MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION

5th Floor, "Metro Plaza", Bittan Market, Bhopal - 462016

Petition No. 12 of 2019

PRESENT:
Dr. Dev Raj Birdi, Chairman
Mukul Dhariwal, Member

IN THE MATTER OF:

Petition filed under Section 94(1)(f) of the EA Act, 2003 read with Regulation 40 of the MPERC (Conduct of Business) Regulations, 2004 seeking review of the order dated 30.11.2018 passed by the Commission in petition No. 28 of 2018 for 1x600 MW Coal based Thermal Power Station at village Barela, District Seoni, Madhya Pradesh.

M/s. Jhabua Power Limited,
6th Floor, Vatika City Point,
M. G. Road, Gurgaon - 122002 - **Petitioner**

//Versus//

1. **The Managing Director**
   M.P. Power Management Company Ltd.,
   Block No. 2, Shakti Bhawan, Rampur, Jabalpur – 482008
2. **The Managing Director**
   M. P. Poorv Kshetra Vidyut Vitaran Co. Ltd.
   Shakti Bhawan, Rampur, Jabalpur – 482008.
3. **The Managing Director**
   M. P. Madhya Kshetra Vidyut Vitaran Co. Ltd.
   NishthaParisar, Govindpura, Bhopal – 462023
4. **The Managing Director**
   M. P. Paschim Kshetra Vidyut Vitaran Co. Ltd.
   GPH Compound, Pologround, Indore - 452003

Respondents

ORDER

(Date of Order: 27th December' 2019)

Ms. Swapna Seshadri, Advocate, Shri Janmejaya Mahapatra, CEO,Shri Dileep Singh, Manager, and Ms. Roopam Bansal, Manager appeared on behalf of the petitioner.

Shri Ajasra Gupta, GM (Commercial), and Shri Ravin Dubey, Advocate appeared on behalf of Respondent No. 1.

Shri G.R. Patele (GM) and Shri Himanshu Saxena, (AO) appeared on behalf of Respondent No. 3.

1. M/s. Jhabua Power Limited (hereinafter called "the petitioner") has filed the subject review petition on 1st February' 2019 for review of Commission's order dated 30th November' 2018 in Petition No. 28 of 2018 in the matter of determination of final generation tariff for 1x600 MW coal based thermal power station at village Barela District Seoni, Madhya Pradesh. The aforesaid final tariff order was based on MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2015 (hereinafter called "the Tariff Regulations, 2015"). The subject review petition is filed under Section 94(1)(f) of the Electricity Act, 2003 read with Regulation 40 of the MPERC (Conduct of Business) Regulations, 2004.

2. In the subject review petition, the petitioner has sought review on various issues contending that there have been error apparent on the face of records and also non-consideration of materials placed by the petitioner. Subsequently, the petitioner has filed an application on 25th February' 2019 urging one additional issue for review of the aforesaid Commission's order dated 30th November' 2018. In the said application, the petitioner has submitted that one of the grounds i.e. additional charges for transportation of coal through road for 2.5 km distance from Binaiki Railway Station to power station has been left out by inadvertence and the same is raised as additional ground for review in the subject review petition.

3. Further, by affidavit dated 3rd June' 2019, the petitioner raised one more issue i.e. "**erroneous interpretation of the rate of depreciation** calculation submitted by the petitioner". The review petitioner submitted that this issue being a case of error apparent on the face of records and having significant financial implication.

4. The issues raised by the petitioner for review in the subject review petition are as follows:
   (i) Treating the extension of SCOD as a contractual matter.
   (ii) Non consideration of reasons for delay in COD.

(iii) Erroneous deduction of Rs. 41.30 Crores as undischarged liability.

(iv) Incorrect approach in computation of IDC and IEDC.

(v) Reduction in Equity considered.

(vi) Apportionment of common expenses.

(vii) Revenue realization from sale of infirm power taken as Rs. 15.4 Crores instead of Rs. 9.10 Crores.

(viii) Non consideration of O&M Expenses and losses for the dedicated transmission line built by the petitioner.

(ix) Additional transportation charges for 2.5 km distance from Binaiki Railway Station to power station when coal is transported by road.

(x) Erroneous interpretation of the rate of depreciation calculation

Background:

5. The generating unit under Phase-I (600 MW) of the project in the subject review petition was synchronized with the grid on 23rd February, 2016 and this unit was declared under Commercial Operation on 3rd May, 2016.

6. The petitioner had earlier filed Petition No. 53 of 2015 for determination of provisional generation tariff for the generating unit (1x600 MW) of its power station. However, the generating unit of the petitioner's power plant was not declared under commercial operation, therefore, vide Commission's order dated 20th January' 2016, the petition No. 53 of 2015 was disposed of with the directions to file the petition for determination of provisional tariff with all requisite details and documents as and when the generating unit is declared under commercial operation.

7. Subsequently, the petitioner had filed Petition No. 16 of 2016 on 21st March' 2016 for determination of provisional tariff. Vide order dated 6th September' 2016 (in Petition No. 16 of 2016), the generation tariff for the generating unit was provisionally determined by the Commission from COD (i.e. 3rd May' 2016) to 31st March' 2017 based on MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2015 with the direction to file petition for determination of final tariff based on the Annual Audited Accounts.

8. In compliance to the above direction, the petitioner had filed Petition No. 28 of 2018 on 14th June' 2018 for determination of final tariff for 1x600 MW generating unit of its Coal based Thermal Power Plant under the provisions of the Tariff Regulations, 2015 and based on the Annual Audited Accounts for FY 2016-17.

9. Vide order dated 30th November' 2018, the Commission determined the final tariff of the petitioner's generating unit based on the details and documents filed by the review petitioner and the provisions under the Tariff Regulations, 2015. In the

aforesaid final tariff order, the Commission considered the actual capital expenditure of Rs. 3662.42 Crore as on COD for the generating unit under Phase I of the project. The Commission also considered the additional capitalization of Rs. 252.06 Crore during FY 2016-17 (from COD to 31.03.2017) in terms of the Regulation 20.1 of MPERC (Terms and Conditions for Determination Generation Tariff) Regulations, 2015 and based on Annual Audited Accounts for FY 2016-17.

10. The following Annual Capacity (Fixed) Charges were determined by the Commission in the aforesaid final tariff order dated 30.11.2018 are as follows:

AFC determined in final tariff order dated 30.11.2018: Amount in Rs. Crores

Sr. No.	Particulars	FY 2016-17	FY 2017-18	FY 2018-19
1	Depreciation	174.43	180.24	180.24
2	Interest and Finance Charges	386.36	376.70	351.45
3	Return on Equity	147.53	151.44	151.44
4	Operation & Maintenance Expenses	97.62	103.80	110.28
5	Interest on Working Capital	60.89	55.07	53.12
6	**Total Capacity (fixed) Charges**	**866.82**	**867.24**	**846.52**
7	Less:-Non Tariff Income	2.94	2.94	2.94
8	Net AFC (after adjusting Non-tariff Income)	863.88	864.30	843.58
9	Number of Days in Operation	333	365	365
10	AFC apportioned in actual days of operation	788.14	864.30	843.58
11	**Capacity Charges for contracted Capacity i.e. (30%) of Installed Capacity**	**236.44**	**259.29**	**253.07**

Procedural History:

11. Motion hearing was held in the subject matter on 5th March' 2019. The petitioner was asked to file a consolidated petition with the Commission incorporating the additional ground raised in its application dated 25th February' 2019.

12. By affidavit dated 15th March' 2019, the petitioner filed a consolidated petition incorporating the additional ground. The review petition was admitted by the Commission on 23rd April' 2019 and the petitioner was directed to serve the copy of its review petition on all Respondents in the matter. The Respondents were also directed to file their response by 10th May' 2019 after serving a copy of the same to other side.

13. During the hearing held on 28th May' 2019, Respondent No. 1 sought four weeks' time extension to file its reply to the subject petition. By affidavit dated 3rd June' 2019, the petitioner filed an additional submission in the subject review petition with regard to "erroneous interpretation of the rate of depreciation calculation" considered in the final tariff order.

14. By affidavit dated 14th June' 2019, Respondent No. 1 (MPPMCL) filed its response on the subject review petition. By affidavit dated 20th June' 2019, the petitioner filed its rejoinder on the aforesaid response filed by Respondent No. 1.

15. During the course of hearing held on 25th June' 2019, detailed arguments were placed before the Commission by the petitioner and respondents. Subsequently, the petitioner by affidavit dated 24th June' 2019 has filed additional submission in the subject matter.

Commission's Analysis:

16. In accordance with Rule 1 Order 47 of the Code of Civil Procedure (CPC), a person aggrieved by an order may apply for a review under the following circumstances:
    a. On discovery of new and important matter or evidence which after exercise of due diligence was not within his knowledge or could not be produced by him at a time when the order was made;
    b. An error apparent on the face of the record;
    c. For any other sufficient reason.

17. Keeping in view of the above provisions and on perusal of the submissions made by the petitioner and the respondent, the Commission has examined the issues raised in the review petition as discussed below:

Issue No. 1 – Treating the extension of SCOD as a contractual matter:

Petitioner's Submission:

18. The petitioner while mentioning Para 31 and 32 of Commission's order dated 30th November' 2018 in Petition No. 28 of 2018 has mentioned that the issue of SCOD/ COD is not a contractual issue between the petitioner (Generator) and Respondent/ Distribution Companies. It has further stated that the contractual aspect remains confined to levy of liquidated damages, if any. The petitioner also stated that the Commission has dealt with the issue of SCOD to be 31.03.2015 since the Respondent (MPPMCL) only agreed to extend the petitioner's SCOD till the said date.

19. It is further contended by the petitioner that the agreement between MPPMCL (Respondent No.1) and the petitioner on the SCOD is not relevant and the Commission has to decide the SCOD based on the facts and circumstances of the case. The petitioner has also contended that the Commission has not gone into the reasons for delay of the COD. Therefore, the same amounts to error apparent on face of the records.

Respondent's Response:

While mentioning the provisions under MPERC Tariff Regulation and PPA, the Respondent MPPMCL broadly submitted the following:

i. *Tariff determination under Section 62 of Electricity Act 2003 by Electricity Regulatory Commissions is governed by the extant Tariff Regulations. The inter-se rights of the parties are governed by the terms of Power Purchase Agreement executed by the contracting parties and approved by the Electricity Regulatory Commission. Therefore, while determining Tariff, Hon'ble Commission is bound by provisions of Electricity Act 2003 and the extant Tariff Regulations, keeping in view inter-se rights of the parties under terms of PPA in force.*

ii. *Therefore, the Review Petitioner's contention that the Hon'ble Commission should have determined SCOD "as a preliminary issue" de-hors the provisions of the PPA, is grossly incorrect. This preposition is entirely misconceived and against well established legal principles of dealing with Power Purchase Agreements by the Electricity Regulatory Commissions.*

iii. *It is clear from above that the SCOD was revised as 31.03.2015 as per the provisions of the Article 4.1.6 of the PPA. This fact was also admitted by the Review Petitioner by Affidavit Dated 3.08.2016 submitted during proceedings of Petition No. 28 of 2018. Also, there is no provision in 2015 tariff regulations enabling the Hon'ble Commission to interfere with mutually agreed Revised SCOD or requiring Hon'ble Commission to "decide SCOD as a preliminary issue before proceeding to determine the Tariff".*

iv. *In view of the above, it is humbly submitted that there is no error apparent on the face of the records in respect of Issue No. 1 i.e. "Treating the extension of SCOD as a contractual matter". Therefore, it is prayed that this Hon'ble Commission may graciously be please to reject the prayer for Review of Order Dated 30.11.2018 on the ground of Issue No. 1.*

Commission's Observations:

20. At the outset, the Commission has observed that this issue has been dealt with by the Commission comprehensively in Para 22 to Para 31 under the heading of "Scheduled COD" of Commission's order dated 30.11.2018. Petition No. 28 of 2018 for determination of final generation tariff of petitioner's generating unit was based on MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2015 and the same was examined by the Commission based on the principles articulated in aforesaid Regulations and the contractual agreement (PPA) between the petitioner and procurer i.e. MPPMCL. The relevant provisions of

MPERC Tariff Regulations, 2015 read with the articulations under PPA with regard to SCOD have been dealt with and deliberated in full details by the Commission in Para 22 to 31 of Commission's order dated 30.11.2018. Further, the extensions sought by the petitioner from MPPMCL on account of the reasons for delay in commissioning of project and the revised SCOD as per PPA agreed to by both the parties was considered by the Commission in terms of provisions under MPERC Tariff Regulations.

21. The Power Purchase Agreement (PPA) was executed between the review petitioner and the procurer on 5th January' 2011 for purchase of 30% power of installed capacity on long term bases. The parties are bound with the terms of Power Purchase Agreement executed between them and approved by the Commission. Therefore, while determining tariff of the power project, the provisions under PPA are also considered by the Commission.

22. The petitioner in its subject review petition has no where mentioned the provisions of MPERC Tariff Regulations regarding SCOD which is the basis of SCOD in the subject matter. No provisions under the MPERC Tariff Regulations or PPA provides any power to this Commission to decide SCOD or to interfere revised SCOD mutually agreed between parties.

23. Regarding the Scheduled Date of Commercial Operation of the project, Regulation 4.1(zs) of MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2015 provides that:

> *"Scheduled Commercial Operation Date or 'SCOD shall mean the date(s)of commercial operation of a generating station or generating unit or block thereof as indicated* ***in the Investment Approval or as agreed in power purchase agreement, which ever is earlier****;"*

24. The aforesaid Regulation clearly provides that the SCOD of the project shall be either as indicated in investment approval or as agreed in power purchase agreement, whichever is earlier. During the proceeding of petition No. 28 of 2018, the review petitioner was asked to inform the SCOD, start date and zero date of the generating unit if any, recorded in "Investment Approval" as defined at Regulation 4.1 (zd) of MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2015.

25. By affidavit dated 21st September' 2018, the petitioner submitted that no scheduled date of commercial operation is mentioned in the Investment Approval of the project. however, the SCOD as per the PPA is **31st March' 2013**. The details regarding

schedule COD, start date and Zero date of the petitioner's Unit No. 1 submitted by the review petitioner are as given below:

Zero Date as considered by JPL	Scheduled COD (SCOD)	Revised Scheduled COD	Actual COD
18.03.2010	31.03.2013	31.03.2015	03.05.2016

26. The review petitioner further submitted that as such Zero date is neither mentioned in PPA nor in Investment Approval. However, the petitioner has considered the Zero date of the project in accordance with the L1 Schedule which was developed after the award of BTG Contract to the BHEL on 25.02.2010 and after the actual start of work. Hence, the SCOD was not mentioned in the Investment Approval of the project therefore, the SCOD as agreed in PPA has to be considered in terms of Regulation 4.1(zs) of MPERC Tariff Regulations' 2015.

27. Regarding the scheduled date of commercial operation, Clause 4.1.5 of the PPA dated 05.01.2011, the review petitioner agreed to achieve COD of first Phase of the Generating Station by 31.03.2013. Further, with regard to revised SCOD, Article 4.1.6 of the Power Purchase Agreement stated as below:

> *"The Parties may mutually agree to revise the Scheduled COD for commissioning of any Unit or the Power Station (hereinafter referred to as Revised Scheduled Commercial Operation Date or Revised COD) and such Revised Scheduled COD shall thereafter be the Scheduled COD."*

28. In Para 28 of the order dated 30.11.2018, the Commission has recorded the following –

> *"28. By affidavit dated 3rd August, 2016, the petitioner submitted the following:*
>
> *"As per the PPAs signed with the Respondents and subsequent approval from the Respondent No. 1, the Scheduled COD of Phase-I, Unit-1 of the Project was 31st March 2015 ("SCOD"). The approval of SCOD of 31st March 2015 was granted by the Respondent No. 1 vide its letter no. 05-01/1484 dated 10th November, 2014.* ***In view of the above stipulation of the PPA, it is submitted that the SCOD is to be considered as 31st March 2015****."*
>
> **(Emphasis supplied)**

29. The Commission has comprehensively dealt with this issue in Para 22 to 31 of the Order Dated 30.11.2018. In Para 27 of the aforesaid Order, the Commission has observed that the extension of Scheduled COD of the generating unit till March' 2015 was conditionally considered by MPPMCL subject to furnishing some undertaking by M/s Jhabua Power Limited.

30. In view of the above, it has been observed that the SCOD was revised as 31.03.2015 as per the provisions of the Article 4.1.6 of the PPA. By affidavit dated 3.08.2016, the review petitioner submitted this contention during proceedings in petition No. 28 of 2018. No provision in the Tariff Regulations, 2015 enables this Commission to decide or interfere with mutually agreed revised SCOD of the unit.

31. It was further noted that, the issue of Scheduled date of Commercial Operation (SCOD) has already been dealt with extensively and decided by the Commission in its order dated 6th September' 2016 in petition No. 16 of 2016 for determination of provisional tariff of the project. During the proceeding of the aforesaid petition No. 16 of 2016, the review petitioner had submitted that the SCOD of the generating unit is 31st March' 2015 which is duly agreed by the Respondent No. 1. The review petitioner had not filed any review or appeal against the aforesaid order dated 06.09.2016, therefore, the SCOD of 31.03.2015 as considered in aforesaid provisional tariff order was accepted by the review petitioner and attained finality.

32. In para 31 of the Commission's order dated 30.11.2018 regarding delay in COD, the Commission observed the following:

(i) As per clause 4.1.5 of PPA, M/s Jhabua Power Ltd. was to achieve COD of Unit No. 1 by 31st March, 2013.

(ii) At the request of the M/s Jhabua Power Ltd., the scheduled COD was extended by MPPMCL by one year up to 31st March, 2014.

(iii) M/s Jhabua Power again requested to MPPMCL for extension of revised COD by one year up to 31st March, 2015 and same was considered by MPPMCL.

(iv) Vide letter dated 24th March, 2015, the petitioner further requested for extension of scheduled COD till September, 2015.

(v) Vide letter dated 16th September, 2015, declined the request of the petitioner for extension of COD from 31st March' 2015 to September, 2015 (not considered by MPPMCL.

33. In view of the above, it is observed that the Scheduled Date of Commercial Operation is defined and detailed in the PPA executed between the petitioner and Respondents. Further, the MPPMCL agreed to revise the scheduled date of commercial operation only upto 31.03.2015. For the subsequent period from 31st March' 2015 upto actual COD, the Respondent No. 1 (MPPMCL) had not considered the request of petitioner for further extension of COD. Accordingly, the revised scheduled COD of the generating unit is 31st March' 2015 as considered in provisional tariff order dated 06.09.2016 and final tariff order dated 30.11.2018 in terms of MPERC Tariff Regulations.

34. Accordingly, in light of the provisions under PPA and Tariff Regulations, the Scheduled COD of generating unit is considered by the Commission as 31st March, 2015. The Commission has already dealt with all the aspects on this issue in the subject review petition in its order dated 30.11.2018. Hence, there is no error apparent on the face of the records on this issue "Treating the extension of SCOD as a contractual matter". The contention of review petitioner for review of Commission's order dated 30.11.2018 on this issue does not fall under any of the circumstances/ grounds for review hence the review is not considered in this order.

Issue 2 – Non-Consideration of reasons for delay in COD:

Petitioner Submission:

35. On this issue of delay in achieving COD of the generating unit, the review petitioner has contended that the delay in commissioning and commercial operation of the generating station was only due to longer time taken in the construction and completion of transmission evacuation facilities. In this regard, the review petitioner has submitted the following:

(a) As per the original PPA entered into between the parties, the supply of power by the Petitioner to MPPMCL was at the bus-bar of the generating station, with the responsibility of establishing the evacuation facility being that of MPPMCL. The project was then envisaged to be connected to the system of STU.

(b) However, this was subsequently amended to provide that the Petitioner's generating station would be connected to the CTU network, for which the Petitioner shall establish a dedicated transmission line. This was on account of the fact that it was difficult for MPPMCL to ensure a long transmission line to be established to connect to the project.

(c) In the circumstances, the PPA was amended between the parties to provide for the evacuation line to be built by the Petitioner to connect to the system of the CTU. This was filed with the Commission for approval and the approval was granted by the order dated 07.09.2012. It was mentioned that the amended PPA came into force and was to be performed by the parties.

(d) The transmission line in issue is a 400 KV D/C line with a length of about 65 km long established by the Petitioner. The Petitioner has established the said line in time, within a period of 32 months. There is no delay whatsoever in the time taken to build the transmission line, which is much less than the time taken by even ISTS transmission licensees. Even the Tariff Regulations of the Central Commission provides for a period of 34 months for a 400 KV D/C line to be constructed. The Petitioner is well within the above time frame.

(e) The Petitioner has provided the complete details of the time taken by various authorities, including the MP Transmission Company for granting approvals for the transmission lines. The other authorities involved were NHAI, Railways, Civil Aviation ministry, MoEF and MoP.

(f) Major delay occurred in the approval being granted by Railways, which took almost 1 ½ years. Despite all of the above, the Petitioner constructed and completed the line well within the time period even provided for the CTU for transmission line construction.

(g) The start date for the line itself was only in September' 2012 when the responsibility for building the line came on the Petitioner as against MPPMCL earlier. Therefore, it is respectfully submitted that the non-consideration of the period till the actual COD of the project for the purpose of considering the IDC and IEDC as claimed by the Petitioner is an error apparent on the face of the record and subject to the review jurisdiction of the Commission.

(h) It is respectfully submitted that the said decision of the Hon'ble Commission has not taken into account the factual details of the transmission evacuation line, including the time when the onus and responsibility of the evacuation facility was shifted to the Petitioner.

(i) The Commission has not considered the case of the Petitioner on the merits of the time overrun which needs to be gone into as per the Tariff Regulations of the Hon'ble Commission as under –

17.2. Subject to prudent check, the capital cost admitted by the Commission shall form the basis for determination of Tariff:

Provided that, prudent check of capital cost may be carried out based on the benchmark norms to be specified by the Central Commission from time to time:

Provided further that in cases where benchmark norms have not been specified by the Central Commission, prudent check may include scrutiny of the reasonableness of the capital expenditure, financing plan, interest during construction, use of efficient technology, cost over-run and time over-run, and such other matters as may be considered appropriate by the Commission for determination of Tariff :

……

(j) In terms of the above, one of the factors to be considered by the Commission while conducting prudence check of capital cost is the time over-run. It is respectfully submitted that the non-consideration of the issue in terms of the obligations of the parties in regard to the evacuation line, the time taken for completion by the Petitioner and other facts as elaborated above amounts to an error apparent on the face of the record and is subject to the review jurisdiction of the Hon'ble Commission. In the circumstances mentioned above, the Commission ought to consider the reasons for time over-run and render findings on the same.

Respondent's Response:

36. The Respondent No. 1 (MPPMCL) broadly submitted the following:

"6.11 It is humbly submitted that above contention of the Review Petitioner is grossly incorrect. The Hon'ble Commission has comprehensively dealt and rejected above arguments in respect of time overrun as pleaded in Petition No. 28 of 2018.In Sub Paras 34 (xiii) to 34 (xv) of the Order Dated 30.11.2018 the Hon'ble Commission has quoted/ recorded the contention of JPL in respect of time over run and rejected the same.

6.12 The Commission has noted in the Order Dated 30.11.2018, that the Review Petitioner has claimed that the entire delay in achieving the COD of the plant was mainly on account of inclusion of construction of evacuation infrastructure (Transmission Line) in its scope of work, which was ultimately completed on 24.04.2015. However, the delay from completion of transmission/ system up to achieving COD on 03.05.2016 is not found on account of inclusion of construction of evacuation infrastructure in the scope of work.

6.13. In view of the above, it is humbly submitted that there is no error apparent on the face of the records in respect of Issue No. 2 i.e. "Non consideration of reasons for delay in COD". Therefore, it is prayed that this Hon'ble Commission may graciously be please to reject the prayer for Review of Order Dated 30.11.2018 on the ground of Issue No. 2."

Commission's Observations

37. On this issue of the reasons for delay in COD raised in the subject review petition, the Commission has noted that the review petitioner has already submitted the same contention in its Petition No. 28 of 2018 thus, the grounds raised on this issue are basically re-agitated by the review petitioner by way of subject review petition.

38. The Commission has comprehensively dealt with this issue of delay in commissioning of the unit in final tariff order dated 30.11.2018. In para 34 (xiii) to 34 (xv) of the aforesaid order, the Commission has mentioned the contention of the petitioner in respect of time over run. The relevant portion of the Order dated 30.11.2018 is reproduced below*:*

"34.(xiii) Time Over-run

The petitioner has submitted the following with regard to time over-run in the project:

"The details regarding the scheduled, revised and actual COD is shown in the table below :

Scheduled COD (SCOD)	***Revised Scheduled COD***	***Actual COD***
31.03.2013	*31.03.2015*	*03.05.2016*

- *As per Clause 4.1.5 of the PPA dated 05.01.2011 with MP Tradeco (erstwhile MPPMCL, the Procurer), JPL agreed to achieve COD of first Phase of the Generating Station by 31.03.2013. MP Power Management Company Ltd. vide its letter dated 10.11.2014 had already approved the delay till 31.03.2015. Delay beyond that was not approved by BoD of MPPMCL stating the delay was not attributable to MPPMCL. In line with the same, MPERC in its provisional Order dated 06.09.2016 in Petition No. 16 of 2016 had considered SCOD date as 31.03.2015. However, JPL was not able to commission its Phase I by the date only because of the delay in the availability of start-up Power, for which delay in part of MPPMCL is attributable. This is because the responsibility of construction of the complete evacuation system beyond delivery point was with MPPMCL. However, this responsibility was transferred to JPL by Hon'ble MPERC vide its Order dated 07.09.2012. JPL had humbly taken the responsibility of setting up of evacuation structure in good faith. In spite of all odds, JPL constructed the evacuation structure at its own expenses and start-up power was available by 24.04.2015 (within an approximate construction period of about 32 months). Accordingly, the actual COD of the Phase I was achieved on 03.05.2016."*

- *Regarding the reasons for delay in achieving COD/Time over-run, the petitioner in Para 8.1 of the petition has submitted that the entire delay in achieving the COD of the plant was mainly on account of inclusion of construction of evacuation infrastructure in the scope of work which was earlier to be completed by the procurer. The petitioner has submitted the events/ works for transmission line which was ultimately completed on 24.04.2015, whereas the generating unit achieved COD on 3rd May' 2016. However, the delay from completion of transmission / system up to achieving COD on 03.05.2016 is not found on account of inclusion of construction of evacuation infrastructure in the scope of work."*

39. In its petition for determination of final tariff, the petitioner had mentioned that the entire delay in achieving COD of the plant was mainly on account of inclusion of construction of evacuation infrastructure (Transmission Line) in its scope of work, which was earlier to be completed by the procurer.

40. Regarding the reasons for delay in achieving COD, the review petitioner in its review petition has submitted that the events/ works for transmission line was ultimately completed on 24.04.2015 whereas, the generating unit achieved COD on 3rd May' 2016. Therefore, the delay from completion of transmission line/system up to achieving COD on 03.05.2016 of generating unit has not been found on account of inclusion of construction of evacuation infrastructure in the scope of work as indicated from the evidences submitted by the petitioner.

41. Regarding delay in commissioning of the project, the petitioner had submitted that the Project implementation was hampered owing to the delay in availability of start-up power, raw water intake system and various other uncontrollable reasons including delays in obtaining clearances. In para 5.3 of Petition No.16 of 2016, the petitioner had submitted the various circumstances leading to postponement of the commissioning of the generating unit. Beside the availability of start-up power, there were several other factors for delay in COD of the unit as mentioned by the review petitioner in petition No. 16 of 2016 as reproduced below:

> *In respect of the raw water intake system, the Petitioner respectfully submits that during the construction of the raw water pipeline, the Project witnessed constant disturbances/ unrest on account of the protest carried out by residents/ villagers over compensation for ROW provided by the Petitioner at the instance of external and unscrupulous elements and as such, could not carry out uninterrupted construction activities. There was strong unrest and opposition toward laying of pipeline under the farm land of locals which was supplemented by the local political forces and motivated elements. Due to this, the Petitioner was compelled to involve locals by giving them temporary job along with good ROW premiums toward the land for laying of pipeline.*

42. On perusal of the contention of the review petitioner for delay in completion of transmission line, it has been noted by the Commission in Para 34(xv) of order dated 30.11.2018 that the contention of the review petitioner with regard to transferring the responsibility of complete evacuation system from MPPMCL to the petitioner vide Commission's order dated 07.09.2012 (in Petition No. 8 of 2012) was completely misplaced and wrong interpretation of Commission's Order for approval of PPA. The review petitioner has wrongly interpreted the Commission's order dated 07.09.2012

that the onus and responsibility of the evacuation facility was shifted to the petitioner. There is no mention in aforesaid order for shifting of any responsibility to the petitioner for shifting of evacuation facility. Therefore, this contention of petitioner is completely misplaced and misleading. Further, as mentioned in Para 34(viii) of Commission's order dated 30.11.2018, the petitioner had submitted that the **Jhabua Power Limited (JPL) in good faith and keeping a positive frame of mind for betterment of beneficiaries didn't oppose to take the responsibility of evacuation facility and tried to execute the same as soon as possible at any cost**. From the aforesaid contention, it is explicitly clear that the decision of taking onus and responsibility for evacuation facility was made with mutual agreement between the petitioner and Respondent, however, the Respondent MPPMCL has not agreed to the extension of COD of project beyond 31.03.2015 on the request of the petitioner and the same has attained finality. Therefore, the plea taken by review petitioner for delay in achieving COD of its project due to evacuation facility with wrong interpretation of Commission's order dated 07.09.2012 for approval of PPA has no ground for review of Commission's order. It has been further observed that, the transmission infrastructure was completed on 24th April' 2015 whereas, the COD of the generating unit achieved on 3rd May' 2016, after more than one year of the completion of transmission line.

43. During the proceeding of final tariff order dated 30.11.2018, the review petitioner was asked to file detailed reasons for delay in achieving COD from SCOD mentioned in PPA. In response to the above, the review petitioner submitted chronological events for completion of transmission line and time taken by each event. On perusal of the aforesaid details, the Commission had observed that there were some controllable factors in which the review petitioner spent more time and due to which the construction activities of the line were unnecessarily prolonged.

44. The concerned load dispatch center in the subject matter i.e. WRLDC has confirmed COD of the said unit in terms of CERC Tariff Regulations. It is further observed that the Respondent No. 1 (MPPMCL) accepted COD of the generating unit in terms of Article 5.4.1 of the Power Purchase Agreement executed between the review petitioner and MPPMCL and also the final test certificate issued by the Independent Engineer on 3rd May' 2016.

45. In view of the above, the Commission has observed that there is no error apparent on the face of the records in respect of this issue and there is no ground for review of Commission's order on this issue i.e. Non consideration of reasons for delay in COD. Therefore, the contention of the review petitioner for review of Commission's order dated 30.11.2018 on this issue is not considered.

Issue 3 - Erroneous deduction of Rs. 41.30 crores as undischarged liability

Review Petitioner Submission:

46. Regarding the deduction of Rs. 41.30 crores as undischarged liability, the review petitioner broadly submitted the following:

(a) The Commission has considered the SCOD to be 31.03.2015 and not condoned any portion of the time overrun till 03.05.2016 when the project was actually declared for commercial operation. Without prejudice to the grounds hereinabove, the Commission has not considered the undischarged liability of Rs. 35.70 crores against IDC and Rs. 5.60 Crores against IEDC which were discharged by the Petitioner in FY 2015-16. While the deductions were made based on the additional submissions made by the Petitioner (MOM Dated 27.11.2018 between the officials of the Commission and the Petitioner), the Commission has not considered the fact that the above undischarged liability has been discharged in the FY 2015-16.

(b) The capital expenditure has been disallowed which was spent by the Petitioner in FY 2015-16. The details/ breakup of the liability discharged by the Petitioner in FY 2015-16 is attached as Annexure B.

(c) The above is an error apparent on the face of record and even if the time overrun is not condoned and IDC/ IEDC not allowed, the amount of Rs. 35.70 crores against IDC & Rs. 5.60 crores against IEDC is a capital cost and ought to be included for tariff computations.

Commission's Observation:

47. Regarding the undischarged liability, the review petitioner has contended that the Commission has not considered undischarged liability of Rs. 35.70 Crore against IDC and Rs. 5.60 Crore against IEDC which were discharged in FY 2015-16 therefore, it is an error apparent on the face of the records.

48. Regulation 4.1(t) of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015 provides as under:

*"**Expenditure Incurred** means the fund, whether the equity or debt or both, actually deployed and paid in cash or cash equivalent, for creation or acquisition of a useful asset and does not include commitments or liabilities for which no payment has been released;"*

49. Regarding this issue of undischarged liability, in Para 42 to 45 of the impugned order dated 30.11.2018, the Commission has mentioned its following observations:

"42. *By affidavit dated 28th November' 2018, the petitioner submitted that the IDC as on SCOD of Rs. 999.33 Crore* ***is inclusive of undischarged liability of Rs 35.70 Crore****.*

43. On going through the reasons stated by the petitioner for delay in achieving COD of unit beyond the Schedule COD considered in this Order i.e. 31st March' 2015 all such reasons for delay in achieving COD are not considerable to pass on the increase in IDC beyond Schedule COD to the beneficiaries/end consumers of electricity generated and supplied from this project.

44. In view of the aforesaid observations, the Commission has allowed IDC only upto Scheduled COD of the Unit (31st March, 2015) considered in this Order.

45. Further, the Commission observed that while filling the petition No. 53 of 2015, the petitioner provided the apportionment of IDC and financing charges between units of phase-I&II of the project. It was found that 95.88% of the total IDC and financing charges filed by the petitioner allocated to phase-I and balance 4.12% allocated to phase-II of the project. Accordingly, the IDC and financing charges were allocated in Commission's provisional Order dated 06th September' 2016 in petition no. 16/2016."

50. Further, in Para 46 of order dated 30.11.2018, the Commission has worked out the following IDC and Financing Charges on the basis of findings recorded in aforesaid paras:

Interest During Construction:(Rs. in Crore)

Particular	**Amount**
IDC as on actual COD (A)	1,337.05
Less: Undischrge Liability (B)	102.13
IDC as on actual COD excluding Un-discharged Liability C (A-B)	1234.92
IDC as on SCOD i.e. 31.03.2015 (D)	916.84
Less: Un-discharged Liability (E)	35.7
IDC as on SCOD excluding Un-discharged Liability F=(D-E)	881.14
Increase in IDC due to delay in COD G=(C-F)	353.78
Net IDC Allowed as on COD (H)	881.14
Add: Finance Charges as on COD	97.72
Less: Penal Interest	33.28
IDC and FC as on COD admitted	**945.58**

IDC & FC apportioned between PH 1 and 2 : (Rs in Crore)

Sr.	**Particular**	**Total Amount**	**PH 1**	**PH 2**
1	**Net IDC & FC considered**	945.58	906.66	38.92

51. By affidavit dated 28th November' 2018 (in petition No. 28/2018), the review petitioner submitted that the IDC as on SCOD of Rs. 999.33 Crore is inclusive of undischarged liability of Rs 35.70 Crore and the IEDC as on SCOD of Rs. 229.21 Crore are inclusive of un-discharged liability of Rs 5.60 Crore.

52. Regulation 17.1 of MPERC tariff Regulations, 2015 provided that the Interest during construction shall be computed corresponding to the loan from the date of infusion of debt fund, and after taking into account the prudent phasing of funds upto SCOD. Further, Regulation 17.3 of the tariff Regulations, 2015 provided that the Incidental expenditure during construction shall be computed from the zero date and after taking into account pre-operative expenses upto SCOD. Therefore, the amount towards IDC and IEDC are allowable only till SCOD based on the actual expenditure (excluding liability).

53. In the final tariff order dated 30.11.2018, the Commission has considered "IDC as on SCOD excluding Un-discharged liability". Consequently, the undischarged liabilities beyond SCOD (31.03.2015) have been disallowed. The aforesaid approach of the Commission is well in accordance with the provisions under MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2015. The IDC and IEDC as on 31.03.2015 which the review petitioner has actually incurred had been considered by the Commission in final tariff order dated 30.11.2018. Further, the Commission has taken a consistent approach to allow IDC and IEDC in accordance with the Regulations, 2015. There is no provisions under Regulations, 2015 for allowing IDC and IEDC as additional capitalization of the project.

54. The contention of review petitioner in this review petition was also placed before the Commission in Petition No. 28/2018 and the same has been dealt with in details in Commission's order dated 30.11.2018. The IDC and IEDC were allowed by the Commission based on the details of undischarged liability filed by the petitioner during the proceedings of the petition No. 28/2018.

55. In view of the above facts and figures already dealt with in Commission's order dated 30.11.2018, the contention of petitioner in the review petition do not fall under any of the circumstances/ grounds for review of Commission's order dated 30.11.2018 on this issue i.e. "Erroneous deduction of Rs. 41.30 Crores as undischarged liability". Therefore, the review of Commission's order on this issue is not considered.

Issue 4 – Incorrect approach in computation of IDC& IEDC

Review Petitioner Submission:

56. Regarding the issue of approach in computation of IDC and IEDC, the review petitioner broadly submitted the following:

(i) Without prejudice to the argument that the time overrun must be considered and condoned, even if the SCOD/ COD is taken to be 31.03.2015, the Commission only allowing IDC/ IEDC upto 31.03.2015 is not correct and an error apparent on the face of record.

(ii) In the instant case of the petitioner, Base Case IDC as calculated with SCOD considered as 31st March 2015 as per the procedure laid out in the above order works out to Rs.1024 Crores. The details of calculation are attached at Anx. C.

(iii) Without admitting the fact but even, if the Commission after going in to the merits of the delay furnished by the Petitioner, (which according to it are completely beyond its controls) finds that the reasons were "Controllable" in nature, then also the minimum IDC amount allowable should have been the base case IDC of Rs. 1024 Crores.

(iv) However, since the reasons, as per the Petitioner, were uncontrollable in nature, the entire actual IDC of Rs. 1434.76 Crores should be considered to be capitalized in tariff.

(v) It is respectfully submitted that these issues will be subsumed if the Hon'ble Commission agrees to examine the reasons for time overrun on the merits and decides the same.

Commission's Observation:

57. The review petitioner has contended that the time overrun must be considered and condoned, even if the SCOD/ COD is taken to be 31.03.2015. Allowing IDC/ IEDC upto 31.05.2015 is not correct and an error apparent on face of the record. It is also contended by the review petitioner that Hon'ble APTEL as well as other Regulatory Commissions work out two streams of IDC i.e.

i. Base IDC/ IEDC considering SCOD and revising the phasing of expenditure assuming the project would have been completed by SCOD and

ii. Actual IDC/ IEDC considering the actual phasing of expenditure i.e. IDC/ IEDC actually incurred.

58. The review petitioner has also referred to Judgment dated 27.04.2011 passed by Hon'ble APTEL in Appeal No. 72 of 2010 and quoted a related portion of the same. The review petitioner has contended that the base IDC up to 31.03.2015 was Rs.

1,024/- Crore which should be allowed if the reasons for delay were found to be "controllable". However, according to review petitioner the reasons for delay were "uncontrollable", therefore as per review petitioner the entire actual amount of IDC i.e. Rs. 1,434.76 Crore should be considered to be capitalized in tariff.

59. The Commission has dealt with this issue in details in Para 36 to 46 of its order dated 30.11.2018. The Commission had examined the claim of IDC and FC made by the review petitioner in its petition No. 28 of 2018 and allowed the same as per the provisions of Regulation 17 (A) of MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2015 which provides as under:

A. Interest during Construction (IDC):

17.1 "Interest during construction shall be computed corresponding to the loan from the date of infusion of debt fund, and after taking into account the prudent phasing of funds upto SCOD.

17.2 In case of additional costs on account of IDC due to delay in achieving the SCOD, the generating company shall be required to furnish detailed justifications with supporting documents for such delay including prudent phasing of funds:

Provided that if the delay is not attributable to the generating company and is due to uncontrollable factors as specified in Regulation18 of these Regulations, IDC may be allowed after due prudence check:

Provided further that only IDC on actual loan may be allowed beyond the SCOD to the extent, the delay is found beyond the control of generating company after due prudence and taking into account prudent phasing of funds."

60. In Para 43 of Commission's tariff Order dated 30.11.2018, the Commission has recorded detailed reasons for not considering the IDC and FC beyond SCOD. The reasons for delay in achieving commercial operation beyond SCOD has not been considered in Commission's order dated 30.11.2018, therefore, there was no basis to allow increase in IDC and FC beyond SCOD. The relevant para of the order dated 30.11.2018 is reproduced below :

"*43. On going through the reasons stated by the petitioner for delay in achieving COD of unit beyond the Schedule COD considered in this Order i.e. 31st March' 2015 all such reasons for delay in achieving COD are not considerable to pass on the increase in IDC beyond Schedule COD to the beneficiaries/ end consumers of electricity generated and supplied from this project."*

61. In terms of Regulation 17.2 of Tariff Regulations, 2015, the Commission had not considered any additional costs on account of IDC due to delay in achieving SCOD. Further, the reasons for delay in achieving SCOD were found entirely attributable to the review petitioner and those were covered under the category of controllable factors. Therefore, the same were considered under the category of Sub Para 7.4 (i) of the said Judgment dated 27.04.2011 passed by Hon'ble APTEL in Appeal No. 72 of 2010.

62. While disallowing the IDC beyond scheduled COD, the observations and the approach of the Commission have been discussed in details in Para 43 to Para 46 of the Commission's Order dated 30th November' 2018. With regard to disallowance of IEDC, the following has been mentioned in para 53 to 57 of Commission's tariff order dated 30.11.2018:

- *"The Commission has observed that the increase in overhead and establishment expenses from the estimated amount to the actual figure (as on COD) was on account of delay in achieving the COD of the generating unit. The petitioner filed the detailed break-up of overhead and establishment expenses as on scheduled COD (31st March' 2015) and as on actual COD of the Unit.*
- *Regulation 17 (B) of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015, stipulated that "Incidental expenditure during construction shall be computed from the zero date and after taking into account pre-operative expenses upto SCOD."*
- *On going through the reasons stated by the petitioner for delay in achieving COD of unit beyond the Schedule COD i.e. 31st March' 2015, it is observed that all such reasons for delay in achieving COD are not considerable to pass on the increase in IEDC beyond Schedule COD to the beneficiaries/ end consumers of electricity generated and supplied from this project.*
- *By affidavit dated 28th November' 2018, the petitioner submitted that the IEDC as on SCOD of Rs. 229.21 Crore are inclusive of un-discharged liability of Rs 5.60 Crore*
- *In view of the aforesaid observations, the Commission has allowed IEDC of Rs. 223.61 Crore upto Scheduled COD of the Unit (31st March, 2015).*

Overhead and Establishment Expenses considered:(Rs. Crore)

Sr. No.	***Particular***	***Amount***
1	*Actual Overhead Expenses claimed as on actual COD*	*277.76*
2	*Less: Undischarged liability*	*10.74*
3	*Net Actual Overhead Expenses claimed as on actual COD*	*267.02*
4	*Actual Overhead Expenses as on Scheduled COD*	*229.21*
5	*Less: Undischarged liability*	*5.6*
6	***Net Actual Overhead Expenses as on Scheduled COD***	***223.61***

63. In view of the above facts and figures already dealt with in Commission's order dated 30.11.2018, the contention of review petitioner do not fall under any of the circumstances/ grounds for review of Commission's order dated 30.11.2018 on this issue i.e. "Incorrect Approach in computation of IDC and IEDC". Therefore, the review of Commission's order on this issue is not considered.

Issue 5 – Reduction in Equity considered

Review Petitioner Submission:

64. Regarding the issue of equity considered in final tariff order, the review petitioner broadly submitted the following:

a) The Commission while working out the Debt : Equity ratio has reduced the equity infused by the Petitioner and introduced the concept of normative equity as under:

"96. Based on the above information of capital cost and its funding by debt & equity. The Commission has worked out the following debt equity ratio.

Debt and Equity Ratio considered in this Order (%)

Particulars	***Capital Expenditure***	***Debt***	***Equity***	***Debt (%)***	***Equity (%)***
As on COD i.e. 03.05.2016	*4330.58*	*3235.00*	*1095.59*	*74.70%*	*25.30%*
Additional captilization	*258.68*	*206.89*	*51.79*	*79.98%*	*20.02%*
Capital Expenditure as on 31.03.2017	*4589.26*	*3441.89*	*1147.37*	*75.00%*	*25.00%*

97. Accordingly, the details of the funding considered for the assets admitted in this order are as given below:

Funding as on COD of Unit considered:

Sr. No.	***Particulars***	***Amount in Rs. Crore***
1	*Gross Fixed Assets*	***3662.42***
2	*Opening Loan*	*2735.87*
3	*Opening Equity*	*926.55*
4	*Normative Equity*	*926.55*
5	*Debt : equity*	***75/25***

b) It is respectfully submitted that the above is an error apparent on the face of record since equity is always on actual basis and can never be made 'normative'. The Debt: Equity ratio is normative of 70:30 but the actual equity is never reduced. Even if the time over run is not to be allowed (without prejudice to the grounds raised hereinabove), the IDC disallowed should only be towards loan component and equity cannot be reduced.

c) In regulatory jurisprudence, the loan component gets reduced since it is repaid.

However, equity is constant for the life of the plant and equity cannot be reduced. The equity infused, namely, Rs. 959 crores as on COD and Rs. 51.79 crores as Additional Capitalization cannot be reduced to Rs. 926.55 crores as 'normative equity'.

d) The normative debt equity ratio can be applied but equity cannot reduce. The principle that there can be no depletion on equity has been laid down by the Hon'ble Appellate Tribunal in the judgment dated 16.05.2006 in Appeal No. 121 of 2005, PGCIL vs CERC &Ors ……"

Commission's Observations:

65. The review petitioner has contended that the Commission has reduced the equity and introduced the concept of normative equity. According to review petitioner, this is an error apparent on the face of record since equity is always on actual basis and can never be made 'normative".

66. The contention of the review petitioner on this issue is not in accordance with the provisions under Tariff Regulations, 2015. While considering the funding and debt: equity ratio of the capital cost admitted in final tariff order, the Commission has followed the Regulation 25.1 of MPERC Tariff Regulations, 2015 and considered Debt: Equity ratio accordingly. This issue has been dealt with in paras 91 to 97 of Commission's order dated 30.11.2018. In Para 91of aforesaid order dated 30.11.2018, the Commission has recorded the details of funding as submitted by the petitioner. In Para 93 to 96 of said order the following has been discussed in details by the Commission:

"• From the submission of the petitioner it is observed that the petitioner has incurred equity amount more than 30% (normative equity in the project. Therefore, it has considered debt-equity ratio of 70-30 as per norms under aforesaid Regulation for this project. It is observed that as on COD of Unit, the petitioner has incurred Rs. 4330 Crore towards capital cost.

- *Further, vide affidavit dated 28th November' 2018, the petitioner has furnished the following information regarding the equity capital infused in the project.*

Particular	***As on 31.3.2016***	***As on 02.05.2016***	***As on 31.3.2017***
Issued & subscribed share capital	*959*	*959*	*1147.37*
Unsecured Loans from related parties- holding company's infusion	*111.04*	*136.58*	*0.00*

Total Equity contribution	***1070.04***	***1095.58***	***1147.37***

* *Further breakup of Equity as on into various components such as Equity share capital, Equity component of CCD (Compulsorily Convertible Debentures) (Other equity), Long- term borrowings (CCD Component), Other unsecured Loans from promoters/related parties has already been submitted.*
* *No. & value of CCD converted into Equity shares till 02.05.16- NIL*
* *No. & value of CCD converted into Equity shares in FY 16-17- NIL*

- *It is observed from the above that the CCD component of equity and CCD are the debentures bearing interest, which are convertible after certain period into equity, however, the same has not been converted into equity during FY 2016-17. Thus, the Commission has not considered the CCD as equity during FY 2016-17.*

- *Based on the above information of capital cost and its funding by debt & equity. The Commission has worked out the following debt equity ratio.*

Debt and Equity Ratio considered in this Order (%)

Particulars	***Capital Expenditure***	***Debt***	***Equity***	***Debt (%)***	***Equity (%)***
As on COD i.e. 03.05.2016	*4330.58*	*3235.00*	*1095.59*	*74.70%*	*25.30%*
Additional capitalization	*258.68*	*206.89*	*51.79*	*79.98%*	*20.02%*
Capital Expenditure as on 31.03.2017	*4589.26*	*3441.89*	*1147.37*	*75.00%*	*25.00%*

67. Regarding the debt:equity ratio of the project, Regulation 25.1 of the MPERC Tariff Regulations, 2015 provides that:

"*25. Debt-Equity Ratio:*

25.1 For a project declared under commercial operation on or after 1.4.2016, the debt-equity ratio would be considered as 70:30 as on COD. If the equity actually deployed is more than 30% of the capital cost, equity in excess of 30% shall be treated as normative loan:

Provided that:

a. where equity actually deployed is less than 30% of the capital cost, actual equity shall be considered for determination of tariff

b. theequityinvestedinforeigncurrencyshallbedesignatedinIndianrupees on the date of each investment:

c. any grant obtained for the execution of the project shall not be considered as a part of capital structure for the purpose of debt: equity

ratio.

68. Further, in Para 97 of Commission's order dated 30.11.2018, the Commission has considered Gross Fixed Assets of Rs. 3,662.42 Crore as on COD of Unit, Opening Loan as Rs. 2,735.87 Crore and Opening Equity as Rs. 926.55 Crore, which is in the ratio of 75:25 in terms of Regulations 25.1 of Tariff Regulations, 2015 and based on the funding incurred by the review petitioner.

69. In view of the above facts and figures already dealt with in Commission's order dated 30.11.2018, the contention of petitioner in the review petition do not fall under any of the circumstances/ grounds for review of Commission's order dated 30.11.2018 on this issue i.e. "Reduction of Equity Considered". Therefore, the review of Commission's order on this issue is not considered.

Issue 6 – Apportionment of common expenses.

Review Petitioner Submission:

70. Regarding the issue of apportionment of common expenses, the review petitioner broadly submitted the following:

a) The Commission has, inter-alia, held as under on the aspect of apportionment of common expenses –

72. Accordingly, the detailed break-up with apportionment of each component of the project cost as on COD of the generating unit was made in the aforesaid order dated 06th September' 2016 (in Petition No. 16 of 2016). Considering the same approach and methodology followed in aforesaid Order, the following apportionment of capital cost components of the project as on COD is considered in this order:

b) The Commission has proceeded on the basis of the Petitioner's earlier submission in Petition No. 53 of 2015 and applied the approach taken in the earlier Order dated 06.09.2016 in Petition No. 16 of 2016.

c) There is no discussion at all on the details given by the Petitioner in the present petition as to why the apportionment ratio given is not applicable and therefore, the Commission ought to have atleast dealt with the merits of the case set up by the Petitioner.

d) It is prayed that the Commission may kindly render a finding on the case of the Petitioner instead of merely relying on the earlier finding in the Order dated 06.09.2016.

Commission's Observation:

71. Regarding the apportionment of common expenses, Regulation 5.2 of MPERC (Terms and Conditions for determination of Generation tariff) Regulations, 2015 provides as under:

"For the purpose of determination of tariff, the capital cost of a project may be broken up into stages, blocks, units, if required:

Provided that where break-up of the capital cost of the project for different stages or units or blocks is not available and in case of on-going projects, the common facilities shall be apportioned on the basis of the installed capacity of the unit;"

72. The Commission had comprehensively dealt with this issue in Paras 68 to 72 of Commission's order dated 30.11.2018 with full justification for apportionment of common facilities between Phase I and Phase II of the project in light of the provisions under MPERC Tariff Regulations, 2015. The Commission had also dealt with this issue of apportionment of Common facilities with full justification in paras 71 to 84 of the provisional tariff order dated 6th September' 2016 in petition No. 16 of 2016.

73. In above-mentioned paragraphs, the Commission has mentioned the relevant submission of review petition in its Petition No. 53 of 2015, Petition No. 16 of 2016 and findings of Commission in its orders dated 06.09.2016 in Petition No. 16/ 2016, which are not reproduced in this order.

74. The Commission had observed that some of the facilities which are common for the Phase I & II of the project need to be apportioned as per Regulation 5.2 of the MPERC Tariff Regulations, 2015. Further, the Power Purchase Agreement entered into between the petitioner and MPPMCL on 05.01.2011 is for the contracted capacity equivalent to 30% of the only first unit having installed capacity of 600 MW. However, the tariff for its second unit which has a reference in aforesaid PPA may not be determined by this Commission. Therefore, the Commission had considered the basis of apportionment of most of the common facilities among Phase I and Phase II as filed by the petitioner in petition No. 53/2015.

75. Accordingly, the detailed break-up with apportionment of each component of the project cost as on COD of the generating unit was made in the order dated 06th September' 2016 (in Petition No. 16 of 2016). Considering the same approach and methodology followed in provisional tariff Order dated 6thSeptember' 2018 (in petition No. 16 of 2016) the apportionment of capital cost components of the project as on COD has been considered by the Commission in final tariff order dated 30.11.2018.

76. In view of the above facts and figures already dealt with in Commission's order dated 30.11.2018, the contention of petitioner in the review petition do not fall under any of the circumstances/ grounds for review of Commission's order dated 30.11.2018 on this issue i.e. "Apportionment of common expenses". Therefore, the review of Commission's order on this issue is not considered.

Issue 7 – Revenue realization taken as Rs. 15.4 crores instead of Rs. 9.10 crores

Review Petitioner Submission:

77. On the issue of revenue realization from sale of infirm power, the review petitioner submitted the following:

a) The finding on which review is being sought is as under –

64. In reply to the aforesaid query sought by the Commission, while dealing with the petition No.16/2016 for determination of provisional tariff, the petitioner submitted that the actual revenue from sale of infirm power is Rs. 15.42 crore, out of which Rs. 6.32 crore has been apportioned to the cost of start-up power drawn from CTU for commissioning purposes (Rs 4.21 Cr) and other contingent miscellaneous expenditure during commissioning (Rs 2.01 Cr) and thus, Rs. 9.10 crore has been depicted in the CA certificate. Subsequently, by affidavit dated 3rd August 2016, in petition no. 16/2016 the petitioner filed revised CA certificate indicating that the revenue from sale of infirm power is Rs. 15.42 crore and same has been adjusted from fuel expenses to work out the net fuel expenses from generation of infirm power.

b) It is submitted that the above is an error apparent on the face of record and is subject to the review jurisdiction of the Commission. The Petitioner had claimed the Infirm Power of Rs. 93.06 Crore as on COD of the project. The Petitioner has also submitted the CA Certificate dated 21.05.2016 on account of the expenses incurred towards start up fuel. The Hon'ble Commission has considered Rs. 74.04 Crore as start up fuel indicating that revenue from sale of infirm power as per CA certificate is Rs. 9.10 Crore whereas, the revenue earned from sale of infirm power as indicated in WRPC statement is Rs. 15.42 Crore.

c) The Commission has considered the revenue as Rs.15.42 Crore with reference to the Petitioner's Submission in Petition No. 16 of 2016. The Petitioner in Petition No 16 of 2016 for determination of Provisional Tariff submitted that the actual revenue from sale of infirm power is Rs. 15.42 crore, out of which Rs. 6.32 crore has been apportioned to the cost of start-up power drawn from CTU for commissioning purposes (Rs 4.31 Cr) and other contingent miscellaneous expenditure during commissioning (Rs 2.01 Cr) and thus, Rs. 9.10 crore has

been depicted in the CA certificate. Subsequently, by affidavit dated 3rd August 2016, in petition no. 16/2016 the Petitioner filed revised CA certificate indicating that the revenue from sale of infirm power is Rs. 15.42 crore and same has been adjusted from fuel expenses to work out the net fuel expenses from generation of infirm power.

d) *The Commission derived the cost of Start-up fuel expenses by setting off the revenue earned from sale of infirm power from the total start-up fuel expenses, without considering the expenses of Rs. 6.32 Cr incurred by the Petitioner (Rs. 4.31 Cr against start up power and Rs. 2.01 Cr against contingent expenditure during commissioning.). While doing so, the Hon'ble Commission ought to have considered this dis-allowed expenditure as part of pre-operative and pre-commissioning expenses. Accordingly, the pre-operative & pre-commissioning expenditure would have been Rs. 235.53 Cr instead of the presently allowed total overhead and establishment expenses of Rs. 229.21 Cr.*

e) *Therefore, there is an error on the issue of considering revenue realization of Rs. 15.42 Crores instead actual revenue realization of Rs. 9.10 Crore.*

Commission's Observations:

78. The review petitioner, in Para 54 of the present review petition submitted that the revenue realization from sale of infirm power of Rs. 9.10 Crore (as per CA Certificate given by the petitioner) should have been considered instead of Rs. 15.42 Crore, which is an error apparent on the face of the record.

79. The Commission has dealt with this issue of Sale of Infirm Power in Para 60 to 67 of its order dated 30.11.2018. In Para 63, the Commission has recorded the following:

"63. *On perusal of the CA certificate regarding fuel expenditure for generation of infirm vis-à-vis weekly statements issued by WRPC for infirm power, it observed that the revenue from sale of infirm power as per CA certificate is Rs. 9.10 Crore whereas, the revenue earned from sale of infirm power as indicated in statement is Rs. 15.40 Crore."*

80. The Commission has relied upon the statement of Western Region Power Committee (WRPC) instead of CA Certificate for considering revenue from Sale of Infirm Power. On perusal of the CA certificate regarding fuel expenditure for generation of infirm vis-à-vis weekly statements issued by WRPC for infirm power, it was observed that the revenue from sale of infirm power as per CA certificate was Rs. 9.10 Crore whereas, the revenue earned from sale of infirm power as indicated in statement is Rs. 15.42 Crore.

81. During the proceeding of the petition No.16/2016 for determination of provisional tariff, the petitioner submitted that the actual revenue from sale of infirm power was Rs. 15.42 crore, out of which Rs. 6.32 crore had been apportioned to the cost of start-up power drawn from CTU for commissioning purposes (Rs 4.21 Cr) and other contingent miscellaneous expenditure during commissioning (Rs 2.01 Cr) and thus, Rs. 9.10 crore had been depicted in the CA certificate. Subsequently, by affidavit dated 3rd August 2016, in petition no. 16/2016 the petitioner filed revised CA certificate indicating that the revenue from sale of infirm power is Rs. 15.42 crore and same has been adjusted from fuel expenses to work out the net fuel expenses from generation of infirm power.

82. The Commission observed that the cost of start-up fuel expenses was considered after reducing the revenue earned from sale of infirm power (as indicated in CA certificate) from the total start-up fuel expenses, without considering the expenses of Rs. 6.32 Cr incurred by the petitioner towards start up power and contingent expenditure during commissioning. While doing so, this disallowed expenditure should have been considered as part of pre-operative and pre-commissioning expenses. Therefore, there is an error on the issue of considering revenue realization of Rs. 15.42 Crores instead of actual revenue realization of Rs. 9.10 Crore.

83. By affidavit dated 24th June' 2019, the review petitioner has now submitted the statement clearly indicating the weekly revenue from sale of infirm power and expenses for start up power. The review petitioner has also enclosed the statement issued by the Regional Load Despatch Centre in this regard.

84. In view of the above, the Commission has now observed that the total revenue from sale of infirm power is Rs. 15.42 Crore and expenses for start up power is Rs. 6.32 Crore. Therefore, the net revenue from sale of infirm power is Rs. 9.10 Crore and same has been considered in this order. Hence the review of the Commission's order dated 30th November' 2018 is allowed on this count.

85. Accordingly, the total cost of start up fuel for generation of infirm power allowed in final tariff order dated 30.11.2018 is revised in this order as given below:

Revised Table No. 22 of order dated 31.11.2018: (Rs Crore)

Sr. No.	Particular	Coal Cost	Oil Cost	Total Cost
1	Fuel expenses for generation of infirm power (FY 2015-16)	20.23	22.53	42.76
2	Fuel expenses for generation of infirm power (FY 2016-17)	41.61	5.09	46.70
3	Fuel expenses for generation of infirm	61.84	27.62	89.46

	power			
4	Less :Revenue from sale of infirm power			9.10
5	**Net start-up fuel expenses**			**80.36**

Issue 8 – Non consideration of O & M Expenses and losses for the dedicated transmission line built by the Petitioner:

Review Petitioner Submission:

86. On the issue of O&M expenses of dedicated transmission line, the review has petitioner submitted the following:

a) *"The O & M norms notified by the Commission pertain only to a generating station and do not include a transmission line. In the special facts and circumstances of the case of the petitioner, due to a change in the PPA, the Petitioner also had to construct the dedicated transmission line for evacuation of power to MPPMCL, at its own cost. However, the O & M Expenses for this portion of the asset i.e. the dedicated transmission line has not been separately considered and has been disallowed. Needless to say, had MPPMCL got the evacuation infrastructure implemented by MPPTCL, it would have paid the applicable O&M charges for the upkeep of this asset. The Commission may therefore, apply the Regulations applicable to MPPTCL on this aspect and permit the O & M Expenses.*

b) *The Commission vide Order dated 07.09.2012 has shifted the responsibility of building the evacuation line to the nearest CTU point on the Petitioner. This was clearly a change in the scope of work in so far as the Petitioner is concerned and the consequential financial effect of the same has to be given to the Petitioner including on the aspect of O & M Expenses.*

c) *Further, the Petitioner states the Commission has not considered the additional line loss of more than 0.5% which is being experienced on the above dedicated transmission line of the Petitioner and accordingly the same has not been factored in while determining the tariff. Copy of a statement showing the losses recorded on the above line is attached hereto and marked as Annexure D.*

d) *The above aspects have been missed by the Commission in the Order dated 30.11.2018 and hence the review is being filed. It is humbly submitted that the petitioner is not seeking to profiteer out of it and simply seeks to cover the actual O&M expenses incurred and the line losses taking place between its switchyard ("Delivery Point" as per the PPA and the point of metering at the*

pooling station of the CTU).”

Commission’s Observation:

87. The Commission has comprehensively dealt with the claim of O&M expenses of Dedicated Transmission Line in its Order dated 30.11.2018. In Para 146 and 147, the Commission has recorded its analysis and its findings on this issue in the aforesaid para of the order dated 30.011.2018. However, the observations of Commission are reproduced below in this order also.

88. In its petition for determination of provisional generation tariff of the generating unit, the review petitioner had not claimed any separate O&M expenses for the dedicated transmission lines of its project. The tariff of the unit was provisionally determined by the Commission strictly in accordance with the O&M norms provided in MPERC Tariff Regulations, 2015 wherein no O&M expenses for dedicated transmission lines was considered over and above the norms prescribed in Regulations.

89. The Commission has already considered the expenditure incurred on the construction of dedicated transmission line/system as part of the capital cost of petitioner’s power plant and allowed corresponding Return on Equity, interest charges and depreciation in the Annual Fixed Charges determined in this tariff Order. The claim of petitioner seeking separate O&M expenses over and above O&M norms provided in Tariff Regulations, 2015 is against the provisions of the Tariff Regulations, 2015. The petitioner has claimed the O&M expenses for dedicated transmission line in terms of MPERC Transmission Tariff Regulations whereas the final tariff petition was for determination of generation tariff of petitioner’s power project in accordance with MPERC Generation Tariff Regulations in the capacity of petitioner as the generating company.

90. It was also observed by the Commission that the dedicated transmission line is neither a transmission line in terms of sub-section (72) of Section 2 of the Electricity Act’ 2003 nor it is a distribution system connecting the point of a connection to the installation of consumer in terms of sub-section (19) of Section 2 of the Electricity Act, 2003. The O&M expenses of a transmission line are part of the Annual Fixed Cost (AFC) determined by the Commission under section 62 of the Electricity Act, 2003 for a transmission licensee whereas, the petition No. 28 of 2018 cannot be considered for determination of AFC for the transmission line under section 62 of the Electricity Act, 2003. The cost of dedicated transmission line has thus been considered in the capital cost of the generating station and the tariff of the said generating station has been determined in terms of the Tariff Regulations which do not provide for any O&M expenses of dedicated transmission line separately.

91. Based on aforesaid observation in its order dated 30.11.2018, the Commission has examined the claim of separate O&M expenses of Dedicated Transmission Line in light of the provisions under Tariff Regulations and disallowed the same on the following grounds:

- Tariff Regulations, 2015 do not provide provisions for separate O&M Expenses for dedicated Transmission Line.
- The petitioner had never challenged Tariff Regulations, 2015 before any forum. Hence, the provisions for O&M norms under MPERC Tariff Regulations, 2015 have attained finality.
- The Commission has already considered the expenditure incurred on the construction of dedicated Transmission Line/ System as part of the capital cost of petitioner's power project and allowed corresponding Return on Equity, interest charges and depreciation in the Annual Fixed Charges determined in the Tariff Order Dated 30.11.2019.
- The O&M expenses of a transmission line are part of the Annual Fixed Cost (AFC) determined by the Commission under section 62 of the Electricity Act, 2003 for a transmission licensee. The Petition No. 28 of 2018 cannot be considered for determination of AFC for the transmission line under section 62 of the Electricity Act, 2003.
- On perusal of the O&M expenses recorded in Annual Audited Accounts for FY 2016-17 submitted by the petitioner, it was observed that the actual O&M expenses of the petitioner's power plant are less than the O&M expenses allowed in the final tariff Order based on O&M norms provided in the 2015 Tariff Regulations.

92. In view of all aforesaid and following a consistent approach by this Commission on this issue in all earlier Orders, the claim of petitioner seeking separate O&M expenses of dedicated transmission line over and above the norms/ provisions in MPERC Tariff Regulations, 2015 has not been considered by the Commission in its order dated 30.11.2018. The aspect of additional Transmission Loss has not been raised in the Original Petition No. 28 of 2018, which is being raised for the first time by way of present review petition.

93. In view of the above facts and figures already dealt with in Commission's order dated 30.11.2018, the contention of petitioner in the review petition do not fall under any of the circumstances/ grounds for review of Commission's order dated 30.11.2018 on this issue i.e. "Non consideration of O&M Expenses and losses for

the Dedicated Transmission Line". Therefore, the review of Commission's order on this issue is not considered.

Issue 9: Additional transportation charges for 2.5 Kms when coal is transported by road:

Review Petitioner Submission:

94. With regard to additional transportation charges for 2.5 Kms when coal is transported by road, the review petitioner submitted the following:

a) The Commission has held as under on this aspect -

89. On perusal of above reply, it is observed that petitioner has incurred Rs. 6.29 Crore during FY 2016-17 towards intermediate coal transportation arrangement as per CA certificate filed with the petition however, the aforesaid work was not in the original scope of work. It is also observed that the aforesaid work is an interim arrangement for the last mile road transportation till completion of the broad gauge works by the petitioner. Further, the Commission had not considered the cost of road transportation of coal beyond January' 2017, while determining the energy charges in its last Order dated 06th September' 2016 for determination of provisional tariff. As per submission of the petitioner in para 15(c) and (d) of the subject petition, the Railway track till Binaiki has now been operationalised by Indian Railways since June'2017.It is noted that the works for coal transportation through railways which is about 2.5 Kms from Binaiki to Plant is not yet completed due to the reasons attributable to the petitioner as the block was imposed by the Lenders on all capital expenditure since past eight months.. Therefore, the higher transportation cost by alternate arrangement for transportation of coal through road is not considered in this order also for arriving at landed cost of coal for determining the energy charges. In view of aforesaid, the Commission has not considered the cost of Rs. 6.29 Crore incurred towards intermediate coal transportation arrangement which was not in the original scope of work also. Therefore, the amount of Rs. 6.29 Crore is deducted from the aforesaid additional capitalization of Rs. 258.35 Crore. Accordingly, the Commission has considered net Additional capitalization of Rs. 252.06 Crore during FY 2016-17. However, the petitioner shall be at liberty to claim the actual cost as and when incurred by the petitioner towards the capital works for coal transportation arrangement through railways of about 2.5 Kms from Binaiki to Plant in its true-up petition. The Commission may consider the same after exercising prudence check on such claim as per original scope of works.

b) The Commission has allowed the liberty to the petitioner to claim the actual cost towards the capital cost for coal transportation arrangement through railways of

about 2.5 Kms in its truing up petition. The petitioner is seeking only a short clarification on this aspect.

c) *For the 2.5 Kms stretch where the coal is actually being transported by road by the petitioner, this Hon'ble Commission may at least allow the railway transportation charges that the petitioner would have incurred had the transportation of coal were done though the entire distance (till the wagon tippler inside the plant premises) till the time the Commission takes a final view in the matter in the truing up proceedings.*

d) *The prayer of petitioner is without prejudice to its submission that the entire transportation cost as per actual should be allowed to the petitioner, in the alternative, atleast the applicable transportation cost of railway of 2.5 Kms should be allowed to the petitioner.*

Commission's Observations:

95. As per review petitioner, it had incurred Rs. 6.29 Crore during FY 2016-17 towards intermediate coal transportation arrangement as per CA certificate filed with the petition however, the aforesaid work was not in the original scope of work. It was also observed that the aforesaid work is an interim arrangement for the last mile road transportation till completion of the broad gauge works by the petitioner. Further, the Commission had not considered the cost of road transportation of coal beyond January' 2017, while determining the energy charges in its last Order dated 06th September' 2016 for determination of provisional tariff.

96. As stated by the review petitioner in its petition for determination of provisional tariff, the work for arrangements for transportation of coal through Railways should have been completed by January' 2017 which was not found completed till determination of final tariff by the Commission vide order dated 30.11.2018. The review petitioner stated that the work of coal transportation through railways for last 2.5 Km from Binaiki to plant is yet not completed on account of various reasons attributable to the review petitioner. The electricity being supplied by the petitioner's power plant to the Respondent is being generated using the coal being transported from Binaiki to power plant by alternate arrangement for transportation through road. However, the petitioner is not able to recover any coal transportation cost for transportation of coal from Binaiki station to power plant in this regard. Considering the alternative request of review petitioner seeking at least applicable Railway transportation cost of 2.5 Km and the present status of transportation arrangement between Binaiki and power plant, the Commission has found it appropriate to allow the cost of coal transportation from Binaiki to plant on the basis of the Rail transportation cost which is being allowed by MPPMCL for transportation of coal through Railways upto

Binaiki. The Commission has considered the aforesaid request of review petitioner till the arrangement of coal transportation through rail is made by the petitioner between Binaiki and the plant.

Commission's Observation:

Issue 10: Erroneous interpretation of the rate of depreciation calculation:

Review petitioner Submission:

97. Regarding the rate of depreciation apply for calculation of Annual depreciation, the review petitioner has broadly submitted the following:

i. The Petitioner had submitted the following and the relevant data (in tabular form) at Para 14.3.c – Table 32 in Petition No. 28 of 2018 for determination of rate of depreciation and the allowable annual depreciation amount.

Table 1: Computation of Depreciation for MYT control period

Rs. in Crore

Particulars	***FY 2016-17****		***FY 2017-18***	***FY 2018-19***
	As approved in provisional orderdtd.06.09.2016	***As claimed by JPL***	***As claimed by JPL***	***As claimed by JPL***
Opening Capital Cost	*3719.35*	*4698.66*	*4706.17*	*4828.19*
Closing Capital Cost	*3719.35*	*4706.17*	*4828.19*	*4938.20*
Average Capital Cost	***3719.35***	***4702.41***	***4767.18***	***4883.19***
Freehold land	*0.00*	*103.46*	*103.46*	*103.46*
Rate of depreciation	*5.04%*	*4.60%*	*5.05%*	*5.06%*
Depreciable value	*3347.42*	*4139.06*	*4197.35*	*4301.76*
Annual Depreciation Amount	*187.46*	*235.68*	*243.95*	*249.76*
Depreciation for the period)	***171.02***	***216.69***	***243.95***	***249.76***

**Calculated for operational days post COD*

ii. As is evident from the above, the Petitioner, while calculating the weighted average rate of depreciation for the different rates of depreciation applicable for the various heads of Capital Cost (as stipulated for various category of assets in line with Cl.33 of the MPERC Tariff Regulations, 2015) had arrived at an Annual Depreciation Rate of 5.05%. The same was reduced to 4.60% for the number of days of operation of the unit in the year in which the unit achieved commercial operation. Since the number of days of operation in the FY 2016-17 was 333 days (the date of Commercial operation being 3rd May 2016), the arrived rate of Annual Depreciation was 4.60% i.e. 5.05% was multiplied by a factor of (333/ 365). The same has also been differentiated by indicating them in two different rows of the tabular data – "Annual Depreciation Amount" and "Depreciation amount for the Period". While the amounts calculated for these two heads are different for the year of commercial operation i.e. Fy16-17 (the number of days of

commercial operation being different from the number of days of the year), it is the same in the other two years.

iii. The Commission has indicated the following and the relevant data (in tabular form) while determining the rate of depreciation and the allowable annual depreciation in its order.

Table 33: Depreciation Admitted

Sr. No.	Particular	Unit	FY 2016-17	FY 2017-18	FY 2018-19
1	Opening GFA	Rs Cr.	3662.42	3914.48	3914.48
2	Assets addition during the year	Rs Cr.	252.06	0.0	0.0
3	**Closing GFA as on 31.03.2017**	Rs Cr.	**3914.48**	**3914.48**	**3914.48**
4	Average GFA	Rs Cr.	3788.48	3914.48	3914.47
5	Wt. average Rate of dep. (%)	Rs Cr.	4.60%	4.60%	4.60%
7	Annual Depreciation	Rs Cr.	174.43	180.24	180.24
8	Cumulative Depreciation	Rs Cr.	**159.14**	**339.38**	**519.61**

iv. As is evident from the above, the Commission misinterpreted the already prorated depreciation rate of 4.60% as the Annual Depreciation Rate. It then went ahead with prorating it again for the number of days of commercial operation of the unit for the year 2016-17, thus allowing an effective depreciation rate of 4.20% and a depreciation amount of Rs 159.14Cr. It also allowed the same annual rate of depreciation of 4.60% as the annual rate of depreciation for the remaining years of the control period, thus extending the erroneous calculation.

v. The above error of interpretation has resulted in the following difference in the rate of depreciation and the annual depreciation amount in the first year of operation (FY 2016-17) in the control period of the present Tariff Regulations.

Particular	Average Capital Cost (Rs Cr.)	Ann. Rate of Dep. (%)	Prorat. Rate of Dep. (%)	Ann. Dep. Amount (Rs Cr.)	Prorat. Dep. Amt (Rs Cr.)
As claimed by petitioner	4702.41	5.05	4.60	235.68	216.69
As allowed by Commission	3788.45	4.60	4.20	174.43	159.14
As it should have been if the Cap. Cost allowed by the Comm. Is considered	3788.45	5.05	4.60	191.31	174.54

vi. Based on the outcome of the review of various issues raised by the Petitioner, the complete calculation including that for the Depreciation Rate and the Depreciation amount shall have to be revisited. The above error can then be easily rectified by the Commission without repetition of any process.

Commission's Analysis:

98. By affidavit dated 3rd June' 2019 in the subject matter, the review petitioner has

raised an additional issue regarding "erroneous interpretation of the rate of depreciation calculation". In its additional submission, the review petitioner submitted that while calculating the annual weighted average rate of depreciation, the different rates of depreciation applicable for the various heads of capital cost component stipulated under MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2015 were considered whereas, the annual rate of depreciation @5.05% had been arrived in petition for determination of final tariff. In fact, the aforesaid annual rate of depreciation was reduced to 4.60% for the number of days of operation (333 days) of the unit in the year (i.e. FY 2016-17) in which the unit achieved commercial operation.

99. With regard to aforesaid issue raised by the review petitioner, it was observed that in table No. 32 of the final tariff petition the review petitioner claimed the weighted average rate of depreciation @ 4.60% in the column titled "As claimed for FY 2016-17" and same weighted average rate of depreciation was considered by the Commission for determining the annual depreciation for each year of the control period. However, the review petitioner has now submitted that the aforesaid weighted average rate of depreciation i.e. 4.60% was worked out in the petition for the number of operational days of the unit during FY 2016-17.

100. The Commission observed that in final tariff petition, the review petitioner had not clearly mentioned the weighted average rate of depreciation, whether it was annual rate or apportioned for number of operational days. The contention of the review petitioner has now been verified with formulas (in the excel formats) filed with the final tariff petition and found that the weighted average rate of depreciation filed for FY 2016-17 was for the 333 days (actual operational days after COD during the financial year). The corresponding annual weighted average rate of depreciation for FY 2016-17 is @5.05% which is required to be applied for all the three years of the control period.

101. In view of the above, the Commission has observed that weighted average rate of depreciation considered in MYT order was only for 333 days and it is an error apparent on the face of record. The Commission has now considered the annual weighted average rate of depreciation @5.05% for the control period FY 2016-17 to FY 2018-19 and revised the annual depreciation amount accordingly.

Summary of Commission's findings in this order:

102. As detailed in the foregoing paragraphs, only three issues namely, "revenue realization from sale of infirm power, erroneous interpretation of the rate of depreciation and additional transportation charges of coal for 2.5 km when coal is transported by road" in the subject review petition are considered for review in terms

of the findings in this order. With regard to all other issues, the review petitioner has failed to produce/ establish any circumstances/ grounds for review of Commission's order in terms of Rule 1 order 47 of CPC.

103. In terms of findings in this order, the Annual Capacity (fixed) Charges are now revised by the Commission after considering the revised capital cost on account of change in revenue from sale of infirm power and rate of depreciation. Regarding cost of coal transportation for 2.5 km distance from Binaiki station to power station, the cost of coal transportation from Binaiki to Plant (2.5 Km) is allowed as per Para 96 of this order.

104. Accordingly, the components of Annual Capacity Charges like Depreciation, Return on Equity, Interest on Loan and Interest on working capital is now worked out by the Commission as given below:

Capital Cost and Funding:

Revised capital cost and Funding as on COD Considered:

Sr. No.	Particular	Amount in Rs. Cr.	
		Considered in Final Tariff Order dated 30.11.2018	**Considered in this order**
1	Gross Fixed Assets as on COD	**3662.42**	**3668.73**
2	Opening Loan	2735.87	2740.58
3	Opening Equity	926.55	928.14
4	Normative Equity	926.55	928.14
5	Debt : equity as on COD	**75/25**	**75/25**

Revised Table No. 29 of the order dated 30.11.2018: Return On Equity:

Sr.No	Particular	Unit	FY 2016-17	FY 2017-18	FY 2018-19
1	Opening Equity as on COD	Rs. Cr.	928.14	978.60	978.60
2	Addition in Equity during FY 2016-17	Rs. Cr.	50.46	0.00	0.00
3	Closing Equity as on 31st March	Rs. Cr.	978.60	978.60	978.60
4	Average Equity	Rs. Cr.	**953.37**	**978.60**	**978.60**
5	Base Rate of Return on Equity	%	**15.50%**	**15.50%**	**15.50%**
6	**Annual Return on Equity**	**Rs. Cr.**	**147.77**	**151.68**	**151.68**

Revised Table No 31 of the order dated 30.11.2018: Interest on Loan Capital:

Sr. No.	Particular	Unit	FY 2016-17	FY 2017-18	FY 2018-19
1	Opening Loan	Rs. Cr.	2740.58	2767.35	2569.35
2	Loan Additions during the year	Rs. Cr.	201.60	0.00	0.00
3	Repayment of Loan equal to dep.	Rs. Cr.	174.83	198.00	198.00

4	Closing Loan as on 31st March	Rs. Cr.	2767.35	2569.35	2371.35
5	Average Loan	Rs. Cr.	2753.97	2668.35	2470.35
6	Weighted Average Rate of Interest	%	14.01%	14.01%	14.01%
7	**Annual Interest amount on Loan**	**Rs. Cr.**	**385.92**	**373.92**	**346.17**

Revised Table No 33 of the order dated 30.11.2018: Depreciation allowed:

Sr. No.	Particulars	Unit	FY 2016-17	FY 2017-18	FY 2018-19
1	Opening Gross Fixed Assets	Rs Cr.	3668.73	3920.79	3920.79
2	Assets Addition during the year	Rs Cr.	252.06	0.00	0.00
3	Closing Gross Fixed Assets as on 31.03.2017	Rs Cr.	3920.79	3920.79	3920.79
4	Average Gross Fixed Assets	Rs Cr.	3794.76	3920.79	3920.79
5	Weighted Average Rate of Depreciation	%	5.05%	5.05%	5.05%
6	Annual Depreciation	**Rs Cr.**	**191.64**	**198.00**	**198.00**
7	Cumulative Depreciation	Rs Cr.	174.83	372.83	570.83

Revised Table in para 159 of the order dated 30.11.2018: Receivables for two months:

Particular	Unit	FY 2016-17	FY2017-18	FY2018-19
Variable Charges- two months	Rs.Cr.	152.81	132.45	132.45
Fixed Charges- two months	Rs.Cr.	147.37	147.13	143.25
Receivables- two months	**Rs.Cr.**	**300.18**	**279.58**	**275.71**

Revised Table No. 44 of the order dated 30.11.2018: Interest on working capital:

Sr. No	Particulars	Unit	Norms	FY 2016-17	FY 2017-18	FY 2018-19
1	Cost of Coal	Rs. Cr.	2 months	149.25	129.17	129.17
2	Cost of Main Secondary Fuel Oil	Rs. Cr.	2 months	1.49	1.49	1.49
3	O&M Expenses for One Months	Rs. Cr.	1 Month	8.14	8.65	9.19
4	Maintenance Spares 20% of O&M expenses	Rs. Cr.	20% of O&M	19.52	20.76	22.06
5	Receivables for Two Months	Rs. Cr.	2 Months	300.18	279.58	275.71
6	Total Annual Working Capital	Rs. Cr.		**478.58**	**439.65**	**437.61**
7	Rate of Interest on Working Capital	%		12.80%	12.60%	12.20%
8	**Annual Interest on working Capital**	Rs. Cr.	**Rs. Cr.**	**61.26**	**55.40**	**53.39**

Revised Table No. 46 of the order dated 30.11.2018: Revised Annual Capacity Charges:

Sr. No.	Particulars	Unit	FY 2016-17	FY 2017-18	FY 2018-19
1	Depreciation	Rs. Cr.	191.64	198.00	198.00
2	Interest and Finance Charges	Rs. Cr.	385.92	373.92	346.17
3	Return on Equity	Rs. Cr.	147.77	151.68	151.68

4	Operation & Maintenance Expenses	Rs. Cr.	97.62	103.80	110.28
5	Interest on Working Capital	Rs. Cr.	61.26	55.40	53.39
6	**Total Capacity (fixed) Charges**	Rs. Cr.	**884.20**	**882.80**	**859.52**
7	Less:-Non Tariff Income	Rs. Cr.	2.94	2.94	2.94
8	Net AFC (after adjusting Other Income)	Rs. Cr.	881.26	879.86	856.58
9	Number of Days in Operation	No.	333.00	365.00	365.00
10	AFC apportioned in actual days of operation	Rs. Cr.	804.00	879.86	856.58
11	**Capacity Charges for contracted Capacity i.e. (30%) of installed Capacity**	Rs. Cr.	**241.20**	**263.96**	**256.97**

Sr. No.	Particulars	Unit	FY 2016-17	FY 2017-18	FY 2018-19
1	AFC allowed in order dated 30.11.2018 in Petition No.28 of 2018 contracted Capacity	Rs. Cr.	236.44	259.29	253.07
2	AFC allowed in this Order for Contracted Capacity under long term PPA	Rs. Cr.	241.20	263.96	256.97
3	**Difference amount allowed to be recovered**	**Rs. Cr.**	**4.76**	**4.67**	**3.90**

105. The aforesaid Annual Capacity Charges have been computed based on Normative Annual Plant Availability Factor specified under the Regulations, 2015. The above Annual Capacity Charges are determined corresponding to the contracted capacity under PPA. The recovery of Annual Capacity (Fixed) charges shall be made by the petitioner in accordance with Regulation 36.2 to 36.4 of the Regulations, 2015.

106. The difference between the Annual Capacity (Fixed) charges determined in this order and those determined vide Commission's order dated 30.11.2018 in Petition No.28 of 2018 shall be recovered from the Distribution Companies of the State/ M.P. Power Management Company Limited in terms of applicable Regulations in the ratio of energy supplied to them in six equal monthly installments.

107. Except above, all other terms contained in Commission's order dated 30.11.2018 in Petition No. 28 of 2018 shall remain unchanged.

With the above directions, this review petition is disposed of.

(Mukul Dhariwal)
Member

(Dr. Dev Raj Birdi)
Chairman

Dated: 27th December' 2019
Place: Bhopal (M.P.)

Annexure - 1

Comments offered by MPPMCL and Petitioner's response to each comment:

MPPMCL Comment:

Preliminary Submissions

1. Without prejudice to other submissions made in this reply, following Preliminary Submissions are being made for kind consideration of this Hon'ble Commission:

5.1 Review petitioner has filed the present Review Petition under Section 94(1)(f) of Electricity Act 2003 read with Section 40 of MPERC (Conduct of Business) Regulations 2004*[which are repealed and MPERC (Conduct of Business) Regulations 2016 have been notified.].*

5.2 Section 94(1)(f) of Electricity Act 2003 is extracted below:

*"**94. (1)** The Appropriate Commission shall, for the purposes of any inquiry or proceedings under this Act, have the same powers as are vested in a civil court under the CODe of Civil Procedure, 1908 in respect of the following matters, namely:*

***(a)**……*

(b)……

…….

***(f)** reviewing its decisions, directions and orders;*

***(g)**……."*

5.3 Section 40 of MPERC (Conduct of Business) Regulations 2016 provides as under :

"40. Review of the decisions, directions and orders.-

(1) *The Commission may on its own motion or on the application of any of the person or parties concerned, within 60 days from the date of making any decision, direction or order, review such decision, direction or order and pass such appropriate order as the Commission thinks fit.*

(2) *An application for such review shall be filed in the same manner as a petition under Chapter II of these Regulations subject to fulfillment of the following conditions, namely: -*

(a) *Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the order was passed or;*

(b) *On account of some mistake or error apparent on the face of the record; or*

(c) *Any other sufficient reason."*

5.4 It is humbly submitted that none of the grounds taken in the present Review Petition falls under any of the provisions of the Act and Regulations. On the other hand, all the

grounds pleaded in the present Review Petition are in the nature of re-agitating the contentions on merits which were previously taken by the Review petitioner in the Petition No. 28 of 2018. Hon'ble Commission has already considered all these contentions on merit and rejected them in its order Dated 30.11.2018 passed in Petition No. 28 of 2018. Therefore, there is no ground for review of the order dated 30.11.2018. It is therefore humbly prayed that this Hon'ble Commission may graciously be pleased to dismiss the present Review Petition.

2. Without prejudice to and in addition to above preliminary submissions issue-wise reply to contentions raised in the present Review Petition is as under :

Review Petitioner's Response:

It is stated that the review has been preferred under Section 94 (1) (f) of the Electricity Act, 2003 read with Section 40 of the MPERC (Conduct of Business) Regulations, 2016. The Petitioner is well aware of the scope of review proceedings and is not reagitating any issues raised in the original petition. It is further stated that each of the grounds raised by the Petitioner are related to exercise of review jurisdiction of the Commission. MPPMCL cannot be permitted to make such sweeping statements without any basis.

MPPMCL Comment:

Issue 1 – Treating the extension of SCOD as a contractual matter

6.1 Review Petitioner has contended that the Hon'ble Commission has wrongly considered the extension of Scheduled Commercial Operation Date (SCOD) as a contractual matter, whereas the same is to be determined by this Hon'ble Commission as a "preliminary issue" before proceeding to determine the Tariff. It is most humbly submitted that this contention of the Review Petitioner is grossly misconceived, incorrect and alien to regulatory jurisprudence under Electricity Act 2003.

6.2 Tariff determination under Section 62 of Electricity Act 2003 by Electricity Regulatory Commissions is governed by the extant Tariff Regulations. The inter-se rights of the parties are governed by the terms of Power Purchase Agreement executed by the contracting parties and approved by the Electricity Regulatory Commission. Therefore, while determining Tariff, Hon'ble Commission is bound by provisions of Electricity Act 2003 and the extant Tariff Regulations, keeping in view inter-se rights of the parties under terms of PPA in force.

6.3 Therefore, the Review Petitioner's contention that the Hon'ble Commission should have determined SCOD "as a preliminary issue" *de-hors* the provisions of the PPA, is grossly incorrect. This preposition is entirely misconceived and against well established legal principles of dealing with Power Purchase Agreements by the Electricity Regulatory Commissions.

6.4 The Commission has comprehensively dealt with this issue in Paras 22 to 31 of the Order Dated 30.11.2018.SCOD is defined in Regulation 4.1 (zs) of 2015 tariff regulations. In Para 22 of Order Dated 30.11.2018, Regulation 4.1 (zs), has been extracted, which provides as follows:

"4.1 (zs) *SCOD shall mean the date(s) of commercial operation of a generating station or generating unit or block thereof as indicated in the Investment Approval or as agreed in power purchase agreement, whichever is earlier."*

6.5 In Para 23 of the Order Dated 30.11.2018 Article 4.1.6 of the Power Purchase Agreement has been extracted, which provides as under:

*"**The Parties may mutually agree to revise the Scheduled COD for commissioning of any Unit or the Power Station (hereinafter referred to as Revised Scheduled Commercial Operation Date or Revised COD) and such Revised Scheduled COD shall thereafter be the Scheduled COD.**"*

6.6 In Para 27 of the Order Dated 30.11.2018, the Hon'ble Commission has observed following –

"…the extension of Scheduled COD till March 2015 for Phase1 (600 MW) of Jhabua Power was conditionally considered by MPPMCL subject to furnishing some undertaking by M/s Jhabua Power Ltd."

6.7 In Para 28 of the Order Dated 30.11.2018, the Commission has also observed following –

*"**28.** By affidavit dated 3rd August, 2016, the petitioner submitted the following:*

"As per the PPAs signed with the Respondents and subsequent approval from the Respondent No. 1, the Scheduled COD of Phase-I, Unit-1 of the Project was 31st March 2015 ("SCOD"). The approval of SCOD of 31st March 2015 was granted by the Respondent No. 1 vide its letter no. 05-01/1484 dated 10th November, 2014. ***In view of the above stipulation of the PPA, it is submitted that the SCOD is to be considered as 31st March 2015****."*

6.8 It is clear from above that the SCOD was revised as 31.03.2015 as per the provisions of the Article 4.1.6 of the PPA. This fact was also admitted by the Review Petitioner by Affidavit Dated 3.08.2016 submitted during proceedings of Petition No. 28 of 2018. Also, there is no provision in 2015 tariff regulations enabling the Hon'ble Commission to interfere with mutually agreed Revised SCOD or requiring Hon'ble Commission to "decide SCOD as a preliminary issue before proceeding to determine the Tariff".

6.9 In view of the above, it is humbly submitted that there is no error apparent on the

face of the records in respect of Issue No. 1 i.e. "Treating the extension of SCOD as a contractual matter". Therefore, it is prayed that this Hon'ble Commission may graciously be please to reject the prayer for Review of Order Dated 30.11.2018 on the ground of Issue No. 1.

Review Petitioner's Response:

The contentions raised by MPPMCL on the issue are incorrect, misleading and are denied. MPPMCL has not understood the case of the Petitioner at all. The Petitioner is not denying that the PPA governs the inter-se rights between the Petitioner and MPPMCL. However, the contention of the Petitioner is that while determining SCOD for tariff purposes, the Hon'ble Commission has to go by its Tariff Regulations and examine the reasons for delay in the SCOD.

Instead, the Hon'ble Commission has only gone on the basis that since MPPMCL has agreed to revise the SCOD till 31.03.2015 only, the delay thereafter need not be gone into at all. This is patently erroneous since the contractual negotiations/ discussions between the Petitioner and MPPMCL on the SCOD are only for the purposes of levy of liquidated damages and does not bind this Hon'ble Commission to examine the issue of time overrun in the execution of the generating station.

The affidavit dated 03.08.2016 of the Petitioner referred to Para 29 of the Order cannot be read in isolation without reading the subsequent requests of the Petitioner to revise SCOD recorded in Paras 30 and 31 of the said Order. The case of the Petitioner is in fact being supported by MPPMCL which is contending that only MPPMCL has the right to determine the SCOD of the generating station. This is an absurd contention and would amount to the MPPMCL prohibiting this Commission in exercising its jurisdiction as a sector regulator to decide the SCOD and thereafter the tariff.

The Petitioner has requested the Commission to consider the reasons for time overrun and render a finding on the same instead of giving the absolute right to MPPMCL to decide this issue. The arguments, submissions and averments to the contrary are wrong and are denied.

MPPMCL Comment:

Issue 2 – Non consideration of reasons for delay in COD

6.10 The Review Petitioner has contended that in the Order Dated 30.11.2018, the Hon'ble Commission has only stated that the reason given by the Petitioner is misplaced and mis-interpretation of the Order Dated 07.09.2012 for approval of changes in PPA.It is also contended that the delay in commissioning and commercial operation of Generating Station was only due to longer time taken in construction and completion of transmission evacuation facilities.

6.11 It is humbly submitted that above contention of the Review Petitioner is grossly incorrect. The Hon'ble Commission has comprehensively dealt and rejected above arguments in respect of time overrun as pleaded in Petition No. 28 of 2018.In Sub Paras 34 (xiii) to 34 (xv) of the Order Dated 30.11.2018 the Hon'ble Commission has quoted/ recorded the contention of JPL in respect of time over run and rejected the same. The relevant portion of the Order Dated 30.11.2018 is extracted below :

*"**34**. ….*

(i)…….

(xiii) Time Over-run

The petitioner has submitted the following with regard to time over-run in the project:

"The details regarding the scheduled, revised and actual COD is shown in the table below:

Scheduled COD (SCOD)	***Revised Scheduled COD***	***Actual COD***
31.03.2013	*31.03.2015*	*03.05.2016*

As per Clause 4.1.5 of the PPA dated 05.01.2011 with MP Tradeco (erstwhile MPPMCL, the Procurer), JPL agreed to achieve COD of first Phase of the Generating Station by 31.03.2013. MP Power Management Company Ltd.(MPPMCL) vide its letter dated 10.11.2014 had already approved the delay till31.03.2015. Delay beyond that was not approved by BoD of MPPMCL stating the delay was not attributable to MPPMCL. In line with the same, MPERC in its provisional Order dated 06.09.2016 in Petition No. 16 of 2016 had considered SCOD date as 31.03.2015. However, JPL was not able to commission its Phase I by the date only because of the delay in the availability of start-up Power, for which delay in part of MPPMCL is attributable. This is because the responsibility of construction of the complete evacuation system beyond delivery point was with MPPMCL. However, this responsibility was transferred to JPL by Hon'ble MPERC vide its Order dated 07.09.2012. JPL had humbly taken the responsibility of setting up of evacuation structure in good faith. In spite of all odds, JPL constructed the evacuation structure at its own expenses and start-up power was available by24.04.2015 (within an approximate construction period of about 32 months).Accordingly, the actual COD of the Phase I was achieved on 03.05.2016."

(xiv)** Regarding the reasons for delay in achieving COD/ Time over-run, the petitioner in Para 8.1 of the petition has submitted that the entire delay in achieving the COD of the plant was mainly on account of inclusion of construction of evacuation infrastructure in the scope of work which was earlier to be completed by the procurer. **The petitioner has submitted the events/ works for transmission line which was ultimately completed on 24.04.2015, whereas the generating unit achieved COD on3rd May' 2016. However, the delay from completion of transmission/system up to achieving COD on 03..05.2016 is not found on

account of inclusion of construction of evacuation infrastructure in the scope of work.*"*[Emphasis Added]

6.12 The Commission has noted in the Order Dated 30.11.2018, that the Review Petitioner has claimed that the entire delay in achieving the COD of the plant was mainly on account of inclusion of construction of evacuation infrastructure (Transmission Line) in its scope of work, which was ultimately completed on 24.04.2015. However, the delay from completion of transmission/ system up to achieving COD on 03.05.2016 is not found on account of inclusion of construction of evacuation infrastructure in the scope of work.

6.13 In view of the above, it is humbly submitted that there is no error apparent on the face of the records in respect of Issue No. 2i.e. "Non consideration of reasons for delay in COD". Therefore, it is prayed that this Hon'ble Commission may graciously be please to reject the prayer for Review of Order Dated 30.11.2018 on the ground of Issue No. 2.

Review Petitioner's Response:

The contents of Paras 6.10 – 6.13 of the reply are wrong and denied. MPPMCL has simply referred to this Hon'ble Commission's Order dated 30.11.2018 and repeated the contents as its submissions.

The ground for review itself is that the Order of the Hon'ble Commission has not taken into account the factual details of the transmission evacuation line, including the time when the onus and responsibility of the evacuation facility was shifted to the Petitioner (As detailed in the petition) which are required to be gone into as per Regulation 17.2 of the Tariff Regulations.

The Petitioner states that after this Hon'ble Commission passed the Order dated 07.09.2012, the Petitioner and MPPMCL entered into an Amendment Agreement on 30.07.2013 incorporating the changes. Copy of the Agreement dated 30.07.2013 is attached hereto as Appendix A.

The principal change in the Amendment Agreement was that MPPMCL in the Original PPA was required to establish the evacuation facilities beyond the delivery point. Please refer article 1.1 : Definitions – Scheduled Connection Date which states as follows :

"Scheduled Connection Date" shall mean the date on or before which the evacuation facilities for the contracted energy ***beyond the Delivery Point shall have to be established by the procurer****, which shall be the date falling two hundred and ten (210) days before the scheduled COD or Revised Scheduled COD, as the case may be , of the first unit. (Emphasis has been supplied)*

But, as per the above amendment, MPPMCL was only to ensure such evacuation facilities in view of the change in definition of "Scheduled Connection Date" as given below:

"Scheduled Connection Date" shall mean the date on or before which the evacuation facilities for the contracted energy ***beyond the Delivery Point shall have to be ensured by the procurer****, which shall be the date falling two hundred and ten (210) days before the scheduled COD or Revised Scheduled COD,as the case may be , of the first unit.*

(Emphasis has been supplied)

In line with the above amendment, the Respondent (procurer) chose to take Open Access from the CTU instead of establishing any evacuation network. In the process, even though the PPA states that the 'Delivery Point' is the switchyard of the generating station, the actual Delivery Point for the Petitioner shifted to the point of connection to the CTU network i.e. the Jabalpur new Pooling Station. Accordingly, the Petitioner had to establish a 400 KV D/C line with a length of about 65.2 km long till above mentioned pooling station of PGCIL in order to make power available to the procurer. The Petitioner has established the said line well within time, within a period of 32 months (considering September 2012, the month in which the order in this regard was passed by this Hon'ble Commission, as the first month) when even the Transmission Tariff Regulations of the MP Electricity Regulatory Commission provides for a construction period of 34 months for a 400 KV D/C twin line.

Further, a period of 21 months is envisaged for a generating station, in the Grant of Connectivity regulations,2009, from the availability of start-up power till the COD. In contrast, the Petitioner was able to declare its unit commercial within 13 months of the availability of startup power.

It is not that MPPMCL is not aware of the above factual position. The responsibility having been shifted on the Petitioner only after the Order dated 07.09.2012 and Amendment Agreement dated 31.07.2013, atleast the time taken by the Petitioner in constructing the transmission line is a relevant consideration while deciding the time overrun.

MPPMCL Comment:

Issue 3 – Erroneous deduction of Rs. 41.30 Crores as undischarged liability

6.14 Review Petitioner has contended that Hon'ble Commission has not considered undischarged liability of Rs. 35.70 Crore against IDC and Rs. 5.60 Crore against IEDC which were discharged in FY 2015-16 therefore it is an error apparent on the face of the records.

6.15 It is humbly submitted that above contention of the Review Petitioner is misconceived and erroneous.

6.16 In Para 42to 44 of the Order Dated 30.11.2018, the Commission has observed following:

"**42.***By affidavit dated 28th November' 2018, the petitioner submitted that the IDC as on SCOD of Rs. 999.33 Crore* ***is inclusive of undischarged liability of Rs 35.70 Crore****."*

43.*On going through the reasons stated by the petitioner for delay in achieving COD of unit beyond the Schedule COD considered in this Order i.e. 31st March' 2015 all such reasons for delay in achieving COD are not considerable to pass on the increase in IDC beyond Schedule COD to the beneficiaries/end consumers of electricity generated and supplied from this project.*

44.In view of the aforesaid observations, the Commission has allowed IDC only upto Scheduled COD of the Unit (31st March, 2015) considered in this Order.*"*

6.17 Finally, in Para 46 of the Order Dated 30.11.2018, the Commission has worked out IDC and Financing Charges proceeding on the basis of findings recorded in Paras 43 to 44 above. It is seen that the Commission has considered "IDC as on SCOD excluding Un-discharged liability". Consequently, the undischarged liabilities beyond SCOD (31.03.2015) are also disallowed.

6.18 It is humbly submitted that this approach of the Hon'ble Commission is correct as it has rejected the reasons given by the Review Petitioner for delay in achieving COD beyond SCOD, as recorded in Para 43 of the Order Dated 30.11.2018.

6.19 In view of the above, it is humbly submitted that there is no error apparent on the face of the records in respect of the Issue No. 3 i.e. "Erroneous deduction of Rs. 41.30 Crores as undischarged liability". Therefore, it is prayed that this Hon'ble Commission may graciously be please to reject the prayer for Review of Order Dated 30.11.2018 on the ground of Issue No. 3.

Review Petitioner's Response:

MPPMCL has once again only relied on Paras 42 to 44 of the Order dated 30.11.2018 of which the Petitioner has sought review. There is no application of mind in the submission of MPPMCL.

Even if the entire time overrun is not to be condoned (without prejudice to the submissions hereinabove), the Hon'ble Commission has not considered the undischarged liability of Rs. 35.70 crores against IDC and Rs. 5.60 Crores against IEDC which were discharged by the Petitioner in FY 2015-16. While the deductions were made based on the additional submissions made by the Petitioner (MOM Dated 27.11.2018 between the officials of the Hon'ble Commission and the Petitioner), the Hon'ble Commission has not considered the fact that the above undischarged liability has been discharged in the FY 2015-16. This fact is also reflected in Para 42 of the Order dated 30.11.2018.

This is clearly an error apparent on the face of record and ought to be corrected.

MPPMCL Comment:

Issue 4 –Incorrect approach in computation of IDC and IEDC

6.20 Review Petitioner has contended that the time overrun must be considered and condoned, even if the SCOD/ COD is taken to be 31.03.2015, the Hon'ble Commission only allowing IDC/ IEDC upto 31.05.2015 is not correct and an error apparent on face of the record. It is also contended that Hon'ble APTEL as well as other Regulatory Commissions work out two streams of IDC i.e. (i) base IDC/ IEDC considering SCOD and revising the phasing of expenditure assuming the project would have been completed by SCOD and (ii) Actual IDC/ IEDC considering the actual IDC/ IEDC considering the actual phasing of expenditure i.e. IDC/ IEDC actually incurred.

6.21 Review Petitioner has also referred to Judgment Dated 27.04.2011 passed by Hon'ble APTEL in Appeal No. 72 of 2010 and quoted a portion of the same. The Review Petitioner has contended that the base IDC up to 31.03.2015 was Rs. 1,024/- Crore which should be allowed if the reasons for delay were found to be "controllable". However, according to Review Petitioner the reasons for delay were "uncontrollable", therefore the entire actual amount of IDC i.e. Rs. 1,434.76 Crore should be considered to be capitalized in tariff.

6.22 It is humbly submitted that above contentions of the Review Petitioner are misconceived and incorrect.Hon'ble Commission has dealt with the issue of IDC in Paras 36 to 46 of the Order Dated 30.11.2018. The Hon'ble Commission has thoroughly examined the claim of IDC and FC made by JPL and allowed the same as per the provisions of Regulation 17 (A) of 2015 tariff regulations.

6.23 It is humbly submitted that in Para 43 of the Order Dated 30.11.2018, Hon'ble Commission has clearly recorded the reasoning for rejection of claim of IDC and FC beyond SCOD. Since Hon'ble Commission had considered and rejected the reasons offered by JPL for delay of achieving commercial operation beyond SCOD, there was no occasion to allow increase in IDC and FC beyond SCOD. The relevant portion of the Order Dated 30.11.2018is quoted below:

"43. On going through the reasons stated by the petitioner for delay in achieving COD of unit beyond the Schedule COD considered in this Order i.e. 31st March' 2015 all such reasons for delay in achieving COD are not considerable to pass on the increase in IDC beyond Schedule COD to the beneficiaries/end consumers of electricity generated and supplied from this project."[Emphasis Added]

6.24 As the reasons cited by the Review Petitioner for delay in achieving revised SCOD

have been considered and rejected by the Hon'ble Commission and they were therefore considered as "controllable reasons". In view of this finding, the Hon'ble Commission was constrained to disallow any additional costs on account of IDC due to delay in achieving SCOD as per Regulation 17.2 of 2015 Tariff Regulations.

6.25 Also, the reasons for delay in achieving SCOD were found to be due to factors entirely attributable to the Review Petitioner and controllable. Therefore, the same would obviously fall under the category of Sub Para 7.4 (i) of the Judgment Dated 27.04.2011 passed by Hon'ble APTEL in Appeal No. 72 of 2010 (MSPGCL Vs MERC & Ors.). Therefore, Hon'ble Commission has correctly held that the entire cost due to time over run has to be borne by the Review Petitioner.

6.26 The Review Petitioner has also sought to rely upon certain judgments of the Hon'ble Tribunal and MERC. However, in the humble opinion of the Answering Respondent the ratio of the same are not applicable to the facts of the present Review Petition. Therefore it is humbly prayed that this Hon'ble Commission may graciously be pleased to ignore them.

6.27 In view of the above, it is humbly submitted that there is no error apparent on the face of the records in respect of the Issue No. 4 i.e. "Incorrect Approach in computation of IDC and IEDC". Therefore it is prayed that this Hon'ble Commission may graciously be please to reject the prayer for Review of Order Dated 30.11.2018 on the ground of Issue No. 4.

Review Petitioner's Response:

On this aspect, MPPMCL has relied on Paras 36 – 46 of the Order dated 30.11.2018.

It is wrong and denied that this Hon'ble Commission has held that the reasons which have occurred in the delay of commissioning of the projects are controllable in nature. There is no such finding. In fact, the grievance of the Petitioner is that the Hon'ble Commission has not dealt with the reasons given by the Petitioner at all.

The case of the Petitioner by no stretch of imagination can be said to be covered Para 7.4 (i) of the Judgment dated 27.04.2011 in Appeal No. 72 of 2011 (MSPGCL v MERC). None of the factors as stated in Para 7.4 (i) is applicable to the Petitioner and there is no such finding in the Order dated 30.11.2018.

The case of the Petitioner is that even if the Hon'ble Commission after going in to the merits of the delay furnished by the Petitioner, (which according to it are completely beyond its controls) finds that the reasons were "Controllable" in nature, then also the minimum IDC amount allowable should have been the base case IDC of Rs. 1024 Crores. However, since the reasons, as per the Petitioner, were uncontrollable in nature, the entire actual IDC of

Rs. 1332 Crores should be considered to be capitalized in tariff.

MPPMCL Comment:

Issue 5 –Reduction of Equity considered

6.28 Review Petitioner has contended that the Hon'ble Commission has reduced the equity infused and introduced the concept of normative equity. According to Review Petitioner this is an error apparent on face of record since equity is always on actual basis and can never be made 'normative". The Debt :Equity ratio is normative of 70:30 but the actual equity is never reduced.

6.29 Above contention of the Review Petitioner is grossly misplaced and wrong. Hon'ble Commission has correctly applied provisions of the Regulation 25.1 of 2015 tariff regulations to the facts submitted by the Petitioner to consider Debt to Equity Ratio. This issue is elaborately dealt in Paras 91 to 97 of the Order Dated 30.11.2018.

6.30 In Para 91, Hon'ble Commission has recorded the details of funding as submitted by the Petitioner. In Para 92 the provisions of Regulation 25.1 of Tariff Regulation 2015 have been extracted. Proviso (a.) of Regulation 25.1 stipulates as below :

"25. Debt-Equity Ratio:

25.1 *For a project declared under commercial operation on or after 1.4.2016, the debt-equity ratio would be considered as 70:30 as on COD. If the equity actually deployed is more than 30% of the capital cost, equity in excess of 30% shall be treated as normative loan:*

Provided that:

d. where equity actually deployed is less than 30% of the capital cost, actual equity shall be considered for determination of tariff

e. ……"

6.31 In Para 93 to 96, the Hon'ble Commission has given its analysis of relevant facts before arriving at the Debt :Equity ratio of 75:25. It is clearly stated in Para 94 and 95 that –

". Further breakup of Equity as on into various components such as Equity share capital, Equity component of CCD (Compulsorily Convertible Debentures) (Other equity), Long- term borrowings (CCD Component), Other unsecured Loans from promoters/related parties has already been submitted.

** No. & value of CCD converted into Equity shares till 02.05.16- NIL*

** No. & value of CCD converted into Equity shares in FY 16-17- NIL*

95. *It is observed from the above that the CCD component of equity and CCD are the debentures bearing interest, which are convertible after certain period into equity, however, the same has not been converted into equity during FY 2016-17.* ***Thus,***

the Commission has not considered the CCD as equity during FY 2016-17."[Emphasis Added]

6.32 Finally, in Para 97, the Commission has considered Gross Fixed Assets as on COD of Unit as Rs. 3,662.42 Crore, Opening Loan as Rs. 2,735.87 Crore and Opening Equity as Rs. 926.55 Crore, which is in the ratio of 75:25 and in accordance with the Regulations 25.1 of 2015 tariff regulations and actual fact situation.

6.33 In view of the above, it is humbly submitted that there is no error apparent on the face of the records in respect of the Issue No. 5 i.e. "Reduction of Equity Considered". Therefore, it is prayed that this Hon'ble Commission may graciously be please to reject the prayer for Review of Order Dated 30.11.2018 on the ground of Issue No. 5.

Review Petitioner's Response:

MPPMCL has only relied on Regulation 25.1 of the Tariff Regulations, 2015 and stated that this Hon'ble Commission has applied the same at Paras 93 – 96 of the Order under review.

It is stated that Regulation 25.1 of the Tariff Regulations provide for a normative debt equity ratio of 70:30. If equity exceeds 30%, the same remains restricted to 30% and the balance is treated as normative loan. If the actual equity is less than 30%, then the Actual debt equity ratio is to be adopted for tariff determination.

Regulation 25.1 only states the Debt: Equity ratio is to be taken on a normative basis of 70 : 30 but the actual equity is never reduced. Even if the time over run is not to be allowed (without prejudice to the grounds raised hereinabove), the IDC disallowed should only be towards loan component and equity cannot be reduced. In regulatory jurisprudence, the loan component gets reduced since it is repaid. However, equity is constant for the life of the plant and equity cannot be reduced. The equity infused, namely, Rs. 959 crores as on COD and Rs. 51.79 crores as an Additional Capitalization cannot be reduced to Rs. 926.55 crores as 'normative equity'.

Accepting the argument of MPPMCL would mean that equity can be depleted or eroded which is not possible. The contentions and submissions to the contrary are wrong and are denied.

MPPMCL Comment:

Issue 6 –Apportionment of common expenses

6.34 Review Petitioner has contended that the Hon'ble Commission has proceeded on the basis of the JPL's earlier submissions in Petition No. 53 of 2015 and applied the approach taken in the earlier Order Dated 06.09.2016 passed in Petition No. 16 of 2016 and there is no discussion at all on the details given in the present Petition as

to why apportionment ratio given is not applicable and render a finding on the case of the Petitioner instead of merely relying on the earlier finding in the Order Dated 06.09.2016.

6.35 It is most humbly submitted that the above contentions of the Review Petitioner are grossly misconceived. The Hon'ble Commission has comprehensively dealt with this issue in Paras 68 to 72 of the Order Dated 30.11.2018 and given a clear reasoning for apportionment of Common Facilities as per Regulation 5.2 of 2015 tariff regulations.

6.36 Para 9 of the Petition No. 28 of 2018 filed by JPL has been quoted by the Commission at Page No. 74 of the Order Dated 30.11.2018, which is reproduced below:

"It is pertinent to mention that Phase-II was awaiting fuel linkage and no financial closure could be achieved towards the same. ***Additionally, in view of the slackness in the conventional power sector scenario and the overall macro-economic outlook of the country, the decision to move ahead with implementation of Phase-II could not be proceeded with, by the petitioner. As such, it has been decided to not to go ahead with Phase-II of the project****. In this regard, the Chief General Manager (Commercial), MPPMCL vide its letter dated 16.05.2017 had directed the petitioner to approach the Energy Department, Govt. of Madhya Pradesh for deferment of installation of PhaseII of Jhabua Thermal Power Station. Accordingly, the petitioner vide letter dated26.05.2017 (copy of letter attached as Appendix 19) has requested to the Energy Department, Govt. of Madhya Pradesh for deferment of installation of Phase II of the Jhabua Thermal Power Station. Hence in view of Phase-II being deferred for installation, the entire cost of the Jhabua Thermal Power Station needs to be included in Phase-I of the project.* ***Therefore, the petitioner has prayed that the Commission may be pleased to include the entire cost of the Jhabua Power Project in its Phase I."[Emphasis Added]***

6.37 The Commission has also quoted Para 3.6 of amended Petition No. 53 of 2015, which is also reproduced below:

"The petitioner had originally envisaged the said Power Project to have a capacity of1260 MW comprising of Phase-I having a Unit of 600 MW and Phase-II having a Unit of 660 MW and a Memorandum of Understanding was entered into with the Government of Madhya Pradesh to such effect. The share of State Government is about 35% of the capacity from this Project.

However, Phase-II is still awaiting fuel linkage and no financial closure could be achieved towards the same. ***Additionally, in view of the slackness in the***

conventional power sector scenario and the overall macro-economic outlook of the country, the decision to move ahead with implementation of Phase-II could not be proceeded with, by the petitioner. As such, the Phase-II is currently in the conceptual stages only*."*

6.38 It is clear from above that there was no change in the status of implementation of Phase –II of the Project during proceedings of Petition No. 28 of 2018 and it was unchanged since the proceedings of Petition No. 53 of 2015 and also there is no change in the terms and conditions of the Power Purchase Agreement. Therefore, the Hon'ble Commission has rightly relied upon its earlier finding in the Order Dated 06.09.2016 passed in Petition No. 53 of 2015 for apportionment of Common Facilities and correctly applied Regulation 5.2 of 2015 tariff regulations.

6.39 Review Petitioner has quoted Paras 11.2 and 11.3 of the Judgment Dated 27.04.2011 passed by Hon'ble APTEL in Appeal No. 72 of 2010. However the Review Petitioner has not elaborated as to how the judgment is applicable to the facts of the Petition No. 28 of 2018. In the humble opinion of the Answering Respondent the ratio of the said Judgment is not applicable to the facts of the present Petition.

6.40 In view of the above, it is humbly submitted that there is no error apparent on the face of the records in respect of Issue No. 6i.e. "Apportionment of Common Expenses". Therefore it is prayed that this Hon'ble Commission may graciously be pleased to reject the prayer for Review of Order Dated 30.11.2018 on the ground of Issue No. 6.

Review Petitioner's Response:

MPPMCL has completely misunderstood the issue raised by the Petitioner. The Petitioner is not praying for apportionment of costs of Phase II to Phase I of the project. The Petitioner is only praying that the apportionment ratio as proposed in Petition 28 of 2018 be considered instead of as in Petition No 53 of 2015.

Without understanding this, MPPMCL has made irrelevant submissions regarding Phase II of the project which reflects the complete non-application of mind on the part of MPPMCL.

Further, the Petitioner has quoted Paras 11.2 and 11.3 of the Judgment of the Appellate Tribunal wherein it has been held as follows:

11.2 …In our opinion, where the gap between two generating units is more, it would be prudent to allow cost of common facilities essential for commissioning of the first unit alongwith the capital cost of the first unit. ……

11.3. In the present case common facilities have been created for units 6 and 7 at Parli

which have been executed one after another. Order for unit 6 was placed first followed by order for unit 7 after sometime. The commissioning of some of the common facilities was essential for operation of unit no. 6 and the same facilities will be used by Unit no. 7 subsequently. In our opinion, it would be prudent to allow capitalization of such common facilities which were essential for operation of Unit no. 6 in the capital cost of Unit no. 6. This will result in reduction of capital cost of Unit no. 7 on account of common facilities and IDC on the same and also ensure servicing of capital cost incurred by the Appellant for common facilities which have been commissioned along with Unit no. 6. Accordingly, the State Commission is directed to allow capitalization of only such common facilities, commissioning of which were essential for commissioning of Unit no. 6, in capital cost of Unit no. 6."

The judgment lays down the principle and is clearly applicable to the present matter.

MPPMCL Comment:

Issue 6-A *(Erroneously shown in Review Petition as Issue 6)* – Revenue realization taken as Rs. 15.4 Crore instead of Rs. 9.10 Crore

6.41 Review Petitioner has sought review on the finding of the Hon'ble Commission recorded in Para 64 of the Order Dated 30.11.2018. The Review Petitioner, in Para 54 of the present Review Petition, appears to say that actual revenue realization of Rs. 9.10 Crore (as per CA Certificate given by the Petitioner) should have been considered instead of Rs. 15.42 Crore, which is an error apparent on the face of the record.

6.42 It is most humbly submitted that the above contentions of the Review Petitioner are grossly misconceived and wrong.

6.43 The Commission has dealt with the issue of Sale of Infirm Power in Paras 60 to 67 of the Order Dated 30.11.2018. In Para 63, the Commission has recorded following:

> ***"63.*** *On perusal of the CA certificate regarding fuel expenditure for generation of infirm vis-à-vis weekly statements issued by WRPC for infirm power, it observed that the revenue from sale of infirm power as per CA certificate is Rs. 9.10 Crore* ***whereas, the revenue earned from sale of infirm power as indicated in statement is Rs. 15.40Crore****."*

6.44 The Commission has rightly relied upon the statement of Western Region Power Committee (WRPC) instead of CA Certificate for considering revenue from Sale of Infirm Power. Therefore, there is nothing wrong in this approach and there is no error in the finding recorded in Para 64of Order Dated 30.11.2018.

6.45 In view of the above, it is humbly submitted that there is no error apparent on the face of the records in respect of Issue No. 6-A i.e. "Revenue realization taken as Rs.

15.4 Crore instead of Rs. 9.10 Crore". Therefore, it is prayed that this Hon'ble Commission may graciously be please to reject the prayer for Review of Order Dated 30.11.2018 on the ground of Issue No. 6-A.

Review Petitioner's Response:

Once again MPPMCL is simply denying the issue without application of mind. There is a clear error apparent on the face of record on this issue of considering revenue realization of Rs. 15. 42 Crores instead actual revenue realization of Rs. 9.10 Crore.

The Petitioner had claimed Rs 93.06 Crore as Startup fuel expenses as on COD of the project. The Petitioner has also submitted the CA Certificate dated 21.05.2016 on account of the expenses incurred towards start up fuel. The Hon'ble Commission has allowed Rs. 74.04 Crore as startup fuel after considering a sale revenue of Rs 15.42 Cr.

The Petitioner in Petition No 16 of 2016 for determination of Provisional Tariff had submitted that the actual revenue from sale of infirm power is Rs. 15.42 crore, out of which Rs. 6.32 crore has been apportioned to the combined cost of start-up power drawn from CTU for commissioning purposes (Rs 4.31 Cr) and other contingent miscellaneous expenditure during commissioning (Rs 2.01 Cr) and thus, Rs. 9.10 crore was depicted in the CA certificate as the net revenue realization from sale of infirm power. Subsequently, by affidavit dated 03.08.2016, in the above Petition, the Petitioner filed revised CA certificate indicating that the revenue from sale of infirm power is Rs. 15.42 crore and same has been adjusted from startup fuel expenses to work out the net startup fuel expenses. While the Hon'ble Commission overlooked the Incidental Expenditure of Rs 6.32 Cr which was earlier adjusted by the Petitioner in the revenue earned from infirm power, it did not consider the same in IEDC and accordingly there was a net reduction in Capital Cost by Rs 6.32 Cr.

Without dealing with the above, MPPMCL is simply stating that there is no error apparent on the face of record. The submissions and contentions of MPPMCL are wrong and are denied.

MPPMCL Comment:

Issue 7 – Non consideration of O & M Expenses and losses for the Dedicated Transmission Line

6.46 Review Petitioner has contended that the Hon'ble Commission has missed to consider certain aspects while not considering O & M expenses and Additional Line Loss for Dedicated Transmission Line. Therefore, the review is being filed on these aspects.

6.47 It is most humbly submitted that the above contentions of the Review Petitioner are grossly misconceived and wrong.

6.48 The Hon'ble Commission has dealt with the claim of O & M expenses of Dedicated Transmission Line in Paras 142 to 147 of the Order Dated 30.11.2018. In Para 146 and 147, Hon'ble Commission has recorded its analysis of the issue and its findings, which are extracted below:

"146. *With regard to above claim of the petitioner is seeking separate O&M expenses for dedicated transmission line/ system over and above the O&M norms provided in MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations,2015, the Commission has noted the following:*

(i) *The Commission on 21.12.2015 issued the MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2015 ("Regulations 2015") for the control period of FY 2016-17 to FY 2018-19 and the same was notified in official Gazette on 01.01.2016. The norms of O&M expenses for each year of the control period in respect of generating unit/power plant as a whole are provided in aforesaid Regulations and O&M expenses for dedicated transmission line were not provided separately in the said Regulations.* ***It is pertinent to note that the petitioner had not challenged MPERC Tariff Regulations, 2015 before any forum. Hence, the provisions for O&M norms under MPERC Tariff Regulations, 2015 have attained finality.***

(ii) *In its Petition for determination of provisional generation tariff of the generating unit, the petitioner had not claimed any separate O&M expenses for the dedicated transmission lines of its project. The tariff of the unit was provisionally determined by the Commission strictly in accordance with the O&M norms provided in MPERC Tariff Regulations 2015 wherein no O&M expenses was considered separately for dedicated transmission lines.*

(iii) ***The Commission has already considered the expenditure incurred on the construction of dedicated transmission line/system as part of the capital cost of Petitioner's power plant and allowed corresponding Return on Equity, interest charges and depreciation in the Annual Fixed Charges determined in this tariff Order.****The claim of petitioner seeking separate O&M expenses over and above O&M norms provided in Tariff Regulations, 2015 is against the provisions of the Tariff Regulations, 2015. The petitioner has claimed the O&M expenses for dedicated transmission line in terms of MPERC Transmission Tariff Regulations whereas the subject petition is for determination of generation tariff of petitioner's power project in accordance with MPERC Generation Tariff Regulations in the capacity of petitioner as the generating company.*

(iv) *It is further observed that the dedicated transmission line is neither a*

transmission line in terms of sub-section (72) of Section 2 of the Electricity Act' 2003 nor it is a distribution system connecting the point of a connection to the installation of consumer in terms of sub-section (19) of Section 2 of the Electricity Act, 2003. ***The O&M expenses of a transmission line are part of the Annual Fixed Cost (AFC)determined by the Commission under section 62 of the Electricity Act, 2003 for a transmission licensee whereas, the subject petition cannot be considered for determination of AFC for the transmission line under section 62 of the Electricity Act,2003.*** *The cost of dedicated transmission line has thus been considered in the capital cost of the generating station and the tariff of the said generating station has been determined in terms of the Tariff Regulations which do not provide for any O&M expenses of dedicated transmission line separately.*

(v) On perusal of the O&M expenses recorded in Annual Audited Accounts for FY 2016-17, it is observed that the actual O&M expenses of the Petitioner's power plant are less than the O&M expenses allowed in this Order based on O&M norms provided in the Regulations'2015.

147. *In view of all aforesaid and taking a consistent approach on this issue in all other earlier Orders, the claim of petitioner seeking separate O&M expenses of dedicated transmission line over and above the norms/ provisions in MPERC Tariff Regulations, 2015 is not considered by the Commission in this Order."****[Emphasis Added]***

6.49 The Commission has correctly examined permissibility of O & M expenses of Dedicated Transmission Line in the absence of any provision of the extant 2015 Tariff Regulations and disallowed the same on the following grounds:

6.49.1 Tariff Regulations do not separately provide for O & M Expenses for Dedicated Transmission Line.

6.49.2 Petitioner had never challenged 2015 Tariff Regulations before any forum. Hence, the provisions for O&M norms under MPERC Tariff Regulations, 2015 have attained finality.

6.49.3 The Commission has already considered the expenditure incurred on the construction of Dedicated Transmission Line/ System as part of the capital cost of Petitioner's power plant and allowed corresponding Return on Equity, interest charges and depreciation in the Annual Fixed Charges determined in the Tariff Order Dated 30.11.2019.

6.49.4 The O&M expenses of a transmission line are part of the Annual Fixed Cost (AFC) determined by the Commission under section 62 of the Electricity Act, 2003 for a transmission licensee whereas, the subject petition cannot be considered for determination of AFC for the transmission line under section

62 of the Electricity Act, 2003.

6.49.5 On perusal of the O&M expenses recorded in Annual Audited Accounts for FY 2016-17 submitted by the Petitioner (JPL), it is observed that the actual O&M expenses of the Petitioner's power plant are less than the O&M expenses allowed in this Order based on O&M norms provided in the 2015 Tariff Regulations.

6.50 Therefore, there is nothing wrong in the approach followed by the Commission and there is no error apparent on the face of record in the Order Dated 30.11.2018.

6.51 The aspect of Additional Transmission Loss has not been raised in the Original Petition No. 28 of 2018, which is being raised for the first time in the present Review Petition. Therefore, it is humbly prayed that the same is not permissible in the preset Review Petition.

6.52 In view of the above submissions, it is humbly submitted that there is no error apparent on the face of the records in respect of Issue No. 7 i.e. "Non consideration of O & M Expenses and losses for the Dedicated Transmission Line". Therefore, it is prayed that this Hon'ble Commission may graciously be please to reject the prayer for Review of Order Dated 30.11.2018 on the ground of Issue No. 7.

Review Petitioner's Response:

With regard to the contentions of MPPMCL that there is no provision in the Tariff Regulations, 2015 to allow O & M Expenses on dedicated transmission line, it is submitted that a settled principle of law is that which is not prohibited is permitted. (REF: ***CSPDCL*** *v.* ***Ayran Coal Benefactions Pvt Ltd &Ors*** *[2010] APTEL 11 &****Reliance Energy Limited****.* ***The TATA Power Company Ltd &Ors*** *[Judgment dated 22.05.2006 passed by the Appellate Tribunal]). Therefore, none of the provisions of the Tariff Regulations, 2015 get violated by appreciating the peculiar facts and allowing the additional O&M Expenses. It is just that there is no specific provision dealing with this aspect.*

It is not that the Tariff Regulations, 2015 contain a prohibition for allowing compensation equivalent to what is being sought by the STU. The constitutional bench of the Supreme Court in the ***PTC India Limited*** *v* ***CERC*** *(2010) 4 SCC 603 has held that in case there is a Regulation holding the field, the Commission while passing an Order must adhere to such Regulation. But where there is no Regulation, the Commission can pass appropriate Orders.*

In the present case, the Regulations do not contemplate such a situation which has arisen due to the necessity of building the 65.2 Kms long dedicated transmission line by the Petitioner. The STU would have claimed the O&M Expenses from the Respondent had it built and maintained such a transmission line. Therefore, the Hon'ble Commission can

decide the matter by way of an Order.

While challenging the claim of the Petitioner for additional O&M Expenses and line losses incurred by it on account of the dedicated transmission line, the Respondent has failed to appreciate the difference between a station where the Delivery Point is at the periphery of its switchyard (with the transmission line connecting the station to the CTU / STU network built by the CTU / STU) and a station where the Delivery Point is at the nearest Pooling Station (with the dedicated transmission line connecting the station to the nearest pooling station of the CTU / STU network built by the station owner). Had the Respondent discharged its originally envisaged responsibility of establishing the evacuation facilities, it would have been covered under the previous scenario, whereas due to shifting of the responsibility of establishing the evacuation facility to the Petitioner, the later scenario is in vogue in the present case.

In the previous case, the CTU / STU, on completion of the transmission line would have filed an application for determination of Tariff as per the MPERC (Terms and Condition for determination of Transmission Tariff) Regulations, 2009 and would have been granted an Annual Tariff consisting of ROE, Interest on Loan Capital, Interest on Working Capital, Depreciation, O&M Expenses etc. The Respondent would have paid the same.

In a scenario similar to the latter case, the Petitioner has built the dedicated transmission line and strangely, the Respondent has objections to allowing additional O&M expenses for maintaining the same on the ground that the O&M expenses, as allowed for the generating station (allowed as Rs Lakh per MW per annum), is deemed to have covered the O&M expenses of the transmission line also. The basic reading of the fact that the O&M expenses allowed, as above, is in terms of Rs Lakh per MW per annum makes it amply clear that this expenditure only covers the generating station and does not cover any transmission line. The Respondent fails to recognize the negative financial bias that the Petitioner constantly suffers in comparison to a station which is not required to build a dedicated transmission line, while being very well aware of the fact that it is avoiding its obligation by not compensating the Petitioner for the shifting of the Delivery Point from the Switchyard to the Jabalpur New Pooling Station.

The contention of the Respondent that the actual O&M expenses of the Petitioner are less than the normative as allowed in the Tariff Regulations, 2015 is irrelevant in this context.

Since the commercial meters are located at the point of connection to the CTU Network i.e. at the Pooling Station, the Petitioner is required to bear the line loss in the 65.2 Kms long dedicated transmission line. This is again is a result of the shifting of the Delivery Point from the Switchyard of the Petitioner to the Pooling Station. Therefore, the Normative APC, as allowed in the Tariff Regulations, obviously does not cover this line loss.

The contention of the Respondent that the Petitioner had not raised this issue in Petition 28 of 2018 is wrong and is denied.

MPPMCL Comment:

Issue 8 –Additional Transportation Charges for 2.5 Kms when coal is transported by road

6.53 Review Petitioner has quoted Para 89 of the Order Dated 30.11.2018and stated that it is seeking only a short clarification on the aspect of liberty given by the Hon'ble Commission for claiming actual cost as and when incurred towards capital works for coal transportation arrangement through railways of about 2.5 Kms from Binaiki to Plant in its true-up petition.

6.54 Review Petitioner has further made prayer for allowing "hypothetical railway transportation charges" for 2.5 Kms stretch where it is actually being transported by road.

6.55 It is humbly submitted that this prayer of the Review Petitioner is untenable in the present Review Petition, as on this aspect, no error apparent on the face of the records is demonstrated by the Review Petitioner and it is not even a case for any clarification as the finding and observations of the Hon'ble Commission in Para 89 are crystal clear. Besides, the Review Petitioner is praying for a relief of "hypothetical railway transportation charges" which are not permissible under any provision of the 2015 tariff regulations.

6.56 In view of the above, it is humbly submitted that there is no error apparent on the face of the records in respect of Issue No. 8 i.e. "Additional Transportation Charges for 2.5 Kms when coal is transported by road". Therefore, it is prayed that this Hon'ble Commission may graciously be please to reject the prayer for Review of Order Dated 30.11.2018 on the ground of Issue No. 8.

Petitioner's Response:

With regard to the above paras, it is wrong and denied that the Petitioner is making any hypothetical claim. The coal is being transported by road from Binaiki siding to the plant (2.5 Kms) for which the Petitioner has claimed the actual incurred charges.

However, for the above 2.5 Kms stretch where the coal is actually being transported by road by the Petitioner, the Commission may at least allow the railway transportation charges that the Petitioner would have incurred had the transportation of coal were being done though rail for the entire distance (till the wagon tippler inside the plant premises) till the time this Hon'ble Commission takes a final view in the matter in the truing up proceedings.

The Petitioner further submits that there is a definite reduction in Annual Fixed Cost due to the un-incurred expenditure in the railway siding works (the reasons for which have already been indicated in the original petition) and the Petitioner is incurring a marginally higher expenditure by way of the above road transportation (2.5 Kms). It is therefore logical in the part of the Petitioner to claim the marginally higher Landed Cost of coal.

The prayer of the Petitioner is without prejudice to its submissions that the entire transportation cost as per actuals should be allowed to the Petitioner, in the alternative, atleast the applicable transportation cost of railway of 2.5 Kms should be allowed to the Petitioner. It is not understood as to how this is a hypothetical claim.