

MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION

5th Floor, "Metro Plaza", Bittan Market, Bhopal - 462 016



Review Petition No. 05 of 2015 in petition No. 40 of 2012

PRESENT:

Dr. Dev Raj Birdi, Chairman

A.B. Bajpai, Member

Alok Gupta, Member

IN THE MATTER OF:

In the matter of review petition filed by M/s Jaiprakash Power Ventures Ltd. under Regulation 40 of the MPERC (Conduct of Business) Regulations, 2004 read with Section 94 of the Electricity Act, 2003 for review of the tariff order passed by the Commission on 26.11.2014 for 2x250 MW Bina Thermal Power Project.

M/s Jaiprakash Power Ventures Ltd., Uttar Pradesh

Petitioner

Versus

- 1. M. P. Power Management Co. Ltd., Jabalpur**
- 2. M. P. Poorv Kshetra Vidyut Vitaran Co. Ltd., Jabalpur**
- 3. M. P. Madhya Kshetra Vidyut Vitaran Co. Ltd., Bhopal**
- 4. M. P. Paschim Kshetra Vidyut Vitaran Co. Ltd., Indore**

Respondents

ORDER

(Passed on this day of 08th May' 2015)

1. The subject petition has been filed by M/s. Jaiprakash Power Ventures Ltd. seeking review of the Commission's order dated 26.11.2014 in Petition No. 40 of 2012 on the following issues:
 - (a) Pre Commissioning Fuel Expenses
 - (b) Double deduction of revenue earned from generation of Infirm Power
 - (c) Interest and Finance charges on Loan Capital
 - (d) Inadequate recovery of Capacity charges.

Details of Commission's Order under review:

2. M/s. Jaiprakash Power Ventures Ltd., had earlier filed an application for approval of final generation tariff in respect of Jaypee Bina (2x250 MW) Thermal Power Station, Stage-I (hereinafter referred to as 'the generating station') for the period from COD of each unit to 31.3.2016. The capacity and the date of commercial operation of both units are as given below:

Capacity and CoD of units under Phase 1

S. No.	Unit	Installed Capacity (MW)	Commercial Date of Operation
2.	Unit-I	250 MW	31 st August' 2012
3.	Unit-II	250 MW	7 th April' 2013

3. Vide order dated 26th November' 2014 in Petition No. 40/2012, the Commission admitted the capital cost for both the units as on 31st August' 2012, 31st March' 2013, 6th April' 2013, 31st March' 2014, 31st March' 2015 and 31st March' 2016 was admitted by the Commission. The details of the capital cost admitted by the Commission in its aforesaid order are as given below:

Amount in ₹ Crores

Particulars	As on 31 st August, 2012	As on 31 st March, 2013	As on 6 th April, 2013	As on 31 st March, 2014	As on 31 st March, 2015	As on 31 st March, 2016
Unit operational	Unit I	Unit I	Unit I	Unit I & II	Unit I & II	Unit I & II
Land	3.43	3.43	3.43	6.86	6.86	6.86
BTG	837.82	837.82	837.82	1,713.07	1,713.07	1,713.07
BOP	329.11	331.50	331.50	1,171.05	1,171.05	1,171.05
Civil Cost	277.95	277.95	277.95	580.75	580.75	580.75
Gross Fixed Assets	1,448.31	1,450.70	1,450.70	3,471.73	3,471.73	3,471.73

4. Based on the aforesaid capital cost, the Annual Capacity (fixed) charges for Unit No. I and Unit No. II for FY 2012-13 to FY 2015-16 were determined by the Commission as given below:

Amount in ₹ Crores

Particulars	31.08.2012 to 31.03.2013	01.04.2013 to 06.04.2013	07.04.2013 to 31.03.2014	01.04.2014 to 31.03.2015	01.04.2015 to 31.03.2016
Units	Unit I	Unit I	Unit I & II	Unit I & II	Unit I & II
Return on equity	85.27	85.34	197.07	204.24	204.24
Interest charges on loan	131.40	115.89	270.28	259.61	237.68
Depreciation	71.03	71.08	165.81	172.20	172.20
Operation & Maintenance expenses	42.70	46.05	92.10	99.50	107.30
Secondary fuel oil expenses	11.22	11.23	22.47	22.47	22.53
Interest on working capital	32.62	25.50	54.22	54.75	54.82
Annual capacity (fixed) charges	374.25	355.10	801.94	812.77	798.74
Operational No. Of Days	213	6	359	365	366
Annual capacity (Fixed) charges apportioned for actual days of operation	217.80	5.84	788.76	812.77	798.74
Annual capacity (Fixed) charges corresponding to 65% of the installed capacity of the Units	141.57	3.79	512.69	528.30	519.18

5. In the subject review petition, the petitioner broadly submitted the following seeking review on each issue:

(a) Pre commissioning fuel expenses:

- (i) *“The Commission has erred in disallowing a part of the cost incurred by the Review Petitioner on account of coal cost in generation of infirm power for Unit I and Unit II.*
- (ii) *The Commission in passing the impugned Order has failed to appreciate that the Review Petitioner has incurred an amount of Rs. 20.79 Crores being the weighted average landed cost of consumption of 53,052 MT of Coal as certified by Statutory Auditor of the Review Petitioner vide certificate dated 15th April 2013. Copy of the Statutory Auditor Certificate dated 15th April, 2013 is annexed hereto and marked as ANNEXURE RP-2.*
- (iii) *The Commission in passing the Impugned Order has firstly committed a computational error by holding that the average purchase rate (APR) for domestic coal for the year at Rs 3,776.97 per MT is the same as the weighted average price of consumption (WAPC) at Rs. 3,919/- per MT. The APR for a period differs from the WAPC as WAPC operates on FIFO basis, therefore is the correct method for calculating consumption. The consumption on WAPC basis of coal for the Generation of infirm power of Unit-1 is Rs. 20.79 Crores as certified by Statutory Auditor.*
- (iv) *Further, as for the generation of infirm power the Commission for Unit II has erred by allowing 25,326 MT of coal at an average rate of Rs. 3,137.36 Per MT. It is humbly submitted that the same appears to be worked out by ignoring the landed cost of imported coal of 7,816.38 MT as held in Para 4.22 of the Impugned Order. The Review Petitioner most respectfully submits that the imported coal was purchased for the limited purpose of blending with Domestic FSA and Domestic Non FSA coal. This was required because of the fact that the GCV of Domestic coal was low and as per the boiler design and optimal conditions, blending of coal became essential. Therefore, **the weighted average price of***

consumption at Rs.4,427/-per MT for 25,326 MT works out at Rs.11.21 Crores as certified by the Statutory Auditor of the Petitioner vide certificate dated 15th April, 2013 as correctly claimed by the Petitioner and the same has not been considered by the Hon'ble Commission in passing the Impugned Order. Copy of the CA certificate dated 15th April, 2013 is annexed hereto and marked as ANNEXURE RP-2.

- (v) *It is most respectfully submitted that neither the Electricity Act, 2003 nor the various Regulations framed by this Commission contemplate disallowance of Imported Coal being sourced by the generator for generation infirm power especially in the current scenario where the Coal being sourced through FSA is admittedly not of adequate GCV. It is further submitted that even the PPA dated 05.01.2011 signed between Review Petitioner and the Respondents does not contemplate disallowance of Imported Coal for generation of power. Therefore, it is most respectfully submitted that the Hon'ble Commission may consider the submissions of the Review Petitioner and Review it's finding qua usage of imported coal for generation of infirm power passed in the Impugned Order."*

(b) Double Deduction Of Infirm Power:

- (i) *"It is most respectfully submitted that the Commission in passing the Impugned Order has erred by reducing Rs. 9.23 Crores from the Capital Expenditure, being the revenue earned against Generation of infirm power from Unit 1 and Unit 2. It is humbly submitted that the Petitioner vide affidavit dated 13th August 2014 in its additional submission at Page No. 7 Para 5 in reply to query no. 5 had clearly stated as under:*

"The said income on account of infirm power has been reduced from the capital expenditure."

The petitioner in support of the above would humbly like to submit as under:

- A.** *As per the accounting principles and procedures laid down by the Institute of Chartered Accountants of India, income prior to the*

commercial operation, whether interest earned on Fixed Deposit or income from Generation of infirm power, is to be reduced from the capital cost.

B. *The petitioner has since submitted vide the aforementioned additional submission that the revenue from sale of infirm power has been reduced from the capital expenditure.”*

(ii) *Therefore, the Petitioner had already reduced its capital cost adequately by reducing the amount earned from infirm power generation. The Petitioner in support of its contention most respectfully also encloses a Certificate from the Statutory Auditor dated 14.01.2015 confirming that the revenue from Generation/sale of infirm power of Rs. 9.23 Crs. has been reduced from the Capital Work in Progress by the Petitioner. Copy of the CA certificate dated 14.01.2015 is annexed hereto and marked as ANNEXURE RP-3.*

(iii) *Therefore, as submitted above that the Commission may consider the above submissions of the Petitioner and Review the Impugned Order accordingly.”*

(c) Interest and Finance Charges on Loan Capital:

(i) *“It is most respectfully submitted that the Commission in passing the Impugned Order has determined the Interest and Finance Charges on Loan Capital at Para 6.14 of the Impugned Order.*

(ii) *It is humbly submitted that the Commission in passing the Impugned Order has erred on facts and in law by considering the entire amount of depreciation for the full year for the purpose of repayment during the year, whereas, the depreciation should have been considered on pro-rata basis for the number of days of operations in the year. The methodology of calculation of depreciation in Table 27 on page No.117 is correct, as it has been calculated for the part of the year unit wise/combined.*

The difference in the calculation of Interest on Loan is due to the fact that full year depreciation has been reduced (Repayment of Loan) for FY 2012-13, as on 6th April 2013 and FY 2013-14. The actual days of operation in FY 2012-13 are 213, up to 6th April, 2013 are 6 and balance in FY 2013-14 are 359. Therefore, by reducing full year depreciation for these periods, the quantum of loan is reduced, thereby reducing the amount of interest.”

(d) Inadequate Recovery of Capacity Charges:

- (i) “The Commission in passing the Impugned Order has erred by not issuing a speaking order on the issue of recovery of capacity charge at 68.42% instead of 65%. The Review Petitioner in its submission dated 13.08.2014 before the Commission had prayed for the 68.42% of annual capacity charges. The relevant extracts of the submission is being reproduced as follows:-

“The Petitioner would humbly submit before this Hon’ble Commission that the power tied up for the Petitioner Jaypee Bina TPS is as follows:-

(i) Under two parts tariff to Respondent No.1	-	65%
(ii) Merchant capacity	-	30%
(iii) To GoMP on various charge only	-	<u>05%</u>
Total		100%

On perusal of the above it may be noted that 95% of power from Jaypee Bina TPS will be paying for 100% of the annual capacity charge. This logic is also supported by various tariff orders passed in case of hydro MoU projects, including but not limited to the Petitioner’s hydro projects namely 300 MW Baspa II and 400 MW Vishnuprayag HEP. In both these projects the balance power after reducing the quantum of free energy to the home state is used to recover 100% of the capacity charges.”

- (ii) *In view of the above the capacity charge for the purposes of recovery against the PPA of 65% of power signed on 05.01.2011, works out to 68.42%, whereas the Commission has allowed only 65% of the annual capacity charges instead of 68.42%, without assigning any reasons.”*

Proceedings in the subject review petition:

6. Motion hearing in the subject review petition was held on 24th February’ 2015. The petition was admitted and the petitioner was directed to serve copies of its petition to all Respondents in the matter. Respondents were also asked to file their response on the petition by 20th March’ 2015.
7. On preliminary scrutiny of the subject review petition, it was observed that the review petitioner has enclosed a certificate of Chartered Accountant only in support of its contention on the issue of “Double deduction of the revenue earned from sale of infirm power”. The aforesaid certificate was not placed before the Commission during proceedings in original Petition No. 40 of 2012. On perusal of the aforesaid certificate and contention of the petitioner, the Commission sought various other details and documents from the petitioner to verify the correctness of the contention of review petitioner.
8. By affidavit dated 18th March, 2015, the petitioner filed its reply to the queries raised by the Commission. The response of the petitioner on each issue raised by the Commission is as given below:

Issues:

The certificate dated 14.01.2015 issued by the Chartered Accountant is limited to certifying that the revenue of Rs. 9.23 Crores earned from sale of infirm power has been credited to the Capital Works in Progress (CWIP) account. It does not certify that the amount of revenue earned from sale of infirm power has also been adjusted/ credited in the Gross Fixed Assets / Capital cost claimed by the petitioner as on CoD of unit(s) and recorded in the Audited Accounts. Therefore, a fresh certificate from the statutory auditor of the company explicitly certifying the contention on this issue in review petition be submitted.

The period for which CWIP account was credited with the revenue earned from sale of infirm power and converted in the Gross Fixed Assets be also specified in aforesaid certificate.

All supporting documents related to above mentioned accounting of the revenue earned from sale of infirm power in CWIP account and its adjustments in the capital cost as on CoD claimed in the petition for each unit be also submitted.

Petitioner's Response:

"In response to Para 1, 2 & 3 of the Order Sheet, the Petitioner has attached CA certificate dated 11th March, 2015 which clearly certifies that, in respect of Unit-I, revenue of Rs. 5.92 crores earned from Sale of Infirm Power has been credited to Capital Works in Progress pertaining to cost of Unit-I exclusively during Financial Year 2012-13 and the Capital Cost of Unit-I as on 30-08-2012 of Rs. 1,865.11 Crores is net of Rs. 5.92 Crores of Infirm Power Receipt. Similarly, this certificate further certifies that the Capital Cost of Unit-II of Rs. 1,340.79 Crores as on 06-04-2013 is net of Rs. 3.31 Crores of Infirm Power Receipt. The Auditor's certificate dated 11th March, 2015 is attached as Annexure -1.

CA Certificate dated 6th February, 2014 certifying Capital Cost of Rs. 1,865.11 Crores as on COD of Unit-I (30-08-2012) is attached as Annexure-1.1.

CA Certificate dated 6th February, 2014 certifying Capital Cost of Rs. 1,340.79 Crores as on COD of Unit-I (06-04-2013) is attached as Annexure-1.1."

Issues:

The break-up of CWIP as on CoD of Unit 1, 31st March, 2013, CoD of Unit 2 and 31st March, 2014 duly tallied with the concerned schedule in the books of account be also certified by the statutory auditor and submitted to the Commission. The aforesaid break-up should indicate the adjustments of revenue earned from sale of infirm power in CWIP as per the books of account.

The set of accounting policies of the company be submitted.

Petitioner's Response:

"In response to Para 4 & 5 of the Order Sheet, the Petitioner humbly submits the reconciliation of Capitalized Cost of Jaypee Bina Thermal Power Plant as on 31-03-2013 and 31-03-2014 between CA Certificates certifying Capital Cost & Balance Sheet, and is attached as Annexure-2 Balance Sheets as on 31-03-2013 & 31-03-2014 have been attached as Annexure-2.1 & Annexure 2.2 respectively along with schedules, notes and accounting policies. CA Certificates certifying Capital Cost up to 31-03-2013 & 31-03-2014 are attached as Annexure-2.3 & Annexure-2.4 respectively."

Respondent's Comments:

9. M.P. Power Management Company Ltd., Jabalpur (Respondent No. 1) sought three weeks' time extension for filing its response. On 23rd March' 2015, MPPMCL filed the following comments on each issue of the review petition:

(a) Pre Commissioning Fuel Expenses:

- i. *"That, the contents of para 3.4 are denied and disputed. The contention of the Review Petitioner is neither supported by any data, analysis or calculations, nor any provision of the Regulation has been cited. Therefore, it is humbly prayed that the same may kindly be rejected.*
- ii. *That, the contents of para 3.5 are denied and disputed wherein the Review petitioner has stated that*

"...as far the generation of infirm power the Commission for Unit II has erred by allowing 25,326 MT of coal at an average rate of Rs. 3,137.36 per MT. It is humbly submitted that the same appears to be worked out by ignoring the Landed Cost of Imported Coal of Rs. 7,816.38 MT as held in para 4.22 of the Impugned Order. The Review Petitioner most respectfully submits that the imported coal was purchased for the limited purpose of blending with Domestic FSA and Non FSA coal. This was required because of the fact that the GCV of the Domestic Coal was low and as per the boiler design and optimal conditions, blending of coal became essential....."

- iii. *In this regard, kind attention of this Commission is invited to the Part 1 of Form-19 (Containing information in respect of Fuel for computation of Energy Charges) submitted along with the Bills on the basis of Provisional Tariff. Copies of Form-19 for period from August 2012 to May 2013 are annexed and marked as **Annexure-R/1 (Colly.)**. It is relevant to point out that the commissioning of Unit-2 took place in April, 2013.*
- iv. *The scrutiny of the Form-19 for August 2012 to November 2012 reveals that the GCV of Domestic Coal is consistently improving from 2700 Kcal/Kg to 3404 Kcal/Kg (which is more than Design GCV of 3300 Kcal/Kg). Also, during this period, there is no indication of use of imported coal. The use of imported coal started only after this period and blending appears to have been carried out.*
- v. *However, at Sl. No. 18 of the Form 19 (from Jan-13 to May-13), GCV of blended coal only is indicated and the GCV of the Domestic coal is not shown. Therefore, the question here would be – Whether the GCV of Domestic Coal was in fact lower than design GCV and blending was at all required, particularly during the period in question, i.e., during April 2013, when the pre-commissioning consumption of 25,326 MT of coal is shown for Unit II?*
- vi. *It is important to note here that in Form 19 for April-13, the GCV of blended coal is shown as 4027.83 KCal/Kg, which is substantially higher than Design GCV of 3300 Kcal/Kg. Hence, there seems to be no rationale for use of imported coal and, hence, the cost of the imported coal may not be allowed.”*

(b) Double deduction of Infirm Power:

- i. *“It is apparent that this Hon’ble Commission, while treating the revenue from sale of infirm power in terms of the Regulation 19 of Tariff Regulation 2012, has relied upon the information given by the Review Petitioner in its Additional Affidavit Dated 13-08-2014, wherein it has been said that -*

“... the pre-commissioning fuel expense of Rs. 95.83 Crores was merged with Overheads & Pre-operative expenses...”

No documentary evidence was provided as regards the treatment of revenue earned from sale of infirm power. Whereupon, the Commission went on to conclude that -

“.....the petitioner has adjusted the capital cost only to the extent of pre-commissioning fuel expenses and has not considered the revenue earned from the sale of infirm power while undertaking such adjustment as against the provisions under Regulation 19 of the MPERC (Terms & Conditions of Determination of Generation Tariff)(Revision II), Regulations 2012....” (Emphasis added)

- ii. However, now the Review Petitioner has furnished a CA certificate Dated 14-01-2015 (Annexure –RP-3) stating that

*“... JP Bina Thermal Power Plant, a Division of M/s Jaiprakash Power Ventures Limited, has **credited** the Revenue of Rs. 9.23 Crores earned from Sale of Infirm Power to **Capital Works in Progress Account**.....”* (Emphasis added).

Therefore, it is prayed that actual treatment of the said income from sale of infirm power may kindly be examined in books of account, before taking a final view.”

(c) Interest and Finance Charges on Loan Capital:

“That, in para 3.10 to para 3.12 it has been contended by the Review Petitioner that this Hon’ble Commission has erred on facts and law by considering the entire amount of depreciation for the full year for the purpose of repayment during that year. It is humbly prayed that while taking a view on the said averments in terms of the provisions of the Regulation 24 of the Tariff Regulations 2012, it may kindly be noted that the Review Petitioner has also altered the figures of Opening Loans without pointing to any specific anomaly in methodology adopted by this Hon’ble Commission in arriving at Opening Loan figures in Table 26 at Page No. 113 of the Tariff Order (Page 134 of the Review Petition).”

(d) Inadequate recovery of Capacity Charges:

- i. *“That, in para 3.13 to para 3.14, it has been contended by the Review Petitioner that this Hon’ble Commission has erred by not issuing a*

speaking order on the issue of recovery of capacity charges at 68.42% instead of 65%. This contention of the Review Petitioner is strongly opposed.

- a. *Firstly, the Implementation Agreement dated 30-01-2009 entered between the Govt. of M.P. and the Review Petitioner, which is annexed as Annexure-R/2, stipulates that 5% of net power generated by the Project shall be provided at Variable Charges. This culminated into a PPA dated 27-07-2011 between the Review Petitioner and GoMP. Hence, it was known to the Review petitioner that, under GoMP policy, 5% of the power would have to be given on variable rate to the State. The capital charge on this quantum cannot be passed on to Procurers, including the Answering Respondent. The Review petitioner had consciously agreed to forego RoE on concessional power. Now any attempt to recover Annual Capacity Charges foregone under the provisions of the said IA and PPA, from the Procurers, including Answering Respondent, would upset the basis of the entire arrangement agreed and understood by and between GoMP and Review Petitioner. The burden of any agreement between GoMP and the Review Petitioner cannot be imposed on Answering Respondent.*
- b. *Also, if the increase sought in Annual Capacity Charges is allowed to be recovered in the manner suggested by the Review Petitioner, then the Consumers of the State will be hit, which could not have been the objective of the Govt. of M.P., while facilitating the Private Power developer to set up Power Plant in the State.*
- c. *Further, it is obvious that the Commission has followed its own Regulations and correctly applied the principle laid therein. The relevant part of the applicable Regulation 40 is quoted below :*

“ 40. Recovery of Annual Capacity (Fixed) Charges

40.1 The fixed charges shall be computed on annual basis, based on norms specified under these Regulations, and recovered on monthly basis under Capacity Charges. The total capacity charges payable for the generating station shall be shared by its Beneficiaries as per their respective

percentage share/ allocation in the capacity of the generating station.

....

40.6 Payment of capacity Charges shall be on monthly basis **in proportion to allocated/ contracted capacity**”
(Emphasis added)”

Therefore, it is humbly prayed that the claim of the Review Petitioner for 68.42% of the capacity charges against the PPA of 65%, deserves to be rejected.

Rejoinder filed by the Review Petitioner:

10. By affidavit dated 18th April’ 2015, the review petitioner also filed its rejoinder to the above-mentioned reply filed by Respondent No. 1 on the review petition. The review petitioner broadly submitted the following in its rejoinder:

- (i) *“Without prejudice to the above, Respondent No. 1, in Para 12 of the submission dated 23.03.2015, has mentioned that as per Form No. 19 for April 2013, the GCV of Fired Coal (Blended) has been shown as 4027.83 Kcal/kg, which is factually correct, Respondent No. 1 has missed to appreciate the fact that GCV of Fired Coal (Blended) as per Form No. 19 ranged from 2700 kCal/kg to 3404 Kcal/kg between August 2012 and December 2012. Pursuant to purchase of Imported Coal, blending thereof was started from January 2013, resulting in GCV of Fired (Blended) improving to 3486 Kcal/kg in January 2013 and to 4028 Kcal/kg in April 2013. Therefore, it is most respectfully submitted that the factual position has been wrongly inferred/ interpreted by Respondent No. 1 in as much as pursuant to blending of Imported Coal, the GCV has improved to 4027.83 Kcal/kg, as admitted by Respondent No. 1.”*
- (ii) *“It is most respectfully submitted that the contents of Para 13 and 14 are denied as the Petitioner during Case No. 40 to 2012 had clearly vide Affidavit dated 13.08.2014 had informed the Commission that the income from Infirm Power has been reduced from the Capital Cost. The Petitioner craves to rely upon the Additional Affidavit dated 13.08.2014 during the*

course of hearing. Therefore, the double deduction of the same is also an error apparent on the face of record and the same may be redressed suitably.”

- (iii) “It is submitted that the averments made in Para 15 is vehemently denied for detailed reasons mentioned in preliminary submissions above. Without prejudice to the above, Respondent No. 1 has failed to appreciate the fact that the Petitioner has recast the working of interest on loan after adjusting the disallowances prayed for in the review petition as an example of what the final working of interest would appear after assuming that all disallowances have been allowed. In addition, the annexures on page No. 186 to 188 annexed as **Table T-1, T-1.1, T-1.3** of **Annexure RP-4** have not probably been perused by Respondent No. 1.”
- (iv) “That it is undisputed that the Petitioner and the Government of Madhya Pradesh have entered into a Concessional PPA for supply of 5% of power from the Petitioner’s Power Plant. The inference of the Respondent No. 1 that the Petitioner had also agreed to forego ROE/ Capital Cost recovery on this quantum of 5% energy is grossly misplaced. Therefore, logically 100% of the Capital Cost of the power project will be recovered from 95% generation. Therefore, accordingly the Petitioner had sought determination of Tariff for 68.42% in place of 65%.....”

Commission’s Analysis:

11. In terms of Regulation 40(1) of the MPERC (Conduct of Business) Regulations, 2004,
- “The Commission may on its own motion, or on the application of any of the person or parties concerned, within 60 days of the making of any decision, direction or order, review such decision, direction or orders and pass such appropriate orders as the Commission thinks fit.”
12. 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.

Keeping in view of the above provisions and on perusal of the submissions made by the review petitioner and the respondent, the Commission has analyzed each issue raised in the review petition as discussed below:

A. Pre Commissioning Fuel Expenses:

13. The petitioner sought review of order on this issue on the following grounds:

- (i) The weighted average price of coal consumption be considered instead of weighted average purchase rate of domestic coal for fuel expenses for generation of infirm power from both the units.
- (ii) The landed cost of imported coal is ignored in the impugned order for arriving at the weighted average rate of the coal for generation of infirm power from its Unit No. II.
- (iii) Neither the Electricity Act, 2003 nor any Regulations framed by the Commission contemplate disallowance of imported coal for generation of infirm power. The blending of imported coal with the domestic coal was required on account of low GCV of the domestic coal which could not be used as per the boiler design and optimal conditions

14. On examination of the arguments put forth by the review petitioner for issue at S.No. 13(i) above, the Commission observed the following:

- (i) The provisions under MPERC (Terms and Conditions of determination of Generation Tariff) Regulations, 2009 and 2012 provide that while determining the cost of coal / energy charges of thermal power station, the **weighted average landed price of coal (emphasis supplied)** shall be considered.

Regarding landed cost of coal, the following is mentioned in the

Regulation:

“ The landed cost of coal shall include price of coal corresponding to the grade and quality of coal inclusive of royalty, taxes and duties as applicable, transportation cost by rail/road or any other means, and, for the purpose of computation of Energy Charges, shall be arrived at after considering normative transit and handling losses as percentage of the quantity of coal despatched by the Coal Supply Company during the month.....”.

- (ii) Accordingly, the Regulations provide for only the landed price of coal for determination of primary fuel cost. The Regulations do not provide to consider weighted average price of coal consumption on FIFO basis as contented by the review petitioner. In its order dated 26.11.2014, the Commission has considered the cost of coal for generation of infirm power based on the landed price of domestic coal which has been worked out on the basis of the details filed by the petitioner by its affidavit dated **27th June’ 2014**.

The contention of the petitioner to consider cost of coal for generation of infirm power from Unit No. I based on weighted average price of consumption (WAPC) is not in line with the provisions under aforementioned Regulations. Therefore, the contention of review petitioner on this issue of coal cost for generation of infirm power from Unit I has no merit for review of the Commission’s order.

15. On review of the Commission’s order for issues at S.No. 13(ii) & (iii) above, it is observed that the issues related to the **“Infirm Power”** are dealt with in Regulation 19 of MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2009 and 2012 and CERC (Unscheduled Interchange charges and related matter) 2009 replaced by CERC (Deviation Settlement Mechanism and related matters) Regulations’ 2014. The relevant provisions under the aforesaid Regulations are reproduced as under:

Regulation **19** of MPERC (Terms and Conditions for determination of Generation

Tariff) Regulations, 2012 provides that:

“Infirm Power shall be accounted as Unscheduled Interchange (UI) and paid for from the regional/ State UI pool account at the applicable frequency-linked UI rate:

Provided that any revenue earned by the Generating Company from sale of Infirm Power after accounting for the fuel expenses shall be applied for reduction in capital cost”

Further, the UI rate/ DSM charges are governed by CERC Regulations only. Central Electricity Regulatory Commission (Unscheduled Interchange charges and related matters) Regulations, 2009 replaced by CERC (Deviation Settlement Mechanism and related matters) Regulations, 2014 provide the following with regard to infirm power injected into the grid by a generating unit of a generating station during testing prior to the COD of unit.

*“The infirm power injected into the grid by a generating unit of a generating station during the testing, prior to COD of the unit shall be paid at Charges for Deviation for infirm power injected into the grid, consequent to testing, for a period not exceeding 6 months or the extended time allowed by the Commission in the Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Medium-term Open Access and related matters) Regulations, 2009, as amended from time to time, **subject to ceiling of Cap rates corresponding to the main fuel (emphasis supplied)** used for such injection as specified below:*

<i>Domestic coal/ Lignite/Hydro</i>	<i>₹1.78 / kWh sent out</i>
<i>APM gas as fuel</i>	<i>₹2.82/ kWh sent out up to 31.3.2014 and thereafter, ₹5.64/ kWh sent out</i>
<i>Imported Coal</i>	<i>₹3.03 / kWh sent out</i>
<i>RLNG</i>	<i>₹8.24 / kWh sent out”</i>

16. It is evident from the above provisions that, the rates of infirm power are capped corresponding to the main fuel in case there is blending of imported coal with the domestic coal. In other words, the Generating Company is eligible to earn

revenue from sale of infirm power at the rates capped for domestic coal only even if it has consumed imported coal for blending purpose. In order to comply with the above-mentioned Proviso under Regulation 19 of MPERC (Terms and Conditions for determination of Generation Tariff) Regulations' 2012, it is apparently clear that the expenses of main fuel (domestic coal), corresponding to which the revenue is earned by the Generating Company, are to be considered for reduction of capital cost.

17. Further, it is also evident from the details of coal received by the petitioner in FY 2012-13 and FY 13-14 filed by affidavit dated 27th June' 2014 that the quantity of domestic coal was adequate for generation of infirm power.
18. Therefore, in view of the above-mentioned legal frame work and the facts and figures on record, the review on this issue is not considered.

B. Double deduction of revenue earned from sale of Infirm Power:

19. This issue under review is related to the facts and figures claimed/filed by the review petitioner in its original application in Petition No.40 of 2012 filed with the Commission on 22nd February'2014. As per Proviso under Regulation 19 of MPERC (Terms and Conditions for determination of generation tariff) Regulations, 2012, it is explicitly clear that any revenue earned by the Generating Company from sale of Infirm Power shall be applied for reduction in capital cost after accounting for the fuel expenses. Therefore, in terms of the aforesaid Proviso, it is the primary obligation of the generating company to prove/establish with all details and documents before the Commission that the revenue whatsoever earned by it from sale of infirm power has been reduced from the Capital cost finally claimed by it for determination of tariff. In its original application in Petition No. 40 of 2012, the review petitioner had not claimed for its present contention of having reduced the income earned from sale of infirm power from the capital cost claimed by it. Even the figures also which were filed for the capital cost in the aforesaid original application and supplementary submissions did not prove its present contention. Besides, the petitioner had been submitting different figures at different points of time during scrutiny of the main aforesaid application. It was also observed by the Commission that the

above-mentioned original application under Petition No. 40 of 2012 was filed with incomplete prayer, improper claims/calculations of various tariff components, without segregated audited accounts of the company, unfilled/blank formats prescribed for such applications and several other anomalies/discrepancies in the figures. Besides, the figures filed in various tables of the submissions, the petitioner had nowhere established its present contention in the review petition on this issue. However, by its last affidavit dated 13th August 2014, the petitioner had simply submitted that “*the said income on account of infirm power has been reduced from the capital expenditure*”. The review petitioner stated the aforesaid contention in reply to the queries wherein this was not the issue. Moreover, no documentary evidence was filed by the petitioner in support of its aforesaid contention. In view of the foregoing observations, the Commission did not consider that the income on account of infirm power has been reduced from the capital expenditure in its last order dated 26.11.2014.

20. All aforesaid anomalies/discrepancies in the main application were communicated to the petitioner vide Commission’s letters 758 dated 05th May 2014 and 1238 dated 26th July, 2014. In response to the aforesaid communications in the main application, the petitioner corrected the figures and resubmitted to the Commission. On examination of the revised/corrected submission, the Commission observed the following:

- (i) The petitioner had made different submissions at different points of time:
 - a) In the CA Certificate dated 4.6.2014 for expenses incurred in relation to Bina Project as on 31.3.2014, there was no breakup of the Capital Works in Progress of ₹. 29.63 Cr.
 - b) In its additional affidavit responding to the second set of queries of the Commission, the petitioner emphasized to consider the Capital Cost breakup in additional submission as final estimated capital cost, wherein the Pre-commissioning fuel expenses was ₹ 96 Cr. merged with OH expenses of ₹ 253 Cr.
 - c) In response to the query of the Commission, the petitioner submitted the details of fuel consumed and revenue from Sale of Power showing Net

Revenue of ₹. 86.59 Cr. (₹. 96 Cr. – ₹. 9.23 Cr.)

- (ii) With the above information on record with the Commission, it was observed that petitioner at one place mentioned that the estimated capital cost contains the Pre-commissioning fuel expenditure of ₹. 96 Cr., whereas in further submissions the petitioner had mentioned the Net Revenue earned from sale of Infirm Power as Rs. 86.59 Cr., which was not found in consonance with the statement mentioned by its last affidavit dated 13th August 2014.
21. On preliminary scrutiny of the subject review petition, it was observed that the review petitioner for the first time has enclosed a certificate of Chartered Accountant only in support of its contention on the issue of “Double deduction of the revenue earned from sale of infirm power”. On perusal of the aforesaid certificate and contention of the petitioner, the Commission sought various other details and documents from the petitioner to verify the correctness of the contention of review petitioner.
22. By affidavit dated 18th March, 2015, the petitioner filed its reply to the queries raised by the Commission. The response of the petitioner on each issue raised by the Commission is mentioned at **para 8.0** of this order. It is noted from the reply filed by the review petitioner that the Certificate dated 11th March’2015 by the Chartered Accountant (submitted by the petitioner for the first time) was issued after the date of last/ main order i.e 26th November’2014. Further, as mentioned in the aforesaid certificate, it is based on the information and explanation given to the Chartered Accountant ,which are neither elaborated in that certificate nor shared with the Commission by the review petitioner. Moreover, the following details and documents as sought by the Commission for detailed verification of the contention about some relevant date-wise status of CWIP in the certificate and its actual quantum of capitalization are not filed by the review petitioner:
- (i) All supporting documents related to the accounting of the revenue earned from sale of infirm power in CWIP account and its

adjustments in the capital cost as on CoD claimed in the petition for each unit.

(ii) The break-up of CWIP as on CoD of Unit 1, 31st March, 2013, CoD of Unit 2 and 31st March, 2014 duly tallied with the concerned schedule in the books of account duly certified by the statutory auditor. The aforesaid break-up should indicate the adjustments of revenue earned from sale of infirm power in CWIP as per the books of account.

(iii) The set of accounting policies of the company.

23. In view of the above findings, the Commission has observed that there is no ground for review of its order on this issue.

C. Interest on Loan Capital:

24. As mentioned in Table 25 of the Commission's order dated 26.11.2014 in Petition No. 40 of 2012, the petitioner itself, vide its additional submission dated 13th August, 2014 claimed the interest and finance charges by considering the repayment equal to annual depreciation. Further, the petitioner claimed the interest and finance charges on loan by considering the repayment equal to annual depreciation irrespective of the no. of days in operation also. Therefore, the interest and finance charges were determined by the Commission as claimed by the petitioner.

25. In its review petition, the petitioner has now mentioned that the difference in the calculation of Interest on Loan is due to the fact that full year depreciation has been reduced (Repayment of Loan) for FY 2012-13, as on 6th April 2013 and FY 2013-14. The actual days of operation in FY 2012-13 are 213 and 6 days up to 6th April, 2013 and balance 359 days in FY 2013-14. Therefore, by reducing full year depreciation against repayment of loan for these periods, the quantum of loan and the amount of interest is reduced.

26. In view of the above, the Commission has observed that both the units of Petitioner's power project were commissioned during the intervening period of different financial years. Therefore, the days of operation of each unit is not full

year during FY 2012-13 and FY 2013-14. The Annual Fixed (Capacity) charges have been correctly worked out on pro-rata basis in the last order for number of days of operation of each unit but the repayment of loan is required to be considered on pro-rata basis for arriving at the correct closing loan balance for each period. Therefore, the review of the Commission's last order on this count is allowed.

D. Inadequate recovery of Capacity Charges:

27. With regard to the issue pertaining to 65% of the Annual Capacity Charges allowed by the Commission in the impugned order, the following background is necessarily required to discuss here before addressing this issue under review:

- (i) The petitioner and GoMP entered into a Memorandum of Understanding (MOU) on dated 12th August, 2008 for setting up 1250 MW thermal power station in two phases. In the aforesaid MOU, it was mentioned that *“the Government is desirous of facilitating private investment in power generation projects in the state of Madhya Pradesh and providing assistance for the development of the power generation projects and in consideration being entitled to a certain share of the power generated from such projects.”*
- (ii) As per clause 24 of the above-mentioned MoU, the parties in the MoU entered into an Implementation Agreement (IA) on 30th January, 2009 for construction, ownership and maintenance of the said Power Project. Clause 3.1 under Article III of the said IA stipulated that the company will provide, on an annualized basis, to the Government or its nominated agency, 5% of the net power generated by the project at the variable charges, as determined by the Appropriate Commission. Clause 4.2 of the IA provides obligations of the Government in respect of the concessional power. Subsequently, the GoMP, Review Petitioner and M.P. Power Trading Co. Ltd., Jabalpur entered into a PPA for the aforesaid concessional power.

- (iii) The petitioner and the procurer entered into Power Purchase Agreement on 5th January, 2011 for supply of contracted capacity from the project on long term basis, for a period of 25 years. Clause 10.4.1(a) of the PPA provides that the Capacity Charges shall be based on the Declared Capacity for the entire month. Some related terms defined in the aforesaid PPA are as follows:

Contracted Capacity: shall mean the capacity equivalent to 65% of the phase-I (2x250 MW) and 37% of the phase-II (3x250 MW) (subject to availability of Coal for phase-II) of power station's Installed Capacity contracted with the Procurer as per the terms of this agreement.

Tariff: shall mean the tariff payable by the Procurer to the Company for making available the Contracted Capacity and supplying Electrical Output corresponding to the Contracted Capacity at Normative Availability.

28. On going through all the above agreements entered into by the petitioner with GoMP and the Respondents in the matter, it is explicitly clear that GoMP shall have right to purchase 5.0% / 7.5% of the net power on annualized basis at the price equivalent to only the variable cost to be determined by the Appropriate Commission for the power station. The Commission has determined the Annual Fixed (Capacity) Charges for the contracted capacity (65% of the installed capacity of Phase-I) in terms of the Power Purchase Agreement executed between the petitioner and the respondents on 5th January' 2011 which defines that the tariff means the tariff payable by the procurer to the company for making available the contracted capacity. The beneficiaries/ the conforming parties in both the agreements signed by the petitioner with GoMP for concessional energy and with the procurers for contracted capacity in the subject matter are common. Therefore, it will not be appropriate to load the burden of unrecovered capacity charges on account of concessional power on the same beneficiaries (i.e. the electricity consumers in the state) in both the agreements. Besides, the Power

Purchase Agreements and MPERC (Terms and Conditions for determination for generation tariff) Regulations, 2012 do not provide for recovery of such unrecoverable capacity charges, from any other party on account of any concessional power agreed to by the generating company.

In view of the above, the contention of the review petitioner on this issue is not considerable as it has no merit to review the Commission's order on this count.

29. As detailed in the foregoing paragraphs, the only issue related to "Interest on Loan Capital" raised by the review petitioner is considered for review in terms of the above findings.

Interest and finance charges:

30. Considering the repayment of loan equal to pro-rated depreciation as sought by the review petitioner, the interest and finance charges are revised as under:

Revised Table No. 26 of the main order: Interest and finance charges for Unit I&II:

Particulars	Unit	As on 31 st March, 2013	As on 6 th April, 2013	As on 31 st March, 2014	As on 31 st March, 2015	As on 31 st March, 2016
Units		Unit I	Unit I	Unit I and II	Unit I and II	Unit I and II
Opening Loan	₹ Crores	1,013.81	974.04	2,216.82	2,224.51	2,052.31
Loan addition	₹ Crores	1.68	-	170.77	-	-
Repayment considered	₹ Crores	41.45	1.17	163.09	172.20	172.20
Closing Loan	₹ Crores	974.04	972.87	2,224.51	2,052.31	1,880.11
Average Loan	₹ Crores	993.93	973.46	2,220.66	2,138.41	1,966.21
Weighted average rate of interest	%	13.42%	12.75%	12.75%	12.75%	12.75%
Annual Interest amount	₹ Crores	133.39	124.12	283.13	272.65	250.69

Interest on working capital:

31. On account of the above change in interest amount, receivable of the working capital have been worked out on the basis of two months' fixed and variable charges. For this purpose, the operational parameters and weighted average price of fuel as considered in order dated 26.11.2014 has been retained. The interest on working capital is also recalculated by applying the correct applicable

SBI PLR of 13.20% (i.e ,Base rate of SBI effective from 04.02.2013 was 9.70%) as on 31st March' 2014 as mentioned in Para 6.44 to 6.47 of the Commission's order dated 26.11.2014. The necessary details in support of calculation of interest on working capital are as under:

Revised Table No. 32 of the main order: Receivables for two months

Particulars	Unit	As on 31 st March, 2013	As on 6 th April, 2013	As on 31 st March, 2014	As on 31 st March, 2015	As on 31 st March, 2016
Units		Unit I	Unit I	Unit I and II	Unit I and II	Unit I and II
Variable Charges – two months	₹ Crores	78.48	59.70	119.39	119.39	119.72
Fixed Charges – two months	₹ Crores	62.71	60.59	135.64	137.68	135.35
Receivables – two months	₹ Crores	141.19	120.29	255.03	257.07	255.07

Revised Table No. 33 of the main order: Interest on working capital

Particulars	Unit	As on 31 st March, 2013	As on 6 th April, 2013	As on 31 st March, 2014	As on 31 st March, 2015	As on 31 st March, 2016
Units		Unit I	Unit I	Unit I and II	Unit I and II	Unit I and II
Cost of coal for 60 days	₹ Crores	78.48	59.70	119.39	119.39	119.72
Cost of fuel oil for two months	₹ Crores	1.55	1.55	3.10	3.10	3.11
O&M Charges for one month	₹ Crores	3.56	3.84	7.68	8.29	8.94
Maintenance Spares 20% of the O&M charges	₹ Crores	8.54	9.21	18.42	19.90	21.46
Receivables for two months	₹ Crores	141.19	120.29	255.03	257.07	255.07
Total working capital	₹ Crores	233.32	194.58	403.62	407.76	408.30
Applicable rate of interest	%	14.00%	13.20%	13.20%	13.50%	13.50%
Interest on working capital	₹ Crores	32.67	25.68	53.28	55.05	55.12

32. Regulation 31 of MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2012 provides as under:

“Non Tariff Income

(a) Any income being incidental to the business of the Generating Company derived from sources, including but not limited to the disposal of assets, income from investments, rents, income from sale of scrap other than the de-capitalized/written off assets, income from advertisements, interest on advances to suppliers/ contractors, income from sale of ash/ rejected coal,

and any other miscellaneous receipts other than income from sale of energy shall constitute the non tariff income.

- (b) The amount of Non-Tariff Income relating to the Generation Business as approved by the Commission shall be deducted from the Annual Fixed Cost in determining the Annual Fixed Charge of the Generation Company:

Provided that the Generation Company shall submit full details of its forecast of Non-Tariff Income to the Commission in such form as may be stipulated by the Commission from time to time. Non tariff income shall also be Trued-up based on audited accounts.”

On review of the Commission’s last order dated 26th November’ 2014 in the subject matter, it is found that the non-tariff income is recorded in Schedule 19 of the Audited Balance-Sheet of the petitioner’s company and the petitioner had not dealt with the non-tariff income in its claims made in all the applications/ petitions filed with the Commission. Therefore, the following detailed break-up of non-tariff income was obtained from the petitioner:

S.No	Other Income for FY 2013-14	Amount In ₹
1.	Interest on Deposits with Banks	10,509,558.00
2.	Interest from Electricity Boards	3,182,367.00
3.	Profit on Sale of Fixed Assets	28,460.00
4.	Details of Misc. Receipt	
(i)	Excess Provision Written Back	1,469,629.00
(ii)	Grocery Sale	799,018.00
(iii)	Rent Receipt	2,903,888.00
(iv)	Misc Receipt	1,423,414.00
(v)	Handling charges receipt	2,530,501.00
(vi)	Sale of Scrap	5,574,480.00
(vii)	Other Income	126,725.00
(viii)	Insurance Claim	11,571.00
(ix)	Foreign Currency difference	35,190.00
	TOTAL	2,85,948,01.00

In terms of the provisions under Regulation 31 of MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2012, the non-tariff income of ₹ 2.71 Crore (excluding the miscellaneous receipt on account of Excess Provision Written Back and Foreign currency difference) is now considered in this order and the same is deducted from the Annual Fixed Cost on pro-rata basis of

the days of operation while determining the Annual Fixed Charges in this order.

33. Accordingly, the Annual Fixed (Capacity) charges for the period of FY2012-13 (CoD of Unit No. I) to FY2015-16 are revised as under:

Revised Table No. 34 of the main order: Revised Annual Capacity Charges for JP Bina TPP Phase-I (2X250 MW) :

Particulars	Unit	As on 31 st March, 2013	As on 6 th April, 2013	As on 31 st March, 2014	As on 31 st March, 2015	As on 31 st March, 2016
		Unit I	Unit I	Unit I and II	Unit I and II	Unit I and II
Return on equity	₹ Crores	85.27	85.34	197.07	204.24	204.24
Interest charges on loan	₹ Crores	133.39	124.12	283.13	272.65	250.69
Depreciation	₹ Crores	71.03	71.08	165.81	172.20	172.20
O & M expenses	₹ Crores	42.70	46.05	92.10	99.50	107.30
Secondary fuel oil expenses	₹ Crores	11.22	11.23	22.47	22.47	22.53
Interest on working capital	₹ Crores	32.67	25.68	53.28	55.05	55.12
Annual Capacity (fixed) charges	₹ Crores	376.28	363.51	813.86	826.10	812.08
Operational No. Of Days	No.	213	6	359	365	366
Annual Capacity (Fixed) charges apportioned for actual days of operation	₹ Crores	218.99	5.98	800.48	826.10	812.08
Less: Non - Tariff Income	₹ Crores	-	0.04	2.67	-	-
Net Annual Capacity charges	₹ Crores	218.99	5.94	797.81	826.10	812.08
Annual Capacity (Fixed) charges corresponding to 65% of the installed capacity of the Units	₹ Crores	142.34	3.86	518.58	536.96	527.85

34. The difference between the Annual Capacity (Fixed) charges determined by this order and those determined by earlier order dated 26.11.2014 in Petition No.40 of 2012 shall be recovered from the respondents in this matter in terms of applicable Regulations in the ratio of energy supplied to them in six equal monthly instalments during FY 2015-16.
35. Except the above, all other terms contained in the Commission's order dated 26.11.2014 in Petition No. 40 of 2012 remain unchanged. With the above directions, this review petition is disposed of.

(Alok Gupta)
Member

(A. B. Bajpai)
Member

(Dr. Dev Raj Birdi)
Chairman

Date: 08th May'2015

Place: Bhopal