

MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION

5thFloor, "Metro Plaza", Bittan Market, Bhopal (M.P.) - 462 016



Petition No. 75 of 2022

PRESENT:

S.P.S Parihar, Chairman
Gopal Srivastava, Member (Law)
P.K. Chaturvedi, Member

IN THE MATTER OF:

True-up of Generation Tariff of 2 x 250 MW (Phase-I) coal based Thermal Power Station at Bina, District Sagar (M.P.) for FY 2021-22 determined by MP Electricity Regulatory Commission vide Multi Year Tariff Order dated 30th April, 2021.

M/s Jaiprakash Power Ventures Ltd., Noida (UP):
(Unit: Jaypee Bina Thermal Power Plant)

PETITIONER

Vs.

- 1. M.P. Power Management Company 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 2nd March, 2023)

1. M/s Jaiprakash Power Ventures Limited (hereinafter called “the petitioner” or “JPVL”) has filed the subject petition for True-up of Generation Tariff for FY 2021-22 in respect of its 2x250 MW (Phase I) Coal based Thermal Power Station at Bina determined by the Madhya Pradesh Electricity Regulatory Commission (hereinafter called “the Commission or MPERC”) vide Multi Year Tariff (MYT) Order dated 30th April, 2021.
2. The subject true-up petition has been filed under Sections 62 and 86(1)(a) of the Electricity Act, 2003 and based on the MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020 {RG- (IV) of 2020} (herein after referred to as “the Regulations, 2020”) for the control period from FY 2019-20 to FY 2023-24 notified in the Madhya Pradesh gazette on 28th February, 2020.
3. Bina Thermal Power Station (Phase I) comprises of two generating Units of 250 MW each. Date of Commercial Operation (CoD) of both the units are as given below:

Table 1:CoD of Unit No.1 and 2

Sl. No	Units	Installed Capacity (in MW)	Date of Commercial Operation
1	Unit No. 1	250 MW	31 st August, 2012
2	Unit No. 2	250 MW	7 th April, 2013

4. The petitioner executed long term Power Purchase Agreement (PPA) on 5th January, 2011 with MP Power Management Company Ltd., (hereinafter called “MPPMCL” or “Respondent No. 1”) for supply of 65% power of the installed capacity of the Project at regulated tariff determined by the Commission. The petitioner has executed another Power Purchase Agreement on 20th July, 2011 with the Government of Madhya Pradesh (GoMP) for supply of 5% of net power generated at variable charges determined by the Commission.
5. The petitioner had earlier filed Petition No. 44 of 2020 for determination of Multi Year Tariff for Unit No. 1 and 2 of its Bina thermal power station for the control period from FY 2019-20 to FY 2023-24 based on the Regulations, 2020. Vide order dated 30th April, 2021 in the aforesaid petition, the Commission determined the multi-year tariff of project subject to true-up based on the Annual Audited Accounts for the respective year.
6. The details of Annual Capacity (Fixed) Charges for both the units of Bina Thermal Power Plant for FY 2021-22 determined vide Commission’s MYT Order dated 30th April, 2021 are as given below:

Table 2: Annual Capacity (Fixed) Charges for FY 2021-22 allowed in MYT Order:

Particulars	Amount (Rs. Crore)
Return on Equity	163.68
Interest Charges on Loan	87.58
Depreciation	180.22
Operation & Maintenance Expense	176.55
Interest on Working Capital	52.28
Annual Capacity (Fixed) Charges	660.30
Less: Non-Tariff Income	2.40
Net Annual Capacity (Fixed) Charges	657.90
Annual Capacity (Fixed) Charges corresponding to 65% of the installed capacity of the project	427.63

7. In the subject petition, the petitioner has sought true-up of Annual Capacity (fixed) Charges for FY 2021-22 in respect of additional capital expenditure incurred during FY 2021-22 in accordance with Regulation 9.4 of the Regulations, 2020, which provides as under:

“A generating company shall file a petition at the beginning of the Tariff period. A review shall be undertaken by the Commission to scrutinize and true up the Tariff on the basis of the capital expenditure and additional capital expenditure actually incurred in the Year for which the true up is being requested. The generating company shall submit for the purpose of truing up, details of capital expenditure and additional capital expenditure incurred for each year of the period from 1.4.2019 to 31.3.2024, duly audited and certified by the auditors”.

8. In the subject petition, the petitioner filed additional capitalization of Rs. 10.15 Crore and de-capitalization of Rs. 0.94 Crore during FY 2021-22. Out of major capital expenditure incurred, an amount of Rs. 7.31 Crore has been claimed towards construction of an additional loop line at Samarkhedi Railway Station and balance towards procurement of some minor assets. Therefore, the net additional capitalization of Rs. 9.21 Crore claimed by the petitioner during the year.
9. On the basis of the aforesaid additional capitalization and other submissions contained in the subject petition, the petitioner claimed the following Annual Capacity (fixed) Charges for Bina Thermal Power Station:

Table 3: Annual Capacity Charges claimed for FY 2021-22:

S. No.	Particulars	Amount (Rs. Crore)
1	Return on Equity	201.19
2	Interest on Loan	90.48
3	Depreciation	182.15
4	Interest on Working Capital	49.35
5	O & M Expenses	176.55
5A	O & M expenses (400kV Transmission Lines & Bay)	0.38
6	Lease Rent Payable	0.40
	Total Annual Capacity (Fixed) Charges	700.50
7	Less:-Non Tariff Charges	1.22
8	Net Annual Capacity (Fixed) Charges	699.27
9	Annual Capacity (Fixed) Charges corresponding to 65% of the installed capacity of the Units	454.53

10. With the above submission, the petitioner prayed the following:
- True up the Capacity Charges for FY 2021-22 in terms of the Additional Capital Expenditure incurred by Petitioner after net addition of Rs. 9.21 Crs, as per Tariff Regulations, 2020;*
 - Allow recovery of Electricity Duty and Energy Development Cess on power being scheduled by the MPPMCL and Plant Auxiliary Consumption at actuals;*
 - Allow recovery of actual water charges paid to Water Resources Department, Government of Madhya Pradesh in proportion to the contracted capacity;*
 - Allow the recovery of the filing fees paid to the Commission and also the publication expenses from the beneficiaries;*
11. The subject petition has been examined by the Commission in accordance with the principles, methodology and the norms specified in the Regulations, 2020, Annual Audited Accounts for FY 2021-22, Asset-cum-Depreciation Register for FY 2021-22 and other supplementary submissions filed by the petitioner in response to the additional information/ details sought by the Commission along with all other documents placed on record by the petitioner. The Commission has also examined the subject true up petition in light of the comments/ suggestions offered by the Respondent No.1 and the response of petitioner on the same.
12. In this true-up order, the Commission has considered opening figures of Gross Fixed Assets, Equity, Loan and Accumulated Depreciation as per the last true-up order for Bina TPP issued on 19th May, 2022 for FY 2020-21 in Petition No 63 of 2021.

Procedural History

13. Motion hearing in the subject true up petition was held on 6th December, 2022, wherein the petition was admitted and the petitioner was directed to serve copies of petition to all Respondents in the matter. Respondents were also asked to file their response on the petition within 15 days.
14. Vide Commission's letter dated 20.12.2022, information gaps and additional information on scrutiny of the petition were communicated to the petitioner seeking comprehensive response by 5th January, 2023.
15. By affidavit dated 4th January, 2023, petitioner filed reply to the issues communicated to it by the Commission.
16. The public notice for inviting comments/ objections/ suggestions from stakeholders was published on 6th January, 2023 in the following newspapers:
 - (i) Dainik Jagran (Hindi), Bhopal,
 - (ii) Dainik Jagran (Hindi), Rewa and
 - (iii) Central Chronicle (English), Bhopal

The above public notice along with copy of the petition was uploaded on Commission's website also for inviting comments/objections/suggestions from stakeholders.
17. In response to Public Notice dated 6th January, 2023, the Commission received comments from only one stakeholder, i.e., Justice for Public Cause Foundation Trust on 17th January, 2023. By affidavit dated 27th January, 2023, petitioner filed its response on each issue raised by the stakeholder. The response of the petitioner on the comments/objections filed by the stakeholder along with observations is mentioned in Annexure- II of this order.
18. By affidavit dated 17th January, 2023, Respondent No. 1 (M.P. Power Management Co. Ltd.) filed its response/ comments on the subject petition.
19. By affidavit dated 27th January, 2023, petitioner filed its rejoinder to the response/ comments filed by Respondent No.1. The petitioner's responses on each comment offered by the Respondent No.1 are mentioned in Annexure-I of this order.
20. The public hearing in the subject petition was held on 31st January, 2023 through video conferencing, wherein the representatives of petitioner and Respondent No. 1 appeared.

Capital Cost as on 1st April, 2021**Petitioner's Submission:**

21. The petitioner has claimed additional capitalization and decapitalization of Rs. 10.15 Crore and Rs. 0.94 Crore during FY 2021-22, respectively. The details of opening Gross Fixed Assets as on 01.04.2021 along with asset additions during FY 2021-22, deletions during FY 2021-22 and closing Gross Fixed Assets as on 31.03.2022 as filed by the petitioner are as given below:

Table 4: Opening Gross Block and Asset Addition claimed: (Rs in Crore)

Gross Block as on 01.04.2021	Addition during 2021-22	Deletions during FY 2021-22	Gross Block as on 31.03.2022
3566.06	10.15	0.94	3575.27

Provision in Regulations:

22. With regard to capital cost of the existing power project, Regulation 21.3 of the Regulations, 2020 provide as under:

21.3 *"The Capital cost of an existing project shall include the following:*

- (i) *the capital cost admitted by the Commission prior to 1.4.2019 duly trued up by excluding liability, if any, up to last true-up order issued by the Commission;*
- (ii) *additional capitalization and de-capitalization for the respective year of tariff as determined in accordance with these Regulations;*
- (iii) *capital expenditure on account of renovation and modernization as admitted by the Commission in accordance with these Regulations;*
- (iv) *capital expenditure on account of ash disposal including handling and transportation facility;*
- (v) *capital expenditure incurred towards railway infrastructure and its augmentation for transportation of coal upto the receiving end of generating station but does not include the transportation cost and any other appurtenant cost paid to the railway; and*
- (vi) *capital cost incurred or projected to be incurred by a thermal generating station, on account of implementation of the norms under Perform, Achieve and Trade (PAT) scheme of Government of India shall be considered by the Commission subject to sharing of benefits accrued under the PAT scheme with the beneficiaries";*

Commission's Analysis:

23. In the subject petition, the petitioner filed Opening Gross Fixed Assets of Rs. 3566.06 Crore as on 1st April, 2021. On perusal of the Annual Audited Accounts of Jaypee Bina Thermal Power Plant (JBTPP) filed with the petition, it was observed that the opening balance and closing balance of Gross Fixed Assets filed in the subject petition and those recorded in Note-2 of the Annual Audited Accounts for FY 2021-22 were at variance.
24. Vide Commission's letter dated 20th December, 2022, the petitioner was asked to clarify the difference in figures recorded in Annual Audited Accounts and those filed in the subject petition. The petitioner was also asked to file reasons for difference in figures approved in last true-up order dated 19th May, 2022 for FY 2020-21 and those considered in the subject petition as on 01st April, 2021.
25. By affidavit dated 4th January, 2023, the petitioner submitted the following:

It is submitted that the difference between the figures filed in the TPS 5B of the instant Petition (Rs. 3,566.06 Crores) as on 01/04/2021 and as recorded in Note 2 of the Annual Audited Account (Rs. 3,546.57 Crores) is attached. It is also submitted that there is no difference in figure of Additions during FY 2021-22 as recorded in Note 2 of the Annual Audited Accounts and figures of Additions filed in TPS 5B.

However, difference between assets de-capitalized during FY 2021-22 as claimed in TPS 5B vis-a-vis Note 2 of Audited Annual Accounts is due to non-inclusion in TPS 5B of those decapitalized assets by virtue of their having been disallowed at the first place by Commission during the proceedings of True-up Petitions of the previous years. However, Reconciliation of the same is attached.

26. On perusal of the above submission, the Commission observed that the petitioner while filing GFA as on 01st April, 2021 considered the impact of disallowance made by the Commission on account additional capitalization in true-up orders for FY 2017-18 and FY 2018-19.
27. Accordingly, the Commission has considered the opening Gross Fixed Assets of Rs. 3527.59 Crore as on 1st April, 2021 as admitted by the Commission (as on 31st March, 2021) in last true-up order dated 19th May, 2022 in petition No. 63 of 2021 in this order.

Additional Capitalization

28. The petitioner filed additional capitalization of Rs. 10.15 Crore during FY 2021-22. Out of this, Rs 7.31 Crores has been claimed towards construction of an additional loop line at Samarkhedi Railway Station and Rs 2.84 Crore has been incurred towards procurement of miscellaneous/minor equipments related to BOP and other civil works. Furthermore, the petitioner submitted that the assets of Rs. 0.94 Crore were de-

capitalized in the Generating Station for which suitable downward adjustments have been taken into account while computing the capital cost for FY 2021-22. Therefore, the net additional capitalization (after adjustment of de-capitalized assets) of Rs. 9.21 Crore claimed by the petitioner.

29. With regard to the additional capitalization claimed in the petition, the petitioner in para 11 of the petition has submitted the following:

i. *Out of the total capitalization of Rs 10.15 Crores, Rs 7.31 Crores were spent on the construction of an Additional Loop Line of 1.105 kms at Samarkhedi Station to cater to its inward and outward traffic needs. A brief background to it can be summarized as under:-*

The JBTPP was set up by Aditya Birla Group as BPSCL. In the original plan of the Plant a Railway Siding was already proposed to serve the plant to cater the inward and outward traffic of needs of the plant. DPR & engineering plan for the aforesaid siding was also approved by the concerned Railway authorities. In continuation of this, the portion of railway siding was constructed within the acquired private land area in between the take off point at Samarkhedi Station and inplant yard. JPVL, after taking over from the BPSCL, was mandated to provide an additional loop line at Samarkhedi station of Bina-Guna Section utilizing the already constructed section between Samarkhedi station and inplant yard.

Accordingly, Railway Siding work was started as per DPR prepared by M/S RITES through Railway approved agency under the supervision of RITES Ltd and contracts were awarded for Track and OHE to private parties and S&T work to Railways as a deposit work.

Meanwhile, since, Plant was to be commissioned by June 2012, JBTPP for sometimes managed movement of coal by Rail upto Bina Railway Station and from there to Plant by road. In the process entire fleet of trucks with coal had to be passed through the crowded and congested city areas rendering their movements unsafe. To mitigate such situation, as per the request of the Petitioner a temporary connection from the existing take off point to inplant yard through an existing loop line was provided by the Railways, but the requirement of additional loop line remained as such.

Meanwhile, the work regarding Railway Siding (additional loop line) in respect of Track and OHE was halted by Railways somewhere around May 2015 to construct S&T building to include Relay Room, IPS Room and Battery room. Drawing for this building was provided to JBTPP and it could be completed and

offered to Railways for taking over in February 2017. After a lot of communication the building was taken by WC Railways in June 2018. Since, electrification and doubling of Bina-Kanjia Section and doubling a Bina-Guna Line of was underway, Western Central Railways accorded their approval for electrification of Additional Loop Line. Ultimately, Additional Loop Line linking work was completed in December 2021 for which track fitness for our JBTPP Additional Loop line was given by Railways on 01.02.2022.

- ii. It is respectfully submitted that out of the originally planned three nos of C-Type buildings till date only 2 building could be built. During FY 2021-22, one more C-Type building of Rs 0.22 Crores were capitalized for which the Petitioner fervently prays the Commission to allow it as additional capitalization.
- iii. During FY 2021-22, the Petitioner has procured Electromagnetic Flowmeter & Ultrasonic Flowmeter worth Rs 0.08 Crores to be installed at Cooling Tower & Intake.
- iv. During FY 2021-22, the Petitioner procured various types of pumps, namely, Seal Oil Pump, Hydraulic Pump, Dewatering Pump, Radial Piston Pump for Rs 0.24 Crores for Boiler Maintenance Department, Turbine Maintenance Department, Mechanical workshop, Coal Handling Plant.
- v. During FY 2021-22 it is submitted that for seamless transfer of load at BUS, Micro Processor based FBT Scheme worth Rs 0.52 Crores was installed to achieve better efficiency in transfer of load.
- vi. During FY 2021-22, SCADA Systems worth Rs 0.44 Crores & Rs 0.14 Crores were installed at Switchyard Control room and DM Plant Control room respectively for better and efficient monitoring of operations.
- vii. During FY 2021-22, For better EDP, IT & Data Management services Rs 0.39 Crores were spent on OFC network & procurement of new server.
- viii. During FY 2021-22, Rs 0.04 Crores were spent on the procurement of 8 Nos of 5Ton-Chain Pulley Block, Chain Saws, Moving Trolleys, Mechanical Jacks, Pulling & lifting machines for lifting of material at Boiler Maintenance Department, Turbine Maintenance Department, Mechanical workshop, Coal Handling Plant
- ix. To protect various installations from lightening strike, 420KVA Lightening Arrestors were procured for Rs 0.19 Crores during FY 2021-22.
- x. Rs 0.58 Crores were spent on the procurement of other workshop equipment/tools/implements, Furniture/Fixtures, other Office Equipments, Computers/Computer peripherals.
- xi. Rs. 0.01 Crores have been incurred towards purchase of Security Cameras and its accessories to enhance the security and safety of the plant.

Provisions in Regulations

30. Regarding additional capitalization in respect of existing generating station, within the original scope and after the cut-off date, Regulation 27.1 and 27.2 of the Regulations, 2020 provides as under:

27.1 The additional capital expenditure incurred or projected to be incurred in respect of an existing project or a new project on the following counts within the original scope of work and after the cut-off date may be admitted by the Commission, subject to prudence check:

- (i) Liabilities to meet award of arbitration or for compliance of the directions or order of any statutory authority, or order or decree of any court of law;*
- (ii) Change in law or compliance of any existing law;*
- (iii) Deferred works relating to ash pond or ash handling system including ash transportation facility in the original scope of work;*
- (iv) Liability for works executed prior to the cut-off date;*
- (v) Force majeure events;*
- (vi) Liability for works admitted by the Commission after the cut-off date to the extent of discharge of such liabilities by actual payment; and*
- (vii) Additional capitalization on account of raising of ash dyke as a part of ash disposal system.*

27.2 In case of replacement of assets deployed under the original scope of the existing project after cut-off date, the additional capitalization may be admitted by the Commission, after making necessary adjustments in the gross fixed assets and the cumulative depreciation, subject to prudence check on the following grounds:

- (a) The useful life of the assets is not commensurate with the useful life of the project and such assets have been fully depreciated in accordance with the provisions of these Regulations;*
- (b) The replacement of the asset or equipment if necessary, on account of change in law or Force Majeure conditions;*
- (c) The replacement of such asset or equipment is necessary on account of obsolescence of technology; and*
- (d) The replacement of such asset or equipment has otherwise been allowed by the Commission.*

31. Regarding additional capitalization in respect of existing generating station, beyond the original scope of work, Regulation 28.1 of the Regulations, 2020 provides as under:

28. Additional Capitalization beyond the original scope:

28.1 The capital expenditure in respect of existing generating station incurred or projected to be incurred on the following counts beyond the original scope, may be admitted by the Commission, subject to prudence check:

- (a) Liabilities to meet award of arbitration or for compliance of the order or directions of the any statutory authority, or order or decree of any court of law;
- (b) Change in law or compliance of any existing law;
- (c) Force Majeure Events;
- (d) Any capital expenditure to be incurred on account of need for higher security and safety of the plant as advised or directed by appropriate Government Agencies or statutory authorities responsible for national security/ internal security;
- (e) Deferred works relating to ash pond or ash handling system in addition to the original scope of work, on case-to-case basis:
Provided that if any expenditure has been claimed under Renovation and Modernisation (R&M) or repairs and maintenance under O&M expenses, the same expenditure cannot be claimed under this Regulation; and
- (f) Usage of water from sewage treatment plant in thermal generating station.

Commission's Analysis

32. The petitioner's claim of additional capitalization of Rs 10.15 Crore during FY 2021-22 out of which, Rs 7.31 Crores has been claimed towards construction of an additional loop line at Samarkhedi Railway Station and Rs 2.84 Crore has been incurred towards procurement of minor equipments related to BOP and other civil works. Details of the assets claimed under additional capitalization are as given below:

Details of Assets/Works	Amount (Rs. Crore)
Construction of an additional loop line at Samarkhedi Railway Station	7.31
Construction of C-Type Buildings	0.22
Procurement of flowmeters	0.08
Procurement of various types of pumps	0.24
Installation of microprocessor based FBT Scheme	0.52
installation of switchyard control room	0.44
DM control room	0.14
Spent for better data management services	0.38
Procurement of Mechanical equipments	0.04
Installation of lightening arrestors	0.19
Procurement of equipments such as computers and furnitures/fixtures	0.58
purchase of security cameras	0.01
Total	10.15

33. Vide Commission's letter dated 20th December, 2022, the petitioner was asked to file a comprehensive reply to the various issues related to additional capitalization communicated to it by the Commission. By affidavit dated 4th January, 2023, the petitioner filled response on each issue raised by the Commission. The issue-wise response filed by the petitioner is summarized below:

Issue

- i) **Whether capitalization of additional loop line and other minor assets are under original scope of works of the project? If so, the cost of these works under original scope of works vis-a-vis the actual expenditure be informed. The petitioner was also asked to clarify whether addition of assets was as per Regulation 27.1 of the Regulations, 2020.**
- ii) **If additional capitalization claimed beyond the Original Scope of work, the petitioner was asked to clarify whether the addition of asset was as per Regulation 28.1 of the Regulations, 2020.**

Petitioner's Response

It is submitted that capitalization towards the Additional Loop Line and other minor assets forms part of the original scope of work and in this regard, detailed justification regarding the additional loop line has already been provided in response of this submission. It is relevant to mention that the expenditure till 31.03.2022 including expenditure incurred towards the additional capitalization claimed by the Petitioner by way of the present Petition still falls within the overall budget of Rs 3,575 Crores approved by Board of Directors. Board Resolution approving Final Completion Cost of JBTPP at Rs 3,575 Crores is also submitted.

The TPS Form 5B with complete break-up of capital cost components as per original estimates is attached in this submission. The Commission should note that though there are some minor variations within the sub-groups of the Project Cost, the overall capital expenditure up to 31.03.2022 falls way behind estimated cost of completion of Rs 3,575 Crores.

The petitioner informed that the Query No. (ii) does not require any reply as the capitalization claimed by Petitioner towards the Additional Loop and other minor assets forms part of the original scope of work, therefore, Regulation 28 of the Regulations, 2020 is not applicable to the case of the Petitioner.

Issue

- iii) **The petitioner was asked to file list of assets capitalized under additional capitalization with detailed reasons in the following format:**

Details of Additional Capitalization:

S. No.	Particulars	Asset Additions (Rs. Cr.)	Reasons of Asset Additions	Provisions of Regulations which Add. Cap. filed	Reference supporting doc. Enclosed

Petitioner's Response:

Sr. No.	Particulars	Asset Addition (in Crores)	Detailed reasons for Asset Additions	Provision of the Regulations under which Add. Cap. Filed	Reference of Supporting Documents
1.	Turbine Generator Island	0.04	2 Nos. Of Mechanical lifting jack and a seal oil pump were procured for efficient working.	Regulation 27.1(vi) read with Regulation 66	
2.	DM Water Plant	0.15	SCADA system were installed for better and efficient monitoring of operations.	Regulation 27.2(c)	
3.	Coal Handling Plant	-0.06			
4.	Other Equipments	0.25	Other equipments were required for better efficiency and operation of plant.	Regulation 27.1(vi), 27.2(a) read with Regulation 66	
5.	Switch Yard Package	1.18	The equipment is required for better and efficient monitoring of the operations.	Regulation 27.2(c)	
6.	Township and Colony	0.23	The C-Type building which form part of original scope of work could only completed during FY 2021-22 on account of reasons not attributable to Petitioner.	Regulation 27.1(v).	
7.	External Water Supply	0.15		Regulation 27.2(a) and (c)	
8.	Railway Siding	7.31	Detailed reasons for assets has been mentioned in reply to Query No.3	Regulation 27.1(iv)& (v), 27.2(a), 27.2(b) read with Regulation 66	The supporting documents against the assets are submitted along with the Reply.
9.	CW System	-0.03			
TOTAL: Rs. 9.21 Crore					

Issue

- iv) **The petitioner was asked to file copy of work orders/purchase orders placed to different vendors for additional capitalization claimed in the petition along a statement indicating date of orders, price at which orders were awarded and whether the work was carried out within the specified time. If there was any delay in completion of works on account of contractor, the details of penalty if any, imposed on the contractor be also informed.**

Petitioner's Response:

The list of orders placed to different vendors for additional capitalisation with order reference, date of order placement and price on which order is placed were also submitted by the petitioner.

Issue:

- v) **The petitioner was asked to file copy of the bills/invoices of all such assets under additional capitalization be also filed.**

Petitioner's Response:

Copy of the bills of all the assets capitalised during the FY 2021-22 along with a summarized statement were also submitted by the petitioner.

Issue:

- vi) **The petitioner was also asked to file actual Loan drawn and Equity infused towards additional capitalization during FY 2021-22 claimed in the subject petition.**

Petitioner's Response:

The Petitioner informed that funds for the entire assets that has been capitalised during the FY 2021-22 have been met from revenues generated during the year/internal resources.

34. On perusal of aforesaid petitioner's response on additional capitalization claimed in the subject petition, the Commission has observed the following:
- i. The petitioner submitted that additional capitalization claimed in the subject petition is within the estimated project cost approved by the Board of Directors dated 17th May, 2014 and capitalized after cut-off date of the project. Therefore, the petitioner has filed such additional capitalization under Regulation 27.1 and 27.2 of the Regulations, 2020.

- ii. The petitioner has submitted the details/statement of assets/works under additional capitalization in the format prescribed by the Commission. In the aforesaid statement, the petitioner indicated the details of payments made to different vendors/suppliers towards works cover under additional capitalization. The petitioner also filed the copy of bills raised by the contractors in support of payment made towards assets/works under additional capitalization in this regard.
 - iii. The petitioner has filed a list of orders placed to different vendors for the assets/works under additional capitalization indicating name of assets, name of supplier/contractor, order reference number, date of order issued, price at which the contract was awarded and amount capitalized during FY 2021-22.
 - iv. Regarding funding of the additional capitalization, the petitioner mentioned that funds for the entire assets capitalised during FY 2021-22 have been met from revenues generated during the financial year through internal resources.
 - v. The petitioner has filed statement for reconciliation of assets under additional capitalization claimed in the subject petition with the Asset-cum-Depreciation Register and Annual Audited Accounts of FY 2021-22 for thermal power station.
35. By affidavit dated 17th January, 2023, Respondent No. 1 (MPPMCL) filed its response on the additional capitalization claimed in the subject petition. The response filed by Respondent No. 1 (MPPMCL) is summarized as below:

The Petitioner has claimed Additional Capital Expenditure of Rs. 10.15 Crore during FY 2021-22. It is submitted that the said claims of Additional Capital Expenditure are not admissible under the provisions of 2020 Tariff Regulations as explained in the following paragraphs of the Reply. Therefore, it is most humbly prayed that this Commission may graciously be pleased to reject the said claims of Additional Capital Expenditure.

- i) *Unit No. 1 and Unit No. 2 off the Project achieved their commercial operation (CODs) on 31.08.2012 and 07.04.2013 respectively. Consequently, in terms of Regulation 3.1(14) of 2020 Tariff Regulations, the Cut-Off Date for the Project is 31.04.2016.*
- ii) *Regulations 27 and 28 of 2020 Tariff Regulations provide for criteria for admitting Additional Capital Expenditure in an Existing Project after Cut-off Date.*
- iii) *Regulation 27.1 exhaustively enumerates admissible Additional Capital Expenditure for an existing Project (or a new project) within original scope of work*

and after the cut-off date subject to prudence check. Regulation 28.1 exhaustively enumerates admissible Additional Capital Expenditure for an existing Project (or a new project) beyond original scope of work subject to prudence check.

- iv) It is submitted that all the claims of Additional Capital Expenditures amounting to Rs. 10.15 Crore made in Paragraphs 10 and 11 of the true-up Petition for FY 2021-22, are beyond Cut-off Date of the Project and do not meet the criteria laid down in Regulations 27 or 28. Therefore this Commission may graciously be pleased to reject the same.
- v) Without prejudice and in addition to above, following is submitted in respect of various claims of Additional Capital Expenditures during FY 2021-22.
- a) In Para 11 (i) of the Petition, the Petitioner has stated that Rs. 7.31 Crore were spent on construction of an Additional Loop Line of 1.105 km at Samarkhedi Railway Station. Despite long narration of purported facts concerning this claim, the Petitioner has failed to give any credible justification as to how this huge Additional Capital Expenditure is qualified under 2020 Generation Tariff Regulations after 9 years from the COD of the Project and 6 years after Cut-off Date. The purported justifications given regarding essentiality of the Additional Loop Line and reasons for such huge delay of almost 9 years in its implementation are very vague and unacceptable. In view of the above, it is most humbly prayed that this Commission may graciously be pleased to reject the said claim in respect of construction of Additional Loop Line.
- b) In Para 11 (ii) of the Petition, the Petitioner has claimed Rs. 0.22 Crore towards capitalization of one number "C" type building. As submitted in foregoing paragraphs, this Additional Capital Expenditure cannot be allowed.
- c) In Para 11 (iii) of the Petition, the Petitioner has stated to have procured electromagnetic Flow Meter and Ultrasonic Flow Meter worth Rs. 0.08 Crore. These items do not appear to be part of original scope of work of the Project. Also, the sudden requirement of the said instruments/ equipment after 9 years of operation of the Project is without justification.
- d) In Para 11 (iv) of the Petition, the Petitioner has stated to have incurred Rs. 0.24 Crore towards procurement of various types of pumps namely Seal Oil Pump, Hydraulic Pump, Dewatering Pump, Radial Piston Pump. The Petitioner has failed to provide any justification for procurement of these items after about 9 years of operation of the Project. The Petitioner has also not clarified as to whether these items were part of original scope of work of the Project or not.

- e) *In Para 11 (v) of the Petition, the Petitioner has stated to have incurred Rs. 0.52 Crore towards installation of FBT Scheme “for better efficiency” in transfer of load. This claim has been made on a very vague ground and without providing justification or disclosing whether the said Scheme was part of original scope of work of the Project.*
- f) *In Para 11 (vi) of the Petition, the Petitioner has stated that during FY 2021-22, SCADA System worth Rs. 0.44 Crore and Rs. 0.14 Crore have been installed at Switchyard Control Room and DM Plant Control Room respectively. The Petitioner also has not indicated whether these systems were included in the original scope of work of the Project or not.*
- g) *In Para 11 (vii) of the Petition, the Petitioner has stated that Rs. 0.39 Crore have been spent on OFC Cable network and procurement of new Server, which do not appear to be included in the original scope of work of the Project.*
- h) *In Para 11 (viii) of the Petition, the Petitioner has stated that Rs. 0.04 Crore have been spent on procurement of certain tools and tackles. Any expenditure on these items cannot be allowed separately as the same is already covered under normative Operation and Maintenance Expenses allowed on per MW basis and the expenditure cannot be permitted to be capitalized.*
- i) *In Para 11 (ix) of the Petition, the petitioner has claimed an amount of Rs. 0.19 Crore stated to have been incurred for procurement of 8 numbers 420 KVA Lightning Arrestors said to have been required for protecting various installation from lightning strike. It is highly surprising that the said installations were being operated without protection from lightning for such a long time i.e. almost 9 years and how the clearance from Electrical Inspector was obtained for operating the Power Plant. This Commission may like to seek further information on this claim.*
- j) *In Para 11 (x) of the Petition, the Petitioner has again stated that Rs. 0.58 Crore have been spent on procurement of “other workshop equipment, tools, implements, furniture, fixtures, other office equipment, computer, computer peripherals. The Petitioner has not indicated whether these items are part of original scope of work of the Project or whether they are replacement for old equipment. This Commission may like to seek clarification from the Petitioner on this aspect.*
- k) *In Para 11 (xi) of the Petition, the Petitioner has stated that Rs. 0.01 Crore have been incurred towards purchase of Security Cameras. This claim can only be allowed in terms of Regulation 28.1(d), which mandates that the said expenditure*

must have been incurred on account of need for higher security and safety of the plant as advised or directed by appropriate Government Agencies or statutory authorities responsible for national security/ internal security. This Commission may like to seek information from the Petitioner as to whether the said expenditure was incurred on the basis of advice or direction from appropriate Government Agencies or statutory authorities.

36. The Commission has examined the claim of additional capitalization filed by the petitioner in light of Annual Audited Accounts, Asset-cum-Depreciation register, original scope of work approved by the BoD of petitioner's company and provisions under the Regulations, 2020.

A. Annual Audited Accounts and Asset-cum-Depreciation Register

37. On perusal of the details regarding additional capitalization filed in the subject petition, the Commission observed that out of the total additional capitalization of Rs. 10.15 Crore, an amount of Rs. 7.31 Crore were spent on construction of an Additional Loop Line of 1.105 km at Samarkhedi Railway Station and balance expenditure of Rs 2.84 Crore towards other minor equipments related to BOP and other civil works.
38. Further, on perusal of the Annual Audited Accounts for FY 2021-22, it is observed that the additional capitalization claimed by the petitioner has been capitalized and recorded in Annual Audited Accounts for FY 2021-22 and also recorded in Asset-cum-Depreciation Register of Bina thermal power station filed by the petitioner with the subject petition.

B. Capital Cost under Original Scope of Work and BoD Approval

39. By affidavit dated 4th January, 2023, the petitioner submitted that the additional capitalization claimed in the subject petition is within the original scope of work (Rs. 3,575 Crore) approved by the BoD vide Resolution dated 17th May, 2014. In the aforesaid submission, petitioner filed the detailed break-up of original scope of work for the project along with the actual expenditure as on 31st March, 2022 on each capital cost component of the power station.
40. The petitioner in its final tariff petition (P No. 40 of 2012) had claimed interest of Rs 21.76 Crore for 218 days (from COD of Unit I to COD of Unit II) on common facilities allocated to Unit No. 2 as on COD of Unit 1 and same was capitalized in Annual Audited Accounts. Vide order dated 26th November, 2014, the Commission considered aforesaid interest under IDC component. Therefore, the petitioner has submitted that the capital cost approved by the Board is Rs. 3596.76 Crore (i.e., Rs 3575 Crore + Rs 21.76 Crore = Rs 3596.76 Crore).

41. Based on the above, break-up of capital cost approved by the BoD, capital cost (as on 31.03.2021) considered by the Commission in last true-up order dated 19th May, 2022, net additions claimed by the petitioner during FY 2021-22 and project cost as on 31.03.2022 is as given below:

Table 5: Break-up of capital Cost:**(Rs. Crore)**

S. No.	Capital Cost Components	Project Cost approved by BoD	Capital Cost approved by Commission as on 31.3.2020 in P No 39 of 2021	Additions approved by Commission in FY 2020-21 in P No 63 of 2021	Deletions approved by Commission in FY 2020-21 in P No 63 of 2021	Capital cost as on 31.03.2021 considered by the Commission	Net Asset Addition claimed during FY 2021-22	Project Cost as on 31.03.2022
1	Land and site development	6.86	7.45	2.10	-	9.55	-	7.45
2	Plant and Equipment	2360.41	2285.33	2.50	0.09	2287.74	9.01	2300.78
3	Civil Works	453.97	451.20	1.93	-	453.13	0.20	451.40
4	Over Heads	253.05	253.05	-	-	253.05	-	253.05
5	IDC and Financing Charges	522.47	524.11	-	-	524.11	-	524.11
Total Capital Cost		3596.76	3521.15	6.53	0.09	3527.59	9.21	3536.80

Note: Difference Amount of Rs 21.76 Crore in Project Cost approved by BOD (Rs 3596.76 Crore- Rs 3575 Crore) is the interest amount which was part of common facilities allocated to Unit No 2 of the Project.

42. In view of the above, it is observed that the total additional capitalization claimed by the petitioner during the year is within the project cost approved by the BoD of petitioner's company.

C. Cut-off Date

43. Regarding the Cut-off date of the project, Regulation 4.1 (j) of the MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2012 provides as under:
'Cut-off Date' means 31st March of the year closing after two years of the year of commercial operation of the project, and in case the the project is declared under commercial operation in the last quarter of a year, the cut- off date shall be 31st March of the year closing after three years of the year of commercial operation:
44. The Bina thermal Power Project (Phase-I) achieved its CoD on 7th April, 2013, therefore, the cut of date of the project was 31st March, 2016 in accordance with the above provision under MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2012. The additional capitalization filed by the petitioner is **beyond the cut-off date of the project**. Therefore, the claim of additional capitalization has been examined in light of the Regulations 27.1 and 27.2 of the Regulations, 2020 as below:

Additional Capitalization of Rs. 7.31 Crore towards Railway siding works

45. In the subject petition, the petitioner filed additional expenditure of Rs 7.31 Crore on account of construction of an additional loop line of 1.105 Kms at Semarkhedi Railway Station to provide for its inward and outward traffic needs to the Bina Thermal Power Plant ("JBTPP"). Vide Commission's letter dated 20th December, 2022, the petitioner was asked to justify claim of additional capitalisation in light of the provisions under the Regulations, 2020.
46. By affidavit dated 4th January, 2023, the petitioner submitted the detailed reasons for expenses being incurred towards construction of additional loop line after ten years of commissioning of Plant as under:
- (a) *JBTPP was set up by the Aditya Birla Group as BPSCL. In terms of the original plan of the Plant, a Railway Siding was proposed to serve the inward and outward traffic needs of the Plant. The Detailed Project Report ("DPR") and Engineering plan for the aforesaid siding was also approved by the concerned Railway authorities and a portion of railway siding was constructed within the acquired private land area in between the take off point at Semarkhedi and in plant yard.*
 - (b) *It is relevant to mention that subsequent to the plant being acquired from BPSCL, Petitioner was obligated to provide an additional loop line at Semarkhedi station of Bina-Guna section utilizing the already constructed section between Semarkhedi station and in plant yard.*
 - (c) *For the purpose of executing the work towards additional loop line, on 29.02.2012, the Western Central Railway ("WCR") estimated an amount of Rs. 3,63,74,885.04 (Rupees Three Crore Sixty-Three lakh Seven Four Thousand Eight Hundred Eighty Five Only) to carry out the Signal & Telecommunication ("S&T") work and called upon Petitioner to deposit an amount of Rs 2,38,73,298.4 (Rupees Two Crore Thirty Lakh Seventy Three Thousand Two Hundred Ninety Eight Only) in favour of Senior Divisional Finance Manager, WCR Bhopal. True Copy of the letter dated 29.02.2012 issued by WCR is submitted.*
 - (d) *On 25.04.2012, the Petitioner drew up a cheque amounting to Rs. 2.38 Cr in favour of concerned WCR Authorities to proceed with the aforesaid work which was subsequently deposited on 30.04.2012. Further, a sum of Rs. 85,43,498/- (Rupees Eighty-Five Lakh Forty-Three Thousand Four Hundred Ninety-Eight Only) was also paid by the Petitioner towards License Fee for the land. True Copies of submitted.*
 - (e) *Subsequently, the Railway Siding work was commenced as per the DPR prepared by M/s RITES (Railway approved agency) and contracts were awarded for Track and OHE to private parties and S&T work to Railway as a deposit work.*
 - (f) *In August-September, 2012, the DPR & engineering scale plan ("ESP") for the aforesaid siding was approved by the concerned Railway authorities. True copy of the letter dated 04.09.2012 issued by WCR with regard to grant of approval is submitted.*

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- (g) Further, as per the initial planned time frame of the completion of work regarding the additional loop line and S&T work, considerable time of at least 8 months' time was to be taken for the S&T as discussed by Petitioner with WCR in its letter dated 26.07.2012. Subsequently, it was decided that construction of the proposed additional loop line will be carried out parallelly. True copy of the letter dated 26.07.2012 is submitted.
- (h) In continuation of this, the portion of railway siding was constructed within the acquired private land area in between the take off point at the Semarkhedi Station and in plant yard.
- (i) Meanwhile, since the Plant was to be commissioned by June 2012, JBTPP for sometimes managed movement of the coal by Rail upto Bina Railway Station and from there to Plant by road. In the process entire fleet of trucks with coal had to be passed through the crowded and congested city areas rendering their movements unsafe. To mitigate the above situation, as per the request of the Petitioner, a temporary connection was approved by WCR from the existing take off point to in plant yard through an existing loop line, however, the requirement of additional loop line remained for the Plant. True copy of the letter dated 04.09.2012 is submitted.
- (j) At this stage, it is relevant to mention that while substantive steps were taken by Petitioner towards the electrification of loop line at Semarkhedi Railway Station, however, Petitioner was directed to stop the work by the Railways till the finalization of S&T work.
- (k) While the work was on halt, on 15.05.2015, WCR issued a letter to Petitioner informing about the requirement to construct S&T building at Semarkhedi station and stating the cost to be incurred against the S&T building does not form part of the amount deposited by the Petitioner. True Copy of the letter dated 15.05.2015 issued by WCR to Petitioner is submitted.
- (l) On account of the sudden requirement of the additional building raised by WCR, on 29.07.2015, Petitioner issued a letter stating that at the initial stage, the requirement of new building to be constructed for S&T installation was never raised and it was understood that the Petitioner was only responsible for procurement of material, whereas, the construction of the S&T building was under the scope of the Railway. In view of uncertainty created by WCR, Petitioner called upon the Railways to clarify the following:
- (a) Whether an additional building is really needed.
- (b) Whether the construction of new building would come within the scope of Railway only as Petitioner was responsible to only arrange the material for construction.
- (c) In the event building is to be constructed by Petitioner the construction details of building along with its location with respect to existing permanent structure to be provided.
- (d) True copy of letter dated 29.07.2015 issued by Petitioner to WCR is annexed.
- (m) In furtherance to the clarification sought by Petitioner, on 07.09.2015 & 18.09.2015, WCR issued a letter providing a paper print of approved sketch for proposed location of S&T building at Semarkhedi station in connection with Railway siding. True Copies of letters dated 07.09.2015 and 18.09.2015 issued by WCR to Petitioner is annexed.

- (n) *In order to complete the deposit work, from 16.10.2015 to 24.10.2015, WCR issued letters to Petitioner with a request to arrange for Signalling materials for the deposit work. True Copies of letters dated 16.10.2015 and 24.10.2015 issued by WCR to Petitioner is submitted.*
- (o) *Thereafter, on 05.06.2018, the S&T Building constructed by Petitioner was handed over to WCR for further erection work of S&T system for Petitioner line connection. True Copy of handing over document dated 05.06.2018 is submitted.*
- (p) *At this stage, it is relevant to mention that while Petitioner has performed its part of the obligation, however, there was substantial delay in completion of deposit work by WCR which was duly intimated by Petitioner from time to time. True Copies of letters dated 29.06.2018, 23.07.2018, 29.04.2019, 23.07.2019 and 18.12.2019 issued by Petitioner is submitted.*
- (q) *Only on 28.01.2020, the WCR responded to the abovementioned letters of the Petitioner plainly stating that the Railway Siding work taking off from Samarkhedi Station had been planned for commissioning in May 2020. True copy of the letter dated 28.01.2020 is submitted.*
- (r) *Pertinently, even by September, 2020, the said work was not commenced by the WCR. The same is indicative by the letter dated 24.09.2020 issued by the Petitioner to the WCR. True copy of the letter dated 24.09.2020 is submitted.*
- (s) *On 07.12.2020, the WCR disclosed that the doubling work in Bina- Guna electrification is under progress and the same is to be completed by December 2020. Further, the WCR requested Petitioner to complete the balance electrification of Railway Siding loop, which was initially stopped by the WCR. True copy of the letter dated 07.12.2020 is submitted.*
- (t) *In response to above letter, on 09.01.2021, Petitioner issued a reply to WCR stating that balance electrification work was started by Petitioner in the year 2012, however, on account of finalization of S&T work, the same was put on hold. It was further brought to the knowledge of WCR that in view of the letter dated 07.12.2020 issued by WCR, the executing agency has been called at site to restart the work and assured that the same would be completed as per the approved standards dated 04.02.2012. True copy of letter dated 09.01.2021 issued by Petitioner to WCR is submitted.*
- (u) *On 05.02.2021, the Petitioner vide its letter to the WCR, stated that the material which were procured during the year 2012/2013 were as per the specifications laid down in 'Technical Specification for Silicon Composite Insulators'. However, the materials procured then could not be installed due to stoppage of work, therefore, a request was put forward to WCR to utilize the same composite insulators to complete the existing work under NI programme. True Copy of letter dated 05.02.2021 issued by Petitioner is submitted.*
- (v) *In response to the request made by Petitioner, on 08.03.2021, WCR issued a letter to Petitioner stating that the service life of the insulators procured by Petitioner have been reduced by 9 years from the manufacturer date, therefore, Petitioner will have to bear the expenses towards replacement of insulators. True Copy of letter dated 08.03.2021 issued by WCR to Petitioner is submitted.*
- (w) *On 15.03.2021, amidst the completion of the electrification work on the Railway Siding, the Petitioner vide its letter apprised the WCR that no approved revised OHE drawing has*

been received by the Petitioner, therefore, a request was made to WCR to provide a copy of the same in order to ensure that the balance activities are completed within time. True Copy of letter dated 15.03.2021 issued by Petitioner to WCR is submitted.

- (x) Ultimately, the Additional Loop Line linking work was completed in December 2021 and on 01.02.2022, the track fitness for the JBTPP Additional Loop line was provided by WCR. True copy of the letter dated 01.02.2022 issued by WCR is submitted.

5.1 In view of the facts and circumstances as mentioned above, the following arises for consideration of this Commission:

- (a) Delay which has occurred in implementation of the additional loop line is not attributable to the Petitioner.
- (b) While the Petitioner had taken requisite steps towards the completion of work towards additional loop line, however, in view of the directions passed by WCR, the work had to be kept on hold by the Petitioner.
- (c) It is an admitted position that from the period 2012 to December 2020, the work required to be executed for implementation of additional loop line was kept on hold on account of reasons not attributable to Petitioner.

5.2 In addition to above, it is submitted that while the construction of additional loop line formed part of the original scope of work, however, the same could not be completed within the cut-off date on account of reasons attributable to Railways and beyond the control of the Petitioner.

In light of the above facts, it is submitted that the claim of additional expenditure towards the Additional loop line is claimed under Regulation 27.1(iv), 27.2(a), 27.2(b) read with wide powers granted to this Commission to relax the regulations under Regulation 66.1 of Tariff Regulations, 2020.

5.3 In conclusion, it is submitted that the Petitioner was necessitated to incur the above said additional capital expenditure to cater the inward and outward traffic needs of the Plant. In fact, in absence of the Additional Loop Line, the Petitioner would have continued to faced difficulties towards the management of the movement of coal by road to the Plant. Pertinently, this movement by road, with fleet of trucks carrying coal passing through the crowded and congested city areas, was not only unsafe but also for the traffic plying on the road.

5.4 Therefore, in the light of the sequence of events and documents furnished by way of present reply, it is prayed that this Commission be pleased to allow the additional capitalization incurred by Petitioner in construction of the additional loop line in consonance with Tariff Regulations, 2020.

47. On examination of the petitioner's response on the issue related to construction of additional loop line, the Commission has observed the following:

- i. Regarding the major asset addition of Rs. 7.31 Crore towards establishment of an additional loop line, the petitioner has not claimed such assets under specific Regulation and submitted that aforesaid additional capitalization is claimed under Regulation 27.1(iv) & (v) and 27.2(a) & (b) of the Regulations, 2020.
- ii. Petitioner has also invoked Regulation 66 of the Regulations, 2020 regarding power to relax and inherent powers of Commission for allowing additional

capitalisation of additional loop line.

- iii. Petitioner further submitted that the claim for additional loop line formed part of the original scope of work of the project, however, the same could not be completed within the cut-off date on account of reasons mentioned by the Petitioner.
 - iv. The petitioner has emphasized on the fact that from the period FY 2012 to December 2020, the work required to be executed for implementation of additional loop line was kept on hold on account of reasons not attributable to Petitioner.
 - v. The petitioner submitted the copies of the letters of communication between the petitioner and WCR.
48. By affidavit dated 17th January, 2023, Respondent No. 1 (MPPMCL) filed its response on the additional capitalization towards additional loop line claimed in the subject petition. The response filed by Respondent No. 1 (MPPMCL) is summarized as below:
- “In Para 11 (i) of the Petition, the Petitioner has stated that Rs. 7.31 Crore were spent on construction of an Additional Loop Line of 1.105 km at Samarkhedi Railway Station. Despite long narration of purported facts concerning this claim, the Petitioner has failed to give any credible justification as to how this huge Additional Capital Expenditure is qualified under 2020 Generation Tariff Regulations after 9 years from the COD of the Project and 6 years after Cut-off Date. The purported justifications given regarding essentiality of the Additional Loop Line and reasons for such huge delay of almost 9 years in its implementation are very vague and unacceptable. In view of the above, it is most humbly prayed that this Commission may graciously be pleased to reject the said claim in respect of construction of Additional Loop Line.”*
49. On perusal of the contents under subject petition and additional details and documents filed by the petitioner, the Commission observed that the petitioner has completed and capitalized additional assets towards additional loop line during FY 2021-22 after six years of the cut-off date.
50. It is further observed that the amount under additional capitalization towards construction of an additional loop line of Rs 7.31 Crore was within the total estimated capital cost of the project approved by the BoD. However, the works were completed and capitalized after the cut-off date of the project. Therefore, the petitioner has claimed aforesaid additional capitalization under Regulation 27.1(iv) & (v) and 27.2(a) & (b) of the Regulations, 2020.

51. Regulation 27.1 is applicable on additional capitalization within the original scope and after cut-off date of the project. Further, clause (iv) of the Regulation 27.1 is applicable on “liability of works executed prior to the cut-off date” whereas clause (v) of the Regulation 27.1 is for additional capitalization under ‘force majeure events’.
52. The aforesaid works related to additional loop line claimed under additional capitalization are completed and capitalized in FY 2021-22 therefore, these works towards construction of an additional loop line are not covered under Regulation 27.1(iv) the Regulations, 2020.
53. Regarding the force majeure, Regulation 3.1 (24) of the Regulations, 2020 provides as under:
- ‘Force Majeure’ for the purpose of these Regulations means the event or circumstance or combination of events or circumstances including those stated below which partly or fully prevents the generating company to complete the project within the time specified in the Investment Approval, and only if such events or circumstances are not within the control of the generating company and could not have been avoided, had the generating company taken reasonable care or complied with prudent utility practices:*
- (a) Act of God including lightning, drought, fire and explosion, earthquake, volcanic eruption, landslide, flood, cyclone, typhoon, tornado, geological surprises, or exceptionally adverse weather conditions which are in excess of the statistical measures for the last hundred years, or*
- (b) Any act of war, invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, terrorist or military action, or*
- (c) Industry wide strikes and labour disturbances having a nationwide impact in India, or*
- (d) Delay in obtaining statutory approval for the project except where the delay is attributable to project developer;*
54. On perusal of the submission made by the petitioner and provisions of force majeure under the Regulations, 2020, it is observed that the works towards construction of additional loop line delayed in execution and not fulfilled any of the aforesaid conditions of force majeure event, therefore, not covered under Regulation 27.1(v) of the Regulations, 2020.
55. The petitioner has also invoked Regulation 27.2 (a)&(b) of the Regulations, 2020 which provides that ‘in case of replacement of assets deployed under the original scope of the existing project after cut-off date, the additional capitalization may be admitted by the Commission, after making necessary adjustments in the gross fixed assets and the

cumulative depreciation, subject to prudence check'. Clause (a) and (b) of the Regulation 27.2 provides that:

- (a) The useful life of the assets is not commensurate with the useful life of the project and such assets have been fully depreciated in accordance with the provisions of these Regulations;
- (b) The replacement of the asset or equipment if necessary, on account of change in law or Force Majeure conditions;

56. On examination of the contention of the petitioner, it is observed that the assets proposed under additional capitalization were put to use and capitalized during FY 2021-22, whereas, Regulation 27.2 is for replacement of assets deployed under the original scope of the existing project after cut-off date. The aforesaid works related to additional loop line are new and these works were completed and capitalized during FY 2021-22 as per Annual Audited Accounts. As such these assets cannot be classified as replacement of existing assets.
57. In view of the above-mentioned Regulation 27.1 (iv) & (v) and under Regulation 27.2 (a) & (b) of the Regulations, 2020, it is noted that the aforesaid additional capitalisation neither fall under Regulation 27.1 nor under Regulation 27.2 of the Regulations, 2020. Therefore, additional capitalisation towards additional loop line of Rs 7.31 Crore is not considered in this order.

Additional Capitalization of Rs 1.90 Crore towards assets related to BOP & Civil Works.

58. By affidavit dated 4th January, 2023, the petitioner has filed details of additional capitalization towards minor assets along with provision of the Regulations, 2020 under which such additional capitalization filed.
59. With regard to aforesaid minor assets related to BOP and Civil Works claimed under additional capitalization, the Commission has observed the following:
- i. Mechanical lifting jack and a seal oil pump for turbine generator island:**

The petitioner has claimed capital expenditure of Rs 0.04 Crore towards the purchase of Mechanical lifting jack and a seal oil pump for Turbine Generator Island and claimed under Regulation 27.1 (vi) read with Regulation 66 of the Regulations, 2020. Regulation 27.1 (vi) of the Regulations, 2020 provides that any 'liability for works admitted by the Commission after the cut-off date to the extent of discharge of such liabilities by actual payments'. Petitioner has also prayed to invoke Regulations 66 of the Regulations, 2020 regarding power to relax for allowing said additional capitalisation.

On perusal of the details filed by the petitioner, it is observed that the aforesaid expenditure claimed under additional capitalization is actually made and capitalized after the cut-off date of the project whereas, Regulation 27.1(vi) is applicable only works completed prior to cut-off date, to the extent of discharge of such liabilities by actual payments after cut-off date. Therefore, aforesaid asset is not covered under Regulation 27.1 (vi) of the Regulations, 2020. Hence, the said expenditure is not considered in this order.

ii. SCADA system for DM Plant:

The petitioner has incurred capital expenditure of Rs 0.15 Crore towards the purchase of SCADA System in DM Plant and claimed under Regulation 27.2 (c) of the Regulations, 2020. Regulation 27.2 provides that “in case of replacement of assets deployed under the original scope of the existing project after cut-off date, the additional capitalization may be admitted by the Commission after making necessary adjustments in the gross fixed assets and the cumulative depreciation, subject to prudence check.” Further, Regulation 27.2 (c) of the Regulations, 2020 provides that the additional capitalization towards replacement of assets or equipment is necessary on account of obsolescence of technology.

In view of the above provision under the Regulations, it is observed that the said expenditure claimed by the petitioner does not fall under the aforesaid Regulation 27.2 (c) of the Regulations, 2020 as the petitioner has not shown the replacement of existing assets towards obsolescence of technology. The petitioner has also not established any adjustments in the gross fixed assets and the cumulative depreciation towards replaced existing assets in its Asset-cum-Depreciation register as well as its Annual Audited Accounts. Hence, expenditure towards SCADA System is not considered in this order at this stage.

iii. Other Equipments:

The petitioner has claimed capital expenditure of Rs 0.25 Crore for other equipments which were purchased for better efficiency and operation of plant and has claimed under Regulations 27.1 (vi), 27.2 (a) read with Regulation 66 of the Regulations 2020. However, details of such other equipment's are not provided. Regulation 27.1 (vi) of the Regulations, 2020 provides that any liability for works admitted by the Commission after the cut-off date to the extent of discharge of such liabilities by actual payments.

On perusal of the details filed by the petitioner, it is observed that the aforesaid expenditure under additional capitalization is actually made and capitalized after the cut-off date of the project and liability of such works is not admitted by the Commission. Therefore, this additional capitalisation is not covered under the

Regulation 27.1 (vi) of the Regulations, 2020.

Further, Regulation 27.2 (a) of Tariff Regulations, 2020 provides that in case the useful life of the assets is not commensurate with the useful life of the project and such assets have been fully depreciated in accordance with the provisions of these Regulations, the additional capitalization may be admitted by the Commission after making necessary adjustments in the gross fixed assets and the cumulative depreciation, subject to prudence check.

Since, the petitioner has not justified/demonstrated the capitalization of aforesaid assets under clause (a) of the Regulation 27.2 and also not shown any corresponding adjustments in the gross fixed assets and the cumulative depreciation in its Asset-cum-Depreciation register as well as its Annual Audited Accounts in this regard. Hence, this expenditure towards other equipments is not considered in this order at this stage.

iv. Switch Yard Package:

The petitioner has incurred capital expenditure of Rs 1.18 Crore towards Switchyard package for better and efficient monitoring of the operations and claimed under Regulation 27.2 (c) of the Regulations, 2020.

Regulation 27.2 provides that “in case of replacement of assets deployed under the original scope of the existing project after cut-off date, the additional capitalization may be admitted by the Commission after making necessary adjustments in the gross fixed assets and the cumulative depreciation, subject to prudence check.” Further, Regulation 27.2 (c) of the Regulations, 2020 provides that the additional capitalization towards replacement of assets or equipment necessary on account of obsolescence of technology.

In view of the above provision under the Regulation, it is observed that the said expenditure claimed by the petitioner does not fall under the aforesaid Regulation 27.2 (c) of the Regulations, 2020 as the petitioner has not shown the replacement of assets towards obsolescence of technology. The petitioner has also not established necessary adjustments in the gross fixed assets and the cumulative depreciation towards replaced existing assets in its Asset-cum-Depreciation register as well as its Annual Audited Accounts. Hence, this expenditure towards Switch yard packages is not considered in this order.

v. C-Type building:

The petitioner has claimed capital expenditure of Rs 0.23 Crore towards the C-Type buildings constructed which form part of original scope of work and

completed and capitalized during FY 2021-22. The petitioner has claimed this expenditure under Regulation 27.1 (v) of the Regulations, 2020 which provides for “Force majeure events”.

The petitioner has not been able to show/demonstrate the any force majeure events that under which construction works of C-Type Building were pending and completed during FY 2021-22. Further, the said expenditure is claimed after the cut-off date and does not meet the conditions stipulated in Regulation 27.1(v) of the Regulations, 2020 hence, not considered in this order.

vi. External Water Supply:

The petitioner has claimed capital expenditure of Rs 0.15 Crore towards External water supply system which was procured during FY 2021-22 and has claimed under Regulation 27.2 (a) and (c) of the Regulations, 2020.

Regulation 27.2 provides that “in case of replacement of assets deployed under the original scope of the existing project after cut-off date, the additional capitalization may be admitted by the Commission after making necessary adjustments in the gross fixed assets and the cumulative depreciation, subject to prudence check”. Further, Regulation 27.2 (a) of the Regulations, 2020 provides that if useful life of the assets is not commensurate with the useful life of the project and such assets have been fully depreciated in accordance with the provisions of these Regulations. Also, Regulations 27.2 (c) of the Regulations, 2020 provides that the additional capitalization towards replacement of assets or equipment is necessary on account of obsolescence of technology.

In view of the above provision under the Regulations, it is observed that the said expenditure is not claimed towards replacement of old assets, therefore, does not fall under the Regulation 27.2 of the Regulations, 2020. Further, Regulation 27.2 (a) of the Regulations, 2020 provides that in case the useful life of the assets is not commensurate with the useful life of the project and such assets have been fully depreciated in accordance with the provisions of these Regulations, the additional capitalization may be admitted by the Commission after making necessary adjustments in the gross fixed assets and the cumulative depreciation, subject to prudence check. Regulation 27.2 (c) of the Regulations, 2020 provides that the additional capitalization towards replacement of assets or equipment necessary on account of obsolescence of technology.

As the petitioner has not established/demonstrated capitalization of the aforesaid assets capitalized towards replacement of old assets. Further, the petitioner has not demonstrated corresponding adjustments in the gross fixed assets and the

cumulative depreciation in its Asset-cum-Depreciation register as well as its Audited Accounts in this regard. Hence, expenditure towards water supply system is not considered in this order.

60. In view of the above, the Commission has observed that aforesaid assets related to BOP and other civil works claimed by the petitioner under additional capitalization during FY 2021-22 were capitalized beyond the cut-off date of the project and are not covered under the provisions of Regulation 27.1 and 27.2 of the Regulations, 2020, hence not considered in this order.

Write-off/ Adjustment of Assets:

61. The petitioner submitted that the assets of Rs. 0.94 Crore were de-capitalized in the Generating Station for which suitable downward adjustments have been taken into account while computing the capital cost for FY 2021-22.
62. On scrutiny of the details regarding write-off/ de-capitalization filed by the petitioner, the Commission has observed that the assets of Rs. 0.94 Crore have been adjusted/de-capitalized in Annual Audited Accounts and recorded in Asset-cum-Depreciation register of the project. Therefore, the Commission has considered de-capitalization of Rs. 0.94 Crore during FY 2021-22 in this order. With regard to the funding of write-off/ de-capitalization assets, it is observed that in Asset-cum-depreciation register, the date of 'put to use' for such decapitalized assets has not been mentioned therefore, the Commission has considered the normative Debt:Equity ratio 70 : 30 for reduction of equity and debt components. Therefore, the equity and loan component of de-capitalized assets are reduced accordingly.
63. In view of the above, the details of additional capitalization and de-capitalization considered during FY 2021-22 in this order are as given below:

S. No.	Particular	Additions	Deletions
1.	Addition/Deletions of Assets admitted in Order	0.00	0.94
	Total	0.00	0.94

64. Considering the above, the opening Gross Fixed Assets, adjustment of assets, addition during the year and closing Gross Fixed Assets considered in this order are as given below:

Table 7:Capital Cost			(Rs. in Crore)
Opening Capital cost as on 01.04.2021 as per last order dated 19 th May, 2022	Additions during FY 2021-22	Adjustment/Deletion of Assets	Closing Capital Cost as on 31.03.2022 considered in this order
3527.59	0.00	0.94	3526.65

DEBT –EQUITY RATIO

65. Regarding the sources of funding for additional capitalization claimed in the subject matter, the petitioner in form TPS 10 has mentioned that the sources of funding is entirely from the equity/internal resources. Thus, for the purpose of computation of Return on Equity and Interest on loan, the petitioner has considered funding of additional capitalization in the ratio of 70:30 in accordance to the Regulation 33 of the Regulations, 2020.

Provision in Regulation:

66. Regulation 33 of the Regulations, 2020 provides as under:

33.1 For new projects, the debt-equity ratio of 70:30 as on date of commercial operation shall be considered. 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. the equity invested in foreign currency shall be designated in Indian rupees 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.*

Explanation.-The premium, if any, raised by the generating company while issuing share capital and investment of internal resources created out of its free reserve, for the funding of the project, shall be reckoned as paid up capital for the purpose of computing return on equity, only if such premium amount and internal resources are actually utilised for meeting the capital expenditure of the generating station.

33.2 The generating company shall submit the resolution of the Board of the company regarding infusion of fund from internal resources in support of the utilization made or proposed to be made to meet the capital expenditure of the generating station.

33.3 In case of the generating station declared under commercial operation prior to

1.4.2019, debt- equity ratio allowed by the Commission for determination of tariff for the period ending 31.3.2019 shall be considered:

Provided that in case of a generating station which has completed its useful life as on or after 01.04.2019, if the equity actually deployed as on 01.04.2019 is more than 30% of the capital cost, equity in excess of 30% shall not be taken into account for tariff determination.

33.4 In case of the generating station declared under commercial operation prior to 1.4.2019, but where debt: equity ratio has not been determined by the Commission for determination of tariff for the period ending 31.3.2019, the Commission shall approve the debt : equity in accordance with Regulation 33.1 of these Regulations.

33.5 Any expenditure incurred or projected to be incurred on or after 1.4.2019 as may be admitted by the Commission as additional capital expenditure for determination of tariff, and renovation and modernisation expenditure for life extension shall be serviced in the manner specified in clause 33.1 of this Regulation.

Commission's Analysis

67. With regard to funding of additional capitalisation, vide letter dated 20th December, 2022, the petitioner was asked to inform actual loan draws and equity infusion towards additional capitalization during FY 2021-22 claimed in the subject petition.
68. By affidavit dated 4th January, 2023, the petitioner submitted that funds for the entire assets capitalised during the FY 2021-22 have been met from its own resources.
69. Since no additional capitalization has been considered, therefore no funding towards additional capitalization is considered by the Commission in this order.
70. The Commission in true up order for FY 2020-21 issued on 19th May, 2022 has approved the closing Loan & Equity as on 31st March, 2021. The same closing figures of capital cost, loan and equity as on 31st March, 2021 are considered as opening balance as on 01st April, 2021 in this order. Further, the impact of write off/deletion of the assets of Rs 0.94 Crore has been considered with corresponding reduction of Debt and Equity in the ratio of 70% and 30% respectively as submitted by the petitioner.
71. The details of the opening balance of capital cost and funding as on 01st April, 2021, de-capitalization during FY 2021-22 and closing balance as on 31st March, 2022 as considered for FY 2021-22 in this order are as given below:

Sr No	Particulars	Asset	Loan	Equity
1	Closing balance as on 31 st March, 2021 (as per last true-up order dated 19.5.2022)	3527.59	1018.86*	1058.28
2	Write-off/ Adjustment	0.94	0.66	0.28
3	Addition during FY 2021-22	0.00	0.00	0.00
4	Closing balance as on 31 st March, 2022	3526.65	1018.20	1058.00

(*Before Repayment) (for current year)

Annual Capacity (fixed) Charges:

72. Regulation 17 of the Regulations, 2020 provides that the Annual Capacity (fixed) Charges derived on the basis of annual fixed cost (AFC) of a generating station shall consist of the following components:

- (a) Return on Equity;
- (b) Interest on Loan Capital;
- (c) Depreciation;
- (d) Interest on Working Capital;
- (e) Operation and Maintenance Expenses:

a. Return on Equity:

Petitioner's Submission:

73. The petitioner filed the Return on Equity during FY 2021-22 in form TPS 1(II) of the petition as given below:

Table 9: Return on Equity claimed by the petitioner for FY 2021-22

Sl. No.	Particulars	Unit	Amount
1	Opening Equity	Rs. in Crs	1,069.82
2	Add: Increase due to addition during the year/period	Rs. in Crs.	3.04
3	Less: Decrease due to de-capitalization during the year/period	Rs. in Crs.	0.28
4	Less: Decrease due to reversal during the year/period	Rs. in Crs.	-
5	Add: Increase due to discharges during the year/period	Rs. in Crs.	-
6	Closing Equity	Rs. in Crs.	1,072.58
7	Average Equity	Rs. in Crs.	1,071.20
8	Base Rate of ROE	%	15.50%
9	Tax rate considered MAT	%	17.47%
10	Pre-Tax Rate of Return on Equity	%	18.78%
11	Return on Equity	Rs. in Crs.	201.19

74. While claiming the Return on Equity, the petitioner considered the base rate of return on equity as 15.50%, which is grossed up with MAT rate of 17.47%.

Provision in Regulations:

75. Regarding the Return on Equity, Regulation 34 & 35 of the Regulations, 2020, provides as under:

34 . Return on Equity:

34.1 Return on equity shall be computed in rupee terms on the equity base determined in accordance with Regulation 33 of these Regulations.

34.2 Return on equity shall be computed at the base rate of 15.50% for thermal generating stations and hydro generating stations and at the base rate of 16.50% for the pumped storage hydro generating stations and run-of river generating stations with pondage.

Provided that

(a) in case of a new project, the rate of return of a new project shall be reduced by 1.00% for such period as may be decided by the Commission, if the generating station is found to be declared under commercial operation without commissioning of any of the Restricted Governor Mode Operation (RGMO)/ Free Governor Mode Operation (FGMO):

(b) in case of existing generating station any of the above requirements are found lacking based on the report submitted by the respective SLDC/RLDC, RoE shall be reduced by 1% for the period for which the deficiency continues.

(c) in case of a thermal generating station, with effect from 1.04.2020:

(a) rate of return on equity shall be reduced by 0.25% in case of failure to achieve the ramp rate of 1% per minute:

(b) an additional rate of return on equity of 0.25% shall be allowed for every incremental ramp rate of 1% per minute achieved over and above the ramp rate of 1% per minute, subject to ceiling of additional rate of return on equity of 1.00%:

Provided that the detailed guidelines in this regard shall be issued by National Load Despatch Centre).

35. Tax on Return on Equity:

35.1 The base rate of return on equity as allowed by the Commission under Regulation 34 shall be grossed up with the effective tax rate of the respective financial year. For this purpose, the effective tax rate shall be considered on the basis of actual tax paid in the respective financial year in line with the provisions of the relevant Finance Acts by the concerned generating company. The actual income tax on other income stream including deferred tax liability (i.e., income from non-generation business) shall be excluded for the calculation of "effective tax rate".

35.2 Rate of return on equity shall be rounded off to three decimal places and shall be computed as per the formula given below:

$$\text{Rate of pre-tax return on equity} = \text{Base rate} / (1-t)$$

Where t is the applicable tax rate in accordance with Regulation 35.1 of this Regulation and shall be calculated at the beginning of every financial year based on the estimated profit and tax to be paid estimated in line with the provisions of the relevant Finance Act applicable for that financial year to the company on pro-rata basis by excluding the income of non-generation business and the corresponding tax thereon. In case of generating company paying Minimum Alternate Tax (MAT), " t " shall be considered as MAT rate including surcharge and cess. For example: - In case of the generating company paying

(i) Minimum Alternate Tax (MAT) @ 20.96% including surcharge and cess:

$$\text{Rate of return on equity} = 15.50 / (1 - 0.2096) = 19.610\%$$

(ii) In case of generating company paying normal corporate tax including surcharge and cess:

(a) Estimated Gross Income from generation business for FY 2019-20 is Rs 1000 Crore.

(b) Estimated Advance Tax for the year on above is Rs 240 Crore.

(c) Effective Tax Rate for the year 2019-20 = Rs 240 Crore / Rs 1000 Crore = 24%

(d) Rate of return on equity = $15.50 / (1 - 0.24) = 20.395\%$

35.3 The generating company shall true-up the grossed up rate of return on equity at the end of every financial year based on actual tax paid together with any additional tax demand including interest thereon, duly adjusted for any refund of tax including interest received from the income tax authorities pertaining to the tariff period 2019-20 to 2023-24 on actual gross income of any financial year. However, penalty, if any, arising on account of delay in deposit or short deposit of tax amount shall not be claimed by the generating company. Any under-recovery or over-recovery of grossed up rate on return on equity after trueing up, shall be allowed to be recovered or refunded to beneficiaries on year to year basis.

Commission's Analysis:

76. While calculating the Return on Equity, the equity balance as on 31st March, 2021 as admitted by the Commission in last true-up order dated 19th May, 2022 for FY 2020-21 is considered as the base figure for opening equity balance as on 01st April, 2021 in this order. Further, the Commission has not considered the additional capitalization during FY 2021-22 and its corresponding equity in this order.

77. The Commission has also considered reduction of equity of Rs. 0.28 Crore in respect of the assets de-capitalized during the year. Therefore, closing equity as on 31.03.2022 has been worked out accordingly.
78. The petitioner has claimed Return on Equity during the control period by grossing up the base rate of return with Minimum Alternate Tax (MAT). Regulation 35.1 of the Regulations, 2020 provides that the base rate of return on equity as allowed by the Commission under Regulation 34 shall be grossed up with the effective tax rate of the respective financial year. For this purpose, effective tax rate shall be considered on the basis of actual tax paid in respective financial year, in line with the provisions of relevant Finance Acts by the concerned generating company. Regulation 35.3 further provides that the generating company shall true-up the grossed-up rate of return on equity at the end of every financial year based on actual tax paid.
79. The petitioner has claimed Return on Equity during the control period by grossing up the base rate of return with Minimum Alternate Tax (MAT). On perusal of the subject petition, It was observed that the petitioner's company had not paid any income tax/MAT for Jaypee Bina TPP as well as for JPVL for FY 2021-22. Vide letter dated 20th December, 2022, the petitioner was asked to explain/submit the following:
- i. As per the Annual Audited Accounts of Jaypee Bina Thermal Power Plant and JPVL Corporate's Annual Audited Accounts for FY 2021-22, the current tax amount is indicated as nil, whereas, the petitioner has claimed the Return on Equity by grossing up base rate of return with MAT. In view of aforesaid observations, the petitioner was asked to file the basis of tax amount claimed while, it has not paid any income tax for Jaypee Bina TPP and JPVL for FY 2021-22.
 - ii. Petitioner was further asked to explain with supporting documents whether the petitioner is eligible for MAT during FY 2021-22, in light of figures recorded in its Annual Audited Accounts for FY 2021-22 and the provisions under MPERC (Terms & Conditions for Determination of Generation Tariff) Regulation, 2020. The petitioner was also asked to file the copy of Challan for the income tax, if any, paid during FY 2021-22 along with the copy of the income tax return.
80. Vide affidavit dated 4th January, 2023, the petitioner submitted that:

In response to the above query of this Commission, it is submitted that since generating station has recorded a profit of Rs 47.13 Lacs (approx.) during FY 2021-22, the Petitioner has accordingly claimed Return on Equity ("RoE") grossing up with MAT.

It is further submitted that MAT was introduced under Section 115JB of the Income Tax Act, w.e.f. 1.4.2001. The intention behind the introduction of MAT was that where the income tax payable by a company on its taxable income, as computed under the Income Tax Act, for any financial year is less than a specified percentage of the book profit of the company for that year, the book profit of the company is deemed to be the taxable income of the company for that year and income tax is payable at the specified rate on such taxable income which is known as the MAT.

It is an admitted position that Jaypee Bina Thermal Power Plant is not a corporate legal entity/Company, as it is only a division/Generating station of JPVL and hence is not liable or eligible to pay MAT. For this reason, the payment towards MAT for FY 2021-22 has been shown NIL in the annual Audited Accounts of Jaypee Bina TPP.

However, as per JPVL's Corporate/Consolidated Annual Audited Accounts for FY 2021-22 which shows a profit of Rs 310.61 Crores, but owing to the accumulated losses suffered by JPVL & other exemptions/deductions under Income Tax Act, current tax amount is indicated as NIL.

The Petitioner is entitled to claim grossing up of RoE with Income Tax on Normative basis, even if no tax has been paid because of carry forward of losses. JBTPP has earned profit during the current year from the generation and sale of power and does not earn income from any other business.

Income Tax needs to be computed and applied on the income related to generation and sale of power of the Generating Station (Regulated Business).

Taxable income of a regulated business should be computed on standalone basis irrespective of impact of other business on the overall liability.

Moreover, the grossing up of RoE with effective Tax Rates must be allowed by considering the current year only and it must be insulated from performance of previous years/ other units/ businesses. To put it alternatively, had there not been accumulated losses, certainly the JPVL would have been liable to pay MAT or Normal Tax.

It is respectfully submitted that Income Tax return of JPVL has been filed and acknowledgement of the same is attached.

81. On perusal of the aforesaid response filed by the petitioner on MAT, the Commission observed the following:
- i. The petitioner submitted that since the generating station has recorded book profit of Rs 47.13 Lakh during FY 2021-22, the petitioner has accordingly claimed return on equity grossing up with MAT. The petitioner further submitted that Jaypee Bina TPS is only a division of JPVL and hence is not liable to pay MAT.
 - ii. The petitioner mentioned that payment towards MAT for FY 2021-22 has been shown nil in the Annual Audited Accounts of Bina Thermal Power Station.

- iii. The petitioner further submitted that, as per JPVL Corporate's Annual Audited Accounts for FY 2021-22 which shows a book profit of Rs 310.61 Crore, but owing to the accumulated losses suffered by JPVL & other exemptions/ deductions under Income Tax Act, current tax amount is indicated as NIL.
- iv. The petitioner also submitted Income Tax return of JPVL for the financial year (2021-22) (assessment Year 2022-23) as filed on 27th October, 2022.

82. Regarding MAT, the Commission observed the following:

- i. The petitioner filed Annual Audited Accounts of Jaypee Bina Thermal Power Plant (JBTPP) along with Consolidated Annual Audited Accounts of Jaiprakash Power Ventures Limited (JPVL) as on 31st March, 2022. Both Annual Audited Accounts recorded profit, but with nil tax payment during FY 2021-22.
- ii. Consolidated Annual Audited Accounts of Jaypee Power Ventures Limited (JPVL) comprises of the financials of other power plants also including Bina TPS in the subject petition.
- iii. In the instant case, JPVL has not paid any tax, therefore, despite the fact that Bina thermal power station is earning profit, the grossing up of ROE with MAT cannot be considered in accordance to the Regulations, 2020, as neither JPVL nor Jaypee Bina has paid income tax/MAT for the FY 2021-22.

83. In view of above observations, the Commission while following the same approach that has been followed in all earlier tariff/true-up orders in this matter has not considered any basis for grossing up the base rate of ROE with MAT in accordance to the provisions under the Regulations, 2020.

84. Further, in compliance to Regulation 34.2, by affidavit 4th January, 2023, the petitioner submitted that its thermal power plant meets both the requirements i.e., RGMO/FGMO was duly installed at the time of COD of the project and the petitioner's project has been duly operating under RGMO/ FGMO and both the units of the Project have been operating with the ramp rate of over 1% per minute.

85. Accordingly, Return on equity for FY 2021-22 is worked out in this order as given below:

Table 10: Annual Return on Equity for FY 2021-22 determined by the Commission

Sr. No.	Particular	Unit	Amount
1	Opening Equity as on 01.04.2021	Rs. Cr.	1058.28
2	Equity reduction towards decapitalized assets	Rs. Cr.	0.28
3	Normative Equity Addition During the Year	Rs. Cr.	0.00

4	Closing Equity as on 31.3.2022	Rs. Cr.	1058.00
5	Average Equity	Rs. Cr.	1058.14
6	Base Rate of Return on Equity	%	15.50
7	Tax rate	%	0.00
8	Rate of Return On Equity	%	15.50
9	Annual Return on Equity	Rs. Cr.	164.01

b. Interest on loan capital:

Petitioner's Submission:

86. In form TPS 5M of the petition, the petitioner worked out the interest on loan capital as given below:

Table 11: Interest on Loan Claimed by the petitioner for FY 2021-22 (Rs in Crore)

<i>Particulars</i>	<i>Amount</i>
Gross Normative Loan - Opening	2,496.24
<i>Cumulative Repayment of Normative Loan upto Previous Year</i>	1,455.97
Net Normative Loan-Opening	1,040.27
<i>Add: Increase due to addition during the year/period</i>	7.10
<i>Less: Decrease due to de-capitalization during the year/period</i>	0.66
<i>Repayment During the year</i>	182.15
Closing Loan	864.57
Average Loan-Normative	952.42
<i>Weighted average Rate of Interest on actual Loans</i>	9.50%
Interest on Normative loan	90.48

Provision in Regulations:

87. With regard to Interest on Loan Capital, Regulation 36 of the Regulations 2020, provides as under:

36.1 *The loans arrived at in the manner indicated in Regulation 33 of these Regulations shall be considered as gross normative loan for calculation of interest on loan.*

36.2 *The normative loan outstanding as on 1.4.2019 shall be worked out by deducting the cumulative repayment as admitted by the Commission up to 31.3.2019 from the gross normative loan. The repayment for each of the year of the tariff period 2019-24 shall be deemed to be equal to the depreciation allowed for the corresponding year/period. In case of de-capitalization of assets, the repayment shall be adjusted by taking into account cumulative repayment on a pro rata basis and the adjustment should not exceed cumulative depreciation recovered upto the date of de-capitalisation of such asset*

36.3 *Notwithstanding any moratorium period availed by the generating company, the*

repayment of loan shall be considered from the first year of commercial operation of the project and shall be equal to the depreciation allowed for the year or part of the year.

36.4 *The rate of interest shall be the weighted average rate of interest calculated on the basis of the actual loan portfolio after providing appropriate accounting adjustment for interest capitalized:*

Provided that if there is no actual loan for a particular year but normative loan is still outstanding, the last available weighted average rate of interest shall be considered:

Provided further that if the generating station does not have actual loan, then the weighted average rate of interest of the generating company as a whole shall be considered.

36.5 *The interest on loan shall be calculated on the normative average loan of the year by applying the weighted average rate of interest.*

Commission's Analysis:

88. For determination of interest on term loan, closing loan balance as on 31st March, 2021 as admitted in the Commission's last true up order for FY 2020-21 issued on 19th May, 2022 is considered as the opening loan balance as on 1st April, 2021 in this order.
89. Since, no additional capitalization has been considered in this order, hence no loan addition in respect of additional capitalization is considered during FY 2021-22. The Commission has considered the reduction of loan amount of Rs. 0.66 Crore in respect of the assets de-capitalized during the year. Since, the accumulated depreciation of Rs. 0.66 Crore in respect of the assets decapitalized has been adjusted in reduction of loan amount, hence, loan reduction amount has got nil.
90. With regard to weighted average rate of interest filed in the petition, vide letter dated 20th December, 2022, the petitioner was asked to file detailed computation of actual weighted average rate of interest during FY 2021-22 in excel along with supporting documents such as banker's certificates in respect of actual weighted average rate of interest claimed in the petition. The petitioner was also asked to confirm that any interest on interest on loan amount or any penalty should not be a part of interest on loan amount.
91. By affidavit dated 4th January, 2023, the petitioner broadly submitted the Banker's Certificate in respect of interest rate as claimed in the petition. Further, the petitioner submitted that any interest on interest on loan or any penalty due to default in repayment has not been considered while calculating the Rate of Interest on Loan.

92. In view of the above, the interest on loan is worked out by the Commission based on the following:
- Gross normative opening loan of Rs. 1018.86 Crore has been considered as per last true-up Order dated 19th May, 2022.
 - Annual repayment of loan equal to annual depreciation is considered in accordance to the Regulations, 2020.
 - Weighted average rate of interest @ 9.50% as filed by the petitioner is considered.
93. Based on the above, the interest on loan is worked out as given below:

Table 12: Annual Interest on Loan for FY 2021-22 allowed

Sr. No	Particulars	Unit	Amount
1	Opening Loan	Rs. Crore	1018.86
2	Loan adjustment towards decapitalized assets	Rs. Crore	0.00
3	Loan Addition during the year	Rs. Crore	0.00
4	Repayment during the Year considered	Rs. Crore	179.88
5	Closing Loan	Rs. Crore	838.98
6	Average Loan	Rs. Crore	928.92
7	Weighted average Rate of Interest	%	9.50%
8	Interest on loan	Rs. Crore	88.25

c. Depreciation:**Petitioner's Submission**

94. The petitioner has worked out and claimed annual depreciation in form TPS 12 of the petition as given below:

Table 13: Depreciation on Assets**(Rs. in Crore)**

<i>Particulars</i>	<i>FY 2021-22</i>
<i>Opening Capital Cost</i>	<i>3,566.06</i>
<i>Closing Capital Cost</i>	<i>3,575.27</i>
<i>Average Capital Cost</i>	<i>3,570.67</i>
<i>Rate of Depreciation</i>	<i>5.10%</i>
<i>Depreciation on Capital Cost</i>	<i>182.15</i>
<i>Depreciation (Annualized)</i>	<i>182.15</i>
<i>Depreciation for the period</i>	<i>182.15</i>
<i>Cumulative Depreciation at the end of the period</i>	<i>1,638.06</i>
<i>Less :- Cumulative Depreciation Adjustment on account of de-capitalization</i>	<i>0.66</i>
<i>Net Cumulative Depreciation at the end of the period</i>	<i>1,637.41</i>

Provision in Regulations:

95. Regulation 37 of the Regulations, 2020 provides as under:

37.1 *“Depreciation shall be computed from the date of commercial operation of a generating station or unit thereof. In case of the tariff of all the units of a generating station for which a single tariff needs to be determined, the depreciation shall be computed from the effective date of commercial operation of the generating station taking into consideration the depreciation of individual units:*

Provided that effective date of commercial operation shall be worked out by considering the actual date of commercial operation and installed capacity of all the units of the generating station for which single tariff needs to be determined.

37.2 *The value base for the purpose of depreciation shall be the capital cost of the asset admitted by the Commission. In case of multiple units of a generating station, weighted average life for the generating station shall be applied.*

37.3 *The salvage value of the asset shall be considered as 10% and depreciation shall be allowed up to maximum of 90% of the capital cost of the asset:*

Provided that in case of hydro generating station, the salvage value shall be as provided in the agreement, if any, signed by the developers with the State Government for development of the generating station:

Provided further that the capital cost of the assets of the hydro generating station for the purpose of computation of depreciated value shall correspond to the percentage of sale of electricity under long-term power purchase agreement at regulated tariff:

Provided also that any depreciation disallowed on account of lower availability of the generating station or generating unit shall not be allowed to be recovered at a later stage during the useful life or the extended life:

Provided also that the salvage value for IT equipment and software shall be considered as NIL and 100% value of the assets shall be considered depreciable.

37.4 *Land other than the land held under lease and the land for reservoir in case of hydro generating station shall not be a depreciable asset and its cost shall be excluded from the capital cost while computing depreciable value of the asset.*

37.5 *Depreciation shall be calculated annually based on ‘Straight Line Method’ and at rates specified in Appendix-I to these Regulations for the assets of the generating station.*

37.6 Depreciation shall be chargeable from the first Year of commercial operation. In case of commercial operation of the asset for part of the Year, depreciation shall be charged on pro rata basis:

Provided that the remaining depreciable value as on 31st March of the year closing after a period of 12 years from the effective date of commercial operation of the station shall be spread over the balance useful life of the assets.

37.7 In case of the existing projects, the balance depreciable value as on 1.4.2019 shall be worked out by deducting the cumulative depreciation as admitted by the Commission upto 31.3.2019 from the gross depreciable value of the assets.

37.8 The generating company shall submit the details of proposed capital expenditure five years before the completion of useful life of the project along with justification and proposed life extension. The Commission based on prudence check of such submissions shall approve the depreciation on capital expenditure during the fag end of the project.

37.9 In case of de-capitalization of assets in respect of generating station or unit thereof, the cumulative depreciation shall be adjusted by taking into account the depreciation recovered in tariff by the de-capitalized asset during its useful services.

Commission's Analysis:

96. For determining the annual Depreciation, the Commission has considered the closing Gross Fixed Assets as on 31st March, 2021, as admitted in the last true-up order dated 19th May, 2022 for FY 2020-21, as opening Gross Fixed Assets as on 1st April, 2021 in this order.
97. The Commission has not considered additional capitalization in this order. Further, the write off/ deletion of fixed assets of Rs. 0.94 Crore during the FY 2021-22 has been considered in this order to work out the closing Gross Fixed Assets as on 31st March, 2022.
98. Petitioner has filed the Assets cum Depreciation Register, wherein the weighted average depreciation rate of 5.10% is worked out based on the depreciation rates specified in the Regulations, 2020.
99. According, depreciation is worked out by considering the weighted average rate of depreciation as filed by the petitioner in the subject petition as given below:

Table 14: Annual Depreciation determined for FY 2021-22

Sr. No.	Particular	Units.	Amount
1	Opening GFA	Rs in Cr.	3527.59
2	Gross Block Adjustment	Rs in Cr.	0.94
3	Addition during the year	Rs in Cr.	0.00
4	Closing GFA	Rs in Cr.	3526.65
5	Average GFA	Rs in Cr.	3527.12
6	Weighted Avg Rate of Depreciation	%	5.10%
7	Annual Depreciation Amount	Rs in Cr.	179.88
8	Opening Cumulative Depreciation	Rs in Cr.	1450.01
9	Closing Cumulative Depreciation	Rs in Cr.	1629.89
10	Less: Cum Dep adjustment on account of Decapitalization	Rs in Cr.	0.66
11	Closing Cumulative Dep at the end of the year	Rs. in Cr.	1629.23

d. Operation and Maintenance Expenses:**Petitioner's Submission:**

100. Petitioner filed the Operation and Maintenance expenses for generating units in the petition as given below:

Table 15: O&M Expenses claimed for generating unit (Rs. in Crore)

Phase – 1	Particulars	FY 2021-22
Unit I & II	O & M Expenses	176.55

101. The petitioner also filed the Operation & Maintenance expenses on its dedicated Transmission lines & Bay in the petition as given below:

Table 16: O&M Expenses of Transmission Line & Bay (Rs. in Crore)

Particulars	Particular	FY 2021-22
400kV Transmission Line and bay	O & M Expenses	0.38

Provision in Regulations:

102. The norms for Operation and Maintenance Expenses for thermal generating units commissioned on or after 01/04/2012 are specified under Regulation 40.2 of the Regulations, 2020 for the generating Unit of "250 MW Series" for FY 2021-22 which are as given below:

Table 17: Normative O&M Expenses for FY 2021-22

Units (MW)	Rs. Lakh/MW/Year
45 MW	40.19
200/210/250 MW	35.31
300 MW Series	29.72
500 MW Series	24.12
600/660 MW Series	21.71
800 MW Series and above	19.54

Commission's Analysis:

103. For Thermal Power Station, the Commission worked out annual operation and maintenance expenses as per above Regulations. Accordingly, the operation and maintenance expenses for Jaypee Bina TPS for FY 2021-22 are determined as given below:

Table 18: Operation & Maintenance Expenses admitted (Rs in Crore)

Sr. No.	Phase – 1	Capacity	Normative O&M Expenses	Annual O&M Expenses as per norms
		MW	Rs In Lack/MW	Amount in Rs Crore
1	Unit I & II	2 X 250	35.31	176.55

104. With regard to operation & maintenance expenses of Transmission lines & Bay, vide Commission's letter dated 20th December, 2022, the petitioner was asked to justify its claim in this regard in light of the Regulations, 2020.
105. By affidavit dated 4th January, 2023, the petitioner submitted the following: -

The O&M expenses of the Dedicated Transmission Line are legitimate costs incurred by the Petitioner with regards to generation and supply of power to MPPMCL and such cost are a pass through in a cost-plus tariff regime. Therefore, in terms of the express mandate of Section 61 and 62 of the Act, it is the statutory right of the Petitioner to recover such legitimate cost from MPPMCL through the tariff determined by this Commission.

The Petitioner has never made any submission or given any undertaking before this Commission declaring its intention to not claim the O&M expenses for the Dedicated Transmission Line. Since the preliminary issue qua inclusion of the cost of Dedicated Transmission Line in the Capital Cost of the Project was being adjudicated in the earlier Tariff Proceeding, the Petitioner was constrained to claim the O&M expenses for the same.

The Petitioner has incurred substantial cost in maintaining these Dedicated Transmission Lines consequent to the statutory mandate and for the purpose of generating and supplying power. Therefore, such prudent and legitimate cost of the Petitioner, which is permissible in terms of the express mandate of Section 61 and 62 of the Act, cannot be withheld.

This Commission under section 86(1)(b) of the Act is vested with the power to regulate the tariff of generating companies and that the concept of regulatory jurisdiction provides for comprehending all facts not only specifically enumerated in the Act, but also embraces within its fold the powers incidental to the Regulation. Further, it has been consistently held that the word “regulate” has a broad impact having wide meaning and cannot be construed in a narrow manner.

Further, it is also submitted that each tariff year gives rise to separate cause of action to the Petitioner and each claim is required to be determined in light of the extant regulatory and statutory framework. The issue is sub-judice before the Hon'ble Appellate Tribunal in so far as the facts relating to Bina plant is concerned and as such has not attained finality and the Petitioner is bona-fide in claiming O&M Charges as Capacity Charges.

106. On perusal of the aforesaid submission filed by the petitioner, the Commission has observed that no separate norms are provided in the Regulations, 2020 for operation & maintenance expenses on dedicated transmission lines and Bay as claimed in the subject petition. Further, the cost of dedicated transmission lines has been appropriately considered in the project capital cost of petitioner's power plant, while determining the final capital cost of the project.
107. Further, in all earlier tariff/true-up orders since COD of the project, the Commission had taken the consistent approach on this issue and separate O&M expenses for dedicated transmission line and bay had not been considered. The petitioner also filed several Appeals with Hon'ble Appellate Tribunal for Electricity on this issue of disallowance of O&M expenses on transmission line and Bay and all the such Appeals are sub-judice.
108. Since the Commission had not considered separate O&M expenses for dedicated transmission line and bay in MYT order dated 30.04.2021 (main order) for control period FY 2019-20 to FY 2023-24, therefore, the claim of petitioner for O&M expenses of dedicated transmission line is not considered in this true up order for FY 2021-22.
109. Further, on perusal of the Annual Audited Accounts of Bina Thermal Power Station for FY 2021-22, it is observed that the actual O&M expenses (excluding cost of fuel and transmission charges) and employee benefit cost recorded in Note 26 and Note 27 of the Annual Audited Accounts is Rs 53.51 Crore and Rs 24.51 Cr respectively, whereas,

the O&M expenses allowed in this order on normative basis is Rs 176.55 Crore which is more than the actual O&M Expenses of Rs 78.02 Crore of the Power Station recorded in Annual Audited Accounts. It is obvious that total actual O&M Expenses in Annual Audited Accounts cover O&M of transmission line/system also.

110. In view of above background and facts and since this case is currently pending for adjudication before the Hon'ble Appellate Tribunal for Electricity under several Appeals filed by the petitioner against the tariff/true-up orders issued by the Commission, therefore, the claim of the petitioner for separate Operation and Maintenance expenses of dedicated transmission line and bay is not considered in this order.

**e. Interest on Working Capital
Petitioner Submission:**

111. The petitioner claimed the interest on working capital in form TPS 5N of the petition as under:

Table 19: Interest on Working Capital Claimed

S. No.	Particulars	Basis	2021-22
1	Cost of Coal/Lignite	60 days' coal stock	189.11
2	Cost of Main Secondary Fuel Oil (HFO)	2 months of sec oil purchase	1.39
3	O & M expenses	1 month of O&M expenses	14.71
3A	O & M expenses (Transmission Lines & Bay)	1 month of O&M expenses	0.03
4	Maintenance Spares	20% of O&M expenses	35.31
4A	Maintenance Spares (Transmission Line & Bay)	20% of O&M expenses	0.08
5	Receivables	45 days of total receivables	229.33
6	Total Working Capital		469.96
7	Rate of Interest		10.50%
8	Interest on Working Capital		49.35

Provision in Regulations:

112. Regulation 38 of the Regulations, 2020 regarding working capital for coal based generating stations provides that:

38.1 "The Working Capital shall cover:

- (1) Coal- based thermal generating stations
 - (a) Cost of coal towards stock, if applicable, for 15 days for pit-head generating stations and 30 days for non-pit-head generating stations for generation corresponding to the normative annual plant availability factor or the maximum coal stock storage capacity whichever is lower;
 - (b) Advance payment for 30 days towards cost of coal for generation corresponding to the normative annual plant availability factor;
 - (c) Cost of secondary fuel oil for two months for generation corresponding to the normative annual plant availability factor, and in case of use of more than one

-
- secondary fuel oil, cost of fuel oil stock for the main secondary fuel oil;
- (d) Maintenance spares @ 20% of operation and maintenance expenses specified in Regulation 39 and 40 of these Regulations;
 - (e) Receivables equivalent to 45 days of capacity charges and energy charges for sale of electricity calculated on the normative annual plant availability factor;
 - (f) Operation and maintenance expenses for one month.

38.2 The cost of fuel shall be based on the landed fuel cost incurred (taking into account normative transit and handling losses) by the generating station and gross calorific value of the fuel as per actual weightage average for the three months preceding the first month for which tariff is to be determined and no fuel price escalation shall be provided during the tariff period.”

Provided that in case of new generating station, the cost of fuel for the first financial year shall be considered based on landed fuel cost (taking into account normative transit and handling losses) and gross calorific value of the fuel as per actual weighted average for three months, as used for infirm power, preceding date of commercial operation for which tariff is to be determined

38.3 “Rate of interest on working capital shall be on normative basis and shall be considered as the bank rate as on 1.4.2019 or as on 1st April of the year during the tariff period 2019-20 to 2023-24 in which the generating station or a unit thereof, is declared under commercial operation, whichever is later:

Provided that in case of truing-up, the rate of interest on working capital shall be considered at bank rate as on 1st April of each of the financial year during the tariff period 2019-24.

38.4 Interest on working capital shall be payable on normative basis notwithstanding that the generating company has not taken loan for working capital from any outside agency.

Commission’s Analysis:

113. In the above-mentioned provision under the Regulations, 2020, it is mentioned that no fuel price escalation shall be provided during the tariff period for calculating the working capital. The Regulation further provides that the interest on working capital shall be payable on normative basis notwithstanding that the generating company has not taken loan for working capital from any outside agency. The working capital is worked out as per the provisions under the Regulations, 2020 as given below:

- (i) Two month’s Cost of coal and two month’s Cost of secondary fuel of main oil equivalent to normative plant availability factor as considered in Commission’s

MYT Order dated 30th April, 2021 in Petition No. 44 of 2020 are considered as follows:

Particulars	FY 2021-22 (Rs in Cr.)
Cost of Coal for two Months	189.11
Cost of Secondary Fuel Oil for two Months	1.39

- (ii) Maintenance spares as considered in Commission's MYT Order dated 30th April, 2021 as stated below is considered:

Particulars	FY 2021-22 (Rs in Cr.)
Maintenance Spares (20% of O&M Expenses)	35.31

- (iii) Receivable have been worked out on the basis of 45 Days of fixed and energy charges as given below:

Particulars	FY 2021-22 (Rs in Cr.)
Variable Charges- 45 Days (As considered in Order dated 30 th April, 2021)	142.95
Annual Fixed Charges- 45 Days	80.91
Total	223.86

- (iv) O&M expenses for one month for the purpose of working capital as considered in Commission's MYT Order dated 30th April, 2021 is considered:

Particulars	FY 2021-22 (Rs in Cr.)
O & M Expenses for One Month	14.71

114. Regarding the rate of interest on working capital, Regulation 38.3 of the Regulations, 2020 provides that:

“Rate of interest on working capital shall be on normative basis and shall be considered as the bank rate 1.4.2019 or as on 1st April of the year during the tariff period 2019-20 to 2023-24 in which the generating station or a unit thereof, is declared under commercial operation, whichever is later:

Provided that in case of truing-up, the rate of interest on working capital shall be considered at bank rate as on 1st April of each of the financial year during the tariff period 2019-24.

115. In view of the above provision under the Regulations, 2020, 1-year MCLR of State Bank of India applicable/ prevailing as on 01.04.2021 is 7.00% + 3.50% = 10.50%.

116. Considering the above, the interest on working capital worked out by the Commission for FY 2021-22 in this true-up order is as given below:

Table 20: Interest on Working Capital Allowed

Sr. No.	Particulars	Norms	Unit	FY 2021-22
1	Cost of Coal/Lignite	60 days of coal purchase	Rs.Crore	189.11
2	Cost of Main Secondary Fuel Oil	2 months of fuel oil cost	Rs.Crore	1.39
3	O & M expenses	1 month of O&M	Rs.Crore	14.71
4	Maintenance Spares	20% of O&M	Rs.Crore	35.31
5	Receivables	45 Days of total Revenue	Rs.Crore	223.86
6	Total Working Capital		Rs.Crore	464.38
7	Rate of Interest (SBI MCLR)		%	10.50%
8	Interest on Working Capital		Rs.Crore	48.76

f. Lease Rent: -

117. In the subject true up petition, the petitioner filed Rs. 0.40 Crore as yearly lease rent payable for FY 2021-22.

Commission's Analysis:

118. The petitioner has claimed Rs. 0.40 Crore against lease rent payable for land during the year. Vide Commission's letter dated 20th December, 2022, petitioner was asked to justify its claim towards lease rent for the land in light of the amount recorded in Annual Audited Accounts for FY 2021-22.
119. By affidavit dated 4th January, 2023, the petitioner submitted the following:

It is submitted that the Petitioner is paying lease rent on account of Land Lease and Railway Lease Rent to the Statutory Body/Govt. Body, which is a part of the Project. On this basis, the Petitioner has prayed that the payable Lease Rent be allowed while arriving at AFC.

It is to be noted that this Commission, in the past, has allowed expense towards lease and rent. Further, the reconciliation between Lease Rent claimed vis-à-vis Audited Books is as under:-

Table 21: Lease Rent

S. No	Particular	Amount (In Rs)	Remark
1	Lease rent	60,547/-	Please refer Note 34 (b) Lease of the Balance Sheet.
2		5,20,522/-	
	TOTAL	5,81,069/-	<i>Due to the IND AS Adjustment w.e.f. 01/04/2021, lease rent is being paid through lease liabilities.</i>

Further, out of the recorded figure of "Taxes & Fee of Rs 1,01,51,692/- (may refer Note 30 of Annual Audited Accounts for FY 2021-22) the Petitioner has claimed only Rs 34,48,514/- of Railway Land Lease Rent.

The relevant documents in support of "Lease" payment and relevant pages of Balance Sheet are attached with the submission.

120. In the MYT proceeding, petitioner was asked to inform under what provisions of the Regulations, 2020, these expenses are claimed by the petitioner. In response, the petitioner had submitted that this Commission may exercise its regulatory power and allow the expenditure on account of lease rent. Further, even the Regulations, 2020 envisages the provisions of 'Power to Relax' and 'Power to Remove Difficulty'. Accordingly, considering the nature of the said expenditure, it is humbly prayed to allow Rs. 0.40 Crore incurred/to be incurred by the petitioner for lease rent.
121. On perusal of the aforesaid submission filed by the petitioner, it is observed that petitioner has not justified its claim towards lease rent payable during the control period in accordance with the Regulations, 2020. Since, there is no provision in the Regulations, 2020 for recovery of lease rent, hence, the Commission has not considered the expenditure towards lease rent payable by the petitioner.

g. Non-Tariff Income:

122. In the subject true-up petitioner, the petitioner filed Rs. 1.22 Crore as non-tariff income during the year.

Provision in Regulations:

123. Regulation 58 of the Regulations, 2020 provides as under:

58.1 "The non-tariff net income in case of generating station on account of following shall be shared in the ratio of 50:50 with the beneficiaries and the generating company on annual basis:

- a) Income from rent of land or buildings;*
- b) Income from sale of scrap;*
- c) Income from sale of fly ash;*
- d) Interest on advances to suppliers or contractors;*
- e) Rental from staff quarters;*
- f) Rental from contractors;*
- g) Income from advertisements; and*
- h) Interest on investments and bank balances:*

Provided that the interest or dividend earned from investments made out of Return on Equity corresponding to the regulated business of the Generating

Company shall not be included in Non-Tariff Income:

Provided further that the Generation Company shall submit full details of its forecast of Non-Tariff Income to the Commission. Non-tariff income shall also be trued-up based on audited accounts.

Commission’s Analysis:

124. On perusal of details of non-tariff income for FY 2021-22 filed by the petitioner, it was observed that the petitioner has filed the total non-tariff income of Rs. 1.22 Crore during FY 2021-22 whereas, in Note 25 of Annual Audited Accounts “other income” is shown as Rs. 45.23 Crore. Vide letter dated 20th December, 2022, the petitioner was asked to explain the reasons for aforesaid discrepancy in non-tariff income recorded in Annual Audited Accounts vis-a-vis filed in the subject petition. The petitioner was also asked to file detailed break-up of non-tariff income in accordance with the Regulation 58.1 of the Regulations, 2020 duly reconciled with the Annual Audited Accounts.
125. By affidavit dated 4th January, 2023, the petitioner filed its reply along with the reconciliation of non-tariff income with Annual Audited Accounts of FY 2021-22 as given below:

It is submitted that the Petitioner has submitted the details of Non-Tariff income of Rs. 2.45 Crores in accordance with the Regulation 58.1 in TPS-17. In TPS-1, the Petitioner has reduced 50% of Rs 2.45 Crores i.e. Rs 1.22 Crores from Total Capacity Charges. However, the detailed breakup of Non-Tariff Income as submitted in TPS-17 is submitted as under:-

S. No.	Particulars	Amount (INR)
1	Sale of Fly Ash (Note 24)	1,50,97,526/-
3	SALE- Miscellaneous	67,53,969/-
4	SALE- Scrap	15,20,807/-
5	Rent Received	11,04,904/-
6	Total Non tariff Income during FY 2021-22	2,44,77,206/-
	TOTAL (IN CRS)	2.45
	50% of above (Claimed in the Petition)	1.22

Reconciliation between Non-Tariff Income submitted in the instant petition and figures recorded in Annual Audited Accounts is as under:-

As per books:

S. No.	Particulars	Amount (INR)	Remarks
1	Other Income As per Annual Audited Accounts	45,22,51,319/-	PI refer Note-25 of Audited Accounts
2	Sale of Fly Ash	1,50,97,526/-	PI refer Note 24 of Audited Accounts
	Total (1+2)	46,73,48,845/-	

Reconciliation with the books:

S. No.	Particulars	Amount (INR)
A	Total Non-tariff Income during FY 2021-22 as per Table 3 above	2,44,77,206/-
1	Add: Insurance claim receipts against fire	5,25,00,000/-
2	Add: Credit Balances written back/ Liabilities no longer required written back	2,89,175
3	Add: Ind. AS Adjustments	36,56,319/-
4	Add: Interest on bank FDR	69,75,215/-
5	Add: Interest from Others	37,94,50,930/
	TOTAL	46,73,48,845/

The Petitioner clarifies that in Table above, figures appearing at Sr. No.1 reflects the receipt against insurance claim received against the damages caused by fire. Since Insurance Premium is always treated as Expense in books of account, therefore, the proceeds on account of surrender or maturity also are treated as Income as a matter of Accounting Principles. It is further submitted that Insurance is a means of protection from financial loss. It is a form of risk management, primarily used to hedge against the risk of a contingent or uncertain loss. Insurance Premium is never paid in anticipation of a return, but it is merely an expense made out to create a cushion against a predetermined set of unwarranted events, hence, it does not fall under the ambit of Regulation 58.

Figure appearing at S.No.2 is the writing back of excess provision; therefore, this also does not qualify to be included in Non-Tariff Income as per Regulation 58.

Figure appearing at S.No.3 against the IND AS adjustment has not been included or considered as Non-Tariff since it is only adjustments in the books of account arisen out of applicability of IND AS.

Figures appearing at S. No. 4 are the interest received/ accrued from the FDR made out of the Return on Equity that is why, the Petitioner has excluded the same from Non-Tariff Income as per Proviso to Regulation 58.

Figures appearing at S. No. 5 pertain to the billed amount of Surcharge raised on MPPMCL and other customers in respect of sale of energy; hence it is part of the Tariff Income and not included in Non-Tariff Income.

126. In view of the above, it is observed that the petitioner claimed the non-tariff income of Rs. 1.22 Crore (50% of the total non-tariff income) as recorded in Note-24 & Note- 25 of Annual Audited Accounts for FY 2021-22. Therefore, total non-tariff income of Rs 1.22 Crore as claimed by the petitioner is considered by the Commission in this order. The break-up of non-tariff income considered is as given below:

Table 22: Non-tariff Income during FY 2021-22:

(Rupees in Cr)

S. No.	Parameter	Amount
1	Sale of Fly Ash	1.51
2	Sale- Miscellaneous	0.68
3	Sale- Scrap	0.15
4	Rent Received	0.11
	Total	2.45
	50% of Non-Tariff Income	1.22

Other Charges:

127. In the subject true-up petition, the petitioner claimed following other charges:

- (i) Recovery of Electricity Duty and Energy Development Cess on power being scheduled by the MPPMCL and Plant Auxiliary Consumption;
- (ii) Recovery of water charges paid to Water Resources Department, Government of Madhya Pradesh;
- (iii) Recovery of the filing fees paid to the Commission and also the publication expenses from the beneficiaries.

128. Regarding the other charges, In Para 162 to 164 of the tariff order dated 30th April, 2021, the following was mentioned by the Commission:

- In view of the above, the petitioner is allowed to recover the fee paid to MPERC and publication expenses as per Regulation 65.1 (i) of the Regulations, 2020 on submission of documentary evidence.
- The petitioner is also allowed to recover the electricity duty on plant auxiliary consumption, Energy Development Cess on energy supplied to MPPMCL and water charges paid to Water Resources Department, Government of MP as per Regulation 65.2 of the Regulations, 2020 on submission of documentary evidence.

129. With regard to Application fee, publication expenses and other statutory charges, Regulation 65 of the Regulations, 2020 provides as under:

65.1 *“The following fees, charges and expenses shall be reimbursed directly by the beneficiary in the manner specified herein:*

1. *The application filing fee and the expenses incurred on publication of notices in the application for approval of tariff, may in the discretion of the Commission, be allowed to be recovered by the generating company directly from the beneficiaries.*
2. *The Commission may, for the reasons to be recorded in writing and after hearing the affected parties, allow reimbursement of any fee or expenses, as may be considered necessary.*
3. *SLDC Charges and Transmission Charges as determined by the Commission shall be considered as expenses, if payable by the generating stations.*
4. *RLDC/NLDC charges as determined by the Central Commission shall also be considered as expenses, if payable by the generating station.*

65.2 *Electricity duty, cess and water charges if payable by the Generating Company for generation of electricity from the power stations to the State Government, shall be considered and allowed by the Commission separately by considering normative parameters specified in these Regulations and shall be trued-up on actuals:*

Provided that in case of the Electricity duty is applied in the auxiliary consumption, such amount of electricity duty shall apply on normative auxiliary consumption of the generating station (excluding colony consumption) and apportioned to the each beneficiaries in proportion to their schedule dispatch during the month.

130. In view of the above, the petitioner is allowed to recover the fee paid to MPERC and publication expenses as per Regulation 65.1 (i) of the Regulations, 2020 on submission of documentary evidence to the procurer.
131. The petitioner is also allowed to recover the electricity duty on plant auxiliary consumption, Energy Development Cess on energy supplied to MPPMCL and water charges paid to Water Resources Department, Government of MP as per Regulation 65.2 of the Regulations, 2020 on submission of documentary evidence.

Summary of Annual Capacity (fixed) charges:

132. The details of the Annual Capacity (fixed) Charges for FY 2021-22 determined in this true-up order vis-a-vis those determined in the MYT order dated 30th April, 2021 at normative Plant Availability Factor are summarized in the following table:

Table 23: Annual Capacity Charges at normative availability: - (Rs in Crore)

S. No	Particulars	Allowed in MYT Order dated 30.04.2021 for FY 2021-22	Allowed in this true-up order for FY 2021-22	True-up amount
1	Return on Equity	163.68	164.01	0.33
2	Interest on Loan	87.58	88.25	0.67
3	Depreciation	180.22	179.88	-0.34
4	Interest on Working Capital	52.28	48.76	-3.52
5	O & M Expenses	176.55	176.55	0.00
6	Total Annual Capacity (Fixed) Charges	660.30	657.45	-2.86
7	Less:- Non-Tariff Income	2.40	1.22	-1.18
8	Net Annual Capacity (Fixed) Charges	657.90	656.23	-1.67
9	Annual Capacity(fixed) Charge corresponding to 65% of the installed Capacity	427.63	426.55	-1.07

133. Annual Capacity (Fixed) Charges as determined above for FY 2021-22 are at Normative Plant Availability and these charges are based on Annual Audited Accounts of Jaypee Bina Thermal Power Plant for FY 2021-22.
134. Above Annual Capacity (Fixed) Charges are determined corresponding to the contracted capacity under long term PPA. The recovery of Annual Capacity (Fixed) Charges shall be made by the petitioner in accordance with Clause 42.2 of the Regulations, 2020 on pro rata basis with respect to actual Annual PAF.
135. Regarding the performance-based truing-up of energy charges on account of controllable parameters, Regulation 56.1 of the Regulations 2020 provides that the generating company shall work out gains based on the actual performance of applicable controllable parameters as under:
- Station Heat Rate
 - Secondary Fuel Oil Consumption
 - Auxiliary Energy Consumption
136. In view of the above Regulations, it is observed by the Commission that the generating company shall carry out the truing-up of tariff of generating station based on the controllable performance parameters like Station Heat Rate, Secondary fuel oil consumption and Auxiliary Energy consumption. Vide Commission's letter dated 20th December, 2022, the petitioner was asked to file the annual details of aforesaid performance parameters actually achieved vis-à-vis normative parameters under the Regulations, 2020. The petitioner was also asked to file details of financial gain if any, on account of controllable parameters and shared with the beneficiaries in light of the Regulation 56.2 of the Regulations, 2020.

137. In response to above, by affidavit dated 4th January, 2023, the petitioner submitted month wise comparison of aforesaid performance parameters actually achieved vis-a-vis normative parameters. On perusal of the details filed by the petitioner, it is observed that actual parameters achieved by the petitioner during FY 2021-22 are inferior than the normative parameters under the Regulations therefore, the petitioner incurred loss on account of inferior performance and poor actual operating parameters achieved by it during FY 2021-22.
138. Regulation 56.2 of the Regulations, 2020 provides that financial gains by a generating company on account of controllable parameters shall be shared between generating company and the beneficiaries in the ratio of 50:50 on annual basis. The aforesaid Regulations do not provide for sharing of loss incurred by the generating company. Therefore, the loss incurred by the petitioner on account of inferior operating parameters shall not be passed on to the beneficiary.

Implementation of the order

139. The petitioner must take steps to implement the order after giving seven days public notice in accordance with clause 1.30 of MPERC (Details to be furnished and fee payable by licensee or generating company for determination of tariff and manner of making application) Regulations, 2004 and its amendments and recalculate its bills for the energy supplied to Distribution Companies of the State/ M.P. Power Management Company Ltd. since 1st April, 2021 to 31st March, 2022.
140. The petitioner is also directed to provide information to the Commission in support of having complied with this Order. The deficit / surplus amount as a result of this order shall be passed on to MP Power Management Company Ltd. / three Distribution Companies of the state in terms of applicable Regulation in six equal monthly instalments during FY 2023-24.
141. With the above directions, this Petition No. 75 of 2022 is disposed of.

(P.K. Chaturvedi)
Member

(Gopal Srivastava)
Member (Law)

(S.P.S Parihar)
Chairman

Date: 2nd March, 2023

Place: Bhopal

Response of Petitioner on the comments offered by the MPPMCL and observations of the Commission

MPPMCL Comment:

In Paras 10 and 11, the Petitioner has given its claims of Additional Capital Expenditure stated to have been incurred during FY 2021-22. It is humbly submitted that the said claims of Additional Capital Expenditure are not admissible under the provisions of 2020 Regulations as explained in the following paragraphs of the Reply. Therefore, it is most humbly prayed that this Hon'ble Commission may graciously be pleased to reject the said claims of Additional Capital Expenditure.

As stated by the Petitioner in Para 9.9 of the Petition, Unit No. 1 and Unit No. 2 off the Project achieved their commercial operation (CODs) on 31.08.2012 and 07.04.2013 respectively. Consequently, in terms of Regulation 3.1(14) of 2020 Tariff Regulations, the Cut-Off Date for the Project is 31.04.2016.

Regulations 27 and 28 of 2020 Tariff Regulations provide for criteria for admitting Additional Capital Expenditure in an Existing Project after Cut-off Date. Regulation 27.1 exhaustively enumerates admissible Additional Capital Expenditure for an existing Project (or a new project) within original scope of work and after the cut-off date subject to prudence check. Regulation 28.1 exhaustively enumerates admissible Additional Capital Expenditure for an existing Project (or a new project) beyond original scope of work subject to prudence check.

It is submitted that all the claims of Additional Capital Expenditures amounting to Rs. 10.15 Crore made in Paragraphs 10 and 11 of the present true-up Petition for FY 2021-22, are beyond Cut-off Date of the Project and do not meet the criteria laid down in Regulations 27 or 28. Therefore this Hon'ble Commission may graciously be pleased to reject the same.

Petitioner's Reply:

MPPMCL has contended that as the Additional Capital Expenditure claimed by Petitioner is beyond the Cut-off date, therefore, Petitioner has failed to meet the criteria laid down under Regulation 27 and 28 of Tariff Regulations, 2020. At the outset, it is clarified that the Additional Capital Expenditure claimed by the Petitioner falls within the original scope of the Project. Therefore, criteria laid down under Regulation 28 of Tariff Regulations, 2020 is not relevant for the purpose of adjudicating the claim of the Petitioner.

In order to ascertain as to whether the Petitioner has fulfilled the conditions as laid down under Regulation 27 for the purpose claiming additional capital expenditure, On reading of Regulation 27 above, it is evident that an additional capital expenditure which falls within the original scope of work and is incurred after the cut-off date is admissible by this Commission

after prudence check. Therefore, the objection of MPPMCL that additional expenditure incurred beyond cut-off date cannot be admitted under Regulation 27 of Tariff Regulations, 2020 is untenable.

Observation:

The additional capitalization has been examined by the Commission in accordance to the provisions under the Regulations, 2020, Annual Audited Accounts of the petitioner for FY 2021-22, Asset-cum-Depreciation Register for FY 2021-22, and other supplementary submissions filed by the petitioner and other documents placed on record by the petitioner.

MPPMCL Comment:

In Para 11 (i) of the Petition, the Petitioner has stated that Rs. 7.31 Crore were spent on construction of an Additional Loop Line of 1.105 km at Samarkhedi Railway Station. Despite long narration of purported facts concerning this claim, the Petitioner has failed to give any credible justification as to how this huge Additional Capital Expenditure is qualified under 2020 Generation Tariff Regulations after 9 years from the COD of the Project and 6 years after Cut-off Date. The purported justifications given regarding essentiality of the Additional Loop Line and reasons for such huge delay of almost 9 years in its implementation are very vague and unacceptable. In view of the above, it is most humbly prayed that this Hon'ble Commission may graciously be pleased to reject the said claim in respect of construction of Additional Loop Line.

Petitioner's Reply:

MPPMCL, vide its present Reply, has contended that Petitioner has failed to give any credible justification as to how the Additional Capital Expenditure is qualified under Tariff Regulations, 2020 after 9 years from the COD of Project and 6 years after the Cut-off date. At the outset, it is submitted that Petitioner has provided detailed justification against the delay which has incurred towards the construction of the Additional Loop Line in the True-up Petition and response dated 20.12.2022 filed by Petitioner to the Queries raised by this Hon'ble Commission. In order to address the objection raised by MPPMCL, it would be relevant to consider the justification provided by Petitioner:

- (a) *For purpose of executing the work towards additional loop line, on 29.02.2012, the Western Central Railway ("WCR") estimated an amount of Rs. 3,63,74,885.04 Cr towards carrying out the Signal & Telecommunication ("S&T") and called upon Petitioner to deposit an amount of Rs. 2,38,73,298.4 Cr.*
- (b) *On 25.04.2012, Petitioner drew up a cheque amounting to Rs 2.38 Cr in favour WCR authorities to proceed with the aforesaid work.*
- (c) *In furtherance to above, the Railway Siding work was commenced as per the Detail Project Report ("DPR") prepared by M/s RITES and contracts were awarded for Track and OHE to private parties and S&T work to Railway.*

- (d) *Considering the position that Plant was to be commissioned by June 2012, the movement of the coal by Rail upto Bina Railway station from there to Plant by road was carried through a temporary connection from the existing take off point in plant yard through an existing loop line, however, the requirement of additional loop line remained for the plant.*
- (e) *It is relevant to mention that while substantive steps were taken by Petitioner towards electrification of loop line at Semarkhedhi Railway station, however, on account of direction by Railways, the work towards construction was kept on hold till finalization of S&T work.*
- (f) *While the work was on hold, on 15.05.2015, WCR issued a letter to Petitioner informing about the requirement to construct S&T building at Semarkhedhi station and stating that the cost to be incurred against the building does not form part of the amount deposited by Petitioner.*
- (g) *Thereafter, on 05.06.2018, the S&T building constructed by Petitioner was handed over to WCR for further erection work of S&T system for Petitioner line connection.*
- (h) *Despite Petitioner performing its obligation, there was a substantial delay in completion of deposit work by WCR which was intimated by Petitioner from time to time.*
- (i) *Further, only on 28.01.2020, the WCR responded to the above mentioned letters of the Petitioner plainly stating that the Railway Siding work taking off from Samarkhedhi Station had been planned for commissioning in May 2020. (Letter dated 28.01.2020 has been annexed as Annexure 15 to the Reply to Hon'ble MPERC Letter dated 20.12.2022)*
- (j) *Pertinently, no work was done by WCR even by September 2020. (The letter dated 24.09.2020 has been annexed as Annexure 16 to the Reply to MPERC Letter dated 20.12.2022)*
- (k) *On various counts (for instance vide the WCR letter dated 08.03.2021) it was intimated to the Petitioner that material acquired by Petitioner since 2012 has lost its service life by 9 years from the manufacturer date, therefore, Petitioner will have to bear the expenses towards replacement of insulators. (Letter dated 08.03.2021 issued by WCR to Petitioner has been annexed with the Reply to the MPERC Letter dated 20.12.2022)*
- (l) *Ultimately the additional loop Line linking work was completed in December 2021 and on 01.02.2022, the track fitness for the Additional Loop Line was provided by WCR.*
- (m) *In view of the detailed justification provided by Petitioner, it is evident that while the construction of Additional Loop Line formed part of the original scope of work, however, the same could not be completed within the cut-off date on account of reasons not attributable to the Petitioner. Therefore, the Additional Capital Expenditure in question qualifies the conditions of Regulation 27 of Tariff Regulations, 2020 and objection raised by MPPMCL is liable to be rejected.*

Observation:

The additional capitalization towards additional loop line has been examined by the Commission in accordance to the provisions under the Regulations, 2020, Annual Audited Accounts of the petitioner for FY 2021-22, Asset-cum-Depreciation Register for FY 2021-22, and other supplementary submissions filed by the petitioner and other documents placed on record by the petitioner.

MPPMCL Comment:

Also, in Para 14 of the Petition and in Annexure-2, head-wise claim of Annual Capacity Charges have been given in a Table. At SI.No. 5A of the Table and also at Page No. 40 of the Petition, an amount of Rs. 0.38 Crore has been claimed as O & M Expenses for 400 KV Transmission Lines and Bay. At Page 41 the purported basis and calculations for claiming separate O & M Expenses for 400 KV Dedicated Transmission Line and Bay has been given. In Form TPS-5N, the Petitioner has also included separate O & M Expenses for 400 KV Dedicated Transmission Line and Bay.

The separate claim of O & M Expenses for 400 KV Dedicated Transmission Line and Bay and its inclusion in calculation of Interest on Working Capital (Form TPS-5N) is strongly opposed as it is completely erroneous, misconceived and contrary to the provisions of 2020 Generation Tariff Regulation. The said separate claim of O & M Expenses impermissible because –

- (i.) The said 400 KV Transmission Line is a Dedicated Transmission Line in terms of Section 10 (1) of the Electricity Act 2003. It is the duty of the Generating Company to establish, operate and maintain the same. Section 10 (1) of the Electricity Act 2003 is extracted below for ready reference :

“10(1). Subject to the provisions of this Act, the duties of a generating company shall be to establish, operate and maintain generating stations, tie-lines, sub-stations and dedicated transmission lines connected therewith in accordance with the provisions of this Act or the rules or regulations made thereunder.”

- (ii.) In terms of Regulation 3.1(44) of 2020 Generation Tariff Regulations, “**Thermal Generating Station**” includes “**Dedicated Transmission Line/System**” as may be required. The relevant part of the Regulations is extracted below for ready reference

“3. Definitions:

3.1 In these Regulations, unless the context otherwise requires-

(1)

.....

(44) ‘Project’ means :

- (i) ***In case of thermal generating station, all components of the thermal generating station and includes pollution control system, effluent treatment plant, dedicated transmission line/system, as may be required, and***
- (ii) ***In case of a hydro generating station, all components of hydro generating station and includes dam, intake water conductor system, power generating station and generating units of the scheme, as apportioned to power generation;”***
- (iii.) Capital Cost of the 400 KV Dedicated Transmission Line and Bay has already been allowed along with total Capital Cost of the Generating Station.
- (iv.) Dedicated Transmission Line is an integral part of the Generating Station along with other Electrical Systems viz. Switchyard, Transformers, Bus Bars, Feeder Bays etc., whose O & M Expenses are already covered under Normative O & M Expenses provided in the 2020 Generation Tariff Regulations on per MW basis.
- (v.) 2020 Generation Tariff Regulations do not provide for separate O & M Expenses for Dedicated Transmission Line. 2020 Generation Tariff Regulations have not been challenged by the Petitioner, thus are binding.
- (vi.) There is no evidence inadequacy of normative O & M Expenses allowed with respect to actual O & M Expenses incurred for the Project including Dedicated Transmission Line and Bay.
- (vii.) If the claim of the Petitioner for separate O & M Expenses is allowed then it would amount to over-compensation and unjust enrichment of the Petitioner at the expense of common consumers of electricity.
- (viii.) The separate claim of Dedicated Transmission Line has been consistently rejected by this Commission in all previous Tariff and True-up Petitions. The decision of this Hon’ble Commission on this issue has been challenged by the Petitioner in a number of Appeals filed before Hon’ble Appellate Tribunal of Electricity (APTEL), New Delhi, which are pending adjudication.

Petitioner’s Reply:

MPPMCL has strongly opposed the claim of O&M expenses for 400kV Dedicated Transmission Line and bay inclusion in loWC as it is misconceived and contrary to the provisions of Tariff Regulations, 2020.

The O&M expenses for the Dedicated Transmission Line are legitimate cost incurred by the Petitioner with regard to generation and supply of power to MPPMCL and such cost

are pass through in cost-plus tariff regime. Therefore, in terms of express mandate of Section 61 and 62 of the Act, it is statutory right of the Petitioner to recover such legitimate cost from MPPMCL through the tariff determined by this Hon'ble Commission. The reliance placed upon MPPMCL upon the previous rejection of claim of O&M expenses for dedicated transmission is irrelevant as each tariff year gives rise to a separate cause of action to the Petitioner and each claim is required to be determined in light of the extant regulatory and statutory framework. Furthermore, the orders rejected the claim of Petitioner has been challenged by way of Appeal under the Act before the Appellate Tribunal of Electricity, therefore, the orders relied by MPPMCL has not attained finality.

Observation:

The Commission has considered O&M expenses in accordance to provisions under the Regulations, 2020. Further, the issue of separate O&M of dedicated transmission line and bay is subjudice before Hon'ble Appellate Tribunals for Electricity in various Appeals filed by the petitioner.

MPPMCL Comment

In Para 11 (ii) of the Petition, the Petitioner has claimed Rs. 0.22 Crore towards capitalization of one number "C" type building. As submitted in foregoing paragraphs, this Additional Capital Expenditure cannot be allowed.

Petitioner's Reply:

The contents of Paragraph 20 of the Reply, being vague and unsubstantiated deserve only to be rejected. It is the case of the Petitioner that the additional capitalization for each item has been made out under the Regulation 27 read with Regulation 66. It is the case of the Petitioner that the originally three no's of C-Type buildings were planned (forming part of original scope of work) however, only 2 building were built. Further, in FY 21-22 the third building got capitalised and the Petitioner has incurred an additional capitalization amounting to Rs.0.22 Crore. This additional capitalization falls squarely under the Regulation 27.1 (v) read with Regulation 66 of the MPERC Regulations 2020.

Observation:

The additional capitalization has been examined by the Commission in accordance to the provisions under the Regulations, 2020, Annual Audited Accounts of the petitioner for FY 2021-22, Asset-cum-Depreciation Register for FY 2021-22, and other supplementary submissions filed by the petitioner and other documents placed on record by the petitioner.

MPPMCL Comment:

In Para 11 (ii) of the Petition, the Petitioner has claimed Rs. 0.22 Crore towards capitalization of one number “C” type building. As submitted in foregoing paragraphs, this Additional Capital Expenditure cannot be allowed.

In Para 11 (iii) of the Petition, the Petitioner has stated to have procured electromagnetic Flow Meter and Ultrasonic Flow Meter worth Rs. 0.08 Crore. These items do not appear to be part of original scope of work of the Project. Also, the sudden requirement of the said instruments/ equipment after 9 years of operation of the Project is without justification.

In Para 11 (iv) of the Petition, the Petitioner has stated to have incurred Rs. 0.24 Crore towards procurement of various types of pumps namely Seal Oil Pump, Hydraulic Pump, Dewatering Pump, Radial Piston Pump. The Petitioner has failed to provide any justification for procurement of these items after about 9 years of operation of the Project. The Petitioner has also not clarified as to whether these items were part of original scope of work of the Project or not.

In Para 11 (v) of the Petition, the Petitioner has stated to have incurred Rs. 0.52 Crore towards installation of FBT Scheme “for better efficiency” in transfer of load. This claim has been made on a very vague ground and without providing justification or disclosing whether the said Scheme was part of original scope of work of the Project.

In Para 11 (vi) of the Petition, the Petitioner has stated that during FY 2021-22, SCADA System worth Rs. 0.44 Crore and Rs. 0.14 Crore have been installed at Switchyard Control Room and DM Plant Control Room respectively. The Petitioner also has not indicated whether these systems were included in the original scope of work of the Project or not.

In Para 11 (vii) of the Petition, the Petitioner has stated that Rs. 0.39 Crore have been spent on OFC Cable network and procurement of new Server, which do not appear to be included in the original scope of work of the Project.

In Para 11 (viii) of the Petition, the Petitioner has stated that Rs. 0.04 Crore have been spent on procurement of certain tools and tackles. Any expenditure on these items cannot be allowed separately as the same is already covered under normative Operation and Maintenance Expenses allowed on per MW basis and the expenditure cannot be permitted to be capitalized.

In Para 11 (ix) of the Petition, the Petitioner has claimed an amount of Rs. 0.19 Crore stated to have been incurred for procurement of 8 numbers 420 KVA Lightening Arrestors said to have been required for protecting various installation from lightening strike. It is

highly surprising that the said installations were being operated without protection from lightening for such a long time i.e. almost 9 years and how the clearance from Electrical Inspector was obtained for operating the Power Plant. This Hon'ble Commission may like to seek further information on this claim.

In Para 11 (x) of the Petition, the Petitioner has again stated that Rs. 0.58 Crore have been spent on procurement of "other workshop equipment, tools, implements, furniture, fixtures, other office equipment, computer, computer peripherals. The Petitioner has not indicated whether these items are part of original scope of work of the Project or whether they are replacement for old equipment. This Hon'ble Commission may like to seek clarification from the Petitioner on this aspect.

In Para 11 (xi) of the Petition, the Petitioner has stated that Rs. 0.01 Crore have been incurred towards purchase of Security Cameras. This claim can only be allowed in terms of Regulation 28.1(d), which mandates that the said expenditure must have been incurred on account of need for higher security and safety of the plant as advised or directed by appropriate Government Agencies or statutory authorities responsible for national security/ internal security. This Hon'ble Commission may like to seek information from the Petitioner as to whether the said expenditure was incurred on the basis of advice or direction from appropriate Government Agencies or statutory authorities.

Petitioner's Reply

The contents of Paragraph 20 of the Reply, being vague and unsubstantiated deserve only to be rejected. It is the case of the Petitioner that the additional capitalization for each item has been made out under the Regulation 27 read with Regulation 66. It is the case of the Petitioner that the originally three no's of C-Type buildings were planned (forming part of original scope of work) however, only 2 building were built. Further, in FY 21-22 the third building got capitalised and the Petitioner has incurred an additional capitalization amounting to Rs.0.22 Crore. This additional capitalization falls squarely under the Regulation 27.1 (v) read with Regulation 66 of the MPERC Regulations 2020.

The contents of Paragraph 21 of the Reply, the contents being bereft of any merit and substance are denied. The procurement of electromagnetic Flow Meter and Ultrasonic Flow Meter was required by the Petitioner, for installing the same at Cooling Tower & Intake, which led to incurring of additional capitalization worth Rs. 0.08 Crore. The said additional capitalization comes under the purview of Regulation 27.1(vi) and 27.2(a) read with Regulation 66 of the MPERC Regulations 2020.

The contents of Paragraph 22 of the Reply, save and except what is a matter of record, are denied in totality. MPPMCL is put to strict proof with regard to its submissions that the

Petitioner has not clarified if items form part of original scope of work. Contrary to the submissions of the MPPMCL, it is humbly submitted that a sum tantamount to Rs.0.24 Crore was incurred by the Petitioner towards various pumps namely Seal Oil Pump, Hydraulic Pump, Dewatering Pump, Radial Piston Pump for the purposes of Boiler Maintenance Department, Turbine Maintenance Department, Mechanical workshop, Coal Handling Plant. The Additional Capitalization is squarely accommodated in the 'Other Equipment's broad head that were all meant to achieve better efficiency and is ruled by Regulation 27.1(vi), 27.2 (a) read with Regulation 66 of the MPERC Regulations 2020.

The contents of Paragraph 23 of the Reply are hereby denied for being vague and meritless. It is the case of the Petitioner that additional capitalization amounting to 0.52 Crore regarding the installation of FBT Scheme for transfer of load at BUS, Micro Processor was meant to achieve better efficiency and to avoid any unwarranted tripping of unit while shifting the load.

Contents of Paragraph 24 and 29 of the Reply are hereby denied for being vague and meritless. It is submitted that the claim for additional capitalization on account of procuring and installing SCADA System at the Switch Yard Control room (amounting to Rs. 0.44 Cr) and Security camera is for the purpose of enhancing the security and safety of the plant and efficient monitoring/operation. It is submitted that the expense under question has been rightly claimed under Regulation 27.1(c) of the MPERC Regulations 2020.

The contents of Para 25 of the Reply, save and except what is a matter of record, are denied. The sum of Rs. 0.39 crore spent on OFC Cable network and procurement of new Server, form part of original scope of work of the Project and is rightly claimed under Regulation 27 read with Regulation 66 of Tariff Regulations, 2020 as this entire expense has been incurred to ensure smooth and efficient operation.

The contents of Paragraph 26 of the Reply are denied for false and incorrect. It is submitted that expenditure has been incurred for procurement of tools for the purpose of lifting of material at Boiler Maintenance Department, Turbine Maintenance Department, Mechanical Workshop and Coal Handling Plant. It is incorrect for MPPMCL to contend that expenditure under question is covered under the Normative O&M expenses, therefore cannot be claimed separately. In terms of Regulation 39.1 and 2, the normative O&M expenses would only include the cost components for employee's expenses, repair and maintenance expenses and administrative expenses. Whereas the expenditure under question has been incurred for better functioning of the Power Plant.

With respect to Para 27 of the Reply, save and except what is a matter of record, the contents of the paragraph are denied. The additional capitalization amount of Rs. 019 Cr,

incurred for procurement of 6 numbers 420 KVA Lightning Arresters, has been rightly claimed under the broad head of Switch Yard, as part of the original scope of work. This claim is squarely covered by Regulation 27(c) read with Regulation 66 of the MPERC Regulations 2020. These arresters were installed in order to ensure safety and security not only of plant premises but also of the human lives.

With respect to Para 28 of the Reply, save and except what is a matter of record, the contents of the paragraph are denied. It is being clarified that the expenditure incurred towards other workshop equipment, tools, implements, furniture, fixture and other office equipment forms part of the original scope of work.

Observation:

The additional capitalization towards additional loop line has been examined by the Commission in accordance to the provisions under the Regulations, 2020, Annual Audited Accounts of the petitioner for FY 2021-22, Asset-cum-Depreciation Register for FY 2021-22, and other supplementary submissions filed by the petitioner and other documents placed on record by the petitioner.

MPPMCL Comment:

In Para 12 and 13 of the Petition, the Petitioner has stated that it has decapitalized assets worth Rs. 94,13,028/- for FY 2021-22. In Annexure-1 (at Page No. 30 to 36) a list of assets de-capitalised during FY 2021-22 has been given. From the said List following is observed –

- (i.) At Sl. Nos. 3 to 11 of the List and at 50 to 54 items named as “Airconditioning (For Hotel) – Exhaust Air Fan” and “Airconditioning (For Hotel) – Air Conditioner” respectively, have been shown at total value of Rs. 5,78,184/-. It is humbly requested that the Petitioner may be directed to explain why the said Airconditioning Equipment presumably installed and used at certain “Hotel” have been sought to be decapitalized as assets of the Project.
- (ii.) The amounts indicated against various assets proposed to be decapitalized appear to be their “original costs”. Regulation 37.9 of the Regulations, 2020 provides that cumulative depreciation recovered in tariff by the decapitalized asset during its useful services. The relevant part of the Regulation is extracted below for ready reference :

“37.9 In case of de-capitalization of assets in respect of generating station or unit thereof, the cumulative depreciation shall be adjusted by taking into account the depreciation recovered in tariff by the de-capitalized asset during its useful services”

- (iii.) In view of above it is prayed that the decapitalization of the assets may be considered only in accordance with the provisions of 2020 Tariff Regulations and for the assets which are installed and used in the Project for Generation of Power.

Petitioner's Reply:

The contents of paragraph 30 to 31 are denied in toto. Before taking liberty to counter the contention of the Respondent 1 we would humbly like to submit that due to an inadvertent error, in the list of de-capitalized assets 'Guest House' got replaced with 'Hotel'. The said Guest Houses were built to cater the requirement of visitors/consultants/any other guests.

Further, we would also like to submit that these assets (capitalised earlier and duly approved by this Hon'ble Commission) has become obsolete and needs to be de-capitalised from the books of accounts. It is also submitted that while de-capitalising these assets which are used only for this specific project, cumulative depreciation has been considered which is evident from TPS 5B, TPS 5M, TPS 11 & TPS 12 of the instant petition. The contents of Paragraph 32 to 34 are denied for being false and misleading. It is submitted that the objection under question has already been addressed in Paragraph 9 above, therefore, the same is not being repeated herein for sake of brevity.

Observation:

De-capitalisation of assets has been considered in accordance with the provisions under the Regulations, 2020, Asset-cum Depreciations Register and Annual Audited Accounts of FY 2021-22.

MPPMCL Comment:

Details of claim of Electricity Duty, Development Cess and Water charges have not been given in the Petition. It is humbly prayed that this Hon'ble Commission may kindly direct the Petitioner to give the said details for scrutiny.

It is also to submit that as per Ministry of Environment, Forest and Climate Change (MoEFCC) Notification dated 07.12.2015, Thermal power plants have to meet specific water consumption up to Maximum of 3.5 m³/MWh. Accordingly, the water requirement as per actual generation of power and as per the norms prescribed by MoEFCC may only be allowed.

Petitioner's Reply:

With reference to Para 37 & 38 of the Reply, the contents of the same are hereby denied. It is humbly submitted that this Hon'ble Commission vide its order dated 30.04.2021 passed in Petition 44 of 2021 has already granted liberty to the Petitioner to recover Electricity Duty and Energy Development Cess on plant auxiliary consumption and energy supplied to MPPMCL and water Charges paid to Water Resources Department, GoMP as per Regulation 65.2 of the Tariff Regulations, 2020.

With regard to the ED & ED Cess and Water Charges, it is humbly submitted that Petitioner have been regularly submitting all the details in the office of MPPMCL as details are the integral part of the 'bills of reimbursement' which contains the payment challans, detailed calculation of total amount paid and amount reimbursable from MPPMCL. A summarised statement (ED & ED Cess) is annexed for ready reference along with the differential amount to be claimed from the Respondent.

In fact, in this connection, we would like to bring in kind notice that in line with MPERC Tariff Regulation, 2020 ED & ED Cess is payable to generator on Normative Parameters subject to True Up.

Excerpt of the MPERC Tariff Regulation, 2020 is reproduced below for your ready reference.

“Regulation, 65.2 Electricity duty, cess and water charges if payable by the Generating Company for generation of electricity from the power stations to the State Government, shall be considered and allowed by the Commission separately by considering normative parameters specified in these Regulations and shall be trued-up on actuals:”

By plain reading of the above Regulation, it is clear that Generator is entitled to claim the ED & ED Cess considering the Normative Parameters subject to true up. In other words, Generator shall continue to claim on Normative Parameters, and during the proceedings of True up, if it is found that Actual Parameters differs from the Normative Parameter (whether on higher or lower side) differential amount shall be claimed by either party (Generator/Procurer).

On contrary to above, MPPMCL vide its letter dated: 10/12/2020 have instructed the Petitioner to claim considering the “whichever is lower” theory, meaning thereby Generator is forced to claim from MPPMCL on Normative Parameter or Actual Parameter whichever is lower. In this regard, Hon’ble Commission is very humbly prayed to issue a specific direction to the Respondent No.1 to reimburse the ED & ED Cess on actual basis in strict observance of the MPERC, Tariff Regulations, 2020.

Save and except what is part of record, the content of Paragraph 39 is denied. It is submitted that JBTPP has been adhering all the specified norms specified. With regard to payment of Water Charges is concerned, it is submitted that Concerned Authority raises bill on monthly basis on JBTPP which is duly paid by the JBTPP. Accordingly, along with the bill of concerned authority and payment proof thereof, JBTPP raises bill on MPPMCL for reimbursement purpose. Respondent always reimburses such charges on the basis of such documentary evidences. Therefore, this Commission may allow the claim of Petitioner directly from the Respondent on submission of documentary evidence i.e. bill of concerned authority and payment proof thereof.

Observation:

The statutory charges have been considered in accordance with Regulation 65 of the Regulations, 2020.

MPPMCL Comment:

It is also submitted that Regulation 56 of 2020 Generation Tariff regulations provides for sharing of any gains due to variation in norms on the basis of Controllable Parameters. It is therefore prayed that this Commission may graciously be pleased to direct the Petitioner to provide necessary month-wise details of actual parameters to arrive at any gain/ loss on account of controllable parameters and share the gains due to variation in normative parameters with the Answering Respondents.

Petitioner's Reply:

In response to Paragraph 40 and 41, it is submitted that Petitioner has already submitted the said information before this Hon'ble Commission in response to Letter No. MPERC/D(T)/2022/2639 dated 20/12/2022. However, the same is attached herewith again for ready reference as Annexure 3.

Observation:

Petitioner has provided necessary month-wise details of actual parameters to arrive at any gain/ loss on account of controllable parameters in its additional submission.

Annexure-II

Petitioner's Response on the comments offered by the Stakeholder along with the observations:

Stakeholder Comment

1. This power plant has added the surplus power in MP and causing huge loss to Power Discoms and hence is against public interest.
2. The company is making losses and not paying any dividends to its shareholders as per Section 123 of Companies Act 2013, but claiming return on equity, which is meant to pay dividends to shareholders as per APTEL Order. Hence it is collected illegally.
3. The end use of money collected through ROE is unknown, while it should be kept in separate bank account, as per Section 124 of Companies Act 2013.
4. The clause 4.1 of Para IV of Petition says that nominated agency by Govt of MP will have first right to purchase 30% power of installed capacity, after the tariff is decided by Commission. APTEL also decided that regarding MOUs signed between Govt of MP and Reliance Power Ltd that nominated agency can refuse to take 30% power, after Hon'ble Commission decide the tariff. Hence, MPPMCL and other Respondents are not bound to purchase the 30% power after Commission decided the tariff.
5. Hence, tariff order passed by Commission is not binding on MPPMCL and other Respondents to buy 30% power and pay backwardation charges, if electricity is not purchased.
6. This company and others are not keeping required stock of coal as per CEA Guidelines, but claiming Backwardation charges without maintaining coal stock as per CEA guidelines.
7. Thermal power plant can not run less than 55% plant capacity as per CERC study paper. Hence, it is not known the status of plant running when backwardation charges are being paid by procurers.
8. The cost per MW of this plant is very high on which, the tariff is being demanded by Company, while SBI is ready to sell this plant at much cheaper valuation on MW basis.
9. Since, this power plant is making losses, the rate of interest charged by lenders are also very high, which is being recovered from procurers which is against public interest

Petitioner's Reply:

It is submitted that the objection raised by JPCFT to the instant True-up Petition does not require any consideration and are liable to be rejected for being beyond the scope of the instant proceedings.

8.1 For the purpose of considering the objections raised by JPCFT, it would be relevant to consider the scope of a True-up proceedings. Regulation 9 of Tariff Regulations, 2020

providing the methodology or determination of Tariff and Truing-up is reproduced below for ease of reference:

“9. Methodology for Determination of Tariff and Truing up

9.4 A generating company shall file a petition at the beginning of the Tariff period. A review shall be undertaken by the Commission to scrutinize and true up the Tariff on the basis of the capital expenditure and additional capital expenditure actually incurred in the Year for which the true-up is being requested. The generating company shall submit for the purpose of truing up, details of capital expenditure and additional capital expenditure incurred for each year of the period from 01.04.2019 to 31.03.2024, duly audited and certified by auditors.

9.8 The generating company shall submit for the purpose of truing up, details of actual capital expenditure and additional capital expenditure incurred for the period from 01.04.2019 to 31.03.2024, duly audited and certified by the auditor on year to year basis.

9.9 Where after the truing up, the tariff recovered exceeds the tariff approved by the Commission under these Regulations, the generating company shall refund to the beneficiaries the excess amount so recovered as specified in Regulation 9.11 of these Regulations.

9.10 Where after the truing up, the tariff recovered is less than the tariff approved by the Commission under these Regulations; the generating company shall recover from the beneficiaries the under-recovered amount as specified in Regulation 9.11 of these Regulations.

9.11 After truing up, if the tariff already recovered exceeds or falls short of the tariff approved by the Commission under these Regulations, the generating company shall refund to or recover from, the beneficiaries, the excess or shortfall amount along with simple interest at the rate equal to the bank rate as on 1st April of the respective years of the tariff period in six equal monthly instalments.

[Emphasis Added]

8.2 On a reading of Regulation 9, it is evident that scope of truing up proceedings is limited to the adjustment of actual income and expenditure for the corresponding period of determination of tariff. Therefore, the truing up exercise is carried out in order to fill the gap between the actual expenses at the end of the year and the anticipated expenses in the beginning of the year.

8.3 The objections raised by JPCFT that (i) Implementation Agreements and PPA signed with Petitioner are in violation of Act; (ii) Power Plant in question has added the surplus power in Madhya Pradesh and causing huge loss to Power DISCOMs, therefore, is against the public interest; (iii) Petitioner is making losses and not paying dividend to its shareholders; (iv) non-compliance of Section 124 of the Companies Act, 2013; (v) Petitioner is not maintaining required stock of Coal as per Central Electricity Authority Guidelines; (vi) Cost per MW of this plant is very high; (vii) on account of losses being

incurred by the Petitioner, higher rate of interest is being charged by the lenders, does not require any consideration by this Hon'ble Commission while adjudicating the instant Petition.

I. PARAWISE REPLY

- 2. The contents of paragraph 1 are denied for being false and misleading. JPCFT is put to strict proof with regard to the vague submissions as made in the paragraph under question. The present petition has been filed by the Petitioner for a very specific purpose, which is for seeking a True-up of Tariff for FY 2021-22, therefore, the objection raised does not required any consideration for adjudication of the relief sought by the Petitioner. Further, it is relevant to clarify that any prior submissions made prior to filing of the subject petition by the Petitioner cannot be applied or taken into consideration for the purposes of adjudication of the claims.*
- 3. The contents of Paragraph 2 are denied for being false and misleading. It is submitted that question raised by JPCFT concerning the surplus power being generated in station of Madhya Pradesh is not relevant and is beyond the scope of True-up proceedings.*
- 4. The contents of Paragraphs 3 and 4 are denied for being misleading. It is submitted that the objector has vaguely referred to an order passed by Hon'ble Appellate Tribunal for Electricity, however, it has failed to provide any details of the order/Judgment in support of its statement. It is denied that the money collected through RoE is to be kept in the separate bank account. It is submitted that Section 124 of the Companies Act, 2013 relates to the unpaid dividend of the company, therefore, the same cannot be relate to the RoE as granted in favour of a Generating Company in a true-up proceedings.*
- 5. The contents of Paragraph 5 are denied for being without any merit and not supported by any documents, therefore, on this ground alone, the objection does not require any consideration from this Commission.*
- 6. The contents of Paragraph 6 are denied for being contrary to the documents placed on record. The contents of Paragraph 7 are denied for being irrelevant and do not require any consideration while adjudicating the instant petition. It is submitted that JPCGT cannot make submission on behalf of State Bank of India and same are liable to be rejected for want of any document to that effect.*
- 7. The contents of Paragraph 8 are denied for being false and misleading. It would be relevant to mention that Plant under question has recorded a profit of Rs 47,12,692 (Rupees Forty-Seven Lacs, Twelve Thousand, Six Hundred and Ninety-Two) for FY 2021-22 which is evident from the Balance sheet placed on record, therefore, it is incorrect for JPCFT to contend that on account of losses on part of Plant under question, high interest rate is being charged by the lenders.
In light of the above submissions, the objections/comments raised by the JPCFT deserve to be rejected.*

Observation:

The comment does not pertain to subject true up petition.