

**MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION**  
5<sup>th</sup> Floor, "Metro Plaza", Bittan Market, Bhopal (M.P.) - 462 016



**Petition No. 13 of 2022**

**PRESENT:**

**S.P.S Parihar, Chairman**  
**Mukul Dhariwal, Member**  
**Gopal Srivastava, Member (Law)**

**IN THE MATTER OF:**

**True-up of Generation Tariff for 1x600 MW Unit (Phase-1) Coal Based Thermal Power Project at Barela-Gorakhpur, Dist. Seoni, (M.P.) determined by Madhya Pradesh Electricity Regulatory Commission for FY 2020-21 vide MYT Order dated 8<sup>th</sup> May' 2021 in Petition No 47 of 2020.**

**M/s. Jhabua Power Limited:**

**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 18<sup>th</sup> August' 2022)**

1. M/s. Jhabua Power Limited (hereinafter called "the petitioner") filed the subject petition for Truing-up of Generation Tariff for FY 2020-21 for its 1x600 MW coal based thermal power project at District Seoni, Madhya Pradesh, determined by the Madhya Pradesh Electricity Regulatory Commission (hereinafter called "the Commission" or 'MPERC") vide Multi Year Tariff (MYT) Order dated 8<sup>th</sup> May' 2021 in Petition No 47 of 2020.
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 FY 2019-20 to FY 2023-24 notified on 28<sup>th</sup> February' 2020.
3. Jhabua Power Project under the subject petition comprises of one generating unit of 600 MW capacity. The generating unit achieved Commercial Operation (CoD) on 3<sup>rd</sup> May' 2016.
4. The petitioner executed long term Power Purchase Agreement (PPA) on 5<sup>th</sup> January' 2011 with MP Power Management Company Ltd., (hereinafter called "MPPMCL" or "Respondent No. 1") for supply of 30% power from the petitioner's thermal power project at regulated tariff determined by the Commission.
5. The petitioner had earlier filed Petition No.47 of 2020 for determination of Multi Year Tariff for its generating station for the control period from FY 2019-20 to FY 2023-24 based on the MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020. Vide order dated 08<sup>th</sup> May' 2021 in the aforesaid petition, the Commission determined the multi-year tariff for the aforesaid generating unit of project subject to true-up based on the Annual Audited Accounts for the respective year.
6. In the aforesaid MYT order dated 8<sup>th</sup> May' 2021, following Annual Capacity (fixed) Charges for FY 2020-21 were determined by the Commission:

**Table 1: Annual Capacity (Fixed) Charges determined in MYT Order for FY 2020-21**

<b>Sr. No.</b>	<b>Particulars</b>	<b>Unit</b>	<b>Amount</b>
1	Return on Equity	Rs. Crore	153.14
2	Interest Charges on Loan	Rs. Crore	294.19
3	Depreciation	Rs. Crore	202.37
4	Interest on Working Capital	Rs. Crore	48.69
5	O & M Expenses	Rs. Crore	125.82
<b>6</b>	<b>Annual Capacity (fixed) Charges</b>	<b>Rs. Crore</b>	<b>824.22</b>

7	Less: Non-Tariff Income	Rs. Crore	0.11
8	Net AFC (after adjusting Non-Tariff Income)	Rs. Crore	824.11
<b>9</b>	<b>Annual Fixed Charges corresponding to 30% of the installed capacity of the Unit</b>	<b>Rs. Crore</b>	<b>247.23</b>

7. In the subject petition, the petitioner has sought true-up of Annual Capacity (fixed) Charges for FY 2020-21 in respect of the additional capital expenditure incurred during FY 2020-21 in accordance with Regulation 9.4 of MPERC (Terms and Conditions for Determination of Generation Tariff) 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 the additional capitalization of Rs 101.81 Crore on accrual basis and Rs. 99.03 Crore on cash basis during FY 2020-21. Based on the aforesaid additional capitalization of Rs 99.03 Crore on cash basis, the petitioner claimed the following Annual Capacity (fixed) Charges for the unit of Jhabua Thermal Power Station:

**Table 2: Annual Capacity Charges claimed in the petition for FY 2020-21:**

S. No.	Particulars	Unit	Amount
1	Return on Equity	Rs. Crore	155.27
2	Interest on Loan	Rs. Crore	298.38
3	Depreciation	Rs. Crore	207.12
4	Interest on Working Capital	Rs. Crore	49.91
5	O & M Expenses	Rs. Crore	125.82
6	Loss on Retirement of Assets	Rs. Crore	6.87
<b>7</b>	<b>Total Annual Capacity (Fixed) Charges</b>	<b>Rs. Crore</b>	<b>843.37</b>
8	Less:-Non Tariff Charges	Rs. Crore	0.01
<b>9</b>	<b>Net Annual Capacity (Fixed) Charges</b>	<b>Rs. Crore</b>	<b>843.36</b>
10	<b>Annual Fixed Charges corresponding to 30% of the installed capacity of the Unit</b>	<b>Rs. Crore</b>	<b>253.01</b>

9. The petitioner has filed a copy of the Annual Audited Accounts of Jhabua Thermal Power Plant as on 31<sup>st</sup> March' 2021 with the subject petition.

10. With the above submission, the petitioner prayed the following:
- (a) *Carry out the truing-up of tariff for the Project for the period from 01.04.2020 till 31.03.2021 and allow to recover the Gap amount along with carrying cost.*
  - (b) *Extend the Cut-Off date on account of uncontrollable factors till two (02) years after the resolution of the asset (Date of order of the National Company Law Tribunal, NCLT) keeping in view the extraordinary circumstances engulfing the Petitioner and the execution time required for completion & discharging of all the liabilities of the balance works.*
  - (c) *Approve the Additional Capital Expenditure of Rs. 99.03 Cr for FY 2020-21 in accordance with MPERC Tariff Regulations, 2020.*
  - (d) *Determine the Energy (Variable) charges to be paid by the Respondent No.1 for and on behalf of Government of Madhya Pradesh for the energy supplied under the PPA dated 27.06.2011 equivalent to 5% of net (ex-bus) energy generated;*
  - (e) *Allow to recover E.D., Water Charges and Cess on auxiliary power consumption and other taxes, if any, levied by the Statutory Authorities from the beneficiaries on submission of documentary evidence;*
  - (f) *Allow to recover the fees paid to the Commission and publication expenses from the beneficiaries on submission of documentary evidence.*
11. The petitioner has filed this petition for true up of FY 2020-21 based on Capital cost admitted by the Commission in Order dated 7<sup>th</sup> December' 2021 in petition No. 37 of 2021 regarding true-up for FY 2019-20 and in accordance with the principles laid down in the MPERC Tariff Regulations, 2020.
12. The subject petition has been examined by the Commission in accordance with the principles, methodology and norms specified in the MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020, Annual Audited Accounts 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 also examined the subject petition in light of the comments / suggestions offered by the Respondent No.1 and other stakeholder and response of the petitioner on the same.
13. In this true-up order, the Commission has considered opening figures of Gross Fixed Assets, Equity, Loan, Accumulated Depreciation as per the true-up order for FY 2019-20 in Petition No 37 of 2021 issued on 7<sup>th</sup> December' 2021.

## Procedural History

14. The subject petition was admitted in the motion hearing held on 12<sup>th</sup> April' 2022. Vide daily order dated 13<sup>th</sup> April' 2022, the petitioner was directed to serve copies of its petition to all Respondents in the matter. The Respondents were directed to file their response on the petition within three weeks. The petitioner was asked to file its rejoinder within two weeks, thereafter.
15. Vide Commission's letter dated 29<sup>th</sup> April' 2022, information gaps and requirement of additional information on preliminary scrutiny of the petition were communicated to the petitioner seeking its comprehensive reply by 20<sup>th</sup> May' 2022. By affidavit dated 19<sup>th</sup> May' 2022, the petitioner filed its reply to the issues communicated to it by the Commission.
16. Vide letter dated 17<sup>th</sup> May' 2022, Respondent No. 1 (MPPMCL) sought two weeks' time extension for filing response on the subject petition. By affidavit dated 31<sup>st</sup> May' 2022, the Respondent No. 1 filed its response on the subject petition.
17. By affidavit dated 13<sup>th</sup> June' 2022, the petitioner filed its rejoinder to the response/comments filed by the Respondent No.1. The petitioner's responses on each comment offered by the Respondent No.1 are mentioned in Annexure-I of this Order.
18. The public notice for inviting comments/ suggestions from stakeholders was published on 22<sup>nd</sup> May' 2022 in the following newspapers:
  - (i) Naya Duniya (Hindi), Gwalior,
  - (ii) Naya Duniya (Hindi), Bhopal,
  - (iii) Naya Duniya (Hindi), Jabalpur,
  - (iv) Naya duniya (Hindi), Indore,
  - (v) Times of India (English), Indore
  - (vi) Times of India (English), Bhopal
19. The comments/objections from only one stakeholder, namely, Justice for Public Cause Foundation Trust were received in this matter on 01<sup>st</sup> June' 2022. By affidavit dated 13<sup>th</sup> June' 2022, the petitioner filed its response on the comment offered by the stakeholder. The response of the petitioner on the comments/objections filed by the stakeholder along with observations is mentioned in Annexure II, annexed with this order.
20. The public hearing in the subject petition was held on 14<sup>th</sup> June' 2022 through video conferencing. The representatives of the petitioner and Respondent No. 1 participated in the public hearing. No stakeholder participated in the public hearing.

**Capital Cost as on 1<sup>st</sup> April' 2020****Petitioner's Submission:**

21. Regarding the capital cost of the project, the petitioner submitted that the Commission in last true-up order dated 7<sup>th</sup> December' 2021 has considered the closing capital cost of Rs. 3952.31 Crore as on the 31<sup>st</sup> March' 2020. The same capital cost has been considered by the petitioner as opening capital cost as on the 01<sup>st</sup> April' 2020 for the purpose of true-up of tariff for FY 2020-21 in the subject petition.

**Commission's Analysis:**

22. The petitioner has considered the opening capital cost as on the 1<sup>st</sup> April' 2020 as considered in Commission's tariff order dated 7<sup>th</sup> December' 2021 in true-up petition No. 37 of 2021 for FY 2019-20. The breakup of the capital cost admitted by the Commission as on 31<sup>st</sup> March' 2020 in aforesaid true-up order dated 7<sup>th</sup> December' 2021 is as given below:

**Table 3: Capital Cost considered as on the 31.03.2020****(Rs. in Crores)**

<b>Particulars</b>	<b>Amount</b>
Land and Site Development	55.48
Civil Works	201.75
Plant & Machinery	3679.93
Furniture & Fixtures	7.10
IT Equipments (Computers)	4.04
Office Equipments	3.80
Vehicles	0.21
<b>Total Capital cost considered</b>	<b>3952.31</b>

23. On scrutiny of the subject true-up petition, it was observed that, the Commission has been determining the tariff based on "Indian Generally Accepted Accounting Principles" (IGAAP), whereas, the Annual Audited Accounts prepared by the petitioner are based on the "Indian Accounting Standards (Ind. AS)" in compliance with the Companies Act, 2013. Therefore, vide letter dated 29<sup>th</sup> April' 2022, the petitioner was asked to file a detailed note explaining the difference in each item of the capital cost due to transition of accounting practices from IGAAP to Ind. AS along with the consequential impact of such changes on the tariff, if any.
24. By affidavit dated 19<sup>th</sup> May' 2022, the petitioner submitted that there is no difference in the financial statements prepared as per IGAAP vis-à-vis IND AS system. Therefore, there is no difference in the value of Gross Fixed Assets.
25. On further scrutiny of the subject petition, it was observed that the petitioner did not file Form TPS 5B regarding detailed break-up of capital cost along with the petition.

Therefore, vide letter dated 29<sup>th</sup> April' 2022, the petitioner was asked to file TPS form 5B with complete break-up of capital cost components as per original estimates (as per investment approval from BoD) and liability as on 31<sup>st</sup> March' 2021. The petitioner was also asked to file the variation in original estimate (as per investment approval) and the actual expenditure along with the detailed reasons for such variations, if any.

26. By affidavit dated 19<sup>th</sup> May' 2022, the petitioner filed item-wise reconciliation of the actual expenditure as on CoD vis-à-vis the additional capitalization incurred during FY 2020-21. The petitioner also filed form TPS 5B indicating component-wise break-up of all cost components in this regard.
27. In view of the above, the Commission has considered the closing GFA of Rs. 3952.31 Crore as considered in the last true-up order for FY 2019-20 as opening GFA as on 1<sup>st</sup> April' 2020 in this order. The Commission has also considered the closing balance of equity and loan admitted in last true-up order for FY 2019-20 as opening equity and loan in this order. The details of opening capital cost, equity and loan considered as on 1<sup>st</sup> April' 2020 are as given below:

**Table 4: Opening Figures as on 01.04.2020 considered in the order**

Opening GFA as on 01.04.2020	Opening Loan as on 01.04.2020	Opening Equity as on 01.04.2020
Rs 3952.31 Crore	Rs 2184.08 Crore	Rs 988.07 Crore

### **Additional Capitalization Petitioner's Submission**

28. In the subject true-up petition, the petitioner has claimed the additional capitalization of Rs 101.81 Crore on accrual basis (Rs 99.03 Crore on cash basis) during FY 2020-21. The breakup of additional capitalization claimed on accrual basis and cash basis by the petitioner is as given below:

**Table 5: Additional Capitalization claimed by the petitioner for FY 2020-21**

S. No	Particulars	Amount on (Accrual Basis) (Rs. Crore)	Amount on (Cash Basis) (Rs. Crore)
1	Railway Related Works	84.47	81.89
2	Spares LP Turbine and Replacement	15.15	15.02
3	Misc Mechanical & Electrical Works	0.55	0.29
4	Misc Civil Works	0.27	0.03
5	Roads & drainage	0.00	0.55
6	Furniture & computers	0.07	0.05
7	Ash Handling Plant/Ash Disposal	1.30	1.20
	<b>Total</b>	<b>101.81</b>	<b>99.03</b>

29. With regard to the additional capitalization claimed in the subject petition, the petitioner submitted the following:

*The detailed justification for the various major heads claimed under additional capitalization is as follows:*

i. *Railway Related works*

*A dedicated railway line was envisaged from Binaiki, which is the nearest take off point from the existing main railway line to JPL, for transportation of coal to the Plant from Binaiki Railway Siding. The total length of the line is approx. 2.5 km including the inside plant coverage and was envisaged in the original scope of works. Binaiki is an intermediate station between Jabalpur and Nainpur section and is at a distance of 66 Km from Jabalpur. The Jabalpur-Nainpur section was a narrow-gauge line and was proposed to be converted to broad gauge line by South East Central Railway (SECR). The conversion from narrow-gauge to broad gauge line was proposed by SECR in December 2011. However, it was executed by Railways in full-fledged manner from FY 2014-15 only.*

*Simultaneous to the above developments, JPL initiated the process for construction of dedicated line from July 2010 itself. However, there was a delay of around 3 years in obtaining the approval of Engineering Scale Plan (ESP). The details of the process delay have been submitted to the Commission in the past. Considering the above delay in getting approvals, the work of construction of dedicated private Railways siding was delayed. However, it was initially envisaged to be completed by January 2017 which was in line with the initial completion target of broad-gauge conversion works by South East Central Railways (SECR) of Jabalpur-Nainpur section. Since the estimated completion of works was beyond the CoD of the plant i.e., 03.05.2016, the petitioner was forced to arrange for the transportation of coal from the nearest railway siding which was connected through broad gauge. Initially it was Garha siding till the completion of broad-gauging between Jabalpur and Binaiki and then it was Binaiki.*

*The petitioner in the proceedings for determination of provisional tariff for the Plant had already submitted the above stated progress and the Commission in the provisional tariff order dated 06.09.2016 had allowed to consider the wt. average landed price of coal including the cost of road transport up to January 2017.*

*It is noted that the works for coal transportation through railways which is about 2.5 Kms from Binaiki to Plant is not yet completed due to the reasons attributable to the petitioner as the block was imposed by the Lenders on all capital expenditure*



since past eight months. Therefore, the higher transportation cost by alternate arrangement for transportation of coal through road is not considered in this order also for arriving at landed cost of coal for determining the energy charges. In view of aforesaid, the Commission has not considered the cost of Rs. 6.29 Crore incurred towards intermediate coal transportation arrangement which was not in the original scope of work also. Therefore, the amount of Rs. 6.29 Crore is deducted from the aforesaid additional capitalization of Rs. 258.35 Crore. Accordingly, the Commission has considered net Additional capitalization of Rs. 252.06 Crore during FY 2016-17. However, the petitioner shall be at liberty to claim the actual cost as and when incurred by the petitioner towards the capital works for coal transportation arrangement through railways of about 2.5 Kms from Binaiki to Plant in its true-up petition. The Commission may consider the same after exercising prudence check on such claim as per original scope of works.”

However, the Commission in the Order dated 30.11.2018 had not allowed the coal transportation cost by road for the stretch between the Binaiki siding and the plant. Aggrieved by the disallowance, the petitioner sought Review of the same and the Commission in its Order dated 27.12.2019 had allowed the Review and approved the petitioner to claim the equivalent rail transportation cost for the coal transported through the road. The relevant extracts of the Order dated 27.12.2019 are as follows:

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

*arrangement of coal transportation through rail is made by the petitioner between Binaiki and the plant.”*

*In the above proceedings for Review of the Order dated 30.11.2018, even the Respondent, MPPMCL had submitted that the finding and observations of the Commission in Para 89 of the Order dated 30.11.2018 are crystal clear implying that the Respondent, MPPMCL also acknowledges the necessity of rail transportation for the efficient and reliable functioning of the Petitioner’s Plant. The relevant extracts of the above referred Order dated 27.12.2019 are as follows:*

- “6.53 Review petitioner has quoted Para 89 of the Order Dated 30.11.2018 and stated that it is seeking only a short clarification on the aspect of liberty given by the Commission for claiming actual cost as and when incurred towards capital works for coal transportation arrangement through railways of about 2.5 Kms from Binaiki to Plant in its true-up petition.*
- 6.54 Review petitioner has further made prayer for allowing “hypothetical railway transportation charges” for 2.5 Kms stretch where it is actually being transported by road.*
- 6.55 It is submitted that this prayer of the Review petitioner is untenable in the present Review Petition, as on this aspect, no error apparent on the face of the records is demonstrated by the Review petitioner and it is not even a case for any clarification as the finding and observations of the Commission in Para 89 are crystal clear. Besides, the Review petitioner is praying for a relief of “hypothetical railway transportation charges” which are not permissible under any provision of the 2015 tariff regulations.”*

*From the above quoted relevant extracts, it is clear that the Commission and the Respondent, MPPMCL have time and again admitted that the execution of dedicated railway line from the plant till Binaiki Railway siding is an important and critical aspect of functioning of the petitioner’s Plant which shall help in running the plant in sustainable and economical manner. Further, the Commission in Para 89 of the Order dated 30.11.2018 had already granted liberty to the petitioner to approach the Commission for approval of the additional capitalization in this regard as and when incurred in the true up Petition.*

*With regard to the execution of the works, it is submitted that in the present case most of the cost related to balance works were committed and work had also started well before the cut-off date. However, the work got delayed on account of various uncontrollable factors as detailed above in Paras 6.9 to 6.40.*

The said dedicated railway line has been operational from **21.08.2020** and is utmost essential for the everyday operation of the Plant. It is submitted that the total cost incurred on account of the works is Rs. 84.47 Crore.

In view of the above, the petitioner claims the additional capitalization against the dedicated railway line under Regulation 26.1 (ii) of MPERC Tariff Regulations, 2020 since the works were deferred for execution and the Commission has, time and again, clearly indicated that the expenditure for the same shall be allowed as and when it is incurred. petitioner, therefore, requests the Commission to approve the same as claimed by the petitioner.

ii. Mandatory Spares

The mandatory spares amounting to Rs. 13.59 Crore pertains to the LP turbine free standing blades. These blades are part of the list of initial spares recommended by BHEL (OEM) to be maintained by any power station. The petitioner was unable to procure the complete set of this critical spare due to non-availability of funds. Therefore, the petitioner decided to buy only 02 nos. each of these types of blades and a Purchase order was placed on Siemens in July 2018. However, multiple cases of failure of these blades were reported in some of the contemporary units of similar size and make of LP Turbine viz. JP Bina, North Chennai and Lalitpur Power Generation Company Ltd. This had resulted in long outages and consequent huge generation loss for these power stations. Keeping in view the apprehensions all around, M/s Siemens (the principal designer of the turbo-generator set) even advised the stations to install Blade Vibration Monitoring System (BVMS) which monitors the development of cracks by measuring the blade tip vibrations and alerts the operator to go for an inspection after taking a shut down. The cost of such a system (approx. Rs 5 Cr) was very high. Besides, though the system is envisaged to help in early detection of the failure, the requirement of replacement of the blades cannot be avoided once a crack is detected. Keeping in view the genuine concern and in order to optimise the capex, as an alternative, it was decided to operate the turbine set under close observation and inspect the last stage blades during every annual overhaul by opening the LPT casing. At the same time, it was also decided to procure one complete set each of the various types of these blades urgently and keep them in stock so that they could be immediately replaced in case of detection of any abnormalities during the annual planned inspections. Accordingly, a Purchase Order was placed on M/s Siemens, India / Germany in February 2019. The Committee of Creditors (CoC) and the Interim Resolution Professional (IRP) were unwilling to commit any capex even for this critical item in view of the initiation of the insolvency resolution process in March 2019. However, after lot of discussions / persuasion with the RP and the COC, it

was finally agreed to procure these blades. Accordingly, an amended Purchase Order was placed in August 2020. Subsequently, the actual procurement got delayed due to non-agreement of payment terms between the supplier and the legal team of the RP. Finally, the blades could only be procured (imported from Germany) in the month of December, 2020. It is evident from the above that the reasons for delay in procurement of LPT Blade spares were completely beyond the control of the petitioner and was due to bottlenecks of the ongoing CIRP process.

It is submitted that these spares are very critical for plant operations and therefore it is submitted that the same should be allowed. It is further submitted that even after allowing the same the amount of spares shall be well within the limits specified in the MPERC Tariff Regulations, 2020.

An extension of cut-off date is therefore being sought in the above regard. Therefore, the same has been claimed under Regulation 26.1 (iii) of MPERC Tariff Regulations, 2020 and the petitioner requests the Commission to approve the same as claimed by the petitioner.

iii. Mandatory Spares (Replacement)

As submitted above, in FY 2020-21 there has been a decapitalization of Rs. 12.15 Crore on account of Spares which were no more usable and Spares amounting to Rs. 1.56 Crore have been procured in FY 2020-21 in order to replace the obsolete spares and the balance were used from the stores. It is pertinent to note that the life of all the assets of the plant and specifically the life of Spares is not commensurate with the life of the thermal plant i.e., 25 years owing to their wear and tear and timely replacement of these assets is necessary for reliable and efficient operation of the plant. Further, as the Commission vide approving the capital cost as on COD has allowed Rs. 3668.73 Cr out of the actual capital cost incurred of Rs. 4698.66 Cr hence, the petitioner has de-capitalised the assets in the same ratio and therefore has de-capitalised Rs. 9.49 Cr from the GFA.

Since, the above additional capitalization was majorly on account of replacement of obsolete assets, the same have been claimed under Regulation 27.2 (a) of MPERC Tariff Regulations, 2020.

Accordingly, the petitioner requests the Commission to approve the same as claimed by the petitioner.

iv. AHP and Miscellaneous Electrical, Mechanical and Civil works, Furniture and Computers

*It is submitted that some of the works which are essential for efficient operation of the Plant viz. AHP and Misc. Electrical, Mechanical & Civil works & Furniture and Computers amounting to Rs. 2.19 Crore which could not be completed before the cut-off date of the project owing to the uncontrollable factors as detailed in the earlier paras. Accordingly, the petitioner has completed the works during FY 2020-21 and requests the Commission to consider the same.*

*It is pertinent to note that out of the Rs.0.55 Crore (out of the above mentioned Rs. 2.19 Cr) claimed under Misc. Electrical and Mechanical, Rs.0.11 Crore pertains to procurement for containment of COVID-19 equipment which were necessary for the health of staff and uninterrupted supply of electricity during the tough times of the pandemic. Further, Rs. 0.28 Crore out of Rs. 0.55 Crore pertains to the additional capitalization on account of TG Building A row ventilation which is necessary for the ventilation of the TG operating floors, HT & LT switchgear rooms and cable galleries. Similarly, Rs. 0.18 Crore out of 0.27 Crore for Misc. civil works pertains to additional capitalization on account of Condensate Polishing Unit (CPU) final works which is very essential for maintaining the condensate water quality. This helps to avoid any deposit on the turbine blades for the efficient operation of the Plant and reduces the plant cycle makeup water.*

### **Provisions in Regulations**

30. Regarding additional capitalization within the original scope after the cut-off date, Regulation 27.1 of MPERC (Terms and Conditions for Determination of Generation Tariff) 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.*

### **Commission's Analysis**

31. The petitioner has filed the additional capitalization of Rs. 101.81 Crore on accrual basis however, the additional capitalization claimed in the subject petition on cash basis is Rs. 99.03 Crore. The petitioner has submitted detailed reasons for delay in execution of works claimed under additional capitalization.
32. The petitioner submitted that the additional capitalization claimed for FY 2020-21 is beyond the cut-off date of the project but under original scope of work of the project. Out of the total additional capitalization on accrual basis, assets of Rs. 84.47 Crore pertain to Railway Related works, Rs. 15.15 Crore pertains to Mandatory Spares, Rs. 0.55 Crore pertains to Misc Mechanical & Electrical Works, Rs 0.27 Crore pertains to Misc Civil Works, Rs 0.07 Crore pertains to Furniture & Computers and Rs 1.30 Crore pertains to Ash Handling Plant/Ash Disposal Works.
33. Vide Commission's letter dated 29<sup>th</sup> April' 2022, certain necessary details/documents related to additional capitalization claimed in the subject petition were sought from the petitioner and the petitioner was asked to file a comprehensive reply on various issues related to additional capitalization. By affidavit dated 19<sup>th</sup> May' 2022, petitioner filed its response on the issues raised by the Commission. The response of petitioner on all such issues is mentioned below:

### **Issues**

- i) **Whether the asset under additional capitalized claimed by the petitioner are under original scope of work. If so, all supporting documents establishing that the assets capitalized under original scope of work was to be filed. The petitioner was also required to explain that the addition of assets is on account of the reasons mentioned in Regulation 27.1 of the MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020.**

#### **Petitioner's Response:**

*The petitioner submits that the assets capitalized during the year FY 2020-21 are under original scope of work. It is submitted that the works for the additional capital expenditure claimed were already envisaged in the DPR, however, the same could*

not be completed within cut-off date owing to the uncontrollable reasons which is explained in detail in the Petition. With regard to the supporting documents, the petitioner submits that the works proposed under the Original Scope of Works are reflected in the DPR along with cost estimates.

With regard to the justification of addition of assets in light of MPERC Tariff Regulations, 2020, the petitioner submits that it has claimed the additional capitalization for FY 2020-21 under Regulation 26.1 of MPERC Tariff Regulations, 2020 instead of Regulation 27.1 as referred by the Commission. The Petitioner in the reply to point no. 5(a) above and in the Petition has submitted justification as to why the Petitioner has claimed the additional capitalization under Regulation 26.1 of MPERC Tariff Regulations, 2020 instead of Regulation 27.1. The Petitioner is not repeating the same for the sake of brevity

- ii) The petitioner was asked to file the information duly filled up in the prescribed format in respect of assets addition during the year.

Petitioner's Response:

The petitioner submits the information as per the format as follows:

**Table 6 Information regarding the additional capitalization claimed in FY 2020-21**

S. No	Particular	Asset Addition (Rs. Crore)	Detailed reasons of Asset Additions	Provision of Regulations under which Add. Cap is Filed	Reference of supporting documents
1	Railway Related Works	84.47	Deferred works under original scope of works which are essential, for Safety, reliability and smooth running of the Plant.	26.1 (ii)	Copies of the invoices are attached And Copies of Orders were already provided as Annexure 25 to the Petition.
2	Spares LP Turbine & Replacement	15.15	In line with the Regulation 25 of MPERC Tariff Regulations, 2020 which allows initial spares to be claimed at 4% of Plant & Machinery Cost of the Project.	26.1 (iii)	

<b>S. No</b>	<b>Particular</b>	<b>Asset Addition (Rs. Crore)</b>	<b>Detailed reasons of Asset Additions</b>	<b>Provision of Regulations under which Add. Cap is Filed</b>	<b>Reference of supporting documents</b>
3	Misc. Mechanical and Electrical Works	0.55	Deferred works under original scope of works which are essential are Safety, reliability and smooth running of the Plant.	26.1 (ii)	
4	Misc. Civil Works	0.27		26.1 (ii)	
5	Furniture and Computers	0.07		26.1 (ii)	
6	Ash Handling Plant/ Ash Disposal	1.30		26.1 (ii)	
	<b>Total</b>	<b>101.81</b>			

- iii) If the additional capitalization is claimed beyond the Original Scope of work, the petitioner was asked to explain whether the addition of asset is on account of the reasons mentioned in Regulation 28.1 of the MPERC Terms and Conditions for determination of Generation Tariff) Regulations, 2020.

Petitioner's Response:

The petitioner respectfully submits that all the works which are claimed under additional capitalization for FY 2020-21 are under Original Scope of Works as already submitted in the Petition and in this reply and no asset addition has been proposed on account of works which are new or beyond Original Scope of Works.

- iv) The petitioner was asked to file a list of the orders placed on different vendors for additional capitalization claimed in the petition along with date of order, price at which contract were awarded and anticipated date of completion of each work. If there is any delay in completion of works from contractor side, the details of penalty if any, imposed on the contractor be informed.

Petitioner's Response:

Copies of Purchase Orders to the extent placed on various suppliers/contractors for additional capitalization claimed in the Petition have already been attached as Annexure 25 to the Petition. The petitioner is not providing the same along with this reply for the sake of brevity. As regards to the details of penalty, the Petitioner submits that no penalty has been imposed by the Petitioner on any of the Contractors who were involved in the works claimed under the additional capitalization.



- v) **Whether the petitioner has taken due care in writing off the assets from the original cost in case of any expenditure on replacement of old asset.**

Petitioner's Response:

*The petitioner respectfully submits that due care has been taken in writing off the assets from the original cost in case of any expenditure on replacement of old asset.*

- vi) **Copy of the bills/invoices of all such assets under additional capitalisation etc. were sought.**

Petitioner's Response:

*The petitioner humbly submits that owing to the voluminous nature of Bills/Invoices, copies of Bills/Invoices of the assets above Rs. 10 Lakh and above only have been annexed as Annexure 3 in the above reply since the same amounts to more than 80% of the total claim of additional capitalization. Petitioner further submits that all the invoices against the total additional capitalization claimed in the Petition are available with the petitioner and same can be provided in case the same are required by the Commission. Accordingly, the petitioner requests the Commission to consider the same and approve the additional capitalization as claimed in the Petition.*

34. On perusal of the aforesaid petitioner's response on additional capitalization claimed in the subject petition, the Commission has observed the following:
- i. The petitioner has claimed additional capitalization on account of the reasons mentioned under Regulation 26.1 of the MPERC (Terms & Conditions for Determination of Generation Tariff) Regulations, 2020 which is applicable for the additional capitalization within the original scope of work and upto cut-off date. However, the assets under additional capitalization have been capitalized after the cut-off date of the project.
  - ii. The petitioner submitted that additional capitalization claimed is within the original scope of work of the project. The petitioner has filed Form TPS 5B mentioning the breakup of capital cost in accordance with the Original Scope of work approved by its Board of Director's (BOD).
  - iii. The petitioner further submitted that total actual project expenditure as on 31<sup>st</sup> March' 2021 is within the total amount of Rs 4950 Crore approved by its Board of Directors.
  - iv. The petitioner has filed copies of the bills/invoices, purchase orders placed on

various suppliers/contractors. The petitioner also filed reconciliation of the additional capitalization with the assets recorded in the Annual Audited Accounts for FY 2020-21.

35. By affidavit dated 31<sup>st</sup> May' 2022, Respondent No. 1 (MPPMCL) filed its response on the additional capitalization claimed in the subject petition, broadly mentioning the following:

*It is therefore prayed to reject all the claims of Additional Capitalisation made for FY 2020-21 in the present Petition under Regulation 26 of 2020 Tariff Regulations.*

***However, it is also submitted that Additional Capitalisation under certain specific heads, which are beyond Cut-Off Date of the Project, may only be considered under Regulation 27 of 2020 Tariff Regulations provided they are in original scope of work.***

*It is submitted that most of the claims of Additional Capital Expenditure for FY 2020-21 are not covered even under Regulation 27 of 2020 Tariff Regulations. Therefore, the claims of Additional Capital Expenditure not covered under any provision of 2020 Tariff Regulation may not be considered.*

*In Table 3 shown in Para 72 of the Petition, the petitioner has given Gross Fixed Asset (GFA) considered. Opening, Closing and Average GFA are indicated as Rs. 3,952.31 Crore, Rs. 4,041.84 Crore and Rs. 3,997.07 Crore respectively, considering claimed Additional Capital Expenditure of Rs. 101.81 Crore for FY 2020-21. In Para 6.74 the petitioner has indicated that in support of above, Fixed Asset Register has been attached as Annexure 24. However, in view of the submissions made in the foregoing paragraphs, no Additional Expenditure is admissible during FY 2020-21.*

*In Para 6.75 to 6.82 of the Petition, the petitioner has made vague averments regarding likely Capital Expenditure towards approach road to Intake Pump House. Admittedly, expense towards said work is "anticipated" after FY 2020-21. Since above information is not relevant in the present Petition for True-up of Additional Capitalisation for FY 2020-21, the same may be ignored.*

36. The Commission has examined additional capitalization claimed by the petitioner in light of the Annual Audited Accounts, Asset-cum-Depreciation Register for the project, original scope of work of the project and provisions for additional capitalisation under MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020. The Commission has also examined the claim of additional capitalization in light of the response filed by the Respondent No. 1 and reasons for delay in completion /

capitalization of assets along with other details and documents submitted by the petitioner.

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

37. On perusal of the Annual Audited Accounts and Assets-cum-Depreciation Register for FY 2020-21 filed by the petitioner, it was observed that the figures of capital cost and additional capitalization were at variance. Vide letter dated 29<sup>th</sup> April' 2022, the petitioner was asked to reconcile the Opening GFA, asset additions during the year and closing GFA claimed in the subject petition with the figures recorded in the Asset-cum-Depreciation Register and Annual Audited Accounts for FY 2020-21.

38. By affidavit dated 19<sup>th</sup> May' 2022, the petitioner submitted the following:

*The reconciliation of the figures recorded in the Assets-cum-Depreciation register (also referred as Fixed Asset register) along with figures recorded in Annual Audited Accounts is as follows:*

**Table 7 Reconciliation of figures in Annual Audited Accounts with Assets-cum-Depreciation Register (Rs in Crore)**

<b>Particular</b>	<b>Ref</b>	<b>Gross Block as on 01.04.2020</b>	<b>Acc. Dep. as on 01.04.2020</b>	<b>Addition during FY 2020-21</b>	<b>Dep. for FY 2020-21</b>	<b>Net Block as on 31.03.2021</b>
<i>As submitted in Fixed Asset Register</i>	A	4772.06	663.99	101.80	169.85	4030.01
<b>As Recorded in Annual Audited Accounts</b>						
<i>Tangible Assets (Schedule No. 3)</i>	B	4766.32	658.31	101.80	169.82	4029.98
<i>Intangible Assets (Schedule No. 5)</i>	C	5.73	5.68	-	0.03*	0.02
<b>Total</b>	<b>D=B+C</b>	<b>4772.05</b>	<b>663.98</b>	<b>101.80</b>	<b>169.85</b>	<b>4030.00</b>
<i>Difference</i>	A-D	0	0	0	0	0

\*Amortization charged for the year

*From the above, it can be observed that the figures recorded in Annual Audited Accounts are reconciled with the figures recorded in Assets-cum-Depreciation register.*

39. In view of the above, it is observed that the additional capitalization of Rs 101.81 Crore (on accrual basis) claimed in the subject petition have been capitalised in Annual Audited Accounts for FY 2020-21 and are recorded in the Asset-cum-Depreciation register of the project filed by the petitioner.

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

40. Regarding the original scope of works of the project, the petitioner submitted that the assets capitalized during FY 2020-21 are within the original scope of works of the project.
41. It is observed that the petitioner in its final tariff Petition No 28 of 2018 had submitted the Investment approval of Rs. 2909.89 Crore for 1 x 600 MW of the project initially accorded by its Board of Directors of the Jhabua Power Ltd at its meeting dated 01.07.2008 with the following breakup:

(Rs in Crore)

S. No.	Particulars	Project Cost as per DPR prepared in April 2009 as submitted by the petitioner
1	<b>Cost of Land &amp; Site Development</b>	<b>51.25</b>
2	<b>Boiler, Turbine, Generator (including spares):</b>	
	Plant & Equipment-BTG: Steam Generator Island	1292.92
	Initial spares	37.69
	<b>Sub-Total</b>	<b>1330.61</b>
3	<b>BOP Mechanical:</b>	
	BOP Mechanical (including Air compression system, firefighting system, cranes, DG sets, etc.)	135.00
	CHP	72.50
	MGR	80.00
	External Water Supply System	16.00
	Water Treatment Plant	30.50
	Induced Draft Cooling Tower	26.00
	<b>Sub-Total</b>	<b>360.00</b>
4	<b>BOP Electrical:</b>	
	BOP Electrical (including switchyard package, transformer package, switchgear package, cables, cable facilities & grounding, lighting, DC system, elevators, UPS system, fire detection system, ABT system, etc.)	130.80
	Transmission Line	36.00
	<b>Sub-Total</b>	<b>166.80</b>
5	Taxes and Duties on Plant & Equipments	218.47
	<b>Total Plant &amp; Equipment inclusive taxes</b>	<b>2075.88</b>
6	Total Civil inclusive Taxes	191.24
7	Total Construction & Pre- Commissioning Expenses	51.85
8	Total Overheads including design & engineering, audit & accounts and consultancy & professional charges	136.83
9	Capital cost excluding IDC & FC	2507.06
10	Interest During Construction (IDC) incl. financing charges	402.84
11	<b>Capital cost including IDC, FC, FERV &amp; Hedging Cost</b>	<b>2909.89</b>

42. Subsequently, on 10<sup>th</sup> March 2016, Board of Directors of the petitioner's company revised the investment approval for total estimated cost of Rs 4950 Crores as follows:

**Table 8: Revised project cost approved by BOD dated 10<sup>th</sup> March' 2016 (Rs Crore)**

Description	Revised Project Cost approved by BoD
Land & Site Development	70.00
Plant & Equipment-BTG, BOP & Civil Works	2,965.00
Initial spares	100.00
Total Overheads & pre-commissioning expenses	100.00
IDC, FC, FERV & Hedging Cost	1,435.00
Total Overheads	280.00
<b>TOTAL</b>	<b>4,950.00</b>

43. Therefore, the project cost for components like land and site development, plant and machinery, and civil works has been increased in the subsequent investment approval of Rs 4950 Crore.
44. The complete break-up with apportionment of each component of the project cost to phase-I of the unit as per CoD of the generating unit was made in the provisional tariff order dated 6<sup>th</sup> September' 2016 in Petition No. 16 of 2016. Following the same approach and methodology as in the preceding order, the following apportionment of capital cost components of the project as on CoD was considered by the Commission in the final tariff order in P No 28 of 2018:

**Table 9: Actual Capital Expenditure considered by Commission for Unit 1x600 MW as on CoD in final order of P No 28 of 2018: (Rs. Crore)**

Sr. No	Particulars	Amount Allocated to Phase I
1	Freehold Land & Rehabilitation & Site development	35.77
2	Leasehold Land	1.47
	<b>Total Land &amp; Site Development</b>	<b>37.24</b>
3	BTG and BOP (including package spares)	2198.52
4	Transmission Line	71.27
5	Railway Siding	0.81
	<b>Total plant &amp; Machinery</b>	<b>2270.60</b>
6	Building and Civil Works	134.70
7	Ash Dyke	24.83
	<b>Total Civil Works</b>	<b>159.53</b>
8	Pre-Operative and Pre-Commissioning Expenses (including Overheads)	214.40
9	Start-up Fuel (Net off infirm power)	74.04
10	IDC and Financing Charges	906.62
11	<b>Total</b>	<b>3662.42</b>

45. In view of the above, actual capital expenditure of Rs. 3662.42 Crore as on COD (3<sup>rd</sup> May' 2016) for Unit 1x600 MW was considered in Petition No 28 of 2018 for tariff determination. Additionally, the petitioner had paid past liability of Rs. 258.35 Crore during FY 2016–17. The same capitalization of Rs. 258.35 Crore had also been taken into consideration by the Commission during FY 2016–17. in accordance with Regulation 20.1 of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015.
46. Details of the capital cost admitted by the Commission as on 31.03.2020 vis-à-vis capital cost approved by the Board of Directors of the petitioner's company are as under:

**Table 10: Capital Cost admitted by the Commission upto 31.3.2020 (Rs in Crore)**

<b>Particulars</b>	<b>Capital Cost revised on 10<sup>th</sup> March' 2016</b>	<b>Capital Cost as on COD allowed by Commission in P No 28 of 2018</b>	<b>Additions allowed in FY 2017-18</b>	<b>Additions allowed in FY 2018-19</b>	<b>Additions allowed in FY 2019-20</b>	<b>Total Capital Cost as on 31<sup>st</sup> March' 2020</b>
Land and Site Development	70.00	37.24	-	0.20	-	37.44
Plant & machinery	3065.00	2270.60	6.53	16.57	0.13	2,293.83
Civil Works		159.53	6.28	1.81	-	167.62
Construction and Pre Commissioning Expenses	100.00	74.04	-	-	-	74.04
Overheads	280.00	214.40	-	-	-	214.40
Interest during construction	1435.00	906.62	-	-	-	906.62
	<b>4950.00</b>	<b>3662.42</b>	<b>12.81</b>	<b>18.59</b>	<b>0.13</b>	<b>3,693.95</b>

47. In view of above, it is observed that all the components such as land and site development, plant & machinery and civil works as on 31<sup>st</sup> March' 2020 have not gone beyond the project cost of Rs 4950 Crore and are within the original scope of work and there is still a considerable amount left in each of the components under original scope of work of Rs 4950 Crore.
48. It is clear from the above that the capital cost has not exceeded the original scope of work till date. Total capital expenditure for plant & machinery and civil works as on 31<sup>st</sup> March' 2021 filed by the petitioner is within the expenditure in this head under the estimated capital expenditure of Rs. 4950 Crore approved by the BoD dated 10<sup>th</sup> March' 2016 and as considered in final tariff Petition No 28 of 2018.

### C. Cut-off Date

49. Regarding the Cut-off date of the project, Regulation 4.1 (I) of the MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015 provides as under:

*‘Cut-off Date’ means 31<sup>st</sup> March’ of the year closing after two years of the year of commercial operation of whole or part of the project, and in case the whole or part of the project is declared under commercial operation in the last quarter of a year, the cut- off date shall be 31<sup>st</sup> March of the year closing after three years of the year of commercial operation:*

50. The generating unit of Jhabua Thermal Power Project under subject petition achieved CoD on 3<sup>rd</sup> May’ 2016, therefore, the cut of date of the project is 31<sup>st</sup> March 2019 in accordance with the above provision under Regulations 2015. Accordingly, the additional capitalization claimed by the petitioner in the subject petition is beyond the cut-off date.
51. In the subject true-up petition, the petitioner claimed additional capitalization under Regulation 26.1 of the MPERC Tariff Regulations, 2020, which is applicable on asset additions within the original scope of works and up to cut-off date. The petitioner has also requested to extend the cut-off date of the project exercising inherent Power to Relax under Regulation 66.
52. Earlier, the petitioner had approached the Commission through Petition No. 19 of 2019 seeking extension of cut-off date by a period of 2 years. Vide Order dated 30<sup>th</sup> May’ 2019 in the subject matter the Commission disposed of the aforesaid Petition with the following observations:

*“7. From the aforesaid provisions under MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2015, it is observed that for considering the actual additional capitalization beyond cut-off date of the project, detailed examination of actual capital expenditure of each work beyond cut-off date and the reasons for delay in capitalization of all such works beyond cut-off date shall be required by the Commission in terms of Regulation 4.1(I) and 20.2 of MPERC Tariff Regulations, 2015. Hence, the subject petition cannot be examined and decided by the Commission at this stage. Therefore, the petitioner is directed to approach the Commission with actual additional capitalization of all works beyond cut-off date as per the Annual Audited Accounts along with all details and documents in terms of aforesaid Regulations while filing the true-up petition for respective financial year.”*

53. Vide letter dated 29<sup>th</sup> April' 2022, the petitioner was asked to explain as to why the works claimed under additional capitalization were not completed till cut-off date of the project. The petitioner was also asked to explain detailed reasons for delay in completion of major works claimed as additional capitalization in the subject petition.

54. By affidavit dated 19<sup>th</sup> May' 2022, the petitioner submitted that:

*The petitioner respectfully submits that the works claimed under additional capitalisation for FY 2020-21 pertains to the works included under original scope of work and the same could not be completed before the cut-off date of the project as per MPERC Tariff Regulations, 2015 i.e., March 31, 2019 on account of various restricting factors which were beyond the control of the petitioner. The detailed reasons for delay in completion of the works claimed under additional capitalization were already submitted in the Petition (Para 6.5 to Para 6.46) along with supporting documents (Annexure 3 to Annexure 18 to the filed Petition). The referred submissions of the Petition are not repeated in this reply for the sake of brevity. However, the petitioner reiterates the summary of the uncontrollable reasons leading to delay in completion of the additional capitalization works for the ready reference of the Commission as follows:*

1. *Non-payment of its dues by the Respondent itself (MPPMCL) unabatedly for 12 months between October 2016 to September 2017 and in October'17 only 35% of the total outstanding payment was received.*
2. *Unilateral adjustment of Rs. 83 Crore against Liquidated Damages including GST & Penalty thereon (due to delay in COD) from the monthly invoices though the Respondent didn't suffer any loss due to the delay in COD as evident from 3% scheduling thereafter. Disallowance of IDC on the same account, penalised the Petitioner twice for the same delay which is squarely against the principle of natural justice. In fact, MPPMCL has saved on the fixed cost dues due to the delay in COD.*
3. *On account of non-payment/delayed payment, irrational deductions as brought out in (1) and (2) above, the Project was declared Stressed/NPA.*
4. *Implementation of the RBI Circular dated 12<sup>th</sup> February 2018 & Initiation of the CIRP proceedings as per IBC leading to no financial control over capital expenditure.*
5. *Reluctance on the part of the Lenders not to release a sum of Rs 30 Cr against the dues of a capex creditor resulting in the Petitioner getting admitted to the Corporate Insolvency Resolution Process (CIRP) as per Insolvency and Bankruptcy Code (IBC), 2016.*

*As regards to the provisions under which the aforesaid additional capitalization has been claimed, considering that the above works though being part of Original Scope*



*of Work, were deferred for execution due to uncontrollable reasons, the Petitioner seeks extension of cut-off date in view of the uncontrollable nature of the reasons which restricted the petitioner from completing the works within the original cut-off date. Accordingly, they have been claimed under Regulation 26.1 of MPERC Tariff Regulations, 2020.*

55. Respondent No. 1 in its response has submitted that, the petitioner's own incompetence and mismanagement of the Project implementation resulted in spilling over of work of the Project beyond Cut-Off Date, consequent financial problems and lost trust of the Lenders, which ultimately culminated in initiation of Insolvency Proceedings against the petitioner under IBC.
56. The Commission has observed that there is no provision under MPERC (Terms and Conditions for determination of generation tariff) Regulations, 2020 for extension of cut-off date of the project. However, there are provisions under Regulation 27.1 of the Tariff Regulations, 2020 for consideration of additional capitalization post cut-off date after exercising prudence check.

**D. Analysis of additional capitalization in light of the provisions under Regulations**

57. The petitioner filed the additional capitalization of Rs 99.03 Crore on cash basis under seven major heads i.e. Railway Related Works, Mandatory Spares, Mechanical & Electrical Works, Miscellaneous Civil Works, Roads & Drainage, Furniture & Computers and Ash Handling Plant. The additional capitalization under each of the aforesaid heads is discussed below in light of the provisions under the Tariff Regulations, 2020:

**Railway Related Works:**

58. The petitioner filed additional capitalization of Rs. 81.89 Crore on cash basis towards Railway Related works. The petitioner submitted that the aforesaid additional capitalization are deferred works under original scope of works which are essential for safety, reliability and smooth running of the Plant and covered under Regulation 26.1 (ii) of the Regulations, 2020.
59. Regarding Railway Related Works, the petitioner in the subject petition has submitted the following:

*A dedicated railway line was envisaged from Binaiki, which is the nearest take off point from the existing main railway line to JPL, for transportation of coal to the Plant from Binaiki Railway Siding. The total length of the line is approx. 2.5 km including the inside plant coverage and was envisaged in the original scope of works. Binaiki is an intermediate station between Jabalpur and Nainpur section and is at a distance*

of 66 km from Jabalpur. The Jabalpur-Nainpur section was a narrow-gauge line and was proposed to be converted to broad gauge line by South East Central Railway (SECR). The conversion from narrow-gauge to broad gauge line was proposed by SECR in December 2011. However, it was executed by Railways in full-fledged manner from FY 2014-15 only.

Simultaneous to the above developments, JPL initiated the process for construction of dedicated line from July 2010 itself. However, there was a delay of around 3 years in obtaining the approval of Engineering Scale Plan (ESP). Considering the above delay in getting approvals, the work of construction of dedicated private Railways siding was delayed. However, it was initially envisaged to be completed by January 2017 which was in line with the initial completion target of broad-gauge conversion works by South East Central Railways (SECR) of Jabalpur-Nainpur section. Since the estimated completion of works was beyond the CoD of the plant i.e., 03.05.2016, the petitioner was forced to arrange for the transportation of coal from the nearest railway siding which was connected through broad gauge. Initially it was Garha siding till the completion of broad-gauging between Jabalpur and Binaiki and then it was Binaiki.

The petitioner in the proceedings for determination of provisional tariff for the Plant had already submitted the above stated progress and the Commission in the Order for provisional tariff dated 06.09.2016 had allowed to consider the weighted average landed price of coal including the cost of road transportation up to January 2017.

The Commission in the Order dated 30.11.2018 for approval of capital cost and MYT for the period till FY 2018-19 had acknowledged the reasons for delay in execution of dedicated railway line and had directed that the petitioner to claim the actual cost as and when incurred in the true up Petition. However, the Commission in the Order dated 30.11.2018 had not allowed the coal transportation cost by road. Aggrieved by the disallowance, the petitioner sought Review of the same and the Commission in its Order dated 27.12.2019 had allowed the Review and approved the petitioner to claim the equivalent rail transportation cost for the coal transported through the road.

The Commission and the Respondent, MPPMCL have time and again admitted that the execution of dedicated railway line from the plant till Binaiki Railway siding is an important and critical aspect of functioning of the petitioner's Plant which shall help in running the plant in sustainable and economical manner. With regard to the execution of the works, it is submitted that in the present case most of the cost related to balance works were committed and work had also started well before the cut-off date. However, the work got delayed on account of various uncontrollable factors as

*detailed in paras 6.9 to 6.40 of the petition. The said dedicated railway line has been operational from 21.08.2020. Hence, the petitioner claims the additional capitalization against the dedicated railway line under Regulation 26.1 (ii) of MPERC Tariff Regulations, 2020 since the works were deferred for execution.*

**Commission's Observations:**

60. From the contents in subject petition and the additional submission filed by petitioner regarding delay in execution and capitalization of works related to dedicated railway line, the Commission has observed the following:
- i. Generating unit of M/s Jhabua Power Limited was declared under commercial operation on 3<sup>rd</sup> May' 2016 and as per Regulation 4.1 (I) of Tariff Regulations, 2015, its cut-off date was 31<sup>st</sup> March' 2019.
  - ii. Due to financial crises, the petitioner failed to make interest payments and loan repayments to financial creditors. The Lenders in MoM dated 23<sup>rd</sup> June' 2017 has classified Jhabua Power's account under SMA-2 (Special Mention Accounts) category as per the RBI Guidelines due to default in payment beyond 90 days. Further, in December 2017, the petitioner's lead banker invoked the pledge on 60 percent shares of the petitioner's company.
  - iii. After that, the petitioner's plant was completely under the financial control of the lenders, and thus operational control was no longer with the petitioner's management, because all Opex and capex expenditures had to be approved by the lenders.
  - iv. In the interim period, considering the stressed financial position, the lenders did not allow petitioner to incur any capital expenditure until and unless such expenditure was extremely critical for operation of the plant. Meanwhile, petitioner made efforts to explain the lender to release fund for necessary capex works but no financial approval received from the lenders.
  - v. Further, in compliance of RBI Circular dated 12<sup>th</sup> February 2018 with regard to timelines for classification of assets, the lenders classified the Project as a Non-Performing Asset (NPA).
  - vi. Subsequently, lenders stopped process of debt restructuring in line with the above RBI circular and initiated process of due-diligence for change of ownership. In Lenders' MoM dated 27<sup>th</sup> February 2018 and 22<sup>nd</sup> March' 2018, it was decided to go ahead with the process of Management change of the petitioner's plant with an intent to implement a resolution plan within 6 months from Reference date (i.e. 01.03.2018) to comply with RBI Circular.
  - vii. Following the petitioner's default in debt payment obligations, lenders made the

decision to halt all capital expenditures/payments that were necessary to complete the remaining project works and clearing outstanding liabilities. This action was conducted under the presumption that new management would determine required capital expenditure post resolution.

- viii. The petitioner informed that it was persistently asking the consortium lenders to approve capital expenditures, at least for railway siding related works, from operational cash flows to increase the reliability of the coal supply which would significantly lower the cost of fuel once it was delivered, and reduce coal loss in transit during road transportation.
- ix. Vide letter dated July 30<sup>th</sup> 2018, petitioner approached the lead banker (Axis bank) for allowing the capital expenditure towards railway works. The petitioner in its letter informed the lenders that MoEF and Railway Ministry is following up with JPL for completion of siding work by December' 2018, failing which the siding might get cancelled. The petitioner also informed that non-completion of railways siding due to lack of fund release will lead to shut down of the plant operations for considerable period of time.
- x. In August 2018, the lenders formally acknowledged the situation and consented to only permit restricted capital expenditures for the Railway Siding. The payment for railway siding expenditure work was approved by the lender vide letter dated 3<sup>rd</sup> August' 2018. The lenders communicated the petitioner that no creditor payments shall be allowed and only payment towards additional capital expenditure for railway siding works will be considered.
- xi. However, all already awarded contracts for supply and execution of railway siding-related works had to be renegotiated and re-ordered as a result of the long delay, which further prolonged execution of the works. The petitioner has provided the sample copy of purchase orders with the petition.
- xii. Meanwhile, one of the capex creditor, M/s FL Smidth (supplier of the coal handling plant), filed a request before the NCLT, Kolkata, for recovery of a portion of its debts. Despite petitioner's repeated pleas, the bankers (who had assumed full financial control of the petitioner's company after the pledge was invoked in December' 2017) refused to make necessary payments to the creditor, FL Smidth,
- xiii. As per the aforementioned NCLT Order on March 27, 2019, Ms. Sonu Jain was designated as the Interim Resolution Professional (IRP). The Interim Resolution Professional's (IRP) tenure and mandate were constrained by the Insolvency & Bankruptcy Code, 2016, until the creation of the Committee of Creditors (COC). No significant capex expenditures were permitted because of the short IRP term. CoC was established on 26<sup>th</sup> June' 2019, and Mr. Abhilash Lal was named the RP on

24<sup>th</sup> July' 2019.

xiv. The petitioner submitted that its plant is still under Insolvency proceedings. It is contended by him that restriction on funding by new statutory regime for capital expenditures is enough of a reason to permit additional capitalization after the original cut-off date. With the aforesaid submission, the petitioner has requested the Commission to allow the aforesaid request because the petitioner has repeatedly informed the Commission of the uncontrollable delays.

61. The petitioner in the petition has submitted the following uncontrollable factors for delay in carrying out the capital expenditure:

- (a) Non-payment by the Respondent (MPPMCL) against monthly invoices of bills for a period of 12 months (between October 2016 and September 2017) due to which monthly outstanding payments continued to accumulate around Rs. 100 Cr. In October' 2017 only 35% of the total outstanding payment was released.
- (b) Further, Respondent adjusted approx. Rs 83 Cr. Liquidated Damages (LD) along with GST & Penalty thereon (due to delay in COD). LD of Rs 68 Crore due to non-availability of power as per provisions under PPA and Rs 15 Crore towards GST from the monthly invoices.
- (c) Unilateral adjustment of Rs 83 Cr against Liquidated Damages, including GST and Penalty thereon, from the monthly invoices, despite the fact that the Respondent did not incur any loss as a result of the COD delay. The disallowance of IDC on the same ground punished the petitioner twice for the same delay, directly violating the natural justice principle. In fact, because of the delay in COD, MPPMCL has saved on the fixed cost obligations.
- (d) MPPMCL scheduled very less power for FY 2016-17 and FY 2017-18 and the overall schedule was as low as 3% for FY 2016-17 due to low system demand. Further, The Respondent is yet to execute the Supplementary Agreement for technical minimum schedule.
- (e) Due to low rate in the power exchange (average IEX price was less than Rs 2/kWh at the plant ex-bus), it was impossible for the petitioner to sustain on-bar operation and on certain occasions could not be available to honor the flimsy 10 MW schedules of the Respondent.
- (f) As the consequence of non-payments by the Respondent, the petitioner defaulted on interest payment & Loan repayment to financial creditors in FY 2016-17.

- (g) Implementation of the RBI Circular from 12<sup>th</sup> February, 2018 and the start of CIRP procedures in accordance with IBC, resulting in entire suspension of capital spending.
62. The petitioner submitted that due to above reasons and non-payments by the Respondent, the petitioner came under absolute financial stress and defaulted on repayments to the Lenders. As a result, complete financial and operational control of the petitioner's company came under Lenders control. The petitioner further stated that the lenders did not allow petitioner to incur any capital expenditure considering the stressed financial position unless such expenditure was extremely critical for operation of the plant.
63. In response to the non-payment of revenue amount, MPPMCL has submitted that the allegation of the petitioner to the Respondent is incorrect. MPPMCL stated that out of total amount of Rs. 746.87 Crore billed by the petitioner from April 2016 till February 2019, the Respondents has made payment of Rs. 647.34 crore which is about 86.33 % of the billed amount. MPPMCL submitted that petitioner's own incompetence and mismanagement of the Project implementation has resulted in spilling over of work of its Project beyond Cut-Off Date.
64. It is observed that the petitioner is under the Insolvency and Bankruptcy Code, 2016 ("I&BC") Proceedings with effect from 27<sup>th</sup> March, 2019, which has restricted petitioner's ability to fund capital expenditure. The petitioner submitted that being subjected to a new statutory regime that restricts capital expenditure, is a sufficient reason to allow additional capitalisation beyond the original cut-off date. The petitioner has requested to allow the expenditure towards railway related works since it has repeatedly informed the Commission about the status and reasons of uncontrollable delays in executing the above railway siding related works in all previous petitions.
65. On consideration of the facts and records placed before the Commission by the petitioner, the Commission observed that the petitioner has claimed this expenditure under Regulation 26.1 (ii) of the Regulations, 2020 which provides to allow only those additional capitalization works which have been incurred before the cut-off date while cut-off date of petitioner's plant was 31<sup>st</sup> March' 2019. So, deadline for cut-off date was already passed. Hence, this additional capitalization needs to be examined under Regulation 27.1 of the Tariff Regulations, 2020 which allow only those expenditure which have been incurred beyond the cut-off date and are within the original scope of works. Regulation 27.1 of the Tariff 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:*

*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;*

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

66. It is observed that completion/execution of dedicated railway line from plant till Binaiki Railway siding was necessary for running the plant in economical manner and also for smooth operation of the plant. It is also noted that petitioner has been informing the Commission about the delays in executing the railway related works in earlier tariff/true-up petitions.

67. It is also noted that earlier, the petitioner had filed petition No. 28 of 2018 for determination of final tariff of the project. In the aforesaid petition, the petitioner had submitted the status of railway siding related works. Vide Order dated 30.11.2018, the Commission had determined the final tariff of the project. With regard to works related to railway siding, the Commission had mentioned the following:

*“The petitioner has incurred Rs. 6.29 Crore during FY 2016-17 towards intermediate coal transportation arrangement however, the aforesaid work was not in the original scope of work. It is also observed that the aforesaid work is an interim arrangement for the last mile road transportation till completion of the railway line works by the petitioner.*

*The Commission had not considered the cost of road transportation of coal beyond January’ 2017, while determining the energy charges in its last Order dated 6<sup>th</sup> September’ 2016 for determination of provisional tariff. It is noted that the works for coal transportation through railways which is about 2.5 Kms from Binaiki to Plant is*

not yet completed due to the reasons attributable to the petitioner as the block was imposed by the Lenders on all capital expenditure since past eight months. Therefore, the higher transportation cost by alternate arrangement for transportation of coal through road is not considered in this order also for arriving at landed cost of coal for determining the energy charges. In view of aforesaid, the Commission has not considered the cost of Rs. 6.29 Crore incurred towards intermediate coal transportation arrangement which was not in the original scope of work also. Therefore, the amount of Rs. 6.29 Crore is deducted from the aforesaid additional capitalization of Rs. 258.35 Crore. Accordingly, the Commission has considered net Additional capitalization of Rs. 252.06 Crore during FY 2016-17. **However, the petitioner shall be at liberty to claim the actual cost as and when incurred by the petitioner towards the capital works for coal transportation arrangement through railways of about 2.5 Kms from Binaiki to Plant in its true-up petition. The Commission may consider the same after exercising prudence check on such claim as per original scope of works."**

68. In view of all the foregoing facts and backgrounds related to Railway Siding works in previous tariff/true up orders in this matter, the Commission has considered capitalization of the expenditure towards railway related works which is within the original scope of works. However, the Commission is of the view that the work towards railway related works claimed by the petitioner as on March 31, 2021, should have completed by cut-off date, i.e., 31<sup>st</sup> March, 2019. Therefore, impact of inflation due to two years delay should not be passed on to the procurer/consumers. Hence, the expenditure of Rs 81.89 Crore has been reduced by the escalation factor of 3.01% of WPI from FY 2018-19 to FY 2020-21 as given below:

**Table 11: Amount allowed towards railway related works in this order**

Fiscal Year	Analysis
WPI for FY 2018-19	119.8
WPI for FY 2020-21	123.4
Percentage Increase in WPI	$(123.4-119.8)/119.8= 3.01\%$
Amount Claimed for railway works in FY 2020-21	Rs 81.89 Cr
Amount reduction by applying escalation factor of 3.01%	Rs 2.46 Cr
<b>Amount as on March' 2019 allowed in this order</b>	<b>Rs 79.43 Cr</b>

*(Data of WPI taken from website of Office of Economic Advisory)*

69. Therefore, on examining the additional capitalization towards Railway Siding claimed in the petition in light of Commission's observations in previous tariff / true-up petitions, necessity of Railway Siding for the project and the reasons for delay in execution of this work, the Commission has observed that the aforesaid additional capitalization towards railway related works of Rs. 79.43 Crore is under the original scope of works but beyond



the cut-off date of the project. However, delay is not completely attributable to the petitioner and this work was necessary for smooth operations of the plant. Therefore, the Commission has allowed aforesaid capitalisation of the expenditure of the railway siding related works after the cut-off date under Regulation 27.1 (vi) of the Regulations, 2020.

70. The relaxation granted in the present case will not be quoted as precedent in any of the future cases as each is to be considered and decided on its own merits.

### **AHP/Ash Disposal**

71. The petitioner has claimed Rs 1.20 Crore on account of Ash Handling Plant/Ash Disposal under additional capitalization on cash basis. The petitioner submitted that the aforesaid works claimed under deferred works under original scope of works are essential for safety, reliability and smooth running of the Plant. The petitioner has claimed the aforesaid additional capitalization under Regulation 26.1 (ii) of the Tariff Regulations 2020.
72. On examination of the aforesaid claim of Rs 1.20 Crore, it is observed that the works are related to Ash Handling Plant. These works are under the original scope of works of the project but beyond the cut-off date of the Project. The aforesaid additional capitalization work is covered under Regulation 27.1 (iii) of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020, which provides that the deferred works relating to ash pond or ash handling system including ash transportation facility in the original scope of work and beyond the cut-off date may be admitted by the Commission, subject to prudence check. Therefore, looking to the necessity of the work, the additional capitalization of Rs. 1.20 Crores on cash basis towards AHP Works is considered under Regulation 27.1 (iii) in this order.

### **Initial Spares**

73. The petitioner filed additional capitalization of Rs. 15.02 Crore on cash basis towards mandatory spares for the project.
74. Vide letter dated 29<sup>th</sup> April' 2022, the petitioner was asked to file details of mandatory capital spares till 31<sup>st</sup> March' 2020 considered by the Commission. The petitioner was also asked to justify its claim towards mandatory spares in light of the Regulation 25 the Tariff Regulations, 2020.
75. By affidavit dated 19<sup>th</sup> May' 2022, the petitioner submitted following:

The petitioner submits that the Commission has allowed a total of Rs. 38.63 Crore towards mandatory spares till 31.03.2020. A summary of the mandatory spares approved by the Commission till March 31, 2020 is as follows:

**Details of initial mandatory capital spares approved till 31<sup>st</sup> March 2020**

S. No	Particular/Description	Amount in Rs. Crore	Remark
1	Mandatory initial spares approved in Order dated November 30, 2018	23.54	The approved initial spares of Rs. 23.54 Crore consists of Rs. 9.01 Crore towards initial spares as on CoD and Rs. 14.53 Crore towards initial spares procured after CoD during FY 2016-17
2	Mandatory initial spares approved in Order dated January 5, 2021.	15.09	The approved initial spares of Rs. 15.09 Crore consists of Rs. 8.46 Crore which were pertaining to FY 2017-18 and Rs. 6.63 Crore pertaining to FY 2018-19
3	Mandatory initial spares approved in Order dated December 7, 2021.	0.00	Commission has not approved the claim of petitioner on account of mandatory spares amounting to Rs. 9.66 Crore pertaining to FY 2019-20.
<b>Total</b>		<b>38.63</b>	

With regard to the justification of claim of mandatory initial spares for FY 2020-21, the petitioner submits that Regulation 25 of MPERC Tariff Regulations, 2020 provides as follows:

**“25. Initial Spares:**

25.1 Initial spares shall be capitalized as a percentage of the Plant and Machinery cost, subject to following ceiling norms:

- (a) **Coal-based thermal generating stations - 4.0%**
- (b) Hydro generating stations including pumped storage hydro generating system – 4.0%

Provided that the, Plant and Machinery cost shall be considered as the original project cost excluding IDC, IEDC, Land Cost and cost of civil works. The generating company for the purpose of estimating Plant and Machinery Cost, shall submit the break-up of head-wise IDC and IEDC in its tariff application”

It is submitted that considering the Plant and Machinery cost as approved by the Commission vide its Order dated 30.11.2018 i.e., as on CoD of Rs. 2269.78 Crore and the ceiling limit as per the above Regulations works out to Rs. 90.79 Crore and the petitioner’s claim till March 31, 2021 including the approved mandatory initial spares workout to be only Rs. 53.78 Crore (2.37%). Therefore, the initial spares claimed by the petitioner in FY 2020-21 along with earlier approved spares is well

*within the ceiling limit specified in Regulation 25 of MPERC Tariff Regulations, 2020. The petitioner therefore requests Commission to approve the same.*

76. The petitioner submitted that out of the total additional capitalization, an amount of Rs. 15.02 Crore is on account of capitalization of the initial / mandatory spares during FY 2020-21 claimed in accordance with Regulation 26.1 (ii) of the Regulations, 2020. The petitioner further submitted that the total expenditure on initial spares is within the prescribed limit of 4% of the plant and machinery cost of the project in accordance with Regulation 25 of the Regulations, 2020. It is observed that the aforesaid assets are under the original scope of works but beyond the cut-off date of the project therefore, not covered under the Regulation 27.1, hence not considered in this Order.

### **Roads & Drainage**

77. The petitioner submitted that out of the total additional capitalization, an amount of Rs. 0.55 Crore is on account of capitalization of the roads and drainage works during FY 2020-21 on cash basis in accordance with Regulation 26.1 (ii) of the Regulations, 2020 and has been executed after the cut-off date. It is observed that the aforesaid works are under the original scope of works but capitalized beyond the cut-off date of the project therefore, not covered under any provisions under MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2020, hence not considered in this order.

### **Furniture & Computers**

78. The petitioner has claimed Rs. 0.05 Crore under additional capitalization on cash basis during FY 2020-21 towards Furniture & Computers. The petitioner submitted that this expenditure incurred during FY 2020-21 on cash basis in accordance with Regulation 26.1 (ii) of the Regulations, 2020. On perusal of the above submission, it is observed that the aforesaid assets of Rs 0.05 Crore capitalized after cut-off date of the project therefore, not covered under the scope of the Regulations, hence, not considered in this Order.

### **Miscellaneous Mechanical & Electrical Works**

79. The petitioner submitted that out of the total additional capitalization, an amount of Rs. 0.29 Crore is on account of capitalization of miscellaneous mechanical & electrical works during FY 2020-21 on cash basis in accordance with Regulation 26.1 (ii) of the Regulations, 2020. The petitioner further submitted that the aforesaid works were deferred works and under the original scope of works of the project which are essential for safety, reliability and smooth running of the Plant.

80. On perusal of the above submission of petitioner, it is observed that the additional capitalization of Rs 0.29 Crore capitalized after cut-off date of the project therefore, not covered under the MPERC (Terms and Conditions for determination of generation tariff) Regulations, 2020 and it is beyond the scope of the Regulations, hence, not considered in this Order.

### **Miscellaneous Civil Works**

81. The petitioner has claimed additional capitalization of Rs. 0.03 Crore (on cash basis) during FY 2020-21 towards Misc Civil Works under Regulation 26.1 (ii) of the Regulations, 2020. It is observed that the aforesaid works are under the original scope of works but beyond the cut-off date of the project hence, not covered under the MPERC (Terms and Conditions for determination of generation tariff) Regulations, 2020.

### **Write-off/ Adjustment of Assets:**

82. With respect to de-capitalisation of assets of Rs 9.49 Crore, the petitioner in the subject petition submitted that:

*As submitted above, in FY 2020-21 there has been a de-capitalization of Rs. 12.15 Crore on account of Spares which were no more usable and Spares amounting to Rs. 1.56 Crore have been procured in FY 2020-21 in order to replace the obsolete spares and the balance were used from the stores. It is pertinent to note that the life of all the assets of the plant and specifically the life of Spares is not commensurate with the life of the thermal plant i.e., 25 years owing to their wear and tear and timely replacement of these assets is necessary for reliable and efficient operation of the plant. Further, as the Commission vide approving the capital cost as on COD has allowed Rs. 3668.73 Cr out of the actual capital cost incurred of Rs. 4698.66 Cr hence the petitioner has de-capitalised the assets in the same ratio and therefore has de-capitalised Rs. 9.49 Cr from the GFA.*

83. On scrutiny of the details regarding write-off/ de-capitalization filed by the petitioner, the Commission has observed that the assets of Rs. 9.49 Crore (the petitioner has de-capitalised the assets in the ratio same as the capital cost approved at the time of COD) have been de-capitalized in the Annual Audited Accounts and recorded in Asset-cum-Depreciation register of the project. Therefore, the Commission has considered de-capitalization of Rs. 9.49 Crore during FY 2020-21 in this order. With regard to the funding of write-off/ de-capitalization of assets, the Commission has considered the same normative Debt:Equity ratio as considered in final tariff order in P No 28 of 2018 issued on 30<sup>th</sup> November' 2018. Therefore, the equity and loan component of de-capitalized assets are reduced accordingly.

**Additional Capitalization and De-capitalization Considered in this order:**

84. In view of the above, out of total additional capitalization of Rs. 99.03 Crore claimed, the Commission has considered additional capitalization of Rs. 1.20 Crore towards Ash handling plant and Rs 79.43 Crore towards railway related works during FY 2020-21 in this order. In view of the above, the details of additional capitalization considered during FY 2020-21 in this order are as given below:

**Table 12: Additions Capitalization Admitted in the Order (Rs. in Crore)**

Sr No	Name of Asset/works with specifications	Amount of assets Additions allowed
1	Railway Related Works	79.43
2	Ash Handling Plant/Ash Disposal	1.20

85. Component wise break-up of opening GFA as on 31<sup>st</sup> March' 2020 and closing GFA as on 31<sup>st</sup> March' 2021 considered by the Commission in this order are as given below..

**Table 13: Opening & Closing Capital Cost Considered in the order (Rs. in Crore)**

Particular	Opening GFA as on 01.04.2020	Asset Deletions allowed during FY 2020-21	Asset Additions allowed FY 2020-21	Closing GFA as on 31.03.2021
Land and site development	55.48	-	-	55.48
Civil Works	201.75	-	1.20	202.95
Plant & Machinery	3679.93	9.49	79.43	3749.87
Furniture & Fixture	7.10	-	-	7.10
IT Equipment	4.04	-	-	4.04
Office Equipments	3.80	-	-	3.80
Vehicles	0.21	-	-	0.21
<b>Total Capital Cost</b>	<b>3952.31</b>	<b>9.49</b>	<b>80.63</b>	<b>4023.45</b>

**DEBT –EQUITY RATIO****Petitioner's Submission:**

86. In para 7.2 of the subject petition, it is submitted that, the petitioner in terms of Regulation 33.5 of MPERC Tariff Regulations, 2020, has considered the debt-equity ratio of 70:30 for the actual additional capital expenditure incurred. Further, the additional capital expenditure has been funded through the operational cash flows as no external borrowings are being granted to the petitioner's company.

**Provision in Regulation:**

87. Regulation 33 of the MPERC (Terms and Conditions for Determination of Generation

Tariff) 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

88. Regarding opening balance of capital cost and funding, the Commission has considered closing figures of GFA, Equity and Loan as considered in true-up order dated 7<sup>th</sup> December' 2021 in Petition No 37/2021 as opening balance in this order as follows:

**Table 14: Opening Capital Cost and funding for FY 2020-21 (Rs Crore)**

Sr. No	Particular	Amount
1	Opening Capital Cost	3952.31
2	Opening Equity	988.07
3	Opening Loan	2184.08

89. With regard to funding of additional capitalisation, vide letter dated 29<sup>th</sup> April' 2022, the petitioner was asked to justify the funding of additional assets through the operational cash flows in light of the Annual Audited Accounts.
90. By affidavit dated 19<sup>th</sup> May' 2022, the petitioner submitted following response

*The petitioner submits that the additional capitalization made by the petitioner is funded from the operational cash flows as no external borrowings are being granted to the petitioner's company. The lenders/Committee of Creditors (CoC) who were holding the operational control since the company defaulted in loan payment obligations, were initially hesitant to allow JPL to initiate any capital expenditure works. However, with the petitioner's constant discussions with the lender's stressing the importance of the works (which were part of original scope of works) for safety and reliability of the plant, especially the Railway works, the lenders agreed in FY 2018-19 for the execution of the works with available resources of JPL. Accordingly, the petitioner funded the additional capitalization from the operational cash flows from FY 2018-19.*

*With regard to the justification of said additional capitalization in light of Annual Audited Accounts, the petitioner submits that from the Cash flow statement for the year ended March 31, 2021, it can be observed that the 'Net cash from operating activities' is a positive amount (of Rs. 209.15 Crore). This is indicated under "Cash Flow from Operating Activities" in Cash Flow Statement of Annual Audited Accounts and the amount has been generated during the year. Out of the above Rs. 209.15 Crore, Rs. 29.28 Crore has been invested during the year for purchase of Fixed Assets (including CWIP) indicated under "Cash flows from investing activities" in Cash Flow Statement of Annual Audited Accounts. Similarly, in the previous years ended March 31, 2020 and March 31, 2019 and preceding years, out of the positive*

cashflows generated from operating activities, considerable amount has been spent for purchase of Fixed Assets (including CWIP). The detail of Cash generated from operating activities and amount spent on Purchase of Fixed assets in last three years is as follows:

Year	Extracts as per Audited Annual Accounts	
	Cash generated from operating activities (Rs. Crore)	Purchase of Fixed Assets (including CWIP) (Rs. Crore)
FY 2018-19	108.21	60.31
FY 2019-20	110.2	39.01
FY 2020-21	209.15	29.28

Therefore, it is established from the Audited Accounts that the additional capitalization was funded from the cash flows generated by the company itself during this year & previous years. The amount for the works carried out and claimed under the additional capitalization like railway related works was being incurred in this year & previous years as well, however, the same could not be claimed from the Commission in the previous years as this amount was appearing as CWIP in the annual accounts.

The above explanation is further substantiated with the fact that there has been no increase in the Equity/Debt component indicating that no such infusion was availed to fund capital expenditure.

91. In view of the above submission and provisions under Regulation 33.1, the Commission has considered the Debt: Equity ratio of 70:30 for additional capitalization as considered by the petitioner. Further, the impact of write off/deletion of the assets of Rs. 9.49 Crore has been considered with corresponding reduction of Debt and Equity in the ratio of 75% and 25% respectively as submitted by the petitioner. The detail of additional capitalization & de-capitalization considered during the year and its corresponding Debt and Equity admitted by the Commission for FY 2020-21 in this order are as given below:

**Table 15: Additional Capitalization and Funding: (Rs. in Crore)**

Sr. No.	Particulars	Asset Addition and Source of Funding Admitted for FY 2020-21		
		Asset Addition	Loan Addition	Equity Addition
1	Additions during the year	80.63	56.44	24.19
2	Debt : Equity Ratio	<b>70:30</b>		
3	Deletions during the year	9.49	7.12	2.37
5	Debt:Equity Ratio	<b>75:25</b>		



### **Annual Capacity (fixed) Charges:**

92. Regulation 17 of the MPERC (Terms and Conditions for Determination of General Tariff) 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 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:**

93. While claiming the Return on Equity for FY 2020-21, the petitioner submitted that:

*The Opening Equity as on 01.04.2020 has been considered as Closing Equity as on 31.03.2020 as approved in the Order dated 07.12.2021. The petitioner has claimed return on equity on the average equity considering the equity infused to fund the additional capital expenditure incurred in FY 2020-21.*

*As submitted above, the petitioner has de-capitalized assets of Rs.9.49 Crore on which the petitioner has been allowed pro-rata accumulated depreciation of Rs. 1.67 Crore. It is submitted that all the assets pertaining to the de-capitalization of Rs. 12.15 Crore are related to Spares employed at the project and are capitalized on CoD of the Plant i.e., May 3, 2016. The Commission in Order dated November 30, 2018 had approved debt equity ratio of the Project as on CoD of the plant as 75:25. Accordingly, a reduction in equity of Rs. 2.37 Crore has been done in accordance with MPERC Tariff Regulations, 2020 which is corresponding to 25% of the entire de-capitalization amount.*

*Further, keeping in view that there was no tax liability in FY 2020-21 owing to losses incurred, the RoE has not been grossed up with the applicable Tax rates and has therefore been claimed RoE at 15.50% as per the above quoted Regulation for FY 2020-21 and as considered by the Commission in its MYT Order dated 08.05.2021.*

94. Accordingly, the petitioner claimed the Return on Equity for FY 2020-21 considering base rate of return @15.50% as given below:

**Table 16: Return on Equity claimed by the petitioner for FY 2020-21 (Rs Crore)**

<b>S. No</b>	<b>Particulars</b>	<b>Amount As claimed now</b>
1	Gross Opening Equity (Normal)	988.07
2	Less: Adjustment in Opening Equity	0.00
3	Adjustment during the year	0.00
4	Net Opening Equity (Normal)	988.07
5	Add: Increase in equity due to addition during the year/period	29.71
6	Less: Decrease due to De-capitalization during the year/period	2.37
7	Less: Decrease due to reversal during the year/period	0.00
8	Add: Increase due to discharges during the year/period	0.00
9	Net Closing Equity (Normal)	1015.41
10	Average Equity (Normal)	1001.74
11	Rate of RoE (%)	15.50%
<b>12</b>	<b>Total RoE</b>	<b>155.27</b>

**Provision in Regulations:**

95. Regarding the Return on Equity, Regulation 34 & 35 of MPERC (Terms and Conditions for Determination of Generation Tariff) 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. -----*

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 truing up, shall be allowed to be recovered or refunded to beneficiaries on year to year basis.*

**Commission's Analysis:**

96. Equity balance as on 31<sup>st</sup> March' 2020 as admitted by the Commission in the true-up order dated 7<sup>th</sup> December' 2021 for FY 2019-20 is considered as the base figure for opening equity balance as on 01<sup>st</sup> April' 2020 for the project. Further, the Commission has considered normative equity addition of Rs. 24.19 Crore during FY 2020-21 towards additional capitalization considered in this order which is in accordance with the provisions under Tariff Regulations, 2020. The Commission has also considered the reduction of equity of Rs. 2.37 Crore in respect of the assets de-capitalized during the year.
97. The petitioner has claimed Return on Equity on the base rate of return (15.50%) without considering any tax rate for grossing up the base rate during FY 2020-21, as it has not paid any Tax due to loss incurred by the petitioner's company.
98. Further, in compliance to Regulation 34.2, the petitioner by affidavit 16<sup>th</sup> October' 2021 submitted that its thermal power plant meets both the requirements. RGMO/FGMO was duly installed at the time of COD of the petitioner's project, i.e., the petitioner's project has been duly operating under RGMO / FGMO and the Project have been operating with the ramp rate of over 1% per minute.
99. Accordingly, the following Return on Equity for FY 2020-21 is worked out by applying the base rate of Return on Equity as given below:

**Table 17: Annual Return on Equity for FY 2020-21 worked out in this order**

Sr. No	Particular	Unit	FY 2020-21
1	Opening Equity as on 01.04.2020	Rs. Crore.	988.07
2	Equity reduction towards de-capitalized assets	Rs. Crore.	2.37
3	Equity addition during the year	Rs. Crore.	24.19
4	Closing Equity as on 31.03.2021	Rs. Crore.	1009.89
5	Average Equity	Rs. Crore.	998.98
6	Base rate of Return on Equity	%	15.50%
7	<b>Rate of Return on Equity</b>	<b>Rs Crore</b>	<b>154.84</b>

**b. Interest on loan capital:****Petitioner's Submission:**

100. In form TPS 5M of the petition, the petitioner submitted the break-up of opening loan balances, loan additions, loan deductions during the year, repayment during the year, closing balance of loan, weighted average rate of interest and interest on loan, as given

below:

**Table 18: Interest on Loan Claimed by the petitioner for FY 2020-21 (Rs Crore)**

<b>S. No</b>	<b>Particulars</b>	<b>Amount As claimed</b>
1	Gross Normative loan – Opening	2,964.25
2	Cumulative repayment of Normative Loan up to previous year	780.17
<b>3</b>	<b>Net Normative loan – Opening</b>	<b>2,184.08</b>
4	Add: Increase due to addition during the year/period	69.32
5	Less: Decrease due to de-capitalization during the year/period	5.45
6	Add: Increase due to discharges during the year/period	-
7	Less: Decrease due to reversal/repayment during the year/period	207.12
8	Net Normative loan – Closing	2040.84
9	Average Normative Loan	2,112.46
10	Weighted average Rate of Interest of actual Loans	14.12%
<b>11</b>	<b>Interest on Normative loan</b>	<b>298.38</b>

#### **Provision in Regulations:**

101. With regard to Interest on Loan Capital, Regulation 36 of MPERC (Terms and Conditions for Determination of Generation Tariff) 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:**

102. For determination of interest on term loan, closing loan balance as on 31<sup>st</sup> March' 2020 as admitted in the Commission's true-up order for FY 2019-20 issued on 7<sup>th</sup> December' 2021 is considered as the opening loan balance as on 1<sup>st</sup> April' 2020.
103. Further, the Commission has considered the normative loan addition of Rs. 56.44 Crore during FY 2020-21 towards additional capitalization considered in this order. The Commission has also considered the reduction of loan amount of Rs. 7.12 Crore in respect of the assets de-capitalized during the year.
104. With regard to weighted average rate of interest filed in the petition, vide letter dated 29<sup>th</sup> April' 2022, the petitioner was asked to file detailed computation of actual weighted average rate of interest during FY 2020-21 in excel along with supporting documents such as banker's certificates in respect of actual weighted average rate of interest claimed in the petition.
105. By affidavit dated 19<sup>th</sup> May' 2022, the petitioner broadly submitted the following:  
*The detailed computation for arriving at the lending agency wise weighted average rate of interest claimed has already been submitted by the petitioner in the Petition as Form TPS-13 as part of Annexure 1. With regard to the basis of weighted average rate of interest, the petitioner humbly submits that the weighted average rate of interest on term loan has been worked out as 14.12% in the Petition as per the last applicable interest rates levied by the Bankers excluding the penal interest. It is further submitted that Commission has in the past approved the same and it is requested that the same may be considered for FY 2020-21 as well.*
106. On perusal of the form TPS 13 filed with the petition it has been observed that repayment of loan during FY 2020-21 was nil. Hence, vide Commission's letter dated 29<sup>th</sup> April' 2022, the petitioner was asked to explain the reasons of default in repayment obligations by the petitioner to the lenders. The petitioner was also asked to

demonstrate/establish that the impact of default in repayment is not considered in the weighted average rate of interest claimed in the petition. The petitioner was further asked to confirm that while computing the weighted average interest on loan, interest on interest amount or any penalty amount is not a part of interest on loan amount.

107. By affidavit dated 19<sup>th</sup> May' 2022, the petitioner submitted the following reasons for default in repayment obligations to lenders:

*The petitioner submits the following reasons for default in repayment obligations to lenders:*

- a. *As on the date of commercial operation and up to November 2016, the operationalised PPAs summed up to less than 35% of the capacity (30% on Regulated Tariff basis plus 5% of net generation on variable charges basis) with MPPMCL. Post December'16, a PPA with KSEB of 115 MW got operationalised. However, there was extremely low scheduling (about 3%) from MPPMCL and very poor energy rates were being seen in the power exchange. In view of the above, the plant could achieve a meagre PLF of about 5% and generated a revenue of Rs. 288 Crore only for FY 2016-17. Denial of Fixed Cost by MPPMCL when the unit was off-bar even during the prolonged periods of "nil" scheduling and higher cost of generation as compared to the existing market price in Power Exchanges were the main reasons of intermittent plant operation resulting in low revenue, thus resulting in its failure to meet debt servicing obligations in June'2017 which subsequently led to initiation of CIRP (Corporate Insolvency Resolution process) on March 27, 2019 (reasons for such admission to CIRP are already explained in detail the Petition and are not reproduced here for the sake of brevity).*
- b. *Further, as the generator is under CIRP, thus it has not provided for interest on outstanding loans for FY 2020-21 & FY 2019-20 as the said period falls within the moratorium period as per NCLT order dated 27th Mar'19 (refer note 2.1A of financial statements).*

*As regards to the impact of default in repayment of loan and consideration of penalty in computation of weighted average rate of interest, the petitioner hereby submits that the Penalty amount/ interest on interest amount has not been considered while calculating the weighted average rate of interest for FY 2020-21. Therefore, the weighted average rate of interest claimed in the Petition is without any impact on account of default in repayment of loan by the petitioner. As regards to the affidavit confirming the same, it is submitted that weighted average rate of interest on loan claimed by the petitioner in the Petition i.e., 14.12% is the rate of interest as per the*

*last applicable interest rates levied by the Bankers excluding penal interest. It is further submitted that Commission has in the past approved the same and it is requested that the same may be considered for FY 2020-21 as well.*

108. On perusal of submissions made by the petitioner, it was observed that the petitioner has considered the applicable weighted average rate of interest same as considered in true up for past years. The petitioner by affidavit dated 19<sup>th</sup> May' 2022 has also confirmed that it has not considered any penalty/overdue amount in the interest amount and repayment filed in the petition and worked out the applicable weighted average rate of interest.
109. Accordingly, the petitioner filed the weighted average rate of interest of 14.12% on the basis of past year true up orders; since, the petitioner has not been able to repay any of the loans. Therefore, the Commission has considered the weighted average rate of interest as 14.12% for FY 2020-21 as filed by the petitioner. The repayment equivalent to depreciation during the year is considered as per the provision under the Tariff Regulations, 2020.
110. 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. 2184.08 Crore has been considered as per Order dated 7<sup>th</sup> December' 2021.
  - Loan addition of Rs. 56.44 Crore (70% of add-cap approved above) is considered.
  - Deduction / Adjustment of normative loan of Rs. 7.12 Crore (75% of written off approved above) is considered.
  - Annual repayment of loan equal to annual depreciation is considered.
  - Weighted average rate of interest @ 14.12% filed by the petitioner is considered.
111. Based on the above, the interest on loan is worked out as given below:

**Table 19: Annual Interest on Loan worked out in this order**

Sr. No	Particulars	Unit	FY 2020-21
1	Opening Loan	Rs Crore	2184.08
2	Loan Reduction during the year	Rs Crore	7.12
3	Loan Addition during the year	Rs Crore	56.44
4	Repayment during the Year considered	Rs Crore	206.57
5	Closing Loan	Rs Crore	2026.83
6	Average Loan	Rs Crore	2105.46
7	Weighted average Rate of Interest	Rs Crore	14.12%
<b>8</b>	<b>Annual Interest Amount</b>	<b>Rs Crore</b>	<b>297.29</b>



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

112. The petitioner has claimed the annual depreciation in form TPS 12 of the petition as given below:

**Table 20: Depreciation on Assets** **(Rs. in Crore)**

<b>S. No</b>	<b>Particulars</b>	<b>Amount As claimed</b>
1	Opening Capital Cost	3952.31
2	Closing Capital Cost	4041.84
3	Average Capital Cost	3997.07
4	Freehold land	55.48
5	Rate of depreciation	5.18%
<b>6</b>	<b>Depreciation (for the period)</b>	<b>207.12</b>

**Provision in Regulations:**

113. Regulation 37 of the MPERC (Terms and Conditions for Determination of Generation Tariff) 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 31<sup>st</sup> 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 final 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:**

114. For determining the annual Depreciation, the Commission has considered the closing Gross Fixed Assets as on 31<sup>st</sup> March' 2020, as admitted in the last true-up order dated 7<sup>th</sup> December' 2021 for FY 2019-20, as opening Gross Fixed Assets as on 1<sup>st</sup> April' 2020 in this order.
115. The closing Gross Fixed Assets as on 31<sup>st</sup> March' 2021, is worked out after considering the asset additions of Rs 80.63 Crore towards additional capitalization during the year as considered in this order. Further, write off/ deletion of fixed assets of Rs. 9.49 Crore during the FY 2020-21 has also been considered in this order to work out the closing Gross Fixed Assets as on 31<sup>st</sup> March' 2021.
116. Vide letter dated 29<sup>th</sup> April' 2022, the petitioner was asked to file basis of the weighted average rate of depreciation claimed in the petition in light of Asset-Cum-Depreciation register vis-à-vis the addition of assets claimed in the subject petition.
117. By affidavit dated 19<sup>th</sup> May' 2022, the petitioner submitted that :

*The weighted average rate of depreciation worked out in the Petition for FY 2020-21 is as per Regulation 37 of MPERC Tariff Regulations, 2020, Form TPS 11 and Form TPS 12 and as per the depreciation rates specified in Appendix-I to the MPERC Tariff Regulations, 2020.*

*The opening GFA as on April 1, 2020 has been considered equal to the closing GFA approved by the Commission for FY 2019-20 in the Order dated December 7, 2021. With regard to the addition to the GFA, the petitioner has considered additional capitalization on cash basis and adjusted the same with the de-capitalised assets amounting to Rs. 9.49 Crore.*

*The petitioner, in the Form TPS 11 has arrived at the weighted average rate of depreciation of 5.18% for the year by dividing the total of asset wise depreciation amount i.e., Rs. 207.12 Crore with the average GFA for the year (Average of GFA as on April 1, 2020 and March 31, 2021) i.e., Rs. 3997.07 Crore.*

118. The petitioner has filed the Assets cum Depreciation Register, wherein the weighted average depreciation rate of 5.18% is worked out based on the depreciation rates specified in the MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020. The aforesaid weighted average rate of depreciation worked out by the petitioner by considering the additional capitalization claimed during FY 2020-21. Therefore, the Commission is considering the same weighted average rate of interest as worked out by the petitioner in the subject petition, i.e., @ 5.18%.

119. According, the depreciation is worked out in the subject petition as given below:

**Table 21: Annual Depreciation allowed for FY 2020-21**

Sr. No.	Particular	Units.	FY 2020-21
1	Opening Gross Block	Rs Cr.	3952.31
2	Gross Block Adjustment/Deletion during the year	Rs Cr	9.49
3	Addition during the year	Rs Cr.	80.63
4	Closing Gross Block	Rs Cr.	4023.45
5	Average Gross Block	Rs Cr.	3987.88
6	Weighted Average Rate of Depreciation	%	5.18%
7	Annual Depreciation amount	Rs Cr.	206.57
8	Closing Cumulative Depreciation	Rs Cr.	<b>986.74</b>

**d. Operation and Maintenance Expenses:**

**Petitioner's Submission:**

120. The petitioner filed the Operation and Maintenance expenses for FY 2020-21 in the petition as given below:

**Table 22: O&M Expenses claimed (Rs. in Crore)**

Particulars	FY 2020-21
Annual O & M Expenses	125.82

**Provision in Regulations:**

121. 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 "600 MW Series" for FY 2020-21 which are as given below:

**Table 23: Normative O&M Expenses for FY 2020-21**

Units (MW)	Rs. Lakh/MW/Year
45 MW	38.83
200/210/250 MW	34.12
300 MW Series	28.71
500 MW Series	23.30
<b>600/660 MW Series</b>	<b>20.97</b>
800 MW Series and above	18.87

**Commission's Analysis:**

122. The Commission has worked out annual Operation and Maintenance Expenses as per the norms prescribed under the Regulations, 2020 for the generating unit of "600 MW" as given below:

**Table 24: O& M Expenses for Unit No 1** **(Rs. in Crore)**

Particular	Units	FY 2020-21
Generating Unit Capacity	MW	600
Per MW O&M Expenses Norms	Rs in Lakh/MW	20.97
<b>Annual O&amp;M expenses</b>	<b>Rs in Crore</b>	<b>125.82</b>

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

123. With regard to Interest on Working Capital claimed for FY 2020-21, the petitioner submitted the following:

*With regard to the cost of coal and secondary fuel to be considered for calculation of working capital, the petitioner submits that sole reliance on Regulation 38.2 viz. no fuel price escalation shall be provided during the tariff period is not commensurate with the fact that the cost of fuel is an uncontrollable factor. The fact that cost of fuel is an uncontrollable factor has also been specified in the Clause 5.11 (h) (4) of National Tariff Policy, 2016 which states as follows:*

*"5.11 (h) (4) Uncontrollable costs should be recovered speedily to ensure that future consumers are not burdened with past costs. Uncontrollable costs would include (but not limited to) fuel costs, costs on account of inflation, taxes and cess, variations in power purchase unit costs including on account of adverse natural events."*

*In view of the above, the petitioner respectfully submits that the cost of primary fuel is an uncontrollable factor and is required to be factored in while carrying out the truing up exercise. It is further submitted that primary fuel cost forms a considerable portion of working capital required for functioning of the Plant thereby affecting the daily operations of the petitioner. Considering the same, the petitioner has considered the cost of fuel as the weighted average cost of the fuel incurred during FY 2020-21 as a whole. Accordingly, the petitioner requests the Commission to approve the working capital requirement as considered by the petitioner.*

*The petitioner submits that it has computed the Working Capital in accordance with Regulation 38.1 (A) of MPERC Tariff Regulations, 2020 for FY 2020-21. Further,*

with regards to interest rate on Working Capital, in line with Regulation 38.3 of the MPERC Tariff Regulations, 2020 the rate of interest on working capital has been taken on normative basis and has been worked out considering one-year MCLR of SBI as on 01.04.2020 plus 350 bps i.e., 11.25% (7.75% + 3.50%) for FY 2020-21.

**Table 25: Interest on Working Capital Claimed**

<b>Sr. No.</b>	<b>Particulars</b>	<b>Units</b>	<b>FY 2020-21</b>
1	Cost of Coal/Lignite	Rs. Crore	173.37
2	Cost of Secondary Fuel Oil	Rs. Crore	1.39
3	O & M Expenses	Rs. Crore	10.49
4	Maintenance Spares	Rs. Crore	25.16
5	Receivables	Rs. Crore	233.25
<b>6</b>	<b>Total Working Capital</b>	<b>Rs. Crore</b>	<b>443.765</b>
7	Rate of Interest	Rs. Crore	11.25%
<b>8</b>	<b>Interest on Working Capital</b>	<b>Rs. Crore</b>	<b>49.91</b>

**Provision in Regulations:**

124. Regulation 38 of the MPERC (Terms and Conditions for Determination of Generation Tariff) 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; and
  - (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 1<sup>st</sup> 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 1<sup>st</sup> 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:**

125. In accordance to Regulation 38.2 of the Tariff Regulations, 2020, it is mentioned that no fuel price escalation shall be provided during 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) 60 Days Cost of coal, as considered in Commission's MYT Order dated 8<sup>th</sup> May' 2021 in petition No. 47 of 2020.
- (ii) Two month's Cost of secondary fuel of main oil equivalent to normative plant availability factor as considered in Commission's MYT Order dated 8<sup>th</sup> May' 2021 in petition No. 47 of 2020 is considered in this order. Details of the coal cost and oil cost for working capital purpose is considered as given below:

Particulars	FY 2020-21 (Rs in Cr.)
Cost of Coal for 60 Days	167.01
Cost of Secondary Fuel Oil for two Months	1.90

- (iii) Maintenance spares as considered in Commission's MYT Order dated 8<sup>th</sup> May' 2021 in petition No. 47 of 2020 as stated below is considered:

Particulars	FY 2020-21 (Rs in Cr.)
Maintenance Spares (20% of O&M Expenses)	25.16

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

Particulars	FY 2020-21 (Rs in Cr.)
Variable Charges- 45 Days (As considered on Order dated 8 <sup>th</sup> May' 2021)	126.66
Annual Fixed Charges- 45 Days (Worked out in this Order)	102.74
<b>Total</b>	<b>229.40</b>

- (v) O&M expenses for one month for the purpose of working capital as considered in Commission's MYT Order dated 8<sup>th</sup> May' 2021 in petition No. 47 of 2020 is considered:

Particulars	FY 2020-21 (Rs in Cr.)
O & M Expenses for One Month	10.49

126. 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 1<sup>st</sup> 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 1<sup>st</sup> April of each of the financial year during the tariff period 2019-24.***

127. In view of the above provision under Regulations, 2020, 1-year MCLR of State Bank of India applicable/ prevailing as on 01.04.2020 is 7.75% + 3.50% = 11.25%.



128. Considering the above, the interest on working capital worked out by the Commission for FY 2020-21 in this true-up order is as given below:

<b>Sr. No.</b>	<b>Particulars</b>	<b>Norms</b>	<b>FY 2020-21</b>
1	Cost of Coal/Lignite	60 Days of Coal Purchase	167.01
2	Cost of Main Secondary Fuel Oil	2 months of Sec Oil Purchase	1.90
3	O & M expenses	1 month of O&M	10.49
4	Maintenance Spares	20% of O&M	25.16
5	Receivables	45 days of Total Revenue	229.40
<b>6</b>	<b>Total Working Capital</b>		<b>433.96</b>
7	Rate of Interest (SBI MCLR)		<b>11.25%</b>
<b>8</b>	<b>Interest on Working Capital</b>		<b>48.82</b>

**f. Non-Tariff Income:**

129. In the subject true-up petition, the petitioner filed Rs. 0.01 Crore as non-tariff income during the year.

**Provision in Regulations:**

130. Regulation 58 of MPERC (Terms and Conditions for Determination of Generation Tariff) 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:**

131. On perusal of the details submitted for FY 2020-21 towards non-tariff income, it was observed that the petitioner has filed the total non-tariff income of Rs. 0.01 Crore during FY 2020-21 whereas, in Note 24 of Annual Audited Accounts "other income" is shown as Rs. 7.76 Crore. Vide letter dated 29<sup>th</sup> April' 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 Tariff Regulations, 2020 duly reconciled with the Annual Audited Accounts.
132. By affidavit dated 19<sup>th</sup> May' 2022, the petitioner filed its reply along with the reconciliation of non-tariff income with Annual Audited Accounts of FY 2020-21 as given below:

*The claim of total non-tariff income of Rs. 0.01 Crore (Rs. 1.18 Lakh) in the Petition corresponds to sum of sale of scrap (used Oil) as recorded in the Note 24 of Annual Audited Accounts for FY 2020-21. With regard to the reconciliation of the petitioner's claim of non-tariff income with the Annual Audited Accounts for FY 2020-21, the petitioner submits the following item wise justification for non-consideration of the same as non-tariff income:*

**Table 27 Justification for petitioner's claim of Non-Tariff Income for FY 2020-21**

<b>S. No</b>	<b>Particular/Description</b>	<b>Amount in Rs. Crore</b>	<b>Remark/ Justification</b>
1	Interest on fixed deposit	7.69	<i>The same have not been considered as non-tariff income as the interest amount received is on account of investments made out of petitioner's RoE. From the Annual Audited Accounts of the petitioner, it can be observed that all the cash generated by the petitioner's company (from the Return on Equity allowed by the Commission) has been lying in the accounts of the company and the petitioner is neither involved in any other activity other than sale of electricity. Therefore, the above interest amount received is purely out of petitioner's own funds and are not to be considered as non-tariff income as per Regulation 58 of MPERC Tariff Regulations, 2020.</i>
2	Interest from others	0.06	

S. No	Particular/Description	Amount in Rs. Crore	Remark/ Justification
A	Income Tax Entries For A.Y 2019-20	0.06	This is interest received on Income tax refund for FY 2018-19 issued by Income Tax Office. It is submitted that as the petitioner has not been allowed any Income Tax hence the refund do not qualify as NTI.
3	Scrap Sale	0.01	Claimed as non-tariff income
3	Other Miscellaneous Receipts	0.00	No income for the year FY 2020-21
	<b>Total</b>	<b>7.76</b>	

133. Since, Regulation 58.1 mentions 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, therefore, non-tariff income of only scrap sale of Rs. 0.01 Crore claimed by the petitioner for FY 2020-21 is considered as non-tariff income in accordance to Tariff Regulations, 2020 in this order. The break-up of non-tariff income considered is as given below:

**Table 28: Non-tariff Income during FY 2020-21: (Amount in Rupees )**

Sl. No.	Particulars	Amount FY 2020-21
1	Scrap Sale	0.01
	<b>Total Non tariff Income during FY 2020-21</b>	<b>0.01</b>
	<b>50% of Non-tariff Income</b>	<b>Rs 0.005 Crore</b>

#### Other Charges:

134. In the subject true-up petition, the petitioner claimed following other charges:
- Allow the recovery of the filing fees paid to the Commission and also the publication expenses from the beneficiaries;
  - Allow recovery of Electricity Duty and Energy Development Cess on power being scheduled by the MPPMCL and Plant Auxiliary Consumption
  - Allow recovery of water charges paid to Water Resources Department, Government of Madhya Pradesh.
135. Regarding the other charges, In Para 144 to 146 of the MYT order dated 8<sup>th</sup> May' 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 MPERC (Terms and Conditions

for Determination of Generation Tariff) Regulations, 2020 on submission of documentary evidence.

- In view of the above, the petitioner is 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 MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020 on submission of documentary evidence.

136. With regard to Application fee, publication expenses and other statutory charges, Regulation 65 of MPERC (Terms and Conditions for Determination of Generation Tariff) 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.*

137. 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.
138. 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 MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020 on submission of documentary evidence.

### **Loss on Retirement of Assets**

#### **Petitioner's Submission**

139. The petitioner has filed separate recovery of loss of Rs 6.87 Crore on retirement of those assets which have not been fully depreciated.
140. With regards to loss on retirement of assets, the petitioner in the subject petition submitted that:

*As submitted earlier, the petitioner for tariff purpose has de-capitalised spares with gross value of Rs. 9.49 Cr against which the total depreciation booked is Rs. 1.67 Cr. It is submitted that as salvage value as per the Regulations is 10%, therefore the petitioner has to write off its loan and Equity amounting to Rs. 6.87 Crore after adjusting for 10% salvage value. It is submitted that as the amount of Rs. 6.87 Crore is a direct loss to the petitioner, it has claimed the same. The loss of such de-capitalisation has also been recorded in Note 29 of the Audited Accounts for FY 2020-21.*

#### **Commission's Analysis:**

141. Regarding the loss on retirement of assets of Rs. 6.87 Crore towards de-capitalized spares, vide Commission's letter dated 29<sup>th</sup> April' 2022, the petitioner was asked to file the following:

“In para 8.25 of the petition, the petitioner has claimed loss on retirement of assets of Rs. 6.87 Crore towards de-capitalized spares. In view of the above, the petitioner is required to inform the following:

- i. Why these assets were de-capitalized before the completion of their useful life?
- ii. Reasons for under recovery of depreciation of such de-capitalized assets
- iii. Actual salvage value of these de - capitalized assets needs to be furnished
- iv. The petitioner is required to inform the relevant Regulation under MPERC Tariff, Regulations, 2020, these de-capitalized assets claimed

- v. The petitioner is required to furnish the detailed calculation of Rs 6.87 Crore claimed as loss on retirement of assets such as what was the cost of the asset, how much accumulated depreciation is charged on the asset, sale value of the asset, etc.”
142. By affidavit dated 19<sup>th</sup> May’ 2022, the petitioner submitted the following in response to aforesaid queries:
- i. *It is pertinent to note that the life of all the assets of the plant and specifically the life of Spares is not necessarily commensurate with the life of the thermal plant i.e., 25 years owing to their wear and tear and timely replacement of these assets is necessary for reliable and efficient operation of the plant. Some of the spares which were capitalized at the time of capitalization had to be de-capitalized owing to the completion of life of these spares.*
  - ii. *The petitioner humbly submits that the depreciation rate as per the depreciation rates specified in Appendix-I to the MPERC Tariff Regulations, 2020 is 5.28% for the items/spares which are part of Plant & Machinery. Accordingly, as per the Regulations, the depreciation recovered against the assets de-capitalized is not fully recovered.*
  - iii. *The assets have not been disposed off as the petitioner is under CIRP Process. The petitioner while calculating the loss on de-capitalisation of assets has considered salvage value of 10% as per MPERC Tariff Regulation, 2020. The petitioner humbly submits that in case if the revenue on account of actual disposal of asset is higher than the 10% value of the asset, the same shall be submitted to the Commission.*
  - iv. *The petitioner humbly submits that the de-capitalisation has been claimed towards the replacement of asset as per Regulation 27.2 (a) of MPERC Tariff Regulations, 2020. The petitioner in Para 6.66 and Para 6.67 of the Petition has in detail submitted the same.*
  - v. *The petitioner humbly submits the detailed calculation of Rs 6.87 Crore claimed as loss on retirement of assets in the attached annexure.*
143. The petitioner has claimed balance recovery of Rs 6.87 Crore towards de capitalized spares under Regulation 27.2 (a) of the Regulations, 2020 which provides that the additional capitalization towards replacement of those assets or equipment where 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. Regulation 27.2 initially states 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.”

144. Further, with regards to de-capitalisation the assets, Regulation 28.2 provides that “in case of decapitalisation of assets of a generating company, the original cost of such asset as on the date of decapitalisation shall be deducted from the value of gross fixed asset and corresponding loan as well as equity shall be deducted from outstanding loan and the equity respectively in the year such de-capitalisation takes place with corresponding adjustments in cumulative depreciation and cumulative repayment of loan, duly taking into consideration the year in which it was capitalised.”
145. In view of the facts placed before the Commission, it is observed that the sale process of these assets has not been carried out yet and petitioner has not been able to provide the details of actual salvage value. Further, the amount on account of any sale process was also not accounted for in the books of accounts for FY 2020-21.
146. Further, in view of the abovementioned Provision under Regulations, said expenditure of Rs 6.87 Crore claimed by the petitioner does not fall under the aforesaid Regulation 27.2 (a) of Tariff Regulations, 2020 as the petitioner has not shown/established the necessary adjustments in the gross fixed assets and cumulative depreciation in its Asset cum-Depreciation Register as well as its Annual Audited Accounts. Also, such assets have not been fully depreciated as stated by the petitioner in its aforementioned response.
147. Therefore, this expenditure towards loss on retirement of assets is not considered in this order at this stage for FY 2020-21. The Commission shall examine and deal with this issue of loss on retirement of the assets when the sale process towards these assets will be finalized.

**Summary of Annual Capacity (fixed) charges:**

148. The details of the Annual Capacity (fixed) Charges for FY 2020-21 allowed in this true-up order vis-a-vis those determined in the MYT order dated 8<sup>th</sup> May’ 2021 at normative Plant Availability Factor are summarized in the following table:

**Table 29: Head wise Annual Capacity Charges: - (Rs in Crore)**

S. No	Particulars	Allowed in MYT Order dated 8 <sup>th</sup> May’ 2021 for FY 2020-21	Allowed for FY 2020-21 in this order	True-up amount
1	Return on Equity	153.14	154.84	1.70
2	Interest on Loan	294.19	297.29	3.10
3	Depreciation	202.37	206.57	4.20

4	Interest on Working Capital	48.69	48.82	0.13
5	O & M Expenses	125.82	125.82	0.00
	<b>Total Annual Capacity (Fixed) Charges</b>	<b>824.22</b>	<b>833.34</b>	<b>9.13</b>
6	Less:-Non Tariff Charges	0.11	0.01	-0.11
7	<b>Annual Capacity (Fixed) Charges</b>	<b>824.11</b>	<b>833.33</b>	<b>9.23</b>
8	<b>Annual Capacity (fixed) Charge corresponding to 30% of the installed capacity of the Units</b>	<b>247.23</b>	<b>250.00</b>	<b>2.77</b>

149. The Annual Capacity (Fixed) Charges as determined above for FY 2020-21 are at Normative Availability and these charges are based on Annual Audited Accounts of Jhabua Power Ltd. for FY 2020-21.
150. The 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 Tariff Regulations, 2020 on pro rata basis with respect to actual Annual PAF.
151. Regarding performance-based truing-up of energy charges on account of controllable parameters, Regulation 56.1 of MPERC (Terms and Conditions for determination of Generation Tariff) 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
152. In view of the above Regulations, it was 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 letter dated 29<sup>th</sup> April' 2022, the petitioner was asked to file annual details of aforesaid performance parameters actually achieved vis-à-vis normative parameters under the Tariff Regulations, 2020. The petitioner was also asked to file the details of financial gain if any, on account of controllable parameters and shared with the beneficiaries in light of the Regulations 56.2 of the Regulations, 2020.
153. In response to above, by affidavit dated 19<sup>th</sup> May' 2022, the petitioner submitted following:



*“The details of the Controllable Performance Parameters Viz. Station Heat Rate, Secondary fuel oil consumption and Auxiliary Energy Consumption actually achieved vis-a-vis normative parameters under MPERC Tariff Regulations, 2020 has already been provided along with the Petition as part of annexure 1 with the heading “Financial Gain Calculation for 2020-21”. From the referred computation at Page No. 126 of the Petition, it can be observed that there has been no gain to the Petitioner on account of actual performance parameters for the period FY 2020-21”.*

154. On perusal of the details filed by the petitioner, it is observed that the petitioner incurred loss of Rs. 2.16 Crore on account of the inferior performance and poor operating parameters achieved by it during FY 2020-21.
155. However, the Regulation 56.2 of the Tariff Regulations, 2020 provides that the 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**

156. 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 1<sup>st</sup> April' 2020 to 31<sup>st</sup> March' 2021. The petitioner is also directed to provide information to the Commission in support of having complied with this Order.

The deficit 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 installments during FY 2022-23.

157. With the above directions, this Petition No. 13 of 2022 is disposed of.

**(Gopal Srivastava)**  
**Member (Law)**

**(Mukul Dhariwal)**  
**Member**

**(S.P.S Parihar)**  
**Chairman**

**Date: 18<sup>th</sup> August' 2022**

**Place: Bhopal**

**Annexure-I**

**Petitioner's Response on the comments offered by the Respondent No.1 (MPPMCL) along with the observations**

**MPPMCL Comment**

In Paras 1.5 to 1.8 the petitioner has primarily contended that the filing of the present Petition for True-up of tariff for FY 2020-21 was delayed because the order in True-up Petition for FY 2019-20 was awaited, hence the petitioner wanted to use only admitted Capital Costs for the Project in the present True-up Petition. This contention of the petitioner is erroneous and not in consonance with the provisions of 2020 Tariff Regulations, therefore may not be accepted and the delay may not be condoned on this ground.

**Petitioner's Reply**

*In reply to the averments made by MPPMCL in Para 3, the petitioner submits that it has filed a separate IA (IA No. 7 of 2022) before the Commission for condonation of delay in filing the instant Petition and the Commission vide daily Order for the motion hearing held on April 12, 2022 has already condoned the delay in filing of the instant Petition and IA No. 7 of 2022 was accordingly disposed. In view of the above, the averments made by the Respondent are liable to be rejected by the Commission.*

**Observation:**

Considering the reasons for delay in filing the subject petition submitted by the petitioner, the Commission vide daily Order dated 13<sup>th</sup> April' 2022 condoned the delay in filing the subject Petition.

**MPPMCL Comment:**

In Para 4.2, petitioner has quoted Para 7 of the order dated 30.05.19, passed by this Commission in Petition No. 19 of 2019 filed by the petitioner on the issue of "extension of cut-off date" of the Project. In Para 4.3, the petitioner has stated that "*the Commission took note of extraneous uncontrollable circumstances*" and "*explicitly directed petitioner to approach it with actual capitalization of the works .... While filing the True-up Petition*". It is to humbly submit that in the said order, this Commission was pleased to dispose of the Petition without granting the prayers of the petitioner, while making certain observations and issuing directions to the petitioner in the facts and circumstances of the case and in accordance with the provisions of the 2020 Tariff Regulations.

**Petitioner's Reply**

*The averments made by Respondent in Para 8 are not admitted by the Petitioner except to the extent of facts stated therein. Further, the Commission in the Order dated 30.05.2019 has relied on the provisions of MPERC Tariff Regulations 2015 instead of MPERC Tariff Regulations, 2020 as referred by the Respondent.*

**Observation:**

Cut-off date of the project has been considered in accordance to the provisions under the Tariff Regulations.

**MPPMCL Comment**

In Para 4.4, the petitioner has quoted Para 40 of order dated 08.05.2021 passed by this Commission in MYT Petition No. 47 of 2020, wherein the Petitioner has been granted liberty to approach this Commission for approval of capitalization *“at appropriate stage on the actual expenditure incurred and duly reconciled with Annual Audited Accounts”*. It is humbly submitted that this Commission has rightly declined to consider claims of said Additional Capitalisation prematurely made in the MYT Petition.

In Para 4.6 of the Petition, the petitioner has given the background for filing Petition No. 37 of 2021 for True-up of actual expenses for FY 2019-20. Also in Para 4.7, Paras 51 and 53 of the order dated 07.12.21 passed by this Hon'ble Tribunal in the said True-up Petition have been quoted, the contents of which are self-explanatory. This Commission has rightly rejected the reasons mentioned by the petitioner for extension of the Cut-Off Date for the Project and held that the *“In view of above submission and considering all the facts and documents submitted by the petitioner, it is observed that the spilling over of works beyond the cut-off date due to non-availability of funds and other reasons mentioned by the petitioner post commercial operation of unit are not covered under uncontrollable factors and are due to reasons attributable to the petitioner.”*

The contents of Para 4.8 and 4.9 of the Petition are denied and disputed. It is humbly submitted that initiation of IBC proceedings against Petitioner, is a consequence of financial mismanagement of the Project by the Petitioner only. Also, this Commission has already considered facts, documents, correspondences etc. relied upon by the petitioner in P.No. 19 of 2019, P.No. 47 of 2020 and P.No. 37 of 2021 and rejected the claim of the Petitioner that the delay/ spillover of Capital Expenditure beyond Cut-Off Date was due to uncontrollable reasons not attributable to the Petitioner.

This Commission has found that there was sufficient time since COD (03.05.2016) till Cut-Off Date (31.03.2019) to complete project works within Original Scope of Work and spillover of the Capital Expenditure beyond Cut-Off Date was due to controllable reasons which were entirely attributable to the petitioner only

**Petitioner's Reply:**

*In reply to the averments made by Respondent in Paras 9 to 13, the Petitioner submits that the Respondent even after being aware of the current situation of the Petitioner, for which the Respondent itself was responsible, has made such averments without any material basis. In MYT Order dated 08.05.2021 in Petition 47 of 2010, the Hon'ble Commission has given an opportunity to Petitioner to approach the Commission after incurring actual capex for further approval. The Petitioner is claiming the additional capitalization as per directions of the Commission and thus requests the Commission to decide the prayers made in the instant Petition considering the submissions and documentary proofs submitted along with the Petition which shall substantiate beyond doubt that the factors responsible for delay in executing works were truly uncontrollable and under no circumstances attributable to the petitioner.*

**Observation:**

The Commission has examined the additional capitalization claimed by the petitioner in light of the provisions for additional capitalisation under MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020.

**MPPMCL Comment**

The contents of Para 6.2 of the Petition are denied and disputed on the basis of submissions made in the foregoing paragraphs. It is humbly submitted that the claim of Additional Capitalisation beyond Cut-Off Date has already been rightly rejected by this Commission in its order dated 07.12.2021 passed in P.No. 47 of 2020. The petitioner has again claimed same/ similar Additional Capital Expenditures post Cut-Off Date, therefore it is most humbly prayed that this Commission may graciously be pleased to reject the same

**Petitioner's Response**

*The averments made by Respondent in Para 18 are denied and disputed on the basis of submissions made in foregoing paragraphs. The Petitioner humbly submits that the additional capitalization has been claimed beyond the cut-off date of the project due to the reasons which were not under the reasonable control of the Petitioner and in this Petition, the Petitioner is submitting further submissions and documentary evidences which further substantiates the case of the Petitioner. In view of the above, the Petitioner requests the Commission to approve the request of the Petitioner to extend the cut-off date and approve the additional capitalization claimed in the Petition.*

**Observation**

The Commission has examined the additional capitalization claimed by the petitioner in light of the Annual Audited Accounts, Asset-cum-Depreciation Register for the project, original scope of work of the project and project cost approved by BoD of the petitioner's company and provisions for additional capitalisation under MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020. Cut-off date of the project has been considered in accordance to the provisions under the Tariff Regulations. Accordingly, the additional capitalization has been examined and considered in this order.

### **MPPMCL Comment**

In Para 6.4 of the Petition, Regulation 4.1 (1) of 2015 Tariff Regulations has been referred and quoted. As this Commission has already found that the reasons given by the Petitioner for seeking Additional Capitalisation beyond Cut Off Date are not uncontrollable. Therefore, the proviso of the referred / quoted Regulation is not applicable to the facts of the present case and therefore the Cut-Off Date for the Project could not be extended. Therefore, the claims of the Petitioner in respect of Additional Capitalisation may be allowed only in accordance with 2020 Tariff Regulations.

The contents of Para 6.5 are denied and disputed. The petitioner has stated that the Cut-Off Date can be extended by this Commission on account of uncontrollable reasons and also given several alleged reasons affecting performance of the Petitioner. It is humbly submitted that the cited reasons have not been found to be uncontrollable or attributable to the Respondent by this Commission in previous Petitions, hence may be ignored

### **Petitioner's Response**

*The averments made by Respondent in Para 20 and 21 are denied and disputed except to the extent of facts stated therein. The Respondent's averments are made without any material basis. The Petitioner requests the Commission to decide the prayers made in the instant Petition considering the submissions and documentary proofs submitted along with the Petition which shall substantiate beyond doubt that the factors which led the Petitioner for delay in claiming the additional capitalization were truly uncontrollable and due to the reasons not attributable to the Petitioner.*

### **Observation:**

The Commission has examined the additional capitalization claimed by the petitioner in light of the provisions for additional capitalisation under MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020.

### **MPPMCL Comment**

The contents of Para 6.6 to 6.8 are denied and disputed and it is submitted that this Commission has already gone into the issues raised and held that there was ample time between the COD of the Project and Cut-Off Date prescribed in the Tariff Regulations to complete the balance project work. Timely arrangement of sufficient funds is always the responsibility of the Project Developer.

### **Petitioner's Reply**

*The averments made by Respondent in Para 22 are denied and disputed except to the extent of facts stated therein. The Respondent's averments are made without any material basis and the petitioner could not complete the additional capitalization works within the cut-off period due to the reasons which are uncontrollable.*

*In reply to the Respondent's averment on timely arrangement of project funds is always the responsibility of the petitioner, the petitioner submits that the Project is funded with Project Financing model where the cashflows of the project after the commissioning of the Project itself are considered by the lenders while approving the loan and any deviation in the expected cashflows shall affect the operation of the plant and servicing of the interest and principal amounts of loans. It is humbly submitted that owing to irregular payments and low scheduling of power caused by Respondent as brought out in Para 6.12 to Para 6.17 of the Petition, the petitioner could not execute the works on time. In view of the above, it is humbly requested that Commission rejects the averments made by the Respondent as the same are devoid of any merits.*

### **Observation;**

The Commission has examined the additional capitalization claimed by the petitioner in light of the provisions for additional capitalisation under MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020. Cut-off date of the project has been considered in accordance to the provisions under the Tariff Regulations.

### **MPPMCL Comment**

The allegation of the petitioner, that the Answering Respondent itself contributed to the petitioners suffering cash flow problems and substantial prejudice due to non-payment of dues in time, is grossly incorrect. The petitioner's own records disprove this allegation. Out of total amount of Rs. 746.87 Crore billed by the petitioner from April 2016 till February 2019, the Answering Respondents has made payment of Rs. 647.34 crore (which is about 86.33 % of the billed amount) (Pages. 188-189 of the Petition). In fact, the petitioner's own incompetence and mismanagement of the Project implementation resulted in spilling over of work of the Project beyond Cut-Off Date, consequent financial problems and lost trust of the Lenders, which ultimately culminated in initiation of Insolvency Proceedings against the petitioner under IBC.

### **Petitioner's Response**

*In reply to the averments made by Respondent in Para 24, the petitioner submits that the Respondent has limitedly interpreted the contents of Para 6.17 and Annexure 5 to the Petition. The petitioner in Para 6.17 of the Petition has clearly referred to the non-receipt of the payments from Respondent for a period of 12 months and such non receipt of payments right after the Commissioning of the Project coupled with much less scheduling of the power from the project have severely affected the entire financials of the Project and such affects have cascaded into larger issues and the Petitioner has lost the trust of the lenders which has finally led to the current situation of the Petitioner. The Respondent has very cleverly averted providing month wise payment information for the said 12 months which would have clearly demonstrated that no payments were released during the time even after constant follow up with MPPMCL. As already submitted by the Petitioner in the above Para that the Project is financed with Project Financing mode where the cashflows itself play a major role in efficient running of the Plant and the Respondent's non-payment of timely receipts have contributed to the above situation. Further, from the Annexure 5 of the Reply it can be noted that the Respondent even after resuming the payments has not cleared the entire amount and the payments due were more than Rs. 100 Crore and the Respondent has not even considered the effect of such dues on the working capital requirement of the Petitioner and also non receipt of delayed payment surcharge. In view of the above, the averments made by the Respondent are misleading and therefore denied and disputed.*

### **Observation**

The Commission has examined the additional capitalization claimed by the petitioner in light of the Annual Audited Accounts, Asset-cum-Depreciation Register for the project, original scope of work of the project and project cost approved by BoD of the petitioner's company and provisions for additional capitalisation under MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020. Cut-off date of the project has been considered in accordance to the provisions under the Tariff Regulations. Accordingly, the additional capitalization has been examined and considered in this order.

### **MPPMCL Comment**

Petitioner has falsely alleged that the Answering Respondent has scheduled very less power for FY 2016-17 and FY 2017-18, with malafide intention to delay payment of Fixed Charges, deliberately scheduled fraction of power for one/ two blocks in a day, which was not as per system demand.

Above allegations are denied and disputed as being patently false and totally baseless. It is most humbly submitted that the Answering Respondent has strictly followed standard

operational norms prescribed under Electricity Act 2003, MP Electricity Grid Code and other Regulations made thereunder. It is most humbly submitted that, Generation Scheduling is approved and done by State Load Despatch Center, M.P. Power Transmission Company Limited (“MPSLDC”) based on Day-ahead Generation Schedule given by the Generator, Demand Schedule given by the Answering Respondent, Merit Order of Energy Charges and Real-time System parameters. Therefore, there is no question of alleged discrimination by Answering Respondent, in respect of Scheduling of Power with regards to any Generator including the petitioner.

### **Petitioner’s Reply**

*The averments made by Respondent in Para 25 and 26 regarding the much less scheduling of power by Respondent are denied and disputed as the submissions are without any proof. The petitioner has already provided Annexure 4 to the Petition as necessary proof in support of the submissions made by the petitioner.*

### **Observation:**

Not pertains to subject true-up petition.

### **MPPMCL Comment**

Regarding averments made by the Petitioner in Paras 6.38 to 6.40, it is submitted that the petitioner itself is responsible for dire situation described and the Answering Respondent cannot be burdened with any resultant adverse financial outcome or liability. It is therefore prayed that, the contention of the petitioner that - *“the Petitioner continues to be under the Insolvency and Bankruptcy Code, 2016 (I&BC) Proceeding with effect from 27<sup>th</sup> March 2019.....being subjected to a new statutory regime which puts restrain to fund capital expenditure, is in itself a sufficient ground to allow additional capitalization beyond the original Cut-Off Date.....”(Para 6.40)*, be outrightly rejected and any Capital Expenditure claimed beyond Cut-Off Date may be allowed only in accordance with 2020 Tariff Regulations.

### **Petitioner’s Response**

*The averments made by Respondent in Para 28 are denied and disputed as the submissions are without any material basis and the Petitioner has submitted necessary documentary evidences in support of its submissions.*

### **Observation:**

The Commission has examined the additional capitalization claimed by the petitioner in light of the provisions for additional capitalisation under MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020.



### **MPPMCL Comment**

The contents of Paras 6.43 and 6.44 are denied and disputed being wrong and misplaced. It is most humbly submitted that in the facts and circumstances of the present case there is no occasion for exercise of “Powers to Relax” by this Commission under Regulation 66 of 2020 Tariff Regulations and it is prayed that any Additional Capital Expenditure made beyond Cut-Off Date may be allowed only in accordance with 2020 Tariff Regulations.

Also, reliance placed by the petitioner on the judgements passed by Learned Central Electricity Regulatory Commission (CERC) in cases mentioned [Petition Nos. 109/GT/2020, 151/MP/2012, 67/MP/2018, 319/2009 and 340/GT/2014], is misplaced and erroneous. The judgements referred by the Petitioner were passed in different facts and circumstances, hence are inapplicable to the facts of the present case. Therefore, in the facts of the present case, there is no occasion for this Commission to exercise its Powers to Relax provided under 2020 Tariff Regulations. The Answering Respondent craves leave of this Commission to make further/ additional submissions to distinguish above indicated judgments and their inapplicability to the facts of the present petition.

### **Petitioner’s Response**

*In reply to the averments made by the Respondent in Para 30 and 31, the Petitioner submits that averments made by Respondent are without any material basis and accordingly are denied and disputed. The Petitioner in the Petition has already provided the necessary submissions in support of its submissions and prayers. It is pertinent to mention that Petitioner in the Petition has only referred to the rulings of the Hon’ble CERC which are relevant to the present case of the petitioner.*

### **Observation:**

Cut-off date of the project has been considered in accordance to the provisions under the Tariff Regulations, 2020.

### **MPPMCL Comment**

The contents of Paras 6.45 and 6.46 are denied and disputed being wrong and misplaced. In opposition, the Answering Respondent seeks to place reliance on the submissions made in the foregoing Paras of the present Reply, which are not being repeated to maintain brevity and to avoid prolixity. It is also submitted that the amount of Liquidated Damages, is adjusted in accordance with the provisions of Power Purchase Agreement (PPA).

### **Petitioner's Response**

*In reply to the averments made by the Respondent in Para 32, the petitioner submits that averments made by Respondent are without any material basis and accordingly are denied and disputed. In support of this reply, the petitioner places reliance on its response provided in earlier Paras and the petitioner is not repeating the same for the sake of brevity. As regards to the unilateral adjustment of amount against the Liquidated Damages, the Respondent again has resorted to provide a mere response without providing any basis of its submissions. Further, the Respondent has not provided its response specific to the submissions of Para 6.46 of the Petition and this itself substantiates the hardships imposed on the Petitioner by the Respondent.*

### **Observation:**

The subject petition has been filed for scrutiny of additional capital expenditure claimed by the petitioner. The Commission has examined the additional capitalization claimed by the petitioner in light of the provisions for additional capitalisation under MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020.

### **MPPMCL Comment**

The contentions of the Petitioner in Para 6.47 are denied and disputed. The prayer of the petitioner for extending Cut-Off Date by 2 (two) years is strongly opposed. In this regard, the Answering Respondent seeks to rely on the submissions already made in foregoing paragraphs of the present Reply, which are not being repeated for the sake of brevity and to avoid prolixity. It is most humbly submitted that the petitioner has failed to make out any ground for extension of Cut-Off Date in its earlier Petitions, which were rightly disallowed by this Commission, holding the reasons cited for delay as controllable and attributable to the petitioner. Therefore, the prayer of the petitioner for extension of Cut-Off Date by 2 years may be outrightly rejected.

### **Petitioner's Response**

*In reply to the averments made by the Respondent in Para 33, the Petitioner submits that averments made by Respondent are without any material basis and accordingly are denied and disputed. In support of this reply, the Petitioner places reliance on its response provided in earlier Paras and the Petitioner is not repeating the same for the sake of brevity.*

### **Observation**

Cut-off date of the project has been considered in accordance to the provisions under the Tariff Regulations, 2020. Accordingly, the additional capitalization has been examined and considered in this order.

### **MPPMCL Comment**

It is submitted that this Commission has already determined the Cut-Off Date of the project as 31.03.2019 in its Order Dated 07.12.2021 passed in Petition No. 37 of 2021. The relevant portion of the said order is extracted below for ready reference :

#### **“C. Cut-off Date**

**43.** *Regarding the Cut-off date of the project, Regulation 4.1 (I) of the MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015 provides as under:*

*‘Cut-off Date’ means 31<sup>st</sup> March’ of the year closing after two years of the year of commercial operation of whole or part of the project, and in case the whole or part of the project is declared under commercial operation in the last quarter of a year, the cut- off date shall be 31<sup>st</sup> March of the year closing after three years of the year of commercial operation:*

**44.** *The Unit No. 1 of Jhabua Thermal Power Project under subject petition achieved CoD on 3<sup>rd</sup> May’ 2016, therefore, the **cut-off date of the project is 31<sup>st</sup> March 2019** in accordance with the above provision under Regulations 2015. Therefore, the additional capitalization claimed by the petitioner in the subject petition is beyond the cut-off date.”*

Therefore, admittedly, all Additional Capital Expenditures claimed by the Petitioner in the present True-up Petition, have been incurred after Cut-Off Date (31.03.2019), the same cannot be allowed under Regulation 26 of 2020 Tariff Regulations, which permits claims of Additional Capital Expenditures *upto Cut-Off Date only*.

### **Petitioner’s Reply**

*The averments made by the Respondent in Para 36 to 41 are not admitted and disputed except to the extent of facts stated therein. In reply to the averment made by MPPMCL that the claim of additional capitalization was incurred after the cut-off date, the petitioner submits that the works claimed under additional capitalization by the petitioner are mandatory in nature and are part of Original Scope of Works and shall help the petitioner in running the plant more efficiently and safely therefore ensuring reliable supply to the Respondents. It is humbly submitted that all necessary supporting documents to substantiate the petitioner’s claim have already been provided by the petitioner to the Commission. The petitioner in the Petition has clearly submitted the reasons on account of which the petitioner is claiming the additional capitalization under Regulation 26 of MPERC tariff Regulations, 2020.*

**Observation:**

The Commission has examined the additional capitalization claimed by the petitioner in light of the provisions for additional capitalisation under MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020. Cut-off date of the project has been considered in accordance to the provisions under the Tariff Regulations. Accordingly, the additional capitalization has been examined and considered in this order.

**MPPMCL Comment**

In Table 3 shown in Para 72 of the Petition, the petitioner has given Gross Fixed Asset (GFA) considered. Opening, Closing and Average GFA are indicated as Rs. 3,952.31 Crore, Rs. 4,041.84 Crore and Rs. 3,997.07 Crore respectively, considering claimed Additional Capital Expenditure of Rs. 101.81 Crore for FY 2020-21. In Para 6.74 the petitioner has indicated that in support of above, Fixed Asset Register has been attached as Annexure 24. However, in view of the submissions made in the foregoing paragraphs, no Additional Expenditure is admissible during FY 2020-21.

**Petitioner's Response**

*The averments made by the Respondent in Para 42 are not admitted except to the extent of facts stated therein and the Petitioner places its reliance on its response provided in earlier Paras and the Petitioner is not repeating the same for the sake of brevity.*

**Observation:**

The Commission has examined the additional capitalization claimed by the petitioner in light of the provisions for additional capitalisation under MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020. Accordingly, the additional capitalization has been examined and considered in this order.

**MPPMCL Comment**

In Paras 6.75 to 6.82 of the Petition, the petitioner has made vague averments regarding likely Capital Expenditure towards approach road to Intake Pump House. Admittedly, expenses towards said work is "anticipated" after FY 2020-21. Since above information is not relevant in the present Petition for True-up of Additional Capitalisation for FY 2020-21, the same may be ignored.

**Petitioner's Response**

*The averments made by the Respondent in Para 43 are not admitted except to the extent of facts stated therein. The petitioner in the Paras 6.75 to 6.82 of the Petition has endeavoured to establish the fact that the petitioner was never short of the intent in*

*completing the balance works in spite of being handicapped by various turns of events beyond its control. Further, the petitioner itself in Para 6.82 has admitted that the expenses does not pertain to the claim in instant Petition and sought liberty from the Commission to claim the same once the works are completed and capitalized.*

**Observation:**

The Commission has examined the additional capitalization claimed by the petitioner in light of the provisions for additional capitalisation under MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020.

**MPPMCL Comment**

In respect of averments made by the petitioner regarding Debt:Equity Ratio, the Respondent prays to this Commission to consider submissions made by the Answering Respondent in foregoing paragraphs regarding Additional Capital Expenditures claimed during FY 2020-21.

**Petitioner's Response**

*In respect of averments made by the Respondent in Para 45 regarding the debt equity ratio claimed in the Petition, the Commission is requested to consider the submissions made by the Petitioner in foregoing paragraphs regarding the additional capitalization claimed for FY 2020-21 while approving the same.*

**Observation:**

Debt Equity Ratio is allowed as per Regulation 33 of Tariff Regulations, 2020.

**MPPMCL Comment**

It is prayed to this Commission that submissions of the petitioner in Para 7.4 to 7.7 in respect of Decapitalized Assets may be considered in accordance with provision of 2020 Tariff Regulations

**Petitioner's Response**

*In respect of averments made by the Respondent in Para 46 regarding the decapitalized assets, the Commission is requested to approve the same as claimed by the Petitioner.*

**Observation:**

De-capitalization of assets is considered as Tariff Regulations, 2020.

**MPPMCL Comment**

The claims of the Petitioner in Paras 8.2 to 8.4 towards Return on Equity for FY 2020-21, may kindly be considered in accordance with 2020 Tariff Regulations and the submissions made by the Answering Respondent in the foregoing paragraphs.

**Petitioner's Reply**

*In respect of averments made by the Respondent in Para 48 regarding the Return on Equity claimed in the Petition, the Commission is requested to consider the submissions made by the Petitioner in foregoing paragraphs regarding the additional capitalization claimed for FY 2020-21 while approving the same.*

**Observation:**

Return on Equity is considered as per relevant provisions under MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2020.

**MPPMCL Comment**

The claims of the petitioner in Paras 8.6 and 8.7 towards Interest on Loan Capital for FY 2020-21, may kindly be considered in accordance with 2020 Tariff Regulations and the submissions made by the Answering Respondent in the foregoing paragraphs.

**Petitioner's Reply**

*In respect of averments made by the Respondent in Para 50 regarding the Interest on Loan claimed in the Petition, the Commission is requested to consider the submissions made by the Petitioner in foregoing paragraphs regarding the additional capitalization claimed for FY 2020-21 while approving the same.*

**Observation:**

Interest on Loan is considered as per relevant provisions under MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2020.

**MPPMCL Comment**

The claims of the Petitioner in Paras 8.9 and 8.10 towards Depreciation for FY 2020-21, may kindly be considered in accordance with 2020 Tariff Regulations and the submissions made by the Answering Respondent in the foregoing paragraphs.

**Petitioner's Reply**

*In respect of averments made by the Respondent in Para 52 regarding the Depreciation claimed in the Petition, the Commission is requested to consider the submissions made by the Petitioner in foregoing paragraphs regarding the additional capitalization claimed for FY 2020-21 while approving the same.*

**Observation:**

Depreciation is considered as per relevant provisions under MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2020.

**MPPMCL Comment**

The claims of the petitioner in Paras 8.12 to 8.15 towards Operation and Maintenance Expenses for FY 2020-21, may kindly be considered in accordance with 2020 Tariff Regulations and the submissions made by the Answering Respondent in the foregoing paragraphs

**Petitioner's Reply**

*In respect of averments made by the Respondent in Para 54 regarding the Operation and Maintenance Expenses claimed in the Petition, the Commission is requested to consider the submissions made by the Petitioner which are in line with MPERC Tariff Regulations, 2020.*

**Observation:**

Operation and Maintenance Expenses for FY 2020-21 is considered as per relevant provisions under MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2020.

**MPPMCL Comment**

The claims of the Petitioner in Paras 8.17 to 8.19 towards Interest on Working Capital for FY 2020-21, may kindly be considered in accordance with 2020 Tariff Regulations and the submissions made by the Answering Respondent in the foregoing paragraphs.

**Petitioner's Reply**

*In respect of averments made by the Respondent in Para 56 regarding the Interest on Working Capital claimed in the Petition, the Commission is requested to consider the submissions made by the petitioner which are in line with MPERC Tariff Regulations, 2020.*

**Observation:**

Interest on Working capital is considered as per relevant provisions under MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2020

**MPPMCL Comment**

The submissions of the petitioner in Paras 8.21 to 8.24 in respect of Non-Tariff Income for FY 2020-21, may kindly be considered in accordance with 2020 Tariff Regulations and the submissions made by the Answering Respondent in the foregoing paragraphs.

**Petitioner's Reply**

*In respect of averments made by the Respondent in Para 58 regarding the Non-Tariff Income claimed in the Petition, the Commission is requested to consider the submissions made by the Petitioner which are in line with MPERC Tariff Regulations, 2020.*

**Observation:**

Non-tariff Income for FY 2020-21 is considered as per relevant provisions under MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2020.

**MPPMCL Comment**

The claims of the petitioner in Para 8.25 towards "Loss on Retirement of Assets" for FY 2020-21, may kindly be considered in accordance with 2020 Tariff Regulations and the submissions made by the Answering Respondent in the foregoing paragraphs.

**Petitioner's Reply**

*In respect of averments made by the Respondent in Para 59 regarding the claim on account of Loss on Retirement of Assets, the Commission is requested to approve the same as claimed by the petitioner.*

**Observation:**

Loss on Retirement of Assets is scrutinized as per relevant provisions under MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2020.



## Annexure-II

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

#### **Stakeholder Comment:**

The Commission has already passed certain orders regarding this petitioner. However, we wish to submit before Commission certain facts as available with us. These facts are also applicable to all earlier order passed by Commission, in such type of cases include this petitioner. Our submissions are as follows: --

1. Government of M.P. after conducting the study of long term power requirement of power in the year 2005 decided that requirement for M.P. was less than 2000 MW. Hence, the Tender was floated under section 63 of Electricity Act 2003, in the year 2005 to purchase 200 MW, on long term basis.
2. Govt. of India also planned Sasan Power Ltd (UMPP) in the year 2006 and M.P. was to get nearly 1500 MW power allocation from this plant. Hence long term power the tender to purchase 200 MW was already in process.
3. Govt. of M.P. knowing fully well in the year 2006, that these is no long term power requirement in M.P. and not allowed to purchase any power under section 62 of Electricity Act 2003, as per directive issued by MoP in the year 2006.

#### **Petitioner's Response**

*The averments made by the Stakeholder in the Paras 1 to 3 in the introductory paragraphs of the letter dated 01.06.2022 are a matter of record and accordingly merits no response from the Petitioner.*

#### **Observation:**

The Comment does not pertain to the subject Petition.

#### **Stakeholder Comment**

4. Govt of M.P., formed the Industrial policy and passed it on dated 5/12/2006, to put up power generating plant as industries and nominated agency of Govt of M.P., was entitled to get minimum 5% power at concessional rate (only variable charges). Under the pretext because cheap land, allocation of water etc was to be done. The projects were being installed as industrial project. This whole exercise, later proved to be the part of the coal scam, which CBI is still investigating -
5. Govt of M.P. signing the MOUS with these companies including petitioner, made them eligible illegally to apply for coal block and get subsidized coal from Coal India and hence maximizing their profit by getting cheap coal.

6. The petitioner also signed MOU to set up the industry to generate 2x600 MW power at the cost of nearly Rs 4.6 crores per MW. Petitioner, decided to not to put the second unit of 600 MW, citing the reason that it is not viable to put up this second unit and against public interest.
7. Govt of M.P. signed MOU for 41775 MW with various companies including petitioner, as per Govt of M.P. Industrial policy passed on dated 5/12/2006. These companies were interested to put these power plants as industry and were never covered under Electricity Act 2003. Govt of M.P. was never aimed to take power from them under Electricity Act 2003 and these industries were like export unit to export the power generated in M.P.
8. As per MOU, the role of Commission was advisory to derive the rates on which this power from these companies was to be taken by Govt of M.P. if required, but not binding. Hon'ble MPERC was not allowed to use the powers under Electricity Act 2003 while deciding tariff for the power generated based on these MOUs.
9. These MOUs were never binding and there are several Companies, which signed the MOUS, later abonded the projects like Reliance Power Ltd. towards Chitrangi, Adani Power etc and petitioner itself.
10. Govt of M.P. decided to put this highly polluting coal based, thermal power plants as industry, as per norms applicable of the year 1986. It can be seen that these industries decided to burn low calorie coal including petitioner, to produce power and hence will cause more pollution and generation of ash.
11. The use of low-calorie coal added to requirement of more water because quantity of coal to generate per unit was more. The only concern of these industries was to earn maximum profit at the coast of environment hazards created by them.
12. These industries were to export power out of M.P. while the environmental hazards were to be borne by public of M.P.
13. The environment damage was to be caused as follows :--
  - (a) Burning of additional, huge quantity of coal due to these thermal power industries of 41775 MW.
  - (b) Adding of additional, huge quantity of CO in atmosphere of M.P.
  - (c) Generation of additional huge quantity of fly Ash due to burning of this additional coal.
  - (d) Requirement of additional, huge quantity of water to run these power plants, causing shortage of water for irrigation & drinking purpose.
  - (e) Additional huge no. off tree plantation were required to absorb this release of CO in atmosphere.

14. We wish to submit that this policy of Govt. of M.P. to promote the coal based thermal power plants in the state as industry was against public interest. The parties, who sign the MOU with Govt. of M.P. regarding these power plants as industry, assured that the cost of power will be lesser than Rs. 2.45 per/kwh and cost of project will be near to Rs. 4.60 crores per MW. Govt of M.P. signed the MOU for total 41775 MW at the cost of Rs. 191888 crores. This cost of power to be generated was stated to be comparable with rate of Rs. 2.45 per/kwh, obtained during the bidding carried out under section 63 of Electricity Act 2003, for 2000 MW at the time of signing of these MOUs. MOU also specifies that Govt or their nominated agency do not guarantee purchase of power from the Petitioner company and same stand was taken by GOvt of M.P. before Hon'ble APTEL as shown in para 60 of order dated 6<sup>th</sup> May 2010 against OA No. 44 of 2010.
15. Hon'ble APTEL in its order dated 6<sup>th</sup> May 2010 against OA No. 44 of 2010 has ruled as follows vide para no. 61 of order, regarding MOU :--

“The state Government has retained the option to take the power under the MOU if the rate to be worked out as proposal rate in MOU is cheaper than Rs. 2.45/kWh and if it is costlier, there is an option provided not to take power. The above decision has been taken in the interest of state.”
16. Hence, this para 61, of the order of APTEL, was the binding condition, applicable on all the MOUs signed and further PPAs signed by all the companies. This order of APTEL does not allow, the petitioner to file the petition before Hon'ble MPERC, Bhopal under section 62 andd 86 (1) (a) of the Electricity Act 2003 read with Madhya Pradesh Electricity Regulatory Commission (Terms and condition for determination of Generation Tariff), Regulation, 2020.
17. There was sudden change in the scenario of requirement of power in India and the companies putting these thermal power stations as industry, became non competitive because fall in rates of power and much lesser requirement of power, outside M.P.
18. The companies including petitioner, carried out the fraud with officers of Govt of M.P nad converted these industrial projects based on MOU to illegal PPAs under Electricity Act 2003, while there was no requirement of long term power in M.P. These PPAs were also in violation of para 61 of APTEL order dated 6<sup>th</sup> May 2010.
19. The long term PPAs were signed after Hon'ble APTEL order with several companies including this Petitioner which were against MoP directives also. These PPAs are illegal and against public interest on various grounds as follows:--
  - (a) There is no document to show that there was long term power purchase requirement, which necessitates the signing of these PPAs.
  - (b) Hon'ble APTEL order dated 6<sup>th</sup> May 2010, para 61 was violated.

- (c) These, is power surplus in M.P. from last several years. The power available from these companies including petitioner, will increase the surplus power only and state of M.P. will remain power surplus for long period.
  - (d) The Solar RPO will increase in coming years. This will create further surplus thermal power.
  - (e) These companies including Petitioner Company are receiving back down charges. These back down charges have been paid without verifying following facts :-
    - (i) Grid connectivity cannot be allowed for thermal plants, operating at less than 55% of name plate capacity while in this case the back down charges were paid for not availing 330% capacity.
    - (ii) It was necessary that petitioner plants individually were operating at 55% of name plate capacity for the period for which back down charges were claimed and there must be sufficient coal to generate 85% of name plate capacity
  - (f) The supply cost per unit will be near to 4.50 per unit while surplus units are sold @ Rs 3.00 per unit. This difference cost will be paid by public of Madhya Pradesh.
  - (g) This plant will cause loss to public of M.P. for its entire life.
20. The MOUS were signed with these companies to put up these thermal power plants as industry only and hence, MOUS cannot be used to sign PPAs, under Electricity Act, 2003.

### **Petitioner's Response**

In reply to the averments made by the Stakeholder in the Paras 4 to 20 under detailed submissions of the Stakeholder, the petitioner submits that the averments made by the Stakeholder pertains to the matters not related to the prayers made by the petitioner in the instant Petition and pertains to the matters prior to signing and approval of PPA between the petitioner and Respondents. In view of the above, the petitioner does not find any merit in the averments made by the Stakeholder as the Commission had already approved the PPA for the petitioner's project vide Order dated September 7, 2012 after due regulatory proceedings and accordingly requests the Commission to reject the averments made by the Stakeholder.

### **Observation:**

The Comment does not pertain to the subject Petition.

### **Stakeholder Comment**

21. The cost of project was much lesser per MW as per MOU of this petitioner. However, this has increased too much higher now, and burden of increase of this cost is to be borne by public of M.P. This is against public interest.
22. There is no CAG audit of capital cost carried out by petitioner, while its impact is being paid by public of M.P. Hon'ble Commission is fully empowered to order the CAG audit regarding capital cost incurred.

### **Petitioner's Response**

The averments made by the Stakeholders in Paras 21 and 22 under detailed submissions relates to capital cost incurred for the petitioner's Plant. In this regard, it is to be noted that the Commission had already approved the Capital Cost of the petitioner's project vide Order dated November 30, 2018 after due regulatory proceedings and stakeholder consultation. In view of the same, petitioner does not admit the averments made by the Stakeholder and accordingly requests the Commission to reject the averments made by the Stakeholder.

### **Observation:**

The Comment does not pertain to the subject Petition.

### **Stakeholder Comment**

23. The arrangement of surplus power by signing illegal PPAs and then paying back down charges and selling surplus power at throw away prices is criminality against public of M.P.

### **Petitioner's Response**

The averments made by the Stakeholders in Para 23 relates to the PPAs and related provisions. The Petitioner, in reply to the Paras 1 to 20 above has already submitted the reply in the matters of PPA and the Petitioner is not repeating the same for the sake of brevity.

### **Observation:**

The Comment does not pertain to the subject Petition.

### **Stakeholder Comment**

24. Indian Railway and several H.T. Consumers etc are not availing power while carrying out their operation in M.P. due to high tariff, resulted due to further surplus power. It has resulted in the more surplus power and increased tariff for general public to un bearable extent.
25. M.P Genco, spended more than Rs 15000.00 crores to increase generation capacity in last fifteen years, but due to surplus power, no increase in power generation in units

was achieved despite doubling the installed capacity. Hence, these Rs 15000.00 crores along with interest has gone waste. The liability arising due to this is being recovered from public, by way of increase in power tariff.

26. MPPMCL, Jabalpur as Petitioner and others against petition no. 3/2018 before Commission, have submitted in various paras under Revenue at current & proposed Tariffs. Our submission is as follows:

12.1.4:- MPPMCL, Jabalpur is trying to surrender its share in NTPC Mouda Stage 1, ATPS Chachai-Ph 1 & Ph-2, NTPC Kewas AND NTPC Gandhar. The letter no. 1023 dated. 16 Aug 2016, addressed to Ministry of Power regarding offer for 4023 MW and all is thermal power. This surrender is being offered to reduce financial burden on state.

12.1.5- The petitioner has shown the importance of competitive tariff for industries to retain them. This shows that tariff in M.P. are very high and the industry and Railway has option to not to avail this costly power. However, the domestic consumers have no option, but to avail the costly power.

12.1.6: The petitioner says that it would not be possible for the Discom's to maintain its operational viability without increasing its sale Petitioner is selling surplus power, 12576 MU in FY 2017-18 @ Rs 2.60 per kwh.

### **Petitioner's Response**

*In reply to the averments made by the Stakeholder in the Paras 24 to 26 under detailed submissions of the Stakeholder, the Petitioner submits that the averments made by the Stakeholder are completely irrelevant with respect to the petition filed and pertains to the matters not related to the prayers made by the petitioner and accordingly are not replied by the petitioner.*

### **Observation:**

The Comment does not pertain to the subject Petition.

### **Stakeholder Comment**

ROE may not be allowed to petitioner and all ROE paid in the past, may be recovered on following grounds:

- (i) The Petitioner Company has claimed Rs 155.21 crores for FY 2020-21 crores as ROE while petitioner company is loss making company, not paying any dividend, Book Value is very much in negative, not paying any income tax etc Petitioner, cannot declare and pay any dividend to its shareholders as per section 123 of Companies Act 2013. This is the responsibility of Share holders of these companies to keep the Book Value these Companies at par or above to claim any ROE from

consumers to get dividend. This will require to infuse the funds to these companies by shareholders as follows, which is not being done.

- (ii) Any regulation framed by Commission to allow ROE to pay dividend to these loss making Companies will be in violation of section 123 of Companies Act 2013 The ROE collected by these companies cannot be retained / adjusted against profit & loss APTEL New Delhi order against. Appeal Nos.196 of 2014 and 326 of 2013 Dated: 18th September, 2015 which says that ROE collected is only for the payment of dividend to shareholders and can not be retained Hence, this money collected from consumers as ROE to pay dividend (which is not being paid), is illegal and cannot be allowed by Commission.

The Petitioner or its Shareholders, are not paying any income tax on collection of ROE, which is being collected to pay dividend to shareholders only Hence, fraud/loss to national exchequer is being made by not paying income tax, on ROE collected ( can not be adjusted against loss made by these companies).

We shall submit that, petitioner Company, must explain the position of coal stock holding in compliance of CEA Guidelines, at its power plant, since beginning of its operation. Our submission is as follows:

1. Hon'ble CERC New Delhi has issued, Public Notice, dated 13" May 2022 (copy enclosed) and asked Comments suggestions on Staff Paper on the Methodology for Computing Charges for maintaining lower coal stock by coal based thermal generating stations."
2. The capacity charges/ electricity tariff to thermal power Genco is fixed on the basis that they will maintain the coal stock at their power plant, as per CEA Guidelines. They earn illegally extra money by not maintaining, coal stock at their power plants as per CEA norms and amounts to fraud with their procurer which is ultimately fraud with public. This is going on for last several years.
3. Non maintenance of required coal as per CEA norms by Gencos, were carried out to save on cost of working capital and hence further benefit to Gencos, in addition to Return on Equity the Gencos are also entitled to recover penal interest from procurer for delayed payments even after carrying fraud by not maintaining coal stock.
4. The non maintenance of coal stock at power plants by Gencos affects the working of coal companies in India and these companies are forced to cut their production due to low demand by Gencos. Coal India was having huge stock of coal in March 2022 April 2022 as declared by Hon'ble Coal Minister, Govt of India, which slows down it mininig capacity. There was more than sufficient quantity of coal available: with Coal India to feed Gencos and due to huge inventory, Coal india was not able to carry out coal mining of its full capacity. These coal companies find it difficult to increase the coal production suddenly, if there is sudden spurt in coal demand. The rail transportation

becomes difficult to transport increased quantity of coal at short notice and affects the movement of passenger trains.

5. The other problem lies with railways, because the requirement of racks becomes lower and racks either remain underutilized or diverted somewhere else, if coal is not lifted by Gencos. Sudden increase in requirement of railways racks for transportation of coal causes cancellation of passenger trains and problems for general public.
6. Ministry of Power, New Delhi, invokes powers under section 11 of Electricity Act 2003 vide Notification no. 23/13/2021-R&R (Pt-1), New Delhi, dated 5 May 2022 (copy of first page is enclosed). This action of MoP New Delhi was illegal and has taken away the power of Appropriate Commissions, by forming a committee etc. We made representation vide our letter dated 09/05/2022, in this regard and this notification has been withdrawn MoP vide notification dated 28/05/2022 which was, forcing the State Govt and IPP to import the coal.
7. Commission, is requested to recover back all the benefits availed by petitioner due to surplus power in M.P., by not maintain coal stock as per CEA Guidelines. There was surplus power in Madhya Pradesh. Power Gencos including petitioner collected nearly Rs 15000.00 crores in last five years without supplying any power to electricity consumers of Madhya Pradesh and without maintaining coal stock as per CEA guidelines. However, there is power loadshedding in Madhya Pradesh and surplus power these Power Gencos has been disappeared, citing shortage of coal. This seems to big fraud with consumers.

We shall conclude our submission before Commission as follows:

1. The petitioner power plant was installed as industry and does not fall under the category of generation company as defined under section 2 (28) of Electricity Act 2003.
2. PPA under Electricity Act 2003 cannot be signed on the basis of MOUS signed for putting up industries. This petition under section 62 and section 86(1)(a) of the Electricity Act, 2003 read with Madhya Pradesh Electricity Regulatory Commission (Terms and condition for determination of Generation Tariff), Regulation, 2015, cannot be filled.
3. The benefit of power offered in MOUs was the return to Govt of M.P. in return of various concessions provided by Govt of M.P. to these companies including petitioner, as industry Govt of M.P. is bound by APTEL order para 61, for not availing power, if it works out to be more than Rs 2.45 per unit This order of APTEL also decides that this petition cannot be filled under section 62 and section 86(1)(a) of the Electricity Act 2003 read with Madhya Pradesh Electricity Regulatory Commission (Terms and condition for determination of Generation Tariff 1, Regulation, 2020.
4. PPAs are signed without requirement of power petitioner plant causing surplus power in M.P. and surplus power is being sold at very cheap rates or backwardation charges



are being paid. This will cause further increase in tariff and hence against public interest.

5. This plant will create environmental hazards without supplying any power M.P. The power plant is following pollution norm fixed in the year 1986.
6. PPAs signed are illegal, in violation of APTEL order, in violation of MoP New Delhi notification which debars signing of PPAs under section 62 of Electricity Act 2003.in the year 2006 itself.
7. The arrangement of surplus power by signing illegal PPAs and then paying back down charges and selling surplus power at throw away prices is criminality against public of M.P.
8. We believe that the orders passed by Commission were based on misleading information provided by petitioner and hence all the past orders regarding this petitioner may kindly be reviewed as laid down under section 151 of CPC.

**Petitioner's Response:**

*In reply to the averments made by the Stakeholder in the matter of RoE and Sub Paras (i) and (ii) under the same, the petitioner submits that the claim of the petitioner in the instant Petition is in line with the MPERC Tariff Regulations, 2020. It is to be noted that the power generation activity in India is governed by Electricity Act, 2003. The Respondent has made a misinformed statement by correlating the Return on Equity with the dividend distributed by the Company as they are entirely different aspects. Further, in reply to the Stakeholder's reference to the judgement of Hon'ble APTEL's in its Order dated September 18, 2015, the petitioner submits that the ruling of the Hon'ble APTEL was specifically in the case of Appellant where the applicable governing Regulations were Haryana Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff for Generation, Transmission, Wheeling, Distribution and Retail Supply of Electricity under Multiyear Tariff Framework) Regulations, 2012 as per which the specific Regulation for Return on Equity provides that the rate of RoE shall be decided by the Commission whereas, in the present case of petitioner the applicable Regulations are MPERC Tariff Regulations, 2020 and the specific Regulation for Return on Equity provides for the rate of RoE at a flat rate of 15.50% for thermal generating stations irrespective of profits, losses or dividends paid by the company.*

*The petitioner is refraining from responding to generalised statements. Besides, coal stock is monitored by Ministry of Power, Gol along with all Discoms and Generation companies.*

**Observation:**

Comments relevant to the petition have been considered while deciding this Petition.