

MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION
5th Floor, "Metro Plaza", Bittan Market, Bhopal - 462 016



Petition No. 18 of 2017

PRESENT:

Dr. Dev Raj Birdi, Chairman

A.B. Bajpai, Member

Alok Gupta, Member

IN THE MATTER OF:

Determination of Provisional Tariff of Unit No. 2 of 2X600 MW Coal based Thermal Power Project (Phase-I) in District Anuppur, for the period commencing CoD of the Unit No. 2 i.e. 7th April 2016 till 31st March 2019.

AND IN THE MATTER OF:

**M/s. M.B. Power (Madhya Pradesh) Ltd.
Laharpur, Jaithari,
Anuppur, Madhya Pradesh -484330**

Petitioner

V/s

- 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 28th October' 2017)

1. M/s M.B. Power (Madhya Pradesh) Ltd. (hereinafter called "the petitioner") has filed the subject petition on 28th April' 2017 for determination of provisional tariff for supply of power from Unit No. 2 (600 MW) of its 2X600 MW sub-critical coal based Thermal Power Project (Phase-I) at Anuppur for the period commencing CoD of the unit i.e. 07th April' 2016 till 31st March' 2019. The subject petition is filed under Madhya Pradesh Electricity Regulatory Commission (Terms and Conditions for determination of Generation Tariff) Regulations, 2015 (hereinafter called "the Regulations") and under Section 62 and Section 86(1) (a) of the Electricity Act, 2003.
2. The petitioner's Power Plant under the subject petition comprises of two generating units of 600 MW each. The Unit No.1 and Unit No. 2 of the petitioner's power plant have been declared under commercial operation (CoD) on 20th May' 2015 and 7th April' 2016, respectively.
3. The petitioner executed long term Power Purchase Agreement (PPA) on 5th January' 2011 with Madhya Pradesh Power Management Company Ltd., (hereinafter called "MPPMCL" or "Respondent No. 1") for supply of power of 30% of the installed capacity of the Project for a period of 20 years at regulated tariff determined by the Madhya Pradesh Electricity Regulatory Commission (hereinafter called "the Commission" or "MPERC". The petitioner has also executed another Power Purchase Agreement on 4th May' 2011 with the Government of Madhya Pradesh for supply of 5% of the net power (concessional power) generated at only variable charges determined by the Commission.
4. The petitioner had filed an Interlocutory Application in the subject Petition No. 18 of 2017 seeking ad-interim/ad-hoc tariff for its Unit No. 2 for the purpose of raising bills for the power being supplied to MPPMCL from this Unit for the period commencing 09.05.2017 till determination of provisional tariff for Unit No. 2 by the Commission in the subject petition.
5. Vide order dated 7th June' 2017 in above-mentioned IA, the Commission granted ad-interim/ ad- hoc tariff (Annual Capacity Charges and Energy Charges) of Unit No. 2 for billing purpose based on the details and documents filed with the subject petition. In the aforesaid order, it was mentioned that the ad-interim/ ad-hoc tariff shall be applicable from 09.05.2017 for the power supplied from Unit No. 2 of applicant power project subject to retrospective adjustment as per MPERC (Terms and Conditions for determination of generation tariff) Regulations, 2015 as and when the provisional tariff is determined by the Commission in the subject Petition No. 18 of 2017.

Background of the petition:

6. Vide order dated 29th July' 2015 in the Petition No. 31/2015, the Commission

determined the provisional tariff for Unit No. 1 of the generating station from its COD (i.e. 20th May' 2015) to 31st March' 2016, with the directions to file the petition for determination of final tariff at the earliest along with Annual Audited Accounts and all other required details/documents. The provisional tariff for Unit No. 2 was not determined by the Commission as the Unit No. 2 was not synchronized by that time.

7. The petitioner has filed Petition No. 68 of 2016 for determination of final tariff of its Unit No. 1 based on Annual Audited Accounts which is under process with the Commission.
8. The petitioner filed Petition No. 14 of 2016 on 11th March' 2016 for determination of provisional tariff for Unit No. 2 of its 2x600 MW Coal based Thermal Power Plant (Phase-I) from anticipated COD of Unit No. 2 till 31st March' 2016.
9. The Unit No. 2 achieved COD on 7th April, 2016 and the petitioner had supplied 41.23 MUs from this Unit No. 2 to Respondent No. 1 (MPPMCL) for the period from 28.04.2016 to 16.05.2016. Thereafter, the Unit No. 2 of the project was under forced outage since 16th May' 2016, due to major breakdown in boiler of this Unit.
10. The petitioner filed I.A. No. 1 of 2016 in Petition No. 14 of 2016 on 20th May' 2016 seeking extension of the control period under the MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2012, to cover the COD of Unit No. 2 with the contention that the delay in COD of Unit 2 of the petitioner's Project was for the reasons beyond control of the petitioner.
11. Further, on 14.06.2016, the petitioner filed another I.A. No. 2 of 2016 in the same Petition No. 14 of 2016 and requested for fixing Ad-hoc Tariff for the power supplied from Unit 2 from 07.04.2016 to 16.05.2016 i.e. till forced outage of Unit No. 2.
12. Vide Commission's order dated 24.08.2016, the I.A. No. 1 of 2016 in Petition No. 14 of 2016 was not found maintainable with the following observations and directions:-
 - (a) The Commission has no jurisdiction to intervene in the matter in terms of provisions under Section 29(5) of the Electricity Act.
 - (b) There is no merit the petitioner's contention for extension of control period of MPERC Tariff Regulations 2012 for individual/specific case.
 - (c) The petitioner was directed to file the amended Petition No. 14 of 2016 in light of the provisions under MPERC Tariff Regulations 2015 by 16.09.2016.
13. Vide aforesaid order dated 24.08.2016, the Commission disposed of I.A. No. 2 of 2016 also in Petition No. 14 of 2016 with the following observation:-

".....Considering the above request of the petitioner in IA No. 2 in Petition No. 14 of 2016, the petitioner is allowed to raise bills to MPPMCL for the units supplied from Unit No. 2 from its CoD till 16th May, 2016 at the tariff

provisionally determined by the Commission in Petition No. 31 of 2015 on 29th July'2015 for Unit No. 1 of the same project of the petitioner subject to retrospective adjustment on determination of tariff for Unit No. 2 by the Commission in the subject Petition No. 14 of 2016."

14. Vide order dated 1st October, 2016, the Commission disposed of Petition No. 14 of 2016 with the liberty granted to the petitioner to approach the Commission with a fresh petition in light of the provisions of MPERC Regulations 2015, as and when Unit No. 2 of the Project is revived for generation. In the aforesaid order, the Commission observed the following:

"The Commission has observed from the above submission made by the petitioner that the Unit No. 2 of petitioner's power project in the subject matter is under outage and this generating unit may take four to five months for restoration to the normal working conditions. In view of the aforesaid observations and the prayer made by the petitioner in its application, the Commission is not inclined to keep this petition pending indefinitely and therefore, has decided to dispose of the subject petition at this stage. However, the petitioner shall be at liberty to approach the Commission with a fresh petition in light of the provisions under MPERC (Terms and Conditions for determination of Generation Tariff) Regulation, 2015 alongwith all requisite details and documents as and when the generating Unit No. 2 of petitioner's power project is revived for generation. The Commission may also consider to adjust the processing fees already deposited by the petitioner on early filing of the requisite details and documents in the matter."

15. In compliance with the above directions, the petitioner filed the subject petition for determination of provisional tariff of Unit No. 2. In para 25 of the subject petition the petitioner mentioned that Unit No. 2 of the project is revived for generation and is expected to be operational again by early May' 2017.
16. The petitioner has also filed review Petition No. 67 of 2016 on 28.11.2016 seeking review of the Commission's order dated 24.08.2016 passed in I.A. No. 1 of 2016 (in Petition No. 14 of 2016). Having heard the petitioner and respondent, the aforesaid review petition is to be decided by the Commission. However, the tariff of Unit No. 2 under the subject petition is provisionally determined in this order based on Commission's order dated 24.08.2016 passed in IA No. 1 of 2016.
17. In the subject petition, the petitioner broadly submitted the following:
- (i) *In accordance with the provisions of the PPA, the SCOD of Unit No. 1 is 20.05.2015. Accordingly, the SCOD of Unit No. 2 was to be achieved 6 months thereafter i.e. by 19.11.2015 in accordance with Article 4.1.5 of the PPA. Despite best efforts of the Petitioner, COD of Unit No. 2 was slightly delayed due to reasons/factors beyond the control of the Petitioner. The COD of Unit No. 2 was achieved on 07.04.2016 and*

MPPMCL vide letter dated 22.04.2016 has approved and accepted Revised SCOD of Unit No. 2 as 07.04.2016.

- (ii) Prior to achieving the SCOD of Unit No. 2, the petitioner successfully synchronized Unit No. 2 with the grid on 12.03.2016 and subsequently achieved its full load commissioning on 30.03.2016. At the insistence of MPPMCL, the petitioner undertook 72 hours trial run and completed the same on 06.04.2016 and declared COD of Unit No. 2 as 07.04.2016.
- (iii) It is submitted that the issue as to whether the tariff should be determined by the Commission under MPERC (Terms and Conditions for determination of Generation Tariff) Regulations 2012 ("MPERC Tariff Regulations 2012") or MPERC (Terms and Conditions for determination of Generation Tariff) Regulations 2015 ("MPERC Tariff Regulations 2015"), is pending adjudication before the Commission in Review petition No. 67 of 2016. The said Review petition was admitted by the Commission vide its order dated 01.02.2017.
- (iv) Without prejudice to the pending Review Petition No. 67 of 2016, the petitioner is filing the present petition for determination of provisional tariff for Unit No. 2 of the Petitioner's Project.
- (v) Marginal delay of less than 5 months in Unit No. 2 COD (i.e. 19.11.2015 to 07.04.2016) has been on account of external factors, which were beyond the control of the Petitioner. The Petitioner, from time to time vide its various communications had duly kept MPPMCL abreast of such external factors/ reasons leading to this delay and had sought extension/ revision of SCOD of Unit No. 2 as per provisions of the PPA.
- (vi) On achieving the CoD of Unit No. 2, the petitioner had earlier filed Petition No. 14 of 2016 for determination of provisional tariff of Unit No. 2.
- (vii) The petitioner had supplied power to the Respondents from 28.04.2016 till 16.05.2016 after which the Unit 2 of the Petitioner's Project experienced a forced outage on account of an accident that occurred on 16.05.2016. In compliance with the Commission's Order dated 25.05.2016, the Petitioner submitted a detailed report on the aforesaid accident before the Commission on 14.06.2016.
- (viii) With regard to the supply of power from Unit No. 2 by the Petitioner to the Respondents during the period from 28.04.2016 till 16.05.2016, the Commission vide its order dated 24.08.2016 in I.A. No. 2 of 2016 in Petition No. 14 of 2016 allowed the Ad Hoc tariff for such supply.
- (ix) Further, vide its order dated 01.10.2016, the Commission disposed of Petition No. 14 of 2016 and directed the petitioner to file a fresh Petition when Unit No. 2 of the Petitioner is revived for generation.
- (x) The petitioner submitted that Unit 2 of the Project is revived for generation and has recommenced supply of power from its Unit No. 2 to MPPMCL from 09.05.2017. In regard to the above submissions and in compliance with the Commission's Order

dated 01.10.2016 passed in Petition No. 14 of 2016, **the Petitioner has filed the instant Petition before the Commission for determination of provisional tariff for Unit No. 2 for the period commencing from 07.04.2016 (i.e. Unit 2 COD) till 31.03.2019 under MPERC Tariff Regulations 2015. (Emphasis Supplied)**

18. With the above contention, the petitioner claimed the following Annual Capacity (fixed) Charges and Energy (variable) Charges for Unit No. 2 of its project:

Table 1: Annual Capacity Charges and Energy Charges claimed by the petitioner for Unit No. 2

S. No.	Particular	Unit	FY 2016-17	FY 2017-18	FY 2018-19
1	Return on Equity	Rs. Cr.	183.78	203.31	203.31
2	Interest and Finance Charges on Loan	Rs. Cr.	288.83	302.41	278.05
3	Depreciation	Rs. Cr.	164.38	183.66	183.66
4	O&M expenses	Rs. Cr.	97.62	103.80	110.28
5	Interest on Working Capital	Rs. Cr.	58.49	60.00	59.85
6	Annual Capacity (Fixed) Charges	Rs. Cr.	793.10	853.18	835.15
7	Share of Non-Concessional PPA (%)	%	30%	30%	30%
8	Annual Capacity (Fixed) Charges for Contracted Capacity (30%)	Rs. Cr.	237.93	255.96	250.54
9	Energy Charges at ex-bus per kWh	Rs./kWh	1.969	1.969	1.969

19. In the subject petition, the petitioner prayed the following:
- Determine the Provisional Tariff for Unit 2 of the Project from the COD of Unit 2 (i.e. 07.04.2016) till 31.03.2019 i.e., end of control period;
 - Allow the recovery of statutory charges, water charges, duties, taxes and cess on pass through basis from the beneficiary for the period from COD of Unit 2 till 31.03.2019 as per Para 77-78;
 - Allow the recovery of the filing fees as and when paid before this Hon'ble Commission and also the publication expenses from the Respondents;
 - Relax the norms for Auxiliary power consumption and Station Heat rate for tariff determination as per the submissions in Para 68-76 of the present Petition;
 - Adjust the processing fees deposited by the petitioner while filing its earlier petition 14 of 2016 against the processing fees for the instant petition."

Procedural History:

20. Motion hearing in the matter was held on 20th June' 2017. Vide order dated 20th June' 2017, the petition was admitted and the petitioner was directed to serve copies of the petition on all Respondents in this matter. The Respondents were also asked to file their response if any, on the subject petition by 14th July' 2017.
21. Subsequently, the petitioner had also filed an Interlocutory Application on 12th May, 2017 in aforesaid Petition No. 18 of 2017 seeking ad-interim/ad-hoc tariff for its Unit No. 2 for the purpose of raising bills for the power being supplied to MPPMCL from this Unit for the period commencing 09.05.2017 till determination of provisional tariff

- for Unit No. 2 by the Commission in aforesaid petition.
22. Vide order dated 7th June' 2017 in aforesaid IA, the Commission has granted ad-interim/ ad- hoc tariff (Annual Capacity Charges and Energy Charges) for billing based on the details and documents filed with the Petition No. 18 of 2017.
 23. Vide Commission's letter dated 27th June, 2017, the information gaps and requirement of additional details/documents were conveyed to the petitioner and it was directed to file a comprehensive point-wise response on each issue at the earliest but not later than 14th July' 2017.
 24. Vide letter dated 12th July' 2017, the petitioner sought two weeks' time extension for filling its response on the issues raised by the Commission. The request of the petitioner was considered by the Commission and directed to file its response at the earliest but not later than 29th July' 2017.
 25. Vide letter dated 14th July' 2017, Respondent No. 1 (MPPMCL) sought six weeks' time extension for submission of its reply. Vide order dated 26th July' 2017, the Respondent No. 1 was directed to file its response on the subject petition at the earliest but not later than 16th August' 2017, after serving a copy of the same to the petitioner.
 26. By Affidavit dated 28th July' 2017, the petitioner filed its response on the issues raised by the Commission along with relevant details and documents. Issue-wise response filed by the petitioner has been enclosed as **Annexure-“I”** of this order.
 27. By affidavit dated 19th August' 2017, Respondent No. 1 filed its response on the petition. By affidavit dated 5th September' 2017, the petitioner filed its rejoinder to the response dated 19th August' 2017 filed by the Respondent No. 1. The petitioner's reply on each comment offered by the Respondent No. 1 (MPPMCL) has been mentioned in **Annexure-“II”** of this order.

Capital Cost:

Petitioner's submission:

28. With regard to cash expenditure of Unit No. 2, the petitioner submitted the following:
“The total cash expenditure for the Project along with expenditure incurred for Unit 1 and Unit 2 as on COD of Unit 2 (07.04.2016) are summarized as below:- (Rs Crore)

Table 2: Capital cost claimed by the petitioner

Particulars	Cash Expenditure for the Project	Cash Expenditure attributed to	Cash Expenditure attributed to
	Unit 1&2	Unit 1	Unit 2
<i>Land and Site Development</i>	89.70	80.12	9.58
<i>Plant and Machinery (Less provision for CD/ED)</i>	4280.26	2653.41	1626.85

Particulars	Cash Expenditure for the Project	Cash Expenditure attributed to	Cash Expenditure attributed to
<i>Building and Civil Works</i>	807.37	699.00	108.37
<i>Pre-operative Expenditure*</i>	412.74	259.02	153.72
<i>Finance Charges/IDC</i>	1889.35	1092.20	797.15
<i>Custom Duty/Excise duty</i>	28.75	27.41	1.34
Capital Expenditure	7508.17	4811.14	2697.03
<i>FERV Loss charged to revenue</i>	158.49	46.69	111.80
<i>Add: Unamortized Finance Cost to Borrowings</i>	34.93	27.52	7.41
Total – Capital Cost	7701.59	4885.35	2816.24

*net of other incomes and includes the pre-commissioning expenses (net of infirm power).

29. Based on the total estimated capital expenditure and the cash expenditure for Unit 2 as on COD of Unit 2 (07.04.2016), the details of balance works in terms of undischarged liabilities, balance commitments for unexecuted works and provisions which are likely to be discharged /executed in FY 2016-17 or within the cut off period are summarized as hereunder:-

Table 3: Capital cost for Unit No. 2 claimed by the petitioner: (in Rs Crore)

Particulars	Estimated Capital Cost for Unit 2	Cash Expenditure attributed to Unit 2	Balance Work for Unexecuted commitments, Undischarged liabilities/ provis.
<i>Land and Site Development</i>	15.38	9.58	5.80
<i>Plant and Machinery (Less provision for Custom/ Excise Duty)</i>	1773.31	1626.86	146.45
<i>Building and Civil Works</i>	142.31	108.37	33.94
<i>Pre-operative Expenditure</i>	162.66	153.72	8.94
<i>Finance Charges/IDC</i>	803.16	797.15	6.00
<i>Custom Duty/Excise duty</i>	548.62	1.34	547.28
Capital Expenditure	3445.44	2697.03	748.41
<i>Add: FERV Losses charged to revenue</i>	111.80	111.80	-
<i>Unamortized Finance Cost to Borrowings</i>	7.41	7.41	-
Total – Capital Cost	3564.65	2816.24	748.41

Provision under Regulation:

30. Regarding capital cost of the project, Regulation 15 of MPERC (Terms and Conditions for determination of Generation tariff) Regulations, 2015 provides that,
- “15.1 Capital cost as determined by the Commission after prudence check in accordance with this Regulation shall form the basis of determination of tariff for existing and new projects.
- 15.2 Capital cost for a Project shall include
- the expenditure incurred or projected to be incurred up to the date of commercial operation of the project;
 - Interest during construction and financing charges, on the loans (i) being equal to 70% of the funds deployed, in the event of the actual equity in excess of

30% of the funds deployed, by treating the excess equity as normative loan, or (ii) being equal to the actual amount of loan in the event of the actual equity less than 30% of the funds deployed;

Any gain or loss on account of foreign exchange risk variation pertaining to the loan amount availed during the construction period shall form part of the capital cost.

- (c) Increase in cost in contract packages as approved by the Commission;
- (d) Interest during construction and incidental expenditure during construction as computed in accordance with Regulation 17 of these Regulations;
- (e) capitalised Initial spares subject to the ceiling rates specified in Regulation 19 of these Regulations;
- (f) expenditure on account of additional capitalization and de-capitalisation determined in accordance with Regulation 20 of these Regulations; and
- (g) adjustment of revenue due to sale of infirm power in excess of fuel cost prior to the COD as specified under Regulation 24 of these Regulations;

15.3 The Capital cost of an existing project shall include the following:

- (a) the capital cost admitted by the Commission prior to 1.4.2016 duly tried up by excluding liability, if any, as on 1.4.2016;
- (b) additional capitalization and de-capitalization for the respective year of tariff as determined in accordance with Regulation 20; and
- (c) expenditure on account of renovation and modernization as admitted by the Commission in accordance with Regulations 21-----.”

Commission's Analysis:

31. The petitioner submitted that the estimated capital cost of the Project (Unit No. 1&2) is Rs 8702.23 Crore. The aforesaid capital cost is net of other incomes and it includes the pre-commissioning expenses (net of infirm power).
32. The petitioner submitted that the total cash expenditure for the project as on CoD of Unit No. 2 i.e. 7th April, 2016 is Rs. 7701.59 Crores. The petitioner further submitted that the actual expenditure towards Unit 1 and Unit 2 as on COD of Unit 2 is Rs. 4885.35 Crores and Rs. 2816.24 Crores respectively.
33. The expenditure of Rs 5137.58 Crore as on 31st March' 2016 is allocated to Unit No. 1 based on capitalized capital expenditure of Rs 5063.36 Crore plus Rs 46.69 Crore for expenditure on account of FERV losses charged to revenue and Rs 27.52 Crore on account of unamortized finance cost of borrowings (attributed to Unit 1).
34. The petitioner filed the following break-up with regard to the estimated capital cost of Unit No. 2 with the details of capital work in progress for FY 2015-16:

(i)	Estimated Capital Cost for the Project:	Rs. 8702.23 Cr.
(ii)	Capital Expenditure attributed to Unit 1 as on 31.03.2016:	Rs. 5137.58 Cr.
(iii)	Capital Works in Progress for Unit 2 as on 31.03.2016:	Rs. 2818.38 Cr.
(iv)	Balance Commitments/ Unadjusted Advances/ Provisions:	Rs. 746.27 Cr.

(v) Total Est. Capital Cost for Unit 2 as on its COD (07.04.2016): Rs. 3564.65 Cr.

(i) Capital expenditure certified by Auditor:

35. The petitioner filed a copy of CA certificate certifying cash expenditure for the project (Unit No. 1&2) as on 31st March' 2016 and on the CoD of the Unit No. 2 i.e. 7th April' 2016. In the Auditor's certificate following is mentioned:

- As on 31st March, 2016, the cash expenditure of Rs. 7701.46 Crores has been incurred for the project and these expenses met through the term loan (including ECB) of Rs. 5833.55 Crores and promoters funds of Rs. 2098.75 Crores. The balance is closing cash and bank balances.
- As on 6th April, 2016, the cash expenditure of Rs. 7701.59 Crores has been incurred for the project and these expenses met through the term loan (including ECB) of Rs. 5825.27 Crores and promoters funds of Rs. 2098.75 Crores. The balance is closing cash and bank balances.

36. Break-up of total cash expenditure for the project along with expenditure incurred for Unit No. 1 and Unit No. 2 as on COD of Unit 2 (07.04.2016) certified by the Auditor are summarized as given below:-

Table 4: Cash expenditure for Unit No. 2 as on its CoD certified by the Auditor's:

Sr. No.	Particulars (Amount in Rs. Crore)	Cash Expenditure certified by the Auditor		
		Unit 1&2	Unit 1	Unit 2
1	Cost of Land and Site Development	89.70	80.12	9.58
2	Plant and Machinery	4280.26	2653.41	1626.85
3	Building and Civil Works	807.37	699.00	108.37
4	Pre-operative Expenditure/pre-commissioning expenses*	412.74	259.02	153.72
5	Interest during construction (IDC) / Finance Charges (FC)	1889.35	1092.20	797.15
6	Custom Duty/Excise duty on Offshore/Onshore Equipments	28.75	27.41	1.34
7	Capital Expenditure	7508.17	4811.14	2697.03
8	Add: FERV Losses charged to revenue	158.49	46.69	111.80
9	Add: Unamortized Finance Cost to Borrowings	34.93	27.52	7.41
10	Total – Capital Cost	7701.59	4885.35	2816.24

*Net-off the revenue from sale of infirm power.

37. The subject petition is for determination of provisional tariff based on the cash expenditure as on CoD of Unit No. 2 certified by the Chartered Accountant. However the Annual Audited Accounts of the petitioner's company for FY 2016-17 are yet to be finalized. Therefore, the Commission shall scrutinize the subject petition based on the cash expenditure cited in aforesaid CA certificate.

(ii) Investment Approval:

38. Investment approval for the project was accorded on 21st October' 2009 by the Board of Director's of the petitioner's Company on with the total capital cost of Rs. 6240.12 Crores, which has been subsequently revised to Rs. 8306.03 Crores on 30th June' 2014. The capital cost of the project as per the latest BoD approval dated 16th February' 2016 is Rs. 8702.23 Crores.
39. The petitioner filed the capital cost as approved by BOD of the company on different dates for Unit No. 1&2 as under:

Table 5: Capital cost as approved by BOD of the company (Rs. in Crore)

Sr. no.	Particulars	BOD as on 21/10/2009	BOD as on 30/06/2014	BOD as on 16/02/2016
1	Cost of Land & Site Development	101.75	149.05	144.00
2	Plant & Machinery			
3	Boiler, Turbine & Generator (BOP Facilities)	3,825.00	4,124.36	4,267.34
4	Barrage at River (incl. Raw Water Pipeline & Pump House)	78.24	145.47	156.08
5	Railway Siding	35.00	124.43	142.40
6	Total	3,938.24	4,394.26	4,565.83
7	Building & Civil works (including Ash Dyke)	995.67	1,132.88	895.11
8	Pre-operative/Pre-commissioning Expenses	179.00	456.10	432.48
9	Interest during Construction/Finance Charges	926.47	1,597.72	1,895.35
10	Working Capital Margin	98.99	-	-
11	Custom & Excise Duty on Offshore/Onshore Equipments	-	576.03	576.03
12	Capital Expenditure	6,240.12	8,306.03	8,508.81
13	FERV Charged to Revenue	-	-	158.49
14	Unamortized Finance Cost to Borrowings	-	-	34.93
15	Total Capital Expenditure	6240.12	8306.03	8702.23

40. The petitioner filed detailed reasons for increase in capital cost approved by the BoD in the investment approval dated 21st October' 2009 and revised at time and again.

(iii) SCOD and CoD:

41. With regard to Scheduled date of Commercial Operation, Regulation 4.1 (zs) of MPERC (Terms and Conditions for determination of Generation tariff) Regulations, 2015 provides as under;

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

42. Vide resolution dated 21st October' 2009, Board of Directors of petitioner's company accorded the investment approval for the project at capital cost of Rs. 6240 Crores

with the funding of Rs. 1560 Crores (25% of the project cost) through equity and balance Rs. 4680 Crores from loan component. In the aforesaid resolution, there is no mention about scheduled CoD and date of completion of the project.

43. Regarding the scheduled commercial operation date, clause 4.1.5 and 4.1.6 of the PPA dated 5th January, 2011 executed between the parties mentioned the following:

“4.1.5 Scheduled Commercial Operation Date

The company shall achieve Commercial Operation Date for the first Unit within sixty (60) Months from the date of signing of Implementation Agreement (i.e.01st December 2009) and second Unit of the Power Station within six (6) Month thereafter.

4.1.6 Revised Scheduled Commercial Operation Date

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

44. The petitioner mentioned that as per the PPA, the SCOD of Unit No. 1 was 30.11.2014. However, due to reasons beyond the control of the petitioner, the Commercial Operation Date of Unit 1 could only be achieved on 20.05.2015. The petitioner further submitted that it had requested MPPMCL to revise the SCOD of Unit No. 1 as 20.05.2015 and accordingly MPPMCL, vide its letter dated 26.08.2015 accepted the Revised SCOD of Unit 1 as 20.05.2015.
45. Regarding the CoD of Unit No. 2, the petitioner submitted that in accordance with clause 4.1.5 of the PPA the SCOD of Unit No. 2 was to be achieved 6 months after the CoD of Unit No.1. The petitioner further submitted that despite best efforts made of the petitioner, COD of Unit No. 2 was slightly delayed due to reasons/factors beyond the control of the petitioner. The petitioner mentioned that the COD of Unit No. 2 was achieved on 07.04.2016 and MPPMCL vide letter dated **22.04.2016** has accepted the revised SCOD of Unit No. 2 as 07.04.2016.
46. In para 16 of the petition, the petitioner submitted the following reasons in respect of delay in achieving CoD of Unit No. 2:

“There has been a delay in implementation of the Petitioner’s Project owing to several hurdles faced by the Petitioner during the construction phase of the Project which were beyond the control of the Petitioner. The said reasons have been summarized herein below:-

- (a) Delay in grant of Stage-II Forest Clearance by MoEF;*
- (b) Delay on account of unwarranted Public Interest Litigations by meddlesome interlopers for personal gains;*

- (c) Disturbances/unrest at Project Site by miscreants and motivated elements;
- (d) Unseasonal and unprecedented rains/ floods;
- (e) Delay in barrage construction;
- (f) Delay due to other external factors.

Respondent No. 1 (MPPMCL) in its response on SCOD of the Unit has submitted the following:

47. By affidavit dated 19th August' 2017, Respondent No. 1 (MPPMCL) submitted the following in respect of SCOD of Unit No. 2:
- *"In Para 9 the Petitioner has stated that –".in accordance with the provisions of the PPA the SCOD of the Unit 1 is 20.05.2015. Accordingly SCOD of Unit 2 was to be achieved 6 months thereafter i.e. by 19.11.2015 in accordance with Article 4.1.5 of the PPA."*
 - *It is humbly submitted that the above contention of the Petitioner is misconceived. Actually, in accordance with the provisions of Article 4.1.5 of PPA, the SCOD of Unit 1 was to be achieved on 30.11.2014 (i.e. 60 months from the date of signing of Implementation Agreement). This fact is already admitted by the Petitioner in Para 6(a) of the present Petition. The Respondent agreed to revise the SCOD of Unit 1 to 20-05-2015 after considering specific facts and circumstances leading to the delay in achieving COD of Unit 1.*
 - ***However, the provisions of Article 4.1.5, cannot be construed to mean that the SCOD of Unit 2 will also be automatically extended by 6 months and be counted from the specifically accepted COD for Unit 1 i.e. 20-05-2015. This contention of the Petitioner is strongly denied.***
 - *In the humble submission of the Respondent, the SCOD of Unit 2 will still be counted from date of original SCOD of Unit -1 (i.e., 30-11-2014), **even if the SCOD of Unit 1 has been agreed to be advanced to 20-05-2015.** Therefore, to say or to presume that the new SCOD of Unit 2 will automatically extend by 6 months thereafter is incorrect. If at all there is a case for extension of COD of Unit 2, then it would have to be considered on the specific facts and circumstance pertaining to that unit only. **(Emphasis Supplied)***
48. Vide letter dated 27th June' 2017, the petitioner was asked to inform the following:
- a. The detailed reasons and factors attributable for delay in achieving CoD of the unit.
 - b. If the delay is attributable to the vendor/contractor side, the details of penalty/Liquidated Damages if any, recovered from the vendor/contractor as per the provisions under the contract be submitted
49. By affidavit dated 28th July' 2017, the petitioner submitted the detailed reasons for delay in achieving CoD of Unit No.2 and same has been elaborated in issue-wise response filed by the petitioner enclosed as Annexure I enclosed with this order. The

- petitioner also submitted that despite its' best efforts, the petitioner was unable to commission the Project on SCOD owing to various hurdles faced by it during the construction phase of the Project being, inter alia, delay in grant of forest clearance, various challenges in acquisition of additional land for Barrage, disturbances/unrest at Project site by motivated elements, unprecedented rains during monsoon, delay on account of filing of unwarranted Public Interest Litigations by meddlesome interlopers for personal gains, etc. The petitioner also filed the copy of such documents in support of its aforesaid contention.
50. By affidavit dated 19th August' 2017, Respondent No. 1 (MPPMCL) submitted the following:
"it is quite evident and obvious from the various reasons cited that many of them are merely issues relating to normal uncertainties faced by most of the project developers. These are generally overcome by proper risk mitigation measures and project planning and management. Therefore, such reasons do not merit consideration of this Hon'ble Commission and deserve to be rejected. It is also prayed that any time overrun attributed to above said reasons resulting in increase in Project Cost may be disallowed by the Commission."
51. Regarding the details of penalty/Liquidated Damages if any, recovered from the vendor/contractor as per the provisions under the contract, the petitioner submitted the following:
"There might be certain delays which may be attributed to the Contractor/ Vendor. However, the same have not yet been quantified by the petitioner and have not been included in the present proceedings. In terms of EPC Contract, the final settlement is still pending. It is for this reason that at this juncture the liquidated damages/penalty that may be attributable to the contractor/ vendor for delay in completion of works cannot be quantified. As such, the petitioner reserves its rights to quantify such liquidated damages/penalty at the time of final contract settlement and any such liquidated damages/penalty to be recovered from the contractor/ vendor, would be discussed and finalized at the time of final contract settlement and submitted before this Commission at the appropriate time."
52. By affidavit dated 19th August' 2017, MPPMCL (Respondent No. 1) submitted that the following:
"Unit-1 has been on Commercial Operation since 20.05.2015 (i.e., for more than 2 years) and Unit-2 has been on Commercial Operation since 07-04-2016 (i.e., for more than 1 year) it is, therefore, humbly prayed that any liquidated damages (LD) against delay in executions of contracts as recovered by the petitioner from its contractors/ vendors may be utilized towards reduction of the capital cost of the Project."
53. In view of the above, the petitioner is directed to finalized/settle the amount of LD with the vendor/contractor and file all details with supporting documents of liquidated damages/penalty recovered from the Contractor/ Vendor on account of delay, while filing petition for determination of final tariff for Unit No. 2. The issues related to delay

in achieving actual CoD of Unit No. 2 alongwith the amount of LD shall be dealt with by the Commission while examining the petition for determination of final tariff for Unit No. 2.

(iv) Interest during construction (IDC):

54. Regulation 17.1 and 17.2 of MPERC (Terms and Conditions for determination of Generation tariff) Regulations, 2015 provides as under;

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

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

Provided that if the delay is not attributable to the generating company and is due to uncontrollable factors as specified in Regulation 18 of these Regulations, IDC may be allowed after due prudence check:

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

Respondent No. 1 (MPPMCL) has submitted the following on IDC of the Unit:

55. With regard to IDC of the unit, by affidavit dated 19th August' 2017, Respondent No. 1 (MPPMCL) submitted the following:

- *The Respondent had considered request of the Petitioner for extension of COD of Unit 2 from scheduled date to April-2016, subject to the Petitioner agreeing to certain conditions. This was communicated to the Petitioner vide Letter No. 05-01/472 Dated 22.04.2016..*
- *In the said letter, inter-alia, one of the important conditions for acceptance of extension of COD was - MB Power (Madhya Pradesh) Ltd. (the Petitioner herein) agreeing “**not to claim IDC for delayed COD**”. This condition was duly agreed by the Petitioner vide its Letter No. 7972 Dated 13-06-2016. A copy of the said letter is annexed and marked as Annexure R/2. This Hon'ble Commission is, therefore, prayed to **not to consider** IDC and IEDC while provisionally determining tariff of Unit 2 for the period of actual delay in COD of Unit 2, i.e., from 31.05.2015 (6 months after SCOD of Unit 1 as per PPA or 30.11.2014) to date of actual COD of Unit 2 or 07.04.2016.*

56. On perusal of the response of Respondent No. 1, the Commission observed that the extension of scheduled CoD till the 7th April' 2016 for Unit No. 2 (600 MW) was

conditionally considered by the Respondent i.e. MPPMCL. In its letter dated 9th June' 2016, regarding extension of CoD of Unit No. 2, MPPMCL has mentioned that "total IDC would not exceed the budgeted IDC for the project cost of Rs. 8000 Cr."

57. Vide letter dated 27th June' 2017, the petitioner was asked to inform the amount of IDC and IEDC increased on account of delay in CoD of the Unit No. 2. The petitioner was also asked to file the detailed break-up of IDC as on scheduled CoD and also as on actual CoD of the project.
58. By affidavit dated 28th July' 2017, the petitioner filed the break up of IDC **for the Project** (Unit No. 1 & 2) as on Schedule COD (20.11.2015) and Actual COD (07.04.2016) as given below:-

Table 6: Total IDC as on SCOD and as on COD of Unit No. 2: (Rs. In Crore)

Particulars	As on Scheduled COD of Unit 2 (20.11.2015)	As on Actual COD of Unit 2 (06.04.2016)
Interest during Construction	1612.72	1682.18

59. In view of the above, the Commission observed that the petitioner filed the details of IDC and IEDC as on scheduled CoD and as on actual CoD for the **project** (Unit No. 1&2) whereas the subject petition is for determination of provisional tariff for **Unit No. 2**. Therefore, the petitioner is directed to file unit-wise break-up of IDC and IEDC duly reconciled with Annual Audited Accounts as on scheduled CoD and as on actual CoD while filing the petition for determination of final tariff of Unit No. 2.
60. All the details filed by the petitioner in the subject petition are provisional/ estimated and have not attained finality. Therefore, the detailed scrutiny of IDC shall be carried out while determining the final tariff order of the project on availability of the actual phasing of expenditure and normative debt -equity ratio during construction period of the project.

(v) Incidental Expenditure during Construction (IEDC)

61. Regulation 17.3 to 17.5 of MPERC (Terms and Conditions for determination of Generation tariff) Regulations, 2015 provides as under;

17.3 *"Incidental expenditure during construction shall be computed from the zero date and after taking into account pre-operative expenses upto SCOD:*

Provided that any revenue earned during construction period up to SCOD on account of interest on deposits or advances, or any other receipts may be taken into account for reduction in incidental expenditure during construction.

17.4 *In case of additional costs on account of IEDC due to delay in achieving the SCOD, the generating company shall be required to furnish detailed*

justification with supporting documents for such delay including the details of incidental expenditure during the period of delay and liquidated damages recovered or recoverable corresponding to the delay:

Provided that if the delay is not attributable to the generating company and is due to uncontrollable factors as specified in Regulation 18, IEDC may be allowed after due prudence check:

Provided further that where the delay is attributable to an agency or contractor or supplier engaged by the generating company, the liquidated damages recovered from such agency or contractor or supplier shall be taken into account for computation of capital cost.

17.5 *In case the time over-run beyond SCOD is not admissible after due prudence, the increase of capital cost on account of cost variation corresponding to the period of time over run may be excluded from capitalization irrespective of price variation provisions in the contracts with supplier or contractor of the generating company.”*

62. On scrutiny of the subject petition, it is observed that the petitioner filed pre-operative cash expenditure of Rs. 153.72 Cr. The break-up of these expenses was neither provided in CA certificate not in form TPS 5B filed with the petition. Vide Commission’s letter dated 27th June’ 2017, the petitioner was asked to file detailed break-up of these expenses claimed in the petition.
63. By affidavit dated 28th July’ 2017, the petitioner filed the break-up of Pre-operative cash expenditure of Rs. 153.72 Crore for Unit No. 2 as on 06.04.2016 as per CA certificate dated 26.04.2017 as given below:-

Table 7: Break-up of pre-operative expenses: (Rs. In Crores)

S. No.	Particulars	Amount
1	Employee Benefit Expenses	67.37
2	Depreciation and Amortization Expenses	2.99
3	Other Expenses	130.22
4	Less: Income during Construction	(46.86)
5	Total Pre-operative Cash Expenses as on 06th April, 2016	153.72

64. Vide letter dated 27th June’ 2017, the petitioner was further asked to inform the amount of IEDC increased on account of delay in CoD of the Unit No. 2. The petitioner was also asked to file the detailed break-up of IEDC as on scheduled CoD and also as on actual CoD of the project.

65. By affidavit dated 28th July' 2017, the petitioner filed the break up of IEDC for the **Project** as on Schedule COD (20.11.2015) and Actual COD (07.04.2016) is as given below:-

Table 8: Total IEDC as on SCOD and as on COD of Unit No. 2: (Rs. In Crore)

Particulars	As on Scheduled COD of Unit 2 (20.11.2015)	As on Actual COD of Unit 2 (06.04.2016)
IEDC – Pre-operative & Pre-commissioning Expenses	390.02	412.74

66. In view of the aforesaid discussions, the Commission has observed that the figures filed by the petitioner with regard to IDC and IEDC are provisional/ estimated and shall subject to change finally in Annual Audited Accounts. Therefore, the petitioner is directed to file all necessary details alongwith unit-wise break-up of IDC and IEDC as on scheduled CoD and actual CoD of Unit No. 2 indicating actual phasing of expenditure alongwith the petition for determination of final tariff of Unit No. 2 of its project. The petitioner shall ensure that the figures be filed after due reconciliation of its Annual Audited Accounts. Therefore, the Commission has provisionally considered IDC and IEDC as certificated by the Statutory auditor for Unit No. 2 with the subject petition.

(vi) Foreign Exchange Rate Variation (FERV):

67. The petitioner claimed FERV loss charged to revenue in Unit No. 2 is Rs. 111.80 Cr. and same has been certified by the Auditor.

68. Regarding the loss of FERV during the period of extension of SCOD, the Respondent No. 1 (MPPMCL) submitted the following:

“Loss due to FERV for the period of extension of SCOD may also be disallowed. It is submitted that the scheduled COD of Unit-2 was in the month of May-15 as per PPA, which was extended to Apr-16 at the behest of Petitioner for reasons that cannot be attributed to this Respondent. Since the Petitioner was not able to achieve COD of Unit-2 on time, the burden of loss on account of FERV from May-15 to Apr-16 should not be included in the capital cost of Unit-2 and this Respondent strongly opposes the Petitioner’s contention.

69. Regarding the Recovery of cost of hedging or Foreign Exchange Rate Variation, Regulation 51 of the MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2015 provides as under:

“Recovery of cost of hedging or foreign exchange rate variation shall be made directly by the generating company from the beneficiaries without making any application before the Commission:

Provided that in case of any objections by the beneficiaries to the amounts claimed on account of cost of hedging or foreign exchange rate variation, the generating company may make an appropriate application before

the Commission for its decision.”

70. Vide letter dated 27th June' 2017, the petitioner was asked to clarify that the losses of Rs. 111.80 Cr. against the FERV in Unit No. 2 is provisioning or actual loss in light of the amount recorded in Annual Audited Accounts. The petitioner was also asked to explain the reasons for such losses. By affidavit dated 28th July' 2017, the petitioner submitted the following reasons of FERV loss:

- Change in exchange parity during the time period between the bill raised by M/s LITL and bill payment by the petitioner;
- Change in exchange parity during the time period of the petitioner availing Buyer's Credits and its repayments;
- Change in exchange parity during the time period of the petitioner availing Buyer's Credit and conversion of the Buyer's Credit into ECB borrowings.

71. Based on the Auditor's certificate and details and documents filed by the petitioner, the FERV of Rs. 111.80 Cr. is provisionally considered in this order. However, the details of FERV shall be examined while determination of final tariff for Unit No. 2 based on Annual Audited Accounts.

(vii) Unamortized Finance Cost to Borrowings:

72. The petitioner claimed an amount of Rs. 7.41 Cr. towards unamortized finance cost to borrowings. Vide letter dated 27th June' 2017, the petitioner was asked file the reasons for claiming such unamortized finance cost to borrowings over and above the IDC and financing charges be submitted.

73. By affidavit dated 28th July' 2017, the petitioner submitted the following:

(a) *It is submitted that the Petitioner has incurred Rs. 242.11 Crore under finance charges towards underwriting fee, syndication fee, upfront fee, application and processing fee for raising/drawing the debt facility from the lenders as on 31.03.2016;*

(b) *It is submitted that "Note 2.1 g: Borrowing Costs" of the Petitioner's Audited Annual Accounts for FY 2015-16 attached hereto and marked as ANNEXURE-3, which refers to the borrowing costs (finance costs) as under:-*

"Borrowing costs includes interest and amortization of ancillary costs incurred in connection with the arrangement of borrowings. Borrowing costs directly attributable to the acquisition, construction or production of an asset that necessarily takes a substantial period of time to get ready for its intended use are capitalized as part of the cost of the respective asset. All other borrowing costs are expensed in the period in which they are incurred. Costs incurred in raising funds are amortized equally over the period for which the funds are acquired or within five year, whichever is less."

(c) *In line with the above, it is submitted that the total outstanding unamortized finance*

cost of borrowings as on 31.03.2016 is Rs. 43.23 Crore which can be referred from "Note 11: Loans and Advances" of the Petitioner's Audited Annual Accounts of FY 2015-16 under the line items of Prepaid ancillary cost to borrowings (Rs. 40.46 Crore) and Doubtful advances of Rs. 2.77 Crore (recoverable in cash or kind).

- (d) It is further submitted that out of the total unamortized finance cost to borrowings amounting to Rs. 43.23 Crore (as above), **an amount of Rs. 34.93 Crore is related to the long term debt facilities taken for the Project and balance is related to the working capital loan of the Project.**
- (e) It is submitted that out of the total amount of Rs. 34.93 Crore under Prepaid ancillary finance cost to borrowings/unamortized finance cost to borrowings (which is already incurred and placed under current assets in the Audited Annual Accounts of FY 2015-16 but is yet to be amortized) **an amount of Rs. 27.52 Crore is allocated to Unit 1 and balance of Rs. 7.41 Crore is allocated to Unit 2. The details of working for allocation of such expenses to Unit 1 and Unit 2 with supporting).**

74. The details regarding borrowing costs of Rs. 7.41 Crores include interest and amortization of ancillary costs incurred for arrangement of borrowings filed by the petitioner is provisionally considered in this order.

(viii) Infirm power:

75. Regulation 24 of MPERC (Terms and Conditions for determination of Generation tariff) Regulations, 2015 provides that,

"Supply of infirm power shall be accounted as deviation and shall be paid for from the regional/ state deviation settlement fund accounts in accordance with the Central Electricity Regulatory Commission (Deviation Settlement Mechanism and Related matters) Regulations, 2014, as amended from time to time or any subsequent re-enactment thereof:

Provided that any revenue earned by the generating company from supply of infirm power after accounting for the fuel expenses shall be applied in adjusting the capital cost accordingly."

Commission's Analysis:

76. The petitioner submitted that the Unit No. 2 of its Power Project was synchronized with the grid on 12th March' 2016 and achieved COD on 7th April, 2016. With the subject petition, the petitioner filed a copy of certificate issued by the Power System Operation Corporation Limited certifying the first time synchronization of Unit No. 2 with the grid. The petitioner also filed copies of various documents/ certificates confirming 07th April' 2016 as the date of commercial operation of Unit No. 2 of its power plant.

77. On scrutiny of the subject petition, it was found the petitioner had not filed the CA certificate regarding fuel expenditure for generation of infirm power till CoD of the Unit No. 2. The petitioner had also not enclosed the statements issued by Western

Regional Power Committee regarding details of infirm power supplied to the grid and revenue earned from sale of power.

78. Vide letter dated 27th June' 2016, the petitioner was asked to file the following details:
- (i) The quantity, rate and amount towards oil and coal consumed for generation of infirm power duly certified by Statutory Auditor. Supporting documents regarding rate of coal and oil were also sought from the petitioner.
 - (ii) The petitioner was also asked to file the statements issued by Western Regional Power Committee regarding details of infirm power supplied to the grid and revenue earned from sale of power.
 - (iii) The petitioner was asked to inform whether any coal quantity was allocated to it by the Coal Companies for commissioning activity of the unit.
 - (iv) Whether the imported coal has been used for generation of infirm power. The detailed break-up quantity, rate and cost of coal utilized for generation of infirm power from different sources was also sought from the petitioner.
 - (v) The petitioner was asked to confirm whether the revenue earned from sale of infirm power has been reduced from the capital cost as on CoD of the unit claimed in the subject petition.

79. By affidavit dated 28th July, 2017, the petitioner filed the following:

- (i) *The actual cash expenditure under Pre-commissioning expenses for Unit 2 as on the date of its COD amounts to Rs 48.34 Crore (prior to adjustment of revenue of Rs 1.03 Crore from sale of infirm power realized on cash basis).*

The Statutory Auditor Certificate regarding fuel expenditure & revenue realized from sale of infirm power during pre-commissioning activities for Unit 2 till its COD is attached as Annexure 19.

Based on Statutory Auditor certificate, the Petitioner submits that the total cash expenditure of Rs 15.80 Crore out of total pre-commissioning expenditure (Rs 48.34 Crore) is funded through internal accruals and not by project funds and henceforth not included in the cash expenditure certificate dated 26th April 2017 submitted with this present Petition No. 18 of 2017 as Annexure 11.

- (ii) *The statements issued by Western Regional Power Committee regarding details of infirm power supplied to the grid and revenue earned from sale of infirm power are attached as Annexure-20. According to these statements, the total revenue accrued from sale of infirm power during pre-commissioning activities of Unit 2 till the date of COD amounts to Rs 14.02 Crore.*

Based on the above submissions in Para 41 and Para 42, the details of Pre-operative expenditure for Unit 2 are as hereunder:

Table 9: pre-operative expenses as per CA certified and revised amount (Rs. Crore)

S. No.	Details	As per CA Certificate dated 26.04.2017	Revised Amount	Remarks
A	Project Management Expenses (IEDC) net of interest income.	131.15	131.15	
B	Pre-Commissioning Expenses	32.54	48.34	Based on Auditor certificate 24.07.2017 for Pre-commissioning expenses (+15.80 Crore funded by internal accruals)
C	Less: Revenue from sale of infirm power	1.03	14.02	Based on WRPC statements
D = B-C	Pre-Commissioning Expenses (net of sale of infirm power)	31.51	34.32	
E	Less: Liability	8.94	8.94	
F = A+ D-E	Total Cash Expenditure under Pre-operative Expenditure	153.72	156.53	

The Petitioner humbly submits that the Commission may kindly consider the total cash expenditure under the head "Pre-operative Expenditure including Pre-commissioning expenses" of Rs 156.53 Crore based on the Statutory Auditor certificate dated 24.07.2017 for Pre-commissioning expenditure for Unit 2 (Annexure 19) and the statement of Accounts issued by Western Region Power Committee. [Annexure 20]

- (iii) It is submitted that 2,00,000 Tonnes of coal was allocated to the Petitioner by South Eastern Coal Fields Limited ("SECL") i.e. the Coal Company for commissioning activities of Unit 2. This coal quantity was subsequently adjusted against the regular coal supplies for Unit 2 after Unit 2 became operational. The Memorandum of Understanding dated 13.04.2015, signed between the Petitioner and SECL for this purpose is attached hereto and marked as Annexure-21.
- (iv) It is submitted that no imported coal has been used for generation of infirm power from Unit 2.
- (v) It is submitted that the total revenue from sale of infirm power from Unit 2 is Rs. 14.02 Crore as per the Western Regional Power Committee Documents attached hereto and marked as Annexure-20 (Colly). It is submitted that out of the total revenue from sale of infirm power from Unit 2, Rs. 1.03 Crore has been adjusted/ reduced from the claimed cost of Unit 2. It is further submitted that as per the CA certificate for cash expenditure as on 06.04.2016, balance revenue of Rs. 12.99 Crore has not been realized in books of accounts till the COD of Unit 2.

80. In view of the above, the Commission has observed that the petitioner has now filed a copy of the Auditor's certificate dated 24th July' 2017, certifying the start-up fuel expenditure of Rs. 48.34 Crores for generation of infirm power from Unit No. 2. The Auditor has also certified that the revenue realized from sale of infirm power is Rs.1.03 Crores. Therefore, net start-up fuel expenses/pre-commissioning expenses after accounting for the revenue from sale of infirm power is mentioned as Rs. 47.31 Crores as on COD of the Unit No. 2.
81. The details of start-up fuel expenses as per the Auditor's certificate dated 24th July' 2017 is summarized as given below:

Table 10: Details of start-up fuel expenditure:

Month	Fuel Oil	Quantity Consumed	Landed price (Rs./KL or MT)	Cost in Rs. Crores
Up to 31 st March, 2016	Coal (MT)	61280.50	2736	16.77
	LDO (KL)	1927.32	37513	7.23
	HFO (KL)	3229.41	26444	8.54
April, 2016 to till 6 th April 2016	Coal (MT)	53874.90	2774	14.95
	LDO (KL)	101.02	39596	0.40
	HFO (KL)	168.60	26690	0.45
Total cost of start-up fuel				48.34
Less – revenue from sale of infirm power				14.02
Net cost of start-up fuel (net off revenue from infirm power)				47.31

82. By additional affidavit dated 28th July' 2017, the petitioner also filed a statement for infirm power injected into grid from Unit No. 2 from synchronization to CoD of the unit. The petitioner also filed the copies of weekly statements issued by Western Regional Power Committee in this regard. The details of net infirm power supply and net revenue realized has been summarized below:

Table 11: Infirm power details:

Sr. No.	Particular	Unit	
1	Infirm power injected into grid till CoD	MU's	109.574
2	Power drawl from the grid till CoD	MU's	1.702
3	Net power injection(+)/drawl(-) till CoD	MU's	107.872
4	Net receivable	Rs. Lakhs	1401.59
5	Net payable	Rs. Lakhs	33.83
6	Net amount payable(-)/ Receivable(+)	Rs. Lakhs	1367.765

83. By aforesaid affidavit dated 28th July' 2017, the petitioner filed a statement indicating pre-commissioning expenses as per CA Certificate dated 26th April' 2017 vis-a-vis revised amount as per CA certificate dated 24th July' 2017 on this head. On perusal of the aforesaid statement, the Commission observed the following:

- (i) Pre-commissioning fuel expenses have increased from Rs. 32.54 Crore to Rs.48.34 Crore.
- (ii) Revenue from sale of infirm power has increased from Rs. 1.03 Crore to Rs.14.02 Crore
- (iii) Pre-commissioning fuel expenses net of revenue from sale of infirm power have increased from Rs. 31.51 Crore to Rs. 34.32 Crore.
- (iv) Capital expenditure of the unit increased by Rs. 2.81 Crore in respect to the expenditure filed in the petition.
- (v) Total 2,00,000 Tonnes of coal was allocated to the petitioner by South Eastern Coal Fields Limited for commissioning activities of Unit No. 2. No imported coal has been used for generation of infirm power from Unit No.2.

84. With regard to increase in start-up fuel expenses, the petitioner submitted that the cash expenditure of Rs 15.80 Crore out of total pre-commissioning expenditure (Rs 48.34 Crore) is funded through internal accruals and not by project funds and same has not included in the cash expenditure certified in the CA certificate dated 26th April 2017 filed with the subject petition.

85. In view of the above, the Commission has observed that the petitioner filed the subject petition based on the actual expenditure (as on CoD) duly certified by the CA. Further the Respondent No. 1 has offered comments on the petition and capital expenditure certified by the CA. Therefore, the change in actual capital expenditure on account of pre-commissioning fuel expenses and revenue earned from sale of infirm power is not considered in this order. The petitioner is at liberty to file such expenses with all details and supporting documents in final tariff petition.

86. In view of the above, the Commission has provisionally considered the start-up fuel expenses of **Rs. 31.51 Crores** (net off revenue from sale of infirm power) in this order.

(ix) Mega Power Status:

87. In para 32 of the petition, the petitioner submitted the following:

“The total provision considered in the Project cost towards customs and excise duty is Rs. 576.03 Crore pending the grant of mega status to the Project, out of which Rs. 28.75 Crore has been paid in cash while Bank Guarantees have been provided for the balance amount of Rs 547.28 Crore to Customs/Excise Authorities. Out of the total amount paid in cash, Rs. 27.41 Crore has been considered in the capital cost of Unit 1 as filed with the Commission and balance with the capital cost of Unit 2. In case of any expenditure incurred by the petitioner towards Custom/Excise Duty for the balance amount of Rs. 547.28 Crore, the same shall be identified towards Unit 1 and Unit 2 and the Petitioner craves leave to approach the Commission for consequential adjustments in the fixed charges at the appropriate time.”

88. Towards Custom Duty/ Excise Duty, the petitioner has filed the estimated expenditure

and cash expenditure of Rs. 548.62 Cr. and Rs. 1.34 Cr. respectively till CoD of Unit No. 2. Vide letter dated 27th June' 2017, the petitioner was asked to inform the present position of Mega power status of the project.

89. By affidavit dated 28th July' 2017, the petitioner informed the following status:
- a. *"The Petitioner's Project was granted provisional Mega Power Status by the Ministry of Power, Govt. of India on 18.01.2012. The policy requirements prevailing at that point of time mandated the Petitioner to tie-up entire Project capacity through Long Term PPA's by March, 2017, for availing Mega Power Benefits.*
 - b. *Till date **the Petitioner has tied up around 67% of its Project Capacity through Long Term PPAs with the States of Madhya Pradesh (35%) and Uttar Pradesh (~32%).** However, due to dearth of Long Term Case-1 biddings/ tenders (i.e. Tariff Based competitive bidding) in the market, the Petitioner has been facing challenges in tying-up the entire Project capacity through Long Term PPAs.*
 - c. *On 12.04.2017, the Ministry of Power had issued an Amendment to Mega Power Policy for Provisional Mega Power Projects, vide which a further extension of 60 months has been granted to the Provisional Mega Power Projects (including the Petitioner's Project) for tying-up of Project capacity through Long Term PPAs. Accordingly, **the Petitioner has now been provided a timeline up-to March 2022 for achieving power tie-up of the entire Project capacity through Long Term PPAs.***
 - d. *The said Amendment also states that such Provisional Mega Power Projects may be considered for Mega Power benefits in proportion to the Long Term PPA tied up, once the specified threshold capacity of these projects get commissioned. A suitable mechanism for release of proportionate Bank Guarantee(s) is to be worked out jointly by Ministry of Power and Department of Revenue. However, no such mechanism for release of proportionate Bank Guarantee(s) has been notified till date. **It is further understood that such refund/ release would be restricted to Bank Guarantee(s) only.***
 - e. *The estimated expenditure of Rs. 548.62 Crore towards Custom Duty/Excise Duty claimed in the present Petition for Unit 2, includes an amount of Rs. 1.34 Crore already paid in cash and balance Rs. 547.28 Crore in form of Bank Guarantee(s). However, the above mentioned amendment dated 12.04.2017 contains no provision for refund of amount paid in cash towards Customs and Excise Duty. Accordingly, the Petitioner is unlikely to get any refund against this amount of Rs. 1.34 Crore and as such this amount of Rs. 1.34 Crore is required to be considered as part of Unit 2 capital cost. Accordingly, the Petitioner humbly requests this Commission to consider the same as a part of capital cost for Unit 2."*
90. From the above, it is observed that the Petitioner's project is already granted provisional Mega Power Status from Ministry of Power with the condition to tie-up

100% power through long term power purchase agreements. Presently, the petitioner has tied up about 67% of its Project Capacity through Long Term PPAs with the State of Madhya Pradesh and Uttar Pradesh.

91. Subsequently, the Ministry of Power 12.04.2017 issued an Amendment to Mega Power Policy on for Provisional Mega Power Projects, and provided a further extension of 60 months granted to the Provisional Mega Power Projects including the petitioner's Project for tying-up of Project capacity through Long Term PPAs. Accordingly, the petitioner has now been provided a timeline up-to March 2022 for achieving power tie-up of the entire Project capacity through Long Term PPAs required for issuance of final mega power status of the project.
92. In view of the above, the cash expenditure of Rs 1.34 Cr. claimed towards actual expenses on Custom Duty/ Excise Duty allocated to Unit No. 2 is not considered in this order. The Commission may review the aforesaid cash expenditure as and when all issues related to mega power status of the petitioner's project are addressed and the status of petitioner's power plant regarding Mega power project is finalised.

(x) Forced Outages of unit:

93. Unit No. 2 of project was under major forced outage on account of an accident occurred in Boiler on 16th May'2016. In para 25 of the petition, it is mentioned that the Unit No. 2 of the project is revived for generation and is expected to be operational again by early May' 2017. The petitioner has filed a copy of letters dated 27.03.2017 and 25.04.2017 written by it to Respondent No. 1 (MPPMCL) informing the progress about revival of its Unit No. 2. The petitioner also filed a copy of following documents:
- (i) Letter dated 20.03.2017 from Director of Boilers regarding approval of RT & SR of weld joint for repair and replacement of boiler pressure parts in Boiler No. MP/5113 of Unit No. 2 of M/s. MB Power (MP) Ltd.
 - (ii) Protocol for Hydraulic test of Boiler in presence of Statutory Authority on 22.03.2017 after repair and replacement pressure parts of Boiler of Unit No. 2.
 - (iii) Certificate for the use of Boiler for Unit No. 2 issued by Director of Boilers, Madhya Pradesh Boiler Inspection Department on 27th March' 2017.
94. Vide Commission's letter dated 27th June' 2017, the petitioner was asked to submit the following:
- Nature of works involved rectification/repairing in Boiler under forced outage for revival of Unit No. 2.
 - To confirm that cost incurred on rectification/repairing for revival of Unit No. 2 from the aforesaid outage is not included in the capital cost as on CoD of the unit claimed in the petition.
95. By affidavit dated 28th July' 2017, the petitioner has confirmed that the cost incurred on rectification/repairing works for revival of Unit 2 from the aforesaid outage is not

included in the capital cost as on COD of Unit 2 as claimed in the present petition. The petitioner filed the following list of the Nature of works involved with respect to the Boiler under forced outage for revival of Unit 2.

- (a) Dismantling of Insulation and damaged refractories
- (b) Dismantling of damaged items
- (c) Replacement of damaged Bottom Ring Headers for Front and Rear wall;
- (d) Replacement of damaged Furnace and Back pass buck stays;
- (e) Repair of damaged Furnace Lower S-Panels (Water Wall);
- (f) Repair of part Furnace Roof Tubes and Miscellaneous Loose tubes
- (g) Repair of Wind boxes and Burner Items
- (h) Repair of Penthouse and Roof enclosure Casings
- (i) Replacement of Secondary Air Connecting Ducts
- (j) Replacement of supporting structure for Wind box & S-Panel enclosures
- (k) Replacement of Metallic and Fabric Expansion Joints
- (l) Repair works at Bottom Ash Hopper;
- (m) Repair works at Electrostatic Precipitator area;
- (n) Repair of Coal Piping near Burner area
- (o) Repair of Soot Blowers
- (p) Complete replacement of Insulations works including Cladding
- (q) Refractory works
- (r) Replacement of damaged control and instrumentation items;
- (s) Re testing and Re-commissioning of Boiler systems.

96. The tariff in this order is provisionally determined based on the actual expenditure incurred and certified by CA as on CoD of Unit No. 2. Further, the cost towards rectification/repairing works for revival of Unit 2 from the aforesaid outage was incurred after more than a month from COD of this Unit. Moreover, the additional capitalization claimed in the subject petition shall be examined and considered by the Commission in light of the relevant provisions under MPERC Tariff Regulations' 2015 and Annual Audited Accounts on filing the petition by the petitioner for determination of final tariff in the subject matter. Therefore, the petitioner is directed to file all requisite details and documents duly certified by the Chartered Accountant in support of its contention on the issue of the cost incurred on rectification/repairing works for revival of Unit 2 as mentioned in preceding paragraph of this order.

(xi) Capital Cost as on CoD provisionally considered:

97. The break-up of total cash expenditure for Unit No. 2 as on its COD (07.04.2016) duly certified by the Chartered Accountant and provisionally considered by the Commission in this order is summarized as given below:-

Table 12: Capital Cost as on CoD provisionally considered: (Rs. Crore)

Sr. No.	Particulars	Cash Expenditure for Unit No. 2 as on its CoD as certified by the Auditor
1	Cost of Land and Site Development	9.58
2	Plant and Machinery	1626.85

Sr. No.	Particulars	Cash Expenditure for Unit No. 2 as on its CoD as certified by the Auditor
3	Building and Civil Works	108.37
4	Pre-operative Expenditure/pre-commissioning expenses*	153.72
5	Interest during construction (IDC) / Finance Charges (FC)	797.15
6	Custom Duty/Excise duty on Offshore/Onshore Equipments	0.00
7	Capital Expenditure	2695.69
8	Add: FERV Losses charged to revenue	111.80
9	Add: Unamortized Finance Cost to Borrowings	7.41
10	Total – Capital Cost	2814.88

*Net-off the revenue from sale of infirm power.

Additional Capitalization:

98. The petitioner in the subject petition also filed additional capitalization of Rs. 748.41 Cr. during FY 2016-17 in Unit No. 2 of its project. The petitioner mentioned the details of balance works in terms of undischarged liabilities, balance commitments for unexecuted works and provisions which are likely to be discharged/ executed in FY 2016-17 or within the cut off period. Details of the works covered under additional capitalization are as given below:

Table 13: Additional Capitalization claimed by the petitioner (Rs. Crores)

Particulars	Balance Work for unexecuted commitments, un-discharged liabilities/ provisions as on 07.04.2016
Land and Site Development	5.80
Plant and Machinery (Less provision for Custom/ Excise Duty)	146.45
Building and Civil Works	33.94
Pre-operative Expenditure*	8.94
Finance Charges/IDC	6.00
Custom Duty/Excise duty#	547.28
Total	748.41

Provision under Regulations:

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

- (i) *Un-discharged liabilities recognized to be payable at a future date;*
- (ii) *Works deferred for execution;*
- (iii) *Procurement of initial capital spares within the original scope of work, in accordance*

- with the provisions of Regulation 19;*
- (iv) *Liabilities to meet award of arbitration or for compliance of the order or decree of a court of law; and*
- (v) *Change in law or compliance of any existing law:*
Provided that the details of works asset wise/work wise included in the original scope of work along with estimates of expenditure, liabilities recognized to be payable at a future date and the works deferred for execution shall be submitted along with the application for determination of tariff.

Commission's Analysis:

99. All the details regarding additional capitalization filed by the petitioner are provisional/ estimated and are not recorded/ supported by the Audited Accounts which shall be provided by the petitioner to the Commission while filing the petition for determination of final tariff of its unit. Therefore, the detailed regarding additional capitalization filed with the subject petition shall be examined while determining the final tariff of the project. The Commission shall examine the issues related to additional capitalization in terms of provisions under MPERC Tariff Regulation 2015 and on availability of the Annual Audited Accounts, actual phasing of expenditure and actual capitalization of assets etc..

Debt – Equity Ratio:

Petitioner's Submission:

100. *The petitioner submitted that as per the cash expenditure certificate as on 07.04.2016 duly certified by CA (and duly supported by Statutory Auditor's Certificate), the expenditure incurred till the COD of Unit 2 has been funded with the debt equity ratio of [(73.51): (26.49)] on actual basis.*

Provisions under Regulation:

101. With regard to funding of the project, Regulation 25 of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015 provides that,
- 25.1 *For a project declared under commercial operation on or after 1.4.2016, the debt-equity ratio would be considered as 70:30 as on COD. If the equity actually deployed is more than 30% of the capital cost, equity in excess of 30% shall be treated as normative loan:*
- Provided that:*
- a. *where equity actually deployed is less than 30% of the capital cost, actual equity shall be considered for determination of tariff:*
 - b. *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.

25.2 *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.*

25.3 *In case of the generating station declared under commercial operation prior to 1.4.2016, debt- equity ratio allowed by the Commission for determination of tariff for the period ending 31.3.2016 shall be considered.*

25.4 *In case of the generating station declared under commercial operation prior to 1.4.2016, but where debt: equity ratio has not been determined by the Commission for determination of tariff for the period ending 31.3.2016, the Commission shall approve the debt: equity ratio based on actual information provided by the generating company.-----“*

102. As per the Auditor's certificate dated 26th April, 2017, the actual capital expenditure as on 6th April, 2017 for the project (Unit No.1&2) is Rs. 7701.59 Crores. The Auditor has mentioned that the aforesaid capital cost has been funded through the loan and equity of Rs. 5825.27 Crores and Rs. 2098.75 Crores respectively with debt – equity ratio of 73.51/ 26.49. The balance is closing cash and bank balances.

103. The Commission has observed that while claiming the Return on Equity and Interest on loan capital, the petitioner has considered debt – equity ratio of 70.40/ 29.60. In para 38 of the petition, the petitioner mentioned that the expenditure incurred till the CoD of unit No. 2 has been funded with the debt – equity ratio of 73.51/ 26.49 and the same has been certified by its Statutory Auditor.

104. Vide letter dated 27th June' 2017, the petitioner was asked to explain the above discrepancy/anomaly and inform the actual debt-equity ratio in this regard.

105. By affidavit dated 28th July' 2017, the petitioner submitted the following:

“the debt equity ratio as per the CA certificate dated 26.04.2017 for cash expenditure till COD of Unit 2 (06.04.2016) is (73.51):(26.49) based on total debt drawl and equity infused in the Project. It is further submitted that the Cash expenditure certificate dated 26.04.2017 also includes the expenditure on account of FERV losses charged to Revenue and unamortized finance cost to borrowings which are, in actual, funded entirely through internal accruals of the Project. -----“

106. In view of the above, the Commission has observed that the subject petition is filed for determination of provisional tariff based on the actual expenditure certified by the

CA/Auditor. Therefore, the funding of expenditure pertaining to Unit No. 2 of the project has been provisionally considered at the same debt – equity ratio (73.51/ 26.49) as that of the total actual capital expenditure funded as on COD of Unit No. 2 duly certified by the Auditor.

107. Based on the above, the funding of the actual capital expenditure duly certified by the Auditor and debt : equity ratio as on COD of Unit No. 2 of Petitioner’s power project is considered in this order as given below:

Table 14: Funding as on COD of Unit No. 2:

Sr. No.	Particular	Amount in Rs. Crores
1	Gross Fixed Assets	2814.88
2	Opening Loan	2069.22
3	Opening Equity	745.66
4	Normative Equity	745.66
5	Debt : equity	73.51 / 26.49

Annual Capacity (fixed) Charges:

108. As per Regulation 27 of the MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015, the Annual Capacity (Fixed) Charges shall consist of the following components:
- Return on Equity;
 - Interest on Loan Capital;
 - Depreciation;
 - Interest on Working Capital;
 - Operation and Maintenance Expenses;

a. Return on Equity:

Petitioner’s submission:

109. *The petitioner claimed return on equity by grossing up the rate of return on equity with “Minimum Alternate Tax” as given below:*

Table 15: Return on equity claimed by the petitioner: (Rs. Crores)

S. No	Particular	FY 2016-17	FY 2017-18	FY 2018-19
1	Opening Equity	833.55	1031.77	1031.77
2	Equity addition during the year	198.22	-	-
3	Closing Equity	1031.77	1031.77	1031.77
4	Average Equity	932.66	1031.77	1031.77
5	Base rate of Return on Equity	15.500%	15.500%	15.500%
6	Actual Tax rate (MAT)	21.342%	21.342%	21.342%
7	Rate of return on equity	19.705%	19.705%	19.705%
8	Annual Return on Equity	183.78	203.31	203.31

110. *The petitioner submitted that the MAT rate has been considered at base rate of*

18.50%, surcharge of 12% and 3% on account of education cess and secondary higher education cess respectively in accordance with the Finance Act for Assessment Year FY 2016-17 and has been assumed the same for balance control period.

Provision under Regulations:

111. With regard to Return on Equity, Regulation 30 and 31 of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015 provides that, “30.1 Return on equity shall be computed in rupee terms, on the equity base capital determined in accordance with Regulation 25.

30.2 Return on equity shall be computed at the base rate of 15.5% for thermal generating stations and hydro generating stations.
Provided that

(a) in case of Projects commissioned on or after 1st April, 2016, an additional return of 0.5% shall be allowed if such Projects are completed within the timeline specified in **Appendix-I** :

(b) the additional return of 0.5% shall not be admissible if the Project is not completed within the timeline specified above for reasons whatsoever.

(c) the rate of return of a new project shall be reduced by 1% 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):

(d) as and when any of the above requirements are found lacking in a generation station based on the report submitted by the respective SLDC/RLDC, ROE shall be reduced by 1% for the period for which the deficiency continues:

31 Tax on Return on Equity:

31.1 The base rate of return on equity as allowed by the Commission under Regulation 30 shall be grossed up with the effective tax rate for the Year respective financial years. 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 i.e., income of non generation business shall not be considered for the calculation of “effective tax rate”.

31.2 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 31.1 of this Regulation and shall be calculated at the beginning of every financial year based on the estimated profit and tax to be paid estimated in line with the

provisions of the relevant Finance Act applicable for that financial year to the company on pro-rata basis by excluding the income of non-generation business and the corresponding tax thereon. In case of generating company paying Minimum Alternate Tax (MAT), “t” shall be considered as MAT rate including surcharge and cess. For example: - In case of the generating company paying

- (i) Minimum Alternate Tax (MAT) @ 20.96% including surcharge and cess:
Rate of return on equity = $15.50/(1-0.2096) = 19.610\%$
- (ii) In case of generating company paying normal corporate tax including surcharge and cess:
 - (a) Estimated Gross Income from generation business for FY2016-17 is Rs 1000 crore.
 - (b) Estimated Advance Tax for the year on above is Rs 240 crore.
 - (c) Effective Tax Rate for the year 2016-17 = $\text{Rs } 240 \text{ Crore} / \text{Rs } 1000 \text{ Crore} = 24\%$
 - (d) Rate of return on equity = $15.50 / (1-0.24) = 20.395\%$

31.3 The 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 2016-17 to 2018-19 on actual gross income of any financial year shall be trued-up every 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:

- 112. The opening equity of **Rs.745.66 Crores** as on 6th April, 2016 for Unit No. 2 based on the Auditor’s certificate (with respect to total actual capital expenditure) is considered in this order. The equity amount actually incurred is less than the 30% of the capital cost considered in this order. Therefore, the actual equity of **Rs. 745.66 Crores** is considered as normative equity for return on equity in this order.
- 113. The petitioner has claimed the Rate of return by grossing up the Base rate of Return with Minimum Alternate Tax. Vide letter dated 27th June’ 2017, the petitioner was asked to file the basis for claiming MAT in light of Regulation 31 of MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2015.
- 114. By affidavit dated 28th July’ 2017, the petitioner submitted that it has claimed MAT as applicable effective tax for grossing up return on equity as per the Regulation 31.2 of MPERC Tariff Regulations, 2015. The petitioner further submitted the following:

“Regulations 31.3 of MPERC Tariff Regulations 2015 provides for adjustment for any under-recovery or over-recovery of grossed up rate of return after truing up and further allowance of recovery or refund to beneficiaries on year

to year basis. It is submitted that the Petitioner is a Special Purpose Vehicle company and it had incurred losses in FY 2015-16 and hence no income tax/MAT was payable by it in such year.

Further, the petitioner would like to submit that for FY 2016-17 also, it does not expect the SPV to incur any tax cost (including MAT) on account of operating losses during the year. However, the income tax return for FY 2016-17 is yet to be filed after completion of audit and verification of tax records. Accordingly, the Petitioner craves leave to approach the Commission for reimbursement of tax liability, if incurred by it.”

115. In view of the above, the Commission has considered the grossing up the base rate of return on equity with MAT in this order. Accordingly, the rate of return after grossing up with the MAT is worked out is **19.71%** and same is applied for calculation of return on equity in this order. Based on the above, the following Return on Equity is determined as given below:

Table 16: Return on equity determined in this order:

Sr. No.	Particular	Unit	FY 2016-17	FY 2017-18	FY 2018-17
1	Opening Normative Equity	Rs. Cr.	745.66	745.66	745.66
2	Normative Equity addition during the year	Rs. Cr.	0.00	0.00	0.00
3	Closing Normative equity	Rs. Cr.	745.66	745.66	745.66
4	Average equity	Rs. Cr.	745.66	745.66	745.66
5	Base rate of Return on Equity	%	15.50	15.50	15.50
6	Minimum Alternate Tax considered	%	21.34	21.34	21.34
7	Rate of pre-tax return on equity	%	19.71	19.71	19.71
8	Annual Return on equity	Rs. Cr.	146.94	146.94	146.94

b. Interest and finance Charges:

Petitioner’s submission:

116. The petitioner submitted that the weighted average rate of interest of 13.27% on the actual loan has been considered for computation of Interest and Finance Charges for the control period. The Calculation of weighted average rate of interest is based on the Banker’s Certificates for actual outstanding loan and the interest paid up to 31.03.2016.

117. In accordance with Regulation 25 and Regulation 32 of MPERC Tariff Regulations 2015, the annualized Interest and Finance Charges on Long term Debt with respect to Unit 2 has been worked out by the petitioner is as follows:-

Table 17: Interest and finance charges claimed by the petitioner: (Rs. Crores)

S. No	Particular	FY 2016-17	FY 2017-18	FY 2018-19
1	Opening Debt	1982.69	2371.20	2187.54
2	Addition of Debt during the year	550.19	-	-

S. No	Particular	FY 2016-17	FY 2017-18	FY 2018-19
3	Repayment during the year	161.68	183.66	183.66
4	Closing Debt (1+2-3)	2371.20	2187.54	2003.88
5	Average Debt (1+4)/2	2176.95	2279.37	2095.71
6	Weighted Average Rate of Interest	13.27%	13.27%	13.27%
7	Annual Interest and Finance Charges	288.83	302.41	278.05

Provision under Regulations:

118. With regard to Interest on loan capital, Regulation 32 of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015 provides that,
- “32.1 The loans arrived at in the manner indicated in Regulation 25 shall be considered as gross normative loan for calculation of interest on loan.*
- 32.2 The normative loan outstanding as on 1.4.2016 shall be worked out by deducting the cumulative repayment as admitted by the Commission up to 31.3.2016 from the gross normative loan.*
- 32.3 The repayment for the Year of the Tariff period 2016-19 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.*
- 32.4 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 annual depreciation allowed for the year or part of the year.*
- 32.5 The rate of interest shall be the weighted average rate of interest calculated on the basis of the actual loan portfolio after proving 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.*
- 32.6 The interest on loan shall be calculated on the normative average loan of the Year by applying the weighted average rate of interest.*
- 32.7 The Generating Company shall make every effort to re-finance the loan as long as it results in net savings on interest and in that event the costs associated with such re-financing shall be borne by the Beneficiaries and the net savings shall be shared between the Beneficiaries and the Generating Company, in the ratio of 2:1.*
- 32.8 The changes to the terms and conditions of the loans shall be reflected from the date of such re-financing.*

32.9 *In case of dispute, any of the parties may make an application in accordance with the MPERC (Conduct of Business) Regulation, 2004, as amended from time to time:*

Provided that the beneficiaries shall not withhold any payment on account of the interest claimed by the generating company during the pendency of any dispute arising out of re-financing of loan.

119. The petitioner's Project has been financed by a consortium of banks and financial institutions. The Lender Consortium comprises of State Bank of India as the Lead Bank and Power Finance Corporation Ltd., Rural Electrification Corporation, PTC India Financial Services Ltd., Axis Bank, L&T Infra, Life Insurance Corporation of India, Punjab National Bank, State Bank of Patiala, State Bank of Bikaner and Jaipur and Federal Bank as Consortium partners. The petitioner has signed the Common Loan Agreement on 16.11.2010.
120. The loan amount of **Rs. 2069.22 Crores** for Unit No. 2 (actually incurred as on 6th April, 2017 is worked out based on the Auditor's certificate), is considered as opening loan balance for Unit No. 2 as on its COD. The aforesaid opening loan amount considered in this order is 73.51 % of the opening GFA considered in this order.
121. With regard to the Weighted average rate of interest on loan, the petitioner has mentioned in para 41 of the petition that the weighted average rate of interest is worked out is based on the Banker's Certificates for actual outstanding loan and the interest paid up to 31.03.2016. The petitioner has also filed a copy of the certificate of Banker's in this regard. The petitioner filed detailed working for computation of the weighted average rate of interest in form 13 filed with the petition.
122. Accordingly, the weighted average rate of interest on loan @ **13.27 %** for FY 2015-16 as filed by the petitioner is provisionally considered for calculation of interest amount for FY2016-17 and onwards in this order. The repayment equivalent to depreciation for the period after COD is considered as per the provision under Tariff Regulations, 2015. Based on the above, the interest and finance charges on loan is determined as given below:

Table 18: Interest and finance charges determined by the Commission: (Rs, Crores)

Sr. No.	Particular	Unit	FY 2016-17	FY 2017-18	FY 2018-19
1	Opening Loan	Rs. Cr.	2069.22	1926.63	1781.67
2	Loan addition during the year	Rs. Cr.	0.00	0.00	0.00
3	Repayment during the year considered	Rs. Cr.	142.58	144.97	144.97
4	Closing Loan	Rs. Cr.	1926.63	1781.67	1636.70
5	Average Loan	Rs. Cr.	1997.93	1854.15	1709.19
6	Weighted average rate of interest	%	13.27	13.27	13.27
7	Annual Interest amount	Rs. Cr.	265.12	246.05	226.81

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

123. The petitioner submitted that the weighted average rate of depreciation @ 5.15% has been calculated based on averaging the gross block as on the COD of Unit 2 (07.04.2016) and as on 31.03.2017, and on the rate of depreciation for different capital cost components as per Appendix 2 of MPERC Tariff Regulations 2015 and stipulated as below:-

Table 19: Weighted average rate of depreciation worked out by the petitioner:

Particulars (in Rs Crore)	Gross Block as on 07.04.2016	Gross Block as on 31.03.2017	Average Gross Block	Depreciation Rates	Annual Depreciation for FY 16-17
Total	2816.24	3564.65	3190.45		164.38
Freehold Land*	(0.38)	(0.38)	(0.38)	0%	-
Leasehold Land	16.06	21.98	19.02	3.34%	0.64
Plant and Machinery	2625.79	3333.64	2979.71	5.28%	157.33
Bldg. and Civil Works	174.77	209.40	192.08	3.34%	6.42
Weighted Average Rate of Depreciation					5.15%

*As per Note 9 of Audited Annual Accounts for FY 2015-16, the negative value of Rs 0.38 Crore is on account of transferring of free hold land (transferred to forest department initially) to leasehold land

124. Based on the weighted average rate of depreciation as calculated above, the annual depreciation amount for the control period for Unit 2 is computed as follows:-

Table 20: Annual depreciation claimed by the petitioner: (Rs. Crores)

Particulars (in Rs Crore)	FY 2016-17	FY 2017-18	FY 2018-19
Opening Gross Block	2816.24	3564.65	3564.65
Asset addition during the year	748.41	-	-
Closing Gross Block	3564.65	3564.65	3564.65
Average Gross Block	3190.45	3564.65	3564.65
Weighted Average Rate of Depreciation	5.15%	5.15%	5.15%
Annual Depreciation	164.38	183.66	183.66

Provision's under Regulations:

125. Regulation 33 of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015 provides that,

"33.1 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.

- 33.2 *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. Depreciation shall be chargeable from the first year at the commercial operation.*
- 33.3 *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 stations, the salvage value shall be as provided in the agreement signed by the developers with the State Government for creation of the site:

Provided further that the capital cost of the assets of the hydro generating station for the purpose of computation of depreciable 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 generating station or generating unit shall not be allowed to be recovered at a later stage during the useful life and extended life.

Provided also that salvage value for IT equipment and softwares shall be considered as NIL and 100 % value of the assets shall be considered depreciable.*
- 33.4 *Land other than 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.*
- 33.5 *Depreciation shall be calculated annually based on 'Straight Line Method' and at rates specified in Appendix-II to these Regulations for the assets of the generating station:
Provided that, the remaining depreciable value as on 31st March of the Year closing after a period of 12 Years from the Date of Commercial operation shall be spread over the balance Useful life of the assets.*
- 33.6 *In case of the existing Projects, the balance depreciable value as on 1.4.2016 shall be worked out by deducting the cumulative depreciation as admitted by the Commission upto 31.3.2013 from the gross depreciable value of the assets.*
- 33.7 *The rate of Depreciation shall be continued to be charged at the rate specified in Appendix-II till cumulative depreciation reaches 70%. Thereafter the remaining depreciable value shall be spread over the remaining life of the asset such that the maximum depreciation does not exceed 90%.*
- 33.8 *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.”

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

33.10 *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.”*

126. The opening Gross Fixed Assets of **Rs. 2814.88 Crores** as on 6th April' 2016 (as per the Auditor's certificate based on actual expenditure) is considered in this order as opening GFA as on CoD of Unit No. 2. The petitioner has also filed additional capitalization during FY 2016-17 in the petition. As detailed in preceding para of this order, no additional capitalization is considered up to 31st March, 2016 in this order. The petitioner is at liberty to file additional capitalization with Annual Audited Accounts for FY 2016-17 and other supporting details and documents while filing the petition for determination of final tariff of this unit.

127. For the purpose of depreciation, the petitioner apportioned the soft cost of the project in the ratio of hard cost components of the project. The weighted average rate of depreciation @ 5.15% is worked out by the petitioner based on the rate of depreciation for different capital cost components as per Regulations, 2015 and the detailed break-up of cost components filed in form TPS 11 of the petition.

128. The Commission has provisionally determined depreciation on fixed assets at weighted average rate of depreciation worked out by the petitioner. **The petitioner is directed to file asset-cum-depreciation register for both the unit with the petition for determination of final tariff of the project.**

129. Based on the above, the depreciation is worked as given below:

Table 21: Annual Depreciation determined in this order:

Sr. No.	Particular	Unit	FY 2016-17	FY 2017-18	FY 2018-19
1	Opening Gross Block	Rs. Cr.	2814.88	2814.88	2814.88
2	Addition during the year	Rs. Cr.	0.00	0.00	0.00
3	Closing Gross Block	Rs. Cr.	2814.88	2814.88	2814.88
4	Average Gross Block	Rs. Cr.	2814.88	2814.88	2814.88
5	Weighted average rate of depreciation	%	5.15	5.15	5.15
6	Annual Depreciation amount	Rs. Cr.	144.97	144.97	144.97
7	Accumulated Depreciation	Rs. Cr.	142.58	287.55	432.52

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

130. The O&M expenses are considered by the petitioner as per norms for the control period specified in Regulation 35 of MPERC Tariff Regulations 2015. Based on the above, the O&M expense for Unit No. 2 on annual basis is determined by the petitioner is as given below:-

Table 22: O&M Expenses claimed by the petitioner:

Particular	Unit	FY 2016-17	FY 2017-18	FY 2018-19
Installed Capacity	MW	600	600	600
Per MW O&M Expenses	Rs. Lakh/MW	16.27	17.30	18.38
Annual O&M Expenses	Rs. Crore	97.62	103.80	110.28

Provision's under Regulations:

131. Regulation 35.7 of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015 provides that,

“The Operation and Maintenance expenses admissible to existing thermal power stations commissioned prior to 01.04.2012 comprise of employee cost, Repair & Maintenance (R&M) cost and Administrative and General (A&G) cost. These norms exclude Pension and Terminal Benefits, EL encashment, Incentive, arrears to be paid to employees, taxes payable to the Government, and fees payable to MPERC. The generating company shall claim the rate, rent & taxes payable to the Government, cost of chemicals and consumables, fees to be paid to MPERC, EL encashment and any arrears paid to employees separately as actuals. The claim of pension and Terminal Benefits shall be dealt as per Regulation 35.4 of these Regulations.”

Table 23: O&M Norms for Generating Units Commissioned on or after 01.04.2012

Units (MW)	FY 2016-17	FY 2017-18	FY 2018-19
	<i>(Rs. in lakh/MW)</i>	<i>(Rs. in lakh/MW)</i>	<i>(Rs. in lakh/MW)</i>
45	32.07	34.09	36.24
200/210/250	27.00	28.70	30.51
300/330/350	22.54	23.96	25.47
500	18.08	19.22	20.43
600	16.27	17.30	18.38

132. Operation & Maintenance expenses are considered as per norms specified in Regulation 35.7 of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015. The annual norms for O&M expenses for 600 MW and above unit (commissioned on or after 01.04.2012) as per regulations, 2015 for FY2016-17, FY 2017-18 and FY 2018-19 are Rs. 16.27 Lakhs/MW, Rs. 17.30 Lakhs/MW and Rs. 18.38 Lakhs/MW. Based on the above, the Operation and Maintenance Expenses are determined as given below:

Table 24: Operation & Maintenance expenses determined by the Commission:

Sr. No.	Particular	Unit	FY 2016-17	FY 2017-18	FY 2018-19
1	Installed Capacity	MW	600	600	600
2	Per MW O&M expenses	Rs. L/MW	16.27	17.30	18.38
3	Annual O&M expenses	Rs. Cr.	97.62	103.80	110.28

e. Interest on Working Capital:**Petitioner's submission:**

133. The petitioner broadly submitted the following:

- *It is submitted that the Petitioner has computed the working capital requirement for the control period in accordance with Regulation 34.1 of the MPERC Tariff Regulations 2015.*
- *The Petitioner further submits in light of the Para 95 and Para 96 of the Petition No. 68 of 2016 (amended and as submitted on 17.04.2017), the Project Cost (as approved by the Lenders) also includes the Working Capital Margin of Rs 270 Crore (Rs 135 Crore for each Unit of the Project).*
- *Total Working Capital less Working capital Margin of Rs 270 Crore for the first operation year of the Project is assumed to be funded through short term borrowings; whereas the Working Capital Margin of Rs 270 Crore is funded through long term Project Financing.*
- *The Petitioner further submits that Regulation 34 of MPERC Tariff Regulations 2015 stipulates the provisions for:-*
 - (a) *Normative Working Capital Requirements for the project on annual basis assuming to be funded through short term borrowings (repaid in the same year);*
 - (b) *Interest on such facilities to be charged through tariff as part of Annual Capacity (Fixed) Charges on normative basis.*
- *In light of the above, the Petitioner further submits that the equity deployed to fund the working capital requirements for the very first year of operation as on the date of COD of Unit 2 also attracts the Return on Equity at the base rate of 15.5% grossed up with the effective tax rate for the respective financial year as per the Regulation 30 and Regulation 31 of MPERC Tariff Regulations 2015 which stipulates:*

“30.1 Return on equity shall be computed in rupee terms, on the equity base determined in accordance with Regulation 25.”
- *The Petitioner submits that working capital margin (“WCM”) of Rs 135 Crore (out of Rs 270 Crore for the Project) deployed for Unit 2 is to be funded in the ratio of [(73.51%): (26.49%)] as per the CA Cash Expenditure Certificate (duly supported by Statutory Auditor's Certificate).*
- *The Petitioner further considers that the Normative working capital requirement calculated in regard to Regulation 34 of MPERC Tariff Regulations 2015 is reduced by WCM (funded by debt equity ratio {(73.51%) :*

(26.49%)] and thus the balance net working capital is eligible for charge of interest on normative basis rate.

- The calculation of Interest on Working Capital for Unit 2 for the control period is summarized as hereunder:-

Table 25: Interest on working capital claimed by the petitioner: (Rs. Crores)

S. No	Particular (All values in Rs Crore)	FY 2016-17	FY 2017-18	FY 2018-19
1	Cost of Coal towards stock for 30 days for non-pit head generating stations for generation corresponding to the normative annual plant availability factor	68.05	68.05	68.05
2	Cost of Coal for 30 days for generation corresponding to the normative annual plant availability factor	68.05	68.05	68.05
3	Cost of secondary fuel for two months corresponding to normative availability	0.99	0.99	0.99
4	O&M Expenses for one month	8.14	8.65	9.19
5	Maintenance Spares 20% of the normative O&M	19.52	20.76	22.06
6	Receivables for two months	269.27	279.28	276.28
7	Normative Working Capital (1+2+3+4+5+6)	434.01	445.78	444.61
8	Working Capital Margin for Unit 2	135.00	135.00	135.00
9	Working Capital to be allowed	299.01	310.78	309.61
10.	WCM funded by Long term debt @ 73.51%	99.24	99.24	99.24
11	WCM funded by long term equity @ 26.49%	35.76	35.76	35.76
12	Interest on Working Capital @ 12.80%	38.27	39.78	39.63
13	Interest on WCM funded by debt @ 13.27%	13.17	13.17	13.17
14	Return on WCM funded by equity @19.705%	7.05	7.05	7.05
15	Total-Annual Interest on Working Capital	58.49	60.00	59.85

Provisions under Regulations:

134. Regulation 34 of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015 provides that,

34.1 "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) Cost of coal for 30 days 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 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 the Operation & maintenance expenses specified in Regulation 35 ;
 - (e) Receivables equivalent to two months 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.

34.2 The cost of fuel shall be based on the landed cost incurred (taking into account normative transit and handling losses) by the Generating Company and Gross Calorific Value of the fuel as per actual 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.”

34.3 “Rate of interest on working capital shall be on normative basis and shall be considered as the bank rate as on 1.04.2016 or as on 1st April of the year during the tariff period 2016-17 to 2018-19 in which the generating station or a unit thereof, is declared under commercial operation, whichever is later.

34.4 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.

135. With regard to the cost of secondary fuel oil considered for the working capital purpose, the cost of only main secondary fuel oil (FO) is taken into account as per aforesaid provision under Regulations, 2015. The rate of Rs. 23681/ KL for HFO is worked out by the petitioner in the petition. Clause 34.2 of the Regulations, 2015 provides that no fuel price escalation shall be provided during the tariff period. Therefore, the same rate of HFO as worked out above is considered for working capital purpose.

136. The cost of two months’ main oil stock at normative availability is worked out as given below:

Table 26: Two months cost of main sec. fuel oil considered in this order:

Sr. No.	Particular	Unit	FY 2016-17	FY 2017-18	FY 2018-19
1	Installed Capacity	MW	600	600	600
2	NAPAF	%	85.00	85.00	85.00
3	Two months stock of main fuel oil	KL	372.30	372.30	372.30
4	Rate of main secondary fuel oil	Rs./KL	23681	23681	23681
5	Cost of two months main fuel oil	Rs. Cr.	0.88	0.88	0.88

137. Cost of coal for two months stock for working capital purpose, is worked out based on the norms specified by the Commission. The landed cost of coal and weighted average GCV of the coal is considered as claimed by the petitioner in the petition. The coal stock is worked out for working capital on the basis of price and GCV of coal for three preceding months prior to COD of the unit i.e. January, February and March 2017 as filed by the petitioner is given below:

Table 27: Two months cost of coal considered in this order:

Sr. No.	Particular	Unit	FY 2016-17	FY 2017-18	FY 2018-19
1	Station Heat Rate	Kcal/kWh	2361.51	2361.51	2361.51
2	Gross Calorific Value	Kcal/kg	3587.09	3587.09	3587.09

3	Annual Coal Quantity	MT	2958668	2958668	2958668
4	Two months coal stock	MT	493111	493111	493111
5	Rate of Coal for working capital	Rs./MT	2707.61	2707.61	2707.61
6	Amount of two months coal stock	Rs. Cr.	133.52	133.52	133.52

138. Maintenance spares for working capital is worked out @ 20% of the Operation & maintenance expenses specified in Regulation is worked out as given below:

Table 28: Maintenance Spares considered in this order:

Sr. No.	Particular	Unit	FY 2016-17	FY 2017-18	FY 2018-19
1	Annual O&M expenses	Rs. Cr.	97.62	103.80	110.28
2	20% of the Annual O&M Expenses	Rs. Cr.	19.52	20.76	22.06

139. Receivables for working capital have been worked out on the basis of the fixed and energy charges for two months on normative plant availability factor as given below:

Table 29: Two months receivables considered in this order:

Sr. No.	Particular	Unit	FY 2016-17	FY 2017-18	FY 2018-19
1	Variable Charges – two months	Rs. Cr.	134.51	134.51	134.51
2	Fixed Charges – two months	Rs. Cr.	117.95	115.79	113.66
3	Receivables – two months	Rs. Cr.	252.46	250.30	248.17

140. Operation and Maintenance expenses for one month is worked out as given below:

Table 30: One month O&M expenses considered in this order:

Sr. No.	Particular	Unit	FY 2016-17	FY 2017-18	FY 2018-19
1	Annual O&M expenses	Rs. Cr.	97.62	103.80	110.28
2	O&M Expenses for one month	Rs. Cr.	8.14	8.65	9.19

141. With regard to the rate of interest on working capital, Regulation 34.3 of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015 provides that the rate of interest on working capital shall be on normative basis and shall be considered as the bank rate as on 1.04.2016 or as on 1st April of the year during the tariff period 2016-17 to 2018-19 in which the generating station or a unit thereof, is declared under commercial operation, whichever is later.

142. The rate of interest on working capital for FY2016-17 has been taken equal to the State Bank of India's Base Rate as on 1st April of that financial Year plus 3.50%. Base Rate of SBI effective from 07/11/2013, is 9.30 %. The same has been considered to remain effective as on COD of Unit No. 2. The interest on working capital equal to Base Rate of SBI as on 1st April' 2016 (9.30% + 3.50%) i.e. 12.80% is considered in this order.

143. Based on the above, the interest on working capital is provisionally determined in this

order is as given below:

Table 31: Interest on working capital determined in this order:

Sr. No.	Particular	Unit	FY 2016-17	FY 2017-18	FY 2018-19
1	Cost of coal for two months considering non pit head power station	Rs Cr.	133.52	133.52	133.52
2	Cost of fuel oil for two months	Rs. Cr.	0.88	0.88	0.88
3	O&M Charges for one month	Rs. Cr.	8.14	8.65	9.19
4	Maint. Spares 20% of the O&M charges	Rs. Cr.	19.52	20.76	22.06
5	Receivables for two months	Rs. Cr.	252.46	250.30	248.17
6	Total working capital	Rs. Cr.	414.51	414.11	413.81
7	Applicable rate of interest	%	12.80	12.80	12.80
8	Interest on working capital	Rs. Cr.	53.06	53.01	52.97

Summary of Annual Capacity (fixed) Charges:

144. As per MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015, Normative Annual Plant Availability Factor for recovery of annual capacity charges is 85%. The Annual Capacity (fixed) charges for FY 2016-17 have been pro-rated for 359 days. Considering the above, the annual capacity (fixed) charges for Unit No. 2 of petitioner's Power plant, which are provisionally determined for the control period FY 2016-17 to FY 2018-19 in this order are as given below:

145. Regarding the recovery of Annual Capacity (fixed) charges, proviso (i) of the Regulation 7.10 of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015, provides as under:

"The Commission may grant tariff up to 90% of the annual fixed cost of the project determined by the Commission after prudence check subject to adjustment as per Regulation 8.15 of these Regulations after the final tariff order is issued."

146. Accordingly, the Annual Capacity (fixed) charges summarized as given below:

Table 32: Annual Capacity (fixed) charges provisionally determined in this order:

Sr. No.	Cost Component	Unit	FY 2016-17	FY 2017-18	FY 2018-19
1	Return on equity	Rs Cr.	146.94	146.94	146.94
2	Interest charges on loan	Rs. Cr.	265.12	246.05	226.81
3	Depreciation	Rs. Cr.	144.97	144.97	144.97
4	Operation & Maintenance expenses	Rs. Cr.	97.62	103.80	110.28
5	Interest on working capital	Rs. Cr.	53.06	53.01	52.97
6	Annual capacity (fixed) charges	Rs. Cr.	707.71	694.75	681.96
7	Less: Non-Tariff Income	Rs. Cr.	0.00	0.00	0.00
8	Net AFC	Rs. Cr.	707.71	694.75	681.96
9	No. of days in operation during the year	No.	359.00	365	365
10	AFC apportioned in actual days of operation	Rs. Cr.	696.07	694.75	681.96

11	Annual capacity (Fixed) charges corresponding to 30% of the installed capacity of the Unit	Rs. Cr.	208.82	208.43	204.59
12	90 % of the above AFC allowed to be recovered by the petitioner in this order	Rs. Cr.	187.94	187.58	184.13

147. The above-mentioned Annual Capacity (fixed) charges as provisionally allowed in this order are on normative plant availability factor (NAPAF) 85% for the thermal generating unit. The above Annual Capacity (fixed) Charges are determined corresponding to the contracted capacity under PPA. The recovery of Annual Capacity (Fixed) charges shall be made by the petitioner in accordance with Regulations 36.2 to 36.4 of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015.

Energy (Variable) Charges:

Provisions in Regulation:

148. For determining the Energy (variable) charges of thermal power stations, Regulation 36 of the MPERC (Terms and Conditions for determination of tariff) Regulation, 2015 provides as under,

“36.5 The energy charge shall cover primary and secondary fuel cost and shall be payable by every beneficiary during the calendar month on ex-power plant basis, at the energy rate of the month (with fuel price adjustment). Total energy charges payable to the generating company for a month shall be:

(Energy charge rate in Rs./kWh) X {Scheduled energy (ex-bus) for a month in kWh.}

- 36.6 *Energy charge rate (ECR) in Rupees per kWh on ex-power plant basis shall be determined to three decimal places as per the following formula:*

- (i) *For coal based stations*

$$ECR = \{(GHR - SFC \times CVSF) \times LPPF/CVPF + SFC \times LPSFi\} \times 100 / (100 - AUX)\}$$

Where,

AUX = Normative Auxiliary Energy Consumption in percentage.

CVPF = Weighted Average Gross Calorific Value of coal as received, in kCal per kg, for coal based stations.

CVSF = Calorific Value of secondary fuel, In kCal per ml.

ECR = Energy Charge Rate, in Rupees per kWh sent out.

GHR = Gross Station Heat Rate, in kCal per kWh.

LPPF = Weighted average Landed price of Primary Fuel, in Rupees per kg, per liter or per standard cubic meter, as applicable, during the month. (In case of blending of fuel from different sources, the weighted average landed price of primary fuel shall be arrived in proportion to blending ratio)

SFC = Specific Fuel Oil Consumption, in ml/kWh

LPSFi=Weighted Average Landed Price of Secondary Fuel in Rs./ml during the month

- 36.7 *The generating company shall provide to the beneficiaries of the generating station details of parameters of GCV and price of fuel i.e. domestic coal, imported coal, e-auction coal etc., as per the forms prescribed to these regulations.*

Provided that the details of blending ratio of the imported coal with domestic coal, proportion of e-auction coal and weighted average GCV of fuels as received shall be provided separately along with the bills of the respective month:

Provided further that a copy of the bills and details of parameters of GCV and price of fuel i.e. domestic coal, imported coal, e-auction coal etc., details of blending ratio of the imported coal with domestic coal, proportion of e-auction coal shall also be displayed on the website of the Generating Company. The details should be available on its website for a period of three months -----.

Commission's analysis:

149. The base rate of energy charges shall cover primary and secondary fuel cost and based on the parameters like Gross Station Heat Rate, Landed cost of fuel, Gross calorific value of fuel and other operating parameters prescribed under MPERC (Terms and Conditions for determination of Generation tariff) Regulations, 2015.
150. In the subject petition, the petitioner has sought relaxation of norms pertaining to the technical parameters like auxiliary energy consumption and Station Heat Rate used for determining the energy charges of Unit No. 2 of the project.

Response of Respondent No. 1 (MPPMCL) on relaxation of norms:

151. Regarding relaxation of norms sought by the petitioner, by affidavit dated 19th August' 2017, Respondent No. 1 (MPPMCL) submitted its reply and same has been summarized as follows:
- *“ It is the duty of Petitioner to operate the Power Plant in efficient and economical manner. The Respondent (and consequently the end consumers) cannot be penalized for any under performance or inefficiency on the part of Petitioner.*
 - *The prayer of the Petitioner seeking relaxation of norms pertaining to Auxiliary Consumption and Station Heat Rate is strongly opposed as the “Norms of Operation” are part of Tariff Regulations 2015, duly made and notified under Electricity Act 2003, following procedure prescribed in the Act and, therefore, are binding on all the stakeholders including this Hon'ble Commission. Any relaxation in the said norms will result in increase in the cost of electricity procured from the Petitioner, resulting in increase in tariff for the end consumer and the same should not be allowed.*

- *The Petitioner has sought relaxation of norms of operation prescribed under Regulation 39.3 of Tariff Regulations, 2015. However, the Petitioner has failed to demonstrate either –“sufficient reason to justify relaxation” or insurmountable “hardship” or “injustice” being caused by the Regulations “leading to unjust result”. On the contrary the relaxation to the Operational Norms is being sought in a routine manner, merely in “anticipation of difficulty” or “perceived hardship”.*
 - *As mandated in the Electricity Act 2003 and the National Electricity Policy, more stringent norms have been progressively introduced by the Commission to encourage efficiency in the Generation of Power using non-renewable fossil fuel (Coal), reduce emission of environmental pollutant, green house gases and also reduce fuel cost per unit of generation, which is a pass through to the end consumer. Therefore, it is prayed that the Commission be pleased to reject the request for relaxation of norms.*
 - *The Petitioner has quoted parts of three judgments of APTEL purportedly on the issue of “relaxation” of provisions of Regulations. However, it is humbly submitted that those judgments were passed in particular facts and circumstance of individual cases. The facts and circumstances of the present case are not akin to any of the three cases whose judgments are cited for “exercise of power to relax” by the Hon’ble Commission. The Petitioner has failed in bringing any fact and hence has miserably failed to prove beyond doubt about the “injustice” that it has to face due to Tariff regulations, 2015. The Petitioner has failed to demonstrate either “sufficient reason to justify relaxation” or insurmountable “hardship” or “injustice” being caused by the Regulations “leading to unjust result”. The relaxation in norms cannot be allowed as allowing them will be against the interest of end consumers of the State. Therefore, it is most humbly prayed that the Commission be pleased to out rightly reject the request for relaxation of norms.*
- (i) **Gross Station Heat Rate:**
- The petitioner has claimed the Gross Station Heat Rate for Unit No. 2 as 2407 Kcal/kWh in accordance to MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2012.
152. The petitioner submitted that the Contract for Design, Engineering Supply, Erection and Commissioning of Main Plant Equipment (BTG) and its installation for 2 units of 600 MW (each) with specific technical requirements with the assurance of guaranteed technical performance parameters, had been awarded to M/s Lanco Infratech Limited on the guidelines of international competitive bidding.
153. The petitioner mentioned that on account of load variations and inconsistent coal quality, the petitioner is able to operate the Unit beyond the margin of 6.5% (as specified in the MPERC Tariff Regulations 2012) over the guaranteed parameters of Gross Station Heat Rate. Further restricting the design margin for Station Heat Rate to lower level would lead to operational and financial difficulties.
154. Regarding the Gross Station Heat Rate of thermal generating units, Regulation 39.3

(C) of MPERC (Terms and Conditions for determination of Generation tariff) Regulations, 2015, provides as under:

“(a) Existing Coal based thermal generating stations having COD on or after 1.4.2012 till 31.03.2016, (other than those covered under clause 39.2) shall be the heat rate norms approved during FY 2012-13 to FY 2015-16.

New thermal generating stations achieving COD on or after 1.4.2016:

(b) Coal-based Thermal Generating Stations = 1.045 X Design Heat Rate (kCal/kWh)

Where the Design Heat Rate of a Unit means the Unit heat rate guaranteed by the supplier at conditions of 100% MCR, zero percent make up, design coal and design cooling water temperature/back pressure:

Provided that the design heat rate shall not exceed the following maximum design Unit heat rates depending upon the pressure and temperature ratings of the Units:

Table 33: Maximum design Unit heat rates as per norms

Pressure Rating (Kg/cm²)	150	170	170	247
SHT/RHT (0C)	535/535	537/537	537/565	565/593
Type of BFP	Electrical Driven	Turbine driven	Turbine driven	Turbine driven
Max Turbine Cycle Heat rate (kCal/kWh)	1955	1950	1935	1850
Minimum Boiler Efficiency				
Sub-Bituminous Indian Coal	0.86	0.86	0.86	0.86
Bituminous Imported Coal	0.89	0.89	0.89	0.89
Max. Design Unit Heat Rate (kCal/kWh)				
Sub-Bituminous Indian Coal	2273	2267	2250	2151
Bituminous Imported Coal	2197	2191	2174	2078

Provided further that in case pressure and temperature parameters of a Unit are different from above ratings, the maximum design Unit heat rate of the nearest class shall be taken:

Provided also that where Unit heat rate has not been guaranteed but turbine cycle heat rate and boiler efficiency are guaranteed separately by the same supplier or different suppliers, the Unit design heat rate shall be arrived at by using guaranteed turbine cycle heat rate and boiler efficiency:

Provided also that if one or more Units were declared under commercial operation prior to 1.4.2016, the heat rate norms for those Units as well as Units declared under commercial operation on or after 1.4.2016 shall be lower of the heat rate norms arrived at by above methodology.

Note: In respect of Units where the boiler feed pumps are electrically operated, the maximum design Unit heat rate shall be 40 kCal/kWh lower than the maximum design Unit heat rate specified above with turbine driven BFP.”

155. The petitioner has filed the subject petition based on MPERC (Terms and Conditions for determination of generation tariff) Regulations' 2015, whereas, the station heat rate claimed by the petitioner is based on the MPERC Tariff Regulations 2012. Vide letter dated 27th June' 2017, the petitioner was asked to file the detailed reasons for considering Gross Station Heat Rate and Auxiliary energy consumption as per provisions under the Regulations, 2012.
156. By affidavit dated 6th December, 2014, the petitioner submitted the following:
“It is submitted that the Petitioner has already submitted the detailed reasons for considering Gross Station Heat Rate and Auxiliary consumption under the MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2012 in Para 68 to 75 of the present Petition. The Petitioner has requested the Commission to exercise its Power to Relax as provided under Regulation 54 of the MPERC Tariff Regulations 2015. It is further submitted that the Petitioner has also filed a Review Petition (Petition No. 67 of 2016) before the Commission seeking review of the Commission's Order dated 24.08.2016 passed in Petition No. 14 of 2016, and the Petitioner has also prayed for declaring that the norms of MPERC Tariff Regulations 2012 will apply to Unit 2 and its COD, which is pending adjudication.”
157. The Commission has observed that the Unit No. 2 of petitioner's power plant achieved COD on 7th April' 2016, therefore, the tariff for Unit No. 2 shall be determined under the provisions of MPERC (Terms and conditions for determination of Generation tariff) Regulations, 2015 which is applicable in the present case.
158. In view of the above, the Gross Station Heat Rate of 2361.70 Kcal/kWh for Unit No. 2 of the petitioner's Power Project is considered in accordance with MPERC (Terms and conditions for determination of Generation tariff) Regulations, 2015 and same has been considered in this order as follows:

Table 34: Gross Station Heat Rate considered by the Commission

Technical Parameters		Value	Unit
A.	Design Turbine Cycle Heat Rate (Actual)	1,945.70	kCal/kWh
B.	Design Boiler Efficiency (Actual)	86.10	%
C.	Design Heat Rate (Actual)	2,260	kCal/kWh
D.	Max Turbine Cycle Heat Rate (Normative)	1,950	kCal/kWh
E.	Min. Boiler Efficiency for Sub-Bituminous Indian Coal (Normative)	85.00	%
F.	Normative Heat Rate [D/E]	2294	kCal/kWh
G.	Allowable Heat Rate (Lower of C/F)	2260	kCal/kWh
H.	GSHR considered as per Regulation	2260	kCal/kWh
I.	Gross Station Heat Rate considered	2361.51	Kcal/kWh

(ii) **Auxiliary Energy Consumption:**

159. While determining the Energy Charges, the petitioner considered Auxiliary Energy Consumption 6.5% in accordance to MPERC (Terms and conditions for determination of Generation tariff) Regulations, 2012. In para 74 of the petition the petitioner submitted that the guaranteed parameter of Auxiliary Consumption of the Main Plant Equipment Supplier stipulate the value of 6.5% including the consumption for induced draft cooling tower.
160. Regulation 39.3 (E) prescribed the norms for Auxiliary Energy Consumption for thermal generating unit(s) / stations commissioned on or after 01.04.2012 as given below:

Table 35: Norms for Auxiliary Energy Consumption:

Sr. No.	Power Station	With Natural Draft Cooling Tower or without Cooling
(1)	200 / 300 MW series	8.50%
(2)	500 MW & above	
	Steam driven boiler feed pumps	5.25 %
	Electrically driven boiler feed pumps	7.75 %
(3)	45 MW Series	10 %

rovided further that for thermal generating stations with induced drafts cooling towers, the norms shall be further increased by 0.5%.

Provided also that Additional Auxiliary Energy Consumption as follows may be allowed for plants with Dry Cooling Systems -----“.

161. Unit No. 2 of petitioner’s power project achieved CoD on 7th April’ 2016 therefore, the tariff of this generating unit shall be determined under the provisions of MPERC (Terms and conditions for determination of Generation Tariff) Regulations, 2015. The norms of Operation in the aforesaid Tariff Regulations 2015, have been specified after specified after following due procedure of inviting and considering the comments received from all stake holders and holding public hearing on the said Regulations. Therefore, the contention of petitioner seeking relaxation of norms is not considered by the Commission.
162. Therefore, the Auxiliary Energy consumption of 5.75% is considered for the subject unit of steam driven feed pump in accordance to aforesaid Regulation of MPERC (Terms and conditions for determination of Generation Tariff) Regulations, 2015 as worked out below:
- Aux. consumption for unit 500 MW and above = 5.25%
 - Add. Aux. consumption for induced draught CT = 0.50%
 - **Total Aux. consumption considered = 5.75%**

(iii) **Specific Secondary fuel oil Consumption:**

163. The petitioner in the subject petition considered the Specific Secondary fuel oil Consumption of 0.50 ml/kWh in accordance to Regulation 39.3 (D) of MPERC (Terms and conditions for determination of Generation Tariff) Regulations, 2015. The Commission has considered the same Specific Secondary fuel oil Consumption of 0.50 ml/kWh in this order.

(iv) **Transit and Handling losses:**

164. Regarding the normative transit and handling loss, Regulation 36.8 of MPERC (Terms and conditions for determination of Generation Tariff) Regulations, 2015, provides as under:

“The landed cost of fuel for the month shall include price of fuel corresponding to the grade and quality of fuel inclusive of royalty, taxes and duties as applicable, transportation cost by rail / road or any other means, and, for the purpose of computation of energy charge, and in case of coal shall be arrived at after considering normative transit and handling losses as percentage of the quantity of coal dispatched by the coal supply company during the month as given below:

<i>Pithead generating stations</i>	<i>:</i>	<i>0.2%</i>
<i>Non-pithead generating stations</i>	<i>:</i>	<i>0.8%</i>

Provided that in case of pit head stations if coal is procured from sources other than the pit head mines which is transported to the station through rail, transit loss of 0.8% shall be applicable:

Provided further that in case of imported coal, the transit and handling losses shall be 0.2%.”

165. The petitioner claimed energy charges by considered the normative transit and handling losses 0.80 % in accordance to aforesaid Regulation 36.8 of MPERC (Terms and conditions for determination of Generation Tariff) Regulations, 2015.

166. Vide letter dated 27th June’ 2017, the petitioner was asked to clarify whether the transit and handling losses have been considered for determining the landed cost of coal. By affidavit dated 28th July’ 2017, the petitioner confirmed that the transit and handling losses have not been considered in the landed cost of coal.

167. In view of the above, the Commission has observed that the petitioner’s power project is Non pit-head and therefore, the transit and handling losses of 0.80 % is considered in this order.

168. The parameters like Gross Station Heat Rate, Aux. Energy Consumption, Sp. Secondary Fuel oil consumption and transit and handling losses considered for determining the energy charges for Unit No. 2 in this order are summarized as given below:

Table 36: Norms for Operating Parameters considered in this order:

Sr. No.	Parameter	Considered in this order
1	Gross Station Heat Rate	2361.51 Kcal/kWh
2	Aux. Energy Consumption	5.75 %
3	Sp. Secondary Fuel oil consumption	0.50 ml/kWh
4	Transit and handling losses	0.80 %

(v) Landed cost of Coal:

169. The petitioner submitted that the weighted average Landed cost of the Primary fuel is calculated on the basis of actual values of the average landed cost of coal actually billed as mutually agreed between the petitioner and Respondent No. 1 for preceding three months i.e. January 2016, February 2016 and March 2016.
170. With regard to the landed price of coal, clause 36.8 of MPERC (Terms and Conditions for determination of Generation tariff) Regulations, 2015 provides as under;
- “The landed cost of coal shall include price of coal corresponding to the grade and quality of coal inclusive of royalty, taxes and duties as applicable, transportation cost by rail/road or any other means, and, for the purpose of computation of Energy Charges, shall be arrived at after considering normative transit and handling losses as percentage of the quantity of coal dispatched by the Coal Supply Company during the month.-----”*
171. On scrutiny of the subject petition, it was observed that the petitioner has not indicated the cost of coal transportation. Vide letter dated 27th June’ 2017, the petitioner was asked to file the details of coal transportation with supporting in this regard.
172. In response, by affidavit dated 28th July’ 2017, the petitioner filed form TPS-15 containing the details with rregard to landed cost of coal, weighted average GCV of coal and cost of coal transportation.
173. On perusal of the aforesaid details filed by the petitioner, the Commission has observed that the petitioner received and consumed both FSA and Non FSA coal and claim weighted average rate of both type of coal.
174. Regulation 36.7 of MPERC (Terms and Conditions for determination of Generation tariff) Regulations, 2015 provides as under;
- “The generating company shall provide to the beneficiaries of the generating station the details of parameters of GCV and price of fuel i.e. domestic coal, imported coal, e-auction coal, etc., as per the forms prescribed to these Regulations:*
- Provided that the details of blending ratio of the imported coal with*

domestic coal, proportion of e-auction coal and the weighted average GCV of the fuels as received shall also be provided separately, along with the bills of the respective month:

Provided further that copies of the bills and details of parameters of GCV and price of fuel i.e. domestic coal, imported coal, e-auction coal, etc., details of blending ratio of the imported coal with domestic coal, proportion of e-auction coal shall also be displayed on the website of the generating company. The details should be available on its website on monthly basis for a period of three months.”

175. Further, Regulation 36.6 provides that for determination of energy charge rate, weighted average landed price of primary fuel, in Rupees per kg, during the month shall be considered. In case of blending of fuel from different sources, the weighted average landed price of primary fuel shall be arrived in proportion to blending ratio.
176. Based on the aforesaid Regulations and details & documents filed by the petitioner, the weighted average rate of coal considered in this order is worked out as given below:

Table 37: Weighted average rate of Coal:				
Month	Type of Coal	Quantity of Coal	Rate of Coal	Wt. average rate
		MT	Rs./MT	Rs./MT
Jan. 2016	FSA	221285	2130	2707.61
	Non FSA	121375	4224	
Feb. 2016	FSA	198871	2117	
	Non FSA	94352	3946	
March, 2016	FSA	219891	2135	
	Non FSA	87701	3509	

177. Accordingly, the Commission has considered the weighted average landed cost of coal as **Rs. 2707.61 /MT** in this order.

(vi) **Gross Calorific Value:**

178. With regard to the Gross Calorific Value of Coal, the petitioner mentioned that the weighted average GCV of the Primary fuel (on received basis) is calculated on the basis of actual values of the average GCV of the primary fuel (coal) for preceding three months i.e. January 2016, February 2016 and March 2016.
179. Regulation 36.6 (a) of MPERC (Terms and Conditions for determination of Generation tariff) Regulations, 2015 provides as under;
- (a) *Weighted Average Gross calorific value of coal as received, in kCal per kg for coal based stations*
- (b) *In case of blending of fuel from different sources, the weighted average Gross*

*calorific value of primary fuel shall be arrived in proportion to **blending ratio**.*

180. Regarding the GCV of coal, the Commission observed that the petitioner has not filled-up the information as desired in form TPS-15. Vide letter dated 27th June' 2017, the petitioner was required to fill up the complete details of weighted average GCV of coal in Form TPS-15.
181. By affidavit dated 28th July' 2017, the petitioner filed the form TPS-15 containing the details with respect to weighted average GCV of both FSA and Non-FSA coal as received basis received during three preceding months.
182. Based on the aforesaid Regulation and details filed by the petitioner, the weighted average GCV of coal considered in this order is worked out as given below:

Table 38: Weighted average GCV of Coal (As received basis):

Month	Type of Coal	Quantity of Coal	GCV of Coal	Wt. average GCV
		MT	Kcal/kg	Kcal/kg
Jan. 2016	FSA	221285	3614	3587.09
	Non FSA	121375	3532	
Feb. 2016	FSA	198871	3615	
	Non FSA	94352	3524	
March, 2016	FSA	219891	3621	
	Non FSA	87701	3515	

183. Accordingly, the Commission has considered the weighted average GCV of coal as **3587.09 Kcal/kg** in this order.

(vii) **Landed cost of Secondary Fuel oil:**

184. Regarding the landed price of secondary fuel oil, the petitioner submitted that the weighted average Landed cost of the Secondary fuel [based on actual consumption mix of Heavy Furnace Oil (HFO) and Light Diesel Oil (LDO)] is calculated on the basis of actual values of the average landed cost of secondary fuel for preceding three months i.e. January 2016, February 2016 and March 2016.
185. The petitioner filed the date-wise details of LDO and HFO procured during the month. With regard to weighted average landed cost of secondary fuel oil, the petitioner considered actual consumption ratio of 70:30 for the last quarter of FY 2015-16 for HFO and LDO.
186. Based on the above, the petitioner worked out the weighted average landed cost of secondary fuel oil including freight charges and entry tax as given below:

Wt. average cost of HFO (Rs./KL)	Wt. average cost of LDO (Rs./KL)	Wt. average cost of Sec. fuel oil (Rs./KL)
23681	33620	26663

187. The Commission has considered same weighted average cost of Sec. fuel oil of **Rs. 26663/KL** as filed by the petitioner in this order.
188. The petitioner filed GCV of secondary fuel oil 9920 Kcal/Ltr. By affidavit dated 28th July' 2017 in response to the Commission's queries, the petitioner submitted that the average of the useful calorific value of HFO and LDO is considered, as both are being used in the operation of the plant. HFO is used for flame stabilization and LDO for start-up fuel, which ranges from 9840 Kcal/kg to 10000 Kcal/Kg. The Commission has considered same GCV of oil as claimed by the petitioner.
189. Based on the above, the Energy Charges ex-bus for unit No.2 of the petitioner's power plant are determined as given below:

Table 39: Energy (variable) Charges of Unit No. 2 of petitioner's power project:

Sr. No.	Particular	Unit	FY 2016-17	FY 2017-18	FY 2018-19
1	Installed Capacity	MW	600	600	600
2	Normative annual Plant availability Factor	%	85	85	85
3	Gross Generation at generator terminals	MU's	4467.60	4467.60	4467.60
4	Net Generation at ex-bus	MU's	4210.71	4210.71	4210.71
5	Gross Station Heat Rate (worked-out)	kCal/kWh	2,361.51	2,361.51	2,361.51
6	Sp. Fuel Oil Consumption (Normative)	ml/kWh	0.50	0.50	0.50
7	Aux. Energy Consumption (Normative)	%	5.75	5.75	5.75
8	Transit and handling Loss (Normative)	%	0.80	0.80	0.80
9	Weighted average GCV of Oil (filed)	kCal/ltr.	9920	9920	9920
10	Price of Oil (filed)	Rs./ltr.	26.663	26.663	26.663
11	Weighted average GCV of Coal (As received)	kCal/kg	3587.09	3587.09	3587.09
12	Weighted Average price of Coal	Rs./MT	2707.61	2707.61	2707.61
13	Heat Contributed from Oil	kCal/kWh	4.96	4.96	4.96
14	Heat Contributed from Coal	kCal/kWh	2,356.55	2,356.55	2,356.55
15	Specific Coal Consumption	kg/kWh	0.6570	0.6570	0.6570
16	Sp. Coal consumption including transit loss	kg/kWh	0.6622	0.6622	0.6622
17	Rate of Energy Charge from Coal	Rs./kWh	1.793	1.793	1.793
18	Rate of energy charges from oil	Rs./kWh	0.013	0.013	0.013
19	Total energy charges (Coal + Oil)	Rs./kWh	1.806	1.806	1.806
20	Rate of Energy Charge at ex bus	Rs./kWh	1.917	1.917	1.917

190. The base rate of the energy charges shall however, be subject to month to month adjustment of actual fuel price and actual GCV of coal on received basis during the month. The recovery of energy charges shall be made in accordance with Regulations 36.6 to 36.8 of the Regulations, 2015.

Other Charges:

191. Regarding the Application fee, publication expenses and other statutory charges, Regulation 52 of MPERC (Terms and Conditions for determination of generation tariff) Regulations, 2015, provides as under:

“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.*
5. *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 allowed by the Commission separately and shall be trued-up on actuals.”*

192. The petitioner is allowed to recover fee towards filing of subject tariff petition directly from the beneficiaries, as per aforesaid Regulations, 2015. In addition to the above, the petitioner is also entitled to recover Electricity duty, cess and water charges if payable by the Generating Company for generation of electricity from the power stations to the State Government, from the beneficiaries separately.

193. The above tariff is provisionally determined for Unit No.2 of Petitioner’s power plant and shall be effective from its CoD i.e. 7th April, 2016 to 31st March, 2019 subject to retrospective adjustment of ad-hoc/interim tariff considered by the Commission vide its orders dated 24.08.2016 in !A No.2/2016 in Petition No.14 of 2016 and order dated 07.06.2017 in IA No. 01/2017 in the subject petition.

194. The provisional tariff so determined in this order shall be subject to adjustment as per Regulation 8.15 of the MPERC (Terms and Conditions for determination of generation tariff) Regulations, 2015 on determination of the final tariff by the Commission after submission of the Annual Audited Accounts and all other relevant details/documents and clarifications to the satisfaction of the Commission.

195. The petitioner is directed to file the final tariff petition at the earliest along with the Annual Audited Accounts and all other required details / documents. The Unit-wise break-up of the figures in the audited accounts be also submitted by the petitioner with the final tariff petition in favor of its claims. All discrepancies and information gaps observed by the Commission in this order be eliminated while filing the final tariff petition.

With the above directions, the subject petition is disposed of.

(Alok Gupta)
Member

(A. B. Bajpai)
Member

(Dr. Dev Raj Birdi)
Chairman

Date : 28th October' 2017

Place : Bhopal

Annexure – “I”

Response of the petitioner to the issues communicated by the Commission:

Issue No. 1: Capital Cost

- i. In para 51 of the petition, it is mentioned that the working capital margin of Rs. 135 Cr. is deployed for Unit No. 2 as per the cash expenditure certified by CA. However, the amount against working capital margin is neither indicated in CA certificate nor in the break-up of capital cost filed in the petition.

In view of the above, the petitioner is required to inform whether the working capital margin is included in the cash expenditure as on CoD of Unit No. 2. If so, where it is indicated.

- ii. The petitioner has filed the estimated expenditure and cash expenditure of Rs. 548.62 Cr. and Rs. 1.34 Cr. respectively till CoD of Unit No. 2 towards Custom Duty/Excise Duty. The petitioner is required to inform the present position of Mega power status of the project.
- iii. The petitioner has claimed an amount of Rs. 7.41 Cr. towards unamortized finance cost to borrowings. The reasons for claiming such unamortized finance cost to borrowings over and above the IDC and financing charges be submitted.
- iv. The petitioner has filed Rs. 111.80 Cr. towards FERV losses charged to revenue. It needs to be clarified by the petitioner whether it is provisioning or actual loss in light of the amount recorded in Annual Audited Accounts. The petitioner is also required to explain the reasons for such losses.
- v. The petitioner has filed pre-operative cash expenditure of Rs. 153.72 Cr. The break-up of these expenses is neither provided in CA certificate nor in form TPS 5B filed with the petition. The detailed break-up of these expenses be submitted.
- vi. The petitioner is required to clearly indicate the basis of apportionment of common expenses between unit No. 1 and 2. The petitioner is also required to inform the details of existing assets under phase-I of this project if any, to be used in phase-II of the project also.
- vii. As informed by the petitioner that Unit No. 2 of project was under major forced outage on account of an accident occurred in Boiler on 16th May'2016. In para 25 of the petition, it is mentioned that the Unit No. 2 of the project is revived for generation and is expected to be operational again by early May' 2017.

In view of the above, the petitioner is required to submit the following:

- Nature of works involved rectification/repairing in Boiler under forced outage for revival of Unit No. 2.
- To confirm that cost incurred on rectification/repairing for revival of Unit No. 2 from the aforesaid outage is not included in the capital cost as on CoD of the unit claimed in the petition.

Petitioner's Response:

1. With regard to **Issue 1(i)**, it is submitted that the Petitioner had submitted in Para(s) 95 and 96 of Amended Petition No. 68 of 2016 (as amended and submitted on 17.04.2017) and **Para(s) 46 to 53 of the present Petition No. 18 of 2017** that the Lenders [including State Bank of India ("SBI") as lead lender] have approved the working capital margin of Rs. 270 Crore (Rs. 135 Crore for each unit) based on the working capital requirements for the first year of Project operations (Unit 1 and Unit 2) in their Project Information Memorandum (the relevant excerpts of the same are attached hereto and marked as ANNEXURE-1).
2. The Petitioner further submits and clarifies that it has excluded the cost of Working Capital Margin of Rs. 270 Crore (Rs. 135 Crore for each unit) from the capital cost from very inception stage and has not claimed any tariff on the same. For this very reason, it has neither been shown in the break-up of capital cost, nor has it been reflected or indicated in the CA certificate dated 26.04.2017 for unit- wise Cash expenditure as on 06.04.2016.
3. With regard to Issue No. 1(ii), it is submitted that the Petitioner's Project was granted provisional Mega Power Status by the Ministry of Power, Govt. of India on 18.01.2012. The policy requirements prevailing at that point of time mandated the Petitioner to tie-up entire Project capacity through Long Term Power Purchase Agreements ("PPA") by March, 2017, for availing Mega Power Benefits.
4. It is submitted that till date the Petitioner has tied up around 67% of its Project Capacity through Long Term PPAs with the States of Madhya Pradesh (35%) and Uttar Pradesh (~ 32%). However, due to dearth of Long Term Case-1 biddings/ tenders (i.e. Tariff Based competitive bidding) in the market, the Petitioner has been facing challenges in tying-up the entire Project capacity through Long Term PPAs.
5. However, recently on 12.04.2017, the Ministry of Power had issued an Amendment to Mega Power Policy for Provisional Mega Power Projects, vide which a further extension of 60 months has been granted to the Provisional Mega Power Projects (including the Petitioner's Project) for tying-up of Project capacity through Long Term PPAs. A copy of the said Amendment to Mega Power Policy dated 12.04.2017 issued by Ministry of Power is attached hereto and marked as ANNEXURE-2. Accordingly, the Petitioner has now been provided a timeline up-to March 2022 for achieving power tie-up of the entire Project capacity through Long Term PPAs.
6. It is submitted that the said Amendment also states that such Provisional Mega Power Projects may be considered for Mega Power benefits in proportion to the Long Term PPA tied up, once the specified threshold capacity of these projects get commissioned. A suitable mechanism for release of proportionate Bank Guarantee(s) is to be worked out jointly by Ministry of Power and Department of Revenue. However, no such mechanism for release of proportionate Bank Guarantee(s) has been notified till date. It is further understood that such refund/ release would be restricted to Bank Guarantee(s) only.
7. It is submitted that in case of the Petitioner's Project, the estimated expenditure of Rs.

548.62 Crore towards Custom Duty/Excise Duty claimed in the present Petition for Unit 2, includes an amount of Rs. 1.34 Crore already paid in cash and balance Rs. 547.28 Crore in form of Bank Guarantee(s). However, the above mentioned amendment dated 12.04.2017 contains no provision for refund of amount paid in cash towards Customs and Excise Duty. Accordingly, the Petitioner is unlikely to get any refund against this amount of Rs. 1.34 Crore and as such this amount of Rs. 1.34 Crore is required to be considered as part of Unit 2 capital cost. Accordingly, the Petitioner humbly requests this Hon'ble Commission to consider the same as a part of capital cost for Unit 2 for the purpose of determination of its tariff.

8. With regard to **Issue No. 1(iii)**, it is submitted that the Petitioner has already submitted the detailed reasons and working (including supporting documents) for claiming unamortized finance cost to borrowings in its Amended Petition No. 68 of 2016 (as amended and submitted on 17.04.2017) for determination of Final Tariff for Unit 1, as well as in its Reply dated 15.06.2017 to this Hon'ble Commission's letter No. MPERC/D (T)/2017/753 dated 19.05.2017 in Petition No. 68 of 2016. However for the sake of convenience, the Petitioner reiterates its submissions as hereunder:-
- (c) It is submitted that the Petitioner has incurred Rs. 242.11 Crore under finance charges towards underwriting fee, syndication fee, upfront fee, application and processing fee for raising/drawing the debt facility from the lenders as on 31.03.2016;
- (b) It is submitted that "Note 2.1 g: Borrowing Costs" of the Petitioner's Audited Annual Accounts for FY 2015-16 attached hereto and marked as ANNEXURE-3, which refers to the borrowing costs (finance costs) as under:-
 "Borrowing costs includes interest and amortization of ancillary costs incurred in connection with the arrangement of borrowings. Borrowing costs directly attributable to the acquisition, construction or production of an asset that necessarily takes a substantial period of time to get ready for its intended use are capitalized as part of the cost of the respective asset. All other borrowing costs are expensed in the period in which they are incurred. Costs incurred in raising funds are amortized equally over the period for which the funds are acquired or within five year, whichever is less."
- (c) In line with the above, it is submitted that the total outstanding unamortized finance cost of borrowings as on 31.03.2016 is Rs. 43.23 Crore which can be referred from "Note 11: Loans and Advances" of the Petitioner's Audited Annual Accounts of FY 2015-16 under the line items of Prepaid ancillary cost to borrowings (Rs. 40.46 Crore) and Doubtful advances of Rs. 2.77 Crore (recoverable in cash or kind).
- (d) It is further submitted that out of the total unamortized finance cost to borrowings amounting to Rs. 43.23 Crore (as above), **an amount of Rs. 34.93 Crore is related to the long term debt facilities taken for the Project and balance is related to the working capital loan of the Project.**
- (e) It is submitted that out of the total amount of Rs. 34.93 Crore under Prepaid ancillary finance cost to borrowings/unamortized finance cost to borrowings (which is already incurred and placed under current assets in the Audited Annual Accounts of FY 2015-

16 but is yet to be amortized) an **amount of Rs. 27.52 Crore is allocated to Unit 1 and balance of Rs. 7.41 Crore is allocated to Unit 2. The details of working for allocation of such expenses to Unit 1 and Unit 2 with supporting documents are attached hereto and marked as ANNEXURE-4 (Colly).**

9. With regard to **Issue 1(iv)**, the Petitioner humbly submits its response as hereunder:-

Reasons for FERV Losses:

10. It is submitted that the Petitioner had awarded the Engineering Procurement and Construction ("**EPC**") contract of the Project on the basis of International Competitive Bidding ("**ICB**") to M/s Lanco Infratech Limited ("**M/s LITL**") which included import of Main Plant Equipment, i.e., Boiler, Turbine and Generator by way of Off-shore Supply Contract at a lump sum value of US \$360 Million. At the time of financial closure in November 2010, the appraised cost for this package was finalized by the Lenders at Rs. 1775.41 Crore at an exchange rate of Rs. 49.31/ US \$ with the total appraised / approved Project cost of Rs. 6240 Crore.
11. It is further submitted that SBI (Lead Bank), at the time of approving the revised Project cost of Rs. 8000 Crore had approved exchange rate of Rs. 60/US \$ for balance offshore payments. The Petitioner, in order to economize on savings in Interest cost during Construction ("**IDC**"), had availed Buyer's Credit facilities with a six month roll over to make US Dollar payments to the EPC Contractor. It is further submitted that these Buyer's Credit facilities are short term credit facilities and are to be repaid or rolled over within the specified contracted period i.e. 3 to 6 months.
12. Further, in order to protect against the Foreign Exchange Rate Variation ("**FERV**") and to reduce the overall cost of borrowing by reducing the exposure of Rupee Term Loan ("**RTL**") facility, the Petitioner had also got sanction of US \$150 Million of foreign loan/External Commercial Borrowings ("**ECB**") from India Infrastructure Finance Company (UK) Limited ("**IIFCL UK**") for the Project on 28.03.2014 for an estimated (INR) amount of Rs. 900 Crore at Rs. 60/US \$.
13. It is submitted that during the construction period, there was an adverse movement of exchange parity (INR Vs. USD) rates which was beyond the control of the Petitioner. It is further submitted that Petitioner has suffered foreign exchange losses on account of following reasons:-
 - (a) Change in exchange parity during the time period between the bill raised by M/s LITL and bill payment by the Petitioner;
 - (b) Change in exchange parity during the time period of the Petitioner availing Buyer's Credits and its repayments;
 - (c) Change in exchange parity during the time period of the Petitioner availing Buyer's Credit and conversion of the Buyer's Credit into ECB borrowings.
14. The Petitioner submits that although the adverse FERVs were on capital accounts (on account of above stated reasons for import of plant and machinery under the offshore

supply contract), the losses/gain under FERV has been charged to the Profit and Loss accounts in the books of accounts based on the Accounting Standards (AS-11 of ICAI) considering 6 months Buyer's Credit as short-term monetary item as per following details:-

FY	Forex Loss (Rs)	Remarks	
FY 2012-13	1,07,411,89	M/s LITL Offshore Contract-direct payment	Charged to P&L as per books of accounts for FY 2012-13
FY 2013-14	35,78,29,005	Buyer's Credit avail and payment to M/s LITL	Charged to P&L as per books of accounts for FY 2013-14
FY 2014-15	39,20,92,679	Buyer's Credit avail and payment to M/s LITL	Charged to P&L as per books of accounts for FY 2014-15
01.04.2015-19.05.2015	2,32,63,105	M/s LITL Offshore Contract-direct payment	Charged to P&L as per books of accounts for FY 2015-16
01.04.2015-19.05.2015	14,75,14,350	On account of Buyer's Credit outstanding paid by IIFCL UK loan	Charged to P&L as per books of accounts for FY 2015-16
Sub Total- till COD of Unit 1	93,14,40,327		
Post COD of Unit-1 till 31.03.2016	65,34,79,870	Loss of Rs. 25,08,937 on account of M/s LITL Offshore Contract-direct payment; Loss of Rs. 65,09,70,933 on account of Conversion of Buyer's Credit by IIFCL UK Loan	Charged to P&L as per books of accounts for FY 2015-16
Total Forex Loss till 31.03.2016	158,49,20,197		

As per the table above, it is submitted that the Petitioner has incurred the net Forex loss of Rs. 158.49 Crore during the construction period till 31.03.2016. The supporting documents for such foreign exchange losses for each financial year are attached hereto in the form of Audited Annual Accounts and marked as ANNEXURE-5.

15. It is further submitted that under Regulation 15.2(b) of Madhya Pradesh Electricity Regulatory Commission (Terms and Conditions for determination of Generation Tariff) Regulations, 2015 ("MPERC Tariff Regulations 2015"), any gain or loss on account of FERV on the loan during construction period can be claimed as part of the capital cost.
16. In line with the above Regulations, the Petitioner submits to claim the Forex losses of Rs. 158.49 Crore till 31st March 2016 as part of the Capital cost of the Project. Out of total Forex losses of Rs. 158.49 Crore, the Petitioner has claimed the realized losses of Rs. 46.69 Crore towards capital cost of Unit 1 up-to the Commercial Operation Date ("COD") of Unit 1 for determination of Final Tariff of the Unit 1. The balance net forex losses of Rs. 111.80 Crore as incurred are allocated to Unit 2. The unit wise

details of realized and unrealized forex losses are attached hereto in soft copy as marked as ANNEXURE-6.

17. With regard to **Issue 1(v)**, the Petitioner submits the break-up of Pre-operative cash expenditure of Rs. 153.72 Crore as on 06.04.2016 as per CA certificate dated 26.04.2017 is as hereunder:-

(Rs. In Crores)

S. No.	Particulars	Amount
1	Employee Benefit Expenses	67.37
2	Depreciation and Amortization Expenses	2.99
3	Other Expenses	130.22
4	Less: Income during Construction	(46.86)
5	Total Pre-operative Cash Expenses as on 06th April, 2016	153.72

Detailed break of Pre-operative expenditure is attached hereto and marked as ANNEXURE-7. However, the total cash expenditure under Pre-operative expenditure for Unit 2 in light of the Statutory Auditor's certificate for Pre-commissioning expenses and WRPC statements for revenue from sale of infirm power generated from Unit 2 during its pre-commissioning activities has been re-mentioned in Para 41-42 of this instant reply.

18. With regard to **Issue 1(vi)**, it is submitted that the Petitioner has already submitted the detailed basis of apportionment of common expenses between Unit 1 and Unit 2 in its Reply dated 30.03.2017 (at Para 26 to 29) to this Hon'ble Commission's Issue No. 10 raised in this Hon'ble Commission's letter dated 07.02.2017 bearing reference No. MPERC/D(T)/2017/237 in Petition No. 68 of 2016. It is submitted that for the sake of convenience, the same is attached hereto and marked as ANNEXURE-8.
19. It is further submitted that all the existing assets of the Project comprising of Unit 1 and Unit 2 are exclusively catering to the requirement of Phase-I of the Project. Phase-II of the Project, as and when gets implemented, shall have separate and distinct facilities/ assets.
20. With regard to **Issue 1(vii)**, the Petitioner submits the point wise reply as hereunder:-
- A. Nature of works involved with respect to the Boiler under forced outage for revival of Unit 2:-
- Dismantling of Insulation and damaged refractories
 - Dismantling of damaged items
 - Replacement of damaged Bottom Ring Headers for Front and Rear wall;
 - Replacement of damaged Furnace and Back pass buck stays;
 - Repair of damaged Furnace Lower S-Panels (Water Wall);
 - Repair of part Furnace Roof Tubes and Miscellaneous Loose tubes
 - Repair of Wind boxes and Burner Items
 - Repair of Penthouse and Roof enclosure Casings
 - Replacement of Secondary Air Connecting Ducts
 - Replacement of supporting structure for Wind box & S-Panel enclosures
 - Replacement of Metallic and Fabric Expansion Joints
 - Repair works at Bottom Ash Hopper;

- (m) Repair works at Electrostatic Precipitator area;
- (n) Repair of Coal Piping near Burner area
- (o) Repair of Soot Blowers
- (p) Complete replacement of Insulations works including Cladding
- (q) Refractory works
- (r) Replacement of damaged control and instrumentation items;
- (s) Re testing and Re-commissioning of Boiler systems.

B. The Petitioner further confirms that the cost incurred on rectification/repairing works for revival of Unit 2 from the aforesaid outage has not been included in the capital cost as on COD of Unit 2 as claimed in the present Petition.

Issue No. 2: Time Overrun

- (i) It is observed that the scheduled CoD of the Unit No. 2 was 29th November' 2015 in terms of PPA executed between the parties whereas, the actual CoD of the unit is 7th April. 2016. There is a delay in CoD of Unit No. 2 by more than five months. Therefore, the petitioner is required to inform the following:
- a. The detailed reasons and factors attributable for delay in achieving CoD of the unit.
 - b. If the delay is attributable to the vendor/contractor side, the details of penalty/Liquidated Damages if any, recovered from the vendor/contractor as per the provisions under the contract be submitted
 - c. The detailed break-up of IDC as on scheduled CoD and also as on actual CoD of the project.
- (ii) The extension of scheduled CoD till the 7th April' 2016 for Unit No. 2 (600 MW) was conditionally considered by the respondent i.e. MPPMCL. MPPMCL in its letter dated 9th June' 2016, regarding extension of CoD of Unit No. 2, has mentioned that "total IDC would not exceed the budgeted IDC for the project cost of Rs. 8000 Cr."

In view of the above, the petitioner is required to inform the amount of IDC and IEDC increased on account of delay in CoD of the Unit No. 2.

Petitioner's Response:

21. With regard to the **Issue 2(i)(a)**, it is submitted that prior to achieving the Scheduled COD ("SCOD") of Unit 2, the Petitioner successfully synchronized Unit 2 with the grid on 12.03.2016 and subsequently achieved its full load commissioning on 30.03.2016. At the insistence of Madhya Pradesh Power Management Company Ltd. ("MPPMCL"), the Petitioner undertook 72 hours trial run and completed the same on 06.04.2016 and declared COD of Unit 2 as 07.04.2016.
22. It is submitted that despite the best efforts of the Petitioner, there was a delay of **around 4 Months** in achieving the COD of Unit 2 due to the external factors/ reasons beyond the control of the Petitioner. It is further submitted that in terms of the provisions of the PPA dated 05.01.2011 executed between the Petitioner and

MPPMCL, the SCOD of Unit 2 was revised to 07.04.2016 and the same was duly approved and accepted as Revised SCOD of Unit 2 by MPPMCL vide its letter dated 22.04.2016. In addition to the above, the Petitioner (vide various communications from time to time) also offered to supply power (corresponding to power from Unit 2) to MPPMCL from alternative generation source as per the terms of the PPA for the period corresponding to delay in COD of Unit 2. However, MPPMCL did not exercise its option to procure such power. The various communications between the Petitioner and MPPMCL have already been submitted by the Petitioner as "ANNEXURE 3 (Colly)" to the present Petition No. 18 of 2017.

23. It is submitted that despite adhering to Prudent Utility Practices and despite all efforts by the Petitioner, there has been a marginal delay of **around 4 Months** in achieving the COD of Unit 2 due to the external factors/ reasons, which were beyond the control of the Petitioner. These external factors/ reasons are classified in three (3) categories as under:-

- A. **Category-1: External Factors/ Reasons leading to delay in overall Project Implementation.** These External Factors/ Reasons led to delay in COD of Unit 1 and consequently delayed the COD of Unit 2 as the cumulative delay on account of these factors spilled over during the construction and implementation of Unit 2.
- B. **Category-2: External Factors/ Reasons leading to delay in implementation of Unit 2.**
- C. **Category-3: External restrictions/ constraints imposed on the Petitioner leading to delay in declaration of COD of Unit 2.**

The External Factors/ Reasons classified under these respective categories are detailed hereunder:-

- A. **Category-1: External Factors/ Reasons leading to delay in overall Project Implementation.** These are summarized herein below:
 - (a) Delay in grant of Stage-II Forest Clearance by Ministry of Environment and Forest ("MoEF");
 - (b) Delay on account of unwarranted Public Interest Litigations ("PILs") by meddlesome interlopers for personal gains;
 - (c) Disturbances/unrest at Project Site by miscreants and motivated elements;
 - (d) Unseasonal and unprecedented rains/ Floods;
 - (e) Delay in barrage construction.
 - (f) Delay due to other external factors.

A brief explanation on each of the above stated reasons for delay is set out herein below for this Hon'ble Commission's consideration:-

(a) Delay in grant of Stage-II Forest Clearance by MoEF:

24. It is submitted that certain portion of forest land falls within the main plant area. The Stage-I Forest Clearance for the said land was granted by MoEF on 04.06.2010. Thereafter the Stage-II Forest Clearance was granted by MoEF on 17.08.2011, i.e., after more than 14 months from the date of grant of Stage-I Forest Clearance. As per the existing industry practices, Stage-II Forest Clearance is generally granted within 5

to 6 months of Stage-I Forest Clearance. Accordingly, the Petitioner anticipated grant of Stage-II Forest Clearance within the year 2010 and hence on 20.12.2010, awarded the EPC Contract for Main Plant Activities to M/s LITL. However this Stage-II Forest Clearance was granted by MoEF to the Petitioner only on 17.08.2011.

25. It is further submitted that, there was delay on account of the fact that MoEF vide letter dated 23.09.2011 imposed a stay on Stage-II Forest Clearance in the wake of several PILs filed before the Hon'ble High Court of Madhya Pradesh. These PILs were eventually disposed of by the Hon'ble High Court of Madhya Pradesh in favor of the Petitioner. Accordingly, MoEF vide letter dated 19.03.2012 vacated the stay and re-instated Stage-II Forest Clearance. Thereafter, the forest land was transferred to the Petitioner. Copies of the Stage-I and Stage-II Forest Clearance and MoEF letters dated 23.09.2011 and 19.03.2012 are attached hereto and marked as ANNEXURE-9 (Colly). A table demonstrating the above unwarranted delays is provided herein below for this Hon'ble Commission's ease of reference:

Period			Details	Delay in commencement of construction works
From	To	Total Days		
04.06.2010	17.08.2011	439 days (Against the general timelines of ~ 180 days.)	Period elapsed between Grant of Stage-I and Stage-II Forest Clearance by MoEF.	~ 8 months
23.09.2011	19.03.2012	178 days	Stay on the granted Stage-II Forest Clearance.	~ 6 months
Total delay in transfer of forest land on account of above				~ 14 months
Delay in commencement of construction works due to above delay in transfer of forest land				~ 10 months

26. As is evident from the above table, grant of Stage-II Forest Clearance was delayed by MoEF by around 8 months (*vis-à-vis* general timelines between grant of Stage-I and Stage-II Forest Clearance). Further a period of another 6 months was lost due to the stay imposed on this Forest Clearance by MoEF. Thus, transfer of forest land was delayed by a period of more than 14 months (8 months + 6 months), which consequently delayed the commencement of various construction activities including those at Coal Handling Plant Area and IDCT Area by around 10 months. This delay was beyond the Petitioner's control and is attributable to the Government agencies.

(b) Protests/Agitations/Demonstrations at the Project Site:

27. The Petitioner respectfully submits that during the construction period, the Project witnessed constant disturbances/unrest at the Project Site on account of protests/demonstrations/ agitations carried out by residents/ villagers. These protests/demonstrations/ agitations were politically motivated and were carried out at the instance of external and unscrupulous elements for personal gains and these resulted in intermittent closure of Project Site, thereby severely interrupting the ongoing construction activities. The major events which resulted in interruption/stoppage of

construction works at the Project Site from time to time and delayed the commissioning of the Project are detailed in the table below:-

Period		Reasons for Work Interruption	No. of Days	Area Affected	Documentary Evidence
From	To				
24.01.2011 1	01.02.2011 1	Labour Unrest; Local Villagers intruded the plant; fatal attacks	9 days	Complete Site was closed	News Articles in local dailies from 25.01.2011 to 01.02.2011
26.02.2011 1	12.03.2011 1	Local Villagers Unrest on petty wage issues; committed fatal attacks; Work re-commenced after 12.03.2011	15 days	Complete Site was closed	News Articles in local dailies from 26.02.2011 to 12.03.2011
02.12.2011 1	03.12.2011 1	Agitation by Bhartiya Kisan Union at Plant Main Gate	2 days	Complete Site was closed	News Articles in local dailies from 02.12.2011 to 03.12.2011
04.02.2012 2	09.02.2012 2	Agitation by Bhartiya Kisan Union at Main Gate	6 days	Complete Site was closed	News Articles in local dailies from 04.02.2012 to 09.02.2012
05.05.2012 2	08.05.2012 2	Political Rally by Bhartiya Kisan Union (Distt. SP and others were injured) at Main Gate	4 days	Complete Site was closed	News Articles in local dailies from 05.05.2012 to 08.05.2012
25.03.2014 4	27.03.2014 4	Agitations and threat to labour by political motivated elements	3 days	Complete halt of works	Petitioner's letter dated 27.03.2014 to the Collector and SP, Anuppur
17.01.2015 5	19.01.2015 5	Agitation by local miscreants for the part of the land for Railway Siding; Several Police officials injured; labour at plant stopped the work for two days	3 days	Complete Site was closed	News Articles in local dailies from 18.01.2015 to 21.01.2015
TOTAL SITE CLOSURE ON ACCOUNT OF ABOVE: 42 Days					

Copies of news articles/ clippings in the local newspapers and letter of the Petitioner substantiating the afore-stated delays are attached hereto and marked as ANNEXURE-10 (Colly). **The Petitioner submits that on account of aforementioned reasons, the Project implementation works were severely affected for around 65 days during the construction phase, i.e., 42 days direct**

delay on account of Project Site closure and an indirect delay of 3-4 days per interruption (totaling to around 20 days for such 6 interruptions) on account of resource and manpower re-mobilization/ re-deployment and restart of work.

(c) Unconventional heavy rainfall during non-monsoon period/ floods:

1. The Petitioner respectfully submits that the Project witnessed unusually heavy rainfalls/ floods repeatedly in non-monsoon months during the implementation phase of the Project, which severely affected the construction works. The rainfall data for District Anuppur by the Indian Meteorological Department from for the years 2010 to 2014 is summarized hereunder and is also attached hereto and marked as ANNEXURE-11.

Year	Average Rainfall Data (mm)					% Departure from long term average for the respective month				
	2010	2011	2012	2013	2014	2010	2011	2012	2013	2014
January		0	73	3.5	8.7		-100%	147%	-88%	-70%
February		0	2.6	70.4	69.5		-100%	-90%	184%	180%
March	0	0	0	3.5	28.9	-100%	-100%	-100%	-83%	41%
April	0	0	0.8	41.0	0	-100%	-100%	-95%	179%	-100%
May	0	0	3.6	0.2	0		-100%	-82%	-99%	-100%
June	43	258.3	51.6	226.9	119.4	-78%	45%	-71%	28%	-33%
July	258.2	205.2	462.9	263.3	315.8	-33%	-47%	20%	-32%	-18%
August	264.2	407.6	297.1	331.6	309.2	-33%	5%	-23%	-14%	-20%
September	252.9	425.1	136.7	123.4	268.2	11%	90%	-39%	-45%	20%
October	4.5	0	16.5	204.4	185.7	-92%	-100%	-65%	336%	295%
November	4	0	59.6	0	0	-64%	-100%	636%	-100%	-100%
December	18.2	0	5.2	0	2.3	70%	-100%	-66%	-100%	-85%

*Source: India Meteorological department (2010-2014) for District Anuppur, Madhya Pradesh

28. The Table above makes it abundantly clear that the Project had witnessed unconventional heavy rainfall/ floods in the months of September 2011, January 2012, November 2012, February 2013, April 2013, October 2013, February 2014 and October 2014 i.e. a total period of 8 months during the construction phase of the Project, thereby severely affecting the construction works at the Site during the peak time. Further, during the month of August 2014, sudden and abrupt cloud outbursts were experienced leading to flash floods in the entire region for around 10-12 days, due to which the entire movement of material and labour came to a standstill. As a result the construction activities were severely affected for the month of August 2014. Copies of news articles/ clippings in the local newspapers reporting the torrential rainfall and floods are attached hereto and marked as ANNEXURE-12(Colly).
29. In this background, it is submitted that due to unseasonal and unconventional heavy rain falls and floods during these 9 months, the construction works slowed down significantly causing a delay of 12-15 days during each such month, resulting in overall delay of around 100 days during the construction phase of the Project.

(d) Delay in Barrage construction:

30. The barrage construction activities were severely affected primarily on account of two factors as under:-

(i) Hindrance by local villagers, labour strikes etc. leading to stoppage of barrage construction works from time to time. **The cumulative stoppage of works on account of such agitations, strikes etc. is estimated to be around 139 days.**

(ii) As already mentioned above, sudden cloud burst and torrential rains were witnessed during August, 2014, which led to a flash flood in Son River. During this period, the barrage was under advanced stage of construction. This flash flood in River Son on 05.08.2014 caused severe damage to the trunnions of Gate Nos. 2 and 3 of the barrage. It would be worthwhile to mention here that the trunnion is embedded in the concrete and acts as a hinge for opening and closing of the barrage gate. These trunnions and other embedded parts were removed and sent to works of OEM's casting agency in Punjab. After casting, these were then dispatched to OEM works at Kota for machining and finishing and finally these were received back at the Project Site on 17.01.2015, subsequent to which, their restoration to the original condition in the barrage was completed on 02.02.2015. **Thus a total delay of 181 days from 05.08.2014 to 02.02.2015 is attributable to heavy rain and flash flood in River Son which caused delay in barrage construction.**

31. A detailed breakup of a total delay of 320 days in the construction of barrage on account of reason (i) and (ii) above (i.e. 139 days + 181 days) is attached hereto and marked as ANNEXURE-13.

(e) Delay due to other External Factors:

32. Additionally, the Project witnessed unwarranted delays on account of external reasons beyond control of the Petitioner, which inter alia, included:

(i) Strikes, agitations and power shutdowns in Seemandhra region during September-October 2013 on the state bifurcation issue. Due to this, the Government offices and Banks in this region followed BANDH, thereby impairing and delaying the custom clearance for the offshore supplies received at Vizag/ Ganagavaram Port.

(ii) Major fire broke-out in Mumbai Mantaraya on 21.06.2012, due to which permission for loading/ unloading the material received at Mumbai Port and movement of the same was delayed for around seven (7) days.

33. It is further submitted that the cumulative delay on account of the above impediments is of the order of almost 12-14 months. Although with the efficient and meticulous Project planning, management and execution skills, and judicious allocation and utilization of manpower and resources, the Petitioner was able mitigate this delay to around 6 months in achieving the COD of Unit 1 (i.e. from 30.11.2014 to 20.05.2015).

However, these factors did affect the COD of Unit 2 as well and the aforesaid cumulative delay spilled over during the construction and implementation of Unit 2.

B. Category-2: External Factors/ Reasons leading to delay in implementation of Unit 2:

34. It is submitted that in addition to above, the Petitioner witnessed other external factors beyond its control, which led to the delay in COD of Unit 2. These include:-

- (a) Devastating earthquake of April 2015 originating in Nepal and spreading up to parts of China, severely disrupted the various manufacturing facilities in China. This earthquake resulted in slow down/ delays in manufacturing of various main and other equipment associated with Unit 2 of the Petitioner's Project. This slow down/ delays by manufacturing facilities in China resulted in cascaded delays in supply and logistics, erection and testing, and commissioning activities of Unit 2 of the Petitioner's Project.
- (b) Change in piping lay-out of the plant: At the time of commissioning of Unit 1, certain modifications were carried out in piping lay-out of the Petitioner's Project. This was done in the best interest of the Project with a view to ensure smooth project operation and maintenance in the longer run. This modification in the piping layout necessitated arranging additional piping for Unit 2 from other/ alternate vendors. Since this piping material was not readily available, hence arranging and sourcing of the same from other vendor(s) delayed the other serially associated project commissioning activities. Supporting Documents in this regard (Copy of the E-mail received from the Petitioner's EPC Contractor enclosing list of additional piping material for Unit 2. Also enclosed is a copy of order placed by the Petitioner's EPC Contractor to an alternate vendor for additional piping material) are attached hereto and marked as ANNEXURE-14.
- (c) Cannibalization of Control and Instrumentation ("C&I") Items: During commissioning activities of Unit 1, certain C&I items were damaged/ required replacement. To expedite commissioning of Unit 1, such C&I items procured for Unit 2 were used for Unit 1. Thus fresh sourcing of such C&I items for Unit 2, being a time consuming process, resulted in delay in COD of Unit 2. Supporting documents in this regard (Copy of the E-mail received from the Petitioner's EPC Contractor enclosing list of cannibalized C&I items for Unit 2) are attached hereto and marked as ANNEXURE-15.
- (d) Delay in dispatch of Turbine Spacers due to extended Chinese holiday: Extended holiday of around 12 days during the month(s) of September-October' 2015 resulted in delay in dispatch of Turbine Spacer from the Petitioner's vendor in China, which in turn resulted in delay of commissioning activities of Unit 2. A Copy of Chinese Calendar for the year 2015, highlighting Chinese holidays is attached hereto and marked as ANNEXURE-16.

C. Category-3: External restrictions/ constraints imposed on the Petitioner leading to delay in declaration of COD of Unit 2.

35. It is submitted that in addition to the above factors adversely affecting the construction activities of Unit 2, the Petitioner experienced a further delay of **around 15 days** in declaring the COD of Unit 2 on account of the following external constraints:-

- (a) Grid restrictions imposed by the system operator, Western Regional Load Despatch Centre (“WRLDC”) from 23.03.2016 to 28.03.2016; and
- (b) The concurrent restraint on account of hotline stringing works by Power Grid Corporation of India Ltd. (“PGCIL”) affecting the 400 kV Anuppur - Jabalpur Transmission Line from 26.03.2016 to 30.03.2016. This is the only transmission line available for evacuation of the power generated from the Petitioner’s Project to the Jabalpur Pooling Point of PGCIL.
36. It is submitted that the requirement of 72 hours trial run was insisted by MPPMCL de hors the statutory requirements at the time of COD of Unit 1, which has been uniformly followed by the Petitioner during COD of Unit 1 as well as during COD of Unit 2. It is due to the restraints imposed by WRLDC and PGCIL and the insistence by MPPMCL to undertake 72 hours trial run, that despite having achieved full load commissioning on 30.03.2016 of Unit 2, the Petitioner could declare the COD of Unit 2 only on 07.04.2016. A copy of letter dated 01.04.2015 to this effect, issued by the Superintending Engineer, Madhya Pradesh Power Generation Company Limited (authorized on behalf of MPPMCL for witnessing and monitoring the commissioning tests of both Unit 1 and Unit 2 of the Petitioner’s Project in compliance with Article 5.3 of the PPA) is attached hereto and marked as ANNEXURE-17.
37. It is submitted that the details with respect to these external constrains have been dealt in detail by the Petitioner in its Petition No. 67 of 2016 filed before this Hon’ble Commission and the same is not reproduced herein for the sake of brevity. **Thus, as amply evident, all the above reasons leading to delay in COD of Unit 2 were beyond the control of the Petitioner.**
38. With regard to **Issue 2(i)(b)**, it is submitted that apart from the above there might be certain delays which may be attributed to the Contractor/ Vendor. However, the same have not yet been quantified by the Petitioner and have not been included in the present proceedings. In terms of EPC Contract, the final settlement is still pending. It is for this reason that at this juncture the liquidated damages/penalty that may be attributable to the contractor/ vendor for delay in completion of works cannot be quantified. As such, the Petitioner reserves its rights to quantify such liquidated damages/penalty at the time of final contract settlement and any such liquidated damages/penalty to be recovered from the contractor/ vendor, would be discussed and finalized at the time of final contract settlement and submitted before this Hon’ble Commission at the appropriate time.
39. With regard to **Issue 2(i)(c)**, the detailed break up of IDC for the Project as on Schedule COD (20.11.2015) and Actual COD (07.04.2016) as Form-14 (Detail of Interest During Construction) is attached herewith and marked as ANNEXURE-18 and summarized as hereunder:-

Particulars	(Rs. In Crore)	
	As on Scheduled COD of Unit 2 (20.11.2015)	As on Actual COD of Unit 2 (06.04.2016)
Interest during Construction	1612.72	1682.18

40. With regard to **Issue 2(ii)**, it is submitted that the amount of IDC and IEDC as on Scheduled COD (20.11.2015) and on Actual COD (07.04.2016) is summarized as hereunder:-

(Rs. In Crore)		
Particulars	As on Scheduled COD of Unit 2 (20.11.2015)	As on Actual COD of Unit 2 (07.04.2016)
<i>Interest during Construction</i>	1612.72	1682.18
<i>IEDC – Pre-operative & Pre-commissioning Expenses</i>	390.02	412.74

Issue No. 3: Infirm Power

- i. The petitioner has not filed the CA certificate regarding fuel expenditure for generation of infirm power till CoD of the Unit No. 2. Therefore, the quantity, rate and amount towards oil and coal consumed for generation of infirm power duly certified by Statutory Auditor be submitted by the petitioner. Supporting documents regarding rate of the coal and oil be also filed in this regard.
- ii. The petitioner is also required to file the statements issued by Western Regional Power Committee regarding details of infirm power supplied to the grid and revenue earned from sale of power.
- iii. The petitioner is required to inform whether any coal quantity was allocated to it by the Coal Companies for commissioning activity of the unit.
- iv. It needs to be inform whether the imported coal has been used for generation of infirm power. The detailed break-up quantity, rate and cost of coal utilized for generation of infirm power from different sources be also submitted by the petitioner.
- v. The petitioner is also required to confirm whether the revenue earned from sale of infirm power has been reduced from the capital cost as on CoD of the unit claimed in the subject petition.

Petitioner's Response:

41. With regard to **Issue 3(i)**, the actual cash expenditure under Pre-commissioning expenses for Unit 2 as on the date of its COD amounts to Rs 48.34 Crore (prior to adjustment of revenue of Rs 1.03 Crore from sale of infirm power realized on cash basis).

The Statutory Auditor Certificate regarding fuel expenditure & revenue realized from sale of infirm power during pre-commissioning activities for Unit 2 till its COD is attached hereto and marked as ANNEXURE 19.

Based on Statutory Auditor certificate, the Petitioner submits that the total cash expenditure of Rs 15.80 Crore out of total pre-commissioning expenditure (Rs 48.34 Crore) is funded through internal accruals and not by project funds and henceforth not included in the cash expenditure certificate dated 26th April 2017 submitted with this

present Petition No. 18 of 2017 as Annexure 11 (Page 166-170).

42. With regard to **Issue 3(ii)**, the statements issued by Western Regional Power Committee regarding details of infirm power supplied to the grid and revenue earned from sale of infirm power are attached hereto and marked as ANNEXURE-20. According to these statements, the total revenue accrued from sale of infirm power during pre-commissioning activities of Unit 2 till the date of COD amounts to Rs 14.02 Crore.

Based on the above submissions in Para 41 and Para 42, the details of Pre-operative expenditure for Unit 2 are as hereunder:

(Rs. In Crore)

S. No.	Details	As per CA Certificate dated 26.04.2017	Revised Amount	Remarks
A	Project Management Expenses (IEDC) net of interest income.	131.15	131.15	
B	Pre-Commissioning Expenses	32.54	48.34	Based on Stat Auditor certificate 24.07.2017 for Pre-commissioning expenses (+15.80 Crore funded by internal accruals)
C	Less: Revenue from sale of infirm power	1.03	14.02	Based on WRPC statements
D = B-C	Pre-Commissioning Expenses (net of sale of infirm power)	31.51	34.32	
E	Less: Liability	8.94	8.94	
F = A+D -E	Total Cash under Expenditure Pre-operative Expenditure	153.72	156.53	

The Petitioner humbly submits that the Hon'ble Commission may kindly consider the total cash expenditure under the head "Pre-operative Expenditure including Pre-commissioning expenses" of Rs 156.53 Crore based on the Statutory Auditor certificate dated 24.07.2017 for Pre-commissioning expenditure for Unit 2 (ANNEXURE 19) and the statement of Accounts issued by Western Region Power Committee ("WRPC") [ANNEXURE 20 (Colly)]

43. With regard to **Issue 3(iii)**, it is submitted that 2,00,000 Tonnes of coal was allocated to the Petitioner by South Eastern Coal Fields Limited ("SECL") i.e. the Coal Company for commissioning activities of Unit 2. This coal quantity was subsequently adjusted against the regular coal supplies for Unit 2 after Unit 2 became operational. The Memorandum of Understanding ("MoU") dated 13.04.2015, signed between the Petitioner and SECL for this purpose is attached hereto and marked as ANNEXURE-21.

44. With regard to **Issue 3(iv)**, it is submitted that no imported coal has been used for generation of infirm power from Unit 2.
45. With regard to **Issue 3(v)**, it is submitted that the total revenue from sale of infirm power from Unit 2 is Rs. 14.02 Crore as per the Western Regional Power Committee Documents attached hereto and marked as ANNEXURE-20 (Colly). It is submitted that out of the total revenue from sale of infirm power from Unit 2, Rs. 1.03 Crore has been adjusted/ reduced from the claimed cost of Unit 2. It is further submitted that as per the CA certificate for cash expenditure as on 06.04.2016, balance revenue of Rs. 12.99 Crore has not been realized in books of accounts till the COD of Unit 2.

Issue No. 4: Additional Capitalization

- (i) With regard to the additional capitalization during FY 2016-17, the petitioner is required to submit the details of additional capitalization in terms of Regulation 20.1 of MPERC (Terms and Conditions for Determination of Generation 'Tariff) Regulations. 2015.
- (ii) The petitioner is also required to file a comprehensive reply to the following issues with all relevant supporting documents in favor of its claim for additional capitalization:
- Whether the addition of assets are on account of the reasons (i) to (v) in clause 20.1 of the Regulations, 2015.
 - Whether the assets capitalized during the year are under original scope of work supporting documents be also filed in this regard.

Petitioner's Response:

46. With regard to **Issue 4(i)**, the details of additional capitalization in terms of Regulation 20.1 of MPERC Tariff Regulations 2015 is provided hereunder:-

S. No	Items	Nature of works	Amount in Rs. Crore
1	Land and Site Development	Un-discharged provisions under R&R policy	5.80
2	Plant and Machinery	Un-discharged liabilities for Balance and Retention Payments under: a. Boiler, Turbine & Generator for Unit 2 b. Balance of Plants for Unit 2 c. Mandatory spares for BTG and BOP	146.45
3	Building and Civil works	Un-discharged liabilities for Balance and Retention Payments for Civil works under: a. General Civil works for main plant building, other miscellaneous civil works etc. b. Township works/finishing works for Administrative Buildings etc.	33.94
4	Pre-operative, Interest during Construction/	Un-discharged liabilities for expenses under Employee benefits provided on the basis of actuarial valuation as per AS-15; Provision of Rs.	14.94

S. No	Items	Nature of works	Amount in Rs. Crore
	Finance Charges	6 Crore for payment of interest and finance charges post 31.03.2016 till COD of Unit 2.	
5	Provision for Custom and Excise Duty		547.28
		Total	748.41

47. With regard to **Issue 4(ii)**, the Petitioner submits the point wise reply as under:-

- (a) The addition of Assets post COD of Unit 2 during FY 2016-17 are within the original scope of work and on account of un-discharged liabilities payable after COD of Unit 2 and up to the cut-off date. Such addition of Assets is in accordance with Regulation 20.1(i) of MPERC Tariff Regulations 2015.
- (b) The assets capitalized or to be capitalized are under the original scope of works under Land and Site Development, Plant and Machinery, and Building and Civil works, which includes the payments for balance works and un-discharged liabilities as per the terms and conditions of the various contracts awarded under the original scope of works.

Issue No. 5: Project Funding

- (i) With regard to funding of capital cost as on CoD of Unit No. 2, the Commission has observed different ratios for drawl of loan and infusion of equity as given below:
- In para 38 of the petition, it is mentioned that the actual cash expenditure as on CoD of Unit No. 2 was funded by actual debt-equity ratio of (73.51) : (26.49).
 - While claiming the return on equity and interest on loan capital, the petitioner has considered actual opening equity and loan amount in the ratio of (70.40) : (29.60).
 - As per CA certificate dated 26th April' 2017 regarding actual cash expenditure the funding of total cash expenditure is in the ratio of (73.51): (26.49).

In view of the above, the petitioner is required to explain above discrepancy/anomaly and inform the actual debt-equity ratio in this regard.

- (ii) On perusal of the CA certificate dated 26th April' 2017 regarding the cash expenditure as on 6th April' 2017, it is observed that the total funding for the project is more than the cash expenditure. The petitioner is required to inform the amount of IDC on the debt component over and above the cash expenditure incurred as on 6th April' 2017.

Petitioner's Response:

48. With regard to **Issue 5(i)**, it is submitted that the debt equity ratio as per the CA

certificate dated 26.04.2017 for cash expenditure till COD of Unit 2 (06.04.2016) is (73.51):(26.49) based on total debt drawl and equity infused in the Project. It is further submitted that the Cash expenditure certificate dated 26.04.2017 also includes **the expenditure on account of FERV losses charged to Revenue and unamortized finance cost to borrowings which are, in actual, funded entirely through internal accruals of the Project.** Henceforth, while claiming the return on equity, the Petitioner has considered the calculation of debt and equity as hereunder:-

S. No	Particulars	FY 2016-17	FY 2017-18	FY 2018-19
As per the Certificate of Expenditure as on 06.04.2016				
A	Debt drawl	73.51%	73.51%	73.51%
B	Equity infused	26.49%	26.49%	26.49%
APPLICATION OF FUNDS				
C	Opening Capital Cost	2697.03	3564.65	3564.65
D	FERV Losses charged to Revenue (Opening)	111.80	-	-
E	Unamortized Cost to Borrowings (Opening)	7.41	-	-
F	Total Opening Capital Cost (F = C+D+E)	2816.24	3564.65	3564.65
G	Additional Capex during the Year	748.41	-	-
H	Closing Capital Cost	3564.65	3564.65	3564.65
SOURCES OF FUNDS				
I	Debt for Opening Capital Cost (I = C*A)	1982.69	2532.88	2532.88
J	Debt for Additional Capex during the year (J = G*A)	550.19		
K	Total Debt	2532.88	2532.88	2532.88
L	Opening Equity [L = (C*B) + D + E]	833.55	1031.77	1031.77
M	Equity addition for Add. Capex	198.22	-	-
N	Total Equity	1031.77	1031.77	1031.77
Debt-Equity Ratio as on COD of Unit 2 (I:N)		(70.40):(29.60)*		
*For Opening Loan and Equity				

49. With regard to **Issue 5(ii)**, this Commission has observed with respect to CA certificate dated 26.04.2017 that the total funding as on 06.04.2016 exceeds the actual cash expenditure as incurred on the said date. In this regard, the Petitioner submits that the balance amount (total funding minus cash expenditure) pertains to Cash and Bank Balance as well as share issue expenses and other expenses (to be charged to Profit and Loss accounts on account of specific nature of expenditure as per accounting guidance). The details of the balance amount as mentioned above have been submitted by the Petitioner in its Reply dated 15.06.2017 (Page No. 2-3) to this Hon'ble Commission's letter no. MPERC/D(T)/2017/753 dated 19.05.2017 in Petition No. 68 of 2016. However, the copy of Audited Annual Accounts for FY 2015-16 is attached hereto and marked as ANNEXURE-3 for the sake of convenience. The details of sources and application of funds as on 06.04.2016 is tabulated below:-

S. No	Particulars (All values in Rs. Crore)	As on 06.04.2016
1	Debt Deployed	5825.27
2	Equity Infused	2098.75
3	Total Funding (3 = 1 + 2) = (4 + 5)	7924.02
Application of Funds		

4	Cash Expenditure	7701.59
5	Balance (5 = 3 – 4) = (5.1 + 5.2 + 5.3)	222.43
5.1	Cash and Bank Balance	182.54
5.1.1	Current Investments#	28.89
5.1.2	Cash and Bank Balance – Current@	122.48
5.1.3	Cash and Bank Balance – Non Current\$	31.17
5.2	Share Issue Expenses	10.19
5.3	Other Expenses	29.70

Current investments as on 31.03.2016 under Balance Sheet and Note 13 of the Audited Annual Accounts for FY 2015-16;

@ Cash and Bank Balances as on 31.03.2016 under Balance Sheet and Note 16 of the Audited Annual Accounts for FY 2015-16 less FD of Rs. 8.28 Crore against margin for outstanding Buyer's Credit and was adjusted with the outstanding loan amount by State Bank of India (after paying the Buyer's credit through IIFCL UK Loan raised by the Petitioner). Supporting Documents attached hereto and marked as ANNEXURE-22.

\$ Note 12: Non-current bank balances as on 31.03.2016 of the Audited Annual Accounts for FY 2015-16

50. It is further submitted and reiterated that the cash and bank balances from time to time available are on account of the unutilized funds pending payments to various vendors/contractors engaged in the construction of the Project. In this regard, it is further submitted that disbursement of the funds to the Project is made on on-going basis from time to time, either by way of infusion of equity or by way of disbursement of loan in tranches by the lenders, based on the projected requirement of cash flow over 3-6 months. Till the time, the payments to various vendors/contractors are made, the balance funds available with the Petitioner are invested in short-term investments.

Issue No. 6: Annual Capacity Charges

- (i) The rate of Return on Equity is claimed in the petition by grossing up the base rate of return with MAT. However, the Annual Audited Accounts for FY 2015-16 filed by the petitioner is indicate loss and no tax has been paid by the Company. The petitioner is required to file the basis or claiming MAT in light of Regulation 31 of MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2015.
- (ii) While determining the cost of two months' oil stock for working capital purpose, the petitioner has considered weighted average rate of secondary fuel oil. As per Regulation 34.1 (c) of MPERC (Terms and Conditions for determination of generation tariff) Regulations, 2015, the rate of only main fuel oil is to be considered. Therefore, the petitioner is required to file the cost of secondary fuel oil in light of aforesaid Regulations.
- (iii) With regard to cost of coal stock for working capital purpose, the petitioner is required to inform the maximum coal storage capacity in light of Regulation 34.1 (a) & (b) of the MPERC Tariff Regulations, 2015.

- (iv) In table under para 53 of the subject petition, the petitioner has considered the funding of working capital in the same debt-equity ratio as considered for capital cost funding. The aforesaid approach for calculating interest on working capital is not found in accordance with the provisions under Regulations, 2015.. Therefore, the petitioner is required to file interest on working capital in light of the provisions under Regulations, 2015.

Petitioner's Response:

51. With regard to **Issue 6(i)**, it is submitted that the Petitioner has claimed Minimum Alternative Tax ("MAT") as applicable effective tax for grossing up Return on Equity as prescribed by Regulation 31.2 of MPERC Tariff Regulations 2015. Regulation 31.2 of MPERC Tariff Regulations 2015 is reproduced below:-

"31.1 The base rate of return on equity as allowed by the Commission under Regulation 30 shall be grossed up with the effective tax rate of the respective financial year....."

31.2 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 effective tax rate in accordance with Clause 31.1 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 Alternative Tax (MAT), "t" shall be considered as MAT rate including surcharge and cess. ..."

52. It is further submitted that Regulations 31.3 of MPERC Tariff Regulations 2015 provides for adjustment for any under-recovery or over-recovery of grossed up rate of return after truing up and further allowance of recovery or refund to beneficiaries on year to year basis. It is submitted that the Petitioner is a Special Purpose Vehicle company and it had incurred losses in FY 2015-16 and hence no income tax/ MAT was payable by it in such year.

Further, the Petitioner would like to submit that for FY 2016-17 also, it does not expect the SPV to incur any tax cost (including MAT) on account of operating losses during the year. However, the income tax return for FY 2016-17 is yet to be filed after completion of audit and verification of tax records. Accordingly, the Petitioner craves leave to approach the Hon'ble Commission for reimbursement of tax liability, if incurred by it.

53. With regard to **Issue 6(ii)**, it is submitted that while estimating the per unit energy charges for Unit 2, the Petitioner has considered the normative specific fuel oil

consumption of 0.5 ml/kwh corresponding to the normative plant availability factor in line with Regulation 39.3 (D) of MPERC Tariff Regulations 2015. Further, it is clarified that while calculating the cost of two months of oil stock for working capital purpose, it has considered the weighted average rate of Heavy Furnace Oil (“HFO”) and Light Diesel Oil (“LDO”), both being used in the operation of plant; HFO for flame stabilization and LDO as start-up fuel (but capped the total consumption less than or equal to normative consumption).

54. With regard to **Issue 6(iii)**, it is submitted that the maximum coal storage capacity of the Project (i.e. both for Unit 1 and Unit 2) is around 70 days.
55. With regard to **Issue 6(iv)**, it is submitted that, as stated in Para 95 and Para 96 of Amended Petition No. 68 of 2016 (as amended and submitted on 17.04.2017) and Para 46 to 53 of the present Petition, the Project has been sanctioned a cost of Rs. 270 Crore under the sub-head Working Capital Margin (“WCM”) based on the working capital requirements for the first year of Unit operations (Rs. 135 Crore for each unit), to be funded through mutually agreed debt and equity ratio at the time of Financial Closure.

Particulars	Amount in Rs. Crore	Debt in Rs. Crore	Equity in Rs. Crore
Original Project Cost as appraised by Lenders (including WCM/ excluding Custom and Excise Duties)	6240	4680 (@75%)	1560 (@25%)
Cost Over-run (including WCM of Rs. 270 Crore/ excluding Custom and Excise Duties)	1760	1232 (@70%)	528 (@30%)
Revised Project Cost appraised by Lenders (including WCM of Rs. 270 Crore/ excluding Custom and Excise Duties)	8000	5912 (@73.90%)	2088 (@26.10%)
WCM (not the part of Capital Cost as claimed in the tariff petition)	270	199.53 (@ 73.90%)	70.47 (@ 26.10%)
Working Capital Margin for Unit 1	135	99.765 (@73.90%)	35.235 (@26.10%)
Working Capital Margin for Unit 2	135	99.765 (@73.90%)	35.235 (@26.10%)
Working Capital Margin for Unit 2 @ actual Debt Equity ratio as on COD of Unit 2	135	99.24 (@73.51%)	35.76 (@26.49%)

56. It is further submitted that the Petitioner has excluded the cost of working capital margin of Rs. 270 Crore from the capital cost and has not claimed any tariff on the same, and for the same reason, it has neither been shown in the break-up of capital cost, nor has it not been reflected or indicated in the CA certificate dated 26.04.2017 for Unit wise Cash expenditure as on 06.04.2016.

57. *It is submitted that while estimating the normative working capital requirement and the interest on working capital in compliance with Regulation 34 of MPERC Tariff Regulations 2015, the Petitioner has considered the actual impact of applicable interest on working capital keeping in view the funding of normative working capital as hereunder:-*

- (a) *Out of the total working capital requirement as per Regulation 34 of MPERC Tariff Regulations 2015 for the first year operations of Unit 2, Rs. 135 Crore has been funded as working capital margin in actual debt-equity ratio as on COD of Unit 2 (07.04.2016) eligible for charge of actual interest and return on equity on normative basis respectively;*
- (b) *Balance normative working capital less of working capital margin eligible for charge of interest on normative basis as per Regulation 34 of MPERC Tariff Regulations 2015.*

Regulation 34.4 of MPERC Tariff Regulations 2015 is provided as under:-

“ 34.4 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”

In case of the Petitioner’s Project, the WCM of Rs. 270 Crore (Rs. 135 Crore for each unit) out of the total working capital requirement has been funded through long term debt and equity and hence are eligible for charge of actual interest on debt drawn and return on equity infused for the same. The same approach has been allowed by the Central Electricity Regulatory Commission (Central Commission) in its Order dated 13.04.2004 passed in Petition No. 94 of 2002 for Central Generating Station of Gandhar Gas Power Station. A copy of the said Order dated 13.04.2004 is attached hereto and marked as ANNEXURE-23. In light of the aforesaid Order passed by Ld. Central Commission, it is respectfully submitted that this Hon’ble Commission may be pleased to allow the same.

Issue No. 7: Energy Charges

- i. Regarding the landed cost of coal and GCV of coal, the petitioner has not filled-up the information as desired in form TPS-15. The petitioner is required to fill up the complete details of landed cost of coal and weighted average GCV of coal in Form TPS-15.**
- ii. The petitioner has not indicated the cost of coal transportation. The details of coal transportation with supporting documents are required to be filed.**
- iii. The petitioner has filed the subject petition based on MPERC (Terms and Conditions for determination of generation tariff) Regulations' 2015. The reason for considering Gross Station Heat Rate and Auxiliary energy consumption as per provisions under the Regulations, 2012, is required to be explained.**
- iv. While claiming the energy charges in the subject petition, the petitioner has**

considered normative transit and handling losses. It needs to be clarified that the transit and handling losses have not been considered for determining the landed cost of coal.

- v. The petitioner has considered GCV of secondary fuel oil 9920 Kcal/Ltr. Documents in support of aforesaid claim for GCV of secondary fuel oil be submitted.

Petitioner's Response:

58. *With regard to **Queries 7(i) and 7(ii)**, Form TPS-15 containing the required details with respect to landed cost of coal, weighted average GCV of coal and cost of coal transportation is attached hereto and marked as ANNEXURE-24.*
59. *With regard to **Issue 7(iii)**, it is submitted that the Petitioner has already submitted the detailed reasons for considering Gross Station Heat Rate and Auxiliary consumption under the MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2012 ("**MPERC Tariff Regulations 2012**") in Para 68 to 75 (at Page 25-27) of the present Petition. The Petitioner has requested this Hon'ble Commission to exercise its Power to Relax as provided under Regulation 54 of the MPERC Tariff Regulations 2015. It is further submitted that the Petitioner has also filed a Review Petition (Petition No. 67 of 2016) before this Hon'ble Commission seeking review of this Hon'ble Commission's Order dated 24.08.2016 passed in Petition No. 14 of 2016, and the Petitioner has also prayed for declaring that the norms of MPERC Tariff Regulations 2012 will apply to Unit 2 and its COD, which is pending adjudication.*
60. *With regard to **Issue 7(iv)**, the Petitioner confirms that the transit and handling losses have not been considered in the landed cost of coal.*
61. *With regard to **Issue 7(v)**, it is submitted that the Petitioner has considered the average of the useful calorific value of HFO and LDO, as both are being used in the operation of the plant. HFO is used for flame stabilization and LDO for start-up fuel, which ranges from 9840 Kcal/kg to 10000 Kcal/Kg. The relevant excerpts of comparison of GCV of various fuels taken from M/s Hindustan Petroleum Corporation Limited is attached hereto and marked as ANNEXURE-25.*

Annexure-“II”

Rejoinder filed by the Petitioner M/s M.B. Power to the comments offered by Respondent (MPPMCL):

1. *It is submitted that the Petitioner denies all allegations, averments and contentions of Respondent No. 1 at variance with the Petition and reiterates contents of the present Petition which are not being reproduced for the sake of brevity. The present Rejoinder seeks to explain and/or controvert the specific averments and statements of Reply filed on behalf of Respondent No. 1 without controverting each statement line-by-line to avoid prolixity. It is submitted that nothing contained in the Reply which is not specifically admitted to in the present Rejoinder be deemed to be specifically adverted and denied.*

Petitioner's Submissions

2. *It is submitted that the Petitioner has filed the present Petition for determination of provisional tariff for supply of power from its Unit 2 of 600 MW of Phase-I (2 X 600 MW) sub-critical coal based thermal power Project in District Anuppur, Madhya Pradesh (“**Project**”) for the period commencing from 07.04.2016 till 31.03.2019 under Madhya Pradesh Electricity Regulatory Commission (Terms and Conditions for determination of Generation Tariff) Regulations, 2015 (“MPERC Tariff Regulations 2015”).*
3. *It is submitted that in accordance with the provisions of the Power Purchase Agreement (“PPA”) dated 05.01.2011, the Scheduled Commercial Operation Date (“**SCOD**”) of Unit 1 is 20.05.2015. Accordingly, as per Article 4.1.5 of the PPA, the SCOD of Unit 2 was 6 months thereafter i.e. 19.11.2015. Despite the best efforts of the Petitioner, the Commercial Operation Date (“**COD**”) of Unit 2 was slightly delayed due to reasons/factors beyond the control of the Petitioner. Nonetheless, the Revised SCOD of Unit 2 as 07.04.2016 has been duly approved and accepted by the Respondent No. 1 vide letter dated 22.04.2016.*
- A. Adjudication of Review Petition No. 67 of 2016 filed by the Petitioner ought not to delay the present Petition**
4. *It is submitted that prior to achieving the COD of Unit 2, the Petitioner successfully synchronized Unit 2 with the grid on 12.03.2016 and subsequently achieved its Commissioning on 30.03.2016. At the insistence of Respondent No. 1, the Petitioner undertook 72 hours trial operation and completed the same on 06.04.2016 and declared COD of Unit 2 as 07.04.2016. The Petitioner has already placed before this Hon'ble Commission relevant certificates with respect to synchronization, commissioning and COD of Unit 2 as Annexure 2 (Colly) (Pages 38-47) to the present Petition.*
5. *It is submitted that the Respondent No. 1 insisted the Petitioner to undertake the 72 hours trial run for Unit 1, which is evident from:-*
 - (a) *Petitioner's letter dated 20.02.2015, 05.03.2015 and 23.03.2015;*
 - (b) *Respondent No. 1's letter dated 12.03.2015 and Superintending Engineer, MPPMCL's*

- letter dated 01.04.2015; and
- (c) Respondent No.1's Reply in Review Petition No. 67 of 2016, wherein Respondent No. 1 has averred that the Petitioner could not demonstrate 72 hours trial run and hence the COD of Unit 2 was not achieved by 31.03.2016. Thus, it is evident that the 72 hours trial run was insisted by Respondent No. 1 which was not required either under the MPERC (Terms and Conditions for determination of Generation Tariff) Regulations 2012 ("MPERC Tariff Regulations 2012") or the PPA.

Therefore, the Respondent No. 1 cannot now claim that the said 72 hours trial run was not insisted upon by the Respondent No. 1. A copy of the abovementioned communications is annexed hereto and marked as **ANNEXURE 1(Colly)**.

6. It is submitted that the Respondent No. 1 insisted on the requirement of 72 hours trial run de hors the statutory requirements at the time of COD of Unit 1, which was unalteredly followed by the Petitioner during COD of Unit 1 as well as during COD of Unit 2. It is due to the restraints imposed by Western Regional Load Dispatch Centre ("**WRLDC**") and Power Grid Corporation of India Ltd. ("**PGCIL**") and the insistence by Respondent No. 1 to undertake 72 Hrs trial run, that despite having achieved Commissioning on 30.03.2016 of Unit 2, the Petitioner was forced to declare its COD as 07.04.2016.
7. It is submitted that in terms of the provisions of the PPA, the SCOD of Unit 2 has been revised to 07.04.2016 and the same has been duly approved and accepted as Revised SCOD of Unit 2 by the Procurer, Respondent No. 1 vide its letter dated 22.04.2016. Further, vide various communications from time to time, the Petitioner also offered to supply power (corresponding to power from Unit 2) to Respondent No. 1 from alternative generation source as per the terms of the PPA for the period corresponding to delay in COD of Unit 2. However, Respondent No. 1 did not exercise its option to procure such power. The various communications between the Petitioner and Respondent No. 1 including the above mentioned letter of the Respondent No. 1 dated 22.04.2016 approving the revision of SCOD of Unit 2 has been placed before this Hon'ble Commission as Annexure 3 (Colly) (Pages 48-103) to the present Petition.
8. It is submitted that this marginal delay of less than 5 months in Unit 2 COD (i.e. 19.11.2015 to 07.04.2016) has been on account of external factors, which were beyond the control of the Petitioner. The Petitioner, from time to time vide its various communications had duly kept Respondent No. 1 abreast of such external factors/ reasons leading to this delay and had sought extension/ revision of SCOD of Unit 2 as per provisions of the PPA.
9. It is submitted that due to this marginal delay in achieving the COD of Unit 2, the tariff determination of Unit 2 has come under the scope of MPERC Tariff Regulations 2015 instead of MPERC Tariff Regulations 2012. Therefore, for adjudication of the issue of delay in achieving COD of Unit 2 and the issue as to whether the tariff should be determined by this Hon'ble Commission under MPERC Tariff Regulations 2012 or MPERC Tariff Regulations 2015, the Petitioner herein had filed I.A. No. 1 of 2016 in Petition No. 14 of 2016. This Hon'ble Commission by its Order dated 24.08.2016 passed in the aforesaid I.A. No.1 of 2016 disallowed the prayer of the Petitioner for

extension of control period of MPERC Tariff Regulation 2012. Thereafter the Petitioner filed Review Petition No. 67 of 2016 before this Hon'ble Commission seeking review of the Order dated 24.08.2016. The said Review Petition was admitted by this Hon'ble Commission by its order dated 01.02.2017, and is pending adjudication.

10. *It is submitted that the Petitioner has made detailed submissions with respect to the reasons for delay in Project Implementation in the present Petition and the Petitioner craves leave to refer to the submissions made in the present Petition in this regard.*
11. *It is submitted that the present Petition has been filed by the Petitioner without prejudice to the pending Review Petition No. 67 of 2016. It is submitted that the pendency of adjudication of Review Petitioner No. 67 of 2016 ought not to delay the adjudication of the present Petition as averred by Respondent No.1.*

B. Relaxation of Technical Parameters

12. *It is submitted that the MPERC Tariff Regulations 2012 prescribe the following norms for 600 MW thermal generating stations:-*
 - (a) *The Auxiliary consumption is allowed at 6% with additional 0.5% allowance for Projects using induced draft cooling technology;*
 - (b) *Gross Station Heat Rate is allowed at additional margin of 6.5% over the design heat rate of the Unit or the design heat rate as derived by the turbine cycle heat rate and boiler efficiency as guaranteed by the Supplier.*
13. *It is submitted that in the present Petition, the Petitioner has prayed that operational norms [viz. Station Heat Rate (“SHR”) and Auxiliary Consumption] be considered in line with the norms prescribed in MPERC Tariff Regulations 2012 as provided above. It is submitted that the reasons for praying for such relaxation inter alia include lower/erratic off-take of power supply, the technical performance parameters guaranteed by the Engineering Procurement and Construction (“EPC”) Contractor, load variation, inconsistent coal quality etc. It is submitted that the Petitioner’s Project is based on sub-critical technology and the EPC Contract for design, engineering, supply, erection and commissioning of main plant equipment (Boiler, Turbine & Generator) based on guaranteed technical performance parameters had been awarded to M/s. Lanco Infratech Limited in accordance with the guidelines of international competitive bidding. These guaranteed technical performance parameters are in accordance with the operational norms prescribed in the MPERC Tariff Regulations 2012 and as such the Petitioner would only be able to operate its Project at the operational norms prescribed in the MPERC Tariff Regulations 2012. As such, restricting the design margin for SHR and lowering the norms for Auxiliary consumption would cause severe financial and operational difficulties to the Petitioner’s Project thereby adversely impacting its viability. The Petitioner has prayed for relaxation of these operational norms viz. SHR and Auxiliary Consumption i.e. in accordance with the operational norms prescribed in MPERC Tariff Regulations 2012 by invoking the powers to relax vested with this Hon'ble Commission as per Regulation 54 of MPERC Tariff Regulations 2015.*

14. *It is settled law that the Electricity Regulatory Commissions have the power to relax the applicability of the Regulations framed by the Commissions. In this context, the following judgments are noteworthy:-*
- (a) *Ratnagiri Gas and Power Limited v. Central Electricity Regulatory Commission: 2011 ELR (APTEL) 0532 (Para 10.7): "The above Regulations and the decision give the judicial discretion to the Central Commission to relax norms based on the circumstances of the case. However, such a case has to be one of those exceptions to the general rule. There has to be sufficient reason to justify relaxation. It has to be exercised only in exceptional case and where non-exercise of the discretion would cause hardship and injustice to a party or would lead to unjust result."*
 - (b) *M.P. Power Trading Company Limited v. Torrent Power Limited & Ors.: 2009 ELR (APTEL) 0124 (Para 13): "There are sufficient reasons which justify the enhancement of the percentage of initial spares from 4% to 5.87%. The Commission is vested with the power to relax its Regulations and therefore the order of the Commission was not interfered with."*
 - (c) *National Thermal Power Corporation Ltd. v. Madhya Pradesh SEB: 2007 ELR (APTEL) 7 (Para 24): "...In case any Regulation causes hardship to a party or works injustice to him or application thereof leads to unjust result, the Regulation can be relaxed. The exercise of power under Regulation 13 of the Regulations is minimized by the requirement to record the reasons in writing by the Commission before any provision of the Regulations is relaxed. Therefore, there is no doubt that the Commission has the power to relax any provision of the Regulations."*
 - (d) *BSES Yamuna Power Ltd. & Ors. v. CERC & Ors.: 2015 ELR(APTEL) 0643 (Para 18): "The 'power to remove difficulties' and the 'power to relax' provided in the 2004 Tariff Regulations supplement each other to deal with the situations which may arise from time to time. In the present matters, the learned Central Commission has exercised these powers correctly, properly and legally in allowing the impact of the 6th Pay Commission's Recommendations regarding increase in employees cost including increase in salaries of the employees and wages of the workmen. Apart from it, from the Regulations 12 and 13 conferring 'Power to remove difficulties' and 'Power to relax' upon the Central Commission in 2004 Tariff Regulations, the Central Commission has retained the powers such as savings of inherent powers of the Commission (Regulations 111, 113, 114) & power to remove difficulties (Regulation 115)."*

In view of the above, the Petitioner has prayed before this Hon'ble Commission for relaxation of the operational norms viz. SHR and Auxiliary Energy Consumption i.e. in accordance with the operational norms prescribed in MPERC Tariff Regulations 2012.

15. *The Petitioner has also filed Review Petition before this Hon'ble Commission challenging the Order dated 24.08.2016 passed in I.A. No. 1 in Petition No. 14 of 2016. In case this Hon'ble Commission allows the Review Petition, then in that case there will be no requirement for relaxation of norms.*

C. Foreign Exchange Rate Variation losses charged to Revenue

16. *It is submitted that the Petitioner is entitled to claim the Foreign Exchange Rate*

Variation (“FERV”) losses suffered by the Petitioner as part of Capital Cost. In this regard, the following is noteworthy:-

- (a) The Project has witnessed an adverse movement in exchange parity (INR vs USD) rates during the construction period (from initially envisaged rate of INR 50/USD reaching to Rs 68/USD at the peak time of construction period) which was beyond the control of the Petitioner.
 - (b) The entire Project cost was initially funded by Rupee Term Loan (“RTL”) and no foreign currency loan/external commercial borrowings were envisaged. However, in order to economize on savings in overall cost related to the funding the expenditure with respect to the payments under offshore Supply Contract, the Petitioner has availed cheaper Buyer’s Credit facilities (as compared to RTL) with a six month roll over to make US dollar payments to EPC Contractor. The Petitioner further claims that the Petitioner has been able to achieve savings of over Rs 78 Crores in Interest during Construction (“IDC”) of the Project on account of availing Buyer’s Credit facilities (approximately Rs 840 Crore) as compared to RTL equivalent facility.
 - (c) Further, the Petitioner had refinanced the outstanding Buyer’s Credit with cheaper External Commercial Borrowings (“ECB”) amounting to US \$150 Million sanctioned from India Infrastructure Finance Company (UK) Limited (fully hedged-currency as well as interest).
 - (d) As evident from above, the Petitioner has diligently evaluated and used every option to affect savings wherever possible. However, despite these efforts to minimize the interest cost, the Petitioner has suffered foreign exchange rate variation cost on account of adverse foreign exchange rate variations during the construction period.
 - (e) In this regard, the Petitioner would like to submit that Regulation 15.2 of the MPERC Tariff Regulations 2015, permits any gain and loss on account of FERV on loan during the construction period for claiming as part of the capital cost.
17. It is submitted that Respondent No. 1 vide its letter dated 22.04.2016 had extended SCOD of Unit 2 to April 2016. In the said letter there was no mention of disallowing FERV losses to the Petitioner. Therefore, in view of the above the Petitioner is entitled to claim the FERV losses suffered by the Petitioner as a part of Capital Cost. Any submissions of the Respondent No. 1 to the contrary are liable to be rejected by this Hon’ble Commission.

Comments offered by the Respondent No. 1 i.e. MPPMCL and para-wise response of the petitioner on each comment:

MPPMCL’s Comments:

Para No. 1:

The Petitioner has filed the present Petition under Section 62 and Section 86(1)(a) of the Electricity Act 2003 read with Part VII of Electricity Act 2003 for determination of Provisional Tariff of Unit-2 (of 600 MW) of 2x600 MW Coal based Anuppur Thermal

Power Plant (Phase-I) comprising of Unit-1 and Unit-2 in District Anuppur, Madhya Pradesh for the period commencing from 07th April 2016 till 31st March 2019 under MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2015 (*Tariff Regulations, 2015 for short*).

Para No. 2:

The Petitioner has also prayed for relaxation of Norms of Operation and for recovery of Statutory Charges, Taxes, Duties, Cess etc.

Para No. 3:

In Para 21, the Petitioner has given a chronological list of events occurring after filing of Petition No. 14 of 2016 (for determination of Provisional Tariff for the Project in anticipation of COD of Unit-2). In the said list, at Sl. No. 20, it is disclosed by the Petitioner that a Review Petition No. 67 of 2016 has been filed against Order dated 24.08.2016 passed in IA-1 of 2016 filed in Petition No. 14 of 2016 before this Hon'ble Commission, which is pending adjudication.

Petitioner's Response:

The contents of Para Nos. 1 to 3, except those which are matter of record are wrong and denied.

MPPMCL's Comments:

Para No. 4:

Without prejudice to various contentions raised and averments made by this Respondent in the subsequent paragraphs of the present reply, it is submitted that the outcome of the said Review Petition No. 67 of 2016 is likely to have a significant impact on calculation of Energy Charges in this instant case. The Respondent has explained hereinafter, how the possible outcomes of the said Review Petition may affect the Tariff Determination under present Petition in the following paragraphs.

Para No. 5:

Regulation 39.3 of the Tariff Regulation 2015 is quoted below:

"39.3 Following norms shall be applicable for all the thermal generating Units/stations for all capacities which are Commissioned on or after 01/04/2012 :

- (A) Normative Annual Plant Availability Factor (NAPAF) : 85%***
- (B) Normative Annual Plant Load Factor (NAPLF) : 85%***
- (C) Gross Station Heat Rate***
 - (a) Existing Coal based thermal generating stations having COD on or after 1.4.2012 till 31.03.2016, (other than those covered under clause 39.2) shall be the heat rate norms approved during FY 2012-13 to FY 2015-16.***
New thermal generating stations achieving COD on or after 1.4.2016 :
 - (b) Coal-based Thermal Generating Stations = 1.045 X Design Heat Rate***

(kCal/kWh)

Where the Design Heat Rate of a Unit means the Unit heat rate guaranteed by the supplier at conditions of 100% MCR, zero percent make up, design coal and design cooling water temperature/ back pressure:

Provided further that in case pressure and temperature parameters of a Unit are different from above ratings, the maximum design Unit heat rate of the nearest class shall be taken:

Provided also that where Unit heat rate has not been guaranteed but turbine cycle heat rate and boiler efficiency are guaranteed separately by the same supplier or different suppliers, the Unit design heat rate shall be arrived at by using guaranteed turbine cycle heat rate and boiler efficiency :

Provided also that if one or more Units were declared under commercial operation prior to 1.4.2016, the heat rate norms for those Units as well as Units declared under commercial operation on or after 1.4.2016 shall be lower of the heat rate norms arrived at by above methodology.” [Emphasis Added]

Para No. 6:

If the above said Review Petition is allowed, then the last Proviso of Regulation 39.3 (C)(b) will have to be ignored and Operating Norms prescribed under Tariff Regulations 2012 will be applied to both of them.

Para No. 7:

However, if the Review Petition is disallowed, then the last Proviso of Regulation 39.3 (C)(b) will apply and Norms of Operation prescribed under Tariff Regulations 2015 will apply to both Unit-1 and Unit-2.

Para No. 8:

In view of above, it is humbly prayed that the till the time the Review Petition No. 67 of 2016 is decided, this Hon'ble Commission may consider deferring determination of the Provisional Tariff for Unit-2 under present Petition. Otherwise, in absence of clarity regarding applicable Norms of Operation, the tariff determination under present Petition may result in wastage of precious time and energy of this Hon'ble Commission.

Petitioner's Response:

The contents of Para Nos. 4 to 8, except those which are matter of record are wrong and denied. It is submitted that Review Petition No. 67 of 2016 has been admitted by this Hon'ble Commission by its Order dated 01.02.2017 and is pending adjudication. The pendency of Review Petition No. 67 of 2016 ought not to delay the determination of Provisional tariff for the supply of power from Unit 2 of the Petitioner's Project. The Petitioner craves leave to refer to submissions in Para Nos. 5 to 12 of the present Rejoinder which have not been repeated

herein for the sake of brevity.

MPPMCL's Comments:

Para No. 9:

Also, in the present Petition, particularly in Paras 56 to 58 and in Paras 68 to 76, the Petitioner has sought relaxation of Norms of Operation prescribed under Regulation 39.3 of Tariff Regulations 2015. However, the Petitioner has failed to demonstrate either –“sufficient reason to justify relaxation” or insurmountable “hardship” or “injustice” being caused by the Regulations “leading to unjust result”. These are all essential prerequisites for consideration of relaxation by Hon’ble Commission as laid down by Hon’ble APTEL in various judgments on the issue of relaxation of provisions of Regulations. On the contrary the relaxation is being sought in routine manner, merely in “anticipation of difficulty” or “perceived hardship”.

Para No. 10:

The Commission has progressively introduced energy efficient norms to encourage efficient use of non-renewable fossil fuel, reduce emission of environmental pollutant, green house gases and also reduce fuel cost per unit of generation, which is a pass through to the end consumer. Relaxation of such norms of operation will prove to be a regressive step. The Petitioner is unjustly asking for relaxation in norms only for increasing profit of the generating company at the expense of consumers of the State. The same cannot be allowed as allowing them will be against the interest of end consumers of the State. Therefore, it is most humbly prayed that the Commission be pleased to outrightly reject the request for relaxation of norms.

Petitioner's Response:

The contents of Para Nos. 9 and 10 are wrong and denied. The Petitioner craves leave to refer to submissions in Para Nos. 13 to 15 of the present Rejoinder which have not been repeated herein for the sake of brevity.

MPPMCL's Comments:

Para No. 11:

In Para nos. 1 to 4, the Petitioner has set out the context and the factual background of the present Petition, including reference to the Power Purchase Agreements (PPAs), and therefore, does not require specific comments.

Para No. 12:

In Para nos. 5 to 8, under heading “COD of Unit 1 of the Project”, the Petitioner has provided the background of revised Scheduled Commercial Operation Date (SCOD) of Unit 1 as 20-05-2015 and also the fact of determination of Provisional Tariff by Hon’ble Commission for Unit 1 in P.No. 31 of 2015 vide Order Dated 29-07-2015. Petitioner has also referred to the Order Dated 09-03-2016 passed by Hon’ble Commission in P.No. 6 of 2016 allowing the Petitioner to provisionally bill the Respondent in terms of Order Dated 29-07-2015. Petitioner has also disclosed that in compliance to the direction of

Hon'ble Commission P.No. 68 of 2016 has been filed for determination of Final Tariff for Unit 1, which is under consideration before Hon'ble Commission.

Para No. 13:

In Paras 9 to 14 under the heading "COD of Unit 2 of the Project", the Petitioner has placed information in respect of Scheduled Commercial Operation Date (SCOD) of Unit 2 and purported reasons for delay in achieving COD.

Para No. 14:

In Para 9 the Petitioner has stated that -

"....in accordance with the provisions of the PPA the SCOD of the Unit 1 is 20.05.2015. Accordingly SCOD of Unit 2 was to be achieved 6 months thereafter i.e. by 19.11.2015 in accordance with Article 4.1.5 of the PPA."

Petitioner's Response:

The contents of Para Nos. 11 to 14 are reiteration of the submissions made by the Petitioner in the present Petition and do not merit any response.

MPPMCL's Comments:

Para No. 15:

It is humbly submitted that the above contention of the Petitioner is misconceived. Actually, in accordance with the provisions of Article 4.1.5 of PPA, the SCOD of Unit 1 was to be achieved on 30.11.2014 (i.e. 60 months from the date of signing of IA). This fact is already admitted by the Petitioner in Para 6 (a) of the present Petition. The Respondent agreed to revise the SCOD of Unit 1 to 20.05.2015 after considering specific facts and circumstances leading to the delay in achieving COD of Unit 1.

Para No. 16:

However, the provisions of Article 4.1.5, cannot be construed to mean that the SCOD of Unit 2 will also be automatically extended by 6 months and be counted from the specifically accepted COD for Unit 1 i.e. 20-05-2015. This contention of the Petitioner is strongly denied.

Para No. 17:

In the humble submission of the Respondent, the SCOD of Unit 2 will still be counted from date of original SCOD of Unit -1 (i.e., 30-11-2014), even if the SCOD of Unit 1 has been agreed to be advanced to 20-05-2015. Therefore, to say or to presume that the new SCOD of Unit 2 will automatically extend by 6 months thereafter is incorrect. If at all there is a case for extension of COD of Unit 2, then it would have to be considered on the specific facts and circumstance pertaining to that unit only.

Petitioner's Response:

The contents of Para Nos. 15 to 17 are wrong and denied. It is submitted that Article 4.1.5 and Article 4.1.6 of the PPA provide as under:-

“4.1.5 Scheduled Commercial Operation Date

*The Company shall achieve Commercial Operation Date for the first Unit within Sixty (60) Months from the date of signing of Implementation Agreement (i.e. 01st December 2009) and **second Unit of the Power Station within six (6) Months thereafter.***

4.1.6 Revised Scheduled Commercial Operation Date

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

It is submitted that on a conjoint reading of Article 4.1.5 with Article 4.1.6, it is evident that Unit 2 of the Project was to be commissioned after 6 months of the COD of Unit 1. Further, once the parties have mutually agreed to revise the SCOD of a Unit, the Revised SCOD would be considered the SCOD of that Unit. Therefore, it is submitted that when the SCOD of Unit 1 was revised to 20.05.2015, the SCOD of Unit 2 stood revised to a date 6 months after 20.05.2015 i.e. 19.11.2015. Thereafter, Respondent No.1 by its letter dated 22.04.2016 has itself acknowledged that the original SCOD of Unit 2 was November 2015 and further agreed to revise the SCOD of Unit 2 from November 2015 to April 2016. It is submitted that the Respondent No. 1's present submissions with respect to SCOD of Unit 2 are contrary to the records stated in Respondent No. 1's letter dated 22.04.2016. Such submissions of the Respondent No. 1 are erroneous and are liable to be outrightly dismissed with no consideration.

MPPMCL's Comments:

Para No. 18:

In Para 10, the Petitioner has given a list of documents evidencing the events leading to the achieving of COD of Unit 2. In this context, it is to bring to the notice of the Hon'ble Commission, that the document submitted at Sl. No. (e), which is a copy of Letter No. 05-01/429 dated 07.04.2016 written by MPPMCL (the Respondent herein) to the Western Regional Load Centre, Mumbai for starting Scheduling Power from Unit 2 of Anuppur Thermal Power from the 00:00 Hrs on 07.04.2016. Therefore, this letter *per-se* is not the “letter accepting the COD of Unit 2 as 07.04.2016”. Here, it is also humbly submitted that this Respondent did not insist the Petitioner to undertake 72 hours trial run for Unit-2. The Petitioner has failed to submit any document wherein this Respondent has specifically insisted on 72 hours trial run for Unit-2.

Petitioner's Response:

*The contents of Para No. 18 are wrong and denied. It is submitted that the contention of the Respondent No. 1 that the letter dated 07.04.2016 written by Respondent No.1 to WRLDC is not *per-se* “letter accepting the COD of Unit 2 as 07.04.2016” is baseless and contrary to the facts on record. It is submitted that the said letter dated 07.04.2016 categorically states as*

under:-

“In view of the above, MPPMCL as Procurer, accepts the Performance Test carried out by MB Power (Madhya Pradesh) Anuppur Thermal Power Project and certified by I.E. as also the declaration of its Commercial Operation of the Unit-2 (600 MW) on 07.04.2016 on the basis of the above.”

It is submitted that Respondent No. 1 has unequivocally accepted the COD of Unit 2 as 07.04.2016 by way of the above letter. It is further submitted that the Respondent No. 1 insisted the Petitioner to undertake the 72 hours trial run for Unit1 and the requirement of 72 hours trial run was unalteredly followed by the Petitioner during COD of Unit 1 as well as during COD of Unit 2. The fact that the Petitioner followed a higher standard/benchmark and the 72 hours trial run was conducted by the Petitioner must not be the basis to penalize the Petitioner especially since the commissioning of Unit 2 was already done on 30.03.2016 and even the 72 hour trial run ended on 07.04.2016. The Petitioner further craves leave to refer to submissions in Para Nos. 5 to 12 of the present Rejoinder which have not been repeated herein for sake of brevity.

MPPMCL’s Comments:

Para No. 19:

The Respondent had considered request of the Petitioner for extension of COD of Unit 2 from scheduled date to April-2016, subject to the Petitioner agreeing to certain conditions. This was communicated to the Petitioner vide Letter No. 05-01/472 Dated 22.04.2016. A copy of the said letter is annexed and marked as ANNEXURE R/1.

Para No. 20:

In the said letter, inter-alia, one of the important conditions for acceptance of extension of COD was - MB Power (Madhya Pradesh) Ltd. (the Petitioner herein) agreeing “not to claim IDC for delayed COD”. This condition was duly agreed by the Petitioner vide its Letter No. 7972 Dated 13-06-2016. A copy of the said letter is annexed and marked as ANNEXURE R/2. This Hon’ble Commission is, therefore, prayed to not to consider IDC and IEDC while provisionally determining tariff of Unit 2 for the period of actual delay in COD of Unit 2, i.e., from 31.05.2015 (6 months after SCOD of Unit 1 as per PPA or 30.11.2014) to date of actual COD of Unit 2 or 07.04.2016.

Petitioner’s Response:

The contents of Para Nos. 19 and 20 are wrong and denied. It is submitted that when the COD of Unit 2 was getting delayed with respect to its original SCOD of November 2015, the Petitioner vide its letters dated 17.12.2015 and 27.01.2016 had offered to supply power to the Respondent No. 1 from an alternate source corresponding to the power from Unit 2 at the same tariff in accordance with the provisions of the PPA. However, the Respondent No. 1 chose not to avail such power from alternate source. Therefore, it is submitted that the delay in achieving COD of Unit 2 had no adverse effect on the Respondent No. 1. Therefore,

Respondent No. 1's claim for denial of IDC and Incidental Expenditure during Construction ("IEDC") cannot be sustained in the present case. The Respondent No. 1 has also prayed to disallow IDC and IEDC for the period from 31.05.2015 till 07.04.2016. In this context it is submitted that the SCOD of Unit 2 stood revised from 31.05.2015 to 19.11.2015 as per Articles 4.1.5 and 4.1.6 of the PPA. Further the SCOD was revised to April' 2016 vide Respondent No. 1's letter dated 22.04.2016 in terms of Article 4.1.5 of the PPA. Therefore, as per Regulation 15 of the MPERC Tariff Regulations 2015, various components of Capital Cost including FERV, IDC and IEDC till the date of actual COD of Unit 2 i.e. 07.04.2016 form part of the Capital Cost.

MPPMCL's Comments:

Para No. 21:

In the above said List, the Petitioner has also not submitted any Certificate from Independent Engineer, which is the requirement as per PPA, certifying the successful completion of the COD on 6-04-2016. The Petitioner may kindly be directed to furnish the same.

Petitioner's Response:

The contents of Para No. 21 except those which are matter of record and wrong and denied. The Certificate dated 06.04.2016 issued by the Independent Engineer is annexed hereto and marked as ANNEXURE 2.

MPPMCL's Comments:

Para No. 22:

In Para 11, the Petitioner has stated that in terms of the provision of the PPA, the SCOD of Unit 2 has been revised to 07.04.2016. In this connection it is humbly requested to kindly refer submissions made in Paras 14 to 17 above.

Petitioner's Response:

The contents of Para No. 22 are wrong and denied. The Petitioner craves leave to refer to submissions in Para No.23 of the present Rejoinder which are not repeated herein for the sake of brevity.

MPPMCL's Comments:

Para No. 23:

In Para 11, the Petitioner also has stated that "various communications between Petitioner and Respondent No. 1" have been attached and marked as ANNEXURE 3 (Colly.). However, only copy of one Letter of Petitioner Dated 17-11-15 is found at Page Nos. 48 to 50. No other letter is found with the present Petition. Therefore, the Petitioner may kindly be directed to file complete set of correspondence/ communications with a copy to the Respondent No. 1. In view of this, the Respondent reserves right to respond comprehensively to correspondence/ letter referred to in Para 11 at a later date.

Petitioner's Response:

The contents of Para No. 23 are wrong and denied. It is submitted that Annexure 3 (Colly) annexed to the present Petition, (comprising of Page Nos. 48 to 103) includes the following letters/correspondences:-

- (a) Petitioner's letter dated 17.11.2015 (Page Nos. 48-50),
- (b) Petitioner's Project's Progress Report till 15.11.2015 (Page Nos. 51 to 75)
- (c) Petitioner's letter dated 04.12.2015 (Page Nos. 76 to 77)
- (d) Respondent No. 1's letter dated 08.12.2015 (Page Nos. 78 to 79)
- (e) Petitioner's letter dated 17.12.2015 (Page Nos. 80 to 81)
- (f) Petitioner's letter dated 27.01.2016 (Page Nos. 82 to 83)
- (g) Petitioner's letter dated 25.02.2016 (Page Nos. 84 to 85)
- (h) Petitioner's letter dated 16.03.2016 (Page Nos. 86 to 87)
- (i) Petitioner's letter dated 31.03.2016 (Page Nos. 88 to 89)
- (j) Central Electricity Authority's certificate dated 30.03.2016 (Page No. 90-91)
- (k) Petitioner's letter dated 06.04.2016 (Page Nos. 92 to 93)
- (l) Respondent No. 1's letter dated 07.04.2016 (Page Nos. 94 to 95)
- (m) Respondent No. 1's letter dated 22.04.2016 (Page Nos. 96 to 97)
- (n) Petitioner's letter dated 13.05.2016 (Page Nos. 98 to 99)
- (o) Respondent No. 1's letter dated 09.06.2016 (Page Nos. 100 to 101)
- (p) Petitioner's letter dated 13.06.2016 (Page No. 102-103)

It is submitted that this Hon'ble Commission may kindly direct the Respondent No. 1 to refrain from making such bald statements.

MPPMCL's Comments:

Para No. 24:

In Para 12, it is submitted by the Petitioner that a Review Petition No. 67 of 2016, filed by it, is pending adjudication before this Hon'ble Commission on the issue that whether the tariff should be determined under MPERC (Terms and Conditions for determination of tariff) Regulations 2012 or under MPERC (Terms and Conditions for determination of tariff) Regulations 2015. The Petitioner has annexed copy of Order Dated 01-02-2017 passed by the Hon'ble Commission admitting the said Review Petition.

Para No. 26:

In Para 13, the Petitioner has stated that without prejudice to the pending Review Petition No. 67 of 2016, the present Petition has been filed for determination of Provisional Tariff for Unit 2. It is humbly prayed that the Hon'ble Commission may kindly consider submissions made by the Respondent in Paras 3 to 8 above and, therefore, consider deferment of determination of Provisional Tariff till above said Review Petition is decided.

Petitioner's Response:

The contents of Para Nos. 24 and 26, except those which are matter of record are wrong and denied. The said Review Petition No. 67 of 2016 is now listed for hearing before this Hon'ble Commission on 26.09.2017. The Petitioner craves leave to refer to submissions in Para Nos. 5 to 12 and Para No. 18 of the present Rejoinder which are not repeated herein for the sake of brevity.

MPPMCL's Comments:

Para No. 25:

However, on last date of listing of the said Review Petition, i.e., on 25-07-2017, the Hon'ble Commission has passed order dated 26-07-2017 giving last opportunity to the Review Petitioner and posted the matter on 22-08-2017 for hearing.

Para No. 27:

In Para 14, the Petitioner has stated that the "marginal delay of less than 5 months" (from 19-11-2015 to 07-04-2016) in the COD of Unit 2 has been on account of external factors beyond control of Petitioner. In this connection the Respondent humbly requests the Hon'ble Commission to kindly consider submissions made by the Respondent in Paras 19 and 20 of the present Reply. It may also be recalled that the extension of the SCOD by the Respondent, on the request of the Petitioner was subject to certain conditions including the Petitioner agreeing "not to claim IDC for delayed COD", which was agreed by the Petitioner. (Please refer ANNEXURE-R-1 and R-2). This Commission is, therefore, prayed to not to consider IDC and IEDC while provisionally determining tariff of Unit 2 for the period of actual delay in COD of Unit 2, i.e., from 31.05.2015 (6 months after SCOD of Unit 1 as per PPA or 30.11.2014) to date of actual COD of Unit 2 or 07.04.2016.

Petitioner's Response:

The contents of Para No. 25 and 27 are wrong and denied. The Petitioner craves leave to refer to submissions in Para No. 25 of the present Rejoinder which are not repeated herein for the sake of brevity.

MPPMCL's Comments:

Para No. 28

In Para 15 to 19, the Petitioner has given number of reasons for delay in implementation of the Project. It is humbly submitted that it is quite evident and obvious from the various reasons cited that many of them are merely issues relating to normal uncertainties faced by most of the project developers. These are generally overcome by proper risk mitigation measures and project planning and management. Therefore, such reasons do not merit consideration of this Hon'ble Commission and deserve to be rejected. It is also prayed that any time overrun attributed to above said reasons resulting in increase in Project Cost may be disallowed by the Commission.

Petitioner's Response:

The contents of Para No. 28 are wrong and denied. It is submitted that the delay in achieving COD of Unit 2 was due to reasons beyond the control of the Petitioner. It is submitted that with the efficient and meticulous Project planning, management and execution skills, and judicious allocation and utilization of manpower and resources, the Petitioner was able to mitigate this delay to 5 months in the COD of Unit 2. It is submitted that this marginal delay of less than 5 months in Unit 2 COD (i.e. 19.11.2015 to 07.04.2016) has been on account of external factors, which were beyond the control of the Petitioner. The Petitioner, from time to time vide its various communications had duly kept Respondent No. 1 abreast of such external factors/ reasons leading to this delay and had sought extension/ revision of SCOD of Unit 2 as per provisions of the PPA. Therefore, it is humbly prayed that no adverse actions may be taken against the Petitioner for this delay which was beyond the control of the Petitioner.

MPPMCL's Comments:

Para No. 29:

In Para 20, it is stated by the Petitioner that the requirement of 72 Hours trial run was insisted by MPPMCL (*the Respondent herein*) *de hors* the statutory requirement at the time of COD of Unit 1 which was uniformly followed by the Petitioner during commissioning of Unit 1 as well as during COD of Unit 2.

Petitioner's Response:

The contents of Para No. 29 are reiteration of the Petitioner's submissions in the present Petition, and merit no response.

MPPMCL's Comments:

Para No. 30:

Above contention of the Petitioner is grossly misleading, therefore, strongly opposed. It is humbly submitted that the Respondent did not insist for 72 Hours trial run of Unit 2, on the contrary the Petitioner itself "*chose to follow higher standards/ benchmark*" and 72 Hours trial run was conducted by the Petitioner on its own free will, as per prevailing CERC Regulations, as categorically admitted in IA 1 filed in P. No. 14 of 2014 by the Petitioner.

Petitioner's Response:

The contents of Para No. 30 are wrong and denied. It is submitted that the Respondent No. 1 insisted the Petitioner to undertake the 72 hours trial run for Unit1and the same was unalteredly followed by the Petitioner during COD of Unit 1 as well as during COD of Unit 2. The fact that the Petitioner followed a higher standard/benchmark and the 72 hours trial run was conducted by the Petitioner must not be the basis to penalize the Petitioner especially since the commissioning was already done on 30.03.2016 and even the 72 hour trial run ended on 07.04.2016. The Petitioner craves leave to refer to the submissions in Para Nos. 6 and 7of the present Rejoinder which have not been repeated to avoid prolixity.

MPPMCL's Comments:

Para No. 31:

It is also submitted by the Petitioner that Petition No. 67 of 2016 is currently pending adjudication before this Hon'ble Commission. In this context, it is requested that the Hon'ble Commission may kindly refer to the submissions made by the Respondent in Para 3 to 8 above and consider deferment of the proceedings in present Petition till final adjudication of the Petition No. 67 of 2016.

Petitioner's Response:

The contents of Para No. 31 are wrong and denied. The Petitioner craves leave to refer to submissions in Para Nos. 5 to 12 and Para No. 20 of the present Rejoinder which are not repeated herein for the sake of brevity.

MPPMCL's Comments:

Para No. 32:

In Para 21, the Petitioner has given chronological list of events occurring after filing Petition No. 14 of 2016 (for determination of Provisional Tariff for the Project in anticipation of COD of Unit-2).

Para No. 33:

In Para 22, the Petitioner has stated that it had supplied power from Unit 2 from 28.04.2016 till 16.05.2016. The incident of accident that occurred on 16.05.2016 leading to forced outage of Unit 2 has also been narrated. This does not require specific comments from the Respondent.

Para No. 34:

In Para 23, the Petitioner has given the details of order dated 24.08.2016 passed by this Hon'ble Commission in IA No. 2 of 2016 in Petition No. 14 of 2016 allowing Ad Hoc Tariff for Unit 2 for the period from 28.04.2016 till 16.05.2016. In Para 24, the Petitioner has given the details of order dated 01.10.2016 vide which this Hon'ble Commission had disposed of the Petition No 14 of 2014 with the directions to file a fresh Petition when Unit 2 is revived for generation. These submissions of the Petitioner do not require comments from the Respondent.

Petitioner's Response:

The contents of Para Nos. 32 to 34 are reiteration of the submissions made by the Petitioner in the present Petition and merit no response.

MPPMCL's Comments:

Para No. 35:

In Para 25, the Petitioner has stated that Unit 2 is "revived" and is expected to be operational again by early May 2017. In Para 26, the Petitioner has stated that in compliance to the directive of the Hon'ble Commission in order dated 01.10.2016, the

present Petition has been filed. In this context, it is requested that the Hon'ble Commission may kindly refer to the submissions made by the Respondent in Para 3 to 8 above and consider deferment of the proceedings in present Petition till final adjudication of the Petition No. 67 of 2016.

Petitioner's Response:

The contents of Para No. 35 are wrong and denied. The Petitioner craves leave to refer to submissions in Para Nos. 5 to 12 and Para No. 20 of the present Rejoinder which are not repeated herein for the sake of brevity.

MPPMCL's Comments:

Para No. 36:

In Para 27, the Petitioner has reiterated that it has filed Petition No. 68 of 2016 for determination of Final Tariff for Unit 1, therefore does not require comments.

Para No. 37:

In Para 28, the Petitioner has requested to treat details, documents and submissions in above mentioned Petitions as part and parcel of the instant Petition. Correspondingly, the Respondent also prays this Hon'ble Commission to consider Counter Affidavits, Replies and other submissions filed by the Respondent in that Petition, not being repeated/ reproduced here for the sake of brevity, as parts of the present Reply.

Petitioner's Response:

The contents of Para Nos. 36 and 37 are reiteration of the submissions made by the Petitioner in the present Petition, and do not merit any response.

MPPMCL's Comments:

Para No. 38:

In Para 29, the Petitioner has given Estimated Capital Cost of the Project as filed in Petition No. 68 of 2016. Component-wise breakup is also given in tabular form. This was already commented and opposed in Paras 22 to 24 of Reply Dated 15.04.2017 filed in P. No. 68 of 2017. The same are being reproduced below for ready reference:

“22. In the Tariff Format 5-B filed with the present Tariff Petition, the Petitioner has given details of estimated costs against various heads of Project Cost filed with P.No. 31/2015 and the estimated cost of Project at the time of COD (20-05-2015) of Unit-1. However, such a comparison does not reflect actual variation of the Project Cost since Financial Closure. The Table 1 below provides such comparison.

Table 1 : (Project Cost as per Tariff Format 5B) (Rs Cr.)

Particulars	Original Estimated Cost At Financial Closure	Revised Estimated Cost as on COD	Increase/ (Decrease)
Land and Site Development	101.76	144.00	42.24
Plant and Machinery	3938.24	4578.39	640.15
Building & Civil Works	1132.88	882.54	(250.34)
Pre-operative and Misc. Exp.	179.00	432.48	253.48
Financing charges + Interest During Construction	725.04	1,895.35	1,170.31
Custom & Excise Duty		576.03	576.03
Total Capital Expenditure	6,240.12	8508.80	2,268.68

23. **From above table, the following is observed :**

- **The cost of land and site development has increased by Rs. 42.24 Cr.(increase of about 42%)**
- **The cost of Plant & Machinery has increased by Rs. 640.15 Cr.(increase of about 16.25%)**
- **The cost of pre-operative/pre-commissioning expenses has increased by Rs. 253.48 Cr. (increase of about 142%)**
- **The Financing charges and Interest During Construction has increased by Rs. 1,170.31 Cr.(increase of about 161%)**
- **Overall increase Rs. 2,268.68 Cr. (increase of about 36%)**

24. **It is humbly prayed that the Petitioner be directed to furnish the reasons for such increases in costs to enable appropriate prudence check by this Hon'ble Commission."**

Petitioner's Response:

The contents of Para No. 38 are reiteration of Para Nos. 22 to 24 of the Respondent No. 1's Reply to Petition No. 68 of 2016. The Petitioner had appropriately replied to the contentions of Respondent No. 1 with respect to above in Para No. 17 of Petitioner's Rejoinder dated 26.05.2017 in Petition No. 68 of 2016, and the same is reproduced herein below:-

"17. The contents of Para Nos. 22, 23 and 24, except those which are matter of record are wrong and denied. In this regard, it is submitted that:-

- (a) The Financial Closure of the Project was done by State Bank of India as lead lender with the appraised Project cost of Rs 6240.12 Crore with the debt:equity ratio of 75:25 on 16.11.2010.
- (b) Subsequently, this appraised Project cost was reviewed and assessed by the Lenders citing changes in scope, additional works of Piling (not envisaged earlier), changes in statutory taxes and duties, reassessment of Custom and Excise duty, change in interest rates, change in R&R Policy, impact of adverse foreign currency exchange

rate variation, change in O&M strategy and manpower planning etc. After technical and financial due diligence of the Project, the Project cost was revised to Rs. 8000 Crore. The additional impact of Rs. 1760 Crore (Rs. 8000 Crore – Rs. 6240.12 Crore) was proposed to be financed by the debt:equity ratio of 70:30.

- (c) The comparative break-up of the Revised Project cost vis-à-vis Original Estimated Project Cost is as hereunder:-

Particulars	Original Estimate (Rs. Cr.)	Revised Estimate (Rs. Cr.)	Cost Variation (Rs. Cr.)
Land & Site Development	101.76	149.05	47.29
EPC Cost (including Offshore Supply, Onshore Supply, Onshore Services and related Onshore Civil Works)	4372.10	4610.47	238.37
Non EPC Cost (including Barrage, , Railway Siding works, Township, Administrative & Other Buildings, Boundary wall, Ash dyke, Reservoir, Other Site enabling Facilities etc.)	561.81	916.66	354.85
Pre-operative/Pre-Commissioning Expenses	179.00	456.10	277.10
Finance Charges, IDC and Contingency	926.47	1597.72	671.25
Margin Money for Working Capital	98.99	270.00	171.02
Total – Original Project Cost Estimates (rounded off)	6240.12	8000.00	1760.00
Provision of Custom/Excise Duty	-	576.03	576.03

- (d) There was no provision for Customs duty and Excise duty in the originally estimated Project cost, as there were benefits of duty drawback available on deemed exports under Foreign Trade Policy (“FTP”) applicable from 23.08.2010. However, due to change in FTP (with effect from 15.07.2012), the only way to avail reimbursement of Custom Duty and Excise Duty is by acquiring Mega Power Project Status. In this regard, the Lenders have also sanctioned bank Guarantee (“BG”) facility of Rs. 570 Crore (rounding off for the estimated requirement of Rs. 576.03 Crore for Customs and Excise duty) pending the grant of Final Mega Power Project Status to the Project.
- (e) The Petitioner had submitted the detailed reasons for cost variations from the Original Project cost of Rs. 6240.12 Crore to the revised Project Cost of Rs. 8000 Crore (in the table appended above) [as re-appraised by the Lenders (with State Bank of India as Lead Lender) in its Project Information Memorandum] by way of Additional Affidavit (Volume IV) dated 06.12.2014 in Petition No. 31 of 2015.
- (f) For the sake of further clarity with respect to the reasons for increase in cost from the Original Estimated Project cost of Rs. 6240 Crore to the Revised Project cost of Rs. 8000 Crore, the Petitioner re-submits:-
- The relevant excerpts of Project Information Memorandum [Pages 672-682 of Additional Affidavit (Volume IV) dated 06.12.2014 in Petition No. 31 of 2015] and the same is annexed hereto and marked as Annexure6.
 - The copies of Board Resolutions dated 21.10.2009 and 04.08.2014 for equity

commitment for the Original and the Revised Project cost respectively [already submitted as Additional Affidavit (Volume V) in Petition No. 31 of 2015 (Page 836-841)] and the same is annexed hereto and marked as Annexure 7.

- (g) The Petitioner has retained the provision of Rs 576.03 Crore for the Custom and Excise Duty in Capital cost as claimed in Petition No. 31 of 2015 and discarded the provision of Margin money of Rs. 270 Crore for tariff determination. The Capital Cost as on the date of initial SCOD of the Project so arrived as under:-
- (h) The Project capital cost (excluding working capital margin) has subsequently been revised from Rs. 8306.03 Crore to Rs. 8702.23 Crore based on the actual expenditure incurred (as per the Audited Annual Accounts as on 31.03.2016), un-discharged liabilities and provision for balance works. The same has been duly apprised by the Petitioner vide its additional submissions in the Petition 68 of 2016 filed before this Hon'ble Commission on 30.03.2017 and the amended Petition No. 68 of 2017 filed before this Hon'ble Commission on 17.04.2017. The Board Approval for the revised Project cost has been submitted along with the amended Petition No. 68 of 2016 (Pages 199-200) for the commitment of equity infusion.
- (i) It is further submitted that the reasons for the variation in the capital cost from Rs 8306.03 Crore to Rs 8702.23 Crore has been detailed in amended Petition No. 68 of 2016 (Para 45-54).
- (j) It is submitted that the Capital Cost of the Project as appraised by the Lenders has been submitted in Form 5B on the basis of capitalization as per books of accounts with the present Petition based on which the reasons for cost variations are detailed in the table hereunder:-

(Rs. Crore)

Particulars	Original Estimate	Revised Estimate	Cost Variations	Reasons for Variation
Land & Site Development	101.76	144.00	42.24	Final Expected Cost; Cost Variations are on account of: (a) Cost of acquisition of Additional land required for submergence under Barrage; (b) Cost of acquisition of Additional land required for railway siding as per revised Engineering Scale Plan approved by SECR; (c) Additional R&R cost impact on account of Change in R&R Policy for Project affected people and on account of additional land acquired for Barrage and Railway Siding. (d) All the above reasons for variation are beyond the control of Petitioner.
Plant & Machinery (excluding Power House Buildings, Roads and Drains and other Misc. civil	3938.24	4565.83	627.59	Final Expected Cost; Cost variation on account of: (a) Impact of FERV in Offshore contract package; (b) Additional Cost of Piling not envisaged earlier in the Original Estimate (preliminary stage); (c) Statutory variations in taxes & duties;

Particulars	Original Estimate	Revised Estimate	Cost Variations	Reasons for Variation
works from Onshore Civil works but including Non EPC works of Barrage Construction/Railway Siding, Reservoir facility etc)				(d) Scope change and additional work of Fish Pass arrangement in Barrage as mandated by National Green Tribunal; (e) Additional scope in Railway siding works on account of change in track length as per Engineering Scale Plan approved by South Eastern Central Railways; (f) Additional work of HDPE lining in Reservoir as mandated by MoEF; (g) Additional cost impact in the work of Ash dyke on account of excessive quantum of rock encountered in the proposed area for ash dyke within the premises of the plant; location shifted to CHP area;
Building & Civil Works (includes Power Buildings, Roads & Drains, Other civil works, Ash dyke facility, Township, Administrative and other buildings etc.)	995.67	895.11	(100.56)	(h) Addition in scope of Township works in number of Residential facilities on account of change in O&M manpower planning (being underestimated at the time of financial closure); The details of cost variations in hard cost have been discussed in Para 17 of the present Rejoinder All the above reasons for variation [except point (h)] are beyond the control of Petitioner. The negative variation is only due to reclassification and regrouping of assets and building works in accordance with the capitalization of the expenditure within both the heads.
Pre-operative/Pre-Commissioning Expenses	179.00	432.48	253.48	On account of delay in COD of the Project due to external factors beyond control of the Petitioner, details of which (along with the supporting documents) have already been submitted by the Petitioner in its earlier Petition No. 31 of 2015.
Finance Charges, IDC and Contingency	926.47	1895.35	968.88	
Sub Total - Cost Estimates	6141.14	7932.78	1791.64	
Provision of Custom/Excise Duty	-	576.03	576.03	Reason for variation is as per Para 17(d) of the present Rejoinder
Total- Project Cost Estimate	6141.14	8508.81	2367.67	
Add: Forex Losses charged to P&L	-	158.49	158.49	Reasons for Variation is as per Para 27-36 of Amended Petition No. 68 of 2016

Particulars	Original Estimate	Revised Estimate	Cost Variations	Reasons for Variation
Add: Unamortized Finance Cost to Borrowings	-	34.93	34.93	Reasons for Variation is as per Para 19-26 of Amended Petition No. 68 of 2016
Total Capital Cost*	6141.14[#]	8702.23	2567.67	

*: Excluding Working Capital Margin

#: This translates into initial appraised Project Cost of Rs. 6240 Crores after including Working Capital Margin of Rs 98.99 Crore”

MPPMCL’s Comments:

Para No. 39:

In Para 30 to 35, the Petitioner has given Estimated Capital Cost of Unit 2, Cash Expenditure incurred till COD (07.04.2016) and Balance work/ Undischarged Liabilities for Unit 2. In Para 33, the Petitioner has tabulated Cash Expenditure for Unit 2 as on COD, i.e., as on 07.04.2016. It is humbly requested that the comments/ observations offered by the Respondent in P. No. 68 of 2016 may kindly be referred, as the same are not being repeated here for the sake of brevity.

Petitioner’s Response:

The contents of Para No. 39 are wrong and denied. It is submitted that the contention of Respondent No.1 in Para Nos. 17 to 19 of Respondent No. 1’s Reply to Petition No. 68 of 2016 was that the allocation of capital expenditure appears to be highly asymmetrical among Unit 1 and Unit 2 of the Petitioner’s Project and that the Petitioner may be directed to allocate/apportion the capital cost of different Units strictly in accordance with MPERC Tariff Regulations 2015. In this context it is submitted that the allegation that the allocation of capital expenditure appears to be highly asymmetrical among the two units is contrary to settled principles of Accounting Standards (AS)-10 notified by Institute of Chartered Accountants of India (“ICAI”) which stipulates that the assets put to use are to be capitalized from the date they have been put to use.

It is submitted that the Petitioner had appropriately replied to the contentions of Respondent No. 1 with respect to the above, in Para No. 14 of Petitioner’s Rejoinder dated 26.05.2017 in Petition No. 68 of 2016, and the same is reproduced herein below:-

“14. The contents of Para Nos. 17, 18 and 19 except those which are matter of record are wrong and denied. The allegation that the allocation of capital expenditure appears to be highly asymmetrical among the two units is contrary to settled practice Accounting Standards which is evident from the Paras below:-

(a) Regulation 5.2 of MPERC Tariff Regulations 2015 states as under:-

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

Provided that where break-up of the capital cost of the project for different

stages or units or blocks is not available and in case of on-going projects, the common facilities shall be apportioned on the basis of the installed capacity of the unit;”

As is evident from above, Regulation 5.2 of MPERC Tariff Regulations 2015 is only applicable to those cases where break-up of the capital cost of the Project for different units is not available. However, this is not the case with the Petitioner's Project. The Petitioner has duly enclosed the Audited Annual Accounts for FY 2015-16 (the Financial Year of COD of Unit 1) along with the Petition No. 68 of 2016 and subsequently with Amended Petition No. 68 of 2016 for determination of final tariff of Unit 1. Based on this, the capital expenditure has been capitalized at the time of COD of Unit 1.

(b) Further, with respect to the claimed unit-wise allocation of the Petitioner's Project expenditure, it is submitted that allocation of capital expenditure between Unit 1 and Unit 2 has been carried out based on technical assessment/engineering estimates with respect to assets including common facilities put to use at the time of COD of Unit 1. This is in line with Accounting Standards issued by the Institute of Chartered Accountants of India. For the sake of further clarity, the Petitioner would like to detail the basis of allocation of major common facilities as hereunder:-

- (i) **Raw Water Reservoir** is a common facility for both the Units. However, Unit wise construction is not technically feasible as there is a single pump house facility with single pond without any partition and it will cater to the water requirement for both the Units. Hence, the construction of this facility has been executed in one go and the entire facility has been put to use at the time of COD of Unit 1 for meeting its water requirements post COD. As such, the cost incurred for the same is capitalized at the time of COD of Unit 1.
- (ii) **Ash dyke** constructed and put to use till date, is an interim ash dyke within the premises of the Project with the capacity of 1.5 MCM and caters to Unit 1 only. The construction of mother dyke has been deferred and proposed to be completed within the cut off period. It is pertinent to note that the Petitioner has just capitalized this interim ash dyke and not the mother dyke at the time of COD of Unit 1 and has not claimed any tariff on the deferred works of the mother dyke.
- (iii) **Barrage** is a common facility for both the Units. However, its unit-wise construction is not technically feasible and had to be executed in one go to cater the water requirement of both the Units. As such, the barrage has been put to use at the time of COD of Unit 1 for meeting the water requirements of Unit 1. Therefore, the cost of Barrage has been capitalized at the time of COD of Unit 1.
- (iv) **Railway Siding** is a common facility for both the Units, but it has been capitalized and put to use with effect from 30.06.2015 to cater to the coal requirement for Unit 1 post Unit 1's COD. Further, subsequently vide letter dated 14.12.2015, South East Central Railways informed that the Railway

Board has sanctioned a new railway line i.e. 3rd line between Bilaspur-Katni section and accordingly mandated the Petitioner to construct the entry line [Rail over Rail (RoR)] to take off from the proposed 3rd line between Bilaspur-Katni. A copy of this letter dated 14.12.2015 is annexed hereto and marked as Annexure 4.

- (v) **Other Buildings** including Administration Building, Canteen, Watch Towers, Fire Stations, Time Office, Security House, Driver's Rest rooms, Boundary wall, R&R and CSR building are common facilities, whose unit-wise segregation is not technically feasible and were essentially required to be put to use at the time of COD of Unit 1. As such, the cost incurred for the same is capitalized at the time of COD of Unit 1
- (c) Further, as per the prevailing industry practices for the coal based thermal power projects consisting of two units, the common facilities like railway siding, fuel handling system, ash handling system, switchyard, barrage etc. are generally put to use along with Unit 1 and hence these common facilities are capitalized at the time of COD of Unit 1 only. Thus the capital cost of Unit 1 and Unit 2 of such projects are not in 50:50 proportions and instead the capital cost allocated to Unit 1 is generally higher than that of Unit 2. This is evident from the tariff orders issued by the concerned Electricity Regulatory Commissions for the various thermal power projects, based on which a brief comparison of the capital cost allocation between Unit 1 & Unit 2 as a percentage of the overall Project capital cost is tabulated below:-
- (i) Estimated Project capital cost of the Petitioner's Project: Rs 8702.23 Crore (as filed in the Amended Petition No. 68 of 2016)
- (ii) Estimated capital cost of Unit 1 claimed by the Petitioner: Rs. 5137.58 Crore (as filed in the Amended Petition No. 68 of 2016) i.e. 59% of the estimated Project capital cost.

Hence, the estimated Project capital cost allocation between Unit 1 and Unit 2 of the Petitioner's Project is 59% and 41% respectively.

Comparison of Unit-wise cost allocation of various thermal power projects as per tariff orders issued by concerned Electricity Regulatory Commissions

Sl. No	Project	Sector	Capacity (MW)	Cost Allocation (as a % of Overall Project Cost)	
				Unit 1	Unit 2
1	Mauda-1	Central (NTPC)	2 x 500	64.20%	35.80%
2	Simhadri-II	Central (NTPC)	2 x 500	57.45%	42.55%
3	Vindhyachal-IV	Central (NTPC)	2 x 500	56.74%	43.26%
4	Udupi TPS	IPP (Karnataka)	2 x 600	55.82%	44.18%
54	Kalisindh TPS	State (Rajasthan)	2 x 600	55.20%	44.80%

- (d) The Petitioner respectfully reiterates that the unit wise capital expenditure allocation of its Project has been done based on assets capitalized in the books of account and in line with the guiding principles as per Accounting Standard-10 notified by ICAI (i.e. all assets put to use are to be capitalized from the date they are put to use). It is

respectfully submitted that this methodology is totally reasonable and in accordance with the industry practice standards.”

It is further submitted that, the Hon'ble Appellate Tribunal for Electricity (“Hon'ble Appellate Tribunal”) in its judgment dated 27.04.2011 passed in Appeal No. 72 of 2010 in Maharashtra State Power Generation Company Limited v. Maharashtra Electricity Regulatory Commission &Ors. has held as under:-

“13.5. The next issue is disallowance of return on equity on investments made on the common facilities for unit nos. 6 and 7 at Parli. We have noticed that the commissioning of some of the common facilities was essential for operation of unit no. 6 and the same facilities will be used by Unit no. 7 subsequently. In our opinion, it would be prudent to allow capitalization of such common facilities commissioning of which were essential for operation of Unit no. 6 in the capital cost of Unit. Accordingly, the State Commission is directed to allow capitalization of only such common facilities which were essential for commissioning of Unit no. 6.”

In light of the above findings of the Hon'ble Appellate Tribunal, it is quite evident that the common facilities (BOP facilities, Barrage, Railway Siding and the land acquired onto which such facilities exist) ought to be capitalized with Unit 1 as these facilities have already been put to use and were essential for the commissioning and operation of the Unit 1. A copy of the judgment dated 27.04.2011 passed in Appeal No. 72 of 2010 is annexed hereto.

Further, the Petitioner would like to submit the expert opinion issued in March 2013 by the Expert Advisory Committee of Institute of Chartered Accountants of India (“ICAI”) which deals in detail with the matter of capitalization of the common facilities of a thermal power project. In the said opinion, the Expert Advisory Committee of ICAI has duly endorsed that the cost of the common facilities put to use along with Unit1 of a thermal power project are to be capitalized at the time of Unit1 COD and accordingly are to be considered as cost of Unit1 at its COD. While giving this opinion, the Expert Advisory Committee of ICAI has emphasized that the basic principle to be applied while capitalizing an item of cost as a part of the cost of a fixed asset is that it should be directly attributable to the construction of the fixed asset for bringing it to its working condition for its intended use. A copy of the expert opinion is annexed hereto and marked as ANNEXURE 4.

MPPMCL's Comments:

Para No. 40:

It is to submit that the extension of the SCOD of Unit 2 by the Respondent to 07.04.2015 on the request of Petitioner was subject to certain conditions including the Petitioner agreeing “not to claim IDC for delayed COD”. (Please refer ANNEXURE-R-1 and R-2) Therefore, without prejudice to the request of the Respondent for deferment of the determination of Provisional Tariff, the IDC, IEDC and Financing Charges for the period of extension of SCOD may be disallowed. Similarly, Loss due to FERV for the period of extension of SCOD may also be disallowed. It is submitted that the

scheduled COD of Unit-2 was in the month of May-15 as per PPA, which was extended to Apr-16 at the behest of Petitioner for reasons that cannot be attributed to this Respondent. Since the Petitioner was not able to achieve COD of Unit-2 on time, the burden of loss on account of FERV from May-15 to Apr-16 should not be included in the capital cost of Unit-2 and this Respondent strongly opposes the Petitioner's contention.

Petitioner's Response:

The contents of Para No. 40 are wrong and denied. It is submitted that Respondent No. 1 vide its letter dated 22.04.2016 had itself acknowledged that the original SCOD of Unit2 was November 2015 and further agreed to revise the SCOD of Unit 2 from November 2015 to April 2016. In the said letter there was no mention of disallowing FERV to the Petitioner. The Petitioner craves leave to refer to submissions in Para Nos. 17, 18, 23 and 25 of the present Rejoinder which have not been repeated herein for sake of brevity.

MPPMCL's Comments:

Para No. 41 and 42:

Para 36 requires no comment.

In Para 37, the Petitioner has given estimation of average Capital Cost for the control period from FY 2016-17 to FY 2018-19.

Petitioner's Response:

The contents of Para No. 41 and 42 merit no response.

MPPMCL's Comments:

Para No. 43:

In Para 38 to 55, the Petitioner has given various components of Annual Capacity Charge (Fixed Cost). The Petitioner has given all these figures on the basis of Certificate issued by Chartered Accountants. It is humbly prayed that the Hon'ble Commission may kindly apply prudence check on the expenses shown under various heads. However, it is again requested that the Hon'ble Commission may kindly refer to the submissions made by the Respondent in Para 3 to 8 above and consider deferment of the proceedings in present Petition till final adjudication of the Petition No. 67 of 2016.

Petitioner's Response:

The contents of Para No. 43 except those which are matter of record are wrong and denied. The Petitioner craves leave to refer to submissions in Para Nos. 5to 12 and Para No. 20 of the present Rejoinder which have not been repeated herein for the sake of brevity.

MPPMCL's Comments:

Para No. 44:

The Capital cost of similar plants in India, which have been commissioned in recent past, may be considered at the time of determination of tariff in this instant Petition.

Petitioner's Response:

The contents of Para No. 44 are wrong and denied. With respect to the contents of Para 44, it is submitted that the Petitioner in its Amended Petition No. 68 of 2016 has already benchmarked the capital cost of its Project (hard cost) as per the methodology prescribed by Ld. Central Electricity Regulatory Commission ("**Ld. Central Commission**") in its Order No. L1/103/CERC/2012 dated 04.06.2012. As per this methodology, capital (hard) cost of a 2 x 600 MW Green field coal based thermal project is benchmarked at Rs 4.54 Crore/MW (for the base year 2011) and the same is estimated at Rs 5.13 Crore/MW as on March/April 2016 after escalation at wholesale price index ("**WPI**"). In comparison to this, the estimated capital cost (hard cost) of the Petitioner's Project works out to Rs 4.46 Crore/MW which is well within the capital cost (hard cost) benchmarked by the Ld. Central Commission. Without prejudice to the above, it is submitted that the capital cost of similar projects commissioned in India has nothing to do with the capital cost determination of the Petitioner's Project. Further, a detailed comparison of the capital cost (hard cost) of the Petitioner's project with the other similar thermal power projects commissioned in the recent past is as under:-

Power Station	Sector	Installed Capacity	No. of Units	Year of Project COD	Project Hard Cost		Source
					Rs Cr	Rs Cr/MW	
Singareni TPP	IPP (MP)	1200	2 x 600	Dec 2016	6904	5.75	SCCL's Petition No. 9 of 2016
Nigrie TPP	IPP (MP)	1320	2 x 660	Feb 2015	7350	5.57	MPERC Order dated 26.09.2014 on Petition No. 03 of 2014
Lalitpur (Thermal)	IPP (UP)	1980	3 x 660	June 2016	10786	5.45	UPERC Order dated 27.11.2015; Petition No. 975/2014 & 1017/2015
Kalisindh TPS	State (Rajasthan)	1200	2 x 600	July 2015	6521	5.43	RERC Order dated 14.05.2015
Jhabua Power Limited	IPP (MP)	600	1 x 600	May 2016	3077	5.13	MPERC Order dated 06.09.2016
Barh TPS	Central	1320	2 x 660	May 2015	6563	4.97	Form 5B of NTPC Petition No. 130/GT/2014
ShriSingaji TPS	State (MP)	1200	2 x 600	Dec 2014	5476	4.56	MPERC Order dated 10.11.2014

As is clearly evident from above, the project cost of the Petitioner's Project is reasonable and is well within the industry norms.

MPPMCL's Comments:

Para No. 45:

In Para 56, the Petitioner has quoted Regulation 39.3 (A) to (E), of MPERC Tariff Regulations 2015 which provide norms of operation for Normative Annual Plant

Availability Factor (NAPAF), Gross Station Heat Rate (GSHR), Specific Fuel Oils Consumption, Auxiliary Energy Consumption for Thermal Power Stations.

Para No. 48:

In Paras 59 and 60, the Petitioner has referred to Regulation 36.5 Tariff Regulation 2015 and submitted Weighted Average Landed Cost and Weighted Average GCV of the coal and the basis of their calculations. In Para 61 the provision of Regulation 36 has been referred. In Paras 62 to 65 the Petitioner has referred to Regulation 36.5 of Tariff Regulation 2015 and submitted Weighted Average Landed Cost of the Secondary Fuel Oil [based on actual consumption mix of Heavy Furnace Oil (HFO) and Light Diesel Oil (LDO)] and the basis of their calculations. The Respondent does not wish to offer comments on these points at this stage and reserves right to respond at a later stage.

Para No. 50:

In Para 67, the Petitioner has referred to the provision of Regulation 36 of Tariff Regulation 2015, therefore, does not require comments by the Respondent.

Para No. 53:

In Para 68, the Petitioner has quoted Regulation 54 of MPERC Tariff Regulations 2015 which provides for the power of the State Commission to relax any provision of the regulations.

Petitioner's Response:

The contents of Para Nos. 45, 48, 50 and 53 are reiteration of the submissions made by the Petitioner in the present Petition, and merit no response.

MPPMCL's Comments:

Para No. 46:

In Para 57, the Petitioner has submitted that the norms of Station Heat Rate are restricted to normative Plant Load Factor (PLF) of 85% whereas the units may run at lower PLF, resulting in higher SHR. This contention of the Petitioner is obviously incorrect, as the norms are based on Normative Plant Availability Factor (NPAF) besides Plant Load Factor (PLF). This contention of the Petitioner deserves to be rejected. It is the duty of Petitioner to operate the Power Plant in efficient and economical manner. The Respondent (and consequently the end consumers) cannot be penalized for any under performance or inefficiency on the part of Petitioner.

Para No. 47:

In Para 58, the Petitioner has informed that it is seeking relaxation of norms pertaining to Auxiliary Consumption and Station Heat Rate which are detailed in Para 68 to 76 of the Petition. This prayer of the Petitioner is strongly opposed as the "Norms of Operation" are part of Tariff Regulations 2015, duly made and notified under Electricity Act 2003, following procedure prescribed in the Act and, therefore, are binding on all the stakeholders including this Hon'ble Commission. Any relaxation in the said norms

will result in increase in the cost of electricity procured from the Petitioner, resulting in increase in tariff for the end consumer and the same should not be allowed.

Para No. 49:

In Para 66, the Petitioner has given calculation of Energy Charge for the years 2016-17, 2017-18 and 2018-19 in tabulated form, presuming “relaxed” Norms of Operation, as prayed in this Petition. This is strongly opposed. The prayer of the Petitioner for relaxation of operational norms is totally misconceived and, therefore, deserves to be rejected. Therefore, without prejudice to the request of the Respondent for deferment of the determination of Provisional Tariff, the Hon’ble Commission is requested not to consider relaxed operational norms while calculating Energy Charges.

Para No. 51:

In Paras 68 to 76, the Petitioner has sought relaxation of norms of operation prescribed under Regulation 39.3 of Tariff Regulations, 2015. However, the Petitioner has failed to demonstrate either –“sufficient reason to justify relaxation” or insurmountable “hardship” or “injustice” being caused by the Regulations “leading to unjust result”. On the contrary the relaxation to the Operational Norms is being sought in a routine manner, merely in “anticipation of difficulty” or “perceived hardship”.

Para No. 52:

As mandated in the Electricity Act 2003 and the National Electricity Policy, more stringent norms have been progressively introduced by the Hon’ble Commission to encourage efficiency in the Generation of Power using non-renewable fossil fuel (Coal), reduce emission of environmental pollutant, green house gases and also reduce fuel cost per unit of generation, which is a pass through to the end consumer. Therefore, it is most humbly prayed that the Hon’ble Commission be pleased to reject the request for relaxation of norms.

Para No. 54:

In Para 69, the Petitioner has quoted parts of three judgments of APTEL purportedly on the issue of “relaxation” of provisions of Regulations. However, it is humbly submitted that those judgments were passed in particular facts and circumstance of individual cases. The facts and circumstances of the present case are not akin to any of the three cases whose judgments are cited for “exercise of power to relax” by the Hon’ble Commission. The Petitioner has failed in bringing any fact and hence has miserably failed to prove beyond doubt about the “injustice” that it has to face due to Tariff regulations, 2015. The Petitioner has failed to demonstrate either “sufficient reason to justify relaxation” or insurmountable “hardship” or “injustice” being caused by the Regulations “leading to unjust result”. The relaxation in norms cannot be allowed as allowing them will be against the interest of end consumers of the State. Therefore, it is most humbly prayed that the Hon’ble Commission be pleased to out rightly reject the request for relaxation of norms.

Para No. 55:

The Petitioner has failed to demonstrate either “sufficient reason to justify relaxation” or insurmountable “hardship” or “injustice” being caused by the Regulations “leading to unjust result”, which were regarded as essential pre-requisites by Hon’ble APTEL in above cited judgments for exercise of power to relax by the Hon’ble Commission. On the contrary, the relaxation in the Operational Norms is being sought in routine manner, merely in “anticipation of difficulty” or “perceived hardship”.

Para No. 56:

In Para 70, the Petitioner has prayed for relaxation of operating Norms for Unit 2. This is strongly opposed by the Respondent on above mentioned grounds.

Petitioner’s Response:

The contents of Para Nos. 46 to 47, Para No. 49, Para Nos. 51 to 52 and Para Nos. 54 to 56 are wrong and denied. The Petitioner craves leave to refer to submissions in Para Nos. 13 to 16 of the present Rejoinder which have not been repeated herein for the sake of brevity.

MPPMCL’s Comments:

Para No. 57:

In Paras 71 to 75, the Petitioner, citing various reasons, which are not relevant in the context of Regulation 54 of the Tariff Regulation 2015, has prayed for sweeping relaxation of operational norms of Normative Auxiliary Energy as 6.5% (instead of 5.75% prescribed in Tariff Regulations 2015) and Norms of Gross Station Heat Rate “as per Tariff Regulations 2012”, i.e., to allow Multiplier of 1.065 instead of 1.045 prescribed in Tariff Regulations 2015 for working out Gross Station Heat rate from Design Heat Rate for both Unit 1 and Unit 2. In Para 73, the Petitioner has specifically mentioned “inconsistent coal quality” to be reason for auxiliary consumption to be above 6.5%. However, it has failed to submit any relevant proof. In fact, there is no major inconsistency in the monthly GCV of coal submitted by the Petitioner for calculation of monthly variable charges. As already submitted above, there is no basis whatsoever to allow such sweeping relaxation in operating norms and the Hon’ble Commission may be pleased to reject this prayer of the Petitioner. The same cannot be allowed as allowing them will be against the interest of end consumers of the State. Therefore, it is most humbly prayed that the Hon’ble Commission be pleased to out rightly reject the request for relaxation of norms.

Petitioner’s Response:

The contents of Para No. 57 are wrong and denied. It is submitted that the operational performance of the Petitioner’s Project does get affected by the external factor beyond the control of the Petitioner like lower/ erratic off-take of power supply, load variation, inconsistent coal quality etc. As such, restricting the design margin for SHR and lowering the norms for Auxiliary consumption would cause severe financial and operational difficulties to the Petitioner’s Project thereby adversely impacting its viability. As such the Petitioner has prayed for relaxation of these operational norms viz. SHR and Auxiliary Consumption i.e. in

accordance with the operational norms prescribed in MPERC Tariff Regulations 2012 by invoking the powers to relax vested with this Hon'ble Commission as per Regulation 54 of MPERC Tariff Regulations 2015.

MPPMCL's Comments:

Para No. 58:

In Para 76, the Petitioner has made slight mis-statement while saying that it has filed Review Petition challenging order passed in P.No. 14 of 2016. In fact the Petitioner has filed a Review Petition (P.No. 67 of 2016) challenging order dated 24.08.2016 passed in IA 1 filed in P.No. 14 of 2016. The Petitioner has also stated that in case the Review Petition is allowed, then there would be no requirement for relaxation of norms. In view of this submission of the Petitioner, the Respondent prays that the Hon'ble Commission may consider deferment of determination of Provisional Tariff in present Petition till the final adjudication of the P.No. 67 of 2016, so as to avoid potentially redundant exercise.

Petitioner's Response:

The contents of Para No. 58 are wrong and denied and the Petitioner craves leave to refer to submissions in Para Nos. 5 to 12 and Para No. 20 of the present Rejoinder which have not been repeated herein for sake of brevity.

MPPMCL's Comments:

Para No. 59:

In Paras 77 to 78, the Petitioner has prayed for recovery of Statutory Charges, Duties, Taxes and Cess. It is humbly submitted that the Hon'ble Commission may be pleased to allow recovery of above Charges, Duties, Taxes, Cess etc. strictly as per the applicable Tariff Regulations. The end consumers may not be burdened with any other charges not covered in the Tariff Regulations.

Petitioner's Response:

The contents of Para No. 59 are wrong and denied. It is submitted that the MPERC Tariff Regulations 2015 allow the recovery of electricity duty, cess and water charges in terms of Regulation 52. However there are certain other statutory charges, duties and taxes which are linked with the generation of a power station. There are several tariff orders and Regulations of different Electricity Regulatory Commissions placed on record by the Petitioner which allow for the recovery of statutory charges, taxes and duties on pass through basis based on actuals. This Hon'ble Commission is requested to consider the same and allow for the recovery of these statutory charges, taxes and cess by the Petitioner.

MPPMCL's Comments:

Para No. 60:

In respect to the statements of the Petitioner in Paras 79 and 80, the Respondent humbly submits that the adjustment for fee applicable for determination of Provisional

Tariff may be done in accordance with the relevant Regulations.

Petitioner's Response:

The contents of Para No. 60 are wrong and denied. It is submitted that this Hon'ble Commission while disposing of Petition No. 14 of 2016 vide Order dated 01.10.2016, had clearly agreed to consider adjusting the processing fees already deposited by the Petitioner, against the processing fees for filing the present Petition. Therefore, it is prayed that this Hon'ble Commission may kindly adjust the processing fee already deposited by the Petitioner in its earlier Petition No. 14 of 2016 against the processing fees for the present Petition.

MPPMCL's Comments:

Para No. 61:

In respect of statement of the Petitioner in Para 81, the submissions of the Respondent in Paras 3 to 10 of the present Reply may kindly be considered.

Petitioner's Response:

The contents of Para No. 61 are wrong and denied. The Petitioner craves leave to refer to submissions in Para Nos. 5 to 12 and Para No. 20 of the present Rejoinder which have not been repeated herein for sake of brevity.

MPPMCL's Comments:

Para No. 62:

The Prayers made in Para 82 by the Petitioner are opposed to the extent and on the grounds indicated in foregoing Paras.

Petitioner's Response:

The contents of Para No. 62 are wrong and denied. In view of the submissions made in the present Rejoinder read with the submissions of the Petitioner in the present Petition, the Petitioner most respectfully submits that this Hon'ble Commission may be pleased to determine the provisional tariff for Unit 2 as prayed by the Petitioner.

MPPMCL's Comments:

Para No. 63:

As the Unit-1 has been on Commercial Operation since 20-05-2015 (i.e., for more than 2 years) and Unit-2 has been on Commercial Operation since 07-04-2016 (i.e., for more than 1 year) it is, therefore, humbly prayed that any liquidated damages (LD) against delay in executions of contracts as recovered by the petitioner from its contractors/ vendors may be utilized towards reduction of the capital cost of the Project.

Petitioner's Response:

The contents of Para No. 63 are wrong and denied. It is submitted that till date, no liquidated damages have been recovered by the Petitioner from its contractors/ vendors. It is further submitted that at this juncture, the liquidated damages that may be attributable to the contractor(s) for delay in completion of works cannot be quantified. In terms of EPC Contract,

the final settlement is still pending. As such, the Petitioner reserves its rights to quantify such liquidated damages at the time of final contract settlement and any such liquidated damages to be recovered from the contractor(s) would be discussed and finalized at the time of final contract settlement and submitted before this Hon'ble Commission at the appropriate time.

MPPMCL's Comments:

Para No. 64:

That, it is humbly prayed that the prudence check, carried out by the Hon'ble MPERC, be shared with this respondent so that the humble Respondent may assist the Hon'ble Commission in the process.

Petitioner's Response:

The contents of Para No. 64 are wrong and denied. It is submitted that conducting prudence check is the function of this Hon'ble Commission, and the Respondent No. 1 has no role to play in the prudence check.

MPPMCL's Comments:

Para No. 65:

That, it is further prayed that per MW cost of similar plants in India, which have been commissioned in recent past, may be kept in mind at the time of decision in this instant Petition.

Petitioner's Response:

With respect to the contents of Para No. 65, the Petitioner craves leave to the submissions in Para No. 43 of the present Rejoinder which have not been repeated herein for sake of brevity.

MPPMCL's Comments:

Para No. 66 A:

Apart from above submissions, the main prayers are summarized below for kind consideration of the Hon'ble Commission:

It is most humbly prayed that till the time the Review Petition No. 67 of 2016 is decided, this Hon'ble Commission may consider deferment of determination of Provisional Tariff for Unit-2 under present Petition.

Petitioner's Response:

The contents of Para No. 66 A are wrong and denied, and the Petitioner craves leave to refer to submissions in Para Nos. 5 to 12 and Para No. 20 of the present Rejoinder which have not been repeated herein for sake of brevity.

MPPMCL's Comments:

Para No. 66 B:

It is most humbly prayed that the claim of IDC/IEDC/Finance Charges for the period of

extension beyond original COD of Unit 2 may not be allowed in terms of Letter No. 7972 Dated 13-06-2016 of Petitioner (ANNEXURE-R-2), vide which the claim of has been waived by the Petitioner.

Para No. 66 C:

It is most humbly prayed that the burden of loss on account of FERV may not be considered in the Capital Cost of Unit-2 for the period of extension of COD of Unit 2 beyond original date as per PPA.

Petitioner's Response:

The contents of Para Nos. 66 B and 66 C are wrong and denied and the Petitioner craves leave to refer to submissions in Para No. 25 of the present Rejoinder which have not been repeated herein for sake of brevity.

MPPMCL's Comments:

Para No. 66 D:

It is humbly requested that the comments/ observations offered by the Respondent in Petition no. 68 of 2016 may kindly be considered, as the same have not been repeated here for the sake of brevity.

Petitioner's Response:

The contents of Para No. 66 D are wrong and denied. It is respectfully prayed that this Hon'ble Commission may be pleased to consider the submissions made by the Petitioner in the pleadings in Amended Petition No. 68 of 2016, which have not been repeated herein for sake of brevity.

MPPMCL's Comments:

Para No. 66 E:

The Prayer of the Petitioner for relaxation of Norms of Operation may be rejected.

Petitioner's Response:

The contents of Para No. 66 E are wrong and denied. It is most respectfully prayed that this Hon'ble Commission may be pleased to relax the norms of operation in view of the submissions made by the Petitioner in Para Nos. 11 to 13 of the present Rejoinder read with the Petitioner's submissions in the present Petition.

MPPMCL's Comments:

Para No. 67:

Further, this Respondent humbly prays that the Commission may kindly condone any inadvertent omission, error etc. in this submission.

Petitioner's Response:

The contents of Para No. 67 merit no response.