PETITION NO……

JHABUA POWER

Jhabua Power Limited (A Joint Venture of NTPC Limited)

Seoni Thermal Power Station at Village Barela – Gorakhpur, Dist. Seoni, Madhya Pradesh

(1 X 600 MW)

PETITION FOR DETERMINATION OF TARIFF FOR THE PERIOD

01.04.2024 TO 31.03.2029

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BEFORE THE HON'BLE CENTRAL ELECTRICITY REGULATORY COMMISSION

NEW DELHI

PETITION NO.....

IN THE MATTER OF: Petition under Section 62 and Section 79 (1) (a) of the Electricity Act, 2003 read with Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2024 ("CERC Tariff Regulations, 2024") for approval of Tariff for period 01.04.2024 to 31.03.2029 in respect of 1 x 600 MW Seoni Thermal Power Station at Barela- Gorakhpur, Dist. Seoni, Madhya Pradesh.

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Summary of Issues: Jhabua Power Limited Seoni Thermal Power Station (1 X 600 MW)

(in compliance with CERC notice dated 07.06.2024)

The major highlights of the tariff petition for Seoni Thermal Power Station (1 X 600 MW) of Jhabua Power Limited are as follows: -

The present petition is being filed under Section 62 and Section 79 (1) (a) of the Electricity Act, 2003 read with Chapter-IV of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 2023 and Chapter-3, Regulation-9 Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2024 ("CERC Tariff Regulations, 2024") for approval of Tariff for period 01.04.2024 to 31.03.2029 of the Seoni Thermal Power Station (1 X 600MW).

Seoni Thermal Power Station of Jhabua Power Limited is located at Village Barela, District Seoni in the State of Madhya Pradesh comprising of one unit of 600 MW capacity. The unit was declared commercial on 3rd May 2016. The 180 MW gross power generated from the Thermal Power Station (600 MW Installed capacity) is being supplied as per the long term Power Purchase Agreement (PPA) dated 5th January 2011 executed with MP Power Management Company Ltd., (hereinafter called "MPPMCL") under MoU route ("PPA-1"), and another PPA with Government of Madhya Pradesh dated 27th June 2011 for sale of 5% of the net power on annualized basis ("PPA-2").

The Jhabua Power Limited ("JPL") has been taken over by NTPC Limited as a Joint Venture with Secured Financial Creditors/Bankers (50:50) through CIRP (Corporate Insolvency Resolution Process) vide National Company Law Tribunal (NCLT) Order dated 6th July 2022. Further, it is pertinent to mention that the Management control lies with NTPC post-acquisition w.e.f. 05.09.2022 and thus JPL falls under the category of Central Generating Station with jurisdiction of Hon'ble CERC.

The Resolution Plan, as sanctioned by the National Company Law Tribunal (NCLT) Order dated 6th July 2022, stipulates that subsequent to the transfer date, the Tariff Regulations of the Central Electricity Regulatory Commission (CERC) shall be applicable to Jhabua Power. This is due to Jhabua Power's changed status (i.e. Central Generating Station) post-transfer date as an entity governed under Section 79 (1) (a) of the Electricity Act, 2003. Consequently, the Statutory/Regulatory authority for tariff determination has transitioned

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from the Hon'ble Madhya Pradesh Electricity Regulatory Commission (MPERC) to the Hon'ble CERC. The same has also been duly recognized by Hon'ble MPERC at Para 24 of true up order dated 05.03.2024 for the period 01.04.2022 to 04.09.2022 in Petition No. 61 of 2023.

Since CoD, tariff was being determined by Hon'ble MPERC and truing up exercise till 4th September 2022 (prior to takeover by NTPC Limited) has also been completed by Hon'ble MPERC. Based on the approved capital cost by Hon'ble MPERC as on 4th September 2022, the Petitioner has prepared and submitted the true up petition for determination of tariff to Hon'ble CERC for the period from 05.09.2022 to 31.03.2024 in accordance with Regulation 9(2) read with Regulation 12. In accordance with the principles laid down by the Hon'ble Appellate Tribunal for Electricity in Renascent Power Ventures Pvt. Ltd. v. Uttar Pradesh Electricity Regulatory Commission & Ors. (Appeal No. 183 of 2018 – Judgment dated 27.09.2019), the capital cost considered in accordance with prevailing regulations at the time of bidding for the project under CIRP cannot be relooked at the time of true up/ tariff determination.

Hence, the tariff for Seoni Thermal Power Station of JPL as per provisions of the CERC Tariff Regulations 2024 for the period from 01.04.2024 to 31.03.2029 are based on the closing balances furnished in the true-up petition for the period 05.09.2022 to 31.03.2024 before Hon'ble CERC. The Hon'ble Commission is requested to determine the tariff considering the special circumstance in which the plant has been taken over through NCLT process.

The projected Additional Capital Expenditure has been considered as Rs. 471.94 Crore from FY 2024-25 to FY 2028-29. The same has been depicted year wise in Form 9 of the Appendix-I along with applicable regulations and justifications for the claims. It is humbly requested to approve the actual Additional Capital expenditure during the period of FY 2024-25 to FY 2028-29.

Water charges, security expenses and ash transportation charges are projected by applying escalation at the rate of 5% on actual expenses of FY 2023-24 claimed in the true-up petition of 05.09.2022 to 31.03.2024. The escalation rate considered in projected security expenses and ash transportation charges is in line with the escalation rate considered by the Hon'ble Commission in notification of O&M Norms in Tariff Regulations, 2024.

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- It is submitted that water is subject matter under the control of State Government and Jhabua Power has no control over it. It is also an essential

input for generation of electricity from a thermal power plant. Jhabua Power is bound to pay the water charges as per the agreement with the State Government. The detailed calculation for the water charges claimed as per the agreement is submitted in Form 3A. Water charges are also projected at the escalation rate of 5% in accordance with notification from Water Resources Department, Government of Madhya Pradesh attached at **Annexure VII**.

- It is further mentioned that instant station is a critical infrastructure. Safety and security of such critically important infrastructure projects against any threat perception is a prime concern. Therefore, the Hon'ble Commission may please allow the claims of security expenses as submitted in Form 3A.
- Ash transportation expenses are being claimed in accordance with CERC Tariff Regulations 2024. The ash transportation expenses have been depicted in Form 3A.

Further, Hon'ble Commission is requested to please allow statutory charges for the period 01.04.2024 to 31.03.2029 as levied by the statutory authorities from the beneficiaries on submission of documentary evidence.

In light of above submission and as per the Petition being filed by the Petitioner for approval of Tariff for the tariff period 2024-29 of Seoni Thermal Power Station (1 X 600MW), the Hon'ble Commission may please approve the tariff as per the CERC Tariff Regulations 2024.

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BEFORE THE HON'BLE CENTRAL ELECTRICITY REGULATORY COMMISSION

NEW DELHI

PETITION NO.....

IN THE MATTER OF: Petition under Section 62 and Section 79 (1) (a) of the Electricity Act, 2003 read with Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2024 ("CERC Tariff Regulations, 2024") for approval of Tariff for period 01.04.2024 to 31.03.2029 in respect of 1 x 600 MW Seoni Thermal Power Station at Barela- Gorakhpur, Dist. Seoni, Madhya Pradesh.

Jhabua Power Limited

3rd Floor, Plot No A-8A, Sector -24, NTPC-EOC Noida-201301

---- Petitioner

VERSUS:

1. Madhya Pradesh Power Management Company Ltd

Shakti Bhawan Road, MPSEB colony Vidyut Nagar, Rampur, Jabalpur (M.P)- 482008

2. Madhya Pradesh Poorv Kshetra Vidyut Vitaran Co. Ltd. Jabalpur

Shakti Bhawan, Vidyut Nagar, Rampur, Jabalpur (M.P)- 482008

3. Madhya Pradesh Madhya Kshetra Vidyut Vitaran Co. Ltd Bhopal

Bijli Nagar Colony, Nishtha Parisar, Govindpura, Bhopal (M.P.) - 462023

4. Madhya Pradesh Paschim Kshetra Vidyut Vitaran Ltd. Indore

GPH Campus, Polo Ground, Indore (M.P.) - 452003

---- Respondents

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Background

The Petitioner humbly states that:

1. The Petitioner herein Jhabua Power Limited (hereinafter referred to as 'Petitioner' or 'Jhabua Power'), is a company incorporated under provisions of the Companies Act, 1956. Further, Jhabua Power is a 'Generating Company' as defined under Section 2(28) of the Electricity Act, 2003.

2. The Petitioner has established a Thermal Power Station located at Village Barela, District Seoni in the State of Madhya Pradesh comprising of one unit of 600 MW capacity. The generating unit was declared commercial on 3rd May 2016.

3. The petitioner has executed long term Power Purchase Agreement (PPA) on 5th January 2011 ("**PPA-1"**) with MP Power Management Company Ltd., (hereinafter called "MPPMCL") for supply of up to 30% of the power station's installed capacity for a period of 20 years at the tariff determined by the Appropriate Commission. Further the petitioner executed another PPA ("**PPA-2"**) with GoMP on 27th June 2011 for sale of 5% of the net power on annualized basis at a price equivalent to the variable cost only to be determined by the Appropriate Commission. The copy of the PPAs are attached as **Annexure I**.

4. The Petitioner has been taken over by NTPC Limited as a Joint Venture with Secured Financial Creditors/Bankers (50:50) through CIRP (Corporate Insolvency Resolution Process) vide National Company Law Tribunal (NCLT) Order dated 6th July 2022. Further, it is pertinent to mention that the Management control of JPL lies with NTPC post-acquisition w.e.f. 05.09.2022. The copy of NCLT Order is attached as **Annexure II**.

5. The Resolution Plan, as sanctioned by the National Company Law Tribunal (NCLT) Order dated 6th July 2022, stipulates that subsequent to the transfer date, the Tariff Regulations of the Central Electricity Regulatory Commission (CERC) shall be applicable to Jhabua Power. This is due to Jhabua Power's changed status (i.e. Central Generating Station) post-transfer date as an entity governed under Section 79 (1) (a) of the Electricity Act, 2003. Consequently, the Statutory/ Regulatory

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authority for tariff determination has transitioned from the Hon'ble Madhya Pradesh Electricity Regulatory Commission (MPERC) to the Hon'ble CERC. The relevant extract of Resolution Plan is reproduced below:

Clause 4.2.1 (b) (i) of the Resolution Plan states the following: -

Quote

Further after the Transfer Date, CERC tariff regulations shall apply to JPL, as it will become a group company of NTPC which is a central government enterprise with generation and sale of electricity in more than one state. Accordingly, CERC tariff regulations for control period FY 2019-24 have been considered including continuation of tariff parameters such as approved capital base, O&M expense, operational parameters etc.

Unquote

6. Since NTPC Limited is a Central Sector Generating Company and management control of Petitioner's plant also lies with NTPC Limited, it is submitted that Jhabua Power is a Central Sector Generating Company. Further, the Central Electricity Authority vide its letter dated 06.01.2023 has also recognized the Petitioner as a Central Sector Generating Company. Copy of letter is attached as **Annexure III**.

7. Primarily, Section 79 (1) (a) of the Electricity Act, 2003 contemplates that the tariff of generating companies owned or controlled by the Central Government would be regulated by this Hon'ble Commission. Therefore, jurisdiction for the Tariff determination/Truing-up of the Petitioner (post NTPC takeover i.e. effective 05.09.2022) vests in this Hon'ble Central Electricity Regulatory Commission (hereinafter referred to as 'the Commission' or 'CERC') under Section 79 (1) (a) of the Electricity Act 2003.

8. Prior to 05.09.2022, the tariff determination/Truing-up for the generating station of the Petitioner was done by the Hon'ble Madhya Pradesh Electricity Regulatory Commission as per the applicable MPERC tariff regulations. Hon'ble MPERC has already taken cognizance of NTPC takeover w.e.f. from 05.09.2022 and accordingly has Trued-up tariff for FY 22-23 only till 04.09.2022 Copy of the Hon'ble MPERC Order in Petition No 61 of 2023 dated 05.03.2024 is attached as **Annexure IV**.

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Further details regarding change of jurisdiction are elaborated in the true-up petition filed with this Hon'ble Commission for the period (5th Sep 2022 to 31st March 2024), for the sake of brevity, the same is not reproduced here.

9. Since the jurisdiction for determination of Tariff for the petitioner post takeover by NTPC lies with Hon'ble Commission, for the purposes of determination of tariff, the provisions of the Tariff regulation, 2024 (hereinafter 'Tariff Regulations 2024') would be applicable for the period 01.04.2024 to 31.03.2029.

10. The petitioner has submitted True-up petition dated 27.11.2024 to Hon'ble Commission for period 05.09.2022 (post takeover) to 31.03.2024 in accordance with applicable Tariff Regulations, 2019. In the instant petition, for calculation of tariff components (for FY 2024-25 to FY2028-29), the opening balances of various inputs such as opening capital cost, equity balance, loan balance, etc as on 01.04.2024 are taken based on closing balance (as of 31.03.2024) of respective inputs as submitted in the true-up petition.

Tariff determination of FY 2024-25 to FY 2028-29

11. The Hon'ble Commission has notified the Central Electricity Regulatory Commission (Terms & Conditions of Tariff) Regulations, 2024 (hereinafter 'Tariff Regulations 2024') which came into force from 01.04.2024, specifying the terms & conditions and methodology of tariff determination for the period 01.04.2024 to 31.03.2029 under section 62 & 79 of the Electricity Act, 2003.

12. Regulation 19 (5) (a) of Tariff Regulations 2024 provides as follows:

"For Projects acquired through NCLT proceedings under the Insolvency and Bankruptcy Code, 2016, the following shall be considered while approving Capital Costs for the determination of tariff:

(a) For projects already under operation, historical GFA of the project acquired or the acquisition cost paid by the generating company, whichever is lower;

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13. In accordance with Regulation 12, the capital cost admitted as on 31.03.2024 based on the truing up shall form the basis of the opening capital cost as on 01.04.2024 for the tariff determination for the period 2024-29. Hence, capital cost claimed in the companion petition for truing up for part period from 2022 to 2024 may be considered for the purposes of tariff determination for 2024-29. Regulation 12 is reproduced below:

Quote

12. Truing up of tariff for the period 2019-24:

The tariff of the generating stations, integrated mines, and transmission systems for the period 2019-24 shall be trued up in accordance with the provisions of Regulation 13 of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019 along with the tariff petition for the period 2024-29. The capital cost admitted as on 31.3.2024 based on the truing up shall form the basis of the opening capital cost as on 1.4.2024 for the tariff determination for the period 2024-29.

Unquote

14. The Petitioner humbly requests the Hon'ble Commission to acknowledge certain timelines about the resolution process of Jhabua Power Limited under the Insolvency and Bankruptcy Code 2016. Insolvency proceedings were initiated on 27th March 2019 by the Hon'ble NCLT. The resolution plan of NTPC was approved by the Hon'ble NCLT on 6th July 2022 with effective date of implementation of resolution plan being 5th September 2022. At the time when the insolvency proceedings were ongoing, CERC Tariff Regulations, 2019 were in effect. Since the said Regulations did not contain any provision regarding capital cost determination for projects acquired under NCLT route, NTPC prepared its bids based on the existing framework, namely, that this Hon'ble Commission would determine capital cost based tariff. The Approach Paper for CERC Tariff Regulations, 2024 was published on 26th May 2023 which outlined the views of CERC for capital cost determination for NCLT projects. By the time appropriate submissions were made by the Petitioner to the draft and the finalization of the Tariff Regulations, 2024, the project already stood bid for and acquired.

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15. Thus from the timeline mentioned as above, the approval of Resolution Plan was much before the publication of CERC Tariff Regulation 2024-29. It is respectfully submitted that under the NCLT process, the intent of stakeholders/lenders is to select the bid which maximizes the value for stakeholders i.e. the lenders. The Resolution Applicant (i.e. NTPC Ltd) submitted bid considering the revenue that the asset will be able to generate which is based on the capital cost determined by the Appropriate Commission.

16. Restricting the capital cost to acquisition cost based on the Tariff Regulations, 2024 will significantly reduce the value of asset and this will lead to further under recovery of Revenue from the Long-Term tie-up and the project may again become unviable/ stressed. The detailed explanation is mentioned at para 29 of the instant petition. It is reiterated that in the case of Jhabua Power Limited, NTPC submitted the resolution plan considering the revenue stream computed as per CERC Regulations 2019 which were in effect when the resolution plan was submitted. In view of this, the Petitioner requests the Hon'ble Commission to consider the capital cost as admitted by the Hon'ble MPERC as the capital cost for computation of tariff as per CERC Regulations. Further, the revision in capital cost will cause consequent changes to the normative loan and interest thereof, the ROE, depreciation, etc. Tariff determination must balance the interests of the consumer and the investor, and a post facto redetermination of capital cost may upend the balance. The Tariff Regulations, 2024 do not address the issue of the cost of debt servicing, including repayment, that were allowed as a part of the tariff during the CIRP, which was proposed to be included in the CERC Staff's Approach Paper for the Tariff Regulations for 2024-29.

17. In view of above, it is humbly submitted that Regulation 19(5)(a) is not applicable to the petitioner since the project has been taken over through NCLT route prior to notification of CERC Tariff Regulations, 2024, unlike a project proponent who is bidding for a project through the NCLT process after the notification of the said Regulations. Instead, this Hon'ble Commission should adopt the approach in Regulation 12 of the Tariff Regulations, 2024.

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18. *"Historical GFA of the project acquired"* in Regulation 19 (5) is one of the considerations to be taken into account by this Hon'ble Commission. The use of this

phrase in Regulation 19(5) as opposed to *"capital cost admitted as on 31.03.2024"* used in Regulation 12 shows that the intention of this Hon'ble Commission is not to apply Regulation 19 (5) in the cases of projects already taken over by the NCLT process prior to notification of the Tariff Regulations, 2024. For projects that have the capital cost admitted already, as in the instant case, the capital cost will be as admitted and trued up as on 01.04.2024 in accordance with Regulation 19(3).

19. Further, Regulation 9 of CERC Tariff Regulations, 2024 regarding the methodology for Determination of Tariff and Truing up specifies the following for determination of Generation Tariff:

Quote

9 (2) In case of an existing generating station or unit thereof, or transmission system or element thereof, the application shall be made by the generating company or the transmission licensee, as the case may be, by 30.11.2024 , based on admitted capital cost including additional capital expenditure already admitted and incurred up to 31.3.2024 (either based on actual or projected additional capital expenditure) and estimated additional capital expenditure for the respective years of the tariff period 2024-29 along with the true up petition for the period 2019-24 in accordance with the CERC (Terms and Conditions of Tariff) Regulations, 2019.

Unquote

20. The Petitioner hereby submits that the determination of tariff for the period from FY 2024-25 to FY 2028-29 is in accordance with the provisions of the CERC Tariff Regulations, 2024.

21. The Petitioner respectfully submits that there are certain matters pertaining to the period prior to 05.09.2022, which are currently under consideration before the Hon'ble Appellate Tribunal for Electricity (APTEL). The Petitioner shall comply with and act in accordance with the directions issued by the Hon'ble APTEL in these proceedings. The list of issues in appeals filed with the Hon'ble APTEL is provided as **Annexure V**. The Petitioner is submitting this list of appeals to provide an indication of the issues to be decided by the Hon'ble APTEL. All these appeals have been admitted and are

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in the list of finals of the Hon’ble Appellate Tribunal for Electricity (APTEL). The hearings are yet to be scheduled.

22. Further, should the outcome of the proceedings before the Hon’ble APTEL have any bearing or impact on the filings made or to be made before the Hon’ble Commission, the Petitioner shall approach the Hon'ble Commission separately to address any such implications arising from the said proceedings. In this regard, the Petitioner requests the Hon’ble Commission to grant liberty to the Petitioner to make additional submissions at a later date regarding any matter related to tariff based on the outcome of proceedings at Hon’ble APTEL.

23. The petitioner hereby humbly submits the filled tariff formats (Appendix I).

Brief Overview of Component Wise Annual Charges and Variable Charges

24. The components of Tariff for Thermal Power Generating Stations have been stipulated in the Chapter 4 of the CERC Tariff Regulations, 2024 which is reiterated as under:

Quote

14. ***Components of Tariff:***

(1) The tariff for the supply of electricity from a thermal generating station shall comprise two parts, namely, capacity charge (for recovery of annual fixed cost consisting of the components as specified in Regulation 15 of these regulations) and energy charge (for recovery of primary and secondary fuel cost and cost of limestone and any other reagent, where applicable as specified in Regulation 16 of these regulations).

(2) The Supplementary tariff consisting of supplementary capacity charges and supplementary energy charges, on account of the implementation of revised emission standards in existing generating stations or new generating stations, as the case may be, shall be determined by the Commission separately.

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(3) The capacity charge and energy charge of a generating station shall be determined in accordance with the provisions of Chapter 11 of these regulations. The input price of coal or lignite from the integrated mine, as determined in accordance with the provisions of Chapter 9 of these regulations, shall form part of the energy charge of the generating station. "

15. ***Capacity Charges****:*

(1) The capacity charges shall be derived on the basis of annual fixed costs. The Annual Fixed Cost (AFC) of a generating station or a transmission system, including a communication system, shall consist of the following components:

(a) Return on equity;
(b) Interest on loan capital;
(c) Depreciation;
(d) Interest on working capital; and
(e) Operation and maintenance expenses:

Provided that Special Allowance in lieu of R&M, where opted in accordance with Regulation 28 of these regulations, shall be recovered separately and shall not be considered for computation of working capital.

16. ***Energy Charges****:*

Energy charges shall be derived on the basis of the landed fuel cost (LFC) of a generating station (excluding hydro) and shall consist of the following costs:

(a) Landed Fuel Cost of primary fuel;
(b) Cost of secondary fuel oil consumption; and
(c) Cost of limestone or any other reagent, as applicable:

Provided that any refund of taxes and duties along with any amount received on account of penalties from the fuel supplier shall be adjusted in fuel cost:

Provided further that the supplementary energy charges, if any, on account of meeting the revised emission standards in case of a thermal generating station shall be determined separately by the Commission as per Regulation 64 of these regulations.

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Provided also that in case of supply of coal or lignite from the integrated mine(s), the landed cost of primary fuel shall be based on the input price of coal or lignite, as the case may be, as computed in accordance with these regulations.

Unquote

25. In terms of above, the generation tariff shall include Capacity Charges and Energy Charges which shall be determined in accordance with the norms stipulated under the CERC Tariff Regulations, 2024.

Gross Fixed Asset and Additional Capitalization

26. Chapter 3, Regulation 10 of the Tariff Regulations 2024 provides as under:

Quote

*10**. Determination of tariff***

(1) The generating company for a specific generating station or unit thereof or for an integrated mine or the transmission licensee for a transmission system or element thereof, as the case may be, shall file a petition before the Commission as per Annexure-I to these regulations containing the details of underlying assumptions for the capital expenditure and additional capital expenditure incurred and projected to be incurred, wherever applicable.

(2) If the petition is deficient in any respect as required under Annexure-I to these regulations, the application shall be returned to the generating company or transmission licensee, as the case may be, for resubmission of the petition within one month of the date of return of the application after rectifying the deficiencies as may be pointed out by the staff of the Commission.

(3) If the information furnished in the petition is in accordance with these regulations, the Commission may consider granting an interim tariff of up to ninety per cent (90%) of the tariff claimed in the case of a new generating station or unit thereof or transmission system, or element thereof during the first hearing of the application for billing purposes till the final tariff is determined by the Commission:

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Provided that in case the final tariff determined by the Commission is lower than the interim tariff by more than 10%, the generating company or transmission licensee shall return the excess amount recovered from the beneficiaries or long term customers, as the case may be, with simple interest at 1.20 times of the rate worked out on the basis of 1 year SBI MCLR plus 100 basis points prevailing as on 1st April of the financial year in which such excess recovery was made.

(4) In the case of the existing projects, the generating company or the transmission licensee, as the case may be, shall continue to bill the beneficiaries or the long term customers at the capacity charges or the transmission charges, respectively, as approved by the Commission and applicable as on 31.3.2024 for the period starting from 1.4.2024 till approval of final capacity charges or transmission charges by the Commission in accordance with these regulations:

Provided that the billing for energy charges w.e.f. 1.4.2024 shall be as per the operational norms specified in these regulations.

(5) The Commission shall grant the final tariff in the case of existing and new projects after considering the replies received from the respondents and suggestions and objections, if any, received from the general public and any other person permitted by the Commission, including consumers or consumer associations.

(6) Subject to Sub-Clause (7) below, the difference between the tariff determined in accordance with clauses (3) and (5) above and clauses (4) and (5) above, shall be recovered from or refunded to, the beneficiaries or the long term customers, as the case may be, with simple interest at the rate equal to the 1 year SBI MCLR plus 100 basis points prevailing as on 1st April of the respective year of the tariff period, in a maximum of six equal monthly instalments;

Provided that the bills to recover or refund shall be raised by the generating company or the transmission licensees within 45 days from the issuance of the Order.

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Provided further that such interest, including that determined as per sub-clause (7) of this regulation shall be payable till the date of issuance of the Order and no interest shall be allowed or levied during the period of six-monthly instalments.

Provided further that in case where money is to be refunded and there is a delay in the raising of bills by the generating company or transmission licensees beyond 45 days from the issuance of the Order, it shall attract a late payment surcharge as applicable in accordance with these regulations.

(7) Where the capital cost approved by the Commission on the basis of projected additional capital expenditure exceeds the actual trued up additional capital expenditure incurred on a year to year basis by more than 10%, the generating company or the transmission licensee shall refund to the beneficiaries or the long term customers as the case may be, the tariff recovered corresponding to the additional capital expenditure not incurred, as approved by the Commission, along with simple interest at 1.20 times of the rate worked out on the basis of 1 year SBI MCLR plus 100 basis points as prevalent on 1st April of the respective year.

Unquote

27. In line with the provisions quoted above, the Petitioner is filing the instant petition for tariff determination for the control period 01.04.2024 to 31.03.2029, based on closing capital cost as on 31.03.2024 (as per the true-up petition for the period 05.09.2022 to 31.03.2024) and projected capital expenditure to be incurred during the tariff period from 01.04.2024 to 31.03.2029.

28. The closing GFA (Gross Fixed Assets) as on 31.03.2024 (as per the true up petition for the period 05.09.2022 to 31.03.2024) has been considered for the purpose of tariff determination for the generating station from FY 2024-25 to FY 2028-29. As stated above, the opening balances are to be considered as per the closing balances determined for the period 2019-24.

29. With respect to the Capital Cost of the project, the Petitioner humbly submits the following:

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- The Petitioner's Plant (erstwhile promoters Avantha Power) was identified as one of the 34 stressed thermal coal-based power plants in the 40th Report of the Standing Committee on Energy (2017-18), Ministry of Power. Extract of the Report is attached as **Annexure VI**.
- Vide NCLT Kolkata's Order dated 27.03.19, the petitioner was admitted to CIRP (Corporate Insolvency Resolution Process).
- The Resolution Applicants (RA) were invited to submit the bids for the project by CoC (Committee of Creditors) with an intent to select the H1 bidder.
- NTPC Ltd was one of the RAs. The bid was submitted by NTPC Ltd with certain assumptions, most important of them being that the approved capital cost by Hon'ble MPERC would be continued for recovery of Tariff in future also as only 30% of plant capacity is tied-up under section 62. Accordingly, the final offer/bid amount was ascertained and submitted to bankers. NTPC submitted the resolution plan considering the revenue stream computed as per CERC Regulations 2019 which were in effect when the resolution plan was submitted. In view of this, the Petitioner requests the Hon'ble Commission to adopt the capital cost as admitted by the Hon'ble MPERC as the capital cost for computation of tariff.
- The Resolution Plan submitted by NTPC was voted in favor by 100% voting percentage of the CoC. NTPC's Bid was selected and vide an Order dated 06.07.22, approval was granted to Resolution Plan submitted by NTPC Ltd by NCLT Kolkata.
- Based on the Resolution Plan submitted by NTPC Ltd and its subsequent approval by NCLT Kolkata, the petitioner has continued the Capital Cost as approved by Hon'ble MPERC for recovery of Tariff and accordingly all the calculations in the instant petition have been made.
- As the Hon'ble Commission is well aware that acquisition of a stressed project involves significant risk and investment, both in terms of resources and expertise. By assuming this challenge, NTPC has positioned itself to not only turn around the project but also to unlock its full potential. As a stakeholder, NTPC's commitment and strategic decisions will be the driving forces behind its eventual success.

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- Moreover, considering NTPC's expertise in the Thermal Power sector, bankers also took major haircut in the process considering future value appreciation.
- Further, this successful acquisition of a stressed power plant through NCLT route is an unprecedented case in the country and NTPC has taken a substantial risk by venturing into this unchartered territory. Therefore, it is only fair that the rewards associated with this transformation—whether financial gains, enhanced reputation, or future opportunities should accrue primarily to the major stakeholders. Sharing these rewards with other stakeholders, who may not have been as directly involved in the revitalization efforts, would undermine the value of the risks undertaken by the primary stakeholders to ensure the project's success.
- In view of the above and also considering NCLT Kolkata's approval to Resolution Plan submitted by NTPC (wherein it has been expressly indicated to continue the Capital Cost base), the petitioner has made all the calculations in the instant petition. It is humbly submitted that in light of the NCLT Order dated 06.07.22, Hon'ble Commission is requested to consider the capital cost and other parameters as approved vide the Hon'ble MPERC Order dated 05.03.24. The petitioner has considered the approved capital cost as per Hon'ble MPERC Order as opening capital cost in true-up petition and instant petition.

30. Furthermore, it is submitted that only 30% of the power of Petitioner's plant is tied up under section 62, ensuring only 30% of the Fixed Cost (FC) recovery. There exists a substantial risk of under-recovery for the remaining 70% FC due to fluctuating market conditions. The high penetration of solar and wind power in the current scenario has led to significant price drops (as low as Rs 0.10/kWh) during solar hours, complicating the maintenance of technical minimum levels as all beneficiaries, including Long Term/ Medium Term, provide minimal or zero scheduling during these periods, causing substantial losses in electricity generation from thermal plants. The aforementioned losses are not compensated during peak hours due to rate caps. The Resolution Applicant (RA) has already assumed this risk, and any further reduction in the base capital cost initially considered by the RA will jeopardize the recovery process for the entire asset over its remaining life. It is noteworthy that most of the times fuel allocation for market-oriented capacity under the SHAKTI scheme follows the RCR mode, which generally results in a significant Gross Calorific Value (GCV)

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loss from billed grade to as-received basis (ARB) GCV. This further diminishes the prospects of recovering fixed costs through power sales in exchanges. Therefore, it is submitted that for the plant to operate successfully until 2041, the recovery of Fixed Cost corresponding to the already approved Capital Cost by Hon'ble MPERC, as well as that considered by RA, must serve as the starting point for the tariff truing-up petition.

31. In the case of a takeover of a power project through the CIRP by a subsequent purchaser, the Hon'ble Appellate Tribunal has already held that the tariff cannot be reduced post take over. In **Renascent Power Ventures Pvt. Ltd. v. Uttar Pradesh Electricity Regulatory Commission & Ors. (Appeal No. 183 of 2018 – Judgment dated 27.09.2019),** the Hon'ble Tribunal has held as under –

> *21. The argument raised by the Appellant is that the 1st Respondent-Commission acted beyond its scope/jurisdiction by reviewing a tariff which was already adopted and the same amounts to modifying/revising/reviewing a tariff. For this proposition the Appellant was justified in placing reliance on Section 61 and 63 of the Act and also judgment of this Tribunal in the matter of* ***Madhya Pradesh Power Trading Company Ltd. v. MPERC*** *in Appeal No. 44 of 2019 dated 06.05.2010 to contend how Section 63 has to be appreciated and adopted, which reads as under:*
>
> *.....*
>
> *122. The Appellant has rightly placed reliance in the case of* ***Official Trustee v. Sachindra Nath*** *[reported in (2007) 4 SCC 451 : AIR 1969 SC 823] to contend that if a court has jurisdiction to decide a particular matter, it should have power to hear and decide the questions at issue and decide the controversy which has arisen between the parties. The Appellant rightly referred to the case of* ***Jagmittar Sain Bhagat v. Director, Health Services, Haryana and Others*** *[reported in (2013) 10 SCC 136] to contend that conferment of jurisdiction is a legislative function and it can neither be conferred with the consent of the parties nor by a superior court; therefore, if an order/decree is passed by a court which has no jurisdiction, it would amount to nullity since it goes to the root of the cause.*

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123. The change in the PPA tariff, which being the fundamental basis for arriving at the bid amount by the bidders, any subsequent reduction in the PPA tariff, post conclusion of the bid process by lenders of the project, would amount to change in the fundamental basis of the bid. This is well settled law laid down by the Hon'ble Supreme Court in several cases.

……...

127. In pursuance of financial documents, lenders led by SBI invoked terms of pledge for sale/transfer of pledged shares of PPGCL and said document is not only recognised but a legal document under PPA. Through this process, lenders intended to bring a new entity that too adopting transparent competitive bid process, therefore, it may not be out of place to opine that the Appellant had legitimate expectation to the effect that bid would be awarded to it in terms of said bidding process especially once the Appellant was found successful in the bid process and letter of intent being issued to them. In the absence of said bidding process not contemplating any change in the terms of existing PPA (like reduction in tariff) neither the Appellant nor any person who participated in the bid could anticipate such reduction in the tariff already adopted. ***On the other hand, the adopted tariff envisaged in the PPA would be the basis to formulate their economics to quote the price in the bid****.*

128. Apparently, the Commission did not consider the effects of reduction in PPA tariff in post facto scenario since there was certainty in the bid condition with reference to PPA tariff and associated revenue stream which was the basic input for inviting the bids in question.

……

141. In the light of the above discussion and reasoning, we are of the opinion that the finding of the 1st Respondent-Commission so far as reduction of adopted tariff by Rs. 0.14 per unit warrants interference. Accordingly, we

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uphold the approval/waiver/relaxation granted by the 1st Respondent-Commission for SPA dated 14.11.2018, but without any reduction of adopted tariff. Accordingly the Appeal is allowed.

32. Further, it is now well settled that Sections 62 and 63 are only the two means of tariff determination provided for under the Electricity Act, 2003. In **Tata Power Co. Ltd. Transmission v. Maharashtra Electricity Regulatory Commission & Ors. (2023) 11 SCC 1, the Hon'ble Supreme Court has authoritatively ruled as under –**

> ***88.*** *Section 63 indicates that the provision would be invoked after the tariff has been determined by the bidding process. There is nothing in Sections 62 or 63 that could lead us to interpret that Section 63 is the dominant route for determination of tariff. Both the provisions provide alternative modalities through which tariff can be determined. The non obstante clause in Section 63 must be read in the context of Sections 61 and 62. Section 62 bestows the Commission with wide discretion to determine tariff. Section 63 seeks to curtail this discretion where a bidding process for tariff determination has already been conducted. Section 63 contemplates that in such situations where the tariff has been determined through the bidding process, the Commission cannot by falling back on the discretion provided under Section 62 negate the tariff determined through bidding. This interpretation of Section 63 is fortified by the use of the phrase "such" in Section 63 — the Commission is bound to "adopt" "such" tariff determined through bidding.*
>
> *……...*
>
> *92. …….. Therefore, Section 63 can only be invoked after the tariff has been determined through bidding. The terms and conditions notified by the appropriate Commission under Section 61 will have to be referred for the purpose of choosing the modality of tariff determination that the Commission should undertake. In view of the above discussion, the argument of the appellant that a reading of Sections 61, 62 and 63 indicates that the TBCB route is the dominant route of tariff determination does not hold merit.*

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33. Following the principle laid down above, even though the truing up/tariff determination is being conducted by this Hon'ble Commission due to the provisions of the Electricity Act, 2003, the truing up/tariff determination cannot be to relook at the capital cost already determined by the Hon'ble MPERC or for reworking a tariff that was operating at the time the Petitioner bid for this project under the CIRP route.

Additional Capitalization

34. Regulations 25 and 26 of CERC Tariff Regulations, 2024, provide for Additional Capitalization within original scope after the cutoff date and for Additional Capitalization beyond original scope respectively. The Petitioner has made its claims in detail in Form 9A quoting the relevant Regulations and the justifications praying for allowing appropriate additional capital expenditure towards the project during the period 01.04.2024 to 31.03.2029.

35. The petitioner has projected total additional capitalization of Rs. 471.94 Crore from FY 2024-25 to FY 2028-29 *(break-down provided in table below)*, out of which Rs. 167.79 Crore is claimed as additional capitalization towards balance works which were under the original scope of work and balance amount of Rs. 304.15 Crore is towards work beyond original scope. This capital expenditure is essential for running the plant safely and efficiently. The Hon'ble Commission is requested to note that due to financial stress of the Petitioner, several critical works had to be deferred for execution. Further, the procurement of initial capital spares also had to be kept on hold due to financial hardships faced by the Petitioner. The Petitioner requests the Hon'ble Commission to allow the additional capitalization towards these critical works.

36. During the period 2024-29, the additional capital expenditure has been projected in accordance with the provisions of the Tariff Regulations, 2024. Details of the additional capital expenditure are given below:

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Table 1: Additional Capitalization claimed for FY 2024-25 to FY 2028-29 (Rs. Crore)

Sr. No.	Particulars	2024 - 25	2025 - 26	2026 - 27	2027 - 28	2028 - 29	Total
1	Civil Works [Regulation 25]	-	5.00	32.26	43.50	66.00	146.76
2	Civil Works [Regulation 26]	-	-	-	-	53.00	-
3	Coal ash handling [Regulation 25]	0.75	-	-	0.28	-	1.03
4	Coal ash handling [Regulation 26]	-	25.15	-	-	7.00	32.15
5	Boiler, Turbine and Generator [Regulation 25]	-	-	-	20.00	-	20.00
6	Boiler, Turbine and Generator [Regulation 26]	40.00	73.50	100.00	5.50	-	219.00
9	**Total Additional Capitalization claimed (1 to 6)**	**40.75**	**103.65**	**132.26**	**69.28**	**126.00**	**471.94**

Civil works in the original scope of work [Regulation 25 read with Resolution Plan]

37. For FY 2025-26 to FY2028-29, the Petitioner has included cost of following in Civil Works:

a. **Construction of rail line no. 1** – The construction of this line will lead to more efficient operation of the plant as the rail line facilitates the swift and cost-

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effective movement of fly ash, reducing the need for road transport and minimizing traffic congestion and unnecessary dumping at ash dyke,

b. **Construction of plant internal roads and balance surface drains** is essential to prevent storm water from submerging low-lying areas as this flooding causes operational difficulties, poses safety hazards, and affects critical zones like the gate complex, Barela gate, TG "A" row to POG, and the dead end of the CHP rail track. Proper drainage is vital for safe and efficient operations,

c. **Bottom ash dyke and recovery water system** is needed because the temporary bund for bottom ash disposal is exhausted and there is no additional space available. This temporary solution poses environmental risks, especially during the rainy season. A real dyke will provide necessary capacity and structural integrity, ensuring safe disposal and reducing environmental hazards. An additional Recovery Water System will also be required for future needs,

d. **Service building, fire station, workshop** is essential for operational efficiency and safety. The Service Building supports administrative and operational tasks, and the Fire Station ensures rapid response to emergencies. Further, the Workshop provides space for equipment maintenance and repairs, ensuring smooth and safe industrial operations,

e. **Bottom ash conveyor belt system** is crucial for efficient and safe disposal of bottom ash into the dyke. Currently, the incomplete civil works and lack of mechanical systems hinder proper ash handling, create operational inefficiencies and environmental risks. Completing this system will streamline bottom ash disposal, enhance safety, and ensure the healthiness of the environment,

f. **CHP area coal run off pond, flooring, surface roads and drains** to manage coal runoff effectively. Currently, the lack of these facilities complicates maintaining cleanliness and recovering water, leading to operational

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inefficiencies and potential environmental issues. Proper infrastructure will enhance cleanliness and water management in the CHP area,

g. **Expansion of transit guest house (field hostel) and site administration building** is essential as adequate housing and amenities for staff will improve operational efficiency and employee well-being. The site administration building will streamline management and coordination, enhancing overall O&M effectiveness and

h. **IPS Flooring for BTG Area** - the construction of civil IPS flooring for the turbine generator zero-meter area is crucial for ensuring a durable, level, and safe surface. This flooring will support heavy equipment, prevent dust accumulation, and facilitate maintenance, thereby enhancing operational efficiency and safety. All these works were included in the original scope of work but could not be completed due to the CIRP and the events leading up to it.

The civil works have been considered as per the table below:

Table 1A:

							Rs. in Crore
Sr. No	**Particulars**	**2024-25**	**2025-26**	**2026-27**	**2027-28**	**2028-29**	**Total**
A	Civil works	-	5.00	32.26	43.50	66.00	146.76

BTG work in the original scope of work [Regulation 25 read with Resolution Plan]

38. For FY 2027-28, the Petitioner has included cost of Coal Mill No. 9 Body & internals balance that was included in the original scope of work but could not be completed due to the CIRP and the events leading up to it. The BTG works have been considered as per the table below:

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Table 1B:

Rs. in Crore							
Sr. No	**Particulars**	**2024-25**	**2025-26**	**2026-27**	**2027-28**	**2028-29**	**Total**
A	Boiler, Turbine & Generator (BTG) work	-	-	-	20.00	-	20.00

Coal handling work in the original scope of work [Regulation 25 read with Resolution Plan]

39. For FY 2024-25 and FY 2027-28the Petitioner has included cost of deck sheeting in CHP, Installation of EOT cranes and Wagon Tippler Dust Extraction System that was included in the original scope of work but could not be completed due to the CIRP and the events leading up to it. The BTG works have been considered as per the table below:

Table 1C:

Rs. in Crore							
Sr. No	**Particulars**	**2024-25**	**2025-26**	**2026-27**	**2027-28**	**2028-29**	**Total**
A	Coal Handling Plant / Ash Handling Plant	0.75	-	-	0.28	-	1.03

Additional capitalisation for efficient operation (Regulation 26 (1) (i) read with Resolution Plan]

Civil works [Regulation 26 (1) (i) read with Resolution Plan]

40. For FY 2028-29, the Petitioner has included cost of construction of fly ash storage silo and integrated system (excluding electrification work). The civil works have been considered as per the table below. These works will help in efficient operation of the plant as the fly ash storage silo ensures safe and environmentally responsible storage

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of fly ash, preventing air pollution and potential hazards. The integrated system streamlines operations, enhancing productivity and safety in material handling processes. Overall, this infrastructure supports sustainable industrial practices and efficient logistics.

Table 1D:

							Rs. in Crore
Sr. No	**Particulars**	**2024-25**	**2025-26**	**2026-27**	**2027-28**	**2028-29**	**Total**
A	Civil Works	-	-	-	-	53.00	53.00

BTG [Regulation 26 (1) (i) read with Resolution Plan]

41. For FY 2024-25 to FY 2027-28, the Petitioner has included cost of Procurement & Installation of 2nd TG Building EOT Crane, Procurement & Installation of standby CW Pump Set and spares part of BTG and BOP. The BTG works have been considered as per the table below. The works will help in efficient operation of the plant as due to the critical need for a second EOT crane at the TG Building, the AOH period for the TG could be shortened by eight days if one is available, standby CW Pump set is essential in case if one pump fails, the load (MW) may be lowered by 50% and spares of BTG and BOP are critical for plant operations.

Table 1E:

							Rs. in Crore
Sr. No	**Particulars**	**2024-25**	**2025-26**	**2026-27**	**2027-28**	**2028-29**	**Total**
A	Boiler, Turbine & Generator (BTG)	40.00	73.50	100.00	5.50	-	219.00

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Coal handling [Regulation 26 (1) (i) read with Resolution Plan]

42. For FY 2025-26 and FY 2028-29, the Petitioner has included cost of Revamping work of both WT, Installation of EOT Cranes & Electrical Hoist in AHP & CHP, JNT'S, Installation of signaling system in JPL rail portion after take-off portion and Procurement of additional 1 no Diesel Loco Including Loco Mandatory Spare. The coal handling works have been considered as per the table below. The works will help in efficient operation of the plant

Table 1F:

Rs. in Crore

Sr. No	**Particulars**	**2024-25**	**2025-26**	**2026-27**	**2027-28**	**2028-29**	**Total**
A	Coal Handling Plant / Ash Handling Plant	-	25.15	-	-	7.00	32.15

Debt – Equity Ratio for Tariff determination

43. Regulation 18 of the CERC Tariff Regulations 2024, provides as follows:

Quote

18. **Debt – Equity Ratio:**

18 (1) For new projects, the debt-equity ratio of 70:30 as on date of commercial operation shall be considered. If the equity actually deployed is more than 30% of the capital cost, equity in excess of 30% shall be treated as normative loan:

Provided that:

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

ii. the equity invested in foreign currency shall be designated in Indian rupees on the date of each investment:

iii. 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.

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Explanation - The premium, if any, raised by the generating company or the transmission licensee, as the case may be, 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 utilized for meeting the capital expenditure of the generating station or the transmission system.

(2) The generating company or the transmission licensee, as the case may be, shall submit the resolution of the Board of the company or the approval of the competent authority in other cases regarding the infusion of funds from internal resources in support of the utilization made or proposed to be made to meet the capital expenditure of the generating station or the transmission system including communication system, as the case may be.

(3) In the case of the generating station and the transmission system, including the communication system declared under commercial operation prior to 1.4.2024, the debt-equity ratio allowed by the Commission for the determination of tariff for the period ending 31.3.2024 shall be considered:

Provided that in the case of a generating station or a transmission system, including a communication system which has completed its useful life as on 1.4.2024 or is completing its useful life during the 2024-29 tariff period, if the equity actually deployed is more than 30% of the capital cost, equity in excess of 30% shall not be taken into account for tariff computation.

Provided further that in case of projects owned by Damodar Valley Corporation, the debt: equity ratio shall be governed as per sub-clause (ii) of clause (2) of Regulation 96 of these regulations.

(4) In the case of the generating station and the transmission system, including communication system declared under commercial operation prior to 1.4.2024, but where debt: equity ratio has not been determined by the Commission for determination of tariff for the period ending 31.3.2024, the Commission shall approve the debt: equity ratio in accordance with clause (1) of this Regulation.

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(5) Any expenditure incurred or projected to be incurred on or after 1.4.2024 as may be admitted by the Commission as additional capital expenditure for determination of tariff, and renovation and modernization expenditure for life extension shall be serviced in the manner specified in clause (1) of this Regulation.

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44. The Petitioner in terms of Regulation 18 (5) of CERC Tariff Regulations, 2024 has considered the debt – equity ratio of 70:30 for the projected capital expenditure from FY 2024-25 to FY 2028-29.

Determination of Capacity Charges and Energy Charges

A. Capacity Charges

i. Return on Equity (RoE)

45. Regulation 30 of CERC Tariff Regulations, 2024, provides as follows:

Quote

*30. **Return on Equity:***

(1) Return on equity shall be computed in rupee terms, on the equity base determined in accordance with Regulation 18 of these regulations.

(2) Return on equity for existing project shall be computed at the base rate of 15.50% for thermal generating station, transmission system including communication system and run-of- river hydro generating station and at the base rate of 16.50% for storage type hydro generating stations, pumped storage hydro generating stations and run-of- river generating station with pondage.

*31.**Tax on Return on Equity:***

(1) The rate of return on equity as allowed by the Commission under Regulation 30 of these regulations shall be grossed up with the effective tax rate of the respective financial year. The effective tax rate 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

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concerned generating company or the transmission licensee by excluding the income of non-generation or non-transmission business, as the case may be, and the corresponding tax thereon.

Provided that in case a generating company or transmission licensee is paying Minimum Alternate Tax (MAT) under Section 115JB of the Income Tax Act, 1961, the effective tax rate shall be the MAT rate, including surcharge and cess;

Provided further that in case a generating company or transmission licensee has opted for Section 115BAA, the effective tax rate shall be tax rate including surcharge and cess as specified under Section 115BAA of the Income Tax Act, 1961.

(2) The rate of return on equity shall be rounded off to three decimal places and shall be computed as per the formula given below:

Rate of pre-tax return on equity = Base rate / (1-t)

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46. The Petitioner has considered opening equity as on 01.04.2024 as per the closing equity as on 31.03.2024 as submitted in the true up petition for the period 05.09.2022 to 31.03.2024. Accordingly, the Opening Equity as on 01.04.2024 has been considered as Rs. 1021.75 Cr

47. The Petitioner has claimed return on equity on normative basis. Further, keeping in view that there was no tax liability in previous years/Control period, the RoE has not been grossed up with the applicable Tax rates and has therefore been claimed at 15.50% as per the above quoted Regulation from FY 2024-25 to FY 2028-29. Addition to normative equity is in accordance with additional capitalization on the basis of Regulation 18 (5) of CERC Tariff Regulation 2024.

48. According to the Regulation 31 of the CERC Tariff Regulation 2024, the effective tax rate must be utilized for calculating the pre- tax rate of Return on Equity (RoE). In the instant petition, tax has not been factored into the RoE computation for the period 2024-29. Nevertheless, same shall be adjusted annually during any future true-up processes in case of any actual tax liability arises or is paid.

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49. The computation of RoE is shown as below: -

Table 2: Computation of RoE

Sl	Particulars	Unit	FY 24-25	FY 25-26	FY 26-27	FY 27-28	FY 28-29
	A. Statement showing Return on Equity at Normal Rate:						
1	Opening balance	Rs Crore	1014.93	1015.15	1016.65	1026.33	1045.46
2	Add: Addition	Rs Crore	0.23	1.50	9.68	19.13	19.80
3	Closing balance	Rs Crore	1015.15	1016.65	1026.33	1045.46	1065.26
4	Average balance	Rs Crore	1015.04	1015.90	1021.49	1035.90	1055.36
5	Rate of return	%	15.50	15.50	15.50	15.50	15.50
6	Tax-rate	%	0.00	0.00	0.00	0.00	0.00
7	Grossed up rate of return	%	15.50	15.50	15.50	15.50	15.50
8	**RoE (A)**	**Rs Crore**	**157.33**	**157.46**	**158.33**	**160.56**	**163.58**
	B. Statement showing Return on Equity linked to SBI MCLR:						
1	Opening balance	Rs Crore	6.82	18.82	48.41	78.41	80.06
2	Add: Addition	Rs Crore	12.00	29.60	30.00	1.65	18.00
3	Closing balance	Rs Crore	18.82	48.41	78.41	80.06	98.06
4	Average balance	Rs Crore	12.82	33.62	63.41	79.24	89.06
5	Rate of return	%	12.15	12.15	12.15	12.15	12.15
6	Tax-rate	%	0.00	0.00	0.00	0.00	0.00

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Sl	Particulars	Unit	FY 24-25	FY 25-26	FY 26-27	FY 27-28	FY 28-29
7	Grossed up rate of return	%	12.15	12.15	12.15	12.15	12.15
8	**RoE (B)**	**Rs Crore**	**1.56**	**4.08**	**7.70**	**9.63**	**10.82**
	Total RoE (A+B)	**Rs Croroe**	**158.89**	**161.55**	**166.04**	**170.19**	**174.40**

ii. Interest and Financing Charges

50. Regulation 32 of the CERC Tariff Regulation 2024, provides as follows:

Quote

32. ***Interest on Loan Capital:***

(1) The loans arrived at in the manner indicated in Regulation 18 of these regulations shall be considered gross normative loans for the calculation of interest on loans.

(2) The normative loan outstanding as on 1.4.2024 shall be worked out by deducting the cumulative repayment as admitted by the Commission up to 31.3.2024 from the gross normative loan.

(3) The repayment for each of the years of the tariff period 2024-29 shall be deemed to be equal to the depreciation allowed for the corresponding year or 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 up to the date of de-capitalization of such asset.

(4) Notwithstanding any moratorium period availed of by the generating company or the transmission licensee, as the case may be, the repayment of the loan shall be

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

(5) The rate of interest shall be the weighted average rate of interest calculated on the basis of the actual loan portfolio or allocated loan portfolio.

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

Provided further that if the generating station or the transmission system, as the case may be, does not have any actual loan, then the weighted average rate of interest of the loan portfolio of the generating company or the transmission licensee as a whole shall be considered.
Provided that the rate of interest on the loan for the installation of the emission control system commissioned subsequent to date of commercial operation of the generating station or unit thereof, shall be the weighted average rate of interest of the actual loan portfolio of the emission control system, and in the absence of the actual loan portfolio, the weighted average rate of interest of the generating company as a whole shall be considered, subject to a ceiling of 14%;

Provided further that if the generating company or the transmission licensee, as the case may be, does not have any actual loan, then the rate of interest for a loan shall be considered as 1-year MCLR of the State Bank of India as applicable as on April 01, of the relevant financial year.

(6) The interest on the loan shall be calculated on the normative average loan of the year by applying the weighted average rate of interest.

(7) The changes to the terms and conditions of the loans shall be reflected from the date of such re-financing

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51. The Petitioner has considered opening normative loan balance as on 01.04.2024 as per the closing normative loan balance as on 31.03.2024 as submitted in the true up petition for the period 05.09.2022 to 31.03.2024. Accordingly, the Opening normative loan balance as on 01.04.2024 has been considered as Rs. 1435.76 Cr.

52. In accordance with the Resolution Plan approved by NCLT, Non-Convertible Debentures (NCDs) have been issued. As of 05.09.22, the Petitioner has secured long-term borrowings at a fixed interest rate of 8.50% p.a. as per Resolution Plan. Accordingly, the Petitioner has considered this rate of interest as the Weighted Average Rate of Interest for the calculation of interest on the loan capital. The repayment for each year is being considered equal to the Depreciation calculated for the respective year.

Table 3: Interest on Normative Loan

SI	**Particulars**	**Unit**	**FY 24-25**	**FY 25-26**	**FY 26-27**	**FY 27-28**	**FY 28-29**
1	Opening balance	Rs Crore	1435.76	1254.43	1111.76	982.75	806.85
2	Add: Increase due to addition	Rs Crore	28.53	72.56	92.58	48.49	88.20
3	Add: Increase due to discharges	Rs Crore	(209.85)	(215.23)	(221.59)	(224.40)	(228.74)
4	Closing Balance	Rs Crore	1254.43	1111.76	982.75	806.85	666.30
5	Average Normative Loan	Rs Crore	1345.09	1183.09	1047.25	894.80	736.57
6	Weighted Average Rate of Interest	%	8.50	8.50	8.50	8.50	8.50
7	**Interest on Loan**	**Rs Crore**	**114.33**	**100.56**	**89.02**	**76.06**	**62.61**

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iii. Depreciation:

53. Regulation 33 of the CERC Tariff Regulations, 2024, provides as follows:

Quote

33. Depreciation

(1) Depreciation shall be computed from the date of commercial operation of a generating station or unit thereof or a transmission system or element thereof including communication system. In the case of the tariff of all the units of a generating station or all elements of a transmission system including the communication system 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 or the transmission system taking into consideration the depreciation of individual units:

Provided that the 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 or capital cost of all elements of the transmission system, for which a single tariff needs to be determined.

(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 or multiple elements of a transmission system, the weighted average life for the generating station or the transmission system shall be applied. Depreciation shall be chargeable from the first year of commercial operation. In the case of commercial operation of the asset for a part of the year, depreciation shall be charged on a pro rata basis.

(3) The salvage value of the asset shall be considered as 10%, and depreciation shall be allowed up to the maximum of 90% of the capital cost of the asset:
Provided that the salvage value for IT equipment and software shall be considered as NIL and 100% value of the assets shall be considered depreciable.

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

Provided also that the capital cost of the assets of the hydro generating station for the purpose of computation of depreciated value shall correspond to the percentage of the sale of electricity under long-term power purchase agreement at regulated tariff: Provided also that any depreciation disallowed on account of lower availability of the generating station or unit or transmission system, as the case may be, shall not be allowed to be recovered at a later stage during the useful life or the extended life.

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

(5) Depreciation for Existing Projects shall be calculated annually based on the Straight Line Method and at rates specified in Appendix-I to these regulations for the assets of the generating station and transmission system:

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

Provided further that in the case of an existing hydro generating station, the generating company, with the consent of the beneficiaries, may charge depreciation at a rate lower than that specified in Appendix I and Appendix II to these Regulations to reduce front loading of tariff.

(6) Depreciation for New Projects shall be calculated annually based on the Straight Line Method and at rates specified in Appendix-II to these regulations for the assets of the generating station and transmission system:

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Provided that the remaining depreciable value as on 31st March of the year closing after a period of 15 years from the effective date of commercial operation of the generating station or the transmission system, as the case may be, shall be spread over the balance useful life of the assets.

Provided further that in the case of a new hydro generating stations, the generating company, with the consent of the beneficiaries, may charge depreciation at a rate lower than that specified in Appendix II to these Regulations to reduce front loading of tariff.

(7) In the case of the existing projects, the balance depreciable value as on 1.4.2024 shall be
worked out by deducting the cumulative depreciation as admitted to by the Commission up to 31.3.2024 from the gross depreciable value of the assets.

(8) The generating company or the transmission licensee, as the case may be, shall submit the details of capital expenditure proposed to be incurred during five years before the completion of useful life along with proper justification and proposed life extension. The Commission, based on prudence check of such submissions, shall approve the depreciation by equally spreading the depreciable value over the balance Operational Life of the generating station or unit thereof or fifteen years, whichever is lower, and in case of the transmission system shall equally spread the depreciable value over the balance useful life of the Asset or 10 years whichever is higher.

Unquote

54. The Petitioner has computed Weighted Average Rate of Depreciation from FY 2024-25 to FY 2028-29 considering rates of Depreciation as per Appendix-I in accordance with Regulation 33 of CERC Tariff Regulations, 2024.

55. The working of Weighted Average Rate of Depreciation is placed at Form-11 of the Tariff Forms. The depreciation claimed by the Petitioner from FY 2024-25 to FY 2028-29 is as follows:

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Table 4:Computation of Depreciation

Sl	Particulars	Unit	FY 24-25	FY 25-26	FY 26-27	FY 27-28	FY 28-29
1	Opening Capital Cost	Rs Crore	4061.29	4102.04	4205.69	4337.95	4407.22
2	Addition	Rs Crore	40.75	103.65	132.26	69.28	126.00
3	Closing Capital Cost	Rs Crore	4102.04	4205.69	4337.95	4407.22	4533.22
4	Average Capital Cost	Rs Crore	4081.66	4153.86	4271.82	4372.59	4470.22
5	Freehold Land	Rs Crore	55.48	55.48	55.48	55.48	55.48
6	IT Assets	Rs Crore	4.26	4.26	4.26	4.26	4.26
7	Weighted Average Rate of Depreciation	%	5.12	5.12	5.11	5.09	5.05
8	**Depreciation**	**Rs Crore**	**209.85**	**215.23**	**221.59**	**224.40**	**228.74**

iv. Operation and Maintenance Expenses for Generating Station

56. Regulation 36 of the CERC Tariff Regulations, 2024, provides as follows:

Quote

*36. **Operation and Maintenance Expenses***

(1) Thermal Generating Station: Normative Operation and Maintenance expenses of thermal generating stations shall be as follows:

(1) Coal based and lignite fired (including those based on Circulating Fluidised Bed Combustion (CFBC) technology) generating stations, other than the generating stations or units referred to in clauses (2), (4) and (5) of this Regulation:

(in Rs Lakh/MW)

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Year	200/210/250 MW Series	300/330/350 MW Series	500 MW Series	600 MW Series	800 MW Series and above
FY 2024-25	40.92	34.04	27.17	25.78	23.20
FY 2025-26	43.07	35.83	28.60	27.13	24.42
FY 2026-27	45.33	37.71	30.10	28.56	25.70
FY 2027-28	47.71	39.69	31.68	30.06	27.05
FY 2028-29	50.21	41.78	33.34	31.64	28.47

Provided also that operation and maintenance expenses of generating station having a unit size of less than 200 MW not covered above shall be determined on a case-to-case basis.

(6) The Water Charges, Security Expenses, Ash Transportation Expenses and Capital Spares for thermal generating stations shall be allowed separately after prudence check:

Provided that water charges shall be allowed based on water consumption depending upon type of plant and type of cooling water system or water agreement with state govt./utilities, and the norms specified by the Ministry of Environment, Forest and Climate Change subject to prudence check. The details regarding the same shall be furnished along with the petition.

Provided further that the generating station shall submit the assessment of the security requirement and estimated expenses along with the petition seeking the determination of tariff;

Provided also that the generating station shall submit the details of year-wise actual capital spares consumed individually costing above Rs. 10 Lakh at the time of truing up with appropriate justification for incurring the same and substantiating that the

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same is not funded through compensatory allowance as per Regulation 17 of Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 or Special Allowance or claimed as a part of additional capitalization or consumption of stores and spares and renovation and modernization.

(7) Any additional O&M expenses incurred by the generating company due to any change in law shall be considered at the time of truing up of tariff.

Unquote

57. Accordingly, the normative O&M expenses have been considered in accordance with the CERC Tariff Regulations, 2024 for 600 MW Thermal Generating Unit. The O&M expenses claimed by Petitioner is computed in the following table:

Table 5: Computation of O&M Expenses

Sl	**Particulars**	**Unit**	**FY 23 - 24**	**FY 24 - 25**	**FY 25 - 26**	**FY 26 - 27**	**FY 27 - 28**	**FY 28 - 29**
1	Normative O&M Expenses	Rs Lakh/ MW	23.26	25.78	27.13	28.56	30.06	31.64
2	Generating Unit Capacity	MW	600	600	600	600	600	600
3	Normative O&M Expenses	Rs. Crore	139.56	154.68	162.78	171.36	180.36	189.84
3	Water Charges	Rs Crore	12.89	13.54	14.22	14.93	15.67	16.46
4	Security Expenses	Rs Crore	3.43	3.60	3.78	3.97	4.17	4.38
5	Ash Transportation Expenses	Rs Crore	26.00	27.30	28.67	30.10	31.61	33.19

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Sl	Particulars	Unit	FY 23 - 24	FY 24 - 25	FY 25 - 26	FY 26 - 27	FY 27 - 28	FY 28 - 29
6	Capital Spares	Rs Crore	2.83	-	-	-	-	-
7	**Total O&M Expenses**	**Rs Crore**	**184.71**	**199.12**	**209.45**	**220.36**	**231.81**	**243.86**

58. Water charges, security expenses and Ash transportation charges are projected by applying escalation at the rate of 5% on actual expenses of FY 2023-24 claimed in the true-up petition of FY 2022-23 (05.09.2022) to FY 2023-24. Escalation rate considered in projected security expenses and ash transportation charges is in line with the escalation rates considered by the Hon'ble Commission in notification of O&M Norms in Tariff Regulations, 2024. Water charges are also projected at the escalation rate of 5% in accordance with Notification from Water Resources Department, Government of Madhya Pradesh attached at **Annexure VII**.

Table 6: Details of water charges

Particulars	Details
Type of plant	Thermal power plant
Type of cooling system	Induced Draft Cooling Tower
Consumption of Water for Seoni Thermal Power Station	Water for this station is drawn from Rani Awanti Bai Lodhi Sagar (Bargi) Dam quantity allocated is 16.00 MCM per Year / 43835 Cum / day
Rate of Water Charges*	Rs. 5.5/Cum Till May'22 & thereafter Rs. 8.4/Cum till Dec'22 & thereafter Rs. 8.82/Cum till Dec'23 and thereafter Rs. 9.26/Cum

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Particulars	Details
Total Water Charges	Rs 12.89 Cr (FY 23-24) and water charges for 2025 – 29 period has been claimed on the basis of water charges for FY 2023-24 with an annual escalation @ 5%. Annual escalation is taken in accordance with Notification from Water Resources Department, Government of Madhya Pradesh attached at **Annexure VII**

** As per true-up petition filed for the period 05.09.2022 to 31.03.2024*

59. Clause 36 (3) of CERC Tariff Regulations, 2024 provides as follows:

Quote

*36 (3): **Transmission System***

(a) The following normative operation and maintenance expenses shall be admissible for the transmission system:

Particulars	***2024-25***	***2025-26***	***2026-27***	***2027-28***	***2028-29***
Norms for sub-station Bays (Rs Lakh per bay)					
400 kV	*29.53*	*31.08*	*32.71*	*34.43*	*36.23*
Norms for AC and HVDC lines (Rs Lakh per km)					
Double Circuit (Twin & Triple Conductor)	*0.861*	*0.906*	*0.953*	*1.003*	*1.056*

(b) The total allowable operation and maintenance expenses for the transmission system shall be calculated by multiplying the number of sub-station bays, transformer capacity of the transformer (in MVA) and km of line length with the applicable norms for the operation and maintenance expenses per bay, per MVA and per km respectively.

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60. The Petitioner submits that it has constructed a dedicated 400 kV Double Circuit (Twin) Transmission Line with a total length of 64.64 km for interconnection with Jabalpur Pooling Sub-station. Copy of the 'Prior Approval of the Government of India under Section 68 of the Electricity Act, 2003' is enclosed herewith and marked as '**Annexure VIII**'. The copy of the 'Connectivity Intimation Letter' from Power Grid Corporation of India Limited is also enclosed herewith and marked as **Annexure IX**.

61. As per the original PPA, the supply of power by the Petitioner to MPPMCL was at busbar of the generating station, with the responsibility of establishing the evacuation facility being that of MPPMCL. The project was then envisaged to be connected to the system of STU.

61. The scope of the Transmission Line was subsequently amended to stipulate that the Petitioner's generating station would be connected to the Central Transmission Utility (CTU) network. Consequently, the Petitioner was required to establish a dedicated transmission line due to the difficulty faced by MPPMCL in ensuring the construction of a long transmission line to connect to the CTU System.

62. Under these circumstances, the Power Purchase Agreement (PPA) was amended between the parties to mandate that the evacuation line be constructed by the Petitioner to connect to the CTU system. However, the delivery point remained Ex-Bus, i.e., the generating station's switchyard. The amendment regarding the modification in the PPA to include the Dedicated Transmission Line (DTL) within the generator's scope was filed with the Hon'ble Madhya Pradesh Electricity Regulatory Commission (MPERC) for approval, which was granted by Hon'ble MPERC's order dated 07.09.2012. The Amended PPA came into force and was to be executed by the parties.

63. The Operation and Maintenance (O&M) norms notified by the Hon'ble MPERC pertain solely to the O&M of the generating station and do not encompass the transmission line. Given the unique facts and circumstances of the Petitioner's case, due to a change in the PPA, the Petitioner was also required to construct the dedicated transmission line for the evacuation of power to MPPMCL at its own expense. However, the O&M Expenses for this portion of the asset, i.e., the dedicated

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transmission line, have not been separately considered and have been disallowed by Hon'ble MPERC. It is noteworthy that had MPPMCL implemented the evacuation infrastructure through MPPTCL, it would have incurred the applicable O&M charges for the maintenance of this asset. The matter is currently sub-judice before the Appellate Tribunal for Electricity (APTEL) concerning the Capital Cost and O&M Charges for the DTL, and the Petitioner may be granted the liberty to approach this Hon'ble Commission (CERC) for revision in Tariff/any implications arising from the final order of the Hon'ble APTEL. However, in Appeal No. 283 of 2017, 131 of 2018, and 231 of 2018 in the matter of M/S Jaiprakash Power Ventures Limited vs. MP Power Management Company Ltd, the Hon'ble APTEL, vide its order dated 22.03.2024, has taken cognizance of similar facts and circumstances and has directed the Hon'ble MPERC to pass consequential orders expeditiously. Accordingly, based on the aforementioned APTEL order, the Hon'ble MPERC, vide its order dated 20.06.2024 in Petition No. 70 of 2015 and 62 of 2016, has already allowed the claim of O&M Expenses for the 400 KV dedicated transmission line constructed by the generator.

64. Further, the extant CERC Regulation, 2024 separately provide for O&M Expenses of Transmission line and pursuant to this, the Petitioner in instant petition has claimed the Operation and Maintenance expense as per Regulation 36(3) of CERC Tariff Regulations, 2024 since the DTL is also an integral part of Power Station.

65. Furthermore, the Petitioner is also entitled to an additional line loss that occurs on the dedicated transmission line of the Petitioner, as the PPAs are signed with the beneficiaries for delivery of power on ex-bus basis i.e. the delivery of power at JPL switchyard. The dedicated transmission line was constructed due to scope change for JPL and CTU connectivity as explained above. The similar issues have already been conclusively adjudicated by the Hon'ble Appellate Tribunal for Electricity (APTEL) in the following cases:

    1. Greenko Budhil Hydro Power Private Limited vs. Uttarakhand Electricity Regulatory Commission, Appeal No. 100 of 2017, order dated 28.08.2024.
    2. Chhattisgarh Biomass Energy Developers Association Limited vs. Chhattisgarh State Electricity Regulatory Commission, Appeal Nos. 63, 66, and 144 of 2012, order dated 29.04.2013.

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Accordingly, the Petitioner has considered the line loss of the dedicated transmission line in the calculation of energy charges in the present petition. The Hon'ble Commission is requested to consider the grossing up of monthly energy charges by 0.63% or actual losses in the dedicated transmission line on month to month basis. The details of actual transmission line losses based on ABT meter data on sample basis are as follows:

Table 7: Actual transmission line loss (%)

Date of measurement	**JPL end (kWh)**	**Jabalpur Pooling station End (kWh)**	**T/ line losses (%)**
	00-24 hrs	00-24 hrs	
12/02/2024	10.909	-10.842	0.61%
13/02/2024	10.773	-10.707	0.61%
14/02/2024	10.697	-10.628	0.64%
15/02/2024	10.468	-10.407	0.59%
16/02/2024	10.518	-10.454	0.60%
17/06/2024	10.814	-10.750	0.59%
18/06/2024	10.081	-10.003	0.77%
19/06/2024	9.518	-9.462	0.59%
20/06/2024	10.303	-10.239	0.62%
Average losses			**0.63%**

66. The table below shows the computation of normative O&M expenses for transmission line:

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Table 8: Computation of O&M for Transmission Line

Sl	Particulars	Unit	FY 24-25	FY 25-26	FY 26-27	FY 27-28	FY 28-29
1	O&M Expenses (for 2 bays)	Rs Crore	0.59	0.62	0.65	0.69	0.72
2	O&M Expenses-Line (for 2 x 64.64 km)	Rs Crore	1.11	1.17	1.23	1.30	1.37
3	**Total O&M – transmission line**	**Rs Crore**	**1.70**	**1.79**	**1.89**	**1.99**	**2.09**

v. Fly Ash Utilization & Ash Transportation

67. It is submitted that, the Ministry of Environment, Forest and Climate Change (MoEFCC) issued a notification dated 25.01.2016 (copy attached as **Annexure X**) regarding utilization of fly ash under which all the thermal power plants needed to comply with the relevant provision as follows:

Quote

(10) The cost of transportation of ash for road construction projects or for manufacturing of ash based products or use as soil conditioner in agricultural activity with a radius of hundred kilometers from a coal or lignite based thermal power plant shall be borne by such coal and lignite based thermal power plant and the cost of transportation beyond the radius of hundred kilometers and up to three hundred kilometers shall be shared equally between the user and the coal or lignite based thermal power plant.

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68. It is submitted that the Petitioner to comply with the above, has projected Ash transportation expenses from FY 2024-25 to FY 2028-29 by applying 5% escalation on the actual expenses of FY 2023-24.

Table 9: Ash Transportation Projected Expenses

SI	Particulars	Unit	Existing FY 23 - 24	FY 24 -25	FY 25 - 26	FY 26 - 27	FY 27 - 28	FY 28 - 29
1	Ash Transportation Expense	Rs Crore	26.00	27.30	28.67	30.10	31.61	33.19

vi. Interest on Working Capital:

69. Regulation 34 of the CERC Tariff Regulation, 2024, provides as follows:

Quote

*34. **Interest on Working Capital***

(1) The working capital shall cover:

(a) For Coal-based/lignite-fired thermal generating stations:

(i) Cost of coal or lignite, if applicable, for 10 days for pit-head generating stations and 20 days for non-pit-head generating stations for generation corresponding to the normative annual plant availability factor or the maximum coal/lignite stock storage capacity, whichever is lower;

(ii) Limestone towards stock for 15 days corresponding to the normative annual plant availability.

(iii) Advance payment for 30 days towards the cost of coal or lignite and limestone for generation corresponding to the normative annual plant availability factor;

(iv) Cost of secondary fuel oil for two months for generation corresponding to the normative annual plant availability factor, and in case of use of more than one secondary fuel oil, cost of fuel oil stock for the main secondary fuel oil;

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(v) Maintenance spares @ 20% of operation and maintenance expenses, including water charges and security expenses;
(vi) Receivables equivalent to 45 days of capacity charge and energy charge for the sale of electricity calculated on the normative annual plant availability factor; and
(vii) Operation and maintenance expenses, including water charges and security expenses, for one month.

(2) The cost of fuel in cases covered under sub-clauses (a) and (c) of clause (1) of this Regulation shall be based on the landed fuel cost (taking into account normative transit and handling losses in terms of Regulation 59 of these regulations) by the generating station and gross calorific value of the fuel as per actual weighted average for the preceding financial year in case of each financial year for which tariff is to be determined:
Provided that in the case of a new generating station, the cost of fuel for the first financial year shall be considered based on landed fuel cost (taking into account normative transit and handling losses in terms of Regulation 59 of these regulations) and gross calorific value of the fuel as per actual weighted average for three months, as used for infirm power, preceding date of commercial operation for which tariff is to be determined.

(3) Rate of interest on working capital shall be on a normative basis and shall be considered at the Reference Rate of Interest as on 1.4.2024 or as on 1st April of the year during the tariff period 2024-29 in which the generating station or a unit thereof or the transmission system including communication system or element thereof, as the case may be, is declared under commercial operation, whichever is later:

(4) Interest on working capital shall be payable on a normative basis, notwithstanding that the generating company or the transmission licensee has not taken a loan for working capital from any outside agency

Unquote

70. The Petitioner submits that it has computed the Working Capital in accordance with Regulation 34 (1) (a) of CERC Tariff Regulations, 2024 from FY 2024-25 to FY 2028-29. Further, with regards to interest rate on Working Capital, in line with Regulation

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34 (3) of CERC Tariff Regulations, 2024 the rate of interest on working capital has been taken on normative basis and has been worked out considering one-year MCLR of SBI as on 1st April'24 plus 325 bps from FY 2024-25 to FY 2028-29.

71. The table below shows the computation of Interest on Working Capital

Table 10: Computation of Interest on Working Capital

Sl	**Particulars**	**Unit**	**FY 24 - 25**	**FY 25 - 26**	**FY 26 - 27**	**FY 27 - 28**	**FY 28 - 29**
1	Cost of Coal	Rs Crore	154.05	154.05	154.05	154.05	154.05
2	Cost of Secondary Fuel	Rs Crore	2.94	2.94	2.94	2.95	2.94
3	O&M Expenses for 1 Month	Rs Crore	16.74	17.60	18.52	19.48	20.50
4	Maintenance Spares	Rs Crore	40.17	42.25	44.45	46.76	49.19
5	Receivables	Rs Crore	232.58	233.21	234.54	235.03	236.25
6	**Total Working Capital**	**Rs Crore**	**446.47**	**450.05**	**454.50**	**458.27**	**462.93**
7	Interest Rate	%	11.90	11.90	11.90	11.90	11.90
8	**Interest on Working Capital**	**Rs Crore**	**53.13**	**53.56**	**54.09**	**54.53**	**55.09**

vii. Non- Tariff Income

72. Regulation 82 of the CERC Tariff Regulations, 2024, provides as follows:

Quote

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62. ***Sharing of Non- Tariff Income:***

The non-tariff net income in case of generating station and transmission system from rent of land or buildings, eco-tourism, sale of scrap, and advertisements shall be shared between the generating company or the transmission licensee and the beneficiaries or the long term customers, as the case may be, in the ratio of 1:1.

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73. The petitioner humbly submits that non-tariff income has not been considered in the instant petition and shall be taken into account at the time of true up for the period FY 2024-25 to FY 2028-29.

viii. Annual Fixed Capacity Charges:

74. Based on the above the Annual Fixed Capacity Charges is shown below:

Table 11: Computation of Annual Fixed Charges

Sl	Particulars	Unit	FY 24-25	FY 25-26	FY 26-27	FY 27-28	FY 28-29
1	Add: Return on Equity	Rs Crore	158.89	161.55	166.04	170.19	174.40
2	Add: Interest on Loan	Rs Crore	114.33	100.56	89.02	76.06	62.61
3	Add: Depreciation	Rs Crore	209.85	215.23	221.59	224.40	228.74
4	Add: Interest on Working Capital	Rs Crore	53.13	53.56	54.09	54.53	55.09
5	Add: O&M Expenses	Rs Crore	199.12	209.45	220.36	231.81	243.86
6	Add: O&M Expenses - Transmission Line	Rs Crore	1.70	1.79	1.89	1.99	2.09
7	**Net: Annual Fixed Charge**	**Rs Crore**	**737.03**	**742.14**	**752.97**	**758.98**	**766.80**

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B. Energy Charges

75. Regulation 64 of the CERC Tariff Regulations, 2024, provides as follows:

Quote

64. **Computation and Payment of Energy Charge for Thermal Generating Stations and Supplementary Energy Charge for Coal or Lignite based Thermal Generating Stations:**

(1) The energy charge shall cover the primary and secondary fuel cost and limestone consumption cost (where applicable) and shall be payable by every beneficiary for the total energy scheduled to be supplied to such beneficiary during the calendar month on an ex-power plant basis, at the energy charge rate of the month (with fuel and limestone price adjustment). The total Energy charge payable to the generating company for a month shall be:

Energy Charges = (Energy charge rate in Rs./kWh) x {Scheduled energy (ex bus) for the month in kWh}

(3) Energy charge rate (ECR) and Supplementary Energy charge rate in Rupees per kWh on ex-power plant basis shall be determined to three decimal places in accordance with the following formulae:

(a) ECR for coal based and lignite fired stations:

ECR = [{(SHR - SFC x CVSF) x LPPF / CVPF} + (SFC x LPSFi) + (LC x LPL)] x 100 114 /(100 - AUX)

Where,

AUX =Normative auxiliary energy consumption in percentage.

CVPF = (a) Weighted Average Gross calorific value of coal considering GCV as per Regulation 60, in kCal per kg for coal based stations less 85 Kcal/Kg on account of variation during storage at generating station;

(b) Weighted Average Gross calorific value of primary fuel as received, in kCal per kg, per litre or per standard cubic meter, as applicable for lignite, gas and liquid fuel based stations;

(d) In the case of blending of fuel from different sources, the weighted average Gross calorific value of the primary fuel shall be arrived at in proportion to the blending ratio:

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CVSF = Calorific value of secondary fuel, in kCal per ml;

ECR = Energy charge rate, in Rupees per kWh sent out;

SHR = Gross station heat rate, in kCal per kWh;

LC = Normative limestone consumption in kg per kWh;

LPL = Weighted average landed cost of limestone in Rupees per kg;

LPPF = Weighted average landed fuel cost of primary fuel, in Rupees per kg, per litre or per standard cubic metre, as applicable, during the month. (In case of blending of fuel from 115 different sources, the weighted average landed fuel cost of primary fuel shall be arrived in proportion to the blending ratio);

SFC = Normative Specific fuel oil consumption, in ml per kWh;

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

(□ECR) = Difference between ECR with revised auxiliary energy consumption with emission control system equivalent to (AUXn + AUXen) and ECR with normative auxiliary energy consumption as specified in these regulations.

SRC = Specific reagent consumption on account of revised emission standards (in g/kWh);

LPR = Weighted average landed price of reagent for the emission control system (in Rs./kg).

Unquote

76. Chapter 12 of CERC Tariff Regulations, 2024, on the Norms of operation for thermal generating station is as follows:

Quote

Norms of operation for thermal generating station

70. The norms of operation as given hereunder shall apply to thermal generating stations:

(A) ***Normative Annual Plant Availability Factor (NAPAF)***

(a) 85% for all thermal generating stations, except those covered under clauses (b), (c), (d) and (e);

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(C) ***Gross Station Heat Rate***

(b) ***Thermal Generating Stations achieving COD on or after 1.4.2009:***

(i) For Coal-based and lignite-fired Thermal Generating Stations:

For 200-300 MW Sets. : 1.05 X Design Heat Rate (kCal/kWh)

For 500 MW Sets and above: 1.045 X Design Heat Rate (kCal/kWh)

(D) ***Secondary Fuel Oil Consumption:***

(a) For Coal-based generating stations: 0.50 ml/kWh

(E) Auxiliary Energy Consumption:

(a) For Coal-based generating stations except at (b) below:

S.No	*Generating Station*	*With Natural Draft cooling tower or without cooling tower*
(i)	*200 MW series*	*8.50%*
(ii)	*300 MW and above*	
	Steam driven boiler feed pumps	*5.25%*
	Electrically driven boiler feed pumps	*8.00%*

Provided that for thermal generating stations with induced draft cooling towers and where tube type coal mill is used, the norms shall be further increased by 0.5% and 0.8% respectively:

Unquote

77. The table below shows the computation of Energy Charges from FY 2024-25 to FY 2028-29.

Table 12:Computation of Energy Charges

Sl	Particular	Unit	FY 24-25	FY 25-26	FY 26-27	FY 27-28	FY 28-29
1	Capacity	MW	600.00	600.00	600.00	600.00	600.00
2	NAPAF	%	85.00%	85.00%	85.00%	85.00%	85.00%

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Sl	Particular	Unit	FY 24-25	FY 25-26	FY 26-27	FY 27-28	FY 28-29
3	Gross Station Heat Rate	kCal / kWh	2337.72	2337.72	2337.72	2337.72	2337.72
4	Specific Fuel Oil Consumption	Ml / kWh	0.50	0.50	0.50	0.50	0.50
5	Aux. Energy Consumption	%	5.75%	5.75%	5.75%	5.75%	5.75%
6	Weighted average GCV of Oil	kCal / ltr	10000	10000	10000	10000	10000
7	Weighted average GCV of Coal (after adjusting 85 kcal/kg)	kCal / kg	3081.71	3081.71	3081.71	3081.71	3081.71
8	Weighted Average landed Price of Coal	Rs. / MT	3325.36	3325.36	3325.36	3325.36	3325.36
9	Weighted Average landed Price of Oil	Rs / KL	79071.71	79071.71	79071.71	79071.71	79071.71
10	Heat Contributed from HFO	kCal / kWh	5.00	5.00	5.00	5.00	5.00
11	Heat Contributed from Coal	kCal / kWh	2332.72	2332.72	2332.72	2332.72	2332.72

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Sl	Particular	Unit	FY 24-25	FY 25-26	FY 26-27	FY 27-28	FY 28-29
12	Specific Coal Consumption	Kg / kWh	0.757	0.757	0.757	0.757	0.757
13	Rate of Energy Charge from Coal	Rs. / kWh	2.671	2.671	2.671	2.671	2.671
14	Rate of Energy Charge from Oil	Rs. / kWh	0.042	0.042	0.042	0.042	0.042
15	Energy Charge from Coal	Rs Crore	1124.56	1124.56	1124.56	1127.64	1124.56
16	Energy Charge from Oil	Rs Crore	17.66	17.66	17.66	17.71	17.66
17	Total Energy Charges (excl. dedicated transmission line loss)	Rs Crore	1142.23	1142.23	1142.23	1145.36	1142.23
18	Total Energy Charges (incl. dedicated transmission line loss)	Rs Crore	1149.42	1149.42	1149.42	1152.57	1149.42
19	**Rate of Energy Charge at ex bus**	**Rs. / kWh**	**2.713**	**2.713**	**2.713**	**2.713**	**2.713**

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Sl	Particular	Unit	FY 24-25	FY 25-26	FY 26-27	FY 27-28	FY 28-29
20	**Rate of Energy Charge at ex bus (incl. dedicated transmission line loss)**	**Rs. / kWh**	**2.730**	**2.730**	**2.730**	**2.730**	**2.730**

Statutory Charges

78. Regulation 77 of the CERC Tariff Regulations, 2024, provides as follows:

Quote

77. ***Recovery of Statutory Charges:*** *The generating company shall recover the statutory charges imposed by the State and Central Government, such as electricity duty and water cess, by considering normative parameters specified in these regulations. In case the electricity duty is applied to the auxiliary energy consumption, such amount of electricity duty shall apply to the normative auxiliary energy consumption of the generating station (excluding colony consumption) and apportioned to each of the beneficiaries in proportion to their scheduled dispatch during the month.*

Unquote

79. The Commission is requested to allow the petitioner to recover Statutory Charges such as Electricity Duty and cess on auxiliary power consumption and other taxes, if any, levied by the statutory authorities from beneficiaries on submission of documentary evidence.

Prayers

The Petitioner most respectfully prays that the Hon'ble Commission may be pleased to:

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i. Approve tariff for Unit-1 of the generating station for the period from 01.04.2024 to 31.03.2029 as per the CERC Tariff Regulations 2024;

ii. Grant approval to charge interim tariff at 90% of the claimed tariff to avoid tariff shock, till the time, final tariff is determined by Hon'ble Commission;

iii. Approve the projected additional capitalization for the period from 01.04.2024 to 31.03.2029;

iv. Allow O&M expenses for dedicated transmission line in addition to the O&M expenses for the generating station

v. Allow Energy Charge Rate to be grossed up by dedicated transmission line loss (0.63% or actual losses) on month to month basis in the billing;

vi. Allow to recover Electricity Duty and Cess on Auxiliary Power Consumption, Cess on power supply to MPPMCL, WRLDC fees & charges and any other taxes, if any, levied by the Statutory Authorities from the beneficiaries on submission of documentary evidence;

vii. Allow to recover the fees paid to the Hon'ble Commission from the beneficiaries on submission of documentary evidence;

viii. Allow to recover the fees paid on account of publication expenses from the beneficiaries on submission of documentary evidence;

ix. Allow the Petitioner to approach the Hon'ble Commission to revise the tariff petition depending on the outcome of proceedings on pending issues at Hon'ble APTEL;

x. Condone any inadvertent omissions/errors/rounding off differences/shortcomings and permit the Petitioner to add/alter this filing and make further submissions as may be required;

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28.11.2024 10.53

xi. Pass such further and other orders, as the Hon'ble Commission may deem fit and proper, keeping in view the facts and circumstances of the case.

(Petitioner)

Place: Noida

Date: 28.11.2024

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Vinod Kumar Jain
28.11.2024 10.53

BEFORE THE HON'BLE CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI

Petition No. ___ of ___

IN THE MATTER OF: - Petition under Section 62 and Section 79 (1) (a) of the Electricity Act, 2003 read with Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2024 ("CERC Tariff Regulations, 2024") for approval of Tariff for period 01.04.2024 to 31.03.2029 in respect of 1 x 600 MW Seoni Thermal Power Station at Barela- Gorakhpur, Dist. Seoni, Madhya Pradesh.

Jhabua Power Limited
3rd Floor, Plot No A-8A, Sector -24, NTPC - EOC Noida-201301
---- Petitioner

VERSUS:

1. **Madhya Pradesh Power Management Company Ltd**
Shakti Bhawan Road, MPSEB colony Vidyut Nagar, Rampur, Jabalpur (M.P)- 482008

2. **Madhya Pradesh Poorv Kshetra Vidyut Vitaran Co. Ltd. Jabalpur**
Shakti Bhawan, Vidyut Nagar, Rampur, Jabalpur (M.P)- 482008

3. **Madhya Pradesh Madhya Kshetra Vidyut Vitaran Co. Ltd Bhopal**
Bijli Nagar Colony, Nishtha Parisar, Govindpura, Bhopal (M.P.) - 462023

4. **Madhya Pradesh Paschim Kshetra Vidyut Vitaran Ltd. Indore**
GPH Campus, Polo Ground, Indore (M.P.) – 452003

---- Respondents

NOTARY YOGENDRA SINGH AREA NOIDA G.B. NAGAR REGN. NO. 5677/08 GOVT. OF INDIA NOTARIAL NOTARIAL

AFFIDAVIT VERIFYING THE PETITION

I, Vinod Kumar Jain, S/o late Sh. R.C. Jain, aged 52 years, having office at Third Floor, Sector-24, NTPC EOC Noida - 201301, Uttar Pradesh do hereby solemnly affirm and state as follows:

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Vinod Kumar Jain
28.11.2024 10.53

NOTARY YOGENDRA SINGH AREA NOIDA G.B. NAGAR REGN. NO. 5677/08 GOVT. OF INDIA

JHABUA POWER LIMITED Noida (U.P.)

1. That the deponent is working as AGM - Commercial of Petitioner, and is well conversant with the facts and the circumstances of the case and therefore competent to swear this affidavit.

2. That the accompanying Petition under Section 62 and Section 79 (1) (a) of the Electricity Act, 2003, has been filed by my authorised representative under my instruction and the contents of the same are true and correct to the best of my knowledge and belief.

3. That the contents of Para ..1.. to ..79.. of the facts as mentioned in the Petition are true and correct based on my personal knowledge, belief and records maintained in the office.

4. That the annexures annexed to the Petition are correct and true copies of the respective originals.

5. That the Deponent has not filed any other Petition or Appeal before any other forum or court of law with respect to the subject matter of the dispute.

JHABUA POWER LIMITED

DEPONENT

VERIFICATION

Verified at Noida on this 22nd day of November, 2024, that the contents of my above noted affidavit are true and correct to my knowledge and no part of it is false and nothing material has been concealed therefrom.

NOTARY GOVT. OF INDIA YOGENDRA SINGH AREA NOIDA G.B. NAGAR REGN. NO. 5677/08

ATTESTED
YOGENDRA SINGH
NOTARY NOIDA
G B NAGAR (U.P.) INDIA

22 NOV 2024

JHABUA POWER LIMITED Noida (U.P.)

DEPONENT

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28.11.2024 10.53

Appendix - I

TARIFF FILING FORMS (THERMAL)

FOR DETERMINATION OF TARIFF

FOR

Seoni Thermal Power Station at Village Barela – Gorakhpur, Dist. Seoni, Madhya Pradesh
(1 X 600 MW)

Main Tariff Form

PART-I

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Checklist of Main Tariff Forms and other information for tariff filing for Thermal Stations

Form No.	Title of Tariff Filing Forms (Thermal)	Tick
FORM- 1	Summary of Tariff	✓
FORM -1 (I)	Statement showing claimed capital cost	✓
FORM -1 (II) A	Statement showing Return on Equity at Normal Rate	✓
FORM -1 (II) B	Statement showing Return on Equity linked to SBI MCLR	✓
FORM-2	Plant Characteristics	✓
FORM-3	Normative parameters considered for tariff computations	✓
Additional 3A	Statement showing O&M Expenses	✓
FORM- 4	Details of Foreign loans	Not Applicable
FORM- 4A	Details of Foreign Equity	Not Applicable
FORM-5	Abstract of Admitted Capital Cost for the existing Projects	✓
FORM- 6	Financial Package upto COD	Not Applicable
FORM- 7	Details of Project Specific Loans	Not Applicable
FORM- 8	Details of Allocation of corporate loans to various projects	Not Applicable
FORM- 9A	Summary of Addtitional Capitalisation after COD	✓
FORM-9	Statement of Additional Capitalisation after COD	✓
FORM- 10	Financing of Additional Capitalisation	✓
FORM- 11	Calculation of Depreciation on original project cost	✓
FORM- 12	Statement of Depreciation	✓
FORM- 13	Calculation of Weighted Average Rate of Interest on Actual Loans	✓
FORM- 14	Draw Down Schedule for Calculation of IDC & Financing Charges	Not Applicable
FORM- 15	Details of Fuel for Computation of Energy Charges	✓
FORM- 15A	Details of Secondary Fuel for computation of Energy Charges	✓
FORM- 15B	Computation of Energy Charges	✓
FORM- 16	Details of Limestone for Computation of Energy Charge Rate	Not Applicable
FORM-17	Details of Capital Spares	****
FORM- 18	Non-Tariff Income	****
FORM-19	Details of Water Charges	****
FORM-20	Details of Statutory Charges	****

List of Supporting Forms / documents for tariff filing for Thermal Stations

FORM-A	Abstract of Capital Cost Estimates	Not Applicable
FORM-B	Break-up of Capital Cost for Coal/Lignite based projects	Not Applicable
FORM-C	Break-up of Capital Cost for Gas/Liquid fuel based Projects	Not Applicable
FORM-D	Break-up of Construction/Supply/Service packages	Not Applicable
FORM-E	Details of variables, parameters, optional package etc. for New Project	Not Applicable
FORM-F	Details of cost over run	Not Applicable
FORM-G	Details of time over run	Not Applicable
FORM –H	Statement of Additional Capitalisation during end of the useful life	Not Applicable
FORM –I	Details of Assets De-capitalised during the period	****
FORM –J	Reconciliation of Capitalisation claimed vis-à-vis books of accounts	****
FORM –K	Statement showing details of items/assets/works claimed under Exclusions	****
FORM-L	Statement of Capital cost	****
FORM-M	Statement of Capital Woks in Progress	****
FORM-N	Calculation of Interest on Normative Loan	✓
FORM-O	Calculation of Interest on Working Capital	✓
FORM-P	Incidental Expenditure up to SCOD and up to Actual COD	Not Applicable
FORM-Q	Expenditure under different packages up to SCOD and up to Actual COD	Not Applicable
FORM-R	Actual cash expenditure	Not Applicable
FORM-S	Statement of Liability flow	****
FORM-T	Summary of issues involved in the petition	✓

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Shall be submitted at the time of truing-up

List of supporting documents for tariff filing for Thermal Stations

S. No.	Information / Document	Tick
1	Certificate of incorporation, Certificate for Commencement of Business, Memorandum of Association, & Articles of Association (For New Station setup by a company making tariff application for the first time to CERC)	Submitted along with True-up petition
2	A. Station wise and Corporate audited Balance Sheet and Profit & Loss Accounts with all the Schedules & annexures on COD of the Station for the new station & for the relevant years. B. Station wise and Corporate audited Balance Sheet and Profit & Loss Accounts with all the Schedules & annexures for the existing station for relevant years.	Submitted along with True-up petition / ****
3	Copies of relevant loan Agreements	Submitted along with True-up petition
4	Copies of the approval of Competent Authority for the Capital Cost and Financial package.	NA
5	Copies of the Equity participation agreements and necessary approval for the foreign equity.	NA
6	Copies of the BPSA/PPA with the beneficiaries, if any	Submitted along with True-up petition
7	Detailed note giving reasons of cost and time over run, if applicable. List of supporting documents to be submitted: a. Detailed Project Report b. CPM Analysis c. PERT Chart and Bar Chart d. Justification for cost and time Overrun	NA
8	Generating Company shall submit copy of Cost Audit Report along with cost accounting records, cost details, statements, schedules etc. for the Generating Unit wise /stage wise/Station wise/ and subsequently consolidated at Company level as submitted to the Govt. of India for first two years i.e. 2019-20 and 2020-21 at the time of mid-term true-up in 2021-22 and for balance period of tariff period 2019-24 at the time of final true-up in 2024-25. In case of initial tariff filing the latest available Cost Audit Report should be furnished.	NA
9	Any other relevant information, (Please specify)	NA
10	Reconciliation with Balance sheet of any actual additional capitalization and amongst stages of a generating station	NA
11	BBMB is maintaining the records as per the relevant applicable Acts. Formats specified herein may not be suitable to the available information with BBMB. BBMB may modify the formats suitably as per available information to them for submission of required information for tariff purpose.	NA

******* Shall be submitted at the time of truing-up***

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28.11.2024 10.53

PART 1
FORM- 1

Summary of Tariffs

Name of the Petitioner Jhabua Power Limited (JV of NTPC Limited)
Name of the Generating Station Seoni TPP (1x600 MW)
Place (Region/District/State): District - Ghansore, Madhya Pradesh

(Amount in Rs Lakh)

S.No.	Particulars	Unit	Existing 2023-24	2024-25	2025-26	2026-27	2027-28	2028-29
1	2	3	4	5	6	7	8	9
1	**Summary of Tariff**							
1.1	Depreciation	Rs Lakh	20,770.13	20,985.29	21,522.86	22,158.61	22,440.00	22,874.42
1.2	Interest on Loan	Rs Lakh	13,012.24	11,433.30	10,056.29	8,901.66	7,605.79	6,260.87
1.3	Return on Equity	Rs Lakh	15,759.28	15,888.87	16,154.93	16,603.60	17,019.16	17,440.26
1.4	Interest on Working Capital	Rs Lakh	5,025.86	5,313.01	5,355.60	5,408.60	5,453.41	5,508.82
1.5	O&M Expenses	Rs Lakh	18,676.00	20,082.83	21,123.98	22,224.65	23,379.55	24,595.25
1.6	Special Allowance (If applicable)	Rs Lakh	-	-	-	-	-	-
	Loss on Retirement on Assets	Rs Lakh	349.27					
	Total	**Rs Lakh**	**73,592.78**	**73,703.31**	**74,213.66**	**75,297.13**	**75,897.90**	**76,679.61**
2	Primary Fuel							
2.1	Landed Fuel Cost (coal/gas/RLNG/ liquid) as per FSA approved by beneficiaries	Rs/Ton	3,284.92	3325.36				
	(%) of Fuel Quantity	(%)	100%	100%				
2.2	Landed Fuel Cost (coal from Integrated mine) as per FSA, if any, approved by beneficiaries or as per allocation of coal quantity	Rs/Ton	NA	NA	NA	NA	NA	NA
	(%) of Fuel Quantity	(%)	NA	NA	NA	NA	NA	NA
2.3	Landed Fuel Cost Imported Coal as per FSA approved by beneficiaries		NA	NA	NA	NA	NA	NA
	(%) of Fuel Quantity		NA	NA	NA	NA	NA	NA
2.4	Landed Fuel Cost (coal/gas /RLNG/liquid) other than FSA	Rs/Ton	NA	NA	NA	NA	NA	NA
	(%) of Fuel Quantity	(%)	NA	NA	NA	NA	NA	NA
2.5	Landed Fuel Cost Imported Coal other than FSA.		NA	NA	NA	NA	NA	NA
	(%) of Fuel Quantity		NA	NA	NA	NA	NA	NA
3	Secondary Fuel							
3.1	Secondary fuel oil cost	Rs/Unit	0.041	0.042				
	Energy Charge Rate ex-bus (Paise/kWh) 2A, 2B, 2C, 2D	Rs/Unit	2.534	2.730				

(Petitioner)

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Vinod Kumar Jain
28.11.2024 10.53

PART 1
FORM-1(I)

Name of the Petitioner Jhabua Power Limited (JV of NTPC Limited)
Name of the Generating Station Seoni TPP (1x600 MW)

Statement showing claimed capital cost – (A+B)

INR Lakhs

S. No.	Particulars	2024-25	2025-26	2026-27	2027-28	2028-29
1	2	3	4	5	6	7
1	Opening Capital Cost	406,128.89	410,203.89	420,568.89	433,794.89	440,722.39
2	Add: Addition during the year/period	4,075.00	10,365.00	13,226.00	6,927.50	12,600.00
3	Less: De-capitalisation during the year/period	-	-	-	-	-
4	Less: Reversal during the year / period	-	-	-	-	-
5	Add: Discharges during the year/ period	-	-	-	-	-
6	Closing Capital Cost	410,203.89	420,568.89	433,794.89	440,722.39	453,322.39
7	**Average Capital Cost**	**408,166.39**	**415,386.39**	**427,181.89**	**437,258.64**	**447,022.39**

Statement showing claimed capital cost eligible for RoE at normal rate (A)

S. No.	Particulars	2024-25	2025-26	2026-27	2027-28	2028-29
1	2	3	4	5	6	7
1	Opening Capital Cost	403,855.67	403,930.67	404,430.67	407,656.67	414,034.17
2	Add: Addition during the year / period	75.00	500.00	3,226.00	6,377.50	6,600.00
3	Less: De-capitalisation during the year / period	-	-	-	-	-
4	Less: Reversal during the year / period	-	-	-	-	-
5	Add: Discharges during the year / period	-	-	-	-	-
6	Closing Capital Cost	403,930.67	404,430.67	407,656.67	414,034.17	420,634.17
7	**Average Capital Cost**	**403,893.17**	**404,180.67**	**406,043.67**	**410,845.42**	**417,334.17**

Statement showing claimed capital cost eligible for RoE at one year MCLR + 350 bps subject to ceiling of 14.00% (B)

S. No.	Particulars	2024-25	2025-26	2026-27	2027-28	2028-29
1	2	3	4	5	6	7
1	Opening Capital Cost	2,273.22	6,273.22	16,138.22	26,138.22	26,688.22
2	Add: Addition during the year / period	4,000.00	9,865.00	10,000.00	550.00	6,000.00
3	Less: De-capitalisation during the year / period	-	-	-	-	-
4	Less: Reversal during the year / period	-	-	-	-	-
5	Add: Discharges during the year / period	-	-	-	-	-
6	Closing Capital Cost	6,273.22	16,138.22	26,138.22	26,688.22	32,688.22
7	**Average Capital Cost**	**4,273.22**	**11,205.72**	**21,138.22**	**26,413.22**	**29,688.22**

(Petitioner)

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Vinod Kumar Jain
28.11.2024 10.53

PART 1
FORM-1(II A)

Name of the Petitioner Jhabua Power Limited (JV of NTPC Limited)
Name of the Generating Station Seoni TPP (1x600 MW)

Statement showing Return on Equity at Normal Rate:

Sr	Particulars	2024-25	2025-26	2026-27	2027-28	2028-29
1	2	3	4	5	6	7
	Return on Equity					
1	Gross Opening Equity (Normal)	101,492.71	101,515.21	101,665.21	102,633.01	104,546.26
2	Less: Adjustment in Opening Equity	-	-	-	-	-
3	Adjustment during the year	-	-	-	-	-
4	Net Opening Equity (Normal)	101,492.71	101,515.21	101,665.21	102,633.01	104,546.26
5	Add: Increase in equity due to addition during the year / period	22.50	150.00	967.80	1,913.25	1,980.00
7	Less: Decrease due to De-capitalisation during the year / period					
8	Less: Decrease due to reversal during the year / period					
9	Add: Increase due to discharges during the year / period					
10	Net closing Equity (Normal)	101,515.21	101,665.21	102,633.01	104,546.26	106,526.26
11	Average Equity (Normal)	101,503.96	101,590.21	102,149.11	103,589.64	105,536.26
12	Rate of ROE	15.50%	15.50%	15.50%	15.50%	15.50%
13	**Total ROE**	**15,733.11**	**15,746.48**	**15,833.11**	**16,056.39**	**16,358.12**

(Petitioner)

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Vinod Kumar Jain
28.11.2024 10.53

PART 1
FORM-1 (II B)

Name of the Petitioner Jhabua Power Limited (JV of NTPC Limited)
Name of the Generating Station Seoni TPP (1x600 MW)

Statement showing Return on Equity linked to SBI MCLR:

Sr	Particulars	2024-25	2025-26	2026-27	2027-28	2028-29
1	2	3	4	5	6	7
	Return on Equity (beyond the original scope of work including additional capitalization due to Change in Law, ECS, Force Majeure)					
1	Gross Opening Equity (Normal)	681.97	1,881.97	4,841.47	7,841.47	8,006.47
2	Less: Adjustment in Opening Equity					
3	Adjustment during the year					
4	Net Opening Equity (Normal)	681.97	1,881.97	4,841.47	7,841.47	8,006.47
5	Add: Increase in equity due to addition during the year / period	1,200.00	2,959.50	3,000.00	165.00	1,800.00
6	Less: Decrease due to De-capitalisation during the year / period	-	-	-	-	-
7	Less: Decrease due to reversal during the year / period	-	-	-	-	-
8	Add: Increase due to discharges during the year / period	-	-	-	-	-
9	Net closing Equity (Normal)	1,881.97	4,841.47	7,841.47	8,006.47	9,806.47
10	Average Equity (Normal)	1,281.97	3,361.72	6,341.47	7,923.97	8,906.47
11	Rate of ROE (One year SBI MCLR+350 bps subject to ceiling of 14.00%)	12.15%	12.15%	12.15%	12.15%	12.15%
12	**Total ROE**	**155.76**	**408.45**	**770.49**	**962.76**	**1,082.14**

(Petitioner)

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Vinod Kumar Jain
28.11.2024 10.53

Plant Characteristics

Name of the Petitioner — Jhabua Power Limited (JV of NTPC Limited)
Name of the Generating Station — Seoni TPP (1x600 MW)

Unit(s)/Block(s)/Parameters	**1x600 MW**
Installed Capacity (MW)	600
Schedule COD as per Investment Approval	31st March 2015
Actual COD /Date of Taken Over (as applicable)	3rd May 2016
Pit Head or Non Pit Head or Integrated Mine	Non-Pit Head Station
Distance from Integrated mine (kms), If applicable	NA
Name of the Boiler Manufacture	BHEL
Name of Turbine Generator Manufacture	BHEL
Main Steams Pressure at Turbine inlet (kg/Cm^2) abs[1] .	176.7
Main Steam Temperature at Turbine inlet (^oC) [1]	540
Reheat Steam Pressure at Turbine inlet (kg/Cm^2) [1]	43.2
Reheat Steam Temperature at Turbine inlet (^oC) [1]	540
Main Steam flow at Turbine inlet under MCR condition (tons /hr)[2]	1798.2
Main Steam flow at Turbine inlet under VWO condition (tons /hr)[2]	1793.8
Unit Gross electrical output under MCR/ Rated condition (MW)[3]	600
Unit Gross electrical output under VMO condition (MW)[3]	600
Guaranteed Design Gross Turbine Cycle Heat Rate (kCal/kWh)[3]	1944
Conditions on which design turbine cycle heat rate guaranteed	
% MCR	100% TMCR
% Makeup Water Consumption	0%
Design Capacity of Make up Water System	2185
Design Capacity of Inlet Cooling System	70236
Design Cooling Water Temperature (^0C)	33
Back Pressure	0.1033
Steam flow at super heater outlet under BMCR condition (tons/hr)	1950
Steam Pressure at super heater outlet under BMCR condition) (kg/Cm^2)	178
Steam Temperature at super heater outlet under BMCR condition (^0C)	540
Steam Temperature at Reheater outlet at BMCR condition (^0C) condition ^oC	540
Design / Guaranteed Boiler Efficiency (%) [4]	86.9
Design Fuel with and without Blending of domestic /imported coal.	COAL
Type of Cooling Tower	Induced Draft
Type of cooling system[5]	Induced Draft
Type of Boiler Feed Pump[6]	Steam Turbine Driven
Type of Coal Mill	Bowl Mill / XRP1043 , make : BHEL
Fuel Details[7]	
-Primary Fuel	Coal
-Secondary Fuel	LDO
-Alternate Fuels	
Types of SOX control system	Nil
Types of NOX control system	Low Nox Coal Burners (32 Nos in 8 elevation)
Details of SPM control system	Electrostatic Precipitator, Type: FAA-9X45 M-2X112150-2
Special Features/Site Specific Features[8]	a. Railway Siding at PJPB siding within Plant b. Intake water system from Bargi reservoir at a distance of approx. 12 kms.
Special Technological Features[9]	High Concentration Slurry Discharge System (HCSD) for ash disposal
Environmental Regulation related features[10]	ESP designed for outlet dust concentration of less than 50mg/Nm3.
Any other special features	Non-Pit Head Station

1. At Turbine MCR condition.
2. With 0% (Nil) make up and design Cooling water temperature
3. At TMCR output based on gross generation, 0% (Nil) makeup and design Cooling water temperature.
4. With Performance coal based on Higher Heating Value (HHV) of fuel and at BMCR) out put
5. Closed circuit cooling, once through cooling, sea cooling, natural draft cooling, induced draft cooling etc.
6. Motor driven, Steam turbine driven etc.
7. Coal or natural gas or Naptha or lignite etc.
8. Any site-specific feature such as Merry-Go-Round, Front/Rear/Sides fired Boiler, Vicinity to sea, Intake /makeup water systems etc. scrubbers etc. Specify all such features
9. Any Special Technological feature like Advanced class FA technology in Gas Turbines, etc.
10. Environmental Regulation related features like FGD, ESP etc.,

Note 1: In case of deviation from specified conditions in Regulation, correction curve of manufacturer may also be submitted.
Note 2: Heat Balance Diagram has to be submitted along with above information in case of new stations.
Note 3: The Terms – MCR, BMCR, HHV, Performance coal, are as defined in CEA Technical Standards for Construction of Electric Plants and Electric Lines Regulations – 2010 notified by the Central Electricity Authority.

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(Petitioner)

PART 1
FORM- 3

Normative parameters considered for tariff computations

Name of the Petitioner Jhabua Power Limited (JV of NTPC Limited)
Name of the Generating Station Seoni TPP (1x600 MW)

(Year Ending March) **INR Lakhs**

Particulars	Unit	Existing 2023-24	2024-25	2025-26	2026-27	2027-28	2028-29
1	2	3	4	5	6	7	8
Base Rate of Return on Equity	%	15.50%	15.50%	15.50%	15.50%	15.50%	15.50%
Base Rate of Return on Equity on Add. Capitalization	%						
Effective Tax Rate [4]	%	0%	0.00%	0.00%	0.00%	0.00%	0.00%
Target Availability (NAPAF)	%	85%	85.00%	85.00%	85.00%	85.00%	85.00%
Peak Hours	%	85%	85.00%	85.00%	85.00%	85.00%	85.00%
Off-Peak Hours	%	85%	85.00%	85.00%	85.00%	85.00%	85.00%
ß- Average Monthly Frequency Response Performance[5]	0-1						
Auxiliary Energy Consumption	%	6.25%	5.75%	5.75%	5.75%	5.75%	5.75%
Gross Station Heat Rate	kCal/kWh	2,348.85	2,337.72	2,337.72	2,337.72	2,337.72	2,337.72
Specific Fuel Oil Consumption	ml/kWh	0.50	0.50	0.50	0.50	0.50	0.50
Cost of Coal/Lignite for WC[1]	in Months	1.67	1.67	1.67	1.67	1.67	1.67
Cost of Main Secondary Fuel Oil for WC[1]	in Months	2	2	2	2	2	2
Fuel Cost for WC[2]	in Months	NA	NA	NA	NA	NA	NA
Liquid Fuel Stock for WC[2]	in Months	NA	NA	NA	NA	NA	NA
O&M Expenses	Rs lakh/MW	23.26	25.78	27.13	28.56	30.06	31.64
Maintenance Spares for WC	% of O&M	20%	20%	20%	20%	20%	20%
Receivables for WC	in Months	1.5	1.5	1.5	1.5	1.5	1.5
Storage capacity of Primary fuel	MT	250,000.00	250,000.00	250,000.00	250,000.00	250,000.00	250,000.00
SBI 1 Year MCLR plus 325 basis point[3] as on 01.04.24	%	12.00%	11.90%	11.90%	11.90%	11.90%	11.90%
Blending ratio of domestic coal/imported coal		NA	NA	NA	NA	NA	NA
Norms for consumption of reagent		NA	NA	NA	NA	NA	NA
Specific Limestone consumption for Wet Limestone FGD		NA	NA	NA	NA	NA	NA
Specific Limestone consumption for Lime Spray Dryer or Semi-dry FGD		NA	NA	NA	NA	NA	NA
Specific consumption of sodium bicarbonate		NA	NA	NA	NA	NA	NA
Specific Limestone consumption for CFBC based generating station		NA	NA	NA	NA	NA	NA
specific urea consumption of the SNCR		NA	NA	NA	NA	NA	NA
Specific ammonia consumption of the SCR		NA	NA	NA	NA	NA	NA
Transit and Handling Losses of coal or lignite, as applicable	%	0.80%	0.80%	0.80%	0.80%	0.80%	0.80%

Note: 1). For Coal based/lignite based generating stations
2). For Gas Turbine/Combined Cycle generating stations duly taking into account the mode of operation on gas fuel and liquid fuel.
3). Mention relevant date.
4). Effective tax rate is to be computed in accordance with Regulation 31 i.e. actual tax (or advance tax)/gross income, where gross income refers the profit before tax.
5). To be submitted at the time of truing up based on RPC certification.

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28.11.2024 10.53

(Petitioner)

PART 1
FORM- 3A

Normative parameters considered for tariff computations

Name of the Petitioner Jhabua Power Limited (JV of NTPC Limited)
Name of the Generating Station Seoni TPP (1x600 MW)

(Year Ending March) **INR Lakhs**

S.No.	Particulars	Unit	Existing 2023-24	2024-25	2025-26	2026-27	2027-28	2028-29
1	2	3	4	5	6	7	8	9
1	**O&M expenses under Reg.36 (1) and 36 (3)**							
1.1	Normative	INR Lakhs	14,160.52	15,638.37	16,457.29	17,324.62	18,234.53	19,192.98
2	**O&M expenses under Reg.36 (1) (6)**							
2.1	Water Charges #**	INR Lakhs	1,289.36	1,353.82	1,421.52	1,492.59	1,567.22	1,645.58
2.2	Security expenses **	INR Lakhs	343.04	360.19	378.20	397.11	416.97	437.82
2.3	Capital Spares ***	INR Lakhs	282.65	-	-	-	-	-
2.4	O&M expenses-Ash Transportation **	INR Lakhs	2,600.43	2,730.45	2,866.97	3,010.32	3,160.84	3,318.88
	Total O&M Expenses	**INR Lakhs**	**18,676.00**	**20,082.83**	**21,123.98**	**22,224.65**	**23,379.55**	**24,595.25**

Note: Water charges, security expenses and Ash transportation charges are projected by applying escalated at rate of 5% on actual expenses of FY 2023-24.

Notification of water charges is attached as Annexure-VII of the petition

** Subject to truing up.

*** Shall be provided at the time of truing up

(Petitioner)

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28.11.2024 10.53

Abstract of Admitted Capital Cost for the existing Projects

Name of the Petitioner Jhabua Power Limited (JV of NTPC Limited)
Name of the Generating Station Seoni TPP (1x600 MW)

Last date of order of Commission for the project	Date (DD-MM-YYYY)	05-03-2024
Reference of petition no. in which the above order was passed	Petition no.	61 of 2023 (MPERC)
Following details (whether admitted and /or considered) as on the last date of the period for which tariff is approved, in the above order by the Commission:		
Capital cost	(Rs. in lakh)	402,532.00
Amount of un-discharged liabilities included in above (& forming part of admitted capital cost)		Not mentioned in Tariff Order
Amount of un-discharged liabilities corresponding to above admitted capital cost (but not forming part of admitted capital cost being allowed on cash basis)		Not mentioned in Tariff Order
Gross Normative Debt		301,545.40
Cumulative Repayment		128,241.00
Net Normative Debt		173,304.40
Normative Equity		101,049.60
Cumulative Depreciation		128,240.68
Freehold land		5,548.00

Note: Amount of Gross Normative Debt was not mentioned in Tariff Order dated 05th March 2024, the Petitioner have calculated the same by adding cummulative depreciation and net normative debt available in the said tariff order. However, there is a difference of Rs. 63 lacs when the Gross Normative Debt amount is calculated by subtracting normative equity and approved capital cost. Further, for the calculation of normative interest on loan and return on equity the Petition in the instant petition have used the approved Net Normative Debt and Normative Equity balance as mentioned in the tariff order dated 05th March 2024.

(Petitioner)

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28.11.2024 10.53

Year wise Statement of Additional Capitalisation after COD

Name of the Petitioner Jhabua Power Limited (JV of NTPC Limited)
Name of the Generating Station Seoni TPP (1x600 MW)
COD 3rd May 2016
For Financial Year FY 2024-25

INR Lakhs

S. No.	Head of Work / Equipment	ACE Claimed (Projected)					Regulations under which claimed / Justification	Admitted Cost by the Commission, if
		2024-25	2025-26	2026-27	2027-28	2028-29		
1	2	3	4	5	6	7	8	9
A	**For assets eligible for Normal RoE**							
1	Coal Handling Plant / Ash Handling Plant / Ash Dyke	75.00	-	-	27.50	-	Regulation 25 read with Resolution Plan - The expenditure on the coal/ash handling plant/ash dyke/Civil works and BTG works was already included in the original scope of works. However, due to severe financial stress, some portions of the same could not be undertaken by the Petitioner. Pursuant to takeover, it was planned to incur substantial amounts to complete these works in the respective financial years. Further, it is reiterated that all these works are part of the original scope and necessary for the efficient operation of the generating station over remaining plant life. It is also an important factor to note that estimated miscellaneous/balance capex works were also part of the proposal of takeover submitted by NTPC and form part of the resolution plan approved by NCLT.	
2	Civil	-	500.00	3,226.00	4,350.00	6,600.00		
3	Boiler, Turbine & Generator (BTG)	-	-	-	2,000.00	-		
	Total (A)	**75.00**	**500.00**	**3,226.00**	**6,377.50**	**6,600.00**		
A	**For assets eligible for RoE at Weightage average rate of interest on loan**							
1	Coal Handling Plant / Ash Handling Plant / Ash Dyke	-	2,515.00	-	-	700.00	Regulation 26 (1) (i) read with Resolution Plan. The additional capex is necessary to maintain maximum station availability at all times. Also, the Petitioner was under CIRP process, thereby was not able to make necessary capex, however, post-takeover this capex is required. It is also an important factor to note that estimated miscellaneous/balance capex works were also part of the proposal of takeover submitted by NTPC and form part of the resolution plan approved by NCLT.	
2	Civil	-	-	-	-	5,300.00		
3	Boiler, Turbine & Generator (BTG)	4,000.00	7,350.00	10,000.00	550.00	-		
	Total (B)	**4,000.00**	**9,865.00**	**10,000.00**	**550.00**	**6,000.00**		
	Total Additional Capitalisation claimed	**4,075.00**	**10,365.00**	**13,226.00**	**6,927.50**	**12,600.00**		

(Petitioner)

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28.11.2024 10.53

Year wise Statement of Additional Capitalisation after COD

Name of the Petitioner Jhabua Power Limited (JV of NTPC Limited)
Name of the Generating Station Seoni TPP (1x600 MW)
COD 3rd May 2016
For Financial Year FY 2024-25

INR Lakhs

S. No.	Head of Work / Equipment	ACE Claimed (Actual / Projected)				Regulations under which claimed	Justification	Admitted Cost by the Commission, if any
		Accrual basis	Un-discharged Liability included in column	Cash basis	IDC included in col. 3			
1	2	3	4	(5 = 3 - 4)	6	7	8	9
A	**For assets eligible for normal RoE**							
1	Coal Handling Plant / Ash Handling Plant / Ash Dyke	75.00		75.00		Regulation 25 read with Approved Resolution Plan	For detailed justification, refer Form 9A (summary)	
2	Civil	-		-				
3	Boiler, Turbine & Generator (BTG)	-		-				
	Total (A)	**75.00**	**-**	**75.00**				
B	**For assets eligible for RoE at One year MCLR+350 bps subject to ceiling of 14.00%**							
1	Coal Handling Plant / Ash Handling Plant / Ash Dyke	-		-		Regulation 26 (1) (i) read with Approved Resolution Plan	For detailed justification, refer Form 9A (summary)	
2	Civil	-		-				
3	Boiler, Turbine & Generator (BTG)	4,000.00		4,000.00				
	Total (B)	**4,000.00**	**-**	**4,000.00**				
	Total Add. Cap. Claimed (A+B)	**4,075.00**	**-**	**4,075.00**				

(Petitioner)

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28.11.2024 10.53

Year wise Statement of Additional Capitalisation after COD

Name of the Petitioner Jhabua Power Limited (JV of NTPC Limited)
Name of the Generating Station Seoni TPP (1x600 MW)
COD 3rd May 2016
For Financial Year FY 2025-26

INR Lakhs

S. No.	Head of Work / Equipment	ACE Claimed (Actual / Projected)				Regulations under which claimed	Justification	Admitted Cost by the Commission, if any
		Accrual basis	Un-discharged Liability included in column [3]	Cash basis	IDC included in col. 3			
1	2	3	4	(5 = 3 - 4)	6	7	8	9
A	**For assets eligible for normal RoE**							
1	Coal Handling Plant / Ash Handling Plant / Ash Dyke	-		-		Regulation 25 read with Approved Resolution Plan	For detailed justification, refer Form 9A (summary)	
2	Civil	500.00		500.00				
3	Boiler, Turbine & Generator (BTG)	-		-				
	Total	**500.00**	**-**	**500.00**				
B	**For assets eligible for RoE at One year MCLR+350 bps subject to ceiling of 14.00%**							
1	Coal Handling Plant / Ash Handling Plant / Ash Dyke	2,515.00		2,515.00		Regulation 26 (1) (i) read with Approved Resolution Plan	For detailed justification, refer Form 9A (summary)	
2	Civil	-		-				
3	Boiler, Turbine & Generator (BTG)	7,350.00		7,350.00				
	Total (B)	**9,865.00**	**-**	**9,865.00**				
	Total Add. Cap. Claimed (A+B)	**10,365.00**	**-**	**10,365.00**				

(Petitioner)

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Year wise Statement of Additional Capitalisation after COD

Name of the Petitioner Jhabua Power Limited (JV of NTPC Limited)
Name of the Generating Station Seoni TPP (1x600 MW)
COD 3rd May 2016
For Financial Year FY 2026-27

INR Lakhs

S. No.	Head of Work / Equipment	ACE Claimed (Actual / Projected)				Regulations under which claimed	Justification	Admitted Cost by the Commission, if any
		Accrual basis	Un-discharged Liability included in column	Cash basis	IDC included in col. 3			
1	2	3	4	(5 = 3 - 4)	6	7	8	9
A	**For assets eligible for normal RoE**							
1	Coal Handling Plant / Ash Handling Plant / Ash Dyke	-		-		Regulation 25 read with Approved Resolution Plan	For detailed justification, refer Form 9A (summary)	
2	Civil	**3,226.00**		3,226.00				
3	Boiler, Turbine & Generator (BTG)	-		-				
	Total	**3,226.00**	-	**3,226.00**				
B	**For assets eligible for RoE at One year MCLR+350 bps subject to ceiling of 14.00%**							
1	Coal Handling Plant / Ash Handling Plant / Ash Dyke	-		-		Regulation 26 (1) (i) read with Approved Resolution Plan	For detailed justification, refer Form 9A (summary)	
2	Civil	-		-				
3	Boiler, Turbine & Generator (BTG)	10,000.00		10,000.00				
	Total (B)	**10,000.00**	-	**10,000.00**				
	Total Add. Cap. Claimed (A+B)	**13,226.00**	-	**13,226.00**				

(Petitioner)

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Vinod Kumar Jain
28.11.2024 10.53

Year wise Statement of Additional Capitalisation after COD

Name of the Petitioner Jhabua Power Limited (JV of NTPC Limited)
Name of the Generating Station Seoni TPP (1x600 MW)
COD 3rd May 2016
For Financial Year FY 2027-28

INR Lakhs

S. No.	Head of Work / Equipment	ACE Claimed (Actual / Projected)				Regulations under which claimed	Justification	Admitted Cost by the Commission, if any
		Accrual basis	Un-discharged Liability included in column [3]	Cash basis	IDC included in col. 3			
1	2	3	4	(5 = 3 - 4)	6	7	8	9
A	**For assets eligible for normal RoE**							
1	Coal Handling Plant / Ash Handling Plant / Ash Dyke	27.50		27.50		Regulation 25 read with Approved Resolution Plan	For detailed justification, refer Form 9A (summary)	
2	Civil	4,350.00		4,350.00				
3	Boiler, Turbine & Generator (BTG)	2,000.00		2,000.00				
	Total	**6,377.50**	**-**	**6,377.50**				
B	**For assets eligible for RoE at One year MCLR+350 bps subject to ceiling of 14.00%**							
1	Coal Handling Plant / Ash Handling Plant / Ash Dyke	-		-		Regulation 26 (1) (i) read with Approved Resolution Plan	For detailed justification, refer Form 9A (summary)	
2	Civil	-		-				
3	Boiler, Turbine & Generator (BTG)	550.00		550.00				
	Total (B)	**550.00**	**-**	**550.00**				
	Total Add. Cap. Claimed (A+B)	**6,927.50**	**-**	**6,927.50**				

(Petitioner)

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Vinod Kumar Jain
28.11.2024 10.53

PART 1
FORM- 9

Year wise Statement of Additional Capitalisation after COD

Name of the Petitioner Jhabua Power Limited (JV of NTPC Limited)
Name of the Generating Station Seoni TPP (1x600 MW)
COD 3rd May 2016
For Financial Year FY 2028-29

INR Lakhs

S. No.	Head of Work / Equipment	ACE Claimed (Actual / Projected)				Regulations under which claimed	Justification	Admitted Cost by the Commission, if any
		Accrual basis	Un-discharged Liability included in column [3]	Cash basis	IDC included in col. 3			
1	2	3	4	(5 = 3 - 4)	6	7	8	9
A	**For assets eligible for normal RoE**							
1	Coal Handling Plant / Ash Handling Plant / Ash Dyke	-		-		Regulation 25 read with Approved Resolution Plan	For detailed justification, refer Form 9A (summary)	
2	Civil	6,600.00		6,600.00				
3	Boiler, Turbine & Generator (BTG)	-		-				
	Total	**6,600.00**	**-**	**6,600.00**				
B	**For assets eligible for RoE at One year MCLR+350 bps subject to ceiling of 14.00%**							
1	Coal Handling Plant / Ash Handling Plant / Ash Dyke	700.00		700.00		Regulation 26 (1) (i) read with Approved Resolution Plan	For detailed justification, refer Form 9A (summary)	
2	Civil	5,300.00		5,300.00				
3	Boiler, Turbine & Generator (BTG)	-		-				
	Total (B)	**6,000.00**	**-**	**6,000.00**				
	Total Add. Cap. Claimed (A+B)	**12,600.00**	**-**	**12,600.00**				

(Petitioner)

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Vinod Kumar Jain
28.11.2024 10.53

Financing of Additional Capitalisation

Name of the Petitioner Jhabua Power Limited (JV of NTPC Limited)
Name of the Generating Station Seoni TPP (1x600 MW)
Date of Commercial Operation 3rd May 2016

(Amount in Rs Lakh)

	Actual					Admitted				
Financial Year (Starting from COD)[1]	**2024-25**	**2025-26**	**2026-27**	**2027-28**	**2028-29**	**2024-25**	**2025-26**	**2026-27**	**2027-28**	**2028-29**
1	**2**	**3**	**4**	**5**	**6**	**7**	**8**	**9**	**10**	**11**
Amount capitalised in Work/ Equipment	Add cap is proposed to be financed in Debt : Equity ratio of 70:30									
Financing Details										
Loan-1										
Loan-2										
Loan-3 and so on										
Total Loan[2]										
Equity										
Internal Resources										
Others (Pl. specify)										
Total										

Note:
1. Year 1 refers to Financial Year of COD and Year 2, Year 3 etc. are the subsequent financial years respectively.
2. Loan details for meeting the additional capitalisation requirement should be given as per FORM-7 or 8 whichever is relevant.

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28.11.2024 10.53

(Petitioner)

Calculation of Depreciation

Name of the Petitioner Jhabua Power Limited (JV of NTPC Limited)
Name of the Generating Station Seoni TPP (1x600 MW)

(Amount in Rs Lakh)

S. No.	Name of the Assets	Gross Block as on 31.03.2024	Gross Block as on 31.03.2025	Gross Block as on 31.03.2026	Gross Block as on 31.03.2027	Gross Block as on 31.03.2028	Gross Block as on 31.03.2029	Depreciation Rates as per CERC's Depreciation Rate Schedule	Depreciation amount for FY 2024	Depreciation amount for FY 2025	Depreciation amount for FY 2026	Depreciation amount for FY 2027	Depreciation amount for FY 2028	Depreciation amount for FY 2029
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
1	Freehold Land	5,548.00	5,548.00	5,548.00	5,548.00	5,548.00	5,548.00	0.00%	-	-	-	-	-	-
2	Leasehold Land	-	-	-	-	-	-	3.34%	-	-	-	-	-	-
3	Civil Works	22,383.77	22,383.77	22,883.77	26,109.77	30,459.77	42,359.77	3.34%	747.62	747.62	764.32	872.07	1,017.36	1,414.82
4	Plant & Machinery	376,660.45	380,735.45	390,600.45	400,600.45	403,177.95	403,877.95	5.28%	19,887.67	20,102.83	20,623.70	21,151.70	21,287.80	21,324.76
5	Furniture Fixtures	710.00	710.00	710.00	710.00	710.00	710.00	6.33%	44.94	44.94	44.94	44.94	44.94	44.94
6	IT Equipments(Computers)	425.67	425.67	425.67	425.67	425.67	425.67	15.00%	63.85	63.85	63.85	63.85	63.85	63.85
7	Office Equipments	380.00	380.00	380.00	380.00	380.00	380.00	6.33%	24.05	24.05	24.05	24.05	24.05	24.05
8	Vehicles	21.00	21.00	21.00	21.00	21.00	21.00	9.50%	2.00	2.00	2.00	2.00	2.00	2.00
									-	-	-	-	-	-
	TOTAL	**406,128.89**	**410,203.89**	**420,568.89**	**433,794.89**	**440,722.39**	**453,322.39**		**20,770.13**	**20,985.29**	**21,522.86**	**22,158.61**	**22,440.00**	**22,874.42**
	Weighted Average Rate of Depreciation (%)								5.11%	5.12%	5.12%	5.11%	5.09%	5.05%

* Provide details of Freehold land and Lease hold land separately

(Petitioner)

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Statement of Depreciation

Name of the Petitioner Jhabua Power Limited (JV of NTPC Limited)
Name of the Generating Station Seoni TPP (1x600 MW)

(Amount in Rs Lakh)

S. No.	Particulars	Existing 2023-24	2024-25	2025-26	2026-27	2027-28	2028-29
1	2	3	4	5	6	7	8
1	Opening Capital Cost	404,077.39	406,128.89	410,203.89	420,568.89	433,794.89	440,722.39
2	Closing Capital Cost	406,128.89	410,203.89	420,568.89	433,794.89	440,722.39	453,322.39
3	**Average Capital Cost**	**405,103.14**	**408,166.39**	**415,386.39**	**427,181.89**	**437,258.64**	**447,022.39**
4	Freehold land	5,548.00	5,548.00	5,548.00	5,548.00	5,548.00	5,548.00
5	IT Assets	425.67	425.67	425.67	425.67	425.67	425.67
6	Rate of depreciation	5.11%	5.12%	5.12%	5.11%	5.09%	5.05%
7	Depreciable value	359,642.20	362,399.12	368,897.12	379,513.07	388,582.15	397,369.52
8	Balance useful life at the beginning of the period	18.09	17.09	16.09	15.09	14.09	13.09
9	Remaining depreciable value	219,567.27	201,958.05	187,470.75	176,563.84	163,474.30	149,821.68
10	**Depreciation (for the period)**	**20,770.13**	**20,985.29**	**21,522.86**	**22,158.61**	**22,440.00**	**22,874.42**
11	**Depreciation (annualised)**	**20,770.13**	**20,985.29**	**21,522.86**	**22,158.61**	**22,440.00**	**22,874.42**
12	Cumulative depreciation at the end of the period	160,802.49	181,426.37	202,949.23	225,107.84	247,547.84	270,422.25
13	Less: Cumulative depreciation adjustment on account of un-discharged liabilities deducted as on 01.04.2009	-	-	-	-	-	-
14	Less: Cumulative depreciation adjustment on account of de-capitalisation	(361.42)	-	-	-	-	-
15	**Net Cumulative depreciation at the end of the period**	**160,441.07**	**181,426.37**	**202,949.23**	**225,107.84**	**247,547.84**	**270,422.25**

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(Petitioner)

Calculation of Weighted Average Rate of Interest on Actual Loans [1]

Name of the Petitioner Jhabua Power Limited (JV of NTPC Limited)
Name of the Generating Station Seoni TPP (1x600 MW)

(Amount in Rs. Lakh)

Particulars	Existing 2023-24	2024-25	2025-26	2026-27	2027-28	2028-29
NCD (NTPC Limited)						
Gross loan - Opening	59,999.99	59,999.99	59,999.99	59,999.99	59,999.99	59,999.99
Cumulative repayments of Loans upto previous year	(2,500.00)	(7,500.00)	(12,500.00)	(17,500.00)	(22,500.00)	(27,500.00)
Net loan - Opening	57,499.99	52,499.99	47,500.00	42,500.00	37,500.00	32,500.00
Add: Drawl(s) during the Year	-	-	-	-	-	-
Less: Repayment (s) of Loans during the year	(5,000.00)	(5,000.00)	(5,000.00)	(5,000.00)	(5,000.00)	(5,000.00)
Net loan - Closing	52,499.99	47,500.00	42,500.00	37,500.00	32,500.00	27,500.00
Average Net Loan	54,999.99	50,000.00	45,000.00	40,000.00	35,000.00	30,000.00
Rate of Interest on Loan on annual basis	8.50%	8.50%	8.50%	8.50%	8.50%	8.50%
Interest on loan	4,675.00	4,250.00	3,825.00	3,400.00	2,975.00	2,550.00
NCD (Axis Bank Ltd)						
Gross loan - Opening	5,338.12	5,338.12	5,338.12	5,338.12	5,338.12	5,338.12
Cumulative repayments of Loans upto previous year	(222.42)	(667.26)	(1,112.11)	(1,556.95)	(2,001.79)	(2,446.64)
Net loan - Opening	5,115.69	4,670.85	4,226.01	3,781.16	3,336.32	2,891.48
Add: Drawl(s) during the Year	-	-	-	-	-	-
Less: Repayment (s) of Loans during the year	(444.84)	(444.84)	(444.84)	(444.84)	(444.84)	(444.84)
Net loan - Closing	4,670.85	4,226.01	3,781.16	3,336.32	2,891.48	2,446.64
Average Net Loan	4,893.27	4,448.43	4,003.59	3,558.74	3,113.90	2,669.06
Rate of Interest on Loan on annual basis	8.50%	8.50%	8.50%	8.50%	8.50%	8.50%
Interest on loan	415.93	378.12	340.30	302.49	264.68	226.87
NCD (Bank of India)						
Gross loan - Opening	4,146.63	4,146.63	4,146.63	4,146.63	4,146.63	4,146.63
Cumulative repayments of Loans upto previous year	(172.78)	(518.33)	(863.88)	(1,209.43)	(1,554.98)	(1,900.54)
Net loan - Opening	3,973.85	3,628.30	3,282.75	2,937.19	2,591.64	2,246.09
Add: Drawl(s) during the Year	-	-	-	-	-	-
Less: Repayment (s) of Loans during the year	(345.55)	(345.55)	(345.55)	(345.55)	(345.55)	(345.55)
Net loan - Closing	3,628.30	3,282.75	2,937.19	2,591.64	2,246.09	1,900.54
Average Net Loan	3,801.07	3,455.52	3,109.97	2,764.42	2,418.87	2,073.31
Rate of Interest on Loan on annual basis	8.50%	8.50%	8.50%	8.50%	8.50%	8.50%
Interest on loan	323.09	293.72	264.35	234.98	205.60	176.23
NCD (LIC of India)						
Gross loan - Opening	2,840.41	2,840.41	2,840.41	2,840.41	2,840.41	2,840.41
Cumulative repayments of Loans upto previous year	(118.35)	(355.05)	(591.75)	(828.45)	(1,065.15)	(1,301.86)
Net loan - Opening	2,722.06	2,485.36	2,248.66	2,011.96	1,775.26	1,538.56
Add: Drawl(s) during the Year	-	-	-	-	-	-
Less: Repayment (s) of Loans during the year	(236.70)	(236.70)	(236.70)	(236.70)	(236.70)	(236.70)
Net loan - Closing	2,485.36	2,248.66	2,011.96	1,775.26	1,538.56	1,301.86
Average Net Loan	2,603.71	2,367.01	2,130.31	1,893.61	1,656.91	1,420.21
Rate of Interest on Loan on annual basis	8.50%	8.50%	8.50%	8.50%	8.50%	8.50%
Interest on loan	221.32	201.20	181.08	160.96	140.84	120.72

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Particulars	Existing 2023-24	2024-25	2025-26	2026-27	2027-28	2028-29
NCD (Power Finance Corporation)						
Gross loan - Opening	12,746.85	12,746.85	12,746.85	12,746.85	12,746.85	12,746.85
Cumulative repayments of Loans upto previous year	(531.12)	(1,593.36)	(2,655.59)	(3,717.83)	(4,780.07)	(5,842.31)
Net loan - Opening	12,215.73	11,153.50	10,091.26	9,029.02	7,966.78	6,904.55
Add: Drawl(s) during the Year	-	-	-	-	-	-
Less: Repayment (s) of Loans during the year	(1,062.24)	(1,062.24)	(1,062.24)	(1,062.24)	(1,062.24)	(1,062.24)
Net loan - Closing	11,153.50	10,091.26	9,029.02	7,966.78	6,904.55	5,842.31
Average Net Loan	11,684.62	10,622.38	9,560.14	8,497.90	7,435.66	6,373.43
Rate of Interest on Loan on annual basis	8.50%	8.50%	8.50%	8.50%	8.50%	8.50%
Interest on loan	993.19	902.90	812.61	722.32	632.03	541.74
NCD (Punjab National Bank)						
Gross loan - Opening	7,624.47	7,624.47	7,624.47	7,624.47	7,624.47	7,624.47
Cumulative repayments of Loans upto previous year	(317.69)	(953.06)	(1,588.43)	(2,223.80)	(2,859.18)	(3,494.55)
Net loan - Opening	7,306.79	6,671.41	6,036.04	5,400.67	4,765.30	4,129.92
Add: Drawl(s) during the Year	-	-	-	-	-	-
Less: Repayment (s) of Loans during the year	(635.37)	(635.37)	(635.37)	(635.37)	(635.37)	(635.37)
Net loan - Closing	6,671.41	6,036.04	5,400.67	4,765.30	4,129.92	3,494.55
Average Net Loan	6,989.10	6,353.73	5,718.35	5,082.98	4,447.61	3,812.24
Rate of Interest on Loan on annual basis	8.50%	8.50%	8.50%	8.50%	8.50%	8.50%
Interest on loan	594.07	540.07	486.06	432.05	378.05	324.04
NCD (REC)						
Gross loan - Opening	5,148.04	5,148.04	5,148.04	5,148.04	5,148.04	5,148.04
Cumulative repayments of Loans upto previous year	(214.50)	(643.50)	(1,072.51)	(1,501.51)	(1,930.51)	(2,359.52)
Net loan - Opening	4,933.54	4,504.53	4,075.53	3,646.53	3,217.52	2,788.52
Add: Drawl(s) during the Year	-	-	-	-	-	-
Less: Repayment (s) of Loans during the year	(429.00)	(429.00)	(429.00)	(429.00)	(429.00)	(429.00)
Net loan - Closing	4,504.53	4,075.53	3,646.53	3,217.52	2,788.52	2,359.52
Average Net Loan	4,719.03	4,290.03	3,861.03	3,432.03	3,003.02	2,574.02
Rate of Interest on Loan on annual basis	8.50%	8.50%	8.50%	8.50%	8.50%	8.50%
Interest on loan	401.12	364.65	328.19	291.72	255.26	218.79
NCD (State Bank of India)						
Gross loan - Opening	9,019.92	9,019.92	9,019.92	9,019.92	9,019.92	9,019.92
Cumulative repayments of Loans upto previous year	(375.83)	(1,127.49)	(1,879.15)	(2,630.81)	(3,382.47)	(4,134.13)
Net loan - Opening	8,644.09	7,892.43	7,140.77	6,389.11	5,637.45	4,885.79
Add: Drawl(s) during the Year	-	-	-	-	-	-
Less: Repayment (s) of Loans during the year	(751.66)	(751.66)	(751.66)	(751.66)	(751.66)	(751.66)
Net loan - Closing	7,892.43	7,140.77	6,389.11	5,637.45	4,885.79	4,134.13
Average Net Loan	8,268.26	7,516.60	6,764.94	6,013.28	5,261.62	4,509.96
Rate of Interest on Loan on annual basis	8.50%	8.50%	8.50%	8.50%	8.50%	8.50%
Interest on loan	702.80	638.91	575.02	511.13	447.24	383.35
NCD (UCO Bank)						
Gross loan - Opening	4,074.63	4,074.63	4,074.63	4,074.63	4,074.63	4,074.63
Cumulative repayments of Loans upto previous year	(169.78)	(509.33)	(848.88)	(1,188.43)	(1,527.99)	(1,867.54)
Net loan - Opening	3,904.86	3,565.30	3,225.75	2,886.20	2,546.65	2,207.09
Add: Drawl(s) during the Year	-	-	-	-	-	-
Less: Repayment (s) of Loans during the year	(339.55)	(339.55)	(339.55)	(339.55)	(339.55)	(339.55)
Net loan - Closing	3,565.30	3,225.75	2,886.20	2,546.65	2,207.09	1,867.54

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Particulars	Existing 2023-24	2024-25	2025-26	2026-27	2027-28	2028-29
Average Net Loan	3,735.08	3,395.53	3,055.97	2,716.42	2,376.87	2,037.32
Rate of Interest on Loan on annual basis	8.50%	8.50%	8.50%	8.50%	8.50%	8.50%
Interest on loan	317.48	288.62	259.76	230.90	202.03	173.17
NCD (Union Bank of India)						
Gross loan - Opening	9,060.93	9,060.93	9,060.93	9,060.93	9,060.93	9,060.93
Cumulative repayments of Loans upto previous year	(377.54)	(1,132.62)	(1,887.69)	(2,642.77)	(3,397.85)	(4,152.93)
Net loan - Opening	8,683.39	7,928.31	7,173.24	6,418.16	5,663.08	4,908.00
Add: Drawl(s) during the Year	-	-	-	-	-	-
Less: Repayment (s) of Loans during the year	(755.08)	(755.08)	(755.08)	(755.08)	(755.08)	(755.08)
Net loan - Closing	7,928.31	7,173.24	6,418.16	5,663.08	4,908.00	4,152.93
Average Net Loan	8,305.85	7,550.77	6,795.70	6,040.62	5,285.54	4,530.46
Rate of Interest on Loan on annual basis	8.50%	8.50%	8.50%	8.50%	8.50%	8.50%
Interest on loan	706.00	641.82	577.63	513.45	449.27	385.09
Total Loan						
Gross loan - Opening	119,999.99	119,999.99	119,999.99	119,999.99	119,999.99	119,999.99
Cumulative repayments of Loans upto previous year	(5,000.00)	(15,000.00)	(25,000.00)	(35,000.00)	(45,000.00)	(54,999.99)
Net loan - Opening	114,999.99	104,999.99	94,999.99	84,999.99	74,999.99	64,999.99
Add: Drawl(s) during the Year	-	-	-	-	-	-
Less: Repayment (s) of Loans during the year	(10,000.00)	(10,000.00)	(10,000.00)	(10,000.00)	(10,000.00)	(10,000.00)
Net loan - Closing	104,999.99	94,999.99	84,999.99	74,999.99	64,999.99	54,999.99
Average Net Loan	109,999.99	99,999.99	89,999.99	79,999.99	69,999.99	59,999.99
Interest on loan	9,350.00	8,500.00	7,650.00	6,800.00	5,950.00	5,100.00
Weighted average Rate of Interest on Loans	**8.50%**	**8.50%**	**8.50%**	**8.50%**	**8.50%**	**8.50%**

(Petitioner)

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Details of Source wise Fuel for Computation of Energy Charges[1] (COAL)

PART 1
FORM- 15

Name of the Petitioner Jhabua Power Limited (JV of NTPC Limited)
Name of the Generating Station Seoni TPP (1x600 MW)

For Existing Plants Year wise and Month-wise details for the period 2024-29 (For preceding 12 months)

Sr.No	Month-wise	Unit	Apr-23	May-23	Jun-23	Jul-23	Aug-23	Sep-23	Oct-23	Nov-23	Dec-23	Jan-24	Feb-24	Mar-24
			Domestic Source	Domestic Source	Domestic Source	Domestic Source	Domestic Source	Domestic Source	Domestic Source	Domestic Source	Domestic Source	Domestic Source	Domestic Source	Domestic Source
A)	OPENING QUANTITY													
1	Opening Quantity of Coal	(MMT)	18,247.95	143.29	2,979.60	483.26	604.14	51,851.10	2,560.18	18,063.42	32,639.84	39,498.71	26,767.82	26,772.03
2	Value of Stock	(Rs.)	5,89,84,820.77	4,50,756.51	94,38,825.51	15,47,890.03	19,07,688.92	16,50,96,302.81	83,26,849.67	5,92,53,593.47	11,02,36,925.21	13,66,58,496.99	9,16,89,839.65	9,64,99,975.04
B)	QUANTITY													
3	Quantity of Coal supplied by Coal Company for the particular month giving complete details of mode of transportation used for transportation along with quantity.	(MMT)	1,73,016.54	1,85,117.25	1,48,308.13	1,66,681.80	1,84,219.39	59,593.83	1,35,740.17	1,08,987.48	1,73,979.71	98,994.97	96,865.96	1,05,267.39
	By Rail													
	By Road													
	By Ship													
	By MGR													
	By any other mode (specify)													
4	Adjustment (+/-) in quantity supplied made by Coal Company *	(MMT)	-							-				
5	Coal supplied by CoalCompany (3+4)	(MMT)	1,73,016.54	1,85,117.25	1,48,308.13	1,66,681.80	1,84,219.39	59,593.83	1,35,740.17	1,08,987.48	1,73,979.71	98,994.97	96,865.96	1,05,267.39
6	Normative Transit & Handling Losses (For coal based Projects) specify the source	(MMT)	1,384.13	1,480.94	1,186.47	1,333.45	1,473.76	476.75	1,085.92	871.90	1,391.84	791.96	774.93	842.14
7	Actual coal received	(MMT)	1,71,632.41	1,83,636.31	1,47,121.66	1,65,348.35	1,82,745.63	59,117.08	1,34,654.25	1,08,115.58	1,72,587.87	98,203.01	96,091.03	1,04,425.25
C)	PRICE													
8	Amount charged by the Coal Company	(Rs.)	31,61,88,824.67	34,25,14,762.71	27,82,41,470.70	30,47,26,812.97	34,28,10,399.16	11,56,64,312.12	26,97,62,271.74	20,77,12,783.01	37,65,65,172.15	19,84,75,535.53	22,67,52,953.70	23,89,97,052.26
9	Adjustment (+/-) in amount charged made by Coal Company *	(Rs.)	-	-	29,70,860.64	-	-	-	-	1,96,59,648.04	-	-	-	-
10	Unloading, Handling and Sampling charges	(Rs.)	40,38,097.30	41,56,270.35	35,33,885.42	66,36,709.31	37,51,455.74	21,88,414.45	30,78,744.29	28,20,794.33	40,74,107.67	55,53,776.52	26,55,966.13	31,94,077.57
	Unloading charges													
	Handling charges													
	Sampling charges													
11	Total amount Charged (8+9+10)	(Rs.)	32,02,26,921.97	34,66,71,033.07	28,47,46,316.75	31,13,65,522.27	34,65,61,854.90	11,78,52,726.57	27,28,41,016.03	23,01,93,225.36	38,06,39,279.81	20,40,29,312.04	22,94,08,919.83	24,21,91,129.83
D)	TRANSPORATION													
12	Transportation charges by rail/ship/road transport	(Rs.)	22,80,66,476.00	23,42,36,253.00	18,59,81,773.77	20,99,54,555.56	23,45,59,928.76	7,72,17,388.30	16,81,82,105.77	13,59,51,863.52	21,84,77,466.43	13,02,04,188.60	12,09,91,260.93	13,15,83,320.34
	By Rail	(Rs.)	22,42,50,860.00	22,81,74,309.00	18,06,76,632.00	20,69,11,502.00	22,91,95,382.00	7,40,27,211.00	16,38,35,308.00	13,36,84,869.00	21,17,14,315.00	12,99,30,245.00	11,94,80,471.00	13,10,35,869.00
	By Road	(Rs.)	38,15,616.00	60,61,944.00	53,03,241.77	30,43,053.56	53,64,546.76	31,90,177.30	43,46,797.77	22,66,994.52	67,63,151.43	2,73,943.60	15,10,789.93	5,47,451.34
	By Ship	(Rs.)	-	-	-	-	-	-	-	-	-	-	-	-
	By MGR													
13	Adjustment (+/-) in amount charged made by Railways/Transport Company	(Rs.)	-	-	-	-	-	-	-	-	-	-	-	-
14	Demurrage Charges, if any	(Rs.)	-	-	-	-	-	-	-	-	-	-	-	-
15	Cost of fuel in transporting coal through MGR system, if applicable	(Rs.)	6,56,505.00	8,14,165.78	6,05,065.00	7,79,595.52	7,64,643.74	7,51,790.68	7,55,695.25	7,54,939.31	6,97,624.05	7,88,059.11	7,55,543.10	7,60,609.00
16	Total Transportation Charges (12+13+14+15)	(Rs.)	22,87,22,981.00	23,50,50,418.78	18,65,86,838.77	21,07,34,151.08	23,53,24,572.50	7,79,69,178.98	16,89,37,801.02	13,67,06,802.83	21,91,75,090.48	13,09,92,247.71	12,17,46,804.03	13,23,43,929.34
17	Total amount Charged for coal supplied including Transportation (11+16)	(Rs.)	54,89,49,902.97	58,17,21,451.85	47,13,33,155.52	52,20,99,673.35	58,18,86,427.40	19,58,21,905.56	44,17,78,817.05	36,69,00,028.21	59,98,14,370.29	33,50,21,559.75	35,11,55,723.86	37,45,35,059.17
E)	TOTAL COST													
18	Landed cost of coal (2+17)/(1+7)	Rs./MT	3,201.67	3,167.82	3,202.98	3,157.71	3,184.05	3,252.45	3,280.31	3,377.37	3,459.82	3,425.38	3,604.51	3,590.28
19	Blending Ratio (Domestic/Imported)		NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
20	**Weighted average cost of coal**	**Rs./MT**	**3,201.67**	**3,167.82**	**3,202.98**	**3,157.71**	**3,184.05**	**3,252.45**	**3,280.31**	**3,377.37**	**3,459.82**	**3,425.38**	**3,604.51**	**3,590.28**
F)	QUALITY													
21	GCV of Domestic Coal of the opening coal stock as per bill of Coal Company	(kCal/K	G-11/G-8/G-14	G-11	G-11	G-11/G14	G-11/G11	G-11/G11	G-11/G11	G-11/G11	G-11/G11	G-11/G11	G-11/G11	G-11/G11
22	GCV of Domestic Coal supplied as per bill of Coal Company	(kCal/K	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
23	GCV of Imported Coal of the opening stock as per bill Coal Company	(kCal/K	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
24	GCV of Imported Coal supplied as per bill Coal Company	(kCal/K	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
25	Weighted average GCV of coal as Billed	(kCal/K	3,916.45	4,000.00	4,000.00	3,932.16	4,001.00	4,001.00	4,001.00	4,001.00	4,001.00	4,001.00	4,001.00	4,001.00
26	GCV of Domestic Coal of the opening stock as received at Station	(kCal/K	3,156.76	3,342.05	3,253.92	3,266.60	3,071.92	2,996.67	3,118.02	2,880.17	3,073.59	3,170.54	3,192.52	3,338.62
27	GCV of Domestic Coal supplied as received at Station	(kCal/K	3,361.75	3,253.85	3,266.86	3,071.35	2,996.42	3,224.45	2,875.65	3,105.91	3,188.88	3,201.36	3,379.31	3,285.00
28	GCV of Imported Coal of opening stock as received at Station	(kCal/K	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
29	GCV of Imported Coal supplied as received at Station	(kCal/K	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
30	Weighted average GCV of coal as Received	(kCal/K	3,342.05	3,253.92	3,266.60	3,071.92	2,996.67	3,118.02	2,880.17	3,073.59	3,170.54	3,192.52	3,338.62	

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Sr.No	Month-wise	Unit	Apr-23	May-23	Jun-23	Jul-23	Aug-23	Sep-23	Oct-23	Nov-23	Dec-23	Jan-24	Feb-24	Mar-24
			Domestic Source	Domestic Source	Domestic Source	Domestic Source	Domestic Source	Domestic Source	Domestic Source	Domestic Source	Domestic Source	Domestic Source	Domestic Source	Domestic Source
31 *	Period of Adjustment and reasons		NA	NA	Adjustments relates to month of Nov, Dec 2022 and January, March 2023. Adjustment is due to debit and credit notes shared by SECL.	NA	NA	NA	NA	Adjustments relates to month of Nov, Dec 2022 and January, March, May, June and September 2023. Adjustment is due to debit and credit notes shared by SECL and MCL.	NA	NA	NA	NA

(*specifying the period of adjustment along with reason and support document for the adjustment)

(Petitioner)

UDIN: 24405326BKCDMC3259

PRAKASH S. JAIN & CO. ★ CHARTERED ACCOUNTANTS ★ FRN 002423C INDORE

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Details of Source wise Fuel for Computation of Energy Charges [1] (LDO)

Name of the Licensee: Jhabua Power Limited (JV of NTPC Limited)
Name of the Generating Station: Seoni TPP (1x600 MW)

FY2023-24

S.No.	Month	Unit	Apr-23	May-23	Jun-23	Jul-23	Aug-23	Sep-23	Oct-23	Nov-23	Dec-23	Jan-24	Feb-24	Mar-24
		Monthly	LDO	LDO	LDO	LDO	LDO	LDO	LDO	LDO	LDO	LDO	LDO	LDO
A)	OPENING QUANTITY													
1	Opening Quantity of LDO	(kL)	313.57	537.17	421.67	276.77	370.77	438.07	327.67	390.04	401.14	392.54	634.84	551.04
2	Value of Stock	(Rs)	2,53,33,744.11	4,18,96,548.25	3,28,89,604.16	1,99,37,955.84	2,72,17,947.25	3,51,52,811.34	2,71,69,137.58	3,12,52,431.05	3,20,73,182.55	3,13,85,569.31	5,15,78,138.84	4,47,69,730.39
B)	QUANTITY													
3	Quantity of LDO supplied by LDO Company	(kL)	250.00	-	213.00	441.00	304.00	79.00	335.37	154.00	-	305.00	-	-
4	Adjustment (+/-) in quantity supplied made by LDO Company	(kL)	-	-	-	-	-	-	-	-	-	-	-	-
5	LDO supplied by LDO Company (3+4)	(kL)	250.00	-	213.00	441.00	304.00	79.00	335.37	154.00	-	305.00	-	-
6	Normative Transit & Handling Losses	(kL)	-	-	-	-	-	-	-	-	-	-	-	-
7	Net LDO Supplied (5-6)	(kL)	250.00	-	213.00	441.00	304.00	79.00	335.37	154.00	-	305.00	-	-
C)	PRICE													
8	Amount charged by the LDO Company	(Rs)	1,86,97,711.92	-	1,49,64,331.00	3,22,77,231.00	2,53,10,867.00	71,98,653.00	2,67,22,055.18	1,22,70,689.20	-	2,52,05,688.00	-	-
9	Adjustment (+/-) in amount charged made by LDO Company	(Rs)	-	-	-	-	-	-	-	-	-	-	-	-
10	Handling, Sampling and such other similar charges	(Rs)	-	-	-	-	-	-	-	-	-	-	-	-
11	Total amount Charged (8+9+10)	(Rs)	1,86,97,711.92	-	1,49,64,331.00	3,22,77,231.00	2,53,10,867.00	71,98,653.00	2,67,22,055.18	1,22,70,689.20	-	2,52,05,688.00	-	-
D)	TRANSPORATION													
12	Transportation charges by rail/ship/road transport	(Rs)	-	-	-	-	-	-	-	-	-	-	-	-
13	Adjustment (+/-) in amount charged made by Railways/Transport Company	(Rs)	-	-	-	-	-	-	-	-	-	-	-	-
14	Demurrage Charges, if any	(Rs)	-	-	-	-	-	-	-	-	-	-	-	-
15	Cost of diesel in transporting LDO through MGR system, if applicable	(Rs)	-	-	-	-	-	-	-	-	-	-	-	-
16	Total Transportation Charges (12+13+14+15)	(Rs)	-	-	-	-	-	-	-	-	-	-	-	-
17	Total amount Charged for LDO supplied including Transportation (11+16)	(Rs)	1,86,97,711.92	-	1,49,64,331.00	3,22,77,231.00	2,53,10,867.00	71,98,653.00	2,67,22,055.18	1,22,70,689.20	-	2,52,05,688.00	-	-
E)	TOTAL COST													
18	Landed cost of LDO (2+17)/(1+7)	Rs/kL	78,129.52	77,998.68	75,399.71	72,746.40	77,846.99	81,906.64	81,254.68	80,000.15	79,955.48	81,130.00	81,246.14	81,246.18
19	Weighted average cost of LDO	Rs/kL	78,129.52	77,998.68	75,399.71	72,746.40	77,846.99	81,906.64	81,254.68	80,000.15	79,955.48	81,130.00	81,246.14	81,246.18
20	Weighted Average GCV of LDO as received	(kCal/Kg)	10,000.00	10,000.00	10,000.00	10,000.00	10,000.00	10,000.00	10,000.00	10,000.00	10,000.00	10,000.00	10,000.00	10,000.00

UDIN: 24405326BKCDMF8124

(Petitioner)

PRAKASH S. JAIN & CO. ★ FRN 002423C INDORE ★ CHARTERED ACCOUNTANTS

Computation of Energy Charges

Name of the Petitioner Jhabua Power Limited (JV of NTPC Limited)
Name of the Generating Station Seoni TPP (1x600 MW)

		FY 24-25	FY 25-26	FY 26-27	FY 27-28	FY 28-29
No. of days in the year	Days	365.00	365.00	365.00	366.00	365.00
Sp. Oil Consumption	ml/kWh	0.50	0.50	0.50	0.50	0.50
Auxiliary Consumption	%	5.75%	5.75%	5.75%	5.75%	5.75%
Heat Rate	Kcal/kWh	2,337.72	2,337.72	2,337.72	2,337.72	2,337.72
Capacity	MW	600.00	600.00	600.00	600.00	600.00
Dedicated line loss %	%	0.63%	0.63%	0.63%	0.63%	0.63%

Coal		Apr-23	May-23	Jun-23	Jul-23	Aug-23	Sep-23	Oct-23	Nov-23	Dec-23	Jan-24	Feb-24	Mar-24	Wt. Avg.
Wtd. Avg. Price of Coal	Rs./MT	3,201.67	3,167.82	3,202.98	3,157.71	3,184.05	3,252.45	3,280.31	3,377.37	3,459.82	3,425.38	3,604.51	3,590.28	**3,325.36**
Wtd. Avg. GCV of Coal as received	kcal/Kg	3,342.05	3,253.92	3,266.60	3,071.92	2,996.67	3,118.02	2,880.17	3,073.59	3,170.54	3,192.52	3,338.62	3,295.94	**3,166.71**
Wtd. Avg. GCV of Coal as received after adjustement of 85 kcal/kg														**3,081.71**
Sec. Oil (LDO)														
Wtd. Avg. Price of Secondary Fuel (LDO)	Rs/kL	78,129.52	77,998.68	75,399.71	72,746.40	77,846.99	81,906.64	81,254.68	80,000.15	79,955.48	81,130.00	81,246.14	81,246.18	**79,071.71**
Wtd. Avg. GCV of Secondary Fuel (LDO)	kcal/L	10,000.00	10,000.00	10,000.00	10,000.00	10,000.00	10,000.00	10,000.00	10,000.00	10,000.00	10,000.00	10,000.00	10,000.00	**10,000.00**

Computation of Variable Charges

		FY 24-25	FY 25-26	FY 26-27	FY 27-28	FY 28-29
Heat Contribution from SFO/ Alternate Fuel	kCal/kWh	5.00	5.00	5.00	5.00	5.00
Heat Contribution from coal	kCal/kWh	2,332.72	2,332.72	2,332.72	2,332.72	2,332.72
Specific Primary Fuel Consumption	kg/kWh	0.757	0.757	0.757	0.757	0.757
Variable Charge (Coal)	p/kWh	267.072	267.072	267.072	267.072	267.072
Variable Charge (Oil)	p/kWh	4.195	4.195	4.195	4.195	4.195
Total	**p/kWh**	**271.267**	**271.267**	**271.267**	**271.267**	**271.267**
Variable Charge (including dedicated line loss)	**p/kWh**	**272.975**	**272.975**	**272.975**	**272.975**	**272.975**

Computation of Fuel Expenses for calculation of IWC

		FY 24-25	FY 25-26	FY 26-27	FY 27-28	FY 28-29
ESO in a year	MU	4,210.71	4,210.71	4,210.71	4,222.25	4,210.71
ESO for 50 Days	MU	576.81	576.81	576.81	576.81	576.81
Cost of coal for 50 Days	Rs. Lakh	15,404.97	15,404.97	15,404.97	15,404.97	15,404.97
Cost of oil for 2 months	Rs. Lakh	294.38	294.38	294.38	295.19	294.38
Energy Expenses for 45 Days	Rs. Lakh	14,170.91	14,170.91	14,170.91	14,170.91	14,170.91
Fixed Charges for 45 Days	Rs. Lakh	9,086.71	9,149.63	9,283.21	9,331.71	9,453.65
Capacity Charge and Energy Charge (45 Days)	Rs. Lakh	23,257.62	23,320.54	23,454.12	23,502.62	23,624.56

Computation of Energy Charges	FY 24-25	FY 25-26	FY 26-27	FY 27-28	FY 28-29
1 Rate of Energy Charge from Sec. Fuel / Alternate Fuel (p/kwh) (REC)s = (Qs)n X Ps	3.95	3.95	3.95	3.95	3.95
2 Heat Contribution from SFO / Alternate Fuel $(H)_s = (Q_s)_n$ X (GCV)s	5.00	5.00	5.00	5.00	5.00
3 Heat Contribution from coal $(Hp)_s$ = GHR - Hs	2,332.72	2,332.72	2,332.72	2,332.72	2,332.72
4 Specific Primary Fuel Consumption $(Qp)_n$ = Hp/(GCV)p	0.76	0.76	0.76	0.76	0.76
5 Rate of Energy charge from Primary fuel (p/kwh) (REC)p	251.715	251.715	251.715	251.715	251.715
6 Rate of Energy charge ex-bus (p/kwh) (REC) = ((REC)s + (REC)p / (1-AUX))	271.267	271.267	271.267	271.267	271.267
7 Rate of Energy charge ex-bus and including dedicated line loss (p/kwh) REC/(1 - line loss%)	272.975	272.975	272.975	272.975	272.975

(Petitioner)

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Calculation of Interest on Normative Loan

PART 1
FORM- N

Name of the Petitioner Jhabua Power Limited (JV of NTPC Limited)
Name of the Generating Station Seoni TPP (1x600 MW)

(Amount in Rs. Lakh)

S. No.	Particulars	Existing 2023-24	2024-25	2025-26	2026-27	2027-28	2028-29
1	2	3	4	5	6	7	8
1	Gross Normative loan – Opening (including adjustment on account of de-capitalisation**)	302,627.17	304,017.21	306,869.71	314,125.21	323,383.41	328,232.66
2	Cumulative repayment of Normative loan up to previous year (including adjustment on account of de - capitalisation**)	140,032.68	160,441.39	181,426.69	202,949.55	225,108.16	247,548.16
3	**Net Normative loan – Opening**	**162,594.49**	**143,575.82**	**125,443.03**	**111,175.66**	**98,275.25**	**80,684.50**
4	Add: Increase due to addition during the year / period	2,085.62	2,852.50	7,255.50	9,258.20	4,849.25	8,820.00
5	Less: Decrease due to de-capitalisation during the year / period	(334.16)	-	-	-	-	-
6	Less: Decrease due to reversal during the year / period	-	-	-	-	-	-
7	Add: Increase due to discharges during the year / period	-	-	-	-	-	-
8	**Normative loan - Closing**	**164,345.95**	**146,428.32**	**132,698.53**	**120,433.86**	**103,124.50**	**89,504.50**
9	Repayment of loan during the year	20,770.13	20,985.29	21,522.86	22,158.61	22,440.00	22,874.42
10	**Net Normative loan - Closing**	**143,575.82**	**125,443.03**	**111,175.66**	**98,275.25**	**80,684.50**	**66,630.09**
11	**Average Normative loan**	**153,085.16**	**134,509.42**	**118,309.34**	**104,725.46**	**89,479.88**	**73,657.30**
12	Weighted average rate of interest	8.50%	8.50%	8.50%	8.50%	8.50%	8.50%
13	**Interest on Loan**	**13,012.24**	**11,433.30**	**10,056.29**	**8,901.66**	**7,605.79**	**6,260.87**

** Note: The opening balances of Gross Normative Loan and Cumulative repayment of normative loan up to previous year is after reducing amount of Rs. 695.58 Lakhs and Rs. 361.42 Lakhs respectively on account of de-capitalisation of assets in FY2023-24.

(Petitioner)

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Calculation of Interest on Working Capital **PART 1**

Name of the Petitioner Jhabua Power Limited (JV of NTPC Limited) **FORM- O**

Name of the Generating Station Seoni TPP (1x600 MW)

(Amount in Rs. Lakh)

S. No.	Particulars	Existing 2023-24	2024-25	2025-26	2026-27	2027-28	2028-29
1	**2**	**3**	**4**	**5**	**6**	**7**	**8**
1	Cost of Coal	14,214.88	15,404.97	15,404.97	15,404.97	15,404.97	15,404.97
2	Cost of Main Secondary Fuel Oil (LDO)	284.95	294.38	294.38	294.38	295.19	294.38
3	O & M Expenses	1,556.33	1,673.57	1,760.33	1,852.05	1,948.30	2,049.60
4	Maintenance Spares	3,735.20	4,016.57	4,224.80	4,444.93	4,675.91	4,919.05
5	Receivables	22,090.84	23,257.62	23,320.54	23,454.12	23,502.62	23,624.56
6	**Total Working Capital**	**41,882.20**	**44,647.11**	**45,005.02**	**45,450.46**	**45,826.99**	**46,292.57**
4	Rate of Interest	12.00%	11.90%	11.90%	11.90%	11.90%	11.90%
5	**Interest on Working Capital**	**5,025.86**	**5,313.01**	**5,355.60**	**5,408.60**	**5,453.41**	**5,508.82**

(Petitioner)

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28.11.2024 10.53

Summary of issue involved in the petition

PART 1
FORM- T

1.	**Petitioner: Jhabua Power Limited**		
2.	**Subject**	Approval of tariff for 2024-29	
3	**Prayer:** i.Approve tariff for Unit-1 of the generating station for the period from 01.04.2024 to 31.03.2029 as per the CERC Tariff Regulations 2024; ii.Grant approval to charge interim tariff at 90% of the claimed tariff to avoid tariff shock, till the time, final tariff is determined by Hon'ble Commission; iii.Approve the projected additional capitalization for the period from 01.04.2024 to 31.03.2029; iv.Allow O&M expenses for dedicated transmission line in addition to the O&M expenses for the generating station v.Allow Energy Charge Rate to be grossed up by dedicated transmission line loss (0.63% or actual losses) on month to month basis in the billing; vi.Allow to recover Electricity Duty and Cess on Auxiliary Power Consumption, Cess on power supply to MPPMCL, WRLDC fees & charges and any other taxes, if any, levied by the Statutory Authorities from the beneficiaries on submission of documentary evidence; vii.Allow to recover the fees paid to the Hon'ble Commission from the beneficiaries on submission of documentary evidence; viii.Allow to recover the fees paid on account of publication expenses from the beneficiaries on submission of documentary evidence; ix.Allow the Petitioner to approach the Hon'ble Commission to revise the tariff petition depending on the outcome of proceedings on pending issues at Hon'ble APTEL; x.Condone any inadvertent omissions/errors/rounding off differences/shortcomings and permit the Petitioner to add/alter this filing and make further submissions as may be required; xi.Pass such further and other orders, as the Hon'ble Commission may deem fit and proper, keeping in view the facts and circumstances of the case.		
4.	**Respondents**		
	Name of Respondents		
	a.	Madhya Pradesh Power Management Company Ltd.	
	b.	Madhya Pradesh Poorv Kshetra Vidyut Vitaran Co. Ltd. Jabalpur	
	c.	Madhya Pradesh Madhya Kshetra Vidyut Vitaran Co. Ltd Bhopal	
	d.	Madhya Pradesh Paschim Kshetra Vidyut Vitaran Ltd. Indore	
5.	**Project Scope**		600 MW Coal Based Station
	Cost		
	Commissioning		03.05.2016
	Claim		
	AFC		
	2024-25		73,703.31
	2025-26		74,213.66
	2026-27		75,297.13
	2027-28		75,897.90
	2028-29		76,679.61
	Capital cost (as of 01.04.2024)		406,128.89
	Initial spare		
	NAPAF (Gen)		85%
	Any Specific		NA

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28.11.2024 10.53

(Petitioner)

MODEL PPA

(Applicable for power projects under MoU route)

POWER PURCHASE AGREEMENT BETWEEN

M/S [Jhabua Power Ltd.,]

AND

M. P. POWER TRADING COMPANY LIMITED

FOR

PROCUREMENT OF POWER ON REGULATED TARIFF BASIS

[*June-2011*]

M.P Tradeco

Jhabua Power Ltd.,

East Discom

Central Discom

West Discom

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M.P Tradeco

Jhabua Power Ltd.

East Discom

Central Discom

West Discom

JHABUA POWER LTD.

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Vinod Kumar Jain
28.11.2024 10.53



मध्य प्रदेश MADHYA PRADESH S 243107

THIS AGREEMENT IS MADE ON THE [5th] day of January 2011 ABBajpai

Between

1) **Madhya Pradesh Power Trading Company Limited**, a company incorporated under the Companies Act, 1956 and having its registered office at Shakti Bhawan, Jabalpur Madhya Pradesh (hereinafter referred to as the "**Procurer**", which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns) as party of the **FIRST PART**;

AND

2) **M/s Jhabua Power Ltd.,** a company incorporated under the Companies Act, 1956 and having its registered office at **6-B Express Tower, 42-A Shakespeare Sarani, Kolkata** (hereinafter referred to as "**the Company**", which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns) as party of the **SECOND PART;**

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The Procurer and the Company are hereinafter individually referred to as "Party" and collectively as "Parties"

AND

3) **Madhya Pradesh Poorva Kshetra Vidyut Vitaran Nigam Limited**, a company incorporated under the Companies Act, 1956 and having its registered office at Shakti Bhawan, Jabalpur Madhya Pradesh (hereinafter referred to as Discom 1), which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns; and

4) **Madhya Pradesh Madhya Kshetra Vidyut Vitaran Nigam Limited**, a company incorporated under the Companies Act, 1956 and having its registered office at Bijali Nagar, Govindpura, Bhopal, Madhya Pradesh (hereinafter referred to as Discom 2), which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns; and

5) **Madhya Pradesh Paschim Kshetra Vidyut Vitaran Nigam Limited**, a company incorporated under the Companies Act, 1956 and having its registered office at Pologround, Indore Madhya Pradesh (hereinafter referred to as Discom 3), which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns;

Discom 1, Discom 2 and Discom 3, collectively referred to as "**Discoms**", are executing this agreement as confirming parties being beneficiaries under this Agreement.

WHEREAS the Government of Madhya Pradesh (hereinafter referred to as '**GoMP'**) is desirous of facilitating private sector participation and investments in power generation projects in the State of Madh+ya Pradesh by providing assistance and support in terms of the Memorandum of Understanding and Implementation Agreements entered into with various developers for development of generation projects and in consideration being entitled to a certain share of power generated from such projects to be procured through the Procurer being the nominee of the GoMP, for the utilization primarily by the Discoms, individually or collectively;

AND WHEREAS pursuant to the above, the Company and the GoMP have entered into a Memorandum of Understanding 17.1.2007, amendment 14.1.2010 for setting up of coal based thermal power stations by the Company with a proposed capacity of 1200 MW with Unit configuration as 2x600 MW to be located at Seoni Distt. in the State of Madhya Pradesh;

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AND WHEREAS pursuant to the terms of the MoU and being satisfied with the feasibility report and techno economic viability of the project, the Company and the GoMP had entered into an Implementation Agreement dated 14.1.2008, as amended on 14.1.2010 (hereinafter referred to as "the I.A.") for construction, ownership and maintenance of the said Power Station;

AND WHEREAS this Agreement is being entered into pursuant to the terms of the I.A., and the GoMP, acting through its Energy Department has agreed to facilitate expeditious grant of permissions, approvals, no objection certificates, recommendations etc., as defined in greater detail in the said I.A.;

AND WHEREAS in terms of the I.A., the Company has granted the first right to GoMP or its nominated agency to purchase power from 1st unit having capacity of 600 MW, up to thirty percent (30%) of the Power Station's Installed Capacity for a period of twenty (20) years at the tariff determined by the Appropriate Commission and the GoMP has exercised its right to purchase the aforesaid power to such extent;

AND WHEREAS the above right of GoMP is in addition to and not in derogation of GoMP's right to purchase five percent (5%) of the net power (gross power generated minus the auxiliary consumption) on annualized basis at a price equivalent to the Variable Cost only (excluding fixed charges) such Variable Cost to be determined by the Appropriate Commission for the Power Station from time to time;

AND WHEREAS in accordance with the notification No. 3474/FRS/17/XIII/2002, dated 03.06.2006 of the GoMP, the Discoms herein shall buy electricity of their requirement from the single source, i.e. from the Procurer, as per the inter-se Bulk Supply Agreement at the tariff as determined/ approved by the Appropriate Commission, and the role of the Procurer will be that of the authorized nominee of the Government of Madhya Pradesh to procure and make available power the Discoms;

AND WHEREAS THE GoMP vide letter 4370/13/2008 Bhopal dated 24th June 2008 has nominated the Procurer to procure 30% of the Installed Capacity of the Power Station at the Tariff to be determined by the Appropriate Commission and has further directed that the Procurer shall make available the aforesaid power to each of Discoms in the proportion as may be directed by GoMP;

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AND WHEREAS Discoms have agreed to receive the aforesaid power from the Procurer, in the proportion as directed by the GoMP from time to time and are accordingly, executing this Agreement as confirming Parties;

AND WHEREAS pursuant and in terms of the above, the Company and the Procurer have mutually agreed on the terms and conditions for developing, commissioning, operation and maintenance of the Power Station and for generation and sale of energy from the Power Station by the Company to the Procurer and to enter into this Power Purchase Agreement to incorporate the terms and conditions agreed to between them;

AND WHEREAS the Company has provided to the Procurer, Initial Contract Performance Guarantee as per the provisions of Article 3.5.1 as per the format specified in Schedule - 1 of this Agreement.

NOW THEREFORE IN CONSIDERATION OF THE PREMISES AND MUTUAL COVENANTS AND CONDITIONS SET FORTH HEREIN, IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES AS UNDER:

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ARTICLE - 1: DEFINITIONS AND INTERPRETATION

1.1. Definitions

The words and expressions used in this Agreement, unless as defined below or repugnant to the context, shall have the same meaning as assigned to them in the Electricity Act, 2003 and the rules or regulations framed there under, including those issued/ framed by the Appropriate Commission (as defined hereunder), and as amended or re-enacted from time to time.

The words and expressions mentioned below shall have the same meanings as respectively assigned to them hereunder:

"Act" or "Electricity Act 2003" shall mean the Electricity Act, 2003 and any rules, amendments, regulations, notifications, guidelines or policies issued there under from time to time;

"Affiliate" shall mean a company that either directly or indirectly

a. controls; or
b. is controlled by; or
c. is under common control with;

the Company and "control" means ownership by one company of at least twenty six percent (26%) of the voting rights of the other company;

"Aggregate Capacity" shall mean, in relation to a Unit the proposed nameplate capacity of the Unit and in relation to the Power Station the total proposed nameplate capacity of the Power Station. Such proposed capacity of the Power Station in mega watt shall be the sum total of proposed nameplate capacities of each of the Units as mentioned below:

Unit 1: 600 MW, Unit 2: 600 MW,

"Agreement" or "Power Purchase Agreement" or "PPA" shall mean this Power Purchase Agreement including its recitals and Schedules, amended or modified from time to time in accordance with the terms hereof;

"Appropriate Commission" shall mean the Madhya Pradesh Electricity Regulatory Commission and wherever the context so admits specifically and to the limited extent thereof the Central Commission constituted under the Electricity Act, 2003;

"Availability Based Tariff" or "ABT" shall mean the regulations contained in the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009, as amended or revised from time to time, to the extent applied as per the terms of this Agreement;

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"Availability Factor" or "Availability" shall have the meaning ascribed thereto in ABT and shall be reckoned with reference to Installed Capacity as defined herein;

"Available Capacity" shall mean such of the Contracted Capacity as declared available by the Company in accordance with ABT;

"Bill Dispute Notice" shall mean the notice issued by a Party raising a Dispute regarding a Monthly Bill or a Supplementary Bill issued by the other Party;

"Business Day" shall mean with respect to the Company and Procurer, a day other than Sunday or a statutory holiday, on which the banks remain open for business at Jabalpur in the State of Madhya Pradesh;

"Capacity Charge" or "Fixed Charge" shall be the capacity charge determined by the Appropriate Commission as part of the Tariff;

"Central Transmission Utility" or "CTU" shall mean the utility notified by the Central Government under Section-38 of the Electricity Act 2003;

"CERC" or "Central Commission" shall mean the Central Electricity Regulatory Commission of India, constituted under sub-section (1) of Section 76 of the Electricity Act, 2003, or its successors;

"Change in Law" shall have the meaning ascribed thereto in Article 12 of this Agreement;

"Commercial Operation Date" or "COD" shall mean, in relation to a Unit the date on which the Unit is Commissioned and in relation to the Power Station the date on which all the Units of the Power Station are Commissioned;

"Commissioning" or "Commissioned" with its grammatical variations shall mean, in relation to a Unit, the relevant Unit or in relation to the Power Station, all the Units of the Power Station that have passed the Commissioning Tests successfully and the Procurer receives a Final Test Certificate of the Independent Engineer as per the provisions of Article 5.4.1 in relation to the Unit or the Power Station as the case may be;

"Competent Authority" shall mean State Load Despatch Centre, Regional Load Despatch Centre, Regional Power Committee, Government of Madhya Pradesh, Appropriate Commission or any other governmental authority having jurisdiction over the Power Station;

"Competent Court of Law" shall mean any court or tribunal or any similar judicial or quasi-judicial body in India that has jurisdiction to adjudicate upon issues relating to this Agreement;

"Conditions Subsequent" shall have the meaning set out in Article 3;

"Consents, Clearances and Permits" shall mean all authorizations, licenses, approvals, registrations, permits, waivers, privileges, acknowledgements, agreements, or concessions required to be obtained from or provided by any

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concerned authority for the purpose of setting up of the Power Station and/ or supply of power, including without limitation for the construction, ownership, operation and maintenance of the Power Station;

"Consultation Period" shall mean the period of ninety (90) days or such other longer period as the Parties may agree, commencing from the date of issuance of a Company Preliminary Default Notice or Procurer Preliminary Default Notice as provided in Article 13.4.2 and Article 13.3 (i) of this Agreement, for consultation between the Parties to mitigate the consequences of the relevant event having regard to all the circumstances;

"Contract Performance Guarantee" shall mean the irrevocable unconditional bank guarantee submitted or to be submitted by the Company to the Procurer from a scheduled commercial bank and in the format provided in Schedule – 1B in accordance with the terms of this Agreement;

"Contract Year" shall mean the period commencing on the Effective Date (as defined hereunder) and ending on the immediately succeeding March 31 and thereafter each period of twelve (12) months commencing on April 1 and ending on March 31;

Provided that:

(i) in the financial year in which the Scheduled COD , or the Revised Scheduled COD, as the case may be of the first Unit would occur, the Contract Year shall end on the date immediately before the Scheduled COD , or the Revised Scheduled COD, as the case may be of such Unit and a new Contract Year shall commence once again from the Scheduled COD or the Revised Scheduled COD, as the case may be and end on the immediately succeeding March 31, and thereafter each period of twelve (12) months commencing on April 1 and ending on March 31, and

(ii) provided further that the last Contract Year of this Agreement shall end on the last day of the Term of this Agreement;

Contracted Capacity", shall mean the capacity equivalent to 30% of the first unit having Installed Capacity 600 MW contracted with the Procurer as per terms of this Agreement;

"Debt Service" shall mean the amounts which are due under the Financing Agreements by the Company to the Lenders, expressed in Rupees (with all amounts denominated in currencies other than Rupees being converted to Rupees at the reference exchange rate, which is the selling rate in Rupees for the foreign currency on the relevant Day, as notified by the State Bank of India as its TT Rate at 12:00 noon of the date of Financial Closure);

"Declared Capacity" in relation to a Unit or the Power Station at any time means the Net Capacity of the Unit or the Power Station at the relevant time (expressed in MW at the Delivery Point) as declared by the Company in

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accordance with the Grid Code and despatching procedures as per the Availability Based Tariff;

"Delivery Point" shall mean the ex-bus point of the Power Station at the Power Station switchyard;

"Despatch" shall mean to schedule and control the generation of the Power Station in order to commence, increase, decrease or cease the Electrical Output as delivered to the Grid System in accordance with the instructions from the SLDC/ RLDC in conformity with the Grid Code, this Agreement and Prudent Utility Practices;

"Despatch Instruction" shall mean any instruction for scheduling of power issued by the Procurer through the concerned SLDC and/or RLDC to the Company, in accordance with applicable Grid Code and this Agreement;

"Dispute" shall mean any dispute or difference of any kind between the Parties hereto in connection with or arising out of this Agreement including any issue on the interpretation and scope of the terms of this Agreement;

"Due Date" shall means the thirtieth (30th) day after a Monthly Bill or a Supplementary Bill is delivered to and its receipt is acknowledged by the Procurer (or, if such day is not a Business Day, the immediately succeeding Business Day) by which date such Monthly Bill or Supplementary Bill is payable by the Procurer;

"Effective Date" Shall have the meaning set out in Article 2.1 of this Agreement;

"Electrical Output" shall mean the gross electrical energy in kilowatt-hour (kWh) generated by one or more Unit(s) or the Power Station, as the case may be, reduced by normative auxiliary consumption and delivered at the Delivery Point;

"Energy Account" or "Regional Energy Account" or "REA" shall mean the Regional Energy Account as defined in the Grid Code and issued by the Western Region RPC secretariat or other Competent Authority for each calendar month or part thereof (as per their prescribed methodology), including the revisions and amendments thereof;

"Event of Default" shall mean the events as defined in Article 13 of this Agreement;

"Expiry Date" shall mean the 20th anniversary of the Commercial Operation Date of the Power Station;

"Final Test Certificate" shall mean, in relation to each Unit, a certificate of the Independent Engineer certifying and accepting the results of a Commissioning Test(s) in accordance with Article 5.3 of this Agreement;

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"Financial Closure" shall mean the execution of all the Financing Agreements required for the Power Station and fulfillment of conditions precedents thereunder and/or waiver; of any of such conditions precedents for the initial draw down of funds there under;

"Financing Agreements" shall mean the agreements pursuant to which the Company has sought financing for the Power Station including the loan agreements, notes, indentures, security agreements, letters of credit and other documents, as may be amended, modified, or replaced from time to time, but without in anyway increasing the liabilities of the Procurer;

"Force Majeure" or "Force Majeure Event" shall have the meaning ascribed thereto in Article 11 of this Agreement;

"Forced Outage" shall have the meaning ascribed thereto in the Grid Code;

"Fuel" means primary fuel (coal) used to generate electricity namely, domestic coal /imported coal/ blended coal (as applicable);

"Fuel Supply Agreement(s)" shall mean the agreement(s) entered into between the Company and the Fuel supplier and others for the purchase, transportation and handling of the Fuel. ;

"GoI" shall mean the Government of India;

"GoMP" shall mean the Energy Department, Government of Madhya Pradesh;

"Grid Code" or "IEGC" shall mean any set of regulations or codes issued by the Appropriate Commission as amended and revised from time to time and as applicable to the Power Station and the Procurer governing the operation of the Grid System or any succeeding set of regulations or code;

"Grid System" shall mean the interconnection and transmission facilities and any other transmission or distribution facilities through which the Procurer supply electricity to its customers or the transmission company transmits electricity to the Procurer;

"IA" or "Implementation Agreement" shall have the meaning set out in the recitals above and as may be amended from time to time;

"Independent Engineer" shall mean an independent consulting engineering firm or group appointed by the Company in accordance with, Article 5.2;

"Indian Governmental Instrumentality" shall mean the Government of India, Government of Madhya Pradesh and any ministry, department, board, authority, agency, corporation, commission under the direct or indirect control of Government of India or Government of Madhya Pradesh or both, any political sub-division of any of them including any court or Appropriate Commission(s) or tribunal or judicial or quasi-judicial body in India but excluding the Company and the Procurer;

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"Initial Performance Guarantee" shall have the meaning ascribed thereto in Article 3.5;

"Installed Capacity" shall mean the sum of MCR capacities of the Unit(s) of the Power Station, as confirmed by the respective Performance Test;

"Insurances" shall mean the insurance cover to be obtained and maintained by the Company in accordance with Article 9 of this Agreement;

"Interconnection Facilities" shall mean the facilities on the Procurer's side of the Delivery Point for receiving and metering Electrical Output in accordance with this Agreement and which shall include, without limitation, all other transmission lines and associated equipment, transformers and associated equipment, relay and switching equipment and protective devices, safety equipment and, subject to Article 8, the Metering System required for the Power Station;

"Invoice" or "Bill" shall mean a Monthly Invoice and / or a Supplementary Invoice as per Article 10 or an invoice from the Procurer, in accordance with Article 10.3.1;

"Late Payment Surcharge" shall have the meaning as defined in Article 10.4.2;

"Law" shall mean in relation to this Agreement, all laws including electricity laws, in force in India and any statute, ordinance, regulation, notification or code, rule, or any interpretation of any of them by an Indian Governmental Instrumentality and having force of law and shall further include without limitation all applicable rules, regulations, orders, notifications by an Indian Governmental Instrumentality pursuant to or under any of them and shall include without limitation all rules, regulations, decisions and orders of the Appropriate Commissions, and shall include for avoidance of doubt, any amendments thereto and replacements thereof;

"Lender(s)" shall mean the banks, other financial institutions, multilateral agencies, non banking financial companies registered with Reserve Bank of India, mutual funds and agents or trustees of debenture/ bond holders, including their successors and assignees, who have agreed as on or before COD of the Power Station to provide the Company with the debt financing and any successor banks or financial institutions to whom their interests under the Financing Agreements may be transferred or assigned or securitised;

Provided that, such assignment or transfer shall not relieve the Company of its obligations to the Procurer under this Agreement in any manner and shall also not lead to an increase in the liability of the Procurer at any given point of time;

"Letter of Credit" or "L/C" shall have the meaning ascribed thereto in Article 10.5 of this Agreement;

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"Maintenance Outage" shall have the meaning as ascribed to this term as per the provisions of the Grid Code;

"MCR" shall mean Maximum Continuous Rating of Unit(s) as defined in the Grid Code, as may be amended from time to time;

"Meters" or "Metering System" shall mean meters used for accounting and billing of electricity in accordance with Central Electricity Authority (Installation and Operations of Meters) Regulations, 2006, Grid Code and ABT, as amended from time to time;

"Month" shall mean a period of thirty (30) days from (and excluding) the date of the event where applicable, else a calendar month;

"Monthly Bill" or "Monthly Invoice" shall mean a Monthly invoice to be raised by the Company for the Tariff, in accordance with Article 10;

"Net Capacity" shall mean, in relation to a Unit or in relation to the Power Station the Installed Capacity of the Unit or the Power Station, reduced by the normative auxiliary power consumption for power station(s) having similar Unit capacity(s) as prescribed by the Central Commission from time to time and measured at the Delivery Point;

"Normative Availability" shall mean the normative annual plant Availability equal to eighty five per cent (85%) at the Delivery Point on Contract Year basis as specified in the Tariff Regulations, of the Appropriate Commission as may be amended from time to time;

"Operating Period" shall mean the period commencing from the COD of the first Unit, until the Expiry Date or date of earlier termination of this Agreement in accordance with Article 2.3 of this Agreement, as the case may be;

"Performance Test" or "Commissioning Test" shall mean the tests to be carried out in accordance with Article 5 hereof and shall include a periodic Performance Test and a Commissioning Test;

"Planned Outage" shall have the meaning ascribed to this term as per the provisions of the Grid Code;

"Power Station" shall mean the coal based Jhabua Power Station having the proposed capacity of 2x600 MW to be established in District Seoni in the State of Madhya Pradesh;

This includes all Units and auxiliaries such as associated Fuel handling, treatment and storage facilities; water supply, treatment and storage facilities; the ash disposal system including ash dyke bays for transmission system in the switchyard, intake water conductor system and all the other assets, buildings/ structures, equipments, plant and machinery, facilities and related assets required for the efficient and economic operation of the power generation facility; whether completed or at any stage of development (including design, engineering, financing, construction, operation and maintenance, R&M and

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other activities incidental thereto) or intended to be developed and constructed for the purpose of supply of power as per this Agreement;

"Power Station Documents" shall mean

(i) This Agreement;

(ii) Construction contracts;

(iii) Fuel Supply Agreements (as applicable)/ Fuel mining agreements (*applicable in case where coal block allocated*), including the Fuel transportation agreement, if any;

(iv) O&M contracts;

(v) Financing Agreements;

(vi) Water supply agreement; and

(vii) Any other agreements designated in writing as such, from time to time, jointly by the Procurer and the Company;

"Preliminary Default Notice" shall have the meaning ascribed thereto in Article 13.3(i) and Article 13.4.2 of this Agreement;

"Procurer Event of Default" shall mean the default by the Procurer of any of its obligations specified in Article 13.2 of this Agreement;

"Prudent Utility Practices" shall mean those practices, methods, techniques and standards, as prevalent from time to time, that are generally accepted internationally by electric utilities for the purpose of ensuring safe, efficient and economic design, construction, commissioning, testing, operation and maintenance of the various components of the Power Station and which practices, methods and standards shall be adjusted as necessary to take into account:

(i) Installation, operation and maintenance guidelines recommended by the manufacturers of plant and equipment to be incorporated in the Power Station.
(ii) The requirement of Indian Law
(iii) Conditions affecting the Grid System and
(iv) Physical conditions at the Site;

"Rebate" shall have the same meaning as ascribed thereto in Article 10.4.1 of this Agreement;

"Repeat Performance Test" shall have the meaning ascribed thereto in Article 6;

"Revised Scheduled Commercial Operation Date" or "Revised Scheduled COD" shall have the meaning as ascribed thereto in the Article 4.1.6;

"RLDC" shall mean the relevant Regional Load Despatch Centre established under Sub-section (1) of Section 27 of the Electricity Act, 2003;

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"RPC" shall mean the Regional Power Committee established by the Government of India for the western region in accordance with the Electricity Act, 2003 for facilitating integrated operation of the power system in that region;

"Scheduled Commercial Operation Date" or "Scheduled COD" shall mean the scheduled date for achieving COD, as specified in Article 4.1.5;

"Scheduled Connection Date" shall mean the date on or before which the evacuation facilities for the Contracted Energy beyond the Delivery Point shall have to be established by the Procurer, which shall be the date falling two hundred and ten (210) days before the Scheduled COD or Revised Scheduled COD, as the case may be, of the first Unit;

"**Scheduled Energy**" shall mean the energy corresponding to the Available Capacity, to be scheduled in accordance with ABT;

"Scheduled Synchronisation Date" shall mean in relation to a Unit, the date, which shall be maximum of one hundred and eighty (180) days prior to the Scheduled COD of the respective Unit;

"Settlement Period" shall mean the time period for the issuance of daily generation and drawl schedules as provided in ABT;

"Site" means the land over which the Power Station will be developed;

"SLDC" shall mean the centre established under Sub-section (1) of Section 31 of the Electricity Act 2003 for the State of Madhya Pradesh being at present the Madhya Pradesh Power Transmission Company Limited;

"SLDC Charges" shall mean the charges levied by SLDC for the supply of power by the Company to the Procurer;

"State Energy Accounts" or "SEA" shall mean as defined in the Grid Code and issued by the Madhya Pradesh SLDC for each calendar month or part thereof (as per their prescribed methodology), including the revisions and amendments thereof;

"State Transmission Utility" or "STU" shall mean the Government Company notified by the Madhya Pradesh State Government under Sub-section (1) of Section 39 of the Act;

"Supplementary Bill" shall mean a Bill other than a Monthly Bill raised by any of the Parties in accordance with Article 10 of this Agreement;

"Tariff" shall mean the tariff payable by the Procurer to the Company for making available the Contracted Capacity and for supplying Electrical Output corresponding to the Contracted Capacity at Normative Availability, as may be determined by the Appropriate Commission under Law;

"Tariff Payment" shall mean the payments to be made by the Procurer under Monthly Bills and the relevant Supplementary Bills;

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"Term of Agreement" shall mean the period commencing from the execution of this Agreement and expiring on the Expiry Date;

"Termination Notice" shall have the meaning ascribed thereto in Article 13.6.1, and Article 3.3.2 of this Agreement;

"Tested Capacity" shall mean, in relation to a Unit, or the Power Station as a whole (if all the Units of the Power Station have been Commissioned) the capacity, as certified by the Independent Engineer, of the most recent Performance Test carried out in accordance with Article 5 of this Agreement;

"Unit" shall mean, in relation to the Power Station one steam generator, one turbine, one electrical generator and associated auxiliaries of the Power Station, all of which together are capable of generating electricity at the terminals of the electrical generator;

"Unscheduled Interchange" or "UI" shall have the meaning ascribed thereto in the CERC (Unscheduled interchange charges & related matters) Regulations 2009 as amended or revised from time to time;

"Unscheduled Outage" shall mean an outage that is not a Planned Outage and is for the purpose of performing work on specific plant and equipments at the Power Station, which work cannot be postponed till the next Planned Outage;

"Variable Charge" or "Energy Charge" or "Variable Cost" shall have the meaning assigned to the term under the CERC Tariff Regulations, 2009;

"Wheeling Charges" or **"Transmission Charges"** shall mean the charges to be paid by the Procurer to the CTU or STU or any other transmission licensee or any other agency as applicable under Law, for the transfer of power corresponding to Contracted Capacity from the Delivery Point onwards.

1.2. Interpretation

Save where the contrary is indicated, any reference in this Agreement to:

1.2.1. "Agreement" shall be construed as including a reference to its Schedules;

1.2.2. An "Article", a "Recital", a "Schedule" and a "paragraph/clause" shall be construed as a reference to an Article, a Recital, a Schedule and a paragraph/clause respectively of this Agreement;

1.2.3. A "crore" means a reference to ten million (10,000,000) and a "Lakh" means a reference to one tenth of a million (1,00,000);

1.2.4. An "encumbrance" shall be construed as a reference to a mortgage, charge, pledge, lien or other encumbrance securing any obligation of any person or any other type of preferential arrangement (including, without limitation, title transfer and retention arrangements) having a similar effect;

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1.2.5. "Indebtedness" shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;

1.2.6. A "person" shall be construed as a reference to any person, firm, company, limited liability partnership, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and a person shall be construed as including a reference to its successors, permitted transferees and permitted assigns in accordance with their respective interests;

1.2.7. "Rupee", "Rupees" and "Rs." shall denote Indian Rupees, the lawful currency of India;

1.2.8. The "winding-up", "dissolution", "insolvency", or "reorganization" of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the Law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganization, dissolution, arrangement, protection or relief of debtors;

1.2.9. Words importing the singular shall include the plural and vice versa;

1.2.10. This Agreement itself or any other agreement; or deed, instrument, license or document shall be construed as a reference to this or to such other agreement or document as it may have been, or may from time to time be, amended, varied, novated, replaced or supplemented;

1.2.11. A Law shall be construed as a reference to such Law including its amendments or re-enactments from time to time;

1.2.12. A time of day shall, save as otherwise provided in any agreement or document be construed as a reference to Indian Standard Time;

1.2.13. Any reference to period commencing "from" a specified day or date and "till" or "until" a specified day or date shall include such days or dates;

1.2.14. Different parts of this Agreement are to be taken as mutually explanatory and supplementary to each other and if there is any inconsistency between or among the parts of this Agreement, they shall be interpreted in a harmonious manner so as to give effect to each part;

1.2.15. The words/expressions used in this Agreement shall have the same meaning as assigned to them in the context in which these have been used in this Agreement provided that their respective meaning, if any, assigned to such undefined word/expression in the Electricity Act, 2003 shall also be taken into consideration for harmonious interpretation of the Agreement.

1.2.16. The tables of contents and any headings or sub-headings in this Agreement have been inserted for ease of reference only and shall not affect the interpretation of this Agreement;

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1.2.17. All interest payable under this Agreement shall accrue from day to day and be calculated on the basis of a year of three hundred and sixty five (365) days;

1.2.18. The words "hereof" or "herein", if and when used in this Agreement shall mean a reference to this Agreement;

1.2.19. The terms "including" or "including without limitation" shall mean that any list of examples following such term shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided;

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ARTICLE - 2: TERM OF AGREEMENT

2.1. Effective Date

2.1.1. This Agreement shall come into effect from the date it is executed and delivered by the last of all the Parties and such date shall be referred to as the Effective Date.

2.2. Term of Agreement

2.2.1. This Agreement shall be valid for a term commencing from the Effective Date until the Expiry Date ("Term of Agreement"), unless terminated earlier pursuant to Article 2.3. This Agreement may be extended for a further period subject to the terms and conditions that the Parties may mutually agree in writing for such extended period.

2.3. Early Termination

2.3.1. This Agreement shall terminate before the Expiry Date:

(i) if the right to terminate, is validly exercised by any Party pursuant to a specific provision of this Agreement; or

(ii) in such other circumstances as the Company and the Procurer may mutually agree, in writing.

2.4. Survival

2.4.1. The expiry or termination of this Agreement shall not affect any accrued rights, obligations and liabilities of the Parties under this Agreement, including the right to receive liquidated damages as per the terms of this Agreement, nor shall it affect the survival of any continuing obligations for which this Agreement provides, either expressly or by necessary implication, which are to survive after the Expiry Date or termination including those under Article 3.3.2, Article 11 (Force Majeure), Article 13 (Events of Default, Dispute Resolution and Termination), Article 14 (Liability and Indemnification), and Article 16 (Miscellaneous Provisions) and any other Article and Schedule of this Agreement which expressly or by their nature survive the Term of Agreement or termination of this Agreement shall continue and survive any expiry or termination of this Agreement.

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ARTICLE - 3: CONDITIONS SUBSEQUENT

3.1. Satisfaction of Conditions Subsequent by the Company

3.1.1. The Company agrees and undertakes to duly perform and complete the following activities at the Company's own cost and risk.

3.1.1.1. Within twelve (12) Months from the Effective Date, unless such completion is affected by any Force Majeure Event or due to the Procurer's failure to comply with its obligations under this Agreement, or if any of the activities is specifically waived in writing by the Procurer,

(i) The Company shall have taken the possession of land required, for the setting up of the Power Station and shall have submitted a letter to this effect to the Procurer;

(ii) The Company shall have awarded the Engineering, Procurement and Construction contract ("EPC contract") or main plant contract for boiler, turbine and generator ("BTG"), for setting up of the Power Station and shall have given to such contractor an irrevocable instruction to proceed and shall have submitted a letter to this effect to the Procurer;

(iii) The Company shall have achieved Financial Closure and shall have provided a certificate from the lead banker to this effect to the Procurer;

(iv) The Company shall have made available to the Procurer the data with respect to the Power Station for design of Interconnection Facilities;

(v) The Company shall have submitted to the Procurer, the milestone schedule for setting up of the Power Station;

(vi) The Company shall have obtained clearances from the Ministry of Environment and Forests, Government of India;

(vii) In the event the Company exercises its right under Article 15.1.4, then the Company shall have provided an irrevocable letter to the Lenders duly accepting and acknowledging the rights provided to the Lenders under the terms of this Agreement and all other Power Station Documents.

3.2. Satisfaction of Conditions Subsequent by the Procurer

The Procurer agrees and undertakes to duly perform and complete following activities within the time stipulated against each, unless such completion is affected due to any Force Majeure Event or due to the Company's failure to comply with its obligations under this Agreement or if any of the activities is specifically waived in writing by the Company.

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i) The Procurer shall have obtained open access and/ or connectivity for evacuation of the Scheduled Energy from the Delivery Point at least 60 (sixty) days prior to Commissioning of the first Unit;

ii) The Procurer shall have established the necessary evacuation infrastructure beyond the Delivery point required for evacuation of the Scheduled Energy at least 210 days prior to Commissioning of the first Unit;

iii) The Procurer agrees and undertakes that the Procurer along with the Discoms shall file, within three (3) months from the Effective Date, an appropriate petition with the Appropriate Commission seeking the approval of the said Commission for this Agreement. The Company shall duly furnish the requisite data, details, information and documents and assist the Procurer in such proceedings before the Appropriate Commission. Subject to the appellate remedies that may be availed by any of the Parties hereto as provided under section 111 and 125 of the Electricity Act, 2003, the Parties agrees to implement this Agreement with such modification to the terms thereof, as may be decided by the Appropriate Commission.

iv) The Procurer shall have established and furnished to the Company, the Letter of Credit in accordance with Article 10.5.

3.3. Consequences of non-fulfillment of Conditions Subsequent by the Company

3.3.1. If any of the conditions specified in Article 3.1 is not duly fulfilled by the Company even within three (3) Months after the time specified under Article 3.1, otherwise than for reasons directly attributable to the Procurer or Force Majeure Event in terms of Article 3.3.4, then on and from the expiry of such period and until the Company has satisfied all the conditions specified in Article 3.1, the Company shall be liable to furnish to the Procurer additional weekly performance guarantee (the **"Additional Weekly Performance Guarantee"**) of Rupees Sixty Seven Point Five Lakhs (67.5 lakhs) only for Unit No. 1 within two (2) Business Days of expiry of every such week. Such Additional Weekly Performance Guarantee shall initially be valid for twelve (12) Months, and shall be extended from time to time, at least fifteen (15) days prior to the expiry, to be valid up to three (3) Months after the achievement of Conditions Subsequent. The Procurer shall be entitled to hold and/or invoke the Initial Contract Performance Guarantee, including such Additional Weekly Performance Guarantee, in accordance with the provisions of this Agreement.

For avoidance of doubt it is clarified that:

(a) the Additional Performance Guarantee to be furnished by the Company to the Procurer, as may be required under this Agreement, shall be in addition to the Initial Contract Performance Guarantee; and

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(b) the Procurer shall have the right to encash the Initial Contract Performance Guarantee and/or the Additional Weekly Performance Guarantee, individually or in combination, to compensate itself, without any obligation to issue any notice to the Company in case of Company Event of Default before doing so, according to the terms hereof;

3.3.2. Subject to Article 3.3.4, if:

(i) fulfilment of any of the conditions specified in Article 3.1 is delayed beyond the period of three (3) Months after the date specified in Article 3.1 above and the Company fails to furnish any Additional Weekly Performance Guarantee to the Procurer in accordance with Article 3.3.1 hereof; or

(ii) the Company furnishes Additional Weekly Performance Guarantee to the Procurer in accordance with Article 3.3.1 hereof but fails to fulfil the conditions specified in Article 3.1 for a period of eight (8) Months beyond the period specified therein,

the Procurer shall have the right (but not an obligation) to terminate this Agreement by giving a Termination Notice to the Company in writing of at least seven (7) days. The termination of the Agreement shall take effect upon expiry of the last date of the said notice period ("Termination Date").

3.3.3. If the Procurer elects to terminate this Agreement in the event specified in the preceding Article 3.3.2, the Company shall be liable to pay to the Procurer on the Termination Date an amount of Rupees Eighteen Crores (18 crores) only as pre-estimated liquidated damages, without affecting the Procurer's right under Article 3.3.4 herein.

The Procurer shall be entitled to recover this amount of liquidated damages by invoking the Initial Contract Performance Guarantee and Additional Weekly Performance Guarantee to the extent of Rupees Eighteen Crores (18 crores) only and shall then return the balance Performance Guarantee, if any, to the Company. If the Procurer is unable to recover the said amount of Rupees Eighteen Crores (18 crores) only or any part thereof from the Initial Contract Performance Guarantee and/or Additional Weekly Performance Guarantee, the amount not recovered from these performance guarantees, if any, shall be payable by the Company to the Procurer within ten (10) days from the date of Termination.

For the avoidance of doubt, it is clarified that:

(a) The Company shall have no right to terminate this Agreement for non fulfilment of any Conditions Subsequent on the part of the Company as mentioned in this Article;

(b) This Article shall survive the termination of this Agreement;

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(c) Provisions of Article 13.6.4 of this Agreement shall also apply in the event of termination of this Agreement.

3.3.4. In case of inability of the Company to fulfill any one or more of the conditions specified in Article 3.1 due to any Force Majeure Event, the time period for fulfillment of the Conditions Subsequent as mentioned in Article 3.1 shall be extended for the period of such Force Majeure Event, subject to a maximum extension period of ten (10) Months, continuous or non-continuous in aggregate. Thereafter, this Agreement may be terminated by either the Procurer or the Company by giving a notice of at least seven (7) days, in writing to the other Party without any cost to either Party. However, provisions of Article 13.6.4 of this Agreement shall also apply in the event of such termination of this Agreement.

3.4. Consequences for non-fulfillment of Conditions Subsequent by Procurer

In case of inability of the Procurer to file the Petition before the Appropriate Commission as specified in Article 3.2 within the time period specified therein, otherwise than for the reasons attributable to the Company or any Force Majeure Event, the time period for the fulfillment of Conditions Subsequent by the Procurer as mentioned in Article 3.2 would be extended by another three (3) months. Thereafter, this Agreement may be terminated by the Company at its option, by giving a Termination Notice of at least seven (7) days, in writing to the Procurer. If the Company elects to terminate this Agreement under this Article the Procurer shall, within a period of thirty (30) days of termination by the Company, release the Initial Contract Performance Guarantee. It is clarified that the filing of the petition before the Appropriate Commission shall be due compliance of the Condition Subsequent mentioned in Article 3.2(iii) on the part of the Procurer notwithstanding the time that may be taken by the Appropriate Commission to deal with and/or decide the petition.

Similarly, in case of inability of the Procurer to fulfill any one or more of the conditions specified in Article 3.2 due to any Force Majeure event, the time period for fulfillment of the condition subsequent as mentioned in Article 3.2 shall be extended for the period of such Force Majeure event, subject to a maximum extension period of ten (10) months, continuous or non-continuous in aggregate. Thereafter, this Agreement may be terminated by either the Procurer or the Company by giving a notice of at least seven (7) days, in writing to other party without any cost to either Party. The termination of the Agreement, shall take effect upon the expiry of the last date of the said notice period.

In case of inability of the Procurer to perform the activities specified in Article 3.2 within the time period specified therein, otherwise than for the reasons directly attributable to the Company or Force Majeure event, the time period for the fulfillment of Condition Subsequent by the Procurer as mentioned in Article 3.2

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would be extended for an additional time period which may be required by the Procurer to complete the activities mentioned in Article 3.2, subject to a maximum additional time period of three (3) months. Thereafter, this Agreement may be terminated by the Company at its option, by giving a Termination Notice of at least seven (7) days, in writing to the Procurer. If the Company elects to terminate this Agreement, the Procurer shall, within a period of thirty (30) days of termination by the Company, release all the Contract Performance Guarantee, Additional Performance Guarantee of the Company, forthwith. In addition, the Procurer shall pay to the Company as liquidated damages, a sum equivalent to ten percent (10%) of the value of the Contract Performance Guarantee.

3.5. Initial Contract Performance Guarantee and Contract Performance Guarantee

3.5.1. Prior to or simultaneously with the execution of this Agreement, the Company has provided to the Procurer, an unconditional and irrevocable performance guarantee (the "**Initial Contract Performance Guarantee**") as per proforma given in Schedule – 1A from any scheduled bank, of an aggregate amount of Rupees Five Point Four Crores (5.4 crores) only Subject to Article 3.3 the Initial Contract Performance Guarantee shall be initially valid till fifteen (15) Months from the Effective Date and shall be extended from time to time, at least fifteen (15) days prior to the expiry, to be valid till three (3) Months after the fulfillment of Conditions Subsequent by the Company. If such extended Initial Contract Performance Guarantee is not received as per the date specified above even after giving atleast 7 days prior notice for extension of validity of Initial Contract Performance guarantee, the Procurer shall have the right to encash the then existing Initial Contract Performance Guarantee without giving any notice to the Company.

3.5.2. Upon fulfillment of Conditions Subsequent by the Company, the Company shall provide to the Procurer an unconditional and irrevocable contract performance guarantee (the "**Contract Performance Guarantee**") as per proforma given in Schedule – 1B from any scheduled commercial bank, of an aggregate amount of Rupees Thirteen Point Five Crores (13.50 crores) only. Subject to Article 3.3 the Contract Performance Guarantee shall be initially valid till three (3) Months after the Scheduled COD of the Power Station and which shall be extended from time to time, at least fifteen (15) days prior to the expiry, to be valid up to three (3) Months after the COD of the Power Station. If such extended Contract Performance Guarantee is not received as per the date specified above, even after giving atleast 7 days notice for extension of validity of Initial Contract Performance guarantee the Procurer shall have the right to encash the then existing Contract Performance Guarantee.

3.5.3. The Initial Contract Performance Guarantee or the Contract Performance Guarantee, as the case may be, including the Additional Weekly Performance Guarantee furnished under this Agreement shall be for guaranteeing the due and

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timely completion of the Power Station, achievement of Scheduled COD or the Revised Scheduled COD, as the case may be, of each Unit.

3.5.4. The failure on the part of the Company to furnish and maintain Initial Contract Performance Guarantee or the Contract Performance Guarantee, as the case may be, and/ or the Additional Weekly Performance Guarantee shall be a material breach of the term of this Agreement.

3.5.5. If the Company fails to achieve COD of any of the Units on their respective Scheduled COD or the Revised Scheduled COD, as the case may be subject to conditions mentioned in Article 4.4.1, the Procurer shall have the right (but not an obligation) to encash the Contract Performance Guarantee, without any notice to the Company, and appropriate in its favour as liquidated damages an amount specified in Article 4.5, without prejudice to the other rights of the Procurer under this Agreement.

3.6. Subject to the provisions of the Articles 3.3.4 and 3.3.1 any increase in the time period for completion of Conditions Subsequent mentioned in Article 3.1, shall also lead to an equal increase in the time period for Scheduled COD and Scheduled Connection Date.

3.7. Return of Performance Guarantee

3.7.1. Upon satisfaction of the Conditions Subsequent by the Company and upon the Company having duly furnished the Contract Performance Guarantee as per Article 3.5.2. the Initial Contract Performance Guarantee and/or the Additional Weekly Performance Guarantee shall be returned/ released by the Procurer within 30 days to the Company subject to the provisions of Article 3.3.3.

3.7.2. In the event of applicability of Article 3.3.2 the Procurer shall return / release the performance guarantee(s) to the extent the performance guarantee is valid.

3.7.3. The Procurer shall return / release the Initial Contract Performance Guarantee and Additional Weekly Performance Guarantee to the Company in the event of:

(i) Termination of this Agreement by any Party under Article 3.3.4; or

(ii) Termination of this Agreement by the Procurer under Article 3.3.2 of this Agreement subject to the provisions of Article 3.3.3; or

(iii) Upon fulfillment of Conditions Subsequent as per Article 3.1.

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3.7.4. The Procurer shall return / release the Contract Performance Guarantee to the Company at the end of the third (3rd) Month of the actual COD of the Power Station.

3.7.5. The return/release of the Contract Performance Guarantee shall be without prejudice to other rights of the Procurer under this Agreement and subject to adjustment by the Procurer of any amount due to the Procurer from the Company at the relevant time.

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ARTICLE - 4: DEVELOPMENT OF THE PROJECT

4.1. Company's Obligations

4.1.1. Subject to the terms and conditions of this Agreement, the Company undertakes to be responsible, at its own cost and risk, for:

(i) Obtaining and maintaining in full force and effect all Consents, Clearances, and Permits during the Term of this Agreement required by it, pursuant to this Agreement and Law;

(ii) Setting up of the Power Station in a timely manner so as to enable first unit to be Commissioned not later than its Scheduled COD or the Revised Scheduled COD, as the case may be , and to make available the Contracted Capacity reliably through the use of Prudent Utility Practices throughout the Term of this Agreement;

(iii) The Company shall enter into appropriate arrangements for supply of Fuel for all or part of the capacity of the Unit(s) upon prudent terms and conditions materially consistent with the extant policy of the Government of India, if any. The Company shall provided a copy of the duly executed Fuel Supply Agreement to the Procurer;

(iv) Operation and maintenance of the Power Station in accordance with the provisions of this Agreement, Grid Code and Prudent Utility Practices;

(v) Procure the requirements of electricity at the Power Station (including construction, commissioning and start-up power) and to meet in a timely manner all formalities for getting such supply of electricity;

(vi) Assist the Procurer and the Discoms in filing petition with the Appropriate Commission for approval of Tariff as may be required under Law and make available the requisite data details information and documents for the purpose from time to time;

(vii) Providing to the Procurer, on a timely basis, relevant technical information on Power Station specifications, which may be reasonably required by the Procurer to design the Interconnection Facilities;

(viii) Performance and fulfillment of all other obligations of the Company in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Company under this Agreement.

4.1.2. Submission of progress reports

The Company shall furnish to the Procurer, as well as to the Energy Department, GoMP, quarterly progress reports of actual progress of the Power Station and shall

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give all such other relevant information as may be required by the GoMP or Procurer from time to time till COD of the Power Station.

4.1.3. To provide all information required under Consents, Clearances and Permits. The Company shall provide all information and supporting documentation required to be submitted under Law, to any Competent Authority.

4.1.4. Safety Measures

The Company shall ensure proper safety measures during implementation of the Power Station including, but not limited to, any geological study, construction and testing at the Site as per Law.

4.1.5. Scheduled Commercial Operation Date

The Company shall achieve Commercial Operation Date for the first Unit by 31st March'2013.

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..

4.2. Procurer's Obligations

Subject to the terms and conditions of this Agreement, the Procurer undertakes to be responsible, at its own cost and risk, for:

(i) Obtaining open access and/ or connectivity for evacuation of the Contracted Capacity from the Delivery Point at least 60 (sixty) days prior to Commissioning of the first Unit;

(ii) Establishing the necessary evacuation infrastructure beyond the Delivery point required for evacuation of the Contracted Capacity at least 210 days prior to Commissioning of the first Unit;

(iii)Filing along with the Discoms, within three (3) months from the Effective Date, an appropriate petition with the Appropriate Commission seeking the .approval of the said Commission for this Agreement. However, the Company shall duly furnish the requisite data, details, information and documents and assist the Procurer in such proceedings before the Appropriate Commission. Subject to the appellate remedies that may be availed by any of the Parties hereto as provided under section 111 and 125 of the Electricity Act, 2003, the Parties agrees to implement this Agreement with such modification to the terms thereof, as may be decided by the Appropriate Commission.

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(iv) Ensuring the availability of Interconnection Facilities for evacuation of Contracted Capacity from the Delivery Point;

(v) Payment of the Tariff in accordance with Article 10;

(vi) Payment of all charges for transmission as per prevailing regulations issued by the Appropriate Commission(s) beyond the Delivery Point corresponding to Contracted Capacity;

(vii) Opening and furnishing to the Company a Letter of Credit in favour of the Company and renewing and replenishing the same in accordance with Article 10.5; and

(viii) Fulfilling other obligations undertaken by it under this Agreement.

4.3. Right to Contracted Capacity and Scheduled Energy

4.3.1. Subject to the terms and conditions of this Agreement, the Company undertakes to make available to the Procurer the Contracted Capacity and the Procurer undertakes to purchase the Scheduled Energy and pay the Tariff. The title and risk to the Scheduled Energy shall pass from the Company to the Procurer at the Delivery Point.

4.3.2. Subject to the provisions of this Agreement, the entire Contracted Capacity shall at all times be for the exclusive benefit of the Procurer (through the Procurer to meet the Discoms requirements) who shall have the exclusive right to purchase the Scheduled Energy. The Company shall not grant to any third party or allow any third party to obtain, any entitlement to the Contracted Capacity and / or Scheduled Energy.

4.3.3. If the Procurer does not schedule the whole or part of the Available Capacity for any reason whatsoever, the Company shall be entitled to make available such Available Capacity not scheduled by the Procurer, to any other person without losing the right to receive the Capacity Charges from the Procurer for such unscheduled Available Capacity. During this period, the Company will continue to receive the Capacity Charges from the Procurer. For any such third party sale, all open access charges including losses, as may be applicable, shall not be payable by the Procurer. The Company shall maintain accounts and provide all details regarding price of sale etc. to the Procurer in respect of such sales under this Article.

4.3.4. In the cases referred in Article 4.3.3, the sale realization in excess of Energy Charges shall be equally shared by the Company and the Procurer. In the event, the Company makes available such Available Capacity to any direct or indirect Affiliate of the Company/ shareholders of the Company without obtaining the prior written consent of the Procurer, the Company shall be liable to make available such Available Capacity to such entity at a tariff being not less than the Tariff.

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4.3.5. Where the sale under Article 4.3.3 by the Company is consequent to a notice issued by the Procurer to the Company indicating its unwillingness to schedule the whole or part of the Available Capacity for a period specified in such notice, the Procurer shall be entitled to request the Company for the resumption of availability of the Available Capacity at any time, however, the Company shall not be liable to resume such availability earlier than the period specified in the said notice, and subject to the provisions regarding scheduling as per the Grid Code.

4.3.6. The sale under Unscheduled Interchange shall not be considered as sale to third party for the purposes of this Agreement.

4.3.7. Alternative Source of Power Supply

During the Operating Period, if the Company is unable at any time to make available the Contracted Capacity or part thereof from the Power Station, except due to a Force Majeure Event or due to Procurer Event of Default, to mitigate the damages payable by the Company to the Procurer the Company shall be free to make available the Contracted Capacity from an alternative generation source to meet its obligations under this Agreement. Such capacity shall be made available to the Procurer at the same Tariff that the Procurer was required to pay in accordance with Article 10 of this Agreement. In case the transmission and other incidental charges, including but not limited to application fees for open access, RLDC/ SLDC charges, etc., applicable from the alternative generation source are higher than the equivalent charges applicable under this Agreement, the Company would be liable to bear such additional charges.

4.3.8. The Company shall be permitted to make available the Contracted Capacity to the Procurer from any alternative generation source as specified in Article 4.3.7 for a maximum continuous period of six (6) Months or a maximum non continuous period of twenty four (24) months during the Operating Period, excluding any period during which the Company makes available the Contracted Capacity prior to the COD of the Unit or Power Station, as the case may be, as provided for in Article 4.5.

4.4. Extensions of time

4.4.1. In the event that the Company is prevented from performing its obligations to Commission first Unit by its Scheduled COD, or the Revised Scheduled COD as the case may be , due to either (i) Procurer Event of Default; or (ii) any Force Majeure Event, then in such events, the Scheduled COD, or the Revised Scheduled COD as the case may be shall be deferred, subject to the limit prescribed in Article 4.4.4, for a reasonable period but not less than 'day to day' basis, to permit the Company through the use of due diligence to overcome the effects of the Force Majeure Event(s) affecting the Company or in the case of the Procurer's Event of Default, till such time such default is rectified by the Procurer.

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4.4.2. In the event the delay is under Article 4.4.1(i) above, then the Expiry Date shall not be deferred and shall be reckoned with reference to the Scheduled COD, or the Revised Scheduled COD as the case may be, whereas if the delay is under Article 4.4.1(ii) above, then the Expiry Date shall be deferred and shall be reckoned with reference to the actual COD.

4.4.3. If the Parties have not agreed, within thirty (30) days after the affected Party's performance has ceased to be affected by the relevant circumstances, on the time period by which the Scheduled COD or the Revised Scheduled COD, as the case may be should be deferred by, any Party may raise the Dispute to be resolved in accordance with Article 13.5

4.4.4. In case of extension occurring due to reasons specified in Article 4.4.1 the original Scheduled COD, or the Revised Scheduled COD as the case may be of any Unit or the Power Station as the case may be, shall not be extended by more than two (2) years.

4.4.5. In the event of any extension under this Article 4.4, the date newly determined shall be deemed to be the Scheduled COD for the purposes of this Agreement.

4.5. Liquidated damages for delay in providing Contracted Capacity

4.5.1. If the Company is unable to Commission first Unit of the Power Station by the Scheduled COD, or the Revised Scheduled COD as the case may be other than for the reasons specified in Article 4.4.1, the Company shall pay to Procurer liquidated damages as per Article 4.5.3, for the delay in such Commissioning and making the Contracted Capacity available for despatch by the Scheduled COD, or the Revised Scheduled COD as the case may be , without in any manner affecting the other rights of the Procurer.

Provided that the Company shall have the option to supply power from any alternative generation source from the Scheduled COD for a period not exceeding twelve (12) months at a tariff not exceeding the Tariff to mitigate the damages payable by the Company to the Procurer and without affecting the Procurer's interests..

Provided further, the cumulative Availability from such alternative generation source in the twelve (12) Months period shall not be less than the Normative Availability. If the Company fails to Commission any Unit of the Power Station and/ or fails to achieve the required Availability as mentioned above in this Article, it shall pay to the Procurer liquidated damages determined under the provisions of Article 4.5.3 for such period of delay.

4.5.2. The Company shall be liable to bear all the transmission and other incidental charges, including but not limited to application fees for open access, RLDC

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SLDC charges, etc., applicable from the alternative source of power supply up to the Delivery Point.

4.5.3. The sum total of the liquidated damages payable by the Company to the Procurer shall be calculated as follows:

If dn <= 60 days, then the liquidated damages shall be calculated as follows:

SLDb = [CCun x dn x DR1]

If dn > 60 days, then the liquidated damages shall be calculated as follows:

SLDb = [CCun x 60 x DR1] + [CCun x (dn - 60) x DR2]

Where:

(a) "SLDb" is the liquidated damages payable by the Company during the period beginning with the day from the Scheduled COD, or the Revised Scheduled COD, as the case may be, or from the end of continuous period of supply from the alternative generation source or for the period during which the Availability from the alternative generating source is less than the Normative Availability, as the case may be, up to and including the day on which supply of power to the Procurer actually commences from the generation source as provided in this Agreement;

(b) "CCun" is the Contracted Capacity of the relevant Unit "n";

(c) "dn" is the number of days in the period beginning with the day after the Scheduled COD, or the Revised Scheduled COD, as the case may be of Unit "n" up to and including the day on which such Unit is actually Commissioned;

(d) "DR1" is Rs. Ten Thousand (10,000) of damages per MW per day of delay in case "d" is equal to or less than 60 days and "DR2" is Rs. Fifteen Thousand (15,000) of damages per MW per day of delay in case "d" is more than 60 days. The amount so determined shall be paid by the Company without any demur and it agrees to pay the same unequivocally and unconditionally in the manner provided herein.

For the avoidance of doubt it is clarified that the Company shall be entitled to make available the Contracted Capacity from any Unit or combination thereof and in such event LD shall be determined only in respect of Contracted Capacity not made available on Scheduled COD, or the Revised Scheduled COD as the case may be.

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4.5.4. The Company's maximum liability under this Article 4.5 (excluding liability under Article 4.5.8) shall be limited to the amount of liquidated damages calculated in accordance with Article 4.5.3 for and up to eighteen (18) Months of delay in Commissioning for the Unit. Provided that in case of failure of the Company to Commission the Unit even after expiry of eighteen (18) Months from its Scheduled COD, it shall be considered as a Company Event of Default and the provisions of Article 13 shall apply. Notwithstanding the termination of the Agreement in terms of Article 13.3 read with this Article for Company Events of Default and the receipt of liquidated damages as specified in this Article 4.5 in the event at any time the Company achieves COD of the first Unit of the Power Station, the Procurer shall subject to the GoMP reinstating all the benefits under and in terms of the I.A. to the Company, have the option and right of first refusal to require the Company to supply power to Procurer of the Contracted Capacity on the same terms and conditions as contained in this Agreement and this Agreement shall revive and bind the parties.

4.5.5. The Company shall pay the amount calculated pursuant to Article 4.5.3 to the Procurer within ten (10) days of the earlier of:

(a) the date on which the Unit is actually Commissioned; or

(b) expiry of the eighteen (18) Month period mentioned in Article 4.5.4.

4.5.6. If the Company fails to pay the amount of damages within the said period of ten (10) days, the Procurer shall be entitled to recover the said amount of the liquidated damages by invoking the Contract Performance Guarantee. If then existing Contract Performance Guarantee is for an amount which is less than the amount of the liquidated damages payable by the Company to the Procurer under this Article 4.5, then the Company shall be liable to forthwith pay the balance amount within ten (10) days of the invocation of the Contract Performance Guarantee by the Procurer.

4.5.7. The Parties agree that the formula specified in Article 4.5.3 for calculation of liquidated damages payable by the Company under this Article 4.5, read with Article 13, is a genuine and accurate pre-estimation of the actual loss that will be suffered by the Procurer in the event of the Company's delay in starting supply of power by the Scheduled COD or, the Revised Scheduled COD.

4.5.8. In addition to the liquidated damages payable by the Company to the Procurer for delay in Commissioning a Unit and commencement of supply of power, as specified in Article 4.5.3, the Company shall further pay to the Procurer liquidated damages as per this Article 4.5.8. Such additional liquidated damages payable by the Company to the Procurer shall be equivalent to the damages payable by the Procurer to the CTU/STU (as the case may be) for the period of delay, as per the terms of agreement entered into by the Procurer with CTU/STU for establishment of transmission system and/ or transmission services beyond the Delivery Point.

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Provided however, the liquidated damages payable by the Company to the Procurer in case of delay under this Article 4.5.8 shall not be more than twenty percent (20%) of liquidated damages computed in the manner mentioned in Article 4.5.3.

4.5.9. It is clarified that the liquidated damages payable under this Article 4.5.8 shall be in addition to the liquidated damages determined in terms of Article 4.5.3.

4.6. **Liquidated Damages for delay due to Procurer** Event of Default or Indirect Non Natural Force Majeure Events or Natural Force Majeure Event (affecting the Procurer)

4.6.1. If a the Unit or the Power Station is otherwise ready to commence supply of power to the Procurer on any date, where such date is on or before the Scheduled COD or Revised Scheduled COD, as the case may be, but is not able to commence supply of power by the said date, due to a Procurer Event of Default or due to Indirect Non Natural Force Majeure Event or (Natural Force Majeure Event affecting the Procurer) provided such Indirect Non Natural Force Majeure Event or (Natural Force Majeure Event affecting the Procurer) has continued for a period of more than three (3) continuous or non-continuous Months, the Company shall, until the effects of the Procurer Event of Default or of Indirect Non Natural Force Majeure Event or (Natural Force Majeure Event affecting the Procurer) no longer prevent the Company from providing supply of power to the Procurer, be deemed to have an Available Capacity equal to the Contracted Capacity relevant to that date and to this extent, be deemed to have been providing supply of power with effect from the date notified, and notwithstanding anything contained herein shall be treated as follows:

a) In case of delay on account of the Procurer Event of Default, the Procurer shall make payment to the Company of Capacity Charges in proportion to its Contracted Capacity, calculated on Normative Availability of Contracted Capacity for and during the period of such delay.

b) In case of delay due to Indirect Non Natural Force Majeure Event or (Natural Force Majeure Event affecting the Procurer), the Procurer shall make payment to the Company for Debt Service, subject to a maximum of Capacity Charges calculated on Normative Availability of Contracted Capacity, which is due under the Financing Agreements for the period of such events in excess of three (3) continuous or non-continuous Months.

c) In case of delay due to Indirect Non Natural Force Majeure Event (or Natural Force Majeure Event affecting the Procurer) or Procurer Event of Default, the Procurer shall be liable to make payments mentioned in (a) and (b) above, after commencement of supply of power, in the form of an increase in Capacity Charges. These amounts shall be paid from the date,

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being the later of a) the date of cessation of such Indirect Non Natural Force Majeure Event (or Natural Force Majeure Event affecting the Procurer) or Procurer Event of Default and b) the completion of sixty (60) days from the receipt of the Financing Agreements by the Procurer from the Company.

Provided such increase in Capacity Charges shall be determined by Appropriate Commission on the basis of putting the Company in the same economic position as the Company would have been in case the Company had been paid amounts mentioned in (b) above in a situation where the Force Majeure Event or Procurer Event of Default had not occurred.

For the avoidance of doubt, it is specified that the charges payable under this Article 4.6.1 shall be paid by the Procurer in proportion to its Contracted Capacity.

4.7. Liquidated Damages for delay due to Direct Non Natural Force Majeure Event

4.7.1. If the Unit or the Power Station is otherwise ready to commence supply of power to the Procurer on the date, where such date is on or before the Scheduled COD or Revised Scheduled COD, as the case may be, but is not able to commence supply of power by the said date specified in the notice, due to a Direct Non Natural Force Majeure Event, provided such Direct Non Natural Force Majeure Event has continued for a period of more than three (3) continuous or non-continuous Months, the Company shall, until the effects of the Direct Non Natural Force Majeure Event no longer prevent the Company from providing supply of power to the Procurer, be deemed to have an Available Capacity equal to the Contracted Capacity relevant to that date and to this extent, be deemed to have been providing supply of power with effect from the date notified, and shall be treated as follows:

a) In case of delay due to Direct Non Natural Force Majeure not attributable to the Procurer, the Procurer shall make payment for Debt Service, subject to a maximum of Capacity Charges calculated on Normative Availability of Contracted Capacity which are due under the Financing Agreements for the period of such events in excess of three (3) continuous or non-continuous Months.

b) In case of delay due to Direct Non Natural Force Majeure attributable to the Procurer, the Procurer shall make payment to the Company of Capacity Charges calculated on Normative Availability of Contracted Capacity for the period of such events in excess of three (3) continuous or non-continuous Months.

c) In case of delay due to Direct Non Natural Force Majeure Event, the Procurer shall be liable to make payments mentioned in (a) and (b) above,

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after commencement of supply of power, in the form of an increase in Capacity Charges. These amounts shall be paid from the date, being the later of a) the date of cessation of such Direct Non Natural Force Majeure Event and b) the completion of sixty (60) days from the receipt of the Financing Agreements by the Procurer from the Company.

Provided such increase in Capacity Charges shall be determined by Appropriate Commission on the basis of putting the Company in the same economic position as the Company would have been in case the Company had been paid amounts mentioned in (a) and (b) above in a situation where the Force Majeure Event had not occurred.

For the avoidance of doubt, it is specified that the charges payable under this Article 4.7.1 shall be paid by the Procurer in proportion to its Contracted Capacity.

4.8 In every case referred to in Article 4.6.1 and 4.7.1 hereinabove, the Company shall undertake to commence supply of the Contracted Capacity, relevant to such date, to the Procurer as soon as reasonably practicable and in no event later than two (2) Weeks or such longer period as mutually agreed between the Company and the Procurer after the point at which it is no longer prevented from doing so by the effects of Force Majeure Events or Procurer Event of Default (as applicable). If the Company is unable to provide supply of the Contracted Capacity in such a situation, then:

a) the Company shall repay to the Procurer, all sums received by way of Capacity Charge for the deemed supply of power with interest at the same rate as Late Payment Surcharge; and

b) If the Company fails to provide supply of power to Procurer by the Scheduled COD or the Revised Scheduled COD, as the case may be, it shall also pay liquidated damages to the Procurer calculated in accordance with Article 4.5.

4.9. Limit on amounts payable due to default

The Parties expressly agree that the Procurer's only liability for any loss of profits or any other loss of any other kind or description whatsoever, suffered by the Company by reason of the Procurer's failure to meet its obligations under Article 4.1.2 shall be the amounts specified in Article 4.6.

Similarly the Company's only liability for any loss of profits or any other loss of any other kind or description whatsoever, suffered by the Procurer by reason of the Company's failure to meet any of its obligations under this Agreement shall be the amounts specified in Article 4.5.

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ARTICLE – 5: SYNCHRONISATION, TESTING, COMMISSIONING AND COMMERCIAL OPERATION AND SUBSEQUENT EXPANSION OR INCREASE OF INSTALLED CAPACITY

5.1. Synchronisation

5.1.1. The Company shall give Procurer, the SLDC and RLDC at least sixty (60) days advance written notice intimating the Scheduled Synchronization Date i.e. the date on which the Company intends to synchronize a Unit to the Grid System. Any final date proposed by the Company that is earlier than the Scheduled Synchronization Date, shall be subject to written consent of Procurer.

5.1.2. Subject to Article 5.1.1, a Unit may be synchronised by the Company to the Grid System when it meets all connection conditions prescribed in the Grid Code then in effect and otherwise meets all other Indian legal requirements for synchronisation to the Grid System.

5.2. Appointment of Independent Engineer

5.2.1. The Company shall appoint an Independent Engineer for the purposes of carrying out the functions as specified in, Article 5, [*add other relevant article references: 4.7.2, 11.7*] at least twelve (12) months prior to Scheduled COD or of the first Unit.

5.2.2. The Independent Engineer shall be appointed by the Company from the panel of competent firms as agreed to between the Company and the Procurer and annexed in Schedule – 5 of this Agreement.

5.2.3. The fees and expenses of the Independent Engineer shall be borne by the Company.

5.3. Testing and Commissioning

5.3.1. The Company shall be responsible for ensuring that the first Unit is commissioned at its own cost, risk and expense in accordance with the procedures enumerated in the Grid Code, Prudent Utility Practices, and complying with the directions of the SLDC/ RLDC.

5.3.2. The Company shall give the Procurer and the Independent Engineer not less than twenty one (21) days prior written notice of Commissioning Test of first Unit.

5.3.3. The Company, the Procurer and the Independent Engineer shall each designate qualified and authorised representative to witness and monitor Commissioning Test of first Unit.

5.3.4. Testing and measuring procedures applied during each Commissioning Test shall be in accordance with the codes, practices and procedures mentioned in the contract with the EPC contractor, and operating manuals of the equipment manufacturer.

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5.3.5. Within five (5) days of a Commissioning Test, the Company shall provide the Procurer and the Independent Engineer copies of the detailed Commissioning Test results. Within five (5) days of receipt of the Commissioning Test results, the Independent Engineer shall provide to the Procurer and the Company in writing, his findings from the evaluation of Commissioning Test results, either in the form of a Final Test Certificate certifying the matters specified in Article 5.4.1 or the reasons for non-issuance of Final Test Certificate.

5.4. Commercial Operation

5.4.1. A Unit shall be Commissioned on the day after the date when the Independent Engineer issues the Final Test Certificate stating that:

(a) the Commissioning Tests have been carried out in accordance with the provisions of Article 5.3; and are acceptable to him; and

(b) the results of the Performance Test show that the Unit's Tested Capacity, is not less than ninety five (95) percent of its Aggregate Capacity.

5.4.2. If a Unit fails a Commissioning Test, the Company may retake the relevant test, within a reasonable period after the end of the previous test, with three (3) day's prior written notice to the Procurer and the Independent Engineer. The procedure for conducting such repeat tests shall be in accordance with Article 5.3. The Company shall have a right to repeat the Commissioning Test(s) two (2) times and the Installed Capacity of the Unit(s) shall be determined based on the most recent Commissioning Test.

5.4.3. Based on the most recent Commissioning Test carried out as per Article 5.4.2, if:

5.4.3.1. the Tested Capacity is less than the Aggregate Capacity of the Unit or the Power Station, as the case may be, then:

(a) Such Tested Capacity of the Unit or the Power Station, as the case may be, shall be the Installed Capacity and accordingly the Contracted Capacity of the Procurer shall be reduced proportionately.

(b) The Availability Factor thereafter shall be calculated by reference to the reduced Contracted Capacity.

(c) The Capacity Charges for such reduced Contracted Capacity shall be as determined by the Appropriate Commission.

(d) The Net Capacity shall be reckoned with reference to such reduced Installed Capacity.

5.4.3.2. If the Installed Capacity is greater than or equal to the Aggregate Capacity of the Unit or the Power Station, as the case may be, the Installed Capacity of the Unit or the Power Station, as the case may be, shall be the Aggregate Capacity.

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5.5. Disputes over Test results

5.5.1. The Test results and the Tested Capacity certified by the Independent Engineer under Article 5.3 shall be binding on the Procurer.

5.5.2. If the Company or Procurer disputes the Test results and Tested Capacity certified by the Independent Engineer under Article 5.3 ("Dispute"), it shall issue a notice to this effect to the Independent Engineer and the Procurer. The Independent Engineer shall, within seven (7) days of receipt of the Company's notice, issue its expert opinion justifying its position and thereafter, the Company, Procurer and the Independent Engineer shall meet within seven (7) days at a mutually acceptable location to discuss and resolve the Dispute, within fourteen (14) days. In the event the Dispute cannot be resolved as above, the Company may refer the Dispute under the dispute resolution mechanism to be provided under the agreement appointing the Independent Engineer.

Pending the resolution of the Dispute, as above, the Procurer shall pay the Capacity Charges as per the certificate issued by the Independent Engineer under Article 5.3, subject to the final resolution of the Dispute.

5.6. Repeat Tests

5.6.1. Upon conclusion of a Performance Test, the Company shall be entitled to repeat any such test ("Repeat Test") upon issue of a notice to Procurer, and the Performance Tests shall be repeated; Provided that the Company shall not be entitled to perform more than two (2) Repeat Tests. The highest results of the Commissioning Test or Repeat Tests as the case may be, shall be the conclusive Test results for purposes of this Agreement. The Company shall give the Procurer and the Independent Engineer three (3) days' prior written notice of the date on which a Repeat Test will commence. Provided however, the Procurer/Independent Engineer shall have the right to require the deferment of any such Repeat Test for a period not exceeding seven (7) days.

5.7. Costs of Tests

5.7.1. The Company expressly agrees that all costs incurred by it in synchronising, connecting, Commissioning and / or Testing or retesting a Unit shall be solely and completely to its account and the Procurer shall have no liability.

For avoidance of doubt it is clarified that the energy generated during the Test will be the infirm energy/ power. The tariff for such infirm energy/ power will be governed by the applicable Regulation(s) of the Appropriate Commission.

5.8. Commercial Operation Date

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5.8.1. In the event that the actual COD of a Unit occurs prior to the Scheduled COD, or the Revised Scheduled COD, as the case may be of the said Unit, and the Procurer is:

5.8.1.1. able to cause off-take of the Scheduled Energy from such Unit commencing from the day on which the said Unit is Commissioned and the Procurer at its discretion within 15 days of written notice from the Company, opts for taking electricity from an earlier date to Scheduled Commercial Operation Date , such earlier date shall be taken as COD of the said Unit, or

5.8.1.2. able to cause off-take of Scheduled Energy from the said Unit commencing from the day falling between:

(a) the day on which the Unit is Commissioned: and

(b) the Scheduled COD of the said Unit.

If the Procurer within 15 days of written notice from the Company at its discretion opts for taking electricity from an earlier date to Scheduled commercial Operation Date such earlier date of off-take shall be taken as COD of the said Unit.

5.8.2. In the event that the actual COD of a Unit occurs after the Scheduled COD, or the Revised Scheduled COD of such Unit, the Company shall be liable to pay liquidated damages in terms of the conditions set out in Article 4.

5.9. Evacuation of power until COD

5.9.1. At all times during start-up, preliminary testing or other operations of a Unit for achieving the COD and during the Commissioning Tests, infirm energy generated shall be accounted for as per relevant regulations of the Appropriate Commission.

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ARTICLE - 6: CAPACITY, AVAILABILITY AND DESPATCH

6.1. Availability, Scheduling and Despatch

6.1.1. The Company shall comply with the provisions of the applicable Law regarding Availability, scheduling and Despatch including, in particular, to the provisions of the ABT and Grid Code relating to declaration of Availability and the matters incidental thereto.

6.1.2. The Contracted Capacity being a part of the Power Station's Net Capacity; in the event of Declared Capacity being less than the Power Station's Net Capacity, the Available Capacity to the Procurer for despatch out of the Contracted Capacity shall be reduced in the same proportion as the Declared Capacity is reduced in proportion to the Power Station's Net Capacity.

6.1.3. The Company agrees that the Availability entitlement of the Procurer for despatch over any Settlement Period is the exclusive right of the Procurer and it cannot be offered to any third party other than for conditions under Article 4.3.3.

6.1.4 Subject to the Procurer paying the amounts due to the Company under the terms of this Agreement, within the time specified in this Agreement, without demur and notwithstanding any dispute, the Company shall not offer the Contracted Capacity, in part or fully, to any third party in contravention to the conditions specified in Article 6.1.3, The Company unconditionally and irrevocably agrees to and acknowledges the Procurer's right to instruct and enforce RLDC/ SLDC, as the case may be, not to schedule such power to any third party without prejudice to Procurer's other rights. The Company further agrees and waives any and all objections or claims in respect of such right or any other legal remedy including but not limited to seek specific performance of this Agreement, the Procurer may have under the Law with respect to such default of the Company. In such event, the Procurer shall be obliged to schedule such power and purchase and pay the Tariff for the Scheduled Energy. It is clarified and re iterated that the remedy provided to the Procurer under this Article shall not be available to the Procurer if it fails for any reason whatsoever, to pay any amount due to the Company in terms of this Agreement, notwithstanding any dispute relating to any such amount and the Company's demand for such amounts outstanding shall, for purposes only of this Article, be conclusive and binding on the Procurer.

6.2 Demonstration of Power Station's Installed Capacity

6.2.1 The Procurer may from time to time during the Operating Period, but only if the Available Capacity with respect to the Procurer has not been one hundred percent

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(100%) of the Contracted Capacity for one continuous period of at least three (3) hours during any last three (3) continuous months, request the Company to demonstrate the Power Station's Installed Capacity by conducting a Performance Test in accordance with Article 5. Such Performance Test shall not be done more than once in a continuous period of twelve (12) Months.

6.2.2 If the Tested Capacity after such Performance Test is determined to be less than the Installed Capacity, then the provisions of Article 5.4.3 shall apply and the Company shall have a right to again demonstrate to the satisfaction of the Independent Engineer the Installed Capacity only after a period of six (6) Months from the date of such Performance Test.

6.2.3 If the Company wishes to take any Unit(s), out of service for repair before any Performance Test, it shall inform the Independent Engineer and the Procurer in writing before its scheduled start of the repairs and the estimated time required to complete the repairs. The Parties shall then schedule a Maintenance Outage in accordance with the Grid Code to enable the Company to carry out those repairs and in such a case, the Performance Test shall be deferred until such Unit(s) is returned to service following that Maintenance Outage.

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ARTICLE - 7: OPERATION AND MAINTENANCE

7.1. Operation and Maintenance of the Power Station

7.1.1. The Company shall be responsible at its own expense for ensuring that the Power Station is operated and maintained in an efficient, coordinated and economical manner and in accordance with all legal requirements, including the terms of all Consents, Clearances and Permits, Prudent Utility Practices, and in particular, the Grid Code, so as to meet its obligations under this Agreement and so as not to have an adverse effect on the Grid operation.

7.2. Coordination among Parties

7.2.1. The Parties herein agree that the issues relating to interconnection, evacuation, transmission facilities inter-utility metering, and coordination with the Grid System will be decided and settled between the Parties mutually or as per any agreements executed between them and subsequently, on not being able to reach on a mutual agreement, shall be dealt with according to the provisions of the Grid Code.

7.3. Maintenance of Records

7.3.1. Each Party shall keep complete and accurate records of the meter readings and other records needed to reflect power exchange between the Parties for each Settlement Period and Electrical Output of the Power Station on a continuous real time basis.

7.3.2. Every Party shall have the right, upon reasonable prior notice, to examine the records and data of the other Party relating to this Agreement or the operation and maintenance of the Power Station at any time during normal office hours on normal Business Days.

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ARTICLE - 8: METERING AND ENERGY ACCOUNTING

8.1. Meters

For installation of Meters, Meter testing, Meter calibration and Meter reading and all matters incidental thereto, the Company and the Procurer shall follow and be bound by the Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006, the Grid Code and ABT as amended and revised from time to time or any other Law in force at the relevant point of time.

8.2. ENERGY ACCOUNTING

The Energy Account shall be binding on the Parties for billing and payment purposes.

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ARTICLE - 9: INSURANCES

9.1. Insurance

The Company shall effect and maintain or cause to be effected and maintained during and before the Operating Period, Insurances against such risks, with such deductibles and with such endorsements and co-insured(s), which the Prudent Utility Practices would ordinarily merit maintenance of and as required under the Financing Agreements.

9.2. Application of Insurance Proceeds

Save as expressly provided in this Agreement or the Insurances, the proceeds of any insurance claim made due to loss or damage to the Power Station or any part of the Power Station shall be first applied to reinstatement, replacement or renewal of such loss or damage.

If a Force Majeure Event renders the Power Station no longer economically and technically viable and the insurers under the Insurances make payment on a "total loss" or equivalent basis, the Procurer shall have no claim on such proceeds of such Insurance.

9.3. Effect of liability of the Procurer

Notwithstanding any liability or obligation that may arise under this Agreement, any loss, damage, liability, payment, obligation or expense which is insured or for which the Company can claim compensation, under any Insurance shall not be charged to or payable by the Procurer.

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ARTICLE - 10: TARIFF, BILLING AND PAYMENT

10.1. General

10.1.1. The Tariff shall comprise Capacity Charge, Variable Charge and any other charges as may be determined by the Appropriate Commission under Law and as per the norms contained in the tariff regulations notified by the Appropriate Commission.

However the Company, at any time, offers the sale of any part of the capacity from the project on long term basis pursuant to any competitive bidding process, it shall be open to the Appropriate Commission, either on an application filed by the Procurer or any consumer or suo motu and if considered to be beneficial to the consumers after considering the terms and conditions of such tariff, to decide to adopt such competitive tariff offered by the Company in the competitive bidding process in place of the tariff specified under this Agreement. In case of such decision by the Appropriate Commission, the Company agrees to generate and sell and the Procurer agrees to purchase from the Company the quantum of electricity under this Agreement at the said tariff.

10.1.2. From the COD of the first Unit, the Procurer shall pay the Company the Tariff Payment, on or before the Due Date, determined in accordance with this Article 10.

10.1.3. All Tariff Payments by the Procurer shall be in Indian Rupees (INR).

10.1.4. The Company shall issue to the Procurer a signed Monthly Bill for the immediately preceding Month not later than ten (10) days of the next Month. In case the Monthly Bill for the immediately preceding Month is issued after ten (10) days of the next Month, the Due Date for payment of such Monthly Bill shall be extended by thirty (30) days.

Provided that:

a. if the COD falls during the period between the first (1st) day and up to and including the fifteenth (15th) day of a Month, the first Monthly Bill shall be issued for the period until the last day of such Month, or

b. if the COD falls after the fifteenth (15th) day of a Month, the first Monthly Bill shall be issued for the period commencing from the COD until the last day of the immediately following Month.

10.2. Monthly Billing

The Tariff under this Agreement shall be billed by the Company and shall be paid by the Procurer in accordance with the following provisions:

(i) The Company shall submit the Bill to the Procurer, which shall include:

(a)Availability and Energy Account for the relevant Month as per SEA/ REA for Monthly Bill;

(a) the Company's computation of various components of the Monthly Tariff in accordance with Article 10.1.1; and

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(b) supporting data, documents and calculations in accordance with this Agreement.

(ii) The Monthly Bill for the energy supplied to Procurer shall be in accordance with the provisions of this Agreement. If for certain reasons some of the charges which otherwise are in accordance with this Agreement, can not be included in the main Monthly Bill, such charges shall be billed as soon as possible through Supplementary Bill (s).

(iii) The Bill(s) of the Company shall be paid in full subject to the condition that

(a) There is no apparent arithmetical error in the Bill (s).

(b) The Bill (s) is/are claimed as per the Tariff determined by the Appropriate Commission.

(c) They are in accordance with the Energy Accounts.

(iv) If Procurer disputes any amount, it shall pay according to Article 10.7.9 and file a written objection with the Company within thirty (30 days) of presentation of the Bill, giving following particulars:

(a) Item disputed, with full details / data and reasons of Dispute

(b) Amount disputed against each item

10.3. Payment of Monthly Bills

10.3.1. The Procurer shall pay the amount payable under Monthly Bill by the Due Date to such account of the Company, as shall have been previously notified by the Company to Procurer in accordance with Article 10.3.3 below.

All payments made by the Procurer shall be appropriated by the Company in the following order of priority:

(i) towards Late Payment Surcharge, payable by the Procurer, if any;

(ii) towards earlier unpaid Monthly Bill, if any; and

(iii) towards then current Monthly Bill.

10.3.2. All payments required to be made under this Agreement shall only include any deduction or set off for:

(i) deductions required by Law; and

(ii) amounts claimed by the Procurer from the Company, through an invoice duly acknowledged by the Company, to be payable by the Company, and not disputed by the Company within thirty (30) days of receipt of the said invoice and such deduction or set-off shall be made to the extent of the amounts not disputed. It is clarified that the Procurer shall be entitled to

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claim any set off or deduction under this Article, after expiry of the said thirty (30) day period.

Provided further, the maximum amounts that can be deducted or set-off by the Procurer under this Article in a Contract Year shall not exceed Rupees Nine Hundrend Lakhs (Rs. 900 Lakhs) only, except under sub Article 10.3.2(i) above.

10.3.3. The Company shall open a bank account at ..... [Insert identified place or account designated by Lenders] (the "Designated Account") for all Tariff Payments to be made by Procurer to the Company, and notify the Procurer of the details of such account at least ninety (90) days before the despatch of the first Monthly Bill to Procurer. The Procurer shall instruct its bankers to make all payments under this Agreement to the Designated Account and shall notify the Company of such instructions on the same day. The Procurer shall also designate a bank account at ..... [Insert identified place] for payments to be made by the Company (including Supplementary Bills) to the Procurer and notify the Company of the details of such account ninety (90) days before the COD of the first Unit.

10.4. Billing and Payment of charges

10.4.1. **Rebate**

For payment of any Bill before Due Date, the following rebate shall be paid by the Company to the Procurer in the following manner.

(a) Two point two five percent (2.25%) rebate for credit to Designated Account made on same day of the presentation of Monthly Bill for the Month.

(b) Two percent (2%) rebate for credit to Designated Account made within one (1) day of the presentation of Monthly Bill for the Month.

(c) Applicable rate of rebate at (a) and (b) above shall be based on the date on which payment has been actually credited to the Designated Account. Any delay in transfer of money to the Designated Account, on account of public holiday, bank holiday or any other reasons shall be to the account of the Procurer.

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(d) For credit to Designated Account made on other days the rebate on Monthly Bill shall be as under:

Number of days before Due Date of Monthly Bill	Rates of Rebate applicable
29	Two percent (2.00%)
Each day thereafter up to the Due Date	2% less [0.033% x {29 less number of days before Due Date when the payment is made by the Procurer}]

(e) No rebate shall be payable on the bills raised on account of Change in Law relating to taxes, duties and cess;

(f) The above rebate will be allowed only to the Procurer if it credits to the Company's account the full Monthly Bill; provided that the Procurer shall while crediting such amount will be authorized to make adjustment of rebate from the amount of the Monthly Bill paid.

10.4.2. **Late Payment Surcharge**

In case the payment of any Bill for charges payable under this Agreement is delayed by the Procurer beyond the Due Date thereof, a Late Payment Surcharge shall be payable by the Procurer to the Company at the rate of 1.25% per Month on the amount of outstanding payment, calculated on a day to day basis for each day of the delay, compounded on monthly rests.

Similarly if any amount outstanding against the Company and payable to Procurer is not paid beyond its Due Date a Late Payment Surcharge shall be payable by the Company to the Procurer at the rate of 1.25% per Month on the amount of outstanding payment, calculated on a day to day basis for each day of the delay, compounded on monthly rests. Late Payment Surcharge shall be claimed by the Company or Procurer through Supplementary Bills.

10.4.3. The rate of Late Payment Surcharge shall be revised from time to time on the basis of rates notified by the Central Commission.

10.5. Establishment of Letter of Credit

10.5.1. The Procurer shall provide to the Company, in respect of payment of its Bills, an unconditional, revolving and irrevocable letter of credit ("**Letter of Credit**"), opened and maintained by the Procurer, which may be drawn upon by the Company

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in accordance with Articles 10.5.2 through Article 10.5.6. The Letter of Credit shall be in the format annexed hereto as Schedule - 4.

10.5.2. Not later than one (1) Month prior to the Scheduled COD or the Revised Scheduled COD (as applicable) of the first Unit, the Procurer shall through a scheduled bank at Jabalpur open the Letter of Credit in favour of the Company, to be made operative from a date prior to the Due Date of its first Monthly Bill under this Agreement. The Letter of Credit shall have an initial term of twelve (12) Months and shall be renewed annually, for an amount equal to:

(i) for the first Contract Year, equal to one point one (1.1) times the estimated average Monthly billing based on Normative Availability of the Power Station's Net Capacity allocated to the Procurer;

(ii) for each subsequent Contract Year, equal to one point one (1.1) times the average of the Monthly Tariff Payments of the previous Contract Year plus the estimated Monthly billing during the current year from any additional Unit(s) expected to be put on COD during the current Contract Year based on Normative Availability.

Provided that if at any time, such Letter of Credit amount falls short of the amounts specified above, the Procurer shall restore such shortfall within seven (7) days.

Provided further, that the Company shall not draw upon such Letter of Credit prior to the Due Date of relevant Monthly Bill and/ or Supplementary Bill and shall not make more than one drawal in a calendar month.

10.5.3. The Procurer shall cause the scheduled bank issuing the Letter of Credit to intimate the Company in writing regarding the establishment of such irrevocable Letter of Credit.

10.5.4. In case of drawal of the Letter of Credit by the Company in accordance with the terms of this Agreement, the amount of the Letter of credit shall be reinstated in the manner specified in Article 10.5.2.

10.5.5. If the Procurer fails to pay a Monthly Bill or a Supplementary Bill or part thereof within and including the Due Date, then the Company may draw upon the Letter of Credit, and accordingly the bank shall pay without any reference or instructions from the Procurer, an amount equal to such Monthly Bill or a Supplementary Bill or part thereof plus Late Payment Surcharge, if applicable, by presenting to the scheduled bank issuing the Letter of Credit, the following documents:

(i) a copy of the Monthly Bill or Supplementary Bill that has remained unpaid by the Procurer;

(ii) a certificate from the Company to the effect that the Bill at item (i) above, or specified part thereof, is in accordance with the Agreement and has remained unpaid beyond the Due Date; and

(iii) calculations of applicable Late Payment Surcharge, if any.

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10.5.6. The Letter of Credit shall be renewed by the Procurer not later than forty five (45) days prior to its expiry.

10.5.7. All costs relating to opening and maintenance of the Letter of Credit shall be borne by the Procurer; however, Letter of Credit negotiation charges shall be borne and paid by the Company

10.5.8. As of now the Procurer is not inclined to provide escrow mechanism as part of payment security mechanism to the Company, as this is a MoU Project. However, Procurer may examine and endeavour to consider providing escrow mechanism to the Company thirty (30) days before the date of Scheduled COD or Revised Scheduled COD as the case may be. However if at any future date subsequent to the Effective Date, an escrow mechanism is offered by the Procurer or a Discom to any other generating station being developed on terms similar to this project, the Procurer shall simultaneously extend the same to the Company upon terms and conditions not less favourable than those being offered to such other generating station. The amount of escrow cover in such instance shall be not be less than 110% of the "Monthly Billing" corresponding to Contracted Capacity. The terms and conditions for such escrow account will be decided at the time of signing of the escrow and disbursement agreement. The Company shall be entitled to utilize the "escrow account" only under the circumstances when the Letter of Credit has been encashed by the Company.

10.6. Third Party Sales on Default

10.6.1. Upon the occurrence of an event where the Procurer has not made payment by the Due Date of an Invoice through the payment mechanism provided in this Agreement, the Company shall follow the steps as enumerated in Articles 10.6.2 and 10.6.3 below.

10.6.2. On the occurrence of the event mentioned in Article 10.6.1 and after giving a notice of at least seven (7) days to the Procurer, the Company shall have the right to offer twenty five (25) per cent of the Contracted Capacity pertaining to the Procurer ("Default Electricity") for sale to third-parties.

10.6.3. If the Letter of Credit is not fully restored by the Procurer within the stipulated period of the non-payment by the Procurer of an Invoice by its Due Date, the provisions of Article 10.6.2 shall apply with respect to one hundred per cent (100%) of the Contracted Capacity.

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10.6.4. The Company shall ensure that sale of power to the shareholder(s) of the Company or to any direct or indirect Affiliate of the Company/ the shareholder(s) of the Company is not at a price less than the Energy Charges.

10.6.5. In case of third party sales as permitted by this Article 10.6, the adjustment of the surplus revenue over Energy Charge attributable to such Default Electricity sold, shall be adjusted as under :

a) the surplus up to the Tariff shall be used towards the extinguishment of the subsisting payment liability of the Procurer towards the Company; and

b) the surplus if any above the Tariff shall be retained by the Company.

10.6.6. The liability of the Procurer towards making Capacity Charge payments to the Company even for Default Electricity sold to third parties or remaining unsold during such periods will remain unaffected.

Provided such Capacity Charge payment liability shall cease on the date which occurs on the expiry of a period of twenty four (24) months from the date of occurrence of a Procurer Event of Default under Article 13.2, provided if prior to such date, such Procurer Event of Default has not been cured and regular supply of power for a period of at least ninety (90) continuous Days has not occurred.

Provided further that at the end of such period of twenty four (24) months, this Agreement shall automatically terminate without the need of any exercise of termination by the Company and thereafter, the Procurer shall have no further Capacity Charge liability towards the Company.

10.6.7. Sales to any person or Party, other than the Procurer under Article10.6, shall cease and regular supply of power to the Procurer in accordance with the provisions of this Agreement shall commence and be restored on the later of the two following dates or any date before this date at the option of Company:

a) the day on which the Procurer pays the amount due to the Company and renews the Letter of Credit; or

b) the date being "x" days from the date on which the Procurer pays the amount due to the Company, where "x" days shall be calculated as under:

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Percentage of Monthly Invoice which is the subject of default under Article 10 as notified in the Notice (issued under Article 10.6.2) relatable to the present occurrence	Number of times a Notice has been issued under Article 10.6.2 to the defaulting Procurer prior to present occurrence			
	1st time	2nd time	3rd time	4th time
Less than 25%	x = 20 days	x = 25 days	x = 40 days	x = 60 days
25% to 30%	x = 20 days	x = 30 days	x = 45 days	x = 65 days
More than 30% to 35%	x = 20 days	x = 35 days	x = 50 days	x = 70 days
More than 35% to 40%	x = 20 days	x = 40 days	x = 55 days	x = 75 days
More than 40%	x = 20 days	x = 45 days	x = 60 days	x = 90 days

10.7. Disputed Bill

10.7.1. If a Party does not dispute a Monthly Bill or a Supplementary Bill raised by the other Party within ten (10) days of receiving it, such bill shall be taken as conclusive for payment of the Bill amount.

10.7.2. If a Party disputes the amount payable under a Monthly Bill or a Supplementary Bill, as the case may be, that Party shall, within ten (10) days of receiving such bill, issue a notice (the "Bill Dispute Notice") to the invoicing Party setting out:

(i) the details of the disputed amount;

(ii) its estimate of what the correct amount should be; and

(iii) all written material in support of its claim.

10.7.3. If the invoicing Party agrees to the claim raised in the Bill Dispute Notice issued pursuant to Article 10.7.2, the invoicing Party shall revise such bill within fifteen (15) days of receiving such notice and make a refund to the disputing Party within fifteen (15) days of receiving such notice.

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10.7.4. If the invoicing Party does not agree to the claim raised in the Bill Dispute Notice issued pursuant to Article 10.6.2, it shall, within fifteen (15) days of receiving the Bill Dispute Notice, furnish a notice to the disputing Party providing:

(i) reasons for its disagreement;

(ii) its estimate of what the correct amount should be; and

(iii) all written material in support of its counter-claim.

10.7.5. Upon receipt of such notice of disagreement to the Bill Dispute Notice, authorised representative(s) of a director of the board of directors of each Party shall meet and make best endeavours to amicably resolve the dispute within fifteen (15) days of receiving such notice of disagreement to the Bill Dispute Notice.

10.7.6. If the Parties do not amicably resolve the dispute within fifteen (15) days of receipt of notice of disagreement to the Bill Dispute Notice pursuant to Article 10. 7.4, the matter shall be referred to Dispute Resolution in accordance with Article 13.

10.7.7. In case of a Dispute it shall be open to the aggrieved Party to approach the Appropriate Commission for Dispute Resolution in accordance with Article 13 and also for interim orders protecting its interest including for orders for interim payment pending Dispute Resolution and the Parties shall be bound by the decision of the Appropriate Commission including in regard to interest or delayed payment surcharge, if any directed to be paid by the Appropriate Commission.

10.7.8. If a dispute regarding a Monthly Bill or a Supplementary Bill is settled pursuant to Article 10. 7.5 or by Dispute Resolution mechanism provided in this Agreement in favour of the Party that issues a Bill Dispute Notice, the other Party shall refund the amount, if any incorrectly charged and collected from the disputing Party within five (5) days of the dispute either being amicably resolved by the Parties pursuant to Article 10.7.5 or settled by Dispute Resolution Mechanism in accordance with Article 13.5 along with interest and /or delayed surcharge as may directed by the Appropriate Commission.

10.7.9. For the avoidance of doubt, it is clarified that despite a Dispute regarding an Invoice, the Procurer shall, without prejudice to its right to Dispute, be under an obligation to make payment, of the lower of (a) an amount equal to simple average of last three (3) Months Invoices (being the undisputed portion of such three Months Invoices) and (b) Monthly Invoice which is being disputed, provided such Monthly Bill has been raised based on the REA and in accordance with this Agreement.

10.8Quarterly and Annual Reconciliation

10.8.1 Parties acknowledge that all payments made against Monthly Bills, and Supplementary Bills shall be subject to quarterly reconciliation at the beginning of the following quarter of each Contract Year and annual reconciliation at the end of each Contract Year to take into account Regional Energy Accounts / State Energy Accounts (as applicable), tariff adjustment payments, Rebates, Late Payment

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Surcharge, etc. or any other reasonable circumstance provided under this Agreement. The Parties, therefore, agree that as soon as all such data in respect of any quarter of a Contract Year or a full Contract Year as the case may be has been finally verified and adjusted, the Company and Procurer shall jointly sign such reconciliation statement. Within fifteen (15) days of signing of a reconciliation statement, the Company or Procurer, as the case may be, shall raise a Supplementary Bill for the tariff adjustment payments for the relevant quarter/ Contract Year and shall make payment of such Supplementary Bill for the tariff adjustment payments for the relevant quarter/Contract Year. Late Payment Surcharge shall be payable in such a case from the date on which such payment had been made to the invoicing Party or the date on which any payment was originally due, as may be applicable. Any Dispute with regard to the above reconciliation shall be dealt with in accordance with the provisions of Article 13.5.

10.9 Payment of Supplementary Bill

10.9.1 Either Party may raise a Bill on the other Party ("Supplementary Bill") for payment on account of:

(i) Adjustments required by the Regional Energy Account/ State Energy Account, as applicable;

(ii) Tariff Payment for change in parameters, pursuant to provisions in – Article 10.1.1; or

(iii) Change in Law as provided in Article 12.

and such Bill shall be paid by the other Party.

10.9.2 Procurer shall remit all amounts due under a Supplementary Bill raised by the Company to the Company's Designated Account by the Due Date and notify the Company of such remittance on the same day. Similarly, the Company shall pay all amounts due under a Supplementary Bill raised by the Procurer by the Due Date to the Procurer's designated bank account and notify the Procurer of such payment on the same day. For such payments by Procurer, Rebates as applicable to Monthly Bills shall be payable as per Article 10.4.1.

10.9.3 In the event of delay in payment of a Supplementary Bill by either Party beyond its Due Date, a Late Payment Surcharge shall be payable at the same terms applicable to the Monthly Bills as per Article 10.4.2.

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10.10 Payment for Construction and Start-up Power

10.10.1 The Company shall be liable to pay, for the power and energy consumed for construction and start-up and Commissioning of the Power Station, to the distribution Licensee(s) in whose area the Power Station is located or such other entity from whom such power/energy is sourced, at then prevalent rates payable by industrial consumers.

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ARTICLE - 11: FORCE MAJEURE

11.1. Definitions

11.1.1. In this Article, the following terms shall have the following meanings:

11.2. Affected Party

11.2.1. An affected Party means the Procurer or the Company whose performance has been affected by an event of Force Majeure.

11.2.2. Any event of Force Majeure affecting the performance of the Company or affecting the transmission facilities from the Power Station to the Delivery Point shall be deemed to be an event of Force Majeure affecting the Company only if the event affects and results in interruptible or no power supply to the Procurer.

11.2.3. Any event of Force Majeure affecting the performance of the Company's contractors shall be deemed to be an event of Force Majeure affecting Company only if the Force Majeure Event is affecting and resulting in:

(a) late delivery of plant, machinery, equipment, materials, spare parts, Fuel, water or consumables for the Power Station; or

(b) a delay in the performance of any of the Company's contractors.

11.2.4. Similarly, any event of Force Majeure affecting the performance of the Procurer or Procurer's contractor for setting up or operating Interconnection Facilities and/ or transmission facilities shall be deemed to be an event of Force Majeure affecting Procurer only if the Force Majeure Event is resulting in a delay in the performance of Procurer or Procurer's contractors.

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11.3. Force Majeure

11.3.1. A 'Force Majeure' means any event or circumstance or combination of events and circumstances including those stated below that wholly or partly prevents or unavoidably delays an Affected Party in the performance of its obligations under this Agreement, but only if and to the extent that such events or circumstances are not within the reasonable control, directly or indirectly, of the Affected Party and could not have been avoided if the Affected Party had taken reasonable care or complied with Prudent Utility Practices:

i. Natural Force Majeure Event(s)

act of God, including, but not limited to lightning, drought, fire and explosion (to the extent originating from a source external to the Site), earthquake, volcanic eruption, landslide, flood, cyclone, typhoon, tornado, or exceptionally adverse weather conditions which are in excess of the statistical measures for the last hundred (100) years.

ii. Non-Natural Force Majeure Event(s)

1. Direct Non-Natural Force Majeure Event(s)

a) Nationalization or compulsory acquisition by any Indian Governmental Instrumentality of any material assets or rights of the Company or the Company's contractors; or

b) the unlawful, unreasonable or discriminatory revocation of, or refusal to renew, any Consents, Clearances and Permits required by the Company to perform its obligations under the Power Station Documents or any unlawful, unreasonable or discriminatory refusal to grant any Consents, Clearances and Permits required for the development/ operation of the Power Station , provided that a Competent Court of Law declares the revocation or refusal to be unlawful, unreasonable and discriminatory and strikes the same down.

c) any other unlawful, unreasonable or discriminatory action on the part of an Indian Government Instrumentality which is directed against the supply of power by the Company to the Procurer, provided that a Competent Court of Law declares the action to be unlawful, unreasonable and discriminatory and strikes the same down.

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2. Indirect Non-Natural Force Majeure Event(s)

a) any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo;, revolution, riot, insurrection, terrorist or military action; or

b) radio active contamination or ionising radiation originating from a source in India or resulting from another Indirect Non Natural Force Majeure Event mentioned above excluding circumstances where the source or cause of contamination or radiation is brought or has been brought into or near the Power Station by the Affected Party or those employed or engaged by the Affected Party.

c) Industry wide strikes and labor disturbances having a nationwide impact in India.

11.4. Force Majeure Exclusions

11.4.1. Force Majeure shall not include (i) any event or circumstance which is within the reasonable control of the Parties and (ii) the following conditions, except to the extent that they are consequences of an event of Force Majeure:

a. Unavailability, late delivery, or changes in cost of the plant, machinery, equipment, materials, spare parts, Fuel or consumables for the Power Station;

b. Delay in the performance of any contractor, sub-contractor or their agents excluding the conditions as mentioned in Article 11.2;

c. Non-performance resulting from normal wear and tear typically experienced in power generation materials and equipment;

d. Strikes or labour disturbance at the facilities of the Affected Party;

e. Insufficiency of finances or funds or the agreement becoming onerous to perform; and

f. Non-performance caused by, or connected with, the Affected Party's:

i. Negligent or intentional acts, errors or omissions;

ii. Failure to comply with an Indian Law; or

iii. Breach of, or default under this Agreement or any other Power Station Documents.

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11.5. Notification of Force Majeure Event

11.5.1. The Affected Party shall give notice to the other Party of any event of Force Majeure as soon as reasonably practicable, but not later than seven (7) days after the date on which such Party knew or should reasonably have known of the commencement of the event of Force Majeure. If an event of Force Majeure results in a breakdown of communications rendering it unreasonable to give notice within the applicable time limit specified herein, then the Party claiming Force Majeure shall give such notice as soon as reasonably practicable after reinstatement of communications, but not later than one (1) day after such reinstatement.

Provided that such notice shall be a pre-condition to the Affected Party's entitlement to claim relief under this Agreement. Such notice shall include full particulars of the event of Force Majeure, its effects on the Party claiming relief and the remedial measures proposed. The Affected Party shall give the other Party regular (and not less than monthly) reports on the progress of those remedial measures and such other information as the other Party may reasonably request about the Force Majeure Event.

11.5.2. The Affected Party shall give notice to the other Party of (i) the cessation of the relevant event of Force Majeure; and (ii) the cessation of the effects of such event of Force Majeure on the performance of its rights or obligations under this Agreement, as soon as practicable after becoming aware of each of these cessations.

11.6. Duty to perform and duty to mitigate

11.6.1. To the extent not prevented by a Force Majeure Event pursuant to Article 11.3, the Affected Party shall continue to perform its obligations pursuant to this Agreement. The Affected Party shall use its reasonable efforts to mitigate the effect of any Force Majeure Event as soon as practicable.

11.7. Available Relief for a Force Majeure Event

11.7.1. Subject to this Article 11:

(a) no Party shall be in breach of its obligations pursuant to this Agreement except to the extent that the performance of its obligations was prevented, hindered or delayed due to a Force Majeure Event;

(b) each Party shall be entitled to claim relief in relation to a Force Majeure Event in regard to its obligations, including but not limited to those specified under Article 4.4;

(c) for the avoidance of doubt, it is clarified that no Tariff shall be paid by the Procurer for the Contracted Capacity or part thereof affected by a Natural

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Force Majeure Event affecting the Company, for the duration of such Natural Force Majeure Event affecting the Company. For the balance part of the Contracted Capacity, the Procurer shall pay the Tariff to the Company, provided during such period of Natural Force Majeure Event affecting the Company, the balance part of the Power Station is declared to be Available for scheduling and despatch as per ABT for supply of power by the Company to the Procurer;

In case of a Natural Force Majeure Event affecting the Procurer no Tariff shall be paid by the Procurer to the Company for the duration of such Natural Force Majeure Event affecting the Procurer;

(d) if the average Availability of the Power Station is reduced below eighty percent (80%) of Normative Availability for over two (2) consecutive months or for any non consecutive period of four (4) months both within any continuous period of 36 Months, as a result of an Indirect Non Natural Force Majeure Event, then, with effect from the end of such two (2) consecutive months or four (4) non consecutive months so long as the daily average Availability of the Power Station continues to be reduced below eighty percent (80%) of Normative Availability as a result of an Indirect Non Natural Force Majeure Event of any kind, the Procurer shall make payments for Debt Service, subject to a maximum of Capacity Charges based on Normative Availability which are due under the Financing Agreements and these amounts shall be paid from the date, being the later of a) the date of cessation of such Indirect Non Natural Force Majeure Event and b) the completion of sixty (60) days from the receipt of the Financing Agreements by the Procurer from the Company, in the form of an increase in Capacity Charge.

Provided payments for such Debt Service shall be limited to the Debt Service proportional to the Contracted Capacity of the Procurer from the Power Station.

Provided such Capacity Charge increase shall be determined by Appropriate Commission on the basis of putting the Company in the same economic position as the Company would have been in case the Company had been paid Debt Service in a situation where the Indirect Non Natural Force Majeure Event had not occurred.

Provided that the Procurer will have the above obligation to make payment for the Debt Service only (a) after supply of power from the Power Station affected by such Indirect Non Natural Force Majeure Event has started, and (b) only if in the absence of such Indirect Non Natural Force Majeure Event, the Availability of Power Station would have resulted in Capacity Charges equal to Debt Service.

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(e) If the average Availability of the Power Station is reduced below Normative Availability for over two (2) consecutive months or for any non consecutive period of four (4) months both within any continuous period of thirty six (36) Months, as a result of a Direct Non Natural Force Majeure Event then, with effect from the end of such two (2) consecutive months or four (4) non consecutive months and for so long as the daily average Availability of the Power Station of the Company continues to be reduced below Normative Availability as a result of a Direct Non Natural Force Majeure Event, the Company may elect through a written notice to the Procurer, to deem the Availability to be equal to Normative Availability from the end of such two (2) consecutive months or four (4) non consecutive months, regardless of its actual Available Capacity. In such a case, the Procurer shall be liable to make payment of Capacity Charges calculated on such deemed Normative Availability, after the cessation of the effects of Direct Non Natural Force Majeure Event in the form of an increase in Capacity Charge.

Provided such Capacity Charge increase shall be determined by Appropriate Commission on the basis of putting the Company in the same economic position as the Company would have been in case the Company had been paid Capacity Charges in a situation where the Direct Non Natural Force Majeure Event had not occurred.

11.8. Additional Compensation and Procurer's Subrogation

11.8.1. If the Company is entitled, whether actually or contingently, to be compensated by any person (other than the Procurer) as a result of the occurrence of a Non Natural Force Majeure Event for which it has received compensation from the Procurer pursuant to this Article 11, including without limitation, payments made which payments would not have been made in the absence of Article 4.6, the Procurer shall be fully subrogated to the Company's rights against that person to the extent of the compensation paid by the Procurer to the Company.

Provided that in case the Company has actually received compensation from any person other than the Procurers as well as the Procurer as a result of the occurrence of a Non Natural Force Majeure Event, then the Company shall forthwith refund the compensation received by it from the Procurer but only to the extent of the compensation received by the Company from any person other than the Procurer.

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ARTICLE - 12: CHANGE IN LAW

12.1. Definitions

In this Article 12, the following terms shall have the following meanings:

12.1.1. "Change in Law" means:

The occurrence of any of the following events after the date, which is seven (7) days prior to the execution of this PPA, resulting into any additional recurring/ non-recurring expenditure by the Company or any income to the Company:

(i) the enactment, coming into effect, adoption, promulgation, amendment, modification or repeal (without re-enactment or consolidation) in India, of any Law, including rules and regulations framed pursuant to such Law; or

(ii) a change in the interpretation of any Law by any Indian Governmental Instrumentality having the legal power to interpret or apply such Law, or any Competent Court of Law; or

(iii) the imposition of a requirement for obtaining any Consents, Clearances and Permits which was not required earlier; or

(iv) a change in the terms and conditions prescribed for obtaining any Consents, Clearances and Permits or the inclusion of any new terms or conditions for obtaining such Consents, Clearances and Permits; or

(v) any change in tax or introduction of any tax made applicable for supply of power by the Company as per the terms of this Agreement.

But shall not include,

(i) any change in any withholding tax on income or dividends distributed to the shareholders of the Company, or

(ii) change in respect of UI Charges or frequency intervals by an Appropriate Commission; or

(iii) any change on account of regulatory measures by the Appropriate Commissions including calculation of Availability.

(iv) The Decision, direction and orders of the Appropriate commission including the orders passed on the petition seeking approval to this Agreement.

12.2. Application and Principles for computing impact of Change in Law

While determining the consequence of Change in Law under this Article 12, the Parties shall have due regard to the principle that the purpose of compensating the

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Party affected by such Change in Law, is to restore through Monthly Tariff Payment, to the extent contemplated in this Article 12, the affected Party to the same economic position as if such Change in Law has not occurred and such impact shall be as decided by the Appropriate Commission.

12.3. Notification of Change in Law

12.3.1. If the Company is affected by a Change in Law in accordance with this Article 12 and the Company wishes to claim relief for such a Change in Law under this Article 12, it shall give notice to the Procurer of such Change in Law as soon as reasonably practicable after becoming aware of the same or should reasonably have known of the Change in Law.

12.3.2. Notwithstanding Article 12.3.1, the Company shall be obliged to serve a notice to the Procurer under this Article 12.3.2, even if it is beneficially affected by a Change in Law. Without prejudice to the factor of materiality or other provisions contained in this Agreement, the obligation to inform the Procurer contained herein shall be material.

Provided that in case the Company has not provided such notice, the Procurer shall have the right to issue such notice to the Company.

12.3.3. Any notice served pursuant to this Article 12.3.2 shall provide, amongst other things, precise details of:

(a) the Change in Law; and

(b) the effects on the Company.

12.4. Tariff Adjustment Payment on account of Change in Law

12.4.1. Subject to provisions mentioned above, the adjustment in Monthly Tariff Payment shall be effective from:

(i) the date of adoption, promulgation, amendment, re-enactment or repeal of the Law or Change in Law; or

(ii) the date of order/judgment of the Competent Court or tribunal or Indian Governmental Instrumentality, if the Change in Law is on account of a change in interpretation of Law.

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12.4.2. In case of any change in Tariff by reason of Change in Law, as determined in accordance with this Agreement, the Monthly Invoice to be raised by the Company after such change in Tariff shall appropriately reflect the changed Tariff. The payment for Change in Law shall be claimed through Supplementary Bills.

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ARTICLE - 13: EVENTS OF DEFAULT, DISPUTE RESOLUTION AND TERMINATION

13.1. Company Event of Default

13.1.1. The occurrence and continuation of any of the following events, unless any such event occurs as a result of a Force Majeure Event or a breach by Procurer of their obligations under this Agreement or a Procurer Event of Default, shall constitute a Company Event of Default:

(i) The failure to Commission first Unit by the date falling twelve (12) Months after its Scheduled COD, or Revised Scheduled COD provided that if for this period, the Company continues to supply power from alternate sources in terms of the first Proviso of Article 4.5.1, then it shall not constitute a Company Event of Default; or

(ii) After COD of the first Unit of the Power Station, the Company fails to achieve Normative Availability for a period of twelve (12) consecutive Months or within a non-consecutive period of twelve (12) Months within any continuous aggregate period of thirty six (36) Months; or

(iii) After the COD of the first unit of the Power Station the interruption in power supply, either in part or in full of the Contracted Capacity, by the Company for a continuous period of two (2) Months and such default is not rectified with in thirty (30) days from the receipt of first notice from the Procurer; or

(iv) the Company fails to make any payment (a) of an amount exceeding Rupees one (1) crore in aggregate required to be made to Procurer under this Agreement, within three (3) Months after the Due Date of undisputed invoice(s) /demand raised by the said Procurer on the Company or (b) of an amount up to Rupees fifty (50) Lakhs required to be made to Procurer under this Agreement within six (6) Months after the Due Date of undisputed invoice(s)/ demand; or

(v) if

(a) the Company assigns, mortgages or charges or purports to assign, mortgage or charge any of its assets or rights related to the Power Station in contravention of the provisions of this Agreement; or

(b) the Company transfers or novates any of its rights and/ or obligations under this agreement, in a manner contrary to the provisions of this Agreement; except where such transfer

1. is in pursuance of a Law; and does not affect the ability of the transferee to perform, and such transferee has the financial capability to perform, its obligations under this Agreement; or

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2. is to a transferee who assumes such obligations under this Agreement and the Agreement remains effective with respect to the transferee; or

3. is to another company in which Jhabua Power Ltd., holds not less than 51% of the equity shareholding and shall continue to hold equity shares in accordance with Article 16.1.

(vi) if (a) any winding up or bankruptcy or insolvency order is passed against the Company, or (b) the Company goes into liquidation or dissolution or has a receiver or any similar officer appointed over all or substantially all of its assets or official liquidator is appointed to manage its affairs, pursuant to Law,

Provided that a dissolution or liquidation of the Company will not be an Event of Default if such dissolution or liquidation is for the purpose of a merger, consolidation or reorganization, and the resulting company retains creditworthiness similar to the Company and expressly assumes all obligations of the Company under this Agreement and is in a position to perform them; or

(vii) The Company repudiates this Agreement or otherwise evidences an intention not to perform its obligations under or to be bound by this Agreement and does not rectify such breach even within a period of thirty (30) days from a notice from the Procurer in this regard; or

(viii) Except where due to any Procurer's failure to comply with its material obligations, the Company is in breach of any of its material obligations pursuant to this Agreement and such material breach is not rectified by the Company within thirty (30) days of receipt of first notice in this regard given by the Procurer; or

(ix) The Company fails to renew or replace or provide the Performance Guarantee to the Procurer in accordance with Articles 3.3.1 and 3.5 of this Agreement, or

(x) Failure to meet any of the Conditions Subsequent as mentioned in Article 3.1; or

(xi) Any change in the shareholding of the Company in contravention of Article 16.1; or

(xii) Any of the representations and warranties made by the Company in Schedule - 2 of this Agreement; being found to be untrue or inaccurate. Provided however, prior to considering any event specified under this sub-article to be an Event of Default, the Procurer shall give a notice to the Company in writing of at least thirty (30) days to cure the default and the Company fails to rectify the default; or

(xiii) Any other event which have been specified as an event of default or breach by the Company under any of the other provisions in this Agreement.

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13.2. Procurer Event of Default

13.2.1. The occurrence and the continuation of any of the following events, unless any such event occurs as a result of a Force Majeure Event or a breach by the Company of its obligations under this Agreement or a Company Event of Default, shall constitute a Procurer Event of Default:

(i) The Procurer fails to pay the most recent Monthly/ Supplementary Bill for a period of sixty (60) days after the Due Date and the Company is unable to recover the amount outstanding to the Company through the Letter of Credit; or,

(ii) In case of a disputed Monthly Bill or Supplementary Bill, the Procurer fails to make payment of the amount required to be paid as per Article 10.7 for a period of thirty (30) days after the Due Date and the Company is unable to recover the amount outstanding through the Letter of Credit; or,

(iii) Non opening or Non-re instatement or non renewal of Letter of Credit as per the provisions of the Article 10.5.4 or Article 10.5.2; or Article 10.5.6

(iv) Procurer repudiates this Agreement and does not rectify such breach even within a period of thirty (30) days from a notice from the Company in this regard; or,

(v) Except where due to any Company's failure to comply with its material obligations, the Procurer is in breach of any of its material obligations pursuant to this Agreement and such material breach is not rectified by the Procurer within thirty (30) days of receipt of first notice in this regard given by the Company;

(vi) If

(a) any winding up or bankruptcy or insolvency order is passed against the Procurer, or

(b) the Procurer goes into liquidation or dissolution or a receiver or any similar officer is appointed over all or substantially all of its assets or official liquidator is appointed to manage its affairs, pursuant to Law,

(c) Provided that it shall not constitute a Procurer Event of Default, where such dissolution or liquidation of Procurer is for the purpose of a merger, consolidation or reorganization and where the resulting entity assumes the financial standing to perform the Procurer's obligations under this Agreement; or,

(vii) Any representation and warranties made by the Procurer in Schedule - 2 of this Agreement being found to be untrue or inaccurate. Provided however, prior to considering any event specified under this sub-article to be an Event of Default, the Company shall give a notice to the Procurer in writing of at least thirty (30) days to cure the default and the Procurer fails to rectify the default; or,

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(viii) Failure to meet any of the Conditions Subsequent as mentioned in Article 3.2; or,

(ix) Any other event which have been specified as an event of default or breach by the Procurer under any of the other provisions in this Agreement.

13.3. Procedure for cases of Company Event of Default

(i) Upon the occurrence and continuation of any Company Event of Default under Article 13.1 except under Articles 13.1.1 (ii), (iii), and (iv), the Procurer shall have the right to deliver to the Company a notice of their intention to terminate this Agreement (Procurer Preliminary Default Notice), under intimation to the Lender(s), which shall specify in reasonable detail, the circumstances giving rise to the issue of such notice.

(ii) Following the issue of Procurer Preliminary Default Notice, the Consultation Period of ninety (90) days or such longer period as the Parties may agree, shall apply and it shall be the responsibility of the Parties to discuss as to what steps shall be taken with a view to mitigate the consequences of the relevant Event of Default having regard to all the circumstances.

(iii) During the Consultation Period, the Parties shall, save as otherwise provided in this Agreement, continue to perform their respective obligations under this Agreement.

(iv) Upon the occurrence and continuation of Company Event of Default under Article 13.1 above except for defaults under Articles 13.1.1 (ii), (iii), and (iv), and the failure by the Company to cure such default within the applicable cure period specified in this Article, the Procurer shall have the right (but not an obligation) to terminate this Agreement by notice to the Company in accordance with the procedures set forth set forth in Article 13.6.

Subject to the Procurer paying the amounts due to the Company under the terms of this Agreement, within the time specified in this Agreement, without demur and notwithstanding any dispute, the Company shall not offer the Contracted Capacity, in part or fully, to any third party in contravention to the conditions specified in Article 6.1.3, The Company unconditionally and irrevocably agrees to and acknowledges the Procurer's right to instruct the RLDC/ SLDC, as the case may be, not to schedule such power to any third party without prejudice to Procurer's other rights. The Company further agrees and waives any and all objections or claims in respect of such right or any other legal remedy including but not limited to seek specific

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performance of this Agreement, the Procurer may have under the Law with respect to such default of the Company. In such event, the Procurer shall be obliged to schedule such power and purchase and pay the Tariff for the Scheduled Energy. It is clarified and re iterated that the remedy provided to the Procurer under this Article shall not be available to the Procurer if it fails for any reason whatsoever, to pay any amount due to the Company in terms of this Agreement, notwithstanding any dispute relating to any such amount and the Company's demand for such amounts outstanding shall, for purposes only of this Article, be conclusive and binding on the Procurer.

13.4. Procedure for Procurer Event of Default

13.4.1. Upon the occurrence and continuation of any Procurer Event of Default pursuant to Articles 13.2.1(i), 13.2.1(ii) and 13.2.1(iii), the Company shall follow the remedies provided under Article 10.6.

13.4.2. Without in any manner affecting the rights of the Company under Article 13.4.1, on the occurrence of any Procurer Event of Default specified in Article 13.2, the Company shall have the right to deliver to the Procurer, a Company Preliminary Default Notice, which notice shall specify in reasonable detail the circumstances giving rise to its issue.

13.4.3. Following the issue of a Company Preliminary Default Notice, the Consultation Period of ninety (90) days or such longer period as the Parties may agree, shall apply and it shall be the responsibility of the Parties to discuss as to what steps shall be taken with a view to mitigate the consequences of the relevant Event of Default having regard to all the circumstances.

13.4.4. During the Consultation Period, the Parties shall, save as otherwise provided in this Agreement, continue to perform their respective obligations under this Agreement.

13.4.5. After a period of seven (7) days following the expiry of the Consultation Period and unless the Parties shall have otherwise agreed to the contrary or the Procurer Event of Default giving rise to the Consultation Period shall have ceased to exist or shall have been remedied, the Company shall be free to sell the Contracted Capacity and corresponding Available Capacity of the Procurer to any third party.

Provided the Procurer shall have the liability to make payments for Capacity Charges based on Normative Availability to the Company for the period up to the Expiry Date, subject to a maximum of twenty four (24) months from the eight day after expiry of the Consultation Period.

13.5. Resolution of Disputes

13.5.1. Governing Law

This Agreement shall be governed by and construed in accordance with the Laws of India. Any legal proceedings in respect of any matters, claims or disputes under this

Agreement shall be under the jurisdiction of Appropriate Commission and subject to such Jurisdiction the appropriate courts in Jabalpur, unless required otherwise under Law.

13.5.2. **Amicable Settlement**

(a) Either Party is entitled to raise any claim, dispute or difference of whatever nature arising under, out of or in connection with this Agreement including its existence or validity or termination (collectively "Dispute") by giving a written notice to the other Party, which shall contain:

(i.) a description of the Dispute;

(ii.) the grounds for such Dispute; and

(iii.) all written material in support of its claim.

(b) The other Party shall, within thirty (30) days of issue of dispute notice issued under Article 13.5.2(a), furnish:

(i) counter-claim and defences, if any, regarding the Dispute; and

(ii) all written material in support of its defences and counter-claim.

(c) Within thirty (30) days of issue of notice by any Party pursuant to Article 13.5.2(a), or Article 13.5.2(b), both the Parties to the Dispute shall meet to settle such Dispute amicably. If the Parties fail to resolve the Dispute amicably within thirty (30) days of receipt of the notice referred to in the preceding sentence, the Dispute shall be referred to Dispute Resolution in accordance with Article 13.5.3.

13.5.3. **Dispute Resolution**

All disputes and differences arising under or in relation to this Agreement including interpretation, construction or otherwise in regard to Contracted Capacity and Tariff terms and conditions thereof shall be subject to adjudication of the Appropriate commission in terms of section 86(1)(f) of the Electricity Act, 2003

13.5.4. **Parties to Perform Obligations**

Notwithstanding the existence of any Dispute and difference referred to the Appropriate Commission as provided in this Article 13.5, and save as the Appropriate Commission may otherwise direct by a final or interim order, the Parties hereto shall continue to perform their respective obligations (which are not in dispute) under this Agreement.

13.6. Termination and consequences of Termination

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13.6.1. Notice of Termination

This agreement may be terminated on serving a seven (7) days notice (Notice of Termination) by either Party in case of Event of Default by the other Party pursuant to this Article.

13.6.2. On the expiry of the Notice of Termination, the Party which serves the notice of termination shall be entitled to terminate this Agreement under intimation to the other Party, unless the event leading to the Notice of Termination has been rectified or complied with to the satisfaction of the Party which issues the Notice of Termination.

13.6.3. Termination of the Agreement shall be without prejudice to the accrued rights and liabilities of the Parties, as on the date of the termination, unless waived in writing by the other Party.

13.6.4. In the event this Agreement is terminated by the Procurer in accordance with the aforesaid provisions, then all rights conferred to the Company under and in terms of the I.A. shall revert back to the GoMP and all facilities provided to or availed by the Company under the I.A. shall be withdrawn. It is clarified that the provisions of this Article shall not apply in the event of termination of this Agreement by a Party due to Force Majeure or termination by the Company for Procurer Event of Default.

13.6.5. It is clarified that in the event of termination under this Article as above, the remedies provided in this Article 13.6 hereinabove shall be exhaustive and the Procurer and/or the GoMP shall not be entitled to any further remedies.

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ARTICLE - 14: LIABILITY AND INDEMNIFICATION

14.1. Indemnity

14.1.1. The Company shall indemnify, defend and hold Procurer harmless against:

(a) any and all third party claims, actions, suits or proceedings against the Procurer for any loss of or damage to property of such third party, or death or injury to such third party, arising out of a breach by the Company of any of its obligations under this Agreement, except to the extent that any such claim, action, suit or proceeding has arisen due to a negligent act or omission, breach of this Agreement or breach of statutory duty on the part of Procurer, its contractors, servants or agents; and

(b) any and all losses, damages, costs and expenses including legal costs, fines, penalties and interest actually suffered or incurred by Procurer from third party claims arising by reason of:

(i) breach by the Company of any of its obligations under this Agreement, (provided that this Article 14 shall not apply to such breaches by the Company, for which specific remedies have been provided for under this Agreement) except to the extent that any such losses, damages, costs and expenses including legal costs, fines, penalties and interest (together to constitute "Indemnifiable Losses") has arisen due to a negligent act or omission, breach of this Agreement or breach of statutory duty on the part of Procurer, its contractors, servants or agents, or

(ii) any of the representations or warranties of the Company under this Agreement being found to be inaccurate or untrue.

14.1.2. Procurer shall indemnify, defend and hold the Company harmless against:

(a) any and all third party claims, actions, suits or proceedings against the Company, for any loss of or damage to property of such third party, or death or injury to such third party, arising out of a breach by Procurer of any of its obligations under this Agreement or otherwise except to the extent that any such claim, action, suit or proceeding has arisen due to a negligent act or omission, breach of this Agreement or breach of statutory duty on the part of the Company, its contractors, servants or agents; and

(b) any and all losses, damages, costs and expenses including legal costs, fines, penalties and interest ('Indemnifiable Losses') actually suffered or incurred by the Company from third party claims arising by reason of :

(i) a breach by Procurer of any of its obligations under this Agreement or otherwise (provided that this Article14 shall not apply to such breaches by Procurer, for which specific remedies have been provided for under this Agreement.), except to the extent that any such Indeminifiable Losses have

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arisen due to a negligent act or omission, breach of this Agreement or breach of statutory duty on the part of the Company, its contractors, servants or agents, or

(ii) any of the representations or warranties of the Procurer under this Agreement being found to be inaccurate or untrue.

14.2. Procedure for claiming Indemnity

14.2.1. Third party claims

(a) Where the Indemnified Party is entitled to indemnification from the Indemnifying Party pursuant to Article 14.1.1(a) or 14.1.2(a), the Indemnified Party shall promptly notify the Indemnifying Party of such claim, proceeding, action or suit referred to in Article 14.1.1(a) or 14.1.2(a), in respect of which it is entitled to be indemnified. Such notice shall be given as soon as reasonably practicable after the Indemnified Party becomes aware of such claim, proceeding, action or suit. The Indemnifying Party shall be liable to settle the indemnification claim within thirty (30) days of receipt of the above notice. Provided however that, if:

(i) the Parties choose to contest, defend or litigate such claim, action, suit or proceedings in accordance with Article 14.2.1 (b) below; and

(ii) the claim amount is not required to be paid/ deposited to such third party pending the resolution of the Dispute,

the Indemnifying Party shall become liable to pay the claim amount to the Indemnified Party or to the third party, as the case may be, promptly following the resolution of the Dispute, if such Dispute is not settled in favour of the Indemnified Party.

(b) The Indemnified Party may contest, defend and litigate a claim, action, suit or proceeding for which it is entitled to be Indemnified under Article 14.1.1(a) or Article 14.1.2(a) and the Indemnifying Party shall reimburse to the Indemnified Party all reasonable costs and expenses incurred by the Indemnified party. However, such Indemnified Party shall not settle or compromise such claim, action, suit or proceedings without first getting the consent of the Indemnifying Party, which consent shall not be unreasonably withheld or delayed.

An Indemnifying Party may, at its own expense, assume control of the defence of any proceedings brought against the Indemnified Party if it acknowledges its obligation to indemnify such Indemnified Party, gives such Indemnified Party prompt notice of its intention to assume control of the defence, and employs an independent legal counsel at its own cost that is reasonably satisfactory to the Indemnified Party.

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14.3. **Indemnifiable Losses**

14.3.1. Where an Indemnified Party is entitled to Indemnifiable Losses from the Indemnifying Party pursuant to Article 14.1.1(b) or 14.1.2(b), the Indemnified Party shall promptly notify the Indemnifying Party of the Indemnifiable Losses actually incurred by the Indemnified Party. The Indemnifiable Losses shall be reimbursed by the Indemnifying Party within thirty (30) days of receipt of the notice seeking Indemnifiable Losses by the Indemnified Party. In case of non-payment of such losses after a valid notice under this Article 14.3, such event shall constitute a payment default under Article 13.

14.4. **Infringement of Intellectual Property Rights**

14.4.1.

(a) The Company shall, subject to the Procurer compliance with Article 14.4.1(b), indemnify and hold harmless the Procurer and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney's fees and expenses, which the Procurer may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright or other intellectual property right registered or otherwise existing at the date of the Agreement by reason of the setting up of the Power Station by the Company.

Such indemnity shall not cover any use of the Power Station or any part thereof other than for the purpose indicated by or to be reasonably inferred from the Agreement, any infringement resulting from the misuse of the Power Station or any part thereof, or any products produced in association or combination with any other equipment, plant or materials not supplied by the Company.

(b) If any proceedings are brought or any claim is made against the Procurer arising out of the matters referred to in Article 14.4.1(a), the Procurer shall promptly give the Company a notice thereof, and the Company shall at its own expense take necessary steps and attend such proceedings or claim and any negotiations for the settlement of any such proceedings or claim. The Company shall promptly notify the Procurer of all actions taken in such proceedings or claims.

(c) If the Company fails to notify the Procurer within twenty-eight (28) days after receipt of such notice from the Procurer under Article 14.4.1(b) above, that it intends to attend any such proceedings or claim, then the Procurer shall be free to attend the same on their own behalf at the cost of the

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Company. Unless the Company has so failed to notify the Procurer within the twenty eight (28) days period, the Procurer shall make no admission that may be prejudicial to the defense of any such proceedings or claims.

(d) The Procurer shall, at the Company's request, afford all available assistance to the Company in attending to such proceedings or claim, and shall be reimbursed by the Company for all reasonable expenses incurred in so doing.

14.4.2.

(a) The Procurer, subject to the Company's compliance with Article 14.4.2(b) shall indemnify and hold harmless the Company and its employees, officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs and expenses of whatsoever nature, including attorney's fees and expenses, which the Company may suffer as a result of any infringement by the Procurer or alleged infringement of any patent, utility model, registered design, trademark, copyright or other intellectual property right registered.

(b) If any proceedings are brought or any claim is made against the Company arising out of the matters referred to in Article 14.4.2(a)the Company shall promptly give the Procurer a notice thereof, and the /Procurer shall at its own expense take necessary steps and attend such proceedings or claim and any negotiations for the settlement of any such proceedings or claim. The Procurer shall promptly notify the Company of all actions taken in such proceedings or claims.

(c) If the Procurer fails to notify the Company within twenty-eight (28) days after receipt of such notice from the Company under Article 14.4.2(b) above, that it intends to attend any such proceedings or claim, then the Company shall be free to attend the same on its own behalf at the cost of the Procurer. Unless the Procurer has so failed to notify the Company within the twenty (28) days period, the Company shall make no admission that may be prejudicial to the defense of any such proceedings or claim.

(d) The Company shall, at the Procurer request, afford all available assistance to the Procurer in attending to such proceedings or claim, and shall be reimbursed by the Procurer for all reasonable expenses incurred in so doing.

14.5. Limitation on Liability

14.5.1. Except as expressly provided in this Agreement, neither the Company nor Procurer nor its/ their respective officers, directors, agents, employees or Affiliates (or their officers, directors, agents or employees), shall be liable or responsible to the other Party or its Affiliates, officers, directors, agents, employees, successors or permitted assigns or their respective insurers for incidental, indirect or

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consequential damages, connected with or resulting from performance or non-performance of this Agreement, or anything done in connection herewith, including claims in the nature of lost revenues, income or profits (other than payments expressly required and properly due under this Agreement), any increased expense of, reduction in or loss of power generation or equipment used therefore, irrespective of whether such claims are based upon breach of warranty, tort (including negligence, whether of the Procurer, the Company or others), strict liability, contract, breach of statutory duty, operation of law or otherwise.

14.5.2. Procurer shall have no recourse against any officer, director or shareholder of the Company or any Affiliate of the Company or any of its officers, directors or shareholders for such claims excluded under this Article. The Company shall have no recourse against any officer, director or shareholder of Procurer, or any Affiliate of Procurer or any of its officers, directors or shareholders for such claims excluded under this Article.

14.6. **Duty to Mitigate**

14.6.1. The Parties shall endeavor to take all reasonable steps so as mitigate any loss or damage which has occurred under this Article 14.

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ARTICLE - 15: ASSIGNMENTS AND CHARGES

15.1. Assignments

15.1.1. This Agreement shall be binding upon, and inure to the benefit of the Parties and their respective successors and permitted assigns.

15.1.2. The Company shall not assign any of its rights or obligations in this Agreement to any Party other than with the consent in writing of the Procurer.

15.1.3. The Procurer shall be free to deal with the Contracted Capacity or any part thereof in any manner as the Procurer may in its discretion consider appropriate, including further sale of the Contracted Capacity to any person subject to the condition that the Procurer shall continue to be liable to the Company in so far as the fulfillment of the obligations under this Agreement. The Procurer shall at all times be entitled to assign this Agreement to any other Government of Madhya Pradesh Undertaking or to any of the Discoms. Subject to the above the Procurer shall not assign the obligations of the Procurer under this Agreement to any Party other than with the consent in writing of the Company and such consent shall not be unreasonably withheld by the Company if the Procurer seeks to transfer to any transferee all of its rights and obligations under this Agreement.

15.1.4. The Company shall be entitled to assign its rights and obligations under this Agreement in favor of the Selectee duly appointed pursuant to the terms of Schedule – 6 of this Agreement.

15.2. Permitted Charges

15.2.1. Neither Party shall create or permit to subsist any encumbrance over all or any of its rights and benefits under this Agreement.

15.2.2. Notwithstanding anything contained herein the Company may create any encumbrance over all or part of the receivables, or any other assets of the Power Station in favour of the Lenders or the Lender's representative on their behalf, as security for:

(a) amounts payable under the Financing Agreements; and

(b) any other amounts agreed by the Parties,

Provided that:

(a) the Lenders or the Lender's Representative on their behalf shall have entered into the Financing Agreements; and,

(b) any encumbrances granted by the Company in accordance with this Article 15.2.2 shall contain provisions pursuant to which the Lenders or the Lender's Representative on their behalf agrees unconditionally with the Company acting

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for itself and as trustee of the Procurers to release from such encumbrances all of the right, title and interest to Additional Compensation so as to enable the Procurers to claim its right of subrogation. For the purposes of this Article, Additional Compensation shall mean the compensation that the Company is entitled, whether actually or contingently, to receive from the Procurer as well as compensated by any person other than the Procurer for the same event.

(c) the Lenders or the Lender's Representative on their behalf shall have agreed in writing to the provisions of Schedule – 6.

15.2.3. Article 15.2 does not apply to:

(a) liens or encumbrances arising by operation of law (or by an agreement evidencing the same) in the ordinary course of implementation of this Agreement by the Company;

(b) hypothecation or pledge of goods, the related documents of title and / or other related documents, arising or created in the ordinary course of supply of power by the Company; or

(c) security arising out of retention of title provisions in relation to goods acquired in the ordinary course of supply of power by the Company.

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ARTICLE - 16: MISCELLANEOUS PROVISIONS

16.1. Minimum Equity holding/ Equity Lock-in

16.1.1. The minimum shareholding requirements specified in this Article shall apply to all of the Promoters which have made equity investment in the Company. The Company confirms that [name of the promoter]is one of the promoters of the Company.

16.1.2. The aggregate equity share holding of the promoters in the issued and paid up equity share capital of the Company shall not be less than the fifty-one percent (51%) from the Effective Date up to a period of two (2) years after COD of the Power Station.

16.1.3. All shareholders of the Company shall be allowed to divest their equity as long as the promoters hold the minimum aggregate equity as specified in Article 16.1.2.

16.2. Amendment

16.2.1. This Agreement may only be amended or supplemented by a written agreement between the Parties and after duly obtaining the approval of the Appropriate Commission, where necessary.

16.3. Third Party Beneficiaries

16.3.1. This Agreement is solely for the benefit of the Parties, and their respective successors and permitted assigns and shall not be construed as creating any duty, standard of care or any liability to, any person not a party to this Agreement.

16.4. Waiver

16.4.1. No waiver by either Party of any default or breach by the other Party in the performance of any of the provisions of this Agreement shall be effective unless in writing duly executed by an authorised representative of such Party:

16.4.2. Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement nor time or other indulgence granted by one Party to the other Party shall act as a waiver of such breach or acceptance of any variation or the relinquishment of any such right or any other right under this Agreement, which shall remain in full force and effect.

16.5. Entirety

16.5.1. This Agreement and the Schedules are intended by the Parties as the final expression of their agreement and are intended also as a complete and exclusive statement of the terms of their agreement.

16.5.2. Except as provided in this Agreement, all prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement or

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supply of power up to the Contracted Capacity under this Agreement to the Procurer by the Company shall stand superseded and abrogated.

16.6. Confidentiality

16.6.1. The Parties undertake to hold in confidence this Agreement and other Power Station Documents and not to disclose the terms and conditions of the transaction contemplated hereby to third parties,

16.6.2. Except (i) to their professional advisors; (ii) to their officers, contractors, employees, agents or representatives, financiers, who need to have access to such information for the proper performance of their activities; or (iii) disclosures required under Law; without the prior written consent of the other Parties.

16.7. Affirmation

16.7.1. The Company and Procurer, each affirm that:

(i) neither it nor its respective directors, employees, or agents has paid or undertaken to pay or shall in the future pay any unlawful commission, bribe, pay-off or kick-back; and,

(ii) it has not in any other manner paid any sums, whether in Indian currency or foreign currency and whether in India or abroad to the other Party to procure this Agreement, and the Company and Procurer hereby undertake not to engage in any similar acts during the Term of Agreement.

16.8. Severability

16.8.1. The invalidity or enforceability, for any reason, of any part of this Agreement shall not prejudice or affect the validity or enforceability of the remainder of this Agreement, unless the part held invalid or unenforceable is fundamental to this Agreement.

16.9. Survival

16.9.1. Notwithstanding anything to the contrary herein, the provisions of this Agreement, including Article 9 (Application of Insurance), Article 11 (Force Majeure), Article 13 (Events of Default, Dispute Resolution and Termination), Article 16 (Miscellaneous Provisions), and other Articles and Schedules of this Agreement which expressly or by their nature survive the Term or Termination of this Agreement shall continue and survive any expiry or termination of this Agreement.

16.10. Relationship of the Parties

16.10.1. This Agreement shall not be interpreted or construed to create an association, joint venture, or partnership or agency or any such other relationship between the

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Parties or to impose any partnership obligation or liability upon either Party and neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

16.10.2. Subject to the provisions of the Agreement, the Company shall be solely responsible for the manner in which its obligations under this Agreement are to be performed. All employees and representatives of the Company or contractors engaged by the Company in connection with the performance of the Agreement shall be under the complete control of the Company and shall not be deemed to be employees, representatives, contractors of Procurer and nothing contained in the Agreement or in any agreement or contract awarded by the Company shall be construed to create any contractual relationship between any such employees, representatives or contractors and the Procurer.

16.11. Counterparts

16.11.1. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which collectively shall be deemed one and the same Agreement.

16.12. Notices

16.12.1. All notices to be given under this Agreement shall be in writing and in the English Language.

16.12.2. All notices must be delivered personally, by registered post or any method duly acknowledged or facsimile to the addresses below:

Name of Procurer	**Name & address of the Procurer**
Madhya Pradesh Power Trading Company Limited	The Managing Director, Madhya Pradesh Power Trading Company Limited, Shakti Bhawan, Jabalpur- 482 008 Tel: +91 761 2660909/2702900 Fax No: +91 761 2664749

Name of Company	**Name & address of the Company**
Jhabua Power Ltd.,	The Chief Operating Officer, 6th & 7th Floor, Vatika City Point, M.G. Road, Gurgaon-122002

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16.12.3. All notices or communications given by facsimile shall be confirmed by sending a copy of the same via post office in an envelope properly addressed to the appropriate Party for delivery by registered mail. All Notices shall be deemed validly delivered upon receipt evidenced by an acknowledgement of the recipient, unless the Party delivering the notice can prove in case of delivery through the registered post that the recipient refused to acknowledge the receipt of the notice despite efforts of the postal authorities.

16.12.4. Any Party may by notice of at least fifteen (15) days to the other Parties change the address and / or addresses to which such notices and communications to it are to be delivered or mailed.

16.13. Language

16.13.1. All agreements, correspondence and communications between the Parties relating to this Agreement and all other documentation to be prepared and supplied under the Agreement shall be written in English, and the Agreement shall be construed and interpreted in accordance with English language.

16.13.2. If any of the agreements, correspondence, communications or documents are prepared in any language other than English, the English translation of such agreements, correspondence, communications or documents shall prevail in matters of interpretation.

16.14. Breach of Obligations

16.14.1. The Parties acknowledge that a breach of any of the obligations contained herein would result in injuries. The Parties further acknowledge that the amount of the liquidated damages or the method of calculating the liquidated damages specified in this Agreement is a genuine and reasonable pre-estimate of the damages that may be suffered by the non-defaulting party in each case specified under this Agreement

16.15. Nomination Restriction

16.15.1. Notwithstanding anything contained to the contrary in this Agreement, wherever a reference is made to the right of the Procurer to nominate a third Party to receive benefits under this Agreement, such third Party shall have a financial standing comparable to that of the Procurer in question.

16.16. Commercial Acts

16.16.1. The Procurer and the Company unconditionally and irrevocably agree that the execution, delivery and performance by each of them of this Agreement and any other Power Station Documents to which it is a Party constitute private and commercial acts rather than public or governmental acts.

16.17. Restriction of Shareholders/Owners Liability

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16.17.1. Parties expressly agree and acknowledge that none of the shareholders of the Parties hereto shall be liable to the other Party for any of the contractual obligations of the concerned Party under this Agreement. Further, the financial liabilities of the shareholder/s of each Party to this Agreement shall be restricted to the extent provided in Section 426 of the Indian Companies Act, 1956.

16.17.2. The provisions of this Article shall supersede any other prior agreement or understanding, whether oral or written, that may be existing between the Procurer, Company, shareholders/ owners of the Company, shareholders/ successors of the Procurer, regarding the subject matter of this Agreement. Provided however the Company and the Procurer shall at all times be bound by IA and other Agreements entered into with GoMP.

16.18. Taxes and Duties

16.18.1. The Company shall bear and promptly pay all statutory taxes, duties, levies and cess, assessed/ levied on the Company, contractors or their employees that are required to be paid by the Company as per the Law in relation to the execution of the Agreement and for supplying power as per the terms of this Agreement.

16.18.2. Procurer shall be indemnified and held harmless by the Company against any claims that may be made against Procurer in relation to the matters set out in Article 16.18.1.

16.18.3. Procurer shall not be liable for any payment of, taxes, duties, levies, cess whatsoever for discharging any obligation of the Company by the Procurer on behalf of the Company or its personnel,.

16.19. No Consequential or Indirect Losses

16.19.1. The liability of the Company and the Procurer shall be limited to that explicitly provided in this Agreement.

Provided that notwithstanding anything contained in this Agreement, under no event shall the Procurer or the Company claims from one another any indirect or consequential losses or damages.

16.20. Discretion

16.20.1. Except where this Agreement expressly requires a Party to act fairly or reasonably, a Party may exercise any discretion given to it under this Agreement in any way it deems fit.

16.21. Fraudulent and Corrupt Practices

16.21.1. The Company and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the subsistence of this Agreement. Notwithstanding anything to the contrary contained in the Agreement, the Procurer may terminate the Agreement without being liable in any manner whatsoever to the Company, if it determines that the Company has,

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directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the negotiation process. In such an event, the Procurer shall forfeit the Contract Performance Guarantee, without prejudice to any other right or remedy that may be available to the Procurer hereunder or subsistence otherwise.

16.21.2. Without prejudice to the rights of the Procurer under Article 16.21.1 hereinabove and the rights and remedies which the Procurer may have under this Agreement, if a the Company is found by the Procurer to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the negotiation process, or after the execution of the PPA, the Procurer may terminate the Agreement without being liable in any manner whatsoever to the Company. Further, in such an event, the Procurer shall forfeit the Contract Performance Guarantee.

16.21.3. Further, the Company shall not be eligible to participate in any tender or RFP issued by the Procurer during a period of 2 (two) years from the date such the Company is found by the Procurer to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practices, as the case may be.

16.21.4. For the purposes of this Article 16.21, the following terms shall have the meaning hereinafter respectively assigned to them:

(a) **"corrupt practice"** means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the negotiation process (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of the Procurer who is or has been associated or dealt in any manner, directly or indirectly with the negotiation process or has dealt with matters concerning the PPA or arising there from, before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of the Procurer, shall be deemed to constitute influencing the actions of a person connected with the negotiation process); or (ii) engaging in any manner whatsoever, whether during the negotiation Process or after the execution of the PPA, as the case may be, any person in respect of any matter relating to the Power Station or the PPA, who at any time has been or is a legal, financial or technical adviser of the Procurer in relation to any matter concerning the Power Station;

(b) "**fraudulent practice**" means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the negotiation process;

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(c) "**coercive** practice" means impairing or harming, or threatening to impair or harm, directly or indirectly, any person or property to influence any person's participation or action in the negotiation process;

(d) "**undesirable** practice" means (i) establishing contact with any person connected with or employed or engaged by the Procurer with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the negotiation process; or (ii) having a conflict of interest; and,

(e) "**restrictive practice**" means forming a cartel or arriving at any understanding or arrangement among prospective Companies with the objective of restricting or manipulating a full and fair competition in the negotiation process.

16.22. Compliance with Law

16.22.1. Despite anything contained in this Agreement but without prejudice to this Article, if any provision of this Agreement shall be in deviation or inconsistent with or repugnant to the provisions contained in the Electricity Act, 2003, or any rules and regulations made thereunder, such provision of this Agreement shall be deemed to be amended to the extent required to bring it into compliance with the aforesaid relevant provisions as amended from time to time.

16.23. Representations and Warranties

16.23.1. The Company hereby provides the Representation and Warranties to the Procurer as contained in Schedule – 2.

16.23.2. The Procurer hereby provides the Representation and Warranties to the Company as contained in Schedule – 2.

IN WITNESS WHEREOF the Parties have executed these presents through their authorized representatives at Jabalpur, Madhya Pradesh.

For and on behalf of: **Madhya Pradesh Power Trading Company Limited**	**For and on behalf of:** **Jhabua Power Ltd.**
Name A. B. BAJPAI Designation: C GM (Commercial) Address: Madhya Pradesh Power Trading Company Ltd. Shakti Bhawan, Jabalpur- 482 008.	Name: K N NEELKANT Designation: Chief operating officer Address:

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(A.K. BAJPAI) Chief General Manager (Commercial) M.P. Power Trading Co. Ltd. Jabalpur Signature with seal	Signature with seal
Witness: 1. 2.	Witness: 1. ASHUTOSH MOHAN MISRA 2. A.V. Mishra

For and Behalf of Discoms (Confirming Parties) Through their authorized representative	
Witness: (i) ..... (SANJAY OKHADE) Executive Engineer (Comml) E.Z. JBP. Witness: (ii)	**1. M.P. Poorva Kshetra Vidyut Vitran Company Limited, Jabalpur** **Signature:** Name..... P.K. Singh Designation.. CE(Comml) - EZ, Chief Engineer (Comml.) M.P.P.K.V.V.C.L., Jabalpur **2. M.P. Paschim Kshetra Vidyut Vitran Company Limited, Indore.** **Signature:** Name..... Designation.....

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Witness: (iii)	**3. M.P. Madhya Kshetra Vidyut Vitran Company Limited, Bhopal** **Signature:** Name..... Designation.....

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SCHEDULE – 1A: FORMAT OF THE INITIAL CONTRACT PERFORMANCE GUARANTEE

(To be on non-judicial stamp paper of appropriate value as per Stamp Act relevant to place of execution)

In consideration of the .....[*Insert name of the Company*] agreeing to undertake the obligations under the PPA and the Procurer, agreeing to execute the Agreement with the Company for purchase of power on long term basis ..... [*Insert name of the Bank*] (hereinafter referred to as "Guarantor Bank") hereby agrees unequivocally, irrevocably and unconditionally to pay to the Procurer at .....[*Insert address of Procurer*] forthwith on demand in writing from the Procurer or any officer authorized by it in this behalf, any amount up to and not exceeding Rupees ..... (Rs .....) [insert amount of BG computed on the basis of Rs. Three (3) lakhs /MW] only (with the respect to proposed Contracted Capacity as per the terms of PPA on behalf of the Company).

This guarantee shall be valid and binding on the Guarantor Bank up to and including .....[*Insert date of validity of CPG*] and shall in no event be terminable by notice or any change in the constitution of the Bank or the term of the PPA or by any other reasons whatsoever and our liability hereunder shall not be impaired or discharged by any extension of time or variations or alternations made, given, or agreed with or without our knowledge or consent, by or between parties to the respective agreement.

Our liability under this Guarantee is restricted to Rs. ..... (Rs. ..... only). Our Guarantee shall remain in force until ..... [*Insert the date of validity of the CPG]*. The Procurer shall be entitled to invoke this Guarantee up to thirty (30) days of the last date of the validity of this Guarantee by issuance of a written demand to invoke this guarantee.

The Guarantor Bank hereby expressly agrees that it shall not require any proof in addition to the written demand from the Procurer, made in any format, raised at the above mentioned address of the Guarantor Bank, in order to make the said payment to the Procurer.

The Guarantor Bank shall make payment hereunder on first demand without restriction or conditions and notwithstanding any objection by [*Insert name of the Company*] and/ or any other person. The Guarantor Bank shall not require the Procurer to justify the invocation of

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this BANK GUARANTEE, nor shall the Guarantor Bank have any recourse against the Procurer in respect of any payment made hereunder.

This BANK GUARANTEE shall be interpreted in accordance with the laws of India and the courts at Jabalpur (M.P.) shall have exclusive jurisdiction.

The Guarantor Bank represents that this BANK GUARANTEE has been established in such form and with such content that it is fully enforceable in accordance with its terms as against the Guarantor Bank in the manner provided herein.

This BANK GUARANTEE shall not be affected in any manner by reason of merger, amalgamation, restructuring, liquidation, winding up, dissolution or any other change in the constitution of the Guarantor Bank.

This BANK GUARANTEE shall be a primary obligation of the Guarantor Bank and accordingly the Procurer shall not be obliged before enforcing this BANK GUARANTEE to take any action in any court or arbitral proceedings against the Company, to make any claim against or any demand on the Company or to give any notice to the Company or to enforce any security held by the Procurer or to exercise, levy or enforce any distress, diligence or other process against the Company.

The Guarantor Bank acknowledges that this BANK GUARANTEE is not personal to the Procurer and may be assigned, in whole or in part, (whether absolutely or by way of security) by the Procurer to any entity to whom it is entitled to assign its rights and obligations under the PPA.

The Guarantor Bank hereby agrees and acknowledges that the Procurer shall have a right to invoke this Bank Guarantee either in part or in full, as it may deem fit.

Notwithstanding anything contained hereinabove, our liability under this Guarantee is restricted to Rs. ..... crore (Rs. ..... crore only) and it shall remain in force until .....[Date to be inserted is three (3) months after the Scheduled COD], with an additional claim period of thirty (30) days thereafter. This BANK GUARANTEE shall be extended from time to time for such period, as may be desired by ..... [Insert name of the Company]. We are liable to pay the guaranteed amount or any part thereof under this Bank Guarantee only if the Procurer serves upon us a written claim or demand.

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In witness whereof the Bank, through its authorized officer, has set its hand and stamp on this …….. day of …… at ……

……

Signature:

Name: ……

Designation with Bank Stamp ……

Attorney as per power of attorney No. ……

For:

…… [*Insert Name of the Bank*]

Full Address:

Dated this …… day of …… 20…..

Witness:

1. ……

Signature

Name and Address: ……

2. ……..

Signature

Name and Address: ……..

[Note: The Stamp Paper should be in the name of the Executing Bank.]

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SCHEDULE – 1B: FORMAT OF THE CONTRACT PERFORMANCE GUARANTEE

(To be on non-judicial stamp paper of appropriate value as per Stamp Act relevant to place of execution)

In consideration of the .....[*Insert name of the Company*] agreeing to undertake the obligations under the PPA and the Procurer, agreeing to execute the Agreement with the Company for purchase of power on long term basis ..... [*Insert name of the Bank*] (hereinafter referred to as "Guarantor Bank") hereby agrees unequivocally, irrevocably and unconditionally to pay to the Procurer at .....[*Insert address of Procurer*] forthwith on demand in writing from the Procurer or any officer authorized by it in this behalf, any amount up to and not exceeding Rupees ..... (Rs .....) [insert amount of BG computed on the basis of Rs. Seven Lakhs Fifty Thousand (7.5) /MW] only (with the respect to proposed Contracted Capacity as per the terms of PPA on behalf of the Company).

This guarantee shall be valid and binding on the Guarantor Bank up to and including .....[*Insert date of validity of CPG*] and shall in no event be terminable by notice or any change in the constitution of the Bank or the term of the PPA or by any other reasons whatsoever and our liability hereunder shall not be impaired or discharged by any extension of time or variations or alternations made, given, or agreed with or without our knowledge or consent, by or between parties to the respective agreement.

Our liability under this Guarantee is restricted to Rs. ..... (Rs. ..... only). Our Guarantee shall remain in force until ..... [*Insert the date of validity of the CPG]*. The Procurer shall be entitled to invoke this Guarantee up to thirty (30) days of the last date of the validity of this Guarantee by issuance of a written demand to invoke this guarantee.

The Guarantor Bank hereby expressly agrees that it shall not require any proof in addition to the written demand from the Procurer, made in any format, raised at the above mentioned address of the Guarantor Bank, in order to make the said payment to the Procurer.

The Guarantor Bank shall make payment hereunder on first demand without restriction or conditions and notwithstanding any objection by, ... [*Insert name of the Company*] and/ or any other person. The Guarantor Bank shall not require the Procurer

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to justify the invocation of this BANK GUARANTEE, nor shall the Guarantor Bank have any recourse against the Procurer in respect of any payment made hereunder.

This BANK GUARANTEE shall be interpreted in accordance with the laws of India and the courts at Jabalpur (M.P.)..... shall have exclusive jurisdiction.

The Guarantor Bank represents that this BANK GUARANTEE has been established in such form and with such content that it is fully enforceable in accordance with its terms as against the Guarantor Bank in the manner provided herein.

This BANK GUARANTEE shall not be affected in any manner by reason of merger, amalgamation, restructuring, liquidation, winding up, dissolution or any other change in the constitution of the Guarantor Bank.

This BANK GUARANTEE shall be a primary obligation of the Guarantor Bank and accordingly the Procurer shall not be obliged before enforcing this BANK GUARANTEE to take any action in any court or arbitral proceedings against the Company, to make any claim against or any demand on the Company or to give any notice to the Company or to enforce any security held by the Procurer or to exercise, levy or enforce any distress, diligence or other process against the Company.

The Guarantor Bank acknowledges that this BANK GUARANTEE is not personal to the Procurer and may be assigned, in whole or in part, (whether absolutely or by way of security) by the Procurer to any entity to whom it is entitled to assign its rights and obligations under the PPA.

The Guarantor Bank hereby agrees and acknowledges that the Procurer shall have a right to invoke this Bank Guarantee either in part or in full, as it may deem fit.

Notwithstanding anything contained hereinabove, our liability under this Guarantee is restricted to Rs. ..... crore (Rs. ..... crore only) and it shall remain in force until .....[Date to be inserted is three (3) months after the Scheduled COD], with an additional claim period of thirty (30) days thereafter. This BANK GUARANTEE shall be extended from time to time for such period, as may be desired by ..... [*Insert name of the Company*]. We are liable to pay the guaranteed amount or any part thereof under this Bank Guarantee only if the Procurer serves upon us a written claim or demand.

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In witness whereof the Bank, through its authorized officer, has set its hand and stamp on this …….. day of …… at ……

……

Signature:

Name: ……

Designation with Bank Stamp ……

Attorney as per power of attorney No. ……

For:

…… [*Insert Name of the Bank*]

Full Address:

Dated this …… day of …… 20…..

Witness:

1. ……

Signature

Name and Address: ……

2. ……

Signature

Name and Address: ……

[Note: The Stamp Paper should be in the name of the Executing Bank.]

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SCHEDULE - 2: REPRESENTATION AND WARRANTIES

1.1. Representations and Warranties by the Procurer

The Procurer hereby represents and warrants to and agrees with the Company as follows and acknowledges and confirms that the Company is relying on such representations and warranties in connection with the transactions described in this Agreement:

(i) The Procurer has all requisite powers and has been duly authorized to execute and consummate this Agreement;

(ii) This Agreement is enforceable against the Procurer in accordance with its terms;

(iii) The consummation of the transactions contemplated by this Agreement on the part of the Procurer will not violate any provision of nor constitute a default under, nor give rise to a power to cancel any charter, mortgage, deed of trust or lien, lease, agreement, license, permit, evidence of indebtedness, restriction, or other contract to which the Procurer is a party or to which the Procurer is bound, which violation, default or power has not been waived;

(iv) The Procurer is not insolvent and no insolvency proceedings have been instituted, nor threatened or pending by or against the Procurer;

(v) There are no actions, suits, claims, proceedings or investigations pending or, to the best of the Procurer's knowledge, threatened in writing against the Procurer at law, in equity, or otherwise, and whether civil or criminal in nature, before or by, any court, commission, arbitrator or governmental agency or authority, and there are no outstanding judgments, decrees or orders of any such courts, commission, arbitrator or governmental agencies or authorities, which materially adversely affect its ability to comply with its obligations under this Agreement.

1.1.1. The procurer makes all the representations and warranties above to be valid as on the date of this Agreement.

1.2. Representation and Warranties of the Company

1.2.1. The Company hereby represents and warrants to and agrees with the Procurer as follows and acknowledges and confirms that the Procurer is relying on such

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representations and warranties in connection with the transactions described in this Agreement:

(i) The Company has all requisite power and has been duly authorized to execute and consummate this Agreement;

(ii) This Agreement is enforceable against the Company in accordance with its terms;

(iii) The consummation of the transactions contemplated by this Agreement on the part of the Company will not violate any provision of nor constitute a default under, nor give rise to a power to cancel any charter, mortgage, deed of trust or lien, lease, agreement, license, permit, evidence of indebtedness, restriction, or other contract to which the Company is a party or to which the Company is bound which violation, default or power has not been waived;

(iv) The Company is not insolvent and no insolvency proceedings have been instituted, or not threatened or pending by or against the Company;

(v) There are no actions, suits, claims, proceedings or investigations pending or, to the best of the Company's knowledge, threatened in writing against the Company at law, in equity, or otherwise, and whether civil or criminal in nature, before or by, any court, commission, arbitrator or governmental agency or authority, and there are no outstanding judgments, decrees or orders of any such courts, commission, arbitrator or governmental agencies or authorities, which materially adversely affect its ability to supply power or to comply with its obligations under this Agreement.

(vi) The Company has neither made any statement nor provided any information, which was materially inaccurate or misleading at the time when such statement was made or information was provided. Further, all the confirmations, undertakings, declarations and representations made are true and accurate and there is no breach of the same.

1.2.2. The Company makes all the representations and warranties above to be valid as on the date of this Agreement.

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SCHEDULE - 3: TECHNICAL LIMIT AND CONTRACTED PERFORMANCE PARAMETERS

(This schedule describes only a sample for technical limits and specifications. It has to be filled up jointly by the parties within six months from the Effective Date according to their requirements)

S No.	Description		Unit	Particulars
1.1.	**Grid Conditions at Delivery Point:**			
1.	Voltage:	Nominal	kV	[ ]
		Variation	%	[ ]
(ii)	Frequency:	Nominal	Hz.	[ ]
		Variation	%	[ ]
(iii)	Combined Voltage and Frequency variation for Contracted Capacity		%	[ ]
(iv)	Power Factor :	Nominal		[ ] lag
		Variation		[ ] lag to [ ] lead
(v)	Basic Impulse Level (Peak)		kV	[ ]
1.2.	**Fault Levels:**			
(i)	3 Phase	Maximum	kA	[ ]

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(ii)Clearance time	Maximum	ms	[ ]

1.3. Ramp Rates

All Units of the Power Station shall be capable of increasing or decreasing their output (generation level) by not less than one percent (1%) per minute. Such capability shall be demonstrated during the Unit load of more than 60%.

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SCHEDULE - 4: FORMAT OF LETTER OF CREDIT

(To be finalized between the Parties atleast six (6) months before Scheduled CoD or the Revised Scheduled CoD, as the case may be)

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SCHEDULE - 5: PANEL OF INDEPENDENT ENGINEERS

1. L&T – Sargent & Lundy Limited, Faridabad
2. Tata Consulting Engineers Limited, Bengluru
3. Lahmeyer International Limited, Gurgaon
4. Desein Pvt. Ltd., New Delhi
5. Development Consultant Limited, Kolkata
6. Mecon Limited, Ranchi
7. NTPC, Noida

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SCHEDULE – 6: SUBSTITUTION RIGHTS OF THE LENDERS

1. Substitution of the Company

1.1. Subject to the terms of the PPA, upon occurrence of a Company Event of Default under the PPA, the Lenders shall, have the right to seek substitution of the Company by a Selectee for the residual period of the PPA, for the purposes of securing the payments of the Total Debt Amount from the Company and performing the obligations of the Company, in accordance with the provisions of this Schedule.

1.2. The Lenders may seek to exercise right of substitution by an amendment or novation of the PPA and other Power Station Documents executed between Procurer and the Company in favour of the Selectee, the Procurer and the Company shall cooperate with the Lenders to carry out such substitution.

2. Procurer Notice of Default

2.1. The Procurer, upon serving the Preliminary Default Notice on the Company as per this PPA, shall simultaneously also issue a copy of the same to the Lenders.

3. Substitution Notice

3.1. In the event of failure of the Company to rectify the Company Event of Default giving rise to Preliminary Default Notice and on receipt of a copy of the Termination Notice by the Procurer, the Lenders, either on their own or through its representative (the ".....") shall be entitled to notify the Procurer and the Company of the Lenders' Representative intention of the Lenders to substitute the Company by the Selectee for the residual period of the PPA (the "Substitution Notice").

4. Interim operation of Power Station

4.1. On receipt of a Substitution Notice, no further action shall be taken by any Party to terminate the PPA, except under and in accordance with the terms of this Schedule of this PPA.

4.2. On issue of a Substitution Notice, the Lenders shall have the right to request the Procurer to enter upon and takeover the Power Station for the interim and till the substitution of the Selectee is complete and to otherwise take all such steps as are necessary for the continued operation and maintenance of the Power Station, including levy, collection and appropriation of payments thereunder, subject to, the servicing of monies owed in respect of the Total Debt Amount as per the Financing Agreements and the Company shall completely cooperate in any such takeover of the Power Station by the Procurer. If the Procurer, at its sole and exclusive discretion agree to enter upon and takeover the Power Station, till substitution of

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the Selectee in accordance with this PPA, then the Procurer shall be compensated for rendering such services in accordance with Clause 9.4 of this Schedule.

4.3. If the Procurer refuses to takeover the Power Station on request by the Lenders in accordance with Clause 4.2 above, the Company shall have the duty and obligation to continue to operate the Power Station in accordance with the PPA till such time as the Selectee is finally substituted.

4.4. The Lenders and the Procurer shall, simultaneously have the right to commence the process of substitution of the Company by the Selectee in accordance with these terms and the Company hereby irrevocably consents to the same.

5. Process of Substitution of Company

5.1. The Lenders' Representative may, on delivery of a Substitution Notice notify the Procurer and the Company on behalf of all the Lenders about the Lenders' decision to invite and negotiate, at the cost of the Lenders, offers from third parties to act as Selectee, either through private negotiations or public auction and / or a tender process, for the residual period of the PPA. Subject to and upon approval of the Procurer, such Selectee shall be entitled to receive all the rights of the Company and shall undertake all the obligations of the Company under the PPA and other Power Station Documents executed between the Company and the Procurer, in accordance with these terms of substitution.

5.2. The Lenders and the Company shall ensure that, upon the Procurer approving the Selectee, the Company shall transfer absolutely and irrevocably, the ownership of the Power Station to such Selectee simultaneously with the amendment or novation of the PPA and other Power Station Documents executed between the Company and the Procurer in favour of the Selectee as mentioned in Clause 1.2 of this Schedule.

6. Modality for Substitution

Criteria for selection of the Selectee

6.1. The Lenders and / or the Lenders' Representative shall in addition to any other criteria that they may deem fit and necessary, apply the following criteria in the selection of the Selectee:

(a) if the Company is proposed to be substituted prior to the Scheduled COD or , , the Selectee shall possess the financial capability used to qualify bidders in the MoU stage (including the methodology prescribed therein) to perform and discharge all the residual duties, obligations and liabilities of the Company under the PPA. If the Company is proposed to be substituted during the Operation Period, these criteria shall not be applicable.

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(b) the Selectee shall have the capability and shall unconditionally consent to assume the liability for the payment and discharge of dues, if any, of the Company to the Procurer under and in accordance with the PPA and also payment of the Total Debt Amount to the Lenders upon terms and conditions as agreed to between the Selectee and the Lenders;

(c) the Selectee shall have not been in breach of any agreement between the Selectee and any Bank or any Lender or between the Selectee and the Procurer, involving sums greater than Rupees ..... (Rs ....) [Insert amount] at any time in the last two (2) years as on the date of the Substitution Notice to the Company.

(d) any other appropriate criteria, whereby continuity in the performance of the Selectee's obligations under the PPA is maintained and the security in favour of the Lenders under the Financing Agreements is preserved.

7. Modalities

7.1. The following modalities shall be applicable to any substitution of the Company by the Selectee pursuant to this PPA:

7.2. The Lenders' Representative shall on behalf of the Lenders propose to the Procurer (the "Proposal") pursuant to Clause 7.3 below, the name of the Selectee for acceptance, seeking:

(a) grant of all the rights and obligations under the PPA and the other Power Station Documents executed between the Procurer and the Company, to the Selectee (as substitute for the Company);

(b) amendment of the PPA and the other Power Station Documents executed between the Procurer and the Company, to the effect that the aforementioned grant to the Selectee, shall be such that the rights and obligations assumed by the Selectee are on the same terms and conditions for the residual period of the PPA as existed in respect of the Company under the original PPA and the other Power Station Documents executed between the Procurer and the Company; and

(c) the execution of new agreements as necessary, by the proposed Selectee for the residual period of the PPA on the same terms and conditions as are included in this PPA.

7.3. The Proposal shall contain the particulars and information in respect of the Selectee and the data and information as the Procurer may reasonably require. The Procurer

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may intimate any additional requirement within thirty (30) days of the date of receipt of the Proposal.

7.4. The Proposal shall be accompanied by an unconditional undertaking by the Selectee that it shall, upon approval by the Procurer of the Proposal:

(a) observe, comply, perform and fulfill the terms, conditions and covenants of the PPA and all other Power Station Documents executed between Company and the Procurer or a new PPA or respective RFP Document (in the case of the novation thereof), which according to the terms therein are required to be observed, complied with, performed and fulfilled by the Company, as if such Selectee was the Company originally named under the PPA; or the respective RFP Document; and

(b) be liable for and shall assume, discharge and pay the Total Debt Amount or then outstanding dues to the Lenders under and in accordance with the Financing Agreements or in any other manner agreed to by the Lenders and the Procurer as if such Selectee was the Company originally named under such Financing Agreements.

7.5. At any time prior to taking a decision in respect of the Proposal received under Clause 7.2, the Procurer may require the Lender/ Lenders' Representative to satisfy it as to the eligibility of the Selectee. The decision of the Procurer as to acceptance or rejection of the Selectee, shall be made reasonably and when made shall be final, conclusive and binding on the Parties.

7.6. The Procurer shall convey their approval or disapproval of such Proposal to the Selectee. Such decision shall be made by the Procurer at their reasonably exercised discretion within twenty one (21) days of:

(a) the date of receipt of the Proposal by the Procurer; or,

(b) the date when the last of further and other information and clarifications in respect of any data, particulars or information included in the Proposal requested by the Procurer under Clause 7.3 above is received;

whichever is later.

Notwithstanding anything to the contrary mentioned in this PPA, the approval of the Procurer for the Selectee shall not be withheld in case the Selectee meets the criteria mentioned in Clause 6.1.

7.7. Upon approval of the Proposal and the Selectee by the Procurer, the Selectee mentioned in the Proposal shall become the Selectee hereunder.

7.8. Following the rejection of a Proposal, the Lenders and/ or the Lenders' Representative shall have the right to submit a fresh Proposal, proposing another Selectee (if the rejection was on the grounds of an inappropriate third party

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proposed as Selectee) within sixty (60) days of receipt of communication regarding rejection of the Selectee previously proposed. The provisions of this article shall apply mutatis mutandis to such fresh Proposal.

7.9. The substitution of the Company by the Selectee shall be deemed to be complete upon the Selectee executing all necessary documents and writings with or in favour of the Company, the Procurer and the Lenders so as to give full effect to the terms and conditions of the substitution, subject to which the Selectee has been accepted by the Lenders and the Procurer and upon transfer of ownership and complete possession of the Power Station by the Procurer or the Company, as the case may be, to the Selectee. The Procurer shall novate all the Power Station Documents, which they had entered in to with the Company in order to make the substitution of the Company by the Selectee effective. The quantum and manner of payment of the consideration payable by the Selectee to the Company towards purchase of the Power Station and assumption of all the rights and obligations of the Company under the PPA and other Power Station Documents as mentioned in this PPA shall be entirely between the Company, Selectee and the Lenders and the Procurer shall in no way be responsible to bear the same.

7.10. Upon the substitution becoming effective pursuant to Clause 7.9 above, all the rights of the Company under the PPA shall cease to exist.

Provided that, nothing contained in this sub-article shall prejudice any pending / subsisting claims of the Company against the Procurer or any claim of the Procurer against the erstwhile Company or the Selectee.

7.11. The Selectee shall, subject to the terms and conditions of the substitution, have a period of ninety (90) Days to rectify any breach and/ or default of the Company subsisting on the date of substitution and required to be rectified and shall incur the liability or consequence on account of any previous breach and/ or default of the Company.

7.12. The decision of the Lenders and the Procurer in the selection of the Selectee shall be final and binding on the Company and shall be deemed to have been made with the concurrence of the Company. The Company expressly waives all rights to object or to challenge such selection and appointment of the Selectee on any ground whatsoever.

7.13. The Lenders shall be solely and exclusively responsible for obtaining any and all consents/ approvals or cooperation, which may be required to be obtained from the Company under this PPA and the Procurer shall not be liable for the same.

7.14. All actions of the Lenders' Representative hereunder shall be deemed to be on behalf of the Lenders and shall be binding upon them. The Lenders' Representative shall be authorised to receive payment of compensation and any other payments, including the consideration for transfer, if any, in accordance with the Proposal and the Financing Agreements and shall be bound to give valid discharge on behalf of all the Lenders.

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8. Company's Waiver

8.1. The Company irrevocably agrees and consents (to the extent to which applicable law may require such consent) to any actions of the Lenders, the Lender's Representative and the Procurer or exercise of their rights under and in accordance with these terms.

8.2. The Company irrevocably agrees and consents (to the extent to which applicable law may require such consents) that from the date specified in Clause 7.10, it shall cease to have any rights under the PPA or the Financing Agreements other than those expressly stated therein.

8.3. The Company warrants and covenants that any agreement entered into by the Company, in relation to the Power Station, shall include a legally enforceable clause providing for automatic novation of such agreement in favour of the Selectee, at the option of the Lenders or the Procurer. The Company further warrants and covenants that, in respect of any agreements which have already been executed in relation to the Power Station and which lack a legally enforceable clause providing for automatic novation of such agreement, the Company shall procure an amendment in the concluded agreement to incorporate such clause.

9. Interim Protection Of Service And Preservation Of Security

Appointment of a Receiver

9.1. In every case of the Lenders issuing a Substitution Notice and the Procurer refusing to takeover the Power Station and the Company failing to operate the Power Station in accordance with Clause 4.3 and the Procurer not electing to act as Receiver as per Clause 9.2 hereof, the Lenders may institute protective legal proceedings for appointment of a receiver (the "Receiver") to maintain, preserve and protect the assets held as security by the Lenders if such right is granted under the terms of the Financing Agreements.

9.2. If the assets of the Power Station are, in the opinion of the Procurer, necessary and required for the operation and maintenance of the Power Station, the Procurer shall be entitled to elect to act as the Receiver for the purposes of this Article and be entitled to maintain, preserve and protect the said assets by engaging an operator/service provider to act on their behalf and the Lenders and Company hereby consent and agree to the same. Upon the Procurer so intimating the Company and the Lender's representative their desire to act as Receiver, the Company and the Lender's representative shall co-operate with the Procurer to facilitate the same.

9.3. Upon appointment of the Court appointed Receiver or the Procurer acting as Receiver, all the Receivables received by such Receiver shall be deposited by the Receiver in the bank account jointly designated by the Procurer and the Lenders. The Receiver shall be responsible for protecting the assets in receivership and shall

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render a true and proper account of the receivership to the Lenders in accordance with the terms of its appointment.

9.4. When acting as a Receiver or operator in accordance with Clauses 9 or 4.2, the Procurer shall be entitled to be remunerated for such services as may be determined by the Appropriate Commission. Furthermore, when acting as a Receiver, the Procurer shall not be liable to the Lenders, the Lenders' Representative, Company or any third party for any default under the PPA, damage or loss to the Power Station or for any other reason whatsoever, except for willful default of the Procurer.

10. Substitution Consideration

10.1. The Lenders and Procurer shall be entitled to appropriate any consideration received for the substitution of the Company as hereinabove provided, from the Selectee towards the payment of Lenders' and the Procurer' respective dues, to the exclusion of the Company.

10.2. The Company shall be deemed to have nominated, constitutes and appoints the Lenders' Representative as its constituted attorney for doing all acts, deeds and things as may be required to be done for the substitution of the Company by the Selectee pursuant to these terms.

11. Change in the Lenders

11.1. The Parties hereto acknowledge that during the subsistence of the PPA, it is possible that any Lender may cease to remain as a Lender by reason of repayment of the debt or otherwise. Further it may possible that any Lender may be substituted or a new Lender may be added. In the event of any Lender ceasing to be a party to the PPA or Financing Agreements respectively, the term and conditions as prescribed in this Schedule shall cease to automatically apply to such Lender. Further, upon any entity being added as a Lender and in the event such entity is given the right to substitute the Company under the Financing Agreements and then the contents of this Schedule shall be applicable to the exercise of such right by the said new entity.

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Annexure - I (B)

POWER PURCHASE AGREEMENT
BETWEEN

GOVENRMENT OF MADHYA PRADESH

AND

M/S Jhabua Power Ltd.,
FOR
PROCUREMENT OF POWER ON VARIABLE CHARGE BASIS

JUNE 2011

For JHABUA POWER LIMITED

K.N. NEELKANT
CHIEF OPERATING OFFICER

Designation of Signatory of IPP

JHABUA POWER LIMITED

Dy. Secretary
Secretary (Energy)
GoMP, Bhopal
Govt. of M.P. Bhopal

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28.11.2024 10.53

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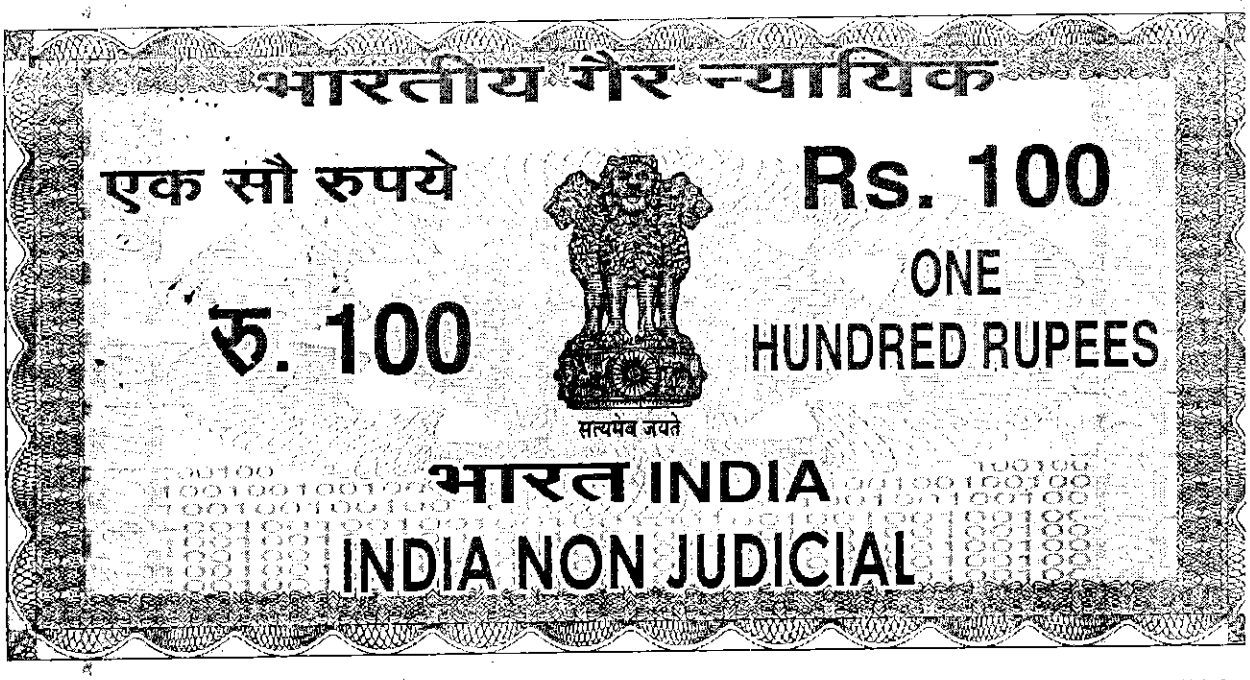
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Dy. Secretary
Secretary (Energy)
Energy Deptt.
Govt. of M.P., Bhopal

Designation of Signatory of IPP

M P POWER TRADING CO. LTD. JABALPUR

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मध्य प्रदेश MADHYA PRADESH S 194775

THIS AGREEMENT IS MADE ON THE 27th day of June 2011

BETWEEN

The Government of Madhya Pradesh through its Secretary, Energy Department, Vallabh Bhawan, Bhopal (hereinafter referred to as **'GoMP'**, which expression shall unless repugnant to the context or meaning thereof, include any person(s) nominated by GoMP for the purpose of this Agreement) as party of the **First Part;**

AND

M/s Jhabua Power Limited a Company incorporated under the provisions of the Companies Act, 1956 and having its registered office at **6-B Express Tower, 42-A Shakespeare Sarani, Kolkata** (hereinafter referred to as **'the Company'**, which expression shall unless repugnant to the context or meaning thereof, include its successors and permitted assigns) as party of the **Second Part.**

The **"GoMP"** and **"the Company"** are individually referred to as **"Party"** and collectively to as the **"Parties".**

WHEREAS the Government of Madhya Pradesh is desirous of facilitating private sector participation and investments in power generation projects in the State of Madhya Pradesh by providing assistance and support and in terms of the Memorandum of Understanding and

Secretary (Energy)
GoMP
Secretary
Govt. of Madhya Pradesh
Energy Department

MP Power Trading Co. Ltd. Jabalpur

(Chief Operating Officer)
Jhabua Power Ltd.

Jhabua Power Limited

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Implementation Agreements entered into with various developers for development of generation projects and in consideration being entitled to a certain share of power generated from such projects;

AND WHEREAS pursuant to the above, the Company and the GoMP have entered into a Memorandum of Understanding dated 17.01.2007, as amended on 14.01.2010 for setting up of Coal based Thermal Power Station by the Company with a proposed capacity of (1x600+1x660) 1260 MW to be located at Seoni District in the State of Madhya Pradesh;

AND WHEREAS pursuant to the terms of the MoU the Company and the GoMP had entered into an Implementation Agreement dated 14.01.2008, as amended on 14.1.2010 and 27.6.2011 (hereinafter referred to as "the I.A.") for construction, ownership, operation and maintenance of the said Power Station by the Company subject to the terms and conditions contained in the I.A. and the MOU;

AND WHEREAS this Agreement is being entered into pursuant to the terms of the I.A;

AND WHEREAS as per terms of the I.A., the GoMP has the right, inter alia, to purchase power from the Power Station at all times so long the Power Station exists including in any enhanced, expanded and /or renovated and/or modernized Plant equal to five percent (5 %) of the net power (the net power being the gross power generated minus the permitted auxiliary consumption) at a price equivalent to Variable Charge/Cost only (as defined herein below), from Unit No. 1 and five point four five percent (5.45 %) of the net power (the net power being the gross power generated minus the permitted auxiliary consumption) at price equivalent to variable charge / cost only from Unit No. 2 . If the company is allocated captive coal block also in the state of Madhya Pradesh for supply of coal to the Unit No.2, then the GoMP has right to purchase Seven point seven three percent (7.73%) of the net power (the net power being the gross power generated minus the permitted auxiliary consumption) at price equivalent to variable charge / cost only, from Unit No. 2

AND WHEREAS THE GoMP has nominated, for the present, the Madhya Pradesh Power Trading Company Limited a Government of Madhya Pradesh Undertaking (hereinafter referred to as MP Tradeco) to receive on behalf of GoMP the aforesaid net power at Variable Charge/Cost to be determined by the Appropriate Commission and has further directed that MP Tradeco shall deal with the said power purchased in such manner as may be directed by GoMP and in confirmation of the above MP Tradeco is signing this Agreement as a confirming party;

AND WHEREAS the Company has provided to the GoMP, Initial Contract Performance Guarantee as per the provisions of Article 3.4 as per format specified in Schedule-IA of this Agreement.

NOW THEREFORE IN CONSIDERATION OF THE PREMISE AND MUTUAL COVENANTS AND CONDITIONS SET FORTH HEREIN, IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES AS UNDER:

Dy. Secretary
Energy Dept.
Govt. of M.P., Bhopal

MP Tradeco

(Chief Operating Officer)
Jhabua Power Ltd.

JHABUA POWER LIMITED

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Vinod Kumar Jain
28.11.2024 10.53

ARTICLE - 1: DEFINITIONS AND INTERPRETATION

1.1. Definitions

The words and expressions used in this Agreement, unless as defined below or repugnant to the context, shall have the same meaning as assigned to them in the Electricity Act, 2003 and the rules or regulations framed there under, including those issued / framed by the Appropriate Commission (as defined hereunder), and as amended or re-enacted from time to time.

The words and expressions mentioned below shall have the same meanings as respectively assigned to them hereunder:

"Act" or "Electricity Act 2003" shall mean the Electricity Act, 2003 and any rules, amendments, regulations, notifications, guidelines or policies issued there under from time to time;

"Agreement" or "Power Purchase Agreement" or "PPA" shall mean this Power Purchase Agreement including its recitals and Schedules, amended or modified from time to time in accordance with the terms hereof;

"Aggregate Capacity" shall mean, in relation to a Unit the proposed nameplate capacity of the Unit and in relation to the Power Station the total proposed nameplate capacity of the Power Station. Such proposed capacity of the Power Station in mega watt shall be the sum total of proposed nameplate capacities of each of the Units as mentioned below:

Unit 1: 600 MW, Unit 2 : 660 MW;

Appropriate Commission" shall mean the Madhya Pradesh Electricity Regulatory Commission and wherever the context so admits the Central Commission constituted under the Electricity Act, 2003;

"Availability Based Tariff" or "ABT" shall mean the regulations contained in the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009, as amended or revised from time to time, to the extent applied as per the terms of this Agreement;

"Bill Dispute Notice" shall mean the notice issued by a Party raising a Dispute regarding a Weekly Bill or a Supplementary Bill issued by the other Party;

"Business Day" shall mean with respect to the Company and GoMP, a day other than Sunday or a statutory holiday, on which the banks remain open for business at Jabalpur in the State of Madhya Pradesh;

"CERC" or "Central Commission" shall mean the Central Electricity Regulatory Commission of India, constituted under sub-section (1) of Section 76 of the Electricity Act, 2003, or its successors;

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GoMP

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"Change in Law" shall have the meaning ascribed thereto in Article 12 of this Agreement;

"Commercial Operation Date" or "COD" shall mean, in relation to a Unit the date on which the Unit is Commissioned and in relation to the Power Station the date on which all the Units of the Power Station are so Commissioned;

"Commissioning" or "Commissioned" with its grammatical variations shall mean, in relation to a Unit, a written notice by the Company to the GoMP confirming the commissioning of the relevant Unit in accordance with applicable Law or in relation to the Power Station, such commissioning of all the Units of the Power Station;

"Competent Court of Law" shall mean any court or tribunal or any similar judicial or quasi-judicial body in India that has jurisdiction to adjudicate upon issues relating to this Agreement;

"Conditions Subsequent" shall have the meaning set out in Article 3;

"Contract Performance Guarantee" shall mean the irrevocable unconditional bank guarantee submitted or to be submitted by the Company to the GoMP from a scheduled commercial bank and in the format provided in Schedule – 1B in accordance with the terms of this Agreement;

"Contract Year" shall mean the period commencing on the Effective Date (as defined hereunder) and ending on the immediately succeeding March 31 and thereafter each period of twelve (12) months commencing on April 1 and ending on March 31;

Provided that the financial year in which the Scheduled COD, as the case may be, of the first Unit would occur, the Contract Year shall end on the date immediately before the Scheduled COD as the case may be, of such Unit and a new Contract Year shall commence once again from the Scheduled COD, as the case may be and end on the immediately succeeding March 31, and thereafter each period of twelve (12) months commencing on April 1 and ending on March 31,

"Contracted Energy" shall mean energy equivalent to five percent (5%) of the Electrical Output of the Unit No.1 and five point four five percent (5.45 %) of the Electrical Output of the Unit No. 2 at all times contracted to be sold by the Company to the GoMP in accordance with the terms of this Agreement. If the company is allocated captive coal block in the state of Madhya Pradesh for supply of the coal to the Unit No.2, then contracted Energy for Unit No 2 shall mean energy equivalent to seven point seven three percent (7.73%) of the Electrical Output of the Unit No 2 at all times contracted to be sold by the Company to the GoMP in accordance with the terms of this Agreement;

"Delivery Point" shall mean the ex-bus point of the Power Station at the Power Station switchyard;

Dy. Secretary
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"Despatch" shall mean to schedule and control the generation of the Power Station in order to commence, increase, decrease or cease the Electrical Output as delivered to the Grid System in accordance with the instructions from the SLDC/ RLDC in conformity with the Grid Code, this Agreement and Prudent Utility Practices;

"Despatch Instruction" shall mean any instruction for scheduling of power issued by the GoMP through the concerned SLDC and/or RLDC to the Company, in accordance with applicable Grid Code and this Agreement;

"Dispute" shall mean any dispute or difference of any kind between the Parties hereto in connection with or arising out of this Agreement including any issue on the interpretation and scope of the terms of this Agreement;

"Due Date" shall mean the thirtieth (30th) day after a Weekly Bill or a Supplementary Bill is delivered to and its receipt is acknowledged by the GoMP (or, if such day is not a Business Day, the immediately succeeding Business Day) by which date such Weekly Bill or Supplementary Bill is payable by the GoMP;

"Effective Date" shall have the meaning set out in Article 2.1 of this Agreement;

"Electrical Output" or **"Net Power"** shall mean the gross electrical energy in kilo watt hour (kWh) generated by one or more Unit(s) or the Power Station, as the case may be, reduced by normative auxiliary consumption for power station(s) having similar Unit capacity(s) as prescribed by the Appropriate Commission and delivered at the Delivery Point;

"Energy Account" or **"Regional Energy Account"** or **"REA"** shall mean the Regional Energy Account as defined in the Grid Code and issued by the Western Region RPC secretariat or other Competent Authority for each calendar month or part thereof (as per their prescribed methodology), including the revisions and amendments thereof;

"Event of Default" shall mean the events as defined in Article 13 of this Agreement;

"Financial Closure" shall mean the execution of all the Financing Agreements required for the Power Station and fulfillment of conditions precedent there under and/or waiver; of any of such conditions precedent for the initial draw down of funds there under;

"Financing Agreements" shall mean the agreements pursuant to which the Company has sought financing for the Power Station including the loan agreements, notes, indentures, security agreements, letters of credit and other documents, as may be amended, modified, or replaced from time to time, but without in anyway increasing the liabilities of the GoMP;

Dy. Secretary
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"Force Majeure" or **"Force Majeure Event"** shall have the meaning ascribed thereto in Article 11 of this Agreement;

"Fuel" means primary fuel (coal) used to generate electricity namely, domestic coal/imported coal/blended coal (as applicable);

"Fuel Supply Agreement(s)" shall mean the agreement(s) entered into between the Company and the Fuel supplier and/or others for the purchase, transportation and handling of the Fuel **"GoI"** shall mean the Government of India;

"GoMP" shall mean the Energy Department, Government of Madhya Pradesh and shall include the nominee or assignee, as the case may be, of the GoMP nominated or assigned in terms of this Agreement

"Grid Code" or "IEGC" shall mean any set of regulations or codes issued by the Appropriate Commission as amended and revised from time to time and as applicable to the Power Station and the GoMP governing the operation of the Grid System or any succeeding set of regulations or code;

"Grid System" shall mean the interconnection and transmission facilities and any other transmission or distribution facilities through which the GoMP supply electricity to its customers or the transmission company transmits electricity to the GoMP;

"IA" or "Implementation Agreement" shall have the meaning set out in the recitals above and as may be amended from time to time;

"Indian Governmental Instrumentality" shall mean the Government of India, Government of Madhya Pradesh and any ministry, department, board, authority, agency, corporation, commission under the direct or indirect control of Government of India or Government of Madhya Pradesh or both, any political sub-division of any of them including any court or Appropriate Commission(s) or tribunal or judicial or quasi-judicial body in India; ;

"Initial Performance Guarantee" shall have the meaning ascribed thereto in Article 3.4;

"Insurance" shall mean the insurance cover to be obtained and maintained by the Company in accordance with Article 9 of this Agreement;

"Interconnection Facilities" shall mean the facilities beyond the Delivery Point for receiving and metering Electrical Output in accordance with this Agreement and which shall include, without limitation, all other transmission lines and associated equipment, transformers and associated equipment, relay and switching equipment and protective devices, safety equipment and, subject to Article 8, the Metering System required for the Power Station;

"Invoice" or **"Bill"** shall mean an Invoice and / or a Supplementary Invoice as per Article 10 or an invoice from the GoMP;

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"**Late Payment Surcharge**" shall have the meaning as defined in Article 10.4.1;

"**Law**" shall mean in relation to this Agreement, all laws including electricity laws in force in India and any statute, ordinance, regulation, notification or code, rule, or any interpretation of any of them by an Indian Governmental Instrumentality and having force of law and shall further include without limitation all applicable rules, regulations, orders, notifications by an Indian Governmental Instrumentality pursuant to or under any of them and shall include without limitation all rules, regulations, decisions and orders of the Appropriate Commission, and shall include for avoidance of doubt, any amendments thereto and replacements thereof;

"**Lender(s)**" shall mean the banks, other financial institutions, multilateral agencies, non banking financial companies registered with Reserve Bank of India, mutual funds and agents or trustees of debenture / bond holders, including their successors and assignees, who have agreed as on or before COD of the Power Station to provide the Company with the debt financing and any successor banks or financial institutions to whom their interests under the Financing Agreements may be transferred or assigned or securitized;

Provided that, such assignment or transfer shall not relieve the Company of its obligations to the GoMP under this Agreement in any manner and shall also not lead to an increase in the liability of the GoMP at any given point of time;

"**Letter of Credit**" or "**L/C**" shall have the meaning ascribed thereto in Article 10.5 of this Agreement;

"**Meters**" or "**Metering System**" shall mean meters used for accounting and billing of electricity in accordance with Central Electricity Authority (Installation and Operations of Meters) Regulations, 2006, Grid Code and ABT, as amended from time to time;

"**Month**" shall mean a period of thirty (30) days from (and excluding) the date of the event where applicable, else a calendar Month;

"**Power Station**" shall mean the coal based Thermal Power Station having the proposed capacity of (1x600+1x660) 1260 MW, to be established in District Seoni in the State of Madhya Pradesh and shall also include any expansion, enhancement or increase in the above capacity as well as any renovation and modernization of the Power Station;

"**Preliminary Default Notice**" shall have the meaning ascribed thereto in Article 13.2 (i);

"**Prudent Utility Practices**" shall mean those practices, methods, techniques and standards, as prevalent from time to time, that are generally accepted internationally by electric utilities for the purpose of ensuring safe, efficient and economic design, construction, commissioning, testing, operation and maintenance of the various components of the Power Station and which

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practices, methods and standards shall be adjusted as necessary to take into account:

i) Installation, operation and maintenance guidelines recommended by the manufacturers of plant and equipment to be incorporated in the Power Station.
ii) The requirement of Indian Law
iii) Conditions affecting the Grid System and
iv) Physical conditions at the Site;

"RLDC" shall mean the relevant Regional Load Dispatch Centre established under Sub-section (1) of Section 27 of the Electricity Act, 2003;

"RPC" shall mean the Regional Power Committee established by the Government of India for the western region in accordance with the Electricity Act, 2003 for facilitating integrated operation of the power system in that region;

"Scheduled Commercial Operation Date" or **"Scheduled COD"** shall mean the scheduled date for achieving COD,

"Scheduled Connection Date" means the date on or before which the evacuation facilities for the Contracted Energy beyond the Delivery Point shall have to be established by GoMP, which shall be the date falling two hundred ten (210) days before the Scheduled COD or Revised Scheduled COD, as the case may be, for the first unit.

"Scheduled Energy" shall mean the Contracted Energy determined in relation to the available capacity of a Unit or the Power Station, to be scheduled by the GoMP in accordance with ABT as confirmed by RLDC;

"Settlement Period" shall mean the time period for the issuance of daily generation and drawl schedules as provided in ABT;

"SLDC" shall mean the centre established under Sub-section (1) of Section 31 of the Electricity Act 2003 for the State of Madhya Pradesh being at present the Madhya Pradesh Power Transmission Company Limited;

"SLDC Charges" shall mean the charges levied by SLDC for the supply of power by the Company to the GoMP;

"State Energy Accounts" or **"SEA"** shall mean as defined in the Grid Code and issued by the Madhya Pradesh SLDC for each calendar month or part thereof (as per their prescribed methodology), including the revisions and amendments thereof;

"State Transmission Utility" or **"STU"** shall mean the Government company notified by the Madhya Pradesh State Government under Sub-section (1) of Section 39 of the Act;

"Supplementary Bill" shall mean a Bill other than a Weekly Bill raised by any of the Parties;

"Tariff" shall mean the Variable Charge/Cost;

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"Tariff Payment" shall mean the payments to be made by the GoMP under Weekly Bills and the relevant Supplementary Bills;

"Unit" shall mean, in relation to the Power Station one steam generator, one turbine, one electrical generator and associated auxiliaries of the Power Station, all of which together are capable of generating electricity at the terminals of the electrical generator;

"Variable Charge/Cost"

shall have the meaning ascribed to the term under "CERC Tariff Regulation 2009" in priority the following

(a) in case any part of the power from the power station is sold subject to the determination of tariff (variable cost) by the Madhya Pradesh Electricity Regulatory Commission, the variable cost so determined by such Commission; and

(b) in case no part of the power is sold subject to the determination of the tariff (variable cost) by the Madhya Pradesh Electricity Regulatory Commission, then variable cost shall be as determined by the Madhya Pradesh Electricity Regulatory Commission on a reference being made by the GoMP requesting the said Commission for such determination of variable cost under the provisions of the Electricity Act, 2003.

"Weekly Bill" or "Weekly Invoice" shall mean a Weekly invoice to be raised by the Company for the Tariff, in accordance with Article 10;

"Wheeling Charges" or "Transmission Charges" shall mean the charges to be paid by the GoMP to the CTU or STU or any other transmission licensee or any other agency as applicable under Law, for the transfer of power corresponding to Contracted Energy from the Delivery Point onwards.

1.2. Interpretation

Save where the contrary is indicated, any reference in this Agreement to:

1.2.1. "Agreement" shall be construed as including a reference to its Schedules

1.2.2. An "Article", a "Recital", a "Schedule" and a "paragraph/clause" shall be construed as a reference to an Article, a Recital, a Schedule and a paragraph/clause respectively of this Agreement;

1.2.3. A "Crore" means a reference to ten million (10,000,000) and a "Lakh" means a reference to one tenth of a million (1,00,000);

1.2.4. An "encumbrance" shall be construed as a reference to a mortgage, charge, pledge, lien or other encumbrance securing any obligation of any person or any other type of preferential arrangement (including, without limitation, title transfer and retention arrangements) having a similar effect;

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1.2.5. "Indebtedness" shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;

1.2.6. A "person" shall be construed as a reference to any person, firm, company, limited liability partnership, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and a person shall be construed as including a reference to its successors, permitted transferees and permitted assigns in accordance with their respective interests;

1.2.7. "Rupee", "Rupees" and "Rs." shall denote Indian Rupees, the lawful currency of India;

1.2.8. The "winding-up", "dissolution", "insolvency", or "reorganization" of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the Law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganization, dissolution, arrangement, protection or relief of debtors;

1.2.9. Words importing the singular shall include the plural and vice versa;

1.2.10. This Agreement itself or any other agreement; or deed, instrument, license or document shall be construed as a reference to this or to such other agreement or document as it may have been, or may from time to time be, amended, varied, novated, replaced or supplemented;

1.2.11. A Law shall be construed as a reference to such Law including its amendments or re-enactments from time to time;

1.2.12. A time of day shall, save as otherwise provided in any agreement or document be construed as a reference to Indian Standard Time;

1.2.13. Any reference to period commencing "from" a specified day or date and "till" or "until" a specified day or date shall include such days or dates;

1.2.14. Different parts of this Agreement are to be taken as mutually explanatory and supplementary to each other and if there is any inconsistency between or among the parts of this Agreement, they shall be interpreted in a harmonious manner so as to give effect to each part;

1.2.15. The words / expressions used in this Agreement shall have the same meaning as assigned to them in the context in which these have been used in this Agreement provided that their respective meaning, if any, assigned to such undefined word / expression in the Electricity Act, 2003 shall also be taken into consideration for harmonious interpretation of the Agreement.

1.2.16. The tables of contents and any headings or sub-headings in this Agreement have been inserted for ease of reference only and shall not affect the interpretation of this Agreement;

Dy. Secretary
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M.P. Bhopal

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1.2.17. All interest payable under this Agreement shall accrue from day to day and be calculated on the basis of a year of three hundred and sixty five (365) days;

1.2.18. The words "hereof" or "herein", if and when used in this Agreement shall mean a reference to this Agreement;

1.2.19. The terms "including" or "including without limitation" shall mean that any list of examples following such term shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided;

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ARTICLE - 2: TERM OF AGREEMENT

2.1. Effective Date

2.1.1. This Agreement shall come into effect from the date it is executed by the Parties and delivered by the last of all the Parties and such date shall be referred to as the Effective Date.

2.2. Term of Agreement

2.2.1. This Agreement shall have a term commencing from the Effective Date and shall be co-terminus with the life of the Power Station without termination or determination by efflux of time or otherwise by any notice by either Party till the operation of the Power Station, including any expanded, or increased capacity or additional units that may be established from time to time and continues to be operated through Renovation or Modernization or otherwise or till the resumption of the facilities by the GoMP for default or reasons attributable to the Company as provided in this Agreement (hereinafter referred to as the "Term"). The Term of this Agreement shall expire on the day the Power Station is de-commissioned and ceases to operate forever.

2.3. Survival

2.3.1. The cessation of the operation of the Power Station shall not affect any accrued rights, obligations and liabilities of the Parties under this Agreement nor shall it affect the survival of any continuing obligations for which this Agreement provides, either expressly or by necessary implication, which are to survive after the termination.

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ARTICLE - 3: CONDITIONS PRECDENT AND SUBSEQUENT

3.1. IA to be part of this PPA

The IA will be deemed to be valid part of this Agreement. However in case of conflict between IA and this Agreement, the provision of this Agreement shall prevail.

3.2. Satisfaction of Conditions Subsequent by the Company

3.2.1. The Company agrees and undertakes to duly perform and complete the following activities at the Company's own cost and risk.

3.2.1.1. Within twelve (12) Months from the Effective Date complete the following activities, unless such completion is affected by any Force Majeure Event or due to the GoMP's failure to comply with its obligations under this Agreement, or if any of the activities is specifically waived in writing by the GoMP.

(i) The Company shall have taken the possession of land required, for the setting up of the Power Station and shall have submitted a letter to this effect to the GoMP;

(ii) The Company shall have awarded the Engineering, Procurement and Construction contract ("EPC contract") or main plant contract for boiler, turbine and generator ("BTG"), for setting up of the Power Station and shall have given to such contractor an irrevocable instruction to proceed and shall have submitted a letter to this effect to the GoMP;

(iii) The Company shall have achieved Financial Closure and shall have provided a certificate from the lead banker to this effect to the GoMP;

(iv) The Company shall have made available to the GoMP the data with respect to the Power Station for design of Interconnection Facilities;

(v) The Company shall have submitted to the GoMP, the milestone schedule for setting up of the Power Station.

(vi) The Company shall have obtained clearances from the Ministry of Environment and Forests, Government of India;

(vii) In the event the Company exercises its right under Article 15.1.4, then the Company shall have provided an irrevocable letter to the Lenders duly accepting and acknowledging the rights provided to the Lenders under the terms of this Agreement and all other Power Station Documents.

3.3. Consequences of non-fulfillment of Conditions Subsequent by the Company

3.3.1. If any of the conditions specified in Article 3.2 is not duly fulfilled by the Company even within three (3) Months after the time specified under Article 3.2 otherwise than for reasons attributable to GoMP or Force Majeure Event then on and from the

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expiry of such period and until the Company has satisfied all the conditions specified in Article 3.2, the Company shall be liable to furnish to the GoMP additional weekly performance guarantee (the "**Additional Weekly Performance Guarantee**") of Rupees twenty four point seven five lakhs (Rs. 24.75 Lakhs) only for Unit No.1 and 2 within two (2) Business Days of expiry of every such week. Such Additional Weekly Performance Guarantee shall initially be valid for twelve (12) Months, and shall be extended from time to time, at least fifteen (15) days prior to the expiry, to be valid up to three (3) Months after the achievement of Conditions Subsequent. The GoMP shall be entitled to hold and/or invoke the Initial Contract Performance Guarantee, including such Additional Weekly Performance Guarantee, in accordance with the provisions of this Agreement.

For avoidance of doubt it is clarified that:

(a) the Additional Performance Guarantee to be furnished by the Company to the GoMP, as may be required under this Agreement, shall be in addition to the Initial Contract Performance Guarantee; and

(b) the GoMP shall have the right to encash the Initial Contract Performance Guarantee and/or the Additional Weekly Performance Guarantee, individually or in combination, to compensate itself, without any obligation to issue any notice to the Company before doing so, according to the terms hereof;

3.3.2. If:

(i) Fulfilment of any of the conditions specified in Article 3.2 is delayed beyond the period of three (3) Months after the date specified in Article 3.2.1.1 above and the Company fails to furnish any Additional Weekly Performance Guarantee to the GoMP in accordance with Article 3.3.1 hereof; or

(ii) The Company furnishes Additional Weekly Performance Guarantee to the GoMP in accordance with Article 3.3.1 hereof but fails to fulfil the conditions specified in Article 3.2 for a period of eight (8) Months beyond the period specified therein,

the GoMP shall have the right (but not an obligation) to terminate this Agreement by giving a Termination Notice to the Company in writing of at least seven (7) days. The termination of the Agreement shall take effect upon expiry of the last date of the said notice period ("Termination Date"). On such termination becoming effective all rights conferred to the Company under and in terms of the I.A. shall revert back to the GoMP and the land and all facilities provided to or availed by the Company under the I.A. (collectively referred to as "the Benefits") shall be withdrawn in addition to the Liquidated Damages provided in this Agreement.

3.3.3. If the GoMP elects to terminate this Agreement in the event specified in the preceding Article 3.3.2, the Company shall be liable to pay to the GoMP on the Termination Date an amount of Rupees six hundred sixty lakhs (Rs:6 60 lakhs) only as pre-estimated liquidated damages.

The GoMP shall be entitled to recover this amount of liquidated damages by invoking the Initial Contract Performance Guarantee and Additional Weekly

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Performance Guarantee to the extent of Rupees six hundred sixty lakhs (Rs.6,60 lakhs) only and shall then return the balance Performance Guarantee, if any, to the Company. If the GoMP is unable to recover the said amount of Rupees six hundred sixty lakhs (Rs. 660 lakhs) only or any part thereof from the Initial Contract Performance Guarantee and/or Additional Weekly Performance Guarantee, the amount not recovered from these performance guarantees, if any, shall be payable by the Company to the GoMP within ten (10) days from the date of Termination..

For the avoidance of doubt, it is clarified that:

(a) The Company shall have no right to terminate this Agreement for non fulfilment of any Conditions Subsequent on the part of the Company as mentioned in this Article;

(b) This Article shall survive the termination of this Agreement;

(c) Notwithstanding the termination of the Agreement and recovery of the liquidated damages as mentioned above, in the event the Company establishes the Power Station or any Unit thereof at any time in future, then the GoMP shall, subject to re instatement of the Benefits that may have been withdrawn under Article 3.3.2 above, have an option and a right of first refusal to require the Company to sell electrical output equivalent to the Contracted Energy to it, on the same terms and conditions contained in this Agreement and accordingly this Agreement shall revive and bind the Parties for such Contracted Energy, without in any manner affecting the appropriation of the liquidated damages mentioned above.

3.3.4. In case of inability of the Company to fulfill any one or more of the conditions specified in Article 3.2 due to any Force Majeure Event, the time period for fulfillment of the Conditions Subsequent as mentioned in Article 3.2 shall be extended for the period equivalent to the period required to cure the effects of such Force Majeure Event.

3.3.5. Notwithstanding the above terms contained in clauses 3.2. and 3.3 the parties agree that in the event of the Company deciding to abandon the Unit No. 2 of the project at any time within 12 months from the Effective Date for non availability of Fuel and in consequence thereof the Company unconditionally and irrevocably surrenders all privileges, rights and interests under the IA to the GoMP, the Company shall be entitled to terminate this Agreement without any liability to pay liquidated damages. In such an event the Company shall have no right to develop the Unit No. 2 of the project and no claim against GoMP for cost and expenses incurred by the Company in the development of the Project

3.4. Initial Contract Performance Guarantee and Contract Performance Guarantee

3.4.1. Prior to or simultaneously with the execution of this Agreement, the Company has provided to the GoMP, an unconditional and irrevocable performance guarantee (the "**Initial Contract Performance Guarantee**") as per proforma given in Schedule – 1A from any scheduled bank, of an aggregate amount of Rupees One hundred ninety

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eight lakhs (Rs. 198.00 lakhs) only. Subject to Article 3.3 the Initial Contract Performance Guarantee shall be initially valid till Fifteen (15) months from the Effective Date and shall be extended from time to time, at least fifteen (15) days prior to the expiry, to be valid till three (3) Months after the fulfillment of Conditions Subsequent by the Company. If such extended Initial Contract Performance Guarantee is not received as per the date specified above, even after giving atleast 7 days prior notice for extension of validity of Initial Contract Performance guarantee, GoMP shall have the right to encash the then existing Initial Contract Performance Guarantee without giving any notice to the Company.

3.4.2. Upon fulfillment of Conditions Subsequent by the Company, the Company shall provide to the GoMP an unconditional and irrevocable contract performance guarantee (the "**Contract Performance Guarantee**") as per proforma given in Schedule - 1B from any scheduled commercial bank, of an aggregate amount of Rupees four hundred ninety five lakhs (Rs. 495 lakhs) only. Subject to Article 3.3.2 the Contract Performance Guarantee shall be initially valid till three (3) Months after the Scheduled COD of the Power Station and which shall be extended from time to time, at least fifteen (15) days prior to the expiry, to be valid up to three (3) Months after the COD of the Power Station. If such extended Contract Performance Guarantee is not received as per the date specified above, the GoMP shall have the right to encash the then existing Contract Performance Guarantee.

3.4.3. The Initial Contract Performance Guarantee or the Contract Performance Guarantee, as the case may be, including the Additional Weekly Performance Guarantee furnished under this Agreement shall be for fulfillment of conditions subsequent within the period specified under this Agreement and for guaranteeing the due and timely completion of the Power Station, achievement of Scheduled COD of each Unit.

3.4.4. The failure on the part of the Company to furnish and maintain Initial Contract Performance Guarantee or the Contract Performance Guarantee, as the case may be, and/ or the Additional Weekly Performance Guarantee shall be a material breach of the term of this Agreement.

3.4.5. If the Company fails to achieve COD of any of the Units on their respective Scheduled COD subject to conditions mentioned in Article 4.3, the GoMP shall have the right (but not an obligation) to encash the Contract Performance Guarantee, without any notice to the Company, and appropriate in its favour as liquidated damages an amount specified in Article 4.4 without prejudice to the other rights of the GoMP under this Agreement.

3.4.6. Subject to the provisions of the Articles 3.3.4 and any increase in the time period for completion of Conditions Subsequent mentioned in Article 3.2, shall also lead to an equal increase in the time period for Scheduled COD.

3.5. Return of Performance Guarantee

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3.5.1. Upon satisfaction of the Conditions Subsequent by the Company the Initial Contract Performance Guarantee and/or the Additional Weekly Performance Guarantee shall be returned/ released by the GoMP to the Company within a reasonable time after the Company has duly furnished to the GoMP the Contract Performance Guarantee;

3.5.2. In the event of applicability of Article 3.3.2 the GoMP shall return / release the performance guarantee(s) to the extent the performance guarantee is valid for an amount in excess of Rupees Six Hundred Sixty Lakhs (Rs. 660 lakhs) only.

3.5.3. The GoMP shall return / release the Contract Performance Guarantee to the Company at the end of the third (3rd) Month of the actual COD of the Power Station.

3.5.4. The return/release of the Contract Performance Guarantee shall be without prejudice to other rights of the GoMP under this Agreement and subject to adjustment by the GoMP of any amount due to the GoMP from the Company at the relevant time.

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ARTICLE - 4: DEVELOPMENT OF PROJECT

4.1. Company's Obligations

4.1.1. Subject to the terms and conditions of this Agreement, the Company undertakes to be responsible, at its own cost and risk, for:

(i) Obtaining and maintaining in full force and effect all Consents, Clearances, and Permits during the Term of this Agreement required by it pursuant to this Agreement and Law;

(ii) Setting up of the Power Station in a timely manner so as to enable each of the Units and the Power Station as a whole to be commissioned not later than its Scheduled COD or the Revised Scheduled COD, as the case may be and to make available the Contracted Energy reliably through the use of Prudent Utility Practices throughout the Term of this Agreement;

(iii) Operation and maintenance of the Power Station in accordance with the provisions of this Agreement, Grid Code and Prudent Utility Practices;

(iv) Procure the requirements of electricity at the Power Station (including construction, commissioning and start-up power) and to meet in a timely manner all formalities for getting such supply of electricity;

(v) Providing to the GoMP, on a timely basis, relevant technical information on Power Station specifications, which may be reasonably required by the GoMP to design the Interconnection Facilities;

(vi) Performance and fulfillment of all other obligations of the Company in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Company under this Agreement.

4.1.2. Submission of progress reports

The Company shall furnish to the GoMP, quarterly progress reports of actual progress of the Power Station and shall give all such other relevant information as may be required by the GoMP from time to time till COD of the Power Station.

4.1.3. To provide all information required under Consents, Clearances and Permits

The Company shall provide all information and supporting documentation required to be submitted under Law, to any Competent Authority.

4.1.4. Safety Measures

The Company shall ensure proper safety measures during implementation of the Power Station including, but not limited to, any geological study, construction and testing at the Site as per Law.

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4.1.5. Scheduled Commercial Operation Date

The Company shall achieve Commercial Operation Date for the first Unit by 31st of March 2013 and second Unit of the Power Station within 3 (Three) 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.

[Provided that where the Company has separately entered into an agreement with the GoMP or its nominee for sale of energy at non-concessional tariffs from the project, then the Revised Scheduled COD under that agreement shall be the Revised Scheduled COD for this Agreement too.]

4.2 Supply of Energy

4.2.1 Subject to the terms and conditions of this Agreement, the Company undertakes to make available to the GoMP the Contracted Energy and the GoMP undertakes to purchase the Contracted Energy and pay the Tariff. The title and risk to the Contracted Energy as scheduled shall pass from the Company to the GoMP at the Delivery Point. The Company's obligation to supply Contracted Energy in terms of this Agreement shall stand discharged upon its offering the Contracted Energy to the GoMP at the Delivery Point and the GoMP shall be responsible for evacuation of the same beyond the Delivery Point. Failure by the GoMP for any reason whatsoever to evacuate such Contracted Energy when offered by the Company shall entitle the Company to deal with such energy in any manner that it deems appropriate.

4.2.2 Subject to the provisions of this Agreement, the entire Contracted Energy shall at all times be for the exclusive benefit of the GoMP who shall have the exclusive right to purchase the Contracted Energy. The Company shall not grant to any third party or allow any third party to obtain any entitlement to the Contracted Energy. Upon failure by the GoMP to pay the Tariff for the Contracted Energy in accordance with the provisions of this agreement, the Company shall be entitled to sell the Contracted Energy to any third party and shall not share any revenue arising out such sell. The GoMP shall ensure that it opens and maintains the Letter of Credit in accordance with Article 10.5.

4.2.3 If the GoMP does not avail of the Contracted Energy provided by the Company, the Company shall be entitled to sell such Contracted Energy not taken by the GoMP, to any other person. For any such third party sale, all open access charges including losses, as may be applicable, shall not be payable by the GoMP. The Company shall

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maintain accounts and provide all details regarding price of sale etc. to the GoMP in respect of such sales under this Article.

4.2.4 In the case referred in Article 4.2.3, the sale realization in excess of Energy Charges shall be equally shared by the Company and the GoMP. In the event, the Company sells such Contracted Energy to any direct or indirect Affiliate of the Company/ shareholders of the Company the same shall be on arms length basis without any preference being given.

4.2.5 Where the sale under Article 4.2.3 by the Company is consequent to a notice issued by the GoMP to the Company indicating its unwillingness to purchase the Contracted Energy or part thereof for a period specified in such notice, the GoMP shall be entitled to request the Company for the resumption of supply of the Contracted Energy at any time. However, the Company shall not be liable to resume such supply earlier than the period specified in the said notice, and subject to the provisions regarding scheduling as per the Grid Code.

4.3 Extensions of time

4.3.1 In the event that the Company is prevented from performing its obligations to Commission any Unit by its Scheduled COD or Revised Scheduled COD, as the case may be, due to reasons attributable to GoMP or any Force Majeure Event, then in such events, the Scheduled COD or Revised Scheduled COD, as the case may be, shall be deferred for a period required and to be determined on 'day to day' basis, to permit the Company through the use of due diligence to overcome the said aforementioned events, as the case may be affecting the Company.

4.3.2 In the event of any extension under this Article 4.3.1, the date newly determined shall be deemed to be the Scheduled COD for the purposes of this Agreement.

4.4 Liquidated damages for delay in providing Contracted Energy

4.4.1 If the Company is unable to Commission any Unit of the Power Station by the Scheduled COD other than for force majeure reasons, the Company shall pay to GoMP liquidated damages as per Article 4.4.2, for the delay in such Commissioning and making the Contracted Energy available for dispatch by the Scheduled COD, without in any manner affecting the other rights of the GoMP.

4.4.2 The liquidated damages payable by the Company to the GoMP shall be calculated considering for the purpose of this clause that GoMP has contracted for five percent (5%) of the Aggregate Capacity proposed to be established for Unit No. 1 and five point four five / seven point seven three percent (5.45/7.73%) for Unit No. 2 and as follows:

If dn <= 60 days, then the liquidated damages shall be calculated as follows:

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SLDb = [CCun x dn x DR1] x five/five point four five/seven point seven three percent (5 / 5.45/7.73%)

If dn > 60 days, then the liquidated damages shall be calculated as follows:

SLDb = {[CCun x 60 x DR1] + [CCun x (dn - 60) x DR2]} x five/five point four five/seven point seven three percent (5/5.45/7.73%)

Where:

(a) "SLDb" is the liquidated damages payable by the Company during the period beginning with the day from the Scheduled COD up to and including the day on which supply of power to the GoMP actually commences from the generation source as provided in this Agreement;

(b) "CCun" is the Aggregate Capacity of the relevant Unit "n";

(c) "dn" is the number of days in the period beginning with the day after the Scheduled COD, of Unit "n" up to and including the day on which such Unit is actually Commissioned;

(d) "DR1" is Rupees Ten Thousand (Rs. 10,000) of damages per MW per day of delay in case "d" is equal to or less than 60 days and "DR2" is Rs. Fifteen Thousand (Rs. 15,000) of damages per MW per day of delay in case "d" is more than 60 days. The amount so determined shall be paid by the Company without any demur and it agrees to pay the same unequivocally and unconditionally in the manner provided herein.

4.4.3 The Company shall pay the amount calculated pursuant to Article 4.4.2 to the GoMP within ten (10) days of the amount becoming due

4.4.4 If the Company fails to pay the amount of damages within the said period of ten (10) days, the GoMP shall be entitled to recover the said amount of the liquidated damages by invoking the Contract Performance Guarantee. If the then existing Contract Performance Guarantee is for an amount which is less than the amount of the liquidated damages payable by the Company to the GoMP under this Article 4.4 then the Company shall be liable to forthwith pay the balance amount within ten (10) days of the invocation of the Contract Performance Guarantee by the GoMP.

4.4.5 The Parties agree that the formula specified in Article 4.4.2, for calculation of liquidated damages payable by the Company under this Article 4.4 is a genuine and accurate pre-estimation of the actual loss that will be suffered by the GoMP in the event of the Company's delay in starting supply of power by the Scheduled COD.

4.4.6 In addition to the liquidated damages payable by the Company to the GoMP for delay in Commissioning a Unit and commencement of supply of power, as specified in Article 4.4.2, the Company shall further pay to the GoMP liquidated damages as per this Article. Such additional liquidated damages payable by the Company to the GoMP shall be equivalent to the damages payable by the GoMP to the CTU/STU (as the case may be) for the period of delay, as per the terms of agreement entered into

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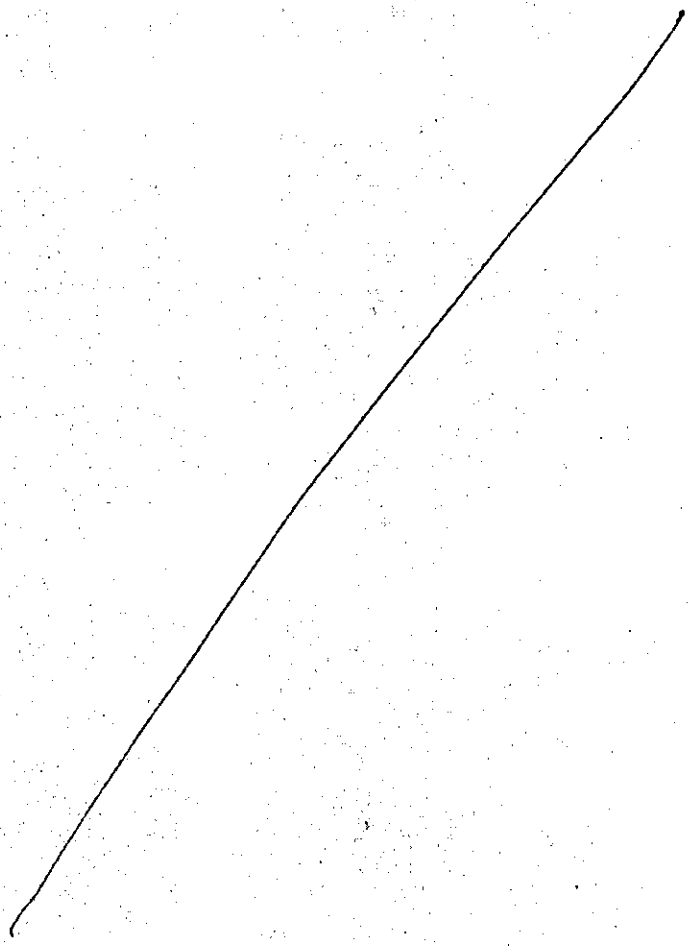
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by the GoMP with CTU/STU for establishment of transmission system and/ or transmission services beyond the Delivery Point.

4.4.7 It is clarified that the liquidated damages payable under this Article 4.4.7 shall be in addition to the liquidated damages determined in terms of Article 4.4.2.

4.4.8 Notwithstanding the receipt of liquidated damages as specified in this Article and even when the Agreement is terminated by GoMP because of the Schedule COD not being accomplished for any reason whatsoever in the event at any time the Company achieve COD of the Power Station or any of the units of the Power Station the GoMP shall have the option and right to revive this Agreement and require the Company to supply power to GoMP of the Contracted Energy on the same terms and conditions as contained in this Agreement and in such an event this Agreement shall revive and bind the parties for all intent and purposes.



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ARTICLE – 5: SYNCHRONISATION AND COMMERCIAL OPERATION

5.1. Synchronisation

5.1.1. The Company shall give GoMP, the SLDC and RLDC at least sixty (60) days advance written notice intimating the Scheduled Synchronization Date i.e. the date on which the Company intends to synchronize a Unit to the Grid System. Any final date proposed by the Company that is earlier than the Scheduled Synchronization Date, shall be subject to written consent of GoMP.

5.1.2. Subject to Article 5.1.1, a Unit may be synchronised by the Company to the Grid System when it meets all connection conditions prescribed in the Grid Code then in effect and otherwise meets all other Indian legal requirements for synchronisation to the Grid System.

5.2. Commercial Operation Date

5.2.1. In the event that the actual COD of a Unit occurs prior to the Scheduled COD, of the said Unit, and the GoMP is:

5.2.1.1. able to cause off-take of the Scheduled Energy from such Unit commencing from the day on which the said Unit is Commissioned, such earlier date shall be taken as COD of the said Unit, or

5.2.1.2. able to cause off-take of Scheduled Energy from the said Unit commencing from the day falling between:

(a) the day on which the Unit is Commissioned: and

(b) the Scheduled COD of the said Unit.

such earlier date of off-take shall be taken as COD of the said Unit.

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ARTICLE - 6: AVAILABILITY, SCHEDULING AND DESPATCH

6.1. Availability, Scheduling and Despatch

6.1.1. The Company agrees that the entitlement of GoMP over the Contracted Energy for despatch over any Settlement Period is the exclusive right of GoMP and it cannot be offered to any third party other than for conditions under Article 4.2.3.

6.1.2. Subject to GoMP paying the amounts due to the Company under the terms of this Agreement, within the time specified in this Agreement, without demur and notwithstanding any dispute, the Company shall not offer the Contracted Energy, in part or fully, to any third party in contravention to the conditions specified in Article 6.1.1. The Company agrees to and acknowledges the GoMP's right to instruct the RLDC/ SLDC, as the case may be, not to schedule such power to any third party. The Company further agrees and waives any and all objections or claims in respect of such right or any other legal remedy including but not limited to seek specific performance of this Agreement, the GoMP may have under the Law with respect to such default of the Company. In such event, GoMP shall be obliged to schedule such power and pay the Tariff for the Scheduled Energy. It is clarified and re iterated that the remedy provided to GoMP under this Article shall not be available to GoMP if it fails to pay any amount due to the Company in terms of this Agreement.

6.1.3. The quantum of Contracted Energy will be computed on real time basis based on actual generation of the Power Station. The quality of such power shall be firm power and at no time the Company shall be supplying such power less than ninety (90) percent of the Contracted Energy. However, such percentage shall not be more than one hundred and ten (110) percent of the Contracted Energy during the off-peak period. The off-peak period shall be notified by the GoMP or its nominated agency from time to time. The Parties shall undertake a bi-annual reconciliation on June 30 and Dec 31 of each calendar year, to ascertain the aggregate Contracted Energy actually supplied against the Contracted Energy required to be supplied in terms hereof, and variations if any, between the two, over such reconciliation period, shall be settled/adjusted in the supplies of Contracted Energy to be made over the immediately succeeding 6 months period.

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ARTICLE - 7: OPERATION AND MAINTENANCE

7.1. Operation and Maintenance of the Power Station

7.1.1. The Company shall be responsible at its own expense for ensuring that the Power Station is operated and maintained in an efficient, coordinated and economical manner and in accordance with all legal requirements, including the terms of all Consents, Clearances and Permits, Prudent Utility Practices, and in particular, the Grid Code, so as to meet its obligations under this Agreement and so as not to have an adverse effect on the Grid operation.

7.2. Maintenance of Records

7.2.1. Each Party shall keep complete and accurate records of the meter records and other records needed to reflect power exchange between the Parties for each Settlement Period and Electrical Output of the Power Station on a continuous real time basis.

7.2.2. Each Party shall have the right, upon reasonable prior notice to the other Party, to examine the records and data of the other Party relating to this Agreement or the operation and maintenance of the Power Station at any time during normal office hours on normal Business Days.

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ARTICLE - 8: METERING AND ENERGY ACCOUNTING

8.1. Meters

For installation of Meters, Meter testing, Meter calibration and Meter reading and all matters incidental thereto, the Company and the GoMP shall follow and be bound by the Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006, the Grid Code and ABT as amended and revised from time to time or any other Law in force at the relevant point of time.

8.2. ENERGY ACCOUNTING

The Energy Account shall be binding on the Parties for billing and payment purposes.

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ARTICLE - 9: INSURANCES

9.1. Insurance

The Company shall effect and maintain or cause to be effected and maintained during and before the Operating Period, Insurances against such risks, with such deductibles and with such endorsements and co-insured(s), which the Prudent Utility Practices would ordinarily merit maintenance of and as required under the Financing Agreements.

9.2. Application of Insurance Proceeds

Save as expressly provided in this Agreement or the Insurances, the proceeds of any insurance claim made due to loss or damage to the Power Station or any part of the Power Station shall be first applied to reinstatement, replacement or renewal of such loss or damage.

If a Force Majeure Event renders the Power Station no longer economically and technically viable and the insurers under the Insurances make payment on a "total loss" or equivalent basis, the GoMP shall have no claim on such proceeds of such Insurance.

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ARTICLE - 10: TARIFF, BILLING AND PAYMENT

10.1. General

10.1.1. The Tariff for the Contracted Energy shall comprise only the Variable Charge/Cost. The Variable Charge/Cost shall be as determined by the Madhya Pradesh Electricity Regulatory Commission on a reference being made by the GoMP under the appropriate provisions of the Electricity Act 2003, requesting the said Commission for such determination of Variable Charge/Cost in terms of this Agreement.

10.1.2. From the COD of the first Unit, the GoMP shall pay the Company the Tariff Payment, on or before the Due Date, determined in accordance with this Article 10.

10.1.3. All Tariff Payments by the GoMP shall be in Indian Rupees (INR).

10.1.4. The Company shall issue to the GoMP a signed Weekly Bill for the Scheduled Energy supplied by it to GoMP during the immediately preceding week. In case the Weekly Bill for the immediately preceding week is delayed, the Due Date for payment of such Weekly Bill shall be extended by the same number of days by which the issue of such Weekly Bill has been delayed.

10.2. Weekly Billing

The Tariff under this Agreement shall be billed by the Company and shall be paid by the GoMP in accordance with the following provisions:

(i) The Weekly Bill to be raised as per the billing cycle mentioned below:

a. 1st Week: From 00:00 hrs of 1st day of month to 24:00 hrs of the 8th day of Month

b. 2nd Week: From 00:00 hrs of 9th day of month to 24:00 hrs of the 15th day of Month

c. 3rd Week: From 00:00 hrs of 16th day of month to 24:00 hrs of the 23rd day of Month

d. 4th Week: From 00:00 hrs of 24th day of month to 24:00 hrs of the last day of the Billing Month.

(ii) The Company shall submit the Weekly Bill to the GoMP, which shall include:

a. Availability and Energy Account for the relevant week as per scheduled energy as provided by concerned RLDC;

b. the Company's computation of the Weekly Tariff payment in accordance with Article 10.1; and

c. supporting data, documents and calculations in accordance with this Agreement.

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(iii) The Weekly Bill for the energy supplied to GoMP shall be in accordance with the provisions of this Agreement. If for certain reasons some of the charges which otherwise are in accordance with this Agreement, cannot be included in the Weekly Bill, such charges shall be billed as soon as possible through Supplementary Bill(s). Furthermore, the Company shall reconcile the Weekly Bills with the monthly REA/SEA Accounts and in the event the aggregate of the Weekly Bills constituting the relevant calendar month are less than the amounts determined to be billed as per the REA/SEA Accounts, then the Company shall issue a Supplementary Bill. Conversely, in the event the aggregate of the Weekly Bills for the relevant calendar month are in excess of the amounts determined to be billed as per the REA/SEA Accounts, then the Company shall provide a credit to the GoMP for such excess amounts in its immediately subsequent Bill.

(iv) The Bill(s) of the Company shall be paid in full subject to the condition that:

(a) There is no apparent arithmetical error in the Bill(s).

(b) The Bill(s) is / are claimed as per the Tariff determined by the Appropriate Commission.

(c) They are in accordance with the Energy Accounts.

(v) If GoMP disputes any amount, it shall pay according to Article 10.6.6 and file a written objection with the Company within thirty (30) days of presentation of the Bill, giving following particulars:

(a) Item disputed, with full details / data and reasons of Dispute;

(b) Amount disputed against each item;

10.3. Payment of Weekly Bills

10.3.1. The GoMP shall pay the amount payable under Weekly Bill by the Due Date to such account of the Company, as shall have been previously notified by the Company to GoMP in accordance with Article 10.3.3 below.

All payments made by the GoMP shall be appropriated by the Company in the following order of priority:

(i) towards Late Payment Surcharge, payable by the GoMP, if any;

(ii) towards earlier unpaid Bill, if any; and

(iii) towards then current Bill.

10.3.2 All payments required to be made under this Agreement shall include any deduction or set off for:

(i) deductions required by Law; and

(ii) amounts claimed by the GoMP from the Company, through an Invoice duly acknowledged by the Company, to be payable by the Company, and not disputed by the Company within thirty (30) days of receipt of the said

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Invoice and such deduction or set-off shall be made to the extent of the amounts not disputed. It is clarified that the GoMP shall be entitled to claim any set off or deduction under this Article, after expiry of the said thirty (30) day period.

10.3.3 The Company shall open a bank account at Jabalpur, Madhya Pradesh (the "Designated Account") for all Tariff Payments to be made by GoMP to the Company, and notify the GoMP of the details of such account at least ninety (90) days before the despatch of the first Weekly Bill to GoMP. The GoMP shall instruct its bankers to make all payments under this Agreement to the Designated Account and shall notify the Company of such instructions on the same day. The GoMP shall also designate a bank account at Jabalpur, Madhya Pradesh for payments to be made by the Company (including Supplementary Bills) to the GoMP and notify the Company of the details of such account ninety (90) days before the COD of the first Unit.

10.4 Billing and Payment of charges

10.4.1 **Late Payment Surcharge**

In case the payment of any Bill for charges payable under this Agreement is delayed by the GoMP beyond the Due Date thereof, a Late Payment Surcharge shall be payable by the GoMP to the Company at the rate of 1.25% per Month on the amount of outstanding payment, calculated on a day to day basis for each day of the delay, compounded on monthly rests.

Similarly, if any amount outstanding against the Company and payable to GoMP is not paid beyond its Due Date a Late Payment Surcharge shall be payable by the Company to the GoMP at the rate of 1.25% per Month on the amount of outstanding payment, calculated on a day to day basis for each day of the delay, compounded on monthly rests. Late Payment Surcharge shall be claimed by the Company or GoMP through Supplementary Bills.

10.4.2 The rate of Late Payment Surcharge shall be revised from time to time on the basis of rates notified by the Appropriate Commission.

10.5 Letter of Credit

10.5.1 The GoMP shall provide to the Company, in respect of payment of its Weekly Bills, an unconditional, revolving and irrevocable letter of credit ("**Letter of Credit**"), opened and maintained by the GoMP or by the nominee on behalf of the GoMP, which may be drawn upon by the Company in accordance with the provisions of this Agreement. The Letter of Credit shall be in the format annexed hereto as Schedule - 4.

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10.5.2 Not later than one (1) Month prior to the Scheduled COD of the first Unit, the GoMP shall through a scheduled bank at Jabalpur open the Letter of Credit in favour of the Company, to be made operative from a date prior to the Due Date of its first Weekly Bill under this Agreement. The Letter of Credit shall have an initial term of twelve (12) Months and shall be renewed annually, for an amount equal to:

(i) for the first Contract Year, equal to one point one (1.1) times the estimated average Weekly billing based on Normative Availability corresponding to the Contracted Energy;

(ii) for each subsequent Contract Year, equal to one point one (1.1) times the average of the Weekly Tariff Payments of the previous Contract Year plus the estimated Weekly billing during the current year from any additional Unit(s) expected to be put on COD during the current Contract Year based on Normative Availability.

Provided that if at any time, such Letter of Credit amount falls short of the amounts specified above, GoMP shall restore such shortfall within seven (7) days.

Provided further, that the Company shall not draw upon such Letter of Credit prior to the Due Date of relevant Weekly Bill and/ or Supplementary Bill.

10.5.3 GoMP shall cause the scheduled bank issuing the Letter of Credit to intimate the Company, in writing regarding the establishment of such irrevocable Letter of Credit.

10.5.4 In case of drawal of the Letter of Credit by the Company in accordance with the terms of this Agreement, the amount of the Letter of credit shall be reinstated in the manner in Article 10.5.2;

10.5.5 If GoMP fails to pay a Weekly Bill or a Supplementary Bill or part thereof within and including the Due Date, then the Company may draw upon the Letter of Credit, and accordingly the bank shall pay without any reference or instructions from the GoMP, an amount equal to such Weekly Bill or a Supplementary Bill or part thereof plus Late Payment Surcharge, if applicable, by presenting to the scheduled bank issuing the Letter of Credit, the following documents:

(i) a copy of the Weekly Bill or Supplementary Bill that has remained unpaid by the GoMP;

(ii) a certificate from the Company to the effect that the Bill at item (i) above, or specified part thereof, is in accordance with the Agreement and has remained unpaid beyond the Due Date; and

(iii) calculations of applicable Late Payment Surcharge, if any.

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10.5.6 The Letter of Credit shall be renewed by the GoMP not later than forty five (45) days prior to its expiry.

10.5.7 All costs relating to opening and maintenance of the Letter of Credit shall be borne by the GoMP; however, Letter of Credit negotiation charges shall be borne and paid by the Company.

10.6 Disputed Bill

10.6.1. If a Party does not dispute a Weekly Bill or a Supplementary Bill raised by the other Party within Seven (7) days of receiving it, such Bill shall be taken as conclusive for the purpose of making payment.

10.6.2. If a Party disputes the amount payable under a Weekly Bill or a Supplementary Bill, as the case may be, that Party shall, within Seven(7) days of receiving such Bill, issue a notice (the "Bill Dispute Notice") to the invoicing Party setting out:

i. the details of the disputed amount;

ii. its estimate of what the correct amount should be; and

iii. all written material in support of its claim.

10.6.3. If the invoicing Party agrees to the claim raised in the Bill Dispute Notice issued pursuant to Article 10.6.2, the invoicing Party shall revise such Bill within seven (7) days of receiving such notice and if the disputing Party has already made the excess payment refund to the disputing Party such excess amount within fifteen (15) days of receiving such notice. In such a case excess amount shall be refunded along with interest at the same rate as Late Payment Surcharge which shall be applied from the date on which such excess payment was made to the invoicing Party and up to and including the date on which such payment has been received as refund.

10.6.4. If the invoicing Party does not agree to the claim raised in the Bill Dispute Notice issued pursuant to this Article shall, within fifteen (15) days of receiving the Bill Dispute Notice, furnish a notice to the disputing Party providing:

(i) reasons for its disagreement;

(ii) its estimate of what the correct amount should be; and

(iii) all written material in support of its counter-claim.

Upon receipt of notice of disagreement to the Bill Dispute Notice one authorized representative(s) of the Company preferably a Director of the Board of Directors of each Party shall meet and make best endeavours to amicably resolve the Dispute within fifteen (15) days of receiving such notice of disagreement to the Bill Dispute Notice.

10.6.5. If the Parties do not amicably resolve the Dispute within fifteen (15) days of receipt of notice of disagreement to the Bill Dispute Notice pursuant to this Article the

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matter shall be settled through Dispute Resolution according to the provisions of Article 13.3.

10.6.6. For the avoidance of doubt, it is clarified that despite a Dispute regarding a Bill, the GoMP shall, without prejudice to its right to Dispute, be under an obligation to make payment, of the lower of (a) an amount equal to simple average of last three (3) Weekly Bills (being the undisputed portion of such three weeks invoices) and (b) the Bill which is being disputed, provided such disputed Bill, if it is a Weekly Bill, has been raised based on the Scheduling done by the GoMP and in accordance with this Agreement.

10.6.7 In case of Disputed Bills it shall be open to the aggrieved Party to approach the Appropriate Commission for Dispute Resolution in accordance with Article 13 and also for interim orders protecting its interest including for orders for interim payment pending Dispute Resolution and the Parties shall be bound by the decision of the Appropriate Commission including in regard to interest or delayed payment surcharge, if any directed to be paid by the Appropriate Commission.

10.6.8 If a Dispute regarding a Weekly Bill or a Supplementary Bill is settled pursuant to this in favour of the Party that issues a Bill Dispute Notice, the other Party shall refund the amount incorrectly charged by it from the disputing Party within five (5) days of the Dispute either being amicably resolved by the Parties pursuant to this Article along with interest. Such interest shall accrue on day to day basis for the period between the date of payment of the disputed Bill and receipt of refund in the Designated Account of the relevant Party at a rate equal to the Late Payment Surcharge.

10.7. Quarterly and Annual Reconciliation

10.7.1. Parties acknowledge that all payments made against Weekly Bills, and Supplementary Bills shall be subject to quarterly reconciliation at the beginning of the following quarter of each Contract Year and annual reconciliation at the end of each Contract Year to take into account Regional Energy Accounts / State Energy Accounts (as applicable), tariff adjustment payments, Rebates, Late Payment Surcharge, etc. or any other reasonable circumstance provided under this Agreement. The Parties, therefore, agree that as soon as all such data in respect of any quarter of a Contract Year or a full Contract Year as the case may be has been finally verified and adjusted, the Company and GoMP shall jointly sign such reconciliation statement. Within fifteen (15) days of signing of a reconciliation statement, the Company or GoMP, as the case may be, shall raise a Supplementary Bill for the tariff adjustment payments for the relevant quarter/ Contract Year and shall make payment of such Supplementary Bill for the tariff adjustment payments for the relevant quarter/Contract Year. Late Payment Surcharge shall be payable in such a case from the date on which such payment had been made to the invoicing Party or the date on which any payment was originally due, as may be applicable. Any Dispute with

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regarding to the above reconciliation shall be dealt in accordance of the provision of Article 13.3.

10.8. Payment of Supplementary Bill

10.8.1. Either Party may raise a Bill on the other Party ("Supplementary Bill") for payment on account of,

(i) Adjustments required by the Regional Energy Account / State Energy Account, as applicable; or
(ii) Tariff Payment for change in parameters, pursuant to provisions in Article 10.1.1;
(iii) Change in Law as provided in Article 12;
and such Bill shall be paid by the other Party

10.8.2. GoMP shall remit all amounts due under a Supplementary Bill raised by the Company to the Company's Designated Account by the Due Date and notify the Company of such remittance on the same day. Similarly, the Company shall pay all amounts due under a Supplementary Bill raised by the GoMP by the Due Date to the GoMP's designated bank account and notify the GoMP of such payment on the same day.

In the event of delay in payment of a Supplementary Bill by either Party beyond its Due Date, a Late Payment Surcharge shall be payable at the same terms applicable to the Weekly Bills as per Article 10.4.1.

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ARTICLE - 11: FORCE MAJEURE

11.1. Definitions

11.1.1. In this Article, the following terms shall have the following meanings.

11.2. Affected Party

11.2.1. An affected Party means the GoMP or the Company whose performance has been affected by an event of Force Majeure.

11.2.2. Any event of Force Majeure affecting the performance of the Company or affecting the transmission facilities beyond the Delivery Point shall be deemed to be an event of Force Majeure affecting either Party.

11.2.3. Any event of Force Majeure affecting the performance of the Company's contractors shall be deemed to be an event of Force Majeure affecting Company only if the Force Majeure Event is affecting and resulting in:

(a) late delivery of plant, machinery, equipment, materials, spare parts, Fuel, water or consumables for the Power Station; or

(b) a delay in the performance of any of the Company's contractors.

11.3. Force Majeure

11.3.1. 'Force Majeure' means any event or circumstance or combination of events and circumstances including those stated below that wholly or partly prevents or unavoidably delays an Affected Party in the performance of its obligations under this Agreement, but only if and to the extent that such events or circumstances are not within the reasonable control, directly or indirectly, of the Affected Party and could not have been avoided if the Affected Party had taken reasonable care or complied with Prudent Utility Practices:

i. **Natural Force Majeure Event(s)**

act of God, including, but not limited to lightning, drought, fire and explosion (to the extent originating from a source external to the Site), earthquake, volcanic eruption, landslide, flood, cyclone, typhoon, tornado, or exceptionally adverse weather conditions which are in excess of the statistical measures for the last hundred (100) years,

ii. **Non-Natural Force Majeure Event(s)**

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a) Nationalization or compulsory acquisition by any Indian Governmental Instrumentality of any material assets or rights of the Company; or

b) the unlawful, unreasonable or discriminatory revocation of, or refusal to renew, any Consents, Clearances and Permits required by the Company to perform its obligations under the Power Station Documents or any unlawful, unreasonable or discriminatory refusal to grant any Consents, Clearances and Permits required for the development / operation of the Power Station , provided that a Competent Court of Law declares the revocation or refusal to be unlawful, unreasonable and discriminatory and strikes the same down.

c) any other unlawful, unreasonable or discriminatory action on the part of an Indian Government Instrumentality which is directed against the supply of power by the Company to the GoMP, provided that a Competent Court of Law declares the action to be unlawful, unreasonable and discriminatory and strikes the same down.

d) Any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo;, revolution, riot, insurrection, terrorist or military action; or

e) radio active contamination or ionising radiation originating from a source in India or resulting from another Indirect Non Natural Force Majeure Event mentioned above excluding circumstances where the source or cause of contamination or radiation is brought or has been brought into or near the Power Station by the Affected Party or those employed or engaged by the Affected Party.

f) industry wide strikes and labor disturbances having a nationwide impact in India.

11.4. Force Majeure Exclusions

11.4.1. Force Majeure shall not include (i) any event or circumstance which is within the reasonable control of the Parties and (ii) the following conditions, except to the extent that they are consequences of an event of Force Majeure:

a. Unavailability, late delivery, or changes in cost of the plant, machinery, equipment, materials, spare parts, Fuel or consumables for the Power Station;

b. Delay in the performance of any contractor, sub-contractor or their agents excluding the conditions as mentioned in Article 11.2;

c. Non-performance resulting from normal wear and tear typically experienced in power generation materials and equipment;

d. Strikes or labour disturbance at the facilities of the Affected Party;

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e. Insufficiency of finances or funds or the agreement becoming onerous to perform; and

f. Non-performance caused by, or connected with, the Affected Party's:
   i. Negligent or intentional acts, errors or omissions;
   ii. Failure to comply with an Indian Law; or
   iii. Breach of, or default under this Agreement or any other Power Station Documents.

11.5. Notification of Force Majeure Event

11.5.1. The Affected Party shall give notice to the other Party of any event of Force Majeure as soon as reasonably practicable, but not later than seven (7) days after the date on which such Party knew or should reasonably have known of the commencement of the event of Force Majeure. If an event of Force Majeure results in a breakdown of communications rendering it unreasonable to give notice within the applicable time limit specified herein, then the Party claiming Force Majeure shall give such notice as soon as reasonably practicable after reinstatement of communications, but not later than one (1) day after such reinstatement.

Provided that such notice shall be a pre-condition to the Affected Party's entitlement to claim relief under this Agreement. Such notice shall include full particulars of the event of Force Majeure, its effects on the Party claiming relief and the remedial measures proposed. The Affected Party shall give the other Party regular (and not less than monthly) reports on the progress of those remedial measures and such other information as the other Party may reasonably request about the Force Majeure Event.

11.5.2. The Affected Party shall give notice to the other Party of (i) the cessation of the relevant event of Force Majeure; and (ii) the cessation of the effects of such event of Force Majeure on the performance of its rights or obligations under this Agreement, as soon as practicable after becoming aware of each of these cessations.

11.6. Duty to perform and duty to mitigate

11.6.1. To the extent not prevented by a Force Majeure Event the affected Party shall continue to perform its obligations pursuant to this Agreement. The Affected Party shall use its reasonable efforts to mitigate the effect of any Force Majeure Event as soon as practicable.

11.7. Available Relief for a Force Majeure Event

11.7.1. Subject to this Article 11:

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a) no Party shall be in breach of its obligations pursuant to this Agreement except to the extent that the performance of its obligations was prevented, hindered or delayed due to a Force Majeure Event;

b) every Party shall be entitled to claim relief in relation to a Force Majeure Event in regard to its obligations under this Agreement, including but not limited to those specified under Article 4.3.

c) The existence of Force majeure or its continuation shall not however give any right to any of the party to terminate this Agreement

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ARTICLE - 12: CHANGE IN LAW

12.1 Since the Variable charge is being determined by the Appropriate Commission based on actual cost components of Variable Charge at the relevant time and there being no aspect of capacity or fixed charges payment under this Agreement the provisions relating to change in law are not required. However, it is clarified that Appropriate Commission while determining the Tariff will take into consideration any change in taxes, duties, cess and any other such impositions that may have financial implications on such Tariff.

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ARTICLE - 13: EVENTS OF DEFAULT, DISPUTE RESOLUTION AND TERMINATION

13.1. Company Event of Default

13.1.1. The occurrence and continuation of any of the following events, unless any such event occurs as a result of a Force Majeure Event or a breach by GoMP of its obligations under this Agreement , shall constitute a Company Event of Default:

(i) The failure to Commission any Unit by the date falling twelve (12) Months after its Scheduled COD or Revised Scheduled COD; or

(ii) the Company fails to make any payment (a) of an amount exceeding Rupees one (1) crore in aggregate required to be made to GoMP under this Agreement, within three (3) Months after the Due Date of undisputed invoice(s) / demand raised by the said GoMP on the Company or (b) of an amount up to Rupees fifty (50) Lakhs required to be made to GoMP under this Agreement within six (6) Months after the Due Date of undisputed invoice(s) / demand; or

(iii) if

(a) the Company assigns, mortgages or charges or purports to assign, mortgage or charge any of its assets or rights related to the Power Station in contravention of the provisions of this Agreement; or

(b) the Company transfers or novates any of its rights and / or obligations under this agreement, in a manner contrary to the provisions of this Agreement; except where such transfer:

1. is in pursuance of a Law; and does not affect the ability of the transferee to perform, and such transferee has the financial capability to perform, its obligations under this Agreement or

2. is to a transferee who assumes such obligations under this Agreement and the Agreement remains effective with respect to the transferee; or

3. is to another company in which **Jhabua Power Ltd.,** holds not less than 51% of the equity shareholding and shall continue to hold equity shares in accordance with Article 16.1.

(iv)if (a) any winding up or bankruptcy or insolvency order is passed against the Company, or (b) the Company goes into liquidation or dissolution or has a receiver or any similar officer appointed over all or substantially all of its assets or official liquidator is appointed to manage its affairs, pursuant to Law,

Provided that a dissolution or liquidation of the Company will not be an Event of Default if such dissolution or liquidation is for the purpose of a

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merger, consolidation or reorganization, and the resulting company retains creditworthiness similar to the Company and expressly assumes all obligations of the Company under this Agreement and is in a position to perform them; or

(v) The Company repudiates this Agreement or otherwise evidences an intention not to perform its obligations under or to be bound by this Agreement and does not rectify such breach even within a period of thirty (30) days from a notice from the GoMP in this regard; or

(vi) , the Company is in breach of any of its material obligations pursuant to this Agreement and such material breach is not rectified by the Company within thirty (30) days of receipt of first notice in this regard given by the GoMP; or

(vii) The Company fails to renew or replace or provide the Performance Guarantee to the GoMP in accordance with Article 3.3 and Article 3.4 of this Agreement, or

(viii) Failure to meet any of the Conditions Subsequent as mentioned in Article 3.2; or

(ix) Any direct or indirect change in the shareholding of the Company in contravention of Article 16.1;

(x) Any of the representations and warranties made by the Company in Schedule - 2 of this Agreement; being found to be untrue or inaccurate; or

(xi) Any other event which have been specified as an event of default or breach by the Company under any of the other provisions in this Agreement.

13.2. Procedure for cases of Company Event of Default

(i) Upon the occurrence and continuation of any Company Event of Default under Article 13.1 except under Articles 13.1.1 (ii), the GoMP shall have the right to deliver to the Company a notice of their intention to terminate this Agreement (GoMP Preliminary Default Notice), under intimation to the Lender(s), which shall specify in reasonable detail, the circumstances giving rise to the issue of such notice.

(ii) Following the issue of GoMP Preliminary Default Notice, the Consultation Period of ninety (90) days or such longer period as the Parties may agree, shall apply.

(iii) During the Consultation Period, the Parties shall, save as otherwise provided in this Agreement, continue to perform their respective obligations under this Agreement.

(iv) Upon the occurrence and continuation of Company Event of Default under this Article, the following consequences will apply—

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a. If the event of default occurs before the COD or Revised COD, the liquidated damages shall be payable as specified in Article 4.4 above;

(v) Subject to GoMP paying the amounts due to the Company under the terms of this Agreement, within the time specified in this Agreement, without demur and notwithstanding any dispute, the Company shall not offer the Contracted Energy, in part or fully, to any third party in contravention to the conditions specified in Article 6.1.1. The Company unconditionally and irrevocably agrees to and acknowledges the GoMP's right to instruct the RLDC/ SLDC, as the case may be, not to schedule such power to any third party. The Company further agrees and waives any and all objections or claims in respect of such right or any other legal remedy including but not limited to seek specific performance of this Agreement, the GoMP may have under the Law with respect to such default of the Company. In such event, the GoMP shall be obliged to schedule such power and purchase and pay the Tariff for the Scheduled Energy. It is clarified and re iterated that the remedy provided to GoMP under this Article shall not be available to GoMP if it fails for any reason whatsoever, to pay any amount due to the Company in terms of this Agreement, notwithstanding any dispute relating to any such amount and the Company's demand for such amounts outstanding shall, for purposes only of this Article, be conclusive and binding on GoMP.

13.3. Resolution of Disputes

13.3.1. Governing Law and Jurisdiction of Courts

This Agreement shall be governed by and construed in accordance with the Laws of India. Subject to the dispute resolution provided herein, any legal proceedings in respect of any matters, claims or Disputes under this Agreement shall be under the jurisdiction of the Appropriate Commission and subject to such jurisdiction, appropriate courts in Bhopal, unless required otherwise under Law.

13.3.2. Amicable Settlement

(a) Either Party is entitled to raise any claim, dispute or difference of whatever nature arising under, out of or in connection with this Agreement including its existence or validity or termination (collectively "Dispute") by giving a written notice to the other Party, which shall contain:

(i.) a description of the Dispute;

(ii.) the grounds for such Dispute; and

(iii.) all written material in support of its claim.

(b) The other Party shall, within thirty (30) days of issue of dispute notice issued under Article 13.3.2(a), furnish:

(i) counter-claim and defences, if any, regarding the Dispute; and

(ii) all written material in support of its defences and counter-claim.

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(c) Within thirty (30) days of issue of notice by any Party pursuant to Article 13.3.2(a), or Article 13.3.2(b) both the Parties to the Dispute shall meet to settle such Dispute amicably. If the Parties fail to resolve the Dispute amicably within thirty (30) days of receipt of the notice referred to in the preceding sentence, the Dispute shall be referred to Dispute Resolution in accordance with Article 13.3.3.

13.3.3. Dispute Resolution

All disputes and differences arising between the parties under or in respect of this Agreement including any interpretation or construction of the provisions shall be subject to adjudication under section 86 (1) (f) read with Section 158 of the Electricity Act, 2003.

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ARTICLE - 14: LIABILITY AND INDEMNIFICATION

14.1. Indemnity

14.1.1. The Company shall indemnify, defend and hold GoMP harmless against:

(a) any and all third party claims, actions, suits or proceedings against the GoMP for any loss of or damage to property of such third party, or death or injury to such third party, arising out of a breach by the Company of any of its obligations under this Agreement, except to the extent that any such claim, action, suit or proceeding has arisen due to a negligent act or omission, breach of this Agreement or breach of statutory duty on the part of GoMP, its contractors, servants or agents; and

(b) any and all losses, damages, costs and expenses including legal costs, fines, penalties and interest actually suffered or incurred by GoMP from third party claims arising by reason of:

(i) breach by the Company of any of its obligations under this Agreement, (provided that this Article 14 shall not apply to such breaches by the Company, for which specific remedies have been provided for under this Agreement) except to the extent that any such losses, damages, costs and expenses including legal costs, fines, penalties and interest (together to constitute "Indemnifiable Losses") has arisen due to a negligent act or omission, breach of this Agreement or breach of statutory duty on the part of GoMP, its contractors, servants or agents, or

(ii) any of the representations or warranties of the Company under this Agreement being found to be inaccurate or untrue.

14.1.2 **Limitation on Liability:**

The liability of the Company under this Article shall not exceed the liquidated damages payable by the Company under this Agreement.

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ARTICLE - 15: ASSIGNMENTS AND CHARGES

15.1. Assignments

15.1.1. The GoMP shall be entitled to nominate any entity owned and controlled by GoMP and for the present has nominated MP Tradeco as such entity to perform on its behalf and exercise all its rights under this Agreement and the reference to GoMP in this Agreement shall include such designated agencies. Accordingly, till further directions are given by the GoMP, the liability for payment of the amounts becoming due to the Company including arranging the Letter of Credit as envisaged in this Agreement, the raising and payment of bills for the electricity supplied shall by and in the name of MP Tradeco on behalf of GoMP. Notwithstanding such nomination, GoMP shall continue to be primarily responsible for fulfillment of its obligations under this Agreement.

15.1.2. The Company shall not assign any of its rights or obligations in this Agreement to any Party other than with the consent in writing of the GoMP:

15.1.3. The GoMP shall be free to deal with the Contracted Energy or any part thereof in any manner as the GoMP may in its discretion consider appropriate, including further sale of the Contracted Energy to any person subject to the condition that the GoMP shall continue to be liable to the Company in so far as the fulfillment of the obligations under this Agreement. The GoMP shall at all times be entitled to assign this Agreement to any other Government of Madhya Pradesh Undertaking or to any of the Discoms. Subject to the above the GoMP shall not assign the obligations of the GoMP under this Agreement to any Party other than with the consent in writing of the Company and such consent shall not be unreasonably withheld by the Company if the GoMP seeks to transfer to any transferee all of its rights and obligations under this Agreement.

15.1.4. The Company shall be entitled to assign its rights and obligations under this Agreement in favor of the Selectee duly appointed pursuant to the terms of Schedule – 6 of this Agreement.

15.2. Permitted Charges

15.2.1. Neither Party shall create or permit to subsist any encumbrance over all or any of its rights and benefits under this Agreement. Provided that the Company shall be entitled to create such a charge in favour of the Lenders.

15.2.2. Notwithstanding anything contained herein the Company may create any encumbrance over all or part of the receivables, or any other assets of the Power Station in favour of the Lenders or the Lender's representative on their behalf, as security for:

(a) amounts payable under the Financing Agreements; and

(b) any other amounts agreed by the Parties,

Dy. Secretary
Secretary (Energy)
Energy Deptt.
GoMP
Govt. of M.P., Bhopal

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(Chief Operating Officer)
Jhabua Power Ltd.

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28.11.2024 10.53

Provided that:

(a) the Lenders or the Lender's Representative on their behalf shall have entered into the Financing Agreements; and

(b) any encumbrances granted by the Company in accordance with this Article shall contain provisions pursuant to which the Lenders or the Lender's Representative on their behalf agrees unconditionally with the Company acting for itself and as trustee of the GoMP to release from such encumbrances all of the right, title and interest to Additional Compensation so as to enable the GoMP to claim its right of subrogation. For the purposes of this Article, Additional Compensation shall mean the compensation that the Company is entitled, whether actually or contingently, to receive from the GoMP as well as compensated by any person other than the GoMP for the same event; and

(c) the Lenders or the Lender's Representative on their behalf shall have agreed in writing to the provisions of Schedule – 6.

15.2.3. Article 15.1.5 does not apply to:

(a) liens or encumbrances arising by operation of law (or by an agreement evidencing the same) in the ordinary course of implementation of this Agreement by the Company;

(b) hypothecation and pledge of goods, the related documents of title and / or other related documents, arising or created in the ordinary course of supply of power by the Company; or

(c) security arising out of retention of title provisions in relation to goods acquired in the ordinary course of supply of power by the Company.

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GoMP
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ARTICLE - 16: MISCELLANEOUS PROVISIONS

16.1. Minimum Equity holding / Equity Lock-In

16.1.1. The minimum shareholding requirements specified in this Article shall apply to all of the promoters which have made equity investment in the Company. The Company confirms that is one of the promoters of the Company.

16.1.2. The aggregate equity share holding of the promoters in the issued and paid up equity share capital of the Company shall not be less than fifty-one percent (51%) from the Effective Date up to a period of two (2) years after COD of the Power Station ;

16.1.3. All shareholders of the Company shall be allowed to divest their equity as long as the promoters hold the minimum aggregate equity specified in Article 16.1.1.

16.2. Amendment

16.2.1. This Agreement may only be amended or supplemented by a written agreement between the Parties and after duly obtaining the approval of the Appropriate Commission, where necessary.

16.3. Waiver

16.3.1. No waiver by either Party of any default or breach by the other Party in the performance of any of the provisions of this Agreement shall be effective unless in writing duly executed by an authorised representative of such Party:

16.3.2. Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement nor time or other indulgence granted by one Party to the other Party shall act as a waiver of such breach or acceptance of any variation or the relinquishment of any such right or any other right under this Agreement, which shall remain in full force and effect.

16.4. Severability

The invalidity or enforceability, for any reason, of any part of this Agreement shall not prejudice or affect the validity or enforceability of the remainder of this Agreement, unless the part held invalid or unenforceable is fundamental to this Agreement.

16.5. Notices

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Energy Deptt.
GoMP
Govt. of M.P., Bhopal

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Jhabua Power Ltd.

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Vinod Kumar Jain
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16.5.1 All notices to be given under this Agreement shall be in writing and in the English Language and sent to the addresses designated for the purpose by the Parties.

16.5.2 All notices or communications given by facsimile shall be confirmed by sending a copy of the same via post office in an envelope properly addressed to the appropriate Party for delivery by registered mail. All Notices shall be deemed validly delivered upon receipt evidenced by an acknowledgement of the recipient, unless the Party delivering the notice can prove in case of delivery through the registered post that the recipient refused to acknowledge the receipt of the notice despite efforts of the postal authorities.

16.5.3 Any Party may by notice of at least fifteen (15) days to the other Parties change the address and / or addresses to which such notices and communications to it are to be delivered or mailed.

16.6 Language

16.6.1 All agreements, correspondence and communications between the Parties relating to this Agreement and all other documentation to be prepared and supplied under the Agreement shall be written in English, and the Agreement shall be construed and interpreted in accordance with English language.

16.6.2 If any of the agreements, correspondence, communications or documents are prepared in any language other than English, the English translation of such agreements, correspondence, communications or documents shall prevail in matters of interpretation.

16.7 Breach of Obligations

16.7.1 The Parties acknowledge that a breach of any of the obligations contained herein would result in injuries. The Parties further acknowledge that the amount of the liquidated damages or the method of calculating the liquidated damages specified in this Agreement is a genuine and reasonable pre-estimate of the damages that may be suffered by the non-defaulting party in each case specified under this Agreement

16.8 Fraudulent and Corrupt Practices

16.8.1 The Company and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the subsistence of this Agreement. Notwithstanding anything to the contrary contained in the Agreement, the GoMP may terminate the Agreement without being liable in any manner whatsoever to the Company, if it determines that the Company has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the negotiation process. In such an event, the GoMP shall forfeit the Contract Performance Guarantee, without prejudice to any other

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right or remedy that may be available to the GoMP hereunder or subsistence otherwise.

16.8.2 Without prejudice to the rights of the GoMP under this Article and the rights and remedies which the GoMP may have under this Agreement, if a the Company is found by the GoMP to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the negotiation process, or after the execution of the PPA, the GoMP may terminate the Agreement without being liable in any manner whatsoever to the Company. Further, in such an event, the GoMP shall forfeit the Contract Performance Guarantee.

16.8.3 Further, the Company shall not be eligible to participate in any tender or RFP issued by the GoMP during a period of two (2) years from the date such the Company is found by the GoMP to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practices, as the case may be.

16.8.4 For the purposes of this Article the following terms shall have the meaning hereinafter respectively assigned to them:

(a) **"corrupt practice"** means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the negotiation process (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of the GoMP who is or has been associated or dealt in any manner, directly or indirectly with the negotiation process or has dealt with matters concerning the PPA or arising there from, before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of the GoMP, shall be deemed to constitute influencing the actions of a person connected with the negotiation process); or (ii) engaging in any manner whatsoever, whether during the negotiation Process or after the execution of the PPA, as the case may be, any person in respect of any matter relating to the Power Station or the PPA, who at any time has been or is a legal, financial or technical adviser of the GoMP in relation to any matter concerning the Power Station;

(b) **"fraudulent practice"** means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the negotiation process;

(c) **"coercive practice"** means impairing or harming, or threatening to impair or harm, directly or indirectly, any person or property to influence any person's participation or action in the negotiation process;

(d) **"undesirable practice"** means (i) establishing contact with any person connected with or employed or engaged by the GoMP with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the negotiation process; or (ii) having a conflict of interest; and

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(e) **"restrictive practice"** means forming a cartel or arriving at any understanding or arrangement among prospective Companies with the objective of restricting or manipulating a full and fair competition in the negotiation process

16.9 Restriction of Shareholders/Owners Liability

16.9.1 Parties expressly agree and acknowledge that none of the shareholders of the Parties hereto shall be liable to the other Party for any of the contractual obligations of the concerned Party under this Agreement. Further, the financial liabilities of the shareholder/s of each Party to this Agreement shall be restricted to the extent provided in Section 426 of the Indian Companies Act, 1956.

16.10 Representations and Warranties

16.10.1 The Company hereby provides the Representation and Warranties to the GoMP as contained in Schedule –2.

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Energy Deptt.
GoMP
Govt. of M.P., Bhopal

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Vinod Kumar Jain
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IN WITNESS WHEREOF the Parties have executed these presents through their authorized representatives at Bhopal, Madhya Pradesh.

For and on behalf of: Government of Madhya Pradesh	For and on behalf of: M/s Jhabua Power Limited
..... Signature with seal Name ..... Designation ..MOHD..SULEMAN..... Secretary Address .....Govt. of Madhya Pradesh..... .....Energy Department.....	..... Signature with seal Name:, KN NEELKANT Designation: Chief operating officer Address:
Witness: 1. Rafeel Ahmed Dy Secy, Energy Deptt, GoMP 2 Neeraj Agrawal EE (Energy Deptt)	Witness: 1. ANAND MOHAN MISRA 2 A.N. Mishra.
For and on behalf of MP Power Trading Co. Ltd. as conforming party	
20/8/11 Name ..... Managing Director Designation M.P. Power Trading Co. Ltd. Address	Witness: 1. (A.B. BAJPAI) Chief General Manager (Commercial) M.P. Power Trading Co. Ltd. Jabalpur 2. (S. S. Agrawal)

Dy. Secretary
Secretary (Energy)
Energy Deptt.
GoMP
Govt. of M.P., Bhopal

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SCHEDULE – 1A: FORMAT OF THE INITIAL CONTRACT PERFORMANCE GUARANTEE

(To be on non-judicial stamp paper of appropriate value as per Stamp Act relevant to place of execution)

In consideration of the .....[*Insert name of the Company*] agreeing to undertake the obligations under the PPA and the GoMP, agreeing to execute the Agreement with the Company for purchase of power on long term basis ..... [*Insert name of the Bank*] (hereinafter referred to as "Guarantor Bank") hereby agrees unequivocally, irrevocably and unconditionally to pay to the GoMP at .....[*Insert address of GoMP*] forthwith on demand in writing from the GoMP or any officer authorized by it in this behalf, any amount up to and not exceeding Rupees ..... (Rs .....) [insert amount of BG computed on the basis of Rs. 3 lakhs /MW] only (with the respect to proposed Contracted Capacity as per the terms of PPA on behalf of the Company).

This guarantee shall be valid and binding on the Guarantor Bank up to and including .....[*Insert date of validity of CPG*] and shall in no event be terminable by notice or any change in the constitution of the Bank or the term of the PPA or by any other reasons whatsoever and our liability hereunder shall not be impaired or discharged by any extension of time or variations or alternations made, given, or agreed with or without our knowledge or consent, by or between parties to the respective agreement.

Our liability under this Guarantee is restricted to Rs. ..... (Rs. ..... only). Our Guarantee shall remain in force until ..... [*Insert the date of validity of the CPG*]. The GoMP shall be entitled to invoke this Guarantee up to thirty (30) days of the last date of the validity of this Guarantee by issuance of a written demand to invoke this guarantee.

The Guarantor Bank hereby expressly agrees that it shall not require any proof in addition to the written demand from the GoMP, made in any format, raised at the above mentioned address of the Guarantor Bank, in order to make the said payment to the GoMP .

The Guarantor Bank shall make payment hereunder on first demand without restriction or conditions and notwithstanding any objection by, ... [*Insert name of the Company*] and/ or any other person. The Guarantor Bank shall not require the GoMP to justify the invocation of this BANK GUARANTEE, nor shall the Guarantor Bank have any recourse against the GoMP in respect of any payment made hereunder.

Dy. Secretary
Secretary (Energy)
Energy Deptt.
GoMP
Govt. of M.P., Bhopal

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(Chief Operating Officer)
Jhabua Power Ltd.

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28.11.2024 10.53

This BANK GUARANTEE shall be interpreted in accordance with the laws of India and the courts at Jabalpur (M.P.)..... shall have exclusive jurisdiction..

The Guarantor Bank represents that this BANK GUARANTEE has been established in such form and with such content that it is fully enforceable in accordance with its terms as against the Guarantor Bank in the manner provided herein.

This BANK GUARANTEE shall not be affected in any manner by reason of merger, amalgamation, restructuring, liquidation, winding up, dissolution or any other change in the constitution of the Guarantor Bank.

This BANK GUARANTEE shall be a primary obligation of the Guarantor Bank and accordingly the GoMP shall not be obliged before enforcing this BANK GUARANTEE to take any action in any court or arbitral proceedings against the Company, to make any claim against or any demand on the Company or to give any notice to the Company or to enforce any security held by the GoMP or to exercise, levy or enforce any distress, diligence or other process against the Company.

The Guarantor Bank acknowledges that this BANK GUARANTEE is not personal to the GoMP and may be assigned, in whole or in part, (whether absolutely or by way of security) by the GoMP to any entity to whom it is entitled to assign its rights and obligations under the PPA.

The Guarantor Bank hereby agrees and acknowledges that the GoMP shall have a right to invoke this Bank Guarantee either in part or in full, as it may deem fit.

Notwithstanding anything contained hereinabove, our liability under this Guarantee is restricted to Rs. ..... crore (Rs. ..... crore only) and it shall remain in force until .....[Date to be inserted is twenty four (24) Months from the Effective Date and three (3) months thereafter], with an additional claim period of thirty (30) days thereafter. This BANK GUARANTEE shall be extended from time to time for such period, as may be desired by ..... [Insert name of the Company]. We are liable to pay the guaranteed amount or any part thereof under this Bank Guarantee only if the GoMP serves upon us a written claim or demand.

In witness whereof the Bank, through its authorized officer, has set its hand and stamp on this ..... day of ..... at .....

.....

Signature:

Dy. Secretary
Secretary (Energy)
Energy Deptt.
GoMP
Govt. of M.P., Bhopal

MP Tradeco

(Chief Operating Officer)
Jhabua Power Ltd.

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Signature Not Verified
Vinod Kumar Jain
28.11.2024 10.53

Name: .....

Designation with Bank Stamp .....

Attorney as per power of attorney No. .....

For:

..... [*Insert Name of the Bank*]

Full Address:

Dated this ..... day of ..... 20.....

Witness:

1. .....

Signature

Name and Address: .....

2. .....

Signature

Name and Address: .....

* *12 months period would be applicable for the companies with whom Implementation Agreement has been signed before December'2010 and for the other companies 24 months time would be applicable,*

[Note: The Stamp Paper should be in the name of the Executing Bank.]

Dy. Secretary
Secretary (Energy)
Energy Deptt.
Govt. of M.P., Bhopal

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(Chief Operating Officer)
Jhabua Power Ltd.

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Vinod Kumar Jain
28.11.2024 10.53

SCHEDULE – 1B: FORMAT OF THE CONTRACT PERFORMANCE GUARANTEE

(To be on non-judicial stamp paper of appropriate value as per Stamp Act relevant to place of execution)

In consideration of the **M/s SEW Thermal Power Corporation Limited** agreeing to undertake the obligations under the PPA and the GoMP, agreeing to execute the Agreement with the Company for purchase of power on long term basis ..... [*Insert name of the Bank*] (hereinafter referred to as "Guarantor Bank") hereby agrees unequivocally, irrevocably and unconditionally to pay to the GoMP at .....[*Insert address of GoMP*] forthwith on demand in writing from the GoMP or any officer authorized by it in this behalf, any amount up to and not exceeding Rupees ..... (Rs .....) [insert amount of BG computed on the basis of Rs. 7.5 lakhs /MW] only (with the respect to proposed Contracted Capacity as per the terms of PPA on behalf of the Company).

This guarantee shall be valid and binding on the Guarantor Bank up to and including .....[*Insert date of validity of CPG*] and shall in no event be terminable by notice or any change in the constitution of the Bank or the term of the PPA or by any other reasons whatsoever and our liability hereunder shall not be impaired or discharged by any extension of time or variations or alternations made, given, or agreed with or without our knowledge or consent, by or between parties to the respective agreement.

Our liability under this Guarantee is restricted to Rs. ..... (Rs. ..... only). Our Guarantee shall remain in force until ..... [*Insert the date of validity of the CPG*]. The GoMP shall be entitled to invoke this Guarantee up to thirty (30) days of the last date of the validity of this Guarantee by issuance of a written demand to invoke this guarantee.

The Guarantor Bank hereby expressly agrees that it shall not require any proof in addition to the written demand from the GoMP, made in any format, raised at the above mentioned address of the Guarantor Bank, in order to make the said payment to the GoMP .

The Guarantor Bank shall make payment hereunder on first demand without restriction or conditions and notwithstanding any objection by, ... [*Insert name of the Company*] and/ or any other person. The Guarantor Bank shall not require the GoMP to justify the invocation of this BANK GUARANTEE, nor shall the Guarantor Bank have any recourse against the GoMP in respect of any payment made hereunder.

Dy. Secretary
Secretary (Energy)
Energy Dept.
GoMP
Govt. of M.P., Bhopal

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This BANK GUARANTEE shall be interpreted in accordance with the laws of India and the courts at Jabalpur (M.P.)..... shall have exclusive jurisdiction..

The Guarantor Bank represents that this BANK GUARANTEE has been established in such form and with such content that it is fully enforceable in accordance with its terms as against the Guarantor Bank in the manner provided herein.

This BANK GUARANTEE shall not be affected in any manner by reason of merger, amalgamation, restructuring, liquidation, winding up, dissolution or any other change in the constitution of the Guarantor Bank.

This BANK GUARANTEE shall be a primary obligation of the Guarantor Bank and accordingly the GoMP shall not be obliged before enforcing this BANK GUARANTEE to take any action in any court or arbitral proceedings against the Company, to make any claim against or any demand on the Company or to give any notice to the Company or to enforce any security held by the GoMP or to exercise, levy or enforce any distress, diligence or other process against the Company.

The Guarantor Bank acknowledges that this BANK GUARANTEE is not personal to the GoMP and may be assigned, in whole or in part, (whether absolutely or by way of security) by the GoMP to any entity to whom it is entitled to assign its rights and obligations under the PPA.

The Guarantor Bank hereby agrees and acknowledges that the GoMP shall have a right to invoke this Bank Guarantee either in part or in full, as it may deem fit.

Notwithstanding anything contained hereinabove, our liability under this Guarantee is restricted to Rs. ..... crore (Rs. ..... crore only) and it shall remain in force until .....[Date to be inserted is three (3) months after the Scheduled COD], with an additional claim period of thirty (30) days thereafter. This BANK GUARANTEE shall be extended from time to time for such period, as may be desired by ..... [Insert name of the Company]. We are liable to pay the guaranteed amount or any part thereof under this Bank Guarantee only if the GoMP serves upon us a written claim or demand.

In witness whereof the Bank, through its authorized officer, has set its hand and stamp on this ..... day of ..... at .....

.....

Signature:

Dy. Secretary
Secretary (Energy)
Energy Deptt.
GoMP
Govt. of M.P., Bhopal

MP Tradeco

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(Chief Operating Officer)
Jhabua Power Ltd.

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Vinod Kumar Jain
28.11.2024 10.53

Name: .....

Designation with Bank Stamp .....

Attorney as per power of attorney No. .....

For:

..... [*Insert Name of the Bank*]

Full Address:

Dated this ..... day of ..... 20.....

Witness:

1. .....

Signature

Name and Address: .....

2. .....

Signature

Name and Address: .....

[Note: The Stamp Paper should be in the name of the Executing Bank.]

Dy. Secretary
Secretary (Energy)
Energy Deptt.
GoMP
Govt. of M.P., Bhopal

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Jhabua Power Ltd.

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Vinod Kumar Jain
28.11.2024 10.53

SCHEDULE - 2: REPRESENTATION AND WARRANTIES OF THE COMPANY

1.1.1. The Company hereby represents and warrants to and agrees with the GoMP as follows and acknowledges and confirms that the GoMP is relying on such representations and warranties in connection with the transactions described in this Agreement:

(i) The Company has all requisite power authorizing and has been duly authorized to execute and consummate this Agreement;

(ii) This Agreement is enforceable against the Company in accordance with its terms;

(iii) The consummation of the transactions contemplated by this Agreement on the part of the Company will not violate any provision of, nor constitute a default under, nor give rise to a power to cancel any charter, mortgage, deed of trust or lien, lease, agreement, license, permit, evidence of indebtedness, restriction, or other contract to which the Company is a party or to which the Company is bound which violation, default or power has not been waived;

(iv) The Company is not insolvent and no insolvency proceedings have been instituted, or not threatened or pending by or against the Company;

(v) There are no actions, suits, claims, proceedings or investigations pending or, to the best of the Company's knowledge, threatened in writing against the Company at law, in equity, or otherwise, and whether civil or criminal in nature, before or by, any court, commission, arbitrator or governmental agency or authority, and there are no outstanding judgments, decrees or orders of any such courts, commission, arbitrator or governmental agencies or authorities, which materially adversely affect its ability to execute the project or supply power or to comply with its obligations under this Agreement.

(vi) The Company has neither made any statement nor provided any information, which was materially inaccurate or misleading at the time when such statement was made or information was provided. Further, all the confirmations, undertakings, declarations and representations made are true and accurate and there is no breach of the same.

The Company makes all the representations and warranties above to be valid as on the date of this Agreement.

Dy. Secretary
Secretary (Energy)
Energy Deptt.
GoMP
Govt. of M.P., Bhopal

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Jhabua Power Ltd.

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Vinod Kumar Jain
28.11.2024 10.53

SCHEDULE - 3: TECHNICAL LIMIT AND CONTRACTED PERFORMANCE PARAMETERS

S No.	Description		Unit	Particulars
1.1.	**Grid Conditions at Delivery Point:**			
(i)	Voltage:	Nominal	kV	[400]
		Variation	%	[(±) 3% to (-) 5%]
(ii)	Frequency :	Nominal	Hz.	[50]
		Variation	%	[(+) 3% to (-) 5%]
(iii)	Combined Voltage and Frequency variation for Contracted Capacity		%	[5]
(iv)	Power Factor:	Nominal		[0.85] lag
		Variation		[0.85] to [0.95] lag lead
(v)	Basic Impulse Level (Peak)		kVp	[1425]
1.2.	**Fault Levels:**			
(i)	3 Phase	Maximum	kA	[50]
(ii)	Clearance time	Maximum	ms	[100]

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1.3. Ramp Rates

All Units of the Power Station shall be capable of increasing or decreasing their output (generation level) by not less than one percent (1%) per minute. Such capability shall be demonstrated during the Unit load of more than 60%.

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SCHEDULE - 4: FORMAT OF LETTER OF CREDIT

[To be finalized between the Parties atleast six (6) months before Scheduled CoD or Revised Scheduled CoD, as the case may be]

SCHEDULE - 5: INDEPENDENT ENGINEERS

NOT REQUIRED

Dy. Secretary
Secretary (Energy)
Energy Deptt.
Govt. of M.P., Bhopal

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SCHEDULE – 6: SUBSTITUTION RIGHTS OF THE LENDERS

1. Substitution of the Company

1.1. Subject to the terms of the PPA, upon occurrence of a Company Event of Default under the PPA, the Lenders shall, have the right to seek substitution of the Company by a Selectee for the residual period of the PPA, for the purposes of securing the payments of the Total Debt Amount from the Company and performing the obligations of the Company, in accordance with the provisions of this Schedule.

1.2. The Lenders may seek to exercise right of substitution by an amendment or novation of the PPA and other Power Station Documents executed between GoMP and the Company in favour of the Selectee, the GoMP and the Company shall cooperate with the Lenders to carry out such substitution.

2. GoMP Notice of Default

2.1. The GoMP, upon serving the Preliminary Default Notice on the Company as per this PPA, shall simultaneously also issue a copy of the same to the Lenders.

3. Substitution Notice

3.1. In the event of failure of the Company to rectify the Company Event of Default giving rise to Preliminary Default Notice and on receipt of a copy of the Termination Notice by the GoMP, the Lenders, either on their own or through its representative (the "") shall be entitled to notify the GoMP and the Company of the **Lenders' Representative** intention of the Lenders to substitute the Company by the Selectee for the residual period of the PPA (the "**Substitution Notice**").

4. Interim operation of Power Station

4.1. On receipt of a Substitution Notice, no further action shall be taken by any Party to terminate the PPA, except under and in accordance with the terms of this Schedule of this PPA.

4.2. On issue of a Substitution Notice, the Lenders shall have the right to request the GoMP to enter upon and takeover the Power Station for the interim and till the substitution of the Selectee is complete and to otherwise take all such steps as are necessary for the continued operation and maintenance of the Power Station, including levy, collection and appropriation of payments thereunder, subject to, the servicing of monies owed in respect of the Total Debt Amount as per the Financing Agreements and the Company shall completely cooperate in any such takeover of the Power Station by the GoMP. If the GoMP, at its sole and exclusive discretion agree to enter upon and takeover the Power Station, till substitution of

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the Selectee in accordance with this PPA, then the GoMP shall be compensated for rendering such services in accordance with Clause 9.4 of this Schedule.

4.3. If the GoMP refuses to takeover the Power Station on request by the Lenders in accordance with Clause 4.2 above, the Company shall have the duty and obligation to continue to operate the Power Station in accordance with the PPA till such time as the Selectee is finally substituted.

4.4. The Lenders and the GoMP shall, simultaneously have the right to commence the process of substitution of the Company by the Selectee in accordance with these terms and the Company hereby irrevocably consents to the same.

5. Process of Substitution of Company

5.1. The Lenders' Representative may, on delivery of a Substitution Notice notify the GoMP and the Company on behalf of all the Lenders about the Lenders' decision to invite and negotiate, at the cost of the Lenders, offers from third parties to act as Selectee, either through private negotiations or public auction and / or a tender process, for the residual period of the PPA. Subject to and upon approval of the GoMP, such Selectee shall be entitled to receive all the rights of the Company and shall undertake all the obligations of the Company under the PPA and other Power Station Documents executed between the Company and the GoMP, in accordance with these terms of substitution.

5.2. The Lenders and the Company shall ensure that, upon the GoMP approving the Selectee, the Company shall transfer absolutely and irrevocably, the ownership of the Power Station to such Selectee simultaneously with the amendment or novation of the PPA and other Power Station Documents executed between the Company and the GoMP in favour of the Selectee as mentioned in Clause 1.2 of this Schedule.

6. Modality for Substitution

Criteria for selection of the Selectee

6.1. The Lenders and / or the Lenders' Representative shall in addition to any other criteria that they may deem fit and necessary, apply the following criteria in the selection of the Selectee:

(a) if the Company is proposed to be substituted prior to the Scheduled COD or the Selectee shall possess the financial capability used to qualify bidders in the MoU stage (including the methodology prescribed therein) to perform and discharge all the residual duties, obligations and liabilities of the Company under the PPA. If the Company is proposed to be substituted during the Operation Period, these criteria shall not be applicable.

(b) the Selectee shall have the capability and shall unconditionally consent to assume the liability for the payment and discharge of dues, if any, of the

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Company to the GoMP under and in accordance with the PPA and also payment of the Total Debt Amount to the Lenders upon terms and conditions as agreed to between the Selectee and the Lenders;

(c) the Selectee shall have not been in breach of any agreement between the Selectee and any Bank or any Lender or between the Selectee and the GoMP, involving sums greater than Rupees ..... (Rs ....) [Insert amount] at any time in the last two (2) years as on the date of the Substitution Notice to the Company.

(d) any other appropriate criteria, whereby continuity in the performance of the Selectee's obligations under the PPA is maintained and the security in favour of the Lenders under the Financing Agreements is preserved.

7. Modalities

7.1. The following modalities shall be applicable to any substitution of the Company by the Selectee pursuant to this PPA:

7.2. The Lenders' Representative shall on behalf of the Lenders propose to the GoMP (the "Proposal") pursuant to Clause 7.3 below, the name of the Selectee for acceptance, seeking:

(a) grant of all the rights and obligations under the PPA and the other Power Station Documents executed between the GoMP and the Company, to the Selectee (as substitute for the Company);

(b) amendment of the PPA and the other Power Station Documents executed between the GoMP and the Company, to the effect that the aforementioned grant to the Selectee, shall be such that the rights and obligations assumed by the Selectee are on the same terms and conditions for the residual period of the PPA as existed in respect of the Company under the original PPA and the other Power Station Documents executed between the GoMP and the Company; and

(c) the execution of new agreements as necessary, by the proposed Selectee for the residual period of the PPA on the same terms and conditions as are included in this PPA.

7.3. The Proposal shall contain the particulars and information in respect of the Selectee and the data and information as the GoMP may reasonably require. The GoMP may intimate any additional requirement within thirty (30) days of the date of receipt of the Proposal.

7.4. The Proposal shall be accompanied by an unconditional undertaking by the Selectee that it shall, upon approval by the GoMP of the Proposal:

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(a) observe, comply, perform and fulfill the terms, conditions and covenants of the PPA and all other Power Station Documents executed between Company and the GoMP or a new PPA or respective RFP Document (in the case of the novation thereof), which according to the terms therein are required to be observed, complied with, performed and fulfilled by the Company, as if such Selectee was the Company originally named under the PPA; or the respective RFP Document; and

(b) be liable for and shall assume, discharge and pay the Total Debt Amount or then outstanding dues to the Lenders under and in accordance with the Financing Agreements or in any other manner agreed to by the Lenders and the GoMP as if such Selectee was the Company originally named under such Financing Agreements.

7.5. At any time prior to taking a decision in respect of the Proposal received under Clause 7.2, the GoMP may require the Lender/ Lenders' Representative to satisfy it as to the eligibility of the Selectee. The decision of the GoMP as to acceptance or rejection of the Selectee, shall be made reasonably and when made shall be final, conclusive and binding on the Parties.

7.6. The GoMP shall convey their approval or disapproval of such Proposal to the Selectee. Such decision shall be made by the GoMP at their reasonably exercised discretion within twenty one (21) days of:

(b) the date of receipt of the Proposal by the GoMP; or

(a) the date when the last of further and other information and clarifications in respect of any data, particulars or information included in the Proposal requested by the GoMP under Clause 7.3 above is received;

whichever is later.

Notwithstanding anything to the contrary mentioned in this PPA, the approval of the GoMP for the Selectee shall not be withheld in case the Selectee meets the criteria mentioned in Clause 6.1.

7.7. Upon approval of the Proposal and the Selectee by the GoMP, the Selectee mentioned in the Proposal shall become the Selectee hereunder.

7.8. Following the rejection of a Proposal, the Lenders and/ or the Lenders' Representative shall have the right to submit a fresh Proposal, proposing another Selectee (if the rejection was on the grounds of an inappropriate third party proposed as Selectee) within sixty (60) days of receipt of communication regarding rejection of the Selectee previously proposed. The provisions of this article shall apply mutatis mutandis to such fresh Proposal.

7.9. The substitution of the Company by the Selectee shall be deemed to be complete upon the Selectee executing all necessary documents and writings with or in favour

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of the Company, the GoMP and the Lenders so as to give full effect to the terms and conditions of the substitution, subject to which the Selectee has been accepted by the Lenders and the GoMP and upon transfer of ownership and complete possession of the Power Station by the GoMP or the Company, as the case may be, to the Selectee. The GoMP shall novate all the Power Station Documents, which they had entered in to with the Company in order to make the substitution of the Company by the Selectee effective. The quantum and manner of payment of the consideration payable by the Selectee to the Company towards purchase of the Power Station and assumption of all the rights and obligations of the Company under the PPA and other Power Station Documents as mentioned in this PPA shall be entirely between the Company, Selectee and the Lenders and the GoMP shall in no way be responsible to bear the same.

7.10. Upon the substitution becoming effective pursuant to Clause 7.9 above, all the rights of the Company under the PPA shall cease to exist:

Provided that, nothing contained in this sub-article shall prejudice any pending / subsisting claims of the Company against the GoMP or any claim of the GoMP against the erstwhile Company or the Selectee.

7.11. The Selectee shall, subject to the terms and conditions of the substitution, have a period of ninety (90) Days to rectify any breach and/ or default of the Company subsisting on the date of substitution and required to be rectified and shall incur the liability or consequence on account of any previous breach and/ or default of the Company.

7.12. The decision of the Lenders and the GoMP in the selection of the Selectee shall be final and binding on the Company and shall be deemed to have been made with the concurrence of the Company. The Company expressly waives all rights to object or to challenge such selection and appointment of the Selectee on any ground whatsoever.

7.13. The Lenders shall be solely and exclusively responsible for obtaining any and all consents/ approvals or cooperation, which may be required to be obtained from the Company under this PPA and the GoMP shall not be liable for the same.

7.14. All actions of the Lenders' Representative hereunder shall be deemed to be on behalf of the Lenders and shall be binding upon them. The Lenders' Representative shall be authorised to receive payment of compensation and any other payments, including the consideration for transfer, if any, in accordance with the Proposal and the Financing Agreements and shall be bound to give valid discharge on behalf of all the Lenders.

8. Company's Waiver

8.1. The Company irrevocably agrees and consents (to the extent to which applicable law may require such consent) to any actions of the Lenders, the Lender's Representative and the GoMP or exercise of their rights under and in accordance with these terms.

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8.2. The Company irrevocably agrees and consents (to the extent to which applicable law may require such consents) that from the date specified in Clause 7.10, it shall cease to have any rights under the PPA or the Financing Agreements other than those expressly stated therein.

8.3. The Company warrants and covenants that any agreement entered into by the Company, in relation to the Power Station, shall include a legally enforceable clause providing for automatic novation of such agreement in favour of the Selectee, at the option of the Lenders or the GoMP. The Company further warrants and covenants that, in respect of any agreements which have already been executed in relation to the Power Station and which lack a legally enforceable clause providing for automatic novation of such agreement, the Company shall procure an amendment in the concluded agreement to incorporate such clause.

9. Interim Protection Of Service And Preservation Of Security

Appointment of a Receiver

9.1. In every case of the Lenders issuing a Substitution Notice and the GoMP refusing to takeover the Power Station and the Company failing to operate the Power Station in accordance with Clause 4.3 and the GoMP not electing to act as Receiver as per Clause 9.2 hereof, the Lenders may institute protective legal proceedings for appointment of a receiver (the "Receiver") to maintain, preserve and protect the assets held as security by the Lenders if such right is granted under the terms of the Financing Agreements.

9.2. If the assets of the Power Station are, in the opinion of the GoMP, necessary and required for the operation and maintenance of the Power Station, the GoMP shall be entitled to elect to act as the Receiver for the purposes of this Article and be entitled to maintain, preserve and protect the said assets by engaging an operator/service provider to act on their behalf and the Lenders and Company hereby consent and agree to the same. Upon the GoMP so intimating the Company and the Lender's representative their desire to act as Receiver, the Company and the Lender's representative shall co-operate with the GoMP to facilitate the same.

9.3. Upon appointment of the Court appointed Receiver or the GoMP acting as Receiver, all the Receivables received by such Receiver shall be deposited by the Receiver in the bank account jointly designated by the GoMP and the Lenders. The Receiver shall be responsible for protecting the assets in receivership and shall render a true and proper account of the receivership to the Lenders in accordance with the terms of its appointment.

9.4. When acting as a Receiver or operator in accordance with Clauses 9 or 4.2, the GoMP shall be entitled to be remunerated for such services as may be determined by the Appropriate Commission. Furthermore, when acting as a Receiver, the GoMP shall not be liable to the Lenders, the Lenders' Representative, Company or any third party for any default under the PPA, damage or loss to the Power Station or for any other reason whatsoever, except for wilful default of the GoMP.

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10. Substitution Consideration

10.1. The Lenders and GoMP shall be entitled to appropriate any consideration received for the substitution of the Company as hereinabove provided, from the Selectee towards the payment of Lenders' and the GoMP' respective dues, to the exclusion of the Company.

10.2. The Company shall be deemed to have nominated, constitutes and appoints the Lenders' Representative as its constituted attorney for doing all acts, deeds and things as may be required to be done for the substitution of the Company by the Selectee pursuant to these terms.

11. Change in the Lenders

11.1. The Parties hereto acknowledge that during the subsistence of the PPA, it is possible that any Lender may cease to remain as a Lender by reason of repayment of the debt or otherwise. Further it may possible that any Lender may be substituted or a new Lender may be added. In the event of any Lender ceasing to be a party to the PPA or Financing Agreements respectively, the term and conditions as prescribed in this Schedule shall cease to automatically apply to such Lender. Further, upon any entity being added as a Lender and in the event such entity is given the right to substitute the Company under the Financing Agreements and then the contents of this Schedule shall be applicable to the exercise of such right by the said new entity.

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Annexure II

IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH

KOLKATA

I.A. (IB) No. 586/KB/2021

in

C.P. (IB) No. 634/KB/2017

In the matter of:

An application under section 30(6) read with section 31(1) of the Insolvency and Bankruptcy Code, 2016.

And

In the matter of:

Flsmidth Private Limited

… Operational Creditor

Versus

Jhabua Power Limited

… Corporate Debtor

And

I.A. (IB) No. 586/KB/2021

In the matter of :

Abhilash Lal

Resolution Professional of Jhabua Power Limited

… Applicant

Coram:

Shri Rohit Kapoor, Member (Judicial)

Shri Harish Chander Suri, Member (Technical)

Appearances (via hybrid mode)

For the Resolution Professional : 1. Mr. Ratnanko Banerji, Senior Advocate

2. Ms. Mamta Binani, Advocate

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3. Ms. Anindita Roy Chowdhury, Advocate
4. Mr. Rohit Sharma, PCS
5. Mr. Raghav Chadha, Advocate
6. Mr. Avinansh Subramaniam, Advocate
7. Mr. Kanishk Kejriwal, Advocate
8. Mr. Abhilash Lal, Resolution Professional

For the CoC : 1. Mr. Joy Saha, Senior Advocate

For NTPC : 1. Mr. Ramji Srinivasan, Senior Advocate

Date of hearing: 20 April 2022

Order pronounced on: 06 July 2022

ORDER

Per: Rohit Kapoor, Member (Judicial)

1. This Court convened through video conferencing.

2. **IA (IB) No. 586/KB/2021** is an application under section 30(6) of the Insolvency and Bankruptcy Code, 2016 ("Code") read with regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (**"CIRP Regulation"**), filed by Mr. Abhilash Lal, Resolution Professional ("**RP**") of Jhabua Power Limited ("**Corporate Debtor**") (CIN: U40105WB1995PLC068616), for approval of the Resolution Plan in respect of the Corporate Debtor.

3. The underlying Company Petition in CP (IB) No. 634/KB/2017 was filed by Flsmidth Private Limited against the Corporate Debtor, under section 9 of the Code, which was admitted *vide* order dated 27.03.2019. Initially, Ms. Sonu Jain was appointed as the Interim Resolution Professional ("IRP"). The Applicant herein, Mr. Abhilash Lal (IBBI

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Reg. No. IBBI/IPA-001/ IP-P00344/2017-2018/10645) was appointed as the Resolution Professional of the Corporate Debtor at the first meeting of the Committee of Creditors on 26.06.2019.

4. Initially, Ms. Sonu Jain was appointed as the Interim Resolution Professional. The Applicant herein, Mr. Abhilash Lal (IBBI Reg. No. IBBI/IPA-001/ IP-P00344/2017-2018/10645) was appointed as the Resolution Professional of the Corporate Debtor at the first meeting of the Committee of Creditors on 26.06.2019.

5. The IRP made public announcement on 01.04.2019 in two newspapers i.e. the Economic Times (English daily) having circulation in Ahmedabad, Bengaluru, Bhubaneshwar, Chandigarh, Chennai, Delhi, Goa, Hyderabad, Jaipur, Kochi, Kolkata, Lucknow, Madhya Pradesh, Mumbai, Nagpur, Patna, Pune, Ranchi and in Dainik Statesman (Bengali daily) having circulation in West Bengal regarding initiation of Corporate Insolvency Resolution Process [hereinafter referred to as **"CIRP"**] and called proof of claims from the financial and operational creditors, workers and employees of the Company in the specified forms till 10.04.2019.

6. The Applicant states that a total of 16 CoC meetings have been held du ring CIRP period, as follows

Particulars	Date of CoC Meetings
1st CoC Meeting	26.06.2019
2nd CoC Meeting	09.08.2019
3rd CoC Meeting	16.09.2019
4th CoC Meeting	11.11.2019
5th CoC Meeting	10.12.2019
6th CoC Meeting	10.01.2020
7th CoC Meeting	24.01.2020
8th CoC Meeting	05.05.2020
9th CoC Meeting	17.10.2020
10th CoC Meeting	29.10.2020

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11th CoC Meeting	21.12.2020
12th CoC Meeting	05.03.2021
13th CoC Meeting	24.03.2021
14th CoC Meeting	21.04.2021
15th CoC Meeting	15.06.2021
16th CoC Meeting	26.06.2021

7. The Applicant submits that in terms of the provisions of Section 25(2)(h) of the Code read with regulation 36A(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, invitation in Form 'G' for Expressions of Interest [hereinafter referred to as "EoI"] from potential resolution applicants was issued on 19.08.2019 for submission of resolution plans for the Corporate Debtor by 03.09.2019. This was published in Economic Times (English), Kolkata edition, Bartaman Patrika (Bengali), Kolkata edition and Navbharat Times (Hindi) Delhi Edition newspapers on 19.08.2019. The notice was also published on the website of the Insolvency and Bankruptcy Board of India [hereinafter referred to as "IBBI"]. Subsequently, an extension of EOI was issued by the RP on 30.08.2019 whereby the last date for submission of EOI was extended upto 09.09.2019, and 30.12.2019 as the last date for submission of the Resolution Plan.

8. The Applicant/RP submits that in response to the invitation for EoI, upto the last date, i.e., 09.09.2019, 10 EoIs were received. On 01.10.2019, the Applicant / RP shared the Request for Resolution Plan ("RFRP"), Information Memorandum and the evaluation matrix with all the prospective resolution applicants. However, up till the last date of submissions of resolution plan i.e., till 30.12.2019, out of the 10 prospective resolution applicants only 2 resolution applicants i.e. NTPC Limited and Adani Power Limited submitted their Resolution Plans.

9. The Resolution Plan submitted by NTPC Limited and Adani Power Limited was present by the RP and put up for discussion in the 7th CoC meeting held on 24.01.2020. After series of negotiations between the

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two resolution applicants and the CoC of the Corporate Debtor, the resolution applicant namely Adani Power Limited communicated to the RP vide email dated 20.01.2021 that it would like to withdraw its EOI and requested the RP for refund of its Proposal Performance Guarantee. Consequently, pursuant to the negotiations between the CoC and NTPC Limited, the plan dated 16.04.2021 submitted by NTPC Limited was put up for discussion and voting in the 16th CoC meeting dated 26.06.2021. The resolution plan submitted by NTPC Limited was voted in favor by 100% vote percentage of the CoC. Copies of minutes of 16th CoC meeting as well as e-voting results are annexed to the application as Annexure H at pages 351 to 353, Vol – II.

10. Upon receipt of the approval from the CoC, the Applicant / RP issued a Letter of Intent ("LOI") to the successful resolution applicant (RA) on 26.06.2021. A copy of the said LOI is annexed to the application as Annexure J at pages 369 to 371, Vol – II.

11. The RA has provided Performance Security of Rs. 100,00,00,000 (Rupees One Hundred Crores Only) by way of Proposal Performance Guarantee dated 28.06.2021. A copy of the said Performance Security is annexed to the application as Annexure K at pages 372 to 377, Vol – II.

12. The Applicant / RP submits details of various compliances as envisaged within the Code and the CIRP Regulations which requires a Resolution Plan to adhere to, which is reproduced hereunder:

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13. Submission of Resolution Plan in terms of sub-Section (2) of Section 30 of the Code (as amended vide Amendment dated 16 August 2019):

Clause of S.30(2)	Requirement	How dealt with in the Resolution Plan
(a)	Plan must provide for payment of CIRP cost in priority to repayment of other debts of CD in the manner specified by the Board.	Page 40 - Clause 7 of the Resolution Plan, Page 46 - Clause 9.2.2(f) of the Resolution Plan, and Page 51 - Clause 9.4 of the Resolution Plan
(b)	Plan must provide for repayment of debts of OCs in such manner as may be specified by the Board which shall not be less than the amount payable to them in the event of liquidation u/s 53; or Plan must provide for repayment of debts of OCs in such manner as may be specified by the Board which shall not be not less than amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-Section (1) of Section 53, whichever is higher and provides for payment of debts of financial creditors who do not vote in favour of the resolution plan, in such manner as may be specified by the Board.	Page 40 - Clause 7 of the Resolution Plan, Page 47- Clause 9.2.3 of the Resolution Plan, Page 51- Clause 9.4 of the Resolution Plan Page 47- Clause 9.2.2(l) of the Resolution Plan Page 51 - Clause 9.4 of the Resolution Plan
(c)	Management of the affairs of the Corporate Debtor after approval of the Resolution Plan.	Page 29 - Clause 5.2.1 of the Resolution Plan and Page 32 - Clause 5.2.2 of the Resolution Plan
(d)	Implementation and Supervision.	Page 29- Clause 5.2.1 of the Resolution Plan, Page 33 - Clause 5.3 of the Resolution Plan
(e)	Plan does not contravene any of the provisions of the law for the time being in force.	Clause 15(d) of the Resolution Plan
(f)	Conforms to such other requirements as may be specified by the Board.	-------

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14. Regulation 38 of CIRP Regulations:

Reference to relevant Regulation	Requirement	How dealt with in the Plan
38(1)	The amount due to the operational creditors under a resolution plan shall be given priority in payment over financial creditors.	Clause 7 at Page 40 and Clause 9.4 at Page 51 of the Resolution Plan.
38(1A)	A resolution plan shall include a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors of the corporate debtor.	Clause 9.2.1 at Page 45 of the Resolution Plan.
38(1B)	A resolution plan shall include a statement giving details if the resolution applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past.	Clause 15(h) at Page 66 of the Resolution Plan.
38(2)	A resolution plan shall provide: (a) the term of the plan and its implementation schedule;	Clause 5.3.1 at Page 33 and Clause 5.3.2 at Page 37 of the Resolution Plan.
	(b) the management and control of the business of the corporate debtor during its term; and	Clause 5.2.1(a) (ii) Page 29, Clause 5.2.2(ii) Page 32, of the Resolution Plan.
	(c) adequate means for supervising its implementation.	Clause 5.2.1 (ii) Page 29, Clause 5.3 Page 33, of the Resolution Plan.
38(3)	A resolution plan shall demonstrate that – (a) it addresses the cause of default;	Clause 3.1 at Page 14 of the Resolution Plan.
	(b) it is feasible and viable;	Clause 4.3.4 at Page 28 of the Resolution Plan.
	(c) it has provisions for its effective implementation;	Clause 5.3 at Page 33 of the Resolution Plan.
	(d) it has provisions for approvals required and the timeline for the same; and	Clause 5.1 at Page 28 and Clause 12.1.3 at Page 61 of the Resolution Plan.
	(e) the Resolution Applicant has the capability to implement the resolution plan.	Clause 2.1 at Page 9 and Clause 2.5 at Page 10 of the Resolution Plan.

15. The Applicant submits the relevant information with regard to the amount claimed, amount admitted, and the amount proposed to be paid

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by the Resolution Applicant. i.e., NTPC Limited under the said Resolution Plan is tabulated as under:

S.No.	Creditor	Amount Claimed (in Rs.)	Amount Admitted (in Rs.)	Amount proposed in Resolution Plan (in Rs.)
1.	Financial Creditors	50,68,53,05,043/-	50,66,90,88,284/-	18,29,87,83,700/-
2.	Operational Creditors	6,84,49,64,235/-	1,07,18,07,556/-	20,13,16,300/-
3.	CIRP Cost			As per actuals

16. Summary of the financial proposal/payment under the Resolution Plan dated 14.06.2021 of M/S NTPC Limited is tabulated hereunder:

Creditor	INR (Cr)	Remarks
Unpaid CIRP Costs	Actuals	Payable in cash in priority to all other creditors of the CD and to be adjusted from the payout to the Secured Financial Creditors
Secured Financial Creditors	1,830	
	905	Upfront payment made in cash on Transfer date**
	600	Total face value of NCD issued on settlement of debt on Transfer date
	325	Total face value of equity shares issued on settlement of debt on Transfer date
Unsecured Financial Creditors	Nil	
Operational Creditors	20	Payable in cash
Unpaid Employee & Workmen	Actuals	Payable in cash in priority to all other creditors of the CD
Total Payouts	1,850	
Fund Infusion	576	3 years from transfer date for Capex work

** Transfer Date - The Date payouts are made (within 90 days of approval date) in terms of the Resolution Plan.

*If there are sub-categories in a category, please add rows for each sub-category.

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Amount provided over time under the Resolution Plan and includes estimated value of non-cash components. It is not NPV.]

17. The Resolution Plan defines "Approval Date" or "Date of Approval" as the date on which the Adjudicating Authority approves this Resolution Plan under the provisions of the Code and CIRP Regulations.

Details on Management/Implementation and Reliefs as per the Resolution Plan

18. The Resolution Plan also provides for –

a. Management of Company after resolution in Clause 5.2.1 and Clause 5.2.2 of the Resolution Plan

b. Term of the resolution plan in Clause 5.3.1 of the Resolution Plan.; and

c. Implementation and Supervision of the resolution plan in Clause 6.8.

19. Relinquishment/Waiver of liabilities

Sl.No.	Relief and/or Concessions Sought	Orders Thereon
1.	No action by Financial Creditors: Pending the occurrence of the Transfer Date, no Financial Creditor shall take, initiate or continue any steps or proceedings against the Company or its assets (whether by way of demand, legal proceedings, alternative determination process including arbitration/expert determination process, the levying of distress, execution of judgment or otherwise) in any jurisdiction whatsoever for the purpose of obtaining payment of any liability, or for the purpose of placing the Company into liquidation or any analogous proceedings.	Granted in terms of the ***Ghanashyam Mishra and Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd,***[1] wherein the Hon'ble Supreme Court has held in para 95(i) that once a resolution plan is duly approved by the Adjudicating Authority under sub-section (1) of section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the Corporate Debtor and its employees, members, creditors, including the Central Govt, any State Govt or
2.	No action by Operational Creditors or Other Creditors: Pending the occurrence of the Transfer Date, no Operational Creditor or Other Creditors shall be entitled to take, initiate or continue any steps or proceedings against the Company or its assets whether by way of demand, legal proceedings, alternative determination process including arbitration/expert determination process, the levying of distress, execution of judgment or otherwise in any jurisdiction whatsoever for the purpose of obtaining payment of any liability, or for the	

[1] 2021 SCC OnLine SC 313 decided on 13.04.2021.

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Sl.No.	Relief and/or Concessions Sought	Orders Thereon
	purpose of placing the Company into liquidation or any analogous proceedings.	any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan. The Hon'ble Supreme Court also held that all the dues including the statutory dues owed to the Central Govt, any State Govt or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the Adjudicating Authority grants its approval under section 31 could be continued.
3.	Licenses and approvals held by the Company, which have expired or may expire prior to the Transfer Date or may expire within a period of 6 (six) months from the Transfer Date, thereafter, shall be renewed / extended by the relevant Governmental Authorities, and the Company shall be permitted to continue to operate its business and assets in the manner operated prior to submission of this Plan until the renewal / extension of such licenses and approvals. The relevant Governmental Authorities will provide a reasonable period of time after the Transfer Date (at least one year) in order for the Resolution Applicant to: (i) assess the status of licenses and approvals required by the Company and to procure that the Company applies for the same; and (ii) regularize any non-compliances under the Applicable Law (including non-registration, inadequate / non-stamping of documents as required under Applicable Law) existing prior to the Transfer Date.	Granted

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Sl.No.	Relief and/or Concessions Sought	Orders Thereon
4.	The relevant Governmental Authorities shall not initiate any investigations, actions or proceedings in relation to any non-compliance with Applicable Law by the Company during the period prior to the Transfer Date. Neither shall the Resolution Applicant, nor the Company, nor their respective directors, officers and employees appointed on and as of the Transfer Date be liable for any violations, liabilities, penalties or fines with respect to or pursuant to the Company not having in place the requisite licenses and approvals required to undertake its business as per Applicable Law, or any non-compliances of Applicable Law by the Company. Further, the relevant Governmental Authorities will provide a reasonable period of time after the Transfer Date, for the Resolution Applicant to assess the status of any non-compliances under the Applicable Law (including with respect to applicable environmental laws, directions or orders by the Ministry of Environment and Forest, permits, clearances and forest related clearances) and to procure that the Company regularizes such non-compliances under the Applicable Law existing prior to the Transfer Date.	Granted in terms of Section 32A of the Code
5.	All legal proceedings against the Corporate Debtor (including criminal proceedings but excluding those against the existing promoters) including by Serious Fraud Investigation Office, Enforcement Directorate, Central Bureau of Investigation or any other governmental or regulatory authority and all reference to enquiry, investigation, summon, notice or any other proceedings pertaining to seizure or attachment of the assets of the Corporate Debtor shall stand irrevocably and unconditionally withdrawn, abated, settled and extinguished in perpetuity on and with effect from the Approval Date.	Granted in terms of Section 32A of the Code
6.	Under Section 115JB of the Income-tax Act, 1961, assessee company for which a rehabilitation scheme was approved, or reference was made under the provisions of the erstwhile Sick Industrial Companies (Special Provisions), Act, 1985 was not subject to minimum alternate tax until the net worth becomes positive. Accordingly, a similar benefit ought to be extended to a resolution plan approved in accordance with the IBC since the IBC supersedes all other Applicable Law and deals with the same subject matter as the erstwhile Sick Industrial Companies (Special Provisions), Act, 1985. In light of this, the Central Board of Direct Taxes, Department of Revenue, Ministry of Finance, Government of India (hereinafter referred to as "CBDT/DOR") shall: (i) exempt income / gain / profits, if any, arising as a result of giving effect to the Plan as on the Transfer Date from being subjected to minimum alternate tax in the hands of Company under the provisions of the Income-tax Act, 1961; (ii) exempt income / gain / profits, if any, arising	Granted in terms of Section 32A of the Code

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Sl.No.	Relief and/or Concessions Sought	Orders Thereon
	as a result of giving effect to the Plan as on the Transfer Date from being subjected to tax in the hands of the Company under the provisions of the Income-tax Act, 1961; (iii) grant an exemption to receive all income without deduction of any Tax under the provisions of Chapter XVII-B of the Income-tax Act, 1961 for a period of 10 (ten) years from the Transfer Date; and (iv) waive all Liabilities in respect of Taxes (including interest and penalty) arising in respect of periods up to the Transfer Date, including such Liabilities for the period up to the Transfer Date that may crystallize subsequent to the Transfer Date.	
7.	The exceptional gains on account of waivers of financial liabilities shall be exempted from Income Tax applicable as per relevant provisions of Income Tax Act.	Granted
8.	The current liabilities mentioned herein and further accruing up to Transfer Date in terms of Section 31(1) of IBC shall be waived off.	Granted in terms of the ***Ghanashyam Mishra and Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd..***[2]
9.	The Ministry of Corporate Affairs and/or the Adjudicating Authority shall exempt procedural compliance including but not limited to the provisions of Section 66 of the Companies Act, 2013 (and the corresponding rules issued under the Companies Act, 2013) and Section 42 read with Section 62 and other applicable provisions of the Companies Act, 2013 (and the corresponding rules issued under the Companies Act, 2013) in respect of the capital reduction, conversion of debt into equity, issuance of new equity shares and issuance of NCDs proposed under the Plan. Further, capital reduction, conversion of debt into equity, allotment of equity shares and NCDs in the manner envisaged under this Resolution Plan shall not require the consents of any of the creditors of the Company or approval of any of the shareholders of the Company, or any other person having security interest over such shares and the approval of the NCLT (pursuant to Section 31 of the IBC) to the Resolution Plan shall constitute approval of the reduction of share capital, conversion of debt into equity, allotment of equity shares and NCDs and shall be binding on the Company and its stakeholders (including its creditors and shareholders).	Granted
10.	The Department of Registration and Stamps of the relevant States (including State of Madhya Pradesh, Kerala and West Bengal) and the Ministry of Corporate Affairs shall exempt the Resolution Applicant and the Company, from the levy of	Not granted. The Resolution Plan cannot be in violation of any law for the time being in force.

[2] 2021 SCC OnLine SC 313 decided on 13.04.2021.

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Sl.No.	Relief and/or Concessions Sought	Orders Thereon
	stamp duty and fees applicable in relation to this Plan and its implementation.	Therefore, if there are any documents on which stamp duty is required to be paid, or in respect of which non-registration will have adverse consequences, they shall apply with full force and no waiver can be granted in this regard.
11.	The concerned state revenue/ stamp authorities shall waive off any penalties for non-registration and inadequate/ non-stamping of the documents executed by the Company.	
12.	Notwithstanding the terms of any Agreement, the Adjudicating Authority shall direct that the respective counterparties of the Company in various agreements, including but not limited to PPAs and FSAs, that the said parties: shall waive all objections/ liabilities of the Company arising out of the initiation of CIRP against the Company; shall not exercise any specific termination rights available to it, or take any adverse actions under the respective agreement; shall continue to perform its obligations under the respective agreement; shall be deemed to have given consent/permissions required, if any, owing to change in ownership of the Company on the Transfer Date and no further action in respect of such consent/permission shall be required to be taken by the Company.	Granted
13.	The Adjudicating Authority shall direct that all consents/ approvals shall be deemed to have been given by all relevant authorities in relation to approval for 100MW and 115 MW PPAs as per terms of executed PPAs of the Company with KSEB and no further action in respect of such consents/permissions shall be required to be taken by the Company.	Granted
14.	The Adjudicating Authority shall direct that the Company shall not be liable for any non-compliance, default, breach, etc., during the period prior to the Transfer Date, in relation to the following: Any contractual arrangements of the Company with counter-parties, including Governmental Authorities; and Failure to take or obtain any approvals, consents or permits including but not limited to use of land for industrial purposes.	Granted
15.	Notwithstanding the terms of any Agreement, the Adjudicating Authority shall direct that the respective counterparties of the Company in various agreements, including but not limited to PPAs and FSAs, to waive late payment surcharge, if any, arising on account of late payment	Granted

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Sl.No.	Relief and/or Concessions Sought	Orders Thereon
	by the Company on account of financial distress faced by the Company prior or during CIRP.	
16.	The Directorate of Industries shall be deemed to have given its approval/ consent, if required, in respect of change in ownership/ constitution / management of the Company and shall continue to grant all incentives.	Granted
17.	All the consents and clearances are in the name of JPL currently. It is expected that the consents and clearances shall remain in effect post-acquisition as they are linked to the asset or with JPL and not related to the shareholders of JPL.	Granted
18.	The relevant Governmental Authority in relation to Tax shall waive any Tax/any interest/penalties and shall not initiate any penal proceedings in case of non-fulfillment of any obligations of the Company in relation to which benefit has been claimed by the Company prior to the Approval Date.	Granted
19.	The relevant Governmental Authorities (including the land and revenue authorities) shall provide a reasonable period of time after the Transfer Date, for the Resolution Applicant to obtain necessary approvals to convert the land parcels over which the Company has freehold or leasehold rights, to use for non-agricultural purposes, and shall waive any non-compliance in this regard, if required.	Granted
20.	The Resolution Applicant and its affiliates shall not in any manner be implicated in, or in any manner adversely affected by (including in respect of transactions in foreign exchange), or have any Liability in relation to, any investigations / proceedings / orders or any matters relating to the Company.	Granted
21.	The Adjudicating Authority shall direct that upon grant of the approval of the Adjudicating Authority under Section 30 of the IBC, the terms and provisions of this Plan shall have effect, notwithstanding anything inconsistency contained herein with the provisions of any other Applicable Law for the time being in force or any other instrument having such effect by virtue of any Applicable Law.	Granted

20. On hearing the submissions made by the Resolution Professional, and perusing the record, we find that the Resolution Plan has been approved with 100% voting share. As per the CoC, the plan meets the requirement of being viable and feasible for revival of the Corporate Debtor. By and large, all the compliances have been done by the RP and the Resolution Applicant for making the plan effective after approval by this Bench.

21. On perusal of the documents on record, we are also satisfied that the

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Resolution Plan is in accordance with Sections 30 and 31 of the IBC and also complies with regulations 38 and 39 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

22. As far as the question of granting time to comply with the statutory obligations/seeking sanctions from governmental authorities is concerned, the Resolution Applicant is directed to do the same within one year as prescribed under Section 31(4) of the Code.

23. In case of non-compliance of this order or withdrawal of Resolution Plan, the CoC shall forfeit the EMD amount already paid by the Resolution Applicant.

24. Subject to the observations made in this Order, the Resolution Plan in question is hereby APPROVED by this Bench. The Resolution Plan shall form part of this Order.

25. The Resolution Plan is binding on the Corporate Debtor and other stakeholders involved so that revival of the Debtor Company shall come into force with immediate effect.

26. The Moratorium imposed under Section 14 shall cease to have effect from the date of this order.

27. The Resolution Professional shall submit the records collected during the commencement of the proceedings to the Insolvency & Bankruptcy Board of India for their record and also return to the Resolution Applicant or New Promoters.

28. Certified copy of this Order be issued on demand to the concerned parties, upon due compliance.

29. Liberty is hereby granted for moving any Application if required in connection with implementation of this Resolution Plan.

30. A copy of this Order is to be submitted in the Office of the Registrar of

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Companies, West Bengal.

31. The Resolution Professional shall stand discharged from his duties with effect from the date of this Order.

32. The Resolution Professional is further directed to handover all records, premises/factories/documents to the Resolution Applicant to finalise the further line of action required for starting of the operation. The Resolution Applicant shall have access to all the records/premises/factories/documents through the Resolution Professional to finalise the further line of action required for starting of the operation.

33. IA (IB) No. 586/KB/2021 and the main Company Petition i.e., CP (IB) No. 634/KB/2017 shall stand disposed of accordingly.

34. The Registry is directed to communicate the Order to the Applicants, Respondents, to the Resolution Applicant and to IBBI, through e-mail and free copy is to be given, if applied for.

35. The Certified copy of the Order may be issued to all the concerned parties, if applied for, upon compliance with all the requisite formalities.

Harish Chander Suri
Member (Technical)

Rohit Kapoor
Member (Judicial)

The order is pronounced on the 6th day of July, 2022

GGRB_LRA

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Annexure III

File No.CEA-PL-14-40/1/2018-PDM Division-Part(1)

सत्यमेव जयते

भारत सरकार
Government of India
विद्युत मंत्रालय
Ministry of Power
केंद्रीय विद्युत प्राधिकरण
Central Electricity Authority
पी .डी एम .प्रभाग
Power Data Management Division

Vinod Kumar Jain
AGM (Commercial)
Jhabua Power Ltd –
JV of NTPC Ltd.

विषय: सिओनी टीपीपी के स्वामित्व में परिवर्तन के सम्बन्ध में ।
Subject: Change in ownership of Seoni TPP – regarding.

महोदय,

This has reference to your letter dated 15.11.2022 to Power Data Management Division, CEA. Whereby it was informed about change in the ownership of Seoni TPP (1x600 MW) from IPP to JV of NTPC Ltd.

After going through the documents provided in support of the change in ownership, the name of the owner company of Seoni TPP (1x600 MW) has been changed in CEA records to JHABUA POWER LTD. – JV of NTPC Ltd. and the sector from Private sector to Central sector. This is for your information please.

भवदीय

06/01/2023
(इरफ़ान अहमद)
मुख्य अभियन्ता (पी.डी.एम.)

सूचना की प्रति :

1. Chief Engineer (FM), CEA
2. Chief Engineer (OPM), CEA
3. Chief Engineer (TPM), CEA
4. Chief Engineer (IRP), CEA

Sewa Bhawan , R. K. Puram, New Delhi – 110066; Tel No.011-26732221

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MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION

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

Petition No. 61 of 2023

PRESENT:
S. P. S Parihar, Chairman
Gopal Srivastava, Member (Law)
Prashant Chaturvedi, Member

IN THE MATTER OF:

True-up of Generation Tariff for 1x600 MW (Phase-1) Coal Based Thermal Power Project at Barela-Gorakhpur, Dist. Seoni, (M.P.) for FY 2022-23 determined by Madhya Pradesh Electricity Regulatory Commission vide MYT Order dated 8th May, 2021 in Petition No 47 of 2020.

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

Vs.

RESPONDENTS

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**

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ORDER

(Passed on this day of 5th March, 2024)

1. M/s. Jhabua Power Limited (hereinafter called "the petitioner") filed the subject petition for Truing-up of Generation Tariff for FY 2022-23 for its 1x600 MW coal based thermal power project (herein after referred to as "project") at District Seoni, Madhya Pradesh, determined by the Madhya Pradesh Electricity Regulatory Commission (hereinafter called "the Commission" or 'MPERC") vide Multi Year Tariff (MYT) Order dated 8th May, 2021 in Petition No. 47 of 2020.

2. The subject true-up petition has been filed under Sections 62 and 86(1)(a) of the Electricity Act, 2003 and based on the MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020 {RG- (IV) of 2020} (herein after referred to as "Regulations, 2020") for the control period FY 2019-20 to FY 2023-24 notified on 28th February, 2020.

3. Jhabua Power Project under the subject petition comprises of one generating unit of 600 MW capacity. The generating unit achieved Date of Commercial Operation (CoD) on 3rd May, 2016.

4. The petitioner executed long term Power Purchase Agreement (PPA) on 5th January, 2011 with MP Power Management Company Ltd., (hereinafter called "MPPMCL" or "Respondent No. 1") for supply of 30% power from the project at the tariff determined by the Commission. The petitioner executed another PPA with GoMP on 27th June, 2011 for sale of 5% net power on variable charges only determined by the Commission.

5. The petitioner had earlier filed Petition No. 47 of 2020 for determination of Multi Year Tariff for its generating station for the control period from FY 2019-20 to FY 2023-24 based on the Regulations, 2020. Vide Order dated 08th May, 2021 in the aforesaid petition, the Commission determined the multi-year tariff for the aforesaid generating unit subject to true-up based on the Annual Audited Accounts for the respective financial year.

6. In the aforesaid MYT order dated 8th May, 2021, the following Annual Capacity (fixed) Charges for FY 2022-23 were determined by the Commission:

Table 1: Annual Capacity (Fixed) Charges determined in MYT Order for FY 2022-23

Sr. No.	Particulars	Unit	Amount
1	Return on Equity	Rs. Crore	153.14
2	Interest on Loan Capital	Rs. Crore	237.02
3	Depreciation	Rs. Crore	202.37

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4	Interest on Working Capital	Rs. Crore	48.31
5	O & M Expenses	Rs. Crore	134.82
6	**Annual Capacity (fixed) Charges**	**Rs. Crore**	**775.66**
7	Less: Non-Tariff Income	Rs. Crore	(-)0.11
8	Net Annual Capacity (Fixed) Charges	Rs. Crore	775.55
9	**Annual Capacity Charges corresponding to 30% of the installed capacity of the Project**	**Rs. Crore**	**232.67**

7. In the subject petition, the petitioner has sought true-up of Annual Capacity (fixed) Charges for FY 2022-23 prior to acquisition of the project by the NTPC Ltd, i.e., till 4th September, 2022 considering actual Additional Capital Expenditure incurred during FY 2022-23 till 4th September, 2022 in accordance with Regulation 9.4 of the Regulations, 2020, which provides as under:

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

8. The petitioner in the subject petition has submitted that, its company has been taken over by NTPC Limited as a Joint Venture with Secured Financial Creditors (50:50) through CIRP (Corporate Insolvency Resolution Process) vide NCLT Order dated 6th July 2022. The petitioner also mentioned that the Management control lies with NTPC post-acquisition w.e.f. 5th September, 2022. Thus, amounts claimed in the subject petition are based on the Annual Audited Accounts for FY 2022-23 prepared till the date prior to the takeover of plant by NTPC Ltd for 157 days i.e. till 4th September, 2022. Since NTPC Limited is a Central Sector Generating Company, effective 05.09.2022, petitioner submitted that Jhabua Power intends to file the tariff for remaining period (post NTPC takeover) with Hon'ble CERC under Section 79 (1) (a) of Electricity Act 2003.

9. In the subject petition, the petitioner filed the additional capitalization of Rs 3.23 Crore on accrual basis and Rs. 4.62 Crore on cash basis during FY 2022-23 till 4th September, 2022. Based on the aforesaid additional capitalization of Rs. 4.62 Crore on cash basis, the petitioner claimed the following Annual Capacity (fixed) Charges for the project:

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Table 2: Annual Capacity Charges claimed in the petition for FY 2022-23 till 4th September, 2022:

S. No.	Particulars	Unit	Amount
1	Return on Equity	Rs. Crore	156.73
2	Interest on Loan Capital	Rs. Crore	251.29
3	Depreciation	Rs. Crore	206.50
4	Interest on Working Capital	Rs. Crore	45.34
5	O & M Expenses	Rs. Crore	134.82
6	Less: Non-Tariff Income	Rs. Crore	0.00
7	**Total Annual Capacity (Fixed) Charges**	**Rs. Crore**	**794.68**
8	**Total Amount proportionate to 4th September, 2022**	**Rs. Crore**	**341.82**
9	Un-recovered Depreciation	Rs. Crore	0.29
10	**Total**	**Rs. Crore**	**342.11**

10. With the above submission, the petitioner prayed the following:

(a) Carry out the truing-up of tariff for Unit-1 of the Project for the period from 01.04.2022 to 04.09.2022 and allow to recover the gap amount along with carrying cost.

(b) Extend the Cut-Off date on account of uncontrollable factors till two (02) years after the resolution of the asset (Date of order of the National Company Law Tribunal, NCLT) i.e., till 05.07.2024, keeping in view the extraordinary circumstances engulfing the Petitioner and the execution time required for completion & discharging of all the liabilities of the balance works.

(c) Approve the Additional Capital Expenditure of Rs. 4.62 Cr (Cash Basis) for FY 2022-23 till 4th September, 2022 in accordance with the Regulations, 2020.

(d) Allow to recover E.D., Water Charges, WRLDC Fees & Charges and Cess on auxiliary power consumption and other taxes, if any, levied by the Statutory Authorities from the beneficiaries on submission of documentary evidence;

(e) To allow the expenditure incurred on Ash utilisation & transportation in FY 2022-23 till 4th September'22 to be directly recovered from the Respondent No. 1.

(f) Allow recovery of Carrying Cost of an amount of Rs. 11.62 Crore which was deducted from monthly bills against GST of Rs. 15.25 Crore (as per the order of Hon'ble NCLT, Kolkata). The deducted amount of Rs. 15.25 Crore has been paid by MPPMCL on 14.07.2023.

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(g) Allow the un-recovered depreciation of Rs. 0.29 Crore towards the Depreciation of Lease Land pertaining to the period from CoD to FY 2022-23.

(h) Allow to recover the fees paid to the Commission and publication expenses from the beneficiaries on submission of documentary evidence.

11. The subject petition has been examined by the Commission in accordance with the principles, methodology and norms specified in the Regulations, 2020, Annual Audited Accounts and other supplementary submissions filed by the petitioner in response to the additional information / details sought by the Commission along with all other documents placed on record by the petitioner. The Commission also examined the subject petition in light of the comments / suggestions offered by the Respondent No.1 and other stakeholder and response of the petitioner on the same.

12. In this true-up order, the Commission has considered opening figures of Gross Fixed Assets (GFA), Equity, Loan and Accumulated Depreciation as per the closing figures considered by the Commission in last true-up Order for FY 2021-22 in Petition No. 87 of 2022 issued on 29th March, 2023.

Procedural History

13. Motion hearing in the subject matter was held on 13th December, 2023, wherein representatives of M/s Jhabua Power Limited (A joint venture of NTPC Limited) was also present and submitted that from 5th September, 2022 onwards, after taking over the ownership by NTPC Limited, the Jhabua Power Limited became Central Generating Station. As such for the balance period, i.e., from 5th September, 2022 to 31st March, 2023, true-up petition shall be filed before Hon'ble CERC under Section 79(1) (a) of the Electricity Act, 2003.

14. Vide daily order dated 13th December, 2023, the petition was admitted and the petitioner was directed to serve copies of petition to all Respondents in the matter. Respondents were also asked to file their response on the petition within 15 days. The petitioner was asked to file rejoinder within one week, thereafter.

15. Vide Commission's letter dated 19th December, 2023, information gaps and requirement of additional information on scrutiny of the petition were communicated to the petitioner seeking comprehensive response by 10th January, 2024.

16. By affidavit dated 11th January, 2024, Respondent No. 1 (M.P. Power Management Co. Ltd.) filed its response/ comments on the subject petition.

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17. The public notice for inviting comments/ objections/ suggestions from stakeholders was published on 12th January, 2024 in the following newspapers:

i. Nayi Duniya (Hindi), Bhopal,
ii. Nayi Duniya (Hindi), Gwalior,
iii. Nayi Duniya (Hindi), Indore
iv. Nayi Duniya (Hindi), Jabalpur
v. Business Standards (English), Bhopal.

18. The above public notice along with copy of the petition was uploaded on Commission's website also for inviting comments/objections/suggestions from stakeholders.

19. In response to Public Notice, the Commission received comments from one stakeholder, Shri Rajendra Agarwal on 17th January, 2024. By affidavit dated 9th February, 2024, the petitioner filed its response on aforesaid comments of the stakeholder. The response of the petitioner on the comments/suggestions filed by the stakeholder along with observations is mentioned in Annexure- II of this Order.

20. By affidavit dated 31st January, 2024, petitioner filed reply to the issues communicated to it by the Commission.

21. By affidavit dated 9th February, 2024, petitioner filed its rejoinder to the response/ comments filed by Respondent No.1. The petitioner's responses on each comment offered by the Respondent No.1 are mentioned in Annexure-I of this Order.

22. The public hearing in the subject petition was held on 13th February, 2024 through video conferencing, wherein the representatives of petitioner, Respondent No. 1 and stakeholder appeared.

23. During the course of the Public Hearing, the petitioner requested the Commission for submission of legal opinion on the issue of jurisdiction of the Electricity Regulatory Commission after takeover of the project by NTPC. Considering the request of petitioner, the Commission allowed the petitioner to file copy of a legal opinion by 14th February, 2024. Petitioner was also directed to serve copy of the same to Respondent No.1 and other stakeholder. By affidavit dated 13th February, 2024, the petitioner filed copy of legal opinion in the subject matter. Vide submission dated 19.2.2024, Respondent No.1 (MPPMCL) filed its reply on the legal opinion submitted by the petitioner.

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24. On 5.09.2022 (Transfer date), Jhabua Power Limited (JPL) has become a Joint Venture (JV) of NTPC Limited, wherein, NTPC Limited is responsible for managing

and controlling the Petitioner's Company with 50% shareholding in JPL. The issue before Commission for this true up was whether Commission can undertake part true-up only upto the transfer date of 5.9.2022. Commission has noted that from the transfer date, Jhabua Power Limited has acquired the status of Company owned and controlled by the Central Government. As per Section 79(1) (a) of the Electricity Act, 2003, Central Electricity Regulatory Commission (CERC) has powers to regulate tariff of such Company. Since these powers are vested with CERC **exclusively**, the Commission is of the opinion that it has powers to true up the tariff before the transfer date in this case, i.e., 5.9.2022. The petitioner has already bifurcated its accounts in two parts during the Financial Year, i.e., before and after the transfer date. The Commission has therefore decided to undertake part true-up till 4.9.2022 for the FY 2022-23.

Disclaimer for Rounding

25. In this Order, certain numbers as a whole, upto several decimal places have been rounded up or down. Therefore, there may be discrepancies between the totals of the individual numbers shown in the tables upto 2 decimal places and numbers given in the corresponding analysis in the text of this order.

Capital Cost as on 1st April, 2022

Petitioner's Submission:

26. Regarding the capital cost of the project, the petitioner submitted that the Commission in last true-up order dated 29th March, 2023 has considered closing capital cost of Rs. 4025.30 Crore as on the 31st March, 2022. The same capital cost has been considered by the petitioner as opening capital cost as on the 01st April, 2022 for the purpose of true-up of tariff for FY 2022-23 (till 4th September, 2022) in the subject petition.

Provisions of Regulations:

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

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

(i) the capital cost admitted by the Commission prior to 1.4.2019 duly trued up by excluding liability, if any, up to last true-up order issued by the Commission;

(ii) additional capitalization and de-capitalization for the respective year of tariff as determined in accordance with these Regulations;

(iii) capital expenditure on account of renovation and modernization as admitted by the Commission in accordance with these Regulations;

(iv) capital expenditure on account of ash disposal including handling and transportation facility;

(v) capital expenditure incurred towards railway infrastructure and its augmentation for

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transportation of coal upto the receiving end of generating station but does not include the transportation cost and any other appurtenant cost paid to the railway; and

(vi) capital cost incurred or projected to be incurred by a thermal generating station, on account of implementation of the norms under Perform, Achieve and Trade (PAT) scheme of Government of India shall be considered by the Commission subject to sharing of benefits accrued under the PAT scheme with the beneficiaries"

Commission's Analysis:

28. The petitioner has considered the opening capital cost as on the 1st April, 2022 as considered in Commission's tariff order dated 29th March, 2023 in true-up petition No. 87 of 2022 for FY 2021-22. The breakup of the capital cost determined by the Commission as on 31st March, 2022 in aforesaid true-up order dated 29th March, 2023 is as given below:

Table 3: Capital Cost considered in last true up Order as on the 31.03.2022

(Rs. in Crore)

Sr. No	Particulars	Amount
1	Land and Site Development	55.48
2	Civil Works	203.72
3	Plant & Machinery	3750.95
4	Furniture & Fixtures	7.10
5	IT Equipments (Computers)	4.04
6	Office Equipments	3.80
7	Vehicles	0.21
	Total	**4025.30**

29. The Commission has considered the opening Gross Fixed Assets (GFA) as on 01.04.2022 of Rs. 4025.30 Crore, same as considered in the last true-up order for FY 2021-22 as closing GFA as on 31st March, 2022, in this Order.

Additional Capitalization

Petitioner's Submission

30. In the subject true-up petition, the petitioner has claimed the additional capitalization of Rs 4.62 Crore on cash basis out of which, Rs 3.23 Crore is on accrual basis during FY 2022-23 till 4th September, 2022. The break-up of additional capitalization claimed on accrual basis and cash basis by the petitioner is as given below:

Table 4: Additional Capitalization claimed by the petitioner for FY 2022-23 till 4.9.2022

S No	Particulars	Amount on (Accrual Basis) (Rs. Crore)	Amount on (Cash Basis) (Rs. Crore)
1	Railway Related Works	-	0.94

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2	Capital Spares	3.19	3.27
3	Coal Handling Plant	-	0.16
4	Ash Handling Plant/Ash Disposal	-	0.01*
5	Others	0.04	0.24
	Total	**3.23**	**4.62**

*(*Petitioner has wrongly mentioned Rs 0.01 Crore towards Ash Handling System/Ash Disposal Works. Actual figure of Rs 0.02 Crore against this expenditure head is mentioned subsequently in para 6.65 of the subject petition.)*

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

Railway Related Works:

i. *It is submitted that the dedicated railway line has been operational from 21.08.2020 and is utmost essential for the everyday operation of the Plant. Furthermore, the Commission in its True-up Orders dated 18.08.2022 & 29.03.2023 has also recognized the importance of the work and has allowed Rs. 79.43 Crore & additional capitalisation of Rs. 2.07 Crore respectively towards railway related works.*

ii. *It is submitted that the Commission has already approved the scheme to allow Capex in its orders dated 18.08.2022 & 20.03.2023 and therefore, the Commission is requested to allow the discharge of liability of Rs. 0.94 Crore for the work already been carried out in FY 2022-23 till 4th September, 2022 as admitted by the Commission as per Regulation 27.1 (vi) of the Regulations, 2020. It is further submitted that the cost incurred on account of the balance works amounting to Rs. 3.69 Crore (cash basis) incurred in FY 2022-23 till 4th September, 2022 may also be kindly allowed under Regulation 26.1(ii).*

Capital spares:

The petitioner has filed list of capital spares amounting to Rs. 3.19 Crore were capitalised in FY 2022-23 till 4th September, 2022.

iii. *It is submitted that the Petitioner had barely allowed to incur additional capital expenditure during CIRP process and therefore capital spares could not be procured in one go and therefore could not be procured before the cut-off date. Like Railways, Capital Spares is also an integral part for running the plant smoothly. Considering the fact that the Commission has allowed expenditure incurred for Railways, as the delays are not completely attributable to the Petitioner, the same principle lies with the Capital Spares as well. It is therefore requested that Commission may please approve the same, because even after allowing capital spares, the ceiling limit of 4% of the Plant & Machinery cost is not violated in accordance with the Regulations, 2020.*

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iv. *Further, liability of Rs. 3.19 Crore towards spares procured in the FY 2021-22 till 4th September, 2022 has been discharged by the Petitioner related to capital spares. Therefore, the Commission is requested to allow the total cost of Rs. 3.19 Crore related to the capital spares. It is further submitted that even after allowing the same the amount of spare will be well within the limits specified in the Regulations, 2020.*

v. *An extension of cut-off date is therefore being sought in the above regard and the same has been claimed under Regulation 26.1 (iii) of Regulations, 2020. The Petitioner requests the Commission to approve the same. .*

Other Works

vi. *It is submitted that some of the works, which are essential for efficient operation of the Plant pertaining to Misc. Electrical works could not be completed before the cut-off date of the project owing to the uncontrollable factors as detailed in the earlier Paras. Therefore, the petitioner requests the Commission to approve the same in FY 2022-23 till 4th September, 2022 under Regulation 26.1(ii) of Regulations, 2020.*

vii. *It is submitted that during the year, Rs. 0.04 Crore is claimed towards Misc. BoP Electrical/Mechanical Works.*

viii. *It is further submitted that the petitioner has discharged the liability of Rs. 0.19 Crore for the previous year (FY 21-22 & FY 20-21) out of which Rs. 0.13 Crore pertains to AoH carried out in FY 2021-22, Rs. 0.01 Crore pertains to Ventilation and Rs. 0.05 Crore pertains to Misc. Civil works. These balance works were part of original scope of works and are essential for safe & smooth operation of the Power Plant.*

ix. *In view of the above, it is submitted that the above works were essential works that is required for safe and efficient operation of the plant and could not be completed within the cut-off date for the reasons discussed in detail in the Petition and hence the Petitioner requests the Commission to approve the same under Regulation 26.1 (ii) of the Regulations, 2019.*

Ash Handling System / Ash Disposal

x. *It is submitted that an amount of Rs. 0.02 Crore pertain to liability discharged during the year for works which were previously carried out and is now being claimed under Regulation 26.1(i) of the Regulations, 2020. These works were required for safe and reliable operations of the plant.*

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Coal Handling Plant

xi. *It is submitted that an amount of Rs. 0.16 Crore corresponds to CHP works which pertains to the liability discharged during the year for works which were previously carried out and is now being claimed under Regulation 26.1(i) of the Regulations, 2020. These works were required for safe and reliable operations of the plant.*

xii. *It is submitted that the Petitioner was barely allowed to incur additional capital expenditure during CIRP process and therefore assets could not be procured in one go and could not be procured before the cut-off date. It is therefore requested that Commission approves the same.*

xiii. *Since the above works were deferred for execution and the Petitioner seeks extension of cut-off date in view of the uncontrollable nature of the reasons which restricted the Petitioner from completing the works within the Original Cut-off date. Accordingly, they have been claimed under Regulation 26.1 (ii) of the Regulations, 2020.*

xiv. *With the above background, it is prayed that the additional capitalization of Rs. 3.23 Crore (accrual basis) and Rs. 4.62 Crore (cash basis) claimed for FY 2022-23 may be allowed.*

Provisions in Regulations

32. Regarding additional capitalization within the original scope of work after the cut-off date, Regulation 27.1 of the Regulations, 2020 provides as under:

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

(i) Liabilities to meet award of arbitration or for compliance of the directions or order of any statutory authority, or order or decree of any court of law;

(ii) Change in law or compliance of any existing law:

(iii) Deferred works relating to ash pond or ash handling system including ash transportation facility in the original scope of work;

(iv) Liability for works executed prior to the cut-off date;

(v) Force majeure events;

(vi) Liability for works admitted by the Commission after the cut-off date to the extent of discharge of such liabilities by actual payment; and

(vii) Additional capitalization on account of raising of ash dyke as a part of ash disposal system.

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

(a) The useful life of the assets is not commensurate with the useful life of the project and such assets have been fully depreciated in accordance with the provisions of these Regulations;

(b) The replacement of the asset or equipment if necessary, on account of change in law or Force Majeure conditions;

(c) The replacement of such asset or equipment is necessary on account of obsolescence of technology; and

(d) The replacement of such asset or equipment has otherwise been allowed by the Commission.

Commission's Analysis

33. The petitioner has filed the additional capitalization of Rs. 4.62 Crore on cash basis however, the additional capitalization claimed in the subject petition on accrual basis is Rs. 3.23 Crore. The petitioner submitted that the additional capitalization claimed during FY 2022-23 till 4th September, 2022 is entirely for the works covered under original scope of works but were deferred for execution due to uncontrollable factors. Out of the total additional capitalization on accrual basis, assets of Rs. 3.19 Crore pertain to Capital Spares and Rs 0.04 Crore pertains to Other misc. BoP Electricity / Mechanical Works.

34. Vide Commission's letter dated 19th December, 2023, certain necessary details/documents related to additional capitalization claimed in the subject petition were sought from the petitioner and the petitioner was asked to file a comprehensive reply on various issues related to additional capitalization. By affidavit dated 31st January, 2024, the petitioner filed its response on the issues raised by the Commission. The response of the petitioner on all such issues is mentioned below:

Issues

i) Whether additional capitalization claimed are under original scope of work. If so, the claim of additional capitalization be justified in light of the Regulation 27.1 of the Regulations, 2020. All supporting documents was asked to be filed in this regard.

Petitioner's Response:

The Petitioner submitted that the assets capitalized during the year FY 2022-23 till 4th September, 2022 are under original scope of work. It is submitted that the works

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for the additional capital expenditure claimed were already envisaged in the DPR, however, the same could not be completed within cut-off date owing to the uncontrollable reasons which is explained in detail in the Petition. With regard to the supporting documents, the Petitioner submits that the works proposed under the Original Scope of Works are reflected in the DPR along with cost estimates and the same is submitted.

With regard to the justification of addition of assets in light of Regulations, 2020, the Petitioner submits that it has claimed the additional capitalization for FY 2022-23 till 4th September, 2022 under Regulation 26.1 and Regulation 27.1 as referred by the Commission. The Petitioner has submitted justification in the Petition as to why the Petitioner has claimed the additional capitalization under Regulation 26.1 and Regulation 27.1 of the Regulations, 2020. The Petitioner is not repeating the same for the sake of brevity.

ii) If additional capitalization is claimed beyond Original Scope of work, the petitioner was asked to clarify whether the addition of asset was as per Regulation 28.1.

Petitioner's Response

The petitioner submitted that all the works which are claimed under additional capitalization for FY 2022-23 till 4th September, 2022 are under Original Scope of Works as already submitted in the Petition and in this reply and no asset addition has been proposed on account of works, which are new or beyond Original Scope of Works.

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

Details of Additional Capitalization:

S. No.	*Particulars*	*Asset Additions (Rs. Crore)*	*Reasons of Asset Additions*	*Provisions of Regulations under which Add. Cap. filed*	*Reference supporting doc. Enclosed*
1					

Petitioner's Response:

The petitioner submitted the information as follows:

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Table 5 Information regarding the additional capitalization claimed in FY 2022-23

S No	Particular	Asset Addition (Rs. Crore)	Detailed reasons of Asset Additions	Provision of Regulations under which Add. Cap is Filed	Reference of supporting documents
1.	Capital Spares	3.19	In line with the Regulation 25 of the Regulations, 2020 which allows initial spares to be claimed at 4% of Plant & Machinery Cost of the Project.	26.1 (iii)	Copies of the invoices are submitted. And Copies of Orders are provided to this Submission.
2.	Others	0.04	Deferred works under original scope of works which are essential are Safety, reliability and smooth running of the Plant.	26.1 (ii)	
	Total	**3.23**			

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

Petitioner's Response:

The Petitioner submitted that the copy of work orders / purchase orders placed to different vendors for additional capitalization claimed in the petition are submitted. As regards to the details of penalty, the Petitioner submits that no penalty has been imposed by the Petitioner on any of the Contractors who were involved in the works claimed under the additional capitalization.

v) Copy of the bills/invoices of all such assets under additional capitalization was asked to be filed.

Petitioner's Response:

The petitioner submitted that copies of Bills/Invoices of the assets (covering almost 96% of capitalisation claim) have been submitted. The Petitioner further submits that all the invoices against the total additional capitalization claimed in the Petition are available with the Petitioner and the same can be provided in case the same are required by the Commission. Accordingly, petitioner requests the Commission

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to consider the same and approve the additional capitalization as claimed in the Petition.

vi) **Actual Loan drawn and Equity infused towards additional capitalization during FY 2022-23 till 4th September, 2022 claimed in the subject petition was asked to be filed.**

Petitioner's Response:
The Petitioner submitted that the assets during FY 2022-23 till 4th September'22 are capitalized through cash inflow of the Petitioner. Therefore, no actual loan and equity was infused towards the additional capitalization during FY 2022-23.

35. On perusal of the aforesaid petitioner's response on additional capitalization claimed in the subject petition, the Commission has observed the following:

i. The petitioner has claimed additional capitalization on accrual basis under Regulation 26.1 of the Regulations, 2020, which is applicable for the additional capitalization within the original scope of work and upto cut-off date. However, the assets under additional capitalization claimed in the subject petition have been capitalized after the cut-off date of the project. The petitioner has also claimed capitalization of asset related to railway related works under Regulation 27.1 of the Regulations, 2020.

ii. The petitioner submitted that the additional capitalization claimed is within the original scope of work of the project and no asset addition has been proposed on account of works which are new or beyond Original Scope of Works.

iii. The petitioner has filed the copies of the bills/invoices, purchase orders placed on various suppliers/contractors. The Petitioner also submitted that the asset additions during FY 2022-23 till 4th September, 2022 were funded through cash inflow of the petitioner. Therefore, no actual loan was infused towards the additional capitalization during FY 2022-23.

iv. The petitioner mentioned that the above works are deferred for execution and the petitioner seeks extension of cut-off date due to uncontrollable reasons, which were beyond the control of the petitioner.

36. By affidavit dated 11th January, 2024, Respondent No. 1 (MPPMCL) filed its response on the additional capitalization claimed in the subject petition. The response filed by Respondent No. 1 (MPPMCL) is as follows:

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i. *In the subject petition, it is clear that the cut-off date for the plant is 31.03.2019 and the additional capital expenditure claim is incurred post cut-off date that can be allowed only if they are in accordance with Regulation 27.2. Since the additional capitalisation claimed have been incurred after the cut-off date and is not in accordance with Regulation 27.2 of the extant Regulations, the claims are untenable as per the Regulations, 2020.*

ii. *It is submitted that all the terms i.e. "Cut-off Date" "controllable factors" and "uncontrollable factors" are defined in the extant tariff regulations. It is settled law that the Regulations once notified are binding on all stakeholders including the Commission. Therefore, "Cut-off Date" cannot be extended as a matter of routine and such extension is only possible if the project is impacted by "uncontrollable factors". While the definition of "uncontrollable factors" is an inclusive definition, what would constitute "uncontrollable factors" shall have to be guided by the illustrated heads in the definition which are Force Majeure Events, Change in Law, Time and cost over-runs on account of land acquisition except where the delay is attributable to the generating company. It is submitted that 'includes' in the definition of the "uncontrollable factors" would have to be interpreted ejusdum generis and financial difficulty of the generating company cannot be termed as an "uncontrollable factor". The MPERC has previously time and again rightly held that events relied on by the Petitioner to extend the cut-off date were not entirely beyond the control of the Petitioner. As a result, the prayer for extension of cut-off date ought not to be allowed by the Commission.*

iii. *It is pertinent to note that the petitioner has not put any evidence on record suggesting that the difficulties faced by the Petitioner would qualify as such. In fact it is pertinent to submit that the 'uncontrollable factors" as alleged by the Petitioner pertains to financial difficulties faced by the Petitioner and such financial difficulties were solely attributable to the Petitioner. The Petitioner having practiced poor financial prudence had to go through the IBC proceedings and resolution thereunder. The liability of such poor financial handling cannot be put on the beneficiaries in the form of additional capitalisation expended past the cut-off date.*

iv. *Further, it is also pertinent to state that this Commission has consistently disallowed the Petitioner's claim for extension of cut-off date and grant of additional capitalisation in lieu of the same. Grant of the same would not only lead to inconsistency but would open a pandora's box of revision of all previous and further claims on the part of the petitioner and similarly placed entities. Further, the matter of whether cut-off date for commissioning the petitioner's project should be extended is already sub-judice*

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before the Hon'ble APTEL and any decision contrary to the same would lead to severe prejudice to the Answering Respondent before the Hon'ble APTEL.

v. *It is the case of the Petitioner in the present Petition that certain railway related works had been accepted by this Commission vide its order dated 18.08.2022 & 29.03.2023. Towards such capitalization in terms of Regulation 27.1 (vi) of the Regulations, cost of Rs. 0.94 Crore has been incurred. The same is unchallenged in line with the previous decisions of this Commission.*

vi. *However, the petitioner seeks to approve Rs. 3.69 crore on account of balance works incurred in FY 2022-23 till 04.09.2022 in terms of Regulation 26.1 (ii) of the Regulations. It is reiterated that as averred hereinabove, such cost of balance works took place after the cut-off date and financial hardships clearly do not attract force majeure or change in law provisions. Therefore, there is no grounds in terms of the MPERC Tariff Regulations basis by which the cost of balance works amounting to Rs. 3.69 Crore can be allowed to be passed through in true up.*

vii. *Similarly as above, the Petitioner seeks to pass through liability of Rs. 3.19 crore on account of expenditure done on capital spares. Further other misc. electric works to the tune of Rs. 0.04 Crore is also sought to be passed through in true up. It is the case of the Petitioner that such expenditures were taken after the cut-off date on account of the inability of the Petitioner to invest money during the CIRP process. However, it is reiterated herein that financial hardships that were brought upon itself by the Petitioner cannot be passed on to the beneficiaries. In that regard the averments made hereinabove are reiterated.*

viii. *Further, additional expenditure towards ash handling system amounting to Rs. 0.02 Crore and additional expenditure towards coal handling plant amounting to Rs. 0.16 crore are also sought for similar reasons as above. It is reiterated that the present case as held by this Commission before, is not a fit case for extension of cut-off date and therefore, such claims on additional capitalization ought to be disallowed.*

ix. *In sum, the additional capitalization amount of Rs. 3.23 Crore (on accrual basis) and Rs. 4.62 Crore (on cash basis) claimed by the Petitioner is untenable under the scheme of the MPERC Tariff Regulations and ought to be disallowed by this Commission.*

37. The Commission has examined additional capitalization claimed by the petitioner in light of the Annual Audited Accounts, Asset-cum-Depreciation Register for the project, original scope of work of the project and provisions for additional capitalisation under

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the Regulations, 2020. The Commission has also examined the claim of additional capitalization in light of the response filed by the Respondent No. 1 and reasons for delay in completion /capitalization of assets along with other details and documents submitted by the petitioner.

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

38. On perusal of the Annual Audited Accounts for FY 2022-23 (till 4th September, 2022) filed by the petitioner, it was observed that the additional capitalisation of Rs 3.23 Crore on accrual basis filed by the petitioner has been capitalized in Schedule 3 of the Annual Audited Accounts. These assets have also been recorded in Asset-cum Depreciation Register of the project.

39. However, for the purpose of claiming Annual Capacity (Fixed) Charges for FY 2022-23 till 4th September, 2022, the petitioner has considered additional capitalization of Rs. 4.62 Crore on cash basis with the contention that some undischarged liability of previous years is discharged during the year. The details of the additional capital expenditure (ACE) claimed on accrual basis and cash basis in the subject petition along with undischarged liability for FY 2022-23 till 4th September, 2022 and discharge of previous year liability as filed by the petitioner are given below:

Table 6: Summary of Additional Capitalization on Accrual Basis and Cash Basis filed by the petitioner during FY 2022-23 (till 4th September, 2022) (Rs. Crore)

Head of Work / Equipment	ACE Claimed on Accrual basis	Un-discharged Liability	Discharge of previous years Liability	ACE Claimed on Cash basis
	A	B	C	D=A-B+C
Railway Related Works	-	-	0.94	0.94
Capital Spares	3.19	0.19	0.27	3.27
Coal Handling Plant	-	-	0.16	0.16
Ash Handling System/Ash Disposal	-	-	0.02	0.01*
Others	0.04	-	0.19	0.24
Total	**3.23**	**0.19**	**1.58**	**4.62**

*(*Petitioner has wrongly mentioned Rs 0.01 Crore in Column D towards Ash Handling System/Ash Disposal Works, since, actual figure of discharge of previous year liability is Rs 0.02 Crore in Column C and is also mentioned subsequently in para 6.65 of the subject petition.)*

40. In view of the above, the Commission has observed that the additional capitalization on cash basis has been capitalized in Annual Audited Accounts and recorded in Asset-cum-Depreciation register. Therefore, the additional capitalization of Rs. 4.62 Crore filed on cash basis has been examined in light of the relevant provisions under the Regulations, 2020 and summarized as follows:

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i.	Additional Capitalization on accrual basis	(A) –	Rs. 3.23 Crore
ii.	Less: undischarged liability during the year	(B) –	Rs. 0.19 Crore
iii.	Add: discharged of previous year liability	(C) –	Rs. 1.58 Crore
iv.	**Additional Capitalization on cash basis**	**(A-B+C) -**	**Rs. 4.62 Crore**

B. <u>Capital Cost under Original Scope of Work and BoD Approval</u>

41. Regarding the original scope of works of the project, the petitioner submitted that the assets capitalized during FY 2022-23 were within the original scope of works of the project and were envisaged in the DPR of the project.

42. It is observed that the petitioner in its final tariff Petition No 28 of 2018 had submitted the Investment approval of Rs. 2909.89 Crore for 1 x 600 MW of the project initially accorded by its Board of Directors of the Jhabua Power Ltd on 01.07.2008.

43. Subsequently, on 10th March, 2016, Board of Directors of the petitioner's company approved the revised estimated cost of Rs 4950 Crore. Break-up of the revised capital cost approved by the Board of Director of Company are as under:

Table 7: Approval of petitioner's BOD dated 10th March, 2016 (Rs Crore)

Sr No	Description	Revised Project Cost approved by BOD
1	Land & Site Development	70.00
2	Plant & Equipment-BTG, BOP & Civil Works	2,965.00
3	Initial spares	100.00
4	Total Overheads & pre-commissioning expenses	100.00
5	IDC, FC, FERV & Hedging Cost	1,435.00
6	Total Overheads	280.00
	TOTAL	**4,950.00**

44. Details of the capital cost as on 31.03.2022 considered by the Commission, additional capitalization claimed by the petitioner during FY 2022-23 and total actual expenditure as on 31.03.2023 filed by the petitioner are as given below:

Table 8: Actual Expenditure as on 04.09.2022 filed by the petitioner: (Rs. Crore)

Sr No	Capital Cost Components	GFA as on 31.03.2022 considered by the Commission	Additions claimed by the petitioner during FY 2022-23 till 4th Sept, 2022	Total actual expenditure as on 04.09.2022 filed by the petitioner
	Land and site development	55.48	-	55.48

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2	Civil Works	203.72	-	203.72
3	Plant & Machinery	3750.95	4.58	3755.53
4	Furniture & Fixture	7.10	-	7.10
5	IT Equipment	4.04	0.04	4.08
6	Office Equipments	3.80	-	3.80
7	Vehicles	0.21	-	0.21
	Total Capital Cost	**4025.30**	**4.62**	**4029.92**

45. In view of the above and details submitted by the petitioner, the Commission has observed that the total capital expenditure as on 31st March, 2023 filed by the petitioner is within the revised project cost of Rs. 4950 Crore approved by the BoD of petitioner's company.

C. Cut-off Date

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

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

47. The generating unit of Jhabua Thermal Power Project under subject petition achieved CoD on 3rd May, 2016, therefore, the cut of date of the project was 31st March, 2019 in accordance with the above provision under the Regulations, 2015. Accordingly, the additional capitalization claimed by the petitioner in the subject petition is beyond the cut-off date.

48. In the subject true-up petition, the petitioner claimed additional capitalization under Regulation 26.1 of the Regulations, 2020, which is applicable on asset additions within the original scope of works and up to cut-off date. The petitioner has also requested to extend the cut-off date of the project exercising inherent Power to Relax under Regulation 66 of the Regulations, 2020. The petitioner has submitted several reasons and uncontrollable factors for delay in capitalization of assets after the cut-off date.

49. The Commission has observed that the issue of extension of cut-off date has already been addressed by the Commission in earlier tariff/true up orders of the Petitioner's Project. Further, there is no provision under the Regulations, 2020 for extension of cut-off date of the project. Moreover, the petitioner has filed Appeal No 547/2023 against the Commission's Order dated 29th March, 2023 in P No 87 of 2022 regarding issue of

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non-extension of the cut-off date of the project which is sub-judice before the Hon'ble Appellate Tribunal for Electricity (APTEL). Therefore, the request of the petitioner for extension of cut-off date is not considered in this Order.

50. Since, the additional capitalization claimed by the petitioner is beyond the cut-off date of the project and within the original scope of work, therefore, same has been examined and analysed under Regulation 27 of the Regulations, 2020.

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

51. The petitioner filed the additional capitalization of Rs 3.23 Crore on accrual basis and Rs 4.62 Crore on cash basis under major heads, i.e., Railway Related Works, Mandatory Spares, Coal handling Plant, Ash Handling Plant and other miscellaneous works. The additional capitalization under each of the aforesaid heads is discussed below in light of the provisions under the Regulations, 2020:

a) Railway Related Works:

52. The petitioner filed additional capitalization of Rs. 0.94 Crore on cash basis towards Railway Related works. The petitioner submitted that the aforesaid additional capitalization is deferred works under original scope of works, which are essential for safety, reliability and smooth running of the Plant and covered under Regulation 26.1 (ii) of the Regulations, 2020.

53. The petitioner submitted that the Commission in its True-up Orders dated 18.08.2022 & 29.03.2023 has considered the work towards railway siding and had allowed Rs. 79.43 Crore & additional capitalisation of Rs. 2.07 Crore respectively towards railway related works.

54. Petitioner has informed that discharge of liability of Rs. 0.94 Crore is considered in expenditure towards initial spares of railway related works in FY 2022-23 till 4th September, 2022. By affidavit dated 31st January, 2024, the petitioner submitted the breakup of initial spares on railway siding related works which are as follows:

Table 9: Break-up of initial spares claimed under head of Railway related Works

Head	Amount (Rs. Crore)	Reason
Railway related Works	0.85	Supply of ROTHE ERDE/ LIEBHERR make slew bearing along with set of two slew pinions and fasteners.
Railway related Works	0.08	Balance payment towards Supply of ballast.
Railway related Works	0.01	Payment for procurement of reinforcement steel.
Total	**0.94**	

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55. Regarding the discharge of previous year liability, the Commission had observed in last true up order dated 25th August, 2022, that the petitioner incurred Rs 84.47 Crore on an accrual basis and Rs. 81.89 Crore on cash basis in FY 2020–21 towards railway siding works. As a result, there was a liability of Rs 2.58 Crore for railway-related works in FY 2020–21, out of which the petitioner discharged its liability of Rs 0.63 Crore in FY 2021–22 and Rs.1.85 Crore incurred on cash basis during FY 2021-22 which amounts to Rs. 2.48 Crore claimed in FY 2021-22. Vide Order dated 29th March, 2023, the Commission allowed the said expenditure by adopting the consistent approach of applying escalation factor towards railway works. Presently, in FY 2022-23, the petitioner has claimed Rs. 0.94 Crore on cash basis, which is towards procurement of initial spares for railway related works.

56. Regarding Railway Related Works, the petitioner in the subject petition has submitted the following:

> *It is submitted that the dedicated railway line has been operational from 21.08.2020 and is utmost essential for the everyday operation of the Plant. Furthermore, the Commission in its True-up Order dated 18.08.2022 & 29.03.2203 has also recognized the importance of the work and has allowed Rs. 79.43 Crore & additional capitalisation of Rs. 2.07 Crore respectively towards railway related works.*
>
> *It is submitted that the Commission has already approved the scheme to allow Capex in its orders dated 18.08.2022 & 29.03.2023 and therefore the Commission is requested to allow the discharge of liability of Rs. 0.94 Crore for the work already been carried out in FY 2022-23 till 4th September, 2022 as admitted by the Commission as per Regulation 27.1 (vi) of the Regulations, 2020. It is further submitted that the cost incurred on account of the balance works amounting to Rs. 3.69 Crore (cash basis) incurred in FY 2022-23 till 4th September, 2022 may also be kindly allowed under Regulation 26.1(ii).*

57. In the last true-up orders dated 18th August, 2022 and 29th March, 2023, the works related to railway siding were examined by the Commission in details and after considering the reasons for delay in completion of these works, it was observed that the reasons for delay in execution of these works were not entirely attributable to the petitioner. Therefore, aforesaid railway related works were considered under Regulation 27.1(vi) of the Regulations, 2020. Further, in the aforesaid Orders dated 18th August, 2022 and 29th March, 2023, the Commission also mentioned that "The relaxation granted in the present case will not be quoted as precedent in any of the future cases, as each case is to be considered and decided on its own merits."

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58. It is observed that the petitioner failed to capitalise initial spares for railway siding works during FY 2020-21, when railway siding works were capitalised. Further, while claiming the additional capital expenditure towards deferred railway siding for FY 2020-21 in P No 13 of 2022, the petitioner did not mention anywhere in its submission that any balance capitalization towards initial spares of railway siding works would be capitalized and/or claimed in subsequent true-ups.

59. The Commission is of the opinion that the procurement of spares related to railway works of Rs 0.94 Crore claimed during FY 2022-23 does not fall under proviso 27.1 (vi) of the Regulations, 2020 which provides for "considering liability for works admitted by the Commission after the cut-off date to the extent of discharge of such liabilities by actual payments". At the time of claiming additional capital expenditure for railway siding, neither the petitioner proposed capitalisation of initial spares for this work nor was this allowed or admitted at that time by the Commission.

60. The initial spares towards railway related works of Rs. 0.94 Crore claimed by the petitioner during FY 2022-23 is not covered under the Regulations, 2020. Hence, this amount is not allowed in this Order.

61. It is also observed that the approach adopted by the Commission while allowing railway related works in previous year tariff orders has been challenged by the petitioner which is sub-judice before the before the Hon'ble Appellate Tribunal for Electricity (APTEL).

b) <u>AHP/Ash Disposal</u>

62. The petitioner has claimed Rs. 0.02 Crore on cash basis towards of Ash Handling Plant/Ash Disposal under additional capitalization. The petitioner submitted that the aforesaid works completed and claimed were deferred works under original scope of works which were essential for safety, reliability and smooth running of the Plant. The petitioner has claimed the aforesaid additional capitalization under Regulation 26.1 (i) of the Regulations 2020. The petitioner has submitted that discharge of previous year liability of Rs 0.02 Crore is considered in claiming expenditure in FY 2022-23.

63. The Commission observed that in last true up order dated 29th March, 2023, the petitioner had incurred expenses of Rs 0.68 Crore on an accrual basis and Rs 0.77 Crore on cash basis in FY 2021-22. As a result, there was a shortfall/deficit of Rs 0.09 Crore for ash handling plant/disposal works in FY 2021-22. Liability of Rs. 0.02 Crore towards ash handling plant and related works has also been discharged by the petitioner during FY 2021-22 and is claimed in the subject petition.

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64. On examination of the aforesaid claim of Rs. 0.02 Crore towards Ash Disposal, it is observed that the aforesaid works related to Ash Handling Plant are deferred works under the original scope of works of the project, but discharged the liability after the cut-off date of the Project. The aforesaid additional capitalization work is covered under Regulation 27.1 (iii) of the Regulations, 2020, which provides that the deferred works relating to ash pond or ash handling system including ash transportation facility in the original scope of work and beyond the cut-off date may be considered by the Commission, subject to prudence check. Looking to the necessity of the work, the additional capitalization of Rs. 0.02 Crore towards AHP Works is allowed under Regulation 27.1 (iii) in this Order.

c) Capital Spares

65. The petitioner filed additional capitalization of Rs. 3.27 Crore on cash basis and Rs 3.19 Crore on accrual basis towards mandatory spares of the project. Vide letter dated 19th December, 2023, the petitioner was asked to justify its claim towards mandatory spares in light of the Regulation 25 of the Regulations, 2020.

66. By affidavit dated 31st January, 2024, the petitioner submitted following:

The petitioner submits that the Commission has allowed a total of Rs. 38.63 Crore towards mandatory spares till 31.03.2019. A summary of the mandatory spares approved by the Commission till March 31, 2019 is as follows:

Table 10 Details of initial mandatory capital spares approved till 31st March, 2019

S. No	Particular/ Description	Amount in Rs. Crore	Remark
1	Mandatory initial spares approved in Order dated November 30, 2018	23.54	The approved initial spares of Rs. 23.54 Crore consists of Rs. 9.01 Crore towards initial spares as on CoD and Rs. 14.53 Crore towards initial spares procured after CoD during FY 2016-17
2	Mandatory initial spares approved in Order dated January 5, 2021	15.09	The approved initial spares of Rs. 23.54 Crore consists of Rs. 8.46 Crore which were pertaining to FY 2017-18 and Rs. 6.63 Crore pertaining to FY 2018-19
Total		**38.63**	

With regard to the justification of claim of mandatory initial spares for FY 2022-23, petitioner submitted that Regulation 25 of the Regulations, 2020 provides as follows:

25. Initial Spares:

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

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(a) Coal-based thermal generating stations - 4.0%

(b) Hydro generating stations including pumped storage hydro generating system – 4.0%

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

It is submitted that considering the Plant and Machinery cost of Rs. 2269.78 Crore (as on CoD) as approved by the Commission vide its Order dated 30.11.2018, the ceiling limit as per the above Regulations works out to Rs. 90.79 Crore and the petitioner's claim till 4th September, 2022 including the claimed mandatory initial spares workout to be only Rs. 78.73 Crore on cash basis which is still 14% less than the allowed limit for Capital Spares. Therefore, the initial spares claimed by the Petitioner in FY 2022-23 till 4th September, 2022 along with earlier approved spares are well within the ceiling limit specified in Regulation 25 of the Regulations, 2020. Since commercial operations w.e.f 03.05.2016, this unit is supplying uninterrupted power to MPPMCL and other long-term customers along with market participants, therefore these spares are essential for smooth operations as already explained in para 6.57 of True-up Petition. The petitioner therefore requests Commission to approve the same.

67. The petitioner submitted that out of the total additional capitalization, an amount of Rs. 3.27 Crore is on account of capitalization of the initial / mandatory spares during FY 2022-23 (till 4th September, 2022) claimed in accordance with Regulation 26.1 (iii) of the Regulations, 2020. The petitioner further submitted that the total expenditure on initial spares is within the prescribed limit of 4% of the plant and machinery cost of the project in accordance with Regulation 25 of the Regulations, 2020.

68. In view of the above provision under the Regulations, the said expenditure claimed by the petitioner capitalized after the cut-off date, therefore, does not fall under the Regulation 26.1 (iii) of the Regulations, 2020 Since, the capital spares of Rs. 3.27 Crore capitalized and claimed by the petitioner are under the original scope of works but capitalized after the cut-off date of the project and Commission has not considered the request of the petitioner for extension of the cut-off date of the project, hence, this amount towards capitalization of initial spares is not allowed under Regulation 26.1 (iii) in this Order at this stage.

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d) Coal handling Plant

69. The petitioner submitted that an amount of Rs. 0.16 Crore related to CHP works which pertains to the liability discharged during the year for works which were previously carried out and is now being claimed under Regulation 26.1(i) of the Regulations, 2020.

70. On perusal of claim of additional capitalization towards coal handling plant made by the petitioner, it is observed that the aforesaid works are under the original scope of works but capitalized beyond the cut-off date of the project. The petitioner claimed these expenses under Regulation 26.1(i) which is for additional capitalization within the cut-off date of the project. However, the Commission has not considered the prayer of the petitioner for extension of cut-off date of the project. Therefore, additional capitalization towards coal handling plant capitalized after cut-off date is not covered under provisions of the Regulations, 2020, hence, the aforesaid claim is not allowed in this Order.

e) Other Works

71. The petitioner submitted that out of the total additional capitalization, an amount of Rs. 0.24 Crore on cash basis and Rs 0.04 Crore on accrual basis during FY 2022-23 is claimed for works pertaining to Misc. Electrical works. The aforesaid works completed after the cut-off date of the project. The petitioner has claimed capitalizations towards other works under Regulation 26.1 (ii) of the Regulations, 2020.

72. By affidavit dated 31st January, 2024, the petitioner submitted the details of other works as follow:

Table 11: Detailed break-up of other works claimed by the petitioner (Rs. in Crore)

Head	Amount (Rs. Crore)	Reason
Air Condition & Ventilation System	0.012	A-row ventilation system works- Mechanical works, Ducting, Fabrication of Structural Works & A-Row HVAC system works
AoH Capitalised over FY 21-22 & FY 22-23	0.133	Balance payment towards Refurbishment of Crusher Rotor Assembly.
Misc. BOP Electrical	0.042	Misc Electrical Equipment procured like UPS Battery Rack, Que Manager for CCR etc.
Main plant, Site level and Infra	0.048	Balance civil works of Air Washer building
Total	**0.24**	

73. On perusal of the above submission of petitioner, it is observed that the aforesaid additional works are capitalized after cut-off date of the project, therefore, these are not covered under the Regulation 26.1 of the Regulations, 2020. Hence, the aforesaid claim is not allowed in this Order.

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Additional Capitalization Considered in this Order:

74. As mentioned in the foregoing paragraphs, out of total additional capitalization of Rs. 4.62 Crore claimed on cash basis, the Commission has allowed additional capitalization of Rs. 0.02 Crore towards Ash Handling System during FY 2022-23 in this Order. The details of additional capitalization allowed during FY 2022-23 in this Order are as given below:

Table 12: Additional Capitalization allowed in this Order (Rs. in Crore)

Sr No	Name of Asset/works with specifications	Amount of assets Addition allowed
1	Ash Handling Plant/Ash Disposal	0.02
	Total	**0.02**

75. Component wise break-up of opening GFA as on 1st April, 2022 and closing GFA as on 31st March, 2023 considered by the Commission in this Order is as given below:

Table 13: Opening & Closing Capital Cost Considered in this Order (Rs. in Crore)

Particular	Opening GFA as on 01.04.2022	Asset Additions allowed during FY 2022-23	Closing GFA as on 31.03.2023
Land and site development	55.48	-	55.48
Civil Works	203.72	-	203.72
Plant & Machinery	3750.95	0.02	3750.97
Furniture & Fixture	7.10	-	7.10
IT Equipment	4.04	-	4.04
Office Equipments	3.80	-	3.80
Vehicles	0.21	-	0.21
Total Capital Cost	**4025.30**	**0.02**	**4025.32**

DEBT –EQUITY RATIO

Petitioner's Submission:

76. In the subject true up petition, petitioner submitted that:

i. It is submitted that, the petitioner in terms of Regulation 33.5 of the Regulations, 2020, has considered the debt-equity ratio of 70:30 for the actual additional capital expenditure incurred in FY 2022-23 till 4th September, 2022. Further, the additional capital expenditure has been funded through the operational cash flows as no external borrowings are being granted to the petitioner's company. The lenders/Committee of Creditors (CoC) who were holding the operational control were initially hesitant to allow JPL to initiate any capital expenditure works. However, with the Petitioner's constant discussions & consistent efforts with the

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lenders stressing the importance of the works which were part of original scope of works and safety and reliability of the plant, the lenders agreed for the execution of the most critical works only with available resources with JPL. Accordingly, the Petitioner has funded the additional capitalization from the operational cash flows.

Provision in Regulation:

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

33.1 For new projects, the debt-equity ratio of 70:30 as on date of commercial operation shall be considered. If the equity actually deployed is more than 30% of the capital cost, equity in excess of 30% shall be treated as normative loan:

Provided that:

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

b. the equity invested in foreign currency shall be designated in Indian rupees on the date of each investment: -

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

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

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

33.3 In case of the generating station declared under commercial operation prior to 1.4.2019, debt- equity ratio allowed by the Commission for determination of tariff for the period ending 31.3.2019 shall be considered:

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

33.4 In case of the generating station declared under commercial operation prior to 1.4.2019, but where debt: equity ratio has not been determined by the Commission for determination of tariff for the period ending 31.3.2019, the Commission shall

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approve the debt : equity in accordance with Regulation 33.1 of these Regulations.

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

Commission's Analysis

78. Regarding opening balance of capital cost and funding, the Commission has considered closing figures of GFA, Equity and Loan as considered in true-up order dated 29th March, 2023 in Petition No 87/2022 as opening balance in this Order as follows:

Table 14: Opening Capital Cost and funding considered for FY 2022-23

(Rs. in Crore)

Sr. No	Particular	Amount
1	Opening Capital Cost	4025.30
2	Opening Equity	1010.49
3	Opening Loan	1821.85

79. With regard to funding of additional capitalisation during FY 2022-23, vide Commission's letter dated 19th December, 2023, the petitioner was asked to inform actual loan and equity infused towards additional capitalisation during FY 2022-23 (till 4th September 2022).

80. By affidavit dated 31st January, 2024 the petitioner submitted that the assets during FY 2022-23 till 4th September, 2022 were capitalized through cash inflow/internal resources of the petitioner. Therefore, no actual loan was availed towards the additional capitalization during FY 2022-23 till 4th September, 2022.

81. In view of the above submission and provisions under Regulation 33.1, the Commission has considered the Debt: Equity ratio of 70:30 for additional capitalization as considered by the petitioner.

82. The detail of additional capitalization allowed during the period and its corresponding Debt and Equity considered by the Commission for FY 2022-23 in this Order are as given below:

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Table 15: Additional Capitalization and Funding allowed in this Order:

(Rs. in Crore)

Sr. No.	Particulars	Asset Addition and Source of Funding for FY 2022-23		
		Asset	Loan	Equity
1	Debt : Equity Ratio		70:30	
2	Additions during the year	0.02	0.01	0.01

Annual Capacity (fixed) Charges:

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

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

a. Return on Equity:

Petitioner's Submission:

84. While claiming the Return on Equity for FY 2022-23, the petitioner submitted that:

The Opening Equity as on 01.04.2022 has been considered as Closing Equity as on 31.03.2022 as approved in the last true-up Order dated 29.03.2023. The Petitioner has claimed return on equity on the average equity considering the equity infused to fund the additional capital expenditure incurred in FY 2022-23 till 4th September, 2022.

Further, keeping in view that there was no tax liability in FY 2022-23 till 4th September, 2022, the RoE has not been grossed up with the applicable Tax rates and has therefore been claimed at 15.50% as per the above Regulations for FY 2022-23 and as considered by the Commission in its MYT Order dated 08.05.2021.

85. Accordingly, the petitioner claimed the Return on Equity for FY 2022-23 considering base rate of return @15.50% as given below:

Table 16: Return on Equity claimed by the petitioner for FY 2022-23 (Rs Crore)

Sr. No	Particulars	As claimed
1	Gross Opening Equity (Normal)	1010.49
2	Less: Adjustment in Opening Equity	0.00

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Sr No	Particulars	As claimed
3	Adjustment during the year	0.00
4	Net Opening Equity (Normal)	1010.49
5	Add: Increase in equity due to addition during the year/period	1.39
6	Less: Decrease due to De-capitalization during the year/period	0.00
7	Less: Decrease due to reversal during the year/period	0.00
8	Add: Increase due to discharges during the year/period	0.00
9	Net Closing Equity (Normal)	1011.87
10	Average Equity (Normal)	1011.18
11	Rate of RoE (%)	15.50%
12	**Total RoE**	**156.73**

Provision in Regulations:

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

34 . Return on Equity:

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

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

Provided that

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

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

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

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

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

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

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Commission's Analysis:

87. Equity balance as on 31st March, 2022 as considered by the Commission in last true-up order dated 29th March, 2022 for FY 2021-22 is considered as the base figure for opening equity balance as on 01st April, 2022 for the project. Further, the Commission has considered normative equity addition of Rs. 0.01 Crore during FY 2022-23 towards additional capitalization allowed in this Order, which is in accordance with the Regulations, 2020.

88. The petitioner has claimed Return on Equity on the base rate of return (15.50%) without considering any tax rate for grossing up the base rate during FY 2022-23, as it has not paid any Tax due to loss incurred by the petitioner's company.

89. Accordingly, the following Return on Equity for FY 2022-23 is worked out by applying the base rate of Return on Equity as given below:

Table 17:Annual Return on Equity for FY 2022-23 allowed in this Order

Sr. No.	Particular	Unit	Amount
1	Opening Equity as on 01.04.2022	Rs. Crore	1010.49
2	Equity Addition During the year till 4.9.2022	Rs. Crore	0.01
3	Closing Equity as on 31.03.2023	Rs. Crore	1010.50
4	Average Equity	Rs. Crore	1010.49
5	Base rate of Return on Equity	%	15.50%
6	**Annual Return on Equity**	Rs. Crore	**156.63**

b. Depreciation:

Petitioner's Submission

90. While claiming the Depreciation for FY 2022-23, the petitioner submitted that in accordance with Regulation 37 of the Regulations, 2020, it has computed Weighted Average Rate of Depreciation for FY 2022-23 till 4th September, 2022 considering rates of Depreciation to the Regulations, 2020.

91. The petitioner has claimed the annual depreciation in the petition as given below:

Table 18: Depreciation claimed by the petitioner for FY 2022-23 till 4th September, 2022

(Rs. in Crore)

Sr No	*Particulars*	*As claimed now by JPL*
1	*Opening Capital Cost*	*4025.30*
2	*Closing Capital Cost*	***4029.92***
3	*Average Capital Cost*	*4027.61*
4	*Freehold land*	*54.02*
5	*Rate of depreciation*	*5.13%*

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Sr No	Particulars	As claimed now by JPL
6	Depreciation (for the period)	206.50
7	Proportionate Depreciation (till 4th September, 2022)	88.82

Provision in Regulations:

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

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

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

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

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

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

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

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

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

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37.4 Land other than the land held under lease and the land for reservoir in case of hydro generating station shall not be a depreciable asset and its cost shall be

excluded from the capital cost while computing depreciable value of the asset.

37.5 Depreciation shall be calculated annually based on 'Straight Line Method' and at rates specified in Appendix-Ito these Regulations for the assets of the generating station.

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

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

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

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

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

Commission's Analysis:

93. For determining the annual Depreciation, the Commission has considered the closing Gross Fixed Assets as on 31st March, 2022, as considered in the last true-up order dated 29th March, 2023 for FY 2021-22, as opening Gross Fixed Assets as on 1st April, 2022 in this Order.

94. The closing Gross Fixed Assets as on 31st March, 2023, is worked out after allowing the asset additions of Rs. 0.02 Crore towards additional capitalization during the year as allowed in this Order.

95. The petitioner has filed the Assets cum Depreciation Register, wherein the weighted average depreciation rate of 5.13% is worked out based on the depreciation rates specified in the Regulations, 2020. The aforesaid weighted average rate of depreciation

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worked out by the petitioner by considering the additional capitalization claimed during FY 2022-23. Therefore, the Commission is considering the same weighted average rate of interest as worked out by the petitioner in the subject petition, i.e., @ 5.13%.

96. Accordingly, the depreciation is worked out in the subject petition as given below:

Table 19: Annual Deprecation for FY 2022-23 admitted in this Order

Sr. No.	Particular	Unit	Amount
1	Opening Gross Block as on 1.4.2022	Rs Crore	4025.30
2	Assets Addition till 4.9.2022	Rs Crore	0.02
3	Closing Gross Block	Rs Crore	4025.32
4	Average Gross Block	Rs Crore	4025.31
5	Weighted Average Rate of Depreciation	%	5.13%
6	**Annual Depreciation amount**	Rs Crore	**206.50**
7	Depreciation proportionate to 157 days till 4th September, 2022	Rs Crore	88.82
8	Opening Cumulative Depreciation as on 1.4.2022	Rs Crore	1193.59
9	Closing Cumulative Depreciation as on 04.09.2022	Rs Crore	**1282.41**

c. Interest on loan Capital:

Petitioner's Submission:

97. While claiming the Interest on Loan for FY 2022-23, the petitioner submitted that:

The Opening Loan as on 01.04.2022 has been considered as Closing Loan as on 31.03.2022 as approved in the Order dated 29.03.2023. With regard to rate of interest, Regulation 36 of the Regulations, 2020 stipulates that the rate of interest shall be weighted average rate of interest calculated on the basis of the actual loan portfolio after providing appropriate adjustment for interest capitalized. Accordingly, the Petitioner has considered the actual Weighted Average Rate of Interest (hereinafter referred as 'WAROI') for FY 2022-23 till 4th September, 2022 as 14.12% after deducting the Penal Interest for computing interest charges for FY 2022-23 till 4th September, 2022 which has also been considered by the Commission in its MYT Order dated 08.05.2021. The repayment for the year is being considered equal to the Depreciation calculated for the respective year. The interest on loan claimed vis-à-vis that approved in the MYT Order dated 08.05.2021 is as shown below:

98. In subject petition, the petitioner has claimed interest on loan as given below:

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Table 20: Interest on Loan Claimed by the petitioner till 4th September, 2022 (Rs in Crore)

Sr. No	Particulars	As claimed now by JPL
1.	**Net Normative loan – Opening**	**1821.84**
2.	Add: Increase due to addition during the year/period	3.23
3.	Less: Decrease due to de-capitalization during the year/ period	-
4.	Add: Increase due to discharges during the year/period	-
5.	Less: Decrease due to reversal/repayment during the year/period	88.79
6.	Net Normative loan – Closing	1736.28
7.	**Average Normative Loan**	**1779.06**
8.	**Weighted average Rate of Interest of actual Loans**	**14.12%**
9.	**Interest on Normative loan**	**251.29**

Provision in Regulations:

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

36.1 The loans arrived at in the manner indicated in Regulation 33 of these Regulations shall be considered as gross normative loan fo0r calculation of interest on loan.

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

36.3 Notwithstanding any moratorium period availed by the generating company, the repayment of loan shall be considered from the first year of commercial operation of the project and shall be equal to the depreciation allowed for the year or part of the year.

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

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

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

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shall be considered.

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

Commission's Analysis:

100. For determination of interest on term loan, closing loan balance as on 31st March, 2022 as considered in the Commission's true-up order for FY 2021-22 issued on 29th March, 2023 is considered as the opening loan balance as on 1st April, 2022.

101. Further, the Commission has considered the normative loan addition of Rs. 0.01 Crore during FY 2022-23 towards additional capitalization allowed in this Order.

102. With regard to weighted average rate of interest filed in the petition, vide letter dated 19th December, 2023, the petitioner was asked to file detailed computation of actual weighted average rate of interest with supporting documents such as banker's certificates in respect of actual weighted average rate of interest claimed in the petition.

103. By affidavit dated 31st January, 2024, the petitioner broadly submitted the following:

> *The petitioner submits that the weighted average rate of interest on term loan has been worked out as 14.12% in the Petition as per the last applicable interest rates levied by the Bankers excluding the penal interest. It is further submitted that Commission has in the past approved the same and it is requested that the same may be considered for FY 2022-23 as well. Further, the petitioner respectfully submits that it hasn't claimed any penalty due to default in repayment or interest on interest as part of interest on loan amount in the Petition.*

104. In last true up Order dated 29th March, 2023, the Commission had observed that the weighted average rate of interest was on higher side, therefore the petitioner was directed to review existing weighted average rate of interest on loans and explore the possibilities of refinancing/restructuring of loans. However as per Regulations, 2020, the Commission has considered the weighted average rate of interest as 14.12% for FY 2022-23 as filed by the petitioner. The repayment equivalent to depreciation during the period till 4.9.2022 is considered as per the provision under the Regulations, 2020.

105. It is once again brought to the notice of the petitioner that Regulation 57 of the Regulations, 2020 provides that:

57.1 If re-financing or restructuring of loan by the generating company results in net savings on interest after accounting for cost associated with such refinancing or restructuring, the same shall be shared between the beneficiaries and the

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generating company in the ratio of 50:50."

106. In light of the above Regulation, the petitioner is again directed to review existing weighted average rate of interest on loans and explore the possibilities of refinancing/restructuring of loans.

107. In view of the above, the interest on loan is worked out by the Commission based on the following:

(a) Gross normative opening loan of Rs. 1821.85 Crore has been considered as per last true-up order dated 29th March, 2023.

(b) Loan additions of Rs 0.01 Crore (70% of add-cap approved above) is considered.

(c) Repayment of loan equal to depreciation corresponding to 157 days (till 4th September, 2022) is considered.

(d) Weighted average rate of interest @ 14.12% filed by the petitioner is considered.

108. Based on the above, the annual interest on loan is worked out as given below:

Table 21: Annual Interest on Loan for FY 2022-23 allowed in this Order

Sr. No.	Particulars	Unit	Amount
1	Opening Loan as on 1.4.2022	Rs Crore	1821.85
2	Loan Addition	Rs Crore	0.01
3	Repayment during the Year considered upto 4.09.22	Rs Crore	88.82
4	Closing Loan	Rs Crore	1733.04
5	Average Loan	Rs Crore	1777.45
6	Weighted average Rate of Interest	%	14.12%
7	**Annual Interest Amount on Loan**	Rs Crore	**250.98**

d. Operation and Maintenance Expenses:

Petitioner's Submission:

109. The petitioner filed the Operation and Maintenance expenses for FY 2022-23 in the petition as given below:

Table 22: O&M Expenses claimed by the petitioner (Rs. in Crore)

Particulars	FY 2022-23
Annual O & M Expenses	134.82

Provision in Regulations:

110. The norms for Operation and Maintenance Expenses for thermal generating units commissioned on or after 01/04/2012 are specified under Regulation 40.2 of the

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Regulations, 2020 for the generating Unit of "600 MW Series" for FY 2022-23 which are as given below:

Table 23: Normative O&M Expenses for FY 2022-23

Units (MW)	Rs. Lakh/MW/Year
600/660 MW Series	**22.47**

Commission's Analysis:

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

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

Particular	Units	FY 2022-23
Generating Unit Capacity	MW	600
Per MW O&M Expenses Norms	Rs in Lakh/MW	22.47
Annual O&M expenses	**Rs in Crore**	**134.82**

e. Interest on Working Capital
Petitioner Submission:

112. The petitioner claimed the interest on working capital in the subject petition as under:

Table 25: Interest on Working Capital claimed by the petitioner for FY 2022-23 till 4th September,22 (Rs. in Crore)

Sr No	*Particulars*	*As claimed*
1	*Cost of Coal/Lignite*	*167.01*
2	*Cost of Secondary Fuel Oil*	*1.90*
3	*O & M Expenses*	*11.24*
4	*Maintenance Spares*	*26.96*
5	*Receivables*	*224.67*
6	*Total Working Capital*	*431.78*
7	*Rate of Interest*	*10.50%*
8	***Interest on Working Capital***	***45.34***

Provision in Regulations:

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

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38.1 "The Working Capital shall cover:

(1) Coal- based thermal generating stations

(i) 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;

(ii) Advance payment for 30 days towards cost of coal for generation corresponding to the normative annual plant availability factor;

(iii) Cost of secondary fuel oil for two months for generation corresponding to the normative annual plant availability factor, and in case of use of more than one secondary fuel oil, cost of fuel oil stock for the main secondary fuel oil;

(iv) Maintenance spares @ 20% of operation and maintenance expenses specified in Regulation 39 and 40 of these Regulations;

(v) Receivables equivalent to 45 days of capacity charges and energy charges for sale of electricity calculated on the normative annual plant availability factor; and

(vi) Operation and maintenance expenses for one month.

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

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

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

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

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

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Commission's Analysis:

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

(i) Two months' Cost of coal, and Two months' Cost of secondary fuel of main secondary fuel oil equivalent to normative plant availability factor as considered in Commission's MYT Order dated 8th May, 2021 in petition No. 47 of 2020 are considered as follows:

Particulars	FY 2022-23 (Rs in Crore)
Cost of Coal for 60 Days	167.01
Cost of Secondary Fuel Oil for two Months	1.90

(ii) Maintenance spares as considered in Commission's MYT Order dated 8th May, 2021 in petition No. 47 of 2020 as stated below is considered:

Particulars	FY 2022-23 (Rs in Crore)
Maintenance Spares (20% of O&M Expenses)	26.96

(iii) O&M expenses for one month for the purpose of working capital as considered in Commission's MYT Order dated 8th May, 2021 is considered:

Particulars	FY 2022-23 (Rs in Crore)
O & M Expenses for One Month	11.24

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

Particulars	FY 2022-23 (Rs in Crore)
Variable Charges- 45 Days (As considered on Order dated 8th May, 2021)	126.66
Annual Fixed Charges- 45 Days (Worked out in this Order)	97.92
Total	**224.58**

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115. Regarding the rate of interest on working capital, Regulation 38.3 of the Regulations,

2020 provides that:

"Rate of interest on working capital shall be on normative basis and shall be considered as the bank rate1.4.2019 or as on 1st April of the year during the tariff period 2019-20 to 2023-24 in which the generating station or a unit thereof, is declared under commercial operation, whichever is later:
Provided that in case of truing-up, the rate of interest on working capital shall be considered at bank rate as on 1st April of each of the financial year during the tariff period 2019-24.

116. With regard to Bank Rate, Regulation 3.1 (7) of the Regulations, 2020 provides that Bank rate means the one-year marginal cost of lending rate (MCLR) of the State Bank of India issued from time to time plus 350 basis points. Accordingly, one-year MCLR of State Bank of India applicable as on 1.4.2021 is 7.00%, therefore, the interest on the working capital is considered 10.50% (7.00% + 3.50%) in this order.

117. Considering the above, the interest on working capital worked out by the Commission for FY 2022-23 in this true-up order is as given below:

Table 26: Interest on Working Capital for FY 2022-23 allowed in this Order (Rs. Crore)

Sr. No.	Particulars	Norms	FY 2022-23
1	Cost of Coal/Lignite	60 Days of Coal Purchase (As per Regulation 38.1 (1) (i & ii)	167.01
2	Cost of Main Secondary Fuel Oil	2 months of Sec Oil Purchase	1.90
3	O & M expenses	1 month of O&M	11.24
4	Maintenance Spares	20% of O&M	26.96
5	Receivables	45 days of Total Revenue	224.58
6	**Total Working Capital**		**431.69**
7	Rate of Interest (SBI MCLR)	%	10.50%
8	**Interest on Working Capital**		**45.33**

f. Non-Tariff Income:

118. In the subject true-up petition, the petitioner filed Rs. 0.0001 Crore (50% of total non-tariff income) as non-tariff income during the year.

Provision in Regulations:

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

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

company on annual basis:

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

Provided that the interest or dividend earned from investments made out of Return on Equity corresponding to the regulated business of the Generating Company shall not be included in Non-Tariff Income.

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

Commission's Analysis:

120. On perusal of the details related to non-tariff income, it was observed by the Commission that the petitioner has filed non-tariff income of Rs. 0.0001 Crore during FY 2022-23, whereas, in Note 23 of Annual Audited Accounts "other income" is shown as Rs. 10.05 Crore. Vide letter dated 19th December, 2023, the petitioner was asked to explain the reasons for aforesaid discrepancy in non-tariff income/other income recorded in Annual Audited Accounts vis-a-vis filed in the subject petition. The petitioner was also asked to file detailed break-up of non-tariff income in accordance with the Regulation 58.1 of the Regulations, 2020 duly reconciled with the Annual Audited Accounts.

121. By affidavit dated 31st January, 2024 the petitioner filed its reply along with the reconciliation of non-tariff income with Annual Audited Accounts of FY 2022-23 as given below:

The petitioner submits that the claim of total non-tariff income of Rs. 0.0001 Crore (Rs. Two thousand) in the Petition corresponds to sum of sale of scrap (Empty drums/ used Oil) as recorded in the Note 23 of Annual Audited Accounts for FY 2022-23. With regard to the reconciliation of the petitioner's claim of non-tariff income with the Annual Audited Accounts for FY 2022-23, the petitioner submits the following item wise justification for non-consideration of the same as non-tariff income:

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Table 27: Justification for Petitioner's claim of Non-Tariff Income for FY 2022-23

S. No	Particular/ Description	Amount in Rs. Crore	Remark/ Justification
1	Interest on fixed deposit	9.98	The same has not been considered as non-tariff income as the interest amount received is on account of investments made out of Petitioner's RoE. From the Annual Audited Accounts of the Petitioner, it can be observed that all the cash generated by the Petitioner's company (from the Return on Equity allowed by the Commission) has been lying in the accounts of the company and the Petitioner is neither involved in any other activity other than sale of electricity. Therefore, the above interest amount received is purely out of Petitioner's own funds and is not considered as non-tariff income as per Regulation 58 of Regulations, 2020.
2	Scrap Sale	0.0002	Claimed as non-tariff income as per regulation 58 of Regulations, 2020.
3	Other Miscellaneous Receipts	0.07	It is submitted that Rs. 0.07 Crore pertains to insurance claim received by the company under its Marine Insurance policy. Railway Wagons were derailed outside plant in FY 21-22 and company has lodged a claim with Insurance company towards the loss incurred. The receipt of such claim is reflected in Audited accounts. It may please be noted that insurance receipts do not form part of NTI as per Regulations, 2020.
	Total	**10.05**	

Keeping in view of the above submissions, the total non-tariff income of the Petitioner for FY 2022-23 till 4th September, 2022 is Rs. 0.0002 Crore (Rs. Two thousand) and as per Regulation 58.1 of the Regulations, 2020, the Petitioner is entitled to retain 50% of the above non-tariff income. Accordingly, the Petitioner requests the Commission to

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consider the sharing of non-tariff income of Rs. 0.0001 Cr in 50:50 ratios between Petitioner and Beneficiaries.

122. Since, Regulation 58.1 mentions that the interest or dividend earned from investments made out of Return on Equity corresponding to the regulated business of the Generating Company shall not be included in Non-Tariff Income, therefore, non-tariff income of only scrap sale of Rs. 0.0002 Crore claimed by the petitioner for FY 2022-23 is allowed in accordance to the Regulations, 2020 in this Order. The break-up of non-tariff income considered is as given below:

Table 28: Non-tariff Income for FY 2022-23 allowed in this Order: (Rs in Crore)

Sl. No.	*Particulars*	*Amount*
1	*Scrap Sale*	*0.0002*
	Total Non-tariff Income during FY 2022-23	***0.0002***
	50% of Non-tariff Income	***Rs 0.0001 Crore***

Other Charges:

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

(i) Allow to recover E.D., Water Charges, WRLDC Fees & Charges and Cess on auxiliary power consumption and other taxes, if any, levied by the Statutory Authorities from the beneficiaries on submission of documentary evidence;

(ii) Allow to recover the fees paid to the Hon'ble Commission and publication expenses from the beneficiaries on submission of documentary evidence;

124. Regarding the other charges, In Para 144 to 146 of the MYT order dated 8th May, 2021, the following was mentioned by the Commission:

- *In view of above, the petitioner is allowed to recover the fee paid to MPERC and publication expenses as per Regulation 65.1 (i) of the Regulations, 2020 on submission of documentary evidence.*

- *In view of the above, the petitioner is allowed to recover the electricity duty on plant auxiliary consumption, Energy Development Cess on energy supplied to MPPMCL and water charges paid to Water Resources Department, Government of MP as per Regulation 65.2 of the Regulations, 2020 on submission of documentary evidence.*

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

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65.1 "The following fees, charges and expenses shall be reimbursed directly by the

beneficiary in the manner specified herein:

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

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

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

126. In view of the above, the petitioner is allowed to recover the fee paid to MPERC and publication expenses as per Regulation 65.1 (i) of the Regulations, 2020 on submission of documentary evidence.

127. The petitioner is also allowed to recover the electricity duty on plant auxiliary consumption, Energy Development Cess on energy supplied to MPPMCL and water charges paid to Water Resources Department, Government of MP as per the provisions under the Regulations, 2020 and amendment thereof on submission of documentary evidence.

Unrecovered Depreciation:

Petitioner's Submission

128. The petitioner submitted that in its previous filings, it has inadvertently included an amount of Rs. 1.47 Crore pertaining to Leased Land under the Freehold Land. As a

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result, the Petitioner inadvertently missed out on claiming depreciation on the leased land which is allowable as per the Regulations, 2015 and the Regulations 2020. The petitioner has now requested to approve un-recovered depreciation amounting to Rs. 0.29 Crore towards the Depreciation of Lease Land pertaining to the period from CoD to FY 2022-23 till 4th September, 2022.

Commission's Analysis

129. The petitioner has submitted that it has inadvertently not claimed depreciation on the leased land since CoD of the project and hence now claimed Rs. 0.29 Crore towards depreciation on leased land from CoD to FY 2022-23 till 4th September, 2022 in subject true-up petition. The generating unit of petitioner power project achieved COD on 3rd May, 2016.

130. It is observed that the petitioner has filed Appeal No 547/2023 against the Commission's Order dated 29th March, 2023 in P No 87 of 2022 regarding this issue of unrecovered depreciation pertaining to lease land, which is sub-judice before the Hon'ble Appellate Tribunal for Electricity (APTEL). Since this issue has not attained any finality, hence, the Commission has not allowed this amount in this Order.

Fly Ash Utilization & Ash Transportation Expenses:

Petitioner's Submission

131. With regard to expenditure incurred on fly ash utilization and transportation expenses, petitioner has submitted that in order to comply with MOEFCC Notification regarding utilization of fly ash, it has incurred a cost of Rs. 1.06 Crore in FY 2022-2023 till 4th September, 2022. The actual bills raised to MPPMCL in support to the expenses incurred is also submitted with the subject petition. The details of expenses incurred w.r.t transportation of fly ash is as follows:

Table 29: Expenses incurred on account of transportation of Ash (Rs. Crore)

Particulars	*Total Ash utilization expenses*	*Proportionately claimed from MPPMCL*
FY 2022-23 till 4th Sept, 2022 - 5%	*1.06*	*0.21*
FY 2022-23 till 4th Sept, 2022 - 30%		*0.03*

132. The petitioner submitted that it had claimed the proportionate share of such expenses from MPPMCL for FY 2022-23 till 4th September, 2022 against Ash Transportation are admissible as per article 12 of PPA and MPERC Order dated 29.11.2021 (Petition no

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26 of 2021 of M/s. Lanco Amarkantak Power Ltd Vs. MPPMCL & Ors). In view of the above, the Petitioner has prayed to allow reimbursement of the cost incurred for transportation of Ash on monthly basis in proportion to the contracted capacity with MPPMCL in FY 2022-23 till 4th September, 2022.

Commission's Analysis

133. On perusal of the details regarding expenditure incurred towards ash utilization and transportation expenses, it is observed that the petitioner has incurred Rs. 1.06 Crore during FY 2022-23 till 4th September'22 towards fly ash transportation in compliance with the MOEFCC Fly Ash Notification, 2016 and claimed proportionate expenditure from MPPMCL corresponding to the contracted capacity on long term basis.

134. It is pertinent to mentioned that the Commission vide order dated 29.11.2021 in the matter of Lanco Amarkantak vs MPPMCL in petition No 26 of 2021, had considered aforesaid expenses under 'change in law' as statutory expenses and allowed generating companies to recover such expenses directly from the procurer / MPPMCL as per provisions under the said notification. In para 26 of the aforesaid order mentioned the following:

"26. As a matter of fact, the aforesaid MoEFCC notification dated 25.01.2016 is applicable on all the thermal power plants also and similar situation for transportation of fly ash like in the subject matter may arise for other coal based thermal power generators in the State also. Pursuant to the aforesaid notification by the Central Government, the generating companies are bound to incur expenditure for compliance with the above-mentioned directives issued by MoEFCC. The Commission has initiated the process for appropriate amendment in MPERC Regulations, 2020 to incorporate appropriate provision in this regard. However, the amendment in Regulations shall be applicable from the date of its notification. Therefore, the Commission in exercise of the powers under the provisions of MPERC Regulations, 2020 decides that the actual additional expenditure incurred/ to be incurred by the coal based thermal power plants towards transportation of fly ash in terms of the aforesaid MOEFCC Notification shall be considered under "Change in Law" as statutory expenses and the generating companies are eligible to recover such expenses directly from the procurer / MPPMCL as per provisions under the said notification." However, the recovery of the ash transportation expenses by the petitioner/ generating company shall be subject to fulfillment of following conditions by the petitioner/generating company and verification of the following conditions for each station by the procurer / MP Power Management Company Ltd"

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135. In view of the aforesaid order, it is observed that the MOEFCC notification for 100%

utilization of fly ash generated in power station has been declared under 'change in law' event and Commission in aforesaid order dated 29.11.2021 in P No. 26 of 2021 had also recognized the aforesaid expenditure under the change in law event. Further, with respect to Fly Ash Transportation Expenses, proviso 65.3 of the 2nd Amendment of the Regulations, 2020 provides that:

65.3 Expenses towards Fly Ash Utilization & transportation shall be payable in accordance to the directives issued by Government of India, Ministry of Environment, Forest & Climate Change vide Notification No. S.O. 5481 (E) dated 31.12.2021 and subsequent amendment issued from time to time.

Provided that the generating company shall maintain separate accounts/records for expenses towards Fly ash Utilization & transportation reconciled with the Annual Audited Accounts and duly certified by the Statutory Auditor. The generating company shall submit complete details of aforesaid expenses to the procurer in Form TPS 19 A along with supporting documents.

136. The petitioner is allowed to recover fly ash utilization and transportation expenses in accordance to the Regulation 65.3 of the 2nd Amendment to the Tariff Regulations, 2020 on actual basis from MPPMCL subject to submission of all details/documents in this regard.

Late Payment Surcharge on the GST Amount

Petitioner's Submission:

137. The petitioner in the subject petition has requested the Commission to allow recovery of Carrying Cost of an amount of Rs. 11.62 Crore which was deducted from monthly bills against GST of Rs. 15.25 Crore (as per the order of Hon'ble NCLT, Kolkata). The petitioner also submitted that deducted amount of Rs. 15.25 Crore has been paid by MPPMCL on 14.07.2023.

Commission's Analysis:

138. The petitioner in the subject petition submitted the following:

Further, Respondent unilaterally adjusted Rs 82.48 Crore against Liquidated Damages along with GST & Penalty thereon (due to delay in CoD) from the monthly invoices though the Respondent didn't suffer any loss due to the delay in CoD as evident from 3% scheduling thereafter. Further, disallowance of IDC on the same account, penalised the Petitioner twice for the same delay which is squarely against the principle of natural justice. The Respondent has set-off the GST amounting to Rs. 15.25 Crore and LD of Rs. 67.23 Crore from monthly bills of the Petitioner

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without prior consent of the Petitioner. Subsequent to the NCLAT Order dated 16th November 2022, GST amount of Rs. 15.25 Crore along with LPSC was payable by the Respondent to the Petitioner. After rigorous follow up, MPPMCL has paid only principle amount i.e. Rs. 15.25 Crore to the Petitioner on 14.07.2023, however, LPSC amount of Rs. 11.62 Crore against the same is still pending.

139. Regarding Late payment Surcharge (LPSC), by affidavit dated 11th January, 2024, MPPMCL submitted that:

"It is submitted that due to delay in commissioning of the generating station liquidated damages were levied on the Petitioner. The levy of such damages was never challenged by the Petitioner and thus became final. The answering respondent paid GST on the same in terms of the demand raised by the department of revenue intelligence, where the Petitioner refused to participate. It is submitted that after the clarification of liability of GST on liquidated damages that no GST is to be levied on liquidated damages, the GST amount was returned to the Petitioner. Since the clarification, the Petitioner has been insisting on late payment surcharge on the GST amount refunded.

It is settled law that interest can be claimed only if any wrongdoing can be attributed to the party (Clariant International Ltd & Anr vs SEBI (2004) 8 SCC 524) Para 30). It is not in dispute that the payment of GST was in terms of the demand by the department of revenue intelligence, on the levy of liquidated damages. Admittedly the levy of liquidated damages for delay was never challenged. The consequent imposition of tax therefore cannot be independently challenged. It is submitted that after the law on levy of GST on liquidated damages was clarified the amount was refunded; demand for interest if any has to be raised with the GST authorities and not with MPPMCL"

140. In view of the above submissions of Petitioner and Respondent No.1, the issue related to dispute on payment of LPSC on the GST amount is beyond the scope of the Regulations, 2020 and therefore beyond the scope of this true-up petition. The petitioner and Respondent are required to follow the Dispute Resolution Process under the PPA in this regard.

Summary of Annual Capacity (fixed) Charges:

141. The details of the Annual Capacity (fixed) Charges allowed in this true-up order vis-a-vis those determined in the MYT order dated 8th May, 2021 at normative Plant Availability Factor are summarized in the following table:

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Table 30: Head wise Annual Capacity Charges allowed in this Order:- (Rs in Crore)

S. No.	Particulars	MYT Order dated 8th May, 2021 for FY 2022-23	Allowed for FY 2022-23 in this Order	True-up amount
		A	B	C=B-A
1	Return on Equity	153.14	156.63	3.49
2	Interest on Loan Capital	237.02	250.98	13.96
3	Depreciation	202.37	206.50	4.13
4	O&M Expenses	134.82	134.82	0.00
5	Interest on Working Capital	48.31	45.33	-2.98
6	**Total Annual Capacity (Fixed) Charges**	**775.66**	**794.26**	**18.60**
7	Less:- Non Tariff Charges	0.11	0.0001	-0.11
8	**Net Annual Capacity (Fixed) Charges**	**775.55**	**794.25**	**18.70**
9	**Annual Capacity (Fixed) Charges proportionate to number of days till 4th September, 2022 (157 Days)**	**333.59**	**341.64**	**8.05**
10	**Annual Capacity(fixed) Charge corresponding to 30% of the installed capacity of the Units**	**100.08**	**102.49**	**2.41**

142. The Annual Capacity (Fixed) Charges as determined above from 1st April, 2022 to 4th September, 2022 are at Normative Availability and these charges are based on Annual Audited Accounts of Jhabua Power Ltd. till 4th September, 2022 submitted by the petitioner.

143. The above Annual Capacity (Fixed) Charges are determined corresponding to the contracted capacity under long term PPA. The recovery of Annual Capacity (Fixed) Charges shall be made by the petitioner in accordance with Clause 42.2 of the Regulations, 2020 on pro rata basis with respect to actual Annual PAF.

144. Regarding the performance-based truing-up of energy charges on account of controllable parameters, Regulation 56.1 of the Regulations, 2020 provides that the generating company shall work out gains based on the actual performance of applicable controllable parameters as under:

- Station Heat rate
- Secondary Fuel Oil Consumption
- Auxiliary Energy Consumption

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145. In view of the above Regulations, it was observed by the Commission that the

generating company shall carry out the truing-up of tariff of generating station based on the controllable performance parameters like Station Heat Rate, Secondary fuel oil consumption and Auxiliary Energy consumption. Vide letter dated 19th December, 2023, the petitioner was asked to file annual details of aforesaid performance parameters actually achieved vis-à-vis normative parameters under the Regulations, 2020. The petitioner was also asked to file the details of financial gain till 4th September, 2022, if any, on account of controllable parameters and shared with the beneficiaries in light of the Regulations 56.2 of the Regulations, 2020.

146. In response to above, by affidavit dated 31st January, 2024, the petitioner submitted the following:

> *The details of the Controllable Performance Parameters Viz. Station Heat Rate, Secondary fuel oil consumption and Auxiliary Energy Consumption actually achieved vis-a-vis normative parameters under Regulations, 2020 is attached. Further it can be observed that there has been no gain to the Petitioner on account of actual performance parameters for the period FY 2022-23 till 4th September, 2022".*

147. On perusal of the details of actual operating parameters vis-à-vis normative parameters filed by the petitioner, it is observed that the petitioner incurred loss on account of the inferior performance and poor actual operating parameters achieved by it during the period from 1.4.2022 till 4.9.2022.

148. The Regulation 56.2 of the Regulations, 2020 provides that the financial gains by a generating company on account of controllable parameters shall be shared between generating company and the beneficiaries in the ratio of 50:50 on annual basis. The aforesaid Regulations do not provide for sharing of loss incurred by the generating company. Therefore, the loss incurred by the petitioner on account of inferior operating parameters shall not be passed on to the beneficiary.

Implementation of the Order

149. The petitioner must take steps to implement the order after giving seven days public notice in accordance with clause 1.30 of MPERC (Details to be furnished and fee payable by licensee or generating company for determination of tariff and manner of making application) Regulations, 2004 and its amendments and recalculate its bills for the energy supplied to Distribution Companies of the State/ M.P. Power Management Company Ltd. since 1st April, 2022 to 4th September, 2022. The petitioner is also directed to provide information to the Commission in support of having complied with this Order.

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150. The deficit amount as a result of this Order shall be recovered from MP Power Management Company Ltd. / three Distribution Companies of the state in terms of applicable Regulation in six equal monthly installments during FY 2024-25.

151. With the above directions, this Petition No. 61 of 2023 is disposed of.

(Prashant Chaturvedi)	(Gopal Srivastava)	(S.P.S Parihar)
Member	**Member (Law)**	**Chairman**

Date: 5th March, 2024
Place: Bhopal

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Annexure-I

Petitioner's Reply on the response of the Respondent No.1 (MPPMCL) along with observations:

MPPMCL's Response-

In terms of Section 79(1) (a) of the Act, Tariff for generating stations owned and controlled by the Central Government are determined by the Ld. Central Electricity Regulatory Commission. However, it is also important to note that tariff determined of a generating station is undertaken on projection basis at the beginning of a control period. It is submitted that tariff determined on projection basis is trued-up for actual expenditures however tariff once determined cannot be subject to redetermination. The tariff determined by this Commission in terms of the Regulations is valid for the period from 1st April 2019 to 31st March 2024 and notwithstanding the change in shareholding pattern, the tariff cannot be determined. As a corollary, true-up exercise for the entire control period would also have to be undertaken by this Commission and piecemeal true-up exercise proposed by the petitioner is illegal and is liable to be rejected.

True-up of the tariff determined can only falls under the purview of only such Commission which originally determined the tariff in accordance with extant laws. There is no provision either under the CERC Regulation or Regulations framed by this Commission or under the Act wherein true-up for part of the control period becomes subject matter of a different commission. It is submitted that the provisions of the Act, the Rules and the Regulations framed thereunder would have to be interested harmoniously and therefore tariff determination would continue to be in terms of regulations applicable at the beginning of the control period.

That the contention of the Petitioner that the true up of tariff ought to be only till 04.09.2022 after which the true up would be done by the Ld. CERC cannot be accepted in the scheme of the Act or the extant regulations. Regulation 9.1 of the Regulations clearly states as under :-

> *"9.1 The Commission shall define Tariff period for the generating company from time to time. The principles for Tariff determination shall be applicable for the duration of the Tariff period. The principles that guide Tariff determination for the next Tariff period shall be valid fora period from 1st April, 2019 upto 31st March, 2024."*

Further, true-up of such tariff year-on-year is to be carried out in terms of Regulations 9.4 and 9.8 of the Regulations, 2020.

That it is clear that when tariff of a generating company is determined by this Commission, the true up for the same would also have to be determined by this Commission. It is absurd to suggest that for the Petitioner when the tariff has been determined by this Commission in terms of Regulations, 2020. Then the true up of that tariff would be undertaken in terms of the CERC Tariff Regulations by the Ld. CERC.

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That not just limited to the above grounds, it is pertinent to note that as elaborated hereunder, the capital cost for the Petitioner has changed drastically after NTPC acquired it through the resolution process under IBC. The same needs reconsideration as in the absence of the same, the tariff recovered would be exponentially higher than the actual expenditure. However, for the purposes of the present subject petition, this Commission ought to direct the Petitioners to file for true-up of the entire period FY22-23 and not just until 04.09.2022.

Petitioner's Reply-

The averments made by the Respondent are denied and disputed. The Petitioner submits that the True-up of Tariff for FY 2022-23 till 4th September, 2022 has been filed because w.e.f. 05.09.2022 i.e Transfer Date, Jurisdiction is a question of law and in the case of statutory commissions, it has to flow from the Statue itself, namely the Electricity Act, 2003. The Act clearly demarcates the jurisdiction of the Central Commission and the State Commissions under Sections 79 and 86. Since 05.09.2022, the status of Jhabua Power has changed from an IPP to a company owned or controlled by Central Government, jurisdiction over the tariff of Jhabua Power can only be exercised by the CERC and any tariff petition subsequent to 04.09.2022 must be governed by CERC (Terms and Conditions of Tariff) Regulations, 2019. In view of the above, the Petitioner is right in filing the true-up till 4th September, 2022 and requests the Commission to approve the additional capitalization claimed in the Petition till 4th September, 2022.

Observation-

The petitioner has submitted that after acquisition of project by NTPC, it has become central generating station and come under the jurisdiction of the CERC under Section 79 (1) (a) of the Electricity Act, 2003. In support of its contention, the petitioner by affidavit dated 13th February, 2024 filed legal opinion in this regard. The Commission has considered the legal opinion and concluded that Central Electricity Regulatory Commission under Section 79(1)(a) of the Electricity Act 2003 has exclusive jurisdiction to regulate tariff of generating company owned and controlled by the Central Government.

The Commission has examined the true up tariff petition thoroughly in accordance to the provisions under the Regulations, 2020, Annual Audited Accounts of the petitioner for FY 2022-23 (till 4th September, 2022), Asset-cum-Depreciation Register for FY 2022-23 (till 4th September, 2022) and other supplementary submissions filed by the petitioner and other documents placed on record by the petitioner.

MPPMCL's Response-

Admittedly, the cut-off date for the plant was 31.03.2019. In the True-up petition, as has been clearly recorded in Paragraph 7 of the Review Order dated 27.12.2019, the true-up was sought for the FY 2019-20 in accordance with Regulation 9.4 of the Regulations, 2020.

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In the subject petition it is clear that the cut-off date for the plant is 31.03.2019 and the additional capital expenditure claim is incurred post that can be allowed only if they are in accordance with Regulation 27.2. Since the additional capitalisation claimed have been incurred after the cut-off date and is not in accordance with Regulation 27.2 of the extant Regulations, the claims are untenable as per the scheme of the Regulations, 2020.

It is submitted that all the terms i.e. “Cut-off Date” “controllable factors” and “uncontrollable factors” are defined in the extant tariff regulations. It is settled law that the Regulations once notified are binding on all stakeholders including the Commission. Therefore, “Cut-off Date” cannot be extended as a matter of routine and such extension is only possible if the project is impacted by “uncontrollable factors”. While the definition of “uncontrollable factors” is an inclusive definition, what would constitute “uncontrollable factors” shall have to be guided by the illustrated heads in the definition which are Force Majeure Events, Change in Law, Time and cost over-runs on account of land acquisition except where the delay is attributable to the generating company. It is submitted that ‘includes’ in the definition of the “uncontrollable factors” would have to be interpreted *ejusdum generis* and financial difficulty of the generating company cannot be termed as an “uncontrollable factor”. The MPERC has previously time and again rightly held that events relied on by the Petitioner to extend the cut-off date were not entirely beyond the control of the Petitioner. As a result, the prayer for extension of cut-off date ought not to be allowed by the MPERC.

It is pertinent to note that the Petitioner has not put any evidence on record suggesting that the difficulties faced by the Petitioner would qualify as such. In fact it is pertinent to submit that the ‘uncontrollable factors” as alleged by the Petitioner pertains to financial difficulties faced by the Petitioner and such financial difficulties were solely attributable to the Petitioner. The petitioner having practiced poor financial prudence had to go through the IBC proceedings and resolution thereunder. The liability of such poor financial handling cannot be put on the beneficiaries in the form of additional capitalisation expended past the cut-off date.

Further, it is also pertinent to state that this. Commission has consistently disallowed the Petitioner’s claim for extension of cut-off date and grant of additional capitalisation in lieu of the same. Grant of the same would not only lead to inconsistency but would open a pandora’s box of revision of all previous and further claims on the part of the Petitioner and similarly placed entities. Further, the matter of whether cut-off date for commissioning the Petitioner’s project should be extended is already sub-judice before the Hon’ble APTEL and any decision contrary to the same would lead to severe prejudice to the Answering Respondent before the Hon’ble APTEL.

It is also pertinent to state that in the subject petition, the Petitioner seeks to put the onus of the financial difficulties faced by it on the Answering Respondent. However, in that regard it is submitted that the schedule to a generating station is not provided by the procurer. It is provided by the appropriate load despatch centre in accordance with the merit order available

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to the procurer. It is submitted that even assuming low off-take by MPPMCL, the entitlement of capacity charge is not impacted and debt servicing is part of the capacity charge. MPPMCL like any other procurer provides its load requirement to the appropriate load despatch centre who provide schedule to the generating stations. It is submitted that MPPMCL had a PPA for maximum of 35% of power generated. Accordingly, even if it proposed to schedule the entire power, then also the Petitioner would not have the technical minimum schedule unless it tied-up the remaining capacity. Accordingly, the Petitioner's failure to tie-up or otherwise sell the power caused the distress and MPPMCL cannot be blamed for the same. Similarly low energy prices in the power exchanges are business risk that any generator is required to take and the same cannot be cited as a reason for extending the cut-off date.

Petitioner's Reply-

The averments made by Respondent are denied and disputed except to the extent of facts stated therein, the Petitioner submits that the Respondent even after being aware of the current situation of the Petitioner, for which the Respondent itself was responsible, has made such averments without any material basis. The Petitioner requests the Commission to decide the prayers made in the instant Petition considering the submissions and documentary proofs submitted along with the Petition which shall substantiate beyond doubt that the factors responsible for delay in executing works were truly uncontrollable and under no circumstances attributable to the Petitioner.

The averments made by Respondent in above para are without any material basis and accordingly are denied and disputed. The Respondent has very cleverly shifted the responsibility of low scheduling by the Respondent to the appropriate load dispatch centre which has further resulted the Petitioner into the huge financial risk due to the cascading effects. In view of the above, the averments made by the Respondent are misleading and therefore denied and disputed.

Observation-

The issue of extension of cut-off date has already been addressed by the Commission in earlier tariff/true up orders of the Petitioner's Project. Further, there is no provision under the Regulations, 2020 for extension of cut-off date of the project. Therefore, the request of the petitioner for extension of cut-off date is not considered in this true-up Order.

Since, the additional capitalization claimed by the petitioner is beyond the cut-off date of the project and within the original scope of work, therefore, same has been analysed under Regulation 27 of the Regulations, 2020.

MPPMCL's Response-

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That it is the case of the Petitioner in Paragraphs 6.53-6.71 of the present Petition that certain railway related works had been accepted by this Commission *vide* its order dated 18.08.2022

& 29.03.2023. Towards such capitalization in terms of Regulation 27.1 (vi) of the Regulations, 2020, cost of Rs. 0.94 Crore has been incurred. The same is unchallenged in line with the previous decisions of this Commission.

However, the Petitioner seeks to approve Rs. 3.69 Crore on account of balance works incurred in FY 2022-23 till 04.09.2022 in terms of Regulation 26.1 (ii) of the Regulations, 2020. It is reiterated that as averred hereinabove, such cost of balance works took place after the cut-off date and financial hardships clearly do not attract force majeure or change in law provisions. Therefore, there is no grounds in terms of the Regulations, 2020, basis which the cost of balance works amounting to Rs. 3.69 can be allowed to be passed through in true up.

That similarly as above, the Petitioner seeks to pass through liability of Rs. 3.19 crore on account of expenditure done on capital spares. Further other misc. electric works to the tune of Rs. 0.04 Crore is also sought to be passed through in true up. It is the case of the Petitioner that such expenditures were taken after the cut-off date on account of the inability of the Petitioner to invest money during the CIRP process. However, it is reiterated herein that financial hardships that were brought upon itself by the Petitioner cannot be passed on to the beneficiaries. In that regard the averments made hereinabove are reiterated.

Further additional expenditure towards ash handling system amounting to Rs. 0.02 Crore and additional expenditure towards coal handling plant amounting to Rs. 0.16 crore are also sought for similar reasons as above. It is reiterated that the present case as held by this Commission before is not a fit case for extension of cut-off date and therefore such claims on additional capitalization ought to be disallowed. In sum, the additional capitalization amount of Rs. 3.23 Crore (on accrual basis) and Rs. 4.62 Crore (on cash basis) claimed by the Petitioner is untenable under the scheme of the Regulations, 2020 and ought to be disallowed by this Commission.

Petitioner's Reply-

The Respondent has agreed that Railway related works should be granted to the petitioner. Thus, Commission is requested to allow the same.

In reply to the averments made by the Respondent in above para, the Petitioner submits that averments made by Respondent are without any material basis and accordingly are denied and disputed. In support of this reply, the petitioner submits that the assets capitalized during the year FY 2022-23 till 4th September'22 are under original scope of work. It is submitted that the works for the additional capital expenditure claimed were already envisaged in the DPR, however, the same could not be completed within cut-off date owing to the uncontrollable reasons. The petitioner submits that it has claimed the additional capitalization for FY 2022-23 till 4th September, 2022 under Regulation 26.1 and Regulation 27.1 of the Regulations, 2020 and The Commission is requested to consider the submissions made by the Petitioner as per the Regulations, 2020.

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Observation-

The additional capitalization claimed in the petition has been examined thoroughly and dealt with, by the Commission in accordance to the provisions under the Regulations, 2020, Annual Audited Accounts of the petitioner for FY 2022-23 (till 4th September, 2022), Asset-cum-Depreciation Register for FY 2022-23 (till 4th September, 2022) and other supplementary submissions filed by the petitioner and other documents placed on record by the petitioner.

MPPMCL's Response-

It is submitted that it is not under dispute in the subject petition that JPL was successfully acquired by NTPC for Rs. 925 Crore through the CIRP initiated by NCLT, Kolkata. NTPC bought 50.5% of the shares in JPL for the aforementioned Rs. 925 Crore.

Petitioner's Reply-

The averments made by Respondent are matter of facts. The Petitioner, hereby submits that NTPC Ltd is a 50% shareholder in JPL along with the secured financial creditors and not 50.5% as indicated by the Respondent in its submissions.

Observation-

The Commission has determined true-up of tariff prior to project takeover by NTPC.

MPPMCL's Response-

That in terms of Regulation 9 of the Regulations, 2020, it is evidently clear that for purpose of tariff determination and tariff true-up in a cost-plus regime under Section 62 of the Act. It is pertinent to take into consideration the details of actual capital expenditure and actual additional expenditure. While it is true that the erstwhile management of the Petitioners had made certain capital investments in construction of the Petitioner's plant. However, it is pertinent to note that the said plant was acquired by NTPC with a capital investment of just 925 Crore. Therefore, for the purpose of determination of tariff and true-up of tariff, it is pertinent to take the actual capital expenditure for the period.

That the Hon'ble APTEL in its judgement in **Renascent Power Ventures Private Limited v. Uttar Pradesh Electricity Regulatory Commission & Ors. (Appeal No. 183 of 2019)** had observed that while revision of tariff for generators whose tariff is determined by the bidding route in terms of Section 63, capital investment and structure does not matter. Such enquiry has to be done in determination/revision of tariff for generators whose tariff is determined in terms of Section 62 of the Act. The relevant paragraph has been reproduced hereunder for ready reference :-

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"103. As contended by the Appellant and the 2nd Respondent-SBI, in the process undertaken under Section 63 of the Act, question of examination of capital cost or capital

structure of the project by UPERC at the time of adoption of tariff would not arise. ***However, such examination can be undertaken by the Commission if it is a case of determination of tariff by the appropriate Commission under Section 62 of the Act. Under Section 62 PPA, tariff is determined based on the capital cost of the project, debt and equity amounts invested or capital structure of the project.*** *Whereas if tariff is discovered through competitive bidding process, the same has to undergo the process of adoption of tariff by appropriate Commission under Section 63 of the Act. During such examination, the Commission has to see "whether the guidelines issued by the Ministry of Power for procurement of power on long term basis is complied with or not and whether the bidding process was transparent, fair and justified"?"*

Therefore on a conjoint reading of the relevant regulations in the Regulation, 2020, along with the observations of the Hon'ble APTEL, it is clear that this Commission in the present subject petition ought to take into account that the actual capital expenditure from NTPC is to the tune of Rs. 925 Crore. Any tariff that is based on a sum more than Rs. 925 Crore is excess tariff that is accruing to NTPC and must be disallowed by this Commission.

That it is pertinent to state that NTPC took control of the petitioner only on 04.09.2022. Therefore, any tariff that accrues to the Petitioner before that period can be in terms of the previously determined tariff. However, any tariff that is computed after the takeover of control by NTPC must be based on a revised tariff where the actual capital expenditure from NTPC of Rs. 925 Crore needs to be the base capital cost for determination of tariff.

In that regard as stated hereinabove, the contention of the petitioner that there should only be a part true up in the subject petition whereas the balance true up would be done before the CERC is legally untenable. The petitioner would have to continue to operate on the tariff determined by this Commission and the true up is done by this Commission in terms of the Tariff Regulations in full. There is no legal method for determination and part true up of tariff by one commission and part true up by another commission.

That this Commission must take into account that the actual capital expenditure by the Petitioner is only Rs. 925 Crore. This makes it a case fit for rebate in true up in terms of Regulation 9.9 of the Tariff Regulations.

Petitioner's Reply-

The averments made by Respondent are completely misleading. Petitioner has filed the Petition for true-up of tariff for FY 2022-23 till 4th September, 2022, i.e. period before take over by NTPC Limited which falls within the jurisdiction of this Commission. The same has been clearly explained in the instant petition and this reply. Accordingly, the averments made by the Respondent are denied.

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Observation-

The Commission has examined true-up of tariff for FY 2022-23 only till 4th September, 2022 prior to takeover by NTPC and true up has been carried out as per the provision of the Regulations, 2020.

MPPMCL's Response-

That in response to the capacity charges claimed by the petitioner, it is submitted that only such capacity charges may be allowed by this Commission as is applicable in terms of the Tariff Regulations. However, it is pertinent to note that any increase in capital cost in terms of additional capital expenditure may not be allowed as the same has been done after the cut-off date. Further, there has been no extension of cut-off date allowed by this Commission. It is submitted that any return on equity claims, interest and financing charges claims, depreciation claims, depreciation pertaining to lease land claims, interest on working capital claims, non-tariff income claims must be evaluated sans the additional capital expenditure made by the Petitioner after the cut-off dates.

That it is also pertinent to note that the capacity charges as claimed by the petitioner pertains to the period till 04.09.2023. As submitted hereinabove, the Petitioner ought to file its entire financial statements for truing up as there is no provision for part true up before this Commission in terms of the Tariff Regulations. The present petition is therefore incomplete in nature and no claims can be correctly evaluated on such incomplete petition.

Petitioner's Reply-

In respect of averments made by the Respondent regarding the return on equity, non-tariff income, interest on loan, depreciation, interest on working capital and annual capacity charges claimed in the Petition, the Commission is requested to consider the submissions made by the Petitioner which are in line with the Regulations, 2020.

Observation-

As per Section 79 (1) (a) of the Electricity Act, 2003, CERC has exclusive jurisdiction to regulate tariff of Generating Company owned and controlled by the Central Government and the Commission has examined true-up of tariff for FY 2022-23 till 4th September, 2022 under the provision of the Regulations, 2020.

MPPMCL's Response-

That for fly ash utilization and transportation, the petitioner has claimed that it has incurred a cost of Rs. 1.06 Crore in FY 2022-23. The petitioner claims 0.24 lakhs from the Respondent for the period till 04.09.2023. However, it is submitted that the additional expenditure on the same has occurred after the cut-off date and cannot be granted by this Commission.

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Petitioner's Reply-

In reply to the averments made by the Respondent are denied and disputed except to the extent they are the matter of facts mentioned in instant petition. The claims raised for Fly Ash Utilisation and transportation are as per article 12 of the executed PPA and in line with MPERC Order dated 29.11.2021 (Petition No. 26 of 2021). Accordingly, the Commission is requested to consider the submissions made by the petitioner which are in line with the Regulations, 2020. The said Ash utilisation expenses are not capitalisated expenses thus the concept of cut-off date is not applicable to the such claim. The said bills are claimed on reimbursement basis along with the submission of all the necessary documents.

Observation-

Claim regarding Fly Ash Transportation Charges has been dealt in accordance to relevant order issued by the Commission in petition No. 26 of 2021 and provisions of the 2nd Amendment to the Regulations, 2020.

MPPMCL's Response-

It is submitted that due to delay in commissioning of the generating station liquidated damages were levied on the Petitioner. The levy of such damages was never challenged by the Petitioner and thus became final. The answering respondent paid GST on the same in terms of the demand raised by the department of revenue intelligence, where the Petitioner refused to participate. It is submitted that after the clarification of liability of GST on liquidated damages that no GST is to be levied on liquidated damages, the GST amount was returned to the Petitioner. Since the clarification, the Petitioner has been insisting on late payment surcharge on the GST amount refunded.

It is settled law that interest can be claimed only if any wrongdoing can be attributed to the party (Clariant International Ltd & Anr vs SEBI (2004) 8 SCC 524) Para 30). It is not in dispute that the payment of GST was in terms of the demand by the department of revenue intelligence, on the levy of liquidated damages. Admittedly the levy of liquidated damages for delay was never challenged. The consequent imposition of tax therefore cannot be independently challenged. It is submitted that after the law on levy of GST on liquidated damages was clarified the amount was refunded; demand for interest if any has to be raised with the GST authorities and not with MPPMCL.

Petitioner's Reply-

The averments made by Respondent are denied and disputed. The Petitioner has prayed for LPSC amount deducted in October 2019 towards GST by the Respondent. Accordingly, NCLT vide its order dated 23.03.22 held that GST amount recovery cannot be made from JPL as the company was under moratorium. MPPMCL appealed in NCLAT against the aforementioned

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NCLT's order and NCLAT vide its order dated 16.11.22 dismissed the MPPMCL's petition. The Petitioner submits that the Respondent after considerable delay from the date NCLT/NCLAT Order has refunded the amount of Rs. 15.25 Crore on account of GST levied on LD on 14.07.2023. Therefore, The Petitioner is right in claiming the Late Payment Surcharge as per article 10.4.2 of the executed PPA. Accordingly, the Commission is requested to consider the submissions made by the Petitioner as per Regulation 32 of the Regulations, 2020.

Observation-

Dispute related to Late Payment Surcharge on the GST amount is therefore not covered under the scope of the Regulations, 2020, hence not allowed in this Order.

MPPMCL's Response-

That in response to the statutory charges claimed by the petitioner, it is submitted that such claims can only be entertained by this Commission on production of documentary evidence. The same has not been produced by the Petitioner and must therefore be disallowed.

That, it is humbly prayed that the prudence check, carried out by the MPERC, be shared with this respondent and any reasoning/ rationale advanced in support for inclusion of above indicated Costs with the Capital Cost of the Project deserves to be summarily rejected/ ignored.

Petitioner's Reply-

In respect of averments made by the Respondent, the Commission is requested to consider the submissions made by the Petitioner which are in line with the Regulations, 2020 and the Commission is requested to approve the same as claimed by the Petitioner.

Observation-

In the subject true-up petition, Statutory Charges upto 4th September, 2022 have been allowed in accordance to the provisions under the Regulations, 2020.

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Annexure-II

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

Stakeholder's Comment

Subject petition for partial period :- The Commission has issued tariff for M/s Jhabua Power Limited from 01st April, 2019 to 31st March, 2024 by MYT Order dated 08/05/2021 as per the provisions of the Regulations, 2020 and on the basis of the subject petition filed for the year 2019-20 and 2020-21, the final tariff was determined by approving the additional capitalization under the Tariff Regulations.

In the subject petition, due to change in the management of the company, the petitioner has sought true-up only till 4th September, 2022 and for the remaining period - the petition will be filed in the Central Electricity Regulatory Commission under Section 79(1)(a) of the Electricity Act 2003 in future. But in the petition, it is not mentioned whether, the petition for true-up from 5th September, 2022 to 31st March, 2023 has been filed with the Central Electricity Regulatory Commission or not.

The Central Electricity Regulatory Commission has not determined any tariff for the private power plants. Therefore, it is not clear on what basis the true up will be done. It is not clear which rule has been taken by the petitioner in submitting two separate petitions for one financial year to different Regulatory Commissions. It is clear from the petition that the above referred petition is final and thereafter the petitioner will file the petition at the Central Electricity Regulatory Commission.

The Commission is requested to direct the petitioner to provide a copy of the petition to be filed in the Central Electricity Regulatory Commission for the remaining period of the financial year 2022-23 from 5th September, 2022 to 31st March, 2023. Apart from this, instructions will also be given to provide any order given by the Central Electricity Regulatory Commission for accepting the petition for consideration for a partial period.

The verification of the petition for partial/full year under power purchase contract executed by the former management of the plant on January 5, 2011 and with the M.P. Govt. for remaining 5 percent electricity is desirable under the provisions of the contract, by the Commission.

Petitioner's Reply:

The averments made by the stakeholder pertains to the matters not related to the prayers made by the petitioner in the petition. Further, it has been already explained in para 1.4 to para of the petition that post NTPC takeover w.e.f. 5th September, 2022. The petitioner is a

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company under Section 79 (1) (a) of Electricity Act, 2003 and therefore the same shall not be under the jurisdiction of this Commission.

Observation:

The petitioner by affidavit dated 13th February, 2024 filed legal opinion on the matter of Petitioner's Company, which has been taken over by NTPC Limited as a Joint Venture with Secured Financial Creditors (50:50) through CIRP (Corporate Insolvency Resolution Process) vide NCLT Order dated 6th July 2022. The Commission has considered the legal opinion and concluded that Central Electricity Regulatory Commission under Section 79(1)(a) of the Electricity Act 2003 has exclusive jurisdiction to regulate tariff of generating company owned and controlled by the Central Government.

The Commission has examined the true up tariff petition thoroughly in accordance to the provisions under the Regulations, 2020, Annual Audited Accounts of the petitioner for FY 2022-23 (till 4th September, 2022), Asset-cum-Depreciation Register for FY 2022-23 (till 4th September, 2022) and other supplementary submissions filed by the petitioner and other documents placed on record by the petitioner.

Stakeholder's Comment:

Increase in cut-off date of plant:- While the subject petition has been filed for the period up to 4th September, 2022, however due to various reasons mentioned in paragraphs 6.11 to 6.49, the cut-off date of the plant, which was 31st March, 2019, petitioner has requested the Commission to extend it till 4th July, 2024, which is contradictory to itself.

In paragraphs 6.11 to 6.29, the petitioner mainly said that MPPMCL is to be blamed for the plant becoming sick, which is completely wrong in view of the facts. The petitioner or the new management has not taken into account that MPPMCL is responsible for managing only 30 percent of the finances. No specific information/details of any specific difficulty is mentioned in the petition by the petitioner for the remaining share of 65 percent electricity and 70 percent finance. Therefore, the poor performance of the plant can't be attributed to M.P. Power Management Company, which has less share and it is not befitting an institution, which has just undergone transfer of management.

In Section 27 and 28 of the Regulations, 2020, provisions are there for approval of additional capitalization after the cut-off date of the project. Apart from this, petition no. 19/2019 specifically filed by the parent management of the Company, in that order, clear guidelines had been given for additional capitalization and on the same basis, the subject petition for FY 2019-20 and FY 2020-21 had been disposed of. Therefore, re- raising an issue regarding extension of cut-off date that has been resolved is contrary to the principle of law.

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The Commission is requested to completely reject the petitioner's demand for increasing the cut-off date in view of the incomplete facts.

Petitioner's Reply

The averments made by the stakeholder are completely false. The petitioner submits that the reasons regarding extension of the cut-off date has been explained in detail in para 6.5 to 648 at page no 19 to page no 37 of the petition. Accordingly, the petitioner humbly requests the Commission to consider prayers made by the petitioner and reject the averments made by the stakeholder.

Observation:

The issue of extension of cut-off date has already been addressed by the Commission in earlier tariff/true up orders of the Petitioner's Project. Further, there is no provision under the Regulations, 2020 for extension of cut-off date of the project, therefore, the request of the petitioner for extension of cut-off date is not considered in this Order.

Since, the additional capitalization claimed by the petitioner is beyond the cut-off date of the project and within the original scope of work, therefore, same has been analysed under Regulation 27 of the Regulations, 2020.

Stakeholder's Comment

Report of the Comptroller and Auditor General of India:-The plant has been transferred to the NTPC with effect from 05/09/2022 in pursuance of the order dated 06/07/2022 of the National Company Law Tribunal (NCLT). Therefore, seeking relief by mentioning the previous issues without complete information is completely outside the scope of the verification petition. The petitioner probably does not know that it is mentioned in Part-2 Para 2.1.11 of the Report No. 34/2017 issued by the Comptroller and Auditor General of India (GAG) for the Ministry of Energy, Government of India (Commerce) that:

> *2.1.11. The promoters of M/s Jhabua Power Limited (JPL) formed for setting up 600 MW coal-based thermal power plant, had no experience of implementing similar projects. The promoter M/s Avantha Power and Infrastructure Limited (APIL), was formed by way of diverstment of small power generation assets with a total capacity of 95 MW (individual unit capacity ranged between 13 MW and 30 MW) and had implemented a few expansion projects However, the loan was sanctioned.*

Therefore, the figures of poor performance of the plant for 2016-17 and 2017-18 in the report of the Comptroller and Auditor General of India, itself verify on the inexperience of the promoters. It is not appropriate to blame anyone else and this is a major reason for the transfer of the plant to NTPC.

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Petitioner's Reply:

The averments made by the stakeholder pertains to the matters not related to the prayers made by the petitioner in the petition. The extract of CAG report quoted by stakeholder is out of context without any material basis.

Observation:

The comment is general in nature and does not seek any action related to prayers of the petitioner.

Stakeholder's Comment:

Non-availability of railway line for coal transportation:- The date of commercial operation was 3rd May, 2016. Till then there was no permanent arrangement for bringing coal to the plant. The then management had assured that the transportation of coal by rail would be operational by January, 2017, which was accepted by the Commission. Approval was given to bring coal by road transport for a distance of about 80 km from Sagara Railway Station of Jabalpur to the plant. But actually, after the construction of Jabalpur Gondia Broad Railway Gauge line in May, 2017, coal transportation through railways became possible till Binaiki which was the railway station nearest to the plant. Despite this, the work of railway line (Last Mile Connectivity) from Binaki to the plant was completed on 21/08/2020 and as a result of which, the availability from the plant could be increased from FY 2020-21, which is also mentioned in the petition. Therefore, it is not right for the petitioner to blame anyone else for the poor performance of the plant.

Petitioner's Reply

The averments raised by the stakeholder pertains to the matters not related to the prayers made by the petitioner in the petition and accordingly requests the Commission to reject the averments made by the stakeholder.

Observation:

The comment is general in nature and does not seek any action related to prayers of the petitioner.

Stakeholder's Comment

Benefits of change in Management to Consumers:- Since now Jhabua Power Limited is a joint venture between NTPC, which is a Maharatna company in the power generation sector of India and Secured Financial Creditors. Therefore, it would be fair for the lenders as well as the consumers of the state to get the direct benefit of the transfer of the referred BIMARU

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company into the hands of a highly efficient management in the form of tariff reduction. Paragraph 57 of the Regulations, 2020 also has the following provisions in this regard:

57. Sharing of saving in interest due to re-financing or restructuring of loan-

57.1 If re-financing or restructuring of loan by the generating company results in net savings on interest after accounting for cost associated with such refinancing or re-structuring, the same shall be shared between the beneficiaries and the generating company in the ratio of 50:50.

Petitioner's Reply

The averments raised pertains to the matters not related to the period for which the instant petition is filed and accordingly requests the Commission to reject the averments made by the stakeholder.

Observation:

The Commission has determined true-up of Annual Capacity (fixed) Charges for FY 2022-23 prior to acquisition of the petitioner by NTPC Ltd on 5th September, 2022 considering actual Additional Capital Expenditure incurred during FY 2022-23 till 4th September, 2022 in accordance with Regulation 9.4 of the Regulations, 2020. The issue raised by the stakeholder is beyond the period under consideration in this Order.

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Annexure V - List of issues filed in APTEL Appeals

Sr.No.	Description of the Issue	Filed in Appeal No
1.	Treating the extension of SCOD as a contractual matter.	Appeal DFR 93 of 2020 (Appeal filed against review of Final Order passed by Hon'ble MPERC 2016-17 to 2018-19)
2.	Non-consideration of reasons for delay in COD- Time Overrun.	
3.	Erroneous disallowance of Rs. 41.30 Crores which is the IDC & IEDC incurred till 31.03.2015.	
4.	Incorrect approach in computation of IDC and IEDC.	
5.	Reduction in Equity considered	
6.	Apportionment of common expenses	
7.	**Non-consideration of O&M Expenses and losses for the dedicated transmission line built by the Appellant**- (Issue part of current petition as well)	
8.	Non-extension of cut-off date for completion of essential works/capitalization till 31.3.22 i.e. 2 yrs beyond cut-off date of 31.03.19 on vague basis that reasons for extension were not covered under Uncontrollable factors and were due to reasons attributable to the Appellant.	158 of 2022 (Appeal Filed against True-up Order of 2019-20.)
9.	Denial of extension of Cut-off date & Accordingly RoE/IOL & Depreciation are reduced. Not considering Add Cap under Regulation 26 (i.e. Add Cap with Original Scope/up to Cut-off date) and referring to only Regulation 27 (i.e. add Cap beyond Cut-Off date)	33 of 2023 Appeal Filed against (True-up Order of 2020-21 issued by MPERC.)
10.	Railway expense admitted by Commission has been artificially restricted by applying the WPI factor of 3.01% for FY 2018-19 and FY2020-21	
11.	Spares beyond Cut-off date not allowed however Decap of Spares is reduced from the Cost.	
12.	Accumulated Depreciation of Rs 1.67 cr on Decapitalized spares not considered by Commission while calculating Interest on Loan.	
13.	Denial of extension of Cut-off date and rejecting Add Cap. Not considering Add Cap under Regulation 26 (i.e. Add	

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	Cap with Original Scope/up to Cut-off date) and referring to only Regulation 27 (i.e. add Cap beyond Cut-Off date)	
14.	Railway expense admitted by Commission has been artificially restricted by applying the WPI factor of 16.36%	273 of 2023 (Appeal Filed against True-up Order of 2021-22 issued by MPERC.)
15.	Disallowance of depreciation on Leased Land from Date of CoD i.e. 03.05.16 on ground that sufficient documentary evidence has not been produced whereas the audited Balance Sheet explicitly identifies such amount of Leased Land.	

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Annexure VI

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STANDING COMMITTEE ON ENERGY (2017-2018)

SIXTEENTH LOK SABHA

MINISTRY OF POWER

IMPACT OF RBI's REVISED FRAMEWORK FOR RESOLUTION OF STRESSED ASSETS ON NPAs IN THE ELECTRICITY SECTOR

FORTIETH REPORT



LOK SABHA SECRETARIAT
NEW DELHI

August, 2018/*Shravana,* 1940 *(Saka)*

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FORTIETH REPORT

STANDING COMMITTEE ON ENERGY
(2017-2018)

(SIXTEENTH LOK SABHA)

MINISTRY OF POWER

IMPACT OF RBI's REVISED FRAMEWORK FOR RESOLUTION OF STRESSED ASSETS ON NPAs IN THE ELECTRICITY SECTOR

Presented to Lok Sabha on 7.8.2018
Laid in Rajya Sabha on 7.8.2018



LOK SABHA SECRETARIAT
NEW DELHI

August, 2018/*Shravana,* 1940 *(Saka)*

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COMPOSITION OF THE STANDING COMMITTEE ON ENERGY
(2017-2018)

Dr. Kambhampati Haribabu — *Chairperson*

MEMBERS

Lok Sabha

2. Shri Devendra Singh Bhole
3. Shri Om Birla
4. Shri M. Chandrakasi
5. Shri Harish Dwivedi
6. Shri Deepender Singh Hooda
7. Shri Bhagat Singh Koshyari
8. Dr. Arun Kumar
9. Kunwar Sarvesh Kumar
10. Shri Malyadri Sriram
11. Shri R.P. Marutharajaa
12. Dr. Pritam Gopinath Munde
13. Shri Jagdambika Pal
14. Shri Ravindra Kumar Pandey
15. Shri M.B. Rajesh
16. Shri Vinayak Bhaurao Raut
17. Shri Gutha Sukhender Reddy
18. Shri Conrad Kongkal Sangma
19. Shri Bhanu Pratap Singh Verma
20. Shri Kotha Prabhakar Reddy
21. Shri Nagendra Kumar Pradhan

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22. Shri T.K.S. Elangovan
23. Shri Oscar Fernandes
24. Shri Manish Gupta
25. Shri Ram Jethmalani
26. Dr. Prabhakar Kore
27. Shri Shamsher Singh Manhas
28. Shri S. Muthukaruppan
29. Shri Surendra Singh Nagar
30. Smt. Viplove Thakur
31. Shri Narain Dass Gupta

SECRETARIAT

1. Shri A.K. Singh — *Additional Secretary*
2. Shri N.K. Pandey — *Director*
3 Ms. Deepika — *Executive Assistant*

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INTRODUCTION

I, the Chairperson, Standing Committee on Energy having been authorized by the Committee to present the Report on their behalf, present this Fortieth Report on 'Impact of RBI's Revised Framework for Resolution of Stressed Assets on NPAs in the Electricity Sector' pertaining to the Ministry of Power.

2. The Committee had a series of discussions on the subject on 11th April, 2018, 12th June, 2018 and 5th July, 2018 with representatives of the Ministry of Power, the Ministry of Finance, the Ministry of Coal, the Reserve Bank of India, Lending Banks and Developers/Promoters of the Stressed Power Projects.

3. The Committee wish to express their thanks to representatives of the Ministry of Power, the Ministry of Finance, the Ministry of Coal, the Reserve Bank of India, Lending Banks and the Developers/Promoters of the Stressed Power Projects, for appearing before the Committee and furnishing the desired information on the issues relating to the subject.

4. The Report was considered and adopted by the Committee at their sitting held on 2nd August, 2018.

5. The Committee place on record their appreciation for the valuable assistance rendered to them by the officials of the Lok Sabha Secretariat attached to the Committee.

6. For facility of reference and convenience, the observations and recommendations of the Committee have been printed in bold letters in Part-II of the Report.

NEW DELHI;
2 *August*, 2018
11 *Shravana*, 1940 *(Saka)*

DR. KAMBHAMPATI HARIBABU,
Chairperson,
Standing Committee on Energy.

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REPORT

PART I

NARRATION ANALYSIS

I. Introductory

1.1 37th Report of the Standing Committee on Energy on the subject "Stressed/Non - Performing Assets in the Electricity Sector" was presented to the Parliament after extensive deliberations with all the stakeholders like the Ministry of Power, the Ministry of Finance, the Ministry of Coal, the Ministry of Railways, the Reserve Bank of India, lending Banks and developers/promoters of the stressed power projects, etc. in order to resolve the issue of NPA in electricity sector as per the extant RBI Guidelines and other legal/financial/statutory provisions applicable at that time. The said Report, *inter alia*, analysed Power Scenario in the country, Stressed/Non-Performing Assets in the Electricity Sector and reasons thereof, Role of RBI/Ministry of Finance/Banks in financing of Power Projects, Role of the Ministry of Power/CEA/CERC/SERCs in regulation and development of Power Sector, etc.

1.2 The Committee focussed on 34 coal-based thermal power plants which were categorised as 'stressed' due to issues such as:—

- Non-availability of Fuel:
  - Cancellation of coal block.
  - Projects set up without Linkage.
- Lack of enough PPA by States.
- Inability of the Promoter to infuse the equity and working capital.
- Contractual/Tariff related disputes.
- Issues related to Banks/Financial Institutions (FIs).

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- Delay in project implementations leading to cost overrun.
- Aggressive bidding by developers in PPA.

1.3 The Committee have been apprised that the total coal-based power capacity in the private sector may be nearly 90,000 MW out of which 75,000 MW is already operational. It is estimated by various sources that approximately 60,000 MW to 65,000 MW of this capacity may be under financial stress. Lenders have exposure of approximately INR 3 Lakh Crore to such assets and it is imperiled due to slow resolution process and tepid power procurement demand from discoms in last 3 to 4 years. Stressed Power Assets have placed a major pressure on the balance sheets of lenders including scheduled commercial banks.

1.4 With a view to clean-up the books of the banks, RBI issued a Revised framework which substituted the then existing guidelines with a harmonised and simplified generic framework for resolution of stressed assets. As per the Revised Framework, the extant instructions on resolution of stressed assets such as Framework for Revitalizing Distressed Assets, Corporate Debt Restructuring Scheme, Flexible Structuring of Existing Long Term Project Loans, Strategic Debt Restructuring Scheme (SDR), Change in Ownership outside SDR, and Scheme for Sustainable Structuring of Stressed Assets (S4A) were withdrawn. The Joint Lenders' Forum (JLF) as an institutional mechanism for resolution of stressed accounts has also been discontinued. Now, all accounts, including such accounts where any of the schemes have been invoked but not yet implemented, shall be governed by the revised framework.

1.5 It may be noted that the 'Revised Framework for Resolution of Stressed Assets' has been issued by the RBI in exercise of powers conferred under Section 35A, 35AA (read with S.O.1435 (E) dated May 5, 2017 issued by the Government of India) and 35AB of the Banking Regulation Act, 1949; and Section 45(L) of the Reserve Bank of India Act, 1934.

1.6 Due to the sectoral issues *i.e*. non-availability of adequate fuel, delay in power sale agreement tie-ups and the like, the resolution plans achieved under RBI frameworks and/or IBC are likely to be highly sub-optimal and may lead to large haircuts for lenders which are State- owned bank, FIs also State owned companies *i.e*. Power Finance Corporation

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Limited and Rural Electrification Corporation Limited. Given these asset level issues, the number of buyers is also very small thus creating a near fire sale situation.

1.7 The demand for electricity is said to have picked up pace as reflected in the recent power tariff increases in spot and short term markets. There is likelihood that this stressed capacity may be meaningfully absorbed in power system in next 3 to 4 years. In this light it is extremely critical to preserve the existing thermal power capacity for current and future economic benefits.

1.8 As a result of the Revised Framework issued by RBI and to evaluate the impact of this Revised Framework on NPA in the Electricity Sector, the Committee had meetings with the representatives of the Ministry of Power, Ministry of Finance and Ministry of Coal. The Committee also heard the views of the representatives of the Reserve Bank of India and lending Banks/Institutions along with the promoters of the stressed power plants.

II. Non-Performing Assests in the Electricity Sector

2.1 As per RBI, the high NPA ratio for Indian banks is a sector-specific phenomenon and as such, most of the non-performing loans of the banking system are concentrated in few sectors, *viz.*, infrastructure, power, iron and steel, textile etc., and different sectors are not similarly placed with regard to the reasons for stress.

2.2 When asked about the reasons for stress in aforementioned sectors, the Ministry of Finance, in its reply, stated as under:—

> "(a) Coal linkage related issues, delay in implementation of projects due to various reasons, non-availability of fuel, delay in land/environment clearances, inability of promoters to infuse additional funds, lower power generation due to restrictions on release of water etc. have aggravated the problems faced by the power industry. Weak financial health of Distribution Companies (DISCOMS) have led to substantial increase in receivables of borrowing groups (*i.e.*, receivables of Power Generating Companies), thus impacting their liquidity position.

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(b) Iron and steel industry has suffered and borrowing entities have been restructured due to the problems of huge capacity expansion with thinner equity cushion as well as problems associated with the allocation of iron ore and coal blocks.

(c) Industries like ship-building and shipyards have seen an increased spate of restructuring on account of drying up of global finances to this industry. Fall in commodity demand and prices due to global crisis have resulted in fall/cancellation of new orders. Cancellation of contracts leading to piling up of inventory has been another cause for stress. On account of global economic downturn, finances available to ship-owners have dried up.

(d) The southern zone has seen textile industry getting visibly affected due to fluctuation in the price of cotton and yarn. Environmental issues created by treatment of effluent wastes have also affected the textile industry.

(e) Recession in paper industry has resulted in several paper mill accounts with banks turning NPAs."

2.3 RBI submitted before the Committee that while the reasons for stress may vary across sectors, the nominal principles of resolution of such stress remain the same irrespective of the sector, as ultimately any negotiation of debt is a restatement of a financial contract. It further stated that given the sector-agnostic basic principles of stress resolution, the revised framework provides a harmonized, flexible approach to apply the same.

2.4 The Committee have been informed that the Gross NPAs in the power sector have risen steadily over the past few quarters. As per RBI, the total outstanding loans of scheduled commercial bank to the power sector (including renewables) stood at Rs. 5.65 lac crore (as on March 2018). Nearly 80 per cent of this amount is accounted for by the Public Sector Banks (PSBs) and almost a fifth of this exposure is stressed on account of various structural factors plaguing the power sector.

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2.5 Given below is the present status of 34 stressed coal-based thermal power plants, as furnished by the Ministry of Finance:—

Project Name	Capacity (MW)	Completed/ Under Construction	Completed but not Operational	Commer-cially commissio-ned and operational	FSA Tied Up	PPA Tied Up	Estimated Project Cost (Equity and Debt)	Stage of Insolvency
1	2	3	4	5	6	7	8	9
Adani Power Maharashtra Limited	3300	Completed	NA	Yes	3085	3085	19,788.00	Resolved
Adhunik Power and Natural Resources Ltd.	540	Completed	NA	Yes	0	322	3,377.00	Resolved: Sold to ARC
Athena Chhattisgarh Power Ltd.	1200	Under Construction	NA	NA	600	220	11,522.00	Admitted to NCLT
Avantha Power (Jhabua)	600	Completed	NA	Yes	600	245	4,806.00	
Avantha Power (Korba)	600	Completed	NA	Yes	600	0	4,929.00	
Coastal Energen Pvt. Limited	1200	Completed	NA	Yes	NA	600	7,870.00	
Damodar Valley Corporation Raghunathpur	1200	Completed	NA	Yes	550	550	7,957.00	Resolved
DB Power Limited	1200	Completed	NA	Yes	600	518	8,965.00	Resolved

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1	2	3	4	5	6	7	8	9
East Coast Energy Pvt. Ltd.	1320	Under Construction	NA	NA	0	100	9,975.00	Admitted to NCLT
Essar Power Jharkhand Ltd.	1200	Under Construction	NA	NA	0	1050	10,441.00	
Essar Power Mahaan Ltd.	1200	Completed	Unit 2 to be commi-ssioned	Unit 1 is commissi-oned	0	275	7,173.00	
GMR Chhattisgarh Energy Ltd.	1370	Completed	NA	Yes	0	69	11,643.00	
GMR Kamalanga Energy Ltd.	1050	Completed	NA	Yes	500	887	6,519.00	Resolved
GMR Warora Energy Ltd.	600	Completed	NA	Yes	600	600	4,250.00	
GVK Industries Ltd. (Goindwal Sahib)	540	Completed	NA	Yes	0	540	4,773.00	Resolved but under stress
Ind Bharath (Utkal) Ltd.	700	Unit 1 is operational; Unit 2 is under construction	NA	Unit 1 is commissi-oned	NA	500	4,797.00	
Jaypee Power Ventures Pvt. Ltd. (Bina)	540	Completed	NA	Yes	500	350	3,575.00	

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1	2	3	4	5	6	7	8	9
Jaypee Power Ventures Pvt. Ltd. (Nigrie)	1320	Completed	NA	Yes	500	495	11,700.00	
Jindal India Thermal Power Ltd.	1200	Completed	NA	Yes	600	544	7,061.00	
Kanti Bijlee Utpadan Nigam Ltd.	390	Completed	NA	Yes	390	390	4,778.00	Resolved
KSK Mahanadi Power Co. Ltd.	3600	Phase 1 Completed; Phase 2 Under Construction	NA	Phase 1 is operational	0	2270	27,080.00	
KVK Nilachal Power Ltd.	350	Under Construction	NA	NA	350	88	2,992.00	Referred to NCLT
Lanco Amarkantak Power Ltd.	1920	Phase 1 Completed; Phase 2 Under Construction	NA	Phase 1 (600MW) is operational	1920	672	12,865.00	
Lanco Anpara Power Ltd.	1200	Completed	NA	Yes	1200	1100	4,845.00	
Lanco Babandh Power Ltd.	1320	Under Construction	NA	NA	660	545	13,400.00	Referred to NCLT

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1	2	3	4	5	6	7	8	9
Lanco Vidarbha Thermal Power Ltd.	1320	Under Construction	NA	NA	0	0	10,443.00	
Monnet Power Co. Ltd.	1050	Under Construction	NA	NA	0	476	9,500.00	Admitted to NCLT
Prayagraj Power Generation Company Ltd. (Jaypee)	1980	Completed	NA	Yes	1980	1782	15,537.00	
Rattan India Power Ltd. (Nasik)	1350	Completed	NA	Yes	1080	650	9,818.00	
RKM Powergen Private Ltd.	1440	Unit 1, 2, 3 Operational; Unit 4 Under Construction	NA	Unit 1, 2, 3 Operational	900	350	12,608.00	
Simhapuri Energy Ltd. (Phase 1 and 2)	600	Completed	NA	Yes	NA	400	3,510.00	
SKS Power Generation Chhattisgarh Ltd.	600	Completed	NA	Yes	300	30	6,180.00	
Vandana Vidhyut Ltd.	270	Completed	Yes	NA	0	14	1,949.00	Admitted to NCLT
Visa Power Ltd.	600	Under Construction	NA	NA	NA	600	4,500.00	Admitted to NCLT
	38870				17515	20317	2,91,126	

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2.6 Explaining the status of above-mentioned under construction Power Projects, Independent Power Producers submitted before the Committee that:—

> "Out of the 34 stressed projects, around 35% are under construction. Project progress achieved in these under construction projects is ranging from 45% to 85% with residual project completion time lines between 9 months to 24 months from the date of Re-financing and Re-mobilization.
>
> Since 2012, construction work at these projects is stalled due to various reasons beyond the control of developer. Disbursement made by banks during the stalled period mostly served the IDC component and a very small percentage of the disbursed amount, which in many projects would be in single digit, was allowed by banks to be utilized towards project construction. As a result, most of the projects have an IDC component in excess of 50% of the total project cost. These stalled under construction projects currently:
>
> - Are servicing debt at a Rate of Interest between 15% to 17% including penal charges of 2%,
> - Have high tech thermal power plant equipment stored at various ports and project sites without preservation because of zero disbursements by banks post end of 2016,
> - Are without basic insurance coverage like fire, burglary etc., due to paucity of funds."

2.7 Suggesting the measures for resolution of under construction stressed Power Projects, Independent Power Producers deposed that:—

> "Any project which is in excess of 75 per cent completion, let the project be funded and let them complete the project so that there is a value which is retained and some amount of debt can be protected. The interest for these projects has to be made reasonable. Our suggestion is 10 per cent for going forward. If a promoter brings in an additional equity during this construction period, then you give him a value. Otherwise, no. The change in management has to be done post commissioning because the existing promoter could not continue with the project for various reasons. In respect of the projects which have attained between 50 per cent and 75 per cent progress, the lenders again have to provide the required fund. However, simultaneously, explore the possibility of change in

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management, either through the RBI circular or through the IBC provisions. Here, a slight premium has to be charged on the IDC because these projects have attained less progress. In respect of projects which have attained progress less than 50 per cent, the first and the foremost priority is to preserve the equipment which has been delivered."

2.8 Commenting on the possibility of these stressed power projects being revived, the CMD, Rural Electrification Corporation deposed before the Committee that:—

"Those projects which are less than 50 per cent completed, there is no hope of them being revived unless the promoter does something outside the formal structure that exists today. There is not much hope of a retrieval. They would have to go to the NCLT. The projects of 16,000 MW perhaps have no scope but to go to NCLT and be liquidated for whatever their value is or find an alternate use. If there is a land available, maybe, that could become a real estate option or it could be an industrial estate. There must be other economic or commercial opportunities that exist. But it may not be a power project. As a power project, we do not see a viability for them but I am sure they would have other economic opportunities that could find a place."

2.9 As on May 31, 2018, out of 34 identified stressed cases, 7 projects corresponding to installed capacity of 7,620 MW have reportedly been resolved after allocation of coal under SHAKTI scheme.

2.10 Confirming about the 7 Power Projects that have been resolved, the Secretary, Ministry of Power deposed that:—

"We had 34 projects at the point of time when we started discussion. Out of them, seven projects have got resolved either due to SHAKTI policy or the discoms issue settled and they are out of stress as far as we are concerned."

2.11 Explaining the reasons for stress in the Power Projects and steps taken by the Government to alleviate them, the Secretary, Ministry of Power deposed that:—

"These projects were in stress for different reasons. Everything perhaps does not rest with the banks or the RBI per se. For example, the cancellation of coal blocks led to non-availability. Then, there was allotment of coal blocks and some of those coal blocks got into dispute again because of aggressive bidding. So, situation has come again where the fuel became an issue in some of those plants. So, SHAKTI policy addressed some issues.

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Secondly, there was an issue of delayed payment by discoms. Again, it leads to stress if the payment to power plants is delayed beyond 60 days. There are instances from some places of longer periods of delay. This is another issue where bankers or RBI circular per se does not have an any impact. This needs to be addressed. We have been taking it up with the discoms regularly, requesting for tariff revision and all that. Under UDAY, we have requested for checking the losses and some improvement is visible on account of discoms.

Here, I would like to mention that there are large amounts of money which are outstanding from the Government Departments in some of the States. That is a huge money. If that is available, these losses can be easily written off or payments to generators can be made.

The other reason cited was lack of PPAs in the market. We had done some analysis. We find that if the peak rated capacity is about 160-165 GW, the PPAs available with the State Governments are of more than 230 GW. They are already having excess PPAs and each PPA is a cost to them as far as fixed cost is concerned.

As regards the regulatory issues, the regulator has been addressing them. With regard to the railway charges etc., all the charges have been included in the freight. The notification was issued in January. One part of that issue which was there, delay in incorporation of increase in other charges other than freight, has been addressed and they have now been included. Now onwards, it will be addressed better. The regulator has brought out some other improvements also. The indexation issue was there. So, it has been already put for consultation by the regulator, CERC. We expect that these are the issues which can be addressed quickly. We are working on it and hopefully, we should be able to resolve some of these issues in three months' time."

2.12 Explaining the status regarding coal supply with respect to the stressed Power Projects, the Secretary, Ministry of Coal deposed that:—

"Out of the 34 assets that have been listed, there are 14 which have issues with the coal. There are eight projects which had PPAs but no coal linkage, the auction process was set into motion under clause(b) of the SHAKTI Policy and coal supply has been started to five of them. They have to get their PPA amended. Similarly, in the three more cases where neither PPA was there nor the coal linkage was there, they are being made eligible under the B-(III). An Inter-Ministerial Committee has been constituted and it has

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worked out the modalities. Once it is approved by the Competent Authority, the provision for providing coal will be made available. There are three plants which had problem with the coal block allocation and the cases regarding the same are pending in the court. Out of that, two are clear from the court and we are making provision for them under the B(III) clause of the policy. So, this is only the limited issue as far as the coal sector is concerned. The SHAKTI policy is quite comprehensive and will cater to the requirements of these plants."

2.13 When the Committee wanted to know the views of the Ministry of Finance about the resolution of the stressed Power Projects, the Secretary, Department of Financial Services deposed that:—

"There are few considerations which we have to keep in mind while we are trying to resolve the situation. One, the entire economy which is on a growth trajectory has to be fueled by the power. If there is no power, all will suffer at some stage. We are also very well aware that whatever gestation period is gone through these projects, this must not be lost. We must try and do something that these projects are, to the extent possible, resolved.

Secondly, these projects are at different stages and each project is unique in itself and one situation cannot fit all. I will mention a few points. They are in different stages because of physical progress, the kind of clearances they have, the kind of PPAs they have, the kind of availability of natural resources including the linkages they have, promotors' behaviour, lending, gold plating which cannot be denied in many cases, possibility of a particular project coming out of the stress, bank exposure, capacity of the bank to take that kind of a hit at this stage or before going to the NCLT etc. These are the various things which determine how you treat different projects."

2.14 When asked if there is some provisioning so that the above-mentioned 7 Projects will not become stressed again, the Ministry of Finance stated as under:—

"As far as the asset classification is concerned, it cannot be said that any project will remain constant for times to come. In case projects are not able to service their debt obligations then the possibility of classification being downgraded remains. The classification of account is governed by the status/progress of the project and the extant guidelines."

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2.15 In response to a query if these stressed coal-based Power Projects can be made viable in future, keeping in view the fact that renewable energy is being made available to the country at a very low price, the Committee were apprised that:—

> "Currently, roughly 1,70,000 MW is the peak electricity requirement in the country. As per CEA projections and as per National Electricity Plan, the growth will be roughly six per cent. That means every year the demand will increase by 11,000 plus MW. No new coal plant will get added except those which are under construction. Currently, power plants worth 18,000 to 19,000 MW have no PPA. The annual requirement is 11,000 MW which is incremental every year.
>
> In terms of renewables, as a country our peak requirement comes in the evening and seasonally in some States during the monsoon. The peak renewable energy from solar comes during the day time, when the demand is not at its peak. No country will be able to run its energy requirements through renewables, which can at best contribute 15 per cent of the energy. It is because while the PLF of coal plant can be 80 per cent, renewables run at 20 or 25 per cent. So, without coal plant, energy needs cannot be met. This current capacity overhang will clear in two to three years. As per the MoEF recommendation, new FGD, and as per the CEA calculations, 13,000 to 14,000 MW capacity of old plants have to be retired. So, we believe that all these plants can be economic in two to three years."

2.16 When asked if the promoters have been allowed to go scot-free under IBC 2016 for their role or contribution in making the asset NPA or stressed, the Ministry of Finance stated as under:—

> "Under the IBC, the old promoters have to forego their ownership and are also not allowed to participate in the bidding process as per Sec. 29A. Forensic audit of NPA accounts continues even if a case is referred under IBC. The liability of the promoter is not linked to reference by creditors of the account to the NCLT under the IBC."

III. RBI's Revised Framework for Resolution of Stressed Assets

3.1 The Committee were apprised that the RBI with its new guidelines dated February 12, 2018 *(Annexure-I)* has discontinued all previous schemes for resolution of stressed assets and substituted the same with a generic framework for resolution. The circular stipulates that

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default of even a single day in payment of interest/principal would trigger formulation of resolution plan. This framework has provided deadline of 180 days for implementation of resolution plan and if such resolution is not implemented then lenders have to file insolvency application under Insolvency and Bankruptcy Code (IBC), 2016 within 15 days.

3.2 RBI stated that default is a lagging indicator of financial stress in a borrower's account and RBI's Revised Framework for Resolution of Stressed Assets is aimed at ensuring early resolution of stressed assets in a transparent and time-bound manner so that maximum value could be realized. Further, it allows banks to do restructuring of the asset with complete flexibility to determine the contours of the restructuring plan.

3.3 Explaining the positive impact of the Revised Framework, the Governor, RBI deposed that:—

> "In effect, the revised framework has ensured timely recognition of NPAs. Independent study by Crisil which is a rating agency that we all know about, also corroborates the above and states that: "The tide is slowly turning and Crisil expects moderation in slippages, better recoveries from NPAs and improved provision coverage to goad well for bank." The expected pick up in loans and advances concomitantly with all this happening in fiscal year 2018-19 and the resolution of stressed assets is expected to increase the earnings on banking assets and help banks to strengthen their transparent balance-sheets. It may be pertinent to note that the growth in advances across banking routes has witnessed a pick up over the past few months. The adjusted non-foot credit is up by 13 per cent.
>
> Another positive result of the above measure has been that banks have been able to increase the provision coverage ratio on the stressed loans significantly in the year that has just ended from 58.9 per cent to 63.6 per cent which again should help banks in better managing the incremental NPA.
>
> International research has shown that higher and quicker build up of provisions helps in faster resolution of stressed assets. The stressed assets include throughout the sector, throughout the economy. The infusion of capital by the Government of India has been timed well to enable the banks to manage the transition while not breaching any regulatory capital limits. It is a requirement when we are in the international capital market. We have to follow the rules that the rest of the world follows. We cannot be having separate [illegible] for the banking system which is integrated with the rest of

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the world. If you include the budgeted amount for this year over the last four years, the capital infusion into our banks will be Rs. 2,15,000 crore, if my calculation is correct. The Reserve Bank also committed to facilitate a smoother transition as much as prudentially possible. In particular, banks were given additional time to make provisions for cases referred under IBC on the RBI direction which would include the power assets. It must be stressed that as a result of the above measures, none of our public sector banks barring one is in breach of the regulatory capital requirement of nine per cent of capital adequacy ratio as on March 31, 2018 in spite of recognizing much higher level of NPAs. These NPAs were always there. We are now recognizing them. Further, it is expected that the banks will have sufficient avenues to raise additional capital so as not to face any capital constraints. As I just mentioned, the Government has budgeted Rs. 65,000 crore for additional capital infusion in 2018-19 alone which can be front-loaded. Further, post re-capitalization, the scope for PSBs to raise additional market borrowings continue. These measures are expected to assist the PSBs in complying with the regulatory capital requirements and in case of healthier PSBs to also have growth capital. Since substantial parts of stressed assets have been recognized and reasonably provisioned, any further accretion to capital is expected to help any further asset quality stress in the short run and hopefully and eventually support credit growth in the medium to long term while preserving the financial health of our public sector banks. Overall, therefore, we are of the view that the banking system in general including the PSBs is getting stronger with the regulatory and transparency measures undertaken by the RBI and other regulators. The legislative changes brought about through the enactment of IBC and the amendments that have taken place as recently as last week and the financial support to the public-sector banks by the Central Government goads well for the sector."

3.4 When asked about the reasons and objectives of the new guidelines regarding Non-Performing Assets (NPAs) issued by the RBI on February 12, 2018, the Ministry of Finance, in its reply, stated as under:—

"As per the circular dated 12.2.2018 issued by the Reserve Bank of India (RBI), in view of the enactment of the Insolvency and Bankruptcy Code, 2016 (IBC), RBI decided to substitute the existing guidelines and instructions for resolution of stressed assets, including specific schemes introduced by RBI, with a harmonised and simplified generic framework for resolution of stressed assets (Framework on Resolution of Stressed Assets)."

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3.5 When asked if any review had been done to evaluate the performance and achievement of earlier Guidelines, the Ministry of Finance stated as under:—

> "Various special resolution schemes introduced by RBI were used by lenders more to address asset classification concerns rather than to effectively resolve stressed assets. An internal review of SDR and S4A schemes, which provided asset classification benefits to banks, revealed that their adoption rate among eligible borrowers was less than 20% and in case of SDR, the success rate was close to zero where implemented, indicating that the schemes were not really used for resolution of stressed assets."

3.6 On being asked if the earlier guidelines had been withdrawn because of their failure to provide the desired result, the Ministry of Finance stated as under:—

> "RBI has stated that various special schemes for resolution introduced by it were used by lenders more to address asset classification concerns rather than to effectively resolve stressed assets, and that the enactment of a comprehensive bankruptcy law in the country has obviated the need for such specific schemes."

3.7 Explaining the reasons for failure of earlier guidelines, CMD, Rural Electrification Corporation deposed that:—

- "JLF was an inefficient tool for resolution of stressed assets due to various inter-creditor issues,
- Lenders' efforts were driven by minimization of provisioning rather than focussing on recovery/asset resolution,
- Weak regulatory response to change in costs aggravated cashflow stress."

3.8 When queried about the reasons for revision in the definition of 'Default', the Ministry of Finance stated as under:—

> "As per RBI, the revised framework has aligned the definition of default with the one used in IBC. The objective is to ensure prompt action to cure stress in a borrower account as soon as default takes place."

3.9 When asked if the new concept of default has taken into account the ground realities of different sectors and should the definition of default

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be sector specific as more often the reasons for default remain beyond the control of promoter, the Ministry of Finance stated that while the causes for stress may be different, the nominal principles governing resolution of stress are the same, regardless of the sector.

3.10 When asked if the new guidelines on NPA will not spur the filing of insolvency proceedings with NCLT, the Ministry of Finance stated as under:—

> "As per RBI's new guidelines, a stressed account of above Rs. 2,000 crore has to be referred to NCLT under IBC if the default continues beyond 180 days."

A. Early identification and reporting of Stress

3.11 RBI's Revised Framework for Resolution of Stressed Assets has prescribed that the Lenders shall identify incipient stress in loan accounts, immediately on default, by classifying stressed assets as special mention accounts (SMA) as per the following categories:—

SMA Sub-categories	Basis for classification – Principal or interest payment or any other amount wholly or partly overdue between
SMA-0	1-30 days
SMA-1	31-60 days
SMA-2	61-90 days

3.12 Further, in para 4, all lenders have been asked by the RBI to put in place Board-approved policies for resolution of stressed assets under this framework, including the timelines for resolution. As soon as there is a default in the borrower entity's account with any lender, all lenders " singly or jointly " shall initiate steps to cure the default. The Resolution Plan (RP) may involve any actions/plans/reorganization including, but not limited to, regularization of the account by payment of all over dues by the borrower entity, sale of the exposures to other entities/investors, change in ownership, or restructuring. The RP shall be clearly documented by all the lenders (even if there is no change in any terms and conditions). Restructuring is defined by RBI as below:—

> "Restructuring is an act in which a lender, for economic or legal reasons relating to the borrower's financial difficulty (An illustrative non-exhaustive list of indicators of financial difficulty are given in the Appendix to Annexure-I), grants concessions to the borrower. Restructuring would normally involve modification of terms of the advances/securities, which may include, among others, alteration

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of repayment period/repayable amount/the amount of instalments/ rate of interest; rollover of credit facilities; sanction of additional credit facility; enhancement of existing credit limits; and, compromise settlements where time for payment of settlement amount exceeds three months."

B. Implementation Conditions for Resolution Plan (RP)

3.13 Para 5 of the RBI's Revised Framework prescribes that a RP in respect of borrower entities to whom the lenders continue to have credit exposure, shall be deemed to be 'implemented' only if the following conditions are met:—

a. the borrower entity is no longer in default with any of the lenders;

b. if the resolution involves restructuring; then

i) all related documentation, including execution of necessary agreements between lenders and borrower/ creation of security charge/perfection of securities are completed by all lenders; and

ii) the new capital structure and/or changes in the terms of conditions of the existing loans get duly reflected in the books of all the lenders and the borrower.

3.14 Additionally, Para 6 of the RBI's Revised Framework stipulates that the RPs involving restructuring/change in ownership in respect of 'large' accounts (*i.e.*, accounts where the aggregate exposure of lenders is Rs. 1 billion and above), shall require independent credit evaluation (ICE) of the residual debt by credit rating agencies (CRAs) specifically authorized by the Reserve Bank for this purpose. While accounts with aggregate exposure of Rs. 5 billion and above shall require two such ICEs, others shall require one ICE. Only such RPs which receive a credit opinion of RP4 or better for the residual debt from one or two CRAs, as the case may be, shall be considered for implementation.. Further, ICEs shall be subject to the following:—

(a) The CRAs shall be directly engaged by the lenders and the payment of fee for such assignments shall be made by the lenders.

(b) If lenders obtain ICE from more than the required number of CRAs, all such ICE opinions shall be RP4 or better for the RP to be considered for implementation.

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3.15 When asked about the reasons for independent credit evaluation in the Resolution Plan involving restructuring/change in ownership and if it would increase subjectivity in course of its functioning, the Ministry of Finance stated as below:—

> "RBI has stated that the credibility of the resolution plan is sought to be ensured through the requirement of independent credit evaluation by credit rating agencies. Such independent credit evaluation would ensure that only sustainable or viable plans are adopted by creditors and the borrower as resolution plans. RBI has also stated that for credit rating agencies, the incentive to not give erroneous or questionable credit opinion is its credibility and reputation in the market, which is its main currency for sustained business."

C. Timelines for Stressed Accounts to be referred under IBC

3.16 According to the RBI's Revised Framework for Resolution of Stressed Assets, in respect of accounts with aggregate exposure of the lenders at Rs. 20 billion and above, on or after March 1, 2018 ('reference date'), including accounts where resolution may have been initiated under any of the existing schemes as well as accounts classified as restructured standard assets which are currently in respective specified periods (as per the previous guidelines), Resolution Plan shall be implemented as per the following timelines:—

(i) If in default as on the reference date, then 180 days from the reference date.

(ii) If in default after the reference date, then 180 days from the date of first such default.

3.17 Further, if a Resolution Plan in respect of such large accounts is not implemented as per the timelines specified in the above paragraph, lenders shall file insolvency application, singly or jointly, under the Insolvency and Bankruptcy Code (IBC), 2016 within 15 days from the expiry of the said timeline.

3.18 RBI's Revised Framework for Resolution of Stressed Assets also prescribe that in respect of such large accounts, where a RP involving restructuring/change in ownership is implemented within the 180 days period, the account should not be in default at any point of time during the 'specified period', failing which the lenders shall file an insolvency application, singly or jointly, under the IBC within 15 days from the date of such default.

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'Specified period' means the period from the date of implementation of RP up to the date by which at least 20 per cent of the outstanding principal debt as per the RP and interest capitalization sanctioned as part of the restructuring, if any, is repaid. Provided that the specified period can not end before one year from the commencement of the first payment of interest or principal (whichever is later) on the credit facility with longest period of moratorium under the terms of RP.

3.19 Explaining the problem with the provision regarding 'Specified Period for the purpose of Restructuring of the Stressed Assets', Independent Power Producers deposed before the Committee that:—

"The RBI Circular gives a strong disincentive to the banks to restructure loan even in deserving cases. It says that if any loan is restructured, it will remain substandard till 20 per cent of the loan is repaid. That 20 per cent loan for the power sector gets paid over five years' time. As per RBI's own provisioning norms for a substandard asset, once it crosses three years, over a period, 100 per cent of the loan has to be provided in the books. So, which bank will restructure loan, even for a deserving candidate, if it has to increase its provisioning in the books? It hits its profit and it makes it an NPA. The same circular says that if you bring in a new promoter and change in control, then the asset becomes standard. It means that unwittingly, what RBI is doing is making the existing promoters to be kicked out, who have spent sweat and blood to invest and build up, and bring new promoters, and giving concessions to them. So, if a new promoter comes, any restructuring, any write off is fine, but it is not fine with the existing promoters."

3.20 When asked if the timeline prescribed under Resolution Plan is practical and implementable, the Ministry of Finance stated as under:—

"RBI has stated that default is a lagging indicator of financial stress in a borrower's account. The framework provides for 180 days after the lagging indicator to cure the stress, in the case of borrowers with aggregate exposure of Rs. 2,000 crore and above, failing which insolvency resolution process under IBC will be triggered, which provides for another 270 days for resolution. Lenders need to be proactive in monitoring their borrowers and be able to identify financial stress using a combination of leading indicators and renegotiation points in the form of loan covenants, rather than wait for a borrower to default. Such early identification of stress and loan modifications in response would provide sufficient time for lenders to put in place the required resolution plan."

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3.21 Explaining the difficulties faced by the lenders with respect to the strict timeline of 180 days, CMD, Rural Electrification Corporation deposed that:—

> "Exactly in 180 days to find an optimal solution and resolve is almost impossible. We have submitted a timeline to the Ministry that minimum, if no roadblocks come in between, 231 days are required because you have to prepare bidding document, technical and financial operation, then you have to invite bids and evaluate, document it and create security also. All these aspects within 180 days is almost impossible. Ultimately solution is the NCLT only. It means every project will ultimately land up in NCLT where pipeline would be chocked. There are limited number of judges. It will not be so easy".

3.22 Regarding the strict timeline of 180 days, the representative of SBI deposed before the Committee that:—

> "As of now our deadline is 27th August not only for getting the bids, but even this restructuring has to be reflected in the books of the banks as well as in the books of the company. Now, this deadline is approaching so fast. The bidding process takes time, and then there are negotiations involved in it. If in the case of power project 12 months' time is given, then this can work smoothly and also very efficiently. Hence, we want an extended time for these."

3.23 The Committee were apprised that the RBI's Revised Framework for Resolution of Stressed Assets prescribes to identify and implement a Resolution Plan within 180 days with 100% consensus whereas the IBC, 2016 stipulates for consensus among 66 % of the Lenders. Highlighting the difficulty in getting 100% consensus, CMD, Rural Electrification Corporation deposed that:—

> "Unfortunately 100 per cent consensus to be reached is difficult because in some projects we are having as many as 27 banks."

3.24 Regarding the same issue of 100 % consensus, Independent Power Producers deposed that:—

> "If there is a resolution plan which has been submitted and has been approved by two-thirds, it should be carried on by other [illegible], what can happen as per the RBI guidelines *vis-à-vis* the IBC Code, even a person having 0.1 per cent share can stall

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the Resolution Process. There is a dichotomy here. If the majority is passing the resolution plan, it should be agreed to by other banks."

3.25 Explaining the provision regarding "One Day Default", the Deputy Governor, RBI deposed that:—

"One day default does not result in reference to NCLT at all. We have maintained the 90 days definition for NPA classification as it is. What we have said is that one day default should set in motion a process to deal with the problem. From that day, within 180 days, the problem should be solved. If the problem is solved within 180 days, the case does not go to NCLT."

3.26 He further explained that:—

"There is no restriction for lending when a company is an SMA. There is no restriction for lending even to an NPA account. If you look at the circular, we have said it that as part of the resolution plan, if additional funding is required, that additional funding is treated as standard asset. So, we have actually provided adequate provisions. As an account, SMA has no stigma. It is only to indicate that the banks have to deal with the stressed asset."

D. Joint Lending Forum

3.27 As per the RBI's Revised Framework for Resolution of Stressed Assets, the Joint Lenders' Forum (JLF) as an institutional mechanism for resolution of stressed accounts stands discontinued.

3.28 As per RBI, the concept of Joint Lenders' Forum was envisaged as a part of the erstwhile Framework for Revitalizing Distressed Assets in the economy, to function as a platform for efficient information-sharing and decision-making. RBI has stated that in the absence of a bankruptcy law, previous schemes/frameworks were designed to emulate desirable features of a bankruptcy law and with the enactment of a comprehensive bankruptcy law, the need for specific guidelines emulating bankruptcy laws was obviated.

3.29 When asked if the Joint Lending Forum was an effective platform for Resolution of NPAs in power sector and to what extent it helped in making the NPA standard assets, the Ministry of Finance replied as under:—

"RBI has stated that the Joint Lenders' Forum (JLF) was envisaged to serve as a platform for efficient information-sharing and decision-

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making and that the existence of such a platform does not have any bearing on the efficacy of the resolution plans adopted in each case. RBI has further stated that while it no longer recognizes a JLF, if lenders so desire and find it useful, they can form an informal JLF."

3.30 The Committee were apprised that according to the Resolution Plan, as soon as there is a default in the borrowers entity account with any lender, all lenders – singly or jointly – shall initiate steps to cure the default. When asked about the rationale behind this provision when there is no platform like Joint Lender Forum, the Ministry of Finance stated as under:—

"According to RBI, the new framework does not seek unanimity as it gives complete discretion and flexibility to banks to formulate their own ground rules in dealing with borrowers who have exposures with multiple banks and lenders can implement resolution plans tailored to their internal policies and risk appetites. However, if at the end of the 180 days of first default, the borrower is in default to a bank, that bank is mandated to refer the case under IBC."

E. Committee of Creditors (CoC)

3.31 In response to a query regarding the composition of Committee of Creditors, the Ministry of Finance submitted that the CoC comprises all financial creditors of the corporate debtor.

3.32 It has been alleged that the creation, constitution and the constituents of the Committee of Creditors are against the principle of natural justice as in all likelihood Committee of Creditors may adopt a scoot approach so as to absolve themselves of their accountability. When asked about the details of the constitution of Committee of Creditors and the purpose behind creation of CoC and if the constituents of Committee of Creditors will be helpful in any objective analysis and fair assessment of the value of NPA, the Ministry of Finance stated as under:—

"The Committee of Creditors has been specified under Section 21 of the Insolvency and Bankruptcy Code (IBC) 2016. Section 21 reads as under: Committee of creditors

(1) The interim resolution professional shall after collation of all claims received against the corporate debtor and determination of the financial position of the corporate debtor, constitute a committee of creditors.

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(2) The committee of creditors shall comprise all financial creditors of the corporate debtor:

Provided that a related party to whom a corporate debtor owes a financial debt shall not have any right of representation, participation or voting in a meeting of the committee of creditors.

(3) Where the corporate debtor owes financial debts to two or more financial creditors as part of a consortium or agreement, each such financial creditor shall be part of the committee of creditors and their voting share shall be determined on the basis of the financial debts owed to them.

(4) Where any person is a financial creditor as well as an operational creditor,—

(a) such person shall be a financial creditor to the extent of the financial debt owed by the corporate debtor and shall be included in the committee of creditors, with voting share proportionate to the extent of financial debts owed to such creditor;

(b) such person shall be considered to be an operational creditor to the extent of the operational debt owed by the corporate debtor to such creditor.

(5) Where an operational creditor has assigned or legally transferred any operational debt to a financial creditor, the assignee or transferee shall be considered as an operational creditor to the extent of such assignment or legal transfer.

(6) Where the terms of the financial debt extended as part of a consortium arrangement or syndicated facility or issued as securities provide for a single trustee or agent to act for all financial creditors, each financial creditor may—

(a) authorise the trustee or agent to act on his behalf in the committee of creditors to the extent of his voting share;

(b) represent himself in the committee of creditors to the extent of his voting share;

(c) appoint an insolvency professional (other than the resolution professional) at his own cost to represent

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himself in the committee of creditors to the extent of his voting share; or

(d) exercise his right to vote to the extent of his voting share with one or more financial creditors jointly or severally.

(7) The Board may specify the manner of determining the voting share in respect of financial debts issued as securities under sub-section (6).

(8) All decisions of the committee of creditors shall be taken by a vote of not less than seventy-five per cent. of voting share of the financial creditors:

Provided that where a corporate debtor does not have any financial creditors, the committee of creditors shall be constituted and comprise of such persons to exercise such functions in such manner as may be specified by the Board.

(9) The committee of creditors shall have the right to require the resolution professional to furnish any financial information in relation to the corporate debtor at any time during the corporate insolvency resolution process.

(10) The resolution professional shall make available any financial information so required by the committee of creditors under sub-section (9) within a period of seven days of such requisition."

3.33 On being asked about the powers conferred on Committee of Creditors, the Ministry of Finance stated:—

"As per MCA, when default is established, the Adjudicating Authority (AA) admits the application and appoints an Interim Resolution Professional (IRP). The IRP runs the operations of corporate as a going concern up to 30 days, during which he collects claims and based on the same, forms a Committee of Creditors (CoC). The corporate moves away from 'debtor-in-possession' to 'creditor-in-control'. CoC appoints a resolution professional to run the corporate as a going concern. CoC, in its first meeting, decides either to appoint the IRP as Resolution Professional (RP) or to replace the IRP with Insolvency Professional as RP. It endeavors to resolve insolvency through a resolution plan. It invites resolution plans from credible people. If it approves a resolution plan within 90 days with 75% majority, the resolution professional submits

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the plan to the AA for approval. If the AA does not receive a resolution plan within the scheduled time or does not approve a resolution plan, the corporate debtor is liquidated.

During the corporate insolvency resolution process, the RP shall not take any of the following actions without the prior approval of CoC, namely:—

(a) raise any interim finance in excess of the amount as may be decided by CoC;

(b) create any security interest over the assets of the corporate debtor;

(c) change the capital structure of the corporate debtor, including by way of issuance of additional securities, creating a new class of securities or buying back or redemption of issued securities in case the corporate debtor is a company;

(d) record any change in the ownership interest of the corporate debtor;

(e) give instructions to financial institutions maintaining accounts of the corporate debtor for a debit transaction from any such accounts in excess of the amount as may be decided by the committee of creditors in their meeting;

(f) undertake any related party transaction;

(g) amend any constitutional documents of the corporate debtor;

(h) delegate its authority to any other person;

(i) dispose of or permit the disposal of shares of any shareholder of the corporate debtor or their nominees to third parties;

(j) make any change in the management of the corporate debtor or its subsidiary;

(k) transfer rights or financial debts or operational debts under material contracts otherwise than in the ordinary course of business;

(l) make changes in the appointment or terms of contract of such personnel as specified by the committee of creditors; or

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(m) make changes in the appointment or terms of contract of statutory auditors or internal auditors of the corporate debtor."

3.34 When asked if there is any provision wherein Committee of Creditors can allow equity to be paid before the debt, the Ministry of Finance stated that there is no provision wherein CoC can allow equity to be paid before the debt.

3.35 When asked about the safeguards that have been introduced in IBC to preclude the possibility of Committee of Creditors colluding with the possible purchaser/owner of the liquidated property/power plant, the Ministry of Finance Stated as under:—

"As per amendments made recently to the IBC, any person who has an account, or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, which is classified as non -performing asset are not allowed to participate in the bidding process as per Section 29A. Section 29A reads as under:—

29A. A person shall not be eligible to submit a resolution plan, if such person, or any other person acting jointly or in concert with such person—

(a) is an undischarged insolvent;

(b) is a wilful defaulter in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949;

(c) has an account, or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 and at least a period of one year has lapsed from the date of such classification till the date of commencement of the corporate insolvency resolution process of the corporate debtor:—

Provided that the person shall be eligible to submit a resolution plan if such person makes payment of all overdue amounts with interest thereon and charges relating to non-performing asset accounts before submission of resolution plan;

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(d) has been convicted for any offence punishable with imprisonment for two years or more;

(e) is disqualified to act as a director under the Companies Act, 2013;

(f) is prohibited by the Securities and Exchange Board of India from trading in securities or accessing the securities markets;

(g) has been a promoter or in the management or control of a corporate debtor in which a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place and in respect of which an order has been made by the Adjudicating Authority under this Code;

(h) has executed an enforceable guarantee in favour of a creditor in respect of a corporate debtor against which an application for insolvency resolution made by such creditor has been admitted under this Code;

(i) has been subject to any disability, corresponding to clauses (a) to (h), under any law in a jurisdiction outside India; or

(j) has a connected person not eligible under clauses (a) to (i).

Explanation.— For the purposes of this clause, the expression "connected person" means—

(i) any person who is the promoter or in the management or control of the resolution applicant; or

(ii) any person who shall be the promoter or in management or control of the business of the corporate debtor during the implementation of the resolution plan; or

(iii) the holding company, subsidiary company, associate company or related party of a person referred to in clauses (i) and (ii):

Provided that nothing in clause (iii) of this Explanation shall apply to—

(a) a scheduled bank; or

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(B) an asset reconstruction company registered with the RBI under section 3 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; or

(C) an Alternate Investment Fund registered with the Securities and Exchange Board of India."

F. Roles and Responsibilities of the Banks/Lenders

3.36 When asked about the details regarding the provisioning norms for secured assets that are referred to or are likely to be referred to NCLT, the Ministry of Finance stated as under:—

"The provision required to be maintained by banks in respect of borrowers referred for insolvency resolution process through NCLT as a result of the revised guidelines would be governed by the asset classification of each borrower with a particular bank. For secured assets that turn NPAs, extant provisioning norms are as follows:

Asset Classification	Provisioning requirement as a per cent of outstanding
Substandard Assets (NPA for less than or equal to 12 months)	15%
Doubtful Assets (Substandard for 12 months)	
Doubtful up to 1 year	25%
Doubtful for more than 1 year but not more than 3 years	40%
Doubtful for more than 3 years	100%
Loss assets (assets considered uncollectible)	100%

3.37 When asked if the Government had prescribed any guidelines for the banks or financial institutions with regard to financial cap on the cost per megawatt of Power plants and if not, what are the reasons for such open and vast maneuvering landscape given to the banks for grant of loan, the Ministry of Finance stated as under:—

"Financing of projects, including in the power generation sector is a commercial decision of Bank and governed by their board approved policy encompassing all the relevant factors *i.e.* viability

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of the power project through Techno Economic Viability (TEV) Study/Detailed Project Report (DPR)/vetting by independent engineers (Lenders Independent Engineers) etc."

3.38 When asked if it can be inferred that the higher cost per megawatt is a willful exercise of gold-platting and if the banks were issued any tocsin in this regard for self-regulation with regard to the sanction of large amount as loans, the Ministry of Finance stated as under:—

"Banks Boards lay down policies for the bank to follow, monitor performance, review adherence to policies and oversee compliance.

Further, as per RBI, guidelines are issued by it with regard to credit exposure norms relating to single and group borrowers (entity and sector-wise). Moreover, each Bank has its own board approved lending policy, policy for ascertaining staff accountability etc. as per extant RBI guidelines. RBI in its supervisory capacity determines the risk profile of each banks off-site surveillance, targeted on-site inspections, structured meetings with banks, commissioned external audits, specific supervisory directions and new policy notices in conjunction with close monitoring through a Monitorable Action Plan (MAP) followed by enforcement action, as warranted. Reserve Bank of India checks the implementation and enforcement of the guidelines issued by it across all banks during the Annual Financial Inspection (AFI) and Risk Based Supervision (RBS). The non-compliances observed by the banks are communicated to the banks and the banks are asked to comply with the guidelines making required provisions, putting in place requisite monitoring and control mechanisms to avoid such non-compliances in future. Further, compliance to RBI instructions on income recognition, asset classification and provisioning norms are verified by banks' internal audit, concurrent audit and statutory auditors."

3.39 When asked if any assessment has been made with regard to hair-cut that the banks are likely to have following the IBC and how the Government propose to compensate the banks for huge hair-cut as a result of IBC, the Ministry of Finance stated as under:—

"In this regard, RBI has stated that the resolution envisaged under IBC approximates a market-driven process, wherein the true value of an asset is discovered through a public bidding process, and that haircuts are a natural consequence of recognizing the true value of investments."

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3.40 When asked if there should be some limit on the extent of the amount which can be allowed to be taken as a hit (hair-cut) by the banks/financial institutions, the Ministry of Finance stated:—

> "IBC 2016 lays down a process for approval of a resolution plan by the Committee of Creditors provided it confirms with the stipulations laid down in Sec 30(2) of the IBC. Such a plan is thereafter required to be approved by the Adjudicating Authority."

3.41 When asked about the details of the collaterals obtained from private power developers for the loan sanctioned to them, the Ministry of Finance stated as under:—

> "The securitization including collateral security is governed by the extant guidelines. Usually, Project Financing is of non-recourse nature and done *inter alia* on the basis of projected cash flows of the Project being funded, primary security (project assets), pledge of paid up equity shares of the promoter etc. Banks take their commercial decisions as per extant policy."

3.42 When asked if any of collateral guarantees had been confiscated or encashed by the banks/financial institutions, the Ministry of Finance stated that in some cases, the pledge of shares has already been invoked.

3.43 On being queried about the status of non-banking financial institutions which have invested money in various sectors of the economy and are afflicted with the problem of NPA, the Ministry of Finance stated as under:—

> "As per MCA, non-banking finance companies (NBFCs) may fall under the definition of financial creditors under IBC. Under section 7(1) of IBC, a financial creditor, either by itself or jointly with other financial creditors, may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has taken place. Once the resolution process is initiated, the financial creditor joins the Committee of Creditors, which either approves resolution plan for insolvency resolution of the corporate debtor or liquidates the corporate debtor."

3.44 When asked about the rationale behind absolving the bankers or the other officers responsible for sanctioning the loan which later

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turned out as NPA and if any accountability has been visualized in the entire process beginning from SMA to auction following the decision of NCLT, the Ministry of Finance stated as under:—

> "The Banks carry out a detailed Staff Accountability study in all cases of NPA Loans and where ever any deviation from Bank's extant guidelines are found, suitable penal action is taken against the officials responsible for sanctioning the loan. Recently, Government has directed that in all cases involving NPAs of Rs. 50 Crore. and above examination for fraud is to be carried out on mandatory basis."

IV. Impact of RBI's revised framework on NPAs in the Electricity Sector

4.1 The Committee were apprised that about 66 GW of conventional IPP capacity is under various degrees of financial stress in the Electricity Sector which includes 54,805 MW of Coal based Power (44 Assets), 6831 MW of Gas based Power (9 Assets) and 4571 MW of Hydro Power (13 Assets).

4.2 It was submitted by the Ministry of Power that the following assets have already been referred for Chartered Insolvency and Restructuring Professional (CIRP) under IBC:—

- Ind-Barath Energy (Utkal) Ltd.
- Lanco Amarkantak Power Ltd.
- Lanco Teesta Hydro Pvt. Ltd.
- Lanco Vidarbha Thermal Power Ltd.
- Ind-Barath (Madras) Ltd.
- Lanco Babandh Power Ltd.

4.3 The Ministry of Power submitted that the outcomes of RBI's Revised Framework with respect to the Electricity Sector are following:—

> "Major Lenders to Power Sector IPPs have displayed significant accretion to NPAs:
>
> - Slippages Exceed Rs. 1.8 lakh crores in Q4 – FY 2018.
> - Slippages in 6 major lenders exceed Rs. 61,000 crores on account of revised RBI framework."

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4.4 On being asked if the Ministry of Power and other stakeholders were consulted before finalizing the Revised Framework for Resolution of Stressed Assets, the Secretary, Ministry of Power deposed that the RBI had no formal consultations with the Ministry of Power on this.

4.5 It was stated before the Committee that the Lender's actions under IBC in order to resolve the stressed assets in the Electricity Sector are inflicted with certain limitations such as:—

"(i) Sub-optimal Bid Outcome—

- 5 to 6 Change in Management bids have been conducted by lenders.
- Bids of Rs. 1.02 crore per MW to Rs. 2.5 crore per MW.
- 46% to 19% recovery of principal.

(ii) Small buyer universe—

- Asset specific risks are not mitigated currently.
- Significant undisclosed liabilities risk buyer returns.

(iii) Weak commercial framework—

- Many commissioned assets without adequate PPA/FSA.
- Difficult to determine Market value for such assets."

4.6 Giving an example of Sub-Optimal Bid Outcome, CMD, Power Finance Corporation deposed before the Committee that:—

"The Chhattisgarh Project is a running project under operation. It is a good project. Yet there is 70 per cent hair-cut. Against the debt of Rs. 8300 crore, we have received the offer of Rs. 2500 crore only."

4.7 Regarding Sub-Optimal Bid Outcome, the Independent Power Producers also stated that:—

"Abhijit Group had a power plant in Jharkhand. It was bid out. It got a bid of Rs. 35 lakh per MW whereas a new plant would need five crore rupees. So, there are no bidders in the system. Forcing to sell under the circular or NCLT will end up having a sacrifice of public money without having any benefit to the economy or the Electricity sector because the new promoter will

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have the same problem. Meenakshi Energy got restructured in such a manner and again, it is in stress because if the existing promoters cannot solve the systemic issues, how the new promoter will solve them."

4.8 On being asked if the measures introduced in fresh RBI guidelines would help the electricity sector to overcome its NPA problem, the Ministry of Finance stated as under:—

"Certain representations have been received regarding the Revised Framework on Resolution of Stressed Assets from Indian Banks' Association and other stakeholder organizations, expressing concern regarding issues like one day default, referring of case under IBC at the end of 180 days of first default, application of revised guidelines in the cases where SDR/S4A/Overseas SDR have been invoked but not implemented, withdrawal of circulars regarding flexible structuring of loans to infrastructure and core industries, applicability of the framework for overseas borrower, timelines for reference of large accounts to IBC in case of default during specified period, implementation of the RP within 180 days, etc. These concerns have been referred to RBI.

With regard to whether the fresh RBI guidelines would help the electricity sector overcome its NPA problem, RBI has stated that though the causes of stress may vary, the notional principles of resolution are sector-agnostic."

4.9 When asked about the impact of new RBI guidelines on the Electricity Sector as a whole and 34 stressed projects in particular, the Ministry of Finance stated as under:—

"As per RBI, the immediate impact of the revised framework would be withdrawal of standstill in asset classification for accounts in which the previous resolution schemes had been invoked but not implemented. In these accounts, which may include a few accounts from the 34 projects identified in the 37th Report of the Hon'ble Standing Committee on Energy, the asset classification would be as if the previous schemes had never been invoked in the first place. However, another impact of the circular would be in encouraging the banks to find a resolution within 180 days from March 1, 2018. If the promoters and banks fail to find a viable resolution within 180 days, banks have to file insolvency application against those borrowers, where aggregate exposure of lenders is ₹ 20 billion and above.

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Of the 34 identified stressed asset cases, applications for admission of cases under IBC, 2016 have already been filed with respect to 9 cases."

4.10 In response to same query as above, the Ministry of Power stated as under:—

"Implication of the RBI circular is that:

- The stressed power project assets have to draw and implement Resolution Plan within 180 days, else approach NCLT under IBC, which means several stressed assets in power sector will be restructured including exploring change of ownership either under resolution plan (within 180days) or under IBC in the immediate near term.

- Earlier Loan Accounts were becoming NPA after 90 days but now, under revised framework, framing of Resolution Plan is incumbent immediately after default.

- Even in case of default for a single loan the Resolution Plan of the entire Company covering all Lenders is required."

4.11 Explaining the non-suitability of new RBI guidelines for the Electricity Sector, Independent Power Producers submitted that:—

"It appears that RBI has not considered the Macro-Economic issues faced by the power sector, regulated nature of the business and the fact that Electricity features in the concurrent list of the seventh schedule of constitution before issuing the 12th Feb'18 policy. This policy has served a death knell on revival prospects of many under construction projects stressed for various reasons beyond their control as power sale is completely regulated unlike other sectors like Steel, Cement and Manufacturing.

The RBI Circular also treats heavily regulated sector like Electricity on par with unregulated sectors which is arbitrary since it equates un-equals. By equating solutions of stressed assets applicable for other sectors with that of power sector, the new policy inadvertently proceeds to damage the public investment in banks it seeks to protect by this new policy.

There is also an anomaly in respect of the maximum period of [illegible]O extension possible and the maximum amount of escalation

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in the project cost allowed without downgrading the account. While DCCO extension is possible for a maximum period of 4 (2+1+1) years in case of no change in management, a maximum of 6 years is allowed with change in management, the project cost (Non-IDC) escalation is allowed only to the extent of 10% without down grading the account, which does not even provide for the inflation (5%/annum) and currency escalation (approx. 45% since 2010) for the 4-6 year period as the case may be."

4.12 Highlighting the need for synchronization between the RBI's Guidelines and the resolution of the systemic issues of the Electricity Sector, the Chairman, SBI deposed that:—

"From the timeline point of view, even though the RBI circular has the complete framework but its implementation might not give enough results. The reason is, still we have problems with the coal supplies, PPAs – because many plants do not have PPAs, they have only partial PPAs. We have large regulatory recoverables. Unless these three are resolved, any amount of changes we do to the RBI framework would not pull the sector up. My request is, synchronize the implementation of those with the RBI circular."

4.13 Explaining the basis for seeking relief/exemption from the RBI circular dated Feb. 12, 2018, the Independent Power Producers furnished that the power projects are stressed due to the following policy issues that are beyond the control of the developers:—

"1. **Complete Absence of PPA bidding**: There is complete absence of planned power procurement by DISCOMS either through Long Term or through Medium Term. The last successful Long Term PPA bid won by a private developer was in the year 2014-15 when Kerala concluded PPAs for about 850 MW under the new DBFOO basis. Since then though many State DISCOMS like UP, AP and Telangana had conducted the bidding process, none of the bids have resulted in concluded PPAs. The Pilot scheme for 2500 MW launched by MoP is a good beginning. As individual States are not forthcoming to procure power, such pooled power procurement should be continued by central agencies at regular intervals at least for next 2 to 3 years till demand picks up owing to the various initiatives taken by Central Government. However, the provisions of the Pilot Scheme needs to be relooked into with regards to capping of fixed cost at an unrealistic value of 1 paise, guaranteeing off-take

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only to 55% and transfer of all escalation risks to sellers for the PPA duration, particularly when this scheme was introduced with a view to alleviate stress in the sector. Because of such unrealistic bid conditions, Tariff discovered under Pilot Scheme would be high when compared to recent annulled Long Term bids under DBFOO and hence DISCOMS may not be interested to avail this power defeating the whole purpose for which this power procurement scheme was launched.

Also these schemes will be helpful only if such Medium Term/ Short Term PPAs are considered for aggregating the tied up capacity requirement by a company to avail CD/ED exemption benefits under Mega Policy.

Needless to mention, a viable Long Term PPA would not only protect the debt already disbursed but also encourages lenders for further disbursement and investors will also be interested.

2. **Restrictions in Coal Usage Policy:** The present policy framework of Linkage Coal is very restrictive and allows Linkage Coal only for Long and Medium Term PPAs, Linkage coal will not be supplied by Coal companies for Short Term PPAs. In the absence of Long Term or Medium Term PPA bids in the market, sale of power through Short Term is the only alternative for projects which are commissioned. Price discovery in Short Term too is on the basis of approved bidding guidelines by MoP hence, Coal may be supplied to existing linkage holders for Short Term PPAs. This will help in alleviating the stress in the sector for commissioned projects. But would not give much needed relief to under construction projects.

3. **Disparity in PPAs between Government and Private Sector:** The power procurement policy currently in place is skewed and does not provide a level playing field; it is discriminatory in nature and favours CG and State sector generators. IPPs are required to participate in competitive bidding to sell their capacity whereas, power producers of Central Generating and State follow the allocation route for capacity allocation and their tariff is determined through Section 62 (Pass Through) of the Act. Even, the recent proposed amendment in Tariff Policy seeks to perpetuate this different treatment.

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This discriminatory policy would be detrimental to attract any private investments into sector.

4. **Thermal Power Cross Subsidizing Renewable:** Transmission charges for renewable solar/wind power is Zero, whereas the cost of transmission infrastructure incurred on this account is 'Shared' by the Thermal sector, transmission charges are forced upon Thermal Projects which are not ready or supplying power because of various issues. The present policy with regards to sharing of entire transmission charges is discriminatory and growth of one sector is promoted at the expense of another, pushing the Thermal sector further into losses. Even though clean energy must be encouraged but this anomaly should be slowly abolished before 2020.

5. **Mega Power Benefit:** GoI had extended the time period by another 5 years in 2017 to secure PPA for a minimum quantum of 85% of the installed capacity and the extended deadline expires on Nov' 2021. In the present context when all under construction projects are in severe financial stress and there is reluctance on part of DISCOMS to enter into long term PPAs, the end date specified to avail the benefit may not be met with, resulting in withdrawal of financial benefits under Mega Power Policy leading to imposition of additional financial burden on these already stressed assets. Hence, there is a need to do away with the requirement of securing a minimum % of long term PPA to avail the benefit."

4.14 Explaining why the Electricity Sector should be treated differently with respect to the Resolution of the Stressed Assets, CMD, Rural Electrification Corporation while making a presentation before the Committee, deposed that:—

"Power Sector is in a transition which is well known and we are really moving in from a low demand, low supply situation to a moderately high demand context. This is the transition period that needs to be managed. The RBI framework or the other issues that we have been talking about addresses only the financial issues. Of course, as a financial institution that is our major concern but it does not address a whole range of issues that are external to the financing matters.

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We have to take into consideration two major important contexts. One is the need for a national energy security in the context of managing the transition in the power sector. (Second,) these stressed assets are national assets at the end of the day and need to be preserved, protected and conserved."

4.15 Further, he stated that the IBC is generally focussed on Capital Structure Resolution only and the sectoral challenges can not be addressed through IBC and thus the resolution may not be forthcoming as the Power Assets have challenges extraneous to the Capital Structure like:—

- Shortages/Non-availability of Coal
- Delayed Power Procurement by Discoms
- Regulatory Issues
- Long working capital cycle with Discoms
- Level playing field not offered

4.16 Elaborating about the need for a separate framework for Resolution of Stressed Assets in Electricity Sector, Independent Power Producers deposed that:—

"RBI circular has not taken cognizance of the (ground realities of the Electricity Sector) and it is heavily framed in such a way that steel and all other industries have been put together and it tried to address every sector together. But electricity is a very highly regulated sector. So, comparing this sector with other sectors and putting the same framework may not work. So, what we feel is that there should be a separate framework as far as the power sector is concerned."

4.17 Highlighting the problem in formulating a separate framework for Resolution of Stressed Assets in Electricity Sector, the Secretary, Department of Financial Services deposed that:—

"The possibility of the similar demands (of exemption from RBI's Guidelines) from similarly placed sectors cannot be ruled out. It could be shipping, cement, and more particularly MSMEs. MSMEs are at a much worse situation at this stage than these projects and for a much lesser fault of theirs. This demand can come from all those sectors. So, should we have a separate sector-specific NPA resolution regime or an overarching regime?"

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V. Steps taken by the Government

5.1 The Ministry of Power furnished that the Government has taken the following steps to resolve the stress in the Electricity Sector:—

"A. **Fuel linkages under SHAKTI:** Government on 17.05.17 approved new coal linkage allocation policy named SHAKTI (Scheme for Harnessing and Allocating Koyala Transparently in India). Under the scheme, auction of coal linkages for Independent Power Producers (IPPs) with PPAs based on domestic coal has been conducted on 12.09.2017. IPPs having PPA but no coal linkages have participated in the auction and linkages have been granted to 11549 MW capacity (10 projects) including five stressed projects of total 8490 MW capacity, and these projects have been resolved. Under B(i) provisions of SHAKTI policy, linkages have been granted to State/Central Gencos-8870 MW for 10 projects. Further, CIL is likely to conduct auction of coal linkages to plants without PPA under clause B(iii) of SHAKTI scheme shortly.

B. **Pilot project for procurement of 2500 MW power:** A pilot project has been launched for procurement of aggregated 2500 MW of power for three years (covered under medium term). PFCCL, the nodal agency has invited bids in line with the standard bidding documents issued by MoP for this pilot scheme. Bids for 2200 MW are received from 8 developers and 7 bidders (1900MW) have offered to match the lowest bid (Rs 4.24/Kwh) The bidding formalities including signing of PPAs are expected to be completed by July 18.

C. **Under recovery due to anomalies in Coal Escalation Index:** Certain Generators were facing under recoveries due to anomalies in the coal escalation index published by DIPP. Now, CERC *vide* Notification dated June 1st, 2018 has amended "Guidelines for determination of tariff by bidding process of power procurement by distribution licensee" to remove those anomalies and adopt a new series of Wholesale Price Index (WPI) in non-coking coal (G7-G14) *w.e.f.* April 2012. On the basis of the new Notification of CERC, the generators will be eligible for revised tariff *w.e.f.* 1st April, 2017 calculated on the basis of new series of WPI for non-coking coal (G7 – G14).

This will largely take care of the issues of under recovery of the generator's dues.

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Further, at present, there is a time lag of 12-18 months between the revision of tariff and the escalation in the prices of coal. The matter is under consideration of CERC and a staff paper has been issued on 10/4/2018. Public hearing has been conducted on 5/6/2018. The Commission is likely to decide the matter soon.

D. Ministry has issued direction to CERC under 107 of the Electricity Act, 2003 on 30th May to allow pass through of increase in the cost of generation due to installation of FGDs.

E. Ministry of Power *vide* letter dated 30.05.2018 has proposed amendments in Tariff Policy, 2016. As per Section 6.2.4 of the proposed Tariff Policy it is stated that "After the award of bids, if there is any change in domestic duties, levies, charges, surcharges, cess and taxes imposed by Central Government, State Governments/Union Territories or by any Government instrumentality leading to corresponding changes in the cost, the same may be treated as "Change in Law" and may unless provided otherwise in the PPA, be allowed as pass through. The Appropriate Commission shall lay down the principle and procedure for the same.

F. A new App "PRAAPTI" (Payment Ratification and Analysis in Power Procurement for bring in the transparency in payment of Generators) has been launched by the Ministry to bring more transparency in the system of payment of DISCOMS. The Generators are being actively encouraged to feed in their invoicing and payments data. This portal would be expanded to include Transmission as well as Renewable Generators as well.

G. DISCOM Reforms: The efforts of the Ministry for reforms in the distribution system has also started bearing fruits. AT&C losses has come down from 20.7% in FY 2016 to 20.2% in FY 2017-18 which is likely to come down further to less than 20% (19.08%) in FY 2018. In the first 9 months of FY 2018, 17 States have reduced their AT&C losses as compared to that in the first 9 months of FY 2017.

Similarly, the difference between ACS and ARR has come down from Rs. 0.59/kWh in FY16 to Rs. 0.41/kWh in FY 17. It is likely to further come down below 25 paise in FY 2018.

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The improvement of financial health will ease out the situation of payment to the generators and also increase the purchasing power of the DISCOMs to buy more power.

H. **Steps taken to reduce the cost of generation:** Reduction in the cost of generation is likely to improve the ability of DISCOMs purchasing more powers and thus create more demand for power. Government has taken various steps to reduce the cost of generation which are as under:—

- The introduction of third party sampling by CIMFR: The Government has started Third Party Sampling of Coal at both, loading and unloading end of Generators. There has been considerable improvement in the quality of coal supplied by the Coal India Limited. On an average, due to improvement in coal quality and improvement in the efficiency of plants, there has been a reduction of 6.5% in specific coal consumption by coal based thermal power plants (from 0.69 kg/kwh in 2013-14 to 0.645 kg/kwh in 2017-18).

- The coal linkage have been rationalised to optimise the cost of transportation of coal and thus reducing the cost of generation leading to savings of approx Rs. 900 crore by NTPC .

- Flexibility utilization of domestic coal has also resulted into substantial savings in the cost of generation. Annual saving of Rs. 468 crore. by NTPC

- Regarding of mines by Coal controller has resulted in a cost saving of 686 crore to NTPC alone for year 2017-18.

These saving has been passed on to the DISCOMs.

I. Other measures

- States have been impressed upon to make use of the policy of flexibility in utilization of domestic coal for reducing the cost of power generation *i.e*. use of linkage coal of State Gencos in IPPs and get cheaper power generated from such coal. Gujarat and Maharashtra have already operationalised PPAs 500 MW and 400 MW, respectively through this mechanism. Gujarat and Maharashtra has further indicated to use this policy and

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expected bidding by them is around 2800MW. Other States have also requested to make use of this policy. This will help IPPs to commence generation of power.

- Connecting all households under "Saubhagya" is likely to increase demand for electricity in the country.

Above measures taken by Ministry of power, Government of India will ease the stress on Generation projects."

5.2 When asked if any concrete plan has been drawn by the Government in the light of the latest guidelines of RBI for Resolution of these NPAs, the Ministry of Finance stated as under:—

"Government has been making concerted efforts to resolve the stressed assets situation. As informed by the Ministry of Power, various steps have been undertaken to improve operations by units in the power sector. These *inter alia* include fuel linkages under SHAKTI, Pilot project for procurement of 2500 MW Power, Notification by CERC making generators eligible for revised tariff calculated on the basis of new WPI for non-coking coal; pass through of increase in the cost of generation due to installation of FGDs (flue gas desulphurization), new App "PRAAPTI" (Payment Ratification and Analysis in Power Procurement for bring in the transparency in payment of Generators) to bring in more transparency in the system of payment of DISCOMS, DISCOM Reforms under UDAY, Introduction of third party sampling by CIMFR for improving coal quality, connecting all households under "Saubhagya" etc.

5.3 It was submitted before the Committee that the State Bank of India has initiated SAMADHAN in view of RBI's Revised Framework. 10 Electricity Sector Assets have already been referred under this scheme. Some of the salient features of SAMADHAN includes:—

- Sustainable debt to be determined based on rating of RP4,
- Unsustainable debt to be converted into equity,
- Lenders to keep significant equity holding in the project,
- Investor to take 51% stake in project along with sustainable debt,
- Investor to be selected through competitive bidding.

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5.4 The Committee were apprised that the Rural Electrification Corporation has formulated PARIWARTAN as a multi-track approach that focusses on recovery, value-enhancement and quick disposal of stressed assets wherein asset warehouse may be established to protect value and revitalize assets. Some of the features of PARIWARTAN includes:—

- Preserve potentially viable assets under PARIWARTAN,
- Provide institutional support at highest level to enhance value,
- Dispose assets at a pre-defined commercial structure level (say a 60% PPA and Fuel arrangement),
- State Gencos to be encouraged to take over such assets,
- Appointment of specialized credible players, like NTPC, to complete last mile construction
- Meet last mile funding requirement of the projects,
- Infuse capital to meet the working capital requirement of the assets,
- Will outsource O&M/Contractual services to NTPC and/or any other credible player through a transparent process,
- In house team of commercial experts to be recruited and built as an institution,
- Investment committee to approve warehousing and monitor implementation,
- On receipts of sale proceeds, warehousing receipts shall be encashed by PARIWARTAN net of a suitable incentive.

5.5 It was also submitted that the asset acceptance criteria under PARIVARTAN shall be determined by the Board of Directors in consultation with Investment Committee and indicative Asset Acceptance Criteria shall include:—

a. "Fundamental competitiveness of the asset,

b. Ability to enter into PPA/FSAs,

c. Extent of equity ownership enforceable by lenders,

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d. Revitalization Potential,

e. Low outstanding operational creditor liabilities."

5.6 The Capital Structure of PARIWARTAN, as furnished by the Rural Electrification Corporation, is as below:—

"(i) Likely Equity Participants — Key power sector players and large lenders can be equity participants.

- Initial Participants
  - — Power sector lenders to float the Company with basic capital.
  - — NTPC/PFC/REC/SBI/PNB/Axis/ICICI/Bank of Baroda to be invited for equity participation.
- NIIF/Private Investors
  - — Government to evaluate role of private sector investors/NIIF in the 'PARIWARTAN' as equity investors.

(ii) Capital Requirements - PARIWARTAN Capital requirements are in a phased manner.

- Phase-I
  - — PARIWARTAN accepts operational assets only.
  - — Capital requirements of INR 500 crore to 1000 crore of equity.
  - — Capital requirement largely for margin money for working capital.
- Phase-II
  - — PARIWARTAN accepts under construction assets.
  - — Capital requirements of INR 1500 Crore to INR 2000 Crore.
  - — Deployment of capital towards last mile equity.

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(iii) Lender Support - Debt Support required from lenders for asset revitalization.

- Working Capital.
  - — Sanction of working capital limits to enable plant operations.
  - — Margin money to be provided by PARIWARTAN.
- Last Mile debt funding.
  - — For assets under construction, lenders to provide debt facilities towards completion.
  - — Smaller participating lenders may cede priority charge to facilitate plant completion in the event of inability to provide completion debt."

5.7 CMD, Rural Electrification Corporation deposed that to facilitate the implementation of PARIWARTAN, the following relaxation are required from RBI:—

- "Sunset Date of Warehousing Receipts should be 60 months.
- The ARC regulations may need to be amended as below to facilitate the implementation:

  The ARC may be exempted from the requirement of "SC/RC shall by transferring funds, invest a minimum of 15% of the SRs of each class issued by them under each scheme on an ongoing basis till the redemption of all the SRs issued under such scheme".

  The ARC may be exempted from the requirement of "valuation procedure ensuring that the assets acquired have realisable value which is capable of being reasonably estimated and independently valued".

  The PARIWARTAN ARC may be exempted from the requirement of "Every SC/RC shall obtain initial rating/ grading of SRs from an approved CRA within a period of six months from the date of acquisition of assets and declare forthwith, the NAV of the SRs issued by it. Thereafter, SC's/RCs will get the rating/grading of SRs reviewed from an approved CRA as on June 30, and December 31 every year

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and declare the NAV of SRs forthwith, to enable the QIBs to value their investment in SRs. For arriving at NAV, SC/RC shall get the SRs rated on 'recovery rating scale' and require the rating agencies to disclose the rationale for rating".

5.8 After having a detailed discussion, as per the direction of Hon'ble High Court, with all the stakeholders like Ministry of Power, Ministry of Coal, Ministry of Petroleum and Natural Gas, Reserve Bank of India, Rural Electrification Corporation, National Thermal Power Corporation, Independent Power Producers Association, etc., the Secretary, Department of Financial Services, presented an overview of the problem of NPAs in the Electricity Sector before the Committee, as stated below:—

"As I have understood the entire thing after hearing it for the first time from everybody involved, I would like to divide them into four major verticals. The first vertical essentially is the economic growth, the increasing needs of power, and the power being the engine to fuel the growth of the country, the necessity of not allowing any asset to go waste to the extent possible. That is the first vertical. The first objective of whatever decision we take is that the power needs of not only the present which are increasing but also the future must be taken care of before any decision is taken.

The second vertical is the sectoral problems within the power sector which are multifarious and multi-agency. It includes coal, fuel, gas, Discoms, PPAs, transmission lines, imported coal v/s domestic coal, boiler capacity, etc. It has a whole lot of sectoral issues within which the second vertical is to be looked at. The second vertical also has a very specific further sub-vertical which is that it is managed within some monopolies, some private space and in some form of the customer interest. So, when we reconcile the sectoral aspects it has to deal with also the private space, the space occupied by the monopolies of the PSUs and also how the customer benefits by the decisions we take.

The third vertical is the overall credit culture, the promoters and the health of these power plants under stress, which we are talking about. Some are already NPAs and some are going to be NPAs. So, we have issues of gold-plating, of how much of this stress is accounted towards that and how much is towards the sectoral problems which the sector has.

The entire credit culture in this country is under a tremendous [illegible]ge. That is, if you are taking credit, you have to be responsible;

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if you are in the business of giving credit, hedge your risk and be responsible. And if somehow because of some reason you are not able to do that, then the Government under the Parliamentary legislation has introduced the fourth vertical which is an exit route of the IBC.

So, the essential question is, how does one weave all these four verticals together and reach to a solution without disturbing anyone within the constraints of the sectoral issues which are not going to be solved in the short term, within the objective of saving these power projects, apportioning the kind of responsibilities on the promoter to the extent it is there, to the other extraneous sectoral issues which are there and keeping the sanctity of IBC in picture."

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PART II

OBSERVATIONS/RECOMMENDATIONS OF THE COMMITTEE

Introductory

1. The Committee note that the RBI has issued Revised Framework with a view to resolve Stressed Assets in all the Sectors of the Economy. The Electricity Sector is one of the sectors which have been affected by this framework. Under the New Guidelines, the definition of the default has been revised with far reaching consequences. The Committee also note that the New Guidelines of the RBI will only deepen the crisis of the Electricity sector as its leitmotif is distinct, peculiar and sector specific without any generic underpinning with other sectors of the economy. The Committee observe that the efforts of the private players in developing the Electricity Sector of this country has not been given due recognition otherwise their genuine constraints that have led to stress might have been addressed. The Committee feel that the seminal significance and epochal importance of this sector has been conveniently given a go by. The committee, therefore, recommend that the Government should be sensitive to this vital sector of our economy which acts as a core to shoulder the other engines of the economy and thus the Committee postulate that the specific and realities of the sector should be taken into account for appropriate modulation of the RBI Guidelines.

2. The Committee note that the Reserve Bank of India in exercise of its powers under relevant sections of the Banking Regulation Act, 1949 and Reserve Bank of India Act, 1934, has issued a Revised Framework for Resolution of Stressed Assets. The Committee feel that as a result of this Revised Framework, the Electricity Sector has been forced towards NPA. During deliberations with the relevant quarters of the Government and all the other stakeholders, the Committee have been informed that the causes for stress in different sectors are different, however, the nominal principles governing Resolution of the Stress are the same irrespective of the sector. The Committee observe that the one of the objectives of the Revised Framework is to ensure prompt

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action to cure stress in a borrower's account as soon as default takes place. The Committee find that the nominal principles for resolution are more chimerical than practical as on the one hand, it is acknowledged that reasons for stress are not identical while on the other hand similar and identical tools are taken recourse to, to remedy the malady. According to the Committee, this is vapid and capable of crippling the Electricity Sector. The Committee, therefore, recommend that appropriate, relevant and sector specific measures should be explored to address the issue. The Committee, *per-se*, are not averse to the idea of cure but it should be efficacious enough to energize the sector and not to extirpate it.

Stressed/non-performing assets in electricity sector

3. The Committee note that the high rate of NPA in Indian Banks is sector specific phenomena and most of the non-performing loans are concentrated in few sectors *viz*. infrastructure, power, iron, steel, textile etc. and the reasons of stress in these sectors are separate and varying. The Committee observe that for Power Sector, factors like coal linkage related issues, delay in implementation of projects due to various reasons, non-availability of fuel, delay in land/environment clearances, inability of promoters to infuse additional funds, etc. have aggravated the problem and weak financial health of Distribution Companies (DISCOMS) have led to substantial increase in receivables of borrowing groups (*i.e*., receivables of Power Generating Companies), thus impacting their liquidity position. The Committee also observe that the Government have accepted that the reasons responsible for stress in Power Sector are at variance with the reasons responsible for stress in other sectors of the Economy. But even after acknowledging the differentials in reasons for sectoral sickness, uniform principles of resolution have been introduced across the sectors and this has been done on the premise that ultimately any negotiation of debt is a restatement of financial contract. The Committee have been apprised that given the sector agnostic basic principles of resolution, revised framework provide a harmonized and flexible approach. However, the Committee are not convinced with the reasons given by the Government to justify their formula for Resolution of stress because different ailments can be cured only with ailment specific remedies and if a single remedy is taken as panacea for all maladies and applied uniformly all across, it is bound to be counter productive and is sure to aggravate the problem. The Committee, therefore, recommend

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that instead of adopting a sector agnostic approach for stress Resolution, more penetrative and sector friendly measures should be adopted.

RBI's Revised Framework for resolution of Stressed Assets

4. The Committee note that the Reserve Bank of India substituted the previous guidelines with a harmonized and simplified generic framework for resolution of stressed assets in view of the enactment of the Insolvency and Bankruptcy Code, 2016. Although the new guidelines have been termed as harmonized and simplified generic framework, yet they are far from being so. Prior to these guidelines, an asset was classified as NPA if a loan or an advance where interest or installment of principal remains overdue for a period of 90 days in respect of term loan. Similarly, stressed assets were accounts where there has been delay in payment of interest and/or payment as against the repayment schedule on account of financial difficulties of the borrower. Under the previous framework, failure of an asset to serve its debt obligation within the prescribed time was taken to be symptomatic of an incipient stress of potential NPA and consequently, corrective measures of various grades, *i.e.*, rectification, restructuring and recovery were the options keeping in view the totality of the situation. However, the new regime have dispensed with all such measures and any failure beyond the duration of SMA (Special Mention Accounts) will directly and immediately invoke the provisions of resolution plan, making the revival extremely difficult. The Committee, therefore, recommend that in the interest of the economy in general and the Electricity Sector in particular, the revised guidelines should be "harmonized and simplified" in the real sense.

5. The Committee note that the framework which was in vogue prior to issuance of these guidelines by RBI was more generic, sector friendly and harmonized. The previous Guidelines, *inter-alia*, included the framework of revitalizing the stressed assets, corporate debt restructuring scheme, flexible structuring of existing long-term project loans, strategic restructuring, debt restructuring scheme, change in ownership outside SDR, scheme for sustainable structuring of stressed assets and the Joint Lenders' Forum was an effective institutional mechanism for resolution of stressed accounts. However, these have all been withdrawn and replaced with more stringent guidelines

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unmindful of the problems of the Electricity Sector. The Committee are informed that the previous Guidelines have been withdrawn by the RBI as various special schemes for resolution introduced earlier were used by lenders more to address asset classification concerns rather than to affectively resolve the stressed assets and the enactment of a comprehensive Bankruptcy Law in the country has obviated the need for such specific schemes. The Committee feel that even if the previous schemes were used for the purpose of asset classification, they cannot be termed to be useless as asset classification and categorization are the basis for implementation of any of the schemes for restructuring. The Committee are of the view that one can bring new additions, replace old ones, modify existing ones, keeping in view the problems and their ramifications, but it should not be done in a cavalier manner, shorn of prevailing realities. The Committee express their anguish about the manner in which the entire exercise has been undertaken turning a Nelson's eye towards the issues and necessities of the Electricity Sector. The Committee, therefore, strongly recommend that it will be more appropriate if a reasoned view and seasoned approach are taken *vis-á-vis* the Revised Framework of RBI to emancipate the emaciated Power Sector.

6. The Committee note that the Revised Framework of RBI provide for early identification and reporting of assets, implementation of resolution plan, implementation condition for resolution plan, timelines for large accounts to be referred under IBC etc. It *inter-alia* stipulates that the lenders shall identify incipient stress in loan accounts immediately on default by classifying stressed assets as Special Mention Accounts as per the prescribed criteria. It also prescribes that all lenders must put in place Board-approved policies for resolution of stressed assets under this framework, including the timelines for resolution and as soon as there is a default in the borrower entity's account with any lender, all lenders – single or jointly – are asked to initiate steps to cure the default. The Committee observe that the Resolution Plan (RP) may involve any actions/plans/reorganization including, but not limited to, regularization of the account by payment of all over dues by the borrower entity, sale of the exposures to other entities/investors, change in ownership, or restructuring. The Committee feel that the various options as introduced in the Resolution Plan are not consistent in their order for curing the stress and all of them can be jointly or severally invoked for resolving the stress. The Committee also note that

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one of the options provided is of restructuring which has been defined as an act in which a lender, for economic or legal reasons relating to the borrower's financial difficulty grants concessions to the borrower and Restructuring would normally involve modification in terms of the advances/securities, which may include, among others, alteration of repayment period/repayable amount/the amount of installments/rate of interest; roll over of credit facilities; sanction of additional credit facility; enhancement of existing credit limits; and, compromise settlements where time for payment of settlement amount exceeds three months. The Committee find that the restructuring is more generous and flexible concept as against the other options like regularization of the account by payment of all dues by the borrower entity, sale of the exposure to other entities/investors, change in ownership etc. The Committee are of the opinion that the coinage of restructuring in resolution plan is hollow without having any serious meaning or business which only reflects the blurred vision of RBI in understanding and appreciating the problems. The Committee expect that clarity of thought and transparency in approach should be the guiding factor to streamline and strengthen the sector squirming under ineluctable hardships.

7. The Committee note that the implementation conditions of the resolution plans are very stringent as the process of Resolution Plan is set in motion on default of debt service obligations even by a day. The Committee also note that the definition of default has been revised and the same has been aligned to the definition of default given in IBC. The Committee observe that the objective of the Revised Framework is to ensure prompt action to cure stress in a borrower account as soon as default takes place and the Resolution Plan should be implemented within a specified timeline of 180 days from the date of first such default failing which lenders shall have to file insolvency application, single or jointly, under the Insolvency and Bankruptcy Code 2016(IBC) within 15 days from the expiry of the said timeline. The committee have been apprised that finding an optimal solution exactly in 180 days is almost impossible and if no road blocks come in the way, at least 231 days are required to complete the process which includes preparation of bidding documents, technical and financial operations, invitation of bids, evaluating them and creating security etc. The representatives of the banks/lending institutions also echoed the same sentiments and stated that in case of power projects, 12 months

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are needed for a smooth and efficient resolution. The Committee feel that going by the prescribed timelines, every stressed project of the Power Sector will ultimately land in NCLT. The Committee observe that even the degree of consensus among the lenders for the purpose of resolution plan is a bone of contention, as RBI guidelines and IBC Code significantly differ on the percentage of consensus. The Committee, therefore, recommend that there should be unanimity among the different arms of the Government on such crucial issues like timeline and consensus percentage for resolution and they should be flexible enough to address the problem in the proper perspective and resolve it in the positive manner.

8. The Committee note that the Revised Framework for Resolution of Stressed Assets prescribes that in respect of large accounts where resolution process involving restructuring/change in ownership is implemented within 180 days, the account should not be in default at any point of time during the 'specified period', failing which the lenders shall have to file an insolvency application, single or jointly, under the IBC within 15 days from the date of such default. The 'Specified period has been explained as the period from the date of implementation of RP up to the date by which at least 20 per cent of the outstanding principal debt as per the RP and interest capitalization sanctioned as part of the restructuring, if any, is repaid. However, the Committee have been apprised that the RBI guidelines disincentivize the banks against restructuring a loan with the existing promoter even in most genuine cases as the condition of 20% repayment of loan upfront is impracticable and it will force existing promoters out of the projects even in cases where they are not at fault. The Committee feel that the timeline for payment of 20% is not synchronous with the RBI's own provisional norms for substandard assets and there is no guarantee that the new promoters will bail out the project with the concession that are being offered to them. In the opinion of the Committee, the circular of RBI is discriminatory in approach to the existing promoters without being certain about the resolution of the issue. The Committee also feel that this kind of approach will not help in addressing the real issues. The Committee, therefore, recommend that the RBI should accordingly amend its Guidelines to make them amenable in an unbiased manner so that the problems are addressed adequately.

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9. The Committee note that the concept and definition of default in Insolvency and Bankruptcy Code, 2016 as well as in new guidelines of RBI has been given a new dimension and this has led to difficulties in tackling the issue of NPA in a holistic manner. The Committee have been apprised that one day default does not result in reference to NCLT at all and the 90 days definition for NPA classification has been maintained as it is. As per RBI, the one day default will set in motion a process to deal with the problem within 180 days and if the problem is solved within 180 days, the case does not go to NCLT. The Committee observe that there is no restrictions on lending if an account is an SMA or even an NPA. The Committee have been apprised that being an SMA is no stigma and it is only to indicate that the banks have to deal with the stressed asset. The Committee understand the spirit of the Guidelines of RBI, but its implementation on the ground is far from being real and workable. The Committee find that once the account is classified as NPA, even if the project is functioning and generating power, Banks do not support them for working capital. Despite Reserve Bank of India's categorical stand that Banks have never been asked to stop financing these projects, the banks maintain that once projects are specified as NPA, they can not give any more finance. This, according to the Committee, is a catch 22 situation, so clear and conclusive instructions are required in this regard. The Committee, therefore, recommend that to salvage the commercially operational stressed projects, necessary instructions should be issued regarding the availability of working capital or other financial requirements of the projects that will help them to float and become standard again.

10. The Committee note that consequent to default in debt services obligation, the interim resolution professional shall constitute a Committee of Creditors comprising all financial creditors of the corporate debtors. The Committee observe that the Committee of Creditors endeavors to resolve insolvency through resolution plans and have been vested with wide ranging powers that include raising of interim finance, creating security interest over the asset of corporate debtor and changing the capital structure etc. as well. The Committee feel that the reply furnished by the Government, in response to a query regarding the purpose behind creation of CoC and if the creation, constitution and constituents of CoC are against the principle of natural justice as in all likelihood it may adopt a scoot approach so as to absolve themselves from any accountability, is unsatisfactory. The

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Committee feel that these guidelines have led to a situation wherein insolvency proceedings have been taken as *fate accompli* by the bankers and the role, responsibility and accountability of the bankers has been willfully sidelined as they prefer the option of insolvency as a better way to shed their responsibilities and dodge their accountability. The Committee are of the opinion that CoC is a perfect case of being Judge, Jury and Executioner in itself. The Committee as such are not against the CoC but feel there should be some safeguards or provisions wherein a judicious and justiciable regime is established to deal with the matter. The Committee therefore recommend that any scheme or system for resolution of NPA problem should be just, transparent, accountable and trustworthy in the eyes of the people.

11. The Committee note that the Committee of Creditors has been given wide scope and vast landscape to maneuver. In the given circumstances, it may be necessary, but it would have been more prudent had some hedging been done to strike a balance so as to do away with any possibility of misdemeanor or misadventure. In response to a query about the safeguards that have been introduced to preclude the possibility of CoC colluding with possible purchasers/owner of the liquidated property/power plant, it has been submitted that as per amendments made to the IBC, any person who has an account, or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, which is classified as non-performing asset are not allowed to participate in the bidding process as per Section 29A. The Committee feel that the reply of the Government is not satisfactory as it speaks only about those who have become the defaulters as per the provisions of RBI Guidelines or IBC 2016. The Committee find that the Committee of Creditors is in an enviable position with regard to the resolution of NPA and hence its functioning should be unimpeachable. The Committee, therefore recommend that suitable safeguard should be introduced to make the CoC irreproachable.

Impact of RBI's revised framework on NPAs in the electricity sector

12. The Committee note that about 66 GW of conventional energy is under various degrees of financial stress which include 54805 MW of Coal based Power (44 assets), 6831 MW of Gas based Power (9 assets) and [illegible] MW of Hydro power (13 assets). In addition, certain assets

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from Power Sector have already been referred for CIRP under IBC. The Committee also note that the outcomes of RBI's Revised Framework with respect to the Electricity Sector have been very disappointing with major lenders to power sector IPPs displaying significant accretion to NPAs and their slippages have exceeded Rs. 1.8 lakh crores in Q 4- FY 2018 and slippages of 6 major lenders have exceeded Rs. 61,000 crores. The Committee observe that the Ministry of Power was never formally consulted by the RBI for revision of the Guidelines. The Committee also observe that the lenders' action for resolving stressed assets in the Electricity Sector are beset with glaring limitations like Sub-optimal Bid Outcome, small buyer universe and weak commercial framework. For a Power Project in Chhattisgarh, against the debt of Rs. 8300 crores, an offer of only Rs. 2500 crores has been made *i.e.* a hair-cut of about 70 per cent has to be incurred and a Power Plant in Jharkhand got a bid of Rs. 35 lakh per MW. One of the stressed plants have been restructured but it is still in stress because the promoters cannot solve the systemic issues. The Committee are of the opinion that forced sale under the NCLT will end up causing a big sacrifice of public money without any benefit to the Economy or to the Electricity Sector which would be baffling and disastrous. The Committee feel that this entire exercise seems to have failed in its Mission and rendered the new framework worthless. The Committee express its deep anguish over the situation and expect that RBI should have considered macro issues of Electricity Sector before finalizing the guidelines as the Revised Framework of RBI will not help the Electricity Sector in its revival prospects. The Committee, therefore, strongly recommend that RBI should consider the problems of the Electricity Sector which are responsible for stress rather than concentrating on the management of NPA only and should accordingly synchronize its efforts and directives.

13. The Committee presented their 37th Report to help resolve the NPA problem of the Electricity Sector, suggesting workable preposition keeping in view the legal/financial/statutory provisions then in vogue. However, the new guidelines of RBI have created extraordinary and worrisome situation for the Electricity Sector of the country. These guidelines were issued to address the problem of stressed assets in the Economy irrespective of the sectoral concerns and confines. Consequently, the Electricity Sector today is in a marshy condition. In addition to under construction power plants, even the operational and

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functional units are on the verge of becoming NPA. It is the fallout of knee-jerk response of the RBI. The turbulent headwinds in which the Electricity Sector is in today, is the systemic offshoot and if not navigated carefully the sailing will not only be tumultuous but has the potential of crash-landing also. The investment in the Electricity Sector whether private or otherwise is Public Money and everybody is concerned for it. The discretion of RBI should coordinate and cooperate with other factors which are integral part of the problem and well within the realm of resolution. The Committee find that the efforts made so far has been part of our national endeavor to achieve self-sufficiency in the field of Energy. Financing of these activities is one among the other chapters of the entire Plan. Though, very vital for successful completion of the project, but the finances should not be allowed to hijack or stymie the other efforts. The Committee therefore, recommend that a holistic view should be taken about the systemic constraints rather than a lopsided approach looking at management of NPA only without addressing the genesis of the problem.

14. The Committee observe that the Electricity Sector is in a transitional phase and is moving from a low demand-low supply situation to a moderately high demand context. The Committee feel that the RBI framework is ignorant as well as unmindful of prevailing reality of the Electricity sector and that is why it addresses only the financial issues ignoring the whole range of vital issues of the Electricity sector. The Committee are of the view that two major important contexts should be taken into consideration — one is the need for a national energy security in the context of managing the transition in the Electricity Sector and the other is the need to preserve, protect and conserve these stressed assets as these are national assets at the end of the day. There are doubts that all the stressed power projects would ultimately be referred to NCLT whereinafter they will be auctioned at throw away prices. The Committee are not in favour of such procedure which is more for dissolution rather than resolution of stressed assets. The Committee caution about the intrinsic weakness of the proposed system because taking a cue, the deep pockets may enter the fray, stake their bids, pocket the projects and later when the demand for the electricity goes up, they will sell these projects at high prices and siphon off the money without doing anything. At the end, it will be the [illegible] which have to take the hit which has been conveniently

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facilitated by the revised framework of the RBI. The Committee feel that even the under construction projects should not be put under the resolution process as the construction of a power plant begins only after the completion of lot many complicated procedures and formalities and hence in addition to the money, all the efforts invested on these formalities will also go in waste. The Committee therefore, strongly recommend that with a view to ensure power security and also to avoid wastage of collective efforts, a new framework should be put in place which safeguards the transient sagging situation of the Electricity Sector and provides the much needed stimulus.

15. The Committee note that the Revised Framework of RBI has stipulated rigorous procedure and stiff timeline for resolution of stressed assets without specifying the minimum quantum of retrievable value of such assets. The duration of various stages of SMAs and resolution plan are prescribed and defined. However, upon reference to NCLT, the timeline provision seems to be of no essence to the Government. During the currency of resolution plan, the assets can be extremely devalued resulting into loss of public money in the form of HAIR-CUT. Similarly, NCLT proceedings will also result in similar situation albeit adopting a quasi judicial approach. The Committee feel that the HAIR-CUT as envisaged under the framework is nothing but a deep economic wound with festering ramifications. The functioning and workload of NCLT may create unpredictable situations, the consequences of which can be quantified in monetary terms only after the finality of the issue. But the factors associated with the process are not infallible and thus the consequences may be enormous. If these resultant consequences of Resolution and NCLT process are put together and weighed against the efforts and consequences of reviving the power plants of whatsoever nature and character, the Committee are sure the latter will definitely be the less burdensome and relatively more fructuous for the Economy and the Nation. This is more so when there is no ceiling on the proposed HAIR-CUT which is a euphemism for front and deep economic wound. The Committee therefore, recommend that the power sector, being the nucleus for growth of Economy and development of the Nation, should be protected from this temporary phase of uncertainty so that these Power Plants can be put to use at the time of need which is certain to happen sooner than after

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16. The Committee appreciate the Ministry of Power for their painstaking efforts to address the issue in a holistic manner. The Committee have been apprised in detail about the multi-track approach culminating into PARIVARTAN which provides the workable solution to the problem in the given circumstances. It *inter alia* focuses on recovery, value-enhancement and quick disposal of stressed assets wherein asset warehouse will be established to protect value and revitalize assets. The scheme can be helpful in revitalizing the assets and it aims at pooling the efforts, talents, expertise and finances from the desired quarters. Similarly, the State Bank of India has also proposed a scheme named SAMADHAN in light of the revised framework of the RBI. The Committee feel that both the schemes intend to resolve the issue of stressed assets of the Electricity Sector and deserve objective and careful attention of the Government with positive mindset. The Committee therefore recommend that all out efforts should be made from every quarter to see that a genuine initiative is taken under these schemes for resolution of stressed assets in the Electricity Sector.

17. The Committee note that efforts are being made from all the quarters to address the issue of NPA/stressed assets. The representative of the Ministry of Finance (Department of Financial Services) attempted to explain the situation through four verticals. But the Committee find that the four verticals are not in consonance with one another. The first vertical of economic growth, second vertical of increasing need of power being the engine to fuel the growth and the necessity to not allow any asset to go waste to the extent possible are not in coherence with the fourth vertical of exit route of IBC. We have to solve the sectoral problems of the Electricity Sector as explained in the second vertical. The third vertical which speaks about credit culture is linked with the second vertical which deals with the reasons responsible for stress in the Electricity Sector. The Committee are in full agreement with the fact that the entire credit culture in the country is under a tremendous change and if one takes credit, one should be responsible and if one gives credit, one should hedge one's risk and responsibilities. However, the Committee feel that the most important vertical should be the revival of stressed power plants as nothing stops the Government from taking effective measures. Promoters can be divested of their equity, management can be replaced or capital structure can be modified. But,

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this all should be done with the focus on revival and revival only. To divide it into segments with the thrust on liquidation will nullify the efforts made so far and kill the zeal required to address the problem. The Committee are of the opinion that the constraints of sectoral issues should be taken into account otherwise the whole exercise will remain only a sophistry. The Committee expect the Ministry of Finance to be more serious, sincere and sensitive towards the prevailing hardships of the Electricity Sector for their genuine resolution rather than smarting under a compulsive situation with the intent to shrug-off the pressure and let the situation remain unattended.

NEW DELHI;
2 *August*, 2018
11 *Shravana,* 1940 *(Saka)*

DR. KAMBHAMPATI HARIBABU,
Chairperson,
Standing Committee on Energy.

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ANNEXURE I

RESERVE BANK OF INDIA
www.rbi.org.in

RBI/2017-18/131
DBR.No.BP.BC.101/21.04.048/2017-18

February 12, 2018

All Scheduled Commercial Banks
[Excluding Regional Rural Banks (RRB)],
All-India Financial Institutions
(Exim Bank, NABARD, NHB and SIDBI)

Dear Sir/Madam,

Resolution of Stressed Assets — Revised Framework

1. The Reserve Bank of India has issued various instructions aimed at resolution of stressed assets in the economy, including introduction of certain specific schemes at different points of time. In view of the enactment of the Insolvency and Bankruptcy Code, 2016 (IBC), it has been decided to substitute the existing guidelines with a harmonised and simplified generic framework for resolution of stressed assets. The details of the revised framework are elaborated in the following paragraphs.

I. Revised Framework

A. Early identification and reporting of stress

2. Lenders[1] shall identify incipient stress in loan accounts, immediately on default[2], by classifying stressed assets as special mention

[1] Lenders under these guidelines would generally include all scheduled commercial banks (excluding RRBs) and All India Financial Institutions, unless specified otherwise.

[2] 'Default' means non-payment of debt when whole or any part or installment of the amount of debt has become due and payable and is not repaid by the debtor or the corporate debtor, as the case may be. For revolving facilities like cash credit, default would also mean, without prejudice to the above, the outstanding balance remaining continuously in excess of the sanctioned limit or drawing power, whichever is lower, for more than 30 days.

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accounts (SMA) as per the following categories:—

SMA Sub-categories	Basis for classification — Principal or interest payment or any other amount wholly or partly overdue between
SMA-0	1-30 days
SMA-1	31-60 days
SMA-2	61-90 days

3. As provided in terms of the circular DBS.OSMOS.No.14703/ 33.01.001/2013-14 dated May 22, 2014 and subsequent amendments thereto, lenders shall report credit information, including classification of an account as SMA to Central Repository of Information on Large Credits (CRILC) on all borrower entities having aggregate exposure[3] of Rs. 50 million and above with them. The CRILC-Main Report will now be required to be submitted on a monthly basis effective April 1, 2018. In addition, the lenders shall report to CRILC, all borrower entities in default (with aggregate exposure of Rs. 50 million and above), on a weekly basis, at the close of business on every Friday, or the preceding working day if Friday happens to be a holiday. The first such weekly report shall be submitted for the week ending February 23, 2018.

B. Implementation of Resolution Plan

4. All lenders must put in place Board-approved policies for resolution of stressed assets under this framework, including the timelines for resolution.

As soon as there is a default in the borrower entity's account with any lender, all lenders "singly or jointly" shall initiate steps to cure the default. The Resolution Plan (RP) may involve any actions/plans/ reorganization including, but not limited to, regularisation of the account by payment of all over dues by the borrower entity, sale of the exposures to other entities/investors, change in ownership, or restructuring[4]. The

[3] Aggregate exposure under the guidelines would include all fund based and non-fund based exposure with the lenders.

[4] Restructuring is an act in which a lender, for economic or legal reasons relating to the borrower's financial difficulty (An illustrative non-exhaustive list of indicators of financial difficulty are given in the Appendix to **Annex-A**), grants concessions to the borrower. Restructuring would normally involve modification of terms of the advances/securities, which may include, among others, alteration of repayment period/repayable amount/the amount of instalments/rate of interest; roll over of credit facilities; sanction of additional credit facility; enhancement of existing credit limits; and, compromise settlements where time for payment of settlement amount exceeds three months.

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RP shall be clearly documented by all the lenders (even if there is no change in any terms and conditions).

C. Implementation Conditions for RP

5. A RP in respect of borrower entities to whom the lenders continue to have credit exposure, shall be deemed to be 'implemented' only if the following conditions are met:—

a. the borrower entity is no longer in default with any of the lenders;

b. if the resolution involves restructuring; then

i. all related documentation, including execution of necessary agreements between lenders and borrower/ creation of security charge/perfection of securities are completed by all lenders; and

ii. the new capital structure and/or changes in the terms of conditions of the existing loans get duly reflected in the books of all the lenders and the borrower.

6. Additionally, RPs involving restructuring/change in ownership in respect of 'large' accounts (*i.e.*, accounts where the aggregate exposure of lenders is Rs. 1 billion and above), shall require Independent Credit Evaluation (ICE) of the residual debt[5] by Credit Rating Agencies (CRAs) specifically authorised by the Reserve Bank for this purpose. While accounts with aggregate exposure of Rs. 5 billion and above shall require two such ICEs, others shall require one ICE. Only such RPs which receive a credit opinion of RP4[6] or better for the residual debt from one or two CRAs, as the case may be, shall be considered for implementation. Further, ICEs shall be subject to the following:—

(a) The CRAs shall be directly engaged by the lenders and the payment of fee for such assignments shall be made by the lenders.

[5] The residual debt of the borrower entity, in this context, means the aggregate debt (fund based as well as non-fund based) envisaged to be held by all the lenders as per the proposed RP.

[6] Annex 3 provides list of RP symbols that can be provided by CRAs as ICE and their meanings.

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(b) If lenders obtain ICE from more than the required number of CRAs, all such ICE opinions shall be RP4 or better for the RP to be considered for implementation.

7. The above requirement of ICE shall be applicable to restructuring of all large accounts implemented from the date of this circular, even if the restructuring is carried out before the 'reference date' stipulated in paragraph 8.

D. Timelines for Large Accounts to be Referred under IBC

8. In respect of accounts with aggregate exposure of the lenders at Rs. 20 billion and above, on or after March 1, 2018 ('reference date'), including accounts where resolution may have been initiated under any of the existing schemes as well as accounts classified as restructured standard assets which are currently in respective specified periods (as per the previous guidelines), RP shall be implemented as per the following timelines:—

(i) If in default as on the reference date, then 180 days from the reference date.

(ii) If in default after the reference date, then 180 days from the date of first such default.

9. If a RP in respect of such large accounts is not implemented as per the timelines specified in paragraph 8, lenders shall file insolvency application, singly or jointly, under the Insolvency and Bankruptcy Code 2016 (IBC)[7] within 15 days from the expiry of the said timeline[8].

10. In respect of such large accounts, where a RP involving restructuring/change in ownership is implemented within the 180-day period, the account should not be in default at any point of time during the 'specified period', failing which the lenders shall file an insolvency application, singly or jointly, under the IBC within 15 days from the date of such default.

'Specified period' means the period from the date of implementation of RP up to the date by which at least 20 per cent of the outstanding principal debt as per the RP and interest capitalisation sanctioned as part of the restructuring, if any, is repaid.

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[7] Applicable in respect of entities notified under IBC.

[8] The prescribed timelines are the upper limits. Lenders are free to file insolvency petitions under the IBC against borrowers even before the expiry of the timelines, or even without attempting a RP outside IBC.

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Provided that the specified period cannot end before one year from the commencement of the first payment of interest or principal (whichever is later) on the credit facility with longest period of moratorium under the terms of RP.

11. Any default in payment after the expiry of the specified period shall be reckoned as a fresh default for the purpose of this framework.

12. For other accounts with aggregate exposure of the lenders below Rs. 20 billion and, at or above Rs. 1 billion, the Reserve Bank intends to announce, over a two-year period, reference dates for implementing the RP to ensure calibrated, time-bound resolution of all such accounts in default.

13. It is, however, clarified that the said transition arrangement shall not be available for borrower entities in respect of which specific instructions have already been issued by the Reserve Bank to the banks for reference under IBC. Lenders shall continue to pursue such cases as per the earlier instructions.

E. Prudential Norms

14. The revised prudential norms applicable to any restructuring, whether under the IBC framework or outside the IBC, are contained in **Annex-A**[9] . The provisioning in respect of exposure to borrower entities against whom insolvency applications are filed under the IBC shall be as per their asset classification in terms of the Master Circular on Prudential norms on Income Recognition, Asset Classification and Provisioning, as amended from time to time.[10]

II. Supervisory Review

15. Any failure on the part of lenders in meeting the prescribed timelines or any actions by lenders with an intent to conceal the actual status of accounts or evergreen the stressed accounts, will be subjected to stringent supervisory/enforcement actions as deemed appropriate by the Reserve Bank, including, but not limited to, higher provisioning on such accounts and monetary penalties[11].

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[9] During the period when the RP is being finalised and implemented, the usual asset classification norms would continue to apply. The process of re-classification of an asset should not stop merely because RP is under consideration.

[10] Accounts in respect of which banks have already been specifically issued instructions to initiate insolvency resolution proceedings under the IBC, minimum provisions as already advised shall be maintained.

[11] This may be in addition to direction to banks to file insolvency application under the Insolvency and bankruptcy Code 2016.

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III. Disclosures

16. Banks shall make appropriate disclosures in their financial statements, under 'Notes on Accounts', relating to resolution plans implemented. Detailed guidelines will be issued separately.

IV. Exceptions

17. Restructuring in respect of projects under implementation involving Deferment of Date of Commencement of Commercial Operations (DCCO), shall continue to be covered under the guidelines contained at paragraph 4.2.15 of the Master Circular No. DBR.No.BP.BC.2/21.04.048/ 2015-16 dated July 1, 2015 on 'Prudential norms on Income Recognition, Asset Classification and Provisioning pertaining to Advances'.

V. Withdrawal of extant instructions

18. The extant instructions on resolution of stressed assets such as Framework for Revitalising Distressed Assets, Corporate Debt Restructuring Scheme, Flexible Structuring of Existing Long Term Project Loans, Strategic Debt Restructuring Scheme (SDR), Change in Ownership outside SDR, and Scheme for Sustainable Structuring of Stressed Assets (S4A) stand withdrawn with immediate effect. Accordingly, the Joint Lenders' Forum (JLF) as an institutional mechanism for resolution of stressed accounts also stands discontinued. All accounts, including such accounts where any of the schemes have been invoked but not yet implemented, shall be governed by the revised framework.

19. The list of circulars/directions/guidelines subsumed in this circular and thereby stand repealed from the date of this circular is given in **Annex-C**.

20. The above guidelines are issued in exercise of powers conferred under Section 35A, 35AA (read with S.O.1435 (E) dated May 5, 2017 issued by the Government of India) and 35AB of the Banking Regulation Act, 1949; and, Section 45(L) of the Reserve Bank of India Act, 1934.

Yours faithfully,

(Saurav Sinha)
Chief General Manager-in-Charge

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Annexure *A*

NORMS APPLICABLE TO RESTRUCTURING

1. Restructuring is an act in which a lender, for economic or legal reasons relating to the borrower's financial difficulty[12], grants concessions to the borrower. Restructuring would normally involve modification of terms of the advances/securities, which would generally include, among others, alteration of repayment period/repayable amount/the amount of installments/rate of interest/roll over of credit facilities/sanction of additional credit facility/enhancement of existing credit limits/compromise settlements where time for payment of settlement amount exceeds three months.

I. Prudential Norms[13]

A. Asset Classification

2. In case of restructuring, the accounts classified as 'standard' shall be immediately downgraded as non-performing assets (NPAs), *i.e*., 'sub-standard' to begin with. The non-performing assets, upon restructuring, would continue to have the same asset classification as prior to restructuring. In both cases, the asset classification shall continue to be governed by the ageing criteria as per extant asset classification norms.

B. Conditions for Upgrade

3. Standard accounts classified as NPA and NPA accounts retained in the same category on restructuring by the lenders may be upgraded only when all the outstanding loan/facilities in the account demonstrate 'satisfactory performance' (*i.e*., the payments in respect of borrower entity are not in default at any point of time) during the 'specified period' (as defined in paragraph 10 of the covering circular)[14].

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[12] An illustrative (but not exhaustive) list of indicators of financial difficulty are in Appendix.

[13] Applicable to all resolution plans, including those undertaken under IBC.

[14] For accounts under IBC, the specified period shall be deemed to commence from the date of implementation of the resolution plan as approved by the Adjudicating Authority.

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4. For the large accounts (*i.e.*, accounts where the aggregate exposure of lenders is Rs. 1 billion and above) to qualify for an upgrade, in addition to demonstration of satisfactory performance, the credit facilities of the borrower shall also be rated as investment grade[15] (BBB- or better) as at the end of the 'specified period' by CRAs accredited by the Reserve Bank for the purpose of bank loan ratings. While accounts with aggregate exposure of Rs. 5 billion and above shall require two ratings, those below Rs. 5 billion shall require one rating. If the ratings are obtained from more than the required number of CRAs, all such ratings shall be investment grade to qualify for an upgrade.

5. In case satisfactory performance during the specified period is not demonstrated, the account shall, immediately on such default, be reclassified as per the repayment schedule that existed before the restructuring[16]. Any future upgrade for such accounts shall be contingent on implementation of a fresh RP and demonstration of satisfactory performance thereafter.

C. Provisioning Norms

6. Accounts restructured under the revised framework shall attract provisioning as per the asset classification category as laid out in the Master Circular on Prudential Norms on Income Recognition, Asset Classification and Provisioning pertaining to Advances dated July 1, 2015, as amended from time to time. However, the provisions made in respect of accounts restructured before the date of the circular under any of the earlier schemes shall continue to be held as per the requirements specified therein.

D. Additional Finance

7. Any additional finance approved under the RP (including any resolution plan approved by the Adjudicating Authority under IBC) may be treated as 'standard asset' during the specified period under the approved RP, provided the account performs satisfactorily (as defined in paragraphs 3-5 above) during the specified period. If the restructured asset fails to perform satisfactorily during the specified period or does not qualify for upgradation at the end of the specified period, the

[15] These ratings shall be the normal ratings provided by the CRAs and not ICEs referred to in Paragraph 6 of the covering circular.

[16] For large accounts, this will be in addition to mandatory IBC filing.

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additional finance shall be placed in the same asset classification category as the restructured debt.

E. Income recognition norms

8. Interest income in respect of restructured accounts classified as 'standard assets' may be recognized on accrual basis and that in respect of the restructured accounts classified as 'non-performing assets' shall be recognised on cash basis.

9. In the case of additional finance in accounts where the pre-restructuring facilities were classified as NPA, the interest income shall be recognised only on cash basis except when the restructuring is accompanied by a change in ownership.

F. Conversion of Principal into Debt/Equity and Unpaid Interest into 'Funded Interest Term Loan' (FITL), Debt or Equity Instruments

10. The FITL/debt/equity instruments created by conversion of part of principal/unpaid interest, as the case may be, will be placed in the same asset classification category in which the restructured advance has been classified.

11. These instruments shall be valued as per usual valuation norms and marked to market. Equity instruments, whether classified as standard or NPA, shall be valued at market value, if quoted, or else at break-up value (without considering the revaluation reserve, if any) as ascertained from the company's balance sheet as on March 31st of the immediate preceding financial year. In case balance sheet as on March 31st of the immediate preceding financial year is not available, the entire portfolio of equity shares of the company held by the bank shall be valued at Re.1. Depreciation on these instruments shall not be offset against the appreciation in any other securities held under the AFS category.

12. The unrealised income represented by FITL/Debt or equity instrument can only be recognised in the profit and loss account as under:—

a. FITL/debt instruments: only on sale or redemption, as the case may be;

b. Unquoted equity/quoted equity (where classified as NPA): only on sale;

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c. Quoted equity (where classified as standard): market value of the equity as on the date of upgradation, not exceeding the amount of unrealised income converted to such equity. Subsequent changes to value of the equity will be dealt as per the extant prudential norms on investment portfolio of banks.

G. Change in Ownership

13. In case of change in ownership of the borrowing entities, credit facilities of the concerned borrowing entities may be continued/upgraded as 'standard' after the change in ownership is implemented, either under the IBC or under this framework.

If the change in ownership is implemented under this framework, then the classification as 'standard' shall be subject to the following conditions:

(i) Banks shall conduct necessary due diligence in this regard and clearly establish that the acquirer is not a person disqualified in terms of Section 29A of the Insolvency and Bankruptcy Code, 2016.

(ii) The new promoter shall have acquired at least 26 per cent of the paid up equity capital of the borrower entity and shall be the single largest shareholder of the borrower entity.

(iii) The new promoter shall be in 'control' of the borrower entity as per the definition of 'control' in the Companies Act, 2013/ Regulations issued by the Securities and Exchange Board of India/any other applicable regulations/accounting standards as the case may be.

(iv) The conditions for implementation of RP as per Section I-C of the covering circular are complied with.

14. For such accounts to continue to be classified as standard, all the outstanding loans/credit facilities of the borrowing entity need to demonstrate satisfactory performance (as defined above in paragraph 3 above) during the specified period. If the account fails to perform satisfactorily at any point of time during the specified period, the credit facilities shall be immediately downgraded as non-performing assets (NPAs) *i.e.* 'sub-standard'. Any future upgrade for such accounts shall be contingent on implementation of a fresh RP (either under IBC, wherever

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mandatory filings are applicable or initiated voluntarily by the lenders, or outside IBC) and demonstration of satisfactory performance thereafter.

15. Further, the quantum of provisions held by the bank against the said account as on the date of change in ownership of the borrowing entities can be reversed only after satisfactory performance during the specified period.

II. Principles on classification of sale and lease back transactions as restructuring

16. A sale and leaseback transaction of the assets of a borrower or other transactions of similar nature will be treated as an event of restructuring for the purpose of asset classification and provisioning in the books of banks with regard to the residual debt of the seller as well as the debt of the buyer if all the following conditions are met:

(i) The seller of the assets is in financial difficulty;

(ii) Significant portion, *i.e*. more than 50 per cent, of the revenues of the buyer from the specific asset is dependent upon the cash flows from the seller;

(iii) 25 per cent or more of the loans availed by the buyer for the purchase of the specific asset is funded by the lenders who already have a credit exposure to the seller.

III. Prudential Norms relating to Refinancing of Exposures to Borrowers in different currency

17. If foreign currency borrowings/export advances for the purpose of repayment/refinancing of rupee loans are obtained from:

a. lenders who are part of Indian banking system (where permitted); or

b. with support (where permitted) from the Indian banking system in the form of Guarantees/Standby Letters of Credit/ Letters of Comfort, etc., such events shall be treated as 'restructuring' if the borrower concerned is under financial difficulty.

18. Similarly, rupee loans for repayment/refinancing of foreign currency borrowings/export advances will also be treated as 'restructuring' if such rupee loans are extended to a borrower who is under financial difficulty

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IV. Regulatory Exemptions

Exemptions from RBI Regulations

19. Acquisition of non-SLR securities by way of conversion of debt is exempted from the restrictions and the prudential limit on investment in unlisted non-SLR securities prescribed by the RBI.

20. Acquisition of shares due to conversion of debt to equity during a restructuring process will be exempted from regulatory ceilings/ restrictions on Capital Market Exposures, investment in Para-Banking activities and intra-group exposure. However, these will require reporting to RBI (reporting to DBS, CO every month along with the regular DSB Return on Asset Quality) and disclosure by banks in the Notes to Accounts in Annual Financial Statements. Nonetheless, banks will have to comply with the provisions of Section 19(2) of the Banking Regulation Act, 1949.

Exemptions from Regulations of Securities and Exchange Board of India (SEBI)

21. SEBI has provided exemptions, under certain conditions, from the requirements of Securities and Exchange Board of India (SEBI) (Issue of Capital and Disclosure Requirements) (ICDR) Regulations, 2009 as well as SEBI (Substantial Acquisition of Shares and Takeovers) (SAST) Regulations, 2011 for restructurings carried out as per the regulations issued by the Reserve Bank.

22. With reference to the requirements contained in sub-regulations 70 (5) (a) and 70 (6) (a) of ICDR Regulations, 2009, the issue price of the equity shall be the lower of (i) or (ii) below:

(i) The average of the weekly high and low of the volume weighted average price of the related equity shares quoted on the recognised stock 7 exchange during the twenty six weeks preceding the 'reference date' or the average of the weekly high and low of the volume weighted average prices of the related equity shares quoted on a recognised stock exchange during the two weeks preceding the 'reference date', whichever is lower; and

(ii) Book value: Book value per share to be calculated from the audited balance sheet as on March 31st of the immediate preceding financial year (without considering 'revaluation reserves', if any) adjusted for cash flows and financials post the earlier restructuring, if any. The balance sheet shall not

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be more than a year old. In case the audited balance sheet as on March 31st of the immediate preceding financial year is not available the total book value of the borrower company shall be reckoned at Re. 1.

23. In the case of conversion of debt into equities, the 'reference date' shall be the date on which the bank approves the restructuring scheme. In the case of conversion of convertible securities into equities, the 'reference date' shall be the date on which the bank approves the conversion of the convertible securities into equities. In case of issuance of fresh shares to the new promoter, the 'reference date' shall be the date of signing of the binding agreement between the bank and the new promoter.

24. With reference to the requirements contained in sub-regulations 10 (1) (ia) (a) of the SAST Regulations, 2001, at the time of selling the equity instruments acquired by banks (as part of a restructuring exercise) in favour of a new promoter, the selling price may be a negotiated price. However, the selling price shall not be lower than the 'fair value', which shall be the higher of (i) and (ii) below:

(i) The average of the weekly high and low of the volume weighted average price of the related equity shares quoted on the recognised stock exchange during the twenty six weeks preceding the 'reference date' or the average of the weekly high and low of the volume weighted average prices of the related equity shares quoted on a recognised stock exchange during the two weeks preceding the 'reference date', whichever is higher; and

(ii) Book value: Book value per share to be calculated from the company's latest audited balance sheet (without considering 'revaluation reserves', if any) adjusted for cash flows and financials post the earlier restructuring, if any.

25. In case of sale of equity held by banks as a result of conversion/ invocation of pledge, the 'reference date' shall be the date on which the share purchase agreement between the bank and the new promoter is executed.

V. Non-applicability of these guidelines

26. The revival and rehabilitation of MSMEs as defined under 'The Micro, Small and Medium Enterprises Development Act, 2006' shall continue to be guided by the instructions contained in Circular

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No. FIDD.MSME and NFS.BC.No.21/06.02.31/2015-16 dated March 17, 2016, as amended from time to time.

27. Restructuring of loans in the event of a natural calamity shall continue to be as per the directions contained in the Master Directions FIDD.CO.FSD.BC No.8/05.10.001/2017-18, as amended from time to time.

VI. Cases of frauds/wilful defaulters.

28. Borrowers who have committed frauds/malfeasance/wilful default will remain ineligible for restructuring. However, in cases where the existing promoters are replaced by new promoters, and the borrower company is totally delinked from such erstwhile promoters/management, lenders may take a view on restructuring such accounts based on their viability, without prejudice to the continuance of criminal action against the erstwhile promoters/management.

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APPENDIX

NON–EXHAUSTIVE INDICATIVE LIST OF SIGNS OF FINANCIAL DIFFICULTY

- Irregularities in cash credit/overdraft accounts such as inability to maintain stipulated margin basis or drawings exceeding sanctioned limits, periodic interest debited remaining unrealised;
- Failure/anticipated failure to make timely payment of instalments of principal and interest on term loans;
- Delay in meeting commitments towards payments of instalments due, crystallized liabilities under LC/BGs, etc.;
- Excessive leverage;
- Inability to adhere to financial loan covenants;
- Failure to pay statutory liabilities, non-payment of bills to operational creditors, etc.;
- Non-submission or undue delay in submission or submission of incorrect stock statements and other control statements, delay in publication of financial statements and adversely qualified financial statements;
- Steep decline in production figures, downward trends in sales and fall in profits, margin erosion etc.;
- Elongation of working capital cycle, excessive inventory build-up;
- Significant delay in project implementation;
- Downward migration of internal/external ratings/rating outlook.

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Annexure B

ICE Symbols	Definition
RP1	Debt facilities/instruments with this symbol are considered to have the highest degree of safety regarding timely servicing of financial obligations. Such debt facilities/instruments carry lowest credit risk.
RP2	Debt facilities/instruments with this symbol are considered to have high degree of safety regarding timely servicing of financial obligations. Such debt facilities/instruments carry very low credit risk.
RP3	Debt facilities/instruments with this symbol are considered to have adequate degree of safety regarding timely servicing of financial obligations. Such debt facilities/instruments carry low credit risk.
RP4	Debt facilities/instruments with this symbol are considered to have moderate degree of safety regarding timely servicing of financial obligations. Such debt facilities/instruments carry moderate credit risk.
RP5	Debt facilities/instruments with this symbol are considered to have moderate risk of default regarding timely servicing of financial obligations.
RP6	Debt facilities/instruments with this symbol are considered to have high risk of default regarding timely servicing of financial obligations.
RP7	Debt facilities/instruments with this symbol are considered to have very high risk of default regarding timely servicing of financial obligations.

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Annexure C

LIST OF CIRCULARS REPEALED

S. No.	Circular number	Date of issue	Subject
1	2	3	4
1.	BR.BP.BC.No.67/ 21.04.048/2016-17	05.05.2017	Timelines for Stressed Assets Resolution
2.	DBR.No.BP.BC.33/ 21.04.132/2016-17	10.11.2016	Scheme for Sustainable Structuring of Stressed Assets – Revisions
3.	DBR.No.BP.BC.34/ 21.04.132/2016-17 (Excluding instructions on deferment of DCCO)	10.11.2016	Schemes for Stressed Assets – Revisions
4.	DBR.No.BP.BC.103/ 21.04.132/2015-16	13.06.2016	Scheme for Sustainable Structuring of Stressed Assets
5.	DBR.BP.BC.No.82/ 21.04.132/2015-16 (Excluding Part E on Sale of Financial Assets to SCs/RCs)	25.02.2016	Review of Prudential Guidelines — Revitalising Stressed Assets in the Economy
6.	DBR.BP.BC.No.41/ 21.04.048/2015-16	24.09.2015	Prudential Norms on Change in Ownership of Borrowing Entities (Outside Strategic Debt Restructuring Scheme)
7.	DBR.BP.BC.No.39/ 21.04.132/2015-16	24.09.2015	Framework for Revitalising Distressed Assets in the Economy — Review of the Guidelines on Joint Lenders' Forum (JLF) and Corrective Action Plan (CAP)
8.	DBR.No.BP.BC.101/ 21.04.132/2014-15	08.06.2015	Strategic Debt Restructuring Scheme
9.	DBR.No.BP.BC.53/ 21.04.048/2014-15	15.12.2014	Flexible Structuring of Existing Long Term Project Loans to Infrastructure and Core Industries
10.	DBR.No.BP.BC.45/ 21.04.132/2014-15	21.10.2014	Framework for Revitalising Distressed Assets in the

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1	2	3	4
			Economy – Review of the Guidelines on Joint Lenders Forum (JLF) and Corrective Action Plan CAP)
11.	DBOD.No.BP.BC.31/ 21.04.13 2/2014-15	07.08.2014	Refinancing of Project Loans
12.	DBOD.No.BP.BC.24/ 21.04.13 2/2014-15	15.07.2014	Flexible Structuring of Long Term Project Loans to Infrastructure and Core Industries
13.	DBOD.No.BP.BC.97/ 21.04.13 2/2013-14 (Excluding para 8 on 'Wilful Defaulters and Non-cooperative Borrowers' and para 9 on 'Dissemination of Information')	26.02.2014	Framework for Revitalising Distressed Assets in the Economy – Guidelines on Joint Lenders Forum (JLF) and Corrective Action Plan
14.	Para 2 of circular DBOD.BP.BC.No. 98/ 21.04.13 2/2013-14	26.02.2014	Framework for Revitalising Distressed Assets in the Economy - Refinancing of Project Loans, Sale of NPA and Other Regulatory Measures
15.	DBOD.No.BP.BC-99/ 21.04.048/2012-13 (Excluding paragraph 2 on change in DCCO)	30.05.2013	Review of Prudential Guidelines on Restructuring of Advances by Banks and Financial Institutions
16.	DBOD.BP.BC.No.80/ 21.04.13 2/2012-13	31.01.2013	Disclosure Requirements on Advances Restructured by Banks and Financial Institutions
17.	DBOD.No.BP.BC-63/ 21.04.048/2012-13	26.11.2012	Review of Prudential Guidelines on Restructuring of Advances by Banks and Financial Institutions
18.	DBOD.BP.BC. No.99/ 21.04.13 2/2010-11	10.06.2011	Prudential Guidelines on Restructuring of Advances by Banks
19.	DBOD.BP.BC. No.74/ 21.04.13 2/2010-11	19.01.2011	Credit Support to Micro Finance Institutions
20.	DBOD.BP.No.49/21.04.13 2/2010-11	07.10.2010	Prudential Guidelines on Restructuring of Advances by Banks
21.	DBOD.No.BP.BC.No.124/ 21.04.13 2/2008-09	17.04.2009	Prudential Guidelines on Restructuring of Advances

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1	2	3	4
22.	DBOD.BP.BC.121/ 21.04.13 2/2008-09	09.04.2009	Prudential guidelines on Restructuring of Advances 13
23.	DBOD.BP.BC.76/21.04.13 2/2008-09	03.11.2008	Prudential guidelines on Restructuring of Advances
24.	DBOD.BP.BC.58/ 21.04.048/2008-09	13.10.2008	(i) Disbursal of Loans against Sanctioned Limits (ii) Restructuring of Dues of the Small and Medium Enterprises(SMEs)
25.	DBOD.BP.BC.37/21.04.13 2/2008-09	27.08.2008	Prudential guidelines on Restructuring of Advances-comprehensive guidelines
26.	DBOD.No.BP.BC.45/ 21.04 21.04.048/2005-06	10.11.2005	Revised Guidelines on Corporate Debt Restructuring (CDR) Mechanism
27.	DBOD No.BP.BC.101/ 21.01.002/2001-02	09.05.2002	Corporate Debt Restructuring
28.	DBOD No.BP.BC.15/2o1/ 04/114/2000-2001	23.08.2001	Corporate Debt Restructuring

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ANNEXURE II

MINUTES OF THE FIFTEENTH SITTING OF THE STANDING COMMITTEE ON ENERGY (2017-18) HELD ON 11TH APRIL, 2018 IN COMMITTEE ROOM 'G-074', PARLIAMENT LIBRARY BUILDING, NEW DELHI

The Committee met from 1430 hrs. to 1630 hrs.

PRESENT

Dr. Kambhampati Haribabu — *Chairperson*

MEMBERS

Lok Sabha

2. Shri Bhagat Singh Koshyari
3. Dr. Arun Kumar
4. Shri Ravindra Kumar Pandey
5. Shri M.B. Rajesh
6. Shri Vinayak Bhaurao Raut
7. Shri Bhanu Pratap Singh Verma

Rajya Sabha

8. Shri T.K.S. Elangovan
9. Shri Manish Gupta
10. Shri S. Muthukaruppan
11. Smt. Viplove Thakur

SECRETARIAT

1. Shri A.K. Singh — *Additional Secretary*
2. Shri N.K. Pandey — *Director*
3. Smt. L. Nemjalhing Haokip — *Under Secretary*

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Ministry of Power

1.	Shri Ajay Kumar Bhalla	Secretary
2.	Shri Aniruddha Kumar	Joint Secretary

Ministry of Coal

1.	Shri Suresh Kumar	Additional Secretary
2.	Shri Ashish Upadhyaya	Joint Secretary
3.	Shri Rajesh Kumar Sinha	Joint Secretary

PSUs/Autonomous Body/Statutory Body

1.	Shri R.K. Verma	Chairperson, CEA
2.	Shri Rajeev Sharma	CMD, PFC
3.	Shri P.V. Ramesh	CMD, REC

2. At the outset, the Chairperson welcomed the Members of the Committee and the representatives of the Ministry of Power and the Ministry of Coal to the sitting of the Committee and apprised them of the agenda and focus area for the discussion and the provisions of Directions 55(1) and 58 of the Directions by the Speaker.

3. The Secretary, Ministry of Power deposed before the Committee that there were 34 stressed projects in Power Sector, out of them, seven projects have got resolved. He informed the Committee that these projects were in stress for different reasons like:—

- Cancellation of Coal Blocks and dispute over allocation of Coal Blocks due to aggressive bidding. SHAKTI policy has addressed some of these issues.

- Delayed payment by Discoms: A large amount of money has been outstanding from the Government Departments in some of the States. If that is made available, Discoms' losses can be easily written off or payments to generators can be made. UDAY has brought in some improvement in this regard.

- Lack of PPAs in the market: If the peak rated capacity is about 160-165 GW, the PPAs available with the State

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Governments are of more than 230 GW. States are already having excess PPAs and each PPA is a cost to them as far as fixed cost is concerned.

- Regulatory issues: With regard to the railway charges etc., all the charges have been included in the freight. CERC has already put up for consultation the indexation issue.

4. He further informed the Committee that the Ministry has notified a scheme for procurement of 2,500 MW as a pilot, using PFC as the aggregator for aggregating power on behalf of Discoms and then opening the market for generators. The Coal Ministry has been requested for putting some coal linkage on auction for this purpose.

5. The Secretary, Ministry of Power submitted that the RBI had no formal consultations with the Ministry of Power before notifying the "New Guidelines" regarding resolution of Non-Performing Projects. He further stated that REC and PFC were in the process of restructuring over a longer period of time, but they have not been able to resolve any project leaving aside one or two. Now the RBI has put a lid over it and said that beyond a point, one cannot keep on doing restructuring. The Ministry felt that in the power sector, at this stage, this kind of resolution (RBI's Resolution Plan) would not come through very quickly because there is hardly any PPA in the market. So, any model of restructuring, either with or without the RBI guidelines, cannot give much benefit to the Power Sector.

6. The CMD, REC deposed before the Committee that REC has a loan book of about Rs. 2,40,000 crore, of which private sector exposure has been about 13 %. REC's total NPAs (12 projects) have been 2.1 % as on 1st March, 2018. The impact of RBI's guidelines on REC's balance sheet would be to the tune of Rs. 15,000 crore.

7. The CMD, REC further submitted that the power sector financing has been a long-term investment having the tenure of 15-20 years and there has always been involvement of a consortium of financiers. In some projects there have been a consortium of as many as 27 banks where it would become difficult to achieve 100 % consensus. To find an optimal solution and resolution would be almost impossible in 180 days which means every project will ultimately land up in NCLT. A timeline has been submitted to the Ministry that a minimum of 231 days are required for the resolution process to be completed.

8. The Committee *inter-alia* deliberated upon the following points relating to the subject — "Impact of new RBI Guidelines on

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Non- Performing Assets in Power Sector" with the representatives of the Ministry of Power and the Ministry of Coal:—

(i) If the measures introduced in fresh RBI guidelines will help the electricity sector to overcome its NPA problem in a realistic and pragmatic manner?

(ii) What will be effect of these guidelines on the stressed Power Projects?

(iii) If the timeline of 180 days suggested in the Resolution Plan will be adequate for all the actions to be completed under the plan?

(iv) If the role and responsibility of the members of lending consortium in filing insolvency proceedings have been clearly demarcated and defined?

(v) Whether the stakeholders, *i.e.*, Ministry of Power, Ministry of Coal, lending banks and financial institutions, independent power producers were consulted before framing of the guidelines by the RBI?

(vi) Impact of these guidelines on the supply of coal to the power plants, which may become unviable in near future.

(vii) Whether there is still demand for FSA by the running/ upcoming power plants and in what manner will it affect the coal supply?

(viii) Will the Ministry of Coal be in a position to improve supply of coal as a result of these guidelines?

(ix) Coordination system among Regulators, Government, Banks, promoters and other stakeholders.

9. Thereafter, the Members sought clarifications on various issues relating to the subject and the representatives concerned responded to the same. The Committee directed the representatives concerned to furnish written replies to those queries which could not be readily responded to by them.

10. The verbatim proceedings of the sitting of the Committee were kept for record.

The Committee then adjourned.

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ANNEXURE III

MINUTES OF THE SIXTEENTH SITTING OF THE STANDING COMMITTEE ON ENERGY (2017-18) HELD ON 12TH JUNE, 2018 IN COMMITTEE ROOM '3', PARLIAMENT HOUSE ANNEXE EXTN., NEW DELHI

The Committee met from 1500 hrs. to 1700 hrs.

PRESENT

Dr. Kambhampati Haribabu — *Chairperson*

MEMBERS

Lok Sabha

2. Shri Devendra Singh Bhole
3. Shri Harish Dwivedi
4. Dr. Arun Kumar
5. Shri Jagdambika Pal
6. Shri Ravindra Kumar Pandey
7. Shri M.B. Rajesh
8. Shri Vinayak Bhaurao Raut
9. Shri Bhanu Pratap Singh Verma

Rajya Sabha

10. Shri Oscar Fernandes
11. Shri Manish Gupta
12. Shri Shamsher Singh Manhas
13. Smt. Viplove Thakur
14. Shri Narain Das Gupta

SECRETARIAT

1. Shri A.K. Singh — *Additional Secretary*
2. Shri N.K. Pandey — *Director*

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Ministry of Power

1.	Shri Ajay Kumar Bhalla	Secretary
2.	Shri Sanjiv Nandan Sahai	Additional Secretary
3.	Shri Aniruddha Kumar	Joint Secretary

Department of Financial Services, Ministry of Finance

1.	Shri Rajiv Kumar	Secretary
2.	Shri Pankaj Jain	Joint Secretary

Reserve Bank of India

1.	Dr. Urjit R. Patel	Governor
2.	Shri N.S. Vishwanathan	Deputy Governor
3.	Dr. Viral V. Acharya	Deputy Governor

PSUs/Autonomous Body/Statutory Body

1.	Shri R.K. Verma	Chairperson, CEA
2.	Shri Rajeev Sharma	CMD, PFC
3.	Shri P.V. Ramesh	CMD, REC

2. At the outset, the Chairperson welcomed the Members of the Committee and the representatives of the Ministry of Power, Department of Financial Services, Reserve Bank of India, Central Electricity Authority, Power Finance Corporation and Rural Electrification Corporation to the sitting of the Committee and apprised them of the agenda and focus area for the discussion and the provisions of Directions 55(1) and 58 of the Directions by the Speaker.

3. The Committee *inter-alia* also deliberated upon the following points related to the subject — "Impact of new RBI Guidelines on Non-Performing Assets in Power Sector" with the representatives of the Ministry of Power, Department of Financial Services, Reserve Bank of India, etc:

(i) Reasons for introduction of "New" Guidelines for resolution of Non-Performing Assets?

(ii) How the RBI's new guidelines will help the Electricity Sector to overcome its NPA problem?

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(iii) What will be effect of these guidelines on the stressed Power Projects?

(iv) Whether the timeline of 180 days suggested in the Resolution Plan will be adequate for all the actions to be completed under the Plan?

(v) The amount of hair-cut that the Banks are likely to take following the IBC Act.

(vi) Reasons for abolition of Joint Lending/Consortium Forum.

(vii) Justification for requirement of independent credit evaluation in the Resolution Plan?

(viii) Will the new Guidelines on NPA not spur the filing of insolvency proceedings with NCLT?

(ix) Accountability and responsibility of the Lenders under the Plan?

(x) Coordination system among Regulators, Government, Banks, promoters and other stake holders.

4. Thereafter, the Members sought clarifications on various issues relating to the subject and the representatives concerned responded to the same. The Committee directed the representatives concerned to furnish written replies to those queries which could not be readily responded to by them.

5. *** *** *** *** ***

6. The verbatim proceedings of the sitting of the Committee were kept for record.

The Committee then adjourned.

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*** Not printed to this Report.

ANNEXURE IV

MINUTES OF THE SEVENTEENTH SITTING OF THE STANDING COMMITTEE ON ENERGY (2017-18) HELD ON 5TH JULY, 2018 IN COMMITTEE ROOM 'C', PARLIAMENT HOUSE ANNEXE, NEW DELHI

The Committee met from 1130 hrs. to 1330 hrs. and from 1430 hrs. to 1600 hrs.

PRESENT

Dr. Kambhampati Haribabu — *Chairperson*

MEMBERS

Lok Sabha

2. Shri Devendra Singh Bhole
3. Shri Harish Dwivedi
4. Shri Bhagat Singh Koshyari
5. Dr. Arun Kumar
6. Shri Jagdambika Pal
7. Shri M.B. Rajesh
8. Shri Bhanu Pratap Singh Verma
9. Shri Kotha Prabhakar Reddy
10. Shri Nagendra Kumar Pradhan

Rajya Sabha

11. Shri T.K.S. Elangovan
12. Shri Oscar Fernandes
13. Shri Manish Gupta
14. Shri Shamsher Singh Manhas
15. Shri Narain Das Gupta

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SECRETARIAT

1. Shri A.K. Singh — *Additional Secretary*
2. Shri N.K. Pandey — *Director*

WITNESSES

Ministry of Power/PSUs/Autonomous Bodies

1.	Shri Aniruddha Kumar	Joint Secretary, MoP
2.	Shri Rajeev Sharma	CMD, PFC
3.	Shri P.V. Ramesh	CMD, REC
4.	Shri Gurdeep Singh	CMD, NTPC
5.	Shri P.K. Mukopadhyay	Chairman, DVC
6.	Shri Pankaj Batra	Chairman, CEA

Public and Private Sector Banks

7.	Shri Rajnish Kumar	Chairman, SBI
8.	Shri Sunil Mehta	MD and CEO, Punjab National Bank
9.	Shri R.A. Sankara Narayanan	MD and CEO, Vijaya Bank
10.	Shri Rakesh Sharma	MD and CEO, Canara Bank
11.	Shri Jai Kumar Garg	MD and CEO, Corporation Bank
12.	Shri Mukesh Kumar Jain	MD and CEO, Oriental Bank of Commerce
13.	Shri Pawan Bajaj	MD and CEO, United Bank of India
14.	Shri Rajeev Rishi	MD and CEO, Central Bank of India
15.	Shri Kishor Kharat	MD and CEO, Indian Bank
16.	Shri R. Subramania Kumar	MD and CEO, IOB
17.	Shri P.S. Jayakumar	MD and CEO, BOB

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18.	Shri Rajkiran Rai G.	MD and CEO, Union Bank of India
19.	Shri Manjul Chawla	Head, IDFC
20.	Shri B. Sriram	MD and CEO, IDBI
21.	Shri Arun Kumar Manda	General Manager, Bank of India
22.	Mrs. Vishakha Mulye	Executive Director, ICICI Bank
23.	Shri Kulbhushan Jain	ED, Andhra Bank
24.	Shri Charan Singh	ED, UCO Bank
25.	Shri R.K. Yadhuvanshi	ED, Dena Bank
26.	Shri N.K. Sahoo	ED, Allahabad Bank
27.	Shri S. Krishnan	ED, Syndicate Bank
28.	Shri A.C. Rout	ED, Bank of Maharashtra
29.	Dr. Fareed Ahmed	ED, PSB

Independent Power Producers

30.	Shri Pradeep Mittal	Executive Vice Chairman, Essar Power Ltd.
31.	Shri B.R. Jaju	Chief Financial Officer, D. B. Power Baradhara
32.	Shri A. Issac George	GVK Power Goindwal Sahib Ltd.
33.	Shri Suresh Jain	Managing Director, JPVL
34.	Shri S.K. Bagai	President Prayagraj Power General Company Ltd.
35.	Shri Gattu Rambhav	Chief Operating Officer, Korba West Power Company Ltd.
36.	Shri R. Raveendra Nathan Nair	CEO, Jindal India Thermal Power Ltd.
37.	Shri Ismail Kamal	Promotor Group, Coastal Energen Pvt. Ltd.

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38.	Shri M. Narasimha Murthy	President, Lanco Babandh Power Ltd. and Lanco Vidarbha Thermal Power Ltd.
39.	Shri M. Chandrasekhar Reddy	Dy. CEO, Lanco Amarkantak Power Ltd. and Lanco Anpara Power Ltd.
40.	Shri Ashish Bansal	Edelweiss Alternative Asset Advisors Ltd.
41.	Shri Sameer Ganju	Adani Power Maharashtra Ltd. Tiroda Plant
42.	Shri Ashish Basu	CEO, GMR
43.	Shri Vibhuti Handoo	DGM, Lanco
44.	Shri R. Srinivasan	Advisor, RKM Powergen Pvt. Ltd.

2. At the outset, the Chairperson welcomed the Members of the Committee and the representatives of the Ministry of Power, Central Electricity Authority, Power Finance Corporation, Rural Electrification Corporation, National Thermal Power Corporation, Public and Private Sector Banks, Independent Power Producers, etc. to the sitting of the Committee and apprised them of the agenda and focus area for the discussion and the provisions of Directions 55(1) and 58 of the Directions by the Speaker.

3. During the discussion, the CMD, Rural Electrification Corporation made a presentation on the subject "Stressed Power Projects — A Framework for Sustainable Management" which, *inter alia*, covered Electricity Act 2003 : A watershed for Industry Transformation, Conventional IPP Capacity under Stress, Explanation of Stress, Historical Resolution Approaches, Revised Resolution Approach, Sectoral Challenges and Efficacy, Potential Outcome of Revised Approach, Lender's Action in view of RBI Framework, Limitation of Lender's Actions, Need for a Warehousing Approach, Multi-track Resolution Framework, Warehousing of Power Assets, Key Objectives of Warehousing, Power Asset Revival Focused Warehousing and Revitalization (PARIWARTAN), Mode of Transfer of Assets, Operational Details, Regulatory Aspects, Regulatory Forbearance Required, Capital Structure of PARIWARTAN, Key Support Required, etc.

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4. The Committee *inter alia* also deliberated upon the following points related to the subject — "Impact of new RBI Guidelines on Non-Performing Assets in Power Sector" with the representatives of the Ministry of Power, Power Finance Corporation, Rural Electrification Corporation, Public and Private Sector Banks, Independent Power Producers, etc.

(i) How the RBI's new guidelines will help the Electricity Sector to overcome its NPA problem?

(ii) What will be the effect of these guidelines on the stressed Power Projects?

(iii) Whether the timeline of 180 days suggested in the Resolution Plan should be increased?

(iv) The amount of hair-cut that the Banks are likely to take following the IBC Act.

(v) Need for a separate Framework for resolution of the Stressed Assets in the Electricity Sector.

(vi) Need to modify the condition regarding consensus among all the Lenders for implementation of Resolution Plan so as to get it aligned with IBC.

(vii) Will the new Guidelines on NPA not spur the filing of insolvency proceedings with NCLT?

(viii) If the Revised Framework disincentivizes the Banks in carrying out Resolution of a Stressed Projects with the existing Promoter?

(ix) Need to preserve at least those Stressed Power Projects that are functional so as not to jeopardize the Energy Security of the Nation.

(x) Need to create an alternative mechanism to ensure timely payment from Discoms.

(xi) Need for the Government Agencies like Railways to take over some of the Stressed Power Projects.

(xii) Need to make use of the DBT Mechanism for transferring electricity subsidy to the consumers.

(xiii) Need to synchronize the resolution of Sectoral Issues with the RBI's Guidelines.

(xiv) Accountability and responsibility of the Lenders under the Plan?

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(xv) Coordination system among Regulators, Government, Banks, promoters and other stakeholders.

5. Thereafter, the Members sought clarifications on various issues relating to the subject and the representatives concerned responded to the same. The Committee directed the representatives concerned to furnish written replies to those queries which could not be readily responded to by them.

The Committee then took a lunch-break.

The above mentioned witnesses withdrew.

WITNESSES

Ministry of Power

1.	Shri Ajay Kumar Bhalla	Secretary
2.	Shri Sanjiv Nandan Sahai	Additional Secretary
3.	Shri Aniruddha Kumar	Joint Secretary

Department of Financial Services, Ministry of Finance

4.	Shri Rajiv Kumar	Secretary
5.	Shri Ravi Mittal	Additional Secretary
6.	Shri Pankaj Jain	Joint Secretary

Ministry of Coal

7.	Shri Ashish Upadhyaya	Joint Secretary
8.	Shri Rajesh Kumar Sinha	Joint Secretary

PSUs/Autonomous Body/Statutory Body

9.	Shri Pankaj Batra	Chairperson, CEA
10.	Shri Rajeev Sharma	CMD, PFC
11.	Shri P.V. Ramesh	CMD, REC
12.	Shri Gurdeep Singh	CMD, NTPC
13.	Shri P.K. Mukopadhyay	Chairman, DVC
14.	Shri Anil Kumar Jha	Chairman, CIL

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6. After the lunch, the Chairperson welcomed the representatives of the Ministry of Power, Ministry of Finance, Ministry of Coal etc. to the sitting of the Committee and apprised them of the agenda and focus area for the discussion and the provisions of Directions 55(1) and 58 of the Directions by the Speaker.

7. The Committee *inter alia* also deliberated upon the following points related to the subject — "Impact of new RBI Guidelines on Non-Performing Assets in Power Sector" with the representatives of the Ministry of Power, Department of Financial Services, Ministry of Coal, etc:

(i) The number of stressed Power Projects that have been provided Coal-linkages since December, 2017.

(ii) Whether the production of coal in the country is now sufficient to fully cater the demand of power sector?

(iii) Whether the problem of rail rakes for transportation of coal has been sorted out completely?

(iv) Are the power plants maintaining the normative coal stocks?

(v) Feasibility of the proposal that 14th Finance Commission grants to the defaulting local bodies may be given directly to the DISCOMs.

(vi) Need for allowing all the coast-based thermal plants to import the coal so that the load on the railways and on Coal India can be reduced.

8. Thereafter, the Members sought clarifications on various issues relating to the subject and the representatives concerned responded to the same. The Committee directed the representatives concerned to furnish written replies to those queries which could not be readily responded to by them.

9. The verbatim proceedings of the sitting of the Committee were kept for record.

The Committee then adjourned.

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ANNEXURE V

MINUTES OF THE NINETEENTH SITTING OF THE STANDING COMMITTEE ON ENERGY (2017-18) HELD ON 2ND AUGUST, 2018 IN COMMITTEE ROOM 'C', PARLIAMENT HOUSE ANNEXE, NEW DELHI

The Committee met from 1700 hrs. to 1730 hrs.

PRESENT

Dr. Kambhampati Haribabu — *Chairperson*

MEMBERS

Lok Sabha

2. Shri Devendra Singh Bhole
3. Shri Om Birla
4. Shri Harish Dwivedi
5. Dr. Arun Kumar
6. Shri Malyadri Sriram
7. Dr. Pritam Gopinath Munde
8. Shri Jagdambika Pal
9. Shri Ravindra Kumar Pandey
10. Shri Vinayak Bhaurao Raut
11. Shri Bhanu Pratap Singh Verma

Rajya Sabha

12. Shri T.K.S. Elangovan
13. Shri Oscar Fernandes
14. Shri Manish Gupta
15. Shri Narain Das Gupta

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SECRETARIAT

1. Shri N.K. Pandey — *Director*
2. Smt. L. Nemjalhing Haokip — *Under Secretary*

2. At the outset, the Chairman welcomed the Members and apprised them about the agenda of the sitting. The Committee then took up the following draft Reports for consideration and adoption:—

(a) Draft Report on "Impact of RBI's Revised Framework for Resolution of Stressed Assets on NPAs in the Electricity Sector".

(b) Draft Action Taken Report on the recommendations contained in the Thirty Eighth Report (16th Lok Sabha) on Demands for Grants (2018-19) of the Ministry of Power.

3. After discussing the contents of the Reports in detail, the Committee adopted the aforementioned draft Reports without any modifications. The Committee also authorized the Chairperson to finalize the above-mentioned Reports and present the same to both the Houses of Parliament in the current session.

4. *** *** *** *** ***

The Committee then adjourned.

Signature Not Verified
Vinod Kumar Tanwar

Not printed to this Report.

28.11.2024 10.53

Annexure VII

इसे वेबसाईट **www.govtpressmp.nic.in** से भी डाउन लोड किया जा सकता है.

मध्यप्रदेश राजपत्र

(असाधारण)

प्राधिकार से प्रकाशित

क्रमांक 429] भोपाल, शुक्रवार, दिनांक 29 अक्टूबर 2021--कार्तिक 7, शक 1943

जल संसाधन विभाग

मंत्रालय, वल्लभ भवन, भोपाल

क्र. एफ 35--43--मध्यम--इकतीस. भोपाल, दिनांक 29 अक्टूबर 2021

मध्यप्रदेश सिंचाई अधिनियम, 1931 (क्रमांक 3, सन् 1931) की धारा 37 की उप-धारा (2) तथा 40 के साथ पठित उक्त अधिनियम के अधीन विरचित नियमों के उपबंधो द्वारा प्रदत्त शक्तियों को प्रयोग में लाते हुए, राज्य सरकार, एतद्द्वारा, निर्मित किए गए, निर्मित किये जाने वाले शासकीय स्त्रोतों और समस्त नैसर्गिक/स्वनिर्मित स्त्रोतों से सिंचाई,पेयजल एवं घरेलू प्रयोजनों,औद्योगिक,ताप विद्युत परियोजना एवं जल विद्युत परियोजनाओं के लिए जल के उपयोग हेतु जल दरें नियत करती है अर्थात्:-

1. कृषि प्रयोजन हेतु जलदर.-

कृषि प्रयोजनों के लिए शासकीय स्त्रोतों से प्रवाह एवं कृषक द्वारा स्वयं के साधन से उद्वहन के लिए सिंचाई की जलदरें

अनुसूची

अनुक्रमांक	फसल का नाम	जल दर (रूपये प्रति हेक्टर)
1	**खरीफ फसल :-**	
	▪ धान खरीफ-(125+85x3)	380
	▪ कपास (125+70x3)	335
	▪ हरी घास वाली फसलें, मूंगफली (खरीफ), ज्वार, मक्का, मूंग (खरीफ), सोयाबीन (खरीफ), तिल, तुअर (खरीफ), उड़द (125+50x3)	275
2	रबी फसल :-	
	▪ गेहूँ (125+75x3)	350
	▪ चना(125+75x1)	200
	▪ धान रबी -(125+155x3)	590

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Vinod Kumar Jain
28.11.2024 10:53

3	दलहनी एवं तिलहनी फसलें:– धनिया, मूंगफली (रबी), मूंग(रबी), सरसों, कुसुम(सेटफ्लाव), सूरजमुखी (सनफ्लावर), सोयाबीन(रबी), तुअर (रबी) (125+75x3).	350
4	सब्जी फसलें :– जौ, बैगन, गाजर, फूलगोभी, मिर्च, ककड़ी, घुंइया, मेथी, अदरक, लहसुन, ग्वारफली, भिण्डी, शहतूत, मटर, खसखस, कद्दू, आलू, मूली, पालक, तम्बाकू, टमाटर, हल्दी, तरबूज, हरी सब्जियां.	630
5	फलदार फसलें - केले, पान, उद्यान फसलें, रबर के पौधे, गन्ना	960
6	बरसीम घास (फोडर क्रॉप)	480

2. पेयजल एवं घरेलू उपयोग हेतु जलदर.-

अनुक्रमांक	विवरण	जल दर
(i)	नैसर्गिक स्त्रोत/स्वनिर्मित स्त्रोत से नगर निगम/नगर पालिका/नगर पंचायत/ग्राम पंचायत/लोक स्वास्थ्य यांत्रिकी विभाग को पेयजल एवं घरेलू उपयोग के लिए जलापूर्ति.	अधिसूचना क्रमांक 29/31/99/म/31/83 भोपाल दिनांक 14 जनवरी 2000 से प्रभावशील शासकीय स्त्रोतों से प्रदाय पेयजल हेतु जलदर का 50% प्रतिवर्ष 1 पैसे की वृद्धि सहित.

3. औद्योगिक प्रयोजन.-

औद्योगिक प्रयोजन हेतु जलदर -

(जलदर रू. प्रति घनमीटर)

अनुक्र.	वर्गीकरण	जलदर	अभियुक्ति
अ	**शासकीय स्त्रोत से** यथा जलाशय, नहर, नलकूप आदि	8.00 (1 जनवरी से प्रति वर्ष 5% वृद्धि सहित)	
ब	**नैसर्गिक स्त्रोत से बहाव प्रणाली व भूजल** यथा नदी, झील, नलकूप या अन्य प्राकृतिक संग्रह या उद्योग द्वारा निर्मित जलाशय से.		
	(i) नैसर्गिक स्त्रोत पर स्वनिर्मित सरंचना अर्थात् बांध, खुलाकुआ, नलकूप आदि से.	3.00 (1जनवरी से प्रतिवर्ष 5% वृद्धि सहित)	भू जल स्त्रोत को नैसर्गिक स्त्रोत माना गया.
	(ii) नैसर्गिक जल स्त्रोत से सीधे जल लिया जाना	3.00 (1जनवरी से प्रतिवर्ष 5% वृद्धि सहित)	

4. ताप एवं जल विद्युत परियोजना हेतु जलदर.-

अनुक्र.	वर्गीकरण	जलदर
अ	शासकीय जल भंडारण योजनाओं यथा बांध, नहर, बैराज आदि से जल विद्युत परियोजनाओं की जनरेटिंग इकाइयों को जलप्रदाय किए जाने के लिए, जल के उपयोग के पश्चात जल की पुर्नप्राप्ति.	रू. 0.60 प्रति विद्युत इकाई (प्रति किलोवाट घण्टा) दर दिनांक 01.01.2022 से, इसके उपरान्त प्रतिवर्ष 1 जनवरी से 02 पैसा प्रति विद्युत इकाई (प्रति किलोवाट घण्टा) की वृद्धि.

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ब	नैसर्गिक/स्वनिर्मित स्त्रोत अर्थात जल विद्युत परियोजना से जल के उपयोग के पश्चात जल की पुर्नप्राप्ति	रु. 0.20 प्रति विद्युत इकाई (प्रति किलोवाट घण्टा) दर दिनांक 01.01.2022 से, इसके उपरान्त प्रत्येक वर्ष 1 जनवरी से 01 पैसा प्रति विद्युत इकाई (प्रति किलोवाट घण्टा) की वृद्धि.

टीप :-

1. पेयजल एवं औद्योगिक प्रयोजनों के लिए जल का उपयोग हेतु संबंधित इकाई को प्ररूप "7क" में अनुबंध निष्पादित करना होगा ।
2. ताप विद्युत परियोजनाओं के मामले में, औद्योगिक प्रयोजन के लिये दर्शाई गई दरें लागू होगी ।
5. यह अधिसूचना मध्यप्रदेश राजपत्र में प्रकाशन की दिनांक से प्रवृत होगी।

क्र. एफ 35–43–मध्यम–इकतीस.

In exercise of the powers conferred by sub-section (2) of section 37 and 40 of the Madhya Pradesh Irrigation Act, 1931 (No. 3 of 1931) read with the provisions of the rules framed under the said Act, the State Government, hereby, fix the water rates for the use of water for irrigation, drinking and domestic purposes, industries, thermal power projects and Hydel projcts from various constructed, to be constructed government resources and natural/self-made resources as under:-

1. Water Rate for Agricultural purposes.-

Water rates for irrigation from Government sources for agricultural purposes and levied by the farmer by his own means.

S.No.	Name of Crop	Water rate (Rs. Per Hectare)
1.	Crop Kharif:-	
	▪ Paddy Kharif – (125+85x3)	380
	▪ Cotton (125+70x3)	335
	▪ Green fodder crops, Groundnut (Kharif), Jowar, Maiz, Moong (Kharif), Soyabean (Kharif), Till, Tuar (Kharif), Urd-(125+50x3)	275
2.	Rabi Crop:-	
	▪ Wheat (125+75x3)	350
	▪ Gram (125+75x1)	200
	▪ Paddy Rabi- (125+155x3)	590
3.	Pulses and oilseed Crops:- Coriander, Groundnut (Rabi), Moong (Rabi), Mustard, Satflower, Sunflower, Soyabean (Rabi), Tuar (Rabi) (125+75x3)	350
4.	Vegetable Crop:- Barley, Bringal, Carrot, Cauliflower, Chilli, Cucumber, Dalocasia, Fenugreek, Ginger, Garlic, Gwarphali, Ladiesfinger Mulberry, Pea, poppyseed, Pumpkin, Potato, radish, Spinach, Tobacco, Tomato, Turmeric, Watermelon, Green Vegetables	630

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Vinod Kumar Jain
28.11.2024 10.53

5.	Fruit Crops:- Bananas, Beetel, Garden crops, Rubber plants, Sugarcane	960
6.	Barseem grass (fodder crop)	480

2. Water rate for drinking and domestic use.-

S.No.	Description	Water rate
(1)	Water supply to Municipal Corporation/Municipality/Nagar Panchayat/Gram Panchayat/Public Health Engineering Department for domestic use and drinking purposes from natural source/self-made source.	50% of the water rate applicable as per the notification No. 29/31/99/M/31/83 Bhopal dated 14, January, 2000 with an increase of 1 paise per annum.

3. Industrial Purpose.-

Water rate for industrial purpose:-

(Water rate Rs. per cubic metre)

S.No.	Classification	Water rate	Remark
A	**From Government Sources** Such as Reservoir, Canal, Tube well etc.	8.00 (with 5% increase per annum from 1st January)	
B	**Flow system and ground water from natural resources** e.g. River, Lake, Tube well or other Natural storage or the Reservoir constructed by industry.		
	(I) from the self-made structure on natural resources e.g. Dam, Open well, Tube well etc.	3.00 (with 5% increase per annum from 1st January)	Ground water source considered as natural resources
	(II) Direct drawal from natural resources.	3.00 (with 5% increase per annum from 1st January)	

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Vinod Kumar Jain
28.11.2024 10.53

4. Water rate for Thermal and Hydel Power Project:-

S.No.	Classification	Water rate
A	Recovery of water after use of water from government water storage schemes such as dams, canals, barrages etc. for water supplied to the generating units of hydro power projects.	Rs. 0.60 per power unit (per kilowatt hour) rate from 01.01.2022, thereafter increase by 02 paise per power unit (per kilowatt hour) every year from 1st January.
B	Water recovery after use of water from natural/self-generated source eg hydroelectric project.	Rs. 0.20 per power unit (per kilowatt hour) rate from 01.01.2022, thereafter increase by 01 paise per power unit (per kilowatt hour) every year from 1st January.

Note:

1. For use of water for drinking and industrial purposes, the concerned unit shall have to execute the agreement in Form "7A".

2. In case of thermal power projects, the rates indicated for industrial purpose shall be applicable.

5. This notification shall come into force from the date of publication in the Madhya Pradesh Gazette.

क्रमांक एफ 35–43–मध्यम–31.–मध्यप्रदेश सिंचाई अधिनियम, 1931 (क्रमांक 3, सन् 1931) की धारा 64 के अधीन पुनरीक्षित कार्यकारी अनुदेश.

(Revised Executive Instructions)

मध्यप्रदेश राजपत्र (असाधारण) दिनांक 11 अक्टूबर 2001 को प्रकाशित पुनरीक्षित कार्यकारी अनुदेश क्रमांक पीसी 32–10–96–म–इकतीस–943–मध्यप्रदेश सिंचाई अधिनियम, 1931 (क्रमांक 3, सन् 1931) की धारा 64 के अधीन निम्नानुसार संशोधन स्थापित किया जाता है :–

कण्डिका क्रमांक 2(स) (1)

प्रथम वर्ष में पट्टे पर दी जानी वाली भूमि की दर रुपये 1,000/– प्रति एकड़ से कम नहीं होगी.

मध्यप्रदेश के राज्यपाल के नाम से तथा आदेशानुसार,
व्ही.एस. टेकाम, उपसचिव.

Signature Not Verified
Vinod Kumar Jain
28.11.2024 10.53

नियंत्रक, शासकीय मुद्रण तथा लेखन सामग्री, मध्यप्रदेश द्वारा शासकीय केन्द्रीय मुद्रणालय, भोपाल से मुद्रित तथा प्रकाशित–2021.

Annexure VIII

No.11 /2/2011-PG(Jhabua PL)

भारत सरकार
Government of India
विद्युत मंत्रालय
Ministry of Power
Shram Shakti Bhawan, Rafi Marg, New Delhi – 110001
Telefax No. 23730264

New Delhi , dated 7th May, 2012.

To,

Shri Jitendra Mahapatra
Head- Electrical
Jhabua Power Limited
6th & 7th Floor,Vatika City Point
M.G. Road, Gurgaon-122002

Sub: Prior Approval of the Government under Section 68 of the Electricity Act, 2003 for dedicated transmission line for 1x600 MW Jhabua Power Limited.

Sir,

I am directed to refer to your letters dated 25.1.2012, 21.2.2012. 20.3.2012 and 23.4.2012 on the above subject and to convey the prior approval of the Government under section 68 of the Electricity Act, 2003 for construction of the dedicated transmission line of 1×600 MW coal based power project near Barela village, Seoni, Madhya Pradesh with the following scope of works as agreed in the 32nd meeting of Standing Committee on Power System Planning in Western Region/14th meeting of WR constinuents regarding LTOA application held on 13.05.2011:-

Dedicated Transmission System:

(i) Jhabua Power TPS- Jabalpur pooling station 400 kV D/C (high capacity)line.

Interim arrangement:

(i) Termination of Jhabua Power TPS- Jabalpur PS 400 kV D/C line at Jabalpur(existing) 400 kV substation through a 400 kV D/C line between an intermediate point on the dedicated line and Jabalpur (existing) 400 kV substation.

The approval is subject to compliance of (a) the requirement of the relevant provisions of the Electricity Act, 2003, as amended from time to time and the rules and regulations framed there-under and (b) the rules governing the overhead lines as specified in the Indian Electricity Rules, 1956, till they are substituted by corresponding rules framed under the Electricity Act, 2003.

Continued.....

Signature Not Verified
Vinod Kumar Jain
28.11.2024 10.53

7/5/2012

O/C issued 7/5/2012

The approval is also subject to the following conditions :

i. The implementing agency will commence construction of the project within 3 years, unless this term is extended by the Ministry of Power.

ii. Ministry of Power may withdraw the approval before the expiry of the period of 3 years after giving a one-month notice.

iii. M/s Jhabua Power Limited shall abide by the provisions of Works of Licensee Rules, 2006 notified by the Government of India, Ministry of Power in the Gazette of India, extra Part-II Section 3 (i) dated 18.4.2006 (vide GSR 217 (E) dated 18.4.2006).

iv The interim arrangement is purely a temporary transmission arrangement to be carried out by the project developer (Jhabua Power Limited) at his own cost. With the commissioning of Jabalpur Pooling Station, the interim arrangement has to be removed by the project developer at his cost. During the interim arrangement Special Protection Schemes, in consultation with the RPC/RLDC, to back down the generation level in case of transmission constraints has to be put in place by Jhabua Power Limited.

Yours faithfully,

(K.V.Gopala Rao)
Under Secretary to the Govt. of India.

Copy to Ravinder Gupta, Director , CEA w.r.t. to CEA's letter No. 26/3/2012/SP&PA/473 dated 30.04.2012

Signature Not Verified
Vinod Kumar Jain
28.11.2024 10.53

ANNEXURE- 14(ii)

Annexure IX

1311

पावर ग्रिड कारपोरेशन ऑफ इंडिया लिमिटेड
(भारत सरकार का उद्यम)
POWER GRID CORPORATION OF INDIA LIMITED
(A Government of India Enterprise)
पावरग्रिड

केन्द्रीय कार्यालय : "सौदामिनी" प्लाट सं–2, सेक्टर–29, गुडगाँव–122 001, हरियाणा
फोन : 0124–2571700–719 फैक्स : 0124–2571760, 0124–2571761 तार : 'नेटग्रिड'
Corporate Office : "Saudamini" Plot No-2, Sector-29, Gurgaon - 122 001 Haryana
Tel.: 0124-2571700 - 719 Fax : 0124-2571760, 0124-2571761 Gram : 'NATGRID'

संदर्भ संख्या / Ref. No. केन्द्रीय कार्यालय / CORPORATE CENTRE

C/SEF/W/06/INT/1108/01

05th August, 2011

Sh A. M. Misra
Head - Electrical (Jhabua Power Ltd)
Avantha Power & Infrastructure Ltd
Oppo. Of First India Place,
M.G.Road,
Gurgaon -122002

Sub: Grant of Connectivity

Dear Sir,

We write this with reference to your application dated 25/04/2011 for Connectivity of Jhabua Power Ltd. 600MW generation project in Madhya Pradesh in WR and discussions held in the 14th meeting of WR constituents held on 13.05.2011. It is to inform that in line with the discussions held during the above referred meeting, the Connectivity is hereby granted subject to signing of requisite Connection Agreement and fulfillment of other conditions as mentioned in the enclosed intimation letter.

In regard to the above grant of Connectivity, applicant shall abide by all provisions of the CERC (Grant of Connectivity, Long Term Access and Medium-term Open Access in inter-state transmission and related matters) Regulations 2009.

Thanking You,

Yours Faithfully

(Y.K.Sehgal)
Executive Director (SEF, CE)

Copy to:

Member Secretary
Western Regional Power Committee
Plot No. F-3, MIDC Area, Marol
Opposite SEEPZ, Andheri (East)
Mumbai – 400 093

Member (Power Systems)
Central Electricity Authority
Sewa Bhawan, R K Puram
New Delhi – 110 066.

JHABUA POWER LIMITED GURGAON

Copy for information to:

EC(Commercial)/CEO(POSOCO)/ED(WRTS- II)/ED(WRLDC)

Signature Not Verified
Vinod Kumar Jain
28.11.2024 10.53

पंजीकृत कार्यालय : बी–9, कुतब इंस्टीट्यूशनल एरिया, कटवारिया सराय, नई दिल्ली–110016 दूरभाष : 011–26560121 फैक्स : 011–26560039 तार : 'नेटग्रिड'
Registered Office : B-9, Qutab Institutional Area, Katwaria Sarai, New Delhi -110016 Tel.: 011-26560121 Fax : 011-26560039 Gram: 'NATGRID'

1312

FORMAT-CON-3

Intimation for Grant of Connectivity

1	**Intimation No.** **Date :**	C/SEF/TA/C/W/11/09 05.08.11
2	**Ref. Application No.** **Date :**	-- 25.04.11
3	**Name of the Applicant**	Jhabua Power Limited
4	**Address for Correspondence**	Avantha Power & Infrastructure Ltd Vatika City Point, 6th & 7th floor, Oppo. Of First India Place, M. G. Road, Gurgaon-122002
5	**Nature of the Applicant**	
	Generator (other than captive)	Generator
	Captive Generator	-
	Bulk Consumer	-
6	**Details for Connectivity**	
6a	Capacity(MW) for which connectivity is granted	600MW
6b	Point at which Connectivity is granted	400kV Jabalpur Pooling Station
6c	Date from which connectivity is granted	Jan'13 or Commissioning of connectivity line whichever is later
6d	Transmission System Required for Connectivity	Jhabua TPS – Jabalpur Pool 400kV D/c (High Capacity)
6e	Implementing Agency for transmission system required for connectivity	Jhabua Power Limited
6f	Agencies between which agreement is to be signed for implementation of transmission system required for connectivity	NA
7	**Transmission Charges Applicable for the dedicated line**	NA
8	Amount (in Rupees) for which Bank Guarantee is to be provided by the applicant	NA
9	**Location of the Generating Station / Bulk Consumer**	
	Nearest Village / Town	Barela Village

JHABUA POWER LIMITED GURGAON

Signature Not Verified
Vinod Kumar Jain
28.11.2024 10.53

District Seoni,
State Madhya Pradesh
Latitude 22° 43' N To 22° 44' 30" N
Longitude 79° 54' E To 79° 55' 30" E

10 Installed Capacity of the Generating Station

Unit-1 600MW

11 Commissioning Schedule of the Generating Station

Unit-1 Dec'13

Note:

Interim Transmission Arrangement (to be developed by applicant)

i. *Jhabua TPS – Jabalpur(Existing) 400kV D/c (High Capacity)*
ii. *On completion of 400kV D/c stretch upto Jabalpur Pooling Station, the termination at Jabalpur (existing) S/s shall be removed.*

Details of scope of applicant for Interim/connectivity transmission system is as under:

i. *2 nos. of 400kV Line Bays each at Jabalpur Pool as well as Jabalpur(existing) for termination of connectivity/interim transmission system*
ii. *1x125 MVAR, 420kV bus reactor at generation switchyard*

1. As per the CERC Regulations 2009, time period for commissioning of transmission system by the Tr. licensee/CTU would be as per CERC time line (as per CERC regulation 2009 for tariff) plus 9 months from the date of signing of Transmission agreement & furnishing of Bank Guarantee whichever is later. Since the commissioning schedule of the generation project is earlier than the commissioning schedule of transmission system for connectivity, the applicant agreed to take up implementation of connectivity/interim transmission system.

2. The modifications required at the connection point for termination of connectivity/interim transmission system would be implemented by the POWERGRID on deposit of estimated cost by applicant as per CERC Regulations 2009. For this, applicant needs to coordinate with POWERGRID.

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3. Applicant shall provide Special protection Scheme (SPS) integrated into their system. Details of SPS and its setting shall be worked out by the applicant in-consultation with WRLDC/WRPC separately.

4. The Applicant given intimation for connectivity to the grid shall have to furnish additional details to CTU for signing of "Connection Agreement" as per format given at FORMAT-CON-4 in detailed procedure for CERC (Grant of Connectivity, Long-term Access and Medium-term Open access in inter-State transmission and related matters) regulation 2009. These details are to be furnished to CTU at least 2 (two) years prior to physical interconnection, unless otherwise indicated by CTU. The Applicant is, therefore advised to furnish such details at the earliest.

5. Applicant shall have to inform likely date of synchronization, likely quantum and period of injection of infirm power before being put into commercial operation to the SLDC/RLDC concerned at least one month in advance and obtain their concurrence for the same.

6. The applicant shall abide by all provisions of the Electricity Act, 2003, the CERC regulation 2009 (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) Central Electricity Authority (Technical Standards for connectivity to the Grid) and Indian Electricity Grid Code as amended from time to time.

Signature
Name: Y.K.Sehgal
Designation: Executive Director (SEF, CE)

Place: Gurgaon
Date: August 05, 2011

To,

Sh. A. M. Misra
Head-Electrical (Jhabua Power Ltd)
Avantha Power & Infrastructure Ltd
Oppo. Of First India Place,
M.G.Road,
Gurgaon -122002

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Vinod Kumar Jain
28.11.2024 10.53

Intimation No. C/SEF/TA/C/W/11/09

JHABUA POWER LIMITED GURGAON

Annexure X

रजिस्ट्री सं० डी० एल०-33004/99 REGD. NO. D. L.-33004/99

भारत का राजपत्र
The Gazette of India

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पर्यावरण, वन और जलवायु परिवर्तन मंत्रालय

अधिसूचना

नई दिल्ली, 25 जनवरी, 2016

का.आ. 254(अ).—भारत सरकार, पर्यावरण, वन और जलवायु परिवर्तन मंत्रालय की अधिसूचना सं. का.आ. 763(अ), तारीख 14 सितंबर, 1999 (जिसे इसमें इसके पश्चात् उक्त अधिसूचना कहा गया है) में कतिपय संशोधनों का प्रारूप, जिन्हें केन्द्रीय सरकार पर्यावरण (संरक्षण) नियम, 1986 के नियम 5 के उप-नियम (3) के खंड (घ) के साथ पठित पर्यावरण (संरक्षण) अधिनियम, 1986 (1986 का 29) की धारा 3 की उप-धारा (1) और उप-धारा (2) के खंड (v) के अंतर्गत करने का प्रस्ताव करती है, भारत के राजपत्र, असाधारण, भाग II, खंड 3, उप-खंड (ii) में अधिसूचना सं. का.आ. 1396(अ), तारीख 25 मई, 2015 द्वारा प्रकाशित किया गया था, जिसके द्वारा ऐसे सभी व्यक्तियों से, जिनके उनसे प्रभावित होने की संभावना थी, उस तारीख से, जिसको उक्त प्रारूप संशोधनों को अंतर्विष्ट करने वाली राजपत्र की प्रतियां जनता को उपलब्ध करा दी जाती हैं, साठ दिनों के अवसान से पूर्व आक्षेप और सुझाव आमंत्रित किए गए थे;

और उक्त राजपत्र की प्रतियां 25 मई, 2015 को जनता को उपलब्ध करा दी गई थी;

और उक्त प्रारूप अधिसूचना के संबंध में, ऐसे सभी व्यक्तियों से, जिनके उनसे प्रभावित होने की संभावना थी, प्राप्त सभी आक्षेपों और सुझावों पर केन्द्रीय सरकार द्वारा सम्यक् रूप से विचार कर लिया गया है;

अत:, अब, केन्द्रीय सरकार पर्यावरण (संरक्षण) नियम, 1986 के नियम 5 के उप-नियम (3) के खंड (घ) के साथ पठित पर्यावरण (संरक्षण) अधिनियम, 1986 (1986 का 29) की धारा 3 की उप-धारा (1) और उप-धारा (2) के खंड (v) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उक्त अधिसूचना में निम्नलिखित संशोधन करती है, अर्थात् :-

1. उक्त अधिसूचना के पैरा 1 में-

(क) उप पैरा 1(क) में "सौ किलोमीटर" शब्दों के स्थान पर "तीन सौ किलोमीटर" शब्द रखें जाएंगे;

(ख) उप पैरा 3 में "100 कि.मी." अंकों और शब्दों के स्थान पर "तीन सौ किलोमीटर" शब्द रखें जाएंगे;

(ग) उप पैरा 5 में "सौ किलोमीटर" शब्दों के स्थान पर "तीन सौ किलोमीटर" शब्द रखें जाएंगे;

(घ) उप पैरा 7 में "सौ किलोमीटर" शब्दों के स्थान पर "तीन सौ किलोमीटर" शब्द रखें जाएंगे;

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2. उक्त अधिसूचना के पैरा 2 में:-

(क) उप पैरा (1) के पश्चात् निम्नलिखित परंतुक अंत:स्थापित किया जाएगा, अर्थात्:-

"परंतु यह और कि शुष्क ईएसपी फ्लाई ऐश के 20 प्रतिशत का नि:शुल्क प्रदाय करने का निर्बंधन उन तापीय विद्युत संयंत्रों पर लागू नहीं होगा, जो विहित रीति में सौ प्रतिशत फ्लाई ऐश का उपयोग करने में समर्थ हैं।"

(ख) उप पैरा (7) के पश्चात् निम्नलिखित उप पैरा अंत:स्थापित किए जाएंगे, अर्थात् :-

"(8) प्रत्येक कोयला या लिग्नाइट आधारित तापीय विद्युत संयंत्र (जिसके अंतर्गत कैपटिव और/या सह उत्पादन केन्द्र भी हैं), अधिसूचना की तारीख से तीन मास के भीतर उनके पास उपलब्ध प्रत्येक किस्म की ऐश के स्टाक के ब्यौरे अपनी वेबसाइट पर अपलोड करेगा और उसके पश्चात् मास में कम से कम एक बार स्टाक की स्थिति को अद्यतन करेगा।

(9) प्रत्येक कोयला या लिग्नाइट आधारित तापीय विद्युत संयंत्र समर्पित शुष्क ऐश साइलोस प्रतिष्ठापित करेगा, जिनके पास पृथक् पहुंच मार्ग होंगे, जिससे कि फ्लाई ऐश के परिदान को सुगम बनाया जा सके।

(10) कोयला या लिग्नाइट आधारित तापीय विद्युत संयंत्र से 100 किलोमीटर की परिधि के भीतर सड़क संनिर्माण परियोजनाओं या ऐश आधारित उत्पादों के संनिर्माण के लिए या कृषि संबंधित क्रियाकलापों में मृदा अनुकूलक के रूप में उपयोग के लिए ऐश के परिवहन की लागत ऐसे कोयला या लिग्नाइट आधारित तापीय विद्युत संयंत्र द्वारा वहन की जाएगी और 100 किलोमीटर की परिधि से परे और 300 किलोमीटर की परिधि के भीतर ऐसे परिवहन की लागत को उपयोक्ता और कोयला या लिग्नाइट आधारित तापीय विद्युत संयंत्र के बीच समान रूप से अंश भाजित की जाएगी।

(11) कोयला या लिग्नाइट आधारित तापीय विद्युत संयंत्र अपने परिसरों के भीतर या अपने परिसरों के आस-पास ऐश आधारित उत्पाद संनिर्माण सुविधाओं का संवर्धन करेंगे, उन्हें अपनाएंगे और उनकी स्थापना करेंगे (वित्तीय और अन्य सहबद्ध अवसंरचना)।

(12) नगरों के आस-पास बने कोयला या लिग्नाइट आधारित तापीय विद्युत संयंत्र ऐश आधारित उत्पाद विनिर्माण इकाइयों का संवर्धन करेंगे और उनकी स्थापना का समर्थन और उसमें सहायता करेंगे ताकि ईंटों और अन्य भवन संनिर्माण सामग्रियों की अपेक्षाओं की पूर्ति की जा सके और साथ ही परिवहन में कमी की जा सके।

(13) यह सुनिश्चित करने के लिए कि किसी सड़क संनिर्माण का संविदाकार सड़क निर्माण में ऐश का उपयोग करता है, सड़क संनिर्माण के लिए संबद्ध प्राधिकारी संविदाकार को किए जाने वाले संदाय को तापीय विद्युत संयंत्र से ऐश के प्रदाय के प्रमाणीकरण के साथ जोड़ेगा।

(14) कोयला या लिग्नाइट आधारित तापीय विद्युत संयंत्र, 300 किलोमीटर की परिधि के भीतर प्रधानमंत्री ग्रामीण सड़क योजना के अधीन सड़क संनिर्माण परियोजनाओं और भवनों, सड़कों, बांधों और तटबंधों के संनिर्माण को अंतर्वलित करने वाले सरकार के आस्ति सृजन कार्यक्रमों के स्थल तक ऐश के परिवहन की संपूर्ण लागत का वहन करेगा।"।

3. उक्त अधिसूचना के पैरा (2) के उप-पैरा (2क) को उप-पैरा (15) के रूप में पढ़ा जाए और उक्त उप-पैरा के अंत में निम्नलिखित उप-पैरा जोड़ा जाएगा, अर्थात् :-

"और तटीय जिलों में अवस्थित कोयला या लिग्नाइट आधारित तापीय विद्युत संयंत्र तटरेखा सुरक्षा उपायों का समर्थन करेंगे, उनके संनिर्माण में सहायता करेंगे या उसमें प्रत्यक्ष रूप से सम्मिलित होंगे।"

4. उक्त अधिसूचना के पैरा 3 में उप-पैरा (7) के पश्चात् निम्नलिखित अंत:स्थापित किया जाएगा, अर्थात् :-

"(8) विभिन्न संनिर्माण परियोजनाओं का अनुमोदन करने वाले सभी राज्य प्राधिकारियों का यह उत्तरदायित्व होगा कि वे यह सुनिश्चित करें कि फ्लाई ऐश का उपयोग करने या फ्लाई ऐश आधारित उत्पादों के लिए तापीय विद्युत संयंत्रों और संनिर्माण अभिकरण या संविदाकारों के बीच परस्पर समझ ज्ञापन या कोई अन्य ठहराव किया जाता है।

(9) राज्य प्राधिकारी, दस लाख या अधिक की जनसंख्या वाले नगरों की भवन निर्माण संबंधी उप विधियों का संशोधन करेंगे ताकि भार वहन करने वाली संरचनाओं हेतु तकनीकी अपेक्षाओं के अनुसार आवश्यक विनिर्देशों को ध्यान में रखते हुए ऐश आधारित ईंटों के आज्ञापक उपयोग को सुनिश्चित किया जा सके।

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(10) संबद्ध प्राधिकारी सभी सरकारी स्कीमों या कार्यक्रमों में, उदाहरणार्थ महात्मा गांधी राष्ट्रीय ग्रामीण रोजगार गारंटी अधिनियम, 2005 (मनरेगा), स्वच्छ भारत अभियान, शहरी और ग्रामीण आवासन स्कीम, जहां संनिर्मित क्षेत्र एक हजार वर्ग फुट से अधिक है और अवसंरचना संबंधी संनिर्माण में, जिसके अंतर्गत अभिहित औद्योगिक संपदाओं या पार्कों या विशेष आर्थिक जोनों में भवन निर्माण भी है, ऐश आधारित ईंटों या उत्पादों के आज्ञापक उपयोग को सुनिश्चित करेंगे ।

(11) कृषि मंत्रालय कृषि क्रियाकलापों में ऐश के मृदा अनुकूलक के रूप में उपयोग का संवर्धन करने पर विचार कर सकेगा ।"

5. सभी संबद्ध प्राधिकारियों द्वारा उपरोक्त उपबंधों का अनुपालन करने की समयावधि 31 दिसंबर, 2017 है । कोयला या लिग्नाइट आधारित तापीय विद्युत संयंत्र, उनके द्वारा उत्पादित फ्लाई ऐश के 100 प्रतिशत उपयोग के अतिरिक्त उपरोक्त उपबंधों का अनुपालन 31 दिसंबर, 2017 से पूर्व करेंगे ।

[फा. सं. 9-8/2005-एचएसएमडी]

बिश्वनाथ सिन्हा, संयुक्त सचिव

टिप्पण:- मूल अधिसूचना भारत के राजपत्र, असाधारण, भाग II, खंड 3, उप-खंड (ii) में अधिसूचना सं. का.आ. 763(अ), तारीख 14 सितंबर, 1999 द्वारा प्रकाशित की गई थी और इसमें पश्चातवर्ती संशोधन अधिसूचना सं. का.आ. 979(अ), तारीख 27 अगस्त, 2003 और का.आ. 2804(अ), तारीख 3 नवंबर, 2009 द्वारा किए गए थे ।

MINISTRY OF ENVIRONMENT, FORESTS AND CLIMATE CHANGE

NOTIFICATION

New Delhi, the 25th January, 2016

S.O. 254(E).—Whereas a draft of certain amendments to the Government of India in the Ministry of Environment, Forests and Climate Change number S.O. 763(E), dated the 14th September, 1999 (hereinafter referred to as the said notification) which the Central Government proposes to make under sub-section (1) and clause (v) of sub-section (2) of section 3 of the Environment (Protection) Act, 1986 (29 of 1986) read with clause (d) of sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1986, **was** published in the Gazette of India, Extraordinary, Part II, section 3, Sub-section (ii), *vide* S.O. 1396(E), dated the 25th May, 2015 inviting objections and suggestions from all persons likely to be affected thereby before the expiry of sixty days from the date on which copies of the Gazette containing the said draft amendments were made available to the public.

And, whereas copies of the said Gazette were made available to the public on 25th May, 2015;

And, whereas all the objections and suggestions received from all persons likely to be affected thereby in respect of the said draft notification have been duly considered by the Central Government;

Now, therefore, in exercise of the powers conferred by sub-section (1) and clause (v) of sub-section (2) of section 3 of the Environment (Protection) Act, 1986 (29 of 1986) read with clause (d) of sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1986, the Central Government hereby makes the following amendments to the said notification, namely: —

1. In the said notification, in paragraph 1,-

(a) in sub-paragraph 1(A), for the words "hundred kilometers", the words "three hundred kilometers" shall be substituted;

(b) in sub-paragraph (3), for the figures and letters "100 km", the words "three hundred kilometers" shall be substituted;

(c) in sub-paragraph (5), for the words "hundred Kilometers", the words "three hundred Kilometers" shall be substituted;

(d) in sub-paragraph (7), for the words "hundred Kilometers", the words "three hundred Kilometers" shall be substituted.

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2. In the said notification, in paragraph 2:-

(a) after sub-paragraph (1), the following proviso shall be inserted, namely:-

"provided further that the restriction to provide 20 % of dry ESP fly ash free of cost shall not apply to those thermal power plants which are able to utlise 100 % fly ash in the prescribed manner."

(b) after sub-paragraph (7), the following sub-paragraphs shall be inserted, namely:-

"(8) Every coal or lignite based thermal power plants (including captive and or co-generating stations) shall, within three months from the date of notification, upload on their website the details of stock of each type of ash available with them and thereafter shall update the stock position at least once a Month.

(9) Every coal or lignite based thermal power plants shall install dedicated dry ash silos having separate access roads so as to ease the delivery of fly ash.

(10) The cost of transportation of ash for road construction projects or for manufacturing of ash based products or use as soil conditioner in agriculture activity within a radius of hundred kilometers from a coal or lignite based thermal power plant shall be borne by such coal or lignite based thermal power plant and the cost of transportation beyond the radius of hundred kilometers and up to three hundred kilometers shall be shared equally between the user and the coal or lignite based thermal power plant.

(11) The coal or lignite based thermal power plants shall promote, adopt and set up (financial and other associated infrastructure) the ash based product manufacturing facilities within their premises or in the vicinity of their premises so as to reduce the transportation of ash.

(12) The coal or lignite based thermal power plants in the vicinity of the cities shall promote, support and assist in setting up of ash based product manufacturing units so as to meet the requirements of bricks and other building construction materials and also to reduce the transportation.

(13) To ensure that the contractor of road construction utilizes the ash in the road, the Authority concerned for road construction shall link the payment of contractor with the certification of ash supply from the thermal power plants.

(14) The coal or lignite based thermal power plants shall within a radius of three hundred kilometers bear the entire cost of transportation of ash to the site of road construction projects under Pradhan Mantri Gramin Sadak Yojna and asset creation programmes of the Government involving construction of buildings, road, dams and embankments".

3. In the said notification, in paragraph 2, sub-paragraph (2A) be read as sub-paragraph (15) and at the end of the said sub-paragraph, the following sub-paragraph shall be added, namely:-

"and the coal or lignite based thermal power plants located in coastal districts shall support, assist or directly engage into construction of shore line protection measures."

4. In the said notification, in paragraph 3, after sub-paragraph (7), the following shall be inserted, namely:-

"(8) It shall be the responsibility of all State Authorities approving various construction projects to ensure that Memorandum of Understanding or any other arrangement for using fly ash or fly ash based products is made between the thermal power plants and the construction agency or contractors.

(9) The State Authorities shall amend Building Bye Laws of the cities having population One million or more so as to ensure the mandatory use of ash based bricks keeping in view the specifications necessary as per technical requirements for load bearing structures.

(10) The concerned Authority shall ensure mandatory use of ash based bricks or products in all Government Scheme or programmes e.g. Mahatma Gandhi National Rural Employment Guarantee Act, 2005 (MNREGA), SWACHH BHARAT ABIYAN, Urban and Rural Housing Scheme, where built up area is more than 1000 square feet and in infrastructure construction including buildings in designated industrial Estates or Parks or Special Economic Zone.

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28.11.2024 10.53

(11) The Ministry of Agriculture may consider the promotion of ash utilisation in agriculture as soil conditioner."

5. The time period to comply with the above provisions by all concerned authorities is 31st December, 2017. The coal or lignite based thermal power plants shall comply with the above provision in addition to 100 % utilization of fly ash generated by them before 31st December, 2017.

[F. No. 9-8/2005-HSMD]

BISHWANATH SINHA, Jt. Secy.

Note:- The principal notification was published in the Gazette of India, Extraordinary, Part II, section 3, Sub-section (ii) *vide* notification S.O. 763(E), dated the 14th September, 1999 and was subsequently amended *vide* notification S.O. 979(E), dated the 27th August, 2003 and S.O. 2804(E), dated the 3rd November, 2009.

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JHABUA POWER

Ref No. JPL/BD/CERC/2024/01 **27.04.2024**

To
The Secretary
Central Electricity Regulatory Commission
3rd & 4th Floor, Chanderlok Building
36, Janpath,
New Delhi - 110001

Sub: **Regarding payments of fees against Truing up of Tariff for 2019- 24 (5th September'22 to March'24) & Determination of Tariff for FY 2024-29- Jhabua Power Limited -1x600MW (JV of NTPC)**

Reference: **CERC (Payment of Fees) Regulation,2012**

Dear Sir,

Jhabua Power Limited (JPL) 1X600 MW Coal Based Thermal Power Plant situated at village Barela, District –Seoni, M.P. has been taken over by NTPC as a Joint Venture through insolvency process w.e.f 5th September'2022. Post Take-over by NTPC, JPL being CGS needs to file the Tariff Petition for determination of Tariff under Section-62 before Hon'ble CERC.

Accordingly, the following payment of fees is deposited through CERC Portal on 27th April'24 through Netbanking for the following years as per CERC (Payment of Fees) Regulation, 2012:

1.	Payment of Fees for Generation Tariff for FY 2022-23 (5th September'22 to 31st March'23)	Rs. 1504439/-
2.	Payment of Fees for Generation Tariff for FY 2023-24	Rs. 26,40,000
3.	Payment of Fees for Generation Tariff for FY 2024-25	Rs. 26,40,000

Kindly consider the payments for determination of Tariff.

Thanking you,
Yours faithfully,

P Bansal 27/04/24

Roopam Bansal
Sr. Manager (BD& Regulatory)
Jhabua Power Ltd- JV of NTPC Ltd

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Vinod Kumar Jain
28.11.2024 10.53

Form – I

Particulars	
1. Name of the Petitioner/Applicant	Jhabua Power Limited
2. Address of the Petitioner/Applicant	Third Floor, NTPC-EOC Building Sector-24, Plot-8A,Noida-201301
3. Subject Matter	Filing of Truing up of Tariff Petition for FY 2019-24
4. Petition No., if any	
5. Details of generation assets (a) generating station/units (b) Capacity in MW (c) Date of commercial operation (d) Period for which fee paid (e) Amount of fee paid (f) Surcharge, if any	1X600 MW 3rd May 2016 Truing up of Tariff - Fees paid for FY 2022-23 (5th Sept.'22 to 31st March'23)
6. Details of transmission assets (a) Transmission line and sub-stations (b) Date of commercial operation (c) Period for which fee paid (d) Amount of fee paid (g) Surcharge, if any	NA
7. Fee paid for Adoption of tariff for (a) Generation asset (b) Transmission asset	NA
8. Application fee for licence (a) Trading licence (b) Transmission licence (c) Period for which paid (d) Amount of fee paid	NA
9. Fees paid for Miscellaneous Application	NA
10. Fees paid for Interlocutory Application	NA
11. Fee paid for Regulatory Compliance petition	NA
12. Fee paid for Review Application	NA
13. Licence fee for inter-State Trading (a) Category (b) Period (c) Amount of fee paid (d) Surcharge, if any	NA
14. Licence fee for inter-State Transmission (a) Expected/Actual transmission charge (b) Period (c) Amount of fee calculated as a percentage of transmission charge. (d) Surcharge, if any	NA
15. Annual Registration Charge for Power Exchange (a) Period (b) Amount of turnover (c) Fee paid (d) Surcharge, if any	NA
16. Details of fee remitted (a) UTR No. (b) Date of remittance (c) Amount remitted	INB/790196387/CENTRAL ELECTRICITY(PAYU)/ - 27 Apr '24 15,04,439.00
Note: While Sl. Nos. 1 to 3 and 16 are compulsory, the rest may be filled up as applicable	
Signature of the authorized signatory with date	PBansal 29/04/24

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Vinod Kumar Jain
28.11.2024 10.53

Form – I

Particulars	
1. Name of the Petitioner/Applicant	Jhabua Power Limited
2. Address of the Petitioner/Applicant	Third Floor, NTPC-EOC Building Sector-24, Plot-8A,Noida-201301
3. Subject Matter	Filing of Truing up of Tariff Petition for FY 2019-24
4. Petition No., if any	
5. Details of generation assets (a) generating station/units (b) Capacity in MW (c) Date of commercial operation (d) Period for which fee paid (e) Amount of fee paid (f) Surcharge, if any	1X600 MW 3rd May 2016 Truing-up of Tariff for FY 2023-24 Fees paid for FY 2023-24
6. Details of transmission assets (a) Transmission line and sub-stations (b) Date of commercial operation (c) Period for which fee paid (d) Amount of fee paid (g) Surcharge, if any	NA
7. Fee paid for Adoption of tariff for (a) Generation asset (b) Transmission asset	NA
8. Application fee for licence (a) Trading licence (b) Transmission licence (c) Period for which paid (d) Amount of fee paid	NA
9. Fees paid for Miscellaneous Application	NA
10. Fees paid for Interlocutory Application	NA
11. Fee paid for Regulatory Compliance petition	NA
12. Fee paid for Review Application	NA
13. Licence fee for inter-State Trading (a) Category (b) Period (c) Amount of fee paid (d) Surcharge, if any	NA
14. Licence fee for inter-State Transmission (a) Expected/Actual transmission charge (b) Period (c) Amount of fee calculated as a percentage of transmission charge. (d) Surcharge, if any	NA
15. Annual Registration Charge for Power Exchange (a) Period (b) Amount of turnover (c) Fee paid (d) Surcharge, if any	NA
16. Details of fee remitted (a) UTR No. (b) Date of remittance (c) Amount remitted	INB/790247649/CENTRAL ELECTRICITY(PAYU)/ 27th April'24 26,40,000
Note: While Sl. Nos. 1 to 3 and 16 are compulsory, the rest may be filled up as applicable	
Signature of the authorized signatory with date	PBansal 29/4/24

Signature Not Verified
Vinod Kumar Jain
28.11.2024 10.53

Form – I

Particulars	
1. Name of the Petitioner/Applicant	Jhabua Power Limited
2. Address of the Petitioner/Applicant	Third Floor, NTPC-EOC Building Sector-24, Plot-8A,Noida-201301
3. Subject Matter	Filing of Tariff Petition for Determination of Tariff for FY 2024-29
4. Petition No., if any	
5. Details of generation assets (a) generating station/units (b) Capacity in MW (c) Date of commercial operation (d) Period for which fee paid (e) Amount of fee paid (f) Surcharge, if any	1X600 MW 3rd May 2016 Determination of Tariff for FY 2024-25 Fees paid for FY 2024-25
6. Details of transmission assets (a) Transmission line and sub-stations (b) Date of commercial operation (c) Period for which fee paid (d) Amount of fee paid (g) Surcharge, if any	NA
7. Fee paid for Adoption of tariff for (a) Generation asset (b) Transmission asset	NA
8. Application fee for licence (a) Trading licence (b) Transmission licence (c) Period for which paid (d) Amount of fee paid	NA
9. Fees paid for Miscellaneous Application	NA
10. Fees paid for Interlocutory Application	NA
11. Fee paid for Regulatory Compliance petition	NA
12. Fee paid for Review Application	NA
13. Licence fee for inter-State Trading (a) Category (b) Period (c) Amount of fee paid (d) Surcharge, if any	NA
14. Licence fee for inter-State Transmission (a) Expected/Actual transmission charge (b) Period (c) Amount of fee calculated as a percentage of transmission charge. (d) Surcharge, if any	NA
15. Annual Registration Charge for Power Exchange (a) Period (b) Amount of turnover (c) Fee paid (d) Surcharge, if any	NA
16. Details of fee remitted (a) UTR No. (b) Date of remittance (c) Amount remitted	INB/790248961/CENTRAL ELECTRICITY(PAYU)/ 27 Apr '24 26,40,000.00
Note: While Sl. Nos. 1 to 3 and 16 are compulsory, the rest may be filled up as applicable	
Signature of the authorized signatory with date	P Bansal 29/04/24

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