

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 408/GT/2020

Coram:

Shri P.K. Pujari, Chairperson

Shri I.S. Jha, Member

Shri Arun Goyal, Member

Date of Order: 8th January, 2022

In the matter of

Petition for truing-up of tariff for the 2014-19 Tariff Period and for determination of tariff for the 2019-24 Tariff Period in respect of Maithon Right Bank Thermal Power Project (1050 MW) of Maithon Power Limited.

And

In the matter of

Maithon Power Limited,
Jeevan Bharti, 10th Floor, Tower-I,
124, Connaught Circus,
New Delhi-110001

.....Petitioner

Vs

1. Tata Power Delhi Distribution Limited,
33 kV Sub-station, Kingsway Camp,
Delhi –110 009
2. Damodar Valley Corporation,
DVC Towers, VIP Road,
Kolkata-700 054
3. Kerala State Electricity Board Limited,
Vidyuthi Bhawan, Pattom,
Thiruvananthapuram – 695 004
4. West Bengal State Electricity Distribution Company Limited,
Bidyut Bhawan (8th Floor), Block-DJ, Sector-II, Salt Lake,
Kolkata-700 091
5. Tata Power Trading Company Limited,
Corporate Centre, 'A' Block,
34, Sant Tukaram Road, Carnac Bunder,
Mumbai 400 006

....Respondents



Parties present:

Shri Venkatesh, Advocate, MPL
Ms. Nishtha Kumar, Advocate, MPL
Shri Pankaj Prakash, MPL

ORDER

The Petitioner, Maithon Power Ltd (in short 'MPL') is a public limited company incorporated on 26.7.2000 under the provisions of the Companies Act, 1956. MPL is a joint venture between Tata Power Trading Company Ltd. (TPTCL) with an equity participation of 74% and Damodar Valley Corporation (DVC) with an equity participation of the remaining 26%. Maithon Right Bank Power Project (1050 MW) (hereinafter referred to as 'the generating station') of the Petitioner is situated in the Dhanbad District of the State of Jharkhand and is envisaged as a Mega Power Project in terms of the Ministry of Finance, Govt. of India Notification No. 63/99 dated 13.5.1999 and Notification no.100/99-Customs dated 28.7.1999. The actual date of commercial operation (COD) of Unit-I of the generating station is 1.9.2011 and the COD of Unit-II/generating station is 24.7.2012.

Background

2. Petition No. 274/2010 was filed by the Petitioner for determination of tariff of the generating station from COD of Unit-I (1.9.2011) and Unit-II (24.7.2012) till 31.3.2014 and the Commission vide its order dated 19.11.2014 determined the tariff for the said period, based on the capital cost of Rs.244839 lakh (as on 1.9.2011) and Rs.137002 lakh (as on 24.7.2012). Against this order dated 19.11.2014, the Petitioner filed Appeal No. 48/2015 before the Appellate Tribunal for Electricity (APTEL) and the same was disposed of by judgment dated 10.5.2016. Against this judgment, the Petitioner filed Review Petition (RP No. 16/2016) before APTEL and by order dated 10.10.2017, the APTEL upheld its judgment dated 10.5.2016 in



Appeal No.48/2015. During the pendency of the said appeal, Petition No. 152/GT/2015 was filed by the Petitioner for truing-up of tariff for the 2009-14 tariff period and for determination of tariff of the generating station for the 2014-19 tariff period. Meanwhile, Petition No. 72/MP/2016 was also filed by the Petitioner seeking in-principle approval of the “Abstract Schemes” of capital expenditure in compliance with Environment (Protection) Amendment Rules, 2015 issued by the Ministry of Environment, Forest and Climate Change (in short ‘MOEF & CC’) dated 7.12.2015 and the Commission vide its order dated 20.3.2017 in Petition No. 72/MP/2016 disposed of the same as under:

“10. Since, the 2014 Tariff Regulations do not provide for the grant of in-principle approval for the capital expenditure, the prayer of the petitioner for in-principle approval of the Abstract scheme of capital expenditure by relaxing the provisions of the tariff regulations through invoking Regulation 54 of 2014 Tariff Regulations, is not maintainable. In our view, since, the implementation of new norms in the existing and under construction thermal generating stations would require modification of their existing system and installation of new systems such as Retro-fitting of additional fields in ESP/replacement of ESP, etc. to meet Suspended Particulate Matter norms, installation of FGD system to control SOx and Selective Catalytic Reduction (SCR) systems for DeNox, the petitioner is directed to approach the Central Electricity Authority to decide specific optimum technology, associated cost and major issues to be faced in installation of different system like SCR, etc. The petitioner is also directed to take up the matter with the Ministry of Environment and Forest for phasing of the implementation of the different environmental measures. Accordingly, the petitioner is granted liberty to file appropriate petition at an appropriate stage based on approval of CEA and direction of MoEF which shall be dealt with in accordance with law.”

3. Subsequently, the Commission by order dated 26.12.2017 in Petition No.152/GT/2015, trued up the tariff of the generating station for the 2009-14 tariff period and determined tariff for the 2014-19 tariff period. In the said order, an amount of Rs.160 crore towards Liquidated Damages (LD) was deducted from the capital cost, till such time the Petitioner furnished details of LD settlement. Against this order, the Petitioner filed Review Petition (Petition No.16/RP/2018) on the following issues:

“a) Disallowance of 1% of additional interest rate for computing the Interest During Construction and Interest on Loan for the period 2011-14 to recover fully the interest cost with actual weighted average;



- b) *Weighted average depreciation rate for the entire generating station as shown in Form-11 and accordingly, revise the depreciation on the fixed assets for the period 2014 -19 and grant consequential relief;*
- c) *Billing as 'on received' basis at unloading point through hydraulic augur or manually;*
- d) *Allow ash disposal expenses for the period 2014-19; and*
- e) *Non-consideration of reimbursement of refinancing cost and financing charges.”*

4. Thereafter, the Commission vide its order dated 25.4.2019, disposed of the review petition (Petition No.16/RP/2018) rejecting the prayer (a) above, while allowing the other prayers (b) to (e) above. However, while allowing prayers (b) and (d), the Commission in the said order dated 25.4.2019 observed that these issues would be considered at the time of truing-up of tariff for the 2014-19 tariff period. Subsequently, by corrigendum order dated 25.4.2019, certain clerical errors in Commission's order dated 25.4.2019 in Petition No.16/RP/2018 were corrected. Against the Commission's order dated 25.4.2019 in Petition No.16/RP/2018, the Petitioner has filed appeal (Appeal No. 405/2019) before APTEL and the same is pending.

5. The Petitioner had also filed Petition No. 285/MP/2018 for inclusion of LD amount of Rs.160 crore deducted from the capital cost (*in terms of Commission's order dated 26.12.2017 in Petition No. 152/GT/2015*) and for re-computation of tariff for the tariff periods 2009-14 and 2014-19 and the Commission by order dated 17.7.2019 disposed of the same, as under:

“22. In view of the above, the total expected LD amount of `160 crore which was deducted from the capital cost vide Commission's order dated 26.12.2017 in Petition No. 152/GT/2015 is allowed to be included in the capital cost of the generating station. Consequently, the impact due to inclusion of the said LD amount in the capital cost shall be worked out and tariff of the generating station for the period 2011-14 and 2014-19 shall be revised by a separate order in Petition No. 152/GT/2015. We decide accordingly”



6. In terms of the above order, the Commission vide its order dated 1.10.2019 in Petition No.152/GT/2015, revised the annual fixed charges of the generating station for the 2009-14 and 2014-19 tariff periods, as under:

For the 2009-14 tariff period

	<i>(Rs. in lakh)</i>			
	1.9.2011 to 31.3.2012	1.4.2012 to 23.7.2012	24.7.2012 to 31.3.2013	1.4.2013 to 31.3.2014
Return on Equity	6638.57	3562.77	12522.21	24504.50
Interest on Loan	11406.46	6432.76	22039.39	32976.10
Depreciation	7410.76	3977.19	14071.72	21765.36
Interest on Working Capital	2551.51	1380.28	5848.12	8757.88
O&M Expenses	4439.39	2518.62	11090.76	17052.00
Cost of secondary fuel oil	1213.41	651.21	2641.17	3840.74
Total	33660.10	18522.83	68213.37	108896.58

For the 2014-19 tariff period

	<i>(Rs. in lakh)</i>				
	2014-15	2015-16	2016-17	2017-18	2018-19
Return on Equity	26206.98	27372.03	27641.49	27641.49	27641.49
Interest on Loan	30577.17	29802.87	27474.08	24608.99	21340.09
Depreciation	16024.29	21522.66	23943.11	24142.40	30720.24
Interest on Working Capital	8599.88	8809.52	8879.48	9032.77	9187.93
O&M Expenses	17746.18	18807.18	19930.18	21127.18	22398.18
Total	99154.50	106314.26	107868.34	106552.83	111287.93

7. Thereafter, the Petitioner, based on the response of CEA and MOEF&CC and in terms of the liberty granted by the order dated 20.3.2017 in Petition No. 72/MP/2016 (refer paragraph 2 above), filed Petition No.152/MP/2019, seeking amongst others, a declaration that the MOEF&CC Notification dated 7.12.2015 and its letter dated 11.12.2017 are 'change in law' events and also for the grant of 'in-principle' approval of the expenditure towards installation of FGD system for meeting the revised emission norms of SO₂. By order dated 11.11.2019, the Commission disposed of prayers (a) to (h) in Petition No.152/MP/2019 as extracted below:

“16.....Considering the fact that the expenditure shall be incurred during next tariff period commencing from 1.4.2019, prayer of the petitioner is to be dealt under the provisions of 2019, Tariff Regulations pertaining to additional capital expenditure. As per



Regulation 29 of 2019, Tariff Regulations, the additional capital expenditure to be incurred on account of revised emission standards has been recognized separately. In light of the above explicit Regulation pertaining to the additional capital expenditure on new environment standards, it is not required to invoke the provision of Change in Law as per the 2019, Tariff Regulations. Accordingly, prayer (b) of the petitioner disposed in terms of above

..The petitioner has already informed the beneficiaries about the estimated expenditure which exceeds the limit of Rs.100 crore specified under the Regulation. As such, the proposed expenditure on FGD is squarely covered within the Regulation 11 of the 2019 Tariff Regulations. Accordingly, it is held that proposed expenditure qualifies for the In-principle approval, subject to further scrutiny of the proposed expenditure

29. In view of the above, the Commission accords In-principle approval to the petitioner for following cost:

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The Commission allows the petitioner to claim IDC, IEDC, Taxes and opportunity cost at actuals which may be allowed after prudence check in accordance with the 2019, Tariff Regulations.

30. Accordingly, prayer (c) and (d) of the petitioner are disposed in terms of above

35. The norms for additional O&M expenses would be finalized by CERC. Accordingly, the claim of the petitioner for allowing O&M expenditure is not being considered at this stage. We direct the petitioner to submit the O&M expenses relating to FGD system on actual basis at the time of filling the petition for determination of tariff on commissioning of the FGD system.

38. As regards the exclusion of the shutdown period for calculation of availability for recovery of fixed charges, Commission has already taken a view that the generator in consultation with beneficiaries would plan to synchronize the interconnection of FGD with the annual overhaul so as to minimize the additional downtime required for FGD interconnection. Accordingly, Petitioner is directed to schedule the shutdown period prudently to avoid the impact on availability. However, if shutdown period for FGD integration exceeds the period of annual overhauling, the petitioner has liberty to claim the same at the time of tariff determination. Accordingly, prayer (e) and (f) of the petitioner is disposed in terms of above.

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40. As per Clause (2) of the Regulation 14 of the 2019 Tariff Regulations, the Commission has already specified the regulatory framework for determination of supplementary tariff inter-alia provides supplementary capacity charges and supplementary energy charges. This regulation is effective for 2019-24 tariff period. The Commission will determine this supplementary tariff on submission of application by the petitioner after installation of FGD. As such, state/beneficiaries may decide merit order dispatch while scheduling the plants. Accordingly, prayer (g) of the petitioner is disposed in terms of above.

41.....Further, in Petition no. 92/MP/2015 dated 08.03.2019, the Commission has clarified as under:

“xxxxx

In view of the above, the Petitioner may seek appropriate remedy in case the Petitioner relinquishes LTA due to additional APC. Accordingly, prayer (h) of the petitioner is disposed in terms of above.”



8. It is noticed that the opening capital cost of Rs.432039.88 lakh claimed by the Petitioner as on 1.4.2014 is at variance with the capital cost of Rs.432490.69 lakh as allowed vide order dated 1.10.2019 in Petition No. 152/GT/2015. In this regard, the Petitioner has clarified as under:

“Capital cost of ₹432490.69 lakh as on 1.4.2014 in order dated 26.12.2017 was approved based on admitted capital cost of 31.3.2014 in true up of tariff for 2009-14 tariff period. However, while reporting de-capitalization of assets during the 2012-13 and 2013-14 in the true-up of tariff for 2009-14, the Petitioner had inadvertently missed to exclude small de-capitalizations towards few minor assets. This omission of de-capitalization is worked out by the Petitioner as ₹450.81 lakh and is corrected in the opening value of 2014-15 i.e. (₹432490.69 lakh – 450.81 lakh) for the purpose of Tariff determination.”

9. Admittedly, the capital cost of Rs.432490.69 lakh as on 31.3.2014 (the same capital cost was considered as opening capital cost as on 1.4.2014 for determination of tariff for the 2014-19 tariff period), approved vide order dated 1.10.2019 in Petition No.152/GT2015, is without considering the de-capitalization of certain amounts for 2012-13 and 2013-14, which the Petitioner had failed to furnish at the time of truing up of tariff for the 2009-14 tariff period. Since the Petitioner, in the present petition, has submitted that there is de-capitalization of Rs.450.81 lakh for 2012-13 and 2013-14, the opening capital cost for the 2014-19 period stands revised to Rs.432039.88 lakh as on 31.3.2014, instead of Rs.432490.69 lakh as approved vide order dated 1.10.2019 in Petition No. 152/GT/2015. Here, we would like to point out that even though tariff for the 2009-14 tariff period has been trued up earlier for the generating station, the downward revision (on account of decapitalization of Rs. 450.81 lakh) in the capital cost is allowed, keeping in view the interest of consumers and tariff is modified accordingly.

Tariff for the 2009-14 tariff period

10. As discussed above, the de-capitalization of Rs.450.81 lakh for 2012-13 and 2013-14 has been allowed and based on the downward revision in capital cost, the



annual fixed charges for the period from 1.9.2011 to 31.3.2014 in order dated 1.10.2019 in Petition No.152/GT/2015 stands modified as under:

	<i>(Rs. in lakh)</i>			
	1.9.2011 to 31.3.2012	1.4.2012 to 23.7.2012	24.7.2012 to 31.3.2013	2013-14
Total annual fixed charges allowed in order dated 1.10.2019	33660.10	18522.83	68213.37	108896.58
Total annual fixed charges allowed in this order	33660.10	18522.83	68199.83	108896.58

11. The difference between the annual fixed charges recovered by the Petitioner in terms of the order dated 26.12.2017 read with order dated 1.10.2019 in Petition No.152/GT/2015 and the annual fixed charges determined by this order shall be adjusted in terms of Regulation 6(4) of the 2009 Tariff Regulations.

TARIFF FOR THE 2014-19 TARIFF PERIOD (PRESENT PETITION)

12. The present petition has been filed by the Petitioner for truing-up of tariff of the generating station for the 2014-19 tariff period, in terms of Regulation 8 of the 2014 Tariff Regulations and for determination of tariff of the generating station for the 2019-24 tariff period, in accordance with the provisions of the 2019 Tariff Regulations. We proceed to examine the claims of the Petitioner in the present petition as stated in the subsequent paragraphs.

13. The capital cost allowed vide order dated 1.10.2019 in Petition No. 152/GT/2015 for the 2014-19 tariff period is as under:

Capital cost allowed

	<i>(Rs. in lakh)</i>				
	2014-15	2015-16	2016-17	2017-18	2018-19
Opening Gross Block	432490.69	458448.69	467564.69	467564.69	467564.69
Addition due to Projected additional capitalization	25958.00	9116.00	0.00	0.00	0.00
Closing Gross Block	458448.69	467564.69	467564.69	467564.69	467564.69



14. The capital cost and the annual fixed charges claimed by the Petitioner for the 2014-19 tariff period are as under:

Capital Cost claimed

	<i>(Rs. in lakh)</i>				
	2014-15	2015-16	2016-17	2017-18	2018-19
Opening Capital Cost	432039.88	465178.28	480597.95	481368.32	483304.48
Add: Additions during the year/ period	34679.91	14992.72	1029.48	2213.78	4380.74
Less: De-capitalisation during the year/ period	(-) 3214.56	(-) 131.14	(-) 69.61	(-) 132.63	(-) 81.37
Add: Un-discharged liability as on 1 st April of each year	4980.50	391.10	71.94	179.30	0.00
Less: Un-discharged liability as on end of each year	391.10	71.94	179.30	0.00	0.00
Cash Capitalization towards land	(-) 5506.76	0.00	0.00	0.00	0.00
Add: Normative IDC on Excess Equity	62.39	199.52	41.00	192.37	429.04
Less: De-capitalisation not performed in books	0.00	96.56	192.54	717.48	350.46
Add: Normative IDC on actual loan	2672.02	485.50	69.39	200.82	230.48
Less: IDC Capitalised in Books excluding Railways	144.00	349.53	0.00	0.00	0.00
Total Capitalisation	33138.39	15419.68	770.36	1936.17	4608.43
Closing Capital Cost	465178.28	480597.95	481368.32	483304.48	487912.91

Annual Fixed Charges claimed

	<i>(Rs. in lakh)</i>				
	2014-15	2015-16	2016-17	2017-18	2018-19
Depreciation	22643.97	23503.18	23832.01	24111.09	24114.97
Interest on Loan	32595.27	31716.69	27954.98	25045.86	21526.68
Return on Equity	26392.44	27955.58	28434.13	28514.13	28783.32
Interest on Working Capital	8599.88	8809.52	8879.48	9032.78	9187.93
O&M Expenses	17846.53	18932.63	20092.92	21275.50	22443.24
Other O&M expense (Ash disposal)	6098.44	3791.36	3647.73	3320.87	3340.46
Additional Tax due to Change in law	0.00	0.00	49.06	49.06	49.67
Total	114176.53	114708.95	112890.30	111349.28	109446.27

15. The Respondent No.3, Kerala State Electricity Board Limited (KSEBL) has filed its reply vide affidavit dated 17.6.2020 and the Petitioner has filed its rejoinder to



the said reply vide affidavit dated 24.7.2020. The matter was heard on 2.6.2020 and the Commission vide Record of the Proceedings (ROP) directed the Petitioner to submit certain additional information and reserved its order. In response, the Petitioner vide affidavit dated 3.7.2020 has filed the additional information and has served copies of the same on the Respondents. Taking into consideration the submissions of the parties and the documents available on record, we examine the claims of the Petitioner for the 2014-19 tariff period, on prudence check, as stated in the subsequent paragraphs.

Capital Cost

16. Regulation 9(3) of the 2014 Tariff Regulations provides as under:

“9 (3) The Capital cost of an existing project shall include the following:

- (a) the capital cost admitted by the Commission prior to 1.4.2014 duly trued up by excluding liability, if any, as on 1.4.2014;*
- (b) additional capitalization and de-capitalization for the respective year of tariff as determined in accordance with Regulation 14; and*
- (c) expenditure on account of renovation and modernization as admitted by this Commission in accordance with Regulation 15.”*

17. We have, in paragraph 9 of this order, allowed the revision of the capital cost of the generating station to Rs.432039.88 lakh as on 31.3.2014, after considering the de-capitalization of certain amounts by the Petitioner for 2012-13 and 2013-14. Accordingly, in terms of Regulation 9(3)(a) of the 2014 Tariff Regulations, the closing capital cost of Rs.432039.88 lakh as on 31.3.2014, has been considered as the opening capital cost as on 1.4.2014.

Additional Capital Expenditure

18. Regulations 14(1) and 14(3) of the 2014 Tariff Regulations provide as under:

“14. Additional capitalization and De-capitalization:

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



- (i) *Un-discharged liabilities recognized to be payable at a future date;*
- (ii) *Works deferred for execution;*
- (iii) *Procurement of initial capital spares within the original scope of work, in accordance with the provisions of Regulation 13;*
- (iv) *Liabilities to meet award of arbitration or for compliance of the order or decree of a court of law; and*
- (v) *Change in law or compliance of any existing law:*

Provided that the details of works asset wise/work wise included in the original scope of work along with estimates of expenditure, liabilities recognized to be payable at a future date and the works deferred for execution shall be submitted along with the application for determination of tariff

(2) xxxx

(3) *The capital expenditure, in respect of existing generating station or the transmission system including communication system, incurred or projected to be incurred on the following counts 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 order or decree of a court of law;*
- (ii) *Change in law or compliance of any existing law;*
- (iii) *Any expenses to be incurred on account of need for higher security and safety of the plant as advised or directed by appropriate Government Agencies of statutory authorities responsible for national security/internal security;*
- (iv) *Deferred works relating to ash pond or ash handling system in the original scope of work;*
- (v) *Any liability for works executed prior to the cut-off date, after prudence check of the details of such un-discharged liability, total estimated cost of package, reasons for such withholding of payment and release of such payments etc.;*
- (vi) *Any liability for works admitted by the Commission after the cut-off date to the extent of discharge of such liabilities by actual payments;*
- (vii) *Any additional capital expenditure which has become necessary for efficient operation of generating station other than coal/lignite based stations or transmission system as the case may be. The claim shall be substantiated with the technical justification duly supported by the documentary evidence like test results carried out by an independent agency in case of deterioration of assets, report of an independent agency in case of damage caused by natural calamities, obsolescence of technology, up-gradation of capacity for the technical reason such as increase in fault level;*
- (viii) *In case of hydro generating stations, any expenditure which has become necessary on account of damage caused by natural calamities (but not due to flooding of power house attributable to the negligence of the generating company) and due to geological reasons after adjusting the proceeds from any insurance scheme, and expenditure incurred due to any additional work which has become necessary for successful and efficient plant operation;*
- (ix) *In case of transmission system, any additional expenditure on items such as relays, control and instrumentation, computer system, power line carrier communication, DC batteries, replacement due to obsolescence of technology, replacement of switchyard equipment due to increase of fault level, tower strengthening, communication equipment, emergency restoration system, insulators cleaning infrastructure, replacement of porcelain insulator with polymer insulators,*



replacement of damaged equipment not covered by insurance and any other expenditure which has become necessary for successful and efficient operation of transmission system; and

(x) Any capital expenditure found justified after prudence check necessitated on account of modifications required or done in fuel receiving system arising due to non-materialization of coal supply corresponding to fullcoal linkage in respect of thermal generating station as result of circumstances not within the control of the generating station:

Provided that any expenditure on acquiring the minor items or the assets including tools and tackles, furniture, air-conditioners, voltage stabilizers, refrigerators, coolers, computers, fans, washing machines, heat convectors, mattresses, carpets etc. brought after the cut-off date shall not be considered for additional capitalization for determination of tariff w.e.f. 1.4.2014:

Provided further that any capital expenditure other than that of the nature specified above in (i) to (iv) in case of coal/lignite based station shall be met out of compensation allowance:

Provided also that if any expenditure has been claimed under Renovation and Modernization (R&M), repairs and maintenance under (O&M) expenses and Compensation Allowance, same expenditure cannot be claimed under this regulation.

(4) In case of de-capitalization of assets of a generating company or the transmission licensee, as the case may be, the original cost of such asset as on the date of de-capitalization shall be deducted from the value of gross fixed asset and corresponding loan as well as equity shall be deducted from outstanding loan and the equity respectively in the year such de-capitalization takes place, duly taking into consideration the year in which it was capitalized.”

19. The projected additional capital expenditure allowed vide order dated 26.12.2017 in Petition No. 152/GT/2015 is as under:

(Rs.in lakh)

Sl. No	Package Name	2014-15	2015-16	2016-17	2017-18	2018-19
1	BTG Package- Station	(-) 416.00	0.00	0.00	0.00	0.00
2	Cost of Land & Site	19505.00	0.00	0.00	0.00	0.00
3	General Civil Works (GCW)	9793.00	0.00	0.00	0.00	0.00
4	Plant Water System (PWS)	214.00	0.00	0.00	0.00	0.00
5	Ash Handling System (AHS)	(-) 413.00	716.00	0.00	0.00	0.00
6	Coal Handling System	(-) 502.00	0.00	0.00	0.00	0.00
7	Reverse Osmosis (RO)System	0.00	8400.00	0.00	0.00	0.00
8	BOP Electrical	45.00	0.00	0.00	0.00	0.00
9	Township & Colony	57.00	0.00	0.00	0.00	0.00
10	Design, Engineering & Project Management	787.00	0.00	0.00	0.00	0.00
11	Pre-Operative Expenses	1836.00	0.00	0.00	0.00	0.00
12	IT System for Software	414.00	0.00	0.00	0.00	0.00
13	Interest During Construction	145.00	-	0.00	0.00	0.00
	Total (on net basis) including de-capitalization	31465.00	9116.00	0.00	0.00	0.00
14	Cash expenses towards land	(-) 5507.00	0.00	0.00	0.00	0.00
	Total additional capital expenditure (projected)	25958.00	9116.00	0.00	0.00	0.00



20. The Petitioner was directed by the said order dated 26.12.2017 in Petition No. 152/GT/2015 to furnish the calculation of IDC along with basis of IDC allocation towards additional capital expenditure and the reconciliation of the same with books of accounts.

21. The Petitioner in Form 9Bi and Form-9C of the petition, has furnished the position of additional capitalization and de-capitalization as per books of accounts as under:

(Rs. in lakh)

	2014-15	2015-16	2016-17	2017-18	2018-19
Additional capitalization as per books (a)	34679.91	14992.72	1087.48	2267.78	4390.74
Less: Exclusions (items not allowable / not claimed)	0.00	0.00	58.34	53.53	10.44
Additional capitalization claimed	34679.91	14992.72	1029.14	2214.25	4380.30
De-capitalization as per books of accounts	3214.56	131.14	69.61	132.63	81.37

2014-15

22. The additional capitalisation of Rs.31465.35 lakh (*after adjustment of the de-capitalisation of Rs.3214.56 lakh*) claimed in 2014-15 *vis-a-vis* the projected additional capitalisation allowed in 2014-15 vide order dated 26.12.2017 in Petition No. 152/GT/2015 are as under:

(Rs in lakh)

Head of Work/Equipment	Projected additional capitalization allowed vide Commission's order dated 26.12.2017 in Petition No.152/GT/2015	Additional capital expenditure claimed in this petition
Ash Handling System (AHS)	(-) 413.00	48.65
BOP	45.00	18.21
BTG Package – Station	(-) 416.00	730.69
Coal Handling System (CHS)	(-)502.00	1042.53
Cost of Land & Site	19505.00	21142.23
General Civil Works	9793.00	10577.92
IT System for Software	414.00	457.52
Plant Water System	214.00	252.36
Pre-Operative expenses	1836.00	207.87
Design, Engineering & Project Management	787.00	0.00
Township & Colony	57.00	57.12



Interest During Construction (General Civil Works)	145.00	144.82
Total additions (a)	31465.00	34679.91
De-capitalization (b)	(included in the above)	3214.56
Total (c)=(a)-(b)	31465.00	31465.35

23. The de-capitalization of Rs.3214.56 lakh claimed as aforesaid, includes the de-capitalization of Rs.1147.14 lakh for 'Generator Transformer', de-capitalization of Rs.1550.00 lakh corresponding to adjustment in 'Coal Handling System' and de-capitalization of Rs.462.07 lakh corresponding to adjustment on account of LD adjustment in 'Ash Handling System'.

24. The Petitioner has submitted that the actual additional capital expenditure incurred for 2014-15 is in respect of assets which form part of the original scope of work of the project and is up to the cut-off date of the generating station. COD of the generating station is 24.7.2012 and, accordingly, the cut-off date of the generating station, in terms of the 2009 Tariff Regulations is 31.3.2015. It is observed that the claim of the Petitioner for net additional capital expenditure of Rs.31465.35 lakh in 2014-15 (after adjustment of de-capitalization) is against the net projected additional capital expenditure of Rs.31465.00 lakh allowed vide order dated 26.12.2017 in Petition No. 152/GT/2015. Since the additional capitalisation claimed is in respect of assets which form part of the original scope of work of the project and is up to the cut-off date, the net additional capital expenditure of Rs.31464.35 lakh (Rs.34679.91 lakh-3214.56 lakh) is allowed in 2014-15 in terms of Regulation 14(1)(ii) of the 2014 Tariff Regulations.

2015-19

25. In Petition No.152/GT/2015, the Petitioner had claimed projected additional capital expenditure in respect of certain assets/ works, which form part of the original scope of work of the project, namely, Railway System, Township & Colony, General



Civil Works, Reverse Osmosis plant, Ash Conveying Pipeline, Ash Handling System, Coal Handling System, BOP Electrical, BTG Package, Design Engineering and Project Management, Pre-operative Expenses and Additional Spares during the period 2015-18 with a prayer for extension of cut-off date of the generating station till 31.3.2019, due to the delay in execution of these works. Though the prayer of the Petitioner for extension of cut-off date of the generating station till 31.3.2019 was rejected by order dated 26.12.2017, the Commission had allowed the projected additional capitalization in 2015-16 only towards works namely, RO system and Ash Handling System, subject to the Petitioner furnishing certain additional information at the time of truing-up of tariff of the generating station. However, in respect of other assets/ works like Railway System, Township & Colony, General Civil Works and Ash Conveying Pipeline, the projected additional capitalization for the period 2015-18 was disallowed, but liberty was granted to the Petitioner to approach the Commission for additional capitalization, based on the actual expenditure incurred and in accordance with the provisions of the applicable Tariff Regulations. The relevant portions of the order dated 26.12.2017 is extracted hereunder:

Railway System, Township & Colony, General Civil Works

“91..In view of this submission and considering the fact that capitalization of projected additional expenditure of these assets/ expenditure before 31.3.2019 is uncertain, the consideration of the prayer of the petitioner for extension of cut-off date of the generating station till 31.3.2019 would not serve any useful purpose. In this background, the prayer of the petitioner for projected capitalization of the expenditure is not allowed. However, the petitioner is granted liberty to approach the Commission for additional capitalization based on the actual expenditure incurred for these assets and the same will be considered after due diligence and prudence as per the regulation in vogue at that time. In view of this, the projected additional capitalization claimed in respect of Railways System (`31100.00 lakh in 2016-17 and `9400.00 lakh in 2017-18), Township & Colony (`2000.00 lakh in 2015-16, `3000.00 lakh in 2016-17 and `1442.00 lakh in 2017-18) and General Civil Works for `6255.00 lakh in 2015-16 has not been allowed at this stage.”

Ash Conveying Pipeline

“95...In view of this Submission and considering the fact that the capitalization of projected additional expenditure of the asset/ expenditure before 31.3.2019 is uncertain, the consideration of the prayer of the petitioner for extension of cut-off date of the generating station till 31.3.2019 would not serve any useful purpose. In this background, the prayer of the petitioner for projected capitalization of the expenditure is not allowed. However, the



petitioner is granted liberty to approach the Commission for additional capitalization based on the actual expenditure incurred for the asset and the same will be considered in accordance with the provisions of the Tariff Regulations applicable. Based on this, the projected additional capitalization claimed of `11200.00 lakh in 2017-18 in respect of Ash Conveying Pipeline has not been allowed.”

Reverse Osmosis system

100.....Considering the fact that the expenditure incurred during 2015-16 is in compliance with the directions of JSPCB mandating the installation of the RO system, we allow the claim of the petitioner under Regulation 14(2)(ii) of the 2014 Tariff Regulations. This is however subject to the petitioner filing certain additional information on affidavit namely the (i) audited actual expenditure incurred for the asset (ii) LD amount, if any, recovered from the contractor (iii) reasons for delay including IDC, if any; (iv) Cost-benefit analysis and (v) technical capacity assessment at the time of truing-up of tariff of the generating station in terms of Regulation 8 of the 2014 Tariff Regulations”

Ash Handling System

102.....It is however noticed that the work of „Ash handling system“ is continuous in nature and the said work which is included in the original scope of work of the project is being carried out in phases, during the life time of the project. In this background, we are inclined to allow the claim of the petitioner under this head in terms of Regulation 14(3)(iv) of the 2014 Tariff Regulations. This is however subject to the petitioner submitting relevant details regarding the work executed, at the time of truing-up of tariff, in terms of Regulation 8 of the 2014 Tariff Regulations”

26. Also, the Petitioner, in the Petition No.152/GT/2015, had claimed projected additional capital expenditure during 2014-19 in respect of ‘Other assets/works’ which were not part of the original scope of work of project, namely, Building and Civil Engineering works, Transformer and Sub-station equipment, Plant & Machinery, Other Assets-Unclassified and IT Equipment. The Commission, while disallowing such claims in its order dated 26.12.2017, granted liberty to the Petitioner to approach the Commission at the time of truing-up of tariff with detailed justification, including the provisions of the relevant regulations under which the said expenditure was claimed. The Commission held as under:

“110. It is observed that petitioner has not filed any details regarding the break-up of the “Plant and Machinery” Building & Civil works” and “Other un-classified assets” along with justification and the relevant provisions of the regulations under which each asset/work has been claimed for 2014-19. In this background, we are not inclined to allow the projected additional capital expenditure in respect of items/assets which are not in the original scope of work as shown in the above table. However, the petitioner is granted liberty to approach the Commission at the time of truing-up of tariff along with the detailed justification and the provisions of relevant regulations under which the expenditure has been claimed”.



27. In this background, the additional capital expenditure claimed by the Petitioner in the present petition, for the period 2015-19, are summarized below:

<i>(Rs. in lakh)</i>				
Assets/Works	2015-16	2016-17	2017-18	2018-19
Reverse Osmosis (RO) System	7798.20	(-) 28.04	57.38	-
IDC- RO system	349.53	-	-	-
Ash Handling System (AHS)	26.23	-	-	-
Balance of Plant (BOP)	445.57	5.82	-	-
BTG	837.40	1.78	-	-
Spare GT	846.76	35.73	-	-
Coal Handling System (spares)	367.53	-	-	-
Cost of Land and Site	69.98	0.40	-	2112.86
General Civil Works	791.99	184.39	154.47	147.49
Railway System	2412.62	-	-	-
IDC- Railway System	448.94	-	-	-
Town Ship & Colony	43.38	-	-	-
New Schemes	554.59	829.06	2002.40	2119.96
Total additional capital expenditure claimed	14992.72	1029.14	2214.25	4380.30
De-capitalization	131.14	69.61	132.63	81.37
Net additional capital expenditure claimed	14861.58	959.53	2081.62	4298.93

28. The Petitioner has submitted that the capitalization of these packages that form part of the original scope of work of the project could not be completed till the cut-off date (31.3.2015) on account of various factors which were beyond the control of the Petitioner and due to 'Force Majeure' reasons. The Petitioner has also submitted that after the cut-off date, most of the project packages were completed in 2015-16, except for Railway System, General Civil Works (GCW) and Land & Site, which are expected to be completed by end of 2020-21 i.e. by 31.3.2021. However, some assets in these packages have been put to use during the 2014-19 tariff period and, accordingly, part capitalization of these packages falls in the said period and the balance within the 2019-24 tariff period. The Petitioner has added that in majority of cases where additional capitalization within the original scope of work of the project has been delayed beyond the cut-off date (31.3.2015), the same has been on account of reasons beyond the control of the Petitioner. The Petitioner has, therefore, submitted that in respect of the additional capitalization during the period



2015-19, the Commission may exercise its power under Regulation 3(25) read with Regulation 8(3) and Regulation 54 of the 2014 Tariff Regulations (Power to relax) to consider the delays faced by the Petitioner due to 'Force Majeure' events and to approve the additional capitalization, within the original scope of work. In addition to this, the Petitioner has submitted that as the generating company is not entitled to Compensation Allowance as per Regulation 17 of the 2014 Tariff Regulations, funds for minor capital assets for construction or procurement under the said allowance was not available to the Petitioner. Therefore, for such expenditure on capital assets, the Petitioner has sought invocation of Regulation 54 of the 2014 Tariff Regulations (Power to relax) for consideration of such additional capital expenditure in terms of Regulation 8(3) and Regulation 14(3) read with the principles laid down under Section 61 of the Electricity Act, 2003.

29. The Respondent, KSEBL has submitted that Regulation 14 of the 2014 Tariff Regulations allows additional capitalization limited to works within the original scope of work of the project. It has also stated that the additional capital expenditure claimed in respect of assets/ works beyond the original scope of work, such as Fire tender with shed & fixed foam system, NABL accredited lab, Yard sprinkling and fire detection system in CHP, Re-heater modification & MTM installation, Coal pit run-off mechanised drainage system & segregation of storm water, Power supply redundancy and re-arrangement at BOP area, Gate house near junction tower & E-security system, Replacement of IT Equipment, Labour Colony, Augmentation of store area and MAX DCS Version up-gradation, do not fall within the scope of 'Change in law' and these claims ought to be carried out from the O&M expenses allowed to the generating station in terms of the 2014 Tariff Regulations. Based on the submissions of the parties.

