

purpose of COD, the procurement of most of these items was initiated prior to the cut-off date from M/s BHEL, but their procurement was concluded in 2015-16. Accordingly, the Petitioner has submitted that the additional capital expenditure falls within the scope and ambit of Regulation 54 read with Regulation 8(3) and Regulation 14(3) of the 2014 Tariff Regulations.

50. The Respondent, KSEBL has submitted that the Petitioner has not furnished any details and justification for the claim and the same is not in line with Regulation 14(3) of the 2014 Tariff Regulations. It has further submitted that the BTG package was capitalized after the cut-off date and is not allowable in terms of the regulations, as the Petitioner has not furnished any valid reason for extension of procurement of the same beyond the cut-off date. Accordingly, KSEBL has submitted that the claim of the Petitioner may be disallowed. In response, the Petitioner has submitted that the cut-off date of the generating station is 31.3.2015, which is within the first year (2014-15) of the 2014-19 tariff period. The Petitioner has stated that the claim under Regulation 14(3) is inadvertent and the same may be read as Regulation 14(2) of the 2014 Tariff Regulations. Accordingly, it has submitted that the claim is within the original scope of work of the project. The Petitioner has further submitted that the contractual liability was created in 2014-15, but was reflected in 2015-16 only after supply of material was received, as in supply contracts liability is created immediately upon execution of contract and recognition in books of accounts, only after material is received along with bills. The Petitioner has also furnished the details in Annexure P/12 of the petition. The Petitioner has contended that due to force majeure condition, arising on account of multiple failures, the Petitioner had to procure the assets, the process for which had started in 2014-15. It has also added that initial spare GTs under contingency budget for deferred initial spares was procured to sustain the unit operation during any future eventuality. Therefore, the



Petitioner has stated that the additional capital expenditure claimed falls within the scope of Regulations 14(3)(iii) and 14(3)(v) read with Regulation 54 of the 2014 Tariff Regulations.

51. In addition, the Petitioner has submitted that for key initial spares, such as BCW pump, journal shaft, workshop, IA compressor spare, High energy drain valve, HP plunger pump, Mill hoist for Unit-2, Instrumentation capital spares and Spare GT, the procurement of these spares were initiated prior to the cut-off date, but the OEM could deliver these items only after the cut-off date. It has been stated that these items are urgently required for the operation of the generating station and by procurement of these spares after the cut-off date, no extra cost had occurred to the beneficiaries. The Petitioner has further stated that in terms of Regulation 13 of the 2014 Tariff Regulations, the capitalisation of initial spares is limited to 4.0% of Plant & Machinery cost up to cut-off date for coal-based/ lignite-fired thermal generating stations. It has submitted that the total Plant & Machinery cost up to cut-off date is Rs.2821.82 crore and in terms of Regulation 13 of the 2014 Tariff Regulations, the amount of Initial spares to be capitalised is limited to Rs.112.87 crore i.e. (4% of Rs.2821.82 crore). The Petitioner has pointed out that initial spares of Rs.71.64 crore, capitalised till 2013-14, were approved in the order dated 26.12.2017 in Petition No. 152/GT/2015 and further, initial spares of Rs.14.83 crore and Rs.21.53 crore have been procured and capitalized under various packages during the years 2014-15 and 2015-16 respectively. The summary of initial capital spares, as furnished by the Petitioner is as under:

<i>(Rs. in crore)</i>	
Initial Spares	Amount
Initial Spares supplied till 31.3.2014 (A)	71.64
Initial Spares supplied during 2014-15 (B)	14.83
Initial Spares supplied during 2015-16/ 2016-17 (C)	*21.53
Total (A+B+C)	108.00
4% of P&M cost	112.87



**including BTG spare of Rs.777.30 lakh and Spare GT of Rs.846.76 lakh*

52. Thus, the total value of Initial spares procured till 2015-16 is Rs.108 crore which is within the ceiling of Rs.112.87 crore i.e. (4% of Rs.2821.82 crore), specified under Regulation 13 of the 2014 Tariff Regulations. The Petitioner has submitted that it has procured initial spares as and when it was required and some spares were procured in 2015-16, after cut-off date. Regulation 14(1)(3) of the 2014 Tariff Regulations permits the capitalization of capital spares up to the cut-off date in accordance with Regulation 13 of the 2014 Tariff Regulations (i.e. 4% of Plant & Machinery cost as on the cut-off date). It is evident from the submissions of the Petitioner that the initial spares form part of the original initial cost of the plant and machinery. The procurement of spares was initiated before the cut-off date (31.3.2015) but the OEM had delayed the delivery of the same. Since the Petitioner is entitled for initial spares up to 4% of Plant and Machinery cost, we allow Rs.777.30 lakh towards initial spares of BTG package in exercise of the power to relax under Regulation 54 of the 2014 Tariff Regulations. However, the amount of Rs.60.10 lakh (Rs.837.40 - Rs.777.30) towards BTG package which include Workshop equipment (Rs.23.83 lakh), Mill hoist (Rs.15.23 lakh) and for Others (Rs.21.05 lakh) during 2015-16 and Rs.1.78 lakh in 2016-17 have not been allowed as the capitalization has occurred after the cut-off date and reasons furnished by the Petitioner do not justify the capitalization of these assets after the cut-off date.

53. As regards claim of the Petitioner for additional capitalisation of Rs.846.76 lakh in 2015-16 and Rs 35.73 lakh in 2016-17 towards Spare GT, the Petitioner has submitted that the same may be allowed as 'replacement' as the original Generator Transformer (GT) procured prior to COD had failed and has been de-capitalized at its gross value of Rs.1147.14 lakh in 2014-15. This submission of the Petitioner has been verified from the list of assets de-capitalized in 2014-15 and it is noticed that



GT has been de-capitalized at the aforesaid gross value, which is more than the cost of new GT (i.e. Rs.846.76 lakh). Accordingly, the additional expenditure of Rs.846.76 lakh in 2015-16 and Rs.35.73 lakh in 2016-17 towards Spare GT is allowed for the purpose of tariff as 'replacement' since the gross value of the old asset has been de-capitalized in terms of the provisions of Regulation 14(4) of the 2014 Tariff Regulations.

Balance of Plant (BOP)

54. The Petitioner has claimed actual additional capital expenditure of Rs.445.57 lakh in 2015-16 and Rs.5.82 lakh in 2016-17 towards 'BOP' which form part of the original scope of work of the project, but after the cut-off date. The claim of the Petitioner for Rs.5.82 lakh in 2016-17 is under the head 'Others'. In justification of the said claim, the Petitioner has categorised the capitalization of this package in 2015-16, as under:

<i>(Rs. in lakh)</i>	
Asset Description	2015-16
Condition Monitoring Instruments	207.20
Initial mandatory spares	185.10
Electrical System for Plant facilities	53.27
Total	445.57

55. The Respondent, KSEBL has submitted that the additional capitalization claimed after the cut-off date may not be allowed. In response, the Petitioner has submitted that the capitalization claimed under BOP package, beyond the cut-off date, is mainly towards the procurement of condition monitoring equipment/ testing instruments and initial spares. It has submitted that the procurement process was initiated within the cut-off date and order was placed in March 2015/ early April 2015, but the supply got concluded in 2015-16. The Petitioner has stated that the delay was on account of multiple failure of the units during the years 2013-14 and 2014-15, thereby delaying the initial stabilization of the units. It has added that on account of



this 'force majeure' condition, the additional capitalization falls under the purview of Regulation 14(3)(v) read with Regulation 54 of the 2014 Tariff Regulations (Power to relax). The Petitioner has further submitted that the additional capitalization for assets which form part of the original scope of the project, but also have life of more than one accounting period and is an integral part of the existing assets. Hence, such expenditure incurred are capital in nature and are not charged to O&M expenses in the books of accounts of the Petitioner.

56. We examine the claims of the Petitioner in following paragraphs.

(a) Condition Monitoring Instruments

57. The Petitioner has submitted that Regulation 46 of the Central Electricity Authority (Technical Standards for Construction of Electrical Plants and Electric Lines) Regulations, 2010 specifies standards for Condition Monitoring of Electrical equipment. It has submitted that the procurement process of testing instruments was initiated on 13.8.2014 (within the cut-off date) after finalizing the specifications and the bidding process was initiated and Purchase order was issued to qualified supplier on 6.4.2015. The equipment was procured in batches in order to lessen the burden of cost in one year. The Petitioner has also submitted that major procurement was done in 2015-16 for Rs.207.20 lakh and the remaining equipment were purchased in 2016-17. The Petitioner has submitted that since the said expenditure has been incurred in furtherance to the Regulations specified by CEA, the expenditure incurred squarely falls within the scope of Regulation 14(3)(ii) of the 2014 Tariff Regulations.

58. We have considered the submissions of the Petitioner. Since the additional capital expenditure for Rs.207.20 lakh for Condition Monitoring of Electrical equipment has been incurred in compliance with the CEA (Technical Standards for



Construction of Electrical Plants and Electric Lines) Regulations, 2010, the same is allowed to be capitalised under Regulation 14(3)(ii) of the 2014 Tariff Regulations.

(b) Initial mandatory spares

59. The Petitioner has claimed initial mandatory spares for Rs.185.10 lakh and has stated that these mandatory spares were procured as and when they were required and some spares were procured in 2015-16 i.e. after cut-off date. The Petitioner has stated that the same is within the ceiling of initial spares as per the provisions of the 2014 Tariff Regulations.

60. We have considered the submissions. The claim of the Petitioner for Rs.185.10 lakh towards mandatory spares pertain to initial spares which form part of the original scope of the Plant and Machinery. It is evident from the submissions of the Petitioner that the procurement of the spares was initiated before the cut-off date (31.3.2015), but were received only during 2015-16. Accordingly, the claim of the Petitioner for additional capitalisation of Rs.185.10 lakh in 2015-16 towards initial spares for 'BOP spares' after the cut-off date is allowed under Regulation 14(1)(3) of 2014 Tariff Regulations, in exercise of the power to relax.

(c) Electrical system for Plant facilities

61. The Petitioner has submitted that facilities like field hostel, gate house and canteen were delayed due to land issues and local agitation as explained under "General Civil Works" package. Hence, the capitalization of electrical system was carried out in 2015-16 when these facilities were commissioned and an amount of Rs.53.27 lakh was capitalized in 2015-16. The Petitioner has submitted that these assets are within the original scope of work, but due to various force majeure conditions faced by the Petitioner, the commissioning of such assets were delayed and was finally completed beyond the cut-off date.



62. It is observed that the electrical system for facilities i.e. field hostel, gate house and canteen, is consequential to 'General Civil Works' which were delayed due to land non-availability and the same are for reasons beyond the control of the Petitioner as discussed in paragraph 46 above. In this background, the additional capitalization of Rs.53.27 lakh in 2015-16 pertaining to Electrical system for plant facilities is allowed under Regulation 14(3)(i) of the 2014 Tariff Regulations. In support of the claim for Rs.5.82 lakh during 2016-17, the Petitioner has submitted that the amount corresponds to "Others" but has not mentioned the nature of items capitalized and the necessity of such capitalization. In view of the above, capitalization of Rs.5.82 lakh during 2016-17 is not allowed.

New Schemes in 2015-19

63. The Petitioner has also claimed additional capital expenditure for 'New Schemes' in 2015-19, as follows, which do not form part of the original scope of work of the project and which were taken up after the cut-off date:

	<i>(Rs in lakh)</i>			
Assets/Works	2015-16	2016-17	2017-18	2018-19
Fire Tender with shed	61.53	0.60	14.47	1.30
Fixed Foam system for LDO & HFO	60.74	-	-	-
NABL Accredited Lab	70.52	112.96	5.62	55.18
Online Effluent Monitoring System	13.95	-	-	-
IT & Others	10.97	61.01	125.62	134.55
Augmentation of Track Hopper shed	268.36	-	-	
MAX DCS version up-gradation (XP) Unit-1	67.52	-	438.86	
Construction of road in Ash area	-	80.29	18.15	-
Installation of CAAQMS	-	67.58	-	-
Power supply redundancy and Re-arrangement at BOP area	-	401.59	-	-
Gate house near JNT/security infra/e-security	-	45.07	98.58	257.66
Ash Bagging	-	27.21	-	
Augmentation of Store area	-	31.74	7.58	171.16
Safety related expenditure	-	-	67.09	103.67
Augmentation of Fire detection system	-	-	80.41	-
Drinking Water System	-	-	10.07	13.16
Augmentation of Ash handling system	-	-	700.13	848.07
Fabrication of expansion bellow	-	-	49.69	23.34



Labour colony	-	-	192.79	16.08
Refurbishment of DM Plant Piping and Tank	-	-	31.98	-
Re-heater modification & MTM installation	-	-	160.29	78.23
Up-gradation of protection system	-	-	1.45	47.30
Yard sprinkling and Fire detection system in CHP	-	-	-	18.91
Coal pit run-off mechanized drainage system	-	-	-	321.88
Wind barrier in Ash Pond	-	-	-	29.90
Total additional capitalization	553.59	828.05	2002.78	2120.39
Total additional capitalization claimed as per Form 9A	554.59	829.06	2002.40	2119.96

(a) Fire Tender with shed

64. The Petitioner has claimed additional capitalization of Rs.61.53 lakh in 2015-16, Rs.0.60 lakh in 2016-17, Rs.14.47 lakh in 2017-18 and Rs.1.30 lakh in 2018-19 for Fire tender with shed under Regulation 14(3)(ii) of the 2014 Tariff Regulations. In justification for the same, the Petitioner has submitted that a fire station has been commissioned near the DM plant with intent to cover the entire plant premises in the eventuality of fire and, hence, the expenditure may be approved.

65. The Respondent, KSEBL has submitted that IS 3034 Standards were to be followed by the Petitioner at the time of design of the generating station and should have formed part of the original scope of work. The Respondent has stated that the expenditure does not fall under 'change in law' and, therefore, should not be allowed to be capitalized. In response, the Petitioner has submitted that after overcoming stabilization issues of the units, which was of utmost priority, the Petitioner had initially conducted audit/ review/ mock drills of the existing firefighting systems and their compliance with IS standards/ CEA Regulations, 2010. After review of the firefighting systems, it was observed that with the existing location of Fire Tender, it was not possible to meet the response time of 5 minutes in case of fire at the Coal Handling Plant area. The Petitioner has pointed out that the claim of NTPC towards firefighting system was allowed by the Commission in its order dated 29.7.2016 in



Petition No. 293/GT/2014 (tariff of Talcher STPS, Stage-II for the 2014-19 tariff period) subject to the report of CEA. Accordingly, the Petitioner has submitted that the additional capital expenditure claimed may be allowed.

66. IS:3034 standard which deals with fire stations in Super Thermal Power generating stations having installed capacity exceeding 1000 MW, stipulate the following:

“(a) As per clause no 10.3.5 “Considering the large area of Super Thermal Power Stations (Super Thermal/Power Stations Having Installed Capacity Exceeding 1 000 MW), facilitate quick turn out it may be necessary to deploy the operational manpower at two Fire Stations — a Main Fire Station and a Sub Fire Station, both having up-to-date communication facilities to help easy mobilization in case of emergency.”

“(b) As per clause no 10.4.1 “Power Stations authorized for full time Fire Brigades with major firefighting appliances shall have well designed Fire Stations for housing appliances and firefighting staff. They shall be so located that the response times for fire appliances are kept to a minimum not to exceed 5 minutes.”

67. Thus, as per IS:3034 standard, the response time for reaching a fire prone area should be limited to less than 5 minutes and, if necessary, an additional sub-fire station is required to be made operational. The Petitioner has submitted that during various mock drills conducted (as per the Factories Act, 1948), it took more than five minutes to reach the premises of Coal Handling Plant (CHP) of the Petitioner, which is a critical area to be protected from fire, as it is situated far away from the DM Plant area. Hence, the need was felt by the Petitioner to set up another sub-fire station near CHP area to be compliant with IS:3034 standard in order to avoid any eventuality. Keeping in view that the expenditure incurred was in compliance with the IS:3034 standard (which deals with “Fire Stations in Industrial Buildings’) and as the same is required for the safety and security of the plant, the additional capital expenditure incurred is allowed under Regulation 14(3)(ii) of the 2014 Tariff Regulations.



(b) NABL accredited lab, Online Effluent Monitoring system, Installation of CAAQMS, Yard sprinkling and Fire detection system, Wind barrier in Ash pond and Construction of road in Ash area

68. The Petitioner has claimed additional capitalization of Rs.70.52 lakh in 2015-16, Rs.112.96 lakh in 2016-17, Rs.5.62 lakh in 2017-18 and Rs.55.18 lakh in 2018-19 for NABL accredited lab. It has also claimed additional capitalization of Rs.13.95 lakh for 'Online Effluent monitoring system' in 2015-16. The Petitioner has claimed additional capitalization of Rs.80.29 lakh in 2016-17 and Rs.18.19 lakh in 2017-18 for Construction of road in Ash area and Rs.67.58 lakh for 'Installation of CAAQMS' in 2016-17. Also, additional capital expenditure of Rs.29.90 lakh for 'Wind barrier in Ash pond' and Rs.18.91 lakh for 'Yard sprinkling and Fire detection system' in CHP in 2018-19 has been claimed by the Petitioner. The Petitioner has submitted that these expenditures have been incurred for various schemes which were to be complied by the Petitioner based on the directions of the Jharkhand State Pollution Control Board (JSPCB) and is, therefore, covered under Regulation 14(3)(ii) of the 2014 Tariff Regulations. It has stated that the sitting arrangement of the lab technicians/ department was initially arranged in the adjoining space which was not in compliance with ISO-17025 (NABL) and, accordingly, a separate sitting arrangement was made to comply with the requirements of ISO-17025 for the lab and to comply with the mandate of Jharkhand State Pollution Control Board (JSPCB) and it being a governmental instrumentality, directions issued by it fall within the scope and meaning of Regulation 14(3)(ii) of the 2014 Tariff Regulations i.e. change in law or compliance of existing law. The Respondent, KSEBL has submitted that the expenditure incurred for establishing additional vertical extension of DM plant lack justification on perusal of the 'Consent to Operate' order and the same is not in line with the aforesaid regulation.



69. The matter has been examined. The Petitioner in support of its claim for additional capitalization of the schemes has furnished the correspondences made with JSPCB with regard to the said schemes. The schemes executed by the Petitioner are mainly to comply with the Pollution control norms and for maintaining the environment standards as per directions of JSPCB. As the Petitioner has incurred the aforesaid additional expenditure in respect of these assets/ works for compliance with the directions of JSPCB, the same are allowed under Regulation 14(3)(ii) of the 2014 Tariff Regulations.

(c) IT & Others

70. The Petitioner has claimed additional capitalization of Rs.10.97 lakh in 2015-16, Rs. 61.01 lakh in 2016-17, Rs.125.62 lakh in 2017-18 and Rs.134.55 lakh in 2018-19 for IT & others. The Petitioner, in justification of the same, has submitted that it has incurred the expenditure for replacement of IT equipment, namely laptops, computers, servers, printers, etc. and some other 'minor assets' which have been fully depreciated in the books of accounts. The Petitioner has stated that in case the generating station would have completed more than 10 years, the expenses on such items would have been managed from the Compensation Allowance eligible in terms of the 2014 Tariff Regulations. It has stated that the life of IT equipment is much less than 10 years and needs to be replaced within the said period. Therefore, there is no other means available with the Petitioner for meeting expenditure on these assets. The Petitioner has sought additional capitalization of these assets by invoking Regulation 54 of the 2014 Tariff Regulations and has submitted that the expenditure needs to be allowed on the principles enshrined under Section 61 of the Electricity Act, 2003. The Respondent, KSEBL has submitted that the additional capital expenditure falls under R&M expenses and, therefore, the same may be disallowed.



71. The matter has been examined. Admittedly, the additional capital expenditure claimed by the Petitioner is beyond the original scope of work of the project and is after the cut-off date. In this regard, the proviso to Regulation 14(3) of the 2014 Tariff Regulations provides the following:

“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.”

72. In our considered view, the expenditure pertaining to IT equipment is in the nature of ‘minor assets’ which has been incurred after the cut-off date. Hence, in terms of the proviso to Regulation 14(3) of the 2014 Tariff Regulations, the additional capitalization of the expenditure claimed is not allowed.

(d) Fixed foam system for LDO & HFO

73. The Petitioner has claimed additional capitalization of Rs.60.74 lakh in 2015-16 for ‘Fixed foam system for LDO and HFO’ under Regulation 14(3)(ii) of the 2014 Tariff Regulations. The Petitioner has submitted that Foam flooding system at HFO and LDO Tank is required as per clause no 5.3.5.2 of IS 3034 standards, which stipulate as follows:

“5.3.5.2 The oil storage tanks should also have fixed foam fire extinguishing system in conformity with IS 12835 (Part 1): 1989.”

74. The Petitioner has referred to IS 3034:1993 and IS 12835 (Part 1): 1989 and has submitted that the additional expenditure incurred is for compliance with the provisions of the said IS standards. Though these IS standards were in place at the time of conceptualization of the generating station, since the additional capitalization is for compliance with the existing law, we allow the additional capitalization of Rs. 60.74 lakh for ‘Fixed Foam system for LDO and HFO’ in 2015-16 under Regulation 14(3)(ii) of the 2014 Tariff Regulations.



(e) Augmentation of Track Hopper shed

75. The Petitioner has claimed additional capitalization of Rs.268.36 lakh in 2015-16 towards 'Augmentation of track hopper shed'. In justification of the same, the Petitioner has submitted that originally, Track hopper was designed for direct unloading of coal from BOBR (Bogie Open Bottom Rapid discharge Railway Wagon) into track hopper. It has submitted that the track hopper shed was erected in 2012 with dimensions as per BOBR unloading requirements, but in the absence of rail connectivity, coal is transported through road by Hyva (a vehicle by Tata Motors) and is unloaded at coal bed/ ramp area or track hopper as per need and, thereafter, excavators/ bulldozers push the coal into track hopper. The Petitioner has stated that continuous movement of heavy vehicles for feeding coal into track hopper, coupled with impact of large size stones in coal had considerably damaged the structure of the Track hopper, which endangered the safety of personnel working there. It has submitted that additional capital expenditure under this scheme was required to be incurred due to unforeseen circumstances beyond the control of the Petitioner and could not have been anticipated or avoided, through prudent utility practices. Accordingly, the Petitioner has prayed that the Commission may allow the additional capital expenditure under this scheme, in exercise of the power under Regulation 54 (Power to relax) read with Regulation 3(25) and Regulation 8(3) of the 2014 Tariff Regulations. Alternatively, the Petitioner has submitted that the said expenditure is covered under Regulation 14(3)(iii) of the 2014 Tariff Regulations.

76. The matter has been examined. Admittedly, the additional capital expenditure claimed by the Petitioner is beyond the original scope of work of the project and is after the cut-off date. The Petitioner's submission that the additional capitalization incurred is on account of 'Force Majeure' events and the same may be allowed in



exercise of the power to relax is not acceptable, as the submissions made by the Petitioner do not demonstrate the existence of any 'force majeure' events. Alternatively, the prayer of the Petitioner to allow the said claim under Regulation 14(3)(iii) of the 2014 Tariff Regulations is also not acceptable, as the Petitioner has not furnished any documentary evidence indicating that the expenditure has been incurred for higher security or safety of plant as advised or based on directions of the Appropriate Governmental agencies or Statutory authorities responsible for national/ internal security. In view of this, the additional capitalization claimed by the Petitioner under this head is not allowed.

(f) MAX DCS Version up-gradation (XP) Unit-1 (New schemes required on account of obsolescence)

77. The Petitioner has claimed additional capitalization of Rs.67.52 lakh in 2015-16 and Rs.438.86 lakh in 2017-18 for 'MAX DCS version Up-gradation (XP) Unit-1' in exercise of the power to relax under Regulation 54 of the 2014 Tariff Regulations. In justification of the same, the Petitioner has submitted the following:

(a) Digital Control System (DCS) is the automated intelligence of any thermal power generating station. Windows XP operating system was the most popular and reliable Windows platform provided by all leading industrial automation companies for their control system. However, from 8.4.2014, Microsoft has completely withdrawn the support for Windows XP Operating System. With end of support by Microsoft on Windows XP operating system, it stopped developing Security Patches for Windows XP, non-security hot fixes, online technical content updates and telephone support. Hence, system was more vulnerable for malware attack and had become out-dated.

(b) The Petitioner managed the system with existing inventories and support from BHEL till mid of 2016. However, after mid of 2016, M/s BHEL expressed its inability to provide further support and recommended for complete up-gradation of existing DCS to higher version of Windows Operating System with upgraded version of MAX DNA DCS for Maithon Units to ensure services and necessary spares. Accordingly, MAX DCS up-gradation for Unit-1 was taken up in 2017-18.

78. The Respondent, KSEBL has submitted that the additional capital expenditure incurred is in the nature of R&M expenses and, hence, may not be allowed. In response, the Petitioner has submitted that the expenditure has been incurred on



account of obsolescence and force majeure conditions which was not within the control of the Petitioner. It has stated that though Microsoft had withdrawn its support for Windows XP Operating System on 8.4.2014, the Petitioner with all its efforts and existing inventory managed to maintain the system till 2016-17, but had to undertake such replacements when M/s BHEL stopped extending its support after mid of 2016 and strongly recommended to upgrade to higher versions. The Petitioner has stated that the same could not have been avoided and due to such uncontrollable factors, it had to incur a one-time expenditure towards such up-gradation, and is in no way a recurring expenditure that can be booked under R&M expenses.

79. The matter has been examined. The Petitioner has submitted that the Digital Control System (DCS) has become obsolete as Microsoft had completely withdrawn its support for Windows XP Operating System. Max DNA version 6.x.x on Windows 7 was envisaged to replace the earlier version i.e. Max DNA version 4.x.x on Windows XP. The Petitioner has furnished the recommendations of OEM (M/s BHEL) confirming that further sustenance of the system was not possible. Considering the submissions of the Petitioner and the documents furnished and keeping in view that the additional expenditure was incurred by the Petitioner under circumstances which were beyond its control (on account of obsolescence of Windows XP for DCS), the additional capital expenditure claimed is allowed, in relaxation of Regulation 14(3)(vii) of the 2014 Tariff Regulations.

(g) Gate House Near JNT/ Security infra/ E-security

80. The Petitioner has claimed additional capital expenditure of Rs.45.07 lakh in 2016-17, Rs.98.58 lakh in 2017-18 and Rs.257.66 lakh in 2018-19 under Regulation 54 (Power to relax) read with Regulation 14(3)(iii) of the 2014 Tariff Regulations for construction of gate house near JNT equipped with turnstile gate and strengthening



of e-Security system for main gate, labour gate and the plant premises. In justification of the said claim, the Petitioner has submitted that these works were necessitated on account of increasing security incidents due to local agitations, strikes, dharna and increasing instances of theft etc.. The Petitioner has also submitted that the turnstile gates have dual authentication with access card as the first and biometric as the other. It has further stated that Boom barriers, one for entry road and one for exit road have been constructed and also RFID system has been installed for automated gate operation.

81. The Respondent, KSEBL has submitted that expenditure claimed is covered under the security expenses allowed to the Petitioner, over and above the normative O&M expenses. In response, the Petitioner has submitted that the plant is spread over 1116 acres of land and is situated in a region having less employment and is a stronghold of Maoists, which poses a high security threat to the installations and workforce of the plant. It has further submitted that since inception, it is continuously facing a lot of law and order problems like agitation, gate jams, trespassing, thefts by displaced persons, supported by political outfits and such facts had been observed by the Intelligence Bureau, GOI in its report dated 10.1.2019. The Petitioner has added that due to delay in the commissioning of Railway project, owing to Force Majeure conditions, coal is transported through trucks (about 1200-1600 per day) and the security staff had to oversee all these along with patrolling and monitoring which was difficult for them and was prone to human error, due to fatigue.

82. The matter has been considered. Admittedly, the additional capital expenditures claimed by the Petitioner is beyond the original scope of work of the project and is after the cut-off date. The Petitioner's submission that the additional capitalization has been incurred is on account of Force Majeure events and the



same may be allowed in exercise of the power to relax is not acceptable, as the submissions made by the Petitioner do not demonstrate the existence of any force majeure events. Alternatively, the prayer of the Petitioner to allow the said claim under Regulation 14(3)(iii) of the 2014 Tariff Regulations is also not acceptable, as the Petitioner has not furnished any documentary evidence indicating that the expenditure incurred is for higher security or safety of plant as advised or is based on the directions of the Appropriate Governmental agencies or Statutory authorities responsible for national/ internal security. In view of this, the additional capitalization claimed by the Petitioner under this head is not allowed.

(h) Power Supply redundancy and re-arrangement at BOP area and Augmentation of Store area

83. The Petitioner has claimed additional capital expenditure of Rs.401.59 lakh in 2016-17 for 'Power Supply redundancy and re-arrangement at BOP area' and Rs.31.74 lakh in 2016-17, Rs.7.58 lakh in 2017-18 and Rs.171.16 lakh in 2018-19 towards 'Augmentation of Store area' under Regulation 3(25) read with Regulation 54 of the 2014 Tariff Regulations. In justification of the same, the petitioner has submitted the following:

(i) Power Supply Redundancy and Re-arrangement at BOP area: Frequent tripping of 11 kV CPS overhead line due to breaking of insulators and other overhead line components due to storm and lightning were leading to shutdown of essential load. Further, underground Cable fault of the single source was leading to shutdown of supply of the vital load along approach road for a longer time as it requires considerable time locating and repairing the fault. Moreover, frequent disruption of lighting load and supply of Gate house was becoming major concern of safety and security of the persons and the plant. It was, therefore, decided to form a 6.6 kV Ring Mains Unit by sourcing of 2 numbers of 6.6 kV outgoing feeders from existing 6.6 kV ER #1 switchboard to form a 6.6 kV network with low cost Compact Sub Stations at different load centres to feed such critical loads.

(ii) Augmentation of Store area: In view of the increased Inventory levels in volume and high value spares and to avoid damage of the equipment due to bad weather/ temperature, the need for a sufficient and proper storage facility,



both open and covered, equipped with additional racking/ handling infrastructure was felt. Accordingly, the Petitioner has undertaken augmentation of the store area which broadly includes (i) Concreting and securitization of additional space admeasuring 200 m x 100 m for the purpose of storage of material along with road and pathways, (ii) Development of shed of specification 50 m x 100 m in the open yard of the existing store and (iii) Installation of heavy duty racks and procurement of material handling machines like forklift, crane etc.

84. The Respondent, KSEBL has submitted that expenditure incurred is as a result of poor planning which is attributable to the Petitioner and, therefore, may not be allowed and cannot also be classified as a force majeure event. In response, the Petitioner has submitted that existing overhead line of 11 kV installed for the purpose of construction supply was being utilized for supplying power to some of the essential load like gate house complex, field hostel, site office, etc. It has stated that with passage of time, tripping of these overhead lines had increased because of failures of insulators, breaking of the conductor, damage on account of the movement of coal trucks, which was initially not envisaged and was beyond the control of the Petitioner. Accordingly, the Petitioner has submitted that the expenditure may be allowed in exercise of the power under Regulation 54 or, alternatively, under Regulation 14(3)(iii) of the 2014 Tariff Regulations.

85. The submissions have been considered. The Petitioner's submission that the additional capitalization incurred is on account of 'Force Majeure' events and, hence, the same may be allowed in exercise of the power to relax is not acceptable, as the submissions made by the Petitioner do not indicate the existence of any force majeure events. In our view, the works executed by the Petitioner are only an extension/ rearrangement of the existing system in the generating station. Alternatively, the prayer of the Petitioner to allow the said claim under Regulation 14(3)(iii) of the 2014 Tariff Regulations is also not acceptable, as the Petitioner has

