



Truing up of additional capitalization incurred for period from COD to 31.03.2014 in respect of Barkhera, Khambarkhera, Maqsoodapur, Utraula, & Kundarki Thermal power project of Bajaj Energy Limited.

- a) Complete copy of MOU dated 14.01.2010 and MOU dated 22.04.2010
- b) Complete copy of DPR with detailed original scope of work considered for establishment of the project for all the five power stations of BEL
- c) Comparison table showing year wise deferred liabilities related to work/services within the 'original scope of work' as submitted with previous truing up petition (i.e., Petition No. 1036-1040 of 2015). The Petitioner to corroborate these deferred liabilities with those filed in present petition/submission.
- d) Year wise deferred liability under different asset head specified in Tariff Form 5B
- e) Monthly average coal stock for all the five power plants during the year before and after cut-off date
- f) The coal stockyard area during the year before and after cut-off date
- g) Monthly Ash generated and Ash stock for all the five power plants during the year before and after the cut-off date along with detailed note on Petitioner's compliance of MoEF&CC notification dated 03.11.2009 regarding Ash utilization for all the five power stations.
- h) Auditor certificate of year wise expenditure towards such minor head of add-caps claimed during FY 2012-14.
- i) Detailed reasons for variations in the Audited report of 2015 versus 2020 with respect to each heading/item claimed by the Petitioner.
- j) Justification on the variation in the claimed interest on loan from that approved earlier by the Commission vide Order dated 24.05.2017.

Petitioner filed the details on 01.10.2021 in compliance to the Commission's order dated 13.09.2021.

1.3.6 During the final hearing on 07.10.2021, Petitioner and Respondent reiterated their earlier arguments/submissions. After hearing the parties, the Commission granted the request of the UPPCL to file its submission in petition no.1585-88/2020 covering other power station with a copy to the Petitioner to file its rejoinder, if any. The Commission reserved the order in the matter. UPPCL filed its submissions on 21.10.2021.

#### **1.4 Suggestions/Objections Received, Response of BEL and Commission's View**

1.4.1 The Commission has considered all the issues raised by the Stakeholders and Petitioner's response to these issues while carrying out the detailed analysis. The common issues raised, by the parties and the views of the Commission have been summarized below. The specific plant issue is dealt at Commission's analysis part of respective plant in the Order.

#### **A. Deferment of proceedings in the matter**







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1.4.2 Shri. R. S. Awasthi submitted that he has filed an appeal before the Hon'ble APTEL in Appeal No. 360 of 2017, challenging the True-up Order dated 24.05.2017 passed by the Commission. The grounds raised in the aforesaid Appeal include, inter-alia, the wrongful approval of the alleged costs towards initial spares claimed by the Petitioner without conducting a proper prudence check. Considering the pendency of the Appeal, he urged that the instant petition ought not to be proceeded with by the Commission.

#### **BEL's Response**

1.4.3 BEL strongly objected to the submissions of Shri. R. S. Awasthi and submitted that mere pendency of Impleaded Respondent's Appeal No. 360 of 2017 filed before the Hon'ble Tribunal does not operate as a stay on the Order dated 24.05.2017.

#### **Commission's View**

1.4.4 There is no dispute to the fact that the Commission's Order dated 24.05.2017 have not been stayed by the Hon'ble APTEL. It is a settled legal position that mere pendency of appeal before the appellate court/authority does not create any legal disability/ embargo or operate as a stay. **In our view it would not be fair or correct to defer the present proceedings in anticipation of the decision of Hon'ble APTEL in the pending appeals. Hence, the plea of Shri. R. S. Awasthi to not proceed with the present matter is rejected.**

#### **B. Delay in filing of instant Petition and non-submission of documents despite clear directions from the Commission**

1.4.5 Shri. R. S. Awasthi submitted that there is a judicial finding against the Petitioner that it had failed to submit the relevant proof on record, which formed the basis for the denial of the Petitioner's claims regarding its additional capital expenditure vide Commission's Order dated 24.05.2017. The Petitioner should have promptly filed a subsequent petition furnishing the requisite proofs. Further, after the passage of more than 3 years since True-up Order dated 24.05.2017, the Petitioner has filed the instant petition. The Petitioner has not even made an attempt to justify such delay in approaching the Commission. Without prejudice to the above, Shri. R. S. Awasthi submitted that the Petitioner shall not claim any interest charges on the amounts claimed. Further, Shri. R. S. Awasthi submitted that the Petitioner has failed to place on record any particular details of year wise deferred liabilities relating to work/services within the original scope of work.

1.4.6 UPPCL submitted that the Commission vide order dated 24.05.2017 had

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directed BEL to place on record an independent agency's report providing technical justification on the requirement of additional capitalization. However, in wilful non-compliance of the Commission's directions, under the instant petition, BEL has submitted the same report by M/s. Powertech Engineering Private Limited along with the petition, which undertook the design engineering services for its projects. Thereafter, by way of its additional submissions dated 20.10.2020, BEL placed on record a report dated 20.05.2020 prepared by M/s Encotec Energy (India) Pvt. Ltd. Therefore, the present petition deserved to be dismissed since despite multiple direction by this Commission, BEL refused to place on record the complete information as desired by this Commission.

### BEL's Response

1.4.7 BEL submitted that the Tariff Regulations, 2009 provide for payment of interest / carrying cost to BEL. Also, Tariff Regulations, 2009 and the Commission's Order dated 24.05.2017 do not prescribe any specific time frame for claiming Additional capitalization. Neither UPPCL nor the Expert Committee conducted prudence check on the actually incurred expenditure by BEL post COD of its Plants. This expenditure on account of various additional capitalization works after the COD of the Plants is being claimed by way of the present petitions. In addition, BEL was directed to submit a report on technical justification for additional capitalization prepared by an independent agency. BEL had appointed M/s. Encotec Energy (India) Pvt. Ltd. for this purpose and the report was finalised in May 2020. During filing of the instant Petition, BEL had inadvertently omitted filing of the said report, which was duly submitted before the Petition was taken up for hearing.

1.4.8 In the earlier tariff proceedings, BEL had submitted the following details in respect of year-wise deferred liabilities:

(₹ Crore)

	KKH	BRK	MQR	UTR	KDK	Total
<b>A Work Deferred for Execution (Non-EPC)</b>						
1 Emergency DG Set	1.732	1.732	1.732	1.732	1.732	8.66
2 Housing & Colony	2.80	0.64	5.03	8.53	3.39	20.39
3 Roads & Drainage				1.51		1.51
4 Admin Building	0.30	0.30	0.30	0.30	0.30	1.50
<b>B Work Deferred for Execution (EPC)</b>						
1 Initial Spares	9.624	9.624	9.624	9.624	9.624	48.12
2 Land	0.19	1.14	1.24	0.99	1.47	5.03
<b>Total (A+B)</b>	<b>14.646</b>	<b>13.436</b>	<b>17.926</b>	<b>22.686</b>	<b>16.516</b>	<b>85.21</b>

