amounts already approved by this Commission on a provisional basis under the MYT Order) is impermissible. The Commission may further direct the Petitioner to submit the proper calculations in relation to depreciation in Form 11.

vii. Interest on Loan:

(a) The additional capital expenditure proposed to be capitalized by UPRVUNL has to be subjected to prudence check and admitted by this Hon'ble Commission.

(b) UPRVUNL is required to place on record details pertaining to actual debt and equity employed by it to finance the additional capital expenditure.

(c) Based on the actual data submitted by UPRVUNL, loan amount has to be worked out as per Regulation 24 of the Tariff Regulations 2014.

(d) In terms of Regulation 25(i)(a) the interest on loan capital has to be computed loan wise on the above loans.

(e) Repayment has to be considered equal to depreciation allowed for the year.

(f) In respect of proposed de-capitalization of Rs. 183.18 crores, the repayment should be adjusted as per Regulation 25(i)(b).

(g) Finally, the rate of the interest should be the weighted average rate of interest calculated on the basis of actual loans at the beginning of each year and shall be adjusted based on actual loan each year accordingly.

(h) If there is no actual loan for a particular year but normative loan is still outstanding, the last available weighted average of interest shall be considered.

viii. Return on Equity: UPRVUNL has considered ROE @ 15.5% whereas as per government order dated 31.07.2017, adopted by board of directors of UPRVUNL on 09.04.2018, ROE has billed @ 2% for 2017-18-19. The Commission vide order dated 21.06.2016 in Petition no. 1070 of 2015 had allowed generators to have the option of foreign some part of fixed cost for which credit shall be given in the variable cost to revise their position in MOD cost.

ix. Operation & Maintenance Expenses:

Regulation 25(iv) of the Tariff Regulations 2014 stipulates that either the amount mentioned under the regulations or actual expenditure, whichever is lesser, will be allowed as O&M expenses for a particular year. In case of partial utilization, unutilized amount may be allowed to meet increased O&M expenses in subsequent years. Applying Regulation 25(iv)(ii) of the Tariff

Regulations 2014 Rs. 431.50 crores should be allowed as O&M expenses for UPRVUNL against the claimed amount of Rs. 491.04 crores.

x. Interest on Working Capital:

Regulation 25(v) of the Tariff Regulations 2014 prescribes detailed guidelines and methodology for computing both working capital and IoWC. Particularly, the requisite workings are to be furnished under Form 13B which deals with calculation of IoWC.

xi. Claims of Income Tax Reimbursement:

UPRVUNL has claimed that it has paid income tax of Rs. 192.65 crores for FY 2016-17, 35.34 crores for FY 2017-18 and 36.34 crores for FY 2018-19. Applying the above quoted and highlighted regulation, the maximum amount of income tax reimbursable cannot exceed ROE x MAT or ROE x Corporate Tax as applicable. Accordingly, the maximum allowable reimbursement of income tax has been worked by UPPCL as follows:

Table 4: UPPCL Submission on Income Tax

(Figures in Rs. Crore)

Maximum allowable Income Tax reimbursement – Panki TPS*			
Financial Year	**ROE**	**MAT%**	**Allowable Income Tax reimbursement**
FY 2016-17	5.68**	19%	1.08
FY 2017-18	0.73***	19%	0.14
FY 2018-19	-	19%	-
Total			**1.22**

* *For the purposes of this calculation, additional capitalization claimed by UPRVUNL has not been considered since no justification/details have been provided by UPRVUNL.*

** *ROE at 15.5% as approved by this Commission under MYT Order.*

*** *ROE at 2% on equity of 357.76 crores approved by the Commission under the MYT Order.*

xii. Reimbursement of Interest on Income Tax:

It is a settled principle of law that interest on income tax charged due to failure in making timely payment of income tax is penal in nature cannot be reimbursed in tariff.

xiii. Reimbursement of UPSLDC and NRPC Fee:

Such charges should not be passed on to UPPCL keeping in line with past practices and UPRVUNL should be directed to bear the same through internal accruals.

1.5 UPRVUNL reply dated 06.10.2021

1.5.1 UPRVUNL rejoinder dated 6.10.21 in true up petition for FY 2014-15 to 18-19 of 2x105 MW Panki TPS.

(a) UPRVUNL had filed collective true up petition in accordance to previously established practice. The collective petition was filed on 25.10.19 for Anpara A, Anpara B, Anpara D, Harduaganj, Harduaganj Ext., Obra A, Obra B, Panki, Paricha Ext, Paricha Ext II, within stipulated deadline date of 31.10.19 as per regulation 6(2) of UPERC (Generation Tariff) Regulations, 2014. UPRVUNL had provided a copy to UPPCL vide letter dt.25.10.19. Subsequently on 3.1.2020, due to typographical error and slippages there were material changes to the original petition, and thus additional submission was made. On 20.1.2020, additional submission no.2 was made with regard to claim of ROE component at rate of 15.5%, though to be adjusted with UPPCL at the rate of 2%. On 10.6.20, additional submission no.3 was made on profit sharing of Rs.200.97 Cr. for control period. UPPCL has already adjusted this profit-sharing amount in its running bills. UPRVUNL on 14.10.20 made additional submission on additional capitalisation claim for Paricha Ext. Stage II for purchase of mandatory spares for Rs.5.15 Cr. and Government approval of revised R&M cost of Harduaganj from Rs.392 Cr. to Rs.475.9 Cr. on account of increase in IDC. UPRVUNL made last submission on 1.12.20 to substantiate the claims of statutory charges and to facilitate prudence check as per UPERC (Generation Tariff), Regulations, 2014. All these submissions were material change as far as original petition is concerned. Subsequent to hearing held on 16.3.21, separate petitions for each thermal station were filed within stipulated time frame. Therefore, there was no delay in filing of petition and claim for interest as admissible under Regulations stand firm.

(b) Regarding truing up of tariff basis availability, UPRVNL has submitted that these are vintage plants having hereditary systemic and institutional constraints causing inevitable under performance when compared to regulatory norms despite best efforts. Further, due to paucity of funds and forced running of unit to meet emergent power demand situation, it is not always possible /permitted to undertake timely overhauling /purchase of spares causing further wear and tear to deteriorate operational performance and increasing unplanned shut down to result in loss of availability.

(c) Regulation 6 of UPERC (Generation Tariff) Regulations, 2014 provides that admittance of additional capital cost is to be done during true up after carrying out prudence check by Commission. There is no explicit provision in regulations making it compulsory to give projection for additional capital expenditure during beginning of control period. Further, auditing process for financial year is finalised by the end of quarter to of next financial year, therefore audited figures may not be available at the time of final MYT petition.

(d) UPRVUNL has provided justification in prescribed format for major additional capital expenditure. Moreover, UPRVUNL accounts undergo audit at Internal, Statutory and finally at CAG level in which the procedure as well as cost incurred is duly verified by the auditors and no observation ever was raised at any of the audit stages. UPRVUNL has submitted audited accounts and information available with it.

(e) UPRVUNL, in in line with the provision of the Regulation 6 (1) and 6 (2) of the UPERC Generation Tariff Regulations 2014, has claimed the additional capitalization actually incurred in its instant True-Up Petition for FY 2014-19 and not during the MYT Petition for FY 2014-19. UPRVUNL has incurred the additional capital expenditure towards additional works/services which have become necessary for efficient and successful operation of the generating station, but not included in the original project cost and could not be envisaged at the time of MYT Petition. UPRVUNL has submitted that Regulation 22 (2) (vi) is the enabling provision under which the Petitioner has claimed the actual Additional Capitalization it has incurred during FY 2014-19 period. UPRVUNL submitted that Special Allowance has been claimed as per the previous Tariff order as approved by the Hon'ble Commission.

(f) UPRVUNL has claimed additional capital expenditure to the tune of Rs. 23.18 Cr. which leads to increase in capital cost from Rs.159.97 Crore as allowed by Commission in MYT order dt.29.4.2016 and review order dated 18.01.2017 to Rs.183.15 Crore. In true up petition, depreciation has been claimed in accordance with UPERC (Generation Tariff) Regulations, 2014.

(g) There is no loan disbursement of Panki TPS during FY 2014-19, thus weighted average rate of interest has been taken as allowed by the Commission in MYT order dated 29.04.2016 which is 11.55%. Further, UPRVUNL has submitted that on capex reimbursement done by PFC and REC against sanctioned loan directly to vendor/supplier. The reimbursement of loan includes amount of previous year and current year including that towards CWIP.

(h) The Board of Directors of UPRVUNL had adopted ROE at rate of 2% from 2017-18 onwards as per UP Government order vide letter dt.31.7.17. Accordingly, the petitioner has built the fixed cost keeping ROE 2% for 2017-18 and 18-18 and forgone rest of 13.5%. However, voluntarily forgoing 13.5% claim in its bill can make petitioner relinquishing its right of ROE at the rate of 15.5% as stipulated in clause 25(iii) of UPERC (Generation Tariff) Regulations, 2014.

(i) The Commission may approve O&M expenses as claimed in petition in normative basis.

(j) Interest on working computation has been done as per approach followed by Commission in MYT order dt.29.4.16 and review of MYT order dt.18.1.17.

(k) The claim on account of reimbursement of income tax has been made as per clause ii(g) of MYT Review order dt. 18.1.17.

(l) UPRVUNL has explicitly agreed in PPA with UPPCL to not to claim any late payment surcharge on shortfall in revenue realization in verified bills. However, if any penal liability from late payment surcharge is created due to shortfall in revenue realization on account of UPPCL it has to be borne by UPPCL.

(m) UPPCL reimburses UPSLDC and NRPC fees to other generating station in terms of clause 25(iv)(c) of UPERC (Generation Tariff) Regulations, 2014.

1.6 Preliminary scrutiny of the Petition

1.6.1 Information Requirement/ Discrepancies/ Data Gaps in Petition for True-Up for the Control Period of FY 2014-19 for 10 Generating Station of UPRVUNL

(a) UPRVUNL has claimed 15.5% ROE in FY 2017 and FY 2018-19 though the UPRVUNL and UPPCL have agreed for ROE @2% in these two years.

(b) UPRVUNL has to submit the details of the expenditure claimed towards Special Allowance during the period 2014-19 and break-up of capital expenditure incurred out of Special Allowance for all the 10 power stations:

FY	Special Allowance Claimed (Rs. Crore)	Capital Expenditure incurred out of Special allowance (Rs. Crore)
FY 2014-15		
FY 2015-16		
FY 2016-17		
FY 2017-18		
FY 2018-19		

(c) UPRVUNL has to clearly specify as to whether they have claimed the CAPEX out of special allowance in AD-CAP also? If yes, then the amount of such CAPEX is to be specified.

(d) UPRVUNL has claimed normative O&M expenses in true up petitions. To arrive at the correct admissibility, UPRVUNL has to submit the Actual Operation & Maintenance Expenses (O&M Expenses) incurred and normative O&M expenses as claimed by the UPRVUNL during the control period 2014-19 in the following table for all the 10 power stations:

FY	Normative O&M Expenses as Claimed (Rs. Crore)	Actual O&M Expenses Incurred as per Audited Accounts (Rs. Crore)
FY 2014-15		
FY 2015-16		
FY 2016-17		
FY 2017-18		
FY 2018-19		

(e) Details of Gross Station Heat Rate (GSHR), Secondary Fuel Oil Consumption (SFOC), Auxiliary Energy Consumption for the control period 2014-19.

(f) Justification and details of payment on account of penal charges by UPRVUNL to the Income Tax Authorities, though it is not admissible as per Regulations.

(g) Details of expenditure incurred towards UPSLDC & NRPC Fee.

1.6.2 **UPRVUNL vide letter dt.29.12.21 has submitted replies to the Commission's queries as follows:**

(a) The Commission vide tariff order 29.4.16 & 18.1.17 as approved special allowance for Anpara A and Panki for control period 2014-15 to 18-19. UPRVUNL has claimed special allowance to the tune of Rs.268.21 Cr. and Rs.69.25 Cr. in Anpara A and Panki respectively.

(b) UPRVUNL has claimed additional expenditure of Rs.143.01 Cr. and Rs.23.18 Crs for Anpara A and Panki respectively as per audited annual accounts.

(c) UPRVUNL has submitted actual O&M expenses for all power stations of UPRVUNL and also provided justification for higher actual O&M expenses for Anpara A than normative.

(d) UPRVUNL has submitted GSHR, secondary fuel oil consumption, auxiliary consumption for control period 14-19.

(e) UPRVUNL has submitted details of payment on account of penal charges by UPRVUNL with Income Tax authorities.

(f) UPRVUNL has submitted supporting documents and verified bills by UPPCL towards UPSLDC and NRPC fees.

1.6.3 Subsequently, the Commission sought further details of operating parameter for computation of efficiency gain. These details were furnished vide email dated 13.04.2022 and subsequently vide email dated 20.05.22, the updated actual performance data was submitted. The Petitioner vide email dated 01.06.22 has furnished the details of plants availability for FY 2014-15 to FY 2018-19 and amended forms for Panki TPS.

2. TRUING UP OF 2X105 MW PANKI TPS TARIFF FOR FY 2014-15 TO FY 2018-19

2.1 Previous Orders of the Commission

2.1.1 The Commission vide its Order dated April 29, 2016 in Petition No. 1025 and 1026 of 2015 approved the Tariff for the Second Control Period (FY 2014-15 to FY 2018-19). Further the Commission vide its Order dated January 18, 2017 in the Petition No. 1117 and 1126 of 2016 reviewed the Order and revised the Tariff for the Second Control Period (FY 2014-15 to FY 2018-19). The Annual fixed charges approved by the Commission were as under:

Table 5: ARR components approved in Order dated April 29, 2016 and January 18, 2017

(Figures in Rs. Crore)

Particulars	FY 15	FY 16	FY 17	FY 18	FY 19
O & M Expenses (Rs Cr.)	115.37	120.20	125.18	130.28	135.56
Depreciation (Rs. Cr.)	7.40	7.40	7.40	7.40	7.40
Interest on Loan (Rs. Cr.)	2.48	1.62	0.77	0.17	0.00
Return on Equity (Rs Cr)	5.68	5.68	5.68	5.68	5.68
Interest on Working Capital	25.85	26.17	26.42	26.72	27.05
Special Allowance (Rs Cr)	15.75	16.75	17.81	18.94	20.15
Total (Rs Cr)	172.53	177.83	183.26	189.20	195.83

2.1.2 MYT Review Order

"*1.111* in case of vintage stations namely Anpara "A", Obra "A", Obra "B", Panki, Harduaganj and Parichha for the period FY 2014-15 to FY 2018-19, there has been an inadvertent error in approving the compensation allowance beyond the useful life of the plant and since it has now been brought to the notice of the Commission, the Commission has accepted the submission made by UPPCL and accordingly, the Commission **disallows the compensation allowance approved for these stations for the period FY 2014-15 to FY 2018-19**.

1.112 With respect to UPRVUNL's submission on special allowance, according to the second provisio under Regulation 22(5)(i)(a) of UPERC (Terms and Conditions of Generation Tariff) Regulations, 2014, the option to avail special allowance is not available to generating stations or units which have

undertaken renovation & modernization. The aforementioned provision has been produced below for greater clarity:
"Provided also that such option shall not be available for a generating station or unit for which renovation and modernization has been undertaken and the expenditure has been admitted by the Commission before commencement of these regulations, or for a generating station or unit which is in a depleted condition and operating under relaxed operational and performance norms"

1.113 **The Commission has already admitted Renovation & Modernization expenditure for Obra 'A', Obra 'B', Harduaganj, Parichha power generating stations in its previous tariff orders and hence these stations are not eligible for special allowance. Hence, only Anpara-A and Panki generating station are eligible for special allowance under UPERC (Terms and Conditions of Generation Tariff) Regulations, 2014."**

2.1.3 Particularly, as regards truing-up, the following findings have been rendered by this Commission under the MYT Review Order:

"Issue 5: Inclusion of Separate Clause for allowing recovery of statutory Charges

UPRVUNL submitted that

1.95 The Hon'ble Commission in Clause 8 (A) of its MYT Order dated 20th January 2011 had allowed UPRVUNL to recover the cost incurred on account of payment of statutory charges from the beneficiary. Further, it quoted the aforementioned clause of the Tariff Order dated 20th January 2011 which is produced below:
"In addition to the above tariff UPRVUNL is allowed to recover the payment of statutory charges like water cess, cost of water, payment to Pollution Control Board, rates and taxes, FBT and Regulatory Fee paid to the Commission, on production of details of actual payments made and duly supported with the certificate of the Statutory Auditors. The Petitioner has claimed certain additional charges as variable charges towards other fuel related costs, station supplies, lubricants and consumables critical to the generating stations as separate pass through on actuals. The same is allowed for the consideration period of MYT subject to verification of audited accounts at the time when true up would be considered by the Commission..."

1.96 The Hon'ble Commission while issuing the MYT Tariff Order dated 29.04.2016 for the period FY 2014-15 to FY 2018-19 has left out the above clause. Due to absence of the above clause, it would not be able to recover its costs incurred on payment of statutory charges like water cess, cost of water payment to Pollution Control Board, rates and taxes, FBT and regulatory fee paid to commission, additional payments towards other fuel related costs and station supplies, lubricants and consumables critical to generating station.

1.97 Hence, in view of the above, UPRVUNL requested the Hon'ble Commission to amend the MYT Tariff Order dated 29.04.2016 and insert the aforementioned clause allowing recovery of statutory charges and other fuel related costs as a separate pass through in line with the previous MYT Tariff Order dated 20.01.2011

Commission's View:

1.98 **<u>The Commission found the prayer reasonable and decided that following shall be added in clause "11" of UPRVUNL's Tariff Order dated 29.04.2016</u>**:

(G) **<u>Recovery of Statutory charges and Tax on income etc.</u>**

In addition to the above tariff UPRVUNL is allowed to recover the payment of statutory charges like water cess, cost of water, payment to Pollution Control Board, rates and taxes, FBT and Regulatory Fee paid to the Commission and taxes on income etc., on production of details of actual payments made and duly supported with the certificate of the Statutory Auditors. The Petitioner has claimed certain additional charges as variable charges towards other fuel related costs, station supplies, lubricants and consumables critical to the generating stations as separate pass through on actuals. The same is allowed for the consideration period of MYT subject to verification of audited accounts at the time when true up would be considered by the Commission.

However, the payment of finance and bank charges will not be allowed separately as these charges are considered as part and parcel of the acquired loans to be invested for addition of Gross Fixed Assets and therefore the same shall be claimed as Fixed Charges in the same manner as is applicable for the recovery of interest during construction. Similarly, the payment of Service Tax on services provided by CISF shall not be allowed separately because the same has already been included in norms of O & M Expenses."

2.2 Approach to this Order

2.2.1 The UPERC Generation Tariff Regulations, 2014 provides the following for True Up:

"6. Truing up of Capital Expenditure and Tariff:

(1) The Commission shall carry out truing up exercise along with the tariff petition filed for the next tariff period, with respect to the capital expenditure including additional capital expenditure incurred up to 31.3.2019, as admitted by the Commission after prudence check at the time of truing up.

(2) The generating company shall make an application, as per Appendix II to these regulations, for carrying out truing up exercise in respect of the

generating station or any of its units or block of units thereof by 31.10.2019.

(3) The generating company shall submit for the purpose of truing up, details of capital expenditure and additional capital expenditure incurred duly audited and certified by the auditors.
Provided the Commission may appoint a separate independent auditor who, under the supervision of the Commission, shall undertake technical and financial audit of the generating station at any time.

(4) The Commission shall also carry out truing up of tariff of generating stations based on the performance of following controllable parameters:
- (a) Gross Station Heat Rate;
- (b) Secondary Fuel Oil Consumption;
- (c) Auxiliary Energy Consumption; and
- (d) Re-financing of Loan.

(5) The Commission shall carry out truing up of tariff of generating stations based on the performance of following uncontrollable parameters:
- (a) Force Majeure;
- (b) Change in Law; and
- (c) Primary Fuel Cost

(6) The financial gains by a generating company on account of controllable parameters shall be shared between generating company and the beneficiaries. The financial gains computed as per following formulae in case of generating station on account of operational parameters contained in Clause (4) (a) to (c) above shall be shared in the ratio of 80:20 between generating company and the beneficiaries:
Net Gain = (ECR_N – ECR_A) x Scheduled Generation
Where,
ECR_N – Normative Energy Charge Rate computed on the basis of norms specified/approved for Gross Station Heat Rate, Auxiliary Consumption and Secondary Fuel Oil Consumption.
ECR_A – Actual Energy Charge Rate computed on the basis of actual Gross Station Heat Rate, Auxiliary Consumption and Secondary Fuel Oil Consumption for the month.

Provided that in case of financial gains on account of parameters contained in Clause (4)(d) above shall be shared in accordance with Clause (i) (e) of Regulation 25 & Regulation 44 of these regulations.

(7) The financial gains and losses by a generating company on account of uncontrollable parameters shall be passed on to beneficiaries of the generating company.

(8) Where after the truing up the tariff recovered exceeds the tariff approved by, the Commission under these regulations the generating company shall refund to the beneficiaries, the excess amount so recovered along with simple interest at the rate equal to the Bank Rate prevailing as on 1st April of the respective Year.

(9) Where after the truing up the tariff recovered is less than the tariff approved by the Commission under these regulations the generating

company shall recover from the beneficiaries, the under-recovered amount along with simple interest at the rate equal to the Bank Rate, prevailing as on 1st April of the respective Year.

(10) The amount under-recovered or over-recovered, along with simple interest at the rate equal to the Bank Rate as on 1st April of the respective Year, shall be recovered or refunded by the, generating company, in six equal monthly installments starting within three months from the date of the tariff order issued by the Commission after the truing up exercise."

2.2.2 **The Commission in the instant matter has determined the True-Up for FY 2014-15 to FY 2018-19 in terms of UPERC Generation Tariff Regulations, 2014, its earlier orders dated 29.04.2016 in Petition Nos. 1025 & 1026 of 2015 ("MYT Order") read with review order dated 18.01.2017 in Petition Nos. 1117 & 1126 of 2016 ("MYT Review Order") and UPPCL reply dated 02.07.2021, UPRVUNL rejoinder dated 06.10.2021 and UPRVUNL reply dated 29.12.2021 to the Commission's query. The Commission has also considered the details submitted vide email dated 20.05.2022 and 01.06.22.**

2.3 Truing up of additional capitalization for FY 2014-15 to FY 2018-19

The two units are operational at present. The unit wise COD achieved as under:

Table 6: COD of Panki 2x105 MW-TPS

Units	Actual COD
Panki TPS	
Unit 3	January 29, 1977
Unit 4	May 29, 1977

2.3.1 GFA Balance

2.3.1.1 The Petitioner has submitted that there has been additional capitalization to the tune of Rs 23.18 Crores spread across the Control period as per details in the specific formats. The Petitioner has considered the opening balance of gross fixed assets for the financial year 2014-15 from the MYT Order issued by the Commission on 29th April 2016 and review order dated 18th January 2017. Accordingly, the following table depicts the approved gross fixed asset balance vis-à-vis actual gross fixed asset balance for FY 2014-15 to FY 2018-19:

Table 7: Gross Fixed Asset Balance of Panki TPS

Figures in Rs Crore

Particulars	2014-15		2015-16		2016-17		2017-18	
	Approved	Actual	Approved	Actual	Approved	Actual	Approved	Actual
Opening GFA	159.97	160.00	159.97	170.41	159.97	170.42	159.97	182.44
Capitalisation	-	10.41	-	0.01	-	12.65	-	0.12
Deletions	-	-	-	-	-	0.62	-	182.56

Closing GFA	159.97	170.41	159.97	170.42	159.97	182.44	159.97	-

2.3.1.2 However, the Commission noted that UPRVUNL has not placed any justification for the heads of expenditure, relevant item wise break up with applicable additional capitalization provisions of UPERC Generation tariff Regulations 2014 in the Petition. Subsequently, vide its rejoinder dated 06.10.2021, UPRVUNL has submitted that it has incurred the additional capital expenditure towards additional works/services which have become necessary for efficient and successful operation of generating station, but not included in the original project cost and could not be envisaged earlier. Accordingly, the Regulation-22(2)(vi) has been invoked for claiming actual additional capitalization incurred during FY2014-19. **The petitioner has also submitted that de-capitalization claimed by petitioner was on account of decommissioning of all the units of Panki TPS.** The Petitioner has also revised the HQ GFA allocation based on the opening of each subsequent year. The revised breakup of additional capex as is below:

Table 8: Revised Break-Up of Additional Capex as per UPRVUNL

Figures in Rs Crore

Particulars	2014-15 Actual	2015-16 Actual	2016-17 Actual	2017-18 Actual
Opening GFA	160.00	170.41	170.42	183.07
Capitalization	10.41	-	12.65	0.11
HQ allocation	0.00	0.01	0.00	0.01
Deletions	-	-	-	183.19
Closing GFA	170.41	170.42	183.07	-

2.3.1.3 Under UPERC (Generation Tariff) Regulations, 2014, as per clause 22(2)(vi), the petitioner has claimed expenditure during FY 2014-19 on account of furniture & fixtures, computer, photo state machine, Hydraulic Works and Transformers. **While the Commission approves the additional capital expenditure for hydraulic works and transformers but the expenditure on computers, photo state machine and furniture & fixtures is not approved, being the minor assets under Regulation 22(3).**

2.3.1.4 The Commission also observes that the Petitioner has claimed Special Allowance in addition to the claim of Additional Capital Expenditure during FY 2014-19 Period. In this regard, the Commission observes that Regulation 22(5) provides as under:

" *22. Additional Capitalization:*

...

(5) Renovation and Modernization (R&M)

(i)

(a)...... Provided that in case of coal-based thermal generating station, the ***generating company, may, in its discretion, avail of a "special allowance" in accordance with the norms specified in clause (d), as compensation for meeting the requirement of expenses including renovation and modernization beyond the useful life of the generating station or a unit thereof, and in such an event revision of the capital cost shall not be***

considered and the applicable operational norms shall not be relaxed but the special allowance shall be included in the annual fixed cost.

(e) In the event of granting special allowance by the Commission, ***the expenditure incurred or utilized from special allowance shall be maintained separately by the generating station and details of same shall be made available to the Commission as and when directed to furnish details of such expenditure.***

........"

2.3.1.5 **In view of the above, the Commission observes that the Petitioner cannot claim the Additional Capital Expenditure and Special Allowance at the same time. Further regarding the issue of maintaining details of expenditure incurred or utilized from special allowance, it is observed that UPRVUNL has not submitted the required details to the Commission despite providing several opportunities. Accordingly, the Commission in this order after carrying out the prudence check approves the Additional Capital Expenditure for FY 2014-19 Period. The Commission is not inclined to approve the Special Allowance during FY 2014-19 Period. The details of the approved GFA as well as Additional Capitalization approved is as below:**

Table 9: Break-Up of Additional Capex as approved by the Commission

Figures in Rs Crore

Particulars	**2014-15** Approved	**2015-16** Approved	**2016-17** Approved	**2017-18** Approved
Opening GFA	159.97	170.36	170.37	183.00
Capitalization	10.39	-	12.62	0.02
HQ allocation	-	0.01	0.00	0.01
Deletions	-	-	-	183.02
Closing GFA	170.36	170.37	183.00	-

2.3.2 **Means of Finance**

The petitioner has submitted that opening values of accumulated depreciation, normative loan and equity as on 1.4.14 has been adopted from approved values in the Commission's order dt. 29.4.16 and review order dt. 18.1.17. **The Commission, in terms of the Generation Tariff Regulations, 2014 has considered the financing of add-cap normative debt: equity of 70%:30%.**

2.3.3 **The Commission, based on approved GFA for FY 2014-19, has considered the following GFA balance, net fixed asset balance and financing as per table below:**

Table 10: Calculation of GFA and NFA with Financing

Figures in Rs Crore

PANKI	2014-15	2015-16	2016-17	2017-18
Op. GFA	159.97	170.36	170.37	182.34
Additions	10.39	0.01	12.59	0.02
Deletions	0.00	0.00	0.62	182.36
Cl. GFA	170.36	170.37	182.34	0.00
Cl. Net FA	58.76	51.36	43.96	36.55
Financing:				
Op. Equity	36.63	39.75	39.75	43.34
Additions	3.12	0.00	3.78	0.01
Deletions	0.00	0.00	0.19	43.35
Cl. Equity	39.75	39.75	43.34	0.00
Op. Accu Dep.	93.80	111.17	128.55	145.92
Dep. During the	17.37	17.37	17.37	17.37
Cl. Accu. Dep.	111.17	128.55	145.92	163.29
Op. Debts	25.14	15.04	0.00	0.00
Additions	7.28	0.00	8.82	0.02
Less: Dep.	17.37	17.37	17.37	17.37
Cl. Debts	15.04	0.00	0.00	-

2.3.4 Depreciation

2.3.4.1 The Petitioner has submitted that depreciation has been computed as per tariff regulations Appendix 2 which prescribes distinct depreciation rates of each class of assets.

2.3.4.2 The Commission has noted the submissions made by UPRVUNL and UPPCL with regard to the computation of depreciation for Panki TPS during FY 2014-19 period. Regulation 25(ii) of UPERC Generation Tariff Regulations, 2014 provides as under:

> *"25 (ii) Depreciation*
>
> *For the purpose of tariff, depreciation shall be computed in the following manner, namely:*
>
> *(a) 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 or elements thereof.*
>
> *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.*
>
> *(b) In case of multiple units of a generating station weighted average life for the generating station shall be applied. Depreciation shall be*

chargeable from the first year of operation. In case of operation of the asset for part of the year, depreciation shall be charged on pro rata basis.

(c) *The value base for the purpose of depreciation shall be the historical cost of the asset.*

Provided that the historical capital cost of the asset shall include additional capitalization on account of Foreign Exchange Rate Variation up to 31.3.2014 already allowed by the Government /Commission.

(d) *The residual life of the asset shall be considered as 10% and depreciation shall be allowed up to maximum of 90% of the historical capital cost of the asset. Land other than the land held under lease shall not be a depreciable asset and its cost shall be excluded from the capital cost while computing depreciable value of asset.*

(e) *In case of new projects, depreciation shall be calculated annually, based on straight line method over the useful life of the asset and at the rates prescribed in Appendix III to these regulations.*

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.

Provided also that any depreciation disallowed on account of lower availability of the generating station shall not be allowed to be recovered at a later stage during the useful life and the extended life.

(f) ***In case of the existing projects, the balance depreciable value as on 1.4.2014 shall be worked out by deducting the cumulative depreciation including Advance Against Depreciation as admitted by the Commission upto 31.3.2014 from the gross depreciable value of the assets. The rate of depreciation shall be continued to be charged at the rate specified in Appendix III till cumulative depreciation reaches 70%. Thereafter the remaining depreciable value shall be spread over the remaining life of the asset such that the maximum depreciation does not exceed 90%.***

Provided also that any depreciation disallowed on account of lower availability of the generating station shall not be allowed to be recovered at a later stage during the useful life and the extended life.

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

(h) *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 decapitalized asset during its useful services."*

2.3.4.3 In line with Regulation 25(ii)(f) of UPERC Generation Tariff Regulations, 2014, the opening Gross Block of Rs. 159.97 Crore as on 01.04.2014 as approved in the MYT Order dated 29.04.2016 and Review Order dated 18.01.2017 has been considered. Further, Cost of Land which amounts to Rs. 1.55 Crore has been excluded and Additional Capitalization of Rs. 23.02 as approved under section 2.3.1.3 has been taken into account to work out the Net Block of Rs. 181.44 Crore as on 31.03.2018. Accordingly, the maximum allowable depreciation up to 90% works out at Rs. 163.29 Crore. The cumulative depreciation of Rs. 93.80 as on 31.03.2013 as approved in the MYT Order dated 29.04.2016 and Review Order dated 18.01.2017 has been considered to work out the remaining depreciation. Since, the Panki Sub-station has been decommissioned during FY 2017-18, the remining depreciation to be charged has been spread over the remaining years of operation of the Panki Power Station. The depreciation worked out for Panki Power Station for each year of the FY 2014-19 period is as under:

Table 11: Computation of Depreciation for FY 2014-19 Period

(Figures in Rs. Crore)

Particulars	Value
Opening Gross Block as on 01.04.2014 as approved vide MYT Order dated 29.04.2016 and Review Order dated 18.01.2017	159.97
Less: Value of Land	1.55
Add: Additional Capitalization approved for FY 2014-19 Period	23.03
Net Gross Block	181.44
Allowable Depreciation up to 90% (a)	163.29
Cumulative Depreciation accumulated up to FY 2013-14 (b)	93.80
Remaining Depreciation to be Allowed (c = a-b)	69.49
Remaining Depreciation to be allowed spread over 4 years of Plant Operations up to FY 2017-18 (d = c/4)	**17.37**

Table 12: Depreciation approved by the Commission for FY 2014-19 Period

(Figures in Rs. Crore)

Particulars	2014-15	2015-16	2016-17	2017-18
Opening Gross Fixed Assets	159.97	170.36	170.37	182.34
Addition during the Year	10.39	0.01	12.59	0.02
Deletion during the Year	-	-	0.62	182.36
Closing Gross Fixed Assets	170.36	170.37	182.34	-
Average Gross Fixed Asset	165.17	170.37	176.36	91.17
Depreciation approved during	**17.37**	**17.37**	**17.37**	**17.37**

2.3.5 **Interest on loan**

2.3.5.1 Petitioner has submitted that the Commission in its order dt.29.4.16 and review order dt.18.1.17 prescribed a normative approach of financing of capex in ratio of 70% debt and 30% equity as per the tariff regulations. The allowable depreciation has been considered as normative loan repayment. The weighted average interest on loan capital as 10.75%.

2.3.5.2 UPERC Generation Regulation 25(i) are being reproduced herein below for ready reference –

> "22. *Additional capitalization:*
>
> ...
>
> *Note 1:*
>
> ***Any expenditure admitted*** *on account of committed liabilities within the original scope of work and the expenditure deferred on techno-economic grounds but falling within the original scope of work* ***shall be serviced in the normative debt equity ratio specified in Regulation 24****.*
>
> *Note 2:*
>
> *Any expenditure on replacement of old assets shall be considered after writing off the gross value of the original assets from the original project cost, except such items as are listed in clause (3) of this regulation.*
>
> *Note 3:*
>
> ***Any expenditure admitted*** *by the Commission for determination of tariff on account of new works not in the original scope of work* ***shall be serviced in the normative debt-equity ratio specified in Regulation 24.***
>
> ...
>
> 24. *Debt-Equity Ratio:*
>
> (1) *In case of all generating stations, debt-equity ratio as on the date of commercial operation shall be 70:30 for determination of tariff.* ***Where equity employed is more than 30%, the amount of equity for determination of tariff shall be limited to 30% and the balance amount shall be considered as the normative loan.***
>
> *Provided that*
>
> *(i)* ***In case of a generating station where actual equity employed is less than 30%, the actual debt and 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; and*
>
> *(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.*
>
> (2) ***The debt and equity amount arrived at in accordance with clause (1) shall be used for calculating interest on loan, return on equity, and Foreign Exchange Rate Variation.***
>
> (3) ***Any expenditure incurred or projected to be incurred on or after 1.4.2014 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 (1) of this regulation.***"
>
> 25. *Computation of Capacity (Fixed) Charge:*
>
> ...
>
> (i) *Interest on loan capital*
>
> (a) ***Interest on loan capital shall be computed loan wise on the loans arrived at in the manner indicated in Regulation 24****.*
>
> (b) *The loan outstanding as on 1st April 2014 shall be worked out as the gross loan as per Regulation 24 minus cumulative repayment as admitted by the Commission up to 31st March 2013.* ***The repayment for any year during the Tariff Period shall be deemed to be equal to the depreciation allowed for that Year.***

In case of decapitalisation 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 decapitalisation of such asset.

(c) ***The rate of the interest shall be the weighted average rate of interest calculated on the basis of actual loans at the beginning of each year and shall be adjusted based on actual loan each year accordingly.***

(d) ***If there is no actual loan for a particular year but normative loan is still outstanding, the last available weighted average of interest shall be considered.***

(e) *The generating company shall make every effort to re-finance the loan as long as it results in net benefit to the beneficiaries. The costs associated with such re-financing shall be borne by the beneficiaries and the net savings shall be shared between the beneficiaries and the generating company in the ratio of 2:1. The above facts shall be certified by statutory auditor.*

(f) *The changes to the loan terms and conditions shall be reflected from the date of such re-financing and benefit passed on to the beneficiaries.*

(g) *In case of any dispute, any of the parties may approach the Commission with proper application. However, the beneficiaries shall not withhold any payment as ordered by the Commission to the generating company during pendency of any dispute relating to refinancing of loan.*

(h) *In case any moratorium period is availed of by the generating company, depreciation provided for in the tariff during the years of moratorium shall be treated as repayment during those years and interest on loan capital shall be calculated accordingly.*

(i) *The generating company shall not make any profit on account of refinancing of loan and interest on loan.*

(j) *In case, the generating company has contracted floating/variable rate of interest on loan resetting at certain interval of time the impact of change in rate of interest shall be assessed by the generating company on account of such resetting duly certified by statutory auditor and the capacity charge of the relevant year shall be adjusted for such impact and billed accordingly to beneficiary without approaching the Commission for change in tariff on this account.*

Provided if the generating company does not have actual loan or have re-financed the loan resulting in no specific loan attributable to the generating station then the weighted average rate of interest of the generating company as a whole shall be considered.

Provided also in case of dispute, any party to such dispute may approach the Commission with proper application and it shall be ensured that the payment to the generating company is not withheld during pendency of the dispute."

2.3.5.3 The Commission has noted that there is no loan disbursement in Panki TPS during control period FY 2014-19. The Commission had earlier approved the rate of interest in MYT Order dated 29.04.2016 and Review Order dated 18.01.2017. Accordingly, the interest on loan at the rate of interest as approved earlier works out as below:

Table 13: Interest on Term Loan (IoTL)

(Figures in Rs. Crore)

Particulars	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18
	Approved	Approved	Approved	Approved
Opening Loan Balance	25.14	15.04	0.00	0.00
Addition	7.27	0.01	8.84	0.02
Reduction	0.00	0.00	0.44	0.02
Repayment	17.37	15.05	8.40	0.00
Closing Loan Balance	15.04	0.00	0.00	0.00
Interest Rate	11.55%	11.55%	11.55%	11.55%
Interest on Loan	**2.32**	**0.87**	**0.00**	**0.00**

2.3.6 **Return on Equity**

2.3.6.1 UPPCL has objected that UPRVUNL has considered ROE @ 15.5% whereas as per government order dated 31.07.2017, adopted by board of directors of UPRVUNL on 09.04.2018, ROE has billed @ 2% for 2017-18-19. However, UPRVUNL has contested and submitted that Board of Directors of UPRVUNL had adopted ROE at rate of 2% from 2017-18 onwards as per UP Government order vide letter dt.31.7.17. Accordingly, the petitioner has billed the fixed cost keeping ROE 2% for 2017-18 and 18-19 and forgone rest of 13.5%. However, voluntarily forgoing 13.5% claim in its bill can make petitioner relinquishing its right of ROE at the rate of 15.5% as stipulated in clause 25(iii) of UPERC (Generation Tariff), Regulations,2014.

2.3.6.2 The Commission, vide order dated order dated 29.04.2016 in Petition Nos. 1025 & 1026 of 2015 (**"MYT Order"**) read with review order dated 18.01.2017 in Petition Nos. 1117 & 1126 of 2016 (**"MYT Review Order"**) has approved ROE @15.5% in terms of UPERC Generation Regulations, 2014. Therefore, the Commission, while Trueing up can't deviate from what is approved already as per the extent Regulations.

2.3.6.3 The said regulation is reproduced herein below for ready reference:

"25. Computation of Capacity (Fixed) Charge:

(iii) Return on Equity:

Return on equity shall be computed in rupee terms on the equity base determined in accordance with Regulation 24 @ 15.5% per annum;

Provided that in case of projects commissioned on or after 1st April, 2014, if such projects are completed within the timeline specified in Appendix IV an additional return of 0.5%, shall be allowed;

Provided further that additional return shall not be admissible if the project is not completed within the timeline specified above for reasons whatsoever;

Provided that the rate of return of a new project shall be reduced by upto 1% for such period as maybe 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), data telemetry, communication system up to load dispatch centre or protection system;

Provided also that as and when any of the above requirements are found lacking in an existing generating station based on the report submitted by the SLDC, RoE may be reduced by upto 1% for such period as may be decided by the Commission;

Explanation: The premium raised by the generating company while issuing share capital and investment of internal resources created out of free reserve of the generating company, if any, for the funding of the project, shall also be reckoned as paid-up capital for the purpose of computing return on equity, provided such premium amount and internal resources are actually utilized for meeting the capital expenditure of the generating station and forms part of the approved financial package."

2.3.6.4 Accordingly, the Return on Equity to the Petitioner has been worked out as below:

Table 14: Return on Equity

(Figures in Rs. Crore)

Particulars	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18
	Approved	Approved	Approved	Approved
Opening Equity	36.63	39.75	39.75	43.35
Addition	3.12	0.00	3.79	0.01
Reduction	0.00	0.00	0.19	43.36
Closing Equity	39.75	39.75	43.35	0.00
Rate of RoE	15.50%	15.50%	15.50%	15.50%
RoE	5.92	6.16	6.44	3.36

2.3.7 O&M expenses:

UPPCL has submitted that UPERC Regulation stipulate that lower of normative or actual O&M expenses for particular year shall be allowed therefore, actual expenses of 431.50 crores should be allowed against claimed amount of Rs. 591.04 crores. UPRVUNL has submitted that the Commission may approve O&M expenses as claimed in petition in normative basis.

2.3.7.1 The Commission has gone through the Generation Tariff Regulations, 2014 which prescribe as below:

"25. *Computation of Capacity (Fixed) Charge:*

...

(iv) Operation and Maintenance expenses:

(a) *Coal-based generating stations except for those at (b) below:*

Year	**Upto 200/210/250 MW sets**	300/330/350 MW sets	500 MW sets	600 MW & above sets
2014-15	**23.90**	19.95	16.00	14.40
2015-16	**25.40**	21.21	17.01	15.31
2016-17	**27.00**	22.54	18.08	16.27
2017-18	**28.70**	23.96	19.22	17.30
2018-19	**30.51**	25.47	20.43	18.38

(b) Obra A, Obra B, Panki, Parichha and Harduaganj Power Stations:

...

Note:

(i) For the generating stations having combination of 200/210/250/300/330//500/600/660 MW and above sets, the weighted average value for operation and maintenance expenses shall be adopted.

(ii) ***Operation & Maintenance expenses, specified above or the actual expenditure, whichever less, shall be allowed in a particular year. Provided further that in case of partial utilisation of expenditure, unutilised amount may be allowed to meet the increased requirement of Operation & Maintenance expenditure in subsequent years.***

(c) The expenses on regulatory fee, payment to pollution control board, impact of pay revision, capital spares, cost of water and water cess shall be paid additionally at actuals subject to prudence check. The details regarding the same shall be furnished along with the petition;

Provided that the generating station shall submit the details of year wise actual capital spares consumed at the time of truing up with appropriate justification for incurring the same and substantiating that the same is not funded through compensatory allowance or special allowance or claimed as a part of additional capitalisation or consumption of stores and spares and renovation and modernization.

(d) In case of coal-based thermal generating station a separate compensation allowance unit-wise may be permitted to meet expenses in nature of capital expenditure on replacement of minor assets which are not admissible under Regulation 22 of these regulations, and in such an event, revision of the capital cost shall not be allowed on account of compensation allowance but the compensation allowance shall be allowed to be recovered separately, in the following manner from the year following the year of completion of 10, 15, or 20 years of useful life:"

2.3.7.2 The Commission, keeping in view that vintage plants would require higher O&M expenses, had prescribed higher normative O&M for namely OBRA-A, OBRA-B, Panki, Paricha and Harduaganj Power Stations, than those applicable to other power stations. However, at the same time to keep a check & balance, the provision of lower of actual or normative O&M expenses was provided. As Panki TPS falls under the category of vintage plants, lower of the actual or normative O&M expenses would be approved. Accordingly, the O&M expenses work out as below:

Table 15: Approved O&M Expenses

Particulars	2014-15	2015-16	2016-17	2017-18
Plant Capacity	210	210	210	210
Normative O&M Expenses as Regulation (Rs. Lakh/MW)	54.94	57.24	59.61	62.04
Normative O&M Expenses for the Year	115.37	120.20	125.18	130.28
Actual O&M Expenses as Claimed by the Petitioner	108.62	124.58	100.51	102.18
Allowable O&M Expenses for the Year	108.62	120.20	100.51	102.18

2.3.8 Interest on Working Capital

2.3.8.1 Regulation 25(v) of the Tariff Regulations 2014 prescribes detailed guidelines and methodology for computing both working capital and IoWC. Further, the Regulation 6(5) of Tariff Regulations 2104 provides for True-Up of Primary Fuel cost as uncontrollable parameter. Therefore, the Commission has considered the Fuel cost as per Cost Audit Report for each year.

Table 16: Annual Receivables of Panki Power Station required for calculation of Working Capital

Particulars	2014-15	2015-16	2016-17	2017-18
Annual capacity charges (fixed charges)	117.92	89.88	147.13	137.69
Cost of Fuel	389.20	226.36	347.80	172.68
Total annual receivables	507.12	316.24	494.93	310.37

(Figures in Rs. Crores)

Table 17: Working Capital as determined by Commission

(Figures in Rs. Crore)

Particulars	2014-15	2015-16	2016-17	2017-18	2018-19
Cost of Coal for 60 days as per Cost Audit Report	64.87	37.73	57.97	28.78	-
Cost of Secondary Fuel Oil for 2 months as per Cost Audit Report					-
O&M for 1 Month	9.05	10.02	8.38	8.52	-
Maintenance Spares @20% of O&M Expenses	21.72	24.04	20.10	20.44	-

Receivables equivalent to 2 Months Capacity and Energy Charges	84.52	52.71	82.49	51.73	-
Working Capital	**180.16**	**124.49**	**168.93**	**109.46**	-
Rate of Interest	13.50%	13.50%	13.50%	13.50%	-
IoWC	**24.32**	**16.81**	**22.81**	**14.78**	-

2.3.9 **Based on discussion in above sections, the fixed charges as claimed by the Petitioner and approved by the Commission in present True-up order is shown in the Table below:**

Table 18: Annual Fixed Charges

(Figures in Rs Crore)

Particulars	2014-15			
	Approved in MYT Order	Claimed in True-up	Approved in True-up	Diff. (If any)
O&M Expenses	115.37	115.37	108.62	
Depreciation	7.40	7.62	17.37	
Interest on Term Loan	2.48	2.68	2.32	
Return on Equity	5.68	5.92	5.92	
Interest on Working Capital	25.85	25.85	24.32	
Special Allowance	15.75	15.75	0.00	
Annual Fixed charges	**172.53**	**173.19**	**158.56**	
Target Availability	**70.00%**	**52.06%**	**52.06%**	
Admissibility	**128.31**	**128.81**	**117.92**	**-10.39**
Scheduled Generation (Mus)	1161.52	855.02	855.02	

Particulars	2015-16			
	Approved in MYT Order	Claimed in True-up	Approved in True-up	Diff. (if any)
O&M Expenses	120.20	120.20	120.20	
Depreciation	7.40	7.83	17.37	
Interest on Term Loan	1.62	2.25	0.87	
Return on Equity	5.68	6.16	6.16	
Interest on Working Capital	26.17	26.17	16.81	
Special Allowance	16.75	16.75	0.00	
Annual Fixed charges	**177.82**	**179.36**	**161.41**	
Target Availability	**70.00%**	**38.98%**	**38.98%**	
Admissibility	**99.02**	**99.88**	**89.88**	**-9.14**
Scheduled Generation (Mus)	1164.18	460.76	460.76	

Particulars	2016-17

	Approved in MYT Order	Claimed in True-up	Approved in True-up	Diff. (if any)
O&M Expenses	125.18	125.18	100.51	
Depreciation	7.40	8.05	17.37	
Interest on Term Loan	0.77	1.87	0.00	
Return on Equity	5.68	6.46	6.44	
Interest on Working Capital	26.42	26.42	22.81	
Special Allowance	17.81	17.81	0.00	
Annual Fixed charges	**183.26**	**185.79**	**147.13**	
Target Availability	**70.00%**	**66.20%**	**66.20%**	
Admissibility	**173.31**	**172.91**	**136.93**	**-36.38**
Scheduled Generation (Mus)	1161.52	670.32	670.32	

Particulars	2017-18			
	Approved in MYT Order	Claimed in True-up	Approved in True-up	Diff. (if any)
O&M Expenses	130.28	130.28	102.18	
Depreciation	7.40	0.00	17.37	
Interest on Term Loan	0.17	0.96	0.00	
Return on Equity	5.68	3.38	3.36	
Interest on Working Capital	26.72	26.72	14.78	
Special Allowance	18.94	18.94	0.00	
Annual Fixed charges	**189.19**	**180.27**	**137.69**	
Target Availability	**70.00%**	**65.15%**	**65.15%**	
Admissibility	**176.08**	**167.78**	**128.15**	**-47.93**
Scheduled Generation (Mus)	1161.52	291.89	291.89	

Table 20: Summary of Annual Fixed Charges

(Figures in Rs Crore)

Particulars	Summary FY 2014-18			
	Approved in MYT Order	Claimed in True-up	Approved in True-up	Diff. (if any)
O&M Expenses	491.03	491.03	431.51	
Depreciation	29.60	23.50	69.49	
Interest on Term Loan	5.04	7.75	3.19	
Return on Equity	22.72	21.91	21.88	
Interest on Working Capital	105.16	105.16	78.71	
Special Allowance	69.25	69.25	0.00	
Annual Fixed charges	722.80	569.38	472.89	
Admissibility	576.73	569.38	472.89	-103.84

2.4 Other Related Issues

2.4.1 Reimbursement of Actual Income Tax

2.4.1.1 The Commission has gone through its MYT Order dated 29.04.2016, Review Order dated 18.01.2017 and Generation Tariff Regulations 2014. The relevant clause of Regulations is reproduced below:

"9. Tax on Income:

(1) Tax on the income streams of the generating company from its core business, shall be computed as an expense and shall be permitted to be recovered from beneficiaries. Any income stream other than the core business shall not constitute a pass-through component in tariff and tax on such other income shall be payable by the generating company.

Provided that the generating station-wise profit before tax of the generating company, as estimated for a year in advance, shall constitute the basis for distribution of the corporate tax liability to all the generating stations.

Provided also that the benefits of tax-holiday as applicable in accordance with the provisions of the Income-Tax Act, 1961 shall be passed on to the beneficiaries.

Provided further that income-tax allocated to the thermal generating station shall be recovered in the same proportion as annual fixed charges, the income-tax allocated to the hydro generating station shall be recovered in the same proportion as annual capacity charges.

*(2) **Notwithstanding anything contained in sub-regulation (1), total income tax payable to generating company, in any year, shall not be higher than the amount of:***

*(a) **Return on Equity allowed in that year X Minimum Alternative Tax (%), if company is paying such tax in any relevant year; or***

(b) Return on Equity allowed in that year X Corporate Tax (%), if company is paying such tax in any relevant year.

However, any income tax incidental due to payment of income tax in any preceding year shall be paid by the beneficiaries in subsequent year in addition to income tax at (a) & (b) above.

(3) Any under-recoveries or over-recoveries of tax on income shall be adjusted every year on the basis of income-tax assessment under the Income-Tax Act, 1961, as certified by the statutory auditors."

2.4.1.2 **The UPERC Generation Tariff Regulations, 2014 prescribe maximum amount payable for reimbursement of Income Tax either @MAT rate or @Corporate Tax rate, as per applicability to the Company subject to production of details of actual payment made. Therefore, the Commission is of the view that UPPCL shall reimburse the claim of Income tax based on the provisions of Generation Tariff Regulations and the Commission's Order.**

2.4.2 **Reimbursement of UPSLDC & NRPC Fee**

While perusing the details furnished along with the Petition, the Commission has observed that the total amount of Rs. 48.73 Crs is not verified by UPPCL which is pertaining to Income tax, on which the Commission has already given its view above. Also, the Petitioner in response to the Commission's query has clarified that UPPCL has verified these bills.

2.4.3 Interest on Income Tax

2.4.3.1 **While perusing the details furnished along with the Petition, the Commission has observed that the total amount of Rs. 7.38 Crs is not verified by UPPCL which is pertaining to Interest on Income tax.** It is a settled principle of law that interest on income tax charged due to failure in making timely payment of income tax is penal in nature cannot be reimbursed in tariff. In this regard, reliance is placed upon the judgment of the Hon'ble APTEL in Appeal Nos. 177 and 178 of 2012 in the case of ***BSES Rajdhani Power Limited & Ors. v. DERC.*** The relevant extract of the said judgment is reproduced herein below for ready reference –

> "*38.1* ***The State Commission has allowed the income tax after disallowing the penal interest of Rs. 2.28 crores paid by the Appellant to the income tax authorities.***
>
> *38.2* *According to the Appellant, they were compelled to pay penal interest only because the State Commission in its MYT order dated 23.02.2008 allowed a negligible amount of Rs. 5 crores toward income tax for the entire control period as against the claim of Rs. 25.48 crores towards income tax made by the Appellant. In FY 2010-11, the Appellant actually incurred a tax expense of Rs. 36.88 crores and penal interest thereon of Rs. 2.28 crores. As the State Commission had not provided adequate income tax in the ARR, the penal interest on income tax should be allowed.*
>
> *38.3* *We are not convinced by the argument of the Appellant that penal interest should be allowed as the State Commission has not kept adequate provision for income tax in the ARR. The Appellant gets carryings cost on the revenue shortfall which also includes the shortfall in income tax. The Appellant cannot claim the penal interest on income tax as also carrying cost on the revenue deficit.* ***The Appellant is responsible to make full payment of income tax in time. In any case, the Appellant had paid the income tax alongwith penal charges despite the shortfall in revenue. Therefore, the argument for claim of penal interest on income tax is not valid and is rejected.***"

2.4.3.2 **Therefore, in view of the above, it is clear that UPRVUNL in the present case cannot claim reimbursement of the penal charges paid by it due to delay in making the payment of income tax.**

2.5 Sharing of Gains and Losses for the Period FY 2014-15 To FY 2018-19

2.5.1 The Petitioner submitted the sharing of the efficiency gains on account of the controllable parameters for the Control Period FY 2014-15 to 2018-19 as follows:

Table 19: Details of Sharing of Gains/Loss as submitted by the Petitioner for the period FY 2014-15 to FY 2018-19

(*Figures in Rs. Crore*)

Summary of Sharing of Gain/Loss					
Sl. No.	**Financial Year**	**Variable Charges claimed from UPPCL**	**Fuel Cost as per Audited Accounts**	**Difference**	**Gain Sharing @20% with UPPCL**
1	FY 2014-15	368.21	389.20	-	-
2	FY 2015-16	201.47	226.36	-	-
3	FY 2016-17	265.35	347.80	-	-
4	FY 2017-18	119.21	172.68	-	-
Total		954.24	1136.04	-	-

2.5.2 The Petitioner further submitted to consider the above information of profit sharing with UPPCL as per UPERC Generation Tariff Regulations 2014. Accordingly, the Commission approves the above sharing of efficiency gain.

2.6 Carrying Cost

2.6.1 The Commission observed that the rate of carrying cost considered by the Petitioner is in variation with the Bank Rate calculated as per UPERC Generation Tariff Regulations, the Commission has worked out bank rate as per Regulation 16 (7) of UPERC Generation Tariff Regulation, 2014 as shown in Table below:

Table 20: Bank Rate

Particulars	**FY 2014-15**	**FY 2015-16**	**FY 2016-17**	**FY 2017-18**	**FY 2018-19**
Bank Rate (SBI Base Rate +350 Basis Point) for respective FY	13.50%	13.50%	12.80%	12.60%	12.20%
	FY 2019-20	**FY 2020-21**	**FY 2021-22**	**FY* 2022-23**	
	12.55%	11.65%	10.90%	11.05%	

2.6.2 **A summary of the carrying cost as approved by the Commission is shown below:**

Table 21: Carrying Cost on AFC and Efficiency gain as approved by the Commission for FY 2014-15 and FY 2017-18)

(Figures in Rs. Crore)

Particular	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18	FY 18-19
Opening Balance of Principal	0.00	-10.39	-19.53	-55.90	-103.84
Addition on account of Fixed Charges True Up	-10.39	-9.14	-36.38	-47.93	
Gain Sharing	-	-	-	-	
Closing Balance of Principal	-10.39	-19.53	-55.90	-103.84	-103.84
Average Balance	-5.20	-14.96	-37.72	-79.87	-103.84
Rate	13.50%	13.50%	12.80%	12.60%	12.20%
Carrying Cost on Addition	-0.70	-2.02	-4.83	-10.06	-12.67

Particular	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23*	Total
Opening Balance of Principal	-103.84	-103.84	-103.84	-103.84	
Addition on account of Fixed Charges True Up	0.00	0.00	0.00	0.00	
Gain Sharing	-	-	-	-	
Closing Balance of Principal	-103.84	-103.84	-103.84	-103.84	
Average Balance	-103.84	-103.84	-103.84	-103.84	
Rate	12.55%	11.65%	10.90%	11.05%	
Carrying Cost on Addition	-13.03	-12.10	-11.32	-3.82	-70.55
* up to 31.07.2022					

2.7 Summary of our findings and directions:

2.7.1 **In view of the above, the Commission directs that total amount of Rs. 174.39 Crore shall be payable by UPRVUNL to UPPCL in six equal monthly installments starting, within three months, from the date of this tariff Order in line with Regulation 6(10) of UPERC Generation Tariff Regulations, 2014.**

(Vinod Kumar Srivastava)
Member

(Kaushal Kishore Sharma)
Member

(Raj Pratap Singh)
Chairman

Place: Lucknow
Dated: 05.09.2022