BEFORE THE HON'BLE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION

PETITION NO. 1649OF 2020

Bajaj Energy Limited (BEL) ...**PETITIONER**

VERSUS

Uttar Pradesh Power Corporation Ltd. (UPPCL) ...**RESPONDENT**

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U.P. Power Corporation Limited

(Anand Shukla)
Superintending Engineer-I (FTA)
UPPCL

FORM-2

(See Regulation 17)

BEFORE THE HON'BLE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION

PETITION NO. 1649 OF 2020

IN THE MATTER OF:

Petition under Section 62, 86(1)(a) & 86(1)(b) of the Electricity Act, 2003 read with Regulation 15 (1) of UPERC (Terms and Condition of Tariff) Regulations, 2019 for fixation of Multiyear Tariff for the period from 01.04.2019 to 31.03.2024 in respect of 2 x 45 MW Utraula Thermal power project of Bajaj Energy Limited.

AND IN THE MATTER OF:

Bajaj Energy Limited (BEL) ...**PETITIONER**

VERSUS

Uttar Pradesh Power Corporation Ltd. (UPPCL) ...**RESPONDENT**

AFFIDAVIT VERIFYING THE REPLY OF UPPCL

I, Anand Shukla, S/o. Sh. Ram Swaroop Shukla, aged 55 years, working as Superintending Engineer (Power Purchase Agreement – 1) of the Respondent, Uttar Pradesh Power Corporation Limited having office at Shakti Bhawan, 14, Ashok Marg, Lucknow – 226001, do hereby solemnly affirm and state on oath as under-

1. That the deponent is working as Superintending Engineer (PPA-1) with the Respondent, UPPCL in the above matter and is duly authorized by UPPCL to make this affidavit.
2. That the contents of the accompanying reply are true to the best of my knowledge and records maintained by UPPCL and the submissions are based on legal advice. The annexures are true copies of their respective originals.

29.4.2022
Date

Sworn & Verified before me
29/4/22
V.N. SINGH
Advocate & Notary
Lucknow U.P. India
Regd. No. 31/63/2000

DEPONENT
(Anand Shukla)
Superintending Engineer (PPA-I)
UPPCL

VERIFICATION

I, the above-named Deponent, do hereby verify that the contents of this affidavit are true to my knowledge and belief, no part of it is false and nothing material has been concealed.

29.4.2022
Date

DEPONENT
(Anand Shukla)
Superintending Engineer-I (PPA-I)
UPPCL

NOTARY
V.N. SINGH
Advocate & Notary
Distt. Head Quarter
Lucknow
Regd. No. 31/63/2000
STATE OF U.P. INDIA

Sworn & Verified
before me
30/4/22
V.N. SINGH
Advocate & Notary
Lucknow U.P. India
Regd. No. 31/63/2000

I Identity of the deponents/Person
who has signed/L.T./R.T. before

BEFORE THE HON'BLE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION

PETITION NO. 1649 OF 2020

IN THE MATTER OF:

Petition under Section 62, 86(1)(a) & 86(1)(b) of the Electricity Act, 2003 read with Regulation 15 (1) of UPERC (Terms and Condition of Tariff) Regulations, 2019 for fixation of Multiyear Tariff for the period from 01.04.2019 to 31.03.2024 in respect of 2 x 45 MW UtraulaThermal power project of Bajaj Energy Limited.

AND
IN THE MATTER OF:

Bajaj Energy Limited ...**Petitioner**

VERSUS

Uttar Pradesh Power Corp. Ltd. (UPPCL) ...**Respondent**

REPLY ON BEHALF OF THE RESPONDENT, UTTAR PRADESH POWER CORPORATION LIMITED–

1. The present reply is being filed by the Respondent, Uttar Pradesh Power Corporation Limited ("**UPPCL**") in response to the petition filed by the Petitioner, Bajaj Energy Limited ("**BEL**") on 04.11.2020and the additional affidavit filed by BEL on 16.12.2021. By way of the present petition, BEL has sought for fixation of Multiyear Tariff ("**MYT**") for the period from 01.04.2019 to 31.03.2024 in respect of its 2 x 45 MW Utraula Thermal Power Project ("**Utraula Project**").

2. At the outset, UPPCL denies the contents of BEL's petitionand additional affidavit except whatever may be a matter of record or specifically admitted hereunder and the same may be treated as denied in seriatim. UPPCL craves the leave of this Hon'ble Commission to file a more detailed response and to add/modify/supplement the submissions under the present reply and/or place additional documents on record, as may be required. The contentions under the present reply are without prejudice to and in the alternative of each other.

Brief background –

3. On 10.12.2010, a Power Purchase Agreement ("**PPA**") was executed between BEL and UPPCL for supply 90% power generated by BEL'sUtraula Project. The PPA was approved by an order dated 18.11.2010 passed by this Hon'ble Commission in Petition Nos. 662 of 2010 & Batch read with corrigendum dated 07.12.2010.

   Subsequently, the PPA was amended by way of a Supplementary PPA dated 15.06.2011 to incorporate that 100% of power generated at BEL'sUtraula Project was to be supplied to UPPCL. The said SPPA was also approved by this Hon'ble Commission, by way of its order dated 03.11.2014 in Petition Nos. 830 of 2013 & Batch.

4. On 22.12.2011, by way of an order in Petition Nos. 763-767 of 2011, this Hon'ble Commission considered 95% of actual incurred capital expenditure of BEL of Rs. 2307 Crores (towards all 5 TPPs) and approved the provisional tariff as Rs. 1.81/kWh towards fixed charges and Rs. 2.19/kWh towards variable charges for the power supplied by BEL from its Utraula Project amongst others.

5. On 24.04.2012, Unit No.2 of BEL's Utraula Project achieved COD.As per the UPERC Tariff Regulations notified from time to time, this will be considered as the COD for the Utraula Project.

6. On 05.11.2012, by way of its order in Petition Nos. 825-829 of 2012, this Hon'ble Commission approved variable charges on actuals from the date of COD. Thereafter, on 20.05.2013, this Hon'ble Commission by way of another order in the same petition approved revised fixed charges on a provisional basis atRs. 2.43 for FY 2012-13 and Rs. 2.32 for FY 2013-14 in respect of the Utraula Project.

7. On 16.12.2014, this Hon'ble Commission issued the UPERC (Terms and Conditions of Generation Tariff) Regulations, 2014 ("**UPERC Tariff Regulations 2014**"). These regulations were applicable for the period 01.04.2014 to 31.03.2019.

8. On 24.05.2017, this Hon'ble Commission was pleased to pass a common order in Petition Nos. 973 of 2014[for approval of final capital cost as on COD], 1036-1040 of 2015 [Determination of final tariff, additional capitalisation and true up for the period from the COD upto 31.03.14] and 1079-1083 of 2016 [Determination of Multi Year Tariff for FY 2014-15 to FY 2018-19] ("**UPERCTariff Order 2017**").

9. On 05.07.2019, a public hearing was held by this Hon'ble Commission to deliberate upon the draft of the UPERC (Terms and Conditions of Generation Tariff) Regulations, 2019 which are applicable for the control period FY 2019 to 2024. During the said public hearing, various stakeholders participated and submitted their comments/suggestions on the draft tariff regulations.

10. On 11.09.2019, after taking into consideration the comments/suggestions of all stakeholders and having discussed the same during the public hearing, this Hon'ble Commission notified the UPERC (Terms and Conditions of Generation tariff) Regulations, 2019 ("**UPERC Tariff Regulations 2019**"). These regulations were to apply for the control period FY 2019-2024 and for cases where tariff for a generating station is required to be determined under Section 62 read with Section 86 of the Electricity Act, 2003 ("**Act**"). The relevant extracts of the UPERC Tariff Regulations 2019 are reproduced herein below for ready reference –

> *"1. Short titled and commencement:*
>
> ...
>
> *(2) These Regulations shall be applicable for the period from 01.04.2019 to 31.03.2024.*
>
> ...
>
> *2. Scope and extent of Application:*
>
> *(1) These Regulations shall apply in all cases where tariff for a generating station or a unit thereof is required to be determined by the Commission under Section 62 of the Act read with Section 86 thereof."*

11. On 23.09.2019, the Statement of Reasons ("**SOR**") for the UPERC Tariff Regulations 2019 was issued by this Hon'ble Commission where each of the comments/suggestions given by the stakeholders during the public hearing were taken into consideration and discussed.

Preliminary Submissions –

12. ***Re: Capital cost –***

12.1 In terms of the UPERC Tariff Regulations 2019, BEL's Utraula Project comes under the definition of an 'Existing Project' for which tariff is to bedeterminedon the generating station wise basis upon an application being preferred by BEL under Regulation 15. Further, Regulation 17 governsdetermination of capital cost which forms the basisfor determination of tariff. The extracts of the relevant regulations are reproduced herein below for ready reference –

"CHAPTER 1
GENERAL

...

3. Definitions:

...

*(19) **'Existing Project' means a project declared under commercial operation from a date prior to 01.04.2019;***

...

CHAPTER 3
Tariff Determination

14. Determination of tariff:

*(1) tariff in respect of a generating station under these Regulations shall be determined Stage-wise, Unit-wise or for the whole generating station, as the case may be. **However, on completion of projects the tariff may be determined for the whole station.***

(2) For the purposes of tariff, the Capital Cost of the Project shall be broken up into Stages and by distinct Units (in case part of Units are functional) forming part of the generating station. Where the Stage-wise, Unit-wise, breakup of the Capital Cost is not available and in case of on-going projects, the common facilities shall be apportioned on the basis of the installed capacity of the Units.

In relation to Multi- Purpose Hydroelectric generating stations, with irrigation, flood control and power components, the Capital Cost chargeable to the Power component of the generating station shall only be considered for determination of tariff. 'Project' as said above shall include generating station.

15. Application for determination of tariff:

*(1) **The generating company shall make an application for fixation of tariff in respect of the completed units of the generating station in such forms and such manners as prescribed in these Regulations and Uttar Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations, 2004 as amended from time to time or any statutory reenactment thereof.***

Provided that the applications for determination of tariff shall be filed covering the period for which the terms and conditions of tariff shall remain in force.

...

CHAPTER 4
Capital Cost and Structure

17. Capital Cost:

*(1) Subject to prudence check by the Commission, **the actual expenditure incurred on completion of the project shall form the basis for determination of final tariff for new and existing projects**.*

...

*(3) **The final tariff for an existing project shall be determined based on the admitted capital cost which shall include:***

*(a) **The capital cost admitted by the Commission prior to 01.04.2019 duly trued up by excluding liability, if any, as on 01.04.2019;***

*(b) **Additional capitalization and de-capitalization for the relevant year of tariff as determined in accordance with these Regulations;***

(c) Expenditure on account of Renovation and Modernization as admitted by this Commission in accordance with these Regulations;

(d) Capital expenditure on account of ash disposal and utilization including handling and transportation facility;

(e) Capital Cost incurred or projected to be incurred by a thermal generating station, on account of implementation of the norms under Perform, Achieve and Trade (PAT) scheme of Government of India shall be considered by the Commission subject to sharing of benefits accrued under the PAT scheme with the beneficiaries."

(Emphasis Supplied)

As is discernible from the quoted and highlighted extracts of Regulation 17 above, only the actual expenditure incurred forms the basis for determining the final tariff of an existing project such as the Utraula Project. Further, the tariff is determined based on the admitted capital cost which *inter alia* includes–

- Capital cost admitted by this Hon'ble Commission prior to 01.04.2019 duly trued-up by excluding liability, if any, as on 01.04.2019.
- Additional capitalization and de-capitalization for the relevant year of tariff as determined in accordance with the UPERC Tariff Regulations 2019.

12.2 In the above context, it is relevant to highlight that the petition for truing-up of additional capital expenditure incurred by BEL's Utraula Project up to 01.04.2019 is pending as on date.Notably, the said petition for truing-up for FY 2014-19 was filed by BEL only on 19.10.2020 with an inordinate and

inexplicable delay of 354 days. Hence, as on date, the trued-up capital cost of BEL's Utraula Project (as of 01.04.2019) is unavailable and in its absence, tariff for FY 2019 to 2024 cannot be determined. In this regard, it is most humbly submitted that since the entire delay is attributable solely to BEL's defaults, the liability of carrying costs (if any) should not be passed on to UPPCL.

12.3 Under the present petition, BEL hasalso admitted that its true-up petition for the Utraula Project for FY 2014-19 is pending and the closing capital cost claimed by it under the said petition has been adopted as the opening capital cost for the purposes of the present petition.The relevant extract of BEL's submissions under the present petition is reproduced herein below for ready reference –

> *"7) BEL has recently filed the true up Petition of Utraula Station (2x45 MW) for the period from 01.04.2014 to 31.03.2019 on 19.10.2020 for truing up of Tariff determined vide Order dated 24.5.2017 based on actual capital expenditure claimed as per UPERC (Terms and Conditions of Generation Tariff), 2014.* ***Further, as per the aforesaid true-up petition filed, the closing capital cost of the instant Station as on 31.03.2019 (i.e. Rs. 534.97 Cr) has been considered as the opening capital cost for the computation of Tariff in the instant Petition.This capital cost shall be subject to the outcome of the True Up Petition filed before Hon'ble Commission for the period 2014-19 and based on the outcome, opening capital cost would be adopted accordingly."***
>
> (Emphasis Supplied)

In the above context, it is most humbly submitted that such submissions of BEL are contrary to the express mandate of the UPERC Tariff Regulations 2019 which permit determination of tariff only basis duly trued-up figures. Hence, the capital cost unilaterally put forth by BEL under the present petition as the basis for determination of MYT for FY 2019-24 does not merit any consideration by this Hon'ble Commission.

It is also relevant to highlight that the additional capitalization and the closing capital cost claimed by BEL under the said true-up petition for FY 2014-19 has been vehemently disputed by UPPCL. Hence, the opening capital cost under the present petition would be subject to the adjudication and decision of this Hon'ble Commission in the true-up petition for FY 2014-19 and the base figures adopted by BEL under the present petition do not merit any consideration at this stage. This interdependence between the true-up proceedings of the previous control

period and the present petition has also been admitted by BEL under its present petition as extracted above.

12.4 It is most humbly submitted that not only the base capital cost figures adopted by BEL are contrary to the UPERC Tariff Regulations 2019, but even the capital cost figures adopted by BEL for each of the financial years inthe control period i.e., FY 2019-24are erroneous. This is because, BEL has also included in its capital cost,additional capitalization to the tune of Rs. 5.36 crores which is yet to be incurred. Such inclusion is contrary to Regulation 20 of the UPERC Tariff Regulations 2019 which stipulates that additional capitalization is permitted only at the true-up stage subject tothe additional capital expenditure being actuallyincurred and accepted by this Hon'ble Commission afterprudence check.

12.5 To substantiate its claims, BEL has placed reliance upon Regulation 17 and Regulation 20 of the UPERC Tariff Regulations 2019. The relevant extracts of BEL's submissions as well as Regulations 17 and 20 are reproduced herein below for ready reference –

BEL's submissions –

> *"8) The capital expenditure claimed in the instant Petition is based on the opening capital cost as on 01.04.2019 considered as above and estimated capital expenditures for the period 2019-24 have been projected based on the Regulation 17 and Regulation 20 of the Tariff Regulations, 2019."*

Regulation 17 of the UPERC Tariff Regulations 2019 –

> *"17. Capital Cost:*
> *(1) Subject to prudence check by the Commission, **the actual expenditure incurred** on completion of the project **shall form the basis for determination of final tariff for new and existing projects**.*
> *(2) The final tariff for a new project shall be determined based on the admitted capital cost which shall include:*
> *...*
> *(3) **The final tariff for an existing project shall be determined based on the admitted capital cost which shall include:***
> *(a) **The capital cost admitted by the Commission prior to 01.04.2019 duly trued up by excluding liability, if any, as on 01.04.2019;***
> *(b) **Additional capitalization and de-capitalization for the relevant year of tariff as determined in accordance with these Regulations;***

(c) *Expenditure on account of Renovation and Modernization as admitted by this Commission in accordance with these Regulations;*

(d) *Capital expenditure on account of ash disposal and utilization including handling and transportation facility;*

(e) ***Capital Cost*** *incurred* ***or projected to be incurred*** *by a thermal generating station,* ***on account of implementation of the norms under Perform, Achieve and Trade (PAT) scheme of Government of India*** *shall be considered by the Commission* ***subject to sharing of benefits accrued under the PAT scheme with the beneficiaries.***

...

(5) ***The following shall be excluded or removed from the capital cost of the existing and new projects:***

(a) ***The assets forming part of the project, but not in use;***

(b) ***De-capitalized Assets after the date of commercial operation on account of replacement or removal on account of obsolescence or shifting from one project to another project:***

Provided further that unless shifting of an asset from one project to another is of permanent nature, there shall be no de-capitalization of the concerned assets.

(c) *In case of hydro generating stations, any expenditure incurred or committed to be incurred by a project developer for getting the project site allotted by the State Government by following a transparent process;*

(d) *The proportionate cost of land which is being used for generating power from generating station based on renewable energy;*

(e) *Any grant received from the Central or State Government or any statutory body or authority for the execution of the project which does not carry any liability of repayment.*

(6) *Prudence Check of Capital Cost: The following principles shall be adopted for prudence check of capital cost of the existing or new projects:*

..."

Regulation 20 of the UPERC Tariff Regulations 2019 –

"20. Additional capitalization:

(1) ***The additional capital expenditure*** *in respect of a new project* ***or an existing project,*** *on the following counts within the original scope of work as per Detailed Project Report (DPR),* ***actually incurred after the date of commercial operation and up to the cutoff date*** *may be admitted by the Commission, subject to prudence check:*

...

(2) *Subject to the provisions of clause (3) of this Regulation, the **capital expenditure** of the following counts for new or existing projects **actually incurredafter the cutoff date** may be admitted by the Commission, subject to prudence check:*

...

(3) *In case of de-capitalisation of the assets of a generating company, the original cost of such asset as on the date of de-capitalisation shall be deducted from the value of gross fixed asset and corresponding loan as well as equity shall be deducted from outstanding loan and the equity respectively in the year such de-capitalisation takes place, duly taking into consideration the year in which it was capitalised.*

(4) *Additional capitalisation on account of Renovation and Modernization (R&M)*

..."

(Emphasis Supplied)

As is discernible from the above quoted and highlighted extracts of Regulation 17 and Regulation 20, only the capital expenditure actually incurred subject to prudence check by this Hon'ble Commission forms part of the capital cost for determination of tariff. The only situation where projected costs are taken into consideration is when a particular expenditure is required towards implementing norms under Perform, Achieve and Trade scheme ("**PAT Scheme**") of the Government of India. However, BEL has not qualified the projected capital expenditure as being required under the PAT Scheme. As such, BEL's submission oftariff computations which are based on projected capital expenditure is entirely impermissible.

13. ***Re:Return on Equity*** –

13.1 Under the present petition, BELhas considered the rate of Return on Equity ("**ROE**") as 16% (comprising of 15.5% base ROE along with 0.5% incentive for early commissioning)as against ROE of 15% prescribed under Regulation 24(i) the UPERC Tariff Regulations 2019. The relevant extracts of BEL's submissions and the UPERC Tariff Regulations 2019 are reproduced herein below for ready reference –

BEL's submissions –

"10) It is noteworthy to mention that Tariff has been calculated by considering 16% ROE worked out as follows:

a) Additional 0.5% ROE for early commissioning

b) Base ROE as 15.5%"

Regulation 24(i) of the UPERC Tariff Regulations 2019 –

> *"24. Capacity (Fixed) Charge:*
>
> ...
>
> *(i)* ***Return on Equity***
> ***Return on equity shall be computed in rupee terms on the equity base determined in accordance with these Regulations @ 15% per annum;***
> *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) or Free Governor Mode Operation (FGMO), data telemetry, communication system up to load dispatch center or protection system based on the report submitted by SLDC;*
> *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 up to 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."*
>
> (Emphasis Supplied)

As is discernible for the above quoted and highlighted extract of the UPERC Tariff Regulations 2019, the rate of ROE prescribed by this Hon'ble Commission for the control period FY 2019-24 is 15% and there is no additional ROE for early commissioning.

13.2 To substantiate its claim of16% ROE, BEL has advanced the following submissions under the present petition –

(i) Schedule 7 of the PPA provides for base ROE rate of 15.5% which is different from the rate of ROE under the UPERC Tariff Regulations 2019.

(ii) The additional ROE of 0.5% for early commissioning was allowed during the first control period COD to 2014 and the same was also continued during the previous control period i.e., 01.04.2014 to 31.03.2019 as per

the UPERC Tariff Order 2017. The additional 0.5% ROE is allowed as per the order dated 09.07.2014.

(iii) At the time of framing the UPERC Tariff Regulations 2019, this Hon'ble Commission was cautious of the fact that individual PPAs of the generators provide for different tariff parameters. Hence, the proviso clause to Regulation 2(4) was provided as a safeguard.

(iv) As per the proviso to Regulation 2(4) of the UPERC Tariff Regulations 2019, while this Hon'ble Commission recognized the supervening effect of the regulations, this Hon'ble Commission has retained the power to deal with hardship due to deviation in regulations from the PPA terms.

(v) The financial closure, arrangement of funds, deployment of equity and investments made in the capital cost of the plant by BEL have been made basis ROE of 15.5%.Accordingly, BEL and similarly placed generators arranged their affairs on this basis while committing to 25 year old PPAs. If the ROE is reduced to 15%, the fundamental basis for BEL's investment would be changed. Such ROE of 15.5% was also consistent with the Hon'ble CERC's tariff regulations which recognized the equity of public sector companies like NTPC, Powergrid, DVC, NEEPCO, etc.

(vi) ROE was envisaged at 15.5% on account of the investor's risk as compared to the other sectors. ROE of 15.5% was considered by the Government of India, Hon'ble CERC and even this Hon'ble Commission to be necessary to incentivize investment into generating companies.

(vii) As per Section 61 of the Act, this Hon'ble Commission is required to be guided by the Hon'ble CERC's tariff regulations which provide for a 15.5% ROE.

(viii) Additionally, this Hon'ble Commission may exercise its Power to Remove Difficulties under Regulation 11 or Power to Relax under Regulation 12 of the UPERC Tariff Regulations 2019 to deal to with the hardship caused to BEL on account of the UPERC Tariff Regulations 2019.

(ix) Lalitpur Power Generation Company Limited ("**LPGCL**") which is a part of the Bajaj group of companies had filed Petition No. 1524/2019 on the issue of ROE where this Hon'ble Commission allowed LPGCL to withdraw

the petition with liberty to approach at a later stage. BEL's PPAs have similar provisions.

13.3 It is most humbly submitted that none of the above submissions advanced by BEL substantiate its claim for allowing ROE at 16% contrary to the explicit terms of the UPERC Tariff Regulations 2019 whichprescribe ROE at 15%. It is pertinent to highlight that ROE for BEL's Utraula Project has always been allowed as per the prevailing UPERC Tariff Regulations of the respective control period. In this regard, reliance is placed upon the UPERC Tariff Order 2017 where *inter alia*MYT for the previous control period i.e., FY 2014-19 was approved. The relevant extracts of the UPERC Tariff Order 2017 are reproduced herein below for ready reference –

> *"8.* ***TARIFF DESIGN AND APPROACH FOR DETERMINATION OF MYT***
> *The tariff is structured on the following basis:*
> *(i) The data of GFA, Debt, Equity on 01.04.14, as approved by the Commission in the true-up of FY 2013-14 in this Tariff Order, has been considered as baseline data for calculation of tariff and ARR for the Petitioner for the MYT period from FY 2014-15 to FY 2018-2019.*
> *(ii)* ***Return on Equity has been considered as 16.0 % as provided in the UPERC Generation Tariff Regulations, 2014****.*
> *..."*
>
> (Emphasis Supplied)

As is discernible from the above quoted and highlighted extracts, the ROE for BEL's projects including theUtraula Project was approved at 16% as per the prevailing UPERC Tariff Regulations 2014. As such, it is inappropriate for BEL to claim that the ROE for the present control period should be determined as per the PPA termsand not on the basis of UPERC Tariff Regulations. Hence,in line with the past practices, the ROE for the present control period should also be approved strictly in accordance with the UPERC Tariff Regulations 2019 which prescribes ROE of 15% without any additional ROE for early commissioning.

13.4 It is most humbly submitted that even Schedule 7 of the PPA which has been relied upon by BEL expresslystipulates that that the tariff will be determined by this Hon'ble Commission as per the prevalent tariff regulations. In this regard,

reliance is placed upon paragraph 7.1.2 and 7.3.6 under schedule 7 of the PPA which are reproduced herein below for ready reference –

"SCHEDULE 7 : TARIFF

7.1 General

7.1.1 Procurers shall pay to the Seller the Tariff and Incentive Charge for each Tariff Period as set out in this Agreement. Tariff will be determined on a two-part basis comprising Fixed Charge (Capacity Charge) and Variable Charges (Energy Charges) and shall be computed for each Tariff Period. The Tariff (Fixed Charge, Variable Charges) and Incentive shall be determined by Appropriate Commission.

*7.1.2 **The Seller shall make an appropriate application to Appropriate Commission for determination of** provisional tariff and/or **final tariff or revision thereof from time to time, in accordance with the UPERC Regulations.***

..."

(Emphasis Supplied)

In view of the above quoted and highlighted extracts of the PPA, it is clear that tariff determination by this Hon'ble Commission is to be done as per the prevailing tariff regulations i.e., UPERC Tariff Regulations 2019. Particularly, ROE is to be allowed by this Hon'ble Commission as per the rate fixed by it under the UPERC Tariff Regulations 2019 for the present control period of FY 2019-24.

13.5 As regards BEL's submissions pertaining to adverse impact on financial closure, arrangement of funds, deployment of equity, investor's risk, etc. it is relevant to highlight that such submissions have already been dealt with and rejected by this Hon'ble Commission at the stage of framing the UPERC Tariff Regulations 2019 itself. It is noteworthy that before issuing the UPERC Tariff Regulations 2019 which prescribe ROE of 15%, this Hon'ble Commission had undertaken adetailed and through public consultation process where, a draft of the UPERC Tariff Regulations 2019 was made available tothe stakeholders on 24.05.2019 for their suggestions/comments. Thereafter, public hearing was held by this Hon'ble Commission on 05.07.2019 and ultimately the UPERC Tariff Regulations 2019 were issued on 11.09.2019 and Statement of Reasons for the same was issued on 23.09.2019 ("**SOR**").One of the companies which had participated in the public consultation process was LPGCL(an admittedconstituent of the Bajaj group). The relevant extracts of LPGCL's submissions on ROE as recorded under the SOR are reproduced herein below for ready reference –

"Section 61

"The Appropriate Commission shall, subject to the provisions of this Act, specify the terms and conditions for the determination of tariff, and in doing so, shall be guided by the following, namely:-

a) The principles and methodologies specified by the Central Commission for determination of the tariff applicable to generating companies and transmission licensees;

b) The generation, transmission, distribution and supply of electricity are conducted on commercial principles;

c) The factors which would encourage competition, efficiency, economical use of the resources, good performance and optimum investments;

d) Safeguarding of consumers' interest and at the same time, recovery of the cost of electricity in a reasonable manner;

e) The principles rewarding efficiency in performance;

f) Multi-year tariff principles;

g) That the tariff progressively reflects the cost of supply of electricity and also reduces cross subsidies in the manner specified by the Appropriate Commission;

h) The promotion of co-generation and generation of electricity from renewable sources of energy;

i) The National Electricity Policy and tariff policy"

Further, Section 181(2) (zd) of the Act empowers the State Commission to make regulations on the Terms and Conditions for the determination of tariff under section 61.

...

1.4 The Commission held a public hearing on July 05, 2019 at 3:30 pm at the Commission's Office, Lucknow in which stakeholders submitted their comments and suggestions. The comments / suggestions offered by the stakeholders on the then proposed Regulations and the Commission's decision thereon are discussed hereunder:

Particulars	*Draft Regs No.*	*Comments of the Stakeholders*	*Commission's view*
...	...	...	...
Return on Equity (ROE)	*27(iii)*	*1. UPRVUNL...* *2. LPGCL- **To allow the RoE at 16.00% per annum**(15.5% for ROE plus 0.50% additional for early completion of the projects) since, investment decision by promoter and bankers were taken when the ROE was (15.5 + 0.5%). If ROE is reduced now, it will not only reduce the return on investment but also create*	*Please refer Annexure-I*

Particulars	*Draft Regs No.*	*Comments of the Stakeholders*	*Commission's view*
		and environment of uncertainty (Regulatory and Financial). Also considering the present status of power projects across the country, higher risk is associated with the existing and new projects owing to macroeconomic changes, uncontrollable factors, pending litigations etc. are relatively higher for projects based on cost-plus model. So, the same ROE of 16% (15.5% + 0.5%) needs to be continued. ...	
...	...	...	...

...

"

(Emphasis Supplied)

As is discernible from the above quoted and highlighted extract of the UPERC Tariff Regulations 2019, LPGCL had put forth identical contentions to that of BEL under the present petition for allowing ROE of 16% i.e., of financial closure/arrangement of funds/investment decision by bankers& promoters and investment risk. Such submissions were duly taken into consideration and rejected by this Hon'ble Commission.The reasoning for such decision has been elaborated at Annexure-I appended to the SOR. Annexure-I to the SOR is reproduced herein below for ready reference –

"Rate of Return on Equity

1. *Return on equity is the return allowed to the ordinary shareholders on their equity investment in generation projects.* ***To ensure that it is fair to both the investors and the consumers, the return allowed should be commensurate with the returns available from alternate investment opportunities having comparable risk.***

2. ***The Tariff Policy of 2016 prescribes the following with regard to the Return on Equity:***

(i) ***Balance needs to be maintained between the interests of consumers and the need for investments while laying down rate of return.***

(ii) ***Return should attract investments at par with, if not in preference to, other sectors so that the electricity sector is able to create adequate capacity.***

(iii) ***The rate of return should be such that it allows generation of reasonable surplus for growth of the sector.***

3. ***The Commission has gone through the data of ROEs of different power companies across the country, and has observed that the ROE of major power companies in the Sector is in the range of 11%-13%, as shown in the table below:***

Table - ROE of major Power Sector Co's for FY 2015-16 to FY 2018-19

S. No.	*Companies*	*FY 2015-16*	*FY 2016-17*	*FY 2017-18*	*FY 2018-19*
	Regulated Generation Business Companies				
1	***NTPC***	***11.8%***	***12.25%***	***10.72%***	***10.11%***
2	***NHPC***	***9.48%***	***9.79%***	***12.82%***	***11.41%***
3	***SJVN***	***17.42%***	***13.08%***	***13.52%***	***11.01%***
	Regulated Diversified Business Companies				
4	*CESC*	*6.08%*	*8.45%*	*7.19%*	*9.73%*
5	*Tata Power*	*4.82%*	*-1.06%*	*7.73%*	*7.45%*
6	*Torrent Power*	*13.85%*	*6.51%*	*13.18%*	*10.83%*
7	*JSW Energy*	*16.96%*	*6.17%*	*1.25%*	*5.7%*
8	*Reliance Power*	*5.13%*	*4.38%*	*5.3%*	*4.71%*
9	*Jaiprakash Power Ventures*	*2.65%*	*-3.47%*	*-15.23%*	*-19.69%*

Source: www.valueresearchonline.com

4. ***Following key trends have been observed during recent times: As per RBI database, overall interest rates have shown a declining trend during the period 2014-19. The yield on 10 years bench mark Government bond has come down to 7-7.5% during 2018 as compared to 8-8.5% during 2014. The Repo Rate, Interbank Rate and SBI Base Rate have also come down during this period with better control over inflation. The***

interest rates are expected to remain low and stable over short and medium term.

S No.	Month/Year	Yield on 10 years Government bond
1	March, 14	8.83%
2	March, 15	7.74%
3	March, 16	7.46%
4	March, 17	6.69%
5	March, 18	7.4%
6	March, 19	7.35%
7	August, 19	6.69%

Source: www.investing.com

5. ***The Commission has undertaken an exercise to determine Return on Equity using the Capital Asset Pricing Model (CAPM) principles. As per CAPM Methodology,***
Return on equity = Risk free return + Beta x (Market return - Risk free return) Where;

Risk free return -Average of last five years yield of G-Sec (10 yrs bond yield) = (7.74%+7.46%+6.69%+7.40%+7.35%)/5=7.33%

Beta -BSE Power Index = 1.004 over last one year

Market Return- CAGR of last 20 years BSE Sensex values (1999-2019) calculated as 12.12%

ROE = 7.33%+1.004x (12.12%-7.33%) =12.14%

Considering the market realities, the Commission has decided to give a market premium of 300 basis points over the prevailing average G-Sec rates prevalent during the last 5 years. Accordingly, the ROE@15% has been fixed for the next control period i.e. 01.04.2019 to 31.03.2024."

(Emphasis Supplied)

As is evident from the above extracts of the SOR, this Hon'ble Commission while rejecting the submissions put forth by LPGCL for allowing ROE of 16%, had undertaken a detailed study to arrive at the well-informed conclusion that ROE of 15% must be allowed. Particularly, this Hon'ble Commission was conscious of Section 61 of the Act including, the principles of the National Tariff Policy 2016. Further, ROE data of various generating companies across the country over the previous 4 years along with financial trends and market realities were analysed by this Hon'ble Commission.It is an indisputable fact that the UPERC Tariff Regulations 2019 have not been challenged by any of the generators. Hence, having accepted this Hon'ble Commission's UPERC Tariff Regulations 2019

without demur, it is now impermissible for BEL to seek an increased rate of 16% ROEcontrary to the UPERC Tariff Regulations 2019.

13.6 It is most humbly submitted that the reliance placed by BEL on the proviso clause of Regulation 2(4) of the UPERC Tariff Regulations 2019 is entirely misplaced and the same has no application in the present case. The relevant extract of the UPERC Tariff Regulations 2019 is reproduced herein below for ready reference –

> *"2. Scope and extent of Application:*
>
> ...
>
> *(4) In case of any conflict between provisions of these Regulations and a Power Purchase Agreement signed between a generating company and Distribution Licensee(s)/ beneficiary (ies), the provisions of these Regulations shall prevail.*
> *Provided that in case of Projects where parameters have been agreed to in the Power Purchase Agreement or determined through earlier Regulations prior to 1.4.2019, for any hardship due to discrepancy/ inconsistency with parameters given in these Regulations, the Commission may be approached and parameters in such cases may be determined by the Commission at the time of tariff determination of concerned generating station."*

The above proviso clause to Regulation 2(4)applies in a situation where hardship is caused due to parameters fixed under the UPERC Tariff Regulations 2019. In this present case, the submissions advanced by BEL to justify that a hardship would be caused due to 1% reduction is ROE have already been considered and rejected by this Hon'ble Commission at the stage of framing the UPERC Tariff Regulations 2019. The rate of 15% ROE has been fixed by this Hon'ble Commission upon undertaking a detailed study and to balance the interests of all the stakeholders. Hence, it is impermissible for BEL to re-agitate the same under the garb of the proviso clause to Regulation 2(4) of the UPERC Tariff Regulations 2019.

13.7 It is a settled principle of law that a body entrusted with the task of framing sub-ordinate legislation such as the tariff regulationshas a range of options including, policy options. If on an appraisal of such guiding principles, the appropriate commission has chosen a particular line of logic or rationale, then no interference is warranted. In this regard, reliance is placed upon the judgment of

the Hon'ble Supreme Court in the case of ***Reliance Infrastructure Ltd. v. State of Maharashtra &ors***reported as**(2019)3 SCC 253**.The relevant extract of the said judgment is reproduced herein below for ready reference –

> *"40. We commenced our discussion by emphasising, in our prefatory observations, that the power to frame regulations is of a legislative nature. The CPRI report was an input before MERC in carrying out that exercise.* ***MERC followed the statutory procedures laid down for the determination of tariffs. It took into account factors which it is mandated by the statute to consider.*** *The National Tariff Policy, suggestions of stakeholders as well as the assessment carried out by CPRI were duly considered. Hence, the present case does not fall in the paradigm of manifest unreasonableness or arbitrariness to warrant the interference of this Court. It would be rather formulaic for the Court to accept that merely because DTPS was placed on a par in the immediately previous period (2006-07) and the period immediately succeeding (2016-20), that this must necessarily be extrapolated to the intervening period governed by the MYT Regulations, 2011.* ***A body which is entrusted with the task of framing subordinate legislation has a range of options including policy options. If on an appraisal of all the guiding principles, it has chosen a particular line of logic or rationale, this Court ought not to interfere.***"
>
> (Emphasis Supplied)

Applying the above legal principle to the present case, it is clear that since this Hon'ble Commission being an expert body, after considering the submissions of the stakeholders, guiding principles prescribed under Section 61 of the Act and upon undertaking a detailed study at stage of framing of the UPERC Tariff Regulations 2019,hadarrived at a well-informed conclusion that the ROE should be fixed at 15%, there is no reason for the same to be re-considered under the present petition afresh.

13.8 As regards BEL's submissions that this Hon'ble Commission is required to be guided by the Hon'ble CERC's tariff regulations, it is noteworthy that the the Hon'ble APTEL in its judgment in **Appeal No. 200 of 2011**in the case of ***M/s. Maruti Suzuki India Ltd. v. HERC &Anr.*** has held that the factors provided under Section 61 (a) to (i) of the Act are guiding in nature and not mandatory.The Hon'ble APTEL has also held that if the principles specified by the Hon'ble CERC were to be followed by the State Electricity Regulatory Commissions ("SERC"), then there was no reason to give the SERCs power to frame regulations under

Section61 of the Act. The relevant extract of the said judgment is reproduced herein below for ready reference –

> *"39. **Now, let us examine the usage of term 'shall be guided' in Section 61 as reproduced below:***
>
> ...
>
> *40. **Bare reading of the above section would make it amply clear that the factors given in clauses (a) to (i) are guiding in nature and cannot be held to be mandatory.** For example, clause (i) refers to multi-year tariff principles. What are multi-year tariff principles? These are not defined or prescribed anywhere in the Act or Rules made thereunder. If the term 'shall be guided' is to be construed as 'shall be followed', then which are the multi-year tariff principles the Commissions are expected to follow? Each Commission has framed multi-year tariff Regulations depending upon specific requirements of the respective state.*
>
> *41. Further, Section 61(a) states that the Appropriate Commission shall be guided by the principles and methodologies specified by the Central Commission for determination of the tariff applicable to generating companies and transmission licensees. Section 61 is equally applicable to the Central Commission. Thus, for the Central Commission, the Section 61(a) would imply that the Central Commission shall follow the principles and methodologies specified by the Central Commission for determination of the tariff applicable to generating companies and transmission licensees. Naturally, this provision cannot be made mandatory for the Central Commission. **Again, if the principles and methodology laid down by the Central Commission for determination of tariff applicable to generating stations and transmission licensee has to be followed by the State Commissions, as contended by the Appellant, then there was no need to give powers to State Commissions to make Regulations under Section 61. The Parliament could have simply stated that the State Commissions shall follow the Regulations laid down by the Central Commission under Section 61.** Every State Commission has framed Tariff Regulations under Section 61 specifying various normative parameters which may or may not be in conformity with the normative parameters specified by the Central Commission."*
>
> (Emphasis Supplied)

Applying the above legal principle to the present petition, it is clear that BEL's submissions that this Hon'ble Commission should be guided by the Hon'ble CERC's tariff regulations merits no consideration. Particularly, when this Hon'ble Commission has carried out a detailed independent exercise in arriving at a well-informed conclusion and has determined its own tariff regulations governing ROE.

13.9 Under the present petition, BEL has also contended that this Hon'ble Commission may exercise its Power to Remove Difficulties under Regulation 11 of the UPERC Tariff Regulations 2019 for allowing ROE of 16%. The relevant extract of the said regulation is reproduced herein below for ready reference –

> *"11. Power to Remove Difficulties:*
> *If any difficulty arises in giving effect to these Regulations, the Commission may, of its own motion or otherwise, by an Order and after giving a reasonable opportunity to those likely to be affected by such Order, make such provisions, not inconsistent with these Regulations, as may appear to be necessary for removing the difficulty."*

As is discernible from the explicit language of the regulation quoted and highlighted above, the power to remove difficulties is to be exercised for giving effect to the UPERC Tariff Regulations 2019 and to make such provisions which are not inconsistent with the UPERC Tariff Regulations 2019. Such being the intent of Regulation 11 above, BEL's reliance on the same to obtain a relief which is inconsistent with the UPERC Tariff Regulations 2019is wholly erroneous and does not merit any consideration.

13.10 BEL has also placed reliance upon Regulation 12 of the UPERC Tariff Regulations 2019 which deals with the Power to Relax. The relevant extract of the said regulation is reproduced herein below for ready reference –

> *"12. Power to Relax:*
> *The Commission, for reasons to be recorded in writing, may vary any of the provisions of these Regulations on its own motion or on an application made before it by an interested person by an order."*

Pertinently, the Hon'ble Supreme Court in the case of ***Gujarat Urja Vikas Nigam Ltd. v. Solar Semiconductor Power Co. (India) (P) Ltd.*** reported as **(2017) 16 SCC 498** has held that provisions such as power to relax are in the nature of inherent power and cannot be exercised in a manner contrary to the regulations framed by the appropriate Electricity Regulatory Commission. The relevant extracts of the said judgment are reproduced herein below for ready reference –

> *"34. **Regulations 80 to 82 are instances of such powers specified by the Commission.** Regulation 80 has provided for the inherent power of the Commission to the extent of making such orders as may be necessary for the ends of justice or to prevent the abuse of the process of the Commission. It has to be borne in mind that such*

inherent powers are to be exercised notwithstanding only the restrictions on the Commission under the Conduct of Business Regulations, meaning thereby that there cannot be any restrictions in the Conduct of Business Regulations on exercise of inherent powers by the Commission. But the specified inherent powers are not as pervasive a power as available to a court under Section 151 of the Code of Civil Procedure, 1908:

> *"151. Saving of inherent powers of court.—Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice, or to prevent abuse of the process of the court."*

However, the Commission is enjoined with powers to issue appropriate orders in the interest of justice and for preventing abuse of process of the Commission, to the extent not otherwise provided for under the Act or Rules. ***In other words, the inherent power of the Commission is available to it for exercise only in those areas where the Act or Rules are silent.***

35. ***Under Regulation 81, the Commission is competent to adopt a procedure which is at variance with any of the other provisions of the Regulations in case the Commission is of the view that such an exercise is warranted in view of the special circumstances and such special circumstances are to be recorded in writing. However, it is specifically provided under Section 181 that there cannot be a Regulation which is not in conformity with the provisions of the Act or the Rules.***

36. *Under Regulation 82, the Commission has powers to deal with any matter or exercise any power under the Act for which no Regulations are framed meaning thereby where something is expressly provided in the Act, the Commission has to deal with it only in accordance with the manner prescribed in the Act.* ***The only leeway available to the Commission is only when the Regulations on proceedings are silent on a specific issue. In other words, in case a specific subject or exercise of power by the Commission on a specific issue is otherwise provided under the Act or the Rules, the same has to be exercised by the Commission only taking recourse to that power and in no other manner.To illustrate further, there cannot be any exercise of the inherent power for dealing with any matter which is otherwise specifically provided under the Act.*** *The exercise of power which has the effect of amending the PPA by varying the tariff can only be done as per statutory provisions and not under the inherent power referred to in Regulations 80 to 82.* ***In other words, there cannot be any exercise of inherent power by the Commission on an issue which is otherwise dealt with or provided for in the Act or the Rules.***

...

> 39. ***The Commission being a creature of statute cannot assume to itself any powers which are not otherwise conferred on it. In other words, under the guise of exercising its inherent power, as we have already noticed above, the Commission cannot take recourse to exercise of a power, procedure for which is otherwise specifically provided under the Act.***
>
> (Emphasis Supplied)

Pertinently, in arriving at the above conclusions, a provision akin to Regulation 12 of the UPERC Tariff Regulations 2019 namely, Regulation 81 of the GERC (Conduct of Business) Regulations 2004 was analysed by the Hon'ble Supreme Court. The said Regulation 81 is being reproduced herein below for ready reference–

> *"81. Nothing in these Regulations shall bar the Commission from adopting in conformity with the provisions of the Acts, a procedure,* ***which is at variance with any of the provisions of these Regulations, if the Commission, in view of the special circumstances of a matter or class of matters and for reasons to be recorded in writing, deems it necessary or expedient for dealing with such a matter or class of matters.***"
>
> (Emphasis Supplied)

In view of the law laid down by the Hon'ble Supreme Court as set out above, BEL's claim for exercise of Power to Relax is impermissible.

13.11 It is also relevant to note that the Hon'ble Supreme Court in the case of ***R.K. Khandelwal v. State of Uttar Pradesh &ors.*** reported as **(1981)3 SCC 592** has held that Power to relax must be exercised reasonably and fairly and the same cannot be exercised in arbitrary manner to favour certain parties over the others. The relevant extract is reproduced herein below for ready reference-

> *"6. Dr Singhvi, who appears on behalf of the appellant, raised a further contention that the ratio 1 : 1 was relaxed from time to time by the University and that the appellant was discriminated against by the arbitrary refusal of the authorities to relax the ratio in his favour.* ***We are prepared to accept that if there is a power to relax the ratio, that power must be exercised reasonably and fairly. It cannot be exercised arbitrarily to favour some students and to disfavour some others.****But the difficulty in the way of the learned Counsel is that this point of discrimination was not taken in the writ petition which was filed in the High Court, it was not argued in the High Court and is not even mentioned in the special leave petition before us. The question as to whether the authorities have the power to relax the ratio and the further question as to whether that power has been exercised arbitrarily in this case raise new points into*

which it is difficult for us to enquire for the first time. We are therefore unable to entertain the submission made by the counsel."
(Emphasis Supplied)

In the present Petition as well, Power to Relax cannot be exercised solely to favour BEL and enable it to claim higher ROE than the other generators. Particularly, when the reasoning put forth by BEL is similar to the reasoning which was put forth by the generators which was rejected by this Hon'ble Commission at the stage of framing the UPERC Tariff Regulations 2019.

13.12 It is also relevant to point out that under the true-up petition dated 19.10.2020 filed by BEL in respect of its Utraula Project for truing-upof tariff pertaining to FY 2014-19, BEL has admitted that its Utraula Project was designed contrary to the technical specifications and requirements of the prevailing the UPERC (Terms and Conditions of Generation Tariff) Regulations, 2009 ("**UPERC Tariff Regulations 2009**"). Particularly, the coal yard which was developed by BEL was insufficient to meet the mandatory coal storage requirements under the UPERC Tariff Regulations 2009. This fact has also been buttressed and substantiated by thetechnical justification report for additional capitalization put forth by BEL in its true-up petition for FY 2014-19.All of this clearly reflects that BEL's Utraula Project was commissioned in a haste without complying with the requirements set out under the UPERC Tariff Regulations 2009. As such, claim of any additional ROE by BEL is entirely impermissible. This Hon'ble Commission may take into consideration the fact that BEL has enjoyed additional ROE since its COD despite the fact the technical specifications of its UtraulaProject did not comply with the UPERC Tariff Regulations 2009. Hence, this Hon'ble Commission may direct BEL to refund the additional ROE which has been collected by it so far along with interest and bear the same fact in mind while approving ROE for BEL in the present control period i.e., FY 2019-24.

13.13 In view of the above submissions, it is most humbly submitted that BEL's claim of allowing ROE at 16% contrary to the UPERC Tariff Regulations 2019 which allows ROE at 15% is impermissible and merits no consideration by this Hon'ble Commission.

14. ***Re: Interest on loan –***

14.1 Under the present petition, BEL has considered the Weighted Average Rate of Interest on loan as follows in its Form 13 –

Particulars	FY 18-19	FY 19-20	FY 20-21	FY 21-22	FY 22-23	FY 23-24
Weighted average rate of interest on loans	12.20%	12.83%	12.71%	12.53%	12.40%	12.40%

Pertinently, the interest on loan component is calculated in terms of Regulation 24(ii) of the UPERC Tariff Regulations 2019 which provides as follows –

"24. Capacity (Fixed) Charge:

...

(ii) Interest on loan capital

(a) Interest on loan capital shall be computed loan wise on the loans arrived at in the manner indicated in these Regulations.

(b) The loan outstanding as on 1st April 2019 shall be worked out as the gross loan as per these Regulations minus cumulative repayment as admitted by the Commission up to 31st March 2019. The repayment for any financial year during the tariff period shall be deemed to be equal to the depreciation allowed for that financial year.

In case of de-capitaisation of assets, the repayment shall be adjusted by taking into account cumulative repayment on a pro rata basis and the adjustment should not exceed cumulative depreciation recovered up to the date of de-capitalisation 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 financial year and shall be adjusted based on actual loan each financial year accordingly.***

(d) If there is no actual loan for a particular financial year but normative loan is still outstanding, the last available weighted average 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 50:50. The above facts shall be certified by the 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 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.

(h) 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 financial year shall be adjusted for such impact and billed accordingly to the 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 the pendency of the dispute."

(Emphasis supplied)

14.2 It is relevant to highlight that under the UPERC Tariff Order 2017, this Hon'ble Commission had approved the following rate of interest for BEL's Barkhera Plant–

"9.5.2 ARR and MYT as determined by the Commission:

i. Capacity (Fixed) Charges:

(a) Provisions under Regulations:

For determination of components of fixed charges for MYT period of FY 2014 - 15 to FY 2018 - 19, the Commission opines that the parameters provided under UPERC Generation Tariff Regulations, 2014 shall be considered. Hence, the Commission has decided to allow the components of fixed charges as below:

Components of Fixed Charge	*Value*	*Remark*
...	...	...
Interest on Loans	*FY 15 – 13.43%* *FY 16 – 11.76%*	*Weighted average of interest on loans for*

Components of Fixed Charge	*Value*	*Remark*
	FY 17 – 11.72% *FY 18 – 11.67%* *FY 19 – 11.59%*	*FY 2014-15 to FY 2018-19*

"

Assuming for the sake of argument but not admitting, even if the rate of interest on loan in FY 2018-19 is taken as 12.20% as claimed by BEL, it is inexplicable as to why the interest rate has increased to 12.84% in FY 2019-20.

14.3 It is relevant to highlight that the benchmark interest rates in terms of the SBI Base Rate for the last 6 years has declined from 10% as on 01.04.2014 to 7.30% as of 10.12.2020 which is a total reduction of 270 basis points –

Effective date	Interest rate (in %)
10.12.2020	7.30
10.09.2020	7.40
10.06.2020	7.40
10.03.2020	8.15
16.12.2019	8.45
10.09.2019	8.95
10.12.2018	9.05
01.10.2018	9.00
01.07.2018	8.95
01.04.2018	8.70
01.01.2018	8.65
01.10.2017	8.95
01.07.2017	9.00
01.04.2017	9.10
01.01.2017	9.25
05.10.2015	9.30
08.06.2015	9.70
10.04.2015	9.85
07.11.2013	10.00

In view of the above, it is most humbly submitted that BEL's claims of increase in interest rate from 12.20% in FY 2018-19 to 12.84% in FY 2019-20 does not correspond to the prevailing interest regime applicable for domestic rupee term loans. In this regard, BEL has not even corroborated/substantiated its claims with any documentary evidence such as interest certificates and bank loan

agreements. Under the present petition, BEL has claimed varying rates of interest from different banks ranging from 12.40% to 15.00% while in the immediately preceding years, interest rates were ranging from 10.49% to 13.79%. Further, the submissions made under Form 7 on project specific loans is not legible. Hence, in the absence of proper details and documentary evidence, UPPCL is unable to comment on the rates of interest claimed by BEL.

15. ***Re: Failure to seek prior approval of Hon'ble Commission for additional capitalization –***

15.1 It is most humbly submitted that by way of the UPERC Tariff Order 2017, this Hon'ble Commission had specifically directed that BEL should seek prior approval of this Hon'ble Commission before undertaking any additional capital expenditure on its generating stations including the Barkhera Project. The relevant extract of UPERC Tariff Order 2017 is reproduced herein below for ready reference –

> *"10. OTHER PROVISIONS*
> ...
> *(D) Additional Capital Expenditure:*
> *The Petitioner shall seek* ***prior approval*** *of the Commission before undertaking additional capital expenditure on its generation stations."*
>
> (Emphasis Supplied)

15.2 Pertinently, in the present petition BEL has projected additional capital expenditure on various counts spread out between FY 2019-24. If such additional capital expenditure is actually incurred by BEL during FY 2019-20, FY 2020-21 and FY 2021-22, without any prior approval of this Hon'ble Commission, then in view of the non-compliance of this Hon'ble Commission's orders, the additional capitalization claimed by BEL for such period should be disallowed at the threshold.

16. ***Re: Submissions under tariff filing forms –***

16.1 Under Form 1 annexed to the petition, BEL has not provided the details of landed cost of fuel (domestic and imported) and Secondary Fuel Oil cost.

16.2 Without prejudice to the submissions that additional capitalization cannot be taken into consideration at this stage under the present petition, it is most

humbly submitted that the annual PLF of BEL's power stations is normally less than 20% for the past 3 years. This is because, BEL's power stations figure at the fag end of Merit Order Despatch due to higher variable charges. Considering the same, it is likely that the O&M expenses incurred by BEL's Utraula Project may have been lower. Therefore, it is requested that this Hon'ble Commission may direct BEL to place on record the actual O&M expenses of the previous 3 years and accordingly modify the O&M norms to reflect the actual requirement at BEL's power stations.

16.3 The Form 7 submitted by BEL for placing on record the details of project specific loans is not legible. Hence, BEL should be directed to re-furnish the same.

16.4 Without prejudice to the submissions that additional capitalization cannot be taken into consideration at this stage under the present petition, it is most humbly submitted that BEL has claimed various counts of capital expenditure (such asDeSOX, ESP, installation of RO, Piezometer) under its Form-9A as being required due to Change in Law. In this regard, it is relevant to point out that barring bald assertions, BEL has not demonstrated as to how any ofthese expendituresarise out Change in Law events. Change in Law is a question of fact which depends upon pre-existing obligations, conditions, standards, norms, provisions, tariff regulations and PPA. Further, BEL was also required to comply with the procedure prescribed under the PPA for notifying the occurrence of a Change in Law event. However, no such submissions have been placed on record by BEL. Hence, it is most humbly submitted that BEL's claims for additional capitalization on this count are impermissible.

16.5 Without prejudice to the submissions under the present petition that BEL's claims of additional capitalization cannot be taken into consideration, it is relevant to point out that details under Form 9E (Statement of capital cost) and Form 9F (Statement of capital works in progress) have not been placed on record by BEL.

16.6 Under Form 13B pertaining to calculation of Interest on Working Capital, BEL has considered cost of coal as 2936.72 lakhs and cost of main secondary fuel oil

as Rs. 17.59 lakhs for FY 2019-20 to FY 2023-24. When such data is compared to the corresponding values of FY 2018-19, there is substantial variance as the cost of coal was considered as 4008.85 lakhs and cost of secondary fuel oil was considered as 80.23 lakhs. In this regard, this Hon'ble Commission may direct BEL to place on record the justification and basis for such variance in the figures considered by BEL for cost of coal and secondary fuel oil to enable UPPCL to comment on the same.

16.7 In addition to the above, both Form 15 (Details/information to be submitted in respect of fuel for computation of energy charges) and Form 17 (Liability flow statement) have been stated to be 'Not Applicable'. In this regard, BEL should be directed to furnish the requisite information.

17. ***Re: Submissions under additional affidavit dated 16.12.2021***

17.1 Without prejudice to the submissions that additional capitalization cannot be taken into consideration at this stage under the present petition, it is submitted that by way of its additional affidavit dated 16.12.2021BEL has brought claims for additional capital expenditure to be incurred towards the alleged upgradation of Digital Control System ("**DCS**"), Field Control System ("**FCS**") and associated bundled Operating System ("**OS**") (collectively referred to as "**IT systems**"). At the outset, UPPCL denies the contents of BEL's additional affidavit and submits that the said affidavit deserves no consideration on account of the reasons stated in the subsequent paragraphs.

17.2 BEL has placed reliance on Regulation 20 (2) (iv) of the UPERC Tariff Regulations 2019 read with the Cyber Security in Power Sector Guidelines dated 07.10.2021 ("**CEA Guidelines**") to justify the claim of capital expenditure on account of the IT systems. The CEA Guidelines have been issued in terms of Regulation 10 of CEA (Technical Standards for Connectivity to the Grid) (Amendment) Regulations, 2019. The relevant extract of the UPERC Tariff Regulations 2019 and the CEA Guidelines as extracted from BEL's submissions and have been reproduced herein below for ready reference –

Regulation 20 of UPERC Tariff Regulations 2019 –

"20. Additional capitalization:

...

*(2) Subject to the provisions of clause (3) of this Regulation, the **capital expenditure** of the following counts for new or existing projects **actually incurredafter the cutoff date** may be admitted by the Commission, subject to prudence check:*

(iv) Any expenses to be incurred on account of need for higher securityand safety of the plant as advised or directed by appropriateGovernment Agencies of statutory authorities responsible for nationalsecurity/internal security;

..."

Relevant Clauses of CEA Guidelines from BEL's Submissions –

"8. Clause 2.4 of the CEA Guidelines provides that:-

"2.4.1 Control Systems for System Operation and Operation Management.

a) Grid Control and Management Systems,

b) Power Plant Control Systems...."

Further, Clauses 5 and 7 of the CEA Guidelines provide as under:-

"Article 5. Cyber Security Requirements

c) The Responsible Entity shall ensure that ISD

(5) updates the firmware/software with the digitally signed OEM validated patches only.....

.... Article 7. Phasing out of Legacy System

a) As the life cycle of the Power System Equipment/System is longer than that of IT Systems deployed therein, the Responsible Entity shall ensure that all IT technologies in the Power System Equipment/System should have the ability to be upgraded.""

17.3 To substantiate its projected claimof Rs. 1.42 Crores ***(@para 19 at pg. 7 of Additional Affidavit dated 16.12.2021***) on the IT systems, BEL has averred that–

(i) Being a thermal power generator BEL falls under the category of a Responsible Entity under CEA Guidelines and would thus, be required to comply with its provisions.

(ii) As per CEA Guidelines, Responsible Entities are required to ensure that all IT Technologies deployed in the Power System Equipment should have the ability to be upgraded.

(iii) To comply with the CEA Guidelines BEL had to upgrade the IT systems for the Utraula Project.

(iv) The capital expenditure to be incurred as a result of upgrading the IT systems is justified under Regulation 20 (2) (iv) of the UPERC Tariff Regulations 2019.

17.4 It is submitted that the above contentions raised by BEL deserves no consideration of this Hon'ble Commission as because BEL itself is in non-compliance of Art. 7 of the CEA Guidelines. Art. 7 of the CEA Guidelines has been reproduced herein below for ready reference –

"Article 7 Phasing out of Legacy System

...

b) ***The Responsible Entity shall ensure that the Information Security Division shall draw the list of all communicable equipments/systems nearing end life or are left without support from OEM. Thereafter CISO shall identify equipment/systems to be phased out from the list drawn, firm up their replacement plan and put up the replacement plan for approval before the Board of Directors.***

...."

(Emphasis Supplied)

It is discernible from the above that the plan for the replacement or upgradation of the phased-out systems has to be approved by the Board of Directors ("**BOD**") of the concerned responsible entity. It is clear from a bare reading of the CEA Guidelines that the IT systems could not be replaced without the express approval of the BOD. Notably, BEL has not put on record any documentary evidence to indicate that the BOD has approved the plan for upgrading the IT systems of its plant. Therefore, on this count alone BEL's claim for additional capitalization for the IT systems should be dismissed at the threshold.

17.5 BEL basis the notification dated 26.09.2013 of OS Manufacturer Microsoft has submitted that the supporting OS for its DCS (Foxboro) systems i.e., 'Windows Server 2003' for its Server and 'Windows XP'for Operator Workstations would go out of support from April 2014. These would, hence, require urgent upgradation and replacement. In this regard it is pertinent to note that at the time of procuring the OS, there were latest Server OS versions available from Microsoft

which have not been procured by the Petitioner for reasons best known to them. As per the information available in the public domain, Windows Server 2008 (R2) was available in 2009, which was prior to the procurement of the existing OS. It needs to be ascertained as to what other IT software/ hardware had been put to use which were not the latest versions of themselves at the time of signing the PPAs. It is humbly submitted that BEL be directed to explain the reason for its acquisition of older version of software when newer versions, which could have lasted longer were available.

17.6 BEL has also submitted that it had to acquire four Field Control Processor (Model FCP – 270) ("**FCP**") allegedly since they would no longer be available for from 01.10.2017. BEL has put on record a customer notification dated 26.06.2017 from M/s Schneider Electric, BEL's original equipment manufacturer to justify the acquisition. The relevant portion of the customer notification dated 26.06.2017 has been reproduced herein below for ready reference –

> *"The purpose of this notification is to inform you that the Schneider Electric Foxboro Model P0917YZ, FCP270 Control Processor is approaching the end of its availability for sales.*
> *The FCP270 was released for sale in February 2005, then moved to the Available phase of its product lifecycle in June 2014, when its replacement, FCP280, became the Preferred product. After more than 12 years of commercialization, **the FCP270 will enter the Mature phase and will no longer be available in Buyautomation.com effective on October 1st, 2017**.*
>
> *The Mature Phase begins when the product is withdrawn from sale and no more enhancements are provided. Before the product is withdrawn, we are committed to ensure that a comprehensive, clearly defined support program is firmly in place. The length of time that a Standard Product remains in this phase varies, based on product type, and is directly related to the degree of disruption to our Customers' processes – the more difficult it is to remove, the longer the duration. **According to our product lifecycle policy, Controllers are supported in the Mature Phase for five years**."*
>
> (Emphasis Supplied)

Upon a close perusal of the notification dated 26.06.2017, it becomes evident that the FCP Controllers are supported for five years after they enter their mature phase, i.e., till 30.09.2022. Thus, it is submitted that BEL's reliance on the customer notification dated 26.06.2017 to justify the additional capitalization claimed on this count is impermissible. BEL's decision to procure the FCP

Controllers is not only premature, but it is also callous. It is prayed that this Hon'ble Commission does not allow any capital expenditure on this count.

17.7 Further, BEL has also averred to certain FCP failures commencing from January 2018. As a consequence, the FCP were required to be upgraded. In this regard, it is submitted that since FCPs constitute an important part of the plant control systems, non-inclusion of additional capitalisation towards FCP upgradation in the present petition only reveals that the BEL's proposal in this regard is merely an afterthought; as even the CEA Guidelines (basis which BEL has sought to justify its claims under this additional affidavit) were notifiedon 07.10.2021 i.e., immediately prior to the filing of this additional affidavit.

17.8 BEL has also submitted that it is in the process of finalizing the capital expenditure to be incurred for upgradation of the aforesaid systems and that exact amounts would be placed before this Hon'ble Commission in due course of time. Hence, it is submitted that UPPCL is unable to comment on the same and it reserves its rights to make additional submissions at the relevant stage.

18. **Paragraph wise response** –

With respect to the Petition

18.1 The contents of paragraphs 1-5 of the petition to the extent that they are a matter of record and are not inconsistent with the background facts set out in this reply do not merit a response. Any inconsistent submissions are vehemently denied and UPPCL craves the leave of this Hon'ble Commission to explain the correct facts as set out in the present reply.

18.2 The contents of paragraphs 6-8 of the petition are vehemently denied. It is reiterated that thetariff for the control period FY 2019-24 under the UPERC Tariff Regulations 2019 can be determined only basis duly trued-up capital cost as on 01.04.2019 and it is impermissible BEL to consider the opening capital cost as per its claims under the true-up petition for FY 2014-19. Further, it is also impermissible for BEL to factor in projected capital expenditure. In this regard, reliance is placed on the preliminary submissions set out above and the same is not being repeated for the sake of brevity.

18.3 As regards contents of paragraph 9 and 16-17 relating to reimbursement of water charges and regulatory fee, it is most humbly submitted that this Hon'ble Commission allow the same strictly in accordance with the UPERC Tariff Regulations 2019 subject to actual payment (as supported by documentary proof) and prudence check.

18.4 The contents of paragraph 10, 10.1 to 10.13, 11-12 and15 regarding claim of ROE at 16% dehors the explicit provisions of the UPERC Tariff Regulations 2019 are vehemently denied. The contentions advanced in the preliminary submissions above are reiterated and not repeated for the sake of brevity. Further, the reliance placed by BEL on various materials/ judgments is inapplicable in the present case as they can be distinguished as under –

A. Reliance on M.P. Jain's cases and materials on Indian Administrative Law – It is most humbly submitted that the paragraph extracted in BEL's petition has no binding precedence on this Hon'ble Commission. Further, the Power to Remove Difficulty contained under the UPERC Tariff Regulations 2019 clearly stipulates that the same is for giving effect to the UPERC Tariff Regulations 2019 and to adopt such measures which are not inconsistent. Hence, BEL's claim of 16% ROE contrary to the explicit provisions of the UPERC Tariff Regulations 2019 is impermissible under exercise of Power to Remove Difficulty.

B. Reliance on the judgment of the Hon'ble APTEL in **Appeal No. 89 of 2006** in the case of ***NTPC Ltd. v. MPSEB &Ors.***–

This judgment is not applicable in the facts and circumstances of the present case.The power to relax was directed to be exercised by the Hon'ble APTEL given the peculiar facts and circumstances of that case where there was nation-wide scarcity of gas resulting in under-recovery of capacity charges by NTPC for reasons not attributable to it. In the present case, a 1% decrease in ROE cannot be equated to NTPC's case in the said judgment. In any case, as held by the Hon'ble Supreme Court, the Power to Relax cannot be exercised dehors the applicable tariff regulations i.e., UPERC Tariff Regulations 2019.

C. Reliance on judgment of the Hon'ble Supreme Court in the case of ***Hindustan Paper Corpn. Ltd. v. Govt. of Kerala***reported as **(1986) 3 SCC 398–**

This was a case where the Government of Kerala, being empowered under Section 6 of the Kerala Forest Produce (Fixation of Selling Price) Act, 1978 ("**Kerala Forest Act**"),had granted an exemption to Hindustan Paper Corporation Ltd., a company owned by the Central Government and certain other State-owned companies from paying the minimum selling price determinedunder the said act for procuring wood. Such exemption which was only granted for government owned companies was challenged by certain private sector companies as being discriminative violative of Article 14 of the Constitution. Upholding the grant of exemption, the Hon'ble Supreme Court held that the power was exercised in public interest and the classification made was valid in view of the objectives sought to be achieved by the Kerala Forest Act. Further, the Hon'ble Supreme Court held that as far as government companies are concerned, they form a separate class of their own since the profit made by them results in a benefit to the public as the public coffer is enriched and not a private one.

In the present case, there is no element of public interest in allowing BEL additional ROE at 16%. Hence, the judgment of the Hon'ble Supreme Court is entirely inapplicable in the facts and circumstances of the present case.

18.5 The contents of paragraphs 13, 14 and 17-18 are vehemently denied. It is most humbly submitted that the tariff worked out by BEL under the present petition basis its unilaterally claimed capital cost as on 01.04.2019 which is not trued-up by this Hon'ble Commission is impermissible. BEL has also admitted that the opening capital cost is subject to the decision of this Hon'ble Commission in the true-up petition for FY 2014-19 and has craved leave to modify its submissions at a later stage.Hence, UPPCL craves the leave to advance detailed contentions at the appropriate stage once true-up proceedings for FY 2014-19 are concluded by this Hon'ble Commission.

With respect to Additional Affidavit dated 16.12.2021 -

18.6 The contents of paragraphs 1-8 of the additional affidavit to the extent that they are a matter of record and are not inconsistent with the background facts set out in this reply do not merit a response. Any inconsistent submissions are vehemently denied and UPPCL craves the leave of this Hon'ble Commission to explain the correct facts as set out in the present reply.

18.7 The contents of paragraphs 9-10 of the additional affidavit are vehemently denied. In this regard, reliance is placed on the preliminary submissions set out under paragraph 17.4 and the same is not being repeated for the sake of brevity.

18.8 The contents of paragraphs 11-23 of the additional affidavit are vehemently denied. In this regard, reliance is placed on the preliminary submissions set out under paragraph 17.5 to 17.7 and the same is not being repeated for the sake of brevity.

AUTHORIZED SIGNATORY

UTTAR PRADESH POWER CORPORATION LIMITED

(Anand Sharma)
Superintending Engineer-I (PPA-I)
UPPCL