

Subject: Fwd: Copy of petition to be filed before GERC - EPGL matter
Date: Thursday, 28 March 2019 at 1:59:58 PM India Standard Time
From: Commerce GUVNL <commerce.guvnl@gmail.com>
To: wasim@gercin.org <wasim@gercin.org>
Attachments: Copy of draft petition to be filed before GERC GUVNL -EPGL - 20.03.2019.docx

----- Forwarded message -----

From: Commerce GUVNL <commerce.guvnl@gmail.com>
Date: Thu, Mar 28, 2019 at 1:54 PM
Subject: Copy of petition to be filed before GERC - EPGL matter
To: jecom2.guvnl <jecom2.guvnl@gebmail.com>

Sir,

Please find attached herewith soft copy of Petition to be filed before Hon'ble GERC in the EPGL matter.

Moreover, GUVNL has paid Rs. 10,000/- towards fee for filing Misc. Petition through NEFT Cheque No 218955, Bank of India, Alkapuri Branch UTR No. for payment - BKIDN19087333422

Kindly acknowledge the receipt of the same.

Regards

Executive
Legal Services
Wasim
procur
Judy
28/3/2019

REC.
No - 1426
28 MAR 2019

Rs 10,000/-
MR No. 2311/28.3.19
MA

P/ accept the fees of Rs. 10,000/-
Subject to verification of GERC
(Fees, fines & charges) Regulations, 2005.
Wasim
28/03/2019
(Ex. Legal)

BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION
AT GANDHINAGAR

PETITION NO. _____ of 2019

IN THE MATTER OF:

Petition under Sections 86 (1)(b) and 86(1)(f) of the Electricity Act, 2003 read with Article 18.1 of the Power Purchase Agreement (PPA) dated 26.02.2007 under 1000 MW (Bid-03), executed between Gujarat Urja Vikas Nigam Ltd. and Essar Power Gujarat Ltd. for approval of amendments to the PPAs by way of Supplemental PPA dated 01.03.2019.

**AND
IN THE MATTER OF:**

Gujarat Urja Vikas Nigam Limited

- Petitioner

Versus

1. Essar Power Gujarat Ltd.

2. Energy Watchdog

3. Prayas (Energy Group)

- Respondents

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PLACE: VADODARA

DATE: 27-03-2019



**BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION
AT GANDHINAGAR**

PETITION NO. _____ of 2019

IN THE MATTER OF:

Petition under Sections 86 (1)(b) and 86(1)(f) of the Electricity Act, 2003 read with Article 18.1 of the Power Purchase Agreement (PPA) dated 26.02.2007 under 1000 MW (Bid-03), executed between Gujarat Urja Vikas Nigam Ltd. and Essar Power Gujarat Ltd. for approval of amendments to the PPAs by way of Supplemental PPA dated 01.03.2019.

AND

IN THE MATTER OF:

Gujarat Urja Vikas Nigam Limited - Petitioner

Versus

1. Essar Power Gujarat Ltd.
2. Energy Watchdog
3. Prayas (Energy Group) - Respondents

MEMO OF PARTIES

Gujarat Urja Vikas Nigam Limited

Having its Registered Office at,
Sardar Patel Vidyut Bhavan,
Race Course Circle, Vadodara - 390 007

- Petitioner

Versus

- 1. Essar Power Gujarat Limited**
44 KM Milestone, Jamnagar – Okha Highway,
Khambhaliya, Devbhumi, Dwarka,
- 2. Energy Watchdog**
B-5/51, Paschim Vihar,
New Delhi



3. Prayas (Energy Group)

Unit III A & B, Devgiri,
Joshi Railway Museum lane,
Kothrud Industrial Area,
Kothrud, Pune - 411 038

- Respondents



K. Phule
PETITIONER

(Gujarat Urja Vikas Nigam Limited)

PLACE: YADODARA

DATE: 27-03-2019

K. Phule



**BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION
AT GANDHINAGAR**

PETITION NO. _____ of 2019

IN THE MATTER OF:

Petition under Sections 86 (1)(b) and 86(1)(f) of the Electricity Act, 2003 read with Article 18.1 of the Power Purchase Agreement (PPA) dated 26.02.2007 under 1000 MW (Bid-03), executed between Gujarat Urja Vikas Nigam Ltd. and Essar Power Gujarat Ltd. for approval of amendments to the PPAs by way of Supplemental PPA dated 01.03.2019.

AND

IN THE MATTER OF:

Gujarat Urja Vikas Nigam Limited - Petitioner

Versus

1. Essar Power Gujarat Ltd.
2. Energy Watchdog
3. Prayas (Energy Group)
Respondents

Most respectfully Showeth:

1. That the present Petition is being filed under Section 86(1)(b) and 86(1)(f) of the Electricity Act, 2003 (**hereinafter "Electricity Act"**) pursuant to the liberty granted by the Hon'ble Supreme Court of India to the Petitioner to approach Electricity Regulatory Commissions including this Hon'ble Commission for approval of the proposed amendment to be made to the Power Purchase Agreement dated 26.02.2007. The facts and circumstances giving rise to the said order of the Hon'ble Supreme Court of India and filing of the present Petition are set out hereinafter.
2. Gujarat Urja Vikas Nigam Limited (**hereinafter "GUVNL/Petitioner"**) is a Company incorporated under the provisions of the Companies Act, 1956. Petitioner is engaged in activities of bulk purchase and bulk supply of electricity and is a Licensee for the said activities under provisions of Electricity Act.

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3. Essar Power Gujarat Ltd. (hereinafter "**Essar Power/Respondent No. 1**") is a Generating Company within the meaning of Section 2(28) of the Electricity Act, 2003 ("Electricity Act"). The Respondent No. 1 has set up thermal power plant having total capacity of 1200 MW (2x660 MW) situated in Salaya, District Jamnagar, Gujarat.
4. Energy Watchdog and Prayas (Energy Group), are the consumer organizations ("**hereinafter "Respondent No. 2 & 3"**") respectively.
5. The Petitioner had entered into a PPA with Respondent No.1 through competitive bidding process in accordance with the guidelines issued U/s 63 of the Electricity Act i.e. PPA dated 26.02.2007 for contracted capacity of 1000 MW to be supplied from Units 1 and 2 of Salaya Power Plant (**hereinafter "Bid-03 PPA"**).
6. The present Petition is filed seeking approval of this Hon'ble Commission for the proposed amendments to Bid-03 PPA through Supplemental PPA dated 01.03.2019 (**hereinafter "Supplemental PPA"**) in terms of Article 18.1 of said Bid-03 PPA, pursuant to the Govt. of Gujarat Policy Directive vide Government Resolution (GR) No. CGP-12-2018-166-K dated 01.12.2018 ("**hereinafter "Policy GR"**") accepting the recommendations of High Power Committee Report (**hereinafter "HPC Report"**) as stated in GR and the order of Hon'ble Supreme Court dated 29.10.2018 in Miscellaneous Application No. 2705-2706 of 2018 in CA No. 5399-5400 of 2016. It is respectfully submitted that this Hon'ble Commission has jurisdiction to approve the amendments to the PPAs as provided under Section 86(1)(b) read with 86(1)(f) of the Electricity Act.

A. Background Facts

7. The Petitioner had entered into separate PPAs for purchase of power from (i) Tata-CGPL (ii) Adani-Mundra and (iii) Essar-Salaya power plants in 2007. It is pertinent to note that above referred three projects contribute substantially to cater to the power requirements of



the State of Gujarat. A table summarizing the details for these three major power **producers** who set up thermal power stations in Gujarat are as follows:



Name	Capacity (MW)	GUVNL's share (MW)	Location	Commencement Year
Coastal Gujarat Power Ltd. (CGPL)	4150	1805	Mundra, Gujarat	2012
Essar Power Ltd	1200	1000	Salaya, Gujarat	2012
Adani Power (Mundra) Ltd.	4620	1000 (Bid 1)	Mundra, Gujarat	2010
		1000 (Bid 2)		2012
Total	9970	4805		

8. Subsequent to signing of PPAs, Indonesian Government on 23.09.2010 issued Regulation No. 17 of 2010 titled as "Procedures to Determine the Benchmark Price for Mineral and Coal Sales" (hereinafter "**Indonesian Regulations**"). Govt of Indonesia vide this Regulation mandated export of coal on benchmark prices notified by Govt. of Indonesia. The detailed factual background leading upto the constitution of the HPC has been enumerated in Chapter I of the HPC Report. The facts leading to the promulgation of the Indonesian Regulations and their impact on the Indian power projects, including the Mundra Power Project, have been enumerated in Chapter II of the HPC Report. The Generators i.e. the Tata-CGPL and Adani-Mundra had approached the CERC seeking relief to offset the adverse financial impact of the Indonesian Regulation. A similar





petition (1389 of 2014) was filed by the Respondent No. 1 before this Hon'ble Commission on similar grounds which, is still pending before this Hon'ble Commission and no final order has been passed. Subsequently, the Respondent No. 1 has shut down its thermal power plant since the past 1 year and is not supplying electricity to the Petitioner. The matter with respect to the Tata-CGPL and Adani-Mundra travelled upto the Supreme Court and the Hon'ble Supreme Court vide its Judgment dated 11.04.2017 in CA No. 5399-5400 of 2016 had decided that enactment of Indonesian Regulations did not constitute either a change in law event or Force Majeure, as contractually specified under the PPAs. The detailed chronology of the legal proceedings leading to the aforesaid Energy Watchdog matter in the Supreme Court, has been enumerated in Chapter III of the HPC Report.

9. Out of the aforesaid 3 imported coal-based power projects, Essar's Salaya power plant had discontinued power supply under the contracts whereas the other imported coal based power plants supplied less quantum citing the issue of non-viability and liquidity issues due to Indonesian Regulation.

B. REPRESENTATIONS BY THE GENERATING COMPANIES TO REDRESS THE SITUATION:

10. The generators had made several representations to the Government of Gujarat and the Petitioner that they are unable to sustain generation on a long-term basis to honor their obligations under the PPAs and requested for redressal of the issue. The brief of representations received from generators is as follows:

- a. Respondent No.1 addressed a letter to the Petitioner on 19.04.2017 submitted that there will be no cash-flows available in the company due to under recovery in energy charges and requested for a long term viable solution to ensure sustainability of the company. Essar Power has shut down its power plant for around one year and is not supplying power to GUVNL. Essar





Power through its letter dated 09.06.2017 stating the difficulties being faced due to inadequate cash-flows, requested the Petitioner to take early appropriate decision so that operations of Essar Power can continue and consumers are not affected. Essar Power in the letter dated 09.06.2017 has stated that net-worth of Essar Power has been wiped out and the debt has increased to Rs. 5062 crores due to losses incurred so far. Due to continued financial difficulties, Essar Power has shut down its plant for over a year.

- b. Coastal Gujarat Power Ltd. has in its letter dated 25.04.2017 addressed to the Petitioner stated that *"As stated above, the financial position of CGPL speaks for itself and is at an extremely critical stage. It is submitted that if urgent remedial measures are not taken, then, inspite of best efforts of CGPL/Tata Power it may be very difficult to continue the operations. It is matter of fact, that CGPL's tariff even with addition of compensatory tariff (as was allowed by CERC) will be among the cheapest power available."*CGPL has accumulated losses of Rs. 6,306 crores and 100% of the equity has been wiped out. CGPL addressed another letter dated 07.06.2017 to the Petitioner to resolve the issue based on various proposals offered by CGPL.
- c. Adani Power (Mundra) Ltd (hereinafter "**APML**") has vide its letter dated 16.04.2017 addressed to the Petitioner submitted a proposal to take over 51% of equity of Mundra Project (Units 1 to 6) at value of Rs. 1 and purchase power from Mundra Project on cost plus basis. It was further stated that, *"Since the existing coal stock is at critical level, adequate for only 7-10 days of operation, and the Financial Institutions are not willing to extend any further support, we request GUVNL to procure coal and supply to APL and APL will supply power utilizing such coal and will charge only capacity charges as per PPA so that operations of Mundra Project is continued."* APML has addressed various letters to the Petitioner dated 21.04.2017, 06.05.2017,



12.05.2017 and 25.05.2017 to have early resolution and decision on the proposals offered by it, in light of the severe power shortage issues.

C. EFFORTS MADE BY STATE FOR RESOLUTION OF ISSUES:



11. Subsequent to representations made by Imported Coal based Project Developers, Government of Gujarat, on 20.04.2017, had written a letter to Ministry of Power, Govt of India as follows, *"since the matter is of urgent nature and impacting supply of power to various states, your kind intervention at the earliest is solicited for resolving the issue by arranging a meeting of all the stakeholders, at your convenience."* Therefore, the State of Gujarat sought for intervention of the Central Government to resolve the crisis. A request was made to the Ministry of Power, Govt. of India to call for a meeting of all stakeholders.
12. In view of above, on 20.06.2017, a meeting was held at New Delhi by the Ministry of Power, Union of India of all stakeholders including the representatives from the State Governments of Gujarat, Maharashtra, Punjab, Haryana, Rajasthan, representatives from various Banks and Financial Institutions (PFC & REC) and representatives from generating companies for resolution of the issues being faced by Imported coal based power plants.
13. Pursuant to the said meeting, a Working Group was constituted of members of all the procurer States, and banks represented by Punjab National Bank and Canara Bank with the SBI acting as a convener to find a solution through a consultative process.
14. The Working Group Committee submitted its' report on 10.01.2018 after undertaking due diligence on technical, legal and financial aspects of these 3 Imported coal based power projects in Gujarat. The Working Group Committee *inter-alia* recommended 2 options i.e.(i) State Govt. to takeover projects through majority stake and subsequently PPAs be amended to address viability issues by allowing fuel cost pass through or (ii) Amending PPAs without change



in ownership – wherein Procurers may agree for pass through of fuel cost.



15. Subsequent to the submission of report by the Working Group Committee and in furtherance of the Working Group Committee Report, SBI on 17.01.2018 wrote to Govt. of India that Government of Gujarat may form a High Power Committee comprising of individuals with proven expertise drawn from the Judiciary, Banking and Power Sectors (with Regulatory knowledge) to review the report of the Working Group and suggest means for early resolution of issues relating to these Projects.

D. CONSTITUTION OF HIGH POWER COMMITTEE:

16. Thereafter by enclosing copies of (i) SBI letter dated 05.03.2018 and (ii) Ministry of Finance letter dated 05.04.2018, the Ministry of Power addressed a letter to Government of Gujarat on 13.04.2018 stating that being a lead procurer/major procurer in the three imported coal power plants based in Gujarat, the Government of Gujarat may take further actions for resolution of the issues related to these power plants.
17. In view of above, Government of Gujarat on 03.07.2018 issued Resolution No. CGP-12-2018-166-K constituting the High Power Committee for reviewing the report of Working Group and obtaining its recommendations, with regard to resolution of the issues of the imported coal based Power Projects located in the State of Gujarat. The resolution is extracted below:

"Resolution:

After careful consideration, the Government of Gujarat is, therefore, pleased to form a High Power Committee comprising of the following, for reviewing the report of working group and obtaining its recommendations, with high regard to resolution of the issues of the Imported Coal based Power Projects, located in the State of Gujarat:



(i)	Hon. Mr. Justice R. K. Agrawal, Former Justice of Supreme Court	Chairman
(ii)	Shri S. S. Mundra, Former Deputy Governor, RBI	Member
(iii)	Dr. Pramod Deo, Former Chairman, CERC	Member

SBI Caps – Mumbai shall provide secretarial support to the Committee.

Suggestive terms of reference of High Power Committee:

- (i) *The Committee should examine and analyse all the relevant documents related to the Projects;*
- (ii) *Analyze and ascertain any hardship faced by these projects – If yes, mode and manner for mitigating the hardship faced by the Projects on account of Indonesian Regulations and subsequent orders/judgments in the matter;*
- (iii) *Call relevant parties for submission of details/clarification as required by the Committee;*
- (iv) *Contribution by each Stakeholders viz. Banks, Project Developers & Procurers by way of concessions for mitigating hardship;*
- (v) *Any other relevant issues which Committee would like to discuss and Study.*
- (vi) *Suggest sustainable solutions(s) – for resolving the issue; and*
- (vii) *The Committee may suggest any other measure for overall reduction in the cost of Generation of Power in the interest of the consumers."*

18. The High Power Committee conducted various meetings with all the stakeholders viz. Discoms /officials of procurer states, consumer representative groups, lenders and generators. It is pertinent to note that the Appellant before the Hon'ble Supreme Court in CA No. 5399-5400 of 2016 i.e. Energy Watchdog was also heard in the meeting held on 22.07.2018 by the HPC. After taking into account the views / suggestions of all the stakeholders the HPC has submitted its submissions and recommendations as extracted below:



"10.1 ...HPC while undertaking the analyses and making the recommendations in this Report has the 'consumer interest' paramount and this has been the focal point of their approach.

10.2 On the touchstone of 'consumer interest', it can be safely concluded that these Projects need to be salvaged. Sustainable operation of these Projects is of critical importance, essentially due to the fact that these Projects are instrumental in fulfilling the increasing demand of the procurer States. Consumer interest thus lies in ensuring that reliable and relatively inexpensive power is secured in a sustainable manner to meet current and future demand projections. This in turn would also ensure that the economic growth of the procurer States is not vitiated.

10.3 In contrast, if these Projects are not salvaged, consumer interest will be adversely affected on account of various reasons, gist of which are set out below:

- (i) the capacities from these Projects will have to be replaced from alternative sources and therefore, prices will further go up in view of the clear co-relation between demand and supply;*
- (ii) the cost of replacement power at today's market price would be higher;*
- (iii) setting up new projects in any event will be more expensive and will take another 4-5 years to commence supply;*
- (iv) increase in cost on account of procurement of power from in-efficient and old plants which would also have reliability issue;*
- (v) resorting to load shedding on account of difficulties associated with complete replacement of power from these Projects; and*
- (vi) any insolvency or liquidation of these Projects would hardly address the issues of power supply.*

10.4 Therefore, ensuring sustainable operation of these Projects would only be possible by making them economically viable. It is however evident that the economic viability of these Projects has been severely impacted due to the promulgation of Indonesian Regulations 2010, which led to an unprecedented rise in the price of coal. This situation has further been exacerbated in view of the fact that the Generators could not pass the uncontrollable increase in the fuel prices on the Procurers under the PPAs.





10.5 In light of the findings as given by the Hon'ble Supreme Court in the Energy Watchdog Judgment, this HPC has sought to recommend solutions to mitigate the hardships being faced by the Generators only on the basis of 'consumer interest' which has been discussed at length in Chapter - VII. This primarily entails undertaking financial and commercial restructuring which is based on the premise that the burden of hardships will have to be borne by all the stakeholders. The details of financial and commercial restructuring be followed in terms of Chapter - VIII which primarily envisage the following:

- (i) Reduction of capacity charge on account of sacrifice by lenders;
- (ii) Past losses to be borne by Developers and the financial resolution plan being applicable from a prospective cut-off date of 15th October 2018;
- (iii) Option for extension of PPA tenure by another period of 10 years after the completion of the PPA tenure of 25 years;
- (iv) Offer for tie-up of free capacity; and
- (v) Sharing of profit from the Indonesian mines.

10.6 The financial and commercial resolution package that is accepted by the procurer State Governments will need to be incorporated as revised contractual provisions into the PPAs and such amendments to the PPA will need to be approved by the Appropriate Commission.

10.7 The option recommended for amending the PPAs are discussed in detail in Chapter-IX. The HPC accordingly recommends the implementation of the said option. Though the steps to be taken under this option are set out in detail at Section 9.10 of this Report, it is imperative to mention that as part of this option, a directive may be issued by the State Government(s) to their Discoms. The said directive would primarily state that the Discoms have to ensure adequate supply of energy on the least possible tariff and while doing so, they should consider whether the same can be achieved by way of facilitating and promoting the revival and rehabilitation of existing thermal capacities already installed in the State, that may have, for diverse reasons, become financially stressed and economically unviable to be operated in a sustainable basis.

10.8 Draft Supplemental PPA for effecting Amendment to the PPAs





10.8.1 The HPC recognises that the economic, financial and commercial components of the recommendations of this HPC, as set out hereinabove, may be susceptible to conflicting interpretations. Accordingly, to ensure effective and accurate implementation of the HPC's recommendations, the HPC has crafted a model draft of the supplemental PPA for amending the PPAs of the Projects, incorporating the rehabilitation package in detailed legal and contractual language. It is re iterated that this model Supplemental PPA incorporates the intention and detailed application of the HPC's recommendations for the rehabilitation of the concerned Projects.

10.8.2 With the above premise, the HPC stipulates that the model draft of the supplemental PPA for amending the PPAs of the Projects, which is annexed hereto as Annexure – VI shall be taken as an integral part of this HPC report and shall be applied for interpreting the true intent, meaning and application of the detailed terms of this HPC Report.

A copy of the report by High Power Committee is annexed and marked herein as **Annexure P-1**.

E. RECOMMENDATIONS OF HPC:

19. In brief, keeping the interests of the consumers as paramount, the HPC has *inter-alia* recommended as follows:

a. The agreement between the procurer i.e. DISCOMs and power producers would be amended and effective w.e.f. 15.10.2018 to reflect the tariff based on the report of the Committee in order to ensure the projects keep running without any benefit to the power producers and at the same time the interest of the banks who have lent monies and consumers are safeguarded. Only energy charge tariff will be marginally increased but the same would be limited to a Cap to ensure that the increase is not unlimited.

b. **Sacrifice by Lenders:** At the same time, to keep the burden on end consumer low Lenders have agreed to sacrifice and reduce



debt equivalent to reduction of 20 paise in the capacity charge for three Projects as indicated in the following table:

Sr. No.	Name of Project	PPA Capacity	Debt reduction
		MW	Rs. Crore
1	Coastal Gujarat Power Ltd.	3800	4240
2	Adani Power Mundra Ltd.	3424	3821
3	Essar Power Gujarat Ltd.	1000	1154*

* Lenders' sacrifice may be higher as they may have to reduce the outstanding debt by around Rs. 2,324 crore (excluding undisbursed loan of Rs. 250 crore) to make the debt sustainable after implementation of this scheme. Over and above that, there is invoked BG of Rs. 250 crore and devolved LCs of Rs. 481 crore.

Additionally, the lenders will be reducing the interest rate also in all these three Projects. In case of Essar, lenders may have to reduce the debt further to make this specific TPP sustainable.

- c. **Sacrifice by Promoters:** Promoters have agreed to bear the past losses to the extent of about Rs.21,249 Crore. Accordingly, this solution would be prospective and Generators have to bear accumulated losses as indicated in the table below.

Name of Project	Accumulated Loss (Rs. Crs)
Coastal Gujarat Power Ltd.	8,176
Adani Power (Mundra) Ltd.	9,473
Essar Power Gujarat Ltd.	3,600
Total	21,249

In addition, Promoters have agreed to extend the tenure of the PPA for a further period of 10 years after the completion of the PPA tenure of 25 years, which will also benefit the end



consumer in getting the power at a cheaper rate. Further, Committee has recommended to increase the availability from 80% to 90% and also to offer to procurers the untied capacity available with M/s Adani and M/s Essar Power.

d. Tariff as recommended by the HPC would be incorporated by amendment of PPA.

e. Such an amendment is provided for in the PPA itself.

f. The amendment would be subject to regulatory approval of the appropriate electricity regulatory commission.

F. SCOPE OF THE ENERGY WATCHDOG JUDGEMENT CLARIFIED BY THE HON'BLE SUPREME COURT:

20. Before implementing the recommendations of HPC which includes amending the PPAs, it was found prudent to obtain clarification of the Hon'ble Supreme Court on the concerns raised by the Consumer Organizations (Energy Watchdog, Prayas Energy etc.) that in the face of the judgment of the Hon'ble Supreme Court dated 11.04.2017 in CA Nos. 5399-5400 of 2016, any amendment would be illegal and contrary to the said judgment.
21. In view of above, the Government of Gujarat and the Petitioner herein, approached the Hon'ble Supreme Court with Miscellaneous Application No. 2705-2706 of 2018 in CA No. 5399-5400 of 2016 dated 08.10.2018 seeking clarification about impingement of Hon'ble Supreme Court order dated 11.04.2017 if the recommendation of HPC are accepted and PPAs are suitably modified. The Prayers of the Miscellaneous Application filed before the Hon'ble Supreme Court is as follows:

"a) Clarify the judgment of this Hon'ble Court in (2017) 14 SCC 80 to the extent that the same does not in any manner



impinge upon to exercise the option to operate clause 18.1 and amend PPA in public interest;

b) Pass directions to the concerned regulatory commissions to expeditiously dispose of applications seeking such amendment of PPA;

c) Pass any such further orders as it may deem fit in the facts and circumstances of the case."

Copy of the Miscellaneous Application dated 08.10.2018 filed before the Hon'ble Supreme Court is attached herewith and marked as **Annexure P-2**.

22. That matter was heard by the Hon'ble Supreme Court on 29.10.2018 when Counsels for Prayas and Energy Watchdog were also heard. The Hon'ble Supreme Court has after perusal of the record, the HPC Report and hearing parties issued its order dated 29.10.2018 *inter-alia* clarifying that the parties can approach the Hon'ble Commission for approval of proposed amendment and that Judgment dated 11.04.2017 will not stand in the way of such amendment. The Hon'ble Supreme Court has also directed the Hon'ble Commission to decide the matter as expeditiously as possible, and definitely within a period of eight weeks from 29.10.2018 taking note of the conclusions in the HPC Report. The relevant portion of the said Judgment is extracted herein below:

"Having heard learned counsel for the parties, including the learned Attorney General appearing for the State of Gujarat, we allow the application for impleadment of the State of Gujarat. We are of the view that, having perused the High Power Committee's report, which was given after our judgment dated 11th April, 2017, it will be open to the applicants to approach the Central Electricity Regulatory Commission (C.E.R.C.) for approval of the proposed amendments to be made to the Power Purchase Agreements (PPAs) in question.





We make it clear that our judgment will not stand in the way of maintaining such applications. We also make it clear that each of the consumer groups, who had appeared before us and who have appeared before us today, will be heard on all objections that they may make to the proposed amendments to the PPA, after which, it will be open to the C.E.R.C. to decide the matter in accordance with law. Given the conclusions in the High Power Committee report, we are of the view that the C.E.R.C. should decide this matter as expeditiously as possible, and definitely within a period of eight weeks from today.

*The miscellaneous applications are disposed of accordingly.
Pending applications, if any, stand disposed of."*

Copy of the Judgment of the Hon'ble Supreme Court dated 29.10.2018 is attached herewith and marked as **Annexure P-3**.

G. AMENDMENT OF PPA IN PUBLIC INTEREST:

23. In the aforesaid background facts, it is submitted that the proposal for amendment of the PPA as contained in this petition, is the fair course which would protect the interest of all stakeholders, especially the consumers, and would also ensure the availability of power in large quantities from these power plants, which is a vital necessity for the economic growth of the State of Gujarat as well as the country. The commercial insolvency of the companies would lead to inevitable shut down of the power plants, will result in a huge shortfall in the availability of power to the State. In the circumstances and considering the substantial implications on end consumers, the Petitioner in accordance with Policy Directives from Govt. of Gujarat has accepted the recommendations of the HPC as stated in GR dated 01.12.2018 and is presenting the present petition in terms of liberty granted by the Hon'ble Supreme Court on 29.10.2018 in C.A. Nos. 5399-5400 of 2016. It is submitted that the Energy Watchdog judgment dated 11.04.2017 which, led to the constitution of HPC, was passed by the Hon'ble Supreme Court regarding the case of Tata-



CGPL and Adani-Mundra in exactly similar factual and legal background as in the present case.

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24. It is respectfully submitted that the proposed amendments to the PPAs are in the interest of consumer since the non-availability of power from Respondent 1 will result in the Petitioner not only incurring higher cost for replacement of such power but may also result in not being able to provide uninterrupted power supply to the consumers as the availability of such huge quantity from alternate sources is uncertain and procurement from new sources takes 4-5 years' time.
25. The High Power Committee has carried out detailed consultative process and also analyzed the circumstances, facts associated with the issue and submissions by all the stakeholders viz. the Developers, Procurers, consumer representative groups and the lenders. Based on above, HPC at Para 7.1 of the Report has clearly noted that *"Only a mechanism which results in savings to the consumers in the long run is to be considered."* Further, the HPC in Chapter 7, has analyzed aspects such as Importance of the three Projects, Price competitiveness of power produced from these Projects & Reliability, Impact of Shutting Down of these Projects on Discoms/ End Consumers, Lenders, State Government, Generators, Transmission System etc.
26. The consultative process undertaken with the diverse stakeholders has been enumerated in Chapter VI of the HPC Report. Some of the important extracts from HPC Report analyzing and identifying the consumer/public interest are extracted below:

Quote:

7.3.2 Additionally, the criticality of these Projects is also evident from the following facts:

- *As informed by GUVNL in the meetings, these Projects contribute to approximately 45% requirement of GUVNL. The average variable charge is Rs 1.74 per kwh as*



against overall average variable charge of about Rs 2.59 per kwh. (i.e. 50% higher variable cost); and

.....

7.4 Price competitiveness of power produced from these Projects & Reliability

7.4.1 These Projects are undoubtedly cheaper sources of electricity as compared to certain sources from which Discoms have been procuring power. An analysis has been carried out to ascertain the importance of these Projects and their position in the MOD of the respective States.

.....

7.4.7 From an analysis of the data of energy purchase and the corresponding variable cost provided by GUVNL, it is clear that even after considering the actual coal cost, the entire power from these Projects gets scheduled. Therefore, there is no question of lack of competitiveness of these Projects in future on account of pass through of increased energy charge. The Procurers and Consumers Representatives have also expressed similar views during the meetings of the HPC. It was also pointed out by one of the Consumer Representatives that the capacity charge under these PPAs is very competitive and therefore, the Discoms should not lose these PPAs.

7.5 Impact of Shutting Down of these Projects on Discoms/ End Consumers

7.5.1 These Projects fulfill almost 16-18% power requirement of the five States and it is not possible to replace such a high contribution spread-over entire Western Region by other alternatives. Even power exchange and other short-term markets put together are incapable of replacing these capacities. CGPL's TPP and Phase III & IV of APL's TPP are based on the supercritical technology and are more efficient. Even otherwise, these Projects are more efficient as compared to the older units installed by the State Generating Companies with SHR being lower by about 369 kcal/kwh and auxiliary consumption being lowered by 5.51%. Collectively, there is a saving of almost 18.5% in fuel cost of electricity is generated from these Projects.

7.5.2 Further, an analysis of the prices discovered under the recent Case 1 bidding process as well as the short term market shows substantially higher prices.

- Average tariff discovered under recent Case 1 long-term biddings is about Rs. 4.50 per unit as detailed below:





State/Utility	Requisition ed Capacity (MW)	Date of Bidding	Range of Tariff (Rs./kWh)	Average of Quoted Tariff (Rs./kWh)
Andhra Pradesh	2400	25.06.2015	4.23 – 6.31	5.06
Tata Power	400	04.09.2015	3.99 – 4.77	4.39
Telangana	1000	28.10.2016	4.15	4.15
Andhra Pradesh	1000	05.02.2016	4.44	4.44
Uttar Pradesh	3800	26.07.2016	3.94 – 4.63	4.2

- Short-term price (Power Exchange and market price) is also around Rs 4.00 per unit as detailed below:

Month	Volume of Electricity Transacted (MUs)			Wt. Avg. Price of Electricity Transacted (Rs./kWh)		
	Bilateral	IEX	PXIL	Bilateral	IEX	PXIL
May '18	5,170	4,916		4.17	4.76	
Apr '18	4,912	4,055	6	3.63	4.03	3.36
Mar '18	5,946	3,955	24	3.59	4.10	3.90
Feb '18	4,524	3,326	28	4.13	3.42	2.12
Jan '18	4,612	3,375		3.92	3.44	
Dec '17	4,714	3,108	2	3.60	3.25	3.38
Average	5,343	4,309	15	3.80	4.30	3.63

7.5.3 It is to be noted that if these capacities are to be replaced from alternative sources, prices will further go up in view of clear co-relation between demand and supply. Further, it is not possible to replace the entire capacity with the existing capacity available in the market and the Discoms have to resort to eventualities such as load shedding which is highly undesirable. Considering that it is stated goal of the Central Government that all endeavours should be made to ensure supply of 24x7 power to each and every household including the houses given connectivity under the 'Subhagya Scheme' at affordable price, it is imperative that the possibility of load shedding is reduced to the maximum possible extent.

7.5.4 It is also observed that when these Projects are not available or are partly available due to the grave financial stress being faced by them, GUVNL bought replacement power from the spot



market for fulfilling its demand for electricity. During the four months from March to June 2018, GUVNL had to purchase 6,749 MUs from high cost sources like power exchange, bilateral and spot LNG to fulfill their demand. The average cost for this procurement was Rs. 4.30/unit.

7.5.7 Further, replacement with new capacity is also not feasible since end consumers are going to pay higher tariff in view of following:

- New projects will have substantially higher capital cost as compared to the capital cost of these Projects. Analysis of recently commissioned projects shows capital cost ranging between Rs. 6.32 crore to Rs. 8.50 crore per MW. It is also relevant to highlight that addition of any new capacity by way of setting up new projects would have a gestation period of around 4-5 years.

Name of Company	Capacity (MW)	Project Cost (Rs Cr.)	Project Cost (Rs. Cr/MW)
DB Power Limited	600	4,935	8.22
HNPC	1040	8,580	8.25
Haldia Energy Limited	600	4,685	7.81
Damodar Valley Corporation	500	4,200	8.40
GMR Chhattisgarh Energy Limited	1370	11,642	8.50
Coastal Energen	1200	7,870	6.56
Mouda STPP Stage 2 (NTPC)	1320	8,190	6.20
Sloapur STPP (NTPC)	1320	9,395	7.12
Kudgi STPP Stage 1 (NTPC)	2400	15,166	6.32

7.5.8 A comparison of the average project cost of the above projects with average project cost of the Projects under consideration clearly demonstrates an increase of about 40%. Therefore, procurement of power from the new projects will entail approximately 40% higher capacity charge. Additionally, on account of the changes made in the new SBDs, there is complete pass through of fuel costs, which would result in higher variable charge and consequently result in higher tariff. Further, in view of higher gestation period for the new projects of around 4-5 years, and these new projects would not be readily available to cater the demand in short term unlike the Projects under consideration.

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27. With the above background it is submitted that due to low availability/shutdown of these power plants the Petitioner was forced to resort to procure power from alternate sources such as Power Exchange, Short-term power purchases etc. incurring higher cost. The average cost of power procured from alternate sources in the last one year is comparatively higher.

28. The Petitioner also submits that the procurement of alternate power on a long-term basis to mitigate the non-availability of power from these projects would take 4 to 5 years' time apart from being costlier based on the power procurement process conducted by other states recently through competitive bidding. As stated in HPC Report, for recently commissioned projects, capital cost ranges between Rs. 6.32 crore to Rs. 8.50 crore per MW which is almost 40% higher than the average cost of the project under consideration.

29. While parties are free to amend a contract through mutual consent under general law, the PPA too contain a specific provision being Article 18.1, allowing the parties to amend the Bid-03 PPA, with the approval of the Appropriate Commission. The said Articles are extracted herein below:

"18.1 Amendment

This Agreement may only be amended or supplemented by a written agreement between the Parties and after duly obtaining the approval of the Appropriate Commission, where necessary"

Copy of the Bid-03 PPA dated 26.02.2007 is attached herewith and marked as **Annexure P4**.

30. Keeping the above in view, the Government of Gujarat has vide its policy directions contained in Resolution No. CGP-12-2018-166-kdated 01.12.2018 accepted the recommendations of the HPC with modifications as stated in GR, decided to implement the same and consequently directed the Petitioner herein to amend the PPA and to



approach this Hon'ble Commission in the light of the decision of the Hon'ble Supreme Court dated 29.10.2018.

31. The Govt. of Gujarat vide GR dated 01.12.2018 has decided to accept recommendations of HPC Report as stated in GR. The resolutions passed by Govt. are as under:

- 
- (i) It is decided to accept the recommendation of the HPC about the effective date of implementation as 15.10.2018.
 - (ii) In respect of the recommendation of the HPC about adjustment in variable cost, it is decided that the tariff will be adjusted considering actual fuel cost based on the superior of actual parameters or normative parameters as per the Regulation of the Appropriate Commission subject to ceiling of HBA Index of 110 USD / MT for 6322 Kcal / Kg coal on monthly basis. In case the HBA Index of coal exceeds 110 USD / MT, the payment will be capped at 110 USD/ MT and the generator shall bear the differential cost and continue to supply power. Further, it is decided to review the ceiling price every 5 years as per the HPC's recommendations.
 - (iii) As per the recommendation of the HPC about sacrifice by the bankers, it is decided that the fixed cost @ 20 paise / kWh is to be reduced to extent of normative availability of 80%.
 - (iv) In respect of the recommendation of the HPC for sharing of mining profit, it is decided that 100% mining profit towards coal utilized at respective projects stipulated from their coal mines shall be shared. However, in case the coal from stipulated mines is not transferred or less transferred to the power plants and is sold outside, the profit is to be shared equivalent to energy supplied under PPA considering coal supplied to power plant as well as coal sold outside. In any case, the mining profit will be minimum 5 paise/kWh in case of APL and 15 paise/kWh in case of CGPL. In case of Essar Power, no mining profit will be shared.



- (v) As regards the recommendation of HPC for tying up of free capacity, it is decided that the procurers may tie up the untied up capacity of 550 MW available with APL and 100 MW with EPGL. The free capacity from APL will be offered to Gujarat and Haryana in proportion of 83:17. The tariff for such capacity shall be as per revised variable cost (no mining profit to be adjusted) and fixed cost (levelised for balance term of PPA). It is decided that the untied capacity from the projects be tied up by GUVNL from the identified units under existing PPA i.e. unit 1 to 6 of APL and unit 1 & 2 of EPGL. As GUVNL has no share from unit # 7, 8 & 9 of M/s. APL and these units have different fuel sources and tariff structure; taking free capacity (22 MW) does not come in question here.
- (vi) With reference to the recommendation of the HPC about increase in plant availability, it is decided to accept the recommendation of the HPC that the project developer shall increase the availability up to 90% without procurer having to pay capacity charge beyond 80% while penalty shall be applicable at 10% of capacity charges for availability below 90% to the extent of short availability. Moreover, penalty and incentive shall continue to apply in accordance with existing provisions of PPA.
- (vii) As far as the recommendation of the HPC about the extension of the PPA tenure is concerned, it is decided that procurers will have the option for extending the PPA for 10 years after the existing tenure of 25 years.
- (viii) As against the recommendation of the HPC in respect of waiver/refund of penalty, it is decided that the penalty shall not be waived/refunded.
- (ix) It is decided that no rebate shall be applicable on Energy Charge for the balance term of the PPA. However, rebate on payment of capacity charges shall be applicable. Further, delay payment charge provision is retained as per the existing PPA.



- (x) In respect of freight, port and coal handling charges, it is decided as follows:-

In case of Adani (APMuL), the port charges and transportation charges are not quoted in the bid separately therefore the Port & Coal handling charges shall be considered lower of actual or charges as per the Agreement of M/s CGPL (Tata) with M/s Adani Port which was negotiated by M/s Power Finance Corporation, Govt. of India before inviting the competitive bids. As regard to the ocean freight & insurance for transportation of coal, the escalation for the same shall be considered by linking it with the index notified by the CERC or the actual Ocean Freight paid by Project Developer, whichever is lower.

In case of CGPL (UMPP), port and coal handling shall be actual or as per the quoted charges in bid and escalated as per the PPA, whichever is lower. The ocean freight and insurance shall be lower of the actual or the freight worked out as per the CERC index from time to time subject to a maximum of quoted charges in bid and escalated as per the PPA, if any.

In case of Essar Power, port and coal handling shall be actual or as per the quoted charges in bid and escalated as per the PPA, whichever is lower. The ocean freight and insurance shall be lower of the actual or the freight worked out as per the CERC index from time to time subject to a maximum of the quoted charges in bid and escalated as per the PPA, if any.

- (xi) It is decided that in the 10th year from the date of signing of the supplemental PPA, if energy charges of these respective projects under the PPA(s) is higher than marginal coal based thermal power stations having 50 % schedule or immediate below, as the case may be, during the previous financial year under merit order of GUVNL, GUVNL shall have a right to terminate the PPA. In the event of termination pursuant to this decision, neither party shall be liable for any damages or penalty of any kind to the other party.





- (xii) It is decided to execute amendments in PPA(s) of for APMuL (Unit 1-6) and Essar Power and approach appropriate Regulatory Commission for approval of the same immediately. In case of amendment in PPA of Coastal Gujarat Power Ltd, since the PPA for Mundra UMPP is a joint contract wherein four other States (i.e. Maharashtra, Rajasthan, Punjab and Haryana) are also having allocation, the amendments in the PPA shall be carried out and presented to the CERC along with the consent and supplemental PPA jointly signed also by the other four States in question.

Copy of the Policy GR dated 01.12.2018 is annexed herewith and marked as **Annexure P-5**.

32. Accordingly, the Petitioner and the Respondent No. 1 have mutually agreed and signed the Supplemental PPA in Bid-03 PPA on 01.03.2019 as provided in Article 18.1 of the PPA pursuant to and considering the recommendations of the HPC. The salient features of the Supplemental PPA which are in the interest of the state and the consumers in turn are as follows:

- a. Date of applicability shall be from 15th October 2018.
- b. Fuel Cost shall be pass-through on actual basis subject to ceiling of imported coal cost of 110 USD/MT for 6322 Kcal/Kg GCV coal. The landed cost of fuel shall be worked out considering coal consumed at plant as lower of actual coal cost discovered through competitive bid with a ceiling of HBA Index formula derived price having a tolerance of maximum 10% and shall not be higher than the coal price determined on proportionate basis to HBA Index. This tolerance of 10% shall not be applicable for coal procured from mines owned by Seller / it's Affiliates. Seller shall purchase coal through competitive bidding for which document and rate discovered is to be approved by GUVNL. Generator shall continue to supply power and bear the price risk beyond the ceiling price of USD 110 / MT for 6322 Kcal/Kg.

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- c. Reduction in Capacity Charges to the extent of Rs 0.20 per kWh as recommended by HPC.
- d. Tie-up of free capacity at the capacity charge equal to the levelized capacity charge for balance period of the existing PPAs without any discount and the Energy Charge as stated at 'b' above.
- e. Extension of PPA tenure by 10 years with capacity charge equal to the quoted capacity tariff of the terminal year without any discount and the energy charge as actual. The Capital Cost of renovation and modernization as well as incremental O&M expenses shall be allowed additionally in the capacity charge as per the mechanism provided in the Supplemental PPAs.

Copy of the Supplemental PPA for Bid-03 dated 01.03.2019 signed by both the parties are attached herewith and marked as **Annexure P-6**. HPC has recommended execution of Supplemental Agreement incorporating the amendments.

33. Looking at overall circumstances, the amendment in Bid-03 PPA as executed with the Respondent No. 1 as per the terms summarized at para 32 above is the most preferred option in the Consumer Interest and therefore, the Petitioner is filing the present Petition before this Hon'ble Commission to approve the amendments in the PPA as directed by the Hon'ble Supreme Court after duly taking into consideration views of Respondents Consumer Groups. The Hon'ble Commission may approve the proposal to amend the terms of the PPA to the extent provided in the Supplemental PPA. All the other terms and conditions in the PPA shall remain as unaltered.

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Prayers

It is, therefore, most respectfully prayed that this Hon'ble Commission may graciously be pleased to:

- a. Approve the amendment in the Bid-03 PPA as provided in the Supplemental PPA dated 01.03.2019 and;
- b. Pass any such further orders as deemed fit in the facts and circumstances of the case

PLACE VADODARA
DATE 26-03-2019

Kohmalojam
PETITIONER

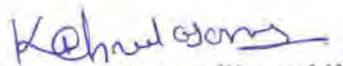
*
GUJARAT URJA VIKAS NIGAM LTD





DECLARATION

Declaration that subject matter of the Petition / Application has not been raised by the Petitioner before any other competent forum and that no other competent forum is currently seized of the matter or has passed any order in relation thereto.


† Gujarat Urja Vikas Nigam Limited
Petitioner



Regd. No.: 315
Date: 27/03/2019

NOTARY

NOTARY

NOTARY

NOTARY

NOTARIAL

BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION
AT GANDHINAGAR

PETITION NO. _____ of 2019

IN THE MATTER OF:

Gujarat Urja Vikas Nigam Ltd.

- Petitioner

Versus

Essar Power Gujarat Ltd. & Ors.

- Respondents

AFFIDAVIT

I, Kripalsinh N. Chudasama, S/o Shri Nitubha R. Chudasama, aged about 32 years, resident of Vadodara, do hereby solemnly swear and affirm as under:

1. I am the Deputy Engineer in Petitioner Company and am authorised to swear this affidavit.
2. I say that the contents of the accompanying Petition being filed by the Petitioner are based on the information available with Petitioner Company in normal course of business and believed by me to be true or the legal submissions are based on legal advice received believed by me to be true.
3. I say that the annexures filed along with the accompanying Petition are true copies of their respective originals.

Kripalsinh N. Chudasama
DEPONENT

VERIFICATION:

I, the Deponent above named, do hereby verify the contents of the above affidavit to be true to the best of my knowledge, no part of it is false and nothing material has been concealed there from.

Verified at Vadodara on this 27th day of March, 2019.



Solemnly Affirmed / Declared
Sworn Before me by *Kripalsinh N. Chudasama*

Bhavesh C. Vyas
BHAVESH C. VYAS
NOTARY (Govt. of Gujarat)
27-3-19

Kripalsinh N. Chudasama
DEPONENT

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REPORT OF THE HIGH POWER COMMITTEE

(Constituted Pursuant to the Government Resolution bearing no. CGP-12-2018-166-K
issued by the Government of Gujarat dated 3rd July 2018)

**RECOMMENDATIONS OF THE HIGH POWER
COMMITTEE FOR ACHIEVING SUSTAINABLE
RESOLUTION OF THE FINANCIAL STRESS BEING FACED
BY IMPORTED COAL BASED POWER PROJECTS
LOCATED IN THE STATE OF GUJARAT**

AND

**TO ALLEVIATE THE CONSEQUENTIAL FINANCIAL
BURDEN ON CONSUMERS OF THE PROCURER STATES
OF GUJARAT, HARYANA, MAHARASHTRA, PUNJAB AND
RAJASTHAN**

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<i>Annexure – III</i>	<i>Copy of the Working Group Committee for APL, CGPL and EPGL</i>
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<i>Annexure – V</i>	<i>Formula for Profit Sharing from Indonesian Mines</i>
<i>Annexure – VI</i>	<i>Model Draft of the Supplemental PPA</i>

PREAMBLE

CONSTITUTION OF THE HIGH POWER COMMITTEE AND MANDATE FOR THE HPC, APPROACH AND METHODOLOGY ADOPTED BY THE HPC

- A. The Government of Gujarat, vide its policy direction dated 3rd July 2018, issued by way of Resolution bearing no. CGP-12-2018-166-K (copy annexed hereto as Annexure - I and herein referred to as the GR), constituted this High Power Committee for, inter alia, – “finding solutions in respect of power supply by imported coal based power projects¹ to the procurer States, for reviewing the report(s) of the Working Group Committee and obtaining the recommendations of such High Power Committee”. The GR nominated the following members to the High Power Committee:

- (i) Justice Mr. R. K. Agrawal (former Justice, Supreme Court of India);
- (ii) Mr. S. S. Mundra (former Deputy Governor, RBI); and
- (iii) Dr. Pramod Deo (former Chairman, CERC)

SBI Caps was appointed to provide secretarial support and HSA Advocates was appointed as the legal expert to provide legal analysis and inputs.

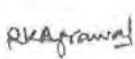
(hereinafter referred to as the HPC or High Power Committee)

- B. The mandate of the HPC, specified in the said GR as the suggestive terms of reference, is as follows:

- (i) The Committee should examine and analyse all the relevant documents related to the Projects;
- (ii) Analyze and ascertain any hardship faced by these projects – If yes, mode and manner for mitigating the hardship faced by the Projects on account of Indonesian Regulations and subsequent orders/judgments in the matter;
- (iii) Call relevant parties for submission of details/clarification as required by the Committee;
- (iv) Contribution by each Stakeholders viz. Banks, Project Developers & Procurers by way of concessions for mitigating hardship;
- (v) Any other relevant issues which Committee would like to discuss and Study.

¹ Adani Power Limited - 4620 MW TPP, Mundra, District Kutch, Gujarat; Coastal Gujarat Power Limited - 4150 MW TPP, Mundra, District Kutch, Gujarat; and Essar Power Gujarat Power Limited - 1200 MW, Salaya, District - Jamnagar, Gujarat (individually referred as Project and jointly referred as Projects)


Member


Chairman


Member

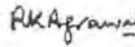
- (vi) Suggest sustainable solutions(s) – for resolving the issue; and
- (vii) The Committee may suggest any other measure for overall reduction in the cost of Generation of Power in the interest of the consumers.

C. Accordingly, this HPC has been called upon to review, evaluate and analyse the overall legal, including the decision of the Hon'ble Supreme Court of India in the matter *Energy Watchdog & Ors. vs. Central Electricity Regulatory Commission & Ors.* (CA No. 5399-5400 of 2016 and batch matters)² (Energy Watchdog Judgment)). regulatory, economic, financial and other factors affecting the concerned Projects, review and take inputs as appropriate from the findings of the diverse earlier reports and analyses already undertaken, including the reports by the Deepak Parekh Committee (DPC) and the Working Group Committee, and in the aforesaid background, re-look, review, analyse and re-evaluate the overall situation afresh and make appropriate recommendations in line with the mandate. It is noteworthy that the DPC was formulated by the Central Electricity Regulatory Commission (CERC) and the Working Group Committee was set up as a broad arrangement amongst the Procurers, Developers and lenders to find a solution through a consultative process. The relevant extract from the Working Group Committee report is extracted below :

"A meeting of all the stakeholders including the lenders, developers and procurers was held on 20th June 2017 in Delhi to discuss the issues related to imported coal based power projects. In that meeting, it was decided to form a specific Working Group to find resolution for the three projects mentioned above. The Working Group consists of all members of procurer states and Banks represented by Punjab National Bank and Canara Bank with State Bank of India acting as a convener, to find a solution through consultative process. In the meeting it was decided that the procurers and lenders will find the best solution possible for issues related to three projects namely Coastal Gujrat UMPP, Adani Power Mundra Projects and Essar Power Gujarat Limited. It was decided that the solution needs to be broad based and flexible. SBI Capital Markets Ltd. was co-opted in the working group to facilitate secretarial and administrative responsibilities. Further, NTPC was assigned to conduct technical due diligence of all the three plants.) to find a solution through a consultative process. In contradistinction, the HPC is constituted through a policy decision by the State Government through the GR as stated above."

² (2017)14SCC80


Member


Chairman

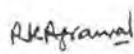

Member

In contradistinction, this HPC has been constituted through a policy decision by the State Government through the GR as stated above.

D. In analysing the applicable framework and factors as above, and in making its recommendations, the HPC has adopted the following approach and methodology:

- (i) The HPC recommendations are underpinned by the mandate given to the HPC to ensure that consumer interest is always protected and accordingly, the HPC has treated the consumer interest as supreme and has ensured that its entire analyses and recommendations keep the consumer interest paramount;
- (ii) The barometers adopted by the HPC for objectively measuring consumer interest include availability of reliable power on a sustainable basis, at the cheapest prices, over the life of the Projects, even beyond the term of the respective PPAs, while all the time factoring for the availability and reasonable predictability of price movement of international coal and domestic coal;
- (iii) In making its recommendations, the HPC has identified, evaluated and dealt with all present and potential future risks that may apply to the Projects in discussion, especially in the context of availability and prices of coal, and has made appropriate recommendations to ensure that the risks are equitably balanced and allocated to parties that are best positioned to manage and absorb such risks;
- (iv) It is well recognised and indisputable that these Projects are already very significantly financially stressed and their continued operations in the current framework is not financially sustainable for these Projects. Accordingly, unless positive steps are taken to revive these Projects, the only realistic alternative is that these Projects will become financially unviable and will inevitably lead to closure of these assets resulting in shortage of reliable supply of electricity;
- (v) It is also well recognised and indisputable that these Projects are national assets, with amongst the cheapest fixed costs, are highly efficient being new assets based on world class technology, most of the units are based on the supercritical technology, and accordingly, there is strong merit in exploring ways and means to revive them through appropriate financial and contractual re-structuring;

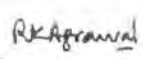

Member


Chairman


Member

- (vi) The HPC has reviewed the earlier reports prepared by the Working Group Committee and has analysed the assumptions and findings of such prior reports in the context of updated data;
- (vii) The HPC has ensured that, while recommending appropriate resolution plan for the concerned Projects, the accumulated costs and losses incurred are not passed on to the consumers. The recommended resolution plan aims at ensuring that the concerned Projects are revived prospectively and are appropriately enabled to operate on a sustainable basis for the remainder of their respective lives, and the consumers get the full benefit of the prospective revival of these Projects even beyond the initially contracted terms of the PPAs, at prices that will, as a result of the financial and contractual re-structuring, be amongst the cheapest for the procurers from their respective baskets of power procurement sources, and that these revived Projects would certainly be the cheapest amongst all future new and/or replacement projects;
- (viii) The HPC has ensured that the financial and contractual re-structuring and the framework for future operations, including appropriate amendments to the respective PPAs, will result in an equitable sharing of the burden amongst the diverse stakeholders (i.e. the developers, lenders, procurers and consumers) and the net incremental impact to the consumers is the lowest and within tolerable limits, and certainly lower than the potential costs and increase in tariffs that are bound to result if these Projects were to be abandoned and substituted with new and/or replacement projects;
- (ix) The HPC, for the purpose of maintaining a balance has ensured that pursuant to the resolution plan, the pass through of energy charge based on the fuel cost on landed cost basis under the PPAs will not be unbridled as a cap has been stipulated for the imported coal prices, upto which a pass through will be permitted;
- (x) The HPC has tried to find a solution which can mitigate the hardship faced by the Projects in a timely manner as further delay may cause irreversible damage to the entire situation; and
- (xi) While analyses of individual Projects have been undertaken to understand the issues and impact on the Projects collectively, as a matter of policy, a uniform package on common principles has been recommended by the HPC for each of the Projects.


Member


Chairman


Member

LIST OF ABBREVIATIONS

ADF	Airport Development Fee
APTEL	Appellate Tribunal for Electricity
APL	Adani Power Limited
BTS Licenses	Basic Telephone Service Licenses
CAGR	Compound Annual Growth Rate
CCEA	Cabinet Committee on Economic Affairs
CERC	Central Electricity Regulatory Commission
CGPL	Coastal Gujarat Power Limited
CMTS	Cellular Mobile Telephone Services
CMTS Licenses	Cellular Mobile Telephone Services Licenses
CSA	Coal Supply Agreement
DIAL	Delhi International Airport Limited
Discoms	Distribution Companies
DPC	Deepak Parekh Committee
DRI	Directorate of Revenue Intelligence
DGMC	Director General of Minerals and Coal
ESP	Engineering Scale Plan
EPGL	Essar Power Gujarat Limited
FOB	Free on Board
FCA	Fuel Cost Adjustment
FSA	Fuel Supply Agreement
FTS	Fixed Telephone Services
GCV	Gross Calorific Value
GoI	Government of India
GoT	Group on Telecom
GUVNL	Gujarat Urja Vikas Nigam Limited
HBA	Harga Batubara Acuan
HPGCL	Haryana Power Generation Corporation Limited
IEX	Indian Energy Exchange
KPC	Kaltim Prima Coal
MCL	Mahanadi Coalfields Limited
Mega Policy	Mega Power Policy 1995
MIAL	Mumbai International Airport Limited
MEMR	Ministry of Energy and Mineral Resources
MoCA	Ministry of Civil Aviation

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MoP	Ministry of Power
MOD	Merit Order Despatch
NCLT	National Company Law Tribunal
NPA	Non-Performing Asset
NPV	Net Present Value
NTPC	National Thermal Power Corporation
NTP 1994	National Telecom Policy 1994
NTP 1999	National Telecom Policy 1999
O&M	Operations and Maintenance
OMDA	Operation, Management and Development Agreement
PPA	Power Purchase Agreement
PPP	Public Private Partnership
PLF	Plant Load Factor
RBI	Reserve Bank of India
RoE	Return on Equity
SBI	State Bank of India
SCOD	Scheduled Commercial Operation Date
SMA	Special Mention Accounts
SBDs	Standard Bidding Documents
SSA	State Support Agreement
SCE	Standing Committee on Energy
TPP	Thermal Power Project
UMPP	Ultra Mega Power Projects

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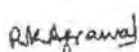
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LIST OF DEFINITIONS

Electricity Act	means Electricity Act, 2003.
Energy Watchdog Judgment	means the Judgment of the Hon'ble Supreme Court in the case of Energy Watchdog & Ors. vs. CERC & Ors. (C.A. No. 5399-5400 of 2016 and batch matters) dated 11 th April 2017.
Generators/Developers	means CGPL, APL and/or EGPL.
GR	means the Government Resolution bearing no. CGP-12-2018-166-K issued by the Government of Gujarat dated 3 rd July 2018 constituting the High Power Committee.
HPC or High Power Committee	shall mean this High Power Committee constituted by the GR.
IBC	means Insolvency & Bankruptcy Code, 2016.
Indonesian Regulations, 2010	means the Regulation No. 17 of 2010 titled "Procedures to Determine the Benchmark Price for Mineral and Coal Sales" issued by The Ministry of Energy and Mineral Resources, Republic of Indonesia on 23 rd September 2010.
Procurers	means the distribution licensees or their nodal agency(ies) operating in the States of Gujarat, Maharashtra, Rajasthan, Haryana and Punjab.
Projects	mean the 4620 MW TPP in Mundra, District Kutch, Gujarat set up by APL; 4150 MW TPP in Mundra, District Kutch, Gujarat set up by CGPL; 1200 MW TPP in Salaya, District - Jamnagar, Gujarat set up by EPGL.
WGC Report	means the report submitted by the Working Group Committee in January 2018 in relation to each of the Projects.

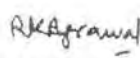

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Report	means this report containing its' recommendations pursuant to the mandate contained in the GR.
37 th SCE Report	means the 37 th Report issued by the SCE on 'Stressed/Non-performing Assets in Electricity Sector' dated March 2018.
40 th SCE Report	means the 40 th Report issued by the SCE on 'Impact of RBI's Revised Framework for Resolution of Stressed Assets on NPAs in the Electricity Sector' dated August 2018.
1994 Licenses	mean CMTS licenses issued in the year 1994 for a period of 10 years.
1995 Licenses	mean CMTS licenses issued in the year 1994 for a period of 10 years.


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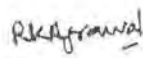

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CHAPTER - I

BRIEF BACKGROUND AND THE HISTORY LEADING UPTO THE CONSTITUTION OF THE HPC

- 1.1 In 1995, the Government of India (GoI) to meet the then requirement of setting up more than 10,000 MW of the capacity every year for next few years, formulated the Mega Power Policy (Mega Policy) which envisaged development of coal based mega power projects having capacity of 1000 MW and more power to avail fiscal benefits in form of customs duty and excise duty. The Mega Policy also envisaged setting up of mega power projects in the coastal region based on imported coal as fuel *inter alia* on account of shortage of domestic coal supply in the country. Thus, it is clear that the option of having imported coal based plants in the coastal areas was envisaged way back in 1995.
- 1.2 The Mega Policy met with limited success and accordingly, to overcome the challenges faced in the implementation of the aforesaid Mega policy, the GoI came up with an initiative for setting up Ultra Mega Power Projects (UMPPs). The policy of UMPP was introduced in 2005 by the Ministry of Power in association with the Central Electricity Authority and the Power Finance Corporation to overcome the bureaucratic obstacles hindering the development of large thermal plants and thereby address India's chronic power deficits. The UMPPs were seen as an expansion of the MPP (Mega Power Projects) that the GoI undertook in the 1990s with limited success.
- 1.3 In addition, the UMPPs were also envisaged to meet the GoI's plan of providing "power for all" by the end of its Eleventh Five Year Plan (2007-2012) which required creation of an additional capacity of at least 100,000 MW by the year 2012. In line with the decision to set up imported coal based projects as part of the Mega Policy and also considering the logistical benefits associated with imported coal, capacity based on imported coal was also encouraged in coastal locations under the UMPP policy.
- 1.4 This also becomes evident from the review of the Report of the Expert Committee, Planning Commission, GoI on the '*Integrated Energy Policy*' dated August 2006 (draft report of which was issued in December 2005). The aforesaid report also clearly sets out the benefits associated with setting up of imported coal based projects primarily in the coastal areas of the country and in fact, clearly recommends that India must encourage coastal power plant based on imported coal. While making the aforesaid


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recommendation, the committee based on the reasonable recommendations³ at that point in time (i.e., around the same time when bidding of imported coal based UMPP was envisaged) factored that the delivered cost of the power grade Indian coal exceeded the cost of imported coal at port when transported to consumers beyond 1000 km. Further, it also factored that imported coal was the cheaper option even with inland transportation of some 500 km in comparison to domestic coal which was required to be transported beyond 1400 km to reach the consumers.

1.5 Not only this, the premise that the GoI supported the development of imported coal based projects in the coastal areas gets reinforced in view of the fact that UMPPs such as Mundra, Krishnapatnam and Cheyyur were conceived by the GoI in coastal areas based on imported coal. Furthermore, it is noteworthy that the UMPP initiative was intended to be executed through private capital, both domestic and foreign, attracted through transparent competitive bidding processes.

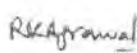
1.6 Pursuant to such UMPP policy, in or around 2005 - 2006, the GoI invited bids for development of coastal UMPPs based on imported coal.⁴ Such UMPPs were to be awarded to the developers under tariff based competitive bidding route, under Section 63 of the Electricity Act, 2003 (Electricity Act). On account of the fact that imported coal was to be the source of fuel for these projects, the same were set up as coastal plants with a view to incur lesser transportation costs by avoiding an additional land transportation after landing at the port. Further, the UMPPs were mandated to use Supercritical technology so as to achieve a higher level of fuel efficiency, which in turn would result in saving of fuel consumption and lower green-house gas emissions.

1.7 As part of this initiative, Mundra UMPP was awarded to the Tata Group which acquired the shareholding of Coastal Gujarat Power Limited (CGPL) (i.e., the SPV set up for execution of 4150MW (5x830 MW) Thermal Power Project (TPP) in Mundra, District Kutch, Gujarat) and CGPL executed the Power Purchase Agreement (PPA) with the States of Gujarat (1805 MW), Maharashtra (760 MW), Haryana (380 MW), Punjab (475 MW) and Rajasthan (380 MW) in April 2007.

³ Assumptions included landed CIF price of imported coal having GCV of 6000 kcal/kg was taken as US\$60 and exchange rate assumed was Rs 44.50 per US\$. Domestic coal price includes weighted average notified price of coal for the respective grades.

⁴ This bid was floated under the Case 2, Scenario 2 of the then existing Competitive Bidding Guidelines read with the model RFP issued thereunder by the Ministry of Power. Scenario 2 envisaged arrangement of imported coal by the Seller/power generator.


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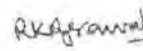

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- 1.8 Around the same time in the year 2006 - 2007, Gujarat Urja Vikas Nigam Limited (GUVNL) invited bids for the supply of power under the long-term PPAs⁵. Pursuant to the tenders floated by GUVNL, Adani Power Limited (APL) was selected to supply 2000 MW (i.e., 1000 MW each under Bid 01 and Bid 02) from its 4620 MW (4x330 MW + 5x660 MW) TPP located in Mundra, District Kutch, Gujarat. APL's 1000 MW PPA under Bid 02 was based on commitment from Gujarat Mineral Development Corporation (GMDC) for supply of coal from the Morga-II coal block. However, in view of non-execution of Fuel Supply Agreements (FSA) by GMDC, APL had to resort to alternate arrangement to depend upon imported coal from Indonesia. Essar Power Gujarat Limited (EPGL) was selected to supply 1000 MW power (under Bid 03) from its 1200 MW (2x600 MW) TPP located in Salaya, District, Jamnagar, Gujarat.
- 1.9 In 2006, Haryana Power Generation Corporation Limited (HPGCL) invited bids by way of issuing RFP in 2007 for procurement of 2000 MW of power under the long-term PPA in terms of the Case 1 model of the then existing Competitive Bidding Guidelines. Pursuant to the tenders floated by HPGCL, APL was selected to supply 1424 MW from its 4620 MW Mundra TPP.
- 1.10 APL entered into two PPAs with GUVNL in February 2007 (1000 MW each), and PPA with UHBVNL and DHBVNL in August 2008 (1424 MW, 712 MW each); and EPGL executed a PPA with GUVNL in February 2007 (1000 MW).
- 1.11 The tariff quoted by CGPL, APL and EPGL (collectively known as **Generators/Developers**) in their respective bids, was predominantly based on usage of the imported coal from Indonesia which was available in a certain price range keeping in view the past as well as the then prevailing market trends pertaining to imported coal pricing in Indonesia since the past 40 (forty) years. Further, the coal supplies from Indonesia were found to be competitive as compared to other sources by virtue of comparatively lower ocean transportation costs. Therefore, all the generating companies that were setting up imported coal based power projects in India (such as APL, CGPL, EPGL, Reliance Power - Krishnapatnam, Shapoorji Pallonji) tied up their coal supplies from mines located in Indonesia and accordingly offered fixed/discounted tariff factoring the cost saving available to them from coal supplies from Indonesian coal mines.

⁵ These bids were floated under the Case 1 of the then existing Competitive Bidding Guidelines. GUVNL floated Bid 01 (100 - 2000 MW): coal/lignite based plants; Bid 02 (100 - 2000 MW): multiple fuel and Bid 03 (500-2000 MW): imported coal based plants.


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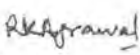

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1.12 However, in 2010, the Indonesian Government brought about significant regulatory changes (as explained in greater detail in Chapter 2 hereinbelow), that had a direct impact on the financial viability and sustainability of the projects in India based on Indonesian coal as fuel. As it transpired, coal prices increased in other exporting countries of coal also, notably Australia and South Africa, thereby making import of coal from such alternate sources too, unviable. These changes on pricing methodology came into effect in September 2011 and it was further directed by the Indonesian Government that all the existing supply agreements with Indonesian mining firms would also be brought in line with this new benchmark by September 2011. In view of these radical changes in Indonesia, several planned thermal projects in India intended to be based on Indonesian coal as fuel, had to be abandoned such as Krishnapatnam UMPP, Salaya Phase II, etc. The imported coal from other countries like Australia and South Africa was/is costlier and could not be used as a substitute to Indonesian coal. Similarly, based on National Thermal Power Corporation's (NTPC) technical due diligence which has been covered under the Working Committee Report (explained in greater detail in Chapter -4), it was discovered that it is difficult to operate the Projects on domestic coal.

1.13 The changes in the Indonesian legal and regulatory regime, resulted not just in an increase in the input fuel prices, but also resulted in a significant disruption in the financial models of the subject Projects in India designed and set up on the basis of Indonesian coal, and distorted the balance of risks that had elaborately been crafted under the UMPP policy and Standard Bidding Documents (SBDs), including the model PPAs. Notably, the price of the Indonesian coal agreed upon in each of the FSA were negated and superseded by the new laws promulgated by Indonesia. The prices agreed to in the FSAs had to be revised and aligned with the new benchmark prices linked to the coal price indices, as directed by the Government of Indonesia. This caused a significant variation in the envisaged price of imported coal considered for the purpose of bidding and the actual cost of imported coal and consequently, the Generators started incurring huge losses in the process of supplying power under their PPAs. Thus, APL and CGPL approached the CERC⁶, seeking relief for these unforeseen events, under the terms of the PPA. The primary basis of the claims before the CERC were based on assertions of change in law and/or force majeure as per the provisions of the PPA.

⁶ Since EPGL is supplying from its TPP to only GUVNL under long term PPA, it had approached Gujarat Electricity Regulatory Commission.


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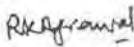

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CERC by way of its order dated 2nd April 2013 and 15th April 2013 refused to grant relief based on the PPA provisions on force majeure or change in law, to APL and CGPL respectively. However, as detailed in paragraph 3.2.1 below, the CERC by its orders in April 2013, directed the formation of a committee to recommend a compensation package for APL and CGPL, which was termed as "compensatory tariff"

- 1.14 Pursuant to the aforesaid directions of the CERC, the DPC was formed. In compliance with the directions given in the aforesaid CERC orders, the Government of Gujarat and Haryana accepted the directive issued by CERC with respect to the formation of a Committee subject to certain conditions. The DPC by way of its report dated August 2013, gave recommendations for evolving an appropriate methodology to compute the compensatory tariff package. In furtherance of the recommendations of the DPC, the CERC passed the order dated 21st February 2014, *inter alia* providing the formula as per which compensatory tariff was to be granted as a relief to counter the hardships caused due to the increase in coal price on account of change in the Indonesian legal regime.
- 1.15 GUVNL, Haryana Distribution Companies (collectively referred to as Discoms) and the consumer representative groups being aggrieved by the order passed by CERC, preferred an appeal (Appeal No. 100 of 2013 and batch matters) before the Appellate Tribunal for Electricity (APTEL). APTEL by way of its final order dated 7th April 2016 set aside the orders passed by CERC and held that no relief is made out under the change in law provision of the PPAs, however, it held that the promulgation of the Indonesian law resulting into an unprecedented enhancement in the cost of imported coal, constitutes a force majeure event. Accordingly, APTEL directed CERC to compute compensation payable to the Generators under the force majeure provision. Accordingly, CERC by way of order dated 06th December 2016 granted relief under the force majeure provisions of the PPA.
- 1.16 Being aggrieved by the said directions issued by APTEL, the consumer representative groups i.e., Energy Watchdog and Prayas (Energy Group) and the Discoms, amongst others, filed appeals (CA No. 5399-5400 of 2016 and batch matters) before the Hon'ble Supreme Court. The Hon'ble Supreme Court passed the Energy Watchdog Judgment on 11th April 2017, wherein it was *inter alia* held that the change in the Indonesian legal regime dealing with price of coal cannot be construed either as a Force Majeure event or as a Change in Law event under the relevant PPAs. The Hon'ble Supreme Court further held that while the CERC had general regulatory powers under Section 79 of


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the Electricity Act, such regulatory powers could be exercised only in a situation where there are no guidelines that have been framed under Section 63 of the Electricity Act, or where the guidelines do not deal with a given situation. Accordingly, the Hon'ble Supreme Court concluded that the financial distress being faced by the two projects could not be addressed or resolved within the framework of the terms of the PPAs as they stood, nor could recourse be had to the general regulatory powers of CERC under Section 79 of the Electricity Act. However, there is no restriction or prohibition, express or implied, in the said order of the Hon'ble Supreme Court, against finding an appropriate resolution to the financial distress being faced by the Generators, outside the framework of the contractual terms of the PPAs. The HPC notes that the manner and methodology for bringing about these changes will eventually require an amendment to the contractual terms of the PPAs, which will need to be duly approved by the Appropriate Commission (CERC for CGPL and APL and Gujarat Electricity Regulatory Commission (GERC) for EPGL). The approach to effecting the recommendations of this HPC, within the applicable legal and regulatory framework, has been discussed in greater detail in Chapter 9 hereinbelow.

- 1.17 In terms of the findings of the Energy Watchdog Judgment, APL and CGPL have not been granted any compensation/reprieve either under the contractual provisions relating to 'change in law' and/or 'force majeure' under the PPAs, nor under the exercise of general regulatory powers of the CERC under Section 79 of the Electricity Act. It is relevant to highlight that the petition filed by EPGL on similar legal grounds as advanced by CGPL and APL, is still pending before GERC, and no final order has been passed by GERC in this regard. Resultantly, the Generators are continuing to face huge financial losses and are unable to sustain generation on a long-term basis to honour their obligations under the PPAs. In fact, one of the Generators, EPGL has shut down its TPP for around one year and is not supplying power to GUVNL. Faced with such an impossible situation, the Generators have made several representations to the States of Gujarat, Maharashtra, Rajasthan, Haryana and Punjab seeking redressal of their grievances and even offered 51% equity at value of Rs. 1 to the procurer States.
- 1.18 Subsequently, the Government of Gujarat referred the matter to the GoI, seeking timely resolution of the problems being faced by the Generators, as well as the procurer states (Procurers) and the lenders. The Ministry of Power, GoI thereafter convened a meeting of the lenders, developers and officials of the procurer States on 20th June 2017 to discuss options for resolving the financial distress being faced by the Generators and also to consequently resolve the potential insolvency threat faced by the lenders. It was

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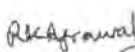
decided at this meeting that a Working Group would be constituted to evaluate and recommend the options that are available for ensuring sustained operation of the Projects. The Working Group consisted of all members of the procurer States, and banks represented by Punjab National Bank and Canara Bank with the State Bank of India acting as a convener. The final report prepared by the Working Group, after carrying out discussions and deliberations over a course of meetings, was circulated by SBI on 10th January 2018. Additionally, SBI had also requested for the formation of a high power committee to review the report and make recommendations for resolving these issues.

- 1.19 In this regard, SBI requested the Government of Gujarat vide its letter dated 17th January 2018 seeking formation of a high power committee for finding a resolution for the financial issues being faced by the imported coal-based power projects. The Government of Gujarat thus approached the GoI vide its letter dated 1st February 2018 seeking coordination of the process of resolution of issues related to imported coal-based power projects. Responding to this letter, the GoI issued a letter dated 13th April 2018, wherein it granted the Government of Gujarat being the lead procurer/major procurer in the three imported coal based projects based in Gujarat, the liberty to examine the issues and take further action for resolution of the same. The relevant extract from the aforesaid letter of the GoI is set out below :

"As State of Gujarat is the lead procurer/ major procurer in the three Imported Coal based Projects in Gujarat, you may like to have this issue examined and take further action for resolution of the issues related to these projects"

- 1.20 In furtherance of the recommendation of SBI, and the concurrence given by the GoI to this effect, the Government of Gujarat, through its Energy and Petrochemicals Department by way of the Government Resolution has constituted the HPC, as above. As mentioned earlier, the mandate of the HPC is to, *inter alia*, make recommendations on the mode and manner for mitigating the hardships being faced by the projects on account of the change in the Indonesian laws and other such related issues. The HPC is required to give recommendations, pursuant to deliberations with the relevant stakeholders including the generating companies, lenders and distribution companies for ensuring the financial viability of the Projects, which were conceived and set up based on the usage of imported coal from Indonesia.


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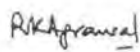

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CHAPTER - II
PROMULGATION/CHANGE IN THE INDONESIAN REGULATIONS AND ITS
IMPACT ON THE INDIAN POWER PROJECTS

- 2.1 The details of the changes made in the Indonesian laws pertaining to change in cost of coal have been covered in the DPC and the Working Committee Report which as mentioned earlier have been perused by the HPC. The relevant excerpts of the DPC relied upon by the HPC for the purpose of this Report is annexed hereto as Annexure - II. Based on review of the aforesaid reports, the gist of the changes in the Indonesian laws is discussed herein below.
- 2.2 The Ministry of Energy and Mineral Resources, Republic of Indonesia (MEMR), on 23rd September 2010 issued Regulation No. 17 of 2010 titled as "Procedures to Determine the Benchmark Price for Mineral and Coal Sales" (**Indonesian Regulations 2010**). These regulations brought about a significant change in the coal mining framework that was prevalent at the time and have had severe financial ramifications for the Indonesian coal-based power generation projects located in India.
- 2.3 Prior to 2009, mining permits were granted by the Indonesian Government based on Law No. 11/1967 (Law on Basic Mining Regulations) and the relevant regulations in this regard. The essential characteristic of this regime was the protection by the Indonesian Government, of individual coal sales contracts entered into by mining companies in Indonesia. The mining companies were provided with protection against future changes in law, if any, and were also granted the authority to repatriate profits. Further, the practice of negotiation with mines in Indonesia was in existence for more than 40 (forty) years. Additionally, there was no past practice of benchmarking of price by Indonesia prior to the bidding process.
- 2.4 However, the Indonesian Government was facing the following issues under the earlier regime:
- (i) The transfer pricing issues arose on account of sale of coal at below market prices considering pricing was not regulated;
 - (ii) As a result of above factor, there was loss of production royalties;
 - (iii) In addition, the above factor also led to adverse impact on the taxable revenues from the sector; and


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- (iv) There was no restriction on the foreign ownership in the companies owning mining rights in Indonesia and consequently, the Indonesian Government was unable to control the level of repatriation.

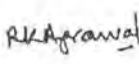
2.5 Thereafter, in 2010, as mentioned above, the Indonesian Regulations 2010 were promulgated to counter the aforesaid issues. This primarily changed the entire economics of the imported coal-based projects in India. As per the said Regulations, the holders of the mining permits and special mining permits for production and operation of mineral and coal mines were obliged to sell the minerals and coals at the benchmark price either for domestic sales or exports, even to its affiliated business entities. As per Article 11 of the Indonesian Regulations 2010, the Director General of Minerals and Coal (DGMC) was required to set a benchmark price of coal on a monthly basis based on a formula that refers to the average price index of coal in accordance with the market mechanism and/or in accordance with the prices generally accepted in the international market.

2.6 Impact on the existing coal contracts

2.6.1 The Indonesian Regulations 2010 recognized the direct sale contract (spot) and term sale contract (long term) which have been signed by the holders of mining permits and special mining permits. The said Regulations further provided that the existing direct sale contracts and term sales contracts shall comply with the Regulations within a period not later than 6 months and 12 months respectively. Spot sale contracts were required to be amended by 22nd March 2011 and the term sales contracts were required to be amended by 22nd September 2011. In the event of violation, the holders of mining permits and special mining permits were liable for administrative sanction in the form of written warning, temporary suspension of sales or revocation of mining operations permits.

2.6.2 This amendment primarily aimed to increase the government revenue by way of the royalties received from the coal producers. As per the applicable royalties, taxes and duties, only 47.62% of profit can be repatriated outside Indonesia by any mine owner. Further, for the calculation of dividend of USD 100 declared in Indonesia, payment/deduction of corporate tax in Indonesia and mandatory retention (as per Indonesian laws) is required to be done from the profit earned. (currently corporate tax in Indonesia is levied at 25% and mandatory retention requirement is 20% of subscribed and paid up capital). Methodology followed for this calculation is set forth herein below:


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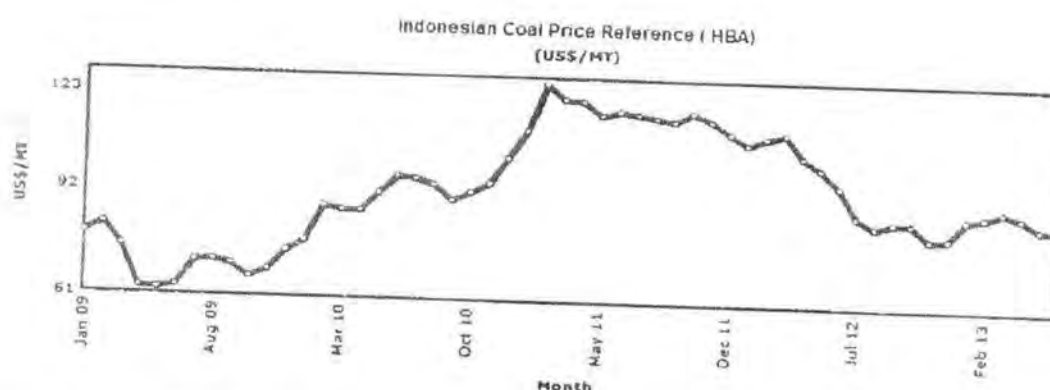

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Parameters	Formula	Amount
Profit from Indonesian Mines	A	100
Royalty	$B = A \times 13.50\%$	13.50
Revenue net of royalty	$C = A - B$	86.50
Taxes and duties including Mandatory Retention in Indonesia.	$D = C \times 45\%$	38.93
Net Incremental Profit	$E = C - D$	47.62
Taxes and duties as % of Profit	$F = A - E$	52.38

(Source: CERC Order dated 6th December 2016)

2.6.3 As a result of linking price for sale of coal with the benchmarked price, the issues of abuse of transfer pricing, loss of production royalty and adverse impact on taxable revenues were addressed. As far as the issue of restriction on foreign ownership is concerned, with the change in the laws, a restriction on the maximum shareholding by a foreign entity in an Indonesian mining company was capped at 49%.

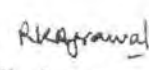
2.6.4 It is also relevant to set out the chart of prices for Indonesian coal and an indication of trend of coal price index (Harga Batubara Acuan or HBA) for the period between 2009 to 2013.



Source: Declared by the Directorate of Mineral, Coal and Geothermal, Ministry of Energy and Mineral Resources, Republic of Indonesia, Coal Spot.com

2.6.5 The effective result of the promulgation of the new regulations and laws in Indonesia was that the cost of coal imported from Indonesia became at par with other countries like Australia and South Africa.

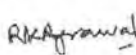

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- 2.6.6 Effectively, the cost of coal from Australia and South Africa is also linked to international coal indices akin to HBA and therefore, cost of coal from these countries is similar to or higher than the cost of coal from Indonesia. However, in view of the strategic maritime location of Indonesia *vis a vis* India, the freight charges for transporting coal from Indonesia to India is comparatively lower and therefore, on an overall basis, Indonesian coal still remains competitive as compared to coal supply from other countries like Australia and South Africa. Therefore, under the current PPA provisions, it is not feasible to switch to these alternate coal sources.


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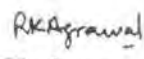

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CHAPTER - III
CHRONOLOGY OF THE LEGAL PROCEEDINGS

- 3.1 Orders passed by CERC dated 16th October 2012 and 02nd April 2013 in Petition No. 155/MP/2012 and April 15, 2013 in Petition No. 159/MP/2012 respectively
- 3.1.1 Being financially impacted by the promulgation of the Indonesian Regulations 2010, and the ensuing adverse ramifications of these regulations on the operation of their respective TPPs in India, APL and CGPL filed petitions before the CERC *inter alia* seeking revision of tariff in order to offset the adverse impact of the unforeseen and unprecedented escalation in the price of imported coal.
- 3.1.2 On 16th October 2012, CERC passed an interim order in the matter of *Adani Power Limited Vs. UHBVNL and Ors.* in Petition No. 155/MP/2012, wherein *inter alia* the issue of maintainability of the petitions and jurisdiction of the CERC, was adjudicated upon. It was held that since APL is generating and selling electricity to more than one state, the conditions of Section 79(1)(b) of the Electricity Act are met, and therefore APL has a composite scheme for generation and sale of electricity in more than one State. Therefore, regulating the tariff of APL was held to be within the jurisdiction of CERC.
- 3.1.3 CERC vide its order dated 02nd April 2013, observed that one of the main issues which was to be considered was whether the promulgation and coming into effect of the Indonesian Regulations 2010 was making it impossible for APL to supply power to the procurers at the tariff agreed to in the PPAs. If so, then it would have to be considered if the case of APL falls within the ambit of the 'force majeure' or 'change in law' clauses of the PPA. In the alternative, it was to be considered if CERC had the power under the Electricity Act, the National Electricity Policy and the Tariff Policy, to grant relief to APL without revisiting the tariff as was agreed upon in the PPAs.
- 3.1.4 CERC, in the said order *inter alia* held that while APL has a prima facie case for grant of relief, on account of promulgation of the Indonesian Regulations, and the consequent increase in the price of coal, the nature of the relief that could be granted to APL in order to make it financially viable would have to be examined.
- 3.1.5 With regard to APL's claim of seeking relief under the force majeure clause of the PPAs, it was held by CERC that the case of APL is not covered by either the natural or non-natural force majeure events as laid down under Article 12.3 of the relevant PPAs. Moreover, the PPAs do not contain any provision which covers the change in procurement prices as an event of force majeure. It was further stated that the PPAs did not prevent APL from buying coal from Indonesia or any other source.

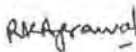

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- 3.1.6 It was further highlighted that APL had quoted non-escalable energy charges, thereby eliminating the prospect of being compensated on account of escalation in prices of fuel. CERC also observed that Indonesian Regulations 2010, which are affecting the agreed price under the Coal Supply Agreement (CSA) cannot be said to be a force majeure event under the PPAs. Moreover, the Indonesian Regulations 2010 do not prohibit APL from performing its contractual obligations under the PPAs, and the said regulations have not rendered the PPAs impossible to perform. In view of the above, it was held by CERC that no case was made out in favour of APL under the force majeure clause of the PPAs.
- 3.1.7 APL had also sought relief under the change in law provision of the PPAs. In this regard, CERC held that "all laws" as mentioned in the change in law provision of the PPAs, would refer only to the Indian Laws, as expressly stated in the PPA. It was stated that if "all laws" would be interpreted to include foreign law, the same would lead to absurd results, and if at all any foreign law is to be made applicable, it should be specifically provided in the contract. In the absence of an express provision including foreign law within the ambit of "change in law" under the PPA, APL was not entitled to relief under the change in law provision of the PPA either.
- 3.1.8 In light of the above findings, CERC held that while relief cannot be granted under either force majeure or change in law contractual provisions, however, absence of a clause for price escalation in the contract cannot be a ground for denying compensation for actual expenditure incurred on account of unprecedented price rise for reasons beyond the control of the Developers. It was thus held that – *"ways and means need to be found to compensate the petitioner for the loss or additional expenditure incurred by it on account of procurement of coal from Indonesia at the international benchmark price as it was never in the contemplation of the petitioner and even the respondents that purchase price of coal from Indonesia will increase manifold on account of promulgation of Indonesian Regulations."*
- 3.1.9 It was thus held that the escalation in the price of imported Indonesian coal on account of the Indonesian Regulations 2010 is a temporary phenomenon, which is likely to stabilize in some time. In view of the same, APL needs to be compensated for the intervening period, and this compensation would be in addition to the existing tariff which has been determined subsequent to competitive bidding. This compensation package was termed as "compensatory tariff", and it was to be variable in nature, commensurate to the hardship being faced by APL. As and when such hardship would cease to exist, or its extent would lessen, the compensatory tariff would accordingly be revised or withdrawn.


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3.1.10 Accordingly, CERC directed APL, the Discoms and the respective State Governments to form a committee, which would consist of the Principal Secretary (Power), Govt. of Gujarat/Managing Director of GUVNL and Principal Secretary (Power), Govt. of Haryana/Managing Directors of UHBVNL and DHBVNL, the Chairman of APL or his nominee, an independent financial analyst of repute and an eminent banker of the commensurate level. This committee was directed to keep in view *inter alia* the following considerations while working out the compensatory tariff:-

- The net profit less Govt. taxes and cess etc. earned by the petitioner's company from the coal mines in Indonesia on account of the bench mark price due to Indonesian Regulation corresponding to the quantity of the coal being supplied to the Mundra Power Project should be factored to pass on the same in full to the beneficiaries in the compensatory tariff.
- The possibility of sharing the revenue due to sale of power beyond the target availability of Mundra Power Project to the third parties may be explored.
- The possibility of using coal with a low GCV for generation of electricity for supply to the respondents without affecting the operational efficiency of the generating stations.

3.1.11 Similar findings were given by CERC in its order dated 15th April 2013 in the matter of Coastal Gujarat Power Limited Vs. GUVNL and Ors. in Petition No.159/MP-2012.

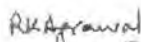
3.1.12 In compliance with the orders issued by CERC, the Government of Gujarat and Haryana accepted the directive issued by it with respect to the formation of a Committee. Further, a similar decision was taken by the Government of Maharashtra as well.

3.2 Findings of the Deepak Parekh Committee Report dated August 2013 constituted in compliance of CERC's directions in orders dated 02nd April 2013 and 15th April 2013

3.2.1 The DPC was constituted pursuant to the orders in April 2013 of the CERC. The relevant portion of the said order is reproduced below:

"Accordingly, we direct the petitioner and the respondents and the respective State Governments to constitute a committee within one week from the date of this order. The committee shall consist of the Principal Secretary (Power), Govt. of Gujarat / Managing Director of GUVNL and Principal Secretary (Power), Govt. of Haryana / Managing Directors of UHBVNL and DHBVNL, the Chairman of Adani Power Ltd. or his nominee, an independent financial


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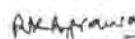

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analyst of repute and an eminent banker of the commensurate level. The nominees of financial analysts and banker should be selected on mutual consent basis. The Committee shall go into the impact of the price escalation of the Indonesian coal on the project viability and obtain all the actual data required with due authentication from independent auditors to ascertain the cost of import of coal from Indonesia and suggest a package for compensatory tariff which can be allowed to the Petitioner over and above the tariff in the PPAs. The Committee shall keep in view inter-alia the following considerations while working out and recommending the compensatory tariff applicable upto a certain period."

- 3.2.2 The DPC was chaired by Mr. Deepak Parekh, and comprised of representatives of the procurers, generators, SBI Capital Markets and Dr. Devi Singh, Director- IIM Lucknow. During the course of meetings held from May 2013 to July 2013, the DPC analysed various options to arrive at the compensatory tariff package, in order to mitigate the hardships being faced by the Generators.
- 3.2.3 After discussions and deliberations, the DPC recommended that the generators (APL and CGPL) be compensated for historical losses on account of under recoveries of energy cost, effective from the Scheduled Commercial Operation Date (SCOD) for APL and Commercial Operation Date (COD) of Unit 1 for CGPL till 31st March 2013. It was further recommended that a methodology be formulated to compensate the generators for the prospective hardship that would be incurred on *inter alia* account of promulgation of the Indonesian Regulations 2010.
- 3.2.4 After evaluating three broad options to determine the compensatory tariff, the DPC finalised the option of Fuel Cost Adjustment in Energy Charges (FCA) taking into consideration several factors such as the fact that an equitable level of compensation has to be given to the developers and the procurers; the compensation determined is the lowest of the methods evaluated; FCA is consistent with the then Cabinet Committee on Economic Affairs (CCEA) Guidelines allowing pass through of the cost of imported coal on account of shortage of domestic coal; and fuel cost is highly unpredictable and volatile and is thus a risk that cannot be borne by the generator/developer for a long period of 25 years.
- 3.2.5 The methodology/mechanism of computing the compensatory tariff as recommended by the DPC was divided into the following two aspects:-
- (i) **Compensation for actual hardship faced in the period from SCOD till cut-off date of 31st March 2013 for APL and from COD of Unit 1 till the date of implementation of Compensatory Order for CGPL**


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The total under recovery on account of energy charges was computed on the basis of PPA sales as per the actual invoices raised by the generators, and the fuel cost incurred thereto and the said figure was then extrapolated on the basis of the normative plant operating parameters. It was recommended by DPC that CERC may recommend the methodology for payment of the past losses and approve the same in a time bound manner, and in case the payment is deferred beyond the stipulated point in time, carrying cost on this outstanding amount should also be paid.

(ii) **Compensation for the period beyond 31st March 2013**

The DPC proposed a formula for computation of prospective compensatory tariff. This compensatory tariff was to be recovered in 3 (three) steps - (a) Provisional Compensatory Tariff to be charged in monthly bill; (b) Actual Compensatory Tariff to be calculated at the end of the particular year and (c) Truing up/reconciliation of Provisional Compensatory Tariff at the end of each financial year based on the audited financial statements with adjustment for actual/normative fuel energy expenses and sharing of profits from the Indonesian mining companies pertaining to coal supplied under the respective CSAs.

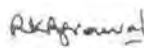
3.2.6 It was also recommended by the DPC that third party sale of power beyond target availability of 80% may be permitted (after making requisite modifications in the PPA), and the profits from such sale may be shared equally between the generator and procurers. It was further recommended that usage of low GCV coal may not be commercially beneficial at the then prevailing prices and in any event, is expected to adversely affect the performance of the plants in the long run causing extra cost.

3.2.7 The procurers and generators were urged to jointly pursue options for reduction in duties and taxes with the concerned authorities. Further, the lenders were advised to explore options of reduction in interest rates, extending moratorium on principal payment for a period of 2-3 years and elongation of loan repayment tenor to reduce the hardship of capacity charges on generator.

3.3 Order dated 21st February 2014 passed in Petition No.155/MP/2012 in order to evolve a mechanism for changing or revising tariff

3.3.1 In furtherance of the recommendations of the DPC, the CERC passed the order dated 21st February 2014, so as to evolve a mechanism for changing or revising tariff on account of change in circumstances which primarily involved the promulgation of the Indonesian Regulations 2010.

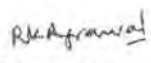

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- 3.3.2 It was held that the generators would be entitled to a provisional lump sum compensation for the period from SCOD till 31st March 2013. Further, generators were directed to submit their claims to the procurers with actual cost on a month to month basis, for the final settlement. The procurers were directed to pay this amount in equal monthly instalments over a period of not more than 36 (thirty six) months from the date of the said order and the said order also stipulated payment of carrying cost for delay in release of the aforesaid payment.
- 3.3.3 The formula for calculating the compensatory tariff from April 2013 onwards, which was to be provided on a monthly basis, was also specified in the said order. It was also directed that the excess realization towards third party sale above the availability of 80% (after adjusting Energy Charges including Compensatory Tariff and Incentive) shall be shared in the ratio 60:40 between the procurers and generators.
- 3.3.4 Actual profit from the coal mining operations in Indonesia was directed to be calculated based on the total incremental revenue after payment of taxes and royalty as per the Indonesian Regulations 2010 and the incremental mining cost in proportion to the coal used for the generation of contracted power under the respective PPAs.
- 3.3.5 CERC, in terms of the recommendations of the DPC Report, also directed for the usage of low GCV imported coal blended with high GCV imported coal. It was also directed that the generators and procurers shall jointly continue to pursue all possible options with the concerned authorities for reduction in duties and taxes on fuel. Gains made by the generator on account of any possible reductions shall be passed on to the consumers in reducing the tariff through change in law provision in PPA.
- 3.3.6 It was also held that the procurers and the generators shall jointly continue to pursue all possible options in approaching lenders to obtain reduction in interest rates, extending moratorium on principle repayment for a period of 2 to 3 years and possible extension of loan repayment tenor to reduce hardship on capacity charges. Further, the generator and procurers may jointly approach the RBI, Ministry of Finance and the Ministry of Power for possible assistance to the power producers in getting relief on account of interest rates and restructuring of loan.
- 3.3.7 CERC was of the view that the generators should also share the burden of the hardship caused due to escalation of the coal prices in the Indonesian market, and in light of the same directed for the adjustment in the tariff towards sacrifice of ROE based on the equity investment of respective contracted capacity, as on the SCOD.
- 3.3.8 CERC was to review the compensatory tariff after a period of three years unless the same was withdrawn earlier.

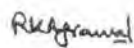

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- 3.4 Order dated 07th April 2016 passed by APTEL in Appeal No.100 of 2013 and batch matters
- 3.4.1 Being aggrieved by the findings of the orders passed by CERC in Petition Nos. 155/MP/2012 and 159/MP/2012 respectively, the Discoms and the consumer representative groups (among others) preferred appeals before APTEL.
- 3.4.2 Of the diverse issues before the APTEL, on the issue of *composite scheme*, the APTEL vide its order dated 07th April 2016, in the matter of *Uttar Haryana Bijli Vitran Nigam Limited Vs. CERC and Ors.* in Appeal No. 100 of 2013 and batch matters, held that the moment a generating company executes PPAs to supply the electricity generated by it to more than one State, or it undertakes actual supply to more than one State by virtue of some other binding arrangement, CERC's jurisdiction under Section 79(1)(b) of the Electricity Act would be attracted. It was thus held that *supply of power to more than one State from the same generating station of a generating company, ipso facto, qualifies as 'Composite Scheme' to attract the jurisdiction of the Central Commission under Section 79 of the said Act.*
- 3.4.3 In light of the above, it was held that in the case of APL and CGPL, a 'composite scheme' for generation and sale of electricity exists in terms of Section 79(1)(b) of the Electricity Act, and as such CERC could exercise its jurisdiction.
- 3.4.4 With regards the exercise of *regulatory powers*, APTEL in the said appeals, considered the issue as to whether CERC had the regulatory powers to vary or modify tariff that had been determined under Section 63 of the Electricity Act, or otherwise grant compensatory tariff to the generating companies, *de hors* the provisions of the PPAs.
- 3.4.5 In this regard, it was held by APTEL that while CERC could exercise its regulatory powers under Section 79(1)(b) to grant relief if any force majeure or change in law had been made out, the tariff could not have been modified/compensatory tariff could not have been granted (where such tariff had been determined under Section 63 of the Electricity Act) independent of the force majeure and change in law provisions of the PPAs. Thus, it effectively held that CERC had no power to vary/modify the tariff or otherwise grant compensatory tariff to the generating companies *de hors* the provisions of the PPAs.
- 3.4.6 As far as the issue of '*change in law*' was concerned, APTEL considered the issue whether the contractual change in law provision as provided in the PPAs should include laws other than Indian Laws, and if in light of the same, the promulgation of the Indonesian Regulations 2010 would thus constitute an event of change in law under the PPA.

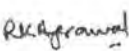

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- 3.4.7 In this regard, it was held by APTEL that the term 'law' referred only to Indian Laws and there was no scope whatsoever to insert foreign law in the said definition, as foreign law is not mentioned anywhere in the PPAs, and thus cannot be brought in by implication. It was stated that the parties to the PPA could never have contemplated a situation where change in any law of any foreign country could be considered as a change in law for the purpose of the PPA. In light of the same, while referring to provisions of the PPAs and the Competitive Bidding Guidelines, it was held that *Change in Law provided under Article 13 of the PPA or under Clause 4.7 of the said Guidelines issued by the Central Government as per Section 63 of the said Act should not be construed to include laws other than Indian Laws such as the Indonesian Law/Regulations prescribing the benchmark price for export of coal.* It was further held that the promulgation of Indonesian Regulation (2010) does not constitute an event of Change in Law attracting Clause 4.7 of the said Guidelines read with Article 13 of the PPA.
- 3.4.8 In the context of 'force majeure', it was held by APTEL that the present PPAs contemplated that if the agreement becomes onerous to perform because of a force majeure event and because of circumstances beyond the control of the affected party, such affected party would be covered by the Force Majeure Event. Moreover, the promulgation of Indonesian Regulations 2010 was an act which the generators had no control over and was a least expected event which severely impacted and hindered the performance of the contract. These regulations thus wiped out the fundamental premise on which the generators had quoted their bids, thereby making their projects commercially unviable.
- 3.4.9 In view of the above analysis, it was held that *the increase in price of coal on account of the intervention by the Indonesian Regulations 2010 as also the non-availability/short supply of domestic coal in case of APL constitute a Force Majeure Event in terms of the PPA.* Thus, Petition Nos. 155/MP/2012 and 159/MP/2012 were remanded back to CERC to assess the extent of impact of Force Majeure Event on the TPPs of APL and CGPL and give them such relief as may be available to them under their respective PPAs.
- 3.5 Order dated 06th December 2016 passed by CERC in Petitions Nos. 155/MP/2012 and 159/MP/2012 in compliance of the APTEL Judgment dated 07th April 2016
- 3.5.1 It was held by CERC in light of the APTEL's judgment dated 07th April 2016 that the generators are entitled to force majeure relief under the PPAs, and that relief is admissible in respect of coal procured from Indonesia.

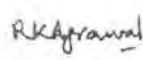

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- 3.5.2 The CERC held that the payment to the generators on account of relief for force majeure due to promulgation of the Indonesian Regulations 2010 was to be the difference between the coal price based on the CSAs and Free on Board (FoB) price of coal ex-Indonesia (i.e. the benchmark price as per Indonesian index or the actual price paid for purchase of similar quality of coal, whichever is lower).
- 3.5.3 The profit earned on account of sale of coal at benchmark price corresponding to the quantity of coal received from the Bunu/KPC Mines in Indonesia in which investments have been made by APL/Tata Power was to be passed on to procurers, as per the formulation given in the order.
- 3.5.4 The generators and the procurers were to carry out true-up exercise at the end of each contract year. This order was passed subject to the outcome of the Civil Appeal Nos. 5399-5400 of 2016 which were pending before the Supreme Court at that point in time.
- 3.6 **Judgment passed by the Supreme Court of India in Civil Appeal Nos. 5399-5400 of 2016 and batch matters**
- 3.6.1 The Civil Appeal Nos. 5399-5400 were preferred by the consumer representative groups, against the order dated 07th April 2016, passed by APTEL.
- 3.6.2 The Supreme Court, by way of its judgment dated 11th April 2017, while expounding on the regulatory powers of the appropriate commission, *inter alia* held that the appropriate commission does not act as a mere post office in situations where tariff is determined under Section 63 of the Electricity Act. It was further held that the regulatory powers of the Central Commission qua tariff are specifically mentioned under Section 79(1) of the Electricity Act, and on account of this regulatory power being a general one, it is difficult to state that when the commission adopts tariff under Section 63 of the Electricity Act, it functions *de hors* its general regulatory powers under Section 79(1)(b) of the Electricity Act. It was thus held that in a situation where the guidelines issued by the Central Government under Section 63 of the Electricity Act cover the situation, CERC is bound by those guidelines and must exercise its regulatory functions under Section 79(1)(b) of the Electricity Act only in accordance with such guidelines. The Supreme Court further observed that only in a situation where there are no guidelines that have been framed, or where the guidelines do not deal with a given situation, can the CERC use its general regulatory powers under Section 79(1)(b) of the Electricity Act.
- 3.6.3 With regard to the issue of jurisdiction of CERC, it was held that the expression 'composite scheme' does not mean anything more than a scheme of generation and sale of electricity in more than one State. It was stated that as per the wording of Section


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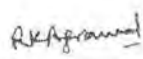

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79(1)(b), the expression 'composite scheme' does not have any special meaning, and the fact that generating companies have a scheme for generation and sale for electricity in more than one state (in any manner) would be enough. The Supreme Court also stated that there was no need for commonality and uniformity in tariff for a "composite scheme".

- 3.6.4 It was further held by the Supreme Court that Clause 12.4 of the relevant PPA made it abundantly clear that changes in the cost of fuel, or the agreement becoming onerous to perform, are not treated as force majeure events under the PPA itself. Further, alternative modes of performance were available, albeit at a higher price. In view of the same, the Hon'ble Supreme Court held that change in coal cost due to the promulgation of the Indonesian Regulations 2010 cannot be construed as a force majeure event and accordingly, no compensatory tariff is payable to the generators on account of the same.
- 3.6.5 As regards the change in law claim, it was held by the Supreme Court that the definition of "law" speaks of all laws only in force in India and would not include changes in Indonesian Law. It was further stated that the meaning of the expression "change in law" as mentioned under Clause 13 of the relevant PPAs cannot depend on whether the coal sourced in a particular PPA is from outside India or within India. It was however held that procurement of Indian coal to the extent of supply from Coal India and other Indian sources being cut down was within the ambit of the relevant change in law provisions of the PPA. In view of the same, the Supreme Court concluded that while change in Indonesian law would not qualify as being 'change in law' in terms of the PPA read with the relevant guidelines, however, change in Indian law would be covered by the PPA.
- 3.6.6 In view of the foregoing, the Supreme Court set aside the APTEL's judgment dated 07th April 2016 and the CERC orders following the said judgment and consequently, directed CERC to look into the matter afresh and determine what relief should be granted to those power generators that fall within the ambit of the change in Indian law provision of the relevant PPA in terms of the findings given in this judgment.


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CHAPTER – IV FINDINGS OF THE WORKING GROUP COMMITTEE

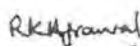
4.1 As detailed in Chapter I above (Background), the Working Group was constituted pursuant to the meeting convened by the Ministry of Power on 20th June 2017 to find a solution through a consultative process, in relation to the Projects and it consisted of members of all the procurer States, and banks represented by Punjab National Bank and Canara Bank with the SBI acting as a convener. The Working Group Committee held meetings on 07th July 2017, 04th September 2017 and 09th November 2017, wherein several reports and presentations were submitted by its members, providing an analysis of technical, financial and legal aspects of the issues being faced by the Projects and the best way forward thereto. During the course of these meetings, NTPC was assigned the task of carrying out the technical due diligence of the three plants, while M/s Shardul Amarchand Mangaldas & Co. was appointed as the legal consultant. Additionally, M/s Pricewaterhouse Coopers and KPMG were also appointed as independent consultants for carrying out the enterprise valuation of all three projects. The Working Group Committee submitted separate reports for APL, CGPL and EPGL respectively and these reports are annexed hereto as Annexure-III to this Report.

4.2 Competitive Analysis

4.2.1 The report submitted by the Working Group Committee in January 2018 (WGC Report) sets out a competitive analysis of the Projects qua other such comparable coal-based power projects. This analysis *inter alia* highlighted that the five States that are procuring power from these Projects i.e. Gujarat, Maharashtra, Rajasthan, Haryana and Punjab all have very high demand for electricity and are thus in the top bracket of the spectrum of the electricity consumer States in India and are critical States with respect to electricity demand of the country. Accordingly, any disturbance in the demand supply situation of these States will have greater ramifications on the overall situation.

4.2.2 Further, it was shown that the capital cost of these Projects (in Rs. crore/MW) was significantly lower than other comparable coal-based power projects that had been completed recently or were in the implementation/planning phase. The WGC Report further provided that the lower cost of these Projects was reflected in the lower fixed charge quoted by the Developers at the time of bidding and if bids were invited for projects which had been completed recently, the fixed charge was expected to be much higher. It went on to state that the replacement cost of these Projects was going to be much higher in the existing scenario i.e., in the range of Rs. 7-8 crore/MW as against Rs. 4- 5 crore/MW for the Projects.

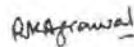

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- 4.2.3 Additionally, an analysis had also been carried out in order to ascertain the competitiveness of the power generated by the Projects with regard to the power being traded under the various exchanges. Upon analysing data in this context, it was stated that the average rates in exchange market had been in the range of Rs. 2.5/unit to Rs. 4.25/unit for November 2016 to October 2017 and they were moving towards the average tariff discovered in Case 1 bidding in the recent past. Further, an analysis was carried out on volume data for electricity trading on Indian Energy Exchange (IEX) from 1st April 2017 till 18th December 2017 and it showed that clearing price went above Rs. 4/unit whenever the purchase quantity was more than quantity available for sale. In view of this analysis, it was stated that in a scenario wherein these Projects are not operational (which are capable of generating approximately 61.2 BUs at a Plant Load Factor (PLF) of 85%), the exchange prices would significantly increase as the quantum of power being supplied presently (approximately 44.6 BUs) in the system was not sufficient to meet the existing demand.
- 4.2.4 It was also highlighted that the Projects (even after considering full Indonesian coal cost pass through) had a lower tariff in comparison to the then recent Case 1 bids, as a result of which replacement cost for the Procurers would be very high.
- 4.2.5 In addition, an analysis was also undertaken, of the emerging power sector scenario in India, including the potential competitive and other threats to the Projects by the potential addition of significant renewable energy capacity (keeping in view the aggressive target of 175 GW of renewable energy by 2022 announced by the GoI), addition of hydel energy and the situation of stranded coal based projects in the country were considered. In view of the aforesaid analysis, it was concluded in the WGC Report that going by the track record of capacity addition of renewable & hydel projects and the latest position of generation capacities, there would not be any slack available on the supply side in the medium term and therefore, to meet the demand, it was deemed very important that the new operating plants, including the three subject Projects under consideration, with stabilized operations are not taken out of grid.
- 4.2.6 The WGC Report also sets out the demand-supply analysis for GUVNL in order to establish the quantum of power that would be required to meet the growing demand for Gujarat in the coming years. This demand-supply analysis suggested that in the event the problems being faced by these Projects are not resolved, the then existing deficit between peak demand and available capacity would only increase in the coming years. It was thus stated that a sustainable resolution of problems being faced by these Projects/Generators would be critical in ensuring that the State of Gujarat has requisite power supply so that it is not constrained to source power from expensive sources.


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- 4.2.7 The competitive analysis by the WGC Report concluded by highlighting that the subject Projects are placed very high in the merit order of their respective procurer States at the then existing tariff, and that even with pass through of the variable tariff at the enhanced Indonesian coal prices, the Projects would continue to be competitively placed in their respective MODs. It was further highlighted that the overall tariffs of these Projects would also remain low as compared to tariffs discovered in recent Case I bids.

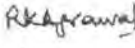
4.3 Technical Due Diligence

- 4.3.1 The WGC Report also captured the key findings of the technical due diligence that was carried out by NTPC for the Projects. Pursuant to the said due diligence, it was *inter alia* concluded that all the plants were technically healthy with operations that comply with the industry standards. It was further stated that the Projects were running satisfactorily on imported coal. However, in relation to usage of domestic coal, it was submitted by the Generators that the Projects were designed for usage of imported coal and that domestic coal can be used only subsequent to making suitable changes to these Projects, which will involve incurring significant additional capex. It was also highlighted that the possibility of usage of domestic coal will require rigorous study/analysis of various parameters including safety concerns for boiler due to higher ash content of domestic coal. Further, in the technical due diligence, it was also stated that in order to assess possibility of blending of domestic coal, the Original Equipment Manufacturers (OEMs) need to be comprehensively consulted for revisiting boiler capability, design adequacy & Engineering Scale Plan (ESP) design as various parameters like volume heat loading, area heat loading, tube metal temperature etc. are required to be reassessed. All of these would also affect the performance parameters and contractual warranties in relation to the equipment. In effect, it was discovered that it would be extremely difficult to operate the Projects on domestic coal.

4.4 Recommendations of the Legal Consultant

- 4.4.1 The legal consultant upon analysing the PPAs and relevant orders passed during the course of the litigation pertaining to the present issue, submitted its proposal for resolution of these problems being faced by the Projects. It was recommended by the legal consultant that the insolvency route of approaching National Company Law Tribunal (NCLT) should be avoided. Instead, two broad suggestions were given i.e., acquisition of majority stake in the Projects by the State Governments, and amendment of the PPAs for revision in tariff. It was however pointed out that the said amendment would have to be approved by the appropriate commission.


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4.5 Cost Benefit Analysis

4.5.1 One of the key conclusions that emerged from the discussions and deliberations of the Working Group Committee was that any commercial solution to resolve the issues being faced by the Generators/Projects, would require amending the contractual provisions in the PPAs. Further, any commercial resolution would lead to the Procurers incurring additional cost, as compared to the existing quoted tariff contained in the PPAs. In this regard, cost benefit analysis of each Project was carried out, so as to highlight that in a scenario where these Projects were to be shut down, the Procurers may have to incur much higher costs to purchase electricity from other sources to replace the power available from these shut down Projects.

4.5.2 Therefore, while fundamentally recognising that the preferred option was to commercially revive these Projects, however, in order to mitigate the additional costs that would have to be incurred by the Procurers as a result, it was suggested that the Procurers may ask the Generators for certain benefits such as:-

(i) *Enhanced Plant Availability*

It was stated that the Projects would be able to operate at a higher availability once they stop incurring losses on account of increase in fuel cost. This in turn would provide electricity to the procurers effectively at a variable cost only.

(ii) *Availability of untied capacity*

Since a portion of the plant capacity of APL and EPGL is not tied up through any long term PPA, it was suggested that the Procurers may enter into long term PPAs for the same.

(iii) *Power availability beyond tenor of PPA*

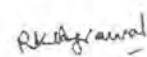
The Projects would have substantial residual life even after conclusion of the PPA tenor (25 years). In this regard, it was suggested that the Procurers may enter into an arrangement to purchase electricity from the generators even after the tenor of the PPAs has expired

4.5.3 The following two options were primarily considered in order to evaluate the cost benefit analysis:-

(i) *Full pass through of the fuel cost*

Under this option, the fuel cost would be made fully pass through, and the capacity charge was to remain as per the quoted tariff.


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(ii) *Force Majeure Order*

Under this option, the formula adopted by CERC in its order dated 06th December 2016 to compute the compensatory tariff (in terms of the directions given by APTEL in its order dated 07th April 2016) would be adopted to evaluate the cost benefit analysis. As per the aforesaid order, relief was to be based on the difference between FOB price agreed to in the CSA and the FOB price at which the plants are purchasing coal from Indonesia, or the HBA price, whichever is lower. The difference in the actual imported coal cost and bid cost for Indonesian coal was to be considered at the exchange rate of the respective PPAs with adjustment of profit from the Indonesian mines.

4.5.4 Thus, the cost benefit analysis was carried out in terms of the aforesaid two options for each of the Projects, where the Net Present Value (NPV) and the compensation was deduced as per both approaches.

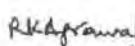
4.6 **Overall impact of the proposed resolution plan on the end users/consumers**

4.6.1 This section of the WGC Report analysed the impact of the proposed resolution plan on the consumers. The impact of both options, i.e. (i) allowing fuel cost pass through by amending the PPAs; and (ii) shutting down the Projects and subsequently purchasing electricity from alternate sources, was analysed.

4.6.2 In the first scenario i.e. amending the PPAs and allowing fuel cost pass through, it was submitted that while the same would increase the cost to the Procurers, the capacity charge would remain the same. Moreover, higher availability of the Projects would spread the fixed costs over higher number of generated units, thereby effectively reducing the capacity charge per unit payable by the Procurers. Additionally, as stated in preceding paragraphs, the Discoms/consumers would also benefit from continuation of contracted capacity beyond the tenor of the PPA (25 years), and utilization of untied capacity at a price which is substantially lower than market price.

4.6.3 With regard to the second scenario, i.e. the Projects getting stranded or initiation of insolvency proceedings, it was submitted that an analysis of prices discovered in recent Case I bids would make it clear that cost of power from alternate sources would be substantially higher than the cost of procuring power from the existing Projects, even after including full Indonesian fuel cost as pass through. It was further submitted that the Ministry of Power has revised the guidelines and the SBDs for procurement of


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power on long term through bidding⁷, and as per the said revision, fuel cost is a pass through. In light of the same, the difference in cost of procuring power from existing sources vis a vis. new/alternate sources would only be restricted to capacity charges. Moreover, the capacity charge of the Projects was significantly lower than that of projects which had been recently implemented or were in the planning/implementation phase.

- 4.6.4 In view of the above, the WGC Report concluded that while allowing pass through of fuel cost would lead to an increase in the cost to the Procurers initially, the same would be beneficial in the long run, as opposed to abandoning these Projects and procuring power from alternate sources. Procuring power from alternate sources would result in a perpetual cycle of high cost that would have to be borne by the Procurers. Thus, amendment of the PPAs and continued procurement of power from the Projects would be beneficial from the consumers point of view as well.

4.7 Conclusion and Way Forward

- 4.7.1 The WGC Report thus concluded by reiterating that the only way to resolve the issues being faced by the Generators/Projects would be by way of the Procurers addressing the issue of fuel cost, which could essentially be done in the following two ways:-

(i) *Change in ownership with effect from 31st March 2017*

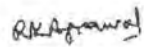
In such a scenario, the majority stake in the Projects would vest in the respective State Governments. Along with the change in ownership, the PPAs would be amended to address the issue of fuel cost. This may be done by making the fuel cost fully recoverable in terms of Section 62 of the Electricity Act, or through some other mechanism as suggested in the CERC formula. It was suggested in the case of multiple procurers that the concerned states may have joint ownership of the project or Gujarat as a lead procurer may take majority stake in the Projects and sign amended PPA with the respective States.

(ii) *Revision in PPA without change in ownership*

Under this approach, the PPAs would be amended without change in the ownership structure, and the issue of fuel cost would have to be addressed by way of said amendment.

⁷ Guidelines for Procurement of Electricity from Thermal Power Stations set up on Design, Build, Finance, Operate and Transfer (DBFOT) basis issued by Ministry of Power on 21st September 2013 and Guidelines for Procurement of Electricity from Thermal Power Stations set up on Design, Build, Finance, Own and Operate (DBFOO) basis issued by Ministry of Power on 9th November 2013

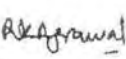

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- 4.7.2 The 'way forward' was thus summarized to include the states taking requisite approval from the competent authorities, after which the lenders may be apprised of the same, if required. A tripartite agreement could thus be executed between the procurers, lenders and developers, covering the roles and responsibilities of each of the parties thereto.


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CHAPTER - V

IMPLICATIONS OF THE INCREASE IN PRICE OF INDONESIAN COAL

5.1 The present chapter provides a brief over-view of the impact of the promulgation of Indonesian Regulations benchmarking the cost of Indonesian coal with the international market, on the stakeholders viz. the Generating Companies, Distribution Companies and the lenders, and is based on the submissions made by the stakeholders in their presentations to the HPC and the follow-up discussions thereto.

5.2 Impact of increase in price of Indonesian Coal on the Generating Companies

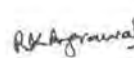
5.2.1 Prior to dealing with the impact of increase in price of the Indonesian Coal on the Generators, it is significant to briefly set out the history regarding the importation of coal by India from Indonesia. India has been importing coal mainly from Indonesia, Australia and South Africa. The total quantum of imported coal has increased at Compound Annual Growth Rate (CAGR) of 22.50% from FY 2006-07 (43 Million tonnes) to FY 2014-15 (218 Million tonnes). Out of the total quantity of imported coal, Indonesian coal constitutes around 40%-61%. A table showing the year wise details of coal imports is as follows:

Country	2006 -07	2007 -08	2008 -09	2009 -10	2010 -11	2011 -12	2012 -13	2013 -14	2014 -15
Indonesia	19	20	29	32	36	55	80	102	124
Australia	16	21	20	23	16	28	27	34	48
SA	2	7	7	14	11	12	18	21	31
Others	6	2	3	4	6	8	13	10	15
Total	43	50	59	73	69	103	138	167	218

5.2.2 The main reason for Indonesia being the preferred source of importing coal is logistical ease (favourable location with respect to India) and availability of coal at cheaper price under long term contracts.

5.2.3 The three Projects in discussion were conceived and set up entirely based on imported coal from Indonesia as fuel. The Competitive Bidding Guidelines issued by the Central Government *inter-alia*, provided for quoting escalable components for fuel, transportation, handling charges etc. For the purpose of evaluating the bids based on escalable components, the Competitive Bidding Guidelines stipulated the responsibility of issuing escalation rates for these components on CERC. Considering long tenure of contracts i.e. 25 years, CERC has devised the methodology taking into account long


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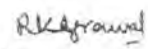
term variability of 10-12 years for the base components in order to capture correct trends for these components. Accordingly, the escalation rate for imported coal notified by CERC for evaluation at the time of bid submissions was only about 3-3.5%. Similarly, the trajectory of Dollar-Rupee conversion rate from 1998 to 2006 reflected escalation of about 1% as captured in the escalation rate notified by CERC for the exchange rate for bid evaluation. With such trends based on the long term trajectories, it would appear that a sudden and steep rise in the Indonesian coal prices, as was experienced due to promulgation of the Indonesian Regulations, 2010, was reasonably un-anticipated and unpredictable. As mentioned above, on account of promulgation of the Indonesian Regulations 2010, the price for sale of coal produced in Indonesia was benchmarked to the international indices which was significantly higher in comparison to the historical trend of escalation set out hereinabove.

- 5.2.4 The present section thus analyses and sets out the impact of the promulgation of Indonesian Regulations 2010 on the Generators of such Projects. The Generators also made presentations before the HPC on 14th July 2018 where they explained the various hardships being faced by their respective TPPs.

5.3 Adani Power Mundra Limited

- 5.3.1 APL had developed its 4620 MW Mundra Project in four phases. The entire coal requirement of Phase I, II and III of the Mundra Project is met by imported coal entirely from Indonesia. The coal is procured at market price from the coal suppliers. With respect to Phase IV of the Mundra Project, the coal requirement is met by domestic as well as imported coal. The FSA has been entered into with Mahanadi Coalfields Limited (MCL) for supply of 6.405 MTPA per annum which is sufficient to meet 70% of the coal requirements of Phase IV and the balance requirement is met by imported coal mainly from Indonesia.
- 5.3.2 Pursuant to the promulgation of the Indonesian Regulations 2010 and the consequent increase in the price of Indonesian coal, APL has been suffering huge under recovery, for more than 5 (five) years in the energy charge, for reasons not attributable to it.
- 5.3.3 The energy charge under-recovery is mainly due to the increase in the price of Indonesian coal and the escalation in the exchange rate, which enhanced price cannot be passed through to the procurers on account of the PPA provisions, the interpretation of which has been concluded by the Hon'ble Supreme Court. APL has suffered significant under recovery in energy charge in the Gujarat Bid-01 and Bid-02 PPAs and partially in the Haryana PPA due to promulgations of the Indonesian Regulations 2010 which forced it to procure coal at international indexed benchmark prices as against the negotiated prices based on which the PPAs were entered into. APL has also suffered


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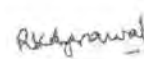
significant under-recovery in the energy charge in the Haryana PPA due to shortage in domestic coal supply as well as steep increase in the domestic coal prices of Coal India and railway freight.

- 5.3.4 The under recovery of energy charge, and APL's efforts to fulfil the normative availability obligations have resulted in significant shortfall of cash flow. Since the capacity charge along with the promoter's support is used to cover the under recovery of energy charge, APL is increasingly unable to service the project debt, and no margin is left for equity return.
- 5.3.5 Till 31st March 2018, APL has suffered financial losses to the tune of Rs. 9,748 crore. Further, the entire equity capital of APL has been wiped off due to the persistent losses and the promoter has infused additional amount of approximately Rs. 9,000 crore from FY 2013-14 to May 2018, in the form of promoters loans, to sustain the operations of APL. This promoter's support does not carry any interest or return and its repayment is subordinated to the project debt of the lenders.
- 5.3.6 Further, the Mundra Project was under shut down for some time in FY 2018-19 and the Units except for those under Bid-02 (i.e. Units 5 and 6) have started operations in July 2018. Further, the irregularity in the working capital loan was cleared by APL on 29th June 2018 and a fresh irregularity for loan facility has started on 1st July 2018. APL has been reported as a Special Mention Accounts (SMA) 1 under the RBI Master Circular dated 12th February 2018 and has presented a resolution plan to the lenders.
- 5.3.7 In effect, APL is unable to continue operations with mounting losses year on year and is getting pushed towards liquidation.

5.4 Coastal Gujarat Power Limited

- 5.4.1 CGPL's 4150MW Mundra UMPP has been designed using low ash, higher calorific value imported Indonesian coal. Tata Power through its subsidiaries, holds 30% equity stake in PT Kaltim Prima Coal (KPC) which is a coal mining company of Indonesia. Further, CGPL entered into a CSA with IndoCoal Resources (Cayman) Limited on 31st October 2008, and also executed an agreement with Tata Power for meeting the balance coal requirement on best effort basis. It is thus evident that CGPL had taken appropriate measures not only to ensure availability of fuel, but to also mitigate the consequences of any reasonable/estimated escalation. However, before the Mundra UMPP was commissioned, the Indonesian Regulations 2010 were promulgated as a result of which CGPL's coal contracts were forced to align with the benchmarked market price of coal and the discount available under the negotiated contracts was no more available, which completely wiped out the underlying assumptions and premise on which the entire bid


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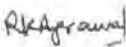
was based.

- 5.4.2 Pursuant to the promulgation of the Indonesian Regulations 2010 and the consequent increase in the price of Indonesian coal, CGPL has been suffering significant under-recovery in the energy charge due to the procurement of coal from Indonesia at the benchmark price.
- 5.4.3 Further, the project debt was financed through a mix of USD and INR loans at extremely competitive terms. However, due to the change in the Indonesian Regulations, the foreign project lenders stopped making the disbursements to CGPL and the balance funding of Rs. 1264 crore towards the undisbursed loan was done through additional funding from the parent company, Tata Power Ltd. As a result of the financial stress, CGPL is in multiple breaches under the loan agreements and repayments are being done through loss funding from Tata Power Ltd.
- 5.4.4 CGPL is in a stressed financial position and the cumulative losses stand at Rs. 8176 crore as compared to its net worth of Rs. 2093 crore, as on 31st March 2018. Tata Power Ltd. has contributed a total of Rs. 11,560 crore (Rs. 4779 crore as equity for project construction; Rs. 1264 crore towards debt funding to complete for undisbursed portion of debt by lenders and Rs. 5517 crore as additional funding of the project to meet cash loss and debt repayment since commissioning) in CGPL, which has further put a tremendous strain on its balance sheet. There is an outstanding external debt of Rs. 11,175 crore (Secured term loan of Rs. 9139 crore as on 31st March 2018 along with working capital of Rs. 1982 crore) which is not completely serviceable by CGPL and is being paid through loss funding from the parent company, Tata Power Ltd., as stated above.

5.5 Essar Power Gujarat Limited

- 5.5.1 EPGL's TPP was commissioned in 2012 and since then, EPGL has been incurring huge losses on account of under recovery in energy charge due to the promulgation of the Indonesian Regulations 2010 and the consequent increase in the price of Indonesian coal. In addition, EPGL has also suffered under recovery of capacity charge on account of steep hike in water charge, unprecedented depreciation of rupee and increase of interest rates.
- 5.5.2 The increased coal price has impacted the availability of the working capital thereby majorly affecting the plant operations. Further, since the commissioning of its TPP, EPGL has not been able to recover its coal cost which has severely impacted the availability of funds to meet its debt servicing obligations.

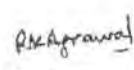

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- 5.5.3 EPGL, up till March 2018, has suffered losses to the tune of Rs. 3600 crore. Essar Power has constantly infused additional funds and has raised additional borrowing in EPGL to support its operations since commissioning. So far, the additional promoter contribution is of Rs. 1260 crore. Apart from this, additional borrowing of Rs. 1200 crore has been arranged through promoter/group support and funding.
- 5.5.4 During the long protracted legal battle of tariff revision petition which continued for a period of 4 (four) years, the plant diligently continued to perform its obligations under the PPA and managed normative availability of 80%, which was only possible because of the support from the parent Essar Power Ltd. Essar Power, with the assumption that the final solution of the legal process will also address the losses being incurred during such period, has been supporting EPGL.
- 5.5.5 Additionally, the operation of the plant has now become unviable and is under shut down since more than 8 (eight) months, which has resulted in EPGL incurring further losses. Further, EPGL has been declared as a Non-Performing Asset (NPA) as on 1st March 2018. As per the RBI circular dated 12th February 2018, the resolution plan has to be implemented by all the lenders by 28th August 2018 (i.e. 180 days from 1st March 2018). In the event of failure of implementation of the resolution plan, the lenders will be required to refer EPGL for insolvency proceedings under the IBC within 15 (fifteen) days of completion of such deadline.
- 5.6 Impact of increase in price of the Indonesian Coal on the Distribution Companies/Procurers
- 5.6.1 In the second half of the meeting of the HPC with the Procurers/Discoms on 14th July 2018, the hardships being faced by the Procurers pursuant to the promulgation of the Indonesian Regulations 2010 were discussed. The present section thus analyses and sets forth the impact of the promulgation of the Indonesian Regulations 2010 on the Procurers procuring power from such Projects.
- 5.6.2 It is of utmost significance to note that EPGL has closed down its operations and Phase III (1320 MW) of the APL Mundra Project is also under shut down. Further, CGPL is operational now but the developer is finding it difficult to continue the operations with recurring losses. In this view, it was stated that since GUVNL/Gujarat is the major procurer from these three Projects, any adverse development on these Projects will affect the State of Gujarat the most.
- 5.6.3 Further, as per recent developments, many stressed projects are being/will be referred to the NCLT in the next 6 (six) months. Therefore, the supply under these stressed


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Projects will stop completely and the Procurers may face further challenges in meeting the demand of the State.

In view of the foregoing, the Procurers are primarily facing the following issues/hardships on account of the increase in the price of Indonesian coal:

- Inconsistent supply of power under the PPAs;
- Increase in the cost of procurement of power from alternate sources as the prices in the merchant market are showing an increasing trend and the price may shoot up even further on account of closure of these projects; and
- Higher cost of replacement of the existing capacity as the projects in discussion have lower tariff as compared to the recent Case I bids even after considering coal cost pass through. These costs will ultimately have to be borne by the end-consumers by way of payment of a higher tariff.

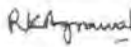
5.7 Impact of increase in price of Indonesian Coal on the Lenders

5.7.1 In the meeting of the HPC with the lenders on 15th July 2018, the hardships being faced by the lenders pursuant to the promulgation of the Indonesian Regulations were discussed. The present section thus analyses and sets forth the impact of the promulgation of Indonesian Regulations on the lenders providing support from such Projects.

5.7.2 The lenders provided the project cost funding based on stable cash flows as the PPAs and FSAs for the respective Projects were in place. These Projects were already constructed/under advance stage at the time of promulgation of the Indonesian Regulations 2010 which made the FSAs at the contracted prices unenforceable, while the price of imported Indonesian coal continued to rise. The financial viability of these Projects got severely impacted and they suffered significant losses from the year 2013 onwards. In the year 2012, the Generators filed a petition before the CERC/GERC to address the issue of increase in the cost of coal. In view of the positive consideration by both CERC and the APTEL, lenders extended further support in the interim period by way of providing *inter alia* working capital support, interest rate reduction and repayment tenor extension in line with the RBI Guidelines. The lenders also provided additional funding for overdue creditors, increase in working capital limits and waiver from Debt Service Reserve Account creation and the financial covenant testing.

5.7.3 However, the Supreme Court in the Energy Watchdog Judgment *inter alia* held that the change in the Indonesian Regulations is neither a 'Force Majeure' nor a 'Change in Law' event under the PPA and therefore, no benefit could be given under the existing terms of the PPA.

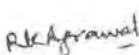

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- 5.7.4 Thus, while the lenders have always provided support to the Projects, the existing unviable operations are leading to these project accounts facing severe stress, which may lead to these accounts turning into NPAs thereby increasing the provisioning requirement for the lenders.
- 5.7.5 As discussed above, EPGL is already an NPA and timely resolution is necessary as per the RBI Guidelines. In the event the same is not done, EPGL will be referred to NCLT under the IBC within the stipulated period. Further, CGPL and APL are also stressed accounts and RBI may ask for provisioning/classification based on inherent project risk.
- 5.7.6 In view of the foregoing, the lenders submitted that the net worth is already wiped out for these Projects, and they are primarily managing to survive on additional fund infusion by promoter groups. There is likelihood of further erosion in the credit worthiness of the Generators and the Projects may become non-performing thereby leading to further significant losses being borne/to be borne by the lenders. The lenders further stated that they are handling various stressed accounts in the power sector due to multiple reasons and therefore, it would be desirable to resolve the issues pertaining to these Projects with some efforts, rather than pushing them towards insolvency.


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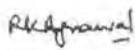

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CHAPTER -VI COMMENTS/SUBMISSIONS OF THE STAKEHOLDERS

- 6.1 This chapter provides a brief overview of the submissions and recommendations of the various stakeholders, notably, the Generating Companies, the Distribution Companies, the lenders and the consumer representative groups⁸ in relation to the mitigation of the hardships being faced by the three imported coal based Projects on account of the change in the Indonesian laws. The HPC compiled a list of consumer representative groups that are either registered and/or actively appear before the relevant State Electricity Regulatory Commissions as representatives of consumer groups, in diverse tariff and related regulatory proceedings. Of these, the most prominent and active consumer representative groups were shortlisted and invited to submit their comments. Energy Watchdog and Prayas, who had shepherded the legal proceedings on behalf of consumers before the Regulatory Commissions and the Hon'ble Supreme Court, were invited due to their stellar and unwavering contributions and crusader zeal on behalf of consumers, in the diverse legal proceedings, and also due to the fact that they have analysed the financial and legal issues already in great detail in the course of their representation before the judicial forums. Energy Watchdog accepted the invitation and made oral and written submissions. Prayas, even though it did not attend the meetings, did provide their comments through written submissions. The HPC would like to recognise the extremely valuable and relevant contributions and analyses and constructive suggestions from each of the consumer representative groups that attended the meetings and/or made written submissions with their contributions. The HPC was able to evaluate the issues in a much more informed manner relying upon and with the benefit of the precise and very sharp analyses provided by the said consumer representative groups.
- 6.2 The HPC has received the submissions/recommendations of all the stakeholders qua the issues being faced by the Projects during various rounds of deliberations. The HPC would also like to note and acknowledge the efforts and contributions made by the diverse senior officials of the Procurer States, which once again were extremely incisive, very detailed in terms of analyses and provided a very strong perspective from a Procurers' and consumer protection perspective. In addition to ratifying and validating the positions taken by the consumer representative groups, the officials of

⁸ The HPC had invited six consumer representative groups/organizations viz. (i) Energy Watchdog; (ii) Prayas (Energy Group); (iii) Mumbai Grahak Panchayat; (iv) Thane Belapur Industries Association; (v) Vidarbha Industries Association; and (vi) Maharashtra Chamber of Commerce, Industry & Agriculture. However, the said meeting could only be attended by Energy Watchdog, Mumbai Grahak Panchayat and Thane Belapur Industries Association. Further, these three Consumer Groups and Prayas (Energy Group) submitted their written views to the HPC.


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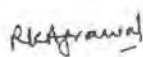

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the Procurers were able to provide significantly detailed business, commercial, financial and economic data and inputs and analyses, that proved to be very critical and invaluable in the HPC's deliberations and formulation of their recommendations. HPC would like to make specific mention of the time and contributions made by the Chief Secretaries of the Procurer States.

- 6.3 It is of utmost significance to duly take into account the submissions/recommendations of the stakeholders while proposing any solution/resolution. In view thereof, a brief overview of the said submissions/recommendations of all the stakeholders is set out herein below.

Discoms/ Officials of Procurers' States	Views
	- An equitable solution is required wherein the consumers are benefitted. - Resolution process should not lead to litigation under other PPAs in the future. - Developers are facing hardships over the past 5 years. - These Projects are efficient and shutting down will lead to increase in power purchase cost for the consumers. - Many stressed projects are being/ will be referred to NCLT in next six months, Therefore, the Procurers will face multiple challenges in meeting the demand of the State. - Projects should not be referred to NCLT as the value would be destroyed (as the PPA would face the risk of termination) and the Discoms would have to resort to procure costlier power as an alternative. - These three Projects constitute about 45% of the overall power requirement of the State of Gujarat and 22% of the requirement of Haryana and their shutting down would affect the Discoms' operations and finances adversely. - Any solution should be equitable to all the stakeholders.


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	<u>Suggestions</u> - Lenders should share significant burden. - Tariff may be increased by some fixed value. A ceiling for the energy charge may be prescribed in case pass-through is permitted. - If the Developers earn any surplus in case of lower coal cost, it may be used to fund the operations whenever coal cost goes up. - PPA tenure may be extended for 10 to 15 years beyond the 25 years period. - The formula provided by the CERC in its order dated 06th December 2016 may be considered for giving relief against increased cost of Indonesian coal. - Discoms are open to increase in the variable charges however, it was clarified that any retrospective application of the resolution mechanism would not be possible.
Consumer Representative Groups	<u>Views</u> - The Projects form a part of an aggregate capacity of 60,000 MW stressed projects in the country - Discoms should not lose the PPAs. Further, the Projects should not be turned into an NPA. - APL and CGPL plants are highly efficient and their respective fixed cost is quite attractive. - For coastal plants, landed price of domestic coal is very high. Imported coal @70USD/MT is competitive as against domestic coal. - Safeguarding the sanctity of contracts to ensure the Procurers' right to get power supply at the PPA agreed tariff, and terms and conditions throughout the term of the PPA and to not overburden the consumers thereof. - Decision should be taken pursuant to undertaking a much wider consultation with the consumers as well as the

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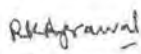
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public at large in a transparent manner.

- The Generators have not filed any review petition or curative petition before the Supreme Court subsequent to the Energy Watchdog Judgment being passed. In light of the same, the said judgment has become final and binding on all parties, including the Generators and CERC. Further, any attempt to try and resolve the issues in order to mitigate the difficulties faced by the Generators would have to be made strictly within the framework of the Energy Watchdog Judgment by the Hon'ble Supreme Court.
- The Generators in the present matter had quoted fixed rates in their respective PPAs (in spite of an option to quote escalable rates) and therefore, the Supreme Court had rightly denied any relief to them on account of the rise in the price of the Indonesian coal. The Generators should thus face the consequences of having taken such a risk.
- The Generators secured their respective contracts through bidding on the basis of the tariff quoted by them and that the others who lost had quoted marginally high bids. The sanctity of tendering and contracts will lose its meaning.
- Composition of the HPC has been questioned, considering Dr. Pramod Deo was the CERC Chairman, when the two majority orders dated 2nd April 2013 (in the case of Adani) and 15th April 2013 (in the case of Tata) were issued by the CERC in the very same matter.
- The HPC has not been provided with Directorate of Revenue Intelligence (DRI) Reports with regard to over invoicing. There are dishonest transactions about Adani and Essar groups


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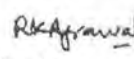

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Suggestions

- There needs to be an equitable sharing of the cost burden.
- Lenders should give concessions to make the Projects viable.
- Use of unused land of the Projects for setting up low cost solar projects and revenue earned therein may be used for mitigating some hardship.
- Selling of capacity beyond 85% in the open market and revenue earned therein may be used for mitigating some hardship.
- Ensuring that the Procurers get supply upto 80% PLF/Availability as per the PPA terms and conditions.
- Supply to open access customers when coal prices are high.
- Procurers to forgo their first right of refusal on any additional/optional generation beyond the normative availability of 80%. In lieu of this, PPA term to be extended by 15 years at a tariff as per the PPA's last year capacity charge and variable charge to be determined by the Regulatory Commission.
- Plants should remain in MOD after passing on relief.
- Only the projects exclusively based on imported coal and impacted by the Indonesian Regulations are to be considered for relief.
- All the possible avenues for mitigating hardship before deviating from the terms of the PPA need to be explored.
- Legalities need to be examined as to how PPAs can be amended.
- There must be a prospective applicability of the relief/mitigation plan.
- Para 40, 45 and 54 of the Energy Watchdog Judgment would make PPA amendment difficult. Any resolution

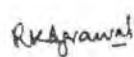

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	should be within the framework of the Energy Watchdog Judgment. - All PPAs under Section 63 of the Electricity Act could be brought under cost plus regime under Section 62 of the Electricity Act. - Lenders should approach NCLT for resolution of issues under the IBC, as opposed to seeking such extra-legal resolution. The same could be initiated in advance on any anticipated difficulty. However, none of the stakeholders have initiated the aforesaid process. Moreover, it is not mandatory to discard the PPA during NCLT process and that continuation of the PPA has to be the basis to arrive at the Enterprise Value for the entity interested in procuring these Projects.
Lenders	<u>Views</u> - These Projects are either NPAs or are on the verge of being referred to NCLT. They have very little liquidation value considering the situation of power sector. - Lenders supported these Projects in anticipation of a possible resolution. - These Projects are operating assets with a total capacity of around 10,000 MW and are strategically important for the respective States buying power from such projects. - The effective tariff after amendment will still be competitive in view of the lower capacity charge (lower cost per MW to set up) of these Projects. The overall tariff of these Projects after relief will be well below the average cost of procurement of power by the respective Discoms. <u>Suggestions</u> - The Projects need long term solution in terms of addressing the fuel risk. - PPA should be amended to allow pass through of the

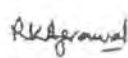

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	actual cost of coal. - The Projects can be revived by way of an amendment in the tariffs, which will enable the continuous supply of power to the Discoms and will further help the lenders to recover the funds deployed in the setting up of these Projects.
Generators	<u>Views</u> - Generators have incurred substantial losses and infused equity to sustain the operation / fund losses. No fresh funding available from lenders due to uncertainty. - The Projects are on the verge of liquidation. - The Projects are developed at competitive project cost as compared to projects under execution by NTPC or the State-owned generating companies. - These Projects (CGPL's TPP and APL's TPP - Phase III & IV) are based on the supercritical technology and offers efficient and reliable power supply. - These Plants will remain competitive even after considering the fuel cost pass-through. - Speedy execution of resolution plan will help in cash flow improvement. - Merchant power market is very small and discovered price is function of demand and supply. Alternate power supply will be very high priced due to high demand-low supply situation. - Supply will remain lower due to many other generators facing stress. - Indonesia has increased various taxes/ duties post 2010 like income tax, royalty, etc. Further the ownership of foreign partner in the mine has also been restricted to 49% as against 100% earlier. Also, there is a stipulation for reserve production for local usage. All these factors have rendered it difficult to derive any material upside


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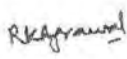
from the mining operations in Indonesia. Other countries have also adopted similar models. However, Indonesia has a logistical advantage.

- Considering high procurement prices of alternate power and lower generation costs of these Projects, a solution to make the Projects viable in the long term is in the best interests of the consumer.
- The Projects are built at very competitive costs and have outstanding past operational performance. National assets of such quality should not be allowed to become stranded.
- The Projects are very high in the MOD. Even with the coal cost as a pass through, the power purchase cost will be highly competitive.

Suggestions

- Amendment to the PPA to allow pass through of the actual cost of coal, either by way of approaching the appropriate Commission or by grandfathering of the new SBDs wherein energy charge is allowed to be passed through.
- Extension of the term of the PPA for a suitable period beyond the expiry date at a tariff as per the existing PPA's capacity charge and complete pass through of energy charge.
- Increased availability of the plant to 90%.
- EPGL is willing to give free capacity of 100 MW to GUVNL with current capacity charge and APL is willing to give free capacity of 550 MW to GUVNL and Haryana Discoms.
- Speedy execution of the resolution plan from the commercial operation date.
- Government has now changed the SBD to incorporate fuel cost pass-through in the bid terms acknowledging the fact that nobody can bear the fuel risk in the PPA. The


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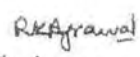

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same can be extended and applied to the three TPPs.

- 6.4 In view of the fact that the prime objective of the entire exercise is to explore sustainable solutions while also ensuring that the interest of the consumers is not compromised, the HPC deems it appropriate to evaluate each of the suggestions/ views given by the consumer representative groups before arriving at any solution/resolution. The HPC has therefore deliberated upon the suggestions in detail and has duly taken the afore-stated recommendations of the stakeholders into account while formulating the solution/resolution plan.


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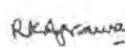
CHAPTER - VII

PUBLIC/ CONSUMER INTEREST INVOLVED IN SALVAGING THESE PROJECTS

- 7.1 While devising a mechanism to revive these stressed Projects, it is imperative to make a detailed analysis of the consequences of closure of the aforesaid Projects by *inter alia* covering aspects such as power supply scenario and the impact on consumer tariff. Only a mechanism which results in savings to the consumers in the long run is to be considered. At the same time, it is equally important to ensure that no arbitrary decision is taken without properly analyzing the impact of alternate procurement as compared to the revision of tariff for these stressed Projects.
- 7.2 Accordingly, this chapter sets out the importance of the Projects in terms of their significant presence in the States and the impact on the overall economy at national level and the consequences pertaining to shutting down of these Projects. This chapter also analyses the impact of shutting down of the Projects on the stakeholders.
- 7.3 Importance of the three Projects
- 7.3.1 CGPL, APL and EPGL have implemented 4150 MW, 4620 MW and 1200 MW coal based power plants respectively. They have tied up majority of the capacity through competitive bidding with the States of Gujarat, Maharashtra, Haryana, Rajasthan and Punjab. These Projects are critical and are of national importance and the same becomes evident from the fact that these five States together contribute to 44% of the country's total peak demand and 36% of the total requirement of power. The details of peak demand (MW) and energy requirement (MUs) is captured in the table below:

States	Peak Demand (MW)	Energy Requirement (MUs)
Gujarat	16,590	109,985
Maharashtra	22,542	149,760
Rajasthan	11,722	71,193
Punjab	11,705	54,812
Haryana	9,671	50,775
Total	72,230	436,525
NR	60,749	371,934
WR	50,477	368,404
SR	47,385	320,248
ER	20,794	136,522
NER	2,629	16,217
Total Country	164,066	1,213,325


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Five States as % of (NR+WR)	65.0%	59.0%
Five States as % of Country	44.0%	36.0%

(Source: CEA Reports - LGBR 2018)

7.3.2 Additionally, the criticality of these Projects is also evident from the following facts:

- Total installed capacity of the three Projects is 9970 MW which is almost double the installed capacity of State Generating Company in Gujarat which stands at 5516 MW
- As informed by GUVNL in the meetings, these Projects contribute to approximately 45% requirement of GUVNL. The average variable charge is Rs 1.74 per kwh as against overall average variable charge of about Rs 2.59 per kwh. (i.e. 30% higher variable cost); and
- APL and CGPL fulfil about 22% requirement of the Haryana Utilities. Additionally, CGPL also caters to States of Rajasthan, Maharashtra and Punjab.

7.3.3 It becomes evident from a perusal of the aforesaid facts that these Projects are extremely critical for the five States under consideration as well as for the country as a whole. Discontinuance of these Projects will have greater ramifications on the overall power supply situation and therefore, the resolution of these three Projects becomes important from the strategic perspective.

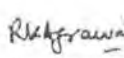
7.4 Price competitiveness of power produced from these Projects & Reliability

7.4.1 These Projects are undoubtedly cheaper sources of electricity as compared to certain sources from which Discoms have been procuring power. An analysis has been carried out to ascertain the importance of these Projects and their position in the MOD of the respective States.

7.4.2 GUVNL – As per the data provided by GUVNL, the position of the Projects in the MOD has been provided as below:

Plant	PPA Variable Cost (Rs./kWh)	% Dispatched	Tariff after actual Cost Pass Through (Rs./kWh)	% Dispatched
EX 2018-19				
CGPL	1.60	48.4%	2.37	54.3%
APL – Phase III	1.62	48.4%	2.58	61.5%
APL – Phase I & II	1.85	51.6%	2.67	68.2%


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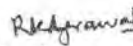
Plant	PPA Variable Cost (Rs./kWh)	% Dispatched	Tariff after actual Cost Pass Through (Rs./kWh)	% Dispatched
EPGL	1.99	51.6%	2.70	75.7%
FY 2017-18				
CGPL	1.65	51.2%	2.27	52.9%
APL - Phase III	1.57	36.2%	2.47	63.4%
APL - Phase I & II	1.96	63.3%	2.56	70.9%
EPGL	1.92	57.8%	2.59	77.5%
FY 2016-17				
CGPL	1.28	29.8%	1.81	46.2%
APL - Phase III	1.55	51.6%	2.00	63.9%
APL - Phase I & II	1.88	66.4%	2.07	71.5%
EPGL	1.93	73.7%	2.07	77.1%

(Reference data provided by GUVNL)

Further, the MOD analysis for Gujarat on 9th August 2018 is as below:

Station	Capacity Allocated to State (MW)	Type of Station	Variable Cost (Rs./Unit)	Schedule (MWh)	% Cumulative Scheduled
Must Run					
Total Renewable	6637	Renewable		16936	5.9%
Total Hydro	240	Hydro		1580	6.5%
Total Nuclear	824	Nuclear		7743	9.2%
Others					
ALTPS	250	Thermal	1.07	3010	10.2%
ACBIL	200	Thermal	1.12	4992	12.0%
SIPAT 1	509	Thermal	1.27	12214	16.3%
SIPAT 2-WR	257	Thermal	1.33	6175	18.4%
KSTPS 3-WR	90	Thermal	1.33	2085	19.1%
KSTPS-WR	336	Thermal	1.35	5697	21.1%
VTPS 2	225	Thermal	1.44	5406	23.0%
VSTPS 3	251	Thermal	1.44	6016	25.1%
VSTPS 4	226	Thermal	1.45	2713	26.1%
SLPP II	250	Thermal	1.47	5208	27.9%
SLPP -1	250	Thermal	1.48	2125	28.7%
VSTPS -5	88	Thermal	1.49	2091	29.4%


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Station	Capacity Allocated to State (MW)	Type of Station	Variable Cost (Rs./Unit)	Schedule (MWh)	% Cumulative Scheduled
VTPS I	209	Thermal	1.54	4643	31.0%
APL (MUNDRA) U-5-6	1000	Thermal	1.62	28704	41.1%
CGPL MUNDRA UMPP	1805	Thermal	1.87	30951	51.9%
EPGL	1200	Thermal	1.99	0	51.9%
APL (MUNDRA) U-1-4	1000	Thermal	2.01	28800	62.0%
KAHALGAON-II	133	Thermal	2.05	3209	63.1%
DHUVARAN CCPP-II (GSECL) ON GAIL (APM)	112	Gas	2.06	436	63.2%
KLTPS 4	75	Thermal	2.12	24	63.2%
KLTPS 1-3	215	Thermal	2.29	1468	63.8%
GANDHAR	231	Gas	2.29	1982	64.4%
GIPCL-I ON GAS - APM	42	Gas	2.33	144	64.5%
KAWAS GAS	182	Gas	2.34	749	64.8%
DHUVARAN CCPP II ON ONGC WO	112	Gas	2.56	40	64.8%
GAN NAPM	231	Gas	2.6	542	65.0%
KAWAS NAPM	182	Gas	2.62	257	65.1%
MAUDA-II	138	Thermal	2.89	9125	68.2%
CLPI ON CAIRN GAS	655	Gas	2.96	202	68.3%
MAUDA-I	226	Thermal	3	4215	69.8%
UTPS 6	500	Thermal	3.17	10531	73.5%
AMGEN DEF	362	Thermal	3.43	7060	75.9%
UTPS	850	Thermal	3.46	8270	78.8%
GTPS 5	210	Thermal	3.51	4227	80.3%
GTPS34	420	Thermal	3.74	7718	83.0%
WTPS 1-6	1260	Thermal	3.78	19811	89.9%
STPS 3&4	500	Thermal	4.02	5836	92.0%
Other Gas		Gas	4.94-7.49	22899	100.0%

(Reference Meritindia.in)

As seen from the table above, the APL, CGPL & EPGL thermal stations have their variable charge per unit in the range of Rs. 1.62/unit to Rs. 2.01/unit which corresponds

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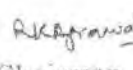
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to a cumulative scheduling between 41% to 62%. The 75% cumulative scheduling corresponds to variable tariff of approx. Rs 3.43/unit while the last thermal plant scheduled had variable tariff of Rs. 4.02/unit (92% cumulative scheduling).

7.4.3 HARYANA - The MOD analysis on 9th August 2018 is as below.

Station	Capacity Allocated to State (MW)	Type of Station	Variable Cost (Rs/Unit)	Schedule (MWh)	% Cumulative Scheduled
Must Run					
Total Hydro	1863	Hydro		29634	20.0%
Total Nuclear	97	Nuclear		2244	21.5%
Total Renewables	194	Renewable		1052	22.2%
Others					
RIHAND STPS	60	Thermal	1.3	1439	23.2%
RIHAND-II STPS	54	Thermal	1.3	1289	24.1%
SASAN UMPP	419	Thermal	1.31	8195	29.6%
RIHAND-III STPS	53	Thermal	1.32	1269	30.5%
SINGRAULI STPS	186	Thermal	1.42	4152	33.3%
PTC ORISSA GMRKEL HRY	300	Thermal	1.47	7185	38.1%
CGPL MUNDRA UMPP	380	Thermal	1.8	6516	42.5%
KODERMA (DVC)	100	Thermal	1.97	1637	43.6%
KAHALGAON-II	65	Thermal	2.05	1554	44.7%
KAHALGAON - I	23	Thermal	2.14	461	45.0%
RAGHUNATHPUR (DVC)	100	Thermal	2.22	0	45.0%
FARAKKA	10	Thermal	2.25	186	45.1%
LANCO AMARKANTAK POWER LIMITED (LAMKPL)	285	Thermal	2.33	0	45.1%
MEJIA TPS	100	Thermal	2.38	1077	45.8%
ADANI POWER LIMITED (APL PHASE IV)	1424	Thermal	2.38	32732	67.9%
UNCHAHAHAR-I TPS	10	Thermal	3.02	176	68.0%
UNCHAHAHAR-II TPS	21	Thermal	3.02	220	68.2%
UNCHAHAHAR-III TPS	11	Thermal	3.02	188	68.3%
FARIDABAD GPS	432	Thermal	3.08	0	68.3%


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Station	Capacity Allocated to State (MW)	Type of Station	Variable Cost (Rs/Unit)	Schedule (MWh)	% Cumulative Scheduled
(NTPC)					
AURAIYA (GAS)	38	Gas	3.18	89	68.4%
JHAJJAR (CLP)	1320	Thermal	3.21	21250	82.7%
YTPP-I&2--	600	Thermal	3.26	11461	90.5%
PTPS UNIT-8	250	Thermal	3.35	5106	93.9%
PTPS UNIT-7	250	Thermal	3.35	5133	97.4%
RGTTP (KHEDAR) (IPP)	1200	Thermal	3.37	0	97.4%
JHAJJAR	657	Thermal	3.46	2150	98.8%
BAGLIHAR-I (PTC)	50	Thermal	3.82	1168	99.6%
PTPS UNIT-5 & 6	420	Thermal	3.88	0	99.6%
PRAGATI POWER (BAWANA/IP)	137	Gas	4.54	587	100.0%

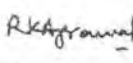
(Reference Tariff Order / Meritindia.in)

As seen from the table above, CGPL has a variable charge per unit of Rs 1.80/unit which corresponds to a cumulative scheduling of 42.5%. The 75% cumulative scheduling corresponds to variable tariff of approx. Rs 3.19/unit while the last thermal plant scheduled had variable tariff of Rs. 3.88/unit (99.6% cumulative scheduling).

7.4.4 **MAHARASHTRA (ONLY CGPL)** - The MOD analysis on 9th August 2018 is as below:

Station	Capacity Allocated to State (MW)	Type of Station	Variable Cost (Rs./Unit)	Schedule (MWh)	% Cumulative Scheduled
Must Run					
Total Hydro	391	Hydro			
Total Renewable	40	Renewable		97	0.03%
Total Nuclear	544	Nuclear		165	0.08%
Others				10993	3.34%
SIPAT 1	584	Thermal	1.4	12157	6.95%
SIPAT 2-WR	279	Thermal	1.45	5987	8.72%
TROMBAY U-7	180	Gas	1.49	3943	9.89%
VTPS 2	338	Thermal	1.52	7260	12.05%
VSTPS 3	281	Thermal	1.52	5943	13.81%
VSTPS 4	307	Thermal	1.53	3178	14.76%
VSTPS -5	166	Thermal	1.53	3435	15.77%
CGPL MUNDRA	760	Thermal	1.6	12561	19.50%


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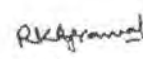

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Station	Capacity Allocated to State (MW)	Type of Station	Variable Cost (Rs./Unit)	Schedule (MWh)	% Cumulative Scheduled
UMPP					
GTPS URAN (U 05 TO 10)	672	Thermal	1.61	5790	21.22%
VTPS I	421	Thermal	1.62	8340	23.70%
ADANI TIRODA (U- 2,3)	1320	Thermal	1.82	25200	31.17%
GANDHAR	195	Gas	1.88	1460	31.61%
EMCO	200	Thermal	1.9	3691	32.70%
KAWAS GAS	199	Gas	1.93	710	32.91%
JSW UI, JAIGAD	300	Thermal	2.07	6504	34.84%
GAN NAPM	195	Gas	2.16	174	34.89%
KAWAS NAPM	199	Gas	2.17	143	34.94%
KORADI U - 08 TO 10	1980	Thermal	2.17	17184	40.04%
CHANDRAPUR U - 08,09	1000	Thermal	2.24	22172	46.62%
PARAS U - 03 & 04	500	Thermal	2.24	9183	49.34%
KORADI U - 05 TO 07	620	Thermal	2.26	0	49.34%
CHANDRAPUR U- 03 TO 07	1920	Thermal	2.31	32694	59.04%
KHAPERKHEDA U - 05	500	Thermal	2.35	0	59.04%
ADANI- TIRODA (U- 1,4,5)	1325	Thermal	2.38	24283	66.25%
KAHALGAON-II	140	Thermal	2.43	3244	67.21%
ADANI- TIRODA (U- 1,4,5)	440	Thermal	2.44	916	67.48%
VIPL U I & 2	600	Thermal	2.45	4584	68.84%
KHAPERKHEDA U 01 -04	840	Thermal	2.73	8809	71.46%
BHUSAWAL U- 04 & 05	1000	Thermal	2.74	16862	76.46%
MAUDA-II	270	Thermal	2.79	4594	77.83%
MAUDA-I	401	Thermal	2.93	1106	78.15%
PARALI U -08	250	Thermal	3.02	5291	79.72%
RATAN INDIA U- 01 TO 05	1200	Thermal	3.03	28065	88.05%
BHUSAWAL U - 2 & 3	420	Thermal	3.07	0	88.05%


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Station	Capacity Allocated to State (MW)	Type of Station	Variable Cost (Rs./Unit)	Schedule (MWh)	% Cumulative Scheduled
NASIK U - 03 TO 05	630	Thermal	3.27	3489	89.09%
TROMBAY U-8	250	Thermal	3.38	4744	90.50%
TROMBAY U-5	500	Thermal	3.39	7164	92.62%
DAHANU (DTPS U1 & 2)	500	Thermal	3.39	8158	95.04%
PARALI U - 06 & 07	500	Thermal	3.5	4283	96.31%
GANDHAR RLNG	195	Gas	4.59	81	96.34%
KAWAS RLNG	199	Gas	4.69	212	96.40%
TROMBAY U-6	500	Thermal	9.4	0	96.40%
KSTPS-WR	626	Thermal		9632	99.26%
KSTPS 3-WR	128	Thermal		2497	100.00%

(Reference Meritindia.in)

As seen from the table above, CGPL has a variable charge per unit of Rs 1.60/unit which corresponds to a cumulative scheduling of 19.5%. The 75% cumulative scheduling corresponds to variable tariff of approx. Rs 2.74/unit while the last thermal plant scheduled had variable tariff of Rs. 3.50/unit (96.31% cumulative scheduling).

7.4.5 RAJASTHAN (ONLY CGPL) - The MOD analysis on 9th August 2018 is as below:

Station	Capacity Allocated to State (MW)	Type of Station	Variable Cost (Rs/Unit)	Schedule (MWh)	% Cumulative Scheduled
Must Run					
Total Hydro	1849	Hydro		18408	9.1%
Total Nuclear	268	Nuclear		5677	11.9%
Total Renewables	5453	Renewable		11771	17.7%
Others					
BARSINGSAR (NLC)	250	Thermal	1.18	2645	19.0%
MARUTI CLEAN COAL AND POWER LIMITED (MCCPL)	250	Thermal	1.22	0	19.0%
DB POWER	250	Thermal	1.27	0	19.0%
SASAN UMPP	372	Thermal	1.3	6920	22.4%
RIHAND STPS	132	Thermal	1.31	3707	24.2%
RIHAND-II STPS	144	Thermal	1.31	4049	26.2%
RIHAND-III STPS	164	Thermal	1.33	4562	28.4%

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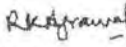
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Station	Capacity Allocated to State (MW)	Type of Station	Variable Cost (Rs/Unit)	Schedule (MWh)	% Cumulative Scheduled
GIRAL LTPS	250	Thermal	1.34	0	28.4%
SINGRAULI STPS	370	Thermal	1.43	9160	32.9%
CGPL MUNDRA UMPP	380	Thermal	1.69	6238	36.0%
KAHALGAON-II	101	Thermal	2.07	2288	37.1%
CHABRA TPS U3	660	Thermal	2.13	12419	43.2%
RAMGARH GPS STG1&2	111	Gas	2.14	1020	43.7%
RAJWEST LTPS (IPP)	1080	Thermal	2.15	16857	52.0%
KAHALGAON - I	23	Thermal	2.16	384	52.2%
CHABRA TPS U1&2	500	Thermal	2.22	5003	54.7%
FARAKKA	10	Thermal	2.27	139	54.8%
CHABRA TPS U3	250	Thermal	2.33	5020	57.2%
CHABRA TPS U4	250	Thermal	2.33	5114	59.8%
KALISINDH TPP-I	600	Thermal	2.6	11117	65.2%
KALISINDH TPP-II	600	Thermal	2.6	0	65.2%
KAWAI (ADANI)	1200	Thermal	2.65	22680	76.4%
UNCHAHR IV		Thermal	2.83	288	76.5%
KOTA TPS	1240	Thermal	2.96	20661	86.7%
UNCHAHR-I TPS	25	Thermal	3.05	1437	87.4%
UNCHAHR-II TPS	57	Thermal	3.05	237	87.5%
UNCHAHR-III TPS	32	Thermal	3.05	435	87.7%
RAMGARH GPS STG3	160	Gas	3.08	2040	88.7%
DADRI-II TPS	50	Thermal	3.39	535	89.0%
AURAIYA (GAS)	67	Gas	3.43	53	89.0%
SURATGARH TPS	1500	Thermal	3.47	22282	100.0%
JHAJJAR	13	Thermal	3.49	0	100.0%

(Reference Meritindia.in)

As seen from the table above, CGPL has a variable charge per unit of Rs 1.69/unit which corresponds to a cumulative scheduling of 36%. The 75% cumulative scheduling corresponds to variable tariff of approx. Rs 2.64/unit while the last thermal plant scheduled had variable tariff of Rs. 3.47/unit (100% cumulative scheduling).


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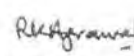

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7.4.6 PUNJAB (ONLY CGPL) - The MOD analysis on 8th August 2018 is as below:

Station	Capacity Allocated to State (MW)	Type of Station	Variable Cost (Rs./Unit)	Schedule (MWh)	% Cumulative Scheduled
Must Run					
Total Hydro	3103	Hydro		41395	26.87%
Total Nuclear	187	Nuclear		4889	30.05%
Total Renewables	848	Renewable		79	30.10%
Others					
SASAN UMPP	558	Thermal	1.15	10619	36.99%
CGPL MUNDRA UMPP	475	Thermal	1.31	8877	42.75%
RIHAND STPS	108	Thermal	1.31	2481	44.36%
RIHAND-II STPS	103	Thermal	1.31	2368	45.90%
RIHAND-III STPS	86	Thermal	1.32	1947	47.17%
SINGRAULI STPS	199	Thermal	1.43	4212	49.90%
RAGHUNATHPUR (DVC)	300	Thermal	2.01	0	49.90%
DURGAPUR STEEL THERMAL POWER STATION (DSTPS)	200	Thermal	2.17	2244	51.36%
PRAGATI-III GAS PLANT BAWANA	137	Gas	2.19	593	51.74%
NABHA POWER LTD. RAJPURA		Thermal	2.26	24624	67.73%
KAHALGAON-II	113	Thermal	2.41	2590	69.41%
KAHALGAON - I	46	Thermal	2.52	884	69.98%
ANTA (GAS)	50	Gas	2.62	96	70.04%
FARAKKA	21	Thermal	2.84	392	70.30%
TALWANDI SABOO	1980	Thermal	2.85	16918	81.28%
JHAJJAR	4	Thermal	2.89	32	81.30%
DADRI-II TPS	7	Thermal	2.94	8	81.31%
GOVINDWAL (GVK)	540	Thermal	2.94	3714	83.72%
UNCHAHAAR-I TPS	34	Thermal	2.98	779	84.22%
UNCHAHAAR-II TPS	58	Thermal	2.98	720	84.69%
UNCHAHAAR-III TPS	17	Thermal	2.98	388	84.94%
GURU HARGOBIND SINGH TPS (GHTPS)	920	Thermal	3.61	12872	93.30%
RTPS		Thermal	3.78	10322	100.00%

(Reference Meritindia.in)


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As seen from the table above, CGPL has a variable charge per unit of Rs 1.31/unit which corresponds to a cumulative scheduling of 42.75%. The 75% cumulative scheduling corresponds to variable tariff of approx. Rs 2.84/unit while the last thermal plant scheduled had variable tariff of Rs. 3.78/unit (100% cumulative scheduling).

7.4.7 From an analysis of the data of energy purchase and the corresponding variable cost provided by GUVNL, it is clear that even after considering the actual coal cost, the entire power from these Projects gets scheduled. Therefore, there is no question of lack of competitiveness of these Projects in future on account of pass through of increased energy charge. The Procurers and Consumers Representatives have also expressed similar views during the meetings of the HPC. It was also pointed out by one of the Consumer Representatives that the capacity charge under these PPAs is very competitive and therefore, the Discoms should not lose these PPAs.

7.4.8 Apart from being competitive, these Projects are highly reliable. The average availability from these Projects is of more than 80% on a continuous basis (except APL for which availability is about 90%) till the last year. The details pertaining to the availability of these Projects for the last three years are set out below:

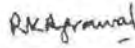
Plant	Particulars	2015	2016	2017
APL	Phase I&II	97%	96%	96%
	Phase III	92%	91%	88%
	Phase IV	92%	93%	93%
CGPL		80%	80%	80%
EPGL		80%	80%	80%

7.5 Impact of Shutting Down of these Projects on Discoms/ End Consumers

7.5.1 These Projects fulfil almost 16-18% power requirement of the five States and it is not possible to replace such a high contribution spread-over entire Western Region by other alternatives. Even power exchange and other short-term markets put together are incapable of replacing these capacities. CGPL's TPP and Phase III & IV of APL's TPP are based on the supercritical technology and are more efficient. Even otherwise, these Projects are more efficient as compared to the older units installed by the State Generating Companies with SHR being lower by about 369 kcal/kwh and auxiliary consumption being lowered by 5.51%.⁹ Collectively, there is a saving of almost 18.5%

⁹ SHR: Difference between SHR as per CERC Tariff Regulations, 2009 for similar Supercritical Units i.e. 2380 kcal/kwh (2235x1.065) and the average SHR for GSECL's coal based plants for FY 2016-17. Auxiliary Consumption: Difference between Auxiliary consumption as per CERC Tariff Regulations, 2009 for similar Supercritical Units i.e. 6.5% and average Auxiliary consumption for GSECL's coal based plants for FY 2016-17 (Ref: CERC Tariff Order dated 31.03.2018 for GSECL).


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in fuel cost if electricity is generated from these Projects.

7.5.2 Further, an analysis of the prices discovered under the recent Case I bidding process as well as the short term market shows substantially higher prices.

- Average tariff discovered under recent Case I long-term biddings is about Rs. 4.50 per unit as detailed below:

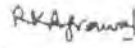
State/Utility	Requisitioned Capacity (MW)	Date of Bidding	Range of Tariff (Rs./kWh)	Average of Quoted Tariff (Rs./kWh)
Andhra Pradesh	2400	25.06.2015	4.23 – 6.31	5.06
Tata Power	400	04.09.2015	3.99 – 4.77	4.39
Tejanganana	1000	28.10.2016	4.15	4.15
Andhra Pradesh	1000	05.02.2016	4.44	4.44
Uttar Pradesh	3800	26.07.2016	3.94 – 4.63	4.2

- Short-term price (Power Exchange and market price) is also around Rs 4.00 per unit as detailed below:

Month	Volume of Electricity Transacted (MUs)			Wt. Avg. Price of Electricity Transacted (Rs./kWh)		
	Bilateral	IEX	PXIL	Bilateral	IEX	PXIL
May '18	5,170	4,916		4.17	4.76	
Apr '18	4,912	4,055	6	3.63	4.03	3.36
Mar '18	5,946	3,955	24	3.59	4.10	3.90
Feb '18	4,524	3,326	28	4.13	3.42	2.12
Jan '18	4,612	3,375		3.92	3.44	
Dec '17	4,714	3,108	2	3.60	3.25	3.38
Average	5,343	4,309	15	3.80	4.30	3.63

7.5.3 It is to be noted that if these capacities are to be replaced from alternative sources, prices will further go up in view of the clear co-relation between demand and supply. Further, it is not possible to replace the entire capacity with the existing capacity available in the market and the Discoms will have to resort to eventualities such as load shedding which is highly undesirable. Considering that it is the stated goal of the Central Government that all endeavours should be made to ensure supply of 24x7 power to each and every household including the houses given connectivity under the 'Subhagya Scheme' at affordable price, it is imperative that the possibility of load shedding is


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reduced to the maximum possible extent.

7.5.4 It is also observed that when these Projects were not available or were partly available due to the grave financial stress being faced by them, GUVNL bought replacement power from the spot market for fulfilling its demand for electricity. During the four months from March to June 2018, GUVNL had to purchase 6,749 MUs from high cost sources like power exchange, bilateral and spot LNG to fulfil their demand. The average cost for this procurement was Rs. 4.30/unit.

7.5.5 Further, all the three Projects have connectivity with the State Transmission network of Gujarat and therefore, in case of alternate power purchase, say from other States, it will put additional burden of transmission charges and losses of inter-state system.

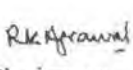
7.5.6 It is also important to note that recently, coal linkage has been granted to developers under SHAKTI Scheme. However, even in the said linkage, maximum possible coal supply is only about 64%. In fact, the actual coal availability is even worse making usage of imported coal inevitable. In case these Projects are closed, the requirement of domestic coal for other thermal projects will increase and availability would further reduce.

7.5.7 Further, replacement with new capacity is also not feasible since the end consumers are going to pay higher tariff in view of following:

- New projects will have substantially higher capital cost as compared to the capital cost of these Projects. An analysis of the recently commissioned projects shows capital cost ranging between Rs. 6.32 crore to Rs. 8.50 crore per MW. It is also relevant to highlight that addition of any new capacity by way of setting up new projects would have a gestation period of around 4-5 years.

Name of Company	Capacity (MW)	Project Cost (Rs Cr.)	Project Cost (Rs. Cr/ MW)
DB Power Limited	600	4,935	8.22
HNPCCL	1040	8,580	8.25
Haldia Energy Limited	600	4,685	7.81
Damodar Valley Corporation	500	4,200	8.40
GMR Chhattisgarh Energy Limited	1370	11,642	8.50
Coastal Energen	1200	7,870	6.56
Mouda STPP Stage 2 (NTPC)	1320	8,190	6.20
Sloapur STPP (NTPC)	1320	9,395	7.12
Kudgi STPP Stage 1 (NTPC)	2400	15,166	6.32


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7.5.8 A comparison of the average project cost of the above projects with average project cost of the Projects under consideration clearly demonstrates an increase of about 40%. Therefore, procurement of power from the new projects will entail approximately 40% higher capacity charge. Additionally, on account of the changes made in the new SBDs, there is complete pass through of fuel costs, which would result in higher variable charge and consequently result in higher tariff. Further, in view of the higher gestation period for the new projects of around 4-5 years, these new projects would not be readily available to cater to the demand in the short term unlike the Projects under consideration.

7.6 Impact of Shutting Down of these Project on the Lenders

- In case the Projects become stranded, the lenders are going to be affected severely;
- Huge public money is involved as more than 70% of the cost is funded by the lenders i.e. by public at large which will remain unpaid leading to increase in sector level credit margins and hence, increased NPAs; and
- Lenders have very high exposure in the power sector and closure of these Projects may trigger an increased number of NPAs in respect of other stressed thermal power projects, which would impact their profitability severely and also the overall economy of the Country.

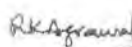
7.7 Impact on the State Government

- Loss to exchequer in case of load shedding in form of electricity duty etc.;
- Unquantifiable impact on investment climate in the State and its Gross Domestic Product;
- Will adversely impact the long term vision of the State to provide power to all; and
- More than 11000 job losses in case of shutdown of these Projects.

7.8 Impact on the Generators

- Projects developed with an investment of more than Rs. 50,000 crore will get stranded;
- Due to the issues associated with fuel cost, Developers have already lost about Rs. 24,000 crore and have no capacity left to bear further losses amounting to more than Rs. 5,000 crore per annum by these Projects. The Developers of these Projects have


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made losses substantially higher than the liquidated damages payable by them for termination under the respective PPAs; and

- EPGL has already become NPA. There is no possibility of saving the other two projects from becoming NPAs in near future with the status quo.

7.9 Impact on the Transmission System

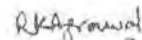
- Since these Projects cater to the base load requirement and are located near the load center (injection and drawl points both in Western Region), it has been contributing to reduction of the overall transmission losses in the Country. On the contrary, replacement of injection points from remote locations, will have a negative impact on the overall transmission losses and charges.
- In addition, severe transmission constraints may arise since load center remains Western Region and interregional capacity is also constant; and it may also require augmentation of the transmission capacity putting additional burden on end consumers.

7.10 Other relevant Considerations

In addition to the above, the following objective aspects which have a bearing on the recommendations and its impact on the stakeholders are also considered:

- Objective of the Electricity Act;
- Development of electricity industry as a whole duly safeguarding consumer and public interest and simultaneously ensuring recovery of cost of power at reasonable tariffs;
- Recognition by MoP in revised SBDs that issues related to fuel and unprecedented increase cannot be borne by the generators;
- Resolution to help all stakeholders rather than being bound by technicalities;
- Resolution is limited to the fuel cost/energy charge - no increase in the capacity charge;
- Should not result in profiteering to Generators - restricted to actual cost;
- Any resolution plan to be approved by concerned Regulatory Commission; and
- Usage of imported coal plant in existing projects versus hinterland projects.


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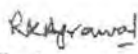

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7.11 Broad Conclusions

7.11.1 In light of the above, it can be concluded that shutting down of these Projects will have severe ramifications on all the stakeholders, including the consumers. Further, the almost unanimous consensus, including from most of the consumer representative groups that made oral and written presentations, is that these Projects need to be salvaged and with reasonable efforts, be allowed to be rehabilitated and continue operations. The consequences of the alternative option of allowing these projects to shut down and be scrapped, has very significant adverse financial and economic consequences. All the stakeholders, including consumers, will be severely impacted and consequences will range from unavailability of power to an unaffordable increase in tariffs. It is also widely recognised, including by the Procurers and consumer representatives that these Projects are highly efficient as most of the units are designed on supercritical technology and therefore, are cost and environmentally beneficial. Further, an analysis of the operational parameters affirms that these Projects offer at least a 18.5% saving in coal utilisation, compared to the other existing State generating plants that are of older vintage.

7.11.2 Additionally, with regard to the way forward, the common suggestions of the stakeholders are – (i) Providing increase in variable charge; (ii) Offer increased availability and tenure under the PPAs; (iii) Sharing of some burden by the lenders; (iv) Sale of untied capacity of the Projects to the Procurers; and (v) Sharing of profits generated by the captive coal mines. Needless to state, the solutions have to be within the framework and principles established by the Supreme Court in the Energy Watchdog Judgment.


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CHAPTER – VIII

BALANCING OF EQUITIES – SHARING OF PAIN BY ALL THE STAKEHOLDERS

8.1 As discussed in detail in the preceding Chapters, the HPC had convened multiple meetings with the stakeholders viz. the Developers, Procurers, consumer representative groups and the lenders to find an equitable solution through a consultative process in relation to the Projects in discussion. All the stakeholders, specifically the Procurers and the consumer representative groups were of the view any resolution process should be finalized considering the interests of all the stakeholders. Thus, the HPC after having carefully examined and analysed the views and suggestions of all the stakeholders, has come out with a solution with a view to bring out balance of equities for all the stakeholders.

8.2 Hardship faced by Developers/ Lenders

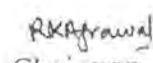
8.2.1 Since the commencement of operations, all the three Projects in discussion owned by, CGPL, APL and EPGL respectively, have been facing hardship due to under-recovery in fuel costs. These Projects were envisaged to receive coal from Indonesia for their operations. Indonesia is the largest supplier of imported coal in India due to its coal quality and logistical advantage. However, as discussed in detail in the preceding Chapters, the Indonesian Government brought about a change in the coal pricing regulation with effect from September 2011 which increased the cost of coal procurement for these Projects significantly as a result of which the economics of these Projects were adversely affected. Additionally, APL has also suffered significant under-recovery in the energy charge in its PPA with the Haryana Discoms due to shortage in domestic coal supply as well as steep increase in the domestic coal prices of Coal India Limited and the railway freight.

8.2.2 The indicative fuel cost when applied to the normative operating parameters of such Projects, translates to more than Rs. 2/unit for almost the entire period from 2011 to 2018. Despite high prices of imported coal, these Developers kept supplying electricity at PPA tariff which is in the range of Rs. 1.30-2/ unit. Consequently, the Projects had to absorb significant losses in the form of under recovery of fuel costs, in the past.

8.2.3 Further, the Developers had approached the Appropriate Regulatory Commissions¹¹ for relief on account of the increase in the Indonesian coal prices and APL and CGPL had received favourable orders from both, the CERC and APTEL. Eventually, the Hon'ble Supreme Court gave a ruling in April 2017 which clarified that the change in

¹¹ As mentioned earlier, EPGL approached GERC, however, order in its case is still pending.


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the Indonesian Regulations 2010 was neither a Change in Law event nor a Force Majeure event as per the relevant provisions of the PPAs. During the multiple rounds of litigation, the lenders and the Developers continued supporting the Projects in anticipation of a final favourable order from the Supreme Court. The lenders of these Projects further extended their supported by *inter alia* reducing interest rates, providing additional working capital facilities and by elongation of loan tenors.

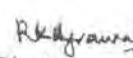
8.3 Proposal for Resolution

Based on discussion held by the HPC with the various stakeholders, the following framework is proposed for an effective and sustainable resolution of these Projects. The framework is based on the premise that the hardships faced by these Projects are to be equitably shared by all the stakeholders. The underlying assumption and principle that has dominated the HPC's deliberations and that has been un-waveringly applied is that the interest of the consumers is paramount, and any resolution must ensure that the short, medium and long-term interests of the consumers is always protected. This framework takes into consideration all the major recommendations submitted by the various stakeholders. Further, the salient features of the framework primarily involves sharing of the burden by all the stakeholders and the consequential financial restructuring, the summary of which is set out below:

- (i) Reduction of capacity charge on account of sacrifice by lenders;
- (ii) Past losses to be borne by the Developers and the resolution plan being applicable from a prospective cut-off date.
- (iii) Extension of PPA tenure by another period of 10 (ten) years after the completion of the PPA tenure of 25 (twenty five) years;
- (iv) Offer for tie-up of free capacity; and
- (v) Sharing of profit from the Indonesian Mines.

Note: APMuL has PPA for 1424 MW with Haryana also which is supplied from Phase IV project (1980 MW). This phase has got domestic coal linkage for 70% of the capacity. Currently, the entire linkage coal is being allocated to Haryana PPA. After the tie-up of full capacity under the proposed framework, entire linkage coal will not be available for Haryana PPA. Hence, 30% of the supply under this PPA will come from imported coal. Therefore, this resolution framework will be applicable to 30% capacity in case of Haryana PPA also on pro rata basis.


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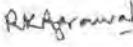

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8.4 Change in Energy Tariff

- 8.4.1 These Projects have been facing significant under-recovery in the fuel cost and this has made their operations unviable. However, sustainable operation of these Projects is critical for meeting the increasing demand of the procurer States. The consumer interest lies in ensuring that reliable and relatively inexpensive power is secured in a sustainable manner to meet the current and future demand projections. This is essential to also ensure that the economic growth of the procurer States is not vitiated. Sustainable operations of these Projects are possible only if these Projects are made economically viable. It is an acknowledged and accepted position amongst the stakeholders that the economic viability of these Projects has been severely impacted entirely on account of one factor i.e. the change in the Indonesian Regulations leading to increased prices of coal and the inability of the Generators to pass these increased fuel prices on to the Procurers under the PPAs. If the under recovery of fuel prices can be effectively addressed, then these Projects can be revived. However, the HPC is conscious and recognises the fact that an unfettered and unqualified complete pass through of all and any increase in fuel prices is neither feasible nor desirable from a long-term perspective as it sends wrong signals to the coal suppliers.
- 8.4.2 It is worth reiterating that, based on their initial experiences in the UMPP initiative including the Projects in discussion, the GoI has recognised that the fuel price risk cannot be absorbed by the developers and accordingly, it revised the SBDs designed by them under Section 63 of the Electricity Act, and re-structured the fuel cost pass through mechanism and formula to ensure that this long term fuel price risk is mitigated for the developers/generators. It was also provided in the draft PPA for the new UMPP bidding documents (i.e., Cheyyur UMPP) that the change in law or taxes occurring in the jurisdiction where the mine is situated (such as Indonesia) shall be deemed to be a change in law event.
- 8.4.3 It is therefore, desirable that the same economic and commercial principles on long term fuel price risk, be applied to the present Projects, duly modulated for the facts and circumstances, and at the same time it is ensured that the entire cost impact of such financial and commercial re-structuring is not passed on merely to the consumers, rather the same is equitably distributed amongst the other stakeholders too. While recommending changes to the commercial and contractual provisions in the PPA, the HPC has proposed a comprehensive resolution plan that distributes the long-term risks, as well as accumulated costs to the entities that are best suited to absorb the same.


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8.4.4 With regard to the Projects in discussion too, the fuel cost will be made fully pass through on landed cost basis and these Projects will not have any margin/loss on account of fuel prices. However, in order to avoid any unfettered pass through of fuel cost, a cap has been stipulated for the imported coal prices, upto which a pass through will be permitted and beyond which the Generators will continue to carry the price risk with respect to the energy charge. Accordingly, if the imported coal prices exceed such cap, the Generators will continue to declare Availability and shall supply power, at the capped coal price. Such declaration of Availability by the Generator, shall be considered for determining the "Availability" in accordance with the provisions of the respective PPAs.

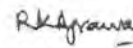
8.4.5 One of the objectives of our recommendations is to maximise the utilisation of the generation capacity from these Projects as these Projects even with the implementation of the financial, economic and commercial rehabilitation plan, will be competitive in price, efficiency and availability. Therefore, appropriate mechanisms need to be structured to ensure that the developers maximise their availability. Accordingly, it is proposed that the developers shall declare availability up to 90% in the year. However, the Capacity charge shall be paid corresponding to Normative Availability of 80%, as specified in the PPA on achievement of cumulative availability of 80%. Further, in the event the cumulative Availability is less than 80%, the Capacity charge shall be reduced proportionately as specified in the PPA.

In addition to that, in the event the cumulative Availability is less than 90%, the Capacity charge shall be reduced by 10% of Capacity Charges otherwise payable to the Seller. An illustration for two different levels of availability is given in the following table:

Illustration: For actual availability of 82% and 76%

	Actual DC 82%	Actual DC 76%
PPA Capacity	1,000 MW	1,000 MW
Normative Availability	80%	80%
Capacity Charges	1.00 Rs/kWh	1.00 Rs/kWh
Normative Units	7008 Mus	7008 Mus
Actual Availability	82%	76%
Actual Units	7183 Mus	6658 Mus
Shortfall in availability compared to revised 90%	8% (701 MUs)	14% (1226 MUs)
Penalty for shortfall in 90%	Rs 0.10 / kWh (1 Rs * 10%)	Rs 0.10 / kWh (1 Rs * 10%)


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(10% of Capacity Charges)		
Penalty Amount	Rs 7.01 crore	Rs 12.26 crore
Yearly Capacity Charges	Rs 700.8 crore (7008 MUs * 1 Rs)	Rs 665.8 crore (6658 MUs * 1 Rs)
Less: Penalty	Rs 7.01 crore	Rs 12.26 crore
Net of Penalty Payment	Rs 693.79 crore	Rs 653.54 crore

For the avoidance of doubt, it is clarified that for all other purposes including passing on the Discount of 20 paise/kWh, the Normative Availability shall continue to be 80% as specified in the PPA. It is further clarified that for the purposes of determining the Incentives under the PPA on account of Availability being higher than Normative Availability, the Normative Availability shall continue to be reckoned as per existing PPA at 80%. Conversely, provisions relating to penalty for lower Availability below 80% shall also continue to apply in accordance with the provisions of the existing PPA.

Through this mechanism, the Procurers will get benefit of higher availability beyond 80% without paying capacity charge.

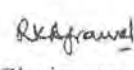
8.4.6 In view of the background facts and financial stress, as elaborated in this report, it would be appropriate that a mechanism be devised to compensate for the penalty that may have accrued for lesser availability under the PPAs pertaining to the past period till the implementation of recommendation of the HPC.. Accordingly, Penalty, if any, accrued or appropriated under the PPA on account of Availability being lower than Normative Availability, for period from April 12, 2017 to Amendment Effective Date, shall be compensated by the Seller by way of offering to supply additional electricity from the Project or from alternate source, to liquidate such Penalty for the past period as above and upon supply of such additional electricity, the past accrued/appropriated Penalty shall be liquidated/refunded to the extent of such additional supply. In case the Seller is unable to fulfil the same in a Financial Year, the arrangement shall continue to carry forward in next Financial Year till such time the entire accrued/appropriated penalty is liquidated/refunded.

8.4.7 The formula for energy tariff and the principle of fixing the cap is set out in the Annexure - IV of this Report.

8.5 Extension of PPA Tenure

8.5.1 The tenure of all the PPAs executed by the Generators for the Projects is 25 (twenty five) years. However, these Projects are based on modern technology and their life may be extended by another 10 (ten) years with the help of renovation and modernization after the expiry of the PPAs. These Projects will be made available to the procurers for an extended period of 10 (ten) years if it is economical for the respective States.


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8.5.2 The Procurers will have a right to extend the PPA on the same terms, for a further period of 10 years after the existing PPA term gets over. The extended PPA will be on the capacity charge equal to the quoted capacity tariff of the terminal year without any discount. The capital cost incurred for renovation & modernization, if necessary, along with the incremental O&M expenses, if applicable, determined as per the applicable regulatory norms will be incurred after due approval from the Appropriate Commission and thereafter, will become part of the capacity charge for the extended period. Further, the energy charge will remain fully pass through for the extended period. The option of extension will have to be exercised by the Procurers at the least 5 (five) years before the expiry of the PPAs. If the Procurers do not convey this decision within the stipulated time, the Developers will be free to tie-up the capacity with other available entities.

8.6 Tie-up of Free capacity

8.6.1 APL, currently has free untied capacity of around 800 MW. Out of this untied capacity, around 250 MW is committed for Mundra SEZ and the balance capacity of around 550 MW is available for long term tie-up. Similarly, EPGL also has nominal available free capacity of around 100 MW. The aforesaid free capacity (fully or partly) may be offered by APL and EPGL to the Procurers for long term PPA. However, in case of CGPL, there is no free capacity.

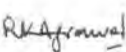
8.6.2 This additional capacity will be offered at a capacity charge equal to the levelized capacity charge of the existing PPAs. It is clarified that there will be no reduction either on account of discount attributable to passing on of profit from Indonesian mines nor on account of the discount of Rs 0.20 attributable to debt sacrifice. Energy charge will be fully pass through (as per the suggested formula in Annexure - V of this Report). For levelizing the capacity charge as above, the discount rate to be used shall be the discount rate specified in the RFP, that was used for evaluating the bids, pursuant to which the Seller was selected as successful bidder and PPA was executed.

8.7 Sharing of profit from Indonesian mines

8.7.1 Tata Power Limited, the holding company of CGPL, through its subsidiaries, holds 30% equity stake in PT Kaltim Prima Coal (KPC) which is a coal mining company of Indonesia. Similarly, Adani Group holds equity stake in Bunyu Mines in Indonesia through its subsidiaries. These coal mines supply coal to their respective thermal power plants in India.

8.7.2 It is proposed that the profits from these mining businesses in Indonesia, attributable to the quantum of coal being supplied to their respective projects in India, may be


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shared/passed on by the Developers to the Procurers, so as to further reduce the cost of power delivered to the Procurers. The principles to be adopted for determining these profits attributable to the coal supplied to the Projects (CGPL's TPP and APL's TPP), have been articulated earlier in the CERC order dated 21st February 2014 and these principles appear to be appropriate to be adopted in the context of the current package. These aforesaid principles must be applied on a uniform basis to each of the Projects, as applicable. Both the companies will share 100% of their profit earned on the coal supply to respective projects stipulated from their coal mines (which should not go beyond their share of total production from their mines). The costs, i.e. transportation costs, taxes, royalty, withholding tax, dividend distribution tax, etc. shall be adjusted as per the prevailing rates. Such sharing of profit will result into lowering of the energy charges after the resolution framework is implemented. The formula for sharing of profit from the mines is set out in Annexure - V of this Report in line with the aforesaid order issued by the CERC.

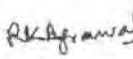
- 8.7.3 In the interest of consumers, it is desirable that the aforesaid profit from the Indonesian coal mines, as above, should be determined at actuals, subject to a minimum amount, which has been determined on the basis of a financial analysis of past operations. Accordingly, it is recommended that the aforesaid profits from the Indonesian mines to be passed on to the consumers, shall be a minimum of Rs 0.15/kWh for CGPL and a minimum of Rs 0.05/kWh for APL. This floor corresponds to maximum of Seller's share of coal from the coal mine or coal consumed from its mine this year and will be adjusted if coal production/consumption from the mine reduces.

8.8 Sharing by Lenders

- 8.8.1 During the meetings of the HPC with the stakeholders, it was submitted by various parties that all the stakeholders including the lenders of the Projects should share the burden of the new framework. Therefore, it has been decided to reduce the debt in these companies to give effect to the reduction in tariff. These Projects already have very low capacity charges.

Sr. No.	Name of Project	Capacity	PPA	Procurers	Capacity charge*
		MW	MW		Rs./unit
1	Coastal Gujarat Power Ltd.	4150	3800	Multiple states	0.90
2	Adani Power Mundra Ltd.	4620	1000	GUVNL	1.14
			1000	GUVNL	1.00
			1424	Haryana	1.08
3	Essar Power Gujarat Ltd.	1200	1000	GUVNL	1.06


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** Tariff is given for the current year which also includes allowed change in law. Any further change in law including capex related to environment norms shall be added.*

8.8.2 Due to substantial foreign exchange depreciation during the implementation phase, all the three Projects faced severe cost overruns. Further, losses in the subsequent years of operations has skewed the capital structure of these Projects. The fuel cost under recovery, significant promoter level financial support, the fact that the equity in these Projects has effectively been written off, and the overall operational constraints and financial challenges faced by these Projects, have collectively resulted in the situation where these Projects are not in a position to earn any Return on Equity (RoE). Notwithstanding the above, it is proposed that the lenders will take effective steps to reduce project debt to ensure that the capacity charges specified in the PPAs are further reduced by 20 paise/unit. This amount will be treated as a discount and will be reduced from the energy charge for the purpose of merit order and billing.

8.9 Effectiveness of new Tariff Structure

8.9.1 The Developers have incurred substantial losses in the past and have requested that the proposed framework should be applied retrospectively. However, the Procurers and consumer representative groups were not in favour of any retrospective applicability of the solution/relief. Therefore, the HPC proposes that the past losses incurred by the Developers upto the cut-off date may be absorbed by the Developers and that the re-structuring plan proposed herein may be applied prospectively.

8.9.2 Various options were considered for determining the cut-off date for implementing the re-structuring plan, ranging from the date of the order of the Hon'ble Supreme Court till the date of final approval of the re-structuring plan and approval of the Appropriate Commission to the consequential amendments to the PPAs. The HPC, after having considered all these options and proposals, has concluded that while the cut-off date will have to be prospective, however, the same cannot be left open ended. Accordingly, the HPC after careful deliberations, feels it appropriate to recommend that the cut-off date for implementing the re-structuring plan be 15th October 2018 which is around one month after the date of submission of this HPC Report. This future date ensures that all the divergent stakeholder interests are balanced in the best possible manner. Further, it ensures that the recommendations of this HPC are implemented in a predictable and time bound manner and is not left open ended. Further, the payment as per the new tariff structure should commence provisionally from such cut-off date of 15th October, 2018 till the time the approval from the Appropriate Commission is received. It is imperative that the rehabilitation plan is implemented without any further delay to save these Projects from further stress. Each delay exacerbates the financial stress and makes any possible resolution even more difficult, as the quantum of losses and cash flow


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mismatches will only continue to grow and accumulate, unless the equation is brought to a balance forthwith.

8.10 Sharing of burden by the Stakeholders

8.10.1 After the implementation of the package, the variable tariff in all these PPAs will increase as the coal cost is currently at high levels. However, this increase will be compensated/ partially mitigated by reduction of capacity charge by 20 paise/unit in tariff due to project debt reduction and a further component equivalent to sharing of profits from the Indonesian coal mines. In the revised framework, the fuel cost risk will be mostly borne by the Procurers and eventually the end consumers, subject to the cap on fuel price pass through. However, at the same time, the other stakeholders too have absorbed significant financial costs and burden. Considering that the cut-off date is to be applied prospectively, the Developers and their promoters are sharing a significant burden of the past losses. This sharing of the financial burden is necessary to ensure an equitable re-structuring plan that can be absorbed by all concerned stakeholders.

8.11 Lenders' sacrifice

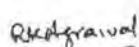
8.11.1 It is proposed to reduce the tariff of the existing PPAs by 20 paise/unit. The debt amount equivalent to reduction of 20 paise in the capacity charge, to be passed through in the form of a discount on the energy charge, for the three Projects is given in the following table:

Sr. No.	Name of Project	PPA Capacity	Debt reduction
		MW	Rs. crore
1	Coastal Gujarat Power Ltd.	3800	4240
2	Adani Power Mundra Ltd.	3424	3821
3	Essar Power Gujarat Ltd.	1000	1154*

* Lenders' sacrifice may be higher as they may have to reduce the outstanding debt by around Rs. 2,324 crore (excluding undisbursed loan of Rs. 250 crore) to make the debt sustainable after implementation of this scheme. Over and above that, there is invoked BG of Rs. 250 crore and devolved LCs of Rs. 481 crore.

8.11.2 Additionally, the lenders will also need to reduce the interest rate in all these three Projects. In case of EPGL, lenders may have to reduce the debt further to make this specific TPP sustainable.


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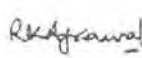

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8.12 Promoters' sacrifice

- 8.12.1 The promoters of all the three Projects have contributed significant amounts in these Projects since their inception. As represented by the Developers, promoters' contribution in CGPL till 31st March 2018 is Rs. 11,560 crore. The promoter contribution in APL Phase I/II/III and IV till 31st March 2018 is Rs. 13,320 crore and the promoter contribution in EPGL till 31st March 2018 is Rs. 3,283 crore. The Developers are not expected to get any return on their equity contribution from the existing PPAs. On an overall basis, the aforesaid losses translate to about 24 paise/kWh contribution calculated on normative basis over a period of 20 years. As already mentioned, the promoters of these Projects have incurred losses that are substantially higher than the liquidated damages payable by them for termination under the respective PPAs. This shows the bona fides on the part of the Developers to continue with the Projects. Further, the Developers are offering the un-tied capacity and the extended tenure, sacrificing the margins that could potentially have been made by the Developers by selling these capacities in the open market or other long term PPAs.
- 8.12.2 The accumulated losses of these three companies as submitted by the respective companies are around Rs. 21,249 crore till 31st March 2018 (CGPL – Rs. 8,176 crore, APMuL – Rs. 9,473 crore, EPGL – Rs. 3,600 crore). After considering the estimated losses during six months till 30th September 2018, these accumulated losses will be around Rs. 23,815 crore. These losses have been majorly funded by additional contribution brought by promoters.
- 8.12.3 At the present level of debt and equity, the normative capacity cost of these projects will be very high. The quoted fixed tariff of these projects is lower than the capacity cost (excluding RoE) as shown in the table below:

Name of Project	CGPL	APMuL	EPGL
O&M Cost	0.27	0.29	0.28
Secondary Fuel	0.03	0.03	0.03
Interest on Term Loan	0.36	0.53	0.78
Interest on Working capital	0.06	0.10	0.11
Depreciation	0.37	0.36	0.51
Capacity cost (excl. RoE)	1.09	1.32	1.72
Quoted Fixed Tariff	0.90	1.14/1.00	1.02
Shortfall in capacity cost	0.19	0.18/0.32	0.70


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As seen in the table above, the quoted fixed tariff is not sufficient for the capacity cost even after excluding return on equity. Further, the resolution scheme envisages discount of 20 paise per unit from the capacity charge, to be passed on as a discount in the energy charges. Therefore, the promoters are not in a position to earn any return on their equity invested in the capacities covered by these PPAs.

8.13 Benefit to the Stakeholders

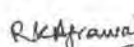
- 8.13.1 The proposed framework has been structured in such a way that it is beneficial to all the stakeholders. The Developers and lenders are going to get respite in future as this revised framework will make the Projects self-sustainable at least on a going forward basis. The Procurers and consumers will also get huge benefits in the form of increased availability of reliable supply of power, extension of PPA tenure, long term tie-up of free capacity at lower tariff, etc. Further, this resolution is necessary as closure of these Projects may force the Procurers to purchase relatively more expensive electricity from alternate sources which will eventually increase the burden on the end consumers. The resolution will also provide a positive impetus to the investment and economic climate in the concerned procurer States.

8.14 Benefit to Procurers/ Consumers

- 8.14.1 After the implementation of the scheme, these Projects will not get stranded due to unviable operations and the Procurers will not have to resort to costlier alternate power supply which is expected to increase substantially from the current level. From an analysis of prices discovered in recent Case I bids, it is clear that cost of power from alternate sources would be substantially more than the cost of procuring power from the Projects, even after including fuel cost as pass through. Further, even after allowing full pass through in coal cost, the Projects will be coming under the merit order for the States as the effective tariff is lower. However, in case the scheme recommended in this Report is not acceptable to any State, then such State may relinquish its tied-up capacity to facilitate the resolution.

- 8.14.2 Further, as per the scheme, the PPAs may be extended for a further period of 10 years and free capacity available in the Projects may also be tied up. With no under recovery in fuel cost, these Projects may be operated at higher availability. The net present value of the benefit to Procurers over the years is given as follows:


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S. No.	Name of Project	PPA extension	Higher availability	Free capacity
1	Coastal Gujarat Power Ltd.	5105	5555	--
2	Adani Power Mundra Ltd.	3896	4815	3776*
3	Essar Power Gujarat Ltd.	1219	1462	730
	Total	10,210	11,832	4,506

*Considering net free capacity of 556 MW (out of 806 MW) available for procurers

8.14.3 The developers' accumulated losses are estimated to be around Rs. 23,815 crore till 30th September 2018. Further, the loss in debt due to the further proposed discount in capacity charge of 20 paise per unit to be passed through in the form of a discount on the energy charge, is around Rs. 10,385 crore. Total sacrifice for promoters and lenders for these three projects is expected to be around Rs. 34,200 crore. The burden for the procurers due to higher energy tariff will get offset by the benefits of free capacity, PPA extension and enhanced availability as explained in the preceding section. The expected burden on the procurers at different levels of coal prices is given in the following table:

HBA Price (USD/MT)	73.6	90	100	107.8	110
Coal cost burden (20 year NPV @ 9%)	(11894)	(22885)	(29596)	(34853)	(36322)
Benefits			26548		
Extension of PPA tenure			10210		
Increased Availability			11832		
Free Capacity Tie-up			4506		
Total (Burden)/Benefit	14654	3663	(3048)	(8305)	(9774)

73.6 is three year average of HBA and 107.8 is the HBA index of August 2018

The burden of the procurers even at HBA Index of USD 110/MT is expected to around Rs. 9,774 crore. This is still lower than the total combined sacrifice of Rs. 34,200 crore borne by the promoters and lenders.

8.15 Alternate Source for Procurement

8.15.1 If these Projects are not available for generation in future due to their grave financial distress, the Procurers will have to resort to spot market for fulfilling their demand for electricity. During the four months from March to June 2018, GUVNL had to purchase 6749 MUs from high cost sources like power exchange, bilateral and spot LNG to fulfil their demand. The procurement pattern is shown as follows:

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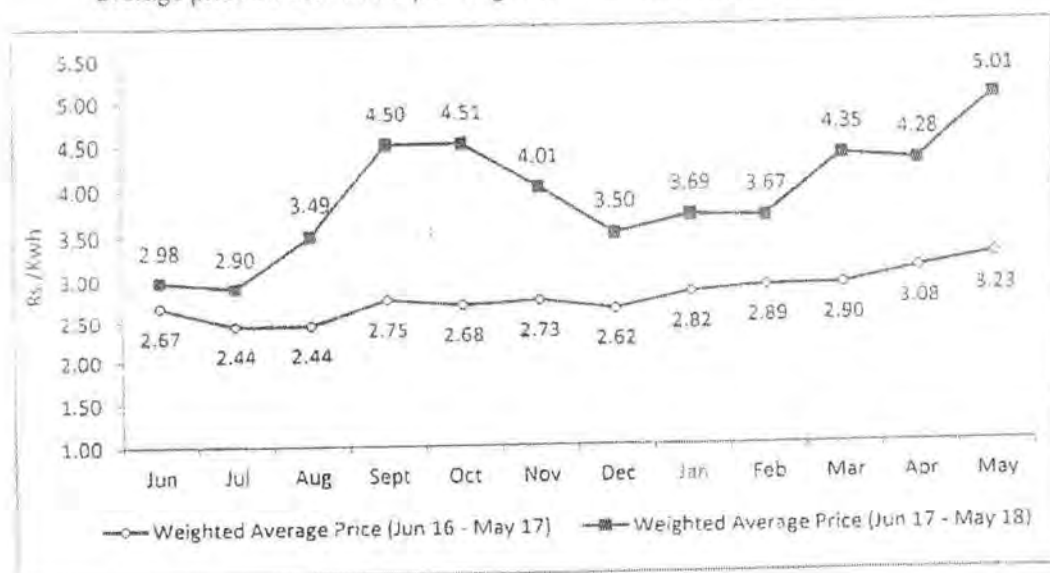
PK Agrawal
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Month (2018)	Power Exchange		Bilateral		Spot LNG		Total	
	MUs	Rs/unit	MUs	Rs/unit	MUs	Rs/unit	MUs	Rs/unit
March	1107	4.45	512	3.77	69	7.01	1688	4.35
April	1063	4.24	544	3.78	338	5.20	1945	4.28
May	833	4.77	399	3.09	363	5.45	1595	4.51
June	1168	4.18	251	2.83	101	5.89	1520	4.07

8.15.2 The average cost for this procurement was Rs 4.30/unit. This has resulted into high fuel surcharge for end consumers. The effective tariff as per the proposed resolution scheme is less than this value even at current coal prices. The power supply from these Projects will thus have greater reliability once the issues are sorted out.

8.15.3 The average price on IEX during April 2018 to July 2018 was also quite high. Monthly average price on IEX in the past is given in the following chart:



* Including transmission charges of 25 paise/unit

8.15.4 After including the transmission charges, the effective price may be in the range of Rs. 4.50 – 5.00/unit. After fuel pass through for these Projects, the effective tariff will be lower than this level. If electricity is procured from exchange at aforementioned price as compared to full pass through tariff as per the proposed scheme, incremental annual impact would be significant.

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8.15.5 Alternatively, the Procurers may go for fresh bidding of the PPAs which will be a time-consuming process/affair. Recently, bids were invited by PTC India Limited (PTC) for medium term PPA for three years. The price discovered during this bid was Rs 4.24/unit which may go up to Rs. 4.80 per unit after including transmission charges. At this price, the annual impact may be even higher. Price discovered for short term supply through Discovery of Efficient Electricity Price bidding is also very high for the next six months.

8.16 Benefit to Developers/Lenders

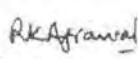
8.16.1 After the implementation of this package, these Projects will become economically viable. As a result thereof, the Developers will not incur further losses in these Projects. However, while EPGL has already become an NPA for the lenders, once the scheme is implemented, EPGL may also be resolved. Additionally, the other two accounts will also come out of stress. The lenders are already facing the situation of multiple stressed accounts in the power sector in the country. Resolution of these three Projects will be a big relief for the banks and this resolution would thus be in the overall interest of all the stakeholders.

8.17 Comparative Analysis of the recommendations provided by the Working Group Committee and the HPC

8.17.1 For the purpose of a better understanding and reference, a comparative analysis of the recommendations made by the Working Group Committee earlier and the HPC at this stage is set out below:

Parameters	Working Group Committee's Recommendation	HPC's Recommendation
Date of applicability for the resolution package	- Effective date was suggested as 1 st April 2017	- Prospective from the cut-off date of 15 th October 2018
Pass through of fuel cost	- Pass through on actual basis recommended - No ceiling cap on cost of imported coal envisaged	- On actual basis but with a ceiling of imported coal cost of 110 USD/MT - the Generators to carry the price risk beyond the capped ceiling. - The capped ceiling figure to be reviewed after five years on pre-determined principles.


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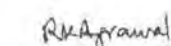

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Sharing of burden by the lenders	- Not considered and recommended	- Reduction of capacity charge to the tune of 20 Paise/ kWh on account of sacrifice by lenders
Sharing of profit from the Indonesian mines	- Recommended as per CERC order in proportion to shareholding in mines	- Considered and recommended to be passed on by the Developers to the Procurers. 100% of profits on coal consumed as per CERC order. Provided that the discount to be passed on behalf of mining profit shall be, subject always to a minimum discount of Rs 0.05/kWh (for APMuL) and Rs 0.15/kWh (for CGPL). This floor is corresponding to Seller's share of coal from the coal mine or coal consumed from its mine this year and will be adjusted if coal production/consumption from the mine reduces.
Tie-up of free capacity	- Recommended	- Recommended with the option available with the Procurers
Extension of PPA tenure by 10 years	- Recommended	- Recommended with the option available with the Procurers

8.17.2 The aforesaid analysis clearly shows that the HPC has considered various nuanced parameters primarily on the touchstone of consumer interest for the purpose of making recommendations on the resolution package which in essence ensures that all the stakeholders share the burden of resolution appropriately.



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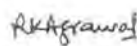

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CHAPTER - IX
ANALYSIS OF THE LEGAL FRAMEWORK FOR THE WAY FORWARD AND
IMPLEMENTATION OF THE RECOMMENDATIONS OF THE HPC

- 9.1 The present Chapter analyses the applicable legal and regulatory framework and sets out the various options available for the purpose of implementing the re-structuring and revival package recommended by the HPC. In this regard, at the outset, it is important to point out that the mandate given to the HPC is *inter alia* to recommend sustainable solutions for mitigating the hardships being faced by the Projects on account of the change in the Indonesian laws keeping always in mind the protection of consumer interest as the primary objective.
- 9.2 Before delving into the analysis of the applicable legal and regulatory framework which could be evaluated for implementing the resolution package, it is relevant to deal with certain earlier Indian experiences, where impact of critical changes in circumstances on the development and commercial viability of a project/relevant sector have been taken into account post execution of the long term contract/grant of licence and suitable mechanism has been devised to revive such projects. In addition, it is also relevant to analyse the views taken by other committees formed earlier at different levels by the Government to deal with stressed power sector assets as well as long term off-take contracts.
- 9.3 Precedents where recourse has been granted post execution of Contract/Licence - Airport Development Fee (ADF)
- 9.3.1 The levy of ADF by the Delhi International Airport Limited (DIAL) and Mumbai International Airport Limited (MIAL) in relation to the Delhi and Mumbai airports respectively is an example of one such situation where a long term concession was varied to mitigate the financial hardships faced by the developer/concessionaire on account of reasons beyond their control.
- 9.3.2 The airport operators were allowed to levy ADF in addition to the revenue streams available under the Operation, Management and Development Agreement (OMDA) and State Support Agreement (SSA). It is to be noted that the OMDA and SSA originally did not allow collection of development charges from passengers. However, DIAL and MIAL made the following submissions before the Ministry of Civil Aviation (MoCA):
- (a) DIAL and MIAL were unable to arrange the funds to the extent anticipated to meet increased capital cost of their respective airport project resulting into a substantial shortfall of capital, for reasons beyond their reasonable control;


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- (b) Lenders did not agree to extend any further debt for the airport projects as the then existing debt arrangement covered all possible revenue streams;
- (c) Shareholders of DIAL and MIAL represented that they had infused equity in the airport projects to the maximum extent and were not in a position to take additional equity exposure beyond already infused limit.

9.3.3 In light of the above, the MoCA allowed the introduction and levy of ADF from domestic and international passengers, being the ultimate consumers, to meet the deficit between the increased actual capital cost and the initially projected capital cost. In determining this, MoCA took into account the declining revenue stream of the developer/operator and the overall importance of the development of the project in the larger scheme of the country's developmental goals.

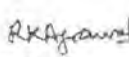
9.3.4 A clear analogy can be drawn between the underlying factors which led to the levy of ADF and the present scenario of sustaining the viability of the power projects, in the sense that on account of increase in Indonesian fuel costs (beyond the control of the parties), the revenue stream for such power project developers have been severely impacted. Therefore, the option of equitable sharing of the financial burden with fuel pass-through, is an appropriate mitigation measure against excessive hardship arising from the increase in coal price and simultaneously protecting consumers' interests through other financial re-structuring of the Projects.

9.4 Change in the Telecom Policy

9.4.1 The Gol announced the National Telecom Policy 1994 (NTP 1994) which defined certain important objectives, including availability of telephone on demand, provision of world class services at reasonable prices, ensuring India's emergence as major manufacturing / export base of telecom equipment and universal availability of basic telecom services to all villages. Further, the said policy also recognized that the required resources for achieving these targets would not be available only out of the Gol resources and concluded that private investment and consequently, involvement of the private sector was required to bridge the resource gap.

9.4.2 The Gol invited private sector participation in a phased manner from the early nineties, initially for value added services such as Paging Services and Cellular Mobile Telephone Services (CMTS) and thereafter for Fixed Telephone Services (FTS). Pursuant to this, the Department of Telecommunication, Gol in 1994 issued Cellular Mobile Telephone Services Licenses (CMTS Licenses), 2 (two) in each of the four Metro cities of Delhi, Mumbai, Kolkata and Chennai for a period of 10 years (1994


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Licenses). The 1994 licensees were selected based on rankings achieved by the bidders on the technical and financial evaluation based on parameters set out by the GoI in the tender and were required to pay a fixed license fee for initial three years and subsequently based on number of subscribers subject to the minimum commitment mentioned in the tender document and license agreement. There was no separate upfront charge for the allocation of spectrum to the licensees, who only paid annual spectrum usage charges, which was subject to revision from time to time and which under the terms of the license bore the nomenclature "license fee and royalty".

- 9.4.3 Subsequently, in December 1995, CMTS Licenses were granted based on auction for 18 (eighteen) telecommunication circles for a period of 10 (ten) years (1995 Licenses). Even in this leg of auction, there was no separate upfront charge for allocation of spectrum to the licensees who were only required to pay annual spectrum usage charges, which under the terms of the license bore the nomenclature "license fee and royalty" and was subject to revision from time to time.
- 9.4.4 Further, in 1995, bids were also invited for basic telephone service licenses (BTS Licenses) with the license fee payable for a 15 (fifteen) year period. Under the terms of the BTS Licenses, a licensee could provide fixed line basic telephone services as well as wireless basic telephone services. There was no separate upfront charge for allocation of spectrum and the licensees offering the basic wireless telephone service were required to pay annual spectrum usage charges, which under the terms of the license bore the nomenclature "license fee and royalty".
- 9.4.5 Though the NTP 1994 envisaged a higher extent of private sector participation, the GoI recognized that the result of the privatization had not been entirely satisfactory. While there had been a rapid rollout of cellular mobile networks in the metros and states with then currently over 1 (one) million subscribers, most of the projects were facing financial problems. The main reason, according to the cellular and basic operators, was the fact that the actual revenues realized by the projects were far short of the projections and the operators were unable to arrange financing for their projects. As a result, some of the targets as envisaged in the objectives of the NTP 1994 had remained unfulfilled. The private sector entry had been slower than what was envisaged in the NTP 1994.
- 9.4.6 The GoI viewed the above developments with concern as it would have adversely affected the further development of the sector and recognised the need to take a fresh look at the policy framework for this sector.
- 9.4.7 As a result, on 01st April 1999, the New Telecom Policy 1999 (NTP 1999) was brought into effect on the recommendation of a Group on Telecom (GoT) which had been


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constituted by GoI. NTP 1999 also provided that BTS (Fixed Service Provider or FSP) Licenses for providing both fixed and wireless (WLL) services would also be issued for a period of 20 (twenty) years on payment of a one-time entry fee and licence fee in the form of revenue share and prescribed charges for spectrum usage, appropriate level of which was to be recommended by TRAI¹¹. The licensees both cellular and basic were also required to pay annual spectrum usage charges. Existing licensees were required to pay the same percentage of revenue as annual license fee, as applicable to the new licensee(s) in the same service area. The licence fee payable upto 31st July 1999, under the previous licence regime was to be treated as the entry fee for the existing operators.

9.4.8 Consequently, based on NTP 1999, a migration package for migration from fixed license fee to one time entry fee and licence fee based on revenue share regime was offered to all the existing licenses on 22nd July 1999. This came into effect on 01st August 1999. Under the migration package, the licence period for all the CMTS and FSP licensees was also extended to 20 (twenty) years from the date of issuance of the licenses.

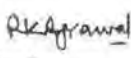
9.4.9 Thus, effectively the terms and conditions of the existing contracts and licenses under which the private telecom operators have been operating were changed mid-stream. In the present scenario, an analogy can be drawn where the changes in the PPA could be brought out to save the Projects in the overall interest of the consumers.

9.5 Comparative Changes in the Bid Framework

9.5.1 Even in the power sector, changes have been brought in the policy for procurement of power through the competitive bidding route from time to time. In 2005, the Ministry of Power introduced the Competitive Bidding Guidelines under Section 63 of the Electricity Act which envisaged Case-I bidding process in terms of which the bidders were required to identify the source of fuel and quote the energy charge subject to revision in terms of change in law / force majeure provisions under the PPA to be executed with the procurers. Based on the framework, few PPAs have been executed. However, number of litigations related to quality, availability and change in law/ force majeure have cropped up associated with the fuel cost. Further, recognizing the issues and complexity involved in the fuel price and procurement process, the bidders were not forthcoming for making further investments by participating in future bid processes. This had led to a situation wherein the basic objective of the Electricity Act to introduce competition along with recovery of reasonable tariff was being defeated.

¹¹ The Telecom Regulatory Authority of India Act, 1997 was enacted and the Telecom Regulatory Authority of India (TRAI) was established.


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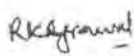
9.5.2 Since, the provisions of Competitive Bidding Guidelines were unable to provide essential thrust for procurement of power through the competitive route, the Central Government came out with changes in the bidding framework in 2013 in order to mitigate some of the inherent project risks, especially in relation to long term fuel price risk. Accordingly, in the revised bidding framework, ostensibly recognising the problems faced by earlier projects such as the three subject Projects, fuel cost was made a pass-through. Further, as mentioned earlier, the draft PPA for new UMPP bidding documents (i.e., Cheyyur UMPP) provides that the change in law or taxes occurring in the jurisdiction where mine is situated (such as Indonesia) shall be deemed to be a change in law event. This in effect covers the change in law or taxes affecting the source country. Though the changes have been brought, such changes were applicable only for future bidding and projects. Therefore, while these policy changes were positive, unfortunately, they were applied prospectively and the existing developers having PPAs as per the earlier policy, could not get the benefit of such changes.

9.5.3 Though a clear analogy can be drawn between the changes brought in the telecom sector and in the power sector, the implementation framework has left the existing PPA holders at risk which has resulted into these Projects becoming stressed assets. As is evidently clear from the analysis carried out in the earlier chapters of this Report, it is indisputably in the interest of the consumers that the Projects under consideration be allowed to continue to operate in a financially sustainable manner. Not only the Developers, but the Procurers, lenders and the consumer representative groups have also accepted that these Projects are efficient and need to continue to operate in a sustainable manner. It is also indisputable and has been accepted by all the stakeholders, including the procurers and consumer representatives, that any alternative arrangement of power supply to replace these Projects in case these Projects are forced to shut down, would result in increase in the cost of power supply and tariffs.

9.6 Analysis of the Thirty-Seventh and Fortieth Report presented by the Standing Committee on Energy

9.6.1 The recent reports issued by the Standing Committee on Energy (SCE) are also relevant in the context of the present Report as they specifically deal with the issues pertaining to stressed generating assets. In addition, the issue as to whether it would be desirable to explore revival of stressed power generating assets such as these Projects before they are referred to NCLT proceedings under the IBC, has been considered in these reports in view of the fact that various power projects are under the stressed category and are on the verge of being referred to NCLT.


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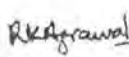

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- 9.6.2 This issue gains further relevance in the context of the present Report as the proposition of the lenders approaching NCLT for resolution of the present issues pertaining to these Projects under the IBC in contrast to finding ways and means to resolve the problems pertaining to these Projects, is being oft repeated at the behest of two of the consumer representative groups i.e., Energy Watchdog and Mumbai Grahak Panchayat. It has been consistently highlighted by these consumer groups that initiating the process as laid down under the IBC would be the most effective option and would be well within the ambit of directions given in the Energy Watchdog Judgment. The HPC would like to deal with this proposition squarely by evaluating the merits and de-merits of this option.
- 9.6.3 In this regard, it is relevant to highlight that the SCE in its 37th Report on 'Stressed/Non-performing Assets in Electricity Sector' dated March 2018 (37th SCE Report) recommended that *an appropriate task force be formed/constituted to specifically look into the problems of the IPPs with a view to bring them out of NPAs/Stressed Asset mire so that the power generation in the country is given a fillip and the vision of power for all 24x7 is achieved sooner than later.*
- 9.6.4 Further, in the 40th report of the SCE dated August 2018 (40th SCE Report), the SCE primarily evaluated the 'Impact of RBI's Revised Framework for Resolution of Stressed Assets on NPAs in the Electricity Sector'. The SCE observed in this report that in the power sector, factors such as coal linkage related issues, non-availability of fuel, delay in land/environment clearances, inability of promoters to infuse additional funds etc., coupled with the weak financial health of the discoms have led to substantial increase in receivables of borrowing groups i.e. the power generators, thereby impacting their liquidity position. The SCE notes that in spite of these differentials across various sectors having been acknowledged, uniform principles of resolution have been introduced across the sectors. This has not necessarily addressed the sector specific factors of the electricity sector. It has thus been recommended that such a sector agnostic approach may be replaced by more sector specific measures.
- 9.6.5 The new regime under the Revised RBI Guidelines essentially dispenses away with the erstwhile parameters/criteria for classification of NPAs and stressed assets, and any failure beyond the duration of the SMA would directly and immediately invoke the provisions of the resolution plan, making revival extremely difficult. In this regard, it is relevant to set out the relevant portion of the 40th SCE Report:-

"6. The Committee note that the Revised Framework of RBI provides for early identification and reporting of assets, implementation of resolution plan, implementation condition for resolution plan, timelines for large accounts to be


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referred under IBC etc. It inter-alia stipulates that the lenders shall identify incipient stress in loan accounts immediately on default by classifying stressed assets as Special Mention Accounts as per the prescribed criteria. It also prescribes that all lenders must put in place Board-approved policies for resolution of stressed assets under this framework, including the timelines for resolution and as soon as there is a default in the borrower entity's account with any lender, all lenders – singly or jointly – are asked to initiate steps to cure the default."

- 9.6.6 It was thus observed by the SCE that stringent implementation conditions for the resolution plan that have been set out in the Revised RBI Guidelines would result in every stressed project of the power sector ultimately being referred to the NCLT. It was further observed by the SCE that :-

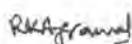
"9....The Committee understand the spirit of the Guidelines of RBI, but its implementation on the ground is far from being real and workable. The Committee find that once the account is classified as NPA, even if the project is functioning and generating power, Banks do not support them for working capital. Despite Reserve Bank of India's categorical stand that Banks have never been asked to stop financing these projects, the banks maintain that once projects are specified as NPA, they cannot give any more finance. This, according to the Committee, is a catch 22 situation, so clear and conclusive instructions are required in this regard. The Committee, therefore, recommend that to salvage the commercially operational stressed projects, necessary instructions should be issued regarding the availability of working capital or other financial requirements of the projects that will help them to float and become standard again"

- 9.6.7 In light of the above, the SCE noted that the Revised RBI Guidelines have led to a situation where insolvency proceedings have been taken to be *fait accompli* by the bankers, who prefer the option of insolvency as it enables them to shed their responsibility and avoid any manner of accountability.

- 9.6.8 It was further recommended by the SCE that it must be taken into consideration that there is a need to preserve, protect and conserve these stressed assets as they are national assets, and that as such, the SCE is not in favour of a procedure that emphasises more on dissolution than on resolution of the stressed assets. Moreover, it was observed that ultimately, the consumers would have to bear the brunt of the Revised RBI Guidelines. It was thus emphasised by SCE that the efforts and consequences of reviving the power plants would definitely be less burdensome and more fruitful, as compared to the enormity of the consequences of approaching the NCLT. The relevant excerpt of the



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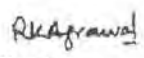
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40th SCE Report in this regard is set out below:-

"14...The Committee are of the view that two major important contexts should be taken into consideration - one is the need for a national energy security in the context of managing the transition in the Electricity Sector and the other is the need to preserve, protect and conserve these stressed assets as these are national assets at the end of the day. There are doubts that all the stressed power projects would ultimately be referred to NCLT wherein after they will be auctioned at throw away prices. The Committee are not in favour of such procedure which is more for dissolution rather than resolution of stressed assets. The Committee caution about the intrinsic weakness of the proposed system because taking a cue, the deep pockets may enter the fray, stake their bids, pocket the projects and later when the demand for the electricity goes up, they will sell these projects at high prices and siphon off the money without doing anything. At the end, it will be the public which have to take the hit which has been conveniently facilitated by the revised framework of the RBI. The Committee feel that even the under construction projects should not be put under the resolution process as the construction of a power plant begins only after the completion of lot many complicated procedures and formalities and hence in addition to the money, all the efforts invested on these formalities will also go in waste. The Committee therefore, strongly recommend that with a view to ensure power security and also to avoid wastage of collective efforts, a new framework should be put in place which safeguards the transient sagging situation of the Electricity Sector and provides the much needed stimulus.

15... During the currency of resolution plan, the assets can be extremely devalued resulting into loss of public money in the form of HAIR-CUT. Similarly, NCLT proceedings will also result in similar situation albeit adopting a quasi judicial approach. The Committee feel that the HAIR-CUT as envisaged under the framework is nothing but a deep economic wound with festering ramifications. The functioning and workload of NCLT may create unpredictable situations, the consequences of which can be quantified in monetary terms only after the finality of the issue. But the factors associated with the process are not infallible and thus the consequences may be enormous. If these resultant consequences of Resolution and NCLT process are put together and weighed against the efforts and consequences of reviving the power plants of whatsoever nature and character, the Committee are sure the latter will definitely be the less burdensome and relatively more fructuous for the Economy and the Nation. This is more so when there is no ceiling on the proposed HAIR-CUT which is a euphemism for front and deep economic


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wound. The Committee therefore, recommend that the power sector, being the nucleus for growth of Economy and development of the Nation, should be protected from this temporary phase of uncertainty so that these Power Plants can be put to use at the time of need which is certain to happen sooner than later."

9.6.9 It was thus concluded by the SCE that revival of stressed power plants is of utmost importance and should be prioritised over merely mechanically referring the same to the NCLT process under IBC. Revival of the stressed assets should be done with a **focus on revival and revival only**. Placing thrust on liquidation as per the SCE will only nullify all the efforts that have been made so far and kill the zeal that is required to address the present problem.

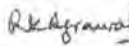
9.6.10 The abovementioned observations of the SCE make it abundantly clear that revival of the Projects at this stage itself would yield more fruitful results, as against opting for resolution by way of an NCLT referral. In light of the same, the present options for resolution at this stage itself of the issues being faced by the Projects (and their viability thereto) are being put forth by virtue of the present report.

9.7 Kelkar Committee Report

9.7.1 Before evaluating the options, it is also important to refer to the findings of the Kelkar Committee Report on revisiting and revitalising the Public Private Partnership (PPP) model of infrastructure dated 19th November 2015 (Kelkar Committee) which was constituted pursuant to the Finance Minister's announcement on revising the PPP mode of infrastructure development in his budget speech, 2015-16. Terms of reference of the Kelkar Committee *inter-alia* included (i) reviewing the experience of PPP policy, including the variations in contracts and the difficulties experienced; and (ii) analysing the risks involved in PPP projects in different sectors and the framework of risk sharing between the project developer and the government.

9.7.2 The Kelkar Committee noted that with the current demographic transition, and the consequent growing need for better infrastructure, it is important for India to mature its current model of PPPs. The Kelkar Committee also noted that PPPs have the potential to deliver infrastructure projects better and faster and that currently, PPP contracts focus more on fiscal benefits. The committee recommended that the focus should instead be on service delivery for citizens. The said report also emphasized on involvement of a private partner to leverage financing and improve operational efficiencies. The Kelkar Committee also noted that inefficient and inequitable allocation of risk can be a major factor leading to failure of PPPs. The Kelkar


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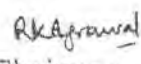
Committee also recommended that a quick, efficient, and enforceable dispute resolution mechanism must be developed for PPP projects. The most important observation was that since infrastructure projects span over 20-30 years, a private developer may lose bargaining power because of abrupt changes in the economic or policy environment. In view of this, the Kelkar Committee recommended that the private sector must be protected against such loss of bargaining power. This could be ensured by amending the terms of the PPP contracts to allow for renegotiations.

- 9.8 In view of the discussions in the preceding chapters as well as the discussions herein above in the present chapter, there is no doubt that salvaging these Projects is in the consumer interest and in that light, the options are being considered herein below.

9.9 Discussion of Framework & Options

- 9.9.1 The Hon'ble Supreme Court in the Energy Watchdog Judgment has merely interpreted the contractual provisions of the existing PPAs. The said judgement does not preclude the Government from finding and implementing a commercial and financial rehabilitation package, even if that entails amending the contractual provisions contained in the PPAs subject to compliance with the applicable legal and regulatory provisions. It is the procedure and manner in which the PPAs are to be amended within the legal and regulatory framework, that needs to be evaluated. Accordingly, the eventual financial and commercial re-structuring package that is accepted by the procurer State Governments will need to be thereby incorporated as revised contractual provisions into the PPAs and such amendments to the PPA will need to be approved by the Appropriate Commission.
- 9.9.2 Quite apart from the fact that the PPAs contain provisions that enable the parties to amend the contract through mutual agreement, it is trite to note that the law of contracts in India always permits the parties to a contract to amend or modify their agreement by mutual consent. The issue to be addressed here is not the mechanism between the parties to amend the PPAs, rather the entire decision making process for accepting the financial and commercial re-structuring package by the procurer State Governments, implementing such decision through the procurer utilities including by effecting appropriate amendments to the PPAs, and eventually persuading the Appropriate Commission to accept these amendments to the PPA, thereby bringing finality to the execution of the resolution package.
- 9.9.3 Once the procuring State Governments decide to implement the financial and commercial re-structuring package/rehabilitation package, the options for effecting the same, including consequential amendments to be carried out to the PPAs, are discussed hereinbelow.


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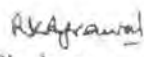
9.9.4 In view of the foregoing, the HPC considered diverse options and the inescapable and perhaps the only durable option for implementing the rehabilitation package appears to be through a decisive policy intervention by the Government. Therefore, the rehabilitation plan, which may also require certain amendments to the PPAs, to salvage these Projects, should be effected and implemented through promulgation of appropriate policy decision of the State Governments. It is clear, that regulatory approvals to the extent of amendments being made to the PPAs, would be required.

9.10 Rehabilitation Package to be implemented pursuant to a policy decision of the State Governments, which may also require certain amendments to the PPAs

9.10.1 It is settled law that the Governments have the power and authority to promulgate policy to deal with, *inter alia*, macro-economic situations as they may occur, in the State as well as for administration of the State. In the current scenario, there are more than adequate grounds and macro-economic considerations available to enable the State Governments to take appropriate policy decision to implement the rehabilitation package. Some of the significant economic considerations before the State Government to justify exercise of such policy making powers in the present facts, include:

- (i) The stated objectives of the diverse policies of the Government of India, to achieve universal power supply to each and every household on a 24x7 basis, including the houses that have been and are being given connectivity under the 'Saubhagya Scheme', at affordable prices;
- (ii) Ensure that there is no load shedding;
- (iii) Arrangement of optimal mix of energy to meet the 24x7 demand;
- (iv) Ensure that all efficient and inexpensive power is procured from the efficient power plants and issues, if any, with such efficient plants be resolved so that such assets are not left stranded, especially since the alternative scenarios are neither economically nor commercially desirable or viable;
- (v) Larger macro-economic considerations that apply to the State, including preserving jobs and economic activities that these Projects support directly and/or indirectly; and
- (vi) Rehabilitation of these Projects is in the larger interests of electricity consumers in the States.

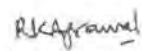

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- 9.10.2 The *first step* would be for the State Governments to take a policy decision as above, for rehabilitation of thermal projects to achieve the stated objectives, as above. As part of this step, the relevant State Government(s) may issue appropriate directives to their Discoms, on the basis of the same considerations as discussed in para 9.10.1 above. In addition, the directive to Discoms may also state that the Discoms must ensure adequate and efficient supply of energy, on the least possible tariff and at the same time, maintain their respective energy basket in a manner that has a mix of power sources that addresses all issues including availability of reliable base load power generation, optimum utilisation of existing resources and installed generation capacities etc.
- 9.10.3 The underlying directive by the State Governments will be that the Discoms should explore all the options of getting cheaper power and while doing so, consider whether the same can be done not only from fresh sources of power but also by way of facilitating and promoting the revival and rehabilitation of existing thermal capacities already installed in the State, that may have, for diverse reasons beyond their reasonable control, become financially stressed and economically unviable to be operated on a sustainable basis.
- 9.10.4 This would further help the Discoms as such directive/ will require them to proceed with taking necessary steps to salvage these three efficient imported coal Projects. In addition, the advisory will also assist the respective SERCs later in approving the procurement of additional capacity and increased power procurement cost from these projects while approving the Annual Revenue Requirement of the respective Discoms.
- 9.10.5 The *second step* would require specifying the amendments that are required to be made to the PPAs, in terms of the policy direction.
- 9.10.6 The *third step* would envisage the parties jointly approaching the CERC/GERC in light of the policy decision by their respective State Governments, with a common petition seeking approval of the amendments to the PPAs.
- 9.10.7 It is to be noted that the aforesaid policy directions of the State Government would have the force of law, since it is settled law, including as articulated by the Hon'ble Supreme Court in the Energy Watchdog Judgement, that policy has the force of law subject to the well settled legal principles to test its legality and enforceability. It is therefore, also recommended that the Government Resolution be issued by each State Government for effecting the policy for implementing the rehabilitation package, including to the extent necessary, allowing consequential amendments in the PPAs. Further, the said Government Resolution should clearly articulate and state that the decision to amend PPAs is a policy decision of the State Government and provide elaborate reasons in


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relation thereto. Moreover, the petition to be filed before the CERC seeking approval of the amendments to the PPAs should provide in greater detail the reasons on the basis of which the said decision to allow amendment of PPAs has been taken as a policy decision by the relevant State Government and should also be supported with the copy of Government Policy Resolution.

9.10.8 The decision to implement the rehabilitation package and make consequential amendments to the PPAs would constitute actions taken pursuant to the aforesaid policy direction of the State Governments. In this regard, it is important to keep in mind that the Government of Gujarat and the State Bank of India had made references to the Central Government for early resolution of the issues related to the imported coal based projects situated in Gujarat. In response, the Ministry of Power by way of its letter dated 13th April 2018 has advised Government of Gujarat that it being the lead procurer, may take further steps on behalf of other power procuring states to resolve this issue. In view of this, Governments of Gujarat, Maharashtra, Haryana, Punjab and Rajasthan could take in consultation with each other a policy decision to protect the interest of electricity consumers in their respective States by ensuring sustained operation of the efficient plants such as the stressed imported coal based projects.

9.11 Summary of Analysis

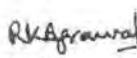
9.11.1 It is also noteworthy that the GR constituting this HPC is pursuant to a policy directive and accordingly, the implementation of the HPC recommendations by the respective procurer State Governments, would also constitute policy directions. In light of this, the preferred option would be the implementation of the rehabilitation package, formulated by the State Governments on the basis of the HPC recommendations, pursuant to an appropriate policy direction of the State Governments, which would include effecting appropriate consequential amendments to the PPAs.

9.11.2 The aforesaid policy directive would be effected through the respective procurer utilities/Discoms of the States, making necessary amendments to the PPAs as a consequence of such policy direction and submitting the amended PPAs, incorporating the references to the policy decision of the State Governments, to the CERC for approving the amendments to the PPAs.

9.12 Exercise of Regulatory Power by Appropriate Commission to Approve Amendment in the PPAs

9.12.1 Under this chapter, it is also relevant to discuss the scope and possibility of exercise of regulatory power by the Appropriate Commission to approve amendments in the PPAs in view of the Hon'ble Supreme Court's Energy Watchdog Judgment.


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9.12.2 The Hon'ble Supreme Court in the aforesaid judgment clearly held that the regulatory power of the CERC is a general one since it is impossible to state that when the CERC adopts a tariff under Section 63 of the Electricity Act, it functions independently of its general regulatory power under Section 79(1)(b). Thus, the power of the CERC to regulate tariff has been reiterated by the Hon'ble Supreme Court. Therefore, the general regulatory power of the CERC under Section 79(1)(b) is indeed the source of the power to regulate which does include the power to determine or adopt tariff. The important sentence in paragraph 19 of the Energy Watchdog Judgment is, ".....Section 79(1)(b) is a wider source of power to regulate tariff....". However, the Hon'ble Supreme Court also observed that the CERC must act in accordance with the relevant guidelines in that case, issued by the Central Government.

9.12.3 Further, it is a well-known fact that the matter which came up before the Hon'ble Supreme Court was in the context of the unamended agreement/PPAs and the power to amend the PPAs was not in question. Thus, the power to amend the agreement has not been dealt with by the Energy Watchdog Judgment.

9.12.4 In view of the above, it may be safely concluded that CERC is not precluded in exercising its statutory powers under Section 79(1)(b) to grant approval to the amendment in the PPAs including in terms of the specific provision in the PPAs which itself envisages the amendment to the existing PPA by the parties pursuant to approval of the Appropriate Commission, where necessary. For reference, the relevant clause dealing with amendment from one of the PPAs (i.e., PPA between APL and Haryana Discoms) is set out below:

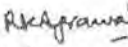
"18.1 Amendment

This Agreement may only be amended or supplemented by a written agreement between the Parties and after duly obtaining the approval of the Appropriate Commission, where necessary"

9.12.5 The CERC may, for the reasons recorded in the State Government policy directions, approve the amendment to the PPAs, with or without further modifications as it deems fit.

9.12.6 In any event, keeping the Projects viable in public interest is a fundamental facet of exercise of regulatory powers. If the Projects become financially unviable and face liquidation, obviously, the Procurers or the CERC is not powerless. In such cases, it is necessary to consider the exercise of power under the relevant provision envisaging amendment in the PPA, subject to the condition that the same is undertake on a rational basis. The CERC is well within the amplitude of its regulatory powers under Section


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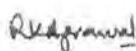

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79(1)(b) to allow amendment in the PPAs based on the financial and commercial restructuring package agreed by the parties to the PPAs.

9.12.7 In context of EPGL's TPP, the aforesaid analysis also holds true in case of the State ERC, i.e. the GERC which can exercise its power under Section 86(1)(b) of the Electricity Act, which corresponds to the aforesaid Section 79(1)(b) of the Electricity Act.

9.12.8 A further element that is specific to CGPL, may also be noted, in the context of effecting amendment to their PPAs. In terms of Article 2.5.1 read with Article 2.5.3 and Schedule 12 of the CGPL PPA, in the event that all the Procurers do not jointly agree to amending the PPA/ entering into Supplemental PPA, a decision to amend/ supplement can be made effective by the Majority Procurers. The decision of the Majority Procurers shall be binding on all other Procurers. Accordingly, the amendments may be made effective for all the Procurers, if the Majority Procurers agree to such amendment.


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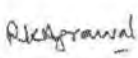

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CHAPTER - X

CONCLUSION AND RECOMMENDATIONS

- 10.1 The preceding chapters of this Report including the preamble clearly set out that the genesis and basis of the HPC's entire analyses and recommendations are premised on serving the consumer interest. HPC while undertaking the analyses and making the recommendations in this Report has the 'consumer interest' paramount and this has been the focal point of their approach.
- 10.2 On the touchstone of 'consumer interest', it can be safely concluded that these Projects need to be salvaged. Sustainable operation of these Projects is of critical importance, essentially due to the fact that these Projects are instrumental in fulfilling the increasing demand of the procurer States. Consumer interest thus lies in ensuring that reliable and relatively inexpensive power is secured in a sustainable manner to meet current and future demand projections. This in turn would also ensure that the economic growth of the procurer States is not vitiated.
- 10.3 In contrast, if these Projects are not salvaged, consumer interest will be adversely affected on account of various reasons, gist of which are set out below:
- (i) the capacities from these Projects will have to be replaced from alternative sources and therefore, prices will further go up in view of the clear co-relation between demand and supply;
 - (ii) the cost of replacement power at today's market price would be higher;
 - (iii) setting up new projects in any event will be more expensive and will take another 4-5 years to commence supply;
 - (iv) increase in cost on account of procurement of power from inefficient and old plants which would also have reliability issue;
 - (v) resorting to load shedding on account of difficulties associated with complete replacement of power from these Projects; and
 - (vi) any insolvency or liquidation of these Projects would hardly address the issues of power supply.
- 10.4 Therefore, ensuring sustainable operation of these Projects would only be possible by making them economically viable. It is however evident that the economic viability of these Projects has been severely impacted due to the promulgation of Indonesian Regulations 2010, which led to an unprecedented rise in the price of coal. This situation


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has further been exacerbated in view of the fact that the Generators could not pass the uncontrollable increase in the fuel prices on the Procurers under the PPAs.

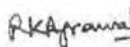
10.5 In light of the findings as given by the Hon'ble Supreme Court in the Energy Watchdog Judgment, this HPC has sought to recommend solutions to mitigate the hardships being faced by the Generators only on the basis of 'consumer interest' which has been discussed at length in Chapter - VII. This primarily entails undertaking financial and commercial re-structuring which is based on the premise that the burden of hardships will have to borne by all the stakeholders. The details of financial and commercial restructuring be followed in terms of Chapter - VIII which primarily envisage the following:

- (i) Reduction of capacity charge on account of sacrifice by lenders;
- (ii) Past losses to be borne by Developers and the financial resolution plan being applicable from a prospective cut-off date of 01st October 2018;
- (iii) Option for extension of PPA tenure by another period of 10 years after the completion of the PPA tenure of 25 years;
- (iv) Offer for tie-up of free capacity; and
- (v) Sharing of profit from the Indonesian mines.

10.6 The financial and commercial resolution package that is accepted by the procurer State Governments will need to be incorporated as revised contractual provisions into the PPAs and such amendments to the PPA will need to be approved by the Appropriate Commission.

10.7 The option recommended for amending the PPAs are discussed in detail in Chapter IX. The HPC accordingly recommends the implementation of the said option. Though the steps to be taken under this option are set out in detail at Section 9.10 of this Report, it is imperative to mention that as part of this option, a directive may be issued by the State Government(s) to their Discoms. The said directive would primarily state that the Discoms have to ensure adequate supply of energy on the least possible tariff and while doing so, they should consider whether the same can be achieved by way of facilitating and promoting the revival and rehabilitation of existing thermal capacities already installed in the State, that may have, for diverse reasons, become financially stressed and economically unviable to be operated in a sustainable basis.


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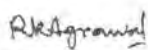

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10.8 Draft Supplemental PPA for effecting Amendment to the PPAs

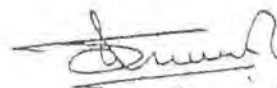
10.8.1 The HPC recognises that the economic, financial and commercial components of the recommendations of this HPC, as set out hereinabove, may be susceptible to conflicting interpretations. Accordingly, to ensure effective and accurate implementation of the HPC's recommendations, the HPC has crafted a model draft of the supplemental PPA for amending the PPAs of the Projects, incorporating the rehabilitation package in detailed legal and contractual language. It is reiterated that this model Supplemental PPA incorporates the intention and detailed application of the HPC's recommendations for the rehabilitation of the concerned Projects.

10.8.2 With the above premise, the HPC stipulates that the model draft of the supplemental PPA for amending the PPAs of the Projects, which is annexed hereto as Annexure - VI shall be taken as an integral part of this HPC report and shall be applied for interpreting the true intent, meaning and application of the detailed terms of this HPC Report.

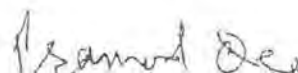
1) Hon'ble Mr. Justice R K Agrawal,
Former Justice of Supreme Court


Chairman

2) Shri S S Mundra,
Former Deputy Governor, RBI


Member

3) Dr. Pramod Deo
Former Chairman, CERC


Member

Annexure - I
(Refer paragraph A, Preamble)

Formation of High Power Committee for finding solutions in respect of power supply by Imported Coal based Power Projects to the procurer States, for reviewing the report of Working Group and obtaining the recommendations of such High Power Committee.

Government of Gujarat,
Resolution No.CGP-12-2018-166-K,
Energy and Petrochemicals Department,
Sachivalaya, Gandhinagar.
Dated the 3 JUL 2018

Ministry of Power, Govt. of India has notified National Tariff Policy in 2006 mandating procurement of power by Distribution Companies on long term basis from Private developers only through competitive bidding process. Subsequently, Power Finance Corporation, nodal agency of Govt. of India had initiated competitive bids for setting up Ultra Mega Power Projects with an objective to ensure availability of power to all. Pursuant to Bidding process initiated by PFC, Coastal Gujarat Power Ltd. (SPV of Tata Power), was selected for setting up of 4000 MW imported coal based UMPP at Mundra, Gujarat. The procurers of the Mundra UMPP are State Distribution Utilities of Gujarat, Maharashtra, Punjab, Rajasthan & Haryana.

Gujarat Urja Vikas Nigam Ltd, for & on behalf of Gujarat State Distribution Companies, invited bids for procurement of long term power through tariff based competitive bidding process. GUVNL has signed following Power Purchase Agreements (PPA) on long term basis through competitive bidding:

- i. Coastal Gujarat Power Ltd. - 1805 MW share - PPA dated 22.4.2007 at levelised tariff of Rs. 2.26/unit
- ii. Adani Power Ltd. Bid 1 - 1000 MW - PPA dated 06.02.2007 at levelised tariff of Rs. 2.89/unit
- iii. Adani Power Ltd. Bid 2 - 1000 MW - PPA dated 02.02.2007 at levelised tariff of Rs. 2.3495/unit
- iv. Essar Power Gujarat Ltd. - 1000 MW - PPA dated 26.02.2007 at levelised tariff of Rs. 2.40/unit

In addition to above, other States have allocation from Mundra UMPP i.e. Maharashtra (780 MW), Punjab (475 MW), Rajasthan (380 MW) & Haryana (380 MW) while in case of Adani Power, Haryana Distribution Utilities are having PPA for 1424 MW.

In view of the promulgation of Indonesian regulations about the pricing mechanism of coal and resultant financial implication of the same on cost of generation of power, the Developers i.e. M/s. APL and M/s. CGPL filed petitions before Hon. CERC and M/s. EPGL had approached Hon. GERC for seeking relief from the hardship by way of revision in tariff. An Expert Committee was formed in respect of the directives of Hon. CERC to compute relief that can be permitted in case of CGPL/APL. Based on the Expert Committee's opinion, Hon. CERC gave its order in February-2014 (supporting increase in tariff) and subsequently, APTEL gave its order in April-2016 in the matter allowing relief considering Change in Indonesian Regulation as "Force Majeure", while waiting for some clarity to emerge, Hon. GERC had kept its order reserved in case of EPGL. The litigation process continued for a long period and judgment was delivered by the Hon. Supreme Court on 11th April, 2017 in case of CGPL/ APL, ruling out increase in tariff.

Due to non-allowance of any relief on account of promulgation of Indonesian Coal Regulation as a "force majeure" or "Change in Law", the States of Gujarat, Maharashtra, Rajasthan, Haryana and Punjab are in receipt of numerous representations from the power generators that they are suffering from huge financial losses and have shown their inability to honour the PPA obligation with full capacity. They have represented that this situation has not only wiped out their net worth but they are also unable to service the bank debt without further capital infusion.

On the other side, the States having total tied up capacity of 8224 MW (Gujarat 4805 MW, Haryana 1804 MW, Punjab 475 MW, Rajasthan 380 MW, Maharashtra 760 MW) with such power procurers, are facing the shortage of Power available at levelised tariff. Resultantly, all these States are required to purchase/generate the power at higher cost/rates. Thus, due to prevailing conditions the consumers of these States are to be put to pay much higher cost of power.

It is also pertinent to mention here that after the decision of the Hon. Supreme Court of India, these Power Project Developers either do not supply or supply less quantum of Power than as agreed in the PPA for sustainability of their financial resources. Due to non-availability of power under these PPAs, there is a huge financial implication on procurer States in respect of power purchased/generated at the cost much higher than the PPA rates which is putting these States under heavy stress.

Subsequently, on referring the matter to Govt. of India by Govt. of Gujarat for early resolution of issue, Ministry of Power, Govt. of India convened a meeting on 20th June 2017 for discussing the above issue wherein it was

decided to constitute a Working Group for evaluating the options for ensuring sustained operations of stressed imported coal based generation projects. Working Group was formed comprising of representatives from Procurers States and State Bank of India (being lead banker). SBI circulated the Report of Working Group on 10 January 2018 to all the Procurer states after undertaking due diligence on Technical, Legal & Financial aspects of above projects. Further, SBI has requested to form a High Power Committee for reviewing the Report and resolutions of issues. Pursuant to series of meetings & discussions and as advised by Ministry of Power, Govt. of India, it was decided by all the procurer States that the Gujarat being a lead procurer should initiate action for resolution of the issues related to these projects.

Therefore, a High Power Committee (HPC) comprising of Individuals with proven expertise drawn from Judiciary, Banking and Power Sector (with Regulatory Knowledge) is needed to be formulated to review the Report of the Working Group of the lenders and suggest means for early resolution of the issues relating to these Projects.

Keeping in view the observations as mentioned above and looking to the urgency and importance of the issue, the State Government has considered to form a High Power Committee comprising of the eminent persons from Judiciary, Power Sector and the field of Finance. Such Committee will come up with its report by considering the suggestive Terms of Reference (ToR) formulated based on suggestions of procurer States before formulation of HPC.

Resolution:-

After careful consideration, the Government of Gujarat is, therefore, pleased to form a High Power Committee comprising of the following, for reviewing the report of working group and obtaining its recommendations, with regard to resolution of the issues of the Imported Coal based Power Projects, located in the State of Gujarat:

(i) Hon. Mr. Justice R. K. Agrawal, Former Justice of Chairman Supreme Court	
(ii) Shri S. S. Mundra, Former Deputy Governor, RBI	Member
(iii) Dr. Pramod Deo, Former Chairman, CERC	Member

SBI Caps- Mumbai shall provide secretarial support to the Committee.

Suggestive terms of reference for High Power Committee:

- (i) The Committee should examine and analyze all the relevant documents related to the Projects.

- (ii) Analyze and ascertain any hardship faced by these projects- If yes, mode and manner for mitigating the hardship faced by the Projects on account of Indonesian Regulations and subsequent orders/judgements in the matter.
- (iii) Call relevant parties for submission of details/clarification as required by the Committee.
- (iv) Contribution by each Stakeholders viz. Banks, Project Developers & Procurers by way of concessions for mitigating hardship.
- (v) Any other relevant issues which Committee would like to discuss and Study.
- (vi) Suggest sustainable solution(s) - for resolving the issue.
- (vii) The Committee may suggest any other measure for overall reduction in the cost of Generation of Power in the interest of the consumers.

The Committee should finalize its recommendations as early as possible, preferably within two months' time. The Committee is empowered to have assistance of NTPC, SBI Caps-Mumbai, Legal / Techno-commercial experts etc., who had participated in the Working Group formed by SBI Caps-Mumbai.

Government has further decided that on behalf of Government of Gujarat, an officer from Energy & Petrochemicals Department shall act as a Nodal Officer, for the purpose.

Notwithstanding anything contained in this GR, the State Government reserves its right to recourse to any further action, as deemed fit, at any point of time.

This issues with the concurrence of Finance Department, vide its note dated 11.06.2018 in this Department's file of even number.

By order and in the name of Governor of Gujarat,


(K. L. Bachani)

Officer on Special Duty (Power)
Energy and Petrochemicals Department.

Copy forwarded with compliments to:

- (1) The Principal Secretary to the Governor of Gujarat, Raj Bhavan, Gandhinagar.
- (2) The Chief Principal Secretary to the Hon. C.M., "SS-I", Gandhinagar.
- (3) The ACS to Govt, Finance Department, Sachivalaya, Gandhinagar.
- (4) The Secretary, Ministry of Power, New Delhi.
- (5) The Secretary, Central Electricity Regulatory Commission, New Delhi.

- (6) The Secretary, Gujarat Electricity Regulatory Commission, Gandhinagar.
- (7) Chairman and Members of the Committee.
- (8) The PS to the Hon. Minister (Energy), "SS-I", Gandhinagar.
- (9) The PS to the Hon. MoS (Energy), "SS-II", Gandhinagar.
- (10) The DS to the Chief Secretary, O/o the Chief Secretary, Sachivalaya, Gandhinagar.
- (11) The Principal Secretary (Power), Govt. of Maharashtra, Secretariat, Mumbai.
- (12) The Principal Secretary (Power), Govt of Rajasthan, Mantralaya, Jaipur.
- (13) The Principal Secretary (Power), Govt of Punjab, Secretariat, Chandigarh.
- (14) The Principal Secretary (Power), Govt of Haryana, Chandigarh.
- (15) The Managing Director, Maharashtra State Electricity Dist. Company Ltd, Mumbai.
- (16) The Managing Director, Jaipur Vidyut Vitran Nigam Ltd, Jaipur.
- (17) The Managing Director, Ajmer Vidyut Vitran Nigam Ltd, Ajmer.
- (18) The Managing Director, Jodhpur Vidyut Vitran Nigam Ltd, Jodhpur, Rajasthan.
- (19) The Managing Director, Gujarat Urja Vikas Nigam Limited, Vadodara.
- (20) The Managing Director, Uttar Haryana Bijli Vitran Nigam Ltd, Haryana.
- (21) The Managing Director, Dakshin Haryana Bijli Vitran Nigam Ltd, Haryana.
- (22) The Managing Director, Punjab State Power Corporation Ltd, Chandigarh, Punjab.
- (23) SBI Caps, Mumbai.
- (24) Select file.

Annexure – II
(Refer paragraph 2.1)

Relevant Excerpt of the DPC dealing with Indonesian Coal

Annexure-V: Impact of Indonesian Regulations on Coal prices

As a part of the Indonesian Government's efforts to stop transfer pricing abuses which have resulted in the loss of production royalties in recent years, government of Indonesia issued Regulation No.17 of 2010 entitled "Procedures to Determine the Benchmark Price for Mineral and Coal Sales". The Regulation provides that mineral and coal producers are obliged to sell minerals and coal based on a regulated benchmark price, whether for domestic or export sales. Determination of benchmark price Regulation provides that the benchmark price for minerals and coal will be determined by the Director General of Minerals and Coal (DGMC).

Determination of Benchmark Price:

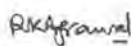
The benchmark Coal price is expected to provide optimum price and help government in calculating potential State Revenue. The new regulations will also allow the Indonesian government to get the right amount of royalty and the taxable revenues from the sector will also move up to the correct levels. The benchmarking method will also stop the practice of transfer pricing of minerals at below market prices.

Different methods are being used to determine the benchmark price for different commodities. For coal, the DGMC determines separate benchmark prices for metallurgical coal, thermal coal and low rank coal monthly. No formal definition of low rank coal exists, however in the past; MEMR has referred to low rank coal as any coal with gross calorific value(ADB Basis i.e. Air Dry Basis) of less than 5100 kcal/kg. The benchmark price for thermal coal uses a formula that refers to the average coal prices based on local and international market indices. As a system government determines Coal Price Reference (Harga Batubara Acuan or HBA) by averaging the calorific value of coal in four coal price indexes, namely:

- Newcastle Export Coal Index (formerly known as the Barlow-Jonker index),
- Global Coal Newcastle Index,
- Platts Kalimantan
- Argus-Indonesia Coal Index (ICI)

The first two indices represent international price and the last two indexes represent local coal prices. Each coal category has a weight of 25%. The coal category is divided based on coal quality, which is set at 6322 kcal/kg (ARB i.e. As Received Basis), moisture content at 8%


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(ARB), sulphur content of 0.8% (ARB), and ash content at 15% (ARB).

After determining the Coal Price Reference (HBA), the benchmark coal price (HPB) is then determined. There will be 8 benchmark prices category, representing the quality of the coal, starting from 4200 up to 7000 kcal/kg.

For that price of coal other than 8 classes of HPB, prices are determined by interpolation approaches or determining HPB based on a certain formula.

Following is the chart of prices and an indication of trend of coal price index (HBA) for last 5 years:



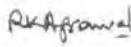
Source: Declared by the Directorate of Mineral, Coal and Geothermal, Ministry of Energy and Mineral Resources, Republic of Indonesia, Coal Spot.com

It can be seen from above that the price level have come down from peak price of USD 123/ton in 2011 to around USD 85/ton now.

Following is the table describing benchmark pricing for basic coal brands in Indonesia taking HBA into consideration.

Coal Band (Basic Coal band)	GCV (Gross as Received)	Total Moisture (Gross as received)	Total Sulphur	Ash	May-13(USD/ton)	June-13 (USD/ton)
Gunung Bayan I	7,000	10	1	15	91.13	91.13
Prima Coal	6,700	12	0.6	5	91.30	90.83
Pinang 6150	6,200	14.5	0.6	5.5	82.37	81.95
Indominco IM East	5,700	17.5	1.6	4.8	69.75	69.38
Melawan Coal	5,400	22.5	0.4	5	67.00	66.67
EnviroCoal	5,000	26	0.1	1.2	62.60	62.31


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Coal Band (Basic Coal band)	GCV (Gross as Received)	Total Moisture (Gross as received)	Total Sulphur	Ash	May-13(USD/ton)	June-13 (USD/ton)
Jorong J-1	4,400	32	0.3	4.2	50.44	50.20
Eco Coal	4,200	35	0.2	3.9	45.98	45.76

Source: Declared by the Directorate of Mineral, Coal and Geothermal, Ministry of Energy and Mineral Resources, Republic of Indonesia, Coal Spot.com

Determination of Sale price

The benchmark price is set on the basis of the price paid for Coal at the point of Sale by way of FOB Vessel. Sales of coal can be made in the following manner:

- Free on Board (FOB) mother vessel or
- FOB barge basis.
- Sales can also be made to end users domestically or in the form of Cost Insurance Freight (CIF) or
- Cost and Freight (C&F).

For coal, sales are contemplated in the form of FOB mother vessel, FOB barge, within an island to an end user or on a CIF or CF basis. In calculating the sales price, holders of Production Operation IUPs for coal to be sold on FOB mother vessel must refer to the benchmark price. Again, for non-FOB mother vessel sales (including FOB barge sales), certain costs may be added or subtracted as approved by the DGMC.

Under the new sales price regime for coal, the production royalty for FOB mother vessel sales will effectively also be imposed on barge transportation and trans-shipment costs (as well as survey and insurance costs), which are not able to be subtracted from the selling price.

For sales in the barge, the reference price is reduced by barging and transshipment costs from barge to vessel. Government has recently issued a regulation (644.K/30/DJB/2013 dated 21st March 2013) to regulate or determine coal prices on FOB barge.

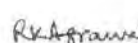
The coal price reference has been established to fulfill the requirement of mining law 04/2009 and ministerial decree No.17/2010. In addition to that, it aims to increase government revenue from royalties from coal producers.

Benchmark Price for calculation of royalties:

For coal sales made on FOB mother vessel basis, the Government will take the higher of the contractually-agreed price or the benchmark price for purpose of royalty calculation

For non-FOB mother vessel sales such as coal sales by way of FOB barge, the production royalties will be calculated using:


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- the contracted sales price, if the contracted sales price is higher than the benchmark price, after adding or subtracting the adjustment amount (adjusted benchmark price); or
- the adjusted benchmark price, if the sales price is the same as or lower than the adjusted benchmark price.

Exemptions from benchmark price:

- Coal of certain types (including fine coal, reject coal and coal with certain impurities) for domestic use may be sold below the coal benchmark price, upon approval of the Government (DGMC).
- Coal to be used for certain purposes in the domestic market may be sold below the coal benchmark price, upon approval of the Govt.

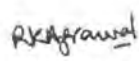
The Indonesian Government will issue further regulations on the purposes that will be exempted. Regulation indicates that coal used for individual needs or for the development of underdeveloped or poorly developed regions will be exempted from the benchmark pricing requirements.

Impact on existing coal contracts:

All existing supply contracts (both Spot and term Contracts) with Indonesian mining firms will have to be brought in line with this new benchmark regulations by 22nd September 2011.

- Spot sale contracts must be adjusted by no later than six months after the effective date of Regulation No. 17 (that is, by 22nd March 2011).
- Term sales contracts must be adjusted by no later than 12 months after the effective date of Regulation No. 17 (that is, by 22nd September 2011).


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Annexure - III

(Refer paragraph 4.1)

Copy of Working Group Committee Report for APL, CGPL & EPGL

**Discussions in Working Group
(Imported Coal Based Power Projects
Located in Gujarat)**

Report on Adani Power Limited

January 2018

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1. Working Group

Background

While the capacity addition in power generation in the country was in the acceleration mode during the 11th plan period, the domestic coal supply in the country was not adequate to cater to entire capacity addition. Hence, some projects were planned with imported coal as fuel and state discoms entered into long term PPAs with these projects. Two Ultra Mega Power Projects (UMPP) based on imported coal as fuel, were also awarded through competitive bidding. After change in coal pricing regulation in Indonesia w.e.f September 2011, the cost of coal procurement for these projects increased significantly. The economics of these project went haywire with sudden spurt in coal prices. Looking at the changed scenario, some developers abandoned their projects. Other projects which were partly/fully complete by then, approached respective regulatory commission for relief. With recent Supreme Court order dated 11th April 2017 in case of Coastal Gujarat UMPP/Adani Power in the matter of compensatory tariff, these projects are not economically viable. These projects namely Coastal Gujarat UMPP, Adani Power Mundra Project and Essar Power Gujarat Ltd (collectively referred as 'Project'), have approached their major procurer state for resolution of this situation. Banks also have large exposure in these projects and these accounts will become Non-Performing if not resolved in timely manner. As these project have large capacity and their tariffs are very competitive in nature, various stakeholders have been trying to find an appropriate resolution.

A meeting of all the stakeholders including the lenders, developers and procurers was held on 20th June 2017 in Delhi to discuss the issues related to imported coal based power projects. In that meeting, it was decided to form a specific Working Group to find resolution for the three projects mentioned above. The Working Group consists of all members of procurer states and Banks represented by Punjab National Bank and Canara Bank with State Bank of India acting as a convener, to find a solution through consultative process. In the meeting it was decided that the procurers and lenders will find the best solution possible for issues related to three projects namely Coastal Gujarat UMPP, Adani Power Mundra Project and Essar Power Gujarat Limited. It was decided that the solution needs to be broad based and flexible. SBI Capital Markets Ltd. was co-opted in the working group to facilitate secretarial and administrative responsibilities. Further, IITPC was assigned to conduct technical due diligence of all the three plants.

Coastal Gujarat UMPP has got PPA with different states – Gujarat, Maharashtra, Haryana, Punjab and Rajasthan. Adani Power Mundra projects have got PPA with Gujarat and Haryana. Essar Power Gujarat Limited has PPA only with Gujarat.

First Meeting – 07th July 2017

Pursuant to the above, first meeting of working group was convened on 07th July 2017 at SBI Bhawan in Nariman Point, Mumbai. The meeting was chaired by Mr. M Sundar, CGM, State Bank of India.

In that meeting it was decided to appoint a legal consultant to get an independent opinion related to the transaction. M/s Shardul Amarchand Mangaldas & Co. (SAM) was appointed as the legal consultant for assisting the Working Group in consultation with other members. Subsequently, National Thermal Power Corporation (NTPC) submitted draft technical due diligence report of all the plants. Further, in the meeting, it was discussed that SBICAPS would circulate the financial analysis of various projects to the Committee members. The financial analysis was shared by SBICAPS with WGC members. To discuss the findings of IITPC report, financial analysis and to have a preliminary discussion on transaction structure, it was decided to schedule a meeting of WGC on 4th September 2017. It was noted that in order to discuss the divestment by Promoter and other technical matters

covered in TIPC report, presence of developers will be required and therefore in order to facilitate the discussion, they were also invited in the second meeting.

Second Meeting – 04th September 2017

Pursuant to the above, second meeting of working group was convened on 04th September 2017 at SBI Bhawan in Nariman Point, Mumbai. The meeting was chaired by Mr. Sunil Srivastava, CMD, State Bank of India.

In that meeting, TIPC made a brief presentation on design, technology, historical plant performance and SWCA analysis for the three projects. Subsequently, SAM made a detailed presentation on options available to procurer to take over the three projects and ways to amend PPAs. Further, SBI Capital Markets Ltd. made a presentation on the cost benefit analysis for the procurer carried out for respective projects. All the requirements related to financial analysis discussed in the last meeting was circulated to members by SBI Capital Markets Ltd. before the meeting. It was noted that, final technical due diligence report of TIPC be submitted before the next meeting. Also, SAM was required to make presentation for the proposed structures of transaction including change in Ownership of assets.

Third Meeting – 09th November 2017

Pursuant to the above, third meeting of working group was convened on 09th November 2017 at SBI Bhawan in Nariman Point, Mumbai. The meeting was chaired by Mr. B. Sriam, MD, State Bank of India. To facilitate the discussion and for his guidance, Shri J. V. Singh, Chief Secretary (Government of Gujarat), was also invited to this meeting. Mr. Rajnish Kumar, Chairman, SBI also graced this meeting with presence from New Delhi through video conferencing.

In the meeting, TIPC presented their observations which were an update over presentation made during 2nd meeting. Subsequently, SAM made a detailed presentation elaborating on the judicial proceedings in the compensatory case. Subsequently, they also presented their views on the proposal keeping public interest in view and presented that the proposed resolution is based on two premises, i.e. (a) Change in Ownership; and (b) Amendment of existing PPA or new PPA, with due regulatory approval, for making the project viable. Further, independent consultants, viz. M/s PricewaterhouseCoopers and IPMG presented their preliminary analysis along with key assumptions for carrying out Enterprise valuation of all three projects. It was also discussed if a single state may take equity stake in the projects instead of multiple states. It was noted that SAM would provide a detailed process chart for the transaction along with timeline and required approvals, if any. Also, Working Group Committee members suggested that a small group comprising of representatives from SBI, Gujarat Discom and SBI Caps should be formed to facilitate preparation of the financial worksheet for various scenario analysis. Accordingly, financial analysis was carried out by this sub-group and submitted.

2. GENESIS OF PROBLEM

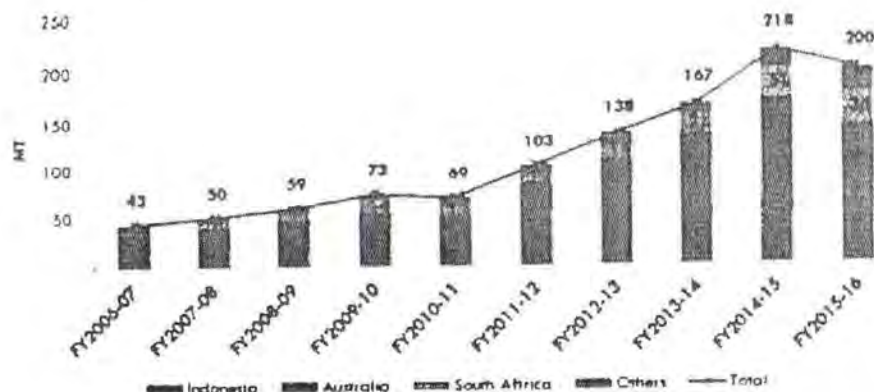
This chapter provides a brief over view of the impact of Indonesian Regulation on the coal prices as it is a major factor contributing to the hardship, challenges and losses for the Project under discussion.

Change in Indonesian regulation and impact on Imported Coal based plants

The total installed capacity of power stations at the beginning of the 11th Plan i.e. End, 2007 was 132 GW with peak deficit and energy deficit at 13.8% and 9.6% respectively. Keeping this in view, Government of India had set an ambitious target of 82 GW to be added in the 11th plan to create a spinning reserve of 5% in the system as per report of The Working Group on Power for Eleventh Plan. Indigenous coal production was not expected to match the demand of coal in power sector due to large capacity addition planned. Therefore, some power plants were planned at coastal locations with imported coal as fuel. These plants entered into PPAs with state discoms for a period of 25 years.

In 2005-06, the Government had launched an initiative for development of coal based Ultra Mega Power Projects (UMPPs) in the country, each with capacity of 4000 MW or above. The projects were to be awarded to developers under tariff based competitive bidding route using super critical technology on build, own and operate basis. Some projects were planned at coastal sites with imported coal as fuel. Of these imported coal based UMPPs, two were awarded through competitive bidding Mundra UMPP (Tata Power) and Krishnapatnam UMPP (Reliance Power).

In FY 2006-07, around 43 Million Tonnes of coal (out of this ~25 Million Tonnes was non-coking coal) was imported. It went up to around 218 Million Tonnes (non-coking coal 174 Million Tonnes) in FY 2014-15. The steam coal for power plants was mainly imported from Indonesia, Australia and South Africa. Coal import from Indonesia have been in the range of 40-60% of total imports during the last ten years as shown below.

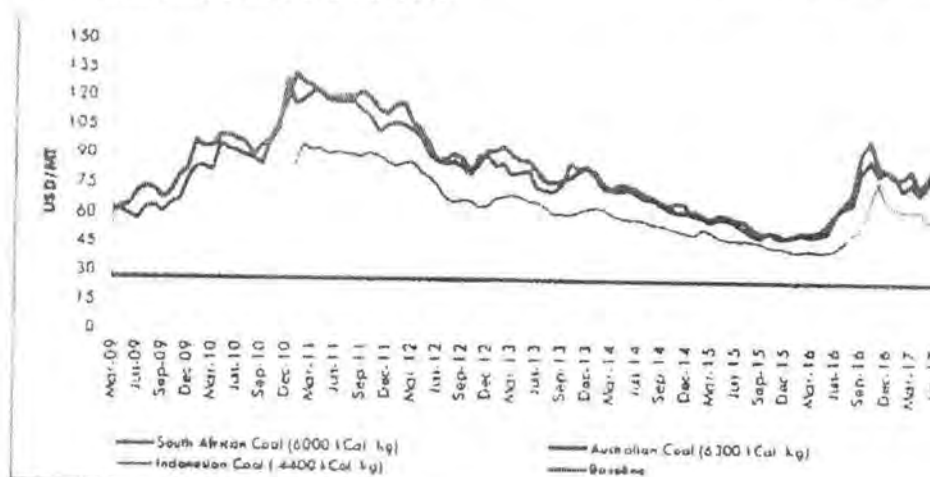


(Source: Coal Controllers Organization)

As depicted in the graph above, Indonesia has been the largest exporter of non-coking coal to India, which is mainly used for imported and blended coal based plants. Indonesia has a strategic maritime location with respect to India and also supplies variety of low GCV coal that is economically priced.

Change in Indonesian Regulations:

In 2010, Indonesian Government came up with guidelines to benchmark its coal prices to international indices. The coal produced by Indian firms from Indonesia was of lower calorific value and, hence, it was priced cheaper compared with Australian and South African coal. The new method came into effect in September 2011 and cost of coal import from Indonesia became at par with other countries. Indonesia government also passed the directive that all existing supply agreements with Indonesian mining firms will have to be brought in line with the new benchmark by September 2011. This regulation changed the entire economics of the imported coal based power projects listed in preceding table. Along with this regulation, the coal prices in the global market witnessed a sudden rise as shown in the chart below:



(Source: www.industry.nic.com)

The new pricing regime led to increase in cost of thermal power generated using imported coal. These imported coal fired power plants became unviable due to huge gap in envisaged coal price and actual coal cost. Last three projects given in the Table I were abandoned by the developers considering the changed pricing scenario.

Impact on the Imported Coal based Projects – Regulatory Approach

Coastal Power Gujarat Ltd. (CPGL), Adani Power Ltd. (APL) and Essar Power Gujarat Ltd. (EPGL) approached respective regulatory commissions to seek relief for the hardship faced by their projects. In the case of CPGL and APL, Central Electricity Regulatory Commission (CERC) and Appellate Tribunal (APTEL) gave favorable orders to allow compensatory tariff to pare the losses in coal cost. Details of the progress of these petitions are as follow:

- CERC used its regulatory power under section 79 of Electricity Act and instructed that developers along with DISCOMs should adopt consultative process to find out and agree for a compensation package to be called "Compensatory Tariff" (CT). Based upon that, CERC gave a mechanism to calculate the CT.
 - DISCOMs challenged this order in APTEL.
 - APTEL in its order dated 7th April 2016 held that the increase in price of coal on account of the change in Indonesian Regulations constitute a Force Majeure event in terms of the PPA.
 - APTEL directed CERC to assess the extent of impact of Force Majeure event. CERC came up with the final order on 6th December 2016 providing a mechanism for relief under Force Majeure clause of the PPA.
- However, these orders were challenged in Supreme Court and the final judgement on the case came on 1st April 2017. In case of EPCL, Gujarat Electricity Regulatory Commission (GERC) reserved its order till the clarity from Supreme Court order. As per the judgment given by Hon'ble Supreme Court, change in Indonesian regulation on coal pricing is neither a Force Majeure nor Change in Law. Hence, no compensation can be given to developers as per the provisions of PPA. In view of the current judgment, these projects are not viable.

3. SCOPE OF THE INDEPENDENT CONSULTANTS

Following Consultant were appointed by Working Group Committee to facilitate the resolution of the Imported Coal based power plants:

- **Technical Consultant** – National Thermal Power Corporation (NTPC)
- **Legal Consultant** – Shardul Amarchand Mangaldas (SAM)
- **Valuation Consultants** – PricewaterhouseCoopers (PwC) and 1 PMO

The scope of work for each of these consultants is provided subsequently:

a. Scope of work of Technical Consultant (NTPC)

NTPC was appointed to carry out the technical due diligence for all the three projects. Since all these three projects have procured boiler, turbine and generator package from overseas suppliers, NTPC was requested to assess the technical healthiness of such equipment. Scope of the technical consultant in brief is provided below:

Technical health of the Plant

- Technical consultant will assess technical sustainability of project
- Evaluation of actual plant performance for last 5 years of operation in terms of Plant Availability, plant efficiency, coal quality, GCV coal consumption, PLF, SHR and Auxiliary consumption for review.
- Comparison of various technical parameters with performance guarantee given by various equipment suppliers.
- Review of failure analysis for last 3 years, if any.
- Analysis of O&M cost and ways to improve it.
- Analysis of dependence of Chinese/overseas suppliers (as applicable) for operation of plant and possibility of procurement of spare parts from various other suppliers.
- SWOT Analysis of the Project
- Apart from above scope of work, assessment of water chemistry, water allocation PPA, FSA, Coal Sourcing Arrangement, PAP liabilities, LTSA, Preparedness for meeting new environmental norms, etc. shall be required.

The technical consultant was also asked to evaluate if these plants are able to use domestic coal in their overall fuel mix.

b. Scope of work of Legal Consultant

SAM was appointed as a legal consultant to carry out the following scope of work:

- Review of the power purchase agreements and other project documents of the Developers;
- Review of the constitutional documents of the offtaker entities;
- Review of the decisions of the CERC, Appellate Tribunal for Electricity and the Supreme Court of India in relation to the matter;
- Preparation of a detailed Memorandum addressing the legal scope of work (addressing the Transmission Structure and the modifications to the Power Purchase Agreement); and
- Discussing the various options with the Working Group and preparation and finalization of a detailed Way Forward Plan.

c. Scope of work of Valuation Consultant

PwC and KPMG were appointed as independent consultants for valuation. Their major scope of work is as mentioned below:

- Review and analyze past financial statements of the Project since the commencement of commercial operations.
- Determine Enterprise Value for the Project using appropriate methods and valuation techniques, which would include development of assumptions for projection of future profitability and cash flows outlining sustainable debt.
- Submission of Enterprise /Business Valuation Report for the project based on the above, outlining your recommendations of fair value, as well as the methodologies employed and assumptions utilized in your analysis.

4. COMPETITIVE ANALYSIS OF PROJECTS

These Projects supply power to five procurer states which are among the states with high electricity demand in the country. Further, this chapter provides capital cost comparison of Projects under discussion with its peers to ascertain competitive advantage over their peers.

Later on, tariff analysis of the projects to ascertain tariff competitiveness is covered through:

- Merchant Tariff Analysis
- Recent Case 1 bids

Further, the delicate demand supply situation in the electricity industry in the country is discussed in brief to emphasize on the importance of well-being of these new generation Projects. Also, the impact of capacity overhauling due to required compliance with new environmental norms has been discussed as it will have some impact on overall availability of thermal project in the year FY 2020-2024.

Gujarat is purchasing significant portion of power from these three plants. The electricity demand-supply scenario for GUVIL for the coming years is analyzed in order to ascertain the requirement of these Projects. After that, merit order analysis is carried out to show the impact of mark-up to be provided as relief.

4.1 States with High Demand – Strategic Importance

The five states getting affected due to these three Project are major states of the country in terms of electricity demand and growth. All these five states figure in the top bracket of the electricity consumer states. The peak demand (MW) and energy requirement (MUs) of the top twelve states/UTs of the country are given below:

States	Peak Demand (MW)	Energy Requirement (MUs)
Maharashtra	22542	99679
Uttar Pradesh	20274	84408
Gujarat	16590	73238
Tamil Nadu	15001	70649
Madhya Pradesh	11830	43447
Punjab	11705	41502
Rajasthan	11215	46513
Karnataka	9992	42160
Haryana	9671	36254
Telangana	9522	37869
West Bengal	8137	35849
Andhra Pradesh	8130	37692
Total country	164066	815348
Total (North+Western Region)	110609	301790
Aggregate of five states	71723	297186
As % of country demand	43.7%	36.4%
As % of N+W Region demand	64.8%	59.0%

(Source: CEA report for April to November 2017)

From the table above, it is evident that these five states are critical states with respect to electricity demand of the country. These five states cater to almost 50% of the total peak demand of this country. Any disturbance in the demand supply situation of these states will have greater ramifications on the overall situation. Therefore, the resolution of these three Projects becomes important from the strategic perspective.

4.2 Capital Cost comparison

The Projects under discussion were commissioned by 2013. The total Project Cost was much lower compared to the projects that have commissioned recently. Details of the Project Cost for projects under discussion are as follows:

Name of the Project	Capacity (MW)	Project Cost (Rs. Cr.)	Project Cost (Rs. Cr./MW)	Gross Block (Rs. Cr., as on 31 st March 2017)
Coastal Gujarat Power Limited	4,150	17,500	4.22	19,653
Adani Power Limited	4,620	21,394	4.63	24,418
Essar Power Gujarat Limited	1,200	5,832	4.86	6,457*

* The figures are provisional and increase is due to change in accounting standards from IND GAAP to IFRS 45

Project costs of other comparable coal based power projects completed recently or under implementation/planning are given below:

Project	Developer	Capacity (MW)	Project Cost (Rs. Cr.)	Project Cost (Rs. Cr./MW)
Central Sector				
Meja TPP	NTPC	1320	10821	8.20
Bongalgon TPP	NTPC	750	6749	9.00
Nabinagar TPP	NTPC	1000	7998	8.00
Darlipalli TPP St I	NTPC	1600	12532	7.83
New Nabinagar TPP	NTPC	1980	15132	7.64
Barh St I	NTPC	1980	15096	7.62
Khargone TPP	NTPC	1320	11149	8.45
Lata TPP	NTPC	1600	11646	7.40
Gadarwara TPP	NTPC	1600	11639	7.27
Salapur TPP	NTPC	1320	9395	7.12
Kudagi TPP	NTPC	2400	15166	6.32
North Karanpur TPP	NTPC	1980	14367	7.26
Tanda II STPP	NTPC	1320	9189	6.96
Telangana TPP	NTPC	1600	11811	7.38
Ghatampur TPP	NTPC	1980	17237	8.71
Average		23750		7.68
State Sector				
Kalkindi TPP	RRVLFIL	1200	9380	7.90
Chabira TPP US-6	RRVLFIL	1320	7920	6.00
Suratgarh TPP	RRVLFIL	1320	7920	6.00
Koradi TPP US-10	Mahagenco	1980	13652	6.89
Chandrapur TPP US-9	Mahagenco	1000	7196	7.20

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Project	Developer	Capacity (MW)	Project Cost (Rs. Cr.)	Project Cost (Rs. Cr./MW)
Ukai Extn U6	GSECL	500	3078	6.16
Harduaganj Expn	UPRVUNL	660	4827	7.31
Obra C	UPRVUNL	1320	10316	7.89
Jawaharpur TPP	UPRVUNL	1320	10556	8.00
Ennore SEZ SCTPP	TANGEDCO	1320	9800	7.42
Uppur SCTPP	TANGEDCO	1600	12778	7.99
North Chennai TPP St III	TANGEDCO	800	6376	7.97
Ennore SCTPP	TANGEDCO	660	4956	7.51
Barauni Extn	BSEB	500	5308	10.62
Ib Valley TPP	OPGC	1320	11955	9.06
Average		16820		7.59
Private Sector				
Badadarka TPP	D B Power Ltd	600	4,935	8.22
Vijay TPP	HT-IPCL	1040	8,560	8.25
Haldia Energy Ltd	CESC	600	4,685	7.8
Raikheda TPP	GMR Chhatnigam Energy Ltd.	1370	11,642	8.49
Muttara TPP	Coastal Energy	1200	7,870	6.56
Average		4810		7.87

It may be observed from the above table, the cost per MW of aforementioned project is competitive with similar project set up by other companies. Further lower project cost is also reflected in lower fixed charge quoted by developers at the time of bidding. If bids are invited for projects which have been completed recently, the fixed charge would be expected to be much higher. Replacement cost of project under discussion will be much higher under current scenario (Rs. 7-8 crore/ MW) as shown in the table above. Hence, this will lead to higher fixed charge obligation for the DISCOMs.

4.3 Merchant Term Analysis

To ascertain the competitiveness of the power produced by the project under discussion with respect to power being traded in the merchant market under various exchanges has been carried out. The price of short term electricity transacted through traders and power exchanges for the period November 2016 to October 2017 as per CERC Monthly Monitoring Report is as furnished below:

Month	Volume of Electricity Transacted (BUs)			Wt. Avg. Price of Electricity Transacted (INR/kWh)		
	Bilateral	IEX	PXIL	Bilateral	IEX	PXIL
Nov'16	3.71	3.39	0.09	3.81	2.48	2.84
Dec'16	3.81	3.09	0.14	3.43	2.37	3.01
Jan'17	4.45	3.23	0.05	3.50	2.57	2.65
Feb'17	3.96	2.93	0.08	3.30	2.64	2.69
Mar'17	3.72	3.36	0.06	3.52	2.65	2.80

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April 17	4.32	3.72	0.03	3.46	2.83	2.79
May 17	4.79	4.10	0.01	3.53	2.98	2.99
June 17	4.85	3.92	0.02	3.31	2.73	3.36
July 17	5.61	3.67	0.01	3.30	2.65	3.52
Aug 17	5.53	3.98	0.03	3.35	3.24	3.21
Sept 17	4.75	4.09	0.28	3.57	4.25	4.07
Oct 17	3.54	4.08	0.28	4.00	4.26	3.94
	53.04	43.56	1.07	3.51	2.97	3.15

Source: CERC Monthly Report on Short Term Transactions of Electricity in India, Nov 2016 till Oct 2017

Further the prices of electricity transacted through power exchanges are expected to rise in near future as they are not reflective of the true cost involved. The average rates in the exchange market has been in the range ~Rs. 2.5/ unit to ~Rs. 4.25/ unit for period November 2016 to October 2017 and they are moving towards the average tariff discovered in case I bidding in recent past. Recent case I bids are discussed later in the report.

Further, an analysis has been carried out on volume data for electricity trading from 1 April 2017 till 18th December 2017 as available on India Energy Exchange (IEX) as below:

Month	Purchase Bid		Sell Bid		Difference		Cleared Volume		MCP (Rs/kWh)
	MU	MW*	MU	MW*	MU	MW*	MU	MW*	
Apr'17	4541.51	6307.65	5830.91	8098.49	1289.40	-1790.84	3716.96	5167.45	2.77
May'17	5083.88	6833.17	6213.37	8351.30	1129.49	-1518.13	4100.01	5510.76	2.92
Jun'17	4427.42	6149.20	7348.76	10206.61	2921.34	-4057.41	3920.07	5444.54	2.59
Jul'17	4295.09	5777.97	6687.45	8988.51	2392.36	-3215.53	3668.77	4931.14	2.49
Aug'17	5047.50	6784.28	6157.55	8276.28	1110.05	-1492.00	3982.18	5352.39	3.13
Sept'17	5737.81	7969.18	5101.20	7085.00	636.61	884.18	4086.60	5675.84	4.09
Oct'17	5535.22	7439.82	5247.88	7053.60	287.35	386.22	4078.61	5482.00	4.08
Nov'17	4524.90	6284.58	5587.41	7760.29	-1062.51	-1475.71	3524.43	4895.04	3.55

It can be seen from the table above that the clearing price goes above Rs. 4/unit whenever the purchase quantity is more than quantity available for sale. The projects under discussion are capable of generating ~61.2 BUs at a PLF of 85% and currently only ~44.6 BUs are being traded on exchange. If these projects are not under operation, the present supply in the system is not sufficient to meet the demand and hence the exchange prices may shoot up beyond this level. Further, power procurement with long term visibility will be preferable for the DISCOMs in the long run.

4.4 Recent Case - I Bids

In case I route, a particular state would call for bids to meet its power requirement. The companies bidding can select any location and any type of fuel to serve that requirement. The players need to follow an International Competitive Bidding (ICB) strategy.

Case I bidding process happen in a scenario, where the state decides it needs power but has no issue with the source of generation. The state comes out with an advertisement for procuring power through a bidding process (International Competitive Bidding). The interested suppliers of power submit their bids and the bidder with the

least levelised tariff with the bid to supply power to the state. The following table shows results in recent state bids:

Entity	Quantum (MW)	Bid Date	Developer	Tariff* (RsR per unit)
Andhra Pradesh - Linkage and Imported Coal Based Bidders (Bids invited: 2400 MW)	500	Nov 2014	NCC Power Projects Ltd	4.35
	540	Nov 2014	Korba West Andhra	4.49
	374	Nov 2014	MB Power Ltd	4.69
	400	Nov 2014	Jindal India Thermal	4.83
	500	Nov 2014	Essar Power	4.83
Tata Power Discom (Delhi)	200	Sept 2015	Jindal India	3.990
	120	Sept 2015	Balco Chamisgarh	4.071
	374.15	Sept 2015	MB Power	4.230
	100	Sept 2015	Lanco Anpara	4.240
	400	Sept 2015	Rattan India	4.479
Bihar Discom - Linkage Coal (Bids invited: 1700 MW)	370	March 2016	Jindal India Thermal	3.84
Uttar Pradesh (UP) - Linkage Coal Based Bidders (Bids invited: 2800 MW)	200	Aug 16	JITPL	3.939
	325	Aug 16	JPL	3.951
	200	Aug 16	BAICO	3.960
	1190	Aug 16	LAICO Amarkantak	3.971
	200	Aug 16	Adani Power	4.047
UP - Imported Coal Based Bidders (Bids invited: 500 MW)	275	Aug 16	ISW Energy limited	4.06
	500	Aug 16	Adani Power Limited	4.04

*Tariff mentioned is Delivered tariff typically transmission charges are about 45 to 60 paise, hence net realization would be lower to that extent

The tariffs given in the table above are the tariffs proposed for the first year including fixed cost and variable cost. The variable tariff will go up with increase in coal cost since fuel cost is made pass through in these bids. In view of the above, Projects under discussion have lower tariff compared to recent state bids even after considering coal cost pass through, considering coal cost as per present scenario (detailed assumptions for coal cost computation is presented in the report). Taking into consideration only imported coal based plants, tariff quoted was even higher compared to other state bids. Hence for DISCOMs, replacement cost of capacity under discussion will be much higher going forward.

4.5 Power Sector Scenario of Country

In the Draft National Electricity Plan (DNELP) released by Central Electricity Authority (CEA) in December 2016, various scenarios have been analysed to understand the demand supply situation in the next ten years. Govt. of India has charted out a very aggressive target of addition of renewable energy capacity in the country and it is

proposed to achieve cumulative capacity of 175 GW by 2022. The DNEP has taken this capacity addition target as the reference point. Further, there are some hydel (15,330 MW), gas (4,340 MW) and nuclear (2,800 MW) power projects which are under various stages of implementation. In case all these capacities come on stream, the DNEP mentions that there is no requirement for any new coal based capacity. However, it has been assumed that coal based capacity of around 50,025 MW is stuck at various stages of development and it will come on stream by 2022. Based on these presumptions, the PLF of the coal based plants has been projected for different scenarios. The scenarios for different growth rates and capacity addition are given in the following table:

Demand CAGR for next 5 years	Expected PLF ^a in 2022	Additional coal based capacity required
Scenario I: Full RES (175 GW) and Full Hydel (15.3 GW)		
6.34%	47.9%	--
7.34%	52.6%	7020
Scenario II: Medium RES (150 GW) and Low Hydel (11.8 GW)		
6.34%	51.1%	--
7.34%	55.8%	9940
Scenario III: Low RES (125 GW) and Low Hydel (11.8 GW)		
6.34%	53.5%	--
7.34%	58.1%	12040

^a PLF has been calculated based on the assumption that entire 50,025 MW of coal based capacity will become available for generation.

(Source: Draft National Electricity Plan, December 2016)

Considering the capacity addition achieved in wind and solar plants till now and track record in implementation of hydel projects, the scenario analysis becomes very important. It has been assumed that entire 50 GW of coal based capacity, which is stuck at various stages of implementation currently, will come on stream in next four years.

Stranded coal based projects in the country – The country is currently grappling with the large number of stranded projects in the country. This has become a major issue for the banks as well as the industry players as huge amount of capital is locked in these projects. Many projects are stuck due to financial and other issues and various stakeholders are trying their level best to resolve these issues. Ministry of Power has constituted various committees to find out the sustainable resolution process on an urgent basis. The resolution process has been taking long time and it is creating further stress on these projects. The efforts required to revive these projects will keep on increasing with increase in stress. These coal based projects may take longer than expected time to come on stream. Some projects may end up in a situation where the revival would not make any economic sense.

Addition of RES capacity – Govt. of India has come up with an aggressive target of 175 GW of RES capacity by 2022. By 2017-18, total target for solar capacity is 32 GW including 10 GW of rooftop solar. As on 31st October 2017, total solar capacity of the country was 15.6 GW and rooftop has not yet achieved a significant size.

Addition of Hydel capacity – In the last five years, the capacity addition program in hydel power capacity in this country has been very sluggish. As on 30th September 2012, the hydel power capacity of this country was 39,291 MW. In next five years, total hydel capacity added in the country was only 5,474 MW which is equivalent to around 1 GW per year.

Going by the track record of capacity addition and renewable/hydel and latest position of generation capacities, there may not be any slack available on the supply side in medium term. Therefore to meet the demand, it is very important that the new operating plants with stabilized operations are not taken out of grid.

4.6 Compliance with new Environment Norms

The Ministry of environment, Forest and Climate Change (MoEFCC) has notified the Environment Protection Amendment Rules, 2015 vide Notification dated 7 December 2015. This amendment has brought in revised environment standards for the coal based thermal power plants in the country by December 2024. A writ petition was filed in Supreme Court for implementation of the revised emission norms as per the guidelines specified by MoEFCC. The Power ministry has sought extension of 5 years for implementation of the revised norms and the petition is under hearing process.

In order to comply with revised norms, the coal based thermal power plants will be required to incur some capex which will require capacity overhauling for some time. Therefore, in order to facilitate this exercise, CEA has drawn a schedule for implementation of such capex for all the required plants which on an aggregate basis is presented below:

Expected Capacity Overhaul (MW)	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
Northern Region	1590	4480	7440	10575	3320
Southern Region	5480	9310	2450	3000	0
Western Region	2100	20662	26655	6780	2160
Eastern Region	0	2000	8715	3955	2000
Total	9170	36452	45260	24310	7480

Therefore, in light of above, many plants will be put under scheduled maintenance for implementation of new technology in order to comply with revised emission norms. This may further strain the system and create demand-supply mismatch in the future and consequently may result in increase in short term market price.

4.7 Demand-Supply Analysis for GUVNL

The Demand-Supply scenario for GUVNL has been examined to establish the necessary capacity required to meet the peak demand in the coming years. An analysis has been carried out taking into consideration present installed capacity and capacity addition/detrating as envisaged by GUVNL as below:

Particular	Unit	2017#	2018	2019	2020	2021	2022
Demand Analysis (Peak Demand)							
Peak Demand (Gujarat) at 6%	MW	17097	18123	19210	20363	21585	22880
Peak Demand (GUVNL) at 6%(A)	MW	15000	15900	16854	17865	18937	20073
Supply Side Analysis							
Conventional							
PPA Capacity	MW	17905					
PPA lie-up in coming years	MW		1261	246	0	476	0
PPA Capacity De-rated	MW		0	655	0	0	150
Idle Gas Capacity tied up	MW	2000					
PPA Capacity Available	MW		17166	16757	16757	17233	17077
PPA Capacity at 80% PLF (B)	MW		13733	13406	13406	13786	13662
Renewable Energy							
PPA Capacity	MW	4800					
PPA lie-up in coming years	MW		1140	1140	1140	1140	1140

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PPA Capacity Available	MW	5940	7080	8220	9360	10500
PPA Capacity to be utilized* (C)	MW	1654	2266	2877	3488	4100
Total Supply (C+B+C)	MW	15387	15671	16283	17273	17761
Deficit (A-C)		-619	-1183	-1583	-2062	-2512

*Considering CUF of 7% of wind, 70% for solar and 0% for both bio gas and small hydel

*Year is considered from Jan to Dec for 5 years

Source: GUVNL

As observed in the table above, the peak demand for GUVNL for CY 2018 is estimated at 15900 MW. The available capacity after necessary adjustment is estimated at 15387 which leaves a deficit of about 513 MW for 2018. The deficit is estimated to increase in the coming years as shown in the table above with net deficit of 2512 MW for CY 2022.

Further, the PPA capacity of GUVNL also includes aggregate capacity of 4805 MW tied up with APL, EPGL and CGPL. In case the capacity of 4805 MW is also excluded from the system, the deficit will further increase by about 3844 MW (80% of 4805 MW) for each year which may further aggravate the deficit scenario.

Additionally, any increase in power demand due to anticipated plan of EVs due to GOI focus on Transformative Mobility Solution for All and railway electrification, Make in India program, etc. will further increase the deficit. Therefore, to maintain requisite power supply position in Gujarat in the coming years and to avoid sourcing of power from costly sources / merchant market, it is important that the Projects under dispute are resolved.

4.8 State wise Merit Order Analysis

In the Working Group, the competitiveness of the electricity produced by these Projects was ascertained in terms of the merit order dispatch / ranking. Total generation capacity of CGPL, APL and EPGL is 9970 MW. CGPL has signed power purchase agreements with 5 states (Gujarat – 1805 MW; Maharashtra – 760 MW; Punjab – 475 MW; Haryana – 380 MW and Rajasthan – 380 MW). APL has two PPAs of 1000 MW each with Gujarat and PPA of 1424 MW with Haryana. EPGL has PPA of 1000 MW with Gujarat. These projects appear very high (mostly first or second quartile) in the merit order of their respective procuring states. The merit orders of individual states are given in the Annexure I. Even with the variable tariff made pass through, these projects will be in a competitive position in the respective merit orders. The overall tariffs of these projects will also remain low as compared to the tariffs discovered in recent case I bids.

States	Plant	Current PPA Tariffs	Scheduled Capacity (in MU) #	%age Dispatched	Tariff after Coal Cost Pass-Through	Capacity after dispatch with pass through (in MU) #	% age Dispatched
Gujarat	APL – Phase III	1.53	104812	37.55%	2.27	158074	56.63%
	CGPL	1.73	145238	52.03%	2.13	136699	48.97%
	APL – Phase I & 2	1.89	170423	61.05%	2.33	181800	65.13%
	EPGL	1.89	193787	69.42%	2.43	205401	73.58%
Maharashtra	CGPL	1.60	61361	17.79%	2.13	103339	29.95%
Punjab	CGPL	1.31	51680	41.75%	2.13	63524	51.32%
Rajasthan	CGPL	1.46	61457	32.47%	2.13	101591	53.67%
Haryana	CGPL	1.51	36017	28.07%	2.13	47738	37.20%

This is the cumulative capacity scheduled by the state considering capacity for given project as per Merit Order of 24th October taken from Meritdata.in

CGPL tariff doesn't incorporate the latest provision of change in law provisions

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5. WORKING GROUP – MAJOR FINDINGS

During the meetings of Working Group, technical due diligence of all the three projects was discussed in detail. The independent consultants provided their views on the enterprise valuation of these three projects. The legal consultant also presented its views on the transaction structure and the steps to be followed to conclude the transaction.

5.1. Technical Findings

As per the requirement of the working group NTPC conducted technical due diligence for all the three projects. The key finding of the NTPC report are:

- All the plants are running satisfactorily with imported coal.
- The projects are technically healthy and their operations are compliant with industry standards.
- It is difficult to operate the plants on domestic coal. All three developers have represented that the projects are designed for imported coal and domestic coal can be used in these projects only after making suitable changes in projects. Prima facie, it may require rigorous study/analysis of various parameters including safety concerns for boiler due to higher ash content of domestic coal. Adani Power has submitted some studies for usage of domestic coal in the plants after certain changes including capex investment.

5.2. Independent Consultant for Valuation

PwC and ERMG were appointed for determination of enterprise valuation of all three projects. These consultants have carried out the valuation based on certain assumptions. In their analysis, it has been assumed that the coal cost will be fully recovered in the variable tariff and the capacity charge will kept as per the quoted tariff. They also calculated the debt these projects will be able to sustain in such a scenario. The findings for individual projects are given in the relevant sections of respective projects.

5.3. Independent Legal Consultant

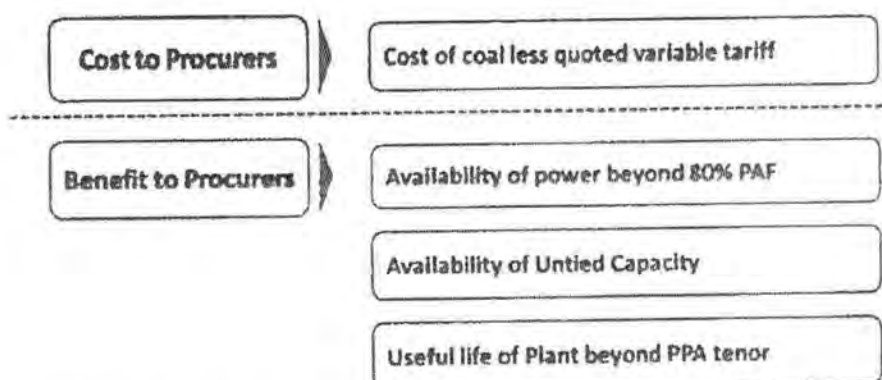
M/s Shardul Amarchand Mangaldas & Co. (SAM) was appointed as the legal consultant for assisting the Working Group with respect to legal issues. The legal consultant has analyzed the PPAs of all these projects as well as the orders given by various regulatory commissions, APTEL and Hon'ble Supreme Court. In view of all these orders, the legal consultant was asked to provide the steps for resolution of these projects. The legal consultant made detailed presentations in the Working Group meetings. The legal advisor has suggested that the transaction should not be done through NCLT. Their analysis is concentrated on two major aspects – acquisition of majority stake by state governments in these projects and amendment in PPAs for revision in tariff. They have explained that PPAs may be amended even after Supreme Court order. However, any amendment in PPAs will have to be approved by the respective authority.

5.4. Cost Benefit Analysis

During the discussion of working group meetings, in order to find solution for the imported coal based power plants, it was emphasized that the PPA needs to be amended in order to take care of the variable nature of the coal cost. If electricity is no longer available from these plants, the DISCOMs may have to incur higher amount to purchase this electricity from alternate sources. Though any relief to these projects will result into producers incurring additional cost as compared to quoted tariff, it will still be lower than the amount required while purchasing power from alternate sources. Further, against this additional cost, the DISCOMs may ask for certain benefits from these projects like:

- i) Enhanced plant availability - Once the projects stop making any losses on the fuel cost, they may be able to run the plant at higher availability which will provide incremental electricity to the procurers effectively at variable cost only.
- ii) Availability of untied capacity - In case of Adani Power and Essar Power, part of the plant capacity is not tied up through any long term PPA. The procurers may enter into long term PPA for this incremental capacity.
- iii) Power availability beyond tenor of PPA - Even after the end of PPA tenor after 25 years, these plants will have substantial residual life. The procurers may enter into some arrangement to purchase electricity from these plants even after the PPA terms are over.

Subsequently the impact of change in variable tariff on the DISCOMs was evaluated by carrying out cost benefit analysis for all the three projects. The principle adopted for cost benefit analysis is as under:



In the third meeting of the Working Group, it was suggested to form a small sub-group to analyze various scenarios for cost benefit analysis for the procurers. Primarily two options were evaluated by the sub-group:

- i) Full pass through of the fuel cost - In this option, the PPA will be amended to make fuel cost fully pass through. The capacity charge will be kept as per the quoted tariff.
- ii) Force Majeure order - CERC had given a formula for compensatory tariff at the instructions of APTEL in case of CGPL and Adani Power Phase II & Phase IV. In this option, the principles of this order were used for carrying out cost benefit analysis. As per the order, relief should be based on the difference between the FOB price agreed in the Coal Supply Agreement and the FOB price at which the plant is purchasing coal from Indonesia or the HBA price whichever is lower. The difference in actual imported coal cost and bid cost for Indonesian coal will be considered at the exchange rate of respective PPA's with adjustment of profit from Indonesian mines.

6. PROJECT DETAILS

This chapter covers the Technical Description, PPA relate details, performance details and financial analysis on standalone basis for the Project Companies.

6.1. Adani Power Limited

6.1.1 Project Details

Adani Power Ltd ("APL") has implemented 4620MW thermal coal based power project (Mundra Project), in Mundra Taluka, Kutch District, Gujarat. The Project was developed in 4 phases. All the phases of the Project have achieved commercial operation dates (COD) as below:

UNIT	Capacity	Date of COD
Phase I&II	1320 MW (4x330)	Dec-2010
Phase III	1320 MW (2x660)	Dec-2012
Phase IV	1980 MW (3x660)	May 2012

a) Land and Location

The entire Mundra Project has been setup on about 294 hectares of land in the Mundra SEZ. The land for the project is leased from Adani Ports and SEZ Ltd. The key details of plant location are as under:

Parameter	Details
Installed Capacity	4620 MW
Location	Near Tundawanda village, Kutch District, Gujarat.
Nearest town	Near Tundawanda village
Nearest Railway Station	Adipur – ~8.5 km
Nearest Airport	Bhuj – ~75 km
Nearest Port	Mundra – ~12 km

b) EPC/ Project Contractors

Phase I project – The Original Equipment Manufacturer for Boiler was Babcock and Wilcox Company Co. Ltd., China and for Turbine was Beijing Beizhong Steam Generator Co. Ltd., China. The project has been implemented on package contract basis. The BTG and associated equipment had been supplied by M/s. Sishuan Machinery & Equipment Import & Export Co. Ltd. (SCMEC), China. Service contract was entered with M/s Sishuan Fortune Project Management Ltd. (SFPML), China for erection, testing, commissioning and construction management services of the equipment/ system. The BOP equipments were supplied by various contractors.

Phase II project – The Original Equipment Manufacturer for Boiler was Babcock and Wilcox Company Co. Ltd., China and for Turbine was Beijing Beizhong Steam Generator Co. Ltd., China. The project has been implemented on package contract basis. The BTG and associated equipment had been supplied by M/s Iwata Company Limited (IWL), Japan. Service contract was entered with M/s Sishuan Fortune Project Management Ltd. (SFPML), China for erection, testing, commissioning and construction management services of the equipment/ system. The BOP equipments were supplied by various contractors.

Phase III & Phase IV project – The Original Equipment Manufacturer for Boiler was Harbin, China and for Turbine was Dongfang, China. The project has been implemented on turnkey EPC contract basis comprising of Supply Contract and Service Contract. The Supply Contract was awarded to SEPCCOIII Electric Power Construction Corporation Shandong, China (SEPCCOIII) and Service Contract to Shandong NEJUI Electric Power Engineering

Company Ltd. (STEPECL) Qingdao, China (Shandong). A Coordination Agreement was signed between SEPCO and STEPECL, who were jointly, severally and collectively responsible for construction of Power Plant.

c) Power Evacuation Arrangement

The power from Phase I, II and III project is being evacuated by Mundra Delgam (part of ISTS network) transmission line and Mundra Zerda transmission line.

The power from Phase IV project under the PPA is supplied at Mahendergarh sub station in Haryana and electricity is transferred by Adani Transmission Ltd.'s Mundra- Mahendergarh transmission line which is a part of ISTS network.

d) Operations and Maintenance Arrangement

The O&M for the entire plant is being done in-house by Adani group.

e) Power Purchase Agreement

For Phase I, II and III, the two PPAs have been signed with Gujarat Urja Vikas Nigam Ltd (GUVNL) with Net Contracted Capacity of 1000 MW (i.e. total of 2000 MW) each at a levelised tariff of Rs. 2.89 per unit for Phase I & II projects and Rs. 2.35 per unit for Phase III project respectively. The power supplied to GUVNL is on bus bar basis.

For Phase IV project, APL has entered into PPAs with Haryana State Urja Haryana Bilji Vitan Nigam Limited (UHBNL) and Dakshin Haryana Bilji Vitan Nigam Limited (DHBNL) to supply 712 MW each (1424 MW in total) on Net Contracted Capacity.

The balance capacity from all the projects is being sold on short term/ medium term/ merchant basis.

Financial Year	Phase I and II		Phase III		Phase IV*	
	Fixed Cost	Variable Cost	Fixed Cost	Variable Cost	Fixed Cost	Variable Cost
FY10	1.3311	1.4789				
FY11	1.3311	1.4789	1.0000	1.3495		
FY12	1.3015	1.5098	1.0000	1.3495		
FY13	1.2810	1.5413	1.0000	1.3495	1.155	1.19
FY14	1.2621	1.5734	1.0000	1.3495	1.119	2.125
FY15	1.2321	1.6063	1.0000	1.3495	1.083	2.161
FY16	1.2121	1.6398	1.0000	1.3495	1.047	2.181
FY17	1.1931	1.6740	1.0000	1.3495	1.011	2.198
FY18	1.1731	1.7089	1.0000	1.3495	0.975	2.216
FY19	1.1631	1.7446	1.0000	1.3495	0.94	2.039
FY20	1.1431	1.7810	1.0000	1.3495	0.904	2.068
FY21	0.9451	1.8182	1.0000	1.3495	0.869	2.088
FY22	0.9451	1.8561	1.0000	1.3495	0.834	2.115
FY23	0.9451	1.8948	1.0000	1.3495	0.834	2.07
FY24	0.9451	1.9344	1.0000	1.3495	0.835	2.098
FY25	0.9451	1.9747	1.0000	1.3495	0.82	2.134
FY26	0.9451	2.0159	1.0000	1.3495	0.89	2.039
FY27	0.9451	2.0580	1.0000	1.3495	0.89	2.035
FY28	0.9451	2.1010	1.0000	1.3495	0.89	1.492
FY29	0.9451	2.1448	1.0000	1.3495	0.89	1.531
FY30	0.9451	2.1896	1.0000	1.3495	0.89	1.571

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Financial Year	Phase 1 and 2		Phase 3		Phase 4*	
	Fixed Cost	Variable Cost	Fixed Cost	Variable Cost	Fixed Cost	Variable Cost
FY31	0.9451	2.2352	1.0000	1.3495	0.89	1.622
FY32	0.9451	2.2619	1.0000	1.3495	0.89	1.665
FY33	0.9451	2.3295	1.0000	1.3495	0.89	1.709
FY34	0.9451	2.3781	1.0000	1.3495	0.89	1.766
FY35	0.9451	2.4277	1.0000	1.3495	0.89	1.813
FY36	0.9451	2.4764	1.0000	1.3495	0.89	1.86
FY37	-	-	1.0000	1.3495	0.89	1.925
FY38	-	-	-	-	0.89	1.949

*Above Tariff excludes 0.17 paise/unit of FGD for Phase IV project

f) Fuel Supply and Transportation Arrangement

The plant is designed to operate on coal with an average Gross Calorific Value of 4500 kcal/kg with a tolerance of $\pm 5\%$.

Phase I, II and III project – The entire coal requirement is met by imported coal mainly from Indonesia. The coal is procured at market price from the coal suppliers.

Phase IV project – The project's coal requirement is met by domestic as well as imported coal. A Fuel Supply Agreement has been entered into with Mahanadi Coalfields Ltd (MCL) for supply of 6.405 MTPA of G10-13 grade coal per annum which is sufficient to meet 70% coal requirements of the Phase IV project. The balance coal requirement is met by imported coal mainly from Indonesia. The plant can also run entirely on imported coal. Due to high ash content in domestic coal and difficulty in disposing ash, Phase IV is using imported coal for its operations. It is advisable to continue use of imported coal in this plant and its domestic linkage coal may be swapped with some other plants located near the mines.

6.1.2 Debt Profile

As on 31st March 2017, the total outstanding project debt in Phase I, II, III and IV is Rs. 9,127 crore. The sanctioned working capital limits for the project is about Rs. 4,356 crore.

Bank/FI name*	Outstanding (Rs. Crore)
Allahabad bank	228
Axis bank	753
Bank of Baroda	208
Bank of India	879
Bank of Maharashtra	353
Canara Bank	1,086
CDB	506
Corporation bank	79
Deutsche bank	201
HDFC bank	52
ICICI bank	985
IDBI bank Ltd.	347

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Bank/FI name ^a	Outstanding (Rs. Crore)
IIFCL	1,032
J&K bank	157
LIC of India	381
Punjab & Sind bank	157
Punjab National bank	354
Royal Bank of Scotland	175
Standard Chartered bank	240
State bank of India	3,656
State bank of India – ECB	201
UCO bank	550
Union bank of India	798
United bank of India	154
Credit Suisse	451
J.P. Morgan	1,950
UBS	330
Barclays	1,325
Kotak MF	270
STCI	75
HDFC	500
Yes Bank	191
ECL Finance	250
L&T Finance	250
Total Bank/FI loans	19,127
Trade Payables	5,070
Total Debt O/s	24,197

^a Includes USD 453 million of loan in the form of ECB. Exchange Rate of INR 64.85/ USD considered

6.1.3 Operational Performance

The key historical parameters highlighting the operational performance of the plant are given below:

Particulars	Phase I & II			Phase III			Phase IV		
	2015	2016	2017	2015	2016	2017	2015	2016	2017
Availability (%)	97%	96%	96%	92%	91%	88%	92%	93%	93%
PLF (%)	72%	77%	70%	74%	84%	73%	78%	82%	79%
Auxiliary (%)	9.01%	8.86%	8.65%	6.42%	6.41%	6.43%	7.00%	7.25%	7.10%
Sold Unit (MU)	7581	8156	7401	7973	9113	7876	12222	12793	12235

Source: Information provided by Adani Power Limited for Mundra project

6.1.4 Financial Performance

The financial performance for past 3 years for the project is as below:

a) Profit and Loss Statement

(Rs. Crore)

Particular	FY 2015	FY 2016	FY 2017*
Sales#	8798	11695	10324
EBIDTA#	1608	2392	909
Dep	858	937	1079
Interest	2118	1956	2261
PAT#	1303	427	6050\$
EBIDTA Margin (%)	18%	20%	9%

Source: Information provided by Adani Power Limited for Mundra project

*Based on IND AS

#Revenues, EBIDTA & PAT adjusted for Compensatory Tariff

\$Consists of project debt and other debt raised for operations support, etc.

\$This includes write-off of Compensatory tariff booked for prior period of about Rs. 3619 crore

b) Balance Sheet Analysis

Particular	FY 2015	FY 2016	FY 2017
Fixed Assets			
Opening Gross Block	23,294	23,861	24,418
(+) Addition on account of capitalisation of forex loss	331	401	51
(+) Addition in Gross Block due to CAPEX	238	168	105
(-) Deduction in Gross Block i.e. Disposal/Other	1	13	16
Closing Gross Block	23,861	24,418	24,455
Accumulated Depreciation	3,818	4,751	5,666
(+) Capital Work in Progress (CWIP)	-	-	25
Net Block	20,043	19,667	18,814
Equity Movement			
Contributed Equity	3,274	3,274	3,274
Loss during the year	-1,642	-1,125	-2,421
(-) Accumulated Losses	5,819	6,945	9,365
Net Worth	2,546	3,671	6,092
Borrowings			
Opening	14,664	15,439	16,461
(+) Net Addition/(repayment)	776	1,022	2,582
Closing Borrowings	15,439	16,461	19,043*
(+) Closing creditor balance	4,155	3,733	5,070
Total Loan + overdue creditors	19,594	20,194	24,113
Working Capital Loan	2,574	2,974	2,728
Other Current Liabilities	1,666	1,790	1,169
Total Liabilities	25,552	26,297	28,011

Source: Information provided by Adani Power Limited for Mundra project

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6.1.5 Credit Rating

The ratings assigned to various facilities of the Company by CARE are as follows:

Facility	Rating
Long Term Bank Facilities of Rs. 7432 Crore	CARE BB+
Long Term/ Short Term Bank Facilities of Rs. 5063 Crore	CARE BB+/ CARE A4
Long Term Bank Facilities (Rupee Term Loan – Phase IV)	CARE BB+

Source: CARE Credit report, July 14, 2017

6.1.6 Technical Due Diligence by NTPC – Salient Features of Project

- Massive dedicated port facility of Group Company at West Port for coal supply logistic.
- Closed cooling water system adopted for condensers in line with MOEF norms lately promulgated.
- FGD available for 3 units and in others, space is available for putting up FGD for other units.
- Auxiliary reservoir exists within plant for make-up water supply to CT.
- Well defined corrosion protection protocol and painting regime exists.
- Cooling tower hot water distribution header & pipes are of FRP and hence corrosion free.
- Unit#4 (320 MW) has run for record 666 days non-stop and Unit# 7 (660 MW) has run for 370 days non-stop.
- 100% Ash utilization; Satisfactory Safety & Security protocol.
- Specific coal consumption is 0.49 kg/kwhr which is better than domestic coal based plants. Using minimal gun to reduce the specific oil consumption.
- All critical spares are available with indigenization of many spares.
- Floating Solar PV plant of 1.5 MW within plant water reservoir is installed for reducing in-house Aux.

6.1.7 Independent Valuation

M/s PricewaterhouseCoopers (PwC) and KPMG were appointed for carrying out Enterprise valuation of all three projects. The sustainable debt and Enterprise Valuation (considering fuel cost pass-through) for APT on an 31st March 2017 is as provided below (as per draft report):

Particulars	Enterprise Value	Sustainable Debt
PWC	27,764	25,494
KPMG	26,011	27,539

6.1.8 Cost Benefit Analysis

The cost benefit analysis has been carried out based on two approaches being contemplated by lenders and procurers to resolve the issue of under recovery. In the first approach, entire fuel cost is assumed to be recovered through fuel tariff by making amendment in the PPA. In the second approach, the formula provided by CERC for the Force Majeure order of APTEL was taken as the guiding principle.

First Approach

The quoted energy tariff including change in Indian law for Phase I&II and Phase III is considered as Rs. 1.93/unit and Rs. 1.56/unit respectively for FY 2018 while the cost of generation for Phase I&II and Phase III is Rs. 2.27/unit and Rs. 2.22/unit respectively (after adjustment of profit from Indonesian coal mines as limited by procurers) based on the coal cost estimate of June 2017.

The cost at pass through of fuel cost in FY18 is Rs. 598 Crore and FIPV of the cost to Procurer due to pass through is equal to Rs. 6,053 Crore.

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Based on the principle for Cost Benefit Analysis discussed earlier, the benefit to Producer(s)/ Discom on account of various factors is illustrated as follows:

S. No.	Benefit	NPV Value (Rs Crore)
1	Increase in availability from 80% to 90%*	5,016
2	Tie-up of free capacity (~870 MW)	5,599
3	Availability of power beyond PPA (for 10 years)	3,495
	Total Benefit	14,110

*As per the PPA, the Normative Availability of the Plant is 80% while the developer will try to run the plant at higher availability on best endeavor basis once fuel cost is fully recovered.

The basis of computation of NPV is provided in Annexure II. If we consider marginal cost for power procurement, this benefit will be higher.

Second Approach

APTEL in its order dated 7th April 2016 had held that the increase in price of coal on account of the change in Indonesian Regulations constitute a Force Majeure event. APTEL had directed CERC to assess the extent of impact of Force Majeure event. CERC came up with the final order on 6th December 2016 providing a mechanism for relief under Force Majeure clause of the PPA.

In the second approach, the Working Group of lenders and producers asked for the analysis as per the formula provided by CERC. In this formula, the compensation is calculated based upon the difference between quoted tariff and fuel cost corresponding to coal cost and exchange rate assumptions taken as per bid. For the PPA of Phase III, the same principle has been used for calculation of relief. As per the formula given by CERC in Force Majeure (FM) case, the compensation for FY 16 would be Rs 948 Crore and NPV of this cost would be Rs 8,552 Crore.

6.1.9 Overall Impact of Proposed Resolution Plan on End Consumers

Since the company is incurring continual losses on account of fuel cost under recovery, the plant will become stranded unless the under recovery of fuel cost is arrested by amending PPA provision allowing fuel cost pass through. The impact on consumers in both scenarios i.e. allowing plant to continue operations allowing fuel cost pass through or allowing it to become stranded and purchase electricity from alternate source are analysed below.

Scenario 1: Continuing purchase by amending PPAs

Scenario 2: Shutdown of these Plants because of unviability and consequent purchase from alternate sources

Scenario 1): Continuing purchase by amending PPAs

While the proposed amendment to PPA i.e. fuel cost pass through will increase the cost to Producers, there will be no increase in the Capacity Charge as per the proposal. In fact, the effective Capacity Charge per unit payable by the Producers will reduce due to higher availability of plants thereby spreading fixed costs over higher number of generated units. Further in return, there will be two more additional benefits that will accrue to consumers/Discoms by way of (i) continuation of contracted capacity beyond PPA term of 25 Years and (ii) utilization of untied capacity at a price substantially lower than market price.

The cost benefit analysis is tabulated below:

S. No.	Benefits/ Cost	NPV Value	
		(Rs. Crore)	Rs./ kWh
1	Increase in availability from 80% to 90%	5,016	0.23
2	Tie-up of free capacity (~870 MW)	3,599	0.26
3	Availability of power beyond PPA (for 10 years)	3,495	0.14
	Total Benefit	14,110	0.63
4	Less: Additional Cost for coal pass through	(6,053)	(0.28)
5	Net Benefit to Producers	8,057	0.35

- Coal Cost is considered without escalation as imported coal prices may go up or down or remain stable at the current level. (Forward price curves are showing downward trend).
- Capacity charges for availability of power beyond PPA period is considered only at Rs. 2 / kWh i.e. at current price level; and escalation for 20 years is not considered, wherein it could be much higher and thereby higher advantage to producer.

Scenario (2): Shutdown of these Plants because of unviability and consequent purchase from alternate sources by Producers

If Scenario (1) is not materialized and the Project gets stranded due to non-viable operation or it is referred for insolvency, the Procurement will be forced to depend on alternate sources. In such an event, based on the prices discovered in recent Case I competitive bids, the cost of power purchase from alternate sources would be substantially higher than the purchase from these projects even with fuel cost at pass-through.

In this context, it is pertinent to mention that the Ministry of Power has revised the guidelines in the year 2013 for procurement of power under Case I. As per revised guidelines, the fuel cost will be pass-through. Therefore, the difference in cost of purchase from existing sources and new sources will be only in respect of Capacity Charge. The Capacity Charge of this project is substantially lower as the project cost is in the range of Rs 4 - 4.5 Crore per MW as compared to the average project cost of more than Rs 7.5 Crore per MW for projects which are recently implemented or which are under implementation and planning.

The comparison of Capacity Charge for the Project and new sources is as under:

S. No.	Benefit	Rs./ kWh
1	Capacity Charge of New Projects (Estimated Cost of Rs 7.5 Crore per MW)	2.00
2	Weighted Average Capacity Charge as per PPA for 3 phases	1.03
3	Net Saving to Producer	0.97

The producer will have to pay capacity charge of around Rs 2/unit in case of it enters into a fresh PPA with any alternate source. The capacity charge of Rs 2/unit consists of Return of Equity (RoE) of Rs 0.53/unit and CoEM

expenses of Rs 0.29/unit (as per CERC norms). In the project, the O&M expense is only Rs 0.17/unit which is significantly lower than CERC norms. Therefore, continuing with existing PPA will result into a saving of Rs 0.53/unit on equity return and Rs 0.12/unit on O&M expenses.

From the above analysis it emerges that:

- (i) If the PPA is amended and fuel cost is made pass through, there will be increase in cost to Procurers in the initial years, but at the same time, the Procurers would stand to get more benefit over a period of time than additional cost and there will be net saving of Rs 0.35 per kwh on IIPV basis to the Procurers.
- (ii) Non availability of power from current project and reliance of Procurers on new sources will result in increase in cost by Rs 0.97 per kwh on account of higher project cost.
- (iii) If these plants are taken over by procurers and PPAs are amended and fuel cost is made pass through, there will be increase in cost to Procurers in the initial years. However, this additional cost is not very high and it is being recovered over a period due to other benefits. On the other end, in the event proposed resolution is not materialized and the Project gets stranded or it is referred for insolvency, Procurers will have to incur higher cost perpetually without any avenues to recover this additional cost.

Therefore, continuation of power purchase from these projects by amending the PPAs to make the fuel cost pass-through will be beneficial from the end consumers point of view. Amendment of PPAs not only helps in making the projects viable but at the same time benefits in terms of higher reliability owing to their best operational performances and proven track record thereby providing uninterrupted power supply. Unlike the new sources, there is no uncertainty in the availability of power as these projects are already commissioned and operational.

7. CONCLUSION & WAY FORWARD

Resolution of these project is possible only if the issue of fuel cost is addressed by the procurers. The procurer states can implement this relief through two options as follows:

1. **Change in ownership** - The state government(s) may take majority stake in the project. The change in ownership may be made effective from 31st March 2017 and the changes in the balance sheet after the effective date may be adjusted on the date of transaction. Along with change in ownership, the PPAs may be amended to address the issue of fuel cost to make the project viable. This may be done by making the fuel cost fully recoverable (as per section 62 of Electricity Act) or through some other mechanism as suggested in CERC formula.
In case of multiple procurers, the states may have joint ownership of the project. During Working Group discussions, the states were ok with Gujarat taking majority stake on their behalf as Gujarat is the major procurer state for all three projects. Gujarat may then enter into amended PPAs with respective states.
2. **Revision in PPA without change in ownership** - The procurers may agree to make amendment in PPAs to address the issue of fuel cost to make the project viable. This may be done by making the fuel cost fully recoverable (as per section 62 of Electricity Act) or through some other mechanism as suggested in CERC formula. In this case, there will not be any change in the ownership structure of the projects.

It may be noted that, to make the solution sustainable, index recovery of fuel cost should be adequately addressed. Without this, the Projects will be facing losses in future also as in case of Force Majeure Formula for COPI.

While providing any relief to the projects, the state(s) may also consider the additional benefit available from these projects. These benefits are as follows:

- a) **Additional generation** - Once the relief on the fuel cost is made available to the projects, the availability of the projects may be increased which will provide higher quantity of electricity to procurers without any additional capacity charge. Procurer(s) will get benefit from higher availability of the Projects.
- b) **Tie-up of free capacity** - Two of the projects have some capacity which is not yet tied up through any long term PPA. The procurers may enter into long term arrangement for purchasing this free capacity.
- c) **Plant availability after PPA term** - Even after the term of the PPA, the plants will have substantial residual life. The procurers may enter into such an arrangement where these capacities will be available to them even for next ten years even after expiry of PPA.

The NPV of these benefits for individual projects are given in the previous chapter.

7.1. Way Forward

Based upon these guiding principles, the states may take approval from their respective competent authorities. After approval, the mechanism may then be conveyed to the lenders of the projects for further course of action, if required. A tripartite agreement among the procurers, developers and the lenders may be executed to take this process forward. The tripartite agreement will cover the roles and responsibilities of all the individual parties during the entire process.

Annexure I: Merit Order of Various States

a. Merit order (Gujarat)

Station	Status	Type Of Station	Variable Cost (Rs/Unit)	Schedule (MWh)	Cumulative Capacity	%Age	Rank
SOLAR	Must Run	Renewable	-	6407	6407	2.30%	1-4
WIND	Must Run	Renewable	-	12740	19147	6.86%	
TAPS 3&4	Must Run	Nuclear	2.98	2953	22100	7.92%	
TAPS 1&2	Must Run	Nuclear	1.02	1776	23876	8.55%	
KHPS	Must Run	Hydro	-	376	24254	8.69%	
SSP	Must Run	Hydro	-	496	24750	8.87%	1
SUGER I		Gas	-	14390	39140	14.02%	
ACBIL		Thermal	0.64	4987	44127	15.81%	2
KSTPS 3-WR		Thermal	1.19	2142	46269	16.57%	3
SIPAT 1		Thermal	1.20	1068	56951	20.40%	4
KSTPS WR		Thermal	1.21	5760	62711	22.46%	5
SIPAT 2-WR		Thermal	1.23	5106	67817	24.29%	6
ALTPS		Thermal	1.25	3134	70951	25.42%	7
VSTPS 5		Thermal	1.45	2113	73064	26.17%	8
VSTPS 4		Thermal	1.45	5470	78534	28.13%	9
VTPS 2		Thermal	1.45	5406	83940	30.07%	10
VSTPS 3		Thermal	1.45	6064	90004	32.24%	11
APL(MUNDRA) UNIT-5 & 6		Thermal	1.53	14808	104812	37.55%	12
VTPS 1		Thermal	1.54	5023	109835	39.35%	13
SLPP - I		Thermal	1.70	2272	112107	40.16%	14
SLPP - II		Thermal	1.70	4631	116738	41.82%	15
COPI MUNDRA UMPP		Thermal	1.73	28500	145238	52.03%	16
GANDHAR		Gas	1.88	2292	147530	52.85%	17
CCPP-I (GSECL) ON		Gas	1.89	1431	148961	53.36%	18
GAIL(APM)							
APL(MUNDRA) UNIT-1-4		Thermal	1.89	21462	170423	61.05%	19
EPGL		Thermal	1.89	23364	193787	69.42%	20
KAWAS GAS		Gas	2.00	1394	195181	69.92%	21
KLTPS 4		Thermal	2.07	1152	196333	70.33%	22
GAIL NMPM		Gas	2.15	389	196722	70.47%	23
KAWAS NMPM		Gas	2.17	295	197017	70.58%	24
KLTPS 1-3		Thermal	2.17	3239	200256	71.74%	25
BECL		Thermal	2.25	2644	202900	72.68%	26
KAMALGAON-II		Thermal	2.31	2764	205164	73.50%	27
DHUVARAN CCPP I ON		Gas	2.41	237	205401	73.58%	28
ONGC WO							
MAUDA-II		Thermal	2.62	1670	207071	74.18%	29
GIPCL-I ON GAS - APM		Gas	2.62	1128	208199	74.58%	30
MAUDA-I		Thermal	2.73	3695	211894	75.91%	31
CLPI ON CAIRN GAS		Gas	2.87	2342	214236	76.75%	32
UTPS 6		Thermal	2.99	10450	224686	80.49%	33
STPS 3&4		Thermal	3.32	9131	233817	83.76%	34
WTPS 7		Thermal	3.38	4355	238172	85.32%	35
GTPS 5		Thermal	3.46	4164	242336	86.81%	36
UTPS		Thermal	3.54	9035	251371	90.05%	37

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Station	Status	Type Of Station	Variable Cost (Rs/Unit)	Schedule (MWh)	Cumulative Capacity	%Age	Rank
WTPS I & II		Thermal	3.66	16752	268123	96.05%	38
GTPS34		Thermal	3.73	6304	274427	98.31%	39
UGBPS 3 SPOT		Gas	6.05	1011	275438	98.67%	40
GPPC SPOT		Gas	6.09	2610	278048	99.61%	41
CLPI (QSPC SPOT GAS)		Gas	6.37	1052	279100	99.98%	42
DHUVARAH CCPP-I GAIL SPOT		Gas	7.12	50	279150	100.00%	43

Source: <http://meritindia.in>

b. Merit order (Punjab)

Station	Status	Type Of Station	Variable Cost (Rs/Unit)	Schedule (MWh)	Cumulative Capacity (MWh)	Cumulative Purchase (%)	Rank
BAIRATH HEP	Must Run	Hydro	0.96	260	260	0.21%	1-24
BHAKRA	Must Run	Hydro	0.96	4350	4610	3.72%	
DEHAR	Must Run	Hydro	0.96	3433	7043	5.69%	
PONG	Must Run	Hydro	0.96	1495	8538	6.90%	
CHAMARA-II HEP	Must Run	Hydro	0.99	260	8818	7.12%	
CHAMARA HEP	Must Run	Hydro	1.11	265	9083	7.34%	
NATHA JHARK HEP	Must Run	Hydro	1.19	1551	10634	8.59%	
URI HEP	Must Run	Hydro	1.27	222	10856	8.77%	
DHALAIGANGA HEP	Must Run	Hydro	1.51	315	11171	9.02%	
TANAKPUR HEP	Must Run	Hydro	1.57	238	11409	9.22%	
RAMPUR HEP	Must Run	Hydro	1.61	268	11677	9.43%	
SALAL HEP	Must Run	Hydro	1.71	1105	12782	10.33%	
KOTESHWAR	Must Run	Hydro	1.96	187	12969	10.48%	
CHAMARA-III HEP	Must Run	Hydro	2.12	159	13128	10.60%	
TALA	Must Run	Hydro	2.16	312	13440	10.86%	
KOLDAM HEP	Must Run	Hydro	2.17	347	13787	11.14%	
SEWA-II HEP	Must Run	Hydro	2.35	41	13828	11.17%	
NAPP	Must Run	Nuclear	2.58	1423	15251	12.32%	
TEHRI HEP	Must Run	Hydro	2.70	683	15934	12.87%	
KALANA-II HEP	Must Run	Hydro	2.73	453	16387	13.24%	
PARBATI-III	Must Run	Hydro	2.74	107	16494	13.32%	
RAPPB	Must Run	Nuclear	2.88	2308	18802	15.19%	
DULHASTI HEP	Must Run	Hydro	3.28	650	19452	15.71%	
URI-II HEP	Must Run	Hydro	3.28	94	19546	15.79%	
RAPPD	Must Run	Nuclear	3.54	1372	20918	16.90%	
TOTAL HYDRO	Must Run	Hydro		10074	30992	25.04%	
TOTAL SOLAR	Must Run	Renewable		66	31058	25.09%	
SASANI UMPP		Thermal	1.15	13122	44180	35.69%	25-32
CGPL MUNDRA UMPP		Thermal	1.31	7500	51680	41.75%	
RIHARD STPS		Thermal	1.31	2647	54327	43.89%	
RIHARD-II STPS		Thermal	1.31	2542	56869	45.94%	
RIHARD-III STPS		Thermal	1.32	2131	59000	47.66%	
SINORAULI STPS		Thermal	1.43	4524	63524	51.32%	
RAOHUNATHPUR (DVC)		Thermal	2.01	0	63524	51.32%	
DURGAPUR STEEL THERMAL POWER STATION (DSTPS)		Thermal	2.17	2192	65716	53.09%	

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Station	Status	Type Of Station	Variable Cost (Rs/Unit)	Schedule (MWh)	Cumulative Capacity (MWh)	Cumulative Purchase (%)	Rank
PRAGATI-II GAS PLANT BAWANA		Gas	2.19	584	66300	51.56%	9
VIJAYA POWER LTD. RAJPURA		Thermal	2.26	15717	82017	66.25%	10
KAHALGAON-II		Thermal	2.41	1956	83973	67.83%	11
KAHALGAON-I		Thermal	2.52	780	84753	68.46%	12
DADRI (GAS)		Gas	2.62	517	85270	68.88%	13
ANITA (GAS)		Gas	2.62	0	85270	68.88%	14
FARAKKA		Thermal	2.84	104	85374	68.97%	15
TAIWANDI SABOO		Thermal	2.85	28076	113450	91.65%	16
JHAJJAR		Thermal	2.89	166	113616	91.78%	17
DADRI-II TPS		Thermal	2.94	79	113695	91.84%	18

Source: <http://meritindia.in>

4. *Maritender (Haryana)*

Station	Status	Type Of Station	Variable Cost (Rs/Unit)	Schedule (MWh)	Cumulative Capacity (MWh)	Cumulative Purchase (%)	Rank
SALAL HEP	Must Run	Hydro	0.6	624	624	0.49%	214
URI HEP	Must Run	Hydro	0.83	88	712	0.55%	
CHAMERA HEP	Must Run	Hydro	0.93	411	1123	0.88%	
BHAKRA	Must Run	Hydro	0.96	3150	4273	3.33%	
DEHAR	Must Run	Hydro	0.96	1762	6035	4.70%	
PONG	Must Run	Hydro	0.96	1083	7118	5.55%	
BAIRASIL HEP	Must Run	Hydro		171	7289	5.68%	
CHAMERA-II HEP	Must Run	Hydro	1.03	113	7402	5.77%	
NATHPA JHAKRI HEP	Must Run	Hydro	1.23	537	7939	6.19%	
DHAULIGANGA HEP	Must Run	Hydro	1.56	135	8074	6.29%	
TAJAKPUR HEP	Must Run	Hydro	1.62	85	8159	6.36%	
RAMPUR HEP	Must Run	Hydro	1.67	146	8305	6.47%	
KARCHAM WANGTOO (KWWHEP)	Must Run	Hydro	1.9	1210	9515	7.41%	
KOTESHWAR	Must Run	Hydro	2.02	92	9607	7.49%	
CHAMERA-III HEP	Must Run	Hydro	2.2	124	9731	7.58%	
SEWA-II HEP	Must Run	Hydro	2.23	21	9752	7.60%	
TALA	Must Run	Hydro	2.23	156	9908	7.72%	
KOLDAM HEP	Must Run	Hydro	2.25	368	10276	8.01%	
URI-II HEP	Must Run	Hydro	2.48	65	10341	8.06%	
TAAPP	Must Run	Nuclear	2.67	595	10936	8.52%	
TEHRI HEP	Must Run	Hydro	2.78	490	11426	8.90%	
PARBATI-III	Must Run	Hydro	2.83	84	11510	8.97%	
DULHASTI HEP	Must Run	Hydro	2.87	306	11816	9.21%	
RAPPB	Must Run	Nuclear	3.2	1104	12920	10.07%	

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Station	Status	Type Of Station	Variable Cost (Rs/Unit)	Schedule (MWh)	Cumulative Capacity (MWh)	Cumulative Purchase (%)	Rank
RAPP	Must Run	Nuclear	3.2	566	13486	10.51%	
TOTAL SMALL HYDRO	Must Run	Hydro	4.09	680	14166	11.04%	
TOTAL BAGGASE	Must Run	Renewable	4.12	0	14166	11.04%	
TOTAL BIOMASS	Must Run	Renewable	7.98	379	14545	11.33%	
TOTAL SOLAR	Must Run	Renewable	10.71	409	14954	11.65%	
PTC ORISSA GMR/EL HRY		Thermal	1.01	1226	16180	12.61%	1
SASANI UMPP		Thermal	1.29	9841	26021	20.28%	2
RIHAND-II STPS		Thermal	1.30	1289	27310	21.28%	3
RIHAND STPS		Thermal	1.31	1439	28749	22.40%	4
RIHAND-III STPS		Thermal	1.32	1268	30017	23.39%	5
CGPL MUNDRA UMPP		Thermal	1.51	6000	36017	28.07%	6
SINGRAULI STPS		Thermal	1.54	4128	40145	31.28%	7
LANCO AMARKANTAK POWER LIMITED (LAMPPL)		Thermal	1.68	5965	46110	35.93%	8
YODERMA (DVC)		Thermal	1.88	1628	47738	37.20%	9
MEJA TPS		Thermal	2.30	837	48575	37.85%	10
KAHALGAON-II		Thermal	2.31	1554	50129	39.06%	11
FARIDABAD GPS (NTPC)		Thermal	2.40	2640	52769	41.12%	12
KAHALGAON-I		Thermal	2.42	476	53245	41.49%	13
ADANI POWER LIMITED (APL - MUNDRA) STG-II		Thermal	2.73	22776	76021	59.24%	14
FARAKKA		Thermal	2.79	113	76134	59.33%	15
UNCHAHAR-III TPS		Thermal	3.01	211	76345	59.49%	16
JHAJJAR(CLP)		Thermal	3.02	13105	89450	69.70%	17
PRAGATI POWER (BAWA/IA/IP)		Gas	3.07	583	90033	70.16%	18
UNCHAHAR-I TPS		Thermal	3.07	125	90158	70.26%	19
UNCHAHAR-II TPS		Thermal	3.07	347	90505	70.53%	20
JHAJJAR		Thermal	3.20	7697	98202	76.52%	21
YTPP (B2-1) AMULIAT (AGAR)		Thermal	3.38	10659	108861	84.83%	22
PITPS UNIT-7		Thermal	3.56	4279	113140	88.16%	23
PITPS UNIT-6		Thermal	3.59	4290	117430	91.51%	24
ROTPP (KHEDAR) (IPP)		Thermal	3.61	10108	127538	99.38%	25
BAGLIHAR-I (PTC)		Thermal	3.83	670	128208	99.91%	26
DADRI (GAS)		Gas	3.95	120	128328	100.00%	27

Source: <http://meritindia.in>

d. Merit order (Maharashtra)

Station	Status	Type Of Station	Variable Cost (Rs/Unit)	Schedule (MWh)	Cumulative Capacity (MWh)	Cumulative %	Rank
SSP	Must Run	Hydro		809	809	0.23%	1st

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Station	Status	Type Of Station	Variable Cost (Rs/Unit)	Schedule (MWh)	Cumulative Capacity (MWh)	Cumulative %	Rank
DAHANU SOLAR POWER PRIVATE LIMITED (DSPPL)	Must Run	Renewable		187	996	0.29%	
KAPS	Must Run	Nuclear		0	996	0.20%	
TAPS 3&4	Must Run	Nuclear		4637	5633	1.63%	
SIPAT 1		Thermal	1.4	11736	17369	5.03%	1
SIPAT 2&VR		Thermal	1.45	5301	22670	6.57%	2
TROMBAY UNIT 7		Gas	1.49	2160	24830	7.20%	3
VTPS 2		Thermal	1.52	7779	32609	9.45%	4
VSTPS 3		Thermal	1.52	6502	39111	11.34%	5
VSTPS 4		Thermal	1.53	7114	46225	13.40%	6
VSTPS 5		Thermal	1.53	3529	49754	15.42%	7
CGPL MUNDRA UMPP		Thermal	1.60	11607	61361	17.79%	8
GIPS URAN (UNIT 05 TO 10)		Thermal	1.61	6600	67961	19.70%	9
VTPS 1		Thermal	1.62	9684	77645	22.51%	10
ADANI TIRODA (UNIT - 2,3)		Thermal	1.82	13200	90845	26.33%	11
GANDHAR		Gas	1.88	1859	92734	26.88%	12
EMCO		Thermal	1.9	2400	95134	27.58%	13
KAWAS GAS		Gas	1.93	1485	96619	28.01%	14
JSW U1, JAIGAD		Thermal	2.07	6720	103339	29.95%	15
GAN NIAPM		Gas	2.16	254	103593	30.03%	16
KAWAS NIAPM		Gas	2.17	317	103910	30.12%	17
KORADI UNIT - 08 TO 10		Thermal	2.17	20909	124819	36.18%	18
CHANDRAPUR UNIT - 08,09		Thermal	2.24	18771	143590	41.62%	19
PARAS UNIT - 03 & 04		Thermal	2.24	11040	154630	44.82%	20
CHANDRAPUR UNIT - 03 TO 07		Thermal	2.31	22440	177070	51.33%	21
KHAPERKHEDA UNIT - 05		Thermal	2.35	9956	187026	54.21%	22
ADANI TIRODA (UNIT - 1,4,5)		Thermal	2.38	29726	216754	62.83%	23
KAKALGAON-II		Thermal	2.43	2723	219477	63.62%	24
ADANI TIRODA (UNIT - 1,4,5)		Thermal	2.44	9872	229349	66.48%	25
VIDARBA INDUSTRIES POWER (TD (VIPL UNIT 1 & 2)		Thermal	2.45	13728	243077	70.46%	26
KHAPERKHEDA UNIT - 01 TO 04		Thermal	2.73	8350	251427	72.88%	27
BHUSAWAL UNIT - 04 & 05		Thermal	2.74	22389	273816	79.37%	28
MAJIDA-II		Thermal	2.79	2752	276568	80.17%	29
MAJIDA-I		Thermal	2.93	6164	282732	81.96%	30
PARAU UNIT -08		Thermal	3.02	4292	287044	83.20%	31
RATAN INDIA UNIT-01 TO 05		Thermal	3.03	5723	292767	84.86%	32
BHUSAWAL UNIT - 2 & 3		Thermal	3.07	4296	297063	86.11%	33
TIASIK UNIT - 03 TO 05		Thermal	3.27	7686	304749	88.33%	34
TROMBAY UNIT-8		Thermal	3.38	5482	310231	89.92%	35

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Station	Status	Type Of Station	Variable Cost (Rs/Unit)	Schedule (MWh)	Cumulative Capacity (MWh)	Cumulative %	Rank
TROMBAY UNIT 3		Thermal	3.39	10400	320631	92.94%	36
DAHANU THERMAL POWER STATION (DTPS UNIT 1 & 2)		Thermal	3.39	10571	331202	96.00%	37
GANDHAR RING		Gas	4.59	368	331570	96.11%	38
LAJAWAS RING		Gas	4.69	224	331794	96.17%	39
KSTPS-WR		Thermal		10294	342088	99.16%	40
KSTPS 3-WR		Thermal		2908	344996	100.00%	41

Source: <http://meritindia.in>

a. Merit order (Rejection)

Station	Status	Type Of Station	Variable Cost (Rs/Unit)	Schedule (MWh)	Cumulative Capacity (MWh)	Cumulative %	Rank
MAHI	Must Run	Hydro	0.30	0	0	0.00%	11A
CHAMERA-II HEP	Must Run	Hydro	0.99	193	193	0.10%	
CHAMERA HEP	Must Run	Hydro	1.11	509	702	0.37%	
KATHPA JHAJRI HEP	Must Run	Hydro	1.19	939	1641	0.87%	
URI HEP	Must Run	Hydro	1.27	144	1785	0.94%	
DHAJUGANGA HEP	Must Run	Hydro	1.31	227	2012	1.06%	
TANAPUR HEP	Must Run	Hydro	1.37	183	2195	1.14%	
RAMPUR HEP	Must Run	Hydro	1.61	270	2465	1.29%	
SALAL HEP	Must Run	Hydro	1.70	122	2587	1.35%	
KARCHAM WANGTOO (KWHEP)	Must Run	Hydro	1.78		2557	1.35%	
KOTESHWAR	Must Run	Hydro	1.96	183	2740	1.45%	
CHAMERA-III HEP	Must Run	Hydro	2.12	155	2895	1.53%	
TALA	Must Run	Hydro	2.16	156	3051	1.61%	
KOLDAM HEP	Must Run	Hydro	2.17	402	3453	1.82%	
SEWA-II HEP	Must Run	Hydro	2.36	38	3491	1.84%	
NAPP	Must Run	Nuclear	2.58	960	4451	2.35%	
PARBATI-II	Must Run	Hydro	2.74	105	4556	2.41%	
RAPPB	Must Run	Nuclear	2.88	3358	7914	4.18%	
RAPS A (NPPC)	Must Run	Nuclear	2.88	4199	12113	6.40%	
TEHRI HEP	Must Run	Hydro	3.00	517	12630	6.67%	
DULHASTI HEP	Must Run	Hydro	3.28	609	13239	6.99%	
URI-II HEP	Must Run	Hydro	3.28	132	13371	7.06%	
RAPPB	Must Run	Nuclear	3.54	1990	15361	8.12%	
ANCOOPGARH MH	Must Run	Hydro	3.78	0	15361	8.12%	
BISALPUR MH	Must Run	Hydro	3.78	0	15361	8.12%	
CHARANWALA MH	Must Run	Hydro	3.78	0	15361	8.12%	
MAHI-RMC MH	Must Run	Hydro	3.78	0	15361	8.12%	

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Station	Status	Type Of Station	Variable Cost (Rs/Unit)	Schedule (MWh)	Cumulative Capacity (MWh)	Cumulative %	Rank
MANOROL MH	Must Run	Hydro	3.78	0	15361	8.12%	
PUGAL MH	Must Run	Hydro	3.78	0	15361	8.12%	
SURATGARH-MH	Must Run	Hydro	3.78	0	15361	8.12%	
JAWAHAR SAGAR HEP	Must Run	Hydro		1514	16875	8.92%	
BIOMASS	Must Run	Renewable		477	17352	9.17%	
RAJAPRATAP SAGAR	Must Run	Hydro		2320	19672	10.39%	
SOLAR	Must Run	Renewable		1230	20902	11.04%	
BHAKRA	Must Run	Hydro		2007	22909	12.10%	
DEHAR	Must Run	Hydro		1174	24083	12.72%	
PONG	Must Run	Hydro		4070	28153	14.87%	
WIND	Must Run	Renewable		2179	30332	16.02%	
BSILUL			0.96	0	30332	16.02%	1
BARSINGGAR (NLC)		Thermal	1.11	4538	34870	18.42%	2
DB POWER		Thermal	1.11		34870	18.42%	3
MARUTI CLEAN COAL AND POWER LIMITED (MCCPL)		Thermal	1.13		34870	18.42%	4
RHAND-II STPS		Thermal	1.25	3879	38749	20.47%	5
RHAND STPS		Thermal	1.26	3558	42307	22.35%	6
RHAND-III STPS		Thermal	1.27	4402	46709	24.68%	7
SASAN UMPP		Thermal	1.30	8748	55457	29.30%	8
COPL MUNDRA UMPP		Thermal	1.46	6000	61457	32.47%	9
SINGRAULI STPS		Thermal	1.48	8772	70229	37.10%	10
RAMGARH GPS STG1&2		Gas	1.84	1047	71276	37.66%	11
FAWAI (ADANI)		Thermal	1.96	13970	85246	45.04%	12
RAJWEST (TPS (IPP))		Thermal	2.09	16345	101591	53.67%	13
FAHALGAON-II		Thermal	2.25	1247	103038	54.34%	14
CHABRA TPS U3		Thermal	2.31	5334	108372	57.25%	15
CHABRA TPS U4		Thermal	2.31	5273	113645	60.04%	16
FAHALGAON-I		Thermal	2.36	317	113962	60.21%	17
CHABRA TPS U1&2		Thermal	2.38	10410	124372	65.71%	18
YALISINDH TPP-II		Thermal	2.55	10278	134650	71.14%	19
YALISINDH TPP-I		Thermal	2.56	9931	144581	76.38%	20
FARAKA		Thermal	2.71	78	144659	76.43%	21
UNCHAHAR IV		Thermal	2.75	861	145520	76.88%	22
UNCHAHAR-II TPS		Thermal	2.97	674	146194	77.24%	23
UNCHAHAR-III TPS		Thermal	2.97	370	146564	77.43%	24
UNCHAHAR-I TPS		Thermal	2.98	194	146758	77.53%	25
KOTA TPS		Thermal	3.02	19302	166060	87.73%	26
RAMGARH GPS STG3		Gas	3.07	2426	168486	89.01%	27

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Station	Status	Type Of Station	Variable Cost (Rs/Unit)	Schedule (MWh)	Cumulative Capacity (MWh)	Cumulative %	Rank
DADRI II TPS		Thermal	3.18	519	169005	89.39%	28
DHOLPUR GPS		Gas	3.43	2625	171630	90.67%	29
SURATGARH TPS		Thermal	3.81	4637	176267	93.12%	30
DADRI (GAS)		Gas	3.86	265	176532	93.25%	31
CHABRA TPS US		Thermal		12729	189261	100.00%	32

Source: NTP merindrain

Annexure II: Key Assumptions for Net Benefit Computation

1. Adani Power Limited

Assumptions	Unit	Phase I & II	Phase III	Phase IV
General				
Capacity	MW	1320	1320	1080
PPA	MW	1000	1000	1424
Gross Capacity - PPA	MW	1095	1069	1587
Normative Units for PPA	MU	7008	7008	6079
Gross Capacity - Free Capacity	MW	225	251	393
Normative units - Free Capacity	MU		6356	
Hours		8760	8760	8760
Discount Rate	%		9.08%	
Exchange Rate	INR/USD		64.85	
Exchange rate escalation	%		0%	
Operational Parameters				
Normative Availability	%	80.00%	80.00%	80.00%
Availability - Free Capacity	%	96.00%	90.00%	93.00%
PLF - Free Capacity	%	90.00%	90.00%	90.00%
Gross SHR (actual)	Kcal/unit	2,265	2,248	2,248
Aux Consumption as per CERC order	%	9.00%	6.50%	6.50%
Transmission loss as per CERC order	%			3.40%
Auxiliary Consumption (Actual)	%	6.65%	6.43%	7.10%
Revenue Related				
Capacity charge as per current market	Per Unit		2.00	
Free Capacity Tariff - Capacity Charge	Per Unit		1.03	
Change in Law	Rs./unit	0.22	0.21	0.34
Incentive for availability/PLF from 80% to 85%	Rs./unit	0.25	0.00	0.00
Incentive for availability/PLF from 85% to 90%	Rs./unit		0.25	
Capacity Charge Beyond PPA for 10 years*	Rs./unit		1.00	
Coal Related				
Fuel cost escalation	%		0%	
Fuel Freight escalation	%		0%	
Imported coal OCV	Kcal/Kg	4400	4400	4400
Imported coal Price (FOB)	USD/ton	40.63	40.63	40.63
Imported coal price (landed cost)	Rs./ton	4,099.58	4,099.58	4,099.58

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Assumptions	Unit	Phase I & II	Phase III	Phase IV
Imported coal price	Rs./unit	2.33	2.27	2.29
Domestic coal Quantity	MTPA			5.44
Domestic coal price	Rs./ton			3,138
Domestic coal GCV	Kcal/kg			3,700
Bid Parameters for FM				
Net SHR as per order (Imported)	Kcal/unit	2,444	2,299	2,299
Net SHR as per order (domestic)	Kcal/unit			2,385
Imported coal GCV	Kcal/Kg	5200	5200	5200
Imported coal Price	USD/ton	25.7	25.7	25.7
Exchange Rate	INR/USD	64.85	57.46	51.50
Mine Related				
Bunyu Coal GCV (Kcal/Kg)	Kcal/Kg	3010	3,010	3,010
Total Fuel Consumption	MTPA	3.57	3.48	4.00
Bunyu coal consumption (MTPA)	%	32%	32%	32%
Contracted Bunyu coal price FOB	USD/ton	8.90	8.90	8.90
Bunyu Coal Price FOB	USD/ton	19.76	19.76	19.76
Taxes and Duties	%	52.38%	52.38%	52.38%

*For arriving at benefit for plant availability beyond PPA tenor for 10 years, a weighted average of capacity charge of last year as per PPA for the 3 phases is considered. There may be some capex requirement for making plant available for the 10 years beyond PPA life which has not been considered for calculation purposes.

**Discussions in Working Group
(Imported Coal Based Power Projects
Located in Gujarat)**

Report on Coastal Gujarat Power Limited

January 2018

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1. Working Group

Background

While the capacity addition in power generation in the country was in the acceleration mode during the 11th plan period, the domestic coal supply in the country was not adequate to cater to entire capacity addition. Hence, some projects were planned with imported coal as fuel and state discoms entered into long term PPAs with these projects. Two Ultra Mega Power Projects (UMPP) based on imported coal as fuel, were also awarded through competitive bidding. After change in coal pricing regulation in Indonesia w.e.f. September 2011, the cost of coal procurement for these projects increased significantly. The economics of these projects went haywire with sudden spurt in coal prices. Looking at the changed scenario, some developers abandoned their projects. Other projects which were partly/full complete by then, approached respective regulatory commission for relief. With recent Supreme Court order dated 11th April 2017 in case of Coastal Gujarat UMPP/Adani Power in the matter of compensatory tariff, these projects are not economically viable. Three projects namely Coastal Gujarat UMPP, Adani Power Mundra Project and Essar Power Gujarat Ltd. (collectively referred as 'Projects' and individually referred as 'Project'), have approached their major procurer state for resolution of this situation. Banks also have large exposure in these projects and these accounts will become Non-Performing if not resolved in timely manner. As these projects have large capacity and their tariffs are very competitive in nature, various stakeholders have been trying to find an appropriate resolution.

A meeting of all the stakeholders including the lenders, developers and procurers was held on 20th June 2017 in Delhi to discuss the issues related to imported coal based power projects. In that meeting, it was decided to form a specific Working Group to find resolution for the three projects mentioned above. The Working Group consists of all members of procurer states and banks represented by Punjab National Bank and Canara Bank with State Bank of India acting as a convener, to find a solution through consultative process. In the meeting it was decided that the procurers and lenders will find the best solution possible for issues related to three projects namely Coastal Gujarat UMPP, Adani Power Mundra Project and Essar Power Gujarat Limited. It was decided that the solution needs to be broad based and flexible. SBI Capital Markets Ltd. was co-opted in the working group to facilitate secretarial and administrative responsibilities. Further, JITPC was assigned to conduct technical due diligence of all the three plants.

Coastal Gujarat UMPP has got PPA with different states – Gujarat, Maharashtra, Haryana, Punjab and Rajasthan. Adani Power Mundra project has got PPA with Gujarat and Haryana. Essar Power Gujarat Limited has PPA only with Gujarat.

First Meeting – 07th July 2017

Pursuant to the above, first meeting of working group was convened on 07th July 2017 at SBI Bhawan in Harman Point, Mumbai. The meeting was chaired by Mr. N Sundar, CGM, State Bank of India.

In that meeting it was decided to appoint a Legal Consultant to get an independent opinion related to the transaction. M/s Shardul Amarchand Mangaldas & Co. (SAM) was appointed as the legal consultant for assisting the Working Group in consultation with other members. Subsequently, National Thermal Power Corporation (NTPC) submitted draft technical due diligence reports of all the plants. Further, in the meeting, it was discussed that SBICAPS would circulate the financial analysis of various projects to the Committee members. The financial analysis was shared by SBICAPS with WGC members. To discuss the findings of JITPC report, financial analysis and to have a preliminary discussion on transaction structure, it was decided to schedule a meeting of WGC on 4th September 2017. It was noted that in order to discuss the divestment by Promoter and other technical matters

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covered in NTPC report, presence of developers will be required and therefore in order to facilitate the discussion, they were also invited in the second meeting.

Second Meeting – 04th September 2017

Pursuant to the above, second meeting of working group was convened on 04th September 2017 at SBI Bhawan in Nariman Point, Mumbai. The meeting was chaired by Mr. Smit Srivastava, DMD, State Bank of India.

In that meeting, NTPC made a brief presentation on design, technology, historical plant performance and SWOT analysis for the three projects. Subsequently, SAM made a detailed presentation on options available to proponent to take over the three projects and ways to amend PPAs. Further, SBI Capital Markets Ltd. made a presentation on the cost benefit analysis for the proponent carried out for respective projects. All the requirements related to financial analysis discussed in the last meeting was circulated to members by SBI Capital Markets Ltd. before the meeting. It was noted that final technical due diligence report of NTPC be submitted before the next meeting. Also, SAM was required to make presentation for the proposed structures of transaction including change in Ownership of assets.

Third Meeting – 09th November 2017

Pursuant to the above, third meeting of working group was convened on 09th November 2017 at SBI Bhawan in Nariman Point, Mumbai. The meeting was chaired by Mr. B. Sikram, MD, State Bank of India. To facilitate the discussion and for his guidance, Shri J. H. Singh, Chief Secretary (Government of Gujarat), was also invited to this meeting. Mr. Rajnish Kumar, Chairman, SBI also graced this meeting with presence from New Delhi through video conferencing.

In the meeting, NTPC presented their observations which were an update over presentation made during 2nd meeting. Subsequently, SAM made a detailed presentation elaborating on the judicial proceedings in the compensatory case. Subsequently, they also presented their views on the proposal keeping public interest in view and presented that the proposed resolution is based on two premises, i.e. (a) Change in Ownership; and (b) Amendment of existing PPA or new PPA, with due regulatory approval, for making the project viable. Further, independent consultants, viz. M/s PricewaterhouseCoopers and KPMG presented their preliminary analysis along with key assumptions for carrying out Enterprise valuation of all three projects. It was also discussed if a single state may take equity stake in the project instead of multiple states. It was noted that SAM would provide a detailed process chart for the transaction along with timeline and required approvals, if any. Also, Working Group Committee members suggested that a small group comprising of representatives from SBI, Gujarat Discom and SBI Caps should be formed to facilitate preparation of the financial worksheet for various scenario analysis. Accordingly, financial analysis was carried out by this sub-group and submitted.

2. GENESIS OF PROBLEM

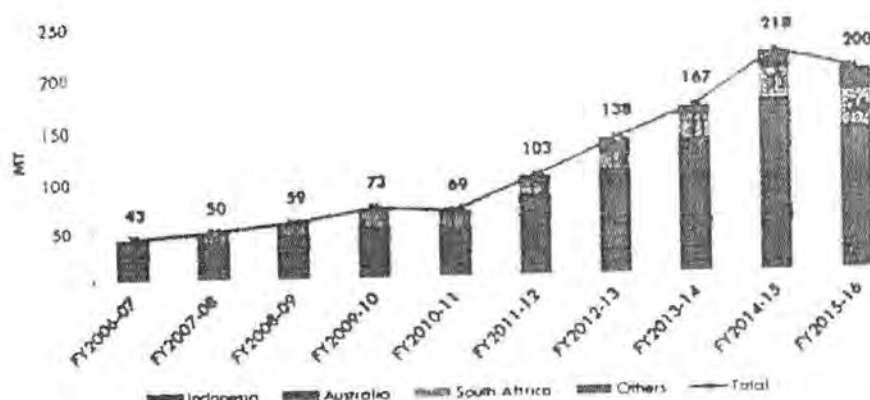
This chapter provides a brief over view of the impact of Indonesian Regulation on the coal prices as it is a major factor contributing to the hardship, challenges and losses for the Projects under discussion.

Change in Indonesian regulation and impact on Imported Coal based plants

The total installed capacity of power stations at the beginning of the 11th Plan i.e. 1.4.2007 was 132 GW with peak deficit and energy deficit at 13.6% and 9.6% respectively. Keeping this in view, Government of India had set an ambitious target of 82 GW to be added in the 11th plan to create a spinning reserve of 5% in the system as per report of The Working Group on Power for Eleventh Plan. Indigenous coal production was not expected to match the demand of coal in power sector due to large capacity addition planned. Therefore, some power plants were planned at coastal locations with imported coal as fuel. These plants entered into PPAs with state discoms for a period of 25 years.

In 2005-06, the Government had launched an initiative for development of coal based Ultra Mega Power Projects (UMPPs) in the country, each with capacity of 4000 MW or above. The projects were to be awarded to developers under tariff based competitive bidding route using super critical technology on build, own and operate basis. Some projects were planned at coastal sites with imported coal as fuel. Of these imported coal based UMPPs, two were awarded through competitive bidding - Mundra UMPP (Tata Power) and Krishnapatnam UMPP (Reliance Power).

In FY 2006-07, around 43 Million Tonnes of coal (out of this ~25 Million Tonnes was non-coking coal) was imported. It went up to around 218 Million Tonnes (non-coking coal: 174 Million Tonnes) in FY 2014-15. The steam coal for power plants was mainly imported from Indonesia, Australia and South Africa. Coal imports from Indonesia have been in the range of 40-60% of total imports during the last ten years as shown below.

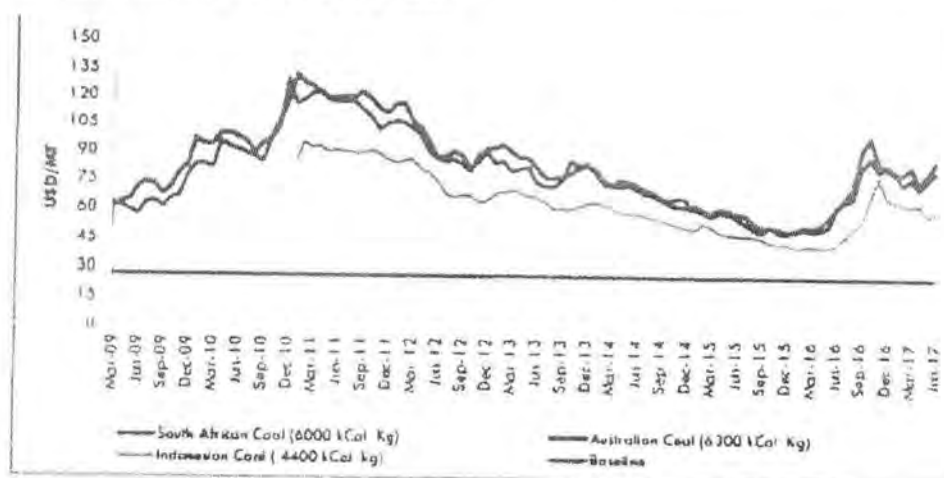


(Source: Coal Controllers Organization)

As depicted in the graph above, Indonesia has been the largest exporter of non-coking coal to India, which is mainly used for imported and blended coal based plants. Indonesia has a strategic maritime location with respect to India and also supplies variety of low GCV coal that is economically priced.

Change in Indonesian Regulations:

In 2010, Indonesian Government came up with guidelines to benchmark its coal prices to international indices. The coal procured by Indian firms from Indonesia was of lower calorific value and, hence, it was priced cheaper compared with Australian and South African coal. The new method came into effect in September 2011 and cost of coal import from Indonesia became at par with other countries. Indonesia government also passed the directive that all existing supply agreements with Indonesian mining firms will have to be brought in line with this new benchmark by September 2011. This regulation changed the entire economics of the imported coal based power projects listed in preceding table. Along with this regulation, the coal prices in the global market witnessed a sudden rise as shown in the chart below:



(Source: www.industrywatch.com)

The new pricing regime led to increase in cost of thermal power generated using imported coal. These imported coal fired power plants became unviable due to huge gap in envisaged coal price and actual coal cost. Last three projects given in the Table I were abandoned by the developers considering the changed pricing scenario.

Impact on the Imported Coal based Projects – Regulatory Approach

Coastal Power Gujarat Ltd. (CPGL), Adani Power Ltd. (APL) and Essar Power Gujarat Ltd. (EPGL) approached respective regulatory commissions to seek relief for the hardship faced by their projects. In the case of CPGL and APL, Central Electricity Regulatory Commission (CERC) and Appellate Tribunal (APTEL) gave favorable orders to allow compensatory tariff to pore the losses in coal cost. Details of the progress of these petitions are as follow:

- CERC used its regulatory power under section 79 of Electricity Act and instructed that developers along with DISCOMs should adopt consultative process to find out and agree for a compensation package to be called "Compensatory Tariff" (CT). Based upon that, CERC gave a mechanism to calculate the CT.
 - DISCOMs challenged this order in APTEL.
 - APTEL in its order dated 7th April 2016 held that the increase in price of coal on account of the change in Indonesian Regulations constitute a Force Majeure event in terms of the PPA.
 - APTEL directed CERC to assess the extent of impact of Force Majeure event. CERC came up with the final order on 07 December 2016 providing a mechanism for relief under Force Majeure clause of the PPA.
- However, these orders were challenged in Supreme Court and the final judgement on the case came on 13th April 2017. In case of EPGL, Gujarat Electricity Regulatory Commission (GERC) reserved its order till the clarity from Supreme Court order. As per the judgment given by Hon'ble Supreme Court, change in Indonesian regulation on coal pricing is neither a Force Majeure nor Change in Law. Hence, no compensation can be given to developers as per the provisions of PPA. In view of the current judgment, these projects are not viable.

3. SCOPE OF THE INDEPENDENT CONSULTANTS

Following Consultants were appointed by Working Group Committee to facilitate the resolution of the imported Coal based power plants:

- **Technical Consultant** – National Thermal Power Corporation (NTPC)
- **Legal Consultant** – Shardul Amarchand Mangaldas (SAM)
- **Valuation Consultants** – PricewaterhouseCoopers (PwC) and I PMD

The scope of work for each of these consultants is provided subsequently.

a. Scope of work of Technical Consultant (NTPC)

NTPC was appointed to carry out the technical due diligence for all the three projects. Since all these three projects have procured boiler, turbine and generator package from overseas suppliers, NTPC was requested to assess the technical healthiness of such equipment. Scope of the technical consultant in brief is provided below:

Technical health of the Plant

- Technical consultant will assess technical sustainability of project
- Evaluation of actual plant performance for last 5 years of operation in terms of Plant Availability, plant efficiency, coal quality, GCV coal consumption, PLF, SHR and Auxiliary consumption for review.
- Comparison of various technical parameters with performance guarantee given by various equipment suppliers.
- Review of failure analysis for last 3 years, if any.
- Analysis of O&M cost and ways to improve it.
- Analysis of dependence of Chinese/overseas suppliers (as applicable) for operation of plant and possibility of procurement of spare parts from various other suppliers.
- SWOT Analysis of the Project
- Apart from above scope of work, assessment of water chemistry, water allocation, PPA, FSA, Coal Sourcing Arrangement, PAP liabilities, LTSA, Preparedness for meeting new environmental norms, etc. shall be required.

The technical consultant was also asked to evaluate if these plants are able to use domestic coal in their overall fuel mix.

b. Scope of work of Legal Consultant

SAM was appointed as a legal consultant to carry out the following scope of work:

- Review of the power purchase agreements and other project documents of the Developers;
- Review of the constitutional documents of the off-taker entities;
- Review of the decisions of the CERC, Appellate Tribunal for Electricity and the Supreme Court of India in relation to the matter;
- Preparation of a detailed Memorandum addressing the legal scope of work (addressing the Transaction Structure and the modifications to the Power Purchase Agreement); and
- Discussing the various options with the Working Group and preparation and finalization of a detailed Way Forward Plan.

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c. Scope of work of Valuation Consultant

PwC and KPMG were appointed as Independent consultants for valuation. Their major scope of work is as mentioned below:

- Review and analyze past financial statements of the Project since the commencement of commercial operations.
- Determine Enterprise Value for the Project using appropriate methods and valuation techniques, which would include development of assumptions for projection of future profitability and cash flows outlining sustainable debt.
- Submission of Enterprise /Business Valuation Report for the project based on the above, outlining your recommendations of fair value, as well as the methodologies employed and assumptions utilized in your analyses.

4. COMPETITIVE ANALYSIS OF PROJECTS

These Projects supply power to five procurer states which are among the states with high electricity demand in the country. Further, this chapter provides capital cost comparison of Projects under discussion with its peers to ascertain competitive advantage over their peers.

Later on, tariff analysis of the projects to ascertain tariff competitiveness is covered through:

- Merchant Tariff Analysis
- Recent Case I bids

Further, the delicate demand supply situation in the electricity industry in the country is discussed in brief to emphasize on the importance of well-being of these new generation Projects. Also, the impact of capacity overhauling due to required compliance with new environmental norms has been discussed as it will have some impact on overall availability of thermal project in the year FY 2020-2024.

Gujarat is purchasing significant portion of power from these three plants. The electricity demand-supply scenario for GUVNL for the coming years is analyzed in order to ascertain the requirement of these Projects. After that, merit order analysis is carried out to show the impact of mark-up to be provided as relief.

4.1 States with High Demand – Strategic Importance

The five states getting affected due to these three Projects are major states of the country in terms of electricity demand and growth. All these five states figure in the top bracket of the electricity consumer states. The peak demand (MW) and energy requirement (MUs) of the top twelve states/UTs of the country are given below:

States	Peak Demand (MW)	Energy Requirement (MUs)
Maharashtra	22542	99679
Uttar Pradesh	20274	84408
Gujarat	16390	73238
Tamilnadu	15001	70640
Madhya Pradesh	11830	43447
Punjab	11705	41502
Rajasthan	11215	46313
Karnataka	9992	42160
Haryana	9671	36254
Telangana	9522	37869
West Bengal	8137	35849
Andhra Pradesh	8130	37692
Total country	164066	813348
Total (North+Western Region)	110609	301790
Aggregate of Five states	71723	297186
As % of country demand	43.7%	36.4%
As % of N+ W Region demand	64.8%	59.0%

(Source: CEA report for April to November 2017)

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From the table above, it is evident that these five states are critical states with respect to electricity demand of the country. These five states cater to almost 50% of the total peak demand of this country. Any disturbance in the demand supply situation of these states will have greater ramifications on the overall situation. Therefore, the resolution of these three Projects becomes important from the strategic perspective.

4.2 Capital Cost comparison

The Projects under discussion were commissioned by 2013. The total Project Cost was much lower compared to the projects that have commissioned recently. Details of the Project Cost for projects under discussion are as below:

Name of the Project	Capacity (MW)	Project Cost (Rs. Cr.)	Project Cost (Rs. Cr./MW)	Gross Block (Rs. Cr., as on 31 st March 2017)
Coastal Gujarat Power Limited	4,150	17,500	4.22	19,653
Adani Power Limited	4,620	21,394	4.63	24,418
Essar Power Gujarat Limited	1,200	5,832	4.86	6,457*

* The figures are provisional and increase is due to change in accounting standards from IND GAAP to IND AS

Project costs of other comparable coal based power projects completed recently or under implementation/planning are given below:

Project	Developer	Capacity (MW)	Project Cost (Rs. Cr.)	Project Cost (Rs. Cr./MW)
Central Sector				
Meja TPP	NTPC	1320	10821	8.20
Bongalgaon TPP	NTPC	750	6749	9.00
Nabinagar TPP	NTPC	1000	7996	8.00
Darlipalli TPP S11	NTPC	1600	12532	7.83
New Nabinagar TPP	NTPC	1980	15132	7.64
Barli S11	NTPC	1980	15096	7.62
Kharagone TPP	NTPC	1320	11149	8.45
Lara TPP	NTPC	1600	11846	7.40
Gadarwara TPP	NTPC	1600	11639	7.27
Solapur TPP	NTPC	1320	9395	7.12
Kudagi TPP	NTPC	2400	15166	6.32
North Karanpur TPP	NTPC	1980	14367	7.26
Tanda II STPP	NTPC	1320	9189	6.96
Telangana TPP	NTPC	1600	11811	7.38
Ghatampur TPP	NTPC	1980	17237	8.71
Average		23750		7.68
State Sector				
Kalishindi TPP	RRVUNIL	1200	9480	7.90
Chabra TPP US-6	RRVUNIL	1320	7920	6.00
Suratgarh TPP	RRVUNIL	1320	7920	6.00
Koradi TPP US-10	Mahagenco	1980	13652	6.89
Chandrapur TPP US-9	Mahagenco	1000	7196	7.20

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Project	Developer	Capacity (MW)	Project Cost (Rs. Cr.)	Project Cost (Rs. Cr./MW)
Ukai Exm U6	GSECL	500	3078	6.16
Harduaganj Expn	UPRVUNL	660	4827	7.31
Obra C	UPRVUNL	1320	10416	7.89
Jawaharpur TPP	UPRVUNL	1320	10556	8.00
Ennore SEZ SCTPP	TANGEDCO	1320	9800	7.42
Uppur SCTPP	TANGEDCO	1600	12778	7.99
North Chennai TPP St II	TANGEDCO	800	6376	7.97
Ennore SCTPP	TANGEDCO	660	4956	7.51
Barauni Exm	BSEB	500	5308	10.62
1b Valley TPP	OPGC	1320	11965	9.06
Average		16820		7.59
Private Sector				
Badadartha TPP	D B Power Ltd	600	4,935	8.22
Vizag TPP	HNPCL	1040	8,580	8.25
Haldia Energy Ltd	CESC	600	4,685	7.8
Raikheda TPP	GMR Chhattisgarh Energy Ltd.	1370	11,642	8.49
Murlata TPP	Coastal Energen	1200	7,870	6.56
Average		4810		7.87

It may be observed from the above table, the cost per MW of aforementioned projects is competitive with similar projects set up by other companies. Further lower project cost is also reflected in lower fixed charge quoted by developers at the time of bidding. If bids are invited for projects which have been completed recently the fixed charge would be expected to be much higher. Replacement cost of projects under discussion will be much higher under current scenario (Rs. 7-8 crore/ MW) as shown in the table above. Hence, this will lead to higher fixed charge obligations for the DISCOMs.

4.3 Merchant Tariff Analysis

To ascertain the competitiveness of the power produced by the projects under discussion with respect to power being traded in the merchant market under various exchanges has been carried out. The price of short term electricity transacted through traders and power exchanges for the period November 2016 to October 2017 as per CERC Monthly Monitoring Report is as furnished below:

Month	Volume of Electricity Transacted (BU's)			Wt. Avg. Price of Electricity Transacted (INR/kWh)		
	Bilateral	IEX	PXIL	Bilateral	IEX	PXIL
Nov'16	3.71	3.39	0.09	3.81	2.48	2.84
Dec'16	3.81	3.09	0.14	3.43	2.37	3.01
Jan'17	4.45	3.23	0.05	3.50	2.57	2.65
Feb'17	3.96	2.93	0.08	3.30	2.64	2.69
Mar'17	3.72	3.36	0.06	3.52	2.65	2.80

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April 17	4.32	3.72	0.03	3.16	2.83	2.79
May 17	4.79	4.10	0.01	3.53	2.98	2.99
June 17	4.85	3.92	0.02	3.31	2.73	3.36
July 17	5.61	3.67	0.01	3.30	2.65	3.52
Aug 17	5.53	3.98	0.03	3.35	3.24	3.21
Sept 17	4.75	4.09	0.28	3.57	4.25	4.01
Oct 17	3.54	4.08	0.28	4.00	4.26	3.94
	53.04	43.36	1.07	3.51	2.97	3.15

Source: CERC Monthly Report on Short Term Transactions of Electricity in India, Nov 2016 till Oct 2017

Further the prices of electricity transacted through power exchanges are expected to rise in near future as they are not reflective of the true costs involved. The average rates in the exchange market has been in the range ~Rs. 2.5/ unit to ~Rs. 4.25/ unit for period November 2016 to October 2017 and they are moving towards the average tariff discovered in case 1 bidding in recent past. Recent case 1 bids are discussed later in the report.

Further, an analysis has been carried out on volume data for electricity trading from 1 April 2017 till 18th December 2017 as available on India Energy Exchange (IEX) as below:

Month	Purchase Bid		Sell Bid		Difference		Cleared Volume		MCP (Rs/kWh)
	MU	MW*	MU	MW*	MU	MW*	MU	MW*	
Apr'17	4541.51	6307.65	5830.91	8098.49	-1289.40	1790.84	3716.96	5162.45	2.77
May'17	5083.88	6833.17	6213.37	8351.30	-1129.49	1518.13	4100.01	5510.76	2.92
Jun'17	4427.42	6149.20	7348.76	10206.61	-2921.34	4057.41	3920.07	5444.54	2.59
Jul'17	4295.09	5772.97	6687.45	8988.51	-2392.36	3215.53	3668.77	4931.14	2.49
Aug'17	5047.50	6784.28	6157.55	8276.28	-1110.05	1492.00	3982.18	5352.39	3.13
Sept'17	5737.81	7969.18	5101.20	7085.00	636.61	884.18	4086.60	5675.84	4.09
Oct'17	5535.22	7439.82	5247.88	7053.60	287.33	386.22	4078.61	5482.00	4.08
Nov'17	4524.90	6284.58	5567.41	7760.29	-1042.51	1475.71	3524.43	4895.04	3.55

It can be seen from the table above that the clearing price goes above Rs. 4/unit whenever the purchase quantity is more than quantity available for sale. The projects under discussion are capable of generating ~61.2 BUs at a PLF of 85% and currently only ~44.6 BUs are being traded on exchange. If these projects are not under operation, the present supply in the system is not sufficient to meet the demand and hence the exchange prices may shoot up beyond this level. Further, power procurement with long term visibility will be preferable for the DISCOMs in the long run.

4.4 Recent Case -1 Bids

In case 1 route, a particular state would call for bids to meet its power requirement. The companies bidding can select any location and any type of fuel to serve that requirement. The players need to follow an International Competitive Bidding (ICB) strategy.

Case 1 bidding process happen in a scenario, where the state decides it needs power but has no issue with the source of generators. The state comes out with an advertisement for procuring power through a bidding process (International Competitive Bidding). The interested suppliers of power submit their bid and the bidder with the

least levelled tariff wins the bid to supply power to the state. The following table shows results in recent Case I bids:

Entity	Quantum (MW)	Bid Date	Developer	Tariff* (INR per unit)
Andhra Pradesh – Linkage and Imported Coal Based Bidders (Bids Invited: 2400 MW)	500	Nov 2014	NCC Power Projects Ltd	4.35
	540	Nov 2014	Korba West Avantha	4.49
	374	Nov 2014	MB Power Ltd	4.69
	400	Nov 2014	Jindal India Thermal	4.83
	500	Nov 2014	Essar Power	4.83
Tata Power Discom (Delhi)	200	Sept 2015	Jindal India	3.990
	120	Sept 2015	Balco Chamigarh	4.071
	374.13	Sept 2015	MB Power	4.230
	100	Sept 2015	Lanco Anpara	4.240
	400	Sept 2015	Ratan India	4.479
Bihar Discom – Linkage Coal (Bids Invited : 700 MW)	370	March 2016	Jindal India Thermal	3.84
Uttar Pradesh (UP) – Linkage Coal Based Bidders (Bids Invited : 2800 MW)	200	Aug 16	JITPL	3.939
	325	Aug 16	JPL	3.951
	200	Aug 16	BAICO	3.960
	1190	Aug 16	LANICO Amarkantak	3.971
	200	Aug 16	Adani Power	4.027
UP – Imported Coal Based Bidders (Bids Invited : 500 MW)	275	Aug 16	JSW Energy Limited	4.06
	500	Aug 16	Adani Power Limited	4.06

*Tariff mentioned is Delivered tariff typically transmission charges are about 45 to 60 paise, hence net realization would be lower to that extent

The tariffs given in the table above are the tariffs proposed for the first year including fixed cost and variable cost. The variable tariff will go up with increase in coal cost since fuel cost is made pass through in these bids. In view of the above, Projects under discussion have lower tariff compared to recent case I bids even after considering coal cost pass through, considering coal cost as per present scenario (detailed assumption for coal cost computation is presented in the report). Taking into consideration only imported coal based plants, tariff quoted was even higher compared to other case I bids. Hence for DISCOs, replacement cost of capacity under discussion will be much higher going forward.

4.3 Power Sector Scenario of Country

In the Draft National Electricity Plan (DNEP) released by Central Electricity Authority (CEA) in December 2016, various scenarios have been analysed to understand the demand supply situation in the next ten years. Govt. of India has charted out a very aggressive target of addition of renewable energy capacity in the country and it is

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proposed to achieve cumulative capacity of 175 GW by 2022. The DNEP has taken this capacity addition target as the reference point. Further, there are some hydel (15,330 MW), gas (4,340 MW) and nuclear (2,800 MW) power projects which are under various stages of implementation. In case all these capacities come on stream, the DNEP mentions that there is no requirement for any new coal based capacity. However, it has been assumed that coal based capacity of around 50,025 MW is stuck at various stages of development and it will come on stream by 2022. Based on these presumptions, the PLF of the coal based plants has been projected for different scenarios. The scenarios for different growth rates and capacity addition are given in the following table:

Desired CAGR for next 5 years	Expected PLF* in 2022	Additional coal based capacity required
Scenario I: Full RES (175 GW) and Full Hydel (15.3 GW)		
6.34%	47.9%	---
7.34%	52.6%	7020
Scenario II: Medium RES (150 GW) and Low Hydel (11.8 GW)		
6.34%	51.1%	---
7.34%	55.8%	9940
Scenario III: Low RES (125 GW) and Low Hydel (11.8 GW)		
6.34%	53.5%	---
7.34%	58.1%	12040

* PLF has been calculated based on the assumption that entire 50,025 MW of coal based capacity will become available for generation

(Source: Draft National Electricity Plan, December 2016)

Considering the capacity addition achieved in wind and solar plants till now and track record in implementation of hydel project, the scenario analysis becomes very important. It has been assumed that entire 50 GW of coal based capacity, which is stuck at various stages of implementation currently, will come on stream in next four years.

Stranded coal based projects in the country – The country is currently grappling with the large number of stranded projects in the country. This has become a major issue for the banks as well as the industry players as huge amount of capital is locked in these projects. Many projects are stuck due to financial and other issues and various stakeholders are trying their level best to resolve these issues. Ministry of Power has constituted various committees to find out the sustainable resolution process on an urgent basis. The resolution process has been taking long time and it is creating further stress on these projects. The efforts required to revive these projects will keep on increasing with increase in stress. These coal based projects may take longer than expected time to come on stream. Some projects may end up in a situation where the revival would not make any economic sense.

Addition of RES capacity – Govt. of India has come up with an aggressive target of 175 GW of RES capacity by 2022. By 2017-18, total target for solar capacity is 32 GW including 10 GW of rooftop solar. As on 31st October 2017, total solar capacity of the country was 15.6 GW and rooftop has not yet achieved a significant size.

Addition of Hydel capacity – In the last five years, the capacity addition program in hydel power capacity in this country has been very sluggish. As on 30th September 2012, the hydel power capacity of this country was 39,291 MW. In next five years, total hydel capacity added in the country was only 5,474 MW which is equivalent to around 1 GW per year.

Going by the track record of capacity addition and renewable/hydel and latest position of generation capacities, there may not be any slack available on the supply side in medium term. Therefore to meet the demand, it is very important that the new operating plants with stabilized operations are not taken out of grid.

4.6 Compliance with new Environment Norms

The Ministry of Environment, Forest and Climate Change (MoEFCC) has notified the Environment (Protection) Amendment Rules, 2015 vide Notification dated 7 December 2015. This amendment has brought in revised environment standards for the coal based thermal power plants in the country by December 2024. A writ petition was filed in Supreme Court for implementation of the revised emission norms as per the guidelines specified by MoEFCC. The Power ministry has sought extension of 5 years for implementation of the revised norms and the petition is under hearing process.

In order to comply with revised norms, the coal based thermal power plants will be required to incur some capex which will require capacity overhauling for some time. Therefore, in order to facilitate this exercise, CEA has drawn a schedule for implementation of such capex for all the required plants which on an aggregate basis is presented below:

Expected Capacity Overhaul (MW)	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
Northern Region	1590	4480	7440	10575	3320
Southern Region	5480	9310	2450	3000	0
Western Region	2100	20662	26655	6780	2160
Eastern Region	0	2000	8715	3935	2000
Total	9170	36452	45260	24310	7480

Therefore, in light of above, many plants will be put under scheduled maintenance for implementation of new technology in order to comply with revised emission norms. This may further strain the system and create demand-supply mismatch in the future and consequently may result in increase in short term market price.

4.7 Demand-Supply Analysis for GUVNL

The Demand-Supply scenario for GUVNL has been examined to establish the necessary capacity required to meet the peak demand in the coming years. An analysis has been carried out taking into consideration present installed capacity and capacity addition/derating as envisaged by GUVNL as below:

Particular	UsM	2017W	2018	2019	2020	2021	2022
Demand Analysis (Peak Demand)							
Peak Demand (Gujarat) at 6%	MW	17097	18123	19210	20363	21585	22880
Peak Demand (GUVNL) at 6%(A)	MW	15000	15900	16854	17865	18937	20073
Supply Side Analysis							
Conventional							
PPA Capacity	MW	17905					
PPA tie-up in coming years	MW		1261	246	0	476	0
PPA Capacity De-rated	MW		0	655	0	0	156
Idle Gas Capacity tied up	MW	2000					
PPA Capacity Available	MW		17166	16757	16757	17233	17077
PPA Capacity at 80% PLF (B)	MW		13733	13406	13406	13786	13662
Renewable Energy							
PPA Capacity	MW	4800					
PPA tie-up in coming years	MW		1140	1140	1140	1140	1140

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PPA Capacity Available	MW	5940	7080	8220	9360	10500
PPA Capacity to be utilized* (C)	MW	1654	2266	2877	3488	4100
Total Supply (C+B+C)	MW	15387	15671	16283	17275	17761
Deficit (A-C)		513	1783	1937	2442	3113

*Considering CLF of 7% of wind, 70% for solar and 0% for both bio gas and small hydel

#Year is considered from Jan to Dec for 5 years.

Source: GUVNL

As observed in the table above, the peak demand for GUVNL for CY 2018 is estimated at 15900 MW. The available capacity after necessary adjustments is estimated at 15387 which leaves a deficit of about 513 MW for 2018. The deficit is estimated to increase in the coming years as shown in the table above with net deficit of 3113 MW for CY 2023.

Further, the PPA capacity of GUVNL also includes aggregate capacity of 3805 MW tied up with APL, EPGL and CGPL. In case the capacity of 4805 MW is also excluded from the system, the deficit will further increase by about 3844 MW (80% of 4805 MW) for each year which may further aggravate the deficit scenario.

Additionally, any increase in power demand due to anticipated push of EVs due to GO's focus on Transformative Mobility Solutions for All and railway electrification, Make in India program, etc. will further increase the deficit. Therefore, to maintain requisite power supply position in Gujarat in the coming years and to avoid sourcing of power from costly sources/ merchant market, it is important that the Projects under discussion are resolved.

4.8 State wise Merit Order Analysis

In the Working Group, the competitiveness of the electricity produced by these Projects was ascertained in terms of the merit order dispatch / ranking. Total generation capacity of CGPL, APL and EPGL is 9970 MW. CGPL has signed power purchase agreements with 5 states (Gujarat - 1805 MW; Maharashtra - 760 MW; Punjab - 475 MW; Haryana - 380 MW and Rajasthan - 380 MW). APL has two PPAs of 1000 MW each with Gujarat and PPA of 1424 MW with Haryana. EPGL has PPA of 1000 MW with Gujarat. These projects appear very high (mostly first or second quartile) in the merit order of their respective purchaser states. The merit orders of individual states are given in the Annexure I. Even with the variable tariff made pay through, these projects will be in a competitive position in the respective merit orders. The overall tariffs of these projects will also remain low as compared to the tariffs discovered in recent case I bids.

States	Plant	Current PPA Tariffs	Scheduled Capacity (in MW) #	%age Dispatched	Tariff after Coal Cost Pass-Through	Capacity after dispatch with pass through (in MW) #	% age Dispatched
Gujarat	APL - Phase I	1.53	104812	37.55%	2.27	158074	56.63%
	CGPL	1.73	145238	52.03%	2.13	136699	48.97%
	APL - Phase I & 2	1.89	170423	61.05%	2.33	181800	65.13%
	EPGL	1.89	193787	69.42%	2.43	205401	73.58%
Maharashtra	CGPL	1.60	61361	17.79%	2.13	103339	29.95%
Punjab	CGPL	1.31	51680	41.75%	2.13	63524	51.32%
Rajasthan	CGPL	1.46	61457	32.47%	2.13	101591	53.67%
Haryana	CGPL	1.51	36017	28.07%	2.13	47738	37.20%

This is the cumulative capacity scheduled by the state considering capacity for given project as per Merit Order of 24th October taken from Meritdata.in

CGPL tariff doesn't incorporate the latest position of change in law provisions.

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5. WORKING GROUP - MAJOR FINDINGS

During the meetings of Working Group, technical due diligence of all the three projects was discussed in detail. The independent consultants provided their views on the enterprise valuation of these three projects. The legal consultant also presented its views on the transaction structure and the steps to be followed to conclude the transaction.

5.1. Technical Findings

As per the requirement of the working group NTPC conducted technical due diligence for all the three projects. The key finding of the NTPC report are:

- All the plants are running satisfactorily with imported coal.
- The projects are technically healthy and their operations are compliant with industry standards.
- It is difficult to operate the plants on domestic coal. All three developers have represented that the projects are designed for imported coal and domestic coal can be used in these projects only after making suitable changes in projects. Prima facie, it may require rigorous study/analysis of various parameters including safety concerns for boiler due to higher ash content of domestic coal. Adani Power has submitted some studies for usage of domestic coal in the plants after certain changes including capex investments.

5.2. Independent Consultant for Valuation

PwC and KPMG were appointed for determination of enterprise valuation of all three projects. These consultants have carried out the valuation based on certain assumptions. In their analysis, it has been assumed that the coal cost will be fully recovered in the variable tariff and the capacity charge will kept as per the quoted tariffs. They also calculated the debt these projects will be able to sustain in such a scenario. Their findings for individual projects are given in the relevant sections of respective projects.

5.3. Independent Legal Consultant

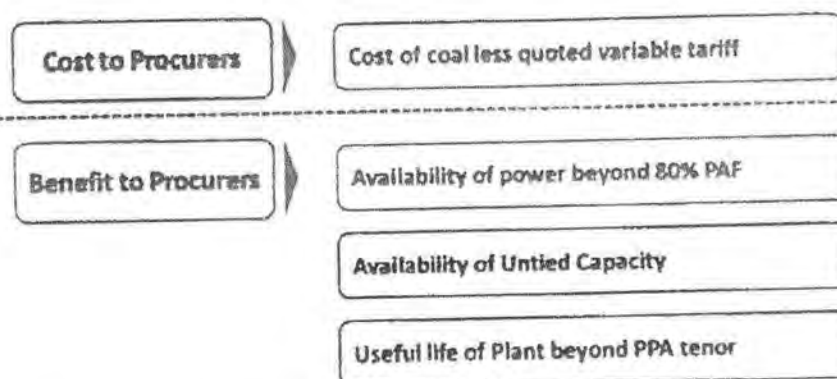
M/s Shardul Amarchand Mangaldas & Co. (SAM) was appointed as the legal consultant for assisting the Working Group with respect to legal issues. The legal consultant has analyzed the PPAs of all these projects as well as the orders given by various regulatory commissions, APTEL and honorable Supreme Court. In view of all these orders, the legal consultant was asked to provide the steps for resolution of these projects. The legal consultant made detailed presentations in the Working Group meetings. The legal advisor has suggested that the transaction should not be done through NCLT. Their analysis is concentrated on two major aspects - acquisition of majority stake by state governments in these projects and amendment in PPAs for revision in tariff. They have explained that PPAs may be amended even after Supreme Court order. However, any amendment in PPAs will have to be approved by the respective authority.

5.4. Cost Benefit Analysis

During the discussion of working group meetings, in order to find solution for the imported coal based power plants, it was emphasized that the PPA needs to be amended in order to take care of the variable nature of the coal cost. If electricity is no longer available from these plants, the DISCOMs may have to incur higher amount to purchase this electricity from alternate sources. Though any relief to these projects will result into producers incurring additional cost as compared to quoted tariff, it will still be lower than the amount required while purchasing power from alternate sources. Further, against this additional cost, the DISCOMs may ask for certain benefits from these projects like:

- i) Enhanced plant availability – Once the projects stop making any losses on the fuel cost, they may be able to run the plant at higher availability which will provide incremental electricity to the procurers effectively at variable cost only.
- ii) Availability of untied capacity – In case of Adani Power and Essar Power, part of the plant capacity is not tied up through any long term PPA. The procurers may enter into long term PPA for this incremental capacity.
- iii) Power availability beyond tenor of PPA – Even after the end of PPA tenor after 25 years, these plants will have substantial residual life. The procurers may enter into some arrangement to purchase electricity from these plants even after the PPA terms are over.

Subsequently the impact of change in variable tariff on the DISCOMs was evaluated by carrying out cost benefit analysis for all the three projects. The principle adopted for cost benefit analysis is as under:



In the third meeting of the Working Group, it was suggested to form a small sub-group to analyze various scenarios for cost benefit analysis for the procurers. Primarily two options were evaluated by the sub-group:

- i) Full pass through of the fuel cost – In this option, the PPA will be amended to make fuel cost fully pass through. The capacity charge will be kept as per the quoted tariff.
- ii) Force Majeure order – CERC had given a formula for compensatory tariff at the instructions of APTEL in case of CGPL and Adani Power Phase III & Phase IV. In this option, the principles of this order were used for carrying out cost benefit analysis. As per the order, relief should be based on the difference between the FOB price agreed in the Coal Supply Agreement and the FOB price at which the plant is purchasing coal from Indonesia or the HBA price whichever is lower. The difference in actual imported coal cost and bid cost for Indonesian coal will be considered at the exchange rate of respective PPA's with adjustment of profit from Indonesian mines.

6. PROJECT DETAILS

This chapter covers the Technical Description, PPA relate details, performance details and financial analysis on standalone basis for the Project Companies.

6.1. Coastal Gujarat Power Limited

6.1.1 Project Details

Coastal Gujarat Power Limited (CGPL or the Company), a Special Purpose Vehicle (SPV), was incorporated as a subsidiary of Power Finance Corporation (PFC), on February 10, 2006 to implement 4000MW Mundra Ultra Mega Power Project (Mundra UMPP), in Mundra Taluka, Kutch District, Gujarat. The Mundra UMPP was awarded to The Tata Power Company Limited (TPCL or the Promoter) through a competitive bidding process. TPCL was selected as a successful bidder, pursuant to which the share purchase agreement was executed on April 22, 2007 between the Company and PFC to make CGPL a wholly owned subsidiary of TPCL. Various units of Mundra UMPP have achieved commercial operation dates (COD) as below:

UNIT	Capacity	Date of COD
Unit 1	830 MW	07-Mar-2012
Unit 2	830 MW	30-Jul-2012
Unit 3	830 MW	27-Oct-2012
Unit 4	830 MW	21-Jan-2013
Unit 5	830 MW	22-Mar-2013

Source: Annual Reports

The COD of the Project was March 31, 2013.

a) Land and Location

Plant is spread across about 1,357 Ha of land that includes 1,307 Ha for the plant area and 50 Ha for township area. The site is situated at 22° 49' 48" N latitude and 69° 30' 56" E longitude. The details of the Project site are as under:

Parameter	Details
Installed Capacity	4150 MW
Location	Near Tundawanda village, Kutch District, Gujarat.
Nearest town	Near Tundawanda village
Nearest Railway Station	Adipur – ~85 km
Nearest Airport	Bluj – ~75 km
Nearest Port	Mundra – ~12 km

b) EPC/ Project Contractors

The Project has Super-Critical boiler technology and had been implemented with a configuration of 830MW x 5 units. The project has been executed through Non-EPC route with more than 100 packages with multiple packaging strategies for different packages. The Steam Turbine and associated equipment had been supplied by M/s Toshiba Power Systems Company, the Steam Generator equipment had been supplied by M/s Doosan Heavy Industries and Construction Limited, Coal handling from Thyssenkrupp, Boiler feed Pump was procured from KSB, Germany and others.

c) Power Evacuation Arrangement

The responsibility for power evacuation from the switchyard gantry, in the power plant boundary, to the grid is with the Procurers under the PPA. The evacuation of power from the project is done through 400 kV transmission lines. It is being evacuated through transmission network of Power Grid Corporation of India Limited.

d) Operations and Maintenance Arrangement

CGPL operates and maintains the power plant with support from JPCI. JPCI has extensive O&M experience and provides requisite skills to operate and maintain large power plants. Presently, all maintenance work of boiler, turbine, their auxiliaries, as well as maintenance work of complete balance of Plant are contracted and outsourced.

e) Power Purchase Agreement

The Company entered into Power Purchase Agreement (PPA) with DISCOMs in Maharashtra, Gujarat, Rajasthan, Punjab & Haryana for 3800 MW power supply (net basis) on April 22, 2007. The tenor of PPA is 25 years from the COD of the Power Station. The allocation of contracted capacity under PPA is as mentioned below:

DISCOMs	Allocated Contracted Capacity (MW)
Gujarat Urja Vikas Nigam Limited	1805.00
Maharashtra State Electricity Distribution Company Limited	760.00
Punjab State Electricity Board	475.00
Haryana Power Generation Corporation Limited	380.00
Almer Vidyut Vitran Nigam Limited	136.80
Jaipur Vidyut Vitran Nigam Limited	136.80
Jodhpur Vidyut Vitran Nigam Limited	106.40
Total	3800.00

The fuel charges and transportation charges were quoted in USD/kWh and other tariff components in Rs/kWh; the levelized tariff at the time of bid was Rs. 2.26/kWh. Details of quoted bid tariff are provided below:

FY	Non-Escalable Capacity Charge (Rs/kWh)	Escalable Capacity Charge* (Rs/kWh)	Non-Esc. Fuel Charge (USD/kWh)	Esc. Fuel Charge* (USD/kWh)	Non-Esc. Transport Charge (USD/kWh)	Esc. Transport Charge* (USD/kWh)	Non-Esc. Fuel-Handling Charge (Rs/kWh)	Esc. Fuel-Handling Charge* (Rs/kWh)
2013	0.872	0.03300*	0.00705	0.00585	0.00285	0.00109	0.042	0.046
2014	0.87		0.00707		0.00284		0.046	
2015	0.868		0.00707		0.00284		0.048	
2016	0.866		0.00707		0.00284		0.047	
2017	0.864		0.00707		0.00284		0.051	
2018	0.862		0.00707		0.00284		0.051	
2019	0.859		0.00707		0.00285		0.051	
2020	0.857		0.00707		0.00284		0.056	
2021	0.854		0.00707		0.00284		0.055	
2022	0.852		0.00707		0.00284		0.055	
2023	0.849		0.00707		0.00284		0.06	
2024	0.846		0.00711		0.00286		0.06	
2025	0.842		0.00714		0.00287		0.059	
2026	0.839		0.00714		0.00287		0.065	
2027	0.836		0.00714		0.00287		0.065	

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FY	Non-Escalable Capacity Charge (Rs/kWh)	Escalable Capacity Charge* (Rs/kWh)	Non Esc. Fuel Charge (USD/kWh)	Esc. Fuel Charge* (USD/kWh)	Non Esc. Transport Charge (USD/kWh)	Esc. Transport Charge* (USD/kWh)	Non Esc. Fuel-Handling Charge (Rs/kWh)	Esc. Fuel-Handling Charge* (Rs/kWh)
2028	0.832		0.00714		0.00288		0.063	
2029	0.828		0.00714		0.00287		0.071	
2030	0.824		0.00714		0.00287		0.069	
2031	0.819		0.00714		0.00287		0.067	
2032	0.55		0.00714		0.00287		0.076	
2033	0.545		0.00714		0.00287		0.074	
2034	0.54		0.00719		0.00289		0.072	
2035	0.534		0.00721		0.0029		0.082	
2036	0.529		0.00721		0.0029		0.079	
2037	0.523		0.00721		0.0029		0.076	
2038	0.516		0.00723		0.00291		0.088	

* Escalable charges is escalated as per CERC escalation index notified semi-annually every year

The Fuel energy charge and the Transport energy charge are quoted in USD/kWh, which enables the Company to mitigate the impact of foreign exchange variation on its tariff. The Capacity charge quoted above is recovered based on the availability of the plant while the fuel energy charge, transport energy charge and fuel handling energy charge cumulatively forms the total energy charge which is recovered based on the units sold by the plant.

f) Fuel Supply and Transportation Arrangement

Fuel Supply Arrangement

CGPL has entered into an agreement with PT Kaltim Prima Coal (TPC) for procurement of coal for the purpose of power generation. TPC holds 30% stake in KPC through its foreign subsidiary. The details of two Coal supply agreement (CSA) signed between CGPL and TPC are provided below:

CSA	Contracted Quantity (MTPA)
CSA - I	5.85
CSA - II	3.51
Total	9.36 (±20%)

Source: TPCI

The above CSAs (~11.23 MTPA) fulfill the annual coal requirement of CGPL.

Fuel Transportation Arrangement

Coal for the Project is primarily sourced from Indonesia, through cargo vessels and off-loaded to a storage area in the jetty area and/or loaded into a high-speed belt conveyor system. A Port Services Agreement has been entered between Adani Port & Special Economic Zone Limited (APSEZL) and CGPL for the facilities relating to import of coal. The coal unloaded at jetty is transported to the plant through a high-speed belt conveyor system.

6.1.2 Debt Profile

The Project was financed through a mix of rupee term loan (RTL) and External Commercial Borrowings (ECB). The Company has also availed subordinated unsecured debt from banks in addition to infusion by Promoters to part finance the shortfall in funding of its capex requirements, as the existing lenders had pruned their debt

commitments to approximately 83% of the initial committed levels. The details of debt facilities outstanding as on March 31, 2017 is given below:

Facilities	O/s as on March 31, 2017
Senior Debt Facilities	
RTL - (A)	Rs. 3825.58 Crore
ECB - (B)	USD 914.96 Mn (Rs. 5,933.52 Crore)*
Sub Total - (C) = (A) + (B)	Rs. 9,739.10 Crore
Subordinated unsecured Debt - (D)	Rs. 400.00 Crore
Total (E) = (C) + (D)	Rs. 10,139.10 Crore
Premeter infusion - (F)	Rs. 5,764.00 Crore
Hedge Brokerage cost - (G)	Rs. 774.00 Crore
Total Liabilities - (H) = (E)+(F)+(G)	Rs. 16,697.10 Crore

Source: FY2017 audited results

* Rs/USD = 64.85

a) Existing RTL Facility

The existing RTL facility was refinanced by the Company in FY2016 under Refinancing at Project loans guidelines issued by the Reserve Bank of India (RBI) dated August 7, 2015. The loan carried a rate of interest linked to SBI Base Rate (present effective of 9.70% p.a.) with a structured amortising schedule and maturity in FY2033. The detail of banking arrangement for the facility is as under:

Bank	Amount Drawn	O/s as on March, 2017
State Bank of India	1,314.63	1,301.48
Indian Infrastructure Finance Company Limited	1,005.44	995.38
Oriental Bank of Commerce	307.22	304.15
Vijaya Bank	270.87	268.16
Axii Bank	151.06	149.55
Allahabad Bank	375.00	371.25
Bank of Maharashtra	300.00	297.00
Syndicate Bank	140.00	138.60
Total	3,864.23	3,825.58

Source: TPCI

b) Existing ECB Facility

The Company had also tied-up ECBs for financing the Project. The ECBs were primarily raised from International Finance Corporation, Asian Development Bank, Korean Export Import Bank & Korea Export Insurance Corporation with pricing in the range of LIBOR + 70-215 bps and final maturity till FY2026. Detail of outstanding ECBs is as under:

Lender	Amount Drawn	O/s as on March, 2017
International Finance Corporation	347.00	251.78
	(2,250.30)	(1,632.81)
Asian Development Bank	589.94	390.22

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Lender	Amount Drawn	O/s as on March, 2017
	(3,825.76)	(2,530.57)
Korea Export Import Bank	159.18	102.33
	(1,032.27)	(663.60)
BNP Paribas	265.42	170.63
	(1,721.26)	(1,106.52)
Total	1,361.54	914.96
	(8,829.61)	(5,933.52)

Source: TPC

Figures in brackets indicates outstanding in Rs. Crore of Rs./USD = 84.23

As per its corporate policy, CGPL has undertaken interest rate swaps and it also periodically hedges its foreign currency exposure fully. Consequently, the Company estimates that the total cost of borrowing for its ECBs is around 11.25% p.a.

6.1.3 Operational Performance

The key historical parameters highlighting the operational performance of the plant are given below:

Parameters	FY2015	FY2016	FY2017
Availability	80%	80%	80%
PLF	73%	70%	76%
Aux consumption	7.81%	7.79%	7.86%
Unit Sold (MU)	24,502	23,679	25,302

Source: CGPL

6.1.4 Financial Performance

c) Profit and Loss Statement

The Profit & Loss statement of the Company for the past three financial years is summarized below:

	(Rs. Crore)		
FY Ended March 31,	2015*	2016	2017
Revenue	6,005.19	5,414.63	5,842.85
EBITDA	886.30	732.79	328.27
Depreciation	431.43	439.48	502.93
Finance Cost	1,352.95	1,291.67	675.08
Exceptional Income	-	2,435.51	-
PAT	(898.08)	1,437.15	(849.74)
EBITDA Margin (%)	14.76%	13.53%	5.62%

*Recorded as per IGAAP

Source: Annual Reports

- As per IndAS 109, if the carrying cost of the fixed assets exceeds the estimated net present value of future benefits, impairment is recognized as an expense in P&L and same is reduced from fixed assets. Similarly, if the impairment recognized in earlier accounting period no longer exists then the same is recorded as a reversal of impairment loss to extent the impairment charged earlier.
- CGPL had recorded an impairment loss as an exceptional item of Rs. 1,800 Crore and Rs. 850 Crore in FY2012 and FY2013 respectively. The impairment was recorded on account of the promulgation of Indonesian regulation leading to increase in coal cost. Similarly, on account lower coal prices as against those

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considered during recording of impairment in FY2012 and FY2013, CGPL reversed the impairment loss in FY2016 as an exceptional income of Rs 2,435 Crore. This is an accounting entry and does not have any impact on cash flows of the Company.

d) Balance Sheet

The Balance Sheet of the Company for the past three financial years is summarized below:

FY Ended March 31,	2015*	2016	2017
Fixed Assets			
Opening Gross Block	18,555	19,647*	19,653
(+) Capitalisation of forex loss	277	-	-
(+) Capitalisation of CWIP	78	10	109
(-) Disposals	4	3	2
Closing Gross Block	18,907	19,653	19,761
Accumulated Depreciation	4,375	1,771*	2,265
(+) Capital Work in Progress (CWIP)	5	79	28
Net Block	14,537	17,962	17,523
Equity Movement			
Opening Equity Share Capital	5,917	5,981	6,030
Promoter Debt converted to Equity	23	50	53
Additional Equity infused	40	-	-
Closing Equity Share Capital	5,981	6,030	6,083
Reserves & Surplus	(6,200)	(5,788)	(6,457)
Borrowings			
Opening Borrowings	14,715	15,843	15,843
+ / (-) Net Addition / (Reduction)	1,126	2	79
Total Closing Borrowings	15,843	15,844	15,923
Closing Bank / FIs loans	11,607	10,797	10,159
Closing Promoter infusion (incl. perp. securities and debt converted to equity)	4,236	5,047	5,764

*Recorded as per IGAAP

- Change in opening block in FY2016 is on account of adoption of IndAS, decapitalisation of loss on Foreign Exchange, accounting for Government grant and change in treatment of lease rentals paid in advance.
- The Company capitalised the forex variation as per the AS 11 (The effect of change in foreign exchange rate), the exchange difference arising out of long term foreign currency monetary item in respect of depreciable capital assets are added to or deducted from the fixed assets.
- CGPL had recorded an impairment loss of Rs. 625 Crore and Rs. 2,000 Crore in FY2012 and FY2013 respectively towards tangible assets. The impairment was recorded, as per IndAS 109, as the carrying cost of fixed assets exceeds the estimated net present value of future benefits. Similarly, on account lower coal prices as against those considered during recording of impairment earlier, the impairment was reversed by Rs. 2,414 Crore in FY2016.
- CGPL has converted Rs. 1,615 crore of Promoter Debt to equity since COO of the project. Further, apart from Promoter debt converted to equity, the company has also added additional Rs. 498 crore in equity.
- The Company did not record any revenue arising due to compensatory tariff, which was earlier allowed by Central Electricity Regulatory Commission (CERC)/ Appellate Tribunal of Electricity (APTEL) and hence the order of the Hon'ble Supreme Court regarding the compensatory tariff has no effect on the Net Worth of the Company.

6.1.5 Credit Rating

The ratings assigned to various facilities of the Company by CRISIL are as follows:

Facility	Rating
Bank Guarantee of Rs. 250 Crore	CRISIL A1+ (SO)
Buyer Credit Limit of Rs. 2,250 Crore	CRISIL A1+ (SO)
Cash Credit & Working Capital Demand Loan of Rs. 500 Crore	CRISIL AA- (SO) / Stable
Long Term Loan of Rs. 3,864 Crore	CRISIL A- / Stable

Source: CRISIL Credit report, May 18, 2017

6.1.6 Technical Due diligence by NTPC – Salient features of the Project

- PLF improved over the years since COD, which is currently 75.54%, though DC is maintained at committed minimum of 80% as per PPA.
- Specific coal consumption improved over year from COD. Presently, it is 0.393 kg/kwhr and Ash utilization is 80.10%.
- Boiler efficiency and Condenser vacuum is maintained very near to guaranteed value. All equipments of plant are from manufacturers who have base in India or are domestic firm.
- Excellent corrosion protection & painting protocol. Regular painting of all equipment/structure with well defined protocol.
- All PG test guarantee values achieved and no LD levied by CGPL for SG, TG, BFP etc.
- Tracking of 400 KV Insulators have been arrested with coating of silicon RTV which has water & dust repellent characteristics. SS canopy provided for PRD & all other protection devices of all transformers.
- FRP lining in inside wall of water box of condenser.
- GT lines Isolators are replaced with double –breaker type Isolators to arrest frequent failures.
- Excellent safety & security protocol
- CGPL has huge land available for expansion of additional future units, say 2 x 800 MW (with Blended / domestic coal of better QCV). The area has high ash utilization potential.
- Man-MW ratio is 0.081 which is very impressive compared to NTPC standard

NTPC also mentioned that possibility of domestic coal blending appear not feasible however it can be conclusively told only upon review of Boiler & ESP design by OEM.

6.1.7 Independent Valuation

M/s PricewaterhouseCoopers (PwC) and KPMG were appointed for carrying out Enterprise Valuation of all three projects. The sustainable debt and Enterprise Valuation (considering fuel cost pass-through) for CGPL is as provided below:

Particulars	Rs Crore	
	Enterprise Value	Sustainable Debt
PWC	17,973	16,727
KPMG	16,710	17,361

6.1.8 Cost benefit Analysis

The cost benefit analysis has been carried out based on two approaches being contemplated by lender and promoters to resolve the issue of under recovery. In the first approach, entire fuel cost is assumed to be recovered through fuel tariff by making amendment in the PPA. In the second approach, the formula provided by CERC for the Force Majeure order of APTEL was taken as the guiding principle.

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First Approach

The quoted energy tariff including change in Indian law is considered as Rs 1.67/unit for FY 2018 while the cost of generation is Rs 2.07/unit (after adjustment of profit from Indonesian Coal mine as insisted by producers) based on the coal cost estimate of June 2017.

The cost of pass through of fuel cost in FY 18 is Rs 1,056 Crore and NPV of the cost to Producers due to pass through is equal to Rs 9,034 Crore.

Based on the principle for Cost Benefit Analysis discussed earlier, the benefit to Producer(s)/ Discom on account of various factors is illustrated as follows:

S. No.	Benefit	NPV Value (Rs Crore)
1	Increase in availability from 80% to 90% (for PPA tenor)*	5,775
2	Availability of power beyond PPA (for 10 years)	4,448
	Total Benefit	10,223

*As per the PPA, the normative availability of the plant is 80% while the developer will try to run the plant at higher availability on best endeavor basis once fuel cost is fully recovered

The basis of computation of NPV is provided in Annexure II. If we consider marginal cost for power procurement, this benefit will be higher.

Second Approach

APTEL in its order dated 7th April 2016 had held that the increase in price of coal on account of the change in Indonesian Regulation constitute a Force Majeure event. APTEL had directed CERC to assess the extent of impact of Force Majeure event. CERC came up with the final order on 6th December 2016 providing a mechanism for relief under Force Majeure clause of the PPA.

In the second approach, the Working Group of lenders and producers asked for the analysis as per the formula provided by CERC. In this formula, the compensation is calculated based upon the difference between contracted coal cost as per Coal Supply Agreement (CSA) entered during bid and actual fuel cost incurred on account of change in Indonesian regulation. The same principle has been used for calculation of relief. As per the formula given by CERC in Force Majeure (FM) case, the compensation for FY 18 would be Rs 421 Crore and NPV of this cost would be Rs 3,711 Crore. As the fuel cost is not getting fully recovered, it may not be a sustainable solution as the Project may continue to incur losses.

6.1.9 Overall Impact of Proposed Resolution Plan on End Consumers

Since the company is incurring continual losses on account of fuel cost under recovery, the plant will become stranded unless the under recovery of fuel cost is arrested by amending PPA provision by allowing fuel cost pass through. The impact on consumer in both scenarios i.e. allowing plant to continue operations allowing fuel cost pass through or allowing it to become stranded and purchase electricity from alternate source are analysed below.

Scenario 1: Continuing purchase by amending PPAs

Scenario 2: Shutdown of these Plants because of unviability and consequent purchase from alternate sources

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Scenario (1): Continuing purchase by amending PPA's

While the proposed amendment to PPA i.e. fuel cost pass-through will increase the cost to Procurers, there will be no increase in the Capacity Charge as per the proposal. In fact, the effective Capacity Charge per unit payable by the Procurers will reduce due to higher availability of plants thereby spreading fixed costs over higher number of generated units. Further in return, there will be an additional benefit that will accrue to consumers/Discoms by way of continuation of contracted capacity beyond PPA term of 25 years.

The cost benefit analysis is tabulated below:

S. No.	Benefits/ Cost	NPV Value	
		(Rs Crore)	Rs/ kWh
1	Increase in availability from 80% to 90%	5,775	0.24
3	Availability of power beyond PPA (for 10 years)	4,448	0.16
	Total Benefit	10,223	0.40
4	Less: Additional Cost for coal pass-through	(9,034)	(0.37)
5	Net Benefit to Procurers	1,189	0.03

- Coal Cost is considered without escalation as imported coal prices may go up or down or remain stable at the current level. (Forward price curves are showing downward trend).
- Capacity charges for availability of power beyond PPA period is considered only at Rs. 2 / kWh i.e. at current price level; and escalation for 20 years is not considered, whereas it could be much higher and thereby higher advantage to procurer.

Scenario (2): Shutdown of these Plants because of unavailability and consequent purchase from alternate sources by Procurer(s)

If Scenario (1) is not materialized and the Project gets stranded due to non-viable operations or it is referred for insolvency, the Procurers will be forced to depend on alternate sources. In such an event, based on the prices discovered in recent Case I competitive bids, the cost of power purchase from alternate sources would be substantially higher than the purchase from these projects even with fuel cost as pass-through.

In this context, it is pertinent to mention that the Ministry of Power has revised the guidelines in the year 2013 for procurement of power under Case I. As per revised guidelines, the fuel cost will be pass-through. Therefore, the difference in cost of purchase from existing sources and new sources will be only in respect of Capacity Charge. The Capacity Charge of this project is substantially lower as the project cost is in the range of Rs 4 - 4.5 Crore per MW as compared to the average project cost of more than Rs 7.5 Crore per MW for projects which are recently implemented or which are under implementation and planning.

The comparison of Capacity Charge for CGPL Project and new sources is as under:

S. No.	Benefit	Rs/ kWh
1	Capacity Charge of New Projects (Estimated Cost of Rs 7.5 Crore per MW)	2.00

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2	Average Capacity Charge of CCPL for balance PPA term	0.78
2	Net Saving to Procurer	1.22

The procurer will have to pay capacity charge of around Rs 2/unit in case or it enters into a fresh PPA with any alternate source. The capacity charge of Rs 2/unit consists of Return of Equity (RoE) at Rs 1.53/unit and O&M expenses of Rs 0.26/unit (as per CERC norms). In the project, the O&M expense is only Rs 0.13/unit which is significantly lower than CERC norms. Therefore, continuing with existing PPA will result into a saving of Rs 0.53/unit on equity returns and Rs 0.13/unit on O&M expenses.

From the above analysis it emerges that:

- (i) If the PPA is amended and fuel cost is made pass-through, there will be increase in cost to Procurers in the initial years, but at the same time, the Procurers would stand to get more benefit over a period of time than additional cost and there will be net saving of Rs 0.03 per kWh on TDPV basis to the Procurers.
- (ii) Non availability of power from current project and reliance of Procurers on new sources will result in increase in cost by Rs 1.22 per kWh on account of higher project cost.
- (iii) If these plants are taken over by procurers and PPAs are amended and fuel cost is made pass-through, there will be increase in cost to Procurers in the initial years. However, this additional cost is not very high and it is being recovered over a period due to other benefits. On the other end, in the event proposed resolution is not materialized and the Project gets stranded or it is referred for insolvency, Procurers will have to incur higher cost perpetually without any avenue to recover this additional cost.

Therefore, continuation of power purchase from these projects by amending the PPAs to make the fuel cost pass-through will be beneficial from the end consumers point of view. Amendment of PPAs not only helps in making the projects viable but at the same time benefits in terms of higher reliability owing to their best operational performances and proven track record thereby providing uninterrupted power supply. Unlike the new sources, there is no uncertainty in the availability of power as these projects are already commissioned and operational.

7. CONCLUSION & WAY FORWARD

Resolution of these project is possible only if the issue of fuel cost is addressed by the procurers. The procurer states can implement this relief through two options as follows:

1. **Change in ownership** – The state government(s) may take majority stake in the project. The change in ownership may be made effective from 31st March 2017 and the changes in the balance sheet after the effective date may be adjusted on the date of transaction. Along with change in ownership, the PPAs may be amended to address the issue of fuel cost to make the project viable. This may be done by making the fuel cost fully recoverable (as per section 62 of Electricity Act) or through some other mechanism as suggested in CERC formula.
In case of multiple procurers, the states may have joint ownership of the project. During Working Group discussions, the states were ok with Gujarat taking majority stake on their behalf as Gujarat is the major procurer state for all three projects. Gujarat may then enter into amended PPAs with respective states.
2. **Revision in PPA without change in ownership** – The procurers may agree to make amendments in PPAs to address the issue of fuel cost to make the project viable. This may be done by making the fuel cost fully recoverable (as per section 62 of Electricity Act) or through some other mechanism as suggested in CERC formula. In this case, there will not be any change in the ownership structure of the projects.

It may be noted that, to make the solution sustainable, under recovery of fuel cost should be adequately addressed. Without this, the Project will be facing losses in future upto as in case of Force Majeure Formula for CGPL.

While providing any relief to the projects, the state(s) may also consider the additional benefit available from these projects. These benefits are as follows:

- a) **Additional generation** – Once the relief on the fuel cost is made available to the projects, the availability of the projects may be increased which will provide higher quantity of electricity to procurers without any additional capacity charge. Procurer(s) will get benefit from higher availability of the Projects.
- b) **Tie-up of free capacity** – Two of the projects have some capacity which is not yet tied up through any long term PPA. The procurers may enter into long term arrangement for purchasing this free capacity.
- c) **Plant availability after PPA term** – Even after the term of the PPA, the plants will have substantial residual life. The procurers may enter into such an arrangement where these capacities will be available to them even for next ten years even after expiry of PPA.

The NPV of these benefits for individual projects are given in the previous chapter.

7.1. Way Forward

Based upon these guiding principles, the states may take approval from their respective competent authorities. After approval, the mechanism may then be conveyed to the lenders of the projects for further course of action. If required, A tripartite agreement among the procurers, developers and the lenders may be executed to take this process forward. The tripartite agreement will cover the roles and responsibilities of all the individual parties during the entire process.

Annexure I: Merit Order of Various States

a. Merit order (Gujarat)

Station	Status	Type Of Station	Variable Cost (Rs/Unit)	Schedule (MWh)	Cumulative Capacity	%Age	Rank
SOLAR	Must Run	Renewable	-	6407	6407	2.30%	1A
WIND	Must Run	Renewable	-	12740	19147	6.86%	
TAPS 3&4	Must Run	Nuclear	2.98	2953	22100	7.92%	
TAPS 1&2	Must Run	Nuclear	1.02	1776	23876	8.55%	
KHPS	Must Run	Hydro	-	378	24254	8.69%	
SSP	Must Run	Hydro	-	496	24750	8.87%	
SUGEF I		Gas	-	14390	39140	14.02%	1
ACBIL		Thermal	0.64	4987	44127	15.81%	2
VSTPS 3-WR		Thermal	1.19	3142	46269	16.57%	3
SIPAT 1		Thermal	1.20	10682	56951	20.40%	4
KSTPS-WR		Thermal	1.21	5760	62711	22.46%	5
SIPAT 2-WR		Thermal	1.23	5106	67817	24.29%	6
ALPS		Thermal	1.25	3134	70951	25.42%	7
VSTPS 5		Thermal	1.45	2113	73064	26.17%	8
VSTPS 4		Thermal	1.45	5470	78534	28.13%	9
VTPS 2		Thermal	1.45	5406	83940	30.07%	10
VSTPS 3		Thermal	1.45	6064	90004	32.24%	11
APL(MUNDRA) UNIT-3 & 6		Thermal	1.53	14808	104812	37.55%	12
VTPS 1		Thermal	1.54	5023	109835	39.35%	13
SUPP -1		Thermal	1.70	2272	112107	40.16%	14
SUPP 3		Thermal	1.70	4631	116738	41.82%	15
CGPL MUNDRA UMPP		Thermal	1.73	28500	145238	52.03%	16
GANDHAR		Gas	1.88	2292	147530	52.85%	17
CCPP-I (GSECL) OH		Gas	1.89	431	148961	53.36%	18
GAIL(APM)		Gas	1.89	21462	170423	61.05%	19
APL(MUNDRA) UNIT-1&4		Thermal	1.89	23364	193787	69.42%	20
EPGL		Thermal	1.89	1394	195181	69.92%	21
KAWAS GAS		Gas	2.00	1394	196333	70.33%	22
KLPS 4		Thermal	2.07	1152	196722	70.47%	23
GAIL NARM		Gas	2.15	389	197017	70.58%	24
KAWAS NARM		Gas	2.17	295	200256	71.74%	25
KLPS 1-3		Thermal	2.17	3239	202900	72.68%	26
BECL		Thermal	2.25	2644	205164	73.50%	27
KAHALGAON-II		Thermal	2.31	2264	205401	73.58%	28
DHUVARAN CCPP-I ON		Gas	2.41	237	205638	74.18%	29
ONGC WO		Thermal	2.62	1670	207308	74.58%	30
MAUDA-II		Gas	2.62	1128	208436	75.91%	31
GIPCL-I ON GAS - APM		Thermal	2.73	3695	212131	76.75%	32
MAUDA-I		Gas	2.87	2342	214473	80.49%	33
CLPI ON CAIRN GAS		Thermal	2.99	10450	224923	83.76%	34
UTPS 6		Thermal	3.32	9131	234054	85.32%	35
STPS 3&4		Thermal	3.38	4355	238409	86.81%	36
WTPS 7		Thermal	3.46	4164	242573	90.05%	37
GTPS 5		Thermal	3.54	9035	251608		
UTPS		Thermal					

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Station	Status	Type Of Station	Variable Cost (Rs/Unit)	Schedule (MWh)	Cumulative Capacity	%Age	Rank
WTPS 1 & 2		Thermal	3.66	16752	268123	96.05%	38
OTPS34		Thermal	3.73	6304	274427	98.31%	39
UGBPS 2 SPOT		Gas	6.05	1011	275438	98.67%	40
OPPC SPOT		Gas	6.09	2610	278048	99.61%	41
CLPI (OSPC SPOT GAS)		Gas	5.37	1052	279100	99.98%	42
DHUVARAN CCPP-I GAIL SPOT		Gas	7.12	50	279150	100.00%	43

Source: <http://meritindia.in>

iv. Merit order (Punjab)

Station	Status	Type Of Station	Variable Cost (Rs/Unit)	Schedule (MWh)	Cumulative Capacity (MWh)	Cumulative Purchase (%)	Rank
BAIRASIL HEP	Must Run	Hydro	0.96	260	260	0.21%	1-28
BHAKRA	Must Run	Hydro	0.96	4350	4610	3.72%	
DEHAR	Must Run	Hydro	0.96	2433	7043	5.69%	
PONG	Must Run	Hydro	0.96	1495	8538	6.90%	
CHAMERA-II HEP	Must Run	Hydro	0.99	260	8818	7.12%	
CHAMERA HEP	Must Run	Hydro	1.1	265	9083	7.34%	
NATHPA JHAKRI HEP	Must Run	Hydro	1.19	1551	10634	8.59%	
URI HEP	Must Run	Hydro	1.27	222	10856	8.77%	
DHALUIGANGA HEP	Must Run	Hydro	1.51	315	11171	9.02%	
TAINAKPUR HEP	Must Run	Hydro	1.57	238	11409	9.22%	
RAMPUR HEP	Must Run	Hydro	1.61	268	11677	9.43%	
SALAL HEP	Must Run	Hydro	1.71	1105	12782	10.33%	
KOTESHWAR	Must Run	Hydro	1.96	187	12969	10.48%	
CHAMERA-III HEP	Must Run	Hydro	2.12	159	13128	10.60%	
TALA	Must Run	Hydro	2.16	312	13440	10.86%	
KOLDAM HEP	Must Run	Hydro	2.17	347	13787	11.14%	
SEWA-II HEP	Must Run	Hydro	2.35	41	13828	11.17%	
NAPP	Must Run	Nuclear	2.58	1423	15251	12.32%	
TEHRI HEP	Must Run	Hydro	2.70	683	15934	12.87%	
MALANA-II HEP	Must Run	Hydro	2.73	453	16387	13.24%	
PARBATI-III	Must Run	Hydro	2.74	107	16494	13.32%	
RAPPB	Must Run	Nuclear	2.88	2308	18802	15.19%	
DULHASTI HEP	Must Run	Hydro	3.28	650	19452	15.71%	
URI-II HEP	Must Run	Hydro	3.28	94	19546	15.79%	
RAPPB	Must Run	Nuclear	3.54	1372	20918	16.90%	
TOTAL HYDRO	Must Run	Hydro		10074	30992	25.04%	
TOTAL SOLAR	Must Run	Renewable		66	31058	25.09%	
SASAN UMPP		Thermal	1.15	13122	44180	35.69%	1
CGPL MUNDRA UMPP		Thermal	1.31	7300	51480	41.73%	2
RIHAND STPS		Thermal	1.31	2647	54127	43.89%	3
RIHAND-II STPS		Thermal	1.31	2542	56669	45.94%	4
RIHAND-III STPS		Thermal	1.32	2131	59000	47.66%	5
SINORAULI STPS		Thermal	1.43	4524	63524	51.32%	6
RAGHUNATHPUR (DVC)		Thermal	2.01	0	63524	51.32%	7
DURGAPUR STEEL THERMAL POWER STATION (DSTPS)		Thermal	2.17	2192	65716	53.09%	8

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Station	Status	Type Of Station	Variable Cost (Rs/Unit)	Schedule (MWh)	Cumulative Capacity (MWh)	Cumulative Purchase (%)	Rank
PRAGATI-III GAS PLANT BAWANA		Gas	2.19	584	66300	53.56%	9
MAHHA POWER LTD, RAJPLURA		Thermal	2.26	15717	82017	66.25%	10
KAHALGAON-II		Thermal	2.41	1956	83973	67.83%	11
KAHALGAON-I		Thermal	2.52	780	84753	68.46%	12
DADRI (GAS)		Gas	2.62	517	85270	68.88%	13
ANITA (GAS)		Gas	2.62	0	85270	68.88%	14
FARAKKA		Thermal	2.84	104	85374	68.97%	15
TAL WANDI SABOO		Thermal	2.85	28076	113450	91.65%	16
JHAJJAR		Thermal	2.89	166	113616	91.78%	17
DADRI II TPS		Thermal	2.94	79	113695	91.84%	18

Source: <http://meritindia.in>

e. Merit order (Haryana)

Station	Status	Type Of Station	Variable Cost (Rs/Unit)	Schedule (MWh)	Cumulative Capacity (MWh)	Cumulative Purchase (%)	Rank
SALAL HEP	Must Run	Hydro	0.6	624	624	0.49%	T1A
URI HEP	Must Run	Hydro	0.83	88	712	0.55%	
CHAMERA HEP	Must Run	Hydro	0.93	411	1123	0.88%	
BHAKRA	Must Run	Hydro	0.96	3150	4273	3.33%	
DEHAR	Must Run	Hydro	0.96	1762	6035	4.70%	
PONG	Must Run	Hydro	0.96	1083	7118	5.55%	
BAJRASIL HEP	Must Run	Hydro	1	171	7289	5.68%	
CHAMERA-II HEP	Must Run	Hydro	1.03	113	7402	5.77%	
HATHPA JHAKRI HEP	Must Run	Hydro	1.13	537	7939	6.19%	
DHAULIGANGA HEP	Must Run	Hydro	1.56	135	8074	6.29%	
TANAKPUR HEP	Must Run	Hydro	1.62	85	8159	6.36%	
RAMPUR HEP	Must Run	Hydro	1.67	126	8305	6.47%	
KARCHAM WANGTOO (K.WHEP)	Must Run	Hydro	1.9	1210	9515	7.41%	
KOTESHWAR	Must Run	Hydro	2.02	92	9607	7.49%	
CHAMERA-III HEP	Must Run	Hydro	2.2	124	9731	7.58%	
SEWA-II HEP	Must Run	Hydro	2.23	21	9752	7.60%	
TALA	Must Run	Hydro	2.23	156	9908	7.72%	
KOLDAM HEP	Must Run	Hydro	2.25	368	10276	8.01%	
URI-II HEP	Must Run	Hydro	2.48	65	10341	8.06%	
NAPP	Must Run	Nuclear	2.67	595	10936	8.52%	
TEHRI HEP	Must Run	Hydro	2.78	490	11426	8.90%	
PARBATI-III	Must Run	Hydro	2.83	84	11510	8.97%	
DULHASTI HEP	Must Run	Hydro	2.87	306	11816	9.21%	
RAPPB	Must Run	Nuclear	3.2	1104	12920	10.07%	

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Station	Status	Type Of Station	Variable Cost (Rs/Unit)	Schedule (MWh)	Cumulative Capacity (MWh)	Cumulative Purchase (%)	Rank
RAPPC	Must Run	Nuclear	3.2	500	13480	10.31%	
TOTAL SMALL HYDRO	Must Run	Hydro	4.09	680	14166	11.04%	
TOTAL BAGGASE	Must Run	Renewable	4.12	0	14166	11.04%	
TOTAL BIOMASS	Must Run	Renewable	7.96	379	14545	11.33%	
TOTAL SOLAR	Must Run	Renewable	10.71	409	14954	11.65%	
PTC ORISSA GMREL HRY		Thermal	1.01	1226	16180	12.61%	1
SASAN UMPP		Thermal	1.29	9841	26021	20.28%	2
RIHAND-II STPS		Thermal	1.30	1289	27310	21.28%	3
RIHAND STPS		Thermal	1.31	1439	28749	22.40%	4
RIHAND-III STPS		Thermal	1.32	1268	30017	23.39%	5
CGPL MUNDRA UMPP		Thermal	1.51	6000	36017	28.07%	6
SINGRAULI STPS		Thermal	1.54	4128	40145	31.28%	7
LAHCO AMARKANTAK POWER LIMITED (LAMKPL)		Thermal	1.66	5965	46110	35.93%	8
KODERMA (DVC)		Thermal	1.88	1628	47738	37.20%	9
MEJIA TPS		Thermal	2.30	837	48575	37.85%	10
KAHALGAON-II		Thermal	2.31	1554	50129	39.06%	11
FARIDABAD OPS (NTPC)		Thermal	2.40	2640	52769	41.12%	12
KAHALGAON - I		Thermal	2.42	470	53245	41.49%	13
ADANI POWER LIMITED (APL - MUNDRA) STG-III		Thermal	2.73	22776	76021	59.24%	14
FARAKKA		Thermal	2.79	113	76134	59.33%	15
UNCHAHAR III TPS		Thermal	3.01	211	76345	59.49%	16
JHAJJAR(CLP)		Thermal	3.02	13105	89450	69.70%	17
PRAGATI POWER (BAWALIA/IP)		Gas	3.07	583	90033	70.16%	18
UNCHAHAR-I TPS		Thermal	3.07	125	90158	70.26%	19
UNCHAHAR-II TPS		Thermal	3.07	347	90505	70.53%	20
JHAJJAR		Thermal	3.20	7697	98202	76.52%	21
YTPP-1&2--(YAMUNAJI AGAR)		Thermal	3.38	10659	108861	84.83%	22
PTPS UNIT-7		Thermal	3.56	4279	113140	88.16%	23
PTPS UNIT-6		Thermal	3.59	4290	117430	91.51%	24
ROTPP (KHEDAR) (IPP)		Thermal	3.61	10108	127538	99.38%	25
BAGIHAJI (PIC)		Thermal	3.83	670	128208	99.91%	26
DADRI (GAS)		Gas	3.95	120	128328	100.00%	27

Source: <http://meritindia.in>

d. ~~Merit order (Merit order)~~

Station	Status	Type Of Station	Variable Cost (Rs/Unit)	Schedule (MWh)	Cumulative Capacity (MWh)	Cumulative %	Rank
SSP	Must Run	Hydro		809	809	0.23%	1st

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Station	Status	Type Of Station	Variable Cost (Rs/Unit)	Schedule (MWh)	Cumulative Capacity (MWh)	Cumulative %	Rank
DAHANU SOLAR POWER PRIVATE LIMITED (DSPPL)	Must Run	Renewable		187	996	0.29%	
FAPS	Must Run	Nuclear		0	996	0.29%	
FAPS 3&4	Must Run	Nuclear		4637	5633	1.63%	
SIPAT 1		Thermal	1.4	11736	17369	5.03%	1
SIPAT 2-WR		Thermal	1.45	5301	22670	6.57%	2
TROMBAY UNIT 7		Gas	1.49	2160	24830	7.20%	3
VTPS 2		Thermal	1.52	7779	32609	9.45%	4
VSTPS 3		Thermal	1.52	6502	39111	11.34%	5
VSTPS 4		Thermal	1.53	7114	46225	13.40%	6
VSTPS 5		Thermal	1.53	3529	49754	14.42%	7
CGPL MUNDRA UMPP		Thermal	1.60	11607	61361	17.79%	8
GTPS URAH (UNIT 05 TO 10)		Thermal	1.61	6600	67961	19.70%	9
VTPS 1		Thermal	1.62	9684	77645	22.51%	10
ADANI TIRODA (UNIT- 2,3)		Thermal	1.82	13200	90845	26.33%	11
GAJNDHAR		Gas	1.88	1889	92734	26.88%	12
EMCO		Thermal	1.9	2400	95134	27.58%	13
KAWAS GAS		Gas	1.93	1485	96619	28.01%	14
JSW UI, JAIGAD		Thermal	2.07	6720	103339	29.95%	15
GAN NARM		Gas	2.16	254	103593	30.03%	16
KAWAS NARM		Gas	2.17	317	103910	30.12%	17
FORADI UNIT 08 TO 10		Thermal	2.17	20909	124819	36.18%	18
CHANDRAPUR UNIT - 08,09		Thermal	2.24	18771	143590	41.62%	19
PARAS UNIT - 03 & 04		Thermal	2.24	11040	154630	44.82%	20
CHANDRAPUR UNIT - 03 TO 07		Thermal	2.31	22440	177070	51.33%	21
KHAPERKHEDE UNIT 05		Thermal	2.35	9956	187026	54.21%	22
ADANI- TIRODA (UNIT- 1,4,5)		Thermal	2.38	29728	216754	62.83%	23
KAHALGAON-II		Thermal	2.43	2723	219477	63.62%	24
ADANI- TIRODA (UNIT- 1,4,5)		Thermal	2.44	9872	229349	66.48%	25
VIDARBHA INDUSTRIES POWER LTD. (VIPL UNIT 1 & 2)		Thermal	2.45	13728	243077	70.46%	26
KHAPERKHEDE UNIT - 01 TO 04		Thermal	2.73	8350	251427	72.88%	27
BHUSAWAL UNIT - 04 & 05		Thermal	2.74	22389	273816	79.37%	28
MAJIDA-II		Thermal	2.79	2752	276568	80.17%	29
MAJIDA-I		Thermal	2.93	6184	282752	81.96%	30
PARAU UNIT -08		Thermal	3.02	4292	287044	83.20%	31
RATAN INDIA UNIT-01 TO 05		Thermal	3.03	5723	292767	84.86%	32
BHUSAWAL UNIT - 2 & 3		Thermal	3.07	4296	297063	86.11%	33
HAJIK UNIT - 03 TO 05		Thermal	3.27	7686	304749	88.33%	34
TROMBAY UNIT-8		Thermal	3.38	5482	310231	89.92%	35

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Station	Status	Type Of Station	Variable Cost (Rs/Unit)	Schedule (MWh)	Cumulative Capacity (MWh)	Cumulative %	Rank
TROMBAY UNIT 5		Thermal	3.39	10400	320631	92.94%	36
DAMRU THERMAL POWER STATION (DIPS UNIT 1 & 2)		Thermal	3.39	10571	331202	96.00%	37
GANDHAR RING		Gas	4.50	368	331570	96.11%	38
FAYVAS RING		Gas	4.69	224	331794	96.17%	39
KSTPS-WR		Thermal		10294	342086	99.16%	40
I STPS 3-WR		Thermal		2908	344996	100.00%	41

Source: <http://meritindia.in>

c. Merit order (Rejection)

Station	Status	Type Of Station	Variable Cost (Rs/Unit)	Schedule (MWh)	Cumulative Capacity (MWh)	Cumulative %	Rank
MAHU	Must Run	Hydro	0.30	0	0	0.00%	11A
CHAMERA-II HEP	Must Run	Hydro	0.99	193	193	0.10%	
CHAMERA HEP	Must Run	Hydro	1.11	509	702	0.37%	
NATHPA BHAKRI HEP	Must Run	Hydro	1.19	939	1641	0.87%	
URI HEP	Must Run	Hydro	1.27	144	1785	0.94%	
DHALJUGANGA HEP	Must Run	Hydro	1.31	227	2012	1.06%	
TANAKPUR HEP	Must Run	Hydro	1.37	153	2165	1.14%	
RAMPUR HEP	Must Run	Hydro	1.61	270	2435	1.29%	
SALAL HEP	Must Run	Hydro	1.70	122	2557	1.35%	
KARCHAM WANGTOO (KWHEP)	Must Run	Hydro	1.78		2557	1.35%	
KOTESHWAR	Must Run	Hydro	1.96	163	2740	1.45%	
CHAMERA-III HEP	Must Run	Hydro	2.12	155	2895	1.53%	
TALA	Must Run	Hydro	2.16	156	3051	1.61%	
KOLDAM HEP	Must Run	Hydro	2.17	402	3453	1.82%	
SEWA-II HEP	Must Run	Hydro	2.36	38	3491	1.84%	
MAAP	Must Run	Nuclear	2.56	960	4451	2.35%	
PARBATI-III	Must Run	Hydro	2.74	105	4556	2.41%	
RAPPB	Must Run	Nuclear	2.88	3358	7914	4.18%	
RAPS A (NPC)	Must Run	Nuclear	2.88	4199	12113	6.40%	
TEHR HEP	Must Run	Hydro	3.00	517	12630	6.67%	
DULHASTI HEP	Must Run	Hydro	3.28	609	13239	6.99%	
URI-II HEP	Must Run	Hydro	3.28	132	13371	7.06%	
RAPPC	Must Run	Nuclear	3.54	1990	15361	8.12%	
ANOOPOGARH MH	Must Run	Hydro	3.78	0	15361	8.12%	
BISALPUR MH	Must Run	Hydro	3.78	0	15361	8.12%	
CHARANWALA MH	Must Run	Hydro	3.78	0	15361	8.12%	
MAJB-RMC MH	Must Run	Hydro	3.78	0	15361	8.12%	

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Station	Status	Type Of Station	Variable Cost (Rs/Unit)	Schedule (MWh)	Cumulative Capacity (MWh)	Cumulative %	Rank
MANGROL MH	Must Run	Hydro	3.78	0	15361	8.12%	
PUGAL MH	Must Run	Hydro	3.78	0	15361	8.12%	
SURATGARH-MH	Must Run	Hydro	3.78	0	15361	8.12%	
JAWAHAR SAGAR HEP	Must Run	Hydro		1512	16875	8.92%	
BIOMASS	Must Run	Renewable		477	17352	9.17%	
RAJAPRATAP SAGAR	Must Run	Hydro		2320	19672	10.39%	
SOLAR	Must Run	Renewable		1230	20902	11.04%	
BHAKRA	Must Run	Hydro		2007	22909	12.10%	
DEHAR	Must Run	Hydro		1174	24083	12.72%	
PONG	Must Run	Hydro		4070	28153	14.87%	
WIND	Must Run	Renewable		2179	30332	16.02%	
BSIUL			0.96	0	30332	16.02%	1
BARSINGGAR (NLC)		Thermal	1.11	4538	34870	18.42%	2
DB POWER		Thermal	1.11		34870	18.42%	3
MARUTI CLEAN COAL AND POWER LIMITED (MCCPL)		Thermal	1.13		34870	18.42%	4
RIHAND-II STPS		Thermal	1.23	3679	38749	20.47%	5
RIHAND STPS		Thermal	1.26	3558	42307	22.35%	6
RIHAND-II STPS		Thermal	1.27	4402	46709	24.68%	7
SASRI UMPP		Thermal	1.30	8748	55457	29.30%	8
CGPL MUNDRA UMPP		Thermal	1.46	6000	61457	32.47%	9
SINGRAULI STPS		Thermal	1.48	8772	70229	37.10%	10
RAMGARH GPS STG1&2		Gas	1.84	1047	71276	37.66%	11
PAWAI (ADAR)		Thermal	1.96	13970	85246	45.04%	12
RAJWEST (TPS/IPP)		Thermal	2.09	16345	101591	53.67%	13
FAHALGAON-II		Thermal	2.25	1447	103038	54.44%	14
CHABRA TPS U3		Thermal	2.31	5334	108372	57.25%	15
CHABRA TPS U4		Thermal	2.31	5273	113645	60.04%	16
FAHALGAON-I		Thermal	2.36	317	113962	60.21%	17
CHABRA TPS U1&2		Thermal	2.38	10410	124372	65.71%	18
KAUSIMOH TPP-II		Thermal	2.55	10278	134650	71.14%	19
KAUSIMOH TPP-I		Thermal	2.56	9931	144581	76.36%	20
FARAKKA		Thermal	2.71	78	144659	76.43%	21
UNCHAHAR IV		Thermal	2.75	861	145520	76.88%	22
UNCHAHAR-II TPS		Thermal	2.97	674	146194	77.24%	23
UNCHAHAR-III TPS		Thermal	2.97	370	146564	77.43%	24
UNCHAHAR-I TPS		Thermal	2.98	194	146758	77.53%	25
KOTA TPS		Thermal	3.02	19302	166060	87.73%	26
RAMGARH GPS STG3		Gas	3.07	2426	168486	89.01%	27

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Station	Status	Type Of Station	Variable Cost (Rs/Unit)	Schedule (MWh)	Cumulative Capacity (MWh)	Cumulative %	Rank
DADRI II TPS		Thermal	3.18	519	169003	89.29%	28
DHOLPUR GPS		Gas	3.43	2625	171630	90.67%	29
SURATGARH TPS		Thermal	3.81	4637	176267	93.12%	30
DADRI (GAS)		Gas	3.86	285	176552	93.28%	31
CHABRA TPS US		Thermal		12729	189281	100.00%	32

Source: <http://meritindia.in>

Annexure II: Key Assumptions for Net Benefit Computation

Particulars	Unit	Value
General		
Contracted Capacity	MW	3,800.00
Gross Capacity	MW	4,150.00
Discount Rate	%	9.08%
Exchange Rate	INR/USD	64.65
Exchange rate escalation	%	0%
Operational Parameters		
Normative Availability	%	80%
Normative Units	MLH	26,630
Normative Station Heat Rate	kcal/kWh	2,050.00
Aux Consumption	%	4.75%
Station Heat Rate - Actual	kcal/kWh	2,090.00
Aux Consumption - Actual	%	7.80%
Higher Availability (beyond 80%)	%	10.00%
Units Generated	MU	29,959
Revenue Related		
Capacity charge as per current market	Rs./kWh	2.00
Change in law	Rs./kWh	0.20
Discount in Fixed Cost	Paise/unit	0 paise/unit
Fixed Tariff (beyond FY2038) of Competing Projects	Rs/unit	2 Rs/unit
Tariff in Last Year of PPA	Rs/unit	0.56 Rs/unit
Incentive Milestones-I	%	85.00%
Incentive Milestones-II	%	90.00%
Incentive (for 85-90%)	Paise/unit	Minimum of 25 p/unit or 40% for non-escalable component of capacity charge
Capacity charge beyond PPA for 10 years*	Rs./kWh	0.56
Coal Related		
Contracted GCV	kcal/kWh	5,350.00
Actual Blended GCV	kcal/kWh	5,350.00
HBA June for 5400 GCV	\$/MT	56.17
Actual FOB assumed constant from Jun-17	\$/MT	55.65
Indonesia IT on export of coal	%	45.00%
Royalty on Coal	%	13.50%
WHT	%	10.00%
Tax on foreign dividend	%	17.304%
Coal mine profit Sharing	%	100.00%
Coal Price Escalation	%	0.00%
Coal Freight Escalation	%	0.00%

* For arriving at benefit for plant availability beyond PPA tenor for 10 years, capacity charge of last year as per PPA is considered. There may be some capex requirement for making plant available for the 10 years beyond PPA life which has not been considered for calculation purposes.

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**Discussions in Working Group
(Imported Coal Based Power Projects
Located in Gujarat)**

Report on Essar Power Gujarat Limited

January 2018

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LIST OF ANNEXURES

Annexure I	Merit Order position of Various States
Annexure II	Key Assumptions for Net Benefit Computation

1. Working Group

Background

While the capacity addition in power generation in the country was in the acceleration mode during the 11th plan period, the domestic coal supply in the country was not adequate to cater to entire capacity addition. Hence, some projects were planned with imported coal as fuel and state discom entered into long term PPAs with these projects. Two Ultra Mega Power Project (UMPP) based on imported coal as fuel, were also awarded through competitive bidding. After change in coal pricing regulation in Indonesia wet September 2011, the cost of coal procurement for these project increased significantly. The economics of these projects went haywire with sudden spurt in coal prices. Looking at the changed scenario, some developers abandoned their projects. Other projects which were partly/tully complete by then, approached respective regulatory commissions for relief. With recent Supreme Court order dated 11th April 2017 in case of Coastal Gujarat UMPP/Adani Power in the matter of compensatory tariff, these projects are not economically viable. Three projects namely Coastal Gujarat UMPP, Adani Power Mundra Project and Essar Power Gujarat Ltd (collectively referred as 'Project' and individually referred as 'Project'), have approached their major procurer state for resolution of this situation. Banks also have large exposure in these projects and there accounts will become Non-Performing if not resolved in timely manner. As these projects have large capacity and their tariffs are very competitive in nature, various stakeholders have been trying to find an appropriate resolution.

A meeting of all the stakeholders including the lenders, developers and procurers was held on 20th June 2017 in Delhi to discuss the issues related to imported coal based power projects. In that meeting, it was decided to form a specific Working Group to find resolution for the three projects mentioned above. The Working Group consists of all members of procurer states and Banks represented by Punjab National Bank and Canara Bank with State Bank of India acting as a convener, to find a solution through consultative process. In the meeting it was decided that the procurers and lenders will find the best solution possible for issues related to three projects namely Coastal Gujarat UMPP, Adani Power Mundra Project and Essar Power Gujarat Limited. It was decided that the solution needs to be broad based and flexible. SBI Capital Markets Ltd, was co-opted in the working group to facilitate secretarial and administrative responsibilities. Further, NTPC was assigned to conduct technical due diligence of all the three plants.

Coastal Gujarat UMPP has got PPA with different states – Gujarat, Maharashtra, Haryana, Punjab and Rajasthan. Adani Power Mundra project have got PPA with Gujarat and Haryana. Essar Power Gujarat Limited has PPA only with Gujarat.

First Meeting – 07th July 2017

Pursuant to the above, first meeting of working group was convened on 07th July 2017 at SBI Bhawan in Nariman Point, Mumbai. The meeting was chaired by Mr. H Sundar, CGM, State Bank of India.

In that meeting it was decided to appoint a Legal Consultant to get an independent opinion related to the transaction. M/s Shardul Amarchand Mangaldas & Co. (SAM) was appointed as the legal consultant for assisting the Working Group in consultation with other members. Subsequently, National Thermal Power Corporation (NTPC) submitted draft technical due diligence report of all the plants. Further, in the meeting, it was discussed that SBI-CAPS would circulate the financial analysis of various projects to the Committee members. The financial analysis was shared by SBI-CAPS with WGC members. To discuss the findings of NTPC report, financial analysis and to have a preliminary discussion on transaction structure, it was decided to schedule a meeting of WGC on 4th September 2017. It was noted that in order to discuss the divestment by Promoter and other technical matters

covered in NTPC report, presence of developers will be required and therefore in order to facilitate the discussion, they were also invited in the second meeting.

Second Meeting - 04th September 2017

Pursuant to the above, second meeting of working group was convened on 04th September 2017 at SBI Bhawan in Nariman Point, Mumbai. The meeting was chaired by Mr. Sunil Srivastava, DMD, State Bank of India.

In that meeting, NTPC made a brief presentation on design, technology, historical plant performance and SWOT analysis for the three projects. Subsequently, SAM made a detailed presentation on options available to procurer to take over the three projects and ways to amend PPAs. Further, SBI Capital Markets Ltd. made a presentation on the cost benefit analysis for the procurers carried out for respective projects. All the requirements related to financial analysis discussed in the last meeting was circulated to members by SBI Capital Markets Ltd. before the meeting. It was noted that, final technical due diligence report of NTPC be submitted before the next meeting. Also, SAM was required to make presentation for the proposed structures of transaction including change in Ownership of assets.

Third Meeting - 09th November 2017

Pursuant to the above, third meeting of working group was convened on 09th November 2017 at SBI Bhawan in Nariman Point, Mumbai. The meeting was chaired by Mr. B. Silram, MD, State Bank of India. To facilitate the discussion and for his guidance, Shri J. H. Singh, Chief Secretary (Government of Gujarat), was also invited to this meeting. Mr. Rajnish Kumar, Chairman, SBI also graced this meeting with presence from New Delhi through video conferencing.

In the meeting, NTPC presented their observations which were an update over presentation made during 2nd meeting. Subsequently, SAM made a detailed presentation elaborating on the judicial proceedings in the compensatory case. Subsequently, they also presented their views on the proposal keeping public interest in view and presented that the proposed resolution is based on two premises, i.e. (a) Change in Ownership; and (b) Amendment of existing PPA or new PPA, with due regulatory approval, for making the project viable. Further, independent consultants, viz. M/s PricewaterhouseCoopers and I PMG presented their preliminary analysis along with key assumptions for carrying out Enterprise valuation of all three projects. It was also discussed if a single state may take equity stake in the projects instead of multiple states. It was noted that SAM would provide a detailed process chart for the transaction along with timeline and required approvals, if any. Also, Working Group Committee members suggested that a small group comprising of representatives from SBI, Gujarat Discom and SBI Caps should be formed to facilitate preparation of the financial worksheet for various scenarios and analysis. Accordingly, financial analysis was carried out by this sub-group and submitted.

2. GENESIS OF PROBLEM

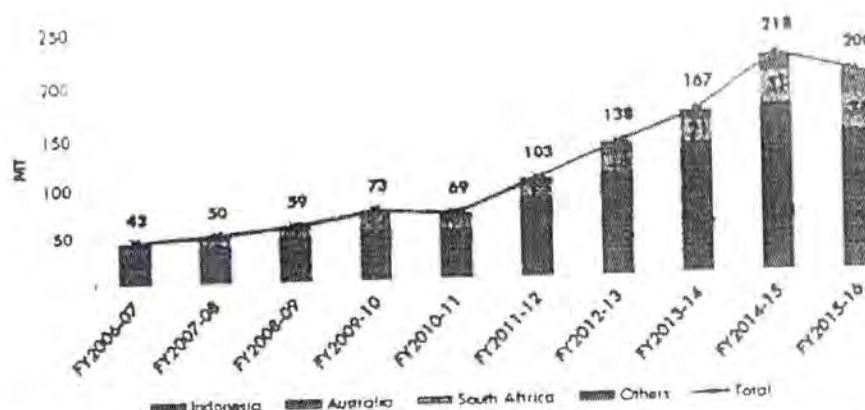
This chapter provides a brief over view of the impact of Indonesian Regulation on the coal prices as it is a major factor contributing to the hardship, challenges and losses for the Projects under discussion.

Change in Indonesian regulation and impact on Imported Coal based plants

The total installed capacity of power stations at the beginning of the 11th Plan i.e. 1.4.2007 was 132 GW with peak deficit and energy deficit at 13.8% and 9.6% respectively. Keeping this in view, Government of India had set an ambitious target of 82 GW to be added in the 11th plan to create a spinning reserve of 5% in the system, as per report of The Working Group on Power for Eleventh Plan. Indigenous coal production was not expected to match the demand of coal in power sector due to large capacity addition planned. Therefore, some power plants were planned at coastal locations with imported coal as fuel. These plants entered into PPAs with state discoms for a period of 25 years.

In 2005-06, the Government had launched an initiative for development of coal based Ultra Mega Power Project (UMPPs) in the country, each with capacity of 4000 MW or above. The projects were to be awarded to developers under tariff based competitive bidding route using super critical technology on build, own and operate basis. Some projects were planned at coastal sites with imported coal as fuel. Of these imported coal based UMPPs, two were awarded through competitive bidding - Mundra UMPP (Tata Power) and Krishnapatnam UMPP (Reliance Power).

In FY 2006-07, around 43 Million Tonnes of coal (out of this ~25 Million Tonnes was non-coking coal) was imported. It went up to around 218 Million Tonnes (non-coking coal 174 Million Tonnes) in FY 2014-15. The steam coal for power plants was mainly imported from Indonesia, Australia and South Africa. Coal imports from Indonesia have been in the range of 40-60% of total imports during the last ten years as shown below.

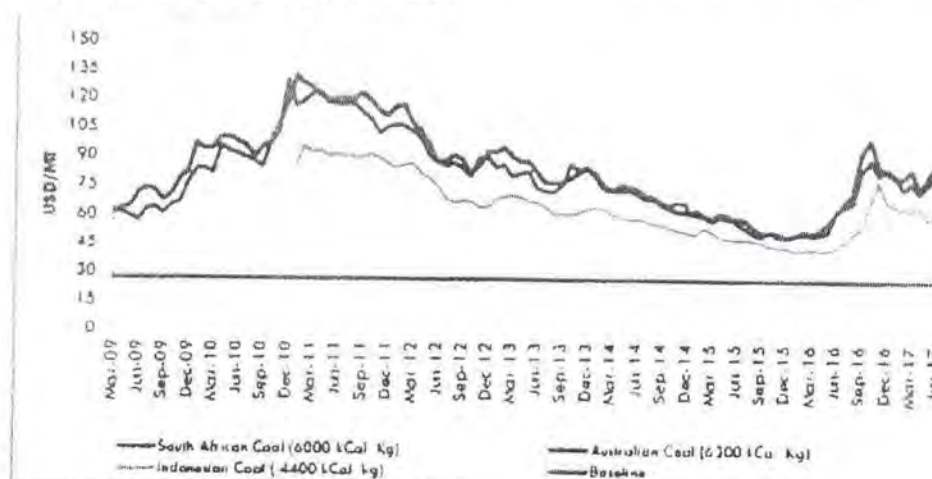


(Source: Coal Controllers Organisation)

As depicted in the graph above, Indonesia has been the largest exporter of non-coking coal to India, which is mainly used for imported and blended coal based plants. Indonesia has a strategic maritime location with respect to India and also supplies variety of low GCV coal that is economically priced.

Change in Indonesian Regulations:

In 2010, Indonesian Government came up with guidelines to benchmark its coal prices to international indices. The coal produced by Indian firms from Indonesia was of lower calorific value and, hence, it was priced cheaper compared with Australian and South African coal. The new method came into effect in September 2011 and cost of coal import from Indonesia became at par with other countries. Indonesian government also passed the directive that all existing supply agreements with Indonesian mining firms will have to be brought in line with this new benchmark by September 2011. This regulation changed the entire economics of the imported coal based power projects listed in preceding table. Along with this regulation, the coal prices in the global market witnessed a sudden rise as shown in the chart below:



(Source: www.industry.ncl.co.uk)

The new pricing regime led to increase in cost of thermal power generated using imported coal. These imported coal fired power plants became unviable due to huge gap in envisaged coal price and actual coal cost. Last three projects given in the Table I were abandoned by the developers considering the changed pricing scenario.

Impact on the Imported Coal based Projects – Regulatory Approach

Coastal Power Gujarat Ltd. (CPGL), Adani Power Ltd. (APL) and Essar Power Gujarat Ltd. (EPGL) approached respective regulatory commission to seek relief for the hardship faced by their projects. In the case of CPGL and APL, Central Electricity Regulatory Commission (CERC) and Appellate Tribunal (APTEL) gave favorable orders to allow compensatory tariff to pare the losses in coal cost. Details of the progress of these petitions are as follow:

- CERC used its regulatory powers under section 79 of Electricity Act and instructed that developers along with DISCOMs should adopt consultative process to find out and agree for a compensation package to be called "Compensatory Tariff" (CT). Based upon that, CERC gave a mechanism to calculate the CT.
 - DISCOMs challenged this order in APTEL.
 - APTEL in its order dated 7th April 2016 held that the increase in price of coal on account of the change in Indonesian Regulations constitute a Force Majeure event in terms of the PPA.
 - APTEL directed CERC to assess the extent of impact of Force Majeure event. CERC came up with the final order on 6th December 2016 providing a mechanism for relief under Force Majeure clause of the PPA.
- However, these orders were challenged in Supreme Court and the final judgement on the case came on 1st April 2017. In case of EPGL, Gujarat Electricity Regulatory Commission (GERC) reserved its order till the clarity from Supreme Court order. As per the judgment given by Hon'ble Supreme Court, change in Indonesian regulation on coal pricing is neither a Force Majeure nor Change in Law. Hence, no compensation can be given to developers as per the provisions of PPA. In view of the current judgment, these projects are not viable.

3. SCOPE OF THE INDEPENDENT CONSULTANTS

Following Consultant were appointed by Working Group Committee to facilitate the resolution of the imported Coal based power plants:

- **Technical Consultant** – National Thermal Power Corporation (NTPC)
- **Legal Consultant** – Shardul Amarchand Mangaldas (SAM)
- **Valuation Consultants** – PricewaterhouseCoopers (PwC) and I PMG

The scope of work for each of these consultants is provided subsequently.

a. Scope of work of Technical Consultant (NTPC)

NTPC was appointed to carry out the technical due diligence for all the three projects. Since all these three projects have procured boiler, turbine and generator package from overseas suppliers, NTPC was requested to assess the technical healthiness of such equipment. Scope of the technical consultant in brief is provided below:

Technical health of the Plant

- Technical consultant will assess technical sustainability of project
- Evaluation of actual plant performance for last 5 years of operation in terms of Plant Availability, plant efficiency, coal quality, GCV coal consumption, P/F, S/R and Auxiliary consumption for review.
- Comparison of various technical parameters with performance guarantee given by various equipment suppliers.
- Review of failure analysis for last 3 years, if any.
- Analysis of O&M cost and ways to improve it.
- Analysis of dependence of Chinese/overseas suppliers (as applicable) for operation of plant and possibility of procurement of spare parts from various other suppliers.
- SWOT Analysis of the Project
- Apart from above scope of work, assessment of water chemistry, water allocation, PPA, FSA, Coal Sourcing Arrangement, PAP liabilities, LTA, Preparedness for meeting new environmental norms, etc. shall be required.

The technical consultant was also asked to evaluate if these plants are able to use domestic coal in their overall fuel mix.

b. Scope of work of Legal Consultant

SAM was appointed as a legal consultant to carry out the following scope of work:

- Review of the power purchase agreements and other project documents of the Developers;
- Review of the constitutional documents of the off-taker entities;
- Review of the decisions of the CERC, Appellate Tribunal for Electricity and the Supreme Court of India in relation to the matter;
- Preparation of a detailed Memorandum addressing the legal scope of work (addressing the Transaction Structure and the modifications to the Power Purchase Agreement); and
- Discussing the various options with the Working Group and preparation and finalization of a detailed Way Forward Plan.

c. Scope of work of Valuation Consultant

PwC and KPMG were appointed as independent consultants for valuation. Their major scope of work is as mentioned below:

- Review and analyze past financial statements of the Project since the commencement of commercial operation.
- Determine Enterprise Value for the Project using appropriate methods and valuation techniques, which would include development of assumptions for projection of future profitability and cash flows, outlining sustainable debt.
- Submission of Enterprise /Business Valuation Report for the project based on the above, outlining your recommendations of fair value, as well as the methodologies employed and assumptions utilized in your analysis.

4. COMPETITIVE ANALYSIS OF PROJECTS

These Projects supply power to five premier states which are among the states with high electricity demand in the country. Further, this chapter provides capital cost comparison of Projects under discussion with its peers to ascertain competitive advantage over their peers.

Later on, tariff analysis of the projects to ascertain tariff competitiveness is covered through

- Merchant Tariff Analysis
- Recent Case 3 bids

Further, the delicate demand supply situation in the electricity industry in the country is discussed in brief to emphasize on the importance of well-being of these new generation Projects. Also, the impact of capacity overhauling due to required compliance with new environmental norms has been discussed as it will have some impact on overall availability of thermal project in the year FY 2020-2024.

Gujarat is purchasing significant portion of power from these three plants. The electricity demand-supply scenario for GUVNL for the coming years is analyzed in order to ascertain the requirement of these Projects. After that, merit order analysis is carried out to show the impact of mark-up to be provided as relief.

4.1 States with High Demand - Strategic Importance

The five states getting affected due to these three Projects are major states of the country in terms of electricity demand and growth. All these five states figure in the top bracket of the electricity consumer states. The peak demand (MW) and energy requirement (MU) of the top twelve states/UTs of the country are given below

States	Peak Demand (MW)	Energy Requirement (MUs)
Maharashtra	22542	99679
Uttar Pradesh	20274	84408
Gujarat	16590	73238
Tamil Nadu	15001	70649
Madhya Pradesh	11830	43447
Punjab	11705	41502
Rajasthan	11215	46513
Karnataka	9992	42160
Haryana	9671	36234
Telangana	9522	37869
West Bengal	8137	35849
Andhra Pradesh	6130	37692
Total country	164066	815348
Total (North+Western Region)	110609	301790
Aggregate of five states	71723	297186
As % of country demand	43.7%	36.4%
As % of N+W Region demand	64.8%	59.0%

(Source: CEA report for April to November 2017)

From the table above, it is evident that these five states are critical states with respect to electricity demand of the country. These five states cater to almost 50% of the total peak demand of this country. Any disturbance in the demand supply situation of these states will have greater ramifications on the overall situation. Therefore, the resolution of these three Projects becomes important from the strategic perspective.

4.2 Capital Cost comparison

The Projects under discussion were commissioned by 2013. The total Project Cost was much lower compared to the projects that have commissioned recently. Details of the Project Cost for projects under discussion are as below:

Name of the Project	Capacity (MW)	Project Cost (Rs. Cr.)	Project Cost (Rs. Cr./MW)	Gross Block (Rs. Cr., as on 31 st March 2017)
Coastal Gujarat Power Limited	4,150	17,500	4.22	19,653
Adani Power Limited	4,620	21,394	4.63	24,418
Essar Power Gujarat Limited	1,200	5,832	4.86	6,457*

* The figures are provisional and increase is due to change in accounting standards from IND GAAP to IND AS

Project costs of other comparable coal based power projects completed recently or under implementation/planning are given below:

Project	Developer	Capacity (MW)	Project Cost (Rs. Cr.)	Project Cost (Rs. Cr./MW)
Central Sector				
Meja TPP	NTPC	1320	10821	8.20
Bongalgaon TPP	NTPC	750	6749	9.00
Nabinagar TPP	NTPC	1000	7998	8.00
Darlipalli TPP St I	NTPC	1600	12532	7.83
New Nabinagar TPP	NTPC	1980	15132	7.64
Borh St I	NTPC	1980	15096	7.62
Kharagone TPP	NTPC	1320	11149	8.45
Lara TPP	NTPC	1600	11846	7.40
Gadarwara TPP	NTPC	1600	11639	7.27
Solapur TPP	NTPC	1320	9395	7.12
Kudagi TPP	NTPC	2400	15166	6.32
North Katarpur TPP	NTPC	1980	14367	7.26
Tanda II STPP	NTPC	1320	9189	6.96
Telangana TPP	NTPC	1600	11811	7.38
Ghatampur TPP	NTPC	1980	17237	8.71
Average		23750		7.68
State Sector				
Kalisindli TPP	RRVUNIL	1200	9480	7.90
Cixobra TPP UB-6	RRVUNIL	1320	7920	6.00
Suratgarh TPP	RRVUNIL	1320	7920	6.00
Paradi TPP UB-10	Mahagenco	1980	13652	6.89
Chandrapur TPP UB-9	Mahagenco	1000	7196	7.20

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Project	Developer	Capacity (MW)	Project Cost (Rs. Cr.)	Project Cost (Rs. Cr./MW)
Ukai Extn U6	GSECL	500	3078	6.16
Harduaganj Expn	UPRVUNL	660	4827	7.31
Obra C	UPRVUNL	1320	10416	7.89
Jawaharpur TPP	UPRVUNL	1320	10556	8.00
Ennore SEZ SCTPP	TANGEDCO	1320	9800	7.42
Uppur SCTPP	TANGEDCO	1600	12778	7.99
North Cheral TPP Sr III	TANGEDCO	800	6376	7.97
Ennore SCTPP	TANGEDCO	660	4956	7.51
Barauni Extn	BSEB	500	5308	10.62
Ib Valley TPP	OPGC	1320	11965	9.06
Average		16820		7.59
Private Sector				
Badadama TPP	D B Power Ltd	600	4,935	8.22
Vizag TPP	HHPCCL	1040	8,580	8.25
Haldia Energy Ltd	CESC	600	4,685	7.8
Raidiada TPP	GMR Chhatrisgarh Energy Ltd.	1070	11,642	8.49
Mutlana TPP	Coastal Energy	1200	7,870	6.56
Average		4810		7.87

It may be observed from the above table, the cost per MW of aforementioned projects is competitive with similar projects set up by other companies. Further lower project cost is also reflected in lower fixed charge quoted by developers at the time of bidding. If bids are invited for projects which have been completed recently the fixed charge would be expected to be much higher. Replacement cost of projects under discussion will be much higher under current scenario (Rs. 7-8 crore/ MW) as shown in the table above. Hence, this will lead to higher fixed charge obligations for the DISCOMs.

4.3 Merchant Term Analysis

To ascertain the competitiveness of the power produced by the projects under discussion with respect to power being traded in the merchant market under various exchanges has been carried out. The price of short term electricity transacted through traders and power exchanges for the period November 2016 to October 2017 as per CERC Monthly Monitoring Report is as furnished below:

Month	Volume of Electricity Transacted (BUs)			Wt. Avg. Price of Electricity Transacted (INR/kWh)		
	Bilateral	IEX	PXIL	Bilateral	IEX	PXIL
Nov'16	3.71	3.39	0.09	3.81	2.48	2.84
Dec'16	3.81	3.09	0.14	3.43	2.37	3.01
Jan'17	4.45	3.23	0.05	3.50	2.57	2.65
Feb'17	3.96	2.93	0.08	3.30	2.64	2.69
Mar'17	3.72	3.36	0.06	3.52	2.65	2.80

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April 17	4.32	3.72	0.03	3.46	2.83	2.79
May 17	4.79	4.10	0.01	3.53	2.98	2.99
June 17	4.85	3.92	0.02	3.31	2.73	3.36
July 17	5.61	3.67	0.01	3.30	2.65	3.52
Aug 17	5.53	3.98	0.03	3.35	3.24	3.21
Sept 17	4.75	4.09	0.28	3.57	4.25	4.01
Oct 17	3.54	4.08	0.28	4.00	4.26	3.94
	53.04	43.56	1.07	3.51	2.97	3.15

Source: CERC Monthly Report on Short Term Transactions of Electricity in India, Nov 2016 till Oct 2017

Further the prices of electricity transacted through power exchanges are expected to rise in near future as they are not reflective of the true cost involved. The average rates in the exchange market has been in the range ~Rs. 2.5/ unit to ~Rs. 4.25/ unit for period November 2016 to October 2017 and they are moving towards the average tariff discovered in case 1 bidding in recent past. Recent case 1 bids are discussed later in the report.

Further, an analysis has been carried out on volume data for electricity trading from 1 April 2017 till 18th December 2017 as available on India Energy Exchange (IEX) as below:

Month	Purchase Bid		Sell Bid		Difference		Cleared Volume		MCP (Rs/kWh)
	MU	MW*	MU	MW*	MU	MW*	MU	MW*	
Apr'17	4541.51	6307.65	5830.91	8098.49	-1289.40	-1790.84	3716.96	5162.45	2.77
May'17	5083.88	6833.17	6213.37	8351.30	-1129.49	-1518.13	4100.01	5510.76	2.92
Jun'17	4427.43	6149.20	7348.76	10206.61	2921.34	-4057.41	3920.07	5444.54	2.59
Jul'17	4295.09	5772.97	6687.45	8988.51	-2392.36	-3215.53	3668.77	4931.14	2.49
Aug'17	5047.50	6784.28	6157.55	8276.28	-1110.05	-1492.00	3982.18	5352.39	3.13
Sept'17	5737.81	7969.18	5101.20	7085.00	636.61	884.18	4086.60	5675.84	4.09
Oct'17	5535.22	7439.82	5247.88	7053.60	287.35	386.22	4078.61	5482.00	4.08
Nov'17	4524.90	6284.58	5587.41	7760.29	-1062.51	-1475.71	3524.43	4895.04	3.55

It can be seen from the table above that the clearing price goes above Rs. 4/unit whenever the purchase quantity is more than quantity available for sale. The projects under discussion are capable of generating ~61.. BUs at a PLF of 85% and currently only ~44.6 BUs are being traded on exchange. If these projects are not under operation, the present supply in the system is not sufficient to meet the demand and hence the exchange prices may shoot up beyond this level. Further, power procurement with long term visibility will be preferable for the DISCOMs in the long run.

4.4 Recent Case - I Bids

In case I route, a particular state would call for bids to meet its power requirement. The companies bidding can select any location and any type of fuel to serve that requirement. The players need to follow an International Competitive Bidding (ICB) strategy.

Case I bidding process happen in a scenario, where the state decides it needs power but has no issue with the source of generation. The state comes out with an advertisement for procuring power through a bidding process (International Competitive Bidding). The interested suppliers of power submit their bids and the bidder with the

least levelled tariff with the bid to supply power to the state. The following table shows result in recent case I bids:

Entity	Quantity (MW)	Bid Date	Developer	Tariff* (INR per unit)
Andhra Pradesh – Linkage and Imported Coal Based Bidders (Bids Invited: 2400 MW)	500	Nov 2014	NCC Power Projects Ltd	4.35
	540	Nov 2014	Korba West Avantha	4.49
	374	Nov 2014	MB Power Ltd	4.69
	400	Nov 2014	Jindal India Thermal	4.83
	500	Nov 2014	Essar Power	4.83
Tata Power Discom (Delhi)	200	Sept 2015	Jindal India	3.990
	120	Sept 2015	Balco Chhatbisgarh	4.071
	374.15	Sept 2015	M B Power	4.230
	100	Sept 2015	Lanco Anpara	4.320
	400	Sept 2015	Ratan India	4.479
Bihar Discom – Linkage Coal (Bids Invited :700 MW)	370	March 2016	Jindal India Thermal	3.84
Uttar Pradesh (UP) – Linkage Coal Based Bidders (Bids Invited : 2800 MW)	200	Aug 16	IITPL	3.939
	325	Aug 16	JPL	3.951
	200	Aug 16	BALCO	3.960
	1190	Aug 16	LAHCO Amarkantak	3.971
	700	Aug 16	Adani Power	4.047
UP – Imported Coal Based Bidders (Bids Invited : 500 MW)	275	Aug 16	JSW Energy limited	4.06
	500	Aug 16	Adani Power Limited	4.06

*Tariff mentioned is Delivered tariff typically transmission charges are about 45 to 60 paise, hence net realization would be lower to that extent

The tariffs given in the table above are the tariffs proposed for the first year including fixed cost and variable cost. The variable tariff will go up with increase in coal cost since fuel cost is made pass through in these bids. In view of the above, Projects under discussion have lower tariff compared to recent case I bids even after considering coal cost pass through, considering coal cost as per present scenario (detailed assumptions for coal cost computation is presented in the report). Taking into consideration only imported coal based plants, tariff quoted was even higher compared to other case I bids. Hence for DISCOMs, replacement cost of capacity under discussion will be much higher going forward.

4.3 Power Sector Scenario of Country

In the Draft National Electricity Plan (DNEP) released by Central Electricity Authority (CEA) in December 2016, various scenarios have been analysed to understand the demand supply situation in the next ten years. Govt. of India has charted out a very aggressive target of addition of renewable energy capacity in the country and it is

proposed to achieve cumulative capacity of 175 GW by 2022. The DNEP has taken this capacity addition target as the reference point. Further, there are some hydel (5,330 MW), gas (4,340 MW) and nuclear (2,800 MW) power projects which are under various stages of implementation. In case all these capacities come on stream, the DNEP mentions that there is no requirement for any new coal based capacity. However, it has been assumed that coal based capacity of around 50,025 MW is stuck at various stages of development and it will come on stream by 2022. Based on these presumptions, the PLF of the coal based plants has been projected for different scenarios. The scenarios for different growth rates and capacity addition are given in the following table:

Demand CAOR for next 5 years	Expected PLF* in 2022	Additional coal based capacity required
Scenario I: Full RES (175 GW) and Full Hydel (15.3 GW)		
6.34%	47.9%	—
7.34%	52.6%	7020
Scenario II: Medium RES (150 GW) and Low Hydel (11.8 GW)		
6.34%	51.1%	—
7.34%	55.8%	9940
Scenario III: Low RES (125 GW) and Low Hydel (11.8 GW)		
6.34%	53.5%	—
7.34%	58.1%	12040

* PLF has been calculated based on the assumption that entire 50,025 MW of coal based capacity will become available for generation

(Source: Draft National Electricity Plan, December 2016)

Considering the capacity addition achieved in wind and solar plants till now and track record in implementation of hydel projects, the scenario analysis becomes very important. It has been assumed that entire 50 GW of coal based capacity, which is stuck at various stages of implementation currently, will come on stream in next four years.

Stranded coal based projects in the country – The country is currently grappling with the large number of stranded projects in the country. This has become a major issue for the banks as well as the industry players as huge amount of capital is locked in these projects. Many projects are stuck due to financial and other issues and various stakeholders are trying their level best to resolve these issues. Ministry of Power has constituted various committees to find out the sustainable resolution process on an urgent basis. The resolution process has been taking long time and it is creating further stress on these projects. The efforts required to revive these projects will keep on increasing with increase in stress. These coal based projects may take longer than expected time to come on stream. Some projects may end up in a situation where the revival would not make any economic sense.

Addition of RES capacity – Govt. of India has come up with an aggressive target of 175 GW of RES capacity by 2022. By 2017-18, total target for solar capacity is 32 GW including 10 GW of rooftop solar. As on 31st October 2017, total solar capacity of the country was 15.6 GW and rooftop has not yet achieved a significant size.

Addition of Hydel capacity – In the last five years, the capacity addition program in hydel power capacity in this country has been very sluggish. As on 30th September 2012, the hydel power capacity of this country was 39,291 MW. In next five years, total hydel capacity added in the country was only 5,474 MW which is equivalent to around 1 GW per year.

Going by the track record of capacity addition and renewable/hydel and latest position of generation capacities, there may not be any slack available on the supply side in medium term. Therefore to meet the demand, it is very important that the new operating plants with stabilized operations are not taken out of grid.

4.6 Compliance with new Environment Norms

The Ministry of environment, Forest and Climate Change (MoEFCC) has notified the Environment (Protection) Amendment Rules, 2015 vide Notification dated 7 December 2015. This amendment has brought in revised environment standards for the coal based thermal power plants in the country by December 2024. A writ petition was filed in Supreme Court for implementation of the revised emission norms as per the guidelines specified by MoEFCC. The Power ministry has sought extension of 5 years for implementation of the revised norms and the petition is under hearing process.

In order to comply with revised norms, the coal based thermal power plants will be required to incur some capex which will require capacity overhauling for some time. Therefore, in order to facilitate this exercise, CEA has drawn a schedule for implementation of such capex for all the required plants which on an aggregate basis is presented below:

Expected Capacity Overhaul (MW)	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
Northern Region	1590	4480	7440	10575	3320
Southern Region	5480	9310	2450	3000	0
Western Region	2100	20662	26655	6780	2160
Eastern Region	0	2000	8715	3955	2000
Total	9170	36432	45260	24310	7480

Therefore, in light of above, many plants will be put under scheduled maintenance for implementation of new technology in order to comply with revised emission norms. This may further strain the system and create demand-supply mismatch in the future and consequently may result in increase in short term market price.

4.7 Demand-Supply Analysis for GUVNL

The Demand-Supply scenario for GUVNL has been examined to establish the necessary capacity required to meet the peak demand in the coming years. An analysis has been carried out taking into consideration present installed capacity and capacity addition/derating as envisaged by GUVNL as below:

Particular	Unit	2017#	2018	2019	2020	2021	2022
Demand Analysis (Peak Demand)							
Peak Demand (Gujarat) at 6%	MW	17097	18123	19210	20363	21585	22880
Peak Demand (GUVNL) at 6%(A)	MW	15000	13900	16834	17865	18937	20073
Supply Side Analysis							
Conventional							
PPA Capacity	MW	17905					
PPA tie-up in coming years	MW		1261	246	0	476	0
PPA Capacity Derated	MW		0	655	0	0	156
Idle Gas Capacity tied up	MW	2000					
PPA Capacity Available	MW		17166	16757	16757	17233	17077
PPA Capacity at 80% PLF (B)	MW		13733	13406	13406	13786	13662
Renewable Energy							
PPA Capacity	MW	4600					
PPA tie-up in coming years	MW		1140	1140	1140	1140	1140

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PPA Capacity Available	MW	5940	7080	8220	9360	10500
PPA Capacity to be utilized* (C)	MW	1654	2266	2877	3488	4100
Total Supply (C=B+C)	MW	15387	15671	16283	17273	17761
Deficit (A-C)		-513	-1183	-1383	-1642	-2212

*Considering CUF of 7% of wind, 70% for solar and 0% for both bio gas and small hydro

#Year is considered from Jan to Dec for 5 years

Source: GUVNL

As observed in the table above, the peak demand for GUVNL for CY 2018 is estimated at 15900 MW. The available capacity after necessary adjustments is estimated at 15387 which leaves a deficit of about 513 MW for 2018. The deficit is estimated to increase in the coming years as shown in the table above with net deficit of 2212 MW for CY 2022.

Further, the PPA capacity of GUVNL also includes aggregate capacity of 4805 MW tied up with APL, EPGL and CGPL. In case the capacity of 4805 MW is also excluded from the system, the deficit will further increase by about 3844 MW (80% of 4805 MW) for each year which may further aggravate the deficit scenario.

Additionally, any increase in power demand due to anticipated push of EVs due to GOI's focus on 'Transformative Mobility Solutions for All' and railway electrification, Make in India program, etc. will further increase the deficit. Therefore, to maintain requisite power supply position in Gujarat in the coming years and to avoid sourcing of power from costly sources/ merchant market, it is important that the Project under discussion are resolved.

4.8 State wise Merit Order Analysis

In the Working Group, the competitiveness of the electricity produced by these Projects was ascertained in terms of the merit order dispatch / ranking. Total generation capacity of CGPL, APL and EPGL is 9970 MW. CGPL has signed power purchase agreements with 5 states (Gujarat – 1805 MW; Maharashtra – 760 MW; Punjab – 475 MW; Haryana – 380 MW and Rajasthan – 380 MW). APL has two PPAs of 1000 MW each with Gujarat and PPA of 1424 MW with Haryana. EPGL has PPA of 1000 MW with Gujarat. These projects appear very high (mostly first or second quartile) in the merit order of their respective producer states. The merit order of individual states are given in the Annexure I. Even with the variable tariff made pass through, these projects will be in a competitive position in the respective merit orders. The overall tariffs of these projects will also remain low as compared to the tariffs discovered in recent cost bids.

States	Plant	Current PPA Tariffs	Scheduled Capacity (in MU) #	%age Dispatched	Tariff after Coal Cost Pass-Through	Capacity after dispatch with pass through (in MU) #	% age Dispatched
Gujarat	APL – Phase III	1.53	104812	37.55%	2.27	158074	56.63%
	CGPL	1.73	145238	52.03%	2.13	136699	48.97%
	APL – Phase I & 2	1.89	170423	61.05%	2.33	181800	65.13%
	EPGL	1.89	193787	69.42%	2.43	205401	73.58%
Maharashtra	CGPL	1.60	61361	17.79%	2.13	103339	29.95%
Punjab	CGPL	1.31	51680	41.75%	2.13	63524	51.32%
Rajasthan	CGPL	1.46	61457	32.47%	2.13	101591	53.67%
Haryana	CGPL	1.51	36017	28.07%	2.13	47738	37.20%

This is the cumulative capacity scheduled by the state considering capacity for given project as per Merit Order of 24th October taken from MeritIndia.in

CGPL tariff doesn't incorporate the latest position of change in law provisions.

5. WORKING GROUP – MAJOR FINDINGS

During the meetings of Working Group, technical due diligence of all the three projects was discussed in detail. The independent consultants provided their views on the enterprise valuation of these three projects. The legal consultant also presented its views on the transaction structure and the steps to be followed to conclude the transaction.

5.1. Technical Findings

As per the requirement of the working group NTPC conducted technical due diligence for all the three projects. The key finding of the NTPC report are:

- All the plants are running satisfactorily with imported coal.
- The projects are technically healthy and their operations are compliant with industry standards.
- It is difficult to operate the plants on domestic coal. All three developers have represented that the projects are designed for imported coal and domestic coal can be used in these projects only after making suitable changes in projects. Prima facie, it may require rigorous study/analysis of various parameters including safety concern for boiler due to higher ash content of domestic coal. Adani Power has submitted some studies for usage of domestic coal in the plants after certain changes including capex investments.

5.2. Independent Consultant for Valuation

PwC and IPMG were appointed for determination of enterprise valuation of all three projects. These consultants have carried out the valuation based on certain assumptions. In their analysis, it has been assumed that the coal cost will be fully recovered in the variable tariff and the capacity charge will kept as per the quoted tariffs. They also calculated the debt these projects will be able to sustain in such a scenario. Their findings for individual projects are given in the relevant sections of respective projects.

5.3. Independent Legal Consultant

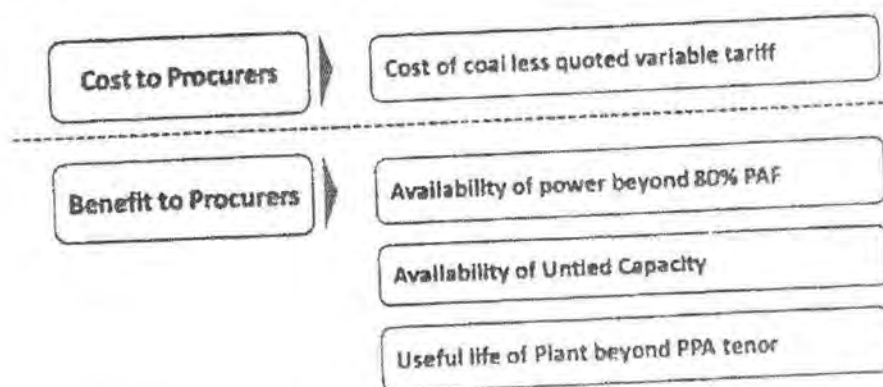
M/s Shroddar Amarchand Mangaldas & Co. (SAM) was appointed as the legal consultant for assisting the Working Group with respect to legal issues. The legal consultant has analyzed the PPAs of all these projects as well as the orders given by various regulatory commissions, APTEL and honorable Supreme Court. In view of all these orders, the legal consultant was asked to provide the steps for resolution of these projects. The legal consultant made detailed presentations in the Working Group meetings. The legal advisor has suggested that the transaction should not be done through NCLT. Their analysis is concentrated on two major aspects – acquisition of majority stake by state governments in these projects and amendment in PPAs for revision in tariff. They have explained that PPAs may be amended even after Supreme Court order. However, any amendment in PPAs will have to be approved by the respective authority.

5.4. Cost Benefit Analysis

During the discussion of working group meetings, in order to find solution for the imported coal based power plants, it was emphasized that the PPA needs to be amended in order to take care of the variable nature of the coal cost. If electricity is no longer available from these plants, the DISCOMs may have to incur higher amount to purchase this electricity from alternate sources. Though any relief to these projects will result into producers incurring additional cost as compared to quoted tariff, it will still be lower than the amount required while purchasing power from alternate sources. Further, against this additional cost, the DISCOMs may ask for certain benefits from these projects like:

- i) Enhanced plant availability - Once the projects start making profits on the fuel cost, they may be able to run the plant at higher availability which will provide incremental electricity to the procurers effectively at variable cost only.
- ii) Availability of untied capacity - In case of Adani Power and Essar Power, part of the plant capacity is not tied up through any long term PPA. The procurers may enter into long term PPA for the incremental capacity.
- iii) Power availability beyond tenor of PPA - Even after the end of PPA tenor after 25 years, these plants will have substantial residual life. The procurers may enter into some arrangement to purchase electricity from these plants even after the PPA terms are over.

Subsequently the impact of change in variable tariff on the DISCOMs was evaluated by carrying out cost benefit analysis for all the three projects. The principle adopted for cost benefit analysis is as under:



In the third meeting of the Working Group, it was suggested to form a small sub-group to analyze various scenarios for cost benefit analysis for the procurers. Primarily two options were evaluated by the sub-group:

- i) Full pass through of the fuel cost - In this option, the PPA will be amended to make fuel cost fully pass through. The capacity charge will be kept as per the quoted tariff.
- ii) Force Majeure order - CERC had given a formula for compensatory tariff at the instructions of APTEL in case of CGPL and Adani Power Phase III & Phase IV. In this option, the principles of this order were used for carrying out cost benefit analysis. As per the order, relief should be based on the difference between the FOB price agreed in the Coal Supply Agreement and the FOB price at which the plant is purchasing coal from Indonesia or the H&A price whichever is lower. The difference in actual imported coal cost and bid cost for Indonesian coal will be considered at the exchange rate of respective PPAs with adjustment of profit from Indonesian mines.

6. PROJECT DETAILS

This chapter covers the Technical Description, PPA relate details, performance details and financial analysis on standalone basis for the Project Companies.

6.1. Essar Power Gujarat Limited

6.1.1 Project Details

Essar Power Gujarat Ltd (EPGL) has developed a 1,200 MW imported coal based power plant, comprising of 2 units of 600 MW each, near Paradiya Village, Khambalia Taluk, Jamnagar District, Gujarat. Both the units have achieved Commercial Operation Date (COD): Unit I on April 5, 2012 and Unit II on June 15, 2012.

a) Land and Location

The entire plant has been setup on about 330 hectares of land in the Salaya, Gujarat. The key details of plant location are as under:

Parameter	Details
Installed Capacity	1200 MW
Location	near Paradiya Village, Khambalia Taluk, Jamnagar District, Gujarat.
Nearest town	Jamnagar City : ~45 km
Nearest Railway Station	Khambalia, ~18 km
Nearest Airport	Jamnagar City : ~45 km
Nearest Port	~18 km

b) EPC/Project Contractors

The Company implemented the Project on a turnkey EPC contract with a consortium comprising of Global Supplies FZE, a Dubai based company and Essar Construction (India) Limited. Essar Engineering Services Limited provided the engineering services for the Project including construction supervision. M/s Tata Consulting Engineers (TCE) did the interface engineering and review of detailed design. The BTG has been sourced from Harbin, China.

c) Power Evacuation Arrangement

The power from the plant bus bar is being evacuated through 400 kV double circuit transmission line to the nearest 400 kV Hadala substation, which is about 105 km away from the power plant. As per the PPA, EPGL is required to supply the power at the plant bus bar and transmission of power from the plant to the nearest substation of Gujarat discom is the responsibility of Gujarat Energy Transmission Company Limited (GETCO). The Company has also been granted long term open access by PGCL and the transmission line till the nearest substation is capable of evacuating the power from the power plant including power related to merchant sales.

d) Operations and Maintenance Arrangement

The O&M for the entire plant is being done in-house by Essar group.

e) Power Purchase Agreement

EPGL signed a long term Power Purchase Agreement (PPA) in February 2007 with Gujarat Urja Vikas Nigam Limited (GUVNL) for supply of 1,000 MW power (on net basis) for 25 years from COD of the plant and subsequently it was assigned to EPGL. The Company had quoted the fuel charges and transportation charges in USD in tariff, the levelized tariff at the time of the bid was Rs. 2.10/kWh. The balance power (net of auxiliary consumption) of around 128 MW is being sold on merchant basis.

Financial Year	QNECC (Rs./kWh)	QNEFC (USD/kWh)	QNETEC (USD/kWh)	QNEFEC (Rs./kWh)
FY11*	1.1662	0.01748	0.00749	0.1174
FY12	1.1217	0.01748	0.00749	0.1161
FY13	1.0840	0.01748	0.00749	0.1194
FY14	1.1317	0.01748	0.00749	0.1207
FY15	1.0945	0.01748	0.00749	0.1219
FY16	1.0576	0.01748	0.00749	0.1233
FY17	1.0211	0.01748	0.00749	0.1246
FY18	1.0593	0.01748	0.00749	0.1259
FY19	0.9603	0.01748	0.00749	0.1273
FY20	0.8281	0.01748	0.00749	0.1286
FY21	0.9017	0.01748	0.00749	0.1300
FY22	0.8348	0.01748	0.00749	0.1314
FY23	0.8449	0.01748	0.00749	0.1328
FY24	0.8555	0.01748	0.00749	0.1342
FY25	0.8665	0.01748	0.00749	0.1356
FY26	0.8267	0.01748	0.00749	0.1371
FY27	0.8386	0.01748	0.00749	0.1386
FY28	0.8509	0.01748	0.00749	0.1400
FY29	0.8637	0.01748	0.00749	0.1415
FY30	0.8770	0.01748	0.00749	0.1431
FY31	0.8908	0.01748	0.00749	0.1446
FY32	0.9052	0.01748	0.00749	0.1461
FY33	0.9292	0.01748	0.00749	0.1477
FY34	0.9357	0.01748	0.00749	0.1493
FY35	0.8240	0.01748	0.00749	0.1509
FY36	0.8438	0.01748	0.00749	0.1523

*Schedule is shifted by 2 years due to delay in COD

QNECC – Quoted Non Esc. Capacity Charge
 QNEFEC – Quoted Non Esc. Fuel Energy Charge
 QNETEC – Quoted Non Esc. Transportation Energy Charge
 QNEFEC – Quoted Non Esc. Fuel Handling Energy Charge

f) Fuel Supply and Transportation Arrangement

The plant is designed to operate on coal with an average Gross Calorific Value of 5155 – 5500 Kcal/kwh. The Company has been sourcing coal from international markets with the main source being Indonesia.

6.1.2 Debt Profile

As on 31st March 2017, the total outstanding project debt is Rs. 4,214 crore comprising of Rupee term loan of about Rs. 3,070 crore and Sub Debt of Rs. 1,144 crore. The working capital limit for the project is about Rs.

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481 crore comprising of Rs. 50 crore of fund based and Rs. 431 crore of non-fund based facility. Further as on 31st March 2017 there are Inter Corporate Deposit of ~ Rs. 553 crore in the Company (including interest overdue). A onetime BG of Rs. 210 crore is availed from State Bank of India which was recently invoked by GUVNL. Debt profile for Rupee Term Loan and Subordinate Debt is shown below:

Term Loan

Bank/FI name*	Outstanding (Rs. Crore)
Secured	
State Bank of India	679
ICICI Bank	956
IFCL	403
Punjab National Bank	328
Union Bank of India	256
United Bank of India	117
Allahabad Bank	83
State Bank of Travancore	83
State Bank of Patiala	83
Indian Overseas Bank	83
Unsecured	
Yes Bank Limited	485
Axii Bank Limited	474
IDBI	129
L & T Infra. Fin. Co. Ltd.	56
Total	4,214
ICD	553

6.1.3 Operational Performance

The key historical parameters highlighting the operational performance of the plant are given below:

Parameters	FY 2015	FY 2016	FY 2017
Availability (%) (GUVNL)	80%	80%	80%
PLF (%) (Station)	63%	50%	50%
Generation Unit (in MU) (Station)	6,609	5,229	5,213
Sold Unit (MU) (Station)	6,224	4,915	4,889
Sold Unit (MU) (GUVNL)	5,812	4,296	4,478
Auxiliary (%)	5.8%	6.1%	6.3%
Avg. GCV	5,427	5,893	5,227
SHR	2,365	2,365	2,389

Source: Information provided by EPCL

6.1.4 Financial Performance

The Financial performance for past 3 years for the projects is as below:

a) Profit and Loss Statement

(Rs. Crore)

Particular	FY 2015	FY 2016	FY 2017*
Sales	1867	1905	1846
EBIDTA	199	533	522
Dep	189	114	207
Interest	694	659	508
PAT	683	39	310
EBIDTA Margin (%)	11%	28%	28%

*Based on IHD AS

b) Balance Sheet Analysis

Particular	FY 2015	FY 2016	FY 2017*
Fixed Assets			
Opening Gross Block	5,151	5,158	8,551
Addition	6	28	5
Depreciation	189	114	207
Accumulated Depreciation	698	812	413
Net Block	4,460	4,374	8,143
Equity Movement			
Contributed Equity	2,337	2,646	2,614
Equity Infusion	309	-	-
Loss during the year	685	39	280#
Accumulated losses	2,132	2,093	570
Net Worth	514	553	2,904
Borrowings			
Opening Term Loan	2,766	3,052	3,102
Opening ICD/Subordinated Debt	1,209	1,209	1,217
Net Addition	266	55	-33
Closing Total	4,260	4,315	4,286
Closing Term Loan	3,052	3,102	3,070

*Based on IHD AS

#Including Unsecured Loan of Rs. 37.50 Crore, Unsecured loan is revolved at Rs. 3.31 crore under IHD AS in 2016-17 Financial.

#Including other comprehensive income of Rs. 30.85 crore during the year

6.1.5 Credit Rating

The ratings of the Company by CARE have been suspended.

6.1.6 Technical Due Diligence by NTPC – Salient Features of Project

- The plant has developed indigenous sources for supply of spares except for turbine generators. The plant has been in operation from April 2012 but no major accidents and equipment failures have been faced since commissioning. It has been noted that there has been no single tripping in the plant due to Control and Instrumentation failure so far.

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- The plant equipment and system have been generally provided with sufficient redundancy and margin for imported coal firing.
- At present, there is 100% ash utilization in the plant. However, further ash utilization studies will be required to assess the possibility of utilization of total ash (bottom ash & fly ash) on sustainable basis, even when the plant operates at its full rated capacity.
- The plant is to be served with dedicated port facilities and coal corridor. Coal Corridor has recently started operation and cost savings are expected in the coal transportation cost.
- The plant has all the permits, consents and approvals in place.
- There is no space constraint for retrofitting of FGD.
- The plant has two simulators replicating two units for training of its O&M personnel.
- The plant was tested at full load operation on 3rd July 2017 during team visit and was able to run at full load with available coal of GCV 5923kcal/kg.

6.1.7 Independent Valuation

M/s PricewaterhouseCoopers (PwC) and KPMG were appointed for carrying out Enterprise Valuation of all three projects. The sustainable debt and Enterprise Valuation (considering fuel cost pass through) for EPGL is as provided below:

Particulars	Rs Crore	
	Enterprise Value	Sustainable Debt
PWC	6,094	5,077
KPMG	6,226	6,773

6.1.8 Cost Benefit Analysis

The cost benefit analysis has been carried out based on two approaches being contemplated by lenders and producers to resolve the issue of under recovery. In the first approach, entire fuel cost is assumed to be recovered through fuel tariff by making amendment in the PPA. In the second approach, the formula provided by CERC for the Force Majeure order of APTEL was taken as the guiding principle.

First Approach

The quoted energy tariff including change in Indian law for EPGL is considered as Rs 1.98/unit for FY 2018 while the cost of generation is Rs 2.43/unit respectively based on the coal cost estimate of September 2017.

The cost of pass through of fuel cost in FY 18 is Rs 3.3 Crore and NPV of the cost due to pass through of fuel cost is equal to Rs 2,826 Crore.

Based on the principle for Cost Benefit Analysis discussed earlier, the benefit to Producer(s)/ Discount on account of various factors is illustrated as follows:

S. No.	Benefit	NPV Value (Rs Crore)
1	Increase in availability from 80% to 90%	1517
2	Tie-up of free capacity (~128 MW)	1032
3	Availability of power beyond PPA (for 10 years)	1060
	Total Benefit	3609

*As per the PPA, the Normative Availability of the Plant is 80% while the developer will try to run the plant at higher availability on best endeavor basis once fuel cost is fully recovered.

The basis of computation of NPV is provided in Annexure II. If we consider marginal cost for power procurement, this benefit will be higher.

Second Approach

APTEL in its order dated 7th April 2016 had held that the increase in price of coal on account of the change in Indonesian Regulations constitute a Force Majeure event. APTEL had directed CERC to assess the extent of impact of Force Majeure event. CERC came up with the final order on 6th December 2016 providing a mechanism for relief under Force Majeure clause of the PPA. The order was for Adani Power Limited and Coastal Gujarat Power Limited and same has been used for calculations for EPGL.

In the second approach, the Working Group of lenders and procurers asked for the analysis as per the formula provided by CERC. In this formula, the compensation is calculated based upon the difference between quoted tariff and fuel cost corresponding to coal cost and exchange rate assumptions taken as per bid. For the PPA, the same principle has been used for calculation of relief. As per the formula given by CERC in Force Majeure (FM) case, the compensation for EPGL comes to about Rs. 406 crore for FY 2018. The NPV of the cost due to application of CERC formula is equal to Rs 3,734 Crore.

6.1.9 Overall Impact of Proposed Resolution Plan on End Consumers

Since the company is incurring continual losses on account of fuel cost under recovery, the plant will become stranded unless the under recovery of fuel cost is arrested by amending PPA provision allowing fuel cost pass through. The impact on consumers in both scenarios i.e. allowing plant to continue operations allowing fuel cost pass through or allowing it to become stranded and purchase electricity from alternate source are analysed below.

Scenario 1: Continuing purchase by amending PPA

Scenario 2: Shutdown of these Plant because of unviability and consequent purchase from alternate sources

Scenario (1): Continuing purchase by amending PPA

While the proposed amendment to PPA i.e. fuel cost pass-through will increase the cost to Producers, there will be no increase in the Capacity Charge as per the proposal. In fact, the effective Capacity Charge per unit payable by the Procurers will reduce due to higher availability of plants. Further in return, there will be two more additional benefits that will accrue to consumers/Discoms by way of (i) continuation of contracted capacity beyond PPA term of 25 Years and (2) utilization of untied capacity at a price substantially lower than market price.

The cost benefit analysis is tabulated below:

S. No.	Benefits/ Cost	NPV Value	
		(Rs Crore)	Rs/ kWh
1	Increase in availability from 80% to 90%	1517	0.16
2	Tie-up of free capacity (~128 MW)	1032	0.23
3	Availability of power beyond PPA (for 10 years)	1060	0.15
	Total Benefit	3609	0.54

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4	Less: Additional Cost for coal pass-through	(2,826)	(0.43)
5	Net Benefit	783	0.10

- Coal Cost is considered without escalation as imported coal prices may go up or down or remain stable at the current level. (Forward price curves are showing downward trend).
- Capacity charges for availability of power beyond PPA period is considered only at Rs. 2/ kWh i.e. at current price level; and escalation for 20 years is not considered, whereas it could be much higher and thereby higher advantage to procurer.

Scenario (2): Shutdown of these Plants because of unviability and consequent purchase from alternate sources by Procurer(s)

If Scenario (1) is not materialized and the Project gets stranded due to non-viable operations or it is referred for liquidation, the Procurer will be forced to depend on alternate sources. In such an event, based on the prices discovered in recent Case I competitive bids, the cost of power purchase from alternate sources would be substantially higher than the purchase from these projects even with fuel cost as pass-through.

In this context, it is pertinent to mention that the Ministry of Power has revised the guidelines in the year 2013 for procurement of power under Case I. As per revised guidelines, the fuel cost will be pass-through. Therefore, the difference in cost of purchase from existing sources and new sources will be only in respect of Capacity Charge. The Capacity Charge of this project is substantially lower as the project cost is in the range of Rs 4 - 4.5 Crore per MW as compared to the average project cost of more than Rs 7.5 Crore per MW for projects which are recently implemented or which are under implementation and planning.

The comparison of Capacity Charge for the Project and new sources is as under:

S. No.	Benefit	Rs/ kWh
1	Capacity Charge of New Projects (Estimated Cost of Rs 7.5 Crore per MW)	2.00
2	Capacity Charge of the Project as per PPA	0.89
3	Net Saving to Procurer	1.11

The procurer will have to pay capacity charge of around Rs 2/unit in case of it enters into a fresh PPA with any alternate source. The capacity charge of Rs 2/unit consists of Return on Equity (RoE) of Rs 0.53/unit and O&M expenses of Rs 0.26/unit (as per CERC norms). In the project, the O&M expense is only Rs 0.20/unit which is significantly lower than CERC norms. Therefore, continuing with existing PPA will result into a saving of Rs 0.53/unit on equity returns and Rs 0.06/unit on O&M expenses.

From the above analysis it emerges that:

- If the PPA is amended and fuel cost is made pass-through, there will be increase in cost to Procurer in the initial years, but at the same time, the Procurer would stand to get more benefit over a period of time than additional cost and there will be net saving of Rs 0.10 per kWh on NPV basis to the Procurer.
- Non availability of power from current project and reliance of Procurer on new sources will result in increase in cost by Rs 1.11 per kWh on account of higher project cost.

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- (iii) If these plants are taken over by procurers and PPAs are amended and fuel cost is made pass-through, there will be increase in cost to Procurers in the initial years. However, this additional cost is not very high and it is being recovered over a period due to other benefits. On the other end, in the event proposed resolution is not materialized and the Project gets stranded or it is referred for insolvency, Procurers will have to bear higher cost perpetually without any avenues to recover this additional cost.

Therefore, continuation of power purchase from these projects by amending the PPAs to make the fuel cost pass-through will be beneficial from the end consumers' point of view. Amendment of PPAs not only helps in making the projects viable but at the same time benefits in terms of higher reliability owing to their best operational performance and proven track record thereby providing uninterrupted power supply. Unlike the new sources, there is no uncertainty in the availability of power as these projects are already commissioned and operational.

7. CONCLUSION & WAY FORWARD

Resolution of these projects is possible only if the issue of fuel cost is addressed by the procurers. The procurer states can implement this relief through two options as follows:

1. **Change in ownership** – The state government(s) may take majority stake in the project. The change in ownership may be made effective from 31st March 2017 and the changes in the balance sheet after the effective date may be adjusted on the date of transaction. Along with change in ownership, the PPAs may be amended to address the issue of fuel cost to make the project viable. This may be done by making the fuel cost fully recoverable (as per section 62 of Electricity Act) or through some other mechanism as suggested in CERC formula.
In case of multiple procurers, the states may have joint ownership of the project. During Working Group discussions, the states were ok with Gujarat taking majority stake on their behalf as Gujarat is the major procurer state for all five projects. Gujarat may then enter into amended PPAs with respective states.
2. **Revision in PPA without change in ownership** – The procurers may agree to make amendments in PPAs to address the issue of fuel cost to make the project viable. This may be done by making the fuel cost fully recoverable (as per section 62 of Electricity Act) or through some other mechanism as suggested in CERC formula. In this case, there will not be any change in the ownership structure of the projects.

It may be noted that, to make the solution sustainable, under recovery of fuel cost should be adequately addressed. Without this, the Projects will be facing losses in future also as in case of Force Majeure Formula for COPL.

While providing any relief to the projects, the state(s) may also consider the additional benefits available from these projects. These benefits are as follows:

- a) **Additional generation** – Once the relief on the fuel cost is made available to the projects, the availability of the projects may be increased which will provide higher quantity of electricity to procurers without any additional capacity charge. Procurer(s) will get benefit from higher availability of the Projects.
- b) **Tie-up of free capacity** – Two of the projects have some capacity which is not yet tied up through any long term PPA. The procurers may enter into long term arrangement for purchasing this free capacity.
- c) **Plant availability after PPA term** – Even after the tenor of the PPA, the plants will have substantial residual life. The procurers may enter into such an arrangement where these capacities will be available to them even for next ten years even after expiry of PPA.

The NPV of these benefits for individual projects are given in the previous chapter.

7.1. Way Forward

Based upon these guiding principles, the states may take approval from their respective competent authorities. After approval, the mechanism may then be conveyed to the lenders of the projects for further course of action. If required, A tripartite agreement among the procurers, developers and the lenders may be executed to take this process forward. The tripartite agreement will cover the roles and responsibilities of all the individual parties during the entire process.

Annexure 6 Merit Order of Various States

a. Merit order (Gujarat)

Station	Status	Type Of Station	Variable Cost (Rs/Unit)	Schedule (MWh)	Cumulative Capacity	%Age	Rank
SOLAR	Must Run	Renewable	-	6407	6407	2.30%	1
WIND	Must Run	Renewable	-	12740	19147	6.86%	
TAPS 3&4	Must Run	Nuclear	2.98	2953	22100	7.92%	
TAPS 1&2	Must Run	Nuclear	1.02	1776	23876	8.55%	
KHPS	Must Run	Hydro	-	378	24254	8.69%	
SSP	Must Run	Hydro	-	496	24750	8.87%	2
SUGEN		Gas	-	14390	39140	14.02%	
ACBIL		Thermal	0.64	4987	44127	15.81%	
VSTPS 3-WR		Thermal	1.19	2142	46269	16.57%	
SIPAT 1		Thermal	1.20	10682	56951	20.40%	
KSTPS-WR		Thermal	1.21	5760	62711	22.46%	5
SIPAT 2-WR		Thermal	1.23	5106	67817	24.29%	6
ALPS		Thermal	1.25	2134	70951	25.42%	7
VSTPS 5		Thermal	1.45	2113	73064	26.17%	8
VSTPS 4		Thermal	1.45	5470	78534	28.13%	9
VTPS 2		Thermal	1.45	5406	83940	30.07%	10
VSTPS 3		Thermal	1.45	6064	90004	32.24%	11
APL(MUNDRA) UNIT-5-6		Thermal	1.53	14808	104812	37.55%	12
VTPS 1		Thermal	1.54	5023	109835	39.35%	13
SLPP - I		Thermal	1.70	2272	112107	40.16%	14
SLPP - II		Thermal	1.70	4631	116738	41.82%	15
CGPL MUNDRA UMPP		Thermal	1.73	28500	145238	52.03%	16
GANDHAR		Gas	1.88	2292	147530	52.85%	17
CCPP (IGSECL) ONI GAIL (APM)		Gas	1.89	1431	148961	53.36%	18
APL(MUNDRA) UNIT-1-4		Thermal	1.89	21462	170423	61.03%	19
EPGL		Thermal	1.89	23364	193787	69.42%	20
KAWAS GAS		Gas	2.00	1394	195181	69.92%	21
RLTPS 4		Thermal	2.07	1152	196333	70.33%	22
GAIL NIPAM		Gas	2.15	389	196722	70.47%	23
KAWAS NIPAM		Gas	2.17	295	197017	70.38%	24
RLTPS 1-3		Thermal	2.17	3239	200256	71.74%	25
BECL		Thermal	2.25	2644	202900	72.68%	26
KAHALQAONI-II		Thermal	2.31	2264	205164	73.50%	27
DHUVARAN CCPP I ONI ONGC WO		Gas	2.41	237	205401	73.58%	28
MAUDA-II		Thermal	2.62	1670	207071	74.18%	29
GIPCL-I ON GAS - APM		Gas	2.62	1128	208199	74.58%	30
MAUDA-I		Thermal	2.73	3695	211894	75.91%	31
CLPI ON CAIRN GAS		Gas	2.87	2342	214236	76.75%	32
UTPS 6		Thermal	2.99	10450	224686	80.49%	33
STPS 3&4		Thermal	3.32	9131	233817	83.76%	34
WTPS 7		Thermal	3.38	4355	238172	85.32%	35
GTPS 5		Thermal	3.46	4164	242336	86.81%	36
UTPS		Thermal	3.54	9035	251371	90.05%	37

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Station	Status	Type Of Station	Variable Cost (Rs/Unit)	Schedule (MWh)	Cumulative Capacity	%Age	Rank
WTPS I & II		Thermal	3.66	16752	268123	96.05%	38
OTPS III		Thermal	3.73	6304	274427	98.31%	39
UGBPS 2 SPOT		Gas	6.05	1011	275438	98.67%	40
GPCC SPOT		Gas	6.09	2610	278048	99.61%	41
CLPI (GSPC SPOT GAS)		Gas	6.37	1052	279100	99.98%	42
DHUVARATI CCPP-I GAIL SPOT		Gas	7.12	50	279150	100.00%	43

Source: <http://meritindia.in>

b. Merit order (Punjab)

Station	Status	Type Of Station	Variable Cost (Rs/Unit)	Schedule (MWh)	Cumulative Capacity (MWh)	Cumulative Purchase (%)	Rank
BAIRASILL HEP	Must Run	Hydro	0.96	260	260	0.21%	T-1A
BHAKRA	Must Run	Hydro	0.96	4350	4610	3.72%	
DEHAR	Must Run	Hydro	0.96	2433	7043	5.69%	
PONG	Must Run	Hydro	0.96	1495	8538	6.90%	
CHAMERA-I HEP	Must Run	Hydro	0.99	280	8818	7.12%	
CHAMERA HEP	Must Run	Hydro	1.11	265	9083	7.34%	
NATHPA JHAKRI HEP	Must Run	Hydro	1.19	1551	10634	8.59%	
URI HEP	Must Run	Hydro	1.27	222	10856	8.77%	
DHAULIGANGA HEP	Must Run	Hydro	1.51	315	11171	9.02%	
TANAKPUR HEP	Must Run	Hydro	1.57	238	11409	9.22%	
RAMPUR HEP	Must Run	Hydro	1.61	268	11677	9.43%	
SALAL HEP	Must Run	Hydro	1.71	1105	12782	10.33%	
KOTESHWAR	Must Run	Hydro	1.96	187	12969	10.48%	
CHAMERA-III HEP	Must Run	Hydro	2.12	159	13128	10.60%	
TALA	Must Run	Hydro	2.16	312	13440	10.86%	
KOLDAM HEP	Must Run	Hydro	2.17	347	13787	11.14%	
SEWA-II HEP	Must Run	Hydro	2.35	41	13828	11.17%	
NAPP	Must Run	Nuclear	2.58	1423	15251	12.32%	
TEHRI HEP	Must Run	Hydro	2.70	683	15934	12.87%	
MALANA-II HEP	Must Run	Hydro	2.73	453	16387	13.24%	
PARBATI-III	Must Run	Hydro	2.74	107	16494	13.32%	
RAPPB	Must Run	Nuclear	2.88	2308	18802	15.19%	
DULHASTI HEP	Must Run	Hydro	3.28	650	19452	15.71%	
URI-II HEP	Must Run	Hydro	3.28	94	19546	15.79%	
RAPPC	Must Run	Nuclear	3.54	1372	20918	16.90%	
TOTAL HYDRO	Must Run	Hydro		10074	30992	25.04%	
TOTAL SOLAR	Must Run	Renewable		66	31058	25.09%	
SASAN UMPP		Thermal	1.15	13122	44180	35.69%	1
CGPL MUNDRA UMPP		Thermal	1.31	7300	51480	41.75%	2
RIHARD STPS		Thermal	1.31	2647	54127	43.89%	3
RIHARD-II STPS		Thermal	1.31	2542	56669	45.94%	4
RIHARD-III STPS		Thermal	1.32	2131	59000	47.66%	5
SINORAU STPS		Thermal	1.43	4524	63524	51.32%	6
RACHUNATHPUR (DVC)		Thermal	2.01	0	63524	51.37%	7
DURGAPUR STEEL THERMAL POWER STATION (DSTPS)		Thermal	2.17	2192	65716	53.09%	8

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Station	Status	Type Of Station	Variable Cost (Rs/Unit)	Schedule (MWh)	Cumulative Capacity (MWh)	Cumulative Purchase (%)	Rank
PRAGATI-III GAS PLANT BAWANA		Gas	2.19	584	66300	53.56%	9
NABHA POWER LTD. RAJPURA		Thermal	2.26	15717	82017	66.25%	10
KAHALGAON-II		Thermal	2.41	1956	83973	67.83%	11
KAHALGAON-I		Thermal	2.52	780	84753	68.46%	12
DADRI (GAS)		Gas	2.62	517	85270	68.88%	13
ANTA (GAS)		Gas	2.62	0	85270	68.88%	14
FARAKKA		Thermal	2.84	104	85374	68.97%	15
TALWANDI SABOO		Thermal	2.85	28076	113450	91.65%	16
JHAJJAR		Thermal	2.89	166	113616	91.78%	17
DADRI-II TPS		Thermal	2.94	79	113695	91.84%	18

Source: <http://meritindia.in>

a. Merit order (Priority)

Station	Status	Type Of Station	Variable Cost (Rs/Unit)	Schedule (MWh)	Cumulative Capacity (MWh)	Cumulative Purchase (%)	Rank
SALAL HEP	Must Run	Hydro	0.6	624	624	0.49%	1A
URI HEP	Must Run	Hydro	0.83	88	712	0.55%	
CHAMERA HEP	Must Run	Hydro	0.93	411	1123	0.88%	
BHAKRA	Must Run	Hydro	0.96	3150	4273	3.33%	
DEHAR	Must Run	Hydro	0.96	1762	6035	4.70%	
PONG	Must Run	Hydro	0.96	1083	7118	5.55%	
BAIRATHI HEP	Must Run	Hydro	1	171	7289	5.68%	
CHAMERA-II HEP	Must Run	Hydro	1.03	113	7402	5.77%	
HAATHPA JHAKRI HEP	Must Run	Hydro	1.23	537	7939	6.19%	
DHAULI GANGA HEP	Must Run	Hydro	1.56	135	8074	6.29%	
TAKIAK PUR HEP	Must Run	Hydro	1.62	85	8159	6.36%	
RAMPUR HEP	Must Run	Hydro	1.67	146	8305	6.47%	
KARCHAM WANGTOO (K.WHEP)	Must Run	Hydro	1.9	1210	9515	7.41%	
KOTESHWAR	Must Run	Hydro	2.02	92	9607	7.49%	
CHAMERA-III HEP	Must Run	Hydro	2.2	124	9731	7.58%	
SEWA-II HEP	Must Run	Hydro	2.23	21	9752	7.60%	
TALA	Must Run	Hydro	2.23	156	9908	7.72%	
KOLDAM HEP	Must Run	Hydro	2.25	368	10276	8.01%	
URI-II HEP	Must Run	Hydro	2.48	65	10341	8.06%	
ICAPP	Must Run	Nuclear	2.67	595	10936	8.52%	
TEHRI HEP	Must Run	Hydro	2.78	490	11426	8.90%	
PARBATI-III	Must Run	Hydro	2.83	84	11510	8.97%	
DLX HASTI HEP	Must Run	Hydro	2.87	306	11816	9.21%	
RAPPB	Must Run	Nuclear	3.2	1104	12920	10.07%	

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Station	Status	Type Of Station	Variable Cost (Rs/Unit)	Schedule (MWh)	Cumulative Capacity (MWh)	Cumulative Purchase (%)	Rank
RAPPC	Must Run	Nuclear	3.2	566	13186	10.51%	
TOTAL SMALL HYDRO	Must Run	Hydro	4.09	680	14166	11.04%	
TOTAL BAGGASE	Must Run	Renewable	4.17	0	14166	11.04%	
TOTAL BIOMASS	Must Run	Renewable	7.98	379	14545	11.33%	
TOTAL SOLAR	Must Run	Renewable	10.71	409	14954	11.65%	
PTC ORISSA GMREL HRY		Thermal	1.01	1226	16180	12.61%	1
SASANI UMPP		Thermal	1.29	9841	26021	20.28%	2
RIHAND-II STPS		Thermal	1.30	1289	27310	21.28%	3
RIHAND STPS		Thermal	1.31	1439	28749	22.40%	4
RIHAND-III STPS		Thermal	1.32	1268	30017	23.39%	5
CGPL MUNDRA UMPP		Thermal	1.51	6000	36017	28.07%	6
SINGRAULI STPS		Thermal	1.54	4128	40145	31.28%	7
LANCO AMARKANTAK POWER LIMITED (LAMKPL)		Thermal	1.68	5965	46110	35.93%	8
KODERMA (DVC)		Thermal	1.88	1628	47738	37.20%	9
MEJIA TPS		Thermal	2.30	837	48575	37.85%	10
KAHALGAON-II		Thermal	2.31	1554	50129	39.06%	11
FARIDABAD OPS (NTPC)		Thermal	2.40	2640	52769	41.12%	12
KAHALGAON -I		Thermal	2.42	476	53245	41.49%	13
ADANI POWER LIMITED (APL - MUNDRA) STG-III		Thermal	2.73	22776	76021	59.24%	14
FARAKKA		Thermal	2.79	113	76134	59.33%	15
UNCHAHAR-III TPS		Thermal	3.01	211	76345	59.49%	16
JHAJJAR(CIP)		Thermal	3.02	13105	89450	69.70%	17
PRAGATI POWER (BAWA) SA/IP)		Gas	3.07	583	90033	70.16%	18
UNCHAHAR-I TPS		Thermal	3.07	125	90158	70.26%	19
UNCHAHAR-II TPS		Thermal	3.07	347	90505	70.53%	20
JHAJJAR		Thermal	3.20	7697	98202	76.52%	21
YTPP-1&2--(YAMUNANAGAR)		Thermal	3.38	10659	108861	84.83%	22
PTPS UNIT-7		Thermal	3.56	4279	113140	88.16%	23
PTPS UNIT-6		Thermal	3.59	4290	117430	91.51%	24
ROTHP (KHEDAR) (IPP)		Thermal	3.61	10108	127538	99.38%	25
BAGUHAR-I (PTC)		Thermal	3.83	670	128208	99.91%	26
DAORI (GAS)		Gas	3.95	120	128328	100.00%	27

Source: <http://meritindia.in>

4. Merit order (Maharashtra)

Station	Status	Type Of Station	Variable Cost (Rs/Unit)	Schedule (MWh)	Cumulative Capacity (MWh)	Cumulative %	Rank
SSP	Must Run	Hydro		809	809	0.23%	1

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Station	Status	Type Of Station	Variable Cost (Rs/Unit)	Schedule (MWh)	Cumulative Capacity (MWh)	Cumulative %	Rank
DAHANU SOLAR POWER PRIVATE LIMITED (DSPPL)	Must Run	Renewable		187	996	0.29%	
FAPS	Must Run	Nuclear		0	996	0.29%	
FAPS 3&4	Must Run	Nuclear		4637	5633	1.63%	
SIPAT 1		Thermal	1.4	11736	17369	5.03%	1
SIPAT 2-WR		Thermal	1.45	5301	22670	6.57%	2
TROMBAY UNIT-7		Gas	1.49	2160	24830	7.20%	3
VTPS 2		Thermal	1.52	7779	32609	9.45%	4
VSTPS 3		Thermal	1.52	6502	39111	11.34%	5
VSTPS 4		Thermal	1.53	7114	46225	13.40%	6
VSTPS 5		Thermal	1.53	3529	49754	14.42%	7
CGPL MUNDRA UMPP		Thermal	1.60	11607	61361	17.79%	8
GTPS URAN (UNIT 05 TO 10)		Thermal	1.61	8600	69961	19.70%	9
VTPS 1		Thermal	1.62	9684	79645	22.51%	10
ADANI TIRODA (UNIT- 2,3)		Thermal	1.82	13200	90845	26.33%	11
GANDHAR		Gas	1.88	1889	92734	26.88%	12
EMCO		Thermal	1.9	2400	95134	27.58%	13
KAVAS GAS		Gas	1.93	1485	96619	28.01%	14
JSW UI, JAIGAD		Thermal	2.07	6720	103339	29.95%	15
GAJI NIAPM		Gas	2.16	254	103593	30.03%	16
KAVAS NIAPM		Gas	2.17	317	103910	30.12%	17
KORADI UNIT - 08 TO 10		Thermal	2.17	20909	124819	36.18%	18
CHANDRAPUR UNIT - 08,09		Thermal	2.24	18771	143590	41.62%	19
PARAS UNIT - 03 & 04		Thermal	2.24	11040	154630	44.82%	20
CHANDRAPUR UNIT - 03 TO 07		Thermal	2.31	22440	177070	51.33%	21
KHAPERKHEDA UNIT - 05		Thermal	2.35	9956	187026	54.21%	22
ADANI TIRODA (UNIT- 1,4,5)		Thermal	2.38	29728	216754	62.83%	23
KAHALGAON-II		Thermal	2.43	2733	219477	63.62%	24
ADANI TIRODA (UNIT- 1,4,5)		Thermal	2.44	9872	229349	66.48%	25
VIDARBHA INDUSTRIES POWER LTD. (VIPL UNIT 1 & 2)		Thermal	2.45	13728	243077	70.46%	26
KHAPERKHEDA UNIT - 01 TO 04		Thermal	2.73	8350	251427	72.88%	27
BHUSAWAL UNIT - 04 & 05		Thermal	2.74	22389	273816	79.37%	28
MAJUDA-II		Thermal	2.79	2752	276568	80.17%	29
MAJUDA-I		Thermal	2.93	6164	282732	81.96%	30
PARALI UNIT -08		Thermal	3.02	4292	287044	83.20%	31
RATAN INDIA UNIT-01 TO 05		Thermal	3.03	5723	292767	84.86%	32
BHUSAWAL UNIT - 2 & 3		Thermal	3.07	4296	297063	86.11%	33
TIASIK UNIT - 03 TO 05		Thermal	3.27	7686	304749	88.33%	34
TROMBAY UNIT-8		Thermal	3.38	5482	310231	89.92%	35

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Station	Status	Type Of Station	Variable Cost (Rs/Unit)	Schedule (MWh)	Cumulative Capacity (MWh)	Cumulative %	Rank
TROMBAY UNIT-5		Thermal	3.39	10400	320631	92.94%	36
DAHANU THERMAL POWER STATION (DTPS UNIT 1 & 2)		Thermal	3.39	10571	331202	96.00%	37
GANDHAR RUNG		Gas	4.59	368	331570	96.11%	38
KAWAS RUNG		Gas	4.69	324	331794	96.17%	39
KSTPS-WR		Thermal		10294	342088	99.16%	40
KSTPS 3-WR		Thermal		2908	344996	100.00%	41

Source: <http://meritindia.in>

a. Merit order (Dispatch)

Station	Status	Type Of Station	Variable Cost (Rs/Unit)	Schedule (MWh)	Cumulative Capacity (MWh)	Cumulative %	Rank
MAHI	Must Run	Hydro	0.30	0	0	0.00%	TIA
CHAMERA-II HEP	Must Run	Hydro	0.99	193	193	0.10%	
CHAMERA HEP	Must Run	Hydro	1.11	509	702	0.37%	
NATHPA JHAKRI HEP	Must Run	Hydro	1.19	939	1641	0.87%	
URI HEP	Must Run	Hydro	1.27	144	1785	0.94%	
DHAULIGANGA HEP	Must Run	Hydro	1.51	227	2012	1.06%	
TANAKPUR HEP	Must Run	Hydro	1.57	153	2165	1.14%	
RAMPUR HEP	Must Run	Hydro	1.61	270	2435	1.29%	
SALAL HEP	Must Run	Hydro	1.70	122	2557	1.35%	
KARCHAM WANGTOO (K.WHEP)	Must Run	Hydro	1.78		2557	1.35%	
KOTESHWAR	Must Run	Hydro	1.96	183	2740	1.45%	
CHAMERA-III HEP	Must Run	Hydro	2.12	155	2895	1.53%	
TALA	Must Run	Hydro	2.16	156	3051	1.61%	
KOLDAM HEP	Must Run	Hydro	2.17	402	3453	1.82%	
SEVA-II HEP	Must Run	Hydro	2.36	38	3491	1.84%	
NAPP	Must Run	Nuclear	2.56	960	4451	2.05%	
PARBATI-III	Must Run	Hydro	2.74	105	4556	2.41%	
RAPPB	Must Run	Nuclear	2.88	3358	7914	4.18%	
RAPS A (NPPC)	Must Run	Nuclear	2.88	4199	12113	6.40%	
TEHRI HEP	Must Run	Hydro	3.00	517	12630	6.67%	
DULHASTI HEP	Must Run	Hydro	3.28	609	13239	6.99%	
URI-II HEP	Must Run	Hydro	3.28	132	13371	7.06%	
RAPPC	Must Run	Nuclear	3.54	1990	15361	8.12%	
ANDOPGARH MH	Must Run	Hydro	3.78	0	15361	8.12%	
BISALPUR MH	Must Run	Hydro	3.78	0	15361	8.12%	
CHARAIWALA MH	Must Run	Hydro	3.78	0	15361	8.12%	
MAHI-RMC MH	Must Run	Hydro	3.78	0	15361	8.12%	

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Station	Status	Type Of Station	Variable Cost (Rs/Unit)	Schedule (MWh)	Cumulative Capacity (MWh)	Cumulative %	Rank
MANGROL MH	Must Run	Hydro	3.78	0	15361	8.12%	
PUGAL MH	Must Run	Hydro	3.78	0	15361	8.12%	
SURATGARH-MH	Must Run	Hydro	3.78	0	15361	8.12%	
JAWAHAR SAGAR HEP	Must Run	Hydro		1514	16875	8.92%	
BIOMASS	Must Run	Renewable		477	17352	9.17%	
RAIIPRATAP SAGAR	Must Run	Hydro		2320	19672	10.39%	
SOLAR	Must Run	Renewable		1230	20902	11.04%	
BHAKRA	Must Run	Hydro		2007	22909	12.10%	
DEHAR	Must Run	Hydro		1174	24083	12.72%	
POND	Must Run	Hydro		4070	28153	14.87%	
WIND	Must Run	Renewable		2179	30332	16.02%	
BSIUL			0.96	0	30332	16.02%	1
BARSINGAR (P.L.C)		Thermal	1.11	4538	34870	18.42%	2
DB POWER		Thermal	1.11		34870	18.42%	3
MARUTI CLEAN COAL AND POWER LIMITED (MCCPL)		Thermal	1.13		34870	18.42%	4
RIHAND-II STPS		Thermal	1.25	3879	38749	20.47%	5
RIHAND STPS		Thermal	1.26	3558	42307	22.35%	6
RIHAND-III STPS		Thermal	1.27	4402	46709	24.68%	7
SASANI UMPP		Thermal	1.30	8748	55457	29.30%	8
CGPL MUNDRA UMPP		Thermal	1.46	6000	61457	32.47%	9
SINGRAULI STPS		Thermal	1.48	8772	70229	37.10%	10
RAMGARH GPS STG1&2		Gas	1.84	1047	71276	37.66%	11
YAWAI (ADANI)		Thermal	1.96	13070	85246	45.04%	12
RAJWEST LTPS (IPP)		Thermal	2.09	16345	101591	53.67%	13
PAHALGAON-II		Thermal	2.25	1447	103038	54.44%	14
CHABRA TPS U3		Thermal	2.31	5334	108372	57.25%	15
CHABRA TPS U4		Thermal	2.31	5273	113645	60.04%	16
PAHALGAON-I		Thermal	2.36	317	113962	60.21%	17
CHABRA TPS U1&2		Thermal	2.38	10410	124372	65.71%	18
PAUSINDH TPP-II		Thermal	2.55	10278	134650	71.14%	19
PAUSINDH TPP-I		Thermal	2.56	9931	144581	76.38%	20
FARAKKA		Thermal	2.71	78	144659	76.43%	21
UNCHAHAR IV		Thermal	2.75	861	145520	76.88%	22
UNCHAHAR-II TPS		Thermal	2.97	674	146194	77.24%	23
UNCHAHAR-III TPS		Thermal	2.97	370	146564	77.43%	24
UNCHAHAR-I TPS		Thermal	2.98	194	146758	77.53%	25
KOTA TPS		Thermal	3.02	10302	166060	87.73%	26
RAMGARH GPS STG3		Gas	3.07	2426	168486	89.01%	27

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Station	Status	Type Of Station	Variable Cost (Rs/Unit)	Schedule (MWh)	Cumulative Capacity (MWh)	Cumulative %	Rank
DADRI-# TPS		Thermal	3.18	519	169005	89.29%	28
DHOLPUR OPS		Gas	3.43	2625	171630	90.67%	29
SURATGARH TPS		Thermal	3.81	4637	176267	93.12%	30
DADRI (GAS)		Gas	3.86	285	176552	93.28%	31
CHABRA TPS US		Thermal		12729	189281	100.00%	32

Source: <http://meritindia.in>

Annexure II: Key Assumptions for Net Benefit Computation

Assumption	Unit	
General		
Capacity	MW	1200
PPA	MW	1000
Gross Capacity - PPA	MW	1064
Normative Unit for PPA	MU	7008
Gross Capacity - Free Capacity	MW	136
Normative Unit - Free Capacity	MU	1009
Hours		8760
Discount Rate	%	9.08%
Exchange Rate	INR/USD	64.85
Exchange rate escalation	%	0
Operational Parameters		
Normative Availability	%	80%
Availability - Free Capacity	%	90%
PLF - Free Capacity	%	90%
Gross SHR (actual)	Kcal/unit	2370
Aux. Consumption as per CERC order	%	6.50%
Auxiliary Consumption (Actual)	%	6.00%
Revenue Related		
Capacity charge as per current market	Per unit	2.00
Free Capacity Tariff - Capacity Charge	Per Unit	1.11
Change in Law	Rs./unit	0.24
Incentive for availability/PLF from 80% to 85%	Rs./unit	0.00
Incentive for availability/PLF from 85% to 90%	Rs./unit	0.23
Capacity Charge Beyond PPA for 10 years*	Rs./unit	1.16
Coal Related		
Fuel cost escalation	%	0%
Fuel Freight escalation	%	0%
Imported coal GCV	Kcal/Kg	5,500.00
Imported coal Price (FOB)	USD/ton	56.12
Imported coal price (landed cost)	Rs/ton	5298.35
Imported coal price	Rs./unit	2.43

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Assumptions	Unit	
Bid Parameters for FM		
Net SHR as per order (Imported)	Kcal/unit	7443.96
Imported coal GCV	kcal/kg	5500
Imported coal Price	USD/ton	36.00

*For arriving at benefit for plant availability beyond PPA tenure for 10 years, capacity charge of last year as per PPA is considered. There may be some capex requirement for making plant available for the 10 years beyond PPA life which has not been considered for calculation purposes.

Annexure - IV
(Refer paragraph 8.4.7)

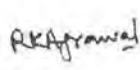
Fuel Cost Pass-through Formula

The Energy Charge determined as above, shall be subject to the following conditions:

(1) General Principles :

FOB cost of Coal	<u>FOB Price for Imported Coal:</u> Shall be the lower of actual price or the HBA Price (as defined hereinafter) determined in Indian Rupees at actual exchange rate. In case of change in pricing framework in Indonesia or change in source of coal to other country, HBA Price will be replaced with relevant coal indices as mutually agreed. "HBA Price" shall mean the HBA Index FOB price of Indonesian imported coal published by Govt. of Indonesia from time to time for coal quality of 6322 Kcal/Kg. as adjusted for quality of coal consumed in the Project. The actual price of coal shall always be subject to an upper ceiling limit of HBA index FOB price of USD 110/MT ascertained on monthly average basis, adjusted for quality of coal consumed in the Project and as revised from time to time in accordance with this Supplemental Agreement (the "Ceiling Price"). This has been explained in greater detail in sub para (2) (Specific Conditions) hereinbelow.
Transportation and other costs	As specified in the PPA or actual, whichever is lower For APL, following clause shall apply subject to lower of actual or as specified herein below: Ocean Freight The CERC in its order dated 21st February, 2014, derived the ocean


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freight price from the aggregate bid that had been submitted by APL. Accordingly, the ocean freight for APL shall be calculated in Indian Rupees, at actual applicable exchange rate, applying USD 11.61 per MT for the FY 18-19, to be escalated as per the formula set out below.

Escalation Formula : This formula is based on the Baltic Index (for fixed charges) and Singapore index (for bunker fuel) :

FY 18-19, USD 11.61/MT as derived by CERC For 19-20 onwards :

USD (11.61 + BAFB + BAFO) /metric ton

Where:

BAFB = (Baltic Exchange Dry Index_A - Baltic Exchange Dry Index_I) X 0.0032 Baltic Exchange Dry Index_A will be the daily index published on immediate Friday preceding the date of bill of lading of vessel; and Baltic Exchange Dry Index_I is the index applicable on 01st April, 2018, being the base year taken by the CERC.

BAFO= {(Singapore IFO (380 CST)_A - Singapore IFO (380 CST)_I} X 0.010 The Singapore IFO (380 CST)_A will be the daily index published on immediate Friday preceding the date of bill of lading of vessel; and Singapore IFO (380 CST)_I is the index applicable on 01st April, 2018 being the base year taken by the CERC.

Port Handling Charges:

As per existing contract to be escalated every year as per WPI index

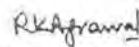
Other transaction charges including transit and handling:

As per actuals, subject to a cap of 3% of total CIF price of the coal, as determined by CERC in its order dated 21st February, 2014.

(2) **Specific Conditions**

- (a) The monthly payment for the Monthly Bills will be made on actual basis as claimed in the relevant Bill, subject to a true up in the succeeding Month, if required.
- (b) The Ceiling Price will be fixed for 5 years at a time, with the first 5 year period commencing from the Amendment Effective Date and the last such 5 year period ending on the Expiry Date even if the last period is less than 5 years. The Ceiling Price will be reset and recalibrated for the next five year period, as per the following methodology:


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- (i) If the HBA Price at any time during the relevant 5 year period, exceeds the Ceiling Price specified for the said relevant 5 year period, then the Ceiling Price for the subsequent 5 year period will be increased by a percentage factor equivalent to the percentage increase in domestic CIL landed coal price for linkage coal, during the corresponding 5 year period. The principle is that the imported coal Ceiling Price is expected to move in tandem with domestic coal price increase.
- (ii) If the HBA Price does not at any time during the relevant 5 year period, exceed the Ceiling Price specified for the said relevant 5 year period, however, if the average HBA Price during the relevant five year period is higher than the average HBA Price during the immediately preceding five year period, the Ceiling Price for the relevant 5 year period shall be increased by a percentage factor equivalent to the lower of:
 - (x) the percentage increase in domestic CIL coal price for linkage coal, during the 5 year period corresponding with the relevant 5 year period; or
 - (y) escalation in the HBA Index over the relevant 5 year period

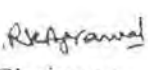
For the avoidance of doubt, for the first 5 year period commencing from the Amendment Effective Date, the aforesaid comparison of average HBA Price shall be done for the immediately preceding five year period prior to the Amendment Effective Date.

- (c) If during the relevant 5 year period, none of the conditions specified in paragraphs (i) or (ii) above are attracted, then the Ceiling Price for the subsequent 5 year period shall remain unchanged

(3) **Methodology for Merit Order Scheduling & Billing**

- (i) The Seller will, on the last working day of each Month, submit to the Procurer the anticipated energy cost for the subsequent Month. The anticipated energy cost will be based on the estimated cost of Indonesian imported coal procurement for subsequent Month. This anticipated energy cost determined as above, will be reduced by the amounts as provided in paragraphs (ii) (Mining Profit) and (iii) (Discount in capacity charge) below, to arrive at the anticipated variable charge for determining merit order standing.
- (ii) Mining Profit may be reckoned based on average profit in the form of per unit supplied in the previous year.
- (iii) Discount of Rs 0.20/kWh as specified in the definition of DT.

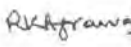

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- (iv) At the end of each Month, the Bills by the Seller will be based on the variable charge determined as per paragraphs (i), (ii) and (iii) above. True up based on actual Mining Profit and actual cost of Indonesian Coal as per Clause 3.2.3 (1) and (2) above, will be undertaken at the end of respective financial year as per provisions of this Supplemental Agreement.
- (v) During the remainder of the Term of the PPA commencing from the Amendment Effective Date, there shall be no rebate available to the Procurer on the Energy Charge, on account of early payment of Bills by the Procurer, and accordingly, all provisions in the PPA relating to rebate as applicable to Energy Charge on account of early payment of Bills by the Procurer for the Contracted Capacity, shall be inapplicable for the remainder period of the Term of the PPA commencing from the Amendment Effective Date. All other provisions relating to payment and payment of interest/surcharge for late payments shall continue to apply. It is clarified that rebate for early payment shall continue on Capacity Charge as per provisions of the PPA.


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Annexure - V

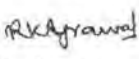
(Refer paragraphs 8.6.2, 8.7.2)

Formula for Profit Sharing from Indonesian Mines

The Mining Profit from Indonesian coal mines will be determined on incremental basis in the following manner :

- (i) In the first step, the Incremental Price shall be calculated as the difference between the actual FOB price of coal (subject to Ceiling Price) in Indian Rupees, per ton, as determined for calculation of the Revised Tariff specified in this Supplemental Agreement, less the coal price equivalent to the fuel energy component specified in the PPA. In the event for any period of time, the actual price of coal, as above, is lower than the equivalent coal price specified in the PPA, then there shall be no Incremental Price and no profit sharing will be available. For the avoidance of doubt, in case the Incremental Price is negative, then it shall be deemed to be zero. For the avoidance of doubt, transportation and handling and other costs incurred to deliver coal to the Plant site shall be excluded from this calculation, which in any case are to be included in determining the landed cost of coal for determining the Revised Energy Charge.
- (ii) In the second step, the Incremental Price shall be multiplied with the quantum of coal consumption stipulated at the lower of normative availability (80% as defined in the PPA) or actual PLF in the Project utilising such imported Indonesian coal as Fuel, subject always to the limit of the share of the Seller/its Affiliate in the total production from the Indonesian coal mine, to arrive at the Incremental Revenue attributable to the Seller, on actual costs basis.
- (iii) In the third step, this Incremental Revenue determined on actual costs basis, will be duly reduced by amounts equivalent to applicable Income and other taxes and royalties and any other charges, taxes, cess or charges of like nature (collectively "Tax on Coal"), imposed in Indonesia and/or India on the production, sale and/or supply of Indonesian coal, to determine the profit attributable to the Seller on account of the Indonesian coal mining operations ("Mining Profit"). The aforesaid Tax on Coal shall be reckoned on notional basis.
- (iv) the entire quantum of Mining Profit determined as per the first to third steps as above, shall be passed on to the Procurer in the form of a discount, in the manner specified in this Supplemental Agreement.


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The above steps are explained by way of illustration, below :

S. No.	Description	Formula
1	FOB Price used for pass-through formula	A
2	FOB price of coal equivalent to tariff component (under the PPA)*	B
3	Quantity of coal to be consumed for supply under PPA#	C
4	Incremental revenue	$D = C \times [A - B]$
5	Profit Sharing	$P = D \times [1 - T_i] \times [1 - T_d]$

T_i : Notional Tax and Royalty incidence in Indonesia

T_d : Notional Tax incidence in India

*Equivalent FOB price derived considering FOB Price of USD 25.7/MT for GCV of 5200 kcal/kg in line with CERC order dated 6th December 2016. Explanation: In case the average GCV of coal received is 4400 kcal/kg, the FOB price shall be correspondingly adjusted to derive the 'B' (i.e. $25.7 \times 4400/5200$)¹²

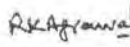
Derived based on quoted fuel energy tariff (after adjusting BCD including education cess prevailing at the time of bid)¹³

coal consumption stipulated at minimum of normative availability or actual PLF in the respective plants from these mines (which should not go beyond their share of total production from their mines)

¹² Applicable for only APMUL.

¹³ Applicable only for CGPL.


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Annexure - VI
(Refer paragraph 10.8.2)
Model Draft Amendment PPA

ON STAMP PAPER OF RS 100/-

THIS SUPPLEMENTAL POWER PURCHASE AGREEMENT hereinafter called the "Supplemental Agreement" is entered into at _____ on the ____ day of ____ Two Thousand and Eighteen by and

BETWEEN

M/s _____, [Insert Seller's Full Name] a Company incorporated under the Companies Act, 1956 having its registered office at _____ (hereinafter referred to as "Seller" or "_____" [Insert Seller's abbreviated Name] which expression shall unless repugnant to the context or meaning thereof include its successors and assigns) as party of the first part;

AND

M/s _____, [Insert Procurer's abbreviated Name] a Government of _____ Undertaking and a Company incorporated under the Companies Act, _____ having its registered office at _____ (hereinafter referred to as "Seller" or "_____" [Insert Procurer's abbreviated Name] which expression shall unless repugnant to the context or meaning thereof include its successors and assigns) as party of the second part

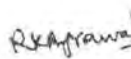
Each of the "Procurer" and "the "Seller" are individually referred to as "Party" and collectively as the "Parties"

Whereas:

- A. The Seller and the Procurer had executed a Power Purchase Agreement dated _____ [as amended by Supplemental Power Purchase Agreement dated _____] (hereinafter referred to as the "PPA"), for the sale and purchase of electricity in accordance with the terms and conditions contained therein;


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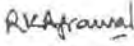
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- B. The promulgation of Indonesian regulations relating to the pricing mechanism of coal and resultant financial implication of the same on cost of generation of power by the power projects based on imported Indonesian coal, led to the inability of the power generators, including the Seller herein, to continue to operate their power generation projects on a sustainable basis. As a consequence of the inability of the Seller to generate and supply power on a sustainable basis, the procurer States, including the Procurer herein, faced power shortages and were required to procure power from alternate sources at higher cost/rates. Thus, due to the prevailing conditions the consumers of these States, including consumers of the Procurer, are put to pay much higher cost of power. In this background and consequent to the diverse background facts and events, as more particularly described in the Government of Gujarat Resolution No. CGP-12-2018-166-K dated 03-07-2018 (hereinafter referred to as "the GR"), the imported Indonesian coal based power generation projects encountered financial stress and losses and were unable to sustain power generation from the projects;
- C. In order to resolve these issues, the Government of Gujarat, vide the GR constituted a High Power Committee to, inter alia, suggest sustainable solutions for reviving the power generation projects based in the state of Gujarat and based on imported Indonesian coal as fuel;
- D. The High Power Committee submitted its Report on _____ making certain recommendations for resolving the said issues;
- E. The Government of the State of _____ *[Name of the State]* accepted the recommendations of the High Power Committee and decided to implement the same, and consequently, issued its policy directions contained in Resolution No. _____ dated _____ (Hereinafter referred to as "the Implementation Policy");
- F. The implementation of the said policy directions contained in the Implementation Policy require, inter alia, carrying out certain amendments to the PPA, and obtaining necessary approvals for these amendments, from the Appropriate Commission;
- G. The PPA enables the Parties to amend the provisions of the PPA by written agreement and subject to the approval of the Appropriate Commission.


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NOW THEREFORE, in consideration of the premises, mutual agreements, covenants and conditions set forth in this Supplemental Agreement, it is hereby agreed by and between the Parties as follows:

1. All capitalized terms, unless specifically defined in this Supplemental Agreement, shall have the meanings ascribed to them in the PPA.
2. With the execution of this Supplemental Agreement, all relevant Articles of the Power Purchase Agreement in respect of the matters covered in this Supplemental Agreement, shall stand amended, modified and/or replaced to the extent provided in this Supplemental Agreement and in the event of any conflict in the interpretation between the clauses of the PPA and this Supplemental Agreement, or in the application of any provision of the PPA or this Supplemental Agreement, then the provisions of this Supplemental Agreement shall prevail. Except as amended, modified and/or replaced hereunder, all other terms and conditions of the PPA shall continue to apply and shall remain unchanged.

3. The Parties agree as follows

3.1.1 The relevant clause specifying the definitions in the PPA shall be amended as follows

- (i) A new definition shall be added as follows

"Amendment Effective Date" shall be October 15, 2018, i.e. the date with effect from which, this Supplemental Agreement shall become effective and binding upon the Parties.

- (ii) The existing definition of "Appropriate Commission" in the PPA shall be replaced with the following definition:

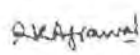
"Appropriate Commission" shall have the meaning ascribed thereto in the Act."

3.1.2 [The Project shall be a composite scheme as defined in the Act and as interpreted by the Hon'ble Supreme Court.¹⁴]

¹⁴ Only in case of CGPL and APMuL. EPGI has PPA with only GUVNL.


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3.2 All provisions in the PPA relating to determination of energy tariff (by whatever nomenclature called in the PPA) for payment for the sale of electricity, shall be replaced and substituted with the following provisions.

3.2.1 Notwithstanding anything to the contrary contained in the PPA, the Seller shall, with effect from the Amendment Effective Date, be entitled to receive, and the Procurer shall be liable to pay, Revised Tariff determined in accordance with the provisions hereinafter contained, with respect to the sale and supply of electricity under and in terms of the PPA.

"Revised Tariff" shall mean the sum total of Energy Charge and Quoted Capacity Charge.

"Energy Charge" shall mean the energy charge determined in accordance with clause 3.2.2 of this Supplemental Agreement.

"Quoted Capacity Charge" shall mean the Quoted Capacity Charge specified in the PPA.

3.2.2 Energy Charge shall be determined for each Month, as under:
Energy Charge payable to the Seller for a Month shall be:
(Energy charge rate in Rs./kWh) x {Scheduled energy (ex-bus) for the Month in kWh.}

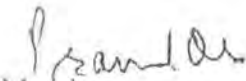
Energy charge rate (ECR) in Rupees per kWh on ex-power plant basis shall be determined to three decimal places in accordance with the following formulae:

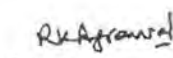
$$ECR = \{GHR \times LPPF / CVPF\} \times 100 / (100 - AUX) \text{ minus DT}$$

Where :

AUX = Superior of Actual or Normative auxiliary energy consumption in percentage as specified in the Tariff Regulations.

CVPF=Weighted Average Gross calorific value of coal on As Received basis, in kCal per kg


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ECR = Energy charge rate, in Rupees per kWh sent out.

GHR = Superior of Actual or Gross station heat rate, in kcal per kWh as specified in the Tariff Regulations.

LPPF = Weighted average landed price at the plant site (which for the avoidance of doubt shall include all taxes on the sale and transportation of coal and transportation costs for transporting and delivering coal to the plant site) of coal as primary fuel, in Rupees per kg, during the relevant Month.

DT = the aggregate of the following two discounts:

- (i) discount in relation to Mining Profit as determined in clause 3.3 of this Supplemental Agreement; and
- (ii) discount by lenders in relation to capacity charge, being a discount of Rs 0.20 /kWh.

For the avoidance of doubt, this discount DT will be determined and applied only in respect of energy charges in respect of power generation upto Normative Availability as specified in the PPA, i.e. only to the extent of 80% as per PPA and in respect only of such proportion of the Capacity that pertains to Contracted Capacity operated on imported coal as Fuel, from time to time.

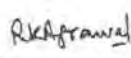
"Tariff Regulations" shall mean the regulations of the Appropriate Commission specifying the terms and conditions for determination of tariff, as may be applicable at the relevant time.

3.2.3 The Energy Charge determined as above, shall be subject to the following conditions:

(1) General Principles for determination of LPPF:

FOB cost of Coal	FOB Price for Imported Coal:
	Shall be the lower of actual price or the HBA Price (as defined hereinafter) determined in Indian Rupees at actual exchange rate. In case of change in pricing framework in Indonesia or change in source


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of coal to other country, HBA Price will be replaced with relevant coal indices as mutually agreed.

"HBA Price" shall mean the HBA Index FOB price of Indonesian imported coal published by Govt of Indonesia from time to time for coal quality of 6322 Kcal/Kg, as adjusted for quality of coal consumed in the Project.

The actual price of coal shall always be subject to an upper ceiling limit of HBA index FOB price of USD 110/MT ascertained on monthly average basis, adjusted for quality of coal consumed in the Project and as revised from time to time in accordance with this Supplemental Agreement (the "Ceiling Price"). This has been explained in greater detail in sub para (2) (Specific Conditions) hereinbelow.

**Transportation
and other costs**

Transportation and Other Costs:

As specified in the PPA, or actual, whichever is lower.

For APL, following clause shall apply subject to lower of actual or as specified herein below:

Ocean Freight

The ocean freight for APL shall be calculated in Indian Rupees, at actual applicable exchange rate, applying USD 11.61 per MT for the FY 18-19, to be escalated as per the formula set out below.

Escalation Formula : This formula is based on the Baltic Index (for fixed charges) and Singapore index (for bunker fuel) :

FY 18-19, USD 11.61/MT

For 19-20 onwards :

USD (11.61 + BAFB + BAFO) - metric ton

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	Where: BAFB = (Baltic Exchange Dry IndexA - Baltic Exchange Dry IndexI) X 0.0032 Baltic Exchange Dry IndexA will be the daily index published on immediate Friday preceding the date of bill of lading of vessel; and Baltic Exchange Dry IndexI is the index applicable on 01st April, 2018, being the base year taken by the CERC BAFO = {(Singapore IFO (380 CST)A - Singapore IFO (380 CST)I) X 0.010 The Singapore IFO (380 CST)A will be the daily index published on immediate Friday preceding the date of bill of lading of vessel; and Singapore IFO (380 CST)I is the index applicable on 01st April, 2018 being the base year taken by the CERC. Port Handling Charges: As per existing contract to be escalated every year as per WPI index Other transaction charges including transit and handling: As per actuals, subject to a cap of 3% of total CIF price of the coal
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(2) Specific Conditions

- (a) The monthly payment for the Monthly Bills will be made on actual basis as claimed in the relevant Bill, subject to a true up in the succeeding month, if required.
- (b) The Ceiling Price will be fixed for 5 years at a time, with the first 5 year period commencing from the Amendment Effective Date and the last such 5 year period ending on the Expiry Date even if the last period is less than 5 years. The Ceiling Price will be reset and recalibrated for the next five year period, as per the following methodology:
 - (i) If the HBA Price at any time during the relevant 5 year period, exceeds the Ceiling Price specified for the said relevant 5 year period, then the Ceiling Price for the subsequent 5 year period will be increased by a percentage factor equivalent to the percentage increase in domestic CIL coal price for linkage coal, during the corresponding 5 year period. The principle is that the imported

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coal Ceiling Price is expected to move in tandem with domestic coal price increase.

- (ii) If the HBA Price does not at any time during the relevant 5 year period, exceed the Ceiling Price specified for the said relevant 5 year period, however, if the average HBA Price during the relevant five year period is higher than the average HBA Price during the immediately preceding five year period, the Ceiling Price for the relevant 5 year period shall be increased by a percentage factor equivalent to the lower of:

- (x) the percentage increase in domestic CIL coal price for linkage coal, during the 5 year period corresponding with the relevant 5 year period; or

- (y) escalation in the HBA Index over the relevant 5 year period

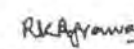
For the avoidance of doubt, for the first 5 year period commencing from the Amendment Effective Date, the aforesaid comparison of average HBA Price shall be done for the immediately preceding five year period prior to the Amendment Effective Date.

- (c) If during the relevant 5 year period, none of the conditions specified in paragraphs (1) or (2) above are attracted, then the Ceiling Price for the subsequent 5 year period shall remain unchanged

(3) Methodology for Merit Order Scheduling & Billing

- (i) The Seller will, on the last working day of each Month, submit to the Procurer the anticipated energy cost for the subsequent Month. The anticipated energy cost will be based on the estimated cost of Indonesian imported coal procurement for subsequent Month. This anticipated energy cost determined as above, will be reduced by the amounts as provided in paragraphs (ii) (Mining Profit) and (iii) (Discount in capacity charge) below, to arrive at the anticipated variable charge for determining merit order standing.
- (ii) Mining Profit may be reckoned based on average profit in the form of per unit supplied in the previous year.
- (iii) Discount of Rs 0.20/kWh as specified in the definition of DT.


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- (iv) At the end of each Month, the Bills by the Seller will be based on the variable charge determined as per paragraphs (i), (ii) and (iii) above. True up based on actual Mining Profit and actual cost of Indonesian Coal as per Clause 3.2.3 (1) and (2) above, will be undertaken at the end of respective financial year as per provisions of this Supplemental Agreement.

3.2.4 Availability : The Parties agree that the payment of Capacity Charges linked to Availability shall be modified, as specified below, in order to provide the Procurer the benefit of higher Availability upto 90%, beyond the Normative Availability of 80% as specified in the PPA, without Procurer having to pay for Capacity Charge for such higher Availability. The Parties agree that the Seller shall maximise the utilisation of the generation capacity from the Project, in the manner specified below :

- (a) The Seller shall declare availability up to 90% in a Financial Year. However, the Capacity charge shall continue to be paid corresponding to Normative Availability of 80%, as specified in the PPA on achievement of cumulative Availability in a Financial Year of 80%. Further, in the event the cumulative Availability in any Financial Year is less than 80%, then the provisions of the PPA shall apply in respect of determination of the Capacity charge payable to the Generator, subject to the reduction specified in sub clause (b) below.
- (b) In the event the cumulative Availability in any Financial Year is less than 90%, the Capacity charge payable to the Generator, shall be reduced by 10% of Capacity Charges otherwise payable to the Seller. This is explained by way of the illustration, below :

Illustration: For actual availability of 82% and 76%

	Actual DC 82%	Actual DC 76%
PPA Capacity	1,000 MW	1,000 MW
Normative Availability	80%	80%
Capacity Charges	1.00 Rs/kWh	1.00 Rs/kWh
Normative Units	7008 MUs	7008 Mus
Actual Availability	82%	76%
Actual Units	7183 MUs	6658 Mus
Shortfall in availability compared to revised 90%	8% (701 MUs)	14% (1226 MUs)
Penalty for shortfall in 90% (10% of Capacity Charges)	Rs 0.10 / kWh (1 Rs * 10%)	Rs 0.10 / kWh (1 Rs * 10%)
Penalty Amount	Rs 7.01 crore	Rs 12.26 crore
Yearly Capacity Charges	Rs 700.8 crore	Rs 665.8 crore

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	(7008 MUs * 1 Rs)	(6658 MUs * 1 Rs)
Less: Penalty	Rs 7.01 crore	Rs 12.26 crore
Net of Penalty Payment	Rs 693.79 crore	Rs 653.54 crore

For the avoidance of doubt, it is clarified that for all other purposes including passing on the Discount of 20 paise/kWh, the Normative Availability shall continue to be 80%, as specified in the PPA. It is further clarified that for the purposes of determining the Incentives under the PPA on account of Availability being higher than Normative Availability, the Normative Availability shall continue to be reckoned at 80% as per existing PPA. Conversely, provisions relating to penalty for lower Availability below 80% shall also continue to apply in accordance with the provisions of the existing PPA.

- 3.2.5 During the remainder of the Term of the PPA commencing from the Amendment Effective Date, there shall be no rebate available to the Procurer on the Energy Charge, on account of early payment of Bills by the Procurer, and accordingly, all provisions in the PPA relating to rebate as applicable to Energy Charge on account of early payment of Bills by the Procurer for the Contracted Capacity, shall be inapplicable for the remainder period of the Term of the PPA commencing from the Amendment Effective Date. All other provisions relating to payment and payment of interest/surcharge for late payments shall continue to apply. It is clarified that rebate for early payment shall continue on Capacity Charge as per provisions of the PPA.

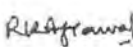
3.3 Sharing of Mining Profits by the Seller

- 3.3.1 Notwithstanding anything to the contrary contained in the PPA, the Procurer shall, with effect from the Amendment Effective Date, be entitled to receive, and the Seller shall provide, a discount for sharing of the Mining Profits, determined in the manner set out hereinbelow, subject to a floor as explained in Annexure I hereto.

"Mining Profit" shall mean the profit earned by the Seller and/or its Affiliate from the mining operations of the coal mines owned by it in Indonesia, proportionate to the quantum of coal being supplied from such owned mine, for operations of the Seller's power generation Project in India, and shall be computed in accordance with Clause 3.3.2 below.

- 3.3.2 The Mining Profit shall be determined on the principle that the incremental price of imported Indonesian coal from mines owned by the Seller or its affiliates, compared to the price of coal specified in the PPA, that is being passed on in the Revised Tariff, shall be deemed to be incremental revenue and the Mining Profit shall be derived from


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such incremental revenue by reducing taxes, cess, royalty and other such impositions under Indonesian and Indian laws, on the sale, transfer and supply of coal. The detailed methodology for determining the Mining Profit is set out in Annexure I hereto.

- 3.3.3 The discount equivalent to the Mining Profit shall be passed on to the Seller by way of reduction in the Monthly Bill or Supplementary Bill issued by the Seller.

3.4 Untied Capacity to be offered to Procurer

- 3.4.1 The currently untied generation capacity available with the Seller at its Project shall be offered to the Procurer and the Procurer may, in its discretion but no later than _____ (provide time for acceptance), accept such offer and take up such untied capacity (hereinafter referred to as "Offer Acceptance Date". Upon acceptance of the offer by the Procurer, such untied capacity shall constitute "Additional Capacity" and accordingly, the contracted capacity under the PPA shall stand increased by such Additional Capacity with effect from the Offer Acceptance Date.

(Note : For Adani Power, the aggregate untied capacity to be offered to the Procurers shall be 550 MW after considering the committed capacity of 250 MW for Mundra SEZ. The said 550MW shall be offered in the proportion of 83:17 to Gujarat and Haryana. This proportion is on the basis of 2000 MW PPA for Gujarat and 30% of 1424 MW PPA for Haryana. For Essar Power, the aggregate untied capacity to be offered to the Procurers shall be 100 MW after considering their committed capacity.)

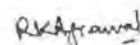
- 3.4.2 Notwithstanding anything to the contrary contained in the PPA, the Seller shall, with effect from the Offer Acceptance Date, be entitled to receive, and the Procurer shall be liable to pay, Additional Capacity Tariff determined in accordance with the provisions hereinafter contained, with respect to the sale and supply of electricity from the Additional Capacity.

"Additional Capacity Tariff" shall mean the sum total of Energy Charge and Additional Capacity Charge.

"Energy Charge" shall mean the energy charge determined in accordance with Clause 3.5.3 of this Supplemental Agreement.


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"Additional Capacity Charge" shall be the Capacity Charge over the Term of the PPA, as specified in the PPA, levelized as on the date of execution of the PPA. The levelization shall be computed using the Discount Rate, as defined below.

Discount Rate shall be the discount rate specified in the RFP, that was used for evaluating the bids, pursuant to which the Seller was selected as successful bidder and PPA was executed.

For the avoidance of doubt, the Energy Charge shall not be subject to the discount DT, i.e. the lenders discount of Rs 0.20/Kwh as specified in the definition of DT, nor shall it include the discount for sharing of the Mining Profits as specified in Clause 3.3 of this Supplemental Agreement.

3.5 Extension of Term of the PPA

3.5.1 The Procurer shall have the right, but not the obligation, to extend the Term of the PPA by ten (10) years for the Contracted Capacity ("Extension Period"), such extension to be effected by issue of a notice by the Procurer to the Seller, stating its decision to extend the PPA for the Contracted Capacity for such period of ten years, and such notice shall be issued not later than five (5) years prior to the Expiry Date of the PPA. For the avoidance of doubt, any extension for a period other than 10 years, as above, shall be with the mutual consent of the Seller.

3.5.2 The Parties agree that the extension of the PPA as aforesaid, shall be on the same terms and conditions as contained in the PPA, subject to the following conditions in relation to the Extension Period

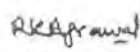
3.5.3 For the Extension Period, the definition of Revised Tariff shall be amended as follows:

"Revised Tariff" shall mean the sum total of Energy Charge and Quoted Capacity Charge"

Where :

"Quoted Capacity Charge" shall mean the Quoted Capacity Charge as specified in the PPA, as applicable for the last Contract Year (falling prior to the Expiry Date) Extension


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Period. Furthermore, such Quoted Capacity Charge applicable for the last Contract Year as above, shall be re determined to factor for additional costs, if any, incurred or to be incurred by the Seller for renovation and modernisation of the Project, and also for the consequential increase in O&M expenses. Such re determination of the Quoted Capacity Charge shall be in accordance with the applicable CERC (Terms and Conditions of Tariff) Regulations as then applicable and shall be approved by the Appropriate Commission; and

"Energy Charge" for the Extension Period shall be determined for each Month of the Extension Period, as under :

Energy Charge payable to the Seller for a Month shall be:

(Energy charge rate in Rs./kWh) x {Scheduled energy (ex-bus) for the Month in kWh}

Energy charge rate (ECR) in Rupees per kWh on ex-power plant basis shall be determined to three decimal places in accordance with the following formulae:

$$ECR = \{GHR \times LPPF / CVPF\} \times 100 / (100 - AUX)$$

Where :

AUX = Superior of Actual or Normative auxiliary energy consumption in percentage as specified in the Tariff Regulations.

CVPF=Weighted Average Gross calorific value of coal on As Received basis, in kCal per kg

ECR = Energy charge rate, in Rupees per kWh sent out.

GHR = Superior of Actual or Gross station heat rate, in kCal per kWh as specified in the Tariff Regulations.

LPPF =Weighted average landed price at the plant site (which for the avoidance of doubt shall include all taxes on the sale and transportation of coal and transportation costs for transporting and delivering coal to the plant site), of coal as primary fuel, in Rupees per kg, during the relevant Month.

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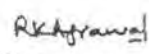
For the avoidance of doubt, the Energy Charge shall not be subject to the discount DT, i.e. the lenders discount of Rs 0.20/Kwh as specified in the definition of DT, nor shall it include the discount for sharing of the Mining Profits as specified in Clause 3.3 of this Supplemental Agreement.

"Tariff Regulations" shall mean the regulations of the Appropriate Commission specifying the terms and conditions for determination of tariff, as may be applicable at the relevant time.

4. Waiver of Penalty for period from April 12, 2017 to Amendment Effective Date

- 4.1 Notwithstanding anything contained in the PPA, Penalty, if any, accrued or appropriated under the PPA on account of Availability being lower than Normative Availability, for the period from April 12, 2017 to Amendment Effective Date, shall be compensated by the Seller by supply of additional electricity from the Project or from alternate sources, to liquidate such Penalty for the past period as above and upon supply of such additional electricity, the past accrued/accrued Penalty shall be liquidated/refunded to the extent of such additional supply. In case the Seller is unable to fulfil the same in a Financial Year, the arrangement shall continue to carry forward in next Financial Year till such time the entire accrued/appropriated penalty is liquidated/refunded.


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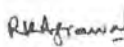

Chairman


Member

In Witness Whereof the Parties have executed this Second Supplemental Agreement to the Power Purchase Agreement on the date mentioned hereinabove through their duly authorized representatives.

FOR AND ON BEHALF OF M/s	FOR AND ON BEHALF OF M/S _____
_____	_____
Authorized Signatory	Authorized Signatory
WITNESSES	WITNESSES
1. _____ ()	1. _____ ()
2. _____ ()	2. _____ ()


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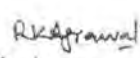
Annexure I
(Refer Clauses 3.3.1 & 3.3.2)

The Mining Profit from Indonesian coal mines will be determined on incremental basis in the following manner :

- (i) In the first step the Incremental Price shall be calculated as the difference between the actual FOB price of coal (subject to Ceiling Price) in Indian Rupees, per ton, as determined for calculation of the Revised Tariff specified in this Supplemental Agreement, less the coal price equivalent to the relevant fuel energy component specified in the PPA. In the event for any period of time, the actual price of coal, as above, is lower than the equivalent coal price specified in the PPA, then there shall be no Incremental Price and no profit sharing will be available. For the avoidance of doubt, in case the Incremental Price is negative, then it shall be deemed to be zero. For the avoidance of doubt, transportation and handling and other costs incurred to deliver coal to the Plant site shall be excluded from this calculation, which in any case are to be included in determining the landed cost of coal for determining the Revised Energy Charge.
- (ii) In the second step, the Incremental Price shall be multiplied with the quantum of coal consumption stipulated at the lower of normative availability (80% as defined in the PPA) or actual PLF in the Project utilising such imported Indonesian coal as fuel, subject always to the limit of the share of the Seller/its Affiliate in the total production from the Indonesian coal mine, to arrive at the Incremental Revenue attributable to the Seller, on actual costs basis.
- (iii) In the third step, this Incremental Revenue determined on actual costs basis, will be duly reduced by amounts equivalent to applicable income and other taxes and royalties and any other charges, taxes, cess or charges of like nature (collectively "Tax on Coal"), imposed in Indonesia and/or India on the production, sale and/or supply of Indonesian coal, to determine the profit attributable to the Seller on account of the Indonesian coal mining operations ("Mining Profit"). The aforesaid Tax on Coal shall be reckoned on notional basis.
- (iv) the entire quantum of Mining Profit determined as per the first to third steps as above, shall be passed on to the Procurer in the form of a discount, in the manner specified in this Supplemental Agreement.


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The above steps are explained by way of illustration, below :

S. No.	Description	Formula
1	FOB Price used for pass-through formula	A
2	FOB price of coal equivalent to tariff component (under the PPA)*	B
3	Quantity of coal to be consumed for supply under PPA#	C
4	Incremental revenue	$D = C \times [A - B]$
5	Profit Sharing	$P = D \times [1 - T_i] \times [1 - T_d]$

T_i : Notional Tax and Royalty incidence in Indonesia

T_d : Notional Tax incidence in India

*Equivalent FOB price derived considering FOB Price of USD 25.7/MT for GCV of 5200 kcal/kg. **Explanation:** In case the average GCV of coal received is 4400 kcal/kg, the FOB price shall be correspondingly adjusted to derive the 'B' (i.e. $25.7 \times 4400/5200$)¹⁵

Derived based on quoted fuel energy tariff (after adjusting BCD including education cess prevailing at the time of bid)¹⁶

coal consumption stipulated at minimum of normative availability or actual PLF in the respective plants from these mines (which should not go beyond their share of total production from their mines)

Provided that the discount to be passed on behalf of mining profit shall be, subject always to a minimum discount of Rs 0.05/kWh (for APMuL) and Rs 0.15/kWh (for CGPL). This floor is corresponding to Seller's share of coal from the coal mine or coal consumed from its mine this year and will be adjusted if coal production consumption from the mine reduces.

¹⁵ Applicable for only APMuL.

¹⁶ Applicable only for CGPL.

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Annexure - P2
Diary No - 38117/2018
I.A Nos - 147455 & 147456 / 2018
I.A No 2702705 - CTO 2016 / 2018

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

I.A Nos. _____/2018

In

CIVIL APPEAL NO. 5399-5400 OF 2016

WITH

CIVIL APPEAL NO. 5347-5348/2016

IN THE MATTER OF:

Energy Watchdog

Appellant

//VERSUS//

Central Electricity Regulatory Commission & Ors. ... Respondents

With

I.A. Nos. 147455/2018

An application for permission to file impleadment on
behalf of the State of Gujarat

AND

I.A. No. 147456/2018

An application for directions and clarification

VOLUME-I

(AT PAGE NO. 1 TO 110)

[PAPER BOOK]

ADVOCATE FOR THE APPLICANT: MRS. HEMANTIKA WAHI

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12.	Annexure-A/10 Copy of the letter dated 20.04.2017 of the Chief Minister, Gujarat State.	107-108
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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

I.A. NOS _____ OF 2018

IN

CIVIL APPEAL NO. 5399-5400 OF 2016

WITH

CIVIL APPEAL NO.5347-5348/2016

IN THE MATTER OF:

Energy Watchdog

... Appellant

VERSUS

Central Electricity Regulatory Commission & Ors. ...Respondents

AND IN THE MATTER OF:

STATE OF GUJARAT

Through the Principal Secretary,

Energy and Petrochemicals Department,

Sachivalaya, Gandhinagar

Gujarat

Impleadment applicant No.2

**APPLICATION FOR PERMISSION TO FILE IMPLEADMENT
ON BEHALF OF STATE OF GUJARAT**

TO,

THE HON'BLE CHIEF JUSTICE OF INDIA AND HIS COMPANION
JUDGES OF THE SUPREME COURT OF INDIA,

THE HUMBLE APPLICATION OF
THE ABOVE NAMED APPLICANT

MOST RESPECTFULLY SHOWETH:

1. The Applicant is a State of Gujarat and is approaching this Hon'ble Court praying for impleadment in the above captioned civil appeal which is disposed of vide judgment dated 11.4.2017.
2. The Applicant states and submits that the contents of the accompanying application for direction may be read as part and parcel of the present application for impleadment and the same are not being repeated for the sake of brevity.
3. The Applicant states and submits that pursuant to the judgment of this Hon'ble Court dated 11.4.2017, the State Government received various representations from the three power producers in the State of Gujarat. Considering their representations and various communications with the Government of India, the State of Gujarat thought it fit to set up a High Powered Committee to look into the grievances of the three power producers.
4. The Applicant states and submits that thereafter the Applicant set up a High Powered Committee vide Government Resolution dated 3.7.2018 (annexed to the main application). The High Powered Committee gave its report and recommendations (annexed to the main application).
5. The Applicant states and submits that since the accompanying application for directions is filed in light of the recommendations of the High Powered Committee which was set up by the Applicant in the larger interest of

the consumers, it is necessary for the Applicant to be impleaded as a party in the main appeal.

6. The Applicant is, therefore, moving before this Hon'ble Court an Application praying for being impleaded as a party Respondent, in the interests of justice.
7. The present Application is being made bona fide and in the interest of justice.

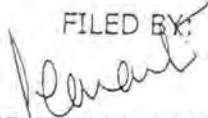
PRAYER

In these circumstances the Applicant prays that your Lordships may be pleased to:-

- a). permit the impleadment of the Applicant i.e. the State of Gujarat as party respondent in the main appeal as well as the present proceedings; and
- b) pass any such other order/s as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

AND FOR THIS ACT OF KINDNESS, THE APPLICANTS AS IN DUTY BOUND SHALL EVER PRAY.

FILED BY:


HEMANTIKA WAHI

ADVOCATE FOR APPLICANTS

Filed on: 8.10.2018

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

I.A. NOS _____ OF 2018

IN

CIVIL APPEAL NO. 5399-5400 OF 2016

WITH

CIVIL APPEAL NO.5347-5348/2016

IN THE MATTER OF:

Energy Watchdog

... Appellant

VERSUS

Central Electricity Regulatory Commission & Ors. ...Respondents

AFFIDAVIT

I, Dhaval Suryakant Shah, Under Secretary, Government of Gujarat, Energy & Petrochemicals Department, Sachivalaya, Gandhinagar, Gujarat, presently at New Delhi, do hereby solemnly affirm and state as under:-

1. That I am the Under Secretary and being familiar with the facts of the case, I am competent to file this affidavit on behalf of the applicant No.2/State.
2. That I have gone through the accompanying application for impleadment and I say that the contents thereof are true to the best of my knowledge and based on record of the case.

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3. That the annexures are true copies of their respective originals.



DEPONENT

VERIFICATION

I, the deponent abovenamed do hereby verify that the contents of the above affidavit are true to the best of my knowledge and belief and nothing is false and nothing material has been concealed therefrom.

Verified at New Delhi on this 8th day of October, 2018.



DEPONENT

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

I.A No. _____/2018

In

CIVIL APPEAL NO. 5399-5400 OF 2016

WITH

CIVIL APPEAL NO.5347-48/2016

IN THE MATTER OF:

Energy Watchdog

... Appellant

//VERSUS//

Central Electricity Regulatory Commission & Ors. ...Respondents

AND IN THE MATTER OF:

1. Gujarat Urja Vikas Nigam Ltd.
Through its General Manager (Commerce)
Sardar Patel Vidyut Bhawan,
Race Course,
Vadodara -390007
Gujarat

... Applicant No.1

2. State of Gujarat
through Principal Secretary,
Energy & Petrochemicals Department,
Sachivalaya,
Gandhinagar
Gujarat

... Applicant No.2

APPLICATION FOR APPROPRIATE DIRECTIONS AND

CLARIFICATION

THE HON'BLE CHIEF JUSTICE OF INDIA
AND HIS OTHER COMPANION JUDGES
OF THE HON'BLE SUPREME COURT

THE HUMBLE APPLICATION OF
THE APPLICANTS ABOVE NAMED:

MOST RESPECTFULLY SHOWETH:

1. This Hon'ble Court has passed its final judgment dated 11.04.2017 reported in (2017) 14 SCC 80 setting aside the judgment of the Appellate Tribunal for Electricity (APTEL) dated 07.04.2016. The APTEL had granted relief to the power producers treating promulgation of Indonesian regulation by which the price of imported Indonesian coal had substantially increased as an event of force majeure. A copy of the judgment dated 11.04.2017 passed by this Hon'ble Court, as reported in (2017) 14 SCC 80 is annexed and marked herein as "Annexure A-1 (at Page 35 to 86).
2. This Hon'ble Court has in the judgment dated 11.04.2017 reported in (2017) 14 SCC 80 *inter-alia* held that change in Indonesian regulation did not constitute Force Majeure or change in law event under the PPA and on that basis set aside the judgment of the APTEL. The Hon'ble Supreme Court has granted relief for domestic coal under Change in Law and the

judgment of this Hon'ble Court has been implemented to that extent.

3. The Applicant No.1 is the procurer company i.e. Gujarat Urja Vikas Nigam Ltd. and Applicant No.2 is the State of Gujarat through Energy and Petrochemicals Department. That both the Applicants are affected party and therefore the joint application is being made in order to seek the appropriate clarification and/or direction from the Hon'ble Court.

4. That there has been reduction in availability of power from three major power producers who have set up power plants in the State of Gujarat based on imported coal. The capacity and description of the power plants is as follows:

Name	Capacity	Location	Commencement Date
CGPL	4150	Mundra, Gujarat	March 7, 2012
Essar	1200	Salaya, Gujarat	April 1, 2012
Adani	4620	Mundra, Gujarat	Feb 6, 2010
Total	9970		

It is submitted that Gujarat State has a share of 4805 MW in the above Power Plants.

5. These generators have reduced/shutdown power generation stating that they are unable to sustain generations due to

increase in the coal prices. The brief of representations received from generators is as follows:

- a) Coastal Gujarat Power Ltd. ("Tata Mundra") has in its letter dated 25.04.2017 addressed to the Applicant No. 1 stated as follows, *"As stated above, the financial position of CGPL speaks for itself and is at an extremely critical stage. It is submitted that if urgent remedial measures are not taken, then, inspite of best efforts of CGPL/Tata Power it may be very difficult to continue the operations. It is matter of fact, that CGPL's tariff even with addition of compensatory tariff (as was allowed by CERC) will be among the cheapest power available."* Tata Mundra has accumulated losses of Rs. 6,306 crores and 100% of the equity has been wiped out. CGPL addressed another letter dated 07.06.2017 to the Applicant to resolve the issue based on various proposals offered by CGPL. A copy of the letter dated 25.04.2017 is annexed and marked herein as "Annexure A-2 (at page 87 to 89).

A copy of the letter dated 07.06.2017 is annexed and marked herein as "Annexure A-3 (at page 90 to 90 B).

- 10
- b) Essar Power Gujarat Ltd. ("EPGL") addressed a letter to the Applicant no. 1 on April 25, 2017 submitted that there will be no cash-flows available in the company due to under recovery in energy charges and requested for a long term viable solution to ensure sustainability of the company. EPGL has shut down its power plant for around one year and is not supplying power to GUVNL. EPGL through its letter dated 09.06.2017 stating the difficulties being faced due to inadequate cash-flows, requested the Applicant no. 1 to take early appropriate decision so that operations of EPGL can continue and consumers are not affected. EPGL in the letter dated 09.06.2017 has stated that net-worth of EPGL has been wiped out and the debt has increased to Rs. 5062 crores due to losses incurred so far. Due to continued financial difficulties, EPGL has shut down its plant for over a year. A copy of the letter dated 25.04.2017 is annexed and marked herein as "Annexure A-4 (at page 91 to 93).

A copy of the letter dated 09.06.2017 is annexed and marked herein as "Annexure A-5(at page 94 to 96).

- c) Adani Power Mundra Ltd (APML) has vide its letter dated 16.04.2017 addressed to the Applicant no. 1 submitted a proposal to take over 51% of equity of Mundra Project (Units 1 to 6) at value of Rs. 1 and purchase power from Mundra Project on cost plus basis. It was further stated as follows, *"Since the existing coal stock is at critical level, adequate for only 7-10 days of operation, and the Financial Institutions are not willing to extend any further support, we request GUVNL to procure coal and supply to APL and APL will supply power utilizing such coal and will charge only capacity charges as per PPA so that operations of Mundra Project is continued."* APML has addressed various letters to the Applicant dated 21.04.2017, 06.05.2017, and 12.05.2017 to have early resolution and decision on the proposals offered by it, in light of the severe power shortage issues. A copy of the letter dated 16.04.2017 is annexed and marked herein as **"Annexure A-6 (at page 97 to 100)**.

A copy of the letter dated 21.04.2017 is annexed and marked herein as **"Annexure A-7 (at page 101 to 102)**.

A copy of the letter dated 06.05.2017 is annexed and marked herein as **"Annexure A-8 (at page 103 to 104)**.

A copy of the letter dated 12.05.2017 is annexed and marked herein as "Annexure A-9 (at page 105 to 106).

6. The generators have represented to the Government of Gujarat (Applicant no. 2) and the GUVNL (Applicant no. 1) that they are unable to sustain operation of the power plant on a long-term basis to honor their obligations under the PPAs. Generators have made several representations seeking redressal of their grievances.
7. The Applicant no. 2 has also received representations from State Bank of India (SBI) to find a solution keeping in view their large exposure. SBI has stated that each of the power producers have huge borrowing from nationalized banks. The total monies lent and advanced by various banks to the three power projects is in excess of Rs. 30,000 Crores. The nationalized banks are therefore directly affected and concerned in as much as if the operations are shut, there will be a huge loss to the banks and to public monies.
8. Owing to the urgent situation being faced by all power producers and consequently by banks, Distribution Licensees and consumers, on 20.04.2017, Hon'ble Chief Minister of Gujarat has addressed a letter to the Hon'ble Minister of

Power, Union of India stating as follows, *"since the matter is of urgent nature and impacting supply of power to various states, your kind intervention at the earliest is solicited for resolving the issue by arranging a meeting of all the stakeholders, at your convenience."* Therefore, the State of Gujarat sought for intervention of the Central Government to resolve the crisis. A request was made to the Union of India to call for a meeting of all stakeholders. A copy of the letter dated 20.04.2017 is annexed and marked herein as **"Annexure A-10 (at page 107 to 108)**.

9. State Bank of India (SBI) addressed a letter dated 20.05.2017 to the Hon'ble Chief Minister of the State of Gujarat wherein it was stated as follows, *"....On behalf of the lenders, as it is in interest of all stakeholders, we request the Government of Gujarat to kindly consider taking control of these projects as early as possible to arrest the deterioration of these performing assets which have been supplying power to Gujarat and to prevent these assets from becoming NPAs."* Therefore, the banks/lenders sought intervention of the State government to arrest the problem of Non-Performing Assets by suggesting Government of Gujarat to take over the projects. A copy of the letter dated 20.05.2017 addressed by SBI to the Hon'ble Chief Minister of the State of Gujarat is

annexed and marked herein as "Annexure A-11 (at page 109 to 110).

10. In view of the aforesaid letters exchanged between power producers and other stakeholders and the specific request of the Hon'ble Chief Minister of the State of Gujarat, it was found necessary to call for and convene a meeting of all the stakeholders. On 20.06.2017 a meeting was held at New Delhi by the Ministry of Power, Union of India of all stakeholders including the representatives from the State Governments of Gujarat, Maharashtra, Punjab, Haryana, Rajasthan, representatives from various Banks and Financial Institutions (PFC & REC) and representatives from generating companies for resolution of the issues being faced by Imported coal based power plants.
11. Pursuant to the meeting held on June 20, 2017 a Working Group was constituted to find a solution through a consultative process, in relation to the projects and it consisted of members of all the procurer States, and banks represented by Punjab National Bank and Canara Bank with the SBI acting as a convener. NTPC was assigned the task of carrying out the technical due diligence of the three plants, while M/s Shardul Amarchand Mangaldas & Co. was appointed

as the legal consultant. Additionally, M/s Pricewaterhouse Coopers and KPMG were also appointed as independent consultants for carrying out the enterprise valuation of all three projects.

12. The Working Group Committee submitted report on January 10, 2018 after undertaking due diligence on technical, legal and financial aspects of these 3 Imported coal based power projects in Gujarat. The Working Group Committee recommended, while keeping in view of Energy Watchdog judgment, that the only way to resolve the issues being faced by the generators/ projects would be by way of the procurers addressing the issues of fuel cost, which could essentially be done in the following two ways:

- a) **Change in ownership** – The state government(s) may take majority stake in the projects. The change in ownership may be made effective from March 31, 2017 and the changes in the balance sheet after the effective date may be adjusted on the date of transaction. Along with change in ownership, the PPAs may be amended to address the issue of fuel cost to make the project viable. This may be done by making the fuel cost fully recoverable (as per section 62 of Electricity Act) or through some other mechanism as suggested in Central

Electricity Regulatory Commission (CERC) formula. In case of multiple procurers, the states may have joint ownership of the project. During Working Group discussions, the states were agreeable with State of Gujarat taking majority stake on their behalf as State of Gujarat is the major procurer state for all three projects and subsequently state of Gujarat may then enter into amended PPAs with respective states.

b) **Revision in PPA without change in ownership -**

The procurers may agree to make amendments in PPAs to address the issue of fuel cost to make the project viable. This may be done by making the fuel cost fully recoverable (as per section 62 of Electricity Act) or through some other mechanism as suggested in CERC formula. In this case, there will not be any change in the ownership structure of the projects.

13. Subsequent to the submission of report by the working group committee a meeting was held on 13.01.2018 at New Delhi which was presided by the Union Minister of Finance, Shri Arun Jaitley. In furtherance of the Working Group committee report and based on discussion held on 13.01.2018 at New Delhi at the level of Hon'ble Union Minister for Finance, the SBI on 17.01.2018 suggested that Government of Gujarat may form a High Powered Committee comprising of individuals

with proven expertise drawn from the Judiciary, Banking and Power Sectors (with Regulatory knowledge) to review the report of the Working Group and suggest means for early resolution of issues relating to these Projects.

14. Thereafter by enclosing copies of (i) Chairman, SBI letter dated 05.03.2018 and (ii) Ministry of Finance letter dated 05.04.2018, the Ministry of Power addressed a letter to Government of Gujarat on 13.04.2018 stating that being a lead procurer/major procurer in the three imported coal power plants based in Gujarat, the Government of Gujarat may take further actions for resolution of the issues related to these power plants

15. On July 3, 2018, through a Policy direction Government of Gujarat issued Resolution No. CGP-12-2018-166-K a High Power Committee was constituted for reviewing the report of Working Group and obtaining its recommendations, with regard to resolution of the issues of the imported coal based Power Projects located in the State of Gujarat. The resolution is extracted below:

"Resolution:

After careful consideration, the Government of Gujarat is, therefore, pleased to form a High Power Committee comprising of the following, for reviewing the report of working group and obtaining its recommendations, with high regard to

resolution of the issues of the Imported Coal based Power Projects, located in the State of Gujarat:

(i)	Hon. Mr. Justice R. K. Agrawal, Former Justice of Supreme Court	Chairman
(ii)	Shri S. S. Mundra, Former Deputy Governor, RBI	Member
(iii)	Dr. PramodDeo, Former Chairman, CERC	Member

***SBI Caps** – Mumbai shall provide secretarial support to the Committee.*

Suggestive terms of reference of High Power Committee:

- (i) *The Committee should examine and analyse all the relevant documents related to the Projects;*
- (ii) *Analyze and ascertain any hardship faced by these projects – If yes, mode and manner for mitigating the hardship faced by the Projects on account of Indonesian Regulations and subsequent orders/judgments in the matter;*
- (iii) *Call relevant parties for submission of details/clarification as required by the Committee;*
- (iv) *Contribution by each Stakeholders viz. Banks, Project Developers & Procurers by way of concessions for mitigating hardship;*
- (v) *Any other relevant issues which Committee would like to discuss and Study.*
- (vi) *Suggest sustainable solutions(s) – for resolving the issue; and*
- (vii) *The Committee may suggest any other measure for overall reduction in the cost of Generation of Power in the interest of the consumers."*

16. The High Power Committee conducted various meetings with all the stakeholders viz. Discoms/officials of procurer states, consumer representative groups, lenders and generators. It is important to note that the Appellant before this Hon'ble Court i.e. Energy Watchdog was also heard in the meeting held on 22.07.2018 by the HPC. After taking into account the views / suggestions of all the stakeholders the High Power Committee has submitted its submissions and recommendations has extracted below:

93/10/2018

"10.1 ...HPC while undertaking the analyses and making the recommendations in this Report has the 'consumer interest' paramount and this has been the focal point of their approach.

10.2 On the touchstone of 'consumer interest', it can be safely concluded that these Projects need to be salvaged. Sustainable operation of these Projects is of critical importance, essentially due to the fact that these Projects are instrumental in fulfilling the increasing demand of the procurer States. Consumer interest thus lies in ensuring that reliable and relatively inexpensive power is secured in a sustainable manner to meet current and future demand projections. This in turn would also ensure that the economic growth of the procurer States is not vitiated.

10.3 In contrast, if these Projects are not salvaged, consumer interest will be adversely affected on account of various reasons, gist of which are set out below:

- (i) the capacities from these Projects will have to be replaced from alternative sources and therefore, prices will further go up in view of the clear co-

relation between demand and supply;

- (ii) the cost of replacement power at today's market price would be higher;*
- (iii) setting up new projects in any event will be more expensive and will take another 4-5 years to commence supply;*
- (iv) increase in cost on account of procurement of power from in-efficient and old plants which would also have reliability issue;*
- (v) resorting to load shedding on account of difficulties associated with complete replacement of power from these Projects; and*
- (vi) any insolvency or liquidation of these Projects would hardly address the issues of power supply.*

10.4 *Therefore, ensuring sustainable operation of these Projects would only be possible by making them economically viable. It is however evident that the economic viability of these Projects has been severely impacted due to the promulgation of Indonesian Regulations 2010, which led to an unprecedented rise in the price of coal. This situation has further been exacerbated in view of the fact that the Generators could not pass the uncontrollable increase in the fuel prices on the Procurers under the PPAs.*

10.5 *In light of the findings as given by the Hon'ble Supreme Court in the Energy Watchdog Judgment, this HPC has sought to recommend solutions to mitigate the hardships being faced by the Generators only on the basis of 'consumer interest' which has been discussed at length in Chapter - VII. This primarily entails undertaking financial and commercial restructuring which is based on the premise that the burden of hardships will have to*

borne by all the stakeholders. The details of financial and commercial restructuring be followed in terms of Chapter – VIII which primarily envisage the following:

- (i) Reduction of capacity charge on account of sacrifice by lenders;
- (ii) Past losses to be borne by Developers and the financial resolution plan being applicable from a prospective cut-off date of 01st /15th October 2018;
- (iii) Option for extension of PPA tenure by another period of 10 years after the completion of the PPA tenure of 25 years;
- (iv) Offer for tie-up of free capacity; and
- (v) Sharing of profit from the Indonesian mines.

10.6 The financial and commercial resolution package that is accepted by the procurer State Governments will need to be incorporated as revised contractual provisions into the PPAs and such amendments to the PPA will need to be approved by the Appropriate Commission.

10.7 The option recommended for amending the PPAs are discussed in detail in Chapter-IX. The HPC accordingly recommends the implementation of the said option. Though the steps to be taken under this option are set out in detail at Section 9.10 of this Report, it is imperative to mention that as part of this option, a directive may be issued by the State Government(s) to their Discoms. The said directive would primarily state that the Discoms have to ensure adequate supply of energy on the least possible tariff and while doing so, they should consider whether the same can be achieved by way of facilitating and promoting the revival and rehabilitation of existing thermal capacities

already installed in the State, that may have, for diverse reasons, become financially stressed and economically unviable to be operated in a sustainable basis.

10.8 Draft Supplemental PPA for effecting Amendment to the PPAs

10.8.1 The HPC recognises that the economic, financial and commercial components of the recommendations of this HPC, as set out hereinabove, may be susceptible to conflicting interpretations. Accordingly, to ensure effective and accurate implementation of the HPC's recommendations, the HPC has crafted a model draft of the supplemental PPA for amending the PPAs of the Projects, incorporating the rehabilitation package in detailed legal and contractual language. It is re iterated that this model Supplemental PPA incorporates the intention and detailed application of the HPC's recommendations for the rehabilitation of the concerned Projects.

10.8.2 With the above premise, the HPC stipulates that the model draft of the supplemental PPA for amending the PPAs of the Projects, which is annexed hereto as Annexure – VI shall be taken as an integral part of this HPC report and shall be applied for interpreting the true intent, meaning and application of the detailed terms of this HPC Report.

A copy of the report dated 3.10.2018 by High Powered Committee is annexed and marked herein as "Annexure A-12 (at page 111 to 365).

17. In brief, keeping the interests of the consumers as paramount, the Committee has inter-alia recommended as follows:

- a) The agreement between the procurer i.e. Distribution Licensees and power producers would be amended to

reflect the tariff based on the report of the Committee in order to ensure the projects keep running without any benefit to the power producers and at the same time the interest of the banks who have lent monies and consumers are safeguarded. Only energy charge tariff will be marginally increased but the same would be limited to a Cap to ensure that the increase is not unlimited.

- b) **Sacrifice by Lenders:** At the same time, to keep the burden on end consumer low Lenders have agreed to sacrifice and reduce debt equivalent to reduction of 20 paise in the capacity charge for three Projects as indicated in the following table:

Sr. No.	Name of Project	PPA Capacity	Debt reduction
		MW	Rs. crore
1	Coastal Gujarat Power Ltd.	3800	4240
2	Adani Power Mundra Ltd.	3424	3821
3	Essar Power Gujarat Ltd.	1000	1154*

* Lenders' sacrifice may be higher as they may have to reduce the outstanding debt by around Rs. 2,324 crore (excluding undisbursed loan of Rs. 250 crore) to make the debt sustainable after implementation of this scheme. Over and above that, there is invoked BG of Rs. 250 crore and devolved LCs of Rs. 481 crore.

Additionally, the lenders will be reducing the interest rate also in all these three Projects. In case of EPGL, lenders may have to reduce the debt further to make this specific TPP sustainable.

- c) **Sacrifice by Promoters:** Promoters have agreed to bear the past losses to the extent of about Rs.21,249crore.
- d) Accordingly, this solution would be prospective and Generators have to bear accumulated losses as indicated in the table below.

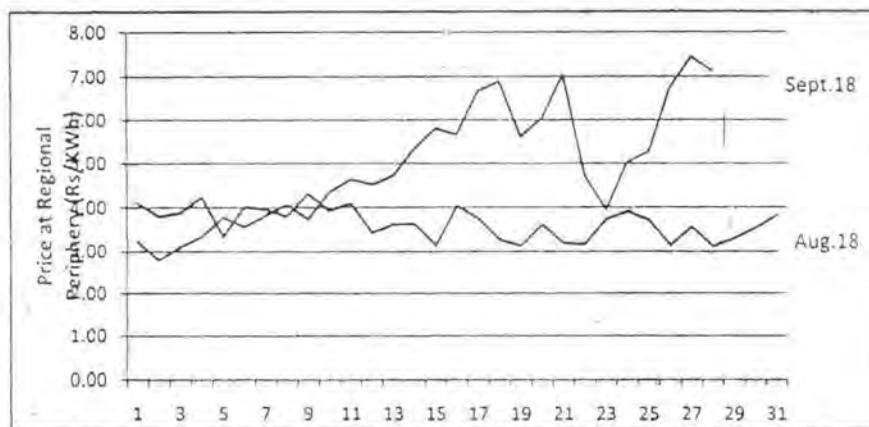
Name of Project	Accumulated Loss (Rs. Crs)
Coastal Gujarat Power Ltd.	8176
Adani Power Mundra Ltd.	9473
Essar Power Gujarat Ltd.	3600
Total	21249

In addition, Promoters have agreed to extend the tenure of the PPA for a further period of 10 years after the completion of the PPA tenure of 25 years, which will also benefit the end consumer in getting the power at a cheaper rate.

- e) Tariff as recommended by the Committee would be incorporated by amendment of PPA.
- f) Such an amendment is provided for in the PPA itself.
- g) The amendment would be subject to regulatory approval of the appropriate electricity regulatory commission.

18. With the above background it is submitted that the Applicant no. 1 may face shortage in power supply to the extent of 4805 MW in case supply of power on continuous basis by these 3 major imported coal based Power Plants namely CGPL, APML and EPGL is discontinued. The Applicant no. 1 was forced to resort to procure power from alternate sources such as Power Exchange, Short-term power purchases etc. incurring higher cost. The average cost of power procured from alternate sources in the last one year is very high as compared to the cost of power from these sources. A graph indicating prices in Indian Power Exchange (IEX) is shown below which indicates that the prices have touched even Rs. 7 per unit in the month of September,

2018.



19. To meet the shortage in power the Gujarat State Utilities have purchased power under short term at rates ranging between Rs. 4.25 – 4.50 per unit.
20. The Applicants submits that the average cost of power purchased from alternate sources is higher as compared to

purchase of power from these three imported coal based power plants even at revised cost suggested in the report of High Power Committee.

21. The Applicants also submits that the procurement of power on a long term basis to mitigate the non-availability of power from these projects would take 4 to 5 year time apart from being costlier based on the power procurement process conducted by other states recently through competitive bidding.
22. The Applicants states that in the PPA, which is a commercial contract *albeit* concluded on terms arrived at through the process of bidding, there are clauses which suggest that the parties to the contract did contemplate that an amendment may be made, and for which purpose, they agreed that any amendment would be by a written agreement, and also arrived at following the same procedure i.e. obtaining approval of the appropriate Commission where necessary. The Applicants states that this Hon'ble Court has not prohibited or prevented or stayed the operation of Clause 18.1 of respective PPA, which provides for amendment. The said clause of the PPA has been reproduced herein under,

Clause in CGPL PPA

18.1 Amendment

This Agreement may only be amended or supplemented by a written agreement between the Parties and after duly obtaining the approval of the Appropriate Commission, where necessary.

Clause in Essar PPA

18.1 Amendment

This Agreement may only be amended or supplemented by a written agreement between the Parties and after duly obtaining the approval of the Appropriate Commission, where necessary.

Clauses in APMuLPPAs:

"Bid-01 PPA

18.1 Amendment

This Agreement may only be amended or supplemented by a written agreement between the Parties.

Bid-02 PPA

18.1 Amendment

This Agreement may only be amended or supplemented by a written agreement between the Parties and after duly obtaining the approval of the Appropriate Commission, where necessary.

23. The Applicants have, in order to augment power supply, may
consider the recommendations of the report of the High
Powered Committee as the way forward. For doing so, a

modification in the tariff on the lines suggested by the HPC would have to be agreed between the parties. It would also require approval of the appropriate Commission and would become effective only if and when approved by the Commission.

24. However, in the course of meetings held by the HPC, the consumer groups (Energy Watchdog, Prayas Energy etc.) who attended, had raised objections on the ground that in the face of the judgment of this Hon'ble Court, any amendment would be illegal. One of them went to the extent to suggest that it could even be contrary to the judgment of this Court and would constitute a violation of it.

25. The proposal for amendment is, in the respectful submission of the Applicant, the fair course which would protect the interest of all stakeholders including the banks and would also ensure the availability of power in large quantities from these power plants, which is a vital necessity. The commercial insolvency of these plants would only result in more losses to bank and, as far as the Applicant is concerned, will result in a huge shortfall in the availability of electricity.

26. The said consumer groups who were Appellants before this Hon'ble Court have strongly objected to the proposed amendment of the PPA on the ground that in view of this Hon'ble Court's judgment of Energy Watchdog, it is impermissible for the committee to override the said judgment. In the meeting of 22.07.2018, consumer groups like Energy Watchdog, Mumbai Grahak Panchayat have objected, and their objections have been recorded as follows:

"Discussion with Energy Watchdog:

"..... He was of the view that there shouldn't be any attempt made to override the Supreme Court order."

Discussion with Mumbai Grahak Panchayat:

Adv Deshpande drew attention to paragraphs 40, 45 and 5 of the Supreme court order which would make it difficult to amend the PPAs."

It is the case of the Energy Watchdog, Prayas and other consumer groups that the judgment of this Hon'ble Court prohibits and bars amendment of the tariff under the PPA and therefore the tariff in the PPA has to remain frozen even if the power producers go into bankruptcy leading to huge losses to DISCOMS and consumers.

27. The Applicants are advised that view propounded by the Consumer Groups would lead to a unworkable situation. Since the contract is entered into between the generating company and the Distribution Licensees, the only other course open would be to push the power generating company into bankruptcy, then await the sale of its plant and then enter into a fresh agreement with any new entity which may choose to acquire the assets. If the continuation of this contract is made a condition, the asset has no commercial value. Considering all this and the various other aspects considered by the High Powered Committee, the Applicants are, therefore, advised to consider the recommendations of the High Powered Committee. However, considering the stance of the consumer organisations, the appropriate Commission may also feel unable to decide whether the judgment of this Hon'ble Court effectively precludes any amendment to the contract.

IMPACT ON PUBLIC INTEREST:

28. It is respectfully submitted that it has become necessary in public interest to amend the PPA, of course, subject to regulatory approval as under –
- a) Ensure steady supply of electricity to consumers at competitive cheaper rates;

- b) Avoid purchase of power from the open market at higher rates which is subject to uncertainties both in terms of price and availability.
- c) The benefit of terminal compensation payable by generators in terms of PPA is very meagre as compared to additional cost being incurred for purchase from alternate sources
- d) Avoid compulsion of take-over of the Power Plants by the State and run the same in case of failure/bankruptcy of the promoter;
- e) To safeguard the interest of the banks who have an exposure of over Rs.30,000crores on the three projects whose net-worth has been eroded.

29. In view of the said objections raised by the consumer groups which would also influence any decision by the regulatory commission while approving the amendment to the PPA, the applicants are approaching this Hon'ble Court for a clarification that the judgment of this Hon'ble Court does not in any manner prohibit or prevent operation of Clause 18.1 of the PPA, which provides for amendment subject to regulatory approval.

30. The applicants are also seeking directions of this Hon'ble Court to the Regulatory Commission in expeditiously decide and

adjudicate any application made before it for seeking amendment of the PPA without being influenced by judgment of this Hon'ble Court.

31. This application is moved bonafide and in the interest of justice.

PRAYER

It is, therefore, most respectfully prayed that this Hon'ble Court may be pleased to:

- a) Clarify the judgment of this Hon'ble Court in (2017) 14 SCC 80 to the extent that the same does not in any manner impinge upon to exercise the option to operate clause 18.1 and amend PPA in public interest;
- b) Pass directions to the concerned regulatory commissions to expeditiously dispose of applications seeking such amendment of PPA; and
- c) Pass any such further orders as it may deem fit in the facts and circumstances of the case.

FOR WHICH ACT OF KINDNESS THE APPLICANTS AS IN DUTY BOUND SHALL EVER PRAY.

FILED BY:

HEMANTIKA WAHI
ADVOCATE FOR THE APPLICANTS

New Delhi
Filed on: 8.10.2018

IN THE SUPREME COURT OF INDIA
 CIVIL APPELLATE JURISDICTION
 I.A. NOS _____ OF 2018
 IN
 CIVIL APPEAL NO. 5399-5400 OF 2016
 WITH
 CIVIL APPEAL NO. 5347-5348/2016

IN THE MATTER OF:

Energy Watchdog

... Appellant

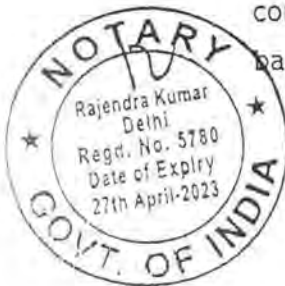
VERSUS

Central Electricity Regulatory Commission & Ors. ... Respondents

AFFIDAVIT

I, Kripalsinh Chudasama, Junior Engineer, Gujarat Urja Vikas Nigam Ltd., having my office at Sardar Patel Vidyut Bhavan, Race Course Circle, Vadodara, Gujarat, presently at New Delhi, do hereby solemnly affirm and state as under:-

1. That I am the Junior Engineer and being familiar with the facts of the case, I am competent to file this affidavit on behalf of the Corporation/Applicant.
2. That I have gone through the accompanying application for appropriate directions and clarification and I say that the contents thereof are true to the best of my knowledge and based on record of the case.



3. That the annexures are true copies of their respective originals.

Kahuladany
DEPONENT

VERIFICATION

I, the deponent abovenamed do hereby verify that the contents of the above affidavit are true to the best of my knowledge and belief and nothing is false and nothing material has been concealed therefrom.

Verified at New Delhi on this 8th day of October, 2018.



Kahuladany
DEPONENT

ATTESTED *Law*

RAJENDRA KUMAR
NOTARY, DELHI-R-5780
GOVERNMENT OF INDIA
SUPREME COURT OF INDIA
COMPOUND, NEW DELHI
REGD. NO. 5780
DATE OF EXPIRY 27/04/2023

CERTIFIED THAT THE CONTENTS EXPLAINED TO THE
DEPONENT EXECUTIVE WHO IS SEEMED PERFECT TO
UNDERSTAND & AFFIRMED DEPOSED BEFORE ME AT
DELHI ON 08 OCT 2018 IDENTIFIED BY *H. Law*
IDENTITY OF THE EXECUTIVE / DEPONENT WHO HAS
SIGNED IN MY PRESENCE

IDENTIFIED

MA 2705-06/2018

1

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

M.A. Nos.2705-2706 of 2018

In

Civil Appeal Nos.5399-5400 of 2016

Energy Watchdog

Appellant(s)

Versus

Central Electricity Regulatory Commission
and Others

Respondent(s)

O R D E R

Having heard learned counsel for the parties, including the learned Attorney General appearing for the State of Gujarat, we allow the application for impleadment of the State of Gujarat. We are of the view that, having perused the High Power Committee's report, which was given after our judgment dated 11th April, 2017, it will be open to the applicants to approach the Central Electricity Regulatory Commission (C.E.R.C.) for approval of the proposed amendments to be made to the Power Purchase Agreements (PPAs) in question.

Signature invalid

Digital Signature by
CHETA
Date: 16/04/2018
Reason:

We make it clear that our judgment will not stand in the way of maintaining such applications. We also make it clear that each of the consumer groups, who had appeared

before us and who have appeared before us today, will be heard on all objections that they may make to the proposed amendments to the PPA, after which, it will be open to the C.E.R.C. to decide the matter in accordance with law. Given the conclusions in the High Power Committee report, we are of the view that the C.E.R.C. should decide this matter as expeditiously as possible, and definitely within a period of eight weeks from today.

The miscellaneous applications are disposed of accordingly.

Pending applications, if any, stand disposed of.

.....J.
[Rohinton Fali Nariman]

.....J.
[Navin Sinha]

New Delhi
October 29, 2018.

ITEM NO.52+54

COURT NO.8

SECTION XVII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

M.A. Nos.2705-2706/2018 in Civil Appeal Nos.5399-5400/2016

ENERGY WATCHDOG

Petitioner(s)

VERSUS

CENTRAL ELECTRICITY REGULATORY COMMISSION & ORS. Respondent(s)

(With appln.(s) for permission to file impleadment and directions and clarifications)

WITH Contempt Petition (Civil) Diary No.39296/2018

(With appln.(s) for permission to file contempt petition)

Date : 29-10-2018 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN
HON'BLE MR. JUSTICE NAVIN SINHA

For Petitioner(s) Mr. K.K. Venugopal, AG
Mr. Mukul Rohatgi, Sr. Adv.
Ms. Hemantika Wahi, AOR
Ms. Jesal Wahi, Adv.
Ms. Puja Singh, Adv.
Ms. Vishakha, Adv.

D.No.39296/2018 Mr. V. Shekhar, Sr. Adv.
Mr. Pankaj Sharma, Adv.
Mr. Shobhit Gaur, Adv.
Mr. Prithviraj Singh, Adv.
Mr. Sashank Shekhar, Adv.
Mr. Manjeet Kirpal, AOR

For Respondent(s) Dr. A.M. Singhvi, Sr. Adv.
Mr. Amit Kapur, Adv.
Mr. Abhishek Munot, Adv.
Mr. Kunal Kaul, Adv.
Mr. Pukhrambam Ramesh Kumar, AOR
Mr. K. Amrit Kumar Sharma, Adv.

Mr. Nikhil Nayyar, AOR
Mr. N. Sai Vinod, Adv.
Mr. Dhananjay Baijal, Adv.
Mr. Divyanshu Rai, Adv.
Mr. Naveen Hegde, Adv.

Mr. G. Umapathy, Adv.
Mr. Rakesh K. Sharma, Adv.
Mr. Aditya Singh, Adv.

Ms. Ashwati Balraj, Adv.
Mrs. Manik karanjawala, Adv.
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Ms. Mansi Kapur, Adv.

UPON hearing the counsel the Court made the following
O R D E R

M.A. Nos.2705-2706/2018 in Civil Appeal Nos.5399-5400/2016

The miscellaneous applications are allowed in terms
of the signed order.

Pending applications, if any, stand disposed of.

Contempt Petition (C) Diary No.39296 of 2018 In
Civil Appeal Nos.5399-5400 of 2016

In view of the order passed in M.A. Nos.2705-2706 of 2018, permission to file contempt petition is rejected.

(Chetan Kumar)

A.R.-cum-P.S.

(Tapan Kumar Chakraborty)

Court Master

(Signed order is placed on the file)

February 2007

Bid No. 03/LTPP/2006

"Power Purchase Agreement"

Between

Gujarat Urja Vikas Nigam Limited

And

Essar Power Limited

For

Supply of 1000 MW on Long Term Basis



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repugnant to the context or meaning thereof include its subsidiary company, affiliate, successors and assigns) as party of the second part.

Each of the "Procurer" and "Selected Bidder" are individually referred to as "Party" and collectively to as the "Parties".

Whereas:

1. In accordance with the Competitive Bidding Guidelines (as defined hereunder), the Procurer had initiated a competitive bidding process, namely Bid No 03/LTPP/2006, through issue of RFQ and RFP for selecting Successful Bidders to supply power on a long-term basis.
2. Pursuant to the said bidding process, Essar Power Limited has been selected by the Procurer, as a Selected Bidder to sell and supply electricity in bulk to the Procurer from 2 X 600 MW Imported Coal based Power Plant at Vadinar, Gujarat in accordance with the terms of this Agreement.
3. As envisaged in the RFP, the Parties have agreed to sign this Power Purchase Agreement setting out the terms and conditions for the sale of Contracted Capacity and supply of electricity by the Seller to the Procurer.
4. All the other RFP Documents have been executed by the Procurer and the Seller simultaneously with the signing of this Agreement.

Now therefore, in consideration of the premises and mutual agreements, covenants and conditions set forth herein, it is hereby agreed by and between the Parties as follows:



1 ARTICLE 1: DEFINITIONS AND INTERPRETATION

1.1 Definitions

The terms used in this Agreement, unless as defined below or repugnant to the context, shall have the same meaning as assigned to them by the Electricity Act, 2003 and the rules or regulations framed there under, including those issued/framed by Appropriate Commission (as defined hereunder), as amended or re-enacted from time to time.

The following terms when used in this Agreement shall have the respective meanings, as specified below:

"Act" or "Electricity Act 2003"	means the Electricity Act 2003 or any amendments made to the same or any succeeding enactment thereof;
"Agreed Form"	means, in relation to any document, the form of the said document most recently agreed to by the Parties and initialled by them for identification;
"Agreement" or "Power Purchase Agreement" or "PPA"	means this document including its recitals and Schedules;
"Appropriate Commission"	means the Gujarat Electricity Regulatory Commission constituted under the Gujarat Electricity Industry (Regulation and Reorganisation) Act, 2003 or such other succeeding authority or commission as may be notified by Government of Gujarat from time to time;
"Availability Based Tariff" or "ABT"	Shall mean all the regulations contained in the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2004 or Gujarat Electricity Regulatory Commission Order No. 3 of 2006, "Bringing Generating Stations of Gujarat State, Distribution Licensees and other persons under the purview of Intra-State Availability Based Tariff (Intra-State ABT)", as amended or revised from time to time, to the extent applied as per the terms of this Agreement;
"Availability Factor" or "Availability"	shall have the meaning ascribed thereto in ABT (provided that in place of Installed capacity and Normative auxiliary consumption it shall be Contracted Capacity) and shall, for the purposes of this Agreement, be determined at the Delivery Point;
"Available Capacity"	shall have the meaning ascribed thereto in ABT and shall, for the purposes of this Agreement, be determined at the

Gujarat Urja Vikas Nigam Limited



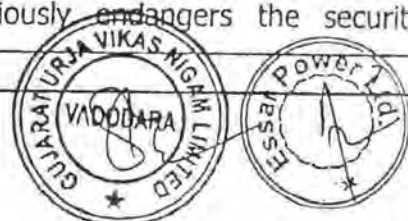
	Delivery Point;
"Bid"	shall mean Non-Financial Bid and Financial Bid submitted by the Bidders, in response to the RFP, in accordance with the terms and conditions of the RFP;
"Bid RFP Documents" or "Bidding RFP Documents"	means the RFQ and RFP along with all their attachments and any amendments thereto or clarifications thereof.
"Bid Deadline"	shall mean the last date for submission of the Bid in response to the RFP, specified in Clause 4.5 of the RFP;
"Bidding Guidelines" or "Competitive Bidding Guidelines"	shall mean Guidelines for Determination of Tariff by Bidding Process for Procurement of Power by Distribution Licensees, issued by: Ministry of Power, Government of India under The Electricity Act, 2003 on January 19, 2005 and as amended from time to time till Bid Deadline;
"Bill Dispute Notice"	means the notice issued by a Party raising a Dispute regarding a Monthly Bill or a Supplementary Bill issued by the other Party;
"Business Day"	means with respect to Seller and Procurer, a day other than Sunday or a statutory holiday, on which the banks remain open for business in the place in which the Procurer's registered office is located;
"Capacity Charge" or "Capacity Charges"	shall have meaning ascribed thereto in Schedule 6;
"Capacity Notice"	shall have the meaning ascribed thereto under ABT or the Grid Code;
'Capital Cost'	means the lower of the following: actual capital cost of the Project on a relevant date which shall not be later than the Commercial Operation Date of the Power Station, as certified by the auditors appointed jointly by the Seller and the Procurer; or total project cost of the Project as set forth in the Financing Agreements, provided that Capital Cost shall always exclude cost overruns arising due to a Seller Event of Default, or costs due to events for which compensation has been received by Seller from the Procurer or Insurers or Third Parties; Provided further that the Capital Cost in relation to a Unit

'Capital Structure Schedule' "Central Transmission Utility" or "CTU" "CERC"	shall be the total Project Cost allocated in proportion to the Contracted Capacity of the said Unit. shall mean sources of finance used to finance the Capital Cost as provided in the Financing Agreements; shall have the meaning ascribed thereto in the Electricity Act, 2003; means the Central Electricity Regulatory Commission, as defined in the Electricity Act, 2003, or its successors;
"Change in Law" / "Commercial Operation Date" or "COD"	shall have the meaning ascribed thereto in Article 13.1.1; means, in relation to a Unit, the date on which the supply of Electrical Output to the Procurer, equivalent to the Contracted Capacity of the Unit (as offered by the Seller in the Bid) and in relation to the Contracted Capacity, the date on which the supply of Electrical Output to the Procurer, equivalent to the Contracted Capacity of all the Units (as offered by the Seller in the Bid), commences on commercial basis Provided that Commercial Operation¹ Date shall occur only after the Procurer receives a Final Test Certificate of the Independent Engineer as per the provisions of Article 6.2.6, in relation to a Unit, for the Unit and in relation to the Contracted Capacity, for all the Units;
"Commissioning" or "Commissioned" with its grammatical variations "Commissioning Tests" or "Commissioning Test"	means, in relation to a Unit, that the Unit or in relation to the Power Station, all the Units of a Power Station have passed the Commissioning Tests successfully; means the Tests provided in Schedule 4 herein;
"Commissioned Unit" "Construction Contractor/s"	means the Unit in respect of which COD has occurred; means one or more main contractors, appointed by the Seller to design, engineer, supply, construct and commission the Project;
("Construction Period"	means the period from (and including) the date upon which the Construction Contractor is instructed or required to commence work under the Construction Contract up to (but not including) the Commercial Operation Date of the Unit in relation to a Unit and of all the Units in relation to a Power Station;
"Consultation Period"	means the period, commencing from the date of issue of a Seller Preliminary Default Notice or a Procurer Preliminary Default Notice as provided in Article 14 of this Agreement,



	for consultation between the Parties to mitigate the consequence of the relevant event having regard to all the circumstances;
"Contract Year"	means the period beginning on the date of this Agreement and ending on the immediately succeeding March 31 and thereafter each period of 12 months beginning on April 1 and ending on March 31 provided that : in the financial year in which Scheduled COD would have occurred, a Contract Year shall end on the date immediately before the Scheduled COD and a new Contract Year shall begin once again from the Scheduled COD and end on immediately succeeding March 31 and provided further that the last Contract Year of this Agreement shall end on the last day of the term of this Agreement;
	Provided that for the purpose of payment, the tariff will be the Quoted Tariff for the applicable Contract Year as per Schedule 10;
"Contracted Capacity"	means (i) 500 MW from the First Unit of Imported Coal Based Power Plant at Vadinar (ii) 500 MW from the Second Unit of Imported Coal Based Power Plant at Vadinar, Gujarat net capacity at the Delivery Point, and in relation to the Contracted Capacity as a whole means 1000 MW net capacity at the Delivery Point, or such capacities as may be determined in accordance with Article 6.2.10 or Article 8.2 of this Agreement;
"Control Centre" or "Nodal Agency"	means the RLDC or SLDC or such other load control centre designated by the Procurer from time to time through which the Procurer shall issue Dispatch Instructions to the Seller for the Contracted Capacity;
"Declared Capacity"	In relation to a Unit or the Contracted Capacity at any time means the net capacity upto the Unit or the Contracted Capacity at the relevant time (expressed in MW at the Delivery Point) as declared by the Seller in accordance with the Grid Code and dispatching procedures as per the Availability Based Tariff;
" Delivery Point"	means the points of delivery for fulfilling the obligation of the Seller to deliver the contracted electrical output/energy to Procurer;

	provided that such Delivery Point shall be the Generator-Gujarat STU Interconnection Point in case the Generator is connected to the Gujarat STU;
	provided that such Delivery Point shall be the Gujarat STU-CTU Interconnection Point in all other cases;
"Developer"	means the Seller or a company with which the Seller has entered into back to back agreement for the Contracted Capacity.
"Direct Non-Natural Force Majeure Event"	shall have the meaning ascribed thereto in Article 12.3.
"Dispute"	means any dispute or difference of any kind between the Procurer and the Seller, in connection with or arising out of this Agreement including any issue on the interpretation and scope of the terms of this Agreement as provided in Article 17;
"Dispatch Instruction"	means any instruction issued by the Procurer through the respective SLDC and RLDC to the Seller, in accordance with applicable Grid Code and this Agreement;
"Due Date"	means the <u>thirtieth (30th) day</u> after a Monthly Bill or a Supplementary Bill is received and duly acknowledged by the Procurer (or, if such day is not a Business Day, the immediately succeeding Business Day) <u>by which date such bill is payable by the Procurer;</u>
"Effective Date"	means the date of signing of this Agreement by last of all the Parties;
"Electricity Laws"	means the Electricity Act, 2003 and the rules and regulations made thereunder from time to time along with amendments thereto and replacements thereof and any other Law pertaining to electricity including regulations framed by the Appropriate Commission;
"Electrical Output" or "Energy Output"	means the net electrical output at the Delivery Point, as expressed in kWh;
"Emergency"	means a condition or situation that, in the opinion of the Procurer or RLDC or SLDC or the agency responsible for operating and maintaining the Interconnection and Transmission Facilities or the transmission company, as the case may be, poses a significant threat to the Procurer's or the said agency's or transmission company's ability to maintain safe, adequate and continuous electrical service to its customers, or seriously endangers the security of

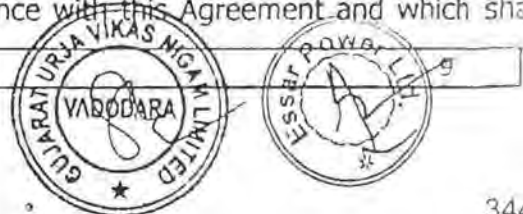


"Energy Charges" or "Fuel Charge"	persons, plant or equipment; Shall have the meaning ascribed to this term under Schedule 6;
"Expiry Date"	means for the 25 th anniversary of the Commercial Operation Date in relation to the Contracted Capacity. For the avoidance of doubt, in case the COD in relation to the Contracted Capacity occurs on June 1, 2013, then the 25th anniversary of the Scheduled COD in relation to the Contracted Capacity shall occur on June 1, 2038, i.e. in the Contract Year 2038-39;
"Final Test Certificate"	Means a certificate of the Independent Engineer certifying and accepting the results of a Commissioning Test/s in accordance with Article 6.2.6 of this Agreement; or a certificate of the Independent Engineer certifying the result of a Repeat Performance Tests in accordance with Article 8.2.1 of this Agreement;
"Financial Closure" or "Financial Close"	Means the execution and delivery of all the Financing Agreements for the Total Debt Amount required for the Project and fulfillment of conditions precedents and waiver, if any, of any of the conditions precedent for the initial draw down of funds there under;
"Financing Agreements"	means all the loan agreements, notes, indentures, security agreements, letters of credit and other documents relating to the financing of the Project on or before the COD of the Power Station, as may be amended, modified, refinanced or replaced from time to time, but without in anyway increasing the liabilities of the Procurer therein;
"Force Majeure"	shall have the meaning ascribed thereto in Article 12.3;
"Forced Outage"	shall have the meaning ascribed thereto in Grid Code;
"Fuel"	means primary fuel used to generate electricity namely, imported coal;
"Fuel Supply Agreements"	means the agreement(s) entered into between the Seller/Developer and the Fuel Supplier for the purchase, transportation and handling of the Fuel, required for the operation of the Power Station.
"Functional Specifications"	means the technical requirements and parameters described in Schedule 3 of this Agreement and as provided in Grid Code relating to the operation, maintenance and dispatch of any Unit and the Power Station.



"Grid Code"	means any set of regulations or codes as amended and revised from time to time and legally binding on the Sellers' and Procurer's governing the operation of the Grid System or any succeeding set of regulations or code;
"Grid System"	means (a) the Interconnection and Transmission Facilities and any other transmission or distribution facilities through which the Procurer supplies electricity to its customers or (b) the transmission company transmits electricity to the Procurer or (c) the Interconnection and Transmission Facilities and any other transmission facilities through which the Seller supplies electricity to the Procurer/CTU/STU;
"Independent Engineer"	means an independent consulting engineering firm or group appointed jointly by the Procurer and the Seller to carry out the functions in accordance with Article 4.7.1, Article 6, Article 12 and Article 8 herein. provided that separate Independent Engineer may be appointed for the purposes of Article 4.7.1, Article 6, Article 12 and Article 8; provided further that separate Independent Engineer may be appointed for each financial year for the purposes of Article 8, and in such case, such Independent engineer shall be appointed at least ninety (90) days prior to the beginning of the financial year.
"Indirect Non-Natural Force Majeure Event"	Shall have the meaning ascribed thereto in Article 12.3.
"Indian Governmental Instrumentality"	means the Government of India (GOI), Government of Gujarat, Government where the Project is located and any ministry or, department of or, board, agency or other regulatory or quasi-judicial authority controlled by GOI or Government of Gujarat or Government where the Project is located and includes the Appropriate Commission;
"Initial Consents"	Shall mean the consents listed in Schedule 1;
"Initial Performance Retest Period"	shall have the meaning ascribed thereto in Article 6.2.8 of this Agreement;
"Interconnection Facilities" or	Means the facilities on the Procurer's side of the Interconnection Point for receiving and metering Electrical
"Interconnection and	Output in accordance with this Agreement and which shall

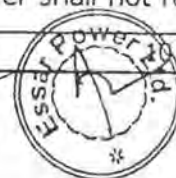
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Transmission Facilities"	include, without limitation, all other transmission lines and associated equipment, transformers and associated equipment, relay and switching equipment and protective devices, safety equipment and, subject to Article 9.1, the Metering System required for the Project.
	The Interconnection Facilities also include the facilities for receiving power at the Delivery Point where the transmission line from the Power Station Switchyard end is injecting power into the transmission network (including the dedicated transmission line connecting the Power Station with the transmission/CTU network);
"Interconnection Points"	means the points at which a Generator's Electrical Output is transmitted to a Transmission Network or the points at which Electrical Energy flows from the one Transmission Network to another;
"Invoice" or "Bill"	means either a Monthly Tariff Invoice, a Supplementary Invoice or a Procurer Invoice;
"Late Payment Surcharge"	shall have the meaning ascribed thereto in Article 11.3.5;
"Law"	means, in relation to this Agreement, all laws including Electricity Laws in force in India and any statute, ordinance, regulation, notification or code, rule, or any interpretation of any of them by an Indian Governmental Instrumentality and having force of law and shall further include all applicable rules, regulations, orders, notifications by an Indian Governmental Instrumentality pursuant to or under any of them and shall include all rules, regulations, decisions and orders of the Appropriate Commission ;
"Lenders"	means the banks, other financial institutions, multilateral agencies, RBI registered non banking financial companies, mutual funds and agents or trustees of debenture / bond holders, including their successors and assignees, who have agreed as on or before COD of the Power Station to provide the Seller with the senior debt financing described in the Capital Structure Schedule, and any successor banks or financial institutions to whom their interests under the Financing Agreements may be transferred or assigned:

Provided that, such assignment or transfer shall not relieve

Gujarat Urja Vikas Nigam Limited



	the Seller of its obligations to the Procurer under this Agreement in any manner and shall also not lead to an increase in the liability of the Procurer;
"Letter of Credit" or "L/C"	shall have the meaning ascribed thereto in Article 11.4.1;
"Meters" or "Metering System"	Means meters used for accounting and billing of electricity in accordance with Central Electricity Authority (Installation and Operations of Meters) Regulations, 2006, Grid Code and ABT, as amended from time to time;
"Maintenance Outage"	shall have the meaning as ascribed to this term as per the provisions of the Grid Code.
"MCR"	means gross Power Station or Unit Maximum Continuous Rating as defined in the Grid Code;
"Minimum Offtake Guarantee"	means <u>guaranteed offtake of sixty five per cent (65%)</u> of the total Contracted Capacity during a Contract Year.
"Month"	Means a period 30 days from (and excluding) the date of the event where applicable, else a calendar month;
"Monthly Bill" or "Monthly Invoice"	Means a monthly invoice comprising Capacity Charges (applicable after COD of the first unit) and Energy Charges, including incentive and penalty, as per Schedule 7 hereof;
"Notice to Proceed" or "NTP"	Means the date on which the Seller shall fulfill the condition as contained in Article 3.1.2 (iii) of this Agreement in accordance with the provisions of this Agreement.
"Natural Force Majeure Event"	Shall have the meaning ascribed thereto in Article 12.3.
"Non-Natural Force Majeure Event"	Shall have the meaning ascribed thereto in Article 12.3.
"Normative Availability"	Means equal to eighty per cent (80%) Availability at the Delivery Point on Contract Year basis;
"Operating Period"	in relation to a Unit or the Contracted Capacity means the period from respective COD, until the expiry or earlier termination of this Agreement in accordance with Article 2 of this Agreement;
"O&M Contract" or "O&M Contracts"	Means the contract/s entered into by the Seller with the Operator or Operators, if any;
"Operating Procedures"	Shall have the meaning ascribed thereto in Grid Code;
"Operator" or "Operators"	Means one or more contractors appointed as operator of power generation facilities of the Power Station pursuant to an O&M contract, if any;
"Party" and "Parties"	Shall have the meaning ascribed thereto in the recital to

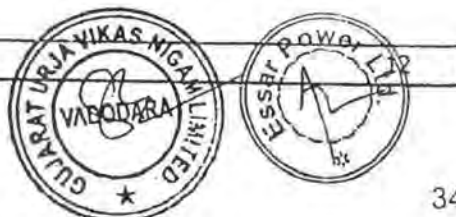
Gujarat Urja Vikas Nigam Limited



11

	this Agreement;
"Performance Guarantee"	Means the Irrevocable unconditional bank guarantee, submitted and to be submitted by the Seller or by the Selected Bidder on behalf of the Seller to the Procurer from a bank mentioned in Annexure 9 of the RFP, in the form attached hereto as Schedule 12, in accordance with Article 3 of this Agreement and which shall include the additional bank guarantee furnished by the Seller under this Agreement;
"Performance Test "	Means the test carried out in accordance with Article 1.1 of Schedule 4 of this Agreement;
"Preliminary Default Notice"	Shall have the meaning ascribed thereto in Article 14 of this Agreement;
"Power Station"	Means the: ▪ Imported coal power generation facility comprising of any or all the Units; ▪ any associated fuel handling, treatment or storage facilities of the power generation facility referred to above; ▪ any water supply, treatment or storage facilities required for the operation of the power generation facility referred to above; ▪ the ash disposal system including ash dyke, if any; ▪ township area for the staff colony; and ▪ bay/s for transmission system in the switchyard of the power station, ▪ all the other assets, buildings/structures, equipments, plant and machinery, facilities and related assets required for the efficient and economic operation of the power generation facility; whether completed or at any stage of development and construction or intended to be developed and constructed as per the provisions of this Agreement.
"Project"	means the Power Station or Power Stations, as the case may be, undertaken for design, financing, engineering, procurement, construction, operation, maintenance, repair, refurbishment, development and insurance by the Seller for supply of Power to the Procurer in accordance with the terms and conditions of this Agreement;

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"Project Documents"	Mean
	1. Construction Contracts; 2. Fuel Supply Agreements, including the Fuel Transportation Agreement, if any; 3. O&M contracts; 4. RFP Documents; and 5. any other agreements designated in writing as such, from time to time, by the Procurer and the Seller;
"Prudent Utility Practices"	means the practices, methods and standards that are generally accepted internationally from time to time by electric utilities for the purpose of ensuring the safe, efficient and economic design, construction, commissioning, operation and maintenance of power generation equipment which practices, methods and standards shall be adjusted as necessary, to take account of: ▪ operation and maintenance guidelines recommended by the manufacturers of the plant and equipment to be incorporated in the Project; ▪ the requirements of Indian Law; and ▪ the physical conditions at the Site;
Quoted Capacity Charge	Shall mean the sum total of Quoted Non Escalable Capacity Charge and Quoted Escalable Capacity Charge;
Quoted Energy Charge	Shall mean the sum total of Quoted Non Escalable Energy Charge, Quoted Escalable Energy Charge;
Quoted Non Escalable Capacity Charge	shall have the meaning as ascribed thereto in Schedule 10;
Quoted Escalable Capacity Charge	shall have the meaning as ascribed thereto in Schedule 10;
Quoted Non Escalable Fuel Energy Charge	shall have the meaning as ascribed thereto in Schedule 10;
Quoted Escalable Fuel Energy Charge	shall have the meaning as ascribed thereto in Schedule 10;
Quoted Non Escalable Transportation Energy Charge	shall have the meaning as ascribed thereto in Schedule 10;
Quoted Escalable Transportation Energy Charge	shall have the meaning as ascribed thereto in Schedule 10;
Quoted Non Escalable Fuel Handling Energy	shall have the meaning as ascribed thereto in Schedule 10;



Charge	
Quoted Escalable Fuel Handling Energy Charge	shall have the meaning as ascribed thereto in Schedule 10;
Quoted Tariff	Shall mean the sum total of Quoted Energy Charges and Quoted Capacity Charge;
"Repeat Performance Test"	Shall have the meaning ascribed thereto in Article 8.1 of this Agreement;
"Revised Scheduled COD"	Shall have the meaning as ascribed thereto in Article 3.1.2 (viii);
"RPC/SPC"	Means the relevant Regional Power Committee/State Power Committee or a committee constituted as defined in the Electricity Laws;
"RBI"	Means Reserve Bank of India;
"Regional/State Energy Accounts" or "REA/SEA"	Means as defined in the relevant Grid Code and issued by the relevant RPC/SPC secretariat or other appropriate agency for each Week and for each Month (as per their prescribed methodology), including the revisions and amendments thereof;
"RLDC "	Means the relevant Regional Load Dispatch Centre as defined in the Electricity Act, 2003, in the region in which the Procurer is located;
"RFP"	shall mean Request For Proposal dated 07 th July, 2006 as amended from time to time along with all schedules, Annexures and RFP Documents attached thereto, issued by the Procurer and shall include any modifications, amendments or alterations thereto.
RFP Documents	shall mean the following documents to be entered into by the parties to the respective agreements: ▪ PPA; ▪ Default Escrow Agreement; and ▪ any other agreement(s) designated as such, from time to time by the Procurer;
"RFQ"	shall mean the Request for Qualification document issued by Gujarat Urja Vikas Nigam Limited for Tariff Based Bidding Process for Procurement of Power on Long-Term Basis and shall include any modifications, amendments or alterations thereto and clarifications issued regarding the same;
"Rupees" or "Rs."	means the lawful currency of India;
"SBAR"	means the prime lending rate per annum applicable for



	loans with one (1) year maturity as fixed from time to time by the State Bank of India. In the absence of such rate, any other arrangement that substitutes such prime lending rate as mutually agreed to by the Parties;
"Selectee"	means a new company (i) proposed by the Lenders pursuant to Schedule 14 hereof and approved by the Procurer (ii) or proposed by the Procurer in accordance with Schedule 14 hereof and approved by the Lenders, for substituting the Seller for the residual period of the PPA by amendment of the PPA or by execution of a fresh PPA in accordance with the terms and conditions contained in the said Schedule.
"Selected Bid"	means the Bid of a Selected Bidder as accepted by the Procurer, copy of which is attached herewith and marked as Schedule 13;
"Selected Bidder" or "Successful Bidder"	shall mean a Bidder selected pursuant to the RFP to supply 1000 MW of power to the Procurer through the Seller as per the terms of PPA and other RFP Documents;
"Seller"	shall, till the assignment of the PPA to the SPV in accordance with Article 16.1A, mean the Selected Bidder and thereafter the SPV as defined in Article 16.1A
"GERC"	means the Gujarat Electricity Regulatory Commission or its successors;
✓ "Scheduled COD" or "Scheduled Commercial Operation Date"	means (i) for the first Unit, 48 months from the Effective Date and (ii) for the second Unit, 54 months from the Effective Date or such other dates from time to time, specified in accordance with the provisions of this Agreement;
✓ "Scheduled Connection Date"	Shall mean the date falling maximum 30 days before the Scheduled Synchronisation Date of first Unit; ✓
"Scheduled Energy" or "Scheduled Generation"	Means scheduled energy or scheduled generation as defined in the ABT and shall be determined at the Delivery Point;
"Scheduled Outage"	shall have the meaning ascribed to this term as per the provisions of the Grid Code;
✓ "Scheduled Synchronisation Date"	means in relation to a Unit, the date, which shall be maximum of one hundred and eighty (180) days prior to the Scheduled Commissioning of the respective Unit; ✓
"Settlement Period"	means the time block for issue of daily generation and drawal schedules as provided in ABT;

"SLDC"	means the relevant State Load Dispatch Centre as defined in the Electricity Laws, in the State where the Procurer's registered office is located;
"State Transmission Utility" or "STU"	shall have the meaning ascribed thereto in the Electricity Act 2003;
"Supplementary Bill"	Means a bill other than a Monthly Bill raised by any of the Parties in accordance with Article 11;
"Tariff Payment"	Means the payments under Monthly Bills as referred to in Schedule 7 and the relevant Supplementary Bills;
"Tariff"	Means the tariff as computed in accordance with Schedule 6;
"Tested Capacity"	in relation to a Unit, or Units or the Contracted Capacity as a whole (if all the Units have been Commissioned) means the results of the most recent Performance Test or Repeat Performance Test carried out in relation to the Unit, or Units or the Contracted Capacity in accordance with Article 6, Article 8 and Schedule 4 of this Agreement;
"Termination Notice"	shall have the meaning ascribed thereto in Article 14 of this Agreement;
"Term of Agreement"	shall have the meaning ascribed thereto in Article 2.1;
"Total Debt Amount"	Means the sum of the following amounts, expressed in Rupees (with all amounts denominated in currencies other than Rupees being converted to Rupees at the Reference Exchange Rate, the selling rate in Rupees for the Foreign Currency on the relevant day, as notified by the State Bank of India as its TT Rate at 12:00 noon on the NTP: (a) the principal amount of the senior debt incurred by the Seller (as per the terms of the Financing Agreements) to finance the Project according to the Capital Structure Schedule which remains outstanding on the date of issuance of Substitution Notice by the Lender after taking account of any senior debt repayments which could have been made out of the Monthly Tariff Payments received by the Seller on or before the date of issuance of Substitution Notice by the Lender as per the terms provided in the Financing Agreements ; and (b) all accrued interest and financing fees payable under the Financing Agreements on the amounts referred to in (a) above from the date of the Capacity Charge payment (as specified in paragraph 1.2 of Schedule 6



hereof) immediately preceding the date of issuance of Substitution Notice by the Lender or, if the Capacity Charges have not yet fallen due to be paid, from the most recent date when interest and financing fees were capitalised, and

(c) if this Agreement is terminated during the Construction Period, any amounts owed to the Construction Contractor for work performed but not paid for under the Construction Contract (other than amounts falling due by reason of the Seller's default);

"Unit" means one steam generator, turbine generator and associated auxiliaries;

"Unscheduled Interchange" or "UI" means as defined in the relevant CERC/GERC Regulations;

"Week" means a calendar week commencing from 00:00 hours of Monday, and ending at 24:00 hours of the following Sunday;

"Wheeling Charges" or "Transmission Charges" (i) are the charges paid by the Seller to the CTU or STU or any other agency for the transfer of power from the Generator bus-bar to the Delivery Point.

(ii) are the charges paid by the Procurer to the Gujarat STU or any other agency for the transfer of power from the Delivery Point to the Procurer's customers' network.

1.2 Interpretation

Save where the contrary is indicated, any reference in this Agreement to:

1.2.1 A "Recital", an "Article", a "Schedule" and a "paragraph/Clause" shall be construed as a reference to a Recital, an Article, a Schedule and a paragraph/clause respectively of this Agreement.

1.2.2 An "affiliate" of any party shall mean a company that either directly or indirectly controls or is controlled by or is under common control of the same person which controls the concerned party; and control means ownership by one company of at least twenty six percent (26%) of the voting rights of the other company.

1.2.3 "**this Agreement**" shall be construed as including a reference to its Schedules and Annexes;



- 1.2.4 A "crore" means a reference to ten million (10,000,000) and a "lakh" means a reference to one tenth of a million (1,00,000);
- 1.2.5 An "encumbrance" shall be construed as a reference to a mortgage, charge, pledge, lien or other encumbrance securing any obligation of any person or any other type of preferential arrangement (including, without limitation, title transfer and retention arrangements) having a similar effect.
- 1.2.6 "indebtedness" shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- 1.2.7 A "person" shall be construed as a reference to any person, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and a person shall be construed as including a reference to its successors, permitted transferees and permitted assigns in accordance with their respective interests.
- 1.2.8 The "winding-up", "dissolution", "insolvency", or "reorganization" of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the Law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganization, dissolution, arrangement, protection or relief of debtors.
- 1.2.9 Words importing the singular shall include the plural and vice versa.
- 1.2.10 This Agreement itself or any other agreement or document shall be construed as a reference to this or to such other agreement or document as it may have been, or may from time to time be, amended, varied, novated, replaced or supplemented.
- 1.2.11 A Law shall be construed as a reference to such Law including its amendments or re-enactments from time to time.
- 1.2.12 A time of day shall, save as otherwise provided in any agreement or document be construed as a reference to Indian Standard Time.



- 1.2.13 Different parts of this Agreement are to be taken as mutually explanatory and supplementary to each other and if there is any inconsistency between or among the parts of this Agreement, they shall be interpreted in a harmonious manner so as to give effect to each part.
- 1.2.14 The tables of contents and any headings or sub-headings in this Agreement have been inserted for ease of reference only and shall not affect the interpretation of this Agreement.
- 1.2.15 All interest payable under this Agreement shall accrue from day to day and be calculated on the basis of a year of three hundred and sixty five (365) days.
- 1.2.16 The words "hereof" or "herein", if and when used in this Agreement shall mean a reference to this Agreement.



2 ARTICLE 2: TERM OF AGREEMENT

2.1 Effective Date and Term of Agreement

2.1.1 This Agreement is effective from the date of its signing of this Agreement by all the Parties. This Agreement shall be valid for a term commencing from the Effective Date until the Expiry Date ("Term of Agreement") unless terminated earlier pursuant to Article 2.2. Upon the occurrence of the Expiry Date, this Agreement shall, subject to Article 18.9, automatically terminate, unless mutually extended by the Parties on mutually agreed terms and conditions, atleast one hundred and eighty (180) days prior to the Expiry Date, subject to approval of the Appropriate Commission, as necessary.

2.2 Early Termination

2.2.1 This Agreement shall terminate before the Expiry Date:

- i. if either the Procurer or Seller exercises a right to terminate, pursuant to Article 3, Article 4.5, Article 4.6.2, Article 14.4.5 or Schedule 9 of this Agreement or any other provision of this Agreement; or
- ii. in such other circumstances as the Seller and the Procurer may agree, in writing.

2.3 Survival

2.3.1 The expiry or termination of this Agreement shall not affect accrued rights and obligations of the Parties under this Agreement, including the right to receive Liquidated Damages as per the terms of this Agreement, nor shall it affect any continuing obligations for which this Agreement provides, either expressly or by necessary implication, the survival of, post its expiry or termination.



3 ARTICLE 3: CONDITIONS SUBSEQUENT TO BE SATISFIED BY THE SELLER AND THE PROCURER

3.1 Satisfaction of conditions subsequent by the Seller

3.1.1 Simultaneously with the execution of this Agreement, the Seller or the Selected Bidder, on behalf of the Seller, have provided to the Procurer, the Performance Guarantee from any of the banks in the list of banks provided in the RFP, of an aggregate amount equivalent to Rupees 7.5 lakhs per each MW of the Contracted Capacity. Subject to Article 3.5, the Performance Guarantee shall be initially valid till three (3) Months after the Scheduled COD of the Contracted Capacity and which shall be extended from time to time to be valid up to three (3) Months after the actual COD of the Contracted Capacity. In case the validity of Performance Guarantee is expiring before the validity period specified in this Article, the Seller shall at least thirty (30) days before the expiry of the Performance Guarantee replace the Performance Guarantee with another Performance Guarantee or extend validity of existing Performance Guarantee which is valid and in force till the validity period specified in this Article.

3.1.2 The Seller agrees and undertakes to duly perform and complete the following activities within (i) Twelve (12) Months from the Effective Date or (ii) Fourteen (14) Months from the date of issue of Letter of Intent, whichever is later, unless such completion is affected due to the Procurer's failure to comply with its obligations under this Agreement or by any Force Majeure event or if any of the activities is specifically waived in writing by the Procurer:

- i. the Seller shall have received the Initial Consents as mentioned in Schedule 1, either unconditionally or subject to conditions which do not materially prejudice its rights or the performance of its obligations under this Agreement;
- ii. the Seller shall have executed Fuel Supply Agreement and provided the copies of the same to the Procurer;
- iii. the Seller shall have awarded the Engineering, Procurement and Construction contract ("EPC contract) or main plant contract for boiler, turbine and generator ("BTG"), for the Project and shall have given to such contractor an irrevocable Notice To Proceed; and
- iv. 1) in case the Project is proposed to be developed on the books of the Selected Bidder, he shall have completed the execution and delivery of the Financing Agreements for at least twenty five percent (25%) of the debt



- required for the Project as certified by the Lender/Lead Lender; or 2) in case the Seller develops the Project on a non recourse basis, Seller shall have achieved Financial Closure;
- v. the Seller shall have made available to the Procurer the data with respect to the Project for design of Interconnection Facilities and Transmission Facilities, if required;
- vi. the Seller shall have got vacant possession of the Sites and shall have obtained valid, enforceable, unencumbered and insurable freehold or leasehold title thereto and such other real property rights including wayleaves as may be required for the Project or the performance of its obligations under this Agreement,
- vii. The Seller shall have provided an irrevocable letter to the Lenders duly accepting and acknowledging the rights provided to the Lenders under the terms of this Agreement and all other RFP Documents.
- viii. The Seller shall have sent a written notice to the Procurer indicating that
- a) the Scheduled COD shall be as per the original Scheduled COD i.e. (i) for the first Unit, 48 months from the Effective Date and (ii) for the second Unit, 54 months from the Effective Date or b) that it intends to prepone the Scheduled COD (hereinafter referred to as "Revised Scheduled COD").

3.2 Joint responsibilities of the Procurer and the Seller

- 3.2.1 The Procurer and Seller shall jointly appoint the Independent Engineer for the purposes of carrying out the functions as specified in Article 4.7.1, Article 6, Article 12 and Article 8, herein within a period of eight (8) months from the Effective Date.

3.3 Progress Reports

- 3.3.1 The Seller and the Procurer shall notify one another in writing at least once a Month on the progress made in satisfying the conditions in Articles 3.1.2 and 3.2.1.

3.4 Consequences of non-fulfillment of conditions under Article 3.1

- 3.4.1 If any of the conditions specified in Article 3.1.2 is not duly fulfilled by the Seller even within three (3) Months after the time specified under Article 3.1.2, then on and from the expiry of such period and until the Seller has satisfied all the conditions specified in Article 3.1.2, the Seller shall be liable to furnish to the Procurer, as additional weekly Performance Guarantee, a sum equivalent to Rs. 0.375 lakhs per MW of Contracted Capacity within two (2)



business days of expiry of every such week. The Procurer shall be entitled to hold and/or invoke the Performance Guarantee, including such increased Performance Guarantee, in accordance with the provisions of this Agreement.

3.4.2 Subject to Article 3.4.3, if:

- (i). fulfillment of any of the conditions specified in Article 3.1.2 is delayed beyond the period of three (3) Months and the Seller fails to furnish any additional Performance Guarantee to the Procurer in accordance with Article 3.4.1 hereof; or
- (ii). the Seller furnishes additional Performance Guarantee to the Procurer in accordance with Article 3.4.1 hereof but fails to fulfill the conditions specified in Article 3.1.2 for a period of eight (8) months beyond the period specified therein,

the Procurer or the Seller shall have the right to terminate this Agreement by giving a notice to the Seller/Procurer in writing of at least seven (7) days.

If the Procurer or the Seller elects to terminate this Agreement in the event specified in the preceding paragraph of this Article 3.4.2, the Seller shall be liable to pay to the Procurer an amount equivalent to Rupees Rs. 10.00 lakhs per MW of the Contracted Capacity as liquidated damages. The Procurer shall be entitled to recover this amount of damages by invoking the Performance Guarantee to the extent of an amount equivalent to Rupees 10.00 lakhs per MW of the Contracted Capacity and shall then return the balance Performance Guarantee, if any, to the Seller. If the Procurer is unable to recover said the amount or any part thereof from the Performance Guarantee the amount not recovered from the Performance Guarantee, if any, shall be payable by the Seller to the Procurer within ten (10) days from the end of eight (8) Months period from the due date of completion of conditions subsequent. It is clarified for removal of doubt that this Article shall survive the termination of this Agreement.

3.4.3 In case of inability of the Seller to fulfill the conditions specified in Article 3.1.2 due to any Force Majeure event, the time period for fulfillment of the Condition Subsequent as mentioned in Article 3.1.2, shall be extended for the period of such Force Majeure event, subject to a maximum extension period of ten (10) Months, continuous or non-continuous in aggregate. Thereafter, this Agreement may be terminated by the Procurer or the Seller by giving a notice of at least seven (7) days, in writing to the Other Party.

3.4.4 No Tariff adjustment shall be allowed on account of any extension of time arising under any of the sub-articles of Article 3.4. Provided that due to the

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provisions of Article 3.4.3, any increase in the time period for completion of Conditions Subsequent mentioned under Article 3.1.2, shall also lead to an equal increase in the time period for Scheduled COD and Scheduled Connection Date.

3.5 Reduction in the amount of Performance Guarantee

3.5.1 On the due fulfillment by the Seller of all the conditions specified under Article 3.1.2 and investment by the Seller of at least twenty five percent (25%) of the total equity required for the Project as certified by the lead lender of the Seller, the Performance Guarantee then existing shall be reduced by an aggregate amount equivalent to Rupees 2.5 lakhs per each MW of the total contracted capacity.

3.5.2 The Performance Guarantee specified in Article 3.5.1 hereof shall be in substitution of the earlier Performance Guarantee furnished under Article 3.1.1.

The Performance Guarantee furnished under this Article shall be initially valid till three (3) Months after the Scheduled COD of the Contracted Capacity and which shall be extended from time to time to be valid up to three (3) Months after the actual COD of the Power Station.

3.5.3 The Performance Guarantee furnished under Articles 3.1, 3.4 and 3.5 shall be for guaranteeing the due and timely completion of the Project and achievement of Scheduled Commercial Operation Date of Contracted Capacity within the time specified in this Agreement.

3.5.4 The failure on the part of the Seller to furnish and maintain the Performance Guarantee as mentioned above shall be a material breach of the term of this Agreement on the part of the Seller.

3.5.5 If the Seller fails to achieve COD of any of the Units on their respective Scheduled Commercial Operation Date specified in this Agreement, subject to conditions mentioned in Article 4.5.1, the Procurer shall have the right to encash the Performance Guarantee and appropriate in its favour as liquidated damages an amount specified in Article 4.6.1, without prejudice to the other rights of the Procurer under this Agreement.



3.6 Return of Performance Guarantee

- 3.6.1 The Performance Guarantee as submitted by Seller in accordance with Article 3.5 shall be released by the Procurer within three (3) Months from the actual Commercial Operation Date of the Contracted Capacity and satisfactory fulfillment of the obligation to commence supply of power at the Delivery Point. In the event of delay in achieving Scheduled COD of any of the Units by the Seller (otherwise than due to Force Majeure event) and consequent part invocation of the Performance Guarantee by the Procurer, the Procurer shall release the Performance Guarantee if any, remaining unadjusted under Article 3.5, after the satisfactory completion by the Seller of all the requirements regarding achieving the Scheduled Commercial Operation Date of the remaining Units of the Contracted Capacity. It is clarified that the Procurer shall also return/release the Performance Guarantee in the event of (i) applicability of Article 3.4.2 to the extent the Performance Guarantee is valid for an amount in excess of equivalent of Rupees 10.00 lakhs per MW of the Contracted Capacity, or (ii) termination of this Agreement by any Party under Article 3.4.3 of this Agreement.
- 3.6.2 The release of the Performance Guarantee shall be without prejudice to other rights of the Procurer under this Agreement.



4 ARTICLE 4: DEVELOPMENT OF THE PROJECT

4.1 The Seller's obligation to build, own and operate the Project

- 4.1.1 Subject to the terms and conditions of this Agreement, the Seller undertakes to be responsible, at Seller's own cost and risk, for:
- obtaining and maintaining in full force and effect all Consents required by it pursuant to this Agreement and Indian Law;
 - executing the Project in a timely manner so as to enable achievement of COD of each of the Units and the Contracted Capacity as a whole, no later than its Scheduled Commercial Operations Date and such that as much of the Contracted Capacity as can be made available through the use of Prudent Utility Practices will be made available reliably to meet the Procurer's scheduling and dispatch requirements throughout the term of this Agreement but under no event earlier than 48 months from Effective Date;
 - owning the Project throughout the term of this Agreement free and clear of encumbrances, except those expressly permitted by Article 16;
 - procure the requirements of electricity at the Project (including construction, commissioning and start-up power) and to meet in a timely manner all formalities for getting such a supply of electricity;
 - shall be responsible for informing about the project to the CTU/STU and procuring the Interconnection and Transmission Facilities up to the Delivery Point to enable the Power Station to be connected to the Grid System of the CTU/STU not later than the Scheduled Connection Date and to facilitate transmission of power from the Power Station to Delivery Point;
 - fulfilling all other obligations undertaken by him under this Agreement.

4.2 Procurer's obligation

Subject to the terms and conditions of this Agreement, the Procurer:

- shall be responsible for procuring the Interconnection and Transmission Facilities to enable the evacuation of Contracted Capacity from the Delivery Point to the Procurer's customers network not later than the Scheduled Connection Date;
- shall be responsible for payment of the Transmission Charges and SLDC charges beyond the Delivery Point;
- shall make all reasonable arrangements for the evacuation of the Infirm Power from the Power Station; subject to such power being made available by the Seller at the Delivery Point and
- shall be responsible for fulfilling obligations undertaken under this Agreement.

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4.3 Purchase and sale of Available Capacity and Scheduled Energy

4.3.1 Subject to the terms and conditions of this Agreement, the Seller undertakes to sell to the Procurer, and the Procurer undertakes to pay the Tariff for all of the Available Capacity up to the Contracted Capacity and Scheduled Energy corresponding to the Contracted Capacity throughout the term of this Agreement.

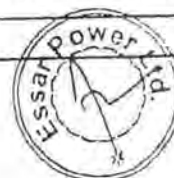
4.3.2 Unless otherwise instructed by the Procurer, the Seller shall sell all the Available Capacity up to the Contracted Capacity of the Power Station to the Procurer pursuant to Dispatch Instructions.

4.4 Right to Available Capacity and Scheduled Energy

4.4.1 Subject to other provisions of this Agreement, the entire Contracted Capacity to the extent achieved Commercial Operation shall at all times be for the exclusive benefit of the Procurer and the Procurer shall have the exclusive right to purchase such Contracted Capacity from the Seller. The Seller shall not grant to any third party or allow any third party to obtain any entitlement to the Available Capacity and/or Scheduled Energy.

Notwithstanding Article 4.4.1, the Seller shall be permitted to sell power, being a part of the Available Capacity of the Power Station to third parties if there is a part of Available Capacity which has not been Dispatched by the Procurer.

4.4.2 If the Procurer does not avail of power up to the Available Capacity as per the provisions of Article 4.4.2, the Seller shall be entitled to sell such Available Capacity not procured, to any person without losing the right to receive the Capacity Charges from the Procurer for such un-availed Available Capacity. In such a case, the sale realization in excess of Energy Charges, shall be equally shared by the Seller with the Procurer. In the event, the Seller sells such Available Capacity to the shareholders of the Seller or any direct or indirect affiliate of the Seller/shareholders of the Seller without obtaining the prior written consent of the Procurer, the Seller shall be liable to sell such Available Capacity to such entity at tariffs being not less than the Tariff payable by the Procurer. Upon the Procurer not availing of the Available Capacity, as envisaged under this Article, intimating to the Seller of its intention and willingness to avail of the part of the Available Capacity not availed of and therefore sold to the third party, the Seller shall, notwithstanding anything contained in the arrangement between the Seller and said third party,



commence supply of such capacity to the Procurer from the later of two (2) hours from receipt of notice in this regard from the Procurer or the time for commencement of supply specified in such notice.

- 4.4.3 The Seller shall not, to the extent of Contracted Capacity, itself use any of the electricity generated by the Project during the term of this Agreement, except for the purpose of meeting the Power Station's auxiliary load requirements, as per the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2004 as amended from time to time.
- 4.4.4 The sale under Unscheduled Interchange shall not be considered as sale to third party for the purposes of this Agreement.

4.5 Extensions of time

4.5.1 In the event that:

- (a) the Seller is prevented from performing its obligations under Article 4.1.1(b) by the stipulated date, due to any Procurer Event of Default; or
- (b) a Unit cannot achieve Commercial Operation by its Scheduled Commercial Operations Date because of Force Majeure Events.
- (c) The Seller is prevented from performing its obligations under Article 4.1.1(b) by the required date because of delay in provision of open access or transmission facilities for reasons solely attributable to the CTU; or
- (d) The Seller arranges to supply the contracted power to the Procurer from alternate sources at the Quoted Tariff.

the Scheduled Commercial Operations Date, the Scheduled Connection Date and the Expiry Date shall be deferred, subject to the limit prescribed in Article 4.5.3, for a reasonable period but not less than 'day for day' basis, to permit the Seller through the use of due diligence, to overcome the effects of the Force Majeure Events affecting the Seller or in the case of the Procurer's Event of Default, till such time such default is rectified by the Procurer provided that in case of sub-article (c) of Article 4.5.1, the Seller shall have to produce a certificate from CTU authenticating such delay in provision of open access or transmission facilities.

- 4.5.2 If the Parties have not agreed, within thirty (30) days after the affected Party's performance has ceased to be affected by the relevant circumstance, on how long the Scheduled Commercial Operations Date, the Scheduled



Connection Date or the Expiry Date should be deferred by, any Party may raise the Dispute to be resolved in accordance with Article 17.

- 4.5.3 In case of extension occurring due to reasons specified in Article 4.5.1 (a), the original Scheduled Commercial Operations Date of any Unit or the original Scheduled Commercial Operations Date of the Contracted Capacity as a whole, would not be extended by more than one (1) year or the date on which the Seller elects to terminate this Agreement, whichever is earlier. As a result of such extension, the date newly determined shall be deemed to be the Scheduled Commercial Operations Date for the purposes of this Agreement.

4.6 Liquidated damages for delay in providing Contracted Capacity

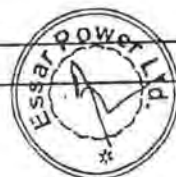
- 4.6.1 If any Unit does not achieve COD by its Scheduled Commercial Operation Date other than for the reasons specified in Article 4.5.1, the Seller shall pay to the Procurer liquidated damages for such delay in achieving COD. The sum total of the liquidated damages payable by the Seller to the Procurer for such delayed COD shall be calculated as follows:

$$SLDb = [CCun \times dn \times DR1], \text{ if } dn \leq 60$$

$$SLDb = [CCun \times 60 \times DR1] + [CCun \times (dn - 60) \times DR2], \text{ if } dn > 60$$

Where:

- "SLDb" are the liquidated damages payable by the Seller during the period beginning with the day from the Scheduled Commercial Operation Date of a Unit up to and including the day on which Unit actually achieves COD;
- "CCun" is the Contracted Capacity of Unit "n";
- "d" is the number of days in the period beginning with the day after the Scheduled Commercial Operation Date of Unit "n" up to and including the day on which such Unit actually achieves COD;
- "DR1" is Rs. Ten Thousand (10,000) of damages per MW per day of delay in case "d" is less than 60 days and "DR2" is Rs. Fifteen Thousand (15,000) of damages per MW per day of delay in case "d" is equal to or more than 60 days.



4.6.2 The Seller's maximum liability under this Article 4.6 shall be limited to the amount of liquidated damages calculated in accordance with Article 4.6.1 for and up to twelve (12) Months of delay for Contracted Capacity of the Unit. Provided that in case of failure of the Seller to achieve COD of the Unit even after expiry of twelve (12) Months from its Scheduled Commercial Operation Date, the provisions of Article 14 shall apply.

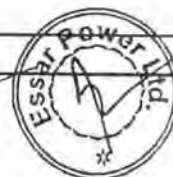
4.6.3 The Seller shall pay the liquidated damages calculated pursuant to Article 4.6.1 to the Procurer within ten (10) days of the earlier of:

- (a) the date on which the Unit actually achieves COD ; or
- (b) the date of termination of this Agreement.

If the Seller fails to pay the amount of damages within the said period of ten (10) days, the Procurer shall be entitled to recover the said amount of the liquidated damages by invoking the Performance Guarantee. If the then existing Performance Guarantee is for an amount which is less than the amount of the liquidated damages payable by the Seller to the Procurer under this Article 4.6, then the Seller shall be liable to forthwith pay the balance amount.

4.6.4 The Parties agree that the formula specified in Article 4.6.1 for calculation of liquidated damages payable by the Seller under this Article 4.6, read with Article 14 is a genuine and accurate pre-estimation of the actual loss that will be suffered by the Procurer in the event of Seller's delay in achieving COD of a Unit by its Scheduled COD.

4.6.5 If any Unit does not achieve COD by its Revised Scheduled COD other than for the reasons specified in Article 4.5.1, the Seller shall pay to the Procurer liquidated damages for the delay in achieving such COD. The sum total of the liquidated damages payable by the Seller to the Procurer for such delayed Commissioning shall be equivalent to the damages payable by the Procurer to the Gujarat STU for the period of delay, as per the terms of agreement proposed to be entered into by the Procurer with Gujarat STU for establishment of transmission system. Provided however, the liquidated damages payable by the Seller to the Procurer in case of delay under this Article 4.6.5 shall not be more than twenty percent of liquidated damages computed in the manner mentioned in Article 4.6.1. Provided further, in case of delay beyond Scheduled Commercial Operation Date, the provisions of Article 4.6.1 to 4.6.4 will apply for such delay.



4.7 Liquidated damages for delay due to Procurer Event of Default and Non Natural Force Majeure Events and Natural Force Majeure Event (affecting the Procurer)

4.7.1 If

- a) a Unit cannot achieve COD by its Scheduled Commercial Operations Date, due to a Procurer Event of Default or due to Non Natural Force Majeure Event (or Natural Force Majeure affecting the Procurer) provided such Non Natural Force Majeure Event (or Natural Force Majeure affecting the Procurer) has continued for a period of more than three (3) continuous or non-continuous Months; or
- b) a Unit is available for conducting Commissioning Tests and is anticipated to be capable of duly completing the Commissioning Tests as certified by the Independent Engineer, but the said Commissioning Tests are not undertaken or completed due to such Procurer Event of Default or due to Non Natural Force Majeure Event (or Natural Force Majeure affecting the Procurer) provided such Non Natural Force Majeure Event (or Natural Force Majeure affecting the Procurer) has continued for a period of more than three (3) continuous or non-continuous Months:

such Unit shall, until the effects of the Procurer Event of Default or of Non Natural Force Majeure Event (or Natural Force Majeure affecting the Procurer) no longer prevent the Seller from undertaking a Commissioning Test/s, be deemed to have, if applicable, a Tested Capacity equal to the Contracted Capacity and to this extent, be deemed to have achieved COD with effect from the Scheduled COD without taking into account delay due to such Procurer Event of Default or Non Natural Force Majeure Event (or Natural Force Majeure affecting the Procurer) and shall be treated as follows.

- a) In case of delay on account of the Procurer Event of Default, the Procurer shall make payment to the Seller of Capacity Charges calculated on Normative Availability of Contracted Capacity of such Unit for and during the period of such delay. Provided however, if any Unit does not achieve COD by its Revised Scheduled COD due to unavailability of transmission system beyond the Delivery Point, the Procurer shall make payment to the Seller of an amount equivalent to the amounts paid by the Gujarat STU to the Procurer as per the terms of agreement proposed to be entered into by the Procurer with Gujarat STU for establishment of transmission system



for the period of delay beyond the Scheduled Commercial Operation Date.

- b) In case of delay on account of Direct Non Natural Force Majeure Event, the Procurer shall make payment to the Seller of Capacity Charges calculated on Normative Availability of Contracted Capacity of such Unit for the period of such events in excess of three (3) continuous or non-continuous Months in the manner provided in (d) below.
- c) In case of an Indirect Non Natural Force Majeure Event (or Natural Force Majeure affecting the Procurer), the Procurer shall make payments for amounts ("Debt Service") relating to such Unit, which are due under the Financing Agreements, subject to a maximum of Capacity Charges based on Normative Availability, for the period of such events in excess of three (3) continuous or non-continuous Months in the manner provided in (d) below.
- d) In case of delay due to Direct and Indirect Non Natural Force Majeure Events (or Natural Force Majeure affecting the Procurer), the Procurer shall be liable to make payments mentioned in (b) and (c) above, after Commercial Operation of the Unit, in the form of an increase in Capacity Charges. Provided such increase in Capacity Charges shall be determined by Appropriate Commission on the basis of putting the Seller in the same economic position as the Seller would have been in case the Seller had been paid amounts mentioned in (b) and (c) above in a situation where the Direct Non Natural Force Majeure or Indirect Non Natural Force Majeure Event, as the case may be, had not occurred.

4.7.2 In every case referred to in Article 4.7.1 hereinabove, the Seller shall undertake a Commissioning Test as soon as reasonably practicable [and in no event later than two (2) weeks] after the point at which it is no longer prevented from doing so by the effects of Force Majeure Events or Procurer Event of Default (as appropriate) and if such Commissioning Test/s is not duly completed and/or demonstrate/s a Tested Capacity of a Unit which is less than ninety five (95) percent of its Rated Capacity, then:

- The Unit which fails the Commissioning Tests, shall be deemed to have not achieved COD from the deemed COD referred to in Article 4.7.1;



- The Seller shall repay to the Procurer, all sums received by way of Capacity Charge for such Unit along with interest at the same rate as Late Payment Surcharge; and
- If the Seller fails to achieve COD by the Scheduled Commercial Operation Date, it shall also pay liquidated damages to the Procurer for such Unit calculated in accordance with Article 4.6.

4.8 Limit on amounts payable due to default

4.8.1 The Parties expressly agree that the Procurer's only liability for any loss of profits or any other loss of any other kind or description whatsoever (except claims for indemnity under Article 15), suffered by the Seller by reason of the Procurer's failure to meet its obligations under Article 4.2 shall be to pay the Seller the amounts specified in Article 4.7 and Article 14.

4.8.2 Similarly, Seller's only liability for any loss suffered by the Procurer of any kind or description whatsoever (except claims for indemnity under Article 15), by reason of the Seller's failure to meet its obligations of achieving COD of the various Units on their Scheduled COD, shall be as per Article 4.6 and Article 14.



5 ARTICLE 5: CONSTRUCTION

5.1 Seller's Construction Responsibilities

5.1.1 The Seller shall be responsible for designing, constructing, erecting, commissioning, completing and testing the Power Station in accordance with the following, it being clearly understood that in the event of inconsistency between two or more of the following, the order of priority as between them shall be the order in which they are placed, with 'applicable law' being the first:

- a) applicable Law;
- b) the Grid Code;
- c) the terms and conditions of this Agreement;
- d) the Functional Specifications; and
- e) Prudent Utility Practices.

Notwithstanding anything to the contrary contained in this PPA, the Seller shall ensure that the technical parameters or equipment limits of the Project shall always be subject to the requirements as specified in points (a) to (e) above and under no event shall over-ride or contradict the provisions of this Agreement and shall not excuse the Seller from the performance of his obligations under this Agreement.

5.2 The Site

5.2.1 The Seller acknowledges that, before entering into this Agreement, it has had sufficient opportunity to investigate the Site and accepts full responsibility for its condition (including but not limited to its geological condition, on the Site, the adequacy of the road and rail links to the Site and the availability of adequate supplies of water) and agrees that it shall not be relieved from any of its obligations under this Agreement or be entitled to any extension of time or financial compensation by reason of the unsuitability of the Site for whatever reason.

5.3 Information Regarding Interconnection Facilities

5.3.1 The Seller shall be responsible for establishing interconnection facilities for evacuation of power from the generating station to the delivery point. In case, a Power Station is not connected to the Gujarat STU, the Seller shall be responsible for procuring arrangements for transmission of electrical energy corresponding to Contracted Capacity up to the Delivery Point.



5.4 Quality of Workmanship

5.4.1 The Seller shall ensure that the Power Station is designed, built and completed in a good workmanlike manner using sound engineering construction practices and using only materials and equipment that are new and of international utility grade quality such that, the useful life of the Power Station will be till the Expiry Date.

5.4.2 The Seller shall ensure that design, construction and testing of all equipment, facilities, components and systems of the Project shall be in accordance with Indian Standards and Codes issued by Bureau of Indian Standards and/or internationally recognised Standards and Codes, such as:

- i. American National Standards Institute (ANSI)
- ii. American Society of Testing and Materials (ASTM)
- iii. American Society of Mechanical Engineers (ASME)
- iv. American Petroleum Institute (API)
- v. Standards of the Hydraulic Institute, USA
- vi. International Organization for Standardization (ISO)
- vii. Japanese Industrial Standards (JIS)
- viii. Tubular Exchanger Manufacturer's Association (TEMA)
- ix. American Welding Society (AWS)
- x. National Electrical Manufacturers Association (NEMA)
- xi. National Fire Protection Association (NFPA)
- xii. International Electro-Technical Commission (IEC)
- xiii. Expansion Joint Manufacturers Association (EJMA)
- xiv. Heat Exchange Institute (HEI)
- xv. American Water Works Association (AWWA)
- xvi. Deutsches Institut für Normung (DIN)

Other international standards, established to be equivalent or superior to the above standards shall also be acceptable. However, in the event of any conflict between the requirements of the international codes and standards and the requirements of the Indian standards/regulations, the latter shall prevail.



5.5 Consents

- 5.5.1 The Seller shall be responsible for obtaining all Consents required for developing, financing, constructing, operating and maintenance of the Project and maintaining/ renewing all such Consents in order to carry out its obligations under this Agreement in general and this Article 5 in particular and shall supply to the Procurer promptly with copies of each application that it submits, and copy/ies of each consent/approval/license which it obtains.

5.6 Construction RFP Documents

- 5.6.1 The Seller shall retain at the Site and make available for inspection to the Procurer at all reasonable times copies of the results of all tests specified in Schedule 4 hereof.

5.7 Co-ordination of Construction Activities

- 5.7.1 Before the tenth (10th) day of each alternate Month, during the Construction Period:

- (a) the Seller shall prepare and submit to the Procurer a bi-monthly progress report, in the Agreed Form, which reviews the progress of the design, engineering, procurement, construction, completion, testing and commissioning of the Power Station; and
- (b) The Seller shall prepare, in consultation with STU/CTU, and submit to the Procurer, a bi-monthly progress report in the Agreed Form which reviews the progress of the design, engineering, procurement, construction and installation of the Interconnection and Transmission Facilities up to the Delivery Point. The same shall be submitted by the Seller to the Procurer.

- 5.7.2 The Seller and the Procurer individually shall designate from time to time, by giving a written notice to the other party up to five (5) of its employees who shall be responsible for coordinating all construction activities relating to the Project and who shall have access at all reasonable times to the other party's land for the purpose of apprising the progress of the work being carried on, subject to such designated persons or the party appointing them giving reasonable notice to the other party of such visit and subject to their complying with all reasonable safety procedures.



6 ARTICLE 6: SYNCHRONISATION, COMMISSIONING AND COMMERCIAL OPERATION

6.1 Synchronization

6.1.1 The Seller shall give the Procurer and RLDC/SLDC at least sixty (60) days advance preliminary written notice and at least thirty (30) days advance final written notice, of the date on which it intends to synchronise a Unit to the Grid System.

6.1.2 Subject to Article 6.1.1, a Unit may be synchronised by the Seller to the Grid System when it meets all connection conditions prescribed in any Grid Code then in effect and otherwise meets all other Indian legal requirements for synchronisation to the Grid System.

6.2 Commissioning

6.2.1 The Seller shall be responsible for ensuring that each Unit is Commissioned in accordance with Schedule 4 at its own cost, risk and expense.

6.2.2 The Seller shall give all the Procurer and the Independent Engineer not less than ten (10) days prior written notice of Commissioning Test of each Unit.

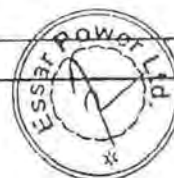
6.2.3 The Seller, the Procurer and the Independent Engineer (individually) shall each designate qualified and authorised representatives to witness and monitor Commissioning Test of each Unit.

6.2.4 Testing and measuring procedures applied during each Commissioning Test shall be in accordance with the codes, practices and procedures mentioned in Schedule 4 of this Agreement.

6.2.5 Within five (5) days of a Commissioning Test, the Seller shall provide the Procurer and the Independent Engineer with copies of the detailed Commissioning Test results. Within five (5) days of receipt of the Commissioning Test results, the Independent Engineer shall provide to the Procurer and the Seller in writing, his findings from the evaluation of Commissioning Test results, either in the form of Final Test Certificate certifying the matters specified in Article 6.2.6 or the reasons for non-issuance of Final Test Certificate.

6.2.6 A Unit shall be Commissioned on the day after the date when the Procurer receives a Final Test Certificate of the Independent Engineer stating that:

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- (a) The Commissioning Tests have been carried out in accordance with Schedule 4; and are acceptable to him; and
- (b) The results of the Performance Test show that the Unit's Tested Capacity, is not less than ninety five (95) percent of its Rated Capacity as existing on the Effective Date

6.2.7 If a Unit fails a Commissioning Test, the Seller may retake the relevant test, within a reasonable period after the end of the previous test, with three (3) day's prior written notice to the Procurer and the Independent Engineer. Provided however, the Procurer shall have a right to require deferment of any such re-tests for a period not exceeding fifteen (15) days, without incurring any liability for such deferment.

6.2.8 The Seller may retake the Performance Test by giving at least fifteen (15) days advance notice in writing to the Procurer, up to eight (8) times, during a period of one hundred and eighty (180) days ("Initial Performance Retest Period") from a Unit's COD in order to demonstrate an increased Tested Capacity over and above as provided in Article 6.2.6 (b). Provided however, the Procurer shall have a right to require deferment of any such re-tests for a period not exceeding fifteen (15) days.

6.2.9 (i) If a Unit's Tested Capacity after the most recent Performance Test mentioned in Article 6.2.8 has been conducted, is less than its Rated Capacity as existing on the Effective Date, the Unit shall be de-rated with the following consequences in each case with effect from the date of completion of such most recent test:

- a) the Unit's Contracted Capacity shall be reduced in proportion of the Tested Capacity to the Rated Capacity, as existing at the most recent Performance Test referred to in Article 6.2.8 and Quoted Capacity Charges shall be paid with respect to such reduced Contracted Capacity;
- b) the Quoted Non Escalable Capacity Charge (in Rs./kwh) shall be reduced by the following, in the event Tested Capacity of the Unit is less than ninety five (95%) per cent of its Rated Capacity as existing on the Effective Date:

$$\text{Rs. } 0.25/\text{kwh} \times [1 - \{(\text{reduced Contracted Capacity of all Commissioned Units} + \text{Contracted Capacity of all Units not Commissioned at the Effective Date}) / \text{Contracted Capacity of all Units at the Effective Date}\}]$$



- c) the Seller shall not be permitted to declare the Available Capacity of the Unit at a level greater than its reduced Contracted Capacity;
- d) the Availability Factor of the derated Unit shall be calculated by reference to the reduced Contracted Capacity; and
- e) the Capital Cost and each element of the Capital Structure Schedule shall be reduced in proportion to the reduction in the Contracted Capacity of the Power Station as a result of that derating (taking into account the Contracted Capacity of any Unit which has yet to be Commissioned).

(ii) If at the end of Initial Performance Retest Period or the date of the eighth Performance Test mentioned in Article 6.2.8, whichever is earlier, the Tested Capacity is less than the Rated Capacity (as existing on the date of this Agreement), the consequences mentioned in Article 8.2.2 shall apply for a period of one year. Provided that such consequences shall apply with respect to the Tested Capacity existing at the end of Initial Performance Retest Period or the date of the eighth Performance Test mentioned in Article 6.2.8, whichever is earlier.

6.2.10 If a Unit's or Power Station's Tested Capacity at the end of the Initial Performance Retest Period is found to be more than its Rated Capacity, the Rated Capacity shall be deemed to be the Unit's or Power Station's Tested Capacity for all purposes.

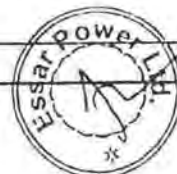
Provided that the Tested Capacity in excess of the Rated Capacity shall be ignored for all purposes of this Agreement but the Procurer shall have the right over such excess in proportion of the Contracted Capacity to the Rated Capacity. No capacity charges shall be payable for such excess capacity.

Provided further that in all the above events, the Seller shall be liable to obtain/maintain all the necessary consents (including Initial Consents), permits and approvals including those required under the environmental laws for generation of such excess Tested Capacity.

6.3 Costs Incurred

The Seller expressly agrees that all costs incurred by him in synchronising, connecting, Commissioning and / or Testing or Retesting a Unit shall be solely and completely to his account and the Procurer's liability shall not exceed the

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amount of the Energy Charges payable for such power output made available at the Delivery Point.

6.4 Commercial Operation

The Seller shall, along with the submission of Final Test Certificate of the Independent Engineer as per provisions of Article 6.2.6, indicate a date as the COD for the concerned Unit. The Unit, for the purposes of this Agreement, shall be considered to have achieved COD on date indicated in such letter or the date on such supply of power actually commences after Commissioning of the Unit, whichever is later.



7 ARTICLE 7: OPERATION AND MAINTENANCE

The Parties shall comply with the provisions of the applicable Law including, in particular, Grid Code as amended from time to time regarding operation and maintenance of the Power Station and all matters incidental thereto (other than Scheduled Outage and Maintenance Outage) including, in particular, Dispatch Procedures.

7.1 Scheduled Outages

7.1.1 Not later than November 30 in each year (or by such other date as the Procurer may from time to time prescribe for the submission of outage plans from generating companies connected to the Grid System), the Seller shall submit to the Procurer and the STU/CTU in writing its firm proposals for the Scheduled Outages to be taken in the next Contract Year and its provisional proposals for Scheduled Outages in each of the next two (2) succeeding Contract Years.

7.1.2 Unless otherwise requested to do so by the Procurer, the Seller shall always plan to take Scheduled Outages only during the months of July, August and September. Further, without the prior consent of the Procurer, the Seller shall not take Scheduled Outages for all the Units of a Power Station, at the same time:

Provided that, after giving a notice of not less than two (2) years, the Procurer shall have the right to replace the above months of July, August and September with any three other months.

7.1.3 Within two (2) months after receiving the Seller's proposals, the Procurer shall notify the Seller in writing whether its proposed Scheduled Outages for the forthcoming one (1) Contract Year are acceptable and, if not, and after discussing the matter with the Seller, they shall indicate the periods that would be acceptable, which shall be:

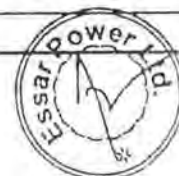
(a) of the same duration as the periods requested by the Seller;

(b) within the time limits required by any legal requirement relating to routine maintenance and;

(c) within the time limits required or recommended by the manufacturer or supplier of the plant which is to undergo maintenance;

7.1.4 The Seller may only object to a Scheduled Outage proposed by the Procurer on the grounds that it would be inconsistent with the requirements of Article

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7.1.3. Unless the Seller objects in writing within twenty (20) days after receiving the proposal, it shall be deemed to have agreed to the Scheduled Outages proposed by the Procurer. If the Seller does object to a proposed Scheduled Outage within that period and the Parties cannot reach agreement within ten (10) days after the Seller's objection was sent to the Procurer, the matter shall be resolved in accordance with Article 17.

7.1.5 The Scheduled Outages accepted by the Procurer or agreed to by the Seller pursuant to Article 7.1.4 shall be confirmed to the extent that they relate to the next Contract Year and shall be provisional to the extent that they relate to subsequent Contract Years. Provisionally confirmed Scheduled Outages, may be changed, by any Party for good cause.

7.1.6 In an Emergency, the Procurer may require the Seller to use its best efforts to reschedule a confirmed Scheduled Outage (including one which has already begun) to a more convenient time.

7.1.7 The Procurer shall also give notice to the Seller of the maintenance program for the Procurer's side of the Interconnection and Transmission Facilities and shall use their reasonable endeavours to coordinate such maintenance with the Scheduled Outages approved pursuant to this Article 7.1 so as to minimise any disruption to the operation of the Project.

7.1.8 The Seller shall also co-ordinate with the CTU/STU for maintenance outage of transmission facilities up to Delivery Point to minimise any disruption to the operation of the Project.

7.1.9 The Seller shall not declare any Unit available in any Settlement Period when it was scheduled to be undergoing a Scheduled Outage except to the extent that the availability of the Interconnection and Transmission Facilities is sufficient to allow the Procurer to utilise the full amount of the Power Station's Declared Capacity and the Procurer, in their sole discretion, choose to accept the Electrical Output made available during such Settlement Period.

7.2 Maintenance Outages

7.2.1 Whenever the Seller needs a Maintenance Outage it shall advise the Procurer in accordance with the Operating Procedures of the nature of the work to be carried out, the estimated time required to complete it and the latest time by which in the Seller's opinion the work should begin consistent with Prudent Utility Practices (which shall be not earlier than forty eight (48) hours after



the time when the Seller advised the Procurer of the need for the Maintenance Outage).

7.2.2 After discussing the matter with the Seller, the Procurer shall advise the Seller regarding when the requested Maintenance Outage is scheduled to begin (which shall be not later than the latest time indicated by the Seller). The Seller shall use its reasonable endeavours consistent with Prudent Utilities Practices to take the relevant Unit out of service at the scheduled time.

7.2.3 The Procurer may require the Seller to schedule a Maintenance Outage in accordance with Articles 7.2.1 and 7.2.2 to remedy any impairment of a Unit's ability to meet its Contracted Operating Characteristics.



8 ARTICLE 8: CAPACITY, AVAILABILITY AND DISPATCH

8.1 Repeat Performance Tests

- 8.1.1 The Procurer may from time to time during the Operating Period, but only if the Available Capacity has not been one hundred per cent (100%) of the Contracted Capacity of the commissioned units (excluding the unit(s) under planned outage for capital maintenance in consultation with the Regional Power Committee/State Power Committee, if any) for one continuous period of at least three (3) hours during any three continuous months, require the Seller to demonstrate a Unit's or Units' Tested Capacity by carrying out a further Performance Test (a "Repeat Performance Test") in accordance with this Article 8.1. A Repeat Performance Test shall be carried out in accordance with Schedule 4, save that the test shall last twenty-four (24) hours instead of seventy two (72) hours. Provided that if the Tested Capacity after such test is less than one hundred percent (100%) of the Rated Capacity (as existing on the Effective Date) of the Commissioned Units, the Seller shall also have a right to conduct not more than two Repeat Performance Test within a period six months, by giving a notice of not less than fifteen (15) days to the Procurer for each such test. Provided that the Procurer shall have a right to require deferment of each such re-tests for a period not exceeding five (5) days, without incurring any liability for such deferment.
- 8.1.2 The Procurer shall give the Seller not less than seven (7) days' advance written notice of the time when a Repeat Performance Test of a Unit or Units is to begin. A Repeat Performance Test may not be scheduled for any period when a Unit to be tested is due to undergo a Scheduled Outage.
- 8.1.3 The Procurer and Seller shall jointly appoint the Independent Engineer to monitor the Repeat Performance Test and to certify the results in accordance with Article 8.2.
- 8.1.4 If the Seller wishes to take any Unit, out of service for repair before a Repeat Performance Test, it shall inform the Procurer in writing before its scheduled start of the repairs and the estimated time required to complete the repairs. The Parties shall then schedule a Maintenance Outage in accordance with the Grid Code to enable the Seller to carry out those repairs and in such a case, the Procurer shall defer the Repeat Performance Test until such Unit is returned to service following that Maintenance Outage.
- 8.1.5 The Procurer may, for reasonable cause, defer any Repeat Performance Test for up to fifteen (15) days from the date originally notified to the Seller in



accordance with Article 8.1.2 if the Procurer notifies the Seller in writing at least one (1) day before the Repeat Performance Test starts of the reason for the deferral and when the test is to be rescheduled.

Provided that, such deferment at the request of the Procurer shall be permitted only once in respect of each of the Repeat Performance Tests.

- 8.1.6 The Seller, the Procurer and the Independent Engineer, individually, shall each have the right to designate qualified and authorised representatives (but not more than three each) to monitor the Repeat Performance Test.
- 8.1.7 Testing and measurement procedures applied during the Repeat Performance Test shall be in accordance with the codes, practices of procedures as generally/normally applied for the Performance Tests.
- 8.1.8 Within five (5) days of a Repeat Performance Test, the Seller shall provide the Procurer and the Independent Engineer with copies of the detailed test results.
- 8.1.9 Within one (1) Month of the date by which all the Units have been commissioned, the Seller shall conduct a Performance Test of the all the Units (hereinafter referred to as "Total Capacity Performance Test") whereafter the provisions of Article 8.2 shall apply. A Total Capacity Performance Test shall be carried out in accordance with Article 1.1 of Schedule 5, save that the test shall last twenty-four (24) hours instead of seventy two (72) hours.

8.2 Derating

- 8.2.1 A Repeat Performance Test shall be concluded when the Procurer receives the Final Test Certificate of the Independent Engineer stating that the Repeat Performance Test has been carried out satisfactorily in accordance with Schedule 4 and certified the Unit's or Units' then current Tested Capacity as demonstrated by the results of the Repeat Performance Test.
- 8.2.2 (i) If a Unit's or Units' then current Tested Capacity as established by the Repeat Performance Test and the Final Test Certificate issued by the Independent Engineer, is less than Rated Capacity of the Unit or Units as existing on the Effective Date, the Unit shall be de-rated with the following consequences in each case with effect from the date of completion of such most recent test:

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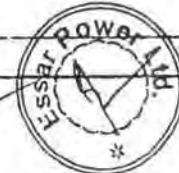
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- a) the Unit's or Units' Contracted Capacity shall be reduced in proportion of the Tested Capacity to the Rated Capacity and Quoted Capacity Charges shall be paid with respect to such reduced Contracted Capacity.
- b) Further, the Quoted Non –Escalable Capacity Charge shall be reduced by the following:
$$\text{Rs. } 0.25/\text{kwh} \times [1 - \{(\text{reduced Contracted Capacity of all Commissioned Units} + \text{Contracted Capacity at the Effective Date of all Units not Commissioned}) / \text{Contracted Capacity at the Effective Date of all Units}\}];$$
- c) the Seller shall not be permitted to declare the Available Capacity of the Unit at a level greater than its Contracted Capacity;
- d) the Availability Factor of the derated Unit or Units shall be calculated by reference to the reduced Contracted Capacity, in each case with effect from date on which the Procurer first notified the Seller of their intention to carry out a Repeat Performance Test of the Unit or Units; and
- e) the Capital Cost and each element of the Capital Structure Schedule shall be reduced in proportion to the reduction in the Contracted Capacity of the Power Station as a result of that derating (taking into account the Contracted Capacity of any Unit which has yet to be Commissioned);

(ii) The consequences mentioned in sub-Article (i) above shall apply from the completion date of each Repeat Performance Test. If at the end of second Repeat Performance Test conducted by the Seller or the last date of the end of the six month period referred to in Article 8.1.1, whichever is earlier, the Tested Capacity is less than the Rated Capacity, the consequences mentioned in Article 8.2.2 shall apply for a period of atleast one year after which the Seller shall have a right to undertake a Repeat Performance Test. Provided that such consequences shall apply with respect to the Tested Capacity existing at the end of second Repeat Performance Test conducted by the Seller or the last date of the end of the six month period referred to in Article 8.1.1, whichever is earlier.

8.2.3 If the Independent Engineer certifies that it is unable to give a Final Test Certificate because events or circumstances beyond the Seller's reasonable control have prevented the Repeat Performance Test from being carried out in accordance with Schedule 4, the Procurer shall reschedule a Repeat Performance Test as soon as reasonably practicable.

8.2.4 If a Unit's or Units' Tested Capacity is found to be more than it's Rated Capacity, the provisions of Article 6.2.10 shall apply mutatis mutandis.



8.3 Availability

8.3.1 The Seller shall comply with the provisions of the applicable Law regarding Availability including, in particular, to the provisions of the ABT and Grid Code relating to intimation of Availability and the matters incidental thereto.

8.3.2 In case the Contracted Capacity of a Unit/Contracted Capacity as a whole is a part of the installed capacity of a power station; in the event of Availability from the Project in a Settlement Period being less than 100%, the capacity available to GUVNL for despatch shall be reduced proportionately. However, the Seller has the option to offer more than such reduced capacity for despatch by GUVNL but not lower than such proportionate availability.

8.4 Dispatch

8.4.1 The Seller shall comply with the provisions of the applicable Law regarding Dispatch instructions, in particular, to the provisions of the ABT and Grid Code relating to Dispatch and the matters incidental thereto.



9 ARTICLE 9: METERING AND ENERGY ACCOUNTING

9.1 Metering system of the Project

9.1.1 The metering system for the Project (the "Metering System") shall be installed by the Seller in consultation with the CTU/STU/Procurer as per the Appropriate Electricity Grid Code and the Applicable ABT Regulations as outlined by the GERC/CERC and shall comprise of:

- a. a meter on each Unit (the "Generator Meters");
- b. a meter at each of the Interconnection Point (the "Interconnection Meter");
- c. a meter at each of the station transformer (the "Import Meter"); and
- d. check meters for the Generator Meters, the Interconnection Meter and the Import Meter (the "Check Meters").

9.1.2 The Metering System shall measure:

- a. in respect of the Generator Meters and the corresponding Check Meters, the Generator Capacity of each Unit at its generator terminal;
- b. in respect of the Interconnection Meters and the corresponding Check Meter, the Electrical Output delivered at the Interconnection Points; and
- c. in respect of the Import Meter and the corresponding Check Meter, energy imported by the Company into the Power Station at the station transformers.

9.2 Meters

9.2.1 For installation of Meters, Meter testing, Meter calibration, Meter reading, Energy accounting and Testing accuracy of meters and all matters incidental thereto, the Seller and the Procurer shall follow and be bound by the Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006, the Grid Code and ABT as amended and revised from time to time.

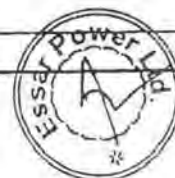
9.3 RLDC / SLDC Charges

9.3.1 All applicable scheduling and RLDC / SLDC charges-

- (a) up to the Delivery Point shall be borne by the Seller and
- (b) beyond the Delivery Point shall be borne by the Procurer.

9.4 Establishment of Proportionate Availability

9.4.1 The 'Generator Meters' shall be jointly read by the Procurer and Seller or their authorised representatives at the end of every quarter.



- 9.4.2 The Seller shall, using such quarterly readings of meters at Generators prove Procurer's proportionate right, as per Article 8.3.2, for each Settlement Period on Power and Energy Output of the Project up to the Contracted Capacity.
- 9.4.3 Procurer shall have the right to initiate such joint meter readings, at times other than the quarterly reading as per Article 9.4.1 of this Agreement, by giving a notice of at least 7 days to the Seller.
- 9.4.4 In case the Seller fails to establish Procurer's proportionate right as per provisions of Article 9.4.2 of this Agreement, the Seller shall be liable to be penalised. Such penalty shall be 1.5 (one and a half) times the difference between Highest Energy Charges for Industrial Category in Gujarat and Energy Charges Quoted by the Seller for each unit of energy for which Procurer's first right was breached. In case the UI Charges at 49.0 Hz, applicable during the period of such breach of Procurer's proportionate right is higher than the Highest Energy Charges for Industrial Category in Gujarat, the penalty shall be 1.5 (one and a half) times the difference between UI Charges at 49.0 Hz and Energy Charges quoted by the Seller for each unit of energy.



10 ARTICLE 10: INSURANCES

10.1 Insurance

10.1.1 The Seller shall effect and maintain or cause to be effected and maintained during the Construction Period and Operating Period, Insurances against such risks, with such deductibles and with such endorsements and co-insured(s), which the Prudent Utility Practices would ordinarily merit maintenance of and as required under the Financing Agreements.

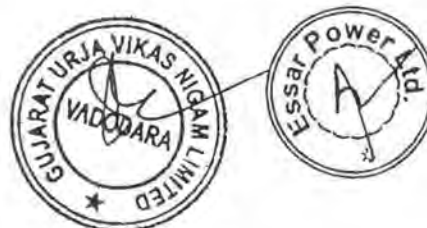
10.2 Application of Insurance Proceeds

10.2.1 Save as expressly provided in this Agreement or the Insurances, the proceeds of any insurance claim made due to loss or damage to the Project or any part of the Project shall be first applied to reinstatement, replacement or renewal of such loss or damage.

10.2.2 If a Natural Force Majeure Event renders the Project no longer economically and technically viable and the insurers under the Insurances make payment on a "total loss" or equivalent basis, the Procurer shall have no claim on such proceeds of such Insurance.

10.3 Effect on liability of the Procurer

10.3.1 Notwithstanding any liability or obligation that may arise under this Agreement, any loss, damage, liability, payment, obligation or expense which is insured or for which the Seller can claim compensation, under any Insurance shall not be charged to or payable by the Procurer.



11 ARTICLE 11: BILLING AND PAYMENT

11.1 General

11.1.1 From the COD of the first Unit, Procurer shall pay the Seller the Monthly Tariff Payment, on or before the Due date, comprising of Tariff for every Contract Year, determined in accordance with this Article 11 and Schedule 6. All Tariff payments by the Procurer shall be in Indian Rupees.

Provided however, if the Procurer avails of any Electrical output from the Seller prior to the Commercial Operation Date of a Unit made available at the Delivery Point ("Infirm Power"), then the Procurer shall be liable to pay only Energy Charges (as applicable for the Contract Year in which the Infirm Power is supplied or next Contract Year in case no Energy Charges are mentioned in such Contract Year), for Infirm Power generated by the corresponding Unit. The quantum of Infirm Power generated by Units synchronized but have not achieved COD shall be computed from the energy accounting and audit meters installed at the Power Station as per Central Electricity Authority (installation and operation of meters) Regulations 2006 as amended from time to time.

11.2 Delivery and content of Monthly Bills

11.2.1 The Seller shall issue to Procurer a signed Monthly Bill for the immediately preceding Month.
Provided that:

- i. if the COD of the first Unit falls during the period between the first (1st) day and up to and including the fifteenth (15th) day of a Month, the first Monthly Bill shall be issued for the period until the last day of such Month, or
- ii. if the COD of the first Unit falls after the fifteenth (15th) day of a Month, the first Monthly Bill shall be issued for the period commencing from the COD of the first Unit until the last day of the immediately following Month.

Provided further that if a Monthly Bill is received on or before the second (2nd) day of a Month, it shall be deemed to have been received on the second (2nd) Business Day of such Month.

11.2.2 Each Monthly Bill and Provisional Bill shall include:

- i. Availability and energy account for the relevant Month as per REA/SEA for Monthly Bill and RLDC/SLDC's daily energy account for Provisional Bill;



- ii. the Seller's computation of various components of the Monthly Tariff Payment in accordance with Schedule 6; and
- iii. supporting data, documents and calculations in accordance with this Agreement.

11.3 Payment of Monthly Bills

11.3.1 The Procurer shall pay the amount payable under Monthly Bill on the Due Date to such account of the Seller, as shall have been previously notified by the Seller to Procurer in accordance with Article 11.3.3 below.

11.3.2 All payments made by the Procurer shall be appropriated by the Seller in the following order of priority:

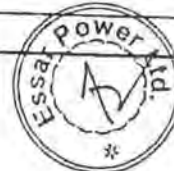
1. towards Late Payment Surcharge, payable by the Procurer, if any;
2. towards earlier unpaid Monthly Bill, if any; and
3. towards the then current Monthly Bill.

11.3.3 All payments required to be made under this Agreement shall only include any deduction or set off for:

- i. deductions required by the Law; and
- ii. amounts claimed by the Procurer from the Seller, through an invoice duly acknowledged by the Seller, to be payable by the Seller, and not disputed by the Seller within thirty (30) days of receipt of the said invoice and such deduction or set-off shall be made to the extent of the amounts not disputed. It is clarified that the Procurer shall be entitled to claim any set off or deduction under this Article, after expiry of the said 30 day period.
- iii. 15% of the disputed amount of a Disputed Invoice in accordance with provisions of Article 11.6.

Provided further, the maximum amounts that can be deducted or set-off by the Procurer under this Article in a Contract Year shall not exceed the amount equivalent to Rupees 2.5 lakhs per MW of Contracted Capacity, except on account of payments under sub Article (i) above.

11.3.4 The Seller shall open a bank account at Vadodara, Gujarat, India (the "Designated Account") for all Tariff Payments to be made by the Procurer to the Seller, and notify the Procurer of the details of such account at least ninety (90) days before the dispatch of the first Monthly Bill to the Procurer. Procurer shall instruct its bankers to make all payments under this Agreement



to the Designated Account and shall notify the Seller of such instructions on the same day. Procurer shall also designate a bank account at Vadodara for payments to be made by the Seller (including Supplementary Bills) to Procurer and notify the Seller of the details of such account ninety (90) days before the COD of the first Unit.

11.3.5 In the event of delay in payment of a Monthly Bill by the Procurer beyond 30 days from Due Date, a Late Payment Surcharge shall be payable by the Procurer to the Seller at the rate of two (2) percent in excess of the applicable SBAR per annum, on the amount of outstanding payment, calculated on a day to day basis (and compounded with Monthly rest), for each day of the delay.

11.3.6 For payment of any Bill before Due Date, the following rebate shall be paid by the Seller to the Procurer in the following manner.

- a) Provisional Bill will be raised by the Seller on the last working day of the Month where the Capacity Charges shall be based on the Declared Capacity for the full Month and the Energy Charges shall be based on the final implemented Scheduled Energy up to 25th day of the Month. Rebate shall be payable at the rate of two point two five percent (2.25%) of the amount (which shall be the full amount due under the Provisional Bill) credited to Seller's account on first day of the Month and rebate amount shall reduce at the rate of zero point zero five percent (0.05%) for each day, up to fifth (5th) day of the Month.
- b) Applicable rate of rebate at (a) above shall be based on the date on which payment has been actually credited to the Seller's account. Any delay in transfer of money to the Seller's account, on account of public holiday, bank holiday or any other reasons shall be to the account of the Procurer.
- c) Two percent (2%) rebate for credit to Sellers account made within one (1) Business Day of the presentation of Monthly Bill for the Month for which the Provisional Bill was raised earlier.
- d) For credit to Seller's account made on other days the rebate shall be as under:

Number of days before Due Date on Monthly Bill	Rates of Rebate applicable
29	Two point two five percent (2.25%)
28	Two point two zero percent (2.20%)
27	Two point one five percent (2.15%)
26	Two point one zero percent (2.10%)

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Number of days before Due Date on Monthly Bill	Rates of Rebate applicable
25	Two point zero five percent (2.05%)
24	Two percent (2.00%)
23 and each day thereafter up to the Due Date	2% less $[0.033\% \times \{24 \text{ less number of days before Due Date when the payment is made by the Procurer}\}]$

In case of presentation of Monthly Bill beyond the sixth (6th) day of the Month, two percent (2%) rebate will be applicable only on the day of presentation of Monthly Bill and beyond that rebate will be applicable as per the table above.

- e) Rebate of two point two five percent (2.25%) to two point zero five percent (2.05%) will be available only in case the Procurer credits one hundred percent (100%) of the Provisional Bill within first five (5) days of the Month to Seller's account/designated account and balance amount, if any, based on Monthly Bill (as per REA) within the Month.
- f) In the event only part amount of Provisional Bill is credited to Seller's account, within first five (5) days and the balance amount is credited to Sellers account during other days of the Month, rebate will be paid on such part amount at the rate of two percent (2%) plus zero point zero three three percent (0.033%) per day of the number of days earlier than the 6th day when the part amount is credited to Sellers' account;
- g) The above rebate will be allowed only incase the Procurer credits to Seller's account the full Monthly Bill.
- h) No rebate shall be payable on the bills raised on account of Change in Law relating to taxes, duties and cess;
- i) If the Provisional Bill has not been paid by the date of receipt of the Monthly Bill then such Provisional Bill shall not be payable, provided in case the Provisional Bill has already been paid, then only the difference between the Monthly Bill and Provisional Bill shall be payable.

11.4 Payment Security Mechanism

11.4.1 Letter of Credit

The Procurer shall provide to the Seller, in respect of payment of its Monthly Bills, a monthly unconditional, revolving and irrevocable letter of credit ("**Letter of Credit**"), opened and maintained by the Procurer, which may be drawn upon by the Seller in accordance with Articles 11.4.1.1 through 11.4.1.5. The Procurer shall provide the Seller draft of the Letter of Credit proposed to be provided to the Seller

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before the NTP. Further, the Letter of Credit shall be provided from the bank that is appointed as Default Escrow Agent under the Default Escrow Agreement.

11.4.1.1 Not later than one (1) Month prior to the COD of the first Unit, Procurer shall through a scheduled bank at Vadodara open a Letter of Credit in favour of the Seller, to be made operative from a date prior to the Due Date of its first Monthly Bill under this Agreement. The Letter of Credit shall have a term of twelve (12) Months and shall be renewed annually, for an amount equal to:

- i) for the first Contract Year, equal to one point one (1.1) times the estimated average monthly billing based on Normative Availability;
- ii) for each subsequent Contract Year, equal to the one point one (1.1) times the average of the Monthly Tariff Payments of the previous Contract Year plus the estimated Monthly Billing during the current year from any additional Unit(s) expected to be put on COD during the current Contract Year based on Normative Availability.

Provided that the Seller shall not draw upon such Letter of Credit prior to the Due Date of the relevant Monthly Bill, and shall not make more than one drawal in a Month.

Provided further that if at any time, such Letter of Credit amount falls short of the amount specified in Article 11.4.1.1 or 11.4.1.8 otherwise than by reason of drawal of such Letter of Credit by the Seller, the Procurer shall restore such shortfall within seven (7) days.

11.4.1.2 Procurer shall cause the scheduled bank issuing the Letter of Credit to intimate the Seller, in writing regarding establishing of such irrevocable Letter of Credit.

11.4.1.3 In case of drawal of the Letter of Credit by the Seller in accordance with the terms of this Article 11.4.1, the amount of the Letter of credit shall be reinstated in the manner stated in Article 11.4.2.3 of this Agreement.

11.4.1.4 If the Procurer fails to pay a Monthly Bill or part thereof within and including the Due Date, then, subject to Article 11.6.7, the Seller may draw upon the Letter of Credit, and accordingly the bank shall pay without any reference or instructions from the Procurer, an amount equal to such Monthly Bill or part thereof plus Late Payment Surcharge, if applicable, in accordance with



Article 11.3.4 above, by presenting to the scheduled bank issuing the Letter of Credit, the following documents:

- i) a copy of the Monthly Bill which has remained unpaid by the Procurer;
- ii) a certificate from the Seller to the effect that the bill at item (i) above, or specified part thereof, is in accordance with the Agreement and has remained unpaid beyond the Due Date; and
- iii) calculations of applicable Late Payment Surcharge, if any.

For the avoidance of doubt it is clarified that the Seller shall not be entitled to drawdown on the Letter of Credit for any failure of the Procurer to pay a Supplementary Bill.

11.4.1.5 Procurer shall ensure that the Letter of Credit shall be renewed not later than forty five (45) days prior to its expiry.

11.4.1.6 All costs relating to opening and maintenance of the Letter of Credit shall be borne by the Procurer; however, Letter of Credit negotiation charges shall be borne and paid by the Seller.

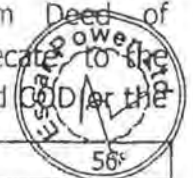
11.4.1.7 Where necessary, the Letter of Credit may also be substituted by an unconditional and irrevocable bank guarantee or an equivalent instrument as mutually agreed by the Procurer and the Seller.

11.4.1.8 Upon fulfillment of the conditions mentioned under Article 11.4.2.2 the Letter of Credit amount as mentioned in Article 11.4.1.1 shall be changed to one (1) time the average of the Monthly Tariff Payments of the previous Contract Year instead of one point one (1.1) times the average of the Monthly Tariff Payments of the previous Contract Year.

11.4.2 Collateral Arrangement

11.4.2.1 As further support for the Procurer's obligations, on or prior to the Effective Date, the Procurer and the Seller shall execute separate Default Escrow Agreement (referred as "Default Escrow Agreement") for the establishment and operation of the Default Escrow Account in favour of the Seller, through which the revenues of the Procurer shall be routed and used as per the terms of the Default Escrow Agreement. The Procurer and the Seller shall contemporaneously with the execution of the Default Escrow Agreement enter into a separate Agreement to Hypothecate Cum Deed of Hypothecation, whereby the Procurer shall agree to hypothecate to the Seller, effective from forty five (45) days prior to the Scheduled COD for the

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Revised Scheduled COD of the first Unit (as applicable), the amounts to the extent as required for the Letter of Credit as per Article 11.4.1.1 routed through the Default Escrow Account and the Receivables in accordance with the terms of the Agreement to Hypothecate Cum Deed of Hypothecation. The Default Escrow Agreements and the Agreement to Hypothecate Cum Deed of Hypothecation are collectively referred to as the "Collateral Arrangement". The minimum revenue flow in any Month in the Default Escrow Account shall be at least equal to the amount required for the Letter of Credit as per Article 11.4.1.1.

Provided that the Procurer shall ensure that the Seller has first ranking charge on the revenues routed through the Default Escrow Account and the 'Receivables' in accordance with the terms of the Agreement to Hypothecate Cum Deed of Hypothecation. However, such first ranking charge shall be on the amounts, in excess of amounts, which have already been charged or agreed to be charged prior to the date of the execution of the Default Escrow Agreement.

11.4.2.2 On the occurrence of all of the following events in respect of the Procurer:

- (i) A period of not less than two (2) years from COD of Contracted Capacity, has elapsed; and
- (ii) The Procurer has achieved, for its ability to honour its Tariff Payment obligations to the Seller under this Agreement, a credit rating of 'A' or better, from a SEBI registered Indian credit rating agency mutually agreed between Seller and the Lender/s, consistently for a period of at least three (3) years; and
- (iii) Immediately prior to the three (3) year period mentioned in sub-clause (ii) above, for a period of at least two (2) years there has been no Procurer Event of Default under Article 14 of the PPA, by the Procurer,

the Procurer shall intimate the Seller in writing of the occurrence of the same and its intention to discontinue the Collateral Arrangement. If the Seller desires to continue with the Collateral Arrangement, it shall intimate the same to the Procurer in writing within thirty (30) days of receipt of intimation from the Procurer and in such case the Seller shall be liable to bear the costs of continuation of the Collateral Arrangement with effect from such date. In case the Seller fails to respond or agrees to discontinue,



the Collateral Arrangement shall forthwith cease and the Default Escrow Agreement and the routed through the Default Escrow Account and the 'Receivables' in accordance with the terms of the Agreement to Hypothecate Cum Deed of Hypothecation shall stand terminated as per terms thereof.

Provided that in case of any of conditions mentioned under (i), (ii) or (iii) in Article 11.4.2.2 ceases to be true, then within 90 days of the occurrence of such event, the Procurer shall reinstate the Collateral Arrangement, at its own cost.

11.4.2.3 If the Letter of Credit is insufficient to pay for the due payments to the Seller or is not replenished for the drawals made, then within a period of seven (7) days from the date such shortfall in the Letter of Credit occurs, the Letter of Credit shall be reinstated to the requisite amount specified in this Agreement, and in the manner specified in the Default Escrow Agreement.

11.5 Third Party Sales on default

11.5.1 Notwithstanding anything to the contrary contained in this Agreement, upon the occurrence of an event where the Procurer has not made payment by the Due Date of an Invoice through the payment mechanism provided in this Agreement the Seller after giving a notice of at least seven (7) days to the Procurer, shall have the right (but not the obligation) to make available and sell twenty five (25) percent of the Contracted Capacity or a part thereof to a third party, namely:

- (a) any consumer, subject to applicable Law; or
- (b) any licensee under the Electricity Act, 2003;

11.5.2 If the Collateral Arrangement is not fully restored by the Procurer within thirty (30) days of the non-payment by the Procurer of an Invoice by its Due Date, the provisions of Article 11.5.1 shall apply with respect to one hundred (100) per cent of the Contracted Capacity. Provided that in case the events mentioned in Article 11.4.2.2 (i), (ii) and (iii) are true, then this Article 11.5.2 shall be applicable as per Article 11.4.2.2.

Provided that, in the case of Article 11.5.3 or 11.5.4, the Seller shall ensure that sale of power to the shareholders of the Seller or any direct or indirect affiliate of the Seller/shareholders of the Seller, is not at a price less than the Energy Charges.



11.5.3 In case of third party sales, the adjustment of the surplus revenue over Energy Charge (applicable to the Procurer) attributable to such electricity sold, shall be adjusted as under:

- (a) the surplus up to the Tariff shall be used towards the extinguishment of the subsisting payment liability of the Procurer towards the Seller; and
- (b) the surplus if any above the Tariff shall be retained by the Seller.

The liability of the Procurer towards making Capacity Charge payments to the Seller for electricity sold to third parties will remain unaffected. Provided such Capacity Charge payment liability shall cease on the date which occurs on the Expiry of a period of 3 years and hundred days from the date of occurrence of a Procurer Event of Default under Article 14.2 (i), provided if prior to such date, such Procurer Event of Default has not ceased and regular supply of electricity for a period of at least 90 continuous days has not occurred.

11.5.4 Sales to third party shall cease and regular supply of electricity to the Procurer in accordance with all the provisions of this Agreement shall commence and be restored on the later of the two following dates or any date before this date at the option of Seller:

- (a) the day on which the Procurer pays the amount due to the Seller and renews the Letter of Credit and restores Default Escrow Account (if applicable) as mentioned in Article 11.4.2.1 ; or
- (b) the date being "x" days from the date on which the Procurer pays the amount due to the Seller, where "x" days shall be calculated in accordance with Schedule 2.

11.6 Disputed Bill

11.6.1 If a Party does not dispute a Monthly Bill, Provisional Bill or a Supplementary Bill raised by the other Party within ninety (90) days of receiving it, such bill shall be taken as conclusive.

11.6.2 If a Party disputes the amount payable under a Monthly Bill, Provisional Bill or a Supplementary Bill, as the case may be, that Party shall, within ninety (90) days of receiving such bill, issue a notice (the "Bill Dispute Notice") to the invoicing Party setting out:

- i) the details of the disputed amount;
- ii) its estimate of what the correct amount should be; and



iii) all written material in support of its claim.

11.6.3 If the invoicing Party agrees to the claim raised in the Bill Dispute Notice issued pursuant to Article 11.6.2, the invoicing Party shall revise such bill within seven (7) days of receiving such notice and if the disputing Party has already made the excess payment refund to the disputing Party such excess amount within fifteen (15) days of receiving such notice. In such a case excess amount shall be refunded along with interest at the same rate as Late Payment Surcharge which shall be applied from the date on which such excess payment was made to the invoicing Party and up to and including the date on which such payment has been received.

11.6.4 If the invoicing Party does not agree to the claim raised in the Bill Dispute Notice issued pursuant to Article 11.6.2, it shall, within fifteen (15) days of receiving the Bill Dispute Notice, furnish a notice to the disputing Party providing:

- i) reasons for its disagreement;
- ii) its estimate of what the correct amount should be; and
- iii) all written material in support of its counter-claim.

11.6.5 Upon receipt of notice of disagreement to the Bill Dispute Notice under Article 11.6.4, authorised representative(s) or a director of the board of directors/member of board of each Party shall meet and make best endeavours to amicably resolve such dispute within fifteen (15) days of receiving such notice of disagreement to the Bill Dispute Notice.

11.6.6 If the Parties do not amicably resolve the dispute within fifteen (15) days of receipt of notice of disagreement to the Bill Dispute Notice pursuant to Article 11.6.4, the matter shall be referred to Dispute Resolution in accordance with Article 17.

11.6.7 In case of Disputed Bills, it shall be open to the aggrieved party to approach the Appropriate Commission for Dispute Resolution in accordance with Article 17 and also for interim orders protecting its interest including for orders for interim payment pending Dispute Resolution and the Parties shall be bound by the decision of the Appropriate Commission, including in regard to interest or Late Payment Surcharge, if any directed to be paid by the Appropriate Commission.

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11.6.8 If a Dispute regarding a Monthly Bill, Provisional Bill or a Supplementary Bill is settled pursuant to Article 11.6 or by Dispute resolution mechanism provided in this Agreement in favour of the Party that issues a Bill Dispute Notice, the other Party shall refund the amount, if any incorrectly charged and collected from the disputing Party or pay as required, within five (5) days of the Dispute either being amicably resolved by the Parties pursuant to Article 11.6.5 or settled by Dispute Resolution Mechanism along with interest at the same rate as Late Payment Surcharge from the date on which such payment had been made to the invoicing Party or the date on which such payment was originally due, as may be applicable.

11.6.9 For the avoidance of doubt, it is clarified that despite a Dispute regarding an Invoice, the concerned Procurer shall, without prejudice to its right to Dispute, be under an obligation to make payment, of the lower of (a) an amount equal to simple average of last three (3) Months invoices (being the undisputed portion of such three Months invoices) and (b) Monthly Invoice which is being disputed, provided such Monthly Bill has been raised based on the REA and in accordance with this Agreement.

11.7 Quarterly and Annual Reconciliation

11.7.1 Parties acknowledge that all payments made against Monthly Bills, Provisional Bill and Supplementary Bills shall be subject to quarterly reconciliation at the beginning of the following quarter of each Contract Year and annual reconciliation at the end of each Contract Year to take into account REA, Tariff Adjustment Payments, Tariff Rebate Payments, Late Payment Surcharge, or any other reasonable circumstance provided under this Agreement. The Parties, therefore, agree that as soon as all such data in respect of any quarter of a Contract Year or a full Contract Year as the case may be has been finally verified and adjusted, the Seller and the Procurer shall jointly sign such reconciliation statement. Within fifteen (15) days of signing of a reconciliation statement, the Seller or Procurer, as the case may be, shall raise a Supplementary Bill for the Tariff Adjustment Payments for the relevant quarter/ Contract Year and shall make payment of such Supplementary Bill for the Tariff Adjustment Payments for the relevant quarter/Contract Year. Late Payment Surcharge shall be payable in such a case from the date on which such payment had been made to the invoicing Party or the date on which any payment was originally due, as may be applicable. Any dispute with regard to the above reconciliation shall be dealt with in accordance with the provisions of Article 17.



11.8 Payment of Supplementary Bill

11.8.1 Either Party may raise a bill on the other Party ("Supplementary Bill") for payment on account of:

- i) Adjustments required by the Regional Energy Account (if applicable);
 - ii) Tariff Payment for change in parameters, pursuant to provisions in Schedule 6; or
 - iii) Change in Law as provided in Article 13,
- and such Bill shall be paid by the other Party.

11.8.2 Procurer shall remit all amounts due under a Supplementary Bill raised by the Seller to the Seller's Designated Account by the Due Date and notify the Seller of such remittance on the same day. Similarly, the Seller shall pay all amounts due under a Supplementary Bill raised by Procurer by the Due Date to concerned Procurer's designated bank account and notify the Procurer of such payment on the same day. For such payments by the Procurer, rebates as applicable to Monthly Bills pursuant to Article 11.3.5 shall equally apply.

11.8.3 In the event of delay in payment of a Supplementary Bill by either Party beyond its Due Date, a Late Payment Surcharge shall be payable at the same terms applicable to the Monthly Bill in Article 11.3.4.

11.9 Payment for Start up Power

11.9.1 The Seller shall be liable to pay, for the power and energy consumed for start-up and commissioning, to the distribution Licensee(s) in whose area the Project/Unit is located or such other entity from whom such power/energy is sourced, at the then prevalent rates payable by such industrial consumers.

12 ARTICLE 12: FORCE MAJEURE

12.1 Definitions

In this Article 12, the following terms shall have the following meanings:

12.2 Affected Party

An affected Party means the Procurer or the Seller whose performance has been affected by an event of Force Majeure.

An event of Force Majeure affecting the STU or any other agent of Procurer, which has affected the Interconnection and Transmission Facilities beyond the Delivery Point, shall be deemed to be an event of Force Majeure affecting Procurer.

Similarly, any event of Force Majeure affecting the CTU which has affected the Interconnection and Transmission Facilities up to the Delivery Point, shall be deemed to be an event of Force Majeure affecting the Seller.

Any event of Force Majeure affecting the performance of the Seller's contractors, shall be deemed to be an event of Force Majeure affecting Seller only if the Force Majeure event is affecting and resulting in:

- a. late delivery of plant, machinery, equipment, materials, spare parts, Fuel, water or consumables for the Project; or
- b. a delay in the performance of any of the Seller's contractors.

Similarly, any event of Force Majeure affecting the performance of the Procurer's contractor for the setting up or operating Interconnection Facilities shall be deemed to be an event of Force Majeure affecting Procurer only if the Force Majeure event is resulting in a delay in the Performance of Procurer's contractors.

12.3 Force Majeure

A 'Force Majeure' means any event or circumstance or combination of events and circumstances including those stated below that wholly or partly prevents or unavoidably delays an Affected Party in the performance of its obligations under this Agreement, but only if and to the extent that such events or circumstances are not within the reasonable control, directly or indirectly, of the Affected Party and could not have been avoided if the Affected Party had taken reasonable care or complied with Prudent Utility Practices:

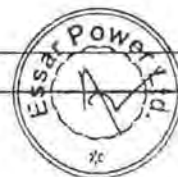
12.4 Force Majeure Exclusions

Force Majeure shall not include (i) any event or circumstance which is within the reasonable control of the Parties and (ii) the following conditions, except to the extent that they are consequences of an event of Force Majeure:

- a. Unavailability, late delivery, or changes in cost of the plant, machinery, equipment, materials, spare parts, Fuel or consumables for the Project;
- b. Delay in the performance of any contractor, sub-contractors or their agents excluding the conditions as mentioned in Article 12.2;
- c. Non-performance resulting from normal wear and tear typically experienced in power generation materials and equipment;
- d. Strikes or labour disturbance at the facilities of the Affected Party;
- e. Insufficiency of finances or funds or the agreement becoming onerous to perform; and
- f. Non-performance caused by, or connected with, the Affected Party's:
 - i) Negligent or intentional acts, errors or omissions;
 - ii) Failure to comply with an Indian Law; or
 - iii) Breach of, or default under this Agreement or any RFP Documents.

12.5 Notification of Force Majeure Event

The Affected Party shall give notice to the other Party of any event of Force Majeure as soon as reasonably practicable, but not later than seven (7) days after the date on which such Party knew or should reasonably have known of the commencement of the event of Force Majeure. If an event of Force Majeure results in a breakdown of communications rendering it unreasonable to give notice within the applicable time limit specified herein, then the Party claiming Force Majeure shall give such notice as soon as reasonably practicable after reinstatement of communications, but not later than one (1) day after such reinstatement. Provided that such notice shall be a pre-condition to the Seller's entitlement to claim relief under this Agreement. Such notice shall include full particulars of the event of Force Majeure, its effects on the Party claiming relief and the remedial measures proposed. The Affected Party shall give the other Party regular (and not less than monthly) reports on the progress of those remedial measures and such other information as the other Party may reasonably request about the situation.



The Affected Party shall give notice to the other Party of (i) the cessation of the relevant event of Force Majeure; and (ii) the cessation of the effects of such event of Force Majeure on the performance of its rights or obligations under this Agreement, as soon as practicable after becoming aware of each of these cessations.

12.6 Duty to perform and duty to mitigate

To the extent not prevented by a Force Majeure event pursuant to Article 12.3, the Affected Party shall continue to perform its obligations pursuant to this Agreement. The Affected Party shall use its reasonable efforts to mitigate the effect of any event of Force Majeure as soon as practicable.

12.7 Available Relief for a Force Majeure Event

Subject to this Article 12:

- (a) no Party shall be in breach of its obligations pursuant to this Agreement to the extent that the performance of its obligations was prevented, hindered or delayed due to a Force Majeure Event;
- (b) every Party shall be entitled to claim relief in relation to a Force Majeure Event in regard to its obligations, including but not limited to those specified under Article 4.5.
- (c) For the avoidance of doubt, it is clarified that no Tariff shall be paid by the Procurer for the part of Contracted Capacity affected by a Natural Force Majeure Event affecting the Seller, for the duration of such Natural Force Majeure Event. For the balance part of the Contracted Capacity, the Procurer shall pay the Tariff to the Seller, provided during such period of Natural Force Majeure Event, the balance part of the Power Station is declared to be Available for scheduling and dispatch as per ABT for supply of power by the Seller to the Procurer.
- (d) If the average Availability of the Power Station is reduced below sixty (60) percent for over two (2) consecutive months or for any non consecutive period of four (4) months both within any continuous period of sixty (60) months, as a result of an Indirect Non Natural Force Majeure, then, with effect from the end of that period and for so long as the daily average Availability of the Power Station continues to be reduced below sixty (60) percent as a result of an Indirect Non Natural Force Majeure of any kind, the Procurer shall make payments for Debt Service, subject to a maximum of Capacity Charges based on Normative Availability, relatable to such Unit, which are due under the Financing Agreements and these amounts shall be paid from the date, being the later of a) the date of cessation of such Indirect Non Natural Force Majeure Event and b) the completion of sixty (60) days from the receipt of the Financing Agreements by the Procurer from the Seller,



in the form of an increase in Capacity Charge. Provided such Capacity Charge increase shall be determined by Appropriate Commission on the basis of putting the Seller in the same economic position as the Seller would have been in case the Seller had been paid Debt Service in a situation where the Indirect Non Natural Force Majeure had not occurred.

Provided that the Procurer will have the above obligation to make payment for the Debt Service only (a) after the Unit(s) affected by such Indirect Non Natural Force Majeure Event has achieved COD, and (b) only if in the absence of such Indirect Non Natural Force Majeure Event, the Availability of such Commissioned Unit(s) would have resulted in Capacity Charges equal to Debt Service.

- (e) If the average Availability of the Power Station is reduced below eighty (80) percent for over two (2) consecutive months or for any non consecutive period of four (4) months both within any continuous period of sixty (60) months, as a result of a Direct Non Natural Force Majeure, then, with effect from the end of that period and for so long as the daily average Availability of the Power Station continues to be reduced below eighty (80) percent as a result of a Direct Non Natural Force Majeure of any kind, the Seller may elect in a written notice to the Procurer, to deem the Availability of the Power Station to be eighty (80) percentage from the end of such period, regardless of its actual Available Capacity. In such a case, the Procurer shall be liable to make payment to the Seller of Capacity Charges calculated on such deemed Normative Availability, after the cessation of the effects of Non Natural Direct Force Majeure in the form of an increase in Capacity Charge. Provided such Capacity Charge increase shall be determined by Appropriate Commission on the basis of putting the Seller in the same economic position as the Seller would have been in case the Seller had been paid Capacity Charges in a situation where the Direct Non Natural Force Majeure had not occurred.
- (f) For so long as the Seller is claiming relief due to any Non Natural Force Majeure Event (or Natural Force Majeure Event affecting the Procurer) under this Agreement, the Procurer may from time to time on one (1) days notice inspect the Project and the Seller shall provide Procurer's personnel with access to the Project to carry out such inspections, subject to the Procurer's personnel complying with all reasonable safety precautions and standards. Provided further the Procurer shall be entitled at all times to request Repeat Performance Test, as per Article 8.1, of the Unit(s) Commissioned earlier and now affected by Direct or Indirect Non Natural Force Majeure Event (or



Natural Force Majeure Event affecting the Procurer), where such Testing is possible to be undertaken in spite of the Direct or Indirect Non Natural Force Majeure Event (or Natural Force Majeure Event affecting the Procurer), and the Independent Engineer accepts and issues a Final Test Certificate certifying such Unit(s) being capable of delivering the Contracted Capacity and being Available, had there been no such Direct or Indirect Non Natural Force Majeure Event (or Natural Force Majeure Event affecting the Procurer). In case, the Available Capacity as established by the said Repeat Performance Test (provided that for such Repeat Performance Test, the limitation imposed by Article 8.1.1 shall not apply) and Final Test Certificate issued by the Independent Engineer is less than the Available Capacity corresponding to which the Seller would have been paid Capacity Charges equal to Debt Service in case of Indirect Non Natural Force Majeure Event (or Natural Force Majeure Event affecting the Procurer), then the Procurer shall make pro-rata payment of Debt Service but only with respect to such reduced Availability. For the avoidance of doubt, if Debt Service would have been payable at an Availability of 60% and pursuant to a Repeat Performance Test it is established that the Availability would have been 40%, then Procurer shall make payment equal to Debt Service multiplied by 40% and divided by 60%. Similarly, the payments in case of Direct Non Natural Force Majeure Event (and Natural Force Majeure Event affecting the Procurer) shall also be adjusted pro-rata for reduction in Available Capacity.

- (g) In case of a Natural Force Majeure Event affecting the Procurer which adversely affects the performance obligations of the Seller under this Agreement, the provisions of sub-proviso (d) and (f) shall apply.

12.8 Additional Compensation and Procurer's Subrogation

If the Seller is entitled, whether actually or contingently, to be compensated by any person other than the Procurer as a result of the occurrence of a Non Natural Force Majeure Event (or Natural Force Majeure Event affecting the Procurer) for which it has received compensation from the Procurer pursuant to this Article 12, including without limitation, payments made which payments would not have been made in the absence of Article 4.7.1, the Procurer shall be fully subrogated to the Seller's rights against that person to the extent of the compensation paid by the Procurer to the Seller. Provided that in case the Seller has actually received compensation from the any person other than the Procurer as well as the Procurer as a result of the occurrence of a Non Natural Force Majeure Event (or Natural Force Majeure Event affecting the Procurer), then the Seller shall forthwith refund the

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compensation received by it from the Procurer but only to the extent of the compensation received by the Seller from any person other than the Procurer.

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13 ARTICLE 13: CHANGE IN LAW

13.1 Definitions

In this Article 13, the following terms shall have the following meanings:

13.1.1 "Change in Law" means the occurrence of any of the following events after the date, which is seven (7) days prior to the Bid Deadline:

(i) the enactment, bringing into effect, adoption, promulgation, amendment, modification or repeal, of any Law or (ii) a change in interpretation of any Law by a Competent Court of law, tribunal or Indian Governmental Instrumentality provided such Court of law, tribunal or Indian Governmental Instrumentality is final authority under law for such interpretation or (iii) change in any consents, approvals or licenses available or obtained for the Project, otherwise than for default of the Seller, which results in any change in any cost of or revenue from the business of selling electricity by the Seller to the Procurer under the terms of this Agreement, or (iv) any change in the cost of implementing Environmental Management Plan for the Power Station;

but shall not include (i) any change in any withholding tax on income or dividends distributed to the shareholders of the Seller, or (ii) change in respect of UI Charges or frequency intervals by an Appropriate Commission.

Provided that if Government of India does not extend the income tax holiday for power generation projects under Section 80 IA of the Income Tax Act, up to the Scheduled Commercial Operation Date of the Power Station, such non-extension shall be deemed to be a Change in Law.

13.1.2 "Competent Court" means:

The Supreme Court or any High Court, or any tribunal or any similar judicial or quasi-judicial body in India that has jurisdiction to adjudicate upon issues relating to the Project.

13.2 Application and Principles for computing impact of Change in Law

While determining the consequence of Change in Law under this Article 13, the Parties shall have due regard to the principle that the purpose of compensating the Party affected by such Change in Law, is to restore through Monthly Tariff payments, to the extent contemplated in this Article 13, the affected Party to the same economic position as if such Change in Law has not occurred.

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a) Construction Period

As a result of any Change in Law, the Impact of increase/decrease of Capital Cost of the Project in the Tariff shall be governed by the formula given below:

For every cumulative increase/decrease of each Rupees 1.25 lakhs in the per MW Capital Cost, in relation to the Installed Capacity, over the term of this Agreement, the increase/decrease in Non Escalable Capacity Charges shall be an amount equal to zero point two six seven (0.267%) of the Non Escalable Capacity Charges. Provided that the Seller provides to the Procurer documentary proof of such increase/ decrease in Capital Cost for establishing the impact of such Change in Law. In case of Dispute, Article 17 shall apply.

It is clarified that the above mentioned compensation shall be payable to either Party, only with effect from the date on which the total increase/decrease exceeds amount equivalent to Rs. 1.25 lakhs in the per MW Capital Cost.

b) Operation Period

As a result of Change in Law, the compensation for any increase/decrease in revenues or cost to the Seller shall be determined and effective from such date, as decided by the Gujarat Electricity Regulatory Commission whose decision shall be final and binding on both the Parties, subject to rights of appeal provided under applicable Law.

Provided that the above mentioned compensation shall be payable only if and for increase/ decrease in revenues or cost to the Seller is in excess of an amount equivalent to 1% of the Letter of Credit in aggregate for a Contract Year.

13.3 Notification of Change in Law

13.3.1 If the Seller is affected by a Change in Law in accordance with Article 13.2 and wishes to claim a Change in Law under this Article, it shall give notice to the Procurer of such Change in Law as soon as reasonably practicable after becoming aware of the same or should reasonably have known of the Change in Law.

13.3.2 Without prejudice to the factor of materiality or other provisions contained in this Agreement, the obligation to inform the Procurer contained herein shall

be material. Provided that in case the Seller has not provided such notice, the Procurer shall have the right to issue such notice to the Seller.

- 13.3.3 Any notice served pursuant to this Article 13.3.2 shall provide, amongst other things, precise details of;
- (a) the Change in Law; and
 - (b) the effects on the Seller of the matters referred to in Article 13.2.
 - (c) the date of impact resulting from the occurrence of Article 13.1.1.

13.4 Tariff Adjustment Payment on account of Change in Law

13.4.1 Subject to Article 13.2, the adjustment in Monthly Tariff Payment shall be effective from:

- (a) the date of adoption, promulgation, amendment, re-enactment or repeal of the Law or Change in Law; or
- (b) (ii) the date of order/judgment of the Competent Court or tribunal or Indian Governmental Instrumentality, if the Change in Law is on account of a change in interpretation of Law.
- (c) the date of impact resulting from the occurrence of Article 13.1.1.

13.4.2 The payment for Changes in Law shall be through Supplementary Bill as mentioned in Article 11.8. However, in case of any change in Tariff by reason of Change in Law, as determined in accordance with this Agreement, the Monthly Invoice to be raised by the Seller after such change in Tariff shall appropriately reflect the changed Tariff.

13.5 Appeal against Change in Law

If the results stated in Article 13.1.1 are brought about by a change in the interpretation of Law by a court or tribunal that does not qualify as a Competent Court, the Seller agrees that it shall, at its own cost, appeal against such order/judgment up to the level of the appropriate Competent Court and the right of the Seller to recover the additional amount from the Procurer on account of Changes in Law shall, unless waived in writing by the Procurer, shall be dependent on the Sellers taking adequate steps to contest the increase.

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14 ARTICLE 14: EVENTS OF DEFAULT AND TERMINATION

14.1 Seller Event of Default

The occurrence and continuation of any of the following events, unless any such event occurs as a result of a Force Majeure Event or a breach by Procurer of their obligations under this Agreement, shall constitute a Seller Event of Default:

- i) the failure to Commission any Unit by the date falling twelve (12) Months after its Scheduled Commercial Operation Date, or
- ii) after the commencement of construction of the Project, the abandonment by the Seller or the Seller's Construction Contractors of the construction of the Project for a continuous period of two (2) Months and such default is not rectified within thirty (30) days from the receipt of first notice from the Procurer in this regard, or
- iii) if at any time following a Unit being Commissioned and during its retest, as per Article 8, such Unit's Tested Capacity is less than ninety two (92) percent of its Rated Capacity, as existing on the Effective Date, and such Tested Capacity remains below ninety two (92) percent even for a period of three (3) Months thereafter; or
- iv) after Commercial Operation Date of Contracted Capacity, the Seller fails to achieve Average Availability of sixty five percent (65%), for a period of twelve (12) consecutive Months or within a non-consecutive period of twelve (12) Months within any continuous aggregate period of thirty six (36) Months, or
- v) the Seller fails to make any payment (a) of an amount exceeding Rupees One (1) Crore required to be made to Procurer under this Agreement, within three (3) Months after the Due Date of an undisputed invoice /demand raised by the Procurer on the Seller or (b) of an amount up to Rupees One (1) Crore required to be made to Procurer under this Agreement within six (6) Months after the Due Date of an undisputed invoice/demand, or
- vi) any of the representations and warranties made by the Seller in Schedule 9 of this Agreement; being found to be untrue or inaccurate. Further, in addition to the above, any of the undertakings submitted by the Seller at the time of submission of the Bid being found to be breached or inaccurate, including but not limited to undertakings from its parent company/ affiliates related to the minimum equity obligation; Provided however, prior to considering any event specified under this sub-article to be an Event of Default, the Procurer shall give a notice to the Seller in writing of at least thirty (30) days, or
- vii) if the Seller:
 - a) assigns or purports to assign any of its assets or rights in violation of this Agreement; or

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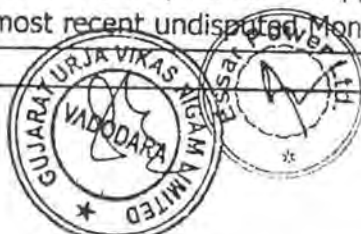
- b) transfers or novates any of its rights and/or obligations under this agreement, in violation of this Agreement; or
- viii) If (a) the Seller becomes voluntarily or involuntarily the subject of any bankruptcy or insolvency or winding up proceedings and such proceedings remain uncontested for a period of thirty (30) days, or (b) any winding up or bankruptcy or insolvency order is passed against the Seller, or (c) the Seller goes into liquidation or dissolution or has a receiver or any similar officer appointed over all or substantially all of its assets or official liquidator is appointed to manage its affairs, pursuant to Law, except where such dissolution or liquidation of the Seller is for the purpose of a merger, consolidation or reorganization and where the resulting entity has the financial standing to perform its obligations under this Agreement and creditworthiness similar to the Seller and expressly assumes all obligations of the Seller under this Agreement and is in a position to perform them; or
- ix) the Seller repudiates this Agreement and does not rectify such breach even within a period of thirty (30) days from a notice from the Procurer in this regard; or
- x) except where due to Procurer's failure to comply with its material obligations, the Seller is in breach of any of its material obligations pursuant to this Agreement or of any of the RFP Documents where the Procurer and Seller are parties, and such material breach is not rectified by the Seller within thirty (30) days of receipt of first notice in this regard given by the Procurer to the Seller.
- xi) the Seller fails to complete/fulfill the activities/conditions specified in Article 3.1.2, beyond a period of 8 Months from the specified period in Article 3.1.2 and the right of termination under Article 3.4.2 is invoked by the Procurer; or
- xii) any direct or indirect change in the shareholding of the Seller in contravention of the terms of the Bid RFP Documents; or
- xiii) The Seller fails to provide additional bank guarantee to the Procurer in accordance with Article 3.4.1 of this Agreement, or
- xiv) Occurrence of any other event that is specified in this Agreement to be a material breach/default of the Seller.

14.2 Procurer Event of Default

The occurrence and the continuation of any of the following events, unless any such event occurs as a result of a Force Majeure Event or a breach by the Seller of its obligations under this Agreement, shall constitute the Event of Default on the part of the Procurer:

- i) the Procurer fails to pay (with respect to a Monthly Bill or a Supplementary Bill) an amount exceeding 15% of the most recent undisputed Monthly Bill for

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- a period of ninety (90) days after the Due Date and the Seller is unable to recover the amount outstanding to the Seller through the Collateral Arrangement and Letter of Credit; or
- ii) the Procurer repudiates this Agreement and does not rectify such breach even within a period of thirty (30) days from a notice from the Seller in this regard; or
 - iii) except where due to any Seller's failure to comply with its obligations, the Procurer is in material breach of any of its obligations pursuant to this Agreement or of any of the RFP Documents where the Procurer and the Seller are Parties, and such material breach is not rectified by the Procurer within thirty (30) days of receipt of notice in this regard from the Seller to the Procurer; or
 - iv) any representation and warranties made by any of the Procurer in Schedule 9 of this Agreement being found to be untrue or inaccurate. Provided however, prior to considering any event specified under this sub-article to be an Event of Default, the Seller shall give a notice to the concerned Procurer in writing of at least thirty (30) days; or
 - v) if (a) the Procurer becomes voluntarily or involuntarily the subject of any bankruptcy or insolvency or winding up proceedings and such proceedings remain uncontested for a period of thirty (30) days, or (b) any winding up or bankruptcy or insolvency order is passed against the Procurer, or (c) the Procurer goes into liquidation or dissolution or has a receiver or any similar officer appointed over all or substantially all of its assets or official liquidator is appointed to manage its affairs, pursuant to Law, except where such dissolution or liquidation of the Procurer is for the purpose of a merger, consolidation or reorganization and where the resulting entity has the financial standing to perform its obligations under this Agreement and has creditworthiness similar to the Procurer and expressly assumes all obligations of the Procurer under this Agreement and is in a position to perform them; or;
 - vi) occurrence of any other event which is specified in this Agreement to be a material breach or default of the Procurer.



14.3 Procedure for cases of Seller Event of Default

- 14.3.1 Upon the occurrence and continuation of any Seller Event of Default under Article 14.1, the Procurer shall have the right to deliver to the Seller a Procurer Preliminary Default Notice, which shall specify in reasonable detail, the circumstances giving rise to the issue of such notice.
- 14.3.2 Following the issue of Procurer Preliminary Default Notice, the Consultation Period of ninety (90) days or such longer period as the Parties may agree, shall apply.
- 14.3.3 During the Consultation Period, the Parties shall, save as otherwise provided in this Agreement, continue to perform their respective obligations under this Agreement.
- 14.3.4 After a period of seven (7) days following the expiry of the Consultation Period and unless the Parties shall have otherwise agreed to the contrary or the Seller Event of Default giving rise to the Consultation Period shall have been remedied and,
- (a) in case the Contracted Capacity from a Power Station is less than 50% of the installed capacity of such Power Station, the Procurer may terminate this Agreement. Provided such Seller shall have the liability to make payments for Capacity Charges based on Normative Availability to the Procurer for the period three (3) years from the eighth day after the expiry of the Consultation Period. Provided further that at the end of the three year period, this Agreement shall automatically terminate and thereafter, the Seller shall have no further Capacity Charge liability towards the Procurer. Provided further, the Procurer shall have the right to terminate this Agreement even before the expiry of such three year period provided on such termination, the future Capacity Charge liability of the Seller shall cease immediately.
- (b) in case the Contracted Capacity from a Power Station is more than or equal to 50% of the installed capacity of such Power Station, the Lenders may exercise or the Procurer may require the Lenders to exercise their substitution rights and other rights provided to them, if any, under Financing Agreements and the Procurer would have no objection to the Lenders exercising their rights if it is in consonance with provisions of Schedule 14. Alternatively, in case the Lenders do not exercise their rights as mentioned herein above, the Capacity Charge of the Seller shall be reduced by 20% for the period of Seller Event of Default and the Procurer



may terminate this Agreement and the provisions of Article 14.3.4(a) shall apply mutatis mutandis.

14.4 Termination for Procurer Events of Default

14.4.1 Upon the occurrence and continuation of any Procurer Event of Default pursuant to Article 14.2(i), the Seller shall follow the remedies provided under Articles 11.5.2.

14.4.2 Without in any manner affecting the rights of the Seller under Article 14.4.1, on the occurrence of any Procurer Event of Default specified in Article 14.2 the Seller shall have the right to deliver to the Procurer a Seller Preliminary Default Notice, which notice shall specify in reasonable detail the circumstances giving rise to its issue.

14.4.3 Following the issue of a Seller Preliminary Default Notice, the Consultation Period of ninety (90) days or such longer period as the Parties may agree, shall apply.

14.4.4 During the Consultation Period, the Parties shall continue to perform their respective obligations under this Agreement.

14.4.5 (i) After a period of seven (7) days following the expiry of the Consultation Period and unless the Parties shall have otherwise agreed to the contrary or the Procurer Event of Default giving rise to the Consultation Period shall have been remedied, the Seller shall be free to sell the Contracted Capacity and associated Available Capacity to any third party of his choice. Provided the Procurer shall have the liability to make payments for Capacity Charges based on Normative Availability to the Seller for the period three (3) years from the eighth day after the expiry of the Consultation Period. Provided further that in such three year period, in case the Seller is able to sell electricity to any third party at a price which is in excess of the Energy Charges, then such excess realization will reduce the Capacity Charge payments due from the Procurer. For the avoidance of doubt, the above excess adjustment would be applied on a cumulative basis for the three-year period. During such period, the Seller shall use its best effort to sell the Contracted Capacity and associated Available Capacity generated or capable of being generated to such third parties at the most reasonable terms available in the market at such time, having due regard to the circumstances at such time and the pricing of electricity in the market at such time. Provided further, the Seller shall ensure that sale of power to the shareholders of the Seller or any direct or indirect



affiliate of the Seller/shareholders of the Seller, is not at a price less than the Tariff, without obtaining the prior written consent of the Procurer. Such request for consent would be responded to within a maximum period of three (3) days failing which it would be deemed that the Procurer has given his consent. Provided further that at the end of the three-year period, this Agreement shall automatically terminate and thereafter, the Procurer shall have no further Capacity Charge liability towards the Seller. Provided further, the Seller shall have the right to terminate this Agreement even before the expiry of such three year period provided on such termination, the future Capacity Charge liability of the Procurer shall cease immediately.

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15 ARTICLE 15: LIABILITY AND INDEMNIFICATION

15.1 Indemnity

15.1.1 The Seller shall indemnify, defend and hold the Procurer harmless against:

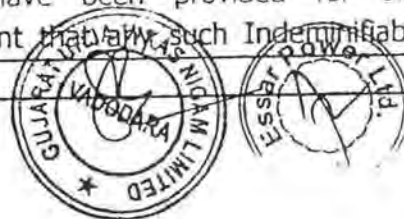
(a) any and all third party claims, actions, suits or proceedings against the Procurer for any loss of or damage to property of such third party, or death or injury to such third party, arising out of a breach by the Seller of any of its obligations under this Agreement, except to the extent that any such claim, action, suit or proceeding has arisen due to a negligent act or omission, breach of this Agreement or breach of statutory duty on the part of Procurer, its contractors, servants or agents; and

(b) any and all losses, damages, costs and expenses including legal costs, fines, penalties and interest actually suffered or incurred by Procurer from third party claims arising by reason of (i) breach by the Seller of any of its obligations under this Agreement, (provided that this Article 15 shall not apply to such breaches by the Seller, for which specific remedies have been provided for under this Agreement) except to the extent that any such losses, damages, costs and expenses including legal costs, fines, penalties and interest (together to constitute "Indemnifiable Losses") has arisen due to a negligent act or omission, breach of this Agreement or breach of statutory duty on the part of Procurer, its contractors, servants or agents or (ii) any of the representations or warranties of the Seller under this Agreement being found to be inaccurate or untrue.

15.1.2 Procurer shall indemnify, defend and hold the Seller harmless against:

(a) any and all third party claims, actions, suits or proceedings against the Seller, for any loss of or damage to property of such third party, or death or injury to such third party, arising out of a breach by Procurer of any of its obligations under this Agreement except to the extent that any such claim, action, suit or proceeding has arisen due to a negligent act or omission, breach of this Agreement or breach of statutory duty on the part of the Seller, its contractors, servants or agents; and

(b) any and all losses, damages, costs and expenses including legal costs, fines, penalties and interest ("Indemnifiable Losses") actually suffered or incurred by the Seller from third party claims arising by reason of (i) a breach by Procurer of any of its obligations under this Agreement (Provided that this Article 15 shall not apply to such breaches by Procurer, for which specific remedies have been provided for under this Agreement.), except to the extent that any such Indemnifiable Losses



have arisen due to a negligent act or omission, breach of this Agreement or breach of statutory duty on the part of the Seller, its contractors, servants or agents or (ii) any of the representations or warranties of the Procurer under this Agreement being found to be inaccurate or untrue.

15.2 Monetary Limitation of liability

A Party ("Indemnifying Party") shall be liable to indemnify the other Party ("Indemnified Party") under this Article 15 for any indemnity claims made in a Contract Year only up to an amount equivalent to half a percent (0.5%) of the average annual Tariff Payment for all the Contract Years up to the Contract Year in which the indemnity claim is made.

15.3 Procedure for claiming indemnity

15.3.1 Third party claims

(a) Where the Indemnified Party is entitled to indemnification from the Indemnifying Party pursuant to Article 15.1.1 (a) or 15.1.2 (a), the Indemnified Party shall promptly notify the Indemnifying Party of such claim, proceeding, action or suit referred to in Article 15.1.1 (a) or 15.1.2 (a) in respect of which it is entitled to be indemnified. Such notice shall be given as soon as reasonably practicable after the Indemnified Party becomes aware of such claim, proceeding, action or suit. The Indemnifying Party shall be liable to settle the indemnification claim within thirty (30) days of receipt of the above notice. Provided however that, if:

- i. the Parties choose to contest, defend or litigate such claim, action, suit or proceedings in accordance with Article 15.3.1(b) below; and
- ii. the claim amount is not required to be paid/deposited to such third party pending the resolution of the Dispute,

the Indemnifying Party shall become liable to pay the claim amount to the Indemnified Party or to the third party, as the case may be, promptly following the resolution of the Dispute, if such Dispute is not settled in favour of the Indemnified Party.

(b) The Indemnified Party may contest, defend and litigate a claim, action, suit or proceeding for which it is entitled to be indemnified under Article 15.1.1 (a) or 15.1.2 (a) and the indemnifying Party shall reimburse to the indemnified Party all reasonable costs and expenses incurred by the indemnified party. However, such indemnified Party shall not settle or compromise such claim, action, suit or proceedings without first getting the consent of the indemnifying Party, which consent shall not be unreasonably withheld or delayed.



An Indemnifying Party may, at its own expense, assume control of the defence of any proceedings brought against the Indemnified Party if it acknowledges its obligation to indemnify such Indemnified Party, gives such Indemnified Party prompt notice of its intention to assume control of the defence, and employs an independent legal counsel at its own cost that is reasonably satisfactory to the Indemnified Party.

15.4 Indemnifiable Losses

Where an Indemnified Party is entitled to Indemnifiable Losses from the Indemnifying Party pursuant to Article 15.1.1 (b) or 15.1.2 (b), the Indemnified Party shall promptly notify the Indemnifying Party of the Indemnifiable Losses actually incurred by the Indemnified Party. The Indemnifiable Losses shall be reimbursed by the Indemnifying Party within thirty (30) days of receipt of the notice seeking Indemnifiable Losses by the Indemnified Party. In case of non payment of such losses after a valid notice under this Article 15.4, such event shall constitute a payment default under Article 14.

15.5 Limitation on Liability

Except as expressly provided in this Agreement, neither the Seller nor the Procurer nor their respective officers, directors, agents, employees or Affiliates (or their officers, directors, agents or employees), shall be liable or responsible to the other Party or its Affiliates, officers, directors, agents, employees, successors or permitted assigns (or their respective insurers) for incidental, indirect or consequential damages, connected with or resulting from performance or non-performance of this Agreement, or anything done in connection herewith, including claims in the nature of lost revenues, income or profits (other than payments expressly required and properly due under this Agreement), any increased expense of, reduction in or loss of power generation production or equipment used therefore, irrespective of whether such claims are based upon breach of warranty, tort (including negligence, whether of the Procurer, the Seller or others), strict liability, contract, breach of statutory duty, operation of law or otherwise. Procurer shall have no recourse against any officer, director or shareholder of the Seller or any Affiliate of the Seller or any of its officers, directors or shareholders for such claims excluded under this Article. The Seller shall have no recourse against any officer, director or shareholder of Procurer, or any affiliate of Procurer or any of its officers, directors or shareholders for such claims excluded under this Article.

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15 ARTICLE 16: ASSIGNMENTS AND CHARGES

16.1 Assignments

This Agreement shall be binding upon, and inure to the benefit of the Parties and their respective successors and permitted assigns. Subject to Article 16.2, this Agreement shall not be assigned by any Party (and no Party shall create or permit to subsist any encumbrance over all or any of its rights and benefits under this Agreement) other than by mutual consent between the Parties to be evidenced in writing:

Provided that, such consent shall not be withheld if any of the Procurer seeks to transfer to any transferee all of its rights and obligations under this Agreement; and

- (a) such transferee is a subsidiary/successor entity of the Procurer; and
- (b) this Agreement and the other RFP Documents shall continue to remain valid and binding on such successor.

Seller shall be entitled to assign its rights and obligations under this Agreement in favour of the Selectee duly appointed pursuant to the terms of Schedule 14 of this Agreement.

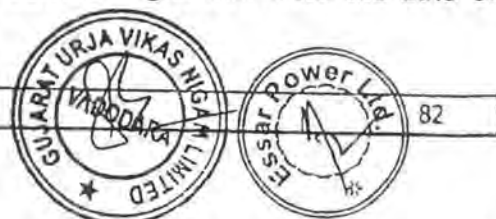
16.1A Assignment to SPV

The Selected Bidder may form a special purpose vehicle ("SPV") for the purposes of development, finance, ownership, design, engineering, procurement, construction, commissioning, operation and maintenance of the Project. Upon the Selected Bidder electing to form a SPV and assign the Agreement to this SPV, the Selected Bidder shall seek, in writing, an approval from the Procurer along with the following documents:

- (i) Certificate of Incorporation, Certificate of Commencement of Business and Memorandum and Articles of Association of SPV; and
- (ii) Resolution of the Board of Directors of the Selected Bidder and the SPV granting and accepting the assignment of this Agreement; and
- (iii) Performance Guarantee from the SPV.

On receipt of the request to assign the PPA to the SPV, the Procurer shall communicate its consent in writing and promptly return the Performance Guarantee submitted by the Selected Bidder. Provided that, the Procurer shall not withhold such consent unreasonably. The Procurer expressly acknowledges that from the date of such assignment, the SPV shall be the Seller.

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16.2 Permitted Charges

16.2.1 Notwithstanding anything contained in Article 16.1, the Seller may create any encumbrance over all or part of the receivables, Payment Security Mechanism or the other assets of the Project or the RFP Documents in favour of the Lenders or the Lender's Representative on their behalf, as security for:

- (a) amounts payable under the Financing Agreements; and
- (b) any other amounts agreed by the Parties,

Provided that:

- I the Lenders or the Lender's Representative on their behalf shall have agreed in writing to the provisions of Schedule 14 of this Agreement; and
- II any encumbrances granted by the Seller in accordance with this Article 16.2.1 shall contain provisions pursuant to which the Lenders or the Lender's Representative on their behalf agrees unconditionally with the Seller acting for itself and as trustee of the Procurer to release from such encumbrances all of the right, title and interest to Additional Compensation so as to enable the Procurer to claim its right of subrogation. For the purposes of this Article, Additional Compensation shall mean the compensation that the Seller is entitled, whether actually or contingently, to receive from the Procurer as well as compensated by any person other than the Procurer for the same event.

16.2.2 Article 16.1 does not apply to:

- (a) liens arising by operation of law (or by an agreement evidencing the same) in the ordinary course of the Seller carrying out the Project;
- (b) pledges of goods, the related documents of title and / or other related documents, arising or created in the ordinary course of the Seller carrying out the Project; or
- (c) security arising out of retention of title provisions in relation to goods acquired in the ordinary course of the Seller carrying out the Project.

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17 ARTICLE 17: GOVERNING LAW AND DISPUTE RESOLUTION

17.1 Governing Law

This Agreement shall be governed by and construed in accordance with the Laws of India.

17.2 Amicable Settlement

17.2.1 Either Party is entitled to raise any claim, dispute or difference of whatever nature arising under, out of or in connection with this Agreement including its existence or validity or termination (collectively "Dispute") by giving a written notice to the other Party, which shall contain:

- (i) a description of the Dispute;
- (ii) the grounds for such Dispute; and
- (iii) all written material in support of its claim.

17.2.2 The other Party shall, within thirty (30) days of issue of dispute notice issued under Article 17.2.1, furnish:

- (i) counter-claim and defences, if any, regarding the Dispute; and
- (ii) all written material in support of its defences and counter-claim.

17.2.3 Within thirty (30) days of issue of notice by any Party pursuant to Article 17.2.1 or Article 17.2.2, both the Parties to the Dispute shall meet to settle such Dispute amicably. If the Parties fail to resolve the Dispute amicably within thirty (30) days of receipt of the notice referred to in the preceding sentence, the Dispute shall be referred to Dispute Resolution in accordance with Article 17.3.

17.3 Dispute Resolution

17.3.1 Where any Dispute arises from a claim made by any Party for any change in or determination of the Tariff or any matter related to Tariff or claims made by any Party which partly or wholly relate to any change in the Tariff or determination of any of such claims could result in change in the Tariff or (ii) relates to any matter agreed to be referred to the Appropriate Commission under Articles 4.7.1, 13.2, 18.1 or clause 1.9.1 (d) of Schedule 14 hereof, such Dispute shall be submitted to adjudication by the Appropriate Commission. Appeal against the decisions of the Appropriate Commission shall be made only as per the provisions of the Electricity Act, 2003, as amended from time to time.



17.3.2 If the Dispute arises out of or in connection with any claims not covered in Article 17.3.1, such Dispute shall be resolved by arbitration under the Indian Arbitration and Conciliation Act, 1996 and the Rules of the Indian Council of Arbitration, in accordance with the process specified in this Article. In the event of such Dispute remaining unresolved as referred to in Article 17.3.2 hereof, any party to such Dispute may refer the matter to registrar under the Rules of the Indian Council of Arbitration.

- i. The Arbitration tribunal shall consist of three arbitrators to be appointed in accordance with the Indian Council of Arbitration Rules.
- ii. The place of arbitration shall be Vadodara, Gujarat, India. The language of the arbitration shall be English.
- iii. The arbitration tribunal's award shall be substantiated in writing. The arbitration tribunal shall also decide on the costs of the arbitration proceedings and the allocation thereof.
- iv. The award shall be enforceable in any court having jurisdiction, subject to the applicable Laws.
- v. The provisions of this Clause shall survive the termination of this PPA for any reason whatsoever.

17.4 Parties to Perform Obligations

Notwithstanding the existence of any Dispute and difference referred to the Appropriate Commission or the arbitral tribunal as provided in Article 17.3 and save as the Appropriate Commission or the arbitral tribunal may otherwise direct by a final or interim order, the Parties hereto shall continue to perform their respective obligations (which are not in dispute) under this Agreement.

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18 ARTICLE 18: MISCELLANEOUS PROVISIONS

18.1 Amendment

This Agreement may only be amended or supplemented by a written agreement between the Parties and after duly obtaining the approval of the Appropriate Commission, where necessary.

18.2 Third Party Beneficiaries

This Agreement is solely for the benefit of the Parties and their respective successors and permitted assigns and shall not be construed as creating any duty, standard of care or any liability to, any person not a party to this Agreement.

18.3 No Waiver

A valid waiver by a Party shall be in writing and executed by an authorized representative of that Party. Neither the failure by any Party to insist on the performance of the terms, conditions, and provisions of this Agreement nor time or other indulgence granted by any Party to the other Parties shall act as a waiver of such breach or acceptance of any variation or the relinquishment of any such right or any other right under this Agreement, which shall remain in full force and effect.

18.4 Entirety

18.4.1 This Agreement and the Schedules are intended by the Parties as the final expression of their agreement and are intended also as a complete and exclusive statement of the terms of their agreement.

18.4.2 Except as provided in this Agreement, all prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement or the sale or purchase of Electrical Output and Contracted Capacity under this Agreement to the Procurer by the Seller shall stand superseded and abrogated.

18.5 Confidentiality

The Parties undertake to hold in confidence this Agreement and RFP Documents and not to disclose the terms and conditions of the transaction contemplated hereby to third parties, except:

- (a) to their professional advisors;

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(b) to their officers, contractors, employees, agents or representatives, financiers, who need to have access to such information for the proper performance of their activities; or

(c) disclosures required under Law.

without the prior written consent of the other Parties.

Provided that the Seller agrees and acknowledges that the Procurer may at any time, disclose the terms and conditions of the Agreement and the Project RFP Documents to any person, to the extent stipulated under the Law or the Competitive Bidding Guidelines.

18.6 Affirmation

The Seller and Procurer, each affirm that:

- (i) neither it nor its respective directors, employees, or agents has paid or undertaken to pay or shall in the future pay any unlawful commission, bribe, pay-off or kick-back; and
- (ii) it has not in any other manner paid any sums, whether in Indian currency or foreign currency and whether in India or abroad to the other Party to procure this Agreement, and the Seller and Procurer hereby undertake not to engage in any similar acts during the Term of Agreement.

18.7 Severability

The invalidity or enforceability, for any reason, of any part of this Agreement shall not prejudice or affect the validity or enforceability of the remainder of this Agreement, unless the part held invalid or unenforceable is fundamental to this Agreement.

18.8 No Partnership

None of the provisions of this Agreement shall constitute a partnership or agency or any such similar relationship between the Seller and Procurer.

18.9 Survival

Notwithstanding anything to the contrary herein, the provisions of this Agreement, including Article 3.4, Article 10.2 (Application of Insurance Proceeds), Article 12 (Force Majeure), Article 14 (Events of Default and Termination), Article 15 (Liability and Indemnification), Article 17 including Article 17.3.2 (Governing Law and Dispute

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Resolution), Article 18 (Miscellaneous), and other Articles and Schedules of this Agreement which expressly or by their nature survive the term or termination of this Agreement shall continue and survive any expiry or termination of this Agreement.

18.10 Counterparts

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which collectively shall be deemed one and the same instrument.

18.11 Notices

All notices to be given under this Agreement shall be in writing and in the English Language.

All notices must be delivered personally, by registered post or any method duly acknowledged or facsimile to the addresses below:

Seller :

Managing Director,
Essar Power Limited
Essar House
11, Keshavarao Khadye Marg
Mahalaxmi, Mumbai - 400034
Fax No. 022-24954787

Procurer :

General Manager (Commerce),
Gujarat UrjaVikas Nigam Limited,
Sardar Patel Vidyut Bhavan,
Race Course, Vadodara-390007
Fax No. 0265-2344543

All notices or communications given by facsimile shall be confirmed by sending a copy of the same via post office in an envelope properly addressed to the appropriate Party for delivery by registered mail. All Notices shall be deemed validly delivered upon receipt evidenced by an acknowledgement of the recipient, unless the Party delivering the notice can prove in case of delivery through the registered post that the recipient refused to acknowledge the receipt of the notice despite efforts of the post authorities.

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Any Party may by notice of at least fifteen (15) days to the other Parties change the address and / or addresses to which such notices and communications to it are to be delivered or mailed.

18.12 Language

The language of this Agreement and all written communication between the Parties relating to this Agreement shall be in English.

18.13 Breach of Obligations

The Parties acknowledge that a breach of any of the obligations contained herein would result in injuries. The Parties further acknowledge that the amount of the liquidated damages or the method of calculating the liquidated damages specified in this Agreement is a genuine and reasonable pre-estimate of the damages that may be suffered by the non-defaulting party in each case specified under this Agreement.

18.14 Nomination Restriction

Notwithstanding anything contained to the contrary in this Agreement, wherever a reference is made to the right of the Procurer to nominate a third Party to receive benefits under this Agreement, such Third Party shall have a financial standing comparable to that of the Procurer in question.

18.15 Commercial Acts

The Procurer and Seller unconditionally and irrevocably agree that the execution, delivery and performance by each of them of this Agreement and those agreements included in the Collateral Arrangement to which it is a Party constitute private and commercial acts rather than public or governmental acts;

18.16 Restriction of Shareholders/Owners Liability

Parties expressly agree and acknowledge that none of the shareholders of the Parties hereto shall be liable to the other Parties for any of the contractual obligations of the concerned party under this Agreement. Further, the financial liabilities of the shareholder/s of each Party to this Agreement, in such Party, shall be restricted to the extent provided in Section 426 of the Indian Companies Act, 1956.

The provisions of this Article shall supercede any other prior agreement or understanding, whether oral or written, that may be existing between the Procurer, Seller, shareholders/ owners of the Seller, shareholders/ owners of the Procurer or

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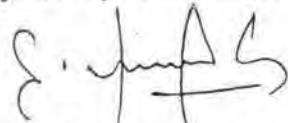
the Selected Bidders before the date of this Agreement, regarding the subject matter of this Agreement.

18.17 No Consequential or Indirect Losses

The liability of the Seller and the Procurer shall be limited to that explicitly provided in this Agreement. Provided that notwithstanding anything contained in this Agreement, under no event shall the Procurer or the Seller claim from one another any indirect or consequential losses or damages.

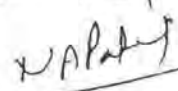
IN WITNESS WHEREOF the Parties have executed these presents through their authorized representatives at Vadodara.

For and on behalf of
Gujarat Urja Vikas Nigam Limited

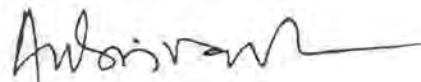


(S. B. KHYALIA)
General Manager (Comm)
GUVNL, BARODA.
Signature with seal

Witness:

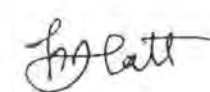
1. K.P. JANGID 
2. N. PATEL 

For and on behalf of
Essar Power Limited



A. K. SRIVASTAVA
Signature with seal

Witness:

1. Tushar S. Bhatt 
2. S. SRIVASTAVA 

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1 SCHEDULE 1: INITIAL CONSENTS

1. Constitutive Documents under Companies Act, 1956
2. Land allotment certificate/letter by the Appropriate Government
3. Clearance of State Pollution Control Board / Ministry of Environment & Forests (MOE&F)
4. Forest clearance of MOE&F (in case of forest land)
5. Water availability confirmation from State Irrigation Department
6. Clearance of National Airport Authority / Ministry of Defence for chimney height
7. Consent of relevant Panchayat for development of site
8. In Principle Approval for Open Access up to the Delivery Point from CTU and STU

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2 SCHEDULE 2: CALCULATION OF 'X' DAYS
(Refer Article 11.5.7)

Percentage of Monthly Invoice which is the subject of default under Article 11.4 as notified in the Notice (issued under Article 11.5.1) relating to the present occurrence	Number of times a Notice has been issued under Article 11.5.2 to the defaulting Procurer prior to present occurrence			
	1 st time	2 nd time	3 rd time	4 th time and onwards
Less than 25%	x = 20 days	x = 25 days	x = 40 days	x = 60 days
25% to 30%	x = 20 days	x = 30 days	x = 45 days	x = 65 days
More than 30% to 35%	x = 20 days	x = 35 days	x = 50 days	x = 70 days
More than 35% to 40%	x = 20 days	x = 40 days	x = 55 days	x = 75 days
More than 40%	x = 20 days	x = 45 days	x = 60 days	x = 90 days

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3 SCHEDULE 3: FUNCTIONAL SPECIFICATION**

S No.	Description	Unit	Particulars
1.1 Grid Conditions at Interconnection Point			
(i) Voltage	: Nominal	kV	[]
	Variation	%	[]
(ii) Frequency	: Nominal	Hz.	[]
	Variation	%	[]
(iii) Combined Voltage and Frequency variation for Contracted Capacity		%	[]
(iv) Power Factor	: Nominal		[] lag
	Variation		[] to [] lag lead
(v) Basic Impulse Level (Peak)		kV	[]

1.2 Fault Levels:

(i) 3 Phase	Maximum	kA	[]
(ii) Clearance time	Maximum	ms	[]

1.3 Ramp Rates

All Units of the Power Station shall be capable of increasing or decreasing their output (generation level) by not less than one percent (1%) per minute. Such capability shall be demonstrated during the Unit load of more than 50%.

** These details shall be provided before Financial Closure.

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4 SCHEDULE 4: COMMISSIONING AND TESTING

1.1 Performance Test

1.1.1 Parameters of Performance Test

- (a) The Performance Test shall be conducted under any and all ambient conditions (temperature, humidity etc.) and any and all Fuel qualities that may exist during the time of the Performance Test and no corrections in final gross and net output of the Unit will be allowed as a result of prevailing ambient conditions or Fuel quality.
- (b) The correction curves will only be used if the Grid System operation during the Performance Test exceeds Electrical System Limits.
- (c) The Performance Test shall be deemed to have demonstrated the Rated Capacity of the Unit under all designed conditions and therefore no adjustments shall be made on account of fuel quality or ambient conditions.
- (d) The Seller shall perform in respect of each Unit a Performance Test, which such Unit shall be deemed to have passed if it operates continuously for seventy two consecutive hours at or above ninety five (95) percent of its Contracted Capacity as existing on the Effective Date and within the Electrical System Limits and the Functional Specifications.

1.1.2 For the purposes of any Performance Test pursuant to this sub-article 1.1, the Electrical System Limits to be achieved shall be as follows:

(a) Voltage

The Unit must operate within the voltage levels described in the Functional Specification for the duration of the Performance Test. If, during the Performance Test, voltage tests cannot be performed due to Grid System, data supplied from tests of the generator step-up transformers and generators supplied by the manufacturers shall be used to establish the ability of the Unit to operate within the specified voltage limits.

(b) Grid System Frequency

The Unit shall operate within the Grid System frequency levels described in the Functional Specification for the duration of the Performance Test.

(c) Power Factor

The Unit shall operate within the power factor range described in the Functional Specification for the duration of the Performance Test. If, during the Performance Test, power factor tests cannot be performed due to the Grid System, data supplied from tests of the generators and the generator step-up transformers supplied by the manufacturers

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shall be used to establish the ability of the Unit to operate within the specified power factor range.

(d) Fuel quality and cooling water temperature

The Unit must operate to its Rated Capacity with Fuel quality and water temperature available at the time of Testing and no adjustment shall be allowed for any variation in these parameters.

- 1.1.3 As a part of the Performance Test, the Seller shall demonstrate that the Unit meets the Functional Specifications for Ramping rate as mentioned in Schedule 4. For this purpose, representative samples of ramp rates shall be taken, by ramping up or down the gross turbine load while maintaining the required temperatures and temperature differences associated with each ramp rate within the turbine while maintaining all other operational parameters within equipment limits.
- 1.1.4 Testing and Measurement procedures applied during Performance Test shall be in accordance with codes, practices or procedures as generally/ normally applied for the Performance Tests in India.
- 1.1.5 The Seller shall comply with the prevalent Laws, rules and regulations as applicable to the provisions contained in this Schedule from time to time.

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5 SCHEDULE 5: AVAILABILITY FACTORS

The following matters shall be determined as per the provisions of the Grid Code and ABT:

- i. Availability declaration and calculation of Availability or Availability Factor;
- ii. Requirement for Spinning Reserves;
- iii. Procedure for revision of Availability;
- iv. Consequences of failure to demonstrate capacity or misdeclarations of capacity; and
- v. Other matters which may be related to Availability or Availability Factor.

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6 SCHEDULE 6: TARIFF

1.1 General

- i. The method of determination of Tariff Payments for any Contract Year during the Term of Agreement shall be in accordance with this Schedule.
- ii. The Tariff shall be paid in two parts comprising of Capacity and Energy Charge.
- iii. For the purpose of payments, the Tariff will be Quoted Tariff, escalated as provided in this Schedule 6 for the applicable Contract Year as per Schedule 10.
- iv. The full Capacity Charges shall be payable based on the Contracted Capacity at Normative Availability and the Incentive shall be for Availability beyond 85% as provided in this Schedule shall be given. In case of Availability being lower than the Normative Availability, the Capacity Charges shall be payable on proportionate basis in addition to the penalty to be paid by Seller as provided in this Schedule.

1.2 Monthly Tariff Payment

1.2.1 Components of Monthly Tariff Payment

The Monthly Bill for any Month in a Contract Year shall consist of the following:

- i. Monthly Capacity Charge Payment in accordance with Article 1.2.2 below;
- ii. Monthly Energy Charge for Scheduled Energy in accordance with Article 1.2.3 below;
- iii. Incentive Payment determined in accordance with Article 1.2.4 below (applicable on annual basis and included only in the Monthly Tariff Payment for the first month of the next Contract Year);
- iv. Penalty Payment determined in accordance with Article 1.2.5 below (applicable on annual basis and included only in the Monthly Tariff Payment for the first month of the next Contract Year);
- v. Penalty Payment determined in accordance with Article 1.2.8 below (applicable on annual basis and included only in the Monthly Tariff Payment for the first month of the next Contract Year);

1.2.2 Monthly Capacity Charge Payment

The Monthly Capacity Charge Payment for any Month m in a Contract Year n shall be calculated as below:

If $CAA \geq NA$, $FC_m = \sum_j (NA \times AFC_{yn} \times CC \times L) - \sum C(m-1)$

Else:

$FC_m = \sum_j (AFC_{yn} \times AA \times CC \times L) - \sum C(m-1)$

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where:

Σ_j is the summation of all the relevant values separately for each settlement period from the start of the contract year in which Month "m" occurs up to and including Month "m"

FCm is the Capacity Charge payment for the Month m (in Rupees)

AFCyn is the Capacity Charge and is sum of a) Payable Escalable Capacity Charges AEFCyn and b) Payable Non Escalable Capacity Charges ANEFCyn for the month in which the relevant Settlement Period occurs in Contract Year n (in Rs per kWh) and computed as mentioned hereunder;

AEFCyn is the Payable Escalable Capacity Charges for month in which the relevant Settlement Period occurs in Contract Year "n", expressed in Rupees/kWh and is equal to the Quoted Escalable Capacity Charges as provided in Schedule 10 for the first Contract Year and for subsequent Contract Years, duly escalated by the following formula:

$$AEFCyn = QAEFCyn * p/q$$

Where,

QAEFCyn is the Quoted Escalable Capacity Charges (in Rs./kWh) in the first Contract Year as per Schedule 10.

p is the Escalation Index as per Schedule 8 at the beginning of Month in which the relevant Settlement Period occurs (expressed as a number)

q is the Escalation Index as per Schedule 8 applicable as at the beginning of the first Contract Year mentioned in Schedule 10 (expressed as a number)

ANEFCyn is the Payable Non Escalable Capacity Charges for month in which the relevant Settlement Period occurs, expressed in Rupees/kWh and is equal to the Quoted Non Escalable Capacity Charges for the Contract Year in which month in which the relevant Settlement Period occurs, as provided in Schedule 10

CAA is the cumulative Availability, as per REA, from the first day of the Contract Year "n" in which month "m" occurs up to and including Month "m";

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AA is the Availability, as per REA, in the relevant Settlement Period (expressed as a percentage of Contracted Capacity in such Settlement Period);

CC is the Contracted Capacity in the relevant Settlement Period (expressed in kW);

L is the number of minutes in relevant Settlement Period, as divided by total number of minutes in one hour, (expressed as hours);

NA Normative Availability;

$\Sigma C(m-1)$ is the cumulative Capacity Charge payable from the first day of the Contract Year "n" in which month "m" occurs up to and including Month "m-1" but not including month "m", (in Rupees);

Provided, no Capacity Charges shall be paid for the Settlement Period during which the RLDC has not allowed the operation of the Power Station due to Sellers failure to operate it as per the provisions of Grid Code.

1.2.3 Monthly Energy Charges

The Monthly Energy charges will be calculated as under:

The Monthly Energy Charges for Month "m" shall be calculated as under:

$$MEP_m = AEO_m \times MEP_n$$

Where:

MEP_m is the Monthly Energy Charges for Month m (in Rs.)

AEO_m is the Scheduled Energy during the Month m (in kwh)

MEP_n is the Energy Charge, in Rs/kwh, and is the sum of

- (a) Payable Escalable Fuel Energy Charges (MEFEPn)
- (b) Payable Escalable Transportation Energy Charges (METEPn)
- (c) Payable Escalable Fuel Handling Energy Charges (MEFHEPn)
- (d) Payable Non Escalable Fuel Energy Charges (MNEFEPn)
- (e) Payable Non Escalable Escalable Transportation Energy Charges (MNETEPn)
- (f) Payable Non Escalable Fuel Handling Energy Charges (MNEFHEPn)



for the Contract Year "n" in which Month "m" occurs and computed as mentioned hereunder:

$$\begin{aligned}\text{MEFEPn} &= \text{QEFECn} * p/q * r \\ \text{METEPn} &= \text{QETECn} * s/t * r \\ \text{MEFHEN} &= \text{QEFHECn} * u/v \\ \text{MNEFEPn} &= \text{QNEFECn} * r \\ \text{MNETEPn} &= \text{QNETECn} * r \\ \text{MNEFHEN} &= \text{QNEFHEN}\end{aligned}$$

Where,

QEFECn is the Quoted Escalable Fuel Energy Charges quoted (in US\$ per kWh) in the first Contract Year as per Schedule 10

QETECn is the Quoted Escalable Transportation Energy Charges quoted (in US\$ per kWh) in the first Contract Year as per Schedule 10

QEFHECn is the Quoted Escalable Fuel Handling Energy Charges quoted (in Rs per kWh) in the first Contract Year as per Schedule 10

QNEFECn is the Quoted Non Escalable Fuel Energy Charges quoted (in US\$ per kWh) in the first Contract Year as per Schedule 10

QNETECn is the Quoted Non Escalable Transportation Energy Charges quoted (in US\$ per kWh) in the first Contract Year as per Schedule 10

p is the Escalation Index for QEFEC as per Schedule 8 at the beginning of Month "m" (expressed as a number)

q is the Escalation Index for QEFEC as per Schedule 8 as at the Bid Deadline (expressed as a number)

r shall be the simple average of closing SBI TT buying rate (for Rs./US\$) for last fifteen (15) days prior to the first day of Month "m" for which such exchange rates are published by SBI.

s is the Escalation Index for QETEC as per Schedule 8 at the beginning of Month "m" (expressed as a number)

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t is the Escalation Index for QETEC as per Schedule 8 as at the Bid Deadline (expressed as a number)

u is the Escalation Index for QEFHEC as per Schedule 8 at the beginning of Month "m" (expressed as a number)

v is the Escalation Index for QEFHEC as per Schedule 8 as at the Bid Deadline (expressed as a number)

QNEFHEC_n is the Quoted Non Escalable Fuel Handling Energy Charges quoted (in Rs per kWh) for the Contract Year in which month "m" occurs as per Schedule 10

1.2.4 Contract Year Energy Incentive Payment

If and to the extent the Availability in a Contract Year exceeds eighty five percent (85%), an incentive rate of 40% of the Quoted Non Escalable Capacity Charges (in Rs./kWh) for such Contract Year mentioned in Schedule 10 or Rs 0.25 per kWh, whichever is less, shall be allowed on the energy (in kwh) corresponding to the Availability in excess of eighty five percent (85%).

1.2.5 Contract Year Penalty for Availability below 75% during the Contract Year

In case the Availability for a Contract Year is less than 75%, the Seller shall pay a penalty at the rate of twenty percent (20%) of the simple average Capacity Charge (in Rs./kWh) for all months in the Contract Year applied on the energy (in kwh) corresponding to the difference between 75% and Availability during such Contract Year.

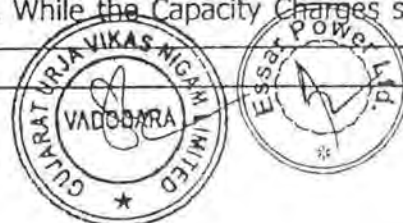
1.2.6 Deviation from the schedule

Variation between Scheduled Energy and actual energy at the Delivery Point shall be accounted for through Unscheduled Interchange (UI) Charges as detailed in the Grid Code and ABT.

1.2.7 Transmission/Wheeling Charges and Scheduling Charges

Procurer shall bear the transmission and related charges and transmission losses beyond the Delivery Point and shall pay such transmission charges directly to the Gujarat STU.

For any change in the Transmission and related charges of the CTU upto the Delivery Point, as approved by the CERC, and the Transmission Losses of the CTU Network, the quoted tariff shall be adjusted. While the Capacity Charges shall have



an impact due to such change in Transmission and related charges and Transmission Losses, the Energy Charges shall be adjusted only for such changes in Transmission Losses.

1.2.8 Penalty and rights relating to Minimum Guaranteed Quantity of Fuel

In case Seller has to pay penalty to the Fuel supplier for not purchasing the minimum guaranteed quantity of Fuel mentioned in the Fuel Supply Agreement and if during that Contract Year, the Availability of the Commissioned Units is greater than the Minimum Offtake Guarantee but the Procurer has not Scheduled Energy corresponding to such Minimum Off-take Guarantee during that Contract Year, then Seller will raise an invoice for the lower of the following amount on the Procurer, for the difference between Scheduled Energy assuming offtake corresponding to Minimum Offtake Guarantee and Scheduled Energy for the following amount:

- (a) penalty paid to the Fuel supplier under the Fuel Supply Agreement in that Contract Year, along with documentary proof for payment of such penalty, or
- (b) an amount corresponding to twenty percent (20%) of cumulative Monthly Capacity Charge Payment (in Rs.) for all the Procurer made for all the months in that Contract Year multiplied by $(1 - x/y)$ where:
X is the Scheduled Energy during the Contract Year for the Procurer (in kwh); and

Y is the Scheduled Energy corresponding to Minimum Offtake Guarantee for the Procurer during the Contract Year (in kwh).

Provided, within ten (10) days of the end of each month after the cod of the first unit, the seller shall provide a statement to the procurer, providing a comparison of the cumulative dispatch for all previous months during the contract year with the minimum offtake guarantee of the procurer. Further, such statement shall also list out the deficit, if any, in the fuel offtake under the fuel supply agreement, due to cumulative dispatch being less than the minimum offtake guarantee. In case of a fuel offtake deficit, within a period of fifteen (15) days from the date of receipt of the above statement from the seller and after giving a prior written notice of at least seven (7) days to the seller and the procurer, the procurer shall have the right to avail such deficit at the same price at which such deficit fuel was available to the seller under the fuel supply agreement and to sell such deficit to third parties.

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1.2.9 Tariff for the period prior to Scheduled COD of first unit and for Contract Years beyond the 25 years from the COD of the first Unit

The Tariff for the period prior to Scheduled COD of the first unit shall be the quoted tariff of the first year with escalation for relevant period only for energy charge. The Tariff for the Contract Years beyond the 25 years from the COD of the first Unit shall be the Quoted Tariff of the 25th year from the COD of the first Unit with applicable escalation.

1.3 Settlement of Bills

The penalty of actual Availability shortfall during the Contract Year, Deviation from the schedule, Transmission & Scheduling Charges, and Penalty to be paid to fuel supplier will be settled as detailed in Article 1.2.2, Article 1.2.5, Article 1.2.6, Article 1.2.7 and Article 1.2.8 of this Schedule.

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7 SCHEDULE 7: DETAILS OF INTERCONNECTION POINT AND FACILITIES

The Delivery Point shall be the points of delivery for fulfilling the obligation of the Seller to deliver the contracted electrical output/energy to Procurer; provided that such Delivery Point shall be the Generator-Gujarat STU Interconnection Point.



8 SCHEDULE 8: ESCALATION INDEX

The index ("Escalation Index") to be applied for escalation of Quoted Escalable Capacity Charges and Quoted Escalable Energy Charges shall be computed by assuming that as on the date of the Bid Deadline (for Quoted Escalable Energy Charges) and Scheduled COD of first Unit (for Quoted Escalable Capacity Charges), the value of such Escalation Index is 100. Thereafter for each Month after the Bid Deadline (for Quoted Escalable Energy Charges) and Scheduled COD of first Unit (for Quoted Escalable Capacity Charges), the value of the Escalation Index shall be computed by applying the per annum inflation rate specified by CERC for payment of escalable (or indexed) capacity charge and escalable energy charge, as per the provisions of the Competitive Bidding Guidelines. For the avoidance of doubt, if the prevailing inflation rate specified by CERC is 4.7% per annum, then at the end of the first Month after the Bid Deadline, the value of the Escalation Index shall be 100.3917 [i.e. $(100 + 4.7/12)$] for Quoted Escalable Energy Charges. Thereafter, at the end of the second month beyond such first Month, the value of the Escalation Index shall be 100.7834 [i.e. $(100.3917 + 4.7/12)$] and so on.

For the avoidance of doubt, the per annum inflation rate specified by CERC shall be revised only at the end of every six months.

Further, different per annum inflation rates can be specified by CERC for Quoted Escalable Capacity Charges, Quoted Escalable Fuel Energy Charges, Quoted Escalable Transportation Energy Charges, Quoted Escalable Fuel Handling Energy Charges. In such a case, such different per annum inflation rates will be used to determine separate Escalation Indices for Quoted Escalable Capacity Charges, Quoted Escalable Fuel Energy Charges, Quoted Escalable Transportation Energy Charges, Quoted Escalable Fuel Handling Energy Charges.



9 SCHEDULE 9: REPRESENTATION AND WARRANTIES

1.1 Representations and Warranties by the Procurer

The Procurer hereby represents and warrants to and agrees with the Seller as follows and acknowledges and confirms that the Seller is relying on such representations and warranties in connection with the transactions described in this Agreement:

- 1.1.1 The said Procurer has all requisite powers authorising and has been duly authorised to execute and consummate this Agreement;
- 1.1.2 This Agreement is enforceable against the said Procurer in accordance with its terms;
- 1.1.3 The consummation of the transactions contemplated by this Agreement on the part of the said Procurer will not violate any provision of nor constitute a default under, nor give rise to a power to cancel any charter, mortgage, deed of trust or lien, lease, agreement, license, permit, evidence of indebtedness, restriction, or other contract to which the said Procurer is a party or to which said Procurer is bound, which violation, default or power has not been waived;
- 1.1.4 The said Procurer is not insolvent and no insolvency proceedings have been instituted, nor threatened or pending by or against the said Procurer;
- 1.1.5 There are no actions, suits, claims, proceedings or investigations pending or, to the best of the said Procurer's knowledge, threatened in writing against the said Procurer at law, in equity, or otherwise, and whether civil or criminal in nature, before or by, any court, commission, arbitrator or governmental agency or authority, and there are no outstanding judgements, decrees or orders of any such courts, commission, arbitrator or governmental agencies or authorities, which materially adversely affect its ability to comply with its obligations under this Agreement.
- 1.1.6 The quantum of Contracted Capacity of said Procurer does not exceed the projected additional demand forecast for the next three (3) years, as required under the Bidding Guidelines.

The Procurer makes all the representations and warranties above to be valid as on the date of this Agreement.

In the event that any of the representations and warranties made by the Procurer in the Article above are not true or are incorrect, the occurrence of such event would amount to a Procurer Event of Default under Article 14.2 of this Agreement and the Seller shall have the right to terminate this Agreement in accordance with Article 14 of this Agreement.

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1.2 Representation and Warranties of the Seller

The Seller hereby represents and warrants to and agrees with the Procurer as follows and acknowledges and confirms that the Procurer is relying on such representations and warranties in connection with the transactions described in this Agreement:

- 1.2.1 It has all requisite power authorising and has been duly authorised to execute and consummate this Agreement;
- 1.2.2 This Agreement is enforceable against it in accordance with its terms;
- 1.2.3 The consummation of the transactions contemplated by this Agreement on the part of the Seller will not violate any provision of nor constitute a default under, nor give rise to a power to cancel any charter, mortgage, deed of trust or lien, lease, agreement, license, permit, evidence of indebtedness, restriction, or other contract to which the Seller is a party or to which the Seller is bound which violation, default or power has not been waived;
- 1.2.4 The Seller is not insolvent and no insolvency proceedings have been instituted, not threatened or pending by or against the Seller;
- 1.2.5 There are no actions, suits, claims, proceedings or investigations pending or, to the best of Seller's knowledge, threatened in writing against the Seller at law, in equity, or otherwise, and whether civil or criminal in nature, before or by, any court, commission, arbitrator or governmental agency or authority, and there are no outstanding judgements, decrees or orders of any such courts, commission, arbitrator or governmental agencies or authorities, which materially adversely affect its ability to execute the Project or to comply with its obligations under this Agreement.
- 1.2.6 The Selected Bidder has neither made any statement nor provided any information in his Bid, which was materially inaccurate or misleading at the time when such statement was made or information was provided. Further, all the confirmations, undertakings, declarations and representations made in the RFP Bid are true and accurate and there is no breach of the same.

The Seller makes all the representations and warranties above to be valid as on the date of this Agreement.

In the event that any of the representations and warranties made by the Seller in the Article above not true or are incorrect, the occurrence of such event would amount to a Seller Event of Default under Article 14.1 of this Agreement and the Procurer shall have the right to terminate this Agreement in accordance with Article 14 of this Agreement.



10 SCHEDULE 10: QUOTED TARIFF

The following is the Quoted Tariff as quoted by the Seller in the Financial Bid -

Contract Year	Financial Year	QNECC	QECC	QNEFEC	QEFEC	QNETEC	QETEC	QNEFHEC	QEFHEC
1	2010-11	1.1662	0.0000	0.01748	0.0000	0.00749	0.0000	0.1174	0.0000
2	2011-12	1.1217		0.01748		0.00749		0.1181	
3	2012-13	1.0840		0.01748		0.00749		0.1194	
4	2013-14	1.1317		0.01748		0.00749		0.1207	
5	2014-15	1.0945		0.01748		0.00749		0.1219	
6	2015-16	1.0576		0.01748		0.00749		0.1233	
7	2016-17	1.0211		0.01748		0.00749		0.1246	
8	2017-18	1.0593		0.01748		0.00749		0.1259	
9	2018-19	0.9063		0.01748		0.00749		0.1273	
10	2019-20	0.8281		0.01748		0.00749		0.1286	
11	2020-21	0.9017		0.01748		0.00749		0.1300	
12	2021-22	0.8348		0.01748		0.00749		0.1314	
13	2022-23	0.8449		0.01748		0.00749		0.1328	
14	2023-24	0.8555		0.01748		0.00749		0.1342	
15	2024-25	0.8665		0.01748		0.00749		0.1356	
16	2025-26	0.8267		0.01748		0.00749		0.1371	
17	2026-27	0.8386		0.01748		0.00749		0.1386	
18	2027-28	0.8509		0.01748		0.00749		0.1400	
19	2028-29	0.8637		0.01748		0.00749		0.1415	
20	2029-30	0.8770		0.01748		0.00749		0.1431	
21	2030-31	0.8908		0.01748		0.00749		0.1446	
22	2031-32	0.9052		0.01748		0.00749		0.1461	
23	2032-33	0.9202		0.01748		0.00749		0.1477	
24	2033-34	0.9357		0.01748		0.00749		0.1493	
25	2034-35	0.8240		0.01748		0.00749		0.1509	
26	2035-36	0.8438		0.01748		0.00749		0.1523	

Where,

QNECC means Quoted Non Escalable Capacity Charge (in Rs/kWhr);

QECC means Quoted Escalable Capacity Charge (in Rs/kWhr)

QNEFEC means Quoted Non Escalable Fuel Energy Charge (in US\$/kWhr);

QEFEC means Quoted Escalable Fuel Energy Charge (in US\$/kWhr);

QNETEC means Quoted Non Escalable Transportation Energy Charge (in US\$/kWhr);

QETEC means Quoted Escalable Transportation Energy Charge (in US\$/kWhr);

QNEFHEC means Quoted Non Escalable Fuel Handling Energy Charge (in Rupees /kWhr);

QEFHEC means Quoted Escalable Fuel Handling Energy Charge (in Rupees /kWhr);



11 SCHEDULE 11: CAPITAL STRUCTURE SCHEDULE

To be furnished by the Seller within 30 days of the Financial Closure.



12 SCHEDULE 12: FORMAT OF THE PERFORMANCE GUARANTEE

Submitted.



13 SCHEDULE 13: SELECTED BID

Enclosed.



14 SCHEDULE 14: SUBSTITUTION RIGHTS OF THE LENDERS

1.1 Substitution of the Seller

- a) Subject to the terms of the PPA, upon occurrence of a Seller Event of Default under the PPA, the Lenders shall, have the right to seek substitution of the Seller by a Selectee for the residual period of the PPA, for the purposes of securing the payments of the Total Debt Amount from the Seller and performing the obligations of the Seller, in accordance with the provisions of this Schedule.
- b) The Lenders may seek to exercise right of substitution by an amendment or novation of the PPA and other RFP Documents executed between Procurer and the Seller in favour of the Selectee, the Procurer and the Seller shall cooperate with the Lenders to carry out such substitution.

1.2 Procurer's Notice of Default

In the event the Procurer issues a Preliminary Default Notice to the Seller in accordance with the terms of this Agreement, the Procurer shall simultaneously issue a copy of such Preliminary Default Notice to the Lenders.

1.3 Substitution Notice

In the event of failure of the Seller to rectify the event giving rise to Preliminary Default Notice and on receipt of a copy of the Termination Notice by the Procurer, the Lenders, either on their own or through its representative ("the Lenders' Representative") shall be entitled to notify the Procurer and the Seller of the intention of the Lenders to substitute the Seller by the Selectee for the residual period of the PPA (the "Substitution Notice").

1.4 Interim operation of Project

- a) On receipt of a Substitution Notice, no further action shall be taken by any Party to terminate the PPA, except under and in accordance with the terms of this Schedule 14 of this Agreement.
- b) On issue of a Substitution Notice, the Lenders shall have the right to request the Procurer to enter upon and takeover the Project for the interim and till the substitution of the Selectee is complete and to otherwise take all such steps as are necessary for the continued operation and maintenance of the Project, including levy, collection and appropriation of payments thereunder, subject to, the servicing of monies owed in respect of the Total Debt Amount as per the Financing Agreements and the Seller shall completely cooperate in any such takeover of the Project by the Procurer.
- c) If the Procurer refuses to takeover the Project on request by the Lenders in accordance with clause 1.4 (b) above, the Seller shall have the duty and

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obligation to continue to operate the Project in accordance with the PPA till such time as the Selectee is finally substituted under clause 1.7.8 hereof.

- d) The Lenders and the Procurer shall, simultaneously have the right to commence the process of substitution of the Seller by the Selectee in accordance with these terms and the Seller hereby irrevocably consents to the same.

1.5 Process of Substitution of Seller

The Lenders' Representative may, on delivery of a Substitution Notice notify the Procurer and the Seller on behalf of all the Lenders about the Lenders' decision to invite and negotiate, at the cost of the Lenders, offers from third parties to act as Selectee; either through private negotiations or public auction and / or a tender process, for the residual period of the PPA. Subject to and upon approval of the Lead Procurer referred to in clause 1.7.5, such Selectee shall be entitled to receive all the rights of the Seller and shall undertake all the obligations of the Seller under the PPA and other RFP Documents executed between the Seller and the Procurer, in accordance with these terms of substitution.

The Lenders and the Seller shall ensure that, upon the Procurer approving the Selectee, the Seller shall transfer absolutely and irrevocably, the ownership of the Project to such Selectee simultaneously with the amendment or novation of the PPA and other RFP Documents executed between the Seller and the Procurer in favour of the Selectee as mentioned in clause 1.1 (b).

1.6 Modality for Substitution

1.6.1 Criteria for selection of the Selectee

The Lenders and / or the Lenders' Representative shall in addition to any other criteria that they may deem fit and necessary, apply the following criteria in the selection of the Selectee:

- (a) if the Seller is proposed to be substituted during the Construction Period, the Selectee shall possess the technical and financial capability used to pre-qualify bidders in the RFQ stage (including the methodology prescribed therein) to perform and discharge all the residual duties, obligations and liabilities of the Seller under the PPA. If the Seller is proposed to be substituted during the Operation Period, this criteria shall not be applicable.
- (b) the Selectee shall have the capability and shall unconditionally consent to assume the liability for the payment and discharge of dues, if any, of the Seller to the Procurer under and in accordance with the PPA and also payment of the



Total Debt Amount to the Lenders upon terms and conditions as agreed to between the Selectee and the Lenders;

(c) the Selectee shall have not been in breach of any agreement between the Selectee and any Bank or any Lender or between the Selectee and the Procurer, involving sums greater than Rupees twenty (20) crores at any time in the last two (2) years as on the date of the substitution of the Seller.

(d) any other appropriate criteria, whereby continuity in the performance of the Selectee's obligations under the PPA is maintained and the security in favour of the Lenders under the Financing Agreements is preserved.

1.7 Modalities

The following modalities shall be applicable to any substitution of the Seller by the Selectee pursuant to this Agreement:

1.7.1 The Lenders' Representative shall on behalf of the Lenders propose to the Procurer (the "Proposal") pursuant to sub-clause 1.7.2 below, the name of the Selectee for acceptance, seeking:

(a) grant of all the rights and obligations under the PPA and the other RFP Documents executed between the Procurer and the Seller, to the Selectee (as substitute for the Seller);

(b) amendment of the PPA and the other RFP Documents executed between the Procurer and the Seller, to the effect that the aforementioned grant to the Selectee, shall be such that the rights and obligations assumed by the Selectee are on the same terms and conditions for the residual period of the PPA as existed in respect of the Seller under the original PPA and the other RFP Documents executed between the Procurer and the Seller; and

(c) the execution of new agreements as necessary, by the proposed Selectee for the residual period of the PPA on the same terms and conditions as are included in this Agreement.

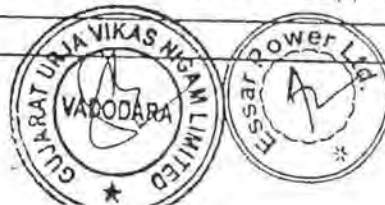
1.7.2 The Proposal shall contain the particulars and information in respect of the Selectee, the Total Debt Amount and other data and information as any of the Procurer may reasonably require. The Procurer may intimate any additional requirement within thirty (30) days of the date of receipt of the Proposal.

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- 1.7.3 The Proposal shall be accompanied by an unconditional undertaking by the Selectee that it shall, upon approval by the Procurer of the Proposal:
- (a) observe, comply, perform and fulfill the terms, conditions and covenants of the PPA and all RFP Documents executed between Seller and the Procurer or a new power purchase agreement or respective RFP Document (in the case of the novation thereof), which according to the terms therein are required to be observed, complied with, performed and fulfilled by the Seller, as if such Selectee was the Seller originally named under the PPA; or the respective RFP Document; and
 - (b) be liable for and shall assume, discharge and pay the Total Debt Amount or then outstanding dues to the Lenders under and in accordance with the Financing Agreements or in any other manner agreed to by the Lenders and the Procurer as if such Selectee was the Seller originally named under such Financing Agreements.
- 1.7.4 At any time prior to taking a decision in respect of the Proposal received under clause 1.7.1, the Procurer may require the Lender / Lenders' Representative to satisfy it as to the eligibility of the Selectee. The decision of the Procurer as to acceptance or rejection of the Selectee, shall be made reasonably and when made shall be final, conclusive and binding on the Parties.
- 1.7.5 The Procurer shall convey their approval or disapproval of such Proposal, through the Procurer, to the Selectee. Such decision shall be made by the Procurer at their reasonably exercised discretion within twenty one (21) days of:
- (a) the date of receipt of the Proposal by the Procurer; or
 - (b) the date when the last of further and other information and clarifications in respect of any data, particulars or information included in the Proposal requested by the Procurer under clause 1.7.2 above is received;
- whichever is later.
- 1.7.6 Upon approval of the Proposal and the Selectee by the Procurer, the Selectee mentioned in the Proposal shall become the Selectee hereunder.
- 1.7.7 Following the rejection of a Proposal, the Lenders and/or the Lenders' Representative shall have the right to submit a fresh Proposal, proposing another Selectee (if the rejection was on the grounds of an inappropriate



third party proposed as Selectee) within sixty (60) days of receipt of communication regarding rejection of the Selectee previously proposed. The provisions of this clause shall apply mutatis mutandis to such fresh Proposal.

1.7.8 The substitution of the Seller by the Selectee shall be deemed to be complete upon the Selectee executing all necessary documents and writings with or in favour of the Seller, Procurer and the Lenders so as to give full effect to the terms and conditions of the substitution, subject to which the Selectee has been accepted by the Lenders and the Procurer and upon transfer of ownership and complete possession of the Project by the Procurer or the Seller, as the case may be, to the Selectee. The Procurer shall novate all the RFP Documents, which it had entered in to with the Seller in order to make the substitution of the Seller by the Selectee effective. The quantum and manner of payment of the consideration payable by the Selectee to the Seller towards purchase of the Project and assumption of all the rights and obligations of the Seller under the PPA and the RFP Documents as mentioned in this Agreement shall be entirely between the Seller, Selectee and the Lenders and the Procurer shall in no way be responsible to bear the same.

1.7.9 Upon the substitution becoming effective pursuant to sub-clause 1.7.8 above, all the rights of the Seller under the PPA shall cease to exist;

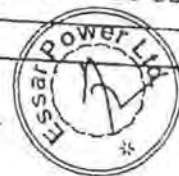
Provided that, nothing contained in this sub-clause shall prejudice any pending / subsisting claims of the Seller against the Procurer or any claim of the Procurer against the erstwhile Seller or the Selectee.

1.7.10 The Selectee shall, subject to the terms and conditions of the substitution, have a period of ninety (90) days to rectify any breach and / or default of the Seller subsisting on the date of substitution and required to be rectified and shall incur the liability or consequence on account of any previous breach and / or default of the Seller.

1.7.11 The decision of the Lenders and the Procurer in the selection of the Selectee shall be final and binding on the Seller and shall be deemed to have been made with the concurrence of the Seller. The Seller expressly waives all rights to object or to challenge such selection and appointment of the Selectee on any ground whatsoever.

1.7.12 The Lenders shall be solely and exclusively responsible for obtaining any and all consents/approvals or cooperation, which may be required to be obtained

Gujarat Urja Vikas Nigam Limited



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from the Seller under this Agreement and the Procurer shall not be liable for the same.

1.7.13 All actions of the Lenders' Representative hereunder shall be deemed to be on behalf of the Lenders and shall be binding upon them. The Lenders' Representative shall be authorised to receive payment of compensation and any other payments, including the consideration for transfer, if any, in accordance with the Proposal and the Financing Agreements and shall be bound to give valid discharge on behalf of all the Lenders.

1.8 Seller's Waiver

1.8.1 The Seller irrevocably agrees and consents (to the extent to which applicable law may require such consent) to any actions of the Lenders, the Lender's Representative and the Procurer or exercise of their rights under and in accordance with these terms.

1.8.2 The Seller irrevocably agrees and consents (to the extent to which applicable law may require such consents), that from the date specified in clause 1.7.9, it shall cease to have any rights under the PPA or the Financing Agreements other than those expressly stated therein.

1.8.3 The Seller warrants and covenants that any agreement entered into by the Seller, in relation to the Project, shall include a legally enforceable clause providing for automatic novation of such agreement in favour of the Selectee, at the option of the Lenders or the Procurer. The Seller further warrants and covenants that, in respect of any agreements which have already been executed in relation to the Project and which lack a legally enforceable clause providing for automatic novation of such agreement, the Seller shall procure an amendment in the concluded agreement to incorporate such clause.

1.9 Interim Protection of Service and Preservation of Security

1.9.1 Appointment of a Receiver

(a) In every case of the Lenders issuing a Substitution Notice and the Procurer refusing to takeover the Project and the Seller failing to operate the Project in accordance with Clause 1.4(c) above and the Procurer not electing to act as Receiver as per sub-clause 1.9.1 (b) hereof, the Lenders may institute protective legal proceedings for appointment of a receiver (the "Receiver") to maintain, preserve and protect the assets held as security by the Lenders if such right is granted under the terms of the Financing Agreements.

(b) If the assets of the Project are, in the opinion of the Procurer, necessary and required for the operation and maintenance of the Project, the Procurer shall



be entitled to elect to act as the Receiver for the purposes of this Clause and be entitled to maintain, preserve and protect the said assets by engaging an operator/service provider to act on their behalf and the Lenders and Seller hereby consent and agree to the same. Upon the Procurer so intimating the Seller and the Lender's representative their desire to act as Receiver, the Seller and the Lender's representative shall co-operate with the Procurer to facilitate the same.

- (c) Upon appointment of the Court appointed Receiver or the Procurer acting as Receiver, all the Receivables received by such Receiver shall be deposited by the Receiver in the bank account jointly designated by the Procurer and the Lenders. The Receiver shall be responsible for protecting the assets in receivership and shall render a true and proper account of the receivership to the lenders in accordance with the terms of its appointment.
- (d) When acting as a Receiver or operator in accordance with this clause 1.9 or clause 1.4(b), Procurer shall be entitled to be remunerated for such services as may be determined by Central Electricity Regulatory Commission. Furthermore, when acting as a Receiver, the Procurer shall not be liable to the Lenders, the Lenders' Representative, Seller or any third party for any default under the PPA, damage or loss to the Power Station or for any other reason whatsoever, except for wilful default of the Procurer.

1.10 Substitution Consideration

1.10.1 The Lenders and Procurer shall be entitled to appropriate any consideration received for the substitution of the Seller as hereinabove provided, from the Selectee towards the payment of Lenders' and the Procurer's respective dues, to the exclusion of the Seller.

1.10.2 The Seller shall be deemed to have nominated, constitutes and appoints the Lenders' Representative as its constituted attorney for doing all acts, deeds and things as may be required to be done for the substitution of the Seller by the Selectee pursuant to these terms.

1.11 Change in the Procurer or Lenders

The Parties hereto acknowledge that during the subsistence of the PPA, it is possible that the Procurer may cease to be a party to this Agreement by reason of termination of PPA vis-à-vis the Procurer and any Lender may cease to remain as a Lender by reason of repayment of the debt or otherwise. Further it may possible that any Lender may be substituted or a new Lender may be added. In the event of the Procurer ceasing to be a party to the PPA or Financing Agreement respectively, the term and conditions as prescribed in this Schedule shall cease to automatically

Gujarat Urja Vikas Nigam Limited



apply to the Procurer or Lender as the case may be. Further, upon any entity being added as a Lender and in the event such entity is given the right to substitute the Seller under the Financing Agreement and then the contents of this Schedule shall be applicable to the exercise of such right by the said new entity.



Policy directive for revival and rehabilitation of stressed imported coal based power projects in consumer interest.

Government of Gujarat
Resolution No.CGP-12-2018-166-K
Energy and Petrochemicals Department
Sachivalaya, Gandhinagar
Dated the 1st December, 2018.

Read: -

- (1) Energy and Petrochemicals Department's Government Resolution of even number dated 03.07.2018.
- (2) Recommendations of the Report dated 03.10.2018 of the High Power Committee for achieving sustainable resolution of the financial stress being faced by imported coal based power projects located in the State of Gujarat and to alleviate the consequential financial burden on consumers of the procurer states of Gujarat, Haryana, Maharashtra, Punjab and Rajasthan.

Preamble:

Vide GR referred to at Sr. No. (1) above, a High Power Committee (HPC) comprising Justice Mr. R. K. Agrawal (former Justice, Hon'ble Supreme Court of India), Shri S. S. Mundra (former Deputy Governor, RBI) and Dr. Pramod Deo (former Chairman, CERC) was constituted to make recommendations with regard to resolution of the issues of the imported coal based power projects located in Gujarat, viz. Coastal Gujarat Power Ltd. (CGPL), Adam Power Ltd. (APL) and Essar Power Gujarat Ltd. (EPGL). As per the terms of reference, the HPC was expected to examine and analyze all the relevant documents related to the projects, analyze and ascertain the hardship faced by these projects as well as by the procurer States and mode and manner for mitigating the hardship faced by the projects on account of Indonesian Regulations and subsequent orders/judgments, call relevant parties for submission of details /clarification as required by the committee, contribution by each Stakeholders viz. Banks, Project Developers & Procurers by way of concessions for mitigating hardship, any other relevant issues which committee would like to discuss and study, suggest sustainable solution(s) for resolving the issue and any other measure for overall reduction in the cost of generation of power in the interest of the consumers.

The HPC submitted its report containing recommendations to the Government of Gujarat on 03.10.2018. Prior to taking the HPC's recommendations

into consideration, as the matter of the imported coal based projects was earlier examined by Hon'ble Supreme Court of India in case of Prayas (Energy Group) vide its order dated 11.04.2017, the Government of Gujarat decided first to make a reference to Hon'ble Supreme Court to seek clarification that the judgment of Hon'ble Supreme Court in Civil Appeal Nos. 5399-5400 of 2016 does not impinge upon accepting the recommendations of the HPC and amending the PPAs suitably.

Hon'ble Supreme Court of India vide order dated 29.10.2018 decided:

'We are of the view that, having perused the High Power Committee's report, which was given after our judgment dated 11th April, 2017, it will be open to the applicants to approach the Central Electricity Regulatory Commission (C.E.R.C.) for approval of the proposed amendments to be made to the Power Purchase Agreements (PPAs) in question.

We make it clear that our judgment will not stand in the way of maintaining such applications. We also make it clear that each of the consumer groups, who had appeared before us and who have appeared before us today, will be heard on all objections that they may make to the proposed amendments to the PPA, after which, it will be open to the C.E.R.C. to decide the matter in accordance with law. Given the conclusions in the High Power Committee report, we are of the view that the C.E.R.C. should decide this matter as expeditiously as possible, and definitely within a period of eight weeks from today.'

Thereafter, the government deliberated on all recommendations of the HPC in detail against the background of the existing and emerging power scenarios in Gujarat:

- Gujarat has a share of 4805 MW from these three projects in question, which contribute around 45% of its total energy requirement. Having the highest share of power from these projects Gujarat is the most affected State. The State grid is already facing low voltage issues in the Saurashtra and Kutch areas and the discontinuation of supply from these projects located in Kutch area would have further adverse ramifications on the quality of power and the power supply position.
- These projects are based on advanced technology, are efficient in operation and have a higher priority in the Merit Order scheduling.
- In case these projects were shut down, replacing such huge capacity with alternate sources from market would not be feasible as the short term market

prices are not only much higher and volatile, the availability of power is uncertain.

- In the recent Case I, long term bids invited by other States like Andhra Pradesh, Uttar Pradesh, Telangana etc. the tariff was discovered in range of Rs. 3.94-6.31/unit.
- In the recent bids invited by M/s PTC on medium term basis, the rate of Rs.4.24/unit was discovered at the Generator bus bar which works out to Rs.4.75/unit at the Gujarat periphery.
- Since the State had surplus power due to sustained availability of power from these projects, the State did not plan new capacity addition except at Wanakbori 8 (800 MW). Further, this surplus capacity also includes Gas based stations of 3300 MW for which gas at economical rate is available only to operate 300 MW. Operating these gas based projects on costlier Regasified Liquefied Natural Gas has significantly higher generation cost and would further increase the Fuel Surcharge on consumers.
- Establishing new imported/indigenous coal based power plants would have significantly higher fixed and variable costs and the gestation period would be about 5 years and hence, would not offer any solution to immediate power requirement.
- To meet the generation loss due to non-availability of power from these projects, Gujarat Urja Vikas Nigam Ltd. (GUVNL) has purchased substantial quantum of power at an average rate of Rs.4.66/unit during FY 2018-19 (up to October) from power exchanges and under bilateral arrangement. New projects are not expected to get commissioned in the near future and hence the rate at the power exchange would remain higher. Had GUVNL not purchased such quantum of power, it would have led to the undesirable situation of load shedding in the State.
- The thermal power projects across the country with long-term linkages are already facing critical coal stock situation in addition to issues related to availability of adequate infrastructure for transportation of coal through railways and high freight cost. Therefore, optimum utilization of generation capacity of these plants, based on imported coal, located in the coastal areas, merits consideration.

It is pertinent to note that the HPC's recommendations are premised on serving the consumer interest and the HPC while undertaking the analysis and

making the recommendations in the Report has the 'consumer interest' paramount and this has been the focal point of the approach of the HPC.

The government took note of the conclusions drawn by the HPC and concurs therewith in essence:

"10.2 On the touchstone of 'consumer interest', it can be safely concluded that these projects need to be salvaged. Sustainable operation of these projects is of critical importance, essentially due to the fact that these projects are instrumental in fulfilling the increasing demand of the procurer states. Consumer interest thus lies in ensuring that reliable and relatively inexpensive power is secured in a sustainable manner to meet current and future demand projections. This in turn would also ensure that the economic growth of the procurer states is not vitiated.

10.3 In contrast, if these projects are not salvaged, consumer interest will be adversely affected on account of various reasons, gist of which are set out below:

- (i) The capacities from these projects will have to be replaced from alternative sources and therefore, prices will further go up in view of the clear co-relation between demand and supply;*
- (ii) The cost of replacement power at today's market price would be higher;*
- (iii) Setting up new projects in any event will be more expensive and will take another 4-5 years to commence supply;*
- (iv) Increase in cost on account of procurement of power from in-efficient and old plants which would also have reliability issue;*
- (v) Resorting to load shedding on account of difficulties associated with complete replacement of power from these projects ; and*
- (vi) Any insolvency or liquidation of these projects would hardly address the issues of power supply."*

In view of the above, the matter in respect of taking decisions for accepting the recommendations of the HPC, fully or partially and subsequent changes/modifications/amendments to the PPA(s) was under active consideration of the Government.

Resolution:

In view of the above, after careful consideration, the Government of Gujarat has decided to accept all recommendations of the HPC except those mentioned as not accepted hereinbelow, and has modified certain recommendations as mentioned below, and has further taken certain policy decisions as mentioned below in this context and hereby resolves as follows :

- i. It is decided to accept the recommendation of the HPC about the effective date of implementation as 15.10.2018.

- ii. In respect of the recommendation of the HPC about adjustment in variable cost, it is decided that the tariff will be adjusted considering actual fuel cost based on the superior of actual parameters or normative parameters as per the Regulation of the Appropriate Commission subject to ceiling of HBA Index of 110 USD / MT for 6322 Kcal / Kg coal on monthly basis. In case the HBA Index of coal exceeds 110 USD / MT, the payment will be capped at 110 USD/ MT and the generator shall bear the differential cost and continue to supply power. Further, it is decided to review the ceiling price every 5 years as per the HPC's recommendations.
- iii. As per the recommendation of the HPC about sacrifice by the bankers, it is decided that the fixed cost @ 20 paise / kWh is to be reduced to extent of normative availability of 80%.
- iv. In respect of the recommendation of the HPC for sharing of mining profit, it is decided that 100% mining profit towards coal utilized at respective projects stipulated from their coal mines shall be shared. However, in case the coal from stipulated mines is not transferred or less transferred to the power plants and is sold outside, the profit is to be shared equivalent to energy supplied under PPA considering coal supplied to power plant as well as coal sold outside. In any case, the mining profit will be minimum 5 paise/kWh in case of APL and 15 paise/kWh in case of CGPL. In case of EPGL, no mining profit will be shared.
- v. As regards the recommendation of HPC for tying up of free capacity, it is decided that the procurers may tie up the untied up capacity of 550 MW available with APL and 100 MW with EPGL. The free capacity from APL will be offered to Gujarat and Haryana in proportion of 83:17. The tariff for such capacity shall be as per revised variable cost (no mining profit to be adjusted) and fixed cost (levelised for balance term of PPA). It is decided that the untied capacity from the projects be tied up by GUVNL from the identified units under existing PPA i.e. unit 1 to 6 of APL and unit 1 & 2 of EPGL. As GUVNL has no share from unit # 7, 8 & 9 of M/s. APL and these units have different fuel sources and tariff structure, taking free capacity (22 MW) does not come in question here.
- vi. With reference to the recommendation of the HPC about increase in plant availability, it is decided to accept the recommendation of the HPC that the project developer shall increase the availability up to 90% without procurer having to pay capacity charge beyond 80% while penalty shall be applicable at 10% of capacity charges for availability below 90% to the extent of short availability. Moreover, penalty and incentive shall continue to apply in accordance with existing provisions of PPA.

- vii. As far as the recommendation of the HPC about the extension of the PPA tenure is concerned, it is decided that procurers will have the option for extending the PPA for 10 years after the existing tenure of 25 years.
- viii. As against the recommendation of the HPC in respect of waiver/refund of penalty, it is decided that the penalty shall not be waived/refunded.
- ix. It is decided that no rebate shall be applicable on Energy Charge for the balance term of the PPA. However, rebate on payment of capacity charges shall be applicable. Further, delay payment charge provision is retained as per the existing PPA.
- x. In respect of freight, port and coal handling charges, it is decided as follows:-
 - In case of Adani (APMuL), the port charges and transportation charges are not quoted in the bid separately therefore the Port & Coal handling charges shall be considered lower of actual or charges as per the Agreement of M/s CGPL (Tata) with M/s Adani Port which was negotiated by M/s Power Finance Corporation, Govt. of India before inviting the competitive bids. As regard to the ocean freight & insurance for transportation of coal, the escalation for the same shall be considered by linking it with the index notified by the CERC or the actual Ocean Freight paid by Project Developer, whichever is lower.
 - In case of CGPL (UMPP), port and coal handling shall be actual or as per the quoted charges in bid and escalated as per the PPA, whichever is lower. The ocean freight and insurance shall be lower of the actual or the freight worked out as per the CERC index from time to time subject to a maximum of quoted charges in bid and escalated as per the PPA, if any.
 - In case of EPGL, port and coal handling shall be actual or as per the quoted charges in bid and escalated as per the PPA, whichever is lower. The ocean freight and insurance shall be lower of the actual or the freight worked out as per the CERC index from time to time subject to a maximum of the quoted charges in bid and escalated as per the PPA, if any.
- xi. It is decided that in the 10th year from the date of signing of the supplemental PPA, if energy charges of these respective projects under the PPA(s) is higher than marginal coal based thermal power stations having 50 % schedule or immediate below, as the case may be, during the previous financial year under merit order of GUVNL, GUVNL shall have a right to terminate the PPA. In the event of termination pursuant to this decision,

neither party shall be liable for any damages or penalty of any kind to the other party.

- xii. It is decided to execute amendments in PPA(s) of for Adani Power Ltd. (Unit 1 - 6) and Essar Power Gujarat Ltd. and approach appropriate Regulatory Commission for approval of the same immediately. In case of amendment in PPA of Coastal Gujarat Power Ltd., since the PPA for Mundra UMPP is a joint contract wherein four other States (i.e. Maharashtra, Rajasthan, Punjab and Haryana) are also having allocation, the amendments in the PPA shall be carried out and presented to the CERC along with the consent and supplemental PPA jointly signed also by the other four states in question.

In view of the aforesaid, it is also resolved to direct GUVNL to ensure adequate and efficient supply of energy at economical tariff and maintain its respective energy basket in a manner that has a mix of power sources that addresses all issues including availability of reliable base load power generation, optimum utilization of existing resources and installed generation capacities etc. by allowing revival and rehabilitation package to the financially stressed and economically unviable imported coal based power projects through consequential amendment(s)/modification(s) in existing PPA(s), in larger public interest. Accordingly, GUVNL is directed to submit the amended/modified PPA(s) before appropriate Regulatory Commission for allowing the aforesaid consequential changes/modifications/amendments and for the purpose, it is further resolved that the Board of Directors of GUVNL is authorized for taking decisions in respect of any incidental issues while carrying out the amendments to PPA(s).

This issues with the concurrence of the Finance Department on this department's file of even number, dated 01.12.2018.

By order and in the name of the Governor of Gujarat,



(K. L. Bachani)

Officer on Special Duty (Power)
Energy and Petrochemicals Department.

Copy forwarded with compliments to:

- (1) The Principal Secretary to the Governor of Gujarat, Raj Bhavan, Gandhinagar.
- (2) The Chief Principal Secretary to the Hon'ble C.M., "SS-I", Gandhinagar.
- (3) The Principal Secretary to Hon'ble CM, "SS-I", Gandhinagar.
- (4) The ACS to Govt., Finance Department, Sachivalaya, Gandhinagar.
- (5) The Secretary to GoI, Ministry of Power, New Delhi.
- (6) The Secretary, Central Electricity Regulatory Commission, New Delhi.
- (7) The Secretary, Gujarat Electricity Regulatory Commission, Gandhinagar.
- (8) The PPS to Hon'ble Deputy CM, "SS-I", Gandhinagar.

- (9) The PS to the Hon'ble Minister (Energy), "SS-I", Gandhinagar.
 - (10) The PS to the Hon'ble MoS (Energy), "SS-II", Gandhinagar.
 - (11) The DS to the Chief Secretary, O/o the Chief Secretary, Sachivalaya, Gandhinagar.
 - (12) The Additional Chief Secretary to Govt. (Power), Power Department, Govt. of Punjab, Secretariat, Chandigarh.
 - (13) The Principal Secretary to Govt. (Power), Govt. of Maharashtra, Secretariat, Mumbai.
 - (14) The Principal Secretary to Govt. (Power), Energy Department, Govt. of Rajasthan, Mantralaya, Jaipur, Rajasthan.
 - (15) The Principal Secretary to Govt. (Power), Govt. of Haryana, Chandigarh.
 - (16) The Managing Director, Gujarat Urja Vikas Nigam Limited, Vadodara.
 - (17) The Select file.
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गुजरात गुजरात GUJARAT

BP 262591

र.वे.नं. 3/504 र. 100 दि. 9/12/2019
नाम : Essar Power Gujarat Limited
ठेकाणु : Channi Road, Vadodra
हस्त : Rajan
र.वे. नं. नीयती : 211/2019
शाह जयंतिलाल पुजारांड न्यायमंडीर
ला. नं. 26/66 ला. 29-90-66
बी-43, विधाविहार सोसायटी, पाघोडीया रोड, पडोहरा-96.

Supplemental Agreement

THIS THIRD SUPPLEMENTAL POWER PURCHASE AGREEMENT hereinafter called the "Supplemental Agreement" is entered into at Vadodara on the 1st day of March, Two Thousand And Nineteen by and

BETWEEN

M/s Essar Power Gujarat Ltd. (EPGL), a Company incorporated under the Companies Act, 2013 having its registered office at 44 KM Milestone, Jamnagar - Okha Highway, Khambhaliya, Devbhumi Dwarka (hereinafter referred to as



'Seller" or "EPGL" which expression shall unless repugnant to the context or meaning thereof include its successors and assigns) as Party of the first part;

AND

M/s Gujarat Urja Vikas Nigam Limited, (GUVNL) a Government of Gujarat Undertaking and a Company incorporated under the Companies Act, 1956 having its registered office at Sardar Patel Vidyut Bhavan, Vadodara (hereinafter referred to as 'Procurer" which expression shall unless repugnant to the context or meaning thereof include its successors and assigns) as Party of the second part

Each of the "Procurer" and "the "Seller" are individually referred to as "Party" and collectively as the "Parties"

Whereas:

- A. The Seller and the Procurer had executed a Power Purchase Agreement dated 26.2.2007, as amended by Assignment Agreement dated 25.11.2008 and Supplemental Power Purchase Agreement dated 16.10.2009 (hereinafter referred to as the "PPA"), for the sale and purchase of electricity in accordance with the terms and conditions contained therein;
- B. The promulgation of Indonesian regulations relating to the pricing mechanism of coal and resultant financial implication of the same on cost of generation of power by the power projects based on imported Indonesian coal, led to the inability of the power generators, including the Seller herein, to continue to operate their power generation projects on a sustainable basis. As a consequence of the inability of the Seller to generate and supply power on a sustainable basis, the Procurer State, faced power shortage and was required to procure power from alternate sources at higher cost/rates. Thus, due to the prevailing conditions the consumers of the State are put to pay much higher cost of power. In this background and consequent to the diverse background facts and events, as more particularly described in the Government of Gujarat Resolution No. CGP-12-2018-166-K dated 03-07-2018 (hereinafter referred to as "the GR"), the imported Indonesian coal based power generation projects encountered financial stress and losses and were unable to sustain power generation from the projects;
- C. In order to resolve these issues, the Government of Gujarat, vide Government Resolution No. CGP-12-2018-166-K dated 3.07.2018 constituted a High Power



[Handwritten signature]



Committee to, inter alia, suggest sustainable solutions for reviving the power generation projects based in the state of Gujarat and based on imported Indonesian coal as fuel;

- D. The High Power Committee submitted its Report on 3.10.2018 making certain recommendations for resolving the said issues;
- E. The Government of the State of Gujarat accepted the recommendations of the High Power Committee with certain modifications and decided to implement the same, and consequently, issued its policy directions contained in Resolution No. CGP-12-2018-166-K dated 1.12.2018 (Hereinafter referred to as "the Implementation Policy");
- F. The implementation of the said policy directions contained in the Implementation Policy require, inter alia, carrying out certain amendments to the PPA, and obtaining necessary approvals for these amendments, from the Appropriate Commission;
- G. Article 18.1 of the PPA enables the Parties to amend the provisions of the PPA by written agreement and subject to the approval of the Appropriate Commission.

NOW THEREFORE, in consideration of the premises, mutual agreements, covenants and conditions set forth in this Supplemental Agreement, it is hereby agreed by and between the Parties as follows:

1. All capitalized terms, unless specifically defined in this Supplemental Agreement, shall have the meanings ascribed to them in the PPA.
2. With the execution of this Supplemental Agreement, all relevant Articles of the Power Purchase Agreement in respect of the matters covered in this Supplemental Agreement, shall stand amended, modified and/or replaced to the extent provided in this Supplemental Agreement and in the event of any conflict in the interpretation between the clauses of the PPA and this Supplemental Agreement, or in the application of any provision of the PPA or this Supplemental Agreement, then the provisions of this Supplemental Agreement shall prevail. Except as amended, modified and/or replaced



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hereunder, all other terms and conditions of the PPA shall continue to apply and shall remain unchanged.

3. The Parties agree as follows:

3.1 The following definitions shall be added:

(i) Article 1.1 of the PPA shall be amended as follows:

"**Affiliate**" with respect to any specified person shall mean any other person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified person and, in relation to a natural person, includes any "Relative" (as such expression is defined in the Companies Act, 2013) of such natural person. The expression "control" shall have the meaning ascribed to the term in the Companies Act, 2013 and the terms "controlling" and "controlled" shall be construed accordingly.

(ii) "**Amendment Effective Date**" shall be October 15, 2018, i.e. the date with effect from which, this Supplemental Agreement shall become effective and binding upon the Parties.

(iii) "**Tariff Regulations**" shall mean the regulations of the Gujarat Electricity Regulatory Commission specifying the terms and conditions for determination of tariff, as applicable at the time of COD of the Project.

3.2 All provisions in the PPA relating to determination of Capacity Charge & Energy Charge, shall be replaced and substituted with the following provisions.

3.2.1 Notwithstanding anything to the contrary contained in the PPA, the Seller shall, with effect from the Amendment Effective Date, be entitled to receive, and the Procurer shall be liable to pay, Revised Tariff determined in accordance with the provisions hereinafter contained, with respect to the sale and supply of electricity under and in terms of the PPA.

"**Revised Tariff**" shall mean the sum total of Energy Charge and Capacity Charge.

"**Capacity Charge**" shall mean the Capacity Charge determined in accordance with Clause 3.2.2 of this Supplemental Agreement



"Energy Charge" shall mean the energy charge determined in accordance with clause 3.2.3 of this Supplemental Agreement.

"Exchange Rate" shall mean the simple average of State Bank of India TT Selling rate for last 15 days prior to 1st day of the Month of power supply

3.2.2 Capacity Charge for each Month shall be the Quoted Capacity Charge (Sum of Quoted Non Escalable Capacity Charge and Quoted Escalable Capacity Charge) mentioned at Schedule 10 of PPA dated 26.02.2007 less 20 paise/kwh applicable upto Normative Availability of 80%. The Monthly Capacity Charge payment shall be made in accordance with Schedule 6 of PPA dated 26.02.2007. This Capacity Charge shall be subject to reduction towards penalty for declaration of Availability lower than 90% as per Clause No. 3.2.5 of this Supplemental Agreement in addition to the Contract Year Penalty for Availability below 75%, as per PPA dated 26.02.2007.

3.2.3 Energy Charge shall be determined for each Month, as under:

(Energy charge rate in Rs./kWh) x {Scheduled energy (ex-bus) for the Month in kWh.}

Energy charge rate (ECR) in Rupees per kWh on ex-power plant basis shall be determined to four decimal places in accordance with the following formulae:

$$ECR = \{GHR \times LPPF / CVPF\} \times 100 / (100 - AUX)$$

Where:

AUX = Lower of actual or normative auxiliary energy consumption as specified in the Tariff Regulations as defined herein.i.e. 6.50%

CVPF (as received basis) = Weighted Average Gross calorific value of coal in Kcal / Kg on as billed basis minus lower of (i) actual difference between GCV at loading port and unloading port or (ii) 72 Kcal / Kg towards loss of heat during transportation as per ISO 1928 (dated 01.06.2009)

ECR = Energy charge rate, in Rupees per kWh sent out.



GHR = Lower of actual or Gross station heat rate of 2333 in kCal per kWh as specified in the Tariff Regulations as defined herein.

LPPF = Weighted average landed price at the plant site of coal as primary fuel (which for the avoidance of doubt shall include all taxes on the sale, transportation & import of coal and inland transportation costs for transporting and delivering coal to the plant site), in Rupees per kg, during the relevant Month. LPPF shall be worked out as per table in Clause 3.2.4 of this Supplemental Agreement.

The operational parameters viz. "AUX" & "GHR" considered for computation of Energy Charge Rate shall be aligned as per CERC approval in Petition No. 374/MP/2018.

- 3.2.4 The Energy Charge determined as above, shall be subject to the following conditions:

(I) General Principles for determination of LPPF:

FOB cost of Coal	FOB Price for Imported Coal: Shall be the lower of actual price or the HBA Price (as defined hereinafter) determined in Indian Rupees at Exchange Rate. In case of change in pricing framework in Indonesia or change in source of coal to other country, HBA Price will be replaced with relevant coal indices as mutually agreed. "HBA Index" shall mean the FOB Price of Indonesian imported coal having 6322 kcal/kg Gross Calorific Value in USD / MT notified by Govt of Indonesia on monthly basis "HBA Price" shall mean the HBA Index FOB price of Indonesian imported coal published by Govt of Indonesia from time to time for coal quality of 6322 Kcal/Kg, as adjusted for GCV (as billed) of coal consignment consumed in the Project as per the formula as stated in Annexure-A. Further, tolerance of maximum 10% over HBA price
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derived for a quality of coal shall be allowed. HBA price + maximum 10% tolerance shall not be higher than HBA coal price worked out on proportionate basis with reference to HBA Index. This tolerance of 10% of HBA price shall not be allowed for coal procured from mines owned by Seller / its Affiliates.

The actual FOB price of coal shall always be subject to an upper ceiling limit of HBA Index of USD 110/MT for 6322 Kcal / Kg ascertained on a monthly basis, adjusted for quality of coal (GCV as billed) in the Project and as revised from time to time in accordance with this Supplemental Agreement (the "Ceiling Price"). This has been explained in greater detail in sub para (II) Specific Conditions herein below.

Illustration: For determination of equivalent Coal Price for working out Landed Cost of imported coal for the Month:

The lower of following for the month shall be considered:

- (a) Actual FOB price of consignment
- (b) HBA price worked as per formula for billed GCV plus maximum 10% tolerance on HBA price (10% tolerance not allowed for coal procured from mines owned by Seller / its Affiliate)
- (c) HBA price worked out on proportionate basis with reference to HBA Index for 6322 GCV coal

Note: HBA price for billed GCV shall be worked out (on proportionate basis and as per formula) considering ceiling of HBA Index of USD 110 / MT or as revised as per sub para (II) Specific Conditions of this Supplemental Agreement



Transportation and other costs	Ocean Freight & Insurance The ocean freight and insurance shall be lower of actual or as stated in Annexure – B and calculated in Indian Rupees, at Exchange Rate. (Column (c) & (d) in Table I & II respectively of Annexure-B) Port / Fuel Handling Charges: The Port / Fuel Handling charges shall be lower of actual or as stated in Annexure – B (Column (e) & (f) in Table I) Transit Losses: Actual or 0.2%, whichever is lower Other Charges (Sampling, Inspection, Customs clearance and Forwarding Agency charge): Actual or 3% of CIF, whichever is lower – Seller to tie up services (Sampling, Inspection, Customs clearance and Forwarding Agency charge) through competitive bidding with approval of tender documents from Procurer & seek approval of discovered rate from Procurer
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(II) Specific Conditions

- (a) The Ceiling Price for HBA Index will be fixed for 5 years at a time, with the first 5 year period commencing from the Amendment Effective Date and the last such 5 year period ending on the Expiry Date even if the last period is less than 5 years. The Ceiling Price will be reset and recalibrated for the next five year period, as per the following methodology:
- (i) If the HBA Price at any time during the relevant 5 year period, exceeds the Ceiling Price specified for the said relevant 5 year period, then the Ceiling Price for the subsequent 5 year period will be increased by a percentage factor equivalent to the percentage increase in domestic CIL coal price (FOR) for linkage coal (Average price of G – 7 to G – 14 grade of coal used for power generation), during the corresponding 5 year period. The principle is that the imported coal Ceiling Price should move in tandem with domestic coal price increase.



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(ii) If the HBA Price does not at any time during the relevant 5 year period, exceed the Ceiling Price specified for the said relevant 5 year period, however, if the average HBA Price during the relevant five year period is higher than the average HBA Price during the immediately preceding five year period, the Ceiling Price for the relevant 5 year period shall be increased by a percentage factor equivalent to the lower of:

(x) the percentage increase in domestic CIL coal price (FOR) for linkage coal (Average price of G – 7 to G – 14 grade of coal used for power generation), during the 5 year period corresponding with the relevant 5 year period; or

(y) escalation in the HBA Index over the relevant 5 year period

For the avoidance of doubt, for the first 5 year period commencing from the Amendment Effective Date, the aforesaid comparison of average HBA Price shall be done for the immediately preceding five year period prior to the Amendment Effective Date.

If during the relevant 5 year period, none of the conditions specified in paragraphs (i) or (ii) above are attracted, then the Ceiling Price for the subsequent 5 year period shall remain unchanged

(b) Seller agrees that in case HBA Index of Indonesian coal exceeds 110 USD/MT or Revised Ceiling Price as determined every 5 years, Seller shall bear the differential cost and continue to supply power under the PPA & Supplemental Agreement

(c) Seller shall procure imported coal only through competitive bidding process after seeking approval of Procurer for Tender document and shall also seek approval of rate discovered from Procurer.

(III) Methodology for Merit Order Scheduling & Billing

(i) The Seller will, on the last working day of each Month, submit to the Procurer the anticipated Energy Charges for the subsequent Month. The anticipated Energy Charge will be based on the estimated cost of Indonesian imported coal procurement for subsequent Month.

(ii) Deleted



- (iii) At the end of each Month, the Bills by the Seller will be based on the Capacity Charge and Energy Charge respectively determined as per paragraphs 3.2.2 and 3.2.3 above.

The Seller has to provide the following documents along with the monthly bill:

1. Auditors certificate for each shipment in terms of value and quantity for coal received, consumed for the previous month.
 2. Invoices of fuel supplier, ocean freight and insurance, port / fuel handling charges and other charges.
 3. Copy of Bill of Entry and bank challans regarding payment of cess, taxes and duties.
 4. GCV certificate of loading and unloading port
 5. Certificate for actual parameters GHR & Auxiliary consumption for the month
- (iv) The payment of the Monthly Bill and Supplementary Bill shall be as per the Tariff specified under PPA dated 26.02.2007 until the approval of the Supplemental Agreement by Appropriate Commission. Differential amount towards Revised Tariff shall be payable after approval of Appropriate Commission without any interest / carrying cost / delay payment surcharge.
- (v) For the Monthly Bills, no rebate shall be available on Energy Charge component while rebate shall be available to Procurer for Capacity Charge component as per the existing provisions of the PPA. It is to clarify that this clause shall be effective for the Monthly Bills submitted after the approval of Appropriate Commission. Further, the Delay Payment Surcharge shall continue to apply as per provisions of PPA dated 26.02.2007.
- (vi) Further, the Seller shall not be entitled to any payment towards approved Change in Law for the Energy Charge from the date of approval of Supplemental Agreement by Appropriate Commission. Any payment received by the Seller towards approved Change in Law for the Energy Charge component for the period between Amendment Effective Date and the date of approval by the Appropriate Commission shall be adjusted in the differential amount stated at Para (iv) above.



3.2.5 Availability: The Parties agree that the payment of Capacity Charges linked to Availability shall be modified, as specified below, in order to provide the Procurer the benefit of higher Availability upto 90%, beyond the Normative Availability of 80% as specified in the PPA, without Procurer having to pay Capacity Charge for such higher Availability. The Parties agree that the Seller shall maximize the utilization of the generation capacity from the Project, in the manner specified below:

- (a) The Seller shall declare availability up to 90% in a Contract Year. However, the Capacity Charge shall continue to be paid corresponding to Normative Availability of 80%, as specified in the PPA on achievement of cumulative Availability of 80% in a Contract Year. Further, in the event the cumulative Availability in any Contract Year is less than 80%, then the provisions of the PPA shall apply in respect of determination of the Capacity Charge payable to the Seller in addition to the reduction specified in sub clause (b) below.
- (b) In the event the cumulative Availability in any Contract Year is less than 90%, the Capacity Charge payable to the Seller, shall be reduced by 10% of Capacity Charges otherwise payable to the Seller. This is explained by way of illustration below:

Illustration for computing additional penalty below 90% Availability declaration

	Actual DC 82%	Actual DC 76%
PPA Capacity	1,000 MW	1,000 MW
Normative Availability	80%	80%
Capacity Charges	1.00 Rs/kWh	1.00 Rs/kWh
Normative Units	7008 Mus	7008 Mus
Actual Availability	82%	76%
Actual Units	7183 Mus	6658 Mus
Shortfall in availability compared to revised 90%	8% (701 MUs)	14% (1226 MUs)
Penalty for shortfall in 90% (10% of Capacity Charges)	Rs 0.10 / kWh (1 Rs x 10%)	Rs 0.10 / kWh (1 Rs x 10%)
Penalty Amount	Rs 7.01 crore	Rs 12.26 crore
Yearly Capacity Charges	Rs 700.8crore	Rs 665.8 crore
	(7008 MUs x 1 Rs)	(6658 MUs x 1 Rs)
Less: Penalty	Rs. 7.01 Crore	Rs. 12.26 Crore
Net of Penalty Payment	Rs. 693.79 Crore	Rs. 653.54 Crore



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For avoidance of doubt, it is clarified that for all other purposes, the Normative Availability shall continue to be 80%, as specified in the PPA. It is further clarified that for the purposes of determining the Incentives under the PPA on account of Schedule being higher than Normative Availability, the Normative Availability shall continue to be reckoned at 80% as per existing PPA. It is further clarified that the Incentives for availability in excess of 85% and provisions relating to penalty for declaration of Availability below 75% during Contract Year shall also continue to apply in accordance with the provisions of existing PPA

3.3 Deleted:

3.4 **Untied Capacity offered to Procurer**

3.4.1 The Seller is having 100 MW untied capacity (hereinafter referred to as **"Additional Contracted Capacity"**) from Units 1–2 (each of 600 MW) and Seller is willing to supply the same to the Procurer and the Procurer agrees to purchase the same for the period from the date of approval of this Supplemental Agreement by the Appropriate Commission to the 25th Anniversary of the Commercial Operation Date of Unit No. 2 and the Contracted Capacity under the PPA shall stand increased by such Additional Contracted Capacity.

3.4.2 The tariff applicable for the Additional Contracted Capacity shall be worked out as under:

"Tariff for Additional Contracted Capacity" shall mean the sum total of Energy Charge for Additional Contracted Capacity and Capacity Charge for Additional Contracted Capacity.

"Energy Charge for Additional Contracted Capacity" shall mean the energy charge determined in accordance with Clause 3.5.3 of this Supplemental Agreement.

"Capacity Charge for Additional Contracted Capacity" shall be Rs. 0.9017 / Kwh being the levelised Capacity Charge for the balance Term of PPA dated 26.02.2007.



For the avoidance of doubt, the Capacity Charge for Additional Contracted Capacity shall not be subject to discount of Rs 0.20/Kwh as specified in Clause 3.3 of this Agreement.

3.4.3 Seller shall be required to declare single Availability for the Project (Unit 1-2) complying with Article 8 & 9 of the PPA dated 26.02.2007. SLDC, Gujarat shall allocate such Availability on proportionate basis between the Contracted Capacity of 1000 MW, Additional Contracted Capacity of 100 MW & 22 MW merchant capacity. SLDC Gujarat shall schedule Energy from the Project from above respective Capacity by adhering to Merit Order Protocol. SLDC, Gujarat shall separately certify the Availability as well as Scheduled Energy from the above Capacity. Seller shall have to ensure establishment of Proportionate Availability as per Article 9.4 of PPA dated 26.02.2007 and in case of failure, shall be subject to penalty as per Article 9.4.

3.4.4 Procurer shall make payment to the Seller for the Additional Contracted Capacity as per the provision of PPA dated 26.02.2007 read together with this Supplemental Agreement.

3.4.5 For the Additional Contracted Capacity, all other terms & conditions shall be applicable as per PPA dated 26.02.2007.

3.5 Extension of Term of the PPA

3.5.1 The Procurer shall have the right, but not the obligation, to extend the Term of the PPA by ten (10) years for the Contracted Capacity ("Extension Period"), such extension to be effected by issue of a notice by the Procurer to the Seller, stating its decision to extend the PPA for the Contracted Capacity for such period of ten years, and such notice shall be issued not later than five (5) years prior to the Expiry Date of the PPA. For the avoidance of doubt, any extension for a period other than 10 years, as above, shall be with the mutual consent of the Parties.

3.5.2 The Parties agree that the extension of the PPA as aforesaid, shall be on the same terms and conditions as contained in the PPA, subject to the following conditions in relation to the Extension Period



3.5.3 For the Extension Period, the Tariff shall be determined as follows:

"Extended Term Tariff" shall mean the sum total of Energy Charge & Capacity Charge as worked out for the Extended Term

Where :

"Capacity Charge for Extended Term" shall mean the Quoted Capacity Charge as specified in the PPA, as applicable for the last Contract Year (falling prior to the Expiry Date). Furthermore, such Quoted Capacity Charge applicable for the last Contract Year as above, shall be increased to factor for additional costs, if any, incurred or to be incurred by the Seller for renovation and modernisation of the Project, and also for the consequential increase in O&M expenses. Such increase in Quoted Capacity Charge shall be determined & approved by GERC in accordance with the applicable GERC Tariff Regulations prevailing then; and

"Energy Charge for Extended Term" shall be determined for each Month of the Extension Period, as under:

Energy Charge payable to the Seller for a Month shall be:

(Energy charge rate in Rs./kWh) x {Scheduled energy (ex-bus) for the Month in kWh.}

Energy charge rate (ECR) in Rupees per kWh on ex-power plant basis shall be determined to four decimal places in accordance with the following formulae:

$$ECR = \{GHR \times LPPF / CVPF\} \times 100 / (100 - AUX)$$

Where :

AUX = Lower of actual or normative auxiliary energy consumption as specified in the Tariff Regulations as defined herein. i.e. 6.50%

CVPF (as received basis) = Weighted Average Gross calorific value of coal in Kcal / Kg on as billed basis minus lower of (i) actual difference between GCV



at loading port and unloading port or (ii) 72 Kcal / Kg towards loss of heat during transportation as per ISO 1928 (dated 01.06.2009)

ECR = Energy charge rate, in Rupees per kWh sent out.

GHR = Lower of actual or Gross station heat rate of 2333 in kCal per kWh as specified in the Tariff Regulations as defined herein.

LPPF = Weighted average landed price at the plant site of coal as primary fuel (which for the avoidance of doubt shall include all taxes on the sale, transportation & import of coal and inland transportation costs for transporting and delivering coal to the plant site), in Rupees per kg, during the relevant Month. LPPF shall be worked out as per table in Clause 3.2.4 of this Supplemental Agreement.

The operational parameters viz. "AUX" & "GHR" considered for computation of Energy Charge Rate shall be aligned as per CERC approval in Petition No. 374/MP/2018.

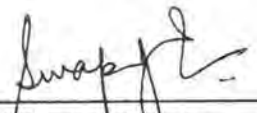
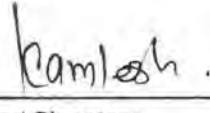
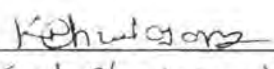
For the avoidance of doubt, the Capacity Charge for Extended Term shall not be subject to adjustment towards Rs 0.20 / Kwh as specified in Clause 3.3 of this Supplemental Agreement.

- 3.6 Notwithstanding anything to the contrary contained in the PPA, it is agreed between Parties that in the 10th Contract Year from the date of signing of this Supplemental Agreement, if Seller's Energy Charges for respective Contracted Capacity under this Supplemental Agreement is higher than marginal coal based thermal power stations having 50% schedule or immediate below, as the case may be, during the previous Contract Year under Merit Order of Procurer, Procurer shall have a right to terminate the PPA & Supplemental Agreement for the Contracted Capacity and / or Additional Contracted Capacity as defined above. In the event of termination pursuant to this clause, neither Party shall be liable for any damages or penalty of any kind to the other Party.
- 3.7 It is clarified that the provisions dealing with Change in Law under the PPA dated 26.02.2007 shall continue to apply including in respect of Additional Contracted Capacity. The impact of additional expenditure to be incurred towards compliance of the Ministry of Environment, Forest & Climate Change



Notification dated 7.12.2015 are not included in the tariff as per this Supplemental Agreement and any impact thereof on tariff and operational parameters shall be considered pursuant to approval of Appropriate Commission.

In Witness Whereof the Parties have executed this Third Supplemental Agreement to the Power Purchase Agreement on the date mentioned hereinabove through their duly authorized representatives.

FOR AND ON BEHALF OF M/s Essar Power Gujarat Ltd. (EPGL)  _____ Authorised Signatory SWAPNIL JAIN WITNESSES 1.  _____ (SANDEEP SAHAY) 2.  _____ (ASHISH MEHTA)	FOR AND ON BEHALF OF M/s Gujarat Urja Vikas Nigam Ltd.  _____ Authorised Signatory WITNESSES 1.  _____ (S.K. Naik) 2.  _____ (K.N. Chudasama)
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Annexure A

Working Methodology for determination of equivalent Coal Price based on HBA Index

1. Formulae for HPB No. 1-7

$$\text{HPB Marker (i)} = (\text{HBA} * \text{K (i)} * \text{A (i)}) - (\text{B (i)} + \text{U (i)})$$

Where

HBP Marker (i) = HPB of 1 to 7 coal price markers

K (i) = Coal Heat Value (i) / 6322

A (i) = (100 - Coal Water Content (i)) / (100 - 8)

B (i) = (Coal Sulfur Content (i) - 0.8) * 4

U (i) = (Coal Ash Content (i) - 15) * 0.4

2. Formulae for Marker No. Coal Benchmark Price 8

$$\text{HPB Marker (i)} = (\text{HBA} * \text{K (i)} * \text{A (i)}) - (\text{B (i)} + \text{U (i)})$$

Where

HBP Marker (i) = HPB coal price marker 8

K (i) = Coal Heat Value (i) / 6322

A (i) = (100 - Coal Water Content (i)) / (100 - 8 / FKA (i))

FKA (i) = (((((100-8) / (100 - Coal Water Content (i))) * Coal Water Content (i))) + (100 - 8)) / 100

B (i) = (Coal Sulfur Content (i) - 0.8) * 4

U (i) = (Coal Ash Content (i) - 15) * 0.4

3. Formulae for Price of Other Coal Benchmark No. 9 – 66

$$\text{"HPB (j)} = \{(\text{HPB Price Marker (i)} + (\text{B (i)} + \text{U (i)})) * (\text{K (j)} / \text{K (i)}) * [(100 - \text{Water Content (j)}) / (100 - \text{Water Content (i)}) * [(100 - 8) / (100 - 8)]] - (\text{B (j)} + \text{U (j)})\}$$

Where

HPB (j) = coal HPB other than coal Price Marker

K (i) = Coal Heat Value (i) / 6322

B (i) = (Coal Sulfur Content (i) - 0.8) * 4

U (i) = (Coal Ash Content (i) - 15) * 0.4

U (j) = (Coal Ash Content (j) - 15) * 0.4

K (j) / K (i) = Coal Calorific Value (j) / Coal Calorific Value (i)

(i) = price marker 1 – 7

(j) = batubara lain 9 – 66



4. Formulae for Price of Other Coal Benchmark No. 67 - 75 (Low Calorie Coal)

a. If TM < 40%

$$\text{HPB (j)} = \{(\text{HPB Price Marker (i)} + (\text{B (i)} + \text{U (i)})) * (\text{K (j)} / \text{K (i)}) * [(100 - \text{Water Content (j)}) / (100 - \text{Water Content (i)}) * [(100 - 8 / \text{FKA (i)}) / (100 - 8 / \text{FKA (j)})] - (\text{B (j)} + \text{U (j)})]\}$$

Where

HPB (j) = coal HPB other than coal Price Marker

HPB Marker (i) = HPB coal price marker (i)

B (i) = (Coal Sulfur Content (i) - 0.8) * 4

U (i) = (Coal Ash Content (i) - 15) * 0.4

B (j) = (Coal Sulfur Content (j) - 0.8) * 4

U (j) = (Coal Ash Content (j) - 15) * 0.4

FKA (j) = (((100 Coal Water Content) / (100 - Coal Water Content (j))) * Coal Water Content (j)) + (100 - Coal Water Content) / 100

K (j) / K (i) = Coal Calorific Value (j) / Coal Calorific Value (i)

(i) = price marker 8

(j) = other coal 67 - 69

b. If TM ≥ 40%

$$\text{HPB (j)} = \{(\text{HPB Price Marker (i)} + (\text{B (i)} + \text{U (i)})) * (\text{K (j)} / \text{K (i)}) * [(100 - \text{Water Content (j)}) / (100 - \text{Water Content (i)}) * [(100 - 8 / \text{FKA (i)}) / (100 - 8 / \text{FKA (j)})]\}$$

Where

HPB (j) = coal HPB other than coal Price Marker

HPB Marker (i) = HPB coal price marker (i)

K (j) / K (i) = Coal Calorific Value (j) / Coal Calorific Value (i)

(i) = price marker 8

(j) = other coal 70 - 75

The above formula is English translation of "COAL STEAM STANDARD PRICE FORMULA (THERMAL)" as notified by Govt. of Indonesia as "FORMULA HARGA PATOKAN BATUBARA STEAM (THERMAL)" in January 2017. Govt. of Indonesia has discontinued publishing prices of various categories of coal since Feb-17 and is presently publishing Coal Price for HBA Index i.e. 6322 GCV Coal on monthly basis. Govt. of Indonesia's HBA price notification for Jan-17 month is attached as under for illustrative purpose.



Signature



HARGA BATUBARA ACUAN (HBA) & HARGA PATOKAN BATUBARA (HPB)

BULAN JANUARI 2017

HBA		
HBA (US\$/Ton)		
Kualitas: CV = 6322 kcal/kg, GAR, TM = 8 %, TS = 0,8 % ar, Ash = 15% ar	86,23	FOB Vessel

HPB BATUBARA MARKER

NO	MEREK DAGANG/ BRAND	KUALITAS TYPICAL				HPB MARKER (US\$/ton)
		CV (kcal/kg GAR)	TM (%)	TS (%, ar)	Ash (%, ar)	
3	Pinang 6150	6.200	14,30	0,60	5,50	83,19
4	Indominco IM East	5.700	17,50	1,63	4,80	70,48
5	Melawan Coal	5.400	22,50	0,40	5,00	67,65
6	Envirocoal	5.000	26,00	0,10	1,20	63,18
7	Jorong J-1	4.400	32,00	0,25	4,15	50,90

CONTOH HARGA PATOKAN BATUBARA LAINNYA YANG TERDAFTAR DI DITJEN MINERBA

No	MEREK DAGANG/ BRAND	KUALITAS TYPICAL				HPB (US\$/ton)
		CV (kcal/kg, GAR)	TM (%, ar)	TS (%, ar)	Ash (%, ar)	
15	Pinang 5000 NAR	6.300	14,00	0,60	5,50	84,93
16	Arutmin Satul 10	6.300	11,00	1,00	10,00	84,33
17	Arutmin Senakin	6.250	11,00	1,00	12,00	82,87
18	Arutmin A6250	6.250	10,00	1,20	12,00	82,99
19	Mandiri 1	5.200	25,00	0,60	7,00	61,82
20	Wahana Coal	6.200	12,00	0,90	10,00	82,49
21	Medco Bara 6200	6.200	10,00	4,00	12,00	71,13
22	Indominco IM West / 6500	6.171	15,50	0,76	5,22	81,38
23	TAI Coal	6.200	10,00	1,00	14,00	82,33
24	Mandiri 2	5.100	26,00	0,60	7,00	59,95
25	Tribalindo MCV LS	6.143	14,00	0,76	5,20	82,40
26	SKB Coal	6.130	9,00	2,20	17,00	76,30
27	Baramarta Coal	6.112	9,50	0,95	13,00	82,21
28	Arutmin A6100	6.100	11,50	1,00	12,50	80,24
29	Insani Coal	6.050	19,00	0,15	3,20	79,99
30	BCS Coal	5.915	15,10	0,56	9,40	77,65
31	Indominco IM West / 6350	6.029	15,50	0,71	5,22	79,80
32	Bangun Coal	6.072	10,02	2,20	14,91	75,44
33	Pinang 6000	6.000	16,00	0,60	5,00	79,52
34	Indominco IMM MCVHS	5.970	15,50	1,65	5,05	75,37
35	Multi Coal Low	5.950	16,00	1,00	7,00	76,50
36	Multi Coal Middle	5.900	16,00	2,00	7,00	71,88
37	Pinang 5900	5.900	19,00	0,90	4,50	74,65
38	Arutmin A5900	5.900	12,00	0,90	13,00	77,38



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No	MEREK DAGANG/ BRAND	Kualitas Tipikal				HPB (US\$/ton)
		CV (kcal/kg GAR)	TM (%, ar)	TS (%, ar)	Ash (%, ar)	
39	Multi Coal High	5.765	16,00	3,20	7,00	65.40
40	KCM Coal	5.730	10,50	0,90	20,50	73.43
41	TSA Coal	5.700	18,00	2,00	8,00	67.30
42	Tanito Coal	5.700	17,50	1,00	8,50	71.52
43	Mahakam Coal	5.700	17,50	1,00	8,50	71.52
44	Ebony High Sulphur	5.700	18,00	1,75	4,70	69.62
45	Pinang 5700	5.700	19,00	0,50	5,00	73.65
46	IBP 5500	5.500	20,00	1,00	7,00	67.63
47	Arutmin A5700	5.700	11,00	0,80	14,00	75.61
48	BSS Coal	5.520	10,00	0,45	15,50	74.85
49	Lanna Harita Coal	5.500	22,00	1,00	6,00	66.40
50	Pinang 5500	5.500	21,00	0,40	5,50	69.82
51	Mahoni Medium Sulphur	5.500	20,00	1,30	4,70	67.35
52	Mahoni	5.500	20,00	0,80	4,70	69.35
53	Mahakam Coal B	5.400	23,00	1,50	8,00	61.65
54	Mahoni B	5.300	22,50	0,80	4,60	65.06
55	Kideco Coal	5.125	24,50	0,10	2,00	65.37
56	Agathis	5.100	25,00	0,82	4,50	60.83
57	Lanna Harita Coal	5.000	27,00	1,20	6,00	56.11
58	IBP 5000	5.000	25,00	1,00	7,00	58.00
59	Sungkai Medium Sulphur	5.000	26,00	1,30	4,50	57.06
60	Sungkai	5.000	26,00	0,90	4,50	58.66
61	Sungkai High Sulphur	5.000	26,00	1,70	4,50	55.46
62	Arutmin A5000	5.000	22,40	0,54	8,90	61.00
63	AGM Warute Coal	4.350	33,00	0,40	4,00	49.21
64	IBP 4600	4.600	28,00	0,50	7,00	53.50
65	Bas Gumay Coal	4.400	35,00	0,50	4,96	47.62
66	IBP 4400	4.400	30,00	0,50	7,00	50.06



Swagat



FORMULA HARGA PATOKAN BATUBARA STEAM (THERMAL)

1. Harga Batubara Acuan (dalam kesetaraan nilai kalor 6322 kkal/kg GAR)
 $HBA = 25\% \text{ ICI} + 25\% \text{ Platts59} + 25\% \text{ NEX} + 25\% \text{ GC}$

(US\$/ton)

Di mana:

- HBA = Harga Batubara Acuan
- ICI = Indonesia Coal Index
- NEX = New Castle Export Index
- GC = New Castle Global Coal Index

(US\$/ton)

(US\$/ton)

(US\$/ton)

(US\$/ton)

Konversi nilai kalor batubara dari kondisi ADB ke GAR
 $K_{GAR} = K_{ADB} \cdot (100 - TM) / (100 - IM)$

Di mana:

K GAR = Nilai kalor batubara kondisi GAR (*gross as received*)

K ADB = Nilai kalor batubara kondisi ADB (*as dried basis*)

TM = Total moisture

IM = Inherent Moisture

Untuk:

Kandungan Belerang Batubara dalam *as received* (ar)

Kandungan Abu Batubara dalam *as received* (ar)

2. Menghitung HPB marker No. 1 - 7

$$\text{HPB Marker } (i) = (HBA \cdot K_{(i)} \cdot A_{(i)}) - (B_{(i)} + U_{(i)})$$

(US\$/ton)

Di mana:

- HBP Marker (i) = HPB dari 7 batubara price marker
- $K_{(i)}$ = Nilai Kalor Batubara (i) / 6322
- $A_{(i)}$ = $(100 - \text{Kandungan Air Batubara } (i)) / (100 - 8)$
- $B_{(i)}$ = $(\text{Kandungan Belerang Batubara } (i) - 0,8) \cdot 4$
- $U_{(i)}$ = $(\text{Kandungan Abu Batubara } (i) - 15) \cdot 0,4$
- (i) = price marker 1 - 7

(US\$/ton)

[fraksi]

[fraksi]

(US\$/ton)

(US\$/ton)

3. Harga Patokan Batubara Marker No. 8

$$\text{HPB Marker } (i) = (HBA \cdot K_{(i)} \cdot A_{(i)}) - (B_{(i)} + U_{(i)})$$

(US\$/ton)

Di mana:

- HBP Marker (i) = HPB batubara price marker 8
- $K_{(i)}$ = Nilai Kalor Batubara (i) / 6322
- $A_{(i)}$ = $(100 - \text{Kandungan Air Batubara } (i)) / (100 - 8 / FKA_{(i)})$
- $FKA_{(i)}$ = $((((100 - 8) / (100 - \text{Kandungan Air Batubara } (i))) \cdot \text{Kandungan Air Batubara } (i)) + (100 - 8)) / 100$
- $B_{(i)}$ = $(\text{Kandungan Belerang Batubara } (i) - 0,8) \cdot 4$
- $U_{(i)}$ = $(\text{Kandungan Abu Batubara } (i) - 15) \cdot 0,4$
- (i) = price marker 8

(US\$/ton)

[fraksi]

[fraksi]

[persen]

(US\$/ton)

(US\$/ton)

4. Harga Patokan Batubara Lain No. 9 - 66

$$\text{HPB } (i) = ((\text{HPB Price Marker } (i) + (B_{(i)} + U_{(i)})) \cdot (K_{(i)} / K_{(8)})) \cdot \frac{[(100 - \text{Kandungan Air } (i)) / (100 - \text{Kandungan Air } (8))]}{[(100 - 8) / (100 - 8)] - (B_{(8)} + U_{(8)})}$$

(US\$/ton)

Di mana:

- HPB (i) = HPB batubara selain batubara Price Marker
- $B_{(i)}$ = $(\text{Kandungan Belerang Batubara } (i) - 0,8) \cdot 4$
- $U_{(i)}$ = $(\text{Kandungan Abu Batubara } (i) - 15) \cdot 0,4$
- $B_{(8)}$ = $(\text{Kandungan Belerang Batubara } (8) - 0,8) \cdot 4$

(US\$/ton)

(US\$/ton)

(US\$/ton)

(US\$/ton)



[Handwritten signature]



- U_{ij} = (Kandungan Abu Batubara (j) - 15) * 0,4 [US\$/ton]
- K_{ij} / K_{ik} = Nilai Kalor Batubara (j) / Nilai Kalor Batubara (i) [fraksi]
- (i) = price marker 1 - 7
- (j) = batubara lain 9 - 56

5. Harga Patokan Batubara Lain No. 67 - 75 (Batubara Kalori Rendah)

- Bila TM < 40%

$$HPB_{ij} = \{ (HPB \text{ Price Marker } (i) + (B_{ij} + U_{ij})) * (K_{ij} / K_{ik}) * [(100 - \text{Kandungan Air } (j)) / (100 - \text{Kandungan Air } (i))] * [(100 - 8/FKA_{ij}) / (100 - 8/FKA_{ik})] - (B_{ij} + U_{ij}) \}$$
 [US\$/ton]

Di mana:

- HPB_{ij} = HPB batubara selain batubara Price Marker [US\$/ton]
- $HPB \text{ Marker } (i)$ = HPB batubara price marker (i) [US\$/ton]
- B_{ij} = (Kandungan Belerang Batubara (i) - 0,8) * 4 [US\$/ton]
- U_{ij} = (Kandungan Abu Batubara (i) - 15) * 0,4 [US\$/ton]
- B_{ik} = (Kandungan Belerang Batubara (j) - 0,8) * 4 [US\$/ton]
- U_{ik} = (Kandungan Abu Batubara (j) - 15) * 0,4 [US\$/ton]
- FKA_{ij} = (((100 - Kandungan Air Batubara (j)) / (100 - Kandungan Air Batubara (j))) * Kandungan Air Batubara (j)) + (100 - Kandungan Air Batubara (j)) / 100 [persen]
- K_{ij} / K_{ik} = Nilai Kalor Batubara (j) / Nilai Kalor Batubara (i) [fraksi]
- (i) = price marker 8
- (j) = batubara lain 67 - 69

- Bila TM ≥ 40%

$$HPB_{ij} = \{ (HPB \text{ Price Marker } (i) + (B_{ij} + U_{ij})) * (K_{ij} / K_{ik}) * [(100 - \text{Kandungan Air } (j)) / (100 - \text{Kandungan Air } (i))] * [(100 - 8/FKA_{ij}) / (100 - 8/FKA_{ik})] \}$$
 [US\$/ton]

Di mana:

- HPB_{ij} = HPB batubara selain batubara Price Marker [US\$/ton]
- $HPB \text{ Marker } (i)$ = HPB batubara price marker (i) [US\$/ton]
- FKA_{ij} = (((100 - Kandungan Air Batubara (j)) / (100 - Kandungan Air Batubara (j))) * Kandungan Air Batubara (j)) + (100 - Kandungan Air Batubara (j)) / 100 [persen]
- K_{ij} / K_{ik} = Nilai Kalor Batubara (j) / Nilai Kalor Batubara (i) [fraksi]
- (i) = price marker 8
- (j) = batubara lain 70 - 75

Keterangan:

1. Harga Batubara Acuan dan Harga Patokan Batubara diatas merupakan harga batubara untuk penjualan spot dalam periode 1 Januari 2017 sampai dengan 31 Januari 2017.
2. Dalam hal penjualan batubara dilakukan secara jangka tertentu (term), harga batubara mengacu pada rata-rata 3 (tiga) Harga Patokan Batubara terakhir pada bulan dimana dilakukan kesepakatan harga batubara, dengan faktor pengali 50% untuk Harga Patokan Batubara bulan terakhir, 30% untuk Harga Patokan Batubara satu bulan sebelumnya dan 20% untuk Harga Patokan Batubara dua bulan sebelumnya.



[Signature]



Annexure B

Reference Rates for Ocean Freight, Insurance & other Transportation / Handling charges as per Clause 3.2.4 of this Agreement

Lower of following charges shall be considered (i) Worked out as per Table I or
(ii) Worked out as per Table II

Table I:

Following is worked out from Schedule 10 of EPGL's PPA dated 26.02.2007:

Contract Year	Commencement Date of Contract Year	Quoted Non Escalable Overseas Transportation Charges	Quoted Escalable Overseas Transportation Charges	Quoted Non Escalable Port / Fuel Handling Charges	Quoted Escalable Port / Fuel Handling Charges
		USD/MT	USD/MT	Rs/MT	Rs/MT
(a)	(b)	(c)	(d)	(e)	(f)
7	Oct-18	16.5098	0	274.65	0
8	01-Apr-19	16.5098	Same as above	277.51	Same as above
9	01-Apr-20	16.5098		280.60	
10	01-Apr-21	16.5098		283.47	
11	01-Apr-22	16.5098		286.55	
12	01-Apr-23	16.5098		289.64	
13	01-Apr-24	16.5098		292.72	
14	01-Apr-25	16.5098		295.81	
15	01-Apr-26	16.5098		298.90	
16	01-Apr-27	16.5098		302.20	
17	01-Apr-28	16.5098		305.51	
18	01-Apr-29	16.5098		308.59	
19	01-Apr-30	16.5098		311.90	
20	01-Apr-31	16.5098		315.43	
21	01-Apr-32	16.5098		318.73	
22	01-Apr-33	16.5098		322.04	
23	01-Apr-34	16.5098		325.57	
24	01-Apr-35	16.5098		329.09	
25	01-Apr-36	16.5098		332.62	
26	01-Apr-37	16.5098		335.71	

The above values have been worked out considering the Operating Parameters of 2333 kcal/kwh of Gross Station Heat Rate and Auxiliary Consumption of 6.50% as EPGL had not quoted parameters separately while submitting the bid. (GHR of 2333 kcal/kwh & Aux of 6.50% shall be aligned as per CERC approval in Petition No. 374/MP/2018.)



[Handwritten signature]

[Handwritten signature]
GUJARAT

Table II:

Contract Year	Commencement Date of Contract Year	Quoted Non Escalable Overseas Transportation Charges	Quoted Escalable Overseas Transportation Charges
		USD/MT	USD/MT
(a)	(b)	(c)	(d)
7	Oct-18	7.0845	3.1122
8	01-Apr-19	7.0597	To be escalated as per CERC index for Transportation Charges
9	01-Apr-20	7.0597	
10	01-Apr-21	7.0597	
11	01-Apr-22	7.0597	
12	01-Apr-23	7.1094	
13	01-Apr-24	7.1342	
14	01-Apr-25	7.1342	
15	01-Apr-26	7.1342	
16	01-Apr-27	7.1591	
17	01-Apr-28	7.1342	
18	01-Apr-29	7.1342	
19	01-Apr-30	7.1342	
20	01-Apr-31	7.1342	
21	01-Apr-32	7.1342	
22	01-Apr-33	7.1839	
23	01-Apr-34	7.2088	
24	01-Apr-35	7.2088	
25	01-Apr-36	7.2088	
26	01-Apr-37	6.9851	

The above per Metric Ton rates have been benchmarked considering the CGPL's bid

Methodology for Escalation Index shall be as per Schedule 9 of PPA dated 22.04.2007.



[Handwritten signature]



Subject: FW: GUVNL letter dated 10.05.19
Date: Friday, 10 May 2019 at 4:30:48 PM India Standard Time
From: Gujarat Electricity Regulatory Commission <gerc@gercin.org>
To: pandeysr@gercin.org <pandeysr@gercin.org>
CC: EXECUTIVE LEGAL <wasim@gercin.org>, EXECUTIVE <ruchik@gercin.org>
Attachments: Guvnl letter dated 10.5.19 to GERC.pdf

From: "DE (CSP)" <decsp.guvnl@gebmail.com>
Date: Friday, 10 May 2019 at 1:52 PM
To: <gerc@gercin.org>
Subject: GUVNL letter dated 10.05.19

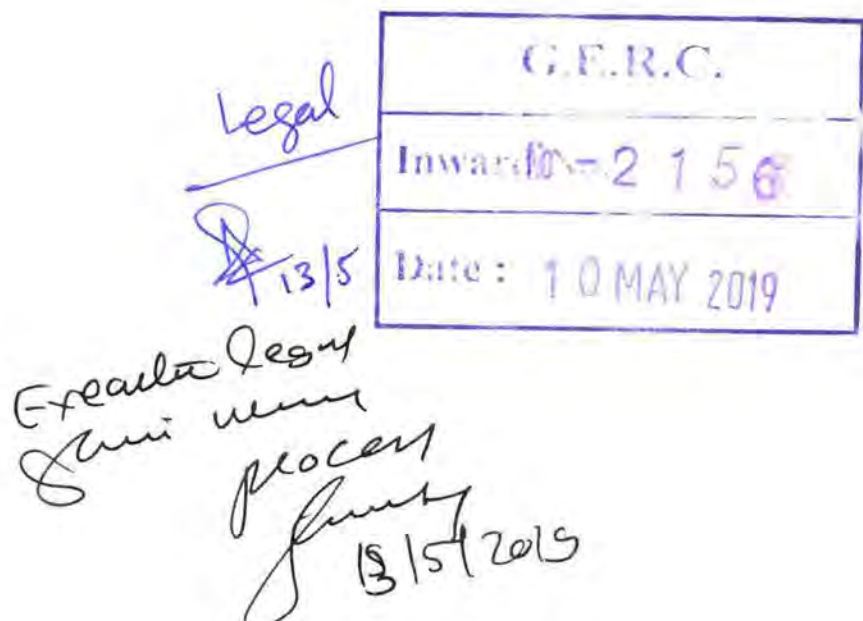
Sir,

Please find attached herewith GUVNL letter dtd. 10.05.2019

Regards
GUVNL

Please do not print this email unless it is absolutely necessary.
The information contained in this electronic message and any attachments to this me

WARNING: Computer viruses can be transmitted via email. The recipient should check
www.guvnl.com



GUJARAT URJA VIKAS NIGAM LIMITED

Sardar Patel Vidyut Bhavan, Race Course, Vadodara 390007

CIN U40109GJ2004SGC045195

Tele. No. : 0265-2310582 to 86 (PBX)

Fax : 0265-2344543, 2337918

Ref. No.: GUVNL : GM (Comm.) : 503

Date : 10/05/2019

To
Secretary
Gujarat Electricity Regulatory Commission
6th Floor, GIFT ONE
Road 5-C, Zone 5, GIFT CITY
Gandhinagar 382 355

Fax: 079 - 2360 2054 / 55

Sub.: Deficiencies in Petition filed by GUVNL for approval of Supplementary PPA dated 1.03.2019 executed between GUVNL and EPGL for amendment to PPA dated 26.02.2007.

Sir,

This has reference to your letter dated 29.04.2019 (received on 4.05.2019) conveying that GUVNL has paid fee of only Rs. 10,000/- as against the requisite fee of Rs. 25,00,000/- in the Petition filed for approval of Supplemental PPA dated 1.03.2019 with EPGL and accordingly there is a shortfall of Rs. 24,90,000/- as per GERC (Fees, Fine and Charges Regulation), 2005. GERC has requested GUVNL to do the needful within 7 days.

In this regard it is to state that GUVNL has filed the Petition for approval of the Supplementary PPA dated 1.03.2019 executed between GUVNL and EPGL for amendment to PPA dated 26.02.2007 as a Miscellaneous Petition (any other Petition category) and paid the requisite fee as per fee prescribed at Sr. No. 24 (1) of the GERC (Fees, Fine and Charges Regulation), 2005.

Further to state that GUVNL had filed similar Miscellaneous Petition before Hon'ble CERC for approval of Supplemental PPAs signed with M/s Adani Power Mundra Ltd. and have paid appropriate fees as per CERC (Fees & Charges Regulation), 2005. Hon'ble CERC having admitted the Petition has conducted hearings in the matter and disposed off the Petition through order dated 12.04.2019. ←

In view of above, it is requested that GUVNL's Petition may be kindly registered, numbered and listed for hearing.

Thanking you,

Yours faithfully



(K. P. Jangid)
General Manager (Comm.)

all
Dharmishtha K. Nanavati +91-9879109155
Keyur D. Gandhi +91-9825030979
Nandish Y. Chudgar +91-9825016498
Prant K. Nanavati +91-9879106229
Kunal K. Nanavati +91-9825005119

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Phones: +91-79-40038081 to 85

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E-mail: email@nanavatiassociates.com

Branch Office

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Tel: +91-0261-3994152
Tel/Fax: +91-0261-3996152
Email: surat@nanavatiassociates.com

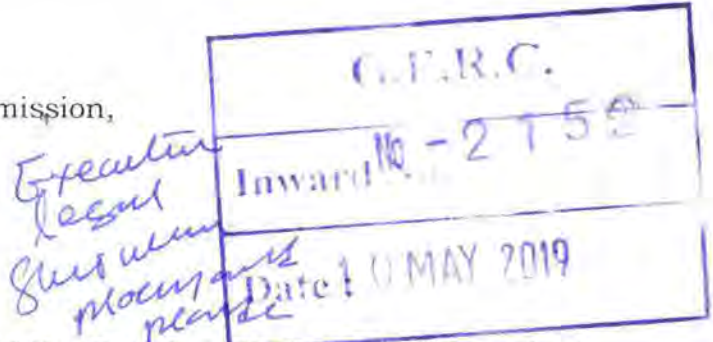
Gujarat High Court Chamber Nos
209 and 230
Telefax: +91-79-27663980,
27660692

W87

NA/KDG/ 5441 /2019

May 09, 2019

To,
The Secretary,
Gujarat Electricity Regulatory Commission,
6th Floor, GIFT ONE,
Road 5C, Zone 5,
GIFT City,
Gandhinagar - 382355,
Gujarat, India.



Sub: - Regarding urgent listing of the Petition filed by GUVNL against

Essar Power Gujarat Ltd.

Copy to
per Causway
fury
10/5/2019

Dear Sir,

1. We represent our client M/s. Essar Power Gujarat Ltd. (EPGL) and are filing present representation on behalf of our client. It is to state that GUVNL has filed Petition under Sections 86(1)(b) and 86(1)(f) of the Electricity Act, 2003 read with Article 18.1 of Power Purchase Agreement (PPA) dated 28.02.2007 under 1000 MW (Bid-03) executed between GUVNL and EPGL. The said Petition has been filed praying for approval of amendments to PPA by way of Supplemental PPA dated 01.03.2019. GUVNL by way of aforesaid petition has prayed as under:-

"Approve the amendment in the Bid-03 as provided in the Supplemental PPA dated 01.03.2019."

2. It is submitted that GUVNL and EPGL have mutually agreed and signed Supplemental PPA on 01.03.2019 as provided in Article 18.1 of the PPA pursuant to and considering the recommendations of the High Powered

Committee (HPC) constituted by the Government of Gujarat for reviewing report of working group and obtaining its recommendations with regard to Resolution of the issues of the imported coal based power projects located in the State of Gujarat. It is pertinent to note that the said HPC had recommended to amend the existing PPA. Due to the concerns raised by certain consumer organisations with regard to Judgment of the Hon'ble Supreme Court dated 11.04.2017, the Government of Gujarat and GUVNL approached Hon'ble Supreme Court by filing Miscellaneous Application No. 2705-2706 of 2018 in CA No.5399-5400 of 2016 dated 08.10.2018 seeking clarification about impingement of Hon'ble Supreme Court Order dated 11.04.2017 if the recommendation of HPC are accepted and PPAs are suitably modified. The Hon'ble Supreme Court, after considering the recommendations of HPC, has directed Ld. CERC i.e. Appropriate Commission in Case of Adani Power to expeditiously decide matter pertaining to approval of the amended PPA.

3. It is stated that the Ld. CERC, vide detailed Order dated 12.04.2019, has approved Supplemental PPA, (which is almost identical with that of EPGL), in case of Adani Power (Mundra) Limited. It is submitted that GUVNL has filed similar Petition before this Hon'ble Commission to approve the Supplemental PPA dated 01.03.2019 executed with EGPL and is awaiting hearing of the Hon'ble Commission.
4. It is submitted that EPGL is in concurrence with terms and conditions of the Supplemental PPA and awaits expeditious approval of the PPA.

5. We on behalf of our Client EPGL requests the Hon'ble Commission to list the captioned Petition filed by GUVNL for hearing at the earliest possible date and oblige.

6. The Hon'ble Commission may do the needful in this regard at the earliest and oblige.

For Nanavati Associates,



Keyur D. Gandhi
Advocate

GUJARAT URJA VIKAS NIGAM LIMITED

Sardar Patel Vidyut Bhavan, Race Course, Vadodara 390007

CIN U40109GJ2004SGC045195

Tele. No. : 0265-2310582 to 86 (PBX)
Fax : 0265-2344543, 2337918

Ref. No.: GUVNL : GM (Comm.): 503
Date : 10/05/2019

To
✓ Secretary
Gujarat Electricity Regulatory Commission
6th Floor, GIFT ONE
Road 5-C, Zone 5, GIFT CITY
Gandhinagar 382 355

Exeuted
G.E.R.C.
placed
18/05/2019

G.E.R.C.

Inward No. - 2187

Fax: 079 - 2360 2054 / 55

Date: 13 MAY 2019

Sub.: Deficiencies in Petition filed by GUVNL for approval of Supplementary PPA dated 1.03.2019 executed between GUVNL and EPGL for amendment to PPA dated 26.02.2007.

Sir,

This has reference to your letter dated 29.04.2019 (received on 4.05.2019) conveying that GUVNL has paid fee of only Rs. 10,000/- as against the requisite fee of Rs. 25,00,000/- in the Petition filed for approval of Supplemental PPA dated 1.03.2019 with EPGL and accordingly there is a shortfall of Rs. 24,90,000/- as per GERC (Fees, Fine and Charges Regulation), 2005. GERC has requested GUVNL to do the needful within 7 days.

In this regard it is to state that GUVNL has filed the Petition for approval of the Supplementary PPA dated 1.03.2019 executed between GUVNL and EPGL for amendment to PPA dated 26.02.2007 as a Miscellaneous Petition (any other Petition category) and paid the requisite fee as per fee prescribed at Sr. No. 24 (1) of the GERC (Fees, Fine and Charges Regulation), 2005.

Further to state that GUVNL had filed similar Miscellaneous Petition before Hon'ble CERC for approval of Supplemental PPAs signed with M/s Adani Power Mundra Ltd. and have paid appropriate fees as per CERC (Fees & Charges Regulation), 2005. Hon'ble CERC having admitted the Petition has conducted hearings in the matter and disposed off the Petition through order dated 12.04.2019.

In view of above, it is requested that GUVNL's Petition may be kindly registered, numbered and listed for hearing.

Thanking you,

Yours faithfully

(K. P. Jangid)
General Manager (Comm.)

GUJARAT URJA VIKAS NIGAM LIMITED

Sardar Patel Vidyut Bhavan, Race Course, Vadodara 390007

CIN U40109GJ2004SGC045195

Tele. No. : 0265-2310582 to 86 (PBX)
Fax : 0265-2344543, 2337918

Ref. No.: GUVNL : GM (Comm.) : 503
Date : 10/05/2019

To
Secretary
Gujarat Electricity Regulatory Commission
6th Floor, GIFT ONE
Road 5-C, Zone 5, GIFT CITY
Gandhinagar 382 355

Fax: 079 - 2360 2054 / 55

Sub.: Deficiencies in Petition filed by GUVNL for approval of Supplementary PPA dated 1.03.2019 executed between GUVNL and EPGL for amendment to PPA dated 26.02.2007.

Sir,

This has reference to your letter dated 29.04.2019 (received on 4.05.2019) conveying that GUVNL has paid fee of only Rs. 10,000/- as against the requisite fee of Rs. 25,00,000/- in the Petition filed for approval of Supplemental PPA dated 1.03.2019 with EPGL and accordingly there is a shortfall of Rs. 24,90,000/- as per GERC (Fees, Fine and Charges Regulation), 2005. GERC has requested GUVNL to do the needful within 7 days.

In this regard it is to state that GUVNL has filed the Petition for approval of the Supplementary PPA dated 1.03.2019 executed between GUVNL and EPGL for amendment to PPA dated 26.02.2007 as a Miscellaneous Petition (any other Petition category) and paid the requisite fee as per fee prescribed at Sr. No. 24 (1) of the GERC (Fees, Fine and Charges Regulation), 2005.

Further to state that GUVNL had filed similar Miscellaneous Petition before Hon'ble CERC for approval of Supplemental PPAs signed with M/s Adani Power Mundra Ltd. and have paid appropriate fees as per CERC (Fees & Charges Regulation), 2005. Hon'ble CERC having admitted the Petition has conducted hearings in the matter and disposed off the Petition through order dated 12.04.2019.

In view of above, it is requested that GUVNL's Petition may be kindly registered, numbered and listed for hearing.

Thanking you,

Legal
DIA/5

G.E.R.C.
Inward No. - 2198
Date: 14 MAY 2019

Resubmit
min
proceed
further
18/05/2019

Yours faithfully
(K. P. Jangid)
General Manager (Comm.)

01c
Wm
29/5/19

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Tel : +91-0261-3994152
Tel/Fax : +91-0261-3996152
Email: surat@nanavatiassociates.com

Gujarat High Court Chamber Nos.
209 and 230

Telefax: +91-79-27663980.
27660692

NA/KDG/5522/2019

May 24, 2019

To,
The Secretary,
Gujarat Electricity Regulatory Commission,
6th Floor, GIFT ONE,
Road 5C, Zone 5,
GIFT City,
Gandhinagar - 382355,
Gujarat, India.

Execution
Legal
Shri
Wm
Pranit
Kunal
29/5/19

C.F.R.C.
Inward No. - 2357
Date : 27 MAY 2019

Sub: - Regarding urgent listing of the Petition filed by GUVNL against

Essar Power Gujarat Ltd.

Dear Sir,

1. We represent our client M/s. Essar Power Gujarat Ltd. (EPGL) and are filing present representation on behalf of our client. It is to state that GUVNL has filed Petition under Sections 86(1)(b) and 86(1)(f) of the Electricity Act, 2003 read with Article 18.1 of Power Purchase Agreement (PPA) dated 28.02.2007 under 1000 MW (Bid-03) executed between GUVNL and EPGL. The said Petition has been filed praying for approval of amendments to PPA by way of Supplemental PPA dated 01.03.2019. GUVNL by way of aforesaid petition has prayed as under:-

"Approve the amendment in the Bid-03 as provided in the Supplemental PPA dated 01.03.2019."

2. It is submitted that GUVNL and EPGL have mutually agreed and signed Supplemental PPA on 01.03.2019 as provided in Article 18.1 of the PPA pursuant to and considering the recommendations of the High Powered

Committee (HPC) constituted by the Government of Gujarat for reviewing report of working group and obtaining its recommendations with regard to Resolution of the issues of the imported coal based power projects located in the State of Gujarat. It is pertinent to note that the said HPC had recommended amending the existing PPA. Due to the concerns raised by certain consumer organisations with regard to Judgment of the Hon'ble Supreme Court dated 11.04.2017, the Government of Gujarat and GUVNL approached Hon'ble Supreme Court by filing Miscellaneous Application No. 2705-2706 of 2018 in CA No.5399-5400 of 2016 dated 08.10.2018 seeking clarification about impingement of Hon'ble Supreme Court Order dated 11.04.2017 if the recommendation of HPC are accepted and PPAs are suitably modified. The Hon'ble Supreme Court, after considering the recommendations of HPC, has directed Ld. CERC i.e. Appropriate Commission in Case of Adani Power to expeditiously decide matter pertaining to approval of the amended PPA.

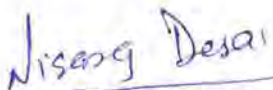
3. It is stated that the Ld. CERC, vide detailed Order dated 12.04.2019, has approved Supplemental PPA in case of Adani Power (Mundra) Limited. It is submitted that GUVNL has filed similar Petition before this Hon'ble Commission to approve the Supplemental PPA dated 01.03.2019 executed with EGPL and is awaiting hearing of the Hon'ble Commission.
4. It is submitted that expeditious approval of PPA is urgently required in order to implement the terms of the revised supplemental PPA. It is submitted that as per Supplemental PPA, the payment of the Monthly Bill and Supplementary Bill shall be as per tariff specified in PPA dated 26.02.2007 until the approval

of the Supplemental Agreement by Appropriate Commission. Therefore EPGL awaits expeditious approval of the PPA.

5. We on behalf of our Client EPGL, had earlier submitted letter dated 08.05.2019 requesting the Hon'ble Commission to list the captioned Petition for hearing at the earliest possible date. We once again reiterate our request to the Hon'ble Commission to list the captioned Petition filed by GUVNL for hearing at the earliest possible date and oblige.

6. The Hon'ble Commission may do the needful in this regard at the earliest and oblige.

For Nanavati Associates,


For Keyur D. Gandhi
Advocate

EXECUTIVE

Thursday, June 20, 2019 at 1:44:49 PM India Standard Time

Subject: FW: GUVNL Letter dated 20.06.2019 - Removal of defficiency in Petiton dtd 28.03.2019 filed by GUVNL

Date: Thursday, 20 June 2019 at 1:42:18 PM India Standard Time

From: DE (CSP) <decsp.guvnl@gebmail.com>

To: 'Wasim bhai GERC' <wasim@gercin.org>

Attachments: GUVNL Letter Date. 20.06.2019.pdf

From: DE (CSP) [mailto:decsp.guvnl@gebmail.com]

Sent: 20 June 2019 13:42

To: 'gerc@gercin.org'

Subject: GUVNL Letter dated 20.06.2019 - Removal of defficiency in Petiton dtd 28.03.2019 filed by GUVNL

Sir,

Please find attached herewith GUVNL letter dtd. 20.06.2019 in reply to Hon'ble GERC letter dtd 29.05.2019

Regards
GUVNL (Comm)

Please do not print this email unless it is absolutely necessary.
The information contained in this electronic message and any attachments to this me

WARNING: Computer viruses can be transmitted via email. The recipient should check www.guvnl.com

Rs. 24,90,000/-

MRNU 2398
20.6.19

Pl. accept the fees of GUVNL
subject to verification of GERC
(Fees, Fines & charges) Regulation, 2015
Wasim
20/06/2019
(S. G. W.)

Executive level
give them
keep in
relevant files and
procure

G.E.R.C.

Inward No. - 2 6 9 8

Date : 20 JUN 2019

25/6/2019

Legal
4/20/19



GUJARAT URJA VIKAS NIGAM LIMITED

Sardar Patel Vidyut Bhavan, Race Course, Vadodara 390007

Tele. No. : 0265-2310582 to 86 (PBX)
Fax : 0265-2344543, 2337918

Ref. No.: GUVNL : GM (Com.) 664
Date : 20.06.2019

To,
✓ The Secretary,
Gujarat Electricity Regulatory Commission
6th Floor, GIFT ONE,
Road 5C, Zone 5, GIFT City,
Gandhinagar,
Gujarat - 382355.

Sub: Removal of deficiency in Petition dated 28.03.2019 filed by GUVNL under section 86(1)(b)(f) of Electricity Act 20 for approval of Supplemental PPA dated 01.03.2019 executed between GUVNL and M/s EPGL.

Sir,

This has reference to GERC letter dtd. 29.05.2019 in reply to GUVNL letter dtd. 10.05.2019 wherein GUVNL has been directed to pay differential fees of Rs. 24,90,000/- considering increase in quantum of power purchase from M/s EPGL and extension in original PPA dtd. 26.02.2007 for 10 years.

In this regards, it is to inform that GUVNL has paid Rs.24,90,000/- through NEFT on 20.06.2019 (UTR No – BKIDH19171348636).

Further, Hon'ble Commission in its letter has mentioned incremental quantum of power from EPGL as 200 MW whereas as per Supplemental PPA the additional contracted capacity is 100 MW and accordingly the quantum of power to GUVNL from EPGL Salaya power plant will increase from 1000 MW to 1100 MW as mentioned in the petition.

This is for your kind information please.

Thanking You,

Yours faithfully,


(Sanjay Mathur)
C. F. M. (Comm.)

all
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Office Copy 20/06/19
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Gujarat High Court Chamber Nos.:
209 and 230
Telefax: +91-79-27663980,
27660692

NA/KDG/5549/2019

To,
The Secretary,
Gujarat Electricity Regulatory Commission,
6th Floor, GIFT ONE,
Road 5C, Zone 5,
GIFT City,
Gandhinagar - 382355,
Gujarat, India.

Excella legal
Guvnl Value
Process
Release file
and provide
Gpr
Guvnl
12/6/19

June 18, 2019

F.R.C.
Inward No.
Date : 18 JUN 2019

Sub: - Regarding urgent listing of the Petition filed by GUVNL against

Essar Power Gujarat Ltd.

Dear Sir,

1. We represent our client M/s. Essar Power Gujarat Ltd. (EPGL) and are filing present representation on behalf of our client. It is to state that GUVNL has filed Petition under Sections 86(1)(b) and 86(1)(f) of the Electricity Act, 2003 read with Article 18.1 of Power Purchase Agreement (PPA) dated 28.02.2007 under 1000 MW (Bid-03) executed between GUVNL and EPGL. The said Petition has been filed praying for approval of amendments to PPA by way of Supplemental PPA dated 01.03.2019. GUVNL by way of aforesaid petition has prayed as under:-

"Approve the amendment in the Bid-03 as provided in the Supplemental PPA dated 01.03.2019."

2. It is submitted that GUVNL and EPGL have mutually agreed and signed Supplemental PPA on 01.03.2019 as provided in Article 18.1 of the PPA pursuant to and considering the recommendations of the High Powered

Committee (HPC) constituted by the Government of Gujarat for reviewing report of working group and obtaining its recommendations with regard to Resolution of the issues of the imported coal based power projects located in the State of Gujarat. It is pertinent to note that the said HPC had recommended amending the existing PPA. Due to the concerns raised by certain consumer organisations with regard to Judgment of the Hon'ble Supreme Court dated 11.04.2017, the Government of Gujarat and GUVNL approached Hon'ble Supreme Court by filing Miscellaneous Application No. 2705-2706 of 2018 in CA No.5399-5400 of 2016 dated 08.10.2018 seeking clarification about impingement of Hon'ble Supreme Court Order dated 11.04.2017 if the recommendation of HPC are accepted and PPAs are suitably modified. The Hon'ble Supreme Court, after considering the recommendations of HPC, has directed Ld. CERC i.e. Appropriate Commission in Case of Adani Power to expeditiously decide matter pertaining to approval of the amended PPA.

3. It is stated that the Ld. CERC, vide detailed Order dated 12.04.2019, has approved Supplemental PPA in case of Adani Power (Mundra) Limited. It is submitted that GUVNL has filed similar Petition before this Hon'ble Commission to approve the Supplemental PPA dated 01.03.2019 executed with EGPL and is awaiting hearing of the Hon'ble Commission.
4. It is submitted that expeditious approval of PPA is urgently required in order to implement the terms of the revised supplemental PPA. It is submitted that as per Supplemental PPA, the payment of the Monthly Bill and Supplementary Bill shall be as per tariff specified in PPA dated 26.02.2007 until the approval

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of the Supplemental Agreement by Appropriate Commission. Therefore EPGL awaits expeditious approval of the PPA.

5. We on behalf of our Client EPGL, had earlier submitted letters dated 08.05.2019 and 24.05.2019 requesting the Hon'ble Commission to list the captioned Petition for hearing at the earliest possible date. We once again reiterate our request to the Hon'ble Commission to list the captioned Petition filed by GUVNL for hearing at the earliest possible date and oblige.

6. The Hon'ble Commission may do the needful in this regard at the earliest and oblige.

For Nanavati Associates,



Keyur D. Gandhi
Advocate

GUJARAT URJA VIKAS NIGAM LIMITED

Sardar Patel Vidyut Bhavan, Race Course, Vadodara 390007

Tele. No. : 0265-2310582 to 86 (PBX)
Fax : 0265-2344543, 2337918Ref. No.: GUVNL : GM (Com.) 664
Date: 20.06.2019

To,
✓ The Secretary,
Gujarat Electricity Regulatory Commission
6th Floor, GIFT ONE,
Road 5C, Zone 5, GIFT City,
Gandhinagar,
Gujarat - 382355.

1807/2019

Sub: Removal of deficiency in Petition dated 28.03.2019 filed by GUVNL under section 86(1)(b)(f) of Electricity Act 20 for approval of Supplemental PPA dated 01.03.2019 executed between GUVNL and M/s EPGL.

Sir,

This has reference to GERC letter dtd. 29.05.2019 in reply to GUVNL letter dtd. 10.05.2019 wherein GUVNL has been directed to pay differential fees of Rs. 24,90,000/- considering increase in quantum of power purchase from M/s EPGL and extension in original PPA dtd. 26.02.2007 for 10 years.

In this regards, it is to inform that GUVNL has paid Rs.24,90,000/- through NEFT on 20.06.2019 (UTR No – BKIDH19171348636).

Further, Hon'ble Commission in its letter has mentioned incremental quantum of power from EPGL as 200 MW whereas as per Supplemental PPA the additional contracted capacity is 100 MW and accordingly the quantum of power to GUVNL from EPGL Salaya power plant will increase from 1000 MW to 1100 MW as mentioned in the petition.

This is for your kind information please.

Thanking You,

Yours faithfully,

(Sanjay Mathur)
C. F. M. (Comm.)

Legal
227

C.F.R.C.
Inward No - 2899
Date :

Executed legal suit
Writ/Vacancy
proceeding
filed
4/7/2019

Already processed.
Petition is registered
as 1807/2019. &
hearing is fixed
on 09/07/2019.

1807/2019
4/7/19

o/c
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BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION
6th Floor, GIFT ONE, Road 5-G, Zone 5,
Gift City Gandhinagar-382 355

Petition No. 1807/2019

IN THE MATTER OF:

Petition dated 28.03.2019, in the matter of filing the petition under Section 86 (1) (b), (f) of the Electricity Act. 2003 read with Article 18.1 of the Power Purchase Agreement (PPA) dated 26.02.2007 under 1000 MW (Bid-03), executed between GUVNL and EPGL for approval of amendments to the PPAs by way of Supplemental PPA dated 01.03.2019.

AND

IN THE MATTER OF:

Gujarat Urja Vikas Nigam Limited

Petitioner

Versus

Essar Power Gujarat Limited
Energy Watchdog
Prayas (Energy Group)

Respondents

Sr No	Particulars	Page No
1	Submission by Prayas (Energy Group) and affidavit	1-12
2	Annexure R 3/1	13-106

*Executive Legal
Sum Meen
Valium keep
in relevant file
and provide
copy to me
Consistent file
January
8/7/2019*

C.E.R.C.
Forward No - 2989
Date: - 6 Jul 2019

Handwritten text, possibly a signature or date, located in the lower-left quadrant of the page.

BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION
6th Floor, GIFT ONE, Road 5-G, Zone 5,
Gift City Gandhinagar-382 355

Petition No. 1807/2019

IN THE MATTER OF:

Petition dated 28.03.2019, in the matter of filing the petition under Section 86 (1) (b), (f) of the Electricity Act, 2003 read with Article 18.1 of the Power Purchase Agreement (PPA) dated 26.02.2007 under 1000 MW (Bid-03), executed between GUVNL and EPGL for approval of amendments to the PPAs by way of Supplemental PPA dated 01.03.2019.

AND

IN THE MATTER OF:

Gujarat Urja Vikas Nigam Limited - Petitioner

Versus

Essar Power Gujarat Limited

Energy Watchdog

Prayas (Energy Group) - Respondents

**SUBMISSIONS OF PRAYAS (ENERGY GROUP), RESPONDENT NO. 3 TO THE PETITION
MENTIONED ABOVE**

BACKGROUND

1. The Petitioner has filed the above mentioned petition for approval of the amendments to the Power Purchase Agreements (PPAs) dated 26.02.2007 for 1000 MW relating to Bid No. 3 initiated by the Petitioner for procurement of power for distribution and retail supply of electricity to the Consumers in the State of Gujarat.
2. The approval to the amendments has been sought by the Petitioner in pursuance to the recommendations made by the High Powered Committee {hereinafter referred to as the HPC} constituted by the Government of Gujarat for resolution of the issues involving the imported coal based generating companies in the State of Gujarat supplying power to the Petitioner and the subsequent policy decision dated 1.12.2018 taken by the Government of Gujarat based on the HPC recommendations.
3. Prayas (Energy Group) {hereinafter referred to as "Prayas"} was supplied with the copy of the petition on 10.04.2019. Prayas is filing the present reply to place before the Commission the factual and legal aspects as to why the amendments, as sought for in the Petition, should not be permitted and further that the amendments proposed are not in public interest.

4. Without prejudice to the above, and in any event it is the submission of Prayas that the extent to which the tariff terms and conditions are being proposed to be varied in favour of Essar Power Gujarat Limited {hereinafter referred to as the "project developer"} is not justified even as per the resolution passed by the Government of Gujarat appointing the HPC to make recommendation and the stated purpose for which the HPC considered the matter, namely to consider the implications of Indonesian Regulations on prices of coal imported from Indonesia.
5. Further in terms of the Order dated 29.10.2018, the Supreme Court had directed as under:

"Having heard learned counsel for the parties, including the learned Attorney General appearing for the State of Gujarat, we allow the application for impleadment of the State of Gujarat. We are of the view that, having perused the High Power Committee's report, which was given after our judgment dated 11th April, 2017, it will be open to the applicants to approach the Central Electricity Regulatory Commission (C.E.R.C) for approval of the proposed amendments to be made to the Power Purchase Agreements (PPAs) in question.

We make it clear that our judgment will not stand in the way of maintaining such applications, we also make it clear that each of the consumer groups, who had appeared before us and who have appeared before us today, will be heard on all objections that they may make to the proposed amendments to the PPA, after which, it will be open to the C.E.R.C. to decide the matter in accordance with law. Given the conclusions in the High Power Committee report, we are of the view that the C.E.R.C. should decide this matter as expeditiously as possible, and definitely within a period of eight weeks from today. The miscellaneous applications are disposed of accordingly. Pending applications, if any, stand disposed of."

6. It is important to note that the Supreme Court in the above Order dated 29.10.2018 has not given any mandate that the amendments sought for should be allowed. The direction given is only that the amendment application can be considered in accordance with law after taking into account all objections and submissions of the consumer groups.

BASIC AND DOMINANT CONSIDERATION IS PROTECTION OF CONSUMER INTEREST

7. At the outset it is submitted that the Commission has to safeguard the interest of the consumers at large. The Commission is not bound by the recommendations of HPC or directives of the Gujarat Government. The Commission has to take an independent and unbiased view of the matter and take a judicial decision after considering the views of all stakeholders, including the consumer groups, in accordance with law. Whether the amendments sought for should be allowed at all or not or if it is to be allowed, to what extent the revisions to the tariff terms and conditions should be considered, are to be decided by the Commission after taking into account all the relevant factual and legal aspects and overall public interest and interest of the consumers. There cannot be any pre-determined prescription or mandate on the Commission to determine the additional amount by way of tariff to be paid to the generators. The hardship of the Project Developer dehors the interest of the consumers cannot be considered at all. The touchstone should be whether the amendments being approved would be in the interest of the consumers.
8. In this regard the objective of the Competitive Bidding Guidelines as provided in the Guidelines dated 19.1.2005 read as under:

"Section 61 & 62 of the Act provide for tariff regulation and determination of tariff of generation, transmission, wheeling and retail sale of electricity by the Appropriate Commission. Section 63 of the Act states that-

"Notwithstanding anything contained in section 62, the Appropriate Commission shall adopt the tariff if such tariff has been determined through transparent process of bidding in accordance with the guideline issued by the Central Government."

These guidelines have been framed under the above provisions of section 63 of the Act. The specific objectives of these guidelines are as follows:

- 1) Promote competitive procurement of electricity by distribution licensees;*
 - 2) Facilitate transparency and fairness in procurement processes;*
 - 3) Facilitate reduction of information asymmetries for various bidders;*
 - 4) Protect consumer interests by facilitating competitive conditions in procurement of electricity;*
 - 5) Enhance standardization and reduce ambiguity and hence time for materialization of projects.*
 - 6) Provide flexibility to suppliers on internal operation while ensuring certainty on availability of power and tariffs for buyers."*
9. There are serious legal and propriety issues in the supplementary agreement as proposed. The proposal is to convert the project, which should have the characteristics of Tariff Based Competitive Bid Process under Section 63 of the Electricity Act only, to an hybrid of Sections 62 and 63, namely partly based on Section 63 and wherever Project Developer has claimed hardship, actual cost being considered which is outside the scope of section 63 and falls under Section 62 concerning tariff determination. There is no legislative sanction to such a hybrid scheme of tariff determination under the Electricity Act, 2003. The parliamentary intention behind Section 63 is to keep tariff based competitive bid process independent of tariff determination under Section 62. The competitively bid tariff being not subject to actual cost based tariff, and that too only on selective elements of tariff sought for by the generator, is fundamental to the scheme of tariff determination under Section 62 of the Electricity Act, 2003. It is in this context Section 63 of the Act provides for Non obstante clause qua Section 62 of the Act.

IMPLICATION OF ENERGY WATCH DOG CASE DECISION OF THE SUPREME COURT HOLDING THE RELIEFS TO BE INADMISSIBLE

10. It is important to note that the case of a project based on imported coal, similar to the present one being considered for increase in tariff, has already been adjudicated by the Supreme Court in Energy Watchdog Case (2017) 14 SCC 80 to be not admissible in law. As per the law laid down by the Supreme Court the project developer is not entitled to any relief as far as use of imported coal is concerned. The basic question then arises as to whether the reliefs which were sought for by the Project Developers, but rejected by the Supreme Court, can be allowed by way of amendment in the PPA with the approval by this Commission.
11. Considering any increase in tariff for the Project Developer in the circumstances mentioned above when in law the reliefs had been held to be not admissible, will be in direct violation of the objectives to be achieved as provided in the Guidelines issued under section 63 of the Electricity Act. Under such circumstances, there is a greater responsibility on the Commission to protect consumer interest and ensure that the project developer does not, contrary to law, have undue gain or advantage at the cost of the consumers.

12. The intention behind Section 63 of the Electricity Act regarding tariff being determined through a competitive bid process in which the quoted tariff is sacrosanct needs to be the guiding factor. It will be fundamentally against public interest and a bad precedent that a competitive bid tariff is given a go by and the PPAs are allowed to be amended and converted into actual cost determination. Such a course, if allowed to be adopted through amendment of PPAs, will render the provisions of Section 63 of the Electricity Act and the scheme to make the electricity industry competitive, redundant and meaningless.

HARDSHIP TO BE CONSIDERED WITH OVERALL TARIFF NEUTRALITY UNDER LONG TERM PPAS.

13. The scheme of allowing amendments providing for increase in tariff of substantial amounts on grounds of hardship has far reaching implications. It is submitted that the appropriate manner in which hardship of a generator, if necessary, should be addressed, would be to consider that the generator gets financial accommodation but at the same time the overall financial outflow to the Procurers over the remaining period of the PPA remains neutral. There are various measures and avenues to implement such neutrality or at least as mitigating aspects, which should be considered while increasing the energy charges to the generator. Broadly stated these can be:
- a. Refinancing and to spread the loan repayment of tariff over a longer period with interest burden and depreciation over longer period and such a course will be in the interest of the banks and lending institutions;
 - b. Consideration that in the course of time debt borrowed by the Project Developer will stand discharged with substantial reduction in financial outflow;
 - c. The Project Developer, the Petitioner and Government of Gujarat pursuing the allocation of domestic coal, since as per the existing PPA the project developer is free to change its coal source at any point of time.
 - d. Increase in the Normative Plant Availability (PAF) from 80% to 90% in all respect and effect so as to reduce and spread the quoted capacity charges over higher availability and thereby bring down the per unit capacity charges;
 - e. Extending the PPA term from 25 years to 35 years and even 40 years and tariff during the extended period should be either-
 - i. continuation of the same capacity charges as on the last year of the original 25 year PPA;
 - Or
 - ii. in the alternate only the renovation modernisation capital cost to be serviced during the extended period with O&M expenses, interest on working capital and incentive and disincentive at 90% target availability being serviced additionally as per the then applicable tariff regulations of the Commission;
 - f. The utilisation of the residual value of the generating station at the end of 35/40 years to adjust the increased tariff paid with carrying cost;
 - g. Reduction in return of equity to the generator; and
 - h. Contribution by the promoter / Group Company of the project developer.

The above are some of the most relevant aspects to be taken into account for meeting the deficit instead of vitiating the risk sharing mechanism inherent in the PPA and burdening the consumers by providing a significant increase in quoted tariff.

14. In the circumstances mentioned above, it is submitted that the proposed amendments to modify the tariff terms and conditions of the PPA and thereby impose substantial

additional burden on the consumers at large should not be considered as proposed in the Supplemental Agreement.

15. Prayas has always maintained that any consideration of relief to the project developer in the implementation of the PPAs for the hardship alleged by the project developer should be considered in the manner that there is cost neutrality to the consumers over the duration of the PPA and Prayas had given various pragmatic suggestions to the High Powered Committee, which unfortunately, have not been considered. As mentioned herein above, the amendments at the most can be considered by adjusting the course of future years in a manner that the generator gets some accommodation keeping the overall financial outflow to the Procurer neutral over the extended period of the PPA.
16. The HPC ought to have addressed the above avenues to mitigate the hardship to the Project developer without imposing the burden on the consumers. The Consumers are entitled to require the Project Developer to their bargain with the Petitioner and the redressal to the hardship cannot be simpliciter loading of financial burden on the consumer at large for no fault of theirs or even of the Procurers such as the Petitioner herein. In this regard, the purported sacrifices made by the Project Developer in the supplementary Agreement is minimal and in many respect, illusory.

IMPORTANCE OF THE INSOLVENCY AND BANKRUPTCY CODE

17. The recommendations of the HPC and the Supplemental Agreement proposed have proceeded on the basis of a misplaced view that the process provided under the Insolvency and Bankruptcy Code (IBC) needs to be avoided at all cost. It is submitted that this will not be a correct way of looking at the matter. The IBC process has been provided specifically for financial creditors such as the Banks (which had advanced loan to the corporate entities) to pursue, so that the resolution process is undertaken under the IBC and through the Adjudicating authority, namely, the NCLT.
18. The IBC has two stage process, namely:
 - a) Resolution Process; and
 - b) Liquidation Process
19. In the Resolution Process it is incumbent on the Promoter to give a proper scheme for the revival and continued functioning of the corporate entity i.e. the project company so as to avoid the Liquidation Process. In the Resolution process, it is open to the resolution professional appointed for the purpose to call for a scheme from the corporate entity i.e. the project developer and its promoters and it would be open to a third party to bring in a scheme to take over the project and continue with the generation and supply of electricity on the terms and conditions contained in the PPA itself. In the Resolution Process the financial creditors decide in the Committee of Creditors the extent to which the loan etc. be re-organised. The IBC process is intended to be a transparent scheme for revival of a Corporate Entity facing hardship.
20. If the Resolution Process fails, the Liquidation Process starts where the generating Undertakings of the Corporate Entity can be sold to any other company and the generating undertaking will be then run by such Purchaser and he may then enter into a PPA with the Procurers. Even in the Liquidation Process, it is possible for NCLT to insist that the Purchaser of the generating undertaking shall fulfill the terms and conditions of the PPA. The Purchaser can be given certain accommodation during the Liquidation Process.

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21. The underlying principle in the Resolution Process and Liquidation Process under the IBC Process is that there is a pressure on the Promoters of project developer company to evolve a proper scheme to run the generating undertaking without any adverse consequences to the Procurers of electricity from the project.
 22. Accordingly, the fundamental basis on which the HPC has approached the issue is contrary to the legal position prevalent in India, the salient objectives sought to be achieved by IBC and the scheme recognized in IBC for revival of the Company. The HPC could not have proceeded on the basis that efforts should be made for the project developer to be kept outside the IBC Process and, therefore, the project developer should be bailed out at the cost of the procurers/consumers at large. This would be doing violence to the Parliamentary intention in enacting the Insolvency and Bankruptcy Code in order to bring in discipline in the corporate sector.

CONSIDERATION OF PUBLIC INTEREST

23. One other important flaw in the course adopted by HPC is to proceed on the basis that bringing viability to the Project Developer in the present case or in case of Adani Power {Mundra} Limited or CGPL is in the larger public interest. This is clearly contrary to, as mentioned above, to the Parliamentary intention in enacting the IBC. There cannot be a bail out of a corporate entity on the ground that if the corporate entity is taken to liquidation, there may be a requirement to pay higher price for goods manufactured by the corporate entity and, therefore, the corporate entity should itself be given the higher price.
24. The HPC has failed to appreciate the important distinction, namely, paying higher price to a corporate entity for its inability to manage its business risks is different from paying higher price in the event the corporate entity is liquidated and the undertakings are vested in a third party. The philosophy behind IBC is to take away the corporate entity from the existing Promoter who does not fulfill the obligations on the terms and conditions agreed to in the PPA, and explore possibilities of vesting the corporate entity with a third party, even at a marginally higher cost and if the same is not possible to take it to liquidation proceedings and vest the undertakings in a third party who may supply goods at a higher cost.
25. The HPC has not appreciated the basic aspect that the amount recommended as increased tariff to be paid to the Project Developer, if offered to a third party after a transparent process under the IBC after the existing Promoter is taken out of the management is much better and appropriate course and shall be in accordance with the objective and reasons for which the IBC had been enacted rather than avoiding the IBC Process. The HPC is therefore misguided in proceeding on the basis that the avoidance of the process of IBC and giving higher amount to the project developer would be in accordance with law and in public interest. Such a course would be to pay premium to the defaulting party, which should not be permitted and is against the larger public interest.
26. Without prejudice to the above preliminary and basic aspects to be considered by the Commission, the submissions of Prayas on the amendments proposed are given hereunder.

BASIC ASPECTS FOR CONSIDERATION OF THE AMENDMENTS PROPOSED

27. Before dealing with the specific aspects of the amendments to the PPA dated 26.02.2007 proposed as per the Supplemental Agreement dated 01.03.2019, the following basic aspects are relevant to consider:

- a. In the proceedings before the Supreme Court in Application No 2705-2706 of 2018 decided vide Order dated 29.10.2018, Prayas had filed detailed submissions. The submissions filed by Prayas before the Supreme Court is attached herewith and marked as Annexure R 3/1. The contents thereof may be read as a part of these submissions.
- b. The Order of the Supreme Court dated 29.10.2018 specifically states that each of the consumer groups who had appeared before the Supreme Court will be heard on the objections that they may have to the proposed amendment to the PPA by the Commission and the Commission will decide the matter in accordance with law. Accordingly, all objections to the proposed amendments need to be considered including the issues of maintainability of the petition for such approval of the amendments. These include, the consideration of the objections that in view of the claim of the Project Developer for compensatory tariff under general exercise of Regulatory powers and/or for relief under the Change in Law and Force Majeure in terms of the PPAs, having been rejected by the Supreme Court and in law no relief is admissible, there is no justification for allowing any relief in the present proceedings by way of amending the tariff terms and conditions.

It is submitted that what has been specifically rejected in law by the Supreme Court should not be now allowed to be claimed through amendment of the PPA. The consideration of any part of the claim which has been rejected in law, cannot per se be in the public interest. In this regard, it is not in the interest of the consumers at large that they should be required to pay significantly higher amount of tariff on account of the consideration of hardship claimed by the project developer, particularly when the PPA is in pursuance to a tariff based competitive bid process under the Section 63 of the Electricity Act, 2003.

- c. The proposed amendments to the tariff terms and conditions determined under Section 63 of the Electricity Act, 2003 will result in determination of tariff under Section 62 of the Act based on actual cost. The above will be contrary to the basic scheme and objective of the Electricity Act providing for such tariff based competitive bid process of determination of tariff under Section 63 as an independent and distinct process from Section 62 with a non obstante clause. The consideration of modifications to the tariff terms and conditions on the basis of actual cost claimed by the project developer to the Section 63 determined tariff is patently contrary to the Parliamentary intention and scheme in enacting the special provision of introducing competition in the electricity sector. Such a course will be against the basic principles of law governing the contracts and bidding namely, the larger public interest in maintaining sanctity of contract and sanctity of bidding process, as laid down by the Supreme Court.
- d. The decision of the Government of Gujarat to issue Policy Directive for amendment of the PPAs and the decision of the Petitioner in proposing the amendment of the said PPAs in the manner suggested in the present petition, which will result in significantly increased consumer tariff, cannot be sustained in law. It would be unfair, unjust and improper that what is not permissible in law and what has been so adjudicated and rejected by the Supreme Court in Energy

Watchdog Case in Civil Appeal Nos. 5399-5400 of 2016, is now being claimed by way of amendment under the provisions of the PPA, particularly requiring the Procurers and thereby the consumers at large to share significant burden of the increased tariff.

- e. Without prejudice to the submissions herein above and in any event the extent of the amendments to vary the tariff terms and conditions, needs to be restricted to the direct and consequential effect of the alleged hardship that could be said to have been caused by the promulgation of the Indonesian Regulations providing for benchmark prices for export of coal. It cannot be:
 - i. extended to other aspects such as, freight or transportation cost, import of coal from countries other than Indonesia, insurance, port handling charges, etc.;
 - or;
 - ii. to modify aspects expressly or impliedly covered by the statutory guidelines notified by the Central Government under Section 63 of the Electricity Act, 2003 as applicable at the cut off date.

IMPLICATIONS OF TARGET AVAILABILITY INCREASE TO 90%

28. The targeted normative availability under the existing PPA is 80%. It has been provided that the project developer will declare availability up to 90% without any further capacity charges payable and in case the declaration of availability is less than 90%, project developer will pay the penalty of 10% of the capacity charges. However, it has been provided that the incentive above 85% shall continue as before.
29. Since one of the mitigating factor in favour of the Petitioner and thereby the consumers for increase in tariff is that the Project Developer shall ensure maximum generation, the normative availability should be changed to 90%. Thus, the Project Developer should be eligible to claim full fixed costs as per PPA only if it can demonstrate availability of 90% during the concerned year. In other words, per unit fixed cost as quoted in the PPA should be spread over the increased availability of 90% for that year. Any shortfall in availability below the modified normative level of 90% shall lead to proportionate reduction in fixed cost payment by procures as per the provisions of the existing PPA.
30. The Penalty for availability below 90% is much lower than the incentive for availability above 85%, which makes the arrangement lopsided and unreasonably in favour of the Project Developer.
31. Therefore, the appropriate methodology for increasing the target availability from 80% to 90% and implications thereof would be that 90% becomes for all intent and purpose the normative Target Availability. In other words, the capacity charges in absolute amount to be recovered at 80% should be allowed to be recovered only if the project developer achieves 90% declared availability. Accordingly, the per unit tariff would need to be proportionately reduced so that the monthly charges at normative Target Availability is fully recovered only at 90%.
32. The incentive should be only for Generation above 90% and only on actual generation/PLF and not on declared availability. The very concept of continuing the incentive for project developer while giving the increase in the tariff to tie over the financial viability as claimed by the project developer is not correct.

EXTENSION OF THE PPAS TERM FROM 10 YEARS TO 15 YEARS I.E. AGGREGATE OF 40 YEARS AND TARIFF FOR THE EXTENDED PERIOD

33. The extension of the term by 10 years should be on the same terms and conditions as in the previous period {except that the option to Petitioner to get out of the PPAs after ten years at any time if the price is higher considering the circumstances prevalent should continue}.
34. As mentioned above the tariff for the extended period should be either:
 - a. the same as was prevalent in the 25th year without any consideration of the Renovation & Modernization Costs; or
 - b. the tariff for the extended period should be based on the servicing of Renovation & Modernization cost only with O&M expenses and interest on working capital and incentive or disincentive as per the then applicable regulations of the Commission.
35. In case the PPA is extended beyond its current term, the capacity charge for such extended duration should only include either last year's capacity charge without any additional R&M expenditure or servicing of R & M related costs as per regulations of the Commission, but not both.
36. One of the important factors to be considered is that as at the end of 25 years there will be no tariff elements of interest on loan, depreciation etc. The return on equity will stand serviced by much increased tariff paid and in any case should not be considered when the project developer is claiming hardship. The only tariff elements which will continue are the O&M expenses and interest on working capital both can be considered on normative basis as per Regulations and in addition the tariff elements of return on equity (if at all), interest on loan depreciation on R & M cost.
37. It is submitted that claim for both the existing tariff and in addition servicing of Renovation & Modernization is incorrect. Such a course would result in undue gain to the project developer. It will be a hybrid application of quoted tariff and cost plus system for the extended period. By the end of 25 years, major elements constituting the capacity charges, namely, interest on loan and depreciation would get exhausted. The return on equity on the initial investment should come to a close after 25 years.
38. It is also necessary to consider the extension beyond 10 to 15 years as thermal power plants with Renovation & Modernisation can operate for more than 40 years.

RESIDUAL VALUE OF THE GENERATING STATION AT THE END SHOULD GO TO THE BENEFIT OF THE PROCURERS AND THEREBY TO THE CONSUMERS

39. It is also incorrect to allow the project developer to retain the residual value of the assets at the end of the 25th/35th/ 40th year period. Substantial additional tariff is being funded by the consumers at large. The project developer as such should vest in the Procurers at the end of the period at Rupee One, at the sole discretion of the procurer i.e. GUVNL.

CEILING ON HBA PRICE

40. The ceiling of HBA prices presently has been provided for only 5 years. It should be at least for 10 years consistent with the right to the Petitioner to exit in case of price not being within the range of merit order as per the amendments proposed.

CONSIDERATION OF FREIGHT, INSURANCE, PORT/FUEL HANDLING CHARGES AND OTHER CHARGES

41. HPC Report and Supplemental PPA provide for various costs to be considered, which are not related to Indonesian Regulations. In any event, ocean freight and Port /Fuel handling has been considered as per lower of actuals or rates at Annexure B. There has been no consideration of the parameters assumed by the project developer.
42. There is no rationale for additional "other charges" – sampling, inspection etc. which are part of fuel handling charges. Even with regard to the reference rates of CGPL, CGPL had not quoted separate tariff for above "other charges" and same are therefore part of fuel handling charges. The Additional charges being provided are undue benefit to the project developer.
43. It is further submitted that there can be no pass through of foreign exchange in respect of such charges. The Guidelines specifically provide for the foreign exchange risk to be borne by the Generator and there is no reason for allowing it to be pass through, particularly, in reference to the freight and insurance, which have no relation to Indonesian regulations and are not subject to any hardship.
44. It is also submitted that the transit loss has been rejected by the Central Commission in the Order dated 06.12.2016 in Petition No. 159/MP/2012 in case of CGPL and there is no reason to permit the transit loss/GCV loss in the Supplemental PPA.

RESET OF CEILING PRICE EVERY 5 YEARS

45. Reset of ceiling price has been linked to domestic coal price increase, in certain conditions. During last five years from October 2013 to September 2018, the increase in domestic price is around 35%. Therefore, the reset value of ceiling price would be \$110 increased by another 35% (domestic increase component) aggregating to about \$160 approximately. This is absolutely excessive. There is no logic and justifications for keeping such provisions for allowing reset of ceiling price as, domestic coal prices in India are deregulated and do not reflect international coal prices and thus, have no direct connection with prices of imported coal.
46. Therefore, there should not be any resetting of ceiling for at least 10 years from the date of the supplementary PPA becoming effective. After this 10-year period there should be more realistic formulae to revise the ceiling price, if required. In fact, the ceiling price being one of the most important mitigating factors, the same should be applied for the entire duration.

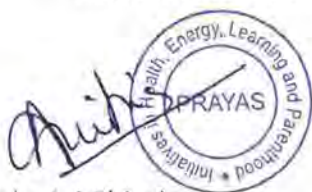
EFFECTIVE DATE

47. Any decision on the revision in the tariff should be applied prospectively for energy supplied from the month following the order passed by the Commission and not retrospectively.

MISCELLANEOUS

48. **Rebate:** There is no purpose of excluding rebate on energy charges. If the same has to be accepted, GUVNL should have liberty to pay capacity charges in advance of due date and claim rebate and pay the energy charges on due date only. Rebate is given for advance payment and same should be extended to full tariff and not restricted to capacity charges payment only.

49. Excess capacity offered should also be on the same tariff terms and conditions. Further, need and appropriateness of the excess capacity needs to be evaluated in terms of due requirements for capacity addition under the existing tariff regulations and the procurer's overall demand and supply situation as well as cost-effectiveness of alternative sources.
50. Compliance with MOEFCC norms concerning emissions is an entirely separate issue which is governed by the change in law provisions of respective PPAs, regulatory orders and other concerned precedents. The same has nothing to do with the present issue and hence should be dealt with separately and on case-to-case basis. Therefore, the reference to the same has to be deleted from Supplemental PPA.
51. Penalty for lower than normative availability in the period since commissioning. The same should be recovered as per the provisions of original PPA and only after such amount is paid by the generator can the provisions of supplementary PPA be implemented.
52. As highlighted by Prayas from time to time, any decision in such matters needs to be undertaken based on a thoroughly transparent process and after undertaking a much wider consultation with consumers as well as the public at large. Given the extent of stressed assets in the power sector, it is of utmost importance to set highest governance standards for any bailout processes. This is also extremely important from the point of view of avoiding such incidents in the future.
53. The Supplemental PPA correctly considers the lenders discount to be deducted from capacity charges and the said provision should be retained.
54. It should be made explicitly clear that coal procurement and hence declaring availability should continue to solely be the responsibility of the project developer, as is the case in current PPA and bidding guidelines. Merely because procurer is approving coal procurement tender should not absolve developer from the responsibility of declaring target availability. An appropriate clause to this effect should be included in supplementary PPA.
55. The Commission's order should also provide clear illustrations and calculations, under various scenarios of coal price, source etc., to avoid any dispute going forward and to transparently bring out impact of supplementary PPA provisions on tariff payable by the procurer.
56. We request the Commission to accept this submission on record and to allow us to make further submissions in this matter, if any.



Ashwini Chitnis
Fellow
PRAYAS (ENERGY GROUP)

PLACE: Pune

DATE: 4th July 2019

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BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION

Gandhinagar

Petition No. 1807/2019

IN THE MATTER OF:

Petition dated 28.03.2019, in the matter of filing the petition under Section 86 (1) {b}, (f) of the Electricity Act. 2003 read with Article 18.1 of the Power Purchase Agreement (PPA) dated 26.02.2007 under 1000 MW (Bid-03), executed between GUVNL and EPGL for approval of amendments to the PPAs by way of Supplemental PPA dated 01.03.2019.

AND

IN THE MATTER OF:

Gujarat Urja Vikas Nigam Limited

Petitioner

Versus

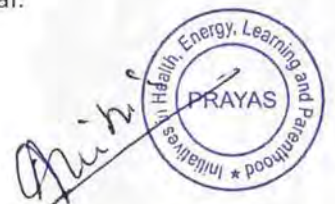
Essar Power Gujarat Limited & Ors.

AFFIDAVIT



I, Ashwini Chitnis, daughter of Deepak Ghayal, aged about 39 years, having my office at Unit III A & B, Devgiri, Joshi Railway Museum lane, Kothrud Industrial Area, Kothrud, Pune-411038, do hereby solemnly affirm and state as under:

1. I am the authorized representative of the Respondent – Prayas (Energy Group) mentioned herein above, and I am well conversant with the facts of the case and able to depose to the present affidavit.
2. I have read the accompany submissions and I say that the contents stated therein are based on the records of the Respondent and believed by the deponent to be true.
3. I say that the annexures to the submissions are true copies of their original.



DEPONENT

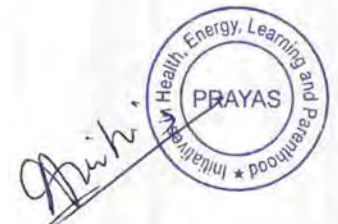
VERIFICATION:

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

Verified at Pune on this 4th day of July, 2019.

4 JUL 2019

NOTED AND REGISTERED AT
SERIAL NUMBER 5057/19



DEPONENT



MAHENDRA MURLIDHAR KALE
ADVOCATE & NOTARY
GOVT. OF INDIA
605, HARIPRIYA, VASANT KAMAL VIHAR,
WARJE PUNE-58. MOB.-9822039387



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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

I.A. NOS. ____ OF 2018

IN

CIVIL APPEAL NO. 5399-5400 OF 2016

WITH

CIVIL APPEAL NO. 5347-5348 OF 2016



IN THE MATTER OF:

Energy Watchdog

Appellant

Versus

Central Electricity Regulatory Commission and Ors.

Respondents

AFFIDAVIT ON BEHALF OF PRAYAS (ENERGY GROUP)

I, Ashwini Chitnis, daughter of Mr. Deepak N Ghayal, aged about 38 years,
having my office at Unit III A & B, Devgiri, Joshi Railway Museum lane,
Kothrud Industrial Area, Kothrud, Pune 411038 state as under:

1. I am a Fellow working with Prayas (Energy Group) and I am conversant with and able to depose to the facts of the case.
2. I am filing this affidavit in response to the Application filed by the State of Gujarat in the above matter seeking clarification of the judgment and order of this Hon'ble Court in the above mentioned matter reported as Energy Watchdog v. Central Electricity Regulatory Commission (2017) 14 SCC 80.
3. At the outset, I say that vide email dated 16.07.2018, the Committee constituted by the Government of Gujarat sought for the comments of Prayas (Energy Group) and for the representative of the Prayas (Energy Group) to attend the meeting on 21.07.2018
4. I say that, in response to the above, on 25.07.2018, Prayas (Energy Group) made its written submissions to the Committee appointed by the Government of Gujarat. A copy of the submission dated 25.07.2018 of Prayas (Energy Group) is attached hereto and marked as Annexure R-1. The representative of the Prayas (Energy Group) could not, however, attend the meeting on 21.07.2018 due to short notice and pre-occupation of the representative on the said date. It is respectfully submitted that the submissions made by Prayas



(Energy Group) on 25.07.2018 may be taken into consideration by this Hon'ble Court as a part of this reply.

5. I say that, in the submissions dated 25.07.2018 made, Prayas (Energy Group) had dealt with, broadly stated, under two parts:

- (a) the legal aspects on the constitution of the Committee by the Government of Gujarat to consider and recommend any variation in Tariff after the matter had been finally decided by this Hon'ble Court in (2017) 14 SCC 80; and
- (b) the principles to be followed while considering the relief, if admissible, beyond the terms and conditions contained in the relevant Power Purchase Agreement (PPA) and the decision of this Hon'ble Court in the Energy Watchdog case (supra).

6. I say that the salient aspects of the matter which may require consideration of this Hon'ble Court while considering the application filed by the Government of Gujarat and the relief sought for therein, are as under:..

LEGAL ASPECTS



7. I say that in 2012 Coastal Gujarat Power Limited {CGPL} and Adani Mundra projects approached the Central Electricity Regulatory

Commission {Central Commission} seeking revision of tariff quoted by them, on the grounds of increase in the price of imported coal along with other issues such as shortfall in domestic coal supply, rupee depreciation, etc. While concluding that no relief is permissible under their respective Power Purchase Agreements (PPA), the Central Commission however decided purported to use General regulatory powers to grant the projects what it termed as "compensatory tariff" over and above the tariff as per PPA terms. The said orders of the Central Commission. were challenged before the Appellate Tribunal for Electricity (APTEL) and subsequently before this Hon'ble Court. In this context, it is important to reiterate the main principles laid down in the decision of this Hon'ble Court in the Energy Watchdog case (supra). The same are briefly mentioned below:

- (a) **Use of regulatory powers:** This Hon'ble Court has overruled use of regulatory powers to alter tariff or any provisions of the contract, so long as the existing Guidelines and the model PPA deals with such issues. Since the Power Purchase Agreement (PPA) and the bidding guidelines clearly define when and in what manner can the quoted tariffs be changed, the commission cannot use its regulatory powers to overrule such provisions. This finding is salient as it upholds the sanctity of contracts while not taking away the regulatory power if it is needed in a situation



where the contract or other legal / policy provisions are silent or inadequate.

(b) **Impact of Indonesian Regulations:** The Hon'ble Court has held that the promulgation of the Indonesian regulation and the resultant price rise cannot be treated as a force majeure event. The Hon'ble Court has also ruled that laws referred to in the PPA and guidelines can only be applied to Indian laws, and hence the promulgation of the Indonesian regulation cannot be treated as a change in law event. Hence no tariff increase can be claimed by projects on account of the change in Indonesian regulations.



(c) **Impact of change in domestic coal policy:** The judgement of the Hon'ble Court has held that the amendment to the New Coal Distribution policy (July 2013) should be considered as change in law event. Hence, relief as per change in law provisions of the PPA will be applicable for projects which experience shortfall in domestic coal supply by virtue of such change namely, shortfall in Supply from CIL/ coal companies in India after July 2013. The quantum of relief will have to be decided by regulatory commissions on case to case basis taking into consideration the respective fuel supply agreement and the level of actual coal shortage and it's cost implications.



8. I say that the Government of Gujarat vide its resolution no CGP-12-18-166-K dated 3rd July 2018 set up a committee to review financial

viability related issues faced by a few thermal power projects in the state, including power projects of Coastal Gujarat Power Limited and Adani located at Mundra. As per the terms of reference issued by the government, the committee is expected to review and establish financial hardship, if any, faced by the concerned projects, especially in light of promulgation of the Indonesian regulation dated September 2010.



9. I humbly submit that the present application, which is based on the report submitted by the said committee and the proposed amendment to the Power Purchase Agreement annexed to it, seek to fundamentally alter the basic premise on which the contracts were awarded to the projects. This is evident based on the following:

(a) The proposed amendment seeks to pass through the fuel cost on actual basis up to an imported coal cost of 110 USD/MT, which is a very high ceiling. More importantly, such an alteration of PPA agreed tariff is not permissible under the contractual framework, and such an act was precisely rejected by this Hon'ble Court in the Energy Watchdog case (supra).

(b) While the terms of reference for the committee was to look into the issues faced by the projects importing coal from Indonesia and which are impacted by the promulgation of the Indonesian



regulation dated September 2010, the committee has exceeded its mandate and suggested pass through of fuel price in case of change in source of coal import from any country. This is completely unjustifiable and legally untenable and cannot be allowed.



(c) The committee has failed to consider the fact that some of the projects are not contractually bound to use imported coal and can be run at a lower cost by utilising domestic coal. Such change in fuel source would not necessitate any legal or contractual changes but such legally permissible remedies that do not require any change in the PPA agreed tariff have not been considered by the Committee at all.

(d) The committee has not limited itself to the issue of fuel price variation alone but has proposed a formula which would also pass on to consumers fuel transportation and other fuel related costs. There has been no event affecting these costs and hence bringing in such considerations and making the consumers bear such additional costs is completely untenable. Once again, the existing PPA and the bid documents provide mechanisms for addressing any legitimate increase in these costs, but overruling such existing provisions in the contract, the committee is attempting to completely change the tariff structure post facto, which is also against the order of this Hon'ble Court.



(e) The committee has proposed to pass on to the consumers all the risk associated with currency variation, which at the time of bidding was voluntarily assumed by some of the projects by not quoting their bids in US dollars although the projects are claimed to be based on imported coal. This is again not a legally and contractually tenable proposition and is indeed a fundamental change in the nature and terms of the contract.

(f) The committee makes it seem as if the project developer is made to deliver more than his obligatory supply of 80% of normative availability by suggesting that project should declare availability of 90%. However, at the same time the penalty for failure to achieve this is so minimal (around 1% of annual fixed cost payment) that it is unlikely to have any impact and will not be commensurate enough as mitigation on the part of the generators to be considered. More importantly, while making it seem like a mandatory requirement the committee has allowed the generator to keep all the incentives on account on increased availability as per the existing PPA terms. Thus, the consumers get no certainty of additional generation but the generator is assured of increase in revenue if availability increases while not facing any real penalty for failure to perform. This once again highlights the lopsidedness of the committee's approach to the problem. Thus, the examples above highlight how the committee is seeking to bring in changes which are legally not permissible



and have been explicitly ruled out this court vide its judgement in this matter. Therefore, such attempts at postfacto altering the basic premise on which the contract is based should be summarily rejected and disallowed.



I humbly say that the Procurers - Distribution Licensees and intermediaries acting on behalf of the Distribution Licensees in the State of Gujarat and other States [hereinafter collectively referred to as "Procurers"] purchasing electricity from generators such as Adani Power Limited, Essar Power Limited, Coastal Gujarat Power Limited etc. (hereinafter referred to as the Generators) should not be allowed to amend the Power Purchase Agreement to agree to provide a tariff more than the tariff admissible under the relevant PPA when:

- a. such PPA is in pursuance to a tariff based competitive bidding process under Section 63 of the Electricity Act, 2003 with quoted tariff being sacrosanct; and
- b. the extra cost to be paid by the Procurers, which is substantial, is being sought to be claimed as a pass through in the consumer's Tariff and thereby burdening the consumers substantially.



11. I say that in the judgement and order dated 7,4,2018 in Energy Watchdog Case reported as (2017) 14 SCC 80 and also in All India Power Engineers Federation –v- Sasan Power Limited (2017) 1 SCC 487, this Hon'ble Court emphasised on the sanctity of the contract and the bidding guidelines and bidding process, and also the plea that contract has become onerous, burdensome etc. are not grounds for varying the terms of the contract. The fundamental aspect in a tariff based competitive bid process is the quoted tariff. The bidders are required to make estimation of the cost elements and quote a tariff. The risk and reward if the quoted tariff being less or more to cover the cost and return is entirely to the account of the bidder. Each bidder decides on the competitiveness of the tariff to be quoted to hedge out the other bidders and get selected. Post such selection process, the selected bidder cannot then complain that the quoted tariff is not adequate.



I say that in the circumstances mentioned above, namely the nature of the competitive bid and quoted tariff being the criteria for selection, the provision contained in the PPA dealing with amendment generally cannot be applied to allow tariff increases or tariff adjustments. The Public interest, namely, the safeguarding of consumer interest and the very scheme of the tariff based competitive bid process provided in section 63 of the Electricity Act, 2003, is against such amendment to increase the tariff post bidding.

13. I say that the quoted Tariff is subject to adjustments only as per the specific provisions of the PPA namely {a} if the quoted tariff is stipulated to be escalable; {b} the changes on account of changes in law as dealt in the PPA itself; and {c} to limited extent as provided in the Available Reliefs for force majeure as dealt in the PPA. The quoted tariff is otherwise sacrosanct and it cannot be allowed to be varied by consent of the the parties to the PPA and the approval of the Regulatory Commission.

14. I say that this Hon'ble Court in Sasan Power Limited case (supra) considering the waiver by the Distribution Licensees vis-à-vis the public interest, is as under:

"21. Regard being had to the aforesaid decisions, it is clear that when waiver is spoken of in the realm of contract, Section 63 of the Contract Act, 1872 governs. But it is important to note that waiver is an intentional relinquishment of a known right, and that, therefore, unless there is a clear intention to relinquish a right that is fully known to a party, a party cannot be said to waive it. But the matter does not end here. It is also clear that if any element of public interest is involved and a waiver takes place by one of the parties to an agreement, such waiver will not be given effect to if it is contrary to such public interest. This is clear from a reading of the following authorities.



22. In *Lachoo Mal v. Radhey Shyam* [*Lachoo Mal v. Radhey Shyam*, (1971) 1 SCC 619] it was held: (SCC pp. 621-22, para (6))



"6. The general principle is that everyone has a right to waive and to agree to waive the advantage of a law or rule made solely for the benefit and protection of the individual in his private capacity which may be dispensed with⁶⁶ without infringing any public right or public policy. Thus the maxim which sanctions the non-observance of the statutory provision is *cuilibet licet juri pro se introducto renuntiare*. (See Maxwell on Interpretation of Statutes, Eleventh Edn., pp. 375 and 376.) If there is any express prohibition against contracting out of a statute in it then no question can arise of anyone entering into a contract which is so prohibited but where there is no such prohibition it will have to be seen whether an Act is intended to have a more extensive operation as a matter of public policy."

23. In *Indira Bai v. Nand Kishore* [*Indira Bai v. Nand Kishore*, (1990) 4 SCC 668] it was held: (SCC p. 672, para 5)



"5. ... The test to determine the nature of interest, namely, private or public is whether the right which is renounced is the right of party alone or of the public also in the sense that the general welfare of the society is involved. If the answer is latter then it may be difficult to put estoppel as a defence. But if it is right of party alone then it is capable of being abnegated either in writing or by conduct."

§(25)

24. In *Krishna Bahadur v. Purna Theatre* [*Krishna Bahadur v. Purna Theatre*, (2004) 8 SCC 229: 2004 SCC (L&S) 1086] it was held: (SCC p. 233, paras 9-10)

"9. The principle of waiver although is akin to the principle of estoppel; the difference between the two, however, is that whereas estoppel is not a cause of action; it is a rule of evidence; waiver is contractual and may constitute a cause of action; it is an agreement between the parties and a party fully knowing of its rights has agreed not to assert a right for a consideration.

10. A right can be waived by the party for whose benefit certain requirements or conditions had been provided for by a statute subject to the condition that no public interest is involved therein. Whenever waiver is pleaded it is for the party pleading the same to show that an agreement waiving the right in consideration of some compromise came into being. Statutory right, however, may also be waived by his conduct."

25. It is thus clear that if there is any element of public interest involved, the court steps in to thwart any waiver which may be contrary to such public interest.

26. On the facts of this case, it is clear that the moment electricity tariff gets affected, the consumer interest comes in and public interest gets affected. This is in fact statutorily recognised by the Electricity Act in Sections 61 to 63





thereof. Under Section 61, the appropriate Commission, when it specifies terms and conditions for determination of tariff, is to be guided inter alia by the safeguarding of the consumer interest and the recovery of the cost of electricity in a reasonable manner. For this purpose, factors that encourage competition, efficiency and good performance are also to be heeded. Under Section 62 of the Act, the appropriate Commission is to determine such tariff in accordance with the principles contained in Section 61. The present case, however, is covered by Section 63, which begins with a non obstante clause stating that notwithstanding anything contained in Section 62, the appropriate Commission shall adopt the tariff if such tariff has been determined through a transparent process of bidding in accordance with the Guidelines issued by the Central Government. The Guidelines dated 19-1-2005 issued by the Central Government under Section 63 make it clear that such Guidelines are framed with the following objectives in mind:

"These Guidelines have been framed under the above provisions of Section 63 of the Act. The specific objectives of these Guidelines are as follows:

- 
- (1) Promote competitive procurement of electricity by distribution licensees;
 - (2) Facilitate transparency and fairness in procurement processes;
 - (3) Facilitate reduction of information asymmetries for various bidders;
 - (4) Protect consumer interests by facilitating competitive conditions in procurement of electricity;

(5) Enhance standardisation and reduce ambiguity and hence time for materialisation of projects;

(6) Provide flexibility to suppliers on internal operations while ensuring certainty on availability of power and tariffs for buyers.



Clause 2.3 of the said Guidelines reads as follows:

"2.3. Unless explicitly specified in these Guidelines, the provisions of these Guidelines shall be binding on the procurer. The process to be adopted in event of any deviation proposed from these Guidelines is specified later in these Guidelines under Para 5.16."

15. I say that the appropriateness of the course of action suggested by the Government of Gujarat needs to be considered in the circumstances mentioned above and more importantly that it will open up an unintended and uncontrollable avenue resulting in substantial increase in tariff to consumer at large for no reason attributable to them. This is particularly when such a course will not have limited implications ad Wilde followed by large number of similar claims made by various other Generators in different States. The consequences of the course adopted will have far reaching implications to the consumers in different states throughout the country. The same Generators for whom the course of action has been suggested will again seek similar dispensation in future. In this regard it is also relevant to state that Adani Power had discontinued the supply of electricity in Gujarat and Haryana in the past for



several months which has caused harm to the consumers and is now trying to take advantage of the same to claim increase in tariff.

16. I humbly say that if the Government of Gujarat considers as a Sovereign that there should be a 'bail-out' of the Generators in Gujarat in the context of the need for the survival of the Industry and continued generation and supply of electricity, the course is not be to increase the tariff for the consumers. This is particularly relevant when one considers the fact that not all of these projects are contractually mandated to run using imported coal. In case of projects that are contractually or by virtue of their bidding process bound to use imported coal, then the appropriate course would be for the Government of Gujarat to give subvention to such generating companies based on budget allocations with the approval of legislature of the State of Gujarat and subject to such conditions as considered appropriate.



The course of increasing the tariff of the consumers, it is humbly submitted, will set a bad precedent of virtually converting a tariff based competitive bid process to a determination of tariff on actual cost and expenses basis, setting at naught the entire scheme evolved under the Electricity Act, 2003. The preamble of the Electricity Act, 2003, the Statement of Object and Reasons, the National Tariff Policy notified by the Central Government under

Section 3 of the Electricity Act, 2003 envisages the activities of the electricity industry to be conducted on competitive principles and provides for promotion of competitive environment. Further, such a course will be contrary to the parliamentary scheme of enacting the Insolvency and Bankruptcy Code, 2016 to bring in financial discipline in the business and commercial activities in India.

18. I say that in the submissions dated 25.07.2018 made by Prayas (Energy Group) to the Committee, the principles to be followed while considering any relief have been highlighted, inter-alia, as under:

"Safeguarding sanctity of contracts: As highlighted above, these matters have been litigated right up to the highest forum and the Hon'ble Supreme Court has upheld the sanctity of the contract. Therefore, it is of utmost importance to ensure the procurers' right to get power supply at PPA agreed tariff, and terms and conditions throughout the term of the PPA. This is also crucial to safeguard the basic tenets of competition and bidding process. Any scheme considered for bailing out the Power projects should not place the procurers and consumers in an adverse position of making higher tariff with no benefit to them.



Applicability of the committee recommendations: As per the terms of reference of the committee, only projects that are exclusively based on imported coal and are impacted by the Indonesian regulation can be considered for relief, if any. Therefore, projects / units that have been either granted letter of assurance for domestic coal supply or have signed fuel supply agreement with any Indian coal company, or are presently running on domestic coal, or are claiming relief under domestic coal related change in law events, cannot be considered for any relief. Similarly, any project / unit for which procurers have not specified imported coal as the primary fuel at the time of bidding cannot be considered for any relief.

Fair and equitable solution: Since legally and contractually no relief is available to imported coal based projects, any bailout scheme devised for such projects must ensure fair and equitable sharing of the cost burden, if any, amongst all concerned stakeholders namely, lenders, project developers, and consumers. Allowing any relief beyond the PPA terms and conditions would imply passing on to the consumers, commercial risks that were voluntarily assumed by the project developer to win the contract. These project developers would not have obviously passed on any



reduction in the prices of imported coal had the position had been reverse namely fall in prices of imported coal. Accordingly, and consistent with section 61 (d) of the Electricity Act, 2003, the consumers should be adequately compensated for supporting and sustaining such stressed assets. The safeguarding of the consumer interest should be the touchstone in considering any bailout to the projects.



Exploring all possible avenues for mitigating hardship before deviating from terms of the PPA: Since the primary responsibility of managing the risks on account of fuel price variation rests with the project developer, every effort should be made by it to mitigate this risk before deviating from PPA terms and putting additional burden on the consumers. In this regard, avenues such as blending of lower cost coal, ploughing back of mining profits to the maximum possible extent, exploring alternate cheaper sources for coal procurement, financial restructuring, debt write-off etc. should be thoroughly explored and fully utilized before any other relief is granted. The project developers have also proceeded with the projects with Special Purpose Vehicle established for the purpose after having participated in the bidding through their holding company or based on the technical and financial qualification of the parent/group



Companies. The project companies should not therefore be considered separately. There has to be sacrifices from the holding company/parent company also.

Relief, if any should only be prospective in nature: No retrospective applicability and no pass through of past liabilities or losses should be considered while devising any relief or mitigation plan. Any such consideration would be highly inappropriate and fundamentally against the Hon'ble Supreme Court judgement in these matters. Further the purpose of considering bail out is that procures /consumers to get the electricity in future and not that any extra amount to be paid for the past. The consideration for the generation and supply of electricity in the past as per the contractual obligations should be as per the amount admissible by law as laid down by the Hon'ble Supreme Court and not something over and above the same. If any such compensation is considered for the past it would amount to rewriting the law laid down.

Transparent process with adequate time and opportunity for public consultation: As highlighted by Prayas from time to time, any decision in such matters needs to be undertaken based on a thoroughly transparent process and after undertaking a much wider consultation with consumers as



well as the public at large. Given the extent of stressed assets in the power sector, it is of utmost importance to set highest governance standards for any bailout processes. This is also extremely important from the point of view of avoiding such incidents in the future. In fact, in the past the Committee appointed by the CERC did not follow such transparent process and did not have the benefit of the consultation with the consumer group.

Recommendation made by the Committee to arrive at the amount of increased tariff is not after per consideration of all relevant aspects

19. Without prejudice to the above submissions on the legal aspects, I humbly say that the Committee appointed should not have proceeded to decide on the quantum of the increased tariff without undertaking much deeper consultation, wider participation and examination of various complex aspects. The generators having been selected through a competitive bid process with the quoted tariff being the selection criteria there cannot be a blanket consideration of all the cost elements as if it is a determination of tariff under section 62 of the Electricity Act, 2003. If the claim of the three generators for increase in tariff is the increase in the prices of imported coal on account of promulgation of Indonesian



Regulations, the financial impact to be considered should be limited to the same. It could not have been extended to giving relief on other aspects.

20. I say that in the submissions made by Prayas (Energy Group) in regard to the above it has been specifically submitted as under:

Need for due process and wider public consultation

Keeping in mind the various technical, legal and regulatory issues involved in these matters, it is absolutely essential to undertake due public process before arriving at any decision in this regard. To ensure such appropriate process, we feel that the following steps should be taken:

- a. The committee should come out with a draft report with clear recommendations along with detailed analysis and justification for the same. The draft report should include details of all consultations undertaken by the committee, data relied up on by it and the submissions and presentations made by all the consultants and other stakeholders.
- b. The draft report should be made public and a notice of at least two weeks should be given to the public to comment on the same. The committee should finalize the report based on the public feedback.



- c. The final report along with all the relevant documents and data should be available in the public domain as soon as it is finalized and submitted to the government.
- d. Recommendations of the committee, if any, can be implemented only after due regulatory approval. For this purpose, the project developer and the procurers should file a joint petition before the appropriate commission to implement the recommendations, if any. Such a petition should also include draft agreements, if any, to give effect to any resolution plan, as may be agreed upon by the concerned parties.
- e. The concerned Commission should issue a reasoned order based on due public process after giving adequate time and opportunity to all the concerned stakeholders to make their submissions.



I say that the Committee has however proceeded to recommend the entire difference in the landed cost of imported coal and the quoted energy price by the generator. The actual export price of coal from the Indonesian mine and the export price supported by the quoted energy charges could alone be the zone of consideration. The issue of independent and impartial assessment by the committee is also relevant in view of the fact that one of the members of the Committee is a former Chairperson of the Central

Commission. The Central Commission had passed the order dated 02.04.2013 (when the said Member was the Chairperson) proposing that the compensatory tariff be considered under exercise of general regulatory power to Adani Power and Coastal Gujarat Power Limited. The above was set aside by this Hon'ble Court in Energy Watchdog case. The recommendation by the Committee is in essence again the same proposal which was recommended by an earlier Committee appointed by the Central Commission vide the above order dated 21.04.2013 for exercise of Regulatory powers by the Central Commission, which was set aside by the Appellate Tribunal and by this Hon'ble Court in the Energy Watch Dog Case (2017) 14 SCC 80.

22. I say that the tariff quoted by each of the generators is broadly in two parts, namely, quoted fixed charges and quoted energy charges. The quoted fixed charges are based on the capital cost incurred, primarily, up to the stage of Commercial Operation Date. The quoted capacity charges were left to the bidders to decide. There have been no external factors affecting such cost and therefore, no relief is admissible for the wrong estimation of the capacity charges by the bidders including Adani Power, Essar Power and Coastal Gujarat Power Limited. Such capacity charges have no bearing on the day to day operation of the power plant except to a limited extent of Operation and Maintenance (O&M) expenses.



There has been no external factor affecting the O&M expenses. The PPA also provides for changes in law to be compensated and therefore, any increase in the cost due to change in law is also allowed. The capacity charge also includes a reasonable return over and above the cost and expenses to be incurred. Each of the bidders does factor in such reasonable return in the region of 12% to 16% (post tax) in the bid.

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I further say that allowing any relief beyond the PPA terms and conditions would imply passing on to the consumers, commercial risks that were voluntarily assumed by the project developer to win the contract. These project developers would not have obviously passed on any reduction in the prices of imported coal had the position had been reverse, namely, fall in prices of imported coal. Accordingly, and consistent with section 61 (d) of the Electricity Act, 2003, the consumers should be adequately compensated for supporting and sustaining such stressed assets. The safeguarding of the consumer interest should be the touchstone in considering any bailout to the projects.



24.

I say that the bidding process pursuant to which Adani Power was selected, the bidding document clearly provided that foreign exchange rate variation (FERV) shall be to the account of the generating company. In this regard, the following are relevant:

- i. the Guidelines issued by Central Government, under Section 63 of the Electricity Act, 2003 reads as under:

"4.3 Tariffs shall be designed in Indian Rupees only. Foreign exchange risks, if any, shall be borne by the supplier. Transmission charges in all cases shall be borne by the procurer.



- ii. Clause 2.4 of the Request For Proposal reads as under:

"2.4 Tariff

The tariff shall be as specified in the PPA and shall be payable in Indian Rupee only. The Bidder shall quote Quoted Tariff for each Contract Year during the term of the PPA as per Format 1 of Annexure-4.



Each of the Procurers shall provide the Letter of Credit and Collateral Arrangement as per the terms of the PPA.

2.7.1.1.3. The Quoted Tariff in Format 1 of Annexure 4 shall be an all inclusive tariff and no exclusions shall be allowed. The Bidder shall take into account all costs including capital and operating costs, statutory taxes, duties, levies while quoting such tariff. Availability of the inputs necessary for generation of power should be ensured by the Seller at the Project Site and all costs involved in procuring the inputs (including statutory taxes, duties, levies thereof) at the Project Site must be reflected in the Quoted Tariff."

- iii. The judgment of this Hon'ble Court in, M/s Alopi Parshad & Sons Ltd. -v- Union of India [AIR 1960 SC 588], wherein it has held under:

"The Indian Contract Act does not enable a party to a contract to ignore the express covenants thereof, and to claim payment of consideration for performance of the contract at rates different from the stipulated rates, on some vague plea of equity. The parties to an executory contract are often faced, in the course of carrying it out, with a turn of events which they



did not at all anticipate – a wholly abnormal rise or fall in price, a sudden depreciation of currency, an unexpected obstacle to execution, or the like. Yet, this does not in itself affect the bargain they have made. If, on the other hand, a consideration of the terms of the contract, in the light of the circumstances existing when it was made, shows that they never agreed to be bound in a fundamentally different situation which has now unexpectedly emerged, the contract ceases to bind at that point – not because the court in its discretion thinks it just and reasonable to qualify the terms of the contract, but because of its true construction it does not apply in that situation." [Emphasis Supplied]

- iv. Numaligarh Refinery Limited v Dealing Industrial Co Limited (2007) 8 SCC 466 at page 482 Para 22, this Hon'ble Court has held as under:

"Clause 14 deals with pricing and currency changes. Clause 14.1. reads as under: "The prices quoted for the entire scope of work shall remain firm and fixed till

complete execution of the work." In these parameters of the terms and conditions, that the price quoted for the entire work shall remain firm and fixed till the complete execution of the work, the heading pricing and currency changes leaves no manner of doubt that there is no scope for giving any benefit of fluctuation on the exchange rates. Once the price is fixed there is no provision for giving any benefit for fluctuation in terms of the contract then in that case, the claimant \026DIC cannot raise this claim of excess payment made towards customs duty on account of fluctuation on exchange rate. The minority view expressed by Justice M. M. Dutt appears to be correct. Had there been downward trend in the exchange rate, then the DIC would not have slashed the exchange rate. If the downward trend cannot benefit either party, then equally the up-ward trend cannot benefit the DIC for claiming the payment of the higher customs duty on account of fluctuation in exchange rate. Therefore, the expression, 'firm and fixed' is clear answer to the question if during the course of contract certain fluctuation has taken place in the market then on that count the claimant cannot raise extra demand on account of upward trend in the exchange rate. In this



connection, reliance was placed on a decision of this Court in *Pure Helium India (P) Ltd. v. Oil & Natural Gas Commission* [(2003) 8 SCC 593]. In this case this Court granted the contractor's claim for being compensated for foreign exchange fluctuation and not for any escalation in the price. This Court held that the claimant does not violate any terms of contract. In the present case, in view of the fact that the price is firmly fixed and DIC has clearly understood and agreed the terms of the contract, and it was clearly stipulated in Clause 12.2. that no financial adjustment arising there from shall be permitted by the owner. In these circumstances, the minority view taken by the Arbitrator, Justice M. M. Dutt appears to be well founded. *Pure Helium India (P) Ltd. (supra)* was decided on peculiar facts. As such, it cannot provide us any assistance.



25. I say that in terms of the above, Adani Power should not be entitled to any relief for foreign exchange rate variation, namely, the difference in US Dollars prevalent at the time of bidding and rate prevalent as at the time of importation of the coal. today.

ON THE MERITS OF THE RECOMMENDATION

26. Restricted Applicability of the committee recommendations: At the outset it is stated that the terms of reference of the committee, only projects that are exclusively based on imported coal and are impacted by the Indonesian regulation can be considered for relief, if any. Therefore, projects / units that have been either granted letter of assurance for domestic coal supply or have signed fuel supply agreement with any Indian coal company, or are presently running on domestic coal, or are claiming relief under domestic coal related change in law events, cannot be considered for any relief. Similarly, any project / unit for which procurers have not specified imported coal as the primary fuel at the time of bidding cannot be considered for any relief.
27. Exploring all possible avenues for mitigating hardship before deviating from terms of the PPA: Since the primary responsibility of managing the risks on account of fuel price variation rests with the project developer, every effort should be made by it to mitigate this risk before deviating from PPA terms and putting additional burden on the consumers. In this regard, avenues such as blending of lower cost coal, ploughing back of mining profits to the maximum possible extent, exploring alternate cheaper sources for coal procurement, financial restructuring, debt write-off etc. should be thoroughly explored and fully utilized before any other relief is granted. The



project developers have also proceeded with the projects with Special Purpose Vehicle established for the purpose after having participated in the bidding through their holding company or based on the technical and financial qualification of the parent/group Companies. The project companies should not therefore be considered separately. There has to be sacrifices from the holding company/parent company also, particularly the company which was the bidder in the competitive bid process and was selected based on the financial qualification of the said company.

28. Other Suggested Approach given in the submissions made by Prayas (Energy Group) before the Committee and not adequately considered: I say that the submissions made by Prayas (Energy Group) before the Committee

- a. The generator has to ensure that all the procurers get their due share, i.e. full generation up to normative availability of 80% at tariff as per the PPA terms and conditions. At the outset they need to unequivocally undertake to the Committee that they will generate and supply electricity against the contracted capacity on regular basis and will not adopt to shutting down the generating units. There have been instances in the past where at crucial juncture the generation of electricity has



been shut down during peak season causing prejudice to the consumer at large.

b. As per the PPA, the procurers cannot mandate the project developer to generate beyond the normative limit of availability of 80%. However, if the project manages to generate beyond this limit, the procurers have the first right of refusal. This provision of the PPA can be used to provide some relief to the project, provided that all the procurers agree to such an arrangement, and the following additional conditions are also met:

- i. The project should ensure 80% availability during any three-month peak season duration, as may be specified by the procurers.
- ii. The term of PPA should be extended by 15 years beyond the present term of the contract. The renovation expenditure for such extension should be to the account of the project developer and not passed on to the Procurers. For these additional fifteen years, the capacity charge should be kept constant at the last year capacity charge quoted in the PPA. The fuel cost and any operation and maintenance related charges for the extended PPA duration should be decided by the



appropriate commission, subject to prudence check. This would ensure benefit to the procurers in terms of continued availability of generation from depreciated asset that was supported and sustained based on their contribution. This would also negate need for any new projects in lieu of this capacity.

- c. In exchange of the above terms, the procurers may forgo their right over generation beyond normative availability (80%) and allow the project developer to sell such power to interested parties at market determined rates. All the additional revenue (after deducting the actual fuel cost) from the sale of such additional power should be used to mitigate the hardship, if any, in supplying power to procurers as per PPA tariff up to 80% of availability. The Table 1 below shows that such sale of additional generation is substantially sufficient to mitigate hardship, if any, on account of increase in the price of Indonesian coal. The merchantⁱⁿ power tariff analysis presented in the working group report for Coastal a Gujarat Power Limited that was shared by the committee also suggests that the rate of sale of power in the bilateral market is quite lucrative. Therefore, it should be possible for the project



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developers to earn additional revenue from sale of surplus generation as considered in below table. The indicative calculation done in Table 1 considers different scenarios for coal price increase. As can be seen, even in a scenario in which the coal price remains consistently high at 80 USD/ton (for Melawan grade of Indonesian coal) for a year, with sale of additional generation at Rs. 4 per unit, the project can still have revenue of about Rs. 600 Cr for debt servicing. In this regard, it is important to note than in the absence of any increase in coal price, the project would have been able to manage all its debt payments and even earn some return on equity using revenue of around Rs. 1850 Cr that it would have received via capacity charge payments. Thus, with the additional revenue from sale of surplus generation, the project can manage its debt payments even when coal price increases and when the coal price drops, the project can create a surplus that can be used to mitigate past or future losses, if any. Since this is indicative calculation, it does not consider finer sensitivity and parameters such coal import duty, but assumes indicative coal price to be constant for entire year, which is unlikely, higher reduction in coal price due to blending, generation beyond 90% etc.



Table 1: Indicative calculation

Details	Unit	Scenario 1	Scenario 2	Scenario 3	Scenario 4
Price of Melawan Coal (GCV 5400 kcal/kg)	USD / Ton	80	75	65	55
Gross calorific value of Melawan coal	kcal/kg	5400	5400	5400	5400
Assumed price of blended Coal	USD / Ton	75	70	60	50
Assumed GCV of blended coal	kcal/kg	5250	5250	5250	5250
Exchange rate assumed	Rs./ USD	69	69	69	69
Station heat rate	Kcal/ Unit	2050	2050	2050	2050
Fuel Cost	Rs./ Unit	2.02	1.89	1.62	1.35
Fuel Cost as per PPA	Rs./ Unit	1.3	1.3	1.3	1.3
Hardship per unit	Rs./ Unit	0.72	0.59	0.32	0.05
Generation upto 80 % PLF	MU	26630	26630	26630	26630
Total hardship on account of coal cost variation [A]	Rs. Cr./ Yr	1919	1561	843	126
Sale rate of Additional power	Rs./ Unit	4	4	4	4
Surplus from sale of additional power	Rs./ Unit	1.98	2.11	2.38	2.65
Additional sale 10 % PLF	MU	3329	3329	3329	3329
Additional revenue from sale of power beyond normative availability [B]	Rs Cr	659	704	793	883
Net hardship after accounting revenue from sale of additional generation [C] = [A] - [B]	Rs Cr	1260	857	50	-758
Capacity Charge per PPA for FY 17-18	Rs./ Unit	0.9	0.9	0.9	0.9
O&M expenses assumed for this calculation	Rs./ Unit	0.2	0.2	0.2	0.2
Revenue available from Cap. Charge for debt repayment	Rs./ Unit	0.7	0.7	0.7	0.7
Revenue from capacity charge after accounting for O&M expenses [D]	Rs. Cr.	1864	1864	1864	1864
Net revenue available for debt repayment [E] = [D] - [C]	Rs. Cr.	604	1007	1814	2622

- d. Further, a quick review of Indonesian coal price index data shows that in the last few years, price of Melawan coal has rarely gone beyond 75 USD/ton. The Table 2 below shows the declared price of Melawan coal from January 2012 to September 2017. During this period, the months in which the price has gone beyond 75 USD/ton are marked in red whereas the months for which it has been lower than 50



USD/ton are marked green. As can be seen, the price has crossed the 75 USD/ton mark for just 7 months out of 69. It is important to note that when the coal price goes below 50 USD/ton, there is no hardship in supplying power at PPA rates, and as noted above, during such periods, the additional revenue generated by selling generation beyond normative availability can be used to off-set past hardships or to create fund to address future coal price risk.

Table 2: HBA (FOB) price of Indonesian Melawan Coal (5400 kcal/kg) in USD/ton

Month	2012	2013	2014	2015	2016	2017
January	84	69	65	52	44	68
February	86	69	63	51	42	66
March	87	70	61	54	43	65
April	82	69	59	52	43	65
May	79	67	59	50	42	66
June	75	67	59	48	43	60
July	69	64	58	48	44	62
August	67	61	56	48	48	66
September	68	61	56	47	52	72
October	68	61	54	47	55	
November	64	62	53	45	67	
December	64	63	52	44	79	
Average	74	65	58	49	50	65

Source: [https://www.minerba.esdm.go.id/library/content/file/28935-](https://www.minerba.esdm.go.id/library/content/file/28935-HBA%20September%202017/64f0489bddbdc960badcbd5f364a50de2017-09-06-20-03-59.pdf)

HBA%20September%202017/64f0489bddbdc960badcbd5f364a50de2017-09-06-20-03-59.pdf

- e. Need for financial restructuring: Along with the above measures, it is essential to undertake debt restructuring of the project to make it financially viable. Based on the assumptions regarding coal price, and rate of sale of additional power, debt that can be serviced under various



scenarios should be worked out. Indicative calculations shown above suggest that different scenarios of coal prices and rate of sale of additional generation, would allow debt servicing in the range of Rs. 5,000 Cr to Rs. 10,000 Cr. during the remaining term of the PPA.

f. Both, lenders and developers need to work towards bringing down the debt to a manageable level. For this purpose, different measures such as debt write-off, conversion of debt into equity, refinancing of loans, extending debt tenure, reducing interest rates, etc. need to be explored. Developers can earn return on equity or repay any additional capital infusion, when coal prices reduce to such a level that would create surplus revenue beyond debt repayment.

g. Additionally, the following options are available for the developer and the lenders to meet the contractual obligations under the PPA, i.e. supplying power at PPA-agreed tariff for generation up to 80% availability:

- i. The project developer should explore ways to reduce fuel cost by blending lower cost coal such as Enviro coal and Eco coal, which can reduce fuel cost by 10 – 15 USD / ton.



- ii. The actual profit of Indonesian Mine on account of enactment of Indonesian Regulations need to be ploughed back to reduce the claimed hardship.
- iii. Sourcing of coal from different locations to optimize costs
- iv. Supply from alternative sources, which is allowed under the PPA. Additionally, avenues such as those provided under the recent MoP guidelines dated 5th April 2018 regarding flexibility in generation and scheduling of thermal power stations to reduce emissions, could also be explored for this purpose.

29. To summarize, the deponent Submit that it is not appropriate to amend the PPA in a manner that fundamentally alters the basic premise of the contract and/or significantly modifies the risk and reward sharing mechanism based on which the contract was awarded. We submit that the recommendations made by the committee appointed by the Government of Gujarat does precisely this. It alters the tariff in a manner that passes on to the consumer all the risks associated with fuel price variation, currency variation, changes in capacity charge as well as changes in transportation and other related costs, and hence it fundamentally alters the basic premise of the contract. Not only is the proposal heavily lopsided in



favour of the generators, it is also manifestly illegal as it seeks to introduce such changes in the contract through an amendment which have been explicitly disallowed by this Hon'ble Court in its ruling in the Energy Watchdog case. Merely because the parties to the contract have agreed, PPA amendment cannot be a route to introduce changes that are otherwise legally untenable. In light of this, the recommendations of the committee set-up by the Government of Gujarat and the PPA amendment proposed therein should be summarily rejected.



30. In case any changes are to be made to the existing contracts in order to mitigate hardships faced by imported coal based projects, it should ensure the following:-

- The procurers shall continue to get supply of power up to 80% of the availability at tariff as per the PPA terms and conditions.
- The procurers shall forgo their first right of refusal on any additional / optional generation beyond the normative availability of 80%. In lieu of this, the PPA term should be extended by 15 years at tariff as per PPA's last year capacity charge and variable charge to be determined by regulatory commission subject to prudence.
- The developers shall be allowed to sell the additional generation beyond the normative availability at market rates



to offset hardship, if any. However, no incentive as applicable as per the PPA terms for generation beyond normative availability should be allowed in this case. The developers shall also forgo return on equity depending on prevailing coal price and rate of sale of additional power.

- The lenders shall agree to restructure loans and/or take the necessary haircut to ensure that the project can sustain operations and debt repayment within the revenue that can be generated based on the above measures.

As shown in the earlier analysis, if the measures such as those listed above, are appropriately implemented then an imported coal based project can become viable even for peak fuel price of up to 80 USD / ton (for Melawan grade coal). As highlighted before, fuel prices have been at this high level only for a few months in the last 5 years.

31. I humbly submit that the above aspects may be considered by the Hon'ble Court.



Verification


Deponent 

I the deponent above named do hereby verify that the contents of my above affidavit are based on the records of Prayas (Energy Group)

maintained in the ordinary course of business and believed by me to be true; no part of it is false and nothing material has been concealed therefrom.

Verified at Pune on this 23rd day of October 2018

Prayas
Initiative in Health, Energy, Learning and Environment
PRAYAS

Deponent



23 OCT 2018

BEFORE ME
Shinde
VANITA VISHNU SHINDE
NOTARY, GOVT OF INDIA
PUNE DISTRICT (MAHARASHTRA)
Reg.No 11179

Submission to the High Power Committee set-up by the Government of Gujarat

by

Prayas (Energy Group), Pune

25th July 2018

The Government of Gujarat vide its resolution no CGP-12-18-166-K dated 3rd July 2018 has set up a committee to review financial viability related issues faced by a few thermal power projects in the state. As per the terms of reference issued by the government, the committee is expected to review and establish financial hardship, if any, faced by the concerned projects, especially in light of promulgation of the Indonesian regulation dated September 2010. The committee is also required to undertake stakeholder consultation for this purpose and in this regard it has requested Prayas (Energy Group) to submit its comments and suggestions. This submission is in response to such a request of the committee through email dated 16th July 2018.

Background and context

1. The projects being reviewed by the committee have all participated in bidding processes conducted by respective state agencies in accordance with Section 63 of the Electricity Act, 2003 and have signed power purchase agreements (PPAs) that are legally binding. The essence of the process has been the quoted tariff without going into the individual elements and the judgement on the quoted tariff is entirely a business decision of the bidders. The bidders take the risk and reward of the decision made on the quoted tariff and the Procurers are to be insulated from all such risks to the extent specifically provided for in the bidding documents.
2. Some of these projects had approached the Central Electricity Regulatory Commission (CERC) seeking revision of tariff quoted largely on the grounds of increase in the price of Indonesian coal along with other issues such as shortfall in domestic coal supply, rupee depreciation, etc. These matters were litigated right up to the Hon'ble Supreme Court of India, which with an elaborate reasoning has ruled that laws referred to in the PPA and the bidding guidelines can only be applied to Indian laws, and hence the promulgation of the Indonesian regulation cannot be treated as a change in law. It has also been held that the Indonesian Regulation is not force majeure event under the respective PPAs.
3. Thus, contractually and legally no tariff increase can be granted to the projects on account of the change in Indonesian regulations. The Hon'ble Supreme Court also ruled that the amendment to the New Coal Distribution policy (July 2013) be considered as change in law event. To this extent, relief as per change in law provisions of the PPA are applicable to projects that are based on and/or are running on Indian coal. The legal position therefore stands settled with law laid down by the Hon'ble Supreme Court.

4. Prayas (Energy Group) has been a party to the various proceedings before the different fora in matters concerning some of the projects being reviewed by the present committee. This submission is without prejudice to Prayas (Energy Group)'s right to participate in any regulatory or legal proceedings in this regard.

Principles to be followed while considering any relief beyond the PPA terms and conditions

5. Given the above background and considering the terms of reference issued by the government of Gujarat, we feel that it is obligatory to abide by the following principles while considering relief measures for such projects, if any:
 - a. **Safeguarding sanctity of contracts:** As highlighted above, these matters have been litigated right up to the highest forum and the Hon'ble Supreme Court has upheld the sanctity of the contract. Therefore, it is of utmost importance to ensure the procurers' right to get power supply at PPA agreed tariff, and terms and conditions throughout the term of the PPA. This is also crucial to safeguard the basic tenets of competition and bidding process. Any scheme considered for bailing out the Power projects should not place the procurers and consumers in an adverse position of making higher tariff with no benefit to them.
 - b. **Applicability of the committee recommendations:** As per the terms of reference of the committee, only projects that are exclusively based on imported coal and are impacted by the Indonesian regulation can be considered for relief, if any. Therefore, projects / units that have been either granted letter of assurance for domestic coal supply or have signed fuel supply agreement with any Indian coal company, or are presently running on domestic coal, or are claiming relief under domestic coal related change in law events, cannot be considered for any relief. Similarly, any project / unit for which procurers have not specified imported coal as the primary fuel at the time of bidding cannot be considered for any relief.
 - c. **Fair and equitable solution:** Since legally and contractually no relief is available to imported coal based projects, any bailout scheme devised for such projects must ensure fair and equitable sharing of the cost burden, if any, amongst all concerned stakeholders namely, lenders, project developers, and consumers. Allowing any relief beyond the PPA terms and conditions would imply passing on to the consumers, commercial risks that were voluntarily assumed by the project developer to win the contract. These project developers would not have obviously passed on any reduction in the prices of imported coal had the position had been reverse namely fall in prices of imported coal. Accordingly and

consistent with section 61 (d) of the Electricity Act, 2003 , the consumers should be adequately compensated for supporting and sustaining such stressed assets. The safeguarding of the consumer interest should be the touchstone in considering any bailout to the projects.

- d. **Exploring all possible avenues for mitigating hardship before deviating from terms of the PPA:** Since the primary responsibility of managing the risks on account of fuel price variation rests with the project developer, every effort should be made by it to mitigate this risk before deviating from PPA terms and putting additional burden on the consumers. In this regard, avenues such as blending of lower cost coal, ploughing back of mining profits to the maximum possible extent, exploring alternate cheaper sources for coal procurement, financial restructuring, debt write-off etc. should be thoroughly explored and fully utilized before any other relief is granted. The project developers have also proceeded with the projects with Special Purpose Vehicle established for the purpose after having participated in the bidding through their holding company or based on the technical and financial qualification of the parent/group Companies. The project company's should not therefore be considered separately. There has to be sacrifices from the holding company/parent company also.
- e. **Relief, if any should only be prospective in nature:** No retrospective applicability and no pass through of past liabilities or losses should be considered while devising any relief or mitigation plan. Any such consideration would be highly inappropriate and fundamentally against the Hon'ble Supreme Court judgement in these matters. Further the purpose of considering bail out is that procures /consumers to get the electricity in future and not that any extra amount to be paid for the past. The consideration for the generation and supply of electricity in the past as per the contractual obligations should be as per the amount admissible by law as laid down by the Hon'ble Supreme Court and not something over and above the same. If any such compensation is considered for the past it would amount to rewriting the law laid down.
- f. **Transparent process with adequate time and opportunity for public consultation:** As highlighted by Prayas from time to time, any decision in such matters needs to be undertaken based on a thoroughly transparent process and after undertaking a much wider consultation with consumers as well as the public at large. Given the extent of stressed assets in the power sector, it is of

utmost importance to set highest governance standards for any bailout processes. This is also extremely important from the point of view of avoiding such incidents in the future. In fact in the past the Committee appointed by the CERC did not follow such transparent process and did not have the benefit of the consultation with the consumer group.

Suggested Approach

6. Past submissions by Prayas (Energy Group) in the proceedings before the CERC and the Appellate Tribunal for Electricity (ATE) have made certain suggestions for addressing hardship on account of increase in the price of imported coal. The same are attached herewith for ready reference. The present submission is in line with these suggestions.
7. Given this context, we propose the following approach that can be considered for addressing the hardship, if any, faced by the projects that are mandated to use imported coal.
 - a. The generator has to ensure that all the procurers get their due share, i.e. full generation up to normative availability of 80% at tariff as per the PPA terms and conditions. At the outset they need to unequivocally undertake to the Committee that they will generate and supply electricity against the contracted capacity on regular basis and will not adopt to shutting down the generating units. There has been instances in the past where at crucial juncture the generation of electricity has been shut down during peak season causing prejudice to the consumer at large.
 - b. As per the PPA, the procurers cannot mandate the project developer to generate beyond the normative limit of availability of 80%. However, if the project manages to generate beyond this limit, the procurers have the first right of refusal. This provision of the PPA can be used to provide some relief to the project, provided that all the procurers agree to such an arrangement, and the following additional conditions are also met:
 - i. The project should ensure 80% availability during three-month peak season duration, as may be specified by the procurers.
 - ii. The term of PPA should be extended by 15 years beyond the present term of the contract. The renovation expenditure for such extension should be to the account of the project developer and not passed on to the Procurers. For these additional fifteen years, the capacity charge

should be kept constant at the last year capacity charge quoted in the PPA. The fuel cost and any operation and maintenance related charges for the extended PPA duration should be decided by the appropriate commission, subject to prudence check. This would ensure benefit to the procurers in terms of continued availability of generation from depreciated asset that was supported and sustained based on their contribution. This would also negate need for any new projects in lieu of this capacity.

- c. In exchange of the above terms, the procurers may forgo their right over generation beyond normative availability (80%) and allow the project developer to sell such power to interested parties at market determined rates. All the additional revenue (after deducting the actual fuel cost) from the sale of such additional power should be used to mitigate the hardship, if any, in supplying power to procurers as per PPA tariff up to 80% of availability. The Table 1 below shows that such sale of additional generation is substantially sufficient to mitigate hardship, if any, on account of increase in the price of Indonesian coal. The merchant power tariff analysis presented in the working group report for CGPL that was shared by the committee also suggests that the rate of sale of power in the bilateral market is quite lucrative. Therefore, it should be possible for the project developers to earn additional revenue from sale of surplus generation as considered in below table. The indicative calculation done in Table 1 considers different scenarios for coal price increase. As can be seen, even in a scenarios in which the coal price remains consistently high at 80 USD/ton (Melawan grade) for a year, with sale of additional generation at Rs. 4 per unit, the project can still have revenue of about Rs. 600 Cr for debt servicing. In this regard, it is important to note than in the absence of any increase in coal price, the project would have been able to manage all its debt payments and even earn some return on equity using revenue of around Rs. 1850 Cr that it would have received via capacity charge payments. Thus, with the additional revenue from sale of surplus generation, the project can manage its debt payments even when coal prices increases and when the coal price drops, the project can create a surplus that can be used to mitigate past or future losses, if any. Since this is indicative calculation, it does not consider finer sensitivity and parameters such coal import duty, but assumes indicative coal price to be constant for entire year, which is unlikely, higher reduction in coal price due to blending, generation beyond 90% etc.

Table 1: Indicative calculation

Details	Unit	Scenario 1	Scenario 2	Scenario 3	Scenario 4
Price of Melawan Coal (GCV 5400 kcal/kg)	USD / Ton	80	75	65	55
Gross calorific value of Melawan coal	kcal/kg	5400	5400	5400	5400
Assumed price of blended Coal	USD / Ton	75	70	60	50
Assumed GCV of blended coal	kcal/kg	5250	5250	5250	5250
Exchange rate assumed	Rs./ USD	69	69	69	69
Station heat rate	Kcal/ Unit	2050	2050	2050	2050
Fuel Cost	Rs./ Unit	2.02	1.89	1.62	1.35
Fuel Cost as per PPA	Rs./ Unit	1.3	1.3	1.3	1.3
Hardship per unit	Rs./ Unit	0.72	0.59	0.32	0.05
Generation upto 80 % PLF	MU	26630	26630	26630	26630
Total hardship on account of coal cost variation [A]	Rs. Cr./ Yr	1919	1561	843	126
Sale rate of Additional power	Rs./ Unit	4	4	4	4
Surplus from sale of additional power	Rs./ Unit	1.98	2.11	2.38	2.65
Additional sale 10 % PLF	MU	3329	3329	3329	3329
Additional revenue from sale of power beyond normative availability [B]	Rs Cr	659	704	793	883
Net hardship after accounting revenue from sale of additional generation [C] = [A] - [B]	Rs Cr	1260	857	50	-758
Capacity Charge per PPA for FY 17-18	Rs./ Unit	0.9	0.9	0.9	0.9
O&M expenses assumed for this calculation	Rs./ Unit	0.2	0.2	0.2	0.2
Revenue available from Cap. Charge for debt repayment	Rs./ Unit	0.7	0.7	0.7	0.7
Revenue from capacity charge after accounting for O&M expenses [D]	Rs. Cr.	1864	1864	1864	1864
Net revenue available for debt repayment [E] = [D] - [C]	Rs. Cr.	604	1007	1814	2622

- d. Further, a quick review of Indonesian coal price index data shows that in the last few years, price of Melawan coal has rarely gone beyond 75 USD/ton. The Table 2 below shows the declared price of Melawan coal from January 2012 to September 2017. During this period, the months in which the price has gone beyond 75 USD/ton are marked in red whereas the months for which it has been lower than 50 USD/ton are marked green. As can be seen, the price has crossed the 75 USD/ton mark for just 7 months out of 69. It is important to note that when the coal price goes below 50 USD/ton, there is no hardship in supplying power at PPA rates, and as noted above, during such periods, the additional revenue generated by selling generation beyond normative availability can be used to off-set past hardships or to create fund to address future coal price risk.

Table 2: HBA (FOB) price of Indonesian Melawan Coal (5400 kcal/kg) in USD/ton

Month	2012	2013	2014	2015	2016	2017
January	84	69	65	52	44	68
February	86	69	63	51	42	66
March	87	70	61	54	43	65
April	82	69	59	52	43	65
May	79	67	59	50	42	66
June	75	67	59	48	43	60
July	69	64	58	48	44	62
August	67	61	56	48	48	66
September	68	61	56	47	52	72
October	68	61	54	47	55	
November	64	62	53	45	67	
December	64	63	52	44	79	
Average	74	65	58	49	50	65

Source: [https://www.minerba.esdm.go.id/library/content/file/28935-](https://www.minerba.esdm.go.id/library/content/file/28935-HBA%20September%202017/64f0489bddbdc960badcbd5f364a50de2017-09-06-20-03-59.pdf)

[HBA%20September%202017/64f0489bddbdc960badcbd5f364a50de2017-09-06-20-03-59.pdf](https://www.minerba.esdm.go.id/library/content/file/28935-HBA%20September%202017/64f0489bddbdc960badcbd5f364a50de2017-09-06-20-03-59.pdf)

- e. **Need for financial restructuring:** Along with the above measures, it is essential to undertake debt restructuring of the project to make it financially viable. Based on the assumptions regarding coal price, and rate of sale of additional power, debt that can be serviced under various scenarios should be worked out. Indicative calculations shown above suggest that different scenarios of coal prices and rate of sale of additional generation, would allow debt servicing in the range of Rs. 5,000 Cr to Rs. 10,000 Cr. during the remaining term of the PPA.

- f. Both, lenders and developers need to work towards bringing down the debt to a manageable level. For this purpose, different measures such as debt write-off, conversion of debt into equity, refinancing of loans, extending debt tenure, reducing interest rates, etc. need to be explored. Developers can earn return on equity or repay any additional capital infusion, when coal prices reduce to such a level that would create surplus revenue beyond debt repayment.
- g. Additionally, the following options are available for the developer and the lenders to meet the contractual obligations under the PPA, i.e. supplying power at PPA agreed tariff for generation up to 80% availability:
 - i. The project developer should explore ways to reduce fuel cost by blending lower cost coal such as Enviro coal and Eco coal, which can reduce fuel cost by 10 – 15 USD / ton.
 - ii. The actual profit of Indonesian Mine on account of enactment of Indonesian Regulations need to be ploughed back to reduce the claimed hardship.
 - iii. Sourcing of coal from different locations to optimize costs
 - iv. Supply from alternative sources, which is allowed under the PPA. Additionally, avenues such as those provided under the recent MoP guidelines dated 5th April 2018 regarding flexibility in generation and scheduling of thermal power stations to reduce emissions, could also be explored for this purpose.

To summarize, the approach suggested above is aimed at achieving the following goals:

- Ensuring that the procurers continue to get supply of power up to 80% PLF / availability as per the PPA terms and condition, and the project does not turn into a non-performing asset.
- The procurers forgo their first right of refusal on any additional / optional generation beyond the normative availability of 80%. In lieu of this, the PPA term should be extended by 15 years at tariff as per PPA's last year capacity charge and variable charge to be determined by regulatory commission subject to prudence. This will ensure that procurers get benefit of low fixed charge generation capacity beyond existing term of the PPA.
- The developers are allowed to sell the additional generation beyond the normative availability at market rates to offset hardship, if any. The developers also forgo return on equity depending on prevailing coal price and rate of sale of additional power.

- The lenders agree to restructure loans and/or take the necessary haircut to ensure that project can sustain operations and debt repayment within the revenue that can be generated based on the above measures.

As shown in the above analysis, if these measures are appropriately implemented the projects can become viable even for peak fuel cost of up to 80 USD / ton (for Melawan grade coal). As highlighted before, fuel prices have been at this high level only for a few months in the last 5 years.

Need for due process and wider public consultation

8. Keeping in mind the various technical, legal and regulatory issues involved in these matters, it is absolutely essential to undertake due public process before arriving at any decision in this regard. To ensure such appropriate process, we feel that the following steps should be taken:
 - a. The committee should come out with a draft report with clear recommendations along with detailed analysis and justification for the same. The draft report should include details of all consultations undertaken by the committee, data relied up on by it and the submissions and presentations made by all the consultants and other stakeholders.
 - b. The draft report should be made public and a notice of at least two weeks should be given to the public to comment on the same. The committee should finalize the report based on the public feedback.
 - c. The final report along with all the relevant documents and data should be available in the public domain as soon as it is finalized and submitted to the government.
 - d. Recommendations of the committee, if any, can be implemented only after due regulatory approval. For this purpose, the project developer and the procurers should file a joint petition before the appropriate commission to implement the recommendations, if any. Such a petition should also include draft agreements, if any, to give effect to any resolution plan, as may be agreed upon by the concerned parties.
 - e. The concerned Commission should issue a reasoned order based on due public process after giving adequate time and opportunity to all the concerned stakeholders to make their submissions.

Submission related to Order(s) issued by
the Commission regarding the petition
No.159/MP/2012 (Tata / CGPL
Mundra UMPP) and the committee
report in this regard

By
Prayas (Energy Group), Pune
Consumer Representative u/s E. Act 2003

1 November 2013

Prayas Energy Group, India

Outline

(65)

- Background and context
- Process shortcomings
- Committee Recommendations: Winners & losers
- Methodological and Analytical Shortcomings in the Committee Report
- Way forward

Background & Context

Main contentions raised by the

(67)

petitioner

- Petitioner has sought relief under:
 - Article 13 of the PPA dealing with 'Change of Law'
 - Article 12 of the PPA dealing with 'Force Majeure' events
 - Section 79 of the Electricity Act 2003 urging commission to intervene and help the petitioner to achieve a tariff that will be financially viable

Gist of the majority order

- Para 69: "We have considered the submissions of the parties. For the reasons already recorded, the case of the petitioner **does not fall under either Change in Law or Force Majeure.**"
- Para 86, the commission notes as follows: "The Electricity Act, 2003 vests in the Commission the responsibility to balance the interest of the consumers with the interest of the project developers while regulating the tariff of the generating companies and transmission licensees....In our view, under the peculiarity of the facts of the present case and also **keeping in view the interest of both project developer and consumers**, we consider it appropriate to direct the parties to set down to a **consultative process to find out an acceptable solution** in the form of compensatory tariff over and above the tariff decided under the PPA to mitigate the hardship arising out of the need to import coal at benchmark price on account of Indonesian Regulations." (emphasis added)

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Committee Recommendations: Winners & losers

Recommended formula for gross compensatory tariff

- *Gross Compensatory Tariff (GCT) = Normative Fuel Energy charges - Tariff recovered from Fuel Energy components of PPA*
 - Adjustments for Profits accruing to the Promoters from the Indonesian mines
 - Adjustment for profit from third party sale of power beyond Normative Availability

Committee's calculation of compensatory tariff for FY 2014 (page no 37)

The compensatory tariff calculation for FY 2014 is shown below:

Item	Ref	Unit	Value
Units sold	(18) ²²	mil kWh	26630
Fuel charges (only FOB) as per tariff	(19) ²³	USD/kWh	0.01856
Fuel charges recovered	(20) ²⁴	mil USD	494.27
FOB cost of imported coal	(21) ²⁵	USD/ton	63.78
FOB cost of imported coal – adjusted for taxes	(22) ²⁶	USD/ton	67.82
Normative Quantity of coal imported	(23) ²⁷	mil ton	11.15
Normative Cost of coal imported	(24) ²⁸	mil USD	756.25
Gross Compensation	(25) ²⁹	mil USD	261.99
Gross Compensation	(26) ³⁰	mil INR	15640.53
Gross Compensation per unit	(27) ³¹	INR/kWh	0.59

Implications of committee recommendation: Impact on different stakeholders

- Increase in tariff beyond PPA tariff : Rs. 1,564 Cr per year
 - Loss in profitability of developer / equity holder: Rs. 0.00 Cr. (as compared to coal prices at the time of bidding)
 - Loss to lenders : Rs. 0.00 Cr.
 - Loss to procurer : Rs. 0.00 Cr. (As the entire cost can be passed through to consumers, based on regulatory approval)
 - Loss to consumers : Rs. 1,564 Cr

→ Takes away all the commercial risk on account of fuel price variation, which the developer had taken willingly at the time of bidding.

→ Committee recommendations imply CGPL as well as mining operations not sharing any burden on account coal price increase

Methodological Shortcomings

Issue 1:

Profits from shareholding in the Indonesian mines

Possible approaches

- Approach 1: Based on audited financial statements, calculate Generator's proportionate share in mining profits and deduct the same
- Approach 2: Calculate increased revenue based on incremental rise in price of coal over and above the price CGPL could have contracted in absence of the Indonesian Regulation, after accounting for taxes and duties. Use this revenue to offset the impact on tariff

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Committee recommended Approach for calculating impact on tariff for FY 13 (page 44)

Particular	Reference	Unit	Value
Tata Power share of net PAT from KPC	(1)	mil USD	1.022
Tata Power share of net PAT from Arutmin	(2)	mil USD	0.964
Total Tata Power share of Profit from KPC & Arutmin	(3)=(1)+(2)	mil USD	1.986
Exchange Rate	(4)	INR/USD	59.7
Total Tata Power share of Profit from KPC & Arutmin	(5)=(3)*(4)	Mil INR	118.564
Units supplied by CGPL to procurers in FY 2013	(6)	mil units	11565
Impact on Compensatory tariff	(7)=(5)/(6)	INR/kWh	0.01

Alternate approach (not recommended by committee)

Particular	Reference	Unit	FY 13
FOB selling price of the Indonesian mining company as per invoice	[A]	\$/ton	
Contracted Price as per FSA	[B]	\$/ton	
Incremental revenue to Indonesian mining company per ton	$[C] = [A] - [B]$	\$/ton	
Less: Royalty @ 13.5%	$[D] = [C] * 13.5\%$	\$/ton	
Revenue net of Royalty per ton	$[E] = [C] - [D]$	\$/ton	
Less: Income tax at marginal rate @ 45%	$[F] = [E] * 45\%$	\$/ton	
Incremental Profit to Indonesian mining company per ton	$[G] = [E] - [F]$	\$/ton	
Quantity supplied to CGPL by the mining company	[H]	Mill Ton	
Net incremental PAT to Indonesian mining company	$[I] = [G] * [H]$	Mill \$	
Tata Power share of net incremental PAT of mining company	$[J] = [I] * 30\%$	Mill \$	1.053
Dollar-rupee conversion rate	[K]	Rs	59.7
Tata Power share of net incremental PAT of mining company	$[L] = [J] * [K] / 10$	Rs Cr	6.28641
Units sold		Mill kWh	11565
Relief on this account		Rs/unit	0.005

Impact as per the Alternate approach

Particular	Reference	Unit	FY 13	CGPL Petition		Prayas suggestion
				FY 14		
FOB selling price of the Indonesia mining company as per invoice	[A]	\$/Ton		63.67		63.67
Landed cost of coal as per PPA quoted tariff at which the petitioner is revenue neutral	[B]	\$/Ton		50.92		41.68
Incremental revenue to the mining company per ton	[C] = [A] - [B]	\$/Ton		12.75		21.99
Less: Royalty @ 13.5%	[D] = [C*13.5%]	\$/Ton		1.72		2.97
Revenue net of Royalty per ton	[E] = [C] - [D]	\$/Ton		11.03		19.02
Less: Income tax at marginal rate @ 45%	[F] = [E*45%]	\$/Ton		4.96		8.56
Incremental Profit to Indonesia mining company per ton	[G] = [E] - [F]	\$/Ton		6.07		10.46
Quantity supplied to CGPL by the mining company	[H]	Million Ton		11.15		11.15
Net incremental PAT to Indonesia mining company	[I] = [G] * [H]	Million \$		67.63		116.65
Tata Power share of net incremental PAT of mining company	[J] = [I] * 30%	Million \$	1.053	20.29		34.99
Less: Indian Tax (on dividend received)@15% for FY-14	[K] = [J] * 15%	Million \$		3.04		5.25
Dollar-rupee conversion rate	[L]	Rs	59.7	59.7		59.7
TPC share of net incremental PAT of mining company	[M] = [L]*[J]- K/10	Rs Cr	6.286	102.96		177.58
Total Units to be sold	[N]	Mil kWh	11565	26630		26630
Relief on this account factor	[O]=[M]*[N]	Rs/unit	0.005	0.04		0.07

Methodological Shortcomings

Issue 2: Sell of generation beyond
normative availability to third parties

Committee approach (page 46)

(79)

		Scenario 1	Scenario 2	Scenario 3	
Normative Availability	%	80%	80%	80%	As per PPA
Third party Sale	%	5%	10%	20%	If allowed sale to third party
Third party sale Price	INR/kWh	4	4	4	
Energy Charges	INR/kWh	2.24	2.24	2.24	
Per Unit Surplus	INR/kWh	1.76	1.76	1.76	Sale price – Energy charges
Incentive to generator	INR/kWh	0	0.13	0.19	Incentive beyond 85% apportioned on entire quantum of 3 rd party sale
Share of Procurers @50% of balance surplus	INR/kWh	0.88	0.82	0.79	50% share
Reduction in Gross Compensatory tariff	INR/kWh	0.055	0.1022	0.1965	Procurer share apportioned on 80%

→ Seller can keep the share of incentives over and above the compensation

Actual sharing of revenue from sale of power beyond the target availability

		Scenario 1	Scenario 2	Scenario 3
Normative Availability	%	80%	80%	80%
Third party Sale	%	5%	10%	20%
Third party sale Price	INR/kWh	4	4	4
Energy Charges	INR/kWh	2.24	2.24	2.24
Per Unit Surplus	INR/kWh	1.76	1.76	1.76
Surplus Mus	MU	1664	3329	6658
Additional revenue	Rs Cr	293	586	1172
Impact on compensatory tariff	Rs/unit	0.11	0.22	0.44

Similar approach has also been proposed by one of the procurers

Salient observations...1

- Combination of following options will significantly offset impact on tariff due to Indonesian Regulations
 - Plough back of incremental revenue (net of tax and royalty) from coal mines
 - Sale of generation beyond normative availability and entire surplus used to offset impact on tariff
 - Reduction in costs due to measures such as low GCV coal, low transportation costs, other sources of coal etc.

Salient observations...2

- Analysis highlights serious lacunae in both methodology and analysis of the committee
- Hence commission cannot rely on committee recommendations for deciding either methodology or impact on tariff
- Need for independent evaluation on part of commission in this regard

Prayas Submission...1

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- Independently establish the need and extent of compensation:
 - CERC must establish beyond doubt the need for compensatory tariff
 - All analysis, documents and assumptions used by the Commission in this regard should be made public
- Define principles for awarding any compensation
 - CERC should ensure that its order does not set any wrong precedent for revising competitively discovered tariffs.
 - Specially crucial considering number of such cases before CERC and other state commissions.
 - Therefore, if need for compensation is established, then any proposed solution must adhere to following criteria:
 - Not fundamentally alter risk allocation in the bidding process and PPA
 - Procurers maximum entitlement should be protected (i.e. normative generation at PPA tariff)
 - Equitable sharing of incremental burden by all stakeholders (developer, lenders and consumers)

Prayas Submission...2

- Undertake due public process, including public hearing, which is an established practice for any tariff revision and also mandatory as per law

Prayas Submission...3

(85)

- Return the generation assets at the end of PPA:
 - Allowing compensation would imply pass through of the commercial risks, voluntarily assumed by the project developer to win the contract, to consumers.
 - Asset supported and sustained in this manner should ultimately belong to the consumers.
 - Hence, entire generation asset supported by such mechanism should be returned to the consumers at the end of term, at an appropriate transfer price.
 - Actual mechanism to be adopted for transferring these assets should be decided based on public consultation.

Thank you

Prayas (Energy Group)

www.prayas pune.org/peg

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In the matter of
Appeal no 133 of 2014

Against the CERC order dated 21st Feb
2014 in petition no 159/MP/2012

Prayas (Energy Group), Pune
7 December 2015

Brief background

- Petition in 159/MP/2012 filed by CGPL before the CERC around July 2012
- Knowing this through media reports, the Appellant (i.e. Prayas) wrote to the CERC to implead itself as an intervener in capacity of consumer representative appointed by the Commission under section 94(3) of the Electricity Act 2003
- Appellant participated in the proceedings and made detail submissions challenging the need and/or appropriateness of granting any compensation, which are recorded in the impugned orders

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Main contentions raised by the project developer before the CERC

- Project developer has sought relief under:
 - Article 13 of the PPA dealing with 'Change of Law'
 - Article 12 of the PPA dealing with 'Force Majeure' events
 - Section 79 of the Electricity Act 2003 urging the Central Commission to intervene and help the project to achieve a tariff that will be financially viable

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Gist of the majority (interim) order dated 15th April 2013

- Para 69: "We have considered the submissions of the parties. For the reasons already recorded, the case of the petitioner does not fall under either Change in Law or Force Majeure."
- Para 86, the commission notes as follows: "The Electricity Act, 2003 vests in the Commission the responsibility to balance the interest of the consumers with the interest of the project developers while regulating the tariff of the generating companies and transmission licensees....In our view, under the peculiarity of the facts of the present case and also keeping in view the interest of both project developer and consumers, we consider it appropriate to direct the parties to set down to a consultative process to find out an acceptable solution in the form of compensatory tariff over and above the tariff decided under the PPA to mitigate the hardship arising out of the need to import coal at benchmark price on account of Indonesian Regulations." (emphasis added)

Implications of the final order dated 21-02-2014: Impact on different stakeholders

- Increase in tariff beyond PPA agreed rate : Rs. 1160 Cr per year
(indicative figure for FY 13-14 as per the impugned order)
 - Loss to developer / equity holder on account of fuel price variation/risk: Rs. 0.00 Cr (as compared to coal prices at the time of bidding)
 - Loss to lenders : Rs. 0.00 Cr.
 - Loss to procurer : Rs. 0.00 Cr. (As the entire cost can be passed through to consumers, based on regulatory approval)
 - Loss to consumers : Rs. 1160 Cr

→ Takes away all the commercial risk on account of fuel price variation, which the developer had knowingly and willingly taken at the time of bidding

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Key issues and lacunae in the
impugned orders

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Non-compliance with due process

- Tariff revision under the Electricity Act 2003 is only possible under section:
 - Section 62: after following due process as per section 64
 - Section 63: in accordance with the provision of bidding guidelines and the PPA
- Grant of compensatory tariff would impose tariff impact on consumers of five states
- In spite of repeated submissions for undertaking due public process in a matter so crucial and peculiar, the Commission refused to allow public consultation, which is otherwise mandatorily undertaken for any tariff revision matter

Inadequate and improper reasoning for not undertaking due public process

- Para 49 of the impugned order:
“... The Commission's Conduct of Business Regulations permits any consumer to participate in the proceedings before the Commission. Prayas Energy Group and the applicant, Shri Puspendra Surana have participated in the proceedings in the present petition. In our view, adequate opportunity was available to the interested parties to participate in the proceeding and in fact, some consumers including the applicant have participated in the proceeding and filed their submissions..” (Emphasis added)

- There was no public notice regarding the date of the hearings
- Petition was not available in the public domain
- Data and information relied upon by the committee was not made public

SGS

Setting bad precedent for overall sector policy and competition

- Using regulatory powers to ensure financial viability of individual projects, which have knowingly and willingly taken certain risks to win contracts, is becoming a routine practice
- State commissions are following CERC's approach of allowing a '*compensatory tariff*' over and above PPA agreed rate while ruling out any relief as per the provisions of the PPA
 - Such tariff is usually based on a Committee's recommendations, which often are not acceptable to the procurers
 - Financial analyst and/or banking sector expert are often the only independent members of such committee.
 - No opportunity is given to consumers to comment on this arrangement
- Such regulatory practice can be detrimental to the broader sector policy, distribution viability and overall competition

List of matters where 'compensatory tariff' has been granted or being considered

Parties	Commission & case no	MW	Compensatory charge sought / allowed	Annual tariff Impact in Rs Cr
Adani Power Ltd Vs Uttar Haryana Bijli Vitran Nigam Ltd	CERC case no 155/MP/2012	1425	0.3255	325
Adani Power Ltd Vs Uttar Haryana Bijli Vitran Nigam Ltd	CERC case no 155/MP/2012	1000	0.8508	596
Coastal Gujarat Power Ltd -v- Gujarat Urja Vikas Nigam Ltd	CERC case no 159/MP/2012	4000	0.4357	1160
Adani Power Maharashtra Ltd Vs MSEDCL	MERC case no 68 of 2012 and 63 of 2014	1320	1.01	566
Adani Power Maharashtra Ltd Vs MSEDCL	MERC case no 189 of 2013 and 140 of 2014	2285	1.95	1374
Indiabulls Power Limited Vs MSEDCL	MERC case no 154 of 2013 and 147 of 2014	1200	1.55	391
Lanco Anpara Power Ltd -v- Uttar Pradesh Power Corporation Ltd	UPERC case no 871 & 891 of 2013		Compensatory tariff granted	Not known
Sasan Power Ltd -v- MP Power Management Co Ltd and others	CERC case no 14/MP/2013	4000	CERC deems it to be a fit case for grant of compensatory tariff	Not known
EMCO Energy Ltd Vs MSEDCL	CERC Petition No. 8/MP/2014	300	Though MERC has adopted the tariff, CERC has admitted petition seeking tariff revision on account of change in law	Not known
M/s Adani Power Rajasthan Ltd. vs Jaipur Vidyut Vitran Nigam Ltd & others	Petition No. RERC-534/15	1320	RERC has granted interim relief of Rs. 0.25 per unit. Further details are being worked out based on a committee process.	Not known

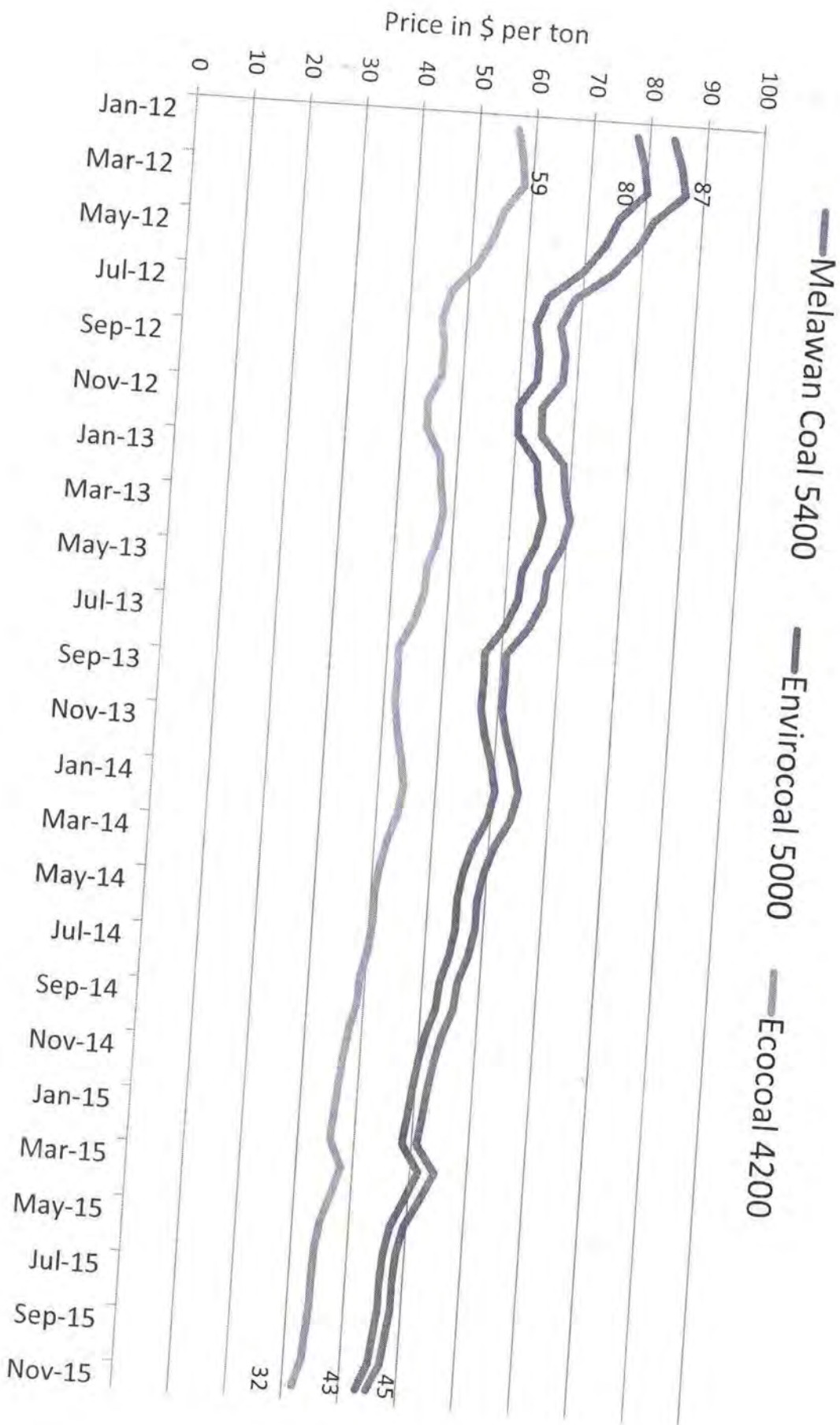
Sector level challenges: Constraints for tariff increase and demand risk

- Distribution sector is already under severe distress in most states
 - Potential tariff increase on account of debt restructuring and accumulated losses
- With increase in open access, and carriage and content separation being proposed through the electricity act amendment, solar PV tariff will effectively act as ceiling for tariff increase for high paying consumers
- Policy commitment to have 175 GW of renewable energy based capacity by 2022
- As per India's Intended Nationally Determined Contributions, 40% of India's installed capacity in 2030 will be from fossil fuel free sources.

Fuel price variation- a transient phenomenon

- Prices of Indonesian coal have been decreasing since the last two years
- Benchmark price of Indonesian Melawan coal (GCV - 5400) at the time of :
 - Petitions being filed before CERC in July 2012 - ~\$ 70 per ton
 - Impugned order being passed - \$ 63.78 per ton
 - Price declared for Feb 2015 - \$ 50.87
 - Price declared for Nov 2015 - \$ 45 per ton
- Benchmark prices for Envirocoal and Ecocoal which were at more than \$50-55 per ton at the time of petition being filed, are down to \$ 32 per ton, which is close to the fixed price contracts signed before the promulgation of the 2010 regulation.
- Thus, the so-called hardship is a transient phenomenon which will keep changing based on market price
- Blending coal sourced from different sources can be hence be an effective tool for mitigating such transient variations in fuel price

Variation in bench mark price (\$/ton) of Indonesian coal since January 2012



Proportionate reduction in CERC determined compensatory tariff (indicative calculation)

Sr No	Item	Unit	Indicative calculation as per impugned order	Calculation as per Feb 2015 coal prices	Calculation as per Nov 2015 coal prices
1	Units sold	mil kwh	26630	26630	26630
2	Fuel Charges as per tariff (FOB only)				
2a	QNEFEC	US\$/kwh	0.00707	0.00707	0.00707
2b	QEFEC	US\$/kwh	0.00585	0.00585	0.00585
3	CERC escalation index		196.41	196.41	196.41
4	QEFEC (2b) after indexation	US\$/kwh	0.01149	0.01149	0.01149
5	Fuel Energy tariff component (2a+4)	US\$/kwh	0.01856	0.01856	0.01856
6	Fuel charges recovered (1*5)	mil US\$	494.26	494.25	494.25
7	FOB cost of imported coal	US\$/ton	63.78	50.87	45
8	effective import duty		6.33%	6.33%	6.33%
9	FOB cost of imported coal-adjusted for duties	US\$/ton	67.82	54.09	47.85
10	Qty of imported coal for stated generation	mil ton	10.73	10.73	10.73
11	cost of imported coal tonnage as above (9*10)	mil US\$	727.98	580.39	513.41
12	gross compensation (11-6)	mil US\$	233.73	86.13	19.16
13	gross compensation per unit (12/1)	US\$/kwh	0.0088	0.003234	0.000720
14	Exchange rate		59.7	66.65	66.65
15	Gross compensation per unit in INR	INR/kwh	0.5254	0.22	0.05

Revenue from sale of power beyond the target availability (indicative calculation)

Item	Unit	Scenario 1	Scenario 2	Scenario 3
Normative Availability	%	80%	80%	80%
Third party Sale	%	5%	10%	15%
Third party sale Price	INR/kWh	3.5	3.5	3.5
Energy Charges	INR/kWh	2.24	2.24	2.24
Per Unit Surplus	INR/kWh	1.26	1.26	1.26
Surplus Mus	MU	1664	3329	4993
Additional revenue	Rs Cr	210	419	629
Impact on compensatory tariff	Rs/unit	0.08	0.16	0.24

Lopsided approach

- Para 84 and 85 of the impugned order:
 - “... Therefore, forcing the generator to generate additional electricity without appropriate incentive will be fundamentally against the spirit of the order dated 15.4.2013, and would cause further hardship to the petitioner.”
 - “... As regards the sharing, we are of the view that the profit may be shared between the procurers and the petitioner in the ratio of 60:40 with incentive, subject to the procurers' written consent for third party sale above 80% target availability.” (Emphasis added)
- Sale of generation beyond normative availability can almost entirely mitigate the so-called hardship while ensuring that the procurers (and hence consumers) get their entire share of contracted capacity at PPA agreed tariff.
- However, the impugned order does not mandate the developer to mitigate the purported hardship using this method, but instead imposes a compensatory tariff on consumers while allowing the developer to retain certain share (40%) of profit from such sale beyond the normative availability

Fundamental alternation in fuel price risk ⁽¹⁰³⁾

allocation

- Bidding framework allowed bidders to transparently pass through the entire fuel price risk at the time of bidding itself
- Risks were knowingly and willingly taken by project developers to win contracts
- By passing on the entire fuel price risk to consumers post bidding, the impugned order has fundamentally altered the risk allocation embedded in the PPA and the bidding framework
- Impugned order seeks to mitigate entire hardship of the project developer on account of fuel price variation by simply passing it through to consumers
 - Without giving the consumers any incentive for bearing this undue burden

Lopsided approach

- Return the generation assets at the end of PPA:
 - Allowing compensation implies pass through of the entire fuel risk, voluntarily assumed by the project developer to win the contract.
 - Asset supported and sustained in this manner should ultimately belong to the consumers.
 - Hence, a generation asset made viable by such mechanism should be returned to the consumers at the end of term, at an appropriate transfer price

- Para 51 of the impugned order:

– “...As regards the suggestion of Prayas for return of the generation assets at the end of the useful life, we are of the view that this aspect will be governed as per the terms and conditions of the PPA and is beyond the scope of the present proceedings which is confined to compensating the petitioner for the hardship suffered by it on account of Indonesian Regulations.” (Emphasis added)

→ While deciding the compensatory tariff the Commission feels it important to go beyond the terms and conditions of the PPA, but to provide similar consideration to the consumers, it feels constrained by the contract provisions

Prayas Submission

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- Compensatory tariff should not be allowed on following grounds:
 - **Flawed process:** Due public process necessary as per law was not followed **Fundamental reallocation of risk:** Entire burden arising out of fuel price variation is passed on to the consumers, thus totally de-risking the developer. Such reallocation of risk post bidding, is unfair, unjust and legally untenable as it goes against the basic tenets of competition
 - **Sanctity of contracts:** In absence of contractual provisions, using regulatory powers to restore financial viability of projects by post facto altering risks that were knowingly and willingly taken to win contracts, sets a bad regulatory precedence for sector policy and competition
- Procurers have a right to get the entire share of power at the rates they have contracted as per the PPA agreed terms and conditions
- If need be, combination of following measures can be used to mitigate the so-called hardship, if any, on account of fuel price variation:
 - Sale of generation beyond normative availability and using the entire surplus to offset impact on tariff
 - In case such revenue is more than the so-called loss, gain sharing as per PPA terms and conditions should apply
 - Reduction in overall fuel costs by adopting measures such as blending low GCV coal, exploring other cheaper sources of coal etc.
 - Plough back of incremental revenue (net of tax and royalty) from coal mines owned by developer

Thank you

Prayas (Energy Group)

www.prayas pune.org/peg

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BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION AT
GANDHINAGAR

PETITION NO. 1807 OF 2019

IN THE MATTER OF:

Gujarat Urja Vikas Nigam Limited

Versus

Essar Power Gujarat Limited & Ors.

G.E.R.C.
Inward No - 3709 Petitioner
Date : 16 JUL 2019 Respondents

AFFIDAVIT ON BEHALF OF THE RESPONDENT NO.1

MOST RESPECTFULLY SHOWETH:

The Petitioner GUVNL has filed the captioned Petition before this Hon'ble Commission for seeking approval of the amendment carried out in Bid-03 PPA as provided in the Supplemental PPA dated 01.03.2019 entered into between Petitioner and Respondent No.1.

2. In this regard, it is stated that Respondent No.1, during the process of signing Supplemental PPA had raised few concerns vide its letters dated 31.12.2018, 07.01.2019 and 25.01.2019. The concerns pertain to (i) limiting the cap to the ocean freight of CGPL, (ii) to approve port / handling charges for Respondent No.1 to be the same as that of CGPL, (iii) the boiler efficiency may be considered as 85% based on the type of coal i.e. sub-bituminous coal and (iv) issue of effective date of the Supplemental PPA. Annexed hereto and marked as **Annexure-I (Colly.)** are copies of the aforementioned letters dated 31.12.2018, 07.01.2019 and 25.01.2019.

3. It is stated that even after signing of the Supplemental PPA, the Respondent No.1 requested Petitioner to consider their aforementioned concerns vide letter dated 01.03.2019. The Petitioner, vide its letter dated 11.03.2019 conveyed to Respondent No.1 that in the event of any issue





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in the Supplemental PPA, the same may be taken up with Energy and Petrochemicals Department, Government of Gujarat. Thereafter, the Respondent No.1 has also taken up its request for reconsideration in few clauses of the draft Supplemental PPA, by way of a letter dated 03.05.2019. Annexed hereto and marked as **Annexure-II (Colly.)** are copies of the aforesaid letters dated 01.03.2019, 11.03.2019 and 03.05.2019.

4. The Respondent No.1 submits that the Hon'ble Commission may consider aforementioned facts and circumstances, while adjudicating the captioned Petition.

DEPONENT

Filed by:

**Essar Power Gujarat Limited
(Respondent No.1)**

Date: 8th July, 2019

Place: Ahmedabad



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dated
11/03/2003
24-02-2003

PETITION NO. 1807 OF 2019

IN THE MATTER OF:

• • •

Petitioner

Versus

...

Respondents

AFFIDAVIT

I, Sandeep Sahay, S/o Santosh B. Sahay, aged about 46 years residing at Mumbai, do solemnly affirm and say as follows:

That I am Vice President (Commercial) of Respondent No.1 Essar Power Gujarat Limited and authorized signatory of the Respondent No.1 herein and I have read the present Affidavit and I am competent and duly authorized by the Petitioner Company to file this Affidavit.

Solemnly affirmed at Ahmedabad on this 8th day of July, 2019 that the contents of the above affidavit are true to my knowledge and belief (as derived from the records), based on information believed to be true and no part of it is false and nothing material has been concealed therefrom.

Serial No. 6723-2019
Solemnly Affirmed &
Signed Before Me
[Signature]
22-8-2019
YOGENDRA S. RAJPUT
NOTARY PUBLIC
GOVT. OF INDIA
(MY COMMISSION
EXPIRES ON DT. 24/02/2023)


DEPONENT

DEPONENT
IDENTIFIED BY ME
ADVOCATE

Annexure I (Colly.)

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o/c

Ref: EPGL/GUVNL/Ph-I/2018/12/02
Date: 31.12.2018



To,
Gujarat Urja Vikas Nigam Limited,
Sardar Patel Vidyut Bhawan,
Race Course,
Baroda - 390 007
Gujarat

Essar Power Gujarat Ltd.
44 KM Milestone
Jamnagar-Okha Highway
P.O. Box No. 07,
Khambhaliya Post Office
Devbhumi Dwarka-361305
Gujarat, India

T +91 2833-661 444
F +91 2833-663 382

www.essar.com

Kind Attn: Sh. S. B. Khyalia, Director Finance (GUVNL)

Sub: Request for reconsideration in few clauses of Draft Supplementary PPA

Dear Sir,

This is with reference to the Power Purchase Agreement dated 26.02.2007 ("PPA") entered into between Essar Power Limited ("EPL") and Gujarat Urja Vikas Nigam Limited ("GUVNL") for supply of 1000 MW electricity from Unit-1 and Unit-2 of the 1200 (2 x 600) MW, Salaya Thermal Power Plant ("Power Project") setup by EPL. The said PPA was later assigned by EPL to Essar Power Gujarat Limited ("EPGL") to which GUVNL accorded consent vide letter dated 05.07.2007.

Government of Gujarat, recognizing the Change in Indonesian Regulation, vide its policy direction constituted a High Power Committee ("HPC") to suggest a sustainable solution for resolving the issue. Government of Gujarat vide its resolution dated 1st Dec 2018 ("GR") accepted the recommendation of HPC which allowed among others, adjustment in tariff subject to ceiling limits on fuel cost.

GUVNL, has shared a Draft Supplemental PPA ("Draft SPPA") with few changes made to the GR and HPC report. EPGL has reviewed the Draft SPPA and have few concerns that needs to be resolved prior to execution of Draft SPPA. In this regard, EPGL have met GUVNL officials and have already discussed these below points for their attention and resolution.

(A) Ocean freight:

S.N o	Clause No	Existing Provision	Modification Requested	Rational Behind the request
1	3.2.4 of Draft SPPA	Ocean Freight & Insurance The ocean freight and insurance shall be lower of actual or as stated in Annexure - B and calculated in Indian Rupees at Exchange Rate	Ocean Freight & Insurance The ocean freight and insurance shall be lower of 1. Actual or 2. Tariff as stated in Annexure - B column (c) & (d) in Table I, which shall be	(a) CGPL is not mentioned in GR or HPC report but has become part of Draft PPA. (b) Ocean freight cannot be linked to CGPL tariff as CGPL can bring large vessels of 200,000 MT and so freight is lower. EPGL can bring relatively smaller vessel of 100,000 MT because of lesser draught and further dredging is an issue (c) Comparative study (Attached at Appendix A) of actual ocean freight for

	(column (c) & (d) in Table I & II respectively in Annexure – B)	separated in two parts with 70% as fixed (non escalable) and 30% (escalable) as variable. CERC escalation rate to be applicable on the variable portion from the Draft SPPA effective date. Further these rates to be adjusted for Change in Law as per the provisions of the PPA. Tariff to be calculated in Indian Rupees at Exchange Rate.	vessel size of 75 KT to 100 KT for Salaya port and 175 KT to 200 KT for Mundra port for the period Aug 2017 to Nov 2018 has been done based on the Time Charter Rate published in the Baltic Index (worldwide index accepted by all ship-owners) and bunker rate for fuel oil from Singapore bunker index and observed that ocean freight for Salaya port is higher than that for Mundra port by \$/MT 3 to 4. (Appendix A - Enclosing a power point presentation in Baltic Index and Singapore Bunker Index) (d) We request that condition for calculation of Tariff in two parts as fixed and variable (same as in CGPL Tariff) to be relaxed for EPGL.
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(B) Port / Fuel Handling charges:

S.N o	Clause No	Existing Provision	Modification Requested	Rational Behind the request
1	3.2.4 of Draft SPPA	Port / Fuel Handling Charges The Port / Fuel Handling Charges shall be lower of actual or as stated in Annexure – B (column (e) & (f) in Table I)	Port / Fuel Handling Charges The Port / Fuel Handling Charges shall be lower of actual or as stated in Annexure – B (adjusted for change in law as per provisions in the PPA) ((column (e) & (f) in Table I column (e) & (f) in Table II) <u>Note:</u> Column (e) of Table II shall mean Quoted Non-Escalable Port / Fuel handling charges in Rs/MT in CGPL Bid. Column (f) of Table II shall mean Quoted Escalable Port / Fuel handling charges in Rs/MT in CGPL Bid.	(a) Actual port charges of EPGL is higher than that quoted by EPGL in the PPA. This is due to the fact that EPGL had to quote port charges in Rs/Kwh (as there was no provision for quoting port charges in USD/Kwh) assuming the prevalent exchange rate at the time of bid and INR depreciation rate as per tender document. However INR has depreciated much more. (b) Due to this the port charges as per Salaya PPA is Rs 270 per MT while actual cost is Rs 390 per MT (port charge is \$/Mt 4 and GMB charges of ~ Rs 50 per MT).

				(c) The port charges for Mundra port as per CGPL Bid is Rs 359 per Mt. (d) Thus, the port charges for Salaya can be linked to the CGPL port charges.
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(C) Gross Station Heat Rate:

S.N o	Clause No	Existing Provision	Modification Requested	Rational Behind the request
1	3.2.3 of Draft SPPA	GHR = Lower of actual or Gross station heat rate of _____ in kCal per kWh as specified in the Tariff Regulations as defined herein	The Tariff Regulation specifies only two boiler efficiency i.e (a) The Boiler efficiency of sub-bituminous Indian coal of 85% and (b) boiler efficiency of bituminous imported coal of 89%. <u>Request:</u> The boiler efficiency of 85% for sub-bituminous coal should be considered	(a) The coal being imported from Indonesia is sub-bituminous coal and hence boiler efficiency of 85% applicable for sub-bituminous coal should be considered.

(D) Amendment Effective Date:

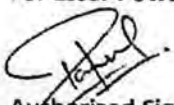
S.N o	Clause No	Existing Provision	Modification Requested	Rational Behind the request
1	3.1 (ii) of Draft SPPA	"Amendment Effective Date" shall be October 15, 2018 i.e. the date with effect from which this Supplemental Agreement shall become effective and binding upon the parties.	Amendment Effective Date" shall be October 15, 2018 [30 days after all approvals for making PPA effective are in place including all relevant regulatory approvals] i.e. the date with effect from which this Supplemental Agreement shall become effective and binding upon the parties.	(a) EPGL has not been able to operate its power plant for almost a period of 1 year and it needs approx. Rs 300 Crores to restart the plant, which would be possible to fund only after the approval of Draft SPPA. (b) If Oct 15, 2018 is retained then EPGL will have to bear the additional penalty of 10% of the Capacity Charge from the Availability below 90%. (c) The GR is dated 1st Dec 2018 and hence EPGL could not have become aware of applicability of this additional penalty prior to 1st Dec 2018. (d) Regulatory approval date would be a more relevant date and hence applicability of this

				additional penalty should become applicable only after its approval by Regulators
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EPGL is keen to restart the power plant and thus requests GUVNL to consider these genuine requests proposed by EPGL. In addition, EPGL has also requested GUVNL to defer the payment of Penalty amount for FY 18 and FY 19 via various letters and meeting, and recover the same in monthly installments over a period of 36 months, after the start of the power plant. Once the power plants start, EPGL shall submit the monthly plan to GUVNL for recovery of the penalty amount.

We shall be grateful to have your support in resolving the above issues and deferring the recovery of penalty amount thus enabling EPGL to supply continuous sustainable power to consumers of Gujarat.

Yours Sincerely,
For Essar Power Gujarat Limited,


Authorized Signatory

CC to -

1) Sh. Raj Gopal, IAS, Principal Secretary, Energy and Petrochemicals Department, Government of Gujarat

2) Sh. Pankaj Joshi, IAS, Managing Director (GUVNL)

21/11/18
CR-1
Energy & Petrochemicals Deptt.
Sachivalaya, Gandhinagar

614

Ref: EPGL/GUVNL/Ph-I/2019/01/01

Date: 07.01.2019



To,

Shri Raj Gopal, IAS

Additional Chief Secretary,

Energy and Petrochemicals Department, Govt. of Gujarat,
Gandhinagar,
GujaratEssar Power Gujarat Limited
Essar House,
Opp. Gujarat College,
Ellisbridge,
Ahmedabad - 380 006
IndiaT +91 79 6608 6666
F +91 79 6608 6608
www.essar.com

Kind Attn: Shri. Raj Gopal, IAS

Sub: Request for reconsideration in few clauses of Draft Supplementary PPA

Reference: our letter no EPGL/GUVNL/Ph-I/2018/12/02 dated 31.12.2018

Dear Sir,

This is with reference to the Power Purchase Agreement dated 26.02.2007 ("PPA") entered into between Essar Power Limited ("EPL") and Gujarat Urja Vikas Nigam Limited ("GUVNL") for supply of 1000 MW electricity from Unit-1 and Unit-2 of the 1200 (2 x 600) MW, Salaya Thermal Power Plant ("Power Project") setup by EPL. The said PPA was later assigned by EPL to Essar Power Gujarat Limited ("EPGL") to which GUVNL accorded consent vide letter dated 05.07.2007.

Government of Gujarat, recognizing the Change in Indonesian Regulation, vide its policy direction constituted a High Power Committee ("HPC") to suggest a sustainable solution for resolving the issue. Government of Gujarat vide its resolution dated 1st Dec 2018 ("GR") accepted the recommendation of HPC which allowed among others, adjustment in tariff subject to ceiling limits on fuel cost.

Based on the discussion we had in your office on 04.01.2019, we once again request you for including the below changes in the Draft Supplemental PPA ("Draft SPPA").

(A) Ocean freight:

S.N	Clause No	Existing Provision	Modification Requested	Rational Behind the request
1	3.2.4 of Draft SPPA	Ocean Freight & Insurance The ocean freight and insurance shall be lower of actual or as stated in Annexure - B and calculated in Indian Rupees at	Ocean Freight & Insurance The ocean freight and insurance shall be lower of 1. Actual or 2. Tariff as stated in Annexure - B column (c) & (d) in Table I, which shall be separated in two parts with 70% as fixed (non escalable) and 30%	We request that the calculation of Ocean Freight quoted in PPA by EPGL, should be made in two parts as 70% fixed (Non Escalable) and 30% variable (Escalable) as per CERC Index be made applicable for EPGL considering the constraint of receiving lower capacity vessel.

Corporate Identification Number - U74900GJ2007PLC066273

Regd. Office : Essar Oil Limited, Khambhajia Post, P.O. Box No. 24, Dist. Jamnagar - 361 305, Gujarat.

T +91 2833 241444 F +91 2833 241414

		Exchange Rate (column (c) & (d) in Table I & II respectively in Annexure - B)	(escalable) as variable. CERC escalation rate to be applicable on the variable portion from the Draft SPPA effective date. Further these rates to be adjusted for Change in Law as per the provisions of the PPA. Tariff to be calculated in Indian Rupees at Exchange Rate.	<u>As per HPC Recommendation,</u> Ocean Freight should be lower of Actual or PPA quoted tariff. <u>As per GR,</u> Ocean Freight shall be lower of (i) Actual, (ii) freight worked out as per CERC Index (iii) PPA quoted tariff. <u>Rationale:</u> (a) CGPL is not mentioned in GR or HPC report but has become part of Draft PPA. (b) Ocean freight cannot be linked to CGPL tariff as CGPL can bring large vessels of 200,000 MT and so freight is lower. EPGL can bring relatively smaller vessel of 100,000 MT because of lesser draught and further dredging is an issue

(B) Port / Fuel Handling charges:

S.N o	Clause No	Existing Provision	Modification Requested	Rational Behind the request
1	3.2.4 of Draft SPPA	Port / Fuel Handling Charges The Port / Fuel Handling Charges shall be lower of actual or as stated in Annexure - B (column (e) & (f) in Table I)	Port / Fuel Handling Charges The Port / Fuel Handling Charges shall be lower of actual or as stated in Annexure - B (adjusted for change in law as per provisions in the PPA) (column (e) & (f) in Table I column (e) & (f) in Table II) <u>Note:</u> Column (e) of Table II shall mean Quoted Non- Escalable Port / Fuel	We request that the port and coal handling charges shall be linked to Adani/CGPL port and coal handling charges. <u>As per HPC Recommendation,</u> Port and coal handling charges shall be lower of Actual or PPA quoted tariff. <u>As per GR,</u> Port and coal handling charges shall be lower of Actual or PPA quoted tariff. <u>Rationale:</u>

			handling charges in Rs/MT in CGPL Bid. Column (f) of Table II shall mean Quoted Escalable Port / Fuel handling charges in Rs/MT in CGPL Bid.	(a) Actual port charges of EPGL is higher than that quoted by EPGL in the PPA. This is due to the fact that EPGL had to quote port charges in Rs/Kwh (as there was no provision for quoting port charges in USD/Kwh) assuming the prevalent exchange rate at the time of bid and INR depreciation rate as per tender document. However INR has depreciated much more. (a) Due to this the port charges as per Salaya PPA is Rs 270 per MT while actual cost is Rs 390 per MT (port charge is \$/Mt 4 and GMB charges of ~ Rs 50 per MT). (b) The port charges for Mundra port as per CGPL Bid is Rs 359 per Mt. (c) Thus, the port charges for Salaya can be linked to the CGPL port charges.
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(C) Gross Station Heat Rate:

S.N o	Clause No	Existing Provision	Modification Requested	Rational Behind the request
1	3.2.3 of Draft SPPA	GHR = Lower of actual or Gross station heat rate of _____ in kCal per kWh as specified in the Tariff Regulations as defined herein	The Tariff Regulation specifies only two boiler efficiency i.e (a) The Boiler efficiency of sub-bituminous Indian coal of 85% and (b) boiler efficiency of bituminous imported coal of 89%. <u>Request:</u> The boiler efficiency of 85% for sub-bituminous coal should be considered and thus the GHR should be 2372 Kcal/Kwh.	The boiler efficiency of 85% for sub-bituminous coal should be considered and thus the GHR should be 2372 Kcal/Kwh. <u>As per HPC Recommendation,</u> Based on the superior of actual parameters or normative parameters as per the regulation of appropriate commission <u>As per GR,</u> Based on the superior of actual parameters or normative

B.

				parameters as per the regulation of appropriate commission Rationale: (a) Majority of Indonesian coal contains high moisture and falls in the category of sub bituminous coal (b) High moisture coal always leads to boiler operation with lesser efficiency (c) Since the coal being imported from Indonesia falls in the category of sub-bituminous coal, boiler efficiency of 85% should be made applicable for calculating GHR as per regulation.
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(D) Amendment Effective Date:

S.N o	Clause No	Existing Provision	Modification Requested	Rational Behind the request
1	3.1 (ii) of Draft SPPA	"Amendment Effective Date" shall be October 15, 2018 i.e. the date with effect from which this Supplemental Agreement shall become effective and binding upon the parties.	Amendment Effective Date" shall be October 15, 2018 [30 days after all approvals for making PPA effective are in place including all relevant regulatory approvals] i.e. the date with effect from which this Supplemental Agreement shall become effective and binding upon the parties.	We request that the amendment effective date shall be 30 days from the approval by CERC/GERC As per HPC Recommendation Amendment Effective Date shall be 15th Oct 2018. As per GR, Amendment Effective Date shall be 15th Oct 2018. Rationale: (a) EPGL has not been able to operate its power plant for almost a period of 1 year and it needs approx. Rs 300 Crores to restart the plant, which would

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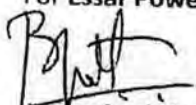


				be possible to fund only after the approval of Draft SPPA. (b) If Oct 15, 2018 is retained then EPGL will have to bear the additional penalty of 10% of the Capacity Charge from the Availability below 90%. (c) The GR is dated 1st Dec 2018 and hence EPGL could not become aware of applicability of this additional penalty prior to 1st Dec 2018. (d) Regulatory approval date would be a more relevant date and hence applicability of this additional penalty should become applicable only after its approval by Regulators.
--	--	--	--	--

EPGL is keen to restart the power plant and thus requests GUVNL to consider these genuine requests proposed by EPGL. In addition, EPGL has also requested GUVNL to defer the payment of Penalty amount for FY 18 and FY 19 via various letters and meeting, and recover the same in monthly installments over a period of 36 months, after the start of the power plant. Once the power plants start, EPGL shall submit the monthly plan to GUVNL for recovery of the penalty amount.

We shall be grateful to have your support in resolving the above issues and deferring the recovery of penalty amount thus enabling EPGL to supply continuous sustainable power to consumers of Gujarat.

Yours Sincerely,
For Essar Power Gujarat Limited,


Authorized Signatory

CC to -

- 1) Shri Saurabhbhai Patel,
Hon'ble Energy Minister, Govt of Gujarat,
New Sachivalay,
Gandhinagar,
Gujarat

619

o/c

ESSAR
POWER

Ref: EPGL/GUVNL/Ph-I/2019/01/02
Date: 25.01.2019

Essar Power Gujarat Limited
Essar House
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Mumbai - 400 034
India

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+91 22 2354 4787
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To,
Additional Chief Secretary,
Energy and Petrochemicals Department,
Government of Gujarat
Gandhinagar
Gujarat

Kind Attn: Shri. Raj Gopal, IAS

Sub: Request for reconsideration in few clauses of Draft Supplementary PPA

Reference: Our letter number EPGL/GUVNL/Ph-I/2019/01/01 dated 07.01.2019

Dear Sir,

EPGL entered in to a Power Purchase Agreement dated 26.02.2007 ("PPA") with Gujarat Urja Vikas Nigam Limited ("GUVNL") for supply of 1000 MW electricity from Unit-1 and Unit-2 of the 1200 (2 x 600) MW, Salaya Thermal Power Plant ("Power Project"). GUVNL, has shared a Draft Supplemental PPA ("Draft SPPA") with few changes made to the Govt of Gujarat resolution dated 01.12.2018 (GR) and High Power Committee (HPC) report.

This is with reference to our referred letter, we once again request you to look into our concerns on the Draft Supplemental PPA ("Draft SPPA") so that the SPPA can be executed. The concerns are detailed below:

1. Ocean Freight

The Draft SPPA has specified the Ocean freight as the lower of (a) actual, (b) CGPL ocean freight as per CERC escalation index and (c) quoted in PPA of Essar. We have concern only with limiting the cap to CGPL freight because of the following reasons:

- Ocean freight cannot be linked to CGPL tariff as CGPL can bring large vessels of 200,000 MT and so freight is lower. EPGL can bring relatively smaller vessel of 100,000 MT because of lesser natural draught and further limitation of carrying out dredging due rocky and eco-sensitive area.
- EPGL generally purchases coal on CIF basis i.e. landed cost at discharge port. However, in few instances in the past, have purchased coal FOB and ocean freight basis. It has been observed that the Ocean freight have varied between \$/Mt 6 to \$/Mt 19 and this variation is largely on account of demand of vessels of particular size, variation in fuel prices, congestion at loading port etc. Hence limiting ocean freight to CGPL tariff may not be prudent. The actual data of coal procured by EPGL, indicating such large variation is attached at Appendix A.

1 | 3

Essar Power Gujarat Limited

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- (c) Ocean freight has a large component of fuel price, which varies based on many factors and this variation has been captured in the CGPL tariff by splitting the tariff in the ratio of 70% (Fixed) and 30% (Escalable as per CERC Index). While, Adani had quoted a fixed tariff, their executed amendment captures escalation in ocean freight similar to that of CGPL, as the discharge port is common. Since EPGL discharge port is different, we also request you to split our quoted PPA tariff for ocean freight, in the ratio of 70%:30%, with escalation on 30% component as per CERC index similar to that of Adani for its own discharge port.

We would like to draw your attention to the fact that the ocean freight reimbursement shall be based on actual freight and this cap shall only act as limiting factor. As per point number (b), Ocean freight at times have also reached \$/Mt 19, thus aggressive limiting value by linking to CGPL tariff may not be prudent for long term PPA.

2. Port / Fuel Handling charges:

The Draft SPPA has specified the Port / Fuel Handling charges as the lower of (a) actual and (b) quoted in PPA of Essar. We have a concern that though the operating efficiency of Adani Port and EPGL Port is nearly same, the recovery of Port / Fuel Handling charges of EPGL as per PPA is much lower than that of Adani / CGPL, on account of following reasons:

- (a) Actual port charges of EPGL is higher than that quoted by EPGL in the PPA. This is due to the fact that EPGL had to quote port charges in Rs/Kwh (as there was no provision for quoting port charges in USD/Kwh) assuming the prevalent exchange rate of INR/USD 45 at the time of bid and INR depreciation rate as per tender document. However INR has depreciated much more and current exchange rate is INR/USD 70.
- (b) Due to this there is under-recovery in the port charges. As per Salaya PPA, the Port / Fuel Handling charges is Rs 270 per MT while actual cost is Rs 390 per MT (port charge is \$/Mt 4 and GMB charges of ~ Rs 50 per MT). Further the cost of port handling has also increased on account of inflation.

Unprecedented depreciation of Rupees against US dollar (a factor beyond the control of EPGL) would result in continuous under-recovery to EPGL while actual cost pass through is happening in case of Adani / CGPL. We therefore request you to approve the port/handling charges for EPGL to be same as that of Adani/CGPL.

3. Gross Station Heat Rate (GHR):

The Draft SPPA has specified that the GHR should be lower of (a) actual or (b) GHR as specified in the Tariff Regulations. The Tariff Regulation specifies boiler efficiency for (a) Sub-bituminous Indian coal as 86% and (b) Bituminous imported coal as 89%.

- (a) While, the coal being imported from Indonesia is sub-bituminous coal the efficiency being considered in the draft SPPA is of bituminous imported coal. This issue has been discussed at length with CERC, however, the fact remains that the current Tariff Regulation does not provide for sub-bituminous imported coal.
- (b) When this specific category of coal is not defined in the Tariff Regulation, in framing the draft PPA, GUVNL have two choices to consider boiler efficiency i.e. Sub-bituminous Indian considering



the type of coal or bituminous imported considering the source of coal. So, GUVNL have chosen to take boiler efficiency of 89% considering bituminous imported coal. This will have impact in terms of under recovery of Rs/Kwh 0.04 to Rs/Kwh 0.05, based on landed price of coal.

- (c) It is technically, prudent to consider boiler efficiency based on type of coal instead of origin of coal. Hence it our submission that, GUVNL may consider sub-bituminous Indian coal, in absence of this clarity in regulation, till the time matter is referred to GERC and get clarified.

Thus it our humble submission that GUVNL may consider boiler efficiency as 85% based on type of coal i.e. sub-bituminous coal.

4. Amendment Effective Date:

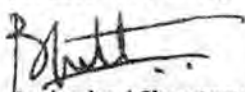
The Draft SPPA has specified the Amendment Effective Date as 15.10.2018. EPGL power plant has been under shut-down for almost a year due to under-recovery in Tariff. The amendment effective date should be of a date after the approval of the PPA by GERC, due to following reasons:

- EPGL has not been able to operate its power plant for almost a period of 1 year and it needs approx. Rs 300 Crores to restart the plant, which would be possible to fund only after the approval of Draft SPPA.
- The GR is dated 1st Dec 2018 and hence EPGL could not have become aware of applicability of this additional penalty prior to 1st Dec 2018.
- If Oct 15, 2018 is retained then EPGL will have to bear the additional penalty of 10% of the Capacity Charge from the Availability below 90%. This will further add to financial burden for the stressed plant.
- Regulatory approval date would be a more relevant date and hence applicability of this additional penalty should become applicable only after its approval by Regulators

In view of the above, we request you to consider making the Amendment Effective Date as 30 days from the date of approval by GERC.

EPGL is keen to restart the power plant and thus requests to consider these genuine requests proposed by EPGL. We shall be grateful to have your support in resolving the above issues thus enabling EPGL to supply continuous sustainable power to consumers of Gujarat.

Yours Sincerely,
For Essar Power Gujarat Limited,


Authorized Signatory

CC to -

- Shri Saurabhbhai Patel,
Hon'ble Energy Minister, Govt. of Gujarat,
New Sachivalay,
Gandhinagar,
Gujarat



APPENDIA - A

Sr No.	Company	Name of vessel	Type of vessel	Date of Sailing	Origin	Supplier	Contract Ref No.	BL Qty (MT)	Loading Rate/Day	Freight \$/Mt
1	EPGL	Abu Al Abyad	Gearless	25.05.2012	Indonesia	IMR Metallurgical Resources AG	EPGL/IMP-COAL/2012/01	55000	8000	19.00
2	EPGL	Centenario Blu	Gearless	03.06.2012	Indonesia	Deutsche Bank AG London Branch	NIL	54524	8000	18.35
3	EPGL	Heilan Aroma	Gearless	10.06.2012	Indonesia	PT Virema Impex	EPGL/IMR-COAL/2012/03	55450	8000	17.55
4	EPGL	Bulk Pegasus	Gearless	28.07.2012	Indonesia	Rudhra Minerals Pte Ltd	EPGL/IMR-COAL/2012/1107	54811	8000	15.25
5	EPGL	Blue Cat	Gearless	19.09.2012	Indonesia	TATA South East Asia Limited	EPGL/IMP-COAL/2012/1108	50356	8000	14.20
6	EPGL	Badri Prasad	Gearless	21.10.2012	Indonesia	PT Virema Impex	EPGL/VIREMA/IMP-COAL/2012/1009/1	136128	15000	7.00
7	EPGL	Eleni	Gearless	03.11.2012	Indonesia	PT Virema Impex	EPGL/VIREMA/IMP-COAL/2012/1009/1	83333	15000	8.75
8	EPGL	Double Progress	Gearless	10.11.2012	Indonesia	PT Virema Impex	EPGL/VIREMA/IMP-COAL/2012/1009/1	83646	15000	8.85
9	EPGL	Keros Warrior	Gearless	27.11.2012	Indonesia	PT Virema Impex	EPGL/VIREMA/IMP-COAL/2012/1009/1	138469	15000	8.40
10	EPGL	Great Wealth	Gearless	17.12.2012	Indonesia	PT Virema Impex	EPGL/VIREMA/IMP-COAL/2012/1009/1	73850	15000	10.65
11	EPGL	Mykonos Wave	Gearless	21.12.2012	Indonesia	Atang Gunung Meratus	EPGL/ANTANG/IMP-COAL/2012/1211	83184	10000	10.85
12	EPGL	Theoskepasti	Gearless	31.12.2012	Indonesia	PT Virema Impex	EPGL/ANTANG/IMP-COAL/2012/1211	50700	8000	14.70
13	EPGL	Double Pride	Gearless	19.01.2013	Indonesia	Atang Gunung Meratus	EPGL/VIREMA/IMP-COAL/2012/02	88014	10000	9.95
14	EPGL	Vishva Diksha	Gearless	06.01.2012	Indonesia	PT Virema Impex	EPGL/VIREMA/IMP-COAL/2012/02	55000	8000	13.45
15	EPGL	Welthero	Gearless	03.02.2013	Indonesia	Atang Gunung Meratus	EPGL/ANTANG/IMP-COAL/2012/1211	91620	15000	8.25
16	EPGL	MBA Giuseppe	Gearless	26.02.2013	Indonesia	PT Virema Impex	EPGL/VIREMA/IMP-COAL/2012/02	80900	10000	7.61
17	EPGL	TW Jiangsu	Gearless	20.03.2013	Indonesia	Adityaa Energy	EPGL/ADITYAA/IMP-COAL/2013/0502	90200	15000	7.67
18	EPGL	MV Coppersmith	Gearless	18.03.2013	Indonesia	PT Virema Impex	EPGL/VIREMA/IMP-COAL/2012/02	137423	20000	6.15
19	EPGL	Diamond Power	Gearless	23.03.2013	Indonesia	Adityaa Energy	EPGL/ADITYAA/IMP-COAL/2013/0103	103725	15000	7.00
20	EPGL	RZS Harmony	Gearless		Indonesia	IMR Metallurgical Resources AG	EPGL/IMP-COAL/2013/01	154000	25000	7.00
21	EPGL	Saiko Majesty	Gearless	23.03.2013	Indonesia	PT Virema Impex	EPGL/VIREMA/IMP-COAL/2012/02	48484	8000	12.50
22	EPGL	Aruna Ece	Gearless		Indonesia	Wilson International Trading	EPGL/WILSON/IMP-COAL/2013/01	55221	8000	13.80
23	EPGL	Wingsail	Gearless	29.04.2013	Indonesia	PT Virema Impex	EPGL/VIREMA/IMP-COAL/2013/01	47147	8000	14.00
24	EPGL	TW Manila	Gearless	Apr-13	Indonesia	Adityaa Energy	EPGL/ADITYAA/IMP-COAL/2013/2103	88009	15000	9.70
25	EPGL	Power China	Gearless		Indonesia	Adityaa Energy	EPGL/ADITYAA/IMP-COAL/2013/2103	163300	25000	5.60
26	EPGL	Magsenger 12	Gearless		Indonesia	Adityaa Energy	EPGL/ADITYAA/IMP-COAL/2013/2103	110000	25000	7.70
27	EPGL	China Pride	Gearless		Indonesia	Adityaa Energy	EPGL/ADITYAA/IMP-COAL/2013/2103	157643	25000	6.25
28	EPGL	Maha Anosha	Gearless	23.07.2013	Indonesia	Adityaa Energy	EPGL/ADITYAA/IMP-COAL/2013/0606	162927	25000	6.70
29	EPGL	Silver Express	Gearless	11.12.2013	Indonesia	Adityaa Energy	EPGL/ADITYAA/IMP-COAL/2013/2006	147025	25000	7.55
30	EPGL	Orient Centaur	Gearless		Indonesia	Goodlink International Limited	EPGL/GL/IMP-COAL/2013/2111	107280	15000	12.25

Sr No.	Company	Name of vessel	Type of vessel	Date of Sailing	Origin	Supplier	Contract Ref No.	BL Qty (MT)	Loading Rate/Day	Freight \$/Mt
31	EPGL	Badri Prasad	Gearless		Indonesia	Goodlink International Limited	EPGL/GLI/IMP-COAL/2013/2111	138882	15000	9.80
32	EPGL	Marine Stars	Gearred		Indonesia	Goodlink International Limited	EPGL/GLI/IMP-COAL/2014/1701	53000	8000	10.65
33	EPGL	MV Wise I	Gearless		Indonesia	Goodlink International Limited	EPGL/GLI/IMP-COAL/2014/1601	139414	15000	7.00

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Annexure II (Colly)

GUJARAT URJA VIKAS NIGAM LIMITED

Sardar Patel Vidyut Bhavan, Race Course, Vadodara 390007

CIN U40109GJ2004SGC045195

Tele. No. : 0265-2310582 to 86 (PBX)	Ref. No. : GUVNL: GM (Comm.): 240
Fax : 0265-2344543, 2337918	Date : 21/03/2019

To
✓ Managing Director
Essar Power Gujarat Ltd.
Post Box No. 7945
Mahalaxmi
Mumbai - 400 034

022 - 2495 4787

Sub.: Supplemental Agreement dated 1.03.2019 between EPGL and GUVNL to amend PPA dated 26.02.2007.

Sir,

This has reference to your letter dated 1.03.2019 referring to the Supplemental PPA dated 1.03.2019 signed with GUVNL and seeking certain modifications related to tariff for ocean freight, port / handling charges, determination of boiler efficiency as 85% with GERC approval and effective date of PPA implementation.

In this regard it is to state that GUVNL has signed the Supplemental PPA dated 1.03.2019 for making certain amendments in the PPA dated 26.02.2007 with EPGL as per the Policy directives by Government of Gujarat G.R. dated 1.12.2018 for implementation of High Power Committee Report as accepted by the State Government for revival and rehabilitation of imported coal based power plants.

Therefore, in case EPGL has any issue, the same may be taken up with EPD, GoG. This is without prejudice to GUVNL's rights under PPAs dated 26.02.2007 and Supplemental PPA dated 1.03.2019

Thanking you,

Yours faithfully,


(K. P. Jangid)
General Manager (Comm.)

625

dc

ESSAR
POWER

Essar Power Gujarat Limited
Essar House
11 K. K. Marg
Mahatma
Mumbai - 400 034
India

Date: 01.03.2019

To,
Gujarat Urja Vikas Nigam Limited,
Sardar Patel Vidyut Bhawan,
Race Course,
Baroda - 390 007
Gujarat

Corporate Identity Number
U74900GJ2007PLC066273

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Kind Attn: Sh. S. B. Khyalla, Director Finance

Subject: Supplemental Agreement dated 01.03.2019 entered into between Essar Power Gujarat Limited and Gujarat Urja Vikas Nigam Limited to amend the Power Purchase Agreement dated 26.02.2017 (as amended) made between the parties

Dear Sir,

1. We refer to the Supplemental Agreement dated 01.03.2019 entered into between Essar Power Gujarat Limited ("EPGL") and Gujarat Urja Vikas Nigam Limited ("GUVNL") for amending some of the provisions of the Power Purchase Agreement ("PPA") dated 26.02.2017 made between the parties to implement the recommendations of the High Power Committee ("HPC") as accepted by the Government of Gujarat for revival and rehabilitation of stressed imported coal based power plants in consumers' interest.

2. In the above connection, we, namely, EPGL wish to place on record that EPGL has entered into the said Supplemental Agreement dated 01.03.2019 with GUVNL on the faith and belief and subject to a condition that upon the Government of Gujarat accepting our requests for:

- (a) splitting the quoted PPA tariff for Ocean Freight in the ratio of 70:30 with escalation on 30 percent component as per the CERC Index, and further removing the cap based on the Coastal Gujarat Power Limited ("CGPL") bid,
- (b) approving the port/ handling charges as applicable to Adani Power Mundra Limited and CGPL,
- (c) determination of boiler efficiency as 85 percent based on the type of coal with the approval of the Gujarat Electricity Regulatory Commission, Ahmedabad, and
- (d) making the Supplemental Agreement dated 01.03.2019 effective from forty five (45) days from the date of signing thereof

the parties, namely, EPGL and GUVNL shall enter into a further Supplemental Agreement to amend the provisions of the PPA as amended by the Supplemental Agreement dated 01.03.2019 for giving effect to our said request(s) as accepted by the Government of Gujarat.

3. Please acknowledge receipt.

Yours Sincerely,
For Essar Power Gujarat Limited,


Authorized Signatory

CC to -

- 1) Shri Saurabhbhai Patel, Hon'ble Energy Minister, Govt. of Gujarat.
- 2) Shri Pankaj Joshi, IAS, Managing Director (GUVNL)



Essar Power Gujarat Limited
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626

o/c



03.05.2019

To,
The Principal Secretary,
 Energy and Petrochemicals Department,
 Government of Gujarat
 Gandhinagar
 Gujarat

Essar Power Gujarat Limited
 Essar House,
 Opp. Gujarat College,
 Ellisbridge,
 Ahmedabad - 380 006
 India

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 F +91 79 6608 6608
 www.essar.com

Kind Attn: Shri. Pankaj Joshi, IAS

Sub: Request for reconsideration in few clauses of Draft Supplementary PPA

Reference:

- (1) Our letter number EPGL/GUVNL/Ph-I/2019/01/01 dated 07.01.2019
- (2) Our letter number EPGL/GUVNL/Ph-I/2019/01/02 dated 25.01.2019

Dear Sir,

EPGL entered in to a Power Purchase Agreement dated 26.02.2007 ("PPA") with Gujarat Urja Vikas Nigam Limited ("GUVNL") for supply of 1000 MW electricity from Unit-1 and Unit-2 of the 1200 (2 x 600) MW, Salaya Thermal Power Plant ("Power Project"). Subsequently, EPGL also entered into a Supplementary PPA ("SPPA") on 01.03.2019. GUVNL has approached GERC for the approval of Supplementary PPA.

We would like to further state that we have started operating one of the unit on 21.04.2019, after a long stoppage of almost a year and a half and we are further arranging coal to ramp up the plant to full load. We, through various representations have requested you to look into our concerns on the Supplementary PPA executed on 01.03.2019. We would like to once again request you to look into our concerns on the Supplementary PPA listed below and resolve them:

1. Port / Fuel Handling charges:

The SPPA has specified the Port / Fuel Handling charges as the lower of (a) actual and (b) quoted in PPA of Essar. We have a concern that though the operating efficiency of Adani Port and EPGL Port is nearly same, the recovery of Port / Fuel Handling charges of EPGL as per PPA is much lower than that of Adani / CGPL, on account of following reasons:

- (a) Actual port charges of EPGL is higher than that quoted by EPGL in the PPA. This is due to the fact that EPGL had to quote port charges in Rs/Kwh (as there was no provision for quoting port charges in USD/Kwh) assuming the prevalent exchange rate of INR/USD 46 at the time of bid and INR depreciation rate as per tender document. However INR has depreciated much more and current exchange rate is INR/USD 70.

Corporate Identification Number - U74900GJ2007PLC056273
 Regd. Office : Essar Oil Limited, Khambhatia Post, P.O. Box No. 24, Dist. Jamnagar - 361 305, Gujarat.

Page 1 | 4

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 145149



- (b) Due to this there is under-recovery in the port charges. As per Salaya PPA, the Port / Fuel Handling charges is Rs 274 per MT while actual cost is Rs 370 per MT (port charge is \$/Mt 4, GMB charges of ~ Rs 37 per MT **plus** applicable GST). Further the cost of port handling has also increased on account of inflation.
- (c) The port charges as per notification of GMB dated 08.03.2019, shall escalate by WPI every year.
- (d) GMB charges some components of port charges in USD.
- (e) EPGL and Adani have similar port efficiencies and the port charges for both should be on par.

Unprecedented depreciation of Rupees against US dollar (a factor beyond the control of EPGL) would result in continuous under-recovery to EPGL while actual cost pass through is happening in case of Adani / CGPL.

Our Request: To resolve the anomaly in the port charges of EPGL. Port charges to be fixed at rate of Rs 359/ Ton **plus** escalation as provided in the case of Adani, which is in line with the expenses of EPGL.

2. Ocean Freight

The SPPA has specified the Ocean freight as the lower of (a) actual, (b) CGPL ocean freight as per CERC escalation index and (c) quoted in PPA of Essar. We have concern only with limiting the cap to CGPL freight because of the following reasons:

- (a) Ocean freight cannot be linked to CGPL tariff as CGPL can bring large vessels of 200,000 MT and so freight is lower. EPGL can bring relatively smaller vessel of 100,000 MT because of lesser natural draught and further limitation of carrying out dredging due rocky and eco-sensitive area.
- (b) EPGL generally purchases coal on CIF basis i.e. landed cost at discharge port. However, in few instances in the past, have purchased coal FOB and ocean freight basis. It has been observed that the Ocean freight have varied between \$/Mt 6 to \$/Mt 19 and this variation is largely on account of demand of vessels of particular size, variation in fuel prices, congestion at loading port etc. Hence limiting ocean freight to CGPL tariff may not be prudent.
- (c) Ocean freight has a large component of fuel price, which varies based on many factors and this variation has been captured in the CGPL tariff by splitting the tariff in the ratio of 70% (Fixed) and 30% (Escalable as per CERC Index). While, Adani had quoted a fixed tariff, their executed amendment captures escalation in ocean freight similar to that of CGPL, as the discharge port is common.

Our Request: Ocean freight ceiling should be as per HPC and GR i.e as per original EPGL PPA and CERC escalation to be applied on 30% of PPA tariff, as per the recommendation of GR i.e. split the Ocean Freight of \$/MT 16.5 (quoted in PPA) as 70(fixed):30 (escalable) as per CERC and as implemented for Adani should be implemented for EPGL to bring parity.

We would like to draw your attention to the fact that the ocean freight reimbursement shall be based on actual freight and this cap shall only act as limiting factor. As per point number (b),

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Ocean freight at times have also reached \$/Mt 19, thus aggressive limiting value by linking to CGPL tariff may not be prudent for long term PPA.

3. Amendment Effective Date:

The SPPA has specified the Amendment Effective Date as 15.10.2018. EPGL power plant has been under shut-down for almost a year due to under-recovery in Tariff. The amendment effective date should be of a date after the approval of the PPA by GERC, due to following reasons:

- (a) EPGL has not been able to operate its power plant for almost a period of 1 year and it needs approx. Rs 300 Crores to restart the plant, which would be possible to fund only after the approval of Draft SPPA.
- (b) The GR is dated 1st Dec 2018 and hence EPGL could not have become aware of applicability of this additional penalty prior to 1st Dec 2018.
- (c) If Oct 15, 2018 is retained then EPGL will have to bear the additional penalty of 10% of the Capacity Charge from the Availability below 90%. This will further add to financial burden for the stressed plant.
- (d) Regulatory approval date would be a more relevant date and hence applicability of this additional penalty should become applicable only after its approval by Regulators

Our Request: To consider making the Amendment Effective Date as the date of approval of Supplementary PPA by GERC.

4. Gross Station Heat Rate (GHR):

The SPPA has specified that the GHR should be lower of (a) actual or (b) GHR as specified in the Tariff Regulations. The Tariff Regulation specifies boiler efficiency for (a) Sub-bituminous Indian coal as 86% and (b) Bituminous imported coal as 89%.

- (a) While, the coal being imported from Indonesia is sub-bituminous coal the efficiency being considered in the draft SPPA is of bituminous imported coal. This issue has been discussed at length with CERC, however, the fact remains that the current Tariff Regulation does not provide for sub-bituminous imported coal.
- (b) When this specific category of coal is not defined in the Tariff Regulation, in framing the draft PPA, GUVNL have two choices to consider boiler efficiency i.e. Sub-bituminous Indian considering the type of coal or bituminous imported considering the source of coal. So, GUVNL have chosen to take boiler efficiency of 89% considering bituminous imported coal. This will have impact in terms of under recovery of Rs/Kwh 0.04 to Rs/Kwh 0.05, based on landed price of coal.
- (c) It is technically, prudent to consider boiler efficiency based on type of coal instead of origin of coal. Hence it our submission that, GUVNL may consider sub-bituminous Indian coal, in absence of this clarity in regulation, till the time matter is referred to GERC and get clarified.

Our Request: GUVNL to consider boiler efficiency pertaining to type of coal (bituminous or sub bituminous) and not source of coal (imported or domestic). However, if any further clarity is required, GUVNL and EPGL to approach GERC/ CEA for clarification in the matter.

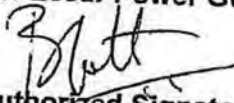
In order to further implement the recommendations in HPC and GR in true spirit, we requests you to consider these genuine requests proposed by EPGL. We shall be grateful to have your support in

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resolving the above issues thus enabling EPGL to supply continuous sustainable power to consumers of Gujarat.

Yours Sincerely,
For **Essar Power Gujarat Limited**,


Authorized Signatory

CC to -

- 1) **Shri Saurabhbhai Patel**,
Hon'ble Energy Minister, Govt. of Gujarat,
New Sachivalay,
Gandhinagar,
Gujarat

K . K . Bajaj
Energy & Regulatory Expert
Contact No : 9374103578 / 9099926592
Email : kabajaj2003@yahoo.com
Email : kkbajaj37@gmail.com

B-62, Goyal Complex
Nr. Sandesh Press
Vastrapur
Ahmedabad – 380 054
Tel : 079 - 26745268

Shri. Vijaybhai Rupanijee
 Hon'ble Chief Minister
 Government of Gujarat
 Block No. 1, 5th Floor
 New Sachivalay
 GANDHINAGAR – 382 010

10th July, 2019

*Execute legal suit with value
 keep in relevant bill and process*

PA to Hon'ble CM

C.F.R.C.

Inward No - 3084

Date : 15 JUL 2019

Shri. K. K. Bajaj

Legal

Seen

17/7

Sub : Constitution of High Power Committee to renegotiate Solar PPAs
Ref : My letter dated 16-4-2019 on same subject

Respected Sir

Government of Gujarat Constituted High Power Committee in July, 2018 to study and recommend increase in tariff for Adani Power Ltd. HPC recommended increase in tariff by 94 paise/unit to compensate losses incurred by APL. Later State Government directed GUVNL to sign supplementary PPA with APL and get it approved by central Electricity regulatory Commission as per directives of Hon'ble Supreme Court. CREC vide its order dated 12-4-2019 approved supplementary PPA signed between GUVNL and ADANI. The increase in tariff will be applicable from 1-4-2019 and shall be recovered from consumers of Gujarat through their electricity bill of July, August and September, 2019. This will increase FPPPA Charges substantially putting heavy burden on 1.40 crore consumers of GUVNL.

There is similar situation in Gujarat where Solar tariff has dropped from Rs.14.50 to Rs. 2.50 per unit due to steep competition and drop in capitol cost from Rs. 16 crores to Rs. 5 Crores per MW . As per natural justice when PPAs can be reopened for increase in tariff , similarly it should be reopened for decrease in tariff for Solar PPA



GUVNL had signed Power Purchase Agreements with Solar Power Generators six years ago with Solar tariff as high as Rs. 14.50 per unit. Later with increase in competition and drop in capitol cost, the solar tariff has dropped to rs.2.50 per unit and recently GUVNL has signed PPAs worth 1000 MWs to procure Solar power at Rs. 2.44 per unit. Under such circumstances there is no justifications that why consumer should pay Solar tariff of Rs. 10.26 per unit for power purchased by GUVNL during first quarter of 2019-20.

We do not have any objections if State Government is protecting interest of Adani, Tata and Essar but similarly it should protect interest of consumers as well. With increase in quantum of Solar Power purchase to meet Renewable Purchase Obligation RPO as notified by GERC, the consumers of Gujarat will be burdened heavily due to increase in Tariff for Adani/ Tata/Essar and high cost of purchase for Solar purchase obligation.

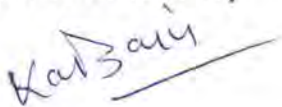
Recently Government of Andhra Pradesh has constituted a High Power Committee to study details of Solar and Wind tariffs in line with action taken by Government of Gujarat last year for Adani Power Ltd.

I, on behalf of consumers of Gujarat request your honour to constitute a High Power Committee to study and submit report on reduction in tariff for Solar power purchase.

A line in reply shall be highly appreciated.

Thanking you

Yours sincerely



K.K.Bajaj

C.C. ✓ Hon'ble Chairman
GERC – Gandhinagar

632

OK
Varun
07/08/19
07/08/19

**BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION AT
GANDHINAGAR**

PETITION NO. 1807 OF 2019

IN THE MATTER OF:

Gujarat Urja Vikas Nigam Limited

...

Petitioner

Versus

Essar Power Gujarat Limited & Ors.

...

Respondents

ADDITIONAL AFFIDAVIT ON BEHALF OF THE RESPONDENT NO.1

MOST RESPECTFULLY SHOWETH:

1. The Respondent No.1 states and submits that it has filed an Additional Affidavit on 16.07.2019 before this Hon'ble Commission in the captioned Petition in which, it has placed on record certain modifications in some of the provisions of the Supplemental PPA, and that it has sought appropriate redressal thereof from the Government of Gujarat.
2. The Respondent No.1 hereby submits that it is unconditionally withdrawing the aforesaid Affidavit filed on 16.07.2019 in Petition No.1807 of 2019 for all intent and purposes.
3. In view of the above, the Respondent No.1 submits that the Hon'ble Commission may be pleased to approve Supplemental PPA at the earliest.

*Execute legal Shri Varun and
A.10C (Varun) Keep in*



C.E.R.C.
Lower No - 3429
Date: - 6 AUG 2019

*Reluct file
and provide
Copy to the
Commission*

DEPONENT

7/8/2019

Filed by:

**Essar Power Gujarat Limited
(Respondent No.1)**

Date: 6th August, 2019

Place: Ahmedabad

**BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION AT
GANDHINAGAR**

PETITION NO. 1807 OF 2019

IN THE MATTER OF:

Gujarat Urja Vikas Nigam Limited

Versus

Essar Power Gujarat Limited & Ors.



Petitioner

Respondents

AFFIDAVIT

I, Sandeep Sahay, S/o Shri Santosh B. Sahay, aged about 46 years residing at Mumbai, do solemnly affirm and say as follows:

That I am Vice President (Commercial) of Respondent No.1 Essar Power Gujarat Limited and authorized signatory of the Respondent No.1 herein and I have read the present Affidavit and I am competent and duly authorized by the Petitioner Company to file this Affidavit.

Solemnly affirmed at Ahmedabad on this 6th day of August, 2019 that the contents of the above affidavit are true to my knowledge and belief (as derived from the records), based on information believed to be true and no part of it is false and nothing material has been concealed therefrom.

IDENTIFIED BY ME

Nisarg Desai
ADVOCATE

Sandeep Sahay
DEPONENT



Sr. No. 5422/2019
SOLEMNLY AFFIRMED
BEFORE ME
Jyotsna K. Patel
JYOTSNA K. PATEL
NOTARY
GOVT. OF GUJARAT
dt: 06/08/19

630
634

BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION AT
GANDHINAGAR

PETITION NO 1807 of 2019

O/c
Vaam
31/08/19

IN THE MATTER OF:

Petition under Sections 86 (1)(b) and 86(1)(f) of the Electricity Act, 2003 read with Article 18.1 of the Power Purchase Agreement (PPA) dated 26.02.2007 under 1000 MW (Bid-03), executed between Gujarat Urja Vikas Nigam Ltd. and Essar Power Gujarat Ltd. for approval of amendments to the PPAs by way of Supplemental PPA dated 01.03.2019.

AND

IN THE MATTER OF:

Gujarat Urja Vikas Nigam Limited
Sardar Patel Vidyut Bhawan,
Race Course, Vadodara 390007
Gujarat

Versus

M/s Essar Power Gujarat Ltd.

Respondent

THE PETITIONER RESPECTFULLY SHOWETH AS UNDER :

1. The Petitioner, above named has filed the present petition No. 1807 of 2019 before Hon'ble Commission requesting to approve the Supplemental PPA dated 1.03.2019 entered into with M/s Essar Power Gujarat Ltd. for amendment in PPA dated 26.02.2007
2. It is submitted that Hon'ble Commission through Daily Order dated 20.08.2019 has directed the Petitioner to issue public notice in two daily Gujarati Newspapers and one English Newspaper having wide circulation in the State and invite suggestions/objections from the stakeholders on affidavit within 30 days from the date of issuance of public notice and to upload the present petition along with all the relevant documents on its website.





3. This affidavit is filed in compliance to the above directives issued by Hon'ble Commission vide Daily Order dated 20.08.2019.
4. It is humbly submitted that the Petitioner has issued public notice on 28.08.2019 in two daily Gujarati Newspapers viz. Sandesh & Divya Bhaskar. Further, the Petitioner has also issued Public notice on 28.08.2019 in Indian Express, English Daily. The copies of the Public Notices dated 28.08.2019 are enclosed herewith and marked as Annexure-A (Colly).
5. The Petitioner has also uploaded on its website (www.guvnl.com) the copy of Petition No. 1807 of 2019 along with all relevant documents.

PRAYER

- A. Hon'ble Commission is requested to take on record the above submission of the petitioner and allow the prayer made in the Petition.


X PETITIONER

Place: Vadodara

Dated: 29.08.2019





Regd. No.: 803
Date: 29/08/2019

BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION AT
GANDHINAGAR

PETITION NO 1807 of 2019

IN THE MATTER OF:

Petition under Sections 86 (1)(b) and 86(1)(f) of the Electricity Act, 2003 read with Article 18.1 of the Power Purchase Agreement (PPA) dated 26.02.2007 under 1000 MW (Bid-03), executed between Gujarat Urja Vikas Nigam Ltd. and Essar Power Gujarat Ltd. for approval of amendments to the PPAs by way of Supplemental PPA dated 01.03.2019.

AND

IN THE MATTER OF:

Gujarat Urja Vikas Nigam Limited

- Petitioner

Versus

M/s Essar Power Gujarat Ltd.

- Respondent

AFFIDAVIT

I, Vipul L Lathiya son of Sh. Lallubhai G Lathiya aged about 32 years resident of Vadodara hereby solemnly affirm and state as under:

1. I am the Deputy Engineer of the Petitioner and I am fully conversant with the facts of the case and able to depose to the present affidavit.
2. I have gone through the contents of the accompanying petition and I say that the facts stated therein are based on the records of the Petitioner and believed by the deponent to be true.
3. The Annexure to the petition are true copies of their originals.

DEPONENT

VERIFICATION:

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

Verified at Vadodara on this 29th day of August 2019.

Solemnly Affirmed / Declared
Sworn Before me by.....

BHAVESH C. VYAS
NOTARY (Govt. of Gujarat)



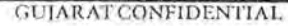
DEPONENT



540
1000

1000

Seven children were rescued on Tuesday after a fire broke out in a ward at Kapiamba hospital in Namwala district, an official said. The fire started in the hospital's hospital laundry but spread to the ward where the children were sleeping.



908 THE first issue in the history of the election of the Suraj Bahadur Indian Medical Association, brewers were brought in at a security measure, much to the surprise of the doctors who gathered up at the Rotary hall of Jeevan Bharti School at Annapurna in the town. They were seen talking about the Indians dressed in black deployed at the venue. The election was because a president for the MBA branch was a tough fight between Dr Parul Vaidya and Dr Yogesh Datta. Out of 3,500 voters, 1,451 doctors exercised their voting rights. After a split of 40 years, a woman, Dr Parul Vaidya, emerged the winner, with 765 votes and winning with a margin of 220 votes. As many as 30 votes were disqualified. So-called cast doctors were brought in to prevent any untoward incident.

THE ANNUAL Heads of Mission conference of the Ministry of External Affairs (MEA), scheduled to be held at the Statute of Unity Hall (from September 10 to 15), has been put off. A communication from the MEA, "pressing and important" administrative matters, said, "In view of the fact that the Mission, Aizawl, Shillong and Kohima are still in the process of reorganisation, the conference is likely to be held later." As many as 107 ambassadors and Consul Generals were to arrive for the conference that was to be inaugurated by Minister of External Affairs, S. Jaishankar, Prime Minister Narendra Modi was to address the annual Heads of Missions meeting last year. In view of Kashmiri decision, the Ministry may have felt it was necessary for the Heads to stay put at their designated locations to carry out any diplomatic duties, to garner support and cooperation for India, an official said.

EXPRESS NEWS SERVICE
 (800) 446-4633, ext. 6177

STATING THAT United Kingdom's stand on Jammu and Kashmir (J&K) has remained unchanged over the years, Sir Nicholas Assquith, British High Commissioner to India, while visiting Ahmedabad on Tuesday said that India's perception of the United Kingdom is real "bureaucrational".

"Our position has not changed one degree. The question of Kashmir has to be sorted out bilaterally between the Indian government and the Pakistani government, taking into account the wishes of the

Kashmiri people," said the diplomat, who on Monday met Gujarat Chief Minister Vijay Ruparekha at Gandhinagar.

When asked if the recent protests outside the Indian High Commission in London have changed the perception of India in UK, Asguthar said, "The Indian government has made it clear what its objective is and included in that is the economic and human development of Kashmir. We welcome and look forward to it being developed and delivered. The perception of India in the UK is not one dimension. It is not about Kashmir." He said that the "texture of relationship" between UK and India "runs upon three" and has

"under spectrum)", despite India having deeper relations with US, Israel, France or Germany, "on specific issues".

Talking to mediapersons about the impending visit of British Prime minister Boris Johnson, which is expected to happen after the Brexit deadline of October 31, the British High Commissioner said: "In the last four years, the number of Indian companies which have set up businesses in UK have quadrupled – there are now 850 Indian firms in the UK. A third of these investments have happened in the Information and Communication Technology sector. The Indian companies have also invested in multiple areas such as

Speaking about his meeting with the Gujarat CM a day ago,

Ashtuji said that topics surrounding GIFT City, health care and education were discussed. When asked if the issue of U.S. stepping up as a partner came from the Vibrant Gujarat summit, he came up for discussion, he said. "My answer to the government is: Do not get looked after. Get to be a country partner, get engaged on the amount of effort being put into Gujarat."

He added that UK has been continuously engaging with the Gujarat government all year. "We are always open to building our presence here, and the opportunity

SEPT
SEPTEMBER 2019

Computer Based Test (CBT)

Online Registration ends - 08 Sept '19

Test Date - 14 Sept '19

*** CBT postponed from 1st**
Candidate may apply.

 **INDIAN AGENCY**
Khandwa Road 9
Phone : +91 731

NET PII - RTU BINA TEL (PRA) 7-1A PG
E-TEST
Home & Service is provided by IT based
Accredited Indian Agency, State Training
Lithography with IITB, IITM, Laser World
Independent Students Call our Helpline for
more information.

For registration log on to
<https://mat.aima.in>

Paper Based Test (PBT)
 Online Registration ends: 16 Sept '11
 Test Date (Revised): 21 Sept '11
 Sept 10 to 21 Sept 2010
 for both PBT and CBT

OF TECHNOLOGY INDOR
 Mr. J. Indora 453552 India
 7438 700 Ext 203 958 949
 1/19/20 August 26, 2010

R NOTICE
 Dear Sir,
 We are pleased to inform you that your application for the position of Assistant Engineer (Civil) has been received and is under consideration. We are sorry that we cannot inform you of the result of your application at this time. We will contact you again when the result of your application is known.

Paryashan Shivan
Tel: 875-7377/152 Fax:
PUBLIC

It is hereby informed that Becharaji Special Investment Development of proposed Mar Region at near Villages of Ahmedabad and Mehsana (F. Mehsana) (Ta: Becharaji, VM: C. "A" is scheduled to be held on 23/07/2019 at Chowk of Chandanki Village Chandanki, Ta. Becharaji, Dist. time being Postponed due to rain. Public hearing is scheduled to be held on 24/07/2019 at Venue: Main Chowk of Chandanki Village, Chandanki, Ta. Becharaji, Dist. Please Condemning Date: 27/06/2019

NOTICE

His Public Hearing at Mrs. Manohar
Kadion Development Authority for
land Becharaji Special Investment
and Becharaji District
Cluster-A (For a part of District
and Becharaji District)
07/2011 at 12.00 hrs. Venue: Main
Road, Near Mahakali Temple, Vill.
Mehsana-384210. Public Hearing at
inconvenient circumstances and
read on 01/16/2019 at 11.00 hrs.
Village, Near Mahakali Temple
at Mehnsana-384210

H. M. Tachani
Member Secretary

EXPRESS NEWS SERVICE
 800-446-4647, All Day & 24/7

UNION HOME Minister Atal Bihari Vajpayee will be arriving in his home state Capital on Wednesday, for the first time after the union government stripped off the special status of Jammu and Kashmir, and made the state a union territory.

Biharati Jammu & Kashmir state leaders and supporters are expected to go on a ghaz and welcome him. He is expected to arrive at the Alimnabad airport after 10 pm on Wednesday.

While Shah will be attending Alimnabad on Thursday for other programs, his visit will

Shah will also have an opportunity to meet the BJP to gather support in the state, in favour of the abrogation of Article 370. Indraganathan, a political pundit, credit Prime Minister Narendra Modi and Shah for policy-making regarding Kashmir. The top brass of BJP will be laying the pitch down on the duo's home turf, in order to garner maximum support.

Setting the agenda ahead of Shah's arrival, BJP spokesperson Bharat Pandey said, "Anushah Shah will be arriving late tonight on Wednesday and all the top leaders of the party will be present to welcome him. He will convene in the early to be present in various programs."

On Thursday, Shah will be

He will also preside over policy meeting under the 'Drish' program of the union government.

Kumbh Mela Aravindha Vidyapeeth
(Sunday) at New Delhi, P.
Kumbh Mela Aravindha Vidyapeeth
(Aravindha Vidyapeeth) (M) (Ar
1979 International Ambassadors
Highly Ambassadors
Be sent their duty India
15th September, 2019
dayp 17212/11/0004/11

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En Test on 22nd September, 2011
 of this year. Initially, course of
 studies, having qualified RAS
 after reorganisation under IIM. For
www.rasdelhi.in for details in
 for other matters etc. and they must
 on above mail on or before
 Roshniya & Arvinda Vidya

K. Industries

General Manager (Commercial)

IN THE OFFICE OF THE CHARITY COMMISSIONER
GUJARATI STATE, BHARUMALI BHAVAN, THIRD FLOOR,
NEAR GUJARATI, DRIVE IN ROAD, AHMEDABAD
Scheme of Amalgamation Application No. 17/2019
Serial Number: 504/27 of the Gujarat Public Trust Act 1956

(1) Ahmednagar Charitable Trust
Registration No. 12/115/Ahmednagar
(2) Munshi and Foundation
Registration No. 12/116/Ahmednagar

Applicants: 133 Old, Kanchan Kanyashala Patel
272 Mrs. Mukunda Kanyashala Patel
9/15

Charity No.: None

The above named applicants have applied to the Charity Commissioner, Gujarat State, Ahmedabad under Section 50(1)(2) of the Bombay Public Trust Act, 1956, and have prayed that it is requested and recommended by amalgamate the applicant trusts (public trusts) by forming a common scheme.

Notice is hereby given that any person interested in the matter may file his written statement on or before date, 26/06/2019 at 12.30 pm, which the date fixed for hearing before the Charity Commissioner. The Charity Commissioner, Gujarat State, Ahmedabad at the above mentioned address either in person or by counsel and during which the matter shall be heard and determined as equity and the Charity Commissioner will pass orders if he deems proper on that day.

Witness under the official seal of this office on 23/06/2019

Prepared by
Parul C. Jari
Beech Chari
(Y. M. Shukla)
Charity Commissioner
Gujarat State, Ahmedabad

CABINET SECRETARIAT
NATIONAL AUTHORITY CHEMICAL WSA
(NACWC)
(1st Floor, Chanakya Bhawan, Chanakypuri)

PUBLIC NOTICE

The requirements to submit Declarations to the Public Convention (NACWC) are mandated under section 12 of the (CWC) Act 2000.

In pursuance of various provisions of 'CWC Act 2000', all facilities dealing with the chemicals belonging to Schedule categories, including those entities who have filed Annual Declaration for the calendar year 2018 and Annual Declaration of final calendar year 2018, are hereby publically notified to file its Activities (AJIAA) for the calendar year 2020 on or before **30th September, 2019**.

3. The AJIAA of 2020 can be filed online using authorities (DSC) through the URL: <http://www.nacwc.gov.in> from 1st September, 2019 and online window will remain open.

3. Failure to furnish correct and complete information punishable offence under the CWC Act 2000

4. All necessary information including detailed instructions, etc are available on the NACWC website (www.nacwc.gov.in) sought from NACWC office by Telephone (011-24615445, 24615446) or Mail (info@nacwc.gov.in) or nacwc@nacwc.in)

No. NI-19016/1/2019-TFC1

[illegible][illegible]

www.indianexpress.com

**કારીગરો પાસેથી
ઇકોફ્રેન્ડલી માટીની મૂર્તિ
અરીદવાની ઉત્તમ તક**

:- મેગાનની તારીખ :-
તા. ૧૭.૮.૨૦૧૭ થી ૨૮.૮.૨૦૧૭

:- મેગાનની સમય :-
બેઝીંગલ ૧ નં. ૩૦ થી રાત્રી ૧૦:૦૦ સુધી

**ઇકો-ફ્રેન્ડલી માટીની મૂર્તિ જ
અરીદવાની આગ્રહ રાખીએ...**

વિશ્વ મુલ્યે સૌથી વધુ ખર્ચિત પ્રવાસના

કેન્ડલ મુલ્ય :-
 * ૧૦૦ગ્રામ ૩૦ રૂ. ૧૦૦ગ્રામ ૩૦ રૂ. ૧૦૦ગ્રામ ૩૦ રૂ.
 * ૨૦૦ગ્રામ ૬૦ રૂ. ૨૦૦ગ્રામ ૬૦ રૂ. ૨૦૦ગ્રામ ૬૦ રૂ.
 * ૩૦૦ગ્રામ ૯૦ રૂ. ૩૦૦ગ્રામ ૯૦ રૂ. ૩૦૦ગ્રામ ૯૦ રૂ.
 * ૪૦૦ગ્રામ ૧૨૦ રૂ. ૪૦૦ગ્રામ ૧૨૦ રૂ. ૪૦૦ગ્રામ ૧૨૦ રૂ.
 * ૫૦૦ગ્રામ ૧૫૦ રૂ. ૫૦૦ગ્રામ ૧૫૦ રૂ. ૫૦૦ગ્રામ ૧૫૦ રૂ.