BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION AT GANDHINAGAR

PETITION NO. _____OF 2024

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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31/1/2024

PETITIONER

GUJARAT URJA VIKAS NIGAM LIMITED VADODARA

GUJARAT URJA VIKAS NIGAM LIMITED

PLACE: VADODARA
DATED: 31.01.2024

BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION
AT GANDHINAGAR

PETITION NO. _____OF 2024

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 LIMITED AND ESSAR POWER GUJARAT LIMITED FOR APPROVAL OF AMENDMENTS BY WAY OF SUPPLEMENTAL POWER PURCHASE AGREEMENT DATED 05.01.2024.

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

PETITION FOR APPROVAL OF THE 5th SUPPLEMENTAL POWER PURCHASE AGREEMENT DATED 05.01.2024

MOST RESPECTFULLY SHOWETH:

1. That the present Petition is being filed under Sections 86(1)(b) and 86(1)(f) of the Electricity Act, 2003, seeking approval of the 5th Supplemental PPA dated 05.01.2024, between Essar Power Gujarat Limited (hereinafter '**EPGL**') and the Petitioner herein, Gujarat Urja Vikas Nigam Limited (hereinafter '**GUVNL**') in regard to the Power Purchase Agreement dated 26.02.2007, as amended and existing as on date of the signing of the 5th Supplemental PPA. A copy of the 5th Supplemental PPA dated 05.01.2024 is attached hereto and marked as **Annexure 'A'.**

2. The Petitioner, Gujarat Urja Vikas Nigam Limited (hereinafter '**GUVNL**') 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. The Respondent No. 1, Essar Power Gujarat Limited (hereinafter **'EPGL'**) is a Generating Company under Section 2(28) of the Electricity Act, 2003. EPGL 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. GUVNL had entered into a Power Purchase Agreement dated 26.02.2007 with EPGL through competitive bidding process in accordance with the guidelines issued under Section 63 of the Electricity Act 2003 for contracted capacity of 1000 MW to be supplied from Units 1 and 2 of Salaya Power Plant (hereinafter **'Bid-03 PPA'**). A copy of the PPA dated 26.02.2007 is attached hereto and marked as **Annexure 'B'.** The Supplemental PPA has been entered into on 25.11.2008, 16.10.2009, 01.03.2019 and 12.08.2021 between the parties, prior to the present 5th Supplemental PPA. GUVNL, if need be, would crave reference to the above Supplemental Agreements at the time of the hearing.

6. That the Petitioner herein had filed the Petition No. 1807 of 2019 before Hon'ble Commission for approval of the Supplemental Power Purchase Agreement dated 01.03.2019 entered into with M/s Essar Power Gujarat Ltd for amendment in PPA dated 26.02.2007. The proposed Amendments were pursuant to the Government of Gujarat Policy Directive vide Government Resolution (GR) No. CGP-12-2018-166-K dated 01.12.2018. A copy of 3rd Supplemental PPA dated 1.03.2019 is attached hereto and marked as **Annexure 'C'.** The Hon'ble Commission vide order dated 27.04.2020 had after public hearing and receiving representation from consumer organizations in the Petition, granted conditional approval to the said Supplemental Agreement, namely, to incorporate certain modifications as morefully set out in the said Order dated 27.04.2020. A copy of Order dated 27.04.2020 passed by the Hon'ble Commission in Petition No. 1807 of 2019 is attached hereto and marked as **Annexure 'D'.**

7. Aggrieved by the decision dated 27.04.2020, EPGL had filed an Appeal being Appeal No 108 of 2020 before the Hon'ble Appellate Tribunal for Electricity.

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8. In the meanwhile, the Energy and Petrochemical Dept., Government of Gujarat vide letter dated 12.06.2020 conveyed that the issue related to uniform implementation of Supplemental PPAs with imported coal based power projects located in Gujarat has been examined and Government of Gujarat vide G.R. CGP-12-2018-166-K dated 12.06.2020 has decided that the earlier G.R. dated 01.12.2018 stands revoked for all intents and purposes since the objective and purpose for which the G.R. dated 01.12.2018 was resolved is not being achieved. Further, Government of Gujarat in its letter dated 12.06.2020 had given detailed guidelines regarding further course of action regarding signing of SPPA with EPGL. The copies of the Government of Gujarat G.R. dated 12.06.2020 and the letter dated 12.06.2020 are attached hereto and marked as **Annexure 'E' ('Colly')**.

9. In view of modifications directed by the Hon'ble Commission vide Order dated 27.04.2020, Government of Gujarat Guidelines and GR dated 12.06.2020 and further modifications approved vide Government of Gujarat G.R. dated 05.06.2021, the Petitioner and EPGL agreed to and executed the amended and modified Supplemental PPA in substitution of the earlier signed Supplemental PPA dated 01.03.2019. A copy of Government of Gujarat G.R. dated 05.06.2021 is attached hereto and marked as **Annexure 'F'**. A copy of the 4th Supplemental PPA dated 12.08.2021 is attached hereto and marked as **Annexure 'G'.**

10. In view of the above, Appeal No. 108 of 2020 was withdrawn by EPGL, as allowed vide Order dated 25.06.2021. The copies of Order dated 25.06.2021 passed by the Hon'ble Appellate Tribunal and the Letter dated 14.07.2021 by EPGL are attached hereto and marked as **Annexure 'H' (Colly)**.

11. The Petitioner on 01.09.2021 had filed the Petition No. 2004 of 2021 for approval of the amendments to the PPA by way of Supplemental PPA dated 12.08.2021 pursuant to the Order dated 27.04.2020 of the Hon'ble Commission and Government of Gujarat GR and Letter dated 12.06.2020 and Government of Gujarat GR dated 05.06.2021.

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12. Vide Order dated 20.11.2021 after hearing the parties and receiving representation from Consumer organizations, the Hon'ble Commission gave approval to the Fourth Supplemental Power Purchase Agreement dated 12.8.2021. The SPPA provided for HBA Index ceiling for imported coal price at 90 USD / MT & Gross Heat Rate (GHR) at lower of (a) actual Gross Station Heat Rate or (b) 2262 Kcal / kwh as approved by Hon'ble Commission in Petition. No. 1296/2013. A copy of the Order dated 20.11.2021 of the Hon'ble Commission in Petition No. 2004 of 2021 is attached hereto and marked as **Annexure 'I'.**

13. On 11.11.2022 EPGL filed Appeal being Appeal No. 457 of 2022 before the Hon'ble Tribunal challenging the Order dated 20.11.2021 of the Hon'ble Commission.

14. Despite the approval of revised SPPA by the Hon'ble Commission, EPGL did not been commence power under the SPPA in spite of repeated requests claiming to be affected by the HBA Index Ceiling. EPGL has alleged that the actual HBA Index is much higher than the ceiling.

15. It to submit that HBA index (6322 GCV) notifed by Government of Indonesia for benchmark coal price has remained higher than 90 USD / MT. The month wise details are as under;-

Month	HBA index for 6322 Kcal/ Kg (USD/MT)
Jan-23	305.21
Feb-23	277.05
Mar-23	283.08
Apr-23	265.26
May-23	206.16
Jun-23	191.26
Jul-23	191.60
Aug-23	179.90
Sep-23	133.13
Oct-23	123.96
Nov-23	139.80
Dec-23	117.38
Jan-24	125.28

16. It is submitted that EPGL has supplied power to GUVNL under Section 11 directive for the period 13.09.2022 to 31.12.2022 wherein Energy Charge received for supply of power is in accordance with the benchmark ECR notified by Expert Committee of Ministry of Power, Govt. of India.

17. EPGL vide letters dated 08.12.2022 and 27.12.2022 to E & P department, Government of Gujarat had requested for various modifications in the Supplemental PPA related to removal of HBA Index ceiling, increase in Station Heat Rate etc. EPGL had also made representations to the Government of Gujarat on the aspects of the conditions contained in the 4th Supplementary PPA dated 12.08.2021 regarding HBA Index ceiling and Station Heat Rate .

18. A meeting dated 23.12.2022 was held at Government of Gujarat level to discuss the representation of EPGL with regard to modification in SPPA dated 12.08.2021. In terms of the Minutes of Meeting dated 23.12.2022 forwarded by EPD, Government of Gujarat vide letter dated 10.01.2023, it was decided that ceiling of HBA Index for USD 90/MT shall be relaxed. Further, it was decided that the relaxation in HBA ceiling shall be made effective from 01.01.2023 for which appropriate approval from Hon'ble Commission shall be obtained. Further, it was decided that for allowing revision in SHR, CEA Recommendations would be obtained and the modification in SHR shall be allowed after due approval of Hon'ble Commission.

19. Based on the discussion in the meeting, EPGL had commenced supply of power under the SPPA w.e.f 01.01.2023 pending the approval for modifications in the SPPA towards HBA Index ceiling.

20. In response to EPD, Government of Gujarat letter dated 17.02.2023, CEA vide letter dated 03.03.2023 to Government of Gujarat has referred to its report dated 06.05.2022 submitted to Ministry of Power recommending normative SHR of 2333 kcal/kwh for EPGL Salaya plant and conveying that Expert Committee of Ministry of Power while declaring the benchmark Energy Charge Rate for EPGL under Section 11 is considering the SHR of 2333 kcal/kwh. A copy of Government of Gujarat letter 17.02.2023 is attached hereto and marked as **Annexure J**. A copy of CEA letter dated 03.03.2023 is attached hereto and marked as **Annexure K**.

21. In view of the above, vide letter dated 10.10.2023 the Government of Gujarat has conveyed its approval for modification of SPPA dated 12.08.2021 between GUVNL and EPGL as under:

NOTARY * H. J. ZALA * AREA : BARODA DIST (GUJ. STATE) REG.NO. G/230/ 2008 * GOVT. OF INDIA *

"I am directed to refer to GUVNL's letters under reference on the subject noted above and the proposal of GUVNL regarding Modification in SPPA dated 12.08.2021 between GUVL and M/s. EPGL, was examined and considered by the State Government.

2. After careful consideration, the State Government is according an approval for modification of SPPA dated 12.08.2021 between GUVNL and M/s. EPGL on the following aspects:-

i. Removal of "HBA Index Ceiling" of US $ 90/MT under SPPA w.e.f. 01.01.2023.

ii. Approval for modification of "SHR" from 2262 Kcal/kwh to 2333 kcal/kwh in SPPA as per CEA recommendations which would be effective from 01.01.2023 subject to approval of GERC and any differential payment on account of revision in SHR shall be due and payable only after necessary approval of GERC.

3. I am, therefore, to request you to take appropriate actions accordingly and the same may be intimated to this Department, at the earliest please."

A copy of the letter dated 10.10.2023 to GUVNL is attached hereto and marked as **Annexure 'L'.**

22. Vide email dated 20.12.2023, GUVNL forwarded a draft of the SPPA to EPGL. Vide letter dated 20.12.2023 EPGL accorded unconditional consent to the draft SPPA forwarded by GUVNL. The copies of GUVNL's email (along with draft SPPA) and EPGL's letter both dated 20.12.2023 are attached hereto and marked as **Annexure 'M' (Colly.).**

23. Vide letter dated 02.01.2024, GUVNL wrote to EPGL as under:

"This is in reference to various representations made by EPGL before State Govt. and GUVNL requesting the (i) Removal HBA Index Ceiling of USD 90/MT and (ii) Regarding modification in Station Heat Rate under the Supplemental PPA dated 12-08-2021 approved by Hon'ble GERC vide order dated 20.11.2021.

In compliance to the directive and approval received from State Govt., GUVNL vide email dated 20.12.2023 had forwarded the draft of SPPA and EPGL vide letter dated 20.12.2023 has accorded its unconditional consent to the draft SPPA forwarded by GUVNL.

In the above context, EPGL is requested to take appropriate actions for withdrawal of pending suits / petitions / appeals / cases / litigations etc. as per Para 1 (v) of draft SPPA in compliance to the consent given and submit the copy of the affidavit(s) filed before various judicial for a for withdrawal of the matter / cases with GUVNL.

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In view of above, EPGL is requested to take appropriate action towards compliance for signing of SPPA and approach GUVNL for signing of SPPA along with Letter of Authorization from Board of Directors, Stamp Papers & ID proof of signatory with prior confirmation of GUVNL. The finalized draft of fifth SPPA is attached herewith for reference."

A copy of GUVNL's letter dated 02.01.2024 to EPGL is attached hereto and marked as **Annexure 'N'.**

24. In terms of the above, on 05.01.2024, GUVNL and EPGL entered into the 5th Supplemental PPA in amendment to the 4th Supplemental PPA dated 12.08.2021 as under:

"(i) The Amendment Effective Date shall be January 1, 2023 i.e. the date with effect from which, this amendment to the Fourth Supplemental Agreement shall become effective and binding upon parties subject to approval of Hon'ble GERC.

(ii) It is agreed that the HBA Index Ceiling of USD 90 / MT for 6322 GCV coal as mentioned under Clause 3 of the Supplemental PPA dated 12.08.2021 shall stand removed w.e.f 1.1.2023. For avoidance of doubt, HBA Index ceiling of USD 90 / MT shall not be applicable while computation of Energy Charge for energy supplied from 1.1.2023 onwards subject to consideration of lower of (a)for a (e) under the FOB cost of coal under Clause 3.2.4 (I) of SPPA dated 12.08.2021.

(iii) At Clauses 3.2.3 and 3.5.3 of SPPA dated 12.08.2021, the definition of GHR is to be substituted and replaced by the following:

"GHR = Lower of (a) actual Gross station heat rate or (b) 2333 Kcal per kWh as recommended by Central Electricity Authority, Govt. of India"

It is agreed that the modification in Station Heat Rate as per CEA recommendations shall be effective from 01.01.2023.

The above amendments shall be subject to requisite approval of Hon'ble GERC and any differential payment on account of revision in Station Heat Rate shall be due and payable in accordance with and only after necessary approval of Hon'ble GERC.

(iv) In view of the relief being allowed to EPGL project pursuant to Govt. of Gujarat decision(s), it is agreed that any change in ownership of Essar Power Gujarat Ltd.'s Salaya Power Project (1200 MW) shall only be done with the prior intimation of any such move and only with prior approval of the Govt. of Gujarat and Hon'ble GERC.

NOTARY * H. J. ZALA AREA : BARODA DIST (GUJ. STATE) REG.NO. 6250/ 2008 * GOVT. OF INDIA

(v) All pending suits / petitions / appeals / cases / litigations etc. filed by EPGL before any judicial fora or any claims of EPGL qua GUVNL shall be withdrawn by EPGL except related to Change in Law claims under the PPA.

2. This Fifth Supplemental Agreement is subject to the approval by Hon'ble GERC and shall be enforceable only upon such approval by Hon'ble GERC w.e.f 1.1.2023.

3. Except for the above all other terms & conditions of the existing PPA read with the existing SPPA(s) shall remain unchanged and shall be effective as before and be read as a part of this Supplemental Agreement.

4. Subject to the above, this Fifth Supplemental Agreement shall be read as an integral part of the PPA dated 26.02.2007 read with Supplemental PPA(s) entered into between the parties as amended from time to time."

25. It is submitted that in view of the above, EPGL has undertaken to withdraw all pending litigations etc. filed by EPGL before all judicial fora except related to change in law claims under the PPA. EPGL has filed an application seeking withdrawal of Appeal No 457 of 2022 in terms of the 5th SPPA which was allowed by the Hon'ble Tribunal on 23.01.2024. Further, in compliance to the SPPA terms regarding withdrawal of all pending litigations / cases filed by EPGL before various fora, EPGL vide letters dated 04-01-2024 has submitted the application for withdrawal of the pending cases in the following:

Forum	Case no.	In the matter	Date of application for Withdrawal
Supreme Court of India	M. A (Dairy) No 32487 of 2023 in Civial Appeal No. 9324-9324 of 2016	M. A filed by EPGL for seeking restoring of C.A (filed by EPGL) in Liquidated Damages (LD)	04-01-2024
Appellate Tribunal (APTEL)	Appeal No. 457 of 2022	Appeal filed against GERC order dated 20.11.2022 approving SPPA	04-01-2024
Hon'ble GERC	Petition No. 2241 of 2023	For determination of adverse financial consequences under	04-01-2024

NOTARY H. J. ZALA AREA : BARODA DIST (GUJ. STATE) REG.NO. 6250/ 2008 GOVT. OF INDIA

		Section 11 (2) of the Electricity Act, 2003 (MOP notification dated 05-05-2022)	

The copies of EPGL's letters dated 04-01-2024 is attached hereto and marked as **Annexure 'O'.**

26. The 5th Supplemental PPA which modified the 4th Supplemental PPA to the extent mentioned above, which is as per the decision of the Government of Gujarat, requires the approval of this Hon'ble Commission under Section 86(1)(b) of the Electricity Act, 2003 before it can be given effect to and implemented. Accordingly, GUVNL is approaching this Hon'ble Commission for the approval of the 5th Supplemental PPA dated 05.01.2024.

27. GUVNL has paid the requisite court fees.

PRAYERS

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

a. Admit the present Petition and take on record the letter dated 10.10.2023 of the Government of Gujarat in regard to the 5th Supplemental PPA for modification of 4th Supplemental PPA dated 12.08.2021 between GUVNL and EPGL;

b. Approve the 5th Supplemental PPA dated 05.01.2024 amending certain terms of the 4th Supplemental PPA dated 12.08.2021 and the PPA dated 26.02.2007 duly executed between GUVNL and EPGL ; and

c. Pass any such further orders as deemed fit by the Hon'ble Commission.

PLACE: VADODARA
DATED: 31.01.2024

NOTARY H. J. ZALA AREA : BARODA DIST (GUJ. STATE) REG.NO. 6250/ 2008 GOVT. OF INDIA

31/1/2024.

PETITIONER
GUJARAT URJA VIKAS NIGAM LIMITED

DECLARATION

The Petitioner declares that the subject matter of the Petition 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.

31/1/2024.

GUJARAT URJA VIKAS NIGAM LIMITED

PETITIONER

GUJARAT URJA VIKAS NIGAM LIMITED VADODARA

NOTARY H. J. ZALA AREA : BARODA DIST (GUJ. STATE) REG.NO. 6250/ 2008 GOVT. OF INDIA

BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION
AT GANDHINAGAR

PETITION NO. OF 2024

IN THE MATTER OF:

Gujarat Urja Vikas Nigam Ltd. - Petitioner

Versus

Essar Power Gujarat Ltd. & Others - Respondents

SR. No. 1813
Date :31/01/2024

AFFIDAVIT

I, Vipul, son of Lallubhai G Lathiya, aged about 36 years, having office at at Sardar Patel Vidyut Bhavan, Race Course, 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 advise received believed by me to be true.

3. I say that the annexures to the Petition are true copies of their originals.

31/1/2024
DEPONENT
V. L. LATHIYA
Deputy Engineer (CSP)
Gujarat Urja Vikas Nigam Limited
Vadodara

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 31st day of January, 2024.

NOTARY GOVT. OF INDIA H. J. ZALA AREA: BARODA DIST (GUJ. STATE) REG.NO. 6250/ 2008 NOTARIAL

NOTARY GOVT. OF INDIA H. J. ZALA AREA: BARODA DIST (GUJ. STATE) REG.NO. 6250/ 2008 NOTARIAL

MY Commission Expires
On 04/ 07/2028

31/1/2024.
DEPONENT
V. L. LATHIYA
Deputy Engineer (CSP)
Gujarat Urja Vikas Nigam Limited
Vadodara

NOTARY GOVT. OF INDIA H. J. ZALA AREA: BARODA DIST (GUJ. STATE) REG.NO. 6250/ 2008

Solemnly Affirmed/Declared
Sworn Before me by ....V.L. Lathiya.... 11

H. J. ZALA
NOTARY (Govt. of India)

Annexure -A

IN-GJ90594333115805V

INDIA NON JUDICIAL

Government of Gujarat

Certificate of Stamp Duty

सत्यमेव जयते

Certificate No.	:	IN-GJ90594333115805V
Certificate Issued Date	:	12-Dec-2023 11:36 AM
Account Reference	:	CSCACC (GV)/ gjcsceg07/ GJ-BAZAH0633/ GJ-BA
Unique Doc. Reference	:	SUBIN-GJGJCSCEG07044879982415 24V
Purchased by	:	HITESH JITENDRA MODI
Description of Document	:	Article 5(h) Agreement (not otherwise provided for)
Description	:	AGREEMENT
Consideration Price (Rs.)	:	300 (Three Hundred only)
First Party	:	ESSAR POWER GUJARAT LIMITED
Second Party	:	GUJARAT URJA VIKAS NIGAM LIMITED
Stamp Duty Paid By	:	ESSAR POWER GUJARAT LIMITED
Stamp Duty Amount(Rs.)	:	300 (Three Hundred only)

ESSAR POWER GUJARAT LTD. Salaya Jamnagar

CSC GUJARAT VADODARA

GUJARAT URJA VIKAS NIGAM LIMITED VADODARA

IE 0014656110

Statutory Alert:

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2. The onus of checking the legitimacy is on the users of the certificate.
3. In case of any discrepancy please inform the Competent Authority.

ESSAR POWER GUJARAT LIMITED ESSAR POWER GUJARAT LIMITED ESSAR POWER GUJARAT LIMITED ESSAR POWER GUJARAT LIMITED ESSAR POWER GUJARAT LIMITED

NOTICE

- The contents of this e-stamp certificate can be verified at www.shcilestamp.com, Stock Holding mobile application "EStamping" or at Stock Holding Branch/ Centre (the details of which are available at www.stockholding.com).

- Any alteration to this certificate renders it invalid and would constitute a criminal offence.

- Kindly contact Stock Holding Branch / Centre in case of discrepancy.

- For information related to e-Stamping you may write to us on our email id estamp.ahmedabad@stockholding.com or visit our Branch/Centre.

સૂચના

- આ ઈ-સ્ટેમ્પ પ્રમાણપત્રની વિગતો www.shcilestamp.com દ્વારા અથવા સ્ટોક હોલ્ડિંગની "ઈસ્ટેમ્પિંગ" મોબાઈલ એપ્લિકેશન અથવા સ્ટોક હોલ્ડિંગની શાખા / કેન્દ્ર (જેની વિગતો www.stockholding.com પર ઉપલબ્ધ છે) પર જઈ ને ચકાસી શકાય છે.

- આ પ્રમાણપત્રમાં કરેલ કોઈપણ ફેરફાર અમાન્ય છે અને તે ફોજદારી ગુનો બને છે.

- આ ઈ-સ્ટેમ્પ પ્રમાણપત્રમાં કોઈપણ વિસંગતતા જણાય તો સ્ટોક હોલ્ડિંગની શાખા / કેન્દ્ર પર સંપર્ક કરવો.

- ઈ-સ્ટેમ્પિંગ સંબંધિત જાણકારી માટે અમને estamp.ahmedabad@stockholding.com પર ઈ-મેઈલ કરવો અથવા અમારી શાખા / કેન્દ્ર ની મુલાકાત લેવી.

SUPPLEMENTAL AGREEMENT

THIS AMENDMENT to **THE FOURTH SUPPLEMENTAL POWER PURCHASE AGREEMENT** (hereinafter **'FIFTH SUPPLEMENTAL AGREEMENT'**) dated 12.08.2021 is entered into at Vadodara, Gujarat on the 5th day of January, Two Thousand And Twenty Four by and

BETWEEN

M/s Essar Power Gujarat Ltd., a Company incorporated under the erstwhile Companies Act, 1956 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, a Government of Gujarat Undertaking and a Company incorporated under the erstwhile Companies Act, 1956 having its registered office at Sardar Patel Vidyut Bhavan, Vadodara (hereinafter referred to as the **"Procurer"** or **"GUVNL"** 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 have executed a Power Purchase Agreement dated 26.02.2007, which was amended by Assignment Agreement dated 25.11.2008 from Essar Power Limited to EPGL and Supplemental Power

ESSAR POWER GUJARAT LTD. Salaya Jamnagar

GUJARAT URJA VIKAS NIGAM LIMITED VADODARA

Purchase Agreement dated 16.10.2009 (hereinafter collectively referred to as the "**PPA**"), for the sale and purchase of electricity in accordance with the terms and conditions contained therein;

B. The Government of Gujarat, vide Government Resolution No. CGP-12-2018- 166-K dated 3.07.2018 constituted a High Power Committee to, inter alia, suggest sustainable solutions for facilitating the power generation projects located in the state of Gujarat and based on imported Indonesian coal as fuel including the Seller herein, on account of representations made by such power generation projects as to the viability of their continued operation after the decision of the Hon'ble Supreme Court in Energy Watchdog Vs Central Electricity Regulatory Commission (2017) 14 SCC 80 that no relief is admissible to such projects under the terms of the PPA entered into by Procurer with such projects;

C. The High Power Committee submitted its Report on 3.10.2018 making certain recommendations for resolving the said issues;

D. The Government of Gujarat accepted the recommendations of the High Power Committee with certain modifications and, issued its policy directions contained in Resolution No. CGP-12-2018-166-K dated 1.12.2018 (Hereinafter referred to as "the Implementation Policy");

E. The implementation of the said policy directions contained in the Implementation Policy required, inter alia, carrying out certain amendments to the PPA, and obtaining necessary approvals for these amendments, from the Appropriate Commission;

F. Article 18.1 of the PPA enabled the Parties to amend the provisions of the PPA by written agreement however subject to the condition that any such supplemental agreement can be effective and valid only on the approval by the Appropriate Commission;

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GUJARAT URJA VIKAS NIGAM LIMITED VADODARA

G. The Seller and the Procurer had then executed a Supplemental Agreement dated 01.03.2019 and further entered into First and Second Addendums to the Supplemental Agreement which were subject to the approval to the Supplemental Agreement by the Gujarat Electricity Regulatory Commission (the '**Hon'ble GERC**') being the Appropriate Commission under the terms of the PPA;

H. The Hon'ble GERC vide order dated 27.04.2020 in Petition 1807/2019 after hearing the parties and receiving representation from Consumer organizations gave a conditional approval to the Supplemental Agreement dated 01.03.2019 by directing the Parties to carry out certain modifications in the Supplemental Agreement as stated in the order dated 27.04.2020;

I. In the meanwhile, the Government of Gujarat was of the considered view that the Govt. of Gujarat GR dated 1.12.2018 was not achieving the objective and purpose for which it was resolved and to further safeguard the public interest, Govt. of Gujarat vide GR dated 12.06.2020 has revoked earlier GR dated 1.12.2018 for all intent and purposes. Govt. of Gujarat has issued Guidelines dated 12.06.2020 for signing of Supplemental Agreement between Procurer (GUVNL) & Sellers of imported coal based power plants including EPGL with modified terms and conditions as per GERC order dated 27.04.2020 and in accordance with terms stated in Guidelines dated 12.06.2020;

J. Govt. of Gujarat vide GR dated 5.06.2021 has accorded approval for signing of SPPA between GUVNL and EPGL in accordance with the Hon'ble GERC order dated 27.04.2020 and Govt. Guidelines dated 12.06.2020 considering the effective date of SPPA to be the date of approval of revised SPPA by GERC and allowing to tie up 122 MW untied capacity from EPGL project under the SPPA. Moreover, Govt. of Gujarat in line with the GERC order dated 27.04.2020 had decided that HBA Index Ceiling Price under SPPA shall be USD 90/MT (HBA Indonesian Index) which shall not be subject to

ESSAR POWER GUJARAT LTD. Salaya Jamnagar

GUJARAT URJA VIKAS NIGAM LIMITED VADODARA

further revision without prior approval of State Government and Hon'ble GERC;

K. Accordingly, the Parties modified the Supplemental Agreement dated 01.03.2019 earlier signed by them in due compliance of the conditions contained in the Order dated 27.04.2020 passed by the Hon'ble GERC, Govt. of Gujarat Guidelines 12.06.2020 and GR dated 05.06.2021.

L. The GERC vide order dated 20.11.2021 in Petition No. 2004 of 2021 after hearing the parties and receiving representation from Consumer organizations gave approval to the Fourth Supplemental Power Purchase Agreement dated 12.8.2021. The SPPA provided for HBA Index ceiling for imported coal price at 90 USD / MT & Gross Heat Rate (GHR) at lower of (a) actual Gross Station Heat Rate or (b) 2262 Kcal / kwh as approved by Hon'ble Gujarat Electricity Regulatory Commission in Petition. No. 1296/2013

M. Pursuant to approval of revised Supplemental PPA by Hon'ble GERC, EPGL has not been commencing supply of power under the PPA / SPPA citing HBA Index ceiling of USD 90 / MT. EPGL has been discontinuing power supply and repeatedly representing to the Government of Gujarat regarding difficulties faced in its operations due to HBA Index Ceiling of USD 90/MT for imported coal and its inability to operate its plant due to steep hike in the cost of imported coal.;

N. Energy & Petrochemicals Dept., Govt. of Gujarat vide letter dated 10.01.2023 conveyed the Minutes of Meeting dated 23.12.2022 with regard to EPGL's proposal for removal of HBA Index Ceiling with effect from 1.1.2023 and modification in Gross Station Heat Rate with due approval of Hon'ble GERC.

O. Subsequently, Government of Gujarat has taken considered view on the representations of Essar Power Gujarat Limited and Energy & Petrochemical department vide letter EPG-12-2019-15-dated 10th

ESSAR POWER GUJARAT LTD. Salaya Jamnagar

GUJARAT URJA VIKAS NIGAM LIMITED VADODARA

October,2023 has conveyed its approval for modification of SPPA dated 12.08.2021 between GUVNL and M/s EPGL on the following aspects:

I. Removal of "HBA Index Ceiling" of USD 90/MT under SPPA **w.e.f. 1.1.2023**

II. Approval for modification of "SHR" from 2262 Kcal/Kwh to 2333 kcal/Kwh in SPPA as per CEA recommendations which would be effective from 01.01.2023

Both subject to approval of Hon'ble GERC and any differential payment on account of revision in SHR shall be due and payable only after necessary approval of Hon'ble GERC.

P. In the above backdrop and subsequent directive, this Amendment to FOURTH Supplemental Agreement is being entered into between the parties to substitute and replace the clauses in the Supplemental Power Purchase Agreement Dated 12th August, 2021 stated above and other matters set out herein.

NOW THEREFORE, in consideration of the premises, mutual agreements, covenants and conditions set forth in this Fifth Supplemental Agreement, it is hereby agreed by and between the Parties as follows:

1. The Parties agree as follows:

(i) The Amendment Effective Date shall be **January 1, 2023** i.e. the date with effect from which, this amendment to the Fourth Supplemental Agreement shall become effective and binding upon parties subject to approval of Hon'ble GERC.

(ii) It is agreed that the HBA Index Ceiling of USD 90 / MT for 6322 GCV coal as mentioned under Clause 3 of the Supplemental PPA dated 12.08.2021 shall stand removed w.e.f 1.1.2023. For avoidance of doubt, HBA Index ceiling of USD 90 / MT shall not be applicable while computation of Energy Charge for energy supplied from 1.1.2023

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onwards subject to consideration of lower of (a) to (e) under the FOB cost of coal under Clause 3.2.4 (I) of SPPA dated 12.08.2021.

(iii) At Clauses 3.2.3 and 3.5.3 of SPPA dated 12.08.2021, the definition of GHR is to be substituted and replaced by the following:

"GHR = Lower of (a) actual Gross station heat rate or (b) 2333 Kcal per kWh as recommended by Central Electricity Authority, Govt. of India"

It is agreed that the modification in Station Heat Rate as per CEA recommendations shall be effective from 01.01.2023.

The above amendments shall be subject to requisite approval of Hon'ble GERC and any differential payment on account of revision in Station Heat Rate shall be due and payable in accordance with and only after necessary approval of Hon'ble GERC.

(iv) In view of the relief being allowed to EPGL project pursuant to Govt. of Gujarat decision(s), it is agreed that any change in ownership of Essar Power Gujarat Ltd.'s Salaya Power Project (1200 MW) shall only be done with the prior intimation of any such move and only with prior approval of the Govt. of Gujarat and Hon'ble GERC.

(v) All pending suits / petitions / appeals / cases / litigations etc. filed by EPGL before any judicial fora or any claims of EPGL qua GUVNL shall be withdrawn by EPGL except related to Change in Law claims under the PPA.

2. This Fifth Supplemental Agreement is subject to the approval by Hon'ble GERC and shall be enforceable only upon such approval by Hon'ble GERC w.e.f 1.1.2023.

3. Except for the above all other terms & conditions of the existing PPA read with the existing SPPA(s) shall remain unchanged and shall be effective as before and be read as a part of this Supplemental Agreement.

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4. Subject to the above, this Fifth Supplemental Agreement shall be read as an integral part of the PPA dated 26.02.2007 read with Supplemental PPA(s) entered into between the parties as amended from time to time.

In Witness Whereof the Parties have executed this **Fifth 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)** (PRATEEK GARG) **FOR ESSAR POWER GUJARAT LIMITED** **AUTHORISED SIGNATORY** Authorized Signatory WITNESSES 1. _____ (ASHISH A. MEHTA) 2. _____ (RAHUL SINGH)	FOR AND ON BEHALF OF **M/s Gujarat Urja Vikas Nigam Ltd. (GUVNL)** 5/11/2024 **Jasmin J Gandhi** **General Manager (Comm)** **Gujarat Urja Vikas Nigam Limited** **Vadodara** _____ Authorized Signatory WITNESSES 1. _____ (Pratik. M. Joshi) 2. 5/11/2024. (Vipul. L. Lathiya)

ESSAR POWER GUJARAT LTD. Salaya Jamnagar

GUJARAT URJA VIKAS NIGAM LIMITED VADODARA

ESSAR
POWER

Essar Power Gujarat Limited
Essar House
11, K. K. Marg, Mahalaxmi,
Mumbai – 400 034
India

Corporate Identity Number
U74900GJ2007PLC066273

T +91- 22- 6660 1100
F +91 -22 – 2354 4787
www.essar.com

CERTIFIED TRUE COPY OF CIRCULAR RESOLUTION PASSED BY THE BOARD OF DIRECTORS OF ESSAR POWER GUJARAT LIMITED ON THURSDAY, DECEMBER 21, 2023

EXECUTION OF SUPPLEMENTAL POWER PURCHASE AGREEMENT AND AUTHORITY THEREOF:

"**RESOLVED THAT** approval of the Board of Directors of the Company be and is hereby accorded to enter into 5th supplemental agreement for amendment to the Power Purchase Agreement (PPA) dated February 28, 2007 as amended by Assignment Agreement dated November 25, 2008 and Supplemental Power Purchase Agreement dated October 16, 2009, March 01, 2019 and August,12, 2021 with Gujarat Urja Vikas Nigam Limited for sale and purchase of power on terms and conditions as contained therein, the draft of which was circulated to the Board of Directors.

RESOLVED FURTHER THAT Mr. Kush, Mr. Ajay Kumar Sinha, Mr. Kapil Singla, Mr. Bhaven Bhatt, Directors of the Company, Mr. Sandip Sinha, Mr. Prateek Garg, Mr. Nilesh Dave, Mr. Ashish Mehta, Mrs. Rachana Luharuka, Mr. Sanjay Shah and Mr. Manohar Kanade, being the persons specifically authorized for this purpose (Authorised Signatories), be and are hereby severally authorized to sign, execute, amend, alter and finalize the agreement and such other document, declaration, indemnities, undertaking as may be required from time to time, to accept such modifications or amendments thereto as may be mutually agreed upon, to execute amendments, supplemental deeds, instruments, and other writings, incidental to the said supplemental agreement and to represent the Company before the appropriate authority and to do such further acts, deeds, things as may be necessary for above purpose.

RESOLVED FURTHER THAT the Common Seal of the Company shall be affixed on such documents as may be required in presence of any of the aforesaid authorized persons who shall sign the same in token thereof;

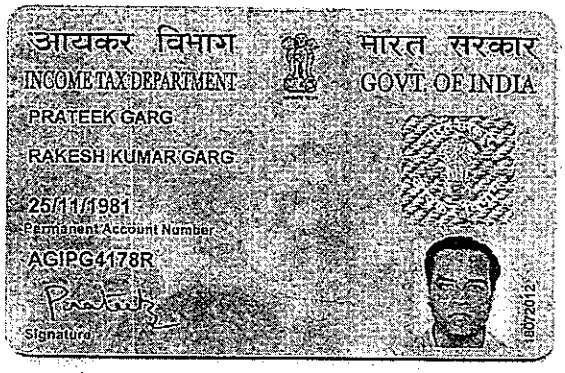
RESOLVED FURTHER THAT any one of the Directors or KMP of the Company, be and are hereby severally authorized to provide a certified true copy of this resolution."

CERTIFIED TRUE COPY
For ESSAR POWER GUJARAT LIMITED

ESSAR POWER GUJARAT LIMITED

GIRISH KUMAR PUROHIT
COMPANY SECRETARY
ACS A45224

ESSAR POWER GUJARAT LTD. Salaya Jamnagar


आयकर विभाग
INCOME TAX DEPARTMENT
भारत सरकार
GOVT. OF INDIA
PRATEEK GARG
RAKESH KUMAR GARG
25/11/1981
Permanent Account Number
AGIPG4178R
Signature
18072012

ESSAR POWER GUJARAT LTD.
Salaya
Jamnagar

"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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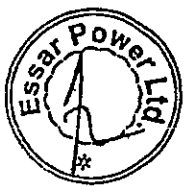
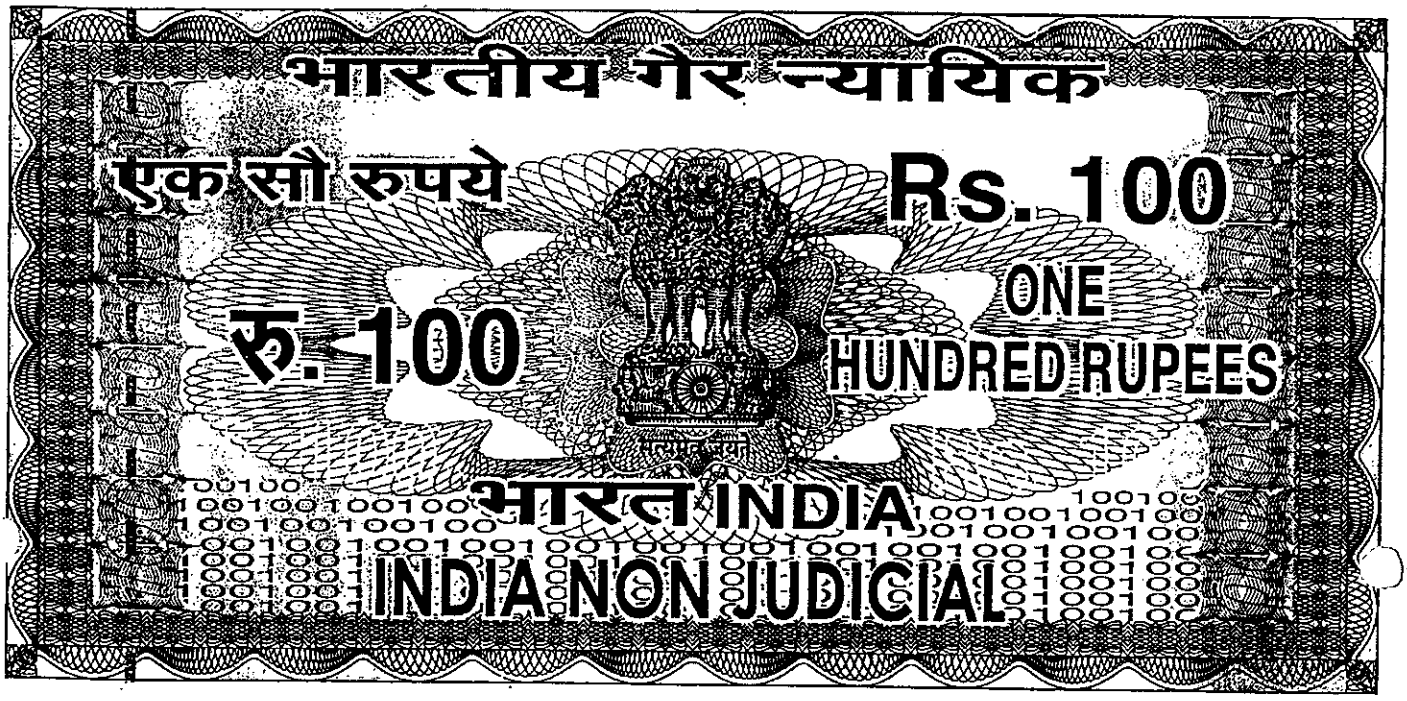




ગુજરાત ગુજરાત GUJARAT C 889606

અનુક્રમ નંબર ૨૨૨ તારીખ ૨૨.૧.૨૦૦૭
ખરીદનારનું નામ .... ઈસ્સાર પાવર લિમિટેડ
સરનામું ..... ઈસ્સાર હાઉસ, ૧૧ કેશવરાવ ખાડે માર્ગ, મહાલક્ષ્મી, મુંબઈ
વતી ..... ઈસ્સાર પાવર લિમિટેડ

સંજય વસંતરાવ કદમ
બી/૨, કમલાપાર્ક એપાર્ટ,
ઈંદોરાપાર્ક, સુભાનપુરા,
વડોદરા - ૩૯૦૦૨૩.

રજીસ્ટર્ડ સહી
લાયસન્સ નં. ૦૨/૨૦૦૨
તા. ૨૨/૦૩/૨૦૦૨

THIS POWER PURCHASE AGREEMENT hereinafter called the "Agreement" is entered into at Vadodara on the 26th day of February, Two Thousand and Seven (26-02-2007) by and between

Gujarat Urja Vikas Nigam Limited, a Government of Gujarat Undertaking and a Company incorporated under the Companies Act, 1956 having its registered office at Sardar Patel Vidyut Bhavan, Race Course Circle, Vadodara – 390007 (hereinafter called 'Procurer' which expression shall unless repugnant to the context or meaning thereof include its successors and assigns) as party of the first part;

And

Essar Power Limited, a Company incorporated under the Companies Act, 1956 having its registered office at Essar House, 11 Keshavarao Khadye Marg, Mahalaxmi, Mumbai – 400 034 (referred to as 'Selected Bidder' which expression shall unless

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:

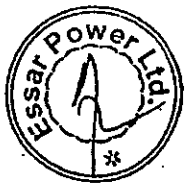
1. In accordance with the Competitive Bidding Guidelines (as defined hereunder), the Procurer had initiated a competitive bidding process, namely Bid No 03/LTPP/2006, through issue of RFQ and RFP for selecting Successful Bidders to supply power on a long-term basis.

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 VADODARA
Essar Power Ltd

	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

	shall be the total Project Cost allocated in proportion to the Contracted Capacity of the said Unit.
'Capital Structure Schedule'	shall mean sources of finance used to finance the Capital Cost as provided in the Financing Agreements;
"Central Transmission Utility" or "CTU"	shall have the meaning ascribed thereto in the Electricity Act, 2003;
"CERC"	means the Central Electricity Regulatory Commission, as defined in the Electricity Act, 2003, or its successors;
"Change in Law"	shall have the meaning ascribed thereto in Article 13.1.1;
"Commercial Operation Date" or "COD"	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 Operation 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	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;
"Commissioning Tests" or "Commissioning Test"	means the Tests provided in Schedule 4 herein;
"Commissioned Unit"	means the Unit in respect of which COD has occurred;
"Construction Contractor/s"	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,

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	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 thirtieth (30th) day 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) by which date such bill is payable by the Procurer;
"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

	persons, plant or equipment;
"Energy Charges" or "Fuel Charge"	Shall have the meaning ascribed to this term under Schedule 6;
"Expiry Date"	means for the 25th 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;

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"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 "Interconnection and	Means the facilities on the Procurer's side of the Interconnection Point for receiving and metering Electrical Output in accordance with this Agreement and which shall

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

	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 guaranteed offtake of sixty five per cent (65%) 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

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	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;

"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 07th 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;

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"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

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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;

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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.

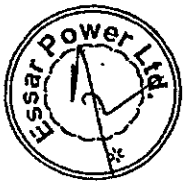
1.2.12 A time of day shall, save as otherwise provided in any agreement or document be construed as a reference to Indian Standard Time.

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

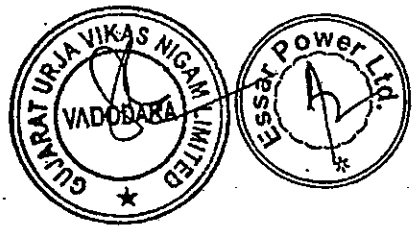
2.2.1 This Agreement shall terminate before the Expiry Date:

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)

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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.

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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 ARTCLE 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:

a) obtaining and maintaining in full force and effect all Consents required by it pursuant to this Agreement and Indian Law;

b) 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;

c) owning the Project throughout the term of this Agreement free and clear of encumbrances, except those expressly permitted by Article 16;

d) 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;

e) 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;

f) 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:

a) 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;

b) shall be responsible for payment of the Transmission Charges and SLDC charges beyond the Delivery Point;

c) 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

d) shall be responsible for fulfilling obligations undertaken under this Agreement.

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 x dn x DR1] , if dn <= 60

SLDb = [CCun x 60 x DR1] + [CCun x (dn - 60) x DR2] , if dn > 60

Where:

a) "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;

b) "CCun" is the Contracted Capacity of Unit "n";

c) "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;

d) "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.

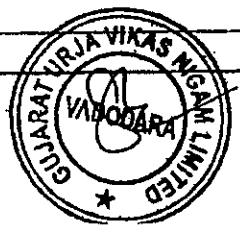
b) In case of delay on account of Direct Non Natural Force Majeure Event, the Procurer shall make payment to the Seller of Capacity Charges calculated on Normative Availability of Contracted Capacity of such Unit for the period of such events in excess of three (3) continuous or non-continuous Months 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") relatable 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 fur 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.

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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:

(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:

Rs. 0.25/kwh x [1 – {(reduced Contracted Capacity of all Commissioned Units + Contracted Capacity of all Units not Commissioned at the Effective Date)/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 it's 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

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

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

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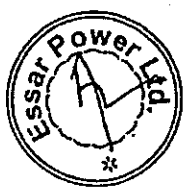
the time when the Seller advised the Procurer of the need for the Maintenance Outage).

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 atleast 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:

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:
Rs. 0.25/kwh x [1 – {(reduced Contracted Capacity of all Commissioned Units + Contracted Capacity at the Effective Date of all Units not Commissioned)/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.

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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.

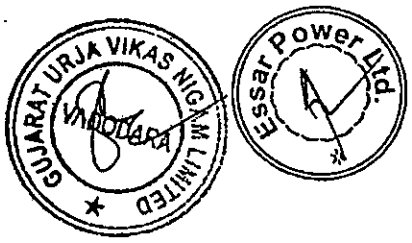
9.4 Establishment of Proportionate Availability

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.

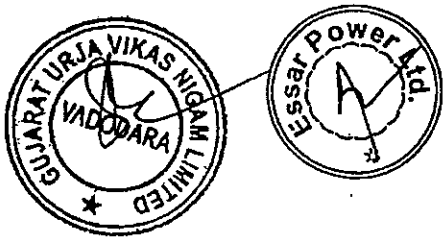
10.2 Application of Insurance Proceeds

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;

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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

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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% x {24 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 (6^{th}) 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 or the

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.

11.4.2.2On 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.

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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:

i. Natural Force Majeure Events:

act of God, including, but not limited to lightning, drought, fire and explosion (to the extent originating from a source external to the Site), earthquake, volcanic eruption, landslide, flood, cyclone, typhoon, tornado, or exceptionally adverse weather conditions which are in excess of the statistical measures for the last hundred (100) years;

ii. Non-Natural Force Majeure Events:

1. Direct Non - Natural Force Majeure Events

a) Nationalization or compulsory acquisition by any Indian Governmental Instrumentality of any material assets or rights of the Seller or the Seller's contractors; or

b) the unlawful, unreasonable or discriminatory revocation of, or refusal to renew, any Consent required by the Seller or any of the Seller's contractors to perform their obligations under the RFP Documents or any unlawful, unreasonable or discriminatory refusal to grant any other consent required for the development/ operation of the Project. Provided that an appropriate court of law declares the revocation or refusal to be unlawful, unreasonable and discriminatory and strikes the same down.

c) any other unlawful, unreasonable or discriminatory action on the part of an Indian Government Instrumentality which is directed against the Project. Provided that an appropriate court of law declares the revocation or refusal to be unlawful, unreasonable and discriminatory and strikes the same down.

2. Indirect Non - Natural Force Majeure Events

a) any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, terrorist or military action; or

b) Radio active contamination or ionising radiation originating from a source in India or resulting from another Indirect Non Natural Force Majeure Event excluding circumstances where the source or cause of contamination or radiation is brought or has been brought into or near the site by the affected party or those employed or engaged by the affected party.

c) Industry wide strikes and labour disturbances having a nationwide impact in India

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

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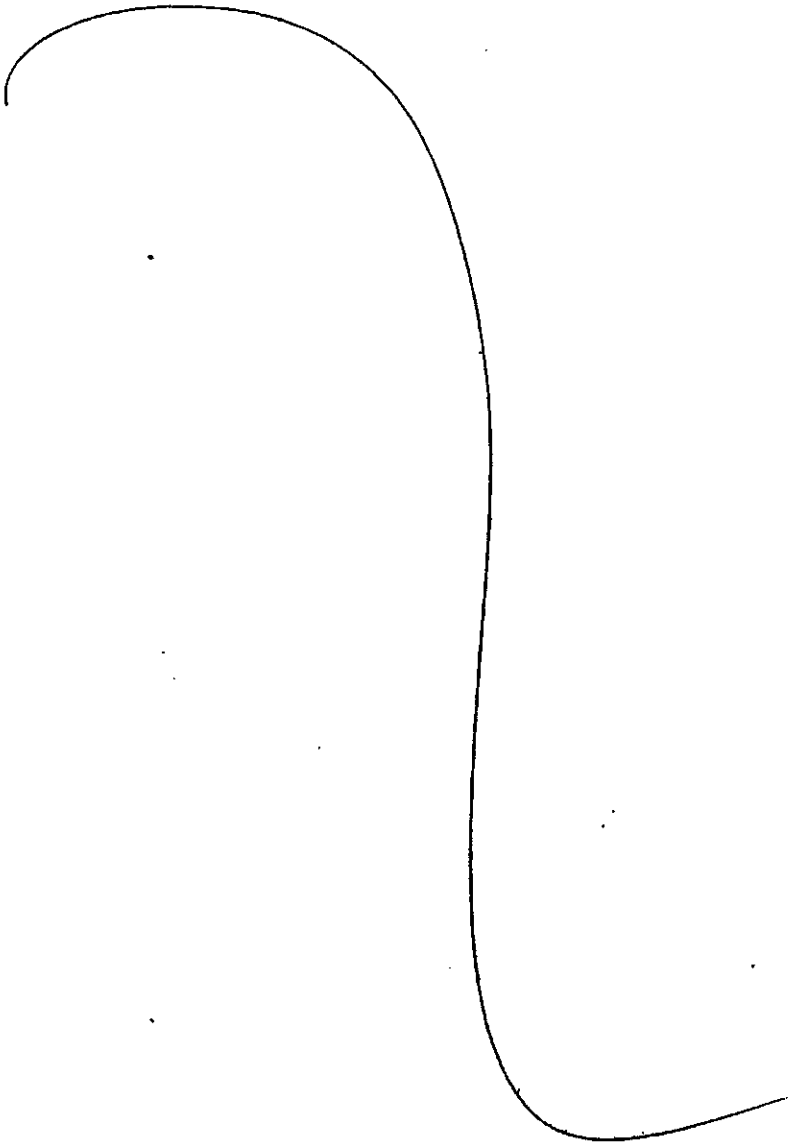
Natural Force Majeure Event affecting the Procurer), where such Testing is possible to be undertaken in spite of the Direct or Indirect Non Natural Force Majeure Event (or Natural Force Majeure Event affecting the Procurer), and the Independent Engineer accepts and issues a Final Test Certificate certifying 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

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.



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.

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

GUJARAT URJA VIKAS NIGAM LIMITED VADODARA

Essar Power Ltd.

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.

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

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

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) occurence 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.

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.

16 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 withheld such consent unreasonably. The Procurer expressly acknowledges that from the date of such assignment, the SPV shall be the Seller.

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.

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.

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;

(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

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.

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

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. NAPATEL

For and on behalf of
Essar Power Limited

A. K. SRIVASTAVA
Signature with seal

Witness:
1. Tushar S. Bhatt
2. S. SHRIVASTAVA

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

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) relatable 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			
	1st time	2nd time	3rd time	4th 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

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		[ ] lag to [ ] 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.

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

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.

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.

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 >= NA, FCm= Σ_j (NA X AFCyn X CC X L)- ΣC(m-1)

Else:

FCm= Σ_j (AFCyn X AA X CC X L)- ΣC(m-1)

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";

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:

MEPm = AEOm x MEPn

Where:

MEPm is the Monthly Energy Charges for Month m (in Rs.)

AEOm is the Scheduled Energy during the Month m (in kwh)

MEPn 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)

GUJARAT URJA VIKAS NIGAM LIMITED
Essar Power Ltd.

for the Contract Year "n" in which Month "m" occurs and computed as mentioned hereunder:

MEFEPn = QEFECn * p/q * r
METEPn = QETECn * s/t * r
MEFHEPn = QEFHECn * u/v
MNEFEPn = QNEFECn * r
MNETEPn = QNETECn * r
MNEFHEPn = QNEFHECn

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)

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)

QNEFHECn 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 al 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.

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

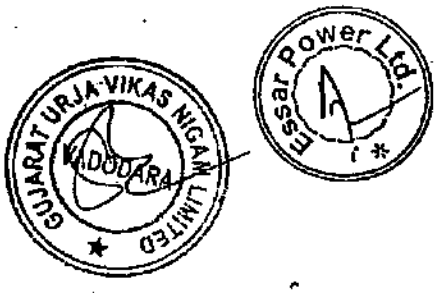
The Tariff for the period prior to Scheduled COD of the first unit shall be the quoted tariff of the first year with escalation for relevant period only for energy charge. The Tariff for the Contract Years beyond the 25 years from the COD of the first Unit shall be the Quoted Tariff of the 25th year 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.

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.

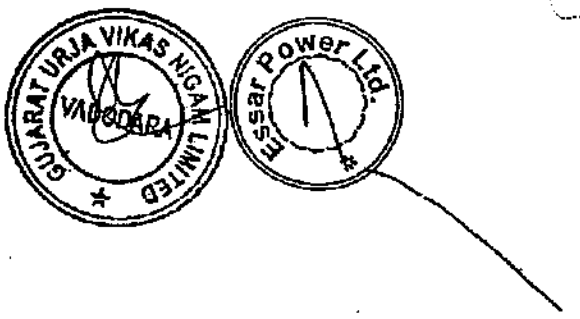


8 SCHEDULE 8: ESCALATION INDEX

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.

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.

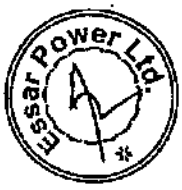
10 SCHEDULE 10: QUOTED TARIFF

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	

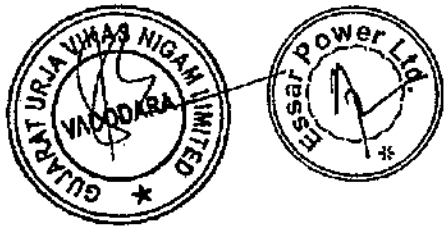
Where,

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

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.

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

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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

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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

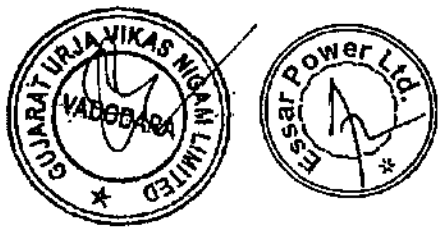
1.10.1 The Lenders and Procurer shall be entitled to appropriate any consideration received for the substitution of the Seller as hereinabove provided, from the Selectee towards the payment of Lenders' and the Procurer's respective dues, to the exclusion of the Seller.

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

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.



भारतीय गैर न्यायिक

एक सौ रुपये

Rs. 100

ONE HUNDRED RUPEES

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सत्यमेव जयते

भारत INDIA

INDIA NON JUDICIAL

ગુજરાત ગુજરાત GUJARAT

BP 262591

રૂ.ટે.ટ. નં.32504 રૂ.100 તા.7/2/2019
નામ : Essar Power Gujarat Limited
ઠેકાણું : Channi Road, Vadodara
વસ્તે : Rajen
રટે. વે. નોંધણી :
શાહ જયંતીલાલ પુનમચંદ ન્યાયમંદીર
લા. નં. ૨૯/૭૮ તા.૨૧-૧૦-૭૮
બી-૧૩,વિદ્યાવિહાર સોસાયટી, વાઘોડીયા રોડ, વડોદરા-૧૯.

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

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'**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

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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

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"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 x LPPF / CVPF} x 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.

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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

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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

(II) <u>Specific Conditions</u>

(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) <u>Methodology for Merit Order Scheduling & Billing</u>

(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

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(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.

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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.

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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

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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 x LPPF / CVPF} x 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

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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

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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)**	FOR AND ON BEHALF OF **M/s Gujarat Urja Vikas Nigam Ltd.**
Authorised Signatory SWAPNIL JAIN	Authorised Signatory
WITNESSES	**WITNESSES**
1. (SANDEEP SAMAY)	1. (S.K. Nair)
2. (ASHISH MEHTA)	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**

HPB Marker (i) = (HBA * K (i) * A (i)) – (B (i) + 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**

HPB Marker (i) = (HBA * K (i) * A (i)) – (B (i) + 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**

"HPB (j) = {(HPB Price Marker (i) + (B (i) + U (i))) * (K (j) / K (i)) *[(100 - Water Content (j)) / (100 - Water Content (i)] *[(100 - 8) / (100 - 8)]} - (B (j) + 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

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4. **Formulae for Price of Other Coal Benchmark No. 67 - 75 (Low Calorie Coal)**

a. **If TM <40%**

HPB (j) = {(HPB Price Marker (i) + (B (i) + U (i))) * (K (j) / K (i)) *[(100 - Water Content (j)) / (100 - Water Content (i)] *[(100 - 8 / FKA (i)) / (100 - 8 / FKA (j)]} - (B (j) + 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%**

HPB (j) = {(HPB Price Marker (i) + (B (i) + U (i))) * (K (j) / K (i)) *[(100 - Water Content (j)) / (100 - Water Content (i)] *[(100 - 8 / FKA (i)) / (100 - 8 / 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.

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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)	
[redacted]						
4	Indominco MV 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	[redacted]	4.400	32,00	0,25	4,15	50.80

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)	
[redacted]						

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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
[redacted]						

FORMULA HARGA PATOKAN BATUBARA *STEAM (THERMAL)*

1. Harga Batubara Acuan (dalam keseteraan nilai kalor 6322 kkal/kg GAR)
   HBA = 25% ICI1 + 25% Platts59 + 25% NEX + 25% GC [US$/ton]

Di mana:
- HBA = Harga Batubara Acuan [US$/ton]
- ICI = Indonesia Coal Index [US$/ton]
- NEX = New Castle Export Index [US$/ton]
- GC = New Castle Global Coal Index [US$/ton]

Konversi nilai kalor batubara dari kondisi ADB ke GAR.
$K_{GAR} = K_{ADB} * (100-TM)/(100-IM)$

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*
I M = *Inherent Moisture*
Untuk :
Kandungan Belerang Batubara dalam *as received* (ar)
Kandungan Abu Batubara dalam *as received* (ar)

2. Menghitung HPB marker No. 1 - 7

HPB Marker $_{(i)}$ = (HBA * $K_{(i)}$ * $A_{(i)}$) – ($B_{(i)}$ + $U_{(i)}$) [US$/ton]

Di mana:
- HBP Marker $_{(i)}$ = HPB dari 7 batubara price marker [US$/ton]
- $K_{(i)}$ = Nilai Kalor Batubara $_{(i)}$ / 6322 [fraksi]
- $A_{(i)}$ = (100 - Kandungan Air Batubara $_{(i)}$) / (100 – 8) [fraksi]
- $B_{(i)}$ = (Kandungan Belerang Batubara (i) – 0,8) * 4 [US$/ton]
- $U_{(i)}$ = (Kandungan Abu Batubara $_{(i)}$ – 15) * 0,4 [US$/ton]
- (i) = price marker 1 – 7

3. Harga Patokan Batubara Marker No. 8

HPB Marker $_{(i)}$ = (HBA * $K_{(i)}$ * $A_{(i)}$) – ($B_{(i)}$ + $U_{(i)}$) [US$/ton]

Di mana:
- HBP Marker $_{(i)}$ = HPB batubara price marker 8 [US$/ton]
- $K_{(i)}$ = Nilai Kalor Batubara $_{(i)}$ / 6322 [fraksi]
- $A_{(i)}$ = (100 - Kandungan Air Batubara $_{(i)}$) / (100 – 8/$FKA_{(i)}$) [fraksi]
- $FKA_{(i)}$ = ((({(100-8)/(100 – Kandungan Air Batubara$_{(i)}$)}* Kandungan Air Batubara$_{(i)}$)+(100 – 8))/100 [person]
- $B_{(i)}$ = (Kandungan Belerang Batubara (i) – 0,8) * 4 [US$/ton]
- $U_{(i)}$ = (Kandungan Abu Batubara $_{(i)}$ – 15) * 0,4 [US$/ton]
- (i) = price marker 8

4. Harga Patokan Batubara Lain No. 9 – 66

HPB $_{(j)}$ = {(HPB Price Marker $_{(i)}$ + ($B_{(i)}$ + $U_{(i)}$)) * ($K_{(j)}$ / $K_{(i)}$) * {(100 – Kandungan Air $_{(j)}$)/(100 – Kandungan Air $_{(i)}$)* {(100 – 8)/(100 – 8)}} – ($B_{(j)}$ + $U_{(j)}$) [US$/ton]

Di mana:
- HPB $_{(j)}$ = HPB batubara selain batubara Price Marker [US$/ton]
- $B_{(j)}$ = (Kandungan Belerang Batubara (j) – 0,8) * 4 [US$/ton]
- $U_{(j)}$ = (Kandungan Abu Batubara (j) – 15) * 0,4 [US$/ton]
- $B_{(j)}$ = (Kandungan Belerang Batubara (j) – 0,8) * 4 [US$/ton]

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- $U_{(j)}$ = (Kandungan Abu Batubara (j) – 15) * 0,4 [US$/ton]
- $K_{(i)}$ / $K_{(j)}$ = Nilai Kalor Batubara (j) / NilaiKalor Batubara (i) [fraksi]
- (i) = price marker 1 – 7
- (j) = batubara lain 9 – 66

5. Harga Patokan Batubara Lain No. 67 – 75 (Batubara Kalori Rendah)

– Bila TM <40%

$$HPB_{(j)} = \{(HPB\ Price\ Marker_{(i)} + (B_{(i)} + U_{(i)})) * (K_{(j)} / K_{(i)}) * [(100 - Kandungan\ Air_{(j)})/(100 - Kandungan\ Air_{(i)}]^{*} [(100 - 8/FKA_{(i)})/(100 - 8/FKA_{(j)})\} - (B_{(j)} + U_{(j)})$$ [US$/ton]

Di mana:

- $HPB_{(j)}$ = HPB batubara selain batubara Price Marker [US$/ton]
- $HPB\ Marker_{(i)}$ = HPB batubara price marker (i) [US$/ton]
- $B_{(i)}$ = (Kandungan Belerang Batubara (i) – 0,8) * 4 [US$/ton]
- $U_{(i)}$ = (Kandungan Abu Batubara (i) – 15) * 0,4 [US$/ton]
- $B_{(j)}$ = (Kandungan Belerang Batubara (j) – 0,8) * 4 [US$/ton]
- $U_{(j)}$ = (Kandungan Abu Batubara (j) – 15) * 0,4 [US$/ton]
- $FKA_{(j)}$ = {((100-Kandungan Air Batubara)/(100 – Kandungan Air $Batubara_{(j)}$))*Kandungan Air $Batubara_{(j)}$ + (100 – Kandungan Air Batubara)/100 [persen]
- $K_{(j)}$ / $K_{(i)}$ = Nilai Kalor Batubara (j) / Nilai Kalor Batubara (i) [fraksi]
- (i) = price marker 8
- (j) = batubara lain 67 – 69

– Bila TM ≥ 40%

$$HPB_{(j)} = \{(HPB\ Price\ Marker_{(i)} + (B_{(i)} + U_{(i)}) * (K_{(j)} / K_{(i)}) * [(100 - Kandungan\ Air_{(j)})/(100 - Kandungan\ Air_{(i)}]^{*} [(100 - 8/FKA_{(i)})/(100 - 8/FKA_{(j)})\}$$ [US$/ton]

Di mana:

- $HPB_{(j)}$ = HPB batubara selain batubara Price Marker [US$/ton]
- $HPB\ Marker_{(i)}$ = HPB batubara price marker (i) [US$/ton]
- $FKA_{(j)}$ = {((100-Kandungan Air Batubara)/(100 – Kandungan Air $Batubara_{(j)}$))*Kandungan Air $Batubara_{(j)}$ + (100 – Kandungan Air Batubara)/100 [persen]
- $K_{(j)}$ / $K_{(i)}$ = Nilai Kalor Batubara (j) / Nilai Kalor Batubara (i) [fraksi]
- (i) = price marker 8
- (j) = batubara lain 70 – 75

Ketentuan:

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.

Gujarat Ltd.

ADODARA

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.)*

Gujarat Ltd. ... VADODARA

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.

Essar Power Gujarat Ltd.

GUJARAT URJA VIKAS NIGAM LIMITED VADODARA

BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION
GANDHINAGAR

Petition No. 1807 of 2019

In the Matter of:

Petition under Section 86 (1) (b) and (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.

Petitioner:	Gujarat Urja Vikas Nigam Limited,
Represented by:	Learned Advocate Shri Hemant Sahai, Advocate Shri Nitish Gupta, Shri Sanjay Mathur, Shri S.K. Nair and Shri K.N. Chudasama.
	Vs.
Respondent No 1:	Essar Power Gujarat Limited,
Represented by:	Learned Advocate Shri Kunal Nanavati, Shri Sandeep Sahay, Shri Pankaj Nair, Advocate Ms. Pooja Rohan Shah.
Respondent No. 2:	Energy Watchdog
Represented by:	Nobody was present
Respondent No. 3:	Prayas (Energy Group)
Represented by:	Nobody was present
Objector No. 1:	Shri K.K. Bajaj
Represented by:	Shri K.K.Bajaj
Objector No. 2:	Utility Users' Welfare Association
Represented by:	Shri Bharatkumar T. Gohil
Objector No. 3:	Jan Kalyan Foundation
Represented by:	Nobody was present
Objector No. 4:	Laghu Udyog Bharti, Gujarat
Represented by:	Shri S.C. Bohra

CORAM

Shri Anand Kumar, Chairman
Shri P.J. Thakkar, Member

Date: 27/04/2020

ORDER

1. The present petition is filed by the Petitioner Gujarat Urja Vikas Nigam Limited (GUVNL) 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 for 1000 MW (Bid-03) executed with Essar Power Gujarat Ltd. (EPGL) praying for approval of amendments to the PPAs by way of Supplemental PPA dated 01.03.2019.

2. Facts mentioned in the petition are detailed below:

2.1. Petitioner is a Company incorporated under the provisions of the Companies Act, 1956 and is engaged in activities of bulk purchase and bulk supply of electricity and is a Licensee for the said activities under provisions of the Electricity Act, 2003.

2.2. Respondent No.-1, EPGL is a Generating Company within the meaning of Section 2(28) of the Electricity Act, 2003 and has set up a thermal power generating plant having total capacity of 1200 MW (2 x 600 MW) located at Salaya, District Jamnagar, Gujarat.

2.3. Energy Watchdog and Prayas (Energy Group), are the consumer organizations and are Respondent No. 2 & 3 respectively.

2.4. The Petitioner had entered into a PPA with Respondent No.1 through competitive bidding process under Bid No. 03 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, District Jamnagar, Gujarat.

2.5. The present Petition is filed seeking approval for the proposed amendments to Bid-03 PPA through Supplemental PPA dated 01.03.2019 (SPPA) in terms of Article 18.1 of said PPA, pursuant to the Govt. of Gujarat Policy Directive vide Government Resolution (GR) No. CGP-12-2018-166-K dated 01.12.2018 accepting the recommendations of High Power Committee Report (hereinafter "HPC Report") as stated in the 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. Petitioner has submitted that this 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. 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 three projects contribute substantially to cater to the power requirements of the State of Gujarat.

2.6. 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". Government of Indonesia vide this Regulation mandated export of coal on benchmark prices notified by Govt. of Indonesia. The detailed factual background leading up to 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.

2.7. The Respondent No. 1 has shut down its thermal power plant since past 1 year and is not supplying electricity to the Petitioner. The matter with respect to the Tata-CGPL and Adani-Mundra travelled up to 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.

2.8. Out of the aforesaid three 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.

2.9. 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 honour their obligations under the PPAs and requested for redressel of the issue. The brief of representations received from generators is as follows:

2.10. Respondent No.1 addressed a letter to the Petitioner on 19.04.2017 and 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.

2.11. Coastal Gujarat Power Ltd. has in its letter dated 25.04.2017 addressed to the Petitioner stated that if urgent remedial measures are not taken, then, in spite 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.

2.12. Adani Power (Mundra) Ltd has vide its letter dated 16.04.2017 addressed to the Petitioner submitted a proposal to take over 51% of equity of Mundra Project (Units1 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.

3. Efforts made by the State for resolution of the issues:

3.1. 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, Government 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 the stakeholders.

3.2. In view of the 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.

3.3. 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.

3.4. 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 two options;

(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.

3.5. 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.

3.6. 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.

3.7. In view of the 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."

3.8. 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 re-structuring 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.

3.9. As regards the recommendations of High Power Committee the Petitioner submitted in brief that the HPC keeping the interests of the consumers as paramount has recommended as follows:

a. **Amendment in the PPA:** 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 Essar Power Gujarat Ltd (1000 MW) with a debt reduction of Rs.1154 Crores.

Lenders' sacrifice may be higher as they may have to reduce the outstanding debt by around Rs. 2324 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 crores and devolved LCs of Rs. 481 crores. Additionally, the lenders will be reducing the interest rate 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.3600 Crore. Accordingly, this solution would be prospective and Generators have to bear accumulated loss. 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 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.

3.10. Government of Gujarat and the Petitioner approached the 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

judgment dated 11.04.2017 if the recommendations of HPC are accepted and PPAs are suitably modified. The Prayers of the Miscellaneous Application filed before the Hon'ble Supreme Court are 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 18.1and 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."

Petitioner has also filed the copy of the Miscellaneous Application dated 08.10.2018 filed before the Hon'ble Supreme Court along with the petition.

3.11. Hon'ble Supreme Court in the case filed by the Petitioner 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 Central Electricity Regulatory 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 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 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."

3.12. As regards the amendment of the PPA in Public Interest it is submitted that, the proposal for amendment of the PPA through the present 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 has filed 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.

3.13. It is further submitted that the proposed amendments to the PPAs are in the interest of consumer since the non-availability of power from Respondent No. 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.

3.14. 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 and accordingly at para 7.1 of the Report, HPC has 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.

3.15. Some of the important extracts from HPC report analysing and identifying the consumer/public interest are extracted below:

a. The criticality of this project is evident from the fact that this projects contribute to approximately 45% requirement of GUVNL.
b. The average variable charge is Rs. 1.74 per kWh as against overall average variable charge of about Rs. 2.59 per kWh.
c. This projects are undoubtedly cheaper source of electricity compared to State Discoms for procuring power.
d. The entire power from this projects get scheduled, which makes it clear that even after considering the actual coal cost, these PPAs are competitive.
e. There will be impact of shutting down of these projects on Discoms/end consumers as these projects fulfilled power requirement of almost 16-18% of five states, which is not possible to replace. These projects are more efficient as based on supercritical technology having higher capacity, lower auxiliary consumption which leads to almost 18.5% saving in the fuel cost for power generated from these projects.
g. Based on the analysis of the prices discovered under the recent Case 1 bidding process, which is on an average between Rs. 4.20 per unit to Rs. 5.06 per unit and in the short term market it is around Rs. 4 per unit.
h. The new capacity is also not feasible since end consumers are going to pay higher tariff in view of the fact that the capital cost of new projects is ranging between Rs. 6.32 Crore per MW to Rs. 8.50 Crore per MW and it will take gestation period of around 4 to 5 years, which will lead to increase in capital cost of around 40% as compared to these projects.

3.16. It is submitted that 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.

"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."

3.17. The Government of Gujarat keeping in view the aforesaid aspects and the policy directions contained in Resolution No. CGP-12-2018-166-k dated 01.12.2018*, has accepted the recommendations of the HPC with modifications as stated in the GR and 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. *(*Annexure - 1)*

3.18. Accordingly, on the basis of above and recommendation by HPC for execution of Supplemental Agreement incorporating the amendments, 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. (**Annexure – 2*)

3.19. The amendment in Bid-03 PPA as executed with the Respondent No. 1 is the most preferred option in the Consumer Interest and therefore, the Petitioner is filing the present Petition before this 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.

3.20. The Commission has the jurisdiction to approve the amendments to the PPAs as provided under Section 86(1)(b) read with 86(1)(f) of the Electricity Act and has accordingly prayed that this Commission may approve the proposal to amend the terms of the PPA to the extent provided in the Supplemental PPA with all the other terms and conditions in the PPA remaining unaltered.

Respondent's Submissions

4. The Respondent No.3 (Prayas Energy Group) has raised the following contentions:

4.1. It is submitted that the Petitioner has filed the above-mentioned petition for approval of the amendments to the Power Purchase Agreement (PPA) 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 should not be permitted and further that the amendments proposed are not in public interest.

4.2. The extent to which the tariff terms and conditions are being proposed to be varied in favor of Essar Power Gujarat Limited 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.

4.3. The Hon'ble Supreme Court in the above Order dated 29.10.2018 has not given any mandate that the amendments sought for should be allowed. The directions 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.

4.4. It is further submitted that as the Commission has to safeguard the interest of consumers at large, hence 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 views of the matter and take a judicial decision after considering the view of all the stakeholders, including the consumer groups, in accordance with law with consideration of overall public interest and interest of the consumers.

4.5. It is further submitted that 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 touchstone should be whether the amendments being approved would be in the interest of the consumers.

4.6. It is further submitted that 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 a hybrid of Sections 62 and 63, namely partly based on Section 63 and whenever 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.

4.7. There is no legislative sanction to such a hybrid scheme of tariff determination under the Electricity Act, 2003 and Section 63 is to keep tariff based competitive 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.

4.8. The case of a project based on imported coal, one being considered for increase in tariff, has already been adjudicated by the Supreme Court of India 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 Hon'ble Supreme Court of India, can be allowed by way of amendment in the PPA with the approval by the Commission.

4.9. It is further submitted that considering any increase in tariff for the Project Developer in the circumstances 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. 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 is 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. 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.

4.10. The scheme of allowing amendments providing for increase in tariff of substantial amounts on grounds of hardship has far reaching implications.

4.11. The Central Commission however decided purported to use General regulatory powers to grant the projects what it terms 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). 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) Supreme Court has overruled use of regulatory powers to alter tariff or any provisions of the contract, so long as the existing Guidelines and model PPA deals with such issues. Since the Power Purchase Agreement (PPA) and 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) The Hon'ble Supreme Court has held that the promulgation of the Indonesian regulation and the resultant price rise cannot to treated as 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) 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.

4.12. 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 its cost implications.

4.13. It is further submitted that the present Petition which is based on the report submitted by the said committee and for the proposed amendment to the Power Purchase Agreement, seek to fundamentally alter the basic premise on which the contracts were awarded to the projects.

(a) The proposed amendment seeks to pass through the fuel costs on actual basis up to an imported coal cost 110 USD/MT, which is very high. An alteration of PPA agreed tariff is not permissible under the contractual framework, and such an act was precisely rejected by the Hon'ble Supreme Court in the Energy Watchdog case (Supra).

(b) 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 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

utilizing 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) Issue of fuel price variation is not alone but the Committee has proposed a formula which would also pass on fuel transportation and other fuel related costs to consumers. 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.

(e) Once again, the existing PPA and 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.

(f) To the customers all the risk associated with currency variation, which at the time of biding 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.

(g) 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 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 by this court vide its judgement.

(h) Therefore, such attempts at *post facto* altering the basic premise on which the contract is based should be summarily rejected and disallowed.

(i) The Procurer– Distribution Licensees and intermediaries acting on behalf of the Distribution Licensees in the State of Gujarat purchasing electricity from generators such as Essar Power Limited, 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, 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

(j) 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.

4.14. It is further submitted that the Judgement dated 07.04.2018 in Energy Watchdog Case reported as (2017) 14 SCC 8 and also in All India Power Engineers Federation vs. Sasan Power Limited (2017) 1 SCC 487, the Hon'ble Supreme Court of India emphasized 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 bidding 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 bidder cannot then complain that the

quoted tariff is not adequate. In the PPA dealing with amendment generally cannot be applied to allow tariff increase by tariff adjustments.

4.15. The Public interest, namely the safeguarding of consumer interest and 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. The quoted Tariff is subject to adjustment 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 parties to the PPA and approval of the Regulatory Commission.

4.16. It is further submitted that with regard to the aforesaid decisions, it is clear that the waiver is spoken of in the realm of the Indian 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.

4.17. The general principle is that everyone has a right to waive and to agree to waive the advantage of law or rule made solely for the benefit and protection of the individual in his private capacity which may be dispensed with without infringing any public right or public policy. Thus, the maxim which sanctions the non-observance of the statutory provisions is cuilibet licet juri pro se introducto renuntiare. (See Maxwell on Interpretation of statutes, Eleventh Edn., pp. 375 and 376.)

4.18. As per the judgement in Indira Boi v. Nand kishor (1990) 4 SCC 668], it was held: (SCC p.672, para 5):

"The test to determine the nature of interest, namely, private or public is whether the right which is renunciated 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."

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 as Act is intended to have a more extensive operation as a matter of public policy.

4.19. The principles of waiver although between 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.

4.20. 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. 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.

4.21. 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 recognized 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 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.

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."

4.22. 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. 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. 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. The course of increasing the tariff of the consumers, it is humbly submitted, it 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 as competitive principles and provides for promotion of competitive environment. Further, such a course will 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.

4.23. 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 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.

4.24. 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 of 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.

4.25. Similarly, any projects / unit for which procurers have not specified imported coal as the primary fuel at the time of bidding cannot be considered for any relief. Since legally and contractually no relief is available to imported coal based projects, any bailout scheme devised for such 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 developers to win the contract. These project developers would not have obviously passed on any reduction in the price 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.

4.26. It is further submitted that the relief, if any should only be prospective in nature and not 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 the 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.

4.27. It is further submitted that the transparent process with adequate time and opportunity for public consultation, as highlighted by them 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 groups.

4.28. It is further submitted the recommendation made by the Committee to arrive at the amount of increased tariff is not as per consideration of all relevant aspects. 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 have been limited to the same. It could not have been extended for giving relief on other aspects.

4.29. 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 consideration.

4.30. 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.

4.31. 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 bidder 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.

4.32. There have been no external factors 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. It is further stated 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 been reversed, 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.

4.33. The judgment of this Hon'ble Court in, M/s Alopi Parshad & Sons Ltd. -- 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 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."*
> *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 1026 DIC cannot raise the 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.

4.34. It is submitted that in terms of the above, Essar 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 at the time of import of coal. 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 namely, difference with US dollars prevalent at the time of bidding and rate prevalent at the time of import of the coal.

4.35. 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 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.

4.36. Other Suggested Approach given in the submissions made by Prayas (Energy Group) before the Committee is also being submitted before the Commission. These are:

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.

5. The matter was kept for hearing on 06.08.2019 wherein the Commission after hearing the parties at para 7 of the daily Order dated 20.08.2019 decided and directed to the petitioner to issue a public notice in Guajarati and English newspaper and invite comment and suggestions from the consumers on the petition.

6. The Petitioner has complied with the Daily Order of the Commission dated 20.08.2019 by issuing a public notice in two Gujarati newspapers and one English newspaper viz. Sandesh, Divya Bhaskar and Indian Express on 28.08.2019 for inviting objections on the petition. In pursuance to the public notice issued by the Petitioner in newspapers for inviting comments/suggestions/objections from the stakeholders, the following Objectors filed their submissions:

(i). Shri K. K. Bajaj
(ii). Utility Users' Welfare Association
(iii). Jan Kalyan Foundation
(iv). Laghu Udyog Bharti

7. The details of the submissions / objections filed by above Objectors are being discussed here as under:

8. Shri K. K. Bajaj filed his submissions/objections as under:

8.1. It is submitted that the Petitioner had signed Power Purchase Agreement No. 1 on 26.2.2007 to supply 1000 MW of electricity at Rs. 2.54 per unit pursuant to selection of Respondent No. 1 as a successful bidder for supply of electricity using imported coal. It is submitted by Respondent Generator that due to change in Indonesian Coal Regulation, it is not possible to supply power at tariff fixed in PPA for 25 years. The Respondent Generator intermittently was discontinuing power supply to reduce its financial losses. The Petitioner failed to take any action or file petition against Generators before Commission despite violation of terms and conditions of PPA.

8.2. The supplementary PPA has been signed in the interest of generators and not in interest of consumers of Gujarat.

8.3. It is submitted that the Hon'ble Supreme Court in its order dated 29.10.2018 has not given any mandate that the amendment sought for should be allowed. The direction given is only that the amendment application should be considered in accordance with law after considering all objections and submissions of the Consumer Groups. Earlier the Hon'ble Supreme Court has rejected the amendment of PPA on ground of Change in Law and Force Majeure ground.

8.4. The Commission is not bound by the recommendations of HPC or directives of the Gujarat Government but is required 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 on the basis of as to whether the amendment being sought to be approved would be in the interest of the consumers. The HPC is constituted by GOG and though consumers of Gujarat will have major impact, the HPC meetings were not held in Gujarat and even Consumer Groups of Gujarat were not invited to participate in HPC proceedings for which the Petitioner and

GOG need to submit the explanation as to why GOG / GUVNL has not issued public notice and not invited the Consumer Groups of Gujarat.

8.5. It is further submitted that there are serious legal and proprietary issues in the Supplemental PPAs as has been proposed since the proposal is to convert a tariff based competitively bid project under Section 63 of the Act into a hybrid of Sections 62 and 63 of the Act for which there is no legislative sanction under the Act. Therefore, the proposed amendment contrary to the Bidding Guidelines cannot be accepted.

8.6. It is also submitted that entering into necessary Fuel Supply Agreement was the responsibility of Generator and lenders were expected to conduct necessary commercial prudence at appropriate time. If any business decision is being taken by the Respondent Generator and lenders based on their risk perception, the cost implication should be to the Respondent Generator/ lenders. However, to favour these Generators, GUVNL has entered into the supplementary agreement for the benefits of the Generators at the cost of consumers. SBI and other lenders have continued to fund such generators in acquiring various stressed assets though they are aware about the past records of such generators.

8.7. It is submitted that the recommendations of the HPC and the Supplemental Agreements have been proposed on the basis of the misplaced view that the process provided under the Insolvency and Bankruptcy Code (IBC) needs to be avoided at any cost and the Project Developer should be bailed out at the cost of the procurer and consumers at large.

8.8. The High Power Committee has neither dealt with nor looked into two important aspects such as over invoicing of import of machinery and coal and the role of lenders by not sharing documents with Directorate of Revenue Intelligence (DRI). As per media reports Directorate of Revenue Intelligence is investigating against Essar Power & Others in respect of over-invoicing of import of coal and import of machinery at their power plants. However, as per reports, the Generators are not cooperating with the DRI. Lenders have allowed the Generators to loot public money through over-invoicing

of equipment imports and coal imports and lenders are not cooperating with DRI, why Government of Gujarat / GUVNL has considered the plea of Lenders? Though this issue is directly relevant, the Government of Gujarat and/ or GUVNL did not seek any clarification on these aspects from Generator and/or Lenders which needs to be clarified by the Petitioner as to why this issue has not been taken up before the HPC when GUVNL generally acts against each and every small consumer. Commission should give its finding based on the submissions of GUVNL. Further, the Generators had earlier offered the ownership of 51% of the project at Re.1/- per unit which was not accepted by Government of Gujarat and GUVNL. Now GUVNL has agreed to give full energy cost as pass through in addition to the entire fixed cost quoted in the tariff and thereby Generators would be allowed to earn ROE for the entire balance life including for the extended term under the pretext of benefits to the consumers, which needs to be looked into by the Commission.

8.9. The High Power Committee did not inquire as to why developers were interested in retaining 49% stake and why not offered 100% stake, when project is unviable. Petitioner needs to clarify for rejection of such proposal for 51% stake vis-à-vis how the present amendment is more beneficial to GUVNL/ Consumers and share copy of all communications by the Petitioner with all Generators along with internal approvals of top management.

8.10. It is submitted that in case the recommendations of HPC are accepted, it would lead to an impact of Rs.1.29 lakh crore over 30 years' period on the consumers of Gujarat, Haryana, Maharashtra, Punjab and Rajasthan in addition to the impact of Rs. 18,000 crores on the lenders of the said IPPs. The HPC report is a ploy to circumvent the Hon'ble Supreme Court judgment dated 11.04.2017 in Energy Watchdog Case which clearly upholds the sanctity of the PPA and allows no room for grant of any relief to the said IPPs.

8.11. Based on above submission he submitted that since approval sought for supplementary Agreement is contrary to the provisions of EA, 2003 including regulatory framework and settled position of law the petition is not admissible and

maintainable. The proposed approval will also put additional burden on consumers of Gujarat. It is going to set a bad precedent and the bidding process will lose its sanctity. In the present submissions, the Objector has sought various information / explanation from the Petitioner and or Generator to provide necessary information so as to assist the Hon'ble Commission in the subject matter.

8.12. It is important to note that SBI and other lenders have continued to fund such generators in acquiring various stressed assets though they are aware about the past records of such generators. In such a scenario, the GUVNL is required to provide detailed explanation as to why Government of Gujarat/GUVNL have taken the lead to act on the request of such Generators/lenders. The Objector requests the Commission to implead Government of Gujarat and lenders including SBI as party to the proceedings so as to understand the nitty gritty of the issues involved.

8.13. It is going to set a bad precedent and the bidding process will lose its sanctity. The Objector humbly requests Commission to consider the submission made herein above and reject the present petition. In the present submissions, the Objector has sought various information / explanation from the Petitioner and or Generator to provide necessary information. Upon receipt of such information/ explanation, the Objector reserves its right to make further submissions to assist the Hon'ble Commission in the subject matter.

9. The Objector UUWA has filed the following objections:

9.1. The Objector has submitted that the Commission has no jurisdiction to decide the present Petition in view of the following legal position. The Commission is consisting of three members. Out of three, there are two members, Chairman Shri Anand Kumar and Shri P.J. Thakkar both are technical members and only one member Shri K.M. Shringarpure is a member from finance.

9.2. It is further submitted that as contemplated in Chapter- II Establishment and Constitution of Commission, Clause-5 of Gujarat Electricity Industry (Reorganization

and Regulation) Act, 2003 which reads "Constitutions of Commission, 5(1) The commission shall consist of a Chairperson and two other members to be appointed by the State Government on the recommendation of a selection Committee constituted under Section 6. (2) out of three members one shall be a person who has special knowledge and professional experience in the field of engineering related to generation, transmission, distribution or supply of electricity; b. The other two shall be the person who have special knowledge and professional experience in the field of finance, commerce, economics, regulation of industry, law or management: Provided that not more than one member shall be appointed having professional Knowledge and experience in the same field. (3) A member of the Commission shall render whole time service and shall not hold any other office during his tenure of office. (4) On occurrence of any vacancy in the office of a member due to death, resignation or any other reason, the same shall be filled in by the State Government in the manner provided in this Act.

9.3. It is further submitted that earlier the Respondent Essar Power Gujarat Ltd. had filed the Petition No. 1389 of 2014 for adjudication of the disputes between Petitioner GUVNL and respondent Essar Power Gujarat Limited where in rate of power to be supplied is requested to increase because of financing stringency of the Respondent Essar Power Gujarat Limited under Section 86 (1) (a) (b), (f) and (k) of the Electricity Act, 2003 read with Article 12, 13 and 17 of the Power Purchase Agreement executed dated 26.02.2007 between Essar Power Gujarat Limited and GUVNL. The objector UUWA representing the consumers' interest, have been impleaded and joined as an affected party during the proceedings of the above Petition No. 1389 of 2014. That Commission was of two members one Chairman Hon'ble Shri Pravinbhai Patel and second Hon'ble Member Shri Dr. M.K. Iyer. The Commission, the Respondent GUVNL and the State Government in the Petition No. 1389 of 2014 are the State within meaning of Article 12 of the Constitution of India. While adjudicating the dispute between Essar Power Gujarat Ltd. as generator and GUVNL as trading licensee under Section 86 (1) (f) of Electricity Act, 2003, Commission has to exercise the power of the State vested in the Civil Courts. For exercise of the powers of the State vested in Civil Courts, the Commission must have one of the members from the judicial background. Since there was no Member from Judicial background, UUWA filed a Writ Petition in

the form of PIL before Hon'ble High Court of Gujarat bearing No. WP (PIL) 172 of 2014. Hon'ble High Court of Gujarat has been pleased to announce the judgement dated 08.10.2015 in favor of UUWA who has challenged the adjudication judicial proceedings by the Commission in absence of the judicial member.

9.4. The Judgement of the Hon'ble High Court of Gujarat has been challenged by the State of Gujarat, before Hon'ble Supreme Court of India in Civil Appeal No. 14697 of 2015 State of Gujarat & Ors. Vs. Utility Users' Welfare Association & Ors. The Hon'ble Supreme Court of India in its judgement dated 12.04.2018 at para No. 114 of page No. 82 concluded is reproduced as below:

> *".....*
> *114. In view of our observations above, we conclude as under: i. Section 84(2) of the said Act is only an enabling provision to appoint a High Court Judge as a Chairperson of the State Commission of the said Act and it is not mandatory to do so. ii. It is mandatory that there should be a person of law as a Member of the Commission, which requires a person, who is, or has been holding a judicial office or is a person possessing professional qualifications with substantial experience in the practice of law, who has the requisite qualifications to have been appointed as a Judge of the High Court or a District Judge. iii. That in any adjudicatory function of the State Page 82 of 84 Commission, it is mandatory for a member having the aforesaid legal expertise to be a member of the Bench. iv. The challenge to the appointment of the Chairman and Member of the Tamil Nadu State Commission is rejected as also the suo moto proceedings carried out by the Commission. v. Our judgment will apply prospectively and would not affect the orders already passed by the Commission from time to time. vi. In case there is no member from law as a member of the Commission as required aforesaid in para 2 of our conclusion, the next vacancy arising in every State Commission shall be filled in by a Member of law in terms of clause (ii) above.*
> *....."*

In light of the above Judgement of the Hon'ble Supreme Court of India, the present Commission is not consisting of any Member of law as mentioned at para (ii) supra, and is requested not to proceed with the Petition filed by GUVNL.

9.5. If the plea is taken that as mentioned above that the present Commission can adjudicate and proceed with this Petition, it is to mention that this was a very case in which the need of Member of law in the Commission has been challenged and all the

Petitioners, Respondents are the same including the Commission. The issue of adjudication of dispute between GUVNL and Essar is pending since last five years and it will be unethical, unfair, illegal, undue and gross violation of jurisprudence to proceed in the matter for the Commission.

9.6. The present petition is filed by GUVNL as Petitioner under Section 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 GUVNL and Essar Power Gujarat Ltd. for approval of amendments to the PPAs by way of Supplemental PPA dated 01.03.2019. The approval to the recommendations made by the High Power Committee constituted by Govt. of Gujarat for resolution of the issues involving the imported coal based generating companies in the State of Gujarat who have executed PPA for supplying power to GUVNL and the subsequent policy decision dated 01.12.2018 taken by the Govt. of Gujarat based on HPC recommendations.

9.7. The Respondent No.1 has after signing PPA with GUVNL for supply of power, not fulfilled their obligation saying that because of change in law in Indonesia from where their coal mines are situated, has approached the legal forums up to Supreme Court of India for increase in the tariff than the quoted tariff under transparent competitive bidding as per guidelines from Ministry of Power, GoI, 2005. The Supreme Court of India has rejected the claim of generators as there is no scope legally possible to justify it and to get any relief.

9.8. It is further submitted that All the stakeholders (except Consumers and Consumers' Organization) like financial agencies, generators, procurers and Govt. of Gujarat are attempting to help the generators under the guise of Public Interest, particularly the Petitioner GUVNL by filing this Petition has attempted to get something done indirectly, which it has not been able to get directly. This is against the well settled principle of law i.e. 'what may not be done directly cannot be allowed to be done indirectly' as has been held by the Hon'ble Supreme Court in the case of *Jagir Singh vs. Ranbir Singh,* reported in (1979) 1 SCC 560 (para 5 may be seen therein) and later reiterated in the

case of *State of Tamil Nadu vs. K. Shyam Sunder*, reported in (2011) 8 SCC 737 (para 28 may be seen therein).

9.9. It is further submitted that the Petitioner has given more weight to the Public Interest in the present petition and on that ground the Petitioner has sought the approval of amendment called re-opening of the PPA and redetermination of tariff. The Commission has made it crystal clear on the issue of public interest, in its Order dated 08.08.2013 in the Petition No. 1320 of 2013 filed by the Petitioner GUVNL the relevant Sections of Electricity Act, 2003 are Section 65 and Section 108 of the Electricity Act, 2003 which is reproduced below:

> *"....*
> *Section 65, if the State Government required the grant of any subsidy to any consumer or class of consumers in the tariff determined by the State Commission under Section 62, the State Government shall, notwithstanding any direction which may be given under Section 108, pay, in advance in the manner as may be specified, by the State Commission the amount to compensate the person affected by the grant pf subsidy in the manner the State Commission may direct, as a condition for the license or any other person concerned to implement the subsidy provided for by the State Government:*
>
> *Provided that no such direction of the State Government shall be operative if the payment is not made in accordance with the provisions contained in this section and the tariff fixed by State Commission shall be applicable form the date of issue of orders by the Commission in this regard.*
>
> *Section 108*
> *108 (1) In the discharge of its functions, the State Commission shall be guided by such directions in matters of policy involving public interest as the State Government may give to it in writing.*
> *(2) If any question arises as to whether any such direction relates to a matter of policy involving public interest, the decision of the State Government thereon shall be final.*
> *From the reading of above sections, it transpires that if the State Government desires to grant subsidy to a particular category of the consumers for public interest the Commission may allow the same. Similarly, under Section 108 of the Electricity Act, 2003 the Government is empowered to pass an order and direct the Commission in the matter of Policy involving the Public Interest. Thus the aforesaid sections of the Act do not provide any power to the Commission to re-open a PPA under the guise of amendment of PPA and to re-determine the tariff discovered under transparent competitive bidding and adopted by Hon'ble Commission under Section 63 of Electricity Act, 2003 and executed the PPA accordingly.*

9.10. It is further submitted that the Commission is not empowered to follow the direction given by the Govt. of Gujarat and recommendations of HPC for revision of the tariff discovered under Section 63 of the Electricity Act, 2003. The question as to whether the State Commission has either judicial power, adjudicatory power, legislative power, regulatory power or administrative power vested under any provision of the Electricity Act, 2003, Regulations, Rules made there under or is there any enabling provision of any other law prevailing in the land of India which empowers the Commission to approve the amendment in the PPA executed between Petitioner and the Respondent? The answer is no as per the various judgements pronounced by Hon'ble Supreme Court of India in the same matter. It is pertinent to mention that the Commission has set a bench mark in two of its judgement (i) dated 11.07.2013 in the Petition No. 1254 of 2012 State of Gujarat Vs. GUVNL & Ores. And (ii) dated 09.05.2019 in the Petition Nos. 1716/1717, 1718, 1720 & 1728 of 2018 Shah Alloys Steel Ltd., Shaifali Steels Ltd., Shaifali Rolls Ltd., RMG Alloys Steel Ltd. and Electrotherm (India) Ltd., Vs. DISCOMs, GUVNL and Energy & Petrochemical Department, Govt. of Gujarat. In Petition No. 1254 of 2012 Govt. of Gujarat has sought this Commission's approval for power tariff subsidy to the spinning and weaving Industry which were/are starving for their existence and are facing tremendous financial hard ship and just to help them, Industry & Mines Dept., GoG had introduced the textile policy and published the G.R. dated 05.09.2012. This Commission has not approved any subsidy into the tariff of textile industry saying that GoG can give direct subsidy to the textile consumers under Section 65 of the Electricity Act, 2003.

9.11. It is further submitted that in the Petition No. 1716/17/18/19/20 and 1728 of 2018, all the Petitioners were steel Industries who were declared sick under provision of Sick Industrial Companies (Special Provisions) Act, 1985. All the Petitioners are the Companies registered under Companies Act, 1956 and are struggling for their existence and are facing tremendous financial hardship and have prayed for reduction in the HT tariff from Rs. 7.34 per unit to Rs. 4.40 per unit (including demand charges). The reasons submitted for reduction in tariff by the above Petitioners are that in the present scenario of global recession coupled with economic slowdown, industries are

passing through its toughest phase and facing challenges for its survival. In such scenario, it is difficult for the Sick Industries to compete in the market due to higher power cost as these industries are already facing financial crunch. The sick Industries as Petitioner also submitted that due to unviable electricity tariff, the operations of such industries may have to be closed down which in turn, may lead to (i) creation of NPAs, (ii) hampering of infrastructure activities due to loss of production, (iii) loss of revenue to DISCOMs, (iv) loss of revenue to Government and (v) loss of direct/indirect employment. The Government of Gujarat has issued a G.R. Policy dated 11.09.2017 for revival of viable Sick Industries in Gujarat. The preamble of the said Policy emphasizes on the need for providing support to viable Sick Industries from financial institutions, Government and from owners for revival as closer of these industries will lead to problems like unemployment, revenue loss to State and Central Govt. and increase in non-performing assets leading to stress on the banking system. The Petitioners have been registered as viable sick Industries under the said Policy. In the Judgement in this petition Nos. 1716-1720 and 1728 of 2018, dated 09.05.2019, this Commission has not approved the special reduced tariff to the Petitioners and not acted as per the direction given by the Govt. of Gujarat under Section 108 of the Electricity Act, 2003 vide letter No. GUV-12-2018-3571-K dated 31.01.2019.

9.12. It is further submitted that the Petitioner GUVNL has adopted the double standards, (i) to favour the private generators by proposing approval of such amendment in the PPA to increase the tariff of power to be supplied by three generators unfairly, illegally, unduly considering the financial crunch/hardship of generators for viability of their units,(ii) that GUVNL in case of Sick Industries is not ready to sacrifice even their profit and wants full recovery of the ARR of its Distribution licensees.

9.13. They have further submitted that, here it is a similar case of survival, revival, NPAs of the banks, unemployment of the people, loss of revenue to the DISCOMs, GoG and GoI etc. On one hand GUVNL is worrying about the financial hardships of power generating companies who are supposed to supply power at the quoted rate under transparent competitive bidding as per guide lines of MoP, GoI, 2005 and as per terms

of PPA executed between GUVNL and generators and even exhaust of all legal remedy.

9.14. It is further submitted that the Petitioner has with a view to engineer an appearance of so called Public Interest is not a bona fide and just to favour the generators by hook or crook to help financial hardship and survival of the generators if higher tariff is not granted, on that hand the Petitioner is strict in recovering their ARR and not interested to find the ways and means to assist their valuable HT consumers who has so far paid lots of energy bills of crores of rupees, and GUVNL/DISCOMs have made profit out of their payments so far, here in the case of HT large scale industrial consumers, either GUVNL or GoG does not find any Public Interest is strange.

9.15. They have further submitted that the Petitioner is having double standards is also evident from the judgement of Hon'ble Gujarat High Court in SCA/2186 of 2007 Jindal Power Ltd. and PTC India Ltd. V/s. GUVN: which is an eye opening that how GUVNL showing Public Interest and has favoured a private generator Adani Enterprises by keeping the Jindal Power Ltd. and PTC India Ltd. kept out who were also successful bidders in the same case.

9.16. If the PPA with Jindal Power Ltd. and PTC India were executed, GUVNL would have not faced this problem of non- supply of power from these three generators. The observation made by the Hon'ble High Court of Gujarat in the SCA/2186 of 2007 in its judgement dated 29.04.2007 for conduct of the Petitioner is narrated at para 26 to 29 on page no. 38 to 40 which is reproduced hereunder.

"…….

26. It is interesting to refer to the figures given by the respondent Corporation to justify its decision not to enter into PPA with PTC India for purchasing 440 MW of power at the rate of Rs. 2.89 per unit. The following figures are given in its affidavit dated 18.8.2007(para 16):- Considering the capacity offered of 590 MW which was proposed to be supplied by the petitioners-M/s. PTC India Ltd. and M/s. Jindal Power Ltd., if electricity is purchased by the respondent M/s. Jindal Power Ltd. , if electricity is purchased by the respondent M/s. Jindal Power Ltd., if electricity is purchase d by the respondent Corporation at the levelized tariff of Rs. 2.89 per unit, then the total cost would come to Rs. 1195/- crores per annum. Similarly, if electricity can be permitted to be purchased by the respondent Corporation at

levelized tariff of Rs. 2.20 per unit (the rate offered by KSK Energy Ltd.) then the total cost would come down to Rs. 909 crores per annum which would save Rs. 286 crores per annum and saving of about Rs. 7150 crores over the period of for 25 years. In a comparative table the above figures are placed in column (A). If the respondent Corporation had cared to apply the same logic to the burden taken upon itself on the basis of the PPA with respondent No. 3 at the rate of Rs. 2.89, the figures would read as indicated in column (B):-

Additional Burden on account of entering into PPA at the rate of Rs. 2.89 per unit

	With Petitioners	With Respondent No. 3
	(A)	(B)
Power Capacity MW	590	1000
Annual burden	Rs. 286 crores	Rs. 484 crores
Burden over 25 years	Rs. 7150 crores	Rs. 12118 crores.

While the figures in Table A are those indicated in Paragraph 16 of the respondent-Corporation's affidavit dated 18.08.2007, the figures in Column B are worked out by applying the rule of three. Working out the exact amount on the basis of varying rates applicable for the relevant years may result into minor variations, but the facts remains that the respondent Corporation is not in a position to dispute that the respondent Corporation was eager to purchase power from M/s. Adani Power Pvt. Ltd. – respondent No. 3 at the rate of Rs. 2.89 per unit, but in the last nine months has not entered into any PPA except under bid. Nos. 1, 2 and 3. The Court's attention is not even invited to any notice inviting tenders for supplying power at any such rates lower than Rs. 2.89 on the same terms and conditions as contained in the PPA entered into with the third respondent under bid No. 1. This coupled with the fact that the respondent Corporation has been purchasing power from the second respondent – (both M/s. Adani Enterprises Ltd. – second respondent and M/s. Adani Power Pvt. Ltd. – third respondent are admittedly belonging to the same Adani group) on a short term basis at the average rate of Rs.5.31 to 5.45 per unit since October 2006 and the amount being paid for such short term purchase from the Adani group has been shown to be Rs. 322.01 crores from October 2006 to August 2007, as against power purchased from other suppliers on short term basis aggregating to only Rs. 36.35 crores during the same period, the Court finds considerable substance in the submissions of the petitioners and particularly PTC India that the decisions of the respondent Corporation impugned in these petitions were not bona fide, but were made with a view to engineer an appearance of default so as to weed out the other successful bidders like M/s. PTC India Ltd. from the arena. Yes, "from the arena", and not "from the competition", because there is no competition. There was and is enough power demand – to accept the power offered by the respondent – Adanis as well as by the petitioners.

29. At the hearing, reference was made to the advantage the Adani Group pf Industries (to which the second and third respondents belong) have of "local

accessibility". In view of the finds already given earlier, it is not necessary to look into this issue.

30. The respondent Corporation through the learned Advocate General had already made a statement before this Court on 22.2.2007 which was also reiterated before the Hon'ble Supreme Court on 26.3.2007that in the event of the petitioner PTC India finally succeeding in the matter, they will be accommodated for the purpose of bid No. 1 in respect of their offered quantity of 440 MW of power. In view of the levelized average tariff rate of Rs. 2.89 per unit, we direct the respondent Corporation to enter into a similar PPA with PTC India Ltd. which it has entered into with the third respondent.

31. However, as far as Jindal Power is concerned, it is not prepared to reduce its price from Rs. 3.24 per unit (as indicated in the letter of Intent dated 8.12.2006) to Rs. 2.89 per unit. Letter of Intent is an expression of intent and not a finding enforceable agreement. Since Jindal Power is not ready and willing to reduce the rate so as to match the rate offered by the third respondent and PTC India i.e. Rs. 2.89 per unit, no mandamus can be issued in favour of Jindal Power.

32. In the result, the petitions are disposed of in the following terms:- (i) Special Civil Application No. 3514 of 2007 is allowed. Respondent No. 1 is directed to enter into the Power Purchase Agreement (PPA) with petitioner – M/s. PTC India Ltd. at the levelized rate of Rs. 2.89 per unit on the same terms and conditions which were incorporated in the PPA dated 6.2.2007 between the respondent Corporation and M/s. Adani Power Pvt. Ltd. – third respondent, within one month from today. (ii) Special Civil Application No. 2186 of 2007 is disposed of after recording the statement made by Mr. K.S. Nanavati, learned counsel for petitioner – M/s. Jindal Power Ltd. to the effect that it is not prepared to offer power to the respondent Corporation at the levelized tariff of Rs. 2.89 per unit under bid NO. 1, but that M/s. Jindal power Ltd. is prepared to offer 100 MW of power to the respondent Corporation at the levelized tariff of Rs. 3.2483 for a period of seven years commencing from 16.06.2008 provided advance intimation of at least three months is given before requiring the petitioner Company to supply the power at the above rate and from the above date. (A detailed pricing year wise is indicated in their letter dated 30.08.2007 addressed to their advocates – M/s. Nanavati Associates, which letter is placed by them on the record of the petition).(iii) The respondent Corporation shall take into account the above offer if M/s. Jindal Power Ltd. supplier from 16.6.2008 onwards.

33. Since both the petitions are disposed of, the Civil Applications are also disposed of.

(M.S. Shah, J.)
K.A. PUJ, J.)

....."

9.17. The Extent to which the tariff terms and conditions are being proposed to be varied in favour of Essar Power Gujarat Limited 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 has considered the implications of Indonesian Regulations on prices of coal imported from Indonesia.

9.18. They have further stated that the Hon'ble Supreme Court of India in its Order dated 29.10.2018 has not given any mandate that the amendments sought for should be allowed. The direction given is only that amendment application can be considered in accordance with law after taking into account all the objections and submissions of the consumers groups. For the sake of clarity, the Order dated 29.10.2018, the Apex Court had directed as follows:

> *".....*
> *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 judgement 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 judgement 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 the 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."*

9.19. The Commission being a statutory body is not bound to act as per the direction of the State Government, if the direction of the State Government is not consistent with the provisions of the Act, 2003, Rules and Regulations framed under the Act, 2003 and policies in view of the various judgements rendered by the Hon'ble APTEL and Hon'ble Supreme Court of India. UUWA in support quote the judgement of Hon'ble APTEL in the judgement dated 31.01.2011 in the Appeal No. 41, 42 and 43 of 2010 which had been considered by this Commission too on the issue.

> *".....*
> *Section 62 (1) The State Commission is independent statutory body. Therefore, the policy directions issued by the State Government are not binding on the State Commission, as those directions cannot curtail the power of the State Commission in the matter of determination of tariff. The State Government may give any such policy direction in order to cater to the popular demand made by the public but while determining tariff the State Commission may take those directions or suggestions for consideration but it is for the State Commission which has statutory*

duty to perform either to accept the suggestion or reject those directions taking note of the various circumstances.
It is purely discretionary on the part of the State Commission on acceptability of the directions issued by the State Government in the matter of determination of tariff.
(2) From the perusal of the impugned order it is the State Commission has fully accepted and acted upon the State Government's policy directions in the light of the legal expert's opinion holding that the State Government directions is binding. Therefore the finding given by the State Commission that the directions of the State Government under Section 108 of the Act is binding on the State Commission is wrong.....".

9.20. 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.

9.21. It is further submitted that what has been specially 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 EPGL, particularly when the PPAs in pursuance to a tariff based competitive bid process under the Section 63 of the Electricity Act, 2003. The proposed amendments of 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.

9.22. 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 contract and sanctity of bidding process, as laid down by the Supreme Court.

9.23. The decision of the Government of Gujarat to issue Policy Directive for amendment of the PPAs and the decision of the Petitioner GUVNL 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 provision of the PPA, particularly requiring the procurers and thereby the consumers at large to share significant burden of the increased tariff.

9.24. The submission herein above and in any event the extent of the amendments to the tariff, terms and conditions, need 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 process 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.

9.25. The Petitioner GUVNL has a share of 1000 MW in the power project of EPGL which comprises of two generating units each of 600 MW at Salaya sea port Dist. Jamnagar,

Gujarat under the PPA dated 26.02.2007 entered into in pursuance of the Tariff Based Competitive Bid Process held as per Guidelines contained under Section 63 of the E.A., 2003. The tariff discovered through competitive bid process of Essar Group (Promoter) bid was adopted by the State Commission is Rs. 2.40 per unit. The quoted transportation, energy charges etc. as per the Bid given is sacrosanct and has been incorporated in the PPA.

9.26. In the Energy watchdog case (2017) 14 SCC 80 the Hon'ble Supreme Court has rejected the claim of CGPL as well as Adani power for any increase in the tariff on account of the promulgation of Indonesian Regulations either under change in law or under the Force Majeure clause of the PPA or otherwise in exercise of General Regulatory Powers of the Central Electricity Regulatory Commission, Accordingly, in law, there is no remedy to CGPL and APL for any increase in the tariff.

9.27. That EPGL does not have "Composite Scheme" and does not supply power to more than one State, the jurisdiction for adjudication is lying with the Commission and for which EPGL has submitted Petition No. 1389 of 2014 for compensatory tariff in the line with CGPL and Adani Power Ltd. Now both CGPL and APL's PPAs amendment Petitions are for the consideration for approval of Central Commission, GUVNL has submitted the amendment Petition for approval of this Commission. It is a fact that EPGL could not get legal judgement from any forum including GERC like CGPL and APL, however, GUVNL has come for approval of the proposed amendment of PPA in line with CGPL and APL.

9.28. That the case of EPGL is quite distinct and different than the case of CGPL and APL and cannot be compared with these two UMPP of CGPL and APL. The issues of EPGL which were submitted in the Petition No. 1389 of 2014 were different over and above the promulgation of Indonesian Regulations.

9.29. The High Powered Committee has not discussed and recommended anything for EPGL separately. However, if Commission is to consider the case of EPGL in line with APL and CGPL, UUWA is of considered opinion that recommendations of High

Powered Committee put forward, ought not to be considered at all in the Public Interest as such recommendations are contrary to law. Mentioned above are the primary issues as to why UUWA is of the opinion that the Supplementary Agreement should not be entered into with EPGL.

9.30. There are few other important aspects which may please be considered as to why UUWA is of opinion that the amendment sought and Supplementary Agreement is not in Public Interest or in the interest of the consumers and ought to be rejected at threshold.

(1) Penalty @ 10% (about 9 paisa/Unit) of capacity charges has been proposed in case of non-availability from 75 to 90% as compared to 20% (about 18 paisa/Unit) stipulated in the old PPA for availability below 75 %. Penalty rate must be in line with PPA dated 26.02.2007.

(2) As per PPA dated 26.02.2007, normative availability is 80% and Incentive is 40% of the Capacity Charges subject to ceiling of 25 paisa/Unit, which is required to be paid only for cumulative availability above 85%. However, in supplementary PPA dated 01.03.2019 availability for incentive is also kept at 85%, which is not proper. Therefore, incentive should be considered only after 95% availability instead of above 85% availability.

(3) In the revised PPA availability and penalty should be applicable on half yearly basis rather than on yearly basis.

(4) Lenders have sacrificed a portion of the Loan, which translates to 20 Paisa/Unit and the same has been recommended by HPC as a reduction from Variable Charges, however it is suggested that it must be reduced from the Capacity Charges as the interest on Term Loan is a part of Capacity Charges.

9.31. As per the HPC report, beneficiaries have a right to extend the PPA by 10 years, if deems fit, however as per the recommendations of HPC, mining profit and discount on

capacity charges shall not be allowed in the extended term. In fact, Profit sharing from the mines must be continued in extended period.

10. The Objector Jan Kalyan Foundation has filed the following objections:

10.1. It is submitted that they have come to know that suggestion/objections have been invited by the Commission in the present matter and as decision in this matter may affect consumers in long-term.

10.2. It is requested to consider the representations as given below by giving reasoned decision in the said matter.

a. Whether the petition required to be admitted?
b. Which are the provisions under which this petition can be admitted?
c. Earlier petition number 1389 of 2013 was withdrawn by the Petitioner on condition that the present petition will be admitted?
d. Can the High-Power Committee decide about tariff hike as demanded by the Essar Power in the Petition No. 1389 without giving an opportunity of being heard to the consumers?
e. Can the hike in tariff recommended by High Power Committee be implemented without hearing the consumers?
f. Whether the documents submitted by the parties before High Power Committee are submitted by the Petitioner in this petition?
g. Whether decision by High Power Committee is taken without giving a Right to being heard to the consumer groups on the basis of partial information submitted by the parties?

10.3. It is requested to the Commission to direct the Petitioner to provide copy of aforesaid documents which was submitted before HPC along with meeting notes and other noting of the HPC in the matter and provide some time to make detailed submission in the matter. We would like to get decision of the Commission in this regard first and if required we would like to file appeal on the decision of Commission before Hon'ble High Court of Gujarat.

10.4. It is requested to the Commission to merge all cases of Essar Power and keep hearing in all matters together and also provide information about all the claims of both the parties. It is further requested to provide component wise details.

10.5. It is further requested to check whether all the supporting documents in connection with the above are checked by the HPC and whether it is consistent with the submissions. Kindly allow us to study and represent ourselves on this aspect. The Commission may decide first about allowing us to implead in the Petition accordingly.

10.6. It is further submitted that under which provision of the Act the HPC was constituted by Government and whether the recommendations of this Committee enforced on the agreement signed between GUVNL and Essar? If it is not covered in any provision than the HPC is not legal and its recommendations cannot be enforced. Who can approve the modification in the said PPA between GUVNL and Essar? Specifically, when it is resulting into costly power to consumers. There are other PPAs where power is procured by GUVNL from Rs. 5 to 15 per kWh from Solar and Wind Generation. But now due to reduction in cost of solar and wind generation, it is required to constitute committee for reduction in these PPAs also.

10.7. It is further submitted that in view of the current situation of farmers and businesses and industries, it is required to provide subsidy of 75% in electricity rates. It is required to constitute Committee to review situation of consumers and decide about reasonable rates to consumers. Why Commission is not deciding or keeping hearing of the petitions filed before petition no 1807? It is further submitted to consider their representation while giving reasoned decision.

10.8. The Petitioner has under the PPA executed with the Respondent imposed the tariff hike on consumers, which is illegal. Therefore, the Petitioner may run the plant on his own or third party.

10.9. It is further submitted that any bank or financial institution under loss due to their own fault then they may have initiated the process regarding the purported benefits of adopted the process as laid down under the Insolvency and Bankruptcy Code, 2016.

10.10. The High Power Committee has not considered the loss of amount of Rs. 5000 Crores approximately occurred due to non-supply of power by Essar Power Limited, Adani Power Limited and Tata Power Limited. The said loss is affected to GUVNL and now imposed on the consumers of Gujarat. The High Power Committee has not considered the following issues, which needs to be considered by the Commission and pass reasoned order with legal grounds so that the same can be challenged by the Objector, Jan Kalyan Foundation before the Hon'ble High Court of Gujarat.

10.11. Currently the present Coram of the Commission is constituted by the Chairperson Shri Anand Kumar and Member (Tech), Shri P.J. Thakkar. They are not possessing the degree or experience in the field of Law and finance. Under such situation in the present case whether the present Commission/Coram is competent enough to deal with such issues regarding law and finance matters. Therefore, in the absence of the member having knowledge of law and finance the present matter cannot be decided.

10.12. Whether the High Power Committee constituted under the ambit of the Electricity Act, 2003 and if the same is done than under which Section the HPC is constituted may be clarified by the Commission. If the said committee is not constituted under the ambit of Electricity Act, 2003 than whether this Commission is empowered to decide such issues raised in the present petition and whether the decision made under the HPC report is bound to decide by the Commission or not need to be clarified.

10.13. Whether the Government of Gujarat had taken the approval of the Commission (GERC) before constitution of the High Power Committee, who is deciding the tariff related matter and the impact of such tariff is imposed on the consumers of Gujarat. Therefore, it is required to be looked into that without the approval of the Commission whether this High Power Committee is competent authority or valid committee and the

decision made under such committee can be legally valid or not, needs to be considered by the Commission.

10.14. Since the amendments to the PPA by the Supplemental PPA, the approval of which amendments has been sought in the present Petition, which is manifestly in the larger public interest for the reasons expressly and explicitly stated in the Report of the HPC containing the recommendations for implementation to mitigate the hardship and stress faced by imported coal based power project located in Gujarat.

10.15. In the earlier PPA executed between the parties, under which the Essar Power Limited (Respondent) was selected based on the competitiveness of price discovered through competitive bidding and bound to supply the electricity for 25 years at the agreed tariff approved by the Commission in the PPA. Now the High Power Committee has given suggestions/observations and based on which the Petitioner sought an amendment in PPA by way of present petition. Whether the High Power Committee is competent enough to revise the tariff/rate which was already approved by the Commission for 25 years under competitive bidding process. The present High Power Committee report recommendations are not in the legal boundary of the proceeding of competitive bidding, which seems to be not legal and valid. Therefore, the Commission may decide the same with legal grounds.

10.16. Whether the High Power Committee considered the suggestions or observations of earlier bidders who were participated in the bidding process in earlier proceedings approved by the Commission in Order No. 4 of 2007 dated 20.12.2007. If the same was not considered, it transpires that the HPC report is not legal and valid and its only considered the grounds of the Petitioner and the Respondents and try to impose tariff penalty on the consumers of Gujarat.

10.17. In the PPA executed between the parties vide Order No. 4 of 2007 dated 20.12.2007 the tariff rate was approved as Rs. 2.35 per unit. However, the HPC report recommendations tariff of Rs. 3.20 per unit i.e. more than 60 paisa increase and if the same required to be approved by the Government of Gujarat, than the only way is pass

through the said increase in tariff as subsidy but not through imposed tariff increase on the consumers of Gujarat. Any tariff increase pass through can be allowed through tariff subsidy by Government of Gujarat, which needs to be clarified by the Commission.

10.18. Moreover, HPC report recommendations tariff increase than the Petitioner GUVNL, can reduce the equity from 14% to 7% of their parent subsidiary companies namely, MGVCL, UGVCL, PGVCL and DGVCL instead of imposing the tariff increase on consumers.

10.19. Based on the recommendations of High Power Committee it is observed by the Objector, Jan Kalyan foundation that there are lots of anomalies in the report and the recommendations are illegal and not in the consumer interest.

10.20. Whether High Power Committee had issued any public notice from the stakeholders. If no, then the clarifications or explanations sought from HPC.

10.21. Whether the Petitioner had run the plant on his own under the provisions of the PPA or whether allocated to other power producer then the tariff recommended by the HPC will be the same or not. If this kind of procedure were initiated in past or not. If not, then the reason thereof.

10.22. It was observed that in such cases where the power producers were not eligible to generate power in such cases the plants were purchased by other power producers i.e. Tata Power Limited, Adani Power Limited and other companies with the same terms and conditions including the same tariff or lower tariff rate. Per contra, the said procedure has not been followed, and based on the HPC report statement that under Insolvency Bankruptcy the plant is not in running condition, which was not scrutinized and not followed by way of documentary evidence. It was informed that there is tariff reduction in the recommendation of the HPC report. Therefore, it is the question of law that whether the report of High Power Committee can be considered as valid or not.

10.23. The objector submitted that it is the duty of the Respondent to supply the electricity at the agreed rate as per the terms of the PPA after considering the price of coal and other materials at the time of bidding. Now because of default on part of the Respondent, the tariff burden cannot pass on to the consumers of Gujarat.

10.24. Whether the High Power Committee investigated that the financial institutions before giving the loan approval sought the details from the parties that whether they are eligible to supply the coal for 25 years and at which rate? Moreover, as per the agreement executed with coal suppliers and Respondent, if the coal suppliers were not eligible to supply the same then under the terms of the PPA, whether the generator claimed for the compensation or not. From the cause of the action it transpires that the financial institutions had given loan approval without prudence check and the High Power Committee also not given any comments on these illegal proceedings. The Commission is requested to consider the same and give a reasoned order.

10.25. If the present petition will be allowed whether the tariff hike impacted on BPL consumers? If no, then which category of other consumers i.e. agriculture, residential and HT categories the tariff hike will be imposed that need to be clarified by the Commission.

10.26. As per the present situation the Respondent plant not generated electricity since last two years and due to that Petitioner GUVNL is required to purchase at higher tariff rate from other generators, which impacted on the consumers. Under this situation it leads to effect on factories, commercial organizations and farmers. The High Power Committee has not considered the following details before giving their recommendations.

10.27. The Commission is requested to consider the suggestions filed by Jan Kalyan Foundation and pass reasoned order, so that the same can be challenged before the Hon'ble High Court of Gujarat.

10.28. The Essar Power Limited filed their reply to the limited objections of the Objector Jan Kalyan Foundation. The Respondent No.1 has not dealt with facts and the legal issues raised by the objector. Therefore, it is requested to the Commission to consider the same while deciding this matter.

10.29. It is further submitted that as per the recommendations of the High Power Committee the details regarding coal supply by the companies and their contracts with the Essar Power Limited and other relevant details not revealed by the parties. Moreover, it is not clarified that the coal supply is as per the recommendation of the High Power Committee Report or not. In the case of coal uncertainty, the Essar Power Limited through international tender invited the bids and the same may be approved by the Commission. The Commission should also constitute a committee who can do the prudence check of the tender documents and approve the same. Based on the recommendation of the committee the Commission may allow the same to reduce the tariff hike on the consumers of Gujarat.

10.30. The Commission vide its Order dated 23.12.2019 in Petition No. 1680 of 2017 decided that the impact of Changes in Law as approved by the Commission shall be applicable till 14.10.2018 as the Petitioner and the Respondents have executed a Supplementary PPA on 01.03.2019 to be effective from 15.10.2018. It is also informed that the said issues are also subject matter to the present petition also. Moreover, in Petition No. 1680 of 2017 the supplemental PPA effective from 15.10.2018 whether its approved by the Commission or not is not clarified. Based on that how the Commission can decide such matter. It is therefore requested to the Commission to wait for the recruitment for the Member (Law) and till then the order will not be issued.

10.31. Moreover, looking to the penetration of the renewable energy and the generation from the renewable sources, i.e. solar, wind, hydro and others increased in the State. Moreover, based on that the Commission has also issued RPO regulations for the same. Looking to the present renewable energy scenario and its generation the coal and gas based power plants may be shut down, so that the feeder cost can be avoided. Moreover, the parties to the present petition has not submitted the details thereof.

Therefore, it is requested to the Commission to bring such details on record and also approve the Power Purchase Agreement for 10 years and renew thereafter. It is also requested to constitute a committee comprising of the stakeholders, non-retired members from the competent organization and based on the recommendations the decision should be made.

10.32. Based on the above, it is requested to the Commission to wait the appointment of the member and thereafter decision the same. However, in case the decision will be made than the Commission may pass reasoned Order. The Commission is also requested to pass detailed order on the representations/suggestions made by Jan Kalyan Foundation so that the same can be challenged before the Hon'ble High Court of Gujarat.

11. Shri Naresh Balvantbhai Patel and Shri Hitesh Mahadevbhai Patel have filed an Application on 16.01.2020 in Petition No. 1807 of 2019 to implead them as a party Respondent.

12. The Petitioner's (GUVNL) submissions:

12.1. It is settled legal position that policy decisions taken by a Government in larger public interest are not justiciable and cannot be challenged before a Court except in cases of manifest arbitrariness. The accompanying petition has been filed in order to implement and give effect to the policy decision of the Govt. of Gujarat to rehabilitate, the three thermal power projects in the State of Gujarat based on imported coal from Indonesia including the Mundra Power Plant, pursuant to and consistent with the recommendations of HPC, which too had been constituted pursuant to a policy decision of the Govt. of Gujarat.

12.2. It is further submitted that the implementation of the diverse components of the rehabilitation plan recommended by the HPC, as aforesaid, includes diverse components out of which only a few components require an amendment to the PPA.

Moreover, the emphasis of the recommendations of the HPC has always been to protect consumer interest and as has been articulated in detail therein.

12.3. All the present amendments are being carried out in furtherance of the recommendations given by the policy directions contained in Policy GR dated 01.12.2018 issued by the Government of state of Gujarat to implement the recommendations given by the HPC. It is relevant to highlight that it is settled that economic/financial policies of a Govt. are not justiciable except in cases of arbitrariness or being inconsistent with the laws of land.

12.4. The policy decisions of the Govt. of Gujarat are evident from the GR dated 03.07.2018 constituting the High Power Committee and the GR dated 01.12.2018 pursuant to which the present petition has been filed. The present petition and the proposed amendments to the PPA constitute a part of the entire rehabilitation package recommended by the High-Power Committee and which is being pursuant to the policy decisions of the Govt. of Gujarat.

12.5. It is further stated that Hon'ble Supreme Court in Energy Watchdog Case has observed that "in a situation where the guidelines are given, the Commission must exercise its regulatory functions, albeit under Section 79 (1)(b), only in accordance with those guidelines." Since the PPAs contain provisions for amendment, the same can be given effect to if the parties agree to amend the provisions of the PPAs and this Commission approves the same. It is pertinent to mention that Article 18.1 of the PPAs provides that "this Agreement may only be amended or supplemented by a written agreement by the parties". Thus, the provisions for amendment of the PPAs apply to all provisions including the provisions for determination of capacity charge and energy charge. If the parties to the PPAs agree to a different tariff structure through Supplemental Agreement, the same shall be given effect to with the approval of the Commission. However, in terms of the judgment in Sasan Case, the Commission while approving such amendment shall have to be guided by consideration of public interest. In our view, amendment of the PPAs by the parties to prescribe a different tariff structure, for energy charge is in term of Article 18.1 of the PPAs and cannot be termed as tariff

determination under Section 62 of the Act. The said amendments to the PPA are being carried out with the consent of both the parties which executed the PPA and are now ad idem on the new provisions of the PPA. The original PPA itself under Clause 18.1 recognizes the Right of the Parties to amend the said PPA, if mutually agreed and with the approval of the Commission.

12.6. The Policy GR has been issued pursuant to the findings of the HPC, which conclusively demonstrated that even after allowing pass through of energy charges, the tariff of the EPGL's project would remain amongst the most competitive tariff. Even after allowing pass through of energy charges, the tariff of the plant in question is much lower than prices discovered under Case I bidding process and current alternative power sources and will continue to remain within the merit order. Thus, it is clear that the rehabilitation plan of Govt. of Gujarat for salvaging the power plant in question is in the larger public interest. Further procurement of power from new projects will entail significantly higher capacity charge, any attempt to replace the entire existing capacity with alternate sources would not only lead to a significant surge in the tariff and the Petitioner will also not be able to cater to the prevailing demand in the short term on account of higher gestation period of new projects.

12.7. It is also a matter of public record that various Electricity Regulatory Commissions including CERC have approved amendments to be made to Sections 63 PPAs leading to change in tariff in compliance of the SHAKTI scheme i.e. policy decision of the Union Ministry of Coal. Few such orders are as under:

i. Order dated 21.02.018 passed by CERC in the matter of KSK Mahanadi Power Co. Ltd vs TANGEDCO & Ors. Petition no. 41/MP/2018;
ii. Order dated 21.02.2018 passed by CERC in the mater of GMR Kamalanga Energy Ltd. vs. GRIDCO Ltd. & Anr., Petition No. 41/MP/2018 and;
iii. Order dated 20.03.2018 passed by MERC in the matter of Adani Power Maharashtra Ltd. vs MSEDCL, Petition No. 70 of 2018

12.8. A clear analogy can be drawn from the aforesaid insofar as in the said cases, amendments to PPAs were allowed in furtherance of SHAKTI Scheme of the Union Ministry of Coal, similarly in this case the amendments proposed are in furtherance of the policy decision of Govt. of Gujarat acting through Energy & Petrochemical Department, which is evident from the Policy GR dated 01.12.2018, pursuant to which the accompanying petition has been filed. Further, it is submitted that the contentions of the Respondents No. 3 seeking impleadment of Government of Gujarat and lenders including as a party to the present proceedings is misconceived and misconstrued.

12.9. The suggestions given by Prayas (Energy group) with respect to the measures for implementing neutrality of financial outflow to the procurers have been extensively dealt in the HPC report. Chapters VIII and IX of the said report set out the way forward, which includes the suggestions that have been given by Prayas (Energy group), such as reduction of interest rate on the debt by the lenders, increasing the tenure of the PPA and so on.

12.10. The present petition and the proposed amendments to the PPA constitute a part of the entire rehabilitation package recommended by the High-Power Committee and which is being implemented pursuant to the policy decisions of the Govt. of the State of Gujarat. The HPC report makes it clear that all the submissions made by the consumer groups before the HPC were duly considered and it was highlighted by the HPC that proposed amendments are most beneficial to the consumer.

12.11. It is further submitted that on the point of purported benefits of adopting the process as laid down under the Insolvency and Bankruptcy Code, 2016 ("IBC") are denied as being devoid of merits. In this regard it is submitted that Chapter IX of the HPC report deals with the option of exploring the NCLT route in detail and has even considered the findings of the 37th and 40th report presented by the Standing Committee on Energy ("SCE") in this regard. The SCE in its report has inter alia highlighted that there is a need to preserve, protect, and conserve stressed assets, and not emphasis on procedures that focus more on dissolution than on resolution of stressed assets.

12.12. It was thus emphasized by the SCE that the consequences of approaching the NCLT. In light of the same, it was concluded by the HPC report that revival of the said projects at this stage itself would yield more fruitful results, as against opting for resolution by way of an NCLT referral. The said recommendations of the HPC have been duly accepted by the Govt. of Gujarat as a policy decision in the large consumer interest. The HPC has duly considered the merits and de-merits of adopting the NCLT route and has thereafter made reasoned recommendations, which have duly been accepted and implemented by the policy decision of the Govt. of Gujarat vide its GR dated 01.12.2018. The said policy decisions are based on cogent reasons and analysis and are not arbitrary. It is not open for the Respondent to seek to impose its own subjective analysis relating to referring the projects to the NCLT, by looking at this single issue in an isolation and selective basis, without considering the overall rehabilitation package and the overall objectives of the entire policy exercise.

12.13. The recommendations of the HPC have duly been evaluated and considered from all perspectives, including the IBC/NCLT option, by experts. The proposed outcomes have been duly considered by eminent banking personalities who are experts in the field as well as the lenders banks, who have concluded that adopting the NCLT route would not be feasible in the present facts and circumstances. Pertinently, Govt. of India & Govt. of Gujarat have also received representation from the State Bank of India to find a solution keeping in view large exposure by nationalized banks. In this regard one of the findings returned by CERC in its order dated 12.04.2019 is important, which is reproduced herein below:

> *"69. As opposed to recommendations of HPC and directives in the GR to salvage the projects, the Consumer Groups have submitted that the plants should have been allowed to be referred to insolvency proceedings under the Insolvency and Bankruptcy Code, which is a statutory framework to deal with such stressed assets. They have further submitted that the recommendations of the HPC and the Supplemental PPAs have proceeded on the basis of a misplaced view that the process provided under the IBC needs to be avoided at all costs.*

12.14. There cannot be a bail out of a corporate entity on the ground that it is the corporate entity taken to liquidation, there may be a requirement to pay higher price for goods

manufactured by the said entity, and therefore the corporate entity should it self be given the higher price', is denied as being illogical, absurd and devoid of merits.

12.15. The HPC recommendations and the policy decision of the Govt. of Gujarat is not to bail out the projects, but suggested rehabilitation package proposed by the HPC requires the corporate to absorb the accumulated financial losses and also a significant reduction in the future cash flows and returns.

12.16. The rehabilitation package being implemented merely stems further financial losses for future operations and also mandates the developers to continue to operate the plants within very strictly defined parameters. Looking at one of the components of the entire package in isolation is not permissible and will only result in a distorted interpretation and understanding of the complete rehabilitation package.

12.17. It is submitted in this regard that Chapter V of the HPC report categorically deals with the implications of the increase in price of Indonesian coal on all the stakeholders i.e. the generators, procurers/distribution companies and lenders. In terms of the said Chapter, the Respondent No. 1 has been suffering huge under recovery of energy charges on account of the promulgation of Indonesian regulations 2010 which forced it to procure coal at international indexed benchmark prices as against the negotiated prices based on which the PPA were entered into. As a result, therefore, till 31.03.2018, Respondent No.1 has incurred losses to the tune of Rs. 3600 Crores and the Promoters' contribution till 31.03.2018 has been Rs. 3283 Crores. Further, the HPC in Chapter V records that the operation of Respondent No. 1's plant has become unviable and is under shutdown for past more than months. The HPC appreciated the fact that promoters of these projects have incurred losses that are substantially higher than the liquidated damages payable by them for termination under the respective PPAs. It is also to be seen that the Developers are offering the untied-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.

12.18. The HPC recommendations have been finely balanced with the intention of resolving the financial and cash flow mismatch issues being faced by the projects in a sustainable manner, and not to create fresh financial issues. It is pertinent to recognize that the said plan envisages an appropriate re-structuring that will result in making the projects financially self-sustaining in its operations, while at the same time requiring the developers to absorb all past accumulated losses and also taking significant financial haircuts in the future operations of the projects. The developers are also undertaking significant financial and operating commitments for the future operations of the projects. The entire rehabilitation plan includes diverse components out of which only few components require an amendment to the PPA. The present petition seeks to implement only those components of the rehabilitation plan that require an amendment to the PPA. Further, the contention of Respondent No, 3 that the proposed amendments to the PPAs cannot be converted to giving relief to the project developer by way of modification to the tariff terms and conditions to allow all actual costs is again incorrect and does not deserve any consideration. It is submitted that the HPC report in its conclusions and recommendations under Chapter X records that HPC while undertaking the analysis and making the recommendations in the report, has the 'consumer interest' as paramount and the same has been the focal point of their approach, and on the touchstone of the consumer interest. The submissions being made by Respondent No. 3 disputing various components of the rehabilitation package singularly, have no application on the facts and circumstances of the present case insofar as the present case deals with an unprecedented financial stress faced by the power project in question which necessitated appropriate financial and contractual restructuring in order to salvage the power project in the larger public interest, which is being implemented through policy decisions.

12.19. It is further submitted that the contentions of the Respondent No. 3 as regards the operating parameters such as GHR and Auxiliary consumption to be considered as per the bid or actual or tariff regulations whichever is lower, it is submitted that the inference is from this Commission. The HPC, which is an expert committee, provided a model draft of the supplemental PPA along with its report. The stipulations/operating parameters of GHR and Auxiliary consumption contained in the supplemental PPA

provides that the same shall be aligned as per Hon'ble CERC's order/approval in Petition No. 374/MP/2008. Importantly, Hon'ble CERC has already approved a similar supplementary PPA entered between the Petitioner and Adani Power Ltd. with respect to its Mundra Power plant. In any case, it is submitted that the HPC report, Govt. of Gujarat's Policy GR dated 01.12.2018 as well as the supplemental PPAs entered in furtherance thereof form part of the diverse components of the rehabilitation plan and thus, the same needs to be holistically interpreted by this Commission in order to implement the same in the larger public interest. The contentions of Respondent No. 3 with respect to the tolerance limit of 10% increase over and above the HBA price shall mean the HBA Index FOB price of Indonesian imported coal published by Govt. of Indonesian from time to time for coal quality of 6322 Kcal/Kg as adjusted for quality of coal consumed in the projects. HPC Report provided for adjustment of HBA Index FOB price of coal supplied basses on GCV of coal supplied as against standard GCV of 6322 Kcal/Kg. The said policy decision cannot be called in question on mere technicalities and must be viewed holistically as a complete rehabilitation package in the larger public/consumer interest. The contentions of the Respondent no. 3 with respect to the extension of the PPAs' term from 10 years to 15 years thereby aggregating 40 years as well as consideration of freight, insurance, port fuel handling charges and other charges are misconceived, lacks merit and does not call for any interference from this Commission. The HPC in its recommendation as contained in Chapter X of the HPC report suggested the option of extension of PPA tenure by a further period of 10 years and not 15 years. The Government of Gujarat's Policy GR dated 01.12.2018 provides for calculation of freight, insurance, port fuel handling charges in a particular manner. It is submitted that amendments sought to be made by way of supplemental PPA are in furtherance of the policy decision taken by the Govt. of Gujarat to salvage the power plant in question keeping in mind the larger public interest involved. A detailed analysis of the diverse conflicting imperatives of all stakeholders and a detailed identification of the consumer interest in salvaging these projects, has already been enumerated in Chapter VII of the HPC report and the same is not being repeated herein for the sake of brevity. The rehabilitation plan of the Govt. of Gujarat which, has been taken after taking into consideration all the aspects of the

matter especially the consumer interest involved is not justiciable and needs to be appreciated holistically.

12.20. It is further stated that the HPC has considered all aspects and has made balanced recommendations in order to arrive at a substantial rehabilitation plan. The proposal by the Respondent to increase the period of re-set to 10 years will create an issue that it is not possible to predict coal price movement over a long period of 10 years and therefore, once again putting the risk on the developers potentially leading to the same financial problems that the rehabilitation plan seeks to alleviate. Any downward movement in the coal prices will result in the benefit being passed on to the procurers and consumers. The model draft supplemental PPA provided in the HPC report also provides for ceiling price to be fixed for 5 years. The contention of the Respondent No. 3 regarding the effective date of revision of tariff is concerned, it is submitted that the HPC recommendations as well as the Policy GR of the Govt. Gujarat dated 01.12.2018 provided for fixing the date of implementation as 15.10.2018. The total accumulated losses of the Developers of all the three projects which have been considered on the HPC report is around Rs. 23815 Crore till 30.09.2018. There is no reason for disturbing this cut-off date. Any change in this date will have a cascading financial impact on the entire package and also on the stakeholders. Further, the effective date of implementation cannot be kept open in order to fix the extent of past losses to be borne by the promoters and to enable the lenders to come forward for funding the required working capital. The proposal for amendment of the PPA as contained in this petition seeking to implement and give effect to certain components of the overall rehabilitation plan which – "primarily entails undertaking financial and commercial re-structuring" of the concerned power plants, including the Salaya Power Plant, is the fair course which would protect the interests of all stakeholders, especially the consumers, and would also ensure the availability of power in large quantities and at a relatively the cheapest prices from these power plants, which is a vital necessity for the economic growth of the State of Gujarat as well as the country. Prayas (Energy group) raised similar contentions before CERC in proceedings relating to Petition No. 374/MP/2018, hence, the Petitioner seeks liberty to rely and refer on the findings/observations of CERC in this regard during the course of hearing.

12.21. It is submitted that the Petitioner is not in position to proceed with the present terms and conditions of supplemental PPA dated 01.03.2019 considering the terms and condition of agreement in order to protect and safeguard the interest of the consumers it is necessary to incorporate the explicit provisions in the supplemental PPA to ensure that past losses are not claimed by the Respondent No. 1 Essar Power Gujarat Ltd. In any manner in the future as the same is to be borne by Respondent No. 1 in line with HPC Report and Government of Gujarat GR Dated 01.12.2018.

12.22. It is further submitted that the Petitioner has taken up the matter with Respondent No. 1 to sign the *Addendum to the supplemental PPA dated 01.03.2019 by incorporating the following clauses as Clause No. 3.8 and 3.9 after Clause 3.7 of the Supplemental Agreement dated 01.03.2019.: *(*Annexure – 3)*

"Clause 3.8:
Seller shall bear the losses for prior period i.e. before 15.10.2018. Further, Seller shall not raise any claim / dispute with regard to past period items before any Forum / Court in the future.

Clause 3.9:
Seller shall unconditionally withdraw all pending cases / litigations / waive claims against GUVNL (other than Change in Law in India) before various Forums in lieu of the relief granted vide Govt. of Gujarat G.R. dated 01.12.2018 towards pass through of actual fuel cost w.e.f. 15.10.2018. Only the cases / litigations filed by GUVNL which are under adjudication shall be considered upon decision by appropriate forum / Court to extent of GUVNL's prayer in the matter."

12.23. Further, it is submitted that the aforesaid clauses are incorporated in addendum dated 23.01.2020 to supplemental PPA dated 01.03.2019. The respondent No. 1 has submitted the copy of the affidavits seeking for withdrawal of pending cases before the various authorities in lieu of Govt. GR dated 01/12/2018 the detail of the same are as under:

Sr. No	Legal Forum	Case No.	Affidavit date
1	Hon'ble GERC, Gandhinagar	1404 of 2014	22-01-2020
2	Hon'ble GERC, Gandhinagar	1532 of 2015	22-01-2020

3	Hon'ble APTEL, New Delhi	90 of 2016	22-01-2020
4	Hon'ble Supreme Court of India, New Delhi	9324-9325 of 2016	23-01-2020

Based on above, the Petitioner submitted that the Commission may consider the addendum dated 23.01.2020 to the supplemental PPA dated 01.03.2019 as part and parcel of PPA dated 26.02.2007 and may proceed further in the matter for approval of the addendum in the PPA dated 26.02.2007 along with supplemental PPA dated 01.03.2019.

12.24. All the contentions raised on behalf of Jan Kalyan are misplaced, misconceived and is an attempt to stall the present proceedings. Pertinently, Jan Kalyan is questioning the jurisdiction of the Commission to adjudicate the present proceedings on the basis that the present Bench of this Commission does not comprise of a Judicial Member. However, a bare perusal of the Hon'ble Supreme Court of India judgment dated 12.04.2018in Civil Appeal No. 14697 of 2015, titled State of Gujarat & Ors Vs Utility Users Welfare Association & Ors shows that the next vacancy arising in the Commission needs to be filled in by a legal member. Without prejudice, if the submissions of Jan Kalyan in this regard are accepted then all the proceedings and orders passed by this Hon'ble Commission since 12.04.2018 i.e. the date of Supreme Court's order will be illegal and without jurisdiction.

12.25. The present Petition seeking approval of the amendments to the PPA constitute a part of larger rehabilitation plan recommended by the High Powered Committee and being implemented pursuant to the policy decision taken by the Govt. of Gujarat to rehabilitate the three power projects in the State of Gujarat, including the power project in question.

12.26. Petition has been filed on 28.03.2019. Whereas the other Petition i.e. Petition No. 1389 of 2014 was filed on behalf of the Respondent No. 1 seeking relief in terms of the PPA provisions relating to Force Majeure and Change in Law. Petition No. 1389 of 2014 has been withdrawn by the Respondent No. 1 as the present petition cannot be proceeded with till the pendency of Petition No. 1389 of 2014. The order dated

20.08.2019, passed by the Commission in furtherance of hearing held on 06.08.2019 duly records this fact.

12.27. As regards the formation of the High Power Committee by Government of Gujarat, it is to submit that the said plan is being implemented pursuant to the policy decision taken by the Govt. of State of Gujarat to rehabilitate the three power projects in the State of Gujarat, including the power project in question, pursuant to and consistent with the recommendations of the High Power Committee. The policy decisions of the Govt. of State of Gujarat are evident from the GR dated 03.07.2018 constituting the High Power Committee and the GR dated 01.12.2018 pursuant to which the present petition has been filed.

12.28. The present petition and proposed amendments to the PPA constitute a part of the entire rehabilitation package recommended by the High Power Committee and which is being implemented pursuant to the policy decisions of the Govt. of State of Gujarat. The Policy GR dated 03.07.2018 and 01.12.2018 issued by the Govt. of Gujarat have been issued in exercise of sovereign powers of the State Government.

12.29. It is a settled legal position that policy decisions taken by a Government in larger public interest are not justiciable and cannot be challenged before a Court except in cases of manifest arbitrariness.

12.30. The power to approve amendments by the Commission contained in Article 18.1 of the PPA flow from and are consistent with Guidelines and Section 63 of the Electricity Act, 2003.

12.31. The Hon'ble Supreme Court in the judgment passed in Sasan Case and Energy Watchdog Case has held that an Electricity Regulatory Commission is empowered to regulate tariff even in case of Section 63 if the same is in the larger public interest.

12.32. The Petitioner respectfully submits that the Commission's power to approve amendments to the PPAs in the public interest even in cases of determination of tariff

by bidding process in accordance with guidelines issued by the Central Govt. under Section 63 of the Electricity Act, 2013 (hereinafter "the Act") flows from the said Section 63 of the Act itself as demonstrated herein below:

A. In furtherance of Section 63 of the Act, the Central Govt. issued the competitive bidding guidelines dated 19.01.2005 and subsequently issued the Standard Bidding Documents which, included the model PPA.

B. As per the said guidelines, the Procurers, in this case GUVNL furnished to the bidders the Model PPA along with the RfQ/RfP. The said model PPA in fact, contained a provision for amendments of PPA if, so agreed by the parties and approved by this Hon'ble Commission.

C. Similarly, PPA dated 26.02.2007 entered between the Petitioner and Respondent No. 1 contained a specific provision being Article 18.1 allowing the parties to amend the PPAs with the approval of this Hon'ble Commission.

D. From the above, it can very well be deduced that the Commission's power to amend the PPA flows from competitive bidding guidelines dated 19.01.2005 of the Central Govt. issued under Section 63 of the Act thereby leading to an invariable conclusion that the said power flows from Section 63 of the Act itself.

12.33. The various Electricity Regulatory Commissions including this Commission and CERC have approved amendments to be made to Section 63 PPAs leading to change in tariff in compliance of the SHAKTI scheme i.e. a policy decision of the Union Ministry of Coal. Few such orders are as under:

I. Order dated 02.02.2018 in Petition No. 1703 of 2018 read along with Order dated 15.03.2018 in Review Petition No.1707 of 2018, passed by this Hon'ble Commission;

II. Order dated 21.02.2018 passed by CERC in the matter of KSK Mahanadi Power Co. Ltd. vs TANGEDCO & Ors., Pet. No. 21/MP/2018;

III. Order dated 21.02.2018 passed by CERC in the matter of GMR Kamalanga Energy Ltd. vs GRIDCO Ltd. & Anr., Pet. No. 41/MP/2018 and;

IV. Order dated 20.03.2018 passed by MERC in the matter of Adani Power Maharashtra Ltd. vs MSEDCL, Pet. No. 70 of 2018.

12.34. A clear analogy can be drawn from the aforesaid insofar as in the said cases, amendments to PPAs were allowed in furtherance of SHAKTI Scheme of the Union Ministry of Coal, similarly in this case the amendments proposed are in furtherance of the policy decision of the Govt. of Gujarat acting through Energy & Petrochemical Department, which is evident from the Policy GR dated 03.07.2018 constituting HPC and the Policy GR dated 01.12.2018 pursuant to which the accompanying petition has been filed.

12.35. Jan Kalyan in its reply has raised preliminary issues as to why Supplementary Agreement is not in the public interest and thus, should not be approved by this Hon'ble Commission. It is important to point out that all these issues were also raised by the Consumer Groups before the Hon'ble CERC in Petition No. 374/MP/2018. The Hon'ble CERC has dealt with all these issues/suggestions on their merits and was pleased to reject the same. It is the most respectful submission of Petitioner/GUVNL that for the same reasons the issues on behalf of Jan Kalyan which are identical to issues/suggestions given by Prayas (Energy Group) before Hon'ble CERC are liable to be rejected out rightly.

12.36. As regards to the submission by Jan Kalyan to consider each individual component of tariff independently, it is submitted that the rehabilitation package being implemented mandates the developers to continue to operate the plants within very strictly defined parameters. Looking at one of the components of the entire package in isolation is not permissible and will only result in a distorted interpretation and understanding of the complete rehabilitation package.

12.37. The contention of Jan Kalyan that the HPC has sought to mitigate the hardship of the generators by burdening the consumers is absurd and factually incorrect. The contents of the HPC report particularly Chapters VII and VIII are being reiterated in this regard. A perusal of the relevant portion of the HPC report makes it clear that all the

submissions made by the consumer groups before the HPC were duly considered and it was highlighted by the HPC that proposed amendments are most beneficial to the consumer.

12.38. The contention of Jan Kalyan that the decision of the Government of Gujarat to issue a policy directive, and the subsequent decision of the Petitioner to approach the Commission seeking amendment of the PPA is not sustainable in law, is denied as being erroneous and contrary to law. The Objector No.4 has failed to provide any specific basis for this averment and is making vague and unsubstantiated statements with a view to cast aspersions not only on the sanctity of the report submitted by the HPC, but also on the Policy GRs issued by the Government of Gujarat, as well as the decision of the Hon'ble Supreme Court in its order dated 29.10.2018. The attempt on the part of Jan Kalyan to thus challenge the maintainability of the present petition is an attempt to render nugatory the policy decision taken by the Govt. of the State of Gujarat.

12.39. The contention of Jan Kalyan that the proposed amendments to the PPAs cannot be converted to giving relief to the project developer by way of modification to the tariff terms and conditions to allow all actual costs is again incorrect and does not deserve any consideration. It is submitted that the HPC report in its conclusions and recommendations under Chapter X records that HPC while undertaking the analysis and making the recommendations in the report, has the 'consumer interest' as paramount and the same has been the focal point of their approach. Thus, on the touchstone of the consumer interest, HPC concluded that the power project in question needs to be salvaged by making them economically viable i.e. by allowing pass through of the energy charges. The restructuring in terms of the HPC report primarily envisaged the following other aspects:

(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 PPA tenure of 25 years;

(iv) Offer for tie-up of free capacity and;

(v) Sharing of profit from Indonesian mines (Not applicable in Essar's case).

12.40. From the above it is to be seen that Government of Gujarat has taken a policy decision to allow pass through of energy charges for rehabilitating the concerned power projects, including the project in question vide the Policy GR dated 01.12.2018, issued in furtherance of and accepting the recommendations of the HPC. Pertinently, the reply filed on behalf of Jan Kalyan fails to point out any valid ground to question/challenge the policy decision of the Government of Gujarat and has failed to demonstrate as to how the policy decision of the Government of Gujarat is against the consumer/public interests.

12.41. It is submitted that all other contentions which have not been specifically dealt with by the Petitioner in the present rejoinder are denied in terms of the submissions made hereinabove. The Petitioner further, craves leave of this Hon'ble Commission to file any other additional documents as may be necessary or as directed by this Hon'ble Commission.

12.42. Further it is submitted that Letters dated 16.01.2020 filed by Shri Naresh Balvantbhai Patel and Shri Hitesh Mahadevbhai Patel before the Commission seeking impleadment in the Petition. It is submitted that the Petitioner has filed the Petition seeking approval of Supplemental PPA signed with Respondent No. 1 pursuant to Hon'ble Supreme Court judgment dated 29.10.2018 in the Miscellaneous Application Nos. 2705 - 2706 of 2018 filed in Civil Appeal No. 5399-5400 of 2016 by the Petitioner, seeking clarification on the concerns raised by the consumer organizations. After perusal of the HPC report, the Hon'ble Supreme Court passed the Order dated 29.10.2018 inter-alia clarifying that the parties can approach the respective Commissions for approval of proposed amendments and the judgment dated 11.04.2017 will not stand in the way of such amendment. Further, Hon'ble Supreme

Court had clarified that each of the consumer groups, who has appeared before us and who has 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 CERC to decide the matter in accordance with law.

12.43. Accordingly, as per Hon'ble Supreme Court order dated 29.10.2018, Petitioner had impleaded all the Consumer Forum in the instant Petition filed before Hon'ble Commission. Further, Hon'ble Commission decided to hold a Public Hearing in the Petition and issued Public Notice dated 08.11.2019 notifying Public Hearing in the Petition on 21.11.2019 and seeking comments / objections from interested parties on or before 21.11.2019 or parties to remain present during the Public Hearing.

12.44. Shri Naresh Balvantbhai Patel and Shri Hitesh Mahadevbhai Patel have not filed any response / objection to the Petition as sought by Hon'ble Commission before 21.11.2019 and also did not attend the public hearing in the matter. Further, Prayas Energy and the four other objectors who have participated in the proceedings in the Petition, have made elaborate submissions taking consumer interest into consideration and Petitioner has responded to each of the submissions. In view of above facts and submissions, Hon'ble Commission may take appropriate view in the matter.

13. Reply of Respondent No. 1 to the objection / representation dated 20th November 2011 and 15.01.2020 filed by Jan Kalyan Foundation and other Objectors is given as here under.

13.1. The Objector shall be put to strict proof of the fact that they filed their Objections on 20.11.2019 and in case, the Objector fails to discharge the said burden, then it can be rejected totally on the ground that the same have been filed by the Objector after the expiry of the time period mentioned in the said Public Notice.

13.2. In the Public hearing held on 22.11.2019, no one had remained present on behalf of the Objector Jan Kalyan Foundation. Even thereafter, the Respondent No. 1 has never received any objections from the Objector Jan Kalyan Foundation.

13.3. In the subsequent hearing held on 16.01.2020, representative of the Objector appeared for the first time and sought time to file objections. Thereafter also, the Respondent No. 1 has received copy of the Objections from the Petitioner GUVNL only on 22.01.2020.

13.4. Hence the Objection filed by the Objector Jan Kalyan Foundation deserves to be dismissed only on this ground.

13.5. The Objections raised by the Objector in the Objections are substantially similar to the Objections filed by the other Objectors in the present proceedings before this Hon'ble Commission.

13.6. The Respondent No. 1 does not intend to repeat its various statements, contentions and submissions contained in its said replies and further craves leave of this Hon'ble Commission to refer to and rely upon the same as a part of its reply to the present Objections as if the same are reproduced herein.

13.7. Respondent No. 1 has filed Affidavit-in-Reply dated 20.11.2019 to the Objections of Utility Users Welfare Association and submit that the undisputed facts and circumstances of the case clearly show that as a matter of fact, the Government of Gujarat (the "GOG") in the larger public interest has formulated and issued as implementation Policy in 01.12.2018 which is more particularly referred to hereunder, on the basis of the recommendations made by the High Power Committee constituted by it, to ensure adequate and efficient supply of energy at economical tariff by the Petitioner among other Developers, having the imported coal based power plants located in Gujarat and maintain its respective energy basket in a manner that has a mix of power sources that addresses all issues including availability of reliable power generation, optimum utilization of existing resources and installed generation capacities, etc. by allowing revival and rehabilitation package to the financial stressed and economically unviable imported coal based power projects located in Gujarat, which include imported coal based power plant of the respondent No. 1, through

consequential amendment(s)/modification(s) in the existing Power Purchase agreement.

13.8. The Only question that arises in this Petition for the decision of this Commission is whether in the facts and circumstances of the case, the above decisions of the GOG are in the larger public interest or not.

13.9. The Respondent No. 1, the undeniable facts and circumstances of the case, manifestly show that the decisions of the GOG in question are in a larger public interest and not at its expense or consumers' interest, as alleged by the Association in the Objections or at all.

13.10. The Respondent No.1 denies all and singular the allegations, statements, contentions and submissions of the Association in the Objections that are contrary thereto or inconsistent therewith.

13.11. The Implementation Policy which takes note of the conclusions drawn by the HPC and concurred therewith in essence.

13.12. The Supplemental PPA is based on the Implementation Policy and is in larger Public Interest, the Objections filed by the Objectors Jan Kalyan Foundation deserves to be rejected.

13.13. This Commission, vide its Order dated 20.08.2019 had directed the Petitioner to issue a Public Notice calling upon person(s) who may be aggrieved by the Petitioner seeking approval of the Supplemental PPA from this Commission to file their Objections, if any, before this Commission supported by way of an Affidavit. Since the Objections filed by the Objectors are not under oath,the objections are liable to be rejected by this Hon'ble Commission as not maintainable.

13.14. The Supplemental PPA dated 01.03.2019 entered into between the parties and the GR issued by the Government of Gujarat in larger public interest. Since the prayers prayed for in the said Petition pertaining to revision of capacity and energy charges did not

survive, in view of the Supplemental PPA entered into between the Petitioner and respondent No. 1, the Respondent No. 1 withdrew the said Petition, which was duly and rightly permitted by this Commission. Therefore. The objection by the Objector with regard to permission granted by the Hon'ble Commission to the Respondent No. 1 to withdraw the said Petition No. 1389 of 2014, is ill-founded and unsustainable.

13.15. With regard to para-3 of the Objections dated 15.01.2020 regarding the purported benefits of adopting the process as laid down under the Insolvency and Bankruptcy Codes, 2016, the same are denied as being devoid of merits.

13.16. Chapter – IX of the HPC Report deals with the option of exploring the NCLT route in detail and has even considered the findings of the 37th and 40th report presented by the Standard Committee on Energy ("SCE").

13.17. The SCE in its report has inter alia highlighted that there is a need to preserve, protect and conserve stressed assets, and not emphasize on procedure that focus more in dissolution than on resolution of stressed assets. It was emphasized by the SCE that the consequences of reviving the power plants would be less burdensome and more fruitful, as opposed to the enormity of the consequences of approaching the NCLT.

13.18. It was concluded by the HPC report that revival of the said projects at this stage itself would yield more fruitful results, as against opting for resolution by way of an NCLT referral. The said recommendations of the HPC have been duly accepted by the Government of Gujarat as a policy decision in larger consumer interest.

13.19. The Policy decisions of the Government of Gujarat are evident from the GR dated 03.07.2018 constituting the HPC and the GR dated 01.12.2018 pursuant to which the present petition has been filed.

13.20. The Commission has the power, inter alia, to adjudicate itself upon the dispute between the licensees such as the Petitioner and the generating companies such as the respondent No. 1 when it has no person of law as a member of the Commission

possessing professional qualification and substantial experience in the practice of law for being appointed as Ia Judge of the High Court or a District Judge as stipulated in Section 84(2) of the Gujarat Electricity Industry (Re-organization and Regulation) Act, 2003.

13.21. The Commission can perform and/or continue to perform its adjudicatory functions under the Electricity Act, 2003, notwithstanding that it has no judicial member. Neither the aforesaid Section nor the judgment of the Hon'ble Supreme Court of India in the case, being the Civil Appeal No. 14697 of 2015 the State of Gujarat & Ors. Vs. Utility Users' Welfare Association & Ors. relied upon by the Association neither expressly or impliedly support the contention of the Association to the contrary stating that the Commission should not proceed to decide the petition, is totally devoid of any merit. The Association has taken the said contention knowing it to be false or without believing it to be true with an ulterior motive to cause or delay the adjudication of the dispute involved in the petition by the Commission in order to cause serious loss, harm and prejudice not only to the interest of the respondent No. 1, but to the interests of consumers' in Gujarat.

13.22. The Objectors have erroneously submitted that the HPC Report does not take into record interest of the consumers and needs to be revisited by this Commission. It is submitted that the HPC Report in its conclusions and recommendations under Chapter – X records that HPC, while undertaking the analysis and making the recommendations in the report, has the 'Consumer Interest' paramount and the same has been the focal point of their approach. On the touchstone of the consumer interest, the HPC concluded that the power project in question need to be salvaged and this can only be done by ensuring sustainable operation of the power project by making them economically viable i.e. by allowing pass through of the energy charges.

13.23. From the recommendations of the HPC report and the Implementation Policy, it is clear that the State Government has taken policy decision to allow pass through of energy charges for rehabilitating the concerned power project including that of Respondent No. 1 Company vide Policy GR dated 01.12.2018 issued in furtherance to and

accepting the Recommendations of the HPC. Therefore, the objections raised by the Objectors are misconceived, ill-founded and therefore deserve to be rejected.

13.24. Since the amendments to the PPA by the Supplemental PPA, the approval of which has been sought in the present Petition, is manifestly in the larger public interest for the reasons expressly and explicitly stated in the Report of the HPC containing recommendations for implementation to mitigate the hardship and stress faced by imported coal based power projects located in Gujarat, the contention of the Objector that only because amendments to the PPA approved for payment of a higher tariff by consumers in Gujarat to the Respondent No. 1 is not in public interest is not just and proper.

13.25. In deciding whether the Implementation Policy is in public interest or not, various other reasons given in paragraph 10.2 of the Implementation Policy are relevant. Considering the said reasons, the contentions of the Objector Jan Kalyan Foundation have no merit.

13.26. There is absolutely no merit in any of the contentions raised by the Objector Jan Kalyan Foundation in its Objections for opposing the grant of the present Petition by the Commission.

13.27. Therefore, the prayer of the Petitioner seeking approval of the Supplemental PPA deserves to be allowed by granting the relief as prayed for therein by the Petitioner.

14. The matter was heard by the Commission on 06.08.2019, 21.11.2019, 16.01.2020, 29.02.2020 and finally heard on 07.03.2020 and daily orders were issued on 28.08.2019, 05.12.2019, 27.01.2020, 29.02.2020 and 09.03.2020 respectively.

15. The Petitioner has made written submission on 16.03.2020 for deliberations during the hearing by Learned Advocate Shri Hemant Sahai on its behalf, which are as mentioned below:

15.1. He submitted that initially the present petition was filed under Section 86(1)(b) and 86 (1)(f) of the Act. However, during the course of hearing the Petitioner without prejudice to its rights and contentions vide its letter dated 02.03.2020 has sought for the amendment of the memo of the Petition to be as under Section 86(1)(b) only. Therefore, the Petition be considered as having been filed under 86(1)(b) of the Electricity Act, 2003 alongwith the relevant provisions of the PPA. An affidavit in this regard has also been filed by the Petitioner. Thus, on withdrawal of aforesaid provision u/s 86 (1) (f) by the Petitioner the Petition now falls under Section 86 (1) (b) of the Act only. Hence, the Commission shall require to approve the PPA with consideration of 86 (1) (b) only.

15.2. The contentions of the Respondents / Objectors have been dealt with by the Central Electricity Regulatory Commission in its Order dated 12.04.2019 passed in Petition No. 374/MP/2018 where issues were identical to those in the present case. While the decision of the Central Commission is not binding on this Commission, it is a settled law that to deviate from the views of the Central Commission on identical issues, the Commission will have to record strong reasons. In support of above submissions, he relied upon following decisions:

I. *Commissioner of Income Tax, Gujarat v Sarabhai Sons Ltd. (Income Tax Reference No. 38 of 1978)* and;

II. N.R Paper and Board Limited & Ors. v Deputy Commissioner of Income Tax (Special Civil Application Nos. 1144-1147 of 1998).

15.3. The Commission is vested with necessary powers/jurisdiction under Section 86(1)(b) of the Electricity Act to approve the amendments sought to be made to the PPA dated 26.02.2007 executed between Petitioner and Respondent No. 1. The Hon'ble Supreme Court in its recent pronouncements has upheld the wide scope of the Central Commission's regulatory powers under Section 79 (1)(b) *[pari materia to 86 (1) (b)]* of the Act to regulate the tariff of a generating company having a composite scheme of generation and sale of electricity in more than one State *even in cases of* adoption of tariff under Section 63 of the Electricity Act. Therefore, it cannot be argued that this Hon'ble Commission lacks necessary power to approve the amendments to PPAs

having an impact on tariff adopted under Section 63 of the Act. In support of the said submissions he relied upon the following judgements.

I. The Hon'ble Supreme Court judgement in the case of *All India Power Engineer Federation & Ors. Vs Sasan Power Ltd. &Ors.*, reported as *(2017) 1 SCC 487.*

II. Judgement in the case of *Energy Watchdog v Central Electricity Regulatory Commission & Ors.* reported as *(2017) 14 SCC 80.*

15.4. The Commission is having power to approve the amendments to the PPA in the public interest even in cases of determination of tariff in accordance with the guidelines issued by the Central Government under Section 63 of the Electricity Act flows from the said provision itself. The same is demonstrated as under:

A. Under Section 63 of the Act, the Central Govt. issued the competitive bidding guidelines dated 19.01.2005 and subsequently issued the Standard Bidding Documents which, included the model PPA.

B. As per the said guidelines, the Procurers, in this case GUVNL furnished to the bidders the Model PPA along with the RfQ/RfP. The said model PPA in fact, contained a provision for amendments of PPA if, so agreed by the parties and approved by this Hon'ble Commission.

C. Similarly, PPA dated 26.02.2007 entered between the Petitioner and Respondent No. 1 contained a specific provision being Article 18.1 allowing the parties to amend the PPAs with the approval of this Hon'ble Commission.

D. From the above, it can very well be deduced that this Hon'ble Commission's power to amend the PPAs flows from competitive bidding guidelines dated 19.01.2005 of the Central Govt. issued under Section 63 of the Act thereby leading to an invariable conclusion that the said power flows from Section 63 of the Act itself.

15.5. The various Electricity Regulatory Commissions including this Commission have approved amendments to be made to Section 63 PPAs leading to change in tariff in compliance of the SHAKTI scheme i.e. a policy decision of the Union Ministry of Coal. During the course of arguments, the Petitioner relied upon such similar orders, details of which are as under:

i. Order dated 21.02.2018 passed by the Central Commission in the matter of KSK Mahanadi Power Co. Ltd. vs TANGEDCO & Ors., Petition No. 21/MP/2018;

ii. Order dated 21.02.2018 passed by the Central Commission in the matter of GMR Kamalanga Energy Ltd. vs GRIDCO Ltd. & Anr., Petition No. 41/MP/2018 and;

iii. Order dated 02.02.2018 passed by this Hon'ble Commission in the matter of GUVNL v ACB (India) Limited, Petition No. 1703 of 2018 read along with Order dated 15.03.2018 passed by this Hon'ble Commission in the matter of GUVNL v ACB (India) Limited, Petition No. 1707 of 2018.

iv. Order dated 20.03.2018 passed by MERC in the matter of Adani Power Maharashtra Ltd. vs MSEDCL, Petition No. 70 of 2018.

v. Order dated 24.01.2018 passed by the Rajasthan Electricity Regulatory Commission in the matter of Adani Power Limited v Jaipur Vidyut Vitaran Nigam Limited & Ors., Petition No. RERC-1313/18.

15.6. From the perusal of the aforesaid Orders, especially the Order dated 02.02.2018 passed by this Hon'ble Commission in the matter of GUVNL vs ACB (India) Ltd., Petition No. 1703 of 2018, it is clear that the this Hon'ble Commission allowed amendments to be made in Section 63 PPAs having an impact on tariff in compliance of the SHAKTI policy of the Union Ministry of Coal dated 22.05.2017 which envisaged amendments to be made to Section 63 PPAs as mutually agreed between the developer and the procurer after approval of appropriate Commission. A clear analogy

can be drawn from the aforesaid Orders that the Commission may allow the proposed amendments in the present case as well.

15.7. As in the said case amendments to PPAs were allowed by the Central Commission in furtherance of SHAKTI Scheme of Union Ministry of Coal. Similarly, in this case the amendments proposed are in furtherance of the policy decision of the Govt. of Gujarat acting through Energy & Petrochemical Department, which is evident from the GR dated 03.07.2018 constituting the HPC and the GR dated 01.12.2018 pursuant to which the accompanying petition has been filed. Therefore, the arguments advanced on behalf of the Consumer Groups / Objectors equating the policy decision of the Govt. of Gujarat with a policy directive as envisaged in Section 107/108 of the Electricity Act is misplaced, misconceived and do not deserve any consideration insofar as the present case is a case of implementation of economic policy of the Govt. of Gujarat and not a policy directive under Section 107 or 108 of the Act. It is for this reason that the GR dated 01.12.2018 makes no reference to Section 107 or 108 of the Act.

15.8. All questions regarding the jurisdiction/power of this Hon'ble Commission to approve the amendments in question, which, indisputably are in the larger public interest and being implemented through a policy decision of the Govt. of Gujarat, has been put to rest by the order dated 29.10.2018 passed by Hon'ble Supreme Court in Miscellaneous Application Nos. 2705-2706 of 2018 in Civil Appeal no. 5399-5400 of 2016. The said order was passed by the Hon'ble Supreme Court in furtherance of Miscellaneous Applications filed on behalf of the Petitioner thereby seeking the indulgence of the Hon'ble Supreme Court to clarify its judgment 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.

15.9. A clear analogy can also be drawn from the CERC's order dated 12.04.2019, passed in Petition No. 374/MP/2018 filed for approval of supplemental PPA of exactly similar nature on behalf of another power generator considered by the HPC. CERC in the said order has discussed and adjudicated upon the issue – *"Whether the Commission has the power to approve the proposed* amendments, *especially since the tariffs specified*

in the PPAs were determined under Section 63 of the Act?" – in great detail and has returned an affirmative finding holding that it has necessary regulatory jurisdiction. In support of the said submissions he relied upon the para 51,55 and 57 of the said judgement.

15.10. The Commission has necessary powers under the Electricity Act to approve the proposed amendments. While approving the proposed amendments, the Commission needs to consider if the said amendments are in public interest. The rehabilitation scheme of the Govt. of Gujarat which is being implemented in the larger public interest by way of a policy decision ensures that the project is revived and alternate expensive power does not have to be resorted to. Besides this, the Commission must take cognizance of the Policy GR dated 01.12.2018 to ascertain whether the proposed amendments are in the public interest. The extent the rehabilitation package is implemented through the policy decision of the Govt. of Gujarat taken in the larger public interest the Commission should accept the same and allow amendments to be made to the PPA dated 26.02.2007 as done in the aforesaid cases to implement the SHAKTI scheme.

15.11. The Policy GR dated 01.12.2018 shows that the Government of Gujarat has deliberated on all recommendations of the HPC in detail against the background of the existing and emerging power scenarios in the State of Gujarat which are as under:

a. Gujarat has a share of 4805 MW from the 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;
b. These projects are based on advanced technology, are efficient in operation and have a higher priority in the Merit Order scheduling;

c. In case these projects were to 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;

d. In the recent Case I long term bids invited by other States like Andhra Pradesh, Uttar Pradesh, Telangana etc. the tariff discovered was in range of Rs. 3.94-6.31/unit;

e. 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;

f. 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 Re-gasified Liquefied Natural Gas has significantly higher generation cost and would further increase the Fuel Surcharge on consumers.

g. 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;

h. To meet the generation loss due to non-availability of power from these projects, the Petitioner 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 the Petitioner not purchased such quantum of power, it would have led to the undesirable situation of load shedding in the State and;

i. 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.

15.12. The judgments relied upon by the Petitioner lay down the principles for adjudication and scope for interference by a court of law in policy decisions of the Government taken in the larger public interest. The said principles are as under:

a. The courts cannot be expected to presume the alleged irregularities, illegalities or unconstitutionality nor the courts can substitute their opinion for illegalities, or the unconstitutionality nor can the courts substitute their opinion for the bona fide opinion of the State executive. The courts are not concerned with the ultimate decision but only with the fairness of the decision-making process;

b. The Government is entitled to make pragmatic adjustments and policy decision which may be necessary or called for under the prevalent peculiar circumstances. The Court cannot strike down a policy decision taken by the Government merely because it feels that another decision would have been fairer or wise or more scientific or logical;

c. If the Govt. is alive to the various considerations requiring thought and deliberation and had arrived at a conscious decision after taking them into account, it may not be for the Court to interfere in the absence of mala fides.

d. It is not necessary for a court of law to enter upon any exercise for finding out the wisdom in the policy decision of the State Government. It is immaterial whether a better or more comprehensive policy decision could have been taken. It is equally immaterial if it can be demonstrated that the policy decision is unwise and is likely to defeat the purpose for which such decision has been taken. Unless the policy decision is demonstrably capricious or arbitrary and not informed by any reason whatsoever or it suffers from the vice of discrimination or infringes any statute or provisions of the Constitution, the policy decision cannot be

struck down. It should be borne in mind that except for limited purpose of testing a public policy in the context of illegality and unconstitutionality, courts should avoid "embarking on uncharted ocean of public policy" and;

e. Court cannot sit in judgment over commercial or business decision taken by the State or its instrumentalities, which has been duly taken after evaluating and assessing the monetary and financial implications, unless the decision is in clear violation of statutory provisions or is perverse or is taken for extraneous considerations or improper motives. State and its instrumentalities can enter into various contracts which may involve complex economic factors. There is always an element of risk in such decisions. However, if the decision is taken bona fide and in public interest, the mere fact that a decision ultimately proves to be wrong, would not by itself be a ground to hold that the decision was mala fide or taken with ulterior motives. Matters relating to economic issues always have an element of trial and error, and so long as the trial and error is bona fide and with best intentions, such decisions cannot be questioned as arbitrary, capricious or illegal.

15.13. Tested on the aforesaid principles, the policy decision of the Government of Gujarat taken in the larger public interest to salvage the project in question which included carrying out certain amendments to the PPAs after obtaining necessary approval from the Commission should not be interfered by the Commission. The contentions of the Consumer Groups in their replies and during the course of arguments questioning some of the aspects of the policy decision on merits in isolation to others is not a correct approach to be adopted. It is settled that a policy document needs to be read as a whole. The disturbing any one component of the complete rehabilitation plan will only result in distorting the entire plan and instead of resolving the current financial and cash flow mismatch issues being faced by the projects, will end up creating fresh cash flow mismatch issues for the projects. The HPC recommendations have been finely balanced with the intention of resolving the financial and cash flow mismatch issues being faced by the projects in a sustainable manner, and not to create fresh financial

issues. The plan envisages an appropriate re-structuring that will result in making the projects financially self-sustaining in its operations, while at the same time requiring the developers to absorb all past accumulated losses and also taking significant financial haircuts in the future operations of the projects. All this is being done in the larger public interest by way of a policy decision of the Govt. of Gujarat which is evident from the Policy GR dated 03.07.2018 constituting the HPC and Policy GR dated 01.12.2018 accepting the recommendations of HPC.

15.14. A clear analogy can also be drawn from the Ld. CERC's order dated 12.04.2019, passed in Petition No. 374/MP/2018 filed for approval of supplemental PPA of exactly similar nature on behalf of another power generator considered by the HPC. In support of above submissions, the petitioner relied upon the para 59, 62 and 63 of the said order.

15.15. The necessary jurisdiction to regulate the tariff adopted under Section 63 of the Electricity Act will include the amendments to PPA, if the same are being implemented through a policy decision of the Government taken in the larger public interest by the Commission. The proposed amendments are in interest of consumers since the non-availability of power from Essar Power Gujarat Ltd. will result in the Petitioner not only incurring higher cost of replacement of such power but may also result in DISCOMs 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 at the very least. The HPC has carried out detailed consultative process and also analysed the circumstances, facts associated with the issue and submissions by all stakeholders viz. the Developers, Procurers, Lenders as well as the consumer representative groups. The consultative process undertaken with the diverse stakeholders by the HPC and also seen the public/ consumers interest etc. which are stated in para V, VI and VII of the HPC report.

15.16. The Petitioner and the Respondent No. 1 have mutually agreed and signed the Supplemental PPA on 01.03.2019 as provided in Article 18.1 of the respective original PPA pursuant to and consistent with the recommendations of the HPC and pursuant to policy decision of the Govt. of Gujarat dated 01.12.2018.

15.17. The salient features of the supplemental PPA dated 01.03.2019 which, includes amendments to various other components besides tariff, are in the interest of State and the consumers are reproduced herein below for ready reference of this Hon'ble Commission:

a. Date of applicability shall be prospective from 15th October 2018. Therefore, all the past losses to the procurers shall be borne by Respondent No. 1 only and not passed on to the consumers.
b. Fuel Cost shall be pass-through on actual basis subject to ceiling of imported coal cost of 110 USD/MT. The Generators shall carry the price risk beyond the capped ceiling. Such capped ceiling shall be reviewed after five years.
c. Lenders shall bear the burden to the extent of Rs 0.20 per kWh by way of reduction in Capacity Charge.
d. Tie-up of free capacity at the capacity charge equal to the levelized capacity charge of the existing PPAs without any discount and the Energy Charge as actual.
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.
f. Increased availability from 80-90% without additional capacity charges for the incremental availability.

15.18. A clear analogy can also be drawn from the para 17 of the Ld. CERC's order dated 12.04.2019, passed in Petition No. 374/MP/2018 filed for approval of supplemental PPA of exactly similar nature on behalf of another power generator considered by the HPC.

15.19. The replies filed on behalf of consumer groups / objectors as well as the arguments advanced were repetitive in nature and do not deserve any consideration. A perusal of

the said replies/objections makes it apparent that on merits of the case in hand, all the consumers/objectors have more or less adopted the submissions of Prayas (Energy) Group.

15.20. The Objectors have raised certain other issues which does not deserve any consideration as the same does not impact the present proceedings at all and have been raised purely to prejudice the Hon'ble Commission against the Petitioner which, is a Statutory Authority. The objections filed on behalf of UUWA and LUBG are verbatim similar. The replies/objections filed on behalf of the Consumers Groups are based on an erroneous premise that the Commission has no power to approve amendments to be made in the Section 63 PPAs or; that policy decision taken by the Govt. of Gujarat in the larger public interest deserves to be interfered by this Hon'ble Commission on merits.

15.21. Public interest was supreme in the considerations of the HPC while evaluating the methodology of the way forward. A bare perusal of the Policy GR dated 03.07.2018, HPC Report and Policy GR dated 01.12.2018 makes it abundantly clear that public interest has been of paramount importance while formulating an equitable solution to mitigate the hardship being suffered by the power generators. Chapter VII of the HPC Report highlights the importance of salvaging the projects by demonstrating how closure of the said projects would have an adverse impact on consumer tariff. These projects contribute to a significant amount of the country's peak demand and contribute to approximately 45% of the requirement of the Petitioner herein. Moreover, it is imperative to highlight that the project of Respondent No. 1 is a cheaper source of electricity as compared to other sources/projects from whom the DISCOMs have been constrained to procure power. Even after allowing pass through of the price of coal, the tariff of Respondent No. 1's project would still be competitive. The said projects have also been developed on supercritical technology and are more efficient leading to higher saving of fuel cost.

15.22. The aforesaid findings of the HPC Report, the Government of Gujarat vide its Policy GR dated 01.12.2018, adopted the recommendations given in the HPC Report with

certain modifications. The preamble of the Policy GR dated 01.12.2018 in itself states that the policy directive is being issued for rehabilitation of stressed imported coal-based projects in consumer interest. Further, the Policy GR has also taken note of the analysis of the HPC Report qua consumer interest involved in salvaging the present projects. The Policy GR has thus been issued keeping the larger public/consumer interest in mind. It is noteworthy that certain modifications that have been made by the Policy GR have been carried out so as to safeguard consumer interest and ensure that no undue benefit is given to the generators. The CERC has considered the aforesaid issue in great detail at paragraphs 68 and 71 of its order dated 12.04.2019, passed in Petition No. 374/MP/2018.

15.23. Before implementing the recommendations of the HPC which, includes amending the PPAs, the Govt. of Gujarat found it prudent to seek a clarification from the Hon'ble Supreme Court of India on the concerns raised by the Consumer Organizations (Energy Watchdog and Prayas (Energy) Group) that any amendments to the PPAs will be on the face of the judgment of the Hon'ble Supreme Court dated 11.04.2017 in Civil Appeal No. 5399-5400 of 2016 (Energy Watchdog judgment). Accordingly, Applications seeking clarifications to this effect were filed by the Govt. of Gujarat and Petitioner herein before the Hon'ble Supreme Court of India. The Hon'ble Supreme Court of India vide its order dated 29.10.2018 after perusing the HPC report was pleased to clarify that it will be open to the applicants (Petitioner herein) to approach the Central Electricity Regulatory Commission for approval of the proposed amendments to be made to the PPAs in question. Accordingly, the Petitioner filed the present Petition seeking approval to the proposed amendments to the PPAs as contained in the Supplemental PPAs dated 01.03.2019.

15.24. The first round of litigation with regard to the present dispute, which culminated in the Energy Watchdog Judgment being passed by the Hon'ble Supreme Court, was with regard to the PPAs as they stood then. The present proceedings are however related to approval of supplemental PPAs by way of an amendment, which has been proposed pursuant to the policy decision of the Govt. of Gujarat, for rehabilitation of the

concerned projects. Thus, the Energy watchdog judgment of the Hon'ble Supreme Court will not have any implications on approving the amendments to the PPAs.

15.25. The allegation of the consumer groups that as per the Petitioner, the Commission is not required to look into the objections of the consumer groups and ipso facto approve the proposed amendments, is fallacious. The Petitioner has never contended that the Commission should approve the amendments to the PPAs without looking into the various aspects of the matter. The Petitioner has only emphasized that the Commission may consider the entire rehabilitation package as a whole, and not look at specific aspects in isolation.

15.26. The CERC has considered the aforesaid issue in great detail in para 45 of its order dated 12.04.2019, passed in Petition No. 374/MP/2018 and has held that the amendments are in public interest.

15.27. The HPC Report has looked into each and every aspect of the rehabilitation proposal in great detail and made the final suggestions after having considered each and every aspect, keeping in view the consumer interest as paramount. In fact, by way of the policy GR dated 01.12.2018, the Petitioner further modified the suggestions made by the HPC and made them stricter for Respondent No. 1 with a view of safeguarding the interest of the consumers. Pertinently, similar suggestions were also made by the Consumer Groups before the HPC, which have been duly considered in the HPC report.

15.28. The Extension of loan repayment tenor aspect has already been considered by the Lenders. Extension of repayment tenor would result in increase of interest amount on overall basis and thus the cost will become higher on an NPV basis. In Para 5.7.2 of the HPC Report it is highlighted that lenders have already extended their support by providing working capital support, interest rate reduction and extension of the tenor for loan repayment. The CERC has considered the aforesaid issue in great detail in para 111 of its order dated 12.04.2019, in Petition No. 374/MP/2018.

15.29. With regard to the suggestion of using domestic coal is concerned the findings of NTPC (technical consultant to the Working Group Committee Report) Report, state that the power plant of Respondent No.1 cannot be operated on domestic coal. The CERC has considered the aforesaid issue in great detail *in para 113 of* its order dated 12.04.2019, passed in Petition No. 374/MP/2018 and held with r*egard to use of domestic coal is not feasible*.

15.30. The issue of increase of normative availability has been adequately dealt with by the HPC and correspondingly dealt with in Supplemental PPAs. The Supplemental PPAs state that the generator would be giving the benefit of higher availability to the procurer as the procurer would not have to pay capacity charges for availability beyond the normative availability of 80%. Further, the supplemental PPAs clearly state that the provisions of the subsisting PPAs would continue to apply with regard to determining both incentives and penalty. This is in furtherance of the mandate of the rehabilitation package which is to ensure that the generators do not incur further losses while also ensuring that the generators do not make any profit on account of the recommendations. Moreover, since the capacity charges are already being reduced by 20 paise, the normative availability has been kept at 80% only, with no incentive being given to the generator up till 85%. At the same time, the Petitioner reiterates that individual components of the rehabilitation package should not be looked at in isolation to the others since the same may lead to distorted results. The CERC has considered the aforesaid issue in great detail *in para 75 and 76 of* its order dated 12.04.2019, passed in Petition No. 374/MP/2018.

15.31. With regard to the extension of the PPA term is concerned the same has been considered by the HPC and it has been recommended in the HPC Report that the PPA tenure may be extended by 10 years, with the option being available to the procurers. The same has been included in the supplemental PPAs under Article 3.5 thereto, which states that the procurer shall have the right, but not the obligation to extend the term of the PPA by 10 years.

15.32. With regard to the contentions of consumer groups that the tariff for the extended period of the PPAs shall be either the capacity charge of the previous year of the PPA term or the R&M costs etc. is concerned, the same has been considered by the HPC and accordingly in the Supplemental PPAs the capacity charges for the extended term of the PPAs is considered as last year capacity charges. Additionally, R&M expenses are allowed to the extent required, which are also allowed subject to the approval of the Commission based on the prevailing regulations at that point of time. The CERC has considered the aforesaid issue in great detail in para 107 & 108 of its order dated 12.04.2019, passed in Petition No. 374/MP/2018.

15.33. As far as the aspect of utilization of residual value is concerned, it is respectfully submitted that the tenure of the PPA is already being increased by 10 years at the discretion of the Petitioner and there is further, scope of extension of PPA if mutually agreed by the parties. Therefore, the issue related to residual value does not arise.

15.34. The CERC has considered the aforesaid issue in great detail in para 114 and 115 of its order dated 12.04.2019, passed in Petition No. 374/MP/2018.

15.35. The return on equity of the project in question has already been written off. With respect to the submission of the consumer groups qua contribution of and sacrifice by the promoter, is concerned, the promoters have already incurred significant losses in mitigating the hardships being faced by the said projects. Moreover, the past losses are also being absorbed by the generators. Further, as per the rehabilitation package, the promoters are contributing or sacrificing the following:

i. Offer of additional capacity at the same tariff thereby foregoing higher tariff for the said additional capacity. It is important to point out that in the recent bids, the capacity charges discovered are in the range of Rs.2 as against the average capacity charge of approximately Rs.1 under the Supplemental PPAs;

ii. Extension of PPA term at the same tariff thereby foregoing the opportunity to earn more revenue;

iii. Discount of 20 paise in capacity charge for the balance term after servicing the debt;

iv. Increase in availability from 80% to 90% without any additional burden to consumers.

15.36. The Ld. CERC has considered the aforesaid issue in great detail in para 116 and 117 of its order dated 12.04.2019, passed in Petition No. 374/MP/2018.

15.37. This aspect was specifically brought to the notice of the Hon'ble Supreme Court in the M.A. Nos. 2705-06 of 2018 filed in Civil Appeal Nos.5399-5400 of 2016. The Hon'ble Supreme Court, after looking at the HPC report, gave its go-ahead for the route of amendments of the PPA as against IBC route. In any case, the HPC Report has considered and evaluated the option of approaching the National Company Law Tribunal ("NCLT") for resolution of the present issue. In its analysis, HPC has relied upon the findings of the Standing Committee on Energy in its 37th and 40th Report and concluded that revival of the projects at this stage itself would prove to be more fruitful, as opposed to referring them to NCLT. The Government of Gujarat has issued the Policy GR after duly considering the merits of the recommendations of the HPC Report. As such, the entire rehabilitation scheme as provided therein should be looked at in totality.

15.38. The Commission while approving the amendments to Section 63 PPAs, is to see if the same is in public interest and if the public interest involved in making the amendments is being implemented through a policy decision, the same should not be interfered with by this Hon'ble Commission.

15.39. The CERC has considered the aforesaid issue in great detail in para 69 and 70 of its order dated 12.04.2019, passed in Petition No. 374/MP/2018.

15.40. At the outset, it is submitted that the Petitioner is not allowing anything to the Generator except the actual cost of imported coal or the cost determined as per Supplemental Agreement, whichever is lower. The main thrust of the Policy GR of the Government of Gujarat read along with the HPC recommendations is to find out a sustainable

solution keeping in view the larger public interest. The suggestive terms of reference of the HPC, as laid down in the policy GR dated 03.07.2018 and the Preamble to HPC Report, include consideration of any other relevant issues which the Committee would like to discuss and to suggest any other method to reduce the overall cost of generation of power in the interest of consumers. Thus, the scope of the HPC was not restricted to merely analysing the impact of increase in the price of Indonesian Coal, but to provide a sustainable and equitable solution to mitigate the hardship of the generators while ensuring that consumer interest is safeguarded.

15.41. Prayas is confusing issue of PPA amendment based on the Government of Gujarat Policy Resolution dated 01.12.2018 with earlier GR/ HPC Report. Taking into account the recommendations of HPC Report, GoG has framed Resolutions under GR dated 01.12.2018 to consider various components/aspects related to tariff amendment and directed the Petitioner to execute the Supplemental PPAs and obtain approval of Appropriate Commission. Therefore, even if it is assumed that the HPC recommendations are beyond the scope given to it, the GoG vide its Policy GR dated 01.12.2018 has accepted those recommendations and regularized them. Under the circumstances, the argument that HPC expanded the scope is completely misplaced.

15.42. In any case, the tariff quoted by Respondent No.1 has no breakup of Ocean Freight and Port Handling Charges. Therefore, while FOB is linked to the benchmark HBA index, the other components Ocean Freight, Port Handling Charges are benchmarked to CGPL tariff which was finalized by PFC after negotiations at the time of Bidding. Even in these parameters, the consumer interest is safeguarded since the ocean freight payable as per the Supplemental PPAs is less than the Ocean Freight which was allowed by the Commission in the earlier proceedings. The CERC has considered the aforesaid issue in great detail in para 98 and 99 of the CERC order dated 12.04.2019, passed in Petition No. 374/MP/2018.

15.43. The amendment of a PPA where tariff has been determined in terms of Section 63 is not barred in terms of the Act. The judgment of the Hon'ble Supreme Court in the matter of All India Power Engineer Federation and Ors. Vs. Sasan Power Ltd and

Ors.,(2017) 1 SCC 487, makes this position abundantly clear. Further, the Commission in its order dated 21.02.2018, passed in the matter of KSK Mahanadi Power Co. Ltd. vs TANGEDCO & Ors., Pet. No. 21/MP/2018 approved the amendment of the PPAs. A clear analogy can be drawn in this case from the said order of the Commission in so far as in the said case the amendment of the PPA was being sought in furtherance of the SHAKTI policy issued by the Union Ministry of Coal, similarly in this case Government of Gujarat has issued the Policy GR pursuant to which the Petitioner is seeking approval of the present amendments. The contention of consumer groups that the FERV will be at the risk of seller as per Clause 4.3 of the competitive bidding guidelines dated 19.01.2005 is erroneous in so far as the said competitive bidding guidelines are applicable at the time of bidding.

15.44. The CERC has considered the aforesaid issue in great detail in para 47 of the CERC order dated 12.04.2019, passed in Petition No. 374/MP/2018.

15.45. The PPA being under Case I, only capacity charges and energy charges are quoted and it is not based on net SHR as recommended by the HPC, Supplemental PPAs provide for SHR and auxiliary consumption to be the lower of the actual or normative parameters as provided in the tariff regulations. As such, the Petitioner has taken due care to ensure that the lowest possible normative parameters are considered so as to protect consumer interest. In any case, the approach of the consumer groups by singling out different aspects of a complete package and questioning the same in isolations to others, is impermissible in law. While the Tariff Policy and the new Standard Bidding Documents provides for additional relief towards operating parameters with the age of the Plant, in the Supplemental PPAs such facility was not extended to the Respondent No. 1 and the operating parameters are fixed as per 2009 Regulations which were in vogue at the time of commissioning. The CERC has considered the aforesaid issue in great detail in para 81 of the CERC order dated 12.04.2019, passed in Petition No. 374/MP/2018.

15.46. Based on above submissions, it is submitted that the Commission may allow the petition.

16. The Respondent No.1 (Essar Power Limited) in its submission stated that the Petition was filed by the Petitioner for approval of supplemental PPA dated 01.03.2019 executed between the parties with a view to redress inequitable situation that arose due to the change in the Indonesian regulation affected to the different power projects of the State of Gujarat who later on constituted a High Power Committee for finding solutions with a view to that the power supply from the power projects which were affected due to Indonesian Regulation be feasible or not and to find out the solution for the same. After examining and analysing all relevant documents and information submitted by the parties the committee has submitted its report with certain recommendation to the Government of Gujarat for approval and implementation.

16.1. The Government of Gujarat after considering the provisions made in the HPC report accepted certain recommendation with modification and passed G.R. dated 01.12.2018 issuing policy directives to the Petitioner to execute the supplemental PPA with the Respondent No.1 and get approved from the Commission.

16.2. Prior to signing the supplemental PPA the clarification was obtained from the Hon'ble Supreme Court of India with regards to its Judgement dated 11.04.2017 in case of Energy Watch Dog Vs. Adani Power Limited and others will not affect to the parties. The Hon'ble Supreme Court allowed to amend the PPA as per law and get approved from the Commission.

16.3. The submissions made by the Petitioner are adopted by the Respondent No.1.

16.4. The objections made by the Objectors with an ulterior motive to delay in grant of approval of supplemental PPA by the Commission.

16.5. The objectors have not raised any objections to deprive the Petitioner from the benefit of the Order dated 12.04.2019 passed by the CERC granting benefits which are prayed in the present petition where the issued involved in the present petition, in facts and circumstances which are materially and substantially identical.

16.6. The allegations levelled against the Respondent No.1.with regard to over invoicing of imported coal and equipment are false, baseless and reckless allegations need to be rejected.

16.7. The Respondent No.1 has withdrawn all its claim pending proceeding against the Petitioner in respect of past losses incurred period prior to 15.10.2018, thereby complied with the stipulation made in G.R. dated 01.12.2018 and addendum dated 23.01.2020. The Respondent has also prayed as under:

(i) The tariff as per the PPA dated 26.02.2007 for the domestically procured imported coal during the period 21.04.2019 to 19.08.2019 by applying Change in Law as decided by this Hon'ble Commission in Petition No.1680 of 2017, vide Order dated 23.12.2019 as per the Affidavit dated 19.12.2019 filed by the Petitioner before this Hon'ble Commission, and

(ii) To allow the Petitioner to avail rebate in respect of the Energy Charge component of Provisional Bill or Monthly Bill, as the case may be, at the request of the Respondent No.1 for the purpose, as per the provisions of the Article 11.3.6 of the PPA dated 26.02.2007 in pursuance of the Affidavit dated 16.03.2020 filed by the Respondent No.1 before this Hon'ble Commission.

17. Shri Bharatkumar T. Gohil on behalf of Utility Users' Welfare Association (UUWA) Objector No. 2 submitted that the present petition is not admissible and maintainable and the Petitioner and the Respondent M/s. Essar Power Gujarat Ltd. have not replied to the objections of UUWA.

17.1. The GUVNL is not qualified as affected party in terms of the provisions of the GERC (Conduct of Business) Regulations, 2004 notified by the Commission as it is a procurer/licensee and it cannot be qualified as affected person stated in the provisions of the GERC (Conduct of Business) Regulations, 2004.

17.2. The Petition is filed under Section 86 (1) (b) for amendment of PPA which was approved by the Commission before more than 10 years' period. Hence, after passing the order the Commission is functus officio and it cannot pass any amendment of that Order. Thus, the proposed amendment in the PPA is not permissible as per the provisions of law.

17.3. The act of Petitioner is review of Order dated 20.12.2007 passed by the Commission after period of more than 10 years. Moreover, no ingredient of review of Order is fulfilled in the present petition. Hence, the same is not permissible.

17.4. The proposed amendment is barred by limitation as per the provisions of Limitation Act.

17.5. The present petition is also barred by the principle of Res-judicata defined under the Act as the issue involved in the present petition has been dealt by the Commission between the same parties and decided about the PPA. Hence, it is not permissible to allow present petition.

17.6. The Commission has earlier decided that financial hardships is not a ground for amendment of PPA executed between the parties. The aforesaid principle was decided by the Hon'ble Supreme Court in number of judgements including the judgement pronounced in the case of Energy Watchdog V/s. Adani power Ltd. & Others.

17.7. In Order No. 4 of 2007 dated 20.12.2007 by this Commission, at para no. 6.40 it has been decided in exhaustive manner with regard to the approval of PPA signed between the Petitioner and Respondent No. 1 who was selected as successful bidder in the competitive bidding process. It is not open to the Commission to review the said Order and the PPA executed between the Petitioner and the Respondent No. 1.

17.8. The UUWA has referred the Judgement of Hon'ble Supreme Court dated 29.10.2018, in MCA No. 2705-2706 of 2018 in Civil Appeal No. 5399- 5400 of 2016 with Civil Appeal No. 5347-5348 of 2016. He has referred Para 22, 23, 24 and prayer (b) of the said

application and submitted that in the aforesaid submission the applicant has requested to the Hon'ble Supreme Court to issue the directions to concerned Regulatory Commission to expeditiously dispose of applications seeking the amendment of PPA sought by the Petitioner.

17.9. UUWA has further referred the Order dated 29.10.2018 and submitted that after hearing the parties the Hon'ble Supreme Court has held that in its Order that it is open to the applicant to approach to the Central Electricity Regulatory Commission (CERC) for approval of proposed amendments to be made to the Power Purchase Agreements (PPAs) in question. Moreover, Hon'ble Supreme Court has also held that the consumer groups who had appeared before it will be heard on all objections and also allowed to make their objections on proposed amendments on PPA thereafter it will be open for the CERC to decide the matter in accordance with law. It is also held by Hon'ble Supreme Court that the CERC should decide the matter expeditiously as possible preferably within period of 8 weeks from the date of Order.

17.10. From the above it is clear that the matter was decided by the Supreme Court where the applicant has prayed that the Supreme Court may allow to decide the amendments in the PPA as per the recommendation of HPC by the appropriate Commission. However, while deciding the matter the Hon'ble Supreme Court has decided that the same matter be referred to CERC and not any appropriate Commission including GERC. Thus, it is not open to decide the matter by this Commission that is GERC as Hon'ble Supreme Court has held that the jurisdiction to decide the amendment in the PPA is with CERC and not GERC. Thus, the appropriate Commission in this case is CERC and not GERC as per the Hon'ble Court Order dated 29.10.2018. Therefore, this Commission has no jurisdiction to decide this matter. From reading of the Order of Hon'ble Supreme Court it is clear that in the eyes of law the jurisdiction to decide the matter is with CERC and not GERC.

17.11. Alternatively if the Petitioner desire that the present petition be heard by this Commission and this Commission has jurisdiction only it is essential that they have to approach to Hon'ble Supreme Court for amendment/ review/ clarification on the issue

that the jurisdiction to decide the amendment in the PPA by way of supplementary PPA between Petitioner and Respondent No. 1 Essar Power Gujarat Ltd. falls within the jurisdiction of GERC till that time no proceedings may be carried out by the Commission and decide the matter. If the GERC ignores the aforesaid facts and continue to hearing and decide the matters though it is not having the jurisdiction as per decision of Hon'ble Supreme Court, then it qualifies as contempt of Court.

17.12. The present Commission consist of two Members who are possessing the qualifications of engineering and having technical knowledge and experience thus there is no Member who is having knowledge of finance or law. Thus in absence Judicial Member who is possessing knowledge of law and also absence of finance by the existing two Members there is lack of knowledge on the various issues pertaining to finance and law. The issue involved in the present Petition having financial implication also therefore it is desirable that the third Member who may have the knowledge of the financial aspect may be appointed till that time the Commission may wait in the subject matter. Moreover, the Constitution of present Coram is also against the Section 5 of the Gujarat Industry Reorganization and Restructuring Act, 2003 on this ground also the present Coram is not empowered to decide the matter.

17.13. It is further contended that there are only two Members and if there is difference of the view reflected in the Order or the both Members are having different decision on the subject matter may require to decide the view of third Member which is not existing at present hence in such a situation it is desirable that the Commission may wait for the appointment of the third Member in the Commission. In support of aforesaid submission, he relied on decision dated 30.03.2017 of Hon'ble APTEL in Appeal No. 121 of 2016.

17.14. The Petitioner GUVNL is not an aggrieved and affected party as per Regulation 23 of the Conduct of Business Regulations, 2004 notified by the Commission. The affected or aggrieved party may be Respondent No. 1. Hence in absence of the Petition filed by the aggrieved party or affected party, the present petition is not maintainable. Moreover the argument of the Petitioner and the Respondent No. 1 that the

supplemental PPA are in public interest is not correct and valid in support of aforesaid submission the objector has referred the litigation between the Petitioner and some of the bidders namely Jindal Power Ltd. and Others who had filed SCA No. 2186 of 2007 and 3154 of 2007 with Civil Application No. 10265 to 10257 of 2007 for the same bids that is bid No.1 Bid No. 2 and Bid No.3, in which the Petitioner has signed the PPAs with M/s Adani Enterprise Ltd. and Essar Power Ltd. and Others. The challenge in the said matters Hon'ble High Court of Gujarat has held that there is additional burden on the consumers due to the procurement of power from the Adani Power Ltd. The Hon'ble High Court of Gujarat dealt with the issue of public interest in the said matter needs to be referred by the Commission and thereafter decide about the issue of public interest.

17.15. The Petitioner has filed the present petition under the guise of the Public Interest Litigation taking the shelter of Hon'ble Supreme Court decision. The question is to whether any public interest involved in the present case needs to be determined and decided by the Commission with consideration of overall impact on different entities as well as the consumers and based on it requires to be decided that whether there is any public interest involved in the approval of Supplementary PPA or not.

17.16. The incremental cost of tariff will be passed on to the consumers of the State and the same will not be borne by the Petitioner as it is revenue neutral. Moreover, the burden of increase in tariff proposed by the HPC and reflected in the Supplemental PPA be borne by the consumers of the State. Hence the increase in tariff proposed in the Supplemental PPA affect the consumers at large. Hence the same is not in the public interest. Therefore, the contention of the Petitioner and Respondent No. 1 that the present petition is in the interest of the Public interest is not legal and valid and it deserves to be quashed and set aside.

17.17. One of the Member of the High-Power Committee was the Chairperson of the Central Electricity Regulatory Commission. As a Chairperson of CERC he has issued Statutory Advice to Ministry of Power, Government of India vide D.O. No. 2/8/Policy (Statutory Advice/ 2009-CERC) dated 16.09.2010 regarding timeframe for tariff based

competitive bidding. In the said letter he has stated that the price determined under the Cost-plus basis are higher than the levelized tariff discovered under the Competitive bidding process. Moreover, such difference is significant. The tariff in cost plus basis is fully passed on to the consumers. The advice given to the Central Government that it should not defer the date of completing transition to tariff based competitive bidding for all future procurement of electricity and also transmission services, thus he himself has advised to the Ministry of Power to follow the competitive bidding process. In such situation the same person who is Member of High-Power Committee differ and take different stand ignoring its earlier advice as a Chairperson of CERC.

17.18. The Commission has earlier in Order No. 04 of 2007 dated 20.12.2007 decided and approved the PPA dated 26.02.2007 after utilizing adjudicatory, financial and Regulatory powers and decided the matter. Hence it is now not open to revisit and recall the said Order by way of the change in the discovered tariff stated in the PPA dated 26.02.2007 approved by the Commission. Thus, the Regulatory power are exhausted by the Commission and therefore the present petition is not maintainable.

17.19. The HPC report dealt with the PPA executed between the Petitioner and the Respondent No. 1 Essar Power Gujarat Ltd., (2) Adani Power Ltd., (3) Costal Gujarat Power Ltd. So far as the amendment of the PPA between Adani Power Ltd. and the Petitioner is concerned the Petitioner has filed earlier petition before the CERC where CERC has approved the supplemental PPAs. Thereafter, Hon'ble Supreme Court has passed an Order in one of the Civil Appeal and decided that the decision of this Hon'ble Commission in Petition No. 1000 of 2010 and decision of Hon'ble APTEL in Appeal No. 184 of 2012 are quashed and set aside and decided that the PPA for supply of 1000 MW by the Adani Power Ltd. to Petitioner GUVNL was legally terminated as claimed by the Adani Power Ltd. Thereafter the Petitioner has filed the Petition before the CERC to recall its Order dated 12.04.2019 in Petition No. 374 /MP / 2018 and the said Petition is pending. In such situation the HPC report for Adani Power Ltd. is in question as for one PPA there is no applicability of HPC report and in case of other PPA the Petitioner himself has approached to CERC to recall its earlier Order.

17.20. In case of the PPA between the Petitioner and the Costal Gujarat Power Ltd. the Petitioner has not filed any Petition for approval of compensatory tariff to Tata Power Ltd. based on HPC report on which basis the present petition has been filed by the Petitioner. Moreover, the other States who are beneficiaries of the CGPL has also not filed any petition or adopted the recommendation of HPC report and increase in tariff as proposed by the HPC. Thus, the HPC report are not followed completely in case of the PPAs between Petitioner and the Adani Power Ltd. as well as CGPL. Thus, it is the recommendations of the HPC report are partially followed by the Petitioner so it is not maintainable.

17.21. The Hon'ble Supreme Court in its decision dated 29.10.2019 decided and directed that the CERC may decide the matter in accordance with law. It proves that it is the duty of the Commission to verify and determine and decide the tariff and not the Government or Committee constituted by it namely High-Power Committee as the tariff is the subject matter fall in decision of the Commission. Therefore, the recommendation of the HPC and based on it the decision of the State Government to sign the Supplemental PPA for tariff recommended by HPC is not legal and valid and the same is not permissible. It is the duty of the Commission to verify and determine the tariff.

17.22. The Respondent No. 1 Essar Power Gujarat Ltd. has not supplied the power to the Petitioner and the Petitioner suffer the loss by way of high procurement price paid by it to meet out the power requirement. Such cost must be required to be recovered from the Respondent No.1 and the same may be passed on to the consumers who borne the higher tariff burden due to non-supply of power by the Respondent No.1 as per the agreed terms of PPA.

17.23. The HPC recommendation is not binding to the Commission, it has to decide the matter in accordance with law as decided by the Hon'ble Supreme Court in various Judgements. The HPC report is not Statutory in nature and the same is not binding to the Commission.

17.24. The supplemental PPA amendment in the PPA dated 26.02.2007 is creating bad precedents by way of overriding on contract signed between two parties by the State Government relying on the HPC report. As per the provision of the Electricity Act, 2003 the State Government is not empowered to issue policy directives to the distribution licensees to sign the supplemental agreement by amending the approved or adopted tariff in the PPA by the State Commission. If the State Government desires to issue any policy directives the same may be issued to the State Commission that is GERC and not the Petitioner GUVNL. The policy directives given to GUVNL is not binding to the Commission. The Commission shall require to take decision as per the provision of the Electricity Act, 2003. The Hon'ble Supreme Court as well as APTEL in various judgements held that in the tariff matters concerning to public interest for within jurisdiction of the State Commission and the Government has no role and power in such matter. In support of aforesaid submission, the Objectors relied on the following judgements of the Hon'ble Supreme Court as well as APTEL.

i. The Judgements of Hon'ble APTEL in Appeal No. 41, 42, 43 of 2010 dated 31.01.2011.
ii. Appeal No. 188 of 2015 TPL V/s. UPERC. The Judgement of APTEL in aforesaid judgement is challenged in Hon'ble Supreme Court and the same is pending. No stay has been granted.

17.25. Reopening of PPA is not permissible as per the provision of law by the State Commission. The Supreme Court has not given any decision on the impact of signing of Supplemental PPA in guise of Article 18.1 of the PPA as per the provision of the Contract Act, it cannot be permissible to over write or re-write the existing contract between the party.

17.26. The Government of Gujarat has framed the policy and declared the sick industries status to SAL Steel, Shaifali Steel and Other such companies and recommended to give subsidy of Rs. 2 per unit to sick industries in the tariff by the Commission. The aforesaid entities have filed Petition No. 1716 of 2016 and 1717 of 2016 before the Commission for reduction of tariff as per the policy which has been rejected by the

Commission on the ground that it is not a policy directive under Section 108 of the Act and it is not binding to the Commission.

17.27. Further, some of the industries have approached the Commission for allowing the rebate or reduction in tariff to the textile industries as per the Govt. of Gujarat policy which is also rejected by the Commission stating that it is not the policy directives under Section 108 of the Act and same is not permissible as per the provisions of the Act. On the same ground the present petition is not maintainable.

17.28. The para 5.1 of the tariff policy provides that the distribution licensee shall procure the power following Competitive bidding process. The said policy is statutory policy is as per the provision of the Electricity Act, 2003. Further, it is not permissible to determine and decide the tariff discovered under Section 63 to tariff determined under Section 62 of the Act.

17.29. The issue involved in the present petition reflect that the affected persons may be the lenders who had taken the business risk of lending the money to the project of the Respondent No.1 without verifying various aspects effecting to the risk of the projects, why the lenders have not verified the fuel supply agreement based on which the Respondent No.1 now stating that the project is not viable. The consumers are not in any way benefited by way of the HPC recommendation for increase in tariff. So, the proposed change in tariff by way of Supplemental PPA is not in public interest.

17.30. The penetration of renewable energy generation has increased in the State of Gujarat where the cost of such energy is quite lower than the proposed change in the tariff in the supplemental PPA. In such situation it is also seen that there are no buyers for such energy. Hence, the Petitioner has to explore such situation to procure the power at lower rate than the proposed change in rate by way of supplemental PPA.

17.31. As per the bidding process carried out by the Petitioner it is not mandatory to procure the coal from Indonesia by the Respondent No. 1. Hence, prior to quote the tariff by the Respondent No. 1, had to verify the various options for procurement of such coal

and the same may be loaded in the tariff quoted by it. Any negligence is not a ground to argue the hardship and seek the amendment in the tariff. The same is not permissible in law on that ground the amendment by way of supplemental PPA may not be permitted.

17.32. The coal price in international market are reduced drastically and the same is lower than the price prevailing while the Respondent No. 1 and the other bidders have bided in the bidding process initiated by the Petitioner. In such a situation, prior to allowing the petition it is required to verify the rates prevailing in the international market and to that extent the tariff is required to be reduced. Moreover, the impact if any which is legally not permissible is limited to impact of the promulgation of Indonesian Regulations which may affect the price of coal and no other parameters be permissible to change or amend while evaluating the impact of tariff.

17.33. The Respondent No. 1 who had filed Petition No. 1389 of 2013 for compensatory tariff on the ground of increase in coal price and other reasons was withdrawn, hence the Respondent No. 1 is not eligible to obtain the same relief by way of supplemental PPA and the present petition.

17.34. The Respondent No.1 has not submitted any documents like the Power Purchase Orders of equipment's like boiler turbine etc. from OEM technical broachers, performance test of the plant, SHR, auxiliary consumption, etc. which are essential for determining the tariff particularly energy charge as well as to verify the procurement of the plant and machinery by the Respondent No.1. In absence of aforesaid details, it is not possible to determine the tariff under Section 62 as proposed by the HPC. Hence, prior to determine the tariff under Section 62 it is necessary that for the relevant documents for deciding the fixed cost as well as energy charge the documents must be produced on record by the Respondent No.1.

17.35. Objector raised the issue that in the original bidding process there are number of bidders who have submitted their bids considering the risk involved in the project and after factoring the risk and the other parameters they had quoted higher tariff than the

tariff quoted by the Respondent No.1. The tariff quoted by such bidder may be lower than the tariff proposed by way of amendment in PPA dated 26.02.2007 by the Petitioner and the Respondent No.1 based on the HPC report as well as Government G.R. In such situation it is necessary to give an opportunity to such bidders that as to whether they agreed to supply the power at quoted rated or lower rate which is proposed by the way of amendment by the parties. Moreover, the aforesaid bidders are also requiring to join party respondent. In absence of joining them as party who are necessary and proper party any amendment in PPA dated 26.02.2007 if made is not legal and valid and permissible as per law.

17.36. Based on aforesaid submission UUWA submitted that the present Petition is not admissible and maintainable.

18. Enormous number of issues were raised by UUWA stating that there are mixed issues of law and facts need to be decided by the Commission with reasoned Order so that the objectors can challenge the same before an appropriate forum. The following issues which are relevant in the matter and within the scope of jurisdiction of the Commission, are being narrated here as under:

18.1. The government of Gujarat G.R dated 03.07.2018 and 01.12.2018 are neither statutory policy decision nor economic policy decision and not binding to the GERC. Though it is the statutory policy or economic policy, is this Commission bound by such policy decision where the issue involved is of tariff determination or change in tariff discovered under the competitive bidding process by way of back door procedures.

18.2. Is it not mandatory for the petitioner to allow such fair chance to the all original bidders who had participated in the original biddings process of Bid No. 3 of 03/LTPP/2006 for giving an equal treatment that they may supply power at which price with consideration of relaxation which are provided to the respondent no-1 by the petitioner on the recommendation of HPC?

18.3. Whether the Government of Gujarat, HPC, lenders of the respondent no.1 M/s Essar Power Ltd. and the Discoms who are Distribution Licensee are not essential and necessary party to the present petition?

18.4. What is the impact of the outcome of the present decision on the Industrial, Commercial, Agricultural, BPL consumer in their tariff? What is the impact of the tariff from the date of the signing of the PPA by the petitioner and respondent No.1 from 01.03.2019 to December 2019 on monthly basis be declared in the petition? If answer is "yes" please indicate? If answer is "no" please explain why such details not being asked or submitted by the petitioner and the respondent No.1.

18.5. What is the impact of power procurement as per the HPC recommended tariff for the respondent No.1 project during the different years? How much impact of it come in the consumer existence tariff?

18.6. Whether the role of the State Government, High Power Committee and this Hon'ble Commission in the Electricity Act, 2003 is to protect the interest of the consumers or to protect the interest of lenders including the financial institution and its officials who had failed in performing their duties of proper verification, investigation, analysis, study and to verify the risk associated with project, obtain collateral security amount and to verify to availability fuel, its price quantum etc. and finance to the respondent Essar Power Ltd. which lead to creation of failure of repayment of loan interest etc. as recorded by HPC.

18.7. Whether the increase of consumer tariff is not against the public interest which is result of the present petition?

18.8. Whether the Hon'ble Commission which is a statutory body and not a body or institutional personal who after retirement from the statutory authority and who are not accountable and responsible for act like the members of the High Power Committee, can take contradictory and different decisions in different cases with utilization of the statutory functions of failure of protection of consumer's interest?

18.9. Whether the HPC consist of the any statutory authority and responsible for their Act or decision which is against the provisions of the Electricity Act?

18.10. Are the HPC report and Govt. of Gujarat G.R. not against the Public interest? If the Commission decide or wants to declare in the public interest prior to it the Commission decide these issues with reasons UUWA wants to challenge the same.

18.11. Whether the present Petition fall within the jurisdiction of this Commission or the Central Commission as per the decision of Hon'ble Supreme Court dated 29.10.2018 in MCA No. 2705-2706 of 2018 in CA No. 5399-5400 of 2016?

18.12. Whether the present Coram of the Commission consists of two technical Members and not having the Law Member is not in accordance with the decision of the Hon'ble Supreme Court and the provision of the Gujarat Reorganization and Restructuring of Electricity Industries Act, 2003 is in accordance of the provision of Act or there is some lacuna in it and the Coram is capable to decide the issue involved in the present petition?

18.13. What is the status of the fuel supply agreement executed between the fuel supplier and the respondent No. 1 based on the PPA signed between the Petitioner and the Respondent No. 1? What are the terms and conditions of that fuel Supply agreement between fuel supplier as well as the Respondent No.1? Is that FSA being not essential to verify by this Commission prior to allow any changes in the cost of fuel that is coal?

18.14. Whether the respondent No. 1 or the Petitioner have provided all financial & technical details proving from the documents on record based on which this Commission is competent to decide the fixed charge and energy charge?

19. Shri R.J.Tillan submitted that there are various projects, which have approached to the different Commission for compensatory tariff due to change in Indonesian regulation affecting the coal price in the country. In that situation it is better that a comprehensive view or decision may be taken by the Central Commission as it affects to the different

projects in the country so that a common approach may be applied to also such projects and the variance in the decision on same problem may be avoided. While deciding such issues the CERC may consider all issues as per the provisions of law.

19.1. He referred the reports of CUTS International on sustainability of business versus sanctity of contract and submitted that it is required to give an importance to the sanctity of contracts and the hardships is not a ground for amendment of the contracts. The PPA needs to interpret by the court as per the provisions of the Contract Act. The Government has no role in interpretation of contract or amendment of the Contract executed between the parties.

19.2. The CERC who has earlier advised to the Central government for the implementation of the competitive bidding process for procurement of power. How can it differ from its earlier stand? Any cost plus approach tariff it is essential to verify and decide the technical parameters like boiler efficiency, turbine heat rate, SHR of the plant, Auxiliary consumption, Capital Cost of the project and different technical commercial agreement executed between the project developers as well as supplier and also the various test carried out as a part of commissioning of the project prior to allow the technical and financial parameters for determination of cost plus tariff. The regulators should require to update the guaranteed parameters by the OEM with the parameters allowed for determination of tariff.

19.3. The penetration of the wind and solar energy is increasing in the State in such situation it is necessary to consider the effect of such penetration of renewable energy with the existing conventional energy sources.

20. We note that the present petition is filed by the GUVNL under the Section 86 (1) (b) and (f) of the Act. Thereafter, the Petitioner has also filed a letter dated 01.03.2020 for dropping its reliance on Section 86 (1) (f) in the Petition. We note that the present petition is filed by the Petitioner seeking approval of the supplemental PPA dated 01.03.2019 in the Bid 03 of the PPA. Hence, the present petition is for approval of supplemental PPA. The Petitioner (GUVNL) vide email dated 02.04.2020 has

submitted additional submission along with copy of second addendum to the supplemental PPA dated 01.03.2019 initiated by both GUVNL and Essar Power Gujarat Limited and copy of letter from EPGL agreeing to the modifications. Further, the Petitioner has requested that due to the prevailing lock down condition in the State, GUVNL is not able to submit the additional submission on affidavit and has submitted scanned copy by email. The original submission on affidavit shall be submitted upon lifting of the lock down.

20.1. The Petitioner has submitted that in the supplemental PPA, it is stated that for working of energy charges, FOB price of imported coal shall be considered as lower of:

20.1.1. Actual FOB (Free on Board) price of consignment.

20.1.2. HBA price worked as per formula for billed GCV plus maximum 10% tolerance on HBA price.

20.1.3. HBA price worked out on proportionate basis with reference to HBA index for 6322 GCV coal.

20.2. The Petitioner has submitted that upon analyzing the market trend of the Indonesian coal price and the index as published by leading International Price Reporting Agencies it is observed that the coal price as per the market trend consistently remains around/ lower than the HBA derived price (HPB price) for the quality of coal worked out for each month since October 2018 onwards.

20.3. The Petitioner has submitted that under the circumstances, both the parties have decided to amend the provisions related to FOB cost of coal in Article 3.2.4 (I) of SPPA and remove the provision related to allowing tolerance of up to 10% above HBA index derived price as provided in the SPPA effective from 15.10.2018 so as to ensure that no additional burden towards coal is put on the consumers of the State. Copy of the Second Addendum dated 01.04.2020 to the Supplemental PPA dated 01.03.2019 with appropriate modifications in the provision related to FOB cost of coal in Article 3.2.4 (I) is attached.(*Annexure – 4*)

Commission's Analysis and Decision:

21. We have heard the parties and gone through their submissions. We have given enough opportunity and adequate time to all the parties during the hearings and through written submissions. We have invited views from all the stakeholders including public through Public notice and had conducted a public hearing and other hearings so as to give a reasoned and fair order balancing the interest of all the stakeholders. Before we finally decide the matter, it has become necessary to first deliberate on number of issues which have come before us and are within the scope and jurisdiction of this Commission.

21.1. **Following major issues have emerged for the decision of the Commission:**

1) Whether the Petitioner(GUVNL) has the *locus standi* to file the present petition being a holding company of the distribution licensees of the State of Gujarat and which is involved in the activity of bulk purchase and supply of the electricity for its Discoms/subsidiaries but does not supply power directly to the consumers?

2) Whether the appropriate Commission in this case is GERC and not CERC as per the Hon'ble Supreme Court's Order dated 29.10.2018 in M.A. No. 2705-2706 of 2018 in Civil Appeal No. 5399-5400 of 2016?

3) Whether this Commission is competent to adjudicate and decide the present case in absence of a judicial member in view of the decision of the Hon'ble Supreme Court in Civil Appeal No. 14697 of 2015?

4) Whether the present petition is a review petition seeking review of Commission's order approving the original PPA dated 26.02.2007 and if so whether it is permissible to admit such petition after a lapse of 10 years?

5) Whether the amendments in the original PPA dated 26.02.2007 by way of Supplemental PPA dated 01.03.2019 executed between GUVNL & EPGL, which

leads to revision of tariff and other terms and conditions are permissible under Section 63 and bidding process carried out by the Petitioner as per competitive bidding guidelines, 2005 issued by Government of India? If yes, whether the Commission has the powers to approve such amendments in the approved PPAs.?

6) Whether this Commission is empowered to convert tariff adopted under Section 63 to determine the tariff under Section 62 of the Electricity Act on cost plus basis and determine the fixed and the variable cost?

7) Whether the Fuel Supply Agreement is compulsory and necessary prior to approving the Supplementary PPA dated 01.03.2019 executed between the parties? Is the Commission empowered to know the status of the Fuel Supply Agreement?

8) Whether the action of Government of Gujarat intervening in the matter and setting up High Power Committee and its recommendations is in public interest? Whether the recommendations of High Power Committee issued vide G.R. dated 03.07.2018 and 01.12.2018 leading to change in terms and conditions of the PPA executed between the parties by way of supplemental PPA are binding to the GUVNL and to the Commission?

9) Whether it is not mandatory for the petitioner to allow those bidders, who had participated in the bidding process of Bid No. 3 of 03/LTPP/2006 for giving an equal treatment?

10) Whether the Government of Gujarat and lenders of the respondent no.1 M/s Essar Power Ltd. and Distribution Licensees are not essential and necessary party to the present petition?

22. Now we shall deal with all the issues as stated above and other relevant issues as raised by the objectors in the ensuing paragraphs.

22.1. **Issue No. 1**

Whether the Petitioner(GUVNL) has the *locus standi* to file the present petition being a holding company of the distribution licensees of the State of Gujarat and which is involved in the activity of bulk purchase and supply of the electricity for its Discoms/subsidiaries but does not supply power directly to the consumers?

22.1.1. We shall discuss the first issue whether GUVNL as a holding company is eligible for filing this petition. The present petition is filed by the Petitioner GUVNL, which is a holding company of the distribution licensees namely, Paschim Gujarat Vij Company Limited (PGVCL), Uttar Gujarat Vij Company Limited (UGVCL), Dakshin Gujarat Vij Company Limited (DGVCL) and Madhya Gujarat Vij Company Limited (MGVCL). The Petitioner purchases electricity in bulk and supply in bulk on behalf of the aforesaid distribution licensees in the State of Gujarat. It is also a deemed trading licensee as per the provisions of Electricity Act, 2003.

22.1.2. The Government of India has pronounced the Competitive bidding guidelines for procurement of power through competitive bidding process. The standard bid documents were also published under the aforesaid guidelines by the Government of India. The aforesaid guidelines provide that if there are any deviations from the provisions of the standard bid documents it requires approval of the appropriate Commission. The said guidelines and bid documents provides that any person/company on behalf of the multiple procurer would be able to carry out the bidding process on behalf of more than one distribution licensee.

22.1.3. The Petitioner has filed the present Petition under Section 86 (1)(b) of the Electricity Act, 2003 for seeking approval of the Supplemental Power Purchase Agreement dated 01.03.2019 (the "Supplemental PPA") to the Power Purchase Agreement dated 26.02.2007 (the "PPA"), both made between the Petitioner and Respondent No.1, for supply of 1000 MW of electricity on long term basis.

22.1.4. The Petitioner had followed the bidding process in the aforesaid bids after publishing the public notice inviting the bids, selection of bidders through bid evaluation

committee and also filed a Petition for adoption of tariff before the Commission based on the bid evaluation committee reports. In the aforesaid bidding process, the bid No.3 which pertains to procurement of power through competitive bidding process of 1000 MW carried out by the Petitioner where the Essar Power Limited, which is a holding company of Respondent No.1, Essar Power Gujarat Limited was selected as successful bidder.

22.1.5. The Petitioner and the Respondent No.1 have signed the power purchase agreement dated 26.02.2007. The Petitioner had filed application before the Commission for adoption of the tariff discovered under the aforesaid bidding process and the Commission had adopted the said tariff discovered under the bidding process based on the recommendation of the bid evaluation committee and approved the PPA dated 26.02.2007 vide its Order No. 4 of 2007 dated 20.12.2007. The bidding process, also includes approval of deviations in the bid documents i.e. RFP, RFQ and PPA. When the Petitioner is the original party to the PPA and has also maintained the petition seeking our approval to adoption of the tariff under section 63 it is thus the appropriate party to maintain the present petition seeking amendment. A party to the contract can seek its amendment as per law. As such, the Petitioner has the *locus standi* and is competent to file the present petition as it is a holding company of the distribution licensees of the State of Gujarat involved in bulk purchase and supply of the electricity on behalf of the distribution licensees for supply of power to the consumers.

22.1.6. Further with regard to objector's contention that whether the Petitioner GUVNL is affected party or not, as stated above, a party to the contract i.e. the Petitioner can only seek its amendment as per law.

22.1.7. We also note that the supplemental PPA has been executed by the parties by invoking Article 18.1 of the PPA which reads as under:

"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."*

{Emphasis added}

As per aforesaid Article it is clear that the agreement signed between the parties may be amended by the parties after obtaining an approval of the appropriate Commission as stated in earlier para of this Order. Hence, the Petitioner has *locus standi* to file the present petition. Therefore, we decide that the Petitioner has *locus standi* to file the present petition for approval of Supplemental PPA. On the aforesaid reasons the contentions of the objectors are hereby rejected.

22.2. **Issue No. 2**

Whether the appropriate Commission in this case is GERC and not CERC as per the Hon'ble Supreme Court's Order dated 29.10.2018 in M.A. No. 2705-2706 of 2018 in Civil Appeal No. 5399-5400 of 2016?

22.2.1. Now we shall discuss whether this Commission is appropriate Commission to decide this matter. We have considered the submissions made by the parties. The objectors have relied upon the decision of Hon'ble Supreme Court in Misc. Civil Appeal No. 2705-2706 of 2018 in Civil Appeal No. 5399-5400 of 2016 for raising the contention that GERC is not the appropriate Commission to approve the amendment to the PPA.

22.2.2. Before, we delve into the contentions raised by the Objectors, we would like to refer to the following Judgements: -

I. In Tata Power *Co. Ltd. v. Reliance Energy Ltd., (2009) 16 SCC,* the Hon'ble Supreme Court inter alia held thus: -

"Section 86 — Functions of the Commission

105. *Section 86 provides for the functions of the State Commission*, clause (a) of sub-section (1) whereof empowers it to determine the tariff for generation, supply, transmission and wheeling of electricity. *Clause (b) empowers it to regulate electricity purchase and procurement process of distribution licensees. Inevitably it speaks of PPA*. PPA may provide for short-term plan, a mid-term plan or a long-term plan. *Depending upon the tenure of the plan, the requirement of the distribution licensee vis-à-vis its consumers, the nature of supply and all other*

relevant considerations, approval thereof can be granted or refused. While exercising the said function necessarily the provisions of Section 23 may not be brought within its purview. While even exercising the said power the State Commission must be aware of the limitations thereto as also the purport and object of the 2003 Act. It has to take into consideration that PPA will have to be dealt with only in the manner provided therefor."

{Emphasis added}

II. The Hon'ble Appellate Tribunal for Electricity in BSES Rajdhani Power Ltd. v. Delhi Electricity Regulatory Commission Vinimak Bhawan, 2010 SCC Online APTEL 23: [2010] APTEL 23, interalia held thus: -

16. In terms of Section 86(1)(b), the regulation of electricity purchase and procurement process to distribution licensee including the price at which electricity shall be procured from generating companies through agreements for purchase of power for distribution and supply between the State is within the ***sole domain of the concerned State Commissions***. Admittedly, there is no provision in the Act which overrides or restricts the said powers of the State Commission. ....."

{Emphasis added}

22.2.3. The Objectors in the present petition have raised the following issues:

a. The jurisdiction to decide the dispute/approval of PPA is with CERC and not GERC.

b. The Application before the Hon'ble Supreme Court specifically prayed that the Hon'ble Supreme Court may pass direction that the Appropriate Commission expeditiously disposed the application seeking amendment of PPA to which the Hon'ble Supreme Court considered CERC as appropriate Commission. Hence, the present petition is not maintainable before this Commission.

c. If the Petitioner desires to continue the present petition prior to that it is the duty of the Petitioner to get amendment or review of Order dated 29.10.2018 in Misc. Application No. 2705-2706 of 2018 in C.A. No. 5399-5400 of 2016, from Hon'ble Supreme Court, without it, it is not permissible.

d. In absence of the aforesaid, i.e. amendment in the Order or review of order dated 29.10.2018 by the Hon'ble Supreme Court any Order passed by the Commission is void-ab-initio.

22.2.4. At the outset, we must mention that Respondent No. 1 was neither a party to Misc. Application No. 2705-2706 of 2018 in C.A. No. 5399-5400 of 2016 or a party in C.A. No. 5399-5400 of 2016. Hence, Hon'ble Supreme Court's Order dated 29.10.2018 in Misc. Application No. 2705-2706 of 2018 in C.A. No. 5399-5400 of 2016 does not get attracted in the present petition seeking approval to amendment of PPA between the Petitioner and Respondent No. 1.

22.2.5. Without prejudice to the foregoing, Hon'ble Supreme Court in its Order dated 29.10.2018 in Misc. Application No. 2705-2706 of 2018 in C.A. No. 5399-5400 of 2016 clarified that it will be open to the applicants to approach the Central Electricity Regulatory Commission (CERC) for approval of the proposed amendments to be made to the Power Purchase Agreements (PPAs) in question.

22.2.6. Hence, in the present Petition the GERC being the appropriate Commission, application seeking amendment to PPA in view of the conclusions of the High Power Committee Report, have been validly made by the Petitioner.

22.2.7. Therefore, question of review of Hon'ble Supreme Court's Order dated 29.10.2018 in Misc. Application No. 2705-2706 of 2018 in C.A. No. 5399-5400 of 2016, does not arise.

22.2.8. Further, the term "Appropriate Commission" is defined in the PPA dated 26.02.2007 as under

> *"....* ***Appropriate Commission" means the Gujarat Electricity Regulatory Commission*** *constituted under the Gujarat Electricity Industry (Regulations and Reorganization) Act, 2003 or such other succeeding Authority or Commission as may be notified by Government of Gujarat from time to time;"*
> {Emphasis added}

From the above it is clear that as per aforesaid definition agreed between the parties for the purpose of PPA dated 26.02.2007 is Gujarat Electricity Regulatory Commission only. We also note that the PPA dated 26.02.2007 was approved by this Commission that is GERC and not CERC hence the jurisdiction of the subject matter is with GERC and not CERC. Hence, from this angle also, it is the GERC which is the appropriate Commission.

It is also necessary to refer Section 86 (1) (b) of the Act reads as under:

"Section 86. (Functions of State Commission): --- (1) The State Commission shall discharge the following functions, namely: -

*(a) regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources **through agreements for purchase of power** for distribution and supply within the State;"*

{Emphasis added}

As per aforesaid provisions it is the statutory function of the Commission to regulate the power procurement of the distribution licensee consisting of the quantum of power, its price, and period. Therefore, the contention that the Petitioner, which purchases electricity in bulk on behalf of distribution licensee cannot invoke Section 86(1)(b) to seek an amendment to the PPA is not valid and the GERC is the appropriate Commission and not the CERC since power supply under the PPA is intra-state and not under composite scheme.

22.2.9. We have also referred to Hon'ble Supreme Court's judgement *Tata Power Co. Ltd. v. Reliance Energy Ltd., (2009) 16 SCC* and Hon'ble Appellate Tribunal's judgement in BSES Rajdhani Power Ltd. v. Delhi Electricity Regulatory Commission Vinimak Bhawan, 2010 SCC On Line APTEL 23 : [2010] APTEL 23, confirming the jurisdiction of the State Commission to exercise its powers under section 86(1)(b) of the 2003 Act.

22.2.10. In view of the above, the contentions raised by the Objector/s disputing the jurisdiction of the GERC are hereby rejected.

22.3. **Issue No. 3**

Whether this Commission is competent to adjudicate and decide the present case in absence of a judicial member in view of the decision of the Hon'ble Supreme Court in Civil Appeal No. 14697 of 2015?

22.3.1. The Objector UUWA contended that in the absence of a Judicial Member as part of Coram of the Commission it is not permissible to adjudicate the dispute between the

Petitioner which is a distribution licensee and the respondent No. 1 which is a generating company in view of the law laid down in the Judgement dated 12.04.2018 of the Hon'ble Supreme Court of India in Civil Appeal No. 14937 of 2015. It is further submitted that there are two technical Members (Chairperson and One Member of the Commission) and one Member Finance is against the provision of the Gujarat Electricity Industry (Reorganisation and Regulations) Act, 2003. Thus, the Coram of the Commission is not in accordance with the aforesaid Act.

22.3.2. Per contra, the Petitioner and the Respondent No.1 submitted that the Commission has power to adjudicate the dispute between the licensees and the generating company when it has no person of law as a member of the Commission possessing professional qualification and substantial experience for the practise of law for being appointed as a Judge of the High Court or a District Judge as stipulated in Section 84 (2) of the Gujarat Electricity Industry (Reorganisation and Regulations) Act, 2003. The Commission can perform and/ or continue to perform its adjudicatory function under the Electricity Act, 2003 notwithstanding that it has no Judicial Member till the vacancy of the Member is filled up.

22.3.3. We note that Utility Users Welfare Association has raised the preliminary issue that in absence of legal member, it is not permissible to decide the present Petition. The issue of adjudication of dispute between the Petitioner and Respondent No.1 as per the judgment dated 12.04.2018 of the Hon'ble Supreme Court in the case of State of Gujarat Vs. Utility Users Welfare Association in Civil Appeal No. 14697 of 2015, the Objector UUWA has relied on the judgement dated 12.04.2018 of the Hon'ble Supreme Court, it is necessary to refer the relevant para of the aforementioned judgement which is reproduced below:

"..... Conclusion:
114. In view of our observations above, we conclude as under:

i. Section 84(2) of the said Act is only an enabling provision to appoint a High Court Judge as a Chairperson of the State Commission of the said Act and it is not mandatory to do so.
ii. It is mandatory that there should be a person of law as a Member of the Commission, which requires a person, who is, or has been holding a judicial office or is a person possessing professional qualifications with

substantial experience in the practice of law, who has the requisite qualifications to have been appointed as a Judge of the High Court or a District Judge.

iii. *That in any adjudicatory function of the State Commission, it is mandatory for a member having the aforesaid legal expertise to be a member of the Bench.*

iv. *The challenge to the appointment of the Chairman and Member of the Tamil Nadu State Commission is rejected as also the suo moto proceedings carried out by the Commission.*

v. *Our judgment will apply prospectively and would not affect the orders already passed by the Commission from time to time.*

vi. *In case there is no member from law as a member of the Commission as required aforesaid in para 2 of our conclusion, the next vacancy arising in every State Commission shall be filled in by a Member of law in terms of clause (ii) above."*

22.3.4. Hon'ble Supreme Court held in State of Gujarat v. Utility Users' Welfare Assn., (2018) 6 SCC 21 that in any adjudicatory function of the State Commission, it is mandatory for a member having legal expertise to be a member of the Bench. It is mandatory that there should be a person of law as a Member of the Commission, which requires a person, who is, or has been holding a judicial office or is a person possessing professional qualifications with substantial experience in the practice of law, who has the requisite qualifications to have been appointed as a Judge of the High Court or a District Judge.

22.3.5. In our view, firstly, the present petition is not for adjudication of any dispute or difference between the Petitioner and Respondent No. 1. In fact, there is no such dispute which calls for adjudication under Section 86(1)(f) of the 2003 Act. The Petitioner has also filed a letter dated 01.03.2020 for dropping its reliance on Section 86 (1) (f) in the Petition, a written submission in this regard was made by its counsel dated 16.03.2020. In fact, the present petition is filed by the Petitioner seeking approval of the supplemental PPA dated 01.03.2019 in the Bid 03 of the PPA. Moreover, the Respondent No. 1 has substantially adopted all arguments of the Petitioner. This is in the nature of a consensual petition.

22.3.6. Secondly, the present petition was filed by the Petitioner on 28.03.2019 for approval of supplemental PPA i.e. subsequent to Supreme Court's judgement in Users Utility *Supra.* The composition at the time when the petition was filed was full strength of

the Commission comprising of Chairperson and two Members. The petition was heard by the full strength of the Commission until the Member (Finance) demitted office on 27.12.2019 on account of his retirement. Judgement was reserved in the matter on 9th March, 2020 i.e. after Member (Finance) demitted office. Till date, the vacancy continues. However, doctrine of necessity requires us to dispose of the matter.

22.3.7. The contours of the doctrine of necessity stand tellingly underscored, in the following passage from Election Commission of India v. Dr. Subramaniam Swami (1996) 4 SCC 104, on which the Constitution Bench of the Supreme Court has, in its decision in Central Public Information Officer, Supreme Court of India v. Subhash Chandra Agarwal (2019 SCC Online SC 1459), placed reliance:

"99. We must have a clear conception of the doctrine. It is well settled that the law permits certain things to be done as a matter of necessity which it would otherwise not countenance on the touchstone of judicial propriety. Stated differently, the doctrine of necessity makes it imperative for the authority to decide and considerations of judicial propriety must yield. It is often invoked in cases of bias where there is no other authority or Judge to decide the issue. If the doctrine of necessity is not allowed full play in certain unavoidable situations, it would impede the course of justice itself and the defaulting party would benefit there from. Take the case of a certain taxing statute which taxes certain perquisites allowed to Judges. If the validity of such a provision is challenged who but the members of the judiciary must decide it. If all the Judges are disqualified on the plea that striking down of such a legislation would benefit them, a stalemate situation may develop. In such cases the doctrine of necessity comes into play. If the choice is between allowing a biased person to act or to stifle the action altogether, the choice must fall in favor of the former as it is the only way to promote decision-making. In the present case also if the two Election Commissioners are able to reach a unanimous decision, there is no need for the Chief Election Commissioner to participate, if not the doctrine of necessity may have to be invoked."

22.3.8. Hence, adopting the *doctrine of necessity,* the decision is being rendered by the remaining Member and Chairperson so that power supply to the public could begin from the power plant of Respondent No. 1 without requiring the entire case being re-heard as and when the vacancy is filled by the Judicial / Legal member.

22.3.9. It had been also held in State of Gujarat v. Utility Users' Welfare Assn., (2018) 6 SCC 21 that " 125.6. In case there is no member from law as a member of the Commission as required aforesaid in para 125.2 of our conclusion, the ***next vacancy arising in every State Commission shall be filled in by a Member of law*** in terms of para 125.2 above."

{Emphasis added}

22.3.10. Now, we shall also deal with the issue raised by the Objectors that the present Commission of only two Members cannot decide this petition in the event they are in disagreement with each other in so far as the decision in the case. The aforesaid contention of the Objectors has no merit. The Conduct of Business, Regulations notified by the Commission vide Notification No. 02 of 2004 addresses this issue.

22.3.11. Regulation 16 to 19 of the said Regulations are reproduced below:-

"……
Quorum and Conduct of Meetings
16. ***Quorum for the proceedings before the Commission shall be two.***

18. All questions which come up before any meeting of the Commission shall be decided by a majority of votes of the Members present and voting, and in the event of an equality of votes, the Chairperson or in his absence, the person presiding shall have a ***second or casting vote.***

19. Save as otherwise provided in Clause 18 above, every Member shall have one vote.
……"

{Emphasis added}

22.3.12. As per clause 16 of the aforesaid notification it is specifically provided that quorum for the proceedings before the Commission shall be "two". Thus, two Members including Chairperson may hear and decide cases. Clause 18 provides that in the event of equality of votes the Chairperson or the person who preside over the meeting has second or casting vote.

22.3.13. It is also necessary to refer Section 93 of the 2003 Act reproduced below.

> *"..... 93. Vacancies etc. not to invalidate proceedings – No act or proceeding of the Appropriate Commission shall be questioned or shall be invalidated merely on the ground of existence of any vacancy or defect in the constitution of the Appropriate Commission....."*.
>
> From the above provisions it is clear that vacancy does not invalidate the proceedings before the Commission.
>
> It is also necessary to refer Section 92 (2) & (3) of the Act, 2003 which are relevant in the present case are reproduced below;
>
> *"Section 92. (Proceedings of Appropriate Commission):*
> *(2) The Chairperson, or if he is unable to attend a meeting of the Appropriate Commission, any other Member nominated by the Chairperson in this behalf and, in the absence of such nomination or where there is no Chairperson, any Member chosen by the Members present from amongst themselves, shall preside at the meeting.*
> *(3) All questions which come up before any meeting of the Appropriate Commission shall be decided by a majority of votes of the Members present and voting, and in the event of an equality of votes, the Chairperson or in his absence, the person presiding shall have a second or casting vote."*

22.3.14. In view of the above, we do not find any merit in the objections raised by the Objectors.

22.4. **Issue No. 4**

Whether the present petition is a review petition seeking review of Commission's order approving the original PPA dated 26.02.2007 and if so whether it is permissible to admit such petition after a lapse of 10 years?

22.4.1. The objectors have raised the issue that the present petition is a review of earlier order No. 4 of 2007 dated 20.12.2007 after more than 10 years. Hence, the same is not permissible to review as there are no ingredient of the review in the petition. Moreover, no ground has been advanced in the Petition by the Petitioner. The objectors have submitted that the approval is required within period of three years. However, the Petitioner has not obtained an approval till the date of filing of the

Petition. Hence, it is barred by the period of limitation and such Petition is not admissible and maintainable.

22.4.2. We note that as stated above the present petition filed by the Petitioner is for amendment of the PPA dated 26.02.2007 by signing of supplemental PPA dated 01.03.2019. The Petition was filed by the Petitioner on 28.03.2019, i.e. within period of one month from the date of signing of the supplemental PPA. Moreover, as recorded in earlier para the present petition is filed by the Petitioner under Article 18.1 for amendment of the approved PPA dated 26.02.2007.

22.4.3. The order No. 4 of 2007 dated 20.12.2007 was for adoption of tariff discovered in bid 03/LTPP/2006 by GUVNL under competitive bidding process and does not pertain to amendment of PPA. Hence, the present petition which raises an entirely different cause of action is certainly not a Review Petition.

22.4.4. The aforesaid amendment in the PPA was carried out by the Petitioner and the Respondent No.1, based on the Government of Gujarat G.R. dated 01.12.2018. The reasons for seeking amendment to the PPA are based on events that occurred subsequent to the adoption of the PPA under our original order dated 20.12.2007. Seeking amendment to the PPA in the given circumstances cannot be equated with or construed as a review petition. The PPA was entered into based on certain understanding between the parties, which was approved and the tariff therein adopted by us. Now when the understanding is to change by way of amendment to the PPA, one cannot term the petition seeking approval to the amendments as a petition seeking review of the order passed by us earlier approving the PPA and adopting the tariff therein. Hence, the contention of the objectors is not acceptable and the same is rejected.

22.5. **Issue No. 5**

Whether the amendments in the original PPA dated 26.02.2007 by way of Supplemental PPA dated 01.03.2019 executed between GUVNL & EPGL, which leads to revision of tariff and other terms and conditions are permissible under Section 63 and bidding process carried out by the Petitioner as per competitive

bidding guidelines, 2005 issued by Government of India? If yes, whether the Commission has the powers to approve such amendments in the approved PPAs.?

22.5.1. Let us first consider the object behind the proposed amendments to the PPA. The amendment proposed in the supplemental agreement dated 01.03.2019 agreed between the parties are based on the recommendation by the High Power Committee (HPC) constituted by the Government of Gujarat to rehabilitate the three power projects which were selected as successful bidders in the competitive bidding carried out by the Petitioner by Bid no. 01/LTPP/2006, 02/LTPP/2006 and 03/LTPP/2006. However, due to regulation on coal prices by Indonesian Government, the selected bidders faced financial problems and were unable to supply the electricity in requisite quantum at the agreed price. In such a situation the Petitioner had to procure remaining power from the open market at a higher rate which in turn affected the consumer's tariff. This all resulted in affecting finances to the lenders, Petitioner, Distribution Licensees as well as high cost to consumers at large. Finally, to overcome this, a High Power Committee was constituted by the Government of Gujarat vide GR No. CGP-12-2018-166-K dated 03.07.2018. The said High Power Committee had submitted its recommendation to the Government of Gujarat based on which the Government of Gujarat issued the Government Resolution No. CGP-12-2018-166-K dated 01.12.2018 accepting the Report of the High Power Committee with certain conditions. In the aforesaid resolution dated 01.12.2018, Government of Gujarat directed the Petitioner to ensure adequate and efficient supply of energy at economic tariff and maintain its source of energy mix in a manner so as to address reliable power generation and optimum utilization of existing resources, by allowing revival and rehabilitation package for the financially-stressed and economically-unviable imported coal based power projects through consequential amendment(s) in the existing PPA(s) in larger public interest and submit before the appropriate Regulatory Commission for its approval.

22.5.2. Thus, Government of Gujarat Resolution No. CGP-12-2018-166-K dated 01.12.2018 is a policy direction by the Government of Gujarat to the Petitioner in a larger public

interest and in the interest of all the stakeholders for inter alia submitting amendments to the PPA.

22.5.3. Article 18.1 of the PPA recognizes that the parties can amend the said PPA if they mutually agree subject to the approval of the appropriate Commission. The amendments to the PPA dated 26.02.2007 are carried out with the consent of both the procurer and suppliers in accordance with the above. The Petitioner relying on Sections 61, 62 and 63 has submitted that the proposed amendments in the supplemental PPA dated 01.03.2019 is in the interest of the consumers, generating company as well as the distribution licensees. The Commission has the power to approve such amendments in the PPAs in the larger public interest even in cases where tariff is arrived by conducting bidding process in accordance with guidelines issued by the Ministry of Power, Government of India of 2005 under Section 63 of the Act itself. The Petitioner relied on the decision of Central Commission and some of the State Commissions who have approved amendments to the PPAs executed between procurer and supplier under competitive bidding process carried out under Section 63 in pursuance to policy decision of Union Ministry of Coal while implementing the SHAKTI (Scheme for Harnessing and Allocation of Koyala (coal) Transparently in India) Scheme. The Petitioner has submitted that the present case is for implementation of economic policy of the Govt. of Gujarat and not a policy directive to the Commission under Section 107 or 108 of the Act. The Petitioner has also relied on the Order dated 29.10.2018 in Miscellaneous Application Nos. 2705-2706 of 2018 in Civil Appeal No. 5399-5400 of 2016 and submitted that all questions regarding the jurisdiction and power of the Commission to approve the amendments in the PPA has been clarified by the Hon'ble Supreme Court.

22.5.4. Per contra, Respondent No. 2 has contended that the Commission does not have power to approve the amendments in supplemental PPA dated 01.03.2019 as it impacts on tariff discovered under section 63 bidding process and the PPA dated 26.02.2007 executed between the parties, on following grounds:

(i) The contention of the Petitioner is that the Hon'ble Supreme Court in its Order dated 29.10.2018 has directed the Commission to consider and allow the amendments sought by the Petitioner based on the HPC report. However, the Hon'ble Supreme Court has in the aforesaid decision only clarified that the decision of Hon'ble Supreme Court dated 11.04.2017 in case of Energy Watchdog Vs. Adani Power Limited and others in C.A. No. 5399-5400 of 2016 will not come in way of deciding the issue with regard to maintainability of Misc. application pertaining to amendment in the PPA. The Hon'ble Supreme Court has not decided the aforesaid Misc. application on its merits, HPC report or any recommendations thereunder.

(ii) The Hon'ble Supreme Court had in C.A. No. 5399-5400 of 2016 in case of Energy Watchdog Vs. Adani Power Limited specifically decided that the power project developers are not entitled to any relief under the exercise of general regulatory powers to grant compensatory tariff by the Commission, force majeure specified under Article 12 of the PPA and change in law under Article 13 of the PPA, based on which the relief was sought by the project developer under the consequence of Indonesian Regulations determining minimum price of imported coal. The Hon'ble Supreme Court held that the relief for mitigation of impact of Indonesian Regulations sought by the project developers are not permissible on aforesaid reasons and therefore, the same is not permissible through amendment of the PPAs. The rejection of rights under the PPA and exercise of regulatory power by the Commission for revision of tariff are relevant to consider in the present case while deciding the present petition.

(iii) The provisions provided under Section 63 of the Electricity Act, 2003 is for discovery of price/tariff for supply of electricity by the generating company by following the competitive bidding process initiated under the competitive bidding guidelines. Thus, the discovered tariff under the aforesaid process is sacrosanct and needs to be a guiding factor.

(iv) It is not permissible to amend the discovered tariff under the competitive bidding process followed in a transparent manner and convert the tariff discovered under the competitive bidding process under Section 63 of the Electricity Act, 2003 into actual cost determination. Such proposed amendment through supplemental PPA amounts to converting the tariff discovered under Section 63 into a tariff under Section 62 which is not permissible.

(v) The competitive bidding guidelines issued under Section 63 of the Act are statutory in nature and have force of law. The tariff discovered under the competitive bidding guidelines incorporated in the PPA is part of contract and to that extent such contract are statutory contract and the same cannot be permitted to be amended against the provisions of the statute.

(vi) The tariff discovered under the transparent process under Competitive Bidding Guidelines specified under Section 63 of the Act, requires to be adopted by the Appropriate Commission as provided in the said guidelines. Thus, the tariff discovered under the competitive bidding process cannot be amended or re-adopted by the Commission.

22.5.5. We also note that in the case of All India Power Engineer Federation & Oths Vs Sasan Power Ltd & Oths. the Hon'ble Supreme Court in its judgement dated 08.12.2016 held as under:

> *29. A perusal of the CERC tariff adoption order in the present case dated 17.10.2007 makes it clear that the tariff is adopted by the Commission only because the competitive bidding process which has been undertaken is in accordance with the guidelines so issued.*
>
> *30. All this would make it clear that even if a waiver is claimed of some of the provisions of the PPA, such waiver, if it affects tariffs that are ultimately payable by the consumer, would necessarily affect public interest and would have to pass muster of the Commission under Sections 61 to 63 of the Electricity Act. This is for the reason that what is adopted by the Commission under Section 63 is only a tariff obtained by competitive bidding in conformity with Guidelines issued.* ***If at any subsequent point of time such tariff is increased, which increase is outside the four corners of the PPA, even in cases covered by Section 63, the legislative intent and the language of Sections 61 and 62 make it clear that the***

Commission alone can accept such amended tariff as it would impact consumer interest and therefore public interest.

The above findings make it clear that even in case of tariff determined through competitive bidding pursuant to the Guidelines and Section 63 of the Act, the Appropriate Commission has to be approached to approve the increased tariff which is outside the PPA and that such Commission alone has the power to approve such amended tariff. ***It also flows from this judgment that the Commission has the power to approve amendment of the PPA including tariff, and that such amendment would have "to pass muster of the Commission under Sections 61 to 63 of the Electricity Act." Accordingly, there can be no doubt that the power of the Commission to approve amendments to the PPAs extends to the power to amend the tariff provisions of the PPAs also. It is also to be noted that such power to amend the tariff could be "outside the four corners of the PPA".***

{Emphasis added}

22.5.6. The aforesaid finding of the Hon'ble Supreme Court recognized that in so far as the tariff discovered under the competitive bidding process pursuant to guidelines under Section 63 of the Act the appropriate Commission has power to amend the tariff if any, which increase is outside the four corners of the PPA.

22.5.7. The Hon'ble Supreme Court has in its judgment in case of Energy Watchdog V/s. M/s Adani Power Ltd & Others made it clear that this Commission can exercise powers to regulate tariff under Section 79(1)(b), even where the tariff has been determined under Section 63 of the Act, subject to the condition that such power is exercised consistently with the Guidelines. The relevant portions of the said judgment are extracted below:

"19. It is important to note that the regulatory powers of the Central Commission, so far as tariff is concerned, are specifically mentioned in Section 79(1). This regulatory power is a general one, and it is very difficult to state that when the Commission adopts tariff under Section 63, it functions de hors its general regulatory power under Section 79(1)(b). For one thing, such regulation takes place under the Central Government's guidelines. For another, in a situation where there are no guidelines or in a situation which is not covered by the guidelines, can it be said that the Commission's power to "regulate" tariff is completely done away with? According to us, this is not a correct way of reading the aforesaid statutory provisions. The first rule of statutory interpretation is that the statute must

be read as a whole. As a concomitant of that rule, it is also clear that all the discordant notes struck by the various Sections must be harmonized. Considering the fact that the non-obstante clause advisedly restricts itself to Section 62, we see no good reason to put Section 79 out of the way altogether. The reason why Section 62 alone has been put out of the way is that determination of tariff can take place in one of two ways – either under Section 62, where the Commission itself determines the tariff in accordance with the provisions of the Act, (after laying down the terms and conditions for determination of tariff mentioned in Section 61) or under Section 63 where the Commission adopts tariff that is already determined by a transparent process of bidding. In either case, the general regulatory power of the Commission under Section 79(1)(b) is the source of the power to regulate, which includes the power to determine or adopt tariff. In fact, Sections 62 and 63 deal with "determination" of tariff, which is part of "regulating" tariff. Whereas "determining" tariff for inter-State transmission of electricity is dealt with by Section 79(1)(d), Section 79(1)(b) is a wider source of power to "regulate" tariff. It is clear that in a situation where the guidelines issued by the Central Government under Section 63 cover the situation, the Central Commission is bound by those guidelines and must exercise its regulatory functions, albeit under Section 79(1)(b), only in accordance with those guidelines. As has been stated above, it is only in a situation where there are no guidelines framed at all or where the guidelines do not deal with a given situation that the Commission's general regulatory powers under Section 79(1)(b) can then be used."

22.5.8. In the light of the above judgments, it emerges that the PPA in question including the powers to approve amendments thereto contained in Article 18.1 of the respective PPA flow from and are consistent with the GOI Guidelines and Section 63 of the Act. Without prejudice to the above power flowing from Article 18.1 of PPA, the Commission can exercise its powers to regulate tariff under Section 86 (1) (b) of the Act in a scenario where it is not covered by any of the provisions of the Guidelines or where no Guidelines are framed at all or Guidelines do not deal with a given situation, as clearly stipulated in the judgment in Energy Watchdog Case extracted above. Therefore, not only does the Commission have the statutory powers to allow amendments pursuant to Article 18.1 of the respective PPA, but also has the statutory / regulatory power under Section 86 (1) (b) of the Act in the absence of any Guidelines or specific provisions in the Guidelines with regard to amendment of the PPA to either approve the proposed amendment or reject the same.

22.5.9. In the present case as stated above the provision in the bid documents RFP, RFQ and PPA were approved by GERC. Further, the discovered tariff under the bid no 03/LTPP/2006 was also adopted by the Commission in accordance with the guidelines issued under section 63 of the Act. Thus the PPA dated 26.02.2007 has the statutory sanction.

22.5.10. We also note that the Petitioner has submitted that the Central Commission as well as State Commission have exercised the power and approved the amendments in PPAs executed under Section 63 of the Act pursuant to policy decisions under the SHAKTI Scheme of the Govt. of India. We refer to the Order dated 21.02.2018 passed by the Central Commission in Petition No. 21/MP/2018 in the case of KSK Mahanadi Power Co. Ltd. vs. TANGEDCO & Ors. exercised its power and amended the tariff to factor the discount offered under the SHAKTI scheme. The relevant paras of the said Order are reproduced below:

" 23. The Petitioner has sought approval of the amendments to the PPAs entered into between the Petitioner and the Respondent Nos. 1 to 8 for passing on the discount in tariff to the Procurers in terms of clause (B)(ii)(b) of the —SHAKTI schemell of the GOI dated 22.5.2017 and the LOIs issued by CIL. The relevant portions of Clause (B) of the Policy guidelines for allocation of Coal linkages to Power Sector under —SHAKTI scheme" are extracted under:

(B) The following shall be considered under a New More Transparent Coal Allocation Policy for Power Sector, 2017-SHAKTI (Scheme for Harnessing and Allocating Koyala (Coal) Transparently in India):

(i) *CIL/SCCL may grant Coal linkages for Central Government and State Government Gencos at the notified price of CIL/SCCL. Similarly, coal linkages may be granted for JVs formed between or within CPSUs and State Govt/PSUs. The recommendations shall be made by Ministry of Power.*

(ii) *CIL/SCCL may grant coal linkages on notified price on auction basis for power producers/IPPs having already concluded long term PPAs (both under Section 62 and Section 63 of The Electricity Act, 2003) based on domestic coal. Power producers/ IPPs, participating in auction will bid for discount on the tariff (in paise/unit). Bid Evaluation Criteria shall be the non-zero Levelized Value of the discount (applying a pre-notified discount rate) quoted by the bidders on the existing tariff for each year of the balance period of the PPA. Ministry of Coal may, in consultation with Ministry of Power, work out a methodology on normative basis to be used in the bidding process for allocation of coal linkages to IPPs with PPAs.*

(a) *The discount by generating companies would be adjusted from the gross amount of bill at the time of billing, i.e., the original bill shall be raised as per the terms and conditions of the PPA and the discount would be reduced from the gross amount of the bill. The discount shall be computed with reference to scheduled generation from linkage coal supplied under this auction. This would be applicable to both the PPAs contracted under Section 62 as well as Section 63 of the Electricity Act, 2003.*

(b) *Accordingly, PPA may be amended or supplemented mutually between the developer and the procurer to pass on the discount to the procurer and the approval of the Appropriate Commission obtained, as per the provisions of the PPA or Regulations.*

(c) *FSA shall be signed with the successful bidders after the terms and conditions for signing of FSA are met and the Appropriate Commission has approved the amendment or supplement to the PPA.*

(iii) *CIL/SCCL may grant future coal linkages on auction basis for power producers/ IPPs without PPAs that are either commissioned or to be commissioned. All such power producers/IPPs may participate in this auction and bid for premium above the notified price of the coal company. The methodology for bidding of linkages shall be similar to the bidding methodology in the policy on auction of linkages of Non-Regulated Sector dated 15.02.2016. Coal drawl will be permitted only against valid long term and medium term PPA with Discoms/State Designated Agencies (SDAs), which the successful bidder shall be required to procure and submit within two years of completion of auction process.*

32. Considering the fact that the amended/supplementary PPAs provides for the methodology for adjustment of the discount in the monthly bills to the Procurers in terms of the —SHAKTI schemell, the amendments to the PPAs between the Petitioner and Respondents Nos. 1 to 8 as stated above are approved. Issues, if any, arising out of such adjustment shall be mutually settled by the parties."

22.5.11. The aforesaid decision proves that the Petitioner KSK Mahanadi Power Co. Ltd. who had signed the agreement with TANGEDCO on long term basis participated in the bidding process based on domestic coal offered discount in the existing tariff for the balance period of PPA signed between the parties. In the aforesaid process the grant of coal linkage based on the notified price from each source based on the discount offered by the power producer on the existing tariff for balance period of the PPA the discount would be computed with reference to linkage coal supplied and received under the SHAKTI scheme. In the aforesaid scheme the discount offered by the generating companies is required to be adjusted from the gross amount of the

monthly bill raised in terms of the PPA and accordingly the directions were issued by the Central Commission.

22.5.12. We note that the High Power Committee constituted by the Govt. of Gujarat vide GR dated 03.07.2018 has studied issues involved in the stressed imported coal based power project including their assets and given its recommendations in their report dated 03.10.2018. After considering the said report, the Govt. of Gujarat issued GR No. CGP-12-2018-166-K dated 01.12.2018. The relevant portion of the said resolution in this case is reproduced in earlier paras.

22.5.13. On verification of the aforesaid resolution, it is clear that the Petitioner GUVNL was directed to ensure adequate and efficient supply of energy at economical tariff and maintain its respective energy basket in a manner that has mix of power sources, where the utilization of existing resources and installed generating capacity by allowing revival and rehabilitation package to the financially stressed and economically unviable imported coal based power project through consequential amendment/modification in the existing PPA in larger public interest. It also directed to the Petitioner to submit the amended PPA before the Commission for its approval. Thus, the aforesaid directives to the GUVNL are the policy directives by the Govt. of Gujarat for which the Petitioner has filed the present Petition for approval of this Petition which needs to be considered if it is in the public interest.

22.5.14. It is also necessary to refer Section 86 (1) (b) of the Act which is relevant in the present case is reproduced below.

*"**Section 86. (Functions of State Commission)**: --- (1) The State Commission shall discharge the following functions, namely: -*

.....

(b) regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State;"

.....

As per the aforesaid provision, the State Commission is required to regulate the power procurement of the distribution licensee, which includes quantum of power, its price

and period. Thus in the present case the supplemental PPA which was executed between the parties leads to amendments in the quantum, price and period approved in the PPA dated 26.02.2007 by the Commission. Thus the Commission has jurisdiction to decide the present case in light of the aforesaid provisions read with the decision of Hon'ble Supreme Court in case of All India Power Engineer Federation & Ors. Vs.Sasan Power Ltd. & Ors., in case of Energy Watchdog vs. Adani Power Ltd. Orders passed by the CERC as well as this Commission in case of SHAKTI Scheme pronounced by the GOI read with Article 18.1 of the PPA as well as from the provisions of the competitive bidding guidelines and pursuant to the Provisions of Section 63 of the Act. With this, the present issue about the power of the Commission is settled and the objections are rejected.

22.6. **Issue No. 6**

Whether this Commission is empowered to convert tariff adopted under Section 63 to determine the tariff under Section 62 of the Electricity Act on cost plus basis and determine the fixed and the variable cost?

22.6.1. As discussed in earlier paras the Electricity Regulatory Commission including this Commission has the power under Section 63 of the Act to approve the PPA executed between the parties under the competitive bidding guidelines of Central Government dated 19.01.2005.

22.6.2. The amendment by way of supplemental PPA dated 01.03.2019 as per the policy direction of the Government of Gujarat was executed under the provision of Article 18.1 of the PPA dated 26.02.2007 allowing the parties to amend the PPA with the approval of the Commission.

22.6.3. The said amendments to the PPA doesn't mean converting entire PPA tariff adopted by this Commission vide Order dated 20.12.2007 as per Section 63 of the Act into tariff freshly to be determined under Section 62 of the Act, but approving the relevant changes in the fuel cost and fixed cost as a result of settlement between the parties due to the difficulties faced by them and resolved by way of policy decision by the Government of Gujarat vide G.R. dated 03.07.2018 and 01.12.2018. Hence, it is not

the case of converting tariff discovered under Section 63 to tariff determine under Section 62.

22.6.4. Now, we deal with the impact of the supplemental PPA on the power purchase tariff and retail tariff of the consumers.

22.6.5. Lenders shall bear the burden of Rs. 0.20 per kWh by way of reduction in capacity charge.

22.6.6. Increased availability from 80% to 90% without payment of any additional capacity charge, which will make additional 10% power available only at the fuel cost, resulting in lower average power purchase cost for the Petitioner.

22.6.7. Fuel cost shall be pass through on actual basis subject to ceiling of imported coal cost of 110 US$/MT. The generators shall carry the price risk beyond the capped ceiling and such capped ceiling shall be reviewed after five years. Hence, it will be only the actual fuel cost within the ceiling that will be approved by the Petitioner. Details for different elements of cost are discussed as per supplementary PPA in the subsequent paras of this Order.

22.6.8. PPA tenure can be extended for further period of 10 years based on mutual acceptance, which will make the availability of cheaper power in future at the competitive rates since as the time passes the project cost goes on increasing trend. Even the present averaged capacity charges are about Rs. 2.00 per kWh against which the Petitioner can avail power from this project which has approximate capacity charge of less than Rs. 1.00 per kWh, which in turn will lead to lessen the burden of fixed charge for power procurement.

22.6.9. From the above, it transpires that it is not that entire tariff is converted under Section 62 as that discovered under Section 63 of the Act and also the impact on the power purchase shall be minimal in a given long term scenario for the Petitioner and ultimately for the retail tariff of consumers at large for the State.

Thus, the petition is not for converting Tariff discovered through Bid process conducted by the Petitioner under section 63 to that of Tariff fixation under Section 62, but it is for the approval of the policy decision taken by the Government and its implementation by way supplemental PPA. So, it is neither case of section 63 or section 62 but approving the amendments in PPA by the Commission as per provision 18.1 and powers vested with the commission to approve it.

22.7. **Issue No. 7**

Whether the Fuel Supply Agreement is compulsory and necessary prior to approving the Supplementary PPA dated 01.03.2019 executed between the parties? Is the Commission empowered to know the status of the Fuel Supply Agreement?

22.7.1. We note that as per the original bid documents it is the duty of the generator/seller to tie up for fuel supply on long term basis and get its approval. In the present case the aforesaid provision still continues and there is no change. The consumer organisations have vehemently submitted that the fuel supply agreement must be submitted to the Commission with the Petition by the Petitioner and the consumer who are burdened of such coal supply must be given an opportunity to comment on it.

22.7.2. We note that the energy charge is dependent on the quantity, quality of the coal, its price, period for supply of such coal etc. by the fuel suppliers. Hence, it is essential that the seller shall tie up the fuel supply with supplier for a long term basis to assure the procurer of the availability of coal, its quantum, quality and price so that as the fuel cost is pass through the competitiveness of such fuel supply must be ensured by the seller/generator. We also note that it is agreed between the parties that the procurement be carried out by the seller/generator following competitive bidding process with approval of the tender documents from the procurer and also approve the rate from the procurer. As per the original bid documents it is the duty of the generator/seller to tie up for fuel supply on long term basis and the Procurer to approve the same. In the present case the aforesaid provision is still continued and

there is no change. Accordingly, the Commission is of the view that a robust, fair and transparent procedure should be enforced so that economical price is paid for fuel purchase and an agreement is required to be placed before the Commission prior to payment of revised tariff. Further, under the agreement since the fuel cost is pass through unlike the original PPA, it is the duty of the procurer/Petitioner to verify the fuel availability and quality. Hence, while approving the monthly energy bills of Respondent No.1 the Petitioner shall verify the fuel details as per details/documents listed in *Annexure - 5*.

22.8. **Issue No. 8**

Whether the action of Government of Gujarat intervening in the matter and setting up High Power Committee and its recommendations is in public interest? Whether the recommendations of High Power Committee issued vide G.R. dated 01.12.2018 leading to change in terms and conditions of the PPA executed between the parties by way of supplemental PPA are binding to the GUVNL and to the Commission?

22.8.1. Now we deal with the issue that whether the intervention by the State Government by way of setting up High Power Committee (HPC) and issuing policy direction in the matter to the Petitioner is in the public interest.

22.8.2. The Consumer Groups have argued that the stand taken by the Petitioner and the Project Developer in regard to the Policy Directive of the Government of Gujarat being binding on the Commission is misconceived, patently erroneous and is liable to be rejected for several reasons. Firstly, as per the Statement of Objects and Reasons of the Act, the objective of the Act is to distance the regulatory responsibilities in Electricity Sector from the Government to the Regulatory Commissions. Secondly, the functions of the State Commission under section 86 of the Act have not been vested in any manner to be exercised by the State Government. Thirdly, Section 108 of the Act vests the powers to issue Policy Directives to the State Commission with the State Government. Fourthly, in matters of tariff, the Act envisages that the Policy Directive should not interfere with the tariff determination even by the State as is evident from Section 65 of the Act where the

State Government can grant subsidy but cannot direct State Commission to subsidise. Thus, the domain of tariff of the electricity utilities is entirely with the Appropriate Commission and not with the Appropriate Government. The very objective of distancing the Government from the tariff determination process will be rendered redundant if the interpretation in regard to the Policy Directive of the Government of Gujarat being binding on this Commission is accepted. Even otherwise, the Policy Directive issued by the State Government to the State Commissions in the matter of tariff are not binding. In support of aforesaid submissions, the Consumer groups have relied upon the decision of the Appellate Tribunal in Polyplex Corporation Limited v Uttarakhand Electricity Regulatory Commission and Others [(2011) ELR APTEL 195].

22.8.3. The Petitioner has submitted that rehabilitation scheme of the Government of Gujarat in being implemented in larger public interest. If the project is revived, then the sourcing of power from the alternative expensive sources is to be avoided. The contention of the petitioner is also that a policy directive in the Govt. GR dated 01.12.2018 needs to be ascertained by the Commission that whether the proposed amendment is in public interest or not. The rehabilitation package is implemented through the policy decision of the Government of Gujarat taken in larger public interest, the Commission should approve the proposed amendments to the PPAs dated 06.02.2007 and 02.02.2007 as have been allowed in the cases of SHAKTI scheme.

22.8.4. The following judgements of Hon'ble Supreme Court laid down the principle of adjudication and scope for interference by a court of law in policy decision of the Government in larger public interest have been relied upon by the Petitioner in support of its submission that there is public interest involved in the policy decision/directives of the Govt. of Gujarat in GR Dated 01.12.2018.

i Netai Bag and Ors -v- State of West Bengal and Ors (2000) 8 SCC 262;

ii Sachidanand Pandey and Anr -v- State of West Bengal and Ors (1987) 2 SCC 295;

iii Krishnan Kakkanth -v- Government of Kerala & Ors (1997) 9 SCC 495;

iv Arun Kumar Agarwal -v- Union of India & Ors (2013) 7 SCC 1; and

v Delhi Science Forum & Ors -v- Union of India and Anr (1996) 2 SCC 405.

22.8.5. Based on above submission and relying on aforesaid judgements of Hon'ble Supreme Court the Petitioner submitted that the Government is entitled to take policy decision with consideration of prevalent & peculiar situation in larger public interest as it is the duty of the courts that while arriving on decision in a subject matter before it, where the policy decision taken by the Government needs to be considered and it cannot be struck down merely because an alternate decision would have been fair and wise or more logical and scientific. Unless it is arbitrary and proved capricious and not informed by any reason what so ever or creating a discrimination or infringes any statute or provisions of the Constitution, the policy decision cannot be struck down.

22.8.6. The contention of the Respondent consumer groups in their reply and in the arguments before the Commission with regard to questioning merits of some of the aspects of the policy decision in isolation is not a correct and proper approach and they are devoid of merits. It is settled law that a policy document needs to be read as a whole as various components of a policy are interlinked and balanced. It is not permitted to read each provisions of the policy in isolation because it may lead to distort the final result. The HPC has considered the interest of all the stakeholders which include generator, lenders, procurer licensee and consumer at large and tried to finally balance the interest of all the above stake holders and given their recommendation with intention of resolving the financial and cash flow miss-match issues being faced by the project in sustainable manner and avoiding the requirement of purchasing expensive power from alternative sources. The policy decision of the Govt. of Gujarat in GR. Dated 01.12.2018 envisages that the proposed restructuring will result in making the project financially self-sustainable in its operation as it also provides the developer to absorb all its past accumulated losses and also take financial haircuts in the future operations of the project. The policy decision of the Govt. of Gujarat are based on the recommendation of HPC is in the larger public interest.

22.8.7. The Petitioner has also brought to the notice of the Commission that the proposed amendment is in the interest of the consumers because non availability of power from the Respondent no. 1 in past period when this plant was shut off due to increase in coal price by the Respondent No.1, the Petitioner was compelled to procure power from the market as an alternative arrangement to meet out the demand of the consumers of the State and maintain 24X7 power and avoided any kind of load shedding. It is necessary to see that uninterrupted power supply with reliability must be available to the consumer which requires continuous availability of requisite quantum of power from the defined source of power. In absence of certainty of availability of continuous power, the licensee is to arrange such power from alternate source which is uncertain and chances are that it may be available at higher cost is definitely not in public interest.

22.8.8. The Respondent No. 1 also submitted that the Supplemental PPAs are aimed to sub serve the interest of consumers for several reasons. Firstly, they ensure that the risks are equitably balanced by having minimal impact on the tariff, with accumulated losses to the account of power producers. Secondly, they allow consumers to avail the benefit of cheap power even beyond the initial contracted period of the PPA. There is no dispute that power from the project is amongst the cheapest for the procurer within its basket of power procurement sources. Thirdly, they facilitate a financially stressed asset to become financially viable, preventing bank loans from turning NPA and resulting in availability of cheap and reliable supply of electricity to the consumers. Fourthly, they ensure that GUVNL need not incur higher cost for replacement of its power, thereby burdening the consumers. Fifthly, they enable GUVNL to provide uninterrupted power supply to the consumers, considering the uncertainty regarding the availability of such quantity of power from alternate sources. There is equitable sharing of the financial burden. While fuel cost pass-through is a mitigation against hardship arising from the increase in coal price, consumer's interests have been safeguarded through financial re-structuring of the Project. As per the new Standard Bidding Documents, fuel cost is now made a pass through for all future power procurements under Competitive bidding, keeping in view the risk associated with fuel. Availability of power from the Respondent No. 1 will

benefit consumers immediately since the capacity charge of the project is competitive and in addition, a discount of 20 Paise/unit is now applicable. The proposed scheme takes consumer interests fully into consideration and therefore meets the test as laid down in the judgment in the Sasan Power Case of the Hon'ble Supreme Court.

22.8.9. The Consumer Groups have also submitted that the various judgments relied on by the Petitioner are distinguishable and have no relevance at all to the present case. These judgments deal with the decisions made by Government and Government Authorities when they have the authority to take such decision and judicial review of such decisions by the Hon'ble High Courts in exercise of writ jurisdiction. These decisions cannot apply to situations where the decision making authority is the Regulatory Commission and the Government is giving directions to the Commission to decide the matter in a particular manner. The Consumer Groups have submitted that the issue whether the amendment should or should not be allowed to the PPAs as sought for by the Petitioner and supported by the Project Developer is entirely within the scope and functions of this Commission and need to be exercised by the Commission in accordance with the settled principles of law.

22.8.10. We have considered the submissions of the Petitioner, Essar power ltd. and Consumer Groups. We have concluded that this Commission has the power and authority under law to decide whether the proposed amendments to the PPAs meet the overall test of public interest i.e. consumer interest and decide whether the proposed amendments should be accepted or not. This is abundantly clear from the judgment of the Hon'ble Supreme Court in the Sasan Case. The relevant portion from para 30 of the said judgment is extracted below:

"30.... if it affects tariffs that are ultimately payable by the consumer, would necessarily affect public interest and would have to pass muster of the Commission under
Sections 61 to 63 of the Electricity Act..... .... The legislative intent and the language of Sections 61 and 62 make it clear that the Commission alone can accept such amended tariff as it would impact consumer interest and therefore, public interest."

22.8.11. The Public Interest involved in the present Petition is vehemently opposed by the Consumer Groups stating that there is no element of public interest as argued by the Petitioner. The interest involved is limited to few entities and not in the interest of consumers at large. The retail tariff of the consumers which are in large would increase as per the proposed amendment which is against the consumer interest. The benefit of the HPC recommendation and Government GR is available only to lenders of the project and project developers who have failed to perform their duties and also defaulted in the task taken by the them. Such beneficiaries who are benefited from the outcome of the present petition involving HPC report recommendation and Government Resolution are few entities, i.e. the lenders and project developers.

22.8.12. As the issue pertaining to the Public Interest involved in the present petition it is necessary to consider the concept of public interest and what is the meaning by "Public Interest" in judicial parlance and in general terms. Public interest meaning in general term is "the welfare or well-being of the general public" and society. In a Federal Court Freedom of Information case, justice Brian Tamberlin wrote:

"*The public interest is not one homogenous undivided concept. It will often be multi-faceted and the decision-maker will have to consider and evaluate the relative weight of these facets before reaching a final conclusion as to where the public interest resides".*

22.8.13. The Hon'ble Supreme Court has in the case of Onkar Lal Bajaj Vs Union of India [(2003) 2 SCC 673] has held with regard to public interest as under:

35. The expression 'public interest' or 'probity in governance' cannot be put in a strait jacket. 'Public interest' takes into its fold several factors. There cannot be any hard and fast rule to determine what is public interest. The circumstance in each case would determine whether Government action was taken is in public interest or was taken to uphold probity in governance.

In the aforesaid Judgement Hon'ble Supreme Court has held that there is no hard and fast rule which can determine the Public interest it depends on the circumstances of each case where the action of the Govt. taken is as to whether in the public interest or not be verified and declare. Thus there is no specific or expressly method which strait way apply to the Public Interest.

22.8.14. We also note that the Supreme Court has dealt with the basic elements of the Public Interest which needs to be considered while deciding the commercial contract. In the case of Raunaq International Limited Vs I.V.R Construction Limited reported in [(1999) 1 SCC 492]. The Relevant portion of the said judgement is reproduced below:

> *10. What are these elements of public interest? (1) Public money would be expended for the purposes of the contract. (2) The goods or services which are being commissioned could be for a public purpose, such as, construction of roads, public buildings, power plants or other public utilities. (3) The public would be directly interested in the timely fulfilment of the contract so that the services become available to the public expeditiously. (4) The public would also be interested in the quality of the work undertaken or goods supplied by the tenderer. Poor quality of work or goods can lead to tremendous public hardship and substantial financial outlay either in correcting mistakes or in rectifying defects or even at times in redoing the entire work — thus involving larger outlays of public money and delaying the availability of services, facilities or goods, e.g., a delay in commissioning a power project, as in the present case, could lead to power shortages, retardation of industrial development, hardship to the general public and substantial cost escalation.*‖

22.8.15. Hon'ble Supreme Court has in the case of Bihar Public Service Commission Vs Saiyad Hussain Abbas Rizwi reported in (2012) 13 SCC 61, held that public interest would mean the general welfare of the public that warrants recommendations and protection. It is something in which public as a whole has a stake. The relevant portion of the said judgement is reproduced below:

> *".....22 The expression "Public Interest has to be under stood in its two connotation so as to give complete meaning to the relevant provisions of the act. The expression "Public Interest) must be viewed in its strict sense with all it exceptions so as to justify denial of statutory exemption in terms of the Act. In this common parlance the expression "Public Interest" like "Public Purpose", is not capable of any precise definition. It does not have a rigid meaning is elastic and takes its colours from the statute in which it occurs, the concept varying with time and state of society and it needs. It also means the general welfare of the public that warrants recognition and protection: Something in which the public as a whole has a stake....."*

22.8.16. We note that the Electricity Act 2003 also provides certain provisions which state about the protection of the various entities that is generation, transmission, distribution as well as consumers at large. The preamble of the Act also envisages that the interest of the consumer may be protected. The tariff policy also provides for

consideration of Public Interest with consideration of different aspects. Section 61 of the Act envisages about Tariff Regulations where the various aspects which needs to be considered as guiding factor while framing the Tariff Regulations as it affects largely to public associated with the electricity sector. The relevant Sections 61 (b), (c), (d), (g) of the Electricity Act, 2003 are reproduced below:

> "..... Section 61 (Tariff regulations):
>
> *The Appropriate Commission shall, subject to the provisions of this Act, specify the terms and conditions for the determination of tariff, and in doing so, shall be guided by the following, namely:-*
>
> .....
>
> (b) *the generation, transmission, distribution and supply of electricity are conducted on commercial principles;*
>
> (c) *the factors which would encourage competition, efficiency, economical use of the resources, good performance and optimum investments;*
>
> (d) *safeguarding of consumers' interest and at the same time, recovery of the cost of electricity in a reasonable manner;*
>
> .....
>
> *(g) that the tariff progressively reflects the cost of supply of electricity and also, reduces cross-subsidies in the manner specified by the Appropriate Commission...."*

The aforesaid provisions provide that the appropriate Commission while framing the regulations shall be guided with consideration that the generation, transmission, distribution and supply of electricity be conducted on commercial principles. Moreover, the competition, efficiency, economical use of resources, good performance and optimum investment factors are to be considered. Further, it is necessary to safeguard the consumers interest as well as the recovery of the cost of electricity in a reasonable manner. The tariff progressively reflects the cost of supply of electricity and cross subsidisation may be reduced as specified by the Commission.

(ii) It is also necessary to refer the relevant provisions of the Tariff Policy which are reproduced below:

> *"-----1.3 It is therefore essential to attract adequate investments in the power sector by providing appropriate return on investment as budgetary resources of the Central and State Governments are incapable of providing*

the requisite funds. It is equally necessary to ensure availability of electricity to different categories of consumers at reasonable rates for achieving the objectives of rapid economic development of the country and improvement in the living standards of the people.

1.4 Balancing the requirement of attracting adequate investments to the sector and that of ensuring reasonability of user charges for the consumers is the critical challenge for the regulatory process. Accelerated development of the power sector and its ability to attract necessary investments calls for, inter alia, consistent regulatory approach across the country. Consistency in approach becomes all the more necessary considering the large number of States and the diversities involved.

4.0 OBJECTIVES OF THE POLICY

The objectives of this tariff policy are to:

(a) *Ensure availability of electricity to consumers at reasonable and competitive rates;*

(b) *Ensure financial viability of the sector and attract investments;*

....."

22.8.17. The aforesaid provisions of the Act and Tariff Policy emphasise on the competition, efficiency, economic use of resources and optimum investment. The aforesaid provision recognise that it is necessary to balance the interest of the consumer and the generator as well as licensee. It also provides that the electricity is available to the consumers at reasonable and competitive rate. It is difficult to define the Public Interest and evaluate the same with consideration of the issues involved in isolation. Therefore, while deciding the Public Interest it is essential to consider all the relevant factors and its effect on the various entities who are associated with such issues. It is incorrect to consider the effect of the decision on particular issue like in the present case. The impact of the tariff applicable to the consumers in case of proposed amendments recommended by the HPC and the Government policy decision on it.

22.8.18. The Petitioner has relied on the judgement dated 28th September 2015 of Hon'ble Appellate Tribunal in Appeal No. 198 of 2014. The relevant portion of the said judgement is reproduced below:

".....48. It was contended by Mr. Ramachandran, learned counsel for the Appellant that the Electricity Act focuses attention on consumer interest. It is the consumer who has to be looked after. The State Commission and this Tribunal have to ensure that consumer interest is protected as that is of prime importance. While it is true that consumer interest should always be protected, we are unable to agree with Mr. Ramachandran that consumer interest will always override all other considerations or interest of other stakeholders. After all, the power sector functions on the joint efforts of all stakeholders and health of all stakeholders should be the concern of the regulator though as far as possible primacy must be given to consumer interest. The policies of the State lay great emphasis on renewable energy sources. The State has recognized that those who generate renewable energy must be encouraged to enable them to remain in the power sector and flourish. Such encouragement undoubtedly cannot be at the cost of consumers. It is for the regulator to find ways to strike a balance. It is pertinent to note that Section 61 states what factors the Appropriate Commission has to take into consideration while specifying the terms and conditions for the determination of tariff. The promotion of cogeneration and generation of electricity from renewable sources of energy is one of those factors as set out in sub-clause (h). Under sub-clause (d), the Appropriate Commission has to safeguard consumer interest and at the same time take into account the recovery of cost of electricity in a reasonable manner.

..... It is, therefore, not possible to hold that the regulator has to only take the consumer interest into account. At the cost of repetition, it must be stated that balance has to be struck between the two. Some of the judgments to which we have made a reference make this position clear....."

22.8.19. The aforesaid judgement of the Hon'ble APTEL held that the power sector is functioning on the joint effort of all the stake holders involved in it. The Regulators are required to balance the interest of all the stakeholders. It is also provided that while safeguarding the interest of the consumers, it is necessary to allow the recovery of the cost of electricity in a reasonable manner by the Commission.

22.8.20. We are therefore of the view that as a Regulator of electricity sector the Commission needs to balance the interest of the consumer and the project developers in a long run and in sustainable manner. The policy decision taken by the Government of Gujarat vide GR Dated 01.12.2018 directing the Petitioner to rehabilitate the stressed imported coal based power projects in public interest and such policy decision should not be interfered with.

22.8.21. Now we deal with the various judgements relied upon by the petitioner in support of aforesaid issue in the light of the legal principles laid down in the judgments. The Judgements relied upon by Petitioner are referred below:

(a) In Netai Bag v. State of W.B. [(2000) 8 Supreme Court Case 262], Hon'ble Supreme Court has made the following observations:

> *"---------19. Though the State cannot escape its liability to show its actions to be fair, reasonable and in accordance with law, yet whenever challenge is thrown to any of such action, initial burden of showing the prima facie existence of violation of the mandate of the Constitution lies upon the person approaching the court. We have found in this case, that the appellants have miserably failed to place on record or to point out to any alleged constitutional vice or illegality. Neither the High Court nor this Court would have ventured to make a rowing inquiry particularly in a writ petition filed at the instance of the erstwhile owners of the land, whose main object appeared to get the land back by any means as, admittedly, with the passage of time and development of the area, the value of the land had appreciated manifold. It may be noticed that in the area 1961 the erstwhile owners were paid about Rs. 5.5 lakhs and the State Government assessed the market value of the property which was paid by Respondent 5 at Rs. 71,59,820. The appellants have themselves stated that the value of the land roundabout the time, when it was leased to Respondents 5 was about Rs. 11 crores. There cannot be any dispute with the proposition that generally when any State land is intended to be transferred or the State largesse decided to be conferred, resort should be had to public auction or transfer by way of inviting tenders from the people. That would be a sure method of guaranteeing compliance with the mandate of Article 14 of the Constitution. Non-floating of tenders or not holding of public auction would not in all cases be deemed to be the result of the exercise of the executive power in an arbitrary manner. Making as exception to the general rule could be justified by the State executive, if challenged in appropriate proceedings. The constitutional courts cannot be expected to presume the alleged irregularities, illegalities or unconstitutionality nor the courts can substitute their opinion for the bona fide opinion of the State executive. The courts are not concerned with the ultimate decision but only with the fairness of the decision-making process.*
>
> *20. The Government is entitled to make pragmatic adjustments and policy decisions which may be necessary or called for under the prevalent peculiar circumstances. The court cannot strike down a policy decision taken by the Government merely because it feels that another decision would have been fairer or wiser or more scientific or logical. In State of M.P. v. Nandlal Jaiswal it was held that the policy decision can be interfered with by the court only if such decision is shown to be patently arbitrary, discriminatory or mala fide. In the matter of different modes, under the rule of general*

application made under the M.P. Excise Act, the Court found that the four different modes, namely tender, auction, fixed license fee or such other manner were alternative to one another and any one of them could be resorted to. In Sachidanad Pandey v. State of W.B. it was held that as regards the question of propriety of private negation with an individual or corporation, it should be borne in mind that State-owned or public-owned Certain precepts and principles have to be observed, public interest being the paramount consideration. One of the methods of securing the public interest when it is considered necessary to dispose of the property is to sell the property by public auction or by inviting tenders. But such a rule is not an invariable rule. There may be situations where there are compelling reasons necessitating departure from the rule. As and when a departure is made from the general rule, it must be shown that such an action was rational and not suggestive of discrimination. In that case on facts the Court found that on the commercial and financial aspect, the lease granted in favor of a group of hoteliers, not arbitrary as the method of "net sales" was held to be fairly well-known method adopted in similar situations. To the same effect is the judgement in G.D. Zalani v. Union of India. In Kasturi Lal Lakshmi Reddy v. State of J&K this Court, after referring to various judgements, including the Judgement in Ramana Dayaram Shetty case held: (SSC pp. 13-14. Para 14)

"It is imperative in a democracy governed by the rule of law that governmental action must be kept within the limits of the law and if there is any transgression, the court must be ready to condemn it. It is a matter of historical experience that there is a tendency in every Government to assume more and more powers and since it is not an uncommon phenomenon in some countries that the legislative check is getting diluted, it is left to the court as the only reviewing authority under the Constitution to be increasingly vigilant, namely, that the governmental action is unreasonable or lacking in the quality of public interest, is different from that of mala fides though it may, in a given case, furnish evidence of mala fides."

In the aforesaid petition the issue is pertaining to Public Interest litigation filed with regard to land matter. In the said judgement Hon'ble Supreme Court has said that it is the duty casted upon the State that they required to show that it's actions are fair, reasonable and in accordance with law. The initial burden to prove existence of violation of mandate lies upon the person, who challenge the action of the State. The Govt. is entitled to make pragmatic adjustment and policy decision which may be either odd under the prevalent peculiar circumstances. The court cannot strike down a policy decision taken by the Govt. merely because it feels that another decision would have been fair or wise or more scientific or logical. There may be situation when there are compelling reasons necessitating to depart from the rules

however, when departure from the rules is made from the general rule it must be shown that such an action was rational and not suggestive of discrimination.

(b) In Sachidanand Pandey v. State of West Bengal [(1987) 2 SCC 295], Hon'ble Supreme Court has held as under:

"……37. In Kasturi Lal Lakshmi Reddy v. State of J & K. Bhajwati J. (as he then was) again, speaking for the court reiterated what he had said earlier in R.D. Shetty v. International Airport Authority". He proceeded to say : (SCC p. 13, para 14)

The Government, therefore, cannot, for example, give a contract or sell or lease out its property, for a consideration less than the highest that can be obtained for it, unless of course there are other considerations which render it reasonable and in public interest to do so. Such considerations may be that some directive principle is sought to be advanced or implemented or that the contract or the property is given not with a view to earning revenue but for the purpose of carrying out a welfare scheme for the benefit of a particular group or section of people deserving it or that the persons who has offered a higher consideration is not otherwise fit to be given the contract or the property. We have referred to these considerations which may have to be taken into account by the Government in formulating its policies and it is on a total evaluation of various consideration, that the court would have to decide whether the action of the Government is reasonable and in public interest. But one basic principle which must guide the court in arriving at its determination on this question is that there is always a presumption that the Governmental action is reasonable and in a public interest and it is for the party challenging its validity to show that it is wanting in reasonableness or is not informed with public interest. This burden is a heavy one and it has to be discharged to the satisfaction of the court by proper and adequate material. The court cannot lightly assume that the action taken by the Government is unreasonable or without public interest because, as we said above, there are a large number of policy considerations which must necessarily weigh with the Government in taking action and therefore the court would not strike down Governmental action as invalid on this ground, unless it is clearly satisfied that the action is unreasonable or not in public interest. But where it is so satisfied, it would be the plainest duty of the court under the Constitution to invalidate the governmental action.

With reference to the particular facts of the case, it was stated: (SSC pp. 17-18, para 19)

The argument of the petitioners was that at the auctions held in December1978, January 1979 and April 1979, the price of resin realised was as much as Rs. 484, Rs. 520 and Rs. 700 per quintal respectively and

when the market price was so high, it was improper and contrary to public interest on the part of the State to sell resin to the second respondents at the rate of Rs. 320 per quintal under the impugned Order. This argument, plausible though it may seem, is fallacious because it does not take into account the policy of the State not to allow export of resin outside its territories but to allot it only for use in factories set up within the State. It is obvious that, in view of this policy, no resin would be auctioned by the State and there would be no questions of sale of resin in the open market and in this situation, it would be no question of sale of resin in the open market I this situation, it would be totally irrelevant to import the concept of market price with reference to which the adequacy of the price charged by the State to the second respondents could be judged. If the State were simply selling resin, there can be no doubt that the State must endeavor to obtain the highest price subject, of course to any other overriding considerations of public interest and in that event, its action in giving resin to a private individual at a lesser price would be arbitrary and contrary to public interest. But, where the State has, as a matter of policy, stopped selling resin to outsider and decided to allot it only to industries set up within the State for the purpose of encouraging industrialization, there can be no scope for complaint that the State is giving resin at a lesser price than that which could be obtained in the open market. The yardstick of price in the open market would be wholly inept, because in view of the State policy, there would be no question of any resin being sold in the open market. The object of the State in such a case is not to earn revenue from sale of resin, but to promote the setting up of industries within the State.

And again : (SC . 20, para 22)
If the State were given tapping contract simpliciter there can be no doubt that the State would have to auction or invite tenders for securing the highest price, subject of course to any other relevant overriding considerations of public weal and interest, but in a case like this where the State is allocating resources such as water, power, raw materials etc. for the purpose of encouraging setting up of industries within the State, we do not think the State is bound to advertise and tell the people that it wants a particular industry to be set up within the State and invite those interested to come up with proposals for the purpose. The State may choose to do so, if it thinks fit and in a given situation, it may even turn out to be advantageous for the State to do so, but if any private party comes before the State and offers to set up an industry, the State would not be committing breach of any constitutional or legal obligation if it negotiates with such party and agrees to provide resources and other facilities for the purpose of setting up the industry.

The observation of the court in the light of the facts therein appear to fully justify the action of the West Dengal Government in the present case not inviting tenders or not holding public auction....."

In the aforesaid judgement Hon'ble Supreme Court held that the Government shall be required to give the contract or sell the property or lease the same at the highest price otherwise there must be other consideration which render it reasonable and in public interest. There are variety of situation and actions which needs to be considered by the Government as reasonable and in public interest. It is also held that the basic principle which needs to be considered is that whenever any question come before the consideration of the case with regards to action of the Government on the subject matter there is always presumption that the Government action is reasonable and in public interest. The court cannot lightly assume that the action taken by the Government is unreasonable and without public interest because while taking the decision large numbers of policy consideration must necessarily be taken into consideration by the Government.

(c) In Krishnan Kakkanth v. Government of Kerala [(1997) 9 SCC 495], Hon'ble Supreme Court has held as under:

> *".....36. To ascertain unreasonableness and arbitrariness in the context of Article 14 of the Constitution, it is not necessary to enter upon any exercise for finding out the wisdom in the policy decision of the State Government. It is immaterial whether a better or more comprehensive policy decision could have been taken. It is equally immaterial if it can be demonstrated that the policy decision is unwise and is likely to defeat the purpose for which such decision has been taken. Unless the policy decision is demonstrably capricious or arbitrary and not informed by any reason what so ever or it suffers from the vice of discrimination or infringes any statute or provisions of the Constitution, the policy decision cannot be struck down. It should be borne in mind that except for the limited purpose of testing a public policy in the context of illegality and unconstitutionality, courts should avoid "embarking on uncharted ocean of public policy"*
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> *37. The contention that the impugned circular suffers from hostile discrimination meted out to the farmers in the northern region of the State covered by the financial assistance under the governmental schemes, by fastening such assistance with an obligation to purchase pumpsets only from the two approved dealers, cannot be accepted in the facts of the case. The reasons for fastening the farmers of northern region with the obligation to purchase pumpsets from the said two dealers have been indicated by Mr. Bhat and Mr. Gupta and, in our view, it cannot be held that such reasoning suffers from lack of objectivity. The law is well settled that even in the matter of grant of largesse, award norms set down by it, in favor of a particular group of persons by subjecting such persons with different standard of*

norm, if such departure is not arbitrary but based in some valid principle which in itself is not irrational, unreasonable or discriminatory (Dayaram Shetty case)

In the aforesaid decision the Hon'ble Supreme Court has held that to ascertain about the unreasonable and arbitrariness in context to Article 14 of the constitution it is not necessary to enter in to the wisdom in the policy decision of the State Government. It is also immaterial that a better comprehensive policy decision could be possible. It is also immaterial that the policy decision is unwise and likely to defeat the purpose for which the decision has been taken. Unless it proves that the policy decision is capricious or arbitrarily and does not specify the reasons whatsoever or it suffers from the discrimination or infringes any statue or provisions of the constitution, the policy decision cannot be struck down.

(d) In Villianur Iyarkkai Padukappu Maiyam v. Union of India (SCC p. 605, para *169),* Hon'ble Supreme Court held as under:
169. It is neither within the domain of the courts nor the scope of judicial review to embark upon an enquiry as to whether a particular public policy is wise or whether better public policy can be evolved. Nor are the courts inclined to strike down a policy at the behest of a petitioner merely because it has been urged that a different policy would have been fairer or wiser or more scientific or more logical. Wisdom and advisability of economic policy are ordinarily not amenable to judicial review. In matters relating to economic issues the Government has, while taking a decision, right to —trial and error|| as long as both trial and error are bona fide and within the limits of the authority. For testing the correctness of a policy, the appropriate forum is Parliament and not the courts.
....."

In the aforesaid the Hon'ble Supreme Court held that it is not within the domain of the court to inquire as to whether particular public policy is wise or whether better policy can be evolved. The court cannot strike down the policy urged by the person stating that the different policy would have been fairer or wiser or more logical. The economic policy is not ordinarily amenable to judicial review.

(e) In the case of Arun Kumar Agarwal V Union of India & Ors.- dt. 9.5.2013 reported in (2013) 7 SCC 1 @ paras, 36, 37, 39, 40, 41 & 42, the Hon'ble Supreme Court has held as under:

"36. We notice the decision taken by the ONGC not to exercise its RoFR was taken after an elaborate and due deliberations. The report of SBI Caps, after making a detailed financial analysis also supported the decision taken by the ONGC. The decision to grant no objection to the transfer of shares of CEIL Page 29 29 from Cairn to Vedanta was also on the basis that the proposed share price of share was at Rs.355 per share, was well in excess of its intrinsic value as were evaluated by SBI Caps. SBI Caps report evaluated each share of CEIL at Rs.291 with the highest production profile under normal circumstances. It was concluded that even considering various other scenario makes possible value at Rs.331 per share.

37. The Union of India also endorsed the decision taken by the ONGC after due deliberations. The matter was finally placed before the Cabinet Committee of Economic Affairs, which placed the matter before the Group of Ministers and Group of Ministers on 27.5.2011 granted its approval, based on certain conditions. The same was conveyed to the parties and the Vedanta Resources conveyed its acceptance to the conditions imposed by CCEA. Cairn also indicated to ONGC that CEIL Board had also accepted the conditions imposed upon it and that the cess arbitration, which had been initiated by Cairn against ONGC was also withdrawn.

39. Matters relating to economic issues, have always an element of trial and error, so long as a trial and error are bona fide and with best intentions, such decisions cannot be Page 31 31 questioned as arbitrary, capricious or illegal. This Court in State of M.P. and others v. Nandlal Jaiswal and others (1986) 4 SCC 566 referring to the Judgment of Frankfurter J. in Morey vs. Dond 354 US 457 held that "we must not forget that in complex economic matters every decision is necessarily empiric and it is based on experimentation or what one may call "trial and error method" and, therefore, its validity cannot be tested on any rigid "a priori" considerations or on the application of any straight jacket formula." In Metropolis Theatre Co. v. State of Chicago 57 L Ed 730 the Supreme Court of the United States held as follows:

> *"The problem of government are practical ones and may justify, if they do not require, rough accommodation, illogical, if may be, and unscientific. But even such criticism should not be hastily expressed. What is best is not discernible, the wisdom of any choice may be disputed or condemned. Mere errors of government are not subject to our judicial review. It is only its palpably arbitrary exercises which can be declared void."*
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> *In Life Insurance Corporation of India v. Escorts Ltd. and others (1986) 1 SCC 264 this Court held*
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> *"that the Court will not debate academic matters or concern itself with intricacies or trade and commerce. The Court held that when the State or its instrumentalities of the State ventures into corporate world and purchases the shares of the company, it assumes to itself the ordinary role of shareholder, and dons the robes of a shareholder, with all the rights*

available to such a shareholders and there is no reason why the State as a shareholder should be expected to state its reasons when it seeks to change the management by a resolution of the company, like any other shareholder."

In Liberty Oil Mills and others v. Union of India and others (1984) 3 SCC 465, this Court held that expertise in public and political, national and international economy is necessary, when one may engages in the making or in the criticism of an import policy. Obviously, courts do not possess the expertise and are consequently, incompetent to pass judgments on the appropriateness or the adequacy of a particular import policy.

In Villianur Iyarkkai Padukappu Maiyam v. Union of India (2009) 7 SCC 561, this Court held as follows:

"It is neither within the domain of the courts nor the scope of judicial review to embark upon an enquiry as to whether a particular public policy is wise or whether better public policy can be evolved. Nor are the courts inclined to strike down a policy at the behest of a petitioner merely because it has been urged that a different policy would have been fairer or wiser or more scientific or more logical. Wisdom and advisability of economic policy are ordinarily not amenable to judicial review. In matters relating to economic issues the Government has, while taking a decision, right to "trial and error" as long as both trial and error are bona fide and within the limits of the authority. For testing the correctness of a policy, the appropriate forum is Parliament and not the courts."

In Bajaj Hindustan Limited v. Sir Shadi Lal Enterprises Limited And Another (2011) 1 SCC 640, this Court held "that economic and fiscal regulatory measures are a field where Judges should encroach upon very wearily as Judges are not expert in those matters".

This Court in Bhavesh D. Parish and Others v. Union of India and Another (2005) 5 SCC 471, took the view that, in the context of the changed economic scenario, the expertise of people dealing with the subject should not be lightly interfered with. The consequences of such interdiction can have largescale ramifications and can put the clock back for a number of years. The process of rationalisation of the infirmities in the economy can be put in serious jeopardy and, therefore, it is necessary that while dealing with economic legislations, this Court, while not jettisoning its jurisdiction to curb arbitrary action or unconstitutional legislation, should interfere only in those few cases where the view reflected in the legislation is not possible to be taken at all. In Centre for Public Interest Litigation and Another v. Union of India and Others (2000) 8 SCC 606, this Court held as follows:

"20. It is clear from the above observations of this Court that it will be very difficult for the courts to visualise the various factors like

commercial/technical aspects of the contract, prevailing market conditions, both national and international and immediate needs of the country etc. which will have to be taken note of while accepting the bid offer. In such a case, unless the court is satisfied that the allegations levelled are unassailable and there could be no doubt as to the unreasonableness, mala fide, collateral consideration alleged, it will not be possible for the courts to come to the conclusion that such a contract can be prima facie or otherwise held to be vitiated so as to call for an independent investigation, as prayed for by the appellants....."

40. The MoPNG on 26.7.2011 conveyed to Cairns UK and its affiliates and Vedanta UK that the Government of India was pleased to grant its consent for the Cairn -Vedanta -- subject to fulfilment of the certain conditions i.e. they had to give an undertaking that in the royalty paid in the ONGC was cost recoverable by ONGC as contract cost and to withdraw the arbitration case relating to cess. The dispute on royalty and cess was bothering ONGC for quite some time and ONGC was facing a claim running into several million US Dollars in an arbitration proceeding in London. Union of India and ONGC, in their wisdom could make Cairn agree to those conditions, it gave an undertaking that in the royalty paid in the ONGC would cost recoverable by ONGC as contract cost and to withdraw the arbitration case relating to cess. Union of India and ONGC, in their wisdom could make Cairn agree to those conditions which was clearly a business commercial decision taken with good intention, since the fate of the arbitration proceedings could not be predicted. ONGC also in its business prudence decided not to go for shares in CEIL, first of all it was equated at a very high premium, secondly it guaranteed no return either in the way of dividend or any other profits. Further, it might lead to huge liability of investment and with a minimum work programme and the remaining PSC's help by CEIL which involved exploitation operations with no guarantee of any commercial discovery. The result of CEIL and its affiliates agreeing to treat royalty paid by ONGC as cost recoverable by ONGC as contract cost, and ONGC has derived benefits to the tune of US $ 970,881,838 towards royalty paid by till June 2012 and would continue to derive similar benefits till the currency of the contract i.e. till June 2020.

41. Consequent to the agreement dated 30.11.2011, ONGC received Rs.5000 crores approximately towards CEIL and CEHL's share of royalty for the period from 29.8.2009 to 30.7.2012 besides CAIRN and Vedanta agreeing to pay their share of royalty and cess in future involving huge financial implications.

(f) In the case of Delhi Science Forum & Ors. V Union of India & Anr. Reported in (1996) 2 SCC 405 @ Para 7, the Hon'ble Supreme Court has held as under:

"7. What has been said in respect of legislations is applicable even in respect of policies which have been adopted by Parliament. They cannot be tested in Court of Law. The courts cannot express their opinion as to whether at a particular juncture or under a particular situation prevailing in the country any such national policy should have been adopted or not. There may be views and views, opinions and opinions which may be shared and believed by citizens of the country including the representatives of the people in Parliament. But that has to be sorted out in Parliament which has to approve such policies. Privatisation is a fundamental concept underlying the questions about the power to make economic decisions. What should be the role of the State in the economic development of the nation? How the resources of the country shall be used? How the goals fixed shall be attained? What are to be the safeguards to prevent the abuse of the economic power? What is the mechanism of accountability to ensure that the decision regarding privatisation is in public interest? All these questions have to be answered by a vigilant Parliament. Courts have their limitations — because these issues rest with the policy-makers for the nation. No direction can be given or is expected from the courts unless while implementing such policies, there is violation or infringement of any of the constitutional or statutory provision. The new Telecom policy was placed before Parliament and it shall be deemed that Parliament has approved the same. This Court cannot review and examine as to whether the said policy should have been adopted. Of course, whether there is any legal or constitutional bar in adopting such policy can certainly be examined by the Court."

(g) Pushpendra Surana V Central Electricity Regulatory Commission, APTEL Order dated 10.03.2014 in IA No. 7 and 8 of 2014 in DFR No. 2675-2676 of 2013 @ paras 22 onwards, Hon'ble APTEL has held as under:

"22. Even according to the Applicant, the Applicant is the resident of Ghaziabad (UP). The Applicant is neither a consumer of any of the procurers, the Respondents, in IA NO.7 OF 2014 IN DFR No.2675 of 2013 AND IA NO.8 OF 2014 IN DFR No.2676 OF 2013 terms of Section 2 (15) of the Electricity Act, nor he is receiving supply of electricity from the Respondents through any of the procurers. Therefore, it cannot be said that the Applicant is an aggrieved person who has suffered any legal grievance or injury.

23. It has not been demonstrated by the Applicant before this Tribunal that due to the Impugned Orders he has been deprived or denied of the same under which it would have otherwise been entitled to.

24. In fact, we have asked the learned Counsel for the Applicant/Appellant as to how he could distinguish the judgment of Bharat Jhunjhunwala Vs UP Commission from the present Application. But, the Applicant failed to distinguish the said decision.

25. It is settled law as laid down in various decisions referred to above that a person filing the Appeal, will have to demonstrate as to how the Impugned Order under challenge has made an impact on him.

26. According to the Applicant, the term "public" used under Section 64 of the Electricity Act would mean any member of the public and he need not be a consumer and as such he is entitled to file Appeal. This contention is misconceived.

IA NO.7 OF 2014 IN DFR No.2675 of 2013 AND IA NO.8 OF 2014 IN DFR No.2676 OF 2013

27. The term "public" as appearing in Section 64 of the Electricity Act, 2003 has to be read in the context of Section 61 (d) of the Electricity Act. This provision mandates that Appropriate Commission to ensure that the rights of the consumers are protected while the tariff is being determined by it. Therefore, the term "public" as contained in Section 64 have to be read in the context of the term "consumer" and not to any person as a member of the public, as sought to be interpreted by the Applicant.

28. Furthermore, Section 111 of the Electricity Act which vests Appellate jurisdiction in this Tribunal specifically provides that an aggrieved person alone can file an Appeal before this Tribunal against the Order passed by the appropriate Commission. This means the right to file an Appeal has been granted only to the persons who are aggrieved by the order of the Appropriate Commission and not to any members of the public irrespective of the fact that whether he participated in the proceedings before the appropriate Commission or not.

29. As indicated above, the Applicant himself admitted in his Affidavit that he is neither a consumer of the Respondent Utilities nor has he received any supply of electricity from the procurers or the Respondent Companies who are concerned IA NO.7 OF 2014 IN DFR No.2675 of 2013 AND IA NO.8 OF 2014 IN DFR No.2676 OF 2013 in the proceedings. Probably, this was the reason as to why he has not participated in the proceedings.

30. As pointed out by the Respondents, the relief sought for by the Respondents before the Central Commission would pertain to the contractual relief available to it with reference to the PPA entered into between the parties. No relief was sought for by the Respondents against the Applicant who is not a party to the PPA. The Applicant has no role to play in the adjudication upon the claims for offset of adverse impact of PPA with regard to commercial impracticability.

31. Therefore, viewed from any angle, it cannot be claimed that the Applicant is a person aggrieved over the Impugned Orders and as such, he has got a locus-standi to file this Appeal.

32. To Sum-UP "In view of the above discussion, these Applications seeking for leave to file the Appeals as against the Impugned Orders dated 2.4.2013 and 15.4.2013 are not maintainable as the Applicant is not a person aggrieved".

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33. Hence, these Applications are dismissed.

34. Consequently, the Appeals are also rejected."

22.8.22. Considering the aforesaid decision of Hon'ble Supreme Court and Hon'ble APTEL, various aspects needs to be considered are as follows:-

a. Whenever any person challenges the actions of the Government on policy decision, the burden of proof lies upon such person to prove that the action is un-constitutional or against the provisions of Statue.
b. The Government take pragmatic adjustment while taking policy decisions in prevalent peculiar circumstances.
c. The Court cannot strike down policy decision taken by the Government merely on the face that another decision would have been fairer or wiser or scientific or logical.
d. The Court may interfere with the Government decision if such decision seems to be patently arbitrary, discriminatory or mala-fide.
e. There may be infinite variety of consideration which might be taken in consideration by the Government while formulating its policy. Therefore, while taking any decision on such policy it is necessary to verify and consideration which have been weighted by the Government while taking particular decision.
f. Whenever any question comes before the court with regards to policy decision of the Government there must be presumption that the Government action is reasonable and is in public interest. The court cannot strike down the Government action as invalid on the ground unless it is clearly satisfied that the action is unreasonable or not in public interest.
g. Unless the policy decision is demonstrably capricious or arbitrary and not informed by any reason or its suffers from discrimination or infringes any statue or provisions of the constitutions, the policy decision cannot be struck down.

22.8.23. In view of above, we are of view that the policy decision taken by the Government of Gujarat vide its GR dated 01.12.2018 should not be interfered with consideration of aforesaid aspects of the decision of the APEX Court.

22.8.24. We note that the Petitioner (GUVNL) which is successor of erstwhile GEB is a Government company carrying out the purchase of power in bulk on behalf of the distribution companies namely PGVCL, UGVCL, MGVCL and DGVCL. The

aforesaid companies are required to carry out the function of power procurement through GUVNL, at reasonable rate in requisite quantum with consideration of reliability of uninterrupted power supply to the consumers. It is observed by the HPC that the Petitioner is procuring about 45% of its power requirement through the power projects of Adani Power Ltd., Respondent No. 1 Essar Power Ltd. and CGPL. It is also recorded that the aforesaid plants are utilising the imported coal. The major coal supply received by this power plants is from Indonesia, hence any change in the price of coal imported from Indonesia affect the cost of energy produced from of the said plants. It is also recorded that there is increase in coal prices from Indonesia due to certain policy changes of the said country and it hampered the procurement cost of coal by aforesaid plants and Therefore, increase in the cost of the coal from Indonesia badly affected the aforesaid companies financially and it became unviable to supply power from the said plants at the discovered competitive bid price quoted by the bidders i.e. the generators of the aforesaid plants. Due the supply from the said plants was affected, the Petitioner needs to procure power from alternate sources at higher cost and which is also not certain. The Govt. of Gujarat therefore took initiative for rehabilitation of the aforesaid power plants in consultation with the lenders and GOI and constituted HPC.

22.8.25. The HPC has considered various aspects which are put up before them affecting to the stakeholders and after analysing the same has given the recommendations to the Government of Gujarat. The GoG has considered some of the recommendations and accepted it with required modification. The Government has resolved in GR dated 01.12.2018 and issued policy directives to the Petitioner with regard to signing of supplemental PPA with the Respondent No. 1 and to get approval from the Commission. From the above it is clear that the policy decision dated 01.12.2018 was taken by the Govt. of Gujarat with consideration of the interest of stakeholders i.e. consumers, project developers, licensee and directed to the Petitioner to sign the supplemental PPA with the Respondent No. 1.

22.8.26. The HPC report consist of various chapters on different subject matter. The committee has specifically incorporated Chapter VII regarding public/consumer

interest involved in salvaging the project. The committee has deliberated upon the following issues:

a. The importance of the projects with regard to quantum of energy price reliability etc.
b. The impact of shut down of the Power Projects and its impact on the distribution licensees and the consumers.
c. The impact of shut down of the projects on financial institutions, lenders, the consumers, the transmission system, and the distribution licenses etc.

22.8.27. The recommendations of High Power Committee are based on the analysis of various submissions of the stakeholders before it. It is also proved that the recommendations suggested by the HPC are not completely accepted by the Government of Gujarat and certain modifications are made in it or rejected by the Govt. with consideration of various stakeholder's interest. We note that as the Respondent power plant is one of those projects who supplies 45% of total requirement of power supply to the GUVNL on long term basis, the certainty of such power supply is essential for the consistent power supply to consumer following its merit order purchase of power. Any uncertainty about quantum of power supply and its price dissertation affects the power supply management and its overall cost. Therefore, the proposed amendments in supplemental PPA by way of acceptance of certain recommendation of HPC report by the Govt. of Gujarat in its Policy decision dated 01.12.2018 is in the interest of public at large.

22.8.28. In order to substantiate whether the Government of Gujarat policy direction is in the public interest or not and is valid, we have tried to discuss relevant portion of HPC Report i.e. chapter 7 and 8, which are reproduced below:

7.3 Importance of the three Projects

7.3.1 CGPPL, 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
Gujarat	16,590	1,09,985
Maharashtra	22,542	1,49,760
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	1,82,034	12,13,325

7.3.2 Additionally, the criticality of the Project 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 meeting, these Projects contribute to approximately 45% requirement of GUVNL. The average variable charge is Rs 1.74 per kwh against overall average variable charge of about Rs 2.59 per kwh. (i.e. 50% higher variable cost); and

APL and BPL 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*
FY 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%*
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)

.....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 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%. 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.*

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 fulfil 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.*

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 to 5 years, and these new projects would not be readily available to cater the demand in short term unlike the Projects under consideration.

7.6 Impact of Shutting Down of these Project on the Lenders

- *In case of Projects become stranded, the lenders are going to be affected severely:*
- *Huge public money is involved as more that 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 and increased number of NPSs 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 Electricity to all; and*
- *More than 11000 job losses in case of shutdown of these Projects.*

7.8 Impact on Generators

- *Projects developed with an investment of more than Rs. 50,000 crores will get stranded.*
- *Due to the issues associated with fuel cost, Developers have already lost about Rs. 24,000 crores and have no capacity left to bear further losses amounting to more than Rs. 5,000 crores per annum by these Projects. The Developers of these Projects have 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 NPS's in near future with the status quo.*

7.9 Impact on 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.*

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 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 recognized, including by the Procurers and consumer representative 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 utilization, 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 Judgement.....

22.8.29. The aforesaid report clearly shows that the HPC has considered various nuances and 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.It is also clear that the HPC has considered the importance of the Respondent 1 project for the Petitioner, lenders and also consumers at large with consideration of the price of the energy and its quantum. The committee has considered the impact of shutdown of the projects on the distribution licensees, generators, lenders, State Government, transmission system, and end consumers. The committee has also discussed hardship faced by project developers, lenders and stated about proposal for resolution of the aforesaid hardship with consideration of change in energy tariff, extension of PPA tenure, tie up free capacity, sharing of profit from Indonesian mines, sharing of lender by way of discount the debt, lender sacrifice, promoters sacrifice, sharing of burden that is stakeholders and the benefit which will arise from the above actions to the stakeholders, procurers/ consumers. The committee has also considered the options which include procurement from alternate sources. The committee has after considering the aforesaid aspects carried out analysis and made its recommendation where it is recorded that the interest of various stakeholders including consumers is protected..

22.8.30. Based on the above, the HPC has made conclusion and recommendation which are recorded in chapter 10 of the said report. The relevant portion is reproduced below:

Conclusions and recommendations

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 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 envisaged the following.

i) Reduction of capacity charge on account of sacrifice by lenders.

ii) Past losses to be borne by Developer and the financial resolution plan being applicable from a prospective cut-off date of 15 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 Government 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, 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 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 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 invisible to be operated in a sustainable basis.

10.8 A 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 PC, as set out hereinabove, may be susceptible to conducting interpretation 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 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.

22.8.31. The HPC has while recommending considered the various aspects on financial commercial terms and recommended the solutions for restructuring which is based on the premise that the burden of hardship which seems during the analysis to be borne by all the stakeholders that is licensee, generator, lenders and consumers. The reduction in capacity charges by the lenders is the sacrifice of the lenders which is at the rate of 20 paise/kWh to be reduced to the extent of Normative Availability of 80%.

22.8.32. The HPC has also considered the alternative options for meeting out the requirement of power by the Petitioner during the hardships faced by the Respondent No. 1 and similarly other power projects. It was found that the cost of such power procurement from such alternative sources and considered the tariff at which it was purchased from different sources i.e. bilateral, through energy exchanges. It is observed that the Average Power Procurement Cost by the Petitioner during the December 2017 to May 2018 through bilateral transactions was at the rate of Rs. 3.80 paisa per unit while the procurement of energy through Indian Energy Exchange at the rate of Rs. 4.30 per unit and PXIL at an average rate of Rs. 3.63 per unit. The aforesaid price is quite higher than the tariff rate payable as per the discovered tariff under the competitive bidding of the Respondent No.1.

22.8.33. We also note that the HPC has also considered the prices discovered under competitive bidding process carried out during bidding process from 25.06.2015 to 26.07.2016 is also quite higher and the same is in the range of Rs. 4.2 per unit to Rs. 5.06 per unit as reflected in para 7.5.2 of the report.

22.8.34. The HPC has also considered that the project cost to set up the power plant is increased substantially than the existing power projects whose assets are stressed. The Committee has analysed the cost of different power projects set up having the cost in the range of Rs. 6.20 Cr. per MW to Rs. 8.50 Cr. per MW which is substantially higher. Moreover, the gestation period of new plant would be about 4 to 5 years. Thus, it proves that the replacement of existing projects of the Respondent No.1 and

similarly situated power projects who are considered by HPC are having substantial lower cost with consideration of reduced capacity charges payable by the Petitioner and also the plant is in running condition.

22.8.35. We also note that the HPC has considered that the projects under consideration of the committee are having lower energy charge and fall in merit order for scheduling and they are contributing approximately 45% of requirement of the Petitioner. The average variable cost is Rs. 1.74 per unit which consists of the energy charge/variable charge of Rs. 1.99 per unit of the Respondent no.1 plant. The aforesaid energy charges are quite lower in comparison to overall energy charge/variable charge which works out to Rs. 2.59 per kWh. It is also analysed by the HPC that if the proposed amendment is permitted by way of allowing the energy charges with consideration of different technical parameters and coal price, the power projects of the Respondent no.1 will qualify in merit order despatch due to lower rate of energy charges and the benefit of it available to the Petitioner and the consumers. If the project is not salvaged in that situation the alternate source required to be identified by way of short-term, medium-term or long-term power procurement which have its own merit as well as demerit. So far as short term power procurement is concerned, the same is uncertain about the quantity as well as price. As far as long term power procurement in the prevailing conditions is concerned it seems that the cost is higher than the proposed amendment. Further, it requires 4 to 5 years gestation period for setting up the power projects. In such situation, the proposed amendment seems to be in interest of the licensee as well as consumers.

22.8.36. We note that the recommendations of HPC are considered by the Govt. of Gujarat and based on it the Govt. has after deliberation passed Resolution in GR No. CGP-12-2018-166-K dated 01.12.2018 as Policy Directive for revival and rehabilitation and stressed imported coal based power project in consumer interest. The relevant portion of the said projects are reproduced below:

".....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 Re-gasified 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 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. "*

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.

22.8.37. We note that the HPC has analyzed the issues with consideration of different aspects. The committee has relied on the finding given by the working group committee constituted by the Government for the aforesaid issues involved. The committee has recommended that there are two options available for resolving the issue emerged in the three projects ;

(1) to follow the procedure specified in the insolvency route by approaching National Company Law Tribunal.

(2) Acquisition of the project by the Government and amendment in PPA.

The amendment in the PPA may be after change in ownership or without change in ownership. The working group committee has recommended that it is preferable to avoid the procedure of approaching NCLT by following IBC procedure. As the change in ownership may also not workout to run the project unless the energy charges are revised, as it affects the working of the project. The alternative route is also not viable as the price of energy available in the market is quite higher than the tariff anticipated from this project. Moreover, the cost of the new project is also higher. The energy cost of the project is quite low and qualified for the merit order. Therefore, the recommendation of the working group is that the commercial solution should be arrived to resolve the issues faced by the generator/project developers by way of amendment in the PPA. The cost benefit analysis of the project has been carried out by the working group and it was found that in case of shut down of the project the procurer i.e. the Petitioner has to incur much higher cost to purchase electricity from other sources to replace the power available from the shut-down projects. Thus, the working group which was constituted by the Ministry of Power has analyzed the aforesaid issue and it is not in favor of following the NCLT route. The aforesaid recommendation has been considered by the HPC and thereafter it has been concluded that revival of the project is beneficial for all the stakeholders and the Government has considered the same and accordingly issued policy GR dated 01.12.2018.

22.8.38. We note that the procedure to be followed for IBC and NCLT may lead to hamper the operation of the plant. It may also affect the availability of power, its quantum, and the price at which the same is available. Any delay in the aforesaid proceeding will also affect the Petitioner/Procurer to procure the power from the market at higher rate than the tariff discovered under the PPA or the proposed amendment in the present petition for revival of the Project. As a consequence of the same the consumers may also be affected. Therefore, merely stating that the IBC procedure through NCLT should be followed is not the solution in the present case. Therefore, the policy decision taken by the Government of Gujarat by its GR dated 01.12.2018 for salvaging the projects by way of amendments in the PPA is equitable solution. Para 5.7.6 of the HPC report also state that the lenders of the projects are also not willing to follow IBC procedures on multiple reasons and avoid the stressed assets to become NPA and desire to resolve the issue through amending the PPA.

22.8.39. The various Judgements as referred above relied upon by the Petitioner not to interfere in the policy decision of Government of Gujarat, which are in larger public interest with consideration of economic aspects seems legal and valid.

22.8.40. Considering the above, we are of the view that the decision taken by the Government of Gujarat vide GR dated 01.12.2018 is in the public interest which include the lenders, generators, procurer, licensee and consumer at large and any objections on this issue are hereby rejected. Further, as discussed above, it is binding to the Petitioner (GUVNL) to follow the policy guidelines as per above G.R. and hence, it has filed the present petition for approval of the Commission. The policy G.R. is not binding upon the Commission in discharge of its functions but the Commission upon receipt of the said Petition from GUVNL has the powers to deal with it in accordance with the law, Electricity Act, and applicable regulations thereof.

22.9. **Issue No. 9**

Whether it is not mandatory for the petitioner to allow those bidders, who had participated in the bidding process of Bid No. 3 of 03/LTPP/2006 for giving an equal treatment?

22.9.1. We are of the opinion that the objection raised is misconceived. This is not a re-bidding where the original bid has been scrapped. There is no re-tender process after bidding involved in the present matter. There is no cancellation and re-invitation of tenders. The present matter is with regard to amendment to the PPA on recommendation of HPC and direction by GoG through Policy GR dated 01.03.2019. Once the PPA has been signed on selection of the Respondent No. 1, the other bidders have no privity of contract. No objection has even been raised by the bidders who participated in the CBP u/s. 63.

22.9.2. While exercising judicial review in the matter of government contracts, the primary concern of the court is to see whether there is any infirmity in the decision-making process or whether it is vitiated by mala fides, unreasonableness or arbitrariness. It cannot be said that there are any mala fides or want of bona fides in the decision to amend the PPA. There is allegation proven or otherwise, that amendment to PPA is exercised for any collateral purpose.

In State of Jharkhand v. CWE-SOMA Consortium, (2016) 14 SCC 172, it was held thus:-

"22. The Government must have freedom of contract. In Master Marine Services (P) Ltd. v. Metcalfe & Hodgkinson (P) Ltd. [Master Marine Services (P) Ltd. v. Metcalfe & Hodgkinson (P) Ltd., (2005) 6 SCC 138] , SCC in para 12 this Court held as under: (SCC p. 147)"

"12. After an exhaustive consideration of a large number of decisions and standard books on administrative law, the Court enunciated the principle that the modern trend points to judicial restraint in administrative action. The court does not sit as a court of appeal but merely reviews the manner in which the decision was made. The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise, which itself may be fallible. The Government must have freedom of contract. In other words, fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principles of reasonableness but also must be free from arbitrariness not affected by bias or actuated by mala

fides. It was also pointed out that quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure. (See para 113 of the Report, SCC para 94.)"

22.9.3. There is no incidence of cancellation of the tender and floating of a fresh tender.

22.9.4. In light thereof, the objection raised has no merit and is accordingly rejected.

22.10. **Issue No.10**

Whether the Government of Gujarat, lenders of the respondent no.1 M/s Essar Power Ltd. and Distribution Licensees are not essential and necessary party to the present petition?

22.10.1. UUWA submitted before the Commission that Government and lenders who were part of the HPC recommendation proceeding should be essential and necessary party to this matter. Before considering this objection, let us deliberate on CPC provisions first and examine this aspect. As per Order 1- Rule 10, a necessary party is one without whom no order can be made effective and a proper/essential party is one in whose absence, an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding. The addition of parties is generally not a question of initial jurisdiction of the court but of a judicial discretion which has to be exercised in view of all the facts and circumstances of a particular case. A necessary party is a person who ought to have joined as a party and in whose absence no effective decree could be passed at all by the court. If a necessary party is not impleaded, the suit itself is liable to be dismissed. A proper party is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in dispute in the suit, though he need not be a person in favour of or against whom the decree is to be made. If a person is not found to be a proper or necessary party, the court has no jurisdiction to implead him, against the wishes of the plaintiff.

22.10.2. Now in the present matter, we are dealing with a PPA wherein the licensee is having an agreement with power supplier to fix a revised price and get Commission's approval under section 86(1) (b). Let us see section 86 (1) (b):

Section 86. (Functions of State Commission): --- (1) The State Commission shall discharge the following functions, namely: ----(b) regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State.

22.10.3. Prior to approval of the Power Procurement of the distribution licensee, the petition for the approval of the PPA signed by the distribution licensee with the generators/ supplier of the energy is admitted by the Commission and notices are issued to the respective Generator with whom the Agreement is to be made. Since this proceeding determines price of power purchase, the consumer tariff is also affected. Accordingly, a public notice is issued in accordance with Commission's Conduct of Business Regulations and the Commission carries out public hearing.. The Commission issued notices to all objectors who sent their objection to the public notice published in the newspapers including the Government of Gujarat (Energy and Petrochemical Power Department). It is the job of Power seller or project developer to deal with lenders and lenders role is not so important in the proceedings of the commission. Finance by the lenders to the project developers is an independent exercise than the power procurement by the distribution licensee. We do not find any merit in the objector's suggestion that lender is also a necessary party without whom we cannot pass an order in accordance with the provisions of the Electricity Act 2003 .. The Commission carries out its functions within the framework of its regulations and provision of Electricity Act. Our function is to see if any agreement executed by the distribution licensee affects the consumer's tariff, then views of general public/consumers is taken and we give our decision thereafter to balance the interest of power supplier and purchaser keeping in view the interest of consumers. The above exercise is done in the present case by the Commission too. Accordingly, we do not find any merit in making Lender a

necessary and a proper party in the case. Moreover, no lender to the project of the Respondent No. 1 has raised this objection of impleading it as a party respondent neither has any lender filed any intervention application.

22.10.4. Further, Lenders were part of the discussion with GOI in its meeting held by MoP on 20.06.2017 and were part of the working group formed for resolution of the issue. The lead lender SBI was appointed as convener and the group suggested to GoI on 17.01.2018 to form HPC by the Govt. of Gujarat for resolution of the issue. Thus lenders were part of the process of resolving this issue and their views were considered at all stages.

22.10.5. In light of the above discussion, we are of the view that Government of Gujarat has taken a policy decision through a package deal to rehabilitate the imported coal based stressed power projects located in the State in the larger public interest. The Government in its policy direction to its Distribution company also required them to approach the Commission for its approval. Now, the Commission's role is to see that the Amendments in the Power Purchase Agreement are in accordance with law, and also protects the interest of all stakeholders including the interest of consumers.

22.11. **Other Issues**

22.11.1. **Right of waiver without infringing any public right**

Respondent No. 3 Prayas has submitted that amendment to the PPA must be construed as a waiver to the effect that GUVNL relinquished or waived its right of opposing revision to the quoted tariffs.

In the present matter, amendments to the PPA dated 26.02.2007 are being carried out with the consent of both the procurer and suppliers who had signed the agreement earlier. Article 18.1 of the PPA recognizes that parties can amend the said PPA if they are mutually agreed with the approval of the appropriate Commission. The Petitioner relying on Sections 61, 62 and 63 submitted that the proposed amendment in the supplemental PPA dated 01.03.2019 is in the interest of the consumers, generating company as well as the distribution licensees. The Commission has the power to approve such amendments in the PPAs in the larger

public interest even in cases of adoption of tariff by the Commission arrived at under the bidding process in accordance with guidelines issued by the Ministry of Power, Government of India. The Petitioner relied on the decision of Central Commission and some of the State Commissions who have approved amendments to the PPAs executed between procurer and supplier under competitive bidding process carried out under Section 63 in pursuance to policy decision of Union Ministry of Coal while implementing the SHAKTI (Scheme for Harnessing and Allocation of Koyala (coal) Transparently in India) Scheme. The Petitioner has submitted that the present case is for implementation of economic policy of the Govt. of Gujarat and not a policy directive to the Commission under Section 107 or 108 of the Act. The Petitioner has also relied on the Order dated 29.10.2018 in Miscellaneous Application Nos. 2705-2706 of 2018 in Civil Appeal No. 5399-5400 of 2016 and submitted that all questions regarding the jurisdiction and power of the Commission to approve the amendments in the PPA has been clarified by the Hon'ble Supreme Court.

The law of waiver as has been laid down by the Hon'ble Appellate Tribunal following the law laid down by the Hon'ble Supreme Court and has been followed in the recent decision dated 2nd December, 2014 in Appeal Nos.4, 5, 6, 7, 8 and 66 of 2014 in M/s Salasar Steel & Power Ltd. vs. Chhattisgarh State Power Trading Company Limited, and Anr., and batch. As held by the Hon'ble Appellate Tribunal in view of the aforesaid judgments of the Supreme Court, whenever waiver is pleaded, it is for the party claiming a waiver to establish that an agreement waiving the right in consideration of some compromise came into being. However, in the present case the Objectors have not established that GUVNL had voluntarily surrendered their rights with a mutual consent. The mere fact that the quoted tariffs are to be revised cannot be construed to be a waiver.

Without prejudice to the foregoing even if there is a waiver in the form of an amendment to the power purchase agreement the same is in the public interest noting the fact that the power plant of the respondent No. 1 has been shut for more than one year as recorded in the report of the high power committee. And during this time no power was being scheduled from the said power plant to the petitioner. If this continues then it will not only be detrimental to the public but will also jeopardise the

interest of the consumers in the state of Gujarat. In view of the above, no question arises on the part of the Commission to consider the issue of waiver on the part of GUVNL.

22.11.2. **Pendency of appeal in regard to the GUVNL versus Adani power**

The objectors have also argued that before the appellate tribunal for electricity the amendment of the power purchase agreement approved by the Central Commission in the case of the GUVNL vs Adani Power is pending and hence this Commission should not have entertained the present petition during the pendency of the said matter. This contention once again is entirely misconceived in view of the settled position of law that mere pendency of an appeal does not act as a stay. Accordingly, all connected contentions that the present petition has been admitted in contravention of the Conduct of Business regulations of this Commission is completely devoid of any merit and hence rejected.

22.11.3. **The requirement of notice to the consumers**

The objectors have relied on the requirement on giving notice prior to amendment of the power purchase agreement. We do not find any substance in this argument because the consumer representatives have been duly given all opportunities as possible in the in the proceedings before this Commission.

22.11.4. **Objections on the constitution of the high power committee**

The objectors have raised arguments against the constitution of the high power committee as well as the extent of the powers that could be exercised by such a committee. We are of the opinion that the report of the high power committee is a material which this Commission could consider while deciding the matter relating to amendment of the power purchase agreement. It is not for this Commission to exercise its jurisdiction over the constitution of such a committee. Insofar as the arguments made against the government resolution, we are once again of the

opinion that it is not for us to decide the legality or validity of the resolution passed by the government based on its examination of the high power committee. We are of the view that these are materials before us which we have taken into consideration while exercising our powers for approving the amendment to the power purchase agreement in accordance with the statutory provisions under the electricity act 2003.

Analysis and Decision

23. In light of the findings on each of the above issues, we are of the view that the matter requires to be examined on merit. Therefore, we have examined the Petition, subsequent filings by the Petioners and Objectors and gone into the proceedings during the hearing. Further, we have examined the Supplemental PPA dated 01.03.2019 keeping in view the original PPA dated 26.02.2007, HPC recommendations; Government Resolution; and requirement of law and public policy.

23.1. We have examined the clauses/articles of the supplemental PPA for which specific objections have been raised by the Respondent consumer groups. These Articles of the SPPA are important in nature and have a bearing on the Consumer's tariff. We have also examined the articles of the SPPA dated 01.03.2019 and its further addendums dated 23.01.2020 & 01.04.2020.

23.2. **Effective date of implementation of Supplemental PPA**

Now we deal with the issue pertaining to effective date of the SPPA which as per the recommendation of HPC is 15 October 2018. Further, the Government of Gujarat has notified Resolution Dated 01.12.2018 in terms whereof the effective date is as under:

"It is decided to accept the recommendation of the HPC about the effective date of implementation as 15.10.2018."

From the above it is clear that the effective date of the supplemental PPA as proposed and agreed upon is 15.10.2018.The Petitioner and the respondent No. 1 also agreed in the PPA that the amendment effective date of the PPA in Article 3.1 (ii) as under;

"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.

23.3. Further, the Petitioner vide its submission dated19.12.2019 has submitted that since the Respondent No.1 has already supplied power generated using domestically procured imported coal and assured that it will not claim energy charge as per the supplemental PPA for the power supply during the period up to 19.08.2019 but as per the PPA dated 26.02.2007 and further to reimburse the GST compensation cess and IGST on the domestically procured imported coal as per Order of the Hon'ble Commission in Petition No. 1680 of 2017. The Respondent No.1 vide letter dated 19.08.2019 has conveyed that power will be generated using direct imported coal with effect from 20.08.2019 and has intimated the anticipated energy charge for merit order purpose with effect from 20.08.2019. Copies of the letters has been submitted.

23.4. In view of the above, the Petitioner has further submitted that though the effective date of Supplemental PPA shall remain 15.10.2018, the revised energy charge shall be payable as per supplemental PPA only from 20.08.2019, i.e. the date as informed and as agreed by the Respondent No.1. The Petitioner has submitted above to the Commission and allow the dates accordingly.

23.5. As per the recommendation of the HPC, which were accepted by the Government the losses prior to supplemental PPA required to be borne by the generator which in the present case is EPGL. The effective date is crucial and critic al in the present case with regard to implementation of the rehabilitation scheme proposed by the HPC and Resolution by Government of Gujarat. Accordingly, the "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.

23.6. As per the submission of the Petitioner in above paras for payment of energy charge for coal directly imported from Indonesia by the Respondent No.1, it has conveyed that since the PPA is based on the Indonesian coal, power will be generated using

direct imported coal with effect from 20.08.2019 only. In view of the above, we allow that the revised energy charges shall be payable as per supplemental PPA only from 20.08.2019 or from the date the coal is directly procured from Indonesia, whichever is later. Prior to this rates of energy charges shall be as per the PPA dated 26.02.2007 and any other payment approved as per change in law by this Commission. For all other purposes, the effective date of the supplemental PPA shall be 15.10.2018.

23.7. **Rebate in Capacity Charge**

Now we deal with the issue with regards 20 paise/kWh in capacity charge raised by the Respondent consumer groups where they have raised the issues on rebate on capacity charge. It is necessary to refer to the rebate in capacity charge stated in clause 3.2.2 of the PPA below:

"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 up to Normative Availability of 80%. The Monthly Capacity Charge payment shall be made in accordance with Schedule 6 of the 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."

We note that in para 10.5 of the Report of the HPC it is recorded that the primary object of the exercise 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. It is recorded that the lenders have to sacrifice by way of reduction in capacity charge as a part of financial commercial restructuring. The Government of Gujarat has in its GR dated 01.12.2018 decided that on account of the sacrifice by the lenders, the fixed cost @ 20 paise/kWh is to be reduced to the extent of normative availability of 80%. Since this provision relating to rebate has been agreed to between the Petitioner and Respondent No. 1 and shall pass on to the consumers and reduce the burden of additional energy charges, the Commission does not have any objection to the same.

23.8. **Normative Availability of Plant**

The objectors have also raised the issue pertaining to availability of the plant as well as incentive payable/receivable as a part of supplemental PPA stating that increase in normative plant availability from 80% to 90% in all respect must be effected so as to reduce the quoted capacity charges by spreading it over higher availability and thereby reduced per unit capacity charges. It is also stated that higher availability should be applicable for all purposes specified in the PPA i.e. for recovery of capacity charges as well as for determination of incentives and disincentives. The Petitioner has submitted that issue of increase of normative availability has been dealt by the HPC and the same is incorporated in the supplemental PPA. It is necessary to refer to clause 3.2.5 which pertains to availability is reproduced below:

*"**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 up to 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:

Particular	***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	*Rs 0.10 / kWh*	*Rs 0.10 / kWh*
90% (10% of Capacity Charges)	*(1 Rs x 10%)*	*(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*

For avoidance of doubt, it is clarified that for all other purposes including passing on of 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 Schedule 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 Minimum Off take Guarantee for relevant period shall also continue to apply in accordance with the provisions of existing PPA.

With reference to the query of Prayas, GUVNL in its affidavit dated 02.01.2019 has explained the working of penalty in respect of Bid-02 PPA at the actual availability of 88% and 70%.

The aforesaid provisions provide that the generator would be giving the benefit of higher availability to the procurer as the procurer would not have to pay capacity charges for availability beyond the normative availability of 80%. Moreover, the provisions of the subsisting PPA would continue to apply with regard to determining both incentives and penalty. The mandate of the rehabilitation package which is to ensure that the generators do not incur further losses. The capacity charges are already being reduced by 20 paise per kWh, the normative availability has been kept at 80% only while ensuring that cheaper power, beyond the availability of 80% becomes available to the procurers. Further, no incentive is being given to the generator up to the availability of 85% as per Bid 03 PPA dated 26.02.2007.

We note that the proposed amendment provides for reduction of capacity charges by 20 paise/kWh. The payment of capacity charge is associated with an achievement of 80% of target availability. The availability if increased from 80% to 90% in that case no liability for additional capacity charge would arise. However, if the cumulative availability during the year is less than 90% in that case the generator would be required to pay penalty as per the provisions of the PPA at the rate of 10% of the capacity charge over and above the penalty provisions in the PPA dated 26.02.2007. The scheme seeks to balance the interest of consumer's vis-a-vis the Project Developer as the Petitioner gets availability above 80% and up to 90% without having to pay additional capacity charge for such higher availability whereas in case of availability being lower than 90%, the Project Developer is required to pay the penalty at the rate of 10% of the capacity charge. We are of the considered view that normative plant availability at 80% as decided in the GR of 01.12.2018 and incorporated in the Supplemental PPAs, being part of the complete rehabilitation package through commercial and financial restructuring of the power project of the Respondent No.1, is reasonable and is in consumer interest as well. Accordingly, we do not have any objection to this provision. We also note that the amended PPA provides that incentive for availability in excess of 85% and provisions for penalty

below 75% are in accordance with the PPA dated 26.02.2007. On the incentive, we are of the opinion that since Respondent no.1 is to schedule at 90% availability as per SPPA, therefore the incentive shall be allowed for the availability above 90% instead 85% as mentioned in the PPA dated 26.02.2007.

23.9. **Energy Charge**

The energy charge agreed between the parties stated in supplemental PPA as clause 3.2.3 is one of the most important clauses of the supplemental PPA, which have effect on generator, procurer and on the consumers. The same is reproduced below:

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 X LPPF/ CVPF} X 100/ (100-AUX)
Where:

AUX = Lower of actual or normative auxiliary energy consumption as specified in the Tariff Regulations as defined 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 1.6.2009)

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" and "GHR" considered for computation of energy charge rate shall be aligned as per CERC approval in Petition No. 374/MP/2018.

The Energy Charge determined under Article 3.2.3 of the Supplemental PPAs are subject to such conditions as general principles of landed price of coal at the plant site (LPPF), specific conditions for LPPF, methodology for merit order scheduling and billing, and pass through of mining profits by the Project Developer.

In the formula for calculation of energy charge, Gross Station Heat Rate (GSHR) of 2333 kCal/kWh or actual whichever is lower has been considered. As regards Aux. Consumption @ 6.5% or actual whichever is lower has been considered.

The consumer groups have submitted that the SHR and Aux Consumption considered are on the higher side and should be as considered in the bid or as per the tariff regulations as applicable at present or actual whichever is lower.

The Petitioner has submitted that the PPA being under Case I, only capacity charges and energy charges are quoted and it is not based on net SHR. The Supplemental PPAs provide for SHR and auxiliary consumption to be the lower of the actual or normative parameters as provided in the Tariff Regulations of the Commission. As such, the Petitioner has taken due care to ensure that the lowest possible normative parameters are considered so as to protect consumers interest. The Petitioner has submitted that the approach of the consumer groups by singling out different aspects of a complete package and questioning the same in isolation is impermissible.

From the provisions of SHR and Aux Consumption in Supplemental PPA, we observe that lower of the actual and the normative SHR has been proposed with reference to the actual and normative Aux Consumption as specified in the CERC Tariff Regulations, 2009 for purposes of determination of energy charge rate. In the absence of any data, the Supplemental PPAs introduced this formulation for calculation of energy charge by taking lower of the actual or normative GHR and lower of the actual or normative Aux Consumption as per the CERC Tariff Regulations, 2009, since energy charge is being made a pass through. In any event, the procurer is adequately protected by capping the GSHR as actual or 2333 kCal/kWh to the normative GSHR contained in the CERC Tariff

Regulations, 2009, whichever is lower. Similarly, in case of auxiliary consumption the same is 6.50% or actual, whichever is lower.

As far as GHR is concerned, we cannot ignore the Original agreement and what we decided earlier on the same subject. The issue of GHR has already been settled by the Commission vide its order dated 03.08.2015 in Petition No.1296 wherein the Commission, based on the detailed technical analysis has fixed GHR as 2262 Kcal/Kwh. Accordingly, GHR shall be as follows: -

GHR = Lower of actual or Gross station heat rate of 2262 in kCal per kWh

The petitioner shall accordingly amend article 3.2.3.

23.10. We note that as per the original bid documents it is the duty of the generator/seller to tie up for fuel supply on long term basis and get it approved. The consumer organisations have vehemently submitted that the fuel supply agreement must be submitted to the Commission with the Petition by the Petitioner and the consumer who are burdened of such coal supply must be given an opportunity to comment on it. We note that the energy charge is dependent on the quantity, quality of the coal, its price, period for supply of such coal etc. by the fuel suppliers. Hence, it is essential that the seller shall tie up the fuel supply with supplier for a long term/medium term basis to assure the availability of coal, its quantum, quality and price so that as the fuel cost is now pass through, the competitiveness of such fuel supply must be ensured prior to start of the sale by the seller/generator. We also note that it is agreed between the parties that the procurement be carried out by the seller/generator following competitive bidding process with the approval of tender documents from the procurer and also approve the rate from the procurer.

23.11. We note that the energy charge which are dependent on the quality of coal, its price and technical parameters of plant like, SHR, Auxiliary consumption etc. and the cost of such energy charge be borne by the consumers of the State as any cost on energy charge is passed through the from the distribution licensee to the end consumers. It is the duty of the Commission to ensure that the price of the energy charge must be reasonable and competitive and therefore it is essential to ensure that the quality of

coal and price at which it is procured by the generator must be transparent and competitive.

23.12. We therefore, decide and direct the Respondent No.1 and the Petitioner that the procurement of coal be carried out by the Respondent No.1 by following international competitive bidding process. We also decide that such procurement of coal also be carried out on long term/medium term basis i.e. for the period of PPA to ensure the availability of coal, its price, and also to ensure that the declaration of availability of the plant by the Respondent No.1 must be based on the actual coal availability and its price. We also decide that as agreed between the parties the Respondent No. 1 shall require to get the approval of tender documents from the procurer. Moreover, the price which is discovered under competitive bidding process shall also be got approved from the procurer as well as from the Commission. In absence of the above, the procurement of coal shall not qualify for energy charges payable under the supplemental PPA.

23.13. **General Principles for determination of LPPF**

Now, we deal with the issue pertaining to Energy Charge payable by the procurer based on the imported coal for Petitioner plant. We note that in the Supplemental PPA, the energy charge stated are dependent on the condition of LPPF. LPPF consists of FoB cost of coal and transportation and other costs. Relevant provisions are extracted as under:

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 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 Government of Indonesia on monthly basis. —HBA Price shall mean the HBA Index FOB price of Indonesian imported coal published by Government 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 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. Illustrations: 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 with 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	<u>Ocean Freight & Insurance</u> 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). <u>Port/ Fuel Handling Charges:</u> The Port/ Fuel Handling Charges shall be lower of actual or as stated in Annexure – B (Column (e) & (f) in Table I) <u>Transit Losses:</u> Actual or 0.2%, whichever is lower <u>Other Charges (Sampling, Inspection, Customs clearance and Forwarding Agency Charge):</u> 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.

23.14. The aforesaid provisions state with regard to price of imported coal on FOB price for month be derived by comparison of (i) actual FOB price of the consignment; (ii) HBA price worked out as per formula for billed GCV plus maximum 10% tolerance on HBA price and (iii) HBA Price worked out on proportionate basis with reference to HBA Index for 6322 GCV coal considering ceiling of HBA Index of USD 110/MT or specific conditions at sub-para (II) and determined in Indian Rupees at Exchange rate. It is also provided that if there is 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 between the parties. In this regard we also agree that the Petitioner should be careful and agree upon the best or lower of indices available in the country of origin from where coal is being imported.

23.15. The consumer organisations have opposed tolerance of 10% over and above HBA price indices for a derived GCV of the coal stating that it is not justified since the relief is essential for coal procured from Indonesia and not from other country. Therefore, such relief is not valid and permissible. The HPC report does not have any provision for tolerance limit. It is also submitted that to minimize the burden on the consumers the ceiling should be computed as per HBA formula only and no 10% mark-up be allowed.

23.16. In reply to aforesaid submission initially Petitioner stated that the tolerance of 10% over HBA price derived with consideration of GCV of the coal and adjustment on account of moisture, ash and Sulphur. The trade of coal is taking place with premium over HBA indices duly adjusted for quality of coal, moisture, Ash and Sulphur. The HBA price as per the supplemental PPA shall always be equal to or less than HBA price worked out on proportionate basis with reference to GCV. Since the procurer is involved at every stage of procurement of imported coal through tendering process, the apprehension of the consumer group is without any basis and does not deserve consideration. However, on 01.04.2020, the petitioner has proposed to the Commission by filing a mutually agreed Addendum to SPPA that 10% tolerance will now be removed. In this regard petitioner has submitted second addendum to third supplemental agreement dated 01.04.2020 wherein it has explained the following:

a) Actual FOB price of Consignment

(b) HBA Price worked out as per the Formula stated in Ann-A of SPPPA dated 01.03.2019 for billed GCV.

(c) HBA price worked out on proportionate basis with reference to HBA index for 6322 GCV Coal.

23.17. It is necessary to see that the supplemental PPA signed between the parties must be in accordance with the Government of Gujarat G.R. dated 01.12.2018. We, therefore, decide to compare the provisions of the recommendations of the High Power Committee with Government G.R and the provisions made in the supplemental PPA.

23.18. From this exercise it seems that the provisions with regard to 10% tolerance made in the supplemental PPA with regard to FOB price for imported coal is not in consonance with either HPC Recommendation or Government of Gujarat GR No. CGP-12-2018-166-K dated 01.12.2018. Subsequently, the Petitioner filed an affidavit to the Commission on 01/04/2020 that upon analysing the market trend of the Indonesian coal price and the index as published by leading international price reporting agencies they have observed that coal price as per market trend consistently remain around or lower than the HBA derived price (HPB Price) for the quality of coal worked out for each month since October 2018 onward. Under these circumstances both the parties have decided to amend the provision related to FOB price in Article 3.2.4 (i) of Supplemental PPA and remove the provision related to allowing tolerance of up to 10% above HBA index derived as provided in the Supplemental PPA effective from 15.10.2018 so as to ensure that no additional burden towards coal is put on the consumers of the State. The Commission appreciates the initiative taken by the petitioner in order to protect the interest of the consumers and therefore we also decide the earlier additions of tolerance of 10% above HBA index in the supplemental PPA dated 01.03.2019 as not permissible on the ground that they are neither part of HPC report nor part of the Govt. GR and also not in interest of the public, Accordingly, we approve the second addendum dated 01.04.2020 agreed between the Petitioner and the Respondent No. 1 modifying the supplemental PPA without tolerance of 10% on HBA index.

23.19. Now we deal with the issue pertaining to energy charge which is also linked with various parameters like auxiliary consumption, SHR/GHR, weighted average landed price of coal at plant, weighted average gross calorific value in Kcal/Kg, FOB price of imported coal, transportation and other cost including ocean freight and insurance, port/fuel handling charge, transit losses, specific condition etc. It is covered in Article 3.2.3 and 3.2.4 of the supplemental PPA dated 01.03.2019. It is also necessary to refer the HPC recommendation for the aforesaid provisions prior to allowing the above parameters. Further, the supplemental PPA executed between the Petitioner and the Respondent No.1 is based on the Government of Gujarat resolution No. CGP-12-2018-166-K dated 01.12.2018 as policy directives for revival and rehabilitation of stressed imported coal based power projects in the consumer interest. It consists of various provisions with regards to the pricing of coal linked with ceiling of HBA index of 110 $ per MT for 6322 Kcal/kg. It is also provided that if the price of the coal increases, the payment will be capped at 110 $ per MT and generator shall bear the differential cost to continue the supply of power. It is also provided that the ceiling price be reviewed every five years as per HPC recommendations.

23.20. The consumer organisations have also raised the issue with regards to ocean freight and Port/Fuel Handling which has been considered as per lower of actuals or rates at Annexure B of Supplemental PPAs and there has been no consideration of the parameters assumed by the Project Developer. Moreover, it is also contended that there is no rationale for additional other charges i.e. sampling, inspection etc. which are part of port/fuel handling charges.

23.21. In response to above, the Petitioner contended that tariff quoted by the Respondent No.1 did not have the breakup of Ocean Freight and Port Handling Charges in the PPA dated 26.02.2007. Therefore, while FOB is linked to the benchmark index, the other components Ocean Freight and Port Handling Charges are benchmarked to CGPL tariff which was finalized by PFC after negotiations at the time of Bidding. It is further contended that the consumer interest has been protected on the aforesaid parameters in the Supplemental PPA with regards to the Ocean Freight payable.

23.22. We have considered the submissions of parties. The consumer groups have objected with regards to sampling, inspection charges etc. which are part of fuel handling charges. The aforesaid parameters are earlier included in the quoted tariff and were based on the assumptions of the project developer which was never disclosed. However, in the supplemental PPA the specific provisions are afresh made by incorporating following clauses:

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.

23.23. We note that certain provisions made in the supplemental PPA are neither part of the HPC report nor it is a part of the Government G.R. dated 01.12.2018. Moreover, there is addition of provisions which lead to the generator asking higher charges of energy on the ground of higher cost of the coal price paid by it which is linked with HBA index suggested by the HPC.

23.24. We also note that the provisions made in the HPC report with regards to transportation and other cost is concerned, it is stated that the same is as specified in the PPA or actual whichever is lower. Further, in case of Adani Power Limited the specific formula and methodology is provided for Ocean freight and escalation formula as well as port handling charge. There is no provision made with regards to transit loss stating as actual or 0.2% whichever is lower. The aforesaid provisions are not provided in the resolutions of Government of Gujarat dated 01.12.2018. Thus, it is in addition to the provisions made in the HPC report read with the Government G.R. dated 01.12.2018. We are of the view that aforesaid additions made by the Petitioner as well as the Respondent which has no approval of the Government of Gujarat vide its policy directives nor it is as per the recommendation of the HPC. Similarly, HPC recommendation does not allow other charges. Hence, we decide the aforesaid provision stated in the supplemental PPA dated 01.03.2019 are neither permissible nor allowed. Accordingly, transportation and fuel handling charges shall be permitted

as per the PPA dated 26.02.2007 which act as a ceiling and beyond which no other charges shall be allowed. The petitioner's approach as explained in Table-B of the SPPA is also permissible as it is done scientifically after conducting competitive bidding of CGPL by the Petitioner in order to further control the cost.

23.25. Accordingly, 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) and Port/ Fuel Handling Charges shall be lower of actual or as stated in Annexure – B (Column (e) & (f) in Table I). However, the Commission is not allowing transit loss and other charges as part of SPPA as explained above. Petitioner is required to amend SPPA accordingly.

23.26. Now we deal with the issue with regard to the linkage of imported coal price with HBA price index, published by FOB price of Indonesian coal from time to time for coal quality of 6322 Kcal/kg. As adjusted for actual quality of coal consumed in the project, we note that the GCV of coal considered by the Commission on the submissions of the Respondent No.1 on the affidavit in various Petition before the Commission i.e. Petition No. 1389 of 2014 and Petition No. 1296 of 2013 where the Respondent No.1 himself agreed and submitted on the affidavit the GCV of coal utilized in the project is designed parameters of 5500 Kcal/Kg. Thus, it is admitted by the Respondent No.1 that the coal utilized in the plant is having GCV of 5500 Kcal/Kg. Hence, the FOB price of imported coal considered in HPC report as well as the Government of Gujarat G.R. dated 01.12.2018 with consideration of GCV of coal 6322 Kcal/kg price as per HBA index.

23.27. The ceiling price of the coal linked with HBA Index considered by the HPC and the Government of Gujarat in GR dated 01.12.2018. The said price is decided by the HPC with consideration of the prevailing coal price during the period March 2009 to January 2017. From the analysis part of the HPC it seems that the price of the international coal was quite lower in comparison to price of Australian as well as South African coal. Moreover, the price increase took place from Sep 2010 and reached highest in the December 2010 or January 2011. Thereafter it seems that the price was gradually reduced up to June 2016 and thereafter the same was increased during

Sep to Dec 2016 and thereafter it was reduced from the prevailing price during Dec 2016 in March 2017 as well as June 2017. The data from the HBA index available from March 2016 to March 2020 is also relevant for consideration by the Commission prior to allow the ceiling price of the coal linkage considered by HPC and made in its recommendation. The HBA index is also to be reviewed every 5 years and the effect of the same may be given by the parties as per the methodology provided in the HPC report as well as in the Government GR dated 01.12.2018.

23.28. We are of the view that prior to allowing the coal price linkage with HBA price with a ceiling to 110 dollars per MT, it is necessary for the Commission to validate the trend of HBA price index of the coal of 6322 Kcal per Kg during the period from March 2015 to March 2020 (5 years) or March 2016 to March 2020 (4 years) or March 2017 to March 2020 (3 years). The details obtained by the Commission were examined. We are of the view that the upper cap of HBA index of USD 110/MT can be relooked into as per the present global market. As per the records available with the Commission imported coal - HBA index varies in year 2020 from 65.93 to 67.08 USD/MT while last year in 2019, the average HBA was 66.30/MT only. Similarly, in year 2018 the average rate was USD 92.51/MT. If we consider last 6 years average from 2012 to 2017 it was USD 76.47/MT. Therefore, keeping in view the reasonable energy cost as comparable with efficient thermal plants in Gujarat, the Commission approves the upper cap of HBA index to USD 90/MT. This is also confirmed by the petitioner vide its affidavit dated 01/04/2020 that upon analysing the market trend of the Indonesian coal price and the index as published by leading international price reporting agencies they have observed that coal price as per market trend consistently remain around or lower than the HBA derived price (HPB Price) for the quality of coal worked out for each month since October 2018 onward. The revision of cap is also necessary in view of highly volatile foreign exchange in the present global market.

23.29. It is also to be seen that this plant at efficient price should come within the merit order so as to give reasonably priced electricity in the State. Since it is a higher capacity plant its operation will also facilitate the system operator in time of variability of Renewable generation. As decided in the G.R, the Commission is also open to review

this ceiling as and when market conditions are not favorable and there is a need to procure power to maintain 24 x7 supply to consumers of the State. Similarly, procurer shall also use a cautious approach at time when FE is not favorable in respect of coal prices. Accordingly, the Petitioner is directed to modify 3.2.4 para (1) to the extent as stated above i.e. cap of USD 90/MT.

23.30. **Specific Conditions with regard to Energy Charge**

The specific conditions for computation of FOB price of coal in the Supplemental PPAs are as under :

(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.*

(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) to (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.*

23.31. The consumer organisations have raised the issue that the ceiling price of imported coal be linked with the domestic coal price. It is further submitted that during last five years from October 2013 to September 2018, the increase in domestic price is around 35%. The reset of ceiling price in aforesaid situation works out to about $ 160 approximately which is absolutely excessive. It seems there is no logic and justifications for keeping such provisions for allowing reset of ceiling price. Further, 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. The Commission should not allow any resetting of ceiling price for at least 10 years from the date of Supplementary PPA becoming effective. If any formula required to consider for resetting of coal price the same may be after 10-year period, with consideration of realistic data.

23.32. The Commission has allowed the upper ceiling of HBA index at USD 90/MT. As regard to specific conditions mentioned above, the Commission is not inclined to go into the merit at this stage and shall review the same as and when the Petitioner shall approach the Commission to amend the ceiling. The petitioner shall take Commission's prior approval for changing any tariff or its index. The Commission shall

take a final view in deciding ceiling values whenever review of HBA index is filed before it.

23.33. ***Foreign Exchange Rate Variation***

In the Supplemental PPAs, it has been mentioned that the FOB Price for Imported Coal shall be the lower of actual price or the HBA Price determined in Indian Rupees at Exchange Rate. Accordingly, Foreign Exchange Rate Variation has been factored in the energy charge as part of the package deal between the Petitioner and the Respondent No.1.

23.34. The consumer organisations have contended that as per Clause 4.3 of the competitive bidding guidelines issued by the Ministry of Power, Government of India under Section 63 of the Act provides that exchange rate fluctuation is to be on account of the seller/generator. It is further submitted that as per para 20 of the Judgment of Hon'ble Supreme Court in case of Energy Watchdog Vs. CERC and others held that guidelines vis-à-vis the power of the Commission in a situation where there are no guidelines framed at all or where the guidelines do not deal with a given situation in that case the Commission has general regulatory power under Section 79 (1) (b) of the Act. Therefore, it is not permissible to allow any amendment to the PPA contrary to term specified in the statutory guidelines. The consumer organisation in support of aforesaid submission also relied on the decision of Hon'ble Supreme Court in Case (i) Numaligarh Refinery Ltd. Vs Daelim Industrial Co. Ltd. [(2007)8 SCC] and (ii) Alopi Prasad Vs Union of India [AIR 1960 SC 588]. Based on above, the Respondents have submitted that the Foreign Exchange Rate Variation cannot be a ground for granting any relief.

23.35. Further, it is also contended by the consumer organisations that Hon'ble High Courts in Commissioner of Income Tax Vs Priyanka Gems [(2014) 367 ITR 575 (Guj) at para 32] and Cairn UK Holdings Limited Vs Director of Income Tax [(2013) 359 ITR 268 (Delhi) at Para 29 have also dealt with the importance of prudence in hedging the foreign exchange risks.

23.36. It is also contended that any foreign exchange rate variation allowed to the project developer in the supplemental PPA has the implication of allowing increase in tariff is not legal and is liable to be rejected as being contrary to law. In support of the same they relied on the judgments in case of (i) India Thermal Power Ltd. Vs State of MP [(2000) 3 SCC 379], (ii) Adani Power Ltd. Vs Gujarat Electricity Regulatory Commission [(2016) 15 SCC 665] and (iii) BSS Projects (P) Ltd. Vs Government of India [2011 SCC Online AP 826].

23.37. We have considered the submissions as noted above. The consumer organisations have relied on Clause 4.3 of the Competitive bidding guidelines which is relevant in this case is reproduced below:

"Tariffs shall be designated 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.

Provided that the foreign exchange rate variation would be permitted in the payment of energy charges [in the manner stipulated in para 4.11(iii)] if the procurer mandates use of imported fuel for coastal power station in case-2.

Provided further that the foreign exchange rate variation would also be permitted in the payment of energy charges [stipulated in para 4.11 (iii)] if the bidder chooses to supply power using domestic gas or RLNG or both or imported coal for long term procurement under Case-1"

23.38. Further para 4.11(iii) is also being reproduced:

In cases where the procurer mandates use of imported fuel for use in a coastal power station in case-2 procurement query or where the bidder chooses to supply from a power station using imported fuel under case-1, the bids may be invited for base energy charge for the first year to be escalated as per the indices identified in the RFP.

Such energy charge would have following three components: (a) Imported fuel component in US Dollars/unit. (b) Transportation of fuel component in US Dollars/unit. (c) Inland fuel handling component in Indian Rupees/unit Para 4.11(iii):

23.39. As per aforesaid clause any exchange rate fluctuation on account of energy charges is permissible. Even the PPA dated 26.02.2007 also provides for Energy rate in USD/Kwh. In the supplemental PPA, FERV is defined as Exchange Rate in the supplemental PPA.

The Exchange Rate is used in the calculation of landed price of primary fuel (LPPF) which is the imported Indonesian coal in the present context. Therefore, the Exchange Rate is used in the context of determination of LPPF. In this connection, it is relevant to refer to paragraph 8.4.4 of the HPC report, which clearly states as under:

..... 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.

Further, in the GR dated 01.12.2018, Resolution (ii) clearly states as under:

.....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.

23.40. We note that in the present case, which is filed by the Petitioner based on the policy directives of the Government of Gujarat vide GR dated 01.12.2018 where it was directed to sign the supplemental agreement between the Petitioner and the Respondent No. 1 as rehabilitation of the stressed assets of the three projects. In the said matter the HPC had after considering the interest of lenders, project developers, licensees, and consumers directed to sign the supplemental PPA with consideration of various recommendation which include the exchange rate to be incorporated as a part of the rehabilitation scheme. The Government of Gujarat has also considered the recommendation of HPC to incorporate the exchange rate as part of supplemental PPA. The objective of the rehabilitation package is to ensure that the fuel cost of imported coal is a pass through and that the generators are reimbursed the actual landed cost paid by them and nothing more or less than such actual landed cost. The Exchange Rate is required to be used for calculation of such actual landed cost of Indonesian imported coal to ensure that no margin/loss accrues to the generators. The Government of Gujarat policy GR dated 01.12.2018 makes it clear that while the procurers are assuming the risk on fuel cost, such pass through is not unfettered, as the fuel cost pass through is subject to a cap. Certain residual risk remains with the generators in case the actual fuel price exceeds the prescribed cap. To enforce this obligation, the Exchange Rate has been used to ensure that the procurer does not

pay higher than the actual landed cost of fuel and the generators are reimbursed the actual cost they incur subject to the cap on procurement of fuel.

23.41. We also note that the formula specified in clause 3.2.4 of the supplemental PPA stated that FOB price for imported coal will be the lower of actual price or HBA price determined in Indian Rupees at Exchange Rate. Since the reimbursement of LPPF is to be made by the procurer in Indian Rupees at actual and on landed cost, it is logical that foreign currency charges are converted into Indian Rupees. We also note that it was decided that imported coal price will be reimbursed in Indian Rupee and that is on actual basis. The seller/generator does not make any margin or loss on account of fuel price. The conversion/exchange rate is provided for converting the currency from foreign to Indian Rupees.

23.42. The inclusion of exchange rate will bring the clarity, predictability and also helpful to avoid the possible future disputes with regards to the fuel price payable to the generator in Indian rupees. On the aforesaid ground we are of the view that the contention of the consumer groups is not sustainable and therefore the same is rejected.

23.43. Once it is accepted that the fuel price of imported coal will be paid to the generators on actual basis, in such case the generator does not make any margin or loss on account of fuel price. It is also provided that the price of the coal will have to be paid in Indian rupees, hence the apprehension of the consumer groups is not sustainable and the same is rejected.

23.44. **Untied Capacity offered to the Procurer**

Now we deal with the issue raised by the objectors with regards to untied capacity offered to the procurer by the generator. Whether it is in the interest of the consumers or not. The objectors have contended that it is against the interest of the consumers. The objectors have contended that the additional capacity offered by the generator should be at the same terms and conditions as with the tied up capacity of 1000 MW. Moreover, it is also necessary to evaluate in terms of the overall requirement of power by the Petitioner with consideration of the demand of such power. It is necessary to

take holistic view while carrying out the rehabilitation plan for the Petitioner power project with consideration of public interest at large.

23.45. The Respondent No.1 submitted that the market rate for the power are quite higher than the rates considered in the HPC report. The Respondent is forgoing its right to sell the excess capacity of power at higher rate in the market. The procurement of power at the rates decided in the HPC report for additional capacity is beneficial to the Petitioner GUVNL for 100 MW.

23.46. It is necessary to refer Article 3.4 of the supplemental PPA which state about 100 MW capacity of the plant which is untied and shall be offered to the procurer for the same period of the approval of the supplemental PPA for the period up to 25th year of the COD of Unit No. 2.

The energy charge payable for additional untied up capacity in accordance with clause 3.5.3 of the supplemental PPA i.e. equivalent to energy charge applicable to tied up capacity of 1000 MW with the Petitioner. Further, we note that the capacity charge for additional capacity shall not be payable beyond the limit prescribed as per supplemental PPA.

23.47. We also note that HPC has dealt the issue in para 7.4.7 of its report whic states that the cost of procurement of power from the entire power project get scheduled with consideration of the price of the energy. Moreover, it is also competitive. The aforesaid report also says that the representation of the consumers as well as procurer were considered by the HPC. We, therefore, decide that the additional capacity tied up by the Petitioner as per Article 3.4 of the PPA do not require any change except the provision as already decided in Article 3.2.3 and 3.2.4. Hence, the contentions of the consumer organisation are rejected.

23.48. **Extension of the term of the PPAs**

The consumer organisations have submitted that the terms of the PPA should be extended up to 40 years and tariff for the same period be extended on the basis of either the same capacity charges as on the last year of the 25th year of the PPA dated

26.02.2007 or on the basis of R&M, capital expenditure service during the extended period with O&M expenses, interest on working capital etc. is applicable as per tariff Regulations of the Commission. Further incentive and penalty are linked with target availability of 90%.

23.49. Per contra, the Petitioner submitted that the recommendation of the HPC stated that the PPA tenure may be extended by 10 years. The first right of refusal is with the Petitioner/Procurer. It is also stated that so far as capacity charge for the extended period is concerned the same may be as per the last year capacity charges. The additional R&M expenses shall be allowed to the extent of requirement for the plant and also subject to approval of the Commission.

23.50. We have considered the submissions made by the parties. As the issue is pertaining to extension of terms of the PPA which is stated in the Article 3.5 of the supplemental PPA, it needs to refer the same and the same is reproduced below:

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 modernization of the Project, and also for the consequential increase in O&M expenses. Such increase in Quoted Capacity Charge shall be determined & approved by Appropriate Commission in accordance with the applicable CERC (Terms and Conditions of 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 x LPPF / CVPF} x 100/(100 - AUX)

Where:

AUX = Lower of actual or normative auxiliary energy consumption of 9% as specified in the Tariff Regulations as defined herein.

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 2340 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.

For the avoidance of doubt, the Capacity Charge for Extended Term shall not be subject to adjustment towards Rs. 0.20 / Kwh and Energy Charge for Extended Term shall not have discount for pass through of the Mining Profits 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.

23.51. As per the aforesaid provisions the first right is provided to the Procurer/Petitioner to take the benefit of extended PPA for period of 10 years for the contracted capacity. It is not obligatory on part of the procurer to extend the PPA for 10 years. It is also provided that procurer shall require to issue a notice not later than 5 years prior to expiry of the PPA, with the mutual consent of the parties. The capacity charges payable for the extension period shall be the capacity charge of the 25thyear of the PPA dated 26.02.2007 plus R&M cost which shall be required to get approved from the Commission. Thus, the R&M cost if any incurred is required to be approved by the Commission after following transparent process and in fair manner. As the procurer has first right of refusal for extension, we did not find any infirmity in the proposed amendment. As regards the extension proposed by the consumer organisation for the period up to 40 years is concerned, we are of the view that such provision is already provided in Article 3.5.1 where it is stated that the PPA may be extended beyond 10 years with mutual consent of the parties and approval of the commission. Thus, the extension provided in the PPA for 40 years, where from 25th to 35th year is at the discretion of the Procurer/Petitioner and from 36th year to 40th year, it shall be with the mutual consent of the parties. The aforesaid provisions provide flexibility to the parties to reassess and revaluate the situation prevailing at

the relevant time. Considering the above, we are of the view that the objections raised by the consumer organisation are not sustainable and the same are rejected. However, the Petitioner shall amend the provision in SPPA as already decided at Article 3.2.3 and 3.2.4.

23.52. **Change in law**

It is also necessary to refer Article 3.2.4 (III), (vi), where both the Petitioner and the Respondent agreed that the seller shall not be entitled to any payment towards change in law for the energy charge from the date of approval of supplemental PPA by the appropriate Commission. Moreover, any payment received by the seller (Respondent No.1) 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. However, the Petitioner vide additional submission dated 27.12.2019 submitted that power will be generated using direct imported coal with effect from 20.08.2019 and intimated that the anticipated energy charge for merit order purpose will be effective from 20.08.2019. It is further submitted that the confirmation is given by the Respondent No.1 to the Petitioner through letter dated 05.03.2019 and 24.04.2019 that, though the effective date of the Supplemental PPA shall remain 15.10.2018, the revised energy charge shall be payable as per Supplementary PPA from 20.08.2019.

In view of this submission by the Petitioner the payment of energy charges prior to 20.08.2019 shall be as per PPA dated 26.02.2007 and hence, the change in law as allowed in Order dated 23.12.2019 in Petition No 1680/2017 shall be applicable till 19.08.2019 for the payment of energy charge or till the coal is procured directly from Indonesia, whichever is later. The computation of energy charge shall be as per supplementary PPA from 20.08.2019 or from the date coal is procured directly from Indonesia, whichever is later. The supplemental PPA allows pass through of actual coal cost, hence, it covers the cost approved under change in law order dated 23.12.2019 of this Commission. Further, any change in law taking place after approval of this order, the Petitioner has to approach the Commission for its approval.

23.53. **Rebate**

Now we deal with the issue of rebate in respect of the Energy Charge component of Provisional Bill or Monthly Bill, as the case may be, at the request of the Respondent No.1 for the purpose, as per the provisions of the Article 11.3.6 of the PPA dated 26.02.2007 in pursuance of the Affidavit dated 16.03.2020 filed by the Respondent No.1.

23.54. As per aforesaid affidavit it is admitted by the Respondent No.1 that they have agreed to allow the rebate to the Petitioner on the earlier payment if any made by the Petitioner against the bill amount as per Article 11.3.6 reads as under:

"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%)*
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% x {24 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 (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 Seller's 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."

23.55. As per aforesaid provisions it is agreed between the parties in the main PPA dated 26.02.2007 that for the payment of any bill before due date by the procurer to the seller the procurer is eligible for the rebate agreed between the parties. It is also agreed between the parties that the methodology for payment of the bills issued by the seller, i.e. Respondent No.1 to the Petitioner.

23.56. We note that in Article 3.2.4 (III), (v), of the supplemental PPA, it was also agreed between the parties that no rebate shall be available on energy charge component while the rebate shall be available on capacity charge to the procurer. As per

aforesaid Article it was admittedly agreed between the parties that the procurer is not eligible for any rebate as per the supplemental PPA on energy charge.

The Government of Gujarat has in para in Clause (ix) of the resolution dated 01.12.2018 resolved that no rebate shall be applicable on energy charge for the balance life in terms of the PPA. From the above, it is clear that it was agreed between the parties that no rebate on energy charge shall be receivable by the Petitioner and the Government of Gujarat in its Resolution dated 01.12.2018 resolved the same. However, Respondent No.1 vide its affidavit dated 16.03.2019 has proposed this change in the supplemental PPA to offer rebate in energy charges as well to which the petitioner reply is not filed. Hence, in the absence of any agreement between the parties on this aspect, at this stage, we are not able to accede to the said proposal.

23.57. **Final Decision on the Supplemental PPA**

The Commission has in the preceding paragraphs dealt with all the diverse objections, suggestions and comments from the Consumer Groups on major articles of the SPPA.

23.58. As discussed above, in the Order while addressing various issues which came during the deliberation on the subject matter, the Commission, now concludes its final decision on each provision of the SPPA executed between the Petitioner and the Respondent No.1 affecting to the power purchase cost of the Petitioner as a procurer and the same is reflected in the consumer tariff. The same are now being approved by the Commission and allow the parties to implement the same subject to the condition that changes/amendments as decided shall be incorporated by the petitioner. Accordingly, we now discuss each and every provision of the supplemental PPA as under:

Article/Clause 1&2 of the Supplemental PPA

23.59. As regards the recital of the PPA and Article 1 and 2 are concerned, they are general in nature and based on facts hence, the same are approved.

Article/Clause 3.1 of the Supplemental PPA

23.60. Article 3.1 state about the definitions of (i) "Affiliate", (ii) "Amendment Effective Date", and (iii) "Tariff Regulations" the same are approved. We find that the Affiliate is added as per the provisions of Companies Act. While the Amendment Effective Date is as per the recommendation of the High Power Committee and also as per the G.R. dated 01.12.2018 of the Government of Gujarat. The tariff regulations are the tariff regulations notified by the Commission as per the provisions of Section 61 read with 181 of the Act. Hence, the same are approved. However, the payment of energy charges prior to 20.08.2019 or from the date the coal is directly procured from Indonesia whichever is later, shall be as per PPA dated 26.02.2007 as explained at para 23.6.

Article/Clause 3.2 of the Supplemental PPA

23.61. Article 3.2 state about the determination of capacity charge and energy charge, substituted with the provisions made in Article 3.2.1, 3.2.2, 3.2.3, 3.2.4 and 3.2.5. Now we deal them one by one:

Article/Clause 3.2.1 of the Supplemental PPA

23.62. These provisions state that the Respondent No. 1 seller is entitled to receive the tariff as per revised tariff determined in accordance with the provisions of sale and supply of electricity in terms of the PPA. It consists of the definition of the revised tariff, capacity charge, energy charge, as well as exchange rate. The same are approved subject to the changes/amendment made in the methodology stated in the earlier part of this Order.

Article/Clause 3.2.2 of the Supplemental PPA

23.63. Article 3.2.2 state that capacity charge payable for each month shall be quoted Capacity Charges (as per the Schedule 10 of the PPA dated 26.02.2007) less 20 paisa/unit. Penalty and Availability provisions for each capacity shall be as per Article 3.2.5 of the PPA dated 01.03.2019 and PPA dated 26.02.2007seems valid. Accordingly, the Commission allows the Petitioner's proposal.

Article/Clause 3.2.3 of the Supplemental PPA

23.64. The aforesaid Article state about determination of energy charge for each month which is discussed in detail at para 23.9 in the order.

As already explained, the Commission is of considered view that the determination of energy charge shall be based on the Gross Station Heat Rate as lower of actual Gross Heat Rate or 2262 Kcal/kWh. Accordingly, the Petitioner and the Respondent are required to make amendment/change in the PPA and work out the energy charge for the same. Remaining provisions of 3.2.3 are approved.

The following provisions made in the aforesaid Article pertaining to energy charge receivable by Adani Power Limited whose PPA with the Petitioner was subject matter of Petition No. 372/MP/2018 is having no relevance. Hence, the same are not approved and deleted from the PPA as the energy charge of the Respondent No.1 plant are different and distinct and has no relevance.

Article/Clause 3.2.4 of the Supplemental PPA

23.65. The aforesaid Article state that the energy charge stated in earlier Articles shall be subject to the following different conditions:

1. General Principle for determination of LPPF
2. Specific conditions
3. Methodology for merit order, scheduling and billing

The Commission in earlier part of this Order have already dealt with the above clauses in detail and observed that the some of the provisions of the supplemental PPA are not in consonance with the provisions of HPC report as well as Government of Gujarat Resolutions. Accordingly, the Commission is making modifications in the aforesaid provisions.

Article/Clause 3.2.4-i of the Supplemental PPA

23.66. The Commission is allowing actual cost of coal or the HBA index whichever is lower, there is no reason to allow any further tolerance of 10%. Even HPC or GR has no intent to do the same. The Commission has gone through actual records of similar plants in Gujarat and find that there is no merit in allowing such tolerance over and above the index. Subsequently, GUVNL has also informed us vide its affidavit dated

01.04.2020 that 10% margin is now disallowed to which Respondent No. 1 has also agreed.

23.67. As regard the upper cap of HBA index of USD 110/MT, the Commission is of the view that this cap seems to be quite high in the present global market. As per the records available with the Commission imported coal - HBA index varies in year 2020 from 65.93 to 67 .08 USD/MT while last year in 2019, the average HBA was 66.30/MT only. Similarly, in year 2018 the average rate was USD92.51/MT. If we consider last 6 years average from 2012 to 2017 it was USD 76.47/MT. Therefore, keeping in view the reasonable energy cost comparable with efficient thermal plants in Gujarat, the Commission allow it at USD 90/MT. This is also being done in view of uncertain foreign exchange variation in the present global market. However, as decided in the G.R, the Commission is also open to review this ceiling as and when market conditions are not favorable and there is a need to procure power to maintain 24 x7 supply to consumers of the State. Accordingly, the Petitioner is directed to modify 3.2.4 para (1) to the extent as stated above i.e. cap of US 90/MT and there will be no provision for tolerance of 10%.

23.68. The transportation and fuel handling charges shall be permitted as per the PPA dated 26.02.2007 which act as a ceiling and beyond which no other charges shall be allowed. 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) and Port/ Fuel Handling Charges shall be lower of actual or as stated in Annexure – B (Column (e) & (f) in Table I).

24. However, the Commission is not allowing transit loss and other charges as part of SPPA as explained at above at para 23.21 onwards. Petitioner is required to amend SPPA accordingly.

Article/Clause 3.2.4-ii of the Supplemental PPA

24.1. With regards to the aforesaid provision made in the supplemental PPA, the Commission decides to allow the same provision with the remark that GUVNL shall ensure that procedure of purchase of imported coal shall be absolutely transparent

and wholly competitive to get best available rates. Quarterly Report of such procurement and price should be regularly conveyed to the Commission. The Commission has no objection to review the ceiling, however it will only be applicable after taking approval of this Commission.

Article/Clause 3.2.4-iii of the Supplemental PPA

Methodology for Merit Order Scheduling and Billing

24.2. Aforesaid Article state about the methodology for merit order, scheduling and billing carried out for the project of the Respondent No. 1. 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.
We find that there is no infirmity with regards to the procedures specified in it.

Article/Clause 3.2.5 of the Supplemental PPA

Availability

24.3. The aforesaid Article state about the availability of plant and in the case of failure to achieve the agreed availability and the consequence thereof. Hence, we allow this provision. However, incentive shall be allowed for the availability above 90% instead 85% as mentioned in the PPA dated 26.02.2007.

Article/Clause 3.4 of the Supplemental PPA

Untied capacity offered

24.4. The aforesaid Article state that the seller is having 100 MW untied capacity available from both units of the generating station and agreed to tie up with the procurer by way of the aforesaid Article of the supplemental PPA. We allow this provision at same SHR and energy charges as per SPPA Article 3.2.3 and 3.2.4.

Article/Clause 3.5 of the Supplemental PPA

Extension of term of the PPA

24.5. We decide to approve the extension of terms of PPA stated in Article 3.5 of the PPA with regards to capacity charge stated in the said Article. So far as energy charge is concerned the same is as per earlier approved charges in Article 3.2.3 and 3.2.4 of

SPPA as per GERC and not CERC Regulations. We also decide that the parties shall obtain the approval of the same prior to start of the extended period from this Commission.

Article/Clause 3.6 of the Supplemental PPA

24.6. We allow this Article.

Article/Clause 3.7 of the Supplemental PPA

24.7. We allow this provision. However, approval of the change in law and environmental cost is to be taken separately as per the PPA dated 26.02.2007 & GERC Regulation and with the prior approval of the Commission.

24.8. The objectors have also raised the issue that GUVNL has filed a petition No. 250/MP/2019 under section 79 (1) (b) & (f) for recalling of CERC order dated 12.04.2019 granting permission to the supplemental agreement dated 05.12.2018. The similar agreement has been submitted before this Commission for grant of approval of supplemental PPA done under Government Resolution No. No: CGP-12-2018-166-K dated 01.12.18. Thus, the PPA for approval under this Petition as well as under the challenge before the CERC as recall of Order dated 12.04.2019 in aforesaid Petition are based on the same HPC report as well as the Government of Gujarat G.R. dated 01.12.2018. Therefore, the Commission is of the opinion that the outcome of CERC order in the above said matter may affect the present Petition. Therefore, the Petitioner is directed to approach this Commission after passing of order passed by CERC for review of the present order, if required so. The Commission shall consider the same and take appropriate action in accordance with law.

Article/Clause 3.8 of the Supplemental PPA

24.9. The aforesaid Article agreed between the parties by way of addendum dated 23.01.2020 to third supplemental agreement dated 1.03.2019. The said article/clause state as under:

"Clause 3.8

Seller shall bear the losses for prior period i.e. before 15.10.2018. Further, seller shall not raise any claim/dispute with regards to past period items before any Forum/Court in the future...."

24.10. In the said clause, it was agreed by the seller i.e. Respondent No.1 that they will bear all the losses prior to period 15.10.2018. It is also agreed by the Respondent No.1 that they shall not raise any claim/dispute with regards to past period items before any Forum/Court in future. The aforesaid provisions added as a part of supplemental PPA recognized that the seller shall forgo all its losses prior to 15.10.2018. Hence, it seems in consonance with the provisions of HPC recommendation and it will also settle down the disputes as prevailing between the parties with regards to the PPA by way of aforesaid provisions. Hence, we decide to approve the aforesaid provisions as a part of supplemental PPA dated 1.03.2019.

Article/Clause 3.9 of the Supplemental PPA

24.11. In the aforesaid Article it was agreed between the parties that the seller i.e. Respondent No.1 agreed to withdraw all pending cases/litigations/waive its claims against GUVNL other than change in law in India before various forum. While the cases filed by GUVNL which are under adjudication shall be considered upon the decision of the appropriate forum/court. The said Clause/Article is reproduced below:

Clause 3.9
"Seller shall unconditionally withdraw all pending cases/litigations/waive claims against GUVNL (other than Change in Law in India) before various Forums in lieu of the relief granted vide Govt. of Gujarat G.R. dated 01.12.2018 towards pass through of actual fuel cost w.e.f. 15.10.2018. Only the cases/litigations filed by GUVNL which are under adjudication shall be considered upon decision by appropriate forum/Court to extent of GUVNL's prayer in the matter."

24.12. The aforesaid provisions provide that the seller i.e. Respondent No.1 withdraws all its pending cases against the Petitioner in various legal forums/Commission, except case for Change in Law in lieu of relief granted vide Govt. of Gujarat G.R. dated 01.12.2018 towards pass through of actual fuel cost. Further, it was also agreed that pending cases filed by the GUVNL for adjudication shall be continued and GUVNL shall claim its due as per the orders of various forums.

25. In view of above observations, we decide that the present petition succeeds. We decide that the supplemental PPA signed between the parties dated 01.03.2019 be modified as per aforesaid decision of the Commission with regard to review of the coal price, ceiling price of coal, SHR, Auxiliary Consumption, incentive in excess of 90% etc. for determination of energy charge and other conditions as decided and directed by the Commission in earlier part of this Order. The Petitioner and the Respondent No.1 are directed to modify the supplemental PPA 01.03.2019 as per the aforesaid decision of the Commission and submit the modified supplemental PPA to the Commission.

25.1. We further decide that this approval with modifications is being granted to the proposed Supplementary PPA dated 01.03.2019 along with the Addendum no. 1 and 2 subsequently filed by the Petitioner and any change in the ownership of the Responder No. 1's Power plant shall only be done with the prior intimation of any such move and approval of the Government of Gujarat and this Commission.

25.2. The change in law as allowed in Order dated 23.12.2019 in Petition No 1680/2017 shall be applicable till 19.08.2019 for the payment of energy charge or till the coal is procured directly from Indonesia, whichever is later. The computation of energy charge shall be as per supplementary PPA from 20.08.2019 or from the date coal is procured directly from Indonesia, whichever is later. The supplemental PPA allows pass through of actual coal cost, hence, it covers the cost approved under change in law order dated 23.12.2019 of this Commission. Further, any change in law taking place after approval of this order, the Petitioner has to approach the Commission for its approval.

25.3. The Respondent No.1 shall start raising the bills as per the aforesaid decision with terms of PPAs from the date of this order. However, for the past period the Petitioner shall submit details such as , invoices raised and Energy supplied by the Respondent No.1 and recovery/Payment due as per the terms of SPPA and clarification as at para 23.6 and submit to the Commission for its approval.

26. We order accordingly.

27. With this order present petition stands disposed of.

Sd/-	Sd/-
(P.J. THAKKAR)	(ANAND KUMAR)
MEMBER	CHAIRMAN

Place: Gandhinagar
Date: 27/04/2020

Annexure-1

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), Adani 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

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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

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prices are not only much higher and volatile, the availability of power is uncertain.

- In the recent Case 1 long term bids invited by other States like Andhra Pradesh, Uttar Pradesh, Telangana etc the tariff was discovered in range of Rs. 3.94-6.3 H/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

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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.

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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.

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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,

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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.

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(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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Annexure - 2

ગુજરાત GUJARAT BP 262591

દસ્તાવેજ નં. ૨૫૦૧ તા. ૧૭/૩/૨૦૧૯
નામ : Essar Power Gujarat Limited
ઠેકાણું : Chemi Road, Vadodara
હસ્તે : Regn.
રજી. પે. ઓથોરિટી :
શાહ જયંતીલાલ પુનમચંદ વ્યાયમંદીર
લા. નં. ૨૯/૭૮ તા.૨૧-૧૦-૭૮
બી-૧૩,વિદ્યાવિહાર સોસાયટી, વાઘોડીયા રોડ, વડોદરા-૧૯.

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

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'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

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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-12-2018-155-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

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"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 x LPPF / CVPF} x 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 01.05.2009)

ECR = Energy charge rate, in Rupees per kWh sent out.

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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

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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

(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

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(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.

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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 <u>Untied Capacity offered to Procurer</u>

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.

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GUJARAT URJA VIKAS NIGAM LIMITED VADODARA

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

Essar Power Gujarat Ltd.

GUJARAT URJA VIKAS NIGAM LTD. VADODARA

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 x LPPF / CVPF) x 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

Essar Power Gujarat Ltd.

GUJARAT URJA VIKAS NIGAM LIMITED VADODARA

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

Essar Power Gujarat Ltd.

GUJARAT URJA VIKAS NIGAM LIMITED VADODARA

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)	FOR AND ON BEHALF OF M/s Gujarat Urja Vikas Nigam Ltd.
Authorised Signatory SWAPNIL JAIN	Authorised Signatory
WITNESSES	WITNESSES
1. (SANDEEP SAHAY)	1. (S.K. Nair)
2. (Ashok Mehta)	2. (K.N. Chudasama)

Essar Power Gujarat Ltd.

GUJARAT URJA VIKAS NIGAM LTD. VADODARA

Annexure – 3

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ADDENDUM TO THIRD SUPPLEMENTAL AGREEMENT DATED 01.03.2019

THIS ADDENDUM to THIRD SUPPLEMENTAL POWER PURCHASE AGREEMENT hereinafter called the **"Addendum Supplemental Agreement"** is entered into at Vadodara on the 23rd **day** of **January, Two Thousand And Twenty** 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"

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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 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.

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H. The Seller and the Procurer had executed a Third Supplemental Power Purchase Agreement dated 1.03.2019 to the Power Purchase Agreement dated 26.02.2007 setting out the terms and conditions for implementation of the Govt of Gujarat Policy Directive through G.R. dated 1.12.2018.

I. As per the recommendations of High Power Committee accepted by Govt. of Gujarat through G.R. dated 1.12.2018, one of the primary conditions for allowing fuel cost as a pass through w.e.f. 15.10.2018 is that the Seller shall bear all the losses for the past period, prior to 15.10.2018. Accordingly, this addendum to the third supplemental PPA dated 1.03.2019 is signed to provide clarifications and modifications in this regard.

J. The seller has also agreed to this clarifications and modifications as detailed herein under:

NOW THEREFORE, in consideration of the premises, mutual agreements, covenants and conditions set forth in this Addendum 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.

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2. The Parties agree as follows:

The following Clause No. 3.8 and 3.9 shall be added after Clause 3.7 of the Third Supplemental Agreement dated 1.03.2019:

Clause 3.8:

Seller shall bear the losses for prior period i.e. before 15.10.2018. Further, Seller shall not raise any claim / dispute with regard to past period items before any Forum / Court in the future.

Clause 3.9:

Seller shall unconditionally withdraw all pending cases / litigations / waive claims against GUVNL (other than Change in Law in India) before various Forums in lieu of the relief granted vide Govt. of Gujarat G.R. dated 1.12.2018 towards pass through of actual fuel cost w.e.f. 15.10.2018. Only the cases / litigations filed by GUVNL which are under adjudication shall be considered upon decision by appropriate forum / Court to extent of GUVNL's prayer in the matter.

The above Clauses 3.8 and 3.9 shall be read as part and partial of Third Supplemental PPA dated 1.03.2019. It is clarified that all other terms

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GUJARAT URJA VIKAS NIGAM LIMITED VADODARA

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and conditions of the Third Supplemental Agreement dated 1.03.2019 shall remain unchanged.

In Witness Whereof the Parties have executed this Addendum to the 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)**	FOR AND ON BEHALF OF **M/s Gujarat Urja Vikas Nigam Ltd.**
Authorised Signatory	Authorised Signatory
WITNESSES	**WITNESSES**
1. (Rahul Singh)	1. (SANJAY AVATHUL)
2. (Kalpesh Muske)	2. (S.K. NAIR)

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Annexure – 4

Annex - A

SECOND ADDENDUM TO THIRD SUPPLEMENTAL AGREEMENT DATED 01.03.2019

THIS SECOND **ADDENDUM to THIRD SUPPLEMENTAL POWER PURCHASE AGREEMENT** hereinafter called the "**Addendum Supplemental Agreement**" is entered into at Mumbai on the **First day of April, Two Thousand And Twenty** 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:

GUJARAT URJA VIKAS NIGAM LIMITED VADODARA

A. The Seller and the Procurer have 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.

C. 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.

D. 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;

E. 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 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;

F. The High Power Committee submitted its Report on 3.10.2018 making certain recommendations for resolving the said issues;

G. 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");

H. 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;

I. 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.

J. The Seller and the Procurer had executed a Third Supplemental Power Purchase Agreement dated 1.03.2019 to the Power

Purchase Agreement dated 26.02.2007 setting out the terms and conditions for implementation of the Govt of Gujarat Policy Directive through G.R. dated 1.12.2018.

K. The Seller and the Procurer have executed a First Addendum dated 23.01.2020 to the Third Supplemental Power Purchase Agreement dated 1.03.2019 in order to ensure that (i) Seller shall bear the losses for prior period i.e. before 15.10.2018. Further, Seller shall not raise any claim / dispute with regard to past period items before any Forum / Court in the future. (ii) Seller shall unconditionally withdraw all pending cases / litigations / waive claims against GUVNL (other than Change in Law in India) before various Forums in lieu of the relief granted vide Govt. of Gujarat G.R. dated 1.12.2018 towards pass through of actual fuel cost w.e.f. 15.10.2018. Only the cases / litigations filed by GUVNL which are under adjudication shall be considered upon decision by appropriate forum / Court to extent of GUVNL's prayer in the matter.

L. Seller and Procurer have further mutually agreed to modify the provision related to FOB cost of coal under Clause No. 3.2.4 (I) and withdraw the maximum tolerance of 10% allowed above HBA price.Accordingly, this Second Addendum to the Supplemental PPA dated 1.03.2019 is signed to make the modification in Clause No. 3.2.4 (I).

NOW THEREFORE, in consideration of the premises, mutual agreements, covenants and conditions set forth in this Addendum

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. The Parties agree as follows:

   The modified substituted and restated clause 3.2.4 (I) regarding FOB cost of coal will be as follows:

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. "HBA Price" shall not be higher than HBA coal price worked out on proportionate basis with reference to HBA Index. 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

GUJARAT URJA VIKAS NIGAM LIMITED

	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 the formula stated in Annexure-A of SPPA dated 1.03.2019 for billed GCV (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

The above modification to FOB Cost of coal under Clause 3.2.4 (I) shall be read as part and parcel of Third Supplemental PPA dated 01.03.2019 and shall be effective from the effective date of the Third Supplemental Agreement. It is clarified that all other terms and conditions of the Third Supplemental Agreement dated 01.03.2019 and First Addendum dated 23.01.2020 shall remain unchanged.

In Witness Whereof the Parties have executed this Second Addendum to the 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)**	FOR AND ON BEHALF OF **M/s Gujarat Urja Vikas Nigam Ltd.**
Authorised Signatory	Authorised Signatory K.P. JANGID General Manager (Com) Gujarat Urja Vikas Nigam Limited Race Course, BARODA-390007.
WITNESSES	**WITNESSES**
1. _____ ( )	1. _____ (Mitul Parikh)
2. _____ ( )	2. _____ (Tushar Rathod)

Date: 1st April 2020

ESSAR POWER

Essar Power Gujarat Limited

Essar House
11 K.K. Marg
Mahalaxmi,
Mumbai - 400 034
India

Corporate Identity Number
U74900GJ2007PLC050178

T +91 22 6660 1100
F +91 22 2354 0484
www.essar.com

To,

Shri K P Jangid
General Manager (Commercial)
Gujarat Urja Vikas Nigam Limited,
Sardar Patel Vidyut Bhavan,
Race Course, Vadodara – 390 007

Subject: Second Addendum to Third Supplemental Agreement dated 01.03.2019

Dear Sir,

We are in receipt of second addendum to the third supplemental agreement dated 01.03.2019 and we hereby agree to the terms and conditions laid in there.

However, due to the lockdown situation in the country during the COVID-19 we are unable to submit the duly notarized affidavit to you. Hence, we hereby submit the signed scanned copy of the affidavit and shall arrange to submit the duly notarized hard copy as soon as the lockdown situation is normalized.

Please accept the same and we request you to kindly expedite the SPPA approval from GERC at the earliest.

Thanking You,

Authorized Signatory

Kush

Annexure – 5

Annexure - 5

Sr. No	Documents
1	Details of Coal Cost
2	Coal Invoice (C&F basis)
3	Invoice for other charges
4	Certificate of Sampling and Analysis for Load Port & Discharge Port
5	Invoice for Port Handling Charges
6	Bill of Entry & Challan – Custom
7	Copy of Contract for Coal Procurement
8	Auditor Certificate for vessel wise Coal Running account / Transit loss
9	Auditor Certificate for vessel wise Coal Consumption & Cost of Coal during the month
10	Certified Energy Auditors' Certification of SHR & Auxiliary Consumption
11	Certificate of Production and Sales for mine in Indonesia
12	Bank Statements showing payment to Fuel Supplier and LC details
13	Certificate of Plant/ Station Head for Monthly Generation Report (MGR) and Coal Consumption
14	Certificate of Plant/ Station Head for Station Heat Rate (SHR) Performance Report
15	Certificate of Plant/ Station Head for Owner's / Affiliated mine Coal Consumption
16	HBA Index notified by Govt. of Indonesia
17	Letter of SBI regarding SBT TT selling rate
18	Letter regarding Anticipated Energy Charges

Government of Gujarat
Resolution No.: CGP-12-2018-166-K
Energy and Petrochemicals Department
Sachivalaya, Gandhinagar.
Dated 12 JUN 2020

Read:

(1) Energy and Petrochemicals Department's G.R. of even number dated 03.07.2018.
(2) Energy and Petrochemicals Department's G.R. of even number dated 01.12.2018.

Preamble:

The GR dated 1.12.2018 was issued for rehabilitation of the three imported coal based power projects located in Gujarat with whom GUVNL was having four PPAs i.e. one PPA with Coastal Gujarat Power Limited (CGPL)-1805 MW, one PPA with Essar Power Gujarat Limited (EPGL)-1000 MW and two PPAs with Adani Power (Mundra) Limited (APMuL) -1000 MW each. Out of four PPAs:-

- The supplemental PPA with M/s Coastal Gujarat Power Ltd. has not materialized so far,
- The Hon'ble Gujarat Electricity Regulatory Commission (GERC) vide order dated 27.04.2020 has approved the Supplemental PPA with EPGL with modifications.
- Whereas in case of APMuL, out of two PPAs, one PPA is sub-judice in Hon'ble Supreme Court in a curative petition filed by GUVNL and for other PPA, Petition has been filed by GUVNL for recall of approval of the Supplemental PPA due to violation of the fundamental premise and primary condition of GR dated 1.12.2018 that the past period losses has to be borne by the Project Developer.

Further, as per the market trend of coal in Indonesia and the prices reflected in indices of repute, the coal is traded at below HBA Index derived price in Indonesia. Thus, in the changed scenario, the ceiling of HBA Index derived price for FOB price of imported coal is not reflecting the true price of coal.

Thus, the G.R. dated 1.12.2018 is not achieving the objective and purpose for which it was resolved. Therefore it is necessary to rectify the situation in order to safeguard the public interest.

In view of the above, the matter was under active consideration of the Government.

Resolution:

In view of above mentioned subsequent developments and changed scenario, after careful consideration, Government of Gujarat has decided to revoke GR dated 1.12.2018 for all intent and purposes.

This issues with the concurrence of the Finance Department on this department's file of even number dated 10.06.2020.

By order and in the name of the Governor of Gujarat.

Shalini 12.06.2020

(Shalini Duhan)
Officer on Special Duty (Power)
Energy and Petrochemicals Department

Copy forwarded with complements to:-

1) The Principal Secretary to the Governor of Gujarat, Raj Bhavan, Gandhinagar.
2) The Chief Principal Secretary to the Hon'ble CM, SS-I, Gandhinagar.
3) The Principal Secretary to the 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 JS to the Chief Secretary, O/o of 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.

सत्यमेव जयते
गुजरात सरकार

Shalini Duhan, I.A.S.
Officer on Special Duty (Power)

No. CGP-12-2018-166-K
Government of Gujarat,
Energy and Petrochemicals Department,
Block No. 5, 5th Floor, Sardar Bhavan,
Phone No. 079-23250786
Fax No. 079-23250797
Sachivalaya, Gandhinagar.

Dated the 12 JUN 2020

To,
The Managing Director,
Gujarat Urja Vikas Nigam Limited,
Sardar Patel Vidyut Bhavan,
Race Course, Vadodara.

Subject:- Resolution of issue of imported coal based power projects located in Gujarat – Modification of provisions under Supplemental PPA for uniform implementation.

Ref:- (1) GUVNL's letter No GUVNL:CFM (Comm): 283 dated 21.04.2020

(2) GUVNL's letter No GUVNL:CFM (Comm): 287 dated 24.04.2020

(3) GUVNL's letter No GUVNL: 298 dated 02.05.2020

Madam,

I am directed to refer to the above cited subject and state that the issue related to uniform implementation of Supplemental PPAs with imported coal based power projects located in Gujarat State, has been carefully examined by State Government.

2. In this regard, after careful consideration, State Government has decided, as follows:

(i) To revoke the GR dated 1.12.2018 for all intent and purposes.

(ii) The matter of signing of supplemental PPA(s) with EPGL and CGPL shall be decided on case to case basis by the Government and as per terms & conditions decided hereafter:

a. Supplemental PPA with EPGL shall be signed with modified terms and conditions as per the GERC order dated 27.04.2020 and as per terms & conditions decided hereunder at para 2(iii) of this letter.

b. GUVNL shall submit the draft Supplemental PPA with CGPL separately for approval of State Government. All the modifications made in Supplemental PPA with M/s. EPGL shall be appropriately incorporated in the Supplemental PPA with M/s. CGPL and shall be submitted to the Government for approval before signing. However, in no case, supply of power to State of Gujarat by CGPL shall be at higher tariff than the tariff charged to other procurer states. Moreover, the supplemental PPA shall be effective from the date of order of CERC approving supplemental PPA. CGPL shall share 100%

of mining profit towards coal utilisation at power project. However, in case the coal from stipulated mines is not transferred or less transferred to the power plant 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 15 paise/unit. Further, fixed cost shall be reduced by 20 paise/unit to extent of normative availability of 80% towards lenders contribution as recommended in HPC report.

(iii) For the payment of actual fuel cost in energy charges, the FOB price of coal to be considered as lower of (i) Actual (ii) HBA Index derived price as per formula given by Indonesian Government for quality of coal consumed (iii) Index published by Argus / Coalindo as applicable for quality of coal consumed (iv) Index published by S&P Global Platts as applicable for quality of coal consumed (v) Lowest Index of the country of origin as applicable for quality of coal consumed.

The ceiling of HBA Index of 110 USD per Metric ton as recommended in HPC report is reduced to 90 USD per Metric ton.

Further, project developers shall procure coal through competitive bidding to ensure fair price discovery in line with market trend and also make available the invoices for the actual cost at which the imported coal is purchased from mining Company from the country of origin of coal.

For the payment of actual fuel cost in energy charges, other charges shall be allowed as under:

a. In case of CGPL – port and coal handling shall be actual or as per the quoted charges in the bid and escalated as per PPA, whichever is lower. The ocean freight & 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 PPA, if any.

b. Whereas in case of EPGL these charges shall be lower of actual or as per Annexure–I.

(iv) The above decision shall be effective notwithstanding any pending proceedings before the Hon'ble CERC or GERC.

(v) In the case of Adani, a recall petition filed by GUVNL before Hon'ble CERC seeking cancellation of the relief allowed under the earlier GR dated 01.12.2018 is pending. Accordingly, the decision taken here above in so far as Adani Power is concerned shall be without prejudice to the claims of GUVNL in the pending matter before the Hon'ble CERC. Pending the decision in the proceedings, as at present, the energy charges in respect of Adani will be considered on provisional basis, only as per the decision as mentioned above and parameters appropriately applied in line with the GERC order dated 27.04.2020 in case of EPGL and further Other Charges - Ocean Freight & Insurance and Port & Coal

Handling Charges as applicable to CGPL (since these charges are not separately quoted in the Bid by Adani). Such energy charges to Adani shall be further affected as;

a. After adjustment of 100% share of mining profit towards coal utilisation at power project. However, in case the coal from stipulated mines is not transferred or less transferred to the power plant 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/ unit;

b. Fixed cost shall be reduced by 20 paise/unit to extent of normative availability of 80% towards lenders contribution as recommended in HPC report.

The energy charge amount so paid shall be without compromising on the rights of GUVNL in the pending recall petition and subject to the adjustment as per the decision of CERC.

3. Accordingly, GUVNL is hereby directed to draft the Supplemental PPAs with EPGL & CGPL consistent with the above decision and the same shall be sent to State Government for approval on case to case basis.

4. Further, GUVNL is directed to submit above decision of Government of Gujarat through affidavit before CERC in pending proceeding in the recall petition.

5. In view of above, as directed, I am, to request you to take appropriate action in the matter under intimation to this Department.

Yours faithfully,

Shalini 12.06.2020

(Shalini Duhan)
Officer on Special Duty (Power)
Energy and Petrochemicals Department

Copy forwarded with compliments to:

1) The CPS to Hon. Chief Minister, Swarnim Sankul-1, Gandhinagar.
2) The PS to Hon. Chief Minister, Swarnim Sankul-1, Gandhinagar.
3) The PS to Hon. Dy. Chief Minister, Swarnim Sankul-1, Gandhinagar.
4) The PS to Hon. Minister (Energy), Swarnim Sankul-1, Gandhinagar.
5) The PS to Hon. Minister of State (Energy), SwarnimSankul-II, Gandhinagar.
6) The JS to Chief Secretary, Sachivalaya, Gandhinagar.
7) The ACS, Finance Department, Sachivalaya, Gandhinagar.
8) The Select File.

Signing of Supplemental PPA between Gujarat Urja Vikas Nigam Limited (GUVNL) and Essar Power Gujarat Ltd (EPGL).

Government of Gujarat
Resolution No. EPG-12-2019-15-K
Energy and Petrochemicals Department
Sachivalaya, Gandhinagar.
Dated - 5 JUN 2021

Read:

(1) Energy and Petrochemicals Department's GR No. CGP-12-2018-166-K dated 01.12.2018.
(2) Energy and Petrochemicals Department's GR No. CGP-12-2018-166-K dated 12.06.2020
(3) Energy and Petrochemicals Department's Letter No. CGP-12-2018-166-K dated 12.06.2020
(4) Gujarat Urja Vikas Nigam Limited's Letter No. GUVNL/GM (Comm.)/122 dated 30.01.2021.
(5) Gujarat Urja Vikas Nigam Limited's Letter No. GUVNL/GM (Comm.)/226 dated 15.02.2021.
(6) Gujarat Urja Vikas Nigam Limited's Letter No. GUVNL/GM (Comm.)/292 dated 01.03.2021.
(7) Gujarat Urja Vikas Nigam Limited's Letter No. GUVNL/GM (Comm.)/372 dated 22.03.2021.
(8) GAD's Letter No. MPB-10-2021(45)-KU dated 05.06.2021.

Preamble:

Vide letter referred to at Sr. No. (3) above, Govt. of Gujarat has issued Guidelines for signing of Supplemental Power Purchase Agreement (SPPA) with Essar Power Gujarat Limited (EPGL) & Coastal Gujarat Power Limited (CGPL) and terms thereof in accordance with the modifications suggested by Gujarat Electricity Regulatory Commission's order dated 27.04.2020 while approving the Supplemental PPA with EPGL.

As per approval of Cabinet, the Govt. has decided that the matter of signing SPPA with EPGL and CGPL to be decided on case to case basis by the Government. Further, it is also decided that SPPA with EPGL shall be signed with modified terms and conditions as per the GERC order dated 27.04.2020 and as decided in the Guidelines, as referred to at Sr. No. (3) above.

Vide GUVNL's letter referred to at Sr. No. (4) above, GUVNL has requested Government to convey decision with regard to sign SPPA in accordance with the modifications as per the GERC order and Govt. Guidelines and two modifications suggested by EPGL regarding (1) Effective date of SPPA being date on which GERC approves SPPA and (2) Offering untied capacity of 122 MW to GUVNL for tie up instead of 100 MW.

In view of the above, the matter was under active consideration of the Government.

Resolution:

After careful consideration of the proposal of GUVNL as narrated in the preamble, the Government of Gujarat is pleased to accord an approval to sign SPPA between GUVNL and EPGL in accordance with the GERC order dated 27.04.2020 and Govt. Guidelines dated 12.06.2020, with the following modifications:-

i. The Effective Date of Supplemental PPA (SPPA) with EPGL shall be from the date of approval of revised SPPA by GERC and the revised SPPA shall be signed incorporating the terms & conditions mentioned in Govt. of Gujarat Guidelines dated 12.06.2020 & GERC order dated 27.04.2020.

ii. In order to limit the impact of coal price on tariff in the interest of consumers, it was decided that HBA Index Ceiling Price under SPPA of USD 90/MT (HBA Indonesian Index) shall not be subject to further revision without prior approval of State Government and GERC.

iii. 122 MW untied capacity from EPGL project shall be tied up under SPPA by GUVNL.

This issues with the concurrence of the Finance Department on this Department's file of even number dated 02.06.2021.

By order and in the name of the Governor of Gujarat,

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

Copy to:-

1) The Principal Secretary to the Governor of Gujarat, Raj Bhavan, Gandhinagar.
2) The Chief Principal Secretary to the Hon'ble CM, SS-I, Gandhinagar.
3) The Principal Secretary to the Hon'ble CM, SS-I, Gandhinagar.
4) The ACS to Govt., Finance Department, Sachivalaya, Gandhinagar.
5) The Secretary, Gujarat Electricity Regulatory Commission, Gandhinagar.
6) The PPS to Hon'ble Deputy CM, SS-I, Gandhinagar.
7) The PS to Hon. Minister (Energy), SS-I, Gandhinagar.
8) The PS to Hon. Minister of State (Energy), SS-II, Gandhinagar.
9) The Joint Secretary to Chief Secretary, Sachivalaya, Gandhinagar.
10) The Managing Director, GUVNL, Vadodara... with a request to take appropriate action, in this regard.
11) The Deputy Secretary (Cabinet), General Administration Department, Sachivalaya, Gandhinagar.
12) Select File.

INDIA NON JUDICIAL

Government of Gujarat

Certificate of Stamp Duty

सत्यमेव जयते

Certificate No.	:	**IN-GJ82176611953423T**
Certificate Issued Date	:	15-Jul-2021 12:42 PM
Account Reference	:	CSCACC (GV)/ gjcsceg07/ GJ-BAZAH0633/ GJ-BA
Unique Doc. Reference	:	SUBIN-GJGJCSCEG07997324389449 88T
Purchased by	:	MONIL K PARIKH
Description of Document	:	Article 5(h) Agreement (not otherwise provided for)
Description	:	AGREEMENT
Consideration Price (Rs.)	:	300 (Three Hundred only)
First Party	:	ESSAR POWER GUJARAT LIMITED
Second Party	:	GUJARAT URJA VIKAS NIGAM LIMITED
Stamp Duty Paid By	:	ESSAR POWER GUJARAT LIMITED
Stamp Duty Amount(Rs.)	:	300 (Three Hundred only)

ESSAR POWER GUJARAT LTD Sitaya Jamnagar

CSC GUJARAT VADODARA GJZAHPAT0633U

GUJARAT URJA VIKAS NIGAM LIMITED VADODARA

LB 0021283201

Statutory Alert:

1. The authenticity of this Stamp certificate should be verified at 'www.shcilestamp.com' or using e-Stamp Mobile App of Stock Holding. Any discrepancy in the details on this Certificate and as available on the website / Mobile App renders it invalid
2. The onus of checking the legitimacy is on the users of the certificate
3. In case of any discrepancy please inform the Competent Authority

Supplemental Agreement

THIS **FOURTH SUPPLEMENTAL POWER PURCHASE AGREEMENT** hereinafter called the "**Supplemental Agreement**" is entered into at Vadodara on the 12th **day of August, Two Thousand And Twenty One** by and

BETWEEN

M/s Essar Power Gujarat Ltd. (EPGL), a Company incorporated under the Companies Act, 2013having 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**" or "**GUVNL**" 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, which was amended by Assignment Agreement dated 25.11.2008 and Supplemental Power Purchase Agreement dated 16.10.2009 (hereinafter collectively referred to as the "**PPA**"), for the sale and purchase of electricity in accordance with the terms and conditions contained therein;

B. The Government of Gujarat, vide Government Resolution No. CGP-12-2018-166-K dated 3.07.2018 constituted a High Power Committee to, inter alia, suggest sustainable solutions for facilitating the power generation projects located in the state of Gujarat and based on imported Indonesian coal as fuel including the Seller herein, on account of representations made by such power generation projects as to the viability of their continued operation after the decision of the Hon'ble Supreme Court in Energy Watchdog Vs Central Electricity Regulatory Commission (2017)14 SCC 80 that no relief is admissible to such projects under the terms of the PPA entered into by Procurer with such projects;

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C. The High Power Committee submitted its Report on 3.10.2018 making certain recommendations for resolving the said issues;

D. The Government of the State of Gujarat accepted the recommendations of the High Power Committee with certain modifications and, issued its policy directions contained in Resolution No. CGP-12-2018-166-K dated 1.12.2018 (Hereinafter referred to as "the Implementation Policy");

E. The implementation of the said policy directions contained in the Implementation Policy required, inter alia, carrying out certain amendments to the PPA, and obtaining necessary approvals for these amendments, from the Appropriate Commission;

F. Article 18.1 of the PPA enabled the Parties to amend the provisions of the PPA by written agreement however subject to the condition that any such supplemental agreement can be effective and valid only on the approval by the Appropriate Commission.

G. The Seller and the Procurer had then executed a Supplemental Agreement dated 01.03.2019 and further entered into First and Second Addendums to the Supplemental Agreement which were subject to the approval to the Supplemental Agreements by the Gujarat Electricity Regulatory Commission ('GERC') being the Appropriate Commission under the terms of the PPA.

H. GUVNL had filed a Petition before Hon'ble Gujarat Electricity Regulatory Commission being Petition No. 1807/2019 for the approval of the Supplemental Agreements.

I. As per the recommendations of High Powered Committee accepted by Govt. of Gujarat through G.R. dated 1.12.2018, one of the primary conditions for allowing fuel cost as a pass through w.e.f. 15.10.2018 is that the Seller shall bear all the losses for the past period, i.e. period prior to 15.10.2018

J. The Seller and Procurer had mutually agreed to modify the provision in the Supplemental Agreement dated 01.03.2019 related to FOB Cost of Coal under Clause 3.2.4 (I) and withdraw the maximum of 10% tolerance allowed above HBA Price and the same was placed before the Gujarat Electricity Regulatory Commission

K. The Gujarat Electricity Regulatory Commission vide order dated 27.04.2020 after hearing the parties and receiving representation from Consumer organisations gave a conditional approval to the Supplemental Agreement by

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directing the Parties to carry out certain modifications in the Supplemental Agreement as stated in the order dated 27.04.2020.

L. On 1.06.2020 EPGL filed an Appeal being Appeal No 108 of 2020 before the Hon'ble Appellate Tribunal for Electricity challenging the order dated 27.04.2020 passed by the Gujarat Electricity Regulatory Commission.

M. In the meanwhile the Government of Gujarat was of the considered view that the Govt. of Gujarat GR dated 1.12.2018 was not achieving the objective and purpose for which it was resolved and to further safeguard the public interest, Govt. of Gujarat vide GR dated 12.06.2020 has revoked earlier GR dated 1.12.2018 for all intent and purposes. Govt. of Gujarat has issued Guidelines dated 12.06.2020 for signing of Supplemental Agreement between Procurer (GUVNL) & Seller (EPGL) with modified terms and conditions as per GERC order dated 27.04.2020 and in accordance with terms stated in Guidelines dated 12.06.2020.

N. EPGL has agreed to withdraw the Appeal being Appeal No. 108 of 2020 filed before the Hon'ble Appellate Tribunal for Electricity and on 14.10.2020 filed an application before the Hon'ble Appellate Tribunal for Electricity for withdrawal of the Appeal.

O. GUVNL vide letter dated 11.11.2020 has forwarded the draft SPPA incorporating the modifications as per GERC order dated 27.04.2020 and in accordance with Govt. of Gujarat Guidelines dated 12.06.2020.

P. EPGL vide letter dated 25.01.2021 has conveyed it's consent to the draft SPPA and requested to incorporate (i) Effective Date of SPPA shall be from the date of approval of GERC (b) 122 MW untied capacity from EPGL project to be tied up by GUVNL under SPPA instead of 100 MW.

Q. GUVNL vide letter dated 30.01.2021 has forwarded the draft of SPPA to EPD, GoG modified in accordance with the directives as per GERC order dated 27.04.2020 and Govt. Guidelines dated 12.06.2020 and also intimated the request of EPGL.

R. Govt. of Gujarat vide GR dated 5.06.2021 has accorded approval for signing of SPPA between GUVNL and EPGL in accordance with the GERC order dated 27.04.2020 and Govt. Guidelines dated 12.06.2020 considering the effective date of SPPA to be the date of approval of revised SPPA by GERC and allowing to tie up 122 MW untied capacity from EPGL project under the SPPA.

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S. The Parties have agreed to modify the Supplemental Agreements earlier signed by them in due compliance of the conditions contained in the Order dated 27.04.2020 passed by the Gujarat Electricity Regulatory Commission and in accordance with the Govt. of Gujarat guidelines dated 12.06.2020 and Govt. of Gujarat GR dated 5.06.2021 and are therefore entering into this Supplemental Agreement in terms of Order dated 27.04.2020, Govt. of Gujarat guidelines dated 12.06.2020 and Govt. of Gujarat GR dated 5.06.2021.

T. In view of the modifications directed by the Hon'ble GERC order dated 27.04.2020, Govt. of Gujarat guidelines dated 12.06.2020, and Govt. of Gujarat GR dated 5.06.2021, this amended and modified Supplemental Agreement being entered into between the parties in substitution of the earlier signed Supplemental Agreement dated 01.03.2019, the said earlier Supplemental Agreement dated 01.03.2019 read with Addendum(s) thereto shall stand superseded for all intent and purpose and will no longer have any effect.

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 to the extent specifically 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 The following definitions shall be added:

(i) Article 1.1 of the PPA shall be amended as follows:

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"**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 mean the effective date of this SPPA which shall be from the date of approval of this revised SPPA by Hon'ble GERC.

(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 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, subject to condition provided at Clause 3.2.1

"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

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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 x LPPF / CVPF} x 100 /(100 – AUX)

Where:

AUX = Lower of (a) actual auxiliary energy consumption or (b) 6.50% as approved by Hon'ble Gujarat Electricity Regulatory Commission in Petition no. 1296/2013.

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 (a) actual Gross station heat rate or (b) 2262 Kcal per kWh as approved by Hon'ble Gujarat Electricity Regulatory Commission in Petition no. 1296/2013.

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.

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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 prudently incurred by Seller or the ceilings mentioned herein under and 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, Ceilings will be replaced with relevant lowest coal indices. Note: For determination of equivalent Coal Price for working out Landed Cost of imported coal for the Month: The lowest of following for the month shall be considered: (a) Actual FOB price of consignment (b) HBA price adjusted and worked as per formula stated in Annexure-A for billed GCV "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. The FOB price of coal shall always be subject to an upper ceiling limit of HBA Index of USD 90/MT for 6322 Kcal / Kg ascertained on a monthly basis, adjusted for quality of coal (GCV as billed) in the Project and as revised in accordance with this Supplemental Agreement (the "Ceiling HBA Price") at sub para (II) Specific Conditions herein below.

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	(c) Index notified by Argus / Coalindo applicable for the quality of coal consumed (d) Index notified by S&P Global Platts applicable for the quality of coal consumed (e) Lowest Index of the country of origin applicable for the quality of coal consumed Note: For the coal procured having the GCV as published by above indices, the notified index price will be directly considered. The coal index for the coal consumed other than for the coal in the pre-determined GCV range as notified by above indices shall be arrived as follows: (i) For the coal consumed having GCV within range of ± 200 Kcal / Kg from GCV of above notified index, the rate shall be worked out on proportionate basis considering the nearest notified monthly index and (ii) For the coal consumed other than above category, the rate shall be worked out considering weighted average price of the two notified monthly index within which the GCV of consumed coal is falling to arrive at the equivalent coal price for the GCV of consumed coal.
Transportation and other costs	Ocean Freight& Insurance The ocean freight & 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) 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)

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GUJARAT URJA VIKAS NIGAM LIMITED VADODARA

(II) Specific Conditions

(a) The Ceiling Price for HBA Index will be 90 USD / MT. In order to limit the impact of coal price on tariff in the interest of consumers, the HBA Index Ceiling Price of USD 90 / MT (HBA Indonesia Index) shall not be subject to further revision without prior approval of State Government and GERC.

(b) Seller agrees that in case HBA Index of Indonesian coal exceeds Ceiling Price 90 USD/MT or Revised Ceiling Price as per para (a) above, Seller shall bear the differential cost and continue to supply power under the PPA & Supplemental Agreement.

(c) Seller shall procure imported coal only through international competitive bidding process for procurement on long term / medium term basis to ensure the availability of coal. Seller shall seek approval of Procurer for Tender document and price discovered under competitive bidding process shall also be approved by Procurer and Hon'ble Gujarat Electricity Regulatory Commission. In absence of above, the procurement of coal shall not qualify for payment of energy charges under Supplemental PPA.

(d) Seller shall be required to make available the details and documents related to procurement of coal from the mining sources.

(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 which shall be considered as ceiling for payment. 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.

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2. Invoices of (i) fuel supplier i.e. invoice for the actual cost at which the imported coal is purchased from mining company from the country of origin of coal (ii) ocean freight and insurance (iii) port / fuel handling charges..

3. Copy of Bill of Entry including Bill of lading and all supporting documents. Bank challans regarding payment of cess, taxes & duties and Letter of Credit / payment details towards purchase of fuel.

4. GCV certificate of loading and unloading port by independent agency.

5. Independent Energy Auditor's Certificate for actual parameters GHR & Auxiliary consumption for the month.

6. Other documents as stated at Annexure-5 of Gujarat Electricity Regulatory Commission order dated 27.04.2020.

The applicability of Revised Tariff under this Supplemental PPA shall be from Amendment Effective Date subject to condition stated at Clause 3.2.1 above.

(iv) 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. Further, the Delay Payment Surcharge shall continue to apply as per provisions of PPA dated 26.02.2007.

(v) Further, the Seller shall be entitled to payment towards approved Change in Law for the Energy Charge only till the Effective Date of this SPPA. Thereafter the Seller shall not be entitled to the approved Change in Law for Energy Charges. Any change in law taking place in future after this Supplemental Agreement, has to be submitted by the Seller to the Hon'ble Gujarat Electricity Regulatory Commission for approval.

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 any 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:

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(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

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 however agreed that for the purposes of determining the incentives under the PPA, the availability shall be considered at 90% instead of 85% as mentioned in the PPA dated 26.02.2007. It is further clarified that the 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**

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3.4.1 The Seller is having 122 MW untied capacity (hereinafter referred to as **"Additional Contracted Capacity"**) from Units 1 and 2 (each of 600MW) 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 execution of this Supplemental Agreement to the 25th Anniversary of the Commercial Operation Date of Unit No. 2 or at the option of the purchaser to the extended period of the PPA in terms of this Supplemental Agreement in terms of Clause 3.5 herein 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 3.2.3 and 3.2.4 of this Supplemental Agreement.

"Capacity Charge for Additional Contracted Capacity" shall be Rs.0.8597/Kwh or as worked out on the date of approval of this SPPA by GERC being the levelized Capacity Charge for the balance Term of PPA dated 26.02.2007.

For the avoidance of doubt, the Capacity Charge Limited to Additional Contracted Capacity only shall not be subject to discount of Rs 0.20/Kwh as specified in Clause 3.2.2 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 based on actual availability of coal at plant for which Seller shall furnish coal stock position on daily basis to Procurer. SLDC, Gujarat shall allocate such Availability on proportionate basis between the Contracted Capacity of 1000 MW, Additional Contracted Capacity of 122 MW. 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.

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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 with this Supplemental Agreement.

3.4.5 For the Additional Contracted Capacity, subject to the above all other terms & conditions shall be applicable as per PPA dated 26.02.2007 mutatis mutandis.

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 and approval of Appropriate Regulatory Commission (Gujarat Electricity Regulatory Commission).

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 Gujarat Electricity Regulatory Commission in accordance with the applicable Gujarat Electricity Regulatory Commission Tariff Regulations prevailing then; and

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"**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 x LPPF / CVPF} x 100 /(100 – AUX)

Where:

AUX = Lower of (a) actual auxiliary consumption or (b) 6.50% as approved by Hon'ble Gujarat Electricity Regulatory Commission in Petition no. 1296/2013.

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 (a) actual Gross station heat rate or (b) 2262 Kcal per kWh as approved by Hon'ble Gujarat Electricity Regulatory Commission in Petition no. 1296/2013.

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.

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 3.2.2 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

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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.

3.8 Seller shall bear the losses for prior period i.e. before implementation of this Supplemental Agreement. Further, Seller shall not raise any claim / dispute with regard to past period items before any Forum / Court in the future.

3.9 Seller shall unconditionally withdraw all pending cases / litigations / waive claims against GUVNL (other than Change in Law in India) before various Forums. Only the cases / litigations filed by GUVNL which are under adjudication shall be considered upon decision by appropriate forum / Court to extent of GUVNL's prayer in the matter.

3.10 Any change in the ownership of the Seller shall only be done with the prior intimation of any such move and after approval of the Government of Gujarat and Hon'ble Gujarat Electricity Regulatory Commission.

4. Notwithstanding anything contained herein above the parties agree that they will be bound by the stipulations, conditions and directions contained in the Order dated 27.04.2020 passed by the Hon'ble Gujarat Electricity Regulatory Commission , the Govt. of Gujarat guidelines dated 12.06.2020 and the Govt. of Gujarat GR dated 05.06.2021, and the contents therein shall be read as superseding and binding on the parties in case of any inconsistency between the terms of this Supplemental Agreement and the said order dated 27.04.2020 read with Govt. of Gujarat guidelines dated 12.06.2020 and the Govt. of Gujarat GR dated 05.06.2021 including if there is any omission to include any of the express or implied terms of the said Order dated

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27.04.2020 or Govt. of Gujarat guidelines dated 12.06.2020 or the Govt. of Gujarat GR dated 05.06.2021.

5. This Supplemental Agreement shall be effective subject to the approval by Gujarat Electricity Regulatory Commission.

6. Subject to the above, the terms of this Supplemental Agreement shall be read as an integral part of the PPA dated 26.02.2007 entered into between the parties.

In Witness Whereof the Parties have executed this Forth 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)** FOR ESSAR POWER GUJARAT LIMITED AUTHORISED SIGNATORY Authorised Signatory Mr. Sandip Sinha (Sr. Vice-President) **WITNESSES** 1. (PRATEEK GARG) 2. (Rahul Singh)	FOR AND ON BEHALF OF **M/s Gujarat Urja Vikas Nigam Ltd.** K.P. JANGID Authorised Signatory General Manager (Com) Gujarat Urja Vikas Nigam Limited Race Course, BARODA-390007. **WITNESSES** 1. (SANJAY MATHUR) 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**

HPB Marker (i) = (HBA * K (i) * A (i)) – (B (i) + 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 forMarker No. Coal Benchmark Price 8**

HPB Marker (i) = (HBA * K (i) * A (i)) – (B (i) + 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**

"HPB (j) = {(HPB Price Marker (i) + (B (i) + U (i))) * (K (j) / K (i)) *[(100 - Water Content (j)) / (100 - Water Content (i)] *[(100 - 8) / (100 - 8)]} - (B (j) + 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

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4. **Formulae for Price of Other Coal Benchmark No. 67 - 75 (Low Calorie Coal)**

a. **If TM <40%**

HPB (j) = {(HPB Price Marker (i) + (B (i) + U (i))) * (K (j) / K (i)) *[(100 - Water Content (j)) / (100 - Water Content (i)] *[(100 - 8 / FKA (i)) / (100 - 8 / FKA (j))]} - (B (j) + 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%**

HPB (j) = {(HPB Price Marker (i) + (B (i) + U (i))) * (K (j) / K (i)) *[(100 - Water Content (j)) / (100 - Water Content (i)] *[(100 - 8 / FKA (i)) / (100 - 8 / 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.

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HARGA BATUBARA ACUAN (HBA) & HARGA PATOKAN BATUBARA (HPB)

BULAN JANUARI 2017

HBA

HBA (US$/Ton)		
Kualitas: CV = 6322 <cal/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)	
1	Gunung Bayan	7.000	10,00	0,00	5,00	92.60
2	Prima Coal	6.700	12,00	0,60	5,00	92.21
3	Pinang 6150	6.200	14,50	0,60	5,50	83.19
4	Indominco IM_East	5.700	17,50	1,63	4,80	70.48
5	Melawar 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
8	Ecocoal	4.200	35,00	0,18	3,90	46.39

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)	
9	Gunung Bayan Pratama	7.000	8,00	0,00	10,00	88.53
10	Marcoda Thermal Coal	6.600	13,00	0,50	10,00	90.29
11	Trubaindo HGV HS	6.553	12,00	1,69	4,21	86.25
12	Medco bara 6500	6.500	10,00	3,28	5,38	79.06
13	Trubaindo HCV LS	6.423	11,50	0,71	4,26	88.73
14	AGM Wanuba Coal	5.913	23,00	0,24	4,00	67.26
15	Pinang 6000 NAR	6.300	14,00	0,60	5,50	84.93
16	Arutmin Satui 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	TA 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	Trubaindo MCV_LS	6.143	14,00	0,76	5,20	82.40
26	SKB Coal	6.136	9,00	2,20	17,00	76.30
27	Baramarta Coal	6.112	8,50	0,95	13,00	82.21
28	Arutmin A6100	6.100	11,50	1,00	12,50	80.24
29	Insani Coal	6.050	15,00	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	16,02	2,20	14,91	75.44
33	Pipang 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 Gunay Coal	4.400	35,00	0,50	4,96	47.62
66	IBP 4400	4.400	30,00	0,50	7,00	50.06
67	IBP 4200	4.200	32,00	0,50	6,00	46.20
68	PJC Coal	4.200	33,00	1,75	6,00	40.56
69	BIB 4000	4.000	35,00	0,50	6,00	40.55
70	Borneo BIB	3.800	41,00	0,40	5,00	32.23
71	AGM Warutas Coal	3.800	40,00	0,15	5,28	32.81
72	PKN 3500	3.520	43,40	0,15	3,40	28.58
73	BMPalenco32	3.200	48,00	0,50	5,00	25.77
74	LIM 3010	3.010	45,50	0,60	5,30	22.59
75	LIM 3000	2.995	50,10	0,60	5,30	21.31

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FORMULA HARGA PATOKAN BATUBARA *STEAM (THERMAL)*

1. Harga Batubara Acuan (dalam kesetaraan nilai kalor 6322 kkal/kg GAR)
   HBA = 25% ICI1 + 25% Platts59 + 25% NEX + 25% GC [US$/ton]

Di mana:
- HBA = Harga Batubara Acuan [US$/ton]
- ICI = Indonesia Coal Index [US$/ton]
- NEX = New Castle Export Index [US$/ton]
- GC = New Castle Global Coal Index [US$/ton]

Konversi nilai kalor batubara dari kondisi ADB ke GAR:
$K_{GAR} = K_{ADB} * (100-TM)/(100-IM)$

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

$HPB\ Marker_{(i)} = (HBA * K_{(i)} * A_{(i)}) - (B_{(i)} - U_{(i)})$ [US$/ton]

Di mana:
- HBP Marker (i) = HPB dari 7 batubara price marker [US$/ton]
- $K_{(i)}$ = Nilai Kalor Batubara (i) / 6322 [fraksi]
- $A_{(i)}$ = (100 - Kandungan Air Batubara (i)) / (100 – 8) [fraksi]
- $B_{(i)}$ = (Kandungan Belerang Batubara (i) – 0,8) * 4 [US$/ton]
- $U_{(i)}$ = (Kandungan Abu Batubara (i) – 15) * 0,4 [US$/ton]
- (i) = price marker 1 – 7

3. Harga Patokan Batubara Marker No. 8

$HPB\ Marker_{(i)} = (HBA * K_{(i)} * A_{(i)}) - (B_{(i)} - U_{(i)})$ [US$/ton]

Di mana:
- HBP Marker (i) = HPB batubara price marker 8 [US$/ton]
- $K_{(i)}$ = Nilai Kalor Batubara (i) / 6322 [fraksi]
- $A_{(i)}$ = (100 - Kandungan Air Batubara (i)) / (100 – 8/$FKA_{(i)}$) [fraksi]
- $FKA_{(i)}$ = ((((100-8)/(100 – Kandungan Air Batubara(i)))* Kandungan Air Batubara(i))+(100 – 8))/100 [persen]
- $B_{(i)}$ = (Kandungan Belerang Batubara (i) – 0,8) * 4 [US$/ton]
- $U_{(i)}$ = (Kandungan Abu Batubara (i) – 15) * 0,4 [US$/ton]
- (i) = price marker 8

4. Harga Patokan Batubara Lain No. 9 – 65

$HPB_{(j)} = \{(HPB\ Price\ Marker_{(i)} + (B_{(i)} + U_{(i)})) * (K_{(j)} / K_{(i)}) * [(100 - Kandungan\ Air_{(j)})/(100 - Kandungan\ Air_{(i)})] * [(100 - 8)/(100 - 8)]\} - (B_{(j)} + U_{(j)})$ [US$/ton]

Di mana:
- $HPB_{(j)}$ = HPB batubara selain batubara Price Marker [US$/ton]
- $B_{(i)}$ = (Kandungan Belerang Batubara (i) – 0,8) * 4 [US$/ton]
- $U_{(i)}$ = (Kandungan Abu Batubara (i) – 15) * 0,4 [US$/ton]
- $B_{(j)}$ = (Kandungan Belerang Batubara (j) – 0,8) * 4 [US$/ton]

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- $U_{(j)}$ = [Kandungan Abu Batubara (j) – 15] * 0,4 [US$/ton]
- $K_{(j)} / K_{(i)}$ = Nilai Kalor Batubara (j) / Nilai Kalor Batubara (i) [fraksi]
- (i) = price marker 1 – 7
- (j) = batubara lain 9 – 66

5. Harga Patokan Batubara Lain No. 67 – 75 (Batubara Kalor Rendah)

– Bila TM <40%

$$HPB_{(j)} = \{(HPB\ Price\ Marker_{(i)} + (B_{(i)} + U_{(i)})] * [K_{(j)} / K_{(i)}) * [(100 - Kandungan\ Air_{(j)})/(100 - Kandungan\ Air_{(i)}]^* [(100 - 8/FKA_{(j)})/(100 - 8/FKA_{(i)})] - (B_{(j)} + U_{(j)}] \quad [US\$/ton]$$

Di mana:

- $HPB_{(j)}$ = HPB batubara selain batubara Price Marker [US$/ton]
- $HPB\ Marker_{(i)}$ = HPB batubara price marker (i) [US$/ton]
- $B_{(i)}$ = [Kandungan Belerang Batubara (i) – 0,8] * 4 [US$/ton]
- $U_{(i)}$ = [Kandungan Abu Batubara (i) – 15] * 0,4 [US$/ton]
- $B_{(j)}$ = [Kandungan Belerang Batubara (j) – 0,8] * 4 [US$/ton]
- $U_{(j)}$ = [Kandungan Abu Batubara (j) – 15] * 0,4 [US$/ton]
- $FKA_{(j)}$ = [((100-Kandungan Air Batubara)/(100 – Kandungan Air $Batubara_{(j)}$))*Kandungan Air $Batubara_{(j)}$] + [100 – Kandungan Air Batubara)/100] [persen]
- $K_{(j)} / K_{(i)}$ = Nilai Kalor Batubara (j) / Nilai Kalor Batubara (i) [fraksi]
- (i) = price marker 8
- (j) = batubara lain 67 – 69

– Bila TM ≥ 40%

$$HPB_{(j)} = \{(HPB\ Price\ Marker_{(i)} + (B_{(i)} + U_{(i)})] * [K_{(j)} / K_{(i)}) * [(100 - Kandungan\ Air_{(j)})/(100 - Kandungan\ Air_{(i)}]^* [(100 - 8/FKA_{(j)})/(100 - 8/FKA_{(i)})] \quad [US\$/ton]$$

Di mana:

- $HPB_{(j)}$ = HPB batubara selain batubara Price Marker [US$/ton]
- $HPB\ Marker_{(i)}$ = HPB batubara price marker (i) [US$/ton]
- $FKA_{(j)}$ = [((100-Kandungan Air Batubara)/(100 – Kandungan Air $Batubara_{(j)}$))*Kandungan Air $Batubara_{(j)}$] + [100 – Kandungan Air Batubara)/100] [persen]
- $K_{(j)} / K_{(i)}$ = Nilai Kalor Batubara (j) / Nilai Kalor Batubara (i) [fraksi]
- (i) = price marker 8
- (j) = batubara lain 70 – 75

Ketentuan:

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.

ESSAR POWER GUJARAT LTD. Salaya Jamnagar

GUJARAT URJA VIKAS NIGAM LIMITED VADODARA

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	

ESSAR POWER GUJARAT LTD. Salaya Jamnagar

GUJARAT URJA VIKAS NIGAM LIMITED VADODARA

Table II:

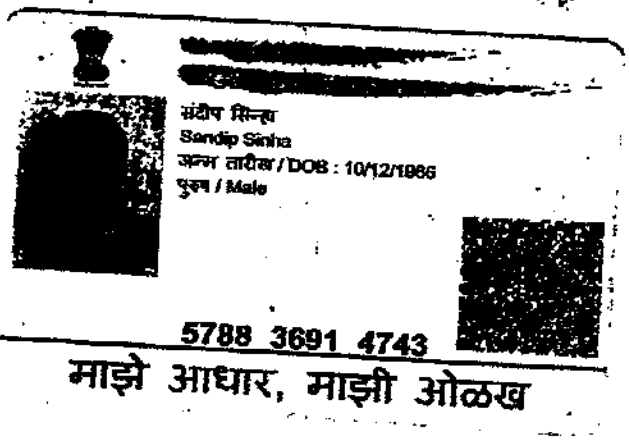
Contract Year	Commencement Date of Contract Year	Quoted Non Escalable Overseas Transportation Charges	Quoted Escalable Overseas Transportation Charges
		USD/MT	USD/MT
(a)	(b)	(c)	(d)
7	Oct-18	7.0845	3.1122
8	01-Apr-19	7.0597	To be escalated as per CERC index for Transportation Charges
9	01-Apr-20	7.0597	
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.

ESSAR POWER GUJARAT LTD. Satya Jamnagar

GUJARAT URJA VIKAS NIGAM LIMITED VADODARA



संदीप सिन्हा
Sandip Sinha
जन्म तारीख / DOB : 10/12/1986
पुरुष / Male

5788 3691 4743

माझे आधार, माझी ओळख

भारत सरकार
Government of India

पत्ता
संदीप सिन्हा, 1802, विस्टा 2, दा अड्रेस, एल.बी.एस मार्ग, आर सिटी माल समीप, घाटकोपर वेस्ट, मुंबई, घाटकोपर वेस्ट, महाराष्ट्र, 400086

Address:
C/O, Sandip Sinha, 1802, Vista 2, The Address, L.b.s Marg, Opp. R City Mall, Ghatkopar West, Mumbai, Ghatkopar West, Maharashtra, 400086

5788 3691 4743

1947

www.uidai.gov.in

ESSAR POWER

CERTIFIED TRUE COPY OF CIRCULAR RESOLUTION PASSED BY THE BOARD OF DIRECTORS OF ESSAR POWER GUJARAT LIMITED ON JULY 9, 2021

Essar Power Gujarat Limited

Essar House
11 K.K. Marg
Mahalaxmi,
Mumbai – 400 034
India

Corporate Identity Number
U74900GJ2007PLC066273

T +91 22 6660 1100
F +91 22 2354 0450
www.essar.com

Execution of Supplemental Power Purchase Agreement and authority thereof

"RESOLVED THAT approval of the Board of Directors of the Company be and is hereby accorded to enter into an agreement supplemental to the Power Purchase Agreement (PPA) dated February 26, 2007 as amended by Assignment Agreement dated November 25, 2008 and Supplemental Power Purchase Agreement dated October 16, 2009 with Gujarat Urja Vikas Nigam Limited for sale and purchase of power on terms and conditions as contained therein, the draft of which was circulated to the Board of Directors.

RESOLVED FURTHER THAT any of the Directors of the Company and Mr. Arun Kumar, Chief Executive Officer of the Company or Mr. Vinod Jain, Chief Financial Officer of the Company and/or Mr. Kush, Mr. Bhaven Bhatt, Directors of the Company, Mr. Sandip Sinha, Mr. Prateek Garg, Mr. Nilesh Dave, Mrs. Rachana Luharuka and Mr. Manohar Kanade, Authorised Signatories of the Company, be and are hereby severally authorized to sign, execute, amend, alter and finalize the agreement and such other document, declaration, indemnities, undertaking as may be required from time to time, to accept such modifications or amendments thereto as may be mutually agreed upon, to execute amendments, supplemental deeds, instruments, and other writings, incidental to the said supplemental agreement and to represent the Company before the appropriate authority and to do such further acts, deeds, things as may be necessary for above purpose.

RESOLVED FURTHER THAT the Common Seal of the Company shall be affixed on such documents as may be required in presence of any of the aforesaid authorized persons who shall sign the same in token thereof;

RESOLVED FURTHER THAT any one of the Directors or KMP of the Company, be and are hereby severally authorized to provide a certified true copy of this resolution."

For Essar Power Gujarat Limited

Prakash Khedekar
Company Secretary
Mem No.: A15214

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

COURT-II

(VACATION BENCH)

IA NO. 924 OF 2021 IN
APPEAL NO. 108 OF 2020 &
IA NOS. 570, 645, 1261, 838 & 1419 OF 2020

Dated: 25th June, 2021

Present: **Hon'ble Mr. Ravindra Kumar Verma, Technical Member**
Hon'ble Mr. Justice R.K. Gauba, Judicial Member

In the matter of:

Essar Power Gujarat Ltd. .... **Appellant (s)**

Vs.

Gujarat Electricity Regulatory Commission & Anr. .... **Respondent(s)**

Counsel for the Appellant (s) : Mr. Mahesh Agarwal
Mr. Nishant Rao

Counsel for the Respondent (s) : Mr. Arijit Maitra for R-1

Ms. Ranjitha Ramachandran
Ms. Poorva Saigal for R-2

ORDER

This matter has been taken up by video conference mode on account of pandemic conditions, it being not advisable to hold physical hearing.

IA NO. 924 OF 2021

[For Urgent Listing]

The matter having been listed before us, the application filed by the appellant having served its purpose stands disposed of.

IA NO. 1419 OF 2020

[For Withdrawal of Appeal]

The appellant has filed an appeal, being no. 108 of 2020, and have now filed an application bearing IA no. 1419 of 2020 to seek permission of this Tribunal to withdraw this appeal (A.No. 108 of 2020). In this appeal, the appellant has submitted that:

(a) Subsequent to the filing of the present appeal, Government of Gujarat by way of Government Resolution dated 12.06.2020 (the "2020 GR") has revoked the earlier Government Resolution dated 01.02.2018 based on which the Supplemental PPA dated 01.03.2019 was entered into. The Government of Gujarat, in its letter dated 12.06.2020 accompanying the 2020 GR has directed that a

Supplemental PPA with EPGL shall be signed with modified terms and conditions as per the Ld. Commission's Order dated 27.04.2020 and as per terms and conditions laid down in the said letter.

(b) The appellant is in the process of entering into a new Supplemental PPA with Gujarat Urja Vikas Nigam Limited ("GUVNL"), respondent no. 2 herein, as per the 2020 GR.

In view of these developments, the issue raised in the appeal do not exist for adjudication and, therefore, the appeal needs to be withdrawn. Accordingly, the appellant has sought permission of this Tribunal to withdraw this appeal.

The application is allowed and disposed of accordingly.

APPEAL NO. 108 OF 2020

The appeal is dismissed as withdrawn. All other pending applications are rendered infructuous and disposed of accordingly.

Dusti is permitted.

No order as to costs.

(Justice R.K. Gauba)
Judicial Member

(Ravindra Kumar Verma)
Technical Member

vt

ESSAR
POWER

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Gujarat, India.
T +91 2833 663 030
F +91 2833 663 382
www.essar.com

Ref : EPGL/GUVNL/210714

Date: 14 July 2021

To,
General Manager(Commercial),
Gujarat Urja Vikas Nigam Limited (GUVNL),
Sardar Patel Vidyut Bhavan,
Racecourse, Vadodara-390007.

Kind Attn: Mr KPJangid

Sub: Signing of Supplemental PPA for amendment to PPA dated 26.02.2007

Ref:

(i) GUVNL letter to EPGL on the subject matter dated 14.06.2021
(ii) EPGL letter to GUVNL dated 17.06.2021
(iii) EPGL letter to GUVNL dated 21.06.2021

Sir,

Kindly refer to our letter dated 21.06.2021 wherein we had informed about our request at Hon'ble APTEL for urgent hearing in the matter for withdrawal of appeal no 108 of 2020 and 90 of .

We would like to inform that the appeal no 108 of 2020 and appeal no 90 of 2016 were listed and has been disposed off by the the Hon'ble APTEL on 25th June 2021. As compliance to the SPPA requirement the matter stands withdrawn.

Further, we request for expeditious execution of the duly approved SPPA. As SPPA once executed will need to be approved by GERC before it becomes effective and EPGL will only be able to start supply of power to GUVNL thereafter. Execution of SPPA is also critical for completion of debt restructuring process of EPGL and very critical for its ongoing operations.

We therefore urge you to kindly nominate a date for execution of SPPA at the earliest.

Thanking you,

Yours truly,

For **Essar Power Gujarat Limited,**

Ashish Mehta

(Authorized Signatory)

Encl.

1. APTEL Order in appeal 108 of 2020 dated 25/06/2021
2. APTEL Order in appeal 90 of 2016 dated 25/06/2021

BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION
GANDHINAGAR

Petition No. 2004 of 2021.

In the matter of:
Petition under Sections 86 (1)(b) and 86(1)(f) of the Electricity Act, 2003 for approval of amendments to the PPA between Gujarat Urja Vikas Nigam Ltd. (GUVNL) and Essar Power Gujarat Ltd. (EPGL) by way of Supplemental PPA dated 12.08.2021 pursuant to the Order dated 27.04.2020 of the Commission and Government of Gujarat GR and Letter dated 12.06.2020 and Government of Gujarat GR dated 05.06.2021.

Petitioner	:	Gujarat Urja Vikas Nigam Limited Sardar Patel Vidyut Bhawan, Race Course, Vadodara – 390007.
Represented by	:	Mr. Sanjay Mathur, Mr. K. N. Chudasama and Mr. Prerak Khamar
		V/s
Respondent No. 1	:	Essar Power Gujarat Ltd., 44 KM Milestone, Jamnagar - Okha Highway, P.O. Box No. 07, Khambhalia P.O., Dist. Devbhumi Dwarka - 361 305.
Represented by	:	Sr. Adv. Mr. Mihir Thakore alongwith Adv. Mr. Raheel Patel & Adv. Ms. Aditi Sharma and Mr. Bhaven Bhatt and Mr. P. D. Naik
Respondent No. 2	:	Energy Watchdog, B 5/51, Paschim Vihar, New Delhi.
Represented by	:	Nobody was present
Respondent No. 3	:	Prayas (Energy Group), Unit III A&B, Devgiri, Joshi Railway Museum Lane,

Kothurd Industrial Area, Kothurd, Pune - 411 038

Represented by	:	Nobody was present
Objector	:	Utility Users Welfare Association, Laxmi Ginning Compound, Opp. Union Co. Op. Bank Ltd., Naroda, Ahmedabad – 382330.
Represented by	:	Nobody was present

CORAM:

Mehul M. Gandhi, Member
S. R. Pandey, Member

Date: 20/11/2021

ORDER

1. The present Petition is filed by the Petitioner, Gujarat Urja Vikas Nigam Ltd. under Section 86 (1) (b) and 86 (1) (f) of the Electricity Act, 2003 for approval of amendments to the PPA between the Petitioner and the Respondent No. 1 Essar Power Gujarat Ltd. (EPGL) by way of Supplemental PPA dated 12.08.2021 pursuant to the Order dated 27.04.2020 of the Commission and Government of Gujarat GR No. CGP-12-2018-1666-K and letter both dated 12.06.2020 and Government of Gujarat GR No. EPG-12-2019-15-K dated 05.06.2021 seeking following prayers:

   (i) To allow the present Petition and take on record Government of Gujarat GR and letter dated 12.06.2020 and Government of Gujarat G.R. dated 05.06.2021.

(ii) To approve the modified Supplemental PPA dated 12.08.2021 to amendment in the PPA dated 26.02.2007 duly executed between the Petitioner and the Respondent No. 1.

2. Facts mentioned in the Petition are detailed below:

2.1. The Petition has been filed to place on record the revised Supplemental Power Purchase Agreement (SPPA) dated 12.08.2021 executed between the Petitioner and the Respondent No.1, M/s. Essar Power Gujarat Ltd. in pursuance to Order dated 27.04.2020 passed by the Commission in Petition No. 1807 of 2019 and the Government of Gujarat Resolution No. CGP-12-2018-166-K dated 12.06.2020 and letter No. CGP-12-2018-166-K dated 12.06.2020 and G.R. No. EPG-12-2019-15-K dated 05.06.2021.

2.2. The Petitioner had earlier filed Petition No. 1807 of 2019 for approval of Supplemental PPA dated 01.03.2019 with the Respondent No. 1 M/s. Essar Power Gujarat Ltd. for amendment in PPA dated 26.02.2007. The proposed amendments in the aforesaid Supplemental PPA were pursuant to Government of Gujarat Policy/Directive vide G.R. No. CGP-12-2018-166-K dated 01.12.2018.

2.3. The Commission passed Order dated 27.04.2020 in the aforesaid Petition No. 1807 of 2019 and approved modification/amendment in the Supplemental PPA with certain modifications as discussed in that Order more particularly in para 23 and 24 and which are summarized in para 25 of the said Order.

2.4. The Commission in the said Order directed the parties to the PPA to incorporate the following modifications in the Supplemental PPA dated 01.03.2019, which are reproduced as under:

(a). Clause 3.1 (II) - Effective date - The effective date of the SPPA is 15.10.2018. However, the revised energy charges as per SPPA payable from 20.08.2019 or from the date the coal is directly

procured by EPGL from Indonesia, whichever is later. For the period prior to 20.08.2019, rates of energy charges shall be as per the PPA dated 26.02.2007 and change in law payment as approved by GERC.

(b). Clause 3.2.3 & 3.5.3 – Station Heat Rate has been reduced to 2262 kcal/kWh from 2333 kcal/ kwh.

(c). Clause 3.2.3 – Deletion of the provision related to operation parameters of Adani Power Limited (viz. Auxiliary Consumption and Gross Heat Rate) considered for computation of Energy Charge Rate to be aligned as per approval by Central Commission in Petition No. 374/MP/2018.

(d). Clause 3.2.4 (I) -Withdrawal of tolerance of 10% above HBA derived price while working out FOB cost of coal.

(e). Clause 3.2.4 (I) – Removal of Transit Loss (upto 0.2%) and Other Charges (upto 3% of CIF).

(f). Clause 3.2.4 (II) (a) - HBA Index Ceiling Price reduced to USD 90 per MT from USD 110 per MT. Review of ceiling only with approval of the Commission.

(g). Clause 3.2.4 (II) - Adhering to International Competitive Bidding Process for coal tie up at best available rates and adoption of best / lower of Indices for the country of origin of coal for working out energy charge and approval of the Commission for the price discovered.

(h). Clause 3.2.5 - Incentive for plant availability above 90% instead of 85%.

(i). Clause 3.5 - Extension of the terms of PPA shall be with approval of the Commission.

In addition to above, the Commission had also approved the following clauses filed by the Petitioner by way of addendum to the SPPA dated 01.03.2019.

(a). Clause - 3.8 & 3.9 - Absorption of past period losses by Project Developers.

(b). Clause - 3.9 - Withdrawal of all pending claims and litigations by the Respondent No. 1 towards past period.

2.5. In para 25 of the said Order, the Commission directed the parties that any change in the ownership of the Respondent Power plant shall be done with prior intimation to such move and approval of the Government of Gujarat and this Commission.

2.6. Being aggrieved by the above Order dated 27.04.2020 of the Commission in Petition No. 1807 of 2019, the Respondent No. 1 had filed Appeal No. 108 of 2020 before the Hon'ble APTEL and the same came to be withdrawn by the Respondent No. 1.

2.7. Subsequent to the said Order dated 27.04.2020 of the Commission, the Energy and Petrochemicals Department, Government of Gujarat vide its letter dated 12.06.2020 conveyed that the issue related to uniform implementation of the Supplemental PPAs with imported coal based power projects located in Gujarat has been examined by Government of Gujarat vide G.R. No. CGP-12-2018-166-K dated 12.06.2020 and has decided that the earlier G.R. dated 01.12.2018 stands revoked for all intents and purposes since the objective and purpose for which the G.R. dated 01.12.2018 was resolved is not being achieved. Further, Government of Gujarat vide its letter

dated 12.06.2020 has issued detailed guidelines regarding further course of action regarding signing of Supplemental PPA with Respondent No. 1.

2.8. The modifications as per the decision of the Commission dated 27.04.2020 in Petition No. 1807 of 2019 and further the Guidelines of the Government of Gujarat dated 12.06.2020 were incorporated in the revised draft Supplemental PPA and the same was forwarded by the Petitioner to the Respondent No. 1 vide letter dated 11.11.2020 and requested to convey its consent on the draft Supplemental PPA so that the Petitioner may proceed further for seeking approvals.

2.9. The Respondent No. 1 conveyed its willingness to execute Supplemental PPA vide its letter dated 25.01.2021 with following two suggestions for modifications in the Supplemental PPA;

(i) Effective date of Supplemental PPA being the date on which the Commission approves the Supplemental PPA;

(ii) Untied power offered to procurer GUVNL to be increased from 100 MW to 122 MW.

2.10. The Supplemental PPA was submitted to the Government of Gujarat and vide G.R. dated 05.06.2021, the Government of Gujarat accorded its approval to the signing of modified Supplemental PPA between the Petitioner and the Respondent No. 1 in accordance with Order dated 27.04.2020 passed by the Commission in Petition No. 1807 of 2019 and Government of Gujarat Guidelines dated 12.06.2020 with the following modifications:

(i) Effective date of Supplemental PPA with the Respondent No. 1 shall be from the date of approval of revised Supplemental PPA by the Commission and the revised Supplemental PPA shall be signed incorporating terms and conditions mentioned in Order dated 27.04.2020 passed by the Commission and Government of Gujarat Guidelines dated 12.06.2020.

(ii) In order to limit the impact of coal price on tariff in the interest of the consumers it was decided that HBA Index Ceiling Price under Supplemental PPA of USD 90 per MT (HBA Indonesia Index) shall not be subject to further revision without prior approval of State Government and the Commission.

(iii) The 122 MW untied capacity from Respondent No.1 project shall be tied up under Supplemental PPA by GUVNL.

2.11. Accordingly, in terms of the modifications directed by the Commission as per Order dated 27.04.2020, Government of Gujarat Guidelines and G.R. dated 12.06.2020 and G.R. dated 05.06.2021, the Petitioner and the Respondent No. 1 have mutually agreed and signed amended and modified Supplemental PPA in substitution of earlier signed Supplemental PPA dated 01.03.2019.

2.12. The salient features of the aforesaid modified Supplemental PPA are as under:

(i) Clause 3.1 (II) – Effective Date: The Amendment Effective Date shall be from the date of approval of revised SPPA by the Commission.

(ii) Clause 3.2.3 & 3.5.3 – Gross Station Heat Rate: Lower of actual or Gross Station Heat Rate of 2262 in kCal per kWh as approved by the Commission in Petition No. 1296/2013.

(iii) Deleted from Clause 3.2.4 (I) - The Petitioner and Respondent No. 1 have agreed to modify the provision related to FoB cost of coal and withdraw the maximum tolerance allowed @ 10% above HBA price.

(iv) Clause 3.2.4 (I) – For determination of equivalent Coal Price for working out Landed Cost of imported coal for the Month, the lowest of following for the month shall be considered:

a) Actual FOB price of consignment

b) HBA price worked as per formula stated in Annexure – A for billed GCV

c) Index notified by Argus / Coalindo applicable for the quality of coal consumed

d) Index notified by S&P Global Platts applicable for the quantity of coal consumed

e) Lowest Index of the country of origin applicable for the quality of coal consumed

For the coal procured having the GCV as published by above indices, the notified index price will be directly considered.

The coal index for the coal consumed other than for the coal in the pre-determined GCV range as notified by above indices shall be arrived as follows:

(i) For the coal consumed having GCV within range of ± 200 Kcal/Kg from GCV of above notified index, the rate shall be worked out on proportionate basis considering the nearest notified monthly index and;

(ii) For the coal consumed other than above category, the rate shall be worked out considering the weighted average price of the notified monthly index within which the GCV of consumed coal is falling to arrive at the equivalent coal price for the GCV of consumed coal.

(v) Deleted from Clause 3.2.4 (I) – Provision related to Transit loss @ 0.02% and Other Charges @ 3% of CIF have been deleted.

(vi) Clause 3.2.4 (III) (iii) & 3.2.4 (II) (d) – The Respondent No. 1 shall make available the invoices for the actual cost of coal purchased from mining company from country of origin.

(vii) Clause 3.2.4 (II) (a) – Ceiling of HBA Index is reduced from USD 110 per MT to USD 90 per MT for 6322 Kcal / kg GCV coal. The ceiling shall not be subject to further revision without prior approval of the State Government and the GERC.

(viii) Clause 3.2.4 (II) (c) – The Respondent No. 1 shall seek approval of Petitioner for Tender document and price discovered under competitive bidding process shall also be approved by Petitioner and the Commission. In absence of above, the procurement of coal shall not qualify for payment of energy charges under Supplemental PPA.

(ix) Clause 3.2.5 – Incentive for availability declaration above Normative Availability of 85% as per PPA dated 26.02.2007 has been modified and shall be applicable for declaration above 90% availability.

(x) Clause 3.5.1 – Extension in term of the PPA shall be with approval of Appropriate Commission.

(xi) Clause 3.8 – The Respondent No. 1 shall bear the losses for prior period i.e. before implementation of this Supplemental Agreement.

Further, the Respondent shall not raise any claim / dispute with regard to past period items before any Forum / Court in the future.

(xii) Clause 3.9 – The Respondent No. 1 shall unconditionally withdraw all pending cases / litigations / waive claims against the Petitioner (other than Change in Law in India) before various Forums in lieu of the relief granted vide Government of Gujarat G.R. dated 01.12.2018 towards pass through of actual fuel cost read with Order dated 27.04.2020 passed by this Commission. Only the cases / litigations filed by the Petitioner which are under adjudication shall be

considered upon decision by appropriate forum / Court to extent of Petitioner's prayer in the matter.

(xiii) Clause 3.4 – Tie up of Additional Capacity being 122 MW untied capacity of Respondent No. 1.

(xiv) Clause 3.10 – Any change in the ownership of the Respondent No. 1 shall only be done with the prior intimation of any such move and after approval of the Government of Gujarat and the Commission.

2.13. Based on above, the Petitioner requested to approve the prayers of the Petition.

Submission of the Respondent No.1

3. The Respondent No. 1 has submitted that prior to signing of the Supplemental PPA (SPPA) by the parties, the Petitioner had filed a Petition No. 1807 of 2019 before the Commission for approval of the Supplemental Agreement dated 01.03.2019, which was entered into between the parties for amending the said PPA dated 26.02.2007, pursuant to the GR dated 01.12.2018 after the Commission, vide Order dated 27.04.2020 had granted approval to the aforesaid supplemental PPA dated 01.03.2019 subject to certain modifications stated therein to be carried out by the parties.

3.1. Being aggrieved by the aforesaid Order of this Commission dated 27.04.2020, the Respondent No.1 had preferred an Appeal before the Hon'ble APTEL being Appeal No. 108 of 2020 challenging the same, inter-alia, on the grounds that fixing of ceiling price for HBA index at USD 90 per MT is not sufficient and adequate to compensate it having regard to actual coal prices rising from time to time in the International market.

3.2. However, the same was withdrawn by the Respondent on 25.06.2021 after the Government of Gujarat GR dated 05.06.2021 with the permission of Hon'ble APTEL vide Order dated 25.06.2021.

3.3. After passing of the said Order by the Commission and before the parties carried out the modifications in the Supplemental Agreement dated 01.03.2019, the Government of Gujarat, Energy and Petrochemicals Department, by its letter dated 12.06.2020 has conveyed that the Government of Gujarat vide G.R. dated 12.06.2020 revoked its earlier G.R. dated 01.12.2018 for all intents and purposes since the objective and purpose for which the said G.R. dated 01.12.2018 was issued is not being achieved.

3.4. The Government further issued revised the Guidelines for signing of fresh Supplemental PPA in its said letter dated 12.06.2020. Pursuant to the same, the Petitioner, vide its letter dated 11.11.2020 forwarded to the Respondent No. 1 a modified draft of the Supplemental Agreement to be entered into between the parties for approval and execution.

3.5. In response to the same, the Respondent No.1, vide its letter 25.01.2021 conveyed its readiness and willingness to execute the said modified SPPA subject to the Petitioner agreeing, inter-alia to the deletion of provision in relation to determination of FOB cost of coal considering multiple indices in the interest of facilitating easy procurement of coal.

3.6. After the Respondent No. 1 accorded its conditional approval of draft of the said modified SPPA, the Petitioner sought approval of the same from the Government of Gujarat, which was accorded by clarifying that the Effective Date of the SPPA shall be the date on which the Commission grants its approval of the same.

3.7. The objections raised by the Respondent No.1 to the deletion of the said provision concerning determination of FOB cost of coal considering multiple

indices was, however not taken into consideration, which is evident from the GR dated 05.06.2021.

3.8. The Petitioner and the Respondent No. 1 entered into a modified Supplemental PPA dated 12.08.2021 containing modifications directed to be made by this Commission, vide its Order dated 27.04.2020 and the Government of Gujarat GRs dated 12.06.2020 and 05.06.2021.

3.9. In the above context it is submitted that this Commission while considering grant of approval of the modified SPPA dated 12.08.2021, it is just, proper and necessary in the interest of doing complete justice to the Respondent No. 1, and above all, in greater public interest to pass an Order holding and directing that the following modifications shall be carried out in the SPPA dated 12.08.2021 with the proper approval in writing of the Government of Gujarat having regard to the following undisputed facts and circumstances.

3.9.1. Referring to Clause 3.2.4 (II) of the Supplemental PPA, the Respondent No. 1 submitted that to neutralize the impact of the steep rise in the price of the coal in Indonesia due to change in its Regulations and its impact on coal prices worldwide, the Government of Gujarat, on the basis of the recommendations made by HPC, has agreed to make FOB cost of coal pass through subject to a ceiling price. While a reduction in the ceiling price from USD 110 per MT to USD 90 per MT was recommended by the Commission in its Order dated 27.04.2020 and has been incorporated in the SPPA dated 12.08.2021, it is submitted that the stipulation of a ceiling price is unjust in the given circumstances and contrary to the objective of making FOB cost of the coal pass through for the benefit of Respondent No. 1.

3.9.2. The Respondent No. 1 will have to bear the differential value of the FOB cost of coal, which would lead to further losses to be suffered by the Respondent No. 1 in operating its power plant with such ceiling fixed on the HBA Index.

3.9.3. This will defeat the very object behind rehabilitation measures determined and implemented by the Government of Gujarat.

3.9.4. It is submitted that HBA Index for the month of September, 2021 is USD 150 per MT and that the HBA Index is trading above USD 90 per MT continuously since last four months and chances of HBA Index to trade below or at USD 90 per MT are farfetched considering the shortage of quality of coal worldwide. In this context it is submitted that the movement of Index is governed by demand supply dynamics of coal in the world market where there are a multitude of Buyers and Sellers and which is also governed by geopolitical considerations in play amongst different coal supplying and importing countries.

3.9.5. No Buyer or Seller or the Respondent No. 1 would be in a position to predict, control or have any say in the determination of this Index. Such being the case, the hypothetical value assigned as a ceiling value will only serve the purpose of going against the basic principle of allowing coal prices to become pass through.

3.9.6. The Respondent No.1 can never operate the plant in such condition by bearing losses which today are region of USD 60 per MT. On top of this unjust ceiling, since the Respondent No. 1 cannot operate the plant in such conditions, the Petitioner will penalize the Respondent No. 1 for not meeting the availability criteria under the Supplemental PPA dated 12.08.2021. This will be total travesty of the intent with which the entire pass through scheme was intended. Thus, having a ceiling price of USD 90 per MT on HBA Index shall always have an adverse/negative impact for the Respondent No. 1 while running its power plant, which is to be made a pass through for Respondent No. 1 by Government of Gujarat (GoG) under the rehabilitation objective of the GoG.

3.9.7. The rehabilitation objective shall not be achieved if a ceiling is fixed on the HBA Index. Further, the Respondent No. 1 will not be able to operate its power plant in a pragmatic and commercially sustainable basis, which is in no one's interest and particularly not in public interest i.e. consumers. Therefore, having any ceiling price in the said Supplemental PPA dated 12.08.2021 would vitiate the primary rehabilitation objective for which the said Supplemental PPA is being entered into by the parties.

3.9.8. As per the Clause 3.2.4 (II) (a), parties to the said Supplemental PPA dated 12.08.2021 have agreed that any change in the ceiling price for HBA Index shall be with the prior approval of the GoG and this Commission. Thus, in view of above, the Respondent No. 1 prays to the Commission to approve the Supplemental PPA dated 12.08.2021 without any ceiling price for HBA Index.

3.9.9. The Respondent No. 1 further submitted that as per the Clause 3.2.4 (I) of the Supplemental PPA dated 12.08.2021, GoG for calculating FOB cost of coal is considering the lowest of the (a) Actual FOB price of the consignment, (b) HBA Index, (c) Index notified by Argus/Coalindo, (d) Index notified by S&P Global Platts, and (e) Lowest Index of the country of origin.

3.9.10. Taking into consideration so many indices for calculations FOB cost of coal, GoG is making it onerous for the Respondent No. 1 to procure coal through International Competitive Bidding process, which is a mandatory requirement for the Respondent No. 1 as provided under Clause 3.2.4 (II) (c) of the Supplemental PPA dated 12.08.2021. The said fact is evident from the fact that when the Respondent No. 1 floated an online tender dated 17.08.2021, having the bid submission date on 08.09.2021, calling upon the bids by mentioning all the conditions in the tender document as stipulated in the Supplemental PPA dated 12.08.2021 for procuring the coal, it has not received a single bid from the Sellers, as no Sellers appeared to be ready and willing to supply coal on the multi Index mechanism, including the ceiling

price fixed for the HBA Index, provided under the Supplemental PPA dated 12.08.2021, which are not aligned with the market realities.

3.9.11. The Respondent No. 1 submits that it has made all the possible efforts for inviting the bids for its tender, as it had approached various coal traders requesting them to submit their respective bids for the tender, vide its emails dated 18.08.2021 and 19.08.2021 written to various coal traders. Based on the sustained followed by the Respondent No. 1, around 22 parties even downloaded the tender document. However, none of the above 22 parties have submitted their bids to the tender.

3.9.12. In case of not receiving any bid nor any queries from any prospective bidders for the tender, the Respondent No. 1 extended the due date for submitting the bids for the tender to 23.09.2021, but it has not received any bid till 28.09.2021.

3.9.13. All these circumstances clearly establish that it would not be possible for the Respondent No. 1 to procure coal from any interested suppliers unless and until the provision relating to determination of FOB cost of coal on multiple indices is dispensed with as harsh, onerous and unrealistic.

3.9.14. It may not be out of place to state in this context that these difference indices, such as HBA Index, Argus/Coalindo Index, S&P Global Platts Index are not uniform, as each one works by considering different components and work on different timeline, such that HBA Index is announced on monthly basis by Government of Indonesia, Argus/Coalindo Index is published on weekly basis and S&P Global Platts Index is published daily.

3.9.15. There is no uniformity with respect to the prices of these indices due to difference in periodicity of the indices and the base factors governing them.

3.10. In view of above, the Respondent No. 1, requested to Commission to approve the Supplemental PPA dated 12.08.2021 with one Index, either HBA or Argus/Coalindo for Indonesian Coal and any one Index for each country for a coal of different country of origin, to be considered by GoG for calculating the FOB cost of Coal and not the multiple indices as specified in Clause 3.2.4 (I) of the Supplemental PPA dated 12.08.2021 and praying to pass an Order allowing the above and grant approval of the SPPA dated 12.08.2021 between the parties after incorporating the changes as submitted by the Respondent No. 1 above.

Rejoinder of the Petitioner

4. It is submitted by the Petitioner that after having executed the Supplemental PPA dated 12.08.2021 with the Respondent No. 1 pursuant to Order dated 27.04.2020 passed by this Commission and the Government of Gujarat GR and letter both dated 12.06.2020 and GR dated 05.06.2021 amending the PPA dated 26.02.2007, the Respondent No. 1 has no cause of justification to raise any issue on the scope of the SPPA whatsoever which has been mutually settled. However, the Respondent No. 1 is now seeking to further amend the Supplemental PPA as well as additional reliefs, which cannot be considered. The consideration of the approval by this Commission can only be to an Agreement as settled between the parties under Article 18.3 of the PPA dealing with amendment to the PPA agreed upon by the parties.

4.1. It is also submitted that the suggestions and submissions of the Respondent No. 1 are contrary to the interests of the consumers in terms of the Energy Watch Dog decision of the Hon'ble Supreme Court [(2017) 14 SCC 80]. The Respondent No. 1 is not entitled to any relief beyond the quoted tariff and the provisions of the PPA dated 26.02.2007. However, considering various aspects, the Government of Gujarat has issued the GR and the SPPA has been executed in terms thereof to grant relief to the Respondent No. 1 when there is no legal right to claim any relief and hence, it is now not open to the

Respondent No. 1 to now unilaterally seek further reliefs. Accordingly, the claims of the Respondent No. 1 are denied.

4.2. It is further submitted that the allegation made by the Respondent No. 1 with regard to being constrained to withdraw the Appeal is denied and the parties having agreed to the terms of the Supplemental PPA, it is not open to the Respondent No. 1 to now raise any issues in regard to its earlier contentions having withdrawn the Appeal which was duly accepted by the Hon'ble APTEL and no further issue can be raised on this aspect.

4.3. The averments made by Respondent No.1 regarding deletion of provision concerning determination of FOB cost of coal considering multiple indices was not taken into consideration is erroneous and denied. In this regard, it is submitted that Respondent No. 1 vide Letter dated 25.01.20121 had shown willingness to execute SPPA prepared in line with the Order dated 27.04.2020 passed by the Commission and Government of Gujarat Guidelines dated 12.06.2020 with two suggestions

(1) Effective date of the SPPA being the date on which GERC approves,
(2) Offering untied power from 100 MW to 122 MW.

There was no reference in the said letter to any deletion of clause for determination of FOB. The two suggestions made by Respondent No 1 were duly forwarded to and in fact considered by the Government of Gujarat.

4.4. With regard to submission of Respondent No. 1 for approval of the SPPA dated 12.08.2021 without any Ceiling Price for HBA index and revise the clause 3.2.4 (II)(a) of SPPA accordingly, it is submitted that the above submission is contrary to the fundamental basis of the Supplementary Agreement between the parties and further of the Order dated 27.04.2020 passed by this Commission and the Government of Gujarat Guidelines. The ceiling price has been recognized and incorporated as necessary to protect

consumer interest and the same has been duly agreed to by the Respondent No. 1.

4.5. It is submitted that this Commission in its Order dated 27.04.2020 has decided the HBA index ceiling of 90 USD/MT after analysing HBA index trend for the period from 2012 to 2020. The decision of this Commission on the said aspect is reproduced herein,

"……

23.28 We are of the view that prior to allowing the coal price linkage with HBA price with a ceiling to 110 dollars per MT, it is necessary for the Commission to validate the trend of HBA price index of the coal of 6322 Kcal per Kg during the period from March 2015 to March 2020 (5 years) or March 2016 to March 2020 (4 years) or March 2017 to March 2020 (3 years). The details obtained by the Commission were examined. We are of the view that the upper cap of HBA index of USD 110/MT can be relooked into as per the present global market. As per the records available with the Commission imported coal - HBA index varies in year 2020 from 65.93 to 67.08 USD/MT while last year in 2019, the average HBA was 66.30/MT only. Similarly, in year 2018 the average rate was USD 92.51/MT. If we consider last 6 years average from 2012 to 2017 it was USD 76.47/MT. Therefore, keeping in view the reasonable energy cost as comparable with efficient thermal plants in Gujarat, the Commission approves the upper cap of HBA index to USD 90/MT.

……".

4.6. It is further submitted that Government of Gujarat vide G.R. dated 05.06.2021 has accorded the approval of revised SPPA with a modification as under:

"……

ii. In order to limit the impact of coal price on tariff in the interest of consumers, it was decided that HBA Index Ceiling Price under SPPA of USD 90

/ MT (HBA Indonesia Index) shall not be subject to further revision without prior approval of State Government and Hon'ble Commission.

....."

4.7. Further, the Petitioner has summarised the data of HBA index in USD/MT (benchmark price for 6322 GCV coal) for the period from January 2011 to September 2021. The yearly average of HBA index for last 11 years are as under:

YEAR	Average HBA (USD/MT)
2011	118.40
2012	95.48
2013	82.92
2014	72.62
2015	60.13
2016	61.84
2017	85.92
2018	98.96
2019	77.89
2020	58.17
2021 (upto Sept)	102.36
Average	**82.02**

Thus, from aforesaid table, it is clear that during last 11 years, average HBA index has remained in range of 58.17 USD/MT to 118.40 USD/MT and average of HBA for last 11 years is 82.02 USD/MT. Month wise HBA index for the period from January 2011 to September 2021.

4.8. Further, with regard to index considered, FOB price of coal, it is submitted that the Commission in its Order dated 28.04.2020 while approving SPPA dated 01.03.2019 has decided as under:

"....."

23.14 ..... *In this regard we also agree that the Petitioner should be careful and agree upon the best or lower of indices available in the country of origin from where coal is being imported."*

Accordingly, in the interest of consumers, Govt. of Gujarat has taken a considered view that in order to ensure procurement of coal by imported coal based generators in a prudent & transparent manner, FOB price of coal shall be worked out considering lowest of actual, HBA index derived price (HPB), Argus/ Coalindo, S&P Global Platts, and lowest index of country of origin.

4.9. It is further submitted that the Guideline dated 12.06.2020 issued by the Government of Gujarat also provides as under:

"……

(iii) For the payment of actual fuel cost in energy charges, the FOB price of coal to be considered as lower of (i) Actual (ii) HBA Index derived price as per formula given by Indonesian Government for Quality of coal consumed (iii) Index published by Argus / Coalindo as applicable for quality of coal consumed (iv) Index published by S&P Global platts as applicable for quality of coal consumed (v) Lowest Index of the country of origin as application for quality of coal consumed.

……"

Accordingly, in view of this Commission's Order dated 27.04.2020 and Government of Gujarat Guideline dated 12.06.2020, the Petitioner has incorporated the clause 3.2.4 in the SPPA dated 12.08.2021 for determination of FOB Price of Coal.

4.10. It is submitted that Respondent No 1 had no objection to consider multiple indices for computing FOB price of coal at the time of signing the SPPA. Now, after signing of SPPA, it is not open for the Respondent No 1 to unilaterally propose any amendment / relief beyond the scope of Supplemental SPPA dated 12.08.2021.

4.11. Further, it is submitted that the consideration of multiple indices would reflect the actual FOB price of coal considering actual market condition which is in interest of the consumers.

Additional Submissions of the Respondent No. 1

5. The Respondent No. 1 has submitted that after passing the said Order by the Commission and before the parties carried out modifications in the said Supplemental Agreement dated 01.03.2019, the Government of Gujarat, Energy and Petrochemicals Dept., vide its letter dated 12.06.2020 has conveyed to the Respondent No. 1 that the Government of Gujarat, vide GR dated 12.06.2020 has revoked its said earlier GR dated 01.12.2018 for all intents and proposes since the objective and purpose for which the said GR dated 01.12.2018 was issued is not being achieved. The Government further gave revised guidelines for signing a fresh supplemental PPA in its said letter dated 12.06.2020.

5.1. Pursuant to the same, the Petitioner, vide its letter dated 11.11.2020 forwarded to the Respondent No.1 a modified draft of the Supplemental Agreement to be entered into between the parties for approval and execution. In response to the same, the Respondent No. 1 a modified draft of the Supplemental Agreement to be entered into between the parties for approval and execution. In response to the same the Respondent No. 1, vide its letter 25.01.2021 conveyed its readiness and willingness to execute the said modified SPPA subject to the Petitioner agreeing, inter-alia, to the provision in relation to determination of FOB cost of Coal considering multiple indices in the interest of facilitating easy procurement of coal.

5.2. After Respondent No.1 accorded its conditional approval of draft of the said modified SPPA, the Petitioner sought approval of the same from the Government of Gujarat, which was accorded by clarifying that the Effective

Date of the SPPA shall be the date on which the Commission grants its approval of the same.

5.3. The objections raised by the Respondent No.1 with respect, inter alia, to the deletion of the said provision concerning determination of FOB cost of coal considering multiple indices was, however, not taken into consideration, which is evident from the GR dated 05.06.2021.

5.4. The Petitioner and the Respondent No.1 entered into a modified Supplemental PPA dated 12.08.2021 containing modifications directed to be made by the Commission, vide its Order dated 27.04.2020 and the Government of Gujarat GR and letter dated 12.06.2020 and G.R. dated 05.06.2021.

5.5. The Respondent No.1 has filed an Affidavit dated 17.09.2021 in the captioned Petition praying before the Commission for approving the SPPA dated 12.08.2021 with certain modifications. It is submitted that while considering grant of approval of the modified SPPA dated 12.08.2021, it is just, proper and necessary in the interest of doing complete justice to the Respondent No.1 and above all, in greater public interest to pass an Order holding and directing that the following modifications shall be carried out to the SPPA dated 12.08.2021 with the prior approval in writing of the Government of Gujarat having regard to the following undisputed facts and circumstances.

(i) The Clause 3.2.4 (I) of the Supplemental PPA dated 12.08.2021, provides as under:

"……

(II) Specific Conditions

(a) The Ceiling Price for HBA Index will be 90 USD/ MT. In order to limit the impact of coal price on tariff in the interest of consumers, the HBA Index Ceiling Price of USD 90/MT (HBA Indonesia Index) shall not be

subject to further revision without prior approval of State Government and GERC.

(b) Seller agrees that in case HBA Index of Indonesian coal exceeds Ceiling Price 90 USD/ MT or Revised Ceiling price as per para (a) above, Seller shall bear the differential cost and continue to supply power under the PPA & Supplemental Agreement.

....."

5.6. The Respondent No. 1 submitted that to neutralize the impact of the steep rise in the price of the coal in Indonesia due to change in its Regulations and its impact on coal prices worldwide, the Government of Gujarat, on the basis of the recommendations made by HPC, has agreed to make FOB cost of coal pass through subject to a ceiling price. While a reduction in the ceiling price from USD 110/MT to USD 90/MT was recommended by the Commission in its Order dated 27.04.2020 and has been incorporated in the SPPA dated 12.08.2021.

5.7. The stipulation of a ceiling price is unjust in the given circumstances and contrary to the objective of making the FOB cost of the coal as pass through for the benefit of the Respondent No. 1, it will have to bear the differential value of the FOB cost of coal, which would lead to further losses to be suffered by the Respondent No. 1 in operating its power plant with such ceiling fixed on the HBA Index. This will defeat the very object behind rehabilitation measures determined and implemented by the Government of Gujarat.

5.8. It is submitted that HBA Index for the month of September, 2021 is 150 USD/ MT and that the HBA Index is trading above 90 USD/ MT continuously since last 4 months and the chances of HBA Index to trade below or at 90 USD/MT are farfetched considering the shortage of quality coal worldwide. The movement of index is governed by demand-supply dynamics of coal in the world market where there are multitude of Buyers and Sellers besides geo-

political considerations amongst 7 different coal supplying and importing countries.

5.9. The Respondent No. 1 or any Buyer or Seller is not in a position to predict, control or have any say in the determination of this index. Such being the case, any hypothetical value assigned as a ceiling value will only serve the purpose of going against the basic principle of allowing coal prices to become pass through. Thus, having a ceiling price of 90 USD/MT on HBA Index shall always have an adverse /negative impact for Respondent No. 1 while running its power plant, which is to be made pass through for Respondent No.1 by Government of Gujarat (GoG) under the rehabilitation objective of the GoG.

5.10. The rehabilitation objective shall not be achieved if a ceiling is fixed on the HBA Index. Further, the Respondent No. 1 will not be able to operate its power plant in a pragmatic and commercially sustainable basis, which is in no one interest and particularly not in public interest, i.e. consumers.

5.11. It is submitted that as per the Clause 3.2.4 (II) (a) parties to the said Supplemental PPA dated 12.08.2021 have agreed that any change in the Ceiling Price for HBA Index shall be with the prior approval of the Government of Gujarat and the Commission. The Commission to approve the Supplemental PPA dated 12.08.2021 without giving effect to the ceiling Price of 90 USD/ MT for HBA Index as specified in Clause 3.2.4 (II) of the SPPA dated 12.08.2021 initially for the period of 4 (Four) months from the date of the approval of the SPPA dated 12.08.2021 by the Commission and subsequently it shall be subject to the assessment of the coal market condition by the parties and as provided in the SPPA dated 12.08.2021.

6. The matter was heard on 23.09.2021 for which Daily Order dated 29.09.2021 is passed by the Commission. After noting that the subject matter of the present Petition is for approval of the Supplemental PPA executed between

the Petitioner and the Respondent No. 1 in compliance of the Order dated 27.4.2020 passed by the Commission in Petition No. 1807 of 2019 which consists of allowing changes in the original PPA dated 26.02.2007 executed between the Petitioner and the Respondent No. 1 and pertains to power procurement of the Distribution Licensees on whose behalf the Petitioner has signed the PPA with the Respondent No. 1. Since, the subject matter is under Section 86(1)(b) of the Electricity Act, 2003 which provides that the power procurement of the Distribution Licensees shall be regulated by the Commission consisting of quantum of power prescribed etc., hence, it is necessary to hear the consumers / stakeholders prior to deciding the matter. Moreover, there are certain modifications also made in the Supplemental PPA signed by the Petitioner and the Respondent No. 1, as submitted by them and hence it is necessary to hear the consumers/stakeholders also. Therefore, the Commission decided and directed the Petitioner to issue public notice in one daily Gujarati newspaper and one English newspaper having wide circulation in the State / National level in respect of its present Petition and to upload the present Petition on its website for inviting comments and suggestions on affidavit from the stakeholders on the Petition within 15 days and thereafter, an affidavit regarding compliance of the same to be filed by the Petitioner.

7. Accordingly, the Petitioner filed an affidavit dated 07.10.2021 in compliance to the directives issued by the Commission in its Daily Order dated 29.09.2021 submitting that the Petitioner has issued public notice on 07.10.2021 in newspapers inviting comments and suggestions from the stakeholders and also uploaded the Petition on its website.

8. Pursuant to above public notice, Utility User Welfare Association vide email dated 29.10.2021 has made its submission on the following issues:

Petition not admissible and maintainable.

8.1. The Petitioner GUVNL had filed the Petition No. 1807 of 2019 which was submitted as per the policy decision taken by Government of Gujarat vide G.R. No. CGP-12-2018-166-K dated 01.12.2018 wherein the Government of Gujarat has accepted the recommendations of High Power Committee for revival and rehabilitation of three power projects situated in the coastal area of Gujarat namely of Adani Power Ltd., Coastal Gujarat Power Ltd. and Essar Power Gujarat Ltd. with whom GUVNL-Petitioner has entered into Power Purchase Agreement on 26.02.2007. The Petition No. 1807 of 2019 by GUVNL was submitted based on this G.R. dated 01.12.2018 manifesting the public interest and accordingly, the Commission has pronounced the judgment dated 27.04.2020 where in the amendments to the Original PPA dated 26.02.2007 as directed in the G.R. dated 01.12.2018, as per recommendation of HPC and as requested by GUVNL in the Petition No. 1807 of 2019 is approved by the Commission. The Government of Gujarat GR dated 01.12.2018 was resolved and titled as "Policy directive for revival and rehabilitation of stressed imported coal based power projects in consumer interest."

8.2. It is further submitted that the Government of Gujarat has revoked its G. R. No. CGP-12-2018-166-K dated 01.12.2018 on 12.06.2020 vide G.R.No.CGP-12-2018-166-K confirming that *"Resolution: In view of above mentioned subsequent developments and changed scenario, after careful consideration, Government of Gujarat has decided to revoke GR dated 1/12/2018 for all intent and purposes."* Therefore, the purpose and intent of consumer interest and revival and rehabilitation of the stressed imported coal based power projects has not been achieved and therefore the GR dated 01.12.2018 is revoked. That the Order of the Commission dated 27.04.2020 in the Petition No. 1807 of 2019 which was based on the said revoked GR dated 01.12.2018 does not survive in view of the confession of the facts by Government of

Gujarat that it has not achieved the objective and purpose for which it was resolved.

8.3. In view of the revocation of GR dated 01.12.2018, the Order dated 27.04.2020 in the Petition No. 1807 of 2019 filed by GUVNL which was based on the revoked GR should be considered revoked or GERC should pronounce it as null and void.

8.4. The GUVNL has submitted the Petition No. 2004 of 2021 under Section 86(1)(b) and (f) of the Electricity Act, 2003. The Section 86(1)(b) and (f) are not attracted to this particular Petition in view of the facts that Section 86(1)(f) contemplates adjudication upon the disputes between the licensees, and generating companies and to refer any dispute for arbitration. The dispute for compensatory tariff under various articles provided in the PPA has been already adjudicated and decided by Hon'ble Supreme Court of India and no relief as to increase in the tariff granted as per provision of law and various clauses of PPA and decided by the Hon'ble Supreme Court in *Energy Watchdog Vs. CERC (2017)14 SCC 80* that no relief is admissible to such projects under the terms of the PPA entered into by Procurer with such project developers.

8.5. He submitted that the dispute under the various clauses of PPA dated 26.02.2007 including Article - 18.1 has been well studied and decided by the Hon'ble Supreme Court of India in the above referred judgment including the various power including regulatory power of the ERCs.

8.6. Hence, it is pertinent to mention here that GUVNL the Petitioner has also opposed any change in terms and the conditions of PPA up to Hon'ble Supreme Court of India. GUVNL and its legal team was aware of this Article-18.1 of Amendment of PPA and the root question is why any of the parties/generators who are facing financial hardships for bringing the

imported coal and supply it to the Procurer GUVNL has not accorded the consent of the Apex Court or not put forward any arguments at the relevant time when the case was being heard that under Article -18.1, the PPA can be changed and ERCs have uncontrolled power to allow any change of terms and conditions of PPA which affects the basic structure of competitive bidding as per the wish of the Government at the cost and risk of the public/consumers.

8.7. In view of the adjudication already done by the Apex Court under Section 86(1)(f) of the Electricity Act, 2003 along with the consideration of Indian Contract Act, 1872/1930 and other provision of law prevailing in the land and various Articles of PPA dated 26.02.2007, the decision is pronounced where in no relief was granted. Therefore, GUVNL or Generators have no right to re- agitate the same issue under Section 86(1)(f) of the Electricity Act, 2003 before GERC by way of this Petition, and therefore the Petition is not maintainable.

8.8. The Petition is submitted under Section 86(1)(b) of the Electricity Act, 2003 which contemplate that "regulate electricity purchase and procurement process ofDistribution Licensee including the price at which electricity shall be procured from generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State."

8.9. Moreover, the Petitioner GUVNL is not a distribution licensee and GERC has not granted any license for distribution of electricity under Section 14 of the Electricity Act, 2003 and not defined any area of supply of GUVNL or is deemed distribution licensee under Section 131(2) of the Electricity Act, 2003.

8.10. It is further submitted that the Commission can only regulate the electricity purchase and procurement process of Distribution Licensee including the

price at which electricity shall be procured from generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State. The legal status of GUVNL is a deemed trading licensee and GUVNL has also not produced any legal back to back sale agreement with any of the Distribution Licensees to whom the power procured from this generator Essar PGL is to be supplied. Thus GUVNL has no *locus standi* to submit this Petition as trading licensee because the Commission has no jurisdiction to regulate the electricity purchase and procurement process of *Trading Licensee.* It is a dispute between Trading Licensee and generating Company which falls under Section 86(1)(f) of E.A.2003 which is already been resolved and decided by the various forums and finally by Supreme Court of India.

8.11. In view of above crystal clear position of law and provision of law, the Petition is required to be dismissed in view of the two facts (1) the Order of the Commission dated 27.04.2020 in the Petition No. 1807 of 2019 which was based on the GoG GR dated 01.12.2018 is revoked and as such the Order of the Commission also gets automatically null and void as the GoG itself is saying that the purpose and intent for which GR dated 01.12.2018 is not achieved which means the revival and rehabilitation of stressed imported coal based power projects coupled with the interest of the consumers is failed. The Commission has not called for the details required to decide Capacity Charges, variable Charges and also not called for the details to decide the incentive based on PAF as per tariff regulations.

8.12. It is submitted that the Commission while determining the Petition No. 1807 of 2019 in Order dated 27.04.2020 has totally followed the recommendations of the HPC without independent discovery and data/details as required for deciding capacity charges and variable charges of the projects as contemplated in the tariff regulations are not called for by the Commission. When HPC recommendations accepted by GoG after making certain changes

vide GR dated 01.12.2018 is revoked, the recommendations of HPC and the Commission's Order which is based on the GR dated 01.12.2018 focusing more on the public interest is automatically gets revoked. (2) The Petition is also not maintainable under Section 86(1)(b) of the Electricity Act, 2003, which does not allow any amendment to the existing PPA dated 26.02.2007 and because the Petitioner is not a Distribution Licensee and is a trading licensee which this Commission does not have power as per provision of Statute referred to supra.

The Supplementary PPA should not be approved.

8.13. It is further submitted that the Petitioner GUVNL has on the base of new GR No.EPG-12-2019-15 K dated 05.06.2021 which is titled as 'Signing of Supplemental PPA between Gujarat Urja Vikas Nigam Limited (GUVNL) and Essar Power Gujarat Ltd. (EPGL)' has submitted this Petition No. 2004 of 2021 for approval of Supplementary PPA with Essar Power Gujarat Ltd. as per guidelines and approval of the Government of Gujarat.

8.14. That Hon'ble Supreme Court of India has never decided that the agreements can be modified or amended to destruct the basic formation of competitive bidding and sanctity of contract. If the Petitioner is relying upon any such judgment is not correct and The Commission may direct Petitioner to get the clarification that Commission has power to change the price under the guise of Article-18.1 of PPA of Amendment which is also taken cognizance by the Apex Court during the hearing of the dispute case of compensatory tariff of stressed imported coal based power projects.

8.15. The Commission is requested to call for the details of power supply from EPGL after the date of submission of Petition No.1807 of 2019 till to day and also by other generators like Adani and CGPL with whom GUVNL has entered into PPA under competitive bidding and PPA approved by this Commission in the year 2007 under Section 63 of the Electricity Act, 2003.

8.16. The Petitioner under the guise of public and consumers interest is trying to favour the defaulter suppliers by awarding higher price than agreed, in this case voluntarily Adani, CGPL and Essar have accepted non-escalation clause for fuel in spite of knowing the facts that fuel prices are not steady and are volatile and highly fluctuating in the local and international market as well. This is done with a view to weed out the other bona fide bidders. The Commission is requested to call for the other bidders who participated in the competitive bidding when GUVNL has invited the bids. The Commission is also requested to refer the judgment of Hon'ble Gujarat High Court in the judgment of SCA/2186 of 2007 dated 29.04.2007 for conduct of GUVNL- the Petitioner. If the PPA with Jindal Power Ltd. and PTC India were executed, GUVNL would have not faced this problem of non-supply of power from these three generators.

8.17. However, the Commission is not bound to follow the policy GR of Government of Gujarat and implement the recommendations made in the GR dated 05.06.2021 if that is in violation and contrary to the law and provision of Electricity Act, 2003. The business of generation activity is de licensed and it is a business just like other business other entrepreneurs are doing. The Government can frame the policies but its implementation by the ERC should be in consistent with the provision of law. The Commission cannot grant relief at the cost of consumers and public for the defaulter bidders for their wrong business decision.

8.18. The GoG has framed the policy for revival and rehabilitation for textile industry vide G.R. dated 05.09.2012 by Industry & Mines Dept. of GoG. And Government of Gujarat has submitted the Petition No. 1254 of 2012 before this Commission known as Government of Gujarat Vs. GUVNL & Ors. to approve the power tariff subsidy to the spinning and weaving Industry which were/are starving for their existence and are facing tremendous financial

hardship. The Gujarat Commission vide its Order dated 11.07.2013 has not approved any subsidy into the tariff of textile industry saying that GoG can give direct subsidy to the textile consumers under Section 65 of the E.A.2003 based on the submission of GUVNL, the Respondent and Government owned company.

8.19. Similarly, the Commission in the Petitions No.1716, 1717, 1718, 1720 & 1728 of 2018 filed by Shah Alloys Steel Ltd., Shaifali Steels Ltd., Shaifali Rolls Ltd., RMG Alloys Steel Ltd., and Electrotherm (India) Ltd. respectively submitted the Petitions before this Commission where in the Respondent was GUVNL and DISCOMs. These petitioners were steel industries who were declared sick under provision of Sick Industrial Companies (Special Provisions) Act, 1985. All the companies are registered under Companies Act, 1956 and are still struggling for their existence and are facing tremendous financial hardships and have prayed for reduction in HT tariff from Rs.7.34 per unit to Rs. 4.40 per unit including demand charges. The reasons submitted for reduction in tariff by the above Petitioners are that in the present scenario of global recession coupled with economic slowdown, industries are passing through its toughest phase and facing challenges for its survival. In such scenario, it is difficult for the Sick Industries to compete in the market due to higher power cost as these industries are already facing financial crunch. The sick Industries as Petitioner also submitted that due to unviable electricity tariff, the operations of such industries may have to be closed down which in turn, may lead to (i) creation of NPAs, (ii) hampering of infrastructure activities due to loss of production, (iii) loss of revenue to DISCOMs, (iv) loss of revenue to Government and (v) loss of direct/indirect employment. The Government of Gujarat has issued a G.R. Policy dated 11.09.2017 for revival of viable Sick Industries in Gujarat. The preamble of the said Policy emphasizes on the need for providing support to viable Sick Industries from financial institutions, Government and from owners for revival as closer of

these industries will lead to problems like unemployment, revenue loss to State and Central Government and increase in non-performing assets leading to stress on the banking system. The Petitioners have been registered as viable sick Industries under the said Policy. In the Judgment in those petitions Nos. 1716-1720 and 1728 of 2018, dated 09.05.2019, this Commission has not approved the special reduced tariff to the Petitioners and not acted as per the direction given by the Government of Gujarat under Section 108 of the Electricity Act, 2003 vide letter No. GUV-12-2018-3571-K dated 31.01.2019 based on the submission of GUVNL.

8.20. It is submitted that the Petitioner GUVNL has adopted the double standards, (i) to favour the private generation industries tycoons who are defaulters and should be penalized instead of that they are advocated for gift/bonus and undue favour of increase in agreed tariff for 25 years unfairly, illegally, unduly considering the financial crunch/hardship of generating business tycoons for viability of their units, (ii) that in case of other industries textile, steel from whom erstwhile GEB companies have been and are being earning tremendous profit without facing any competition like other industry, GUVNL in such true cases of Sick Industry is not ready to sacrifice even their profit and wants full recovery of the ARR of its Distribution Licensee.

8.21. It is submitted that the Commission is also having double standard like GUVNL as can be seen from this present case. For generation business revival and rehabilitation, Government policy and GR is followed and approved where in other GR and policy it is not approved and followed is a gross violation of Article- 14 of the Constitution of India in view of the facts that to run the generation business and to fulfil the contractual obligation is the prime duty of the generation business entrepreneurs like the other business entrepreneurs are doing.

8.22. That if the supplemental PPA is approved and tariff will increase from the date of its implementation, how Commission can allow such recovery by increasing the tariff from retrospective effect in view of the facts the consumers who have entered into contract for supply of commodities to their principals will not give any increase in the price of their product like GUVNL is going to get which is a great injustice to the consumers.

8.23. That such an approval of the SPPA is also a gross violation of MYT Tariff Regulations, 2011, 2016, principle of Multi Year Tariff principles based on which the Commission has pronounced the tariff order for the respective years. The MYT principles give the clarity in tariff for the control period and gives the perfect idea that the tariff will not vary beyond the certain bandwidth, so that the consumers can plan their business and can enter into agreement with their principals for supply of product with a specific price agreed between them. Such an attempt will lead to chaos and no new business will come to India creating hurdles in the Make In India move. No such amendment to favour the generating business entrepreneurs in the agreed price is allowed all over the world, GUVNL may be directed to submit such an instance or any judgment of other country. Even Hon'ble Supreme Court of India has also not allowed any relief to these generators.

8.24. That it is pertinent to mention here that even though such generators are gifted extra price by any hook or crook, they will never supply the power to GUVNL even as per SPPA in view of the facts they are habituated with the evil will. The evidence is the current scenario of power cut in the State of Gujarat as published in the media.

8.25. That in fact, this is the dispute between DISCOMs and GUVNL as trading licensee who is getting the trading commission per unit as per regulations. In fact, it is duty of the trading licensee to supply the power at the terms of agreement of power purchase to the Distribution Licensees i.e. DISCOMs. If

GUVNL as trading licensee cannot get the supply from generating companies as per terms of PPA, it is its responsibility and it is the entity who should bear the loss and should supply the power to DISCOMs as per commercial principles as envisaged in the Section 61 of E.A.2003. If profit is earned, it is privatized and loss occurs is to be socialized cannot be permitted in view of the facts that GUVNL is taking the trading commission to the DISCOMs which ultimately DISCOMs recovers from the consumers. This is the incompetency of GUVNL and such an incompetency in spite of paying all the expenditure, highest salary to GUVNL personnel cannot be permitted.

8.26. That it is the GERC who has been continuously hampered by the consumers and consumers group that there is no such provision in the Electricity Act, 2003 to form a holding company for power procurement on behalf of DISCOMs, the case is very clearly clarified by Hon'ble APTEL in Appeal No. 188 of 2015 judgment dated 28.07.2016 in Torrent Power Ltd. Vs. UPERC & Ors. at para 11.19 to 11.24. That it is the GERC who has to advise the Government of Gujarat under Section 86(2) of the Electricity Act, 2003 to either entrust the whole work of generation, transmission, distribution of power either to GUVNL (in fact GUVNL is doing and other limited companies GSECL, 4-DISCOMs, GETCO, SLDC should be abolished) or to make all these entity independent in their working without penetration of GUVNL if they are considered efficient, to save considerable O&M expenses, Administrative Expenses in the real public interest. That consumers and consumers group failed to understand why Commission being an independent Statutory quasi-judicial body hesitates to implement and to set right the position of GUVNL as per provision of the Electricity Act, 2003. Why GERC is allowing GUVNL to carry the business on behalf of DISCOMs when no provision of the Electricity Act, 2003 permits to do it and why Commission in spite of drawing the attention number of times by the stakeholders that the formation even after 18 years of enactment of the Electricity Act, 2003, such illegal working of

GUVNL is being granted by the Commission is bizarre. The Commission is requested to initiate *suo-motu* proceedings for either making only one company or dissolve GUVNL and to entrust the work of Distribution of electricity to the DISCOMs including power procurement so that consumers can be saved from paying unwarranted trading commission to GUVNL who has totally failed to control its GSECL generation to the 80% PLF, who has also failed to procure power for DISCOMs at the competitive price in spite of the facts that GUVNL has entered into PPA for more than 28000 MW against its requirement of 16000 MW in peak hours.

8.27. That the modes operandi of GUVNL is such that the consumers are being burdened with avoidable fixed cost which are being paid to generators particularly GSECL and other gas based power plants with whom GUVNL has entered into PPA. It is a mystery that power suppliers which GUVNL favours, are becoming defaulters for the best reasons known to GUVNL.

8.28. That is why GUVNL is not submitting the Petition before Commission for amendment in the PPA entered into with gas based plants whose fixed cost is being borne by the consumers of Gujarat though they are not supplying any power to the GUVNL, DISCOMs since more than 10 years? Government of Gujarat, GUVNL and Commission do not see any public interest in this issue? Not only that but Commission has proved its self as one of the machinery of the Government of Gujarat and has become the silent spectator failed to regulate, failed to get the principles envisaged in the Section 61 of the Electricity Act, 2003 implemented in its real spirit to achieve the purpose and intent as narrated in the preamble of the Electricity Act, 2003. Why Commission is allowing the recovery of fixed cost-capacity charges on PAF when it was on PLF in Tariff Regulations of 2005. Why Commission has framed the tariff regulation in which recovery of capacity charges is allowed on PAF instead of PLF when the purpose of Section 61 is very indicative that the business of electricity generation, transmission, distribution and trading

should be carried out on commercial principle. Which commercial principle allows the recovery of capacity charges though it does not supply single unit of power? Not only that but the principle of merit order is also required to be amended to the point that if any generation company who does not qualify for merit order dispatch of their generated power, will not get the capacity charges in order to bring efficiency and to kick out the lethargic character of generating companies particularly GSECL and others private too who gets the recovery of their capacity charges from consumers under the guise of FPPPA. The Commission is requested to initiate *suo-motu* amendment in the interest of the public instead of approving such SPPA which is totally against ethical, legal phenomenon and legally announced judgment by the Apex Court.

8.29. It is to be further submitted that all the stakeholders (except Consumers and Consumers' Organization) like financial agencies, generators, procurers and Government of Gujarat are attempting to help the generators under the guise of Public Interest, particularly the Petitioner GUVNL by filing this Petition has attempted to get something done indirectly, which it has not been able to get directly. This is against the well settled principle of law i.e. 'what may not be done directly cannot be allowed to be done indirectly' as has been held by the Hon'ble Supreme Court in the case of *Jagir Singh vs. Ranbir Singh,* reported in (1979) 1 SCC 560 (para 5 may be seen therein) and later reiterated in the case of *State of Tamil Nadu vs. K. Shyam Sunder,* reported in (2011) 8 SCC 737 (para 28 may be seen therein).

8.30. It is not out of place to state here that the GSECL is having generation capacity of more than 5500 MW and is operating less than 30% PLF. The Commission is requested to find the data from the past tariff order from 2000 to 2020 and compare the generation with the installed capacity. It is found that the generation capacity is increased and the generation is getting lower and lower year on year for the simple reason that they are getting recovery of

their fixed cost from the consumers under the guise of PAF. The GSECL and GUVNL has proved the worst than the old GEB regime as far as efficiency is concerned and implementation of preamble of the Electricity Act, 2003 is concerned. Is it not the responsibility of GUVNL, GSECL and statutory duty of the Commission to see what should be going on and what is going on? in the larger public interest? When the big business tycoons come before the Government and Government makes the policy, Commission sees the public interest and small business tycoons as referred above comes before Government and Commission does not see public interest which is injustice and it is expected that the justice by the Statutory Authority should be balanced and should be in harmony with the stand already taken by the Court in its earlier decisions.

8.31. That very recently GUVNL has submitted the Petition No. 1971 of 2021 for approval of PPA dated 01.01.2011 between GUVNL and GSECL for Unit VIII of Wanakbori 800 MW generating station after 10 years of signing the PPA as if there is no body to regulate and control the activity of GUVNL. Neither GSECL nor GUVNL has submitted any Petition for approval of capital investment before the Commission and also not invited any comments/objections/suggestions of the consumers who are the ultimately bearing the brunt of all expenditure of GSECL, violates all the principle of transparency as envisaged in Section 86(3) of the Electricity Act, 2003 by the Commission and GUVNL as well. Such acts by GUVNL has resulted into the highest tariff in the State of Gujarat which is claimed by GUVNL and GoG power surplus State inversing all the principles of economy that when there is an ample supply of power, the prices should be the lowest and vice-versa.

8.32. In view of above facts, the engineered appearance of public interest for approval of SPPA is a myth and if approved will prove boomerang and will defeat the so called public interest as is the case in other PPA.

8.33. That it also evident from the list of various litigations taken place during the course of administration of GUVNL against generators which is Solar, Wind, MSW, thermal power procurement agreements, and also evident from the results of the litigations GUVNL has faced that the generators to whom GUVNL has favoured have been proved defaulter because of the best reasons known to GUVNL and GoG authorities.

8.34. In view of the facts and legal provisions stated supra, it is requested to reject the Petition for approval of SPPA as it is not maintainable and admissible because it is not the duty of the Commission to revive and rehabilitate the generation business tycoons who are facing financial hardships. Moreover, the GoG has also revoked the GR dated 01.12.2018 which was the policy directive for revival and rehabilitation of generating projects based on the imported coal where in HPC recommendations were accepted and based on it GUVNL has submitted the Petition No. 1807 of 2019 and the Commission has pronounced the Order on it on 27.04.2020 stands revoked. The purpose and intent of revive and rehabilitation of such stressed imported coal based power projects has not been achieved and therefore GoG has revoked the GR dated 01.12.2018. Therefore, there is now no question and purpose of revival and rehabilitation of such power plants and hence the approval sought for amendment in the SPPA by the Commission in the Order dated 27.04.2020 does not survive and is null and void.

8.35. The Commission is requested to call for the data and details of generation and supply with price to GUVNL since the inception of these three projects including EPGL i.e. COD of the plants in terms of PPA. It will be clear from those details that in spite of non-supply from these generators, GUVNL has been able to get the cheaper power from the IEX. The defaulter generators never thought of their obligation of supplying the power in public interest and only GUVNL is worrying about public interest and under the guise of public interest wants to still favour the defaulter generators which is strange.

8.36. In fact, these generators should be black listed and defamed before the other financial agencies so that they cannot do the other business and should be forced to supply the power at the agreed price under competitive bidding price to set a bench mark of promissory estoppels in the overall public interest.

Rejoinder to UUWA objections by the Petitioner vide affidavit dated 02.11.2021

9. The Petitioner GUVNL filed rejoinder-in-reply vide its affidavit dated 02.11.2021 in response to above reply filed by the Objector UUWA as under:

9.1. This Commission vide Daily order dated 29.09.2021 in Petition No 2004 of 2021 has directed the Petitioner (GUVNL) to issue public notice and invite suggestion / objection from the stakeholders on affidavit within 15 days from the date of issuance of public notice. Accordingly, Petitioner has issued public notice on 07.10.2021 in one Gujarati and one English newspaper for wide circulation in the State / National level and also uploaded the copy of Petition No. 2004 of 2021 along with all relevant documents on its website. Last date of submission of suggestion / objection from Stakeholder was 21.10.2021. However, Petitioner is not in receipt of any objection / suggestion from Stakeholder(s) except from UUWA vide its email dated 29.1.2021.

9.2. Utility Users' Welfare Association ("Objector No. 1 UUWA") vide e-mail dated 29.10.2021 has forwarded their un-notarized copy of suggestion / objection / view in the Petition No. 2004 of 2021.

9.3. It is submitted that at the outset the Petitioner denies all averments, allegations and contentions made by Utility Users' Welfare Association (UUWA) in its reply dated 29.10.2021 and craves leave of this Commission to refer to and rely upon the submissions made in the Petition along with

annexures thereto and the same are not being repeated for the sake of brevity. It is further submitted that the reply filed on behalf of the UUWA is repetitive in nature and therefore, the Petitioner rather than filing para-wise response is responding issue-wise to the said reply.

9.4. At the outset, it is pointed out that all the contentions raised on behalf of UUWA are misplaced and misconceived apart from having made irrelevant and inappropriate allegations inter alia against GUVNL, Government of Gujarat and this Commission, which are denied. Further, the aspects raised and prayers sought are beyond the scope of the present Petition and the same cannot be considered in the present case. Such issues sought to be raised and allegations made are not being dealt with as being outside the scope of the Petition. However, it may not be taken as admission of such allegations or prayers on part of the Petitioner since all allegations and prayers of UUWA are wrong and denied.

9.5. The present Petition has been filed to place on record the revised Supplemental Power Purchase Agreement dated 12.08.2021 signed between the Petitioner and the Respondent No 1 M/s Essar Power Gujarat Limited, in pursuance to the Order dated 27.04.2020 passed by this Commission and the Government of Gujarat Resolution and Letter both dated 12.06.2020 and Government of Gujarat GR dated 05.06.2021.

9.6. The Petitioner had filed the Petition No. 1807 of 2019 before the Commission for approval of the Supplemental Power Purchase Agreement dated 01.03.2019 entered into with M/s Essar Power Gujarat Ltd for amendment in PPA dated 26.02.2007. The proposed Amendments were pursuant to the Government of Gujarat Policy Directive vide Government Resolution (GR) No. CGP-12-2018-166-K dated 01.12.2018.

9.7. That the Commission after public hearing and receiving representation from Consumer organisations including Utility Users' Welfare Association in the above Petition, had passed detailed Order dated 27.04.2020 and granted approval to the Supplemental Agreement with certain modifications viz. (i) reduction in Station Heat Rate, (ii) withdrawing 10% tolerance above HBA derived price, (iii) removal of transit losses & other charges, (iv) increase in availability from 85% to 90% for incentive eligibility, (v) procurement of coal only though International Competitive Bidding process at best available rates and adoption of best / lower of Indices for the country of origin of coal for working out energy charge and approval of the Commission for the price discovered etc. These modifications suggested by the Commission are in interest of the public of the State by reducing impact of actual pass through of fuel cost. The said Order had not been challenged by the UUWA.

9.8. It is submitted that the present Petition is filed for approval of the modifications in the SPPA dated 01.03.2019 as per the directive of the Commission in the Order dated 27.04.2020 and as per Government G.R. dated 05.06.2021. UUWA has not raised any specific observation / suggestion to any of these changes or otherwise in relation to the terms of the Supplemental PPA dated 12.08.2021.

9.9. As regard to UUWA's submission for providing the page no. 32 & 33 of the Petition as pages are not legible, it is to state that legible copy of the page no 32 & 33 (HBA index for January 2017) has been duly submitted by Petitioner vide e-mail dated 29.10.2021.

9.10. With regard to Revocation of G.R. dated 01.12.2018 and Guideline dated 12.06.2020, it is submitted that Energy and Petrochemical Dept., Government of Gujarat vide letter dated 12.06.2020 has conveyed that the issue related to uniform implementation of Supplemental PPAs with imported coal based power projects located in Gujarat has been examined and Government of

Gujarat vide G.R. No. CGP-12-2018-166-K dated 12.06.2020 has decided that the earlier G.R. dated 01.12.2018 stands revoked for all intents and purposes since the objective and purpose for which the G.R. dated 01.12.2018 was resolved is not being achieved. Further, Government of Gujarat in its letter dated 12.06.2020 had given detailed guidelines regarding further course of action regarding signing of SPPA with Respondent No. 1 as under:

> "……
>
> *2. In this regard, after careful consideration, State Government has decided, as follows:*
>
> *(i) To revoke the GR dated 1.12.2018 for all intent and purposes.*
>
> *(ii) The matter of signing of supplemental PPA(s) with EPGL and CGPL shall be decided on case to case basis by the Government and as per terms & conditions decided hereafter:*
>
> *a. Supplemental PPA with EPGL shall be signed with modified terms and conditions as per the GERC order dated 27.04.2020 and as per terms & conditions decided hereunder at para 2 (iii) of this letter……*
>
> ……
>
> *3. Accordingly, GUVNL is hereby directed to draft the supplemental PPAs with EPGL & CGPL consistent with the above decision and same shall be sent to State government for approval on cases basis.*
>
> ……"

9.11. The above GR and Letter dated 12.06.2020 refers to the Order dated 27.04.2020 passed by the Commission and provides for further terms and conditions to be included in the Supplemental PPA to be executed with EPGL. UUWA has only referred to the revocation of the earlier GR dated 01.12.2018 without referring to other aspects decided in the GR including the specific reference to the SPPA being signed as per Order dated 27.04.2020 and terms and condition mentioned in the Letter dated 12.06.2020.

9.12. In view of above directives of Government of Gujarat, the Petitioner had sent draft of SPPA with EPGL after incorporating modifications suggested by the

Commission and the Government of Gujarat to State Government for approval. The State Government vide Resolution dated 05.06.2021 has accorded approval to the Petitioner for signing of SPPA with EPGL. Accordingly, the Petitioner has signed Supplemental PPA dated 12.08.2021 with the Respondent No. 1 EPGL.

9.13. Thus, the present Petition and the proposed amendments to the PPA are being implemented pursuant to the policy decisions of the Government of Gujarat. Therefore, the UUWA's argument that, since GR dated 01.12.2018 is revoked, the Commission's Order automatically gets revoked is baseless and misconceived and is liable to be rejected.

9.14. With regard to the contention of the UUWA that this Commission is not bound by the directives of the Government of Gujarat, it is submitted that the policy decisions taken by a Government in larger public interest cannot be challenged before a Court except in cases of manifest arbitrariness. The Policy decision by the Government of Gujarat dated 12.06.2020 has not been challenged. The present Petition has been filed in order to implement and give effect to the policy decision of the Government of Gujarat and directives of this Commission.

9.15. Undoubtedly, this Commission has necessary statutory jurisdiction to approve the amendments and has already approved the Amendments in the Order dated 27.04.2020. The Commission has considered the above aspects including the issue of whether the Supplementary PPA is in public interest in the Order dated 27.04.2020 and has accepted the Policy Decision by the Government of Gujarat. Therefore, the objections sought to be raised by the UUWA in the present Petition are not relevant. The Supplementary PPA dated 12.08.2021 is in accordance with the Commission's Order dated 27.04.2020 and Government of Gujarat guideline dated 12.06.2020 which is in the public interest and beneficial to the consumers of the State. Therefore, there is no

reason to reject such changes in the Supplementary PPA dated 12.08.2021 which are in consumer interest.

9.16. In its desperate attempt to unnecessarily oppose the approval of Supplementary PPA, UUWA is casting uncalled for aspersions on this Commission as well on the bonafide of the Petitioner GUVNL by relying on the judgment dated 24.09.2007 pronounced by Gujarat High Court in SCA No. 2186 of 2007. In reply thereto, it is submitted that the same are not relevant and do not impact the present proceedings at all. The observation of the High Court of Gujarat cannot be treated as a precedent to doubt the credentials of the Petitioner GUVNL in each and every case. It is submitted that every case depends on its facts and passing observations of the High Court in one of the cases more than 14 years ago cannot be construed to be applicable in all other cases. The present proceedings relate to approval of amendments to the PPA by way of Supplementary PPA dated 12.08.2021.

9.17. Further, it is submitted that the UUWA had raised the same submission in the Petition No 1807 of 2019 and this Commission in its Order dated 27.04.2020 while approving SPPA dated 01.03.2019 has dealt with the issue. The same issues cannot be raised again and again.

9.18. With regard to legal status of the Petitioner GUVNL, UUWA has submitted that status of GUVNL is of deemed trading licensee and there are no provisions of the scheme in the Electricity Act, 2003 to entrust the task of procurement of power to the trading licensee by the distribution licensee.

9.19. It is submitted that Petitioner is functioning as an intermediary and a trading licensee for purchase of power on behalf of State distribution licensees and resale on the bulk supply tariff mechanism to such distribution licensees in order to avail the economy of scale. Such structure has been followed in many States wherein a Holding Company procures power on behalf of the State

Distribution Companies. This has also been provided specifically under the Gujarat Electricity Reforms which is recognised under the Electricity Act, 2003.

9.20. The Petitioner GUVNL and its subsidiaries were incorporated during unbundling of Gujarat Electricity Board which was constituted under the Electricity Supply Act, 1948. Once the Electricity Act, 2003 was applicable, the entities/Electricity Boards which were re-organised as the companies have been entrusted the same functions which were under the earlier Indian Electricity Act 1910 and Electricity Supply Act 1948 and are considered as deemed licensees of the respective business, i.e. Trading, Transmission and Distribution.

9.21. The legal status of the Petitioner has been also acknowledged by this Commission in various Orders.

9.22. Moreover, it is submitted that the UUWA had raised the same submission in the Petition No 1807 of 2019 and this Commission has dealt with the issue in the Order dated 27.04.2020 while approving SPPA dated 01.03.2019.

9.23. It is submitted that all other contentions which have not been specifically dealt with by the Petitioner in the present rejoinder are denied in terms of the submissions made hereinabove. Accordingly, it is submitted that the present Petition seeking approval of amendments to the PPA by way of Supplemental PPA dated 12.08.2021 deserves to be allowed.

10. Thereafter, the matter was listed for hearing on 09.11.2021.

10.1. The office of the Commission received an email dated 09.11.2021 from the Objector UUWA Ref. No. UUWA/2004/2/2021 dated 09.11.2021 requesting to grant adjournment on 09.11.2021 which reads as under:

"……

This has reference to the urgent hearing kept of petition No.2004 of 2021 on 9/11/2021 with short notice for approval of Amendment in PPA done on 26/02/2007 before 14 years between GUVNL a trading licensee and Essar Power Gujarat Ltd. where in Essar Power Gujarat Ltd. has quoted a rate with non-escalation clause for fuel- variable cost for 25 years as per bidding guide lines notified by MoP GoI and have been qualified as successful bidder and accordingly contract was given to Essar Power Gujarat Ltd. weeding out the other bidders at the relevant time and GUVNL entered into PPA with Essar Power Gujarat Limited which was approved by Hon'ble GERC in 2007 and have adopted the discovered price per unit quoted by Essar Power Gujarat Ltd. as per provision of Section 63 of Electricity Act,2003. The similar PPA are also approved with Adani Power Ltd. and Coastal Gujarat Power Ltd. by Hon'ble GERC dated 26/02/2007 which is also with the non-escalation clause they preferred voluntarily for variable charges i.e. fuel charge for supply of power from their generating plants for 25 years based on the imported coal.

Subsequently, these generators submitted the petitions for compensatory tariff as there has been promulgation in the law of Indonesia from where these three generators are said importing coal. The litigations between these generators and GUVNL travelled up to Supreme Court of India, but as per the terms and various Articles of PPA, they are not qualified to get any relief. Then after Govt. of Gujarat has formed a special Committee named as High Power Committee for revival and rehabilitation of these generators under the guise of Public Interest vide GR dated 1/12/2018. Based on this GR dated 1/12/2018, GUVNL submitted the petition No.1807 of 2019 before GERC for Amendment in PPA for Essar Power Gujarat Ltd. based on the CERC Order for Adani and CGPL. Hon'ble GERC vide Order dated 27/04/2020 in Petition No.1807 of 2018, approved the Amendment in PPA as per policy directive given by Govt. of Gujarat vide GR dated 1/12/2018.

Then after Govt. of Gujarat has revoked the GR dated 1/12/2018 contemplating that the intent and purpose for which the recommendations of HPC are accepted has not served its purpose and intent of consumer interest as well as revival and rehabilitation of stressed imported coal based power projects and therefore GR dated 1/12/2018 has been revoked on 12/06/2020.

Then after GUVNL submitted the petition No.2004 of 2021 based on the new GR dated 12/06/2020 for approval of Amendment of PPA in terms of Order dated 27/04/2020 in Petition No.1807 of 2019 of GERC. GUVNL as per Oral Order of GERC has invited the objections and suggestions in the Petition

No.2004 of 2021 with short period of 15 days only without joining the parties who have participated in Petition No.1807 of 2019 as per Civil Procedure Code 1908. Therefore the other participants who have submitted their views/comments in Petition No.1807 have got NO opportunity to submit their comments in this Petition No.2004 which is in total violation of CPC and principle of natural justice.

UUWA however, submitted the suggestions and comments by e filing dated 29/10/2021 with copy to GUVNL. UUWA could not send a copy to respondent Essar Power Gujarat Ltd. because there is no email id available in the petition and there is no e mail id available of the advocate they have engaged, and similarly to other objectors of Petition No.1807 of 2019. The petitioner GUVNL has given the reply on 2/11/2021 by e mail.

The Hon'ble Commission has scheduled the hearing of the said petition No.2004 of 2021 on 9/11/2020 at 3.00 PM for which intimation is received by UUWA by e mail on 2/11/2021. It is well known facts that there is a Diwali and New Year vacation in Gujarat as Diwali is on 4/11/2021 and New Year on 5/11/2021. Even UUWA has not been given the opportunity to study and submit rejoinder in the reply of GUVNL dated 2/11/2021 which is also in violation of Clause-50 of Conduct of Business Regulations, 2004 (Mutatis and Mutandis).

In view of the above circumstances, UUWA requests the Hon'ble Commission to grant 15 days time to submit the rejoinder in reply of GUVNL and to impart the opportunity of hearing in the Second week of December 2021 in the interest of justice and oblige as the advocate and other persons who represents during the hearing of UUWA is out of station in the Diwali Vacation, and the schedule of hearing is also not conveyed well in advance as per CoB Regulations, 2004.

Therefore UUWA requests the Hon'ble Commission to grant the adjournment and to grant the time as requested above in the interest of judicial jurisprudence and oblige.

....."

10.2. Although, the adjournment sought by the Objector UUWA was opposed by the Petitioner and the Respondent No. 1, the Commission passed Daily Order dated 11.11.2021 deciding at para 10 of the said Order to keep the matter on 16.11.2021 which reads as under:

".....

10. We keep this matter on 16.11.2021 at 11:30 A.M., so as to provide an opportunity to UUWA for any submission, and thereafter the matter would be for order
.....".

11. Accordingly, the matter was kept for hearing on 16.11.2021 when again a request seeking adjournment and raising certain other issues was received on 16.11.2021 from the Objector UUWA vide its email dated 15.11.2021 as under:

".....
Subject: Request for adjournment in hearing on 16/11/2021 in petition No.2004 of 2021 Oral Order dated 11/11/2021 forwarded with letter dated 15/11/2021 still hard copy not received.
Ref; Oral Order dated 11/11/21 hosted on web site on 12/11/21 and posted vide letter No. GERC/ Tech- II/Petition No.2004 of 2021/1774 dated 15/11/2021 yet not received the certified hard copy.

Respected Sir,

This has reference to the Oral Order dated 11/11/2021 in petition No.2004 of 2021 on hearing held on 9/11/2021. UUWA has requested to grant the adjournment and to keep the matter in the second week of December 2021, however, the Commission has scheduled the hearing of the said Petition on 16/11/2021 for the best reasons known to the Commission. In this regards, it is to state here that such type of violation of judicial jurisprudence particularly in the presence of judicial member is not legal and is not expected. The Hon'ble Commission may find out the adjournment granted to Essar group Companies petitions for recovery of CSS Charges and POC which is still pending since 2014 and in Petition No.1389 of 2014. This is a great injustice to the Consumers not to grant the reasonable adjournment and want to decide the matter so urgently is a bizarre. (1456 of 2014 granted 20 adjournments, 1420 of 2014 granted 22 adjournments, 1389 of 2014 granted 15 adjournments). In both the cases parties are GUVNL and Essar group. UUWA as requested on 8/11/2021 to grant 15 days time to file reply in the reply of GUVNL and then schedule the hearing in the second week of December in view of the facts that the advocate and persons who represents UUWA is out of station and it is Commission's decision not to inform the parties well in advance for hearing the matter

within short notice which in total violation of GERC (CoB) Regulations, 2004 which is bad in law and injustice to the consumers. It is to state here with utmost sorrow that UUWA's petition is pending No.1929 of 2021 for different tariff submitted well before GUVNL's 2004 of 2021. It is the precedent that first comes served first, in the presence of judicial member if this principle is not observed is unexpected and injustice to the consumers.

However, UUWA humbly submits the following important issues for consideration and decision of the Commission before pronouncing the final Order.

(1) UUWA received the reply from GUVNL which is vague and objections which are raised are not replied, which proves that the GUVNL agrees and confesses the objections raised by UUWA. The issues raised in petition No.1807 of 2019 are also not replied by GUVNL, Essar and is also n0ot clarified in the Commission's Order dated 27/04/2020. The selected issues are only replied and clarified which is not fair and just.

(2) UUWA raised the issue of maintainability of the petition in view of the facts that as per GERC (CoB) 2004 , the Petitioner has to mention the concerned Section of E.A.2003 and Clauses of Conduct of Business Regulations, 2004 that under the particular provision the Petition is filed. UUWA proved that GUVNL being not a Distribution Licensee, the GERC does not have jurisdiction to entertain the petition under Section 86(1)(b) of E.A.2003 in view of the facts that Section 86(1)(b) of E.A.2003 and 86(1)(f) of E.A.2003 are not attracted as clarified in detail in our objection para-2.5 to 2.12 which is not replied. Therefore, Hon'ble Commission may decide the issue whether it has the jurisdiction to decide the present petition no.2004 of 2021 of GUVNL who is a trading licensee. Because UUWA feels that this is a test of the Commission GERC with a judicial member who has to give the legal decision as per provision of law considering the various judgments of APTEL and Supreme Court.

(3) GUVNL may be directed to submit the provision of para-19 of reply of GUVNL regarding the provision either in Electricity Act, 2003 or Gujarat Electricity Reforms Act. Hon'ble Commission is requested to refer the Judgment of Hon'ble APTEL in Appeal No.188 of 2015 judgment dated 28th July 2016 Torrent Power Ltd. Vs. UPERC and Ors. Para-11.21 to 11.24. and where in status of GUVNL which is akin to UPPCL (Uttar Pradesh Power Corporation Ltd. who is procuring power for Discoms of UP State just like GUVNL is doing. This Commission is bound to follow the judgments of the superior courts and now judicial member is posted and can very well make this issue clear in the interest of the consumers and justice.

(4) It is the legal point required to be clarified and decided that when the GR dated 1/12/2018 is withdrawn/revoked by the Govt. of Gujarat, what will be its effect on the proceedings and decision taken on the base of that GR/ Govt. policy ?

(5) The Govt. of Gujarat has revoked the policy GR for granting the higher rate to Essar Power Gujarat Ltd, Adani Power Ltd. and Tata's CGPL That the policy is revoked and benefit granted in it is also withdrawn, in such case how the benefit granted in the said revoked/withdrawn policy be allowed to its beneficiaries i.e. Essar PGL, APL and Tata's CGPL?

(6) It is a fact that Hon'ble Commission has taken the decision on 27/04/2020 in Petition No.1807 of 2019 which is totally based on the GR/Policy of Govt. of Gujarat which is revoked/withdrawn by Govt. of Gujarat, how the judgment dated 27/4/2020 is now effective?

(7) It is a crystal clear position that after the revocation of policy/GR by GoG its self, has created the situation that the Hon'ble Commission's judgment dated 27/04/2020 in petition No.1807 of 2019 becomes null and void and looking to this view, how this petition based on judgment dated 27/04/2021 in Petition No.1807 of 2019 is maintainable?

(8) It is reiterated that GUVNL has joined only two parties namely Energy Watchdog and Prayas Energy Group and not joined other parties to this petition. GUVNL may be asked the reasons why other objectors are not made party to this petition. It is arbitrary and is a clear case of non joinder of parties to the present petition.

(9) If plea is taken by either Commission and GUVNL that GUVNL has given the ad.ment for inviting the objections/suggestions in the news paper, then why Energy Watchdog and Prayas are made party to this petition who are from Delhi and Pune -Maharastra who are not going to be affected by Essar Power purchase by GUVNL in view of the facts that Maharastra and Delhi are not the beneficiary of Essar Power. The consumers group and consumers of Gujarat are going to be affected by the out come this Order and are not made party which is a gross violation of CPC 1908. Hon'ble Judicial Member and in charge Hon'ble Chairman is requested to look into this issue from legal point of view to prove the presence of judicial member is correct decision by Hon'ble Supreme Court of India in case of Govt. of Gujarat Vs. UUWA.

(10) It is to mention here that it is a practice and procedure of the GERC so far experienced by UUWA and other parties that when review, clarificatory petitions or any other petitions subsequently filed in context of the previous petition, the Hon'ble Commission directs the petitioner to give

ad.ment in the newspaper and the petitioner always joined the parties of the original petition and so joined parties are supplied with the copy of the petitions and reply, rejoinders there in. Hon'ble Commission may check the procedure so far followed. Why in this case, it is not followed by GUVNL which is totally illegal.

(11) There is no clarification by GUVNL or respondent Essar PGL that what will be the impact of the approval of various clauses of PPA on tariff of the consumers? and the Govt. of Gujarat has been given the cognizance of such steep tariff hike ? looking to the current situation of high price of petrol, diesel and other edible commodities? and also looking to the election to come in 2022?

(12) Whether such a policy to favor the generators which business is delicensed and are doing the business of generation of electricity who in facts have become the defaulters, at the cost of consumers and when the GoG has revoked the scheme of revival and rehabilitation of such stressed imported coal based power plants saying that this is not in the interest of the public as it has not fulfill the intent for which it is notified, is binding to the Commission while deciding the matter under Electricity Act,2003 ?

(13) It is pertinent to mention here that GERC has earlier in its various decision declared and decided that Govt. policy/GR is not binding to it. How in this case without saying any thing on it by the Petitioner GUVNL, the Commission decide it to applicable to the consumers when particular issue is raised by objector UUWA in this petition?

(14) That it is also a undeniable fact that the Govt. of Gujarat has decided to revoke its policy where high power committee was constituted and that committee has recommended various suggestions for Essar, Adani and Tata power plants. Now with the revocation/withdrawal of the policy under which the HPC recommendations were accepted and Hon'ble GERC has considered those recommendations of HPC also becomes baseless and not applicable having no force of policy/GR of GoG. Now on what base, and how GERC rely upon the recommendations of High Power Committee when Govt. of Gujarat its self has already withdrawn and revoked its policy decision notified in GR?

The Hon'ble Commission is requested to grant the adjournment and keep the matter in the second week of December in the interest of justice and consumers at large and in the interest of the GoG newly formed who may not be aware of this developments. It is also requested to join the GoG finance and Energy Department party to this petition in view of the facts that the

impact of the outcome of this petition which will lead to the steep tariff hike and GoG should be aware of this decision in the public interest.

Hon'ble Commission is requested to consider, decide the above issues legal point of view and oblige and again requested to grant the adjournment to the consumers group for genuine reasons like Essar and GUVNL are so far granted as mentioned above.

....."

12. After conclusion of above hearing on 16.11.2021, the Objector UUWA has vide its email dated 18.11.2021 has requested to inform the next date of hearing on letter head Ref. UUWA/4/2004/21 dated 17.11.2021 which reads as under:

".....

Subject: Request to inform the next date of hearing in Petition No.2004 of 2021 and to consider and decide the further submission.

Respected Sir,

This has reference to the above petition hearing scheduled on 16/11/2021. UUWA has requested to grant the adjournment on 8/11/2021 when the matter was scheduled for hearing on 9/11/2021. Again UUWA has requested to grant the adjournment for the genuine reasons on 15/11/2021 in the interest of the justice and consumers. Hon'ble Commission is kindly requested to inform the next date of hearing in the second week of December 2021 and oblige.

UUWA in continuous of its submission, the Hon'ble Commission is kindly requested to grant the time as requested above to argue in the matter and Hon'ble Commission decide the following important issues in view of the fact that the outcome of the order of this petition if approved, is going to increase the tariff and the consumers of Gujarat State has to bear the brunt of Rs.600/- Crore per year which is not at all in the interest of the consumers and public of Gujarat at large.

(1) How and on what ground the Petition is maintainable and admissible?

(2) When the policy/GR dated 1/12/2018 is revoked, on what ground the judgment based on the repealed/revoked policy/GR is survived ?

(3) How Hon'ble Commission determines the fixed charge (Capacity Charge) as per SPPA proposed for approval in absence of data and details required as per tariff regulations and fixed charge required to pay to Essar PGL by GUVNL ?

(4) Is the Govt. of Gujarat policy is binding to the Hon'ble Commission or NOT ? If Hon'ble Commission decides that it is binding to it, under which provision of Electricity Act, 2003 ?

(5) The Govt. of Gujarat policy against the consumers' interest and as per provision of E.A.2003 is not binding to the Hon'ble Commission as per its own earlier Orders in different petitions. How Hon'ble Commission

in this case, policy against the consumers' interest and as per provision of Section 63 of E.A.2003 and as per provision of competitive guide lines, and on what ground it is binding to the Commission ???

(6) The quorum of the present Commission has in Petition No.1936 of 2021 Order dated 11/06/2021 at para 33 (2) page- 128 decided that Government policy is not binding to the Commission if it is not consistent with and is against the provision of E.A.2003. How Hon'ble Commission consisting of the same quorum can say the policy relied by GUVNL which is revoked by the Government is binding to the Commission?

(7) The amendment desired by Petitioner GUVNL in the petition will increase the tariff of the Consumers, in that case it is totally against the public interest and interest of defaulter generator only will be fulfilled by such illegal demand of GUVNL. Can it be legally permissible???

(8) The respondents and petitioner have not provided their reply and rejoinders etc. filed in the petition to the objector and also not filed any reply on UUWA's objections. Therefore, UUWA's objections are admitted by the petitioner and respondents.

(9) Hon'ble Commission is requested to pass the reasoned Order on the above issues, and other issues raised in the objections submitted earlier

because UUWA if justice is not made, is firm to approach the higher forum for justice to the consumers in view of the facts that the consumers have to pay approx. Rs.600 crores per annum just to favor the defaulter generator Essar Power Gujarat Ltd. through the trading licensee GUVNL for no reasons.

.....".

13. The matter was listed for hearing by the Commission on 17.09.2021, 23.09.2021, 09.11.2021 and 16.11.2021.

14. During the hearing the representative of the Petitioner GUVNL reiterated the facts stated in para 2, 4 and 9 above and also drawn attention of the Commission on prevailing scenario of power crisis due to various factors and serious situation of meeting power requirements of State licensees and requested to approve the SPPA by allowing the Petition as early as possible. It is further argued that the present matter has been filed by the Petitioner for approval of Supplemental PPA dated 12.08.2021 entered between the Petitioner and the Respondent No. 1, Essar Power Gujarat Ltd., as per Order dated 27.04.2020 passed by the Commission in Petition No. 1807 of 2019. It is further stated that the said Supplemental PPA consists of two further modifications in the PPA, in addition to the modifications approved by the Commission vide its Order dated 27.04.2020 in Petition No. 1807 of 2019 based on the decision of Government of Gujarat's letter and GR both dated 12.06.2020 and G.R. dated 05.06.2021. The proposed modifications are with regard to the effective date of Supplemental PPA i.e. from the date of approval of the Commission and the second one is with regard to increasing the untied power offered by Essar Power Gujarat Ltd. to GUVNL from 100 MW to 122 MW.

15. Ld. Senior Adv. Mr. Mihir Thakore on behalf of the Respondent No. 1 EPGL reiterated the facts stated in para 3 and 5 above. It is further submitted that the Commission may allow the Petition and approve the SPPA dated

12.08.2021 executed between the Petitioner and the Respondent No. 1 EPGL with consideration of the submissions made by the parties.

15.1. Moreover, Ld. Senior Adv. Mr. Mihir Thakore on behalf of the Respondent EPGL during the hearing on 09.11.2021 submitted that objections which have been raised by the Respondent No. 1 in its submissions with regard to ceiling price of 90 USD per MT of HBA index as specified in Clause 3.2.4 (II) of the SPPA dated 12.08.2021 and four different pricing mechanism for FOB price provided therein are now withdrawn and it is clarified that there is no objection to the said clauses since the Respondent No. 1 has now decided to accept the said clauses as per the SPPA dated 12.08.2021. Hence, it needs to be taken on record that the aforesaid objections raised in their submissions regarding Clause 3.2.4 (I) and (II) of above SPPA stand withdrawn. Even, subsequently, during the hearing on 16.11.2021, it was reiterated by Ld. Counsel for the Respondent No. 1 that above objections raised by the Respondent No. 1 in its submissions made vide affidavit's dated 17.09.2021 and 06.10.2021 stand withdrawn. Accordingly, the above statement made by Ld. Counsel for the Respondent No. 1 is taken on record.

16. Nobody appeared on behalf of the Respondent No.'s 2 & 3 and the Objector UUWA during any of the aforesaid hearings held by the Commission in present matter.

17. Heard the parties. The present Petition filed by the Petitioner is for approval of the Supplemental Power Purchase Agreement (SPPA) dated 12.08.2021 executed between the parties in compliance to the decision / directives of the Commission vide its Order dated 27.04.2020 in Petition No. 1807 of 2019 read with the GR and letter dated 12.06.2020 and GR dated 05.06.2021.

17.1. As the Petition is filed for approval of SPPA executed between the Petitioner and Respondent No. 1, the Commission directed the Petitioner to issue public

notice for inviting comments/objections/suggestion in newspaper and also uploading the present Petition on their website. The Petition was also upload on website of the Commission for same. In response to aforesaid public notice, the Petitioner as well as the Commission received objections/suggestions from Utility Users Welfare Association (UUWA) only. The objections / suggestions of UUWA are stated at para 8, 10, 11 and 12 above.

18. Now, we deal with the issues/objections/suggestions raised by Objector UUWA first hereunder:

18.1. Utility Users' Welfare Association (UUWA) has objected the present Petition on the ground that the same is not maintainable as the Petitioner, GUVNL, is neither a Distribution Licensee nor has it joined the Distribution Licensees who are beneficiaries of the power supply by the Respondent No. 1, Essar Power Gujarat Ltd. It is contended that considering the fact that GUVNL is a Trading Licensee and the Distribution Licensees are different and distinct as per the provisions of the Electricity Act, 2003. Therefore, GUVNL which has filed the present Petition seeking approval of the Commission after signing the Supplemental PPA with Essar Power Gujarat Ltd. under Section 86(1)(b) of the Electricity Act, 2003 does not fall under power of the Commission since GUVNL is a trading licensee and not a distribution licensee. Section 86(1)(b) provides that the Commission shall regulate the power procurement process of the Distribution Licensees. It is, therefore, necessary to refer Section 86(1)(b) of the Act which reads as under:

"……

Section 86. (Functions of State Commission):

(1) The State Commission shall discharge the following functions, namely: -

……

(c) regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other

sources through agreements for purchase of power for distribution and supply within the State;

....."

As per the aforesaid provision, the Commission is empowered to decide and regulate the power procurement of the Distribution Licensees consisting quantum of power, price at which it is to be purchased etc. Thus, the State Commission is empowered to regulate the power procurement of the Distribution Licensees.

18.2. We note that the Petitioner which is the holding company of the erstwhile unbundled Gujarat Electricity Board (GEB) and carrying out bulk power purchase on behalf of the Distribution Licensees of the State Government and sale of electricity to them. It had carried out Competitive Bidding under Section 63 of the Act for procurement of power on behalf of the said Distribution Licensees and selected the Bidders under the said process and had thereafter, signed the Power Purchase Agreement with the successful bidders separately. The Respondent, Essar Power Gujarat Ltd., is one of the successful Bidders in the said Competitive Bidding Process carried out at relevant time by the Petitioner.

18.3. In the aforesaid process the State owned Distribution Licensees and subsidiary companies of the Petitioner, i.e. UGVCL, MGVCL, PGVCL and DGVCL, have authorized the Petitioner to carry out the Competitive Bidding on their behalf and also sign the PPA with successful bidder(s). Accordingly, the Petitioner had carried out the Competitive Bidding Process and signed PPAs with the successful Bidders which also includes Respondent No. 1, Essar Power Gujarat Ltd. It has signed PPA dated 26.02.2007 with the Respondent No. 1, Essar Power Gujarat Ltd.

18.4. Thereafter, the Petitioner had approached the Commission by filing Petition for adoption of tariff under Section 63 of the Electricity Act, 2003 for supply

of electricity arrived at through competitive bidding process under Bid 01/LTPP/2006, 02/LTPP/2006 and 03/LTPP/2006. The Commission has passed Order No. 4 of 2007 dated 20.12.2007 adopting the tariff. Thus, the Petitioner is authorized to procure power on behalf of the State Distribution Licensees, i.e. UGVCL, MGVCL, PGVCL and DGVCL, and the order is already passed by the Commission in the aforesaid process.

18.5. Thereafter, the Petitioner and Respondent No. 1 signed Supplemental PPA dated 01.03.2019 based on the recommendations of the High Power Committee constituted by the State Government vide G.R. No. CGP-12-2018-166-K dated 01.12.2018. As per the recommendations of the High Power Committee, the Petitioner had approached the Commission for approval of the aforesaid Supplemental PPA signed between the parties by filing Petition No. 1807 of 2019. The Commission passed an Order dated 27.4.2020 in the said Petition and decided about the Supplemental PPA dated 01.03.2019 proposing amendments in the PPA dated 26.02.2007 signed between the Petitioner and the Respondent No. 1, Essar Power Gujarat Ltd. The Supplemental PPA dated 01.03.2019 signed between the parties was approved by the Commission with directions to amend certain clauses vide its Order dated 27.04.2020 in Petition No. 1807 of 2019. The present Petition is filed by the Petitioner, GUVNL who is originally authorized by the State Distribution Licensees to procure power in bulk on behalf of the State Distribution Licensees for supply to them and is entitled to sign the Supplemental PPA, if any, with supplier/generator, i.e. Respondent No. 1, Essar Power Gujarat Ltd. Hence, the contention of the Objector that the Petitioner is not a Distribution Licensee but a Trading Licensee, which has filed the Petition under Section 86(1)(b) is not maintainable and cannot be accepted, is not correct and therefore, the same is not accepted.

18.6. The Objector, UUWA, has also contended that the Petition is filed under Section 86(1)(f) of the Electricity Act, 2003. The said Section reads as under:

".....

Section 86. (Functions of State Commission):

(1) The State Commission shall discharge the following functions, namely: -

.....

(f) adjudicate upon the disputes between the licensees, and generating companies and to refer any dispute for arbitration;

....."

The aforesaid provision provides that the State Commission shall adjudicate the disputes between the Licensees or between licensee(s) and the Generating Company(ies). The aforesaid provision provides that the Commission shall adjudicate the dispute between the parties, if any.

18.7. It is contended by the Respondent No. 1 in the present proceedings that ceiling price of imported coal at USD 90 per MT of HBA Index is without giving effect in the Supplemental PPA dated 12.08.2021 in Clause 3.2.4(II) of the PPA which is objected by the Petitioner. Thus, on the aforesaid provision there is dispute between the parties with regard to ceiling price of imported coal while approving the Supplemental PPA dated 12.08.2021 executed between the parties. Hence, it qualifies as dispute between the parties on the aforesaid issue which needs to be decided by the Commission as it is between the Generating Company and the Licensee as a part of PPA which falls under Section 86(1)(b) read with Section 86(1)(f). The aforesaid issue is also already decided by the Commission in earlier proceedings of Petition No. 1807 of 2019 on issue No. 1 wherein it is held that the Petition filed by GUVNL is valid. Hence, the contention of the Objector UUWA, that the Petition is not maintainable and admissible is not acceptable and the same is rejected.

18.8. The Objector has stated that the amendment in the PPA dated 26.02.2007 sought by the Petitioner and the Respondent EPGL is not permissible as per the decision of the Hon'ble Supreme Court in case of *Energy Watchdog Vs. CERC reported in [(2017) 14 SCC 80]*. We note that the present Petition is filed

by the Petitioner in compliance with the earlier decision of the Commission dated 27.04.2020 in Petition No. 1807 of 2019, wherein the Objector UUWA had raised the same issue that the said Petition is not maintainable for the following reasons:

(i) It is in violation of the Competitive Bidding Guidelines of 2005

(ii) The financial hardship, if any, borne by the Generator/Seller is not a ground to revisit and reopen the concluded PPA under Article 18.1 which empowers amendment in the PPA by the parties

(iii) The PPA executed between the parties is based on the proceedings under Section 63 of the Act. It is not permissible to convert and amend an executed PPA by way of change in tariff under Section 62 of the Act on mutually agreed basis.

18.9. We note that the aforesaid issues also came before the Commission in earlier proceedings of Petition No. 1807 of 2019, wherein the Commission has decided that the amendment sought by the Petitioner GUVNL is permissible and the Commission is empowered to approve the same with consideration of provisions of Article 18.1 of the PPA, Competitive Bidding Guidelines and Section 63 of the Act and contentions of the Objector were rejected. The aforesaid issue has attained finality since there is no appeal pending against the decision of the Commission in its Order dated 27.4.2020 in Petition No. 1807 of 2019.

18.10. The present Petition is a consequential Petition filed by the Petitioner seeking compliance of the decision/directives of the Commission in para 25 and 25.1 of the Order dated 27.04.2020 in Petition No. 1807 of 2019. Para 25 and 25.1 of the Order dated 27.04.2020 in Petition No. 1807 of 2019 are reproduced below:

".....

25. In view of above observations, we decide that the present petition succeeds. We decide that the supplemental PPA signed between the parties dated 01.03.2019 be modified as per aforesaid decision of the Commission with regard to review of the coal price, ceiling price of coal, SHR, Auxiliary Consumption, incentive in excess of 90% etc. for determination of energy charge and other conditions as decided and directed by the Commission in earlier part of this Order. The Petitioner and the Respondent No.1 are directed to modify the supplemental PPA 01.03.2019 as per the aforesaid decision of the Commission and submit the modified supplemental PPA to the Commission.

25.1. We further decide that this approval with modifications is being granted to the proposed Supplementary PPA dated 01.03.2019 along with the Addendum no. 1 and 2 subsequently filed by the Petitioner and any change in the ownership of the Responder No. 1's Power plant shall only be done with the prior intimation of any such move and approval of the Government of Gujarat and this Commission.

....."

18.11. In the aforesaid Order, the Commission has directed that the parties to amend/modify the Supplemental PPA dated 01.03.2019 as per decision of the Commission, wherein; the Commission has directed to modify certain clauses and resubmit the same for approval of the Commission. In compliance to the said directives, the present Petition has been filed by the Petitioner. Once the aforesaid issue is already decided by the Commission in earlier proceedings, the contention of the Objector UUWA, relying once again on the same is not permissible and hence, the aforesaid contentions of the Objector are not accepted and the same are rejected.

18.12. The Objector has contended that the Government of Gujarat GR dated 05.06.2021 is in violation and contrary to the provisions of Law and specifically provisions of the Electricity Act, 2003. The contention of the Objector is that the generation activity/business is de-licensed activity. The Government can frame the Policy in the public interest. In the present

Petition, the Petitioner has prayed for grant of benefit by way of Supplemental PPA with regard to tariff agreed between the parties with Respondent No. 1 having defaulted in supply of power in terms of PPA. The same is not permissible as it is against the provisions of the Electricity Act, against consumers' interest and also public interest, as the Supplemental PPA, if approved by the Commission, it will affect the consumer tariff. In support of the said submissions, the Objector UUWA relied on the decision of the Commission dated 11.07.2013 in Petition No. 1254 of 2012, wherein the Commission has not approved the prayer of the Petitioner for grant of concession in tariff, relying on the Government of Gujarat, Industries & Mines Department G.R dated 05.09.2012. In the aforesaid Petition, it is submitted that the Government had decided to grant power tariff subsidy to the Spinning and Weaving Industries which were facing financial hardship. In the said Petition the Commission has not approved the relief/prayer of the Petitioner and decided that the Government of Gujarat to give direct subsidy to the Textile consumers under Section 67 of the Electricity Act, 2003.

18.13. Further, the Objector UUWA has also contended that in other Petitions No. 1716 of 2018, 1717 of 2018, 1718 of 2018, 1720 of 2018 and 1728 of 2018 filed by M/s Shah Alloys Steel Ltd. and similar other Industries which were declared sick under the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985 stating that they are struggling with financial hardship and prayed to reduce the HT tariff from Rs. 7.34 per unit to Rs. 4.40 per unit including demand charges as they are facing global recession coupled with economic slowdown etc. In these matters, GUVNL and other Distribution Licensees were the Respondents. In above matters, the Petitioners' had relied on Government of Gujarat Policy dated 11.09.2017 for revival of such Sick Industries in Gujarat. In the said Petition, the Commission has not approved the prayer of the Petitioners wherein they have prayed for reduction of tariff as per the provisions of the Electricity Act, 2003. In the said Petitions, the

Petitioner, GUVNL, has opposed such tariff reduction, while in the present case, GUVNL is supporting the claim of Respondent No. 1, Essar Power Gujarat Ltd. Accordingly, approval to change in tariff for generation business revival and regeneration, Government Policy and G.R. are in gross violation of Article 14 of the Constitution of India wherein the generators failed to fulfil their contractual obligation. Hence, the Supplemental PPA dated 12.08.2021 cannot be approved.

18.14. The aforesaid contentions of the Objector, UUWA, are not acceptable for the reasons that as recorded in earlier para, the present Petition is filed by the Petitioner in compliance to earlier decision dated 27.04.2020 in Petition No. 1807 of 2019, wherein; the Commission had decided and directed the parties to submit amended/modified Supplemental PPA for approval of the Commission incorporating the decision of the Commission in the said Order. Further, in so far as reliance of the Objector UUWA on the decision of the Commission in its Order dated 11.07.2013 in Petition No. 1254 of 2012 as well as the decision dated 09.05.2019 in Petitions No. 1716 of 2018, 1717 of 2018, 1718 of 2018, 1720 of 2018 and 1728 of 2018 is concerned, the facts and legal issues involved in the said matters are different and distinct from the present matter. Hence, the decisions of the Commission in those matters are not relevant and not applicable in the present matter. Hence, the contentions of the Objector are not accepted and the same are rejected. The contention of the Objector that the Commission is taking different standard/double standard like the Petitioner which is in gross violation of Article 14 of the Constitution of India is not valid and the same is rejected.

18.15. The Objector has contended that if the Supplemental PPA is approved and tariff is increased from the date of its implementation, how can such recovery of increased tariff be allowed from retrospective effect. The increase in tariff with retrospective effect is in gross violation of MYT Regulations, 2011, 2016 and Principles of Multi-Year Tariff decided by the Commission and various

Tariff Orders passed by the Commission relying on the Principles of MYT Regulations. The contention that the incremental tariff based on the approved Supplemental PPA affects the consumer tariff is concerned, we note that the effective date of Supplemental PPA shall be from the date of approval of revised Supplemental PPA by this Commission and the revised Supplemental PPA consists of the terms and conditions stipulated in the Guidelines dated 12.06.2020, Order dated 27.04.2020 and as per the provisions of the G.R. No. EPG-12-2019-15-K dated 05.06.2021. The aforesaid provisions specifically state that the change in tariff based on the Supplemental PPA signed between the parties shall be from the date of approval of the Commission of the said Agreement. Further, the Petitioner has prayed in Prayer B for approving modified Supplemental PPA dated 12.08.2021 to amend the PPA dated 26.02.2007 executed between the parties. Further, Clause 3.1(II) of the Supplemental PPA is regarding 'Effective Date' which states that the amendment effective date shall be from the date of approval of revised Supplemental PPA by the Commission. Hence, there is no dispute with regard to the effective date of the Supplemental PPA based on which the tariff of the Respondent No. 1 as amended is from the date of approval of the Commission which is decided by the Commission in the present Petition as the date of this Order. Hence, the contentions of the Objector have no force and therefore, the same are rejected.

18.16. The Objector has contended that GUVNL is a Trading Licensee and if any dispute between the DISCOMs and Trading Licenses arises for supply of power in that case it is the duty of the Trading Licensee to supply power at the agreed terms of PPA. They are eligible to get trading margin as per the provisions of the Regulations if the Trading Licensee is not getting supply from the generating company as per the terms of PPA. It is the duty of the Trading Licensee to supply and fulfill its responsibility and bear the loss, if any, in supply of power. It is not permitted that if any profit earned is

privatized or loss occurred is to be socialized. It cannot be permitted to recover higher price or power procurement cost from the consumers. As recorded in earlier paras that GUVNL is procuring power on behalf of the Distribution Licensees of the State. Therefore, the question of trading margin etc. does not arise. Further, procurement of such power is permitted by the Commission in its various Orders. In the present case permission for procurement of power from the Respondent, Essar Power Gujarat Ltd., as per the terms of PPA dated 26.02.2007 and subsequent Supplemental PPA executed between the parties and approved by the Commission. Hence, the contention of the Objector that the procurement of power at higher rate by GUVNL should not be passed on to the consumers is not correct and therefore, the same is not accepted and rejected.

18.17. The Objector has contended that generation capacity of GSECL plants is increasing on year to year basis. However, availability of energy from such plants is lower. The Commission may decide recovery of fixed charge for thermal power plant based on PLF and PAF to avoid the fix cost burden on the consumers as the plants of GSECL are operating at quite lower PLF and burden of fixed cost comes on the consumers. The Objector has also contended that the gas based units of GSECL are not operating at full capacity. The generation of energy from such plants is quite lower. However, the burden of fixed cost is passed on to the consumers which qualifies as inefficiency of the plants. However, the same is passed on to the consumers and it cannot be permitted. The aforesaid issues are beyond the scope and the facts involved in the present Petition. Hence, the same are not accepted and rejected.

18.18. The Objector has contended that approval sought in respect of the Supplemental PPA dated 01.03.2019 in the earlier proceedings of Petition No. 1807 of 2019 based on the Government of Gujarat GR No. CGP-12-2018-166-

K dated 01.12.2018 has been revoked by the Government of Gujarat vide its G.R No. CGP-12-2018-160-K dated 12.06.2020 for all intents and purposes since the objectives and purposes of G.R. dated 01.12.2018 for which it was resolved is not being achieved. Therefore, the Order dated 27.04.2020 passed by the Commission in Petition No. 1807 of 2019 has also attained nullity as the Petition No. 1807 of 2019 filed by the Petitioner is based on the recommendation of High Power Committee and accepted by the Government of Gujarat vide G.R. dated 01.12.2018. Once the recommendation of the High Power Committee G.R. is withdrawn or revoked, the purposes, intents and issues associated with it are also revoked. Therefore, the contention raised in Petition No. 1807 of 2019 by the Petitioner is also revoked and the decision dated 27.04.2020 of the Commission has also become null and void. Therefore, the present Petition in which the Supplemental PPA executed between the Petitioner and Respondent in consonance with the Order dated 27.4.2020 in Petition No. 1807 of 2019 has also become infructuous as the Government of Gujarat has revoked the G.R. dated 01.12.2018 based on which the Supplemental PPA dated 1.3.2019 and the present Supplemental PPA are executed between the parties.

18.19. The Objector UUWA has also raised various other objections stated in different emails stated above.

18.20. The other contentions of the Objector are not accepted for the following reasons:

(i) The present Petition filed by the Petitioner is in compliance to earlier decision dated 27.04.2020 in Petition No. 1807 of 2019 of the Commission readwith the Government of Gujarat G.R. and guidelines/letter dated 12.06.2020 and G.R. dated 05.06.2021 wherein it was directed to the Petitioner to carryout certain amendment / modifications in its SPPA dated 01.03.2019 and submit

and get approval from this Commission. The present Petition filed by the Petitioner alongwith SPPA dated 12.08.2021 in compliance to aforesaid decision of the Commission and Government G.R.'s and guidelines. Hence, it is incorrect to say that the SPPA dated 12.08.2021 executed between the parties is not maintainable as the earlier G.R. accepting the HPC recommendation revoked by the Government of Gujarat.

(ii) The other objections are beyond the scope of the present petition and not related with the subject matter of the Petition. Therefore, we are of the view that the contentions raised by the Objector, UUWA, are not acceptable and the same are rejected.

19. Now, we deal with the approval of Supplemental PPA as prayed by the Petitioner.

19.1. Having heard the learned Counsel and the representative of the parties, and on perusal of the facts of the case wherein the Petitioner has prayed for approval of Supplemental PPA dated 12.08.2021 for amendment in the PPA dated 26.02.2007 executed between the Petitioner and the Respondent No.1. The said Supplemental PPA is executed between the parties as per the Order dated 27.04.2020 passed by the Commission in Petition No. 1807 of 2019. It is further submitted that the Supplemental PPA consists of seeking modifications over and above the aforesaid decision of the Commission with consideration of Government of Gujarat's GR and letter both dated 12.06.2020 and GR dated 05.06.2021.

19.2. It is submitted that in approving pricing of imported coal, the Commission and the Government of Gujarat have specified ceiling of USD 90 per MT. The Respondent No. 1 submitted that the aforesaid ceiling is quite lower with consideration of prevailing market price of imported coal. Further, the mechanism for deciding price of imported coal is complex. It is requested that

the Commission may remove the ceiling of imported coal price as well as mechanism for deciding the price.

19.3. It is further submitted that the Respondent no. 1 had challenged the Order dated 27.4.2020 before the Hon'ble APTEL by filing Appeal No. 108 of 2020 on a ground that fixing of ceiling price for HBA Index at USD 90 per MT is not sufficient and adequate to compensate it as the actual coal price has been rising from time to time in the international market. However, thereafter, the said Appeal was withdrawn by the Respondent No. 1 on 26.05.2021.

19.4. It is further argued that the ceiling price is unjust in the present circumstances, and contrary to the objective of making FOB Cost of coal as pass through for the benefit of Respondent No. 1 as the Respondent no. 1 will have to bear the differential value of FOB cost of coal which will lead to further losses suffered by Respondent No. 1 when the power plant is operating with such ceiling fixed on HBA Index and it will defeat the very objective provided for rehabilitation measures determined and implemented by the Government of Gujarat.

19.5. It is argued that in the month of September 2021, there was 150 USD per MT HBA Index and the same was further increased in the month of October, 2021 also. In such situation, it is clear that as per HBA Index coal is traded above 90 USD per MT continuously for the last 4 months and above. In such situation, the Respondent No. 1 cannot be able to operate the plant by bearing loss. Moreover, the Respondent No. 1 has to face penalty for non-availability criteria.

19.6. It is further argued that in such situation having any ceiling price in the PPA dated 12.08.2021 would vitiate the primary rehabilitation objective for which the Supplemental PPA is entered between the parties.

19.7. Clause 3.2.4(II)(a) provides that agreeing for any change in the ceiling price of Imported Coal with HBA Index shall be with prior approval of the Government of Gujarat and the Commission. Therefore, the Respondent No. 1 requested to approve the Supplemental PPA dated 12.08.2021 without any ceiling price of Imported Coal linked with HBA Index.

19.8. The Respondent No. 1 has requested for change in Clause 3.2.4(I) of the Supplemental PPA dated 12.08.2021 by removal of ceiling price while calculating FOB cost of coal with consideration of multiple Indices stated in the same clause.

19.9. Per contra, the Petitioner vehemently opposed the increase in the ceiling of fuel price decided by the Commission dated 27.04.2020 in Petition No. 1807 of 2019 linked with HBA Index Ceiling of USD 90 per MT desired by Respondent No. 1 wherein it is submitted that the aforesaid ceiling provided needs to be removed and further submitted that only one Index, out of 5 Indices, as stated in the Supplemental PPA for calculating FOB cost of coal purchased by Respondent No. 1 be allowed because due to multiple indices, it becomes difficult for the Respondent No. 1 to purchase imported coal from the supplier, is not valid. It is further argued that with consideration of HBA Indices in USD per MT having bench mark price for 6322 GCV coal in the last 11 years i.e. from 2011 to September 2021 having average price of 82.02 USD. During the last 11 years HBA Index has remained in the range of 58.70 USD per MT to 118.40 USD per MT. Therefore, the incremental ceiling in HBA Index sought by the Respondent No. 1 is not valid and the same may not be permitted.

19.10. The present Petition is culminating from the earlier Petition No. 1807 of 2019 filed by the Petitioner. The Petitioner, GUVNL, had approached the Commission for approval of Supplemental PPA dated 01.03.2019 executed between the Petitioner and the Respondent No. 1 for amendment in the PPA

dated 26.02.2007 as per the GoG Policy directive GR No. CGP-12-2018-166-K dated 01.12.2018 and signed Supplemental PPA dated 01.03.2019 and approached the Commission for approval of the same wherein the Commission has passed Order dated 27.04.2020 and decided the matter. The relevant portion of the said Order is reproduced below:

> *".....*
> *25. In view of the above observations, we decide that the present petition succeeds. We decide that the supplemental PPA signed between the parties dated 01.03.2019 be modified as per aforesaid decision of the Commission with regard to review of the coal price, ceiling price of coal, SHR, Auxiliary Consumption, incentive in excess of 90% etc. for determination of energy charge and other conditions as decided and directed by the Commission in earlier part of this Order. The Petitioner and the Respondent No. 1 are directed to modify the supplemental PPA 01.03.2019 as per the aforesaid decision of the Commission and submit the modified supplemental PPA to the Commission.*
> *....."*

19.11. In the said Order the Commission directed the parties to modify the Supplemental PPA dated 01.03.2019 as per the decision of the Commission and submit the modified Supplemental PPA to the Commission.

19.12. On perusal of the Supplemental PPA and submissions of the parties, it is observed that the modification in the Supplemental PPA dated 01.03.2019 carried out by the parties and incorporated in the Supplemental PPA dated 12.08.2021 replying on the Order dated 27.04.2020 passed by the Commission in Petition No. 1807 of 2019 and Government of Gujarat GR and Letter both dated 12.06.2020 and GR dated 05.06.2021 as compliance.

19.13. That the Commission vide the said Order dated 27.04.2020 had directed the parties to incorporate the following modifications in the Supplemental PPA dated 01.03.2019:

a. **Clause 3.1(II)** – Effective date – The effective date of the Supplemental PPA is 15.10.2018. However, the revised energy charges as per the Supplemental PPA payable from 20.8.2019 or from the date the coal is directly procured by EPGL from Indonesia, whichever is later. For the period prior to 20.8.2019, rates of energy charges shall be as per the PPA dated 22.4.2007 and change in law payment as approved by GERC.

b. **Clause 3.2.3. & 3.5.3** – Station Heat Rate has been reduced to 2262 kcal/kW from, 2333 kcal/kWh.

c. **Clause 3.2.3** – Deletion of the provision related to the operation Parameters of Adani Power Ltd (viz. Auxiliary consumption and Gross Heat Rate) considered for computation of Energy Charge Rate to be aligned as per approval by Central Commission in Petition No. 374/MP/2018.

d. **Clause 3.2.4 (I)** – Withdrawal of tolerance of 10% above HBA derived price while working out FOB cost of coal.

e. **Clause 3.2.4 (I)** – Removal of Transit Loss (upto 0.2%) and Other Charges (upto 3% of CIF).

f. **Clause 3.2.4 (II)(a)** – HBA Index Ceiling Price reduced to USD 90/MT from USD 110/MT. Review of ceiling only with approval of the Commission.

g. **Clause 3.2.4 (II)** – Adhering to International Competitive Bidding Process for coal tie up at best available rates and adoption of best /lower of indices for the country of origin of coal for working out energy charge and approval of the Commission for the price discovered.

h. **Clause 3.2.5** – Incentive for plant availability above 90% instead of 85%.

i. **Clause 3.5** – Extension of the terms of PPA shall be with approval of the Commission.

19.14. In addition to above, the Commission had also approved the following clauses filed by the Petitioner by way of addendum to the Supplemental PPA dated 01.03.2019.

a. **Clause 3.8 & 3.9** – Absorption of past period losses by Project Developers.

b. **Clause 3.9** – Withdrawal of all pending claims and litigations by the Respondent No. 1 towards past period.

19.15. It is also noted that the parties, i.e. the Petitioner and the Respondent No. 1 had also agreed to make the amendment in the Supplemental PPA with regard to following two aspects as per the Government of Gujarat letter and G.R. dated 12.06.2020 and GR dated 05.06.2021.

a. Effective date of Supplemental PPA being the date on which the Commission approves the Supplemental PPA.

b. Untied power offered to Procurer (GUVNL) to be increased from 100 MW to 122 MW.

19.16. Therefore, apart from the decision and direction of the Commission in its Order dated 27.04.2020 in Petition No. 1807 of 2019, the present Petition for approval of amendments to the PPA dated 26.02.2007 between the Petitioner and the Respondent No. 1 EPGL by way of Supplemental PPA dated

12.08.2021 is also premised on Government of Gujarat GR and letter both dated 12.06.2020 and Government of Gujarat GR dated 05.06.2021. Hence, it is necessary to refer them as under:

[A] Energy & Petrochemicals Department, Government of Gujarat GR dated 12.06.2020 reads as under:

"Resolution No.: CGP-12-2018-166-R
Energy and Petrochemicals Department
Sachivalaya, Gandhinagar.
Dated : 12 JUNE 2020

Read:
(1) Energy and Petrochemicals Department's C.R of even number dated 03.07.2018.
(2) Energy and Petrochemicals Department's G.R of even number dated 01.12.2018.

Preamble:
The GR dated 1.12.2018 was issued for rehabilitation of the three imported coal based power projects located in Gujarat with whom GUVNL was having four PPAs i.e. one PPA with Coastal Gujarat Power Limited (CGPL)-1805 MW, one PPA with Essar Power Gujarat Limited (EPGL)-1000 MW and two PPAs with Adani Power (Mundra) Limited (APMuL) -1000 MW each. Out of four PPAs:-

- *The supplemental PPA with M/s Coastal Gujarat Power Ltd. has not materialized so far,*
- *The Hon'ble Gujarat Electricity Regulatory Commission (GERC) vide order dated 27.04.2020 has approved the Supplemental PPA with EPGL with modifications.*
- *Whereas in case of APMuL, out of two PPAs, one PPA is sub-judice in Hon'ble Supreme Court in a curative petition filed by GUVNL and for other PPA, Petition has been filed by GUVNL for recall of approval of the Supplemental PPA due to violation of the fundamental premise and primary condition of GR dated 1.12.2018 that the past period losses has to be borne by the Project Developer.*

Further, as per the market trend of coal in Indonesia and the prices reflected in indices of repute, the coal is traded at below HBA Index derived price in Indonesia. Thus, in the changed scenario, the ceiling of HBA Index derived price for FOB price of imported coal is not reflecting the true price of coal.

Thus, the G.R. dated 1.12.2018 is not achieving the objective and purpose for Which it was resolved. Therefore, it is necessary to rectify the situation in order to safeguard the public interest.

In view of the above, the matter was under active consideration of the Government.

Resolution:
In view of above mentioned subsequent developments and changed scenario, after careful consideration, Government of Gujarat has decided to revoke GR dated 1.12.2018 for all intent and purposes.

This issues with the concurrence of the Finance Department on this department's file of even number dated 10.06.2020.

By order and in the name of the Governor of Gujarat.

Sd/-
(Shalini Duhan)
Officer on Special Duty (Power)
Energy and Petrochemicals Department"

[B] Energy & Petrochemicals Department, Government of Gujarat letter dated 12.06.2020 reads as under:

ON LETTER HEAD OF EPD-GOVERNMENT OF GUJARAT

"……

Dated the 12 JUNE 2020

To,
The Managing Director,
Gujarat Urja Vikas Nigam Limited,
Sardar Patel Vidyut Bhavan,
Race Course, Vadodara.

Subject:- Resolution of issue of imported coal based power projects located in Gujarat - Modification of provisions under Supplemental PPA for uniform implementation.

Ref:- (1) GUVNI's letter No GUVNL: CFM (Comm): 283 dated 21.04.2020
(2) GUVNL's letter No GUVNL: CFM (Comm): 287 dated 24.04.2020
(3) GUVNL's letter No GUVNL: 298 dated 02.05.2020

Madam,

I am directed to refer to the above cited subject and state that the issue related to uniform implementation of Supplemental PPAs with imported coal based power projects located in Gujarat State, has been carefully examined by State Government.

2. *In this regard, after careful consideration, State Government has decided, as follows:*

(i) To revoke the GR dated 1.12.2018 for all intent and purposes.

(ii) The matter of signing of supplemental PPA(s) with EPGL and CGPL shall be decided on case to case basis by the Government and as per terms & conditions decided hereafter:

a. Supplemental PPA with EPGL shall be signed with modified terms and conditions as per the GERG order dated 27.04.2020 and as per terms & conditions decided hereunder at para 2 (in) of this letter.

b. GUVNL shall submit the drat supplemental PPA with CGPL separately for approval of State Government. All the modifications made in Supplemental PPA with M/s. EPGL shall be appropriately incorporated in the Supplemental PPA with M/s. CGPL and shall be submitted to the Government for approval before signing., However, in No case, supply of power to State of Gujarat by CGPL shall be at higher tariff than the tariff charged to other procurer states. Moreover, the supplemental PPA shall be effective from the date of order of CERC approving supplemental PPA. CGPL shall share 100% of mining profit towards coal utilisation at power project. However, in case the coal from stipulated mines is not transferred or less transferred to the power plant and is sold outside, the profit is to be shared equivalent to energy supplied under PA considering coal supplied to power plant as well as coal sold outside. In any case, the mining profit will be minimum 15 paise/unit. Further, fixed cost shall be reduced by 20 paise/unit to extent of normative availability of 80% towards lenders contribution as recommended in HPC report.

(iii) For the payment of actual fuel cost in energy charges, the FOB price of coal to be considered as lower of (i) Actual (ii) HBA W Index derived price as per formula given by Indonesian Government for quality of coal consumed (iii) Index published by Argus / Coalindo as applicable for quality of coal consumed (iv) Index published by S&P Global Platts as applicable for quality of coal consumed (v) Lowest Index of the country of origin as applicable for quality of coal consumed.

The ceiling of HBA Index of 110 USD per Metric ton as recommended in HPC report is reduced to 90 USD per Metric ton.

Further, project developers shall procure coal through competitive bidding to ensure fair price discovery in line with market trend and also

make available the invoices for the actual cost at which the imported coal is purchased from mining Company from the country of origin of coal.

For the payment of actual fuel cost in energy charges, other charges shall be allowed as under:

a. *In case of CGPL - port and coal handling shall be actual or as per the quoted charges in the bid and escalated as per PPA, whichever is lower. The ocean freight & 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 PPA, if any.*
b. *Whereas in case of EPGL these charges shall be lower of actual or as per Annexure-I.*

(iv) The above decision shall be effective notwithstanding any pending proceedings before the Hon'ble CERC or GERC.

(v) In the case of Adan, a recall petition filed by GUVNL before Hon'ble CERC seeking cancellation of the relief allowed under the earlier GR dated 01.12.2018 is pending. Accordingly, the decision taken here above in so far as Adani Power is concerned shall be without prejudice to the claims of GUVNL in the pending matter before the Hon'ble CERC. Pending the decision in the proceedings, as at present, the energy charges in respect of Adani will be considered on provisional basis, only as per the decision as mentioned above and parameters appropriately applied in line with the GERC order dated 27.04.2020 in case of EPGL and further Other Charges - Ocean Freight & Insurance and Port & Coal Handlings Charges as applicable to COPI (since these charges are now separately quoted in the Bid by Adani). Such energy charges to Adani shall be further affected as;

a. *After adjustment of 100% share of mining profit towards coal utilisation at power project. However, in case the coal from stipulated mines is not transferred or less transferred to the power plant 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/unit;*

b. *Fixed cost shall be reduced by 20 paise/unit to extent of normative availability of 80% towards lenders contribution as recommended in HPC report.*

The energy charge amount so paid shall be without compromising on the rights of GUVNL in the pending recall petition and subject to the adjustment as per the decision of CERC.

3. *Accordingly, GUVNL is hereby directed to draft the Supplemental PPAs with EPGL & CGPL consistent with the above decision and the same shall be sent to State Government for approval on case to case basis.*

4. *Further, GUVNL is directed to submit above decision of Government of Gujarat through affidavit before CERC in pending proceeding in the recall petition.*

5. *In view of above, as directed, I am, to request you to take appropriate action in the matter under intimation to this Department.*

Yours faithfully,
Sd/-
(Shalini Duhan)
Officer on Special Duty (Power)
Energy and Petrochemicals Department

Annexure-I

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 (in) 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		
(a)	(b)	(c)	(d)		
7	Oct-18	16.5098	0	274.65	0
8	01-Apr-19	16.5098		277.51	
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	Same as above	292.72	Same as above
14	01-Apr-25	16.5098		295.81	
15	01-Apr-26	16.5098		298.90	
16	01-Apr-21	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	

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-21	7.1342	
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.

……"

(The aforesaid G.R. and guideline / letter dated 12.06.2020 are marked as Annexure -1 collectively with this Order.)

[C] Energy & Petrochemicals Department, Government of Gujarat GR dated 05.06.2021 reads as under:

"……

Signing of Supplemental PPA between Gujarat Urja Vikas Nigam Limited (GUVNL) and Essar Power Gujarat Ltd (EPGL).

Government of Gujarat
Resolution No. EPG-12-2019-15-K
Energy and Petrochemicals Department
Sachivalaya, Gandhinagar.
Dated - 5 JUNE 2021

Read:
(1) Energy and Petrochemicals Department's GR No. CCP-12-2018-168-k dated 01.12.2018.
(2) Energy and Petrochemicals Department's R No.CCP-12-2018-166-K dated 12.06.2020
(3) Energy and Petrochemicals Department's Letter No. CGP-12-2018-166-K dated 12.06.2020
(4) Gujarat Uria Vikas Nigam Limited' Letter No. GUVNL/GM (Comm.)/122 dated 30.01.2021.
(5) Gujarat Urja Vikas Nigam Limited's Letter No. GUVNL/GM (Comm.)/226 dated 15.02 2021.
(6) Gujarat Urja Vikas Nigam Limited's Letter No. GUVNL/GM (Comm.)/292 dated 01.03.2021.
(7) Gujarat Urja Vikas Nigam Limited's Letter No. GUVNL/GM (Comm.)/372 dated 22.03.2021.
(8) GAD's Letter No. MPB-10-2021 (45)-KU dated 05.06.2021.

Preamble:

Vide letter referred to at Sr. No. (3) above, Govt. of Gujarat has issued Guidelines for signing of Supplemental Power Purchase Agreement (SPPA) with Essar Power Gujarat Limited (EPGL) & Coastal Gujarat Power Limited (CGPL) and terms thereof in accordance with the modifications suggested by Gujarat Electricity Regulatory Commission's order dated 27.04.2020 while approving the Supplemental PPA with EPGL.

As per approval of Cabinet, the Govt. has decided that the matter of signing SPPA with EPGL and CGPL to be decided on case to case basis by the Government. Further, it is also decided that SPPA with EPGL shall be signed with modified terms and conditions as per the GERC order dated 27.04.2020 and as decided in the Guidelines, as referred to at Sr. No. (3) above.

Vide GUVNL's letter referred to at Sr. No. (4) above, GUVNL has requested Government to convey decision with regard to sign SPPA in accordance with the modifications as per the GERC order and Govt. Guidelines and two modifications suggested

by EPGL regarding (1) Effective date of SPPA being date on which CERC approves SPPA and (2) Offering untied capacity of 122 MW to GUVNL for tie up instead of 100 MW.

In view of the above, the matter was under active consideration of the Government.

Resolution:

After careful consideration of the proposal of GUVNL as narrated in the preamble, the Government of Gujarat is pleased to accord an approval to sign SPPA between GUVNL and EPGL in accordance with the GERC order dated 27.04.2020 and Govt. Guidelines dated 12.06.2020, with the following modifications:-

i. *The Effective Date of Supplemental PPA (SPPA) with EPGL shall be from the date of approval of revised SPPA by GERC and the revised SPPA shall be signed incorporating the terms & conditions mentioned in Govt. of Gujarat Guidelines dated 12.06.2020 & GERC order dated 27.04.2020.*
ii. *In order to limit the impact of coal price on tariff in the interest of consumers, it was decided that HBA Index Ceiling Price under SPPA of USD 90/MT (HBA Indonesian Index) shall not be subject to further revision without prior approval of State Government and GERC.*
iii. *122 MW untied capacity from EPGL project shall be tied up under SPPA by GUVNL.*

This issues with the concurrence of the Finance Department on this Department's file of even number dated 02.06.2021.

By order and in the name of the Governor of Gujarat,

Sd/-
(Dr. Nisarg Joshi)
Officer on Special Duty (Power)
Energy and Petrochemicals Department"

(The aforesaid G.R. dated 05.06.2021 is marked as Annexure -2 with this Order.)

19.17. Now we deal with the amended clauses of the Supplemental PPA one by one.

19.17.1. In the Supplemental PPA dated 12.08.2021, the Petitioner and the Respondent No.1 have agreed to modify certain provisions of earlier PPA dated 01.03.2019 executed between the parties, wherein they have sought an approval of the Commission by filing Petition No. 1807 of 2019 and the Commission passed an Order dated 27.04.2020 and directed the parties to modify the clauses / articles of the PPA. Further, the Petitioner and the Respondent have also agreed to add new clauses/ articles as per decision / directives of the Government of Gujarat guidelines and G.R. dated 12.06.2020

readwith G.R. dated 05.06.2021. In the Supplemental PPA dated 1.03.2019 the Petitioner and the Respondent No. 1 agreed and added following definition:

*(i) "**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.*

The Commission passed Order dated 27.04.2020 in Petition No. 1807 of 2019 and decided regarding the amendment effective date as under:

23.2. Effective date of implementation of Supplemental PPA

Now we deal with the issue pertaining to effective date of the SPPA which as per the recommendation of HPC is 15 October 2018. Further, the Government of Gujarat has notified Resolution Dated 01.12.2018 in terms whereof the effective date is as under: "It is decided to accept the recommendation of the HPC about the effective date of implementation as 15.10.2018."

From the above it is clear that the effective date of the supplemental PPA as proposed and agreed upon is 15.10.2018. The Petitioner and the respondent No. 1 also agreed in the PPA that the amendment effective date of the PPA in Article 3.1 (ii) as under:

"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.

23.3 Further, the Petitioner vide its submission dated 19.12.2019 has submitted that since the Respondent No.1 has already supplied power generated using domestically procured imported coal and assured that it will not claim energy charge as per the supplemental PPA for the power supply during the period up to 19.08.2019 but as per the PPA dated 26.02.2007 and further to reimburse the GST compensation cess and IGST on the domestically procured imported coal as

per Order of the Hon'ble Commission in Petition No. 1680 of 2017. The Respondent No.1 vide letter dated 19.08.2019 has conveyed that power will be generated using direct imported coal with effect from 20.08.2019 and has intimated the anticipated energy charge for merit order purpose with effect from 20.08.2019. Copies of the letters has been submitted.

23.4 In view of the above, the Petitioner has further submitted that though the effective date of Supplemental PPA shall remain 15.10.2018, the revised energy charge shall be payable as per supplemental PPA only from 20.08.2019, i.e. the date as informed and as agreed by the Respondent No.1. The Petitioner has submitted above to the Commission and allow the dates accordingly.

23.5 As per the recommendation of the HPC, which were accepted by the Government the losses prior to supplemental PPA required to be borne by the generator which in the present case is EPGL. The effective date is crucial and critic al in the present case with regard to implementation of the rehabilitation scheme proposed by the HPCand Resolution by Government of Gujarat. Accordingly, the "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.

23.6 As per the submission of the Petitioner in above paras for payment of energy charge for coal directly imported from Indonesia by the Respondent No.1, it has conveyed that since the PPA is based on the Indonesian coal, power will be generated using direct imported coal with effect from 20.08.2019 only. In view of the above, we allow that the revised energy charges shall be payable as per supplemental PPA only from 20.08.2019 or from the date the coal is directly procured from Indonesia, whichever is later. Prior to this rates of energy charges shall be as per the PPA dated 26.02.2007 and any other payment approved as per change in law by this Commission. For all other purposes, the effective date of the supplemental PPA shall be 15.10.2018.

23.52. Change in law

It is also necessary to refer Article 3.2.4 (III), (vi), where both the Petitioner and the Respondent agreed that the seller shall not be entitled to any payment towards change in law for the energy charge from the date of approval of supplemental PPA by the appropriate Commission. Moreover, any payment received by the seller (Respondent No.1) 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. However, the Petitioner vide additional submission dated 27.12.2019 submitted that power will be generated using direct imported coal with effect from 20.08.2019 and intimated that the anticipated energy charge for merit order purpose will be effective from 20.08.2019. It is further submitted that the confirmation is given by the Respondent No.1 to the Petitioner through letter dated 05.03.2019 and 24.04.2019 that, though the effective date of the Supplemental PPA shall remain 15.10.2018, the revised energy charge shall be payable as per Supplementary PPA from 20.08.2019.

In view of this submission by the Petitioner the payment of energy charges prior to 20.08.2019 shall be as per PPA dated 26.02.2007 and hence, the change in law as allowed in Order dated 23.12.2019 in Petition No 1680/2017 shall be applicable till 19.08.2019 for the payment of energy charge or till the coal is procured directly from Indonesia, whichever is later. The computation of energy charge shall be as per supplementary PPA from 20.08.2019 or from the date coal is procured directly from Indonesia, whichever is later. The supplemental PPA allows pass through of actual coal cost, hence, it covers the cost approved under change in law order dated 23.12.2019 of this Commission. Further, any change in law taking place after approval of this order, the Petitioner has to approach the Commission for its approval."

In the aforesaid decision the Commission has decided that the effective date for the revised energy charge shall be payable only from 20.08.2019 or from the date coal is directly procured from Indonesia, whichever is later. For all other purposes the effective date of supplemental PPA shall be 15.10.2018.

19.18. The Commission had also in para 23.60 of the Order dated 27.04.2020 in Petition No. 1807 of 2019 decided and approved the effective date of the Supplemental PPA reads as under:

> *"23.60 Article 3.1 state about the definitions of (i) "Affiliate", (ii) "Amendment Effective Date" and (iii) "Tariff Regulations" the same are approved. We find that the Affiliate is added as per the provisions of Companies Act. While the Amendment Effective Date is as per the recommendation of the High Power Committee and also as per the G.R dated 01.12.2018 of the Government of Gujarat. The tariff regulations are the tariff regulations notified by the Commission as per the provisions of Section 61 read with 181 of the Act. Hence, the same are approved. However, the payment of energy charges prior to 20.08.2019 or from the date the coal is directly procured from Indonesia whichever is later, shall be as per PPA dated 26.02.2007 as explained at para 23.6."*

In the aforesaid decision the Commission has approved the definition of the affiliate, tariff regulations added in the Supplemental PPA dated 01.03.2019. However, in the definition of "Amendment Effective Date" decided that the payment of energy charge prior to 20.08.2019 or from the date of coal is directly procure from Indonesia which is later, shall be as per the PPA dated 26.02.2007 as explained at para 23.6. Thus, the Commission has directed the parties to amend the aforesaid provision.

19.19. The Government of Gujarat in guidelines/letter dated 12.06.2020 and G.R. dated 05.06.2021 stated with regards to effective date of G.R. The relevant portion of the guidelines dated 12.06.2020 is reproduced below:

"2. In this regard, after careful consideration, State Government has decided, as follows:

(i) To revoke the GR dated 1.12.2018 for all intent and purposes.

(ii) The matter of signing of supplemental PPA(s) with EPGL and CGPL shall be decided on case to case basis by the Government and as per terms & conditions decided hereafter:

a. Supplemental PPA with EPGL shall be signed with modified terms and conditions as per the GERG order dated 27.04.2020 and as per terms & conditions decided hereunder at para 2 (iii) of this letter.....

.....(iii) For the payment of actual fuel cost in energy charges, the FOB price of coal to be considered as lower of (i) Actual (ii) HBA W Index derived price as per formula given by Indonesian Government for quality of coal consumed (iii) Index published by Argus / Coalindo as applicable for quality of coal consumed (iv) Index published by S&P Global Platts as applicable for quality of coal consumed (v) Lowest Index of the country of origin as applicable for quality of coal consumed.

The ceiling of HBA Index of 110 USD per Metric ton as recommended in HPC report is reduced to 90 USD per Metric ton.

Further, project developers shall procure coal through competitive bidding to ensure fair price discovery in line with market trend and also make available the invoices for the actual cost at which the imported coal is purchased from mining Company from the country of origin of coal.....

.....

For the payment of actual fuel cost in energy charges, other charges shall be allowed as under:.....

c. Whereas in case of EPGL these charges shall be lower of actual or as per Annexure-I.....

.....

3. Accordingly, GUVNL is hereby directed to draft the Supplemental PPAs with EPGL & CGPL consistent with the above decision and the same shall be sent to State Government for approval on case to case basis....."

19.20. Further, the Government of Gujarat vide its G.R. No. EPG-12-2019-15-K- dated 5.06.2021 by way of Resolution decided as under:

"Resolution:

After careful consideration of the proposal of GUVNL as narrated in the preamble, the Government of Gujarat is pleased to accord an approval to sign SPPA between GUVNL and EPGL in accordance with the GERC order dated 27.04.2020 and Govt. Guidelines dated 12.06.2020, with the following modifications:-

i. The Effective Date of Supplemental PPA (SPPA) with EPGL shall be from the date of approval of revised SPPA by GERC and the revised SPPA shall be signed incorporating the terms & conditions mentioned in Govt. of Gujarat Guidelines dated 12.06.2020 & GERC order dated 27.04.2020....."

In the aforesaid guideline dated 12.06.2020, the Government of Gujarat has decided and directed to the Petitioner to modify the terms and conditions of the SPPA as per the decision dated 27.04.2020 of the Commission in Petition No. 1807 of 2019. In G.R. dated 5.06.2021 the Government has resolved that the effective date of SPPA signed with EPGL by the Petitioner shall be as per the Order dated 27.04.2020 of the Commission and Government of Gujarat guidelines dated 12.06.2020.

The "Amended Effective Date" stated in SPPA dated 12.08.2021 as under:

Amendment Effective Date*" shall mean the effective date of this SPPA which shall be from the date of approval of this revised SPPA by Hon'ble GERC.*

We note that the provision of definition of "Amended Effective Date" stated in the Supplemental PPA dated 12.08.2021 is in accordance with the decision of the Commission dated 27.04.2020 in Petition No. 1807 of 2019

read with the Government of Gujarat guideline dated 12.06.2020 and G.R. date 5.06.2021. Hence, we approve the same.

19.21. Now, we deal with the Amendment / modification in Article / Clause 3.2.3 of SPPA 12.08.2021 state regarding capacity charge for each month claim by the Respondent No.1 to the Petitioner for supply of energy to the Respondent.

19.22. The Supplemental PPA dated 1.03.2019 consists of clause 3.2.3 stating about Energy Charge determination on monthly basis. The aforesaid provision consists of the Gross Heat Rate of the plant provision which is necessary while determining the energy charge is reproduced below:

"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 x LPPF /CVPF} x 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 ali9gned as per CERC approval in Petition No. 374/MP/2018.".....

In the aforesaid Article the Petitioner and the Respondents agreed that for determination of energy charge, Gross Heat Rate is to be consider as 2333 kCal/kWh.

The Commission has in its Order dated 27.04.2020 in Petition No. 1807 of 2019 decided about the Gross Heat Rate of the plant applicable to the Respondent plant with consideration of its earlier decision in Petition No. 1296 of 2013 that the Gross Station Heat Rate shall be 2262 kCal/kWh instead of 2333 kCal/kWh agreed between the parties. The relevant portion of the said decision is reproduced below:

"23.9 Energy Charge

The energy charge agreed between the parties stated in supplemental PPA as clause

3.2.3 is one of the most important clauses of the supplemental PPA, which have effect on generator, procurer and on the consumers. The same is reproduced below:

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 X LPPF/ CVPF} X 100/ (100-AUX)

Where:

AUX = Lower of actual or normative auxiliary energy consumption as specified in the Tariff Regulations as defined 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 1.6.2009)

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" and "GHR" considered for computation of energy charge rate shall be aligned as per CERC approval in Petition No. 374/MP/2018.

The Energy Charge determined under Article 3.2.3 of the Supplemental PPAs are subject to such conditions as general principles of landed price of coal at the plant site (LPPF), specific conditions for LPPF, methodology for merit order scheduling and billing, and pass through of mining profits by the Project Developer.

In the formula for calculation of energy charge, Gross Station Heat Rate (GSHR) of 2333 kCal/kWh or actual whichever is lower has been considered. As regards Aux. Consumption @ 6.5% or actual whichever is lower has been considered.

The consumer groups have submitted that the SHR and Aux Consumption considered are on the higher side and should be as considered in the bid or

as per the tariff regulations as applicable at present or actual whichever is lower.

The Petitioner has submitted that the PPA being under Case I, only capacity charges and energy charges are quoted and it is not based on net SHR. The Supplemental PPAs provide for SHR and auxiliary consumption to be the lower of the actual or normative parameters as provided in the Tariff Regulations of the Commission. As such, the Petitioner has taken due care to ensure that the lowest possible normative parameters are considered so as to protect consumers interest. The Petitioner has submitted that the approach of the consumer groups by singling out different aspects of a complete package and questioning the same in isolation is impermissible.

From the provisions of SHR and Aux Consumption in Supplemental PPA, we observe that lower of the actual and the normative SHR has been proposed with reference to the actual and normative Aux Consumption as specified in the CERC Tariff Regulations, 2009 for purposes of determination of energy charge rate. In the absence of any data, the Supplemental PPAs introduced this formulation for calculation of energy charge by taking lower of the actual or normative GHR and lower of the actual or normative Aux Consumption as per the CERC Tariff Regulations, 2009, since energy charge is being made a pass through. In any event, the procurer is adequately protected by capping the GSHR as actual or 2333 kCal/kWh to the normative GSHR contained in the CERC Tariff Regulations, 2009, whichever is lower. Similarly, in case of auxiliary consumption the same is 6.50% or actual, whichever is lower.

As far as GHR is concerned, we cannot ignore the Original agreement and what we decided earlier on the same subject. The issue of GHR has already been settled by the Commission vide its order dated 03.08.2015 in Petition No.1296 wherein the Commission, based on the detailed technical analysis

has fixed GHR as 2262 Kcal/Kwh. Accordingly, GHR shall be as follows: -

GHR = Lower of actual or Gross station heat rate of 2262 in kCal per kWh

The petitioner shall accordingly amend article 3.2.3.....

.....

.....Article/Clause 3.2.3 of the Supplemental PPA

23.64 The aforesaid Article state about determination of energy charge for each month which is discussed in detail at para 23.9 in the order.

As already explained, the Commission is of considered view that the determination of energy charge shall be based on the Gross Station Heat Rate as lower of actual Gross Heat Rate or 2262 Kcal/kWh. Accordingly, the Petitioner and the Respondent are required to make amendment/change in the PPA and work out the energy charge for the same. Remaining provisions of 3.2.3 are approved.

The following provisions made in the aforesaid Article pertaining to energy charge receivable by Adani Power Limited whose PPA with the Petitioner was subjectmatter of Petition No. 372/MP/2018 is having no relevance. Hence, the same are not approved and deleted from the PPA as the energy charge of the Respondent No.1 plant are different and distinct and has no relevance."

19.23. Thus, in the aforesaid decision the Commission has decided about applicability of Gross Station Heat Rate for determination of energy charge shall be as lower of actual Gross Heat Rate or 2262 Kcal/kWh. The Commission has also decided that the aforesaid Article / Clause consist of "energy charge" receivable by Adani Power Limited whose PPA with Petitioner was subject matter of Petition No. 374/MP/2018 before the CERC has no relevance in this matter.

19.24. Further, the Government of Gujarat in its guidelines dated 12.06.2020 and G.R. dated 05.06.2021 as referred above has decided that the SPPA executed

by the Petitioner GUVNL with Essar Power Ltd. in accordance with Order dated 27.04.2020 in Petition No. 1807 of 2019 of the Commission.

19.25. The SPPA dated 12.08.2021 submitted with the Petition consist of Article/ Clause 3.2.3 as under:

....."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 x LPPF / CVPF} x 100 /(100 – AUX)

Where:

AUX = Lower of (a) actual auxiliary energy consumption or (b) 6.50% as approved by Hon'ble Gujarat Electricity Regulatory Commission in Petition no. 1296/2013.

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 (a) actual Gross station heat rate or (b) 2262 Kcal per kWh as approved by Hon'ble Gujarat Electricity Regulatory Commission in Petition no. 1296/2013.

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....."

On verification of the aforesaid Articles of the SPPA dated 12.08.2021, it is clear that the modification in Article 3.2.3 carried out by the Petitioner and the Respondent No.1 in accordance with the Order dated 27.04.2020 in Petition No. 1807 of 2019 and Government of Gujarat guidelines dated 12.06.2020 and G.R. dated 05.06.2021.

We also note that in the aforesaid Article/ clause the provision related to operation parameters of Adani Power Ltd. (viz. Auxiliary Consumption and Gross Heat Rate) for computation of energy charge rate to be aligned as per approval by Central Commission in Petition No. 374/MP/2018 provided in earlier SPPA dated 1.03.2019 is deleted. Thus, the aforesaid amendments are in compliance to the aforesaid decision of Commission and Government of Gujarat. Hence, we decide to approve the modification made in Article 3.2.3 of the Supplemental PPA dated 12.08.2021.

19.26. Now we deal with the provisions for Article 3.2.4 pertains to the energy charge determined subject to the different aspects stated in the said Article are stated below:

(i) General principle for determination of LPPF
   a. FOB cost of coal.
   b. Transportation and other cost

(ii) Specific conditions
   a. Ceiling price for HBA index
   b. Price of Indonesian Coal
   c. Procurement of imported coal through competitive bidding process after seeking approval from the Commission

(iii) Methodology for merit order scheduling and billing
   a. Methodology for monthly billing

b. Necessary documents required to provide with monthly bill

c. Payment of monthly bill and supplemental bill

d. Rebate etc.

e. Change in law impact etc.

The Article/ Clause 3.2.4 of the SPPA dated 1.03.2019 is reproduced below:

"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 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*

(II) <u>Specific Conditions</u>

(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.

(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) <u>Methodology for Merit Order Scheduling & Billing</u>

(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."

19.27. In the Article 3.2.4 (I) the determination of LPPF with consideration of FOB cost of coal stated wherein it is provided that the FOB cost be determined on monthly basis with consideration of lower of (i) Actual FOB price of consignment (ii) HBA price worked out as per formula for billed GCV plus maximum 10% tolerance on HBA price, (iii) HBA price worked out on proportionate basis with reference to HBA index for 6322 GCV of coal. The transportation and other cost consists of Ocean freight and insurance consist of transit losses as actual or 0.2% whichever is lower. The other charges (sampling, inspection, custom clearance and forwarding agency charge) be actual or 3% of CIF.

19.28. Further, Article 3.2.4 (II) (a) provides for ceiling price for HBA index fixed for 5 years etc. and methodology for such price determination.

19.29. Further, Article / clause 3.2.4 (III) state about methodology for merit order scheduling and billing. It states about submission on monthly bill by seller to the procurer with different documents, payment of bills, rebate claim in it and impact of change in law effect if any occurred.

19.30. The Commission passed order dated 27.04.2020 in Petition No. 1807 of 2019 and decided regarding above Article / Clause as under:

Decision on withdrawal of Tolerance of 10% above HBA Index price derived while working out FOB Cost of coal:

....."23.18. From this exercise it seems that the provisions with regard to 10% tolerance made in the supplemental PPA with regard to FOB price for imported coal is not in consonance with either HPC Recommendation or Government of Gujarat GR No. CGP-12-2018- 166-K dated 01.12.2018. Subsequently, the Petitioner filed an affidavit to the Commission on 01/04/2020 that upon analysing the market trend of the Indonesian coal price and the index as published by leading international price reporting agencies they have observed that coal price as per market trend consistently remain around or lower than the

HBA derived price (HPB Price) for the quality of coal worked out for each month since October 2018 onward. Under these circumstances both the parties have decided to amend the provision related to FOB price in Article 3.2.4 (i) of Supplemental PPA and remove the provision related to allowing tolerance of up to 10% above HBA index derived as provided in the Supplemental PPA effective from 15.10.2018 so as to ensure that no additional burden towards coal is put on the consumers of the State. The Commission appreciates the initiative taken by the petitioner in order to protect the interest of the consumers and therefore we also decide the earlier additions of tolerance of 10% above HBA index in the supplemental PPA dated 01.03.2019 as not permissible on the ground that they are neither part of HPC report nor part of the Government GR and also not in interest of the public, Accordingly, we approve the second addendum dated 01.04.2020 agreed between the Petitioner and the Respondent No. 1 modifying the supplemental PPA without tolerance of 10% on HBA index.....

23.66. The Commission is allowing actual cost of coal or the HBA index whichever is lower, there is no reason to allow any further tolerance of 10%. Even HPC or GR has no intent to do the same. The Commission has gone through actual records of similar plants in Gujarat and find that there is no merit in allowing such tolerance over and above the index. Subsequently, GUVNL has also informed us vide its affidavit dated 01.04.2020 that 10% margin is now disallowed to which Respondent No. 1 has also agreed...."

In the aforesaid decision the Commission decided that the cost of coal link with HBA index having tolerance of 10% on ceiling price is not allowed and directed the parties to remove 10% margin on HBA Index price of imported coal as a part of ceiling price is removed.

Decision on removal of transit loss (upto 0.2%) and other charges (upto 3% of CIF)

The Commission has also decided in the aforesaid order dated 27.04.2020 with regards to removal of transit loss upto 0.2% and other charges upto 3% of CIF. The relevant portion of the said decision is reproduced below:

"23.24 We also note that the provisions made in the HPC report with regards to transportation and other cost is concerned, it is stated that the same is as specified in the PPA or actual whichever is lower. Further, in case of Adani Power Limited the specific formula and methodology is provided for Ocean freight and escalation formula as well as port handling charge. There is no provision made with regards to transit loss stating as actual or 0.2%

whichever is lower. The aforesaid provisions are not provided in the resolutions of Government of Gujarat dated 01.12.2018. Thus, it is in addition to the provisions made in the HPC report read with the Government G.R. dated 01.12.2018. We are of the view that aforesaid additions made by the Petitioner as well as the Respondent which has no approval of the Government of Gujarat vide its policy directives nor it is as per the recommendation of the HPC. Similarly, HPC recommendation does not allow other charges. Hence, we decide the aforesaid provision stated in the supplemental PPA dated 01.03.2019 are neither permissible nor allowed. Accordingly, transportation and fuel handling charges shall be permitted as per the PPA dated 26.02.2007 which act as a ceiling and beyond which no other charges shall be allowed. The petitioner's approach as explained in Table-B of the SPPA is also permissible as it is done scientifically after conducting competitive bidding of CGPL by the Petitioner in order to further control the cost.

23.25 Accordingly, the Ocean Freight and Insurance shall be lower of actual or as statedin Annexure- B and calculated in Indian Rupees, at Exchange Rate (Column (c) & (d) in Table I & II respectively of Annexure – B) and Port/ Fuel Handling Charges shall be lower of actual or as stated in Annexure – B (Column (e) & (f) in Table I). However, the Commission is not allowing transit loss and other charges as part of SPPA as explained above. Petitioner is required to amend SPPA accordingly.....

.....24. However, the Commission is not allowing transit loss and other charges as part of SPPA as explained at above at para 23.21 onwards. Petitioner is required to amend SPPA accordingly.".....

The Commission had in Order dated 27.04.2020 in Petition No. 1807 of 2019 decided that transit loss upto 0.2% and other charges upto 3% of CIF provided in the SPPA dated 1.03.2019 are not permissible and directed the

parties to amend the SPPA dated 1.03.2019 accordingly.

Decision on ceiling of HBA Index reduced from 110 USD/MT to 90 USD/MT for 6322 Kcal/Kg GCV coal and procurement of coal process and approval from the Petitioner and Commission.

"23.12 We therefore, decide and direct the Respondent No.1 and the Petitioner that the procurement of coal be carried out by the Respondent No.1 by following international competitive bidding process. We also decide that such procurement of coal also be carried out on long term/medium term basis i.e. for the period of PPA to ensure the availability of coal, its price, and also to ensure that the declaration of availability of the plant by the Respondent No.1 must be based on the actual coal availability and its price. We also decide that as agreed between the parties the Respondent No. 1 shall require to get the approval of tender documents from the procurer. Moreover, the price which is discovered under competitive bidding process shall also be got approved from the procurer as well as from the Commission. In absence of the above, the procurement of coal shall not qualify for energy charges payable under the supplemental PPA.....

.....23.28 We are of the view that prior to allowing the coal price linkage with HBA price with a ceiling to 110 dollars per MT, it is necessary for the Commission to validate the trend of HBA price index of the coal of 6322 Kcal per Kg during the period from March 2015 to March 2020 (5 years) or March 2016 to March 2020 (4 years) or March 2017 to March 2020 (3 years). The details obtained by the Commission were examined. We are of the view that the upper cap of HBA index of USD 110/MT can be relooked into as per the present global market. As per the records available with the Commission imported coal - HBA index varies in year 2020 from 65.93 to 67.08 USD/MT while last year in 2019, the average HBA was 66.30/MT only. Similarly, in year 2018 the average rate was USD 92.51/MT. If we consider last 6 years average from 2012 to 2017 it was USD 76.47/MT. Therefore, keeping in view the reasonable energy cost as comparable with efficient thermal plants in Gujarat, the Commission approves the upper cap of HBA index to USD 90/MT. This is also confirmed by the petitioner vide its affidavit dated 01/04/2020 that upon analysing the market trend of the Indonesian coal price and the index as published by leading international price reporting agencies they have

observed that coal price as per market trend consistently remain around or lower than the HBA derived price (HPB Price) for the quality of coal worked out for each month since October 2018 onward. The revision of cap is also necessary in view of highly volatile foreign exchange in the present global market.

23.29 It is also to be seen that this plant at efficient price should come within the merit order so as to give reasonably priced electricity in the State. Since it is a higher capacity plant its operation will also facilitate the system operator in time of variability of Renewable generation. As decided in the G.R, the Commission is also open to review this ceiling as and when market conditions are not favorable and there is a need to procure power to maintain 24 x7 supply to consumers of the State. Similarly, procurer shall also use a cautious approach at time when FE is not favorable in respect of coal prices. Accordingly, the Petitioner is directed to modify 3.2.4 para (1) to the extent as stated above i.e. cap of USD 90/MT."…….

23.67. As regard the upper cap of HBA index of USD 110/MT, the Commission is of the view that this cap seems to be quite high in the present global market. As per the records available with the Commission imported coal - HBA index varies in year 2020 from 65.93 to 67 .08 USD/MT while last year in 2019, the average HBA was 66.30/MT only. Similarly, in year 2018 the average rate was USD92.51/MT. If we consider last 6 years average from 2012 to 2017 it was USD 76.47/MT. Therefore, keeping in view the reasonable energy cost comparable with efficient thermal plants in Gujarat, the Commission allow it at USD 90/MT. This is also being done in view of uncertain foreign exchange variation in the present global market. However, as decided in the G.R, the Commission is also open to review this ceiling as and when market conditions are not favorable and there is a need to procure power to maintain 24 x7 supply to consumers of the State. Accordingly, the Petitioner is directed to modify 3.2.4 para (1) to the extent as stated above i.e. cap of US 90/MT and there will be no provision for tolerance of 10%.

Article/Clause 3.2.4-ii of the Supplemental PPA

24.1 With regards to the aforesaid provision made in the supplemental PPA, the Commission decides to allow the same provision with the remark that GUVNL shall ensure that procedure of purchase of imported coal shall be absolutely transparent and wholly competitive to get best available rates. Quarterly Report of such procurement and price should be regularly conveyed to the Commission. The Commission has no objection to review the ceiling, however it will only be applicable after taking approval of this Commission.

In the aforesaid decision the Commission decided and directed to the Petitioner and the Respondent No.1 to carry out the procurement of coal through International Competitive Bidding process with consideration of long-term and medium-term basis and to ensure that the availability of coal and price and declaration of the plant availability on it. It is also decided that the Respondent shall require to get approval of tender documents from the procurer and price discovered under Competitive Bidding process from the procurer as well as Commission.

The Commission has also decided and directed that Article 3.2.4 shall be modified by keeping cap of coal price as 90 USD/MT, linked with HBA Index.

Further it is also necessary to refer the relevant provisions of guidelines and G.R. dated 12.06.2020 of the Government of Gujarat which are produced below:

".....2.

(iii) For the payment of actual fuel cost in energy charges, the FOB price of coal to be considered as lower of (i) Actual (ii) HBA W Index derived price as per formula given by Indonesian Government for quality of coal consumed (iii) Index published by Argus / Coalindo as applicable for quality of coal consumed (iv) Index published by S&P Global Platts as applicable for quality of coal consumed (v) Lowest Index of the country of origin as applicable for quality of coal consumed.

The ceiling of HBA Index of 110 USD per Metric ton as recommended in HPC report is reduced to 90 USD per Metric ton.

Further, project developers shall procure coal through competitive bidding to ensure fair price discovery in line with market trend and also make available the invoices for the actual cost at which the imported coal is purchased from mining Company from the country of origin of coal.

For the payment of actual fuel cost in energy charges, other charges shall be allowed as under:

.....

b. Whereas in case of EPGL these charges shall be lower of actual or as per Annexure-I."

In the aforesaid guidelines it is decided by the Government of Gujarat that the payment of actual fuel cost of FOB price of coal to be considered from the lower (i) Actual (ii) HBA W Index derived price as per formula given by Indonesian Government for quality of coal consumed (iii) Index published by Argus / Coalindo as applicable for quality of coal consumed (iv) Index published by S&P Global Platts as applicable for quality of coal consumed (v) Lowest Index of the country of origin as applicable for quality of coal consumed. It is also decided that the energy charge shall be lower of actual or as per Annexure – A with the said guidelines.

It is also necessary to refer the Government of Gujarat G.R. dated 5.06.2021 wherein the Government has decided regarding the limit the impact of coal price on the tariff of the consumer is reproduced below:

*"**Resolution:***

.....

ii. In order to limit the impact of coal price on tariff in the interest of consumers, it was decided that HBA Index Ceiling Price under SPPA of USD 90/MT (HBA Indonesian Index) shall not be subject to further revision without prior approval of State Government and GERC.".....

In the aforesaid G.R. the Government has decided that coal price limited to HBA Indonesian index ceiling of 90 USD/MT shall not be subject to further revision without prior approval of the State Government and this Commission.

19.31. The supplemental PPA dated 12.08.2021 submitted with the Petition for approval consists of Article 3.2.4 for approval in this Petition is reproduced below:

"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	*<u>FOB Price for Imported Coal:</u>* *Shall be the lower of actual price prudently incurred by Seller or the ceilings mentioned herein under and 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, Ceilings will be replaced with relevant lowest coal indices.* *Note: For determination of equivalent Coal Price for working out Landed Cost of imported coal for the Month: The lowest of following for the month shall be considered:* *(d) Actual FOB price of consignment* *(e) HBA price adjusted and worked as per formula stated in Annexure-A for billed GCV* *"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.* *The FOB price of coal shall always be subject to an upper ceiling limit of HBA Index of USD 90/MT for 6322 Kcal / Kg ascertained on a monthly basis, adjusted for quality of coal (GCV as billed) in the Project and as revised in accordance with this Supplemental Agreement (the "Ceiling HBA Price") at sub para (II) Specific Conditions herein below.*

	(f) Index notified by Argus / Coalindo applicable for the quality of coal consumed *(g) Index notified by S&P Global Platts applicable for the quality of coal consumed* *(h) Lowest Index of the country of origin applicable for the quality of coal consumed* *Note:* *For the coal procured having the GCV as published by above indices, the notified index price will be directly considered.* *The coal index for the coal consumed other than for the coal in the pre-determined GCV range as notified by above indices shall be arrived as follows:* *(i) For the coal consumed having GCV within range of ± 200 Kcal / Kg from GCV of above notified index, the rate shall be worked out on proportionate basis considering the nearest notified monthly index and* *(ii) For the coal consumed other than above category, the rate shall be worked out considering weighted average price of the two notified monthly index within which the GCV of consumed coal is falling to arrive at the equivalent coal price for the GCV of consumed coal.*
Transportation and other costs	*Ocean Freight& Insurance* *The ocean freight & 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)*

	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)*

(II) Specific Conditions

(a) The Ceiling Price for HBA Index will be 90 USD / MT. In order to limit the impact of coal price on tariff in the interest of consumers, the HBA Index Ceiling Price of USD 90 / MT (HBA Indonesia Index) shall not be subject to further revision without prior approval of State Government and GERC.

(b) Seller agrees that in case HBA Index of Indonesian coal exceeds Ceiling Price 90 USD/MT or Revised Ceiling Price as per para (a) above, Seller shall bear the differential cost and continue to supply power under the PPA & Supplemental Agreement.

(c) Seller shall procure imported coal only through international competitive bidding process for procurement on long term / medium term basis to ensure the availability of coal. Seller shall seek approval of Procurer for Tender document and price discovered under competitive bidding process shall also be approved by Procurer and Hon'ble Gujarat Electricity Regulatory Commission. In absence of above, the procurement of coal shall not qualify for payment of energy charges under Supplemental PPA.

(d) Seller shall be required to make available the details and documents related to procurement of coal from the mining sources.

(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 which shall be considered as ceiling for payment. 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:

6. Auditors certificate for each shipment in terms of value and quantity for coal received, consumed for the previous month.

7. Invoices of (i) fuel supplier i.e. invoice for the actual cost at which the imported coal is purchased from mining company from the country of origin of coal (ii) ocean freight and insurance (iii) port / fuel handling charges.

8. Copy of Bill of Entry including Bill of lading and all supporting documents. Bank challans regarding payment of cess, taxes & duties and Letter of Credit / payment details towards purchase of fuel.

9. GCV certificate of loading and unloading port by independent agency.

10. Independent Energy Auditor's Certificate for actual parameters GHR & Auxiliary consumption for the month.

11. Other documents as stated at Annexure-5 of Gujarat Electricity Regulatory Commission order dated 27.04.2020.

The applicability of Revised Tariff under this Supplemental PPA shall be from Amendment Effective Date subject to condition stated at Clause 3.2.1 above.

(iv) 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. Further, the Delay Payment Surcharge shall continue to apply as per provisions of PPA dated 26.02.2007.

(v) Further, the Seller shall be entitled to payment towards approved Change in Law for the Energy Charge only till the Effective Date of this SPPA. Thereafter the Seller shall not be entitled to the approved Change in Law for Energy Charges. Any change in law taking place in future after this Supplemental Agreement, has to be submitted by the Seller to the Hon'ble Gujarat Electricity Regulatory Commission for approval."

On verification of the aforesaid Article it seems that the necessary modification carried out in Article 3.2.4 by the Petitioner and the Respondent in SPPA dated 12.08.2021 by incorporating the modification in earlier Article 3.2.4 of SPPA dated 1.03.2019 with consideration of decision/ directive of the Commission in Order dated 27.04.2020 in Petition No. 1807 of 2019 and the decision of Government in guidelines and G.R. dated 12.06.2020 and G.R. dated 5.06.2021 with regards to (i) withdrawal of tolerance of 10% above HBA Index price, while working out FOB cost of coal, (ii) removal of transit loss and other charges, (iii) HBA index ceiling price reduced to USD 90/MT from 110 USD/MT (iv) FOB price of imported coal shall always be subject to ceiling limit of HBA (Indonesian Index) at USD 90/ MT and other indices notified whichever is lower and (v) adhering to ICB process for procurement of coal and approve the tender documents from the procurer and price of coal from the Commission as well as the procurer of imported coal. Moreover, the seller i.e. EPGL shall require to provide copies of various documents like certificate for shipment of coal, quality, value etc. invoice from fuel supplier for the actual cost at which it is imported from the mining company from the country of origin of coal, ocean freight and insurance, port/fuel handling charges, Bill of Entry including Bill of Lading and all supporting documents, Bank challans regarding payment of cess, taxes & duties and Letter of Credit/payment details towards purchase of fuel, GCV certificate of loading and unloading port by independent agency, independent Energy Auditor's Certificate for actual parameters GHR & Auxiliary consumption for the month and other documents as per the Order dated 27.04.2020 of the

Commission in Petition No. 1807 of 2019. The said clause is in consonance with Government of Gujarat GR dated 12.06.2020.

19.32. During the hearing the Respondent No.1, Essar Power Gujarat Ltd., has contended that calculation of FOB cost of coal in clause 3.2.4(I) of the Supplemental PPA dated 12.08.2021 be carried out with consideration of the lowest of – (i) Actual FOB price of the consignment, (ii) HBA Indexes, (iii) Index notified by Argus/Coalindo, (iv) Index notified by S&P Global Platts, and (v) Lowest Index of the country of origin, taking into consideration of so many indices for calculating FOB cost of coal making it onerous for the Respondent No. 1, to procure coal through international competitive bidding process, which is mandatory requirement for Respondent No. 1. Due to the aforesaid clause, it becomes difficult to obtain the supplier as in such bid, the prospective bidders for the are not getting the clarify about the FOB price at which the coal is required to be supplied as there are multiple indices dispensed with different pricing and they are varying from time to time. Moreover, there are different components and work on different timeline. Hence, it becomes difficult for the Respondent No. 1 to procure the coal with this condition. The aforesaid contention is opposed by the Petitioner stating that the same clause is incorporated as per the decision of the Commission in its order dated 27.04.2020 and the Government of Gujarat Guidelines dated 12.06.2020.

19.33. The Respondent No. 1 Essar Power Gujarat Ltd. has also contended that the ceiling of 90 USD/MT needs revisit and the said ceiling be removed as the buyer or seller is not in a position to predict, control or have say in determination of the Indexes. Further, the coal prices were gone quite higher in the month of September, 2021 to about 150 USD/MT and the Respondent is unable to get coal at the price of 90 USD/MT due to shortage of quality coal worldwide. The Petitioner has objected to the said contention of the Respondent stating that the data of HBA Index in USD/MT (Benchmark price

for 6322 GCV) coal for the period from January 2011 to September 2021 the average works out to 82.02 USD/MT. The average HBA Index has remained in the range of 58.17 USD/MT to 118.40 USD/MT during the period January 2011 to September 2021. Further, the Commission has decided the same in its Order dated 27.04.2020 in Petition No. 1807 of 2019 as recorded earlier.

19.34. We note that the Commission in its Order dated 27.04.2020 in Petition No. 1807 of 2019 decided the aforesaid issue with regards to FOB price of the Coal. Further, the Government of Gujarat in its G.R. dated 5.06.2021 has decided that HBA Index ceiling price under the Supplemental PPA of 90 USD/MT shall not be subject to further revision without prior approval of the State Government and the Commission.

19.35. As regards the contention of the Respondent No. 1 that the imported coal price goes as high as 150 USD/MT or more is concerned, the same is short period phenomena occurred during the recent months on various grounds. It is premature to accept the aforesaid price hike for the remaining period of the PPA because the increase in imported coal price during the month of September-October-November, 2021 is also reduced and it is premature to say that such higher price shall remain in future also. The data submitted by the Petitioner, GUVNL, for the last 11 years proved beyond doubt that imported coal price remained between 55 USD/MT to 118 USD/MT. Therefore, we are of the view that the contention of the Respondent No. 1, Essar Gujarat Power Ltd. relying on the present price for 2-3 months does not qualify or agreeable rates of coal for the remaining period of the PPA executed between the parties. Hence, the said contention is not accepted and the same is rejected.

19.36. Considering the above, we are of the view that the contention of the Respondent No. 1 to remove the ceiling price of coal HBA Index of 90 USD/MT

and not link the coal price with different indices are not accepted and the same is rejected.

Further, we note that senior advocate Shri Mihir Thakore on behalf of the Respondent No.1 Essar Power Gujarat Ltd. on the date of hearing 09.11.2021 and 16.11.2021 made statement before the Commission that the issue of removal of ceiling of imported coal price and associated issues are withdrawn by the Respondent No. 1. On that ground also the aforesaid contention of the Respondent No.1 is not accepted and rejected as withdrawal by the Respondent No.1.

Hence, we approve Article 3.2.4 of the SPPA dated 12.08.2021 as compliance of the Commission decision and Government G.Rs and guidelines.

19.37. Now, we deal with the approval of Article / Clause 3.2.5 of the SPPA dated 12.08.2021 seek by the parties. The Article 3.2.5 of the SPPA dated 1.03.2019 relevant in this case is reproduced below:

*"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*

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....."

In the aforesaid provision it is provided that incentive shall be available to the seller i.e. Respondent No.1 EPGL for availability of plant in excess of 85%.

The Commission passed Order dated 27.04.2020 in Petition No. 1807 of 2019 wherein it is decided about the incentive for the plant availability as under:

"23.8 Normative Availability of Plant

The objectors have also raised the issue pertaining to availability of the plant as well as incentive payable/receivable as a part of supplemental PPA stating that increase in normative plant availability from 80% to 90% in all respect must be effected so as to reduce the quoted capacity charges by spreading it over higher availability and thereby reduced per unit capacity charges. It is also stated that higher availability should be applicable for all purposes specified in the PPA i.e. for recovery of capacity charges as well as for determination of incentives and disincentives. The Petitioner has submitted that issue of increase of normative availability has been dealt by the HPC and the same is incorporated in the supplemental PPA. It is necessary to refer to clause 3.2.5 which pertains to availability is reproduced below:

*"**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 up to 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:

Particular	***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	*Rs 0.10 / kWh*	*Rs 0.10 / kWh*
90% (10% of Capacity Charges)	*(1 Rs x 10%)*	*(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*

For avoidance of doubt, it is clarified that for all other purposes including passing on of 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 Schedule 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 Minimum Off take Guarantee for relevant period shall also continue to apply in accordance with the provisions of existing PPA.

With reference to the query of Prayas, GUVNL in its affidavit dated 02.01.2019 has explained the working of penalty in respect of Bid-02 PPA at the actual availability of 88% and 70%.

The aforesaid provisions provide that the generator would be giving the benefit of higher availability to the procurer as the procurer would not have to pay capacity charges for availability beyond the normative availability of 80%. Moreover, the provisions of the subsisting PPA would continue to apply with regard to determining both incentives and penalty. The mandate of the rehabilitation package which is to ensure that the generators do not incur further losses. The capacity charges are already being reduced by 20 paise per kWh, the normative availability has been kept at 80% only while ensuring that cheaper power, beyond the availability of 80% becomes available to the procurers. Further, no incentive is being given to the generator up to the availability of 85% as per Bid 03 PPA dated 26.02.2007.

We note that the proposed amendment provides for reduction of capacity charges by 20 paise/kWh. The payment of capacity charge is associated with an achievement of 80% of target availability. The availability if increased from 80% to 90% in that case no liability for additional capacity charge would arise. However, if the cumulative availability during the year is less than 90% in that case the generator would be

required to pay penalty as per the provisions of the PPA at the rate of 10% of the capacity charge over and above the penalty provisions in the PPA dated 26.02.2007. The scheme seeks to balance the interest of consumer's vis-a-vis the Project Developer as the Petitioner gets availability above 80% and up to 90% without having to pay additional capacity charge for such higher availability whereas in case of availability being lower than 90%, the Project Developer is required to pay the penalty at the rate of 10% of the capacity charge. We are of the considered view that normative plant availability at 80% as decided in the GR of 01.12.2018 and incorporated in the Supplemental PPAs, being part of the complete rehabilitation package through commercial and financial restructuring of the power project of the Respondent No.1, is reasonable and is in consumer interest as well. Accordingly, we do not have any objection to this provision. We also note that the amended PPA provides that incentive for availability in excess of 85% and provisions for penalty below 75% are in accordance with the PPA dated 26.02.2007. On the incentive, we are of the opinion that since Respondent no.1 is to schedule at 90% availability as per SPPA, therefore the incentive shall be allowed for the availability above 90% instead 85% as mentioned in the PPA dated 26.02.2007.....

.....Article/Clause 3.2.5 of the Supplemental PPA

Availability

24.3 The aforesaid Article state about the availability of plant and in the case of failure to achieve the agreed availability and the consequence thereof. Hence, we allow this provision. However, incentive shall be allowed for the availability above 90% instead 85% as mentioned in the PPA dated 26.02.2007."

In the aforesaid decision the Commission decided that incentive shall be available on availability above 90% instead of 85% as stated in PPA dated

26.02.2007 and SPPA dated 1.03.2019. The parties were directed to modify the aforesaid clause accordingly.

19.38. It is necessary to refer the Article 3.2.5 of SPPA dated 12.08.2021 submitted with this Petition reads as under:

"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 any 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*

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 however agreed that for the purposes of determining the incentives under the PPA, the availability shall be considered at 90% instead of 85% as mentioned in the PPA dated 26.02.2007. It is further clarified that the 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."

The aforesaid provision provides that the capacity charge linked with availability of the plant be modified and amended stating that the capacity charge linked to availability be modified from 80% to 90%. It also provides that the Normative Availability of plant as 80% is specified in the PPA. It is agreed by the parties that there is no incentive available to the seller i.e. Respondent No. 1 for declared availability of 90% which was earlier 85%. The incentives are available, only availability is above 90%. The Respondent No. 1 requires to declare availability by 90% in a contract year. However, the capacity charge shall be continued to pay on Normative Availability of 80% as specified in the PPA dated 26.02.2007. The fixed charge is receivable by the Respondent No. 1 as per the modified provision in SPPA dated 12.08.2021. In case the normative availability is less than 80% in that case clause (b) of Article 3.2.5 is applicable wherein it is provided that the normative availability of 80% of the plant qualifies for receipt of capacity charge. However, the incentive available above 85% as provided in the original PPA dated 26.02.2007 amended to 90% availability. Thus, the

incentive is available only above 90% and not above 85%. It is further clarified that the provision related to penalty for declaration of availability below 75% during the contract year shall continue to apply in accordance with the provisions of the existing PPA. The Commission in its Order dated 27.4.2020 in Petition No. 1807 of 2019 in Para 23.8 and 24.3 decided the aforesaid provision. Hence, we approve the same.

19.39. Now we deal with issue pertaining to extension of terms of the SPPA agreed between the parties in Article 3.5.1. The extension of terms of PPA stated in Article 3.5 of the SPPA dated 1.03.2019 as under:

"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 x LPPF / CVPF} x 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.

The aforesaid provision of SPPA dated 1.03.2019 submitted by the parties for approval of the Commission alongwith Petition No. 1807 of 2019 wherein the Commission passed Order dated 27.04.2020 and decided and directed as under:

"23.48 Extension of the term of the PPAs

The consumer organisations have submitted that the terms of the PPA should be extended up to 40 years and tariff for the same period be extended on the basis of either the same capacity charges as on the last year of the 25th year of the PPA dated 26.02.2007 or on the basis of R&M, capital expenditure service during the extended period with O&M expenses, interest on working capital etc. is applicable as per tariff Regulations of the Commission. Further incentive and penalty are linked with target availability of 90%.

23.49 Per contra, the Petitioner submitted that the recommendation of the HPC stated that the PPA tenure may be extended by 10 years. The first right of refusal is with the Petitioner/Procurer. It is also stated that so far as capacity charge for the extended period is concerned the same may be as per the last year capacity charges. The additional R&M expenses shall be allowed to the extent of requirement for the plant and also subject to approval of the Commission.

23.50 We have considered the submissions made by the parties. As the issue is pertaining to extension of terms of the PPA which is stated in the Article 3.5 of the supplemental PPA, it needs to refer the same and the same is reproduced below:

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 modernization of the Project, and also for the consequential increase in O&M expenses. Such increase in Quoted Capacity Charge shall be determined & approved by Appropriate Commission in accordance with the applicable CERC (Terms and Conditions of 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 x LPPF / CVPF} x 100/(100 - AUX)

Where:

AUX = Lower of actual or normative auxiliary energy consumption of 9% as specified in the Tariff Regulations as defined herein.

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 2340 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.

For the avoidance of doubt, the Capacity Charge for Extended Term shall not be subject to adjustment towards Rs. 0.20 / Kwh and Energy Charge for Extended Term shall not have discount for pass through of the Mining Profits as specified in Clause 3.3 of this Supplemental Agreement.

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.

3.6 *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.*

23.51 *As per the aforesaid provisions the first right is provided to the Procurer/Petitioner to take the benefit of extended PPA for period of 10 years for the contracted capacity. It is not obligatory on part of the procurer to extend the PPA for 10 years. It is also provided that procurer shall require to issue a notice not later than 5 years prior to expiry of the PPA, with the mutual consent of the parties. The capacity charges payable for the extension period shall be the capacity charge of the 25thyear of the PPA dated 26.02.2007 plus R&M cost which shall be required to get approved from the Commission. Thus, the R&M cost if any incurred is required to be approved by the Commission after following transparent process and in fair manner. As the procurer has first right of refusal for extension, we did not find any infirmity in the proposed amendment. As regards the extension proposed by the consumer organisation for the period up to 40 years is concerned, we are of the view that such provision is already provided in Article 3.5.1 where it is stated that the PPA may be extended beyond 10 years with mutual*

consent of the parties and approval of the commission. Thus, the extension provided in the PPA for 40 years, where from 25th to 35th year is at the discretion of the Procurer/Petitioner and from 36th year to 40th year, it shall be with the mutual consent of the parties. The aforesaid provisions provide flexibility to the parties to reassess and revaluate the situation prevailing at the relevant time. Considering the above, we are of the view that the objections raised by the consumer organisation are not sustainable and the same are rejected. However, the Petitioner shall amend the provision in SPPA as already decided at Article 3.2.3 and 3.2.4.....

.....Article/Clause 3.5 of the Supplemental PPA

Extension of term of the PPA

24.5 We decide to approve the extension of terms of PPA stated in Article 3.5 of the PPA with regards to capacity charge stated in the said Article. So far as energy charge is concerned the same is as per earlier approved charges in Article 3.2.3 and 3.2.4 of SPPA as per GERC and not CERC Regulations. We also decide that the parties shall obtain the approval of the same prior to start of the extended period from this Commission."

In the aforesaid decision the Commission has decided that extension of terms of PPA shall be amended as decided in Article 3.2.3 and 3.2.4 of the SPPA decided as per Order dated 27.04.2020 in Petition No. 1807 of 2019 and obtain prior approval on it from the Commission.

The Articles 3.5 of the SPPA dated 12.08.2021 submitted with this Petition is necessary to refer is reproduced below:

*"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 and approval of Appropriate Regulatory Commission (Gujarat Electricity Regulatory Commission).

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 Gujarat Electricity Regulatory Commission in accordance with the applicable Gujarat Electricity Regulatory Commission 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 x LPPF / CVPF} x 100 /(100 – AUX)

Where:

AUX = Lower of (a) actual auxiliary consumption or (b) 6.50% as approved by Hon'ble Gujarat Electricity Regulatory Commission in Petition no. 1296/2013.

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 (a) actual Gross station heat rate or (b) 2262 Kcal per kWh as approved by Hon'ble Gujarat Electricity Regulatory Commission in Petition no. 1296/2013.

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.

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 3.2.2 of this Supplemental Agreement."

The aforesaid provision of the SPPA dated 12.08.2021, consists of the provisions with regards to fixed charge and energy charge wherein as per the decision of the Commission the parties have amended the said provision in accordance with Article 3.2.3 and 3.2.4 of the decision of the Commission by incorporating necessary changes by way of amendment/modification approved by the Commission in its Order 27.04.2020 in Petition No. 1807 of 2019. Hence, we decide to approve the same.

19.40. Now we deal with the issue regarding absorption of past period losses needs to be absorbed by project developer stated in Article 3.8 and 3.9 of the SPPA dated 12.06.2021 submitted for approval of the Commission alongwith the present petition.

19.41. It is necessary to refer the decision of the Commission on the aforesaid issue in earlier proceedings decided by the Commission. The Petitioner and the Respondent No. 1 through their addendum dated 23.01.2020 submitted that the following articles /clause be added in the SPPA dated 1.03.2019 submitted for approval of the Commission. The Commission dealt with the Article / Clause 3.8 of the SPPA dated 1.03.2019 in para 24.9 and 24.10 of the said Order is reproduced below:

"Article/Clause 3.8 of the Supplemental PPA

24.9 The aforesaid Article agreed between the parties by way of addendum dated 23.01.2020 to third supplemental agreement dated 1.03.2019. The said article/clause state as under:

> *"Clause 3.8*
>
> *Seller shall bear the losses for prior period i.e. before 15.10.2018. Further, seller shall not raise any claim/dispute with regards to past period items before any Forum/Court in the future...."*

24.10 In the said clause, it was agreed by the seller i.e. Respondent No.1 that they will bear all the losses prior to period 15.10.2018. It is also agreed by the Respondent No.1 that they shall not raise any claim/dispute with regards to past period items before any Forum/Court in future. The aforesaid provisions added as a part ofsupplemental PPA recognized that the seller shall forgo all its losses prior to 15.10.2018. Hence, it seems in consonance with the provisions of HPC recommendation and it will also settle down the disputes as prevailing between the parties with regards to the PPA by way of aforesaid provisions. Hence, we decide to approve the aforesaid provisions as a part of supplemental PPA dated 1.03.2019.

In the aforesaid decision the Commission has decided to approve the aforesaid

provision by as a part of the SPPA dated 1.03.2019, wherein it was agreed by the seller, Respondent No. 1 that they will bear losses prior to period 15.10.2018, i.e. before implementation of the SPPA. It is also agreed by the parties that the aforesaid provision be added at part of the SPPA. The Commission has approved the same in the aforesaid decision dated 27.04.2020 in Petition No. 1807 of 2019.

Now, in the SPPA dated 12.08.2021 submitted alongwith the present petition consist of Article 3.8 reads as under:

"3.8 Seller shall bear the losses for prior period i.e. before implementation of this Supplemental Agreement. Further, Seller shall not raise any claim / dispute with regard to past period items before any Forum / Court in the future."

In the aforesaid provision it was agreed between the parties that the seller shall bear the losses for the period prior to implementation of SPPA. Thus, the aforesaid provision of the SPPA dated 12.08.2021 is in accordance with the decision dated 27.04.2020 in Petition No. 1807 of 2019 of the Commission. Hence, we approve the same.

19.42. Now, we deal with the issue pertaining to withdrawal of all pending claims and litigations by the Respondent No.1 towards past period. The aforesaid provision is agreed between the parties and submitted in the earlier SPPA dated 1.03.2019 by way of filing an addendum. The Commission passed an Order dated 27.04.2020 in Petition No. 1807 of 2019 and decided in para 24.11 and 24.12 on the aforesaid provision as under:

Article/Clause 3.9 of the Supplemental PPA

24.11 In the aforesaid Article it was agreed between the parties that the seller i.e. Respondent No.1 agreed to withdraw all pending cases/litigations/waive its claims against GUVNL other than change in law in India before various forum. While the cases filed by GUVNL which are under adjudication shall be considered upon the decision of the appropriate forum/court. The said Clause/Article is reproduced below:

Clause 3.9
"Seller shall unconditionally withdraw all pending cases/litigations/waive claims against GUVNL (other than Change in Law in India) before various Forums in lieu of the relief granted vide Govt. of Gujarat G.R. dated 01.12.2018 towards pass through of actual fuel cost w.e.f. 15.10.2018. Only the cases/litigations filed by GUVNL which are under adjudication shall be considered upon decision by appropriate forum/Court to extent of GUVNL's prayer in the matter."

24.12 The aforesaid provisions provide that the seller i.e. Respondent No.1 withdraws all its pending cases against the Petitioner in various legal forums/Commission, except case for Change in Law in lieu of relief granted vide Govt. of Gujarat G.R. dated 01.12.2018 towards pass through of actual fuel cost. Further, it was also agreed that pending cases filed by the GUVNL for adjudication shall be continued and GUVNL shall claim its due as per the orders of various forums.

In the aforesaid decision the Commission has decided that it was agreed between the parties that the seller i.e. Respondent No. 1 agreed to withdraw all pending cases litigations/waive its claim against the Petitioner other than Change in Law in India before various Forums. It was also agreed that the cases filed by GUVNL which are under adjudication shall be considered upon the decision of the appropriate Forum/Court. The aforesaid provisions proposed to incorporate as a part of addendum submitted in the Petition No. 1807 of 2019 and the Commission has decided as stated above.

The Supplemental PPA dated 12.08.2021 submitted by the Petitioner along with this Petition consists of Article 3.9 as under:

"....3.9 Seller shall unconditionally withdraw all pending cases / litigations / waive claims against GUVNL (other than Change in Law in India) before various Forums. Only the cases / litigations filed by GUVNL which are under adjudication shall be considered upon decision by appropriate forum / Court to extent of GUVNL's prayer in the matter....."

As per aforesaid provision it was agreed by the Seller i.e. Respondent No. 1, unconditionally to withdraw all pending cases/litigations/waive claims

against GUVNL before various Forums. While cases/litigations filed by GUVNL under adjudication shall be considered upon decision by appropriate Forum/Court. The aforesaid provision incorporated in the SPPA dated 12.08.2021 based on mutual agreement between the parties and is in accordance with the provision of earlier decision dated 27.04.2020 in Petition No. 1807 of 2019. Hence, we approve the same.

19.43. Now we deal with the issue regarding change in the ownership of the Respondent No. 1 power plant be permitted with prior intimation of any such move and approval of the Government of Gujarat and the Commission in this regard.

The Commission in para 25.1 of the Order dated 27.04.2020 in Petition No. 1807 of 2019 decided as under:

"25.1 We further decide that this approval with modifications is being granted to the proposed Supplementary PPA dated 01.03.2019 along with the Addendum no. 1 and 2 subsequently filed by the Petitioner and any change in the ownership of the Responder No. 1's Power plant shall only be done with the prior intimation of any such move and approval of the Government of Gujarat and this Commission."

As per aforesaid decision by the Commission, change in ownership of the Respondent No. 1 power plant be permitted only with the prior intimation of such move and approval of the Government of Gujarat and this Commission.

Article 3.10 of the SPPA dated 12.08.2021 states about change in the ownership of the seller power plant is reproduced below:

3.10 Any change in the ownership of the Seller shall only be done with the prior intimation of any such move and after approval of the Government of Gujarat and Hon'ble Gujarat Electricity Regulatory Commission.

19.44. As per the aforesaid provision, change in ownership of the power plant of the seller i.e. Respondent No. 1, needs prior intimation of any such move and also approval of Government of Gujarat at this Commission. Thus, it is in consonance and compliance with the earlier decision dated 27.04.2020 in Petition No. 1807 of 2019 of the Commission.

19.45. The Petitioner has also submitted that they have tied up additional capacity of the Respondent No. 1 untied up 122 MW capacity and requested to approve the same.

19.46. The supplemental PPA dated 1.03.2019 executed between the parties consists of Article 3.4 state about untied up capacity offered to the procurer, i.e. GUVNL by the seller i.e. Respondent No.1 is reproduced below:

*"3.4 **Untied Capacity offered to Procurer***

*3.4.1 The Seller is having 100MW untied capacity (hereinafter referred to as "**Additional Contracted Capacity**") from Units 1-2 (each of 600MW) 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. 2and 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 Chargefor 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 Capacityshall 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."

19.47. As per aforesaid provision it was agreed between the parties to tie up 100 MW untied up capacity of the Respondent No.1 plant by the Petitioner, GUVNL. The Commission in its Order dated 27.04.2020 in Petition No. 1807 of 2019 decided about untied up capacity desired to tie up by the Petitioner as under:

"23.44 Untied Capacity offered to the Procurer

Now we deal with the issue raised by the objectors with regards to untied capacity offered to the procurer by the generator. Whether it is in the interest of the consumers or not. The objectors have contended that it is against the interest of the consumers. The objectors have contended that the additional capacity offered by the generator should be at the same terms and conditions as with the tied up capacity of 1000 MW. Moreover, it is also necessary to evaluate in terms of the overall requirement of power by the Petitioner with consideration of the demand of such power. It is necessary to take holistic view while carrying out the rehabilitation plan for the Petitioner power project with consideration of public interest at large.

23.45 The Respondent No.1 submitted that the market rate for the power are quite higher than the rates considered in the HPC report. The Respondent is forgoing its right to sell the excess capacity of power at higher rate in the market. The procurement of power at the rates decided in the HPC report for additional capacity is beneficial to the Petitioner GUVNL for 100 MW.

23.46 It is necessary to refer Article 3.4 of the supplemental PPA which state about 100 MW capacity of the plant which is untied and shall be offered to the procurer for the same period of the approval of the supplemental PPA for the period up to 25th year of the COD of Unit No. 2.

The energy charge payable for additional untied up capacity in accordance with clause 3.5.3 of the supplemental PPA i.e. equivalent to energy charge applicable to tied up capacity of 1000 MW with the Petitioner. Further, we note that the capacity charge for additional capacity shall not be payable beyond the limit prescribed as per supplemental PPA.

23.47 We also note that HPC has dealt the issue in para 7.4.7 of its report which states that the cost of procurement of power from the entire power project get scheduled with consideration of the price of the energy. Moreover, it is also

competitive. The aforesaid report also says that the representation of the consumers as well as procurer were considered by the HPC. We, therefore, decide that the additional capacity tied up by the Petitioner as per Article 3.4 of the PPA do not require any change except the provision as already decided in Article 3.2.3 and 3.2.4. Hence, the contentions of the consumer organisation are rejected."

Thus, the Commission has considered and approved the untied-up capacity offered by the seller to the procurer to the extent of 100 MW and while rejected the objections of the objectors against it.

The Respondent No.1 vide its letter dated 25.01.2021 requested and conveyed its willingness to modify the untied-up power offered from its plant to procurer i.e. GUVNL to be increased from 100 MW to 122 MW. The Government of Gujarat has in its G.R. dated 05.06.2021 resolved to modify the supplemental PPA executed between the parties with consideration of commission's earlier order dated 27.04.2020 and Government of Gujarat guidelines 12.06.2020 with the following modifications:

"Resolution:

After careful consideration of the proposal of GUVNL as narrated in the preamble, the Government of Gujarat is pleased to accord an approval to sign SPPA between GUVNL and EPGL in accordance with the GERC order dated 27.04.2020 and Govt. Guidelines dated 12.06.2020, with the following modifications:-

.....

iii. 122 MW untied capacity from EPGL project shall be tied up under SPPA by GUVNL....."

In the aforesaid decision the Government of Gujarat decided and accorded approval to the Petitioner to tie up 122 MW untied up capacity of EPGL project by incorporating in the SPPA. Thus, the Government of Gujarat has conveyed its approval to the Petitioner to tie up 122 MW capacity of the Respondent project as a part of PPA.

As recorded in earlier decision as stated in para 23.44 to 23.47 of Order dated 27.04.2020 in Petition No. 1807 of 2019 that the untied-up capacity of 100 MW tied up as a part of SPPA is beneficial to the Petitioner and consumer at large as per the aforesaid findings. Now, in SPPA dated 12.08.2021 parties agreed to enhance the tied up capacity from 100 MW to 122 MW from untied up capacity of the plant of the Respondent No. 1. It seems beneficial to the parties and consumers. The only difference in the earlier clause proposed by the parties and present clause of SPPA is that there is enhancement of capacity of the un-tied capacity of the Respondent plant to be tied up by the Petitioner.

It is necessary to refer the relevant provisions of SPPA dated 12.08.2021 is reproduced below:

*"3.4 **Untied Capacity offered to Procurer***

*3.4.1 The Seller is having 122 MW untied capacity (hereinafter referred to as **"Additional Contracted Capacity"**) from Units 1 and 2 (each of 600MW) 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 execution of this Supplemental Agreement to the 25th Anniversary of the Commercial Operation Date of Unit No. 2 or at the option of the purchaser to the extended period of the PPA in terms of this Supplemental Agreement in terms of Clause 3.5 herein 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 3.2.3 and 3.2.4 of this Supplemental Agreement.*

*"**Capacity Charge for Additional Contracted Capacity**" shall be Rs.0.8597/Kwh or as worked out on the date of approval of this SPPA by GERC being the levelized Capacity Charge for the balance Term of PPA dated 26.02.2007.*

For the avoidance of doubt, the Capacity Charge Limited to Additional Contracted Capacity only shall not be subject to discount of Rs 0.20/Kwh as specified in Clause 3.2.2 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 based on actual availability of coal at plant for which Seller shall furnish coal stock position on daily basis to Procurer. SLDC, Gujarat shall allocate such Availability on proportionate basis between the Contracted Capacity of 1000 MW, Additional Contracted Capacity of 122 MW. 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.

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 with this Supplemental Agreement.

3.4.5 For the Additional Contracted Capacity, subject to the above all other terms & conditions shall be applicable as per PPA dated 26.02.2007 mutatis mutandis."

19.48. The SPPA dated 12.08.2021 submitted with this Petition consists of amendment/modification in SPPA dated 1.03.2019 incorporated by the parties on mutual agreement between the Petitioner and the Respondent No. 1. The Commission has also considered the said issue in its Order dated 27.04.2020 in Petition No. 1807 of 2019 and approve to tie up 100 MW capacity of the Respondent No.1 plant from un-tied up capacity.

19.49. The Government of Gujarat has vide its G.R. dated 05.06.2021 also resolved and directed to the Petitioner that capacity of 122 MW be tied up from the un-tied up capacity of the Respondent No. 1 plant by the Petitioner and get approval of same from the Commission.

19.50. As recorded in earlier para the Commission has approved 100 MW untied capacity of Respondent No. 1 plant to be tied up by the Petitioner. The said capacity has been enhanced to 122 MW as agreed between the parties with consideration of Commission's Order dated 27.04.2020 in Petition No. 1807 of 2019 and Government of Gujarat G.R. dated 05.06.2021. The untied capacity of the Respondent No. 1 plant will be helpful to the Petitioner to ensure additional capacity of power generation to meet out the demand of the licensee and the consumers. Moreover, it will also be helpful to the Petitioner to meet out the power requirement of the consumers of the State by way of additional capacity available to it on the same energy charge formula applicable to 1000 MW capacity of the plant. As claimed, the energy available from the plant having better operating and efficient technical parameters will be helpful to receive the energy at lower rate in comparison to other units of generating plants. Hence, we approve the same.

20. We also note that the Supplemental PPA dated 12.08.2021 submitted with the Petition consists of Article / Clause 4 stating as under:

> *"4. Notwithstanding anything contained herein above the parties agree that they will be bound by the stipulations, conditions and directions contained in the Order dated 27.04.2020 passed by the Hon'ble Gujarat Electricity Regulatory Commission, the Government of Gujarat guidelines dated 12.06.2020 and the Government of Gujarat GR dated 05.06.2021, and the contents therein shall be read as superseding and binding on the parties in case of any inconsistency between the terms of this Supplemental Agreement and the said order dated 27.04.2020 read*

with Government of Gujarat guidelines dated 12.06.2020 and the Government of Gujarat GR dated 05.06.2021 including if there is any omission to include any of the express or implied terms of the said Order dated 27.04.2020 or Government of Gujarat guidelines dated 12.06.2020 or the Government of Gujarat GR dated 05.06.2021."

As per the aforesaid provision it is agreed between the parties that whenever any inconsistency is occurred or dispute arises between the parties on any matter wherein the decision of the Commission in Order dated 27.04.2020 in Petition No. 1807 of 2019 and Government of Gujarat GR/Letter dated 12.06.2020 and G.R. dated 05.06.2021 shall supersede such matters.

21. We clarify that the decision taken by the Commission in this Petition on SPPA dated 12.08.2021 readwith earlier Order dated 27.04.2020 in Petition No. 1807 of 2019, Government of Gujarat G.R & Letter dated 12.06.2020 and G.R. dated 05.06.2021 to remain in force so far as it is not inconsistent with the decision in the present Petition.

22. The Respondent No.1 shall start raising the bills as per the aforesaid decision with terms of the PPAs from the date of this Order. However, for the past period the Petitioner shall submit details such as invoices raised and energy supplied by the Respondent No. 1 and recovery/payment dues as per the terms of SPPAs and clarification as stated in paras above and submit to the Commission for its approval.

23. In view of the above observations, we decide that the present Petition succeeds. We also decide that the Supplemental PPA executed between the parties on 12.08.2021 is in consonance with the Commission's Order dated 27.04.2020 in Petition No. 1807 of 2019 and Government of Gujarat GR and guideline/Letter dated 12.06.2020 and G.R. dated 05.06.2021. The aforesaid

Supplemental PPA dated 12.08.2021 is approved from the date of this Order in this Petition and annexed as **Annexure -3** with this Order.

24. We order accordingly.

25. With this Order, the present Petition stands disposed of.

Sd/-

[S. R. Pandey]
Member

Sd/-

[Mehul M. Gandhi]
Member

Place: Gandhinagar.
Date: 20/11/2021.

Annexure - 1

Annexure-C (colly)

Government of Gujarat
Resolution No.: CGP-12-2018-166-K
Energy and Petrochemicals Department
Sachivalaya, Gandhinagar.
Dated 12 JUN 2020

Read:

(1) Energy and Petrochemicals Department's G.R. of even number dated 03.07.2018.
(2) Energy and Petrochemicals Department's G.R. of even number dated 01.12.2018.

Preamble:

The GR dated 1.12.2018 was issued for rehabilitation of the three imported coal based power projects located in Gujarat with whom GUVNL was having four PPAs i.e. one PPA with Coastal Gujarat Power Limited (CGPL)-1805 MW, one PPA with Essar Power Gujarat Limited (EPGL)-1000 MW and two PPAs with Adani Power (Mundra) Limited (APMuL) -1000 MW each. Out of four PPAs:-

- The supplemental PPA with M/s Coastal Gujarat Power Ltd. has not materialized so far,
- The Hon'ble Gujarat Electricity Regulatory Commission (GERC) vide order dated 27.04.2020 has approved the Supplemental PPA with EPGL with modifications.
- Whereas in case of APMuL, out of two PPAs, one PPA is sub-judice in Hon'ble Supreme Court in a curative petition filed by GUVNL and for other PPA, Petition has been filed by GUVNL for recall of approval of the Supplemental PPA due to violation of the fundamental premise and primary condition of GR dated 1.12.2018 that the past period losses has to be borne by the Project Developer.

Further, as per the market trend of coal in Indonesia and the prices reflected in indices of repute, the coal is traded at below HBA Index derived price in Indonesia. Thus, in the changed scenario, the ceiling of HBA Index derived price for FOB price of imported coal is not reflecting the true price of coal.

Thus, the G.R. dated 1.12.2018 is not achieving the objective and purpose for which it was resolved. Therefore it is necessary to rectify the situation in order to safeguard the public interest.

In view of the above, the matter was under active consideration of the Government.

1

Resolution:

In view of above mentioned subsequent developments and changed scenario, after careful consideration, Government of Gujarat has decided to revoke GR dated 1.12.2018 for all intent and purposes.

This issues with the concurrence of the Finance Department on this department's file of even number dated 10.06.2020.

By order and in the name of the Governor of Gujarat.

Shalini 12.06.2020

(Shalini Duhan)
Officer on Special Duty (Power)
Energy and Petrochemicals Department

Copy forwarded with complements to:-

1) The Principal Secretary to the Governor of Gujarat, Raj Bhavan, Gandhinagar.
2) The Chief Principal Secretary to the Hon'ble CM, SS-I, Gandhinagar.
3) The Principal Secretary to the Hon'ble CM, SS-I, Gandhinagar.
4) The ACS to Govt., Finance Department, Sachivalaya, Gandhinagar.
6) 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 JS to the Chief Secretary, O/o of 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.

Shalini Duhan, I.A.S.
Officer on Special Duty (Power)

No. CGP-12-2018-166-K
Government of Gujarat,
Energy and Petrochemicals Department,
Block No. 5, 5th Floor, Sardar Bhavan,
Phone No. 079-23250786
Fax No. 079-23250797
Sachivalaya, Gandhinagar.
Dated the 12 JUN 2020

To,
The Managing Director,
Gujarat Urja Vikas Nigam Limited,
Sardar Patel Vidyut Bhavan,
Race Course, Vadodara.

Subject:- Resolution of issue of imported coal based power projects located in Gujarat – Modification of provisions under Supplemental PPA for uniform implementation.

Ref:- (1) GUVNL's letter No GUVNL:CFM (Comm): 283 dated 21.04.2020
(2) GUVNL's letter No GUVNL:CFM (Comm): 287 dated 24.04.2020
(3) GUVNL's letter No GUVNL: 298 dated 02.05.2020

Madam,

I am directed to refer to the above cited subject and state that the issue related to uniform implementation of Supplemental PPAs with imported coal based power projects located in Gujarat State, has been carefully examined by State Government.

2. In this regard, after careful consideration, State Government has decided, as follows:

(i) To revoke the GR dated 1.12.2018 for all intent and purposes.

(ii) The matter of signing of supplemental PPA(s) with EPGL and CGPL shall be decided on case to case basis by the Government and as per terms & conditions decided hereafter:

a. Supplemental PPA with EPGL shall be signed with modified terms and conditions as per the GERC order dated 27.04.2020 and as per terms & conditions decided hereunder at para 2(iii) of this letter.

b. GUVNL shall submit the draft Supplemental PPA with CGPL separately for approval of State Government. All the modifications made in Supplemental PPA with M/s. EPGL shall be appropriately incorporated in the Supplemental PPA with M/s. CGPL and shall be submitted to the Government for approval before signing. However, in no case, supply of power to State of Gujarat by CGPL shall be at higher tariff than the tariff charged to other procurer states. Moreover, the supplemental PPA shall be effective from the date of order of CERC approving supplemental PPA. CGPL shall share 100%

of mining profit towards coal utilisation at power project. However, in case the coal from stipulated mines is not transferred or less transferred to the power plant 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 15 paise/unit. Further, fixed cost shall be reduced by 20 paise/unit to extent of normative availability of 80% towards lenders contribution as recommended in HPC report. 300

(iii) For the payment of actual fuel cost in energy charges, the FOB price of coal to be considered as lower of (i) Actual (ii) HBA Index derived price as per formula given by Indonesian Government for quality of coal consumed (iii) Index published by Argus / Coalindo as applicable for quality of coal consumed (iv) Index published by S&P Global Platts as applicable for quality of coal consumed (v) Lowest Index of the country of origin as applicable for quality of coal consumed.

The ceiling of HBA Index of 110 USD per Metric ton as recommended in HPC report is reduced to 90 USD per Metric ton.

Further, project developers shall procure coal through competitive bidding to ensure fair price discovery in line with market trend and also make available the invoices for the actual cost at which the imported coal is purchased from mining Company from the country of origin of coal.

For the payment of actual fuel cost in energy charges, other charges shall be allowed as under:

a. In case of CGPL – port and coal handling shall be actual or as per the quoted charges in the bid and escalated as per PPA, whichever is lower. The ocean freight & 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 PPA, if any.

b. Whereas in case of EPGL these charges shall be lower of actual or as per Annexure–I.

(iv) The above decision shall be effective notwithstanding any pending proceedings before the Hon'ble CERC or GERC.

(v) In the case of Adani, a recall petition filed by GUVNL before Hon'ble CERC seeking cancellation of the relief allowed under the earlier GR dated 01.12.2018 is pending. Accordingly, the decision taken here above in so far as Adani Power is concerned shall be without prejudice to the claims of GUVNL in the pending matter before the Hon'ble CERC. Pending the decision in the proceedings, as at present, the energy charges in respect of Adani will be considered on provisional basis, only as per the decision as mentioned above and parameters appropriately applied in line with the GERC order dated 27.04.2020 in case of EPGL and further Other Charges - Ocean Freight & Insurance and Port & Coal

Handling Charges as applicable to CGPL (since these charges are not separately quoted in the Bid by Adani). Such energy charges to Adani shall be further affected as;

a. After adjustment of 100% share of mining profit towards coal utilisation at power project. However, in case the coal from stipulated mines is not transferred or less transferred to the power plant 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/ unit;

b. Fixed cost shall be reduced by 20 paise/unit to extent of normative availability of 80% towards lenders contribution as recommended in HPC report.

The energy charge amount so paid shall be without compromising on the rights of GUVNL in the pending recall petition and subject to the adjustment as per the decision of CERC.

3. Accordingly, GUVNL is hereby directed to draft the Supplemental PPAs with EPGL & CGPL consistent with the above decision and the same shall be sent to State Government for approval on case to case basis.

4. Further, GUVNL is directed to submit above decision of Government of Gujarat through affidavit before CERC in pending proceeding in the recall petition.

5. In view of above, as directed, I am, to request you to take appropriate action in the matter under intimation to this Department.

Yours faithfully,

Shalini 12.06.2020

(Shalini Duhan)
Officer on Special Duty (Power)
Energy and Petrochemicals Department

Copy forwarded with compliments to:

1) The CPS to Hon. Chief Minister, Swarnim Sankul-1, Gandhinagar.
2) The PS to Hon. Chief Minister, Swarnim Sankul-1, Gandhinagar.
3) The PS to Hon. Dy. Chief Minister, Swarnim Sankul-1, Gandhinagar.
4) The PS to Hon. Minister (Energy), Swarnim Sankul-1, Gandhinagar.
5) The PS to Hon. Minister of State (Energy), SwarnimSankul-II, Gandhinagar.
6) The JS to Chief Secretary, Sachivalaya, Gandhinagar.
7) The ACS, Finance Department, Sachivalaya, Gandhinagar.
8) The Select File.

Annexure-I

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	

Shalini 12.06.2020

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	
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	To be escalated as per CERC index for Transportation Charges
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.

Shalini
12.06.2020

Annexure – 2

Annexure-E

305

Signing of Supplemental PPA between Gujarat Urja Vikas Nigam Limited (GUVNL) and Essar Power Gujarat Ltd (EPGL).

Government of Gujarat
Resolution No. EPG-12-2019-15-K
Energy and Petrochemicals Department
Sachivalaya, Gandhinagar.
Dated - 5 JUN 2021

Read:

(1) Energy and Petrochemicals Department's GR No. CGP-12-2018-166-K dated 01.12.2018.
(2) Energy and Petrochemicals Department's GR No. CGP-12-2018-166-K dated 12.06.2020
(3) Energy and Petrochemicals Department's Letter No. CGP-12-2018-166-K dated 12.06.2020
(4) Gujarat Urja Vikas Nigam Limited's Letter No. GUVNL/GM (Comm.)/122 dated 30.01.2021.
(5) Gujarat Urja Vikas Nigam Limited's Letter No. GUVNL/GM (Comm.)/226 dated 15.02.2021.
(6) Gujarat Urja Vikas Nigam Limited's Letter No. GUVNL/GM (Comm.)/292 dated 01.03.2021.
(7) Gujarat Urja Vikas Nigam Limited's Letter No. GUVNL/GM (Comm.)/372 dated 22.03.2021.
(8) GAD's Letter No. MPB-10-2021(45)-KU dated 05.06.2021.

Preamble:

Vide letter referred to at Sr. No. (3) above, Govt. of Gujarat has issued Guidelines for signing of Supplemental Power Purchase Agreement (SPPA) with Essar Power Gujarat Limited (EPGL) & Coastal Gujarat Power Limited (CGPL) and terms thereof in accordance with the modifications suggested by Gujarat Electricity Regulatory Commission's order dated 27.04.2020 while approving the Supplemental PPA with EPGL.

As per approval of Cabinet, the Govt. has decided that the matter of signing SPPA with EPGL and CGPL to be decided on case to case basis by the Government. Further, it is also decided that SPPA with EPGL shall be signed with modified terms and conditions as per the GERC order dated 27.04.2020 and as decided in the Guidelines, as referred to at Sr. No. (3) above.

Vide GUVNL's letter referred to at Sr. No. (4) above, GUVNL has requested Government to convey decision with regard to sign SPPA in accordance with the modifications as per the GERC order and Govt. Guidelines and two modifications suggested by EPGL regarding (1) Effective date of SPPA being date on which GERC approves SPPA and (2) Offering untied capacity of 122 MW to GUVNL for tie up instead of 100 MW.

In view of the above, the matter was under active consideration of the Government.

Resolution:

After careful consideration of the proposal of GUVNL as narrated in the preamble, the Government of Gujarat is pleased to accord an approval to sign SPPA between GUVNL and EPGL in accordance with the GERC order dated 27.04.2020 and Govt. Guidelines dated 12.06.2020, with the following modifications:-

i. The Effective Date of Supplemental PPA (SPPA) with EPGL shall be from the date of approval of revised SPPA by GERC and the revised SPPA shall be signed incorporating the terms & conditions mentioned in Govt. of Gujarat Guidelines dated 12.06.2020 & GERC order dated 27.04.2020.

ii. In order to limit the impact of coal price on tariff in the interest of consumers, it was decided that HBA Index Ceiling Price under SPPA of USD 90/MT (HBA Indonesian Index) shall not be subject to further revision without prior approval of State Government and GERC.

iii. 122 MW untied capacity from EPGL project shall be tied up under SPPA by GUVNL.

This issues with the concurrence of the Finance Department on this Department's file of even number dated 02.06.2021.

By order and in the name of the Governor of Gujarat,

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

Copy to:-

1) The Principal Secretary to the Governor of Gujarat, Raj Bhavan, Gandhinagar.
2) The Chief Principal Secretary to the Hon'ble CM, SS-I, Gandhinagar.
3) The Principal Secretary to the Hon'ble CM, SS-I, Gandhinagar.
4) The ACS to Govt., Finance Department, Sachivalaya, Gandhinagar.
5) The Secretary, Gujarat Electricity Regulatory Commission, Gandhinagar.
6) The PPS to Hon'ble Deputy CM, SS-I, Gandhinagar.
7) The PS to Hon. Minister (Energy), SS-I, Gandhinagar.
8) The PS to Hon. Minister of State (Energy), SS-II, Gandhinagar.
9) The Joint Secretary to Chief Secretary, Sachivalaya, Gandhinagar.
10) The Managing Director, GUVNL, Vadodara... with a request to take appropriate action, in this regard.
11) The Deputy Secretary (Cabinet), General Administration Department, Sachivalaya, Gandhinagar.
12) Select File.

Annexure – 3

Supplemental Agreement

THIS **FOURTH SUPPLEMENTAL POWER PURCHASE AGREEMENT** hereinafter called the "**Supplemental Agreement**" is entered into at Vadodara on the 11th day of **August, Two Thousand And Twenty One** by and

BETWEEN

M/s Essar Power Gujarat Ltd. (EPGL), a Company incorporated under the Companies Act, 2013having 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 Govemment 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**" or "**GUVNL**" 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, which was amended by Assignment Agreement dated 25.11.2008 and Supplemental Power Purchase Agreement dated 16.10.2009 (hereinafter collectively referred to as the "**PPA**"), for the sale and purchase of electricity in accordance with the terms and conditions contained therein;

B. The Government of Gujarat, vide Government Resolution No. CGP-12-2018-166-K dated 3.07.2018 constituted a High Power Committee to, inter alia, suggest sustainable solutions for facilitating the power generation projects located in the state of Gujarat and based on imported Indonesian coal as fuel including the Seller herein, on account of representations made by such power generation projects as to the viability of their continued operation after the decision of the Hon'ble Supreme Court in Energy Watchdog Vs Central Electricity Regulatory Commission (2017)14 SCC 80 that no relief is admissible to such projects under the terms of the PPA entered into by Procurer with such projects;

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C. The High Power Committee submitted its Report on 3.10.2018 making certain recommendations for resolving the said issues;

D. The Government of the State of Gujarat accepted the recommendations of the High Power Committee with certain modifications and, issued its policy directions contained in Resolution No. CGP-12-2018-166-K dated 1.12.2018 (Hereinafter referred to as "the Implementation Policy");

E. The implementation of the said policy directions contained in the Implementation Policy required, inter alia, carrying out certain amendments to the PPA, and obtaining necessary approvals for these amendments, from the Appropriate Commission;

F. Article 18.1 of the PPA enabled the Parties to amend the provisions of the PPA by written agreement however subject to the condition that any such supplemental agreement can be effective and valid only on the approval by the Appropriate Commission.

G. The Seller and the Procurer had then executed a Supplemental Agreement dated 01.03.2019 and further entered into First and Second Addendums to the Supplemental Agreement which were subject to the approval to the Supplemental Agreements by the Gujarat Electricity Regulatory Commission ('GERC') being the Appropriate Commission under the terms of the PPA.

H. GUVNL had filed a Petition before Hon'ble Gujarat Electricity Regulatory Commission being Petition No. 1807/2019 for the approval of the Supplemental Agreements.

I. As per the recommendations of High Powered Committee accepted by Govt. of Gujarat through G.R. dated 1.12.2018, one of the primary conditions for allowing fuel cost as a pass through w.e.f. 15.10.2018 is that the Seller shall bear all the losses for the past period, i.e. period prior to 15.10.2018

J. The Seller and Procurer had mutually agreed to modify the provision in the Supplemental Agreement dated 01.03.2019 related to FOB Cost of Coal under Clause 3.2.4 (I) and withdraw the maximum of 10% tolerance allowed above HBA Price and the same was placed before the Gujarat Electricity Regulatory Commission

K. The Gujarat Electricity Regulatory Commission vide order dated 27.04.2020 after hearing the parties and receiving representation from Consumer organisations gave a conditional approval to the Supplemental Agreement by

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directing the Parties to carry out certain modifications in the Supplemental Agreement as stated in the order dated 27.04.2020.

L. On 1.06.2020 EPGL filed an Appeal being Appeal No 108 of 2020 before the Hon'ble Appellate Tribunal for Electricity challenging the order dated 27.04.2020 passed by the Gujarat Electricity Regulatory Commission.

M. In the meanwhile the Government of Gujarat was of the considered view that the Govt. of Gujarat GR dated 1.12.2018 was not achieving the objective and purpose for which it was resolved and to further safeguard the public interest, Govt. of Gujarat vide GR dated 12.06.2020 has revoked earlier GR dated 1.12.2018 for all intent and purposes. Govt. of Gujarat has issued Guidelines dated 12.06.2020 for signing of Supplemental Agreement between Procurer (GUVNL) & Seller (EPGL) with modified terms and conditions as per GERC order dated 27.04.2020 and in accordance with terms stated in Guidelines dated 12.06.2020.

N. EPGL has agreed to withdraw the Appeal being Appeal No. 108 of 2020 filed before the Hon'ble Appellate Tribunal for Electricity and on 14.10.2020 filed an application before the Hon'ble Appellate Tribunal for Electricity for withdrawal of the Appeal.

O. GUVNL vide letter dated 11.11.2020 has forwarded the draft SPPA incorporating the modifications as per GERC order dated 27.04.2020 and in accordance with Govt. of Gujarat Guidelines dated 12.06.2020.

P. EPGL vide letter dated 25.01.2021 has conveyed it's consent to the draft SPPA and requested to incorporate (i) Effective Date of SPPA shall be from the date of approval of GERC (b) 122 MW untied capacity from EPGL project to be tied up by GUVNL under SPPA instead of 100 MW.

Q. GUVNL vide letter dated 30.01.2021 has forwarded the draft of SPPA to EPD, GoG modified in accordance with the directives as per GERC order dated 27.04.2020 and Govt. Guidelines dated 12.06.2020 and also intimated the request of EPGL.

R. Govt. of Gujarat vide GR dated 5.06.2021 has accorded approval for signing of SPPA between GUVNL and EPGL in accordance with the GERC order dated 27.04.2020 and Govt. Guidelines dated 12.06.2020 considering the effective date of SPPA to be the date of approval of revised SPPA by GERC and allowing to tie up 122 MW untied capacity from EPGL project under the SPPA.

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S. The Parties have agreed to modify the Supplemental Agreements earlier signed by them in due compliance of the conditions contained in the Order dated 27.04.2020 passed by the Gujarat Electricity Regulatory Commission and in accordance with the Govt. of Gujarat guidelines dated 12.06.2020 and Govt. of Gujarat GR dated 5.06.2021 and are therefore entering into this Supplemental Agreement in terms of Order dated 27.04.2020, Govt. of Gujarat guidelines dated 12.06.2020 and Govt. of Gujarat GR dated 5.06.2021.

T. In view of the modifications directed by the Hon'ble GERC order dated 27.04.2020, Govt. of Gujarat guidelines dated 12.06.2020, and Govt. of Gujarat GR dated 5.06.2021, this amended and modified Supplemental Agreement being entered into between the parties in substitution of the earlier signed Supplemental Agreement dated 01.03.2019, the said earlier Supplemental Agreement dated 01.03.2019 read with Addendum(s) thereto shall stand superseded for all intent and purpose and will no longer have any effect.

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 to the extent specifically 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 The following definitions shall be added:

(i) Article 1.1 of the PPA shall be amended as follows:

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"**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 mean the effective date of this SPPA which shall be from the date of approval of this revised SPPA by Hon'ble GERC.

(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 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, subject to condition provided at Clause 3.2.1

"**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 x LPPF / CVPF} x 100 /(100 – AUX)

Where:

AUX = Lower of (a) actual auxiliary energy consumption or (b) 6.50% as approved by Hon'ble Gujarat Electricity Regulatory Commission in Petition no. 1296/2013.

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 (a) actual Gross station heat rate or (b) 2262 Kcal per kWh as approved by Hon'ble Gujarat Electricity Regulatory Commission in Petition no. 1296/2013.

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.

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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 prudently incurred by Seller or the ceilings mentioned herein under and 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, Ceilings will be replaced with relevant lowest coal indices. Note: For determination of equivalent Coal Price for working out Landed Cost of imported coal for the Month: The lowest of following for the month shall be considered: (a) Actual FOB price of consignment (b) HBA price adjusted and worked as per formula stated in Annexure-A for billed GCV "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. The FOB price of coal shall always be subject to an upper ceiling limit of HBA Index of USD 90/MT for 6322 Kcal / Kg ascertained on a monthly basis, adjusted for quality of coal (GCV as billed) in the Project and as revised in accordance with this Supplemental Agreement (the "Ceiling HBA Price") at sub para (II) Specific Conditions herein below.

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	(c) Index notified by Argus / Coalindo applicable for the quality of coal consumed (d) Index notified by S&P Global Platts applicable for the quality of coal consumed (e) Lowest Index of the country of origin applicable for the quality of coal consumed Note: For the coal procured having the GCV as published by above indices, the notified index price will be directly considered. The coal index for the coal consumed other than for the coal in the pre-determined GCV range as notified by above indices shall be arrived as follows: (i) For the coal consumed having GCV within range of ± 200 Kcal / Kg from GCV of above notified index, the rate shall be worked out on proportionate basis considering the nearest notified monthly index and (ii) For the coal consumed other than above category, the rate shall be worked out considering weighted average price of the two notified monthly index within which the GCV of consumed coal is falling to arrive at the equivalent coal price for the GCV of consumed coal.
Transportation and other costs	Ocean Freight& Insurance The ocean freight & 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) 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)

(II) Specific Conditions

(a) The Ceiling Price for HBA Index will be 90 USD / MT. In order to limit the impact of coal price on tariff in the interest of consumers, the HBA Index Ceiling Price of USD 90 / MT (HBA Indonesia Index) shall not be subject to further revision without prior approval of State Government and GERC.

(b) Seller agrees that in case HBA Index of Indonesian coal exceeds Ceiling Price 90 USD/MT or Revised Ceiling Price as per para (a) above, Seller shall bear the differential cost and continue to supply power under the PPA & Supplemental Agreement.

(c) Seller shall procure imported coal only through international competitive bidding process for procurement on long term / medium term basis to ensure the availability of coal. Seller shall seek approval of Procurer for Tender document and price discovered under competitive bidding process shall also be approved by Procurer and Hon'ble Gujarat Electricity Regulatory Commission. In absence of above, the procurement of coal shall not qualify for payment of energy charges under Supplemental PPA.

(d) Seller shall be required to make available the details and documents related to procurement of coal from the mining sources.

(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 which shall be considered as ceiling for payment. 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.

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2. Invoices of (i) fuel supplier i.e. invoice for the actual cost at which the imported coal is purchased from mining company from the country of origin of coal (ii) ocean freight and insurance (iii) port / fuel handling charges.

3. Copy of Bill of Entry including Bill of lading and all supporting documents. Bank challans regarding payment of cess, taxes & duties and Letter of Credit / payment details towards purchase of fuel.

4. GCV certificate of loading and unloading port by independent agency.

5. Independent Energy Auditor's Certificate for actual parameters GHR & Auxiliary consumption for the month.

6. Other documents as stated at Annexure-5 of Gujarat Electricity Regulatory Commission order dated 27.04.2020.

The applicability of Revised Tariff under this Supplemental PPA shall be from Amendment Effective Date subject to condition stated at Clause 3.2.1 above.

(iv) 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. Further, the Delay Payment Surcharge shall continue to apply as per provisions of PPA dated 26.02.2007.

(v) Further, the Seller shall be entitled to payment towards approved Change in Law for the Energy Charge only till the Effective Date of this SPPA. Thereafter the Seller shall not be entitled to the approved Change in Law for Energy Charges. Any change in law taking place in future after this Supplemental Agreement, has to be submitted by the Seller to the Hon'ble Gujarat Electricity Regulatory Commission for approval.

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 any 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:

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(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

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 however agreed that for the purposes of determining the incentives under the PPA, the availability shall be considered at 90% instead of 85% as mentioned in the PPA dated 26.02.2007. It is further clarified that the 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**

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3.4.1 The Seller is having 122 MW untied capacity (hereinafter referred to as "**Additional Contracted Capacity**") from Units 1 and 2 (each of 600MW) 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 execution of this Supplemental Agreement to the 25th Anniversary of the Commercial Operation Date of Unit No. 2 or at the option of the purchaser to the extended period of the PPA in terms of this Supplemental Agreement in terms of Clause 3.5 herein 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 3.2.3 and 3.2.4 of this Supplemental Agreement.

"Capacity Charge for Additional Contracted Capacity" shall be Rs.0.8597/Kwh or as worked out on the date of approval of this SPPA by GERC being the levelized Capacity Charge for the balance Term of PPA dated 26.02.2007.

For the avoidance of doubt, the Capacity Charge Limited to Additional Contracted Capacity only shall not be subject to discount of Rs 0.20/Kwh as specified in Clause 3.2.2 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 based on actual availability of coal at plant for which Seller shall furnish coal stock position on daily basis to Procurer. SLDC, Gujarat shall allocate such Availability on proportionate basis between the Contracted Capacity of 1000 MW, Additional Contracted Capacity of 122 MW. 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.

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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 with this Supplemental Agreement.

3.4.5 For the Additional Contracted Capacity, subject to the above all other terms & conditions shall be applicable as per PPA dated 26.02.2007 mutatis mutandis.

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 and approval of Appropriate Regulatory Commission (Gujarat Electricity Regulatory Commission).

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 Gujarat Electricity Regulatory Commission in accordance with the applicable Gujarat Electricity Regulatory Commission Tariff Regulations prevailing then; and

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"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 x LPPF / CVPF} x 100 /(100 – AUX)

Where:

AUX = Lower of (a) actual auxiliary consumption or (b) 6.50% as approved by Hon'ble Gujarat Electricity Regulatory Commission in Petition no. 1296/2013.

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 (a) actual Gross station heat rate or (b) 2262 Kcal per kWh as approved by Hon'ble Gujarat Electricity Regulatory Commission in Petition no. 1296/2013.

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.

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 3.2.2 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

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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.

3.8 Seller shall bear the losses for prior period i.e. before implementation of this Supplemental Agreement. Further, Seller shall not raise any claim / dispute with regard to past period items before any Forum / Court in the future.

3.9 Seller shall unconditionally withdraw all pending cases / litigations / waive claims against GUVNL (other than Change in Law in India) before various Forums. Only the cases / litigations filed by GUVNL which are under adjudication shall be considered upon decision by appropriate forum / Court to extent of GUVNL's prayer in the matter.

3.10 Any change in the ownership of the Seller shall only be done with the prior intimation of any such move and after approval of the Government of Gujarat and Hon'ble Gujarat Electricity Regulatory Commission.

4. Notwithstanding anything contained herein above the parties agree that they will be bound by the stipulations, conditions and directions contained in the Order dated 27.04.2020 passed by the Hon'ble Gujarat Electricity Regulatory Commission , the Govt. of Gujarat guidelines dated 12.06.2020 and the Govt. of Gujarat GR dated 05.06.2021, and the contents therein shall be read as superseding and binding on the parties in case of any inconsistency between the terms of this Supplemental Agreement and the said order dated 27.04.2020 read with Govt. of Gujarat guidelines dated 12.06.2020 and the Govt. of Gujarat GR dated 05.06.2021 including if there is any omission to include any of the express or implied terms of the said Order dated

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27.04.2020 or Govt. of Gujarat guidelines dated 12.06.2020 or the Govt. of Gujarat GR dated 05.06.2021.

5. This Supplemental Agreement shall be effective subject to the approval by Gujarat Electricity Regulatory Commission.

6. Subject to the above, the terms of this Supplemental Agreement shall be read as an integral part of the PPA dated 26.02.2007 entered into between the parties.

In Witness Whereof the Parties have executed this Forth 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) FOR ESSAR POWER GUJARAT LIMITED AUTHORISED SIGNATORY Authorised Signatory Mr. Sandip Sinha (Sr. Vice-President) WITNESSES 1. (PRATEEK GARG) 2. (Rahul Singh)	FOR AND ON BEHALF OF M/s Gujarat Urja Vikas Nigam Ltd. K.P. JANGID Authorised Signatory Manager (Com) Gujarat Urja Vikas Nigam Limited Race Course, BARODA-390007. WITNESSES 1. (SANJAY MATHUR) 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**

   HPB Marker (i) = (HBA * K (i) * A (i)) – (B (i) + 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 forMarker No. Coal Benchmark Price 8**

   HPB Marker (i) = (HBA * K (i) * A (i)) – (B (i) + 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**

   "HPB (j) = {(HPB Price Marker (i) + (B (i) + U (i))) * (K (j) / K (i)) *[(100 - Water Content (j)) / (100 - Water Content (i)] *[(100 - 8) / (100 - 8)]} - (B (j) + 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

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4. **Formulae for Price of Other Coal Benchmark No. 67 - 75 (Low Calorie Coal)**

a. **If TM <40%**

HPB (j) = {(HPB Price Marker (i) + (B (i) + U (i))) * (K (j) / K (i)) *[(100 - Water Content (j)) / (100 - Water Content (i)] *[(100 - 8 / FKA (i)) / (100 - 8 / FKA (j))]} - (B (j) + 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%**

HPB (j) = {(HPB Price Marker (i) + (B (i) + U (i))) * (K (j) / K (i)) *[(100 - Water Content (j)) / (100 - Water Content (i)] *[(100 - 8 / FKA (i)) / (100 - 8 / 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.

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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
		CV (kcal/kg GAR)	TM (%)	TS (%, ar)	Ash (%, ar)	(US$/ton)
1	Gunung Bayan	7.000	10,00	0,00	15,00	172,60
2	Prima Coal	6.700	12,00	0,50	6,00	97,21
3	Pinang GF50	6.200	14,50	0,60	5,50	83,19
4	Indominco IM_East	5.700	17,50	1,68	4,80	70,46
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
8	Ecocoal	4.200	35,00	0,18	3,50	49,39

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)	
1	Gunung Bayan	7.000	10,00	0,00	15,00	172,60
10	Mahkota Thermal Coal	6.600	11,00	0,50	10,00	390,29
11	Trubaindo HCV_HS	6.653	12,00	1,69	4,21	86,25
12	Medco Bara 6500	6.500	10,00	3,28	5,38	79,06
13	Trubaindo HCV_LS	6.439	11,50	0,72	4,76	88,73
14	AGM Warugi Coal	6.318	13,70	0,24	4,00	87,29
15	Pinang 6200 NAR	6.300	14,00	0,60	5,50	84,98
16	Arutmin Satuf 10	6.300	11,00	1,00	10,00	84,33
17	Arutmin Sonakin	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	6.200	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	2,06	12,00	71,19
22	Indominco IM_West / 6300	6.171	15,50	0,76	5,72	81,38
23	TAS Coal	6.200	10,00	1,00	14,00	82,33
24	Mandiri 2	5.100	25,00	0,60	7,00	59,95
25	Trubaindo HCV_LS	6.143	14,00	0,76	5,20	82,40
26	SKB Coal	6.130	8,00	0,20	17,00	76,90
27	Baramarta Coal	6.112	9,50	0,95	13,00	82,21
28	Arutmin A6100	6.100	11,50	3,00	12,50	80,24
29	Insel Coal	6.030	15,00	0,15	3,20	79,99
30	BCS Coal	5.915	15,10	0,56	8,40	77,65
31	Indominco IM_West / 6350	6.025	15,50	0,72	5,72	79,80
32	Bangun Coal	6.072	15,62	3,20	14,91	75,44
33	Pinang 6000	6.000	16,00	0,60	5,00	79,52
34	Indominco IMA_MCWHS	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 Medco	5.900	16,00	2,00	7,00	71,88
37	Pinang 5900	5.900	15,00	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 S700	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 S500	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	0,60	7,00	50.06
67	IBP 4200	4.200	32,00	0,50	6,00	46.20
68	PIC Coal	4.200	33,00	0,75	6,00	40.55
69	BIB 4000	4.000	28,00	0,50	6,00	40.55
70	Borneo Bio	3.800	41,00	0,40	5,00	32.23
71	AGM Warita Coal	3.800	40,00	0,95	5,23	32.81
72	PKN 3500	3.620	43,50	0,15	3,40	28.58
73	BMPBenco32	3.200	48,00	0,50	5,00	23.97
74	LIM 3010	3.010	47,50	0,60	5,30	22.59
75	LIM 3000	2.995	50,10	0,50	5,30	21.31

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FORMULA HARGA PATOKAN BATUBARA *STEAM (THERMAL)*

1. Harga Batubara Acuan (Calori kesetaraan nilai kalor 6322 kkal/kg GAR;
   HBA = 25% ICI + 25% Platts59 + 25% NEX + 25% GC [US$/ton]

Di mana:

- HBA = Harga Batubara Acuan [US$/ton]
- ICI = Indonesia Coal Index [US$/ton]
- NEX = New Castle Export Index [US$/ton]
- GC = New Cast e Global Coal Index [US$/ton]

Konversi nilai kalor batubara dari kondisi ADB ke GAR:
$K_{GAR} = K_{ADB} * (100-TM)/(100-IM)$

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*
I M = *Inherent Moisture*
Untuk :
Kandungan Belerang Batubara dalam *as received* (ar)
Kandungan Abu Batubara dalam *as received* (ar)

2. Menghitung HPB marker No. 1 - 7

$HPB\ Marker_{(i)} = (HBA * K_{(i)} * A_{(i)}) - (B_{(i)} + U_{(i)})$ [US$/ton]

Di mana:

- HPB Marker$_{(i)}$ = HPB dari 7 batubara price marker [US$/ton]
- $K_{(i)}$ = Nilai Kalor Batubara $_{(i)}$ / 6322 [fraksi]
- $A_{(i)}$ = (100 - Kandungan Air Batubara $_{(i)}$) / (100 – 8) [fraksi]
- $B_{(i)}$ = (Kandungan Belerang Batubara (i) – 0,8) * 4 [US$/ton]
- $U_{(i)}$ = (Kandungan Abu Batubara $_{(i)}$ – 15) * 0,4 [US$/ton]
- (i) = price marker 1 – 7

3. Harga Patokan Batubara Marker No. 8

$HPB\ Marker_{(i)} = (HBA * K_{(i)} * A_{(i)}) - (B_{(i)} + U_{(i)})$ [US$/ton]

Di mana:

- HBP Marker$_{(i)}$ = HPB batubara price marker 8 [US$/ton]
- $K_{(i)}$ = (Nilai Kalor Batubara $_{(i)}$ / 6322 [fraksi]
- $A_{(i)}$ = (100 - Kandungan Air Batubara $_{(i)}$) / (100 – 8/FKA$_{(i)}$) [fraksi]
- FKA$_{(i)}$ = {{{(100-8)/(100 – Kandungan Air Batubara$_{(i)}$)}* Kandungan Air Batubara$_{(i)}$}+(100 – 8)}/100 [persen]
- $B_{(i)}$ = (Kandungan Belerang Batubara (i) – 0,8) * 4 [US$/ton]
- $U_{(i)}$ = (Kandungan Abu Batubara $_{(i)}$ – 15) * 0,4 [US$/ton]
- (i) = price marker 8

4. Harga Patokan Batubara Lain No. 9 – 66

$HPB_{(i)} = [\{HPB\ Price\ Marker_{(i)} + (B_{(i)} + U_{(i)})\} * (K_{(i)} / K_{(i)}) * \{(100 - Kandungan\ Air_{(i)})/(100 - Kandungan\ Air_{(i)})\} * \{(100 - 8)/(100 - 8)\}] - (B_{(i)} + U_{(i)})$ [US$/ton]

Di mana:

- $HPB_{(i)}$ = HPB batubara selain batubara Price Marker [US$/ton]
- $B_{(i)}$ = (Kandungan Belerang Batubara (i) – 0,8) * 4 [US$/ton]
- $U_{(i)}$ = (Kandungan Abu Batubara (i) – 15) * 0,4 [US$/ton]
- $B_{(i)}$ = (Kandungan Belerang Batubara (i) – 0,8) * 4 [US$/ton]

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- $U_{(i)}$ = (Kandungan Abu Batubara (i) – 15) * 0,4 [US$/ton]
- $K_{(j)} / K_{(i)}$ = Nilai Kalor Batubara (j) / Nilai Kalor Batubara (i) [fraksi]
- (i) = price marker 1 – 7
- (j) = batubara lain 9 – 66

5. Harga Patokan Batubara Lain No. 67 – 75 (Batubara Kalor Rendah)

– Bila TM <40%

$$HPB_{(j)} = \{(HPB\ Price\ Marker_{(i)} + (B_{(i)} + U_{(i)})) * (K_{(j)} / K_{(i)}) * [(100 - Kandungan\ Air_{(j)})/(100 - Kandungan\ Air_{(i)})] * [(100 - 8/FKA_{(i)})/(100 - 8/FKA_{(j)})] - (B_{(j)} + U_{(j)})\}$$ [US$/ton]

Di mana:

- $HPB_{(j)}$ = HPB batubara selain batubara Price Marker [US$/ton]
- HPB Marker$_{(i)}$ = HPB batubara price marker (i) [US$/ton]
- $B_{(i)}$ = (Kandungan Belerang Batubara (i) – 0,8) * 2 [US$/ton]
- $U_{(i)}$ = (Kandungan Abu Batubara (i) – 15) * 0,4 [US$/ton]
- $B_{(j)}$ = (Kandungan Belerang Batubara (j) – 0,8) * 2 [US$/ton]
- $U_{(j)}$ = (Kandungan Abu Batubara (j) – 15) * 0,4 [US$/ton]
- $FKA_{(j)}$ = {(100-Kandungan Air Batubara)/(100 – Kandungan Air Batubara$_{(j)}$)*Kandungan Air Batubara$_{(j)}$} + (100 – Kandungan Air Batubara)/100 [persen]
- $K_{(j)} / K_{(i)}$ = Nilai Kalor Batubara (j) / Nilai Kalor Batubara (i) [fraksi]
- (i) = price marker 8
- (j) = batubara lain 67 – 69

– Bila TM ≥ 40%

$$HPB_{(j)} = \{(HPB\ Price\ Marker_{(i)} + (B_{(i)} + U_{(i)})) * (K_{(j)} / K_{(i)}) * [(100 - Kandungan\ Air_{(j)})/(100 - Kandungan\ Air_{(i)})] * [(100 - 8/FKA_{(i)})/(100 - 8/FKA_{(j)})]\}$$ [US$/ton]

Di mana:

- $HPB_{(j)}$ = HPB batubara selain batubara Price Marker [US$/ton]
- HPB Marker$_{(i)}$ = HPB batubara price marker (i) [US$/ton]
- $FKA_{(j)}$ = {(100-Kandungan Air Batubara)/(100 – Kandungan Air Batubara$_{(j)}$)*Kandungan Air Batubara$_{(j)}$} + (100 – Kandungan Air Batubara)/100 [persen]
- $K_{(j)} / K_{(i)}$ = Nilai Kalor Batubara (j) / Nilai Kalor Batubara (i) [fraksi]
- (i) = price marker 8
- (j) = batubara lain 70 – 75

Ketentuan

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 40% untuk Harga Patokan Batubara bulan terakhir, 30% untuk Harga Patokan Batubara satu bulan sebelumnya dan 20% untuk Harga Patokan Batubara dua bulan sebelumnya.

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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	

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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.

ESSAR POWER GUJARAT LTD. Jamnagar

GUJARAT URJA VIKAS NIGAM LIMITED VADODARA

24

Annexure - J

646

Manoj Patel
Officer on Special Duty (Power)

No.EPG-12-2019-15-K
Government of Gujarat,
Energy and Petrochemicals Department,
Block No. 5, 5th Floor, Sardar Bhavan,
Sachivalaya, Gandhinagar.
Dated : 07 FEB 2023

To,
The Chairman,
Central Electricity Authority,
Sewa Bhawan, R.K.Puram,
Sector- 1,
New Delhi 110 066

Subject: - Technical Recommendation regarding Station Heat Rate in case of M/s. Essar Power Gujarat Ltd., Salaya Plant.

Respected Sir,

I am directed to refer to the subject noted above and to state that M/s. Essar Power Gujarat Ltd. (EPGL) has signed PPA with GUVNL for supply of power from their Power plant at Salaya Dist. Jamnagar. Further, GUVNL has Signed Supplemental PPA with EPGL as per the Government of Gujarat's guideline dated 12.06.2020 wherein it is provided that the Station Heat Rate(SHR) for computation of Energy Charges shall be considered as lower of Actual or 2262 kcal/Kwh.

2. It is pertinent to mention that ceiling SHR of 2262 kcal/kwh was considered in the guideline based on the order dated 27.04.2020 passed by Gujarat Electricity Regulatory Commission (GERC).

3. The State Government has received representation from M/s. EPGL that it is technically not possible to achieve Gross SHR of 2262 kcal/kwh and requested to revised SHR to 2333 kcal/kwh for their power plant in line with CEA terms as endorsed by Expert Committee of Ministry of Power. The relevant supporting documents submitted by EPGL are enclosed herewith for reference.

4. In view of above, it is requested to kindly examine the matter and provide technical recommendations along with views of CEA to the State Government regarding Station Heat Rate (SHR) to be considered in respect of EPGL's Power Project at Salaya, Dist. Jamnagar.

With regards

Yours faithfully,

(Manoj Patel)
Officer on Special Duty (Power)
Energy and Petrochemicals Department

Encl.: As per list I to IX below:-

Annexure I Design Prameter 2 X 600 MW EPGL
Annexure – II HMBD TMCR -100%
Annexure – III Boiler Performance Test Procedure

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Annexure – IV EPGL 5 year operational Data
Annexure – V CERC Tariff Regulation 2009 – 14 Relevant Page to SHR
Annexure – VI GERC MYT Regulation 2011 relevant extract for SHR
Annexure – VII MoM of MoP – Directing CEA to assess EPGL SHR
Annexure –VIII MoM of the MoP – EPGL SHR decide by CEA – 10.05.2022
Annexure –IX 1296 –GERC Final Order dated 03.08.2015

Cfwcs to:-

- The Managing Director, Gujarat Urja Vikas Nigam Ltd., Vadodara.
- The Resident Director, EPGL, IT Tower - 1, Info city, Gandhinagar.

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Minutes of Meeting

For

MAHAN 2×600MW/SALAYA 2×600MW
Thermal Power Project

Between

Harbin Power Engineering Company Limited

And

Global Supplies (UAE) FZE

Harbin-China

1st September, 2007

Date: 29th August – 1st September'07.

Subject: Minutes of Meeting between HPE & Essar for Mahan and Salaya Project.

HPE	Essar	TCE
Ge. Xin	BCP Singh	S A Badami.
Lucky Li	PV Rao	M M Bhaskar
Zhang Yu Long	Nitesh Nath	G V Chandra Sekhar
Sheng Nan	AS Narula	
Luo Shan Jun.	S. Parida	
Xia Cemin.		
Feng Dao Xian		

The following points were discussed and agreed.

1. HPE has provided the guarantee parameters for Mahan & Salaya. As per Annex 1.
2. HPE confirmed to design the plant as per Noise level of 75db at the nearest plant boundary.
3. HPE has noted that there are only 6 mills required for Salaya as against 7 mills in their offer considering model, rating and capacity same as Mahan. The same shall be considered in the commercial offer.
4. HPE stated that they have not considered ID fans with VFD'S. However HPE shall submit an optional price for the same.
5. The agreed vendor list is as per Annex- II.
6. Agreed spare list is as Annex -III. HPE informed to provide the total reasonable price for the spare requirements as per the list. Price break-up shall be provided system wise. However, individual price break-up cannot be provided at this stage.
7. HPE agreed to provide training to Essar engineers for 60 manmonths at various locations in China. Essar shall furnish the details of manmonths system wise.
8. HPE agreed to provide all erection, commissioning, operation and maintenance manuals, drawings, documents and procedures.
9. HPE confirmed the Terminal points as per Annex-IV.
10. Modifications in the DOR is agreed and incorporated as per Annex –V.
11. Electrical points are discussed and agreed as per Annex – VI.
12. All the points which are previously discussed and agreed remain valid.
13. IBR approved third party inspector (preferably from M/s Lloyds) shall carry out all stage inspection and certify as per the IBR requirement at manufacturing shops before despatch.

HPE 1/9-07 Essar 1/9/07 TCE

Annex I

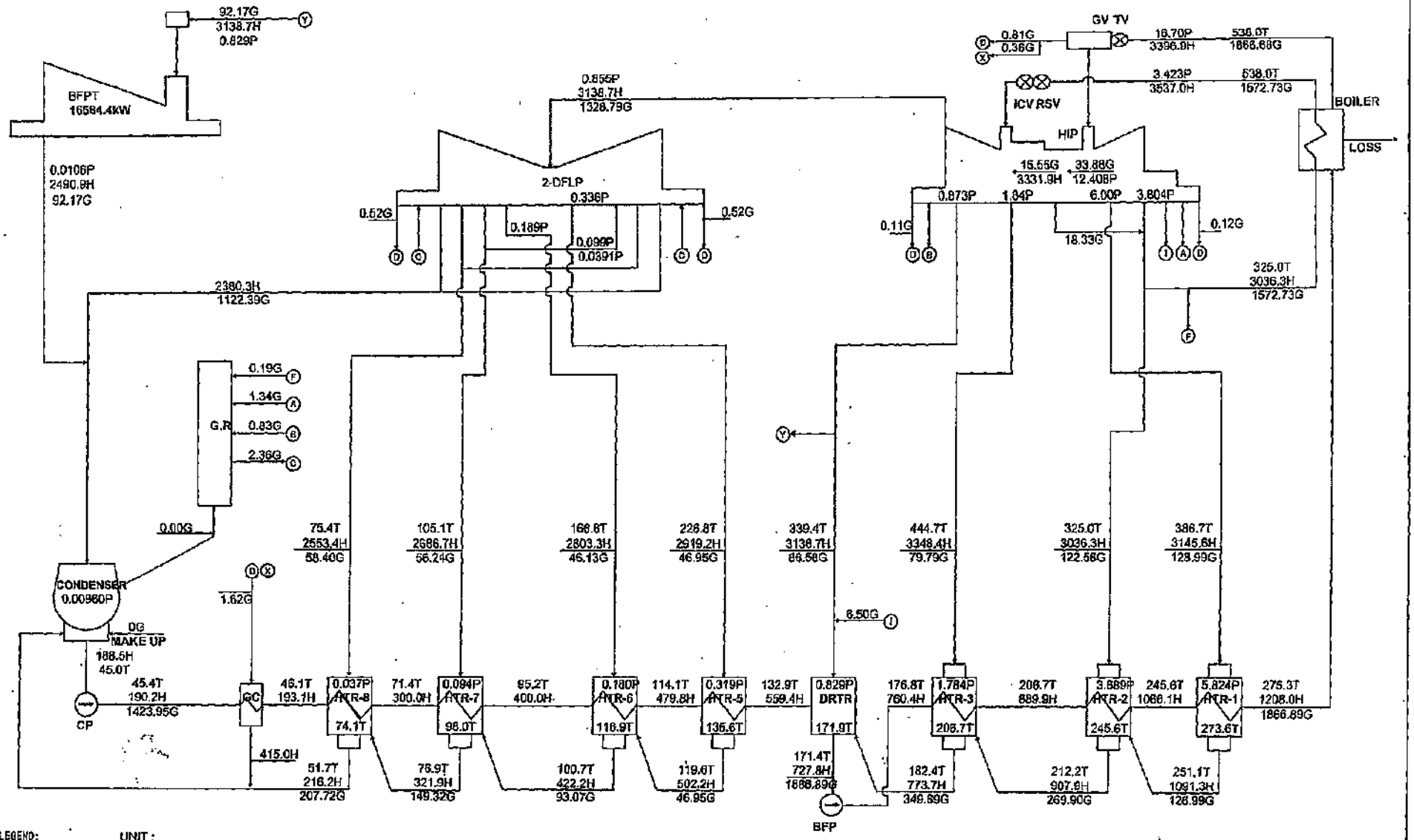
Guarantee Performance Parameters

ANNEXURE I

Sr. No.	Systemized Items	Parameter for Performance Guarantee	Liquidated Damages	HPE (Mahan)	HPE (Salaya)
Guaranteed Performance Parameters under Performance Liquidated Damage using Design Coal and Reference Conditions					
1	Boiler efficiency at HHV	At 100% TMCR	Rs.22 Million for every 0.1% shortfall in guaranteed value.	87.25%	87.10%
2	Gross Turbine Plant Heat Rate at 100% TMCR, 0% Make Up and CW Inlet Temp: 33 Deg C.	Gross Turbine Plant Heat rate in kCal/kWh considering HHV of coal.	Rs.10 Million For every one (1) kcal/kWh increase in heat rate over guaranteed value.	1947	1940
3	Auxiliary Power Consumption for the equipment within the package (List of equipment to be attched)	Auxiliary consumption measured at each motor end (kW)	Rs.100,000 for every 1 kW excess consumption of auxiliary power over the guaranteed auxiliary power consumption.	27,160.59*	26,349.70*
Demonstartion Performance Parameters					

* The aux power consumption figure is as per the list attached. However in case of change in the list because of discussions, the revised figure will be given by 4/9/07.

651



LEGEND:

	UNIT :
P = Pressure	MPaA
T = Temperature	°C
H = Enthelpy	kJ/kg
G = Flow	t/h

OUTOUT	600007.1kW
HEAT RATE	8122.4kJ/kW.h
STEAM RATE	3.111kg/kW.h

600MW HEAT BALANCE DIAGRAM

工况1 TMCR

HARBIN TURBIN COMPANY LIMITS.

CALCULATIONS ARE BASED ON IAPWS-IF97 OF STEAM TABLE.

ALCULATIONS ARE BASED ON NO RADIATION LOSSES FROM HEATERS OR EXTRACTION PIPINGS LOCATED IN THA CONDENSER NECK.

T RATES ARE BASED ON LOCUS OF FULL VALVE POINT.

HPG 汪洋 2008.2.28

2007.12.28日签收 叶静芳

Project

哈尔滨电气国际工程有限公司

HARBIN ELECTRIC INTERNATIONAL COMPANY LIMITED

PERFORMANCE TEST PROCEDURE OF STEAM GENERATOR FOR SALAYA 2×600MW POWER PLANT

ESSAR Construction

Harbin Power Engineering Co., Ltd

Contract No: Salaya/Essar/HPE/001 dated: 21st October, 2007

Thermal Power Research Institute of P. R. China

April 03 2014	Final			
Date	Reversion	Prepared by	Checked by	Approved by

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1.2 Fuel Property 1
2. Purpose 2
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1.Introduction

The steam generators of Salaya Power Plant 2 × 600 MW Unit are designed and manufactured by Harbin Boiler Co. Ltd. which is designed as corner fired using pulverized coal, balanced draft, single reheat, dry bottom and controlled circulation drum boiler.

1.1 Boiler main parameters

Item	Unit	BMCR	TMCR
Superheated Steam Flow	t/h	2060	1866.68
Superheated Steam Outlet Pressure	MPa	17.50	17.34
Superheat Steam Outlet Temperature	℃	541.0	541.0
Reheated Steam Flow	t/h	1725.9	1572.73
Reheater Inlet Steam Pressure	MPa	4.007	3.646
Reheater Inlet Steam Temperature	℃	335.0	335.0
Reheater Outlet Steam Pressure	MPa	3.817	3.472
Reheater Outlet Steam Temperature	℃	541.0	541.0
Feedwater Temperature	℃	281.0	275.0

1.2 Fuel Property

The coal analysis data are as following.

	Item	Unit	Design Coal	Worst Coal
Proximate Analysis	Total moisture	%	18.00	20.00
	Ash(as received)	%	8.00	10.00
	Fixed carbon(as received)	%	32.00	30.00
	Volatile matter(as received)	%	42.00	40.00
	Gross calorific value	kcal/kg	5500	5155
	Grindability index	HGI	42	45
Ultimate analysis	Carbon	%	56.25	52.55
	Hydrogen	%	4.50	4.00
	Oxygen	%	12.00	12.00
	Nitrogen	%	0.85	0.95
	Sulphur	%	0.40	0.50
	Moisture	%	18.00	20.00
	Ash	%	8.00	10.00

2. Purpose

The task of the acceptance tests is to prove the boiler performance guarantee value in the contract.

3. Acceptance/Performance Test Item and Guarantees

3.1 Steam generator efficiency at 600MW.

Guaranteed value: 87.10%.

Precondition:

a) Design coal should be fired.

b) The atmosphere temperature is 28℃ and relative humidity is 60%.

c) Coal fineness is 20%(R_{90}).

d) At the turbine rated load.

e) The efficiency calculation is in accordance with the standard of ASME PTC4.1

3.2 Maximum Steam Generator Capability

Guaranteed value: 2060 t/h.

Precondition:

a) Design coal should be fired.

b) Design feed water temperature.

c) The superheated steam temperature and pressure, re-heater inlet and outlet steam temperatures and pressure are at rated value.

3.3 NOx Emission at 600MW.

Guaranteed value: 350μL/L.

Precondition:

a) Design coal should be fired.

b) At TMCR.

4. Standard and regulation

(1) Steam generating unit performance test code ASME PTC 4.1.

5. Measurement Point

The following details the test measurement points and location for all test measurement.

The raw coal sampling point: the downspout to each coal feeder, one point for each feeder;

The coal powder sampling point: pulverized fuel line of mill outlet, two points for each line;

The fly ash sampling point: flue gas ducts of the air heater outlet, 10 points for each duct;

The bottom slag sampling point: according to the job site condition;

The flue gas sampling point: the flue gas ducts of the air heater inlet and outlet, 12 points for

each inlet duct, 10 points for each outlet duct;
The flue gas temperature measurement point: the flue gas ducts of air heater inlet and outlet, the same position as the flue gas sampling point;
The primary air temperature measurement point at the air heater inlet: the primary air ducts of the air heater inlet, 3 points for each duct;
The secondary air temperature measurement point at the air heater inlet: the secondary air ducts of the air heater inlet, 3 points for each duct;
Ambient air pressure and temperature measurements point: in the vicinity of the FD fan inlets, taking shelter from the wind and sunshine;
The main steam flow: because the boiler acceptance test will be conducted simultaneously with the steam turbine test, the main steam flow should be shared with the results of turbine test. For further testing, which is not accompanied by turbine test, the DCS indication for main steam flow will be used.
All test measurement points have been listed in appendix B.

6.Measuring Method

6.1 Raw Coal Sampling

Raw coal samples will be extracted from the sampling port downstream the coal storage bin downspout pipe, Fuel sampling will be executed every 60 minutes during test run.

All samples will be mixed and divided into 4 portions.

One sample for immediate analyzing at local laboratory.
One sample for later analyzing in china laboratory.
One sample for HEI.
One spare sample to be saved by owner.

Samples should be kept in airtight, noncorrosive storage containers to prevent degradation of the sample until it is analyzed.

TPRI will conduct the detailed analysis of the test coal, including proximate analysis, ultimate analysis, heating value. The results of the analysis will be taken into the calculation of boiler efficiency. if relative parties take an objection to test samples analyzing results, and still can't avoid objection after analyzing again. Open the spare one to analyze, and this result will be the ultimate result and Salaya power plant and HEI keep the rights supervising the analysis procedure.

6.2 Flying Ash Sampling

Fly ash sampling will be performed at each individual grid point by isokinetic method for each cross section downstream air preheater. At each cross section downstream air preheater

there are 10(wide)×3(deep) measurement points.

All samples will be mixed and divided into 4 portions.

One sample for immediate analyzing at local laboratory.

One sample for later analyzing in china laboratory.

One sample for HEI.

One spare sample to be saved by owner.

TPRI will conduct the unburned carbon analyzing in flying ash. The results of the analysis will be taken into the calculation of boiler efficiency. if relative parties take an objection to test samples analyzing results, and still can't avoid objection after analyzing again. Open the spare one to analyze, and this result will be the ultimate result.

6.3 Bottom Ash Sampling

The location and method for bottom ash sampling will be based on the job site condition.

All samples will be mixed and divided into 4 portions.

One sample for immediate analyzing at local laboratory.

One sample for later analyzing in china laboratory.

One sample for HEI.

One spare sample to be saved by owner.

TPRI will conduct the unburned carbon analyzing in bottom ash. The results of the analysis will be taken into the calculation of boiler efficiency. if relative parties take an objection to test samples analyzing results, and still can't avoid objection after analyzing again. Open the spare one to analyze, and this result will be the ultimate result.

6.4 Flue Gas Sampling and Analysis

Measurement points are arranged by grid method at cross sections upstream and downstream air heaters. At each cross section upstream air preheaters there are 12(wide)× 3(deep) measurement points. At each cross section downstream air preheaters there are 10(wide)×3(deep) measurement points.

All individual grid sample points will be combined to form a composite sample for each cross section, where the sampling probes will be positioned by grid point. The composite sample will be continuously analyzed during measuring time, two separate sets of analysis instruments will be used to analyze O_2, NO, CO and CO_2 at cross sections upstream air heater and downstream air heater simultaneously. The air preheater left side and right side

will be measured alternatively.

The duration of gas analyzing for a single flue gas duct is depending on oxygen fluctuation by time. For each flue gas duct reading sufficient analyzing time should be used in order to obtain the average value free of fluctuations. In general the sampling duration for one flue gas duct is 5 to 10 minutes and recorded by reading sheets. All data sheets will be signed after completion of test run.

The flue gas analyzers include: Rosemount BINOS1000 O_2 analyzer, Rosemount BINOS 1000 CO_2 analyzer, Rosemount BINOS1000 CO analyzer and Rosemount BINOS1004 NO analyzer. All analyzers will be calibrated prior and after a test run using certified calibration gas.

6.5 Flue Gas Temperature Measuring

Measurement points are arranged by grid method at flue gas ducts cross sections upstream and downstream air preheaters. Flue gas temperature measurement points will be at the same location with flue gas analysis measurement points. Type E thermocouple will be used to measure flue gas temperature. At each cross section upstream air preheaters there are 12(wide)×3(deep) measurement points. At each cross section downstream air preheaters there are 10(wide)×3(deep) measurement points. Measuring data will be collected by 35954A IMP / PC data acquisition system automatically during test run every 120 seconds.

6.6 Combustion Air Temperature Measuring

Measurement points are arranged by grid method at cross sections downstream of FDFs and PAFs. Type E thermocouple will be used to measure combustion air temperature. Before the test all measurement points will be measured by grid method to prove that there is no air temperature bias at each duct cross section. Three representatives at each duct will be selected. Measuring data will be collected by IMP data acquisition system automatically during test run every 120 seconds.

6.7 Ambient Condition Measuring

Psychomotor and barometer will be used for measuring dry bulb temperature, wet bulb temperature and atmosphere pressure which will be measured every 15~20 minute and recorded by reading sheets. All data sheets will be signed after completion of test run.

6.8 Water/Steam Pressure Measuring

The following DCS measuring points will be used to measure the water/steam pressure,

include: economizer inlet feedwater pressure, superheater outlet header steam pressure, reheater inlet header steam pressure, reheater outlet header steam pressure. All data will be recorded by power plant DCS system automatically during test run.

6.9 Water/Steam Temperature Measuring

The following DCS measuring points will be used to measure the water/steam temperature, include: economizer inlet feedwater temperature, superheater outlet header steam temperature, reheater inlet header steam temperature, reheater outlet header steam temperature. all data will be recorded by power plant DCS system automatically during test run.

6.10 Steam Flow Measuring

If the boiler test be conducted simultaneously with the steam turbine test, the main steam flow should be shared with the results of turbine test. If the boiler test is not accompanied by turbine test, the DCS feedwater flow measuring device, superheater spray water flow measuring device will be used for steam flow measurement. all data will be recorded by power plant DCS system automatically during test run.

7. Testing Procedure

Before the test the unit should have been in normal operation for several days.

HEI will be responsible for the establishment of the operating parameters, which should be confirmed by other testing parties. If the operating parameters are not reasonable other testing parties reserve the right to change. There is no disturb to test condition during the test run.

7.1 Preliminary Test

A preliminary test run will be conducted before formal test run for the following purpose: acquainting test personnel with the test instrument, checking instruments and data collection system.

The preliminary test run is a whole test run, provided all the requirements have been met the preliminary test run can be declared a formal test run if agreed by the parties of the test.

7.2 Formal Test

The formal test operating condition will be set by HEI, after confirmed by the relative test parties the formal test run may be declared to begin. All data sheets should be signed after

completion of test run.

7.3 Requirements

As the guaranteed values refer to steady state conditions, it should ensure that the steam generator has reached heat equilibrium.

During the test the following conditions must be met while acceptance/performance test.

(1) the fired coal quality should be steady, the proximate analysis result difference between the fired coal and the design coal should be not exceed the following amount.

Vdaf	±3%; (Volatile matter dry and ash free basis)
Mar	±3%; (Total Moisture As received)
Aar	±2%; (Ash As received)
$Q_{HHV,ar}$	±5%. (Higher heating value As received)

If any parameter is out of above mentioned limit then PG test to be carried out based on mutually accepted correction curve.

(2) During test, the following parameters vary less than the specified amounts:

Boiler steam flow	±3%
Superheat steam pressure	±2%
Superheat steam temperature	±5 ℃.

(3) During the test, no soot blowing, no blowdown and no adjustment which will disturb the test.

(4) Before test, system should be isolated, such as periodic blow down, continuous blow down.

8. Computation of results

8.1 Boiler efficiency

(1) The calculation for boiler efficiency will be in accordance with the thermal loss method of ASME PTC 4.1. The measured heat losses are as the following:

a) heat loss due to dry gas
b) heat loss due to hydrogen in fuel
c) heat loss due to moisture in fuel
d) heat loss due to moisture in air
e) heat loss due to unburned carbon (Ash ratio :fly ash 90% and bottom ash 10%)
f) heat loss due to radiation and convection
g) heat loss due to Carbon Monoxide (CO) in flue gas
h) Unmeasured heat loss is assigned to be 0.3%.

8.2 BMCR

The feed water flow and the SH spray water flow will be used to compute the BMCR flow, if the steam generator and turbine generator performance test be carried out simultaneously, the turbine generator performance test result will be adopted.

8.3 NOx Emission

The measured NOx emission will be converted to 6.0% oxygen in dry gas. The conversion formula is as follows:

$$NOx = (NOx)_{measured} \times (21-6.0)/(21-(O_2)_{measured}) \quad \mu L/L$$

Where,

NOx is corrected value, μL/L

$(NOx)_{measured}$ is measured value during test, μL/L.

Appendix A

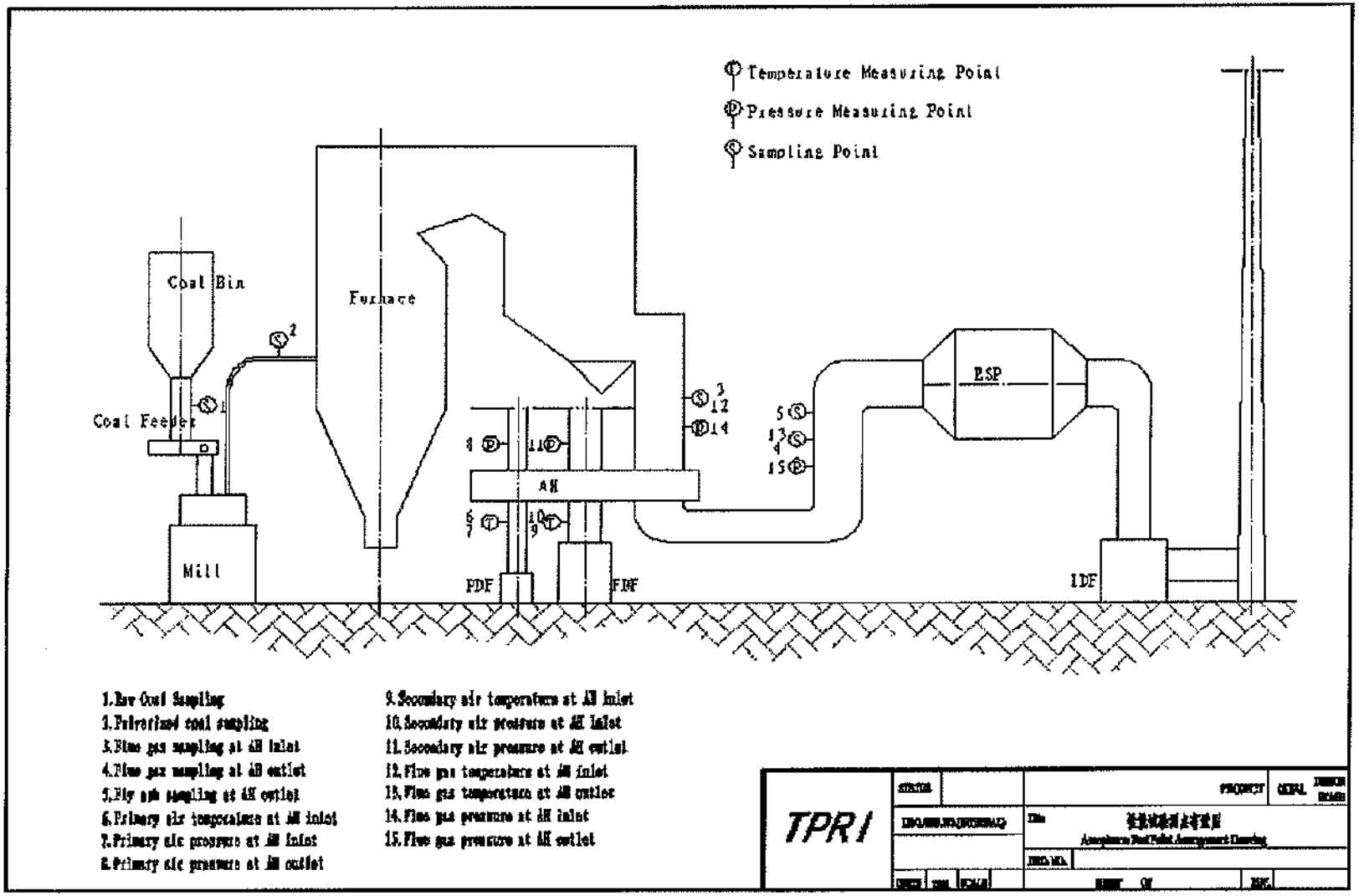
Instrument List for Performance Test of Steam Generator

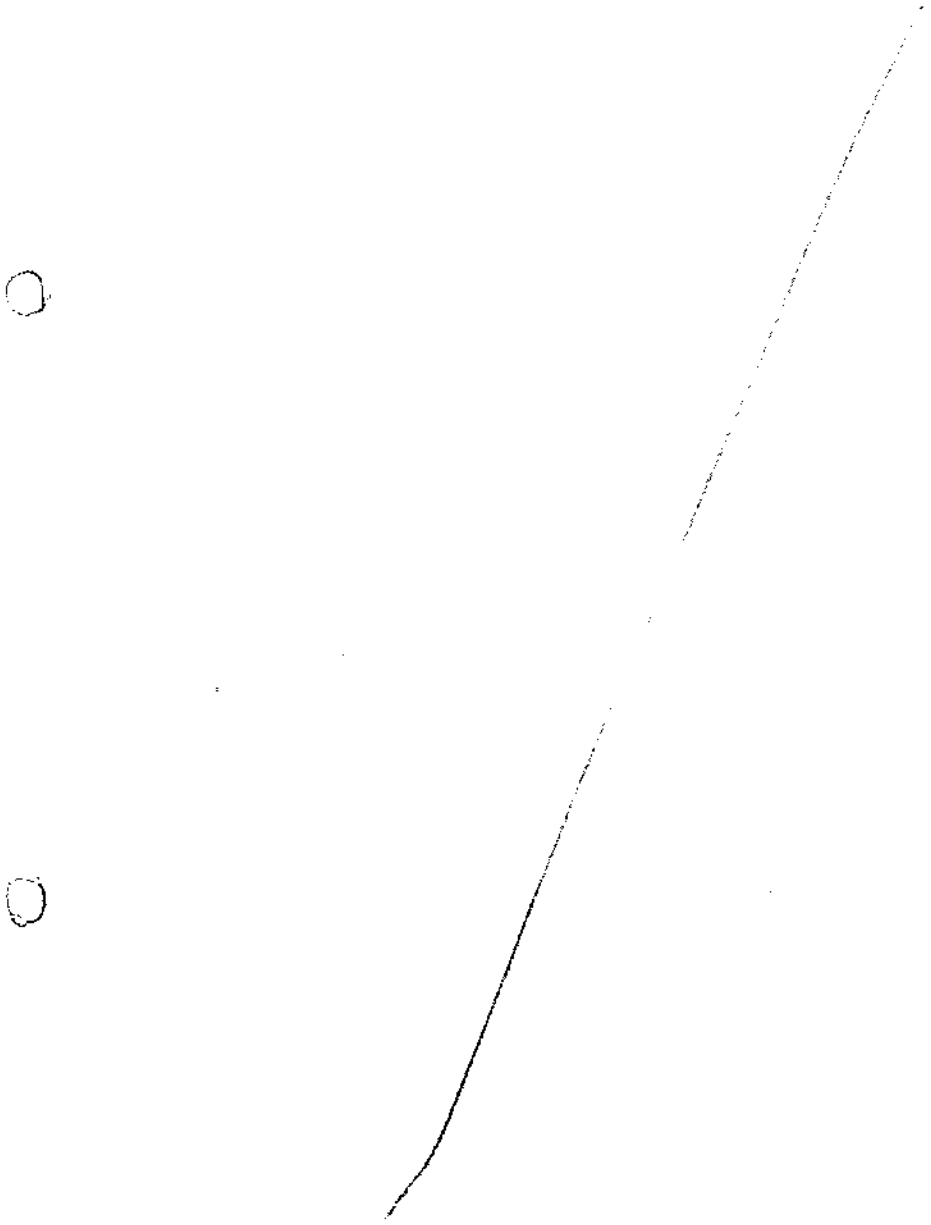
Item		Instrument				
		Type	Range	Accuracy	Number	
Flue Gas Analysis	O_2	NGA2000 Infrared	(0~25)%	±1%	2	To be calibrated before and after test run
	CO_2	NGA2000 Infrared	(0~25)%	±2%	1	To be calibrated before and after test run
	CO	NGA2000 Infrared	(0~1000)μL/L (0.1~2)%	±2%	1	To be calibrated before and after test run
	NO	NGA2000 Infrared	(0~1000)μL/L	±2%	1	To be calibrated before and after test run
	SO_2	NGA2000 Ultraviolet radiation	(0~500~2500)μL/L	±2%	1	To be calibrated before and after test run
Flue Gas Temperature		thermocouple /E type	(-50~800)℃	±0.4 %	132	Certificated test instrument
Air Temperature		thermocouple /E type	(-50~800)℃	±0.4 %	30	Certificated test instrument
Data Acquisition System		IMP Data Processing	---	---	1	Certificated test instrument
Pulverized Coal Sampling		Equal Velocity	---	---	1	Special test instument
Pulverized Coal Fineness Analysis		Airflow Sifter	---	---	1	Certificated test instrument
Atmospheric Pressure		Barometer	(65~105)kPa	±0.5kPa	1	Certificated test instrument
Ambient air		Psychrometer	(-10~60)℃	±0.5℃	1	Certificated test instrument
Fly Ash Sampling		Equal Velocity	---	---	2	Special test instument
Calibration Gas		Pure N_2				Certificated test gas
Calibration Gas		O_2/CO_2				Certificated test gas
Calibration Gas		CO				Certificated test gas
Calibration Gas		NO				Certificated test gas

Appendix B

Measurement Point List for Steam Generator Performance Test

No.	Item	The drawing of measurement Point arrangement	Quantity
1	Raw coal sampling	BZ-03	6
2	Pulverized coal sampling	BZ-04	24
3	Flue gas sampling at AH inlet	BZ-01	24
4	Flue gas sampling at AH outlet	BZ-01	20
5	Fly ash sampling at AH outlet	BZ-01	20
6	Primary air temperature at AH inlet	BZ-02	5
7	Primary air pressure at AH inlet	BZ-02	5
8	Primary air pressure at AH outlet	BZ-02	4
9	Secondary air temperature at AH inlet	BZ-02	8
10	Secondary air pressure at AH inlet	BZ-02	8
11	Secondary air pressure at AH outlet	BZ-02	8
12	Flue gas temperature at AH inlet	BZ-01	24
13	Flue gas temperature at AH outlet	BZ-01	20
14	Flue gas pressure at AH inlet	BZ-01	4
15	Flue gas pressure at AH outlet	BZ-01	4


Temperature Measuring Point
Pressure Measuring Point
Sampling Point
Coal Bin
Furnace
Coal Feeder
Mill
AH
FDF
FDF
ESP
IDF
1. Raw Coal Sampling
2. Pulverized coal sampling
3. Flue gas sampling at AH inlet
4. Flue gas sampling at AH outlet
5. Fly ash sampling at AH outlet
6. Primary air temperature at AH inlet
7. Primary air pressure at AH inlet
8. Primary air pressure at AH outlet
9. Secondary air temperature at AH inlet
10. Secondary air pressure at AH inlet
11. Secondary air pressure at AH outlet
12. Flue gas temperature at AH inlet
13. Flue gas temperature at AH outlet
14. Flue gas pressure at AH inlet
15. Flue gas pressure at AH outlet
TPRI



EPGL - OPERATIONAL DATA - (2X600 MW)									
Sr. No.	Parameters	UOM	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21	FY 2021-22
1	Plant Generation	MU	5229	5213	2682	Plant Under SD	4604	4049	Plant Under SD
2	Plant PLF	%	49.6%	49.6%	25.5%		43.7%	38.5%	
3	Total Export	MU	4915	4889	2514		4305	3789	
4	Aux Consumption	%	6.0%	6.2%	6.3%		6.5%	6.4%	
5	Coal Feeder GCV - As Received Basis	Kcal/Kg	5893	5228	5048		4531	4788	
6	Gross Station Heat Rate	Kcal/kWh	2369	2401	2447		2501	2472	

CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI

No.L-7/145(160)/2008-CERC Dated 19th January, 2009

NOTIFICATION

In exercise of powers conferred under section 178 of the Electricity Act, 2003 (36 of 2003), and all other powers enabling it in this behalf, and after previous publication, the Central Electricity Regulatory Commission hereby makes the following regulations, namely:

CHAPTER - 1

PRELIMINARY

1. **Short title and commencement.** (1) These regulations may be called the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009.

(2) These regulations shall come into force on 1.4.2009, and unless reviewed earlier or extended by the Commission, shall remain in force for a period of 5 years from the date of commencement:

Provided that where a project, or a part thereof, has been declared under commercial operation before the date of commencement of these regulations and whose tariff has not been finally determined by the Commission till that date, tariff in respect of such project or such part thereof for the period ending 31.3.2009 shall be determined in accordance with the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2004.

2. **Scope and extent of application.** These regulations shall apply in all cases where tariff for a generating station or a unit thereof (other than those based on non-conventional

(19) `**gross station heat rate' or 'GHR'** means the heat energy input in kCal required to generate one kWh of electrical energy at generator terminals of a thermal generating station;

(20) **'infirm power'** means electricity injected into the grid prior to the commercial operation of a unit or block of the generating station;

(21) **'installed capacity' or 'IC'** means the summation of the name plate capacities of all the units of the generating station or the capacity of the generating station (reckoned at the generator terminals), approved by the Commission from time to time;

(22) **'implementation agreement'** means the agreement, contract or memorandum of understanding, or any such covenant, entered into between the transmission licensee and the long-term transmission customer for construction of the transmission system;

(23) **'inter-State generating station' or 'ISGS'** has the meaning as assigned in the Indian Electricity Grid Code specified by the Commission;

(24) **'long-term transmission customer'** means a person having a long-term contractual right to use inter-State transmission system by paying transmission charges;

(25) **'maximum continuous rating' or `MCR'** in relation to a unit of the thermal generating station means the maximum continuous output at the generator terminals, guaranteed by the manufacturer at rated parameters, and in relation to a block of a combined cycle thermal generating station means the maximum continuous output at the generator terminals, guaranteed by the manufacturer with water or steam injection (if applicable) and corrected to 50 Hz grid frequency and specified site conditions;

(26) **'medium term'** in the context of usage of transmission system means the period exceeding three months and up to three years.

B. New Thermal Generating Station achieving COD on or after 1.4.2009

(a) Coal-based and lignite-fired Thermal Generating Stations

= 1.065 X Design Heat Rate (kCal/kWh)

Where the Design Heat Rate of a unit means the unit heat rate guaranteed by the supplier at conditions of 100% MCR, zero percent make up, design coal and design cooling water temperature/back pressure.

Provided that the design heat rate shall not exceed the following maximum design unit heat rates depending upon the pressure and temperature ratings of the units:

Pressure Rating (Kg/cm2)	**150**	**170**	**170**	**247**	**247**
SHT/RHT (0C)	**535/535**	**537/537**	**537/565**	**537/565**	**565/593**
Type of BFP	**Electrical Driven**	**Turbine driven**	**Turbine driven**	**Turbine driven**	**Turbine driven**
Max Turbine Cycle Heat rate (kCal/kWh)	**1955**	**1950**	**1935**	**1900**	**1850**
Min.Boiler Efficiency					
Sub-Bituminous Indian Coal	**0.85**	**0.85**	**0.85**	**0.85**	**0.85**
Bituminous Imported Coal	**0.89**	**0.89**	**0.89**	**0.89**	**0.89**
Max Design Unit Heat rate (kCal/kWh)					
Sub-Bituminous Indian Coal	**2300**	**2294**	**2276**	**2235**	**2176**
Bituminous Imported Coal	2197	2191	2174	2135	2079

Provided further that in case pressure and temperature parameters of a unit are different from above ratings, the maximum design unit heat rate of the nearest class shall be taken:

Provided also that where unit heat rate has not been guaranteed but turbine cycle heat rate and boiler efficiency are guaranteed separately by the same supplier or different suppliers, the unit design heat rate shall be arrived at by using guaranteed turbine cycle heat rate and boiler efficiency.

Provided also that if one or more units were declared under commercial operation prior to 1.4.2009, the heat rate norms for those units as well as units declared under commercial operation on or after 1.4.2009 shall be lower of the heat rate norms arrived at by above methodology and the norms as per the regulation 26 (ii) A (a).

Provided also that in case of lignite-fired generating stations (including stations based on CFBC technology), maximum design heat rates shall be increased using factor for moisture content given in sub clause (1) of clause (ii) A(d) of this regulation.

Note: In respect of units where the boiler feed pumps are electrically operated, the maximum design unit heat rate shall be 40 kCal/kWh lower than the maximum design unit heat rate specified above with turbine driven BFP.

(b) Gas-based / Liquid-based thermal generating unit(s)/ block(s)

= 1.05 X Design Heat Rate of the unit/block for Natural Gas and RLNG (kCal/kWh)

= 1.071 X Design Heat Rate of the unit/block for Liquid Fuel (kCal/kWh)

Where the Design Heat Rate of a unit shall mean the guaranteed heat rate for a unit at 100% MCR and at site ambient conditions; and the Design Heat Rate of a block shall mean the guaranteed heat rate for a block at 100% MCR, site ambient conditions, zero percent make up, design cooling water temperature/back pressure.

GUJARAT ELECTRICITY REGULATORY COMMISSION
(MULTI YEAR TARIFF) REGULATIONS, 2011

Notification No. 1 of 2011

Gujarat Electricity Regulatory Commission In exercise of the powers conferred by sub-section (2) of section 181 read with Section 36, Section 39, Section 40, Section 41, Section 51, Section 61, Section 62, Section 63, Section 64, Section 65 and Section 86 of the Electricity Act, 2003 (36 of 2003) and all other powers enabling on that behalf, and under Section 32 of the Gujarat Electricity Industry (Reorganisation and Regulation) Act, 2003 (Gujarat Act No. 24 of 2003) and all powers enabling on that behalf, the Gujarat Electricity Regulatory Commission (GERC) hereby makes the following Regulations, namely:

CHAPTER 1: PRELIMINARY

1 Short title, extent, applicability and commencement

1.1 These Regulations may be called the Gujarat Electricity Regulatory Commission (Multi Year Tariff) Regulations, 2011.

1.2 These Regulations shall come into force on the date of their publication in the Official Gazette.

1.3 These Regulations shall extend to the whole of the State of Gujarat.

1.4 (a) These Regulations shall be applicable for determination of tariff in all cases covered under these Regulations from April 1, 2011 and onwards;

(b) These Regulations shall be applicable to all existing and future Generating Companies, Transmission Licensees and Distribution Licensees and their successors, if any;

(c) These Regulations supersede the "Gujarat Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2005" and "Gujarat Electricity Regulatory Commission (Multi Year Tariff Framework) Regulations, 2007".

2 Definitions

(1) **"Accounting Statement"** means for each financial year, the following statements, namely:

d. unavoidable accident, including but not limited to fire, explosion, radioactive contamination and toxic dangerous chemical contamination;

e. any shutdown or interruption of the grid, which is required or directed by the State or Central Government or by the Commission or the Gujarat State Load Despatch Centre;

(32) **"Generation Business"** means the business of production of electricity from a generating station for the purpose of (i) giving supply to any premises or enabling a supply to be so given, or (ii) supply of electricity to any Licensee in accordance with the Act and the rules and Regulations made thereunder and, (iii) supply of electricity to any consumer subject to the Regulations made under sub-section (2) of section 42 of the Act;

(33) **"Gross Calorific Value"** in relation to a thermal generating station means the heat produced in kilocalories by complete combustion of one kilogram of solid fuel or one litre of liquid fuel or one standard cubic metre of gaseous fuel, as the case may be;

(34) **"Gross Station Heat Rate"** means the heat energy input in kcal required to generate one kWh of electrical energy at generator terminals;

(35) **"High Tension"** or **"HT"** means all voltages defined as "high" or "extra high" voltage under clause (av) of sub-rule (1) of Rule 2 of the Indian Electricity Rules, 1956 and corresponding voltage classifications as may be specified in accordance with clause (c) of sub-section (2) of Section 185 of the Act;

(36) **'Infirm power'** means electricity injected into the grid prior to the commercial operation of a Unit or Block of the generating station;

(37) **"Installed Capacity"** means the summation of the name plate capacities of all the units of the generating station or the capacity of the generating station (reckoned at the generator terminals) as approved by the Commission from time to time;

(38) **"Maximum Continuous Rating" or 'MCR'** in relation to a unit of the thermal generating station means the maximum continuous output at the generator terminals, guaranteed by the manufacturer at rated parameters, and in relation to a Block of a combined cycle thermal generating station means the maximum continuous output at the generator terminals, guaranteed by the manufacturer with water or steam injection (if applicable) and corrected to 50 Hz grid frequency and specified site conditions;

Provided that the Commission may revise the norms for the heat rate for the above mentioned Generating Stations in case of Renovation & Modernisation undertaken by the Generating Station;

b) Thermal Generating Units of Torrent Power Limited - Generation Business (TPL-G):

Table 3: SHR for TPL-G generating stations for the Control Period

(in kcal/kWh)

Station Name	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16
Sabarmati 'C'	3150	3150	3150	3150	3150
Sabarmati 'D'	2450	2450	2450	2450	2450
Sabarmati 'E' & 'F'	2725	2725	2725	2725	2725
Vatva CCPP	2165	2165	2165	2165	2165

Provided that the Commission may revise the norms for the heat rate for the above mentioned Generating Stations in case of Renovation & Modernisation undertaken by the Generating Station;

54.3 Gross Station Heat Rate – For new Generating Units or stations achieving COD after the effectiveness of these Regulations:

a) Coal and lignite based thermal power Generating Units or Stations

= 1.065 x Design Heat Rate (kcal/kWh);

Where the Design Heat Rate of a Unit means the Unit heat rate guaranteed by the supplier at conditions of 100% Maximum Continuous Rating (MCR), zero percent make up, design coal and design cooling water temperature/back pressure:

Provided that the design heat rate shall not exceed the following maximum design Unit heat rates depending upon the pressure and temperature ratings of the Units:

Table 4: SHR for New Generating Stations for the Control Period

Pressure Rating (kg/cm2)	150	170	170	247	247
SHT/RHT (^{0}C)	535/535	537/537	537/565	537/565	565/593
Type of BFP	Electrical Driven	Turbine driven	Turbine driven	Turbine driven	Turbine driven
Max Turbine Cycle Heat rate (kcal/kWh)	1955	1950	1935	1900	1850

Pressure Rating (kg/cm2)	150	170	170	247	247
Min. Boiler Efficiency					
Sub-Bituminous Indian Coal	0.85	0.85	0.85	0.85	0.85
Bituminous Imported Coal	0.89	0.89	0.89	0.89	0.89
Max Design Unit Heat rate (kcal/kWh)					
Sub-Bituminous Indian Coal	2300	2294	2276	2235	2176
Bituminous Imported Coal	2197	2191	2174	2135	2079

Provided further that in case pressure and temperature parameters of a Unit are different from the above ratings, the maximum design Unit heat rate of the nearest class shall be taken:

Provided further that where Unit heat rate has not been guaranteed but turbine cycle heat rate and boiler efficiency are guaranteed separately by the same supplier or different suppliers, the Unit design heat rate shall be arrived at by using guaranteed turbine cycle heat rate and boiler efficiency:

Provided further that if one or more Units are declared under commercial operation prior to the date of effectiveness of these Regulations, the heat rate norms for those Units as well as Units declared under commercial operation on or after the effectiveness of these Regulations shall be lower of the heat rate norms arrived at by the above methodology and the norms in accordance with these Regulations:

Provided also that in case of lignite-fired generating stations (including stations based on Circulating Fluidised Bed Combustion [CFBC] technology), maximum design heat rates shall be increased using factor for moisture content given below:

For lignite fired power plants, the multiplying factors, depending upon the moisture content in the lignite, for deriving the gross Station Heat Rate from that applicable for coal based thermal power plants, are as under:

(i) For lignite having 50% moisture: Multiplying factor of 1.10;

(ii) For lignite having 40% moisture: Multiplying factor of 1.07;

(iii) For lignite having 30% moisture: Multiplying factor of 1.04;

(iv) For other values of moisture content, multiplying factor shall be prorated for moisture content between 30-40% and 40-50%

सत्यमेव जयते

File No. B-5/2015-IPC(Pt.-v)
Government of India
Ministry of Power

Shram Shakti Bhawan, Rafi Marg,
New Delhi, dated 03.05.2022

OFFICE MEMORANDUM

Subject: Minutes of the Meeting held on issues for operationalisation of the power plants that are commissioned but not operational - reg

The undersigned is directed to forward the Minutes of Meeting (MOM) held on issues in operationalisation of the power plants that are commissioned but not operational, held under the chairmanship of Hon'ble Minister of Power & NRE on 02.05.2022 at 04:00 PM.

2. This issues with the approval of Hon'ble Minister (Power, New & Renewable Energy).

Enclosure: as stated

(S. Majumdar)
Under Secretary to the Govt. of India
Tel: 2335 6938

To,

1. Chairman, CEA
2. CMD REC
3. CMD PFC
4. Chairman, SBI
5. CMD, NTPC
6. MD, PNB
7. MD, BoB

8. ACS/ Principal Secretary/ Secretary (Energy) for Project States/ Power procurer States - Gujarat, Maharashtra, Tamil Nadu, Andhra Pradesh, Rajasthan, Uttar Pradesh, Punjab, Haryana, Bihar.
9. MD, Axis Bank
10. MD/CEO/RP for TPPs– as per list

Copy to:

1. PS to Hon'ble Minister for Power and NRE
2. Senior PPS to Secretary (Power)
3. PPS to AS (Thermal)
4. PPS to CE (Thermal)

List

MD/CEO of IPPs –

1. Adani Power Mundra Ltd. (Ph III)
2. Coastal Energen Pvt. Ltd. (Under Partial operation)
3. Rattan India Power Ltd -Nashik
4. Simhapuri Energy Limited
5. Essar Power Gujarat Ltd
6. Vidarbha Industries Power Limited (VIPL)
7. IL&FS Tamil Nadu Power Company Ltd
8. Meenakshi Energy Limited
9. Coastal Gujarat Power Limited (CGPL), Mundra
10. SKS Power
11. Ind Barath Utkal Ltd.

Minutes of the meeting held on 02.05.2022 Chaired by Hon'ble Minister of Power , New & Renewable Energy on the issues related to operationalisation of the power plants that are commissioned but not operational.

The list of participants is at Annexure. CMD, Tangedco attended the meeting through the Video Conference (VC).

2. Secretary (Power) welcomed the Hon'ble Minister and the participants and informed that this meeting was convened to discuss the issues to operationalize the commissioned power plants expeditiously to meet the power requirements of the country.

3. Hon'ble Minister stated that there was a surge in the power demand as the economy was growing rapidly, leading to a mismatch in the demand and supply of the domestic coal. At present the depletion rate of the coal stocks is around 1.3 Lakh Tonne (LT)/day which is a matter of concern. It was also noted that the present power demand is around 215 GW, which is much higher than the demand in the previous years and the Gas based power plants are lying idle due to insufficient gas supply and are unable to contribute to the Grid. Due to this situation, it is essential that every power plant operates and supplies power to the Grid.

4. PFC made a presentation outlining the power plants based on domestic and imported coal which can be made operational. The following decisions were taken during the meeting:

A. IMPORTED COAL BASED POWER PLANTS

4.1 Coastal Gujarat Power Limited (CGPL), Mundra

4.1.1 It was decided that the remaining two units of CGPL (2X830 MW) should be fully operationalized immediately after CGPL & Gujarat Urja Vikas Nigam Limited (GUVNL) sign the Supplemental Power Purchase Agreement (SPPA) based on decision to be issued by Ministry of Power on the issue of sharing of the mining profit.

4.2 Adani Power Mundra Limited (APMuL) (Phase-III), 1980 MW

4.2.1 It was noted that an agreement has been finalized between Haryana and the Power Plant based on mutual understanding. It was

directed that the one unit of APMuL should become operational within 5 days (by 7.5.22) and the remaining two units should become functional within 2 weeks' time (by 16.5.22).

4.3. Essar Power Gujarat Limited (EPGL), Salaya (2x600 MW)- Sub-Critical

4.3.1 It was noted that around Rs. 500 crore was required to operationalize this power plant. Gujarat (GUVNL) consented to provide Rs. 150 crore. It was decided that this will be allowed to be used by the power plant through an escrow account and the promoter would infuse at least Rs 25 crores in next 10 days. The balance working capital would come from Letter of Credit (LC) for Rs.400 crore to be issued by SBI against margin money of Rs.100 crore out of Rs.150 being released by GUVNL. Further, the power plant shall procure imported coal from high sea in next 10 days and the company (EPGL) would arrange credit of 90 days from coal supplier in the form of Usance LC.

4.3.2 All cash flow from the power plant operations should be routed through Escrow Account maintained by SBI.

4.3.3 The actual station heat rate (SHR) of the power plant would be verified by CEA in 5 days' time (i.e. by 7th May,2022) and would be used for the calculation of the fuel cost upto December 2022.

4.3.4 The Lead lender i.e. SBI would be responsible for plant's overall operations and would provide timely and adequate working capital to the power plant.

4.4. Coastal Energen Pvt. Limited (CEPL), Mutiara, Tamil Nadu (2x600 MW)- Sub-Critical:

4.4.1 It was noted that unit-2 (600 MW) was under operation and was supplying power to Tamil Nadu under short term bilateral arrangement. RP has been taken on board.

4.4.2 It was informed by CMD, Tangedco that there was already an order issued for full pass through for unit-1 (600 MW) PPA and this unit would be operationalized after the rectification of the technical fault. It was decided that this arrangement shall be extended upto December 2022. CMD, TANGEDCO agreed to issue orders in 3 days. At present, the unit-1 is under outage and would be put back on bar in next 15 days.

4.5. IL&FS Tamil Nadu Power Company Ltd. (2x 600 MW)- Sub-Critical

4.5.1 It was noted that this power plant supplies 900 MW to Tamil Nadu and remaining 300 MW is sold in power exchange. It was informed by the State that there was already an order issued for full pass through for unit-1 (600 MW) PPA. It was decided that this arrangement shall be extended upto December 2022. Orders to issue in 3 days. In respect of Unit 2 (600 MW), Tangedco had entered into a short term bilateral arrangements for 300 MW capacity with IL&FS. The remaining can be sold in the exchange.

4.5.2 IL&FS requested PFC to clear the amount of Rs. 369 crore admissible to it under Liquidity Infusion Scheme (LIS). It was decided that the amount may be released expeditiously for which a request has to be sent to PFC by State Government of TN citing present supply challenges.

4.5.3 The company requested that the State might consider to release the past payments which may be used for working capital. Tangedco agreed to resolve this on priority.

4.6 Meenakshi Energy Limited (Phase-I:2x150MW Commissioned, Phase II: 2x350MW yet to be commissioned)

4.6.1 It was noted that Phase I: 300 MW capacity was commissioned at present and remaining 700 MW would take time to commission, and there was a need of working capital of Rs 175 crore to operate this 300 MW capacity.

4.6.2. The company has been admitted under NCLT and is under administrative control of the Resolution Professional (RP). It was informed that while SBI (lead lender) has agreed to fund its portion (49%) of working capital requirement but the Committee of Creditors (COC) did not accord its approval to provide the working capital to this plant. CMD, REC agreed to go ahead in this regard. Hon'ble Minister assured that MoP would take up the matter with Department of Financial Services (DFS) to pursue the remaining lenders of the plant for extending the working capital and ensuring operationalisation of the plant.

4.6.3 The RP was advised to ensure starting the operations within 30 days.

4.7. Simhapuri Energy Limited (4x150 MW): admitted under NCLT and bidding over in respect of Liquidation:

4.7.1 It was noted that Jindal Power had emerged as the successful bidder in liquidation auction as going concern and it has to pay Rs.330 crore to lenders.

4.7.2 It was informed by the Liquidator that the plant was last operational in April 2017 and has not been in operation since the. It was further informed that as per the study conducted by the L&T, the plant will take at least 12 months to get operational.

B. DOMESTIC COAL BASED POWER PLANTS

4.8 SKS Power Generation Ltd. (2x 300 MW) at Binjkote Chhattisgarh:

4.8.1 It was noted that plant has PPA for 275 MW capacity out of total capacity of 600 MW and it needs around Rs. 125 crores for starting the operations.

4.8.2. It was decided that since the promoter of the plant was insolvent, the Resolution Professional (RP) should appoint NTPC to operate this plant as an Operation and Maintenance (O&M) agency for which Bank of Baroda (BOB) as lead lender would write to RP for appointment of NTPC to restart the operations. Ministry would facilitate early approval by NCLT.

4.8.3. Ministry of Power will pursue with Bihar for early payment of pending dues.

4.8.4. CMD, NTPC (who was present in the meting) was asked to take immediate preparatory actions.

4.9 Sinnar Thermal Power Plant Limited (5x270 MW) at Nashik, Maharashtra

4.9.1 It was noted that Power Finance Corporation Limited (PFC) was the Lead lender and this plant needs around Rs 500 crores of working

capital to restart the operations and the power plant has no PPA. With present fuel handling facility, 2x270 MW capacity can be operated.

4.9.2. It was decided that PFC would coordinate with other lenders for funding of the working capital requirement and the promoter would infuse Rs 125 crore for this purpose. The power plant can bid for coal linkage under Shakti B(viii) (a) auction and sell power in Day ahead Market (DAM).

4.9.3. The power plant requested the intervention of the Ministry of Power for renewal of lapsed clearances and would submit the requests in this regard. MoP would follow up the requisite clearances.

4.9.4 The power plant was advised to restart the operation within 30 days.

4.10 Vidarbha Industries Power Limited (VIPL) (2x300 MW)

4.10.1 It was noted that there was an outstanding dues of about Rs 3000 crores (inclusive of principal and interest) to the lenders and the project has been referred to NCLT for admission.

4.10.2. It was decided that the Lead lender Axis Bank would follow up in NCLT for quick admission, thereafter the RP can be appointed. The lenders should take up with RP for operating the plant by NTPC as an O&M agency. Ministry would facilitate early permission in NCLT.

4.11. IndBarath Energy (Utkal) Ltd. (2x350 MW) at Jharsuguda, Odisha:

4.11.1 Only 340 MW has been commissioned. PFC is the lead lender and the project has been admitted under NCLT and IBC bidding process was under completion. It was noted that the power plant was in very bad shape and would require around 24 months to restart the operations.

5. Hon'ble Minister for Power & NRE reiterated the importance of restoring the operations of these commissioned plants and advised all the stake holders to take necessary action within the specified timelines.

The meeting ended with a vote of Thanks to the Chair.

*****

ANNEXURE

List of participants

Ministry Of Power

1. Shri R.K. Singh, Hon'ble Minister of Power & NRE (In Chair)
2. Shri Alok Kumar, Secretary
3. Shri S.K.G Rahate, Additional Secretary
4. Shri Vivek Kumar Dewangan, Additional Secretary
5. Shri Sanjeev Kumar Kassi, Chief Engineer (Thermal)
6. Shri D.K Sharma, Joint Director (FSC)
7. Shri S. Majumdar, Under Secretary
8. Shri Subhash Chand, Section Officer
9. Shri Deepanshu Jain, Dy. Manager (FSC)

CEA

1. Shri B.K Arya, Chairman
2. Shri A. Balan, Member (Planning)
3. Shri Vijay Menghani, Chief Engineer

SBI

1. Shri. J.Swaminathan,
2. Shri Subroto Biswas

BOB

1. Shri Debdatta
2. Shri D. Chand, ED

PWC Coastal EnergenPvt. Ltd.

1. Shri Sandeep Kumar Agarwal
2. Shri Ashok Narayana Swamy

ITPCL

1. Shri Sanjeev Seth, Managing Director
2. Ms. Bhuvani Prasad, Business Head

Tata Power Co. Ltd.

1. Shri Ajay Kapoor, Chief

Adani Power Ltd.

1. Shri Sameer Ganju

Meenakshi Energy Ltd.

1. Shri Ravi Sankar Deva Rakonda
2. Shri RamaKrishna

Sinhapuri Energy Ltd.

1. Dr. G.V. Rao, Liquidator

SKS Power

1. Shri T.Ramakrishna Rao, President

Rhance Power Ltd.

1. Shri K Raja Gopal, Dierctor

Rattan India Power Ltd.

1. Shri Rajiv Rattan, Chairman
2. Shri Vibhav Agarwal, MD
3. Shir Ankur Mitra, CFO

IndBarath Energy (Utkal) Ltd.

1. Shri Udayraj Patwardhan, Resolution Professional
2. Ms. C.S Vipasha Jain

Punjab National Bank

1. Shri Binod Kumar, CGM
2. Shri Sanjay Koolwal, GM

REC

1. Shri V.K Singh, ED
2. Shri Ajoy Choudhury, DF
3. Shri Prabhat Kumar, CGM

NTPC

1. Shri Gurdeep Singh, CMD
2. Shri C.K. Mondol, Director

HPGCL

1. Shri S.L Sachdeva
2. Shri P.D. Khattar

PSPCL

1. Shri Paramjeet Singh, Director

POSOCO

1. Shri S.R Narsimhan, CMD

SBICAPS

1. Shri Mukul Modi, EVP
2. Shri Avinash Anurag
3. SHri Shubham Goel,

PFC

1. Shri R.S Dhillon, CMD
2. SHri P.K Sinha, ED
3. Shri Rajiv Ranjan Jha
4. Shri Rahul Mani

Govt. of Maharashtra

1. Shri Dinesh Waghmare, Principal Secretary Energy

APGENCO

1. Shri G.C.S Rajni

MSETC

1. Shri S.S Prasad, Advisor

MSEBHCL

1. Shri Prafulla Pathak, Res. Executive Director

Government of Gujarat

1. Shri Mamta Verma, Pr. Secretary (Energy)

GUVNL

1. Shri J.P Shivhare, MD

Essar Power

1. Shri Kush Singh, CEO
2. Shri Bhaven Bhatt, Resident Director
3. Shri Love Kumar, President

Axis Bank

1. Ms. Shefali Jain
2. Shri Dushyant Dimania

File No. B-5/2015-IPC(Pt.-v)
Government of India
Ministry of Power

Shram Shakti Bhawan, Rafi Marg,
New Delhi, dated 10.05.2022

OFFICE MEMORANDUM

Subject: Minutes of the Meeting held on issues for operationalisation of the power plants that are commissioned but not operational - reg

The undersigned is directed to forward the Minutes of Meeting (MOM) regarding operationalisation of the power plants that are commissioned but not operational, held under the Chairmanship of Hon'ble Minister of Power, New & Renewable Energy on 06.05.2022 at 03:00 PM.

2. This issues with the approval of Hon'ble Minister (Power, New & Renewable Energy).

Enclosure: as stated

(S. Majumdar)
Under Secretary to the Govt. of India
Tel: 2335 6938

To,

1. Secretary, D/o Financial Services
2. Secretary, Ministry of Corporate Affairs
3. Chairman, CEA
4. CMD REC
5. CMD PFC
6. Chairman, SBI
7. CMD, NTPC
8. MD, PNB
9. MD, BoB
10. ACS/ Principal Secretary/ Secretary (Energy) for Project States/ Power procurer States - Gujarat, Maharashtra, Tamil Nadu, Andhra Pradesh.
11. MD, Axis Bank
12. MD/CEO/RP for TPPs– as per list

Copy to:

1. PS to Hon'ble Minister for Power and NRE
2. Senior PPS to Secretary (Power)
3. PPS to AS (Thermal)
4. PPS to CE (Thermal)

List

MD/CEO of IPPs –

1. Rattan India Power Ltd -Nashik
2. Essar Power Gujarat Ltd
3. Vidarbha Industries Power Limited (VIPL)
4. IL&FS Tamil Nadu Power Company Ltd
5. Meenakshi Energy Limited
6. SKS Power

Minutes of the meeting held on 06.05.2022 Chaired by Hon'ble Minister of Power, New & Renewable Energy on the issues related to operationalisation of the power plants that are commissioned but not operational.

The list of participants is at Annexure.

2. Secretary (Power) welcomed the Hon'ble Minister and the participants and informed that this meeting had been convened to assess the steps undertaken in respect of the key decision points of the meeting held on 02.05.2022 regarding operationalization of non-operational Commissioned power plants.

3. Hon'ble Minister reiterated the significance of each power plant operating and supplying power to the grid in view of the surge in the power demand. He mentioned that Section 11 of Electricity Act had been invoked on 05.05.2022 by Ministry of Power (MoP), Government of India for operationalizing Imported Coal Based (ICB) plants. As per the order issued on 05.05.2022, all the ICB plants will have to operate in order to supply power to the grid at their full capacity. These power plants will supply power to PPA holders and any surplus /untied / un-requisitioned power could be sold in power exchange. The benchmark tariff will be determined by a committee constituted by MoP with representatives from MoP, CEA and CERC. Payment will be made to generating companies on weekly basis. This arrangement will be effective until 31.10.2022. Ministry of Power has also instructed all the domestic coal based plants to import at least 10% of their requirement for blending in order to meet any shortfall in domestic coal supplies keeping in view logistics constraints.

3.1 Hon'ble Minister took an update on readiness to commence operations of six power plants. He reiterated that Ministry of Power will provide all necessary support required to bring these plants on stream at the earliest.

4. Power Finance Corporation Limited (PFC) made a presentation outlining the six commissioned but not operational power plants based on imported coal as well as on domestic coal. The following decisions were taken during the meeting:

I. Imported Coal Based (ICB) Plants:

4.1 Essar Power Gujarat Limited (EPGL) : 2x600 MW (1200 MW)

4.1.1 During the last meeting, it was decided that GUVNL will provide Rs. 150 crore which may be used by the power plant through an escrow account and promoter would infuse Rs 25 crores in next 10 days. Balance

working capital would come from Letter of Credit (LC) issued by lenders against margin of Rs 100 crore. EPGL will procure imported coal from high sea in next 10 days against credit of 90 days from coal supplier in the form of Usance LC. The heat rate of the power plant would be verified by CEA and would be used for the calculation of fuel cost.

4.1.2 Lenders agreed to provide LC facility for procurement of coal. SBI (the lead Lender) informed that meetings had been held with all the lenders and all the operational issues would be resolved.

4.1.3 CEA mentioned that they had verified the station heat rate (SHR) and the same was found to be 2333 kcal/kg. CEA was directed to immediately submit the report on SHR to Ministry of Power (MoP) and after considering the report, MoP would communicate the decision on SHR to all the stakeholders for tariff determination.

4.1.4 The company (EPGL) mentioned that there was consensus on signing tripartite agreement among SBI, GUVNL and EPGL and the tripartite agreement would be executed shortly and plant would be ready for operation once imported coal is brought in 8-10 days from high seas.

4.1.5. EPGL was directed to light up the boiler of the plant by 15th May 2022.

4.2. IL&FS Tamil Nadu Power Company Ltd. (2x600 MW)

4.2.1 During the last meeting, it was discussed that Tangedco would extend the pass-through arrangement for PPA until December 2022. After that, 900 MW (600 MW in PPA and 300 MW in short term PPA) will be tied up with Tangedco and balance power will be sold to other discoms/exchange. It was decided that Tangedco would resolve the issue of outstanding past dues on priority.

4.2.2. It was noted that an amount of Rs 369 crore admissible to IL&FS under Liquidity Infusion Scheme (LIS) was released by PFC on 6th May 2022. The company was instructed that this payment should be utilized for operation of the plant and all the income be deposited in an escrow account. Further, to overcome liquidity issue of the company, Tangedco agreed to make payments on weekly basis.

4.2.3 The company (IL&FS) informed that there were some past dues outstanding from Tangedco (more than Rs 3,270 crore) which may be paid in a structured manner. As per the restructuring package approved by lenders, around Rs 2000 crore was due to lenders in next 2 quarters. Tangedco agreed to make payment of Rs 75 crore every week to liquidate around Rs 1500 crore in next five months.This will be in additional to

weekly payment of current dues. With this agreed arrangement, PNB as lead lender assured to facilitate restarting of plant.

4.2.4 IL&FS was directed to operate the remaining one unit of 600 MW capacity by 12th May 2022 so that entire 1200 MW becomes available to the grid.

4.3. Meenakshi Energy Limited (2x150 MW):

4.3.1 During the last meeting held on 02.05.2022, it was decided that MoP would take up the issue of working capital with Department of Financial Services to bring the lenders on board to extend the working capital facility.

4.3.2 Resolution Professional (RP) informed that 300 MW capacity based on imported coal can be operationalized. RP informed that the cost of generation need to be worked out including finance cost, admin, etc. CEA was asked to assess the cost of generation appropriately.

4.3.3 Further, RP informed that working capital would be required for restarting the plant. SBI (lead lender) informed that they can sanction interim financing for operation of plant. SBI & REC (around 70% share) had earlier sanctioned interim finance and they agreed to revisit it again. Other lenders may join this arrangement. Further, escrow arrangement for purpose of ring fencing of cash flows was yet to be finalized for this project.

4.3.4 RP was advised to employ a team of technical experts for operation of plant and it was also suggested to take technical assistance of NTPC for operation of this plant. Further, help of NVVN may be taken for assistance in electricity trading and commercial matters. Any support required to finalize the arrangements in consultation with RP and the lenders may be intimated to MoP.

4.3.5 RP was advised to approach NTPC for these services viz., O&M agency services and commercial consultancy. NTPC may act as O&M agency and coal procurement may be included as its responsibility. The RP was given target date of 31st May 2022 to start the operations for 2x150 MW units and for this, they can approach NTPC for any support required. SBI agreed to provide working capital with NTPC being entrusted to operate the plant.

II. Domestic Coal Based (DCB) plants:

4.4. Sinnar Thermal Power Plant Limited (STPPL) at Nashik (5x270 MW): Likely operational capacity 2x270 MW (540 MW):

4.4.1 During the last meeting held on 2.5.2022, it was decided that PFC would coordinate with the lenders for funding of the working capital requirements and the promoter would infuse Rs 125 crore for this purpose. The company also submitted a request for intervention of Ministry of Power for renewal of lapsed clearances.

4.4.2 It was informed that team of PFC/REC/NTPC had conducted site visit of the plant to assess the readiness of operations. The report will be submitted shortly. As per the company estimates, it will take four months to start operation of two units (2x270 MW). CMD NTPC agreed with this tentative timeline.

4.4.3 The company (Rattan India Limited) informed that it had already started the process to restart the operations. Project was kept under preservation after COD in 2017. It has sent applications to various authorities for renewal of various clearances/approvals. NTPC suggested that assistance of Maharashtra Govt. will be required for various clearances like CTO, water clearance, etc.

4.4.4 The company also informed that working capital arrangement was necessary for plant operations. PFC (lead lender) mentioned that the next lenders' meet was scheduled on 09.05.2022 where details about operations of STPPL shall be finalised.

4.4.5 PFC (lead lender) submitted that Canara Bank had moved to DRT against this company in May 2021. The same needs to be withdrawn. Secretary, Department of Financial Services (DFS) agreed to resolve this matter.

PFC will also coordinate timely clearances required from various authorities, with support of Ministry of Power.

4.4.6. The lenders and Rattan India Limited were advised to operationalize the two units 2x270 MW capacity within a period of 4 months.

4.5. SKS Power Generation Ltd. (2x300 MW):

4.5.1 During the last meeting held on 02.05.2022, it was decided that Bank of Baroda i.e. BoB (lead lender) would write to the Resolution Professional (RP) for appointment of NTPC as O&M agency to operate this plant.

Further, Ministry of Power would pursue with procurers for early payment of pending dues.

4.5.2 BoB informed that they had submitted letter to IRP on 04.05.2022 for appointment of NTPC as O&M agency. They have also written a letter to NTPC in this regard. IRP agreed to appoint NTPC as O&M agency by 09.05.2022. Responsibility of coal procurement and power sale may also be given to NTPC, as decided in case of Meenakshi Energy Limited. The terms and conditions of this arrangement will be decided on mutual agreement basis.

4.5.3 Lenders (BoB and SBI) assured to make the working capital available for operation of the plant.

4.5.4 The Technical experts from NTPC are already at the project site. Post their assessment, the timeline for restarting the plant would be finalized. BoB informed that the coal stock of 10 days was also available at project site.

4.6. Vidarbha Industries Power Limited (VIPL): 600 MW

4.6.1 During last meeting held on 02.05.2022, it was decided that Axis Bank (lead lender) would follow up in NCLT for quick admission of this company. Thereafter, the RP can appoint NTPC as O&M agency for operating the power plant.

4.6.2 The Axis Bank mentioned there was a case pending with Supreme Court and NCLT had been waiting for Supreme Court judgment before admitting the company. Axis Bank informed that hearing on its plea is scheduled for 9th May 2022. It was suggested that Government of India may intervene in this hearing for early admission of this company in NCLT.

4.6.3 The company informed that plant had been shut down for more than 3 years and its consent to operate, water clearance, etc. had expired. Further, there are no staff at the project site. It will take long to restart the plant. NTPC suggested that it can carry out technical due diligence of this plant in the meanwhile. They may assess the readiness for operations of the plant based on a request by the lead lender Bank of Baroda.

5. It was desired to ascertain the actual status of some other imported coal based plants as brought to knowledge in the meeting. viz., Bhadreshwar Power Plant (300 MW) in Gujarat which was earlier a captive plant , and SEPC plant at Tuticorin (525 MW) and find ways to make them fully operational.

6. The meeting ended with a vote of thanks to the chair.

ANNEXURE

List of participants

Ministry Of Power

1. Shri R.K. Singh, Hon'ble Minister of Power & NRE (In Chair)
2. Shri Alok Kumar, Secretary
3. Shri Vivek Kumar Dewangan, Additional Secretary
4. Shri Sanjeev Kumar Kassi, Chief Engineer (Thermal)
5. Shri D.K Sharma, Joint Director (FSC)
6. Shri S. Majumdar, Under Secretary
7. Shri Deepanshu Jain, Dy. Manager (FSC)

DFS

1. Shri Sanjay Malhotra, Secretary

CEA

1. Shri B.K Arya, Chairman
2. Shri A. Balan, Member (Planning)
3. Shri Vijay Menghani, Chief Engineer

NTPC

1. Shri Gurdeep Singh, CMD
2. Shri C.K. Mondol, D (Comm.)

Government of Haryana

1. Shri Satyaprakash, Secretary (Power)
2. Shri Mohd. Iqbal, Director

Government of Rajasthan

1. Shri Mukesh Chand Bansal, CE

Government of Tamil Nadu

1. Shri Rajesh Lakhani (through VC)

SBI

1. Shri Dinesh Khara, Chairman
2. Shri Subrata

SBI CAPS

1. Shri Avinash Anurag
2. Shri Shubham Goel
3. Shri Sachin Vermani

PFC

1. Shri R.S. Dhillon, CMD
2. Shri Rahul Mani
3. Shri P.K. Sinha, ED

REC Ltd.

1. Shri V.K. Singh, ED
2. Shri Ajoy Choudhury, D (F)

PNB

1. Shri Kalyan Kumar
2. Shri Sunil Chugh

BOB

1. Shri D.Chand
2. Shri J.N. Chopra

Axis Bank

1. Ms. Shifali Jain, Sr. VP
2. Shri Dushyant Dimania, VP

Meenakshi Energy

1. Shri Ramakrishna
2. Shri Ravi Shankar Devarakonda

ESSAR Group

1. Shri Ruia
2. Shri Kush singh, CEO
3. Shri Bhaven Bhatt
4. Shri Lav Kumar

Sinnar Thermal Power Ltd.

1. Shri Rajiv Rattan
2. Shri Chandan
3. Shri Suraj Guru

ITPCL (IL&FS)

1. Shri Sanjeev Seth, MD
2. Shri Sushil Agarwal, CFO

SKS Power

1. Shri Ashish Rathi, RP (through VC)

Vidarbha Industry Power Ltd.

1. Shri Rajagopal, CEO (through VC)
2. Shri Manoj Pradhan

BEFORE GUJARAT ELECTRICITY REGULATORY COMMISSION

GANDHINAGAR

Petition No.1296/2013

In the Matter of:

Petition under section 86(1)(f) of the Electricity Act,2003 read with article 17 of the Power Purchase Agreement dated 26.02.2007 executed between Essar Power Ltd. and Gujarat Urja Vikas Nigam Ltd.

Petitioner	:	M/s. Essar Power Gujarat Ltd., Essar House, 11, Keshavrao Khadye Marg, Mahalaxmi, Mumbai-400 034.
Represented	:	Learned Senior Advocate Shri Mihir Thakore with Advocates Shri Aayush Modi and Shri Aayush Modi along with Shri Suarav Srivastav, Shri Vijendra Ranwani and Shri Bhavesh Kundalia.
		V/s.
Respondent No. 1	:	Gujarat Urja Vikas Nigam Limited, Sardar Patel Vidyut Bhavan, Race Course Circle, Vadodara- 390007.
Represented By	:	Learned Advocate Shri M. G. Ramchandran alongwith Shri P. J. Jani.

CORAM:

Shri Pravinbhai Patel, Chairman

Dr. M. K. Iyer, Member (Finance)

Date: 03/08/2015.

ORDER

1.0. The present petition has been filed by the petitioner dated 18.01.2013 seeking following reliefs:

(a) To approve and allow the petitioner to raise supplementary bills for levy of Clean Energy Cess as per paragraph no. 11.1 of the petition under Article 13 of the PPA;

(b) To approve and allow the petitioner to raise supplementary bills for levy of Green Cess as per paragraph no. 11.2 of the petition under Article 13 of the PPA;

(c) To approve and allow the petitioner to raise supplementary bills for increase in Countervailing Duty as per paragraph of the petition under Article 13 of the PPA;

(d) To approve the decrease in Basic Customs Duty as per paragraph of the petition under Article 13 of the PPA;

(e) To approve and allow the petitioner to raise supplementary bills for the increase in Minimum Alternate Tax as per paragraph no. 11.5 of the petition under Article 13 of the PPA, as and when necessary;

(f) To approve and allow the petitioner to raise supplementary bills for the impact of wharfage charges as per paragraph no. 11.6 of the petition under Article 13 of the PPA, as and when necessary.

2.0. The brief facts mentioned in the petition are as under:

2.1. The Petitioner is a company incorporated under the provisions of the Companies Act, 1956 and engaged in the business of generating and selling and/or supplying electricity. The Respondent is a company incorporated under the provisions of the Companies Act, 1956 and a successor of the Gujarat Electricity Board, constituted previously under the Electricity (Supply) Act, 1948.

2.2. The Petitioner submitted that the Respondent GUVNL vide a Request for Qualification Notification (RFQ) dated 01/02.02.2006 had invited bids for supply of power in bulk on long term basis under Bid No. 03/LTPP/2006. Essar Power Limited, a Group Company of the Petitioner, participated in the said bidding process and emerged as a successful bidder for sale and supply of 1000 MW electricity to the Respondent from Unit -1 and Unit -2 of the 1200 (2x600) MW Phase-1, Salaya Thermal Power Plant which was setup by EPL. Accordingly a Power Purchase Agreement (PPA) dated 26.02.2007 was entered into between the Petitioner and the Respondent for supply of 1000 MW electricity. The said PPA was later on assigned by Essar Power Limited to Essar Power Gujarat Limited, Petitioner herein, to which the Respondent accorded consent vide its letter dated 05.07.2007.

2.3. The Petitioner commenced construction activities of the said power project in two phases, i.e. Unit-1 and Unit-2 of 600 MW capacities each. The Petitioner achieved the

commercial operation of Unit-1 and Unit-2 on 1.4.2012 and 15.6.2012 respectively. The Petitioner submitted that the tariff at which the contracted capacity of 1000 MW electricity is to be supplied to the Respondent has been stipulated in Schedule-6 and 10 of the said PPA. Article 13 of the said PPA also provides for an adjustment in tariff on account of any change in the law, which would occur after the date, which is 7days prior to the Bid Deadline. Bid Deadline has been defined in the PPA to mean the last date for submission of the Bid in response to the request for proposal. In the present case, the Bid Deadline was 03.01.2007 and therefore seven days prior to that is 27.12.2006 (hereinafter referred to as the 'Relevant Date'). The Petitioner stated that from the said Relevant Date till the date of filing of the present petition, there have been certain changes in law which would alter the cost of generation of electricity and thereby would also have an impact on the tariff at which electricity would be supplied by the Petitioner. Therefore, by way of the present petition, the Petitioner seeks an adjustment in the tariff at which the electricity is to be supplied to the Respondent.

2.4. The Petitioner submitted that Article 13.1 of the PPA lays down the definition of change in law, the relevant part of which, reads as under:

> ***"13.1 Definitions***
>
> *In the 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 (i) 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 licensees 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 the Agreement, or (iv) any change in the cost of implementing Environmental Management Plan for the Power Station;....."

Accordingly, if there is any change brought in by an enactment or a change in interpretation of law or change in consents, approvals or licenses subsequent to seven days prior to the Bid Deadline, it would qualify as a change in law. Further, it is pertinent to state that Article 13.1 of the PPA not only provides for any new enactment being introduced by the Legislature but also provides for any change in consents, approvals or licensees available or obtained for the Power Project, which results in any change in any cost or revenue from the business of selling electricity under the PPA subsequent to the Relevant Date, would qualify as a change in law.

2.5. Further, the Petitioner stated that Article 13.2 of the PPA provides for application of the aforesaid 'Change in Law' clause of the PPA in two phases – (a) Construction Period; and (b) Operation Period. Article 13.2 of the PPA provides that change in law during the construction period would be applicable only if there is a cumulative increase/decrease of Rs. 1.25 lakhs per MW capital cost in relation to the Installed Capacity of 1200 MW i.e. 1,25,000/- x 1200 (MW) = Rs. 15,00,00,000/-. It is pertinent to state that Article 13.2 also provides that during the operating period, the provisions

of 'Change in Law' will apply if there is increase/decrease in revenues or cost to the Petitioner in excess of an amount equivalent to 1% of the Letter of Credit in aggregate for a Contract Year. As the total amount of Letter of Credit to be issued by the Respondent is Rs. 160.78 Crores, the impact of the change in law would be considered during the operation period, only if there is an increase/decrease of more than Rs. 1.61 Crores (approx.) p.a.

2.6. The Petitioner submitted that Construction Period has been defined in Article 2 of the PPA as the period from commencement of work up to the Commercial Operation Date (COD) of the Unit. Whereas, Operation Period has been defined under Article 2 of the PPA as the period from the COD of the Unit up to the expiry of the PPA. In the present case, Unit-1 and Unit-2 of the Power Project achieved COD on 01.04.2012 and 15.06.2012 respectively. The plain reading of Article 13.2 along with the aforesaid definitions inter alia, make it clear that the changes in law as specified hereunder would be applicable for Unit-1 and Unit-2 during their respective Operation Period i.e. from 01.04.2012 and 15.06.2012 onwards until the expiry of the PPA only if the same results in an increase or decrease of Rs. 1.61 Crores per annum. As the net impact of the changes in law during the operation period till the date of filing of the present petition is an increase of Rs. 5.41 Crores considering normative availability, the present petition is being filed seeking adjustment of tariff in accordance with the terms of the PPA. However, the Petitioner hereby reserves its right to file a separate petition for seeking adjustment of tariff with respect to changes in law applicable during the Construction period. The petitioner submitted that as per the Article 13.3 of the PPA, he has issued a notice dated 1st August, 2012 to the Respondent with respect to the change in law, which have taken place subsequent to the relevant date.

2.7. The Petitioner submitted that the following changes in law have occurred subsequent to the effective date of the PPA i.e. 26.02.2007, which has resulted into an increase/decrease in the costs for the Petitioner thereby requiring an adjustment of tariff:

(i) Notification No. 354/72/2010-TRU dated 24.06.2010 has been introduced by Ministry of Finance, Government of India, whereby 'Clean Energy Cess' is levied as a duty of excise on coal, including imported coal, with effect from 01.07.2010.

(ii) The State Government has introduced 'Gujarat Green Cess Act, 2011' and has also framed the Rules thereunder, whereby the Petitioner is required to pay Green Cess @ Rs. 0.02 per KWh of electricity generated.

(iii) Increase in Countervailing Duty on imported coal from zero percent to one percent.

(iv) Change of Basic Custom Duty (BCD/Standard Rate on Imported Coal from 5 percent to zero percent.

(v) Increase in the rate of Minimum Alternate Tax (MAT) from 7.5%to 18.5%.

(vi) Gujarat Maritime Board (GMB) has changed its policies whereby it has disallowed Essar Bulk Terminal (Salaya) Limited from utilizing the captive jetty for any Third party cargo and has also disallowed any set off of wharfage charges, resulting into a financial burden for the Petitioner.

2.7.1. Levy of Clean Energy Cess:

The Ministry of Finance, Government of India vide Notification No. 354/72/2010-TRU dated 24.06.2010 has levied Clean Energy Cess as a duty of excise on coal, including imported coal, with effect from 01.07.2010. An

effective rate of Rs. 50 per tonne has been prescribed through Notification no. 3/2010-CEC dated 22.06.2010. As a result of the said 'Change in Law' the costs of imported coal for the Petitioner has risen by Rs. 50 per tonne. The resultant impact of the Clean Energy Cess is Rs. 0.02274 per unit of electricity generated, amounting to an annual impact of Rs. 15.94 Crores (approx.). The said increase in costs would have to be accordingly adjusted in the tariff determined by the parties.

2.7.2. Levy of Green Cess:

The Government of Gujarat introduced the 'Gujarat Green Cess Act, 2011' along with the 'Gujarat Green Cess Rules, 2011' framed thereunder. Section 3 of the Gujarat Green Cess Act, 2011, which seeks to levy the green cess on generation of electricity, reads as under:

> *"3. (1) There shall be levied and collected a cess for the purposes of this Act, on generation of electricity except on generation of renewable energy by the generating company at the generating station or at the captive generating plant or the stand by generating plant.*
>
> *(2) Such cess under sub-section (1) shall be levied and payable on the electricity generated in the State of Gujarat irrespective of the fact whether such electricity is consumed within the State or not.*
>
> *(3) Such cess under sub-section (1) shall be levied in such manner and at such rate not exceeding twenty paise per unit of the electricity generated as may be prescribed.*
>
> *(4) .....*
>
> *(5) The cess levied under sub-section (1) shall be payable by the generating company."*

Accordingly, the State Government vide the Gujarat Green Cess Act, 2011 has levied green cess @ Rs. 0.02 per KWH generated by the generating companies. The said Act has been introduced subsequent to the Relevant Date and therefore amounts to a change in law impacting the cost at which electricity is generated by the Petitioner. The resultant impact of the said levy is Rs. 0.02147 per KWH considering the auxiliary consumption of 6.85 percent of power. The annual impact of the said change in law would be an increase of Rs. 15.05 Crores at normative availability.

However, Petitioner has preferred a writ petition before the Hon'ble High Court of Gujarat, being Special Civil Application No. 7141 of 2012, whereby Petitioner has challenged the constitutional validity of the said Gujarat Green Cess Act, 2011. The Hon'ble High Court of Gujarat vide its order dated 11.05.2012 passed in the aforesaid Special Civil Application has been pleased to grant stay against the operation and implementation of the Gujarat Green Cess Act, 2011. Accordingly, the levy of Green Cess under the said Act would remain in abeyance till the outcome of the aforesaid proceedings before the Hon'ble High Court of Gujarat. Petitioner would therefore seek adjustment of tariff, if any, with respect to the Green Cess payable under the said Act, subsequent to the outcome of Special Civil Application No. 7141 of 2012.

2.7.3. Levy of Countervailing Duty on imported coal:

The Petitioner states that the rate of Countervailing Duty as on Bid deadline was zero, which is reflected from Customs Notification No. 21/2002. Thereafter, the Ministry of Finance, Government of India vide Finance Act,

2011 had increased the rate of Countervailing Duty on imported non-coking coal from zero percent to five percent. Whereas, vide Notification No. 12/2012 dated 17.03.2012 the Ministry of Finance, Government of India has reduced the rate of CVD from 5 % to 1% . However, the rate of CVD applicable on the Relevant Date i.e. 27.12.2006 was zero percent. Accordingly, as the present rate of CVD is more than the rate of CVD applicable on the Relevant Date, the said 'Change in Law' has to be considered for adjustment of tariff between the parties. The impact of the said change in law is Rs. 0.01227 per KWH amounting to an annual increase of Rs. 8.60 Crores (approx) at normative availability.

2.7.4. Change of Basic Custom Duty (BCD/Standard Rate on Imported Coal:

The Ministry of Finance vide Notification No. 12/2012 dated 17.03.2012 has reduced the rate of Basic Customs Duty to zero percent, which at the time of the Relevant Date was five percent. The benefit of the said reduction has to be passed on to the Respondent by the Petitioner which comes to around Rs. 0.06078 per Kwh, amounting to Rs. 42.59crores per annum.

2.7.5. Increase in Rate of Minimum Alternate Tax:

Section 115JB of the Income Tax Act, 1961 provides for payment of Minimum Alternate Tax ("MAT") by the companies. The said MAT is calculated on the book profits of the company. The Government of India has gradually increased the rate of MAT during the financial years subsequent to 2007. The increase in the rates of MAT is as under:

(a) Up to 31.03.2007 – rate of MAT was 7.5 percent;

(b) From 01.04.2007 to 31.03.2010 – rate of MAT was increased to 10 percent vide Finance Act, 2006;

(c) From 01.04.2010 to 31.03.2011 – rate of MAT was increased to 15 percent vide Finance Act, 2009;

(d) 01.04.2011 to 01.04.2012 – rate of MAT was increased to 18 percent vide Finance Act, 2010;

(e) 01.04.2012 onwards – rate of MAT is increased to 18.5 percent vide Finance Act, 2011.

Accordingly, the aforesaid rate of MAT has increased from 7.5 percent, as applicable on the Relevant Date, to the prevailing rate of 18.5 percent. Therefore the difference between 7.5 percent being the rate of MAT on the Relevant Date, and the rate of MAT prevalent on the date of payment would have to be considered for adjustment of tariff.

2.7.6. Impact of Wharfage Charges:

The Petitioner entered into a Coal Handling Agreement with Essar Bulk Terminals (Salaya) Limited ("EBTSL") on 24.12.2008 where under the facilities of a Captive Coal Jetty to be setup by EBSTL at Salaya were to be used by the Petitioner. The said jetty is under construction as on date of filing of the present petition. Accordingly, the Petitioner at present is not availing the coal handling facilities from the said captive jetty.

2.7.6.1. The Petitioner stated that on completion of the construction of the said jetty, the Petitioner shall be availing the said facilities.

Accordingly, once the Petitioner starts availing the facilities, the Petitioner would be liable to pay the wharfage charges as per the prevailing Schedule of Port Charges.

2.7.6.2. The Petitioner states that based on the then prevailing practice of collecting the wharfage charges by GMB i.e. providing 80 percent set off against the wharfage charges to the captive jetty companies and thereby collecting only 20 percent of the wharfage charges, EBTSL had agreed to collect only 20 percent of the applicable wharfage charges from the Petitioner. EBTSL vide its letter dated 20.01.2009 had informed the Petitioner that they would take up the issue of grant of set off against wharfage charges to the Power Project, as per the then prevailing practice i.e. providing 80 percent set off on the capital cost and collecting 20 percent towards wharfage charges which would be passed on to GMB. It was also stated in the said letter that GMB had informed EBTSL that the Captive Jetty Policy was under finalization and that once the said policy is approved and released, the wharfage charges would be applicable accordingly.

2.7.6.3. However, GMB vide its letter dated 26.06.2012 informed EBTSL that their request for grant of the benefit of set off against wharfage charges, has been rejected by GMB. As a result, EBTSL vide its letters dated 01.08.2012 and 10.09.2012 has informed the Petitioner that the Petitioner would be required to pay the full Wharfage Charges for Coal Handling by Captive Jetties to EBTSL, which would be

passed on to GMB. EBTSL vide its letter dated 10.09.2012 informed the Petitioner that as per the Schedule of Port Charges (SoPC) published on 20.07.2012, the Petitioner would be liable to pay the additional wharfage charges. Accordingly, the Petitioner states that due to the change in the settled practice of collecting the Wharfage Charges by GMB there is an increase in the wharfage charges payable by the Petitioner to EBTSL i.e. the wharfage charges payable by the Petitioner is Rs. 27.20 per MT as against the earlier agreed wharfage charges of Rs. 6.8 per MT, being 20 percent of the then prevailing wharfage charges of Rs. 34 per MT. It is pertinent to state that the port charges are subject to the changes brought about by way of the notifications published by the Government, from time to time. The Petitioner reserves it right to submit the exact increase in the wharfage charges, at the relevant time, based on the commencement of usage of the subject captive jetty by the Petitioner.

2.7.6.4. Similarly, as informed to the Petitioner by EBTSL vide the aforesaid letters dated 01.08.2012 and 10.09.2012, the then prevailing practice of allowing the captive jetties to handle third party cargo was initially denied by GMB. Subsequently, after a lot of persuasion GMB has agreed to allow EBTSL to handle the third party cargo subject to various conditions laid down in the respective clause of Model Captive jetty agreement. Due to this change in the settled practice of allowing captive jetties to handle third party cargo, there

would be an increase in the cost of coal handling charges, which would lead to an increase in the cost of generation of electricity by the Petitioner. Therefore, once the said concessional agreement is signed by and between EBTSL and GMB, the Petitioner would be able to quantify the increase in cost of coal handling charges.

2.7.7. The impact of the said change in law is Rs. 0.01201 per kWh amounting to an annual increase of Rs. 8.42crores (approx.) at normative availability.

2.8. In view of the above, the Petitioner submitted that the tariff agreed upon between the parties in the PPA ought to be adjusted by the Commission in accordance with Article 13 of the PPA as the cost of generation of electricity has changed because of the aforesaid changes in law which have taken place subsequent to the Relevant Date.

3.0. The Respondent GUVNL filed a reply and submitted that GUVNL had executed a PPA dated 26.01.2007 with Essar Power Limited which was later on assigned to the petitioner Essar Power Gujarat Limited pursuant to Case- 1 Competitive Bidding Process under Bid Specification No. 03/LTPP/2006 where under the petitioner was selected as successful bidder for supply of 1000 MW contracted capacity at levelised tariff of Rs. 2.4006 per unit which was adopted by the Commission in order dated 20.12.2007 in Petition No. 04 of 2007 under section 63 of the Electricity Act, 2003. The respondent requested the Commission that the Commission may direct the petitioner to provide certain details/information as under:

(a) Details of applicable percentage or any other unit of applicability with details of various duties, taxes, cess, levies etc as applicable seven (7) days prior to bid

submission deadline alongwith corresponding impact in Rupees/unit considered in quoted tariff as per the provisions of the PPA;

(b) To provide the details of guaranteed parameters like Gross Station Heat Rate, Auxiliary Consumption, Efficiency Curve etc by the Original Equipment Manufacturer (OEM)/EPC Contractor so as to enable working of the impact on tariff on account of Change in Law;

(c) Details regarding various duties, taxes, cess, levies etc alongwith relevant notification which were considered in the quoted tariff and changes thereto resulting in increase/decrease in tariff now due to such changes having impact on tariff.

3.1. The respondent submitted that the "Change in Law" needs to be determined and decided by the Commission as per the provisions of Article 13 of the PPA dated 26.02.2007. The petitioner had issued a notice dated 01.08.2012 to the respondent with respect to the "Change in Law" that have taken place subsequent to the Bid deadline. The respondent had replied to the notice and had conveyed to the petitioner to take appropriate action in the matter including filing of the petition before the Commission and to pass on the benefits to the respondent under the provisions of "Change in Law" on adhoc basis.

3.2. The respondent submitted that the petitioner has listed the various changes that have taken place subsequent to bid deadline and prayed the Commission to deal with the same as per the provisions of the Article 13 of the PPA dated 26.02.2007. The petitioner stated that the impact in levy of Clean Energy Cess is Rs. 0.2274 per unit

but as per the working of impact at "Annexure – D" of the petition, the same is as under:

Station Heat Rate	Kcal/Kwh	2262
Auxiliary Consumption	%	6.85%
Gross Station Heat Rate	Kcal/Kwh	2428
GCV (ARB) of imported coal	Kcal/Kg	5500
Specific Coal Consumption	Kg/Kwh	0.4415
Clean Energy Cess	Rs./MT	50
Per Unit Clean Energy Cess	Rs./Kwh	0.02208

In this regard, the respondent requested that the Commission may direct the petitioner to provide documentary proof/evidence regarding the Guaranteed Heat Rate and documents of Original Equipment Manufacturer & EPC contract indicating the guaranteed parameters of turbine and boiler efficiency, auxiliary consumption etc so as to enable GUVNL to verify the impact of Clean Energy Cess on per Unit (kWh).

3.3. The respondent GUVNL submitted that as regard to Green Energy Cess, the Gujarat Green Cess Act, 2011 of the Government of Gujarat levying green cess @ Rs. 0.02 per kWh has been challenged on the constitutional validity by the petitioner itself through a writ petition before the Gujarat High Court being Civil Application No. 7141 of 2012. The petitioner itself has conveyed that the Hon'ble Gujarat High Court vide its order dated 11.05.2012 has granted stay against the operation and implementation of the Gujarat Green Cess Act, 2011 and accordingly, the levy of Green Cess under the said Act would remain in abeyance till the outcome of proceedings before the Hon'ble Gujarat High Court and any adjustment in tariff, if any, with respect to the Green Cess can be sought subsequent to outcome of proceedings before the Hon'ble Gujarat High Court. The respondent submitted that the Hon'ble Gujarat High Court vide its letter

dated 22.01.2013 in the matter of Green Cess Act, 2011 notified by Government of Gujarat, has disallowed the imposition of Green Cess and directed that the Cess already paid by the generators has to be refunded. Accordingly, the Commission may deny the claim of the petitioner.

3.4. The respondent submitted that as per Article 13.1.1 of the PPA, Change in law does not include any change in tax on income. Therefore, adjustment in the tariff due to change in MAT cannot be allowed as per the provisions of the PPA. The following aspect are relevant in this regard:

(a) In terms of the definition of change in law, there has to be a resulting effect in the cost of or revenue from the business of selling electricity by the seller to the procurer under the PPA for change in law to be effected. This is specifically provided in Article 13.2 dealing the application of the change in law in computing the impact.

(b) Article 13.1.1 deals with four aspects. For first three aspects, there has to be a result in the change in any cost or revenue and for the fourth aspect, only a change in the cost. The expression 'which results in any change in any cost of or revenue from the business of selling electricity' at the end of sub clause (iii) applies not only to sub clause (iii) but also to sub clauses (i) and (ii). In other words, mere coming into force an enactment, amendment, modification, repeal etc in law or change in the interpretation by a competent court is not to be considered as change in law under Article 13.1.1 unless it results in any change in any cost of or revenue from the business of selling electricity. If otherwise, there is no purpose in allowing the effect of change in law for every enactment.

For example, if there is an enactment or bringing into force any law in a field unrelated to the electricity, the same cannot be construed as changes in law unless it impacts any cost of or revenue from the business of selling electricity by the seller. The qualifying criterion is the effect on the cost of or revenue of the business of selling electricity. This is further provided in Article 13.2 (a) and (b). The increase or decrease in the capital cost of the project is allowed as a result of any change in law etc if there is a change in the cost relating to the business of selling electricity. Similarly, during the operating period any increase to decrease in the revenue or cost is required to be adjusted.

(c) The tax on income including MAT has nothing to do with the cost or revenue from the business of selling electricity. The tax is post revenue of the business and it is on the operating profit or net profit, as the case may be, of the business. The tax does not affect either the cost of or revenue from the business of selling electricity. Accordingly, the imposition of MAT or tax on income cannot be construed as change in law for purpose of Article 13.1. There is also a good reason for not including such tax on revenue or income as a pass through in the tariff of a generating station where the PPA is entered into in pursuance of a competitive bidding process as per section 63 of the Electricity Act, 2003. The tariff is as per unit tariff allowed on the electricity generated and supplied. There is no separate element of Return on Equity or reasonable return. These are all factored in bid price itself. The quantum of revenue or return is not identified in the bid price. The tax including MAT being on the revenue, there is no identification of the tax payable at the time being 7 days prior to the bid dead line as envisaged under Article 13.1.1. Accordingly, it is

not possible at all to factor in the increase or decrease in the tax including MAT.

(d) Further, the proviso to Article 13.1.1 provides that the non-extension of section 80 IA benefit under the Income Tax, 1961 will be treated as a change in law. This itself by implication excludes the application of any other provision of the Income Tax Act from the definition and application of change in law under the PPA. In case all amendments and modifications were to be treated as change in law, there was no necessity to provide for this specific inclusion by way of the proviso.

(e) In the case of tariff determination based on capital cost under section 62 of the Electricity Act, 2003, one of the components specifically allowed in tariff is tax on income. The pass through on MAT or income under the tariff regulation is by virtue of the specific provision and not by virtue of the cost or revenue to be allowed from the business of selling electricity by the generating company to the purchaser.

In view of the above, in terms of Article 13 of the PPA, the MAT or income tax or any increase or decrease in the MAT or income rate is not to be adjusted in the tariff. Further, the Commission in a similar petition being Petition No. 1210 of 2012 filed by the M/s. Adani Power Limited seeking adjustment in tariff on account of MAT has disallowed the prayer of M/s. APL. The Commission in its order dated 07.01.2013 in Petition No. 1210 of 2012 has stated at para 10.6.7 as under:

".... We conclude that in terms of Article 13 of the Power Purchase Agreement, the MAT or increase/decrease in MAT is not to be adjusted in the tariff. Thus, the answer to the question whether MAT constitutes a change in law in the context of Article 13 of the PPA is in the negative."

In the above terms, the claim of the petitioner in the instant petition for adjustment of tariff on account of MAT is also on similar ground and therefore may be disallowed as it is excluded as per the provisions of Article 13.1.1 of the PPA.

3.5. As regards to wharfage charges, the Respondent submitted that the petitioner has not provided any documentary evidence demonstrating that there was an earlier agreement/arrangement with Government of Gujarat whereby EPGL was entitled for any concessional/waiver of wharfage charges which was later on withdrawn resulting in any impact to EPGL. The respondent submitted that impact on account of wharfage charge is not admissible as "Change in Law" and accordingly EPGL is not entitled to any impact on this account.

3.6. Based on the above submissions, the Respondent GUVNL submitted that the petitioner is required to state on affidavit that benefits of all taxes, duty, cess etc have been passed on to GUVNL before claiming any increase in tax and duty through present petition. The Commission may address the prayers of the petitioner and the submissions of GUVNL while adjusting the tariff on account of "Change of Law."

4.0. The matter was heard by the Commission on 20.04.2013, 01.06.2013, 06.07.2013, 31.08.2013, 05.10.2013, 16.11.2013, 07.01.2014, 01.02.2014, 05.04.2014, 13.05.2014, 31.05.2014, and finally on 07.06.2014.

5.0. On 07.06.2014, Shri Mihir Thakkore, on behalf of the petitioner, reiterated the facts as stated in para 2 above. He further submitted as under:

5.1. The petitioner submitted that the Custom Notification No. 44/2004 dated 28.02.2004, provided for 0% levy of Countervailing Duty (CVD). However, customs notification No. 12/2013 dated 01.03.2013 increased the CVD from 0% to 2%. Accordingly, CVD has increased from 0%, as on the 27.12.2012 to 2% as on the date of filing of the present petition for imported coal from Indonesia. The petitioner, therefore, claimed an adjustment of tariff for the change in CVD on Imported Coal. The impact of CVD works out be Rs. 0.0248/kWh.

5.2. He submitted that GUVNL has alleged that there is a stay on the payment of CVD *vide* an order passed by the Hon'ble High Court of Bombay in a case of M/s. JSW Energy. However, it is submitted that EPGL is not a party to the concerned case of M/s. JSW Energy and the said order would, therefore, not be applicable to EPGL in the present case. EPGL is making the payment of CVD as per the Customs Tariff Act, 1975 and the same may therefore be considered for adjustment in tariff.

5.3. He submitted that with respect to imported coal from Indonesia, the CVD was 0% on 27.12.2007, whereas, currently, the CVD is being paid by the petitioner is 2% for imported coal from Indonesia. Accordingly, there has been an increase of 2% in the CVD for imported coal from Indonesia, which may be considered by the Commission for adjustment of tariff in accordance with Article 13 of the PPA.

5.4. Further, the Basic Customs Duty (BCD) has decreased from 5% as on 27.12.2007, to

0% for imported coal from Indonesia vide Ministry of Finance vide Notification No. 12/2012 dated 17.03.2012 as on the date of filing of the present petition. Accordingly, EPGL has claimed a change in law of reduction in basic customs duty. The net impact of BCD works out to be Rs. 0.0615 per Unit. Thus, impact of change in law under Operation Phase on customs duty i.e. both CVD and BCD can be worked out by considering rates of CVD and BCD as on bid deadline and as on today considering the source of shipment of coal and corresponding relevant duties.

5.5. The Gujarat Green Cess Act, 2011 was introduced by the State Government, to impose Cess on the gross generation of electricity @ Rs. 0.02 per unit of Electricity. Section 3 of the said Act reads as under: -

(1) *There shall be levied and collected a cess for the purpose of this Act, on generation of electricity except on generation of renewable energy by the generating company at the generating station or at the captive generating plant or the stand by generating plant.*

(2) *Such cess under sub-section (1) shall be levied and payable on the electricity generated in the State of Gujarat irrespective of the fact whether such electricity is consumed within the State or not.*

(3) *Such cess under sub-section (1) shall be levied in such manner and at such rate not exceeding twenty paisa per unit of the electricity generated as may be prescribed.*

(4) *The cess levied under sub-section (1) shall be payable by the generating company."*

5.6. He submitted that the petitioner entered into a Coal Handling Agreement dated 24.12.2008 with Essar Bulk Terminals (Salaya) Limited (EBTSL),

whereby it was agreed that EBTSL would set up a captive jetty for the purposes of handling and transportation of coal. The said Agreement dated 24.12.2008 also provided that all taxes, duties, levies including Wharfage charges would have to be reimbursed by EPGL. Clause 6.5.1 of the said Agreement reads as under:

> *".....All charges described in the Article 6 are exclusive of all taxes, duties and levies (including Wharfage Charges and other levies by Port Trust Authorities) in relation to the supply of such Services. In the event any such taxes, duties and levies are paid by EBTSL. EPGL shall reimburse EBTSL to that extent no later than five (5) days after a request in writing being made by EBTSL...."*

5.7. Further, the petitioner submitted that the said Gujarat Green Cess Act, 2011 was held to be ultravires by the Hon'ble Gujarat High Court vide order dated 21-22/01/2013 passed in Special Civil Application No. 4690 of 2012 and others. The said order dated 21/22/01/2013 has been challenged before the Hon'ble Supreme Court of India by way of Special Leave Petition (Civil) 18493 -18515 of 2013 and the same is at pending for adjudication. Since, the Green Cess has yet not been levied by the State Government in view of the pendency of the matter before the Hon'ble Supreme Court of India, the same has not been paid by the petitioner. Depending upon the final outcome of Special Leave Petition (Civil) 18493 -18515 of 2013 pending before the Hon'ble Supreme Court of India, the petitioner would pay Green Cess if required under law, and would claim an adjustment of tariff from GUVNL in accordance with Article 13 of the PPA.

5.8. The Government of Gujarat, in order to encourage investment by private companies to set up their own jetty/port, had issued a policy to set off 80% wharfage charges that could be set off against the capital cost of the project. At the time of submission of the bid, wharfage charges was Rs. 34 per tonne as per Gujarat Maritime Board's schedule of Port Charges dated 09.07.2003. Subsequently, GMB reduced the wharfage charges to Rs. 26 per tonne as per the GMB Schedule of Port charges dated 20.07.2012. However, GMB later on abolished the policy of setting off the wharfage charges against the capital cost of the project. This was evident by GMB Circular dated 16.01.2010, whereby it abolished the previous practice of allowing a set off of 80% wharfage against the Capital Cost of the project. The said change in policy adversely affected the EPGL as EPGL was supposed to pay concessional wharfage charges as per the then prevailing policy of GMB. However, due to the change in policy of GMB, EPGL will now have to pay full wharfage charges to EBTSL, thereby directly impacting the cost of generation of electricity by EPGL.

5.9. The GMB vide its letter dated 26th June 2012, has denied the set off wharfage to EBTSL. Thus, EBTSL was now required to pay wharfage as specified in the Schedule of Port Charges published by GMB from time to time. The Concession Agreement dated 24.04.2013 was finally signed between EBTSL and GMB, whereby the benefit of concessional wharfage charges previously available to EBTSL, was not extended. Accordingly, at the time of submission of the bid EPGL had factored the coal handling cost as per the prevailing practice of GMB of granting concessional wharfage charges to the extent of 80%. This policy of granting

concessional wharfage charges was abolished by GMB, vide its circular dated 16.01.2010, thereby increasing the coal handling cost of EPGL. Thus, the change in policy by GMB of abolishing concessional wharfage charges amounts to change in law under the terms of PPA.

5.10. The EBTSL vide its letter dated 26/04/2013 to EPGL reiterated that it would have to pay entire wharfage charges, in view of the change in the wharfage policy of GMB. It was stated that as per the Schedule of Port Charges published on 28/07/2012 by GMB, the wharfage charges for captive jetty is reduced from Rs. 34 per M.T to Rs. 24 per M.T. Accordingly, the wharfage charges payable by EPGL would be Rs. 26 per M.T. as against Rs. 6.8 per M.T., if the earlier Wharfage policy of GMB is considered i.e. 20% of Rs. 34 per M.T. Accordingly, the extra impact at Rs. 19.20 per M.T. would be charged to EPGL by EBSTL due to the change in policy by GMB.

5.11. The EBTSL has also issued a notice to EPGL vide its letter dated 26.04.2013 with respect to the increase of Rs. 19.20/tonne towards wharfage charges payable by EPGL. Further, a Concession Agreement has been signed by EBTSL with EPGL and there is no provision of set-off of Wharfage against the capital cost of the project in the said Agreement. Even though, the captive jetty is not operation because of pending statutory clearances, wharfage needs to be passed in principle as an item of Change in Law. Depending upon wharfage charges paid at the time of the operations, wharfage will be claimed by EPGL to GUVNL. Accordingly, EPGL has raised a claim of adjustment of tariff on account of the change in policy of granting concessional benefits towards Wharfage Charges, by GMB.

5.12. The Learned Counsel further submitted that the Minimum Alternate Tax (MAT) is a tax on income in lieu of Corporate Income Tax which is levied as a percentage of book profits calculated in accordance with section 115 JB of the Income Tax Act, 1961 and hence, any change in the rate of MAT is qualifies as a Change in Law and MAT paid has to be reimbursed. There has been a gradual increase in the rate of Minimum Alternate Tax from 7.5 % as on 31.03.2007 to 18.5 % as on 01.04.2012. However, since EPGL has yet not paid MAT as on the date of filing of the petition, the Commission may only determine the issue of MAT as a principle. The following table provides for the summary of working of the impact due to the change in law, as per Article 13 of the PPA for Indonesian coal.

Item	Rate 7 days prior to Bid Deadline	Rate now	Impact Rs./kWh	Annual impact Rs. Cr.
Clean Energy Cess	-	Rs. 50/MT vide Notification dated 24.06.2010	0.0233	16.30
Green Cess	-	2 paisa/kWh	0.0215	15.05
CVD	-	2% vide Notification dated 01.03.2013	0.0248	17.40
BCD	5% vide Notification dated 28.02.2004	0% vide Notification dated 31.12.2012	(0.0615)	(43.07)
MAT	7.5 %	18.5 % on 01.04.2012		
Wharfage	6.80/MT	26/MT	0.0087	6.08
Net Impact			0.0168	11.75

Though GUVNL has not disputed changes in levy of BCD, CVD, Green Cess and Clean Energy Cess; GUVNL has wrongly disputed the values of certain

key input parameters as provided by EPGL, on the basis that the relevant supporting documents have not been produced by EPGL. Certain values of key input parameters are as under:

5.13. He submitted that GUVNL has alleged that EPGL had earlier submitted SHR of 2262 which was later revised to 2314 kCal/kWh. In response to the same, it is submitted that the derived figure of 2262 kCal/kWh was based on Operation and Maintenance manual of Original Equipment Manufacturer, which is nothing but a Heat Mass Balance.

5.14. GUVNL has contended in its pleadings that EPGL has not submitted the original OEM documents which would reflect the Guaranteed Turbine Heat Rate, Boiler efficiency and Auxiliary Consumption. It was also contended by GUVNL that Global Supplies (UAE) FZE is a group company of Essar and therefore, EPGL should produce the original OEM documents. Further, GUVNL has alleged that EPGL could not succeed in inter-state sell of power prior to the mega power policy being revised by the Ministry of Power, Government of India.

5.15. In response to the aforesaid averments of GUVNL, the petitioner submitted that there is no agreement between EPGL and Harbin (the OEM). EPGL had entered into the EPC contract with Global Supplies (UAE) FZE. The entire document of EPC Contract has been produced by EPGL before the Commission. Though, Global Supplies (UAE) FZE was a group company at the time of entering into the contract, the said Company is no longer a group company of Essar. Further, Global Supplies (UAE) FZE had earlier not shared the documents of OEM with

EPGL. Thus, since EPGL was not shared with the OEM document related to SHR, Turbine efficiency and boiler efficiency, EPGL is not in a position to produce the same before the Commission.

5.16. As per the contract dated 24.08.2007 entered into with Global Supplies (UAE) FZE, the gross turbine heat rate is 1990 kCal/kWh. Whereas, the boiler efficiency is 0.86. Accordingly, the SHR (Gross turbine heat rate /Boiler efficiency) works out to be 2314 kCal/kWh. All the incentives and penalties with respect to contractor Global Supplies is in reference to 2314 kCal/kWh. Thus, SHR works out to be 2314 kCal/kWh based upon the EPC document entered into with Global Supplies (UAE) FZE.

5.17. GUVNL has further contended that GCV should be calculated as 6000 kCal rather than 5500 kCal/Kg, based on the Fuel Supply Agreement. It is submitted that EPGL had considered 5500 kCal/Kg in its bid to GUVNL which was submitted at the RFP stage. As per the Coal Specifications mentioned in Schedule 1A of the FSA dated 24.12.2008 executed with Essar Shipping and Logistics Limited, the GCV as per As Dried Basis ('AMY') is stated to be 6000 kCal/kg. The FSA also stated the percentage of Total Moisture ('TM') content in Coal is stated to be 18.0 percent. The Inherent Moisture (IM) (ABD) content of the coal imported by the Petitioner from Indonesia generally varies between 10 to 11%.

5.18. Accordingly, if GCV (ADB) is converted into GCV as per As Received Basis ("ARB") by standard conversion formula, the GCV works out to be 5500 kCal/kWh. The standard conversion formula is as under:

GCV (ARB) = (ADB) x (1-TM %)/(1-IM %)
= 6000 x ((1-0.18)7(1-0.1055))
= 5500 Kcal/Kg

i.e. ARB = ADB * (1-Total Moisture) / (1-Inherent Moisture).

Accordingly, EPGL submitted that the GCV has rightly been calculated as 5500 kCal/kg.

5.19. He submitted that it is the case of GUVNL that EPGL received Mega Power Project ("MPP") Status as a result of change in mega power policy by the Ministry of Power, Government of India in 2009, whereby the requirement of inter-state sell of power was removed. Hence, EPGL should pass on the benefit of the grant of MPP status to GUVNL.

5.20. The petitioner submitted that the claim is in respect to construction phase and GUVNL is not entitled to raise it by way of a counterclaim. GUVNL could have referred to the counter claim before the Commission only if there was a dispute between the parties with respect to the grant of MPP status. This is evident from the difference in the language used in the Article 13. 2 (a) and (b) which are reproduced as below:

"……

27. Construction Period

As a result of any Change in Law, the impact of the 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 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.

28. 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 the 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."

Accordingly, as per Article 13.2 (1), in case of any dispute between the parties with respect to the claim for change in law during the operation period, Article 17 of the PPA will apply. The relevant part of Article 17.2 reads as under:

"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

17.2.3 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....."

In view of Article 13.1(a) read with Article 17, the petitioner submitted that GUVNL by raising the counter-claim in the present petition for the change in law during the construction phase has not followed the procedure prescribed under the PPA. As per Article 17 of the PPA, GUVNL has to first attempt to solve the dispute amicably and only if the amicable settlement fails, GUVNL can prefer a petition for claiming grant of MPP status to be a change in law.

5.21. Further, the present counterclaim is barred by limitation, in as much as EPGL obtained Mega Power Status on 08.02.2010. Whereas, the present counterclaim is raised by GUVNL vide its affidavit dated 29.08.2013 i.e.

beyond the period of three years. Accordingly, it is submitted that the present counterclaim is clearly barred by Limitation. In this regard, EPGL submitted that the counter claim raised by GUVNL is not valid, since EPGL had already envisaged obtaining the MPP status at the time of submission of the bid and even if the Mega Power Policy had not been revised by the Ministry of Power, Government of India; EPGL would have obtained the MPP status for the following reasons:

5.21.1. In order to qualify for the Mega Power Project Status, projects would have to satisfy the following criteria:

Sr. No.	Date when MPP issued by MOP: 10.11.1995	Bid Submission date: 03.01.2007
01.	Capacity of 1,000 MW in the case of thermal projects (including coal and natural gas-based projects	Capacity of Plant 1200 MW.
02.	Sell power to more than one State	1000 MW bid to GUVNL and after Auxiliary Consumption of 80 MW, balance 120 MW reserved for interstate sale.
03.	Entire power to be tied up through PPA with inter-state sale of power with those States satisfying the condition of privatization of distribution in cities having million plus population.	PPA signed with GUVNL for 1000 MW and PPA signed with PTC for 120 MW wherein PTC was required to sign PPAs such as to PPAs such as to enable EPGL to

5.21.2. The Petitioner had envisaged obtaining the MPP status at the time of submission of the bid itself. Further, EPGL was also aware of the

requirements of Mega Power as a prudent developer and accordingly, it made efforts towards complying with requirements of Mega Power. Only if EPGL was not eligible to consider grant of MPP status at the time of bid then only question of passing the benefit arises. It thus becomes irrelevant whether EPGL got Mega power as a result of change in government policy or not. EPGL submitted that GUVNL issued the tender inviting bids wherein minimum bid capacity was 500 MW and the maximum bid that could be placed was for 2000 MW (Clause 2.3 of RFP). During the bidding process, M/ s Suez Energy India had raised the query no. 1.5 (i) to GUVNL vide its letter dated 28.02.2006:

> *"...We would suppose that you would allow bidders to set up power plants of for example 1200 MW that offer 1000MW to GUVNL and 200 MW to another State in order to obtain the Mega Status and thus be able to offer more competitive tariffs, is that correct?"*

In its response, GUVNL replied as under:

> *"....Yes, the bidders would be allowed to set up power plants of higher capacity and offer only a portion of the capacity to GUVNL which is at least equivalent to the minimum capacity as specified in the RFQ document. The issue has also been clarified in the last line of the para 1.5 of the RFQ document which states that Procurer would retain dispatch rights over the capacity of the generating station, during the term of a Power Purchase Agreement, which has been offered to the Procurer by the Bidder under this Bid."*

GUVNL thus itself has agreed that the Power Producers were allowed to establish the Power Plants of more capacity than the offered quantum of power for availing the benefits of Mega Power Status. EPGL on the similar premise took part in the bid by offering lower tariff for 1000 MW power to GUVNL by setting up 1200 MW power plant and conceptualizing its Plant based on receiving Mega Power status. EPGL had consciously bid for only 1000 MW (i.e. 500 MW from each Unit).

5.21.3.State Bank of India Capital Markets Limited, in its financial appraisal report dated July 2007, clearly provides that the Petitioner has already applied for MPP status and that the Power Project is likely to get the MPP status. The relevant part of the said financial appraisal report reads as under:

> *".....The project is likely to be granted a Mega Power Plant status which would enable the company to avail various benefits available under the Mega Power Policy of Government of India. The application for granting Mega Power Plant Status has already been made to the Ministry of Power, GoL (Page 4 of the report)*
>
> .....
>
> *Mega Power Project Status > Agency > Ministry of Power > Application has been submitted to Ministry of Power. (Page 14)*
>
> .....
>
> *The project is likely to be granted a Mega Power Project status which would enable the company to avail various benefits available under the Mega Power Policy of Government of India. The application for granting Mega Power Project Status has already been made to the Ministry of Power, GoI and the approval is expected shortly. (Page 30 / 31 of the report)*

.....

The project is likely to be granted a Mega Power Plant status which would enable the company to avail various benefits available under the Mega Power Policy of Government of India. The application for granting Mega Power Plant Status has already been made to the Ministry of Power, GoL (Page 34 of the report)

Out of the 1200 MW of power generated, about 1110 MW would be available for export after considering auxiliary power consumption of about 7.5%. Power from the proposed power station would be supplied to GUVNL to the extent of 90% as per the PPA and rest of the power would be earmarked for supply to other states in western. This would also facilitate grant of mega power status for the project.

.....

In order to qualify for the mega power project status, projects would have to satisfy the following criteria:

- *Capacity of 1,000 MW in the case of thermal projects (including coal and natural gas-based projects), and over 500 MW in the case of hydel projects.*
- *sell power to more than one state. The Company has already applied to the Power Ministry for grant of mega power status for its 1200 MW thermal power plant and the approval is expected shortly." (Page 73 of the report)*

Thus, grant of MPP status was clearly factored in the bid.

5.21.4. Further, in order to satisfy the requirement of inter-state sale of electricity, EPGL had entered into a PPA dated 19.12.2008 with Power Trading Corporation (PTC), for supply of 120 MW power to PTC for a period of 25 years. Article 2.2 of the said PPA clearly obliged

PTC to ensure that the power supplied by the petitioner is ultimately supplied to the appropriate end consumers so that the Power Project of the Petitioner would be qualified for the MPP status. In pursuance to the said PPA dated 19.12.2008, PTC was trying to enter into back to back PPAs with the Distribution Companies. EPGL further submits that the PPA entered into with PTC cannot be considered to be merely a Letter of Intent. The said PPA was a Project specific Agreement for the tender issued for the region of Dadra and Nagar Haveli. The said Agreement interalia specified levelised tariff of Rs. 3.35/ kWh, tariff stream for 25 years as well as the Discoms. Therefore, the contention of GUVNL that the agreement with Power Trading Corporation (PTC) was nothing more than a Letter of Intent or a Memorandum of Agreement and that the same did not contain any specific conditions, is not worthy of consideration by the Commission.

5.21.5. He submitted that in this context, EPGL along with PTC participated in bid for supply of power to Dadra and Nagar Haveli and MSEDCL in Maharashtra. Dadra and Nagar Haveli had come out with a tender being NIT No. 5/2008 - 2009/2024 dated 22.10.2008 for supply of 200 MW of power for 25 years. EPGL had participated in the Bid along with PTC and submitted its bid on 31.12.2008. EMD of Rs. 5,00,000 was also deposited by EPGL towards the Bid. A Project specific agreement was also signed by EPGL with PTC on 29.12.2008 to pursue the bid further. In this matter, EPGL through PTC had

rigorously followed up with Ministry of Power and Dadra and Nagar Haveli to open the tender so that Dadra and Nagar Haveli can be insulated from the effect of buying power at UI rate and get access to relatively cheap power from EPGL. But because of delay in opening the tender, EPGL withdrew its bid on 31.07.2009.

5.21.6. The petitioner submitted that subsequently, Maharashtra State Electricity Distribution Company Limited (MSEDCL) had invited Case-1 Bids for bulk purchase of power from national and international developers and generators for supply of maximum 2000 MW of power. The bid submission deadline was 24.10.2008. However, MSEDCL had filed a Petition before the Commission on 01.08.2008 seeking approval of deviations taken in Bidding Documents issued to bidders, for procurement of 2000 MW power on Long Term Basis under International Competitive Bidding Process (Case-I), i.e., LTPP-Stage II. The MERC ruled that MSEDCL has initiated the bidding process as early as October 2007 without any intimation to the Commission. Thus, Commission disposed of MSEDCL's Petition in Case No. 61 of 2008 and rejected approval of bid documents. EPGL was interested to participate in the said bid process. EPGL asked PTC to participate in the bidding process. Since, the bid was taking time, PTC informed EPGL vide its letter dated 20.11.2008 as under:

> *"As the tender of MSEDCL is taking more time to firming up, we would request you to sign an MOA with PTC so that PTC keeps your Company in*

reference in participating in any tender and also take up sale on negotiated route basis, if possible. Copy of draft MOA is attached herewith for your ready reference".

5.21.7. The petitioner submitted that the EPGL made all efforts to sell power in inter-state including MSEDCL and Dadra & Nagar Haveli, despite which it was constrained to withdraw its bid in both the tenders due to the undue delay in the bidding process. On the other hand, as per clause 1.2 of Memorandum of Understanding entered into with PTC, EPGL could not enter into dialogue or any other memorandum of understanding with any third party or undertake any step to independently market 120 MW, the Contracted Capacity. Accordingly, EPGL could not enter into any other Agreement during the existence of the Agreement with PTC.

5.21.8.EPGL submits that even if the Mega Power Policy would not have been revised by the Ministry of Power, Government of India, EPGL would have obtained the MPP status by continuing its effort in signing interstate PPA. It is pertinent to state that the Mega Power Policy did not prescribe any time limit within which the PPA for inter-state sale of power was required to be entered into by the generator. Therefore, merely because EPGL had not entered into a PPA at the time of submission of the bid, for inter-state sale of power, it could not be said that EPGL had not envisaged obtaining the MPP status.

5.22. In view of the aforesaid facts and circumstances of the case, the petitioner

submitted that EPGL had already taken all necessary steps for obtaining the MPP status, even prior to the revised policy issued by the Ministry of Power, Government of India on 14.12.2009. EPGL had already conceived obtaining the MPP status and considered the Mega Power benefits while quoting the tariff therefore grant of the said MPP status cannot be said to be an outcome of 'Change in Law' in terms of Article 13 of the PPA. EPGL submits that the present petition deserves to be allowed by this Hon'ble Commission and the reliefs as prayed for by EPGL may kindly be granted.

6.0. Learned Advocate Shri M.G. Ramchandran, on behalf of the respondent GUVNL, reiterated the facts as mentioned in para 3 above. He further submitted as under:

6.1. GUVNL does not deny that the first four items mentioned in Para 1, namely, changes brought about by Clean Energy Cess, Gujarat Green Cess Act, 2011, Counter Veiling Duty and Basic Custom Duty would amount to Changes in Law within the meaning of Article 13 of the Power Purchase Agreement (PPA) and, therefore, necessary adjustment need to be carried out. Therefore, no dispute on the principle of law contended by Essar Power in regard to the said four claims. GUVNL, however, disputes the method and manner of calculating the effect of the Changes in Law adopted by Essar Power and also the eligibility of Essar Power to claim the effect at this stage in respect of Green Cess Act and Counter Veiling Duty when the amount is not payable and has not been paid by Essar Power to the Government authorities and there are disputes on the admissibility of such levies.

GUVNL also submits that Essar Power has not given the relevant material for due calculation of the quantum of coal used on which Essar may be entitled to adjustment in the tariff under the above four items.

6.2. GUVNL disputed the petitioner's claims on the fifth and sixth item of the claim of Essar Power, viz, Minimum Alternative Tax and Wharfage Charges. GUVNL submitted that these are not on account of any Change in Law covered within the scope of the term 'Change in Law' as provided in Article 13.1 of the PPA.

6.3. GUVNL submitted that the Mega Power Status conferred on Essar Power Project subsequent to the relevant date i.e. 7 days before the bid deadline and consequent exemption under the Custom and Excise Notifications etc are on account of Changes in Law within the meaning of Article 13 of the PPA and necessary adjustments in favour of GUVNL need to be made as claimed in the counter claim.

6.4. The respondent GUVNL submitted that the counter claim is to be treated as a plaint or a cross suit and for all intent and purpose, the claim need to be adjudicated as if it is a plaint or suit. This is more so in the case of adjudication of disputes in the nature of arbitration where the parties are entitled to file their respective claims. The object of allowing the counter claim is to avoid multiplicity of the proceedings.

6.5. The claim for adjustment in tariff in favour of the Respondent on account

of Mega Power Status has been duly raised by GUVNL in the counter claim filed by GUVNL in the above matter. The counter claim also needs to be adjudicated in the same manner as the claim made in the petition. The contentions of Essar Power that the counter claim cannot be considered in the present proceedings are totally misconceived. In this regard, GUVNL crave reference to the principles decided by the Hon'ble Courts as extracted in Sarkar on Code of Civil Procedure 11th Edition at Pages 1216 as under:

> *"A counter-claim has to be treated as a plaint, and is governed by rules applicable to the plaints (Devender Kumar v. Rajinder Singh Yadav, (2001) 3 Punj LR 169 (171) (PEtH); Surgesan Et Co. Pvt. Ltd v. Hindustan machine Tools Ltd, AIR 2004 AP 428 (4301). A counter claim has to be treated as a cross-suit which shall contain all the features of a regular suit. (Surgesan ET Co. Pvt. Ltd v. Hindustan machine Tools Ltd, AIR 2004 AP 428 (431). A counter-claim is o be filed within the limitation period (Devender Kumar v. Rajinder Singh Yadav, (2001) 3 Punj LR 169 (171) (P&H); Rakesh Ahuja v. Jagan Nath, AIR 2005 NOC 156 : 2004 AIHC 4788 (PEtH) (As provided in the Limitation Act); Jhunu Das v. Smt. Purnima Debnath (Bhowmik), AIR 2005 Gau 122 (124), where no limitation is prescribed within three years from the date of the accrual of cause of action (Jarnail Singh v. Sohan Singh, (2001) 3 Punj LR 725 (728) (P&H). Defendant would not be permitted to file counter-claim after closure of plaintiff's evidence. (N. Eshwara Prasad v. Margadeshi Chit Fund Ltd., Warangal, 2004 AIHC 2134 (AP). Counter-claim would survive despite dismissal of the suit of the plaintiff whether on account of with-drawal or even on merit. Same would be position in a case where the suit is decreed (Jarnail Singh v. Sohan Singh, (2001) 3 Punj LR 725 (728) (PEtH), even if ex parte (Archana (Smt). Kumar v. Bhanu Kumar Jain, AIR 2004 NOC 73: (2003) 3 MPLJ 141 (MP). An appellate Court can remand the as to the trial Court to enable the defendant to pay C.F. on counter claim. (Mohanlal v. Sukhilal, AIR 2003 MP 185 (186). Where the plaintiff was allowed to withdraw divorce petition without considering wife's counter claim, order permitting withdrawal of divorce petition was set aside.*

(Hemavathy K(Smt) v. N. Ashok Kumar, AIR 2003 NOC 81 (DB) (Kant) : (2002) 5 Kant LJ 360)."

Accordingly, there is no merit in the contention of Essar Power that the counter claim should not be entertained. The counter claim can be proceeded with even if the plaint or petition is dismissed or withdrawn.

6.6. The main aspect on the admissibility of the claim under the Clean Energy Cess, Green Cess Act, CVD and also BCD is that Essar Power is required to give the applicable Turbine Heat Rate, Boiler Efficiency and Gross Calorific Value (GCV) of the coal. In this regard Essar Power has been making inconsistent pleas. In the affidavit dated 24.06.2013 and affidavit dated 3.10.2013 Essar Power had given parameters of Turbine Heat Rate as 8243.4 KJ/Kwh which is equivalent to 1970.22 K. Cal/Kwh and Boiler Efficiency as 87.10%. This was also consistent with what was pleaded by Essar Power in the initial affidavit dated 16th January 2013. However, in the subsequent affidavit dated 12th November 2013, Essar Power has sought to change the above parameters significantly providing for a Turbine Heat Rate of 1990 Kcal/Kg and Boiler Efficiency of 86%. Similarly, GCV of the coal has been considered by Essar Power in the affidavits at 5500 K. Cal/Kg whereas in the initial affidavit wherein the Fuel Supply Agreement, it was provided at Schedule 1 A of the Fuel Supply Agreement as 6000 K. Cal/Kg. The Fuel Supply Agreement provides for 6000Kcal/Kg.

6.7. The respondent GUVNL submitted that there is no reason whatsoever for such variation in the parameters. Essar Power has not given any cogent

reasons for such variation and has only vaguely stated that the earlier representations were due to inadvertence. Such a plea cannot be countenanced particularly in the context of Essar Power not making available the records and documents of Original Equipment Manufacturers.

6.8. The respondent GUVNL submitted that in view of the above, Essar Power is required to produce the records of the Original Equipment Manufacturer (OEM) in regard to the guaranteed parameters for the satisfaction of the Commission. GUVNL had specifically demanded such records and documents. Essar Power has deliberately withheld such documents. Accordingly, Essar Power is not entitled to any claim until it produces the records of OEM.

6.9. The respondent submitted that the Essar Power had made available the records of its Group Company of M/s. Global Supplies (UAE) FZE which is a Trading Company. Essar Power has initially wrongly denied that M/s. Global Supplies is not a Group Company in order to avoid further inquiry whereas the presentation made by Essar Power and documents available on the website itself clearly show that M/s. Global Suppliers is a Group/Associated Company of Essar Power.

6.10. In view of the above, though it is not denied that Clean Energy Cess is a Change in Law for the purpose of Article 13 of the PPA and the levy need to be adjusted in tariff as envisaged in the Power Purchase Agreement (PPA). The quantum of adjustment in tariff cannot be allowed until Essar Power

makes available the records of the OEM. The claim is to be rejected at this stage on account of deliberate failure on the part of Essar Power to produce such records.

6.11. The respondent GUVNL submitted that as in the case of Clean Energy Cess, the cess under the Gujarat Green Cess Act, is dependent upon Essar Power producing the OEM records. In any event, at present, the Green Energy Cess has been quashed by the Hon'ble High Court of Gujarat, the matter is pending in the Hon'ble Supreme Court. The issue of compensating Essar Power for Green Energy Cess would arise only after the decision in the matter pending before the Hon'ble Supreme Court and if the Hon'ble Supreme Court upholds the levy. Therefore, at this stage, Essar Power is not entitled to any adjustment in the tariff.

6.12. The respondent GUVNL submitted that as regards CVD, it is again necessary for Essar Power to produce the records of the OEM and guaranteed parameters of Turbine Heat Rate and Boiler Efficiency. Similarly, it is necessary to consider GCV of 6000 K. Cal/Kwh as per the Fuel Supply Agreement. Further, as at present, Essar Power seems to be not paying CVD because of the proceedings before the High Court of Bombay. The issue of compensating Essar Power would arise only if Essar Power is required to pay CVD at 1%.

6.13. The respondent submitted that as regards to Basic Custom Duty, Essar Power is required to calculate the Basic Custom Duty on the parameters of

Turbine Heat Rate, Boiler Efficiency and GCV as mentioned above as in the case of other elements. The Basic Custom Duty adjustment to be given in favour of GUVNL.

6.14. The respondent GUVNL submitted that as regards to Minimum Alternative Tax, the Commission has already taken a decision in the case of Adani Power Limited V/s. GUVNL in Petition No. 1210 of 2012 dated 07.01.2013. The Commission has held in the aforesaid decision, the Minimum Alternative Tax is not a Change in Law on the aspect of cost or business of selling electricity. Therefore, there is no merit in the claim by the petitioner.

6.15. The respondent submitted that as regards to Wharfage Charges, there is also no merit in the claim as the payment of Wharfage Charges to the Gujarat Maritime Zone is not on account of any Change in Law.

6.16. The Power Purchase Agreement is entered between the petitioner and GUVNL only and Essar Bulk Terminal Salaya Limited (EBTSL) is not a party to same. Therefore, so far as the applicability of the provisions of PPA is concerned, it is Essar Power and GUVNL only and EBTSL is a third party. The utilization of facilities of the Captive Coal Jetty set up by EBSTL at Salaya by the petitioner is a bilateral issue between the petitioner and EBSTL and the same is outside the purview of 'Change in Law' provisions under the PPA and it is wrong on part of Essar Power to rely only on the practice of collecting wharfage charges on the coal handling by captive jetties. The collection of such charges is not pursuant to any law as defined in the

PPA. These are charges payable to Gujarat Maritime Board for the facilities of EBSTL and are not covered under the provisions of Article 13 of the PPA. Accordingly, the claim by Essar Power on this account is not relevant.

6.17. Further, without prejudice to the above, since Essar Power has not made the actual payment of Wharfage Charges, the question of payment/ adjustment in tariff does not arise in the present petition. The collection of such charges as and when it occurs, is not on account of any statutory mandate or sovereign action to amount to a Change in Law.

6.18. The respondent GUVNL submitted that the Mega Power Status to which Essar Power became entitled to subsequent to the cut-off date is a Change in Law within the meaning of Article 13.1.1 of the Power Purchase Agreement and the effect has to be given by way of adjustment to reduce the tariff in favour of GUVNL in terms of Article 13.2 of the Power Purchase Agreement.

6.19. The cut-off date for the purpose of considering the Change in Law is 26.12.2006, viz, 7 days prior to the Bid Deadline. The Bid Deadline was on 03.01.2007.

6.20. The respondent GUVNL submitted that the issue for consideration by the Commission as to whether the benefit of Mega Power Status or even the eligibility to the Mega Power Status for the power project of Essar Power was existing as on the above cut-off date 26.12.2006 or it came subsequent to

the above date. Essar Power contends that the Mega Power Status was available to Essar Power as on the Cutoff Date. GUVNL's contention is that the Mega Power Status availed by Essar Power was not available on the Cutoff Date and Essar Power became eligible for such benefits only subsequently (after considerable time) of the Cut off Date.

6.21. The respondent GUVNL submitted that if Essar Power's contention is correct that the Mega Power Status was available as on the Cut Off Date, Essar Power need not give any adjustment in the tariff in favour of GUVNL. However, if the benefit of Mega Power Status accrued subsequently, Essar Power is required to give appropriate adjustments in the tariff in favour of the Respondent as set out in the Power Purchase Agreement.

6.22. The respondent also submitted that it may be seen from the above summary of events that as on the Cut Off Date of 26.12.2006, the Mega Power Policy of 2006 was in force were under the power project became eligible for grant of Mega Power Status if it supplies electricity generated from the power project under firm PPA and on long term basis to distribution licensees in more than one State. Admittedly, as on the Cut off Date, Essar Power was not supplying electricity in more than one State. Essar Power upon being selected under the Competitive Bidding Process initiated by GUVNL was supplying electricity to the State of Gujarat on a Long Term basis. Essar Power was to supplying electricity or had not agreed to supply electricity on a Long Term basis to any other State.

6.23. The respondent contented that the above position continued till the Ministry of Power, Government of India issued an amendment to the Mega Power Policy on 01.10.2009. In fact prior to the above, by communication dated 10th February 2009, Essar Power had confirmed its inability to conclude the supply electricity on a Long Term basis to more than one State and obtain the Mega Power Status envisaged under the Mega Power Policy, 2006 prevalent at the Cut-off Date.

6.24. Accordingly, Essar Power never satisfied the basic conditions for the grant of Mega Power Status under the Mega Power Policy, 2006, viz, the sale of electricity to more than one State at any time till 01.10.2009 i.e. much after the Cut off Date of 26th December, 2006. This fact having been admitted by Essar Power itself in its communication dated 10th February 2009, there cannot be any question of Essar Power being entitled to or eligible for the Mega Power Status at the Cut-off Date on 26.12.2006.

6.25. The respondent GUVNL also submitted that Essar Power became eligible and entitled to the Mega Power Status only on 14th December 2009 when the Government of India notified the revised Mega Power Policy in pursuance to the decision taken by the Cabinet on 01.10.2009. The benefit of exemption from Custom Duty, Excise Duty etc for the power project admittedly became eligible only on 14th December 2009 and under the amended Mega Power Policy notified by the Central Government. The amendment to the Mega Power Policy constituted a Change in Law within the meaning of Article 13.1.1 (i) of the Power Purchase Agreement which speaks about the

"enactment, bringing into effect the adoption, promulgation, amendment, modification or repeal of any law".

6.26. The respondent submitted that it is clear that the amended Mega Power Policy of 2009 notified on 14th December 2009 is an amendment or modification of law within the meaning of the above Article 13.1.1. This being subsequent to the cut-off date and Bid Deadline, date the benefit of the Mega Power Policy reducing the cost of the power project need to be adjusted as per Articles 13.2.2 and 13.4 of the Power Purchase Agreement.

6.27. The respondent submitted that the Essar Power contended that it was eligible for the Mega Power Policy, 2006 which prevalent on the Bid Deadline of 26th December 2006 and, therefore, there is no Change in Law for the purpose of the Power Purchase Agreement entered into between the parties is misconceived. The eligibility to the Mega Power Status under the Mega Power Policy, 2006 was based on the conditions contained in the said Policy as was prevalent on the Bid Deadline. One of the basic conditions of being eligible under the Mega Power Policy, 2006 was that Essar Power's project should have a firm Power Purchase Agreement for sale of electricity in more than one State. Admittedly, Essar Power did not have any such Power Purchase Agreement either on the Bid Deadline Date or on any other subsequent date to be eligible for the Mega Power Status under the Mega Power Policy, 2006.

6.28. The respondent submitted that in the facts and circumstances of the case, it

is clear that though Essar Power could have satisfied the conditions of Mega Power Policy, 2006 of sale of electricity to more than one State and obtained the Mega Power Status as per the conditions of Mega Power Policy, 2006, Essar Power never actually fulfilled the conditions at any time. Essar Power cannot contend that on the basis of the intention of Essar Power that it would enter into a binding PPA for sale of electricity from the project in one more State besides Gujarat and the attempts made for such sale etc, Essar Power should held to be eligible for the Mega Power Status right from the beginning i.e. including on the Bid Deadline Date. Essar Power at the most can only contend that it could have entered into a Long Term Power Purchase Agreement with another State and thereby could have acquired the Mega Power Status under the Mega Power policy, 2006 and thereafter avail the import of equipment in pursuance of the above Mega Power Status. This factually did not materialize as per Mega Power Policy, 2006.

6.29. The respondent submitted that the facts of the present case is clear where Essar Power never entered into a Long Term Power Purchase Agreement with another State at any time and claim the Mega Power Status under the Mega Power Policy, 2006 based thereon. This is so despite the fact that Essar Power made a proposal to the Government of India for grant of Mega Power Status on 29th May 2007 and represented that it will sell the balance capacity after meeting the requirements of the Respondent to Discoms/Bulk Consumers outside the State of Gujarat. The Mega Power

Status under the Mega Power Policy, 2006 was not given to Essar Power despite the Ministry of Power taking up the matter with the Ministry of Finance, Government of India of considering allowing Essar Power the import of goods without Custom Duty but based on the Bank Guarantee and subject to Essar Power concluding a Long Term Agreement for sale of electricity from the project to another State. The attempt made by Essar Power to sell electricity in other States also failed.

6.30. The agreement which Essar Power had entered into with PTC on 19th December 2008 for sale of 120 MW from the project was only a broad Memorandum of Agreement and does not constitute a Long Term Power Purchase Agreement satisfying the conditions of Mega Power Policy, 2006. The documents itself envisages that the Essar Power will enter into a PPA with PTC. Clauses 2.1 and 2.2 of the agreement, inter alia, reads as under:

> *"2.1 Obligation of the Company*
>
> *The Company is aware of its responsibility as the supplier of power to PTC and agrees to,*
>
> *(a) sell 120 MW, estimated gross capacity from the Project to PTC for the full term of 25 years in terms of the power purchase agreement to be entered into with PTC (the "PTC-PPA")*
>
> *(b) obtain all necessary approvals and consents of Governments/ Statutory Authority(ies) required for setting up the Projects; and*
>
> *(c) to provide Security Deposit of 5% amount equivalent to one month estimated energy bill. In the form of Bank Guarantee to PTC, which may be invoked in case the Company is unable to supply the power or disrupted the power without prior permission of PTC.*

(d) to provide to PTC Earnest Money Deposit (EMD) @ 3% of the offered value up to Rs. 1,75,000/- and thereafter @ 1% of the balance offered value. The Maximum earnest money deposit payable against the tender shall be limited to Rs.5,00,000/ - (Rupees Five Lakhs).

(e) Comply with the tariff to be agreed with PTC.

2.2 Obligation of PTC

Notwithstanding anything to the contrary specified in this Agreement, PTC agrees and undertakes to

(i)purchase the 120 MW, estimated gross capacity from the Company for the full term of 25 years on the terms and conditions of the PTC-PPA;

(i) Obtain all necessary approvals/consents of Governments! Statutory Authority (ies) and Appropriate State Regulatory Electricity Commission, if required, for purchase.

(ii) Ensure that the power to be supplied by EPGL, shall be ultimately supplied to the sufficient/appropriate numbers of end consumers so that EPGL's Power Plant shall be qualified to the status of Mega Power Project."

6.31. The respondent submitted that except for Clauses 2.1 and 2.2 quoted above, there are no substantive clauses in the agreement. There are no detailed terms and conditions specified in the agreement. The proposed PTC-PPA was executory in nature, namely, to be entered into at a later date and there is no certainty of the PPA coming into force with all the terms and conditions duly agreed to between PTC and Essar Power. Further, there was no identified distribution utility or end user for the quantum of power

mentioned in the Agreement between Essar Power and PTC. No subsequent communication has been filed to show any further action taken in pursuance of the above Agreement.

6.32. GUVNL submitted that after the agreement dated 19.12.2008, there was no further development in the proposal for sale and purchase of electricity from the project to PTC and nothing seems to have fructified.

6.33. GUVNL submitted that the above agreement between Essar Power and PTC entered into on 19.12.2008 seems to be as a result of the conditions imposed by the Government of India in its communication dated 1.04.2008, inter alia, requesting EPGL to provide documents in respect of the power project to Ministry of Power to consider 'In-principle' Mega power project status to Essar Power. Essar Power has not filed either its application made to the Government of India on 29.5.2007 or the grant of 'In-principle' approval to Essar Power. Apparently, the letter dated 1.04.2008 according to GUVNL is not an 'In-principle' approval letter by Ministry of Power as claimed by Essar Power.

6.34. The respondent submitted that upon the issue of the financial appraisal report by SBI Capital Market and further the grant of in-principle approval by the Government of India on 1.4.2008, it appears that Essar Power had signed the agreement dated 19.12.2008 without finalizing any detailed terms and conditions with PTC. The agreement dated 19.12.2008 entered into between Essar Power and PTC was not implementable as such

without the parties entering into proper Power Purchase Agreement setting out the detailed terms and conditions. The agreement dated 9.12.2008 was not even in compliance with the conditions imposed by the Government for grant of Mega Power Status, namely, it was not an Inter State Thermal Power Plant having an agreement for sale of power outside the State of Gujarat which is the pre-conditions for the project to avail the benefits of Mega Power Project such as Power Purchasing States has constituted Regulatory Commission with full powers to fix tariff and power purchasing States undertake in principle to privatize the distribution in all the cities in the State with a population of One Million and above as stated in the Policy.

6.35. The respondent submitted that from the above, it is clear from the fact that despite the financial appraisal report given by the SBI Capital in July 2007 and the in-principle approval granted on 1.4.2008 for grant of Mega Power Status and further the agreement having been signed with PTC on 19.12.2008, there was no PPA entered into between Essar Power and PTC at any time thereafter.

6.36. The respondent submitted that the Essar Power has been granted Mega Power Status only as per the New Mega Power Policy as amended in the year 2009 and not as per the un-amended Mega Power Policy of 2006. Further, the benefit to Essar Power as Mega Power Project under the Customs Notification and other relevant Tax Notification had arisen as per the

amendment to such Notifications made in the year 2009, namely, the amended Notification dated 11.12.2009 and not as per the Notification which was prevalent at the time of the Bid Deadline or the Cut Off Date which is 7 days before the Bid Deadline. Essar Power has claimed the benefit of Mega Power Status by virtue of the law as was amended in 2009 and not as per the law prevalent on 26.12.2006, namely, 7 days before the submission of the bid for the project on 3.1.2007.

6.37. In terms of Article 13 of the Power Purchase Agreement, any change in the legal position which has an impact on the tariff is required to be adjusted in the tariff to Essar Power. This is provided in clear terms of Article 13 of the Power Purchase Agreement.

6.38. The respondent submitted that there are substantial benefits in the form of customs duty remission exemption reduction and other benefits available to the Project Developer under the Mega Power Policy. The Government of India has granted these benefits in public interest and to ensure that the tariff from such projects to the consumers is reduced. The Respondent ought to pass on the consumers in the State of Gujarat such benefits which have become admissible in law after the date subsequent to the Cut-off Date.

6.39. In accordance with the above, Essar Power should be directed to give details of all the equipments imported by availing the Mega Power Status as well as other benefits which has been secured by Essar Power by reason of

Mega Power Status. Essar Power has so far not given all the requisite details. Essar Power is required to render true and complete details and accounts of the equipments imported, the value of such equipments imported and the customs duty and other levies that is otherwise applicable on such imports and the value of the benefits that is required to be passed on to the Respondent.

6.40. The respondent submitted that for the reasons mentioned above, the claims made by Essar Power are liable to be rejected and the counter claims made by the Respondent is required to be allowed.

7.0. In the light of the contentions of the petitioner and the respondent, the following issues emerge for decision of the Commission:

1) Is the petitioner entitled to recover the levy of Clean Energy Cess for use of coal, including imported coal, imposed by the Government of India?
2) Is the claim of the petitioner for allowing levy of Green Cess @ 2 paise per unit imposed by the Government of Gujarat permissible?
3) Is the claim of the petitioner for countervailing duty is qualifies as change in law and the petitioner is entitled to receive the same?
4) Whether the claim of the petitioner towards levy of Custom Duty reduction is qualified is change in law and give effect in terms of PPA?
5) Whether the petitioner is eligible to recover MAT @ 18.5% imposed by the Government of India as claimed by the petitioner and if eligible, the methodology of calculation of the same and its impact to the tariff?

6) Is the claim of the petitioner to allow the impact of wharefage charges is permissible or not?

8.0. We have carefully considered the rival contentions of the parties. In the present case, issue emerged for decision of the Commission as to whether change in law as contemplated by the petitioner is occurred or not and if the same is occurred, what is the remedy for it.

8.1. We note that the respondent has agreed that the claims of the petitioner regarding 4 of the items mentioned in the Petition fall under the Change in Law, as stipulated in the PPA. These claims are in respect of :

(i) Clean Energy Cess,

(ii) Gujarat Green Energy Cess,

(iii) Countervailing duty, and

(iv) Basic Custom Duty

The respondent has, however, raised certain issues regarding calculation of effect of these changes in law on tariff. It has also questioned the entitlement of the petitioner in respect of Gujarat Green Energy Cess and Countervailing duty, at this stage.

8.2. We also observe that these claims are based on the basis of relevant notification/enactments by the Govt. of India or the Govt. of Gujarat issued after the effective date. As such, we decide that these items fall under the category of Change in Law, as stipulated in the PPA and therefore it is necessary to give

adjustment in the tariff agreed between the parties. We shall, therefore, discuss hereunder, only the issue regarding the extent to which such adjustment has to be made.

8.3. Regarding the Clean Energy Cess, the petitioner contended that the clean energy cess as a duty of excise on imported coal was introduced vide Notification No. 354/72/2010-TRU dated 24.06.2010. The same came into effect from 01.07.2010. The rate prescribed for it is of Rs. 50 per tonne as per notification No. 03/2010-CEC dated 22.06.2010. The petitioner contended that the clean energy cess should be reimbursed by the respondent as it is a part of change in law. The petitioner stated that the impact of clean energy cess work out Rs. 0.02274 per unit amounting an annual impact of Rs. 15.94 Crores. The calculation of same is stated in below:

Assumptions		
Auxiliary Consumption	6.85%	%
1 kcal	4.184	KJ
Turbine Heat Rate	8243.4	Kj/Kwh
Boiler Efficiency	87.10%	%
Station Heat Rate=Turbine Heat Rate/Boiler Efficiency	2.262	Kcal/Kwh
GCV/ARB) of imported Coal	5.500	Kcal/Kg
USD (Avg. of last 15 days it buy rate by SBI)	54.48	Inr/USD
Last billing month i.e. June 2012 April 2003		
Coal/Cess	50.00	Rs./MT

Levy of Coal Cess (Clean Energy Cess) NIL to Rs.50 per MT			
Station Heat Rate	Kcal/Kwh	a	2262

Auxiliary Consumption	%	b	6..85%
Gross Station Heat Rate	Kcal / Kwh	C=a/ (1-6.85%)	2.428
GCV(ARB) of imported Coal	Kcal/Kg	D	5.500
Specific Coal Consumption	Kg/Kg	E=c/d	0.441520623
Per Unit Clean Energy Cess	Paise/Kwh	F=(50xE/1000)x100	2.208

8.4. The respondent contended that the petitioner has submitted the calculation for the clean energy cess based on various parameters for which it has not provided any documentary proof/evidences regarding guaranteed heat rate and documents of original equipment manufacturer and EPC contract indicating the guaranteed parameters of turbine and boiler efficiency, auxiliary consumption to verify the clean energy cess. Hence, the Commission may direct the petitioner to provide the same.

8.5. Considering the contentions of the parties, the Commission passed the daily order dated 25.04.2013 directing the petitioner to provide the documents/agreement of OEM/supplier and EPC contract indicating the guaranteed parameters of boiler and turbine efficiency ensured by the supplier/auxiliary consumption, guaranteed station heat rate, performance guaranteed test, fuel supply agreement specifying GCV etc. The relevant portion of said order is reproduced below:

"……

3.1. The demand of the respondent for the details of documents/Agreement of Original Equipment Manufacturer/supplier and EPC contract indicating the guaranteed parameters of boiler and turbine efficiency ensured by supplier, auxiliary

consumption, Guaranteed Station Heat Rate, Performance Guarantee Test Report, Fuel Supply Agreement specifying GCV of coal, and other documents pertaining to various duties, taxes, cess, levies etc. paid to the concerned authorities, as a part of change in law seems to be valid to evaluate the quantum of various claims sought by the petitioner with respect to impact of the change in law on Bid Price quoted by the petitioner. Hence, we direct to the petitioner to submit the copies of the above documents specifying the above details to evaluate the impact of change in law to the Commission with a copy to the respondent.

....."

8.6. In response to the above, the petitioner vide its affidavit in rejoinder on affidavit dated 24.06.2013 submitted the detail for assumption as under:

Assumptions		
Auxiliary Consumption	6.85%	%
1 kCal	4.184	KJ
Turbine Heat Rate	8243.4	Kj/Kwh
Boiler Efficiency	87.10%	%
Station Heat Rate=Turbine Heat Rate/Boiler Efficiency	2.262	Kcal/Kwh
GCV/ARB) of imported Coal	5.500	Kcal/Kg
USD (Avg. of last 15 days it buy rate by SBI)		
Billing month of April 2003	53.86	INR/USD
Coal/Cess	50.00	Rs./MT

Levy of Coal Cess (Clean Energy Cess)			
Station Heat Rate	Kcal/Kwh	A	2.262
Auxiliary Consumption	%	B	6..85%
Gross Station Heat Rate	Kcal / Kwh	C=a/ (1-6.85%)	2.428
GCV(ARB) of imported Coal	Kcal/Kg	D	5.500
Specific Coal	Kg/Kwh	E=c/d	0.4415

Consumption			
Clean Energy Cess Plus SHE on Customs Duty @ 3%	Rs./MT	F=50 + 50x3%	51.5
Per Unit Clean Energy Cess	Paise/Kwh	G=F x E / 1000	2.274

Levy of Coal Cess (Clean Energy Cess)			
Station Heat Rate	Kcal/Kwh	A	2.262
Auxiliary Consumption	%	B	6..85%
Gross Station Heat Rate	Kcal / Kwh	C=a/ (1-6.85%)	2.428
GCV(ARB) of imported Coal	Kcal/Kg	D	5.500
Specific Coal Consumption	Kg/Kwh	E=c/d	0.4415
Clean Energy Cess Plus SHE on Customs Duty @ 3%	Rs./MT	F=50 + 50x3%	51.5
Per Unit Clean Energy Cess	Paise/Kwh	G=F x E / 1000	2.274

The petitioner has also submitted an Operation and Maintenance Manual of M/s. Harbine Power Engineering Company Limited annexed as annexure – 1 alongwith the index of the aforesaid manual and also the details of boiler, generator specification, steam flow diagram and various other diagrams. The details of boiler design specification are stated below:

".....

1.3.1 Boiler designed specifications:

ITEMS	UNIT	BMCR	TMCR
Steam flow rate of super heater outlet	t/h	2060	1866.68

Steam pressure of super heater outlet	MPa(g)	17.5	17.34
Steam temperature of superheater outlet	Celsius	541	541
Steam flow rate of reheater outlet	t/h	1725.9	1572.73
Steam temperature of reheater outlet	Celsius	541	541
Steam pressure of reheater outlet	MPa (g)	3.817	3.472
Steam temperature of reheater inlet	Celsius	335.0	335.0
Steam pressure of reheater inlet	MPa(g)	4.007	3.646
Temperature of feed water	Celsius	281.0	275
Flue gas temperature at air preheater outlet (Unreviesed)	Celsius	138	137
Flue gas temperature at air preheater outlet (revised)	Celsius	131	131

....."

Moreover, the steam flow diagram submitted by the petitioner alongwith the aforesaid indicates as under:

Output - 48000003.06 KW
Heat rate 8243.4 Kg/Kwh
Steam rate - 3.037 KG/Kwh

The petitioner has also submitted a letter No. GUVNL-GM (Com)/173 dated 28.01.2012 regarding approval of auxiliary consumption. The relevant portion of the same is stated below:

"....."

In this regard, it is to inform you that for working out proportionate share of GUVNL as per Article 8.3 and 9.4 of PPA, the net capacity (ex-bus) of the 600 MW Unit shall be considered as 559 MW considering Auxiliary consumption @ 6.85% for Salaya Power Project under Bid specification no 03/LTPP/2006 as certified by your Original Equipment Manufacturer / Independent. Accordingly, GUVNL share shall be 500 MW out of559 MW (ex-bus capacity).

....."

In the aforesaid letter, GUVNL has agreed that the auxiliary consumption of the petitioner's plant as 6.85%.

8.7. The respondent disputed the parameters given by the petitioner on a ground that the petitioner has not provided the entire documents of M/s. Harbine Huitong Electric Power Company Limited and also not provided performance guarantee parameters ensured by OEM towards turbine heat rate, boiler efficiency etc as provided in EPC contract. In respect the turbine SHR, the petitioner has provided the diagram only. Moreover, the documents provided by the petitioner are not signed.

8.8. In response to the above, the petitioner had filed an affidavit dated 12.11.2013 admitting that the performance guarantee test of equipments of both units i.e. boilers, steam turbine and generator would be carried out by the supplier at earliest. In support of the same, the petitioner has submitted a

correspondence/email took place between the parties. The correspondence of the same is reproduced below:

"……

From: Xu Hongfu (mailto:xuhf@china-hei.com)

Sent:Wednesday, October 30, 2013 1:55 PM

To:Reddy, K.V.B.-Director-Power Business Group

CC:Kush Singh;

Subject: Regarding the Performance Test of Salaya Ph-I Project

Dear Mr. Reddy,

How are you!

Our team members for P.G. test already arrived Salaya site, they will check and evaluate the status of both units. If all conditions are fulfilled, we schedule to proceeded the Performance Test in the near future, in addition, all the equipment and tools for P.G. test already shipped to India by our P.G. test sub contractor as for they will proceed the P.G. test for another project executed by DEC.

Just in today, I received the report mail from Mr. Zhou, my Commissioning Manager; he reported to me what he discussed with your Salaya team. During my last visiting to Essar House, we also discussed this to pic. I clearly remembered what we discussed and concluded. You told me that as per the requirement of Gujarat Government, one unit should be proceeded the P.G. test, finally we reached agreement that we select one unit

to proceed the P.G. test as soon as possible, so that we could conclude Salaya project before end of this year.

Mr. Zhou informed me today, your site team request both units should be proceeded the P.G., it is absolutely different with what we conclude. Gentleman, I do hope that you could involve in this issue, I really need your supporting and assistance.

Your really response for this connection would be highly appreciable.

Thanks and Best Regards

....."

XU Hongfu

Chief Project Officer & Director of No.6 Thermal Power Division

Sent: Wednesday, November 06, 2013 2:30 P.M.

To: Kundalia, Bhavesh – EPOL –MUM

CC: Nayak, Sumant – EPOL-Legal-MUM, Singh, Ashok-EPOL- MUM, Srivastav, Saurav-EPOL-MUM

Subject FW: Regarding the Performance Test of Salaya Ph-I Project

The trail mail from BTG vendor for conducting PG Test before the end of this year is sent herewith. We could consider filling this document on affidavit in the matter relating to change in law in pursuance to the request of GUVNL for the PG Test reports.

Regards,

Ramesh Kumar: Managing Director Essar Power Gujarat Limited.
44 KM, Jamnagar-Okha High way, Post Box No.07, Khambhalia, Jamnagar-361305 Gujarat India.

T+ 91 8238015553 / + 91 2833 663401 Voip 7 24 3401/ Direct No. + 91 02833 7243401 (Blackberry PIN 27D90FB1)E Ramesh Kumar1@ essar.com(www.essar .com)

....."

The aforesaid correspondences reflect that up to 30.10.2013, the performance guarantee test was not carried out by the OEM.

8.9. The petitioner had in the said affidavit also submitted that the petitioner entered into contract dated 24.08.2007 with Global Supply (UAE) AZE for procurement of equipments in which, gross turbine heat rate was stated as 1990 KCal per Kwh and boiler efficiency as 0.86. Accordingly the station heat rate worked out to 2313.95 KCL/ Kwh on design fuel and TMC conditions. The petitioner has also given calculation on that basis which is as under:

Clean Energy Cess:

Assumptions		
Auxiliary Consumption	6.85%	%
Turbine Heat Rate	1990	Kcal/Kwh
Boiler Efficiency	86%	%
Station Heat Rate=Turbine Heat Rate/Boiler Efficiency	2.314	Kcal/Kwh
GCV/ARB) of imported Coal	5.500	Kcal/Kg
USD (Avg. of last 15 days it buy rate by SBI)		
Billing month of April 2003	53.86	INR/USD
Coal/Cess	50.00	Rs./MT

Levy of Coal Cess (Clean Energy Cess)			
Station Heat Rate	Kcal/Kwh	a	2.314
Auxiliary Consumption	%	b	6..85%
Gross Station Heat Rate	Kcal / Kwh	C=a/ (1-6.85%)	2.484
GCV(ARB) of imported Coal	Kcal/Kg	D	5.500

Specific Coal Consumption	Kg/Kwh	E=c/d	0.4517
Clean Energy Cess Plus SHE on Customs Duty @ 3%	Rs./MT	F=50 + 50x3%	51.5
Per Unit Clean Energy Cess	Paise/Kwh	G=F x E / 1000	2.326

The petitioner has also submitted that it had inadvertently submitted the heat rate data on its affidavit dated 16.01.2013.

8.10. We have noted that there is dispute between the parties pertaining to the various parameters i.e. Boiler efficiency, turbine heat rate and GCV of coal which are important parameter to determine the quantum of fuel required by the petitioner to generate electricity. The clean energy cess claimed by the petitioner is also applicable on the quantum of fuel consumed by the generators.

8.11. As stated above, there is dispute pertaining to clean energy cess payable by the petitioner with consideration of quantum of fuel utilized by them, which is determined from the various parameters i.e. SHR of the plant, boiler efficiency, turbine heat rate, auxiliary consumption etc. The petitioner had initially in his petition dated 16.01.2013 and its subsequent submission on affidavit in rejoinder – in –reply dated 24.06.2013 submitted that the boiler efficiency of the plant as 87.10% and turbine heat rate as 8243.4 KJ/Kwh. Accordingly, the SHR work out as 2262 KCAL/Kwh. In support of the same, the petitioner had also submitted that the operational manual of M/s. Hurbine Power Engineering Company Limited and documents of that manual specifying the technical specification of turbine

generators and boiler and generator specification in which, it is stated that the boiler efficiency is 87.1% and steam flow diagram specifying the heat rate is 8243.4 KJ/Kwh. Accordingly, the heat rate works out to 1970.22 KCL/Kwh. The petitioner, in its subsequent affidavit dated 12.11.2013 submitted that the petitioner has inadvertently stated the turbine heat rate as 1970.22 KCL/Kwh and boiler efficiency as 87.1%. In fact, the turbine heat rate is 1990 KCL/Kwh and boiler efficiency is 0.86. Thus, gross station heat rate works out to 2313.95 KCL/Kwh. However, in original petition dated 16.01.2013 and thereafter subsequent affidavit in rejoinder dated 24.06.2013, the petitioner has stated that the SHR as 2262 KCL/Kwh. Hence, the claim of the petitioner is under dispute with respect to clean energy cess.

8.12. We note that the claim of the petitioner as regard to station heat rate as 2314 KCL/Kwh is not legal and valid and the same is not acceptable on following grounds:

(a) The petitioner himself in original petition dated 16.01.2013 submitted the turbine heat rate as 8243.4 KJ/Kwh and its boiler efficiency 87.1%. Based on it, SHR works out as 2262 KCL/Kwh. Thereafter, the Commission vide its daily order dated 25.04.2013 directed the petitioner to provide the data of original equipment manufacturer technical data assured by OEM/Supply and EPC contractor indicating the guaranteed parameters of boiler and turbine efficiency, auxiliary consumption, station heat rate, PG test report etc.

(b) The petitioner vide its affidavit in rejoinder – in reply dated 24.06.2013 submitted the documents of M/s. Hurbine Power Engineering Company Limited specifying the boiler efficiency as 87.1% and turbine heat rate 8243.4 KJ/Kwh works out to heat rate as 1970.22 KCL/Kwh and SHR on that basis works out to 2262 KCL/Kwh, which is same as that furnished in the original petition.

(c) The petitioner had with its affidavit dated 12.11.2013 stated that there is an error in turbine heat rate and boiler heat rate submitted by the petitioner in original petition dated 16.01.2013 and subsequent affidavit dated 24.06.2013. The petitioner has also submitted that the above claim of change in boiler efficiency and turbine heat rate and station heat rate is based on the documents of equipments procured by them from M/s. Global Supply (UAE) FZE. The above suppler is not an OEM. The agreements submitted by the petitioner do not specify the technical parameters of SHR, boiler efficiency and turbine heat rate ensured by the original equipment manufacturer i.e. Hurbine Engineering Power Company Limited.

(d) The petitioner admitted that so far no performance guarantee test has been carried out by the Original equipment manufacturer which is Hurbine Engineering Power Company Limited. In the absence of the PG test report, it is difficult to derive the correct turbine cycle heat rate as well as boiler efficiency. The effect of the OEM documents is required to be given.

8.13. Considering the above facts, we decide the technical parameters of boiler efficiency, turbine cycle heat rate, and SHR as under:

Particulars	Unit
Turbine Heat Rate	8243.4 KJ/Kwh equivalent to 1970.22 KCL/Kwh.
Boiler efficiency	87.1%
Station Heat Rate = Turbine Heat Rate/Boiler Efficiency	2262 KCL/Kwh

8.14. As far as the auxiliary consumption is concerned, there is no dispute between the parties and the same is 6.85% as agreed by the petitioner and the respondent. Hence, we considered the same.

8.15. The respondent has stated that the GCV of coal as per fuel supply agreement is 6000 KCL/KG. While the petitioner stated that the same is 5500 KCL/KG on ABD basis. We observed that the schedule 1 (a) of fuel supply agreement executed between the Essar Shipping & Logistics Limited and the petitioner, the gross calorific value as per Air Dired Basis (ADB) is stated as 6000 KCL/KG. The fuel supply agreement (FSA) also stated the percentage of total moisture (TM) as 18% and inherent moisture (IM) as 10 to 11%. Thus, GCV (ADB) is converted as received basis work out to as under:

GCV (ARB) = GCV (ADB) x (1-TM %)/(1-1M %)

= 6000 x (1-0.18)/ (1-0.1055))

= 5500 Kcal/Kg.

From the above, we decide that GCV of the coal on received basis is 5500 Kcal/Kg.

8.16. Considering the above , we decide the effect of levy of the clean energy cess on the tariff receivable by the petitioner as under:

Levy of Coal Cess (Clean Energy Cess)			
Station Heat Rate	Kcal/Kwh	A	2.262
Auxiliary Consumption	%	B	6..85%
Gross Station Heat Rate	Kcal / Kwh	C=a/ (1-6.85%)	2.428
GCV(ARB) of imported Coal	Kcal/Kg	D	5.500
Specific Coal Consumption	Kg/Kwh	E=c/d	0.4415
Clean Energy Cess Plus SHE on Customs Duty @ 3%	Rs./MT	F=50 + 50x3%	51.5
Per Unit Clean Energy Cess	Paise/Kwh	G=F x E / 1000	2.274

8.17. The Commission, therefore, approves the impact of Clean Energy cess @ Rs. 0.02274 per kWh as it falls under the change in law category as per Article 13 of the PPA.

8.18. Now we deal with the issue with regards to imposition of Green Cess by the Government of Gujarat under the Green Cess Act, 2011 @ 2 paise per unit on generation of all kinds of electrical energy in Gujarat, except generation from renewable energy, the petitioner and respondent agreed for the same to be a change in law as per Article 13 of the PPA.

8.19. The Commission examined the levy of Green Cess by the Government of Gujarat. The said Cess was levied w.e.f. 01.08.2011 vide rules framed under the above Act and the relevant provisions of the Act are mentioned below.

Definition of Cess:

"Cess means a Green cess levied on generation of electricity in the State under section 3."

Section 3 of the Gujarat Green Cess Act, 2011: "Levy of Green Cess":

1) *There shall be levied and collected a cess for the purposes of this Act, on generation of electricity except on generation of renewable energy by the generating company at the generating station or at the captive generating plant or the stand by generating plant.*

2) *Such cess under sub-section (1) shall be levied and payable on the electricity generated in the State of Gujarat irrespective of the fact whether such electricity is consumed within the State or not.*

3) *Such cess under sub-section (1) shall be levied in such manner and at such rate not exceeding twenty paise per unit of the electricity generated as may be prescribed.*

4) *The State Government may by notification in the Official Gazette, exempt from payment of the cess, the generating company having aggregate installed capacity of not more than one thousand kilowatts.*

5) *The cess levied under sub-section (1) shall be payable by the generating company."*

8.20. However, the above Act was quashed by the Hon'ble High of Gujarat vide its order dated 21/22-01-2013 in SCA No. 4690 of 2012 and allied matters. The relevant portion of the said order is reproduced as under:

"……

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 4690 of 2012

RELIENCE INDUSTRIES LTD & 1....Petitioner(s)
Versus
STATE OF GUJARAT & 4....Respondent(s)

HONOURABLE MR.JUSTICE AKIL KURESHI
and
HONOURABLE MS JUSTICE SONIA GOKANI

ORAL JUDGMENT

(PER : HONOURABLE MR.JUSTICE AKIL KURESHI)

*----------Petitions arise in common background. All the petitioners have challenged virus of the Gujarat Green Cess Act, 2011 ('**Act**' for short) and the Gujarat Green Cess Rules, 2011 ('**Rules**' for short) on various grounds. Facts, as arising in Special Civil Application No.4690 of 2012, which has been treated as the lead matter may be recorded.--------*

.....Sum total of the entire discussion above is that the State Act ultra vires the Constitution and the same is therefore, declared void. Resultantly, the Cess levied under the State Act would also stand vitiated.....

----------Under the circumstances, petitions are disposed of with a further direction that the cess already paid by the petitioners

would be refunded after verifying that the burden thereof has not already been passed on to the ultimate consumers. For the purpose of considering refund of cess already paid by the petitioners after verifying the question of unjust enrichment, the Collector of Electricity Duty and the Chief Electrical Inspector would be the competent authority to take a decision as provided above. He shall also grant refunds as found due and payable. This shall be done preferably within four months from the date of receipt of copy of this order with simple interest @ 8 per cent after three months of the collection till the actual payment. It is clarified that any further action taken for collection of cess under the Act would be invalid.

At this stage, learned AGP Ms. Vishen for the respondents prayed that this judgment be stayed for a period of eight weeks to enable the respondents to prefer appeals. We notice that this Court had granted interim relief against any further recovery of the cess under the Act. So far as cess already collected, we have granted four months time to the respondents to carry out the direction for refund. In that view of the matter, no useful purpose will be served in staying this judgment. Request is therefore, rejected.

(AKIL KURESHI, J.)

(Ms. SONIA GOKANI, J.)

....."

8.21. The aforesaid order of Hon'ble High Court of Gujarat was challenged by the Govt. of Gujarat before the Hon'ble Supreme Court of India by filing special leave to Appeal No. 18493-18515/2013 in which the Hon'ble Supreme Court passed an order dated 3.07.2013 and stayed the operation of the impugned judgment of the Hon'ble High Court of Gujarat. It is further decided that it will be open to the appellant to determine the cess under the Gujarat Green Cess Act, 2011 and raise

demand on the respondents. However, such demand shall not be enforced against the respondents until disposal of the appeal. Moreover, determination of such cess shall be subject to final decision in the appeals. Thus, the Hon'ble High Court order quashing the Gujarat Cess Act, 2011 has been stayed by the Hon'ble Supreme Court of India. Hence, the claim of the petitioner that due to enactment of Gujarat Cess Act, 2011 the petitioner is liable to pay the Green Cess fall under change in law is valid because on seven day before the bidding date, i.e. 26.12.2006 the Green Cess did not prevail. Hence, the impact of Green Cess Act fall in the category of Change in Law and the petitioner is liable to pay the green cess if, the Hon'ble Supreme Court upholds Gujarat Green Cess Act, 2011. Considering the above we decide that the claim of the petitioner for green cess qualifies as change in law. However, due to the pendency of the validity of the Act before Hon'ble Supreme Court we decide that till the final decision of the Hon'ble Supreme Court the petitioner is not eligible to claim payment on this account.

8.22. Now we deal with the issues regarding the countervailing duty (CVD) claimed by the petitioner. As per the Custom department, Government of India Notification No. 44/2004 dated 28.02.2004, there was no countervailing duty on the effective date. However, the same was increased to 2% by the Custom Department, Government of India vide its Notification No. 12/2013 dated 01.03.2013.

8.23. The respondent disputed CVD on a ground that the petitioner had not submitted the records pertaining to turbine heat rate, boiler efficiency etc. Moreover, the GCV of coal is required to be considered as 6000 Kcl/Kwh as per the Fuel Supply

Agreement (FSA). It is further submitted that the petitioner is not paying CVD because of pending proceedings before the Hon'ble High Court of Bombay.

8.24. We note that as far as the turbine heat rate, boiler efficiency, SHR and auxiliary consumption etc of the petitioner's power plant are concerned, the same are already decided in earlier para. As far as, the issue raised by the petitioner with regards to pending proceeding before Hon'ble High court of Bombay is concerned, we note that in the said proceeding the Petitioner is not a party to the petition. Moreover, in the said proceeding there is no order passed by the Hon'ble High Court staying the applicability of the aforesaid notification of the Custom Department, Govt. of India. Hence, the plea of the respondent on above aspect is not valid and the same is rejected.

8.25. As noted in earlier para the countervailing duty is leviable as per the Notification No. 12/2013 dated 01.03.2013 by the Custom Department, Government of India. Therefore, the petitioner is entitled to receive the countervailing duty as Change in Law. The same is @ of 2% as imposed by the custom department, Government of India.

8.26. The Commission has considered the arguments of both the parties and approves the impact of Counterveility Duty @ 2% on the imported coal as levied by the Custom Department, Government of India. It falls under the Change in Law category as per Article 13 of the PPA. The petitioner shall submit necessary evidence in support of its claim and the same shall be paid by the respondent.

8.27. The next issue is regarding the claim of the petitioner towards change in the rate of Custom Duty.

8.28. The petitioner has submitted that the Ministry of Finance, Government of India has reduced the rate of basic custom duty to 0% vide its notification No. 12/2012-Customs dated 17.03.2012. It is further submitted that the custom duty was applicable 5% on the date of bidding and the same is reduced to 0%. The relevant portion of the said notification is reproduced below.

"……

Please note that BCD is zero for imported coal from Indonesia as per Custom's Notification No. 64/2012 dated 31.12.2012. Sr. NO. 207 BCD for imported coal from other countries shall be as per the extant Custom's Tariff.

……"

In the aforesaid notification, Custom Department, Government of India had notified that the BCD made zero (0) for imported coal from Indonesia Therefore, there is reduction in custom duty required to pass on to the petitioner.

8.29. The respondent while agreeing to the contention of the petitioner that imposition of custom duty constitutes Change in Law. However, while evaluating the basic custom duty, the petitioner is required to calculate the Basic Custom Duty on the parameters of Turbine Heat Rate, Boiler Efficiency and GCV as mentioned above as in the case of other elements. The Basic Custom Duty adjustment to be given in favor of GUVNL.

8.30. The Commission having heard both the parties and also on perusal of Articles of the PPA mentioned above, finds that custom duty reduction by Ministry of Finance, Government of India, qualifies to be considered as change in law and consequently the petitioner is required to pass on the impact of reduction in custom duty to the petitioner with consideration of the technical parameters as approved by the Commission in the earlier paras. With consideration of the above, the reduction in custom duty is required to be passed on to the respondent by the petitioner. The custom duty was applicable @ 5% on the effective date, i.e. 7 days prior to the date of bidding and the same is reduced to 0% by the Custom Department, Government of India. Therefore, there is reduction in custom duty. Hence, we decide that the change in the rate of Basic Custom Duty, comes under the category of the change in Law and the petitioner shall pass on the benefit of reduction in custom duty it from 5% to 0%.

8.31. With regard to the petitioner's claim for recovery of MAT which was in lieu of Corporate Income Tax under section 115JB and changes made in its percentages is concerned, the respondent has objected the same on a ground that the same is not qualify as Change in Law.

8.32. The petitioner submitted that at the time of submission of bid on 03.01.2007, the Minimum Alternate Tax (MAT) under sub-section (6) of section 115 JB of the Income Tax Act, 1961, payable was 7.5% and the same is increased to 18.5%. The petitioner also submitted that it has not paid the MAT as on the date of filing the

petition. The petitioner submitted that from 1.4.2012 MAT leviable is @ 18.5% As such, the MAT became applicable to the petitioner w.e.f. 01.04.2012. He argued further that the payment of MAT falls within Article 13.1 of the PPA and he is entitled to recover the amount of MAT from the respondent. The MAT has an impact on economic position of the petitioner during the operation of the plant. All laws stated in the PPA include the Taxation Law as a part of change in law and hence, will have an impact on the revenue and cost of the petitioner.

8.33. The respondent contended in his response to the petition that MAT cannot constitute a change in law as it is in the form of withholding tax and as per Article 13.1.1 para 2 any change in withholding tax cannot be included to be a part of change in law and the question of paying or compensating the petitioner for MAT does not arise.

8.34. The petitioner in reply indicated that withholding tax is different and distinct as compared to MAT. Withholding tax is Tax Deducted at Source (TDS) governed by Chapter XVII, while MAT is covered under section 115 JB of Chapter XII B which is a special provision. MAT is a tax on income in lieu of corporate Income Tax which is levied as a percentage of book profits calculated in accordance with section 115 JB and hence, the same qualifies as a change in law and MAT paid should be reimbursed.

8.35. In this connection, we observe that the Commission had in Petition No. 1210 of 2012 in its order dated 07.01.2013 discussed the issue in detail, and decided as under.

"……

10.5 From the above arguments of the petitioner as well as the respondents, there are two questions which are required to be decided by the Commission.

1) Whether MAT constitutes a change in law?

2) And if the above is in affirmative, whether the petitioner is eligible to recover the same from the respondent?

10.6 As regards question No. 1 above, the Article 13.1.1 is required to be looked into, which reads as under:

> *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, upto the Scheduled Commercial Operation Date of the power Station, such non-extension shall be deemed to be a Change in Law".

The petitioner and respondent have interpreted the above Article of the PPA differently. It is important to note that in terms of the above definition of Change in Law there has to be a resulting effect in the cost or revenue from the business of selling electricity by the Seller to the Procurer under the PPA for the Change in Law to be effected. This is specifically provided in Article 13.1.1 as well as Article 13.2.

10.6.1 *Article 13.1.1 deals with four aspects. An important question which arises is whether the expression "which results in any change in any cost of or revenue from the business of selling electricity" at the end of sub-clause (iii) applies only to sub-clause (iii) or also to sub-clauses (i) and (ii). The petitioner has argued that the above expression applies only to sub-clause (iii), because the word "or" after each sub-clause is used disjunctively to separate the four different categories of events. On the other hand, the respondent argued that the above expression applies to all the three sub-clauses. A very significant aspect – which comes out if we go through the clause carefully - is that though the four sub-clauses (i) to (iv) are separated by "or", there is no comma (,) before "or" preceding sub-clauses (ii) and (iii),*

whereas the "or" preceding sub-clause (iv) has a comma before it. This indicates that the first three sub-clauses are under one category and the last is of a different category. Hence, we are unable to accept the argument of the petitioner that all the "or" have been used disjunctively. The use or absence of comma before "or" indicates that the expression "which results in any change in any cost of or revenue from the business of selling electricity" at the end of sub-clause (iii) applies not only to sub-clause (iii) but also to sub-clauses (i) and (ii), but not to sub-clause (iv). In other words, mere coming into force of an enactment, amendment, modification, repeal etc. in law or change in interpretation by the competent court is not to be considered as Change in Law under Article 13.1.1 unless it results in any change in any cost or revenue from the business of selling electricity. The qualifying criterion is effect on the cost or revenue of the business of selling electricity. This is further elaborated in Article 13.2(a) and (b).

10.6.2 The contention of the petitioner that the above qualification or criterion applies only to sub-clause (iii) would lead to an anomalous interpretation because sub-clauses (i) and (ii) will become meaningless. Every enactment coming into operation or change in interpretation cannot become a Change in Law for the purpose of the PPA unless it has some effect on the agreement between the parties.

10.6.3 The above interpretation becomes reinforced by the provisions of Article 13.2(a) and (b) dealing with the impact for such change which occur during

the construction period and operation period. Both these provisions refer to increase and decrease of revenue and cost.

10.6.4 The reference to withholding tax or dividend distribution tax has been made to avoid any confusion on the issue whether withholding tax or dividend distribution tax be treated as a cost of business of selling electricity. Under the Income Tax Act, 1961, dividend distribution tax is paid by the company out of its revenue and is treated like other cost elements. Similarly, withholding tax is also treated like other cost elements. In view of the above, a specific provision has been made to exclude them from the effect of Change in Law. MAT is post revenue and post cost appropriation element. It is a tax on the income of the assessee. It is neither a cost nor a revenue from the business of sale of energy. Hence, we cannot accept the argument of the petitioner that MAT being different from withholding tax is covered by Change in Law.

10.6.5 The proviso to Article 13.1.1 deals with the specific situation of section 80(IA) of the Income Tax Act ceasing to provide tax holidays. This provision itself speaks about the only exception where income tax would be considered at the later stage as a Change in Law. If the intentions of the Article 13.1.1 were to include MAT or Income Tax generally under the Change in Law provision, the proviso would be redundant. If the interpretation of the petitioner is accepted, then, change as effected in the income tax in regard to tax holiday would be a Change in Law governed by Article 13.1.1 itself, as it amounts to imposing tax on which there was total exemption. It would not

be necessary to provide for this under a specific proviso. Hence, the proviso to Article 13.1.1 further corroborates the interpretation that the effect of MAT/income tax generally is not covered by the Change in Law.

10.6.6 There is also another factual aspect for not including such tax as a pass through in the tariff of a generation station where the PPA is entered in pursuance of the competitive bidding process as per Article 63 of the Electricity Act, 2003. There is no separate elements of return on equity or reasonable return. These are all factored in the bidding price itself. The quantum of revenue or return is not identified in the biding price. The tax including MAT being on the revenue, there is no identification of tax payable at the time being seven days prior to the bid deadline as envisaged under Article 13.1.1. Accordingly, it is not possible at all to factor the increase or decrease in the tax including MAT. This is different from the tariff determination u/s. 62 of the Electricity Act where one of the components allowed is tax on income. The pass through of MAT or income under Tariff Regulations is by virtue of the specific provision, which is not provided in section 63 of the Electricity Act, 2003.

10.6.7 In view of the above analysis, we conclude that in terms of Article 13 of the Power Purchase Agreement, the MAT or increase/decrease in MAT is not to be adjusted in the tariff. Thus, the answer to the question whether MAT constitutes a Change in Law in the context of Article 13 of the PPA is in the negative.

....."

8.36. In view of the above decision of the Commission, we decide that in terms of Article 13 of the PPA, any change in rate of MAT is not a change in law for the purpose of PPA and as such it has not to be adjusted in the tariff.

8.37. Now, we deal with the claim of the petitioner for wharfage charges. The petitioner submitted that the petitioner entered into coal handling agreement dated 24.08.2008 with Essar Bulk Terminal (Salaya) Limited, where it was agreed that the EBTSL would set up captive jetty for the purpose of handling and transportation of coal. The said agreement provides that all taxes, duties, levies including wharfage would be reimbursed by EPGL. The Government of Gujarat had initially decided that whenever private company sets up their own jetty/port, 80 % of wharfage charges could be set off against the capital cost of the project. The petitioner submitted that at time of bid submission, wharfage charge was Rs. 34 per tonne as per Gujarat Maritime Board (GMB) Schedule of Port charges dated 09.07.2003. Subsequently, the same was reduced to Rs. 26 per tonne by GMTB from 20.07.2012. Later on, GMB abolished the policy for setting off wharfage charges against the capital cost of the project. GMB vide its circular dated 16.01.2010 abolished the practice of allowing the set off of 80% wharfage charges against the capital cost of the project. The said changes affect the petitioner. GMB vide letter dated 26.06.2012 had denied the set off the wharfage charges to EBTSL. Therefore, EBTSL is required to pay the wharfage charges to GMB as per the wharfage charges as specified in schedule of port charges published by GMB from time to time. The petitioner submitted that at time of bid submission, EPGL had factored coal handling cost as per the prevailing practice of GMB for grating

concessional wharfage charges to the extent of 80% which was abolished by GMB vide circular dated 16.01.2010. Thereby, there is increase in coal handling cost of EPGL. It is a change in law as per the Article 13 of the PPA. The petitioner has submitted that EBTSL vide its letter dated 26.04.2013 informed the petitioner that the wharfage charges payable by it was Rs. 6.8 per metric tonne as per the earlier wharfage policy of GMB which now become Rs. 26 per metric tonne. Therefore, there is rise of Rs. 19.20 per metric tonne payable by petitioner. The petitioner also submitted that currently captive jetty is not in operation because of pending statuary clearances. Therefore, the Commission may pass necessary order approving the claim of the petitioner.

8.38. The respondent GUVNL objected the levy of wharfage charges on a ground that the petitioner has not provided any evidences which demonstrating that there was an earlier agreement/arrangement with Government of Gujarat, whereby EPGL was entitled for any concessional/waiver of wharfage charges which was later on withdrawn resulting in any impact to EPGL. The respondent further submitted that the PPA is entered between the petitioner and GUVNL only. Essar Bulk Terminal (Salaya) Limited is not a party to the same. Therefore, the applicability of the provision of the PPA is concerned, it is applicable to the petitioner and the respondent and the same is not applicable to EBTSL which is third party. The utilization of captive coal jetty set up by EBTSL at Salaya and agreement for utilization of the same by the petitioner stated in the agreement is bilateral agreement between the petitioner and EBTSL. The same is outside the purview of change in law specified in PPA. It is wrong on the part of the petitioner to rely on

the practice of collecting the wharfage charges on coal handling by captive jetty. The collection of such charges is not pursuance to any law as defined in the PPA. These are charges payable to GMB for facilitation by EBSTL and not covered under the provisions of article 13 of the PPA. Therefore, the claim of the petitioner for the same is not valid. It is further submitted that the petitioner has so far not made any payment for wharfage charges. Hence, the question of payment/adjustment in tariff does not arise at present.

8.39. We note that the issue for claim of wharfage charges by the petitioner is related to utilization of jetty for coal handling. The respondent has disputed the applicability of the change in GMB policy with regard to levy of jetty handling charges, wharfage charges on a ground that the said charges are not on account of any statutory mandate or sovereign action. Moreover, the wharfage charges claimed by the petitioner are based on the agreement between EBTSL and the petitioner which is different and distinct from the agreement between the petitioner and the respondent. Further, we note that it is an admitted fact by the petitioner that at present the coal jetty of EBTSL is not operational and there is no payment for wharfage charge paid by the petitioner. The petitioner has claimed the wharfage charges based on the Govt. of Gujarat notification dated 30.03.2013. In absence of functioning of coal jetty, it is premature to decide the matter on the basis of the GMB notification dated 30.03.2013. The date on which the coal jetty will be operationalised and the prevailing law on that day is not certain at present. Hence, it is premature to declare change in law in absence of the prevailing law on the date of operationlisation of jetty. Hence, in absence of the operationlisation of jetty

and prevailing law on that day, the claim of the petitioner for wharfage charge do not qualify as Change in Law. Hence, the claim of the petitioner at this stage is not sustainable and the same is rejected.

8.40. The respondent has submitted a counter claim in the present petition stating that the petitioner had obtain the mega power projects after the bid submission date i.e. 30.01.2007. The benefit of mega power project is required to be considered as change in law after the signing of PPA and it qualifies as change in law under the article 13 of the PPA. The respondent had in support of its claim relied on certain decision of Hon'ble Supreme Court of India in the matter of counter claim.

8.41. The petitioner has objected the claim of the respondent on the subject matter of mega power project on a ground that the respondent is required to file separate dispute with regard to mega power project of the petitioner. He referred Article 13. 2 (a) and 13.2 (b) and Article 17 of the PPA and submitted that the counter claims of the respondent is with reference to the dispute during the construction period as per the provisions of the PPA. The petitioner also submitted that as per Article 17, both the petitioner and the respondent are required to resolve the dispute amicably first and if the same is not arrived, the respondent can raise the dispute before the Commission. Thus, on this ground also, the claim of the respondent is not maintainable.

8.42. We note that the respondent has filed a counter claim in the present petition by stating that as the petitioner has obtained the Mega power project after signing the PPA. Hence, the benefit of Mega power is required to be granted by the

Commission. The respondent has not submitted any details with regard to benefits accrued to petitioner on account of it obtaining the Mega Power Project status nor its impact on cost or revenue to the petitioner. Hence, the counter claim of the respondent is without any details of the effect of Mega Power status on cost of electricity generation or revenue earned by the petitioner for supply of electricity by the petitioner to the respondent. In the absence of the same, it is not permissible and legal to declare as to whether any change in law has occurred and its impact on tariff. We further note that the respondent has not submitted any documents or evidence stating that the respondent has raised the issue of Mega Power project status with the petitioner and tried to amicable settlement as specified in Article 17.2 of the PPA. Thus, the remedy available in Article 17 of the PPA is not resolved by the respondent with regard to Mega Power project status received by the petitioner. We decide that it is premature to decide the above issue in the present petition by the Commission. However, the respondent is at liberty to file a fresh petition after exhausting or remedy available in the PPA.

8.43. After completion of the final hearing of the matter on 7.6.2014, the Commission passed daily order dated 10.6.2014 with regards to completion of the hearing and directives to the parties to file their written submission within three weeks' time from the date of the hearing, which is reproduced below:

"...

The matter was kept for hearing on 07.06.2014. The petitioner and the respondent have made their submissions and completed their arguments in the matter. The petitioner and the respondent have requested to grant 3 weeks time

to file their written submissions. The same is granted. The matter is now reserved for final order/judgment."

Thereafter, the petitioner filed its written submissions and draft amendment to the petition. The draft amendment was filed on 15.7.2014 stating that the Commission may permit to make an amendment in the memo of the petition. The petitioner submitted that he may be allowed to make an amendment in prayer clause by substituting prayers 15 (A), 15 (B), 15 (C), 15 (D), 15 (E) and 15 (F) which are reproduced below:

15 *(A) Approve and allow the Petitioner to raise Supplementary Bills for levy of Clean Energy Cess as per affidavit dated 12.11.2013 under Article 13 of the PPA;*

15 (B) Approve and allow the Petitioner to raise Supplementary Bills for levy of Green Cess, under Article 13 of the PPA, as and when necessary;

15 (C) Approve and allows the Petitioner to raise Supplementary Bills for increase in Countervailing Duty as per affidavit dated 12.11.2013, under Article 13 of the PPA;

15 (D) Approve the decrease in Basic Custom Duty as per affidavit dated 12.11.2013, under Article 13 of the PPA;

15 (E) Approve and allow the Petitioner to raise Supplementary Bills for the increase in Minimum Alternate Tax, under Article 13 of the PPA, as and when necessary;

15 (F) Approve and allow the Petitioner to raise Supplementary Bills for the impact of wharfage charges as per affidavit dated 12.11.2013, under Article 13 of the PPA, as and when necessary.

The above draft amendment was submitted by the petitioner after the completion of the hearings and also only after the Order of the Commission dated 10.6.2014 directing parties to file their written submissions within three weeks and reserving the matter for judgment/order. It may be mentioned that the Commission has dealt with the issues raised on the amendment in the order. As such, there is no need to issue any further order in this regard.

9.0. In summary, we decide to allow the petition partially as under:

1) Clean Energy Cess @ Rs. 0.0221 per unit on the actual electricity supplied to the respondent is payable by the respondent.

2) Green Cess claimed by the petitioner qualifies as Change in Law. However, due to pendency of the case before the Hon'ble Supreme Court the petitioner is not entitled to claim any amounts towards Green Cess at present,

3) Countervailing duty @ 2% imposed by Custom Department, Government of India, is allowed to be passed on to the petitioner by the respondent on submission of necessary documentary evidence.

4) Reduction in Basic Custom Duty from 5% to 0% by Custom Department, Government of India, is allowed to be passed on to the respondent by the petitioner.

5) The MAT does not qualify as a Change in Law,

6) The claim of the wharfage charges by the petitioner has not been addressed by us at this stage as the coal jetty of the petitioner is not operational and in absence of any idea about the law that may be applicable on the operational date of the jetty, it is premature to declare the same as change in law.

7) The counter claim of the respondent is not permissible as change in law in the present petition. Hence, the same is rejected.

10.0. We order accordingly.

11.0. With this order, the present petition stands disposed of.

Sd/-

[Dr. M. K. IYER]
MEMBER (F)

Sd/-

[SHRI PRAVINBHAI PATEL]
Chairman

Place: Gandhinagar.

Date: 03/08/2015.

Manoj Patel
Officer on Special Duty (Power)

No.EPG-12-2019-15-K
Government of Gujarat,
Energy and Petrochemicals Department,
Block No. 5, 5th Floor, Sardar Bhavan,
Sachivalaya, Gandhinagar.
Dated : 17 FEB 2023

To,
The Chairman,
Central Electricity Authority,
Sewa Bhawan, R.K.Puram,
Sector- 1,
New Delhi 110 066

Subject: - Technical Recommendation regarding Station Heat Rate in case of M/s. Essar Power Gujarat Ltd., Salaya Plant.

Respected Sir,

I am directed to refer to the subject noted above and to state that M/s. Essar Power Gujarat Ltd. (EPGL) has signed PPA with GUVNL for supply of power from their Power plant at Salaya Dist. Jamnagar. Further, GUVNL has Signed Supplemental PPA with EPGL as per the Government of Gujarat's guideline dated 12.06.2020 wherein it is provided that the Station Heat Rate(SHR) for computation of Energy Charges shall be considered as lower of Actual or 2262 kcal/Kwh.

2. It is pertinent to mention that ceiling SHR of 2262 kcal/kwh was considered in the guideline based on the order dated 27.04.2020 passed by Gujarat Electricity Regulatory Commission (GERC).

3. The State Government has received representation from M/s. EPGL that it is technically not possible to achieve Gross SHR of 2262 kcal/kwh and requested to revised SHR to 2333 kcal/kwh for their power plant in line with CEA terms as endorsed by Expert Committee of Ministry of Power. The relevant supporting documents submitted by EPGL are enclosed herewith for reference.

4. In view of above, it is requested to kindly examine the matter and provide technical recommendations along with views of CEA to the State Government regarding Station Heat Rate (SHR) to be considered in respect of EPGL's Power Project at Salaya, Dist. Jamnagar.

With regards

Yours faithfully,

(Manoj Patel)
Officer on Special Duty (Power)
Energy and Petrochemicals Department

Encl.: As per list I to VIII below:-

Annexure I Design Prameter 2 X 600 MW EPGL
Annexure – II HMBD TMCR -100%

Annexure – III Boiler Performance Test Procedure
Annexure – IV EPGL 5 year operational Data
Annexure – V CERC Tariff Regulation 2009 – 14 Relevant Page to SHR
Annexure – VI GERC MYT Regulation 2011 relevant extract for SHR
Annexure – VII MoM of MoP – Directing CEA to assess EPGL SHR
Annexure –VIII MoM of the MoP – EPGL SHR decide by CEA – 10.05.2022

Cfwcs to:-

- The Managing Director, Gujarat Urja Vikas Nigam Ltd., Vadodara.
- The Resident Director, EPGL, IT Tower - 1, Info city, Gandhinagar.

भारत सरकार/Government of India
विद्युत मंत्रालय/Ministry of Power
केन्द्रीय विद्युत प्राधिकरण/Central Electricity Authority
तापीय परियोजना प्रबोधन प्रभाग/Thermal Project Monitoring Division
****

No. CEA/TPM/EPGL/2023/134 Dated: 03-03.2023

Officer on Special Duty (Power),
Government of Gujarat:
Energy and Petrochemicals Department,
Block No. 5, 5th Floor, Sardar Bhavan,
Sachivalaya, Gandhinagar, Gujarat

Subject: Technical recommendation for Station Heat Rate in case of M/s. Essar Power Gujarat Ltd., Salaya Thermal Power Plant– reg.

Reference is invited to letter dated 17.02.23 from OSD (Power), Energy and Petrochemicals Department, Govt. of Gujarat, addressed to Chairman, CEA, on the above mentioned subject. OSD (Power), Govt. of Gujarat has stated that Essar Power Gujarat Limited (EPGL) has signed supplemental PPA with GUVNL as per Government of Gujarat's guidelines dated 12.6.2020 wherein SHR for computation of energy charges shall be considered as lower of actual or 2262 kcal/kWh.

Further, Government of Gujarat has received representation from EPGL informing that it's technically not possible to achieve Gross Station Heat Rate (SHR) of 2262 kcal/kWh and has requested to revise SHR to 2333 kcal/kWh for Salaya TPP in line with CEA terms as endorsed by Expert Committee of Ministry of Power. Government of Gujarat has, therefore, requested to examine the matter and provide technical recommendation of CEA to State Government regarding SHR to be considered in respect of EPGL's Salaya TPP.

In this regard it is stated that in the meeting held on, 02.05.2022 under the Chairmanship of Hon'ble Minister of Power & NRE, CEA was directed to verify the SHR of Salaya TPP. CEA vide letter dated 06.05.2022 has already submitted the detailed report to MoP and has recommended that the normative heat rate of 2333 kcal/kWh may be considered for Salaya Thermal Power Plant.

This issues with the approval of Chairperson, CEA

भवदीय
03/03/2023
(जे. एन. प्रसाद)
मुख्य अभियंता (टी.पी.एम.)

9 वी तल (दक्षिण), सेवा भवन, आर.के. पुरम, नई दिल्ली-110066, टेली: 011-26732904,ई-मेल: cea-tmd@nic.in, वेबसाईट: www.cea.nic.in
9th Floor (S), Sewa Bhawan, R.K.Puram, New Delhi-110066, Tele: 011-26732904, E-mail: cea-tmd@nic.in Website: www.cea.nic.in

Annexure - L

Manoj Patel
Officer on Special Duty
(Power)

No.EPG-12-2019-15-K
Government of Gujarat,
Energy and Petrochemicals Department,
Block No. 5, 5th Floor, Sardar Bhavan,
Sachivalaya, Gandhinagar.
Dated : 10 OCT 2023

Confidential

To,
The Managing Director
Gujarat Urja Vikas Nigam Ltd.,
Vidyut Bhavan, Race Course,
Vadodara - 390 007

Subject:- Modification in Supplemental PPA dated 12.08.2021 between GUVNL and EPGL - reg.
Ref: GUVNL's letter no. GUVNL/COMM/1111 dated 21.08.2023
GUVNL's letter no. GUVNL/COMM/1149 dated 25.08.2023

Sir,

I am directed to refer to GUVNL's letters under reference on the subject noted above and the proposal of GUVNL regarding Modification in SPPA dated 12.08.2021 between GUVNL and M/s. EPGL, was examined and considered by the State Government.

2. After careful consideration, the State Government is according an approval for modification of SPPA dated 12.08.2021 between GUVNL and M/s. EPGL on the following aspects:-

i. Removal of "HBA Index Ceiling" of US $ 90/MT under SPPA w.e.f. 01.01.2023.
ii. Approval for modification of "SHR" from 2262 Kcal/kwh to 2333 kcal/kwh in SPPA as per CEA recommendations which would be effective from 01.01.2023 subject to approval of GERC and any differential payment on account of revision in SHR shall be due and payable only after necessary approval of GERC.

3. I am, therefore, to request you to take appropriate actions accordingly and the same may be intimated to this Department, at the earliest please.

Yours faithfully,

(Manoj Patel)
Officer on Special Duty (Power)
Energy and Petrochemicals Department

17/10/2023
17/(COM)
CFM
17/10/2023
→DE(CSP) Pls put up
21/10/23

ESSAR
POWER

Essar Power Gujarat Limited
Ground Floor, 14/15,
IT Tower 1, Infocity,
Gandhinagar - 382 009
Gujarat, India.

T +91 79 4754 1000
F +91 79 4754 1020
www.essar.com

20 December 2023

Mr. J.J. Gandhi
General Manager (Commerce)
Gujarat Urja Vikas Nigam Limited
Sardar Patel Vidyut Bhavan
Vadodara, Gujarat

WITHOUT PREJUDICE

Dear Sir:

Sub: Draft Supplemental Power Purchase Agreement to amend the power purchase agreement dated 26 February 2007 and supplemental power purchase agreement dated 12 August 2021 sent *vide* email dated 20 December 2023

We write to you in reference to the captioned draft supplemental power purchase agreement which was sent to us today, i.e., 20 December 2023 *vide* email. We hereby accord our unconditional consent to execute the enclosed draft supplemental power purchase agreement.

We request you to execute the draft supplemental power purchase agreement expeditiously.

Yours sincerely

Prateek Garg
(Head Commercial)
Essar Power Gujarat Limited

Encl: (1) Draft Supplemental Power Purchase Agreement

Pratik Joshi

From: "Pratik Joshi" <dycao@gebmail.com>
Date: 20 December 2023 11:04
To: <bhaven.bhatt@essarport.co.in>; <kush.s@essarpower.co.in>; <prateek.garg@essarpower.co.in>; <gaurav.ray@essarpower.co.in>
Cc: "Director Finance" <df.guvnl@gebmail.com>; "GM Commerce" <coacom@gebmail.com>; "'VIPUL LATHIYA DE COMM'" <de1csp.guvnl@gebmail.com>
Attach: Draft SPPA with EPGL 19.12.2023.pdf
Subject: Draft SPPA with EPGL 19.12.2023

Sir,

As directed, I am hereby sending the draft version of the Supplemental PPA (5th) for amendment to SPPA dated 12.08.2021.

You are requested to kindly convey your unconditional consent to the same.

Regards

GUVNL

SUPPLEMENTAL AGREEMENT

THIS AMENDMENT to **THE FOURTH SUPPLEMENTAL POWER PURCHASE AGREEMENT** (hereinafter **'FIFTH SUPPLEMENTAL AGREEMENT')** dated _____ is entered into at Vadodara, Gujarat on the ___ day of _____ , Two Thousand And Twenty Three by and

BETWEEN

M/s Essar Power Gujarat Ltd., a Company incorporated under the erstwhile Companies Act, 1956 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, a Government of Gujarat Undertaking and a Company incorporated under the erstwhile Companies Act, 1956 having its registered office at Sardar Patel Vidyut Bhavan, Vadodara (hereinafter referred to as the **"Procurer"** or **"GUVNL"** 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 have executed a Power Purchase Agreement dated 26.02.2007, which was amended by Assignment Agreement dated

25.11.2008 from Essar Power Limited to EPGL and Supplemental Power Purchase Agreement dated 16.10.2009 (hereinafter collectively referred to as the **"PPA"**), for the sale and purchase of electricity in accordance with the terms and conditions contained therein;

B. The Government of Gujarat, vide Government Resolution No. CGP-12-2018-166-K dated 3.07.2018 constituted a High Power Committee to, inter alia, suggest sustainable solutions for facilitating the power generation projects located in the state of Gujarat and based on imported Indonesian coal as fuel including the Seller herein, on account of representations made by such power generation projects as to the viability of their continued operation after the decision of the Hon'ble Supreme Court in Energy Watchdog Vs Central Electricity Regulatory Commission (2017) 14 SCC 80 that no relief is admissible to such projects under the terms of the PPA entered into by Procurer with such projects;

C. The High Power Committee submitted its Report on 3.10.2018 making certain recommendations for resolving the said issues;

D. The Government of Gujarat accepted the recommendations of the High Power Committee with certain modifications and, issued its policy directions contained in Resolution No. CGP-12-2018-166-K dated 1.12.2018 (Hereinafter referred to as "the Implementation Policy");

E. The implementation of the said policy directions contained in the Implementation Policy required, inter alia, carrying out certain amendments to the PPA, and obtaining necessary approvals for these amendments, from the Appropriate Commission;

F. Article 18.1 of the PPA enabled the Parties to amend the provisions of the PPA by written agreement however subject to the condition that any such

supplemental agreement can be effective and valid only on the approval by the Appropriate Commission;

G. The Seller and the Procurer had then executed a Supplemental Agreement dated 01.03.2019 and further entered into First and Second Addendums to the Supplemental Agreement which were subject to the approval to the Supplemental Agreement by the Gujarat Electricity Regulatory Commission (the **'Hon'ble GERC'**) being the Appropriate Commission under the terms of the PPA;

H. The Hon'ble GERC vide order dated 27.04.2020 in Petition 1807/2019 after hearing the parties and receiving representation from Consumer organizations gave a conditional approval to the Supplemental Agreement dated 01.03.2019 by directing the Parties to carry out certain modifications in the Supplemental Agreement as stated in the order dated 27.04.2020;

I. In the meanwhile, the Government of Gujarat was of the considered view that the Govt. of Gujarat GR dated 1.12.2018 was not achieving the objective and purpose for which it was resolved and to further safeguard the public interest, Govt. of Gujarat vide GR dated 12.06.2020 has revoked earlier GR dated 1.12.2018 for all intent and purposes. Govt. of Gujarat has issued Guidelines dated 12.06.2020 for signing of Supplemental Agreement between Procurer (GUVNL) & Sellers of imported coal based power plants including EPGL with modified terms and conditions as per GERC order dated 27.04.2020 and in accordance with terms stated in Guidelines dated 12.06.2020;

J. Govt. of Gujarat vide GR dated 5.06.2021 has accorded approval for signing of SPPA between GUVNL and EPGL in accordance with the Hon'ble GERC order dated 27.04.2020 and Govt. Guidelines dated 12.06.2020 considering the effective date of SPPA to be the date of approval of revised SPPA by GERC and allowing to tie up 122 MW untied capacity from EPGL project under the

SPPA. Moreover, Govt. of Gujarat in line with the GERC order dated 27.04.2020 had decided that HBA Index Ceiling Price under SPPA shall be USD 90/MT (HBA Indonesian Index) which shall not be subject to further revision without prior approval of State Government and Hon'ble GERC;

K. Accordingly, the Parties modified the Supplemental Agreement dated 01.03.2019 earlier signed by them in due compliance of the conditions contained in the Order dated 27.04.2020 passed by the Hon'ble GERC, Govt. of Gujarat Guidelines 12.06.2020 and GR dated 05.06.2021.

L. The GERC vide order dated 20.11.2021 in Petition No. 2004 of 2021 after hearing the parties and receiving representation from Consumer organizations gave approval to the Fourth Supplemental Power Purchase Agreement dated 12.8.2021. The SPPA provided for HBA Index ceiling for imported coal price at 90 USD / MT & Gross Heat Rate (GHR) at lower of (a) actual Gross Station Heat Rate or (b) 2262 Kcal / kwh as approved by Hon'ble Gujarat Electricity Regulatory Commission in Petition. No. 1296/2013

M. Pursuant to approval of revised Supplemental PPA by Hon'ble GERC, EPGL has not been commencing supply of power under the PPA / SPPA citing HBA Index ceiling of USD 90 / MT. EPGL has been discontinuing power supply and repeatedly representing to the Government of Gujarat regarding difficulties faced in its operations due to HBA Index Ceiling of USD 90/MT for imported coal and its inability to operate its plant due to steep hike in the cost of imported coal.;

N. Energy & Petrochemicals Dept., Govt. of Gujarat vide letter dated 10.01.2023 conveyed the Minutes of Meeting dated 23.12.2022 with regard to EPGL's proposal for removal of HBA Index Ceiling with effect from 1.1.2023 and modification in Gross Station Heat Rate with due approval of Hon'ble GERC.

O. Subsequently, Government of Gujarat has taken considered view on the representations of Essar Power Gujarat Limited and Energy & Petrochemical department vide letter EPG-12-2019-15-dated 10th October,2023 has conveyed its approval for modification of SPPA dated 12.08.2021 between GUVNL and M/s EPGL on the following aspects:

I. Removal of "HBA Index Ceiling" of USD 90/MT under SPPA **w.e.f. 1.1.2023**

II. Approval for modification of "SHR" from 2262 Kcal/Kwh to 2333 kcal/Kwh in SPPA as per CEA recommendations which would be effective from 01.01.2023

Both subject to approval of Hon'ble GERC and any differential payment on account of revision in SHR shall be due and payable only after necessary approval of Hon'ble GERC.

P. In the above backdrop and subsequent directive, this Amendment to FOURTH Supplemental Agreement is being entered into between the parties to substitute and replace the clauses in the Supplemental Power Purchase Agreement Dated 12th August, 2021 stated above and other matters set out herein.

NOW THEREFORE, in consideration of the premises, mutual agreements, covenants and conditions set forth in this Fifth Supplemental Agreement, it is hereby agreed by and between the Parties as follows:

1. The Parties agree as follows:

(i) The Amendment Effective Date shall be **January 1, 2023** i.e. the date with effect from which, this amendment to the Fourth Supplemental Agreement shall become effective and binding upon parties subject to approval of Hon'ble GERC.

(ii) It is agreed that the HBA Index Ceiling of USD 90 / MT for 6322 GCV coal as mentioned under Clause 3 of the Supplemental PPA dated 12.08.2021 shall stand removed w.e.f 1.1.2023. For avoidance of doubt, HBA Index ceiling of USD 90 / MT shall not be applicable while computation of Energy Charge for energy supplied from 1.1.2023 onwards subject to consideration of lower of (a) to (e) under the FOB cost of coal under Clause 3.2.4 (I) of SPPA dated 12.08.2021.

(iii) At Clauses 3.2.3 and 3.5.3 of SPPA dated 12.08.2021, the definition of GHR is to be substituted and replaced by the following:

"GHR = Lower of (a) actual Gross station heat rate or (b) 2333 Kcal per kWh as recommended by Central Electricity Authority, Govt. of India"

It is agreed that the modification in Station Heat Rate as per CEA recommendations shall be effective from 01.01.2023.

The above amendments shall be subject to requisite approval of Hon'ble GERC and any differential payment on account of revision in Station Heat Rate shall be due and payable in accordance with and only after necessary approval of Hon'ble GERC.

(iv) In view of the relief being allowed to EPGL project pursuant to Govt. of Gujarat decision(s), it is agreed that any change in ownership of Essar Power Gujarat Ltd.'s Salaya Power Project (1200 MW) shall only be done with the prior intimation of any such move and only with prior approval of the Govt. of Gujarat and Hon'ble GERC.

(v) All pending suits / petitions / appeals / cases / litigations etc. filed by EPGL before any judicial fora or any claims of EPGL qua GUVNL shall be withdrawn by EPGL except related to Change in Law claims under the PPA.

2. This Fifth Supplemental Agreement is subject to the approval by Hon'ble GERC and shall be enforceable only upon such approval by Hon'ble GERC w.e.f 1.1.2023.

3. Except for the above all other terms & conditions of the existing PPA read with the existing SPPA(s) shall remain unchanged and shall be effective as before and be read as a part of this Supplemental Agreement.

4. Subject to the above, this Fifth Supplemental Agreement shall be read as an integral part of the PPA dated 26.02.2007 read with Supplemental PPA(s) entered into between the parties as amended from time to time.

In Witness Whereof the Parties have executed this **Fifth 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)** _____ Authorized Signatory WITNESSES 1._____ ( ) 2. _____ ( )	FOR AND ON BEHALF OF **M/s Gujarat Urja Vikas Nigam Ltd. (GUVNL)** _____ Authorized Signatory WITNESSES 1._____ ( ) 2. _____ ( )

GUVNL

Gujarat Urja Vikas Nigam Limited

Sardar Patel Vidyut Bhavan, Race Course, Vadodara: 390 007

CIN U40109GJ2004SGC045195

An ISO 9001:2015 Certified Company
Phone: 0265-2311797, Fax No. 0265-2327483
www.guvnl.com
e-mail : de1csp.guvnl@gebmail.com

Azadi Ka Amrit Mahotsav

GUVNL/Comm./CSP/EPGL/SPPA/16 | 1 | Date : 02-01-2024

To
Managing Director
Essar Power Gujarat Limited,
44 KM Milestone, Jamnagar – Okha Highway,
PO Box- no: 07, Khambhalia P.O
Devbhumi Dwarka -361 305

E-mail. Ashish.Mehta@essarpower.co.in

Sub: Fifth Supplemental Agreement for amendment to SPPA 12.08.2021 – Reg.

Ref: 1- Government of Gujarat GR dated 05-06-2021
2- Supplemental Power Purchase Agreement dated 12-08-2021

Sir,

This is in reference to various representations made by EPGL before State Govt. and GUVNL requesting the (i) Removal HBA Index Ceiling of USD 90/MT and (ii) Regarding modification in Station Heat Rate under the Supplemental PPA dated 12-08-2021 approved by Hon'ble GERC vide order dated 20.11.2021.

In compliance to the directive and approval received from State Govt., GUVNL vide email dated 20.12.2023 had forwarded the draft of SPPA and EPGL vide letter dated 20.12.2023 has accorded its unconditional consent to the draft SPPA forwarded by GUVNL.

In the above context, EPGL is requested to take appropriate actions for withdrawal of pending suits / petitions / appeals / cases / litigations etc. as per Para 1 (v) of draft SPPA in compliance to the consent given and submit the copy of the affidavit(s) filed before various judicial fora for withdrawal of the matter / cases with GUVNL.

In view of above, EPGL is requested to take appropriate action towards compliance for signing of SPPA and approach GUVNL for signing of SPPA along with Letter of Authorization from Board of Directors, Stamp Papers & ID proof of signatory with prior confirmation of GUVNL. The finalized draft of fifth SPPA is attached herewith for reference.

Thanking you,

Yours Sincerely,

(J. J. Gandhi)
General Manager (Commerce)

C.F.W.Cs to
The Director (Finance), GUVNL

SUPPLEMENTAL AGREEMENT

THIS AMENDMENT to **THE FOURTH SUPPLEMENTAL POWER PURCHASE AGREEMENT** (hereinafter **'FIFTH SUPPLEMENTAL AGREEMENT'**) dated _____ is entered into at Vadodara, Gujarat on the ___ day of _____ , Two Thousand And Twenty Three by and

BETWEEN

M/s Essar Power Gujarat Ltd., a Company incorporated under the erstwhile Companies Act, 1956 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, a Government of Gujarat Undertaking and a Company incorporated under the erstwhile Companies Act, 1956 having its registered office at Sardar Patel Vidyut Bhavan, Vadodara (hereinafter referred to as the **"Procurer"** or **"GUVNL"** 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 have executed a Power Purchase Agreement dated 26.02.2007, which was amended by Assignment Agreement dated

25.11.2008 from Essar Power Limited to EPGL and Supplemental Power Purchase Agreement dated 16.10.2009 (hereinafter collectively referred to as the "**PPA**"), for the sale and purchase of electricity in accordance with the terms and conditions contained therein;

B. The Government of Gujarat, vide Government Resolution No. CGP-12-2018-166-K dated 3.07.2018 constituted a High Power Committee to, inter alia, suggest sustainable solutions for facilitating the power generation projects located in the state of Gujarat and based on imported Indonesian coal as fuel including the Seller herein, on account of representations made by such power generation projects as to the viability of their continued operation after the decision of the Hon'ble Supreme Court in Energy Watchdog Vs Central Electricity Regulatory Commission (2017) 14 SCC 80 that no relief is admissible to such projects under the terms of the PPA entered into by Procurer with such projects;

C. The High Power Committee submitted its Report on 3.10.2018 making certain recommendations for resolving the said issues;

D. The Government of Gujarat accepted the recommendations of the High Power Committee with certain modifications and, issued its policy directions contained in Resolution No. CGP-12-2018-166-K dated 1.12.2018 (Hereinafter referred to as "the Implementation Policy");

E. The implementation of the said policy directions contained in the Implementation Policy required, inter alia, carrying out certain amendments to the PPA, and obtaining necessary approvals for these amendments, from the Appropriate Commission;

F. Article 18.1 of the PPA enabled the Parties to amend the provisions of the PPA by written agreement however subject to the condition that any such

supplemental agreement can be effective and valid only on the approval by the Appropriate Commission;

G. The Seller and the Procurer had then executed a Supplemental Agreement dated 01.03.2019 and further entered into First and Second Addendums to the Supplemental Agreement which were subject to the approval to the Supplemental Agreement by the Gujarat Electricity Regulatory Commission (the '**Hon'ble GERC**') being the Appropriate Commission under the terms of the PPA;

H. The Hon'ble GERC vide order dated 27.04.2020 in Petition 1807/2019 after hearing the parties and receiving representation from Consumer organizations gave a conditional approval to the Supplemental Agreement dated 01.03.2019. by directing the Parties to carry out certain modifications in the Supplemental Agreement as stated in the order dated 27.04.2020;

I. In the meanwhile, the Government of Gujarat was of the considered view that the Govt. of Gujarat GR dated 1.12.2018 was not achieving the objective and purpose for which it was resolved and to further safeguard the public interest, Govt. of Gujarat vide GR dated 12.06.2020 has revoked earlier GR dated 1.12.2018 for all intent and purposes. Govt. of Gujarat has issued Guidelines dated 12.06.2020 for signing of Supplemental Agreement between Procurer (GUVNL) & Sellers of imported coal based power plants including EPGL with modified terms and conditions as per GERC order dated 27.04.2020 and in accordance with terms stated in Guidelines dated 12.06.2020;

J. Govt. of Gujarat vide GR dated 5.06.2021 has accorded approval for signing of SPPA between GUVNL and EPGL in accordance with the Hon'ble GERC order dated 27.04.2020 and Govt. Guidelines dated 12.06.2020 considering the effective date of SPPA to be the date of approval of revised SPPA by GERC and allowing to tie up 122 MW untied capacity from EPGL project under the

SPPA. Moreover, Govt. of Gujarat in line with the GERC order dated 27.04.2020 had decided that HBA Index Ceiling Price under SPPA shall be USD 90/MT (HBA Indonesian Index) which shall not be subject to further revision without prior approval of State Government and Hon'ble GERC;

K. Accordingly, the Parties modified the Supplemental Agreement dated 01.03.2019 earlier signed by them in due compliance of the conditions contained in the Order dated 27.04.2020 passed by the Hon'ble GERC, Govt. of Gujarat Guidelines 12.06.2020 and GR dated 05.06.2021.

L. The GERC vide order dated 20.11.2021 in Petition No. 2004 of 2021 after hearing the parties and receiving representation from Consumer organizations gave approval to the Fourth Supplemental Power Purchase Agreement dated 12.8.2021. The SPPA provided for HBA Index ceiling for imported coal price at 90 USD / MT & Gross Heat Rate (GHR) at lower of (a) actual Gross Station Heat Rate or (b) 2262 Kcal / kwh as approved by Hon'ble Gujarat Electricity Regulatory Commission in Petition. No. 1296/2013

M. Pursuant to approval of revised Supplemental PPA by Hon'ble GERC, EPGL has not been commencing supply of power under the PPA / SPPA citing HBA Index ceiling of USD 90 / MT. EPGL has been discontinuing power supply and repeatedly representing to the Government of Gujarat regarding difficulties faced in its operations due to HBA Index Ceiling of USD 90/MT for imported coal and its inability to operate its plant due to steep hike in the cost of imported coal.;

N. Energy & Petrochemicals Dept., Govt. of Gujarat vide letter dated 10.01.2023 conveyed the Minutes of Meeting dated 23.12.2022 with regard to EPGL's proposal for removal of HBA Index Ceiling with effect from 1.1.2023 and modification in Gross Station Heat Rate with due approval of Hon'ble GERC.

O. Subsequently, Government of Gujarat has taken considered view on the representations of Essar Power Gujarat Limited and Energy & Petrochemical department vide letter EPG-12-2019-15-dated 10th October,2023 has conveyed its approval for modification of SPPA dated 12.08.2021 between GUVNL and M/s EPGL on the following aspects:

I. Removal of "HBA Index Ceiling" of USD 90/MT under SPPA **w.e.f. 1.1.2023**

II. Approval for modification of "SHR" from 2262 Kcal/Kwh to 2333 kcal/Kwh in SPPA as per CEA recommendations which would be effective from 01.01.2023

Both subject to approval of Hon'ble GERC and any differential payment on account of revision in SHR shall be due and payable only after necessary approval of Hon'ble GERC.

P. In the above backdrop and subsequent directive, this Amendment to FOURTH Supplemental Agreement is being entered into between the parties to substitute and replace the clauses in the Supplemental Power Purchase Agreement Dated 12th August, 2021 stated above and other matters set out herein.

NOW THEREFORE, in consideration of the premises, mutual agreements, covenants and conditions set forth in this Fifth Supplemental Agreement, it is hereby agreed by and between the Parties as follows:

1. The Parties agree as follows:

(i) The Amendment Effective Date shall be **January 1, 2023** i.e. the date with effect from which, this amendment to the Fourth Supplemental Agreement shall become effective and binding upon parties subject to approval of Hon'ble GERC.

(ii) It is agreed that the HBA Index Ceiling of USD 90 / MT for 6322 GCV coal as mentioned under Clause 3 of the Supplemental PPA dated 12.08.2021 shall stand removed w.e.f 1.1.2023. For avoidance of doubt, HBA Index ceiling of USD 90 / MT shall not be applicable while computation of Energy Charge for energy supplied from 1.1.2023 onwards subject to consideration of lower of (a) to (e) under the FOB cost of coal under Clause 3.2.4 (I) of SPPA dated 12.08.2021.

(iii) At Clauses 3.2.3 and 3.5.3 of SPPA dated 12.08.2021, the definition of GHR is to be substituted and replaced by the following:

"GHR = Lower of (a) actual Gross station heat rate or (b) 2333 Kcal per kWh as recommended by Central Electricity Authority, Govt. of India"

It is agreed that the modification in Station Heat Rate as per CEA recommendations shall be effective from 01.01.2023.

The above amendments shall be subject to requisite approval of Hon'ble GERC and any differential payment on account of revision in Station Heat Rate shall be due and payable in accordance with and only after necessary approval of Hon'ble GERC.

(iv) In view of the relief being allowed to EPGL project pursuant to Govt. of Gujarat decision(s), it is agreed that any change in ownership of Essar Power Gujarat Ltd.'s Salaya Power Project (1200 MW) shall only be done with the prior intimation of any such move and only with prior approval of the Govt. of Gujarat and Hon'ble GERC.

(v) All pending suits / petitions / appeals / cases / litigations etc. filed by EPGL before any judicial fora or any claims of EPGL qua GUVNL shall be withdrawn by EPGL except related to Change in Law claims under the PPA.

2. This Fifth Supplemental Agreement is subject to the approval by Hon'ble GERC and shall be enforceable only upon such approval by Hon'ble GERC w.e.f 1.1.2023.

3. Except for the above all other terms & conditions of the existing PPA read with the existing SPPA(s) shall remain unchanged and shall be effective as before and be read as a part of this Supplemental Agreement.

4. Subject to the above, this Fifth Supplemental Agreement shall be read as an integral part of the PPA dated 26.02.2007 read with Supplemental PPA(s) entered into between the parties as amended from time to time.

In Witness Whereof the Parties have executed this **Fifth 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)** _____ Authorized Signatory WITNESSES 1._____ ( ) 2. _____ ( )	FOR AND ON BEHALF OF **M/s Gujarat Urja Vikas Nigam Ltd. (GUVNL)** _____ Authorized Signatory WITNESSES 1._____ ( ) 2. _____ ( )

Annexure - O

ESSAR
POWER

Essar Power Gujarat Limited
44 KM Milestone
Jamnagar - Okha Highway
P. O. Box No. 07
Khambhalia P. O.
Dist. Devbhumi Dwarka - 361 305
Gujarat, India.
T +91 2833 663 030
F +91 2833 663 382
www.essar.com

Date: 04/01/2024

To,

Shri JJ Gandhi,

General Manager (Commerce),

GUVNL, Sardar Patel VidyutBhavan,

Race Course, Vadodara- 390007

C.E. (REGIPP)
A.C.E. (Comm)
Dy. CAO (Comm)
DY. CAO (Acctt)
E.E. (Tariff)/(CSP) Pls. verify
D.E.(CSP)/ (Trading)/ (Tariff)
P. S.
04 JAN 2024

Sub: Fifth Supplemental Agreement for amendment to SPPA dated 12/08/2021

Ref. 1) Power Purchase Agreement Dated 26/02/2007

2) Government of Gujarat GR dated 05/06/2021

3) Supplemental Power Purchase Agreement dated 12/08/2021

4) GUVNL letter to EPGL on subject matter dated 02/01/2024

Dear Sir,

We are in receipt of the draft Fifth Supplemental Agreement for amendment to SPPA dated 12/08/2021 for amendment to Power Purchase Agreement dated 26/02/2007 and have perused the same. We are in agreement to modified terms of the draft Fifth Supplemental Agreement for amendment to SPPA and are willing to execute the same in its present form.

We would like to inform that Mr. Prateek Garg, Vice President – Commercial, has been authorized by the Board for signing the SPPA (Enclosed Board Resolution of EPGL and KYC document of Mr. Prateek Garg).

Further, we would like to inform that application of withdrawal for the cases*(Withdrawal Applications Enclosed)* has been filed by EPGL as detailed below:

Case No	Forum	Application of Withdrawal Date
M.A. (Diary) No 32487 of 2023 in Civil Appeal No – 9324-9325 of 2016	SUPREME COURT	04/01/2024
457 of 2022	APTEL	04/01/2024
2241 of 2023	GERC	04/01/2024

CRM
4/1/2024

We request you to arrange for execution of the SPPA on 05/01/2024.

Post execution of the SPPA, request you to expedite early approval from Hon'ble Gujarat Electricity Regulatory Commission (GERC).

Thanking you,

Yours truly,

For Essar Power Gujarat Limited

Authorized Signatory

Enclosure:

1) Board Resolution for Signing of the SPPA
2) KYC document of Mr Prateek Garg
3) Application of Withdrawal at various judicial forums

BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION AT GANDHINAGAR

PETITION 2241 OF 2023

IN THE MATTER OF:

Essar Power Gujarat Limited ...Petitioner

v.

Gujarat Urja Vikas Nigam Limited ...Respondent

APPLICATION SEEKING LIBERTY TO WITHDRAW THE PRESENT PETITION

MOST RESPECTFULLY SHOWETH:

1. The Petitioner is filing the present application seeking leave of this Hon'ble Commission to withdraw the prayers in the present petition for the reasons set out herein.

2. The present petition was filed under Section 11 of the Electricity Act, 2003 seeking suitable compensation from the Respondent to offset the adverse financial impact suffered by the Petitioner arising out of the directions dates 5.5.2022 and 20.2.2023 issued under Section 11.

3. Since January 2023, the Petitioner and the Respondent have been engaged in discussions to settle certain issues on the coal ceiling and the SHR in their supplemental power purchase agreement executed in 2021. The Petitioner and the Respondent GUVNL have reached a settlement. The formal agreement with the settled terms will take effect from 1.1.2023 and is expected to be executed imminently.

4. As the formal agreement will take effect from 1.1.2023 and the claim in the present petition *inter alia* covers a period in 2023, the Petitioner is withdrawing the prayers in the present petition.

5. The Petitioner also craves leave to file the executed formal agreement (i.e., the fifth supplemental power purchase

agreement), if necessary. In the event the formal agreement (i.e., the fifth supplemental power purchase agreement) is not executed or approved on agreed-upon terms, the Petitioner reserves its right to withdraw the present application or to seek restoration of the underlying petition, as the case may be.

6. This application has been filed *bona fide* and in the interest of justice.

PRAYER

7. In light of the foregoing, the Petitioner most respectfully prays that this Ld. Commission be pleased to:

a. Pass an order allowing the Petitioner to withdraw the prayers in the present petition; and

b. Any other relief that this Hon'ble Commission may deem fit and proper in the circumstances.

ESSAR POWER GUJARAT LTD.

Essar Power Gujarat Limited

Petitioner

DECLARATION:

The subject matter of the present Application has not been raised by the Petitioner before any other competent forum, and no other competent forum is currently seized of the matter or has passed any orders in relation thereto.

ESSAR POWER GUJARAT LTD.

Date: 03.01.2024

Place: Ahmedabad

Essar Power Gujarat Limited

Petitioner

BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION AT GANDHINAGAR

PETITION 2241 OF 2023

IN THE MATTER OF:

Essar Power Gujarat Limited ...Petitioner

v.

Gujarat Urja Vikas Nigam Limited ...Respondent

AFFIDAVIT

I, Sanjay Shah S/o. Hamendrabhai Shah aged adult years, Indian Inhabitant, residing at Ahmedabad do hereby solemnly affirm and say as follows:

1. That I am authorized signatory of the Petitioner Essar Power Gujarat Limited herein and I am competent and duly authorized by the Petitioner Company to file this Application.
2. The statements made in the Application herein are true to my knowledge. The statements made in Paragraph 1 to 6 of the Application are based on information and belief gathered from the record of the Applicant and I believe them to be true.
3. Paragraph 7 is prayer clause in the captioned Application.

Solemnly affirmed at Ahmedabad on this 3rd day of January, 2024 that the contents of the above affidavit are true to my knowledge and no part of it is false and nothing material has been concealed therefrom.

Solemnly Affirmed & Signed Before Me

YOGENDRA S. RAJPUT
NOTARY PUBLIC
GOVT. OF INDIA
(MY COMMISSION EXPIRES ON DT. 24-02-2025)

- 3 JAN 2024

DEPONENT

ESSAR POWER GUJARAT LTD.

IDENTIFIED BY ME

ADVOCATE

BEFORE THE HON'BLE APPELLATE TRIBUNAL FOR ELECTRICITY AT NEW DELHI, AT NEW DELHI

APPELLATE JURISDICTION

I.A. NO. ____OF 2024

IN

APPEAL NO. 457 /2022

IN THE MATTER OF:

Essar Power Gujarat Limited ...Appellant

VERSUS

Gujarat Electricity Regulatory Commission & Ors. ...Respondents

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2.	Proof of service	7

FILED BY

MAHESH AGARWAL/RISHI AGRAWALA
ADVOCATES FOR THE APPELLANT
AGARWAL LAW ASSOCIATES
19, BABAR ROAD, BENGALI MAKRET
NEW DELHI - 110 001
(M) 9910483627
EMAIL: mail@aglaw.in, geetika.sharma@aglaw.in

PLACE: NEW DELHI
DATED: 03.01.2024

BEFORE THE HON'BLE APPELLATE TRIBUNAL FOR ELECTRICITY AT NEW DELHI, AT NEW DELHI

APPELLATE JURISDICTION

I.A. NO. ____OF 2024

IN

APPEAL NO. 457 /2022

IN THE MATTER OF:

Essar Power Gujarat Limited ...Appellant

VERSUS

Gujarat Electricity Regulatory Commission & Ors. ...Respondents

APPLICATION SEEKING LIBERTY TO WITHDRAW THE APPEAL (APPEAL NO. 457/2022) UNDER SECTION 120(1) OF THE ELECTRICITY ACT, 2003 READ WITH RULE 30 OF THE APPELLATE TRIBUNAL FOR ELECTRICITY (PROCEDURE, FORM, FEES AND RECORD OF PROCEEDINGS) RULES, 2007

MOST RESPECTFULLY SHOWETH:

1. The Appellant is filing the present application seeking leave of this Hon'ble Tribunal to withdraw the existing prayers in the present appeal (Appeal No. 457/2022) for the reasons set out herein.

2. The underlying appeal (Appeal No. 457/2022) was filed under Section 111 of the Electricity Act, 2003 challenging the order

Essar Power Gujarat Limited

dated 20.11.2021 passed by the Ld. Gujarat Electricity Regulatory Commission, Gandhinagar in Petition No. 2004 of 2021, wherein the Ld. GERC has approved the Supplementary Power Purchase Agreement between the Appellant and Respondent No. 2 Gujarat Urja Vikas Nigam Limited (the "**Respondent GUVNL**") dated 12.08.2021 (the "**2021 SPPA**") containing onerous, discriminatory and unreasonable terms which had rendered the Appellant's power project unviable. The existing prayers in the appeal are reproduced below:

"(A) Set aside the impugned order of the GERC dt. 20.11.2021 in Petition No. 2004 of 2001 to the extent it approved the following in the SPPA dated 12.08.2021,

A.1. Upper ceiling limit of HBA Index of USD 90/MT towards FOB price of coal, ***[Clause 3.2.4 (II) (a) of 2021 SPPA & Paragraph 19.36 of the Impugned Order]***

A.2. Gross SHR of 2262 kcal/kWh ***[Clause 3.2.3 and 3.5.3 of 2021 SPPA & Paragraph 19.25 of the Impugned Order],***

A.3. Normative availability as 90%, for the purpose of determining the incentive to the Appellant, on account of Energy Schedule being higher than Normative Availability ***[Clause 3.2.5 of 2021 SPPA & Paragraph 19.38].***

(B) This Tribunal may be pleased to direct substitution of the following in the SPPA

B.1. Removal of upper ceiling limit towards FOB price of coal

Adani Power Gujarat Limited

B.2 Gross Station Heat Rate of 2333 in kCal /kWh,

B.3 Transit Losses of 0.2% as a part of the "Transportation Charges" for Fuel.

[Deleted from Clause 3.2.4 (I) of Original PPA]

B.4 Normative availability as 85%, for the purpose of determining the incentive to the Appellant, on account of Energy Schedule being higher than Normative Availability.

*(C) **In the alternative to Prayer (B),** adoption of the terms with regard to FOB Ceiling price of Coal, SHR, Incentive above Normative Availability and Transit Losses as has been done in the Government Resolution dated 25.02.2022 **(Annexure-13)** and the Order of the Ld. CERC dated 13.06.2022 in Pet No. 111/MP/2022 **(Annexure - 17)**.*

(D) Pass an order striking down/deleting Clause 3.2.4 (II) (c) of the SPPA to the extent that it requires the approval of the Ld. GERC and GUVNL in order for the coal procured by the Appellant to qualify for energy charges;

(E) Pass an order or direction granting port charges which shall be linked to applicable escalation rates notified by Hon'ble CERC from time to time.

(F) Pass any other order(s) as this Hon'ble Tribunal may deem fit in the interest of equity and justice."

3. Since January 2023, the Appellant and the Respondent GUVNL have been engaged in discussions to settle the matter amicably. The Appellant and the Respondent GUVNL have reached a settlement regarding the onerous and illegal terms

in the 2021 SPPA. The formal agreement (i.e., the fifth supplemental power purchase agreement) with the settled terms will take effect from 1.1.2023 and is expected to be executed imminently.

4. The Appellant also craves leave to file the executed formal agreement (i.e., the fifth supplemental power purchase agreement), if necessary. In the event the formal agreement (i.e., the fifth supplemental power purchase agreement) is not executed or approved on agreed-upon terms, the Appellant reserves its right to withdraw the present application or to seek restoration of the underlying appeal, as the case may be.

5. This application has been filed *bona fide* and in the interest of justice.

PRAYER

In light of the foregoing, the Appellant–Applicant most respectfully prays that this Hon'ble Tribunal be pleased to:

a) Pass an order allowing the Appellant to withdraw the existing prayers in the underlying appeal (Appeal No. 457/2022); and

b) Any other relief that this Hon'ble Tribunal may deem fit and proper in the circumstances.

APPELLANT/APPLICANT

MAHESH AGARWAL
ADVOCATE FOR THE APPELLANT

DECLARATION BY APPELLANT / APPLICANT

The appellant / applicant above named hereby solemnly declare(s) that nothing material has been concealed or suppressed and further declare(s) that the enclosures and typed set of material papers relied upon and filed herewith are true copies of the original.

Verified at New Delhi on this 03rd day of January, 2024.

COUNSEL FOR APPELLANT / APPLICANT

APPELLANT / APPLICANT

VERIFICATION

Authorised signatory do hereby verify that the facts stated in the application are believed by me to be true; the legal submissions are based on the advice received and believed by me to be true; no part of it is false and nothing material has been concealed therefrom.

DATE: 03.01.2024

PLACE: NEW DELHI

APPLICANT/AUTHORIZED OFFICER

6

BEFORE THE HON'BLE APPELLATE TRIBUNAL FOR ELECTRICITY

AT NEW DELHI, AT NEW DELHI

APPELLATE JURISDICTION

I.A. NO. ____OF 2024

IN

APPEAL NO. 457 /2022

IN THE MATTER OF:

Essar Power Gujarat Limited ...Appellant

VERSUS

Gujarat Electricity Regulatory Commission & Ors. ...Respondents

AFFIDAVIT

I, Rishabh Vaishwanar, S/o Mr.Bharat Vaishwanar, aged about 33 years, having office at 11, Keshavrao Khadye Marg, Mahalakshmi, Mumbai - 400034, presently at New Delhi do solemnly affirm and say as follows:

That I am the Authorised signatory of the Appellant in the aforesaid matter and as such I am well acquainted with all the facts and circumstances of the case and am fully authorized to swear this affidavit.

That I have read and understood the contents of the accompanying Application and say that the facts stated therein are true and correct to my personal knowledge as derived from the official records of the Appellant Company.

NOTARY GOVT OF INDIA NEELAM SHARMA ADVOCATE DELHI REGD. No. 6227 EXPIRY DATE 01/09/2025

Essar Power Gujarat Limited

13 JAN 2024

DEPONENT

VERIFICATION:

Verified at New Delhi on this 3rd day of January, 2024 that the contents of the above affidavit are true and correct to my knowledge and no material fact has been concealed.

I identified the deponent who has signed in my presence

ATTESTED

NOTARY (Govt. of India)
Neelam Sharma
Advocate
Ch. No. 166A, Cabin No. 1
Patiala House Courts,
New Delhi-110001
(M) 9990406301

13 JAN 2024

Essar Power Gujarat Limited

DEPONENT

IN THE HON'BLE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

I.A. NO. _____ OF 2024

IN

M.A. (DIARY) NO. 32487 OF 2023

IN

CIVIL APPEAL No. 9324-9325 OF 2016

IN THE MATTER OF:

Essar Power Gujarat Limited ....Appellant/ Applicant

Versus

Gujarat Electricity Regulatory Commission & Ors. ...Respondents

PAPER – BOOK

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1.	APPLICATION SEEKING WITHDRAWAL OF MISC. APPLICATION (DIARY) NO. 32487 OF 2023 WITH AFFIDAVIT.	1 – 4

ADVOCATE FOR THE APPLICANT : E.C. AGRAWALA

Filed on: 04.01.2024
New Delhi

IN THE HON'BLE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

I.A. NO. _____ OF 2024

IN

M.A. (DIARY) NO. 32487 OF 2023

IN

CIVIL APPEAL No. 9324-9325 OF 2016

IN THE MATTER OF:

Essar Power Gujarat Limited ....Appellant/ Applicant

VERSUS

Gujarat Electricity Regulatory Commission & Ors. ...Respondents

APPLICATION SEEKING WITHDRAWAL OF MISC. APPLICATION (DIARY) NO. 32487 OF 2023

TO,

THE HON'BLE CHIEF JUSTICE OF INDIA

AND HIS COMPANION JUSTICES OF THE

HON'BLE SUPREME COURT OF INDIA

THE HUMBLE PETITION OF THE APPLICANT ABOVE-NAMED

MOST RESPECTFULLY SHOWETH:-

1. The captioned Miscellaneous Application is filed seeking restoration of Civil Appeal No.9324-9325 which was withdrawn by the Appellant under extraordinary circumstances vide Order 27.11.2020.

2. It is humbly submitted that the Applicant and the Respondent No.2 (Gujarat Urja Vikas Nigam Ltd.) are exploring the possibility of an amicable solution of the matter. The formal agreement (i.e., the fifth supplemental power purchase

agreement) with the settled terms will take effect from 1.1.2023 and is expected to be executed imminently.

3. In light of the above, the Applicant is humbly seeking liberty to withdraw the present Miscellaneous Application.

4. The Applicant also craves leave to file the executed formal agreement (i.e., the fifth supplemental power purchase agreement), if necessary. In the event the formal agreement (i.e., the fifth supplemental power purchase agreement) is not executed or approved on agreed-upon terms, the Applicant reserves its right to withdraw the present application or to seek restoration of the underlying petition, as the case may be.

5. This application has been filed *bona fide* and in the interest of justice. That the balance of convenience lies in the favour of the Applicant and in the interest of justice, equity and good conscience the prayer of the Petitioner may be granted.

PRAYER

In light of the foregoing, the Appellant –Applicant most respectfully prays that this Hon'ble Tribunal be pleased to:

a) Pass an order permitting the Applicant to withdraw Miscellaneous Application (Diary) No. 32487 of 2023; and

b) Any other relief that this Hon'ble Tribunal may deem fit and proper in the circumstances.

FILED BY

(E.C. AGRAWALA)
ADVOCATE FOR THE APPLICANT

Filed on: 04.01.2024
New Delhi

IN THE HON'BLE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

IA NO. _____ of 2024

IN

M.A. (DIARY) NO. 32487 of 2023

IN

CIVIL APPEAL NO. 9324-9325 OF 2016

IN THE MATTER OF:

Essar Power Gujarat Limited ....Appellant/ Applicant

Versus

Gujarat Electricity Regulatory Commission & Ors. ....Respondents

AFFIDAVIT

I, Mr. Rishabh Vaishwanar, son of Bharat Vaishwanar, aged about 34 years, having office at Essar House, 11, KK Marg, Mahalaxmi, Mumbai - 400034, presently at Delhi, do hereby solemnly affirm and state as under:-

1. That I am the authorized representative of the Appellant Company in the captioned matter and I am well conversant with the facts and circumstances of the case and as such I am duly authorized to swear this affidavit.

2. That I have read and understood the contents of the accompanying Application and say that the facts stated therein are true and correct to best of my knowledge and belief as derived from the record of the case.

NOTARY PUBLIC
K. BANDANA
Delhi
Regn. No. 19718
Date of Expiry
26.02.2025
Govt of India

Essar Power Gujarat Limited

DEPONENT

VERIFICATION:

I, the abovenamed deponent, do hereby solemnly verify that the contents of the aforesaid affidavit are true and correct to the best of my knowledge and belief and nothing has been concealed therefrom.

Verified at Delhi on this 03 JAN 2024 day of January, 2024.

IDENTIFIED

DEPONENT

NOTARY PUBLIC
K. BANDANA
Delhi
Regn. No. 19718
Date of Expiry
25.02.2025
Govt of India

03 JAN 2024

ATTESTED
NOTARY PUBLIC DELHI
Govt. of India
Mob.: 9654768488

ESSAR
POWER

Essar Power Gujarat Limited
Essar House
11, K. K. Marg, Mahalaxmi,
Mumbai – 400 034
India

Corporate Identity Number
U74900GJ2007PLC066273

T +91- 22- 6660 1100
F +91 -22 – 2354 4787
www.essar.com

CERTIFIED TRUE COPY OF CIRCULAR RESOLUTION PASSED BY THE BOARD OF DIRECTORS OF ESSAR POWER GUJARAT LIMITED ON THURSDAY, DECEMBER 21, 2023

EXECUTION OF SUPPLEMENTAL POWER PURCHASE AGREEMENT AND AUTHORITY THEREOF:

"**RESOLVED THAT** approval of the Board of Directors of the Company be and is hereby accorded to enter into 5th supplemental agreement for amendment to the Power Purchase Agreement (PPA) dated February 26, 2007 as amended by Assignment Agreement dated November 25, 2008 and Supplemental Power Purchase Agreement dated October 16, 2009, March 01, 2019 and August,12, 2021 with Gujarat Urja Vikas Nigam Limited for sale and purchase of power on terms and conditions as contained therein, the draft of which was circulated to the Board of Directors.

RESOLVED FURTHER THAT Mr. Kush, Mr. Ajay Kumar Sinha, Mr. Kapil Singla, Mr. Bhaven Bhatt, Directors of the Company, Mr. Sandip Sinha, Mr. Prateek Garg, Mr. Nitesh Dave, Mr. Ashish Mehta, Mrs. Rachana Luharuka, Mr. Sanjay Shah and Mr. Manohar Kanade, being the persons specifically authorized for this purpose (Authorised Signatories), be and are hereby severally authorized to sign, execute, amend, alter and finalize the agreement and such other document, declaration, indemnities, undertaking as may be required from time to time, to accept such modifications or amendments thereto as may be mutually agreed upon, to execute amendments, supplemental deeds, instruments, and other writings, incidental to the said supplemental agreement and to represent the Company before the appropriate authority and to do such further acts, deeds, things as may be necessary for above purpose.

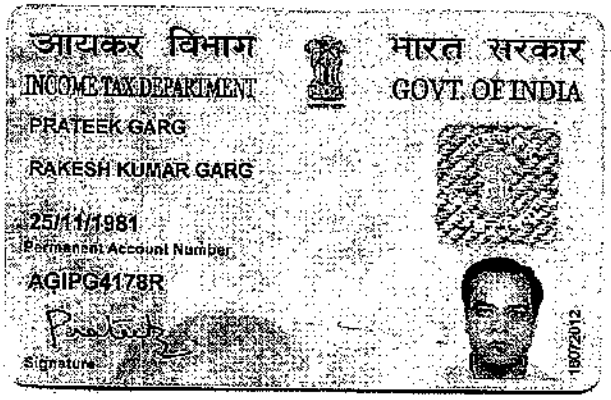
RESOLVED FURTHER THAT the Common Seal of the Company shall be affixed on such documents as may be required in presence of any of the aforesaid authorized persons who shall sign the same in token thereof;

RESOLVED FURTHER THAT any one of the Directors or KMP of the Company, be and are hereby severally authorized to provide a certified true copy of this resolution."

CERTIFIED TRUE COPY
For ESSAR POWER GUJARAT LIMITED

ESSAR POWER GUJARAT LIMITED

GIRISH KUMAR PUROHIT
COMPANY SECRETARY
ACS A45224


आयकर विभाग
INCOME TAX DEPARTMENT
भारत सरकार
GOVT. OF INDIA
PRATEEK GARG
RAKESH KUMAR GARG
25/11/1981
Permanent Account Number
AGIPG4178R
Signature
15072012

BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION
AT GANDHINAGAR

829

PETITION NO. 2331 OF 2024

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 LIMITED AND ESSAR POWER GUJARAT LIMITED FOR APPROVAL OF AMENDMENTS BY WAY OF SUPPLEMENTAL POWER PURCHASE AGREEMENT DATED 05.01.2024.

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

AFFIDAVIT-FOR CONFIRMATION OF SERVICE TO RESPONDENT

1. Hon'ble Commission vide letter dated 07.02.2024 has directed Petitioner to serve a copy of petition to the Respondent and to file Proof of service.

2. In this regard, it is humbly submitted that GUVNL has served the copies of Petition along with annexures to respondents. The proof of service is enclosed herewith and marked as Annexure A.

Sr. No	Name of Respondent	Date of served.
1	Essar Power Gujarat Ltd	01-02-2024
2	Energy Watchdog	05-02-2024
3	Prayas (Energy Group)	05-02-2024

GUJARAT URJA VIKAS NIGAM LIMITED VADODARA

15/2/2024.

GUJARAT URJA VIKAS NIGAM LIMITED
PETITIONER

PLACE: VADODARA
DATED: 15.02.2024

G.E.R.C.
Inward No. - 0795
Date: 17 FEB 2024

830

BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION
AT GANDHINAGAR

PETITION NO. 2331 OF 2024

IN THE MATTER OF:

Gujarat Urja Vikas Nigam Ltd. - Petitioner

Versus

Essar Power Gujarat Ltd. & Others - Respondents

SR. No. 2641
Date : 15/02/2024

AFFIDAVIT

I, Vipul, son of Lallubhai G Lathiya, aged about 36 years, having office at at Sardar Patel Vidyut Bhavan, Race Course, 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 affidavit are based on information maintained in the records of the Answering Respondent and are believed by me to be true.

3. I say that the annexures are true copies of their originals.

GUJARAT URJA VIKAS NIGAM LIMITED VADODARA

15/2/2024.

V. L. LATHIYA
Deputy Engineer (CSP)
Gujarat Urja Vikas Nigam Limited
Vadodara

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 15th day of February, 2024.

MY Commission Expires
On 04/ 07/2028

15/2/2024.

DEPONENT
V. L. LATHIYA
Deputy Engineer (CSP)
Gujarat Urja Vikas Nigam Limited
Vadodara

NOTARY H. J. ZALA AREA : BARODA DIST (GUJ. STATE) REG.NO. 6250/ 2008 GOVT. OF INDIA

Solemnly Affirmed/Declared
Sworn Before me by V.L. Lathiya

H. J. ZALA
NOTARY (Govt. of India)

NOTARIAL

O/C

831

GUVNL	**Gujarat Urja Vikas Nigam Limited** Sardar Patel Vidyut Bhavan, Race Course, Vadodara: 390 007	Azadi Ka Amrit Mahotsav
	CIN U40109GJ2004SGC 045195	*An ISO 9001:2015 Certified Company* *Phone: 0265-2311797, Fax No. 0265-2327483* *www.guvnl.com*
No : GUVNL/COMM./VLL/138		Date : 31-01-2024

To
Secretary
Gujarat Electricity Regulatory Commission
6th Floor, GIFT ONE
Road 5C, Zone 5, GIFT City
Gandhinagar, Gujarat - 382355

Sub: Filling 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 Limited (GUVNL) and Essar Power Gujarat Limited (EPGL) for approval of amendments by way of supplemental power purchase agreement dated 05.01.2024

Sir,

Please find attached herewith 1 - original copy plus 4 - copies on affidavit on above subject matter. Further, requisite fees of Rs. 10,000.00/- in accordance with the GERC (Fees, Fines and Charges) Regulations 2005, is remitted on 31-01-2024 in the Canara Bank account of Hon'ble GERC through Transfer entry vide Cheque No. 000190552063 (bank confirmation attached for reference please)

Kindly acknowledge the receipt of the same.

Thanking You,

RECEIVED
Date: 31 FEB 2024
GUJARAT ELECTRICITY REGULATORY COMMISSION,GANDHINAGAR

Yours faithfully,

31/1

(J.J. Gandhi)
General Manager (Commerce.)

O/C

31/1

Encl: As above

ESSAR POWER GUJARAT LTD. Salaya Jamnagar

9/2

(ARCHISH MEHTA) EPGL

832

Shree Maruti

SHREE MARUTI COURIER SERVICE PVT.LTD.

SHOP NO - 29 DDA MARKET PASCHIM VIHAR, NEW DELHI-110063,DELHI PHONE : 01142311717

2315282202199 Page: 2

Delivery Voucher

Date : 05/02/2024 11:06 am

Area : PASCHIM VIHAR

Delivery Boy : KAMAL 8447043145

#	Center	Doc. No.	Party Name	Signature
13	FARIDABAD-DLF B-3/25 STD - NONDOX Remarks: CLOTHS	23085100048286	NEHA BHAMBARI	Neha 9711476949
14	DELHI-REVERSE B3-6/33.C STD - DOX Remarks: DOX	23027200878231	ATUSH	Ayushi 9999253095
15	AHMEDABAD-AMRA B3-6/27SA STD - NONDOX Remarks: ORING	23036200852785	PNEU MECH ENGINEERING	9810556011
16	BARODA-OLD PAD B-5/51 STD - NONDOX Remarks: DOC	23002100218955	ENERGY WATCHDOG	Usha 813-16211
17	DELHI-OKHLA HU CN-35 STD - DOX T Hutz Remarks: LATER	23035370160546	RUBI DEVI	Rubi 8076262933
18	BENGALURU-RAJA B-2/58 STD - DOX Remarks: DOX	23095200202720	VSP CORP	Vishal 9871110671
19	BENGALURU-RAJA 11 STD - DOX Remarks: DOX	23095200202728	VSP CORP	
20	DELHI-OKHLA HU B-2/15 STD - DOX Remarks: CHEQUEBOO..	23035370160084	RAMA AWASTHI	
21	MCLEODGANJ B-1/126 STD - NONDOX Remarks: MEDICINE	23014100140543	ASHA	9873712345
22	MUMBAI(BOM) B-1/152 STD - DOX Remarks: chequeboo..	23090372369306	VARUNI THAKUR	8178855152
23	A-520, PKT-1 Remarks:	23003100047538		9211895946
24	DELHI-OKHLA HU 13 STD - DOX Janta Flat Remarks: CHEQUEBOO..	23035370161047	VEENA	9811062448

Shree Maruti

OM SAI COURIERS
SHOP NO 2 ,230 YASHODA NIWAS , OPPOSITE YATRI HOTEL ,KARVE ROAD , PAUD PHATA ,PUNE 411038 PUNE,MAHARASHTRA PHONE : 9823269050

2312704400576 Page: 2
Delivery Voucher
Date : 05/02/2024 11:41 am
Area : KARVE ROAD
Delivery Boy : ABHISHEK DURGE

#	Center	Doc. No.	Party Name	Signature
13	VASHI-SECTOR-1 STD - DOX Remarks: PAN CARD	230341001040021	PRAVEEN RAUT	office Collect 12:01 PM 5/02/24 9850086687
14	DELHI JANAKPUR STD - DOX Remarks: DOX	231003702030054	MANASI MAHESH DESHPANDE	Jeeps 8788715492
15	VARANASI-NADES STD - NONDOX Remarks: FABRICS	230321000541003	DR ARCHANA JOSHI	Akshi
16	DELHI JANAKPUR STD - DOX Remarks: DOX	231003702001044	ANJALI MANISH PANDIT	MSPandit
17	DELHI JANAKPUR STD - DOX Remarks: DOX	231003702002109	MAKARAND GOPAL WAIKAR	U1213969
18	PUNE-DHANKAWAD STD - NONDOX Remarks: PARCEL	232122002991419	PARAG BNARKHEDE	9822430485
19	BARODA-OLD PAD STD - DOX Remarks: DOC	230021002180454	PRAYAS (ENERGY GROUP)	7791501427
20	HYDERABAD-CHER STD - NONDOX Remarks: SPARES	232022060013220	ANANT DEFENCES	9743892782 05/02/24
21	PUNE-THERGAON STD - DOX Remarks: DOX	230431000877102	SINGWANE	9652369280
22	DELHI-LAXMINAG STD - DOX Remarks: eco magzi..	230153700300844	ADITYA CHUNEKAR	9604128060.
23	. Remarks:	230003000197734	IDFC FIRST BANK	IDFC First Bank Limited Kothrud Pune Branch Code 74451
24	PUNE-MOHAMMADW STD - DOX Remarks: DOX	230101001099790	CUBIX AUTOMATION	CUBIX AUTOMATION PVT LTD PUNE

23/2/24

BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION AT GANDHINAGAR

PETITION NO. 2331 OF 2024

IN THE MATTER OF:

Gujarat Urja Vikas Nigam Limited ... Petitioner

Versus

Essar Power Gujarat Limited & Ors. ... Respondents

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1.	-	Reply on behalf of Respondent No. 1 Essar Power Gujarat Limited	834-836

Nisarg Desai

Place: Ahmedabad

Date: 21.02.2024

For, Gandhi Law Associates

Advocates for Respondent No.1

G.E.R.C.
Inward No.: 0896
Date: 22 FEB 2024

Addl. Legal/Fe
Put in relevant file.
22/2/2024.

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BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION

AT GANDHINAGAR

PETITION NO. 2331 OF 2024

IN THE MATTER OF:

Gujarat Urja Vikas Nigam Limited ... Petitioner

Versus

Essar Power Gujarat Ltd. & Ors. ... Respondents

NOTARY KANAKSINH K. VAGHELA DIST. AHMEDABAD GUJARAT STATE REG. NO.8643/11 EXP. DT. 3-10-26 GOVT. OF INDIA

AFFIDAVIT-IN-REPLY ON BEHALF OF RESPONDENT NO.1 ESSAR POWER GUJARAT LIMITED

1. The Respondent No. 1 (**"EPGL"**) supports the petition filed by the Petitioner Gujarat Urja Vikas Nigam Limited (**"GUVNL"**) seeking approval of the Fifth Supplemental Power Purchase Agreement (**"5th SPPA"**) dated 05.01.2024, entered into between GUVNL and EPGL amending certain provisions of the Fourth Supplemental Power Purchase Agreement dated 12.8.2021.

2. The facts stated in the petition are true and correct and the modifications made by the 5th SPPA are pursuant to decisions taken by the Government of Gujarat.

3. Therefore, EPGL prays that this Hon'ble Commission be pleased to allow the underlying petition and to grant the prayers therein.

ESSAR POWER GUJARAT LTD.

P. S. Nair

DEPONENT
ESSAR POWER GUJARAT LIMITED

Place: Ahmedabad
DATE: 21.02.2024

DIST.
GUJARAT ST
GOVT. OF

835

BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION
AT GANDHINAGAR

PETITION NO. 2331 OF 2024

IN THE MATTER OF:

Gujarat Urja Vikas Nigam Limited ... Petitioner

Versus

Essar Power Gujarat Ltd. &Ors. ... Respondents

AFFIDAVIT

I, Pankaj Naik s/o. Dahyabhai Naik, adult residing at Ahmedabad do solemnly affirm and say as follows:

1. That I am the authorized signatory of M/s. Essar Power Gujarat Limited the Respondent no. 1 herein and am duly authorized by the said Respondent No. 1 to make this affidavit.
2. The statements made in the Reply herein are true to my knowledge. The statements made in paragraphs 1 to 3 of the present Reply are based on information and belief gathered from the record of the Respondent No. 1 and I believe them to be true.

Solemnly affirmed at Ahmedabad on this 21st day of February,2024 that the contents of the above affidavit are true to my knowledge and no part of it is false and nothing material has been concealed therefrom.

DEPONENT

ESSAR POWER GUJARAT LTD.

DIS
ALAMEDA

836

VERIFICATION:

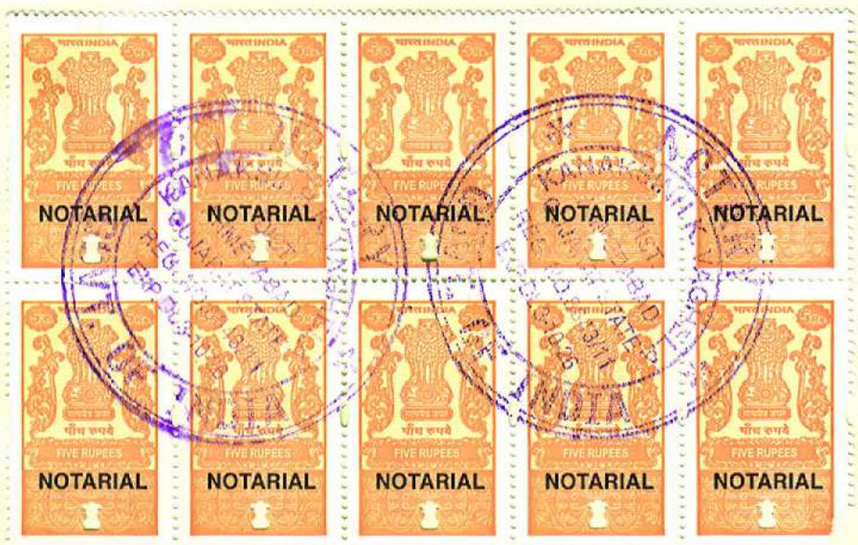
I, the Deponent abovenamed do hereby verify the contents of the above affidavit to be true to the best of my knowledge, no part of it is false and nothing material has been concealed therefrom.

Verified at Ahmedabad on this 21st day of February, 2024.

DEPONENT

IDENTIFIED BY ME

ADVOCATE



SR. No. 4382 /2024
SOLEMNLY AFFIRMED
BEFORE ME

KANAKSINH K. VAGHELA, NOTARY
DATE : 21/02/2024

837

IN THE GUJARAT ELECTRICITY REGULATORY COMMISSION AT GANDHINAGAR

PETITION NO. 2331 OF 2024

Gujarat Urja Vikas Nigam Limited ....Petitioner

Versus

Essar Power Gujarat Limited &Ors. ....Respondents

VAKALATNAMA

We,Essar Power Gujarat Limited (Respondent No. 1);do hereby Nominate, authorize and appoint

GANDHI LAW ASSOCIATES
ADVOCATES& SOLICITORS
1504/5/6, Tower-A, Navratna Corporate Park, Iscon-Ambli Road, Near Ashok Vatika, Ambli, Ahmedabad – 380 058

Represented by Keyur D. Gandhi, Nirav Joshi, Raheel S. Patel, Kunal J. Vyas, Nisarg Desai, Aayog Doshi, Aalay Shah, Divya PravalikhaBatthini,Devarsh Trivedi, Divyesh Bais, Isa Hakim,Yash Dadhich, Vinayak Goswamy, Hatim Tinwala, Karan Vin and Ruhi Parikh, hereinafter called the Advocates, to be my/our Advocates in the above noted matter and authorize them: -

To act, appear and plead in the above noted matter in this Hon'ble Court and/or any Quasi-Judicial Authority or any other Court where the same may be tried or heard or in the appellate courts.

To sign, file and present representations, pleadings, applications, appeals, cross objections or petitions for execution, review, revision, restoration, withdrawal, compromise or other petitions, replies objections or affidavits or other documents as may be deemed necessary or proper for the prosecution of the said case at all stages.

To file and take back documents.

To withdraw or compromise the said case of submit to arbitration any differences or disputes that may arise in or touching upon any matter relating to the said case.

To take out execution proceedings.

To deposit, draw and receive moneys, cheques and grant receipts therefore and to do all things and acts which may be necessary to be done for the progress and in the course of the prosecution of the said case.

To appoint, instruct any other legal practitioner, authorizing him to exercise the power and authorities hereby conferred upon the advocate/s;

AND we agree to ratify all acts done by the aforesaid advocate/s in pursuance of this authority.

Dated this the 21st day of February, 2024.

legal

G.E.R.C.
Inward No.: M - 0897
Date: 22 FEB 2024

Nisarg Desai

Adv(Legal)/Exec(Legal)
Put in relevant file
BSM 22/2/24

Accepted
Contact Details for service:
Phone : +91-9925000763
Email: efiling@gandhilaw.in

Client(s) Signature : P. I. Naik
Name : PANKAJ I. NAIK
Designation : VP
Company Seal :

ESSAR POWER GUJARAT LTD.

BAR COUNCIL OF GUJARAT ADVOCATE WELFARE FUND STAMP Rs.20 11045638

कोर्ट फी COURT FEE Rs.5 भारत INDIA पाँच रुपये FIVE RUPEES

837

BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION
AT GANDHINAGAR

PETITION NO. 2331 OF 2024

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 LIMITED AND ESSAR POWER GUJARAT LIMITED FOR APPROVAL OF AMENDMENTS BY WAY OF SUPPLEMENTAL POWER PURCHASE AGREEMENT DATED 05.01.2024.

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

AFFIDAVIT- FOR COMPLIANCE TO DAILY ORDER DATE 02.03.2024 FOR ISSUING PUBLIC NOTICE

THE PETITIONER RESPECTFULLY SHOWETH AS UNDER:

1. The Petitioner, above named has filed the present petition No. 2331 of 2024 before Hon'ble Commission for approving amendments to the Power Purchase Agreement (PPA) dated 26.02.2007 read with Supplemental PPA (SPPA) dated 12.08.2021 by way of **FIFTH Supplemental PPA** (SPPA) dated 05.01.2024.

2. It is submitted that Hon'ble Commission through Daily Order dated 02.03.2024 has directed Petitioner to issue public notice in two daily Gujarati Newspapers and one English Newspaper having wide circulation in the State and also upload the present petition with all relevant documents on their website and invite comments/suggestions/objections from the stakeholders on affidavit within 21 days from the date of issue of public notice.

3. This affidavit is filed in compliance to the above directives issued by Hon'ble Commission vide Daily Order dated 02.03.2024.

Advocate/Practicing Pleader. Dated 15/03/2024

G.E.R.C.
Inward No.: 1401
Date: 15 MAR 2024

NOTARY H. J. ZALA AREA: BARODA DIST (GUJ. STATE) REG.NO. 6250/ 2008 GOVT. OF INDIA

4. It is humbly submitted that the Petitioner has issued public notice on 12.03.2024 in following daily newspapers having wide circulation in state of Gujarat.

Daily Newspapers	Print Media	Editions
Gujarat Samachar	Gujarati daily	All Gujarat
Sandesh	Gujarati daily	All Gujarat
The Indian Express	English daily	All Gujarat

The copies of the Public Notices dated 12.03.2024 are enclosed herewith and marked as Annexure-A (Colly).

5. It is humbly submitted that petitioner has also uploaded the petition (2331 of 2024) along with all relevant documents on notice section of GUVNL's website (www.guvnl.com/guvnl_notices) on 12.03.2024.

13/3/2024.

GUJARAT URJA VIKAS NIGAM LIMITED
PETITIONER

PLACE: VADODARA
DATED: 13.03.2024

GUJARAT URJA VIKAS NIGAM LIMITED VADODARA

V. L. LATHIYA
Deputy Engineer (CSP)
Gujarat Urja Vikas Nigam Limited
Vadodara

NOTARY H. J. ZALA AREA: BARODA DIST (GUJ. STATE) REG.NO. 6250/2008 GOVT. OF INDIA

839

BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION
AT GANDHINAGAR

PETITION NO. 2331 OF 2024

IN THE MATTER OF:

Gujarat Urja Vikas Nigam Ltd. - Petitioner

Versus

Essar Power Gujarat Ltd. & Others - Respondents

SR. No. 4392
Date: 13/03/2024

AFFIDAVIT

I, Vipul, son of Lallubhai G Lathiya, aged about 36 years, having office at at Sardar Patel Vidyut Bhavan, Race Course, do hereby solemnly swear and affirm as under:

1. I am the Deputy Engineer (Commerce) in Petitioner Company and am authorised to swear this affidavit.

2. I say that the contents of the accompanying affidavit are based on information maintained in the records of the Answering Respondent and are believed by me to be true.

3. I say that the annexures are true copies of their originals.

GUJARAT URJA VIKAS NIGAM LIMITED VADODARA

DEPONENT 13/3/2024.

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 13rd day of March, 2024.

GUJARAT URJA VIKAS NIGAM LIMITED VADODARA

DEPONENT 13/3/2024.

NOTARIAL NOTARIAL NOTARIAL NOTARIAL NOTARIAL
NOTARIAL NOTARIAL NOTARIAL NOTARIAL NOTARIAL

NOTARY H. J. ZALA AREA: BARODA DIST (GUJ. STATE) REG.NO. 62501 2008 GOVT. OF INDIA

NOTARY H. J. ZALA AREA: BARODA DIST (GUJ. STATE) REG.NO. 62501 2008 GOVT. OF INDIA

NOTARY H. J. ZALA AREA: BARODA DIST (GUJ. STATE) REG.NO. 62501 2008 GOVT. OF INDIA

Solemnly Affirmed/Declared
Sworn Before me by V.L.Lathiya

H. J. ZALA
NOTARY (Govt. of India)

MY Commission Expires
On 04/07/2028

ફી રેગ્યુલેટરી કમિટિ, ખાનગી શાળાઓ સહિત પક્ષકારોને નોટિસ

ખાનગી શાળાઓમાં ફી-ખર્ચાઓ મુદ્દે સિંગલ જજના ચુકાદાને સરકારે પડકાર્યો

અમદાવાદ,સોમવાર

રાજ્યની વિવિધ ખાનગી શાળાઓમાં લીઝ, રેન્ટ, લોન પરનું વ્યાજ તથા અન્ય સંબંધિત ખર્ચાઓ નામંજૂર કરવાના ફી રેગ્યુલેટરી કમીટીના નિર્ણયને રદબાતલ કરાવવાં અને ફી નિર્ધારણ કરતી વખતે આ બધી બાબતો ધ્યાનમાં લેવા સહિતના કેટલાક મહત્વના નિર્દેશો જારી કરતાં ગુજરાત હાઈકોર્ટના ચુકાદા સામે આખરે રાજ્ય સરકાર દ્વારા હાઈકોર્ટની ખંડપીઠ સમક્ષ જુદી જુદી લેટર્સ પેટન્ટ અપીલ દાખલ કરવામાં આવી છે. જેની સુનાવણીમાં હાઈકોર્ટે ફી રેગ્યુલેટરી કમીટી, સંબંધિત ખાનગી શાળાઓ સહિતના વિવિધ પક્ષકારોને નોટિસ જારી કરી છે. વીક જસ્ટિસ સુનિતા અગ્રવાલ અને જસ્ટિસ અનિરુદ્ધ માયી-ની ખંડપીઠે ખાનગી શાળાઓને તેમનો જવાબ રજૂ કરવા માટે બે સપ્તાહનો સમય પણ આપ્યો હતો.

સ્કૂલોને બે સપ્તાહમાં જવાબ આપવા નિર્દેશ : સ્કૂલોના ખર્ચાઓ નકારવાના ફી કમિટિના નિર્ણયને સિંગલ જજે રદ કર્યો હતો

રાજ્યની જુદી જુદી ખાનગી શાળાઓ તરફથી હાઈકોર્ટ સમક્ષ કરાયેલી | ગવર્નમેન્ટ રિટ અરજીઓમાં જસ્ટિસ ભાર્ગવ ડી.કારીઆએ જુલાઈ-૨૦૨૨માં આપેલા મહત્વનો ચુકાદો આપતાં ફરાવ્યું હતું કે, ફી નિયમન કમીટી ખાનગી શાળાઓના સંબંધિત ખર્ચાઓ યોગ્ય કે વાજબી કારણ વિના નકારી શકે નહીં. હાઈકોર્ટે ખાનગી શાળાઓને એડમીશન ફી, સત્ર ફી, કરીકયુલમ ફી અને ટ્યુશન ફી તેમ જ વિદ્યાર્થીઓને અપાતી સુવિધા બાબતે ફી વસૂલવાની મંજૂરી આપી હતી. જો કે, હાઈકોર્ટે એ પણ સ્પષ્ટ કર્યું હતું કે, રાજ્યમાં ખાનગી શાળાઓ મફતમાં ફી વસૂલી શકે નહીં કે, અતિશય વધારે પડતી ફી ઉઘરાવી શકે નહીં. ફી અને રાજ્યની વિવિધ ખાનગી શાળાઓમાં લીઝ, રેન્ટ, લોન પરનું વ્યાજ તથા અન્ય સંબંધિત ખર્ચાઓનાં મુદ્દા નિર્ણિત કરતી વખતે ફી નિયમન કમીટીએ આ બાબતો ધ્યાનમાં લેવાની રહેશે. હાઈકોર્ટે ખાનગી શાળાઓના લીઝ, રેન્ટ સહિતના સંબંધિત ખર્ચાઓ નામંજૂર કરવાના ફી રેગ્યુલેટરી કમીટીના હુકમોને રદબાતલ કરાવ્યા હતા અને હાઈકોર્ટના આ નવા નિર્દેશોને ધ્યાનમાં લીધા બાદ નવેસરથી આ તમામ કિસ્સામાં નિર્ણય લેવા હુકમ કર્યો હતો. આ હુકમ સામે સંબંધિત ખાનગી શાળાઓની વેટ હાઈકોર્ટે ફી નિયમન કમીટીને નિર્ણયાર્થે મોકલી આપી હતી. કમીટીને ૧૨ સપ્તાહમાં નિર્ણય કરવા હાઈકોર્ટે તાકીદ કરી હતી.

મીંગલ જજના સંબંધિત ખાનગી શાળાઓની વેટ હાઈકોર્ટે ફી નિયમન કમીટીને નિર્ણયાર્થે મોકલી આપી હતી. કમીટીને ૧૨ સપ્તાહમાં નિર્ણય કરવા હાઈકોર્ટે તાકીદ કરી હતી.

મીંગલ જજના ચુકાદાથી નારાજ સરકાર દ્વારા હાઈકોર્ટની ખંડપીઠ સમક્ષ જુદી જુદી અપીલો દાખલ કરવામાં આવી છે અને જણાવ્યું છે કે, સરકારના નીતિ વિષયક નિર્ણયમાં મીંગલ જજ દ્વારા કરાયેલ હસ્તક્ષેપ ખાનગી શાળાકીય ખંડપીઠની દરમ્યાનગીરી જરૂરી બને છે કારણ કે, આ વિશાળ જનહિતનો અને હજારો વિદ્યાર્થીઓ અને વાલીઓ સાથે સંકળાયેલો પ્રશ્ન છે. વધુમાં, મીંગલ જજ દ્વારા ફી રેગ્યુલેટરી કમીટી પર લગાવાયેલ અંકુશ અને કમીટી માટે જારી કરાયેલ માર્ગદર્શિકાને પણ પડકારવામાં આવી હતી.

આવકવેરા ખાતાએ પૂરો ટેક્સ ન ભરનારાઓને શોધી કાઢવ્યા

(પ્રતિનિધિ તરફથી)

અમદાવાદ, સોમવાર

ચાલુનાણીય વર્ષ ૨૦૨૩-૨૪નો સંપૂર્ણ ટેક્સ ન ભર્યો હોય તેવા કરદાતાઓને શોધી શોધીને આવકવેરા ખાતાએ તેમને નોટિસ પાઠવી છે અને ૧૫મી માર્ચ સુધીમાં ટેક્સ જમા કરવા ટૈયાની સૂચના આપવામાં આવી છે. ૨૦૨૩-૨૪ના વર્ષ દરમિયાન તેમણે કરેલા વ્યવહારિક વર્તવારોના પ્રમાણમાં તેમણે ટેક્સ જમા કરાવ્યો જ ન હોવાનું આવકવેરા ખાતાના ધ્યાનમાં આવ્યું છે.

બાકી વેરો ભરી દેવા માટે કરદાતાઓને પંદરમી માર્ચ સુધીની મહેતલ આપવામાં આવી

આ પ્રકારના કરદાતાઓ માટે આવકવેરા ખાતાએ ઈ-કેમ્પેઈન પણ ચાલુ કર્યું છે. ઈ-કેમ્પેઈનમાં આ કેટેગરીમાં આવતા દરેક કરદાતાઓને તેમણે તેમના આર્થિક વર્તવારોની સરખામણીમાં ભરવાને પાત્ર બનતો આવકવેરો જમા ન કરાવ્યો હોવાનું જણાવીને વેરો ભરી દેવાની સૂચના આપવામાં આવી રહી છે. આ માટેના ઈ-મેઈલ પણ સંબંધિત કરદાતાઓને કરવામાં આવી રહ્યા છે. આ ઈ-કેમ્પેઈનને એડવાન્સ ટેક્સ કેમ્પેઈન તરીકે ઓળખાવવામાં આવી રહી છે. તેમને એસ.એમ.એસ. પણ પાઠવવામાં આવી રહ્યા છે. નાણાકીય વર્ષ ૨૦૨૩-૨૪ અને આકારણી વર્ષ ૨૦૨૪-૨૫ના સંદર્ભમાં આ મેગેઈ કરવામાં આવ્યા છે. તેમને તેમના એડવાન્સ ટેક્સની જવાબદારી બાબત જાણ કરી દેવા જણાવવામાં આવ્યું છે. તેમને માર્ચની ૧૫મી સુધીમાં આ ટેક્સ જમા કરાવી દેવાની સૂચના આપવામાં આવી છે.

ઈ-કાર્ડિંગ પોર્ટલ પર નામ રજિસ્ટર ન કરાવ્યું હોય તેવા કરદાતાઓએ સૌ પ્રથમ તો તેમનું નામ ઈ-કાર્ડિંગ પોર્ટલ-

કરદાતાઓને ઈ-મેઈલ અને એસ.એમ.એસ. પાઠવીને એડવાન્સ ટેક્સ જમા કરાવી દેવા તાકીદ કરવામાં આવી

વેબસાઈટ પર રજિસ્ટર કરાવવું પડશે. ઈ-કાર્ડિંગ પોર્ટલ પર જઈને રજિસ્ટરના બટન પર ક્લિક કરવાનું રહેશે. તેમાં જણાવવામાં આવે તે પ્રમાણેની વિગતો ભરવાની રહેશે. આ વિગતો ભરી દીધા પછી તમારા નામનું રજિસ્ટ્રેશન થઈ જશે. ત્યારબાદ તમે કોમ્પ્લાયન્સ પોર્ટલ પર લોગ ઈન કરી શકો છો. તેના પર જઈને ઈ-કેમ્પેઈન ટેબ પર જઈને મોટા અને મહત્વના ટ્રાન્ઝેક્શન જોઈ શકો છો.

કાચા મકાનોમાં તિરાડો પડી, લોકોમાં ગભરાટ

જુનાગઢના માંગરોળમાં ૩.૫ની તીવ્રતાનો ભૂકંપનો આંચકો

રાજકોટ,સોમવાર

સૌરાષ્ટ્રના જુનાગઢ જિલ્લાના માંગરોળ પંથકમાં આજે સાંજે ૬-૨૩ વાગ્યે ૩.૫ની નોંધપાત્ર તીવ્રતાનો ભૂકંપ નોંધાયો છે. માંગરોળથી ૨૭ કિ.મી.પૂર્વ દિશામાં ૨૧.૨૮ અક્ષાંશ અને ૭૦.૩૦ રેખાંશ ઉપર રાજકોપરા અને ગણેશ કુંડી વચ્ચે આ ભૂકંપનું કેન્દ્રબિંદુ જમીનથી ૧૬.૨ કિ.મી. ઉંડાઈમાં નોંધાયું હતું. આ તીવ્ર ભૂકંપથી માંગરોળ,માણિયા હાટીના, કેશોદ, વંથલી પંથકમાં અનુભવાયો હતો અને કોકોમાં ભારેલા કેલાપો હતો. જુનાગઢની પ્રાથ વિશેષ માહિતી મુજબ ભૂકંપની તીવ્રતા વધુ હોય માંગરોળ ઉપરાંત માણિયાહાટીના, કેશોદ, વંથલી તાલુકામાં પણ ૫૨તીનો પ્રજાએ અનુભવો હતો. માંગરોળના-તા-ગોરેજ સહિતના ગામોમાં પતરાં તુટી ગયા, કાચા મકાનોમાં તિરાડો પડી ગયાના અહેવાલ છે. ૫૨તી પ્રજાના ૭ લોકો ભયભીત થઈને ઘર-દુકાનની બહાર રસ્તા ઉપર દોડી ગયા હતા. લોકોના ટોળા એકઠા થઈ ગયા હતા.

માણિયા હાટીનાના જાલ૫૨ સહિત ગામોમાં પણ કાચા મકાનોમાં તિરાડો પડવાનું જણાવાયું છે, જો કે કોઈ જાનહાનિ નથી.

માંગરોળ પંથકની ૫૨તીના પેટાળમાં તીવ્ર ભૂકંપ અગાઉ પણ આવ્યા છે અને બે ભૂકંપ તો આજના કરતા અનેકગણા વધુ તીવ્રતાના હતા પરંતુ, તે માંગરોળ-ચોરવાડ પાસે દરિયામાં નોંધાયા હતા. સૌરાષ્ટ્રના ગીર સોમનાથ અને જુનાગઢ જિલ્લામાં કે.એસ.એફ. જેવી કમ્પ્લમ છે તેવી કોઈ મોટી કોલ્ડવાર્ડન નથી પરંતુ, ૫૨તીના પેટાળમાં કેમ્પર્સ અને કોલ્ટસ આવેલા છે તે કારણે માંગરોળ ઉપરાંત તલાલા, ઉના સહિત વિસ્તારમાં વારંવાર ભૂકંપો ઉદ્ભવતા રહે છે.

૨૦૧૫માં પૂર્વ ચીફ સેક્રેટરી એકે જોતિને નિયુક્તિ અપાઈ હતી

ચૂંટણી પંચમાં ગુજરાત કેડરના એક અધિકારી પસંદ થાય તેવી શક્યતા

ગાંધીનગર, સોમવાર

ચારતના ચૂંટણી કમિશનર તરીકે ગુજરાત કેડરના કોઈ અધિકારીની પસંદગી થાય તેવી શક્યતા દેખાઈ રહી છે, આ પદ માટે કેટલાક નામોની વિચારણા કેન્દ્ર સરકાર દ્વારા શરૂ કરવામાં આવી છે. લોકસભાની ચૂંટણી જાહેર થાય તે પહેલાં પંચમાં બે કમિશનરની નિયુક્તિ કરવાની થાય છે.

લોકસભાની ચૂંટણી પહેલાં બે ચૂંટણી કમિશનરોની નિયુક્તિ કરવાની પ્રક્રિયા શરૂ કરાઈ છે ત્યારે સચિવાલયમાં અટકળો

ચૂંટણી પંચમાં હાલ માત્ર રાજીવકુમાર એકમાત્ર મુખ્ય ચૂંટણી કમિશનર તરીકે કરજ બજાવે છે. ૧૫મી માર્ચે પંચને નવા બે ચૂંટણી કમિશનર મળી જશે પરંતુ આ પદ પણ કોણ આવશે તેની ચર્ચાએ જોર પકડ્યું છે. બે પૈકી એક કમિશનર ગુજરાત કેડરના કોઈ અધિકારી આવે તો નવાઈ પામવા જેવું નથી. સચિવાલયના સૂત્રોના જણાવ્યા પ્રમાણે કેન્દ્ર સરકાર ગુજરાત કેડરના એક અધિકારીને આ સ્થાને મૂકવા માગે છે. આ અગાઉ જાન્યુઆરી ૨૦૧૩માં રાજ્યના ચીફ સેક્રેટરી પદેથી નિવૃત્ત થયેલા ૧૯૭૭ની બેચના આઈએએસ અધિકારી અચલકુમાર જોતિને ૨૦૧૫માં ચૂંટણી કમિશનર તરીકે નિયુક્ત કરવામાં આવ્યા હતા. આ એક એવી ઘટના છે કે જ્યાં ૬૨ વર્ષની ઉંમર સુધી અને વધુમાં વધુ છ વર્ષ સુધી કરજ બજાવી શકે છે.

ફરિયાદીનું નિવેદન લેવા સાથે તપાસનો ધમધમાટ શરૂ

વકફના નામે PIL-ભંડોળનો દૂરપયોગ પ્રકરણમાં CID ક્રાઈમને તપાસ સોંપાઈ

અમદાવાદ,સોમવાર

ગુજરાત રાજ્યમાં આવેલ કરોડો-અબજો રૂપિયાની વકફ પ્રોપર્ટીઓના રાજકારણમાં કબેલાતા વકફ માફિયાઓ અને તત્વો દ્વારા વકફના નામે ધાર્મિક સહાનુભૂતિ અને માહોલ ઉભુ કરી તેના ઓઠા હેઠળ વકફના નામે કરોડો રૂપિયાનું બંધોળ મેળવી રાજ્ય સરકાર વિરૂધ્ધ જુદી જુદી જાહેરહિતની રિટ અરજીઓ અને અરજીઓ કરી સરકાર વિરૂધ્ધનો માહોલ કરવાના પ્રકરણમાં આવા કબેલાતા વકફ તત્વો, વકફ ટ્રસ્ટો સહિતના જવાબદાર લોકો વિરૂધ્ધ વ્યાપક તપાસ થાય ૫૨વા રાજ્યના મુખ્યમંત્રી, ગૃહમંત્રી સહિતના સત્તાધારીઓને બહુ ગંભીર ફરિયાદ કરવામાં આવી હતી. જેમાં આખરે સરકાર દ્વારા સીઆઈડી ક્રાઈમને બહુ મહત્વની તપાસ સોંપાઈ ગઈ છે. સીઆઈડી ક્રાઈમ દ્વારા આ સમગ્ર પ્રકરણમાં આજે ફરિયાદી નિવેદન લેવાની શરૂઆત કરી તપાસનો ધમધમાટ શરૂ કરાયો છે. આગામી દિવસોમાં આ સમગ્ર પ્રકરણમાં ચોંકાવનારા ખુલાસા સામે આવે તેવી શક્યતાઓ છે.

વકફના ઓઠા હેઠળ લઘુમતીઓની સહાનુભૂતિ મેળવી સરકાર વિરૂધ્ધ માહોલ ઉભો કરી છબી ખરડવાના ષડયંત્રનો મામલો

સીઆઈડી ક્રાઈમ દ્વારા આગામી દિવસોમાં કબેલાતા આવા વકફ ટ્રસ્ટો એને તત્વો વિરૂધ્ધ પણ ગાળિયો કસાય તેવી પૂરી શક્યતા છે. આ સમગ્ર પ્રકરણમાં મોટા માથાઓની પણ સંડોવણી બહાર આવે તેવી પણ શક્યતાઓ બળવત્તર બની છે. રાજ્યભરમાં આવેલી વકફ પ્રોપર્ટીના કરોડો-અબજો રૂપિયાના ગેરવહીવટ અને અમુક કબેલાતા તત્વો દ્વારા બની બને મલકાની સત્તાના જોરે વકફનું સંચાલન અને વકફના નામે મુસ્લિમ સમુદાયમાં એક પ્રકારની ધાર્મિક લાગણીનો માહોલ અને સહાનુભૂતિ ઉભી કરવાનો માહોલ બનાવી વકફના નામે સરકાર વિરૂધ્ધ જુદી જુદી જાહેરહિતની રિટ અરજીઓ(પીઆઈએલ) અને અરજીઓ કરી એક માહોલ બનાવવા વકફ ટ્રસ્ટો અને તત્વો દ્વારા વકફના નામે ધાર્મિક સહાનુભૂતિ અને માહોલ ઉભુ કરી તેના ઓઠા હેઠળ વકફના નામે કરોડો રૂપિયાનું બંધોળ મેળવી રાજ્ય સરકાર વિરૂધ્ધ જુદી જુદી જાહેરહિતની રિટ અરજીઓ અને અરજીઓ કરી સરકાર વિરૂધ્ધનો માહોલ કરવાના પ્રકરણમાં આવા કબેલાતા વકફ તત્વો, વકફ ટ્રસ્ટો સહિતના જવાબદાર લોકો વિરૂધ્ધ વ્યાપક તપાસ થાય ૫૨વા રાજ્યના મુખ્યમંત્રી, ગૃહમંત્રી સહિતના સત્તાધારીઓને બહુ ગંભીર ફરિયાદ કરવામાં આવી હતી. જેમાં આખરે સરકાર દ્વારા સીઆઈડી ક્રાઈમને બહુ મહત્વની તપાસ સોંપાઈ ગઈ છે. સીઆઈડી ક્રાઈમ દ્વારા આ સમગ્ર પ્રકરણમાં આજે ફરિયાદી નિવેદન લેવાની શરૂઆત કરી તપાસનો ધમધમાટ શરૂ કરાયો છે. આગામી દિવસોમાં આ સમગ્ર પ્રકરણમાં ચોંકાવનારા ખુલાસા સામે આવે તેવી શક્યતાઓ છે.

પશ્ચિમ રેલ્વે

દરખાસ્ત માટે વિનંતી (આરફપી)

(RFP નોટિસ નંબર W.Rly/RFP/Dy CE C II IND/EPC)1 of 2024 તારીખ 06/03/2024)

વિગત	
1.	₹. 2,00,00,000/-
2.	ઓનલાઈન દરખાસ્ત સબમિશન શરૂ થવાની તારીખ અને સમય	27/03/2024 18:00 કલાક.
3.	ઓનલાઈન દરખાસ્ત સબમિશન બંધ થવાની તારીખ અને સમય	29.04.2024, સમય: 16:30 કલાક,
4.	ઓનલાઈન દરખાસ્ત ખોલવાની તારીખ અને સમય	29.04.2024 17:00 કલાક.
5.	ઓનલાઈન ફી ચૂકવણી માટેની છેલ્લી તારીખ	29.04.2024 11:30 કલાક.
6.	ઓનલાઈન ફી ચૂકવણી માટેની છેલ્લી તારીખ	24.04.2024 14:00 કલાક સુધી.
7.	ઈ-ટેન્ડર ફોર્મ ડાઉનલોડ કરવાની છેલ્લી તારીખ ("Bid Submission Deadline")	24.04.2024 15:00 કલાક સુધી.
8.	ઈ-ટેન્ડરની ટેકનિકલ બિડ ખોલવાની તારીખ	02.07.2024 15:30 કલાક.

સંપર્ક વ્યક્તિ(ઓ)

1. શ્રી. વીરેન્દ્રકુમાર, મુખ્ય ઈજનેર (ઈ.)(ઈપીસી), વાપી(ફોન નંબર) : 9190643402165
2. શ્રી. અજય નાગર, ડેપ્યુટી ચીફ એન્જિનિયર (ઈપીસી), વાપી(ફોન નંબર) : 9187521922251

વધુ માહિતી માટે કૃપા કરીને વેબસાઈટ www.wr.indianrailways.gov.in જુઓ.

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ગુજરાત પવિત્ર યાત્રાધામ વિકાસ બોર્ડ, ગાંધીનગર

ઓનલાઈન જાહેર નિવિદા નં. ૬૦ સને ૨૦૨૩-૨૪

સચિવશ્રી, ગુજરાત પવિત્ર યાત્રાધામ વિકાસ બોર્ડ, બ્લોક નં.૨-૩, બહેલો માળ, ડૉ. જીવરાજ મહેતા ભવન, કોબા-૨૨૦૦૨૩, ગાંધીનગર ફોન કોડ+૯૧૭૯૨૬૫૩૦૬૦ ફોન નં.૦૭૯-૨૩૬૫૨૪૬૮ દ્વારા **RFP for Selection of an Agency for providing PMC Services for Anavsi Triveni Sangam, at Anavsi, Ta. Mahuva Dist. Surat (2nd Attempt)** કામોના ઓનલાઈન બંધારી ભાવપત્રો આવે છે. ટેન્ડર તા.૧૨/૦૩/૨૦૨૪ થી તા.૨૨/૦૩/૨૦૨૪ (૧૨-૦૦ કલાક) સુધી ઓનલાઈન રહેશે. ટેન્ડર ઓનલાઈન ખોલવામાં આવશે. ટેન્ડરની ફી-નોંધી, મીટીંગ તા.૧૪/૦૩/૨૦૨૪ (૦૬-૦૦ કલાક)નો રોજ રાખવામાં આવેલ છે. ટેન્ડરના ફીઝીકલ ડોકયુમેન્ટ ઈ.એમ.ડી. તથા ટેન્ડર ફી સ્વીકારી બારા.પી.એ.ઈ.ની તા.૨૪/૦૩/૨૦૨૪ (૧૬-૦૦ કલાક) સુધી જમા કરવાના રહેશે. ટેન્ડર ઓથોરાઈની તા.૨૭/૦૩/૨૦૨૪ (૧૮-૦૦ કલાક) રહેશે. ઓનલાઈન ટેન્ડરની અન્ય વિગતો **https://gender.nprocure.com** તથા **www.statetenders.gujarat.gov.in** ઉપર જોઈ શકાશે. ટેન્ડર ફોર્મ **https://tender.nprocure.com** ઉપર ભરી શકાશે.

માહિતી/૨૩૭૮/૨૩-૨૪

Tourism Corporation of Gujarat Ltd

(A Govt. of Gujarat Undertaking)
Nigam Bhavan, 1st floor, sector-16
Gandhinagar-382016, Gujarat

Tender Notice

The tender is invited by Tourism Corporation of Gujarat Ltd. (TCGL), for the appointment of agency for Development of Harshad Mata, Temple Premises work, at- Gandhvi Village Ta: Kalyanpura, Dist :Devbhoomi Dwarka, Gujarat. Estimated Cost (Including GST) of the Project Rs. 7,49,46,160/- The interested bidders/agencies may download the tender document form the website :www.nprocure.com from 7/03/2024 onward Last date of submission on online :03/04/2024 up to 4.00 pm Tender may also be referred on www.gujaratitourism.com.

Managing Director of TCGL reserves the right to reject or accept any or all tenders without assigning any reason thereof.

Managing Director

COMMISIONERATE OF TECHNICAL EDUCATION, GUJARAT ADMISSION COMMITTEE FOR PROFESSIONAL COURSES (TECHNICAL)

ACPC Building, L.D. College of Engineering, Campus, Navrangpura, Ahmedabad - 380 015.

Separate Admission Program for CoE Institutes of MBA Course :Year 2024-25

As per notification of Dt. 07.03.2023 and as decided by Government, early admission round for MBA course will be starting from Dt. 08.03.2024.

- Details of institutes, their seats, schedule of admission and other instructions are available on ACPC website : **https://acpc.gujarat.gov.in**
- Only those students who had appeared in CAT-2023 can apply in this round of admission. Students who are going to appear in qualifying examination can also apply.
- The candidates are advised to visit above mentioned website for obtain information like detailed notification of course, Advertisement, All type of latest announcement/Notice, steps for online process of registration, institute details, Admission schedule, Merit list and All updated information related to admission process on day-to-day basis.

Note: This round is only for CoE Institutes. Regular round of MBA-MCA course admission on the basis of CMAT-2024 will start probably in the month June/July 2024.

Date - 08/03/2024 **- Member Secretary**

ક્રમાંક/સંમમનિ/અમક્રે/૧૮૦૭/૨૦૨૪

ઓન લાઈન ટેન્ડર

ગુજરાત રાજ્ય માર્ગ અને મકાન વિભાગ

જાહેર નિવિદા નંબર - ૧૬ (બીજો પ્રયત્ન) સને ૨૦૨૨ -૨૩

ગુજરાત રાજ્યનાં રાજ્યપાલ તથી અર્થપાલક સભ્યસચિવ, એકસઇઇ,પુર (મા.મ.) વિભાગ, એકસઇઇપુર (૦૨૭૬૮ - ૨૨૩૮૫) ની કચેરીમાંથી ચોગ્ય શ્રેણીનો નોંધણી પ્રમાણપત્ર ધરાવતા ઈજારદારોમાંથી પાસેથી રેડ નું ક્રમ ૯૮૮૮૫૨ ક્રમ (૩૩૦૬.૪૪) લાખ ૫૦૬ ની-૨ કોમનાં ઓનલાઈન ટેન્ડર મંગાવવામાં આવે છે. ઉપરોક્ત ક્રમની માટેના ટેન્ડર દસ્તાવેજ તા.૦૬/૦૩/૨૦૨૪ ના રોજ બપોરના ૧૨.૦૦ કલાક સુધી વેબસાઇટ **http://rnb.nprocure.com** પર ઉપલબ્ધ રહશે. ત્યારે ઓનલાઇન ટેન્ડર ઉપર પ્રમાણ તા.૦૬/૦૩/૨૦૨૪ ના રોજ ૧૮.૦૦ કલાક સુધીમાં ભોકલવાના રહશે. વધુ વિગત માટે ઉપરોકત વેબ સાઇટ તેમજ ગુજરાત સરકારની વેબ સાઇટ **www.statetenders.gujarat.gov.in** અથવા કચેરીએ કચેરીના કામકાજ ના સમય દરમ્યાન સંપર્ક સાધવા વિનતી કામ એંગે ના મુખ્ય વધારા ઓનલાઇન જોવા મળશે..

(માહિતી-વર્ગ-૧૫૬૫-૨૩-૨૪)

ટેન્ડર નોટીસ

આથી કુલ પ્રોજેક્ટ સમાન પ્રોજેક્ટોમાંથી જણાવવામાં આવે છે કે, ક્વોલિફાઈડ અનુભવ ધરાવતા સમજ ટ્રેડીમેન્ટ મુજબના કાર્યોના ટેન્ડર ફોર્મ ભરવા માટે ઈચ્છતા ઉત્સાહી ઈજારદારો પાસેથી તા.૧૨/૩/૨૦૨૪ થી તા.૨૨/૩/૨૦૨૪ સુધીમાં ઓનલાઈન ટેન્ડર ભરવા માટે આમંત્રણ પાઠવવામાં આવે છે. ટેન્ડર ફોર્મ ઓનલાઈન ભરવાનું રહેશે. ટેન્ડર ફોર્મ ભરવાની તારીખ તા.૨૨/૩/૨૦૨૪ સુધીમાં ૧૬:૦૦ કલાક સુધીમાં

જાહેર નોટીસ

આથી જાહેર જનતાને નોટીસ થી જણાવવાનું કે, મોજે પાલનપાડા તા. કપડવંજ જી. વડોદરા ના રહેવાસી ચુના ભાઇ / સરજે નંબર-૧૩૫ વાળા ની માલીકી ની જમીન સર્વે નંબર ૧૩૬ પૈકી ૧ નવા બ્લોક / સરજે નંબર - ૧૩૩ ક્ષેત્રફળ કે. ૦-૩૫-૨૧ ચો.મી. વાળી જીનમેકીની પ્રીવીયસ પાસ જમીન નાં માલીકો અંગેનીખાનાં અંધકાશ પડેલ તથા વિષ્ણુપ્રસાદ અંબાલાલ પટેલ ના એ તેઓની સંયુકત માલીકી ક્બજા ભોગવટાની અને યોગ્ય ટાઇટલ વાળી હોવાનું જણાવી અમારી પાસેથી ટાઇટલ ક્લીયર સર્ટીફિકેટની માંગણી કરેલ છે. વધારે માહીતી માટેઃ ઉપરોક્ત મિલકત સંબંધમાં કોઈ પણ ઇસમને કોઈપણ પ્રકારનો હક્ક, હિત, કબ્જો, દાવો અથવા તે બાબતે કોઈપણ પ્રકારનો હક્કો હોય તો તેવી વ્યકત તમામ લેખીત દસ્તાવેજો પુરાવા સહ દિન - ૧૪ માં બીંધ જણાવેલ સમયમાં કાર્યા. મુદત બાદ તમામ લેખીત વાંધો કે હક્કાત લેવા માં આવી આવે તો ટાઇટલ ક્લીયર સર્ટીફિકેટ આપવા કાર્યવાહી કરવામાં આવશે તેની જાહેર જનતાને નોંધ લેવી.

તા. ૧૧-૦૩-૨૦૨૪, વડોદરા.

અસીલની સુચના અને ફરમાશથી,

મોહમદસલીમ એ. મલેક
એડવોકેટ

ઠે. ૩૦૧, એમ.બી. ચેમ્બર, હોટલ ઉત્સવ લેન, પ્રતાપ રોડ, દાંડીયા બજાર, વડોદરા. – ૩૯૦૦૦૧

ઓનલાઈન ટેન્ડરીંગ નં. ૬/૨૦૨૪
દેવગઢ બારીઆ નગરપાલિકા
નવા દાહોદેવાડા, દેવગઢ બારીઆ જી. દાહોદ - ૩૮૯૩૮૦
ફોન-(૦૨૬૭૮) ૨૨૦૧૦૧ ફેક્સ-૨૨૧૭૧૦

૧) ક-ન. વર્ક ઓફ સી.સી. રોડ ફ્રોમ એમ.આર. વાઈસયુક ટુ ખોડી. સી.આઈ. બોરાણિ ૨) ક-ન. વર્ક ઓફ રર્ફે ઓવર સી.સી. રોડ ૩) ક-ન. એટ નુ આર.સી.સી. કોર્સ વોટર બોમ ફ્રોમ ફ્રોન એનોસરી ખોડિયા રોલોક ઓપ વે. હોસ્પ દેવગઢ બારીઆ નગરપાલિકા મેનોવા (55745)	૩૫૬૮.૫૫ લાખ
ઓનલાઈન બીડ સબમીશનની આખરી તારીખ	૧૮/૦૩/૨૦૨૪
ટેકનીકલ બીડ સબમીશનની આખરી તારીખ	૨૧/૦૩/૨૦૨૪

કામના ટેન્ડર ડોકયુમેન્ટ તથા ભાવત વેબસાઈટ www.tender.nprocure.com પર ઉપલબ્ધ કરી શકાશે. ટેન્ડર ફી,ઈમેડી તથા અન્ય જરૂરી બાબત પુરવા ઉપરોકત કાગળ તા. ૨૧/૩/૨૦૨૪ સુધીમાં કામ ભાર.જી.બે.ટી.વી.ખોલી આપવા રહેશે. જે ઈજારદારોની બીડો યોગ્ય પુરવવી જણાય પુર્વ થવી હશે, તેમનાં નામ જ ખાલી કામવાં આવશે.

ભવદીય,
ચીફ ઓફીસર
દેવગઢ બારીઆ નગરપાલિકા (ખાનિજ-૨૨૮૨૦૨૧) દેવગઢ બારીઆ નગરપાલિકા

ઑન લાઈન ટેન્ડરીંગ માર્ગ અને મકાન વિભાગ
ગુજરાત સરકાર
જાહેર નિવિદા નં. ૩૨ સને ૨૦૨૩-૨૪

ગુજરાત રાજના રાજ્યપાલશ્રીના વતી કાર્યપાલક ઈજનેરશ્રી, મા. અને મ. વિભાગ, સરકારી પોલીટેકનીક પાસે, ઝાઝોદ રોડ, દાહોદ-૩૮૯૧૫૧ ફોન નં. (૦૨૬૭૩) ૨૬૯૯૯૫ ફકેરી દ્વારા માન્ય ઈજારદારો પાસેથી બીજી આશ મરામતને લગત ૦૧ (બ્લેક) કામ જેની અંદાજિત રકમ રૂા.૩૫.૭૯ લાખ છે, જે માટે નિયત નમુનામાં ઓન-લાઈન ટેન્ડર મંગાવવામાં આવે છે.

પ્રસ્તુત કામોના ટેન્ડર ડોકયુમેન્ટ વેબસાઈટhttp://www.nprocure.com પરથી તા.૧૩/૦૩/૨૦૨૪, બપોરે ૧૬:૦૦ કલાક સુધી ઉપલબ્ધ થશે.

પ્રસ્તુત કામોના ઓન લાઈન ટેન્ડર ઉપર જણાવ્યા મુજબ ડોકયુમેન્ટ તા.૧૩/૦૩/૨૦૨૪ ના રોજ સાંજે ૧૮:૦૦ કલાક સુધી મોકલવાના રહેશે.

વધુ વિગત તથા ભવિષ્યમાં આ નિવિદા અંગે કોઈ પણ સુધારા-વધારા માટે ઉપરોકત વેબસાઈટ જોવા વિનંતી. (માહિતી-દાહોદ-૪૩૨-૨૦૨૪)

Tourism Corporation of Gujarat Ltd
(A Govt. of Gujarat Undertaking)
Nigam Bhavan, 1st floor, sector-16
Gandhinagar-382016, Gujarat
TENDER NOTICE

The tender is invited by Tourism Corporation of Gujarat Ltd. (TCGL), for the appointment of agency for Development of Harshad Mata, Temple Premises work, at-Gandhvi Village Ta:Kalyanpura, Dist:Devbhoomi Dwarka, Gujarat. Estimated Cost (Including GST) of the Project Rs.7,49,46,160/- The interested bidders/agencies may download the tender document form the website: www.nprocure.com from 12/03/2024 onward Last date of submission on online: 03/04/2024 up to 4.00pm Tender may also be referred on www.gujarattourism.com.

Managing Director of TCGL reserves the right to reject or accept any or all tenders without assigning any reason thereof.

Managing Director

ઑન લાઈન ટેન્ડરીંગ માર્ગ અને મકાન વિભાગ,
ગુજરાત સરકાર
ટુંકી મુદતની જાહેર નિવિદા નં. - ૨૫ સને ૨૦૨૩-૨૪

ગુજરાત રાજ્યના રાજ્યપાલશ્રીના વતી કાર્યપાલક ઈજનેરશ્રી, વિરમગા (મા.મ) વિભાગ, "સુધારણા બંગલો", હોટલ વેલકમની પાછળ, અમરાપુરી, વડોદરા - ૦૭ ફોન ૨૮૫-૨૯૮૫૨૩ ના પ્યારા પ્યાર વોળ શ્રેણીમાં પોષી પરાવવા અનુભવી ઈજારદારો પાસેથી ક્લાસ્ટ-બીના ૨ (બે) ક્રમ (બંદોબસ્ત ઉમિત ૧૬.૮૦ થી ૩૨.૮૦ લાખ) માટે ઓન લાઈન ટેન્ડર મંગવવામાં આવે છે.

ઉપરોકત ક્રમો માટેના ટેન્ડર ડોકયુમેન્ટસ તા.૧૫/૦૩/૨૦૨૪ ના રોજ સાંજના ૧૮.૦૦ કલાક સુધીમાં વેબ સાઈટ https://tender.nprocure.com પર ઉપલબ્ધ રહેશે.

જ્યારે ક્રમોના ઓન લાઈન ટેન્ડર ઉપર મુજબ તા.૧૫/૦૩/૨૦૨૪ ના રોજ સાંજના ૧૮.૦૦ કલાક સુધીમાં મોકલવાના રહેશે.

વધુ વિગત માટે ઉપરોકત વેબસાઈટ તેમજ ગુજરાત સરકારની વેબસાઈટ www.statetenders.gujarat.gov.in અથવા રૂબરૂ કચેરીએ કચેરીના કામકાજના સમય દરમ્યાન સંપર્ક સાધવા વિનંતી. કામ અંગેના સુધાર વધાર ઓન લાઈન જોવા મળશે.

(માહિતી-વડો-૧૫૩૧-૨૩-૨૪)

THE MAHARAJA SAYAJIRAO UNIVERSITY OF BARODA
Head Office, Maharaja Fatehsinghrao Gaekwad Marg,
Fatehgunj, Vadodara-390 002, Gujarat, INDIA
Accredited Grade "A+" by NAAC

NOTIFICATION NO. ADE/09/06/2023-2024

The Maharaja Sayajirao University of Baroda (MSU) invites "Online applications" for the posts of Temporary Assistant Professor Temporary Teaching Assistant / Temporary Lecturer (Polytechnic College) and various other Temporary Teaching posts in different Departments of Faculties / Colleges / Institutions that are to be filled for 11 months of the Academic Year 2024-2025 purely on temporary basis.

The desirous candidate shall be required to apply online from 13/03/2024 at 11:00 A.M. onwards at:

http://recruitment.msubaroda.ac.in/MSUJBRecruitmentImp The other details and conditions are available on the website of The Maharaja Sayajirao University of Baroda at **www.msubaroda.ac.in**

The last date for submission of online application is **30/04/2024 till 5:30 P.M.**

Place: Vadodara **Dr. K. M. Chudasama**
Dated: 11/03/2024 (માહિતી-વડો-૧૫૩૩-૨૩-૨૪) Registrar (Officiating)

ગુજરાત સરકાર
નર્મદા જળસંપતિ પાણી પુરવઠા અને કલ્પસર વિભાગ,
જાહેર નિવીદા નં.૨૫ સને ૨૦૨૩-૨૪

1	કામનુ નામ	એપોર્ટીંગ કેનલ-૨ સી દુ બોચાઈ સ્ટાફ ક્વોર્ટર ઓપેરેશન ઓફ વાપરવેસ સ્ટેશન એટ જીજેવા-વડવાણા એન્ડ ગેટ ઓપરેશન ઓફ ગોજવા વીયર એન્ડ વડવાણા ટેન્ક અન્ડર જ્યુડીશ્યલ ઓફ ઈરીગેશન ઝોન ડીવીઝન વડોદરા ક્રાઈટેરા-૨૦૧૪
2	અંદાજીત રકમ	રૂા.૧૪,૧૧,૯૯૯.૪૪
3	ઓન લાઈન ટેન્ડર મેળવવાની છેલ્લી તારીખ અને સમય	તા.૨૬/૦૩/૨૦૨૪,૧૮.૦૦ કલાક સુધી
4	સંપર્ક કચેરીનું નામ અને સરનામું.	કાર્યપાલક ઈજનેર,વડોદરા વિચાર વિભાગ, રૂમ નં ૩૧૬,૩જે માળ, કુબેર ભવન, કોઠી કમ્પાઉન્ડ, વડોદરા, ફોન નં.૦૨૬૫૨૪૧૫૩૩૯.
5	વધુ માહીતી www.tender.nprocure.com પરથી,તેમજ www.statetenders.gujarat.gov.inપરથી જોઈ શકાશે.કોઈ પણ પ્રકારના સુધાર વધારા માટ ઓનલાઈન પ્રસિદ કરવામા આવશે જે આખરી અને માન્ય ગણવામા રહેશે.	

(માહિતી-વડો-૧૫૬૮-૨૩-૨૪)

સરદાર સરોવર નર્મદા નિગમ લિમિટેડ
(ગુજરાત સરકારનું સંપૂર્ણ માલિકીનું સાહસ)

કામનું નામ / ટેન્ડર નોટીસ નબર:-	(૧) ઈલેકટ્રીક ની રકમ (લાખ રૂપિયામાં) (૨) ટેન્ડર ફી (રૂપિયામાં) (૩) ઈ.એમ.ડી (લાખ રૂપિયામાં) (૪) કામ પ્રકાર	(૫) બિ બીડ નોટીસ ની તારીખ (૬) ટેન્ડર ડોકયુમેન્ટ ઓનલાઈન ડાઉનલોડ/અપલોડ કરવાની વેબસી તારીખ. (૭) ટેન્ડર ડોકયુમેન્ટ સબમીશન કરવાની તારીખ. (૮) સબમીશન કરેલા ટેન્ડર ડોકયુમેન્ટ ઓનલાઈન ખોલવાની તારીખ. (૯) ટેકનિકલ બીડ ખોલવાની તારીખ. (૧૦) પ્રાઈસ બીડ ખોલવાની તારીખ.
૧	૨	૩
પુનઃ ટેન્ડર (પુનઃ બોડ) ક.ન.૦૯/૨૦૨૩-૨૪		
ટેન્ડર નોટીસ ન.-૦૮ વર્ષ ૨૦૨૩-૨૪ આઈટી ન.૫૫૬૮૮	(૧) ૬૪.૨૮ (૨) ૧૭૭૬૦/- (૩) ૬.૪૮ (૪) "સીધે" કામ	(૫) ૧૫/૦૩/૨૦૨૪ ૧૨.૦૦ કલાકે (૬) ૧૫/૦૩/ ૨૦૨૪, ૧૮.૦૦ કલાક સુધી (૭) ૨૬/૦૩/૨૦૨૪ થી ૨૬/૦૩/૨૦૨૪,૧૬.૦૦ કલાક સુધી (૮) ૨૬/૦૩/૨૦૨૪, ૧૬.૩૦ કલાકે (૯) ૨૬/૦૩/૨૦૨૪, ૧૬.૩૦ કલાકે (૧૦) ૨૬/૦૩/૨૦૨૪, ૧૭.૦૦ કલાકે

(માહિતી/૨૦૨૨/૨૩-૨૪)

Children's RESEARCH UNIVERSITY

ADVERTISEMENT FOR THE POST OF THE VICE-CHANCELLOR

The Children's Research University, Gandhinagar, Gujarat is established by the Gujarat Act, 15 of 2009 and sub-sequent amendments in 2015 and 2023. A Search Committee has been constituted vide Education Department Notification No. GH/SH/19/CHU/1214/191/KH-2 dated 19/06/2023 and UGC letter No. F. No.13-49/2023(CPP-II) dated 13th June, 2023 as per Section 12(2)(a) of the said act. Therefore, in accordance with the provision of UGC regulation- 2018 and the GR No. SPY-2320-CC-23-KH-2 dated 04/05/2023 from the Education Department, Gujarat, the Committee hereby invites applications/nominations for the appointment of Vice-Chancellor along with the detailed bio-data in the prescribed format available on the University website.

The required qualifications for the post of Vice-Chancellor are as under.
A person possessing the highest level of competence, integrity, morals, and institutional commitment is to be appointed as Vice-Chancellor. The person to be appointed as a Vice-Chancellor should be a distinguished academician, with a minimum of ten years of experience as a Professor or a Director or ten years of experience in a reputed research and/or academic administrative organization with proof of having demonstrated academic leadership.

Leadership in any field of children's education, care and development with the experience of serving in a University or children's institutions and recognition for research or creative work as evidenced through publications or guidance provided to research students of a University or college or leadership provided to the field of humanities, science, fine-arts and crafts, technology, medicine, industry are desirable.

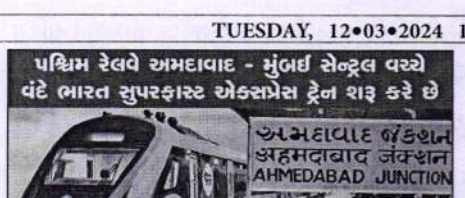
The Search Committee reserves the right to consider a person of eminence outside the list of such applications/nominations.

The Vice-Chancellor shall hold office for a term of five years from the date s/he enters upon his/her office or till attaining the age of sixty-five years, whichever is earlier, and shall not be eligible for re-appointment.

The Application/Nomination should be submitted in hard copy by speed post/registered AD/ courier in a sealed envelope marked "Application/Nomination for Vice-Chancellor Position" addressed to The Chairman, Search Committee for appointment of Vice-Chancellor, C/o. The Registrar, Children's Research University, Sukhsak Chandra Bose Shikshan Sankul, Nr. Raj Bhavan, Chh Road, Sector-20, Gandhinagar- 382021 (Gujarat) and same should also be emailed to searchcommittee2024@cgujarat.ac.in within 30 days of the publication of the advertisement.
The candidates shall apply in the prescribed format available on the website of Children's Research University, Gandhinagar i.e. http://www.cgujarat.ac.in

Date: 11/03/2024 INF/2770/23-24 Registrar

પશ્ચિમ રેલવે અમદાવાદ - મુંબઈ સેન્ટ્રલ વચ્ચે વંદે ભારત સુપરફાસ્ટ એક્સપ્રેસ ટ્રેન શરૂ કરે છે



રવિવાર સિવાય તમામ દિવસો

ટ્રેન નં.	પ્રારંભ સ્ટેશન અને ગંતવ્ય સ્ટેશન	થી અમલ	પ્રસ્થાન	આગમન
૨૨૯૬૨	અમદાવાદ - મુંબઈ સેન્ટ્રલ	૧૩/૦૩/૨૦૨૪	૦૬.૧૦ કલાકે	૧૧.૨૫ કલાકે (તે જ દિવસે)
૨૨૯૬૧	મુંબઈ સેન્ટ્રલ - અમદાવાદ	૧૩/૦૩/૨૦૨૪	૧૫.૫૫ કલાકે	૨૧.૨૫ કલાકે (તે જ દિવસે)

રોકાણ સ્ટેશનો : વડોદરા, સુરત, વાપી અને બોરિવલી સ્ટેશનો બંને દિશામાં.
સંરચના: એસી ચેર કાર અને એક્ઝિક્યુટીવ ચેર કાર.

ટ્રેન નં. ૨૨૯૨૫/૨૨૯૨૬ અમદાવાદ - જામનગર વંદે ભારત સુપરફાસ્ટ એક્સપ્રેસને ઓખા સુધી લંબાવવામાં આવે છે

સમય, રોકાણો અને સંરચના સંબંધિત વિસ્તૃત માહિતી માટે યાત્રીઓ કૃપા કરી www.enquiry.indianrail.gov.in ની મુલાકાત લો.

ટ્રેન નં. ૨૨૯૬૨/૨૨૯૬૧ તથા લંબાવેલ ટ્રેન નં. ૨૨૯૨૫/૨૨૯૨૬નું બુકિંગ તા.૧૨.૦૩.૨૦૨૪ થી PRS કાઉન્ટરો અને IRCTC વેબસાઈટ પર શરૂ થશે.

પશ્ચિમ રેલવે
www.wr.indianrailways.gov.in
આપ અમને પણ ફેસબુક Facebook.com/Westernrly અને ટ્વીટર પર X Twitter.com/Westernrly

તમામ સંભવિત દિકરીઓ માટે વૃક્ષા કરી તમારું અસલ સોગાત્મક સાથે રાખો

Surat Municipal Corporation
EAST ZONE - A

E-TENDER (ONLINE) INVITATION NOTICE No. DMC/EZ-A/13/2023-2024

Tender for invited for various Dept. Works On line on web site https://smctender.nprocure.com from Government Approved Contractor with following schedule.

S.N.	Name of the Dept.	Housing Dep.	Land & Estate Dep.	St.Drainag Dep.	Total work	Total Est. Cost Rs. (Lakh)
01	No. of Work	04	06	01	11	405.32

The detail tender Notice will be made available on website (Visit Us www.suratmunicipal.gov.in)

Sd/- Deputy Municipal Commissioner
East Zone (Varachha) - A
Surat Municipal Corporation

No. P.R.O./737/2023-24
Date : 11/03/2024

જાહેર નોટીસ

આથી આ જાહેર નોટીસ આથી જણાવવાનું કે, રણ.ડી.પટેલ,સબ-ડી.પાદરા, મોજે- વાઘજીપુર, તા.પાદરા,જી. વડોદરાના બ્લોક/સર્વે નં. ૧૬૬, ખાતા નં. ૩૮૬, પુની સર્વે નં. ૨૪૪ + ૨૪૬, પૈકી ૨ હેક્ટર ૦-૮૬-૨૬ ચો.મી. પૈકી ખાતા ૩, ૧૦.૦૦ વાળી પુની જાતની પોતીની જમીન પૈકી ઉત્તર બાજુની ૦-૩૫-૨૦ ફે.આર.ચો.મી.(૩૫૦૦ ચો.મી.) પૈકા માલિકી(૧)પ્રમિલાબેન મુકુન્દભાઈ પટેલ (૨) નિલકુમાર મુકુન્દભાઈ પટેલવાળો પટેલની અસલ અમીરી વેચાણ દસ્તવેજ તથા બીજી કાંઈ અમારી પાસેથી સદર પ્રમિત અંગેના ટાઇટલ ક્લીયરન્સ સર્ટીફિકેટની માંગણી કરેલી છે.

જેથી આ નોટીસ મળ્યે પ્રકાશનનું ૧૪ દિવસ પછી સદર પ્રમિત ઉપર કોઈનો પણ કોઈપણ જાતનો હક્ક, હિત, કબ્જો,ભોગે, ગાર્ય, લીઝ કે ભાગનો પિ.જે કોઈ હોય તો તેઓએ આ નોટીસ પ્રસિદ્ધિ થયેથી દિન-૭ માં અહેવ લીખીત સાથે તેમીનાં પુરાવાના પુરા દાવી સાથે આ ઓફીસ ખાતે લેખીત પુરાવો આપી જાણ કરવી નહી અને તે બાબત કોઈનો કોઈપણ જાતનો વાંધો રહેશે નહી તેમ જ કોઈ હોય તો તેઓએ આ નોટીસ પ્રસિદ્ધિ થયેથી દિન-૧૪ માં અહેવ લીખીત પુરાવા સાથે આ ઓફીસ ખાતે રજુ કરવા જાણ કરવામાં આવે છે અને તે બાબતે કોઈનો કોઈપણ જાતનો વાંધો રહેશે નહી તેમ જ કોઈ હોય તો તેઓએ આ નોટીસ પ્રસિદ્ધિ થયેથી દિન-૨૧ માં અહેવ લીખીત પુરાવા સાથે આ ઓફીસ ખાતે રજુ કરવા જાણ કરવામાં આવે છે ત્યારબાદ કોઈની પણ રજુઆત ધ્યાને લેવામાં આવશે નહી તેની નોંધ લેવી. તા. ૧૨-૦૩-૨૦૨૪

ભરત બી.પટેલ અલકા એન.સોની એડવોકેટ
99987 87424 એડવોકેટ 98982 67219 એન્ડ નોટરી
Office: FF/10, અરોમ કોમ્પ્લેક્ષ, સોમાતલાવ ચાર રસ્તા,કલોલ રોડ, વડોદરા.

જાહેર નોટીસ

મોજે કોયલી, તા. જી. વડોદરાની સીમના પુનીની (૧) બ્લોક / સર્વે નં. ૧૪૯ (પુની સર્વે નં. ૧૩૯), ૧૫૮ પૈકી બીનખેતીની જમીનનું ક્ષેત્રફળ ૦૪૮૮ ચો.મી., બ્લોક/સર્વે નં. ૧૩૬, પુની સર્વે નં. ૧૪૮, ૧૩૯ પૈકી ખાતા નં. ૨૪૧, જૂનું ક્ષેત્રફળ ૧-૧૨-૩૬ ફે.આર.ચો.મી. એટલે કે ૧૨૩૬ ચો.મી., બ્લોક/સર્વે નં. ૧૩૧, પુની સર્વે નં. ૧૪૬, જૂનું ક્ષેત્રફળ ૦-૧૨-૦૬ ફે.આર.ચો.મી. એટલે કે ૧૨૫૬ ચો.મી. અની કુલ મા૫ ૨૩૯૦ ચો.મી. વાળી પુની જાતની જમીન **"AUND VILLE]"** ના બાનેવ કુલેદાર નં. ૧૫૭ ની ખોરાકુનું મા૫ ૧૨૬.૦૪ ચો.મી. વાળી જમીન તેઓ અને તેઓના પરિવારની પાકી પાકતી વાપરવાકામેના જમીન હક્ક, રજા ચો.મી. અની કુલ ક્ષેત્રફળ ૨૦૬.૫૨ ચો.મી. જેમાં કોઈપણ જાતનો ભોગવટો ન હોય તેવી ખરાબાની જમીન ૧૮૮.૫૨ ચો.મી. અની જમીન ઉપર તેઓ ભોગવટો પાકો પડ

ONLINE TENDERING
ROADS AND BUILDING DEPARTMENT, GUJARAT STATE
TENDER NOTICE NO. 69 OF 2023-24

In the name and on behalf of Governor Gujarat State the Executive Engineer, Tapi (R&B) Division, Vyara, Jill Seva Sadan, Block No.10, 2nd Floor, Panwadi, Vyara, Dist.: Tapi, Ph. No. (02626) 226419 invited online tender two cover bid system (Technical & Price bid) in B-1 form the Contractors Registered in Gujarat State or any other state or C.P.W.D. of the Class shown below or equivalent class for the work as under.

Sr. No	Name of Work	Estimated cost Rs.	E.M.D. in Rs.	Tender fee in Rs.	Eligibility Class of registration
1	Repairing and Renovation in Science College, Boys Hostel and Girls Hostel at Valod TA: Valod Dist: Tapi (Plumbing, Bathroom Repair, Door, Window, Sanitary and El Work.)	98,53,164.78	99,000/-	2400/-	"D" Class & Above

The Bid document will be available on website http://tender.nprocure.com and Information deptt. website http://sterbtenders.gujarat.gov.in on Dtd.20/03/2024 up to 18.00 PM & submission of bid document online on Dtd.20/03/2024 up to 18.00 PM.
Tender Online opening will be held in the office of Superintending Engineer, (R&B) Circle, Surat on Dtd. 21/03/2024 at 12.00 Hrs.
D.D. of Tender fee E.M.D. or exemption Certificate shall be submitted in Electronic format along with Reg. Certi., Bank Solvency (Valid) Partnership deed By scanning only.
Original of Tender fee D.D. and EMD Certificate shall be submitted in physical form also by R.P.A.D./Speed Post so as to reach Executive Engineer, Tapi (R&B) Division, Vyara in sealed cover duly subscribing the name of work only between Dtd.21/03/2024 to Dtd.27/03/2024 during the office hours.
For further particular visit us on above mention website.

No.: INF-Surat/1772/2024

SARDAR SAROVAR NARMADA NIGAM LIMITED
(A Wholly owned Govt. of Gujarat undertaking)

Works Under the Executive Engineer, K.B.C. Dn No.3/2, Tharad, (S.S.N.N.I.).
Tender Notice No.10 of 2023-2024
1. Tender ID No. 55977
(I) Name of Work:- "Work of Water Management including Operation & Maintenance of Distributaries with its Minors of Gadsisar Branch Canal for 64 days"
(ii) Estimated cost Rs.54.60 Lacs
(III) Last date/Time of online bid submission: - Dt. 14/03/2024 up to 18.00 Hrs.

For Further details Please visit website https: www.tender.nprocure.com, www.sswnl.com and www.state-tenders.gujarat.gov.in

No.DDI/PAL/868/2023-2024

ON LINE TENDERING
ROAD & BUILDING DEPARTMENT
Tender Notice No. 45 of 2023-24

In the name and on behalf of the Governor of Gujarat State, the Executive Engineer, R & B Division, Civil Lines Road, B/H Blood Bank, Godhra - 389001 Dist. PMS, Ph. No (02672) 243421 invites on line tender for One Rest House Building work in SBD form having cost Rs.249.98 lacs from the Contractors registered in appropriate category. The Bid document for works will be available on web site https://rnb.nprocure.com, up to Dt.19.3.24 up to 12:00 Hrs. & last date of online tender submission Dt.19.3.24 up to 18:00 Hrs. Contractor should submit to this office all bid documents by RPAD on or before from Dt.19.3.24 to 26.3.24 during office hours.
For further particulars please visit above website or contact this office during office hours. (INF/Godhra/1024/24)

Government of Gujarat
Narmada Water Resources, Water Supply and Kalpasar Department
Tender Notice No. 08 of 2023-24

Executive Engineer, U.R.B.C. Inv. Division, Behind I.T.I., Ukai Canal Colony, Ankleshwar-393001 (Phone No. 02646 - 247403) invites offline tender for Canal Ripering Works of Estimated Amount 5.00 Lacs (Offline Work)

(A) Online Tender Date & time	Dt.15/03/2024 to up to 05.00 hrs
(B) SUBMISSION OF Physical Documents) BY RPAD/Courier/Speed Post date & time	Dt.15/03/2024 to Dt.20/03/2024 up to 05.00 hrs
(C) Document Opening Date	Dt. 21/03/2024 up to 12.00 hrs

Tender Opening Date :- For Online Tender :- Dt. 21/03/2024 at 12.00 Hrs. In the Office of the Executive Engineer, Ukal Right Bank Canal Investigation Division, Ankleshwar (INF-BCH-760/2024)

Road & Building Department
Government of Gujarat
Tender Notice No. 89/2023-24

On behalf of Governor of Gujarat State the Executive Engineer, R&B Division, Smith Bungalow, Opp. Officers' Club, College Road, Bhuj (Kachchh) Ph.No. (02832) 251450 / 250424 invites online tender for the work mentioned below from the contractors registered in appropriate class as mentioned below.

Sr.	Name of work	Estimate Amount	Contractor Registration
1	Construction of New Major Bridge on Ravapar Netra Tera Road Km 00/000 To 35/000 (Km 32/800 To 32/980), Ta: Nakhatrana, Dist: Kutch	1728.33 Lac	Sp. Cat.1 (Bridge) with "Class-AA"
2	Construction of New Major Bridge on Kotada Billa Road Km 00/000 To 24/000 (Km 21/820 To 22/00), Dist: Kutch	1241.65 Lac	--As Above--
3	Construction of New Major Bridge on Ravapar Netra Tera Road Km 00/000 To 35/000 (Km 29/600 To 29/780), Ta: Nakhatrana, Dist: Kutch	1081.23 Lac	--As Above--
4	Construction of Bridge on Gadhasisa Mangvana Yaksh Road between Ch. 38/00 to 39/00 Dist. Kutch.	536.08 Lac	Sp. Cat.2 (Bridge) or above with "Class-A" or above

Tender for the work will be available from dt.12/03/24 to dt.04/04/24 on our website: tender.nprocure.com. Bidders are instructed to scan all required documents online by scanning.
Pre-Bid meeting for the above works No. 1, 2 & 3 will be held at our circle office Mehsana at 11.30 AM on dtd.28/03/24.
For further details please contract on our above mentioned office address & for online submission of tender please visit our website mentioned above.
Right to reject the tender is reserved. (DDI-KUTCH-1228-2023-24)

Statue of Unity Area Development and Tourism Governance Authority, Ekta Nagar

Online Tenders (E-Tendering) for following work of SOUADTGA, Ekta nagar are publicly invited by office under the Chief Executive Officer, SOUADTGA, Ekta nagar from the Vendors registered in appropriate class.

Tender Notice No : 04 of 2024
Tender ID No : 51427

(1)	Name of work :	Request for Qualification For Transaction of individual kiosk of remaining food courts/shops at Ekta Nagar food court and Viewpoint1 food court of Ekta Nagar on Auctioning basis
(2)	Last Date/Time of Bid Submission:	Till 22/0312024, up to 18:00 Hrs. (During working hours as per the Government of Gujarat only) Only Technical Bids including Bid Processing Fee and EMD to be submitted in the office of: Chamber of Additional Collector-2, Statue of Unity Area Development and Tourism Governance Authority, Room no.130, IIth Floor, New Administrative Bunding, Ekta Nagar Ta.Garudeshva Dist.Nannada-393 151 Gujarat, India
(3)	Pre-Bid Meeting Date/times	07/0312024, At 03:30 PM Venue for Offline Meeting Chamber of CEO Sir, Statue of Unity Area Development and Tomism Governance Authority, 7th Floor, New Administrative Building, Ektanagar
(4)	1. Estimated amount 2. Tender Fee 3. E.M.D.	1. As per tender document 2. Rs.5,000/- 3. Rs.50,000/-

For Further details please visit website www.nprocure.com
INF/Narmada/541/2023-24

NORTH WESTERN RAILWAY
OPEN TENDER THROUGH E-TENDERING 2023-24

CWM/Carriage & Wagon workshop North western railway Bikaner acting for and on behalf of the president of India invites E-Tender No. 04-MECH-BKNW-CBC-AB-24 Closing Dated 01.04.2024, 1. Name of work and its location: Work of Dropping, Fitting of Draft Gear, CBC/Draw Bar, Striker casting replacement in various types of wagons and Lock Bolting for Fitment of Brake Pull Rod Safety Loop/Hanger Bracket in BCN, BCNA, BCNHL & BOXNHL wagons at C & W Workshop, NWR Bikaner, 2. Estimated Cost of work: Rs. 78,11,245.68 (Inclusive of GST) 3. Earnest money: Rs. 1,56,200.00 4. Last Date and time for submission and opening of E-tender: 01.04.2024 up to 14:30 Hrs. E-Tender will be opened at 15:00 Hrs. on same day 5. Website particular where complete details of e-tender can be seen: www.ireps.gov.in (31-A/24)

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GUJARAT URJA VIKAS NIGAM LIMITED

Sardar Patel Vidyut Bhavan,
Racecourse, Vadodara 390007
PBX : (0265) 2310582-86, Web: www.guvnl.com

PUBLIC NOTICE

GUVNL has filed Petition No: 2331 of 2024 under Section 86 (1)(b) and 86(1)(f) of Electricity Act 2003 before Hon'ble Gujarat Electricity Regulatory Commission (GERC) for approval of amendments to the Power Purchase Agreement (PPA) dated 26.02.2007 read with Supplemental PPA (SPPA) dated 12.08.2021 by way of FIFTH Supplemental PPA (SPPA) dated 05.01.2024. In the matter, Hon'ble GERC through Daily Order dated 02.03.2024 has directed Petitioner (GUVNL) to issue a public notice inviting comments/views from the stakeholders. The petition (2331 of 2024) along with relevant documents filed by GUVNL are uploaded on its website www.guvnl.com on Notice Section. The stakeholders may submit their written comments/ objections/ suggestions in this matter on an affidavit in five copies, within 21 days from date of publication of this notice on petition no. 2331 of 2024, to The Secretary, Gujarat Electricity Regulatory Commission, 6thFloor, GIFT ONE, Road 5C, Zone 5, Gift City, Gandhinagar-382355 with a copy to GUVNL.

Date: 12/03/2024 **Chief Finance Manager (Commerce)**

GUJARAT STATE ELECTRICITY CORPORATION LIMITED

Vidyut Bhavan, Race Course, Vadodara, India - 390007.
Ph. 91-265-6612133, Fax: 91-265-2341588
E-mail: cepnp.gsecl@gebmail.com Website: www.gsecl.in
CIN: U40100GJ1993SGC019988

Tender No. GSECL/PP/PSP/DPR/ 223
Tender ID:56821

The Chief Engineer (P&P), Gujarat State Electricity Corporation Limited, Vidyut Bhavan, Race Course, Vadodara–390 007, Gujarat, Tender For **"Appointment of Consultant for Work for Preparation of Detailed Project Report (DPR) for Pumped Storage Hydro Power Project at various locations in state of Gujarat."**

Tender Documents & Specifications may be down loaded from Web site http://tender.nprocure.com

(For view, download and on line submission) and GUVNL / GSECL web sites www.guvnl.com & www.gsecl.in (For view & download only) from 11.03.2024 onwards.

Note: Be remain updated with above Web Sites for any notices/ amendments/ clarifications etc. till opening of Tender.

Sd/-
Chief Engineer (P&P)
Gujarat State Electricity Corporation Limited

FORM NO. URC-2

Advertisement giving notice about registration under Part I of Chapter XXI [Pursuant to section 374(b) of the companies Act, 2013 and rule 4(1) of the companies (Authorized to Register) Rules, 2014]

Notice is hereby given that in pursuant of sub-section (2) of section 366 of the Companies Act, 2013, an application is proposed to be made after fifteen days hereof but before the expiry of thirty days hereinafter to the Central Registration Centre (CRC), Indian Institute of Corporate Affairs (IICA), Plot No. 6,7, 8, Sector 5, IMT Manesar, District Gurgaon (Haryana), Pin Code-122050 that M/s Bhalala Industries LLP, an LLP may be registered under Part I of Chapter XXI of the Companies Act 2013, as a company limited by shares named "Bhalala Industries Limited"

The Principal objects of the company are as follows:
"To manufacture, trade, import, export, buy, sell of agro products, ginning and pressing, all kinds of food processing activities and related work thereto."

A copy of the draft memorandum and articles of association of the proposed company may be inspected at the M/S Bhalala Industries LLP, Survey No. 484, New Market Yard Shop A 196, Rajkot, Gondal – 360311, Gujarat, India.

Notice is hereby given that any person objecting to this application may communicate their objection in writing to the Registrar at Central Registration Centre (CRC), Indian Institute of Corporate Affairs (IICA), Plot No. 6,7, 8, Sector 5, IMT Manesar, District Gurgaon (Haryana), Pin Code-122050, within twenty-one days from the date of publication of this notice, with a copy to the company at its registered office.

Dated this 12th Day of March, 2024

Names of Applicant:
1. Hasmukhbhai Devrajbhai Bhalala • 2. Shyam Jitendrabhai Bhalala
3. Kalpesh Hasmukhbhai Bhalala • 4. Bhavya Narendra Lodaya
5. Hinaben Mayurbhai Bhalala • 6. Madhuben Jitendrabhai Bhalara
7. Rohit Bhimjibhai Zala

Online Tender Notice No.38/2023-24

The DPIU & executive Engineer, Dang Panchayat (R&B) Division Ahwa Phone No. (02631) 220336 on behalf of Governor of Gujarat invites the Item Rate / percentage rate online bids for Resurfacing of Rods Works, M.M.G.S.Y. Yojna-2023-24 Dang District From Eligible Contractor As per Online on website "https://tender.nprocure.com" For Further Particulars Contact above stated office during office hours.

Last Date & Time of Online Submission of tender	20/03/2024 18.00 PM
Submission of Tender Fee, E.M.D. and other Documents	26/03/2024
Date, Time & Place of Pre Bid Conference	18/03/2024
Online Opening of Bid	20/03/2024 18.00 PM

Sr. No	Name of Work	Est. Cost (Rs. In Lacs)
1	Resurfacing of Kalibel chikhla mahal Road K.M. 0/0 to 11/570 Tal:- Waghai Dist:- Dang	180.12
2	Strengthening and Resurfacing of Forest Road Tanklipada to Garkhadi Road km.10/45 Tal:- Subir Dist:- Dang	370.69
3	Shingana to Murumvihir road	269.14

The tender document for these work are available only in website https://tender.nprocure.com Other Details can be seen on Notice board of R. & B. (P) Division Office Surat.
INF/DANG/362/2024

TAMILNADU TEXTBOOK AND EDUCATIONAL SERVICES CORPORATION
CHENNAI- 6.

Phone: 044 – 28275852
Fax No:044 – 28224493
E-mail : jd.tnbesc@tn.gov.in

"EVK Sampath Maaligai"
No.68, College Road
Chennai- 600 006

Notice Inviting E-Tender

RC.No. 411/PUR-1/2024 Date:05/03/2024

1	Description of E-Tender	Facility Management Service Provider (FMSP) for Housekeeping, Sanitation and Security Services at 1,954 Government Schools under the control of Directorate of School Education for a period of 3 years.
2	Last Date for receiving Pre-bid queries	28/03/2024 at 5.00 p.m.
3	Bid Submission starting date & time	18/04/2024 at 10.00 a.m.
4	Last Date and Time for Submission of E-Tender (Outsourcing) Facility Management	27/04/2024 up to 5.00 p.m.
5	E-Tenders Opening Date &Time, Place: TamilNadu Textbook & Educational Services Corporation, Chennai-6.	29/04/2024 at 11.00 a.m.
6	Tender Document and other details are available in the Websites and can be downloaded free of cost	a) http://tntenders.gov.in b) http://www.textbookcorp.tn.gov.in

Sd/-
Managing Director
Tender Inviting Authority
TamilNadu Textbook and Educational Services Corporation, Chennai-6

DPR/1527/Tender/2024

SHRI SAIBABA SANSTHAN TRUST, SHIRDI

Post, Shirdi, Tal- Rahata, Dist. Ahmednagar Pin- 423 109
Phone No. (02423) 259180/259302, Fax- 258870
E-mail- saisshram@sai.org.in, dwarawati@sai.org.in, Web:- www.sai.org.in

TENDER NOTICE

E-Tenders are invited on out source basis for Saiashram Bhaktniwas for the work of Housekeeping including Machinery, Electrical, Plumbing, Maintainance etc. as well as mechanised housekeeping for Dwarawati Bhaktniwas for the duration of 2024-25 as on dated 01/04/2024 TO 31/03/2025

1. For E-tender criteria terms/conditions and e-tenders information visit Shri Saibaba Sansthan official website **www.sai.org.in/tender**
2. The E-tender for online downloading and uploading Dt. 12/03/2024 from 11.00 to Dt. 01/04/2024 till 5:00 p.m. will be available at **www.mahatenders.gov.in**

sd/-
Tukaram Hulwale
I/C Chief Executive Officer

dgipr/2023-24/9676

"IMPORTANT"

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