

**BEFORE THE HON'BLE ANDHRA PRADESH ELECTRICITY REGULATORY
COMMISSION**

At its office at 4th Floor, Singareni Bhavan, Red Hills, Hyderabad

I.A. No. 6 of 2018

IN

O.P.No. 8 of 2018

In the matter of: Renewal of PPA with M/s Lanco Kondapalli Power Limited

Between:

1. Southern Power Distribution Company of Andhra Pradesh Ltd.,
D. No. 19-13-65/A, Tiruchanoor Road
Tirupathi, Chittoor District, Andhra Pradesh
2. Eastern Power Distribution Company of Andhra Pradesh Ltd.,
Corporate Office, P&T Colony, Seethammadhara,
Visakhapatnam

.... Petitioners

AND

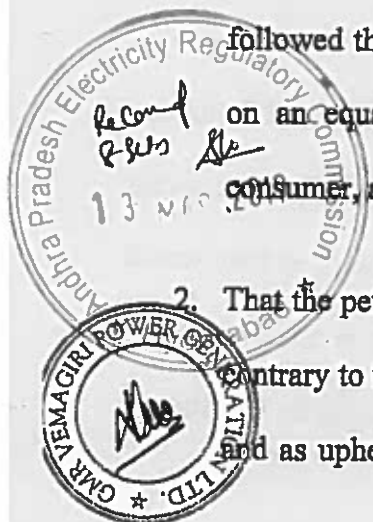
M/s Lanco Kondapalli Power Limited
Regd. Office: "LANCO House",
Plot No 4, Software Unit Layout, HITEC City
Madhapur, Hyderabad- 500081

.... Respondent

**INTERVENTION CUM OBJECTION AFFIDAVIT ON BEHALF OF GMR VEMAGIRI
POWER GENERATION LIMITED TO THE PETITION FILED UNDER SECTION 86
(1) (b) OF THE ELECTRICITY ACT, 2003**

The Applicant Most Respectfully Submit:

1. That the instant application is being filed on behalf of M/s. GMR Vemagiri Power Generation Limited (hereinafter referred to as "**GVPGL**") challenging the process of renewal of the expired PPA of M/s. Lanco Kondapalli Power Limited/ Respondent, which has lived its life and recovered the capital cost, *inter-alia*, on the ground that the Discoms have not followed the tenets and objectives of Electricity Act, 2003 of treating all players in the field on an equal footing, promoting competition, efficiency, ensuring cheaper power to the consumer, and transparency in the power procurement process.
2. That the petition filed by the AP Discoms seeking approval for renewal of LANCO's PPA is contrary to the abovementioned principles as set out by the existing legal /regulatory regimes and as upheld by the Hon'ble Apex Court from time to time. The Hon'ble Supreme Court



duty enjoined upon state machineries in matters of distribution of natural and national resources. Before adverting to the legal contentions/objections to the Petition for renewal of the PPA of LANCO, that has been filed by AP Discoms, it is necessary to set out the brief facts of the case as stated below.

3. Pursuant to the electricity reforms undertaken post the enactment of Electricity Act, 2003 enabling the participation of private sector in the power and electricity domain, the then State of Andhra Pradesh invited proposals from various private sector participants to set up Gas Based Power Plants on the then available projection of the availability of Natural Gas. Natural Gas based power plants were sought to be incentivized and promoted in view of Natural Gas being a clean fuel for generation of electricity as compared to the highly pollutant thermal power industry which formed the bulwark of Indian Power Sector Generation.
4. GVPGL herein is a Company incorporated under the provisions of the Companies Act, set up specifically for the purpose of setting up a 370 Megawatt Gas Based Power Plant at Vemagiri in the State of Andhra Pradesh. Thereafter GVPGL entered into a Power Purchase Agreement with the then APSEB on 31.03.1997 for supply of 370 MW power from the power plant proposed to be set up at Vemagiri. A copy of the relevant extracts of said Power Purchase Agreement is annexed herewith as Annexure A.
5. The Power Purchase Agreement (PPA), *inter-alia*, guaranteed operation of the power plant at 80% PLF (Plant Load Factor) and the said amount was to be paid on a 'deemed generation' basis irrespective of whether any generation was made or not. This Power Purchase Agreement was in line with similar Power Purchase Agreements entered earlier by the then APSEB with a few other power plants including the Respondent herein.
6. The said clauses relating to guaranteed operation of the plant at 80% of plant load factor (on deemed generation basis) was highly critical for the purpose of ensuring that private sector participants would invest huge capital amounts into setting up of power plants, as they would then be assured of a guaranteed off-take as the entire electricity industry is monopolised in the State. Pursuant to such assurances, representations and covenants held out by the State in



public domain, GVPGL set up a power plant by investing a total amount of around Rs.1200 Crores during the relevant time. And on the strength of the PPA, the Ministry of Petroleum and Natural Gas ("MoPNG") (Respondent No. 9) on 05.06.2000 allocated 1.64 MMSCMD of natural gas (under administered price mechanism) to GVPGL on a firm basis. A copy of the said letter of MOPNG is annexed herewith as **Annexure B**. Pursuant to such allocation, the Gas Authority of India Ltd., ("**GAIL**") entered into a Gas Supply Agreement dated 31.08.2001 with GVPGL for supply of gas till 31.03.2020. A copy of the Gas Supply Agreement dt. 31.08.2001 and amendment dt. 29.01.2003 is annexed herewith as **Annexure C**. Subsequently existing Gas Supply Agreement was renewed on 30.08.2018 and is valid till 05.07.2021, with a clause for extension.

7. Subsequent to the PPA and the firm gas allocation made, GVPGL established 388.5 MW of gas based power plant with a total capital outlay of around Rs.1200 crores. The said plant was set up with state of the art facilities to provide better efficiency with the latest Gas Turbine technology. After the investments were made by GVPGL and when the plant was close to its Commercial Operations Date ('COD') i.e. 16.09.2006, the availability of gas was discovered to be lesser than what was originally projected. Accordingly, there was a shortage in the quantity of gas that was to be supplied in relation to the various firm allotments made by MOPNG and the Gas Supply Agreements executed by GAIL.
8. It is respectfully submitted that on any equitable or rationale principle, upon such shortage visiting the Gas Supply arrangement, it would be apposite that the available gas ought to have been apportioned amongst the allotted members, rateably and proportionately. This, in fact, is generally the policy by MOPNG and pursued by GAIL in relation to various power projects across the country.
9. Realizing that the obligations cast under the Power Purchase Agreements would obligate the then APSEB and the State and its entities to pay the minimum amounts to the private sector generators on account of the 'deemed generation' clause, tremendous pressure was built upon the then non-commissioned plants including GVPGL to agree for an alternative fuel clause and for dropping the deemed generation clause. Based on the representations made with regard to appropriate ameliorative steps being taken by the State in future and yielding to the larger public interest, only GVPGL out of 4 new Independent Power Plants (IPPs) had



dropping of the 'deemed generation' clause placing complete faith in the representations and proposed future actions of the Government of Andhra Pradesh and its power utilities.

10. Pursuant to consent granted, the PPA was amended on 18.06.2003 ("First Amendment) incorporating natural gas as only a primary fuel and in case of unavailability of primary fuel, other fuels such as Naptha/LSHS as the alternative fuel clause was also incorporated. Accordingly Article 1.2.27 of the PPA was amended and this Hon'ble Commission vide its Order dated 12.03.2003 in OP No. 12 of 2002 granted consent to the said amendment. It is pertinent to mention that the PPA was subsequently amended again in 2007, *inter-alia*, deleting the deemed generation clause. Vide the said amendment; the term of the PPA was further extended till 16.09.2029 (initially the PPA was for a period of 15 years). Copies of the amendments dated 18.08.2003 and 02.05.2007 to the PPA dated 31.03.1997 are being filed herewith as **Annexures D and E respectively**.
11. Consistent with the representations held out to the Private Power Project Proponents and on 06.12.2004, the then Government of Andhra Pradesh recommended to MOPNG and GAIL on account of shortage of natural gas, GAIL to initially supplied gas to its customers based on guidelines under which gas was distributed among various customers to ensure a pro-rata supply of available gas to all the gas projects, on 06.12.2004, the then Government of Andhra Pradesh recommended to MOPNG and GAIL to ensure a pro-rata supply of available gas to all the gas projects. Thus, the gas was to be supplied to all the firm allottees in a pro-rate manner which would have ensured an equitable distribution of the natural and national resource of natural gas to all the allottees justly. After pressurizing GVPGL to a position of amending the Power Purchase Agreement the then Government of Andhra Pradesh, having either failed to exert similar pressure upon the previously commissioned projects or to discriminatively favor them, could not ensure any amendment of the PPAs for such commissioned projects including the PPA of Respondent herein. A copy of recommendations letter dated 06.12.2004 is annexed herewith as **Annexure F**.
12. This resulted in a peculiar situation where the commissioned projects continued to have the deemed generation clause benefit and GVPGL has been restrained to abide by the amended clause in the PPA. It is respectfully submitted that this situation entirely resulted out of the



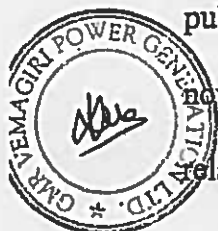
actions of Petitioners in exercising their dominant monopolistic position with regard to GVPGL which was at the final stage of completion .

13. This meant that the State continued to remain bound by the 'deemed generation' clauses in relation to the commissioned projects. Taking a completely commercial view and at odds with the constitutional spirit/duty enjoined upon the State, the then Government of Andhra Pradesh resiled from its previous recommendations of a pro-rata allotment amongst all firm allottees (vide its letter dated 06.12.2004) and changed tracks to look at its pure commercial interest and recommended to MOPNG and GAIL vide its letter dated 22.11.2005 inter alia suggesting that the allotment be made firstly to such commissioned power projects including Respondents No 17 and only after the obligation of achieving 80% PLF of those plants, additional gas, if any, was directed to be allotted to the new projects. The letter addressed by the Government of Andhra Pradesh through its Honb'le Minister inter alia recorded as follows:

"State government have subsequently reviewed the implications of pro-rata allocation of the available gas. If Pro-rata allocation of the available gas is made to all the projects, the generation from the existing 4 projects would fall down appreciably and Government of Andhra Pradesh/APTRANSCO will have to pay about Rs. 333 Crores up to 31.12.2006 towards deemed generation without availing full generation form these 4 existing projects. This additional burden of about Rs. 333 Crores can be avoided if the available gas is first supplied to the existing 4 gas based projects to the extent required for achieving threshold PLF."

A copy of letter dated 22.11. 2005 annexed herewith as **Annexure G** .

14. It is submitted that the said recommendations are wholly repugnant to the duty enjoined upon the State in the manner of dealing with national and natural resources. These resources have now been emphatically held by the Hon'ble Supreme Court to be owned by the State in public trust for the general benefit of citizens at large. The concept of public trusteeship has now been well recognized and the Hon'ble Supreme Court has also held specifically in relation to the subject of natural gas in *Reliance Natural Resources Ltd. and Ors v Reliance*



trusteeship with fairness and non-discrimination for ensuring an equitable and proper discharge of its trustees role.

15. The State ought to therefore take into account various elements of public interest and not merely its private commercial interest while recommending and dictating the policy to be adopted in the manner of allocation of natural resources. The recommendation made by the State, to allocate gas exclusively to the four existing power projects including Respondent herein, at the cost of supply to be made ratable to all the firm allottees would be entirely unconscionable as it is dictated by commercial considerations rather than the constitutional principles of fairness, rationality and objectivity which are required to be observed by all state machineries including the DISCOMS. However, in view of the then representations held by the State and its entities, that they would work out appropriate remedial measures in respect of the new power plants, GVPGL was impressed upon not to precipitate any issue, as the State undertook to prevail upon MOPNG of Union of India to allocate gas on a priority basis to the new power plants like GVPGL.
16. As GVPGL was entirely dependent upon the State support, no steps were taken for challenging such recommendations made by the State Government at that point of time. These recommendations of the State Government led to MOPNG recommending GAIL continue supplies to the existing power plants on a priority basis and consider allotment of only the surplus gas to the new Power Plants.
17. In furtherance of GVPGL efforts to engage with the State and MOPNG, to alter the priorities with regard to allocation of natural gas, GVPGL along with all the other new power plant owners, had engaged in a series of steps with MOPNG and its Empowered Group of Ministries (EGOM) for giving a priority to the Gas Based Power Plants over other sectors such as Fertilizers, CNG etc., or to at least bring it on parity for ensuring allocation of gas. Also the prospect's relating to discoveries in Krishna-Godavari basin allocated to Reliance ('KG-D6'), fuelled the hope of the GVPGL that additional gas would soon be available for the purpose of firing the GVPGL's plant.



18. In the meantime, GAIL continued supplying the APM Gas to the four previously existing power plants even though GVPGL's power plant achieved Commercial Operations Date (COD) on 16.09.2006. As the matters in relation to APM gas had settled by then and GVPGL was persuaded not to challenge such action on various representations and hopes held out, GVPGL reconciled to the position that during the currency of the Power Purchase Agreement with the previously existing power plants, such gas would continue to be supplied on a priority basis.
19. However, GVPGL had a legitimate expectation that continuation of the said policy would mean that after the expiry of the term of the PPA of the previously existing power plants when the monitory obligation would no longer be binding on the power utilities of the State, the APM gas would be supplied to GVPGL on the then acquired priority by virtue of the GVPGL being the previous and existing PPA holder.
20. It is pertinent to mention that GVPGL's PPA executed originally on 31.03.1997 is valid till 16.09.2029, whereas the PPA executed with the Respondent herein expired on 01.01.2016. Once such PPAs are expired, the State and DISCOMS were under no obligation to renew the PPA of the Respondent. The PPA only provided for a clause for renewal at APSEB's option. Similarly APSEB had an option of exercising a buyout right of the power plant from the Respondents. Both these possibilities are only optional and exercisable at the will of APSEB and there is no obligation upon them to resort to one or the other.
21. On account of the priority given to the previously existing plants, a situation has now resulted where the said plants continued to operate and avail the benefit of payment, including on 'deemed generation' clause, leading to recovery of capital cost substantially if not entirely. However GVPGL's total investment of Rs.1200 crores has not seen any tangible benefits as its Power Plant has been completely shut down from the period of COD i.e., 16.09.2006 till date, except for brief intermittent periods of Feb.2008-May, 2008; Dec.2008-March, 2009; April 2009-Feb.2013; April 2013 and April 2015. Huge capital outlay and expenditure employed in a vital infrastructure industry for the nation has gone unutilized and this has also resulted in GVPGL not being able to either generate power or provide employment or other GDP benefits for the nation including taxes. GVPGL was thus resting only on the hope of



to the PPAs with the previous existing power plants.

22. As stated earlier, the PPA with Respondent herein expired on 01.01.2016. However to GVPGL's surprise and consternation, AP DISCOMS (Petitioners herein) instead of being relieved of various onerous conditions which were continued only in relation to the previous existing PPAs (while being amended in relation to the new PPAs including GVPGL), decided for some irrational, incomprehensible and strange reason to continue availing power from the Respondent herein, instead of supplying gas to GVPGL and availing power from GVPGL, whose PPA continues to be in subsistence till 2029.

23. Aggrieved by the aforesaid discriminatory actions of the Petitioners herein, GVPGL immediately approached the concerned authorities by addressing communications dated 05.05.2017 and 10.05.2017, *inter-alia*, specifying the following:-

- a. PPA of Respondent has expired and the Capital Cost for the Plant has already been recovered;
- b. Sub optimal efficiency of the plant operated by Respondent compared to that of GVPGL's plant;
- c. Lower Station Heat Rate of Petitioner and other similarly situated plants would save up to Rs. 0.22/unit;
- d. Respondents Higher Capacity Charges in comparison to GVPGL;
- e. Advantages under GVPGL's PPA include No 'alternate fuel' or 'deemed generation' clauses;

Copies of the communications dated 05.05.2017 and 10.05.2017 addressed by GVPGL to the State authorities are annexed herein as **Annexure E** and **Annexure I** respectively.

24. It is pertinent to mention that vide a communication dt. 27.07.2017 addressed by the Chief General Manager of APSPDCL to the Secretary, APERC, that was available on the website of this Hon'ble Commission, it was communicated, *inter-alia*, that the PPA's with LANCO and several others have expired on 18.04.2016 and it is 'decided not to procure power from



them'. In the said communication, it was also noticed that several other IPP's including GVPGL are in commercial operation in the state, thereby indicating that the Petitioners were exploring the feasibility of utilizing the power plants of GVPGL and other such entities whose PPA's are in subsistence as on today. A copy of letter dt. 27.07.2017 along with relevant extract of resource plan is being filed herewith as **Annexure J**.

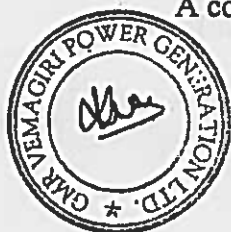
25. Notwithstanding such representations, when the Petitioners herein did not act upon the same, GVPGL was further surprised to learn that they have approached this Hon'ble Commission seeking its consent for availing continued power supply from the Respondent till 31.03.2018 i.e., on a short term basis. When public hearing in relation to such proposals were taken up by this Hon'ble Commission, GVPGL learnt of the said decision made by the Hon'ble Commission. Consequent thereto, GVPGL approached Petitioners herein once again, requesting them to utilize the facilities set up by GVPGL which would be more beneficial for the State in terms of economic as well as effective utilization of a scarce resource like Natural Gas, generating higher quantity of electricity because of the more advance capital machinery and technology employed by GVPGL.

26. While GVPGL's request went disregarded, it appears that various tenable objections were made in the public hearing before the Hon'ble Commission against continuing the onerous conditions in favor of the Respondent while availing power from them on a temporary basis.

27. GVPGL learnt that, thereafter, the Hon'ble Commission vide orders Dt. 29.11.2017 granted its consent to procure power from, *inter-alia*, the Respondent, subject to the following specific conditions:

- i. To procure power from the Respondent herein at a fixed cost of Rs. 0.96 ps and variable cost of Rs. 2.33 ps making a total of Rs. 3.29 ps per unit for the financial year 2017-18.
- ii. That during the short term power purchase they shall not be liable to pay any fixed charges/penalty/deemed generation charges and no reworking of fixed charges based on actual generation.

A copy of the order dated 29.11.2017 is annexed herein as **Annexure K**.



power plant and availing power supply from it on far more beneficial terms should fall on a reasonable consideration with the Petitioners herein, the Petitioners herein, in a blatant and flagrant display of favoritism towards the Respondent, had approached the Hon'ble Commission and filed O.P.No. 8 of 2018 for the purpose of seeking consent for the extension/renewal of PPA, by contending that the Petitioners have only two options, i.e., either to agree for the extension of the PPA or to buy out the power plant from the Respondent. It is pertinent to mention that the Hon'ble Commission vide its order dated 29.11.2017 in I.A.No. 8 of 2017 in O.P.No's 28 and 29 of 2016 permitted the Petitioners to purchase power on a temporary basis from the Respondent. GVPGL submits that it reserves its right to challenge the short-term procurement of power from the Respondent as the same is against the APERC business regulations that mandate competitive bidding even in cases of short-term power purchase.

29. GVPGL submits that being aggrieved by the aforesaid actions of the Petitioners in filing O.P.

No. 8 of 2018 for the purpose of seeking consent for the extension/renewal of PPA of the Respondent, GVPGL approached this Hon'ble Commission and filed I.A. No. 18 of 2018 in O.P. No. 8 of 2018 challenging the proposal for renewal of PPA of the Respondent. GVPGL, *inter-alia*, highlighted in its petition that the said proposal apart from being violative of the principles of level playing field and doctrine of public trust in distribution of natural resources, is also violative of the legitimate expectations of GVPGL and the fundamental rights of the promoters of GVPGL as the actions of the Petitioners in granting undue favoritism to the Respondent, amounts to violation of Articles 14 and 19(1)(g).

30. GVPGL submits that while I.A. No. 18 of 2018 filed by GVPGL was pending adjudication before this Hon'ble Commission, certain negotiations ensued between the Discoms, the Respondent herein, Spectrum and GVPGL, wherein, it was proposed that a mutually acceptable solution on sharing of gas may be proposed for the kind consideration of MoPNG which is in the best interests of the public exchequer and all the stakeholders involved herein. Owing to the aforesaid negotiations, GVPGL, with a bona-fide intention of arriving at a workable solution and without prejudice to its rights and remedies, withdrew I.A. No. 18 of



2018 in O.P. No. 8 of 2018. A copy of the order-dated 07.07.2018 passed by this Hon'ble Commission in I.A. No. 18 of 2018 in O.P. No. 8 of 2018 is filed as Annexure L.

31. GVPGL submits that in the meantime, the Gas Supply Agreement dated 31.08.2001 and the subsequent amendments dated 29.01.2003 and 25.08.2004 got terminated vide letter of termination dated 30.08.2018 issued by GAIL to GVPGL. Subsequent thereto, GVPGL and GAIL have entered into a fresh Gas Supply Agreement dated 30.08.2018, which is valid till 05.07.2021, with a clause for extension. Copy of the letter of termination dated 30.08.2018 issued by GAIL to GVPGL is filed as Annexure M. Copy of the fresh Gas Supply Agreement dated 30.08.2018 between GVPGL and GAIL which is valid till 05.07.2021 is filed as Annexure N.

32. GVPGL submits that subsequent thereto, negotiations ensued between GVPGL, the other stakeholders and the DISCOMS/ Petitioners, which, ultimately did not materialize and no workable solution ensued. Subsequently, GVPGL also addressed a representation dated 22.03.2018 to the Principal Secretary, Infrastructure and Energy Dept, Govt. of AP, highlighting, *inter-alia*, the following important issues:

- i. GVPGL has a valid PPA with the DISCOMS till 2029;
- ii. Supply of APM gas to the new IPP's having valid PPA's will result in savings of about Rs. 1,272 cr to the public exchequer over a period of 10-15 years;
- iii. Plant of GVPGL being more efficient, could be used to supply power at much cheaper tariff's, as compared to LANCO and Spectrum and hence no rationale exists for extending old PPA's without considering GVPGL's case;
- iv. The proposal for renewal of extending old PPA's of LANCO and Spectrum, without honoring the existing PPA of GVPGL would amount of violation of the level playing field, doctrine of public trust and the legitimate expectations of GVPGL;
- v. Extension of old PPA's of LANCO and Spectrum would saddle the DISCOMS and eventually the consumers with an additional financial burden of Rs. 2,825 crore as compared to sourcing power from GVPGL;

A copy of the representation dated 22.02.2019 issued by GVPGL to Principal Secretary, Infrastructure and Energy Dept, Govt. of AP is filed as Annexure O.



representation issued by GVPGL. GVPGL submits that in light on the aforesaid, GVPGL is now constrained to approach this Hon'ble Commission and file the present IA in O.P. No. 8 of 2018 challenging the actions of the Petitioners in undertaking steps for renewal of PPA of the Respondent. GVPGL submits that as the earlier I.A. filed by GVPGL was withdrawn without prejudice to its rights and remedies, the present I.A. is maintainable. Further, as held by the Hon'ble Supreme Court in a catena of judgments, there can be no waiver of fundamental rights. As the actions of the Petitioners in seeking to renew the PPA of the Respondent, apart from being against public interest, are also violative of the fundamental rights of the promoters of GVPGL guaranteed under Article 14 and 19(1)(g) of the Constitution.

34. GVPGL further submits that as the objections to the renewal of PPA's of LANCO and Spectrum are being considered on a public policy angle and as already elaborated by GVPGL, the actions of the Petitioner in seeking to renew the expired PPA's of LANCO and Spectrum, posing the detriment of costing the public exchequer dearly, the present IA being filed by GVPGL is liable to be allowed by this Hon'ble Commission.

35. GVPGL submits that the very actions of the Petitioners in undertaking steps for renewal of PPA of the Respondent reeks of arbitrariness, non-application of mind, favouritism and breach of constitutional principles of appropriation of natural resources for the reasons elaborated here-under.

36. Further it is pertinent to mention that a bare reading of the PPA entered with the Respondent herein makes it evident that the contention of Petitioners that they have only two options, i.e., either to agree for the extension of the PPA or to buy out the power plant from the Respondent is wholly misconceived. The Petitioners have deliberately not brought to the notice of this Hon'ble Commission the existence of a third option as provided under clause 6.2 of the expired PPA of Respondent. Under this option, the Respondent has the right to dispose off its plant or sell the power to third parties with a "Right of First Refusal" (ROFR) by Petitioners. Therefore, a mere perusal of the said clause of the expired PPA of the Respondent would reveal that it is not a mandatory condition for the Petitioners to renew the PPA with the Respondent. It is further submitted that in the event the Respondent decides to



exercise the third option, i.e. selling power to the third parties, the Government of AP has right to interfere and recommend to MoPNG for diversion of APM gas to GVPGL's plant, similar to the line of recommendation as was made in the past, wherein, gas slated to have been allocated to the 4 new IPPs, including GVPGLs plant, was diverted to the 4 old IPPs, including Respondent No. 17.

37. Furthermore, as the PPA executed between APSEB and the Respondent expired on 01.01.2016 and it is legitimately expected that any renewal of PPA cannot be only on a mutually acceptable basis between Petitioners and Respondent. While exercising such option of renewal, the Govt. of A.P and Petitioners are bound to take into account various prevailing circumstances, policies and guidelines, including, *inter-alia*, the following:

- a. The guidelines of central government for procurement of power on long term basis;
- b. The rationale for renewal of Respondent's PPA after expiry and refusal of TS Discoms to participate in renewal process; and
- c. Commercial Justifications for renewal of PPA of Respondent.

GVPGL craves leave to advert to the above-mentioned brief points in detail.

a. Guidelines of central government for procurement of power on long- term basis:

- i. As per the Tariff policy dated 06.01.2006 bearing gazette notification No.23/2/2005-R&R(Vol.III) read with the tariff policy resolution dated 28.01.2016 bearing gazette notification No. 23/2/2005-R&R (Vol-IX) under Section 3 of the Electricity Act 2003, the Ministry of Power has categorically stated that, all long- term power procurement through PPA's (ie. PPA's signed for more than 7 years) shall be done essentially under a transparent competitive bidding process. The relevant extracts of the tariff policy resolution dated 28.01.2016 of the Ministry of Power, Government of India, is reproduced herein- below for ready reference:

"5.0 GENERAL APPROACH TO TARIFF:

5.1 Introducing competition in different segments of the electricity industry is one of the key features of the Electricity Act, 2003. Competition will lead to significant benefits to consumers through reduction in capital costs and also efficiency of operations. It will



already issued detailed guidelines for tariff based bidding process for procurement of electricity by distribution licensees.

5.2 All future requirement of power should continue to be procured competitively by distribution licensees except in cases of expansion of existing projects or where there is a company owned or controlled by the State Government as an identified developer and where regulators will need to resort to tariff determination based on norms provided that expansion of generating capacity by private developers for this purpose would be restricted to one time addition of not more than 100% of the existing capacity.

.....”

(emphasis supplied)

It is submitted that this guideline was not followed by the Petitioners and was given a complete “go-by” in the instant long-term power procurement proposal/renewal from Respondent. Copies of the Tariff policy dated 06.01.2006 and Tariff policy resolution dated 28.01.2016 of Ministry of Power are annexed hereto and marked as Annexure P (colly).

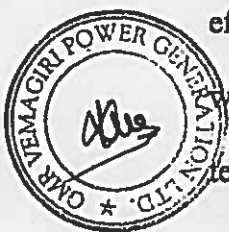
b. Renewal of PPA of the Respondent without the participation of Telangana State DISCOMS:

- i. The PPA of Respondent was initially entered into with APESB which was later transferred to the four Discoms of erstwhile State of AP through various transfer schemes announced by the Government of AP from time to time. Pertinently, after the enactment of AP Reorganization Act, 2014, the successor States of AP and Telangana got two Discoms each and power under various PPAs was to be distributed in prescribed ratio of 46.11% and 53.89% between the successor States of AP and Telangana, respectively. Consequently, the capacity of the PPA of Respondent was allocated to Telangana at the above stated ratio. After expiry of the PPA of Respondent, TS Discoms declined to continue with the PPA of the Respondent and did not undertake any renewal process. In such a situation, where the PPA of the Respondent has expired for all the purposes it cannot be considered for renewal only by the AP Discoms/Petitioners.



c. No commercial justifications for renewal of PPA of the Respondent:

- i. Before initiating any renewal process of the expired PPA of the Respondent, Petitioners ought to have examined comparativeness of tariff and technical parameters of the plant of Respondent in contradistinction with the existing PPA's of the 4 new IPPs, including that of GVPGL.
- ii. After expiry of Respondent's PPA, Petitioners have approached this Hon'ble Commission seeking its consent for renewal of PPA of the Respondent herein without doing its due diligence as stated above. In this regard, GVPGL, vide its letters dated 05.5.2017 and 10.5.2017 informed the Respondents its willingness to supply power at much lower cost as compared to the tariff of Respondent if the available APM Gas is diverted to GVPGL's plant.
- iii. Curiously, the Petitioners have neither responded to GVPGL's offer nor brought this aspect before this Hon'ble Commission for the reasons best known to them. These actions of Petitioners reek of non-transparency and non-application of mind resulting in failure of its obligation to bring down tariff and ensure cheaper power to the consumers.
- iv. While the per unit cost according to proposed PPA with the Respondent is Rs. 0.71, owing to the clause containing guaranteed 80% PLF and mandated payments of Rs 175 Crs towards fixed/capacity charges. Wherein with the actual gas availability at present the PLF will be around 34% and the Fixed Cost liability to DISCOM effectively would be Rs. 1.67 per unit.. In juxtaposition, GVPGL's per Unit cost is only Rs. 0.699, as, as per the PPA of GVPGL, the fixed cost is payable only on actual gas availability (owing to deletion of the alternate fuel clause by way of an amendment).
- v. Further the Petitioners in their proposal have sought for increased Station Heat Rate from 1900 Kilo Calories per KWH to 1995 Kilo Calories per KWH in the renewed PPA with Respondent. This has been done solely to allow Respondent to operate at decreased efficiency at the same time to allow a substantial refurbishment cost of Rs 200 Crores without any justification. It is pertinent to mention that GVPGL, due to advanced technology and a comparatively newer power plant, will be able to operate at Station Heat.



operate. Consequently, GVPGL will be able to produce more amount of electricity with the same amount of APM gas supplied to its power plant.

- vi. It is also pertinent to note that vide the said extension/renewal, Petitioners have provided for a refurbishment cost of Rs. 200 crores to the Respondent which is neither required nor contemplated under the renewal clauses of the expired PPA with Respondent.
- vii. GVPGL is providing a detailed comparative analysis of various parameters between its plant and the plant of Respondent to highlight that commercial considerations lean in favor of supplying gas to GVPGL's power plant instead of a renewal of PPA of Respondent herein:

Comparative analysis of the Objection Petitioner's (GVPGL) and Respondent's plants qua efficiency/ commercial considerations:

Particulars	Units	LANCO	GVPGL	Remarks
Installed Capacity	MW	361.92	370	
PLF	%	34%	36%	
Approx. Gas Available	MMSCMD	0.65	0.65	
PPA Extension	Years	10.00		
Gross SHR	kCal/kWh	1995	1850	
Mus Generated/Year	MUs	1078	1162	
Additional MUs generated by GVPGL w.r.t LANCO	MUs	85		Due to better SHR of GVPGL
Domestic Natural Gas Price	\$/mmbtu	3.36	3.36	
(From 01.04.2018)				



onwards)				
Fixed Cost	Rs/kWh	1.67	0.609	Considering Fixed Cost of Rs 175 Crs Annun as proposed in the draft PPA of Lanco GVPGL - Fixed Cost is considered based on PPA
Variable cost	Rs/KWh	2.74	2.54	Based on SHR
Total cost	Rs/ kWh	4.41	3.24	Sum of fixed cost and variable cost

38. Therefore, in the light of facts stated above, the actions of Petitioners, being state instrumentalities, in according priority to the Respondent, vide the proposal for renewal of its PPA is thus predicated on entirely false premises and suffers from irrationality and non-application of mind. In any event, such actions of Petitioners are completely pejorative of public interest and the State's interest, as any extension favoring the Respondent apart from being discriminatory against the Petitioner, does not besiege itself to any rational consideration of any economic/tangible benefit that can be gained by the State or the general public.



39. It is respectfully submitted that apart from such aspects of commercial benefit for the general public, the action of the Petitioner's in seeking to ask for renewal of expired PPA would not stand to a legal scrutiny, including, *inter-alia*, for the following:-

- i. The State ought to reasonably and rationally act in the manner of allocation of natural resources such natural resources cannot be mobilized or utilized for any person's exclusive benefit. Once firm allotments were made in favor of various people, in the very first instance itself, the State ought to have continued with its originally correct policy of recommending a pro-rata allocation.
- ii. If the State were guided by its commercial compulsions and therefore resorted to a "first come first serve" policy, the State must necessarily continue with the same policy for the purpose of maintaining a rational continuity. It is respectfully submitted that upon the expiry of PPA with the Respondent, the PPA of GVPGL moves to the front of the queue enabling it to be next "served".

40. It is a trite principle of law, that every renewal of any agreement is equivalent to entering into of a new agreement afresh. Such renewal will only relate to the date of renewed agreement and does not relate back to the date of the original agreement, so even if the Petitioners intend to renew the PPAs of the Respondent, GVPGL's application would be anterior in point of time.

41. The Hon'ble Tribunal in *Essar Power Limited vs. Uttar Pradesh Electricity Regulatory Commission* in Appeal No. 82 of 2011 has held that the objectives of Electricity Act is protect the consumer's interest and rationalisation of tariff, the paramount consideration has to be the interest of the consumers and same was also followed by Hon'ble Supreme Court in *All India Power Engineers Federation and others vs. Sasan Power Limited and Ors.* (2017 (1) SCC 487), wherein the role of the Regulatory Commission was again reiterated by opining that the appropriate Commission specifies terms and conditions for determination of tariff and the same is to be guided *inter alia* by safeguarding the interest of the consumer and recovery of the cost of electricity in a reasonable manner. Therefore, this Hon'ble



Commission may not approve the proposal for power procurement from LANCO Project when much cheaper power is available.

42. Further, there is absolutely no justification/ rationale in the actions of Petitioners in seeking to renew the PPA with Respondent having the onerous conditions of 'deemed generation' clause, which were discriminatively continued even for the earlier period in their favor.

43. Since the allocation of scarce natural resources must be done in a just and equitable manner, such principles of equity and justice necessarily demand that GVPGL, having invested substantial amounts and having been denuded the benefit of any allocation in the past in view of the State economic compulsions must be attended to by the State as it is its duty to do so.

44. This would be an even beneficial apportion, more so as GVPGL was compelled to give up a similar 'deemed generation' clause in its favor on the State's representation that appropriate steps would be taken for addressing GVPGL's grievance at a later point of time. GVPGL therefore, has a right of legitimate expectation in the manner of being accorded a priority for the allotment of APM gas, upon expiry of PPA of the Respondent.

45. As allotment made to GVPGL would result in better utilization of the scarce natural resource, on a more economical cost, the principle of trusteeship ordained upon the Petitioners entail them to adopt a rational approach and allot Natural Gas to the GVPGL in priority over Respondent.

46. As the Petitioners in collusion with the Respondent have acted entirely contrary to such constitutional principles, even in the manner of deciding to extend the PPA of Respondent till 31.03.2018 and further to renew the PPA of Respondent, apart from applying to this Hon'ble Commission for seeking consent for extension of the PPA of the Respondent, the Petitioner is approaching this Hon'ble Commission seeking a rejection of the present petition filed by the Petitioners.

47. Further it is respectfully submitted that this Hon'ble Commission has advisory powers under the provisions of section 86 (2) of Electricity Act, 2003 to advise the Government of Andhra Pradesh in relation to promotion of competition, efficiency, economy in activities of



electricity industry within the state. In the instant case, the Hon'ble Commission may invoke its vested powers and advise the GoAP for diversion of APM gas to the GVPGL plant in the larger public interest.

PRAYER

In the light of the above stated facts and circumstances of the case, it is most respectfully prayed that this Hon'ble Commission may be pleased to:-

- a) Allow the instant intervention application;
- b) Dismiss the instant petition filed by the AP Discoms for renewal of the expired PPA dated 31.03.1997 executed with M/s Lanco Kondapalli Power Limited and reject the proposed draft PPA dated 28.04.2017;
- c) Exercise its powers under section 86 (2) of the Electricity Act, 2003 and direct AP Discoms to liaise with GoAP and recommend MoPNG, Government of India to resume the APM/Non-APM/Pre-NELP gas supply to GVPGL from old IPP's whose long terms PPAs have expired;
- d) Direct Discoms to schedule generation from GVPGL under Long Term PPA with the APM/Non-APM/Pre-NELP gas so resumed from old IPPs or alternatively to direct the payment of capacity charges in case DISCOMs doesn't want to procure the power; and
- e) Such other relief as this Hon'ble Commission may deem fit in the facts and circumstances of the instant case.

In the interregnum, this Hon'ble commission may direct the AP Discoms to request to Government of Andhra Pradesh, MoPNG and Gas Authority of India Limited ("GAIL") to resume the APM gas from Repondent's Plant to GVPGL on temporary basis till the disposal of present petition.



**BEFORE THE HON'BLE ANDHRA PRADESH ELECTRICITY REGULATORY
COMMISSION**

At its office at 4th Floor, Singareni Bhavan, Red Hills, Hyderabad

I.A. NO. OF 2019

IN

O.P. No 8 OF 2018

In the matter of: Renewal of PPA with M/s. Lanco Kondapalli Power
Limited

Between:

1. Southern Power Distribution Company of Andhra Pradesh Ltd.,
D.No. 19-13-65/A, Tiruchanoor Road,
Tirupathi, Chittoor District, Andhra Pradesh.

2. Eastern Power Distribution Company Ltd.,
Corporate Office, P&T Colony, Seethammadhara,
Visakhapatnam.

... Petitioners

AND

M/s. Lanco Kondapalli Power Limited,
Regd. Office: "LANCO House",
Plot No. 4, Software Unit Layout, HITEC City,
Madhapur, Hyderabad-500 081.

... Respondent

AND

GMR Vemagiri Power Generation Ltd.,
Having its registered office at Skip House,
25/1, Museum Road, Bangalore,
Rep. by its Manager-Corporate Relations,
Kalyan Chakravarthy S/o Y. Raja Rao.

... Intervention Petitioner

VERIFICATION AFFIDAVIT

I, Kalyan Chakravarthy S/o Y. Raja Rao, age 40, Occ: Manager-Corporate
Relations, GMR Vemagiri Power Generation Ltd., R/o 6-3-866/1/G1, Green Lands,
Begumpet, Hyderabad-500 016; do solemnly affirm and state on oath as follows:

1. I am the Manager-Corporate Relations of the GMR Vemagiri Power Generation
Ltd., therefore, competent and authorized by the Intervention Petitioner to affirm, swear,
execute and file this submissions in the present proceeding.

2. I have read and understood the contents of the accompanying reply affidavit
drafted pursuant to my instructions. The statements made in the accompanying affidavit



available to me and based on information and advice received which I believe to be true and correct.

Solemnly affirmed and signed on this the
11TH day of MARCH, 2019 at Hyderabad



VERIFICATION

I, Kalyan Chakravarthy S/o Y. Raja Rao, age 40, Occ: Manager-Corporate Relations, GMR Vemagiri Power Generation Ltd., R/o 6-3-866/1/G1, Green Lands, Begumpet, Hyderabad-500 016; solemnly affirms at Hyderabad on 11TH day of March, 2019 that the contents of the above affidavit are true to my knowledge, no part of it is false and nothing material has been concealed therefrom.

ADVOCATE



**BEFORE THE HON'BLE ANDHRA PRADESH ELECTRCITY REGULATORY
COMMISSION**

At its office at 4th Floor, Singareni Bhavan, Red Hills, Hyderabad

I.A. No. 7 of 2018

IN

I.A. No. 6 of 2018

IN

O.P.No. 8 of 2018

**In the matter of: Short Term Purchase of Gas Power from Old IPPs in the State of
Andhra Pradesh**

Between:

1. Southern Power Distribution Company of Andhra Pradesh Ltd.,
D. No. 19-13-65/A, Tiruchanoor Road
Tirupathi, Chittoor District, Andhra Pradesh
2. Eastern Power Distribution Company of Andhra Pradesh Ltd.,
Corporate Office, P&T Colony, Seethammadhara,
Visakhapatnam

.... Petitioners

AND

M/s Lanco Kondapalli Power Limited
Regd. Office: "LANCO House",
Plot No 4, Software Unit Layout, HITEC City
Madhapur, Hyderabad- 500081

.... Respondent

**IA FILED ON BEHALF OF GMR VEMAGIRI POWER GENERATION
LIMITED ("GVPGL")**

The Applicant Most Respectfully Submit:

1. At the outset it is submitted that M/s. GMR Vemagiri Power Generation Limited (hereinafter referred to as "GVPGL") has filed an intervention cum objection application in O.P. No. 8 of 2018, challenging the process of renewal of the expired PPA of M/s. Lanco Kondapalli Power Limited/ Respondent, which has lived its life and recovered the capital cost, *inter-alia*, on the ground that the Discoms have not followed the tenets and objectives of Electricity Act, 2003 of treating all players in the field on an equal footing, promoting competition, promotion of efficient and environmentally benign policies efficiency, ensuring cheaper power to the consumer,



and transparency in the power procurement process and taking measures conducive to development of electricity industry.

2. GVPGL is filing the present application seeking to further challenge the short-term purchase of power by the Discoms from the Respondent, *inter-alia*, as being without the sanction of law, arbitrary and against the public interest, apart from the grounds elaborated hereinafter.
3. The brief facts for the purpose of the present application are stated thus:
4. That M/s. GMR Vemagiri Power Generation Limited (hereinafter referred to as "GVPGL") herein is a Company incorporated under the provisions of the Companies Act, set up specifically for the purpose of setting up a 370 Megawatt Gas Based Power Plant at Vemagiri in the State of Andhra Pradesh. Thereafter GVPGL entered into a Power Purchase Agreement (PPA) with the then APSEB on 31.03.1997 for supply of 370 MW power from the power plant proposed to be set up at Vemagiri. A copy of the relevant extracts of Power Purchase Agreement is annexed herewith as **Annexure A.**
5. The Power Purchase Agreement (PPA), *inter-alia*, guaranteed operation of the power plant at 80% PLF (Plant Load Factor) and the said amount was to be paid on a 'deemed generation' basis irrespective of whether any generation was made or not. This Power Purchase Agreement was in line with similar Power Purchase Agreements entered earlier by the then APSEB with a few other power plants including the Respondent herein.
6. The said clauses relating to guaranteed operation of the plant at 80% of plant load factor (on deemed generation basis) was highly critical for the purpose of ensuring that private sector participants would invest huge capital amounts into setting up of power plants, as they would then be assured of a guaranteed off-take as the entire electricity industry is monopolised in the State. Pursuant to such assurances, representations and covenants held out by the State in public domain, GVPGL set up a power plant by investing a total amount of around Rs.1200 Crores during the relevant time. And on the strength of the PPA, the Ministry of Petroleum and Natural



Gas ("MoPNG") (Respondent No. 9) on 05.06.2000 allocated 1.64 MMSCMD of natural gas (under administered price mechanism) to GVPGL on a firm basis. A copy of the said letter of MOPNG is annexed herewith as **Annexure B**. Pursuant to such allocation, the Gas Authority of India Ltd., ("GAIL") entered into a Gas Supply Agreement dated 31.08.2001 with GVPGL for supply of gas till 31.03.2020. A copy of the Gas Supply Agreement dt. 31.08.2001 and amendment dt. 29.01.2003 is annexed herewith as **Annexure C**. Subsequently existing Gas Supply Agreement was renewed on 30.08.2018 and is valid till 05.07.2021.

7. Subsequent to the PPA and the firm gas allocation made, GVPGL established 388.5 MW of gas based power plant with a total capital outlay of around Rs.1200 crores. The said plant was set up with state of the art facilities to provide better efficiency with the latest Gas Turbine technology. After the investments were made by GVPGL and when the plant was close to its Commercial Operations Date ('COD') i.e. 26.09.2006, the availability of gas was discovered to be lesser than what was originally projected. Accordingly, there was a shortage in the quantity of gas that was to be supplied in relation to the various firm allotments made by MOPNG and the Gas Supply Agreements executed by GAIL.
8. It is respectfully submitted that on any equitable or rationale principle, upon such shortage visiting the Gas Supply arrangement, it would be apposite that the available gas ought to have been apportioned amongst the allotted members, rateably and proportionately. This, in fact, is generally the policy by MOPNG and pursued by GAIL in relation to various power projects across the country.
9. Realizing that the obligations cast under the Power Purchase Agreements would obligate the then APSEB and the State and its entities to pay the minimum amounts to the private sector generators on account of the 'deemed generation' clause, tremendous pressure was built upon the then non-commissioned plants including GVPGL to agree for an alternative fuel clause and for dropping the deemed generation clause. Based on the representations made with regard to appropriate ameliorative steps being taken by the State in future and yielding to the larger public interest, only GVPGL out of 4 new Independent Power Plants (IPPs) had consented to



an amendment of PPA providing for alternative fuel clause placing complete faith in the representations and proposed future actions of the Government of Andhra Pradesh and its power utilities.

10. Pursuant to consent granted, the PPA was amended on 18.06.2003 ("First Amendment") incorporating natural gas as only a primary fuel and in case of unavailability of primary fuel, other fuels such as Naptha/LSHS as the alternative fuel clause was also incorporated. Accordingly, Article 1.2.27 of the PPA was amended and this Hon'ble Commission vide its Order dated 12.03.2003 in OP No. 12 of 2002 granted consent to the said amendment. It is pertinent to mention that the PPA was subsequently amended again in 2007, *inter-alia*, deleting the alternate fuel clause. Vide the said amendment; the term of the PPA was further extended till 16.09.2029 (initially the PPA was for a period of 15 years). Copies of the amendments dated 18.08.2003 and 02.05.2007 to the PPA dated 31.03.1997 are being filed herewith as **Annexures D and E respectively.**

11. Consistent with the representations held out to the Private Power Project Proponents and on 06.12.2004, the then Government of Andhra Pradesh recommended to MOPNG and GAIL to ensure a pro-rata supply of available gas to all the gas projects. Thus, the gas was to be supplied to all the firm allottees in a pro-rate manner which would have ensured an equitable distribution of the natural and national resource of natural gas to all the allottees justly. After pressurizing GVPGL to a position of amending the Power Purchase Agreement the then Government of Andhra Pradesh, having either failed to exert similar pressure upon the previously commissioned projects or to discriminatively favor them, could not ensure any amendment of the PPAs for such commissioned projects including the PPA of Respondent herein. A copy of recommendations letter dated 06.12.2004 is annexed herewith as **Annexure F.**

12. This resulted in a peculiar situation where the commissioned projects continued to have the deemed generation clause benefit and GVPGL has been restrained to abide by the amended clause in the PPA. It is respectfully submitted that this situation



entirely resulted out of the actions of Petitioners in exercising their dominant monopolistic position with regard to GVPGL which was at the final stage of completion.

13. This meant that the State continued to remain bound by the 'deemed generation' clauses in relation to the commissioned projects. Taking a completely commercial view and at odds with the constitutional spirit/duty enjoined upon the State, the then Government of Andhra Pradesh resiled from its previous recommendations of a pro-rata allotment amongst all firm allottees (vide its letter dated 06.12.2004) and changed tracks to look at its pure commercial interest and recommended to MOPNG and GAIL vide its letter dated 22.11.2005 inter alia suggesting that the allotment be made firstly to such commissioned power projects including Respondent No 17 and only after the obligation of achieving 80% PLF of those plants, additional gas, if any, was directed to be allotted to the new projects. The letter addressed by the Government of Andhra Pradesh through its Honb'le Minister inter alia recorded as follows:

"State government have subsequently reviewed the implications of pro-rata allocation of the available gas. If Pro-rata allocation of the available gas is made to all the projects, the generation from the existing 4 projects would fall down appreciably and Government of Andhra Pradesh/APTRANSCO will have to pay about Rs. 333 Crores up to 31.12.2006 towards deemed generation without availing full generation from these 4 existing projects. This additional burden of about Rs. 333 Crores can be avoided if the available gas is first supplied to the existing 4 gas based projects to the extent required for achieving threshold PLF."

A copy of letter dated 22.11.2005 is annexed herewith as **Annexure G**.

14. Thereafter, on 05.12.2005 MoPNG accepted the recommendations of GoAP and decided to curtail APM Gas to all 4 New IPPs. As a result of GoAP's decision, GVPGL was deprived of its legitimate share of APM Gas on a pro-rata basis despite having firm APM Gas allocation. A true copy of the Letter dated 05.12.2005 is annexed herewith and marked as **Annexure H**.



15. It is submitted that the said recommendations are wholly repugnant to the duty enjoined upon the State in the manner of dealing with national and natural resources. These resources have now been emphatically held by the Hon'ble Supreme Court to be owned by the State in public trust for the general benefit of citizens at large. The concept of public trusteeship has now been well recognized and the Hon'ble Supreme Court has also held specifically in relation to the subject of natural gas in *Reliance Natural Resources Ltd. and Ors v Reliance Industries Ltd. and Anr. (2010) 7 SCC 1* that, the State must attend to its duties of public trusteeship with fairness and non-discrimination for ensuring an equitable and proper discharge of its trustees role.

16. The State ought to therefore take into account various elements of public interest and not merely its private commercial interest while recommending and dictating the policy to be adopted in the manner of allocation of natural resources. The recommendation made by the State, to allocate gas exclusively to the four existing power projects including Respondent No 1 and Spectrum herein, at the cost of supply to be made ratable to all the firm allottees would be entirely unconscionable as it is dictated by commercial considerations rather than the constitutional principles of fairness, rationality and objectivity which are required to be observed by all state machineries including the DISCOMS. However, in view of the then representations held by the State and its entities, that they would work out appropriate remedial measures in respect of the new power plants, GVPGL was impressed upon not to precipitate any issue, as the State undertook to prevail upon MOPNG of Union of India to allocate gas on a priority basis to the new power plants like GVPGL.

17. GVPGL invested in the State based on the statements made by GoAP with regard to availability of gas in the State of Andhra Pradesh. Further, the project was entirely dependent upon the State support. However when there was shortage of natural gas GoAP recommended to MOPNG for continuation of gas supply through GAIL to the existing power plants by diverting the gas which was allotted to plants under constructions. As regard the power plants under construction GoAP recommended



that the allotment of gas to the under construction power plants was to be made as and when additional gas was available. This recommendation of GoAP has put the power projects under construction to a serious financial stress.

18. In furtherance of GVPGL efforts to engage with the State and MoPNG, to alter the priorities with regard to allocation of natural gas, GVPGL along with all the other new power plant owners, had engaged in a series of steps with MOPNG and its Empowered Group of Ministries ("EGOM") for giving a priority to the Gas Based Power Plants over other sectors such as Fertilizers, CNG etc., or to at least bring it on parity for ensuring allocation of gas. Also the prospect's relating to discoveries in Krishna-Godavari basin allocated to Reliance ('KG-D6'), fuelled the hope of the GVPGL that additional gas would soon be available for the purpose of operating the GVPGL's plant.

19. In the meantime, GAIL continued supplying the APM Gas to the four previously existing power plants even though GVPGL's power plant achieved Commercial Operations Date (COD) on 16.09.2006. As the matters in relation to APM gas had settled by then and GVPGL was persuaded not to challenge such action on various representations and hopes held out, GVPGL reconciled to the position that during the currency of the Power Purchase Agreement with the previously existing power plants, such gas would continue to be supplied on a priority basis. In the meantime, after expiry of PPAs of Respondent No 1 and Spectrum Plants, GVPGL proposed supply of power from Domestic Gas sourced from KG Basin under Deep Water Policy dated 21.03.2016 notified by GoI, but the same was not considered.

20. However, GVPGL had a legitimate expectation that continuation of the said policy would mean that after the expiry of the term of the PPA of the previously existing power plants when the Deemed Generation obligations would no longer be binding on the power utilities of the State, the APM gas would be supplied to GVPGL on the then acquired priority by virtue of the GVPGL being the previous and existing PPA holder.



21. It is pertinent to mention that GVPGL's PPA executed originally on 31.03.1997 is valid till 15.09.2029, whereas the PPA executed with the Respondent No 1 herein expired on 01.01.2016 and Spectrum expired on 18.04.2016. Once such PPAs are expired, the State and DISCOMS were under no obligation to renew the PPA of the Respondent No 1 and Spectrum, as demonstrated in the case of Reliance Power Samalkot by not exercising any of the options as per PPA Provisions. The PPA only provided for a clause for renewal at APSEB's option. Similarly, APSEB had an option of exercising a buyout right of the power plant from the Respondent No. 1 and Spectrum. Both these possibilities are only optional and exercisable at the will of APSEB and there is no obligation upon them to resort to one or the other.

22. On account of the priority given to the previously existing plants, a situation has now resulted where the said plants continued to operate and avail the benefit of payment, inspite of no obligations of repayment of Loan and other Capital expenditures under the expired PPA of Respondent No. 1 and Spectrum. However, GVPGL's total investment of around Rs.1200 crores has not seen any tangible benefits as its Power Plant has been completely shut down from the period of COD i.e., 16.09.2006 till date, except for brief intermittent periods of Feb.2008-May, 2008; Dec.2008-March, 2009; April 2009-Feb.2013; April 2013 and April 2015. Huge capital outlay and expenditure employed in a vital infrastructure industry for the nation has gone unutilized and this has also resulted in GVPGL not being able to either generate power or provide employment or other GDP benefits for the nation including taxes. GVPGL was thus resting only on the hope of gas supplies commencing after the completion of the State's contractual obligation in relation to the PPAs with the previous existing power plants.

23. As stated earlier, the PPA with Respondent No. 1 and Spectrum herein expired on 01.01.2016 and 18.04.2016 respectively. However to GVPGL's surprise and consternation, AP DISCOMS (Petitioners herein) instead of being relieved of various onerous conditions which were continued only in relation to the previous existing PPAs (while being amended in relation to the new PPAs including GVPGL), decided for some irrational, incomprehensible and strange reason to



continue availing power on short term basis from the Respondent No.1 and Spectrum plants, instead of resuming supply of gas to GVPGL and availing cheaper power from GVPGL, whose PPA continues to be in subsistence till 2029.

24. Aggrieved by the aforesaid discriminatory actions of the Petitioners herein, GVPGL immediately approached the concerned authorities by addressing communications dated 05.05.2017 and 10.05.2017, *inter-alia*, specifying the following:-

- a. PPA of Respondent No. 1 and Spectrum has expired and the Capital Cost for the Plants have already been recovered;
- b. Sub optimal efficiency of the plant operated by Respondent No. 1 and Spectrum compared to that of efficient GVPGL's plant;
- c. Lower Station Heat Rate of Petitioner and other similarly situated plants would save up to Rs. 0.22/unit;
- d. Respondent No. 1 and Spectrum have higher Capacity Charges in comparison to GVPGL giving due consideration to Deemed Generation;
- e. Advantages under GVPGL's PPA include No 'alternate fuel' clause hence Capacity Charge paid on actual generation.;

Copies of the communications dated 05.05.2017 and 10.05.2017 addressed by GVPGL to the State authorities are annexed herein as **Annexure I and Annexure J respectively.**

25. It is pertinent to mention that vide a communication dt. 27.07.2017 addressed by the Chief General Manager of APSPDCL to the Secretary, APERC, that was available on the website of this Hon'ble Commission, it was communicated, *inter-alia*, that the PPA's with LANCO expired on 01.01.2016 and Spectrum expired on 18.04.2016 and it is decided that APSEDCL will not procure power from the IIPs whose PPAs have expired. In the said communication, it was also noticed that several other IPP's including GVPGL are in commercial operation in the state, thereby indicating that the Petitioners were exploring the feasibility of utilizing the power plants of GVPGL and other such entities whose PPA's are in subsistence as on today. A copy of letter dt. 27.07.2017 along with relevant extract of resource plan is being filed herewith as **Annexure K.**



26. Notwithstanding such representations, when the Petitioners herein did not act upon the same, GVPGL was further surprised to learn that they have approached this Hon'ble Commission seeking its consent for availing continued power supply from the Respondent No 1 and Spectrum till 31.03.2020 i.e., on a short term basis and the same is approved by APERC vide Tariff Order for FY 2019-20 ignoring the fact that a portion of the gas being made available to Respondent No 1 and Spectrum belongs to GVPGL under the allocation policy of MoPNG. When public hearing in relation to such proposals were taken up by this Hon'ble Commission, GVPGL learnt of the said decision made by the Hon'ble Commission. Consequent thereto, GVPGL approached Petitioners herein once again, requesting them to utilize the facilities set up by GVPGL which would be more beneficial for the State in terms of economic as well as effective utilization of a scarce resource like Natural Gas, generating higher quantity of electricity because of the more advance capital machinery and technology employed by GVPGL.

27. While GVPGL's request went disregarded, it appears that various tenable objections were made in the public hearing before the Hon'ble Commission against continuing the onerous conditions in favor of the Respondent No. 1 and Spectrum while availing power from them on a temporary basis.

28. GVPGL learnt that, thereafter, the Hon'ble Commission vide order on Tariff for Retail Supply of Electricity during FY 2019-20 dated 22.02.2019 granted its consent to procure power, for short-term, from, *inter-alia*, the Respondent,:

- i. To procure power from the Respondent No 1 herein at a fixed cost of Rs. 0.96 and variable cost of Rs. 2.33 making a total of Rs. 3.29 per unit for the financial year 2019-20.
- ii. To procure power from the Spectrum herein at a fixed cost of Rs. 0.92 and variable cost of Rs. 2.39 making a total of Rs. 3.31 per unit for the financial year 2019-20.

A copy of the order on Tariff for Retail Supply of Electricity during FY 2019-20 dated 22.02.2019 is annexed herein as **Annexure L**. GVPGL submits that the said actions of the discoms are, *inter-alia*, without the authority of law, not backed by sanction against the tenets of open –competition and level playing field.



29. While so, even as GVPGL harbored a hope that GVPGL's request for supplying gas to its power plant and availing power supply from it on far more beneficial terms should fall on a reasonable consideration with the Petitioners herein, the Petitioners herein, in a blatant and flagrant display of favoritism towards the Respondent No. 1 and Spectrum . Petitioners approached the Hon'ble Commission and filed O.P.No. 8 of 2018 for the purpose of seeking consent for the extension/renewal of PPA, by contending that the Petitioners have only two options, i.e., either to agree for the extension of the PPA or to buy out the power plant from the Respondent No. 1.

30. GVPGL submits that being aggrieved by the aforesaid actions of the Petitioners in filing O.P. No. 8 of 2018 for the purpose of seeking consent for the extension/renewal of PPA of the Respondent No. 1, GVPGL approached this Hon'ble Commission and filed I.A. No. 18 of 2018 in O.P. No. 8 of 2018 challenging the proposal for renewal of PPA of the Respondent No. 1. GVPGL, *inter-alia*, highlighted in its petition that the said proposal apart from being violative of the principles of level playing field and doctrine of public trust in distribution of natural resources, is also violative of the legitimate expectations of GVPGL and the fundamental rights of the promoters of GVPGL as the actions of the Petitioners in granting undue favoritism to the Respondent No. 1, amounts to violation of Articles 14 and 19(1)(g) of the Constitution of India.

31. GVPGL submits that while I.A. No. 18 of 2018 filed by GVPGL was pending adjudication before this Hon'ble Commission, certain negotiations ensued between the Respondent No. 1, Spectrum and GVPGL, wherein, it was proposed that a mutually acceptable solution on sharing of existing gas may be proposed for the kind consideration of DISCOMs, GoAP & MoPNG which is in the best interests of the public exchequer and all the stakeholders involved herein. Owing to the aforesaid negotiations, GVPGL, with a bona-fide intention of arriving at a workable solution and without prejudice to its rights and remedies, withdrew I.A. No. 18 of 2018 in O.P. No. 8 of 2018. A copy of the order-dated 07.07.2018 passed by this Hon'ble Commission in I.A. No. 18 of 2018 in O.P. No. 8 of 2018 is filed as **Annexure M**.



32. GVPGL submits that in the meantime, the Gas Supply Agreement dated 31.08.2001 and the subsequent amendments dated 29.01.2003 and 25.08.2004 was renewed on 30.08.2018 and is valid till 05.07.2021 is filed as **Annexure N**.
33. GVPGL submits that subsequent thereto, negotiations ensued between GVPGL, the other stakeholders and the DISCOMS/ Petitioners, which, ultimately did not materialize and no workable solution ensued. Subsequently, GVPGL also addressed a representation dated 22.02.2019 to the Principal Secretary, Infrastructure and Energy Dept, Govt. of AP, highlighting, *inter-alia*, the following important issues:
- i. GVPGL has a valid PPA with the DISCOMS till 2029;
 - ii. GVPGL has a legitimate right on the allocated quantity of APM gas presently being supplied to Respondent No. 1, spectrum and others in the State of AP which was earlier withdrawn by GoAP considering certain commercial advantage of Respondent No. 1 and Spectrum . Therefore, it is obligatory on part of GoAP to resume APM gas supplies to GVPGL having valid PPA & GSA.
 - iii. Resume supply of APM gas to GVPGL from old IPP's;
 - iv. Plant of GVPGL being more efficient, could be used to supply power at much cheaper tariff's, as compared to Respondent No. 1 and Spectrum and hence no rationale exists for extending old PPA's without considering GVPGL's case;
 - v. The proposal for renewal of extending old PPA's of Respondent No. 1 and Spectrum , without honoring the existing PPA of GVPGL would amount of violation of the level playing field, doctrine of public trust and the legitimate expectations of GVPGL;
 - vi. Extension of old PPA's of Respondent No. 1 and Spectrum over a period of 10-15 years would saddle the DISCOMS and eventually the consumers with an additional financial burden of Rs. 2,825 crore as compared to sourcing power from GVPGL;

A copy of the representation dated 22.02.2019 issued by GVPGL to Principal Secretary, Infrastructure and Energy Dept, Govt. of AP is filed as **Annexure O**.

34. GVPGL submits that GoAP, till date, has neither considered nor replied to the aforesaid representation issued by GVPGL. GVPGL submits that in light on the aforesaid, GVPGL



was constrained to approach this Hon'ble Commission and file an intervention cum objection petition in O.P. No. 8 of 2018 challenging the actions of the Petitioners in undertaking steps for renewal of PPA of the Respondent No. 1. Suffice to state that the said intervention cum objection petition of GVPGL is pending adjudication before this Hon'ble Commission.

35. While so, GVPGL is filing the present IA challenging the procurement of power on a short-term basis by the discoms from Respondent No. 1 and Spectrum on the following among other grounds:

Grounds

- a. As per the provisions of the Electricity Act, this Hon'ble Commission notified the Tariff Order for retail sale of electricity during FY 2019-20, wherein, this Hon'ble Commission was pleased to issue directions the discoms as follows:

@ *Para 299* of the Tariff Order (Pg 200-201 of document), the Commission's direction is as follows:

" In this regard, the attention of licensees is drawn to the letter dated 3rd October 2018 of Ministry of power on 'Compulsory procurement of power by Distribution Licensees for short term and medium term requirements through DEEP E-bidding portal' wherein the Ministry has advised the DISCOMs quoting the provisions of National Tariff Policy, 2016 that all the power procurements by DISCOMs for meeting their short term and medium term power requirements shall be done competitively through DEEP E-bidding portal only as per the guidelines issued by MoP unless exempted under the provisions of the Tariff Policy issued by the Central Government and permitting DISCOMS procurement of power through exchanges.

Therefore, the licensees are directed to follow the above advice of MoP, GoI, scrupulously."

(emphasis supplied)

The actions of the discoms in continuing to procure short-term power supply from the Respondent, without resorting to e-bidding is violative of the aforesaid Tariff order issued by this Hon'ble Commission and the directions issued by the Ministry of power.



- b. The said actions of the discoms in not resorting to e-bidding are violative of the public trust doctrine. The discoms, which are instrumentalities of the State are duty bound to attend to their duties of public trusteeship with fairness and non-discrimination for ensuring an equitable and proper discharge of its trustees role. In continuing to procure short-term power from the Respondent No. 1 and Spectrum , the discoms are acting in contravention of the public trust doctrine.
- c. The said actions of the discoms are against public interest and the public exchequer) as the Cost of procurement of Power from the Respondent No. 1 and Spectrum is higher compared to GVPGL's power (being offered with the APM gas supply) by Rs 0.40 to 0.42 /Kwh respectively on prevailing gas price as brought out in I.A filed by Respondent No. 1 dated 11.02.2019. As such, there is no rationale to continue procurement of power from the Respondent No. 1 and Spectrum ;
- d. The said actions of the discoms are violative of the principles of level playing field.
- e. Further, there is no commercial justification for procurement of short-term power from the Respondent No. 1 and Spectrum as:
- i. After expiry of Respondent No. 1 and Spectrum PPA, Petitioners have approached this Hon'ble Commission vide its letters dated 05.5.2017 and 10.5.2017 and informed the discoms its willingness to supply power at much lower cost as compared to the tariff of Respondent if the available APM Gas is diverted to GVPGL's plant. The said offer of GVPGL has not been considered by the discoms till date;
 - ii. The Capacity Charge of Rs. 0.96/Kwh as approved by this Hon'ble Commission vide its order on Tariff for Retail Supply of Electricity during FY 2019-20 dated 22.02.2019, for the Respondent No. 1, is higher by around Rs.0.48/Kwh compared to expired PPA of the Respondent No. 1, whereas GVPGL Capacity Charge is only Rs 0.699/Kwh and cheaper by Rs 0.26/Kwh compared to the Respondent No. 1 Tariff approved by Hon'ble Commission;
 - iii. The Capacity Charge of Rs. 0.92/Kwh as approved by this Hon'ble Commission vide its order on Tariff for Retail Supply of Electricity during FY 2019-20 dated



22.02.2019, for the Spectrum , whereas GVPGL Capacity Charge is only Rs 0.699/Kwh and cheaper by Rs 0.22/Kwh compared to the Spectrum Tariff approved by Hon'ble Commission;

iv. The Variable Cost approved by this Hon'ble Commission vide its order on Tariff for Retail Supply of Electricity during FY 2019-20 dated 22.02.2019 for the Respondent No. 1 is Rs 2.33/Kwh whereas for GVPGL for the same gas price Variable Cost will be Rs 2.21/Kwh.

v. The Variable Cost approved by this Hon'ble Commission vide its order on Tariff for Retail Supply of Electricity during FY 2019-20 dated 22.02.2019 for the Spectrum is Rs 2.39/Kwh whereas for GVPGL for the same gas price Variable Cost will be Rs 2.21/Kwh.

vi. There is no obligation cast upon the Discoms to procure power from the Respondent No. 1 and Spectrum on short term, when options to procure cheaper power from GVPGL is available;

vii. Discoms benefit by way of additional energy units (around 147 MUs) when procured from GVPGL by virtue of higher efficiency and cheaper cost for the same gas as consumed by Respondent No. 1 and Spectrum .

f. GVPGL craves leave to urge such other grounds at the time of hearing.

36. GVPGL submits that as the actions of the Discoms, in continuing to avail short-term power supply from the Respondent No. 1 and Spectrum is in violation of various constitutional principles of public trusteeship and level playing field, apart from being in contravention of the ethos of Electricity Act, 2003 , GVPGL is constrained to approach this Hon'ble Commission seeking stay of all further actions of the discoms in short-term procurement of power from the Respondent No. 1 and Spectrum .

37. GVPGL submits that the present application seeking stay is positioned on a larger public interest and is in the interest of the public exchequer.

38. GVPGL submits that GVPGL reserves its right to challenge the short-term procurement of power by the discoms from spectrum vide a separate petition.



PRAYER

In the light of the above stated facts and circumstances of the case, it is most respectfully prayed that this Hon'ble Commission may be pleased to:-

- a. Stay the actions of the Discoms from continuing procurement of power from Respondent/LANCO based on APM/Non-APM/Pre-NELP gas on short term basis;
- b. Exercise its powers under Section 86 (2) of the Electricity Act, 2003 and direct AP Discoms to liaise with GoAP and recommend MoPNG, Government of India to resume the APM/Non-APM/Pre-NELP gas supply to GVPGL from old IPPs whose long term PPAs have expired and schedule GVPGL under Long Term PPA;
- c. Direct Discoms to pay capacity charges to GVPGL, in the event Discoms are neither willing to resume APM/Non-APM/Pre-NELP gas supply to GVPGL from old IPPs nor scheduling power from GVPGL plant;
- d. Grant such other relief as this Hon'ble Commission may deem fit in the facts and circumstances of the instant case.



**BEFORE THE HON'BLE ANDHRA PRADESH ELECTRICITY
REGULATORY COMMISSION**
At its office at 4th Floor, Singareni Bhavan, Red Hills, Hyderabad

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3	Copy of the Gas Supply Agreement and amendment Annexure C	31.08.2001 29.01.2003	-do-	61-86
4	Copy of the amendment to the PPA Annexure D .	18.08.2003	-do-	87-91
5	Copy of the amendment to the PPA Annexure E	02.05.2003	-do-	92-108
6	Copy of recommendation letter dated Annexure F	06.12.2004	-do-	109-110
7	Copy of GOAP letter Annexure G	22.11. 2005	-do-	112-114
8	Copy of the communication addressed by GVPGL to the State authorities Annexure H	05.05.2017	-do-	115-116
9	Copy of the communication addressed by GVPGL to the State authorities Annexure I	10.05.2017	-do-	117-118
10	Copy of letter addressed by Chief General Manager, APSDCL to Secretary, APERC along with relevant extract of resource plan Annexure J	27.07.2017	-do-	119-121
11	Copy of order granting consent to procure short-term power from LANCO Annexure K .	29.11.2017	-do-	122-160
12	Copy of the order passed by this Hon'ble Commission in I.A. No. 18 of 2018 in O.P. No. 8 of 2018 Annexure L	07.07.2018	-do-	161-162
13	Copy of the letter of termination issued by GAIL to GVPGL Annexure M	30.08.2018	-do-	163-167
14	Copy of the fresh Gas Supply Agreement between GVPGL and GAIL which is valid till 05.07.2021 Annexure N .	30.08.2018	-do-	168-227
15	Copy of the representation issued by GVPGL to Principal Secretary, Infrastructure and Energy Dept, Govt. of AP Annexure O	22.02.2019	-do-	228-247
16	Copies of the Tariff policy and Tariff policy resolution of Ministry of Power Annexure P (colly).	06.01.2006 28.01.2016		248-285

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Hyderabad

Date:12.03.2019

Counsel for Intervention Petitioner

13 MAR 2019

2 of 8

POWER PURCHASE AGREEMENT

FOR SHORT GESTATION LIQUID FUEL BASED POWER PROJECT

OF 468 MWs AT VEMAGIRI East Godavari Dist., A.P.

between

ANDHRA PRADESH STATE ELECTRICITY BOARD

and

M/s. ISPAT POWER LIMITED, Mumbai

Dated as of Thirty First March, 1997

Pls. see

A

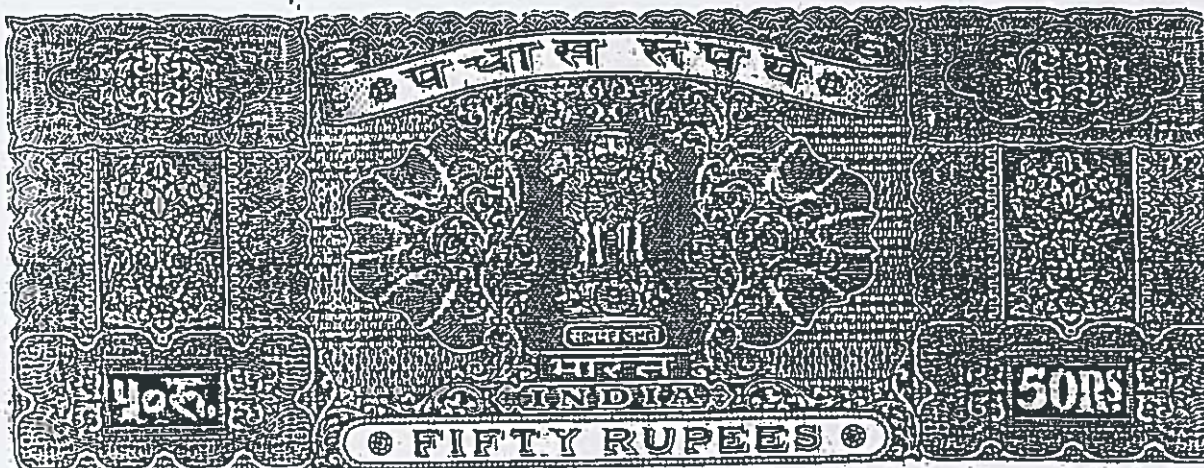
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Signature

Signature

50 Rs



डी. गोविंद रामाराव

परवाना धारक मुद्रांक विक्रेता, 143, डॉ. विगास स्ट्रीट,
काळ्यादेवी, मुंबई-२, क्रमांक 226 दिनांक
सर्वथी/भी/भीमती Isbat Power LTD.
पाना नं. 54 न्यायकेतर मुद्रांक पेपर विक्रेता.

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परवाना धारक मुद्रांक विक्रेता

POWER PURCHASE AGREEMENT
FOR SHORT GESTATION LIQUID FUEL BASED POWER PROJECT
OF 468 MWs at VEMAGIRI, East Godavari Dist., A.P.
between
ANDHRA PRADESH STATE ELECTRICITY BOARD
and
M/s.ISPAT POWER LIMITED

This Power Purchase Agreement (this "Agreement"), entered into on this 31st day of March, 1997, between Andhra Pradesh State Electricity Board, constituted under the Indian Electricity (Supply) Act, 1948 and having its office at Vidyut Soudha, Hyderabad - 500 049 (hereinafter referred to as the "Board", 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.ISPAT POWER LIMITED, a company incorporated under the Indian Companies Act, 1956 and having its registered office at Isbat House, B.G.Kher Marg, Worli, Mumbai - 400 018 (hereinafter referred to as the "Company", which expression shall, unless repugnant to the context or meaning thereof, include its successors and assigns), as Party of the second part;

WHEREAS the Government of Andhra Pradesh (hereinafter called "GOAP") announced a policy for attracting private sector investments in power sector and in line with the Government policy, the Board invited bids for short

Handwritten: B.L. Narula
B. L. NARULA
PRESIDENT
ISPAT POWER LIMITED.
ISPAT HOUSE
B.G. KHER MARG, WORLI,
MUMBAI-400 018.

Handwritten: J. P. Narayana

J. P. NARAYANATHY

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डी. गोविंद रामाराव

25 MAR 1997

परवाना धारक मुद्रांक विभाग, 123, गौ. विगास स्ट्रीट,

काक्यादेरी, मुंबई-२, क्रमांक 224 दिनांक

सर्वश्री/श्री/श्रीमती Ispat Power Ltd.

पाना नं 27/..... न्यायकेतार मुद्रांक पेपर विकला.

राही

परवाना धारक मुद्रांक विभाग

gestation power projects. M/s Nippon Denro Ispat Limited, Ispat House, B.G.Kher Marg, Worli, Mumbai - 400 018 has submitted a bid to design, finance, construct, complete, own and operate a liquid fuel based power station of 468 MW capacity (hereinafter referred to as "Project") at Vemagiri, East Godavari Dist., in Andhra Pradesh, India. The Board accepted the bid by the M/s Nippon Denro Ispat Limited, and they were selected by the Board and duly approved by the GOAP to establish the said Project;

WHEREAS, M/s.Nippon Denro Ispat Ltd. incorporated a new company under the Indian Companies Act, 1956 with the name "M/s. Ispat Power Limited and its Registered Office at Ispat House, B.G.Kher Marg, Worli, Mumbai - 400018 (hereinafter referred to as the " Company", which expression, shall, unless repugnant to the context or meaning thereof, include its successors and assigns) to develop, finance, construct, complete, own and operate the Project;

WHEREAS, the aforesaid Company proposes to develop, finance, construct, complete, own and operate the Project and agrees to sell the capacity and energy generated by the Project to the Board and the Board agrees to purchase such capacity and energy in accordance with the terms and conditions of this Agreement;

B. L. Narula

B. L. NARULA
PRESIDENT

ISPAT POWER LIMITED.

ISPAT HOUSE

B.G. KHER MARG, WORLI,
MUMBAI-400 018.

J. Parthasarathy

J. PARTHASARATHY
CHAIRMAN
AP STATE ELECTRICITY BOARD
VIDYUT SOUDHA, HYDERABAD - 500 043
INDIA

WHEREAS, it has been agreed that the Project would be executed by the Company with reasonable expedition and economy, subject to all Indian laws, rules, regulations and orders having the force of law;

NOW, THEREFORE, in consideration of the premises and mutual covenants and conditions set forth herein, it is agreed by and between the Parties as given below :

B. L. Narula

B. L. NARULA
PRESIDENT

ISPAT POWER LIMITED.

ISPAT HOUSE
B.G. KHER MARG, WORLI,
MUMBAI-400 019.

J. Parthasarathy

J. PARTHASARATHY
CHAIRMAN

A.P. STATE ELECTRICITY BOARD
VENKAT GOUDA, HYDERABAD - 500 048
INDIA.

ARTICLE 1

DEFINITIONS

- 1.1 Definitions: For the purposes of this Agreement,
- 1) **Ambient Reference Conditions** : means the site reference conditions established pursuant to paragraph 1.2 (in the case of open cycle operation) or paragraph 2.2. (in the case of combined cycle operation) of Schedule F for determination of Installed Capacity.
 - 2) **Authority**: means the Central Electricity Authority referred to in Article 3 of the Indian Electricity (Supply) Act, 1948 or any governmental successor entity entrusted with its functions and capacities.
 - 3) **Availability Declaration**: has the meaning ascribed to in Schedule D.
 - 4) **Auxiliary Consumption**: Auxiliary Consumption shall be (i.) 1 (one) % for open cycle operations up to Scheduled Date of Completion of the last Unit or the Project COD, whichever is earlier and (ii) 3 (three) % for combined cycle operations after Scheduled Date of Completion of the last Unit or the Project COD, whichever is earlier, Provided that the figures given above shall be increased by 0.5% during the Stabilization Period.
 - 5) **Billing Date**: means the fifth day after the last day of each Billing Month.
 - 6) **Billing Month**: means each of (A) the period commencing on the Commercial Operation Date of the first Generating Unit and ending on (and including) (i) the tenth day of the calendar month in which the Commercial Operation Date of the first Generating Unit occurs or, (ii) if the Commercial Operation Date of the first Generating Unit occurs on or after the tenth day of the calendar month, the tenth day of the next calendar month; and (B) thereafter, the period commencing on the eleventh day of the calendar month and ending on (and including) the tenth day of the next calendar month.
 - 7) **Board Default** : has the meaning ascribed to it in Article 9.1.
 - 8) **Business Day** : means any day on which banks are open for business in Andhra Pradesh.
 - 9) **Calorific Value (Gross) or GCV of Fuel**: means, for the purpose of calculating the Energy Charge for each Billing Month, the weighted

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average gross calorific content of one designated unit of Fuel, consumed, as recorded, determined in each case for the relevant period on the basis of such sampling methods, frequency and tests as are internationally accepted and may be mutually agreed upon between the Parties on or before the date of Financial Closing.

10) Capacity Charge: shall have the meaning ascribed to it in Article 3.2 hereof.

11) Capital Cost: means the total expenses required for developing, financing, designing, manufacturing, delivering, and erecting the Project, quoted as Rs. 1437 crores.

Explanation : For the avoidance of doubt, the Company shall be solely responsible for, and shall obtain all clearances required to be obtained under Law from the Authority with respect to the Capital Cost.

12) Cause : in relation to the failure to issue, or renew or the revocation or amendment of any Permit means any fact or circumstance, which legally entitles the issuing Government Agency, or the Board, as the case may be, to withhold issuance of, revoke or amend such Permit due to any failure of the Company or any of the lenders, investors or Contractors (in whose name the Permit has been or is to be issued) to make timely application for, or to abide by any terms and conditions of any Permits that were in effect on the date of this Agreement or such later date of issuance of such Permit.

13) Commercial Operation Date or COD: means, with respect to each Generating Unit, the date on which such Generating Unit is declared by the Company to be operational; provided that the Company shall not declare a Generating Unit to be operational until such Generating Unit has completed its performance acceptance test in accordance with Schedule F (Test Procedures).

14) Contractor: means (i) in the case of the Company, the EPC contractor, the operator under the operation and maintenance agreement, and other contractors and suppliers to the Company specifically excluding suppliers of Fuel and transporters of Fuel, and (ii) in the case of the Board, any contractors and suppliers to the Board.

15) Cumulative Available Energy : has the meaning ascribed thereto in Schedule D.

16) Current Rate of Exchange: means, the applicable TT selling rate (s) as published by the State Bank of India at 12:00 hours on the Metering Date or if the Metering Date is not a Business Day, then the applicable

rate as published by the State Bank of India at 12:00 hours on the Business Day immediately following the Metering Date. Provided that if such rate is no longer quoted or if both Parties agree to change such rate, the Parties shall agree to a reasonable alternative reference rate that reflects the rate at which the relevant foreign currency could be purchased with Indian rupees at such time.

- 17) **Current Rate of Exchange (Actual)** : means, the applicable TT selling rate(s) as published by the State Bank of India (or such other reference rate as may be agreed pursuant to paragraph 16 above) at 12:00 hours on the date of payment of the monthly bills / supplementary bills by the Board.
- 18) **Declared Capacity** : has the meaning ascribed to it in Schedule D.
- 19) **Due Date of Payment**: means, with respect to any monthly tariff bill, the date on which the amount of such monthly tariff bill becomes due for payment, which date (A) in the case of any monthly tariff bill for any Billing Month, shall be the later of thirty (30) days from the Metering Date or twenty five (25) days from the date of its presentation to the designated officer of the Board; and (B) in the case of any supplementary bill, shall, subject to Article 5.5, be thirty (30) days from the date of its presentation to the designated officer of the Board.
- 20) **Emergency**: means a condition of or affecting the Board's electrical system which threatens the safe and reliable operation of such system or which is likely to result in disruption of safe, adequate and continuous electric service by the Board or to endanger life or property, which condition is materially adversely affected by the continued delivery of energy from the Project.
- 21) **Energy Charge** : shall have the meaning ascribed to it in Article 3.3 hereof.
- 22) **Energy Unit**: means one Kilo Watt Hour (KWH) of electrical energy.
- 23) **Financial Closing**: means the signing of the Financing Documents and their approval by the Authority, the GOI and/or the GOAP, to the extent required by Law, and the fulfilment or waiver of all conditions precedent to the initial availability of funds thereunder and the receipt of commitments for such equity as required by the Company in order to satisfy the requirements of the lenders.
- 24) **Financing Documents**: means the loan agreements, notes, indentures, security agreements, letters of credit, and other documents relating to the financing of the Project and the Capital Cost or any part thereof.

- 25) **Force Majeure** : has the meaning ascribed to it in Article 10.1.
- 26) **Foreign Debt** : means any debt that shall be denominated by any lender to the Company in currencies other than Indian rupees under the Financing Documents.
- 27) **Fuel**: means gas, naphtha, low sulphur heavy stock or furnace oil, and the like, that is intended to be used as primary fuel, by one or more units of the Project to generate power from the Project or in case of unavailability of Naphtha any of the above as alternate fuel.
- a) **Fuel Linkage** : has the meaning ascribed to it in Article 7.2(g).
- 28) **Fuel Supply Agreement**: means the agreement entered into between the Company and a supplier and/or transporter of Fuel in order to supply and/or deliver Fuel for the Project.
- 29) **GOAP** : means the Government of Andhra Pradesh and its successors.
- 30) **GOI**: means the Government of India and its successors.
- 31) **Generating Unit or Unit** : means one gas or steam turbine generator and the equipment and facilities ancillary thereto.
- 32) **Government Agency**: means any local, state government in India or the Government of India or any department, instrumentality or agency thereof or any corporation (to the extent acting in a legislative, judicial or administrative capacity and not as a contracting party with the Company) or commission under the direct or indirect control of such local or state government or the Government of India or any political subdivision thereof or any court, tribunal or judicial body within India.
- 33) **Grid System** : means the interconnected electrical transmission and distribution system of the state of Andhra Pradesh including the Inter Connection Facility and all other transmission lines and other equipment in the state of Andhra Pradesh on the Board's side of the Inter Connection Point.
- 34) [Intentionally left blank]
- 35) **Installed Capacity**: means the maximum electrical generating capacity of the Project or a Generating Unit, as the case may be, in megawatts ("MW") as measured at the generator terminals, determined from time to time pursuant to the tests given in Schedule F, subject to adjustments for the Ambient Reference Conditions.

Explanation 1 : Where the output of one or more Generating Units of the Project or of the Project as a whole, in final tests to be specified by the Board is higher than the output initially guaranteed by the manufacturer/supplier thereof, the output initially guaranteed by the manufacturer/supplier will be the installed Capacity thereof, as from the date of such final tests. However, where the output of one or more Generating Units of the Project or of the Project as a whole, in final tests to be specified by the Board is lower than the output initially guarantee by the manufacturer/supplier thereof, that lower output alone will be the Installed Capacity thereof.

Explanation 2 : The Installed Capacity furnished in the Bid is taken as the nominal capacity and for Installed Capacity as determined as per Explanation 1 above, a tolerance limit of plus or minus 5% is permitted.

- 36) **Inter Connection Facility:** means all the facilities to be installed by or for the Board on the Board's side of the Inter Connection Point to enable the Board to receive and utilize power from the Project in accordance with this Agreement.
- 37) **Inter Connection Point:** means the point or points where the Project connects to the 220 kv transmission line of the Grid System of the Board in the Project switch yard.
- 38) **Law:** has the meaning ascribed to it in Article 11.
- 39) **Metering Date:** means (A) the midday of the tenth day of the calendar month in which Commercial Operation Date of the first Generating Unit occurs or if the Commercial Operation Date of the first Generating Unit occurs on or after the tenth day of the calendar month, the tenth day of the next calendar month; and (B) the midday of the tenth day of each calendar month, thereafter.
- 40) **Misdeclaration of Availability:** has the meaning as ascribed to it in Schedule D.
- 41) **Net Electrical Energy:** means the Energy Units actually delivered by the Project as metered at the Inter Connection Point, which point shall be the only point at which such Net Electrical Energy shall be metered under this Agreement.
- 42) **Non-Political Force Majeure Event:** means any event of Force Majeure specified in Article 10.1 other than a Political Force Majeure Event and Non-Political Force Majeure shall be construed accordingly.

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- 43) **Permits:** means all formal and informal permits, licences, visas, clearances, rights and any other authorisations and approvals from the Board or any Government Agencies which are required to develop, design, finance, construct, insure, own and operate the Project in accordance with this Agreement, including without limitation to those listed in Schedule E.
- 44) **Plant Load Factor or PLF :** means the ratio, expressed as a percentage, of the number of KWH of Cumulative Available Energy in any Tariff Year, as computed at the generator terminals in accordance with Schedule D , to the maximum KWH of energy that could theoretically be generated by the Project during that Tariff Year based on 8760 hours multiplied by the Installed Capacity, computed at the generator terminals.
- 45) **Plant Load Factor (Incentive) or PLF(I) :** means the ratio, expressed as a percentage of the number of KWH of generation as computed at the generator terminals in any Tariff Year, by adding the Auxiliary Consumption to the Net Electrical Energy as metered at the Interconnection Point, to the maximum of KWH energy that could theoretically be generated by the Project during that Tariff Year based on 8760 hours multiplied by the Installed Capacity, computed at the generator terminals.

$$PLF(I) = \frac{NEE \times (1) \times 100}{8760 \times IC \times 1000 \times [1 - (A/100)]}$$

Where :

NEE : Net Electrical Energy (kwhr)
 A : Auxiliary Consumption (%)
 IC : Installed Capacity (MWs)

- 46) **Political Force Majeure Event:** means any event of Force Majeure described in Article 10.1(i) and Political Force Majeure shall be construed accordingly.
- 47) **Project:** means the combined cycle power station proposed to be established at Vemagiri, East Godavari Dist., in Andhra Pradesh, India, consisting of 2 (two) Generating Units based on Naphtha as Fuel and 1 (one) steam Generating Unit, having a nominal installed capacity of 468 Mega Watts computed at Ambient Reference Conditions.

- 48) **Project COD:** means, the Commercial Operation Date of the last Generating Unit.
- 49) **Promoter Group:** means M/s. ISPAT POWER LIMITED (which includes its successors and assigns), and other associated firms and companies, all of whom have authorised M/s. ISPAT POWER LIMITED to represent them.
- 50) **Prudent Utility Practices :** means those practices, methods, techniques and standards, as changed from time to time, that are generally accepted internationally for use in electric utility industries taking into account conditions in India, and commonly used by the international electric utility industry to operate and maintain power stations and associated equipment of the size, service and type of the Project; adjusted as necessary to take into account (A) site conditions (B) conditions affecting the Grid System, (C) requirements of Law and (D) operation and maintenance guidelines of the manufacturers of the plant and equipment incorporated in the Project.
- 51) **Ramp-up Rate:** means the rate at which each Unit can be asked to increase its generation as specified by the Company in Schedule A, supported by the manufacturer's specifications.
- 52) **Ramp-down Rate:** means the rate at which each Unit can be asked to decrease its generation as specified by the Company in Schedule A, supported by the manufacturer's specifications.
- 53) **Scheduled Bank :** means any Bank, at Hyderabad indicated by the Board and reasonably acceptable to the Company and the parties providing financing for the Project.
- 54) **Scheduled Date of Completion:** means, the following dates with respect to each Generating Unit :

Unit	Scheduled Date of Completion
1. First	20 months
2. Second	22 months
3. Third and last	26 months

Provided that the Scheduled Date of Completion of the last Unit shall be extended day-for-day for any - delay- directly arising from i) a Force Majeure ((Article 10.4), ii) Board Default or failure of the Board to complete the Inter Connection Facilities eight (8) weeks before the Scheduled Date of Completion of the first Unit or any other reason for

which an extension in such date is provided hereunder (including pursuant to Article 7.2).

Explanation : In case of a delay in achieving the Scheduled Date of Completion of the last Unit, the Company shall pay as liquidated damages to the Board, a sum equal to Rs. 50,000 per day for the first one hundred and eighty (180) days of delay and Rs. 350,000 per day for delays in excess of one hundred and eighty (180) days, for each 100 MW of capacity bid or any part thereof, payment for which shall be due thirty (30) days from the Scheduled Date of Completion of the last Unit and every thirty (30) days thereafter or, if earlier, upon the termination of this Agreement provided for hereunder.

- 55) **Scheduled Outage :** has the meaning ascribed to it in Schedule D.
- 56) **Stabilization Period:** means, in respect of each Generating Unit, each ninety-day period commencing on the COD of the said Generating Unit.
- 57) **Station Heat Rate:** shall be 2755 kilo calories per KWH up to Scheduled Date of Completion of the last Unit or the Project COD, whichever is earlier and shall be 1900 kilo calories per KWH after Scheduled Date of Completion of the last Unit or the Project COD, whichever is earlier.

Explanation : Station Heat Rate means the quantum, in Kilo Calories, of input heat energy required by the Project to generate one Energy Unit.

- 57a) **Synchronisation :** means the electrical connection of a Generating Unit to the Grid System by means of Inter Connection Facility for the Project.
- 58) **Tariff Year:** means, prior to the Project COD, the period between the COD of the first Generating Unit and the Project COD; and thereafter, each period of one year from the Project COD.
- 59) **Technical Limits:** means the limits and constraints described in Schedule A hereto relating to the operation and maintenance of the Project.
- 60) **Working Capital Rate :** means the interest rate (or the weighted average of the interest rates) at which the Board or the Company, as the case may be, raises its working capital requirements in rupees or, if none, the rate which is offered from time to time by the State Bank of India (or its successors) for working capital facilities to most creditworthy

State Electricity Boards/ independent power companies in India as the case may be.

- 1.2 All other words and expressions, used herein and not defined herein but defined in the Indian Electricity (Supply) Act, 1948 and set out in Schedule B applicable to this Agreement shall unless the context otherwise requires, have the meanings, respectively, assigned to them as attached hereto as Schedule B.
- 1.3 Unless otherwise stated, all other references made in this Agreement to "Articles" and "Sections", and "Schedules" shall refer, respectively, to Articles of, Sections of, and Schedules to, this Agreement. The Schedules to this Agreement form part of this Agreement and will be of full force and effect as though they were expressly set out in the body of this Agreement. Headings are for ease of reference only.
- 1.4 In this Agreement, unless the context otherwise requires (A) the singular shall include plural and vice versa; (B) words denoting natural persons shall include partnerships, firms, companies, corporations, joint ventures, trusts, associations, organisations or other legal entities; (C) a reference to any party includes that party's successors and permitted transferees and assigns, (D) a reference to this Agreement or any other agreement or document shall be construed as a reference thereto as from time to time amended, novated or replaced, (E) a reference to any Law shall be construed as a reference to such Law as from time to time amended or re-enacted and (F) references to times of day are references to Indian Standard Time.

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ARTICLE 2

SALE AND PURCHASE OF CAPACITY AND ENERGY

2.1 Sale and Purchase of Capacity

From and after the Commercial Operation Date of the first Generating Unit, subject to the provisions of this Agreement, the Company shall sell, and the Board shall purchase, for the consideration of the Capacity Charge, all the available capacity of the Project.

2.2 Sale and Purchase of Energy

From and after the Commercial Operation Date of the first Generating Unit, subject to the provisions of this Agreement, the Company shall sell, and the Board shall purchase, for the consideration of the Energy Charge, the Net Electrical Energy of the Project.

2.3 Sale and Purchase of Power before COD of a Generation Unit

The Company shall sell, and the Board shall purchase, all Energy Units generated by any Generating Unit during testing prior to the COD of such Generating Unit, for the consideration of the Energy Charge.

2.4 Despatch Rights of the Board

The Board shall have the right to despatch the Project at any capacity within the Availability Declaration of the Company and the Company shall comply therewith subject as provided in Schedule D. Any request by the Board for increase or decrease in the generation by the Company shall not violate the declared Ramp-up and Ramp-down Rates. The despatch procedures shall be as specified in Schedule D.

2.5 Shutdown

Except when the equipment of the Project is under forced shutdown, such equipment or any ancillaries, auxiliaries or works in relation thereto shall not be taken out for maintenance, testing or overhaul resulting in outages or reduced generation except as required by Prudent Utility Practices or in accordance with such schedules of outages as are established in accordance with Schedule D. The Company shall take all reasonable steps to bring back the equipment of the Project that is under forced shutdown to normal operations as early as may be reasonably practicable.

2.6 Scheduling and Co-ordination

The detailed schedule of construction, operation and maintenance of the Project and the procedures for co-ordination between the Company and the Board are specified in Schedule D.

2.7 Power Supplies by the Board

Upon the Company's request, the Board shall provide the Company with power as and when required for the purpose of the construction of the Project and following the completion of the Inter Connection Facility up to and including the synchronisation of the first Generating Unit, for start-up, testing and commissioning of the Project. The Board shall bill the Company for such power at a price equal to the Board's applicable published tariff. Thereafter, the Board shall provide power as and when required, for start-up and maintenance of the Project. The Board shall bill the Company for any such power at the rate as the Energy Charge computed under Article 3.3 and such billed amounts shall be set off from the next monthly bill.

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ARTICLE 3

CAPACITY AND ENERGY PAYMENTS

3.1 Capacity Charge

guaranteed
80% PLF

The Board shall pay for the capacity of the Project in respect of any Tariff Year a Capacity Charge calculated in the manner described in Article 3.2 in respect of the Cumulative Available Energy provided by the Project, up to (but not exceeding) an amount of Cumulative Available Energy which is equivalent to a PLF of 80%.

3.2 Computation of Capacity Charge

The Capacity Charge will be the sum of the following amounts, in Rupees, estimated in accordance with Article 5.2(b) for purposes of monthly billing and adjusted pursuant to Article 5.2(c) for each Tariff Year, and subject in either case to the limitation that the total of such amounts shall not exceed an amount corresponding to a PLF of 80%:

- (i) Foreign Debt Service Charge (FDSC) of US\$ 0.0158 per unit of Cumulative Available Energy payable in rupees converted at the Current Rate of Exchange; provided that such Foreign Debt Service Charge shall be payable only in respect of the period ending on the 8th (eighth) annual anniversary of the COD of the last generating unit.
- (ii) Other Fixed Charges (OFC) of Rs. 0.54 per unit of Cumulative Available Energy which shall be fixed for the term of this Agreement.

3.3 Energy Charge

(a) Computation of Energy Charge :

The Energy Charge will be computed based on the following formula:

$$U = EU * (hC) / (g(1-A/100))$$

where :

U is the Energy Charge in Rs. in respect of a Billing Month (or in the case of any bill for Energy Units generated by a Generating Unit prior to its COD, in respect of the period to which such bill relates) ;

EU is the total number of Energy Units delivered at the Inter Connection Point in respect of such Billing Month measured on the Metering Date for such Billing Month (or in the case of any bill for Energy Units generated by a Generating Unit prior to its COD, in respect of the period to which such bill relates) ;

h is the Station Heat Rate in Kcal/KWH as per Article 1.1 (57);
 C is the cost of Fuel in Rs. per unit of Fuel; as delivered at the Fuel metering point at the site
 g is the GCV of Fuel in Kcal/unit of Fuel;
 A is a number equal to the Auxiliary Consumption expressed as a percentage of gross generation as per Article 1.1 (4).

Provided that the cost of Fuel "C" shall be calculated in Rupees (with any amount denominated in any other currency being converted into rupees at the current rate of exchange (actual)) and shall equal the sum of

- (i) Basic weighted average cost of Fuel in case of indigenous fuel and in case of imported fuel, the weighted average CIF value plus in each case, finance and procurement costs.
- (ii) Taxes, duties, cesses and other Government Agency levies ; and
- (iii) Handling, storage, transportation and importation charges

Provided that the Board has the right to review and approve the Fuel Supply Agreement through the Fuel Supply Committee in accordance with and subject to Schedule I.

(b) Minimum Fuel Off-take Charges

The Board shall reimburse the Company for charges paid in respect of its failure to take delivery of minimum levels of Fuel, but only if and to the extent that the Company's failure to take such Fuel is due to the Board's issuance of Despatch Instructions requiring that the Project be operated at a level less than the level of Declared Capacity set forth in any then-applicable Availability Declaration, or the Board's failure or inability to accept delivery of Net Electrical Energy from the Project (whether due to Force Majeure events or otherwise);

Provided that the Board shall reimburse such minimum Fuel off-take charges to the company only to the extent that :

- (i) Such minimum fuel off-take charges were incurred in accordance with the Fuel Supply Agreement;
- (ii) the Company exercised any right to elect, under the terms of the Fuel Supply Agreement, to " carry forward" the Fuel in question (i.e. to receive such Fuel at a later date) or to store such Fuel at any Fuel storage facilities of the Company or of the Fuel supplier, which are available under the Fuel Supply Agreement, and

- (iii) the Company took all reasonable steps available to it and such steps identified by the Board (such as on-sale of Fuel to the Board or other able purchasers identified by the Board) to reduce the amount of liability, any added costs of which the Board shall upon prior notice by the Company have agreed in writing to pay to the Company.

3.4 Monthly Fuel Price Adjustment

The Energy Charge, as per the above formula, will be modified monthly on account of variations in EU, C and g.

3.5 Computing the PLF and PLF(I)

For the purposes of clarification, it is understood and agreed that in computing the PLF and PLF(I), from the Commercial Operation Date of the first Generating Unit and prior to the Project COD, Installed Capacity shall mean the sum of the Installed Capacities of each Generating Unit which has declared commercial operation. Commencing on the Project COD, Installed Capacity shall mean the sum of the respective Installed Capacities of all the Generating Units. For a Tariff Year which includes the occurrence of the COD of one or more Generating Unit (s), the Installed Capacity for computing the PLF and PLF(I) will be determined on a time and megawatt weighted proportionate basis.

3.6 Disincentives

In case the Project is unable to achieve a PLF of 68.5% for a Tariff Year, then the Company will pay to the Board a penalty as a percentage of the Other Fixed Charge paid to the Company in such Tariff Year as given below:

PLF (%)	Penalty (%)
68.5%	Nil
Below 68.5% to 60.5%	2% for every 1% shortfall in PLF (i.e. for a PLF of 60.5%, the penalty will be 16% of the Other Fixed Charge)
Below 60.5% to 50.5%	3% for every 1% shortfall in PLF (i.e. for a PLF of 50.5%, the penalty will be 16% + 30% = 46% of the Other Fixed Charge)
Below 50.5%	Same as for 50.5% i.e. 46% of the Other Fixed Charge

Provided that in case of a Tariff Year which involves the Stabilisation Period of a Generating Unit, the PLF for applying the penalty will be adjusted using a minimum threshold of 51.37% in place of 68.5% for such Stabilisation Period on a time and megawatt weighted basis (and each other threshold specified above, shall be adjusted downwards by the same proportion).

3.7 Incentives

In case the Project achieves a PLF(I) greater than 80% for a Tariff Year, then the Board will pay to the Company an incentive for the additional units of actual generation in excess of a PLF(I) of 80% as a percentage of the Other Fixed Charge in such Tariff Year as given below:

PLF(I) (%)	Incentive (%)
80%	Nil
Above 80% upto 85%	2% for every 1% increase in PLF(I) (i.e. for a PLF(I) of 85%, the incentive will be 10% of the Other Fixed Charge)
Above 85% upto 90%	3% for every 1% increase in PLF(I) (i.e. for a PLF(I) of 90%, the incentive will be 10% + 15% = 25% of the Other Fixed Charge)
Above 90%	Same as for 90% i.e. 25% of the Other Fixed Charge

3.8 Claims for Taxes on Income

Any advance income tax payable for the Project in any month supported by a certificate of a chartered accountant approved by the Board (such approval not to be unreasonably withheld or delayed) shall be reimbursed by the Board. After the tax assessment is completed for any year, and the liability thereon is determined by the taxation authorities in India, the excess or shortfall in the tax liability so determined will be adjusted in the supplementary bill (as defined in Article 5.5) for the succeeding month or on the due date of payment thereof, whichever is later, subject to Article 3.9. Tax to be reimbursed will be calculated on the income from the Project only, and calculated on the assumption that the Company is engaged solely in the ownership, design, financing, construction, operation and maintenance of the Project and will not include tax reimbursements of the previous year.

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3.9 Minimisation of Liability due to Taxes on Income

The Company shall take all reasonable steps to ensure that its liability due to taxes on income in respect of its income from the Project is minimised, by obtaining or by suitable arrangement, all permissible benefits, rebates, concessions and the like, in accordance with Law. The Company, however, is not required, under this Article 3.9, to pass on to the Board any benefits, rebates, concessions and the like in taxation obtained by it as a result of any tax planning or otherwise, not connected with the income, expenditure and operations of this Project.

3.10 Claims for Taxes and Duties Levied on Generation and/or Sale of Electricity

Any taxes or duties or impost or cesses or levies on the generation and/or sale of electricity by any Government Agency levied on the Project will be reimbursed by the Board to the Company in the succeeding month after the payment of such taxes or duties by the Company to such Government Agency, based on a supplemental bill, duly supported by proof of payment of such taxes to be furnished by the Company to the Board. In case, such Government Agency refunds any excess tax or duty paid by the Company, such excess will be adjusted in the supplementary bill for the succeeding month after the receipt of such refund by the Company.

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ARTICLE 4

METERING

4.1 Installation

Main energy meters of 0.2 class accuracy shall be installed at the 220 KV points of supply by the Company and check meters at the same point and of the same accuracy shall be installed by the Board. Each of these will be a pair of export and import meters. The main energy meters shall be the property of the Company and the Company shall be responsible for the cost of inspection, maintenance, calibration, and replacement thereof. The check energy meters shall be the property of the Board and the Board shall be responsible for the cost of inspection, maintenance, calibration and replacement thereof.

4.2 Inspection: Sealing; No Interference

All the meters shall be jointly inspected and sealed on behalf of both Parties and shall not be interfered with except in the presence of the duly authorised representatives of both Parties. If one Party does not attend any inspection, check, calibration or test on the main or check meters required pursuant hereto after receiving such notice from the other Party as may be reasonable in the circumstances, then, notwithstanding anything to the contrary expressed herein, the other Party shall be entitled to proceed on its own and the results obtained shall be used for the purposes hereof.

4.3 Quarterly Checks

All meters shall be checked for accuracy on a quarterly basis by both Parties and shall be treated as working satisfactorily so long as the errors are within the limits prescribed for meters of the class. Meter readings of the main meters will form the basis of billing, so long as the quarterly checks thereof are within the prescribed limit as per IS specifications. If the check meters are found to be defective during the quarterly checks they will be immediately calibrated and/or replaced if found necessary.

4.4 Errors in Main Meters

Where the quarterly check indicates errors in the main meters beyond the prescribed limit as specified in IS specifications but no such error is noticed in the check meters, billing for the month will be done on the

basis of the check meters and the main meters will be calibrated immediately or replaced if necessary.

4.5 Errors in Main Meters and Check Meters

If during the quarterly test checks, both the main meters and the corresponding check meters are found to be beyond permissible limits of error as per the IS specifications, both the meters shall be immediately calibrated and the correction applied to the generation of energy registered by the main meter to arrive at the correct generation of energy for billing purposes for the period of the month up to the time of such test check. Billing for the period thereafter until the next monthly meter reading shall be as per the calibrated main meter.

4.6 Calibration

All the main and check meters shall be calibrated upon installation and once in every six months thereafter jointly by both Parties i.e., January and July irrespective of the calibrations which might have been done where necessary, during the quarterly checks. All calibrations shall be undertaken at the loads and power factor specified in, and otherwise in accordance with IS specifications. Both Parties shall endeavour that recalibration is done as often as possible and the errors are adjusted as close to zero as possible. However, if the meters show errors consistently, the main meters, check meters or both shall be replaced.

4.7 Errors Found During Calibration

If the errors found at the time of semi-annual calibration are beyond permissible limits as per IS specifications, the same procedures applicable to the quarterly test checks shall be followed or the main meters/ check meters or both shall be replaced.

4.8 Corrections in Billing

Corrections in billing, whenever necessary, shall be applicable to the period between the previous monthly meter reading and the date and time of the test calibration in the current month when the error is observed and this correction shall be for the full value of the absolute error. For the purpose of the correction to be applied, the meter shall be tested at 100, 50, 20 and 10 percent load at unity power factor and 0.5 power factor. Of these eight values, the error at the load and power factor nearest the average monthly load served at the Inter Connection Point during the period shall be taken as the error to be applied for correction.

4.9 Defects

If both the main and check meters fail to record or if any of the potential transformer fuses are blown out, then the energy will be computed on a mutually agreeable basis for that period of defect. The main meters and the check meters shall be replaced.

4.10 RSS Meter

For the purpose of test and calibration, the rotating sub-standard (RSS) meter shall be calibrated and sealed by the Chief Electrical Inspector to the GOAP. This RSS meter shall be calibrated once in every six months at the Chief Electrical Inspector's Laboratory in Andhra Pradesh.

4.11 Conduct of Tests

All the tests on the main and check meters shall be jointly conducted by the authorized staff of both Parties. The result and correction so arrived at mutually will be applicable and binding on both Parties.

4.12 Monthly Reading

Monthly meter readings shall be taken (and an acknowledgement thereof signed) by the duly authorized representatives of both Parties on each Metering Date and, if the readings indicate a level of inaccuracy greater than the prescribed limits, all meters shall be immediately tested in accordance with this Article. If either Party fails to take such reading at the required time, in spite of reasonable notice giving reasonable time, then the reading taken by the other Party shall be used for the purposes hereof.

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ARTICLE 5

BILLING AND PAYMENT

5.1 Payments for Power Generated prior to the COD of a Generating Unit

The Board shall pay to the Company monthly payment of the Energy Charge only for all Energy Units generated prior to the Commercial Operation Date of such Generating Unit. Each monthly payment shall be made on the fifth working day following the date of submission of a bill by the Company.

5.2 Monthly Tariff Bills

- (a) On or before each Billing Date, commencing with the first Billing Date following the Commercial Operation Date of the first Generating Unit, the Company shall furnish a monthly tariff bill to the Board, in the form specified in Schedule H, for the Billing Month, which bill will include monthly Capacity Charges and Energy Charges (including fuel price adjustment charges, duly supported by supporting data) and shall show where applicable any adjustments as specified in relevant clauses of this Agreement. Each bill for a Billing Month shall be payable by the Board on the Due Date of Payment.

- (b) The Company shall calculate the monthly Capacity Charge for each Billing Month as follows:

Monthly Capacity Charges = FDSC Payment + OFC Payment
where:

FDSC Payment = $FDSC \times (Installed\ Capacity \times 0.8 \times Monthly\ Settlement\ Periods \times 1000) \times Current\ Rate\ of\ Exchange$

OFC Payment = $OFC \times (Installed\ Capacity \times 0.8 \times Monthly\ Settlement\ Periods \times 1000)$

Installed Capacity shall mean the sum of Installed Capacities of each Unit the Commercial Operation Date for which has occurred, adjusted in respect of the occurrence of the Commercial Operation Date of one or more Units in the Billing Month on a time and megawatt weighted proportionate basis.

Monthly Settlement Periods shall mean the total number of Settlement Periods in the Billing Month (i.e., 24 hours * no. of days), reduced however by the Settlement Periods (if any) during which an event of Political Force Majeure affecting either Party or a Non-Political Force Majeure event affecting the Board or a Force Majeure event affecting the Fuel supplier under Article 10.5.(e) has been declared (in respect of which the payment due shall be calculated in the manner set forth in Article 10.5 and paid as a Supplementary Bill).

- (c) At the end of each Tariff Year, in case the PLF is less than 80 % for that Tariff Year, the Company shall refund to the Board as a credit against the amounts due in the next monthly tariff bill(s), an amount which shall be the sum of the Monthly Capacity Charges paid during such Tariff Year pursuant to Article 5.2(b) multiplied by a fraction, the numerator of which shall be the percentage by which the PLF was less than 80%, and the denominator of which is 80%.

5.3 Adjustments for foreign exchange variation:

For each Billing Month, there shall be added or subtracted, as the case may be, from the Monthly Capacity Charges calculated in accordance with Article 5.2 as part of the monthly tariff bill, an amount (the "Foreign Exchange Adjustment") reflecting the variation in foreign exchange rates between the rates used in calculating the FDSC Payment for the preceding Monthly Bill and the rates in effect on the actual date of payment of the monthly tariff bill by the Board, calculated as follows:

$$\text{Foreign Exchange Adjustment} = \text{FDSC Payment} * \{\text{CRE(A)} - \text{CRE}\}$$

Where

FDSC Payment is as defined in Article 5.2(b).:

CRE(A) is the Current Rate of Exchange (Actual) and

CRE is Current Rate of Exchange.

5.4 Payment of Incentives and disincentives

Incentives and disincentives shall be calculated as per Article 3.7 and 3.6 respectively and shall be payable annually. In case the Board is required to pay incentives to the Company, the Company shall raise a supplementary bill for the same at the end of the Tariff Year. At the end of the Tariff Year, in case the Company is required to pay the Board on account of disincentives, the Company shall adjust the same as a credit in the next month's monthly tariff bill.

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5.5 Supplementary Bills

For payments due to the Company for reimbursement of taxes on income, incentives or taxes and duties levied on generation and/or sale of electricity, payments for periods of Political Force Majeure affecting either Party or Non-Political Force Majeure affecting the Board or any other adjustments or payments due to the Company hereunder, the Company shall present a supplementary bill, in such form as may be mutually agreed upon by the Board and the Company, (duly supported by supporting data). Each supplementary bill shall be payable by the Board on the Due Date of Payment, except in case of supplementary bill for taxes on income. At least thirty (30) days prior to the date when income tax is required to be paid by the Company, the Company shall submit to the Board a supplementary bill for the same. This bill shall be payable by the Board within twenty-five (25) days of its presentation to the Board by the Company or at least five (5) days before the date on which the tax is required to be paid by the Company, whichever is later.

5.6 Amounts Due to the Board

Any amounts which may be due to the Board from the Company pursuant to Article 3.6 will be computed by the Company in the month following the close of each Tariff Year and shown as a credit in the bill for such month. Any amounts which may be due to the Board from the Company pursuant to Articles 3.8 and 3.10 will be shown as a credit in the supplementary bill for such month. A net credit in any supplementary bill will be deducted by the Board from the payments due to the Company under any monthly bill.

5.7 Billing Disputes

Notwithstanding any dispute as to all or any portion of any bill submitted by the Company to the Board, the Board shall pay the full amount of the bill provided that the amount of the bill is based on (a) a meter reading that has either been signed by both Parties or certified by the Company with respect to the Board's refusal to sign within three (3) days of the meter reading date and (b) the provisions of this Agreement. The Board shall notify the Company of any disputed amount, and the Company shall rectify the defect or otherwise notify its rejection of the disputed amount, with reasons, within five (5) days of the reference by the Board, failing agreement on which the provisions of Article 14 shall apply with respect thereto. If the resolution of any dispute requires the Company to reimburse the Board, the amount to be reimbursed shall bear interest at the Working Capital Rate applicable to the Board from the date of payment by the Board to the date of reimbursement. The Board may not

dispute any amount after sixty (60) days following the Due Date of Payment therefor.

5.8 Direct Payment

The Board has the right subject to two (2) Business Days notice to the Company, to make direct payment of any bill by cheque or draft at the same bank at which the Letter of Credit shall be opened on or prior to the Due Date of Payment and when such direct payment is made in full, the Company shall not present the same bill to the Scheduled Bank against the Letter of Credit or Escrow Account as the case may be.

5.9 Letter of Credit

On or before the date thirty (30) days prior to the Scheduled Date of Completion of the first Generating Unit, and at all times thereafter, the Board shall cause to be in effect an irrevocable revolving letter of credit issued in favour of the Company by a Scheduled Bank (the "Letter of Credit"). Each letter of credit shall:

- (a) On the date it is issued, have a term equal to the longest period obtainable by the Board on a commercially reasonable basis from any Scheduled Bank but not less than one year;
- (b) Be transferable to any lender under the Financing Documents;
- (c) Be payable upon the execution and presentation by an officer of the Company of a sight draft on the Due Date of Payment or such earlier date as is specifically authorised by the Board to the issuer of such Letter of Credit supported by a certified copy of the bill for which payment is sought and a statement that such bill remains unpaid on the date of presentation and in the case of a monthly tariff bill rendered pursuant to Article 5.2, a meter reading statement accepted and signed by both parties or a certification from the Company that the Board failed to sign the meter reading statement within three days of the meter reading date; and,
- (d) On the date it is issued, have an aggregate revolving stated amount equal to the sum of one month's Capacity Charge based on PLF of 100% and one month's Energy Charge based on a generation equal to a PLF of 100% (the "LC Amount").

The LC Amount shall be determined (i) in the case of the Capacity Charges, for the initial Letter of Credit, based on the Current Rate of Exchange applicable (rather than on the Metering Date) on the date seven (7) days prior to the date of issuance of the Letter of Credit; which amount shall be adjusted thereafter upon each renewal of the Letter of Credit based on the average of the Current Rates of Exchange (Actual) applicable during each

month in the preceding six (6) months; and (ii) in the case of the Energy Charges, for the initial Letter of Credit, based on the Fuel costs applicable on the date seven (7) days prior to the date of issuance of the Letter of Credit and the methodology in Article 3.3 and thereafter, based on the average monthly Energy Charges (assuming a PLF of 100%) for the preceding six (6) months, adjusted to take account of any escalation in Fuel Costs provided for under the Fuel Supply Agreement.

- (e) Be immediately reinstated to the LC Amount following a valid drawing by the Company without limit to the amount of valid drawings thereunder and
- (f) Otherwise be in form and substance reasonably acceptable to the Company and the lenders.

Not less than thirty (30) days prior to the expiration of any Letter of Credit, the Board shall provide a new or replacement Letter of Credit. Every bill shall be presented at the said Scheduled Bank for payment under the Letter of Credit and shall become payable on the Due Date of Payment applicable thereto.

5.10 Escrow Account

To provide additional security to the Company for the Board's obligation hereunder, the Board shall also open an escrow account with any of the Board's Scheduled Banks, which account shall be maintained by such bank as agent for the company, and which shall be pledged as security to the Company and its Lenders for payment of all sums due to the Company by the Board under this Agreement as further set forth herein. Such account shall be opened on or before the date thirty (30) days prior to the Scheduled Date of Completion of the first Generating Unit. Such account shall be funded with revenues from payments due to the Board from customers comprising one or more circles/areas used by the Board for its administrative convenience. The Board shall cause all payments due to the Board from such customers to be deposited in such escrow account aggregating an amount equal to not less than 120% of the LC Amount as specified in Article 5.9. Such instruction shall be irrevocable during the term of this Agreement subject to the right of the Board to substitute other circles/areas with the concurrence of the Company and its Lenders. The Board shall not act in any manner as may negatively affect the inflow of the revenues into this account and shall take such steps as may be necessary to assure the flow of the specified level of revenues in such account (including adding or substituting customers and undertaking collection efforts) during the term of this Agreement. Provided that the Board is in compliance with its obligations under this Agreement with respect to payment of all sums

when due to the Company, through the Letter of Credit or otherwise, the Board shall be entitled to withdraw funds from the Escrow Account each month to be used for such purposes as the Board may designate. In the event of the Board's failure to pay any sums due to the Company on the Due Date of Payment through the Letter of Credit or otherwise when any sum is due to the Company, or in case of non-renewal of the Letter of Credit as required under Article 5.9, the company, by notice in writing to the bank holding the Escrow Account, may require such bank not to honour any of the cheques, hundies and requisitions presented to it by the Board or any other drawals on the account until after the claim of the Company is first discharged out of the revenues accumulated in the Escrow Account. An agreement among the Board, the Company and the Bank (the "Escrow Account Agreement") shall be executed in order to give effect to this Article 5.10, the details of which shall be in form and substance reasonably acceptable to the Company and its Lenders.

5.11 Rebates; Late Charges

For payment of Tariff bills (excluding supplementary bills) a rebate of 2.5% shall be allowed if payment is made, whether by cheque or by specific authorisation to draw on the Letter of Credit, within three (3) days after the date of presentation of bill. Where such payments are made on or before the Due Date of Payment but after the above three day period, a rebate of 1% shall be allowed.

Any payment made beyond the Due Date of Payment shall include a late charge in an amount equal to the greater of (a) the product of (i) the amount of such bill and (ii) the Working Capital Rate applicable to the Company then in effect, calculated on the basis of the number of days the payment was overdue, and (b) the amount of any liability incurred by the Company for penal interest on Debt arising out of the Board's failure to make such payment on the Due Date of Payment, provided that the Company shall furnish documentary evidence to the Board demonstrating such liability.

5.12 State Government Guarantee

As support for the Board's obligations under this Agreement, GOAP shall provide the State Government Guarantee (the "GOAP Guarantee").

5.13 Order of Precedence

The Company shall present its monthly tariff bills and any supplementary bills to the Board for direct payment by the Board as per this Article. In case of non-payment, or partial payment of the bill by the Board, the Company shall take recourse to the Letter of Credit under

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Article 5.9 on or prior to the due date of payment or upon specific authorization by the Board to draw on the Letter of Credit prior to such date. In case of the claim of the Company not yet being fully satisfied, the Company shall take recourse to the Escrow Account as per the Escrow Account Agreement for the un-paid amount plus interest accrued for delayed payment as per Article 5.11. In case of default of payment by the Board still persisting, the Company shall take recourse to the invoking of the GOAP guarantee as per Article 5.12 for claiming and releasing the unsatisfied claims. This provision is without prejudice to any other right or remedy of the Company arising out of this Agreement.

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ARTICLE 6

DURATION OF AGREEMENT

6.1 Term of the Agreement

Subject to the terms of this Agreement, this Agreement shall become effective upon the execution and delivery thereof by the parties and shall continue in force from the date of such delivery until the completion of a period of fifteen (15) years from the Project COD unless earlier terminated as provided herein, and not later than one hundred and eighty (180) days prior to the expiry of the initial term of this Agreement, the Agreement may be renewed for such further period and on such terms and conditions as may be mutually agreed upon between the Parties.

6.2 This Article shall survive any Termination of this Agreement. If the Parties do not mutually agree to renew this Agreement or otherwise upon the expiry of the initial term of this Agreement, the Board shall have the first option to purchase the Project at the Terminal Value plus any Transfer Costs and Transfer Taxes (as defined in Schedule G) and as determined by the Independent Appraiser defined in Schedule C.

Such option shall be exercisable during the sixty (60) day period immediately preceding the expiration of the initial term of this Agreement and the Company shall notify the Board of its acceptance or rejection of the option within such sixty (60) day period or fifteen (15) days after the date of Board's offer whichever is later. If the Board's offer is not accepted by the Company within such period, the Company may solicit offers of purchase from third parties or sell power from the Project to third parties as per applicable Law; provided that the Board shall have the first right of refusal with respect to any bonafide offer received by the Company which the Company wishes to accept, exercisable within thirty (30) days of receipt by the Company of such offer (which shall within five days of such receipt be provided to the Board by the Company) upon mutually satisfactory terms of payment. If the Board does not exercise such right or the Parties cannot agree to the terms of payment, the Company may dispose of the Project as it thinks fit subject to prevailing Law.

6.3 Notwithstanding any other provision of this Agreement, in the event that Financial Closing has not occurred within 12 months of the signing of this Agreement, either Party may upon 30 days notice to the other party terminate this Agreement without liability or obligation whatsoever

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unless (in case of any termination by the Board) Financial Closing shall occur within such 30 day notice period, in which case such notice shall be deemed to have been withdrawn; provided that (i) the Company shall have used its reasonable endeavours to achieve such Financial Closing and (ii) the Party seeking such termination shall then be in compliance with its obligations under this Agreement. In the event of such termination, the Security Deposit provided by the Company pursuant to Article 15.10 shall be cancelled and/or returned to the Company without being drawn upon by the Board, only if the Board is satisfied that the Company used its reasonable endeavours to achieve Financial Closing.

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ARTICLE 7

UNDERTAKINGS

7.1 Covenants of the Company

The Company hereby covenants and agrees with the Board to:

- (a) use all reasonable efforts to construct the Project in accordance with the construction contract and to operate the Project in accordance with Prudent Utility Practices;
- (b) work without liability with, and co-operate in good faith with, the Board with respect to all of the Board's obligations and rights hereunder;
- (c) use all reasonable efforts to obtain all Permits;
- (d) adhere to the Technical Limits as set out in Schedule A;
- (e) use all reasonable efforts to cause the date of Financial Closing to occur within Six (6) months of the date of signing of this Agreement and furnish to the Board periodic progress reports (not less than monthly) regarding the same and in any case cause Financial Closing to occur not later than twelve (12) months from the date of signing of this Agreement;
- (f) shall not, without the consent of the Board, reduce the amount paid in at Financial Closing by the Promoter Group as the main promoters of the Company and in the development, construction and operation of the Project efficiently during the subsistence of this Agreement;
- (g) if the Inter Connection Facilities are completed by the date which is eight weeks prior to the Scheduled Date of Completion of the first Generating Unit and the first Generating Unit is not synchronised on or before the Scheduled Date of Completion of the first Generating Unit, pay to the Board interest on the actual cost of the Inter Connection Facilities constructed only for the purposes of the Project (as established by the Board to the reasonable satisfaction of the Company), such interest being calculated on a daily basis and being equal to the interest charged in respect of any loans raised by it and applied towards meeting such cost and being payable from the Scheduled Date of

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Completion of the First Generating Unit until the earlier of the date of such synchronisation or the date when such synchronisation would have occurred but for any delay arising from an event of Force Majeure. The Company's payment obligation under this Article shall not be affected by application of Article 10.4.

- (h) provide to the Board a copy of the Financing Documents and the shareholder subscription agreements relating to the Promoter Group's equity commitment to the Project within one month of the Financial Closing and promptly, as they are entered into, provide to the Board copies of instruments creating any liens or encumbrances on any of the assets of the Project.
- (i) cause the Project COD to occur not later than the Scheduled Date of Completion of the last Unit, as per Article 1.1.54.

7.2 Covenants of the Board

The Board hereby covenants and agrees with the Company to:

- (a) (1) make all reasonable efforts for making arrangements (including financing and construction) for the Inter Connection Facility so that the Interconnection Facility is completed eight weeks before the Scheduled Date of Completion of the first Generating Unit of the Project and if the Inter Connection Facility has not been completed on or before such date or the date such Interconnection Facility would have been completed but for any delay arising from an event of Force Majeure, and an Independent Engineer designated by the Company and reasonably acceptable to the Board, has certified that the Project is ready to begin the process of interconnection, the Board shall pay to the Company as liquidated damages for such delay an amount equal to 80% of the Capacity Charge calculated in the manner described in Article 5.2(b), substituting, however, for the Installed Capacity, the capacity of the first Generating Unit required to be installed as per the EPC Contract, from the later of the Scheduled Date of Completion of the First Generating Unit and the date falling six weeks after the first Generating Unit is ready to begin the process of interconnection (as certified by the Independent Engineer) until earlier of the date falling six weeks after the date upon which the Inter Connection Facility is completed or the COD of the first Generating Unit, provided that the Board's payment obligations under this Article shall not be affected by application of Article 10.4. Within thirty (30) days of the COD of the first Unit, the Company shall refund to the Board,

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the excess, if any, of the payments described above over the payments which would have been made based on the Installed Capacity as determined in testing and commissioning the first Unit.

- (b) work, without liability, with, and co-operate in good faith with the Company with respect to, all of the Company's obligations and rights hereunder; and,
- (c) make all reasonable good faith efforts to assist the Company in obtaining clearances for procurement of land and sourcing of water, and such other clearances as may be required at the State level.
- (d) provide electricity in accordance with Article 2.7 for construction, start-up, testing and commissioning and make reasonable efforts to facilitate the conduct of testing and commissioning procedures in accordance with Schedule F.
- (e) use its reasonable efforts to design, construct, operate and maintain the Inter Connection Facilities in accordance with specifications to be determined by mutual agreement of the Parties as per Article 15.5.
- (f) make all reasonable efforts to obtain the issuance of the GOAP Guarantee [as executed by the GOAP] substantially in the form attached hereto as Schedule-J within sixty (60) days of the date of execution hereof or as soon thereafter as practicable, provided that the Scheduled Date of Completion of the last Unit and all prior dates for the Company's performance hereunder shall be deemed to be extended day-for-day for each day of delay reckoned from 61st day in the issuance of GOAP Guarantee.
- (g) make all reasonable efforts to assist the Company to obtain the issuance of the Fuel Linkage i.e., the required Permits from the GOAP and the GOI allocating to the Project the right to obtain and use quantities of Naphtha to generate electricity at a PLF of 100% (the "Fuel Linkage"), subject to any actions of the Company, which may be required in connection therewith, within sixty (60) days of the date of execution of this Agreement or as soon thereafter as practicable provided that the Scheduled Date of Completion of the last Unit and all prior dates for the Company's performance hereunder shall be deemed to be extended day-for-day for each day of delay reckoned from 61st day in the issuance of the Fuel Linkage.

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ARTICLE 8

REPRESENTATIONS AND WARRANTIES

8.1 Representations and Warranties of the Company

The Company represents and warrants that:

- i) The Company is a company duly organised and validly existing under the laws of India and has all requisite legal power and authority to execute this Agreement and carry out the terms, conditions and provisions hereof;
- ii) This Agreement constitutes the valid, legal and binding obligation of the Company, enforceable in accordance with the terms hereof except as the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganisation, moratorium or other similar law affecting creditors' rights generally and except to the extent that the remedies of specific performance, injunctive relief and other forms of equitable relief are subject to equitable defenses, the discretion of the court before which any proceeding may be brought, and the principles of equity in general;
- iii) The Company has duly paid all rents, royalties and all public demands including provident fund dues, gratuity dues, employees state insurance dues, income tax, sales tax, corporation tax and all other taxes and revenues payable to any Government Agency and that at present there are no arrears of such dues, rents, royalties, taxes and revenues due and outstanding and that no attachments or warrants have been served on the Company in respect of sales tax, income tax, Government revenues and other taxes.
- iv) There are no actions, suits or proceedings pending or, to the Company's knowledge, threatened, against or affecting the Company before any court or administrative body or arbitral tribunal that might materially adversely affect the ability of the Company to meet and carry out its obligations under this Agreement; and
- v) The execution and delivery by the Company of this Agreement has been duly authorized by all requisite corporate action, and will not contravene any provisions of, or constitute a default

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under, any other agreement or instrument to which it is a party or by which it or its property may be bound.

8.2 Representations and Warranties of the Board

The Board represents and warrants that:

- i) The Board is a statutory corporation duly organised and validly existing under the laws of India and has all requisite legal power and authority to execute this Agreement and to carry out the terms, conditions and provisions hereof;
- ii) This Agreement constitutes a valid, legal and binding obligation of the Board, enforceable in accordance with the terms hereof except as the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganisation, moratorium or other similar laws affecting creditors' rights generally and except to the extent that the remedies of specific performance, injunctive relief and other forms of equitable relief are subject to equitable defenses, the discretion of the court before which any proceeding may be brought, and the principles of equity in general;
- iii) There are no actions, suits, or proceedings pending or, to the Board's knowledge, threatened against or affecting the Board before any court or administrative body or arbitral tribunal which might materially adversely affect the ability of the Board to meet and carry out its obligations under this Agreement; and
- iv) The execution and delivery of this Agreement by the Board has been duly authorized by all requisite corporate action, and will not contravene any provision of, or constitute a default under, any other agreement or instrument to which it is party or by which it or its property may be bound.

8.3 Mutual Covenants

Each Party will (except to the extent the subject of a bonafide dispute) duly pay all rents, taxes, cesses, fees, revenues, assessments, duties, other outgoings and other amounts owing by it and will observe all the rules and regulations pertaining to the same and will not do or omit to do or (to the extent within its control) suffer to be done anything the purpose of which is to adversely affect or prejudice the interest and rights of the other Party hereunder in any manner whatsoever.

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ARTICLE 9

DEFAULT AND TERMINATION

9.1 Board Default

The occurrence and continuation of any of the following events shall constitute a Board Default, unless any such event occurs as a result of a Company Default as defined in Article 9.2 or any breach by the Company of its obligations hereunder:

- (a) Any failure of the Board to make any payment (s) required to be made to the Company under this Agreement, which continues for a period of sixty (60) days or more from the Due Date of Payment; or any failure of the Board to make any payment (s) in excess of Rs. 30 Crores required to be made to the Company under this Agreement, which continues for a period of thirty (30) days or more from the Due Date of Payment; provided in either case that :
 - (i) the Company has furnished a bill to the Board for such payment as provided in Article 5;
 - (ii) to the extent the Letter of Credit is outstanding or as the case may be the Escrow Account is in operation, the Company shall have presented such bill for payment under the Letter of Credit or Escrow Account as provided under Article 5 of this Agreement;
- (b) The Board repudiates this Agreement or evidences in any manner its intention not to perform its obligations under, or to be bound by, this Agreement;
- (c) The transfer, pursuant to law, of either the Board's rights and obligations under this Agreement or all or a substantial portion of the assets or undertakings of the Board, or the dissolution of the Board, pursuant to law, including by way of merger, consolidation, liquidation, reconstitution or reorganisation unless the transferee or successor:
 - (i) expressly assumes the obligations of the Board under this Agreement and subject to (iii) below, those liabilities and obligations are guaranteed by the GOAP pursuant to the GOAP Guarantee;
 - (ii) is either the owner/operator of a substantial part of the transmission system of Andhra Pradesh and/or is the

purchaser/seller of a substantial part of the bulk supplies of electricity in Andhra Pradesh, has a credit rating (as determined by an independent credit rating agency) at least equivalent to that of the Board and is otherwise capable of performing the obligations of the Board under this Agreement.

- (iii) to the extent that the GOAP Guarantee remains in effect, the GOAP without interruption guarantees the performance of the transferee or successor on the same terms and conditions as the GOAP. Guarantee or such other guarantees or commercial security are provided for the obligations of the resulting entity, successor or transferee that in the reasonable business judgement of the Company and the sole and absolute judgement of the Company's lenders if any, provides equivalent assurance of performance.
- (iv) the transferee or successor shall have provided to the Company security for its payment obligations hereunder which, in the reasonable business judgement of the Company and the sole and absolute judgement of the Company's lenders if any, is at least equivalent to the security constituted by the Letter of Credit and the Escrow Account Agreement as defined in Article 5.10.
- (d) The failure of the Board to observe, or perform any obligation expressed to be assumed by it in Article 5.10 or the Escrow Account Agreement, which failure is not remedied within thirty (30) days of notice thereof from the Company or, in the case of any default in making of any payment from the Escrow Account, referred to therein, such longer period as is represented by the number of days until the Due Date of Payment, plus the cure periods referred to in Article 9.1 (a);
- (e) The GOAP repudiates the GOAP Guarantee, the GOAP shall be in material breach of its obligations under the GOAP Guarantee, or the GOAP Guarantee shall cease to be a legal or binding obligation of the GOAP other than by reason of the Company's failure to materially comply with its terms;
- (f) The serious breach by the Board of any material term of this Agreement (other than with respect to Articles 9.1 (a) through (e) above), where the Board shall fail to cure such breach within ninety (90) days of notice thereof by the Company.

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9.2 Company Default

The occurrence and continuation of any of the following events shall constitute a Company Default, unless any such event occurs as a result of a Board Default as defined in Article 9.1 or any breach by the Board of its obligations hereunder:

- (a) Any failure of the Company to make any payment(s) required to be made to the Board under this Agreement, which continues for a period of sixty (60) days or more; or any failure of the Company to make any payment(s) in excess of Rs. 30 Crores required to be made to the Board under this Agreement, which continues for a period of thirty (30) days or more; either directly or through a credit to the Board in the bills, as per Article 5,
- (b) The Company repudiates the Agreement or evidences in any manner its intention not to perform its obligations under, or to be bound by this Agreement;
- (c) The transfer, pursuant to law, of either the Company's rights and/or obligations under this Agreement or all or a substantial portion of the Company's assets or undertakings, or the dissolution of the Company, pursuant to law, including by way of merger, consolidation, liquidation, reconstitution or reorganisation, unless :
 - (i) the transferee or the successor expressly assumes the obligations of the Company under this Agreement,
 - (ii) such transfer or dissolution does not affect adversely the ability of the resulting entity to perform its obligations under this Agreement, in the sole and reasonable opinion of the Board;

or such transfer or dissolution constitutes or is the direct result of a Change in Law or event of Political Force Majeure

- (d) The Company abandons the construction or operation of the Project, other than as a result of Force Majeure, for a period of forty-five (45) consecutive days or more.
- (e) The Company
 - (i) fails to commence construction by (i) issuing a notice to proceed to the construction contractor, (ii) commencing substantial continuing work on the foundation for the first

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generating unit and/or (iii) delivering to the site and commencing installation of major components of the project within ten (10) months of the signature of this agreement, provided that such period shall be extended as provided in Article 10.4 for delay in the achievement of such date which is caused by a Force Majeure event, or

- (ii) fails to achieve Project COD on or before the **Scheduled Date of Completion plus six months** as extended in accordance with Article 1.1.54
- (f) The Project fails to issue an Availability Declaration providing for Declared Capacity which is in excess of 50% of the Installed Capacity for a continuous period of one hundred and twenty (120) days (excluding any period of major overhaul undertaken in accordance with the manufacturer's recommendations, any period of Force Majeure; any act or omission of the Board or any Emergency directly causing or contributing to the shortfall in the Declared Capacity).
- (g) The failure of the Company either :
 - (i) to demonstrate in tests conducted in accordance with Schedule F (Including any permitted retests) that the Project has an Installed Capacity of at least 90% of the output initially guaranteed by the manufacturer or supplier of the Generating Units as at Project COD.
 - (ii) to maintain thereafter during the term of this Agreement, reliable capacity equal to 98.5% of the Installed Capacity as at Project COD as such reliable capacity shall be determined by testing pursuant to paragraph 2.7 of Schedule D and the Company is not able to demonstrate such reliable capacity in any subsequent retest during the next succeeding twelve (12) months.
- (h) The Company commits a breach of Article 7.1 (f).
- (i) The serious breach by the Company of any material term of this Agreement (other than with respect to Articles 9.2 (a) through (h) above), where the Company shall fail to cure such breach within ninety (90) days of notice thereof by the Board.

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9.3 Remedies of the Company

Upon the occurrence and continuance of a Board Default set forth in Article 9.1 above and the failure of the Board to cure such default within the applicable cure periods, if any, specified in Article 9.1, the Company shall, at its option, have the right to

- (i) elect to terminate this Agreement by issuing a termination notice in accordance with procedures set forth in Article 9.5, or
- (ii) receive damages or have recourse to such other remedies as are available under Law.

9.4 Remedies of the Board

Upon the occurrence and continuance of a Company Default set forth in Article 9.2 above and if the Company fails to cure such default within the applicable cure periods, if any, specified in Article 9.2, the Board shall, at its option, have the right to

- (i) elect to terminate this Agreement by issuing a termination notice in accordance with procedures set forth in Article 9.5, or
- (ii) receive damages or have recourse to such other remedies as are available under Law.

9.5 Termination Procedures

- (a) In the event that the Board gives a termination notice to the Company in accordance with Article 9.4, the following procedures and cure periods shall be observed and shall have expired, respectively, prior to this Agreement actually being terminated and of no further effect (the date of such termination being the Termination Date):

- (i) A termination notice issued in respect of a Company Default under Article 9.2.(c) shall result in the Termination Date occurring on the twentieth (20th) day from the date of receipt by the Company of such termination notice without any further requirement for further action by the Board or any opportunity to cure by the Company. In case of a termination notice received in respect of any other Company Default under Article 9.2, the Company may within ninety (90) days from the date it receives the termination notice attempt to either

- (A) cure the Company Default which gave rise to the termination notice, or
- (B) transfer, sell and/or assign the Project to the Board, the lenders or any third-party purchaser, in which case, if such sale is effected (which shall only be with the prior consent of the Board which consent will not be unreasonably withheld), then such new owner of the Project shall have a full additional ninety (90) day period to cure the Company Default.

The Board shall not be deemed to have unreasonably withheld its approval if in the sole and reasonable opinion of the Board, the new owner does not possess equivalent financial standing and technical capability to that of the Company as on the Commercial Operation Date of the first Generating Unit. If such new owner fails to so cure the Company event of default within such ninety (90) day period, or if the Board fails to provide its consent to such new owner, then the subparagraph (ii) below shall apply.

- (ii) for a period of ninety (90) days from the date on which the lenders are able to fully exercise their right to possess the Project or effectively gain control over operation of the Project in accordance with the Financing Documents (subject to the Board's right under sub-section (iv) and Article 9.6), the lenders shall be entitled to attempt to cure any Company Default (including, Without Limitation, by selling or transferring the Project to a third party, which shall only be with the prior consent of the Board which consent will not be unreasonably withheld, who shall have ninety (90) days from the date of transfer to attempt to cure the Company Default if such sale by itself does not effect such cure). If the lenders or such third party are unable to cure such Company Default by the end of the applicable periods specified above, then the Termination Date shall occur at the expiration of such period;
- (iii) If a cure is effected in accordance with the procedures described in (i) and (ii) above, on notification to the Board by the Company and reasonable verification by the Board, the termination notice shall be and will be deemed to be withdrawn on the date of such cure
- (iv) Notwithstanding anything contained in Article 9.5(a)(i) and (ii) above to the contrary, at all times during the

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continuance of a Company Default and during which the Company maintains actual possession and control over the Project, the Company shall use its reasonable efforts to operate and maintain the Project as generally required hereunder.

- (v) If the Project is sold to any third party in accordance with the provisions of this Article 9.5, then such third party shall become a party hereto in place of the Company and the Board shall execute such documents as may reasonably be required by the Company, the lenders or such third party to give effect to the substitution of such third party as a party hereto in place of the Company.
- (vi) The Board shall, if so requested by the Company, give an undertaking to the lenders or any agent or trustee acting on their behalf in such form as they may reasonably require to perform the obligations set out in this paragraph (a).
- (b) In the event that the Company gives a termination notice to the Board in accordance with Article 9.3, the Board may within ninety (90) days from the date it receives the termination notice attempt to cure the Board Default which gave rise to the termination notice. However, such cure period of ninety (90) days shall be reduced to thirty (30) days in case of a termination notice due to a Board Default under Article 9.1 (a). If such cure is effected, on notification to the Company by the Board and on reasonable verification by the Company, the termination notice shall be and will be deemed withdrawn, or otherwise the Termination Date shall occur at the expiry of such period.
- (c) Any Party which has been served with a notice of termination under Article 9.4 shall use all reasonable endeavours to cure the Company Default or the Board Default as the case may be, as soon as practicable. Both Parties shall, save as otherwise provided herein, continue to perform their respective obligations under this Agreement and shall not, whether by act or omission impede or otherwise interfere with any Party's endeavours to cure the Company Default or the Board Default, as the case may be, during such cure.

9.6 Right to Operate the Project

Notwithstanding anything in Article 9.5 (a) (i) and (ii) or otherwise in this Agreement to the contrary, if the Board gives a termination notice under

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Article 9.4 with respect to a Company Default, during the applicable cure period in Article 9.5(a), neither the Company nor the Lenders under the Financing Documents nor any third party to which the Project has been sold or transferred in accordance with Article 9.5(a) are using all reasonable endeavours in the assessment of the Board to cure such Company Default as soon as reasonably practicable, the Board shall have the right, but not the obligation, if for reasons of the security or integrity of the Board's system or security of supply, the Board considers it necessary, upon seventy-two (72) hours notice to the Company (a "Step-in Notice"), subject to the lender's consent, to require the operator to operate the Project or, where the operator is unwilling or unable to do so, to operate the Project itself in accordance with Prudent Utility Practice for such period(s) up to the date of any transfer of the Project pursuant to a Buy-out or otherwise, as the Board deems necessary, at the expense of the Company. During such period of step-in, the Board's payment obligations to the Company shall be restricted to the payment of 65 % of Capacity Charges computed in the manner described in Article 5.2(b) except that such charges shall be based (rather than on the Installed Capacity) on the capacity which could reasonably be made available, by the Board having regard to the condition of the Project, but the Board shall be responsible for all costs of Fuel. The rights of the Board under this Article 9.6 shall cease upon the earliest of the cure of such Company Default, the transfer of the Project to a third party pursuant to Article 9.5 (a) and the occurrence of the Termination Date.

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ARTICLE 10

FORCE MAJEURE

10.1 Force Majeure Events

For the purposes of this Agreement, Force Majeure means any act, event or circumstance, or combination of acts, events or circumstances, which materially and adversely affects the affected Party's performance of its obligations pursuant to the terms of this Agreement, but only if and to the extent that such acts, events or circumstances are not within the affected Party's reasonable control, were not reasonably foreseeable and could not have been prevented or overcome by the affected Party through the exercise of reasonable skill or care. Any act, event or circumstance or combination thereof meeting the description of Force Majeure that has the same effect upon the performance of any Contractor, which directly, materially and adversely affects the performance by the Company or the Board respectively of their obligations in whole or in part under this Agreement shall constitute Force Majeure with respect to the Company or the Board respectively. Where such performance is affected in part, after applying any damages or compensation from the parties involved or insurance to remedy the effect of such event, the affected Party shall not be relieved of the performance of that part which is not so materially and adversely affected. Force Majeure shall comprise the following acts, events and circumstances to the extent that they or their consequences satisfy the above requirements.

- (i) Political Force Majeure Events, which shall comprise the following acts, events and circumstances.
 - (1) Act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, civil commotion, act of terrorism or sabotage, in each case occurring inside or directly involving India;
 - (2) Any act, failure to act, restraint or regulation, of any Government Agency (excluding actions that constitute remedies or sanctions lawfully exercised as a result of breach by the Company of any Law which is neither expropriatory nor discriminatory in nature), comprising :

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- (a) any act, omission, regulation or restraint constituting a Change in Law (as defined in Article 11.2);
 - (b) any Change in Permits (as defined in Article 11.3); or
 - (c) the expropriation by any Government Agency or compulsory acquisition of any shares in, or assets or rights of, the Company or its Contractors.
- (3) Strikes, lockouts or other labour difficulties, which are politically motivated (rather than motivated primarily by a desire to improve compensation or working conditions of those involved) or are caused in whole or part by another event of Political Force Majeure or are part of a nation-wide or regional strike, or other generalised labour action occurring within India; (excluding such events which are site specific and attributable to the Company);
- (4) Radioactive contamination or ionising radiation or chemical contamination originating from a source in India or resulting from another Political Force Majeure Event;
- (5) Any act, event or circumstance of a nature analogous to the foregoing;
- ii) Non-Political Force Majeure events comprising the following acts, events and circumstances;
- (1) Flood, cyclone, lightning, earthquake, drought, storm or any other extreme effect of the natural elements;
 - (2) Epidemic, or plague;
 - (3) Fire or explosion.
 - (4) Strikes, lockouts or other labour difficulties not included in Article 10.1(i) (3); (excluding such events which are site specific and attributable to the Company)
 - (5) Catastrophic failure of major components or equipment excluding however, normal wear and tear or inherent defects or flaws in materials or equipment;
 - (6) Air crash, shipwreck or trainwreck or loss of or damage to any major component of the Project arising in the course of

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marine transit other than due to the fault of the transporting party;

- (7) Any act, event or circumstance of a nature analogous to the foregoing.

Provided, however, that for the avoidance of doubt, lack of funds shall not be construed as an event of Force Majeure.

10.2 Notification Obligations, etc.

- (a) Any Party claiming a Force Majeure event shall formally notify in writing in the manner specified in (b) below and seek to satisfy the other Party of the existence of such a Force Majeure event and shall use its reasonable endeavour to resume performing its normal obligations as soon as possible after the cessation of such a Force Majeure event.
- (b) The Party claiming Force Majeure shall give notice to the other Party of any event of Force Majeure as soon as reasonably practical after becoming aware of its existence, but not later than five (5) days after the date on which such Party knew or should reasonably have known of the commencement of the event of Force Majeure. Notwithstanding the above; if the event of Force Majeure results in a breakdown of communications rendering it not reasonably practicable 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 the reinstatement of communications, but not later than seven (7) days after such reinstatement.
- (c) The Party claiming Force Majeure shall give notice to the other Party of;
- i) The cessation of the relevant Force Majeure act, event or circumstance ; and,
 - ii) The cessation of the effects of such Force Majeure events on the enjoyment by such Party of its rights or the performance by it of its obligations under this Agreement;

as soon as practicable after becoming aware thereof.

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10.3 Mitigation: Co-operation: No obligation to settle Strikes

Any Party claiming Force Majeure shall use its reasonable efforts to mitigate and overcome the effects of any act, event or circumstance of Force Majeure as soon as practicable after the occurrence of a Force Majeure event, including through the expenditure of reasonable sums of money, and to co-operate with the other Party to develop and implement a plan of remedial and reasonable alternative measures to remove the event of Force Majeure; provided, however, that no Party shall be required under this provision, to settle any strike or other labour dispute on terms it reasonably considers to be unfavourable to it. The Party claiming Force Majeure shall furnish weekly written reports to the other Party with respect to its progress in overcoming the effects of the act, event or circumstance of Force Majeure together with such supporting documentation and information as the other Party reasonably requires regarding the claim of Force Majeure.

10.4 General Consequences of Force Majeure

Subject to the other provisions of this Agreement, no Party shall be in breach of its obligations under this Agreement due to its failure or delay in performing its obligations hereunder to the extent that such failure or delay has been caused by one or more acts, events or circumstances of Force Majeure, for so long as such act, event or circumstance or its effects are continuing and any dates specified herein for such performance shall be extended to the extent necessary to compensate for the delay which shall be on a day-for-day basis (unless the circumstances justify a longer or shorter period); provided that if the Party claiming Force Majeure fails to give notice thereof to the other Party within the period and in the manner specified in Article 10.2(b), such Party shall only be entitled to relief on account thereof from the date it gives such notice.

10.5 Financial Consequences of Force Majeure

- (a) The Company shall not be entitled to claim any adjustments for increased costs incurred as a result of an event of Force Majeure except to the extent provided in Article 11
- (b) Except as provided in this Article 10.5, an act, event or circumstance of Force Majeure shall not excuse the payment obligations of either Party which shall be determined in accordance of the terms of this Agreement.
- (c) Payments to the Company by the Board in respect of periods of Political Force Majeure shall be limited as follows:

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- (i) In case of any event of Political Force Majeure affecting either Party as per Article 10.1(i) (2) occurring after the COD of the first Unit claimed by the affected party, the Board shall pay, for each Settlement Period for which such Force Majeure is in effect, Capacity Charges, until the earlier of the (x) the date the effects of such Political Force Majeure event cease to exist and (y) 180 days from the date of commencement of such event. The Capacity Charges shall be computed in the manner described in Article 5.2(b) except such charges shall be calculated for the period only described above and shall be based (rather than on the Installed Capacity) on the average Availability Declaration of the past 180 days (excluding from such 180 day period any period of Force Majeure or Scheduled Outages) or such lesser period in case the relevant data is not available for a period of 160 days.
- (ii) On the occurrence of any other Political Force Majeure event affecting either Party as per Article 10.1(i), occurring after the COD of the first Unit, claimed by the affected party, the Board shall pay, for each Settlement Period for which such Force Majeure is in effect, 75 % of Capacity Charges, until the earlier of the (x) the date the effects of such Political Force Majeure event cease to exist and (y) one hundred and eighty (180) days from the date of commencement of such event. The Capacity Charges shall be computed in the manner described in Article 5.2(b) except such charges shall be calculated for the period only described above and shall be based (rather than on the Installed Capacity) on the average Availability Declaration of the past 180 days (excluding from such 180 day period any period of Force Majeure or Scheduled Outages) or such lesser period in case the relevant data is not available for a period of 180 days.
- (d) Non-Political Force Majeure affecting the Board after Project COD
- In case of any Non-Political Force Majeure event affecting the Board as per Article 10.1(ii) occurring after the COD of the first Unit, the Board shall pay, for each Settlement Period for which such Force Majeure is in effect, 65% of the Capacity Charges, until the earlier of the (x) date the effects of such Non-Political Force Majeure event cease to exist and (y) one hundred and eighty (180) days from the date of commencement of such event. The Capacity Charges shall be computed in the manner described in Article 5.2(b) except such charges shall be

calculated for the period only described above and shall be based (rather than on the Installed Capacity) on the average Availability Declaration of the past 180 days (excluding from such 180 day period any period of Force Majeure or Scheduled Outages) or such lesser period in case the relevant data is not available for a period of 180 days.

- (e) In case of Political Force Majeure Events described under Article 10.1(i)(2) affecting the Fuel supplier or transporter, which prevents delivery of Fuel to the Project and for which the Fuel supplier or transporter is excused under Fuel Supply Agreement(s), the Board shall pay for each settlement period for which such Force Majeure is in effect 65% of the Capacity Charges, commencing, however, on the date 30 days after the date on which a notice of commencement of such event is delivered by the Fuel supplier or transporter to the Company under the Fuel Supply Agreement(s) as communicated to the Board and the Board having satisfied itself that the Company made best efforts to provide alternate fuel supplies during this 30 day period, until the earlier of the (X) date the effects of such Force Majeure Event cease to exist and (Y) one hundred and eighty (180) days from 31st day of commencement of such event. The Capacity Charges shall be computed in the manner described in Article 5.2(b) except such charges shall be calculated for the period only described above and shall be based (rather than on the Installed Capacity) on the average Availability Declaration of the past 180 days (excluding from such 180 days period any period of Force Majeure or Scheduled Outages) or such lesser period in case relevant data is not available for a period of 180 days.

10.6 Termination for Force Majeure

- (a) Either Party may issue a notice of termination of this Agreement if (i) an event of Political Force Majeure as described in Article 10.1(i) has continued for more than one hundred and eighty (180) days or (ii) the Company following damage to the Project resulting from such event fails or is unable to or elects (subject to Article 10.7) not to restore the Project. Such notice shall become effective twenty (20) days from the date of issuance thereof (the "Termination Date").
- (b) The Board may issue a notice of termination of this Agreement if the effects of a Non-Political Force Majeure Event as described in Article 10.1 (ii) affecting the Board or Force Majeure affecting Fuel supplier or transporter as described in Article 10.5(e) have continued for more than one hundred and eighty (180) days and




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the Company may issue a notice of termination of this Agreement of the effects of a Non-Political Force Majeure Event as described in Article 10.1(ii) affecting the Board or Force Majeure affecting Fuel supplier or transporter as described in Article 10.5 (e) have continued for more than two hundred and seventy (270) days.. Such notice shall become effective twenty (20) days from the date of issuance thereof (the "Termination Date").

- (c) Either Party may issue a notice of termination of this Agreement if (i) the effects of a Non-Political Force Majeure Event as described in Article 10.1(ii) affecting the Company has continued for more than one hundred and eighty (180) days or (ii) the Company following damage to the Project resulting from such event fails or is unable to or elects (subject to Article 10.7) not to restore the Project. Such notice shall become effective twenty (20) days from the date of issuance thereof (the "Termination Date").

Provided that in case of a Non-Political Force Majeure event affecting the Company, Article 12 shall not apply to such termination and the Agreement shall terminate at the end of the cure period specified in Article 10.6 (c) without any liability to either Party.

10.7 Obligation to Restore Project

The Company shall not be entitled to relief under this Article 10 unless, following the occurrence of any damage or destruction of the Project arising from any event of Force Majeure, the Company shall have used all reasonable efforts to commence the restoration of such Project as soon as reasonably practicable taking into account the circumstances of the Force Majeure and thereafter has diligently pursued such restoration, unless (i) the damage or destruction to the Project constitutes a total or constructive loss or (ii) the Project would be incapable following such repair of resuming operation at the levels required under the Agreement; or (iii) such loss is not insured against in whole or in part and the Company is unable despite its best efforts to raise the necessary financing (taking into account any payments received by the Company under this Agreement).

ARTICLE 11

CHANGE IN LAW

11.1 Definition of Law

For the purposes of this Agreement, "Law" means the constitution of India and any act, rule, regulation, directive, notification, order or instruction having the force of Law enacted or issued by any competent legislature, or Government Agency.

11.2 Definition of Change in Law

For the purposes of this agreement, "Change in Law" means

- (i) any enactment or issue of any new Law,
- (ii) any amendment, alteration, modification or repeal of any existing Law or any new or modified directive or order thereunder,
- (iii) any change in the application or interpretation of any Law by a competent legislature or Government Agency in India which is contrary to the existing accepted application or interpretation thereof, in each case coming into effect after the date of this Agreement, provision for which has not been made elsewhere in the Agreement.

11.3 Definition of Change in Permits

For the purpose of this Agreement, "Change in Permits" means

- (i) any failure or refusal to grant or renew any Permit (other than for Cause) or;
- (ii) the imposition (other than for Cause) of any material requirement in connection with the issuance of any Permit or the renewal, extension or modification of any Permit after such Permit was issued, in either case subsequent to the date of this Agreement ;
- (iii) the imposition (other than for Cause) of a requirement for a Permit which did not exist as of the date of this Agreement, or
- (iv) the revocation or cancellation (other than for Cause) of any Permit;

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Provided that any such change establishes requirements that are materially more restrictive than the most restrictive requirements (A) in effect as of the date of this Agreement, (B) specified in any applications for any Permit filed by the Company or other documents filed in connection with such applications by the Company on or before the date of this Agreement, or (C) agreed to by the Company in any Financing Document or in any agreement with any Contractor, supplier of Fuel or transporter of Fuel, provision for which has not been made elsewhere in this Agreement.

11.4 Additional / Reduced Expenditures or Other Increased / Reduced Costs due to a Change in Law or Change in Permits

- (a) Within sixty (60) days after the COD of the first Generating Unit or the end of any Tariff Year, the Company shall determine after accounting for the net economic effects on the Company during the period prior to the COD of the first Generating Unit or, as the case may be, such Tariff Year of any Changes in Law or Changes in Permits, based on an accounting conducted by an independent chartered accountant reasonably acceptable to the Board. If as a result of such accounting, the Company suffers an increase in costs or a reduction in after-tax cash flow or any other net economic burden which it would not have experienced but for such Changes in Law or Changes in Permits (taking into account the reasonable costs of financing of any capital improvement in the period prior to the COD of the first Generating Unit or, as the case may be, such Tariff Year), the aggregate economic effect of which exceeds the equivalent of Rupees three (3) crores per 100 MW or pro-rata for any part thereof during the period prior to the COD of the first Generating Unit and Rupees one (1) crore per 100 MW or pro-rata for any part thereof during the period after the COD of the first Generating Unit, during any Tariff Year (excluding cost adjustments in respect of Changes in Law or Changes in Permits from any prior period), the Company may notify the Board of any proposed amendments to this Agreement required to put the Company in the same economic position it would have occupied in the absence of such cost increase, reduction in the net after-tax cash flow or any other economic burden. Such notice shall be accompanied by a certification of the Company's independent chartered accountant and a reasonably detailed explanation of certification of an officer of the Company respecting the basis for such net economic burden increase. The amount of any net economic burden claimed by the Company shall be net of any insurance proceeds received in respect thereof.

- (b) Within sixty (60) days after the COD of the first Generating Unit or the end of any Tariff Year, if after accounting as provided in subsection (a) for the net economic effects on the Company during the period prior to the COD of the first Generating Unit or, as the case may be, such Tariff Year of any Changes in Law or Changes in Permits, the Company experiences a reduction in costs or an increase in after-tax cash flow or any other net economic benefit which it would not have experienced but for such Changes in Law or Changes in Permits, the aggregate economic effect of which exceeds the equivalent of Rs. 3 crore per 100 MW or pro-rata for any part thereof during the period prior to the COD of the first Generating Unit or Rupees one (1) crore per 100 MW or pro-rata for any part thereof, following the COD of the first Generating Unit, during any tariff Year, the Company shall provide to the Board results of such accounting together with a certificate of the independent chartered accountant and the Board, in response thereto, may notify the Company of any proposed amendments to this Agreement required in its good faith judgement to put the Company in the same economic position it would have occupied in the absence of such cost reduction, increase in the net after-tax cash flow or any other economic benefit. Such notice shall be accompanied by a reasonably detailed explanation of a certification of an officer of the Company respecting the basis for such decrease.
- (c) Only increased costs which are necessarily and unavoidably incurred in complying with or as a direct result of the Changes in Law or Changes in Permits taking into account, all reasonable steps which may be taken by the Company to minimise such increased costs, shall be considered as increased costs for the purposes of this Article.
- (d) As soon as practicable during the period prior to the COD of the first Generating Unit or any Tariff Year after the Company becomes aware of any Change in Law or Change in Permits which could reasonably be expected to give rise to an increase/reduction in costs or reduction/increase in after-tax cash flow pursuant to paragraph (a) and (b), the Company shall provide an interim notice thereof to the Board describing, to the extent possible, the expected effect on the costs and the cash flow of the Company. The Company shall consult with the Board regarding such increased expenditures and the Company shall use all reasonable efforts to implement the Board's recommendations, if any, to minimise such increased

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expenditures consistent with Prudent Utility Practices and the Company's obligations under this Agreement. If prior to the end of any Tariff year the Company demonstrates on the basis of a certification of its chartered accountant that any Change in Law or Change in Permits would result in the Company's being unable to meet its payment obligations to its lenders under the Financing Documents on a current basis, then in addition to the Company's rights under sub-section (a) but notwithstanding the time period for exercising such rights specified therein, the Company shall be entitled to propose amendments to this Agreement as provided in subsection (a) and the Parties shall consider such proposal as provided in subsection (e) below, provided that any benefits which the Company is eligible to receive under subsection (a) shall be reduced by any benefits received by the Company prior to the end of the relevant period under this subsection.

- (e) Within thirty (30) days after receiving any proposal pursuant to paragraph (a), (b) or (d), the Parties shall meet and agree on either amendments to this Agreement or alternative arrangements to implement the foregoing. If no such agreement has been reached within ninety (90) days after any meeting pursuant to Article 11.3 (a), (b) or (d), as the case may be, the proposals of the Parties shall be submitted to the independent chartered accountant referred to in paragraphs (a), (b) and (d), as the case may be.

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ARTICLE 12

BUYOUT

12.1 **Buyout Events:** For the purpose of this Agreement, each of the following shall be a Buyout Event:

- (a) The occurrence of a Termination Date as a result of a termination notice issued by the Board pursuant to a Company Default which becomes effective in accordance with Article 9.5(a);
- (b) The occurrence of a Termination Date as a result of a termination notice issued by the Company pursuant to a Board Default which becomes effective in accordance with Article 9.5(b);
- (c) The occurrence of a Termination Date as a result of any event of Political Force Majeure pursuant to Articles 10.6 (a);
- (d) The occurrence of a Termination Date as a result of an event of Force Majeure pursuant to Article 10.6 (b).

12.2 Remedies to the Company

If a Buyout Event under Article 12.1(b),(c) or (d) occurs, the Company may require the Board to purchase the Project upon giving the Board a notice of the same (the "Buyout Notice") at the "Buyout Price" as defined in Schedule G.

12.3 Remedies of the Board

In case of a Buyout Event described in Article 12.1(a), (c) or (d) (and in case of a Buyout Event described in Article 12.1(a), subject to the lenders cure rights as set forth in Article 9.5), the Board shall have the right to purchase the Project upon giving the Company notice of the same (the "Buyout Notice") at a "Buyout Price" as defined in Schedule G.

12.4. Buyout Price

The Buyout Price shall be as determined in Schedule G.

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12.5 Independent Appraiser

The Buyout Price shall be determined in accordance with Schedule G by an internationally recognised accounting firm listed in Schedule C hereto (the "Independent Appraiser") appointed in accordance with paragraph 4 (a) of Schedule G. All fees and expenses of any technical or other consultants which the Independent Appraiser reasonably believes are necessary to retain, shall be paid by the Party other than the Party validly claiming the Buyout Event.

Buyout

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No. L-12011/2/00-GP(xxiii)
Government of India
Ministry of Petroleum & Natural Gas

Shastri Bhawan, New Delhi
Dated June 05, 2000

To

✓ M/s Vemagiri Power Generation Ltd.,
Generation Ltd.,
"Nirmal", 7th Floor,
Nariman Point,
Mumbai 400021.

Repeat:-

M/s Vemagiri Power

Plot No.62, Road No.3,
Banjara Hills,
Hyderabad-500034.

Subject: Allocation of natural gas to M/s Vemagiri Power Generation Ltd. for 492 MW combined cycle power project at Vemagiri in Andhra Pradesh.

Dear Sirs,

I am directed to convey the decision of the Government to the allocation of 1.64 MMSCMD of natural from the ONGC fields in K.G. Basin on firm basis to M/s Vemagiri Power Generation Ltd. for 492 MW combined cycle power project at Vemagiri in Andhra Pradesh. The above allocation will be subject to the following conditions:-

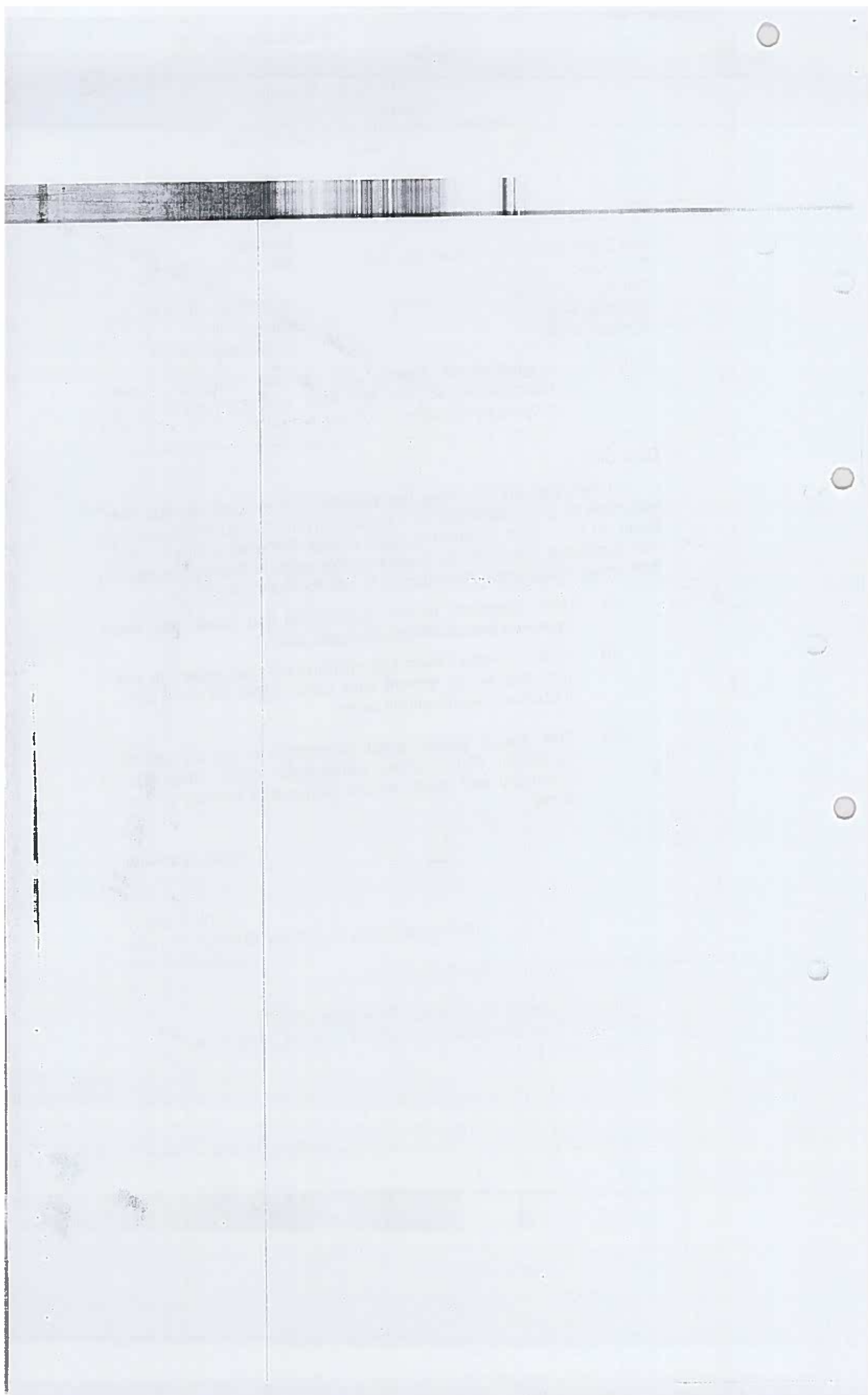
- (i) M/s Vemagiri Power Generation Ltd. shall pay the relevant transportation charges; and
- (ii) M/s Vemagiri Power Generation Ltd. shall enter into the gas supply agreement with GAIL within 60 days from the date of issue of this letter.
- (iii) The above power plant proposed to be set up at Vemagiri (A.P.) shall necessarily have dual fuel capability and would not be dependent on natural gas alone.

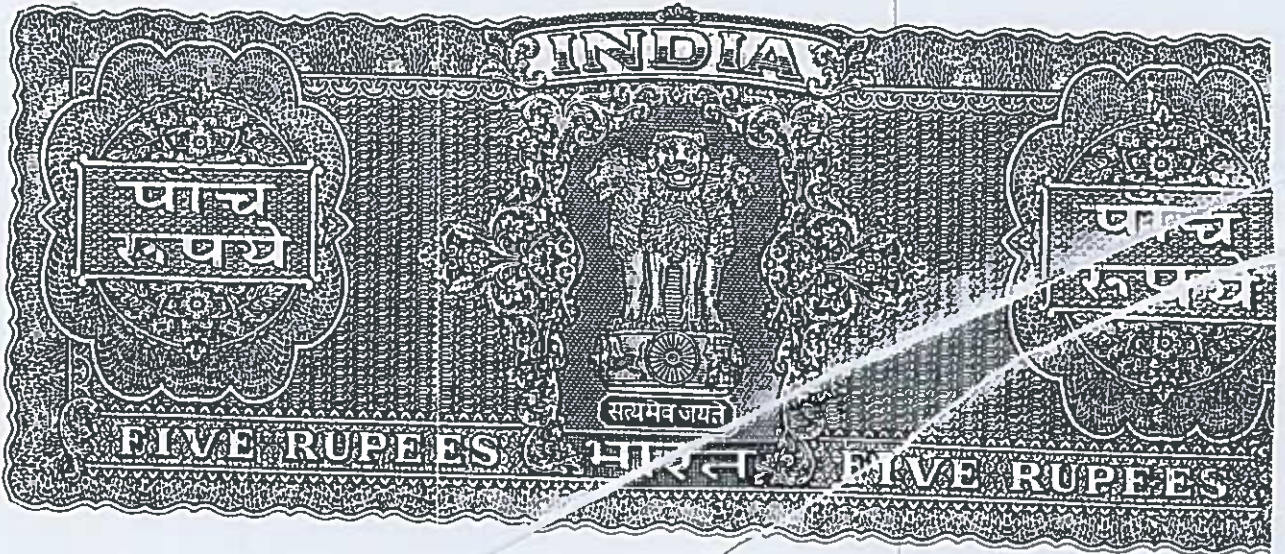
Yours faithfully,

(I.S.N. Prasad)
Deputy Secretary to the Government of India
Tel.No.3381029

Copy for information and necessary to:-

1. Shri H.P. Chandna, Director (Planning), GAIL.
2. Shri A.S. Soni, Director (Operations), ONGC, New Delhi.
3. Spare copy (2 Nos.).





This CONTRACT made on 31-08-2001 at New Delhi between M/S GAS AUTHORITY OF INDIA LIMITED, a Government of India Undertaking established under the Companies Act, 1956 having its Registered Office at 16, Bhikaiji Cama Place, New Delhi - 110066, hereinafter called "THE SELLER" (which expression shall, where the context so requires or admits of, be deemed to include its successors or assigns) of the one part and M/s VEMAGIRI POWER GENERATION LIMITED, having its Registered Office at "Nirmal", 7th Floor, Nariman Point, Mumbai-400021, hereinafter called "THE BUYER" (which expression where the context so requires or admits of, be deemed to include its successors or assigns) of the other part.

Whereas the BUYER desires to purchase and receive 'Natural Gas' from the SELLER and the SELLER agrees to sell and deliver to the BUYER Natural Gas as produced in its natural state or after stripping of heavier components, for other uses, hereinafter referred to as 'GAS' obtained from the field/fields of ONGCL located at Tatipaka, Parsariapudi, Kesnapalli, Mori and other nearby fields and in and around fields and Ravva offshore, as fuel for the power plant of the BUYER located at Vemagiri, East Godavari District in the State of Andhra Pradesh, on the terms and conditions stated hereunder which have been mutually agreed to between the SELLER and the BUYER.

NOW THIS DEED WITNESSES AS FOLLOWS

[Handwritten signatures]

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ARTICLE-1 DEFINITIONS AND INTERPRETATIONS.

The following words shall have the meaning assigned respectively against each one of them in this CONTRACT :-

1.01. "Time" shall be stated in "Hours" and shall mean 'Indian Standard Time'.

1.02. "Day" means a period of twenty four (24) consecutive hours beginning and ending at 0600 hours and the reference date for any such day shall be the date on which such day starts at 0600 hours.

1.03. "Week" means a period of seven (7) consecutive days beginning at 0600 hours from a day.

1.04. "First fortnight" means a period commencing at 0600 hours on first day of month and ending on 0600 hours on sixteenth day of the month and a "second fortnight" from 0600 hours on sixteenth day of the month to 0600 hours on the first day of the succeeding calendar month.

1.05. "Month" means a period beginning at 0600 hours on the first day of a calendar month and ending at 0600 hours on the first day of the succeeding calendar month.

1.06. "Year" means a period of three hundred and sixty five (365) consecutive days or three hundred and sixty six (366) consecutive days when such period includes a twenty-ninth (29th) day of February.

1.07. "Year" "Month" and "Day" wherever used in this CONTRACT imply that of English calendar.

1.08. "Standard Cubic Metre" of GAS means a quantity of GAS required to fill one (1) cubic metre of space when the GAS is at an absolute pressure of seven hundred and sixty (760) millimetres of mercury and a temperature of fifteen (15) degrees Celsius.

1.09. "ASTM" means the American Society of Testing Materials and "ANSI" means American National Standard Institute.

1.10. "GAS" OR "NATURAL GAS" means gas produced from gas wells, gas condensate wells or oil wells, and the residue gas remaining after processing such gas for the removal of liquefiable hydrocarbons and impurities therefrom, to meet gas specifications given in Annexure-I.

1.11. "CONTRACT" means the contract alongwith Annexure-I, II & III.

1.12. "Kilo Calorie" shall means the amount of heat required to raise the temperature of one (1) kilogram of water by one (1) degree Celsius at fifteen (15) degrees Celsius.

1.13. "Heating Value" shall mean the number of kilo calories evolved by complete combustion at a constant pressure of one (1) standard cubic meter of GAS with air and with the temperature of GAS, air and products of combustion at fifteen (15) degree Celsius and all the water formed by combustion being condensed to liquid state.

1.14. Words imparting the singular only also include plural and vice-versa where the context so requires.

1.15. ONGCL means Oil & Natural Gas Corporation Ltd., a public limited company established under the Indian Companies Acts, 1956 with its registered office at Jeevan Bharti, Tower II, 124 Connaught Circus, New Delhi-110001.



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ARTICLE-2 PERIOD OF CONTRACT

2.01. This CONTRACT shall come into force from the date it is signed and shall remain valid for a period upto 31.12.2010 (Thirty First December, Two Thousand Ten). The supply of GAS under this CONTRACT would commence on 31.12.2004 (Thirty First December Two Thousand and Four) or from any earlier date that may be mutually accepted by the SELLER and the BUYER and shall continue for a period ending on 31.12.2010 (Thirty First December, Two Thousand Ten).

2.02 (i) For the purpose of the CONTRACT the BUYER shall make a security deposit of Rs 5,65,80,000/- (Rupees Five Crores Sixty Five Lakhs Eighty Thousand only) to the SELLER. The BUYER shall also arrange to submit a Bank Guarantee for Rs. 16,97,40,000/- (Sixteen Crores Ninety Seven Lakhs Forty Thousand) from any of the nationalized/scheduled banks at New Delhi in favour of the SELLER at the time of signing of the CONTRACT in GAIL's proforma.

2.02(ii) The SELLER shall pay a simple interest at the rate of 7%(Seven Percent) per annum to the BUYER on the amount of security deposit as per the provisions of Article 2.02 (iii) & 2.02 (iv) below.

2.02(iii) The BUYER has indicated the schedule of implementation of key activities of their plant as per Annexure-II to the CONTRACT. The BUYER shall provide the documentary proof to the SELLER of the completion of each of the activities. In case any of the above activities is not completed within the date indicated in Annexure-II ,allocation of natural gas shall be liable for cancellation without waiting for the last activity .Further, the SELLER shall have the right to terminate the CONTRACT and forfeit the security deposit as well as the amount of Bank Guarantee without prejudice to other rights under the CONTRACT .

2.02(iv) The amount of deposit along with interest due as per Article 2.02(ii) and Bank Guarantee shall be refunded/discharged by the SELLER on commencement of supply of GAS, however, subject to provision of Article 2.02(iii) mentioned above and opening of irrevocable L/C as stipulated in Article 11.01 hereinafter.

ARTICLE-3 EXTENSION OF PERIOD OF CONTRACT

3.01 If any of the parties hereto should desire an extension of the period of CONTRACT it shall give to the other a prior notice in writing of its such intention at least Six months before the expiry of the period stipulated in Article 2.01 where upon the period shall be extended on such terms and conditions as may be mutually agreed upon. Provided further that the renewal agreement shall be finalized and executed between the parties atleast three months before the expiry of the period stipulated in Article 2.01.



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ARTICLE-4 DELIVERY OF GAS

4.01 GAS shall be delivered to the BUYER at the Gas Metering Station that shall be located at BUYER's premise at Vemagiri, East Godavari District, in the State of Andhra Pradesh. GAS will be transported from the down stream flange of the pipeline at the outlet of the Gas Metering Station herein referred to as point of delivery by means of pipeline to be provided and maintained by the BUYER.

4.02 Gas Metering Station needed for the same shall be set up/constructed and maintained by the SELLER. Land and building needed for the purpose of such Gas Metering Station shall be provided by the BUYER free of cost. The SELLER may use the said location for effecting deliveries to any other parties in the area.

4.03 In addition to the price of GAS mentioned in Article 10, the BUYER shall pay to the SELLER monthly transmission charges of Rs 3,46,14,137/- (Rupees Three Crores Forty Six Lakhs Fourteen Thousand One Hundred Thirty Seven Only) per month for the facilities provided by the SELLER for supply of GAS to the delivery point located at the BUYER's premises. Provided further, the BUYER shall also pay to the SELLER additional monthly transmission charges, to be indicated by SELLER, towards Gas Dehydration Unit (GDU) proposed to be installed and operated by SELLER in order to maintain the security and integrity of the pipeline facilities for ensuring uninterrupted GAS supply from the date such GDU is installed and operated to be intimated by the SELLER. The BUYER shall also pay to the SELLER additional transmission charges, if any, in case the SELLER is required to replace/revamp the existing pipeline and allied facilities wholly/partly for supply of gas to the BUYER at the point of delivery. The above monthly transmission charges / additional monthly transmission charges shall be increased by 3 (Three) percent on yearly rest basis with effect from 1.4.2005. During the currency of the CONTRACT irrespective of the Total/Partial/Non-supply/drawal of quantity of GAS as per Article 5.01 hereinafter to the BUYER during the month(s), the BUYER agrees to pay above monthly transmission charges and taxes thereof to the SELLER in addition to the payment of invoice for supply of GAS to be raised as per Article 10 and Article 11. Provided further in case monthly transmission charges are not paid by the BUYER within 3 (Three) working days of presentation of invoice, the SELLER will present the invoice for the same to the Bank against Letter of Credit and draw the amount. The BUYER will make arrangements with the Bank in a manner that in such an eventuality the full L/C amount gets automatically reinstated.

4.04 The BUYER shall make all proper and adequate arrangement for receiving GAS at the outlet of Gas Metering Station at its own risk and cost taking all precautions as per guidelines of Oil Industry Safety Directorate (OISD). Should any defect in the BUYER's intake arrangement arise, the same shall be rectified by the BUYER. The SELLER shall have an option to stop supply of GAS as soon as any defect is noticed in the BUYER's intake arrangements. The BUYER shall still be liable to pay for minimum guaranteed offtake of GAS in accordance with Article 5.02 hereinafter irrespective of the fact of stopping supply of GAS by the SELLER on account of defect in the BUYER's intake arrangements.

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4.05 For effecting deliveries as aforesaid the SELLER shall install and maintain at its own risk and cost the piping control and regulation and metering equipment in the aforesaid Gas Metering Station and all other accessories. The said equipment so installed by the SELLER shall remain the property of the SELLER and the SELLER shall have the right to remove such equipment at any time within twelve (12) months after the expiry of the contract. The SELLER shall have the right to use the BUYER's land and utilities essentially required for installation, operation and maintenance of Gas Metering Station and allied equipment required for supply of GAS on payment of such charges for utilities only as may be mutually agreed.

4.06 The title to GAS shall pass from the SELLER to the BUYER at the point of delivery of GAS to the BUYER. The delivery point shall be at the down stream flange of the pipeline at the outlet of the Gas metering station.

4.07 The SELLER shall under the normal circumstances of the supply of GAS and normal off-take by the other buyers make endeavor to maintain gauge pressure upto 27(Twenty Seven) Kilograms per square centimeters at point of delivery, subject to availability of the corresponding matching pressures from ONGCL. However, in cases where the pressure of the GAS received by the SELLER from ONGCL are not sufficient to warrant supply of GAS at a gauge pressure upto 27(Twenty Seven) Kilograms per square centimeters at point of delivery, the SELLER shall provide the estimates of cost of compression of GAS to be borne by the BUYER in addition to the price under Article 10 hereinafter and monthly transmission charges/additional monthly transmission charges under Article 4.03 herein above. In case the compression cost to be borne by the BUYER is mutually agreed between the SELLER and the BUYER, the SELLER shall install, maintain and operate the GAS Compressors to compress the GAS to the pressure as stated hereinabove else the BUYER shall make arrangement to compress the GAS to pressure required by the BUYER at their end.

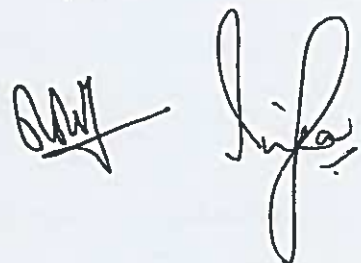


ARTICLE-5 QUANTITY OF GAS

5.01 Subject to availability of GAS and SELLER's ability to supply the same to the BUYER, the SELLER agrees to sell and deliver the GAS at the aforesaid point of delivery to the BUYER as per requirement of the BUYER subject to the maximum of 1640000 (One point Six Four Million) standard cubic meters per day. Provided further for first year of GAS supply or for period upto 30.12.2005, which ever is earlier, the BUYER shall give to the SELLER monthly forecast of the quantity of GAS required for each month atleast month in advance. The BUYER shall build/ maintain dual fuel capabilities in their plant for meeting their fuel requirement through alternative fuel as and when GAS is not available for supply to the BUYER and would not be dependent on natural gas alone.

5.02 For first year of GAS supply or for period upto 30.12.2005, which ever is earlier the BUYER guarantees to pay to the SELLER for actual quantity of the GAS supplied by the SELLER to the BUYER subject to the minimum of 80% of the monthly forecast quantities. Thereafter the BUYER shall pay to the SELLER for the actual quantity of GAS supplied by the SELLER to the BUYER subject to minimum of 80% of the monthly quantity on the basis of the quantities mentioned in clause 5.01, hereinafter referred to as minimum guaranteed offtake (MGO). The BUYER guarantees to buy during every month minimum guaranteed quantity of GAS equivalent to the quantity obtained by multiplying 80% of the daily maximum quantity mentioned in clause 5.01 by the number of days in the month. Upon the BUYER failing to lift the aforesaid minimum guaranteed quantities of GAS during any month, the BUYER undertakes to pay for the said minimum guaranteed monthly quantity for such month. In case the SELLER is unable to supply 80% of the maximum contracted quantity of GAS mentioned in clause 5.01 on any day(s) during any month the minimum guaranteed quantity for the month shall be worked out by adding the actual quantity of GAS supplied on such day(s) and the quantity obtained by multiplying 80% quantity of GAS mentioned in clause 5.01 by remaining number of day(s) during such month and the BUYER undertakes to pay for such minimum guaranteed quantity or for actual quantity of GAS supplied during the month whichever is higher.

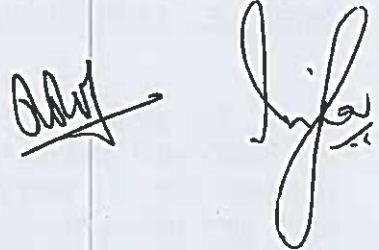
5.03 The BUYER shall draw and SELLER shall supply daily the quantity of GAS agreed to in Article 5.01 and 5.02 above at an uniform rate spread over a period of 24 (Twenty four) hours.

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ARTICLE - 6 QUALITY OF GAS

6.01 The quality of GAS to be delivered to the BUYER will conform to the specifications laid down in Annexure-I hereto which shall form part of this CONTRACT.

6.02 If GAS delivered by the SELLER to the BUYER fails, at any time, to conform to the quality specifications provided in Annexure-I hereto, the BUYER shall notify the SELLER or his authorized representative of such deficiency in writing and the SELLER shall then take immediate steps to remedy such deficiency within reasonable time.





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ARTICLE - 7 SHUT DOWN AND STOPPAGE OF SUPPLY

7.01. The schedule annual shut down of gas supply on the one side from the SELLER's end and on the other side at the BUYER's end shall be limited to all 15 (Fifteen) days in a year for each side. The party desiring a shutdown for the purpose shall give notice in writing to the other party atleast fifteen (15) days prior to the proposed date of shutdown. As far as possible the SELLER and the BUYER shall try to synchronise their shutdown periods. During such shutdown the provisions of clause 5.02 shall not be applied.

7.02. The BUYER shall inform the SELLER immediately about any accident and/or defects in installations of the BUYER calling for the complete or partial stoppage of supply of gas. Provided that in all such cases, the BUYER shall undertake immediate steps to rectify the defects for commencing normal intake of gas. Provided that in all such cases, the provisions relating to payment of minimum guaranteed offtake by the BUYER contained in clause 5.02 shall apply.

7.03. The SELLER shall, likewise, inform the BUYER immediately about any accident and/or defects in installations of the SELLER and gas pipeline calling for the complete or partial stoppage of supply of gas. Provided that in all such cases, the SELLER shall undertake immediate steps to rectify the defects for commencing normal supply of gas. Provided that in all such cases, the provisions relating to payment of minimum guaranteed offtake by the BUYER contained in clause 5.02 shall not be applicable for the duration of stoppage of supply during this period.

ARTICLE- 8 MEASUREMENT & CALIBRATION

8.01. The volume of GAS supplied under the CONTRACT shall be measured by flow meter installed at the GAS Metering Station of the SELLER. The GAS composition and net calorific value of GAS shall be as measured at SELLER's terminal or ONGC Terminal and the same shall be applicable for this CONTRACT. The BUYER shall be permitted to install its check flow meter as not to interfere with the operation of the instruments of the SELLER. In case the variation in the measurement of the flow between the SELLER's flow meter and the BUYER's flow meter is within ± 2 (Two) percent, the reading of SELLER's instrument shall be taken as final. If the variation exceeds ± 2 (Two) percent, the final value shall be arrived at as per the detailed procedure laid down in Article 8.04 below. The measurement shall include all corrections in installations practices recommended for accurate metering of GAS by the AGA Gas Measurement Committee Report No.3/7 by American Gas Association (AGA) and shall be binding on the parties hereto.

8.02. The flow meter at SELLER's installation shall be proved at a frequency to be mutually agreed upon.

8.03. In case the BUYER has any doubt on the proper working of the flow meter of the SELLER it shall inform the same to the SELLER in writing and may request for checking/calibration of the flow meter. The cost of such special test shall be borne by the SELLER if the percentage of inaccuracy is found to be more than limits stated in Article 8.01 above, but the cost of such special test shall be borne by the BUYER if the percentage of inaccuracy is within limits stated in Article 8.01 above.

8.04. If on calibration, the SELLER's meter registers a variation of more than ± 2 (two) percent or if the SELLER's meter is out of service, the following procedure in order of priority whichever is feasible for arriving at the computation of GAS during the period between the last calibration and the present one shall be followed:

- i) by using the recording by the check meter of the BUYER if installed and accurately registering; or
- ii) if 8.04(i) is not possible by correcting the error if the percentage of error is ascertainable by calibration, test or mathematical calculation; or
- iii) if neither 8.04(i) nor 8.04(ii) is possible by estimating the volume of GAS delivered by comparison with deliveries during period under similar conditions when the SELLER's meter was registering accurately.

8.05. The period to which the above corrections will apply will be as under;

- i) If any period during which the SELLER's meter has gone wrong is known or agreed upon that will be the period to which the correction is to be applied.



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ii) If the period is not known the correction shall be made for a period equal to half of the time elapsed since the date of the preceding calibration test, provided the correction period does not exceed sixteen (16) days.

8.06. In any case, if at the time of calibration the meter error exceeds half percent it will be re-calibrated.

8.07. Upon the written request of the BUYER, the SELLER shall permit the BUYER to examine relevant records, charts and calculations from its metering and measuring equipment. The SELLER shall preserve all such charts, records and calculations till such time the payment covered by the invoice of the SELLER has been paid by the BUYER. And likewise upon the written request of the SELLER, the BUYER shall permit the SELLER to examine relevant records, charts and calculations from its check meter. The BUYER shall preserve all such charts, records and calculations for a minimum period of thirty days from the date of presentation of invoice by the SELLER. Provided in the event of dispute regarding billing/payment such records shall be preserved by the BUYER, till the dispute is finally settled.

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ARTICLE- 9 FORCE MAJEURE

9.01 Neither party hereto shall be liable for failure to perform or for delay in performing any provision (s) of the CONTRACT other than those provided for payment of GAS supplied, sold, purchased hereunder, if such failure or delay is caused for results from a Force Majeure.

9.02. The term Force Majeure in this CONTRACT means act of God, war, revolt, riot, tempest, flood, earthquake, lightning, direct, indirect consequences of war (declared/undeclared), sabotage, fire, hostilities, natural calamities, national emergency, civil disturbances or commotion, embargo or any law or promulgation, regulation or ordinance or executive order whether Central or State or local or Municipal authorities, failure of ONGC to supply GAS to the SELLER, and explosion in the BUYER's/SELLER's plant/installation. Upon occurrence or termination of such an event the party rendered unable to fulfil the contractual obligation as aforesaid shall notify the other party in writing within 24 (Twenty four) hours of the beginning and ending, giving full particulars and satisfactory evidence thereof.

9.03. Providing that in case such period of Force Majeure lasts for more than 3 (three) months, the parties shall consult each other with a view to agreeing to what action should in the circumstances be taken.

9.04. Provided the BUYER will make payment to the SELLER for actual quantity of gas supplied during the period of Force Majeure.

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ARTICLE-10 PRICE OF GAS

10.01 Present price of 1000 (One Thousand) Standard Cubic meters of GAS w.e.f 1.10.1997 is applicable as per Government Pricing Order No. L-12015/3/94-GP dated 18.9.1997 (Annexure III). After 31.3.2000 the SELLER shall have right to fix the price of GAS which may be as per directive, instruction, order, etc. of the Government of India etc which is likely to be market related in accordance with current policy of liberalization of the Government of India and the BUYER shall pay to the SELLER such price of GAS. Provided further, the price of GAS so fixed is exclusive of Royalty, Taxes, Duties, Service/Transportation (Transmission) charges and all other statutory levies as applicable at present or to be levied in future by the Central or State Government or Municipality or any other local body or bodies payable on purchase of GAS from ONGCL/Other Producer(s) by the SELLER or on sale from SELLER to the BUYER and these shall be borne by the BUYER over and above the aforesaid price.

ARTICLE - 11 BILLING AND PAYMENT

11.01. The BUYER shall open and maintain at its cost an irrevocable standby revolving Letter of Credit with any nationalized /scheduled bank, one month in advance of the date of commencement of GAS supply mentioned in Article 2.01 herein covering the value of 16 (Sixteen) days supply of gas at maximum contracted quantity as per article 5.01 plus monthly transmission charges / additional transmission charges payable as per Clause 4.03 in favour of the SELLER and continue to maintain at its cost the aforesaid irrevocable standby revolving Letter of Credit for entire period of the CONTRACT. If the BUYER does not open the irrevocable revolving letter of Credit as stipulated above, the SELLER shall have unrestricted right to, not to commence the supply of GAS till opening of such irrevocable revolving letter of Credit. Provided further provision of Article 5.02 shall continue to be applicable during the period of such discontinuation.

11.02. The SELLER shall raise invoice for the first fortnight covering the actual quantity at the price of GAS applicable from time to time as defined in Article 10 plus monthly transmission charges payable as per Clause 4.03 of the CONTRACT. The SELLER shall raise the invoice for second fortnight for the actual quantity of GAS supplied subject to the provision of Article 5.02. The invoice for the second fortnight will have adjustments done for calorific value as provided in Article 10. The SELLER will raise the invoices for each fortnight and the BUYER agrees to pay the invoices so raised in full within 3 (Three) working days of presentation of the said invoice. If for any reasons, the payment is delayed or any disallowance is made from the invoice, the SELLER will present the invoice for full payment or for the amount not paid as the case may be to the Bank against the letter of credit and draw the amount. The BUYER will make arrangements with the bank in a manner that in such an eventuality the full L/C amount gets automatically reinstated.



11.03. In case of any discrepancy/dispute, the BUYER shall lodge a claim with the SELLER within the period of 14 (Fourteen) days from the date of receipt of the related invoice. To the extent the claims admitted by the SELLER, the SELLER shall issue a credit note in favour of the BUYER and adjust the same in the next invoice to be raised. The SELLER undertakes to settle the claim of the BUYER within a period of 30 (Thirty) days from the receipt of such claim, if found acceptable. Failure of the BUYER to put forward any claim within the time above specified shall be an absolute waiver of any claim as also the BUYER's right to refer the matter to arbitration.

11.04. The BUYER shall always, during pendency of the CONTRACT, keep a revolving Letter of Credit (L/C) operative as stipulated in clause 11.02 above. In case L/C is not operative and payment is delayed an interest at the rate of 24% p.a. shall be applicable for all delayed payments. Delayed payment means any payment not received within the period provided in Clause 11.02 above. In case of default in making payments by the BUYER, without prejudice to other rights under the CONTRACT the SELLER shall be at liberty to stop supply of GAS without any further notice and such supplies may not be resumed till all payments are made and L/C restored. The provisions of Clause 5.02 would be applicable for billing and payment for the period during which the supply of GAS is stopped on account delayed payment or L/C not being reinstated by the BUYER.

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11.05. In case of any doubt or clarification by the BUYER whether a particular Cess or Tax or Fee(s) or Duty or Levy or Assessment etc. or any change thereto is effective or imposed, as the case may be, the BUYER shall take-up the matter directly with the concerned Central and/or State Governments or local authority or any such other body and/or bodies without withholding the payments thereto due to the SELLER under this CONTRACT and shall inform the SELLER regarding the decision of such authorities with documentary evidence. The BUYER shall not make the SELLER a party to any dispute that the BUYER may have with Centre or State Governments or Local authority or any such other body or bodies.

ARTICLE - 12 TRANSFER OF RIGHTS

12.01 The BUYER may transfer or assign its rights and obligations under this CONTRACT to any other associated company or corporation by giving prior notice to the SELLER of such transfer or assignment provided further all its rights and obligations under this CONTRACT for supply of GAS shall stand transferred to such associated company or corporation to whom BUYER transfers its rights and obligations. Provided further that the BUYER shall first make all payments in full including interest, if any, before such transfer or assignment. The said assignment (or) transfer shall be with the prior written consent of the SELLER.

12.02 Notwithstanding anything above, the SELLER shall have right to reject the said assignment (or) transfer of the CONTRACT without assigning any reason. Further, if at any stage during the period of the CONTRACT, it is found that the assignment (or) transfer of the CONTRACT of GAS supply is a 'Sale' (or) against the spirit of the CONTRACT, the SELLER shall have the right to stop/suspend the GAS supply and refer the matter to Ministry of Petroleum & Natural Gas/ Gas Linkage Committee for cancellation. However, if assignment (or) transfer is sought during the implementation of activities enumerated in Annexure II hereto, the matter shall be referred to Ministry of Petroleum & Natural Gas/ Gas Linkage Committee for decision.



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ARTICLE - 13 ARBITRATION

13.01. The provision of the Arbitration and Conciliation Act, 1996 and the rules made thereunder and any statutory modifications thereof, shall be deemed to form part of this CONTRACT.

13.02. Unless otherwise specified any dispute or difference whatsoever arising out of this CONTRACT which is not settled by mutual consultations, shall be referred to a sole arbitrator selected by the BUYER from a panel of three arbitrators proposed by the SELLER. The venue of Arbitration shall be New Delhi, by whatever name or status it is called.

13.03. The decision of the sole Arbitrator, shall be final and binding on both parties to the dispute. The Arbitrator, shall decide by whom and in what proportion all costs incurred in the Arbitration, including the fees payable to the Arbitrator, shall be borne. The Arbitrator, may, with the consent of the parties, extend the time from time to time, for making and publishing his award, as the case may be.



ARTICLE - 14 LAWS GOVERNING THE CONTRACT

14.01 The CONTRACT shall be governed by the Indian Laws, rules and regulations, notifications, etc. and Courts of Delhi shall have exclusive jurisdiction over any dispute(s) arising out of this CONTRACT.

ARTICLE - 15 RESALE AND RESTRICTION ON USE OF GAS

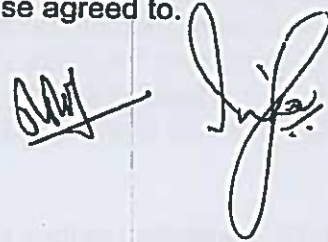
15.01. The BUYER shall not be entitled to sell GAS to any other party nor will use it for any other purpose other than those contemplated in this CONTRACT unless mutually agreed to in writing by the BUYER and the SELLER.

ARTICLE - 16 PREVIOUS CORRESPONDENCE

16.01. All discussions and meetings held and correspondences exchanged between the BUYER and the SELLER in respect of the CONTRACT and any decisions arrived at therein in the past and before the coming into force of the CONTRACT are hereby superseded by the CONTRACT and no reference of such discussions or meetings or past correspondence will be entertained by either the SELLER or the BUYER for interpreting the CONTRACT or otherwise.

ARTICLE - 17 AMENDMENTS

17.01 Any amendment to any of the clauses of the CONTRACT will be proposed and sent in writing to the other party proposing such amendment and if both the SELLER and the BUYER agree to such amendment then the same shall be incorporated in the CONTRACT and shall become binding on the parties as such from the date the agreement is reached unless otherwise agreed to.



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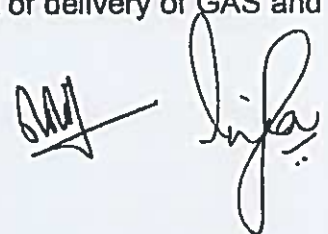
ARTICLE - 18 INDEMNITIES

18.01. The delivery of GAS being a continuous process, once the GAS passes the point of delivery, the BUYER shall be deemed to be in exclusive possession and control of the said GAS & fully liable and responsible for its arrangements, appurtenance and properties. Accordingly the BUYER covenants and agrees to fully protect, indemnify and hold the SELLER, its employees, agents and successors and assigns harmless against any and all claims, demands, actions, suits, proceedings and judgements and any and all liabilities, costs, expenses, damages or losses growing out of or resulting from or incidental to or in connection therewith which may be made or brought against the SELLER whether by the BUYER, its employees, agents or successors and assigns or by third parties on account of damages or injury to property or person or loss of life resulting from or arising out of the installation, presence, maintenance or operation of the intake arrangements, appurtenances and properties of the BUYER or others relating to the possession and handling of any GAS supplied and further defend the SELLER at BUYER's sole expense in any litigation involving the SELLER.

18.01(a) Provided further the BUYER shall continue to maintain, install and operate all such equipments/appurtenances for the safety of the operation of its gas pipeline and plant from the point of delivery in its premises as are applicable under relevant safety code(s)/standard(s). The SELLER shall have free access to such information(s) of the BUYER's facilities.

18.02. Likewise, before the point of delivery the SELLER shall be in control and exclusive possession of GAS and shall be fully liable and responsible for its arrangements appurtenances and properties. Accordingly the SELLER covenants and agrees to fully protect, indemnify and hold the BUYER, its employees, agents and successors and assigns harmless against any loss or damage and all claims, demands, actions, suits, proceedings and judgements and any and all liabilities, cost, expenses, damages or losses arising out of or resulting from or incidental to or in connection therewith which may be made or brought against the BUYER whether by the SELLER, its employees, agents or successors and assigns or by third parties on account of damage or injury to property or person or loss of life resulting from or arising out of the installation, presence, maintenance, or operation of the supply arrangements appurtenance and properties and GAS Metering Station of the SELLER and the possession and handling of any GAS received and further defend the BUYER at SELLERS's sole expense in any litigation involving the BUYER.

18.03. The SELLER shall be totally responsible for all insurance coverage relating to person, third party, the GAS supply etc. upto the point of delivery of GAS. Likewise, the BUYER shall be responsible for the above from the point of delivery of GAS and thereafter.



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ARTICLE- 19 CONSENT

The BUYER hereby expressly declares and admits that the above provisions have been read and understood to their satisfaction and is executing this CONTRACT out of their free will and consent.

ARTICLE -20 ADDRESS OF PARTIES

20.01. The address of the parties hereto unless changed by written notification to be given atleast 15 days in advance by registered letter prior to proposed date of change, shall be as follows:

THE SELLER

Executive Director (Mktg & Plg)
Gas Authority of India Ltd.
16, Bhikaji Cama Place,
NEW DELHI - 110 066

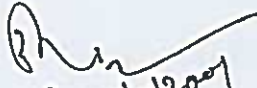
THE BUYER

Managing Director
M/s Vernagiri Power Generation Limited
Plot No 62, Road No 3,
Banjara Hills, Hyderabad-500034(A.P)

IN WITNESS WHEREOF the parties hereto acting through their properly constituted representative have set their hands to cause this CONTRACT signed and executed for and on their behalf:

WITNESS

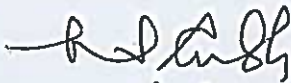
FOR & ON BEHALF OF THE SELLER



21/8/2001


I. N. JHA
Executive Director
(Marketing & Planning)
Gas Authority of India Ltd.
16, Bhikaji Cama Place
New Delhi - 110 066

WITNESSES

FOR & ON BEHALF OF THE BUYER


31/08/01


R. RAM MOHAN
DIRECTOR

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ANNEXURE - I

SPECIFICATION OF GAS.

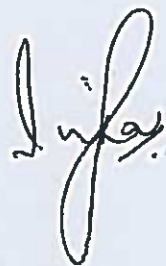
The GAS shall have the following limits of composition at the delivery point:

- | | |
|--|---------------------------------|
| i) Methane | : Not less than 75% by volume |
| ii) Other Gaseous Hydrocarbons | : Not more than 20% by volume |
| iii) Non-combustible gases other than Hydrocarbons including Nitrogen, Carbon-dioxide. | : Not more than 8% by volume |
| iv) Total Sulphur content as H ₂ S | : 10 ppm vol. (Max) |
| v) Moisture content | : No free water will be present |

ANNEXURE – II

SI No	Activity	Date
1.	Purchase of Land/Site Development	31.07.2002
2.	Placement of Order for Equipment's	31.12.2002
3.	Completion of Main Civil Works and Erection	31.8.2004
4.	Commencement of Drawal of Gas	31.12.2004



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ANNEXURE - III

(S No 25)

NO: L-12015/3/94-GP
Government of India
Ministry of Petroleum and Natural Gas

New Delhi, Dated: September 16, 1997

To,

1. Shri C.R. Prasad,
Chairman and Managing Director,
GAIL,
New Delhi.
2. Shri B.C. Bora,
Chairman and Managing Director
ONGC,
New Delhi.
3. Shri N.N. Gogoi,
Chairman and Managing Director,
OIL,
New Delhi.

Sub: Natural Gas Prices.

Sir,

I am directed to state that in supersession of all previous letters of the Government of India on the above subject, the prices of natural gas have been revised as follows w.e.f. October 1, 1997:

- i. From October 1, 1997 to March 3, 2000, the consumer price of gas at landfall points would be linked to the price of a basket of LS/HS Fuel Oils as shown in the table below:

%age of LS/HS FO Price

Year	General Price	Concessional Price for the North-Eastern States
1997-98	55%	30%
1998-99	55%	40%
1999-2000	5%	45%

- ii. The price would be determined and notified by GAIL with the approval of the Ministry for every quarter depending upon the average price of the basket of Fuel Oils based on the figures obtained from Platt's Oilgram for the previous quarter.

general price would vary between the floor price of Rs. 2150/MCM and the ceiling price of Rs. 2850/MCM and the concessional price for the North-Eastern States would have a floor price of Rs. 1200/MCM and the ceiling price of Rs. 1700/MCM. A discount of Rs. 300/MCM would also be available for existing consumers in the North-East on a case to case basis and the concessional price and the discount of Rs. 300/MCM would be available on a case to case basis to the new units in the North-Eastern States set up during 1997-2002 for a period of five years. Clarifications/guidelines regarding the manner of fixation of the gas price would be issued separately by this Ministry.

iii. The consumer price of gas as above would be linked to a calorific value of 10,000 kilo calories/cu.mtrs. The existing linkage between price and calorific value would be retained till gas prices can be denominated in terms of calories would be expedited by the Ministry of Petroleum and Natural Gas in consultation with ONGC, OIL and GAIL.

iv. The consumer price of gas will be reviewed at the end of the first three years (1997-2000) with a view to achieving 100% Fuel Oil parity prices over the 4th and 5th years.

v. ONGC/OIL/GAIL is permitted to sell gas from marginal isolated fields to be developed in future, at market driven prices.

vi. Over the period October 1, 1997 to March 31, 2000, the transportation charge payable to GAIL along the HBJ pipeline would be Rs. 1150/MCM. The transportation charge will increase by 1% for every 1% increase in the consumer price index. This increase will be paid to GAIL out of the Gas Pool Account. The transportation charge will be linked to the calorific value of 8500 k cal/cu.mtr. till such time as it could be denominated in terms of calories. The transportation charge will be reviewed after years.

vii. In addition to the price as fixed above, the transportation charges and royalty, taxes, duties and other statutory levies on the production, transportation and sale of natural gas will be payable by the consumers.

viii. Out of the consumer prices collected by GAIL, GAIL will retain the amount required to pay for the higher cost of gas purchased from the JVCs.

ix. An amount of Rs. 250 crores per year will also be deducted by GAIL from the consumer prices collected and the same shall be credited to the Gas Pool Account to continue to compensate OIL for concessional gas price in the North-East; to continue providing a marketing margin to GAIL, to compensate GAIL/OIL for increases in the operating cost on account of inflation and for utilisation on R&D for exploration and exploitation of small fields. Any balance amount left in the Gas Pool Account after taking care of the above requirements would be transferred to the Central Exchequer. For the purpose of compensating OIL for concessional gas price in the North-East, the producer price of

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OIL will be Rs.1900/MCM which will be increased by 1% for every 10% change in the consumer price index. The Gas Pool Account be administered by a Committee with the following members:

JS&FA, Ministry of Petroleum and Natural Gas - Chairman

JS(Exploration), Min. of Petroleum and Natural Gas - Member

Director (Natural Gas) Min. of Petroleum and Natural Gas - Member

x. GAIL shall pass on to ONGC and OIL in proportion to the supplied by them, on a net back basis the entire proceeds sales of gas of ONGC and OIL, after making deductions under para (viii) & (ix) above.

xi. The producer price of gas payable to ONGC/OIL w.e.f. 1.1.1996 till 30.9.1997 will be Rs.1650/MCM. The increment be paid out of the Gas Pool Account.

xii. Contractual issues relating to the gas supply contract GAIL including minimum guaranteed offtake, penalty for non-supply etc. will be reviewed by the Ministry of Petroleum and Natural Gas in consultation with the Gas Linkage Committee.

2. Any provisions of the earlier gas pricing orders not specifically revised above will continue to be in force.

3. Kindly acknowledge receipt of this letter.

Yours faithfully,



(I.S.V. Prasad)
Deputy Secretary (NG)



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100Rs.



S.No. 45506 DATE 17/11/03 Re. 100
SOLD TO B. Shimara
S/o W/o B. Lakshmi Venkateshwar
FOR WHOM Jell

02704

AP 23 BY VIJAYA L. KISHMI
Stamp Vendor's No 51/73, S.L. No. 30/2002
H.Nr. 7-1-621/287, S.R. Nagar,
HYDERABAD-500 038.

**AMENDMENT AGREEMENT TO THE POWER PURCHASE AGREEMENT
FOR THE GAS BASED POWER PROJECT OF 370 MW
AT VEMAGIRI, EAST GODAVARI DISTRICT**

This Amendment Agreement is entered into to amend the Power Purchase Agreement dated the 31st day of March 1997, at Hyderabad on this day of 18th June, 2003 (here in after referred to as "this agreement").

BETWEEN:

A. Transmission Corporation of Andhra Pradesh Limited constituted under the section 13 of Andhra Pradesh Electricity Reforms Act, 1998 (Act, 30 of 1998) and successor to erstwhile APSEB (hereinafter referred to as "Board") and having its office at Vidyut Soudha, Hyderabad - 500 082 (hereinafter referred to as the "APTRANSCO" which expression shall, unless repugnant to the context or meaning thereof include its successors and assigns), as Party of the first part, and

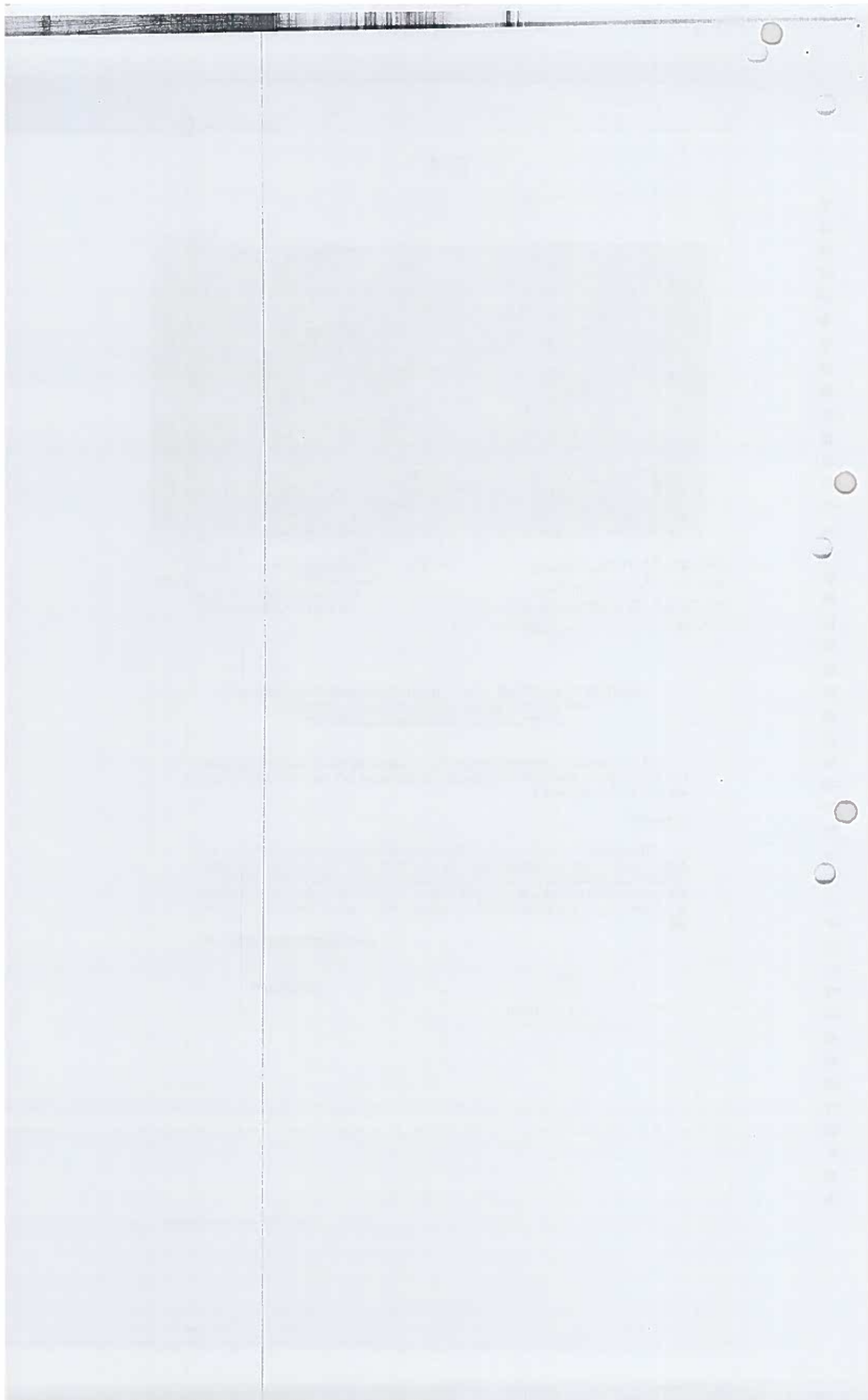
For VEMAGIRI POWER GENERATION CO.

B. S. S. S.
VICE CHAIRMAN

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P. M. K. GANDHI
Director (Finance & Accounts)
APTRANSCO



2. M/s Vemagiri Power Generation Limited (VPGL), a company incorporated under companies act, 1956 and having its Corporate Office at Skip House, 25/1, Museum Road, Bangalore - 560 025 (hereinafter referred to as the "Company" which expression shall, unless repugnant to the context or meaning thereof include its successors and assigns), as Party of the second part;

3. Whereas, the Government of Andhra Pradesh (here in after called "GOAP") announced a policy for attracting private sector investments in power sector and in line with the Government policy, the erstwhile Board invited bids for short gestation power projects. M/s Nippon Denro Ispat Limited (Now Ispat Industries Limited), participated in tenders and submitted a bid to design, finance, construct, complete, own and operate a liquid fuel based power station of 468 MW capacity at Vemagiri, East Godavari District in Andhra Pradesh, India. The erstwhile Board accepted the bid by M/s Nippon Denro Ispat Limited (Now Ispat Industries Limited) and they were selected by the erstwhile Board and duly approved by the GOAP to establish the said Power Project.

4. Whereas, M/s Nippon Denro Ispat Limited (Now Ispat Industries Limited) incorporated a new company under the Indian Companies Act, 1956 with the name "M/s Ispat Power Limited, with its Registered Office at Ispat House, BG Kher Marg, Worli, Mumbai to develop, finance, construct, complete, own and operate the Project, to execute 468 MW Project at Vemagiri and this newly formed company accordingly entered into PPA signed on 31.3.97.

5. M/s Nippon Denro Ispat Limited (Now Ispat Industries Limited), who originally received the Letter of Intent to setup the Power Project, have furnished to the APTRANSCO Relinquishment deeds, relinquishing their rights, claims and demands in the Project to be established at Vemagiri. Accordingly M/s Ispat Power Limited, the Generating Company who signed PPA on 31.03.1997 will develop, finance, construct, complete, own and operate the 468 MW Project at Vemagiri.

6. Whereas, M/s Ispat Power Limited proposed to develop, finance, construct, complete, own and operate the Project and agreed to sell the capacity and energy generated by the Project to the erstwhile Board and the erstwhile Board agreed to purchase such capacity and energy in accordance with the terms and conditions of the Power Purchase Agreement.

7. Whereas, M/s Ispat Power Limited resolved to change their name as M/s Vemagiri Power Generation Limited and substituted their new name and registered the change of name with the Registrar of Companies, Mumbai duly submitting the resolution as required.

8. Registrar of Companies vide certificate No.11-104977 dated 11.12.98 issued a fresh certificate of incorporation No.11-104977 on the name of M/s Vemagiri Power Generation Limited.

9. Whereas, Central Electricity Authority, New Delhi vide Lr.No.F.No.2/AP/61/96-PAC/368-391, dated 14.1.99 accorded Techno Economic Clearance for the 492 MW Combined Cycle Power Plant of the Company at an estimated completed cost of US \$ 248.020 Million + Rs.638.223 Crores at a foreign exchange rate of Rs.42.C per US \$.

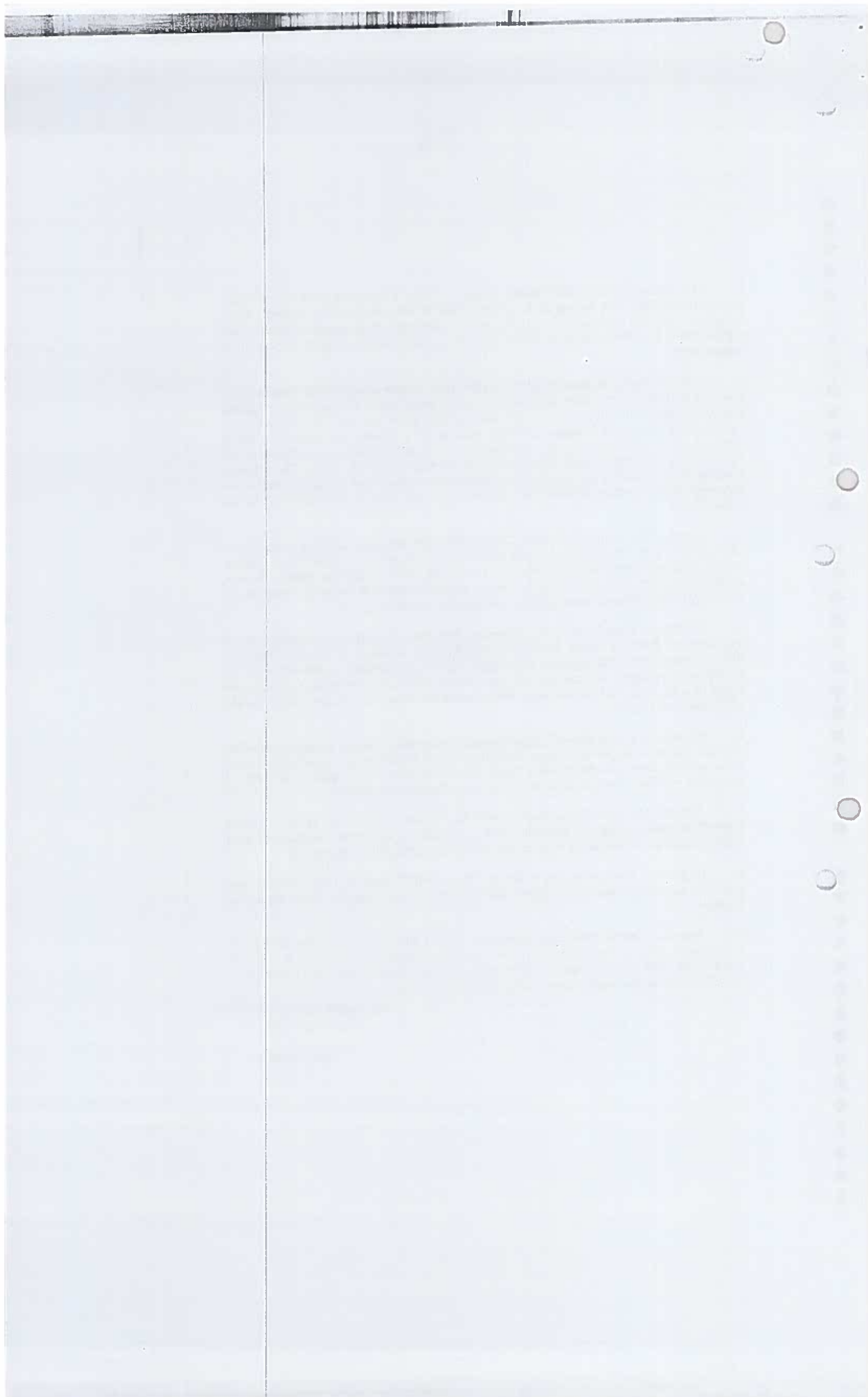
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P. M. K. GANDHI

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For VEMAGIRI POWER GENERATION LTD.

VICE CHAIRMAN



10. Whereas, consequent to change of name M/s Ispat Power Limited requested APTRANSCO to correspond in the name and style of M/s Vemagiri Power Generation Limited (hereinafter referred to as "Company"). M/s Ispat Industries Limited submitted an Indemnity Bond indemnifying APTRANSCO that in the event of failure on the part of M/s Vemagiri Power Generation Limited to adhere to all or any of the conditions contained in the Letter of Intent together with PPA, they shall be held liable for any consequences of non-fulfillment of the conditions. M/s Vemagiri Power Generation Limited gave an Undertaking Bond stating that they shall undertake and complete the scheme as per the terms and conditions set by the APTRANSCO in LOI and as per conditions in the PPA entered into by M/s Ispat Power Limited. M/s Vemagiri Power Generation Limited requested APTRANSCO and GOAP to recognize the new name.

11. Whereas, GOAP in their letter No.6641/Pr.1/1/96 dated 15.10.99 accorded approval for change of name of the Company from M/s Ispat Power Limited to M/s Vemagiri Power Generation Limited under section 15(A) of Electricity Supply Act, 1948 with the terms and conditions governing the original award of power Project and obligations of IPP under PPA remaining unaltered.

12. Whereas, M/s Vemagiri Power Generation Limited in their letter dated 2.5.2000 to the Government of Andhra Pradesh stated that they confirm their acceptance to match the terms applicable to Gautami Power Limited with respect to capacity charge, FDSC, OFC, repayment period, station heat rate, incentives and other benefits and requested the GOAP to recommend to GOI for allotment of Natural Gas.

GOAP in letter dated 19.5.2000 communicated that since M/s Vemagiri Power Generation Limited agreed to match the terms applicable to Gautami Power Project with respect to capacity charge, FDSC, OFC, repayment period, station heat rate, incentives and other benefits, it was agreed to accept the offer of M/s Vemagiri Power Generation Limited and to recommend for allotment of Gas to GOI.

13. Whereas, Ministry of Petroleum & Natural Gas, GOI in letter dated 5.6.2000 has allocated 1.64 MMSCMD of Natural Gas from KG Basin on firm basis to M/s Vemagiri Power Generation Limited.

14. Whereas, GOAP advised developers either to restrict their plant capacity according to the Gas allotted or to execute the project in two stages with available Gas and balance capacity after the additional gas allotment or to join with some other project/Gas allottee and implement the project as per Gas availability.

15. Whereas, M/s Vemagiri Power Generation Limited has chosen the second option to execute the project in two Stages as per Gas availability as below:

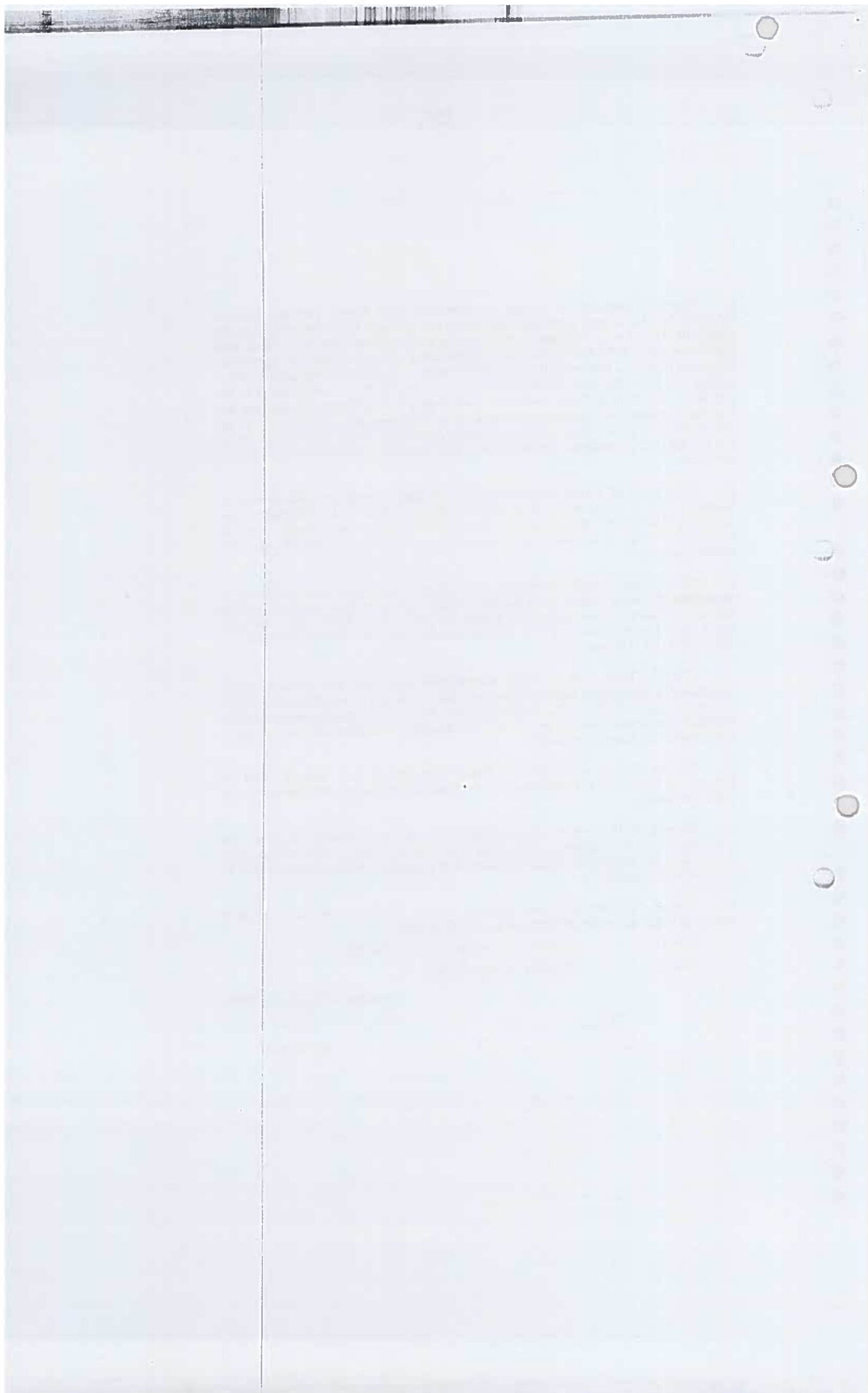
- | | | |
|----------|----|--|
| Stage I | -- | 370 MW with available Gas of 1.64 MCMD |
| Stage II | -- | 150 MW after obtaining Gas |

P. M. K. GANDHI

Director (Power) & Chairman, GOAP
APTRANSCO

For VEMAGIRI POWER GENERATION LTD.

VICE CHAIRMAN



Whereas, the GOAP through their letter dated 15.12.2000 have allowed the Company to implement the Project in two stages of 370 MW in stage I and 150 MW in Stage II.

Whereas, it is the responsibility of the developer to secure the additional gas required for Stage II of the Project with a capacity of 150 MW. The permission to proceed with Stage II of the Project will be given by GOAP, only after the developer gets the required 100% gas allocation and the implementation schedule of Stage II of the Project approved by APTRANSCO with reference to its load requirements and evacuation facilities to be in place.

Whereas, the GOAP in letter dated 8.1.2001 permitted the Company under section 18(A) of the Electricity (Supply) Act 1948 to establish operate and maintain 520 MW Gas based Power Project to be implemented in two stages near Vemagiri, East Godavari District in Andhra Pradesh State.

16. Now whereas, M/s VPGL in letter dated 3.10.2001 intimated that the GMR Group and its Associates have now joined this Project as strategic investors and developers. The proposed equity holding in the Project is as detailed below:

GMR Group and its Associates	--	63%
Ispat Group and its Associates	--	37%

17. Now the Amendment Agreement to Power Purchase Agreement is for the capacity of 370 MW project under Stage I. However, all commercial terms and conditions governing Stage II of the Project shall be the same as per terms and conditions of this Amendment Agreement.

18. Draft Amendment to the PPA was sent to APERC for consent under section 21(4) of APER Act, 1998 on 5.12.2001. APERC conducted public hearing on 19.12.2002. APTRANSCO submitted its remarks on the objections raised during the public hearing. APERC issued consent to the Draft Amendment to the PPA vide its order dated 12.4.2003 for stage-I of capacity of 370 MW.

19. Now therefore, it is agreed between APTRANSCO and the Company that this Amendment Agreement to the Power Purchase Agreement dated 31.3.97 is entered as detailed hereunder:

- (a) The Power Purchase Agreement dated 31.3.97 shall stand amended as indicated in the attached Annexure.
- (b) All other terms and conditions of Power Purchase Agreement dated 31.3.97 and all other obligations of both the parties shall be binding on both the parties and are effective from the date of this Amendment Agreement dated the 18th day of June, 2003.

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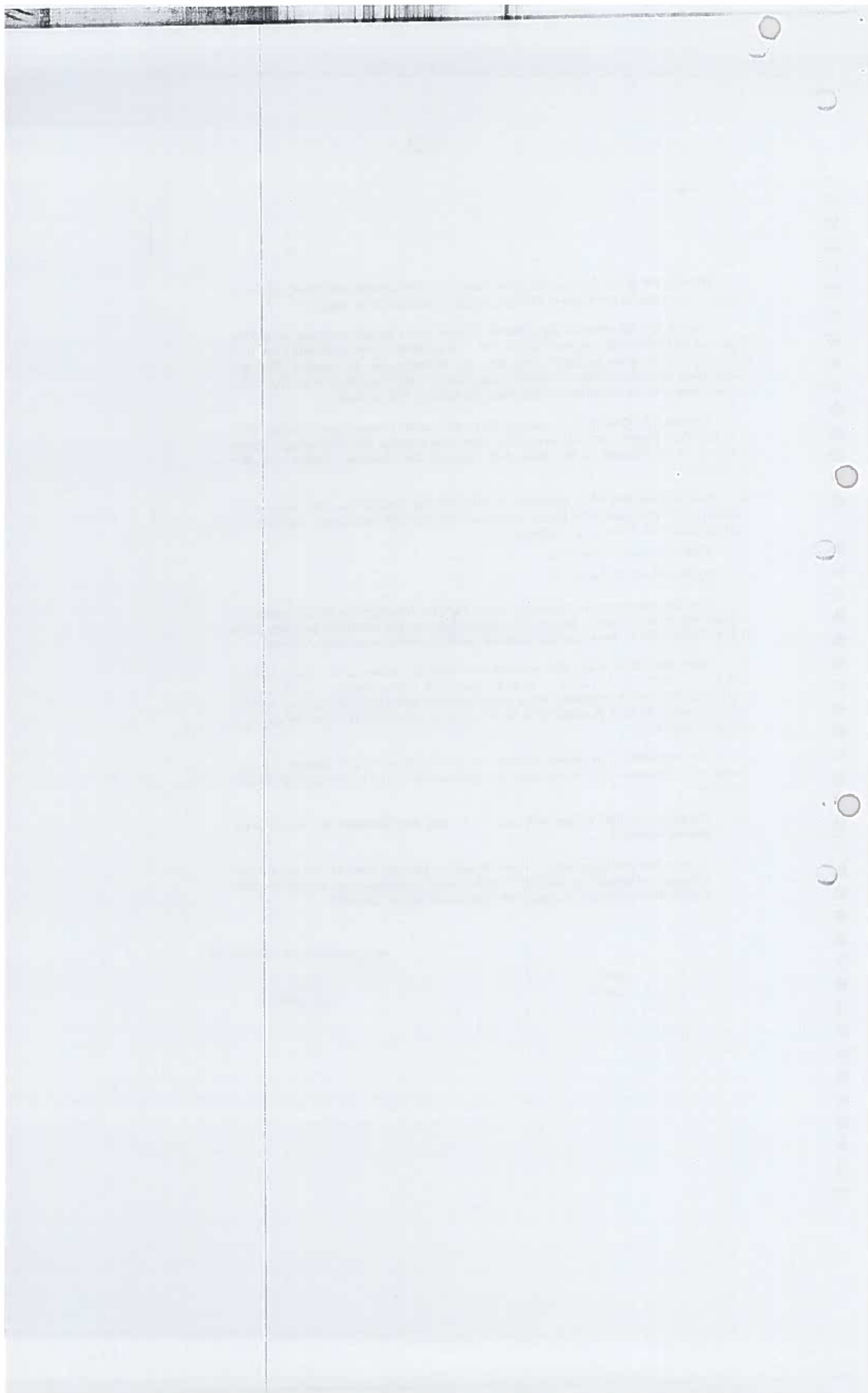
P. M. K. GANDHI

General Manager
APTRANSCO
HYDRA

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For VEMAGIRI POWER GENERATION LTD.

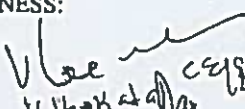
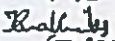
B. Suman
VICE CHAIRMAN

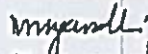


IN WITNESS whereof this Amendment Agreement to the Power Purchase Agreement is executed by the parties hereto, on the day, month and year herein above written through the hands of.

For and on behalf of
TRANSMISSION CORPORATION OF ANDHRA PRADESH LIMITED



WITNESS:


- 1)  18/6/03
V Venkatesh
CC/SEC
- 2) 
(T. P. BHATNAGAR)
SEF REC

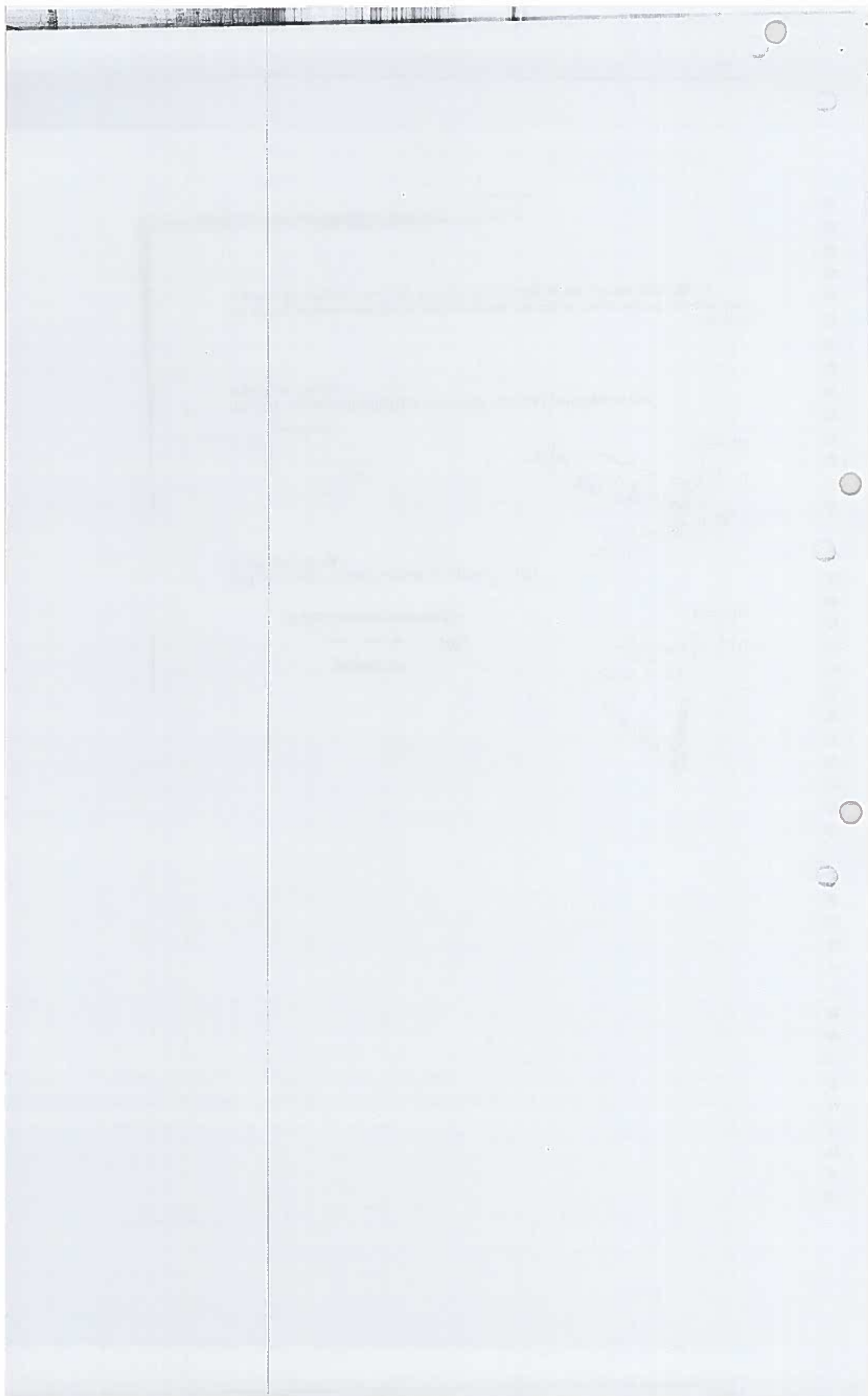

P. M. K. CHANDRA 18.6.03
Director (Commercial & Finance)
APTRANSCO
HYDERABAD

For and on behalf of
M/s VEMAGIRI POWER GENERATION LIMITED

WITNESS:

- 1) 
(P. K. Lenka)
- 2) 
(K. Narayana)

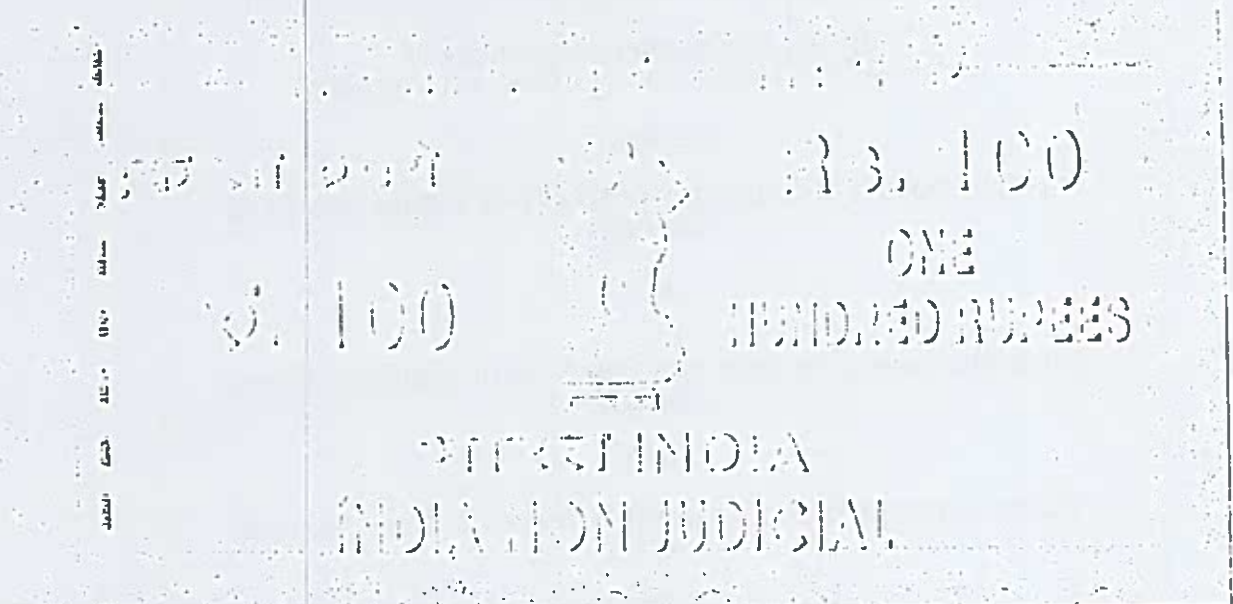
For VEMAGIRI POWER GENERATION LTD.

V. S. SRINIVAS



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Authorized Signatory: 2/5/07

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ఆంధ్ర ప్రదేశ్ రాష్ట్రం ANDHRA PRADESH

H 316070

Sl. NO. 207 Date 25/10/07 Rs. 100/-
SOLD TO 1. ...
FOR VINC ... Generation Ltd

G. JYOTHI
S.V. L.No. 2/2005 RL. 1/07
H.No. 25/3RT, S.R. Nagar,
Hyderabad-38. Ph. 65696959

**AMENDMENT AGREEMENT TO THE POWER PURCHASE AGREEMENT
FOR THE GAS BASED POWER PROJECT OF 370 MW
AT VEMAGIRI, EAST GODAVARI DISTRICT**

This Amendment Agreement is entered into at Hyderabad on this 2nd day of May 2007 to amend the Power Purchase Agreement dated the 31st day of March 1997 (as amended by the Amendment Agreement to the Power Purchase Agreement dated June 13, 2003) (hereinafter referred to as the "Amendment Agreement").

BETWEEN:

Eastern Power Distribution Company of Andhra Pradesh Limited, constituted under the sub-section (6) of section 23 of Andhra Pradesh Electricity Reform Act, 1998 (Act, 30 of 1998) and having its registered office at Sai Shakthi Bhavan, Near Saraswathi Park, Vishakhapatnam - 530 020 (hereinafter referred to as "APEPDCL"); Southern Power Distribution Company of Andhra Pradesh Limited, constituted under the sub - section (6) of section 23 of Andhra Pradesh Electricity Reform Act, 1998 (Act, 30 of 1998) and having

Handwritten signatures and initials: V.A., P.A.L., J.L., T.A., and a signature.

its registered office at H.No. 193-13 (M), Upstairs, Renigunta road, Tirupathi - 517501 (hereinafter referred to as "APSPDCL"); Central Power Distribution Company of Andhra Pradesh Limited, constituted under the sub-section (6) of section 23 of Andhra Pradesh Electricity Reform Act, 1998 (Act, 30 of 1998) and having its registered office at H.No. 11-64-660, 3rd Floor, Singareni Bhavan, Khairatabad, Hyderabad- 500 004 (hereinafter referred to as "APCPDCL"); Northern Power Distribution Company of Andhra Pradesh Limited, constituted under the sub-section (6) of section 23 of Andhra Pradesh Electricity Reform Act, 1998 (Act, 30 of 1998) and having its registered office at H.No. 1-1-503 & 504 Opp. "NIT" Petrol Pump, Chaitanyapuri, Hanamkonda, Warangal - 506004 (hereinafter referred to as "APNPDCL") (hereinafter each of APEPDCL, APSPDCL, APCPDCL and APNPDCL are, as the context may require, individually referred to as "APDISCOM" and collectively referred to as the "APDISCOMS" which expressions shall, unless it be repugnant to the context or meaning thereof include its successors and assigns), as parties of the first part, and

2. M/s Vemagiri Power Generation Limited, a company incorporated under companies act, 1956 and having its Corporate Office at Skip House, 25/1, Museum Road, Bangalore - 560 025 (hereinafter referred to as the "Company" which expression shall, unless repugnant to the context or meaning thereof include its successors and assigns), as party of the second part.

Recitals

1. Whereas, the Company had entered in a Power Purchase Agreement dated March 31, 1997 which was amended on June 18, 2003 by the Amendment Agreement to the Power Purchase Agreement.
2. Whereas, the rights and obligations of Transmission Corporation of Andhra Pradesh Limited, a body constituted under the section 13 of Andhra Pradesh Electricity Reforms Act, 1998 (Act, 30 of 1998) and successor to erstwhile Andhra Pradesh State Electricity Board and having its registered office at Vidyut Soudha, Hyderabad -500 082 (hereinafter referred to as the "APTRANSCO") under the Power Purchase Agreement dated March 31, 1997 and the Amendment Agreement to the Power Purchase Agreement dated June 18, 2003 (hereinafter Power Purchase Agreement dated March 31, 1997 and the Amendment Agreement to the Power Purchase Agreement dated June 18, 2003 are collectively referred to as the "PPA") have been transferred to the APDISCOMS pursuant to a transfer scheme formulated by the Government of Andhra Pradesh and issued vide the notification bearing number [G.O.Ms No.58 Energy (Power-III), dated 07-06-2005] by the Energy Department, Government of Andhra Pradesh as published in the Andhra Pradesh Gazette on June 9, 2005 (hereinafter the notification is referred to as the "Third Transfer Scheme").
3. Whereas, the APDISCOMS have agreed to discharge all the obligations of APTRANSCO under the PPA as provided herein and in accordance with the Third Transfer Scheme.

Witnessed

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4. Whereas, the parties are desirous of amending the PPA on the terms and conditions set forth herein and in terms of the Third Transfer Scheme. The proposed amendments duly initiated by APDISCOMs and the Company and submitted to Andhra Pradesh regulatory Electricity Commission (APERC) on 6.6.2006 for consent. APERC conducted public hearings on 17.7.2006 and 27.7.2006. APDISCOMs submitted responses/clarifications on the objections raised before and after public hearings. APERC issued consent to the proposed amendments and subsequent modifications vide its orders dated 30.12.2006 and amendment order dated 30.03.2007 in O.P.No. 19 of 2006.

NOW THEREFORE, in consideration of the foregoing premises and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

1. In terms of the Third Transfer Scheme, APDISCOMS confirms and agrees that the APDISCOMS shall be deemed for all purposes to be a signatory to the PPA with the same force and effect as if APDISCOMS had been original signatories thereto, and the APDISCOMS agrees to be bound by all terms and conditions thereof and discharge all obligations thereunder and hereunder.
2. The parties acknowledge and agree that the APDISCOMS have replaced APTRANSCO in all respects with regard to the PPA and shall execute such other or further documents and / or take such steps, as are necessary and / or incidental, in order to give full and complete effect to such transfer of contracts, deeds, agreements and other instruments of whatever nature to the APDISCOMS.
3. Subject to Clause 2 hereof and pending the execution of such other or further documents as envisaged under Clause 2 hereof, the parties hereto are entering into this Amendment Agreement to the PPA as detailed hereunder:
 - (a) The PPA shall stand amended as mentioned hereunder and as indicated in the attached Annexure attached hereto, which Annexure shall constitute an integral part of this Amendment Agreement.
 - (b) The PPA shall stand modified or amended to the extent provided herein. All other terms and conditions of PPA and all other obligations of the parties shall continue to be binding on the parties. This Amendment Agreement and the PPA shall together constitute one and the same agreement and the provisions of this Amendment Agreement shall form an integral part of the PPA. However, notwithstanding the foregoing, should any provisions of this Amendment Agreement be at variance or in conflict with any of the provisions of the PPA, the provisions of this Amendment Agreement shall prevail.

Witnessed by:    

IN WITNESS, whereof this Amendment Agreement is executed by the parties hereto, on the 2nd day of May 2007 herein above written through the hands of.

For and on behalf of
EASTERN POWER DISTRIBUTION COMPANY OF ANDHRA PRADESH LTD

[Signature]
Chief General Manager
APSPDCL, Red Hills,
HYDERABAD-500 001

For and on behalf of
SOUTHERN POWER DISTRIBUTION COMPANY OF ANDHRA PRADESH LTD

[Signature]
CHIEF GENERAL MANAGER
PROJECTS (APSPDCL)
VIZAGPATI.

For and on behalf of
CENTRAL POWER DISTRIBUTION COMPANY OF ANDHRA PRADESH LTD

[Signature]
M. NAKKAMMULU
Chief General Manager (Comm)
APCPDCL, Red Hills,
HYDERABAD-500 001
For and on behalf of

NORTHERN POWER DISTRIBUTION COMPANY OF ANDHRA PRADESH LTD

WITNESS:

- 1) *[Signature]*
Sd/- *[Name]*
- 2) *[Signature]*
Sd/- ANAKUPHANA ZAD
Sd/- *[Name]*

WITNESS:

- 1) *[Signature]*
Sd/- *[Name]*
- 2) *[Signature]*
Sd/- *[Name]*

For Vemagiri Power Generation Ltd

For and on behalf of
M/VEMAGIRI POWER GENERATION LIMITED

For Vemagiri Power Generation Ltd
[Signature]
Authorized Signatory

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ANNEXURE

**AMENDMENT AGREEMENT BETWEEN APDISCOMS AND M/s VEMAGIRI
POWER GENERATION LIMITED TO AMEND THE POWER PURCHASE
AGREEMENT DT.31.3.1997 AND AMENDMENT AGREEMENT DT.18.6.2003**

Agreement dated 18.6.2003 AND AMENDMENT AGREEMENT DATED 18.6.2003

SL NO	PPA CLAUSE REF.	EXISTING PROVISION	PROPOSED AMENDMENT												
1	1.1.27	Fuel: means Natural Gas that is intended to be used as primary fuel by one or more units of the Project to generate power from the Project or in case of unavailability of primary fuel, Naphtha or Low Sulphur heavy stock and the like as alternate Fuel. a) [Intentionally left blank]	Fuel: means Natural Gas only. a) [Intentionally left blank]												
2	1.1.44	Plant Load Factor or PLF: means the ratio, expressed as a percentage, of the number of KWH of Cumulative Available Energy in any Tariff Year arrived at as per Article 5.2(c) and as computed at the generator terminals in accordance with Schedule D less energy units equivalent to 5% of the installed capacity of 370 MW, which works out to 162.06 million energy units (kWh) at Generator terminals to the maximum KWH of energy that could theoretically be generated by the Project during that Tariff Year based on 8760 hours multiplied by the Installed Capacity, computed at the generator terminals, provided that if the PLF as computed is negative number, then PLF shall be taken as zero.	Plant Load Factor or PLF: means the ratio, expressed as a percentage, of the number of KWH of Cumulative Available Energy in any Tariff Year arrived at as per Article 5.2(c) and as computed at the generator terminals in accordance with Schedule D less Committed Incentive Energy expressed in KWH to be supplied by the Company in accordance with Article 3.2(A) to the maximum KWH of energy that could theoretically be generated by the Project during that Tariff Year based on 8760 hours multiplied by the Installed Capacity, computed at the generator terminals, provided that if the PLF as computed is negative number, then PLF shall be taken as zero.												
3	1.1.54	Schedule Date of Completion: Means, the following dates with respect to each Generating Unit. <table><tr><td>Unit</td><td>Scheduled Date of Completion (SDOC) from the date of signing of Amendment Agreement</td></tr><tr><td>Gas Turbine (First Unit)</td><td>28 months</td></tr><tr><td>Steam Turbine (Last Unit)</td><td>31 months</td></tr></table>	Unit	Scheduled Date of Completion (SDOC) from the date of signing of Amendment Agreement	Gas Turbine (First Unit)	28 months	Steam Turbine (Last Unit)	31 months	Scheduled Date of Completion: means, the following dates with respect to each Generating Unit. <table><tr><td>Unit</td><td>Scheduled Date of Completion (SDOC) from the date of signing of Amendment Agreement dated 18.6.2003</td></tr><tr><td>Gas Turbine (First Unit)</td><td>31.03.2006</td></tr><tr><td>Combined Cycle (Last Unit)</td><td>31.03.2003</td></tr></table>	Unit	Scheduled Date of Completion (SDOC) from the date of signing of Amendment Agreement dated 18.6.2003	Gas Turbine (First Unit)	31.03.2006	Combined Cycle (Last Unit)	31.03.2003
Unit	Scheduled Date of Completion (SDOC) from the date of signing of Amendment Agreement														
Gas Turbine (First Unit)	28 months														
Steam Turbine (Last Unit)	31 months														
Unit	Scheduled Date of Completion (SDOC) from the date of signing of Amendment Agreement dated 18.6.2003														
Gas Turbine (First Unit)	31.03.2006														
Combined Cycle (Last Unit)	31.03.2003														

V. K. Srinivas

D. R. K.

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Y. S. S.

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SL NO	PPA CLAUSE REF.	EXISTING PROVISION	PROPOSED AMENDMENT
		<p>Note 1 : The COD of the project shall have been achieved in all respects by the SDOC of the Project. In case the Project COD is not achieved within 90 days from the date of COD of the first Generating Unit, the charges payable will be combined cycle energy charges only.</p> <p>Provided that the Scheduled Date of Completion of the last Unit shall be extended day for day for any delay directly arising from (i) a Force Majeure (Article 10.4) (ii) APTRANSCO Default or failure of the APTRANSCO to complete the Inter Connection Facilities three (3) months before the Scheduled Date of Completion of the first Unit.</p> <p>Explanation: In case of a delay in achieving the Scheduled date of completion of the last unit the Company shall pay as liquidated damages to the APTRANSCO, a sum equal to Rs. 50,000 per day for the first one hundred and eighty (180) days of delay and Rs. 3,50,000 per day for delays in excess of one hundred and eighty (180) days, for each 100 MW of capacity or any part thereof, payment for which shall be due thirty (30) days from the Scheduled Date of Completion of the last Unit and every thirty (30) days thereafter or if earlier upon the termination of this Agreement provided for hereunder.</p>	<p>Note 1 : The COD of the Project shall have been achieved in all respects by the SDOC of the Project. In case the Project COD is not achieved within 90 days from the date of COD of the first Generating Unit, the charges payable will be combined cycle energy charges only.</p> <p>Provided that the Scheduled Date of Completion shall be extended day for day for any delay directly arising from (i) a Force Majeure (provided in Article 10.4) (ii) APDISCOMs Default or failure of the APDISCOMs to complete the Inter Connection Facilities three (3) months before the Scheduled Date of Completion of the first Unit (iii) non-availability of Fuel for commercial operation till 31.3.2008 (iv) time required for commissioning as per the construction schedule of the Project due to non-availability of Fuel.</p> <p>Explanation: In case of a delay in achieving the Scheduled Date of Completion of the last unit, the Company shall pay as liquidated damages to the APDISCOMs, a sum equal to Rs. 50,000 per day for the first one hundred and eighty (180) days of delay and Rs. 3,50,000 per day for delays in excess of one hundred and eighty (180) days, for each 100 MW of capacity or any part thereof, payment for which shall be due thirty (30) days from the Scheduled Date of Completion of the last unit and every thirty (30) days thereafter or, if earlier, upon the termination of this Agreement provided for hereunder.</p>
1.	2.1	<p>Sale & Purchase of Capacity: From and after the Commercial Operation Date of the first Generating Unit, subject to the provisions of this Agreement, the Company shall sell, and the APTRANSCO shall purchase, for the consideration of the Capacity Charge, all the available capacity of the Project.</p> <p>Note: In case the Project COD occurs beyond ninety days of the COD of Unit 1, the Capacity Charge payable shall be limited to ninety days only from the</p>	<p>Sale & Purchase of Capacity: From and after the Commercial Operation Date of the first Generating Unit, subject to the provisions of this Agreement, the Company shall sell, and the APDISCOMs shall purchase, for the consideration of the Capacity Charge, all the available capacity of the project limited to Installed Capacity of 370 MW.</p> <p>Note: In case the Project COD occurs beyond ninety days of COD of Unit 1, the Capacity Charge payable shall be limited to ninety days only from the COD of Unit 1.</p>

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		COD of Unit 1.	<p>Notwithstanding anything to the contrary contained in this Agreement, the Company shall not be required to or obligated in any manner whatsoever to sell or otherwise provide to APDISCOMs any capacity over and above the Installed Capacity by the Project at any point of time during the term of this Agreement. The Company shall be free to dispose off capacity not exceeding 17.625 MW (the "Excess Capacity") over and above the Installed Capacity to any third party as it deems fit, without requiring any further approval from APDISCOMs for disposal of excess capacity.</p> <p>Provided this disposal of Excess Capacity shall be subject to</p> <p>(a) The Company complying with all applicable laws, rules and regulations made there under;</p> <p>(b) The Company shall not declare Excess Capacity to third party without providing an Availability Declaration up to installed capacity to the APDISCOMS; and</p> <p>(c) The Company shall always inform along with Availability Declaration the capacity committed to third party out of the Excess Capacity for each Settlement Period.</p>
5.	3.2	<p>Computation of Capacity Charge The Capacity Charge will be the sum of the following amounts, in Rupees, estimated in accordance with Article 5.2(b) for purposes of monthly billing and adjusted pursuant to Article 5.2 (c) for each Tariff Year, and subject in either case to the limitation that the total of such amounts shall not exceed an amount corresponding to a PLF of 80%.</p> <p>(i) Foreign Debt Service Charge (FDSC) of US\$ 0.006 (US\$ zero point zero zero six) per unit of Cumulative Available Energy payable in rupees converted at the Current Rate of Exchange, provided that such Foreign Debt Service Charge shall be payable only in respect of the period ending on</p>	<p>Computation of Capacity Charge The Capacity Charge will be the sum of the following amounts, in Rupees, estimated in accordance with Article 5.2(b) and 5.2 (e) for purposes of monthly billing and adjusted pursuant to Article 5.2 (c) for each Tariff Year, and subject in either case to the limitation that the total of such amounts shall not exceed an amount corresponding to a PLF of 30%.</p> <p>(i) Foreign Debt Service Charge (FDSC) of US\$ 0.006 (US\$ zero point zero zero six) per unit of Cumulative Available Energy payable in rupees converted at the Current Rate of Exchange, provided that such Foreign Debt Service Charge shall be payable only in respect of the period ending on the 11th (eleventh) annual anniversary of the COD of the last Generating Unit.</p>

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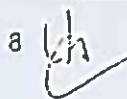
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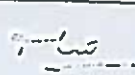
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		<p>the 11th (eleventh) annual anniversary of the COD of the last Generating Unit.</p> <p>(ii) Other Fixed Charges (OFC) of Rs. 0.699 (Rupees zero point six nine nine) per unit of Cumulative Available Energy which shall be fixed for the term of this Agreement.</p>	<p>Provided that the shortfall, if any, in payment of FDSC per unit on account of unavailability of Fuel till 31.03.2008 or till such a later date, when full availability of natural gas of 1.64 MMSCMD is available for a full month for the first time shall be paid to the Company in the Tariff Years immediately succeeding the 11th (eleventh) annual anniversary of the COD of the last Generating Unit till such time that a shortfall in FDSC, on account of such unavailability of Fuel, is recovered by the Company.</p> <p>Such payment shall be made for aggregate of shortfall in Energy Units (KWH) for the period upto 31.3.2008, or till such a later date, when full availability of natural gas of 1.64 MMSCMD is available for a full month for the first time, by which the PLF is lower than 80% on account of unavailability of Fuel.</p> <p>(ii) Other Fixed Charges (OFC) of Rs. 0.699 (Rupees zero point six nine nine) per unit of Cumulative Available Energy which shall be fixed for the term of this Agreement.</p>
3	3.2(A)	<p>The Company shall supply in a Tariff Year (after Project COD) at the Generator terminals energy units equivalent to 5% of the Installed Capacity of 370 MW, which works out to 162.06 million units over and above the PLF of 80% to the APTRANSCO (hereinafter referred to as the "Committed Incentive Energy").</p> <p>APTRANSCO shall deem the initial energy units delivered by the Company subject to a maximum of energy units equivalent to 5% of the installed capacity of 370 MW, which works out to 162.06 million units in a tariff Year (after Project COD) at the Generator terminals as the Committed Incentive Energy.</p> <p>APTRANSCO shall pay the Company for the Committed Incentive Energy at a fixed rate of Rs.0.0699 per Energy Unit [10%(ten percent) of the Other Fixed Charge stated in Article 3.2] (hereinafter referred to as "Committed</p>	<p>The Company shall supply in a Tariff Year (after Project COD) at the Generator terminals energy units equivalent to 5% of the Installed Capacity of 370 MW, which works out to 162.06 million units over and above the PLF of 80% to the APDISCOMs (hereinafter referred to as the "Committed Incentive Energy").</p> <p>APDISCOMs shall deem the initial energy units delivered by the Company subject to a maximum of energy units equivalent to 5% of the Installed Capacity of 370 MW, which works out to 162.06 million units in a Tariff Year (after Project COD) at the Generator terminals as the Committed Incentive Energy.</p> <p>APDISCOMs shall pay the Company for the Committed Incentive Energy at a fixed rate of Rs.0.0699 (Rupees zero point zero six nine nine) per Energy Unit [10% (ten percent) of the Other Fixed Charge stated in Article 3.2] (hereinafter referred to as "Committed Incentive</p>

Witnessed by 

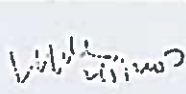
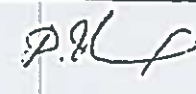
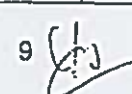
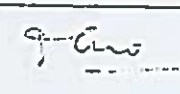

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		Incentive Charge")	Charge") Provided however that notwithstanding anything to the contrary stated hereinabove, the obligation to supply Committed Incentive Energy is applicable with effect from and including the Tariff Year in which Fuel is available, for a PLF of 85% or above. If the Company achieves PLF(I) between 80% to 85% then the incentive would be paid at the Committed Incentive Energy Rate of Rs.0.0699 per unit.
7	3.3	<p>Energy Charge (a) Computation of Energy Charge The Energy Charge will be computed based on the following formula:</p> $U = Eu \cdot (hC) / \{g(1-A/100)\}$ <p>Where: U is the Energy Charge in Rs. in respect of a Billing Month (or in the case of any bill for energy units generated by a Generating Unit prior to its COD, in respect of the period to which such bill relates).</p> <p>Eu is the total number of Energy Units delivered at the Inter Connection Point in respect of such Billing Month measured on the Metering Date for such Billing Month (or in case of any bill for energy units generated by a Generating Unit prior to its COD, in respect of the period to which such bill relates).</p> <p>h is the Station Heat Rate in Kcal/ KWH as per Article 1.1.(57);</p> <p>C is the cost of Fuel in Rs. per unit of Fuel; as delivered at the fuel metering point at the site</p> <p>g is the GCV of Fuel in Kcal/unit of Fuel;</p> <p>A is a number equal to the Auxiliary Consumption expressed as a percentage of gross generation as per Article 1.1 (4).</p>	<p>Energy Charge (a) Computation of Energy Charge The Energy Charge will be computed based on the following formula:</p> $U = Eu \cdot (hC) / \{g(1-A/100)\}$ <p>Where: U is the Energy Charge in Rs. in respect of a Billing Month (or in case of any bill for energy units generated by a Generating Unit prior to its COD, in respect of the period to which such bill relates).</p> <p>Eu is the total number of Energy Units delivered at the Inter Connection Point in respect of such Billing Month measured on the Metering Date for such Billing Month (or in the case of any bill for energy units generated by a Generating Unit prior to its COD, in respect of the period to which such bill relates).</p> <p>h is the Station Heat Rate in Kcal/ KWH as per Article 1.1.(57);</p> <p>C is the cost of Fuel in Rs. per unit of Fuel; as delivered at the fuel metering point at the site</p> <p>g is the GCV of Fuel in Kcal/unit of Fuel;</p> <p>A is a number equal to the Auxiliary Consumption expressed as a percentage of gross generation as per Article 1.1 (4).</p>

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		<p>Provided that</p> <p>Case-I: "C" is the cost of Natural Gas which is primary fuel, delivered at the metering point is inclusive of cost of Gas and transportation charges, and other taxes as per the invoice given by GAIL.</p> <p>Case-II: In the event of purchase of Natural Gas from sources other than GAIL, the cost "C" shall be the cost as per GAIL price or the cost of alternative fuel supplier whichever is less.</p> <p>Case-III: "C" is the cost of Alternate Fuel shall be as decided by the Fuel Supply Committee.</p> <p>Provided that the APTRANSCO has the right to review and approve the Fuel Supply Agreement through the fuel Supply Committee in accordance with and subject to Schedule I.</p> <p>(b) Minimum Fuel Off-take Charges The APTRANSCO shall reimburse the Company for charges paid in respect of its failure to take delivery of minimum levels of primary fuel only, but only if and to the extent that the Company's failure to take such Fuel is due to the APTRANSCO's issuance of Despatch Instructions requiring that the Project be operated at a level less than the level of Declared Capacity set forth in any then applicable Availability Declaration, or the APTRANSCO's failure or inability to accept delivery of Net Electrical Energy from the Project (whether due to Force Majeure events or otherwise).</p> <p>Provided that the APTRANSCO shall reimburse such minimum Fuel Off-take Charges to the Company only to the extent that:</p> <p>(i) such minimum fuel off-take charges were incurred in accordance with the Fuel Supply Agreement.</p>	<p>Provided that</p> <p>Case-I: "C" is the cost of Fuel delivered at the metering point is inclusive of cost of Gas and transportation charges, and other taxes as per the invoice(s) given by GAIL.</p> <p>Case-II: In the event of purchase of Fuel from sources other than GAIL, the cost "C" shall be the cost as per GAIL price or the cost of alternative fuel supplier whichever is less.</p> <p>(b) Minimum Fuel Off-take Charges The APDISCOMs shall reimburse the Company for charges paid in respect of its failure to take delivery of minimum levels of Fuel, but only if and to the extent that the Company's failure to take such Fuel is due to the APDISCOMs issuance of Despatch Instructions requiring that the Project be operated at a level less than the level of Declared Capacity set forth in any then applicable Availability Declaration, or the APDISCOMs failure or inability to accept delivery of Net Electrical Energy from the Project (whether due to Force Majeure events or otherwise).</p> <p>Provided that the APDISCOMs shall reimburse such minimum Fuel Off-take Charges to the Company only to the extent that:</p> <p>(i) such minimum fuel off-take charges were incurred in accordance with the Fuel Supply Agreement.</p> <p>(ii) the Company exercised any right to elect, under the terms of the Fuel Supply Agreement, to "carry forward" the Fuel in question (i.e., to receive such Fuel at a later date) or to store such Fuel at any Fuel storage facilities of the Company or of the Fuel supplier, which are available under the Fuel Supply Agreement; and</p> <p>(iii) the Company took all reasonable steps available to it and such steps identified by the APDISCOMs (such as on-sale of Fuel to the APDISCOMs or other able purchasers identified by the APDISCOMs) to reduce the amount of liability, any added costs of which the APDISCOMs shall upon prior notice by the Company have agreed in writing to pay to the Company.</p>

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		<p>(ii) the Company exercised any right to elect, under the terms of the Fuel Supply Agreement, to "carry forward" the Fuel in question (i.e., to receive such Fuel at a later date) or to store such Fuel at any Fuel storage facilities of the Company or of the Fuel supplier, which are available under the Fuel Supply Agreement; and</p> <p>(iii) the Company took all reasonable steps available to it and such steps identified by the APTRANSCO (such as on-sale of Fuel to the APTRANSCO or other able purchasers identified by the APTRANSCO) to reduce the amount of liability, any added costs of which the APTRANSCO shall upon prior notice by the Company have agreed in writing to pay to the Company.</p>	<p>(c) Notwithstanding anything to the contrary contained in this Agreement, for the period from the date of Synchronisation of the Project to 31.3.2008, if the Company is required to pay transportation charges for Fuel even during the periods when Fuel has not been supplied by the Fuel Supplier, APDISCOMs shall pay and/or reimburse such transportation charges which the Company is liable to pay to the Fuel Supplier.</p>																				
8	3.6	<p>Disincentives: In case the Project is unable to achieve a PLF of 68.5% for a Tariff Year, then the Company will pay to the Board a penalty as a percentage of the Other Fixed Charge paid to the Company in such Tariff Year as given below:</p> <table><thead><tr><th>PLF (%)</th><th>Penalty (%)</th></tr></thead><tbody><tr><td>68.5%</td><td>Nil</td></tr><tr><td>Below 68.5% to 60.5%</td><td>2% for every 1% shortfall in PLF (i.e. for a PLF of 60.5%, the penalty will be 16% of the Other Fixed Charge)</td></tr><tr><td>Below 60.5% to 50.5%</td><td>3% for every 1% shortfall in PLF (i.e. for a PLF of 50.5%, the penalty will be 16% + 30% = 46% of the Other Fixed Charge)</td></tr><tr><td>Below 50.5%</td><td>Same as for 50.5% i.e. 46% of the Other Fixed Charge.</td></tr></tbody></table> <p>Provided that in case of a Tariff Year which involves the Stabilisation Period</p>	PLF (%)	Penalty (%)	68.5%	Nil	Below 68.5% to 60.5%	2% for every 1% shortfall in PLF (i.e. for a PLF of 60.5%, the penalty will be 16% of the Other Fixed Charge)	Below 60.5% to 50.5%	3% for every 1% shortfall in PLF (i.e. for a PLF of 50.5%, the penalty will be 16% + 30% = 46% of the Other Fixed Charge)	Below 50.5%	Same as for 50.5% i.e. 46% of the Other Fixed Charge.	<p>Disincentives: In case the Project is unable to achieve a PLF of 68.5% for a Tariff Year, then the Company will pay to the APDISCOMs a penalty as a percentage of the Other Fixed Charge paid to the Company in such Tariff Year as given below:</p> <table><thead><tr><th>PLF (%)</th><th>Penalty (%)</th></tr></thead><tbody><tr><td>68.5%</td><td>Nil</td></tr><tr><td>Below 68.5% to 60.5%</td><td>2% for every 1% shortfall in PLF (i.e. for a PLF of 60.5%, the penalty will be 16% of the Other Fixed Charge)</td></tr><tr><td>Below 60.5% to 50.5%</td><td>3% for every 1% shortfall in PLF (i.e. for a PLF of 50.5%, the penalty will be 16% + 30% = 46% of the Other Fixed Charge)</td></tr><tr><td>Below 50.5%</td><td>Same as for 50.5% i.e. 46% of the Other Fixed Charge.</td></tr></tbody></table> <p>Provided that in case of a Tariff Year which involves the Stabilisation Period of a Generating</p>	PLF (%)	Penalty (%)	68.5%	Nil	Below 68.5% to 60.5%	2% for every 1% shortfall in PLF (i.e. for a PLF of 60.5%, the penalty will be 16% of the Other Fixed Charge)	Below 60.5% to 50.5%	3% for every 1% shortfall in PLF (i.e. for a PLF of 50.5%, the penalty will be 16% + 30% = 46% of the Other Fixed Charge)	Below 50.5%	Same as for 50.5% i.e. 46% of the Other Fixed Charge.
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		of a Generating Unit, the PLF for applying the penalty will be adjusted using a minimum threshold of 51.37% in place of 68.5% for such Stabilisation Period on a time and megawatt weighted basis (and each other threshold specified above, shall be adjusted downwards by the same proportion).	Unit, the PLF for applying the penalty will be adjusted using a minimum threshold of 51.37% in place of 68.5% for such Stabilisation Period on a time and megawatt weighted basis (and each other threshold specified above, shall be adjusted downwards by the same proportion) Explanation: Provided that the Company shall not be liable for any penalty under this clause to the extent it is due to lower PLF arising out of non-availability of Fuel.
9	New clause 5.2 (e)	—	It is agreed that, if as a result of partial availability of Fuel (availability of natural gas less than 1.64 MMSCMD for a full month for the first time), the Company is unable to attain a PLF of 80%, APDISCOMs will be liable to pay monthly Capacity Charge to the extent of Availability Declaration only at the rate per unit calculated on the basis provided in Clause 3.2(i) and (ii). This clause shall be in operation till 31.3.2008 or till such a later date, when full availability of natural gas of 1.64 MMSCMD is available for a full month for the first time.
10	6.1	Term of the Agreement Subject to the terms of this Agreement, this Agreement shall become effective upon the execution and delivery thereof by the parties and shall continue in force from the date of such delivery until the completion of a period of fifteen (15) years from the Project COD unless earlier terminated as provided herein, and not later than one hundred and eighty (180) days prior to the expiry of the initial term of this Agreement, the Agreement may be renewed for such further period and on such terms and conditions as may be mutually agreed upon between the parties.	Term of the Agreement Subject to the terms of this Agreement, this Agreement shall become effective upon the execution and delivery thereof by the parties and shall continue in force from the date of such delivery until the completion of a period of twenty three (23) years from the Project COD unless earlier terminated as provided herein, and not later than one hundred and eighty (180) days prior to the expiry of the initial term of this Agreement, the Agreement may be renewed for such further period and on such terms and conditions as may be mutually agreed upon between the parties.
11	7.1(g)	If the Inter Connection Facilities are completed by the date which is three (3) months to the Scheduled Date of Completion of the first Generating Unit and the first Generating Unit is not synchronised on or before the Scheduled Date of Completion of the first Generating Unit, pay to the Board	If the Inter Connection Facilities are completed by the date which is three (3) months prior to the Scheduled Date of Completion of the first Generating Unit and the first Generating Unit is not synchronised on or before the Scheduled Date of Completion of the first Generating Unit, otherwise than on account of unavailability of Fuel till 31.3.2008, pay to the APDISCOMs

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		interest on the actual cost of the Inter Connection Facilities constructed only for the purpose of the Project (as established by the Board to the reasonable satisfaction of the Company), such interest being calculated on a daily basis and being equal to the interest charged in respect of any loans raised by it and applied towards meeting such cost and being payable from the Scheduled Date of Completion of the first Generating Unit until the earlier of the date of such synchronisation or the date when such synchronisation would have occurred but for any delay arising from an event of Force Majeure. The Company's payment obligation under this Article shall not be affected by application of Article 10.4.	interest on the actual cost of the Inter Connection Facilities constructed only for the purpose of the Project (as established by the APDISCOMs to the reasonable satisfaction of the Company), such interest being calculated on a daily basis and being equal to the interest charged in respect of any loans raised by it and applied towards meeting such cost and being payable from the Scheduled Date of Completion of the first Generating Unit until the earlier of the date of such synchronisation or the date when such synchronisation would have occurred but for any delay arising from an event of Force Majeure. The Company's payment obligation under this Article shall not be affected by application of Article 10.4.
12	9.2 (f)	The Project fails to issue an Availability Declaration providing for Declared Capacity which is in excess of 50% of the Installed Capacity for a continuous period of one hundred and twenty (120) days (excluding any period of major overhaul undertaken in accordance with the manufacturer's recommendations, any period of Force Majeure; any act or omission of the Board or any Emergency directly causing or contributing to the shortfall in the Declared Capacity).	The Project fails to issue an Availability Declaration providing for Declared Capacity which is in excess of 50% of the Installed Capacity for a continuous period of one hundred and twenty (120) days (excluding any period of major overhaul undertaken in accordance with the manufacturer's recommendations, any period of Force Majeure, any act or omission of the APDISCOMs, any period of unavailability of Fuel, or any Emergency directly causing or contributing to the shortfall in the Declared Capacity)
13	Schedule D 3.4 (i)	Despatch Rights Generation of Net Electrical Energy with alternate fuel shall be with prior approval of APTRANSCO. In despatching the Project, the Company shall follow the directives of the APTRANSCO to back down generation and to resume generation of Net Electrical Energy in each case consistent with the Project's Technical Limits, Prudent Utility Practices, the recommendations of the manufacturers of major equipment, this Agreement and other arrangements between the Company and the APTRANSCO regarding communication and co-ordination of operations (each such directive being called a "Dispatch	Despatch Rights In despatching the Project, the Company shall follow the directives of the APDISCOMs to back down generation and to resume generation of Net Electrical Energy in each case consistent with the Project's Technical Limits, Prudent Utility Practices, the recommendations of the manufacturers of major equipment, this Agreement and other arrangements between the Company and the APDISCOMs regarding communication and co-ordination of operations (each such directive being called a "Dispatch Instruction"). (The APDISCOMs shall not be required to reimburse the Company for any incremental costs or damages in respect of Dispatch Instructions issued in compliance with the foregoing and with the following provisions.)

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		Instruction"). (The APTRANSCO shall not be required to reimburse the Company for any incremental costs or damages in respect of Dispatch Instructions issued in compliance with the foregoing and with the following provisions.)	
14	New Clause - Article 5.2A	--	<p>The Parties hereby acknowledge that the terms of this Agreement have been agreed between the Company and APDISCOMs based on projected availability of Fuel to the Company by GAIL upto the end of March 2008 (and assuming availability of 1.64 MMSCMD of gas during April 2008).</p> <p>The details of Fuel supply projected by the Company are set forth below:</p> <p>May 2006 - 0.5222 MMSCMD Jun 2006 - 0.4910 MMSCMD July 2006 - 0.4632 MMSCMD August 2006 - 0.6577 MMSCMD</p> <p>September 2006 to October 2006 - 0.3904 MMSCMD</p> <p>November 2006 to February 2008 - 0.5206 MMSCMD</p> <p>March 2008 - 1.0687 MMSCMD April 2008 - 1.64 MMSCMD</p> <p>If the supply of Fuel is less than the projected supply till March 2008 and / or shortfall in supply of 1.64 MMSCMD of gas in April 2008, as set forth above, APDISCOMs agree that the Company may claim compensation from APDISCOMs for loss in Capacity Charges incurred by the Company on account of such shortfall of Fuel. In order to compensate the Company for such loss in Capacity Charges, the following shall apply.</p> <p>(a) The compensation shall be limited to the loss in Capacity Charges incurred by the Company till such date the supply of 1.64 MMSCMD of gas is delayed beyond 1st April 2008. Upon supply of 1.64 MMSCMD gas for a full month, for the first time, the Company shall not make any further claims</p>

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SL NO	PPA CLAUSE REF.	EXISTING PROVISION	PROPOSED AMENDMENT
			<p>of loss in Capacity Charges incurred whether there has been a shortfall in gas supply or not.</p> <p>(b) This claim for loss in Capacity Charges shall include the loss in Capacity Charge incurred upto the month in which 1.64 MMSCMD gas is received. The claim shall also include variations in supply of gas till end of March 2008.</p> <p>(c) The Parties shall within ninety (90) days of the claim being made by the Company amend the Agreement, only by way of increasing the term of the Agreement beyond twenty three (23) years. Till such time the Company receives 1.64 MMSCMD of gas for a full month, for the first time, the Company shall not be deemed to be in default or breach of this Agreement for any shortfall in generation.</p> <p>It is agreed by the parties that in case the supply of Fuel during the period between the Project CCD and 31.3.2008 is higher than the projected availability of fuel as mentioned above, the following shall apply.</p> <p>The Parties shall, within ninety (90) days of the submissions made by the Company or claims made by the APDISCOMS for reduced loss in Capacity Charges incurred by the Company, amend the Agreement by reducing the term of the PPA.</p>
15	Schedule I - Fuel Supply Committee	--	<p>Schedule I - Fuel Supply Committee</p> <p>(Intentionally left blank)</p>
16	New Clause	--	Schedule I shall stand deleted and all references to Schedule I or any other matter contained in Schedule I and referred to in the Agreement shall stand deleted.
17	New Clause	--	This Amendment Agreement and the PPA shall together constitute one and the same agreement and the provisions of this Amendment Agreement shall form an integral part of the PPA. However, notwithstanding the foregoing, should any provisions of this Amendment Agreement be at variance or in conflict with any of the provisions of the PPA,

Wile 27/11/08 D.R.P

15

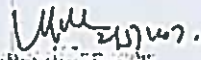
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SL No	PPA CLAUSE REF.	EXISTING PROVISION	PROPOSED AMENDMENT
			the provisions of this Amendment Agreement shall prevail.

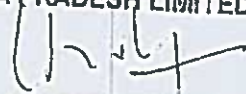
EASTERN POWER DISTRIBUTION COMPANY OF ANDHRA PRADESH LIMITED

For and on behalf of

Chief General Manager
APEDCL, Redhills,
Vijayawada-520 004

SOUTHERN POWER DISTRIBUTION COMPANY OF ANDHRA PRADESH LIMITED

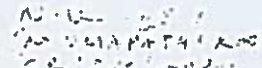
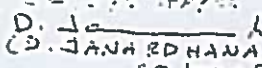
For and on behalf of

Chief General Manager
APEDCL, Redhills,
Vijayawada-520 004

CENTRAL POWER DISTRIBUTION COMPANY OF ANDHRA PRADESH LIMITED

For and on behalf of

M. NARASIMHULU
Chief General Manager (Comm)
APEDCL, Redhills,
HYDERABAD-500 004.

NORTHERN POWER DISTRIBUTION COMPANY OF ANDHRA PRADESH LIMITED

WITNESS:


- 1) 
S. J. JANA REDHILLS
- 2) 
S. J. JANA REDHILLS

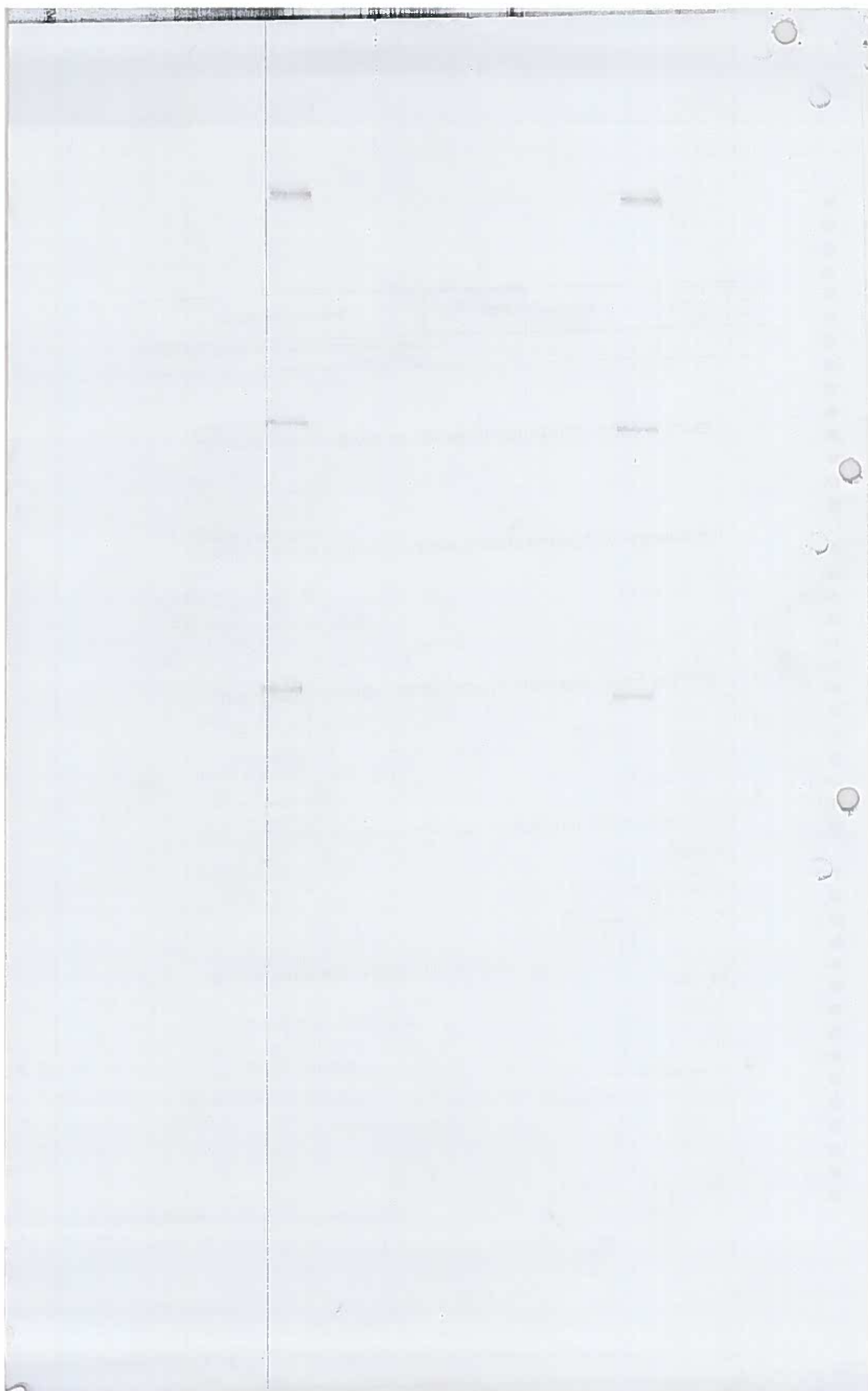
WITNESS:

- 1) 
- 2) 

For Vemagiri Power Generation Ltd

For and on behalf of
M/s VEMAGIRI POWER GENERATION LIMITED

For Vemagiri Power Generation Ltd

Authorized Signatory



✓ 109 ②
DEEPAK KUMAR PANWAR I.A.S.
Principal Secretary to Government



107 Aug- F

Energy Department

A.P. Secretariat, Hyderabad - 500 022

Tel: (O) 040 - 23453305, (R) 23402604

Fax : 040 - 23455452

E-mail : prlsecy_engy@ap.gov.in

D.O.Lr.No.052/PSP/Energy/2004

Dated: 6-12-2004.

Dear Sri Srinivasan,

Sub:- Supply of Naural Gas by GAIL to the existing and emerging Gas based power projects in Andhra Pradesh - Reg.

Ref:- Your D..Lr.No.L-12011/6/2003-GP, dated 01.12.2004.

Kindly refer to your letter cited above in which you have asked the views of the State Government on the criteria to be adopted to distribute the gas for the existing and emerging power projects in Andhra Pradesh. While firming up the views the Government has examined the following relevant factors:

- (1) GAIL, who is the supplier of gas, has set the following guidelines for supply of available gas to the IPPs.
 - If gas is available, full supply to firm allocations and surplus gas on prorata basis to fall back customers.
 - If gas availability is less than firm allocation, supply on prorata basis to firm allocations and no supply to fall back consumers.

GAIL has been following the above guidelines all through the years.

- (2) Similarly, when an upcoming consumer having GSA with GAIL, sought drawl of gas, GAIL fulfilled its obligation under GSA by supplying the gas to the new consumer from the available gas by adopting the prorata basis mechanism. It has never shown differentiation between the old and new consumers. For example GAIL had followed the same principle while starting gas supplies to Lanco Power Project and Reliance Energy Power Projects in AP.
- (3) GAIL had even placed on record, the mechanism of supply of gas on prorata basis, in its submissions through affidavits before High Court of Andhra Pradesh against writ petitions filed by BSES & GVK Industries and before APERC against petition filed by APTRANSCO.

- (4) GAIL, in its counter affidavit dated 28th October, 2004 filed before APERC against the review petition filed by APTRANSCO on alternate fuel provision, has categorically stated that the firm allocation is subject to availability of gas as per GSA and in case of deficit availability of gas, the supplies to such allocatcecs are made on prorata basis based on Policies/Court Orders.
- (5) GAIL in its counter affidavit filed before High Court of Andhra Pradesh against the Writ Petition No.15535/2004 filed by BSES on supply of 0.30 MSCMD of gas, has expressly stated that it has reviewed and taken decision to supply the 0.30 MSCMD of gas to all the consumers on equitable basis to meet the huge shortfall of supply in the firm allocations.
- (6) GAIL in its counter affidavit filed before the High Court of Andhra Pradesh against the Writ Petition No.1415/2003 filed by GVK Industries on allocation of Natural Gas on "first-come-first-served principle", has stated that the available gas to be supplied uniformly to all the consumers in the same ratio and poportion in which their allocations stand.
- (7) High Court of Andhra Pradesh, while giving its judgement on the above referred petition (W.P.No.1415/2003), observed that
- GAIL had denied having any policy to supply the available gas on First-come-first-served principle"
 - There was no drective from GLC to adhere to policy of first-come-first-served.
 - State is required to treat all industries and sectors equally and there cannot be any policy to permit the authorities to allocate gas by pick and choose method. Even if such policy exists, the same cannot answer the test of Article 14 of the Constitution of India.
- (8) Upcoming four IPPs will come into operation in 2005-2006 with a capacity of 1499 MW. GAIL has entered into agreement with these IPPs also for a firm allocation of 6.30 MCMD and a fall back of 0.40 MCMD, totaling to 6.70 MCMD. Given the production profile of ONGC, such supply may not fructify, unless there is focused action to ensure supply as per the agreements. Once these power projects commence commercial operations in 2005-06, APTRANSCO will have to pay the full fixed charges i.e., about Rs.1025 Crores per annum for the entire capacity, even if gas is not supplied, and this will be an unbearable and unjustified burden on the consumers of the State.

(9) In order to protect the interests of the Government, negotiations were held by the State Government with these four IPPs and they have agreed to the following:

- (1) Use of alternative fuel as included in the definition of the "fuel" in the PPAs will not be permitted before 1st January 2007.
- (2) In case of unavailability of natural gas before 1st January 2007, there will not be any liability on APTRANSCO on account of "fixed cost".
- (3) The Companies will implement the project in line with the "Scheduled Date of Completion" as per PPA. However, the Scheduled Date of Completion may be extended on a day for day basis depending upon the unavailability of natural gas before 1st January, 2007.
- (4) The Companies will agree to incorporate the above amendments in the PPAs.

The IPPs have agreed to the above arrangement after taking into confidence their respective Financial Institutions. The IPPs have agreed to the above changes duly keeping in view the existing policy of supply of available gas on prorata basis.

In view of the above facts/factors, GoAP recommends that the existing criteria for supply of available gas on prorata basis amongst the IPPs in A.P. may be retained.

with regards.

Yours sincerely,

o/c

[Signature]
(D.K.PANWAR)

[Signature]
Sri M.S.Srinivasan,
Additional Secretary,
Government of India,
Ministry of Petroleum & Natural Gas,
Shastri Bhawan,
New Delhi-110 001.

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Ann- G

Mohammed Ali Shabber
MINISTER FOR INFORMATION & PUBLIC RELATIONS,
ENERGY AND COAL
Government of Andhra Pradesh



Off : +91-40-23454715
Res : +91-40-23324202
Fax : +91-40-23311519
Cell : +91-98487 82019
email: min_1&pr@ap.gov.in

2533/JS/AD/VP
15/12

Date 22/11/05

D.O.Lr.No.7129/Energy (Pr.) Dept./2005

Dear Dr. Mani Shankar garu,

- Ref: 1. D.O.Lr.No. 52/PSP/Energy/2004, dt. 6.12.2004 from Sri D.K.Panwar, IAS., addressed to Sri M.S.Srinivasan, Addl. Secy., Ministry of Petroleum & N.G.
2. D.O.Lr.No. 52/PSP/Energy/2005, dt. 21.6.2005 from Dr.Y.S Rajasekhara Reddy, Hon'ble Chief Minister
3. D.O.Lr.No. 7127/Pr.I/2005, dt. 5.10.2005 from Dr.Y.S.Rajasekhara Reddy, Hon'ble Chief Minister

Kind attention is invited to the references cited. This matter relates to the supply of natural gas to the power projects in Andhra Pradesh. GAIL has entered into Gas Supply Agreements with four existing gas based projects (total capacity 999 MW) for supply of Natural Gas of 4.85 MCMD. However, the actual quantity of gas supplied by GAIL is 3.526 MCMD and the generation from these projects is less than 70% of their capacity. This gas shortage has resulted in consumers having to pay higher tariff due to (i) increased cost of power procured from alternative sources and (ii) payment of full fixed charges for the total declared capacity of the IPPs, even though the energy produced is less due to inadequate gas supply. The additional cost of power due to short supply of gas is around Rs. 300 crores every year.

GAIL has entered into further agreements with 4 new gas based projects (total capacity 1499 MW) for supply of 6.7 MCMD. Thus the total allocation of gas for the 8 projects is 11.55 MCMD. Since GAIL is not in a position to honour its commitments as per Gas Supply Agreements entered,

Contd..

Government of Andhra Pradesh vide letters dated 17.7.2004 and 5.8.2004 requested for your kind intervention and the Prime Minister of India respectively to direct GAIL/ONGC to augment the supply of Natural Gas as per agreed allocations to the four existing IPPs and the four upcoming IPPs in Andhra Pradesh.

I am grateful to you for convening meeting on 17th October, 2005 to sort out these critical problems of our State. You have discussed this matter with officials of the Ministry of Petroleum and Natural Gas, ONGC, GAIL and Government of Andhra Pradesh. In this connection, I wish to mention the following points for your kind consideration and necessary instructions to the concerned.

The State Government have originally recommended that the available gas may be supplied on a prorata basis to all power projects having firm allocations, including the 4 new projects. As indicated in the reference 1st cited, this stand was taken by the State Government in order to protect the interest of the Government and negotiations held with the upcoming four IPPs. The developers at that time agreed not to use alternate fuel before 1st January, 2007 and that TRANSCO will not be liable before 1st January, 2007 on account of fixed cost. The Companies have agreed to incorporate the amendments in the PPAs. However, the companies have not signed the amended PPAs.

In your letter dt. 14.12.2004 it was indicated that additional gas of 0.5 MMSCMD would be made available from September, 2005 and another 2.0 MMSCMD from second quarter of 2006. Further, the additional gas from Rava 2, Annapurna and Reliance fields is expected from third quarter of 2007, with which the requirements of consumers in KG basin could be met.

State Government have subsequently reviewed the implications of pro-rata allocation of the available gas. If pro-rata allocation of the available gas is made to all the 8 projects, the generation from the existing 4 projects would fall down appreciably and Government of Andhra Pradesh/APTRANSCO

will have to pay about Rs. 333 crores upto 31.12.2006 towards deemed generation without availing full generation from these 4 existing projects. This additional burden of about Rs. 333 crores can be avoided if the available gas is first supplied to the existing 4 gas based projects to the extent required for achieving threshold PLF.

In view of the above implications, Hon'ble Chief Minister has written to on 21.6.2005 and 5.10.2005 to Hon'ble Prime Minister (copy marked to you) Copies of the letters are enclosed for ready reference. It was requested:

- to supply the available gas to the 4 existing projects to the extent required for achieving threshold PLF and to allocate the balance quantity proportionately to the up-coming four projects
- to allow Dual fuel capabilities clause only for use of Naphtha for short periods when gas supply is disrupted
- to direct ONGC/GAIL to honour the agreements for gas supply and the increased cost due to non-supply be borne by GAIL/Developer
- to initiate immediate steps to augment the gas supply to all the 8 IPPs of the State as decided in the meeting convened on 28.9.2004 by the Principal Secretary to Prime Minister

I, therefore, request you once again to issue necessary instructions to the concerned on this matter. I shall be grateful for favourable action for augmenting gas supply to power utilities in Andhra Pradesh to the maximum possible extent.

With regards,

Yours sincerely,

Mohammed Ali Shabber

(MOHAMMED ALI SHABBER)

Dr. Mani Shankar Ayyar,
Union Minister for Petroleum & N.G.,
Government of India,
New Delhi.

*resource
cut
policy*

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GMR/GVPGL/2017/MoP/DEL/023
05th May 2017

Shri Ajay Jain
The Principal Secretary (Energy, Infra & Investments)
Government of Andhra Pradesh

Corporate Office:
Airport Building 302, 1st Floor
New Shakti Bhawan
New Udaan Bhawan Complex
Near Terminal 3, IGI Airport
New Delhi-110037
CIN U23201KA1997PLC032964
+91 11 49832200
www.gmrgroup.in

**Request for allocation/ recommendation by APPCC of APM & Non APM gas to
GVPGL by diverting from old IPPs in Andhra Pradesh.**

Dear Sir,

We refer to the Retail Tariff Order of APERC for 2017-18. The Hon'ble APERC have disallowed the dispatch of old gas based Plants like Lanco Kondapally and Spectrum, whose PPAs have expired, due to high unit fixed cost. Retail Tariff Order also mentions that AP DISCOMs are taking up the proposal for renewal of PPA of M/s LANCO Kondapally for the period of 10 years.

It is ironic and grossly unequitable that whereas around 1500 MW of gas based power plants with valid PPAs are stranded for lack of gas supply and facing bankruptcy, APPCC is proposing to use the APM gas to operate and pay fixed charges to power plants which have run their full term of the PPA and recovered their entire capital and return.

It is submitted that the following power plants, having the benefit of APM gas supply, has run their full term of the PPA-

Project	Capacity (MW)	Gas Allocated (MMSCMD)	Gas supply in 2016-17 (MSCMD)
GVK-Stage-I	216	1.10	0.61
Spectrum	208	1.43	0.62
Lanco	355	1.96	0.72
Reliance#	220	0.84	0
Total	999	5.33	1.95

PPA expiring in October 2017.

At the same time, the following power plants which were set up based on a competitive bid out PPA, have been stranded for lack of gas for years now and are on the brink of bankruptcy-

Project	Capacity (MW)	Gas requirement (MMSCMD) @ 80% PLF	CoD Date	Years till CoD Date	Period of idling till date (Years)
Vemagiri	370	1.48	16.09.2006	11	7
DELV KEX In.	220	0.88	14.04.2009	8	4
Konaseema	445	1.78	05.06.2009	8	4
Andhra Pradesh	464	1.86	30.06.2010	7	4

It is submitted that the APM gas of 1.5 MMSCMD, if allocated to these stranded power plants would enable the plants to operate at around 25% PLF and help to partly service its



Regd. Office :
Skip House, 25/1, Museum Road,
Bangalore 560 025
Plant Office:
Vemagiri, Kadapa Mandal,
East Godavari Dist., A.P - 533125.



GAR

We would also like to point out that:

- The Fixed charge per unit as submitted in the ARR for one of older plants is rightly calculated at Rs. 1.40 / unit taking into account the lower gas availability and lower PLF, which is higher than the fixed cost of newer IPPs.
- The new IPPs are much more efficient with lower heat rates. For example, the Gross heat rate of GVPGL is 1850 Kcal/kWH as compared to approximately 2050 Kcal/kWH for the older plants. This translates to around a lower energy cost of Rs. 0.22 / unit.

Considering a gas supply of 1.5 MMSCMD, the aggregate financial impact of both the above points is around Rs. 160 crore per annum i.e. Rs. 1600 crore over a period 10 years in terms of saving to Discoms and therefore to the consumers at large.

In light of the foregoing, we would sincerely urge you to seek reallocation of the APM gas supply to the new power plants having valid PPA with APDISCOMS and offtake power from them. This would be in the interest of the state, the consumers and the IPPs which have invested in the state based on PPA bid and have already lost their entire net worth and sunk into deeper indebtedness for no fault of theirs.

We look forward to your confirmation and urgent action in the matter

Thanking you

For GMR Vemagiri Power Generation Limited

Arumunda Saha.
Authorized Signatory



Copy to:

1. Chairman and Managing Director, AP Transco
2. Chairman, Andhra Pradesh Power Coordination Committee
3. Secretary, Andhra Pradesh Electricity Regulatory Commission

GMR/GVPGL/2017/MoP/DEL/028

10th May 2017

The Chairman
Andhra Pradesh Power Co-ordination Committee,
Vidyut Soudha
Hyderabad-500082

Subject: Request for allocation/ recommendation by APPCC of APM & Non APM gas to GVPGL by diverting from old IPPs in Andhra Pradesh.

Dear Sir,

We take reference to the Retail Tariff Order of APERC for 2017-18. The Hon'ble APERC have disallowed the dispatch of old gas based Plants like Lanco Kondapally and Spectrum, whose PPAs have expired. We have also noted that APDISCOMs have stopped off-take of power from these two power plants from 7th April'17.

As such, the APM gas which was being consumed by LANCO & SPECTRUM power plants is available for re-allocation.

GVPGL having valid long term PPA upto year 2029 with AP&TS DISCOMs, has legitimate right to receive the above said gas.

Further, we are also concerned to note that APDISCOMs are planning to renew the expired PPA of these plants with threshold PLF of 80% even though APM gas is available for only 40% PLF. In our view due to following reasons the allocation of gas out of expired PPAs should be considered for allocation to GVPGL

1. Capital Cost for old PPA plants have already recovered.
2. Sub optimal efficiency of old PPA plants
3. Higher Capacity Charges in comparison to VPGL
4. Advantages under GVPGL PPA - "No Alternate Fuel" provisions.



Regd. Office:
Skip House, 25/1, Museum Road,
Bangalore 560 025

We hereby summarize the financial benefits that will accrue to AP Discoms by alternatively operating the GVPGL plant with the available APM Gas.

Particulars		LANCO	Spectrum	GVPGL
Capacity	MW	362	208	370
Approx PLF for which gas is available	%	40%	40%	
PPA Extension	Yrs	10.00	15.00	
Mus Generated for PPA Term	Mus	12684	10932	
Per Unit Fixed Cost	Rs/kWh	1.42	1.42	1.08
Incremental Cost per unit in Comparison to VPGL	Rs/kWh	0.34	0.34	
Additional Fixed Charge during PPA term	Rs Crs	431	371	
Variable Cost	Rs/kWh	2.05	2.16	1.90
Incremental Variable Cost in comparison to VPGL	Rs/Unit	0.15	0.26	
Incremental Fuel cost for PPA term	Rs Crs	189	281	-
Total Incremental Fixed Cost and Fuel Cost for PPA Term	Rs Crs	621	652	
Total benefits to DISCOM by opting VPGL	Rs Crs	1272		

=> Annex
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Save an
amt of
Rs 1272 cr

Therefore, the diversion of APM/ non APM gas from old PPA plants to new PPA plants will save DISCOMs an amount more than Rs. 1272 Crs and there is no rational to extend old PPAs without considering GVPGL..

We would therefore request you to kindly recommend to MoPNG for re-allocation of APM and Non-APM gas from old and expired PPA power plants to more efficient power plant of GVPGL having a valid PPA till Sept'2029.

Thanking you

For GMR Vemagiri Power Generation Limited

Authd
Authorized Signatory



Copy to:

1. Pri. Secretary- Energy, GoAP
2. Secretary-APERC
3. CMD, AP TRANSCO
4. JMD, AP TRANSCO
5. CE- IPC &PS, AP TRANSCO



SOUTHERN POWER DISTRIBUTION COMPANY OF A.P. LIMITED
 19-13-65/A, Vidyut Nilayam, Srinivasapuram, Tirupati (www.apspdcl.in)

From
 The Chief General Manager,
 Operation, APSPDCL, 19-13-65/A,
 Vidyut Nilayam, Srinivasapuram,
 Tirupati – 517501.

To
 The Secretary, APERC,
 11-4-660, 4th Floor,
 Singareni Bhavan, Red Hills
 Lakdikapul, Hyderabad-04.

Lr No. CGM/Opn./SPDCL/TPT/RAC/F: /D.No. 45/2017 dt. 27-07-2017

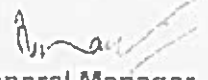
Sir,

Sub :- APSPDCL/TPT – Seeking approval for revised Load forecast and Resource Plan for the 3rd & 4th Control periods along with actual capital expenditure incurred for 3rd control period – Submitted - Regarding.

Ref:- 1) Lr.No.CGM/Opn./SPDCL/TPT/RAC/F.Res.Plan/DNo.384/16 dt.30.12.2016
 2) Lr.No.CGM/Opn./SPDCL/TPT/RAC/F.Res.Plan/DNo.45/17 dt.20.02.2017

In compliance to the directions of the Honourable Commission, the licensee have submitted the Resource Plan along with load forecast and Capex for 3rd control period vide references cited. Due to recent developments in the state in the energy availability and some other factors, the licensee herewith submitting revised Load forecast and Resource Plan for the 3rd & 4th Control periods along with actual capital expenditure incurred for 3rd control period for kind consideration of the Honourable Commission.

Yours faithfully,


 Chief General Manager
 Operation

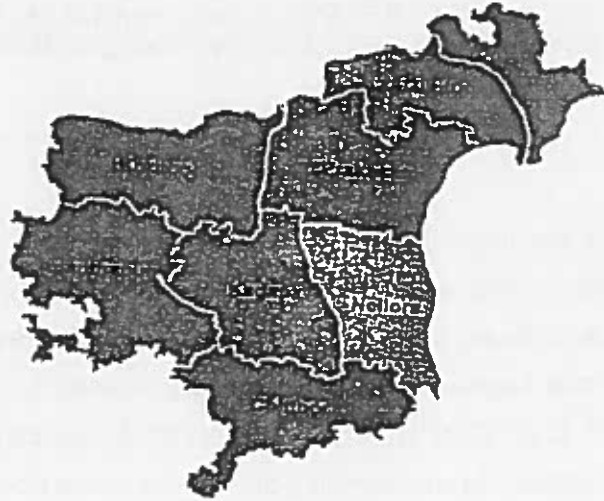
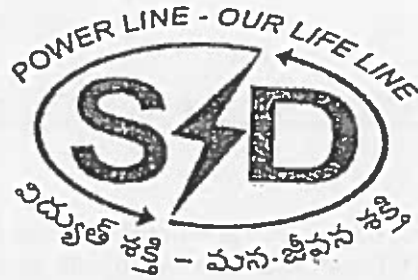
Encl:- As above – 6 nos. Copies

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SOUTHERN POWER DISTRIBUTION COMPANY
OF A.P LIMITED

19-13-65/A, Vidyut Nilayam, Srinivasapuram, Tirupati (www.apspdcl.in)



Load Forecast and Resource Plan

27th July, 2017

3.1.4 Independent Power Producers (IPP)

In Gas IPP's, Lanco's PPA with the licensee expired on 01.01.2016; Spectrum's PPA with the license expired on 18.04.2016. After the expiry of PPA with Lanco, Spectrum and BSES, the licensee has decided not to procure power from them.

The following IPP's are under commercial operation in the State:

Project Name	Installed Capacity (MW)	AP Share (MW)
GVK Extension	220	101
Vemagiri	370	171
Gautami	464	214
Konaseema	444	205
Total	1,498	691*

* 40% Gas is considered subject to APM gas price

3.1.5 Non-Conventional Energy Sources (NCE)

The expected installed capacities of NCE projects in the state from FY 2017-18 to FY 2023-24 is given below:

NCE - Installed Capacity (MW)	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24
NCE - Bio-Mass	157	157	157	157	157	157	157
NCE - Bagasse	121	121	121	121	121	121	121
NCE - Municipal Waste to Energy	6	6	42	57	63	63	63
NCE - Industrial Waste based power project	22	22	29	29	29	29	29
NCE - Wind Power	3,566	4,066	4,266	4,566	4,566	4,566	4,566
NCE - Mini Hydel	86	86	106	106	106	106	106
NCE - NCL Energy Ltd	8	8	8	8	8	8	8
NCE - Solar	601	601	601	601	601	601	601
NCE - Solar Parks	1,100	2,050	2,250	3,250	3,250	3,250	3,250
Total NCE Set	5,666	7,116	7,580	8,895	8,901	8,901	8,901

GoAP has targeted to set up 3,250 MW solar capacity through Solar Parks in Kurnool, Kadapa and Anantapur districts with the support of Govt. of India. As a part of this, GoAP has entered MoU with NTPC on 16.09.2014 for setting up of 1000MW solar park in Anantapur dist. Subsequently as per the directions of GoAP, APDISCOMs had entered PPAs with M/s NTPC for purchase of solar power from



ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION
4th Floor, Singareni Bhavan, Red Hills, Hyderabad 500 004

I.A.No.8 of 2017
in
O.P.Nos. 28 & 29 of 2016

Dated: 29-11-2017

Present
Sri Justice G. Bhavani Prasad, Chairman
Dr. P. Raghu, Member
Sri P. Rama Mohan, Member

Between:

1. Southern Power Distribution Company of Andhra Pradesh Ltd.
2. Eastern Power Distribution Company of Andhra Pradesh Ltd.

... Applicants/Petitioners

A N D

1. M/s. Lanco Kondapalli Power Pvt. Ltd.
2. M/s. Spectrum Power Generation Ltd.

... Respondents/Respondents

The Interlocutory Application has come up for hearing finally on 28-10-2017 in the presence of Sri P. Shiva Rao, learned Standing Counsel for the petitioners, Sri Challa Gunaranjan & Sri K. Gopal Choudary representing M/s. Lanco Kondapalli Power Pvt. Ltd., M/s. Ch. Pushyam Kiran and Sri M. Naga Deepak, learned counsel representing M/s. Spectrum Power Generation Ltd., Sri M. Venugopala Rao, Sr. Journalist & Convenor, Centre for Power Studies, Dr. S. Chandra Mouli representing APSEB Engineers Association and Sri S. Prathap representing APSEB Assistant Engineers' Association, learned objectors. After carefully considering the material available on record and after hearing the arguments of the learned Standing Counsel for the applicants/petitioners, learned counsel for the respondents and the learned objectors, the Commission passed the following:

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ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION
4th Floor, Singareni Bhavan, Red Hills, Hyderabad 500 004

I.A.No.8 of 2017
in
O.P.Nos. 28 & 29 of 2016

Dated: 29-11-2017

Present
Sri Justice G. Bhavani Prasad, Chairman
Dr. P. Raghu, Member
Sri P. Rama Mohan, Member

Between:

1. Southern Power Distribution Company of Andhra Pradesh Ltd.
 2. Eastern Power Distribution Company of Andhra Pradesh Ltd.
- ... Applicants/Petitioners

A N D

1. M/s. Lanco Kondapalli Power Pvt. Ltd.
 2. M/s. Spectrum Power Generation Ltd.
- ... Respondents/Respondents

The Interlocutory Application has come up for hearing finally on 28-10-2017 in the presence of Sri P. Shiva Rao, learned Standing Counsel for the petitioners, Sri Challa Gunaranjan & Sri K. Gopal Choudary representing M/s. Lanco Kondapalli Power Pvt. Ltd., M/s. Ch. Pushyam Kiran and Sri M. Naga Deepak, learned counsel representing M/s. Spectrum Power Generation Ltd., Sri M. Venugopala Rao, Sr. Journalist & Convenor, Centre for Power Studies, Dr. S. Chandra Mouli representing APSEB Engineers Association and Sri S. Prathap representing APSEB Assistant Engineers' Association, learned objectors. After carefully considering the material available on record and after hearing the arguments of the learned Standing Counsel for the applicants/petitioners, learned counsel for the respondents and the learned objectors, the Commission passed the following:

ORDER

A petition under sections 62 (4) and 86 (1) (b) of the Electricity Act, 2003 read with Regulation 55 of the Andhra Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 for grant of approval for procurement of power from 1st and 2nd respondents and M/s. Godavari Gas Power Plant owned by the petitioners during 2017-18 and other appropriate orders.

2. The petitioners stated that the erstwhile Andhra Pradesh State Electricity Board entered into a Power Purchase Agreement dated 31-03-1997 with the 1st respondent for fifteen years from the Commercial Operation Date expiring on 01-01-2016. Even after the bifurcation of the State of Andhra Pradesh, the four distribution companies availed the power from the 1st respondent and after the expiry of the Power Purchase Agreement, the petitioners proposed to extend the Power Purchase Agreement with the 1st respondent located in the State of Andhra Pradesh for another ten years without exercising the option of buying out the project. The petitioners continued to purchase power from the 1st respondent upto 07-04-2017 and there were mutual negotiations between the 1st respondent and the petitioners agreeing for fixed cost tariff at Rs.180 crores per year and other modified terms, subject to the approval of the State Electricity Regulatory Commission. The Government of Andhra Pradesh by a letter dated 26-04-2017 permitted the petitioners to approach the Commission for renewal of the Power Purchase Agreement and the petitioners submitted a letter dated 03-05-2017 to approve procurement of power from the 1st respondent. It was not considered in the Retail Supply Tariff Order of 2017-18. The draft Power Purchase Agreement was also submitted, which is pending with the Commission. M/s. GAIL (India) Limited agreed to renew natural gas supply to the 1st respondent and it issued a notice dated

01-05-2017 on the consequences of non drawal of gas. The cost of power per unit from the 1st respondent worked out at Rs.3.577 for FY 2016-17, which is lower than other suppliers of power. The petitioners gave the details of the actual costs paid to the 1st respondent in that year and claimed that in the Aggregate Revenue Requirement for 2017-18, incorrect numbers relating to the cost of generation crept in, in respect of the 1st respondent reflecting a price of Rs.4.36 per kWh due to which the Commission did not agree for dispatch from it. In fact, the variable tariff per kWh comes to Rs.2.30. The cost of power as per the proposed Power Purchase Agreement for 2017-18 will be Rs.3.55 with a PLF of 40%. The power of the 1st respondent falls within the merit order and hence, the applicants/petitioners seek permission to procure cheaper power.

3. In respect of the 2nd respondent, the Power Purchase Agreement expired on 18-04-2016 and the petitioners decided to renew the Power Purchase Agreement for fifteen years. The Commission permitted dispatches from the 2nd respondent in the Tariff Order 2016-17 upto 711.67 MU in that year, though the Power Purchase Agreement has lapsed. In 2017-18, the 2nd respondent was not considered for dispatches, as the cost of generation was much more than the approved cost and in the Aggregate Revenue Requirement for 2017-18, incorrect numbers of cost of generation crept in, in reflecting the price of power at Rs.4.51 per kWh due to which the Commission did not permit procurement of power from the 2nd respondent. However, the higher values then projected yielded place to lesser variable cost and as per the present gas availability, the cost to be paid at 55% PLF will be Rs.1.13 fixed cost and Rs.2.10 variable cost, making total cost per unit Rs.3.23 ps. The 2nd respondent also will fall within the merit order dispatch and supply cheaper power. The petitioners have to suffer procurement of higher cost power from other sources if

power from the 2nd respondent is refused to them and they will approach the Commission for renewal of the Power Purchase Agreement and for tariff after getting approval of the State Government. The Gas Authority of India Limited had to schedule the allocated gas to Andhra Pradesh Gas Power Corporation Limited, which is scheduling additional quantum of power to their industrial consumers, who are using that cheaper energy than availing energy from the petitioners, who are losing revenue to that extent. In case of exigencies, the petitioners are forced to bid in the exchanges for maintaining uninterrupted power supply, the price of which is higher. Hence, the petitioners sought for approval to procure power from the 2nd respondent on adhoc basis, de hors the question of renewal of the Power Purchase Agreement, fixing an adhoc single part tariff in terms of the existing Power Purchase Agreement.

4. After expiry of the Power Purchase Agreement with M/s. GVK Industries Limited dated 19-04-1996 on 20-06-2015, the petitioners exercised buyout option in respect of 216 MW gas based power project. The Government of Andhra Pradesh approved the issuance of buyout notice dated 19-06-2015 by the petitioners and the petitioners took over the plant on 22-04-2016 for a buyout amount of Rs.333.32 crores under an Agreement. The petitioners are operating the power plant since 22-04-2016 and the buyout process is not yet complete. The power from M/s. GVK Industries Limited was not considered in the Tariff Order 2017-18. But this being the own project of the distribution companies, generation and supply were confirmed. Though higher values were projected towards fixed cost and variable cost in the Aggregate Revenue Requirement for 2017-18, the various factors projected by the petitioners may be considered to revise the variable cost at Rs.2.20 per kWh and fixed cost at Rs.0.79 per kWh for merit order dispatch until GT's C-Inspection

expenditure is undertaken spread over to future years; hence, the application for a revision of tariff and for approval for procurement of power in respect of the three projects.

5. The Commission decided to place the subject matter in public domain and issued a public notice inviting views/objections/suggestions of any interested person/stakeholder.

6. Earlier, the Chief Engineer (Commercial), Andhra Pradesh Power Coordination Committee addressed a letter dated 03-05-2017 to the Commission about the petitioners proposing to renew the original Power Purchase Agreement for a period of ten years with a negotiated tariff including a fixed cost tariff @ Rs.180 crores per year and variable energy charges, the draft Power Purchase Agreement dated 28-04-2017 being enclosed for the purpose of approval of the State Government. The proposed fixed charge per unit at Rs.0.71 per kWh with a threshold PLF of 80% and variable cost at present gas price of Rs.2.09 at the accepted station heat rate with Naphtha as the alternate fuel may be approved for procurement of power and after such approval, the Power Purchase Agreement will be submitted for approval and approval of tariff. The petitioners again addressed a letter dated 20-05-2017 stating that per unit cost of energy generated by the 1st respondent will be only Rs.3.55 which is less than the cost of other sources and hence they may be approved to procure power from the 1st respondent de hors the renewal of the Power Purchase Agreement with an adhoc single part tariff in terms of the existing Power Purchase Agreement, subject to later adjustment.

7. Similarly, petitioners addressed a letter dated 20-05-2017 to the Commission about the decision for renewing the Power Purchase Agreement with the 2nd

respondent for fifteen years and stating that the power unit cost of energy is only Rs.3.54 and not the cost shown in the Aggregate Revenue Requirement. Procurement from the 2nd respondent is cheaper and hence the petitioners requested for approval for procurement of power fixing an adhoc single part tariff in terms of the existing Power Purchase Agreement, subject to a later adjustment.

8. However, later the petitioners addressed letters dated 22-05-2017 withdrawing the earlier letters and intimating about their decision to file a separate petition.

9. Similarly, in respect of the Godavari Gas Power Plant, the first letter dated 18-05-2017 from the petitioners was narrating the sequence of events and stating that no Power Purchase Agreement is required, as the power plant is fully owned by the petitioners and requested that only the revised variable cost of Rs.2.20 per kWh as single part tariff may be considered for merit order dispatch, ratifying the action of the petitioners in continuing the generation and allow payment of lower fixed cost on monthly basis at Rs.0.79 per kWh till GT's C-Inspection expenditure is undertaken. This letter was also required to be withdrawn by a letter dated 20-05-2017 intimating that a separate petition will be filed. The Commission permitted the withdrawal of the proposals with a liberty to file a petition as sought by the petitioners.

10. Sri M. Venugopala Rao, Senior Journalist & Convenor, Centre for Power Studies, Sri Ch. Narasinga Rao, State Secretariat Member, CPI (M), Andhra Pradesh, Sri A. Punna Rao, Sri Penumalli Madhu, State Secretary, CPI (M) and Sri B. Tulasidas placed identical objections before the Commission. The A.P. Spinning Mills Association (APSMA), the APSEB Engineers' Association, The Federation of Farmers' Associations, Andhra Pradesh and the APSEB Assistant Engineers' Association also sent their objections. The petitioners gave their para-wise replies

and Sri M. Venugopala Rao made further submissions dated 18-08-2017, 07-10-2017, 21-10-2017, 28-10-2017 and 03-11-2017. The APSEB Engineers' Association gave further written submissions dated 21-10-2017, 28-10-2017 and 15-11-2017. The APSEB Assistant Engineers' Association filed further written submissions dated 21-10-2017. The petitioners filed their reply to the objections of Sri M. Venugopala Rao dated 21-10-2017.

11. Sri Challa Gunaranjan, learned counsel for the 1st respondent during hearing on 01-07-2017 stated that the 1st respondent consents to the grant of reliefs prayed for in the petition. The 2nd respondent filed a Memo dated 21-10-2017 stating among other things that the Goods & Services Tax (GST) on gas transportation charges was reduced from 18% to 5% reducing consequently the variable cost and the total cost per unit to Rs.3.47, as opposed to Rs.3.52 mentioned in the memo of the petitioners dated 13-10-2017. The petitioners are also availing rebate at Rs.2.5% which is equal to Rs.0.09 per unit. The procurement of power from the 2nd respondent, hence would be at Rs.3.38 per unit. Even the purchases by the petitioners from the exchanges from April to August, 2017 were for Rs.3.76, Rs.3.64, Rs.3.44, Rs.3.49 and Rs.4.04 averaging at Rs.3.67 in respect of 579.93 MU purchased. Hence, the 2nd respondent prayed for approval of the procurement of power from it by the petitioners. The 2nd respondent again filed a Memo on 25-10-2017 stating that during the course of proceedings on 21-10-2017, it offered to reduce the power unit cost and it will reduce the cost to Rs.3.31 ps at which rate procurement of power from it may be approved.

12. During the hearing on 07-10-2017, the petitioners and the 1st respondent were requested to furnish verifiable material to substantiate the claim that payment of fixed and variable cost to these three generators will be less than the variable cost

payable to any other generators, who are permitted in the merit order dispatch as per the Tariff Order, thereby making even the payment of fixed cost to those generators not an additional burden to the distribution companies. The petitioners filed a Memo on 13-10-2017 giving particulars of comparable fixed cost and variable cost. During the hearing on 28-10-2017, learned Standing Counsel for the petitioners stated that any further information sought for by Sri M. Venugopala Rao in his objections cannot and is not being furnished.

13. The first set of identical objections from Sri M. Venugopala Rao and others contended that a single petition for purchasing power from three generators was improper and illegal. Making the letter from Andhra Pradesh Power Coordination Committee dated 03-05-2017 and the draft Power Purchase Agreement enclosed to it as part of the proceedings is improper. The expired Power Purchase Agreements of the three projects have no legal sanctity or relevance and were without any consent from the Commission. The permission requested concerning 1st and 2nd respondents cannot be sought, without transparent and competitive bidding for selection and approval by the Commission of the need to purchase power. Revision of tariff or modification of terms cannot arise when there are no legally tenable Power Purchase Agreements. The consent of the Commission after a public hearing was not sought in respect of the buyout of GVK plant though Rs.289.55 crores were paid by the distribution companies to bail out the owners of GVK. Godavari Gas Power Plant in tune with the dual role of the distribution companies. The petition shows undue preference to private generators for extraneous considerations and the agreement for renewal of gas supply and transport agreement for five years for the first respondent shows the undue priority to private generators. The extension of Power Purchase Agreement proposed for ten years is improper when GST with

GAIL (India) Limited was agreed for five years and when cases are pending in the High Court and APERC, renewing the Power Purchase Agreement is unhealthy. The generation of energy by the 1st respondent should have been confined to 55% PLF and a piecemeal proposal for procurement of power unrelated to long term load forecast and procurement plan subverts the regulatory process damaging larger consumer interest when substantial surplus power is available. The CB CID reports submitted to the State Government in respect of the three plants were kept in cold storage without any action. Supply of natural gas should have been ensured for the new four gas based power projects having long term Power Purchase Agreements and in claiming the cost of power to be cheap, the new four gas based power projects were not compared in respect of the cost of energy or fixed charges. The distribution companies which withdrew the forty one Power Purchase Agreements they had with Non-Conventional Energy generators due to having a surplus of 12013.95 million units as per the Tariff Order of 2017-18 are irresponsible in proposing to procure power from the 1st and 2nd respondents. The distribution companies had to pay Rs.2102.44 crores for backing down surplus power and such avoidable burden will increase if further power is procured from the 1st and 2nd respondents. Quoting the data from "Indian Electricity Market Data Analysis" made by the Power System Operation Corporation Limited, the objectors contended that the distribution companies have to purchase power from the existing Power Purchase Agreement holders irrespective of cost and if further surplus power is purchased, fixed charges have to be paid by the consumers for backing down additional surplus power. When long term load forecast, resources and procurement plans and State Electricity plan are pending before the Commission, irresponsible decisions adversely affecting larger public interest cannot be taken. The distribution

companies have no binding obligation to continue to procure power from the three projects and the three projects have to be dealt with on case by case basis. Therefore, the objectors desired all the details and data regarding buyout of GVK plant, renewal of Power Purchase Agreements and proposed tariffs to be provided to the public at large and to consider the requests only after a final view is taken on long term load forecast plans of Transmission Corporation of Andhra Pradesh Limited and the distribution companies.

14. A.P. Spinning Mills Association in their objection while requiring the Power Purchase Agreements etc., to be produced stated that the gas supply agreement is a fait-accompli and it has to be examined whether the proposed power procurement will add to the problem of plenty and the attendant fixed cost burden for the backed out generation. The distribution companies cannot lament against supply of cheaper power to industries by Andhra Pradesh Gas Power Corporation Limited. The purchase of GVK plant is also a fait-accompli. The objector desired the cost benefit analysis to the consumer be made.

15. The APSEB Engineers' Association in its objection dated 01-07-2017 stated that apart from the surplus energy estimated in the Tariff Order of 2017-18, the Andhra Pradesh Generation Corporation Limited (APGENCO) decided to stop allocation of power to Telangana State and Telangana State Power Generation Corporation Limited (TSGENCO) decided not to schedule power from their plants to Andhra Pradesh, leaving a net off power of 459 MW to Andhra Pradesh. Thus, 2173 MW power due to stoppage of power allocation to Telangana State further aggravated the situation. Andhra Pradesh State Load Dispatch Centre (APSLDC) is issuing backing down instructions to Andhra Pradesh Generation Corporation Limited (APGENCO) based on merit order dispatch but Andhra Pradesh distribution

companies are liable to pay fixed charges for the shut down units. That apart, the Transmission Corporation of Andhra Pradesh Limited (APTRANSCO) entered into Power Purchase Agreements with wind and solar power developers, who have must run status, of a capacity of 5517 MW. With supply becoming much higher, renewal of Power Purchase Agreement with the 1st respondent for ten years will increase the liabilities of the distribution companies and the gas availability is only 40% of the capacity of the gas based stations and the fixed cost varying between Rs.0.71 to Rs.0.90 per kWh from years 1 to 10. The availability of fuel and health of the machine were not stated in the Power Purchase Agreement and 100% capacity was declared by the 1st respondent without taking into account the availability of fuel. The fixed cost component then will be around Rs.1.40 to Rs.1.80. Power purchase cost due to payment of fixed charges to thermal stations will increase for ten years more and even regarding the variable cost, the distribution companies will be liable to pay the minimum fuel charges and positive imbalance charges in case of backing down. The variable cost will increase significantly if the distribution companies have to pay penalties for non-consumption of available gas, though a 06-11-1995 notification by the Government of India exempts the State Electricity Board from any fuel risk. Hence, they desired and sought for non-grant of approval to the renewed Power Purchase Agreement between the distribution companies and the 1st respondent.

16. APSEB Assistant Engineers' Association in their objections dated 01-07-2017 stated that 80% of the tariff component is due to power purchase cost only and due to addition of 2500 MW capacity of wind and solar power, the State Load Dispatch Centre (SLDC) has to issue backing down instructions to APGENCO stations for which fixed charges have to be paid. The power purchase cost will increase in case

of the Power Purchase Agreement with the 2nd respondent and the penalties payable by the distribution companies are significant. In any emergency, power is available in open market at lower cost through competitive bids, without paying the fixed cost.

17. Federation of Farmers Associations, Andhra Pradesh, Guntupalli in their representation dated 29-06-2017 stated about the violation of rights of the people, who are threatened against expressing their opinions even during the public hearings.

18. The petitioners in their response to the first set of objections of Sri M. Venugopala Rao and four others again reiterated that a single petition was filed as an error committed in the Aggregate Revenue Requirement inadvertently in the tariff calculations was common to the three projects. As negotiation and finalization of the Power Purchase Agreement is a long drawn process, the distribution companies seek to extend the expired Power Purchase Agreements on adhoc basis on the same terms and conditions. The distribution companies took a decision to procure power which is cheaper and lower than the ceiling price fixed by the Commission and in the Aggregate Revenue Requirement of 2016-17 also, power was availed from these stations, though the Power Purchase Agreements expired by then. Consequential procedures on expiry of Power Purchase Agreements were initiated before their expiry under intimation to the Commission and the revision of tariff was sought only for 2017-18 but not for long term purchases. The tariff was reduced to the extent possible through negotiations on payment of Rs.180 crores. Fixed charges were avoided by acquiring GVK plant on 22-04-2016 and the project was purchased at 50% of the cost. The project is on Ac.211.73 % cents. GVK will pay lease amount towards utilization of common facilities for which an agreement

was already entered into. No tariff is decided for the power generated by the distribution company projects. The Gas Supply Agreements are renewed for ten years as per the Government of India policy. The capacity of 1st respondent plant is the subject of the pending cases before the Hon'ble High Court. The complaints by the Transmission Corporation of Andhra Pradesh Limited against the 2nd respondent on capital cost failed before the police and the Commission. The four new gas based plants have agreements with the Reliance Gas while the three plants have Gas Supply Agreements with ONGC gas. As dispatches from renewable energy are highly unpredictable, generation from gas based stations will effectively maintain the grid discipline due to quick response time. The prices and availability in exchanges are volatile and the prices go up when the distribution companies seek to purchase power. The process of renewal/buyout in respect of the three stations started six months before the expiry of the Power Purchase Agreements and the solar power produced is only 20 to 30% PLF of installed capacity and vagaries of weather make huge dependence on renewable sources not viable.

19. The petitioners in their response to the objections of Engineers' Association and the AP Spinning Mills Association stated that the emphasis is on pure merit order dispatch including the State owned generators. The utilities are searching for cheaper sources of energy and to avoid any damage to grid stability due to sudden variation in renewable energy, gas stations have to be in the energy portfolio. The capacity declaration clause is incorporated in Schedule "B" of the draft Power Purchase Agreement. The Power Purchase Agreements are available on the websites of Transmission Corporation of Andhra Pradesh Limited and the Commission.

20. Sri M. Venugopala Rao in his submissions on 18-08-2017 stated that the so called apparent common error claimed to have been made inadvertently by the distribution companies in tariff calculations of the three projects is irrelevant. Why buyout is not economically viable in case of 1st and 2nd respondents is not explained. The question of revision of tariff does not arise and no power is needed to be purchased from any plants with which the distribution companies have no legally binding obligations to purchase power. The claim that the power from these three stations is cheaper is not correct and without data. For new IPPs, the variable cost worked out to Rs.1.90 per unit and fixed cost is Rs.1.08 ps per unit whereas it is Rs.2.05 and Rs.1.42 for the 1st respondent and Rs.2.15 and Rs.1.45 for the 2nd respondent. The total charges worked out to Rs.2.98 per unit for the new IPPs and Rs.3.47 per unit for 1st respondent and Rs.3.60 per unit for the 2nd respondent. Whether 1st respondent agreed to reduce the tariff in negotiations was not stated and when litigation on installed capacity is pending, why should power be purchased from the 1st respondent? Distribution companies may be directed to state whether GVK cleared the loan dues to the banks for this plant and what are the conditions of lease agreement for use of the land. These aspects of buyout price and lease amount have to be determined after public hearing for assessing the tariff and efforts have to be made to get the gas allocation to Godavari Gas Power Plant, if not scheduled to 1st and 2nd respondents. The replies of the distribution companies are to the detriment of the larger consumer interest and entering into long term Power Purchase Agreements to purchase high cost Non-Conventional Energy power is irrational, more so, exceeding the Renewable Power Purchase Obligation. The arguments of the distribution companies against the danger of buying high cost power is against their own long term Power Purchase Agreements for buying high

cost power without any imperative need and even very low PLF will not absolve the distribution companies of paying full fixed charges. These plants were not included in the long term load forecast and plans. While the scope for manipulation in exchanges cannot be ruled out the power from central generating stations was not fully drawn and the Southern States came to an understanding to purchase power from one another depending on availability and requirement linked to power exchange prices.

21. Sri M. Venugopala Rao in his further submissions dated 07-10-2017 stated that the distribution companies have to pay Rs.62 crores and Rs.45 crores more per annum to the 1st and 2nd respondents than what they have to pay to new IPPs if power is purchased as proposed. So it will be prudent to get gas allocated to the new IPPs and purchase power from them and get the reduction of tariff by Rs.1295 crores during the proposed periods of Power Purchase Agreements. Vemagiri project should be given priority in the allocation of natural gas and the distribution companies have eliminated these plants from their revised long term load forecast.

22. In his further submissions dated 21-10-2017, Sri M. Venugopala Rao stated that information relating to non-generation and supply of power from coal based thermal power stations has to be furnished to know the severe coal supply constraints. The thermal power, stopped supply to Telangana State distribution companies from June, is available additionally for an installed capacity of 1514 MW. The quantum of thermal power available to Andhra Pradesh distribution companies under bundled power from NTPC should be specified and the implementation of backing down of thermal power stations should be as per merit order dispatch. This information has to be furnished. The distribution companies are silent about the new

gas based private power projects and recent heavy rains lowered the demand for power and increased the generation of hydel power. The information relating to backing down power by SLDC should be examined to confirm whether the principles of merit order dispatch are adhered to. But the distribution companies did not submit any information about Godavari Gas Power Plant to show its variable cost to be less plus the fixed cost payable to the other generators for backing down. The learned objector gave calculations to show that the purchase of power from 1st and 2nd respondents by backing down the other units as per the merit order dispatch would impose avoidable burden on the distribution companies and the consumers. The 1st and 2nd respondents stand at 17th and 15th places in that merit order. The burden of purchasing 432 MU for six months from 1st and 2nd respondents as proposed will not be there for purchase for short periods in case of urgent need.

23. Sri M. Venugopala Rao in his further submissions dated 28-10-2017 stated about the principles of merit order dispatch as evidenced by the information referred to by him which shows avoidable burden of Rs.0.531 per kWh on the consumers. If PGCIL charges are included, the avoidable burden will be more and even the offer by the 2nd respondent to reduce its tariff to Rs.3.31 ps per kWh cannot justify the purchase. The distribution companies showed the variable cost of NLC wrongly. There is no documentary evidence to show the anticipated and severe coal supply constraints for next six months. The learned objector claimed that the information sought for by him was not provided by the distribution companies.

24. Sri M. Venugopala Rao ultimately in his final submissions dated 03-11-2017 stated that the way the public hearing has been conducted and the "Commission responded to their request has been found wanting in ensuring the regulatory

process in a meaningful and purposeful way". Though the learned counsel for the petitioners bluntly refused to furnish any required information, the "Commission expressed its helplessness to get the relevant information", though it has the power of Civil Court. The Chairman of the Commission expressed the view during public hearings that no surplus power is available even without any relevant information to substantiate such a claim. The ever changing and quickly fading stand of the distribution companies about the revised methodology of merit order dispatch or inadvertent errors in the Aggregate Revenue Requirements or inflated cost of NLC etc., confirm that the petitioners are under strong pressure. Still it is strange that the Commission is harping on the representatives of the Engineers Associations being expected to know these things. The Commission and the distribution companies expecting the learned objector to believe that there is no surplus power negates the spirit of regulatory process and the public hearings. If the Commission has such relevant information, it should have been made the public to establish transparency and accountability. It is difficult to understand the silence and unresponsiveness of the Commission and its reluctance to exercise its legitimate authority. Six months in the financial year have been passed without purchasing power from 1st and 2nd respondents without any problem. What is the basis for presumed availability of power through exchanges or competitive bidding at higher rates only? How can the Commission give consent on the mutual understanding between the petitioners and the respondents without any due process or Power Purchase Agreement? Still as suggested by the Chairman of the Commission to suggest what conditions should be imposed for purchase of such power, the learned objector is making suggestions in academic interest only that the distribution companies may be directed to go through exchanges or competitive bidding for additional power where required,

should ensure competitive tariffs and the 1st and 2nd respondents have freedom to come through the same. If the petitioners are intending to purchase power from 1st and 2nd respondents, it may direct them to purchase power at the fixed charges that were applicable at the time of expiry of the Power Purchase Agreements by working out the same per unit based on 80% PLF. In other words, there should be no payment of fixed charges for deemed generation and no reworking out of fixed charges based on actual generation. There is nothing on record that 1st and 2nd respondents have incurred additional capital expenditure. Fixed and variable charges for both should be firm and any purchase should be strictly following merit order dispatch, without any obligation for the distribution companies to pay fixed charges or penalties. Fixed charges and transmission charges to be paid to the backed down projects should also be taken into account. The Commission should respond in its order to all the relevant issues and points raised by the learned objector.

25. APSEB Engineers' Association in its letter dated 15-11-2017 pointed out that the petitioners worked out the levelized fixed charges and variable charges for the 1st and 2nd respondents at 40% and 55% PLF respectively. But, as per the APERC Regulations, IPPs must operate at 80% PLF to get full fixed charges. So the operating norms to be followed and penalty clause should be incorporated in the renewal of the Power Purchase Agreement. Hence, no short term purchases or Power Purchase Agreements may be permitted.

26. APSEB Engineers' Association in its earlier letter dated 21-10-2017 contended that RTPP, SDSTPS and Dr. NTPPS are in running condition except for backing down instructions by SLDC. The 1st respondent gets more profit if it goes to the exchange and in approaching the distribution companies, it kept an eye on the

fixed charges. The distribution companies sustained loss due to gas allocation from Andhra Pradesh Gas Power Corporation Limited for the reasons stated by the objector. The distribution companies did not submit the information relating to implementation of backing down as per the merit order dispatch and the total surplus power from the tariff order, any scheduled net off power and allocated power from NTPC is 2598 MW. This is apart from the generation of hydel power after rains. The State Public Sector undertaking APGENCO becomes a waste if private purchases are so allowed and the 1st respondent should also be subjected to a buyout.

27. APSEB Engineers' Association in its further submissions dated 28-10-2017 stated that the installed capacity is almost 200% to the peak demand and in fact APSLDC is curtailing the units of APGENCO in order to maintain grid stability. Huge public money is wasted if public sector units are thus backed down and it is better to buy out the plants of both the 1st and 2nd respondents. Hence it requested that renewal of the Power Purchase Agreements may not be approved.

28. APSEB Assistant Engineers' Association in its letter dated 21-10-2017 gave the calculations showing that unit cost is around Rs.5.7 for the respondents while the unit cost on the average for purchase from the exchanges in 2017 is Rs.3.66. There is no need to procure power from the 1st and 2 respondents in the power surplus scenario.

29. The petitioners in a Memo filed on 13-10-2017, calculated the unit cost in different contingencies, actual cost in 2016-17, the effect of revision of natural gas price from 01-10-2017, the variable cost of NLC Stages 1 & 2 and the average cost on energy purchases from exchanges from April to August, 2017. The petitioners

stated about the allocation of excess gas not scheduled to the 1st and 2nd respondents to be resulting in supply of cheaper energy to industrial consumers by APGPCL resulting in loss to the distribution companies. The distribution companies should be permitted to avail cheaper generation to the extent of 432 MU more so due to anticipated severe coal constraints for next six months, for the grid availability and stability and due to decision of the State Government, the distribution companies shall be allowed to purchase power from these three plants.

30. The point for consideration is whether the procurement of power from the 1st and 2nd respondents and Godavari Gas Power Plant by the petitioners should be approved for the year 2017-18 as prayed for.

31. The Interlocutory Application herein is only seeking the relief of approval for procurement of power from respondents 1 and 2 and Godavari Gas Power Plant during the year 2017-18, while the Power Purchase Agreement with the 1st respondent admittedly expired on 01-01-2016. The proposal to renew the Power Purchase Agreement for ten years on mutually agreed tariff is not the subject matter of the present Application, while the petitioners claimed the procurement of power from the 1st respondent to have been stopped since 07-04-2017. The letter dated 03-05-2017 along with the draft Power Purchase Agreement for approval for procurement of power from the 1st respondent was stated to be pending with the Commission. Similarly, the Power Purchase Agreement between the petitioners and the 2nd respondent also expired on 18-04-2016 and it was stated that the petitioners submitted proposal of renewal of the Power Purchase Agreement with the 2nd respondent to the State Government. After receiving it, they will approach the Commission for renewal and fixation of tariff. The petitioners therefore requested for approval for procurement of power from the respondents 1 and 2 de hors the

approval of renewed Power Purchase Agreements. They also requested for fixation of an adhoc single part tariff in terms of the existing Power Purchase Agreement subject to adjustment later on approval of renewal of the Power Purchase Agreement and fixation of tariff. In so far as Godavari Gas Power Plant is concerned, the petitioners themselves exercised buyout option and took over the power plant with the approval of the State Government. They claimed that the power plant continued generation and supply being the own project of the petitioners and requested for revising the fixed and variable cost in the manner presented by them.

32. While the petitioners did not place any information before the Commission so far about any final decision on the ownership of Godavari Gas Power Plant, it is only after completion of the total buyout process that the position will be clear about the appropriate future course of action regarding the manner of procurement of power from the said plant or its price.

33. As already stated, the letters addressed on behalf of the petitioners on 03-05-2017 and 20-05-2017 with proposals for purchasing power from the respondents 1 and 2 respectively were withdrawn by the letters dated 22-05-2017 and the petitions said to be in the process of filing on the subject matter were not yet filed before the Commission. Therefore, the request for approval of procurement of power from the respondents 1 and 2 under any Power Purchase Agreements in renewal or fixation of any tariff there-under are not under consideration of the Commission in this Interlocutory Application or otherwise as of now. Similar is the case of Godavari Gas Power Plant in respect of which original request was made by a letter dated 18-05-2017 for revising the variable cost, paying lower fixed cost and ratifying the continued generation of power from that plant, which was withdrawn by

a letter dated 20-05-2017 and in the case of this plant also, any petition proposed to be filed, was not filed so far. As already stated, the letter dated 05-06-2017 from the Commission informed about the acceptance of the request for withdrawal of the proposals with liberty to file petitions. In view of the proposal of the petitioners to file appropriate petitions regarding the subject matter of their earlier letters extracted in detail above, the subject matter of those letters or the proposed petitions except to the extent of any of their contents overlapping the contents of the present Interlocutory Application, may not be open for examination and consideration on merits herein as the same may result in prejudging the issues that may arise for consideration in such petitions on the material that may be placed before the Commission by the petitioners or other stakeholders in such petitions. Under the circumstances, the Commission is compelled to tread carefully a narrow and restricted path to confine its consideration only to the relevant questions involved in the Interlocutory Application.

34. The present Interlocutory Application has been filed under section 62 (4) and section 86 (1) (b) of the Electricity Act, 2003 and Regulation 55 of the Andhra Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations, 1999. Section 62 (4) provides that no tariff or part of any tariff may ordinarily be amended more than once in any financial year, except any changes under fuel surcharge formula. Section 86 (1) (b) makes it a function of the Commission to regulate electricity purchase and procurement process of distribution licensees including its price through agreements for purchase of power for distribution and supply within the State. Regulation 55 of the Business Regulations saves the inherent powers of the Commission. Regarding inherent powers, the Commission is bound to confine itself to the limits laid down by the Hon'ble Supreme Court in its

latest decision in Gujarat Urja Vikas Nigam Limited Vs. Solar Semiconductor Power Company, C.A.No.6399 of 2016 decided on 25-10-2017. Referring extensively to the provisions of the Electricity Act, 2003, the Hon'ble Supreme Court noted that an amendment to tariff by the Regulatory Commission is permitted under section 62 (4) read with 64 (6) and section 86 (1) (a) clothes the Commission with the power to determine the tariff and under section 86 (1) (b), it is for the Commission to regulate the price at which the electricity is to be procured from the generating companies. Noting that there cannot be any quarrel with regard to the power conferred on the Commission with regard to fixation of tariff for the electricity procured from the generating companies or amendment thereof in the given circumstances, the Hon'ble Supreme Court held that the inherent power of the Commission is available to it for exercise only in those areas where the Act or Rules are silent and there cannot be any exercise of the inherent power for dealing with any matter which is otherwise specifically provided under the Act. The interests of the consumers are to be safeguarded in determination of tariff with notice to the public after considering all the suggestions and objections received or the amendments thereof. The Commission being a creature of a statute cannot assume itself any powers which are not otherwise conferred on it.

35. The Electricity Act, 2003, a consolidating legislation was intended among other things for protecting interest of the consumers and rationalization of electricity tariff. The State Commission shall ensure transparency while exercising the powers and discharging its functions as per section 86 (3). The Conduct of Business Regulations, 1999 and the specified powers of a Civil Court enumerated in section 94 guide the Commission in its proceedings.

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36. With this background it should be noted that any of the stakeholders also did not question the jurisdiction of the Commission to consider and decide the Interlocutory Application on merits.

37. In the identical objections of Sri M. Venugopala Rao and others first filed, buyout of the plant from GVK and various questions relating to the same including the absence of any registered Sale Deed so far was questioned in detail but those issues may be the relevant subjects for consideration, if the Commission is approached for any relief relating to buyout or transfer of ownership or fixation of any tariff. The questions raised in that regard may be of some significance but if Godavari Gas Power Plant is fully owned by the petitioners as claimed, whether the same legal persons being the owners of the generating companies and the distribution licensees will obviate the necessity of a Power Purchase Agreement is not crucial for avoiding any arbitrariness or detriment to larger consumer interest in fixing the tariff for such power. As the transfer of ownership and registration of a Sale Deed are still awaited, it will be appropriate not to express any opinion on the same.

38. The objections of A.P. Spinning Mills Association dated 30-06-2017 sought for the copies of the Power Purchase Agreements of all the three generators but as already stated, any Power Purchase Agreements are not the subject matter of the present consideration. The advice of the State Government due to which power was purchased from the 1st respondent upto 07-04-2017 is not provided with this proceeding to confirm or deny whether such advice has been placed before this Commission and whether any orders are passed by this Commission in that regard. While the gas supply agreement has of course become a fait-accompli as pleaded by the Discoms, the same in no way fetters this Commission from discharging its

functions relating to any arrangement or agreement between the petitioners and the 1st respondent. The A.P. Spinning Mills Association rightly cautioned against adding to the problem of plenty and burdening the consumers with fixed costs for backing down already approved sources but the petitioners claimed such burden to be less than the burden of paying fixed cost to the backed down generators and there is no clear proof that such a claim is false or inaccurate. While supply of cheaper power by the APGPCL to its industrial consumers cannot be a matter of complaint for the petitioners, the manner of allocation of gas by GAIL is not a relevant factor to consider reasonableness or acceptability of procurement of power from the 2nd respondent by the petitioners. While the plans of procurement of power need to be revised in tune with the proposed procurement, the petitioners claimed to have made a cost benefit analysis on any questionable terms in respect of the consumers according to their replies.

39. The APSEB Engineers' Association was mainly referring to the fixed and variable cost and penalties etc., to contradict the petitioners. In its objections dated 01-07-2017 the estimated surplus energy for tariff year FY 2017-18, the addition of unallocated power to Telangana from APGENCO and stoppage of power allocation to Telangana State were claimed to aggravate to 2173 MW and if the mission of the State Government were to reduce the tariff from the next year, the increase in the fixed and variable cost is contrary to it. These contingencies were conceived by the association with reference to renewal of the Power Purchase Agreement with the 1st respondent for a further period of ten years while the present Application is confined to short term purchases for this financial year claimed to have been necessitated for the reasons claimed by the petitioners.

40. The APSEB Engineers' Association in its further objections dated 21-10-2017 suggested that the buyout option in respect of the 1st respondent will be beneficial to the State Government and the consumers but the same is a decision to be taken by the petitioners in accordance with their contractual rights on merits on which this Commission cannot express any advance opinion before any such decision is taken and placed before it for consideration. The Association considered it more profitable for the 1st respondent if it sells its power through power exchange than eying the fixed charges from the petitioners. But the consideration herein is not what is profitable to the 1st respondent but to the petitioners and the consumers. Similarly, the anticipation of severe coal shortage for six more months by the petitioners and contrary expectations of the objectors are contingent on future circumstances not susceptible to any mathematical assessment by the Commission. Similarly the circumstances relating to new IPPs i.e., GMR, Gautami, Konaseema and GVK extension or the running of APGENCO plants, RTTP, STSPPS and Dr. NTPPS may be relevant to assess any long term impact which may not be necessarily true of short term purchases. The Association also referred to the absence of comparison of variable cost of all the generators, implementation of backing down instructions, increase in transmission losses, dropping voltage profile, increase in hydel generation in addition to the surplus of 2598 MW etc., which aspects may require a deeper study in the overall planning of the power sector and sacrificing public sector units of APGENCO having a hidden but a strong social impact is undoubtedly a strong circumstance requiring a delicate balancing of interests of public and private generators.

41. In their further objections dated 28-10-2017, the Association again canvassed about protecting public sector units and huge public money and the advisability of

buying out the plants of the 1st and 2nd respondents as done in the case of Godavari Gas Power Plant. As already stated, these are issues on which a decision cannot be arrived at within the scope of this Interlocutory Application.

42. In the last of their representations dated 15-11-2017 with reference to the query by the Commission during the public hearing as to what would be the appropriate conditions to be imposed in case such procurement of power were to be accepted, the Association suggested that as per the Regulation of the Commission, the operating norm should be 80% PLF to get full fixed charges with penalties for under generation and as the AP DISCOMS did not substantiate their decision with relevant data when the PLF of APGENCO is more than 80% and not 37% as projected by AP DISCOMS. Hence, they sought for rejection of the request to protect the interests of the consumers and this suggestion to clarify the operating norms to be followed has to be kept in view, while it is true that the data produced by the AP DISCOMS is not exhaustive but is random.

43. The APSEB Assistant Engineers' Association raised similar objection on 01-07-2017 about possible increase of power purchase cost by entering into any agreement with the 2nd respondent and the availability of emergency power at lower cost in open market through competitive bids without paying fixed charges. But the objection was against the proposed renewal of the PPA with the 2nd respondent. In their further objections dated 21-10-2017, the Association gave its calculations to suggest the unit cost of the respondents to be about Rs.5.70. It is contrary to the calculations given by the petitioners. The Association reiterated that AP DISCOMS can buyout the two units but not procure power from them levying excess burden on the consumers. The statistical data of the Association and the petitioners are at

absolute variance and a statement from the public utility may deserve preference in case of such divergence.

44. The Federation of Farmers' Association has not touched upon any of the questions directly in issue herein.

45. This leaves the different objections of Sri M. Venugopala Rao (and other identical objectors) from 16-06-2017 to 03-11-2017 and the responses of the petitioners to some of the objections of the stakeholders.

46. A single petition for purchase of power from three generators was opined to be improper and illegal, but no specific provision of law or precedent to that effect is placed before the Commission to be relied on in this Interlocutory Application. APPCC's letter or draft Power Purchase Agreement are not under consideration herein, hence making any inquiry into the legal sanctity of APPCC not required here. While the Power Purchase Agreements of those generators which expired due to efflux of time have no relevance for the present consideration except forming part of the chronology of events, as already stated, the terms of any proposed renewal Power Purchase Agreement are also not the subject of the consideration herein and any questionability in terms of propriety therefore does not arise. That competitive bidding is the only route for even short term purchase of power is not shown to be mandatory under any provision or principle and revision and review of or mutual negotiations for tariff or modified terms of the Power Purchase Agreement etc., may not be meticulous expressions but the request of the petitioners plainly and simply understood is for procurement of short term power from the three generators at the price indicated by them for the financial year 2017-18. The buyout of GVK plant and the various issues raised surrounding GVK are beyond the scope of the present

Interlocutory Application and whether the same legal entity can enter into a Power Purchase Agreement with itself is a moot question, a research into which is not indispensable herein. The motives behind the proposal for procurement of power herein, the reasons for renewal of gas supply and transport agreement of the 1st respondent, the pendency of W.P.No.7838 of 2004 and connected matters etc., were suggested to be indicative of undue preference to Lanco (1st respondent) but they can have no direct impact in considering the reasonableness of procurement of power sought for herein. It is true that a long term load forecast and procurement plan etc., are the subject of a pending public hearing but the conclusion of the same is likely consume some more time while the present request is for a short term power supply for the present financial year. An inquiry by CBCID is claimed to have been ordered by the State Government into the various alleged manipulations of three generators and the consequential reports are claimed to have been kept in cold storage about which aspects, there is no material before the Commission in this inquiry. While the four gas based power projects which ought to have been preferred for supply of gas according to the objectors are also private players, the learned objectors have raised issues of comparability of the fixed charges and variable charges of different generators and the Discoms claimed such comparison to be in favour of the three generators herein. Purchase of this power in spite of surplus is claimed to be highly irresponsible but the Discoms claimed that surplus in calculation did not turn out to be surplus in reality. The calculation of the additional financial burden on the consumers due to the liability for payment of fixed cost at Rs.2102.44 crores is not admitted by the Discoms and the considerations for award of additional surcharge from open access consumers are not relevant considerations for the present consideration. The objectors relied on the Indian Electricity Market

Data Analysis by an enterprise of the Government of India to refute the claim of this power being cheaper but such intraday/contingency market depends on the vagaries of the market conditions and forces and may not offer a safe basis for stable planning. The very strong criticism of the "powers that be" and their ways cannot be the subject of determination herein. The objectors ultimately sought for full data (more data than furnished) and the learned Standing Counsel for the petitioners submitted that any further information cannot and is not being furnished.

47. In his further objections dated 18-08-2017, Sri M. Venugopala Rao claimed that so called apparent common error claimed to have been made inadvertently by the Discoms in the tariff calculations of three projects is irrelevant and the subject common petition is uncommon in the annals of the Commission. While the petitioners have not traced the manner in which such an "error" has crept in. If it were such an error as would materially affect the fixation of merit order dispatch by the Commission, the same may not be lightly brushed away as irrelevant. As rules of procedure are intended to be hand maids of justice, the form of the petition making a common prayer in respect of the three generators in an Interlocutory Application should not lead to any denial of civil or substantive rights, if the parties are otherwise entitled to the same. The learned objector worked out the total tariffs for new IPPs and these three plants at Rs.2.98, Rs.3.47 and Rs.3.60 per unit, which the Discoms do not admit. While the various issues about the GVK buyout, gas supply agreement, CBCID inquiry etc., are not the core issues to be considered herein, similar are the questions relating to high cost NCE, RPPO, the inclusion or exclusion of respondents 1 and 2 in the long term power procurement plan, possible manipulations relating to power exchanges etc.

48. In the submissions of Sri M. Venugopala Rao dated 07-10-2017 again the possibility of paying Rs.620 crores more to the 1st respondent and Rs.675 crores more to the 2nd respondent in comparison to new IPPs was referred to and it was stated that it is desirable to give priority to Vemagiri project which agreed for deletion of the clause for payment of fixed charges for deemed generation, subject to certain conditions. While this suggestion of Sri M. Venugopala Rao regarding Vemagiri project has to receive the attention of the concerned authorities, as already stated, the any excessive tariff being payable to respondents 1 and 2 is not admitted by the Discoms.

49. Sri M. Venugopala Rao in his later submissions dated 21-10-2017, questioned the non-furnishing of information about the basis for anticipation of severe coal supply constraints in the next six months and the Discoms not furnishing the relevant information. He also pointed out that the coal which could have generated the installed capacity of 1514 MW supplied to TS Discoms could have been utilized to generate and supply the said power to AP Discoms as per the existing Power Purchase Agreements after the stoppage of supply of thermal power to TS Discoms. In addition is the bundled power from NTPC and any backing down has to follow the merit order dispatch. The direction of the Commission about procurement of energy only from approved sources is also relied on and the contentions of the parties on these aspects are mutual denials of each other's contentions. There is also no definite information about the increase in generation of hydel power and slump in power demand. He stated in detail the reasons for concluding that purchase of power from respondents 1 and 2 by backing down other power units as per the principles of merit order dispatch would impose avoidable additional burden on the Discoms and the consumers and he calculated the possible placement of

As the Commission has already stated, the Commission is not a court of law and it is not its function to pass judgment on the merits of the case. The Commission is a fact-finding body and its task is to determine the facts of the case and to make recommendations on the basis of those facts. The Commission is not a court of law and it is not its function to pass judgment on the merits of the case. The Commission is a fact-finding body and its task is to determine the facts of the case and to make recommendations on the basis of those facts.

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respondents 1 and 2 in merit order. While respondents 1 and 2 obviously did not approach any power exchange, the same may be due to the fluctuating fortunes in any transactions through the power exchanges compared to the stability and continuity of any transactions with the petitioners. The detailed reasons in the submissions dated 21-10-2017 definitely provoke some doubts about the necessity and justifiability of the proposal herein but at the same time, there is also no irrefutable material to totally deny any credit to the claims of the Discoms.

50. Sri M. Venugopala Rao in his further submissions dated 28-10-2017 stated about the generation backing down sequence issued by SLDC with effect from 30-09-2017. The merit order dispatch report of Ministry of Power, Government of India dated 23-10-2017, the energy deviation statement of September, 2017 to the Commission by APPCC etc., to show that transmission charges are not being considered for implementation of the merit order dispatch. PGCIL charges for non-utilization at Rs.0.58 ps per kWh have to be paid and backing down power from NLC will result in an avoidable burden of 0.531 ps per kWh on the consumers. The offer by the Spectrum, 2nd respondent to sell at Rs.3.31 ps per kWh also cannot justify backing down of NLC. He compared the information in the earlier years to indicate that the variable cost of NLC power was not correctly projected and he also relied on the absence of any material to show severe coal supply constraints. He complained against the Discoms not furnishing the information sought by him during the public hearing and as already stated, the Discoms did not furnish any information. The claims of the objectors about the 1st respondent vis-à-vis NLC are denied by the Discoms.

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51. In the final submissions dated 03-11-2017, Sri M. Venugopala Rao complained about the way in which the public hearing is conducted and the Commission responded to their requests, but the Commission can only say that it is acting to the best of its ability, knowledge and judgment in conducting the proceedings including the public hearings or responding to the requests of various parties or stakeholders. When the learned Standing Counsel for the Discoms stated about not producing any further information, it was made clear by the Commission that the necessary inferences about non-production of any information will be drawn if any such information is considered to be vital to the issue and available with the Discoms and suppressed from the Commission and it is for the Commission to arrive at any such conclusion and not for a party or a stakeholder to presume helplessness on the part of the Commission. It should be made clear at this stage that in any judicial proceedings (the proceedings before the Commission having been deemed to be judicial proceedings under section 95 of the Electricity Act, 2003), the court/judge actively participates in the hearing and such interventions are with a view to elicit information or to have a question of law or fact clarified or to stimulate a discussion on conceivable alternative courses of action to do justice.

52. In the objections dated 16-06-2017, the observations of the Chairman of the Commission during some other hearing, about the legal sanctity of APPCC and accusing it of executive arrogance were referred to. The observations of the Commission through its Chairman were neither conclusions nor accusations but were queries to elicit the legal sanctity of APPCC and if it has no legal sanctity, whether its actions amount to executive arrogance. Similar is the observation in the objections about the present public hearing being without a precedent but it is humbly sought to be brought to the notice of all concerned that it is only with a view

to ensure more transparency and accountability that matters which were earlier considered and decided purely as administrative matters within the secrecy of the office of the Commission are now brought to the realm of the public hearing whenever public interest is considered by the Commission to be involved and it is only hoped that mere disagreement of the Commission with the views or perceptions of a stakeholder or a party may not be construed as *per se* indicating any lack of *bona fides* on the part of the Commission.

53. Similar observations of the Chairman during the public hearing that no surplus power is available is not an expression of opinion or view that no surplus power is available but to know about the acceptability of the proposed procurement of power vis-à-vis availability or non-availability of surplus power. If the representatives of Engineers' and Assistant Engineers' Associations were asked as to whether they are expected to know the details of realities as part of the organizations, it is because they came up with facts and figures and not with a view to draw any conclusion from their answers. A hope was expressed that the Commission would respond to all the relevant issues and points raised by the objector and it would be the endeavour of the Commission in all matters including the present one to respond to and decide all the relevant issues and points raised in any proceedings before it. It may not be a word to word, line to line reply but in no case, the Commission failed to deal with and answer any questions which it felt relevant to the inquiry before it. The Commission only wishes to place on record that all its actions and orders or expressions are in *bona fide*, honest and neutral belief of their correctness, reasonableness and justification in fact and law and hopefully the credibility of the Commission on that count is not in doubt. The Commission might have gone wrong in its conclusions and its actions but never knowingly or designedly. However, the Commission does

not claim to be infallible and will continue to make every effort to improve itself without giving any scope for repetition of its mistakes, if any.

54. Be that as it may, the objections dated 03-11-2017 about the silence and unresponsiveness of the Commission and its reluctance to exercise its legitimate authority are noted with pain and anguish and any such impressions or insinuations are left to the good sense of the concerned.

55. Learned objector while sticking to the stand that available surplus power excludes any necessity for the proposed procurement, made suggestions in academic interest as desired by the Commission. He suggested that Discoms may be directed to go through power exchanges or competitive bidding when required and if purchase of power from respondents 1 and 2 is permitted, it may be at the fixed charges applicable at the time of expiry of their Power Purchase Agreements working it out at 80% PLF. In other words, there should be no fixed charges for deemed generation and no reworking of fixed charges on actual generation more so when no additional capital expenditure is incurred. The fixed and variable charges of the respondents 1 and 2 should be firm as in the case of purchase of power from power exchange and the purchase should be strictly following the merit order dispatch without any obligation to the Discoms to pay fixed charges or penalties after taking into account the fixed charges and transmission charges to be paid by the Discoms to those projects which will be backing down in order to purchase this power. The suggestions of Sri M. Venugopala Rao and the Engineers' Associations have to be kept in view accordingly.

56. In their application and their responses, the petitioners have clearly stated about an 'accidental' error in the numbers inadvertently made in the tariff calculation

of these three projects in the filing of Aggregate Revenue Requirement by the distribution companies for the financial year 2017-18. The error described as apparent by the petitioners themselves is difficult, if not impossible, to be believed as inadvertent or innocent. In filing such a crucial document like Aggregate Revenue Requirement, a thorough check at every stage should be indispensable and if the error alone led to the Commission not taking these developers into consideration for the merit order dispatch, it is a very serious consequence that fell upon these three generators for no fault of theirs. Therefore irrespective of the result of this Interlocutory Application, the Discoms should be directed to inquire into the circumstances and persons responsible for such an error and take appropriate corrective measures to prevent recurrence of any such situations in future.

57. The petitioners have stated that the power has been availed in these circumstances even after expiry of the Power Purchase Agreements and that the original Power Purchase Agreement with the 1st respondent was entered into on the basis of international competitive bidding process.

58. The detailed response of the petitioners to the various objections in effect and substance attempted to state that the exclusion of these power producers from consideration in the tariff order of 2017-18 was due to an incorrect statement of the tariff payable based on mistaken numbers and that permitting as short term purchases for this financial year would be beneficial to the Discoms and the consumers. Even in the application, the actual cost of these three generators is projected and the second respondent pointed out that the purchases from the exchanges by the AP Discoms from April, 2017 to August, 2017 was for Rs.3.44 to Rs.4.04 ps per unit making an average of Rs.3.67 ps. The Memo by the petitioners

dated 13-10-2017 also projected the same figures and these circumstances may disclose not only the non-availability of estimated power from the approved stations in these months but also the price of power from exchanges being not less than the cost of power now projected by the three generators. In the Memo dated 25-10-2017, the 2nd respondent offered its power with a further concession at Rs.3.31 ps per kWh/unit and in the Memo of the petitioners dated 13-10-2017 it was clearly stated that if the prices are arrived with a PLF of 80% and a fixed price of 0.4776 kWh being the fixed price paid at the time of expiry of the Power Purchase Agreements, then the effective prices will be Rs.3.23 and Rs.3.09 with 55% and 40% PLF respectively for the 2nd and 1st respondents, which more or less tallies with the suggestions made in academic interest by Sri M. Venugopala Rao. However, as the concerned Ministry of Government of India has revised the price of natural gas with effect from 01-10-2017, the increase in gas price is stated to increase the power per unit cost to Rs.3.52 and Rs.3.29 respectively for the 2nd and 1st respondents. While the other reasons relied on by the petitioners to claim that what was offered by the respondents is less than the cost of procurement of power from other generators are not admitted by the objectors / stakeholders, the claims of the petitioners that the cost of power from respondents 1 and 2 or Godavari Gas Power Plant will be less than procurement from other sources in the merit order dispatch even if other generators were to be paid fixed cost will be open to factual and physical verification at the end of the financial year and if it were to be found that the petitioners misled the Commission, the legal consequences under the provisions of the Electricity Act, 2003 should ensue. If procurement of power from respondents 1 and 2 were to be thus cheaper to the petitioners notwithstanding any liabilities towards persons having Power Purchase Agreements with them, the same exfacie is beneficial both to the

distribution companies and the consumers. The cost of power from the Godavari Gas Power Plant is stated to be much less and if appropriate conditions are imposed, the procurement of power for this financial year from these three generators can be permitted accordingly. While leaving open various questions raised outside the scope of the present Interlocutory Application to be determined in appropriate proceedings, this Interlocutory Application has to be ordered on such lines.

59. Therefore,—

- (a) the Applicants/Petitioners shall cause the circumstances and persons responsible for presenting an incorrect picture relating to respondents 1 and 2 and Godavari Gas Power Plant in the Aggregate Revenue Requirement (ARR) of FY 2017-18 duly identified in accordance with the prescribed procedure and take necessary corrective measures to prevent recurrence of any such events in future;
- (b) the Applicants/Petitioners are permitted to procure power from the 1st respondent at a fixed cost of Rs.0.96 ps and variable cost of Rs.2.33 ps making a total of Rs.3.29 ps per unit during the FY 2017-18;
- (c) the Applicants/Petitioners are permitted to procure power from the 2nd respondent at a single part tariff of Rs.3.31 ps per unit during the FY 2017-18.
- (d) the Applicants/Petitioners are permitted to procure power from Godavari Gas Power Plant at a fixed cost of Rs.0.79 ps and a variable cost of Rs.2.20 ps per unit during the FY 2017-18;
- (e) the above short term purchase of power shall be strictly following the principle of merit order dispatch and the Applicants/Petitioners shall not be

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liable for any obligations to pay any fixed charges or penalty or otherwise if they do not purchase power from these three plants;

(f) there shall be no payment of fixed charges for deemed generation and no reworking of fixed charges based on actual generation in respect of these short term purchases;

(g) the consideration and conclusions herein are purely confined only to the short term purchases for FY 2017-18 and no other issue or matter;

(h) within two months, on expiry of financial year 2017-18, the Applicants/Petitioners shall place before the Commission material to substantiate that these short term purchases did not impose any additional burden on the distribution companies or the consumers due to any payment to any generators permitted in the merit order dispatch, due to these short term purchases.

60. The Interlocutory Application is ordered accordingly, without costs.

This order is corrected and signed on this the 29th day of November, 2017.

Sd/-
P. Rama Mohan
Member

Sd/-
Dr. P. Raghu
Member

Sd/-
Justice G. Bhavani Prasad
Chairman

1. The first part of the document is a letter from the President of the United States to the Congress.

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15. The fifteenth part is a report on the state of the Department of Energy.

16. The sixteenth part is a report on the state of the Department of the Interior.

17. The seventeenth part is a report on the state of the Department of Commerce.

18. The eighteenth part is a report on the state of the Department of Labor.

19. The nineteenth part is a report on the state of the Department of Housing and Urban Development.

20. The twentieth part is a report on the state of the Department of Transportation.

21. The twenty-first part is a report on the state of the Department of Veterans Affairs.

22. The twenty-second part is a report on the state of the Department of the Environment.

23. The twenty-third part is a report on the state of the Department of the Great Outdoors.

24. The twenty-fourth part is a report on the state of the Department of the Arts and Humanities.

25. The twenty-fifth part is a report on the state of the Department of the Future.

26. The twenty-sixth part is a report on the state of the Department of the Past.

27. The twenty-seventh part is a report on the state of the Department of the Present.

28. The twenty-eighth part is a report on the state of the Department of the World.

29. The twenty-ninth part is a report on the state of the Department of the Universe.

30. The thirtieth part is a report on the state of the Department of the Cosmos.



ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION
4th Floor, Singareni Bhavan, Red Hills, Hyderabad 500 004

I.A.No. 16 of 2018
&
I.A.No.18 of 2018
in
O.P.No. 8 of 2018

Dated: 07-07-2018

Present
Justice G. Bhavani Prasad, Chairman
Dr. P. Raghu, Member
Sri P. Rama Mohan, Member

Between:

1. Southern Power Distribution Company of Andhra Pradesh Ltd.
2. Eastern Power Distribution Company of Andhra Pradesh Ltd.
... Applicants/Petitioners

A N D

M/s. Lanco Kondapalli Power Pvt. Ltd. ... Respondent/Respondent

A N D

GMR Vemagiri Power Generation Limited ... Intervention Petitioner
in I.A.No. 18 of 2018

The Interlocutory Application, I.A.No.18 of 2018 has come up for hearing finally on 07-07-2018 in the presence of Sri P. Shiva Rao, learned Standing Counsel for the petitioners, Sri Challa Gunaranjan, learned counsel for M/s. Lanco Kondapalli Power Pvt. Ltd., Ms. Gorantla Sri Ranga Pujitha, learned counsel for GMR Vemagiri Power Generation Limited, Intervention Petitioner, Sri M. Venugopala Rao, Sr. Journalist & Convenor, Centre for Power Studies, Dr. S. Chandra Mouli representing APSEB Engineers Association and Sri S. Prathap

representing APSEB Assistant Engineers' Association, learned objectors. After carefully considering the material available on record and after hearing the arguments of the learned Standing Counsel for the applicants/petitioners, learned counsel for the respondent, learned counsel for the intervention petitioner and the learned objectors, the Commission passed the following:

ORDER

Ms. Gorentla Sri Ranga Pujitha, learned counsel for the intervention petitioner submitted to the Commission and endorsed on the petition that without prejudice to their rights, they are withdrawing the intervention petition, as the parties are availing their alternative solutions. The endorsement is recorded and hence I.A.No.18 of 2018 is dismissed as not pressed, without prejudice to the rights and contentions of the parties, otherwise.

This order is corrected and signed on this the 7th day of July, 2018.

Sd/-
P. Rama Mohan
Member

Sd/-
Dr. P. Raghu
Member

Sd/-
Justice G. Bhavani Prasad
Chairman



गेल (इंडिया) लिमिटेड

(भारत सरकार का उपक्रम - महारत्न कंपनी)

GAIL (India) Limited

(A Government of India Undertaking-A Maharatna Company)

हैदराबाद क्षेत्रीय कार्यालय,
मोड्यूल नं. 105, पहले तल,
एन.एस.आई.सी., ई.एम.डि.बि.वि. बिल्डिंग,
कमलानगर, डा. ए.एस.राव नगर,
ई.सी.आई.एल. (पोस्ट), हैदराबाद - 500 062,

HYDERABAD ZONAL OFFICE
MODULE NO. 105,
1st FLOOR, NSIC-EMDBP BUILDING,
KAMALANAGAR, DR. A.S.RAO NAGAR,
ECIL, (P.O), HYDERABAD - 500 062.

फोन/PHONE : 040-27149500

ई-मेल/ E-MAIL : gailhzhohelpine@gmail.co.in

HZO/MKTG/GSC-GVPGL/2018

Date: 30.08.2018

To
Head- Hydrocarbons,
GMR Vemagiri Power Generation Limited [GVPGL]
Building No. 302, Ground Floor, New Sakthi Bhawan,
Terminal-3, International Terminal
Indira Gandhi International Airport,
New Delhi- 110037

Dear Sir,

Subject: Termination of the existing Gas Supply Contract (GSC) executed on 31.08.2001 and subsequent GSC amendments dated 29.01.2003 and 25.08.2004.

GAIL and M/s. Vemagiri Power Generation Limited (VPGL – 370 MW) executed Gas Supply Contract (GSC) on 31.08.2001 based on the APM Gas allocation (1.64 MMSCMD) by MoPNG vide Letter No. L-12011/7/98-GP dated 26.05.2000 and vide Letter No. L-12011/2/00-GP (XXIII) dated. 05.06.2000. The GSC has been amended twice on 29.01.2003 and 25.08.2004 and the validity of the contract has been extended up to 31.03.2020.

The above GSC, for supply of APM Gas was not operational as gas supplies were not sufficient for existing power projects (LANCO-I, GVK-I / APEPDCL, SPGL & RIL) & it was decided that Gas supplies to the upcoming 4 IPPs (GVPGL, GVK-II, GVK Gautami & KGPL) can be commenced only when additional Gas becomes available (Refer MoPNG Letter No. L-12011/6/03-GP(P) dated 05.12.2005 (attached as Annexure-1).

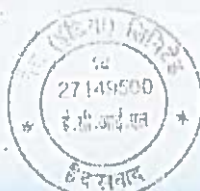
Further, based on GMR request, GAIL vide Letter No. GAIL/HZO/MKTG/Vemagiri, dated 12.04.2010 accepted the name change from M/s. Vemagiri Power Generation Ltd to M/s. GMR Vemagiri Power Generation Ltd (GVPGL).

MoPNG vide Letter No. L-12013/2/2018-GP-I dated 24.08.2018 has now approved the diversion of gas from M/s Godavari Gas Power Plant (GGPP) [a plant of Eastern Power Distribution Company of Andhra Pradesh (APEPDCL)] to M/s GVPGL and pooling of gas between M/s Lanco Kondapalli Stage- I plant and M/s GVPGL on rostering basis.

(Contd. at Page 2)

पंजीकृत कार्यालय
गेल भवन, 16 भीकाजी कामा प्लेस
नई दिल्ली - 110066, इंडिया

REGD. OFFICE :
GAIL BHAWAN, 16 BHIKAJI CAMA PLACE
NEW DELHI-110066, INDIA



सीआईएन/ CIN
1402000DL1984G01018976

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In view of the foregoing, it has been decided to terminate the existing Gas Supply Contract (GSC) dated 31.08.2001 valid till 31.03.2020 and to execute fresh standard APM Gas Sales Agreement (GSA) with M/s GVPGL. Liabilities, if any, pertaining to GSC dated 31.08.2011 shall be dealt with as per the contractual provisions.

Thanking you,

Yours faithfully,

Sy Shinde
Zonal General Manager

संजय शेडे
Sanjay Shende
ज़ोनल मॅनेजर
Zonal General Manager
गैल (इंडिया) लिमिटेड, हैदराबाद
GAIL (India) Limited, Hyderabad

to au
Accepted as above
For & on behalf of M/s.GMR Vemagiri Power Generation Limited



Authorised Signatory: *S. Ranganamurthy*
Name:
Designation: *Head - Hydrocarbons*

Encl: MoPNG Letter No. L-12011/6/03-GP(P) dated 05.12.2005 cited as Annexure -I

No L-12011/6/03-GP (PI)
Government of India
Ministry of Petroleum & Natural Gas

Shastri Bhawan, New Delhi-1
Dated the 5th December, 2005

To

1. Shri S.V. Prasad,
Principal Secretary, Energy,
Government of Andhra Pradesh, Hyderabad,
2. The Chairman & Managing Director,
ONGC, New Delhi
3. The Chairman & Managing Director,
GAIL (India) Limited, New Delhi
4. The Director General,
DGH, New Delhi.

Subject:- Record Note of discussion of the meeting held between Shri S.C. Tripathi, Secretary, Ministry of Petroleum & Natural Gas and Shri Mohd. Ali Shabber, Minister of Information and Public Relations, Energy and Coal, Government of Andhra Pradesh, on 29th November, 2005 at New Delhi regarding shortage of gas supply in KG basin.

Sir,

I am directed to forward herewith a copy of the record note of discussion of the meeting held between Shri S.C. Tripathi, Secretary, Ministry of Petroleum & Natural Gas and Shri Mohd. Ali Shabber, Minister of Information and Public Relations, Energy and Coal, Government of Andhra Pradesh, on 29th November, 2005 at New Delhi regarding shortage of gas supply in KG basin, for information and necessary action.

Yours faithfully,

Encl.: As above.

[Signature]
Under Secretary to the Govt. of India,
Tel. No. 23382583

Copy for information to.

1. PPS to Secretary (P&NG),
2. PS to Spl. Secretary (P&NG),
3. PA to JS(AT), MoP&NG,
4. PA to Dir(SS), MoP&NG.

[Signature]



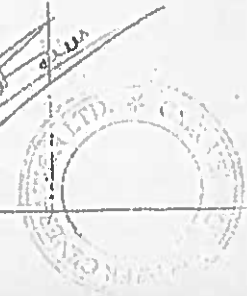
Record Note of discussion of the meeting regarding shortage of gas supply in KG basin held on 29.11.2005

Mr. Mohammed Ali Shabber, Minister for Information & Public Relations Energy & Coal, Government of Andhra Pradesh met Secretary (P&NG) on 29.11.2005 in Shastri Bhawan Office regarding shortage of gas supply in KG basin. The Minister also handed over a copy of his letter written to Minister (P&NG) dated 22.11.2005 (copy enclosed).

2 The Andhra Minister stated that the Andhra Pradesh Government had originally recommended for a pro-rata supply of the available gas to all the existing and upcoming new IPPs against their firm allocations. This recommendation was based on the understanding with the upcoming 4 IPPs that they would not use alternate fuel before 1st January 2007 and that APTRANSCO will not be liable before 1st January 2007 on account of fixed cost. However, the IPPs have not signed the amended PPAs.

4. State Government have subsequently reviewed the implications of pro-rata allocation of the available gas and has found that in such a scenario Government of Andhra Pradesh/APTRANSCO will have to pay about Rs.330 crore upto December 2006 towards deemed generation from the four existing projects. Therefore, the State Govt. have represented to the Hon'ble Prime Minister as well as to the Minister (P&NG) as follows:-

- (i) To supply the available gas to the 4 existing projects to the extent required for achieving threshold PLF and to allocate the balance quantity proportionately to the upcoming 4 projects.
- (ii) To allow dual fuel capabilities clause only for use of naphtha for short periods when gas supply is disrupted.
- (iii) To direct ONGC/GAIL to honour the agreements for gas supply and the increased cost due to non-supply be borne by GAIL/developer

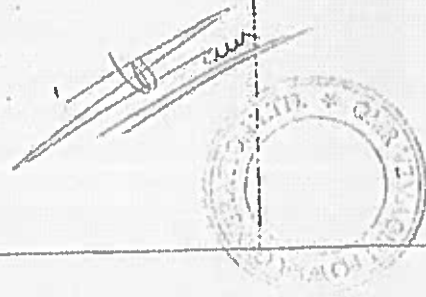


- (iv) To initiate immediate steps to augment the gas supply to all the 8 IPPs of the State as decided in the meeting convened on 28.9.2004 by the Principal Secretary to Prime Minister.

4. On the above points, Secretary (P&NG) responded as follows:

- (a) Regarding point 3(i), MOP&NG would like to be guided by the views of the State Government and, therefore, gas supply to the existing power projects will not be curtailed. Gas supply to the upcoming 4 IPPs can only be given when additional gas becomes available.
- (b) Regarding point 3(ii) on the provision of dual fuel capabilities, it is for the State Government and the Regulator to take a view and to consider whether they would allow the new IPPs to use dual fuel capabilities for power generation till additional gas becomes available:
- (a) With regard to point 3(iii), this Ministry has no objection if legal recourse is resorted to for any breach of agreements for gas supply by ONGC or GAIL. However, this is a matter which is to be examined on its legal merits.
- (b) On point 3(iv) for augmentation of gas supply to the extent of 0.5 MMSCMD by September 2005 and 1.5 to 2.0 MMSCMD by 2nd quarter of 2006, as agreed early by ONGC, MOP&NG will seek the latest prognosis from ONGC which is to be certified by DGH.

5. Secretary (P&NG) further observed that it is unfortunate that GAIL is not able to meet the commitments of gas supply based on which investments were committed by the new IPPs. This has resulted in loss of face and credibility in the public eye. GAIL should examine all possible alternatives to honour gas supply commitments, including import of LNG through EXMAR or imports as CNG, to salvage its credibility. As this is a matter of serious concern, we may also ask GAIL to discuss this matter in their Board.



1. The first part of the paper discusses the importance of the study and the objectives of the research.

2. The second part of the paper describes the methodology used in the study and the data collection process.

3. The third part of the paper presents the results of the study and discusses the findings.

4. The fourth part of the paper discusses the implications of the study and the conclusions drawn from the research.

5. The fifth part of the paper discusses the limitations of the study and the areas for future research.

6. The sixth part of the paper discusses the significance of the study and the contributions it makes to the field.

7. The seventh part of the paper discusses the ethical considerations of the study and the measures taken to ensure ethical standards.



తెలంగాణ తెలంగాణ TELANGANA

Sl.No. 5234 Date 20/08/18 Rs. 50/-

Sold to B. Ravinder Reddy

S/o. Mr. Narayana Reddy Ho. 44/1

For whom M/s. Gail (India) Ltd

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C. Sandhya Rani

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ECIL, Kobra, Medchal-Malkajgiri Dist-500

Cell: 9951237700

GAS SALE AGREEMENT

BETWEEN

GAIL (India) Limited.

As SELLER

AND

M/S. GMR VEMAGIRI POWER GENERATION LIMITED

(370 MW)

As BUYER

FOR THE SALE AND PURCHASE OF NATURAL GAS

[Handwritten signature]



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తెలంగాణ తేలంగానా TELANGANA

No. 5232 Date 20/08/18 Rs. 50/-

To B. Ravinder Reddy

Attn. Mr. Narayana Reddy

For whom M/s. Gail (India) Ltd

Hb. Hyd

K 37203

C. Sandhya

C. SANDHYA RANI

Licenced Stamp Vendor

L.No. 15-26-014/2014, R.L. No. 15-26-046/

H. No. 1-8-67/LIG-60, APJIC Colony

ECIL, Kapra, Medchal-Malkajgiri DI-5000

Cell: 9951237700

This Agreement is made on the 30th Day of Aug. 2018 at Hyderabad

BETWEEN:

GAIL (India) Limited (formerly known as Gas Authority of India Limited), a company incorporated under the Companies Act, 1956 having its registered office at GAIL Bhawan, 16, Bhikaiji Cama Place, R.K. Puram, Ring Road, New Delhi 110 066 India, hereinafter referred to as "SELLER" (which expression shall, where the context so requires or admits of, be deemed to include its successors or assigns) of the first part

AND

GMR VEMAGIRI POWER GENERATION LIMITED a company constituted under the Companies Act, 1956 having its Registered Office at Skip House", 25/1, Museum Road, Bengaluru-560025 in the state of Karnataka, hereinafter referred to as "BUYER" (which expression shall, where the context so requires or admits of, be deemed to include its successors or assigns) of the second part

Parties of the first and second part are individually referred to as a "Party" and collectively referred to as the "Parties"

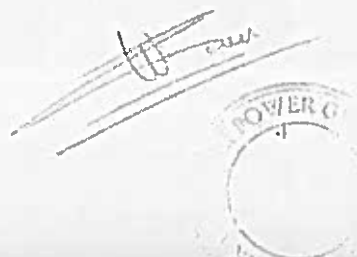
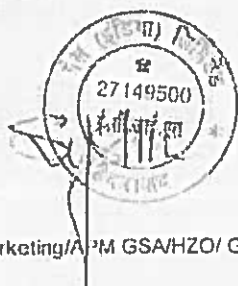
Signature

संजय शेंडे
Sanjay Shende
जोनल महाप्रबंधक

WHEREAS

- Government has allocated natural gas to the BUYER and the distribution and pricing of Administered Pricing Mechanism (APM) gas produced by National Oil Companies (NOCs) viz ONGC & OIL from the oil & gas blocks nominated by the Government to them are fully controlled and determined by the Government.
- SELLER as a Government nominee has the right to procure and sell the Gas from existing Source(s) (fields) of ONGC, OIL, Tapti, Panna-Mukta and Ravva Agreement area and within any other new source(s) from India and/or located outside India including but not limited to Re-Gasified Liquid Natural Gas (R-LNG) and the SELLER owns and operates pipeline network and other associated facilities for supplying and distributing such Gas in a commingled form;
- Gas Sale, Transportation and Delivery under this Agreement by the SELLER to the BUYER is from existing notified fields of ONGC, OIL or any other Gas as notified by the Government from time to time.
- BUYER owns and operates the Power Plant at Vernagiri Village, Kadiam Mandal, East Godavari District, Andhra Pradesh State, using Gas for industrial application as feed and/or fuel and has agreed to purchase and receive Gas from the SELLER at the Delivery Point and pay for the Gas subject to the terms and conditions of this Agreement.
- SELLER agrees to sell, transport and deliver the Gas to the BUYER at the Delivery Point, in its natural state or after stripping of heavier components.
- Pursuant to the allocation of gas to the BUYER by the Government of India, SELLER supplies/supplied Natural Gas to the BUYER under various agreement(s) executed earlier from time to time including latest agreement which was valid upto 31.03.2020 ("Existing Agreement" pre-closed/terminated vide letter dated.30.08.2018) and by Court Orders in some cases. Any amounts receivable by the SELLER from the BUYER on account of Gas supplied under the earlier agreements including Existing Agreement shall be payable to the SELLER and the BUYER undertakes not to commit default of the said obligations. The BUYER further agrees that in case of failure and/or default on its part to discharge such obligation, the right and/or claim to receive Gas either under this Agreement or in any other manner what so ever shall not survive and shall automatically stand forfeited and/or terminated.

Now, therefore, in consideration of the mutual covenants herein the parties agree to the following:



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ARTICLE-1

DEFINITIONS AND INTERPRETATION

The following words shall have the meaning assigned respectively against each one of them in this Agreement:-

"Affiliate" means a company or a body:

- a) Which directly or indirectly controls or is controlled by a company which is a Party to this Agreement; or
- b) Which directly or indirectly controls or is controlled by a company that directly or indirectly controls or is controlled by a company which is a Party to this Agreement.

For the purpose of this definition it is understood that "control" means:

- i) Ownership by one company of more than fifty percent (50%) of the voting securities of the other company; or
- ii) the power to direct, administer and dictate policies of the other company even where the voting securities held by such company exercising such effective control in that other company is less than fifty percent (50%) and the term "controlled" shall have a corresponding meaning.

"Agreement or Contract" means this agreement as may be amended from time to time, including the Recitals and Annexures.

"Agreement Period" has the meaning ascribed thereto in Article 2.2

"ANSI" means American National Standard Institute.

"APM Gas" the Gas identified as APM Gas, under the orders issued by Government from time to time.

"ASTM" means the American Society of Testing Materials.

"Authorized Overdrawal" has the meaning ascribed thereto in Annexure 1 of the Agreement

Authorized Overdrawal Charges" means Charges for the quantities of Gas classified as Authorized Overdrawl Gas in accordance with Annexure 1 of the Agreement

"Business Day" means each Monday, Tuesday, Wednesday, Thursday, Friday and Saturday (excepting second and fourth Saturday of every month) unless any of these Days is declared as a holiday in the state under Negotiable Instruments Act, 1881

- "BUYER's Facilities"** means all Plants, machinery, pipeline and other equipment from the Delivery Point onwards necessary accept and receive delivery of Gas under this Agreement.
- "BTU" or "British Thermal Unit"** means the quantity of heat required to raise the temperature of one (1) pound of Avoirdupois pure water by one degree Fahrenheit (1 degree F) at sixty degrees Fahrenheit (60 degrees F) and absolute pressure of 1013.25 mbar (14.696 psi).
- "Contracted Quantity"** means Daily Contracted Quantity of Gas as mentioned under Article 5.1
- "Cubic Meters" or "Standard Cubic Meter" or "SCM"** means the volume of Gas which occupies one cubic meter of space when such gas is at a temperature of 15°C and at a pressure of 1.0332 kg/cm² (1.01325 Bar) absolute.
- "Daily Contracted Quantity"** means the volume of Gas referred to in Article 5.1
- "Daily Nominated Quantity (DNQ)"** means the quantity of Gas nominated, for sale, Transmission and delivery to the BUYER as per the directive of the Govt. of India/Gas Linkage Committee (GLC) or by the SELLER from time to time on day(s) when availability of Gas from the existing source is less than the sum total of maximum Contracted Quantities of SELLER's all buyers in the given pipeline network of the SELLER through which the sale, Transmission and delivery is being made to the BUYER.
- "Day"** means a period of 24 consecutive hours beginning at 06:00 hours on each day and ending at 06:00 hours on the following day at the Delivery Point and the date of any day shall be the date at its beginning as here defined, and the term "Daily" shall mean from day to day.
- "Delivery Point"** means the point at the flange connecting SELLER'S facilities to the BUYER's facilities at Vemagiri Village, Kadiam Mandal, East Godavari District, Andhra Pradesh State, immediately after the measurement facilities.
- "Effective Date"** means 30.08.2018
- "Existing Source(s)/fields"** means Gas available/produced from the existing fields of ONGC, OIL, Tapti, Panna-Mukta and Ravva Agreement area

ARTICLE-1

DEFINITIONS AND INTERPRETATION

The following words shall have the meaning assigned respectively against each one of them in this Agreement:-

- "Affiliate"** means a company or a body:
- a) Which directly or indirectly controls or is controlled by a company which is a Party to this Agreement; or
 - b) Which directly or indirectly controls or is controlled by a company that directly or indirectly controls or is controlled by a company which is a Party to this Agreement.
- For the purpose of this definition it is understood that "control" means:
- i) Ownership by one company of more than fifty percent (50%) of the voting securities of the other company; or
 - ii) the power to direct, administer and dictate policies of the other company even where the voting securities held by such company exercising such effective control in that other company is less than fifty percent (50%) and the term "controlled" shall have a corresponding meaning.
- "Agreement or Contract"** means this agreement as may be amended from time to time, including the Recitals and Annexures.
- "Agreement Period"** has the meaning ascribed thereto in Article 2.2
- "ANSI"** means American National Standard Institute.
- "APM Gas"** the Gas identified as APM Gas, under the orders issued by Government from time to time.
- "ASTM"** means the American Society of Testing Materials.
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- Authorized Overdrawal Charges"** means Charges for the quantities of Gas classified as Authorized Overdrawl Gas in accordance with Annexure 1 of the Agreement
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THE HISTORY OF THE UNITED STATES

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FROM THE FIRST SETTLEMENTS TO THE PRESENT TIME

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1854

1711

"Fallback Basis Allocation" means supply of Gas on "as and when available basis" without any commitment on the part of the SELLER and depending upon surplus Gas available after meeting the demand of other consumers on firm allocations. Fallback consumer shall use alternate fuel when Gas is not available for supply.

"Financial Year:" The period starting from 06:00 hours of 1st April of each calendar year and ending by 06:00 hours of 1st of April of the succeeding calendar year.

"First Fortnight" means a period commencing at 0600 hours on first day of month and ending on 0600 hours on sixteenth day of the month.

"Force Majeure" has the meaning ascribed to that expression in Article 9.2 thereof.

"Gas" or "Natural Gas" means a mixture of hydrocarbon Gases along with some impurities, consisting essentially of methane, that are the result of decomposed organic material, which are produced from oil and/or Gas wells, excluding those condensed or extracted liquid hydrocarbons that are liquid at normal temperature and pressure conditions to meet Gas specifications given in Annexure-2.

"Government" or "GoI" means the Government of India.

"Government Agency" means the GOI and/or the State Government(s), or any regional or municipal authority thereof, or other central, state or local government or any legislature, ministry, department, commission, board, authority, instrumentality, agency, political subdivision, corporation or commission under the direct or indirect control of the GOI and/or the State Government(s) or any political subdivision of either of them owned or controlled by the GOI and/or the State Government(s) or any of their subdivisions.

"Gross Heating Value (GHV)" or "Gross Calorific Value (GCV)" shall mean the quantity of heat, expressed in MMBTU's or KCals, produced by the complete combustion, at constant pressure, of one (1) Standard Cubic Meter of Gas, with the air at the same temperature and pressure as the gas and the products of combustion are cooled to original temperature and pressure and the water formed by combustion is condensed to liquid state.

"Kilocaloric" or "Kcal"	means the amount of heat required to raise the temperature of one kilogram of water from 14.5 degree of centigrade to 15.5 degree centigrade at a pressure of 1 atmosphere at sea level.
"Marketing Margin"	means part of sale consideration charged by the SELLER from BUYER for sale of gas by the SELLER to the BUYER at Delivery Point, as applicable from time to time
"Metering Facilities"	means the equipment installed and maintained by the Sellers which complies with the requirements of Article 8 for measuring and recording the rate, quality and quantity of Gas deliveries.
"MMBTU"	means one million British Thermal Units.
"Month"	means a calendar month commencing at 06:00 hours on the first day of that calendar Month and ending at 06:00 hours on the first day of the next calendar Month.
"Net Heating Value (NHV)" or "Net Calorific Value (NCV)"	means the quantity of heat, expressed in MMBTUs or KCals, produced by the complete combustion, at constant pressure, of one (1) Standard Cubic Meter of Gas, with the air at the same temperature and pressure as the gas and the products of combustion are cooled to original temperature and pressure and the water formed by combustion reaction remaining in vapor state.
"OIL"	means "Oil India Limited", a public limited company established under the Companies Act, 1956 with its registered office at Duliajan, Assam - 786 602.
"OISD"	means the Oil Industry Safety Directorate of the Government of India, Ministry of Petroleum and Natural Gas, Govt. of India.
"ONGC"	means Oil and Natural Gas Corporation Ltd., a public limited company established under the Companies Act, 1956 with its registered office at Jeevan Bharti, Tower II, 124, Connaught Circus, New Delhi-110001.
"Overdrawl Quantity"	means quantities of gas drawn by the BUYER in excess of aggregate DNQs under all Gas Sales/Supply Agreements with SELLER.
"Price"	means the price for Gas calculated from time to time in accordance with Article 10.

"PNGRB"	means Petroleum and Natural Gas Regulatory Board
"Q MIN"	Q Min will have same meaning as defined in the respective applicable AGA report /as specified by the manufacturer of the Meter.
"Second Fortnight"	means a period from 06:00 hours on sixteenth day of any calendar month to 06:00 hours on the first day of the succeeding calendar month.
"SELLER's Facilities"	means all pipelines including transmission pipeline from various source field(s), point(s) including offshore and/or onshore pipeline connecting from platform/production well up to landfall/delivery point and including plants, machinery, Metering Facilities and other equipment necessary for flow control, processing, compression, measuring and testing of Gas to enable delivery of Gas to the BUYER at the Delivery Point.
"Standard Meter"	a flow meter used for custody transfer conforming to AGA/ISO/Other international standards
"Standard Pressure"	means the pressure of 1013.25 m bar absolute.
"Standard Temperature"	Means the temperature of fifteen degrees Celsius (15 ° C)
"State Government"	means Government of a State or Union of India
"Take or Pay Deficiency Quantity"	means the quantity of Gas as calculated in accordance with Article 5.4.
"Take or Pay Quantity"	means the quantity of Gas calculated in accordance with Article 5.2 (a).
"Taxes"	means all present and future taxes, levies, imposts, service tax, VAT, duties, cess , fees and all statutory levies of any nature whatsoever whether imposed directly or indirectly including by means of withholding by any authorized or empowered governmental, regional, local, municipal or state authority or body of the Government instrumentality, including all penalties, charges and interest relating to any of the foregoing, which arises directly on account of Gas sale/transmission.
"Time"	shall be stated in "Hours" and shall mean 'Indian Standard Time'.
"Transmission Charges"	has the meaning ascribed thereto in Article 10.3

"Unauthorized Overdrawl Charges"

means Charges for the quantities of Gas classified as Unauthorized Overdrawl Gas in accordance with Annexure 1 of the Agreement

"Unauthorized Overdrawl"

has the meaning ascribed thereto in Annexure 1 of the Agreement.

"Year"

means a period of three hundred and sixty five (365) consecutive days or three hundred and sixty six (366) consecutive days when such period includes a twenty-ninth (29th) day of February.



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1.2.1 Interpretation

- (a) Unless the context otherwise requires, a reference to the singular shall include a reference to the plural and vice-versa, and a reference to any gender shall include a reference to all other genders
- (b) Unless the context otherwise requires, a reference to any Article or Annexure shall be a reference to an Article of, or Annexure to, this Agreement;
- (c) In the event of any inconsistency between the main body of this Agreement and any Annexure hereto, the provisions of the main body of this Agreement shall prevail
- (d) The headings of the Articles in this Agreement are inserted for convenience of reference only and shall not affect the meaning or construction of this Agreement;
- (e) A reference to volume of Gas is a reference to the volume in NCV basis unless specified otherwise.
- (f) A reference to a volume of Gas is a reference to the volume at Standard Pressure and Standard Temperature;
- (g) Any reference to a document (including this Agreement) or law shall be deemed a reference to such document or law as it may be amended, supplemented, revised or modified from time to time;
- (h) Any reference to a time of day refers to Indian Standard Time;
- (i) Any reference to any Person shall be deemed a reference to such Person's successors and assigns;
- (j) The terms and provisions of this Agreement, and the respective rights and obligations of the Parties under this Agreement, shall be binding upon, and inure to the benefit of, their respective successors and permitted assigns.
- (k) "Year" "Month" and "Day" wherever used in this Agreement imply that of English calendar.
- (l) The words 'include and including shall be deemed to be qualified by a reference to 'without limitation'
- (m) In the event of conflict between translated version of this Agreement executed in vernacular language and English version, the English version of the Agreement shall prevail as to its interpretation.

ARTICLE-2

GAS SALE, PURCHASE AND AGREEMENT PERIOD

2.1 Gas Sale, Purchase and Transmission

The SELLER agrees to procure, sell, transport Gas and make available for delivery of Gas at the Delivery Point to the BUYER from the Effective Date and the BUYER agrees to take and pay for or pay for if not taken such Gas, in accordance with the terms and conditions in this Agreement.

2.2 Agreement Period

This Agreement shall come into force from the date it is signed and shall remain valid for a period up to **05.07.2021** unless extended in accordance with Article 3 (Extension Period) or terminated by either Party upon written notice to the other prior to the expiry of the duration as provided for in Article 16.


Any amounts receivable by the SELLER from the BUYER on account of Gas supplied shall continue to be receivable by the SELLER and the BUYER undertakes not to commit default on the said obligations of paying such amounts to the SELLER. The BUYER further agrees that in case of failure and/or default on its part to discharge such obligation, the right and/or claim to receive Gas either under this Agreement or in any other manner what so ever shall not survive and shall automatically stand forfeited and/or terminated.

ARTICLE-3

EXTENSION OF PERIOD OF AGREEMENT

In the event of either Party deciding to extend the Agreement Period, such Party shall give to the other a prior notice in writing of its intention at least six months before the expiry of the Agreement Period where upon the Agreement Period shall be extended on such terms and conditions as may be mutually agreed upon at that time, provided further that the renewal Agreement shall be finalized and executed between the Parties before the expiry of the Agreement Period. In the absence of such renewal Agreement, this Agreement shall cease to operate for all purposes.





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ARTICLE 4

DELIVERY AND PRESSURE

4.1 Delivery Point

- (a) Gas sold and transported to the BUYER pursuant to this Agreement shall be delivered by the SELLER to the BUYER at the Delivery Point at BUYER's Power plant premises at **Vemagiri Village, Kadium Mandal, East Godavari District, Andhra Pradesh State**. Gas will be transported from the downstream flange of the pipeline at the outlet of the SELLER's Gas Metering Station herein referred to as Delivery Point by means of pipeline to be provided and maintained by the BUYER.
- (b) The BUYER shall make all proper and adequate arrangement for receiving Gas at the outlet of Gas Metering Station at its own risk and cost taking all precautions as per guidelines of Oil Industry Safety Directorate (OISD). Any defect in the BUYER's intake arrangement arise, shall be rectified by the BUYER. The SELLER at its sole discretion may suspend supply of Gas as soon as any defect is noticed in the BUYER's intake arrangements. The BUYER shall still be liable to pay for Take or Pay Quantity of Gas in accordance with Article 5.2 hereinafter irrespective of the fact of stopping supply of Gas by the SELLER on account of defect in the BUYER's intake arrangements.

4.2 Title and Risk

- (a) The facilities up to the Delivery Point shall be continued to be maintained/constructed, operated and maintained by the SELLER at their own risk and cost
- (b) The facilities downstream from the Delivery Point onwards shall continue to be constructed, operated and maintained by the BUYER at their own risk and cost;
- (c) Title, control and risk of the Gas shall pass from the SELLER to the BUYER at the Delivery Point.

4.3 Delivery Pressure

The SELLER under the normal circumstances of the supply of Gas and normal off-take by the other buyers shall make endeavor to maintain gauge pressure in the range of **31 (Thirty One) Kilograms per Square Centimeters to 34 (Thirty Four) Kilograms per Square Centimeters** at the Delivery Point, subject to availability of the corresponding matching pressures from ONGC, OIL and/or any other source(s) and also subject to the BUYER maintaining appropriate flow and pressure downstream of Delivery Point for flow of Gas.

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ARTICLE- 5

QUANTITY

- 5.1 (a) Subject always to availability of Gas, SELLER's ability to supply to the BUYER and other provisions of this Agreement including but not limited to Article 9, the SELLER agrees to procure, sell, transport and make available for delivery of the Gas at the Delivery Point to the BUYER maximum up to Daily Contracted Quantity (DCQ) of 1.64 (One Point Six Four) Million Standard Cubic Meters Per Day.
- (b) Provided further SELLER agrees to sell, transport and make available for delivery of Gas at the aforesaid Delivery Point to BUYER the Fallback Allocation of Gas of 0.0 (Zero) Million Standard Cubic Meters per Day(MMSCMD) on as and when available basis.
- (c) Provided further, SELLER has the right to nominate the Daily Nominated Quantity (DNQ) of Gas, to be supplied on day to day basis which notwithstanding Article 5.1 (a) and (b), shall be the final quantity for that day(s). For the purpose of the DNQ the SELLER shall inform the BUYER the DNQ of the day latest by 22:00 hrs. Previous day (i.e. for example DNQ for 20th February, shall be informed by 22:00 Hrs. of 19th February)
- (d) Provided further the BUYER shall continue to maintain/build dual fuel/feed capabilities in their plant for meeting their feed/fuel requirement through alternative fuel/feed.

5.2 Take or Pay Quantity Obligation (TOPQ Obligation)

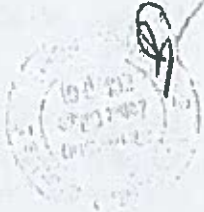
- (a) Notwithstanding Article 12.5, Article 16 and Article 17, for each Year for quantity mentioned under Article 5.1 (a) there shall be an Annual "Take or Pay Quantity" to be taken and paid for or paid for if not taken by the BUYER to be calculated as follows:

Take or Pay Quantity

The BUYER shall pay to the SELLER for actual quantity of the Gas supplied by the SELLER to the BUYER subject to minimum payment for 90% of the annual quantities on the basis of the quantities mentioned in Article 5.1(c), hereinafter referred as "Take or Pay Quantity". The BUYER guarantees to buy during every Financial Year such Take or Pay Quantity of Gas equivalent to the quantity obtained by multiplying 90% of the daily nominated quantity mentioned in Article 5.1 (c) by the number of days in the Financial Year. Upon the BUYER failing to lift the aforesaid minimum guaranteed quantities of Gas during any Financial Year, the BUYER undertakes to pay for the said Take or Pay quantity for such Financial Year.

- (b) Wherever APM gas from ONGC available in a network/field and GAIL is

- 4.4 For effecting deliveries as aforesaid the SELLER shall install and maintain at its own risk and cost the piping control and regulation and metering equipment in the aforesaid Gas Metering Station and all other accessories. The said equipment so installed by the SELLER shall remain the property of the SELLER and the SELLER shall have the right to remove such equipment at any time within twelve (12) months after the expiry of the Agreement. The BUYER shall provide to SELLER, free of cost, the BUYER's land and utilities essentially required for installation, operation and maintenance of Gas Metering Station and allied equipment's required for supply of Gas. Further, the SELLER shall have unrestricted right to use the facilities at the said location for effecting deliveries to the BUYER as well as other parties in the area



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not under obligation to pay ToP to ONGC, GAIL shall not raise invoice for ToP quantity. However, in cases where GAIL is obliged to pay ToP, the same shall be recovered on prorata basis subject to maximum of ToP liability under respective contracts. No ToP on gas price would be applicable individually to consumer (s) in the event the gas has been utilized in the network/field by other consumers and GAIL is not required to pay ToP to ONGC.

5.3 The BUYER shall draw and SELLER shall supply daily the quantity of Gas agreed to in Article 5.1 at an uniform rate spread over a period of 24 (Twenty four) hours.

5.4 **Annual Payment Obligation**

- (a) The BUYER shall during each Financial Year pay for the actual quantity of GAS taken or for a quantity of GAS at least equal to the Take or Pay Quantity referred to in Article 5.2 hereinabove. If the actual quantity is less than the Take or Pay Quantity, the BUYER shall pay for the quantity of GAS not so taken, which will be the quantity equal to the difference between the Take or Pay Quantity for the relevant Financial Year and the GAS actually taken by the BUYER during that Financial Year (referred to as "Take or Pay Deficiency Quantity") at the applicable average price of GAS as mentioned at Article 10 for the relevant Financial Year. The amount of Take or Pay Deficiency Quantity for each Financial Year, if any, shall be calculated by SELLER as above and reflected on the Supplementary Invoice/Debit Note to be raised by the SELLER after completion of each Financial Year. For the purpose of calculation (for Take or Pay Deficiency Quantity), Gross Calorific Value of the Take or Pay Deficiency Quantity shall be deemed to be the volume weighted average of the Gross Calorific Values of Gas delivered during such Financial Year.
- (b) The SELLER shall raise the Supplementary Invoice/Debit Note to the BUYER for the amount of Annual Take or Pay Deficiency Quantity for each Financial Year, if any, after completion of each Financial Year and the BUYER agrees to pay such Supplementary Invoice/Debit Note so raised in full within 3 Business Days of presentation of said invoice. Provided if the BUYER pays the Supplementary Invoice/Debit Note by transfer of funds to the designated account of the SELLER through electronic mode (e-Banking), then the payment shall be made within 4 Business Days of presentation of said Supplementary Invoice/Debit Note through any of the banks (HDFC/ICICI/SBI/as designated by the SELLER from time-to-time). In case payment is made after the due date, an interest at the rate of SBI Base Rate plus 6.25% per annum shall be charged for the period of delay. For calculating interest for any delayed payment, the highest SBI Base rate prevailing during the period of delay shall be taken.
- (c) Further, in case of default in making payments of Supplementary Invoice/Debit Note by the BUYER, the SELLER without prejudice to other rights under the contract shall be at liberty to stop/regulate supply of gas to the BUYER without any further notice and such supplies may not be resumed till all payments are made by the BUYER. During such stoppage/regulation period and the provisions of Article 5.2 hereinabove shall apply and the SELLER shall act in accordance with terms of this Agreement including Article 12.5.

5.5 Substitute Gas

If the BUYER so desire and requests the SELLER for purchase and Transmission of Gas from any other source(s), the SELLER, subject to pipeline and associated facilities and availability of Gas from other source(s), may consider the BUYER's requests and notify to the BUYER the availability of such Gas ("Substitute Gas") from other source(s) along with terms and conditions. If the BUYER accepts in writing the terms and conditions of SELLER's offer, the SELLER may procure, sell and transport substitute Gas to the BUYER.

5.6 Overdrawl Gas

- (a) The provisions pertaining to determination of Overdrawl Gas and the charges for such Gas shall be governed by Overdrawl policy of SELLER as applicable from time to time. The present Overdrawl Policy is placed as ANNEXURE 1 to this Agreement.
- (b) Subject to other provision(s) under this Agreement, nothing under Article 5.3 and Article 5.6 confer/confirm any prescriptive right to the BUYER on such Unauthorized Overdrawl Gas and to draw/purchase such Unauthorized Overdrawl Gas nor obligation on either Govt. of India and/or on the SELLER to procure, sell and transport such Unauthorized Overdrawl Gas to the BUYER.

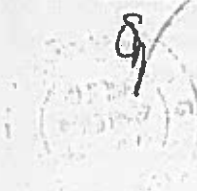
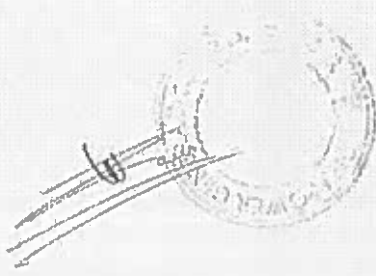


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ARTICLE - 6

QUALITY OF GAS

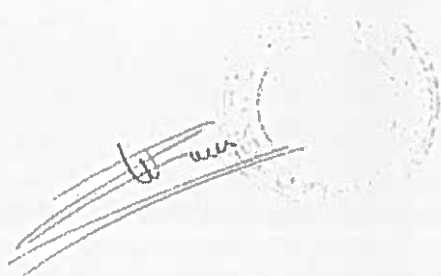
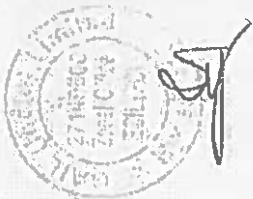
- 6.1 The quality of Gas to be delivered to the BUYER will conform to the specifications laid down in Annexure-2 hereto, which shall form part of this Agreement.
- 6.2 If Gas delivered by the SELLER to the BUYER fails, at any time, to conform to the quality specifications provided in Annexure-2 hereto, the BUYER shall notify the SELLER or its authorized representative of such deficiency in writing and the SELLER shall take steps to remedy such deficiency within a reasonable time. The BUYER reserves the right to refuse to receive and accept the quantity of Gas not conforming to the quality specifications mentioned above and Article 5.2 shall not apply to such quantity of Gas.
- 6.3 Provided further, incase Gas delivered to the SELLER by its upstream suppliers fails to confirm to the quality specifications as per PNGRB guidelines, the SELLER may refuse to offtake such gas from upstream supplier and in turn regulate/stop supplies to the BUYER.
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ARTICLE - 7

PLANNED SHUT DOWN AND STOPPAGE OF SUPPLY

- 7.1. The schedule for annual shut down of gas supply on one side from the SELLER's end and on the other side at the BUYER's end shall be limited to total of 30 days in a Financial Year. The party planning to take a shutdown for the purpose shall give firsthand information in writing to the other party at least seventy (70) days and confirmed notice 30 days prior to the proposed date of shutdown. As far as possible the SELLER and the BUYER shall try to synchronize their shutdown periods. During such shutdown, the provisions of clauses 5.2 shall not be applicable.
- 7.2. The BUYER shall inform the SELLER immediately about any emergency situation and/or defects in BUYER's facility requiring complete or partial stoppage of supply of Gas. In all such cases, the BUYER shall take steps to rectify the defects to enable resumption of supply of Gas. Unless covered under Force Majeure provision, BUYER shall be liable for Take or Pay Quantity in accordance with Article 5.2.
- 7.3. The SELLER shall inform the BUYER immediately about any emergency situation and/or defects in SELLER's facilities requiring complete or partial stoppage of supply of Gas. In all such cases, the SELLER shall undertake steps to rectify the defects for commencing normal supply of Gas. During the period of stoppage, BUYER will not be liable to Take or Pay provision contained in Article 5.2.



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ARTICLE- 3

MEASUREMENT and CALIBRATION

- 8.1. The volume of Gas supplied under the Agreement shall be measured by flow meter installed at the Gas Metering Station of the SELLER. The Gas composition and NCV of Gas shall be as measured by a chromatograph to be installed by the SELLER. The calibration of the online chromatograph shall be established by certified calibration Gas. Heating value shall be computed as per latest edition of ISO 6976/ASTM 3588/GPA 2145 and GPA2172 or any other relevant standards and the same shall be applicable for this Contract. The BUYER may install its check flow meter and check chromatograph so as not to interfere with the operation of the instruments of the SELLER. In case the variation in the measurement of flow between the SELLER's flow meter and the BUYER's flow meter is within ± 2 percent for the flow less than 20 percent and ± 1 percent for the flow more than 20 percent of the SELLER's meter range, the reading of the SELLER's instrument shall be taken as final. If the variation exceeds ± 2 percent for flow less than 20 percent and ± 1 percent for flow more than 20 percent, the final value shall be arrived as per details procedure laid down in Article 8.4 below. The measurement shall include all corrections in installations practices recommended for accurate metering of Gas by the AGA Gas Measurement Committee Report No.3/7/8/9 by American Gas Association (AGA) or any another AGA report as applicable, and shall be binding on the Parties hereto.

In case, the BUYER executes a separate Agreement for supply of Gas, allocation for billing purposes shall be in accordance with such order of priority agreed between the parties in writing.

- 8.2. The flow meter at SELLER's installation shall be proved at a frequency to be mutually agreed upon.
- 8.3. In case the BUYER has any doubt on the proper working of the flow meter of the SELLER, it shall inform the same to the SELLER in writing and may request for checking/calibration of the flow meter. The cost of such special test shall be borne by the SELLER if the percentage of inaccuracy is found to be more than limits stated in Article 8.1 above, but the cost of such special test shall be borne by the BUYER if the percentage of inaccuracy is within limits stated in Article 8.1 above.
- 8.4. If on calibration, the SELLER's meter registers a variation of more than ± 2 (two) percent or if the SELLER's meter is out of service, the following procedure in order of priority whichever is feasible for arriving at the computation of Gas during the period between the last calibration and the present one shall be followed:
- i) By using the recording by the check meter of the BUYER if installed identical to the SELLER's Meter or a Standard Meter and accurately registering; or
 - ii) If 8.4(i) is not possible, by correcting the error if the percentage of error is ascertainable by calibration, test or mathematical calculation; or

- iii) If neither Article 8.4 (i) nor Article 8.4 (ii) is possible, by estimating the volume of Gas delivered by comparison with deliveries during period under similar conditions when the SELLER's meter was registering accurately.

8.5. The period to which the above corrections will apply will be as under;

- i) If any period during which the SELLER's meter has gone wrong is known or agreed upon that will be the period to which the correction is to be applied.
- ii) If the period is not known the correction shall be made for a period equal to half of the time elapsed since the date of the preceding calibration test, provided the correction period does not exceed sixteen (16) days.

8.6. In any event, if at the time of calibration the meter error exceeds half percent it will be recalibrated.

8.7. Upon the written request of the BUYER, the SELLER shall permit the BUYER to examine relevant records, charts and calculations from its metering and measuring equipment. The SELLER shall preserve all such charts, records and calculations till such time the payment covered by the invoice of the SELLER has been paid by the BUYER. And likewise upon the written request of the SELLER, the BUYER shall permit the SELLER to examine relevant records, charts and calculations from its check meter. The BUYER shall preserve all such charts, records and calculations for a minimum period of thirty days from the date of presentation of invoice by the SELLER. Provided in the event of dispute regarding billing/payment such records shall be preserved by the BUYER, till the dispute is finally resolved.

8.8. Notwithstanding Article 5.6, the SELLER reserves the right to regulate the flow of Gas by installing appropriate control devices. Unless and otherwise approved by the Government and/or agreed between the SELLER and the BUYER in writing, if the BUYER draw/take Gas beyond the Maximum Contracted Quantity/DNQ IT SHALL BE AT THE SOLE risk and cost of the BUYER including resultant disruption/stoppage of Gas supply either total or partial either to the BUYER or in the SELLERs transmission/distribution pipeline. BUYER shall be liable for all cost, expenses, damages or losses arising out of or resulting from or incidental to such overdrawal of Gas. Provided further the BUYER shall not be entitled to any claim.

8.9 STEPS FOR METER INSPECTION and HANDLING SUSPECTED METER TAMPERING

1. SELLER's representative shall have the unrestricted access to the meter skid for inspection and its working, at any time.
2. As the Gas is supplied uninterrupted and the BUYER is to draw Gas on continuous basis, the BUYER should make available an authorized representative responsible for the safety and security of the Gas pipeline and the metering skid. Names of such authorized representatives should be given to SELLER in writing in advance; and whenever there is any change, the same should also be intimated in writing. The

representative of the BUYER shall be responsible for associating with SELLER's representative during any kind of work on Metering skid and signing of inspection / reading formats / joint tickets etc.

3. The metering skid shall be surrounded by a fencing and gate. The gate shall be locked and the key shall be in the custody of the BUYER. Metering skid door shall be locked and the key shall be available with the SELLER. Tamper proof security seals shall be put across all the doors with signature of SELLER's representative. Safety of the seal shall be the responsibility of the BUYER. The meter installed in the skid shall be pre-calibrated meter for which calibration records shall be available in SELLER's office. A copy of the same can be issued at the BUYER's request. On the meter, following type of seals shall be provided by the SELLER.
 - (a) Manufacturer seal
 - (b) Calibration lab seal.
 - (c) GAIL holographic seal.
 - (d) GAIL security seal.

The type, no. of seals and condition of seals on the meter shall be recorded on the 4 stage inspection format at the time of installation / change of the meter.

4. For each inspection / visit, other than that for joint ticket reading, where the metering skid is to be opened, the four stage inspection format shall be duly filled by SELLER's representative recording all the observations. The same has to be signed stage wise by representative. In the event of refusal of BUYER's representative to sign the format, the SELLER's representative will record that the BUYER's representative has refused to sign the format; and further record his observations in the format, which will then be pasted and/or delivered to the BUYER's unit. A copy of the format along with the observations recorded therein by the SELLER's representative will be sent to the BUYER through post. It shall be the responsibility of the BUYER to ensure the presence of its representative during the such inspection.
5. Any abnormality observed during the inspection shall be recorded on the 4 stage inspection format.
6. In case of suspected tampering, the meter shall be replaced with another meter in presence of the BUYER's representative and sealed in a box with joint signature of BUYER and SELLERs representatives. No advance notice shall be served to the BUYER for replacing the meter in case of suspected tampering. BUYER shall be required to provide a short shutdown for replacement of the meter as and when informed by SELLER. At all the times of removal of meter, the SELLER shall inform in writing to the BUYER about the reasons of meter removal. In case the BUYER's representative at any stage is absent and/or refuses to sign, it shall be presumed that the meter has been tampered with and the meter without the signature of the BUYER's representative will be sent for further inspection and/or calibration as provided hereinafter, by the SELLER and the BUYER shall accept the actions taken by the SELLER as final.

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7. The meter so taken out shall be sent for third party inspection and calibration at a calibration lab recognized at national level. The date and place of calibration shall be informed to the BUYER in advance and the BUYER may depute authorized representative to the lab. The meter shall be taken out from the sealed box in presence of the BUYER's and SELLER's representative, if available and present; and taken for inspection and calibration and the condition of the seals on the box shall be recorded and signed jointly by the SELLER's and BUYER's representative. Entry in the inspection and calibration room of the lab shall not be allowed. Reports given by the lab shall be duly signed by the SELLER and BUYER's representative, if available and present. In case the representative of either the SELLER or the BUYER is not available, the lab will be free to open the sealed box and proceed for further examination, inspection and calibration and thereafter send the report to the SELLER by post.
 8. Meter shall be considered as tampered, if any of the seals on the meter is found disturbed / broken or missing and / or any of the settings parts inside the meter are found disturbed or changed irrespective of the calibration results. However, if all the seals and parts are found to be okay and only calibration results are found to be having deviation from usual, the meter will not be considered tampered and only calibration error will be taken into account, as per the provisions of this Agreement.
 9. In case, the meter is found tampered, penal action shall be initiated as below –
 - a. Within 10 days of the receipt of inspection and calibration report, confirming tampering, report, a show cause notice shall be issued by SELLER to the BUYER to explain why the penal action should not be initiated.
 - b. The replies, if submitted, shall be reviewed by the SELLER.
 - c. If the replies are not found satisfactory and/or tenable and tampering is established, then the Gas supply shall be discontinued and the SELLER may proceed further for termination of the Agreement and the period of tampering for which Meter Tampering Charges are to be imposed will be determined. Resumption of Gas supply will be regulated as mentioned hereinafter.
 - d. For ascertaining the period of tampering, the Gas drawl data / data from EVC shall be reviewed along with the history of previous meter calibrations. The consumption data shall also be compared with consumption recorded just after replacement of meter. The day or time from where Gas drawl has gone below the normal Gas drawl by the consumer (without any shutdown or otherwise explainable reasons) to the day of replacement of meter shall be considered as the period of tampering. However –
 - (i) If the meter has been changed in between for any reasons and the meter taken out was found not tampered, then the tampering period shall be from the date of replacement of last meter to date of change of present meter.
 - (ii) If in between a four stage inspection has been carried out and nothing abnormal has been found on that day, then tampering period shall be from that day to the date of replacement of present meter.

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- (iii) Four stage inspection of the entire metering skid shall be carried out every quarter. Once this is done, the total tampering period in any case shall not be more than 3 months whereby maximum period for which Meter Tampering Charges can be imposed shall be 3 months.
 - e. Once the tampering period is established, than peak flow recorded during 3 months prior to tampering period shall be taken and that will be treated as quantity of Gas actually consumed by the consumer during the tampering period. The difference between this peak quantity and the actual billed quantity in this period shall be difference quantity or the short fall quantity to be charged from the consumer at the Unauthorized Overdrawl Charges mentioned at Article 5.6 (c). An invoice shall be raised towards actual Gas supplied during tampered period.
 - f. Meter Tampering Charges which shall be over and above the shortfall quantity will be equivalent to the peak flow quantity charged at Unauthorized Overdrawl Charges for the entire tampered period.
 - g. In case the tampering is repeated for the second time, the amount of penal amount calculated as above, shall be charged at a rate which is double of Unauthorized Overdrawl Charges, apart from isolation of Gas supply and/or termination of the Agreement.
 - h. A notice shall be issued to the consumer conveying the differential invoice amount and the penal amount to be paid by the consumer within a period of 15 days, failing which Gas supply will not be restored.
 - i. In case tampering is repeated for the third time, apart from isolation of Gas supply without any further notice, action shall be initiated for termination of Agreement. The BUYER shall pay the penal and other charges as communicated by the SELLER, failing which the SELLER shall have unrestricted right to recover the penal amount together with the cost of pipeline laying and other associated infrastructure from the BUYER as per law.
10. Once Gas supply is stopped because of meter tampering, supply will be restored only after the BUYER pays the full penal amount calculated as above and gives a written apology and undertaking that such an event shall not be repeated in future. Further, before restoration of the supply of Gas in addition to liquidation of all the dues, the BUYER shall be liable to pay an amount of Rs.50, 000/- (fifty thousand only) towards the restoration of Gas supply.
11. In case the BUYER takes legal recourse, the BUYER shall be required to first deposit with the SELLER an interest free deposit by way of Demand Draft in the name of the SELLER of the value equivalent to the penal amount arrived at as hereinabove including the restoration charges of Rs.50, 000 shall also be liable to be paid by the BUYER in case of decision for commencement of supply taken pending final outcome of the proceedings.

8.10 Gas received from ONGCL in commingled form along with GAS from Panna-Mukta and Mid & South Tapti (PMT) fields, where measurement of individual C6 plus (C6+) is being done by appropriate split ratio of C6+ components in the existing gas chromatograph based on analysis of representative samples of GAS at the Delivery Point at Hazira i.e. (Delivery Points of GAS coming from ONGC & PMT fields at Hazira) by key pad or any other appropriate methods, the same methodology using the same split ratio as at delivery point at Hazira shall be used at delivery point under the EXISTING CONTRACT with the BUYER for Sale & Delivery Of Gas provided further to bring clarity, it is elaborated that the measurement of C6,C7,C8 and higher hydrocarbons which is presently being done as C6+,shall be done based on a split ratio of each of these components as determined at the delivery point at Hazira. The methodology for determination of split ratio shall be as agreed between the SELLER & ONGC.

8.11 The BUYER undertakes to strictly follow and comply with the Bureau of Indian Standards (BIS) Pipeline Colour Code and demarcate the pipeline network from the Gas delivery point onwards and inside its premises as per the Bureau of Indian Standards (BIS) Pipeline Colour Code, wherein Canary yellow is the colour code for Natural Gas pipeline.

8.12 Provision for Q Min in Measurement :

- (a) SELLER on its own discretion shall have the option to install metering system of lesser capacity in addition to existing metering system for recording volume flow of Gas during periods when the drawl rate by the BUYER is less than Q Min.
- (b) If required, BUYER shall provide the land and other facilities for the installation and operation of new metering system on the same terms and conditions as per the Agreement.
- (c) In case of reduction /increase of drawl rate below/above Q Min, BUYER shall inform SELLER prior to such reduction/increase of drawl to allow SELLER to plan for switchover of metering system from the one in use to the other metering system.
- (d) The reading recorded by SELLER's meter will be taken as final for all purposes except when the error/variation is established to be more than the threshold specified in Article 8.1 of the Agreement. If the error/variation exceeds the threshold specified in the Article 8.1 of the Agreement, final value shall be arrived as per detailed procedure defined in Article 8.4 of the agreement.

For avoidance of doubt, it is clarified that the article (d) above shall be applicable even for the conditions when flow is less than Q Min.

ARTICLE- 9

FORCE MAJEURE

9.1 Non-Performance or Delay Excused

Any non-performance or delay in performance by any Party of any of its obligations under this Agreement shall be excused if, and to the extent that, such non-performance or delay in performance is caused by Force Majeure Events as mentioned in this Article.

9.2 Force Majeure Events

- (a) For the purpose of this Agreement, the term Force Majeure means any cause or event, whether similar to or different from these enumerated herein, which is beyond the reasonable control of, and unanticipated or unforeseeable by and not brought about at the instance of, the Party claiming to be affected by such event, or which, if anticipated or foreseeable, could not be avoided or provided for and which has caused the non-performance or delay in performance.
- (b) Without limitation to the generality of the foregoing, the term Force Majeure shall include act of God, war, revolt, riot, tempest, flood, earthquake, lightning, direct, indirect consequences of war (declared/undeclared), terrorism, sabotage, fire, hostilities, natural calamities, national emergency, civil disturbances or commotion, embargo or any law or promulgation, regulation or ordinance or executive order whether Central or State or local or Municipal authorities, failure of ONGC/OIL to supply Gas to the SELLER, and explosion in the BUYER's/SELLER's plant/installation but shall not include unavailability of funds.

9.3 Party to Notify Force Majeure Events

Where a Party is claiming suspension of its obligations on account of Force Majeure, it shall promptly, but in no case later than two (2) days after the occurrence of the event of Force Majeure, notify the other Party in writing giving full particulars of the Force Majeure, the estimated duration thereof, the obligations affected and the reasons for its suspension.

9.4 Duty to Mitigate Effects of Force Majeure

A Party claiming Force Majeure shall exercise reasonable diligence to seek to overcome the Force Majeure event and to mitigate the effects thereof on the performance of its obligations under this Agreement provided, the Party affected shall promptly notify the other Party as soon as the Force Majeure event has been removed and no longer prevents it from complying with the obligations, which have been suspended and shall thereafter resume compliance with such obligations as soon as possible.

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9.5 Onus on Party claiming Force Majeure

The Party asserting the claim of Force Majeure shall have the burden of proving that the circumstances constitute valid grounds of Force Majeure under this Article and that such Party has exercised reasonable diligence and efforts to remedy the cause of any alleged Force Majeure. If the Parties are unable in good faith to agree that a Force Majeure event has occurred, the Parties shall submit the dispute for resolution pursuant to Article 15 hereof; provided that the burden of proof as to whether a Force Majeure event has occurred shall be upon the Party claiming a Force Majeure event.

9.6 Extension of Time as a Result of Force Majeure

Where a Party is prevented from exercising any rights or performing any obligations under this Agreement due to Force Majeure, the time for the performance of the obligations affected thereby and for performance of any obligation or the exercise of any right dependent thereon may be extended by such additional period as may be agreed between the Parties or failing agreement, by resolution in accordance with Article 15.

9.7 Force Majeure Event exceeds 30 Days

Notwithstanding anything contained herein above, if an event of Force Majeure occurs and is likely to continue for a period in excess of thirty (30) days, the Parties shall meet to discuss the consequences of the Force Majeure and the course of action to be taken to mitigate the effects thereof or to be adopted in the circumstances.

9.8 Failure to Pay

Notwithstanding the existence of a Force Majeure event, the provisions of this Article 9 shall not in any event excuse any failure to pay or delay in paying money due and payable under this Agreement before the time of occurrence of the Force Majeure event.

9.9 The BUYER shall make payment to the SELLER for actual quantity of Gas supplied during the period of Force Majeure.

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ARTICLE-10

PRICE, TRANSMISSION AND MARKETING COST OF GAS

10.1 Commencing from the Agreement date and during the Agreement Period, BUYER shall pay the Price which shall be arrived in the following manner—:

10.2 **Gas Price**

- (a) The Gas Price payable by the BUYER to the SELLER shall be in accordance with the directives/guidelines/orders etc. of the GoI /MoPNG from time to time. The present gas price is as per the New Domestic Natural Gas Pricing Guidelines, 2014 dated 25th October 2014 notified by the Government (placed at Annexure 3). In accordance with para 8 of the said guidelines, Director General of Petroleum Planning and Analysis Cell (DG-PPAC) under the Ministry of Petroleum and Natural Gas shall notify the periodic revision of prices.

The above price shall be converted to Rs. /MMBTU at RBI reference exchange rate of the month previous to the month during which supply of APM gas is made. The RBI exchange rate of the month would be calculated by taking the average of the RBI reference exchange rates for all days in the relevant month for which the rate is available on the RBI website.

- (b) Notwithstanding Article 10.2(a), any directive, instruction, order, clarifications etc. of the MoP&NG / Government of India issued from time to time in respect of gas price shall be applicable and such gas price shall be payable by the BUYER for gas supplies under this Agreement. Any revision in gas price resulting from such directive, instruction, order, clarifications etc. shall be applicable from the date as specified therein, whether retrospective or prospective.
- (c) BUYER further agrees that for gas supplies beyond APM allocation, the gas price may be different as per directives/orders of the Government and the BUYER shall undertake to pay the same.

10.3 In addition to Gas Price as mentioned under Article 10.2 above, the BUYER shall pay to the SELLER the following charges (as applicable):

- (a) The transmission charges shall be the Provisional Initial/Final Unit Natural Gas Pipeline Tariff for for KG Basin natural gas pipeline network as notified by PNGRB/MoP&NG/Government Agency of i.e. Rs 45.32/MMBTU (Rupees Forty Five and thirty two paisa per MMBTU) (on Gross Heating Value basis).

Provided further that the above transmission charges are subject to revision/variation by the Seller which may be in line with the time to time directives, instructions, orders, etc. of MoP&NG/PNGRB/Government Agency / change in law and accordingly shall be governed by the provisions of such directives, instructions, orders / change in law etc.

- (b) The fixed monthly transmission charges of Rs.Nil (Rupees Nil only) per month plus additional transmission charges at the unit rate of Rs. Nil/ per thousand standard cubic meters (MSCM)/MMBTU

The above fixed monthly transmission charges/additional monthly transmission charges as mentioned at 10.3.b shall be escalated by Nil percent on yearly rest basis with effect from NA.

Provided further that the above transmission charges are subject to revision/ variation by the Seller which may be in line with the directives, instructions, orders, etc. of MoP&NG/PNGRB/Government Agency / change in law and accordingly shall be governed by the provisions of such directives, instructions, orders / change in law etc.

- (c) The Interconnectivity charges of Rs. Nil

- (d) Marketing Margin as applicable from time to time which is presently applicable @ Rs.200 per thousand SCM (linked to calorific value of 10000 Kcal. SCM on Net Calorific Value (NCV) basis for APM Gas supplies.

- (e) Upstream suppliers (ONGC/OIL) charges towards other costs/tariff.

- 10.4 To maintain safe, uninterrupted/continuous Gas supply to the BUYER, the SELLER shall be required to install and operate all such apparatus/equipment including, but not limited to Telemetry and Telecom system. For such facilities created or to be created, the BUYER shall be required to pay all such charges to be calculated as provided under this Article.
- 10.5 In case the BUYER agrees to take Gas under Article 5.5 (Substitute Gas), the BUYER shall pay to the SELLER for the Gas delivered as mentioned in the terms and conditions of the offer of the SELLER including additional transmission charges for such additional pipeline and allied facilities as may be required to provide such Substitute Gas.
- 10.6 The above Price is inclusive of Royalty, and exclusive of Taxes, Duties, cess, VAT, service tax, education cess and all other statutory levies as applicable at present or to be levied in future by the Government or State Government or Municipality or any other local body or bodies payable on purchase of Gas from ONGCL/Other sources (s) by the SELLER or on sale from SELLER to the BUYER and these shall be borne by the BUYER over and above the aforesaid Price.
- 10.7 The applicability of above Price/ Gas price /Transmission charges /Marketing Margin etc., under Article 10 is subject to any law or promulgation or directives, regulation or ordinance or executive order of MoP&NG/Government Agency, if any, from time to time.

ARTICLE 11

VALUE ADDED SERVICES

- 11.1 In case BUYER requests any advisory services or consultancy related to safety audit, energy audit, energy conservation, instrument calibration, maintenance of BUYER's pipeline facility downstream of Delivery Point, training in Gas handling herein referred to as Value Added Services, the SELLER may consider the requests of the BUYER and if possible offer such Value Added Services to the BUYER at a cost on mutually agreed terms and conditions.
- 11.2 Nothing in this Article shall relieve the BUYER from its obligation under this Agreement

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ARTICLE – 12

SECURITY MECHANISM, BILLING AND PAYMENT

12.1 Security Mechanism

The BUYER shall open and maintain at its own cost an Irrevocable, Standby, Revolving, Letter of Credit in favour of the SELLER during currency of the Agreement, without recourse to the BUYER, as per the format at Annexure 4 with any nationalized / scheduled bank (acceptable to SELLER) with a face value equivalent to the value of Gas supplies during two (2) fortnights and aggregate value of four (4) fortnights, where value of one fortnight is taken as 16 days supply of gas at maximum of last 12 fortnights of supply plus transmission charges, any other charges and taxes & duties thereon and as per GAIL policy. In case of new customers/on resumption of gas supply by customer, where past gas supply data is unavailable, LC value shall be equal to: Gas supply during two (2) fortnights and aggregate value of four (4) fortnights, where value of one fortnight is equal to 16 days supply of gas at daily nominated quantity prevailing at that point of time plus transmission charges, any other charges & taxes & duties thereon and as per GAIL policy. Further, the exchange rate shall be RBI Exchange Rate as applicable on the last working day of the fortnight immediately preceding the date of calculation of L/C face value will be considered for conversion of FE component into INR. Provided further that the validity of L/C shall invariably be renewed at least 15 Days before the expiry of the current L/C. The L/C shall automatically be reinstated after invocation. Provided further that all bank charges including negotiation, handling, amendment, renewal, interest charges and any other charges shall be borne by the BUYER.

12.2 Fortnightly Invoice

The SELLER shall raise invoice for the Fortnight covering the following –

1. Gas Quantity actually supplied
2. DNQ
3. Gas Price as mentioned at Article 10.2 for the quantity supplied
4. Fixed Monthly Charges as per Article 10.3 (b)
5. Transmission charges for the quantity supplied as per Article 10.3 (a)
6. Marketing Margin
7. Other charges, taxes and duties as applicable

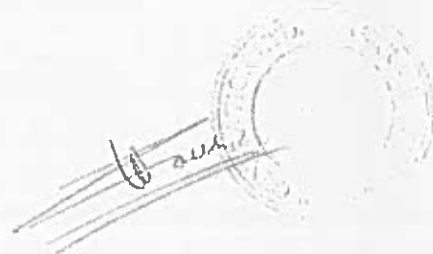
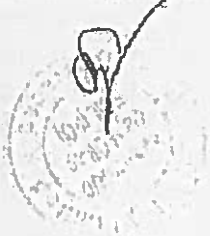
The Seller shall raise separate invoice for Overdrawl of gas and same shall be payable as per the Article 12.5 of this Agreement.

12.3 The invoice and payment for Substitute Gas supplied by the SELLER shall be as per the terms and conditions for such Gas.

12.4 The invoice for Take or Pay Quantity, if applicable, as mentioned at Article 5.4 shall be raised at the end of the Financial Year.

- 12.5 The SELLER will raise the invoices for each Fortnight and the BUYER agrees to pay the invoices so raised in full within 3 (Three) Business Days of receipt of the said invoice either physically or electronically, whichever is earlier by BUYER. Provided if the BUYER pays the invoices by transfer of funds to the designated account of the SELLER through electronic mode (e-banking) then the payment shall be made within 4 (four) Business Days of receipt of the said invoice by BUYER through any of the banks (HDFC / ICICI / SBI / as designated by SELLER from time to time). If for any reasons, the payment is delayed or any disallowance is made from the invoice, the SELLER will present the invoice for full amount or for the amount not paid as the case may be to the Bank against the Letter of Credit and draw the amount. The BUYER shall make arrangements with the bank in a manner that in such an eventuality 3 (Three) Fortnights value of supply of Gas is fully reinstated / replenished. In case of delay in reinstatement of LC or default in payment of Invoice, Debit note etc., SELLER shall have unrestricted right to stop/regulate the supplies.
- 12.6 In case of any discrepancy/dispute, regarding the invoices, the BUYER shall not return the bills or withhold or disallow part or full payment. After making the full payment the BUYER shall lodge a quantified claim with the SELLER within a period of 14 (Fourteen) days from the date of receipt of the related invoice. To the extent the claim is admitted by the SELLER, the SELLER shall issue a credit note in favour of the BUYER and adjust the same in the next invoice to be raised. The SELLER undertakes to consider the claim of the BUYER within a period of 30 (Thirty) days from the receipt of such claim, if found acceptable. Failure of the BUYER to put forward any claim within the time above specified shall be an absolute waiver of any claim.
- 12.7 The BUYER shall always, during validity of the Agreement, keep an Irrevocable Standby Revolving Letter of Credit (L/C) operative as stipulated in Article 12.1 above. In case payment is made after the due date, an interest at the rate of SBI Base Rate plus 6.25% per annum shall be charged for the period of delay. For calculating interest for any delayed payment Base Interest Rate shall be the highest interest rate prevailing during the period of delay. Delayed payment means any payment not received within the period provided in Article 12.5 above. In case of default in making payments by the BUYER or failure of BUYER to keep L/C operative, without prejudice to other rights under the Agreement the SELLER shall be at liberty to stop/regulate supply of Gas without any further notice and such supplies may not be resumed till all payments are made and L/C restored. The provisions of Article 5.2 would be applicable for billing and payment for the period during which the supply of Gas is stopped on account of delayed payment or L/C not being reinstated by the BUYER.

- 12.8 In case of any doubt or clarification by the BUYER whether a particular Cess or Tax or Fee(s) or Duty or Levy or Assessment etc. or any change thereto is effective or imposed, as the case may be, the BUYER shall take-up the matter directly with the concerned Central and/or State Governments or local authority or any such other body and/or bodies without withholding the payments thereto due to the SELLER under this Agreement and shall inform the SELLER regarding the decision of such authorities with documentary evidence.



ARTICLE 13

SELLER' TITLE TO AND USE OF GAS

13.1 Indemnity as to SELLER' Title to Gas

SELLER is liable in accordance with its interest under this Agreement and shall indemnify and hold the BUYER harmless and indemnify it against all losses, damages and expenses of every kind on account of adverse claims to such SELLER' title to the Gas delivered to the BUYER.

13.2 SELLER' Use of Gas

The SELLER shall have the right to use Gas for the purpose of stripping of higher hydrocarbons including but not limited to C₂ (Ethane), C₃ (Propane), C₄ (Butane) and C₅ (Pentane) etc., and operations including pressure maintenance in the pipeline for Transmission and compression of Gas. The SELLER shall also have the right to use such Gas needed to commission the SELLER' Facilities and to use or sell Gas. In the event of any shortfall in delivery of Gas consequent to such usage, the Daily Contracted Quantity or DNQ shall be so adjusted for the purpose of performance of the obligation of the SELLER and the BUYER under this Agreement.



A handwritten signature and a circular stamp, partially obscured by a diagonal line.

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ARTICLE 14

ASSIGNMENT AND WITHDRAWAL

14.1 Right to Assign / Change of Location

- (i) The SELLER may at any time transfer or assign all its rights and obligations under this Agreement to any other associated company or corporation by giving prior notice in writing to the BUYER of such transfer or assignment. Subject to Article 14.2, the rights or obligations hereunder shall not be assigned or transferred in part or in whole by any Party hereto without the prior written consent of the other Party. No assignment shall be effective unless the assignor and assignee have agreed in writing through a Tripartite Agreement that the assignee shall be bound by all the terms and conditions of this Agreement and to assume all of the assignor's rights and obligations under this Agreement with respect to the assigned interest from the date of execution of such Tripartite Agreement.

The BUYER's request for Assignment/Transfer of Rights or change of location shall be dealt in accordance with the orders issued by the GoI from time to time. The present orders in this regard are MoP&NG letter no L-11018/1/09-GP dated 11/03/2010 (Annexure 5) and letter no. L-11018/1/2009-GP dated 21.02.2012 (Annexure 6).

14.2 Liabilities

Any Assignment by either SELLER or BUYER shall be released and discharged from all liabilities and obligations under this Contract except for those obligations and commitments accrued prior to the effective date of the assignment or withdrawal, as the case may be.

ARTICLE - 15

DISPUTE RESOLUTION

- 15.1 GAIL (India) Limited has framed GAIL (India) Ltd Conciliation Rules 2010 in conformity with supplementary to Part - III of the Indian Arbitration and Conciliation Act 1996 for speedier, cost effective and amicable settlement of disputes through conciliation. A copy of the said rules is made available on GAIL's web site www.gailonline.com for reference. Unless specified otherwise in the Agreement all disputes shall be settled in accordance with the said GAIL (India) Ltd Conciliation Rules 2010.
- 15.2 Any dispute(s)/difference(s)/issue(s) of any kind whatsoever between/ amongst the Parties arising under/out of/in connection with this Agreement shall be settled in accordance with the provisions of this Article.
- 15.3 In case of any dispute(s)/difference(s)/issue(s), a Party shall notify the other Party (ies) in writing about such dispute(s)/ difference(s)/issue(s) between / amongst the Parties and that such a party wishes to refer the dispute(s)/ difference(s)/issue(s) to Conciliation. Such Invitation for Conciliation shall contain sufficient information as to the dispute(s)/difference(s)/issue(s) to enable the other Party (ies) to be fully informed as to the nature of the dispute(s)/difference(s)/issue(s), the amount of monetary claim, if any, and apparent cause(s) of action.
- 15.4 Conciliation proceedings commence when the other Party(ies) accept(s) the invitation to conciliate and confirmed in writing. If the other Party (ies) reject(s) the invitation, there will be no conciliation proceedings.
- 15.5 If the Party initiating conciliation does not receive a reply within thirty days from the date on which it sends the invitation, or within such other period of time as specified in the invitation, it may elect to treat this as a rejection of the invitation to conciliate. If it so elects, it shall inform the other Party(ies) accordingly.
- 15.6 Where Invitation for Conciliation has been furnished, the Parties shall attempt to settle such dispute(s) amicably under Part-III of the Indian Arbitration and Conciliation Act, 1996 and GAIL (India) Limited Conciliation Rules, 2010. It would be only after exhausting the option of Conciliation as an Alternate Dispute Resolution Mechanism that the Parties hereto shall go for Arbitration. For the purpose of this Article, the option of 'Conciliation' shall be deemed to have been exhausted, even in case of rejection of 'Conciliation' by any of the Parties.
- 15.7 The cost of Conciliation proceedings including but not limited to fees for Conciliator(s), Airfare, Local Transport, Accommodation, cost towards conference facility etc. shall be borne by the Parties equally.
- 15.8 The Party raising the dispute shall freeze claim(s) of interest, if any, and shall not claim the same during the pendency of Conciliation proceedings. The Settlement

Agreement, as and when reached/agreed upon, shall be signed between the Parties and Conciliation proceedings shall stand terminated on the date of the Settlement Agreement.

15.9 Arbitration

Any Dispute arising in connection with the Existing Contract which is not resolved by the Parties through amicable settlement shall be settled through Arbitration as under:

Where the BUYER is a Government Company or a Central Government Undertaking / Department:

- (a) in the event of any dispute or difference relating to the interpretation and application of the provisions of this Agreement, such dispute or difference shall be referred by either party for arbitration to the sole arbitrator in the Department of Public Enterprises to be nominated by the Secretary to the Government of India in charge of the Department of Public Enterprises. The Arbitration and Conciliation Act, 1996 shall not be applicable to arbitration under this Article. The award of the arbitrator shall be binding upon the parties to the dispute, provided, however, any party aggrieved by such award may make further reference for setting aside or revision of the award to the Law Secretary, Department of Legal Affairs, Ministry of Law and Justice, Government of India at New Delhi. Upon such reference the dispute shall be decided by the Law Secretary or the Special Secretary/Additional Secretary authorized by the Law Secretary, whose decision shall bind the Parties finally and conclusively. The Parties to the dispute will share equally the cost of arbitration as intimated by the arbitrator.
- (b) in the event either Party ceases to be a Government Company, due to privatization or disinvestment or otherwise, the dispute or differences relating to the interpretation and application of the provisions of this Agreement between the Parties shall still be referred to the arbitration proceedings provided above in Article 15.9(a), as per office memorandum No. DPE/4(10)/2001- PMA G 21, dated 22 January, 2004 of the Department of Public Enterprises, Ministry of Heavy Industries and Public Enterprises, Government of India;

Where the BUYER is other than a Government Company/Central Government Undertaking/Department

- (c) The disputes shall be settled by Arbitration by a Sole Arbitrator and procedure for appointment of Sole Arbitrators shall be as follows:

On invocation of the Arbitration clause by a Party, GAIL may suggest a panel of three independent and distinguished persons to the other party to select any one among them to act as the sole arbitrator.

In the event of failure of the other party to select the sole arbitrator within 30 days from the receipt of the communication suggesting the panel of arbitrators, the right of selection of sole arbitrator by the other party shall stand forfeited and GAIL shall have discretion to proceed with the appointment of the sole arbitrator. The decision of GAIL on the appointment of Sole Arbitrator shall be final and binding on the parties.

The Award of the Sole Arbitrator shall be final and binding on the parties and unless directed/awarded otherwise by the Sole Arbitrator, the cost of arbitration proceedings shall be shared equally by both the parties. The arbitration proceeding shall be in English language and the venue shall be at New Delhi, India.

Except to the extent as mentioned in Article 15.9, the provisions of Arbitration & Conciliation Act 1996 and the rules framed there under shall be applicable.

This Article 15.9 shall survive the termination or expiry of this Agreement.

The Government Company shall have the same meaning as ascribed in the Company's Act, 1956.

Notwithstanding the above, where Buyer indulges in corrupt/fraudulent/Collusive/Coercive practices and the same is under investigation by CBI or Vigilance or any other investigating agency or government etc., the same shall not be the subject matter of the arbitration or conciliation mechanism.

15.10 Continue performance

While any Dispute under this Agreement is pending, for settlement before the Arbitration, the Parties shall continue to perform all of their respective obligations under this Agreement without prejudice to the final determination in accordance with the provisions under this Article 15.

15.11 No payments due to the SELLER shall be withheld on account of such legal proceedings.

ARTICLE 16

TERMINATION OF AGREEMENT

- 16.1 Except as provided otherwise, this Agreement may be terminated at any time before expiry of the Agreement Period with the mutual consent of the Parties.
- 16.2 Notwithstanding anything above, the Agreement may be terminated by the SELLER for any act of commission or omission in breach of Article 17.1



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ARTICLE - 17

RESALE AND RESTRICTION ON USE OF GAS

- 17.1 The BUYER shall not sell Gas to any other party nor shall use it for any other purpose/application other than those contemplated in GLC/MoPNG allocation and/or any directives/orders/instructions/advice/clarifications etc., from MoP&NG/GoI with regard to usage of gas sold under this Agreement, unless and otherwise approved by the GoI. In case BUYER is found using gas for any other purpose/application other than those contemplated in GLC/MoPNG allocation and/or any directives/orders/instructions/advice/clarifications etc., from MoP&NG/GoI, the Seller shall have unrestricted right to stop/ restrict gas supply to the BUYER.
- 17.2 The BUYER undertakes to submit to the SELLER, the certificates pertaining to end use of the Gas supplied under this Agreement in the manner and format as sought by the SELLER from time to time.



ARTICLE 18

GENERAL PROVISIONS

18.1 Waiver

No breach of any provisions of this Agreement will be waived except with the express written consent of the party not in breach. Any waiver or delay by any Party of any default by any of the other Party or Parties in the performance of this Agreement shall not operate as a waiver of any other default of that Party or those Parties.

18.2 Governing Law

This Agreement and the rights and obligations of each Party under this Agreement are subject to and shall be governed by the Laws of India.

18.3 Notices

(a) Any notice, request, demand or other statement, document or communication required or permitted to be given or provided for under this Agreement shall be in writing and in English and/or Hindi language(s) and sent or delivered by hand or by registered mail, postage pre-paid, E-mail, facsimile (confirmed by a copy sent by registered mail or courier) and shall be addressed to the Party to whom it is to be sent or delivered at the address of such Party set out in this Article 18.3 or such other address of such Party as such Party may from time to time notify in writing to the other Party.

(i) If to the SELLER:

Zonal General Manager/OIC
GAIL (India) Limited
Hyderabad Zonal Office, Module No: 105, 1st Floor
NSIC-EMDBP Building, Kamalanagar, Dr.A.S.Rao Nagar
ECIL (Post), Hyderabad-500062
Tel: 040-27149560-04
Email: sshende@gail.co.in

With copy to:
General Manager (Gas Marketing), New Delhi

(ii) If to the BUYER:

Head- Hydrocarbons,
GMR Vemagiri Power Generation Limited
Building No. 302, Ground Floor, New Sakthi Bhawan,
Terminal-3, International Terminal
Indira Gandhi International Airport,
New Delhi- 110037
Tel: 011-47157670
Email: Ramamurthy.S@gmrgroup.in

18.4 Amendment

Any amendment to this Agreement or any of its provisions shall be valid and binding only if all the Parties to this Agreement approve of it in writing and agree to its incorporation in this Agreement under the signature and seal of person or persons duly authorized and empowered by the Parties for that purpose.

18.5 Entire Agreement

This Agreement shall constitute the full Agreement between the Parties and shall supersede all prior negotiations, representations, proposals and Agreements, whether oral or written, regarding the subject matter of this Agreement.

18.6 Severability and Renegotiation

Should any provision of this Agreement for any reason be declared invalid or unenforceable by final and unappealable order of any court or regulatory body having jurisdiction, such decision shall not affect the validity of the remaining portions, and the remaining portions shall remain in force and effect as if this Agreement had been executed without the invalid portion. If any provision of this Agreement is so declared invalid or unenforceable, the Parties shall promptly negotiate in good faith to frame new provisions to eliminate such invalidity or unenforceability and to restore this Agreement as nearly as possible to its original intent and effect.

18.7 Consequential Losses

Except as provided in this Agreement the Parties are not entitled to any consequential or indirect losses.

18.8 Survival

Any provision of this Agreement that expressly or by implication comes into or remains in force following the termination or expiration of this Agreement shall survive the termination or expiration of this Agreement.

18.9 Further Assurances

The Parties shall execute such additional documents, including consent to assignment or similar documents, and shall cause such additional action to be taken as may be required or, in the judgment of any of the Parties, may be necessary or desirable to effect or evidence the provisions of this Agreement and the transactions contemplated hereby.

18.10 Insurance

The SELLER shall be totally responsible for all insurance coverage relating to person, third party, the Gas supply etc. upto the point of delivery of Gas. Likewise, the BUYER shall be responsible for the above from the point of delivery of Gas and thereafter.

18.11 Consent

The BUYER and SELLER hereby expressly declare and admit that the above provisions have been read and understood to their satisfaction and are executing this Agreement out of their free will and consent.

18.12 Amendment of Agreement due to any change in Law

Upon the occurrence of any change in Law (including any change in judicial/quasi-judicial interpretation or application of any Law) which necessitates or requires any amendment to this Agreement such as the Seller requires to sever or demerge its transmission activities from the Gas sale activities; or if the Seller otherwise decides to unbundle its transmission activities from the Gas sale activities through any form of corporate restructuring or demerger including any change in transmission tariff, the Buyer shall, on being notified by the Seller, fully cooperate with the Seller and do such acts and deeds (including by entering into appropriate assignment / novation deeds) as may be necessary for reflecting any such change in the Agreement.



ARTICLE 19

WARRANTIES AND INDEMNITIES**19.1 SELLER's Warranties**

- (a) All in licenses, permissions, consents and authorizations necessary to enable the SELLER to perform their obligations under this Agreement are valid and subsisting;
- (b) The SELLER (or their Affiliates), is the beneficial owner of interest in the Gas being supplied;
- (c) Pursuant to the Agreement, the SELLER have such rights as are necessary for the SELLER to perform (to the extent such performance is dependent thereupon) its obligations under this Agreement and all such Agreements are valid and subsisting;

19.2 SELLER's Covenants

Except as otherwise mentioned, the SELLER covenant with the BUYER throughout the period of this Agreement;

- (a) Not knowingly to do, or omit to do, any act or thing, or (to the extent that it is within their power to prevent) agree to or permit any amendments or modifications of the Agreement whereby the warranties given under this Article may be rendered invalid or would not be true in all material respects if repeated in full at such time; and
- (b) To exercise and enforce their rights under the aforesaid Agreements in a manner which will not result in a breach of this Agreement.

19.3 BUYER's Warranties

The BUYER has obtained all licenses, permissions, consents and authorizations necessary to enable the BUYER to perform its obligations under this Agreement and that the same are valid and subsisting;

19.4 BUYER's Covenants

The BUYER covenants with the SELLER throughout the period of this Agreement:

- (a) not knowingly to do, or omit to do, or (to the extent that it is within its power to prevent) permit to be done, any act or thing, whereby the warranties given under this Article may be rendered invalid or would not be true in all material respects if repeated in full as at such time; and

[Handwritten signature] 45

- (b) Without prejudice to the BUYER's other payment obligation ensure the payment all such sums from revenues received, prior to making recourse to other sources of income or finance which may be available to the BUYER.

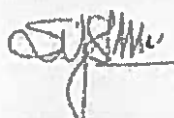
19.5 Indemnities

- (a) The BUYER shall defend, indemnify and hold harmless SELLER against any and all liability for death, injury or illness (arising out of the operation of this Agreement) caused to or suffered by any employee of the BUYER or its Affiliates howsoever caused or arising (including the negligent act or omission of the SELLER, its servants or agents) and shall indemnify and hold harmless the SELLER against any and all costs, damages or expenses whatsoever incurred in respect of any claims, demands, proceedings or causes of action arising in connection with any such death, injury or illness caused or suffered by any employee of the BUYER or its Affiliates.
- (b) the SELLER shall defend, indemnify and hold harmless the BUYER against any and all liability for death, injury or illness (arising out of the operation of this Agreement) caused to or suffered by any employee of the SELLER or its Affiliates howsoever caused or arising (including the negligent act or omission of the BUYER, its servants or agents) and shall indemnify and hold harmless the BUYER against any and all costs, damages or expenses whatsoever incurred in respect of any claims, demands, proceedings or causes of action arising in connection with any such death, injury or illness caused or suffered by any employee of the SELLER or its Affiliates.

IN WITNESS WHEREOF the Parties hereto acting through their properly constituted representative have set their hands to cause this Agreement signed and executed for and on their behalf:

FOR and ON BEHALF OF THE SELLER

FOR and ON BEHALF OF THE BUYER

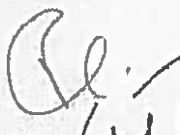


संजय शेडे
Sanjay Shende
जोनल महाप्रबंधक
Zonal General Manager
गैल (इंडिया) लिमिटेड, हैदराबाद
GAIL (India) Limited, Hyderabad

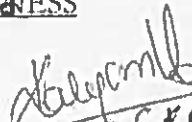
WITNESS

WITNESS

1.


(Milk PATIL)

1.


KALYAN Y.S.)

2.

B. Nandini Reddy
(B.N. REDDY)
11/11/11 (11/11/11)

2.



ANNEXURE - 1

Over Drawl Policy

Over Drawl Policy

ANNEXURE - 1

This has reference to GAIL's correspondence on the above informing to limit the gas drawl to Daily Nominated Quantities to be intimated by GAIL on a daily basis. Further it was also intimated that quantities of gas overdrawn beyond the Daily Nominated Quantities shall attract over drawl charges.

In this regard, it may please be noted that w.e.f. 01.07.2009, the methodology for levy of over drawl charges shall be as follows:

- 1) APM + PMT/RLNG/Spot/other market determined price (MDP) gas including
 - Customers having only RLNG/MDP contract with GAIL (with no APM contract)
 - APM customers having GSAs with other suppliers and GAIL being Transporter
 - RLNG/MDP customers of GAIL having GSAs with other suppliers and GAIL being Transporter

On Daily basis

- If Overdrawl quantities drawn in excess of aggregate DNQs under all GSAs with GAIL is within the tolerance of 3% of aggregate DNQs under all GSAs with GAIL the same shall be treated as Authorized Overdrawl.
- If Overdrawl quantities drawn in excess of aggregate DNQs under all GSAs with GAIL is beyond the tolerance of 3% of aggregate DNQs under all GSAs with GAIL, the entire Over drawl quantities in excess of the aforesaid aggregate DNQs shall be considered as Unauthorized Overdrawl to be charged at 120% of the highest priced gas in the pipeline system.
- Days during which Overdrawl beyond 3% of the aforesaid aggregate DNQs has taken place shall be excluded from the relevant fortnight and remaining day(s) shall be aggregated for calculating the aggregate Overdrawl of that fortnight.
- Authorized Overdrawls to be reconciled over the relevant fortnight.

On Fortnightly basis

If the Authorized Overdrawl for each day, after adjusting under draws in the same priority as mutually agreed in allocation methodology for the days, if any, (excluding those days on which entire Overdrawl quantities have been booked as Unauthorized Overdrawl) aggregated over the relevant fortnight is within 3% of the DNQ of the last day of the fortnight, the same shall be treated as drawl of the highest priced gas as per the respective GSAs with GAIL for which nominations have been made in the relevant fortnight.

If the Authorized Over drawl for each day, after adjusting under draws in the same priority as mutually agreed in allocation methodology for the days, if any, (excluding those days on which entire Over drawl quantities have been booked as Unauthorized Over drawl) aggregated over the relevant fortnight is over 3% of the DNQ of the last day of the fortnight, such Overdrawl quantities shall be considered as fortnightly Unauthorized Overdrawl to be charged at 120% of the highest priced gas in the pipeline system.

In this regard, it is once again clarified that the above methodology of calculation of overdrawl gas does not confer any right on you to overdraw and GAIL reserves the right to regulate/stop gas supply if overdrawl of gas by any consumer(s) has the potential to affect the pipeline hydraulics, safety and health of the system or is likely to have any impact on gas supplies to other consumers.

It is therefore, Buyer is requested for cooperation in maintaining the pipeline system discipline by not resorting to overdrawl and to restrict Buyer's gas consumption to quantities indicated on daily basis in the form of Daily Nominated Quantities.

Annexure -2

SPECIFICATION OF GAS

The Gas shall have the following limits of composition at the delivery point:

- | | |
|--|---------------------------------|
| i) Methane | : Not less than 75% by volume |
| ii) Other Gaseous Hydrocarbons | : Not more than 20% by volume |
| iii) Non-combustible Gases other Than Hydrocarbons including Nitrogen, Carbon-dioxide. | : Not more than 8% by volume |
| iv) Total Sulphur content as H ₂ S | : 10 ppm vol. (Max) |
| v) Moisture content | : No free water will be present |



ANNEXURE - 3

New Domestic gas pricing policy:

(TO BE PUBLISHED IN THE GAZETTE OF INDIA,
EXTRAORDINARY, PART 1, SECTION 1)

GOVERNMENT OF INDIA
MINISTRY OF PETROLEUM AND NATURAL GAS

New Delhi, Dated: 25th October, 2014

New Domestic Natural Gas Pricing Guidelines, 2014

No.22013/27/2012-ONG D.V.—In supersession of this Ministry's Gazette notification no. 22011/3/2012-ONG.D.V dated 10.1.2014, the Government of India hereby notifies the New Domestic Natural Gas Pricing Guidelines, 2014, as hereunder:-

1. The wellhead gas price* (P), under these guidelines would be determined as per the formula given below:

$$V_{HH} P_{HH} = V_{AC} P_{AC} + \frac{V_{NSU} P_{NSU}}{V_{NSU} + V_{RU}} + V_{RU} P_{RU}$$

$$V_{HH} = V_{AC} + V_{NSU} + V_{RU}$$

Where

- (i) V_{HH} = Total annual volume of natural gas consumed in USA & Mexico.
- (ii) V_{AC} = Total annual volume of natural gas consumed in Canada.
- (iii) V_{NSU} = Total annual volume of natural gas consumed in European Union (EU) and Former Soviet Union (FSU) countries, excluding Russia.
- (iv) V_{RU} = Total annual volume of natural gas consumed in Russia.
- (v) P_{HH} and P_{NSU} are the annual average of daily prices at Henry Hub (HH) and National Balancing Point (NBP) respectively, less the transportation and treatment charges as given in para 2.
- (vi) P_{AC} and P_{RU} are the annual average of monthly prices at Alberta Hub and Russia (as published by Federal Tariff of the Russian Government or equivalent source) respectively, less the transportation and treatment charges as given in para 2.
- (*) Well head price refers to the price of gas receivable by the producer of gas at the contract area/lease area from the buyer of gas. In case of on-land blocks, the price receivable by the contractor (producer) in the contract area will be the well head price. In case of offshore blocks, if the gas is processed and sold in the offshore contract area,

the price receivable at the offshore will be the well head price. If the gas is brought to landfall point for processing and is sold at landfall point, the facilities located in the landfall point will be considered part of the contract area and the price receivable at land fall point will be the well head price).

2. The wellhead price for three different hubs and Russia would be determined by deducting US \$ 0.50/MMBTU towards transportation and treatment charges from each of the three Hub prices and Russian price

3. The gas price determined under these guidelines would be applicable to all gas produced from nomination fields given to ONGC and OIL India, New Exploration and Licensing Policy (NELP) blocks, such Pre-NELP blocks where, the Production Sharing Contract, (PSC) provides for Government approval of gas prices and Coal Bed Methane (CBM) blocks except as indicated in para 4 and 5 below.

4. The gas price, so determined under these guidelines shall not be applicable when prices have been fixed contractually for a certain period of time, till the end of such period. This gas price shall also not be applicable where the PSC concerned provides for a specific formula for natural gas price indexation/fixation and to such Pre-NELP PSCs which do not provide for Government approval of formula/basis for gas prices. Further, the pricing of natural gas from small/isolated fields in the nomination blocks of NOCs will continue to be governed by the extant guidelines in respect of these fields issued on 01/07/2013.

5. The matter relating to cost recovery on account of shortfall in envisaged production from D1, D3 discoveries of Block KG-DWN-98/3 is under arbitration. The difference between the price, determined under these guidelines converted to NCM basis and the present price (US \$ 4.2 per million BTU) would be credited to the gas pool account maintained by GAIL and whether the amount so collected is payable or not, to the contractors of this Block, would be dependent on the outcome of the award of pending arbitration and any attendant legal proceedings.

6. The periodicity of price determination/notification shall be half yearly. The price and volume data used for calculation of price under these guidelines shall be the trailing four quarter data with one quarter lag. The first price on



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the basis of aforementioned formula in these guidelines would be determined on the basis of price prevailing at Henry Hub, NBP, Alberta Canada and Russia, between 1st July, 2013 and 30th June, 2014. This price would come into effect from 1st November, 2014 and would remain valid till 31st March, 2015. Thereafter, it would be revised for the period 1st April, 2015 to 30th September, 2015 on the basis of said prices prevalent between 1st January, 2014 and 31st December, 2014, i.e., with the lag of a quarter and so on. The price determined under these guidelines would be announced in advance of the last year, for which it is applicable.

7. The price determined under these guidelines would be applied prospectively with effect from 1st November, 2014.

8. Director General of Petroleum Planning and Analysis Cell (DG PPAC) under the Ministry of Petroleum and Natural Gas shall notify the periodic revision of prices under these guidelines.

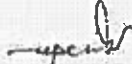
9. For all discoveries after the issuance of these guidelines, in Ultra Deep Water Areas, Deep Water Areas and High Pressure High Temperature (well head shut-in pressure > 690 bars, bottom hole temperature > 150 degree centigrade) areas, a premium would be given on the gas price determined as per the formula given in para 1. The premium under this para shall be determined as per prescribed procedure.

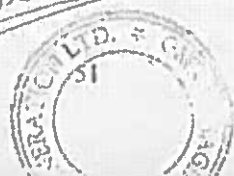
10. Price determined under these guidelines would be on GCV basis.

11. The price, determined under these guidelines would be in US \$ per MMBTU.

12. In the North Eastern Region (NER), the 40% subsidy would continue to be available for gas supplied by ONGC/OIL. However, as private operators are also likely to start production of gas in NER, and would be operating in the same market, this subsidy would also be available to them to incentivize exploration and production.

13. The price determined under these guidelines shall be applicable to all sectors uniformly.

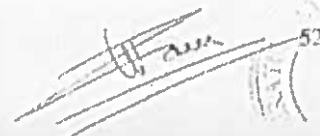

(Upendra Prasad Singh)
Joint Secretary to the Government of India



ANNEXURE - 4

ENCLOSURE-1TERMS & CONDITIONS OF STAND BY LETTER OF CREDIT (L/C)

- 1) Name of the Seller/Transporter-GAIL (India) Ltd (hereinafter referred as "Beneficiary"),
Name of the Buyer/Shipper.....(hereinafter
referred as "Applicant") (to be mentioned in the Letter of Credit L/C)
- 2) This is a **STANDBY IRREVOCABLE REVOLVING LETTER OF CREDIT (L/C)**
which revolves automatically for the next set of documents as soon as the negotiation of
present set of document is over and is valid up to
- 3) The face value of this Letter of credit (L/C) shall be equal to Rs.
(Rupees.....). The aggregate liability under
this Letter of Credit (L/C) is restricted to Rs.
(Rupees.....).
- 4) This Letter of Credit (L/C) is issued under
..... [Name of Contracts/Agreements to
be mentioned] dated and will be valid for any of the documents
such as Invoices/Provisional invoices/Debit notes/Statement of claim/ Demand
letter/Claim Letter etc. raised under the aforesaid contracts/agreement, MoP&NG
directions including any Statutory Authorities as well as supplementary agreements, Side
Letters, Term Sheet, amendments etc. and other addenda thereof.
- 5) All bank charges including negotiation, handling, amendment, renewal, interest charges and
any other charges shall be borne by the opener of Letter of Credit (L/C) i.e. by the
Applicant.
- 6) Payment against this Letter of Credit (L/C) shall be made to the beneficiary immediately on
presentation of a copy of any of the documents such as Invoices/Provisional invoices/Debit
notes/ Statement of claim / Demand Letter/ Claim letter etc. at any time within the validity
period of the Letter of Credit (L/C).
- 7) **Draft/Hundi** drawn under the Letter of Credit (L/C) would be marked the L/C no.
.....dated.....
- 8) This Letter of Credit (L/C) shall also cover requests against partial payment and/or multiple
drawings.


- 9) This Standby Irrevocable Revolving Letter of Credit (L/C) is available for negotiation directly with the issuing Bank/Branch or through Beneficiary's Banker without recourse to the Applicant.
- 10) The issuing Bank unconditionally and irrevocably undertakes to the Beneficiary that if the payment pursuant to any demand is not made at sight, interest @ _____ (rate as applicable on delayed payment under the relevant contract to be entered) would be payable from the date of such demand till the date of actual payment.
- 11) This Letter of Credit (L/C) will automatically be reinstated following any payment pursuant to a Demand i.e. Issuing Bank shall unconditionally and irrevocably undertake to the Beneficiary that, pursuant to any payment against the L/C, Issuing Bank shall automatically reinstate the value of this Letter of Credit (L/C) by the amount paid in order to restore this letter of credit (L/C) to its face value. However, the aggregate liability under this Letter of Credit (L/C) will not exceed Rs..... (Rupees.....).
- 12) The validity of letter of credit (L/C) will be up toThe Issuing Bank unconditionally and irrevocably undertakes to the Beneficiary that, if at least fifteen (15) days prior to the expiry of this Letter of Credit (L/C), Applicant fails to replace or renew such Letter of Credit (L/C) with another Letter of Credit (L/C) as acceptable to the Beneficiary then, the issuing banker shall make full payment of the L/C face value upon receipt of Beneficiary letter/certificate that Applicant has failed to replace or renew the L/C. Such Amount received by the beneficiary, would be treated as a deposit qua payments/receivables from the Applicant towards future Gas Supplies/transmission.
- 13) The Issuing Bank undertakes not to amend any of the terms and conditions of this letter of credit (L/C) without prior consent of Beneficiary during the validity of this Letter of Credit (L/C).
- 14) The issuing Bank certifies that the officer signing this L/C is authorised for this purpose and shall remain binding upon the issuing bank.

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ANNEXURE - 5

MoP&NG Circular dated 11.03.2010

No. L-11018/1/09-GP
Government of India
Ministry of Petroleum & Natural Gas

Shastri Bhawan, New Delhi
Dated March 11, 2010

To

1. The Chairman & Managing Director,
GAIL (India) Limited,
New Delhi.
2. The Chairman & Managing Director,
ONGC,
New Delhi.
3. The Chairman & Managing Director,
OIL,
New Delhi.

Subject: Clarification on Transfer of Rights and Change of location.

Sir,

It has been decided that GAIL, ONGC & OIL should take decisions regarding transfer of rights and change of location of APM allottees in accordance with the following guidelines:-

(A) Change of Location

Change of location to be permitted from one location to another for the same ownership/management, subject to the following:

- (i) The entity undertakes not to undergo any change in the constitution of the entity, except transfer of rights to legal heirs in case of death/permanent total disability/ insanity/ old age of proprietor/ partner (s) in proprietorship / partnership firm in line with the provision 'B' of this policy. Similarly, no such change should have been made since the initial APM allocation.

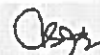
- (iii) Change of location of the plant to be permitted only when the boundary of the new plant is clearly defined and no other factory or plant exists within that boundary.
- (iii) Supply of gas at the new location should be technically feasible.
- (iv) Customer to furnish 'No Objection Certificate' (NOC) from the concerned local authorities
- (v) Customer to submit/undertake to submit other documents, as required by GAIL/ONOC/OIL.
- (vi) Customer to pay expenses on account of shifting/dismantling of existing infrastructure/ new infrastructure to be created for supply of gas, as conveyed by GAIL /ONOC/OIL.
- (vii) Liquidation of dues, if any, before consideration of request.
- (viii) Gas supply should be from the same or connected source.

(B) Transfer of Rights

In case of death/permanent total disability/ insanity/ old age of proprietor/ partner (s) in proprietorship / partnership firm, as the case may be, the legal heirs will be assigned rights & obligations on receipt of such request & production of legal documents thereof.

2. The requests relating to change of location and/or transfer of rights not covered by the above provisions should be referred to MOP&NG for decision.

Yours faithfully,



(K.K. Sharma)

Under Secretary to the Govt. of India
Tel. No. 23073859

ANNEXURE - 6

letter no. L-11018/1/2009-GP dated 21.02.2012 (Annexure 6).

1. The Chairman & Managing Director,
GAIL(India) Limited, New Delhi.
2. Managing Director,
GAIL Gas Ltd., Noida

Subject: ...

Sir,

... to refer to GAIL's letter dated 13.3.2010 regarding the information on other cases of change of constitution/ownership/location in the area of GAIL's operations on 11.3.2010 and to say that all the cases may be referred and necessary action may be taken in the following manner:

- (i) In cases where there has been change of constitution/ownership/location prior to 11.3.2010, GAIL may take appropriate action in accordance with the provisions of their GSA; and
- (ii) In cases where there has been change of constitution/ownership/location after 11.3.2010 and are not covered under the guidelines, the cases may be referred to the Ministry with recommendations of GAIL along with substantiating documents.

Yours faithfully,

...
 Director, Ministry of Petroleum & Natural Gas

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ANNEXURE - 7
MoPNG GUIDELINES DATED 05.12.2005

No L-12011/6/03-GP (P)
Government of India
Ministry of Petroleum & Natural Gas

Shastri Bhawan, New Delhi-1
Dated the 5th December, 2005

- To
1. Shri S.V. Prasad,
Principal Secretary, Energy,
Government of Andhra Pradesh, Hyderabad.
 2. The Chairman & Managing Director,
ONGC, New Delhi
 3. The Chairman & Managing Director,
GAIL (India) Limited, New Delhi
 4. The Director General,
DGH, New Delhi.

Subject: Record Note of discussion of the meeting held between Shri S.C. Tripathi, Secretary, Ministry of Petroleum & Natural Gas and Shri Mohd. Ali Shabber, Minister of Information and Public Relations, Energy and Coal, Government of Andhra Pradesh, on 29th November, 2005 at New Delhi regarding shortage of gas supply in KG basin.

Sir,

I am directed to forward herewith a copy of the record note of discussion of the meeting held between Shri S.C. Tripathi, Secretary, Ministry of Petroleum & Natural Gas and Shri Mohd. Ali Shabber, Minister of Information and Public Relations, Energy and Coal, Government of Andhra Pradesh, on 29th November, 2005 at New Delhi regarding shortage of gas supply in KG-basin, for information and necessary action.

Yours faithfully,

Encl.: As above.

(Sd/-) Sd/-
Under Secretary to the Govt. of India.
Tel No 23382583

Copy for information to

1. PPG to Secretary (P&NG).
2. PS to Spl. Secretary (P&NG).
3. PA to JS(AT), MoP&NG.
4. PA to Dir(SS), MoP&NG.

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Record Note of discussion of the meeting regarding shortage of gas supply in KG basin held on 29.11.2005

Mr. Mohammed Ali Shabbar, Minister for Information & Public Relations Energy & Coal, Government of Andhra Pradesh met Secretary (P&NG) on 29.11.2005 in Shastri Bhawan Office regarding shortage of gas supply in KG basin. The Minister also handed over a copy of his letter written to Minister (P&NG) dated 22.11.2005 (copy enclosed).

2. The Andhra Minister stated that the Andhra Pradesh Government had originally recommended for a pro-rata supply of the available gas to all the existing and upcoming new IPPs against their firm allocations. This recommendation was based on the understanding with the upcoming 4 IPPs that they would not use alternate fuel before 1st January 2007 and that APTRANSCO will not be liable before 1st January 2007 on account of fixed cost. However, the IPPs have not signed the amended PPAs.

4. State Government have subsequently reviewed the implications of pro-rata allocation of the available gas and has found that in such a scenario Government of Andhra Pradesh/APTRANSCO will have to pay about Rs.330 crore upto December 2006 towards deemed generation from the four existing projects. Therefore, the State Govt. have represented to the Hon'ble Prime Minister as well as to the Minister (P&NG) as follows:-

- (i) To supply the available gas to the 4 existing projects to the extent required for achieving threshold PLF and to allocate the balance quantity proportionately to the upcoming 4 projects.
- (ii) To allow dual fuel capabilities clause only for use of naphtha for short periods when gas supply is disrupted.
- (iii) To direct ONGC/GAIL to honour the agreements for gas supply and the increased cost due to non-supply be borne by GAIL/developer.

- (iv) To initiate immediate steps to augment the gas supply to all the 8 IPPs of the State as decided in the meeting convened on 28.9.2004 by the Principal Secretary to Prime Minister.

4. On the above points, Secretary (P&NG) responded as follows.

- (a) Regarding point 3(i), MOP&NG would like to be guided by the views of the State Government and, therefore, gas supply to the existing power projects will not be curtailed. Gas supply to the upcoming 4 IPPs cannot be given till additional gas becomes available.
- (b) Regarding point 3(ii) on the provision of dual fuel capabilities, it is for the State Government and the Regulator to take a view and to consider whether they would allow the new IPPs to use dual fuel capabilities for power generation till additional gas becomes available.
- (a) With regard to point 3(iii), this Ministry has no objection if legal recourse is resorted for any breach of agreements for gas supply by ONGC or GAIL. However, this is a matter which is to be examined on its legal merits.
- (b) On point 3(iv) for augmentation of gas supply to the extent of 0.5 MMSCMD by September 2005 and 1.5 to 2.0 MMSCMD by 2nd quarter of 2006, as agreed early by ONGC, MOP&NG will seek the latest prognosis from ONGC which is to be certified by DGH.

5. Secretary (P&NG) further observed that it is unfortunate that GAIL is not able to meet the commitments of gas supply based on which investments were committed by the new IPPs. This has resulted in loss of face and credibility in the public eye. GAIL should examine all possible alternatives to honour gas supply commitments, including import of LNG through EXMAR or imports as CNG, to salvage its credibility. As this is a matter of serious concern, we may also ask GAIL to discuss this matter in their Board.

ANNEXURE - 8
Allocation Letter by MoPNG dated 05.06.2000

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No. L-12011/2000-GP (all)
 Government of India
 Ministry of Petroleum & Natural Gas

Dated: June 05, 2000

To,

M/s. Vemagiri Power Generation Ltd.
 Generation Ltd.,
 7th Floor,
 Nariman Point,
 Mumbai 400021.

Report:
 M/s. Vemagiri Power
 Generation Ltd.
 Plot No. 82, Road No. 3,
 Begula Hills,
 Hyderabad-500034.

Subject: Allocation of natural gas to M/s. Vemagiri Power Generation Ltd. for 492 MW combined cycle power project at Vemagiri in Andhra Pradesh.

Dear Sirs,

I am directed to convey the decision of the Government to the allocation of 1.84 MMSCMD of natural gas from the ONGC fields in KG Basin on firm basis to M/s. Vemagiri Power Generation Ltd. for 492 MW combined cycle power project at Vemagiri in Andhra Pradesh. The above allocation will be subject to the following conditions:

- (i) M/s. Vemagiri Power Generation Ltd. shall pay the relevant transportation charges and
- (ii) M/s. Vemagiri Power Generation Ltd. shall enter into the gas supply agreement with GAIL within 90 days from the date of issue of this letter.
- (iii) The above power plant proposal to be set up at Vemagiri (A.P.) shall necessarily have dual fuel capability and would not be dependent on natural gas alone.

Yours faithfully,

(I S. Prasad)

Deputy Secretary to the Government of India
 Tel. No. 3301029

Copy for information and necessary to:-

1. Shri P. Chandra Prasad (Planning), GAIL
2. Shri A. S. Sankar (Operations), GAIL, New Delhi
3. Shri A. S. Sankar (Operations), GAIL, New Delhi

GMR/GVPGL/2019/DEL/0011

Date: 22nd February 2019

To,

Annexure ②

The Principal Secretary to Government,
Energy, Infrastructure & Investment Dept.,
Government of Andhra Pradesh,
Secretariat, Velagapudi,
Amravati

Subject: Regarding resumption of APM natural gas supply to GMR Vemagiri Power Generation Limited (GVPGL).

Reference:

1. Government of AP letter D.O.Lr.No. 052/PSP/Energy/2004 dated 06.12.2004
2. Government of AP letter D.O.Lr.No. 7129/Energy (Pr.I) Dept./2005 dated 22.11.2005
3. Ministry of Petroleum and Natural Gas letter No.1.-12011/6/03-GP dated 05.12.2005
4. GVPGL letter No. GMR/GVPGL/2017/MoP/DEL/023 dated 05.05.2017
5. GVPGL letter No. GMR/GVPGL/2017/MoP/DEL/028 dated 10.05.2017

Dear Sir,

1. This has reference to our letters dated 05.05.2017 and 10.05.2017 on the subject of resuming the supply of APM natural gas to GMR Vemagiri Power Generation Ltd. (GVPGL).
2. As you may be aware, GVPGL has a long-term Power Purchase Agreement (PPA) for the supply of 370 MW of power to the Distribution Companies (DISCOMs) in the State of Andhra Pradesh and the State of Telangana. PPA was signed in the year 1997, initially for a period of 15 years and thereafter, in 2007, the PPA was amended to extend up to 2029.
3. In the meantime, upon the recommendation of the Government of Andhra Pradesh, the Ministry of Petroleum and Natural Gas was pleased to allocate 1.64 MMSCM of APM Natural Gas to GVPGL. Accordingly, a Gas Supply Agreement (GSA) was signed between GVPGL and Gas Authority of India Limited (GAIL) for the supply of 1.64 MMSCMD of APM natural gas on firm basis, which is valid till 05.07.2021. However, despite the signing of the GSA, the APM natural gas was never supplied to GVPGL.



4. In this regard, it may be noted that in 2001-2002, the Government of Andhra Pradesh already had four (4) gas based Independent Power Plants (IPPs), namely Lanco, GVK-1, Spectrum and RPL, Samalkot (Old IPPs) having a combined PPA capacity of 999 MW. All these four IPPs also had PPAs with the DISCOMs in the State of Andhra Pradesh.
5. Thereafter, four (4) new IPPs with a combined capacity of 1499 MW were proposed to be setup in the State of Andhra Pradesh, including the IPP to be setup by GVPGL. In these circumstances, with the new IPPs being added, it was decided by the Government of Andhra Pradesh that the allocated APM natural gas under the GSA would be supplied from the available gas by adopting the pro-rata basis mechanism. Letter dated 06.12.2004 from the State Government in this regard is enclosed herewith as **ANNEXURE-1**.
6. However, in 2005, the Government of Andhra Pradesh changed its stand and sent a letter (letter dated 22.11.2005 in this regard is enclosed herewith as **ANNEXURE-2**) requesting the Ministry of Natural Gas and Petroleum to supply APM Natural Gas to the existing four (4) IPPs for the purpose of achieving the threshold Plant Load Factor in respect of the said IPPs. In the Government's view, it would avoid an additional liability of INR 333 crores towards Deemed Generation without availing full generation from the existing IPPs. It was also proposed that the balance quantity of gas may be allocated proportionately for the upcoming four (4) IPPs.
7. The request made by the State Government was, eventually, accepted by the Ministry on 05.12.2005 (letter dated 05.12.2005 from the Ministry in this regard is enclosed herewith as **ANNEXURE – 3**). As a result of this decision, GVPGL was completely deprived of its legitimate share of APM natural gas on pro-rata basis despite the existence of a firm GSA with GAIL.
8. Eventually, with the diversion of APM natural gas from the old IPPs for a brief period, GVPGL was able to somehow achieve COD on 16.09.2006. However, pursuant to the COD, the plant remained stranded until April 2009, except for brief periods in between when the plant was able to operate with the diversion of natural gas from old IPPs.
9. Thereafter, the Ministry of Petroleum and Natural Gas decided to allocate natural gas to GVPGL from Reliance Industries Limited, KG-D6 Fields in NELP Regime in April 2009. However, due to depletion of gas reserves coupled with change in gas utilization policy by the Government of India, the flow of gas from Reliance Industries Limited completely stopped from March 2013. It is a matter of great concern that the plant remained stranded since then due to the unavailability of gas, except for brief periods where the plant was operated with e-bid RLNG.

10. In the meantime, as you may be aware, the PPAs of all the old IPPs expired by the year 2017. In particular, the PPAs with Lanco and Spectrum expired on 01.01.2016 and 18.04.2016 respectively. However, despite the same, the DISCOMs in the State of Andhra Pradesh sought the permission of the Andhra Pradesh Electricity Regulatory Commission (APERC) to continue purchasing power from Lanco and Spectrum on a short-term basis. Moreover, the said DISCOMs also initiated the process of renewing the PPAs with Lanco and Spectrum for an additional period of 10 – 15 years.
11. In these circumstances, vide letters dated 05.05.2017 and 10.05.2017, GVPGL requested the Government of Andhra Pradesh and the Andhra Pradesh Power Co-ordination Committee to resume APM gas supply to the new IPPs having valid PPAs with the DISCOMs as this would result in a saving of about INR 1,272 crores for the state exchequer over a period of 10 – 15 years. Letters dated 05.05.2017 and 10.05.2017 from GVPGL in this regard are enclosed herewith as ANNEXURE – 4 and ANNEXURE – 5 respectively.
12. Additionally, it was also apprised to the State Government that GVPGL Plant being more efficient, could be used to supply power at much cheaper tariffs as compared to Lanco and Spectrum. In such circumstances, it was submitted that there was no rationale behind extending the old PPAs without considering GVPGL's case.
13. Moreover, the proposal for renewing the PPAs of Lanco and Spectrum would not only violate GVPGL's legitimate expectations to receive APM natural gas but also be highly discriminatory, particularly since GVPGL already has a valid long-term PPA up to the year 2029 and the project has been lying stranded for several years now. Further, it is estimated that if the PPAs with Lanco and Spectrum are further extended on long-term basis, the DISCOMs and eventually, the consumers would be saddled with an additional financial burden of around INR 2,825 crores as compared to sourcing power from GVPGL as is evident from (ANNEXURE- 6).
14. In addition to the above, GVPGL further highlighted that the gas previously supplied to the old IPPs ought to be resumed to GVPGL Plant, inter alia for the following reasons:
 - (i) Capital Cost for old IPPs had already been recovered;
 - (ii) Sub-optimal efficiency of old IPPs;
 - (iii) Higher capacity charges in comparison to GVPGL; and
 - (iv) Advantages under GVPGL PPA because of the "no alternative fuel" provisions.
15. However, till date, there has been no response from the authorities on this issue. Moreover, even after the expiry of the PPAs, the DISCOMs in the State of Andhra Pradesh are continuing to procure power from Lanco and Spectrum on short-term basis at a higher tariff as compared to GVPGL.

16. Additionally, on 27.03.2018, the APERC passed an order on the Tariff for Retail Sale of Electricity during the financial year 2018-19 and approved the tariff for sourcing power from Lanco and Spectrum on short-term basis. Moreover, in the tariff filing to APERC for the financial year 2019-20, the DISCOMs have again proposed to procure power from Lanco and Spectrum.
17. In this regard, a comparison of the cost of power supply from Lanco and Spectrum vis-à-vis GVPGL is demonstrated hereunder:

Components	Units	LANCO	SPECTRUM	GVPGL
Fixed Cost	Rs/kWh	0.96	0.92	0.70
Variable Cost	Rs/kWh	2.33	2.39	2.21
Total cost	Rs/kWh	3.29	3.31	2.91

18. Further, a comparison of cost of power supply with the revised APM gas prices (w.e.f 1st Oct 2018 to 31st March 2019) is also provided hereunder:

Components	Units	LANCO	SPECTRUM	GVPGL
Fixed Cost	Rs/kWh	0.96	0.92	0.70
Variable Cost	Rs/kWh	2.68	2.75	2.54
Total cost	Rs/kWh	3.64	3.67	3.24

Thus, taking into account APERC's approved rates for 2018-19 for Lanco & Spectrum, GVPGL's tariff is cheaper by Rs. 0.40/ Unit and Rs.0.43/ year based on the latest gas price.

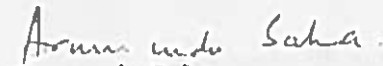
19. In addition to cheaper tariffs, GVPGL will also deliver the following benefits:
1. Higher quantity of Energy (Kwh) per MMSCMD of gas consumed due to better efficiency of machine;
 2. No deemed generation charges under PPA for GVPGL whereas all other 7 IPPs have Deemed Generation provision. Pertinently, the liabilities of the Distribution Companies on account of Deemed Generation costs for old IPPs under the expired PPAs are also over; and
 3. APTRANSCO will avoid payment of R&M Capex projected by old IPPs.
20. In this regard, as stated above, GVPGL also has a legitimate right on the allocated quantity of APM gas presently being supplied to Old IPPs (i.e. Lanco and Spectrum) and the decision to not resume the gas supply to GVPGL in spite of a valid long-term PPA is highly discriminatory. It is, therefore, obligatory to give priority to GVPGL having valid PPA & GSA by resuming APM gas supplies.

21. It may also be relevant to consider that GVPGL has invested about INR 1,150 crores in the project and has operated for approximately 4 years in a span of 13 years since its commissioning in 2006. Significantly, as is evident from ANNEXURE – 7, GVPGL has incurred a loss of about INR 1,485 crores till date, assuming a minimum average Plant Load Factor of 80%.
22. In view of the above facts and circumstances, we request you to take necessary action to resume APM gas supplies to GVPGL from old IPPs (i.e. Lanco and Spectrum). We also remain available to provide a detailed representation to the State Government on these issues, if required.

Thanking you in anticipation for an early action.

Yours Sincerely,

For GMR Vemagiri Power Generation Limited,


Arunendu Saha
(Authorized Signatory)

Copy to:

1. Chairman & Managing Director-APTRANSCO
2. JMD- APTRANSCO-Finance, Commercial, IPC, HRD & IT

DEEPAK KUMAR PANWAR I.A.S.
Principal Secretary to Government



D.O.Lr.No.052/PSP/Energy/2004

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Energy Department
A.P. Secretariat, Hyderabad - 500 022
Tel: (O) 040 - 23453305, (R) 23402604
Fax : 040 - 23455452
E-mail : prlsecy_engy@ap.gov.in

Dated: 6-12-2004.

Dear Sri Srinivasan,

Sub:- Supply of Naural Gas by GAIL to the existing and emcrging Gas based power projects in Andhra Pradesh - Reg.

Ref:- Your D..Lr.No.L-12011/6/2003-GP, dated 01.12.2004.

Kindly refer to your letter cited above in which you have asked the views of the State Government on the criteria to be adopted to distribute the gas for the existing and emerging power projects in Andhra Pradesh. While firming up the views the Government has examined the following relevant factors:

(1) GAIL, who is the supplier of gas, has set the following guidelines for supply of available gas to the IPPs.

- If gas is available, full supply to firm allocations and surplus gas on prorata basis to fall back customers.
- If gas availability is less than firm allocation, supply on prorata basis to firm allocations and no supply to fall back consumers.

GAIL has been following the above guidelines all through the years.

(2) Similarly, when an upcoming consumer having GSA with GAIL, sought drawl of gas, GAIL fulfilled its obligation under GSA by supplying the gas to the new consumer from the available gas by adopting the prorata basis mechanism. It has never shown differentiation between the old and new consumers. For example GAIL had followed the same principle while starting gas supplies to Lanco Power Project and Reliance Energy Power Projects in AP.

(3) GAIL had even placed on record, the mechanism of supply of gas on prorata basis, in its submissions through affidavits before High Court of Andhra Pradesh against writ petitions filed by BSES & GVK Industries and before APERC against petition filed by APTRANSCO.

- (4) GAIL, in its counter affidavit dated 28th October, 2004 filed before APERC against the review petition filed by APTRANSCO on alternate fuel provision, has categorically stated that the firm allocation is subject to availability of gas as per GSA and in case of deficit availability of gas, the supplies to such allocatees are made on prorata basis based on Policies/Court Orders.
- (5) GAIL in its counter affidavit filed before High Court of Andhra Pradesh against the Writ Petition No.15535/2004 filed by BSES on supply of 0.30 MSCMD of gas, has expressly stated that it has reviewed and taken decision to supply the 0.30 MSCMD of gas to all the consumers on equitable basis to meet the huge shortfall of supply in the firm allocations.
- (6) GAIL in its counter affidavit filed before the High Court of Andhra Pradesh against the Writ Petition No.1415/2003 filed by GVK Industries on allocation of Natural Gas on "first-come-first-served principle", has stated that the available gas to be supplied uniformly to all the consumers in the same ratio and proportion in which their allocations stand.
- (7) High Court of Andhra Pradesh, while giving its judgement on the above referred petition (W.P.No.1415/2003), observed that
- GAIL had denied having any policy to supply the available gas on "first-come-first-served principle"
 - There was no directive from GLC to adhere to policy of first-come-first-served.
 - State is required to treat all industries and sectors equally and there cannot be any policy to permit the authorities to allocate gas by pick and choose method. Even if such policy exists, the same cannot answer the test of Article 14 of the Constitution of India.
- (8) Upcoming four IPPs will come into operation in 2005-2006 with a capacity of 1499 MW. GAIL has entered into agreement with these IPPs also for a firm allocation of 6.30 MCMD and a fall back of 0.40 MCMD, totaling to 6.70 MCMD. Given the production profile of ONGC, such supply may not fructify, unless there is focused action to ensure supply as per the agreements. Once these power projects commence commercial operations in 2005-06, APTRANSCO will have to pay the full fixed charges i.e., about Rs 1025 Crores per annum for the entire capacity, even if gas is not supplied, and this will be an unbearable and unjustified burden on the consumers of the State.

(9) In order to protect the interests of the Government, negotiations were held by the State Government with these four IPPs and they have agreed to the following:

- (1) Use of alternative fuel as included in the definition of the "fuel" in the PPAs will not be permitted before 1st January 2007.
- (2) In case of unavailability of natural gas before 1st January 2007, there will not be any liability on APTRANSCO on account of "fixed cost".
- (3) The Companies will implement the project in line with the "Scheduled Date of Completion" as per PPA. However, the Scheduled Date of Completion may be extended on a day for day basis depending upon the unavailability of natural gas before 1st January, 2007.
- (4) The Companies will agree to incorporate the above amendments in the PPAs.

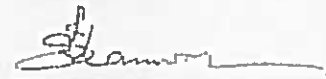
The IPPs have agreed to the above arrangement after taking into confidence their respective Financial Institutions. The IPPs have agreed to the above changes duly keeping in view the existing policy of supply of available gas on prorata basis.

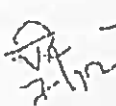
In view of the above facts/factors, GoAP recommends that the existing criteria for supply of available gas on prorata basis amongst the IPPs in A.P. may be retained.

with regards.

Yours sincerely,

O/c


(D.K. PANWAR)


Sri M.S. Srinivasan,
Additional Secretary,
Government of India,
Ministry of Petroleum & Natural Gas,
Shastri Bhawan,
New Delhi-110 001.

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Mohammed Ali Shabber
MINISTER FOR INFORMATION & PUBLIC RELATIONS,
ENERGY AND COAL
Government of Andhra Pradesh



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email min_16pr@ap.gov.in

2535/25/13/10/11
15/12

Date 22/11/05

D.O.Lr.No.7129/Energy (Pr.) Dept./2005

Dear Dr. Mani Shankar garu,

- Ref: 1. D.O.Lr.No. 52/PSP/Energy/2004, dt. 6.12.2004 from
Sri D.K.Panwar, IAS., addressed to Sri M.S.Srinivasan,
Addl. Secy., Ministry of Petroleum & N.G.
2. D.O.Lr.No. 52/PSP/Energy/2005, dt. 21.6.2005 from
Dr.Y.S. Rajasekhara Reddy, Hon'ble Chief Minister
3. D.O.Lr.No. 7127/Pr./2005, dt. 5.10.2005 from Dr.Y.S.Raja-
sekhhara Reddy, Hon'ble Chief Minister

Kind attention is invited to the references cited. This matter relates to the supply of natural gas to the power projects in Andhra Pradesh. GAIL has entered into Gas Supply Agreements with four existing gas based projects (total capacity 999 MW) for supply of Natural Gas of 4.85 MCMD. However, the actual quantity of gas supplied by GAIL is 3.526 MCMD and the generation from these projects is less than 70% of their capacity. This gas shortage has resulted in consumers having to pay higher tariff due to (i) increased cost of power procured from alternative sources and (ii) payment of full fixed charges for the total declared capacity of the IPPs, even though the energy produced is less due to inadequate gas supply. The additional cost of power due to short supply of gas is around Rs. 300 crores every year.

GAIL has entered into further agreements with 4 new gas based projects (total capacity 1499 MW) for supply of 6.7 MCMD. Thus the total allocation of gas for the 8 projects is 11.55 MCMD. Since GAIL is not in a position to honour its commitment as per Gas Supply Agreements entered

Contd

Government of Andhra Pradesh vide letters dated 17.7.2004 and 5.8.2004 requested for your kind intervention and the Prime Minister of India respectively to direct GAIL/ONGC to augment the supply of Natural Gas as per agreed allocations to the four existing IPPs and the four upcoming IPPs in Andhra Pradesh.

I am grateful to you for convening meeting on 17th October, 2005 to sort out these critical problems of our State. You have discussed this matter with officials of the Ministry of Petroleum and Natural Gas, ONGC, GAIL and Government of Andhra Pradesh. In this connection, I wish to mention the following points for your kind consideration and necessary instructions to the concerned

The State Government have originally recommended that the available gas may be supplied on a prorata basis to all power projects having firm allocations, including the 4 new projects. As indicated in the reference 1st cited, this stand was taken by the State Government in order to protect the interest of the Government and negotiations held with the upcoming four IPPs. The developers at that time agreed not to use alternate fuel before 1st January, 2007 and that TRANSCO will not be liable before 1st January, 2007 on account of fixed cost. The Companies have agreed to incorporate the amendments in the PPAs. However, the companies have not signed the amended PPAs.

In your letter dt 14.12.2004 it was indicated that additional gas of 0.5 MMSCMD would be made available from September, 2005 and another 2.0 MMSCMD from second quarter of 2007. Further, the additional gas from Rava 2, Annapurna and Reliance fields is expected from third quarter of 2007, with which the requirements of consumers in KG basin could be met.

State Government have subsequently reviewed the implications of pro-rata allocation of the available gas. If pro-rata allocation of the available gas is made to all the 8 projects, the generation from the existing 4 projects would fall down appreciably and Government of Andhra Pradesh/APTRANSCO

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will have to pay about Rs. 333 crores upto 31.12.2006 towards deemed generation without availing full generation from these 4 existing projects. This additional burden of about Rs. 333 crores can be avoided if the available gas is first supplied to the existing 4 gas based projects to the extent required for achieving threshold PLF.

In view of the above implications, Hon'ble Chief Minister has written to on 21.6.2005 and 5.10.2005 to Hon'ble Prime Minister (copy marked to you) Copies of the letters are enclosed for ready reference. It was requested.

- to supply the available gas to the 4 existing projects to the extent required for achieving threshold PLF and to allocate the balance quantity proportionately to the up-coming four projects
- to allow Dual fuel capabilities clause only for use of Naphtha for short periods when gas supply is disrupted
- to direct ONGC/GAIL to honour the agreements for gas supply and the increased cost due to non-supply be borne by GAIL/Developer
- to initiate immediate steps to augment the gas supply to all the 8 IPPs of the State as decided in the meeting convened on 28.9.2004 by the Principal Secretary to Prime Minister

I, therefore, request you once again to issue necessary instructions to the concerned on this matter. I shall be grateful for favourable action for augmenting gas supply to power utilities in Andhra Pradesh to the maximum possible extent.

With regards,

Yours sincerely,



(MOHAMMED ALI SHABBER)

Dr. Mani Shankar Aiyar,
Union Minister for Petroleum & N.G.,
Government of India,
New Delhi.

234
No.I-12011/6/03-GP (PI)
Government of India
Ministry of Petroleum & Natural Gas

Shastri Bhawan, New Delhi-1
Dated the 5th December, 2005

Shri S.V. Prasad,
Principal Secretary, Energy,
Government of Andhra Pradesh, Hyderabad.

The Chairman & Managing Director
ONGC, New Delhi

The Chairman & Managing Director
GAIL (India) Limited, New Delhi

The Director General,
DGH, New Delhi.

Subject:- Record Note of discussion on the meeting held between Shri S.C. Tripathi, Secretary, Ministry of Petroleum & Natural Gas and Shri Mohd. Ali Shabber, Minister of Information and Public Relations, Energy and Coal, Government of Andhra Pradesh, on 29th November, 2005 at New Delhi regarding shortage of gas supply in KG basin.

Sir,

I am directed to forward herewith a copy of the record note of discussion of the meeting held between Shri S.C. Tripathi, Secretary, Ministry of Petroleum & Natural Gas and Shri Mohd. Ali Shabber, Minister of Information and Public Relations, Energy and Coal, Government of Andhra Pradesh, on 29th November, 2005 at New Delhi regarding shortage of gas supply in KG basin, for information and necessary action.

Yours faithfully,

Encl.: As above.

S.B. Mandal

(S.B. Mandal)

Under Secretary to the Govt. of India,
Tel.No.23382582

Copy for Information to:

1. PPS to Secretary (P&NG),
2. PS to Spl. Secretary (P&NG),
3. PA to JS(AT), MoP&NG,
4. PA to Dir(SS), MoP&NG,

Record Note of discussion of the meeting regarding shortage of gas supply in KG basin held on 29.11.2005

Mr. Mohammed Ali Shabber, Minister for Information & Public Relations, Energy & Coal, Government of Andhra Pradesh met Secretary (P&NG) on 29.11.2005 in Shastri Bhawan Office regarding shortage of gas supply in KG basin. The Minister also handed over a copy of his d.o letter written to Minister (P&NG) dated 22.11.2005 (copy enclosed).

2. The Andhra Minister stated that the Andhra Pradesh Government had originally recommended for a pro-rata supply of the available gas to all the existing and upcoming new IPPs against their firm allocations. This recommendation was based on the understanding with the upcoming 4 IPPs that they would not use alternate fuel before 1st January 2007 and that APTRANSCO will not be liable before 1st January 2007 on account of fixed cost. However, the IPPs have not signed the amended PPAs.

4. State Government have subsequently reviewed the implications of pro-rata allocation of the available gas and has found that in such a scenario Government of Andhra Pradesh/APTRANSCO will have to pay about Rs.330 crore upto December 2006 towards deemed generation from the four existing projects. Therefore, the State Govt. have represented to the Hon'ble Prime Minister as well as to the Minister (P&NG) as follows:-

- (i) To supply the available gas to the 4 existing projects to the extent required for achieving threshold PLF and to allocate the balance quantity proportionately to the upcoming 4 projects.
- (ii) To allow dual fuel capabilities clause only for use of naphtha for short periods when gas supply is disrupted.
- (iii) To direct ONGC/GAIL to honour the agreements for gas supply and the increased cost due to non-supply be borne by GAIL/developer.

- (iv) To initiate immediate steps to augment the gas supply to all the 8 IPPs of the State as decided in the meeting convened on 28.9.2004 by the Principal Secretary to Prime Minister.

On the above points, Secretary (P&NG) responded as follows:-

- (a) Regarding point 3(i), MOP&NG would like to be guided by the views of the State Government and, therefore, gas supply to the existing power projects will not be curtailed. Gas supply to the upcoming 4 IPPs can only be given when additional gas becomes available.
- (b) Regarding point 3(ii) on the provision of dual fuel capabilities, it is for the State Government and the Regulator to take a view and to consider whether they would allow the new IPPs to use dual fuel capabilities for power generation till additional gas becomes available.
- (a) With regard to point 3(iii), this Ministry has no objection if legal recourse is resorted for any breach of agreements for gas supply by ONGC or GAIL. However, this is a matter which is to be examined on its legal merits.
- (b) On point 3(iv) for augmentation of gas supply to the extent of 0.5 MMSCMD by September 2005 and 1.5 to 2.0 MMSCMD by 2nd quarter of 2006, as agreed early by ONGC, MOP&NG will seek the latest prognosis from ONGC which is to be certified by DGH.

8^c Secretary (P&NG) further observed that it is unfortunate that GAIL is not able to meet the commitments of gas supply based on which investments were committed by the new IPPs. This has resulted in loss of face and credibility in the public eye. GAIL should examine all possible alternatives to honour gas supply commitments, including import of LNG through EXMAR or imports as NG, to salvage its credibility. As this is a matter of serious concern, we may ask GAIL to discuss this matter in their Board.

GMR Vernagiri Power Generation Limited

GMR/GVPGL/2017 MoP DEL 0.3
05th May 2017

Shri Ajay Jain
The Principal Secretary (Energy, Infra & Investments)
Government of Andhra Pradesh

Request for allocation/ recommendation by APPCC of APM & Non APM gas to
GVPGL by diverting from old IPPs in Andhra Pradesh.

Dear Sir,

We refer to the Retail Tariff Order of APERC for 2017-18. The Hon'ble APERC have disallowed the dispatch of old gas based Plants like Lanco Kondapally and Spectrum, whose PPAs have expired, due to high unit fixed cost. Retail Tariff Order also mentions that AP DISCOMs are taking up the proposal for renewal of PPA of M/s LANCO Kondapally for the period of 10 years.

It is ironic and grossly unequitable that whereas around 1500 MW of gas based power plants with valid PPAs are stranded for lack of gas supply and facing bankruptcy, APPCC is proposing to use the APM gas to operate and pay fixed charges to power plants which have run their full term of the PPA and recovered their entire capital and return.

It is submitted that the following power plants, having the benefit of APM gas supply, has run their full term of the PPA-

Project	Capacity (MW)	Gas Allocated (MMSCMD)	Gas supply in 2016-17 (MMSCMD)
GVK-Stage-I	216	1.10	0.61
Spectrum	208	1.43	0.62
Lanco	355	1.96	0.72
Reliance#	220	0.84	0
Total	999	5.33	1.95

PPA expiring in October 2017

At the same time, the following power plants which were set up based on a competitive bid out PPA, have been stranded for lack of gas for years now and are on the brink of bankruptcy.

Project	Capacity (MW)	Gas requirement (MMSCMD) @ 80% PLF	CoD Date	Years till CoD Date	Period of idling till date (Years)
Vernagiri	370	1.48	16.09.2006	11	7
GVK-Extn	220	0.88	14.04.2009	8	4
Konaseema	445	1.78	05.06.2009	8	4
Kondapally	464	1.86	30.06.2010	7	4

It is submitted that the APM gas of 1.5 MMSCMD, if allocated to these stranded power plants, would enable the plants to operate at around 25% PLF and help to partly service its



Regd. Office:
Shop No. 254, Market Road,
Gangavaram, 520 025
Dist. Eluru
E. Andhra Pradesh, A.P. 537025



G R

We would also like to point out that.

- The Fixed charge per unit as submitted in the ARR for one of older plants is rightly calculated at Rs 1.40 / unit taking into account the lower gas availability and lower PLF, which is higher than the fixed cost of newer IPPs
- The new IPPs are much more efficient with lower heat rates. For example, the Gross heat rate of GVPGL is 1850 Kcal/kWH as compared to approximately 2050 Kcal/kWH for the older plants. This translates to around a lower energy cost of Rs 0.22 / unit

Considering a gas supply of 1.5 MMSCMD, the aggregate financial impact of both the above points is around Rs. 160 crore per annum, i.e Rs 1600 crore over a period 10 years in terms of saving to Discoms and therefore to the consumers at large

In light of the foregoing, we would sincerely urge you to seek reallocation of the APM gas supply to the new power plants having valid PPA with APDISCOMS and offtake power from them. This would be in the interest of the state, the consumers and the IPPs which have invested in the state based on PPA bid and have already lost their entire net worth and sunk into deeper indebtedness for no fault of theirs

We look forward to your confirmation and urgent action in the matter

Thanking you

For GMR Vemagiri Power Generation Limited

Aswani Saha.

Authorized Signatory



Copy to

1. Chairman and Managing Director, AP Transco
2. Chairman, Andhra Pradesh Power Coordination Committee
3. Secretary, Andhra Pradesh Electricity Regulatory Commission

GMR Vernagiri Power Generation Limited

o/c

G R

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GMR/GVPGL 2017 MoP/DEL 028

10th May 2017

The Chairman

Andhra Pradesh Power Co-ordination Committee,

Vidyut Soudha

Hyderabad-500082

Subject: Request for allocation/ recommendation by APPCC of APM & Non APM gas to GVPGL by diverting from old IPPs in Andhra Pradesh.

Dear Sir,

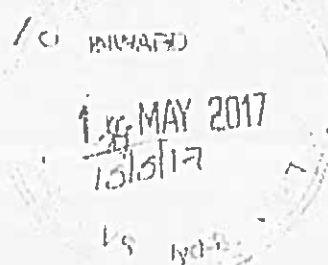
We take reference to the Retail Tariff Order of APERC for 2017-18. The Hon'ble APERC have disallowed the dispatch of old gas based Plants like Lanco Kondapally and Spectrum, whose PPAs have expired. We have also noted that APDISCOMs have stopped off-take of power from these two power plants from 7th April'17.

As such, the APM gas which was being consumed by LANCO & SPECTRUM power plants is available for re-allocation.

GVPGL having valid long term PPA upto year 2029 with AP&TS DISCOMs, has legitimate right to receive the above said gas.

Further, we are also concerned to note that APDISCOMs are planning to renew the expired PPA of these plants with threshold PLF of 80% even though APM gas is available for only 40% PLF. In our view due to following reasons the allocation of gas out of expired PPAs should be considered for allocation to GVPGL

1. Capital Cost for old PPA plants have already recovered.
2. Sub optimal efficiency of old PPA plants
3. Higher Capacity Charges in comparison to VPGI.
4. Advantages under GVPGL PPA - "No Alternate Fuel" provisions.



Regd. Office:
Shop House, 201, Muscat Road
Chennai - 600 002

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We hereby summarize the financial benefits that will accrue to AP Discoms by alternatively operating the GVPGL plant with the available APM Gas

Particulars		LANCO	Spectrum	GVPGL
Capacity	MW	362	208	370
Approx PLF for which gas is available	%	40%	40%	
PPA Extension	Yrs	10.00	15.00	
Mus Generated for PPA Term	Mus	12684	10932	
Per Unit Fixed Cost	Rs/kWh	1.42	1.42	1.08
Incremental Cost per unit in Comparison to VPGL	Rs kWh	0.34	0.34	
Additional Fixed Charge during PPA term	Rs Crs	431	371	
Variable Cost	Rs/kWh	2.05	2.16	1.90
Incremental Variable Cost in comparison to VPGL	Rs/Unit	0.15	0.26	
Incremental Fuel cost for PPA term	Rs Crs	189	281	-
Total Incremental Fixed Cost and Fuel Cost for PPA Term	Rs Crs	621	652	
Total benefits to DISCOM by opting VPGL	Rs Crs	1272		

Therefore, the diversion of APM/ non APM gas from old PPA plants to new PPA plants will save DISCOMs an amount more than Rs. 1272 Crs and there is no rational to extend old PPAs without considering GVPGL..

We would therefore request you to kindly recommend to MoPNG for re-allocation of APM and Non-APM gas from old and expired PPA power plants to more efficient power plant of GVPGL having a valid PPA till Sept'2029.

Thanking you

For GMR Vemagiri Power Generation Limited


Authorized Signatory

Copy to:

1. Prl. Secretary- Energy, GoAP
2. Secretary-APERC
3. CMD, AP TRANSCO
4. JMD, AP TRANSCO
5. CE- IPC &PS, AP TRANSCO

Annexure- 6

Savings to Government of Andhra Pradesh calculated based on renewal of PPA for LANCO & SPECTRUM, while operating GVPGL				
Particulars	Units	LANCO	SPECTRUM	GVPGL
Installed Capacity	MW	361.92	205.19	370
PLF	%	34%	55%	
Approx. Gas Available	MMSCMD	0.65	0.60	
PPA Extension	Years	10.00	15.00	
Mus Generated for PPA Term	MUs	10775	14882	
Additional Generation by GVPGL for PPA Term	MUs	845	1207	
Domestic Natural Gas Price	\$/mmbtu	3.36	3.36	3.36
Fixed Cost	Rs/kWh	1.67	1.09	0.699
Incremental Fixed Cost in comparison to GVPGL	Rs/kWh	0.97	0.39	
Additional Fixed Cost for PPA term	Rs Crs	1047	580	
Variable Cost	Rs/kWh	2.74	2.75	2.54
Incremental Variable Cost in comparison to GVPGL	Rs/kWh	0.20	0.21	
Additional Variable Cost for PPA term	Rs Crs	215	307	
Total Cost	Rs/kWh	4.41	3.84	3.24
Total Increment FC + VC for PPA term	Rs Crs	2148.29		
Cost saving due to additional generation from GVPGL (Assuming Exchange Price Rs 4/Kwh)	Rs Crs	677.11		
Total benefit to Discoms by opting GVPGL	Rs Crs	2825.40		

GVPGL losses due to curtailment of APM Gas by Government of Andhra Pradesh					
Years	Days	Exchange Rate (USD to INR)	MUs @ 80% PLF	GVPGL Fixed Cost (Rs/Kwh)	Fixed Cost (Rs Crs)
2013-14	365	60.50	2592.96	1.06	275.37
2014-15	365	61.15	2592.96	1.07	276.38
2015-16	366	65.46	2600.06	1.09	283.86
2016-17	365	67.09	2592.96	1.10	285.62
2017-18	365	64.45	2592.96	0.88	227.40
2018-19*					
Till 31.12.18	275	70.00	1953.60	0.70	136.56
Total	2101		14925.50		1485.20

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The Gazette of India

EXTRAORDINARY
PART I - Section 1
PUBLISHED BY AUTHORITY
Ministry of Power

New Delhi,
Dated the 6th January, 2006

RESOLUTION

No.23/2/2005-R&R(Vol.III)

TARIFF POLICY

1.0 INTRODUCTION

- 1.1. In compliance with section 3 of the Electricity Act 2003 the Central Government hereby notifies the Tariff policy in continuation of the National Electricity Policy (NEP) notified on 12th February 2005.
- 1.2. The National Electricity Policy has set the goal of adding new generation capacity of more than one lakh MW during the 10th and 11th Plan periods to have per capita availability of over 1000 units of electricity per year and to not only eliminate energy and peaking shortages but to also have a spinning reserve of 5% in the system. Development of the power sector has also to meet the challenge of providing access for electricity to all households in next five years.
- 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

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approach becomes all the more necessary considering the large number of States and the diversities involved.

2.0 LEGAL POSITION

2.1 Section 3 (1) of the Electricity Act 2003 empowers the Central Government to formulate the tariff policy. Section 3 (3) of the Act enables the Central Government to review or revise the tariff policy from time to time.

2.2 The Act also requires that the Central Electricity Regulatory Commission (CERC) and State Electricity Regulatory Commissions (SERCs) shall be guided by the tariff policy in discharging their functions including framing the regulations under section 61 of the Act.

2.3 Section 61 of the Act provides that Regulatory Commissions shall be guided by the principles and methodologies specified by the Central Commission for determination of tariff applicable to generating companies and transmission licensees.

2.4 The Forum of Regulators has been constituted by the Central Government under the provisions of the Act which would, inter alia, facilitate consistency in approach specially in the area of distribution.

3.0 EVOLUTION OF THE POLICY

The tariff policy has been evolved in consultation with the State Governments and the Central Electricity Authority (CEA) and keeping in view the advice of the Central Electricity Regulatory Commission and suggestions of various stakeholders.

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;
- (c) Promote transparency, consistency and predictability in regulatory approaches across jurisdictions and minimise perceptions of regulatory risks;
- (d) Promote competition, efficiency in operations and improvement in quality of supply.

5.0 GENERAL APPROACH TO TARIFF

5.1 Introducing competition in different segments of the electricity industry is one of the key features of the Electricity Act, 2003. Competition will lead

to significant benefits to consumers through reduction in capital costs and also efficiency of operations. It will also facilitate the price to be determined competitively. The Central Government has already issued detailed guidelines for tariff based bidding process for procurement of electricity by distribution licensees for medium or long-term period vide gazette notification dated 19th January, 2005.

All future requirement of power should be procured competitively by distribution licensees except in cases of expansion of existing projects or where there is a State controlled/owned company as an identified developer and where regulators will need to resort to tariff determination based on norms provided that expansion of generating capacity by private developers for this purpose would be restricted to one time addition of not more than 50% of the existing capacity.

Even for the Public Sector projects, tariff of all new generation and transmission projects should be decided on the basis of competitive bidding after a period of five years or when the Regulatory Commission is satisfied that the situation is ripe to introduce such competition.

5.2 The real benefits of competition would be available only with the emergence of appropriate market conditions. Shortages of power supply will need to be overcome. Multiple players will enhance the quality of service through competition. All efforts will need to be made to bring power industry to this situation as early as possible in the overall interests of consumers. Transmission and distribution, i.e. the wires business is internationally recognized as having the characteristics of a natural monopoly where there are inherent difficulties in going beyond regulated returns on the basis of scrutiny of costs.

5.3 Tariff policy lays down following framework for performance based cost of service regulation in respect of aspects common to generation, transmission as well as distribution. These shall not apply to competitively bid projects as referred to in para 6.1 and para 7.1 (6). Sector specific aspects are dealt with in subsequent sections.

a) Return on Investment

Balance needs to be maintained between the interests of consumers and the need for investments while laying down rate of return. Return should attract investments at par with, if not in preference to, other sectors so that the electricity sector is able to create adequate capacity. The rate of return should be such that it allows generation of reasonable surplus for growth of the sector.

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The Central Commission would notify, from time to time, the rate of return on equity for generation and transmission projects keeping in view the assessment of overall risk and the prevalent cost of capital which shall be followed by the SERCs also. The rate of return notified by CERC for transmission may be adopted by the State Electricity Regulatory Commissions (SERCs) for distribution with appropriate modification taking into view the higher risks involved. For uniform approach in this matter, it would be desirable to arrive at a consensus through the Forum of Regulators.

While allowing the total capital cost of the project, the Appropriate Commission would ensure that these are reasonable and to achieve this objective, requisite benchmarks on capital costs should be evolved by the Regulatory Commissions.

Explanation: For the purposes of return on equity, any cash resources available to the company from its share premium account or from its internal resources that are used to fund the equity commitments of the project under consideration should be treated as equity subject to limitations contained in (b) below.

The Central Commission may adopt the alternative approach of regulating through return on capital.

The Central Commission may adopt either Return on Equity approach or Return on Capital approach whichever is considered better in the interest of the consumers.

The State Commission may consider 'distribution margin' as basis for allowing returns in distribution business at an appropriate time. The Forum of Regulators should evolve a comprehensive approach on "distribution margin" within one year. The considerations while preparing such an approach would, inter-alia, include issues such as reduction in Aggregate Technical and Commercial losses, improving the standards of performance and reduction in cost of supply.

b) Equity Norms

For financing of future capital cost of projects, a Debt : Equity ratio of 70:30 should be adopted. Promoters would be free to have higher quantum of equity investments. The equity in excess of this norm should be treated as loans advanced at the weighted average rate of interest and for a weighted average tenor of the long term debt component of the project after ascertaining the reasonableness of the interest rates and taking into account the effect of debt restructuring done, if any. In case of equity below the normative level, the actual equity would be used for determination of Return on Equity in tariff computations.

c) **Depreciation**

The Central Commission may notify the rates of depreciation in respect of generation and transmission assets. The depreciation rates so notified would also be applicable for distribution with appropriate modification as may be evolved by the Forum of Regulators.

The rates of depreciation so notified would be applicable for the purpose of tariffs as well as accounting.

There should be no need for any advance against depreciation.

Benefit of reduced tariff after the assets have been fully depreciated should remain available to the consumers.

d) **Cost of Debt**

Structuring of debt, including its tenure, with a view to reducing the tariff should be encouraged. Savings in costs on account of subsequent restructuring of debt should be suitably incentivised by the Regulatory Commissions keeping in view the interests of the consumers.

e) **Cost of Management of Foreign Exchange Risk**

Foreign exchange variation risk shall not be a pass through. Appropriate costs of hedging and swapping to take care of foreign exchange variations should be allowed for debt obtained in foreign currencies. This provision would be relevant only for the projects where tariff has not been determined on the basis of competitive bids.

f) **Operating Norms**

Suitable performance norms of operations together with incentives and disincentives would need be evolved along with appropriate arrangement for sharing the gains of efficient operations with the consumers. Except for the cases referred to in para 5.3 (h)(2), the operating parameters in tariffs should be at "normative levels" only and not at "lower of normative and actuals". This is essential to encourage better operating performance. The norms should be efficient, relatable to past performance, capable of achievement and progressively reflecting increased efficiencies and may also take into consideration the latest technological advancements, fuel, vintage of

equipments, nature of operations, level of service to be provided to consumers etc. Continued and proven inefficiency must be controlled and penalized.

The Central Commission would, in consultation with the Central Electricity Authority, notify operating norms from time to time for generation and transmission. The SERC would adopt these norms. In cases where operations have been much below the norms for many previous years, the SERCs may fix relaxed norms suitably and draw a transition path over the time for achieving the norms notified by the Central Commission.

Operating norms for distribution networks would be notified by the concerned SERCs. For uniformity of approach in determining such norms for distribution, the Forum of Regulators should evolve the approach including the guidelines for treatment of state specific distinctive features.

g) Renovation and Modernisation

Renovation and modernization (it shall not include periodic overhauls) for higher efficiency levels needs to be encouraged. A multi-year tariff (MYT) framework may be prescribed which should also cover capital investments necessary for renovation and modernization and an incentive framework to share the benefits of efficiency improvement between the utilities and the beneficiaries with reference to revised and specific performance norms to be fixed by the Appropriate Commission. Appropriate capital costs required for pre-determined efficiency gains and/or for sustenance of high level performance would need to be assessed by the Appropriate Commission.

(h) Multi Year Tariff

- 1) Section 61 of the Act states that the Appropriate Commission, for determining the terms and conditions for the determination of tariff, shall be guided inter-alia, by multi-year tariff principles. The MYT framework is to be adopted for any tariffs to be determined from April 1, 2006. The framework should feature a five-year control period. The initial control period may however be of 3 year duration for transmission and distribution if deemed necessary by the Regulatory Commission on account of data uncertainties and other practical considerations. In cases of lack of reliable data, the Appropriate Commission may state assumptions in MYT for first control period and a fresh control period may be started as and when more reliable data becomes available.
- 2) In cases where operations have been much below the norms for many previous years the initial starting point in determining the revenue requirement and the improvement trajectories should be recognized at "relaxed" levels and not the "desired" levels. Suitable benchmarking studies may be conducted to establish

the "desired" performance standards. Separate studies may be required for each utility to assess the capital expenditure necessary to meet the minimum service standards.

- 3) Once the revenue requirements are established at the beginning of the control period, the Regulatory Commission should focus on regulation of outputs and not the input cost elements. At the end of the control period, a comprehensive review of performance may be undertaken.
- 4) Uncontrollable costs should be recovered speedily to ensure that future consumers are not burdened with past costs. Uncontrollable costs would include (but not limited to) fuel costs, costs on account of inflation, taxes and cess, variations in power purchase unit costs including on account of hydro-thermal mix in case of adverse natural events.
- 5) Clear guidelines and regulations on information disclosure may be developed by the Regulatory Commissions. Section 62 (2) of the Act empowers the Appropriate Commission to require licensees to furnish separate details, as may be specified in respect of generation, transmission and distribution for determination of tariff.

(i) **Benefits under CDM**

Tariff fixation for all electricity projects (generation, transmission and distribution) that result in lower Green House Gas (GHG) emissions than the relevant base line should take into account the benefits obtained from the Clean Development Mechanism (CDM) into consideration, in a manner so as to provide adequate incentive to the project developers.

5.4 While it is recognized that the State Governments have the right to impose duties, taxes, cess on sale or consumption of electricity, these could potentially distort competition and optimal use of resources especially if such levies are used selectively and on a non- uniform basis.

In some cases, the duties etc. on consumption of electricity is linked to sources of generation (like captive generation) and the level of duties levied is much higher as compared to that being levied on the same category of consumers who draw power from grid. Such a distinction is invidious and inappropriate. The sole purpose of freely allowing captive generation is to enable industries to access reliable, quality and cost effective power. Particularly, the provisions relating to captive power plants which can be set up by group of consumers has been brought in recognition of the fact that efficient expansion of small and medium industries across the country will lead to faster economic growth and creation of larger employment opportunities.

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For realizing the goal of making available electricity to consumers at reasonable and competitive prices, it is necessary that such duties are kept at reasonable level.

5.5 Though, as per the provisions of the Act, the outer limit to introduce open access in distribution is 27.1.2009, it would be desirable that, in whichever states the situation so permits, the Regulatory Commissions introduce such open access earlier than this deadline.

6.0 GENERATION

Accelerated growth of the generation capacity sector is essential to meet the estimated growth in demand. Adequacy of generation is also essential for efficient functioning of power markets. At the same time, it is to be ensured that new capacity addition should deliver electricity at most efficient rates to protect the interests of consumers. This policy stipulates the following for meeting these objectives.

6.1 Procurement of power

As stipulated in para 5.1, power procurement for future requirements should be through a transparent competitive bidding mechanism using the guidelines issued by the Central Government vide gazette notification dated 19th January, 2005. These guidelines provide for procurement of electricity separately for base load requirements and for peak load requirements. This would facilitate setting up of generation capacities specifically for meeting peak.

6.2 Tariff structuring and associated issues

(1) A two-part tariff structure should be adopted for all long term contracts to facilitate Merit Order dispatch. According to National Electricity Policy, the Availability Based Tariff (ABT) is to be introduced at State level by April 2006. This framework would be extended to generating stations (including grid connected captive plants of capacities as determined by the SERC). The Appropriate Commission may also introduce differential rates of fixed charges for peak and off peak hours for better management of load.

(2) Power Purchase Agreement should ensure adequate and bankable payment security arrangements to the Generating companies. In case of persisting default in spite of the available payment security mechanisms like letter of credit, escrow of cash flows etc. the generating companies may sell to other buyers.

- (3) In case of coal based generating stations, the cost of project will also include reasonable cost of setting up coal washeries, coal beneficiation system and dry ash handling & disposal system.

6.3 Harnessing captive generation

Captive generation is an important means to making competitive power available. Appropriate Commission should create an enabling environment that encourages captive power plants to be connected to the grid.

Such captive plants could inject surplus power into the grid subject to the same regulation as applicable to generating companies. Firm supplies may be bought from captive plants by distribution licensees using the guidelines issued by the Central Government under section 63 of the Act.

The prices should be differentiated for peak and off-peak supply and the tariff should include variable cost of generation at actual levels and reasonable compensation for capacity charges.

Alternatively, a frequency based real time mechanism can be used and the captive generators can be allowed to inject into the grid under the ABT mechanism.

Wheeling charges and other terms and conditions for implementation should be determined in advance by the respective State Commission, duly ensuring that the charges are reasonable and fair.

Grid connected captive plants could also supply power to non-captive users connected to the grid through available transmission facilities based on negotiated tariffs. Such sale of electricity would be subject to relevant regulations for open access.

6.4 Non-conventional sources of energy generation including Co-generation:

- (1) Pursuant to provisions of section 86(1)(e) of the Act, the Appropriate Commission shall fix a minimum percentage for purchase of energy from such sources taking into account availability of such resources in the region and its impact on retail tariffs. Such percentage for purchase of energy should be made applicable for the tariffs to be determined by the SERCs latest by April 1, 2006.

It will take some time before non-conventional technologies can compete with conventional sources in terms of cost of electricity. Therefore, procurement by distribution companies shall be done at preferential tariffs determined by the Appropriate Commission.

- (2) Such procurement by Distribution Licensees for future requirements shall be done, as far as possible, through competitive bidding process under Section 63 of the Act within suppliers offering energy from same type of non-conventional sources. In the long-term, these technologies would need to compete with other sources in terms of full costs.
- (3) The Central Commission should lay down guidelines within three months for pricing non-firm power, especially from non-conventional sources, to be followed in cases where such procurement is not through competitive bidding.

7.0 TRANSMISSION

The transmission system in the country consists of the regional networks, the inter-regional connections that carry electricity across the five regions, and the State networks. The national transmission network in India is presently under development. Development of the State networks has not been uniform and capacity in such networks needs to be augmented. These networks will play an important role in intra-State power flows and also in the regional and national flows. The tariff policy, insofar as transmission is concerned, seeks to achieve the following objectives:

1. Ensuring optimal development of the transmission network to promote efficient utilization of generation and transmission assets in the country;
2. Attracting the required investments in the transmission sector and providing adequate returns.

7.1 Transmission pricing

(1) A suitable transmission tariff framework for all inter-State transmission, including transmission of electricity across the territory of an intervening State as well as conveyance within the State which is incidental to such inter-state transmission, needs to be implemented with the objective of promoting effective utilization of all assets across the country and accelerated development of new transmission capacities that are required.

(2) The National Electricity Policy mandates that the national tariff framework implemented should be sensitive to distance, direction and related to quantum of power flow. This would be developed by CERC taking into consideration the advice of the CEA. Such tariff mechanism should be implemented by 1st April 2006.

(3) Transmission charges, under this framework, can be determined on MW per circuit kilometer basis, zonal postage stamp basis, or some other pragmatic variant, the ultimate objective being to get the transmission system users to share the total transmission cost in proportion to their respective utilization of the

transmission system. The overall tariff framework should be such as not to inhibit planned development/augmentation of the transmission system, but should discourage non-optimal transmission investment.

- (4) In view of the approach laid down by the NEP, prior agreement with the beneficiaries would not be a pre-condition for network expansion. CTU/STU should undertake network expansion after identifying the requirements in consonance with the National Electricity Plan and in consultation with stakeholders, and taking up the execution after due regulatory approvals.
- (5) The Central Commission would establish, within a period of one year, norms for capital and operating costs, operating standards and performance indicators for transmission lines at different voltage levels. Appropriate baseline studies may be commissioned to arrive at these norms.
- (6) Investment by transmission developer other than CTU/STU would be invited through competitive bids. The Central Government will issue guidelines in three months for bidding process for developing transmission capacities. The tariff of the projects to be developed by CTU/STU after the period of five years or when the Regulatory Commission is satisfied that the situation is right to introduce such competition (as referred to in para 5.1) would also be determined on the basis of competitive bidding.
- (7) After the implementation of the proposed framework for the inter-State transmission, a similar approach should be implemented by SERCs in next two years for the intra-State transmission, duly considering factors like voltage, distance, direction and quantum of flow.
- (8) Metering compatible with the requirements of the proposed transmission tariff framework should be established on priority basis. The metering should be compatible with ABT requirements, which would also facilitate implementation of Time of Day (ToD) tariffs.

7.2 Approach to transmission loss allocation

- (1) Transactions should be charged on the basis of average losses arrived at after appropriately considering the distance and directional sensitivity, as applicable to relevant voltage level, on the transmission system. Based on the methodology laid down by the CERC in this regard for inter-state transmission, the Forum of Regulators may evolve a similar approach for intra-state transmission.

The loss framework should ensure that the loss compensation is reasonable and linked to applicable technical loss benchmarks. The benchmarks may be determined by the Appropriate Commission after considering advice of CEA.

It would be desirable to move to a system of loss compensation based on incremental losses as present deficiencies in transmission capacities are overcome through network expansion.

- (2) The Appropriate Commission may require necessary studies to be conducted to establish the allowable level of system loss for the network configuration, and the capital expenditure required to augment the transmission system and reduce system losses. Since additional flows above a level of line loading leads to significantly higher losses, CTU/STU should ensure upgrading of transmission systems to avoid the situations of overloading. The Appropriate Commission should permit adequate capital investments in new assets for upgrading the transmission system.

7.3 Other issues in transmission

- (1) Financial incentives and disincentives should be implemented for the CTU and the STU around the key performance indicators (KPI) for these organisations. Such KPIs would include efficient network construction, system availability and loss reduction.
- (2) All available information should be shared with intending users by the CTU/STU and the load dispatch centers, particularly information on available transmission capacity and load flow studies.

8.0 DISTRIBUTION

Supply of reliable and quality power of specified standards in an efficient manner and at reasonable rates is one of the main objectives of the National Electricity Policy. The State Commission should determine and notify the standards of performance of licensees with respect to quality, continuity and reliability of service for all consumers. It is desirable that the Forum of Regulators determines the basic framework on service standards. A suitable transition framework could be provided for the licensees to reach the desired levels of service as quickly as possible. Penalties may be imposed on licensees in accordance with section 57 of the Act for failure to meet the standards.

Making the distribution segment of the industry efficient and solvent is the key to success of power sector reforms and provision of services of specified standards. Therefore, the Regulatory Commissions need to strike the right balance between the requirements of the commercial viability of distribution licensees and consumer interests. Loss making utilities need to be transformed into profitable ventures which can raise necessary resources from the capital markets to provide services of international standards to enable India to achieve its full growth potential.

Efficiency in operations should be encouraged. Gains of efficient operations with reference to normative parameters should be appropriately shared between consumers and licensees.

8.1 Implementation of Multi-Year Tariff (MYT) framework

- 1) This would minimise risks for utilities and consumers, promote efficiency and appropriate reduction of system losses and attract investments and would also bring greater predictability to consumer tariffs on the whole by restricting tariff adjustments to known indicators on power purchase prices and inflation indices. The framework should be applied for both public and private utilities.
- 2) The State Commissions should introduce mechanisms for sharing of excess profits and losses with the consumers as part of the overall MYT framework. In the first control period the incentives for the utilities may be asymmetric with the percentage of the excess profits being retained by the utility set at higher levels than the percentage of losses to be borne by the utility. This is necessary to accelerate performance improvement and reduction in losses and will be in the long term interest of consumers by way of lower tariffs.
- 3) As indicated in para 5.3 (h), the MYT framework implemented in the initial control period should have adequate flexibility to accommodate changes in the baselines consequent to metering being completed.
- 4) Licensees may have the flexibility of charging lower tariffs than approved by the State Commission if competitive conditions require so without having a claim on additional revenue requirement on this account in accordance with Section 62 of the Act.
- 5) At the beginning of the control period when the "actual" costs form the basis for future projections, there may be a large uncovered gap between required tariffs and the tariffs that are presently applicable. The gap should be fully met through tariff charges and through alternative means that could inter-alia include financial restructuring and transition financing.
- 6) Incumbent licensees should have the option of filing for separate revenue requirements and tariffs for an area where the State Commission has issued multiple distribution licenses, pursuant to the provisions of Section 14 of the Act read with para 5.4.7 of the National Electricity Policy.

- 7) Appropriate Commissions should initiate tariff determination and regulatory scrutiny on a suo moto basis in case the licensee does not initiate filings in time. It is desirable that requisite tariff changes come into effect from the date of commencement of each financial year and any gap on account of delay in filing should be on account of licensee.

8.2 Framework for revenue requirements and costs

8.2.1 The following aspects would need to be considered in determining tariffs:

- (1) All power purchase costs need to be considered legitimate unless it is established that the merit order principle has been violated or power has been purchased at unreasonable rates. The reduction of Aggregate Technical & Commercial (ATC) losses needs to be brought about but not by denying revenues required for power purchase for 24 hours supply and necessary and reasonable O&M and investment for system upgradation. Consumers, particularly those who are ready to pay a tariff which reflects efficient costs have the right to get uninterrupted 24 hours supply of quality power. Actual level of retail sales should be grossed up by normative level of T&D losses as indicated in MYT trajectory for allowing power purchase cost subject to justifiable power purchase mix variation (for example, more energy may be purchased from thermal generation in the event of poor rainfall) and fuel surcharge adjustment as per regulations of the SERC.
- (2) ATC loss reduction should be incentivised by linking returns in a MYT framework to an achievable trajectory. Greater transparency and nurturing of consumer groups would be efficacious. For government owned utilities improving governance to achieve ATC loss reduction is a more difficult and complex challenge for the SERCs. Prescription of a MYT dispensation with different levels of consumer tariffs in succeeding years linked to different ATC loss levels aimed at covering full costs could generate the requisite political will for effective action to reduce theft as the alternative would be stiffer tariff increases. Third party verification of energy audit results for different areas/localities could be used to impose area/locality specific surcharge for greater ATC loss levels and this in turn could generate local consensus for effective action for better governance. The SERCs may also encourage suitable local area based incentive and disincentive scheme for the staff of the utilities linked to reduction in losses.

The SERC shall undertake independent assessment of baseline data for various parameters for every distribution circle of the licensee and this exercise should be completed latest by March, 2007.

The SERC shall also institute a system of independent scrutiny of financial and technical data submitted by the licensees.

As the metering is completed upto appropriate level in the distribution network, latest by March, 2007, it should be possible to segregate technical losses. Accordingly technical loss reduction under MYT framework should then be treated as distinct from commercial loss reduction which require a different approach.

- (3) Section 65 of the Act provides that no direction of the State Government regarding grant of subsidy to consumers in the tariff determined by the State Commission shall be operative if the payment on account of subsidy as decided by the State Commission is not made to the utilities and the tariff fixed by the State Commission shall be applicable from the date of issue of orders by the Commission in this regard. The State Commissions should ensure compliance of this provision of law to ensure financial viability of the utilities. To ensure implementation of the provision of the law, the State Commission should determine the tariff initially, without considering the subsidy commitment by the State Government and subsidised tariff shall be arrived at thereafter considering the subsidy by the State Government for the respective categories of consumers.
- (4) Working capital should be allowed duly recognising the transition issues faced by the utilities such as progressive improvement in recovery of bills. Bad debts should be recognised as per policies developed and subject to the approval of the State Commission.
- (5) Pass through of past losses or profits should be allowed to the extent caused by uncontrollable factors. During the transition period controllable factors should be to the account of utilities and consumers in proportions determined under the MYT framework.
- (6) The contingency reserves should be drawn upon with prior approval of the State Commission only in the event of contingency conditions specified through regulations by the State Commission. The existing practice of providing for development reserves and tariff and dividend control reserves should be discontinued.

8.2.2. The facility of a regulatory asset has been adopted by some Regulatory Commissions in the past to limit tariff impact in a particular year. This should be done only as exception, and subject to the following guidelines:

- a. The circumstances should be clearly defined through regulations, and should only include natural causes or force majeure conditions. Under business as usual conditions, the opening balances of uncovered gap must be covered through transition financing arrangement or capital restructuring;
- b. Carrying cost of Regulatory Asset should be allowed to the utilities;
- c. Recovery of Regulatory Asset should be time-bound and within a period not exceeding three years at the most and preferably within control period;
- d. The use of the facility of Regulatory Asset should not be repetitive.
- e. In cases where regulatory asset is proposed to be adopted, it should be ensured that the return on equity should not become unreasonably low in any year so that the capability of the licensee to borrow is not adversely affected.

8.3 Tariff design : Linkage of tariffs to cost of service

It has been widely recognised that rational and economic pricing of electricity can be one of the major tools for energy conservation and sustainable use of ground water resources.

In terms of the Section 61 (g) of the Act, the Appropriate Commission shall be guided by the objective that the tariff progressively reflects the efficient and prudent cost of supply of electricity.

The State Governments can give subsidy to the extent they consider appropriate as per the provisions of section 65 of the Act. Direct subsidy is a better way to support the poorer categories of consumers than the mechanism of cross-subsidizing the tariff across the board. Subsidies should be targeted effectively and in transparent manner. As a substitute of cross-subsidies, the State Government has the option of raising resources through mechanism of electricity duty and giving direct subsidies to only needy consumers. This is a better way of targetting subsidies effectively.

Accordingly, the following principles would be adopted:

1. In accordance with the National Electricity Policy, consumers below poverty line who consume below a specified level, say 30 units per month, may receive a special support through cross subsidy. Tariffs for such designated group of consumers will be at least 50% of the average cost of supply. This provision will be re-examined after five years.

2. For achieving the objective that the tariff progressively reflects the cost of supply of electricity, the SERC would notify roadmap within six months with a target that latest by the end of year 2010-2011 tariffs are within $\pm 20\%$ of the average cost of supply. The road map would also have intermediate milestones, based on the approach of a gradual reduction in cross subsidy.

For example if the average cost of service is Rs 3 per unit, at the end of year 2010-2011 the tariff for the cross subsidised categories excluding those referred to in para 1 above should not be lower than Rs 2.40 per unit and that for any of the cross-subsidising categories should not go beyond Rs 3.60 per unit.

3. While fixing tariff for agricultural use, the imperatives of the need of using ground water resources in a sustainable manner would also need to be kept in mind in addition to the average cost of supply. Tariff for agricultural use may be set at different levels for different parts of a state depending of the condition of the ground water table to prevent excessive depletion of ground water. Section 62 (3) of the Act provides that geographical position of any area could be one of the criteria for tariff differentiation. A higher level of subsidy could be considered to support poorer farmers of the region where adverse ground water table condition requires larger quantity of electricity for irrigation purposes subject to suitable restrictions to ensure maintenance of ground water levels and sustainable ground water usage.

4. Extent of subsidy for different categories of consumers can be decided by the State Government keeping in view various relevant aspects. But provision of free electricity is not desirable as it encourages wasteful consumption of electricity besides, in most cases, lowering of water table in turn creating avoidable problem of water shortage for irrigation and drinking water for later generations. It is also likely to lead to rapid rise in demand of electricity putting severe strain on the distribution network thus adversely affecting the quality of supply of power. Therefore, it is necessary that reasonable level of user charges are levied. The subsidized rates of electricity should be permitted only up to a pre-identified level of consumption beyond which tariffs reflecting efficient cost of service should be charged from consumers. If the State Government wants to reimburse even part of this cost of

electricity to poor category of consumers the amount can be paid in cash or any other suitable way. Use of prepaid meters can also facilitate this transfer of subsidy to such consumers.

5. Metering of supply to agricultural / rural consumers can be achieved in a consumer friendly way and in effective manner by management of local distribution in rural areas through commercial arrangement with franchisees with involvement of panchayat institutions, user associations, cooperative societies etc. Use of self closing load limitors may be encouraged as a cost effective option for metering in cases of "limited use consumers" who are eligible for subsidized electricity.

8.4 Definition of tariff components and their applicability

1. Two-part tariffs featuring separate fixed and variable charges and Time differentiated tariff shall be introduced on priority for large consumers (say, consumers with demand exceeding 1 MW) within one year. This would also help in flattening the peak and implementing various energy conservation measures.
2. The National Electricity Policy states that existing PPAs with the generating companies would need to be suitably assigned to the successor distribution companies. The State Governments may make such assignments taking care of different load profiles of the distribution companies so that retail tariffs are uniform in the State for different categories of consumers. Thereafter the retail tariffs would reflect the relative efficiency of distribution companies in procuring power at competitive costs, controlling theft and reducing other distribution losses.
3. The State Commission may provide incentives to encourage metering and billing based on metered tariffs, particularly for consumer categories that are presently unmetered to a large extent. The metered tariffs and the incentives should be given wide publicity.
4. The SERCs may also suitably regulate connection charges to be recovered by the distribution licensee to ensure that second distribution licensee does not resort to cherry picking by demanding unreasonable connection charges. The connection charges of the second licensee should not be more than those payable to the incumbent licensee.

8.5 Cross-subsidy surcharge and additional surcharge for open access

8.5.1 National Electricity Policy lays down that the amount of cross-subsidy surcharge and the additional surcharge to be levied from consumers who are permitted open access should not be so onerous that it eliminates competition which

is intended to be fostered in generation and supply of power directly to the consumers through open access.

A consumer who is permitted open access will have to make payment to the generator, the transmission licensee whose transmission systems are used, distribution utility for the wheeling charges and, in addition, the cross subsidy surcharge. The computation of cross subsidy surcharge, therefore, needs to be done in a manner that while it compensates the distribution licensee, it does not constrain introduction of competition through open access. A consumer would avail of open access only if the payment of all the charges leads to a benefit to him. While the interest of distribution licensee needs to be protected it would be essential that this provision of the Act, which requires the open access to be introduced in a time-bound manner, is used to bring about competition in the larger interest of consumers.

Accordingly, when open access is allowed the surcharge for the purpose of sections 38,39,40 and sub-section 2 of section 42 would be computed as the difference between (i) the tariff applicable to the relevant category of consumers and (ii) the cost of the distribution licensee to supply electricity to the consumers of the applicable class. In case of a consumer opting for open access, the distribution licensee could be in a position to discontinue purchase of power at the margin in the merit order. Accordingly, the cost of supply to the consumer for this purpose may be computed as the aggregate of (a) the weighted average of power purchase costs (inclusive of fixed and variable charges) of top 5% power at the margin, excluding liquid fuel based generation, in the merit order approved by the SERC adjusted for average loss compensation of the relevant voltage level and (b) the distribution charges determined on the principles as laid down for intra-state transmission charges.

Surcharge formula:

$$S = T - [C (1 + L / 100) + D]$$

Where

S is the surcharge

T is the Tariff payable by the relevant category of consumers;

C is the Weighted average cost of power purchase of top 5% at the margin excluding liquid fuel based generation and renewable power

D is the Wheeling charge

L is the system Losses for the applicable voltage level, expressed as a percentage

The cross-subsidy surcharge should be brought down progressively and, as far as possible, at a linear rate to a maximum of 20% of its opening level by the year 2010-11.

8.5.2 No surcharge would be required to be paid in terms of sub-section (2) of Section 42 of the Act on the electricity being sold by the generating companies with consent of the competent government under Section 43(A)(1)(c) of the Electricity Act, 1948 (now repealed) and on the electricity being supplied by the distribution licensee on the authorisation by the State Government under Section 27 of the Indian Electricity Act, 1910 (now repealed), till the current validity of such consent or authorisations.

8.5.3 The surcharge may be collected either by the distribution licensee, the transmission licensee, the STU or the CTU, depending on whose facilities are used by the consumer for availing electricity supplies. In all cases the amounts collected from a particular consumer should be given to the distribution licensee in whose area the consumer is located. In case of two licensees supplying in the same area the licensee from whom the consumer was availing supply shall be paid the amounts collected.

8.5.4 The additional surcharge for obligation to supply as per section 42(4) of the Act should become applicable only if it is conclusively demonstrated that the obligation of a licensee, in terms of existing power purchase commitments, has been and continues to be stranded, or there is an unavoidable obligation and incidence to bear fixed costs consequent to such a contract. The fixed costs related to network assets would be recovered through wheeling charges.

8.5.5 Wheeling charges should be determined on the basis of same principles as laid down for intra-state transmission charges and in addition would include average loss compensation of the relevant voltage level.

8.5.6 In case of outages of generator supplying to a consumer on open access, standby arrangements should be provided by the licensee on the payment of tariff for temporary connection to that consumer category as specified by the Appropriate Commission.

9.0 Trading Margin

The Act provides that the Appropriate Commission may fix the trading margin, if considered necessary. Though there is a need to promote trading in

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electricity for making the markets competitive, the Appropriate Commission should monitor the trading transactions continuously and ensure that the electricity traders do not indulge in profiteering in situation of power shortages. Fixing of trading margin should be resorted to for achieving this objective.

Sd/-

(U.N. PANJIAR)

Additional Secretary to the Government of India

To

The Manager,
Government of India Press,
Mayapuri.

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JAN 10 1964

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OF THE DIVISION OF THE PHYSICAL SCIENCES
FROM THE DEPARTMENT OF CHEMISTRY

RE: [illegible]

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भारत का राजपत्र The Gazette of India

असाधारण
EXTRAORDINARY

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PART I—Section 1

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संकल्प

नई दिल्ली, 28 जनवरी, 2016

टैरिफ नीति

सं. 23/2/2005-आर एंड आर (खंड-IX).-1.0 प्रस्तावना

- 1.1 विद्युत अधिनियम, 2003 की धारा 3 का अनुपालन करते हुए, केंद्र सरकार ने दिनांक 6 जनवरी, 2006 को टैरिफ नीति अधिसूचित की। टैरिफ नीति में और संशोधन 31 मार्च, 2008, 20 जनवरी, 2011 और 08 जुलाई, 2011 को अधिसूचित किए गए थे। विद्युत अधिनियम, 2003 की धारा 3(3) के अंतर्गत प्रदत्त शक्तियों का प्रयोग करते हुए केंद्र सरकार एतद्वारा भारत के राजपत्र में इस संकल्प के प्रकाशन की तारीख से प्रभावी किए जाने हेतु संशोधित टैरिफ नीति अधिसूचित करती है।

06 जनवरी, 2006 को अधिसूचित टैरिफ नीति के प्रावधानों के अंतर्गत तथा इसमें किए गए संशोधनों के अंतर्गत किसी भी किए गए कार्य अथवा की गई कार्रवाई अथवा तथाकथित किए गए अथवा किए जाने वाले कार्य के होते हुए भी, जहां तक कि इस नीति से असंगत नहीं हैं, उन्हें इस संशोधित नीति के प्रावधानों के अंतर्गत किया गया अथवा किया जाने वाला माना जाएगा।

- 1.2 राष्ट्रीय विद्युत नीति ने नयी उत्पादन क्षमता की अभिवृद्धि एवं प्रतिवर्ष विद्युत की प्रतिव्यक्ति उपलब्धता बढ़ाने का लक्ष्य निर्धारित किया है एवं न केवल ऊर्जा और व्यस्ततमकालीन कमी को दूर करने के लिए, बल्कि केंद्रीय विद्युत प्राधिकरण द्वारा निर्दिष्ट स्पनिंग रिजर्व रखा जाना भी है। विद्युत क्षेत्र को आगामी पांच वर्षों में सभी घरों को सस्ती बिजली की उपलब्धता को सुगम बनाने हेतु चुनौती को भी पूरा करना है।
- 1.3 केन्द्र और राज्य सरकार, बजटीय संसाधनों से अपेक्षित धनराशि मुहैया कराने में असमर्थ हैं अतः विद्युत क्षेत्र में निवेश को आकर्षित करने के लिए निवेश पर उपयुक्त रिटर्न मुहैया कराना अनिवार्य है। देश के आर्थिक विकास में तेजी लाने और लोगों के जीवन स्तर में सुधार लाने का लक्ष्य प्राप्त करने हेतु

- विवाह अनुदान
- जीवन-निर्वाह अनुदान
- सहकारियों एवं स्वयंसेवी समूहों के लिए आय सृजन योजनाओं को बढ़ावा देना
- बीज, कीटनाशक एवं उर्वरक सब्सिडी तथा सिंचाई सहायता

उपर्युक्त अतिरिक्त प्रावधानों के अलावा वर्तमान में लागू पुनर्वास एवं पुनःस्थापन राष्ट्रीय नीति के प्रावधान सामान्यतः प्रभावी बने रहेंगे।

MINISTRY OF POWER

RESOLUTION

New Delhi, the 28th January, 2016

TARIFF POLICY

No. 23/2/2005-R&R (Vol-IX).—1.0 INTRODUCTION

- 1.1 In compliance with section 3 of the Electricity Act 2003, the Central Government notified the Tariff Policy on 6th January, 2006. Further amendments to the Tariff Policy were notified on 31st March, 2008, 20th January, 2011 and 8th July, 2011. In exercise of powers conferred under section 3(3) of Electricity Act, 2003, the Central Government hereby notifies the revised Tariff Policy to be effective from the date of publication of this resolution in the Gazette of India.

Notwithstanding anything done or any action taken or purported to have been done or taken under the provisions of the Tariff Policy notified on 6th January, 2006 and amendments made thereunder, shall, in so far as it is not inconsistent with this Policy, be deemed to have been done or taken under provisions of this revised policy.

- 1.2 The National Electricity Policy has set the goal of adding new generation capacity and enhancing per capita availability of electricity per year and to not only eliminate energy and peaking shortages but to also have a spinning reserve as specified by the Central Electricity Authority. Development of the power sector has also to meet the challenge of providing access for affordable electricity to all households in next five years.
- 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.

2.0 LEGAL POSITION

- 2.1 Section 3 (1) of the Electricity Act, 2003 empowers the Central Government to formulate the tariff policy. Section 3(3) of the Act enables the Central Government to review or revise the tariff policy from time to time.
- 2.2 Central Electricity Regulatory Commission (CERC) and State Electricity Regulatory Commissions (SERCs) shall be guided by the tariff policy in discharging their functions including framing the regulations.
- 2.3 Regulatory Commissions shall be guided by the principles and methodologies specified by the Central Commission for determination of tariff applicable to generating companies and transmission licensees.
- 2.4 The Forum of Regulators has been constituted by the Central Government under the provisions of the Act which would, inter alia, facilitate consistency in approach specially in the area of distribution.

3.0 EVOLUTION OF THE POLICY

The tariff policy has been evolved in consultation with the State Governments, the Central Electricity Authority (CEA), the Central Electricity Regulatory Commission and various stakeholders.

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;
- (c) Promote transparency, consistency and predictability in regulatory approaches across jurisdictions and minimise perceptions of regulatory risks;
- (d) Promote competition, efficiency in operations and improvement in quality of supply;
- (e) Promote generation of electricity from Renewable sources;
- (f) Promote Hydroelectric Power generation including Pumped Storage Projects (PSP) to provide adequate peaking reserves, reliable grid operation and integration of variable renewable energy sources;
- (g) Evolve a dynamic and robust electricity infrastructure for better consumer services;
- (h) Facilitate supply of adequate and uninterrupted power to all categories of consumers;
- (i) Ensure creation of adequate capacity including reserves in generation, transmission and distribution in advance, for reliability of supply of electricity to consumers.

5.0 GENERAL APPROACH TO TARIFF

5.1 Introducing competition in different segments of the electricity industry is one of the key features of the Electricity Act, 2003. Competition will lead to significant benefits to consumers through reduction in capital costs and also efficiency of operations. It will also facilitate the price to be determined competitively. The Central Government has already issued detailed guidelines for tariff based bidding process for procurement of electricity by distribution licensees.

5.2 All future requirement of power should continue to be procured competitively by distribution licensees except in cases of expansion of existing projects or where there is a company owned or controlled by the State Government as an identified developer and where regulators will need to resort to tariff determination based on norms provided that expansion of generating capacity by private developers for this purpose would be restricted to one time addition of not more than 100% of the existing capacity.

Provided further that the Appropriate Commission, as defined in the Electricity Act, 2003, shall ensure that in case of expansion of such projects, the benefit of sharing of infrastructure of existing project and efficiency of new technology is passed on to consumers through tariff.

Provided also that the State Government can notify a policy to encourage investment in the State by allowing setting up of generating plants, including from renewable energy sources out of which a maximum of 35% of the installed capacity can be procured by the Distribution Licensees of that State for which the tariff may be determined under Section 62 of the Electricity Act, 2003.

Provided that notwithstanding the provision contained in para 5.11(j) of the policy, the tariff for such 35% of the installed capacity shall be determined by SERC.

However, the 15% of power outside long term PPAs allowed under para 5.7.1 of National Electricity Policy shall not be included in 35% allowed to be procured by Distribution Licensees of the State.

5.3 The tariff of all new generation and transmission projects of company owned or controlled by the Central Government shall continue to be determined on the basis of competitive bidding as per the Tariff Policy notified on 6th January, 2006 unless otherwise specified by the Central Government on case to case basis.

Further, intra-state transmission projects shall be developed by State Government through competitive bidding process for projects costing above a threshold limit which shall be decided by the SERCs.

5.4 The Central Electricity Regulatory Commission in consultation with Central Electricity Authority and other stakeholders shall frame within six months, regulations for determination of tariff for generation of electricity from projects using coal washery rejects. These regulations shall also be followed by State Electricity Regulatory Commissions.

Provided that procurement of power from coal washery rejects based projects developed by Central/State PSUs, Joint Venture between Government Company and Company other than Government Company in which shareholding of company other than Government Company either directly or through any of its subsidiary company or associate company shall not be more than 26% of the paid up share capital, can be done under Section 62 of the Act.

5.5 The developer of a hydroelectric project, including Pumped Storage Plant (PSP), would have the option of getting the tariff determined by the Appropriate Commission for the power to be sold through long term Power Purchase

Agreements (PPAs) on the basis of performance based cost of service regulations if the following conditions are fulfilled:

- (a) The Appropriate Commission is satisfied that the project site has been allotted to the developer by the concerned State Government after following a transparent two stage process. The first stage should be for prequalification on the basis of criteria of financial strength, past experience of developing infrastructure projects of similar size, past track record of developing projects on time and within estimated costs, turnover and ability to meet performance guarantee etc. In the second stage, bids are to be called on the basis of only one single quantifiable parameter, such as, additional free power in excess of percentage of free power, as notified by the Central Government, equity participation offered to the State Government, or any other parameter to be notified by the Central Government from time to time.
- (b) Concurrence of CEA (if required under Section 8 of the Act), financial closure, award of work and long term Power Purchase Agreement (PPA) (of the duration of 35 years or more) of the capacity specified in (c) below with distribution licensees are completed by 15.08.2022.
- (c) Long term PPA is firmed up for 60% or more of the total saleable design energy, balance being allowed for merchant sale.

Provided that distribution licensees can extend the duration of long term PPA beyond 35 years for a further period of 15 years at the existing terms and conditions subject to the approval of Appropriate Commission.

Provided further that nothing contained in this clause shall apply to Pumped Storage Plants (PSP).

- (d) The time period for commissioning of all the units of the project shall be fixed at four years from the date of approval of the commissioning schedule by the Appropriate Commission. However, the Appropriate Commission may, after recording reasons in writing, fix longer time period for hydro electric projects (reservoir as well as run-of- river projects) of more than 100 MW capacity. Agreed timelines to achieve the fixed commissioning schedule alongwith penalty for delay shall be decided by the Appropriate Commission in consultation with the Central Electricity Authority. The Appropriate Commission shall allow pass through the Interest During Construction (IDC) and Financing Cost (FC) only upto the period of delay not attributable to the developer, as approved by the CEA.
- (e) Award of contracts for supply of equipment and construction of the project, either through a turnkey or through well defined packages, are done on the basis of international competitive bidding.

5.6 Notwithstanding anything contained in Para 5.5 above, the developers of hydro electric projects of more than 100 MW design capacity for which sites have been awarded earlier by following a transparent process and on the basis of pre-determined set of criteria would have the option of getting the tariff determined by the Appropriate Commission for the power to be sold through long term PPA on the basis of cost plus under Section 62 of the Act.

5.7 In case of projects covered under Para 5.5 and 5.6, the Appropriate Commission shall determine tariff ensuring the following:

- (i) Any expenditure incurred or committed to be incurred by the project developer for getting project site allotted (except free power as notified) would neither be included in the project cost, nor any such expenditure shall be passed through in tariff.
- (ii) The project cost shall include the cost of the approved R&R plan of the Project which shall be in conformity with the following:
 - (a) the National Rehabilitation & Resettlement Policy currently in force;
 - (b) the R&R package as enclosed at appendix.
- (iii) Annual fixed charges shall be taken pro-rata to the saleable design energy tied up on the basis of long term PPAs with respect to total saleable design energy. The total saleable design energy shall be arrived at by deducting the following from the design energy at the bus bar:
 - a) Free power as notified by the Central Government from time to time for the host State and the riparian State and percentage for contribution towards Local Area Development Fund as constituted by the State Government. This free power may be suitably staggered as decided by the State Government.
 - b) Energy corresponding to 100 units of electricity to be provided free of cost every month to every Project Affected Family notified by the State Government to be offered through the concerned distribution licensee in the designated resettlement area/projects area for a period of ten years from the date of commissioning.

5.8 The Appropriate Commission shall provide for suitable regulatory framework for incentivizing the developers of Hydro Electric Projects (HEPs) for using long-term financial instruments in order to reduce the tariff burden in the initial years.

5.9 The real benefits of competition would be available only with the emergence of appropriate market conditions. Shortages of power supply will need to be overcome. Multiple players will enhance the quality of service through competition. All efforts will need to be made to bring power industry to this situation as early as possible in the overall interests of consumers. Transmission and distribution, i.e. the wires business is internationally recognized as having the characteristics of a natural monopoly where there are inherent difficulties in going beyond regulated returns on the basis of scrutiny of costs.

5.10 Consumer interest is best served in ensuring viability and sustainability of the entire value chain viz., generation, transmission and distribution of electricity, while at the same time facilitating power supply at reasonable rate to consumers. The financial turnaround/restructuring plans are approved by the Appropriate Government from time to time to achieve this objective. The Appropriate Government as well as the Appropriate Commission while implementing such plans shall ensure viability of the generation, transmission and distribution in terms of recovery of all prudent costs.

5.11 Tariff policy lays down the following framework for performance based cost of service regulation in respect of aspects common to generation, transmission as well as distribution. These shall not apply to competitively bid projects as referred to in para 6.1 and para 7.1 (6). Sector specific aspects are dealt with in subsequent sections.

a) Return on Investment

Balance needs to be maintained between the interests of consumers and the need for investments while laying down rate of return. Return should attract investments at par with, if not in preference to, other sectors so that the electricity sector is able to create adequate capacity. The rate of return should be such that it allows generation of reasonable surplus for growth of the sector.

The Central Commission would notify, from time to time, the rate of return on equity for generation and transmission projects keeping in view the assessment of overall risk and the prevalent cost of capital which shall be followed by the SERCs also. The rate of return notified by CERC for transmission may be adopted by the SERCs for distribution with appropriate modification taking into view the risks involved. For uniform approach in this matter, it would be desirable to arrive at a consensus through the Forum of Regulators.

While allowing the total capital cost of the project, the Appropriate Commission would ensure that these are reasonable and to achieve this objective, requisite benchmarks on capital costs should be evolved by the Regulatory Commissions. The Central Commission may adopt either Return on Equity or Return on Capital approach whichever is considered better in the interest of the consumers.

The State Commission may consider 'distribution and supply margin' as basis for allowing returns in distribution business at an appropriate time. The State Commission may also consider price cap regulation based on comprehensive study. The Forum of Regulators should evolve a comprehensive approach in this regard. The considerations while preparing such an approach would, inter-alia, include issues such as reduction in Aggregate Technical and Commercial losses, improving the standards of performance and reduction in cost of supply.

b) Equity Norms

For financing of future capital cost of projects, a Debt: Equity ratio of 70:30 should be adopted. Promoters would be free to have higher quantum of equity investments. The equity in excess of this norm should be treated as loans advanced at the weighted average rate of interest and for a weighted average tenor of the long term debt component of the project after ascertaining the reasonableness of the interest rates and taking into account the effect of debt restructuring done, if any. In case of equity below the normative level, the actual equity would be used for determination of Return on Equity in tariff computations.

c) Depreciation

The Central Commission may notify the rates of depreciation in respect of generation and transmission assets. The depreciation rates so notified would also be applicable for distribution assets with appropriate modification as may be evolved by the Forum of Regulators.

Provided that the Appropriate Commission shall specify, for the purpose of tariff determination, a upper ceiling of the rate of depreciation to be applicable during the useful life of the project and the developer shall have the option of indicating, while seeking approval for tariff, lower rate of depreciation subject to the aforesaid ceiling.

The rates of depreciation so notified would be applicable for the purpose of tariffs as well as accounting.

There should be no need for any advance against depreciation.

Benefit of reduced tariff after the assets have been fully depreciated should remain available to the consumers.

Notwithstanding the above, power from those plants of a generating company, where either whose PPAs have expired or plants have completed their useful life, may be bundled with power from renewable generating plants to be set up through the process of bidding or for which the equipment for setting up such plant is procured through competitive bidding. In such cases, power from such plants can be reallocated to beneficiaries purchasing power from renewable energy generating plants on the principles to be decided by Appropriate Government. The Obligated Entities which finally buy such power shall account towards their renewable purchase obligation to the extent of power bought from renewable energy generating plants.

The scheduling and despatch of such conventional and renewable generating plants shall be done separately.

d) Cost of Debt

Structuring of debt, including its tenure, with a view to reducing the tariff should be encouraged. Savings in costs on account of subsequent restructuring of debt should be suitably incentivised by the Regulatory Commissions keeping in view the interests of the consumers.

e) Cost of Management of Foreign Exchange Risk

Foreign exchange variation risk shall not be a pass through. However, appropriate costs of hedging and swapping to take care of foreign exchange variations should be allowed for debt obtained in foreign currencies. This provision would be relevant only for the projects where tariff has not been determined on the basis of competitive bids.

f) Operating Norms

Suitable performance norms of operations together with incentives and disincentives would need to be evolved along with appropriate arrangement for sharing the gains of efficient operations with the consumers. Except for the cases referred to in para 5.11(h)(2), the operating parameters in tariffs should be at "normative levels" only and not at "lower of normative and actuals". This is essential to encourage better operating performance. The norms should be efficient, relatable to past performance, capable of achievement and progressively reflecting increased efficiencies and may also take into consideration the latest technological advancements, fuel, vintage of equipments, nature of operations, level of service to be provided to consumers etc. Continued and proven inefficiency must be controlled and penalized.

The Central Commission would, in consultation with the Central Electricity Authority, notify operating norms from time to time for generation and transmission. The SERC would adopt these norms. In cases where operations have been much below the norms for many previous years, the SERCs may fix relaxed norms suitably and draw a transition path over the time for achieving the norms notified by the Central Commission, or phase them out in accordance with the norms specified by the Authority in this regard.

Operating norms for distribution networks would be notified by the concerned SERCs. For uniformity, the Forum of Regulators should evolve model guidelines taking into consideration the state specific distinctive features.

g) Renovation and Modernization

Renovation and modernization of generation plants (including repowering of wind generating plants) need to be encouraged for higher efficiency levels even though they may have not completed their useful life. This shall not include periodic overhauls. A Multi-Year Tariff (MYT) framework may be prescribed which should also cover capital investments necessary for renovation and modernization and an incentive framework to share the benefits of efficiency improvement between the utilities and the beneficiaries with reference to revised and specific performance norms to be fixed by the Appropriate Commission. Appropriate capital costs required for predetermined efficiency gains and/or for sustenance of high level performance would need to be assessed by the Appropriate Commission.

h) Multi Year Tariff

1) Section 61 of the Act states that the Appropriate Commission for determining the terms and conditions for the determination of tariff shall be guided, inter-alia, by Multi-Year Tariff (MYT) principles. The framework should feature a five-year control period. The initial control period may, however, be of 3 year duration for transmission and distribution if deemed necessary by the Regulatory Commission on account of data uncertainties and other practical considerations. In cases of lack of reliable data, the Appropriate Commission may state assumptions in MYT for first control period and a fresh control period may be started as and when more reliable data becomes available.

2) In cases where operations have been much below the norms for many previous years, the initial starting point in determining the revenue requirement and the improvement trajectories should be recognized at

"relaxed" levels and not the "desired" levels. Suitable benchmarking studies may be conducted to establish the "desired" performance standards. Separate studies may be required for each utility to assess the capital expenditure necessary to meet the minimum service standards.

- 3) Once the revenue requirements are established at the beginning of the control period, the Regulatory Commission should focus on regulation of outputs and not the input cost elements. At the end of the control period, a comprehensive review of performance may be undertaken.
- 4) Uncontrollable costs should be recovered speedily to ensure that future consumers are not burdened with past costs. Uncontrollable costs would include (but not limited to) fuel costs, costs on account of inflation, taxes and cess, variations in power purchase unit costs including on account of adverse natural events.
- 5) Clear guidelines and regulations on information disclosure may be developed by the Regulatory Commissions. Section 62 (2) of the Act empowers the Appropriate Commission to require licensees to furnish separate details, as may be specified in respect of generation, transmission and distribution for determination of tariff.

(i) Benefits under Clean Development Mechanism (CDM)

Tariff fixation for all electricity projects (generation, transmission and distribution) that result in lower Green House Gas (GHG) emissions than the relevant base line should take into account the benefits obtained from the Clean Development Mechanism (CDM) into consideration, in a manner so as to provide adequate incentive to the project developers.

(j) Composite Scheme

Sub-section (b) of Section 79(1) of the Act provides that Central Commission shall regulate the tariff of generating company, if such generating company enters into or otherwise have a composite scheme for generation and sale of electricity in more than one State.

Explanation: The composite scheme as specified under section 79(1) of the Act shall mean a scheme by a generating company for generation and sale of electricity in more than one State, having signed long-term or medium-term PPA prior to the date of commercial operation of the project (the COD of the last unit of the project will be deemed to be the date of commercial operation of the project) for sale of atleast 10% of the capacity of the project to a distribution licensee outside the State in which such project is located.

5.12 While it is recognized that the State Governments have the right to impose duties, taxes, cess on sale or consumption of electricity, these could potentially distort competition and optimal use of resources especially if such levies are used selectively and on a non-uniform basis.

In some cases, the duties etc. on consumption of electricity is linked to sources of generation (like captive generation) and the level of duties levied is much higher as compared to that being levied on the same category of consumers who draw power from grid. Such a distinction is invidious and inappropriate. The sole purpose of freely allowing captive generation is to enable industries to access reliable, quality and cost effective power. Particularly, the provisions relating to captive power plants which can be set up by group of consumers has been brought in recognition of the fact that efficient expansion of small and medium industries across the country will lead to faster economic growth and creation of larger employment opportunities.

For realizing the goal of making available electricity to consumers at reasonable and competitive prices, it is necessary that such duties are kept at reasonable level.

5.13 The Act provides for introduction of open access for consumers of one megawatt and above in a time bound manner. The Regulatory Commissions shall introduce open access for different categories of consumers as per the provisions of the Act.

6.0 GENERATION

Accelerated growth of the generation capacity sector is essential to meet the estimated growth in demand. Adequacy of generation is also essential for efficient functioning of power markets. At the same time, it is to be ensured that new capacity addition should deliver electricity at most efficient rates to protect the interests of consumers. This policy stipulates the following for meeting these objectives.

6.1 Procurement of power

As stipulated in para 5.1, power procurement for future requirements should be through a transparent competitive bidding mechanism using the guidelines issued by the Central Government from time to time. These guidelines provide for procurement of electricity separately for base load requirements and for peak load requirements. This would facilitate setting up of generation capacities specifically for meeting such requirements.

However, some of the competitively bid projects as per the guidelines dated 19th January, 2005 have experienced difficulties in getting the required quantity of coal from Coal India Limited (CIL). In case of reduced quantity of

domestic coal supplied by CIL, vis-à-vis the assured quantity or quantity indicated in Letter of Assurance/FSA the cost of imported/market based e-auction coal procured for making up the shortfall, shall be considered for being made a pass through by Appropriate Commission on a case to case basis, as per advisory issued by Ministry of Power vide OM No. FU-12/2011-IPC (Vol-III) dated 31.7.2013.

6.2 Tariff structuring and associated issues

- (1) A two-part tariff structure should be adopted for all long-term and medium-term contracts to facilitate Merit Order dispatch. According to National Electricity Policy, the Availability Based Tariff (ABT) is also to be introduced at State level. This framework would be extended to generating stations (including grid connected captive plants of capacities as determined by the SERC). The Appropriate Commission shall introduce differential rates of fixed charges for peak and off peak hours for better management of load within a period of two years.

Power stations are required to be available and ready to dispatch at all times. Notwithstanding any provision contained in the Power Purchase Agreement (PPA), in order to ensure better utilization of un-requisitioned generating capacity of generating stations, based on regulated tariff under Section 62 of the Electricity Act 2003, the procurer shall communicate, at least twenty four hours before 00.00 hours of the day when the power and quantum thereof is not requisitioned by it enabling the generating stations to sell the same in the market in consonance with laid down policy of Central Government in this regard. The developer and the procurers signing the PPA would share the gains realized from sale, if any, of such un-requisitioned power in market in the ratio of 50:50, if not already provided in the PPA. Such gain will be calculated as the difference between selling price of such power and fuel charge. It should, however, be ensured that such merchant sale does not result in adverse impact on the original beneficiary(ies) including in the form of higher average energy charge vis-à-vis the energy charge payable without the merchant sale. For the projects under section 63 of the Act, the methodology for such sale may be decided by the Appropriate Commission on mutually agreed terms between procurer and generator or unless already specified in the PPA.

- (2) Power Purchase Agreement should ensure adequate and bankable payment security arrangements to the Generating companies. In case of persisting default on payment of agreed tariff as per PPA in spite of the available payment security mechanisms like letter of credit, escrow of cash flows etc. the generating companies may sell such power to other buyers.
- (3) In case of coal based generating stations, the cost of project will also include reasonable cost of setting up coal washeries, coal beneficiation system and dry ash handling & disposal system.
- (4) After the award of bids, if there is any change in domestic duties, levies, cess and taxes imposed by Central Government, State Governments/Union Territories or by any Government instrumentality leading to corresponding changes in the cost, the same may be treated as "Change in Law" and may unless provided otherwise in the PPA, be allowed as pass through subject to approval of Appropriate Commission.
- (5) The thermal power plant(s) including the existing plants located within 50 km radius of sewage treatment plant of Municipality/local bodies/similar organization shall in the order of their closeness to the sewage treatment plant, mandatorily use treated sewage water produced by these bodies and the associated cost on this account be allowed as a pass through in the tariff. Such thermal plants may also ensure back-up source of water to meet their requirement in the event of shortage of supply by the sewage treatment plant. The associated cost on this account shall be factored into the fixed cost so as not to disturb the merit order of such thermal plant. The shutdown of the sewage treatment plant will be taken in consultation with the developer of the power plant.

6.3 Harnessing captive generation

Captive generation is an important means to making competitive power available. Appropriate Commission should create an enabling environment that encourages captive power plants to be connected to the grid.

Such captive plants could supply surplus power through grid subject to the same regulation as applicable to generating companies. Firm supplies may be bought from captive plants by distribution licensees using the guidelines issued by the Central Government under section 63 of the Act taking into account second proviso of para 5.2 of this Policy.

The prices should be differentiated for peak and off-peak supply and the tariff should include variable cost of generation at actual levels and reasonable compensation for capacity charges.

Wheeling charges and other terms and conditions for implementation should be determined in advance by the respective State Commission, duly ensuring that the charges are reasonable and fair.

Grid connected captive plants could also supply power to non-captive users connected to the grid through available transmission facilities based on negotiated tariffs. Such sale of electricity would be subject to relevant regulations for open access including compliance of relevant provisions of rule 3 of the Electricity Rules, 2005.

6.4 Renewable sources of energy generation including Co-generation from renewable energy sources:

- (1) Pursuant to provisions of section 86(1)(c) of the Act, the Appropriate Commission shall fix a minimum percentage of the total consumption of electricity in the area of a distribution licensee for purchase of energy from renewable energy sources, taking into account availability of such resources and its impact on retail tariffs. Cost of purchase of renewable energy shall be taken into account while determining tariff by SERCs. Long term growth trajectory of Renewable Purchase Obligations (RPOs) will be prescribed by the Ministry of Power in consultation with MNRE.

Provided that cogeneration from sources other than renewable sources shall not be excluded from the applicability of RPOs.

- (i) Within the percentage so made applicable, to start with, the SERCs shall also reserve a minimum percentage for purchase of solar energy from the date of notification of this policy which shall be such that it reaches 8% of total consumption of energy, excluding Hydro Power, by March 2022 or as notified by the Central Government from time to time.
 - (ii) Distribution Licensee(s) shall compulsorily procure 100% power produced from all the Waste-to-Energy plants in the State, in the ratio of their procurement of power from all sources including their own, at the tariff determined by the Appropriate Commission under Section 62 of the Act.
 - (iii) It is desirable that purchase of energy from renewable sources of energy takes place more or less in the same proportion in different States. To achieve this objective in the current scenario of large availability of such resources only in certain parts of the country, an appropriate mechanism such as Renewable Energy Certificate (REC) would need to be promoted. Through such a mechanism, the renewable energy based generation companies can sell the electricity to local distribution licensee at the rates for conventional power and can recover the balance cost by selling certificates to other distribution companies and obligated entities enabling the latter to meet their renewable power purchase obligations. The REC mechanism should also have a solar specific REC.
 - (iv) Appropriate Commission may also provide for a suitable regulatory framework for encouraging such other emerging renewable energy technologies by prescribing separate technology based REC multiplier (i.e. granting higher or lower number of RECs to such emerging technologies for the same level of generation). Similarly, considering the change in prices of renewable energy technologies with passage of time, the Appropriate Commission may prescribe vintage based REC multiplier (i.e. granting higher or lower number of RECs for the same level of generation based on year of commissioning of plant).
- (2) States shall endeavor to procure power from renewable energy sources through competitive bidding to keep the tariff low, except from the waste to energy plants. Procurement of power by Distribution Licensee from renewable energy sources from projects above the notified capacity, shall be done through competitive bidding process, from the date to be notified by the Central Government.
- However, till such notification, any such procurement of power from renewable energy sources projects, may be done under Section 62 of the Electricity Act, 2003. While determining the tariff from such sources, the Appropriate Commission shall take into account the solar radiation and wind intensity which may differ from area to area to ensure that the benefits are passed on to the consumers.
- (3) The Central Commission should lay down guidelines for pricing intermittent power, especially from renewable energy sources, where such procurement is not through competitive bidding. The tariff stipulated by CERC shall act as a ceiling for that category.
 - (4) In order to incentivize the Distribution Companies to procure power from renewable sources of energy, the Central Government may notify, from time to time, an appropriate bid-based tariff framework for renewable energy, allowing the tariff to be increased progressively in a back-loaded or any other manner in the public interest during the period of PPA, over the life cycle of such a generating plant. Correspondingly, the procurer of such bid-based renewable energy shall comply with the obligations for payment of tariff so determined.
 - (5) In order to promote renewable energy sources, any generating company proposing to establish a coal/lignite based thermal generating station after a specified date shall be required to establish such renewable energy generating capacity or procure and supply renewable energy equivalent to such capacity, as may be prescribed by the Central Government from time to time after due consultation with stakeholders. The renewable energy produced by each generator may be bundled with its thermal generation for the purpose of sale. In case an obligated entity procures this renewable power, then the SERCs will consider the obligated entity to have met the Renewable Purchase Obligation (RPO) to the extent of power bought from such renewable energy generating stations.

Provided further that in case any existing coal and lignite based thermal power generating station, with the concurrence of power procurers under the existing Power Purchase Agreements, chooses to set up additional renewable energy generating capacity, the power from such plant shall be allowed to be bundled and tariff of such renewable energy shall be allowed to be pass through by the Appropriate Commission. The Obligated

Entities who finally buy such power shall account towards their renewable purchase obligations.

Provided also that scheduling and despatch of such conventional and renewable generating plants shall be done separately.

- (6) In order to further encourage renewable sources of energy, no inter-State transmission charges and losses may be levied till such period as may be notified by the Central Government on transmission of the electricity generated from solar and wind sources of energy through the inter-state transmission system for sale.
- (7) Appropriate Commission may provide regulatory framework to facilitate generation and sale of electricity from renewable energy sources particularly from roof-top solar system by any entity including local authority, Panchayat Institution, user institution, cooperative society, Non-Governmental Organization, franchisee or by Renewable Energy Service Company. The Appropriate Government may also provide complementary policy support for this purpose.

Explanation: "Renewable Energy Service Company" means an energy service company which provides renewable energy to the consumers in the form of electricity.

7.0 TRANSMISSION

The transmission system in the country consists of the regional networks, the inter-regional connections that carry electricity across the five regions and the State networks. Development of the State networks has not been uniform and capacity in such networks needs to be augmented. These networks will play an important role in intra-State power flows and also in the regional and national flows. The tariff policy, in so far as transmission is concerned, seeks to achieve the following objectives:

1. Ensuring optimal development of the transmission network ahead of generation with adequate margin for reliability and to promote efficient utilization of generation and transmission assets in the country;
2. Attracting the required investments in the transmission sector and providing adequate returns.

7.1 Transmission pricing

- (1) A suitable transmission tariff framework for all inter-State transmission, including transmission of electricity across the territory of an intervening State as well as conveyance within the State which is incidental to such inter-state transmission, has been implemented with the objective of promoting effective utilization of all assets across the country and accelerated development of new transmission capacities that are required.
- (2) The National Electricity Policy mandates that the national tariff framework implemented should be sensitive to distance, direction and related to quantum of power flow. This has been developed by CERC taking into consideration the advice of the CEA. Sharing of transmission charges shall be done in accordance with such tariff mechanism as amended from time to time.
- (3) Transmission charges, under this framework, can be determined on MW per circuit kilometer basis, zonal postage stamp basis, or some other pragmatic variant, the ultimate objective being to get the transmission system users to share the total transmission cost in proportion to their respective utilization of the transmission system. The 'utilization' factor should duly capture the advantage of reliability reaped by all. The spread between minimum and maximum transmission rates should be such as not to inhibit planned development/augmentation of the transmission system but should discourage non-optimal transmission investment.
- (4) In view of the approach laid down by the NEP, prior agreement with the beneficiaries would not be a pre-condition for network expansion. CTU/STU should undertake network expansion after identifying the requirements in consonance with the National Electricity Plan and in consultation with stakeholders and taking up the execution after due regulatory approvals. For smooth operation of the grid, efforts should be made to develop transmission system ahead of generation.
- (5) The Central Commission has specified norms for capital and operating costs and laid down Standards of Performance for inter-State transmission licensees. Tariff determination and adherence to Standards of Performance shall be carried out in accordance with these norms, as amended from time to time.
- (6) Investment by transmission developer including CTU/STUs would be invited through competitive bids in accordance with the guidelines issued by the Central Government from time to time.
- (7) While all future inter-state transmission projects shall, ordinarily, be developed through competitive bidding process, the Central Government may give exemption from competitive bidding for (a) specific category of projects of strategic importance, technical upgradation etc. or (b) works required to be done to cater to an urgent situation on a case to case basis.
- (8) CERC has specified Regulation on framework for the inter-State transmission. A similar approach should be implemented by SERCs for the intra-State transmission, duly considering factors like voltage, distance, direction and quantum of flow.

(9) Metering compatible with the requirements of the proposed transmission tariff framework should be established on priority basis. The metering should be compatible with ABT requirements, which would also facilitate implementation of Time of Day (ToD) tariffs.

7.2 Transmission loss allocation

- (1) Transactions are being charged on the basis of average losses arrived at after appropriately considering the distance and directional sensitivity, as applicable to relevant voltage level, on the transmission system. Based on the methodology laid down by the CERC in this regard for inter-state transmission, the SERCs may evolve a similar framework for intra-state transmission.

The loss framework should ensure that the loss compensation is reasonable and linked to applicable technical loss benchmarks. The benchmarks may be determined by the Appropriate Commission after considering advice of CEA.

- (2) It would be desirable to move to a system of loss compensation based on incremental losses as present deficiencies in transmission capacities are overcome through network expansion. The Appropriate Commission may require necessary studies to be conducted to establish the allowable level of system loss for the network configuration and the capital expenditure required to augment the transmission system and reduce system losses. Since additional flows above a level of line loading lead to significantly higher losses, CTU/STU should ensure upgrading of transmission systems to avoid the situations of overloading. The Appropriate Commission should permit adequate capital investments in new assets for upgrading the transmission system.

7.3 Other issues in transmission

- (1) Financial incentives and disincentives should be implemented for the CTU and the STU around the Key Performance Indicators (KPI) for these organisations. Such KPIs would include efficient network construction, system availability and loss reduction.
- (2) All available information should be shared with intending users by the CTU/STU and the load dispatch centers, particularly information on available transmission capacity and load flow studies.
- (3) In extraordinary circumstances including threat to security to the State, public order or natural calamity, if the Central Government allocates power out of the unallocated share of the Central Generating Stations or otherwise, such allocation of power will have priority over short-term, medium-term and long-term access in this order.

7.4 Ancillary Services

- (1) The Central Commission may introduce the norms and framework for ancillary services, including the method of sharing the charges, necessary to support the power system or grid operation for maintaining power quality, reliability and security of the grid.
- (2) The Central Commission shall also consult the Central Electricity Authority, SERCs/JERCs, CTUs/STUs and NLDC/RLDC/SLDCs while specifying the norms for ancillary services.
- (3) The State Commission shall also adopt the norms and framework for ancillary services as specified by the Central Commission.

8.0 DISTRIBUTION

Supply of reliable and quality power of specified standards in an efficient manner and at reasonable rates is one of the main objectives of the National Electricity Policy. The State Commission should determine and notify the standards of performance of licensees with respect to quality, continuity and reliability of service for all consumers. It is desirable that the Forum of Regulators determines the basic framework on service standards. A suitable transition framework could be provided for the licensees to reach the desired levels of service as quickly as possible. Penalties may be imposed on licensees in accordance with section 57 of the Act for failure to meet the standards.

Making the distribution segment of the industry efficient and solvent is the key to success of power sector reforms and provision of services of specified standards. Therefore, the Regulatory Commissions need to strike the right balance between the requirements of the commercial viability of distribution licensees and consumer interests. Loss making utilities need to be transformed into profitable ventures which can raise necessary resources from the capital markets to provide services of international standards to enable India to achieve its full growth potential. Efficiency in operations should be encouraged. Gains of efficient operations with reference to normative parameters should be appropriately shared between consumers and licensees.

Appropriate Commission should mandate Distribution Licensee to undertake load forecasting every year and to publish and submit to the Commission their short, medium and long-term power procurement plans to meet the load.

The State Regulatory Commission will devise a specific trajectory so that 24 hours supply of adequate and uninterrupted power can be ensured to all categories of consumers by 2021-22 or earlier depending upon the prevailing situation in the State.

Micro-grids supplying renewable energy are being set up in such areas where the grid has not reached or where adequate power is not available in the grid. Investment involved in setting up of such microgrids is substantial. One of the risks of investment is grid reaching the area before the completion of the project life and thereby making power from micro grids costly and unviable. In order to mitigate such risk and incentivize investment in microgrids, there is a need to put in place an appropriate regulatory framework to mandate compulsory purchase of power into the grid from such micro grids at a tariff to be determined under section 62 of the Act considering depreciated cost of investments and keeping in view industry benchmark and with a cap if necessary, as approved by the Appropriate Commission. The Appropriate Commission shall notify necessary regulations in this regard within six months.

8.1 Implementation of Multi-Year Tariff (MYT) framework

- 1) MYT framework would minimise risks for utilities and consumers, promote efficiency and appropriate reduction of system losses and attract investments. It would also bring greater predictability to consumer tariffs on the whole by restricting tariff adjustments to known indicators of power purchase prices and inflation indices. The framework should be applied for both public and private utilities.
- 2) The State Commissions should introduce mechanisms for sharing of excess profits and losses with the consumers as part of the overall MYT framework. In the first control period the incentives for the utilities may be asymmetric with the percentage of the excess profits being retained by the utility set at higher levels than the percentage of losses to be borne by the utility. This is necessary to accelerate performance improvement and reduction in losses and will be in the long term interest of consumers by way of lower tariffs.
- 3) As indicated in para 5.11(h), the MYT framework implemented in the initial control period should have adequate flexibility to accommodate changes in the baselines consequent to metering being completed.
- 4) Licensees may have the flexibility of charging lower tariffs than approved by the State Commission if competitive conditions require so without having a claim on additional revenue requirement on this account in accordance with Section 62 of the Act.
- 5) At the beginning of the control period when the "actual" costs form the basis for future projections, there may be a large uncovered gap between required tariffs and the tariffs that are presently applicable. This gap should be fully met through tariff charges and through alternative means that could inter-alia include financial restructuring and transition financing.
- 6) Incumbent licensees should have the option of filing for separate revenue requirements and tariffs for an area where the State Commission has issued multiple distribution licenses, pursuant to the provisions of Section 14 of the Act read with para 5.4.7 of the National Electricity Policy.
- 7) Appropriate Commissions should initiate tariff determination and regulatory scrutiny on a suo moto basis in case the licensee does not initiate filings in time. It is desirable that requisite tariff changes come into effect from the date of commencement of each financial year and any gap on account of delay in filing should be on account of licensee.

8.2 Framework for revenue requirements and costs

8.2.1 The following aspects would need to be considered in determining tariffs:

- (1) All power purchase costs need to be considered legitimate unless it is established that the merit order principle has been violated or power has been purchased at unreasonable rates. The reduction of Aggregate Technical & Commercial (AT&C) losses needs to be brought about but not by denying revenues required for power purchase for 24 hours supply and necessary and reasonable O&M and investment for system up-gradation. Consumers, particularly those who are ready to pay a tariff which reflects efficient costs have the right to get uninterrupted 24 hours supply of quality power. Actual level of retail sales should be grossed up by normative level of T&D losses as indicated in MYT trajectory for allowing power purchase cost subject to justifiable power purchase mix variation (for example, more energy may be purchased from thermal generation in the event of poor rainfall) and fuel surcharge adjustment as per regulations of the SERC.
- (2) AT&C loss reduction should be incentivised by linking returns in a MYT framework to an achievable trajectory. Greater transparency and nurturing of consumer groups would be efficacious. For government owned utilities improving governance to achieve AT&C loss reduction is a more difficult and complex challenge for the SERCs. Prescription of a MYT dispensation with different levels of consumer tariffs in succeeding years linked to different AT&C loss levels aimed at covering full costs could generate the requisite political will for effective action to reduce theft as the alternative would be stiffer tariff increases. Third party verification of energy audit results for different areas/localities could be used to impose area/locality specific surcharge for greater AT&C loss levels and this in turn could generate local consensus for effective action for better governance. The SERCs may also encourage suitable local area based incentive and disincentive scheme for the staff of the utilities linked to reduction in losses.

The SERC shall undertake independent assessment of baseline data for various parameters for every distribution circle of the licensee.

The SERC shall also institute a system of independent scrutiny of financial and technical data submitted by the licensees.

As the metering is completed up to appropriate level in the distribution network, it should be possible to segregate technical losses. Accordingly technical loss reduction under MYT framework should then be treated as distinct from commercial loss reduction which requires a different approach.

- (3) Section 65 of the Act provides that no direction of the State Government regarding grant of subsidy to consumers in the tariff determined by the State Commission shall be operative if the payment on account of subsidy as decided by the State Commission is not made to the utilities and the tariff fixed by the State Commission shall be applicable from the date of issue of orders by the Commission in this regard. The State Commissions should ensure compliance of this provision of law to ensure financial viability of the utilities. To ensure implementation of the provision of the law, the State Commission should determine the tariff initially, without considering the subsidy commitment by the State Government and subsidised tariff shall be arrived at thereafter considering the subsidy by the State Government for the respective categories of consumers.
- (4) Working capital should be allowed duly recognising the transition issues faced by the utilities such as progressive improvement in recovery of bills. Bad debts should be recognised as per policies developed and subject to the approval of the State Commission.
- (5) Pass through of past losses or profits should be allowed to the extent caused by uncontrollable factors. During the transition period controllable factors should be to the account of utilities and consumers in proportions determined under the MYT framework.
- (6) The contingency reserves should be drawn upon with prior approval of the State Commission only in the event of contingency conditions specified through regulations by the State Commission. The existing practice of providing for development reserves and tariff and dividend control reserves should be discontinued.
- (7) Section 61 of the Act mandates that the Appropriate Commission, while determining tariff, shall not only ensure safeguarding of consumer's interests but also the recovery of the cost of electricity in a reasonable manner. Section 62 of the Act further provides for periodic tariff adjustment during a year to take care of the variation in fuel price, as may be specified.

Therefore, the Appropriate Commission shall specify an appropriate price adjustment formula for recovery of the costs, arising on account of the variation in the price of fuel, power purchase etc. on monthly/quarterly basis for recovery of all prudent costs of the generating company and the licensee.

8.2.2 The facility of a regulatory asset has been adopted by some Regulatory Commissions in the past to limit tariff impact in a particular year. This should be done only as a very rare exception in case of natural calamity or force majeure conditions and subject to the following:

- a. Under business as usual conditions, no creation of Regulatory Assets shall be allowed;
- b. Recovery of outstanding Regulatory Assets along with carrying cost of Regulatory Assets should be time bound and within a period not exceeding seven years. The State Commission may specify the trajectory for the same.

8.3 Tariff design: Linkage of tariffs to cost of service

It has been widely recognised that rational and economic pricing of electricity can be one of the major tools for energy conservation and sustainable use of ground water resources.

In terms of the Section 61(g) of the Act, the Appropriate Commission shall be guided by the objective that the tariff progressively reflects the efficient and prudent cost of supply of electricity.

The State Governments can give subsidy to the extent they consider appropriate as per the provisions of section 65 of the Act. Direct subsidy is a better way to support the poorer categories of consumers than the mechanism of cross-subsidizing the tariff across the board. Subsidies should be targeted effectively and in transparent manner. As a substitute of cross subsidies, the State Government has the option of raising resources through mechanism of electricity duty and giving direct subsidies to only needy consumers. This is a better way of targeting subsidies effectively.

Accordingly, the following principles would be adopted:

1. Consumers below poverty line who consume below a specified level, as prescribed in the National Electricity Policy may receive a special support through cross subsidy. Tariffs for such designated group of consumers will be at least 50% of the average cost of supply.
2. For achieving the objective that the tariff progressively reflects the cost of supply of electricity, the Appropriate Commission would notify a roadmap such that tariffs are brought within $\pm 20\%$ of the average cost of supply. The road map would also have intermediate milestones, based on the approach of a gradual

reduction in cross subsidy.

3. While fixing tariff for agricultural use, the imperatives of the need of using ground water resources in a sustainable manner would also need to be kept in mind in addition to the average cost of supply. Tariff for agricultural use may be set at different levels for different parts of a state depending on the condition of the ground water table to prevent excessive depletion of ground water. Section 62 (3) of the Act provides that geographical position of any area could be one of the criteria for tariff differentiation. A higher level of subsidy could be considered to support poorer farmers of the region where adverse ground water table condition requires larger quantity of electricity for irrigation purposes subject to suitable restrictions to ensure maintenance of ground water levels and sustainable ground water usage.
4. Extent of subsidy for different categories of consumers can be decided by the State Government keeping in view various relevant aspects. But provision of free electricity is not desirable as it encourages wasteful consumption of electricity. Besides in most cases, lowering of water table in turn creating avoidable problem of water shortage for irrigation and drinking water for later generations. It is also likely to lead to rapid rise in demand of electricity putting severe strain on the distribution network thus adversely affecting the quality of supply of power. Therefore, it is necessary that reasonable level of user charges is levied. The subsidized rates of electricity should be permitted only up to a pre-identified level of consumption beyond which tariffs reflecting efficient cost of service should be charged from consumers. If the State Government wants to reimburse even part of this cost of electricity to poor category of consumers the amount can be paid in cash or any other suitable way. Use of prepaid meters can also facilitate this transfer of subsidy to such consumers.
5. Metering of supply to agricultural/rural consumers can be achieved in a consumer friendly way and in effective manner by management of local distribution in rural areas through commercial arrangement with franchisees with involvement of panchayat institutions, user associations, cooperative societies etc. Use of smart meters may be encouraged as a cost effective option for metering in cases of "limited use consumers" who are eligible for subsidized electricity.

8.4 Definition of tariff components and their applicability

1. Two-part tariffs featuring separate fixed and variable charges and time differentiated tariff shall be introduced on priority for large consumers (say, consumers with demand exceeding 1 MW) within one year and subsequently for all consumers within a period of five years or such period as may be specified. This would also help in flattening the peak and implementing various energy conservation measures.
2. The National Electricity Policy states that existing PPAs with the generating companies would need to be suitably assigned to the successor distribution companies. The State Governments may make such assignments taking care of different load profiles of the distribution companies so that retail tariffs are uniform in the State for different categories of consumers. Thereafter, the retail tariffs would reflect the relative efficiency of distribution companies in procuring power at competitive costs, controlling theft and reducing other distribution losses.
3. The Appropriate Commission may provide incentives to encourage metering and billing based on metered tariffs, particularly for consumer categories that are presently unmetered to a large extent. The metered tariffs and the incentives should be given wide publicity. Smart meters have the advantages of remote metering and billing, implementation of peak and off-peak tariff and demand side management through demand response. These would become essential in future for load-generation balancing due to increasing penetration of intermittent type of generation like wind and solar power.

Appropriate Commission shall, therefore, mandate smart meters for:

- (a) Consumers with monthly consumption of 500 units and more at the earliest but not later than 31.12.2017;
- (b) Consumers with monthly consumption above 200 units by 31.12.2019.

Further, two way smart meters shall be provided to all prosumers, who also sell back electricity to the grid as and when they require.

In order to enable energy audit in the distribution system, all distribution companies shall ensure smart meters in their electricity system throughout the chain from transformers at 132kV level right down to distribution transformer level at 11kV and further down to each consumer. Further, in order to reduce theft of power, the distribution companies should have enabling feature like distribution SCADA with distribution management system and energy audit functions. SERCs shall mandate these to be in place within two years.

4. The SERCs may also suitably regulate connection charges to be recovered by the distribution licensee to ensure that second distribution licensee does not resort to cherry picking by demanding unreasonable connection charges. The connection charges of the second licensee should not be more than those payable to the incumbent licensee.

8.5 Cross-subsidy surcharge and additional surcharge for open access

- 8.5.1 National Electricity Policy lays down that the amount of cross-subsidy surcharge and the additional surcharge to be levied from consumers who are permitted open access should not be so onerous that it eliminates competition which is intended to be fostered in generation and supply of power directly to the consumers through open access.

A consumer who is permitted open access will have to make payment to the generator, the transmission licensee whose transmission systems are used, distribution utility for the wheeling charges and, in addition, the cross subsidy surcharge. The computation of cross subsidy surcharge, therefore, needs to be done in a manner that while it compensates the distribution licensee, it does not constrain introduction of competition through open access. A consumer would avail of open access only if the payment of all the charges leads to a benefit to him. While the interest of distribution licensee needs to be protected it would be essential that this provision of the Act, which requires the open access to be introduced in a time-bound manner, is used to bring about competition in the larger interest of consumers.

SERCs may calculate the cost of supply of electricity by the distribution licensee to consumers of the applicable class as aggregate of (a) per unit weighted average cost of power purchase including meeting the Renewable Purchase Obligation; (b) transmission and distribution losses applicable to the relevant voltage level and commercial losses allowed by the SERC; (c) transmission, distribution and wheeling charges up to the relevant voltage level; and (d) per unit cost of carrying regulatory assets, if applicable.

Surcharge formula:

$$S = T - [C / (1 - L/100) + D + R]$$

Where

S is the surcharge

T is the tariff payable by the relevant category of consumers, including reflecting the Renewable Purchase Obligation

C is the per unit weighted average cost of power purchase by the Licensee, including meeting the Renewable Purchase Obligation

D is the aggregate of transmission, distribution and wheeling charge applicable to the relevant voltage level

L is the aggregate of transmission, distribution and commercial losses, expressed as a percentage applicable to the relevant voltage level

R is the per unit cost of carrying regulatory assets.

Above formula may not work for all distribution licensees, particularly for those having power deficit, the State Regulatory Commissions, while keeping the overall objectives of the Electricity Act in view, may review and vary the same taking into consideration the different circumstances prevailing in the area of distribution licensee.

Provided that the surcharge shall not exceed 20% of the tariff applicable to the category of the consumers seeking open access.

Provided further that the Appropriate Commission, in consultation with the Appropriate Government, shall exempt levy of cross subsidy charge on the Railways, as defined in Indian Railways Act, 1989 being a deemed licensee, on electricity purchased for its own consumption.

- 8.5.2 No surcharge would be required to be paid in terms of sub-section (2) of Section 42 of the Act on the electricity being sold by the generating companies with consent of the competent government under Section 43(A)(1)(c) of the Electricity Act, 1948 (now repealed) and on the electricity being supplied by the distribution licensee on the authorisation by the State Government under Section 27 of the Indian Electricity Act, 1910 (now repealed), till the current validity of such consent or authorisation.
- 8.5.3 The surcharge may be collected either by the distribution licensee, the transmission licensee, the STU or the CTU, depending on whose facilities are used by the consumer for availing electricity supplies. In all cases the amounts collected from a particular consumer should be given to the distribution licensee in whose area the

consumer is located. In case of two licensees supplying in the same area, the licensee from whom the consumer was availing supply shall be paid the amounts collected.

- 8.5.4 The additional surcharge for obligation to supply as per section 42(4) of the Act should become applicable only if it is conclusively demonstrated that the obligation of a licensee, in terms of existing power purchase commitments, has been and continues to be stranded, or there is an unavoidable obligation and incidence to bear fixed costs consequent to such a contract. The fixed costs related to network assets would be recovered through wheeling charges.
- 8.5.5 Wheeling charges should be determined on the basis of same principles as laid down for intra-state transmission charges and in addition would include average loss compensation of the relevant voltage level.
- 8.5.6 In case of outages of generator supplying to a consumer on open access, standby arrangements should be provided by the licensee on the payment of tariff for temporary connection to that consumer category as specified by the Appropriate Commission. Provided that such charges shall not be more than 125 percent of the normal tariff of that category.

9.0 Trading Margin

The Act provides that the Appropriate Commission may fix the trading margin, if considered necessary. Though there is a need to promote trading in electricity for making the markets competitive, the Appropriate Commission should monitor the trading transactions continuously and ensure that the electricity traders do not indulge in profiteering in situation of power shortages. Fixing of trading margin should be resorted to for achieving this objective.

JYOTI ARORA, Jt. Secy

APPENDIX

SALIENT FEATURES OF THE APPROVED R&R PROVISIONS FOR HYDRO POWER PROJECTS

1. SCOPE OF COVERAGE

The following provisions shall be applicable even if one family is affected by the development of a Hydro Power Project.

2. DEFINITION OF PROJECT AFFECTED FAMILIES (PAFs)

A Project Affected Family (PAF) shall mean a family whose place of residence or other property or source of livelihood has been affected by the development of a hydro project and who have been residing in the affected zone for two years preceding the date of declaration of notification under Section-11 of the LARR Act. The affected family would also include squatters.

3. DEFINITION OF AGRICULTURAL LABOURER

A person normally residing in the affected zone for two years preceding the date of declaration of the affected zone and earns his/her livelihood principally by manual labour on agricultural land.

4. DEFINITION OF NON-AGRICULTURAL LABOURER

A person normally residing in the affected zone for two years preceding the date of declaration of the affected zone and who does not hold any land in the affected zone but earns his/her livelihood principally by manual labour or as rural artisan or a service provider to the community.

5. DEFINITION OF SQUATTERS

A family occupying Government land in the affected zone without a legal title, at least for 5 years prior to the date of declaration of notification under Section-11 of LARR Act.

6. REHABILITATION/RESETTLEMENT COLONIES

This policy aims to provide built up houses to Project Affected Families (PAFs) who get displaced due to the development of hydro projects to the extent possible. However, wherever opted for, liberal House Construction Allowance would be given in lieu.

7. TRAINING AND CAPACITY BUILDING

This policy also emphasizes the need to provide training to the Project Affected Families as well as to the local population for a sustained livelihood. Special training programmes from ITIs aimed at providing the required skills

to the local population would be undertaken by the Project developers at least six months prior to commencement of construction. This is expected to boost the employability of the PAFs and other people residing in the vicinity of the project.

8. ADDITIONAL PROVISIONS

This policy envisages additional provisions for Project Affected Families such as:

- o scholarships for meritorious students,
- o extension of medical facilities,
- o marriage grants,
- o subsistence grants,
- o support for income generation schemes for cooperative and self-help groups,
- o seed, pesticides and fertilizer subsidies, and irrigation support.

Besides the additional provisions mentioned above, the normally applicable provisions of the National Policy on Rehabilitation and resettlement, currently in force, would be applicable.