

**BEFORE THE HON'BLE CHHATTISGARH STATE ELECTRICITY
REGULATORY COMMISSION, AT RAIPUR
I.A. NO. _____ OF 2022
IN
PETITION NO. 46 OF 2022**

IN THE MATTER OF:

Petition for determination of Annual Revenue Requirement for MYT Control Period of FY 2022-23, FY 2023-24 and FY 2024-25 along with revised estimate for FY 2021-22 and True-up for FY 2019-20, FY 2020-21 for the licensed distribution business under Section 61, 62 and 86 (1) (a) of the Electricity Act, 2003 read with the relevant provisions of the Chhattisgarh State Electricity Regulatory Commission's Conduct of Business Regulations and Terms and Conditions for determination of Tariff Regulations and its amendments thereof.

AND

IN THE MATTER OF:

Application seeking approval of provisional tariff, based, inter-alia, on the principles of adjustment on account of fuel cost and power purchase as provided under Sections 61, 62, 62(4), 86(1)(a), 86(1)(b) and 94(2) of the Electricity Act, 2003, read with Regulation 15 of the CSERC (Terms and Conditions for determination of tariff according to Multi-Year Tariff principles and Methodology and Procedure for determination of Expected revenue from Tariff and Charges) Regulations, 2021

AND

IN THE MATTER OF:

Jindal Steel & Power Limited
P.B. No. 16, Patrapali, Kharsia Road,
Raigarh, Chhattisgarh – 496001

... PETITIONER

INDEX

S. No.	Description	Annexures	Page No.
1.	APPLICATION ON BEHALF OF THE PETITIONER SEEKING PROVISIONAL TARIFF, BASED, INTER-ALIA, ON PRINCIPLES OF ADJUSTMENT ON ACCOUNT OF FUEL COST AND POWER PURCHASE IN TERMS OF SECTIONS 61, 62, 86(1)(a), 86(1)(b) AND 94(2) OF THE ELECTRICITY ACT, 2003 READWITH REGULATION 15 OF THE CSERC (TERMS AND CONDITIONS FOR DETERMINATION OF TARIFF		1-33

	ACCORDING TO MULTIYEAR TARIFF PRINCIPLES AND METHODOLOGY AND PROCEDURE FOR DETERMINATION OF EXPECTED REVENUE FROM TARIFF AND CHARGES) REGULATIONS, 2021 ALONGWITH SUPPORTING AFFIDAVIT		
2.	Copy of the notice issued by this Hon'ble Commission listing the said IA	A	34
3.	Copy of the order dated 05.08.2022 passed in Petition No. 46 of 2022	B	35
4.	Copy of the application filed by this Hon'ble Commission	C	36-163
5.	Copy of the order dated 02.09.2022 passed by this Hon'ble Tribunal	D	164-165
6.	Copy of the data evidencing the losses incurred by JSPL-D	E	166
7.	Copy of the Judgment dated 11.11.2011 passed by the Hon'ble APTEL in OP No. 01 of 2011	F	167-258
8.	Copy of the order dated 22.09.2021 passed by this Hon'ble Commission in Petition No. 22 of 2021	G	259-272
9.	Copy of the aforesaid orders passed by CERC granting provisional tariff	H (Colly.)	273-321

Date:

Place: Raipur

For, Jindal Steel & Power Limited

 Authorised Signatory

**BEFORE THE HON'BLE CHHATTISGARH STATE ELECTRICITY
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IN THE MATTER OF:

Jindal Steel & Power Limited

...PETITIONER

**APPLICATION ON BEHALF OF THE PETITIONER SEEKING
PROVISIONAL TARIFF, BASED, INTER-ALIA, ON PRINCIPLES
OF ADJUSTMENT ON ACCOUNT OF FUEL COST AND POWER**

PURCHASE IN TERMS OF SECTIONS 61, 62, 86(1)(a), 86(1)(b) AND 94(2) OF THE ELECTRICITY ACT, 2003 READ WITH REGULATION 15 OF THE CSERC (TERMS AND CONDITIONS FOR DETERMINATION OF TARIFF ACCORDING TO MULTIYEAR TARIFF PRINCIPLES AND METHODOLOGY AND PROCEDURE FOR DETERMINATION OF EXPECTED REVENUE FROM TARIFF AND CHARGES) REGULATIONS, 2021.

MOST RESPECTFULLY SHOWETH:

1. The present petition was filed by the Petitioner, Jindal Steel & Power Limited ("**Petitioner/ JSPL-D**") before this Hon'ble Commission for seeking determination of Annual Revenue Requirement ("**ARR**") for MYT Control Period of FY 2022-23, FY 2023-24 and FY 2024-25 along with revised estimate for FY 2021-22 and True-up for FY 2019-20, FY 2020-21 for the licensed distribution business under Section 61, 62 and 86 (1) (a) of the Electricity Act, 2003 ("**EA 2003**") read with the relevant provisions of the Chhattisgarh State Electricity Regulatory Commission's Conduct of Business Regulations and Terms and Conditions for determination of Tariff Regulations and its amendments thereof.
2. The present application is being filed by the Petitioner/ Applicant for seeking provisional tariff based, inter-alia, on the principles of adjustment on account of fuel cost and power purchase to be charged to its consumers situated within its distribution license area, in terms of Sections 61, 62, 62(4), 86(1)(a), 86(1)(b) and 94(2) of the EA 2003, read with Regulation 15 of the CSERC (Terms and Conditions for determination of tariff according to Multi-Year Tariff principles and Methodology and Procedure for determination of Expected

revenue from Tariff and Charges) Regulations, 2021 ("**CSERC MYT Regulations 2021**").

3. In this regard, it is submitted that this Hon'ble Commission issued orders dated 21.01.2016 passed in Petition No. 47/2015(M) and the Order dated 01.10.2015 passed in (Review) Petition No. 7/2015(M), and the Tariff Order dated 23.12.2014 passed in Petition No. 12/2014(T). Against the said orders, JSPL-D filed appeals before the Hon'ble Appellate Tribunal for Electricity, being Appeal Nos. 72 and 100 of 2016. In the said appeals, a common judgment dated 06.05.2022 was passed. The relevant extract of the said judgment is reproduced hereinbelow:

"SUMMARY OF OUR FINDINGS:

106. The State Commission is directed to immediately:

- i. determine the available surplus capacity and its pattern;*
- ii. carry out technical analysis for supply of surplus power for the distribution business from the Raigarh CPP and Dongamahua CPP;*
- iii. allow JSPL to procure required quantum of electricity through competitive bidding for long term;*
- iv. determine the tariff for the Distribution Licensee i.e. JSPL from the FY 2011-12, on the basis of already available data and data further furnished by JSPL or otherwise gathered suo moto by the Commission.*

107. The mutually agreed tariff fixed under the directions of the High Court shall continue to be in force till the tariff is determined by the State Commission, and will apply subject to modification / directions, if any, by the superior court.

ORDER

For the foregoing reasons as stated above, we are of the considered view that the present Appeals i.e., Appeal no. 72 of 2016 and Appeal no. 100 of 2016 have merit and are allowed.

The order dated 21.01.2016 in Petition no. 47/2015(M), order dated 01.10.2015 in (Review) Petition No. 7/2015(M), and the Tariff Order dated 23.12.2014 passed in Petition No. 12/2014(T) passed by the Chhattisgarh State Electricity Regulatory Commission are set aside with the direction to pass fresh and reasoned orders in a time bound manner, but not later than four months from the date of this judgment."

(Underline Supplied)

From the aforesaid, it is evident that the tariff fixed under the directions of the Hon'ble Chhattisgarh High Court is to continue to be enforce till any tariff of JSPL-D is determined by this Hon'ble Commission. It is pertinent to state that while the Hon'ble APTEL granted a period of 4 months for passing consequential orders by this Hon'ble Commission from the date of the above judgment, however, the interim tariff fixed in para 107 of the above judgment was to operate only till any tariff is determined by this Hon'ble Commission, whether provisional or final, etc.

4. In this regard, it also becomes necessary to set out hereinbelow the order dated 13.04.2016 passed by the Hon'ble High Court in W.P. No. 921 of 2016:

"It is observed that, the petitioner as offered shall be obligated to pay the electricity charges @ Rs. 4.20 per unit, which would be subject to the final adjudication before the appellate authority. It is further observed that Jindal Steel and Power Limited be entitled to supply the electricity to the petitioner from Dongamauha power plant without prejudice to their right. It is expected that restoration of power shall be done expeditiously as possible."

(Underline Supplied)

Thereafter, another order dated 22.04.2016 was passed by the Hon'ble High Court in W.P. Mo. 940 of 2016. In the said order, the following was held:

"It is observed that, the petitioners as offered shall be obliged to pay the electricity charges @ Rs. 4.20 per unit, which would be subject to the final adjudication before the appellate authority."

Counsel for the respondent No. 3 submits that in view of an order 13.04.2016, passed in W.P. (C) No. 921 of 2016, the Electricity supplied has already been restored subsequent to filing of this petition."

(Underline Supplied)

5. From a combined reading of the above orders, it is clear that the tariff of Rs. 4.20 per unit was an interim arrangement, and was to be applicable till the tariff is decided by the Appellate Authority (*i.e., Hon'ble APTEL*). Hence, the said interim

arrangement was to operate till the final decision of the Hon'ble APTEL in the aforementioned Appeal Nos. 72 and 100 of 2016.

Accordingly, when final decision/ judgment dated 06.05.2022 was passed by the Hon'ble APTEL in the above appeals, the mandate of the aforesaid order dated 13.04.2016 of the Hon'ble Chhattisgarh High Court ceased to operate.

6. The Hon'ble APTEL, thereafter, in its own wisdom passed an independent order in terms of the above judgment dated 06.05.2022, wherein it continued to apply the tariff recorded in the above order dated 13.04.2016 of the Hon'ble High Court, as an interim measure, till this Hon'ble Commission determines any tariff of JSPL-D.
7. In this regard, the following facts become relevant:
 - (a) It is submitted that due to the expiry of the short-term power procurement arrangement of JSPL-D with Jindal Power Limited ("**JPL**") on 30.06.2022, JSPL-D, as a prudent distribution licensee initiated a Request for participation on the Discovery of Efficient Electricity Price ("**DEEP**") portal under the "*Guidelines for Short-term (i.e., for a period of more than one day to one year) Procurement of Power by Distribution Licensees through Tariff based bidding process*" issued by the Ministry of Power, Government of India on 30.03.2016, and its amendments thereof.

- (b) In the said bid, JPL emerged as a successful bidder by quoting the lowest tariff of Rs. 5.5/kWh, and accordingly, a Letter of Intent ("**LoI**") was issued by JSPL-D on 13.07.2022 to JPL, which was also accepted on the even date by JPL for the entire duration of 21.07.2022 to 31.03.2023 for Round the Clock ("**RTC**") power procurement of 150 MW.
 - (c) Accordingly, a petition, being Petition No. 50 of 2022, was filed by JSPL-D under Section 63 of EA 2003 for adoption of Tariff for procurement of power under Short-term arrangement on DEEP portal selected through Competitive Bidding Process as per the Guidelines issued by Ministry of Power, Govt. of India on 30.03.2016 and its amendments thereof.
 - (d) The aforesaid petition was disposed of by this Hon'ble Commission, wherein, vide an order dated 21.07.2022, adopted the tariff determined under Section 63 of EA 2003.
8. In the judgment, *Energy Watchdog vs. CERC & Ors.*, reported in (2017) 14 SCC 80, the Hon'ble Supreme Court has held that the tariff adopted under Section 63 is the tariff which is determined under competitive bidding. Hence, once tariff has been adopted under the said provision, the same means that it has been determined, and the said tariff has to be given effect to.

9. It is now submitted that the word "tariff" is not defined under the provisions of EA 2003, nor the same is defined in any regulations framed by this Hon'ble Commission. As such, tariff is nothing but a schedule of charges. Also, the "tariff" mentioned in para 107 of the aforementioned judgment dated 06.05.2022 passed by the Hon'ble APTEL in Appeal Nos. 72 and 100 of 2016, would mean any tariff determined by this Hon'ble Commission, whether provisional or otherwise.
10. In the above context, Section 62(1)(d) read with Section 86(1)(a) of EA 2003 become relevant, which grant powers to this Hon'ble Commission to determine tariff for retail sale of electricity by a distribution licensee to its consumers. Accordingly, JSPL-D filed an application on 26.07.2022 in the present petition, for seeking determination of a provisional tariff based on the principles of fuel and power purchase adjustment cost. This application was listed before this Hon'ble Commission on 05.08.2022.

A copy of the notice issued by this Hon'ble Commission listing the said IA is annexed hereto and marked as **ANNEXURE – A**

11. On the said date, when the above application was heard by this Hon'ble Commission, JSPL-D withdrew the IA on the basis of the assurance given by this Hon'ble Commission that it would determine the tariff of JSPL-D in terms of timelines as mentioned in the Judgment dated 06.05.2022, passed by the Hon'ble APTEL in Appeal Nos. 72 & 100 of 2016.

The aforesaid withdrawal was also premised on the understanding that once tariff is determined, JSPL-D shall be liable to recover all past dues including carrying cost for any differential tariff recovery, as this Hon'ble Commission was well aware of the losses suffered by JSPL-D over an elongated period of time, due to supply of power at a deflated rate to its consumers.

A copy of the order dated 05.08.2022 passed in Petition No. 46 of 2022 is annexed hereto and marked as **ANNEXURE – B**

12. However, subsequently, this Hon'ble Commission proceeded to file an Interlocutory Application (*I.A. No. 1376 of 2022 filed on 29.08.2022*) before the Hon'ble APTEL in Appeal Nos. 72 & 100 of 2016, seeking extension of 3 (three) months' time in order to comply with the directions of the Hon'ble APTEL qua determination of tariff. The said IA was allowed by the Hon'ble APTEL Tribunal vide its order dated 02.09.2022. The relevant extract of the said order is reproduced hereinbelow:

"Heard. Given the explanations offered, we grant request of Chhattisgarh State Electricity Regulatory Commission for extension of time by three months from today for compliance with the directions in the judgment dated 06.05.2022. The applications are disposed of accordingly."

A copy of the application filed by this Hon'ble Commission is annexed hereto and marked as **ANNEXURE – C**

A copy of the order dated 02.09.2022 passed by this Hon'ble Tribunal is annexed hereto and marked as **ANNEXURE – D**

13. As a consequence of the above extension, which is a subsequent development, this Hon'ble Commission ought to appreciate that:

- (a) Prior to the passage of the Judgment dated 06.05.2022 passed by Hon'ble APTEL, the short-term power procurement arrangement of the Applicant/ Appellant came to an end JPL on 31.03.2022, and despite the same, the Applicant/ Appellant continued to supply power to the consumers at the rate of Rs. 4.20/kWh in terms of the said Judgment by procuring the same at Rs. 6/kWh from JPL. However, the aforesaid arrangement was also coming to an end on 31.07.2022, and accordingly, the short-term bidding was conducted which was approved by this Hon'ble Commission vide its order dated 21.07.2022 and tariff adopted.
- (b) During the aforesaid period, and up till 12.09.2022, JSPL-D in order to comply with its supply obligations has made a purchase of 394.42 MUs of power for an amount of Rs. 227.63 Crores. Out of the said purchased quantum, JSPL-D supplied power equivalent to 390.18 MUs thereby, generating revenue of Rs. 163.88 Crores by charging the consumers at the rate of Rs. 4.20/ kWh in terms of the aforesaid Judgment passed by the Hon'ble APTEL.

However, while charging the consumers at the rate of Rs. 4.20/ kWh as an interim measure in terms of the directions passed by the Hon'ble APTEL, and whilst

eagerly awaiting the determination of tariff by this Hon'ble Commission, JSPL-D incurred substantial amount of losses, which is equivalent to Rs. 74.88 Crores for a period of 165 days (Rs. 0.45/ day).

A copy of the data evidencing the aforesaid losses is annexed hereto and marked as **ANNEXURE - E**

14. As such, pursuant to the adoption order dated 21.07.2022, JSPL-D has to pay the generator a price of Rs. 5.50/kWh discovered through competitive bidding, which is Rs. 1.30 /kWh more than the interim tariff in terms of the judgment of the Hon'ble APTEL dated 06.05.2022. Therefore, in addition to the cost of power, JSPL-D also has to bear the cost of distribution, most of which is also uncontrollable in nature as per Regulation 11.1 of the CSERC MYT Regulations 2021.
15. In the above context, this Hon'ble Commission ought to specifically take note of the fact that JSPL-D is incurring substantial loss as well as carrying cost for the differential power purchase cost of Rs. 5.50/kWh discovered through competitive bidding and Rs. 4.20/kWh recovery allowed by this Hon'ble Commission. In this regard, JSPL-D seeks to provide a detailed computation hereinbelow, which reflects the carrying cost incurred by JSPL-D:

Particulars	Unit	Amount (Purchase)	Amount (Tariff)
Power Purchase Rate discovered through competitive bidding	Rs./kWh	5.5	4.2
Required PP Quantum	MU	1528.42	1528.42
Power Purchase Cost	Rs. Lakh	84063.22	64193.73
Difference in PP Cost	Rs. Lakh		19869.49
Carrying Cost Rate (SBI 1 Yr MCLR+200 Basis Point) as per ARR Petition	%		9.00%
Carrying Cost for the year	Rs. Lakh		1788.25
Effective Carrying Cost per month	Rs. Lakh		149.02

16. Furthermore, in order to demonstrate the cumulative loss suffered by JSPL-D over a period of 3 (three) financial years, it would be relevant to refer to the table hereinbelow:

Sl. No.	Particulars	FY 19-20 (Rs. in Lakhs)	FY 20-21 (Rs. in Lakhs)	FY 21-22 (Rs. in Lakhs)
1	Opening revenue gap	16001.82	20153.47	23092.36
2	Addition	2016.87	558.47	10374.62
3	Closing revenue gap	18018.69	20711.95	33466.98
4	Average revenue Gap	17010.25	20432.71	28279.67
5	Carrying cost interest rate	12.55%	11.65%	10.90%

Sl. No.	Particulars	FY 19-20 (Rs. in Lakhs)	FY 20-21 (Rs. in Lakhs)	FY 21-22 (Rs. in Lakhs)
6	Carrying cost	2134.79	2380.41	3082.48
7	Closing revenue gap including carrying cost	20153.47	23092.36	36549.46

17. From a perusal of the aforesaid table(s) extracted hereinabove, it is submitted that:

- (a) A carrying cost of Rs. 1.49 Crores is incurred by JSPL-D every month since the date the short-term competitive bidding was approved by this Hon'ble Commission; and
- (b) A sum of Rs. 36.54 Crores qua carrying cost has already been incurred by JSPL-D since FY 2019-20.

Therefore, a sum of Rs. 38.03 Crores (approx.) has been incurred by JSPL-D as carrying cost till date, which needs to be considered by this Hon'ble Commission in the interest of justice. This cost is payable by the consumers whenever tariff is allowed/ determined by the Hon'ble Commission in terms of the EA 2003.

18. In the above context, JSPL-D submits that Section 62(4) of EA 2003 has a specific provision for amendment of the tariff more frequently than once in any financial year in terms of Fuel Surcharge Formula specified by the Regulations, which is intended to compensate the distribution companies for the increase in cost of power procurement during the financial year.

In the present case, it is undisputed that there is an under recovery of costs, therefore, this Hon'ble Commission has all the more reason to intervene and pass appropriate orders so as to compensate JSPL-D.

In this regard, reliance is also sought to be placed upon the Judgment dated 11.11.2011 passed by the Hon'ble APTEL in OP No. 01 of 2011, wherein, it has been held as under:

"65. In view of the analysis and discussion made above, we deem it fit to issue the following directions to the State Commissions:

(i) Every State Commission has to ensure that Annual Performance Review, true-up of past expenses and Annual Revenue Requirement and tariff determination is conducted year to year basis as per the time schedule specified in the Regulations.

(ii) It should be the endeavour of every State Commission to ensure that the tariff for the financial year is decided before 1st April of the tariff year. For example, the ARR & tariff for the financial year 2011-12 should be decided before 1st April, 2011. The State Commission could consider making the tariff applicable only till the end of the financial year so that the licensees remain vigilant to follow the time schedule for filing of the application for determination of ARR/tariff.

(iii) In the event of delay in filing of the ARR, truing up and Annual Performance Review, one month beyond the scheduled date of submission of the petition, the State Commission must initiate suo-moto proceedings for tariff determination in accordance with Section 64 of the Act read with clause 8.1 (7) of the Tariff Policy.

(iv) *In determination of ARR/tariff, the revenue gaps ought not to be left and Regulatory Asset should not be created as a matter of course except where it is justifiable, in accordance with the Tariff Policy and the Regulations. The recovery of the Regulatory Asset should be time bound and within a period not exceeding three years at the most and preferably within Control Period. Carrying cost of the Regulatory Asset should be allowed to the utilities in the ARR of the year in which the Regulatory Assets are created to avoid problem of cash flow to the distribution licensee.*

(v) *Truing up should be carried out regularly and preferably every year. For example, truing up for the financial year 2009-10 should be carried out along with the ARR and tariff determination for the financial year 2011-12.*

(vi) **Fuel and Power Purchase cost is a major expense of the distribution Company which is uncontrollable. Every State Commission must have in place a mechanism for Fuel and Power Purchase cost in terms of Section 62 (4) of the Act. The Fuel and Power Purchase cost adjustment should preferably be on monthly basis on the lines of the Central Commission's Regulations for the generating companies but in no case exceeding a quarter. Any State Commission which does not already have such formula/mechanism in place must within 6 months of the date of this order must put in place such formula/ mechanism."**

(Underline and Emphasis Supplied)

A copy of the Judgment dated 11.11.2011 passed by the Hon'ble APTEL in OP No. 01 of 2011 is annexed hereto and marked as **ANNEXURE – F**

19. It is stated that the above judgment categorically holds that, as a matter of principle, the Commissions ought to allow Fuel and Power Purchase cost adjustment on 'monthly' basis, and in no case exceeding a quarter. Further, directions were issued to the State Commissions to have a mechanism/ formula in place within 6 months of the date of the above order for granting fuel and power purchase adjustment cost.

Accordingly, the Applicant/ JSPL-D is seeking approval of a provisional tariff, based, inter-alia, on the principles of adjustment on account of fuel cost and power purchase, pending determination of ARR and other costs for the period 2011 onwards, as per the directions issued by the Hon'ble APTEL vide the above judgment passed in OP No. 01 of 2011, and in terms of the dispensation provided under Section 62(4) of the EA 2003.

20. It is further submitted that in case JSPL-D is allowed to recover a tariff of Rs. 4.20/ kWh from the consumers, when the Hon'ble Commission has sought further extension of time from Hon'ble APTEL for determining ARR of JSPL-D, it shall not only cause grave prejudice to JSPL-D (*as it is incurring losses on a daily basis*), but will also cause grave prejudice to the consumers, as they will be saddled with "carrying costs" in future as JSPL-D is not permitted to recover actual cost of supply, when admittedly this Hon'ble Commission has itself adopted a tariff of Rs. 5.50/kWh under section 63 of the EA 2003 (*while JSPL-D is being allowed to recover only Rs. 4.20/kWh by not granting fuel/ power purchase cost adjustment*). Upon determination of

ARR, the cost incurred towards procurement of power qua the above adopted tariff has to be allowed on cost plus principles under sections 61 and 62 to JSPL-D, with carrying costs.

It is for this very reason that the Hon'ble APTEL in the above judgment passed in O.P. No. 01 of 2011, categorically directed Commissions to allow recovery of fuel/ power purchase adjustment cost to distribution licensees on a 'monthly' basis.

21. It is further submitted that grant of "carrying cost"/ interest on differential tariff is a regulatory principle based on the concept of time value of money or the monies denied at the appropriate time and paid after a lapse of time.
22. It is the settled principle of law that "carrying cost" is to be granted on the differential amount of tariff to compensate the entity for the money denied at the appropriate time. In fact, Courts have even held that "carrying cost" is a consequential order to be passed for the deprivation of legitimate amount to the party and the same is required to be granted irrespective of the fact whether the said issue is raised. Reliance in this regard is placed on the following Judgments:
 - (a) Appeal Nos. 150, 166, 168, 172, 173 of 2011 and 9, 18, 26, 29 and 38 of 2012, titled as **M/s SLS Power Limited v. APERC & Ors.** The relevant extract of the said judgment is reproduced herein below:

"35.5 The principle of carrying cost has been well established in the various judgments of the Tribunal. The carrying cost is the compensation

for time value of money or the monies denied at the appropriate time and paid after a lapse of time. Therefore, the developers are entitled to interest on the differential amount due to them as a consequence of re- determination of tariff by the State Commission on the principles laid down in this judgment. We do not accept the contention of the licensees that they should not be penalized with interest. The carrying cost is not a penal charge if the interest rate is fixed according to commercial principles. It is only a compensation for the money denied at the appropriate time."

(Underline Supplied)

- (b) Appeal No. 153 of 2009, titled as **North Delhi Power Ltd. v. Delhi Electricity Regulatory Commission**. The relevant extract of the said Judgment is reproduced herein bellow:

"45. The carrying cost is allowed based on the financial principle that whenever the recovery of cost is to be deferred, the financing of the gap in cash flow arranged by the distribution company from lenders and/or promoters and/or accruals, has to be paid for by way of carrying cost. This principle has been well recognised in the regulatory practices as laid down by this Tribunal as well as the Hon'ble Supreme Court. In 2007 APTEL 193, this Tribunal has held that "along with the expenses, carrying cost is also to be given as legitimate expense". Hon'ble Supreme Court in 2007 (3) SCC 33 has also held "the reduction in the rate of depreciation is violative of the legitimate expectation of the distribution company to get lawful and reasonable recovery of expenditure".

46. In view of the above ratio, it is evident that the carrying cost is a legitimate expense and, therefore, recovery of such carrying cost is legitimate expectation of the distribution company...

...

58. In view of the above discussion, the following is the summary of our findings:

(i) The normative working capital compensates the distribution company in delay for the 2 months credit period which is given to the consumers. The late payment surcharge is only if the delay is more than the normative credit period. For the period of delay beyond normative period, the distribution company has to be compensated with the cost of such additional financing. It is not the case of the Appellant that the late payment surcharge should not be treated as a non-tariff income. The Appellant is only praying that the financing cost is involved due to late payment and as such the Appellant is entitled to the compensation to incur such additional financing cost. Therefore, the financing cost of outstanding dues, i.e., the entire principal amount, should be allowed and it should not be limited to late payment surcharge amount alone. Further, the interest rate which is fixed as 9% is not the prevalent market Lending Rate due to increase in Prime Lending Rate since 2004-05. Therefore, the State Commission is directed to rectify its computation of the financing cost relating to the late payment surcharge for the FY 2007-08 at the prevalent market lending rate during that period keeping in view the prevailing Prime Lending Rate.

..."

(Underline Supplied)

- (c) Appeal No. 190 of 2011 and 162 & 163 of 2012, titled as
Torrent Power Limited v. Gujarat Electricity

Regulatory Commission. The relevant extract of the said judgment is reproduced herein below:

"83. The relevant principles which have been laid down in these decisions are extracted below:

(a) We do appreciate that the State Commission intends to keep the burden on the consumer as low as possible. At the same time, one has to remember that the burden of the consumer is not ultimately reduced by under estimating the cost today and truing it up in future as such method also burdens the consumer with carrying cost.

(b) The carrying cost is allowed based on the financial principle that whenever the recovery of cost is deferred, the financing of the gap in cash flow arranged by the distribution company from lenders and/or promoters and/or accruals, has to be paid for by way of carrying cost.

(c) The carrying cost is a legitimate expense and therefore recovery of such carrying cost is legitimate expenditure of the distribution company.

(d) "11.5. The utility is entitled to carrying cost on its claim of legitimate expenditure if the expenditure is:

i) accepted but recovery is deferred e.g., interest on regulatory assets,

ii) claim not approved within a reasonable time, and

iii) Disallowed by the State Commission but subsequently allowed by the Superior authority.

iv) Revenue gap as a result of allowance of legitimate expenditure in the true up. The State Commission shall decide the claim of the Appellant regard to carrying cost on the above principles.

The State Commission shall decide the claim of the Appellant regard to carrying cost on the above principles."

(Underline Supplied)

- (d) ***Appeal No. 28 of 2008***, titled as ***Delhi Transco Limited v. DERC & Ors.*** The relevant extract of the said judgment is reproduced hereinbelow:

"13. The first issue relates to carrying cost.

According to the Appellant, the State Commission having allowed the power purchase cost for the FY 2005-06 and RLDC/ULDC charges for FY 2006-07, the carrying cost for the same has not been allowed, which is wrong. According to the Respondent, this is a new point raised for the first time in this Appeal and the same was not raised by the Appellant before the State Commission and, therefore, the State Commission could not have granted relief which has not been specifically prayed. As pointed out by the Appellant, the carrying cost is a consequential order to be passed for the deprivation of legitimate amount to the Appellant. It is settled law that whenever the tariff is revised, the carrying cost, which is a consequential order, has to be allowed. It is also pointed out by the Appellant that in the earlier orders passed by the Tribunal dated

13.01.2009 in Appeal No. 133/07 in respect of the previous year in the Appeal filed by the Appellant, this Tribunal remanded the matter and directed the State Commission to allow the carrying cost in the truing-up proceedings as also in the subsequent tariff orders. The principle of carrying cost/interest has been laid down by the Hon'ble Supreme Court in the case of South Eastern Coalfield Limited v. State of Madhya Pradesh, (2003) 8 SCC 5648. The relevant observation of this judgment is as follows:

"21. Interest is also payable in equity in certain circumstances. The rule in equity is that interest is payable even in the absence of any agreement or custom to that effect though subject, of course, to a contrary agreement. Interest in equity has been held to be payable on the market rate even though the deed contains no mention of interest. Applicability of the rule to award interest in equity is attracted on the existence of a state of circumstances being established which justify the exercise of such equitable jurisdiction and such circumstances can be many."

14. Therefore, the State Commission is directed to pass the consequential order on the basis of details of the materials relating to payment of power purchase cost and ULDC charges to be submitted before the State Commission by the Appellant. Accordingly, the issue is answered in favour of the Appellant"

(Underline Supplied)

23. In addition to the foregoing, it is also pertinent to submit that the principle of "carrying cost" is based on the principle of time value of money as enshrined under the tariff principles provided

in Section 61 of the EA 2003. The relevant extract of Section 61 is reproduced hereinbelow:

"Section 61. (Tariff regulations):

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

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

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

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

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

(e) the principles rewarding efficiency in performance;

(f) multi year tariff principles;

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

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

(i) the National Electricity Policy and tariff policy:

Provided that the terms and conditions for determination of tariff under the Electricity (Supply) Act, 1948, the

Electricity Regulatory Commission Act, 1998 and the enactments specified in the Schedule as they stood immediately before the appointed date, shall continue to apply for a period of one year or until the terms and conditions for tariff are specified under this section, whichever is earlier."

(Underline Supplied)

24. Therefore, in view of the above, it is imperative that this Hon'ble Commission allows a provisional two-part tariff considering the cost of power discovered through competitive bidding and distribution cost till issuance of ARR and Retail Tariff Order for FY 2022-23, in terms of Sections 62 and 86 of EA 2003. This application is being filed after the subsequent development of the order dated 02.09.2022 passed by the Hon'ble APTEL in Appeal Nos. 72 and 100 of 2016 wherein three months' time extension was granted to this Hon'ble Commission for determining the ARR in terms of the judgment dated 06.05.2022 passed in the same appeals.
25. It is further submitted that in the present Petition filed by JSPL-D for determination of ARR for MYT Control Period of FY 2022-23, FY 2023-24 and FY 2024-25 along with revised estimate for FY 2021-22 and True-up for FY 2019-20, FY 2020-21, the Power Purchase Cost has been projected considering per unit rate of Rs. 8.70/kWh and has been used for estimating ARR for FY 2022-23. Since new power purchase price of Rs. 5.50/kWh has been discovered through short term competitive bidding, the revised calculation of the ARR requirement is as follows:

Revised ARR for FY 2022-23

Particulars	Unit	Amount
Power Purchase Rate discovered through competitive bidding	Rs. / kWh	5.5
Required Power Purchase Quantum	MU	1528.42
Power Purchase Cost	Rs. Lakh	84063.22
RPO Costs	Rs. Lakh	6602.87
Transmission Charge	Rs. Lakh	652.58
Employee Cost	Rs. Lakh	914.83
A&G Cost	Rs. Lakh	282.33
R&M Cost	Rs. Lakh	167.79
Depreciation	Rs. Lakh	157.40
Interest and finance charges	Rs. Lakh	55.91
Interest on Security Deposit paid to consumers	Rs. Lakh	401.31
Interest on working capital	Rs. Lakh	726.89
Return on equity	Rs. Lakh	203.44
Provision for bad debts	Rs. Lakh	951.65
Other Income	Rs. Lakh	14.84
Aggregate Revenue Requirement	Rs. Lakh	95165.38

26. JSPL-D also submits that the ARR for FY 2022-23 needs to be recovered through tariff decided by this Hon'ble Commission. In this regard, Section 45 of the EA 2003 empowers JSPL-D to recover charges (*as specified by the Hon'ble Commission*) against the electricity supplied to the consumers. Furthermore, the National Tariff Policy 2016 suggests for adoption of two-part tariff for recovery of the Annual Revenue Requirement of the Distribution Licensee. The relevant extract of the Policy is reproduced below:

"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."

(Emphasis Supplied)

27. In view of the above, it must be considered that a two-part tariff consists of Fixed Charge and Variable Charge, wherein, the Fixed Charge/ Demand Charge is designed to recover the costs of the Distribution Licensee which are fixed in nature such as the charges payable to power generators, transmission charges, operation & maintenance expenses, depreciation, Interest on loans, return on equity etc. This is generally recovered on the basis of sanctioned load/connected load / contract demand or maximum demand of the consumer. Energy Charge is designed to recover the costs of the Distribution Licensee which are variable in nature such as variable cost component of power purchase etc. These costs are recoverable on the basis of the actual consumption of the consumers during the billing period (*per kWh or per kVAh basis*).
28. In fact, this Hon'ble Commission in its Order dated 13.04.2022 in the matter of Petition No. 75/2021 (T) regarding determination of ARR and Tariff for the Control Period from FY 2022-23 to FY 2024-25 of Chhattisgarh State Power

Distribution Company Limited ("**CSPDCL**") has notified tariff schedule to be used for recovery of wheeling and retail supply cost for FY 2022-23. In the said Order, this Hon'ble Commission has allowed two-part tariff methodology for recovery of charges for supplying electricity.

29. It is submitted that there is extreme urgency for the Applicant/ JSPL-D to get the above provisional tariff allowed, subject to/ pending determination of ARR from the year 2011 onwards as mentioned in the Judgment dated 06.05.2022 passed by the Hon'ble APTEL in Appeal Nos. 72 and 100 of 2016. In this context, it is relevant to point out that from a reading of Paras 81 to 103 of the above judgment, it is evident that the cost reflective tariff of the Applicant/ JSPL-D was never determined since the grant of distribution license. As such, the Applicant is already suffering losses to the tune of Rs. 45 lacs per day, and thus, it is required that the Hon'ble Commission grants provisional tariff in the present application/ petition, in terms of the principles of fuel and power purchase adjustment cost.
30. Furthermore, this Hon'ble Commission has ample powers available in terms of Sections 61, 62, 62(4), 86(1)(a), 86(1)(b) and 94(2) of the Electricity Act, 2003, read with Regulation 15 of the CSERC MYT Regulations 2021, for providing provisional tariff to a distribution licensee, based, *inter-alia*, on the principles of adjustment on account of fuel cost and power purchase.

31. It is further submitted that this Hon'ble Commission has been regularly granting provisional tariff to generating companies and licensees. In this regard, reference is made to order dated 22.09.2021 passed by this Hon'ble Commission in Petition No. 22 of 2021, wherein the provisional tariff was allowed, and it was held as follows:

"This order is passed in the petition filed by M/s Madhya Bharat Power Corporation Ltd (herein after referred as MBPCL or petitioner) for determination of provisional tariff of its 113 MW (2x56.5MW) Rongnichu Hydro-Electric Project situated in East Sikkim. The petition is filed under Sections 62 of the Electricity Act 2003 and Chhattisgarh State Electricity Regulatory Commission (Terms and Conditions for determination of tariff according to Multi-Year Tariff principles and Methodology and Procedure for determination of Expected revenue from Tariff and Charges) Regulations, 2015.

...
13. MBPCL filed the instant petition on 06/03/2021 for determination of provisional tariff for supply of power to respondent as per PPA including supplementary PPA. The same was registered as Petition no. 22 of 2021.

14. Meanwhile during the pendency of this petition, Unit – 1 and Unit – 2 of the petitioner's power station had achieved COD on 25.06.2021 and 30.06.2021 respectively.

...
19. Considering the above submissions, the Commission decides to determine the provisional tariff in the present petition in accordance with the CSERC MYT Regulation, 2015. While computing the provisional tariff from 25.06.2021

to 31.03.2022, the Commission has segregated this duration in two parts (i) duration from 25.06.2021 to 29.06.2021 and (ii) duration from 30.06.2021 to 31.03.2022 as the Unit – 1 and Unit – 2 achieved COD on 25.06.2021 and 30.06.2021 respectively.

...

*35. Applicability of this order
The Order will be applicable till the issue of final
Tariff Order."*

In view of the above, the Petitioner/ Applicant/ JSPL-D is seeking parity qua equal treatment to be granted for allowing provisional tariff.

A copy of the order dated 22.09.2021 passed by this Hon'ble Commission in Petition No. 22 of 2021 is annexed hereto and marked as **ANNEXURE – G**

32. Additionally, it is further submitted that this Hon'ble Commission also ought to consider the fact that even the Ld. Central Electricity Regulatory Commission ("**CERC**") has granted provisional tariff to generating companies and licensees. For the said purpose, the following orders may be referred:

- (a) Order dated 04.06.2021, in IA No. 32 of 2021 in Petition No. 92/MP/2021; and
- (b) Order dated 24.12.2012 in Petition No. 160/GT/2012.

As per Section 61(a) of the EA 2003, the methodologies of the Ld. CERC are guiding lights for the State Commissions. As such, this Hon'ble Commission may consider the aforesaid while allowing the present application.

A copy of the aforesaid orders passed by CERC granting provisional tariff are annexed hereto and marked as

ANNEXURE - H (COLLY)

33. In view of the above, this Hon'ble Commission is requested to kindly allow the Petitioner to recover fixed charge @ Rs. 377.34/kVA/month and variable charge @ Rs. 5.18/kVAh on provisional basis till issuance of ARR Order for FY 2022-23. The detailed calculation of the fixed and variable charge to be recovered from the consumers is provided below:

Particulars	Unit	Amount
ARR to be recovered	Rs. Lakh	95165.38
Demand projected for FY 22-23	kVA	315248
Projected Recovery through Fixed Charge @ 15% of ARR	Rs. Lakh	14274.81
Fixed cost to be recovered	Rs. /kVA/month	377.34
Projected Sales in MU for FY 2022-23	MU	1514.37
Projected Sales in kVAh considering 0.97 Power Factor	Million kVAh	1561.21
Projected Recovery through Energy Charge	Rs. Lakh	80890.57
Energy cost to be recovered	Rs. / kVAh	5.18

34. JSPL-D also implores this Hon'ble Commission to kindly approve the above mentioned fixed and variable charges to be recovered from the consumers. As submitted above, the non-

grant of a provisional tariff, as prayed herein, would lead to a situation wherein a carrying cost, as demonstrated aforesaid would be imposed upon the end consumers, by merely considering the differential cost between the tariff of Rs. 5.50 per unit of power purchase cost adopted vide the order dated 21.07.2020 passed in Petition No. 50 of 2022 by this Hon'ble Commission, and the tariff of Rs. 4.20 per unit being presently charged by JSPL-D. The above carrying cost computation does not include the deferred tariff recovery from FY 2010-11 onwards till the determination of the ARR of JSPL-D as mandated under the judgment dated 06.05.2022 passed by Hon'ble APTEL in Appeal Nos. 72 and 100 of 2016 and any operational, finance & transmission costs.

35. The present application is being made bonafide and in the interest of justice.

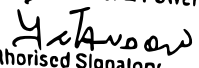
PRAYER

In view of the aforesaid facts, it is most respectfully prayed that this Hon'ble Commission may be pleased to:

- (a) Grant approval of provisional tariff of Rs. 377.34/kVA/month as fixed charge and Rs. 5.18/kVAh as variable charge in terms of the proposal submitted by the Petitioner/ Applicant in the instant application, based on the principles of adjustment of fuel and power purchase cost, especially as mandated by the Hon'ble APTEL in the judgment dated 11.11.2011 passed in O.P. No. 01 of 2011, and permit the Petitioner/ Applicant to charge the same from its consumers situated within its

distribution license area, in FY 2022-23, subject to determination of ARR/ Tariff as mandated in the judgment dated 06.05.2022 passed by the Hon'ble APTEL in Appeal Nos. 72 & 100 of 2016, in terms stated in the present application;

- (b) Allow the Petitioner to claim the revenue gap at the time of truing-up along with carrying cost;
- (c) Condone any inadvertent omissions/ errors/ shortcomings/ delays and permit the Petitioner to make further submissions as may be required at a future date to support in terms of modification / clarification; and
- (d) Pass such other and further order(s) as are deemed fit and proper in the facts and circumstances of the case.

For, Jindal Steel & Power Limited

Authorised Signatory
...PETITIONER



**BEFORE THE HON'BLE CHHATTISGARH STATE
ELECTRICITY REGULATORY COMMISSION**

I.A. NO. OF 2022

IN

PETITION NO. 46 OF 2022

IN THE MATTER OF:

Jindal Steel & Power Limited
Kharsia Road, Patrapali, Raigarh, (C.G.)

...APPELLANT

AFFIDAVIT

I, Pradeep Tandon, S/o Late Dr.R.S.Tandon, aged about 60 years, Authorized Representative of Jindal Steel & Power Limited, having its registered office at O.P. Jindal Marg, Hissar, Haryana 125005, do hereby solemnly affirm and state as follows:

1. That I am the Authorized Representative of the Appellant Company in the abovementioned matter, I have been dealing with the matters relating to the above-mentioned case and I am conversant with the facts of the case.
2. I have read the accompanying application and I say that its contents are true to my knowledge and belief and based on records which are believed to be true and correct.
3. The annexures, if any, filed along with the application are true copies of their respective original.

For, Jindal Steel & Power Limited

Y. Johnson
Authorised Signatory

003 OCT 2022

VERIFICATION:

I, the Deponent above named do hereby verify 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.

03 OCT 2022

Verified at Raipur on this 3rd day of October, 2022.

Identifying Witness

SOLELY
SWORN BY
THE WITHIN NAMED.

For, Jindal Steel & Power Limited

Y. Johnson
Authorised Signatory

CE MARKANDEY
NOTARY ADVOCATE
RAIPUR (C.G.) INDIA

03 OCT 2022

03 OCT 2022



ANNEXURE - A
Chhattisgarh State Electricity Regulatory Commission
 Irrigation Colony, Shanti Nagar, Raipur - 492 001 (C.G.)
 Ph.0771-4048788, Fax: 4073553
www.cserc.gov.in, e-mail: cserc.sec.cg@nic.in



Raipur, Date: 01/08/2022

No. P.N. 46 of 2022/2022/1127

Petition No. 46 of 2022

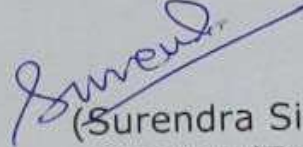
M/s Jindal Steel & Power Ltd. (JSPL-D)

... Petitioner

Notice

The Commission has fixed the hearing on 05.08.2022 at 11:30 AM on I.A. application dated 26.07.2022 in above petition for seeking provisional tariff.

You are hereby directed to be present on the date and time mentioned above for hearing in the Court Room of the Commission. Take notice, in case of default, the petition shall be liable to be dismissed.


 (Surendra Singh)
 Director (Tariff)

To,

✓ M/s Jindal Steel & Power Limited (JSPL-D)
 Through it's Authorized Signatory Mr. Pradeep Tandon
 Post Box No. 16, Kharsia Road,
 Raigarh-496 001 (Chhattisgarh)

Order Sheet
Petition No:- 46/2022

JINDAL STEEL AND POWER LIMITED

--Petitioner

Versus

--Respondent

Date of order or Proceeding	Order or proceeding with signature of presiding officer
05-08-2022	Shri Mridul Chakravarty, Shri Pranav Sood & Shri Chetan Garg, Counsels for petitioner. Shri Anshu Mahajan and Shri Pallav Mongia, counsels for stakeholders. 2. The petitioner's counsel prayed for withdrawing the I.A. dated 26.07.2022, which was filed for provisional tariff of petitioner's licensed distribution business. 3. We have considered the request and prayer is allowed. Sd /- (Pramod Kumar Gupta) Member Sd /- (Vinod Deshmukh) Member(Judicial) Sd /- (Hemant Verma) Chairman

BEFORE THE APPELLATE TRIBUNAL FOR ELECTRICITY, NEW DELHI

I.A. NO. ____ OF 2022

IN

APPEAL NO. 72 OF 2016

&

APPEAL NO. 100 OF 2016

IN THE MATTER OF:

Jindal Steel & Power Limited

...Appellant

VERSUS

Chhattisgarh State Electricity Regulatory Commission
& Anr.

...Respondents

INDEX OF PAPERS

S. NO.	PARTICULARS	PAGES
1.	Interlocutory Application under section 120 (1) of the Electricity Act, 2003 read with section 151 of the Civil Procedure Code, 1908, along with supporting affidavit.	1-16
2.	Annexure A – Copy of the Order dated 06.05.2022 passed by the Hon'ble Tribunal.	17-86
3.	Annexure B – Copy of the letters bearing reference no. 840 and 841 dated 16/06/2022.	87-90
4.	Annexure C – Copy of the letter from the Appellant informing the State Commission.	91
5.	Annexure D – Copy of the communication dated 27/06/2022	92

6.	Annexure E – Copy of Notice for the Tender bearing Reference No. 05/222 published in the newspaper on 30/06/2022.	93
7.	Annexure F – Copy of the Letter dated 08/07/2022.	94-95
8.	Annexure G – Copy of the letter dated 13/07/2022.	96
9.	Annexure H – Copy of the order dated 21/07/2022.	97-103
10.	Annexure I – Copy of the letter dated 21/07/2022.	104
11.	Annexure J – Copy of the communication dated 25/07/2022.	105
12.	Annexure K – Copy of the communication dated 26/07/2022.	106-108
13.	Annexure L – Copy of the letter dated 01.08.2022 seeking the approval of the State Commission before the summary is published.	109-113
14.	Annexure M – Copy of the letter approving the summary for publication.	114-118
15.	Annexure N – Copy of the additional submission.	119-124
16.	Annexure O – Copy of the letters dated 18/08/2022 from the State Commission to the Appellant informing the latter.	125-126

FILED BY:-



(MSA PARTNERS)

ADVOCATES FOR RESPONDENT NO. 1

D-246, DEFENCE COLONY

NEW DELHI- 110024

DATE: 29.08.2022
PLACE: NEW DELHI

BEFORE THE APPELLATE TRIBUNAL FOR ELECTRICITY

AT NEW DELHI

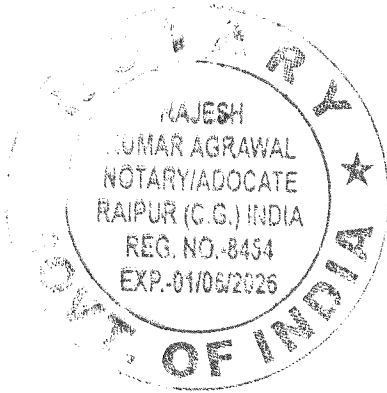
I.A. NO. _____ OF 2022

IN

APPEAL NO. 72 OF 2016

&

APPEAL NO. 100 OF 2016



IN THE MATTER OF:

Jindal Steel & Power Limited

.....Appellant

VERSUS

Chhattisgarh State Electricity

Regulatory Commission

.....Respondent

**INTERLOCUTARY APPLICATION UNDER SECTION 120 (1) OF THE
ELECTRICITY ACT, 2003 READ WITH SECTION 151 OF THE CIVIL
PROCEDURE CODE, 1908**

MOST RESPECTIFULLY SHOWETH:

1. This application on behalf of the CSERC for appropriate orders for time extension has been necessitated due to circumstances beyond its control which are described in detail hereinafter.

2. In the instant appeals, the Appellant had challenged the following orders passed by the State Commission:

i. the order dated 21.06.2016 passed in Petition No. 47/2015(M)

ii. the order dated 01.10.2015 in Review Petition No. 7/2015(M), and

27 AUG 2022

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iii. the order dated 23.12.2014 passed in Petition No. 12/2014(T)

The abovementioned orders have been set aside and the instant appeals have been disposed off by the Hon'ble Tribunal through an Order dated 06.05.2022 *with the direction to pass fresh and reasoned orders in a time bound manner, but not later than four months from the date of the Order, i.e. 06.05.2022.* A copy of the Order dated 06.05.2022 passed by the Hon'ble Tribunal in the present appeals has been marked and annexed hereto as **Annexure A.**

3. The aforesaid appeal arose on account of arrangement for supply of power by the Appellant's captive generating plants of 284 MW to an industrial unit without seeking a distribution licence from the State Commission based solely on the approvals under the Electricity Act, 1910 and MoU agreed to, based on such approval. Needless to say, there was no Power Purchase Agreement or any tariff order in relation to the power supplied by the Appellant to the industrial unit. The question before this Hon'ble Tribunal was in relation of determination of cost of generation of power from Dongamahua captive power plant and Raigarh captive power plant.

4. In this regard, the Hon'ble Tribunal directed the State Commission to:

- i. *"determine the available surplus capacity and its pattern;*
- ii. *carry out technical analysis for supply of surplus power for the distribution business from the Raigarh CPP and Dongamahua CPP;*
- iii. *allow JSPL to procure required quantum of electricity through competitive bidding for long-term;*

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127 AUG 2022

determine the tariff for the Distribution Licensee i.e. JSPL from the FY 2011-12, on the basis of already available data and data further furnished by JSPL or otherwise gathered suo moto by the Commission"

5. As mentioned above, the State Commission was to comply with the directions of this Hon'ble Tribunal by 5.09.2022. The State Commission is filing this present application before this Hon'ble Tribunal to apprise it of the development in such compliance as well as to seek extension of time for completion of its proceedings.

6. The State Commission has in accordance with the directions of the Hon'ble Tribunal initiated regulatory proceedings, details of which are enumerated below:

Date	Particulars
27/05/2022	Pursuant to the Order dated 06/05/2022, the Appellant has filed the following: i. IA for determination of tariff for FY 2014-15 along with true-up of ARR for FY 2012-13. ii. IA for determination of generation cost of Dongamahua CPP from FY 2011-12 till FY 2015-16.
16/06/2022	As the above IAs filed by the Appellant was not as per the direction of the Hon'ble Tribunal, the State Commission vide letter no. 840 and 841 dated 16/06/2022 asked the Appellant to file:

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27 AUG 2022

	i. Tariff petition for its licensed distribution business for approval of ARR from FY 2022-23 to FY 2024-25, retail tariff for FY 2022-23 along with true-up for FY 2011-12 to FY 2020-21. ii. Tariff petition for Raigarh CPP for approval of ARR from FY 2022-23 to FY 2024-25 alongwith true-up for FY 2011-12 to FY 2020-21. iii. Tariff petition for Dongamahua CPP for approval of ARR from FY 2022-23 to FY 2024-25 alongwith true-up for FY 2011-12 to FY 2020-21. A copy of the letters bearing reference no. 840 and 841 dated 16/06/2022 are marked and attached hereto as Annexure B.
21/06/2022	In response to the above letters, the Appellant filed Petition No. 46/2022 for approval of ARR from FY 2022-23 to FY 2024-25, retail tariff for FY 2022-23 and true-up for FY 2019-20 and FY 2020-21. A copy of the letter from the Appellant informing the State Commission of such filing is marked and annexed hereto as Annexure C.
27/06/2022	In compliance to the Order dated 06/05/2022, the State Commission asked Chhattisgarh State Load Despatch Centre (CSLDC) and O/o Chief Electrical Inspector (CEI) to provide the information related to the Appellant's Raigarh CPP and Dongamahua CPP for examining the availability of surplus power. A copy of the communication dated 27/06/2022 is marked as and attached hereto as Annexure D.

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12/7 AUG 2022

30/06/2022	The State Commission floated a Tender bearing Reference No. 05/2022 for inviting bids from consulting firms for disposal of Petition filed for determination of generation cost of Raigarh CPP, Dongamahua CPP and Retail Tariff for Appellant's licensed distribution business, with last date for submission of bid being 13/07/2022. A notice for the Tender bearing Reference No. 05/222 published in the newspaper on 30/06/2022 is Annexure E .
08/07/2022	In response to Letter No. 840 dated 16/06/2022, the Appellant informed that Raigarh CPP does not have any surplus capacity and two units of Dongamahua CPP are not functioning due to non-availability of coal. Further, the Appellant informed the State Commission that the CPPs are in distress due to shortage of coal. Therefore, the Appellant has already initiated process for long term bidding for the procurement of power for industrial park and requested the Commission to decide ARR based on competitive bidding. A copy of the Letter dated 08/07/2022 is marked and annexed hereto as Annexure F .
13/07/2022	The Commission extended the last date for submission of Consultancy bid up to 20/07/2022 as only one bid was received up to the last date, viz., 13/07/2022. A copy of the letter dated 13/07/2022 is marked and annexed hereto as Annexure G .
21/07/2022	The State Commission heard the parties on Petition no. 62/2018, 33/2020, 07/2021 and 14/2021, which were filed prior to Petition No.46/2022 by the Appellant for

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	determination of tariff for different periods for its licensed distribution business. The Commission, vide order dated 21/07/2022, has merged the Petition no. 62/2018, 33/2020, 07/2021 and 14/2021 with 46/2022. A copy of the order dated 21/07/2022 marked and annexed hereto as Annexure H.
21/07/2022	The State Commission has directed the Appellant to submit before the State Commission, a summary of the abovementioned Petition for inviting objections/suggestions from the stakeholders as per CSERC (Terms and Conditions for determination of tariff according to Multi-Year Tariff principles and Methodology and Procedure for determination of Expected revenue from Tariff and Charges) Regulations, 2021. A copy of the letter dated 21/07/2022 containing above direction is marked as and annexed hereto at Annexure I.
22/07/2022	The State Commission issued letter of award to successful bidder for the Consultancy assignment.
22/07/2022 & 25/07/2022	SLDC and O/o Chief Electrical Inspector (CEI) again asked for providing requisite data. A copy of the communication being marked and annexed hereto as Annexure J.
26/07/2022	The Appellant filed IA to petition no. 46/2022 for provisional tariff for the Appellant's distribution business.

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27 AUG 2022

7

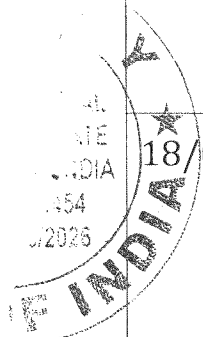
26/07/2022	A Technical Validation Session (TVS) was conducted with the petitioner for speedy disposal of aforesaid petitions.
26/07/2022	The State Commission informed the Appellant of the data required to be submitted by the Appellant, based on the discussions held during TVS, and asked to submit the such additional information by 03/08/2022. The Commission also asked the Appellant to submit tariff petition for determination of true-up and generation cost of Raigarh CPP and Dongamahua CPP by 10/08/2022. A copy of the communication dated 26/07/2022 is attached and annexed hereto as Annexure K.
01/08/2022	The Appellant, in accordance with the directions dated 21/07/2022 by the State Commission, published summary of the petition. A copy of the letter dated 01.08.2022 seeking the approval of the State Commission before the summary is published is marked as and annexed hereto as Annexure L .
02/08/2022	The Appellant submitted requisite gist of the petition.
03/08/2022	Chief Electrical Inspector office has provided the data available with them.
04/08/2022	The State Commission approved the summary submitted to it by the Appellant through a letter dated 1/08/2022. A copy of the letter approving the summary for publication is marked as and annexed hereto as Annexure M .

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27 AUG 2022

8

05/08/2022	The Appellant made additional submission before the State Commission in Petition No. 46/2022 as per the TVS session dated 26/07/2022. A copy of the additional submission made has been marked as and annexed hereto as Annexure N .
05/08/2022	The Commission heard the petitioner on aforesaid IA. During hearing, the Appellant withdrew the IA.
05/08/2022	Appellant published the summary of the Petitions approved by the State Commission in Kello Pravah, Ispat Times, The pioneer.
10/08/2022	Pursuant to the letter of the State Commission dated 27/06/2022 and 25/07/2022, SLDC provided the information available with it.
18/08/2022	The State Commission registered a suo-motu petition No. 61 of 2022 and Petition No. 60/2022 respectively for determination of generation cost of Raigarh CPP and Dongamahua CPP from FY 2022-23 to FY 2024-25 along with true-up from FY 2011-12 to FY 2020-21 upon failure of the Appellant to file a petition for the same. A copy of the letters dated 18/08/2022 from the State Commission to the Appellant informing the latter of the same is marked as and annexed hereto as Annexure O .



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127 AUG 2022

7. From a perusal of the above table, it is evident that the State Commission has been trying to comply with the directions of this Hon'ble Tribunal and there has been no delay on its part, in trying to achieve the meaningful disposal of the Petitions.
8. The data and other information which is required to determine the quantum of surplus power from Raigarh CPP and Dongamahua CPP is now available with the State Commission, and the data submitted by the Appellant can also be verified against the data provided by the Chief Electrical Inspector and the Chhattisgarh State Load Despatch Centre (CSLDC). The data is now available, however due to volume of the data and continuous monthly evaluation that is needed for Raigarh CPP and Dongamahua CPP is taking time as the State Commission can compromise on the accuracy of the data analysis.
9. It is submitted that the volume of work involved is very high, as in addition to establishing the surplus quantum from Raigarh CPP and Dongamahua CPP, if any, the Commission has to true-up the Generation Cost and Tariff for 10 years (from FY 2011-12 to FY 2020-21) for RCPP, and the Distribution Cost and Tariff for 10 years (from FY 2011-12 to FY 2020-21) for distribution business of the Appellant, as well as determine the Generation Cost and Tariff for 3 years (from FY 2022-23 to FY 2020-21) for RCPP and RCPP, and the Distribution Cost and Tariff for 3 years (from FY 2022-23 to FY 2020-21) for JSPL-D. Thus, there are a total of 30 (10 x 3) True-up years/Petitions and 3 MYT Petitions (2 Generation and 1 Distribution) to be processed by the Commission.
10. Further, considering the lack of co-operation from the Appellant, resulting in non-filing of the desired Petitions, the State Commission is

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12/7 AUG 2022

10

having to determine the Generation Cost and Tariff for all 13 years on a suo-motu basis, which has already been initiated. However, the required data will have to be obtained from the Appellant, which will require time, after which the same has to be published for public comments, and analysed carefully, considering the complicated history of the entire matter.

11. To summarise, the status of various Petitions to be processed by the Commission and the various aspects to be analysed, is given in the Table below:

Sl.	Activity	Present Status
1	Determination of Surplus at RCPP and DCPD and its pattern	a) Data received from the Appellant, Chief Electrical Inspector and CSLDC b) Analysis being done
2	Carrying out technical analysis for supply of surplus power for the Distribution Business from RCPP and DCPD	Technical analysis for assessing whether surplus power, if any, can be supplied to distribution arm of the Appellant from RCPP and DCPD is to be done once the quantum of surplus is established
3	Allow the Appellant to procure required quantum of electricity through competitive bidding.	Allowed vide Order dated 21/07/2022 in Petition No. 50 of 2022.
4	Determination of the tariff for the Distribution	Generation Business

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12.7 AUG 2022

Sl.	Activity	Present Status
	Licensee i.e. the Appellant from FY 2011-12, on the basis of already available data and data further furnished by the Appellant or otherwise gathered suo moto by the State Commission	a) Suo-motu process initiated for true-up of Generation Cost and Tariff for RCPP and DCPD from FY 2011-12 to FY 2020-21, and determination of Generation Cost and Tariff for RCPP and DCPD from FY 2022-23 to FY 2024-25 b) Hearing on above suo-motu proceedings scheduled on 24.08.2022 c) Data to be obtained from the Appellant for processing above suo-motu Petitions d) Data to be published for inviting stakeholders' comments on the Generation cost and Tariff for the period from FY 2011-12 to FY 2024-25. e) Public Hearing to be conducted f) Analysis and issue of Order on Generation cost and Tariff for RCPP and DCPD from FY 2011-12 to FY 2024-25 Distribution Business

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27 AUG 2022

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Sl.	Activity	Present Status
		g) Public Notice with gist of Petitions published inviting stakeholders' comments on the Petitions for true-up of Distribution Cost and Tariff for JSPL-D from FY 2011-12 to FY 2020-21, and determination of Distribution Cost for JSPL-D from FY 2022-23 to FY 2024-25 and Retail Tariff for FY 2022-23 h) Public Hearing to be conducted i) Analysis and issue of Order on Distribution cost and Retail Tariff for JSPL-D from FY 2011-12 to FY 2024-25, after considering the power purchase from various sources, including RCPP and DCP, depending on quantum of surplus.

12. Therefore, it is submitted that upon consideration of the present status of the petitions filed by the Appellants before the State Commission as well as actions undertaken by the State Commission towards adequate

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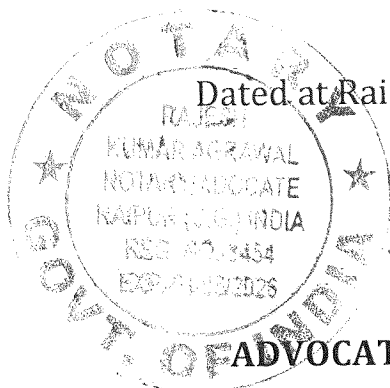
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data collection, it is estimated that the State Commission will be fully in compliance with the directions under Order dated 06/05/2022 within a time frame of four (4) months from the date decided by the Hon'ble Tribunal in its Order i.e., by 05.09.2022.

13. The present application is bonafide and in the interest of justice. The fees on the application stands paid.

14. In view of the same, it is respectfully prayed that this Hon'ble Tribunal may be pleased to grant an additional time of three (3) months i.e. till 05.12.2022 for completion of its mandate as per the Order dated 06.05.2022 in Appeal No. 72 of 2016 and 100 of 2016.

Dated at Raipur, 27th day of August 2022



**ADVOCATE FOR
RESPONDENT**



Suresh
Director (Tariff)
CSERC, Raipur

**FOR THE RESPONDENT
CHHATTISGARH STATE
ELECTRICITY REGULATORY
COMMISSION**

DECLARATION BY RESPONDENT

The Respondent solemnly declare(s) that nothing material has been concealed or suppressed and further declare(s) that the enclosures and typed set of material papers relied upon and filed herewith are true copies of the original.

12.7 AUG 2022

14

Verified at Raipur on this 27th day of August 2022.


ADVOCATE FOR RESPONDENT

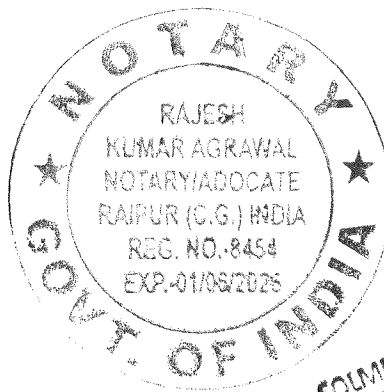

Director (Tariff)
CSERC, Raipur
RESPONDENT

VERIFICATION

I, Surendra Singh s/o Late Ram Darash Singh, aged about 50 years, being the Authorized Signatory of the Respondent, do hereby verify the contents of the above affidavit to be based on the records of the Respondent maintained in its ordinary course and believed by me to be true, no part of it is false and nothing material has been concealed therefrom.

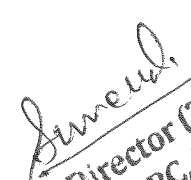
Verified at Raipur on this 27th day of August 2022

IDENTIFIED BY
Signature: 
Name: RAVI KANT VARMA
S/o: SH. R. K. VARMA
Address: CSERC, Raipur



SOLMNY AFFIRMED BEFORE ME WITHIN NAMED DEPONENT

RAJESH KUMAR AGRAWAL
NOTARY/ADVOCATE
RAIPUR (C.G.) INDIA


Director (Tariff)
CSERC, Raipur
DEPONENT

27 AUG 2022

BEFORE THE APPELLATE TRIBUNAL FOR ELECTRICITY

AT NEW DELHI

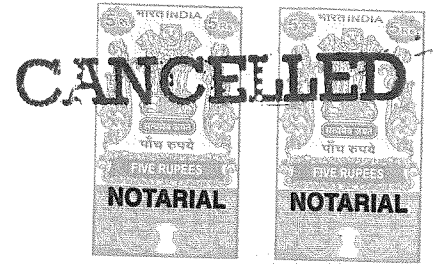
I.A. NO. ____ OF 2022

IN

APPEAL NO. 72 OF 2016

&

APPEAL NO. 100 OF 2016



IN THE MATTER OF:

Jindal Steel & Power Limited

.....Appellant

VERSUS

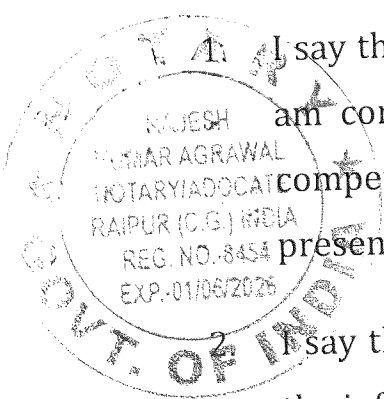
Chhattisgarh State Electricity

Regulatory Commission

.....Respondent

AFFIDAVIT

I Surendra Singh, s/o Late Ram Darash Singh, aged about 50 years, resident of 18/13, Nehru Nagar (East), Bhiali (CG), do hereby solemnly affirm and state as under:



I say that I am the Authorized Representative for the Respondent and am conversant with the facts of the present case. I say that I am competent and also authorised by the Respondent to swear to the present affidavit.

I say that the contents of the accompanying application are based on the information available with the Respondent in the normal course of business and believed by me to be true.

Surendra
Director (Tariff)
DEPONENT
CSENER

27 AUG 2022

16

Verified at Raipur on this 27th day of August 2022.

ADVOCATE FOR RESPONDENT

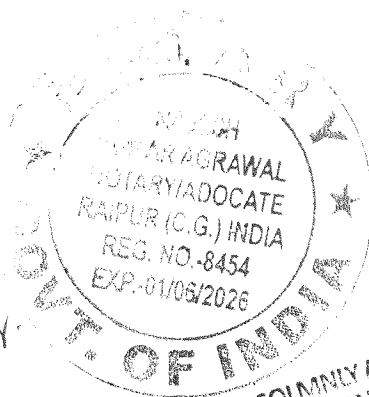
Surendra
Director (Tariff)
CSERC, Raipur
RESPONDENT

VERIFICATION

I, Surendra Singh s/o Late Ram Darash Singh, aged about 50 years, being the Authorized Signatory of the Respondent, do hereby verify the contents of the above affidavit to be based on the records of the Respondent maintained in its ordinary course and believed by me to be true, no part of it is false and nothing material has been concealed therefrom.

Verified at Raipur on this 27th day of August 2022

TESTIFIED BY
Ram Kant Varma
RAM KANT VARMA
SH. R. K. VARMA
CSERC, Raipur



SOLMPLY AFFIRMED BEFORE
ME WITHIN NAMED DEPONENT

Rajesh Kumar Agrawal
RAJESH KUMAR AGRAWAL
NOTARY/ADVOCATE
RAIPUR (C.G.) INDIA

27 AUG 2022

Surendra
Director (Tariff)
CSERC, Raipur
DEPONENT

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)**

**APPEAL NO. 72 OF 2016
&
APPEAL NO. 100 OF 2016**

Dated: 06 .05.2022

**Present: Hon'ble Mr. Justice R.K. Gauba, Officiating Chairperson
Hon'ble Mr. Sandesh Kumar Sharma, Technical Member**

APPEAL NO. 72 OF 2016

In the matter of:

Jindal Steel & Power Limited
Jindal Centre,
12, Bhikaji Kama Place,
New Delhi – 110006.
(Through Mr. Kamal Agrawal)

....Appellant

Vs.

(1) Chhattisgarh State Electricity Regulatory Commission
Through its Secretary
Shanti Nagar, Irrigation Colony,
Raipur – 492001.

(2) Raigarh Ispat Udyog Sangh
C/o Zeon Steel Private Limited,
121, O.P. Jindal Industrial Park,
Gharghora Road, Punjipatara,
Raigarh – 496 001.
Chhattisgarh.

....Respondent(s)

Counsel for the Appellant (s)	:	Mr. Sanjay Sen, Sr. Adv. Ms. Divya Chaturvedi Mr. Saransh Shaw Ms. Mandakini Ghosh Mr. Pranav Sood Mr. Manish Kharbanda
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Counsel for the Respondent (s) : Mr. Anand K Ganesan
 Ms. Swapna Seshadri
 Mr. Aditya Dubey for R-1

Mr. Amit Kapur
 Mr. Vishrov Mukherjee
 Ms. Aparajita Upadhyay
 Mr. Damodar Solanki for
 R-2

APPEAL NO. 100 OF 2016

In the matter of:

Jindal Steel & Power Limited
 Jindal Centre,
 12, Bhikaji Kama Place,
 New Delhi – 110006.
 (Through Mr. Kamal Agrawal)

....Appellant

Vs.

(1) Raigarh Ispat Udyog Sangh
 C/o Zeon Steel Private Limited,
 121, O.P. Jindal Industrial Park,
 Gharghora Road, Punjipatara,
 Raigarh – 496 001.
 Chhattisgarh.

(2) Chhattisgarh State Electricity Regulatory Commission
 Through its Secretary,
 Shanti Nagar, Irrigation Colony,
 Raipur – 492001.

....Respondent(s)

Counsel for the Appellant (s) : Mr. Sanjay Sen, Sr. Adv.
 Ms. Divya Chaturvedi
 Mr. Pranav Sood
 Mr. Saransh Shaw
 Ms. Mandakini Ghosh

Counsel for the Respondent (s) : Mr. Amit Kapur

Mr. Vishrov Mukherjee
Ms. Aparajita Upadhyay
Mr. Damodar Solanki for
R-1

Mr. Anand K Ganesan
Ms. Swapna Seshadri
Mr. Aditya Dubey for R-2

J U D G M E N T

PER HON'BLE MR SANDESH KUMAR SHARMA, TECHNICAL MEMBER

1. The instant batch of appeals have been filed by the Jindal Steel & Power Limited ("Appellant" or "JSPL") challenging the Order dated 21.01.2016 ("Impugned Order") passed in Petition no. 47/2015(M) and the Order dated 01.10.2015 passed by Chhattisgarh State Electricity Regulatory Commission (in short "CSERC" or "Respondent Commission" or "State Commission") in (Review) Petition No. 7/2015(M), (Impugned Review Order) and the Tariff Order dated 23.12.2014 ("Impugned Tariff Order") passed in Petition No. 12/2014(T).

2. The Appellant, in Appeal No. 72 of 2016, challenged the Impugned Order on the grounds that the State Commission has rejected its claim for: -

- (a) determination of cost of generation of power from Dongamahua Captive Power Plant ("DCCP") owned by the Appellant,

- (b) supply of power from DCPD to the consumers of Jindal Industrial Park ("JIP"), in the absence of firm surplus power from Appellant's Raigarh CPP, to meet the required load pattern of the area,
 - (c) not considering the remand directions, to evaluate the availability of surplus power from Appellant's Captive Power Plant ("CPP"), rendered by this Tribunal vide its judgment dated 07.03.2014 in Appeal No.89 of 2012, and
 - (d) allowing the Appellant to source power from the Dongamahua CPP to meet its obligation as distribution licensee under the relevant provisions.
3. The Appeal No. 100 of 2016 has been filed by the Appellant being aggrieved by the decision of the State Commission and stated that: -
- (a) the State Commission has not complied by the directions of this Tribunal passed, vide judgment dated 07.03.2014 in Appeal No.89/2012 (RIUS vs. CSERC & Anr.)
 - (b) the State Commission has not determined the pattern of surplus power available from the Captive Power Plant after meeting the requirement of captive load of the steel plant and load pattern in Jindal Industrial Park.
 - (c) this Tribunal order dated 07.03.2014 has not complied in respect to evaluate the availability of surplus power from Appellant's CPP.
 - (d) the State Commission erred in placing reliance upon the Appellant's application dated 25.01.2005 for grant of Licence

to distribute electricity and its earlier order dated 29.09.2005 granting licence to the Appellant for distribution of electricity to hold that Appellant is bound to supply power from its CPPs including the Dongamahua CPP, which was commissioned much later i.e. in the year 2010.

- (e) the Appellant is free to source power from the Dongamahua CPP, however, the said supply from Dongamahua CPP cannot be called as obligation in terms of its distribution licence.
- (f) in the absence of Power Purchase Agreement (“PPA”) between the generator and distribution licensee, the Appellant’s Dongamahua CPP cannot be held to be obligated to supply power.
- (g) the tariff of Rs.2.50/- per kWh is not a ‘determined’ tariff i.e. tariff determined in accordance with the provisions of Sections 61, 62 and 64 of the Electricity Act read with the CSERC (Terms and Conditions for determination of tariff according to Multi-Year Tariff principles and Methodology and Procedure for determination of Expected revenue from Tariff and Charges) Regulations, 2012 (“CSERC Tariff Regulations, 2012”). Appellant was subjected to such “default” tariff as it had not filed the segregated accounts from the year of grant of licence i.e. FY 2005-06, however, the Appellant had filed the segregated accounts for the period FY 2011-12 onwards when the Impugned Order dated 23.12.2014 was passed.

- (h) reduced the tariff to Rs.2.50 per kWh as a penalty for failing to file the segregated accounts from the year of licence i.e. FY 2005-06 and allowing such undetermined tariff to continue vide the Impugned Review Order in spite of submission of the segregated accounts of Appellant's distribution business from the year of licence i.e. FY 2005-06.

4. Considering that the issues emerging out from the two captioned appeals are same, the two captioned appeals are taken up together for adjudication.

PARTIES

5. The Appellant – Jindal Steel & Power Limited, is a generating company within the meaning of Section 2(8) of the Electricity Act and has captive generating plants of capacity of 284 MW ("Raigarh CPP") at Patrapali Village, Ghargoda Tehsil, Raigarh District Raigarh and 540 MW ("DCPP") at Dongamahua, Chhattisgarh.

6. Respondent No. 1 - Raigarh Ispat Udyog Sangh ("RIUS") is an association comprising of members who are mainly engaged in business relating to steel production and having their industrial units in JIP.

7. Respondent No. 2 – Chhattisgarh State Electricity Regulatory Commission was constituted by the State Govt. of Chhattisgarh ("State Government") vide Notification No.3190/S/E/2002 dated 23.08.2002 read with Notification No. 432/R/353/03 dated 11.05.2014 and discharges functions enjoined upon it under Section 86 of the Electricity Act.

FACTS OF THE CASE (APPEAL NO. 72 OF 2016)

8. The Appellant vide its proposal dated 28.12.2001, under the provisions of the Industrial Policy of the State Government, submitted the scheme for establishing Jindal Industrial Park for supplying power to the industrial units set up in the JIP area, the State Government, on 26.04.2002, granted approval, under Section 28 of the Indian Electricity Act, 1910 ("1910 Act"), to the Appellant for setting up the industrial park (JIP) and accordingly, on 23.10.2002, a MOU was signed between the Chhattisgarh State Industrial Development Corporation ('CSIDC') and the Appellant for setting up the JIP. Through this Memorandum of Understanding ("MOU"), the CSIDC agreed to provide incentives and facilitate clearance etc., necessary for setting up JIP.

9. Subsequently, on 29.01.2003, the State Government issued its No Objection Certificate (NOC) to the Appellant for supply of power by its Raigarh CPP, the only CPP owned by the Appellant and under operation at that time, to industrial units in JIP. Pursuant to this, the Appellant entered into Power Purchase Agreement with various consumers having industrial units in the Jindal Industrial Part for a period of 5 years.

10. The State Government, on 28.02.2004, on the recommendation of Chhattisgarh State Electricity Board (CSEB), granted approval to the Appellant under section 68 of the Act, for laying transmission and distribution lines for supply of power up to 299 MW to the 70 industrial units which were being set up in the first phase of JIP, subsequently, the Appellant connected supply of electricity to such industrial units which had installed their plant and equipment requiring supply of electricity. Pertinent to note here that on 26.05.2003, the new law i.e. the Electricity Act, 2003 (the Act 2003) was enacted by the Parliament and the Appellant commenced the supply of electricity w.e.f. 01.03.2004, the

date after the enactment of the Act, to the industrial units which were already set up in JIP, without seeking a distribution licence, as required, from the State Commission.

11. It was on 25.01.2005, in compliance with the provisions of the Act and the directions given by the State, the Appellant, submitted an application to State Commission for grant of license to distribute electricity in the JIP.

12. In the said application, as submitted by the Applicant, it had proposed to supply electricity from its CPP at Raigarh and Jindal Power Limited's IPP at Tamnar, Raigarh which was set up as an IPP by one of the group companies of the Appellant considering that the capacity of the Raigarh CPP will be inadequate to supply the 299 MW of projected load. The relevant extract of the application is as under:

"The power required by the Units in JIP shall be supplied by JSPL from its power plant at Raigarh. The requisite No Objection permission for Distribution of Electricity to the units in the JIP has been granted by GoCG vide letter No. 601 dated 28.02.04.

[...]

Form – 1A

Form of Application for grant of Licence for Distribution of Electricity in the State of Chhattisgarh

...

10. Particulars of demand/supply

(a) Expected demand in area of supply : 400 MVA (300 MW) on full implementation of the Industrial Park.

(b) Source of obtaining power :

i. 120 MVA (90 MW) from Jindal Steel & Power Ltd., Captive Power Plant at Patrapali Village, Ghargoda Tehsil, Raigarh District.

ii. 280 MVA (210 MW) from the proposed 1000 MW capacity power plant of Jindal Power Ltd., Tamnar Village, Ghargoda Tehsil, Raigarh District.

(c) Own Generation: Yes”

13. On 29.09.2005, the State Commission granted licence to the Appellant for distribution of electricity to the proposed 70 industrial consumers of the JIP with certain conditions with a maximum demand not exceeding 299 MW and at a rate not more than Rs. 2.50 per unit or at the supply rate of CSEB for that category of consumers, whichever is lower. Pertinently, in its licence order dated 29.09.2005, State Commission had not identified any particular source of power for the Appellant to procure power for the purpose of supply to its distribution license area i.e. JIP. The relevant extract is reproduced here under:

“1. ... The proposal is to supply to JIP 400 MVA (300 MW) of electricity on full implementation of the industrial park for which 120 MVA (90 MW) is proposed to be supplied from the existing captive power plant at Raigarh and 280 MVA (210

MW) from the proposed 1000 MW capacity power plant being put up by the applicant company in the same district.

[...]

16. ...The fact remains that the petitioner had an undertaking with the State Government for setting up a private industrial estate (for which the Government had even acquired private land and allocated to him); laying the necessary transmission and distribution facilities, and supplying electricity to the industries which may be set up in the industrial estate from his captive power plant. ... A distribution licensee may procure electricity from any source subject to the terms and conditions of his license and under the regulatory supervision of the Commission. However, the applicant's plea has all through been supply of power from his captive power plant."

14. The State Commission by another order dated 29.11.2005 added some more conditions in the licence were:

- (a) The license is valid for a period of 25 years.
- (b) JSPL is required to abide by all the relevant provisions of the Electricity Act, 2003, the National Electricity Policy, Indian Electricity Rules, 1956 and Electricity Rules, 2005, as amended from time to time.
- (c) JSPL is required to abide by the general conditions of licence as given in Chapter-III, the conditions applicable to a distribution licensee as given in Chapter-V of the Licence Regulations and the relevant provisions of all the

regulations issued or as may be issued by the State Commission, from time to time.

- (d) JSPL is required to lay necessary distribution lines and put up sub-stations at its own cost in the two villages for supply of electricity to any person who may apply for it.
- (e) The consumers of the area other than area of JIP (i.e., other consumers in the villages of Tumdih and Punjipathra of Raigarh District) shall have the option to choose between JSPL and CSEB or its successor entity(ies).
- (f) Existing tariff (Rs. 2.50 per unit) being charged from the industrial consumers in the designated area of JIP shall continue to be charged by JSPL, till the tariff for supply is determined by the State Commission.
- (g) For determination of tariff in the area of supply, JSPL is required to file the necessary application under Section 64 of the Electricity Act, 2003 and Clause 10 of the CSEB (Details to be furnished by licensee or generating company for determination of tariff and manner of making application) Regulations, 2004 (**“Tariff Procedure Regulations”**) before the State Commission on or before 31.03.2006, and thereafter, in terms of the provisions of the said Regulations.

15. It is important to note here that the order dated 29.09.2005 passed by the State Commission was assailed by the Appellant, being aggrieved of the findings regarding supply of power to its consumers prior to grant of the Distribution License, before this Tribunal through Appeal No. 27 of 2006, CSEB and Chhattisgarh Vidyut Manav Abhiyanta Sangh also

challenged by way of Appeal Nos. 179 & 188 of 2005, respectively, CSEB also challenged the order dated 29.11.2005 by way of Appeal No. 16 of 2006. These appeals were disposed of by this Tribunal vide common judgment dated 11.05.2006.

16. However, this Tribunal's judgment dated 11.05.2006 was challenged by way of Civil Appeal Nos. 4268, 3996 and 4529 of 2006 by CSEB, Chhattisgarh Vidyut Manav Abhiyanta Sangh and JSPL, respectively which were disposed of by the Hon'ble Supreme Court vide its judgment dated 19.09.2007 and remanded the matter to this Tribunal for fresh consideration.

17. This Tribunal vide its judgment dated 07.05.2008, in Appeal Nos. 179 and 188 of 2005 and 16 and 27 of 2006, set aside the Orders dated 29.09.2005 and 29.11.2005 passed by the State Commission granting Distribution Licence to JSPL, as also the order imposing penalty on JSPL.

18. The judgment dated 07.05.2008 rendered by this Tribunal was again challenged by way of Civil Appeal Nos. 3607-3610 of 2008 titled "*JSPL v. CSERC & Ors.*", an industrial consumer, Tirumala Balaji Alloys Pvt. Ltd. also filed Civil Appeal Nos. 4104-4107 of 2008 challenging the Judgment dated 07.05.2008, and the Hon'ble Supreme Court vide its Order dated 16.05.2008 admitted Civil Appeal Nos. 3607-3610 of 2008 and stayed the operation and effect of the judgment dated 07.05.2008 passed in Appeal Nos. 179 and 188 of 2005 and 16 and 27 of 2006, vide which this Tribunal had cancelled the Distribution License granted to JSPL, to this effect JSPL resumed the supply of power to its industrial units from 17.05.2008.

19. Meanwhile, in pursuant, to the licence, the Appellant filed a tariff petition (Petition No.28/2006) seeking permission to file tariff petition only for 2007-08, on the ground that it has not been possible for them to segregate the accounts for the distribution business as required in the Electricity Act and the State Commission may fix only maximum ceiling of tariff for retail sale of electricity for promoting competition among distribution licensee, the State Commission vide its order dated 17.07.2006 agreed on the first prayer, however, plea for fixation of only maximum ceiling of tariff for retail sale of electricity was not accepted.

20. Subsequently, the Appellant, on 13.12.2006, filed an amendment application (Petition No.33/2006) seeking review of order dated 17.07.2006, however, the State Commission vide order dated 29.01.2007 partially allowed the amendment petition by fixing maximum ceiling tariff for the two villages falling under JSPL's jurisdiction, however, upheld its decision dated 17.07.2006 for the industrial consumers reiterating that JSPL shall file tariff petition and directed the Appellant to file the completed tariff petition, the tariff for new industrial consumers (with whom no agreement was existing at that time), was also fixed at Rs. 2.50/kWh but with the additional provision that the alternate tariff may be as determined by the Commission.

21. Being aggrieved, JSPL filed Appeal Nos. 34 & 96 of 2007 titled "Jindal Steel & Power Limited v. CSERC & Anr." challenging the review order dated 29.01.2007 passed by the State Commission in Petition No. 33 of 2006, which were disposed of by this Tribunal on 04.10.2007, observing as under:

“16. At the outset, we would like to point out that so far JSPL has not filed any application for determination of its tariff as directed by the CSERC. The appellant, JSPL had set up the plea that it is not possible to segregate its accounts for distribution business and steel business. The contention was rightly rejected by the CSERC. It is not denied that it was one of the terms of the grant of distribution license to JSPL that it shall file an application for determination of tariff. Having obtained the license on the specific condition that it shall apply for determination of tariff, the appellant cannot be allowed to violate the conditions of license. Section 42 of the Act casts a duty on a distribution licensee to supply electricity in accordance with the provisions of the Act. Section 45 of the Act ordains that the price to be charged by a distribution licensee for supply of electricity by it in pursuance of Section 43 of the Act shall be in accordance with such tariff as is fixed from time to time by the Commission and conditions of his license. Therefore, distribution licensee is under a statutory obligation to supply electricity in consonance with the following two conditions:-

- i) supply of energy shall be as per the tariff fixed;*
- ii) supply of energy shall be in accordance with the conditions of distribution license.*

17. The appropriate Commission has been empowered under Section 62(1) of the Act to fix tariff in accordance with the provisions of the Act.”

22. Separately, the Appellant vide letter dated 11.09.2007 informed the State Commission that since the capacity of its steel plant has increased, it would be difficult to supply power to JIP from its CPP as per its commitment, further stating that:

- (a) In absence of surplus power, tariff determination for power generated from JSPL's CPP will no longer be required.
- (b) The 1000 MW power plant of JPL, a wholly owned subsidiary of JSPL, will commence generation in October 2007 and JSPL intends to procure 100 MW power from JPL under Section 62(1)(a) of Electricity Act, 2003.
- (c) JSPL seeks permission to procure 100 MW power on short-term basis for a period of nine months w.e.f. October 2007 at Rs. 2.80 per unit.
- (d) JSPL seeks permission to initiate competitive bidding under Section 63 of the Electricity Act, 2003 for procuring power.

23. In response to the request of JSPL, the State Commission vide communication dated 27.09.2007 to JSPL allowed JSPL to procure 100 MW power from JPL at a rate of Rs. 2.80 per unit for the period October 2007 to June 2008, further, noting that JSPL has long-term agreement with its consumers to provide power at Rs. 2.50 per unit.

24. The Appellant filed its tariff petition No. 23 of 2008 on 14.02.2008, for determination of tariff for FY 2008-09, and again resubmitted on 30.07.2008 as the State Commission found the petition to be incomplete on the ground that the accounts were not segregated, however, revised application was again found to be with many

discrepancies, the Appellant, in response to discrepancies pointed out by the State Commission, on 01.11.2008 filed an application indicating its inability to submit the required data within 15 days and requested for two months' time to submit fresh application for the next year after incorporating all the observations made.

25. The State Commission vide communication dated 13.10.2008, extended the period of power purchase by JSPL from JPL from October 2008 to November 2008 at the maximum rate of Rs. 2.80 per unit.

26. Subsequently, the State Commission passed its Order dated 05.11.2008 in Petition No. 23 of 2008 pertaining to determination of tariff for JSPL for FY 2008-09, observing as under:

"3. ... The Commission is inclined to agree with the request of the applicant in view of the following:

(i) Despite a lapse of three months' time from the date of application, the Commission is not in a position to proceed with the task of determine ARR and hence tariff on account of the application being incomplete.

(ii) The financial year in respect of which the application has been filed has now only five months left. At present, we are already in the month of November and another two months' time for submission of required information will take us to Jan' 09 and then we will be left with only three months of the current financial year. Further, the Commission would also require some time to process and decide the tariff for which 120 days are permitted in the Act. Even if the Commission

expedites the process it will take about two months' time. Thus, by the time tariff is decided hardly one month time of the FY 2008-09 will be left. Thus, no purpose in going through the process of determination of tariff would be served.

(iii) At present, the consumers of the industrial park of the licensee are being supplied electricity @ Rs.2.50 per unit as per the agreements in force, some of which pertain to the period prior to the distribution licence was granted to the licensee. The present tariff is less than the Board's industrial tariff applicable for the similar type of consumers. Further, no representation has been received from any consumer of licensee regarding the said tariff. The Commission, therefore, would not like to interfere with subsisting agreements between consumers and the licensee.

In view of the above, the Commission comes to the conclusion that no useful purpose would be served in determination of tariff for the current year. The application for tariff for the year 2008-09 therefore need not be proceeded with and be filed without any decision. The licensee is directed to continue to provide electricity to all its consumers at the provisional tariff as per our order dated 29.09.05 in Petition No. 03 of 2005 and as amended by order dated 17.07.06 against Petition No. 28 of 2006 (M), irrespective of whether the subsisting agreement with consumers last till the end of financial year or not. The licensee is further directed to ensure that full and complete information as per the comments/observations communicated on the present

application is submitted in the fresh tariff application which will be for the year 2009-10 not later than end December, 2008.”

27. Thereafter, the Appellant filed its another Tariff Petition No.17/2009 for approval of Annual Revenue Requirement (“ARR”) and determination of retail tariff for distribution business for the financial year 2009-10, informed that there will be no surplus power available from its CPP because of capacity addition in its Steel Plant. The State Commission disposed of the said petition by order dated 27.06.2009. Pertinently, the State Commission vide the said order directed that:

“6.1...In the absence of segregated accounts for distribution business, the Commission at present accepts the methodology adopted by JSPL for allocation of fixed assets for its distribution business...”

10.1... In the absence of authenticated segregation of data for distribution segment of M/s JSPL, the Commission is left with no other option but to approve the gross employee expenses of Rs. 303.61 lakhs at present for estimating the expenses.

12... While analyzing the ARR, many discrepancies were noticed mainly because the accounts for the distribution and supply business have not been separated from the main business of the company... the Commission finds it difficult

to arrive at realistic ARR due to unavailability of separate accounts for the business for which license was granted.

13... Under the circumstances, in the interest of consumers the Commissions decides only to fix the maximum ceiling tariff in pursuance of the provision of Section 62(1) of the Act. This ceiling shall be as obtaining for consumers of CSPDCL in the State. The licensee shall not, in other words, charge a tariff for its consumers which is more than the tariff applicable to the same category of consumers of CSPDCL. The Commission shall undertake a true up exercise on the basis of the actual cost of supply when the next tariff petition is submitted by the licensee.

14. DIRECTIONS

(i) In accordance with the terms and conditions of the license, a separate accounting of distribution and supply business is required to be kept. This has repeatedly been brought to the notice of the licensee. The separation of accounts may be confirmed within 3 months. Failure to comply with direction will result in reduction in tariff to Rs. 2.50 per unit as is the licensee's agreement with most consumers.

.....

(ix) The licensee is directed to submit the next tariff application at the end of November, 2009 with complete information based on separate account of licensed business.”

28. In the light of the State Commission's order 27.06.2009, a new supply agreement was signed on 06.07.2009 between the Appellant and various industrial units of JIP.

29. In the order dated 27.06.2009, the State Commission has relied upon its Suo-moto order dated 18.04.2009 in respect of power purchase by CSPDCL in short term from CPPs / IPPs up to a ceiling price of Rs 2.95 per unit with 5% extra tariff for peak hours. In view of above order, the State Commission allowed JSPL to procure power from JPL at Rs. 3.0 per unit.

"5.2. As regards purchase of power form M/s Jindal Power Ltd. (JPL), the licensee has informed that the rate of purchase is Rs. 5.40 per unit and this rate has been obtained on case-I bidding basis. The matter regarding purchase of power by the licensee was separately dealt with by the Commission under section 86(1)(b) of the Act. In this case, the Commission had finally ordered that JSPL may procure power from JPL at the same rate at which JPL is supplying power to Chhattisgarh State Power Distribution Co. Ltd. (CSPDCL) w.e.f. 01.04.2009. This was a provisional order and the JSPL was advised to file a separate petition for purchase of power for the year 2009-10 under section 86(1)(b) of the Act.

The Commission in its order dated 18.04.2009 has allowed maximum base price of Rs. 2.95 per unit for supply of power to CSPDCL at a load factor of 80% and above by the captive generating plants / IPPs of the State which included JPL. The rate of power purchase for peak hours is 5% more than the rates

approved for off-peak hours. In view of above orders of the Commission, the weighted average power purchase rate of Rs. 3 per unit, is therefore admissible at present for the current year.”

30. The Appellant, separately, filed Petition No. 22 of 2010 for approval of power procurement plan (short-term plan) of JSPL for the period FY 2010-11, the State Commission disposed of the petition by its order dated 27.10.2010, approving the short-term power procurement plan of JSPL for the period FY 2010-11 and observed as under:

“1. M/s JSPL was issued licence for distribution of electricity vide order dated 29.11.2005. According to this order, the distribution licence shall be valid for a period of twenty five years from the date of issue. Further, as per this order, M/s JSPL can undertake distribution of electricity in the Jindal Industrial Park (JIP for short), limited to 70 industrial consumers with a maximum demand not exceeding 299 MW, as approved by the Government of Chhattisgarh, in Tumdih and Punjpathra villages of Gharghoda tahsil of Raigarh District and also in the remaining areas of these two villages. According to submission made by JSPL in the licence application, there was a plan to supply power to 70 industrial consumers in JIP with a maximum demand not exceeding 299 MW. The licensee i.e. JSPL has set up the industrial area (JIP) on the basis of understanding with the State Government that industries set up would be supplied surplus power available from their captive generating plant.

The order dated 29.09.2005 passed in petition No. 03 of 2005 in the matter of “application for distribution licence by M/s Jindal Steel and Power Limited” shows that, M/s JSPL, while submitting application for distribution licence has indicated that the proposal was to supply to JIP 400 MVA (300 MW) of electricity on full implementation of the industrial park for which 120 MVA (90 MW) is proposed to be supplied from the existing captive power plant at Raigarh and 280 MVA (210 MW) from the proposed 1000 MW capacity power plant being put up by the M/s Jindal Power Ltd. (JPL for short) a wholly owned subsidiary of JSPL in the same district. It is to take note that the mentioned captive generating plant of JSPL was under operation at the time of issuing licence to JSPL. Since the distribution licensee itself possessed a captive generating plant of its steel business, so the availability of power for distribution business of JSPL was ascertained. This position is also admitted in the para 2.14 of the power procurement plan submitted by applicant.

2. Subsequently, after issuing the licence, M/s JSPL took different position. In September, 2007, JSPL informed that since the capacity of their steel plant has increased and they require more power for their steel plant so it is difficult to supply power to JIP from the CPP (of JSPL) as per commitment. In the letter dated 11.09.2007, JSPL stated that “the 1000 MW IPP of Jindal Power Ltd. (JPL), a wholly owned subsidiary of JSPL, will commence generation in Oct 2007 and JSPL intends to procure 100 MW power from JPL under Section 62(1)(a) of Act.” M/s JSPL sought permission

to procure 100 MW power on short-term basis for a period of nine months w.e.f. Oct 2007 at Rs 2.80 per unit. It was also said that they want to initiate bidding under Section 63 for meeting long-term requirement of industrial park. Subsequently vide their letter dated 20th November 2007, M/s JSPL submitted an application before the Commission to permit them to initiate competitive bidding under Section 63 for procuring power. JSPL sought permission to carry out medium-term bidding process under Section 63. JSPL stated in its letter that:

“JSPL is aware of its obligations to provide reliable and uninterrupted power to its consumers and is therefore eager to enter into long-term supply agreements for procurement of power from other power producer.

In absence of surplus power, tariff determination for power generated from JSPL’s captive power plant will no longer be required.”

Three points emerge from this letter of JSPL. First, as per this letter, the existing captive generating plant of JSPL was unable to supply power for distribution business of JSPL. Second, for the first time through this letter, the JSPL showed its intention to purchase power from “other” power producers. Third, with this proposal of power procurement through bidding process, tariff determination of JSPL’s captive plant for supply of power to the distribution licensee, will no longer be required.

3. As per the provisions and spirit of Electricity Act, 2003, the Commission accorded approval and permitted JSPL to initiate bidding process. Since the bidding process could not be completed till June 2008, JSPL sought extension to purchase 100 MW power from JPL for a further period of three months (July to Sept. 2008) at Rs 2.80 per unit. In September 2008, JSPL submitted the bidding results. According to this, M/s JPL emerged as the lowest bidder quoting Rs 6.30 per unit. The proposal of JSPL to approve rate of Rs. 6.30 per unit was not accepted and tariff was not adopted. Since the period for procurement of power by JSPL from JPL on short-term basis was to complete on Sept 2008, on the request of JSPL, the Commission extended the period of short-term purchase of power by JSPL from the JPL at Rs 2.80 per unit for further period of two months. In December 2008, the Commission ordered and intimated JSPL that the result of competitive bidding is not accepted. After this, M/s JSPL sought permission for short-term purchase of power from JPL at the rate fixed by the Commission for short-term power purchase price by State distribution utility from CPPs/IPPs of the State. Presently, since then, JSPL is continuing this practice and modality of power procurement.

4. The details (table 8, page no 11) of power procurement plan submitted by JSPL shows that in the year 2008-09, M/s JSPL has purchased 496.25 MU from captive unit of JSPL at Rs 2.32 per unit and 113.54 MU from JPL at Rs 2.80 per unit. The fact submitted in power procurement plan reveals that for the year 2008-09, M/s JSPL sought permission to procure

total power (100 MW) from the JPL, but in actual it has sourced power from JSPL captive generating plant and the quantum of power received from JSPL's CPP was much more than that of power purchase quantum from JPL plant.

It is pertinent to mention that while seeking approval for short-term power purchase, M/s JSPL submitted that since the power requirement in the steel industry (of JSPL) has increased and so it may not be possible for the captive power plant of JSPL to supply power for distribution business of JSPL. But the fact submitted by applicant indicates that, in the year 2008-09, captive plant of JSPL supplied major portion of power for distribution segment of JSPL. In the year 2009-10, JSPL's captive plant did not supply power for JSPL's distribution business, but JSPL entered into an agreement dated 30.03.2009 with Chhattisgarh State Power Distribution Company Ltd. (CSPDCL) i.e. State utility for supply of 50 MW of power over and above already contracted 70 MW power from JSPL's existing captive plant for the year 2009-10 and 2010-11. During the proceeding of this case the Commission asked JSPL to clarify the position on this issue. It is noticed that there are different versions in JSPL's reply. The relevant content of their letter dated 29.07.2010 is reproduced below:

"During last few years (FY 2007-08, 2008-09 and 2009-10), the steel business of JSPL has been significantly expanded resulting into increase in consumption of power generated from captive plant. During these years, due to expansion of steel business, the power availability has

reduced because of expansion of steel capacity. As also, we have to meet commitment of power supply to the Board as per agreement of the company with the Board”

But in letter dated 19.08.2010, JSPL submitted that:

“During FY 2008-09, there was slow down in steel business and consumption of power by the steel business of JSPL was quite low in comparison to generation of power by CPP, which resulted in surplus availability of power that had been supplied to the licensed distribution business.”

JSPL has further stated that the intention of seeking permission to purchase power from JPL was to meet out the gap between demand of licensee’s distribution business and surplus power available with CPP of JSPL. In letters dated 19.08.2010 and 07.09.2010, the licensee has submitted and accepted that JSPL’s CGP had entered into a supplementary agreement with CSPDCL on 30.03.2009 for supply of additional 50 MW power.

At the time of seeking approval for short-term power purchase for the year 2008-09, JSPL had power requirement of approximately 100 MW and, JSPL sought permission for 100 MW short-term power purchase from JPL plant, which is its total requirement. This means that it wanted to procure its 100% power requirement from JPL. At that point of time M/s JSPL had submitted that the power requirement in the steel industry (of JSPL) has increased and so it may not be possible for the captive unit of JSPL to supply power for

distribution business of JSPL. Subsequently for the year 2009-10 and 2010-11, JSPL entered into 50 MW PPA with CSPDCL. The question arises that when there was no surplus power available in JSPL's CPP, how it had entered in 50 MW power supply agreement with CSPDCL for the year 2009-10 and 2010-11. Why JSPL CPP could not supply this power for JSPL distribution business. From the above observation it is clear that there was surplus power available with JSPL CPP in 2008-09, 2009-10 and also 2010-11. It is observed that the licensee is taking different position at different point of time and there are contradiction in facts submitted to the Commission. Such an attitude of licensee and its attempt to misguide Commission during quasi-judicial process cannot be appreciated. JSPL's submission in letter dated 19.08.2010 that the intention of seeking permission to purchase power from JPL was to meet out the gap between demand of licensee distribution business and surplus power available with CPP of JSPL does not appears to be correct."

31. Subsequently, the Appellant filed Petition No. 26 of 2011 for approval of long-term procurement of power through tariff based competitive bidding process under Case-I bidding framework which was disposed of by the State Commission vide its order dated 31.12.2011, observing that:

- (a) By Order dated 27.10.2010, JSPL was directed to file power procurement plan within 3 months from date of order. No such detailed plan has been submitted by JSPL.

- (b) Though JSPL has stated that due to expansion of its steel business, the CPP is not able to fulfil the requirement of stable power for distribution business on long-term basis, however, it has not been made clear that actually what minimum quantum of stable power can be supplied by JSPL. Without having a clear statement of power availability from the licensee's own sources, deciding the quantum of power which needs to be procured through long-term PPA may suffer from infirmity.
- (c) JSPL was directed to submit within one month, a detailed power requirement plan indicating the last five years actual consumption data along with the future projection, so that the long-term power to be requisitioned through bid may be assessed in a rational manner.
- (d) The petition is partially disposed of as far as it related to the approval sought for deviation from the standard bid documents. However, regarding quantum of power to be procured through bidding is left to be decided after submission of desired data by JSPL.

32. The Appellant, on 14.01.2011, also filed Petition No.06/2011 (T) for the year 2011-12 before the State Commission which was disposed of vide the tariff order dated 08.02.2012, deciding the provisional true up of FY 2009-10, determination of ARR for FY 2010-11 & FY 2011-12 and retail tariff for FY 2011-12 at Rs. 2.75 per kWh for HT Steel Industries at 33 kV, Rs. 2.85 per unit for HT Steel Industries at 11 kV and Rs. 3.30 per kWh for other HT Industries.

33. The Respondent no. 2-RIUS, challenged the tariff order dated 08.02.2012 passed by the State Commission, through an Appeal No.89/2012 (RIUS vs. CSERC & Anr.) before this Tribunal wherein vide judgment dated 07.03.2014, this Tribunal set aside the said tariff order and remanded the matter with the direction to the State Commission to pass consequential order in terms of the following: -

(a) The first issue relating to surplus power from the Captive Power Plant of Jindal Steel is decided in favour of the Appellant. The State Commission is directed to re-determine the power purchase cost as per the directions given in Paragraph-23 of this Judgment.

(b) The Second Issue regarding delay in filing the tariff petition is allowed in favour of the Appellant with the directions to the State Commission not to pass on the burden on account of delay in filing of the tariff Petition by Jindal Steel to the consumers in the form of increase in tariff due to carrying cost.

(c) The third issue regarding segregated accounts is also decided in favour of the Appellant with the directions to the State Commission not to entertain any Petition of Jindal Steel for enhancement of tariff in the event of failure to submit the segregated accounts as per the directions of the State Commission in future.”

34. It is important to note here, the observations of this Tribunal recorded under para 23 of the judgment dated 07.03.2014, as under:

“In view of the above, we are constrained to conclude that the State Commission’s finding on this issue is wrong and the

same is liable to be set aside. The State Commission should have examined the pattern of surplus power available from the captive power plant after meeting the requirement of captive load of the Steel Plant and load pattern in the licensed area of Jindal Steel and should have considered part of energy supplied in the licensed area from the Captive Power Plant of Jindal Steel. Unfortunately, this has not been done. Therefore, we remand the matter with directions to the State Commission to carry out the exercise and evaluate the energy from the Captive Power Plant that should have been booked to distribution business of Jindal Steel at the cost of the generation tariff of Jindal Steel's Captive Power Plant. The consequential relief may be passed on to the Appellant and other consumers. The State Commission should also facilitate increasing the contract demand of Jindal Steel from 1 MW to 80 MW from CSPDCL as sought by Jindal Steel for meeting the increased load of Jindal Steel. This will help in availability of continuous and sustainable supply from the Captive Power Plant to Jindal Industrial Park in future."

35. In compliance to the remand order, the State Commission vide letter dated 02.03.2015 directed JSPL to withhold the Competitive Bidding process till the time the State Commission ascertain the surplus power from JSPL's CPP in view of the Remand Judgment dated 07.03.2014.

36. Meanwhile the Appellant filed Tariff Petition being Petition no.39/2012 (T) and another Tariff Petition being Petition No.55/2012(T) for determination of the ARR for control period FY 2013-14 and

determination of the tariff for the FY 2013-14. The order disposing of both these petitions came up in appeal (Appeal Nos. 213/2013 and 214/2013) before this Tribunal and was decided by a common judgment dated 01.07.2014, relevant extract is as under:

“Consequently, the instant Appeals, being Appeal Nos. 213/2013 and 214/2013 are allowed only in part as indicated above. The State Commission is directed to pass consequential order at the earliest. No order as to costs.”

37. In view of the directions passed in Appeal No.89/2012 (RIUS vs. CSERC & Anr.), the Appellant filed a Tariff Petition No.12/2014 (T) for determination of tariff for FY 2014-15 along with revised estimates of Multi Year Annual Revenue Requirement for the licensed distribution business for the control period from FYs 2013-14 to 2015-16 and true up of ARR for FY 2012-13. In accordance with the directions, passed by the Hon'ble Tribunal vide judgment dated 07.03.2014, the State Commission was to deal *inter alia* on the following aspects: -

- (a) The determination of the availability of pattern of surplus power from the CPPs of the Appellant after meeting the requirement of captive load of the steel plant and load pattern in JIP and;
- (b) Filing of the segregated accounts of the distribution business of the Appellant in accordance with the order dated 07.03.2014 of this Tribunal.

38. JSPL, filed fresh Petition, being Petition No. 12 of 2014, on 20.01.2014 for determination of tariff for FY 2014-15 along with revised estimates of Multi-Year ARR for its distribution business for the Control Period FY 2013-14 to FY 2015-16 and true up of ARR for FY 2012-13, however, the Petition was again found incomplete as the required segregated audited account for the FY 2012-13 was not submitted with the petition, on direction, JSPL submitted some accounts before the State Commission in Petition No. 12 of 2014, thereafter, the said petition was registered on 10.03.2014.

39. The State Commission examined the Tariff Petition No. 12 of 2014, in the light of directions given by this Tribunal vide judgment dated 07.03.2014.

40. Meanwhile, the State Commission, on 12.06.2014, issued Tariff Order in Petition Nos. 5-8 of 2014 for CSPDCL for FY 2014-15 and final true-up for Previous Years of CSPGCL, CSPTCL, SLDC and CSPDCL, wherein, the State Commission observed that the load curve prepared by SLDC depicts that the injection pattern of the power supplied by JSPL to CSPDCL has wide variation, supply from JSPL is varying frequently and it is unstable / non-firm power. However, the said observation was made by the State Commission in the Tariff Petition filed by State Utilities in respect of determination of their Tariff. The State Commission's order was upheld by this Tribunal vide Judgment dated 26.05.2016 in Appeal Nos. 41 of 2015 and 67 of 2015, noting therein as under:

“10. (A)

...

(vii) We are of the considered Opinion that injection pattern of such unstable power supply causes even commercial implications, besides creating disturbance in the demand supply balance. Since the surplus power supply from JSPL has been fluctuating in nature and unstable the purchase price of non firm power cannot be equated with purchase price of firm power and has to be given treatment as in the case of purchase of infirm power and the purchase cost of such type of power has to be significantly lower than the cost of firm power. We are in agreement with the findings of the Impugned Order of the State Commission on this issue and decide this issue against the Appellant.”

41. The Respondent, RIUS, submitted its objections to Petition No. 12 of 2014 stating that:

- (a) The argument of power being unreliable and fluctuating for supply to JIP had already been rejected by this Hon'ble Tribunal in the Remand Judgment dated 07.03.2014.
- (b) JSPL had been supplying power to the consumers in JIP from its CPP till October 2007 and the claim of JSPL of the same power suddenly becoming unreliable and fluctuating after October 2007 is very strange.
- (c) JSPL's claim of there being no surplus power from CPP is baseless.
- (d) Even if it is assumed that the surplus power available from CPP is unreliable and fluctuating, the CPP is connected with the State grid at 220 kV. The State grid can definitely absorb the

alleged fluctuations (if any) of the surplus power available from CPP.

42. We fail to understand the role of the State Commission at this stage and even the objections raised by the Respondent, RIUS. The responsibility of meeting the reliable and uninterrupted power supply cannot be left to the inertia of the State Grid as it may badly affect the security of the Grid. Further, vague comments like “no surplus power available from CPP” cannot be appreciated as carries no weight to the extent that such capacity can be accurately determined in real time and in fact always available with the system operator. The State Commission is duty bound to obtain such capacity with its pattern from the appropriate authorities like SLDC.

43. The State Commission, on 21.11.2014, requested JSPL to file the requisite audited accounts by 29.11.2014, including the following in Petition No. 12 of 2014:

- (a) Unit wise installed capacity of CPP as on 01.04.2014 along with COD.
- (b) Daily generation in kWh by CPP from FY 2010-11 onwards.
- (c) Electricity consumed in kWh (daily) by captive loads from FY 2010 onwards.
- (d) Details of electricity sold (daily) in kWh from its CPP from FY 2010-11 to other then consumer at JIP.
- (e) Total electricity consumed (daily) in kWh in JIP from FY 2010-11.

44. However, it has been submitted that the Appellant failed to furnish the above information before the State Commission. The State Commission passed the Impugned Tariff Order dated 23.12.2014 in Petition No. 12 of 2014, the relevant extract is as under: -

“55. JSPL has been asked to submit the following information to have a picture of the facts regarding availability of surplus power of its CPP vide letter dated 21/08/2014 and 21/11/2014;

- a) Unit-wise installed capacity of captive generating plant as on 01/04/2014 along with commercial operation date.*
- b) Daily generation in KWH by captive power plant from FY 2010-11 onwards.*
- c) Electricity consumed in KWH (daily) by captive loads from FY 2010-11 onwards.*
- d) Details of electricity sold (daily) in KWH from its captive power plant from FY 2010-11 to other than consumer at Jindal Industrial Park (JIP).*
- e) Total electricity consumed (daily) in KWH in JIP from FY 2010-11.*

56. In response, M/s JSPL did not provide the data in KWH units but submitted the same in different units, hence, in absence of data it is difficult to ascertain quantum of electricity needed for supplying to JIP and quantum how much surplus energy sold by M/s JSPL to others.

57. However, RIUS has provided the table wherein it has calculated the year-wise quantum of electricity M/s JSPL has sold which was desired from the JSPL.

58. Since after repeated directions M/s JSPL has failed to provide the information to ascertain availability of surplus power, it will be proper to analyze the data provided by the RIUS. By analysis of these data, it appears that sufficient surplus power was available to supply power to its consumers.

59. Now as the considerable time has gone since the Hon'ble ATE has passed above mentioned order wherein it has been directed to give effect the content of the order at the earliest and also, considerable time has gone since the filing of this petition.

60. Even after elapsing of so much time, JSPL has failed provide relevant information to decide the matter. Hence, it would be proper to pass this order in absence such information.

61. It is also worth to mention that Commission has issued some directions in the tariff order passed for ARR of FY 2009-10 for JSPL's licensed distribution business. Relevant portion of the direction has been reproduced as under;

"14. DIRECTIONS

(i) In accordance with the terms and conditions of the license, a separate accounting of distribution and supply business is required to be kept. This has repeatedly been brought to the notice of the licensee. The separation of accounts may be confirmed within 3 months. Failure to

comply with direction will result in reduction in tariff to Rs. 2.50 per unit as is the licensee's agreement with most consumers."

62. Hon'ble ATE has also directed to determine the generation tariff of JSPL's CPP to book to distribution business of JSPL.

63. For determining the power generation cost of power generated from JSPL's CPP, at present, it is not possible to determine the same because of non-availability of data. Hence, Commission is directing JSPL to file an application for the same.

64. In its submission, JSPL has submitted that it has to purchase coal at a higher rate on account of situation arisen after judgment of Hon'ble Supreme Court. It is very clear issue that while determining the tariff for CPP, Commission will calculate the same complying provisions of applicable regulations which shall automatically take care of actual coal cost.

65. On the submission of the JSPL that surplus power from CPP of 325.7 MW should only be considered, it is not agreeable as if same is agreed then capacity of CPP and captive load both should be freezed to a value as on date of issue of license. In that case, there will be no issue of examining the surplus power because at that time JSPL was in comfortable position to supply power to consumers of JIP. Submission dated 15/12/2014 of RIUS has also made the same argument.

66. It has been observed that delay in submitting the information by JSPL is unnecessarily delaying the decision, hence, in the interest of justice and a view taken by this Commission that on not filing of proper segregated audited account, Commission will reduce the tariff to 2.50 per unit as is the licensee's agreement with most consumers.

67. Now that JSPL has been allowed a considerable time to file the segregated audited account but same is still to be filed. Hence, we have no option other than to reduce the tariff to Rs. 2.50 per unit.

68. Therefore, we fix a tariff of Rs. 2.50/- with effect from 1st January 2015 with terms and conditions of original agreement signed between consumers of JIP and JSPL subject to condition that same shall be adjusted retrospectively on either side after truing up of ARR on submission of proper data by the JSPL.

69. JSPL is directed to file the petition for ARR and retail tariff for FY 2015-16 along with the segregated audited account since the date of issue of the license for true up of ARR of previous years.

70. JSPL is also directed to file an application for determination of tariff of its CPP since the financial year from which it has charged the Commission's determined tariff to its consumers of JIP. We order accordingly."

45. Being aggrieved by the order dated 23.12.2014, JSPL, filed Review Petition No. 7 of 2015, which was dismissed by of the State Commission on 01.10.2015 with directions to JSPL to file a petition for determination of cost of generation of its captive power plant for the year 2009-10 and onwards at the earliest.

46. Hence the present captioned Appeal No. 100 of 2016 is filed by JSPL, challenging the Impugned Review Order dated 01.10.2015 passed in Review Petition No. 7 of 2015 along with the Impugned Tariff Order dated 23.12.2014 passed in Petition No. 12 of 2014, and further, requested for amending para21 of the said Appeal through I.A. No. 21 of 2016 dated 12.01.2016, as under:

“To declare that the Appellant’s Raigarh CPP has no surplus power available on continuous and regular basis for supplying to the industrial consumers of Jindal Industrial Park; and”

47. Separately, JSPL filed Petition No. 47 of 2015 before the State Commission for determination of cost of generation of power from its Dongamahua CPP which was dismissed by the State Commission vide order dated 21.01.2016, observing that:

“8. After hearing the petitioner on the point of admission of this case, we had passed orders on admission on 27.08.2015, in which the petitioner was directed to file complete petition for determination cost of generation tariff of all it’s captive power plants, situated at Dongamahua and Raigarh, which is according to the above referred judgment of Hon’ble APTEL.

9. Despite the order, the petitioner has not complied the order and therefore, a reminder no. 1696 dated 28.09.2015 was sent to the petitioner with direction to comply with the order positively by 16.10.2015.

10. Though, the reminder has been received by the petitioner, no step has been taken for compliance of the order. In this situation, we have decided on 04.12.2015 to issue last reminder to the petitioner. Accordingly, last reminder no. 2130 dated 05.12.2015 has been served upon the petitioner with direction to comply the order dated 27.08.2015 within 15 days with a warning in case of default, it shall be presumed that the petitioner has nothing to say on the matter and we proceed accordingly.

11. The last reminder was served upon the petitioner on 07.12.2015, but till the date the petitioner has not filed complete petition for compliance of the order dated 27.08.2015. However, the petitioner, vide letter dated 21.12.2015, has informed that the petitioner has preferred an appeal against the order dated 01.10.2015, passed by the Commission in petition no. 07 of 2015(M), in which the directions, given in order dated 27.08.2015 in petition no. 47 of 2015(M) and 48 of 2015(M) has been reiterated. The appeal is listed for hearing by the APTEL on 02.02.2016. With the letter the petitioner has also enclosed order dated 07.12.2015 of the Court-II of the APTEL. It is observed from perusal of the order, no stay has been granted by the APTEL against the proceedings pending before this Commission. It is also appeared that delay in filing appeal is yet to be condoned and

the appeal is not admitted yet. In this situation, it would not be appropriate to defer the proceedings of this case till the disposal of the said appeal.

12. We feel that, despite given several opportunities, the petitioner has failed to file complete petition as directed by us, in accordance with the Hon'ble APTEL's judgment in appeal no. 89 of 2012. Grant of further opportunities or deferment of the proceedings, on the basis of an unadmitted and unregistered appeal, would amount destruction of principles of natural justice, hence, we are constrained to dismiss the petition for non-prosecution."

48. JSPL challenged the order dated 21.01.2016 passed in Petition No. 47 of 2015 through the captioned Appeal No. 72 of 2016.

49. During the pendency of the dispute, the supply to the industrial consumers was disconnected, accordingly, the State Commission issued Notice dated 13.04.2016 to JSPL on RIUS's representation dated 07.04.2016 seeking JSPL's response / report with respect to disconnection of power supply at JIP without following the laws and rules for disconnection of power supply by a distribution licensee.

50. Meanwhile, some settlements were arrived at by the parties and approached the High Court of Chhattisgarh, which in turn was challenged by the State Commission citing that the issue of determination of retail tariff for the consumers is vested solely with the State Commission.

51. M/s Tirumala Balaji Alloys Pvt. Ltd., M/s. Vandana Energy & Steel Pvt. Ltd. and Ajay Ingot Rolling Mills Pvt. Ltd. approached the High Court of Chhattisgarh by way of Writ Petition Nos. 921, 940 and 1003 of 2016, challenging the State Commission's letter dated 31.03.2016 wherein JSPL was requested to file a petition for determination of tariff.

52. On 13.04.2016, the High Court passed its interim order in W.P. Nos. 921 and 940 of 2021 and noted that as agreed by the petitioner consumers, power supplied to the petitioner consumers will be charged at Rs. 4.20 per unit, subject to final adjudication by this Tribunal, as under:

"Heard on interim prayer too.

... If electricity is not restored, the industry shall also suffer closure and may turn sick. The order dated 31.03.2016 though has taken into note that it will have impact on the consumer but the perusal of the documents would show that the consumer i.e. the petitioner and the other persons were not heard before passing such order. The petitioner contended that presently they are ready and willing to pay the electricity @ Rs.4.20 per unit to revive the industry as it is completely closed.

Considering such submission as an interim measure, it is directed that the effect and operation of the order dated 31.03.2016 (Annexure P/14) shall remain stayed till the final adjudication of this petition.

It is observed that, the petitioner as offered shall be obliged to pay the electricity charges @ Rs.4.20 per unit, which would be subject to the final adjudication before the appellate authority.

It is further observed that Jindal Steel and Power Limited be entitled to supply the electricity to the petitioner from Dongamauha power plant without prejudice to their right. It is expected that restoration of power shall be done expeditiously as possible.”

53. RIUS also filed Writ Petition No. 1009 of 2016 before the High Court and raising its concern regarding disconnection of power by JSPL, however, the same was withdrawn after negotiating and finalising an agreement with JSPL for supply of power from Dongamahua CPP at the rate of Rs. 4 per unit and the supply of power to the members of RIUS was commenced from 22.04.2016 onwards, however, RIUS vide letter dated 21.09.2016, filed complaint with the State Commission that JSPL is disobeying the Impugned Tariff Order dated 23.12.2014 and charging a tariff of Rs. 4.00 per unit instead of Rs. 2.50 per unit for supply of power to its consumers in JIP from April 2016 onwards.

54. We fail to understand that once the issue was under examination by the State Commission, the RIUS should not have compromised with JSPL, and once settled for an agreement, it cannot be considered to be arrived at under threat.

55. The action by the State Commission can also be questioned here regarding its lethargic response in the matter and allowing the high handedness, if any, by the distribution licensee.

56. In response to State Commission's notice dated 13.04.2016, JSPL submitted its report before the State Commission on 25.04.2016, stating that:

- (i) The failure to supply power to its consumers in JIP was due to non-approval of power procurement by JSPL from an alternate source.
- (ii) Vide its letter dated 02.03.2015, the State Commission had also rejected JSPL's request for procurement of power through competitive bidding.
- (iii) JSPL has been advised not to make any comments or submissions in relation to the appeals pending before this Tribunal.
- (iv) Upon being approached by RIUS, the issues have been resolved and the power supply to entire JIP has been commenced from 22.04.2016.

57. It is difficult to understand, the role of Appellant on one side and the role of the RIUS, the industrial consumer association on the other hand and the statutory role played by the State Commission. We find it appropriate to add here that all the three contributed to this situation where multiple petitions, cross petitions are filed at every level.

58. Accordingly, this Tribunal vide interlocutory order dated 11.06.2021 made certain observations and issued directions for compliance:

Order dated 11.06.2021

"1. This appeal, being no. 100 of 2016, filed by Jindal Steel & Power Limited (JSPL) challenging the Order dated 23.12.2014 passed Chhattisgarh State Electricity Regulatory Commission (CSERC) has been pending since 2016. It is stated that another appeal, being no. 72 of 2016, is also connected and is similarly pending. The order primarily challenged by the first

said appeal is the Tariff Order passed by CSERC determining the tariff of Rs 2.50/kWh which is expected to be charged by JSPL from its consumers which include the members of Raigarh Ispat Udyog Sangh (RIUS), the first respondent in the appeal. The appeal is presently listed on 10.12.2021, it having been adjourned over the past several dates of hearing primarily by the Court Master under the administrative instructions due to limited working of this Tribunal in the pandemic conditions, neither side in the said matter(s) having moved this Tribunal for urgent hearing all along.

2. When this Vacation Bench assembled today to hear the matters listed for the day, learned counsel, Mr. Vishrov Mukherjee, representing RIUS (first respondent) mentioned the matter requesting for his applications (IA no. 903 and 904 of 2021) to be taken up for urgent hearing today, his submission being that on account of certain dispute between the parties, the members of RIUS (an association) were facing threat of disconnection of the electricity supply by the appellant JSPL (distribution licensee). Having heard the learned counsel and Ms. Divya Chaturvedi who appeared, on advance notice, on behalf of the appellant (non-applicant), we directed that this matter shall be taken up at the end of the board and that it be included in the supplementary list that may be issued.

3. Before we took up the matter at the end of the board, some of the relevant papers relating to the captioned matter have been placed before us through One Drive in the form of digital documents.

4. It needs to be briefly noted at this stage that the appellant is the distribution licensee for a limited area developed as OP Jindal Industrial Park in Raigarh, Chhattisgarh, the members of RIUS having set up their respective industrial units in the geographical area where the appellant, as the distribution licensee, is obliged to serve and cater to them by providing electricity. The issue of tariff, as mentioned earlier, had come up before the State Commission and it had determined the same at Rs. 2.50/kWh w.e.f. 01.01.2015, the counsel on either side being not clear as to the control period to which the said order pertained.

5. The appellant, the distribution licensee, on whose petition the said tariff had been determined, was aggrieved it claiming a higher level of tariff. It, thus, filed the present appeal (A.no. 100 of 2016). The other appeal (A.no. 72 of 2016) is stated to be pertaining to the order determining generation tariff.

6. While the appeal was pending, the distribution licensee (i.e. the appellant herein) and the consumers (i.e. the members of first respondent RIUS) are stated to have entered into a compromise on 30.06.2018. it appears that by that time several other litigations had been initiated, this including Writ Petition (C) No. 1595 of 2018 with a batch of Writ Petitions bearing nos. 921, 940 & 1002 of 2016, all before High Court of Chhattisgarh at Bilaspur.

7. By the Agreement dated 30.06.2018, the parties i.e. the distribution licensee (appellant) and the aforesaid consumers (RIUS) agreed between themselves to waive the rights

declared in their favour or against them by the State Commission, this Tribunal or the High Court, in relation to supply of electricity, any time in the past and further confirmed not to assert for enforcement of any such judgment/order/direction/decision. It appears that by the said agreement, the said parties also inter-alia decided to seek withdrawal of the cases, amongst others, the two appeals mentioned above pending before this Tribunal and the Writ Petitions referred to earlier. By the said agreement, the parties also agreed and decided that the tariff payable by the said consumers shall be as agreed upon and as reflected in the Term Sheet which was made part of the agreement, it being the published tariff of Chhattisgarh State Power Distribution Corporation Limited (CSPDCL) applicable for similar industrial consumers less 25% (on demand and normal energy charge) subject to a minimum tariff of Rs. 4.00 per kWh after all adjustments.

8. The parties i.e. distribution licensee and the group of consumers (the applicant herein) moved the Chhattisgarh High Court by an Interlocutory Application (IA) which was considered on 24.07.2018. A copy of the Order passed by the High Court of Chhattisgarh by learned Single Judge on that date reveals that the State Commission had made a submission that the agreement is “contrary to law”. The High Court declined to enter into that controversy and treated the writ petition as closed, the lis brought before it having come to an end as a result of the compromise placed before it. Noticeably, the High Court did not examine the legality or

otherwise of the said agreement dated 30.06.2018 nor made any comment thereupon.

9. The CSERC challenged the aforesaid order of the learned Single Judge by Writ Appeal No. 758 of 2018 which was not entertained by the Division Bench and disposed of on 31.10.2018. It appears that the State Commission then brought the matter to the Hon'ble Supreme Court by SLP (C) No. 7553 of 2019. While issuing notice on the said SLP, by Order dated 01.04.2019, the Hon'ble Supreme Court directed that in the meantime this Tribunal hear and decide the pending IAs in the two appeals, as mentioned earlier, the date of hearing then being 09.04.2019.

10. On our query, learned counsel on both sides submitted that the two appeals (Appeal nos. 72 of 2016 and 100 of 2016) were at the relevant point of time pending before the Coordinate Bench (Court-I) and that the hearing could not took place because the Technical Member then part of that Bench retired and, thereafter, the matters got dislocated and though allocated to this Bench (Court-II), have remained pending due to the pandemic condition mentioned earlier.

11. The submission of the learned counsel for the applicant/first respondent (RIUS), as indeed of the appellant, have brought out that the parties herein have on their own regulated the business of sale and purchase of electricity in terms of the tariff they had agreed upon by the compromise entered into on 30.06.2018. it has been submitted that a joint application for withdrawal of this appeal connected with appeal

no. 72 of 2016 was moved in terms of the agreement dated 30.06.2018 but then it was withdrawn primarily because the first respondent opted out, its submission being that uninterrupted power supply was not ensured. On the other hand, it is the submission of the appellant that the joint application was withdrawn because the State Commission was opposing it.

12. Be that as it may, the fact remains that the appeal at hand is still pending with the connected appeal.

13. The current controversy leading to the prayer for urgent listing and interim relief has come up against the backdrop pleaded in the application for directions as under:

“2. RIUS is filing the present application for interlocutory orders as JSPL has terminated supply of power to several members of RIUS and JSPL is proposing to terminate supply to the other consumers as well, which will cause irreparable injury to such members of RIUS. JSPL has already:-

(a) Issued illegal disconnection notices issued by JSPL to members of RIUS (dated 16.04.2021), demanding charges which are over and above the tariff fixed by the Ld. Chhattisgarh State Electricity Regulatory Commission (“Ld CSERC”) and the tariff agreed between RIUS and JSPL in the Agreement dated 30.06.2018; and

(b) Addressed subsequent written and oral instructions issued to certain consumers to shut down their High Tension (HT) power supply.

3. Any disconnection of power supply by JSPL will be in violation of: (a) Directions of Ld. CERC in the Order dated 30.05.2018 in Petition No. 4/2017(M), wherein JSPL was directed to ensure uninterrupted continuous power supply to the consumers of JIP. This Order of Ld. CERC was never challenged by JSPL and the same has attained finality. (b) Terms of the Agreement dated 30.06.2018 signed by JSPL and RIUS [Third Recital read with Article 8]. ...”

14. The prayer in the application is set out as under:

“22. In view of the aforesaid submission, it is most respectfully prayed that this Hon’ble Tribunal may be pleased to:

(a) Direct Appellant to not disconnect the High Tension power supply to the consumers in Jindal Industrial Park including the members of Raigarh Ispat Udyog Sangh;

(b) Direct Appellant to restore connection and resume supply to units where supply has been interrupted; and

(c) Pass such other Order(s) as this Hon’ble Tribunal may deem just in the facts of the present case.”

15. Having heard the learned counsel on both sides and having gone through the limited documents that have been made available for urgent hearing today, we record a prima-facie view that the parties seem to have unauthorizedly engaged themselves in transactions which are possibly and wholly outside the law, they seemingly having usurped the jurisdiction of the Regulatory Commission by entering into the compromise agreement dated 30.06.2018 which, if so done, is

impermissible. Though, the learned counsel for the appellant submitted that the party she represents is conscious that they are obliged in law to approach the State Commission, the fact remains that as on date nothing is shown to us that the compromise agreement dated 30.06.2018 was ever taken to the State Commission for it to be adopted by the Regulatory Authority.

16. We find that the agreement dated 30.06.2018, even otherwise, was not fully acted upon, illustratively the two appeals at hand having survived, the parties not being inclined to seek withdrawal.

17. The fact remains that the question of tariff determination, as done by the State Commission, is still subject matter of appellate scrutiny by this Tribunal where the matter is pending. The parties did not even approach this Tribunal for its imprimatur – final or interim, over the determination of tariff done by them on their own by the aforesaid agreement, if that was at all permissible in law.

18. The result of the Writ Petition by the Order which was challenged now pending before Hon'ble Supreme Court, cannot come in the way of this Tribunal for examining the conduct of the parties in above light, in as much as the validity or legality of the compromise has not been examined by the Writ Court.

19. Under the regulatory regime, as we presently understand, the tariff determination is the exclusive domain of the Regulatory Commission subject, of course, to appellate

scrutiny first by us and finally by the Hon'ble Supreme Court. Prima-facie, this function cannot be taken by the parties in their own hands, not the least by a distribution licensee. We presume the obligation to abide by the tariff as determined by the Regulatory Commission is part of the conditions of license given to the distribution licensee. In the facts revealed before us, we would like to have it examined as to whether by entering into the agreement dated 30.06.2018, there has been a breach of the said conditions of distribution license granted in favour of the appellant.

20. Be that as it may, the falling apart of the compromise agreement dated 30.06.2018 entered into by the parties unilaterally, keeping aside the statutory authorities, cannot be allowed to become the subject matter of the appeals at hand wherein the questions of legality and validity of the tariff orders passed by the Commission is to be gone into. If at all, the event mentioned in the applications constitutes a cause of action which has nothing to do with the matter at hand of these appeals.

21. Therefore, while declining any direction of the nature mentioned in the captioned applications, we direct the State Commission to assist us for bringing clarity to the facts. The State Commission, through its Secretary, shall file an explanatory affidavit setting out its position vis-à-vis the compromise agreement dated 30.06.2018, also clarifying as to whether it has been privy to the tariff settled by the parties by the said agreement and whether it has been regulating the business of sale/purchase of electricity, thereby violating the

tariff determined by the Commission. Similarly, we call upon the appellant (distribution licensee), to also discover on oath supported by all relevant documents the justification in law for the acts indulged in leading to the execution of the Agreement dated 30.06.2018, also giving detailed account of the excess money collected as tariff in terms of the said agreement dated 30.06.2018 over and above the tariff determined by the State Commission.

22. The discovery shall be made by affidavit of a responsible officer of the appellant within four weeks of today. The Commission shall also file its response within the same period.

23. The applications are disposed of accordingly.

59. Accordingly, during the hearing on 28.03.2022 adjourned the matter after hearing the Ld advocates of all sides:

“We have heard learned counsel for the parties further. From the submissions made, there seems to be a possibility of some common ground being found by the parties on their own so as to resolve the inordinately delayed resolution of multiple knots in which the parties seem to have bound themselves, courtesy also some orders of the regulatory commission. The learned counsel propose to come with some possible solutions which must be submitted well in advance, after a consensus emerges, before the next date of hearing.”

60. However, the parties failed to arrive at a consensus and therefore, it was decided to hear the matter further for prosecution.

Our Observation and Analysis

61. The first issue which emerges out of the two captioned Appeals is whether the Appellant is bound to supply power from the Raigarh CPP even if no surplus capacity is available or the surplus capacity available is erratic and fluctuating in nature.

62. It is important to note the Appellant: JSPL obtained the permission, of setting up the JIP under the Industrial Policy of the State Government and supply of power to the industrial consumers of the JIP area, under the provisions of the Indian Electricity Act, 1910. However, with the enactment of the Electricity Act, 2003, JSPL, the Indian Electricity Act, 1910 was repealed.

63. As per the provisions of the Electricity Act, 2003, the distribution licensee, JSPL was required to obtain the necessary Licence for distribution of Electricity from the State Commission under the provisions of section 12, 14, and 15 of the Electricity Act, 2003, and the conditions specified in the Licence shall become binding for the distribution licensee (JSPL in this case).

64. It is, thus, important to note certain relevant conditions specified in the Licence so granted by the State Commission. As part of the application filed by JSPL before the State Commission, it was submitted that:

“The power required by the Units in JIP shall be supplied by JSPL from its power plant at Raigarh-----.

[...]

10. Particulars of demand/supply

(a) *Expected demand in area of supply : 400 MVA (300 MW) on full implementation of the Industrial Park.*

(b) *Source of obtaining power :*

i. 120 MVA (90 MW) from Jindal Steel & Power Ltd., Captive Power Plant at Patrapali Village, Ghargoda Tehsil, Raigarh District.

ii. 280 MVA (210 MW) from the proposed 1000 MW capacity power plant of Jindal Power Ltd., Tamnar Village, Ghargoda Tehsil, Raigarh District.”

65. Further, one of the conditions as stipulated in the Licence by the State Commission provides that:

“A distribution licensee may procure electricity from any source subject to the terms and conditions of his license and under the regulatory supervision of the Commission. However, the applicant’s plea has all through been supply of power from his captive power plant.”

66. Further, certain other conditions were incorporated by order dated 29.11.2005, one of such condition was that:

“Existing tariff (Rs. 2.50 per unit) being charged from the industrial consumers in the designated area of JIP shall continue to be charged by JSPL, till the tariff for supply is determined by the State Commission.”

67. It is thus, clear that the conditions as stipulated in the MoU have been amended by the conditions as specified in the Licence granted by the State Commission. The Appellant and the Respondent RIUS are

bound by the provisions of the State Regulations and the Licensing conditions including the Tariff.

68. From the above, it is clear that the Appellant sought permission to supply electricity from two Generating Stations namely existing Raigarh CPP and proposed 1000MW JPL IPP to a capacity of 90 MW and 210 MW without specifying the percentage share of electricity in case load requirement is below 300 MW, however, the State Commission through its order dated 29.09.2005, while granting the Licence has specified that a distribution licensee may procure electricity from any source subject to terms and conditions as specified.

69. Therefore, the State Commission allowed JSPL to procure power from any source subject to terms and conditions of the Licence. It is settled principle of law that any distribution licensee can not be bound by the terms of the Licence to procure electricity from a particular source and also any condition laid down prior to the enactment of Electricity Act, 2003 shall be bad in law if it is inconsistent with the provisions of the Electricity Act, 2003.

70. This Tribunal on 04.10.2007, has held that:

“16. ----- Having obtained the license on the specific condition that it shall apply for determination of tariff, the appellant cannot be allowed to violate the conditions of license. Section 42 of the Act casts a duty on a distribution licensee to supply electricity in accordance with the provisions of the Act.”

71. The Distribution Licensee (JSPL in this case) bound by the provisions of the Act 2003 and the conditions as laid down in the Licence granted by the State Commission. As already mentioned above, the Distribution Licensee can procure power from any source subject to transparent, economic and prudent manner under the legal provisions notified by the State Commission.

72. It may further be noted by the State Commission vide its order dated 27.10.2010 observed that:

“1. -----The licensee i.e. JSPL has set up the industrial area (JIP) on the basis of understanding with the State Government that industries set up would be supplied surplus power available from their captive generating plant-----.”

73. From the above, it is seen that the industries shall be supplied with the surplus capacity of the CPP only. Need not to add that any Captive Power Plant is set up by a person to generate electricity primarily for his own use. Further, the Electricity Rules, 2005 mandates that fifty one (51) percent of electricity generated shall be consumed by the captive consumer, therefore, any supply from the Raigarh CPP has to be regulated as per such provisions.

74. The Respondent RIUS submitted that the source of supply of power is already covered under the order dated 29.09.2005 whereby the State Commission granted distribution licence to JSPL. We fail to understand the reasoning given by RIUS as the order by the State

Commission has clearly mandated differently as quoted in the foregoing paras.

75. Further, the State Commission on 12.06.2014, issued Tariff Order in Petition Nos. 5-8 of 2014 for CSPDCL for FY 2014-15 and final true-up for Previous Years of CSPGCL, CSPTCL, SLDC and CSPDCL, wherein, the State Commission observed that the load curve prepared by SLDC depicts that the injection pattern of the power supplied by JSPL to CSPDCL has wide variation, supply from JSPL is varying frequently and it is unstable / non-firm power. This observation was also noted by this Tribunal while rendering the judgment dated 26.05.2016 in Appeal Nos. 41 of 2015 and 67 of 2015 for the finding that:

“10. (A)

(vii) We are of the considered Opinion that injection pattern of such unstable power supply causes even commercial implications, besides creating disturbance in the demand supply balance.”

76. We are of the firm opinion that the Appellant is bound by the provisions of the Act 2003 and the conditions of the Licence as granted by the State Commission. Any provision of the MoU, if it is inconsistent with the provisions of the Act 2003 and the Licencing conditions stands annulled. Therefore, the Appellant shall supply the surplus power from the Raigarh CPP to the extent it is available and is firm power.

77. The second issue which is under dispute is the tariff at which the Licensee i.e. JSPL shall supply the power to the consumers of its supply

area. There cannot be any dispute that the Appellant and the industrial consumers of JIP signed the Power Purchase Agreement (PPA) in the year 2004 wherein the sale tariff was fixed at Rs. 2.50 per unit. However, the agreement was expired after 5 years.

78. Further, the State Commission vide its order dated 29.11.2005, decided that the existing tariff of Rs. 2.50 per unit shall continue to be charged by JSPL, till the tariff for supply is determined by the State Commission. As such the tariff of Rs. 2.50 was only the provisional tariff, and not the tariff as fixed under the provisions of the Act 2003 (section 61, 62, 63 & 64).

79. Considering that the tariff of Rs 2.50 per unit for Raigarh CPP was mutually agreed tariff between the Appellant and the industrial consumers and as decided under the PPA signed amongst them with validity for 5 years, such tariff cannot be declared as tariff determined or adopted under the provisions of the Electricity Act, 2003 and the State Commission should have exercise its powers for the determination of tariff under the provisions of the relevant Regulations. However, as noted, the Appellant failed to provide information as sought by the State Commission including the audited segregated accounts.

80. In case of failure of the Appellant, the State Commission can always discover the tariff under its regulatory powers by examining the technology, cost of equipment, life of the plants etc and declaring the normative costs to arrive at the most optimised solution which could have been in the benefit of the consumers. The State Commission in its order dated 05.11.2008 in Petition No. 23 of 2008 pertaining to determination of tariff for JSPL for FY 2008-09, held that:

“3. ... The Commission is inclined to agree with the request of the applicant in view of the following:

(i) Despite a lapse of three months' time from the date of application, the Commission is not in a position to proceed with the task of determine ARR and hence tariff on account of the application being incomplete.

(iii) At present, the consumers of the industrial park of the licensee are being supplied electricity @ Rs.2.50 per unit as per the agreements in force, some of which pertain to the period prior to the distribution licence was granted to the licensee. The present tariff is less than the Board's industrial tariff applicable for the similar type of consumers. Further, no representation has been received from any consumer of licensee regarding the said tariff. The Commission, therefore, would not like to interfere with subsisting agreements between consumers and the licensee.

81. Even after making such observations, the State Commission continued with its failure in determining the tariff as vested to it under the Statutory powers. The determination of tariff which was mutually agreed for 5 years cannot be continued and adopted for 25 years. Further, in case of non-compliance by the Appellant, the State Commission should have reviewed the grant of licence section 19 (Revocation of licence) of the Act, providing that:

“19. (1) If the Appropriate Commission, after making an enquiry, is satisfied that public interest so requires, it may revoke a licence in any of the following cases, namely: -

(a) where the licensee, in the opinion of the Appropriate Commission, makes wilful and prolonged default in doing anything required of him by or under this Act or the rules or regulations made thereunder;”

82. This Tribunal on 04.10.2007, has held that:

*“16. At the outset, we would like to point out that so far JSPL has not filed any application for determination of its tariff as directed by the CSERC. The appellant, JSPL had set up the plea that it is not possible to segregate its accounts for distribution business and steel business. The contention was rightly rejected by the CSERC. It is not denied that it was one of the terms of the grant of distribution license to JSPL that it shall file an application for determination of tariff. **Having obtained the license on the specific condition that it shall apply for determination of tariff, the appellant cannot be allowed to violate the conditions of license.** Section 42 of the Act casts a duty on a distribution licensee to supply electricity in accordance with the provisions of the Act.”*

83. However, the above issue is settled now as Appellant has submitted that they have segregated the accounts of the Raigarh CPP from the main business accounts and submitted the information before the State Commission.

84. We find the role of the State Commission as totally irrational and unjustified in performing their statutory duties. The directions issued by this Tribunal have not been complied with in true spirit.

85. Further this Tribunal vide order dated 04.07.2007 has held that :

“16.

Section 45 of the Act ordains that the price to be charged by a distribution licensee for supply of electricity by it in pursuance of Section 43 of the Act shall be in accordance with such tariff as is fixed from time to time by the Commission and conditions of his license. Therefore, distribution licensee is under a statutory obligation to supply electricity in consonance with the following two conditions:-

- i) supply of energy shall be as per the tariff fixed;*
- ii) supply of energy shall be in accordance with the conditions of distribution license.”*

86. It is thus clear that the tariff at which electricity can be supplied to a consumer shall be the tariff as determined by the State Commission under the provisions of the Act 2003. It is the statutory duty of the State Commission to ensure it. Section 61 of the Act 2003 provides that the State Commission shall be guided by the economic principle of safeguarding the interest of the consumer and at the same time, recovery of the cost of electricity in a reasonable manner. While granting licence the State Commission noted that:

“16. -----

More importantly, there are as many as 18 (now 24) industries, most of them power intensive which are being supplied power by him through a long-term agreement for 5 years and at a rate which is much cheaper than the rate of the CSEB for similar industries (at Rs.2.50 per unit 'as' against the CSEB's average rate of Rs.3.37 per unit). If a distribution license is denied today these consumers become unviable, as has been pleaded at least by four consumers (A-15 to 18), and will have to close down their industries...."

87. From the above, the tariff of Rs. 2.50 was fixed as provisional tariff in the benefit of the consumers, however, it is not relevant in the present scenario, as the agreement signed prescribing such tariff has since expired.

88. We are of the firm opinion that the State Commission should immediately determine the tariff of both the captive plants i.e. Raigarh CPP and Dongamahua CPP either through the information furnished by the Appellant or through the methodology adopted for deciding the Generic Tariff in case of failure of the Appellant in furnishing the information.

89. At the same time, in the process of determination of tariff, the State Commission shall endeavour to ensure safeguarding of consumers' interest and at the same time, recovery of the cost of electricity in a reasonable manner.

90. The other issue i.e. the third issue which emerges out from these Appeals is the determination of surplus capacity available from Raigarh

CPP and its pattern. This Tribunal vide judgment dated 07.03.2014, directed the State Commission to determine the surplus capacity and its pattern, as reproduced here under:

“The State Commission should have examined the pattern of surplus power available from the captive power plant after meeting the requirement of captive load of the Steel Plant and load pattern in the licensed area of Jindal Steel and should have considered part of energy supplied in the licensed area from the Captive Power Plant of Jindal Steel. Unfortunately, this has not been done. Therefore, we remand the matter with directions to the State Commission to carry out the exercise Appeal No.89 of 2012 Page 23 of 39 and evaluate the energy from the Captive Power Plant that should have been booked to distribution business of Jindal Steel at the cost of the generation tariff of Jindal Steel’s Captive Power Plant. -----

The State Commission should also facilitate increasing the contract demand of Jindal Steel from 1 MW to 80 MW from CSPDCL as sought by Jindal Steel for meeting the increased load of Jindal Steel. This will help in availability of continuous and sustainable supply from the Captive Power Plant to Jindal Industrial Park in future.”

91. We felt that it is important to take a note of it as the State Commission has totally failed in complying with our directions for examining the quantum and pattern of surplus power availability from the Raigarh CPP owned by the Appellant. There cannot be any dispute that the opinion of this Tribunal was reiterated time and again, a fact which

effects the present Appeal also however, the State Commission is still grappling to find the information. It is one of the major issues in dispute i.e. the pattern and quantum of surplus power available from Raigarh CPP.

92. The State Commission should have obtained the information directly from the SLDC as any power generated by a CPP and its consumption by the captive user is precisely monitored in compliance with the provisions of the Electricity Rules, 2005, for determining the captive status of a power plant.

93. Even after a gap of eight years, the State Commission is still struggling to get this information, it is beyond our understanding even to the fact that the SLDC submitted information for examining the pattern of surplus power before the State Commission, on which the State Commission made the following observation vide its order dated 12.06.2014:

“Commission’s View:

The load curve prepared by the SLDC shows that the injection pattern of the power supplied by JSPL to CSPDCL has wide variation. Supply from JSPL is changing frequently and it is unstable / non-firm power. To check sanctity of the fact, the Commission has done detailed analysis of the power supplied by JSPL.

In the judgment passed by Hon'ble APTEL in the Appeal No.89 9f 2012 dated 07th March 2014, JSPL itself has submitted that surplus power at different times of the day was dependent on the actual computation of steel plant which varied frequently....

It is amply clear that power supplied by JSPL to CSPDCL is fluctuating in nature. In such a case, it is very difficult for CSPDCL to manage its load-generation balance and some time it may have to over draw/ under draw from grid for which heavy penalty is required to be paid. The CSPDCL has signed power purchase agreement with JSPL for RTC power supply and not for non-firm power. It is also seen that CSPDCL has not taken any corrective steps to overcome this situation and continued purchasing such power of poor quality. The Commission takes serious note on the same and directs CSPDCL for not to purchase unstable / non-firm power which creates disturbance in demand supply balance.”

94. From the above order, it is clear that the SLDC has maintained the data bank regarding the availability of power from the Raigarh CPP, Further, the power supplied by the Raigarh CPP to CSPDCL is fluctuating in nature resulting into grid disturbance attracting high penalties, as such it is beyond doubt that such power cannot be sourced by JSPL for its distribution business, supplying power to its consumers in the distribution area.

95. The State Commission's order dated 12.06.2014 was upheld by this Tribunal vide Judgment dated 26.05.2016 in Appeal Nos. 41 of 2015 and 67 of 2015, noting therein as under:

“10. (A)

...

(vii) We are of the considered Opinion that injection pattern of such unstable power supply causes even commercial implications, besides creating disturbance in the demand supply balance.”

96. The State Commission also failed to submit the reason for the delay in increasing the contract demand from 1 MW to 80 MW as requested by the Appellant, which could have resulted into firm power to be supplied for distribution business.

97. From the observations of the State Commission, it is clear that the surplus capacity of the Raigarh CPP, if any, is fluctuating/ intermittent in nature and after observing the State Commission's observation, this Tribunal observed such supply causes commercial implications, besides creating disturbance in the demand supply balance.

98. The State Grid, to which the Raigarh CPP and the distribution & transmission system of the Appellant are connected, is controlled and operated by the SLDC, Chhattisgarh. Further, complete and precise data in respect of any CPP connected to the State Grid is obtained by the SLDC and the State Distribution Licensee in a real time mode of 15 minutes block period. It cannot be denied that, if, such an accurate measurement is available, the State Commission cannot obtain such an information from the concern Utilities.

99. Therefore, the State Commission ought to have determined the quantum and pattern of the surplus capacity, if found to be erratic / fluctuating as such power cannot be a supply source for the distribution business.

100. We are again directing the State Commission to determine the surplus capacity as available from the Appellant's CPP in a real time mode along with its pattern immediately and analyse it whether it can be supplied to the industrial consumers.

101. It is sheer failure on the part of the State Commission that it has failed in obtaining the said information once it has not been provided by the Appellant.

102. Further, the following information as sought by the State Commission should and must have been available with the State Utilities and /or the State Commission:

- (a) Unit wise installed capacity of CPP as on 01.04.2014 along with COD.
- (b) Daily generation in kWh by CPP from FY 2010-11 onwards.
- (c) Electricity consumed in kWh (daily) by captive loads from FY 2010 onwards.
- (d) Details of electricity sold (daily) in kWh from tits CPP from FY 2010-11 to other then consumer at JIP.
- (e) Total electricity consumed (daily) in kWh in JIP from FY 2010-11.

103. We are not convinced and satisfied that the State Commission could not proceed in tariff determination/ examining the surplus capacity, in the absence of such information as not provided by the Appellant.

104. The other issue which remains unresolved is the mutually agreed tariff for the supply of the electricity by JSPL to the consumers of JIPL under the directions and approval of the High Court of Chhattisgarh. As quoted in the foregoing paragraphs, the High Court has directed that:

“It is observed that, the petitioner as offered shall be obliged to pay the electricity charges @ Rs.4.20 per unit, which would be

subject to the final adjudication before the appellate authority. It is further observed that Jindal Steel and Power Limited be entitled to supply the electricity to the petitioner from Dongamauha power plant without prejudice to their right. It is expected that restoration of power shall be done expeditiously as possible.”

105. At this stage, we are of the opinion that the directions as rendered, including the tariff provisioned, by the High Court shall continue to be in place till such the time, the tariff is determined by the State Commission. Further, opined that the tariff so determined or fixed, under the directions of the High Court, shall be considered as final during the period of its applicability without prejudiced to the rights of the parties.

SUMMARY OF OUR FINDINGS:

106. The State Commission is directed to immediately:

- i. determine the available surplus capacity and its pattern;
- ii. carry out technical analysis for supply of surplus power for the distribution business from the Raigarh CPP and Dongamahua CPP;
- iii. allow JSPL to procure required quantum of electricity through competitive bidding for long term;
- iv. determine the tariff for the Distribution Licensee i.e. JSPL from the FY 2011-12, on the basis of already available data and data further furnished by JSPL or otherwise gathered suo moto by the Commission.

107. The mutually agreed tariff fixed under the directions of the High Court shall continue to be in force till the tariff is determined by the State

Commission, and will apply subject to modification / directions, if any, by the superior court.

ORDER

For the foregoing reasons as stated above, we are of the considered view that the present Appeals i.e., Appeal no. 72 of 2016 and Appeal no. 100 of 2016 have merit and are allowed.

The order dated 21.01.2016 in Petition no. 47/2015(M), order dated 01.10.2015 in (Review) Petition No. 7/2015(M), and the Tariff Order dated 23.12.2014 passed in Petition No. 12/2014(T) passed by the Chhattisgarh State Electricity Regulatory Commission are set aside with the direction to pass fresh and reasoned orders in a time bound manner, but not later than four months from the date of this judgment.

In view of the disposal of the Appeals, the reliefs sought in the pending IAs, if any, do not survive for consideration and accordingly stand disposed of.

**PRONOUNCED IN THE VIRTUAL COURT THROUGH VIDEO
CONFERENCING ON THIS 06th DAY OF MAY, 2022.**

(Sandesh Kumar Sharma)
Technical Member

(Justice R.K. Gauba)
Officiating Chairperson

REPORTABLE / NON-REPORTABLE

pr/mkj



Chhattisgarh State Electricity Regulatory Commission
Vidhyut Niyamak Bhawan
 Irrigation Colony, Shanti Nagar, Raipur - 492 001 (C.G.)
 Ph.0771-4073568, Fax: 4073553
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P.No. 12 of 2014/2022/841

Raipur Date: 16/06/2022

To,

The President,
 Jindal Steel & Power Limited,
 Mandir Hasaud, Raipur (CG)
 Pin - 492101

Sub: Filing of petition for determination of ARR of control period from FY 2022-23 to FY 2024-25, retail tariff for the year 2022-23 and truing up petition from FY 2011-12 to FY 2020-21.

Ref: 1. Hon'ble APTEL order dated 06/05/2022 passed in Appeal No.72 of 2016 and Appeal No. 100 of 2016.
2. Your application dated 27/05/2022 for determination of ARR and distribution tariff from FY 2011-12 till date.

You have filed the above-mentioned application for the determination of ARR and tariff from FY 2011-12 till date without giving any relevant information and data for the same. Also, this petition is not in accordance with the directions issued by the Hon'ble APTEL in its judgement dated 06.05.2022.

In light of the foregoing, it is worth noting that JSPL-D has previously filed tariff petitions for the determination of ARR and distribution tariff under Sections 62 and 86(1)(a) of the Electricity Act, 2003, namely petition no. 17/2009, petition no. 06/2011, petition no. 39/2012, petition no. 55/2012, petition no. 12/2014, petition no. 62/2018, petition no. 33/2020, petition no. 07/2021. This shows that JSPL-D as a distribution licensee is well-versed with the process of filing a distribution tariff petition. In addition, you've requested in your tariff application to issue data gaps, if any, but it is noted that you have not submitted any data which is required for determining the ARR and retail tariff and so the question of data gaps to be pointed out by the Commission does not arise.

v/c

In view of the above, JSPL-D is directed again to file a petition for determination of ARR for the control period from FY 2022-23 to FY 2024-25, retail tariff petition for FY 2022-23 and truing up petitions from FY 2011-12 to FY 2020-21 by 24/06/2022 in accordance with the applicable tariff Regulations and orders passed by the Hon'ble APTEL in this regard. In case the petitions are not filed till the stipulated dated i. e. 24/06/2022 the Commission will be constrained to take suo-motu initiative for the same as directed by the Hon'ble APTEL in its order dated 06/05/2022.

SPShukla
(S.P.Shukla)
Secretary



Chhattisgarh State Electricity Regulatory Commission
Vidhyut Niyamak Bhawan
 Irrigation Colony, Shanti Nagar, Raipur - 492 001 (C.G.)
 Ph.0771-4073568, Fax: 4073553
www.cserc.gov.in, e-mail: cserc.sec.cg@nic.in



P.No. 47 of 2015/2022/840

Raipur Date: 16.06.2022

To,

The President,
 Jindal Steel & Power Limited,
 Mandir Hasaud, Raipur (CG)
 Pin - 492101

Sub: Regarding filing of petition for determination of ARR of control period from FY 2022-23 to FY 2024-25 and truing up from FY 2011-12 to 2020-21 of Raigarh captive power plant (CPP) and Dongamahua CPP.

Ref: 1. Hon'ble APTEL order dated 06/05/2022 passed in Appeal No.72 of 2016 and Appeal No. 100 of 2016.
2. Your application dated 27/05/2022 for determination of generation cost from FY 2011-12 till date.

You have filed the above-mentioned application for the determination of ARR from FY 2011-12 till date of Dongamahua CPP without giving any relevant information and data for the same. Also, this petition is not in accordance with the directions issued by the Hon'ble APTEL in its judgement dated 06.05.2022

It is worth noting that JSPL has previously filed tariff petition No. 47 of 2015 for the determination of ARR and generation tariff under Sections 62 and 86(1)(a) of the Electricity Act, 2003 of its Dongamahua CPP. This clearly indicates that JSPL is well-versed with the process of filing a generation tariff petition. In addition, you've requested in your tariff application to issue data gaps, if any, but it is noted that you have not submitted any data which is required for determining the ARR and generation tariff and so the question of data gaps to be pointed out by the Commission does not arise.

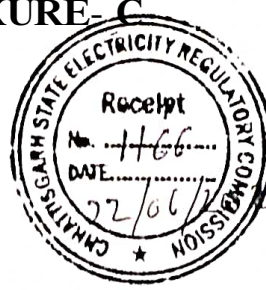
In view of the above, JSPL is directed again to file a petition for determination of ARR of control period FY 2022-23 to FY 2024-25 and truing up petitions from FY 2011-12 to FY 2020-21 of Raigarh CPP and Dongamahua

CPP by 24/06/2022 in accordance with the applicable tariff Regulations and orders passed by the Hon'ble APTEL in this regard. In case the petitions are not filed till the stipulated dated i. e. 24/06/2022, the Commission will be constrained to take suo-motu initiative for the same as directed by the Hon'ble APTEL in its order dated 06/05/2022.

SP Shukla
(S.P.Shukla)
Secretary

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June 21, 2022


JINDAL
 STEEL & POWER

To,

 The Secretary
 C.G. State Electricity Regulatory Commission,
 Vidyut Niyamak Bhawan, Irrigation Colony, Shanti Nagar,
 Raipur (C.G.)

Sub: Submission of Petition for True-Up for FY 2019-20 & FY 2020-21, Annual Performance Review of FY 2021-22 and ARR for MYT Control period for FY 2022-23 to FY 2024-25 and determination of tariff for FY 2022-23 for JSPL Distribution Business.

Reference:

1. Hon'ble Commission's Letter dated 16.06.2022 in the matter of filing of Petition for determination of ARR for control period from FY 2022-23 to FY 2024-25, retail tariff for FY 2022-23 and Truing Up Petition from FY 2011-12 to FY 2020-21
2. Hon'ble APTEL Judgement dated 06.05.2022 passed in Appeal No. 72 of 2016 and Appeal No. 100 of 2016
3. JSPL application dated 27.05.2022 regarding determination of ARR and distribution tariff from FY 2011-12 till date

Sir,

We are in receipt of Letter No. P. No. 12 of 2014 /2022/841 dated 16.06.2022 in the matter of filing of Petition for determination of ARR for control period from FY 2022-23 to FY 2024-25, retail tariff for FY 2022-23 and Truing Up Petition from FY 2011-12 to FY 2020-21 from your office. In the said letter it has been directed to file the following Petitions by 24.06.2022:

- a. Determination of ARR for the control period for FY 2022-23 to FY 2024-25
- b. Retail Tariff Petition for FY 2022-23
- c. Truing Up for FY 2011-12 to FY 2020-21

In compliance to the directions of the Hon'ble Commission in the said letter we are hereby submitting following Petitions for Transmission and Distribution business of JSPL for approval:

- a. Determination of ARR for the control period for FY 2022-23 to FY 2024-25
- b. Retail Tariff for FY 2022-23
- c. Annual Performance Review for FY 2021-22
- d. Truing Up for FY 2019-20 & FY 2020-21

We are in continuous endeavour to prepare Petition for the remaining period i.e. FY 2011-12 to FY 2018-19 and shall be submitting the same in due course of time for our Distribution Business.

Thanking you,

For Jindal Steel & Power Ltd.

 Pradeep Tandon
 President

Jindal Steel & Power Limited

CIN No.- L27105HR1979PLC009913

Office of Corporate Affairs, Mandir Hasaud, Raipur 492 101

T +91 771 2577 600 +91 771 2471 120 W www.jindalsteelpower.com

Registered Office: O. P. Jindal Marg, Hisar, 125 005, Haryana

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ANNEXURE- D



Chhattisgarh State Electricity Regulatory Commission
Vidhyut Niyamak Bhawan
 Irrigation Colony, Shanti Nagar, Raipur - 492 001 (C.G.)
 Ph.0771-4073568, Fax: 4073553
www.cserc.gov.in, e-mail: cserc.sec.cg@nic.in



No. P.No. 12 of 2014/2022/912

Raipur Date: 27/06/2022

To,

**Chief Electrical Inspector,
 B-Block, II Floor, Indravati Bhawan,
 Naya Raipur, Atal Nagar,
 Raipur.**

Sub: Submission of information/data for examining quantum and pattern of surplus power available at Captive Power plant of Jindal Steel and Power Ltd. (JSPL).

Ref: Hon'ble APTEL order dated 06/05/2022 passed in appeal no. 72 of 2016 and appeal no. 100 of 2016 (in the matter of JSPL Vs CSERC and Raigarh Ispat Udyog Sangh)

Hon'ble APTEL passed an order dated 06/05/2022 in appeal no. 72 of 2016 and appeal no. 100 of 2016. Please refer para no. 102 and 103 of the said order. In these para, Hon'ble APTEL has observed that certain information is available with State utilities for disposal of tariff petition of JSPL.

Accordingly, it is requested to provide the details of power generation, auxiliary consumption, captive consumption and power sold etc. in respect of Jindal Steel and Power Ltd., Raigarh by 04th July 2022.

Encls: Aforesaid APTEL order.

SPShukla
(S. P. Shukla)
Secretary

O/c
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MANAGING DIRECTOR



Ref: JSPL/EPS/2022/F-117

To,

The Secretary,
Chhattisgarh State Electricity Regulatory Commission
Irrigation Colony, Shanti Nagar,
Raipur – 492001

Subject: Regarding filing of petition for determination of ARR of control period from FY 2022-23 to FY 2024-25 and truing up from FY 2011-12 to 2020-21 of Raigarh captive power plant (CPP) and Dongamahua CPP

Reference:

1. Hon'ble Commission's Letter dated 16.06.2022 in the matter of filing of petition for determination of ARR of control period from FY 2022-23 to FY 2024-25 and truing up from FY 2011-12 to 2020-21 of Raigarh captive power plant (CPP) and Dongamahua CPP.
2. Hon'ble APTEL Judgement dated 06.05.2022 passed in Appeal No. 72 of 2016 and Appeal No. 100 of 2016.

Dear Sir,

We are in receipt of Letter No. P. No. 12 of 2014 /2022/840 dated 16.06.2022 in the matter of filing of petition for determination of ARR of control period from FY 2022-23 to FY 2024-25 and truing up from FY 2011-12 to 2020-21 of Raigarh captive power plant (CPP) and Dongamahua CPP. In the said letter it has been directed to file the following Petitions by 24.06.2022:

1. Petition for determination of ARR of control period FY 2022-23 to FY 2024-25 and truing up petitions from FY 2011-12 to FY 2020-21 of Raigarh CPP and Dongamahua CPP by 24/06/2022 in accordance with the applicable tariff Regulations and orders passed by the Hon'ble APTEL.
2. In case the petitions are not filed till the stipulated dated i . e . 24/06/2022, the Commission will be constrained to take suo - motu Initiative for the same as directed by the Hon'ble APTEL in Its order dated 06/05/2022.

Jindal Steel & Power Limited

CIN No.- L27105HR1979PLC009913

Office of Corporate Affairs, Mandir Hasaud, Raipur 492 101

T +91 771 2577 600 F +91 771 2471 120 W www.jindalsteelpower.com

Registered Office O. P. Jindal Marg, Hisar, 125 005, Haryana

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8.7.2022

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08/07/22

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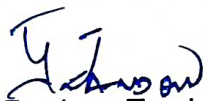


In the above context we would like to bring into your kind notice that Raigarh CPP does not have any surplus capacity and due to non-availability of coal, 2 units of DCP are also not functioning at the moment.. Moreover, as per CERC norms we are a critical power plant as we do not have adequate stock for 21 days. It is submitted that, JSPL has set up these CPPs for captive use and the same is too in distress due to shortage of coal. Therefore, as per Hon'ble APTEL's judgment dated 06/05/2022, we have already initiated process for long term bidding for the procurement of power for industrial park.

You are requested to consider deciding ARR based on the competitive bidding.

Thanking you

Yours faithfully
For Jindal Steel & Power Limited,


Pradeep Tandon
President

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**Chhattisgarh State Electricity Regulatory Commission**

Irrigation Colony, Shanti Nagar, Raipur - 492 001 (C.G.)

Ph.0771-4073568, Fax: 4073553

www.cserc.gov.in, e-mail: cserc.sec.cg@nic.in

**Notice for Extension of date for submission of bid (Tender- 05/2022)**

No. Tender No. 05 of 2022/2022/ 997

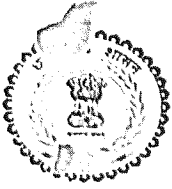
Dated: 13.07.2022

Sub: Extension of date for submission of bid for Appointment of Consultant for Assistance to the Commission in examination of surplus power and its pattern of Jindal steel and Power Limited (JSPL) Captive Power Plant, true-up of generation cost from FY 2011-12 to FY 2020-21 of CPP, determination of generation cost of CPP from FY 2022-23 to FY 2024-25, true up from FY 2011-12 to FY 2019-20 of JSPL's licensed distribution business.

Due to insufficient number of bids received, the last date for submission of bids is extended until 20th July, 2022 upto 3:00 PM. Also, opening time of technical bid and financial bid is rescheduled as 3:30 PM of 20/07/2022 and 3:30 PM of 21/07/2022 respectively. Bidders who have already submitted their bids, need not to submit again.

S. P. Shukla
(S. P. Shukla)
Secretary

ANNEXURE- H



Chhattisgarh State Electricity Regulatory Commission
Vidhyut Niyamak Bhawan
 Irrigation Colony, Shanti Nagar, Raipur - 492 001 (C.G.)
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www.cserc.gov.in, e-mail: cserc.sec.cg@nic.in



No. P.No.12 of 2014/2022/ 913

Raipur Date: 27/06/2022

To,

**The Executive Director,
 Chhattisgarh State Load Dispatch Centre,
 Dangania, Raipur.**

Sub: Submission of information/data for examining quantum and pattern of surplus power available at Captive Power plant of Jindal Steel and Power Ltd. (JSPL).

Ref: Hon'ble APTEL order dated 06/05/2022 passed in appeal no. 72 of 2016 and appeal no. 100 of 2016 (in the matter of JSPL Vs CSERC and Raigarh Ispat Udyog Sangh)

Hon'ble APTEL passed an order dated 06/05/2022 in appeal no. 72 of 2016 and appeal no. 100 of 2016. Please refer para no. 92, 93, 94, 98, 102 and 103 of the said order. Hon'ble APTEL has observed that certain informations must have been available with the State utilities which are required for disposing the tariff petitions filed by JSPL. Accordingly, it is requested to provide the following information by 04th July, 2022.

(a) Unit wise installed capacity of CPP along with date of commercial operation of JSPL.

(b) Daily generation in kWh by CPP of JSPL from FY 2011-12 to FY 2020-21.

(c) Electricity consumed in kWh (daily) by captive loads of JSPL from FY 2011-12 to FY 2020-21.

(d) Details of electricity sold (daily) in kWh from CPP of JSPL from FY 2011-12 to FY 2020-21 to other than consumer at O.P. Jindal Industrial Park.

(e) Total electricity consumed (daily) in kWh in O.P. Jindal Industrial Park from FY 2011-12 to FY 2020-21.

Encls: Aforesaid APTEL order.

(S. P. Shukla)
(S. P. Shukla)
Secretary

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O/C

Order Sheet (Contd.)

Case No. 14 of 2021.

Date of order or Proceeding	Order or proceeding with signature of presiding officer	Signature of Parties or Pleaders where necessary
28.04.2022 <i>L No. - 670</i> <i>Dr. - 29/04/2022</i>	Hearing held through video conferencing. Shri Pranav Sood, Advocate along with Shri Pradeep Tandon and Shri Z. Ali for petitioner. 2. The petitioner informed that Hon'ble APTEL has heard completed arguments in appeal Nos. 72 and 100 of 2016 and these appeals are reserved for orders. 3. Keeping in view the circumstances, with consent of petitioner the case be listed for hearing on 21.07.2022 at 11:30 AM. <i>[Signature]</i> Member <i>[Signature]</i> Member (Judicial) <i>[Signature]</i> Chairman	
21.07.2022	Shri Hemant Singh and Shri Pranav Sood, counsels and Shri Pradeep Tandon for petitioner M/s JSPL (through online). Shri Arvind Sharma for Raigarh Ispat Udyog Sangh. 2. This petition was kept pending being sub-judice as the related matter in appeal No. 72 of 2016 and 100 of 2016 were under consideration before the Hon'ble APTEL. 3. Now, that Hon'ble APTEL has disposed above appeals on 06.05.2022 and directed the Commission to determine tariff from FY 2011-12 to till date.	

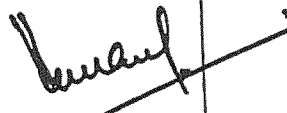
Date of order or Proceeding	Order or proceeding with signature of presiding officer	Signature of Parties or Pleaders whose necessary
L.No. - 1070 Date - 22/07/2022	4. As this petition belongs to the period mentioned by the Hon'ble APTEL, we order to club the petition with petition no. 46 of 2022, which is filed for approval of ARR from FY 2022-23 to FY 2024-25, retail tariff for FY 2022-23 along with true up of ARR of FY 2019-20 and 2020-2021. 5. In regard to above, tariff section is directed to initiate regulatory process. We order accordingly.  Member  Member (Judicial)  Chairman	

Order Sheet (Contd.)

Case No. 67 of 2021

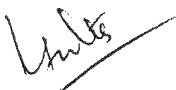


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Date of order or Proceeding	Order or proceeding with signature of presiding officer	Signature of Parties or Pleaders where necessary
21.07.2022 - 1069 - 22/07/2022	Shri Hemant Singh and Shri Pranav Sood, counsels and Shri Pradeep Tandon for petitioner M/s JSPL (through online). Shri Arvind Sharma for Raigarh Ispat Udyog Sangh. 2. This petition was kept pending being sub-judice as the related matter in appeal No. 72 of 2016 and 100 of 2016 were under consideration before the Hon'ble APTEL. 3. Now, that Hon'ble APTEL has disposed above appeals on 06.05.2022 and directed the Commission to determine tariff from FY 2011-12 to till date. 4. As this petition belongs to the period mentioned by the Hon'ble APTEL, we order to club the petition with petition no. 46 of 2022, which is filed for approval of ARR from FY 2022-23 to FY 2024-25, retail tariff for FY 2022-23 along with true up of ARR of FY 2019-20 and 2020-2021. 5. In regard to above, tariff section is directed to initiate regulatory process. We order accordingly.  Member  Member (Judicial)  Chairman	

Order Sheet (Contd.)

Case No. 33 of 2020

Date of order or Proceeding	Order or proceeding with signature of presiding officer	Signature of Parties or Pleaders where necessary
21.07.2022 <i>L.No.-1068</i> <i>Date-22/07/2022</i>	Shri Hemant Singh and Shri Pranav Sood, counsels and Shri Pradeep Tandon for petitioner M/s JSPL (through online). Shri Arvind Sharma for Raigarh Ispat Udyog Sangh. 2. This petition was kept pending being sub-judice as the related matter in appeal No. 72 of 2016 and 100 of 2016 were under consideration before the Hon'ble APTEL. 3. Now, that Hon'ble APTEL has disposed above appeals on 06.05.2022 and directed the Commission to determine tariff from FY 2011-12 to till date. 4. As this petition belongs to the period mentioned by the Hon'ble APTEL, we order to club the petition with petition no. 46 of 2022, which is filed for approval of ARR from FY 2022-23 to FY 2024-25, retail tariff for FY 2022-23 along with true up of ARR of FY 2019-20 and 2020-2021. 5. In regard to above, tariff section is directed to initiate regulatory process. We order accordingly.  Member  Member (Judicial)  Chairman	

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CSEERC
Central Sector Electricity Regulatory Commission

Order Sheet (Contd.)

Case No. 62...of 2018

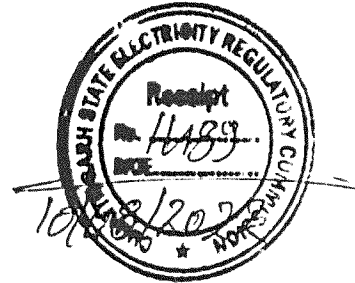
Date of order or Proceeding	Order or proceeding with signature of presiding officer	Signature of Parties or Pleaders where necessary
21.07.2022	Shri Hemant Singh and Shri Pranav Sood, counsels and Shri Pradeep Tandon for petitioner M/s JSPL (through online). Shri Arvind Sharma for Raigarh Ispat Udyog Sangh. 2. This petition was kept pending being sub-judice as the related matter in appeal No. 72 of 2016 and 100 of 2016 were under consideration before the Hon'ble APTEL. 3. Now, that Hon'ble APTEL has disposed above appeals on 06.05.2022 and directed the Commission to determine tariff from FY 2011-12 to till date. 4. As this petition belongs to the period mentioned by the Hon'ble APTEL, we order to club the petition with petition no. 46 of 2022, which is filed for approval of ARR from FY 2022-23 to FY 2024-25, retail tariff for FY 2022-23 along with true up of ARR of FY 2019-20 and 2020-2021. 5. In regard to above, tariff section is directed to initiate regulatory process. We order accordingly.  Member  Member (Judicial)  Chairman	

No. - 1066
22/07/2022

August 9, 2022



The Director (Tariff)
C.G. State Electricity Regulatory Commission,
Vidyut Niyamak Bhawan,
Irrigation Colony, Shanti Nagar,
Raipur (C.G.)



Sub.: Publication of approved gist in newspapers. – JSPL Distribution Business.

Ref.: Your letter no.46 of 2022/2022/1145 dated 04.08.2022

Dear Sir,

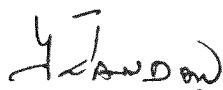
We refer to your above letter and enclose herewith the following newspapers in which the approved gist has been published:-

Sr.	Newspaper	Published in English / Hindi	Date of publication	Page No.
1	Kelo Pravah, Raigarh	Hindi	05.08.2022	2
2.	Ispat Times, Raigarh	Hindi		6
3.	The Pioneer, Raipur	English		3

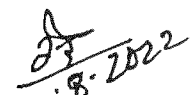
This is for your information and records please.

Thanking you,

Yours faithfully,
For Jindal Steel & Power Ltd.


Pradeep Tandon
President

Encl. as above.


10.8.2022.
Dir. Tariff.

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Chhattisgarh State Electricity Regulatory Commission
Vidhyut Niyamak Bhawan
 Irrigation Colony, Shanti Nagar, Raipur - 492 001 (C.G.)
 Ph.0771-4073568, Fax: 4073553
www.cserc.gov.in, e-mail: cserc.sec.cg@nic.in



P. No. 46 of 2022/1041

Raipur, Date: 21/07/2022

Petition No. 46/2022

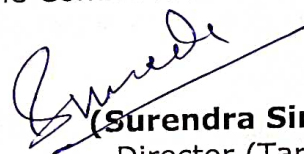
M/s Jindal Steel and Power Ltd. (D)

..... Petitioner

Petition for determination of ARR for MYT control period of FY 2022-23 to FY 2024-25 along with revised estimate for FY 2021-22 and true up for year FY 2019-20 and FY 2020-21 under Section 86(1)(a) read with Section 61, 62 of the Electricity Act, 2003 submitted by petitioner has been registered under registration number 46/2022.

In addition to above, it is to mention that the Commission vide daily order dated 21/07/2022 has merged the petition no. 62/2018, 33/2020, 07/2021 and 14/2021 with this petition i.e. 46/2022. The aforesaid petition contains information for true up from FY 2012-13 to FY 2020-21, for approval of ARR from FY 2022-23 to FY 2024-25 and retail tariff for FY 2022-23. It is also to mention that Hon'ble APTEL vide order dated 06/05/2022, directed the Commission to determine the tariff from FY 2011-12 to till date. In addition to above, JSPL is also required to include summary of the petition no. 39 of 2012 which was filed for true up of FY 2011-12, in the above gist so that stakeholder may get opportunity to file objections/suggestions to the ARR from FY 2011-12 to till date.

In view of the above, JSPL is required to submit a single gist in English and Hindi incorporating summary of the above petitions for inviting objections/suggestions from the stakeholders as provided at clause 6.4 of the Chhattisgarh State Electricity Regulatory Commission (Terms and Conditions for determination of tariff according to Multi-Year Tariff principles and Methodology and Procedure for determination of Expected revenue from Tariff and Charges) Regulations, 2021, for approval of the Commission.


 (Surendra Singh)
 Director (Tariff)

To,

M/s Jindal Steel and Power Limited,
 Through
 Shri Pradeep Tandon (President),
 P.B. No.16, Kharsia Road, Patrapali,
 Raigarh, (CG)



Chhattisgarh State Electricity Regulatory Commission
Vidhyut Niyamak Bhawan
 Irrigation Colony, Shanti Nagar, Raipur - 492 001 (C.G.)
 Ph.0771-4073568, Fax: 4073553
www.cserc.gov.in, e-mail: cserc.sec.cg@nic.in



Reminder

No. P.No.12 of 2014/2022/1081

Raipur Date: 25/07/2022

To,

**The Executive Director,
 Chhattisgarh State Load Dispatch Centre,
 Dangania, Raipur.**

Sub: Submission of information/data for examining quantum and pattern of surplus power available at Captive Power plant of Jindal Steel and Power Ltd. (JSPL).

Ref: This office letter no. P.No. 12 of 2014/2022/913 dtd. 27/06/2022.

Please refer enclosed letter vide which you have been requested to provide following detail:

(a) Unit wise installed capacity of CPP along with date of commercial operation of JSPL.

(b) Daily generation in kWh by CPP of JSPL from FY 2011-12 to FY 2020-21.

(c) Electricity consumed in kWh (daily) by captive loads of JSPL from FY 2011-12 to FY 2020-21.

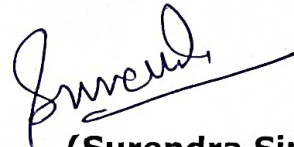
(d) Details of electricity sold (daily) in kWh from CPP of JSPL from FY 2011-12 to FY 2020-21 to other than consumer at O.P. Jindal Industrial Park.

(e) Total electricity consumed (daily) in kWh in O.P. Jindal Industrial Park from FY 2011-12 to FY 2020-21.

The desired information is still awaited.

In view of the above, it is kindly requested to provide the requisite information by 01st Aug 2022.

Encls: As above.


(Surendra Singh)
Director (Tariff)

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0/c



Chhattisgarh State Electricity Regulatory Commission
Vidhyut Niyamak Bhawan
Irrigation Colony, Shanti Nagar, Raipur - 492 001 (C.G.)
Ph.0771-4073555, Fax: 4073553
www.cserc.gov.in, e-mail: cserc.sec.cg@nic.in



No. P.No. 46/2022/2022/1100

Raipur, Date: 26/07/2022

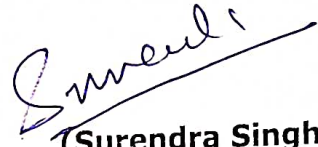
To,

M/s Jindal Steel and Power Limited,
Through
Shri Pradeep Tandon (President),
P.B. No.16, Kharsia Road, Patrapali,
Raigarh, (CG)

Sub: Submission of additional information in line with discussion held during Technical Validation Session on 26/07/2022.

In reference to the above mentioned subject, please submit the additional information as per the enclosed annexure within the date specified in the annexure.

o/c


(Surendra Singh)
Director (Tariff)

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Annexure - I

Data Requirement from JSPL-D in matters related to APTEL remand back in Appeal No.
72 of 2016 and 100 of 2016

As discussed during the Technical Validation Session (TVS) held on 26.07.22, JSPL-D should submit the following information in soft copy as well as hard copy on Affidavit within the timelines mentioned below:

A. Distribution Tariff related (within 1 week, i.e., 03.08.2022)

1. JSPL-D should confirm that the True-up Petition (39 of 2012) filed earlier for FY 2011-12 may be trued-up on the basis of the Audited Accounts filed by JSPL-D for the Distribution Business.
2. JSPL-D should submit the Excel Model associated with the True-up Petitions for the period from FY 2011-12 to FY 2020-21.
3. JSPL-D should submit the details of tariff applicable to consumers for different periods, from April 1, 2011 to March 31, 2021.
4. JSPL-D should submit the details of monthly input energy to Industrial Park and energy sold to JSPL-D's consumers, with the details of Distribution Loss, for the period from FY 2011-12 to FY 2020-21.
5. JSPL-D should submit the audited accounts from FY 2011-12 to FY 2020-21 in PDF and excel format.

B. Surplus Power of Raigarh CPP and Dongamahua CPP (within 1 week, i.e., 03.08.2022)

1. JSPL-D should submit the daily data of Unit-wise generation from Raigarh CPP and Dongamahua CPP from April 1, 2011 to March 31, 2021 in MS Excel
2. JSPL-D should submit the daily data of Unit-wise captive consumption from Raigarh CPP and Dongamahua CPP from April 1, 2011 to March 31, 2021 in MS Excel
3. JSPL-D should submit the daily data of energy sold to different entities from Raigarh CPP and Dongamahua CPP from April 1, 2011 to March 31, 2021 in MS Excel
4. JSPL-D should submit the copy of Form-G for Raigarh CPP and Dongamahua CPP submitted to Chief Electrical Inspector along with all Annexures, for the period from April 2011 to March 2021 (monthly and consolidated for each Financial Year)



5. JSPL-D should submit the Technical configuration details of Raigarh CPP and Dongamahua CPP
6. JSPL-D should clarify if any unit(s) of Dongamahua CPP have been identified as CPP, with copy of the declaration.
7. JSPL-D should submit the annual Energy Balance for energy generated and sold from Raigarh CPP and Dongamahua CPP with the following details:
 - a. Energy generated
 - b. Auxiliary Energy Consumption
 - c. Net Energy Generated
 - d. Captive consumption
 - e. Energy supplied to license area of JSPL-D (Industrial Park)
 - f. Energy sold to CSPDCL
 - g. Energy sold to any other entities
8. JSPL-D should submit the details of capacity tied-up for Raigarh CPP and Dongamahua CPP for future years.

C. Generation Tariff related (to be submitted by 10.08.2022)

1. JSPL-D should submit the Petition for Raigarh CPP and Dongamahua CPP for each Year from FY 2011-12 to FY 2020-21, and MYT Control Period from FY 2022-23 to FY 2024-25, as per the prescribed Formats and applicable MYT Regulations, for determination of the Generation Tariff for each year.

David

JINDAL
STEEL & POWER

August 1, 2022

The Director (Tariff),
C.G. State Electricity Regulatory Commission,
Vidyut Niyamak Bhawan,
Irrigation Colony, Shanti Nagar,
Raipur (C.G.)



Sub.: Determination of ARR for MYT control period FY 2022-23 to FY 2024-25 along with revised estimate for FY 2021-22 and true up for year FY 2019-20 and FY 2020-21 for JSPL's Distribution business.

Ref.: 1.CSERC Letter P.No.62 of 2018(T)/2022/1066 dt.22.07.22
2.CSERC Letter P.No.33 of 2021/2022/1068 dt.22.07.22
3.CSERC Letter P.No.07 of 2021/2022/1069 dt.22.07.22
4.CSERC Letter P.No.14 of 2021/2022/1070 dt.22.07.22
5.CSERC Letter P.No.46 of 2022/1041 dt.21.07.22

28
2.8.2022
Sir. Tariff.

Dear Sir,

This bears reference to your above letters.

As directed we are enclosing herewith gist of our petition in the form of Public Notice in English for the approval of Hon'ble Commission before it is published in English and Hindi newspapers.

Thanking you,

Yours faithfully,
For Jindal Steel & Power Ltd.

Pradeep Tandon
President

Encl. As above

Jindal Steel & Power Limited
CIN No.- L27105HR1979PLC009913
Office of Corporate Affairs, Mandir Hasaud, Raipur 492 101
T +91 771 2577 600 F +91 771 2471 120 W www.jindalsteelpower.com
Registered Office O. P. Jindal Marg, Hisar, 125 005, Haryana

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Public Notice

In compliance with the provisions under Section 61, 62 and 86 (1)(a) of the Electricity Act, 2003 read with Chhattisgarh State Electricity Regulatory Commission (Terms and Conditions for determination of tariff according to Multi-Year Tariff principles and Methodology and Procedure for determination of Expected revenue from Tariff and Charges) Regulations, 2021 and Chhattisgarh State Electricity Regulatory Commission (Terms and Conditions for determination of tariff according to Multi-year Tariff principles and Methodology and Procedure for determination of Expected revenue from Tariff and Charges) Regulations, 2015, M/s Jindal Steel and Power Ltd. (JSPL) has filed Petition No. 46/2022 before the Chhattisgarh State Electricity Regulatory Commission (CSERC), for determination of Annual Revenue Requirement (ARR) for the MYT control period from FY 2022-23 to FY 2024-25, determination of tariff for FY 2022-23 along with revised estimate of FY 2021-22 and True-up of FY 2019-20 & FY 2020-21 for its licensed distribution business.

The Commission vide daily Order dated 21.07.2022 has merged the Petitions No. 62/2018, 33/2020, 07/2021 and 14/2021 with 46/2022 to determine the tariff for M/s JSPL from FY 2011-12 to *will date* comply with the direction of Hon'ble APTEL in Judgement dated 06.05.2022 in Appeal No. 72 and 100 of 2016.

In Petition No. 39/2012 (D), M/s JSPL has requested the Commission to approve ARR of Rs. 26,339 Lakh for FY 2012-13 and True-up of Rs. 22,363 Lakh for FY 2011-12.

In Petition No. 62/2018, M/s JSPL has requested the Commission to approve ARR of Rs. 59,804.50 Lakh, Rs. 62,883.83 Lakh and Rs. 65,986.13 Lakh for FY 2018-19, FY 2019-20 and FY 2020-21 respectively, Revised Estimate of Rs. 32,053.35 Lakh for FY 2017-18 and True-up of Rs. 23,186.38 Lakh for FY 2012-13, Rs. 23,859.31 Lakh for FY 2013-14, Rs. 25,100.23 Lakh for FY 2014-15, Rs. 25,471.22 Lakh for FY 2015-16 and Rs. 27,152.60 Lakh for FY 2016-17.

In Petition No. 33/2020, M/s JSPL has requested the Commission to approve ARR of Rs. 75,788.35 Lakh for FY 2019-20, Revised estimate of Rs. 42,197.04 Lakh for FY 2018-19 and True-up of Rs. 30,230.90 Lakh for FY 2017-18.

In Petition No. 07/2021, M/s JSPL has requested the Commission to approve ARR of Rs. 58,621.61 Lakh for FY 2020-21, Revised estimate of Rs. 47,531.15 Lakh for FY 2019-20 and True-up of Rs. 41,325.15 Lakh for FY 2018-19.

In Petition No. 14/2021, M/s JSPL has requested the Commission to approve ARR of Rs. 64,485.10 Lakh for FY 2021-22.

In Petition No. 46/2022, M/s JSPL has requested the Commission to approve ARR of Rs. 1,44,946.05 Lakh, Rs. 1,76,648.69 Lakh and Rs. 1,94,788.71 Lakh for FY 2022-23, FY 2023-24 and FY 2024-25 respectively, Revised Estimate of Rs. 62,556.92 Lakh for FY 2021-22 and True-up of Rs. 45,346.38 Lakh for FY 2019-20 & Rs. 49,345.88 Lakh for FY 2020-21.

The copies of the Petitions are available at corporate office and plant office of M/s JSPL as well as CSERC office, Vidyut Niyamak Bhavan, New Shanti Nagar, Raipur (C.G.) 492001 which can be purchased on any working days between 11:00 a.m. to 4:00 p.m. on payment of Rs. 200/- & may be obtained by post on payment of additional charges of Rs. 50/-. Copies of this notice and the Petition are available on Commission's website www.cserc.gov.in.

Objections/ Suggestions on the aforesaid Petitions may be submitted to the Secretary, Chhattisgarh State Electricity Regulatory Commission's office, Vidyut Niyamak Bhavan, Shanti Nagar, Raipur (C.G.) – 492001, email id – cserc.sec.cg@nic.in and/or Petitioner's office to Mr. Z. Ali, AGM, Electrical Power System, Jindal Steel & Power limited, Post Box No. 16 Kharsia Road, Raigarh – 496001, Chhattisgarh within 21 days of publication of this notice. Notice for hearing on aforesaid Petition will be published by CSERC in the newspaper separately.

M/s Jindal Steel & Power Ltd.
Kharsia Road, Patrapali, Distt. - Raigarh - 496001

आगरूचना

मेसर्स जिन्दल स्टील एण्ड पावर लिमिटेड (JSPL) द्वारा वित्तीय वर्ष 2022-23 से वित्तीय वर्ष 2024-25 की अवधि के लिए बहुवर्षीय टैरिफ हेतु वार्षिक राजस्व आवश्यकता का निर्धारण, वर्ष 2022-23 हेतु खुदरा दर, वित्तीय वर्ष 2021-22 का संशोधित अनुमान तथा वर्ष 2019-20 एवं वित्तीय वर्ष 2020-21 के डिस्ट्रीब्यूशन बिजनेस के टू-अप हेतु विद्युत अधिनियम, 2003 की धारा 61, 62 एवं 86(1)(ए) सहपठित छत्तीसगढ़ राज्य विद्युत नियामक आयोग (बहुवर्षीय टैरिफ सिद्धांतों के अनुरूप टैरिफ के निर्धारण और टैरिफ एवं प्रभारों से अनुमानित राजस्व के अवधारण हेतु अपनायी जाने वाली कार्यप्रणाली एवं प्रक्रिया तथा निबंधन एवं शर्तें) विनियम, 2015 एवं छत्तीसगढ़ राज्य विद्युत नियामक आयोग (बहुवर्षीय टैरिफ सिद्धांतों के अनुरूप टैरिफ के निर्धारण और टैरिफ एवं प्रभारों से अनुमानित राजस्व के अवधारण हेतु अपनायी जाने वाली कार्यप्रणाली एवं प्रक्रिया तथा निबंधन एवं शर्तें) विनियम, 2021 के अंतर्गत छत्तीसगढ़ राज्य विद्युत नियामक आयोग के समक्ष याचिका क्रं. 46/2022 प्रस्तुत की है।

माननीय विद्युत अपीलीय प्राधिकरण द्वारा अपील क्रमांक 72 एवं 100/2016 में पारित आदेश दिनांक 06/05/2022 में दिए गए निर्देशानुसार वर्ष 2011-12 से अभी तक का टैरिफ तय करने हेतु आयोग द्वारा दिनांक 21/07/2022 के डेली ऑर्डर द्वारा याचिका क्रमांक 62/2018, 33/2020, 07/2021 एवं 14/2021 को याचिका क्र 46/2022 के साथ सम्मिलित कर लिया गया है।

याचिका क्रमांक 39/2012 में M/s JSPL द्वारा वर्ष 2011-12 एवं वर्ष 2012-13 के टू-अप हेतु रु. 22,363 लाख एवं रु.26,339 लाख अनुमोदित करने हेतु प्रस्ताव प्रस्तुत किया गया है।

याचिका क्रमांक 62/2018 में M/s JSPL द्वारा वर्ष 2018-19, वर्ष 2019-20 एवं वर्ष 2020-21 के वार्षिक राजस्व आवश्यकता हेतु रु.59,804.50 लाख, रु.62,883.83 लाख एवं रु.65,986.13 लाख, वर्ष 2017-18 के संशोधित अनुमान हेतु रु.32,053.35 लाख तथा वर्ष 2012-13, वर्ष 2013-14, वर्ष 2014-15, वर्ष 2015-16 एवं वर्ष 2016-17 के टू-अप हेतु रु.23,186.38 लाख, रु.23,859.31 लाख, रु.25,100.23 लाख, रु.25,471.22 लाख एवं रु.27,152.60 लाख, अनुमोदित करने हेतु प्रस्ताव प्रस्तुत किया गया है।

याचिका क्रमांक 33/2020 में M/s JSPL द्वारा वर्ष 2019-20 के वार्षिक राजस्व आवश्यकता, वर्ष 2018-19 के संशोधित अनुमान एवं वर्ष 2017-18 के टू-अप हेतु रु.75,788.35 लाख, रु.42,197.04 लाख एवं रु.30,230.90 लाख अनुमोदित करने हेतु प्रस्ताव प्रस्तुत किया गया है।

याचिका क्रमांक 07/2021 में M/s JSPL द्वारा वर्ष 2020-21 के वार्षिक राजस्व आवश्यकता, वर्ष 2019-20 के संशोधित अनुमान एवं वर्ष 2018-19 के टू-अप हेतु रु.58,621.61 लाख, रु.47,531.15 लाख एवं रु.41,325.15 लाख अनुमोदित करने हेतु प्रस्ताव प्रस्तुत किया गया है।

याचिका क्रमांक 14/2021 में M/s JSPL द्वारा वर्ष 2021-22 के वार्षिक राजस्व आवश्यकता हेतु रु. 64,485.10 लाख अनुमोदित करने हेतु प्रस्ताव प्रस्तुत किया गया है।

याचिका क्रमांक 46/2022 में M/s JSPL द्वारा वर्ष 2022-23, वर्ष 2023-24 एवं वर्ष 2024-25 के वार्षिक राजस्व आवश्यकता हेतु रु.1,44,946.05 लाख, रु.1,76,648.69 लाख एवं रु.1,94,788.71 लाख, वर्ष

2021-22 के संशोधित अनुमान हेतु रु.62,556.92 लाख तथा वर्ष 2019-20 एवं वर्ष 2020-21 के टू-अप हेतु रु.45,346.38 लाख एवं रु.49,345.88 लाख अनुमोदित करने हेतु प्रस्ताव प्रस्तुत किया गया है।

उपरोक्त याचिका की प्रति छत्तीसगढ़ राज्य विद्युत नियामक आयोग, सिंचाई कालोनी, शांति नगर, रायपुर 492001 एवं मेसर्स जिन्दल स्टील एण्ड पॉवर लिमिटेड के कारपोरेट कार्यालय में उपलब्ध है। याचिका की मुद्रित प्रति कार्यालयीन दिवसों में रुपये 200/- का भुगतान कर पूर्वान्ह 11:00 से सांय: 4:00 के बीच प्राप्त की जा सकती है। याचिका की प्रति रुपये 50/- (डाक व्यय) का अतिरिक्त भुगतान कर डाक द्वारा भी प्राप्त की जा सकती है। इस आम सूचना एवं याचिका की प्रति आयोग की वेबसाइट www.cserc.gov.in पर भी उपलब्ध है।

उपरोक्त याचिका पर सुझाव/आपत्तियां, इस आम सूचना के जारी होने के 21 दिवस के भीतर सचिव, छत्तीसगढ़ राज्य विद्युत नियामक आयोग, विद्युत नियामक भवन, सिंचाई कॉलोनी, शांति नगर, रायपुर-492001, ईमेल: cserc.sec.cg@nic.in या श्री जेड. अली (एजीएम) इलेक्ट्रिकल पॉवर सिस्टम, जिन्दल स्टील एण्ड पॉवर लिमिटेड के कार्यालय पोस्ट बॉक्स नं.16, खरसिया रोड, रायगढ़, पिन 496001 (छ.ग.) के कार्यालय में प्रस्तुत की जा सकती है। सुनवाई हेतु स्थल एवं दिनांक की सूचना आयोग द्वारा समाचार पत्रों में पृथक से प्रकाशित की जावेगी।

मेसर्स जिन्दल स्टील एण्ड पॉवर लिमिटेड,
खरसिया रोड, पत्रापाली, जिला-रायगढ़ 496001

ANNEXURE- M

**Chhattisgarh State Electricity Regulatory Commission**
Vidhyut Niyamak Bhawan

Irrigation Colony, Shanti Nagar, Raipur - 492 001 (C.G.)

Ph.0771-4073568, Fax: 4073553

www.cserc.gov.in, e-mail: cserc.sec.cg@nic.in



P. No. 46 of 2022/2022/ 1145

Raipur, Date: 04/08/2022

To,

M/s Jindal Steel and Power Limited,
Through

Shri Pradeep Tandon (President)

P.B. No.16, Kharsia Road, Patrapali,

Raigarh (CG)

Sub: Approved gist of petition no. 46 of 2022 for publication in newspapers.

Ref: Your letter dated: 01/08/2022.

Please find enclosed herewith approved gist in respect of petition no. 46/2022 for publication in at least two newspapers in Hindi and one newspaper in English as provided at clause 6.4 of the Chhattisgarh State Electricity Regulatory Commission (Terms and Conditions for determination of tariff according to Multi-Year Tariff principles and Methodology and Procedure for determination of Expected revenue from Tariff and Charges) Regulations, 2021 having wide circulation in the state of Chhattisgarh. Also, furnish the copy of published gist to the Commission for information and record.

Enclosure: As above.
(Surendra Singh)
Director (Tariff)

//TRUE COPY//

Public Notice

In compliance with the provisions under Section 61, 62 and 86 (1)(a) of the Electricity Act, 2003 read with Chhattisgarh State Electricity Regulatory Commission (Terms and Conditions for determination of tariff according to Multi-Year Tariff principles and Methodology and Procedure for determination of Expected revenue from Tariff and Charges) Regulations, 2021 and Chhattisgarh State Electricity Regulatory Commission (Terms and Conditions for determination of tariff according to Multi-year Tariff principles and Methodology and Procedure for determination of Expected revenue from Tariff and Charges) Regulations, 2015, M/s Jindal Steel and Power Ltd. (JSPL) has filed Petition No. 46/2022 before the Chhattisgarh State Electricity Regulatory Commission (CSERC), for determination of Annual Revenue Requirement (ARR) for the MYT control period from FY 2022-23 to FY 2024-25, determination of tariff for FY 2022-23 along with revised estimate of FY 2021-22 and True-up of FY 2019-20 & FY 2020-21 for its licensed distribution business.

The Commission vide daily Order dated 21.07.2022 has merged the Petitions No. 62/2018, 33/2020, 07/2021 and 14/2021 with 46/2022 to determine the tariff for M/s JSPL from FY 2011-12 to till date to comply with the direction of Hon'ble APTEL in Judgement dated 06.05.2022 in Appeal No. 72 and 100 of 2016.

In Petition No. 39/2012 (D), M/s JSPL has requested the Commission to approve ARR of Rs. 26,339 Lakh for FY 2012-13 and True-up of Rs. 22,363 Lakh for FY 2011-12.

In Petition No. 62/2018, M/s JSPL has requested the Commission to approve ARR of Rs. 59,804.50 Lakh, Rs. 62,883.83 Lakh and Rs. 65,986.13 Lakh for FY 2018-19, FY 2019-20 and FY 2020-21 respectively, Revised Estimate of Rs. 32,053.35 Lakh for FY 2017-18 and True-up of Rs. 23,186.38 Lakh for FY 2012-13, Rs. 23,859.31 Lakh for FY 2013-14, Rs. 25,100.23 Lakh for FY 2014-15, Rs. 25,471.22 Lakh for FY 2015-16 and Rs. 27,152.60 Lakh for FY 2016-17.

In Petition No. 33/2020, M/s JSPL has requested the Commission to approve ARR of Rs. 75,788.35 Lakh for FY 2019-20, Revised estimate of Rs. 42,197.04 Lakh for FY 2018-19 and True-up of Rs. 30,230.90 Lakh for FY 2017-18.

In Petition No. 07/2021, M/s JSPL has requested the Commission to approve ARR of Rs. 58,621.61 Lakh for FY 2020-21, Revised estimate of Rs. 47,531.15 Lakh for FY 2019-20 and True-up of Rs. 41,325.15 Lakh for FY 2018-19.

for order

In Petition No. 14/2021, M/s JSPL has requested the Commission to approve ARR of Rs. 64,485.10 Lakh for FY 2021-22.

In Petition No. 46/2022, M/s JSPL has requested the Commission to approve ARR of Rs. 1,44,946.05 Lakh, Rs. 1,76,648.69 Lakh and Rs. 1,94,788.71 Lakh for FY 2022-23, FY 2023-24 and FY 2024-25 respectively, Revised Estimate of Rs. 62,556.92 Lakh for FY 2021-22 and True-up of Rs. 45,346.38 Lakh for FY 2019-20 & Rs. 49,345.88 Lakh for FY 2020-21.

The copies of the Petitions are available at corporate office and plant office of M/s JSPL as well as CSERC office, Vidyut Niyamak Bhavan, New Shanti Nagar, Raipur (C.G.) 492001 which can be purchased on any working days between 11:00 a.m. to 4:00 p.m. on payment of Rs. 200/- & may be obtained by post on payment of additional charges of Rs. 50/-. Copies of this notice and the Petition are available on Commission's website www.cserc.gov.in.

Objections/ Suggestions on the aforesaid Petitions may be submitted to the Secretary, Chhattisgarh State Electricity Regulatory Commission's office, Vidyut Niyamak Bhavan, Shanti Nagar, Raipur (C.G.) – 492001, email id – cserc.sec.cg@nic.in and/or Petitioner's office to Mr. Z. Ali, AGM, Electrical Power System, Jindal Steel & Power limited, Post Box No. 16 Kharsia Road, Raigarh – 496001, Chhattisgarh within 21 days of publication of this notice. Notice for hearing on aforesaid Petition will be published by CSERC in the newspaper separately.



M/s Jindal Steel & Power Ltd.
Kharsia Road, Patrapali, Distt. - Raigarh - 496001

आगराचनग

मेसर्स जिन्दल स्टील एण्ड पॉवर लिमिटेड (JSPL) द्वारा वित्तीय वर्ष 2022-23 से वित्तीय वर्ष 2024-25 की अवधि के लिए बहुवर्षीय टैरिफ हेतु वार्षिक राजस्व आवश्यकता का निर्धारण, वर्ष 2022-23 हेतु खुदरा दर, वित्तीय वर्ष 2021-22 का संशोधित अनुमान तथा वर्ष 2019-20 एवं वित्तीय वर्ष 2020-21 के डिस्ट्रीब्यूशन बिजनेस के टू-अप हेतु विद्युत अधिनियम, 2003 की धारा 61, 62 एवं 86(1)(ए) सहपठित छत्तीसगढ़ राज्य विद्युत नियामक आयोग (बहुवर्षीय टैरिफ सिद्धांतों के अनुरूप टैरिफ के निर्धारण और टैरिफ एवं प्रभारों से अनुमानित राजस्व के अवधारण हेतु अपनायी जाने वाली कार्यप्रणाली एवं प्रक्रिया तथा निबंधन एवं शर्तों) विनियम, 2015 एवं छत्तीसगढ़ राज्य विद्युत नियामक आयोग (बहुवर्षीय टैरिफ सिद्धांतों के अनुरूप टैरिफ के निर्धारण और टैरिफ एवं प्रभारों से अनुमानित राजस्व के अवधारण हेतु अपनायी जाने वाली कार्यप्रणाली एवं प्रक्रिया तथा निबंधन एवं शर्तों) विनियम, 2021 के अंतर्गत छत्तीसगढ़ राज्य विद्युत नियामक आयोग के समक्ष याचिका क्रं. 46/2022 प्रस्तुत की है।

माननीय विद्युत अपीलीय प्राधिकरण द्वारा अपील क्रमांक 72 एवं 100/2016 में पारित आदेश दिनांक 06/05/2022 में दिए गए निर्देशानुसार वर्ष 2011-12 से अभी तक का टैरिफ तय करने हेतु आयोग द्वारा दिनांक 21/07/2022 के डेली ऑर्डर द्वारा याचिका क्रमांक 62/2018, 33/2020, 07/2021 एवं 14/2021 को याचिका क्र 46/2022 के साथ सम्मिलित कर लिया गया है।

याचिका क्रमांक 39/2012 में M/s JSPL द्वारा वर्ष 2011-12 एवं वर्ष 2012-13 के टू-अप हेतु रु. 22,363 लाख एवं रु.26,339 लाख अनुमोदित करने हेतु प्रस्ताव प्रस्तुत किया गया है।

याचिका क्रमांक 62/2018 में M/s JSPL द्वारा वर्ष 2018-19, वर्ष 2019-20 एवं वर्ष 2020-21 के वार्षिक राजस्व आवश्यकता हेतु रु.59,804.50 लाख, रु.62,883.83 लाख एवं रु.65,986.13 लाख, वर्ष 2017-18 के संशोधित अनुमान हेतु रु.32,053.35 लाख तथा वर्ष 2012-13, वर्ष 2013-14, वर्ष 2014-15, वर्ष 2015-16 एवं वर्ष 2016-17 के टू-अप हेतु रु.23,186.38 लाख, रु.23,859.31 लाख, रु.25,100.23 लाख, रु.25,471.22 लाख एवं रु.27,152.60 लाख, अनुमोदित करने हेतु प्रस्ताव प्रस्तुत किया गया है।

याचिका क्रमांक 33/2020 में M/s JSPL द्वारा वर्ष 2019-20 के वार्षिक राजस्व आवश्यकता, वर्ष 2018-19 के संशोधित अनुमान एवं वर्ष 2017-18 के टू-अप हेतु रु.75,788.35 लाख, रु.42,197.04 लाख एवं रु.30,230.90 लाख अनुमोदित करने हेतु प्रस्ताव प्रस्तुत किया गया है।

याचिका क्रमांक 07/2021 में M/s JSPL द्वारा वर्ष 2020-21 के वार्षिक राजस्व आवश्यकता, वर्ष 2019-20 के संशोधित अनुमान एवं वर्ष 2018-19 के टू-अप हेतु रु.58,621.61 लाख, रु.47,531.15 लाख एवं रु.41,325.15 लाख अनुमोदित करने हेतु प्रस्ताव प्रस्तुत किया गया है।

याचिका क्रमांक 14/2021 में M/s JSPL द्वारा वर्ष 2021-22 के वार्षिक राजस्व आवश्यकता हेतु रु. 64,485.10 लाख अनुमोदित करने हेतु प्रस्ताव प्रस्तुत किया गया है।

याचिका क्रमांक 46/2022 में M/s JSPL द्वारा वर्ष 2022-23, वर्ष 2023-24 एवं वर्ष 2024-25 के वार्षिक राजस्व आवश्यकता हेतु रु.1,44,946.05 लाख, रु.1,76,648.69 लाख एवं रु.1,94,788.71 लाख, वर्ष

Sumant

2021-22 के संशोधित अनुमान हेतु रु.62,556.92 लाख तथा वर्ष 2019-20 एवं वर्ष 2020-21 के टू-अप हेतु रु.45,346.38 लाख एवं रु.49,345.88 लाख अनुमोदित करने हेतु प्रस्ताव प्रस्तुत किया गया है।

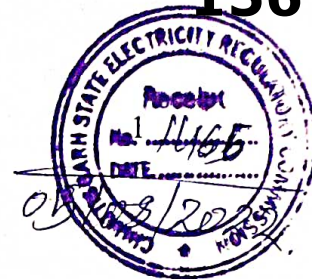
उपरोक्त याचिका की प्रति छत्तीसगढ़ राज्य विद्युत नियामक आयोग, सिंचाई कालोनी, शांति नगर, रायपुर 492001 एवं मेसर्स जिन्दल स्टील एण्ड पावर लिमिटेड के कारपोरेट कार्यालय में उपलब्ध है। याचिका की मुद्रित प्रति कार्यालयीन दिवसों में रुपये 200/- का भुगतान कर पूर्वान्ह 11:00 से सांय: 4:00 के बीच प्राप्त की जा सकती है। याचिका की प्रति रुपये 50/- (डाक व्यय) का अतिरिक्त भुगतान कर डाक द्वारा भी प्राप्त की जा सकती है। इस आम सूचना एवं याचिका की प्रति आयोग की वेबसाइट www.csarc.gov.in पर भी उपलब्ध है।

उपरोक्त याचिका पर सुझाव/आपत्तियां, इस आम सूचना के जारी होने के 21 दिवस के भीतर सचिव, छत्तीसगढ़ राज्य विद्युत नियामक आयोग, विद्युत नियामक भवन, सिंचाई कॉलोनी, शांति नगर, रायपुर-492001, ईमेल: csarc.sec.cg@nic.in या श्री जेड. अली (एजीएम) इलेक्ट्रिकल पावर सिस्टम, जिन्दल स्टील एण्ड पावर लिमिटेड के कार्यालय पोस्ट बॉक्स नं.16, खरसिया रोड, रायगढ़, पिन 496001 (छ.ग.) के कार्यालय में प्रस्तुत की जा सकती है। सुनवाई हेतु स्थल एवं दिनांक की सूचना आयोग द्वारा समाचार पत्रों में पृथक से प्रकाशित की जावेगी।

मेसर्स जिन्दल स्टील एण्ड पावर लिमिटेड,
खरसिया रोड, पत्रापाली, जिला-रायगढ़ 496001



ANNEXURE- N



BEFORE THE

HON'BLE CHHATTISGARH STATE ELECTRICITY REGULATORY COMMISSION
RAIPUR

IN THE MATTER OF: Additional Submission to Petition No. 46/2022 as per discussion during Technical Validation Session on 26.07.2022

PETITIONER: Jindal Steel and Power Limited (JSPL-D)
Kharsia Road, Patrapali, Raigarh, Chhattisgarh

JSPL-D has filed an application before Hon'ble CSERC for approval of Annual Revenue Requirement for MYT Control Period of FY 2022-23, FY 2023-24 and FY 2024-25 along with revised estimate for FY 2021-22 and True-up for FY 2019-20, FY 2020-21 for the licensed distribution business which has been registered as Petition No. 46 of 2022.

The Hon'ble Commission vide daily Order dated 21.07.2022 has merged the Petitions No. 62/2018, 33/2020, 07/2021 and 14/2021 with 46/2022 to determine the tariff for the Petitioner from FY 2011-12 to comply with the direction of Hon'ble APTEL in Judgement dated 06.05.2022 of Appeal No. 72 and 100 of 2016.

Subsequently, a technical validation session in the above matter was held at the Hon'ble Commission's office on 26.07.2022 and the Hon'ble Commission has also sought additional information vide its letter dated 26.07.2022 from the Petitioner

THE PETITIONER ABOVE NAMED MOST RESPECTFULLY SHEWETH:

The Petitioner humbly submits the following in response to the Hon'ble Commission's letter dated 26.07.2022.

A. Distribution Tariff related (within 1 week, i.e., 03.08.2022)

1. JSPL-D should confirm that the True-up Petition (39 of 2012) filed earlier for FY 2011-12 may be trued-up on the basis of the Audited Accounts filed by JSPL-D for the Distribution Business.

Reply: The Hon'ble Commission had determined the tariff for FY 2011-12 in its Order dated 08.02.2012. Subsequently, JSPL-D filed Petition for the True-Up of FY 2011-12 which was listed as Petition No. 39 of 2012 (D) against which the Hon'ble Commission issued Order dated 10.07.2013.

For, Jindal Steel & Power Limited

Authorised Signatory

//TRUE COPY//

The Petitioner submits that the true up for annual revenue requirement claimed by JSPL-D for FY 2011-12 may be considered based on the segregated audited report as decided. A copy of the audited report is attached herewith for the reference and decision.

True-up for FY 2011-12 claimed by JSPL-D and allowed by the Hon'ble Commission (Rs. Lakh)

S. No.	Particulars	Submitted by Petition No. 39 of 2012(D)	Approved in Order dated 10.07.2013
1.	Purchase of Power from Other Sources	19487.4	19,716.00
2.	Intra-State Transmission Charges	177	186.47
3.	R&M Expense	64.62	538.43
4.	Employee Expenses	425.58	
5.	A&G Expense	72.78	
6.	Depreciation	98	57.86
7.	Interest & Finance Charges	1917.275	876.54
8.	Interest on Long Term Loan	182.28	144.42
9.	Interest on working capital	1323	320.29
10.	Interest on consumer security deposit	412	411.83
11.	Total	22,243	21,375.00
12.	Return on Equity	182	28.08
13.	Other Income	62	61.87
14.	Annual Revenue Requirement	22,363	21,342.00
15.	Revenue from Sale of Power	17998.15	18457.39

The Hon'ble Commission is requested to kindly allow the revenue gap along with carrying cost to be recovered from the beneficiaries.

2. JSPL-D should submit the Excel Model associated with the True-up Petitions for the period from FY 2011-12 to FY 2020-21.

Reply: The Petitioner has filed Tariff Formats along with the respective Tariff Petitions. The MS Excel Tariff Formats are being again shared with the Hon'ble Commission vide e-mail zulfeqar.ali@jindalsteel.com dated 04.08.2022. as Annexure-1.1, 1.2, 1.3 & 1.4: .xls File

3. JSPL-D should submit the details of tariff applicable to consumers for different periods, from April 1, 2011 to March 31, 2021.

Reply: The tariff applicable to the consumers of JSPL-D from 01.04.2011 to 31.03.2021 is given here below: The MS Excel Tariff Formats are being again shared with the Hon'ble Commission vide e-mail zulfeqar.ali@jindalsteel.com dated 04.08.2022. as Annexure: 2:

For, Jindal Steel & Power Limited

Y. C. Anand
Authorised Signatory

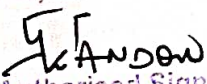
Sl. No.	Period	Avg. Tariff Claimed	Power Sold	Revenue from Sale of Power	Remarks
		P/U	MU	Rs. Lakh	
1	2011-12	2.87	641.72	18,408.22	
2	2012-13	3.34	685.20	22,879.73	
3	2013-14	3.40	712.38	24,212.11	
4	2014-15	3.20	746.28	23,853.80	
5	2015-16	3.73	749.41	27,971.16	Revenue incudes Rs.8653.17 Lacs on account of diff @Rs.0.93/Unit not billed due to order of CSERC but accounted on accrual basis
6	2016-17	3.86	662.31	25,572.53	
7	2017-18	4.00	733.47	29,339.04	
8	2018-19	4.00	992.84	39,711.99	
9	2019-20	4.16	1,042.55	43,329.51	
10	2020-21	4.18	1,167.49	48,787.41	

4. JSPL-D should submit the details of monthly input energy to Industrial Park and energy sold to JSPL-D's consumers, with the details of Distribution Loss, for the period from FY 2011-12 to FY 2020-21.

Reply: The monthly input energy to Industrial Park and energy sold to JSPL-D's consumers, with the details of Distribution Loss, for the period FY 2014-15 to FY 2020-21 is being submitted both in hard & soft copies as **Annexure-3** with the Hon'ble Commission vide e-mail : zulfeqar.ali@jindalsteel.com dated 04.08.2022. Balance years data shall be submitted in 2-3 days based on availability.

JSPL-D should submit the audited accounts from FY 2011-12 to FY 2020-21 in PDF and excel format.

For, Jindal Steel & Power Limited


Authorised Signatory

Reply: The Petitioner has filed Audited Accounts during the proceedings of the respective Tariff Petitions. The only scanned PDF & Hard copies can be and are being again shared and submitted with the Hon'ble Commission vide e-mail-zulfeqar.ali@jindalsteel.com dated 04.08.2022 as Annexure 4.1 to 4.10 –For FY 2011-12 to FY 2020-21 (Distribution).

B. Surplus Power of Raigarh CPP and Dongamahua CPP (within 1 week, i.e., 03.08.2022)

1. JSPL-D should submit the Monthly data of Unit-Wise generation from Raigarh CPP and Dongamahua CPP from April 1, 2011 to March 31, 2021 in MS Excel.

Reply: Yearly and Monthly data of Raigarh & Dongamahua CPP are being shared as Annexure 5.1 to 5.10 – For FY 2011-12 to FY 2020-21. Both in hard/Scan and MS Excel.

2. JSPL-D should submit the Monthly data of Unit-Wise consumption from Raigarh CPP and Dongamahua CPP from April 1, 2011 to March 31, 2021 in MS Excel.

Reply: Yearly and Monthly data of Raigarh & Dongamahua CPP are being shared as Annexure 5.1 to 5.10 – For FY 2011-12 to FY 2020-21. Both in hard/Scan and MS Excel.

3. JSPL-D should submit the Monthly data of Energy sold to different entities from Raigarh CPP and Dongamahua CPP from April 1, 2011 to March 31, 2021 in MS Excel.

Reply: Yearly and Monthly data of Raigarh & Dongamahua CPP are being shared as Annexure 5.1 to 5.10 – For FY 2011-12 to FY 2020-21. Both in hard/Scan and MS Excel.

4. JSPL-D should submit the copy of Form-G for Raigarh CPP and Dongamahua CPP submitted to Chief Electrical Inspector along with all Annexures, for the period from April 1, 2011 to March 31, 2021 (monthly and consolidated for each financial year).

Reply: Monthly Form-G of Raigarh & Dongamahua CPP are being shared, Annexure 6.1.1 to 6.10.12 – For FY 2011-12 to FY 2020-21. both in hard/Scan and MS Excel as per availability.

Reply: As per the above requirement, please find enclosed the data available with us on a monthly basis which has been submitted to CEI, Raipur every month.

The MS Excel formats are now being shared with the Hon'ble Commission vide e-mail zulfeqr.ali@jindalsteel.com dated 04.08.2022.

For, Jindal Steel & Power Limited


Authorised Signatory

5. JSPL-D should submit the technical configuration details of Raigarh CPP and Dongamahua.

Reply: Technical configuration details of Raigarh CPP and Dongamahua are given below and also attached as Annexure-7.

Technical configuration details of Raigarh CPP and Dongamahua.

Sr. No.	TG Details	Sr. No. of TG	Capacity of TGs	COD	Location
1	T.G. - 3 Unit-I	9801001	25 MW	29.10.1999	Raigarh
2	T.G. - 7 Unit-I	1456	24 MW	15.10.2003	Raigarh
4	T.G.-1 UNIT-II	1404	55 MW	03.11.2001	Raigarh
5	T.G.-2 UNIT-II	1474	55 MW	16.04.2004	Raigarh
6	TG-1 UNIT-2 PH-2	1486	25 MW	01.11.2004	Raigarh
7	TG-2 UNIT-2 PH-2	1487	25 MW	15.07.2005	Raigarh
8	T.G.-1 UNIT-03	1516	25 MW	09.10.2006	Raigarh
9	T.G.-2 UNIT-03	1517	25 MW	09.10.2006	Raigarh
10	T.G.-3 UNIT-03	1518	25 MW	09.10.2006	Raigarh
11	DCPP T.G.-1 PH-1	1500030	135 MW	04.09.2010	Donga Mahua
12	DCPP T.G.-2 PH-1	1500035	135 MW	14.11.2010	Donga Mahua
13	DCPP T.G.-3 PH-2	1500037	135 MW	01.01.2012	Donga Mahua
14	DCPP T.G.-4 PH-2	1500038	135 MW	18.01.2012	Donga Mahua

6. JSPL-D should clarify if any unit(s) of Dongamahua CPP have been identified as IPP, with copy of the declaration.

Reply: All units of Dongamahua are identified as CPP only.

7. JSPL-D should submit the annual Energy Balance for energy generated and sold from Raigarh CPP and Dongamahua CPP with the following details:
- Energy generated
 - Auxillary Energy Consumption
 - Net Energy Generated

For, Jindal Steel & Power Limited


Authorised Signatory

- d. Captive consumption
- e. Energy supplied to license area of JSPL-D (Industrial Park)
- f. Energy sold to CSPDCL
- g. Energy sold to any other entities

Reply: Annual Energy Balance for energy generated and sold from Raigarh CPP and Dongamahua CPP with the above details are attached as annexure: Annexure: 5.1 to 5.10 (Hard & Scan Copies both).

8. JSPL-D should submit the details of capacity tied-up for Raigarh CPP and Dongamahua CPP for future years.

Reply: No capacity is tied up for Raigarh CPP and Dongamahua CPP for future years.

C. Generation Tariff related (to be submitted by 10.08.2022)

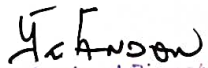
1. JSPL-D should submit the Petition for Raigarh CPP and Dongamahua CPP for each year from FY 2011-12 to FY 2020-21, and MYT control period from FY 2022-23 to FY 2024-25, as per the prescribed formats and applicable MYT Regulations, for determination of the Generation Tariff for each year.

Reply: There is no surplus power from JSPL CPP and DCCPP, hence need for generation cost and tariff is not at all required as is evident from the data submitted. It is worth mentioning here that JSPL is operating 3.6 MTPA steel plant, it has to secure source of power for its consumption including standby units for handling breakdowns and cost effectiveness.

The Hon'ble Commission is requested to kindly accept the above submissions of the Petitioner and condone any inadvertent omissions/ errors/ shortcomings/ delays and permit to make further submissions as may be required at a future date to support this Petition in terms of modification / clarification.

Place: Raigarh
Date: 04.08.2022

For, Jindal Steel & Power Limited


Authorised Signatory

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Chhattisgarh State Electricity Regulatory Commission
Vidhyut Niyamak Bhawan
 Irrigation Colony, Shanti Nagar, Raipur - 492 001 (C.G.)
 Ph.0771-4048788, Fax: 4073553
www.cserc.gov.in, e-mail: cserc.sec.cg@nic.in



Suo-motu P.No. 61 of 2022/2022/1207 Raipur, Date: 18/08/2022

Suo-motu Petition No. 61/2022

M/s Jindal Steel & Power Ltd.

.....

Respondent

NOTICE

In compliance to Hon'ble APTEL order dated 06/05/2022, the Commission vide letter dated 16/06/2022 has directed JSPL to file petition for determination of generation cost of JSPL's Raigarh CPP for FY 2022-23 to FY 2024-25 and truing up from FY 2011-12 to FY 2020-21 by 24/06/2022. In response, JSPL submitted that Raigarh CPP does not have any surplus capacity. In view of this, JSPL has requested to determine ARR based on competitive bidding.

Further, the Commission during technical validation session held on 26/07/2022, has directed the JSPL to submit the petition for determination of generation cost of Raigarh CPP by 10/08/2022 but same was not filed till date. Therefore, to comply the aforesaid Hon'ble APTEL order, the Commission has to take suo-motu initiative to determine the generation cost of Raigarh CPP.

In view of the above, the Commission has registered a suo-motu petition No. 61 of 2022 for determination of generation cost of Raigarh CPP from FY 2022-23 to FY 2024-25 alongwith true-up from FY 2011-12 to FY 2020-21 and fixed a hearing on 24/08/2022 at 11:30 a.m.

You are hereby directed to be present on the date and time mentioned above for hearing in the court room of the Commission.

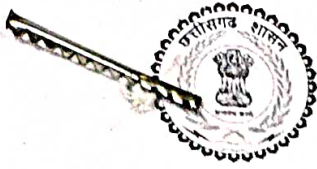
Sudhir Kumar Kale
 18.8.2022.
(Sudhir Kumar Kale)
 Dy. Secretary

To,

M/s Jindal Steel and Power Limited,
 Through
 Shri Pradeep Tandon (President),
 P.B. No.16, Kharsia Road, Patrapali,
 Raigarh, (CG)

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OK



Chhattisgarh State Electricity Regulatory Commission
Vidhyut Niyamak Bhawan
 Irrigation Colony, Shanti Nagar, Raipur - 492 001 (C.G.)
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Suo-motu P.No. 60 of 2022/2022/1208 Raipur, Date: 18/08/2022

Suo-motu Petition No. 60/2022

M/s Jindal Steel & Power Ltd.

.....

Respondent

NOTICE

In compliance to Hon'ble APTEL order dated 06/05/2022, the Commission vide letter dated 16/06/2022 has directed JSPL to file petition for determination of generation cost of JSPL's Dongamahua CPP for FY 2022-23 to FY 2024-25 and truing up from FY 2011-12 to FY 2020-21 by 24/06/2022. In response, JSPL submitted that two units of DCP are not functioning at the moment. JSPL further submitted that JSPL has setup this CPP for captive use and the same is in-distress due to shortage of coal. In view of this, JSPL has requested to determine ARR based on competitive bidding.

Further, the Commission during technical validation session held on 26/07/2022, has directed the JSPL to submit the petition for determination of generation cost of Dongamahua CPP by 10/08/2022 but same was not filed till date. Therefore, to comply the aforesaid Hon'ble APTEL order, the Commission has to take suo-motu initiative to determine the generation cost of Dongamahua CPP.

In view of the above, the Commission has registered a suo-motu petition No. 60 of 2022 for determination of generation cost of Dongamahua CPP from FY 2022-23 to FY 2024-25 alongwith true-up from FY 2011-12 to FY 2020-21 and fixed a hearing on 24/08/2022 at 11:30 a.m.

You are hereby directed to be present on the date and time mentioned above for hearing in the court room of the Commission.

Sudhir Kumar Kale
 18.8.2022
(Sudhir Kumar Kale)
 Dy. Secretary

To,

M/s Jindal Steel and Power Limited,
 Through
 Shri Pradeep Tandon (President),
 P.B. No.16, Kharsia Road, Patrapali,
 Raigarh, (CG)

o/c

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**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)**

COURT-II

**IA NO. 1377 OF 2022 IN
APPEAL NO.72 OF 2016 & IA NO. 1376 OF 2022
AND
IA NO. 1404 OF 2022 IN
APPEAL NO.100 OF 2016 & IA NO. 1403 OF 2022**

Dated: 02.09.2022

**Present: Hon'ble Mr. Justice R.K. Gauba, Officiating Chairperson
Hon'ble Mr. Sandesh Kumar Sharma, Technical Member**

In the matter of:

APPEAL NO.72 OF 2016

Jindal Steel and Power Ltd.

.... Appellant(s)

Versus

**Chhattisgarh State Electricity Regulatory Commission
& Anr.**

.... Respondent(s)

Counsel for the Appellant(s) : Mr. Hemant Singh
Mr. Chetan Garg
Ms. Alchi Thapliyal
Mr. Pranav Sood

Counsel for the Respondent(s) : Ms. Swapna Seshadri for R-1

APPEAL NO.100 OF 2016

Jindal Steel and Power Ltd.

.... Appellant(s)

Versus

**Raigarh Ispat Udyog Sangh C/o Zeon Steel Private
Limited & Anr.**

.... Respondent(s)

Counsel for the Appellant(s) : Mr. Hemant Singh
Mr. Chetan Garg
Ms. Alchi Thapliyal
Mr. Pranav Sood

Counsel for the Respondent(s) : Ms. Swapna Seshadri for R-1

ORDER

IA NOS. 1377 & 1404 OF 2022

[For Urgent Listing]

The matter having been listed before us, the applications filed by the applicant/non-appellant having served their purpose stand disposed of.

**IA NO.1376 OF 2022 IN APPEAL NO.72 OF 2016 &
IA NO.1403 OF 2022 IN APPEAL NO.100 OF 2016**

[Applications for extension of time]

Heard. Given the explanations offered, we grant request of *Chhattisgarh State Electricity Regulatory Commission* for extension of time by three months from today for compliance with the directions in the judgment dated 06.05.2022. The applications are disposed of accordingly.

(Sandesh Kumar Sharma)
Technical Member

(Justice R.K. Gauba)
Officiating Chairperson

pr/tp

Actual Power Purchase & Sale Loss Calculation & RPO Liability													
Month	Purchase				Sales				Rs in Cr				
	Qty (MU)	Qty (MW)	Rate/ Unit	Amount (Rs in Cr)	Qty (MU)	Qty (MW)	Rate/ Unit	Amount (Rs in Cr)	Purchase/S ales Loss	RPO Cost	Total Loss	Days	Avg Daly Loss Rs. Cr
Apr-22	49.23	68.37	6.00	29.54	48.59	67.49	4.20	20.41	-9.13	-1.39	-10.51	30	-0.35
May-22	52.41	70.44	6.00	31.45	51.83	69.67	4.20	21.77	-9.68	-1.48	-11.15	31	-0.36
Jun-22	66.70	92.64	6.00	40.02	66.07	91.77	4.20	27.75	-12.27	-1.88	-14.16	30	-0.47
1-20th July'22	45.68	95.17	6.00	27.41	45.18	94.13	4.20	18.98	-8.43	-1.29	-9.72	20	-0.49
21-31st July'22	26.98	102.21	5.50	14.84	26.69	101.10	4.20	11.21	-3.63	-0.76	-4.39	11	-0.40
Aug-22	106.57	143.24	5.50	58.61	105.43	141.71	4.20	44.28	-14.33	-3.01	-17.34	31	-0.56
1-12th Sep'22	46.84	162.64	5.50	25.76	46.37	161.02	4.20	19.48	-6.29	-1.32	-7.61	12	-0.63
Total	394.42			227.63	390.18			163.88	-63.75	-11.13	-74.88	165	-0.45

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

OP NO.1 OF 2011

Dated: 11th Nov, 2011

Present: Hon'ble Mr. Justice M. Karpaga Vinayagam,
Chairperson,
Hon'ble Mr. Rakesh Nath, Technical Member
Hon'ble Mr.V J Talwar, Technical Member

Tariff Revision

(Suo-Motu action on the letter received from
Ministry of Power)

Counsel nominated by : 1. Mr. M.G. Ramachandran,
the Tribunal Amicus Curiae
2. Mr. R K Mehta, Amicus Curiae
3. Mr. Amit Kapur, Amicus Curiae.
4. Mr. Buddy A. Ranganadhan,
Amicus Curiae

Counsel for Commissions: Mr. G. Umapathy (Tamil Nadu)
Mr. C K Rai (Rajasthan & Tripura)

JUDGMENT

PER HON'BLE MR. JUSTICE M. KARPAGA VINAYAGAM,
CHAIRPERSON

1. Since, the interesting and important issues have been raised, we have taken up this matter by treating the letter sent by the Power Ministry as the suo-moto petition.

2. The Ministry of Power through its Secretary sent a letter to the Chairperson of this Tribunal dated 21.1.2011 complaining that most of the State distribution utilities have failed to file annual tariff revision petitions in time and as a result in a number of States, tariff revision has not taken place for a number of years and that State Commissions constituted all over India have also failed to make periodical tariff revisions suo-moto resulting in the poor financial health of the State distribution utilities. Due to this fact situation, the Power Ministry requested this Tribunal to take appropriate action by issuing necessary directions to all the State Commissions to revise the tariff periodically, if required by suo moto action, in the interest of improving the financial health and long term viability of the electricity sector in general and distribution utilities in particular.

3. In pursuance of the said request, the matter has been posted before the Full Bench of this Tribunal for passing necessary orders. Accordingly, the Full Bench entertained the same as a suo-moto petition and issued notices to all State Commissions and to the Forum of Regulators inviting their responses through their status reports. On receipt of these notices, all the State Commissions have promptly sent their respective reports. The Secretary of the Forum of the Regulators has also sent his report on the basis of the information furnished by all the State Commissions.

4. On perusal of these reports, we found that most of the State Commissions have been complying with the provisions of the Act, 2003. However, we have come across that some of the State Commissions have not complied with the statutory requirements as provided in the Act. Those State Commissions have given some explanation as to why they were not able to make

periodical tariff revision. Besides this, they have also raised two issues regarding jurisdiction of the State Commissions and the Tribunal to take suo-moto action for determination of Tariff.

5. Those two issues relate to the following:-

(a) The jurisdiction of the State Regulatory Commissions to suo-moto determine the tariff under the Tariff policy under section 62, 64 and 86 of the Act, 2003, in the absence of the application filed by the Utilities.

(b) The power of the Appellate Tribunal to issue directions under section 121 of the Act to the Appropriate Commissions for taking suo moto action for the determination of the tariff under the Tariff policy.

6. On these two issues, all the State Commissions in all over India have sent their respective status reports. The

perusal of the reports indicates that most of the Commissions did not raise any question with reference to the jurisdiction of the Tribunal to issue directions under section 121 of the Act and the jurisdiction of the State Commission in taking suo-moto action for determination of tariff. On the other hand, they submitted that they have been following the provisions and comply with the directions issued by the Tribunal then and there.

7. However, 3 State Commissions namely Tamil Nadu, Tripura and Rajasthan have raised the doubts with regard to the authority of the State Commissions to take suo moto action for determination of tariff in the absence of the Tariff applications. Tamil Nadu and Tripura State Commission also raised issue relating to the jurisdiction of this Tribunal to invoke the power under section 121 of the Act to direct the State Commissions to take suo-moto action for determination of the tariff in the absence of the Tariff applications.

8. Before dealing with these issues, it would be appropriate to refer to the chronological events which led this Tribunal to take up this case as a suo-moto petition for issuing necessary directions to the State Commissions under section 121 of the Act, 2003.

9. The relevant events are as under:

Ministry of Power, Government of India, through its Secretary Mr. Uma Shankar, sent a letter to the Chairperson of this Tribunal on 21.1.2011 complaining that periodical tariff revisions by the State Commissions have not been taken place in most of the States contributing to poor financial health of the State Distribution utilities. According to the Secretary, in most of the States, the Utilities have failed to file Annual Tariff Revision Petitions in time and even then, the State Commissions have not taken suo-moto action for the revision of tariff by invoking the suo-moto powers. Under those circumstances, the Power Ministry through its Secretary, requested us to invoke our authority under section

121 of the Act, 2003 by taking suo-moto action and to issue necessary directions to all the State Commissions to take appropriate steps periodically, if required, suo-moto, for the determination of Annual Revenue Requirements/tariff in the interest of improving the financial health and long term viability of electricity sector in general and distribution utilities in particular.

10. We will now quote the contents of the letter sent by the Secretary of the Power Ministry dated 21.1.2011 addressed to the Chairperson of the Appellate Tribunal for Electricity:

“ As you are aware, most of the State distribution utilities are under financial strain due to the gap between the Average Revenue Realised (ARR) and Average Cost of Supply (ACS). On an aggregate basis, the gap between the average cost of supply and tariff is 107.32 paisa per KWH which results in financial loss for every unit of power sold. Financial losses of State distribution utilities are reported to be Rs.52,623 Cr in FY 2008-09 without subsidy. This is likely to rise to Rs.116,089 Cr by FY 2014-15 at 2008 tariff level, with no increases, according to a Mercados study for the 13th Finance

Commission. According to the PFC report for the year 2008-09, out of 39 utilities studied, 22 utilities have negative net worth (35 utilities are incurring losses with subsidy) and loss of Rs.32,197 Crores was incurred by the utilities (on subsidy received basis) in 2008-09. This leads to short term borrowing by distribution utilities to bridge the gap between the revenue and expenditure every year.

2. The debt trap of distribution utilities has serious implication on the financial health of the electricity sector as a whole. The distribution utilities should generate adequate internal resources to honour the Power Purchase Agreements (PPA) made with the generating companies and hence any default in payment will have repercussions on the financial institutions lending to generating companies and future investments in capacity addition. One of the most important reasons for poor financial health of DISCOMS is the inadequacy of tariff to cover the cost incurred by the utilities to procure and supply electricity to the public. In a study conducted by Forum of Regulators of ten States for assessment of tariff revision and financial viability of DISCOMS (published in November, 2010), it is estimated that additional increase to the tune of 1% to 39% is required to fully recover the cost of supply.

3. As per the information available with us tariff revision has not taken place in several States as per details given below:

<i>Tariff Last Changed</i>	<i>No. States</i>	<i>Name of States</i>
<i>2010</i>	<i>6</i>	<i>Tamil Nadu, Madhya Pradesh, Uttaranchal, Gujarat, J&K, UP</i>
<i>2009</i>	<i>9</i>	<i>AP, Delhi, Maharashtra, Goa, Chhattisgarh, Haryana, Assam,</i>

		<i>Arunachal Pradesh, West Bengal</i>
<i>2008</i>	<i>4</i>	<i>Meghalaya, Karnataka, Punjab, Bihar,</i>
<i>2007</i>	<i>4</i>	<i>Kerala, Rajasthan, Jharkhand, Orissa</i>
<i>Before 2006</i>	<i>6</i>	<i>HP, Nagaland, Sikkim, Tripura, Mizoram, Manipur</i>
	<i>29</i>	

(Details in Annexure)

4. One of the reasons for the delay in tariff revisions is that the States have failed to file annual tariff revision petitions in time.

5. As per the Para 8.1 (7) of the Tariff Policy, the State Regulatory Authorities can suo-moto take up the revision of tariffs even if the utilities are not filing the revision petitions. It is also pertinent to mention that under Section 121 of the Act directions can be issued to the State Regulatory Authorities by the Appellate Tribunal.

6. I request you to kindly consider issuing directions under Section 121 of the Electricity Act to the State Regulatory Authorities to revise the tariff appropriately (suo-moto, if required), in the interest of improving the financial health and long term viability of electricity sector in general and distribution utilities in particular”.

11. On receipt of this letter, as directed, the Registry put up a note before the Chairperson to seek suitable administrative orders for taking further action on this letter.

The Chairperson, by the administrative order dated 1.2.2011, directed the Registry to post the matter before Full Bench of this Tribunal comprising of Hon'ble Chairperson, Hon'ble Mr. Rakesh Nath, Technical Member and Hon'ble Mr. V J Talwar, Technical Member, for passing appropriate orders in the matter. Accordingly, the matter was numbered as O.P. No.1 of 2011 and posted before the Full bench on 4.2.2011.

12. As indicated above, the Full Bench of this Tribunal decided to take suo-moto action and entertained this letter as a suo-moto petition for consideration to issue appropriate directions to the State Commissions on those issues. As provided under Section 121 of the Act, before issuing any directions to the State Commissions, they have to be heard. So, we issued notices to all the State Commissions.

13. Since the issues involve the interpretation of the Regulations and policy as well as the provisions of the Act, we have appointed the learned Counsel namely 1) Mr. M.G. Ramachandran, 2) Mr. R.K. Mehta, 3) Mr. Amit Kapur and 4) Mr. Buddy A Ranganathan as Amicus Curiae Counsel to assist this Tribunal in this suo-moto matter by the order dated 4.2.2011.

14. The relevant portion of the order dated 4.2.1011 issuing notices to all the State Commissions passed by the Full Bench is given below:

“In view of the particulars given in the letter and also request made by the Power Ministry, we deem it appropriate to take up suo-moto action. Accordingly, we entertain this letter as suo-moto petition.

While we issue notice to all the State Commissions, we think it fit to appoint Mr. M.G. Ramachandran, Mr. Amit Kapur, Mr. R.K. Mehta and Mr. Buddy A Ranganadhan, the learned counsel as Amicus Curiae to assist this Tribunal for passing appropriate further orders in the matter.

Accordingly, we issue notice to all the State Commissions/Joint Commissions to send the status report

with reference to the determination of annual revenue requirement/ tariff for all the years from the date of the constitution of the Commission to enable us to find out the position and to pass suitable orders.

The Registry is directed to send intimation to all the State Commissions/ Joint Commissions. We think it fit to issue notice to the Secretary of the Forum of Regulators as well. Accordingly, the Registry is directed to send notice to the Secretary of the Forum of Regulators to assist this Tribunal by collecting all the particulars from the State Commissions concerned.

The Registry is also directed to send copy of the letter sent by the Secretary, Ministry of Power to all concerned along with the formats containing queries requiring for the relevant particulars.

The State Commissions are required to give necessary particulars and information in the form of status report within one month from the date of receipt of this notice. The said report must reach the Registry on or before 7th March, 2011.

On receipt of the report, the Registry is directed to give copies of the same to all the Amicus Curiae Advocates to enable them to assist this Tribunal for passing suitable orders.

Post the matter on 14.03.2011 for passing further orders”.

15. When the matter was taken up on the next hearing i.e on 14.3.2011, the Full bench noticed that most of the

State Commissions had sent their reports. Since some of the States had not sent their response, the Full bench again directed them to send their views with reference to the contents of the letter sent by the Power Ministry. Ultimately, on 19.5.2011, we noticed that status reports from all the State Commissions had been received by the Registry. On the basis of those status reports, we framed various issues in our order dated 19.5.2011 and again issued notices to hear the State Commissions on those issues. The relevant portion of the said order is as follows:

“On the basis of these instances we feel that the following issues have to be considered by this Tribunal. These issues are as follows:-

- a) Several State Commissions are leaving Regulatory gaps in tariff fixation i.e. the tariff fixed for a particular year is not sufficient to cover the ARR for that year;*
- b) Such Regulatory Gaps are left as a matter of course and the gap is left to be filled up in the Truing up or in subsequent years;*
- c) Delays in the tariff determination exercise;*

- d) *Truing up is not being carried on regularly and sometimes not even for several years at a time;*
- e) *Several Commissions have not framed regulations regarding Fuel Surcharge Adjustment Mechanism.*
- f) *Suo moto action to be taken for initiating appropriate proceedings for determination of ARR and tariff fixation in the absence of the applications to be filed by the utilities.*

On these issues, we want to hear all the Commissions so that it would facilitate this Tribunal to pass suitable orders and to give guidelines for the future course of action on the basis of the views of the Commissions.

Therefore, we deem it appropriate to issue notices under Section 121 of the Electricity Act to all the State Commissions to get their views on these issues. Accordingly, the notices are issued to all the Commissions. They are directed to send their views/reports on or before 30th June, 2011 to this Tribunal. Copies of these notices be sent to the Forum of Regulators also.

After receipt of the copies of the reports from all the Commissions the Registry is directed to give copies of those reports/views regarding the issues referred to above to Amicus Curiae counsel. A full and complete soft copy of the information provided either on a CD or other similar electronic media must accompany the hard copy. Additionally, the full information provided must also be sent by email to opno1of2011@gmail.com. The Commissions if they so desire can send their representatives or the counsel to make their suggestions to assist this Tribunal.

Post the matter for passing further order on 7th July, 2011 at 2.30 p.m.”.

16. When the matter was taken up on 7th July, 2011, it was found out from the reply made by various State Commissions to the effect, that they have been complying with the provisions as well as the Regulations and they would comply with the directions issued by the Tribunal in future under section 121 of the Act. However, as noted above, the State Commissions of Tamil Nadu and Tripura raised the doubts regarding the jurisdiction of the State Commission to take suo-moto action for determination of tariff as well as the Tribunal to issue suo moto directions regarding the same, through their affidavit and written notes. When the jurisdictional question had been raised, we thought it fit to send notices to all the State Commissions with reference to the said issues. Accordingly, notices were again issued to all the State Commissions with reference to those issues raised by

these State Commissions by the order dated 7th July, 2011. We quote the said order dated 7th July, 2011 which is as follows:-

“Out of these State Commissions, the State Commissions of Tamilnadu and Tripura have raised some questions with reference to the jurisdiction. Tamilnadu State Commission in its affidavit dated 2nd March, 2011 has stated as follows:

“7. I submit that the Appellate Tribunal is empowered to issue orders, instructions or directions to a State Commission for the performance of its statutory functions under this Electricity Act, 2003. A relevant question is whether the power of the Appellate Tribunal extends to issue of directions to Appropriate Commissions for the performance of their functions under the Tariff Policy of the Ministry of Power.

12. I further submit that Section 64, thus, mandates an application from the licensee and also fixes a time limit for issue of tariff order. Section 64 apparently does not visualize suo moto revision of tariff. Suo moto revision of tariff proposed in clause 8.1.7 of the tariff policy conflicts with the requirement of an application from the licensee under Section 64 of the Electricity Act, 2003”.

In its additional affidavit dated June, 2011 it has stated as follows:

“10. I further submit that issues such as Regulatory gaps, Truing up, Fuel surcharge mechanism are quasi judicial matters which come under the purview of State Electricity Regulatory

Commissions. On such issues, the aggrieved parties have the right of appeal under Section 111 of the Electricity Act to this Hon'ble Tribunal. Furthermore, I submit, that the Electricity Act has to be amended suitably to make the filing of Annual Revenue Requirement/tariff petitions by the utilities on annual basis, mandatory. It may further be seen that all the issues framed by this Hon'ble Tribunal related to tariff determination exercise can be initiated only when a licensee or a generating company files a petition under Section 64 of the Electricity Act, 2003. Hence, it is stated that the scope of the petition has been broadened in the order No. OP-1/2011 dated 19.5.2011 by including various new issues which are within the domain of the SERCs".

Similarly, in Tripura Report dated 23rd June, 2011, the State Commission, Tripura has also raised some issue with regard to the question of jurisdiction in last two paragraphs with reference to the views against issue no. (f) as under:

"Views against Issue No. (f):- From the present status as seen by the Commission the utility very seriously has undertaken the process of compilation of Annual accounts for the current and previous years. It is hoped that on completion of the Annual accounts tentatively in the month of August 2011 the ARR shall be submitted along with the petition and the determination process of tariff shall be undertaken by the Commission thereafter.

The Commission i.e. TERC reserves its view on Suo Moto determination of tariff and for Suo Moto action to determination of ARR fixation for following reasons:

That if the Commission takes the responsibility for fixation of tariff at its own the public may raise objection fingering that

once the utility is not willing to submit the petition why Commission takes such decision which is suffering to the consumers budget.

Now keeping in mind the Clause 8 and Clause 9 of Section 61 and for the safeguard of the consumer interest as well considering the sustainability of the utility the Suo Moto process for determination of tariff may please be reviewed”.

In the light of the above issues raised by both Tamilnadu and Tripura State Commission, it would be appropriate to direct the Tamil Nadu and Tripura State Commissions to appear before this Tribunal either through their counsel or by any representative to make submission on these issues to assist this Tribunal in deciding these issues.

On these issues, it is open to the other Commissions also to give their suggestions and views.

Post the matter on 25th July, 2011 at 2.30 p.m. for hearing.”

17. On 25.7.2011, we received the response from various State Commissions endorsing the existence of the powers with reference to the jurisdiction of the State Commissions for taking suo-moto action for tariff determination as well as the power of the Tribunal for issuing directions under section 121 of the Act to the State

Commissions. But this time, three State Commissions namely Tamil Nadu, Tripura and Rajasthan filed Affidavits raising the very same doubt relating to the question of jurisdiction of the State Commission as well as the Tribunal. In the light of these two preliminary questions relating to jurisdiction, we requested the Amicus Curiae Counsel to enlighten us with regard to those issues as well. In the light of the doubts expressed by these three State Commissions, with reference to the jurisdiction, we framed following questions for consideration:-

- (i) Whether the State Regulatory Commissions have the jurisdiction to suo-moto initiate proceedings for determination of tariff under section 62, 64 and 86 of the Electricity Act, 2003 in the absence of the Tariff application to be filed by the Utilities under Section 64 of the Act ?

- (ii) Whether the Appellate Tribunal has got the powers to issue directions under section 121 of the Act, 2003 to appropriate Commissions for the performance of their functions under the tariff policy issued by the Ministry of Power by taking suo moto action for determination of tariff in the absence of the Tariff application?

18. On these questions, we have heard the Learned Counsel for the State Commissions of Tamil Nadu, Tripura and Rajasthan who argued at length questioning the jurisdiction of the State Commission and Tribunal for taking suo-moto action for determination of Tariff. Similarly, the Learned Amicus Curiae Counsel also made elaborate submissions, in detail, contending that the State Commissions have got the jurisdiction to take suo-moto action for initiating proceedings for determination of ARR and Tariff and the Tribunal also has got the powers under Section 121 of the Act to issue such directions to the State Commissions in this regard to ensure that

provisions of the Act and the Regulations framed by the Commission are complied with in letter and spirit. They also filed detailed written notes along with compilation of Regulations framed by all the State Commissions and various judgements rendered by this Tribunal as well as Hon'ble Supreme Court in support of their plea.

19. Let us now deal with the **first question** as to whether the State Commissions have got the jurisdiction to suo-moto determine the tariff in the absence of tariff application filed by the Utilities. The main grounds for the objection raised by these three Commissions on this question are summarised as follows:

- (i) No suo- moto action can be initiated by the State Commissions as it is violative of section 64 of the Electricity Act.
- (ii) The tariff determination could be done by the Appropriate Commissions for the determination of

tariff only when the tariff application is filed by the Utilities before the Commission.

- (iii) The only option available with the Regulatory Commissions concerned is to merely ask the Utilities to comply with the provisions of the Act and to file a tariff petition and nothing more.

20. The issues raised by the three Commissions involve two questions:

- (i) Whether the State Commissions can initiate suo-moto proceedings for determination of tariff ?
- (ii) If so, can the State Commissions determine the tariff without such filing of tariff application by the Utilities?

21. Before dealing with this issue, it would be proper to refer to the objects of the Act. The perusal of the statement of objects and reasons, preamble and the provisions of the Act would reveal, the following

objectives for the enactment of the Act providing the Powers to the State Commissions to determine the Tariff.

- (a) In order to distance the State Governments from determination of tariff as the State Electricity Boards have been unable to take decisions on tariff in an independent manner and consequently tariff has virtually been determined only by State Governments which resulted in the cross-subsidies reaching unsustainable levels.
- (b) In order to take suitable measures conducive to the development of the electricity industry and rationalisation of electricity tariff.
- (c) In order to lay down justiciable statutory principles to mandatorily guide regular tariff determination requiring cost-reflective and viable tariff determination in terms of Section 61 of the Electricity Act read with the Tariff Policy.

22. In the light of the above objectives, it becomes necessary to consider putting in place a mechanism to effectively enforce the powers of suo-moto tariff determination in the absence of application being filed by the Utility in exercise of the various powers and functions under the Act read with Regulations and conditions of licence. The tariff determination ought to be treated as a time-bound exercise. If there is any lack of diligence on the part of the utility which led to the delay, then the State Commissions have to intervene and to play a proactive role in accordance with the Regulations framed and the Statutory policy issued for the tariff determination in time.
23. In this context, it is to be pointed out that all the State Commissions have been conferred with the delegated legislative powers u/s 61 read with Section 181 of the Act, 2003 to frame Regulations. Data collected from all the State Commissions relating to the Regulations framed and approved by the legislature on this issue would clearly indicate that the relevant Regulations relating to

the suo-moto tariff determination have been framed by all the State Commissions including these three States who raised the jurisdictional issue. These Regulations specifically empower them to initiate suo-moto proceedings for determination of tariff. As a matter of fact, almost all the State Commissions including these three State Commissions have exercised those powers on various occasions in the past. This fact is not disputed.

24. Instead of quoting the Regulations framed in this regard by all the State Commissions we feel that it is enough to quote the relevant Regulations framed by these three States, indicating the existence of the said Powers of the State Commissions to take suo-moto action. The relevant tariff Regulations 2005 of **Tamil Nadu** with reference to the same **are as follows:**

***(Terms and Conditions for Determination of Tariff)
Regulations 2005***

“5. Filing of Aggregate Revenue Requirement

(1) The Distribution / Transmission licensee shall file the Aggregate Revenue Requirement (ARR) on or before 30th November of each year in the format prescribed, containing the details of the expected aggregate revenue that the licensee is permitted to recover at the prevailing tariff and the estimated expenditure.

(2) ARR shall be filed every year even when no application for determination of tariff is made.

6. Procedure for making application for Determination of Tariff

(1) The licensee may file the application for determination of tariff in Form 1 in Annexure 1 to the TNERC Conduct of Business Regulations. The tariff changes should normally be applied for to take effect from the 1st day of ensuing financial year and hence the application shall be filed before 30th November of Current Year along with Aggregate Revenue Requirement (ARR).

(8) In case the licensee does not initiate tariff filings in time, the Commission shall initiate tariff determination and regulatory scrutiny on suo motu basis.

7. Decision on Application

(4) The Commission may conduct its proceedings in accordance with the provisions of the Tamil Nadu Electricity Regulatory Commission – Conduct of Business Regulations, 2004.

Conduct of Business Regulations, 2004.

“16(1) The Commission may initiate any proceedings suo motu or on a petition filed by any affected or interested person.

16 (3) While issuing the notice of inquiry the Commission may, in suo motu proceedings and other appropriate cases, designate an officer of the Commission or any other person whom the Commission considers appropriate to present the matter in the capacity of a petitioner in the case.

43(1) The Commission may on its own or on the application of any of the persons or parties concerned within 30 days of the making of any decision, direction or order, review such decision, directions or orders on the ground that such decision, direction or order was made under a mistake of fact, ignorance of any material fact or any error apparent on the face of the record.

47 Subject to the provisions of the Act and these Regulations, the Commission may, from time to time, issue orders and directions in regard to the implementation of the Regulations and procedure to be followed and various matters which the Commission has been empowered by these Regulations to Specify or direct.

48(1) Nothing in these Regulations shall be deemed to limit or otherwise affect the inherent power of the Commission to make such orders as may be necessary.

25. Similarly, **Tripura** has also framed Regulations 2003 on this issue in its Terms and Conditions for determination of Tariff Regulation, 2003 which **are as follows:**

(Terms and Conditions for Determination of Tariff) Regulations 2003

“3. Procedure for calculation of expected revenue

All Generating Companies and the licensee shall submit the petition to the Commission along with the details of calculation with relevant information and particular in line with Tripura Electricity Regulatory Commission (Conduct of Business) Regulations 2004.

The Petition should be filed at least 120 days in advance from the date of proposed effective date of revised tariff.

The Commission reserves the right suo-moto to ask the Generating Companies and the Licensees to file such an application for variation in tariff and other charges which should be filed as per TERC (CBR) Regulation, 2004.

8 (iii) Nothing in these Regulations shall be deemed to limit or otherwise affect the inherent power of the Commission to make such orders as may be necessary

for meeting the ends of justice or to prevent the abuse of the process of the Commission.

Conduct of Business Regulations, 2004.

16. The Commission shall have the authority, either on an application made by any interested party or suo-moto, to review, revoke, revise, modify, amend, alter, or otherwise change any order made or action taken by the Secretary or the Officers of the Commission.

23(1) The Commission may from time to time hold such proceedings including consultations, meetings inquiries etc. as it may consider appropriate in the discharge of its functions. The Commission may appoint an officer or any other person whom the Commission considers appropriate to represent the matter as Commission's representative in the proceedings.

25(1) The Commission may initiate any proceedings suo-moto or on a petition filed by any affected person. The petition so filed shall become a part of the proceedings.

25(2) When the Commission initiate the proceedings, it shall be by a notice issued by the office of the Commission and the Commission may give such orders and directions as may be deemed necessary, for service of notice to the affected or interested parties; for the filling of replies and rejoinders in opposition or in support of the petition in such form as the Commission may direct. The Commission may, if it considers appropriate, issue orders for advertisement of the

petition inviting comments from the public or any class of person on the issue involved in the proceedings in such form as the Commission may direct.

25(3) While issuing the notice of inquiry the Commission may, in suo-moto proceedings and other appropriate cases, designate an officer of the Commission or any other person whom the Commission considers appropriate to present the matter in the capacity of a petitioner in the case.

33(1) The Commission may, at any time before passing order on the matter, require the parties or any one or more of them or any other person whom the commission considers appropriate, to produce such documentary or other evidence as the Commission may consider necessary for the purpose of enabling it to pass orders.

33(2) The Commission may direct the summoning of the witnesses, discovery and production of any document or other material objects producible in evidence, requisitioning any public record from any office, examination by an officer of the Commission or consultant, appointed by the Commission, the books, accounts or other documents or information in the custody or control of a person which the Commission considers relevant for the matter.

33(3) In accordance with the Section 193 of the Indian Penal Code 1860, whoever intentionally gives false evidence in any of the proceedings of the Commission or fabricate false evidence for the purpose of being used in any of the proceedings shall be punishable with imprisonment of either description for a term which may be extended to seven years and shall also be liable to be fined.

38(1) The Commission may make such orders or orders as it may consider appropriate for collection of information, inquire, investigation, entry, search and seizure and without prejudice to the generality of its powers in regard to the following:-

(a) The Commission may, at any time, direct the Secretary or any one or more officers or consultants or any other person as the Commission considers appropriate to study, investigate or furnish information with respect to any matter within the purview of the Commission under the Act.

(b) The Commission may, for the above purpose give such other directions as it may deem fit and specify the time within which the report is to be submitted or information furnished.

(c) The Commission may issue or authorize the Secretary or an Officer to issue directions to any person to produce before it and allow to be examined and kept by an Officer of the Commission specified in this behalf the books of accounts etc. or to furnish information.

(d) The Commission may, for the purpose of collecting any information particulars or documents which the Commission consider necessary in connection with the discharge of its functions under the Act, issue such directions and follow any one or more of the methods.

(e) If any such report or information obtained appears to the Commission to be insufficient or inadequate, the Commission or the Secretary or an Officer authorized for the purpose may give directions for further inquire, report and furnishing of information.

(f) The Commission may direct such incidental, consequential and supplemental matters which may be considered relevant in connection with the above, be attended to.

43 (1) The Utilities shall provide to the Commission during the period between 15th December to 31st December every year details of its calculation for the ensuing financial year of the expected aggregate revenue from charges based on currently approved tariff by the Commission.

47. (1) The Commission may, on its motion or on the application of any of the person or parties concerned, within 90 days of the making of any decision, directions or order, review such decision, directions or orders and pass such appropriate orders as the Commission thinks fit.

53. (1) Nothing in these Regulations shall be deemed to limit or otherwise affect the inherent power of the Commission to make such orders as may be necessary for meeting the ends of justice or to prevent the abuse of the process of the Commission.

(2) Nothing in Regulations shall be the Commission from adopting a procedure, which is at variance with any of the provisions of the Regulations, if the Commission, in view of the special circumstances, on matter or class of matters and for reasons to be recorded in writing deems it necessary or expedient.

58. Failure to comply with any requirement of these Regulations shall not invalidate any proceedings merely by reasons of the failure unless the Commission is of the view that such failure has resulted in miscarriage of justice.

26. We will now refer to the Regulations framed by **Rajasthan** namely **Tariff Regulations 2009** which are as follows.

***(Terms and Conditions for Determination of Tariff)
Regulations 2009***

5. Preparation & submission of Annual Accounts, Reports etc.

(1) Every transmission licensee and distribution licensee and generating company shall prepare annual statement of accounts and also prepare annual reports and statistics, giving an account of its activities during the current and previous year and likely to be undertaken in the remaining years of the MYT Control Period, including the ensuing year.

The report of activities also indicate targets and achievements in respect of various performance parameters. These reports shall be furnished to

the Commission in duplicate, by 30th November every year.

(2) The Commission may also direct that, in addition to submission of the annual statements of accounts, a transmission licensee or distribution licensee or a generating company shall submit to the Commission or such other authority as it may designate in this behalf, such additional information as the Commission may require for the performance of its functions.

8. Annual Review of Performance

(1) Where the aggregate revenue requirement and expected revenue from tariff and charges of a Generating Company or Licensee is covered under a multi-year tariff framework, then such Generating Company or Licensee, as the case may be, shall be subject to an annual performance review during the Control Period in accordance with this Regulation.

(2) The Licensee or Generating Company shall make an application for annual performance review by November 30th of every year:

Provided that the Licensee or Generating Company, as the case may be, submit to the Commission information in such form as may be stipulated by the Commission from time to time, together with the Accounting Statements, extracts of books of account and such other details as the Commission may require to assess the reasons for and extent of any variation in financial performance from the approved forecast of aggregate revenue requirement and expected revenue from tariff and charges:

Provided further that the application for annual performance review shall be submitted to and dealt with by the Commission in the manner provided under the procedure for

Determination of Tariff under these Regulations for submission of and dealing with an application for determination of tariff and within the time limit specified in the Regulations for such application.

11. Periodicity of tariff determination

(1) The Commission shall determine the tariff of a Generating Company, except Captive Power Plants (CPP) and Renewable Energy Power Plants, or Licensee covered under a multi-year tariff framework for each financial year during the Control Period, at the commencement of such financial year, having regard to the following:

a) The MYT principles specified under these Regulations;

b) The approved forecast of aggregate revenue requirement and expected revenue from tariff and charges for such financial year, including approved modifications to such forecast;

*(c) Impact of truing up for previous financial year;
and*

(d) Approved gains and losses to be passed through in tariffs, following the annual performance review.

(2) The tariff for a transmission or distribution licensee or a generating company shall ordinarily be

determined not more than once in a year, except in case of fuel cost adjustment, wherever applicable.

3) The tariff for CPP shall be determined as per RERC (CPP) Regulations whereas the tariff for RE power generating stations, shall be determined as per Part VII of these Regulations.

12. (8) In case the transmission or distribution licensee does not file petition under this regulation within one and half months (that is by 15th January) of submission of Annual Accounts, reports etc. under Regulation 5, the Commission may, on its own initiate proceedings for tariff determination: Provided that the tariff determined for a particular financial year of a Control Period shall remain applicable only till end of such financial year, unless otherwise the Commission approves the continuation of such Tariff for subsequent financial years.

13.(2) After receipt of information or otherwise, the Commission may make appropriate orders regarding initiation of proceedings in accordance with the provisions of the Rajasthan Electricity Regulatory Commission (Transaction of Business) Regulations, 2005.

Conduct of Business Regulations, 2005.

18. Initiation of proceedings- the Commission may initiate proceedings suo motu or on a petition filed by any affected person.

19. When the Commission initiates the proceedings in respect of any matter it shall be by a notice issued by the office of the Commission and the Commission may give such orders and directions as may be deemed necessary, for service of notice to the affected parties for the filing of replies and rejoinder in opposition or in support of the matter in issue or for other matters relating to conduct of the proceedings. The commission may, if it considers appropriate, publish a notice inviting comments on the issue involved in the proceedings in such form as the Commission may direct.

20. In proceedings and inquiries initiated by the Commission suo moto, the Commission may designate an officer of the Commission or any other person whom the Commission considers appropriate to present the matter in the capacity of a petitioner in the case.

49. (1) The Commission may decide the matter on the pleadings the parties or may call for the parties to produce evidence by way of affidavit or lead oral evidence in the matter.

50. Power of the commission to call for further information, evidence, etc.- The Commission may, at any time before passing order s on the matter, require the parties or any one or more of them or any other person whom the Commission consider appropriate, to produce such documentary or other evidence as the Commission may consider necessary for the purpose of enabling it to pass orders.

51. The Commission may direct summoning of witnesses, discovery and production of any document or other material objects producible in evidence, requisitioning of

any public record form any office, examination by an officer of the Commission of books, accounts or other documents or information in the custody or control of nay person which the Commission considers relevant for deciding the matter before it.

63. The Commission may make such order or orders as it fit in terms of Section 96 of the Act for collection of information, inquiry, investigation, entry, search, seizure and without prejudice to the generality of its powers in regard to the following:

- a) The Commission may, at any time, direct the Secretary or an Officer or consultants or any other person as the Commission considers appropriate to study, investigate or furnish information with respect to any matter within the purview of the Commission under the Act. 11*
- b) The Commission may for the above purpose give such other directions as it may deem fit and specify the time within which the report is to be submitted or information furnished.*
- c) The Commission may issue or authorize the Secretary or an Officer to issue directions to any person to produce before it and allow to be examined and kept by an Officer of the Commission, specified in this behalf, the books, accounts, etc. or to furnish to an Officer information, etc. as provided in of Section 94 of the Act.*
- d) The Commission may, for the purpose of collecting any information, particulars or documents which the Commission consider necessary in connection with discharge of its functions under the Act, issue such*

directions as may be considered necessary, as provided for in Section 96 of the Act.

e) If any such report or information obtained under these Regulations appears to the Commission to be insufficient or inadequate, the Commission or the Secretary or an Officer authorised for the purpose may give directions for further inquiry, report and furnishing of information.

f) The Commission may direct such incidental, consequential and supplemental matters be attended to which may be considered relevant in connection with the above

71. Issue of orders and directions- Subject to the provisions of the and these Regulations, the Commission may, from time to time, issue orders and directions in regard to implementation of the Regulations and procedure to be followed and other matters in which the Commission has been empowered by these Regulations to specify or direct.

72. Inherent powers of the Commission-. Nothing in these Regulations shall be deemed to limit or otherwise affect the inherent powers of the Commission to make such orders as may be necessary for meeting the ends of justice or to prevent the abuse of the process of the Commission.

74. Nothing in these Regulations shall be deemed to bar the Commission to deal with any matter or exercise any power under the Act for which no regulation has been framed, and the Commission may deal with such matters or exercise such power in such manner as it thinks fit.”

27. Thus, the above Regulations framed by these three State Commissions would indicate that these Commissions have been conferred with specific powers as well as inherent powers to initiate suo-moto proceedings for tariff determination in the absence of the Tariff applications. Further the status report of these three States show that these State Commissions have, in fact, exercised the said suo moto powers for determination of Tariff in the absence of the application by Utilities in the past. Tamil Nadu State Commission has exercised the said suo-moto powers for various tariff related issues and passed the orders including determination of tariff on the basis of the Tariff Regulations 2004 and 2005 on a number of occasion in regard to following aspects:

- (a) Tariff for generating plants based on non conventional energy sources,
- (b) Tariff for fossil fuel based captive generating and co-generation plants,

- (c) Tariff for grid interactive solar power generation plants, and
- (d) Tariff for solar thermal projects

28. Similarly, the Tripura State Commission have also exercised these powers on various occasions, as admitted by them.

29. The Rajasthan Commission also passed orders in 117 cases out of which 40 orders have been issued in exercise of the suo-moto powers and over 10 orders relating to the tariff determination. These orders involve determination of :

- (a) Tariff for wind power
- (b) Tariff for captive power plant,
- (c) Transmission charges levy for short term open access consumer, and
- (d) Wheeling charges and cross subsidy surcharge dated 20.03.2008 and 22.08.2007).

30. In view of the above admitted fact situation, we raised four questions to these 3 State Commissions seeking clarification.

(A) Is it fair on the part of these State Commissions who have actually framed the Regulation and notified delegated legislation to vest suo-motu powers in their hands and who have actually exercised such powers for determination of tariff in the past, now to make a plea that the said power does not exist or that such power through Regulations can not be exercised as it is contrary to the provisions of Electricity Act?.

(B) If that is the stand of these three Commissions, then why these Commissions exercised those powers conferred by the Regulations in the past by taking suo moto action for tariff determination?

(C) If it is their stand, that these Regulations were not in consonance with Section 64 of the Act, then why these Commissions had framed such Regulations at all ?

(D) Whether the State Commissions are the proper authority to declare that their Regulations are wrong, so long as those Regulations are in force?

31. There is no answer to these questions either in their affidavits or in the written submissions filed by these State Commissions. We are really surprised over the conduct of these State Commissions who now plead as against their own Regulations approved by the legislature. Another surprising feature is that these Commissions, have failed to take note of the findings given by this Tribunal in the several judgments indicating the necessity to follow their Regulations, which are binding on them.

32. We will now refer to some of the judgments of this Tribunal, which decided on the aspect of the suo moto Tariff determination, by the State Commissions. These judgements are as follows:

(a) In the judgement in Appeal No.204 of 2011 dated 11.8.2011 Faridabad Industries Association Vs Haryana State Commission and Ors, this Tribunal has decided two aspects:

(i) The State Commission can initiate suo-moto proceedings and determine the tariff in the absence of the proposal by the Utilities;

(ii) Such exercise by the State Commissions was valid in view of its power under Electricity Act read with Tariff Regulations.

33. The relevant observations made by this Tribunal in the above judgement are as follows:

“Whether the State Commission should have rejected the Petitions of the Distribution Licensees not containing any tariff proposal and, in the absence of any tariff proposal could the State Commission enhance the tariff suo moto?”

“Section 64 (3) of the 2003 Act provides for rejection of the application filed by the licensee if such application is not in accordance with the provisions of the Act and the rules and Regulation made there under. However, in terms of the Regulations and the Tariff Policy, the State Commission is empowered to start suo-moto proceedings to determine the tariff. The Regulations do not state that the suo moto proceedings should be initiated only if the tariff is to be reduced. On the other hand, the Regulations clearly state that if the expected revenue differs significantly from the revenue it is permitted to recover, the State Commission, in the absence of a proposal from the licensee for amendment of tariff, can initiate the proceedings for determination of tariff. Thus, the State Commission has correctly exercised its powers under its tariff Regulations for determination of tariff, suo-moto”

The State Commission has correctly exercised its powers to determine the tariff suo-moto in the absence of a tariff proposal by the Licensee, in accordance with the Tariff Regulations.[emphasis added).

34. The next decision is in Appeal No.106, etc of 2006 titled as Tamil Nadu Newsprint & Papers Ltd Vs Tamil Nadu State Commission reported as 2007 APTEL 157. In this judgement also, this Tribunal had the occasion to consider the suo-moto tariff determination by the Tamil Nadu State Commission for purchase of power from non-conventional energy sources and held that the impugned suo-moto tariff order was valid having been passed with a fair approach after due deliberations and deep consideration. It was also held that the determination of tariff was a mandatory obligation and duty of every Commission which cannot brook any delay.

35. The next judgement is MSEDCL Vs Maharashtra State Commission in Appeal No.70 of 2007. In this judgement, this Tribunal had the occasion to consider the interplay between Part VII of the Electricity Act read with the applicable multi-year tariff regulations vis-à-vis para 8.1 (7) of the National Tariff Policy. In this judgement, this Tribunal gave specific guidelines while discerning the underlying objective that when

should the suo-moto tariff determination be resorted. The relevant observations are as follows:

“5. We now proceed to examine the tariff policy, paragraph 8.1.7 as extracted above. In our opinion the entire paragraph has to be read to interpret the expression given therein. The intention of the Government in this part of the tariff policy is to maintain discipline in the matter of date of commencement of every new tariff. The policy says that is desirable that MYT tariff should come to effect in the beginning of the financial year. The policy does not say that the tariff changes will come into effect at the commencement of the financial year irrespective of any prohibitive situation that may arise for various reasons. There can be no quarrel that if the tariff changes take place at the beginning of the financial year it becomes convenient for all the players in the electricity market as well as for the end consumers. In order to make this possible an advice is given to Appropriate Commissions to initiate tariff determination and regulatory scrutiny on a suo-moto basis in case the licensee does not initiate filings in time. However, suo-moto initiation of tariff determination may not be an easy process. A large amount of data is required for determination of tariff. Without a tariff petition being filed by a licensee the Appropriate Commission may find it quite difficult to collect and collate the necessary data and to fix a tariff. If the appropriate Commissions able to so determine the tariff on suo-moto scrutiny, the same may be different from the tariff which could have been framed on an ARR and tariff petition with relevant data filed by a licensee. It is in this context that the tariff policy says that if there is a gap of this nature the licensee should be made to bear the same. This provision has been made to discourage the licensee

from delaying its tariff petition and for compelling the Appropriate Commission to go into suo-moto determination of the tariff in the next financial year.

6. Undoubtedly, the suo-moto tariff determination will commence only if the ARR filing is inordinately delayed. It is not expected that whenever ARR filing is delayed the Appropriate Commission would suo-moto start initiating the exercise of tariff determination. In our considered view, the last clause of Para 8.1.7 of the tariff policy comes into play only when the ARR filing is so enormously delayed that the appropriate Commission is made to issue a tariff of its own suo-moto regulatory scrutiny.

36. In the above judgments, this Tribunal gave the following directions and guidelines:

(a) The intention of the Government in this part of the tariff policy is to maintain the discipline regarding the date of commencement of every new tariff. To make it possible an advice is given to appropriate Commissions to initiate tariff determination and **regulatory scrutiny on suo-moto basis in case a licensee does not initiate filing in time.**

(b) Without a tariff petition being filed by a licensee, the Appropriate Commission may find it quite difficult to collect and collate the necessary data and to fix the tariff. It is in this context, the tariff policy says that if there is a gap on account of delay in filing, the licensee should be made to bear the same. This provision has been made to discourage the licensee from delaying its tariff petition and for compelling the Appropriate commission to go into suo-moto determination of tariff for the next financial year.

(c) The suo-moto tariff determination will commence only if the ARR filing is inordinately delayed. The last clause of para 8.1.(7) of the tariff policy comes into play only when the ARR filing is so enormously delayed that the appropriate Commission is made to issue a tariff on its own suo-moto regulatory scrutiny. The financial implication of the delay is nothing but the carrying cost. The consumers cannot be burdened with this resulting

carrying cost because the delay has not been caused on account of their default.

37. We will now see the other judgements. The next judgement is in Appeal No.192 of 2010 dated 28.7.2011 titled Tamil Nadu Electricity Consumers Association vs Tamil Nadu Electricity Board. In this Judgement also the Tribunal has held that in case the Utilities do not file the Petition for determination of ARR and tariff in time, the State Commission should initiate the tariff determination and Regulatory scrutiny on suo-moto basis. The relevant observations made by this Tribunal is are follows:

“7.6. While we do not want to interfere with the findings of the State Commission regarding the accumulated losses for the previous years, we are concerned with the fact that the first respondent filed a petition for determination of ARR and tariff after a gap of seven years. The first tariff petition was filed by the first respondent in September, 2002 on the basis of which the State Commission passed the tariff order dated 15.3.2003. Thereafter, the petition for determination of tariff/ARR was filed only on 18.1.2010 for the Control Period 2010-13. During the intervening period the respondent no. 1 has

accumulated huge financial losses, to the tune of Rs. 16700 Crores ending FY 2008-09. We fail to understand as to why the first respondent did not file the petition for ARR and tariff every year during this period and if the first respondent was failing to do so why the State Commission did not initiate suo motu proceedings in the matter. Besides the retail tariff, the State Commission has to regulate the electricity purchase and procurement process and approve capitalization of the assets of the distribution licensee for which the Annual Revenue Requirement has got to be approved by the State Commission.

7.7. In this connection let us examine the 2005 Regulations. The relevant Regulation 5 is reproduced below:

“5. Filing of Aggregate Revenue Requirement

(1) The Distribution / Transmission licensee shall file the Aggregate Revenue Requirement (ARR) on or before 30th November of each year in the format prescribed, containing the details of the expected aggregate revenue that the licensee is permitted to recover at the prevailing tariff and the estimated expenditure.

(2) ARR shall be filed every year even when no application for determination of tariff is made”.

(6). Procedure for making application for

Determination of Tariff:

.....

(8) In case the licensee does not initiate tariff filings in time, the Commission shall initiate tariff determination and regulatory scrutiny on suo motu basis”.

Thus, according to the Regulations the licensee has to file the ARR every year even when no application for determination of tariff is made and in case the licensee does not initiate the tariff filing in time, the State Commission has to initiate the same suo motu.

7.8. In the present case the Regulations were clearly violated by the first respondent and the State Commission also remained a silent spectator.

7.9. The present situation in which the first respondent has landed itself with large accumulated financial losses, is neither in its own interest for smooth operation of the system nor in the interest of the consumers for maintaining a reliable power supply. If the first respondent is in poor financial health, then it is doubtful that it can maintain a reliable power supply to the consumers. We, therefore, direct the first respondent and its successor companies to regularly file their respective petitions for determination of Annual Revenue Requirement and Tariff every year, in time, according to the Regulations. In case the successor companies do not file the petition for determination of ARR and tariff in time, the State Commission should initiate the tariff determination and regulatory scrutiny on suo moto basis”.

38. In this decision following findings and directions have been given by this Tribunal:

(a) The first tariff order was filed by the Tamil Nadu Electricity Board before the State Commission for determination of ARR and tariff in September, 2002. The State Commission passed the tariff order on the basis of its petition on 15.3.2003. Thereafter, the Electricity Board filed a petition only on 18.1.2010 i.e after a gap of seven years. The Tribunal is not able to understand as to why the electricity board did not file its petition for ARR and tariff every year. Similarly, if the Electricity Board had not filed the said petition, there was no reason as to why the State Commission did not initiate suo-moto proceedings in the matter.

(b) The relevant regulations 5.2 of the 2005 Regulations would provide that ARR should be filed every year even when no application for determination of tariff was made.

The Regulation 5 (8) specifically provides that the Commission should initiate tariff determination and regulatory scrutiny on suo-moto basis in case the Utilities had not initiated tariff filing in time. In the present case, the State Commission remained as a silent spectator without following the above Regulations.

(c) The Tribunal directed the Electricity Boards and its successor Companies to regularly file their petitions for determination of tariff and ARR every year according to Regulations. In case they do not file the petition in time, the State Commission should initiate the tariff determination and tariff scrutiny on suo-moto basis.

39. Thus the above issues have already been decided as the ratio and suitable directions have been issued by this Tribunal on the strength of the Regulations framed by the State Commissions in the judgments already rendered by the Tribunal. These judgements of this Tribunal have attained

finality. There is one more aspect to be mentioned here. In the matter of Tamil Nadu Electricity Consumers Association Vs TNEB the Tribunal rendered a judgment in Appeal No.192/2010 on 28.7.2011, which we have earlier mentioned. In the present matter, Tamil Nadu State Commission filed the written submission before this Tribunal, stating that the Tamil Nadu Commission had followed Tariff Regulations which followed the National Tariff Policy which are in consonance with the provisions of the Electricity Act, 2003. We have accepted this plea by the State Commission. When such being the case, we are unable to understand as to why Tamil Nadu State Commission has now taken a different stand that they may not be able to follow the Regulations.

40. As indicated above, this present stand taken by these State Commissions is exactly opposite to the earlier stand taken as well as the ratio decided by this Tribunal in various judgements including the last judgement which was rendered on 28.7.2011 in Appeal No.192 of 2010.

41. As a matter of fact, the Hon'ble Supreme Court has held that the Regulations framed by the Commissions are binding as a delegated legislation on the Commissions and as such the Regulatory Commissions are obliged to determine tariff in exercise of the powers in accordance with these Regulations. The relevant observations made by the Hon'ble Supreme Court in the matter of Power Trading Corporation Vs CERC is as follows:

“40. As stated above, the 2003 Act has been enacted in furtherance of the policy envisaged under the Electricity Regulatory Commissions Act, 1998 as it mandates establishment of an independent and transparent Regulatory Commission entrusted with wide ranging responsibilities and objective, inter alia, including protection of the consumers of electricity. Accordingly, the Central Commission is set up under Section 76 (1) to exercise the powers conferred on, and in discharge of the functions assigned to, it under the Act. On reading Sections 76 (1) and 79 (1) one finds that Central Commission is empowered to take measures/steps in discharge of the functions enumerated in Section 79 (1) like to regulate the Tariff of generating companies, to regulate the inter-State transmission of electricity, to determine Tariff for inter State transmission of electricity, to issue licences, to adjudicate upon disputes, to levy

fees, to specify the Grid Code, to fix the trading margin in inter- State trading of electricity, if considered necessary etc. These measures, which the Central Commission is empowered to take, have got to be in conformity with the Regulations under Section 178, wherever such Regulations are applicable. Measures under Section 79 (1), therefore, have got to be in conformity with the Regulations under Section 178. To regulate is an exercise which is an exercise which is different from making of the regulations. However, making of a regulation under Section 178 is not a pre-condition to the Central Commission taking any steps/measures under Section 79(1). As stated, if there is a regulation, then the measure under Section 79(1) has to be in conformity with such regulation under Section 178. This principle flows from various judgments of this Court which we have discussed hereinafter. For example, under Section 79(1)(g) the Central Commission is required to levy fees for the purpose of the 2003 Act. An Order imposing regulatory fees could be passed even in the absence of a regulation under Section 178. If the levy is unreasonable, it could be the subject matter of challenge before the Appellate Authority under Section 111 as the levy is imposed by an Order/decision making process. Making of a regulation under Section 178 is not a pre-condition to passing of an Order levying a Regulatory fee under Section 79(1)(g). However, if there is a regulation under Section 178 in that regard then the Order levying fees under Section 79(1)(g) has to be in consonance with such regulation. Similarly, while exercising the power to frame the terms and conditions for determination of tariff under Section 178, the Commission has to be guided by the factors specified in Section 61. It is open to the Central Commission to specify terms and conditions for determination of tariff even in the absence of the regulations under Section 178. However, if a regulation is made under Section 178, then, in that event, framing of

terms and conditions for determination of tariff under Section 61 has to be in consonance with the regulation under Section 178. One must keep in mind the dichotomy between the power to make a regulation under Section 178 on one hand and the various enumerated areas in Section 79(1) in which the Central Commission is mandated to take such measures as it deems fit to fulfil the objects of the 2003 Act. Applying this test to the present controversy, it becomes clear that one such area enumerated in Section 79(1) refers to fixation of trading margin. Making of a regulation in that regard is not a pre-

condition to the Central Commission exercising its powers to fix a trading margin under Section 79(1)(j), however, if the Central Commission in an appropriate case, as is the case herein, makes a regulation fixing a cap on the trading margin under Section 178 then whatever measures a Central Commission takes under Section 79(1)(j) has to be in conformity with Section 178. One must understand the reason why a regulation has been made in the matter of capping the trading margin under Section 178 of the Act. Instead of fixing a trading margin (including capping) on a case to case basis, the Central Commission thought it fit to make a regulation which has a general application to the entire trading activity which has been recognized, for the first time, under the 2003 Act. Further, it is important to bear in mind that making of a regulation under Section 178 became necessary because a regulation made under Section 178 has the effect of interfering and overriding the existing contractual relationship between the regulated entities. A regulation under Section 178 is in the nature of a subordinate Legislation. Such subordinate Legislation can even override the existing contracts including Power Purchase Agreements which have got to be aligned with the regulations under Section 178 and which could not have

been done across the board by an Order of the Central Commission under Section 79(1)(j)”

42. The above mandate issued by the Hon’ble Supreme Court would reveal the following factors.

(a) Making of a Regulation under section 178 is not a pre-condition to passing of an order levying a regulatory fee under section 79 (1) (g). However, if there is a Regulation under Section 178 in that regard, then the order levying fees under Section 79 (1) (g) has to be in consonance with the Regulation.

(b) Similarly, while exercising the power to frame the terms and conditions for determination of tariff under section 178, the Commission has to be guided by the factors specified in Section 61. It is open to the Central Commission to specify terms and conditions for

determination of Tariff even in the absence of Regulations.

(c) If a Regulation is made under Section 178, then in that event framing of terms and condition for determination of tariff under Section 61 has to be in consonance with the Regulation under Section 178.

(d) All these observations which relate to the Central Commission, would apply to the State Commissions as well, as the State Commissions have got the powers to frame Regulations under Section 181 of the Act, 2003

43. It is strangely contended by the Tamil Nadu Commission that the Regulations would not prevail over Section 64 of the Act. It is settled position of law that the procedures as provided under section 64 of the Act are to be considered as handmaid of justice which cannot be read in a manner to frustrate the letter and spirit of the underlying statutory

provisions and substantive rights related to regular, cost reflective tariff determination and the statements of objects and reasons read with Section 62 of the Electricity Act. Further, as held by the Hon'ble Supreme Court as well as this Tribunal in various decisions that the quasi judicial authorities (like the State Electricity Regulatory Commissions) are vested with more liberal powers to adopt more flexible processes to fulfil their statutory objectives with purposeful efficiency. This principle has been laid down in the following decisions:

(i) National Sewing Thread Co. vs. James Chadwick: AIR 1953 SC 357 at paras 8 & 9 .

(ii) Vasanlal Maganbhai Sanjanwada vs. State of Bombay: AIR 1961 SC 4 at paras 4,6,9,16 & 17.

(iii) B Prabhakar Rao vs. Desari Panakala Rao: (1976) 3 SCC 550 at paras 10 and 13.

(iv) AR Antulay vs. RS Nayak: (1988) 2 SCC 602 at para 83.

(v) Shree Vijay Cotton & Oil Mills Ltd., vs. State of Gujarat (1991) 1 SCC 262 at para 16.

(vi) Dhannalal vs. Kalwatibai & Ors (2002) 6 SCC 16 at para 20-24.

(vii) Uday Shankar Triyar vs. Ram Kalewar Prasad Singh (2006) 1 SCC 75, para 17.

(viii) SIEL Ltd. Vs. Punjab SERC: 2007 ELR (APTEL)1931 at para 48 (Placed in AC Vol V at page 319-407).

44. In view of the ratio laid down in these decisions, the contention of these three State Commissions that the only option available with the Commission is merely to ask the licensee to comply with the provision of the Act and to file the tariff petition under section 64 and nothing more is wholly misconceived and misplaced. Therefore, we are to conclude that the State Commissions can initiate suo-moto proceedings and collect the data and information and give suitable directions and then to determine the tariff even in the absence of the application filed by the utilities by exercising the powers under the provisions of the Act as well as the tariff regulations. Thus, the 1st question is answered accordingly.

45. Let us now deal with the **next Question** i.e. “Whether this Tribunal has got jurisdiction to issue directions to the State Commissions under Section 121 of the Act for suo-moto determination of tariff”?

46. According to Tamil Nadu State Commission, the jurisdiction of this Tribunal under Section 121 of the Act is limited to the issuance of directions to the Appropriate Commissions for performance of its statutory functions under the provisions of Electricity Act alone and it cannot issue directions to the State Commission for suo-moto determination of tariff under the tariff policy as the same would be beyond jurisdiction.

47. This is a preposterous proposition. As referred to in the earlier paragraphs, we have held that the suo-moto jurisdiction is vested in the hands of the State Commissions by way of Regulations. According to Hon’ble Supreme Court, these

Regulations are statutory and binding delegated legislations which have to be mandatorily followed by the Commissions. In case of failure on the part of the Commissions to follow their own Regulations for performing their statutory duties, this Tribunal has certainly got the powers under section 121 of the Electricity Act to issue such directions to the State Commissions to perform those statutory functions in accordance with the Regulations. The relevant portions of the Supreme Court judgement in PTC India Ltd v CERC and Ors reported as (2010) 4 SCC 603/ELR (SC) 269 are as follows:

“52. Before concluding on this topic, we still need to examine the scope of Section 121 of the 2003 Act. In this case, appellant(s) have relied on Section 121 to locate the power of judicial review in the Tribunal. For that purpose, we must notice the salient features of Section 121. Under Section 121, there must be a failure by a Commission to perform its statutory function in which event the Tribunal is given authority to issue orders, instructions or directions to the Commission to perform its statutory functions. Under Section 121 the Commission has to be heard before such orders, instructions or directions can be issued.

53. The main issue which we have to decide is the nature of the power under Section 121. In the case of *M/s Raman and Raman Ltd. v. State of Madras and Ors.* reported in AIR 1959 SC 694, Section 43A of Motor Vehicles Act, 1939, ("1939 Act"), as amended by Madras Act 20 of 1948, came for consideration before the Supreme Court. Section 43A conferred power on the State Government to issue "orders" and "directions", as it may consider necessary in respect of any matter relating to road transport to the State Transport Authority or a Regional Transport Authority. The meaning of the words "orders" and "directions" came for interpretation before the Supreme Court in the said case. It was held, on examination of the Scheme of the Act, that Section 43A was placed by the legislature before the sections conferring quasi-judicial powers on Tribunals which clearly indicated that the authority conferred under Section 43A was confined to administrative functions of the Government and the Tribunals rather than to their judicial functions. It was further held that the legislature had used two words in the section: (i) orders; and (ii) directions. This Court further noticed that under the 1939 Act there was a separate Chapter which dealt with making of "rules" which indicated that the words "orders" and "directions" in Section 43A were meant to clothe the Government with the authority to issue directions of administrative character. It was held that the source of power did not affect the character of acts done in exercise of that power. Whether it is a law or an administrative direction depends upon the character or nature of the orders or directions authorized to be issued in exercise of the power conferred. It was, therefore, held that the words "orders" and "directions" were not laws. They were binding only on the Authorities under the Act. Such orders and directions were not required to be published. They were not kept for scrutiny by legislature. It was further held that such orders and directions did not override the

discretionary powers conferred on an authority under Section 60 of the 1939 Act. It was observed that non compliance of such orders, instructions and directions may result in taking disciplinary action but they cannot affect a finding given by the quasi-judicial authority nor can they impinge upon the rules enacted by the rule-making authority. It was held that such orders and directions would cover only an administrative field of the officers concerned and therefore such orders and directions do not regulate the rights of the parties. Such orders and directions cannot add to the considerations/topics prescribed under Section 47 of the 1939 Act on the basis of which an adjudicating authority is empowered to issue or refuse permits, as the case may be.

54. Applying the tests laid down in the above judgment to the present case, we are of the view that, the words "orders", "instructions" or "directions" in Section 121 do not confer power of judicial review in the Tribunal. It is not possible to lay down any exhaustive list of cases in which there is failure in performance of statutory functions by Appropriate Commission. However, by way of illustrations, we may state that, under Section 79(1)(h) CERC is required to specify Grid Code having regard to Grid Standards. Section 79 comes in Part X. Section 79 deals with functions of CERC. The word "grid" is defined in Section 2(32) to mean high voltage backbone system of interconnected transmission lines, sub-station and generating plants. Basically, a grid is a network. Section 2(33) defines "grid code" to mean a code specified by CERC under Section 79(1)(h). Section 2(34) defines "grid standards" to mean standards specified under Section 73(d) by the Authority. Grid Code is a set of rules which governs the maintenance of the network. This maintenance is vital. In summer months grids tend to trip.

In the absence of the making of the Grid Code in accordance with the Grid Standards, it is open to the Tribunal to direct CERC to perform its statutory functions of specifying the Grid Code having regard to the Grid Standards prescribed by the Authority under Section 73. One can multiply these illustrations which exercise we do not wish to undertake. Suffice it to state that, in the light of our analysis of the 2003 Act, hereinabove, the words orders, instructions or directions in Section 121 of the 2003 Act cannot confer power of judicial review under Section 121 to the Tribunal, which, therefore, cannot go into the validity of the impugned Regulations 2006, as rightly held in the impugned judgment”.

48. The above decision would make it clear that even though this Tribunal has no powers to go into the validity of the Regulations framed by the Commissions the powers are vested with this Tribunal to interpret those Regulations. If the Tribunal finds that those Regulations have not been followed by the State Commissions, then this Tribunal certainly has got the powers, to direct the Commissions to perform its statutory functions as per the Regulations. As a matter of fact, this Tribunal is duty-bound to give directions to the Commissions to strictly follow the Regulations to achieve the objective of the Act. The Tribunal can not simply keep quiet as a idle spectator.

If the Tribunal has not given such directions through timely intervention, it would be a dereliction of duty on the part of this Tribunal.

49. Let us now see the other judgments. The next decision is in the case of Uttar Pradesh Power Corporation Ltd Vs NTPC reported as (2009) 6 SCC 235 dated 03 March, 2009 which is as under:

“46. The Concept of regulatory jurisdiction provides for revisit of the tariff. It is now a well-settled principle of law that a subordinate legislation validly made becomes a part of the Act and should be read as such”.

50. In the above decision, the Hon’ble Supreme Court has laid down that subordinate legislation, namely Regulations, validly approved by the legislation, would become the part of the Act and should be read as such.

51. The next decision is in the case of Cellular Operators Association of India vs Union of India reported as (2003) 3 SCC 186 which is as under:

“27. TDSAT was required to exercise its jurisdiction in terms of Section 14A of the Act. TDSAT itself is an expert body and its jurisdiction is wide having regard to sub-section (7) of Section 14A thereof. Its jurisdiction extends to examining the legality, propriety or correctness of a direction/order or decision of the authority in terms of sub-section (2) of Section 14 as also the dispute made in an application under sub-section (1) thereof. The approach of the learned TDSAT, being on the premise that its jurisdiction is limited or akin to the power of judicial review is, therefore, wholly unsustainable. The extent of jurisdiction of a court or a Tribunal depends upon the relevant statute. TDSAT is a creature of a statute. Its jurisdiction is also conferred by a statute. The purpose of creation of TDSAT has expressly been stated by the Parliament in the Amending Act of 2000. TDSAT, thus, failed to take into consideration the amplitude of its jurisdiction and thus misdirected itself in law. TDSAT was required to exercise its jurisdiction in terms of Section 14A of the Act. TDSAT itself is an expert body and its jurisdiction is wide having regard to sub-section (7) of Section 14A thereof. Its jurisdiction extends to examining the legality, propriety or correctness of a direction/order or decision of the authority in terms of sub-section (2) of Section 14 as also the dispute made in an application under sub-section (1) thereof. The approach of the learned TDSAT, being on the premise that its jurisdiction is limited or akin to the power of judicial review is, therefore, wholly unsustainable. The extent of

jurisdiction of a court or a Tribunal depends upon the relevant statute. TDSAT is a creature of a statute. Its jurisdiction is also conferred by a statute. The purpose of creation of TDSAT has expressly been stated by the Parliament in the Amending Act of 2000. TDSAT, thus, failed to take into consideration the amplitude of its jurisdiction and thus misdirected itself in law.

52. In this case the Hon'ble Supreme Court held that TDSAT is an expert body and its jurisdiction is wide and it was required to exercise its jurisdiction as per the provisions of the Act. This would apply to this Tribunal as well.

53. Now let us quote Section 121 of the Electricity Act. The same is reproduced below:

“Section 121 of the Electricity Act.

The Appellate Tribunal may, after hearing the Appropriate Commission, or other interested party, if any, from time to time, issue such orders, instructions, or directions as it may deem fit, to any Appropriate Commission for the performance of its statutory functions under this Act.”

54. This section confers powers to Appellate Tribunal to issue such directions to any Appropriate Commission whenever it

finds that the Commission has not performed its statutory functions. This power has been conferred on this Tribunal to ensure that the statutory functions of the Commission as prescribed under the Act and the Regulations are performed by the Commissions.

55. We will now refer to Section 94 of the Act. It vests extensive powers in the hands of the State Electricity Regulatory Commissions to summon, discover and enforce production of documents/records, receive evidence, etc. In furtherance of those powers various State Electricity Regulatory Commissions have notified Regulations under Section 181 and 94 of the Electricity Act. As stated above, these three State Commissions which have raised the jurisdictional issue, have framed Regulations conferring powers on the Commissions to summon and enforce production of documents, public records and evidence etc, and to direct the Utilities to follow the mandates. In the event of failure to comply with directions,

the Commissions have got the powers to punish those Utilities for non compliance of those directions.

56. It is to be pointed out in this context, that the legislative intent in enacting the Act, 2003 is to secure effective Regulations characterised by tariff rationalisation with timely cost reflective tariff determination based on the principles set out in Section 61 read with the National Tariff Policy. The various provisions such as Section 94, 128, 129, 130, 142 and 146 empower the State Commissions to secure discovery of all relevant materials and enforce directions. Similarly, the respective tariff regulations and conduct of business Regulations notified by the State Commissions have enough provisions to call for and collect information and to enforce directions. Therefore, the hands of the State Commission cannot assumed to be tied-up to prevent them from enforcing the statutory mechanism. There are decided cases by the Hon'ble Supreme Court as well as by this Tribunal in which it is held that the State Commissions have complete powers to

impose conditions, to frame regulations and to issue directions as also to enforce them. The relevant decisions are as under:

(a) The relevant portion of the decision rendered in the case of Maharashtra Electricity Regulatory Commissions V Reliance Energy Ltd reported as (2007) 8 SCC 381 is as under:

“9. The question before us is: what is the power of the and to what extent the Commission can issue directions. Suffice it to say that the Regulatory Commission was constituted under the Electricity Act, 2003. The Act was a new enactment which was promulgated by superseding the Electricity Act, 1910 and the Electricity (Supply) Act, 1948. The statement of objects and Reasons of the Act which have been summarised in the Preamble reads as under:

“An act to consolidate the laws relating to generation, transmission, distribution, trading and use of electricity and generally for taking measures conducive to development of electricity industry, promoting competition therein, protecting interest of consumers and supply of electricity to all areas, rationalisation of electricity tariff, ensuring transparent policies regarding subsidies, promotion of efficient and

environmentally benign policies, constitution of Central Electricity Authority, Regulatory Commissions and establishment of Appellate Tribunal and for matters connected therewith or incidental thereto”.

16. A comprehensive reading of all these provisions leaves no manner of doubt that the Commission is empowered with all powers right from granting licence and laying down the conditions of licence and to frame regulations and to see that the same are properly enforced and also power to enforce the conditions of licence under sub section (6) of Section 128”.

(b) The next decision is in the case of Central Power

Distribution Co. Vs CERC reported as (2007) 8 SCC 197:

“22.3: As already noticed, the Central Commission has the power and function to evolve commercial mechanism such as imposition of UI charges to regulate and discipline. It is well settled that a power to regulate includes within it the power to enforce”

(c) The next decision is in the case of BSES Rajdhani Power Ltd Vs Delhi Electricity Regulatory Commission & Anr reported as (2009) ELR (APTEL) 0352: The relevant observations are as follows:

“18. To find out the answer for this question, it is appropriate to refer to the relevant observations made by the Supreme Court in 2007 8 SCC 381,

MSEDC Vs. Reliance Energy Ltd. and the same is contained in para 18, which is as follows:

“There can be no manner of doubt that the Commission has full powers to pull up any of its licensee to see that the rules and Regulations laid down by the Commission are properly complied with. After all, it is the duty of the Commission under Sections 45(5), 52, 55(2), 57, 62, 86, 128, 129, 181 and other provisions of the Act to ensure that the public is not harassed

The above observation would clearly indicate that the Supreme Court endorses the power of the State Commission to pull up the licensee/distribution company and punish them, whenever the Commission finds that there are violations of rules and Regulations, and licensing conditions framed by the State Commission. It is further mandated by the Supreme Court that it is the duty of the State Commission to take action against the distribution licensees who harass the consumer public, by violating the rules and conditions under the powers conferred under the Sections 45, 52, 55, 57, 62, 86, 128, 129 and 181 of the Act. In other words, the Supreme Court gives clear indication about the existence of the independent powers of the State Commission to deal with breach of licensing conditions and Regulations by the distribution licensees to protect the interest of the public.

57. This Tribunal has repeatedly held that regular and timely triuing-up expenses must be done since:

(a) No projection can be so accurate as to equal the real situation.

(b) The burden/benefits of the past years must not be passed on to the consumers of the future.

(c) Delays in timely determination of tariff and truing-up entails:

(i) Imposing an underserved carrying cost burden to the consumers, as is also recognised by para 5.3 (h) (4) of National Tariff Policy.

(ii) Cash flow problems for the licensees.

58. A similar position is reflected in the tariff Regulations framed by various State Commissions. These regulations

would stipulate that the approved gains and losses have to be passed through the tariff following the True-up.

59. Tariff determination ought to be treated as a time bound exercise. If there is any lack of diligence on the part of the Utilities which has led to the delay, the State Commission must play a pro-active role in ensuring the compliance of the provisions of the Act, Regulations and the Statutory Policies under the Electricity Act, 2003.

60. In the absence of the performance of functions and duties enjoined under the Act and Regulations by the State Commission, it is the duty of the Tribunal to intervene and wake them up from their deep slumber and to make them act to ensure that the Regulations are being followed scrupulously by the Commissions as well as the Utilities.

61. It is quite strange on the part of the State Commissions to contend that they may not follow their own Regulations as they

would not prevail over Section 64 of the Act and therefore, they have to keep quite without taking any steps for performing their functions. This plea is made by these Commissions even though they have got the powers to take a suo-moto action for determination of tariff by virtue of the Regulations and the policies. As indicated above, Section 64 provides for procedure to ultimately achieve the purpose which is more important. It is quite surprising to notice that the State Commissions have taken up the stand to plead before this Tribunal that their own Regulations are wrong. How can they take such a stand, so long as those Regulations approved by the legislature are in force? This monstrous plea taken by the three State Commissions would indicate only one thing i.e. State Commissions have ventured to give mere lame excuses for non performance of their statutory duties. In such a surprising and shocking situation, it becomes our bounden duty to invoke the powers under section 121 of the Act, to intervene and to put the house in proper order.

62. Let us now refer to some of the strange features that we noticed from the information furnished by the State Commissions. It is seen that some of the Commissions are leaving uncovered revenue gap in the ARR as a routine, with or without creating regulatory assets. The interest charges on the regulatory assets are also not being allowed in the ARR of the Tariff Order. This, in our view, is not in order as it may create a problem of cash flow for the distribution licensees which are already burdened with heavy debts. The cash flow problem may result in constraints in procurement of power by the distribution licensees and operation and maintenance of the distribution net work affecting the reliability of power supply to the consumers. This Tribunal in a recent Judgment in Appeal no. 192 of 2010 dated 28.07.2011 in the matter of Tamil Nadu Electricity Consumers' Association vs. Tamil Nadu Electricity Board, etc. has dealt with the issue of Regulatory Assets. The relevant extracts are reproduced below:

“8.4. Let us first examine the provisions of the Tariff Policy in this regard. The relevant extracts are as under:

“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”.

The Tariff Policy stipulates creation of the regulatory asset only as an exception subject to the guidelines specified above. According to the guidelines the circumstances under which the regulatory assets should be created are under natural causes or force majeure conditions.”

“8.8. We are of the opinion that the regulatory asset created by the State Commission is not in consonance with the Tariff Policy and its own Regulations. Moreover, the impugned order does not provide for recovery of the regulatory assets with the carrying cost as envisaged in the Regulations and the Tariff Policy.”

“8.10. Now, the question arises whether the creation of the regulatory asset is in the interest of the distribution company and the consumers. The respondent no. 1 will

have to raise debt to meet its revenue shortfall for meeting its O&M expenses, power purchase costs and system augmentation works. It is not understood how the respondent no. 1 will service its debts when no recovery of the regulatory asset and carrying cost has been allowed in the ARR. Thus, the respondent no. 1 will suffer with cash flow problem affecting its operations and power procurement which will also have an adverse effect on maintaining a reliable power supply to the consumers. Thus, creation of the regulatory asset will neither be in the interest of the respondent no. 1 nor the consumers. “

“8.12. According to Shri Rajah, learned Senior counsel for the appellants, the regulatory assets could not be created for the anticipated shortfall in revenue. We are in agreement with the contention of the Senior counsel. The Regulations clearly state that the Regulatory Asset can be created when the licensee could not fully recover the reasonably incurred cost at tariff allowed for reasons

beyond his control under natural calamities and force majeure conditions. Thus, we hold that the creation of the regulatory assets on the basis of projected shortfall in revenue, that too without any directions for time bound recovery for the regulatory asset alongwith its carrying cost, is in contravention of the Tariff Policy and the 2005 Regulations”.

63. In this case the Tribunal held that the regulatory asset created by the State Commission was not in consonance with the Tariff Policy and the Tariff Regulations of the State Commission which clearly define the circumstances under which the regulatory asset can be created. Further, the creation of the regulatory asset without any directions for carrying cost and time bound recovery was neither in the interest of the distribution licensee nor the consumers.

64. We also notice that most of the State Commissions have not provided in their Regulations Fuel & Power Purchase Cost

Adjustment Formula for allowing the increase in fuel and power purchase cost during the tariff year. The fuel and power purchase cost adjustment mechanism provided in most of the states is after completion of the financial year through a separate proceeding which takes a long time. The power purchase cost is a major expenditure in the ARR of the distribution licensee. The fuel and power purchase cost is also uncontrollable and it has to be allowed as quickly as possible according to the Tariff Policy. The Electricity Act, 2003 under Section 62(4) has specific provision for amendment of the tariff more frequently than once in any financial year in terms of Fuel Surcharge Formula specified by the Regulations. A major part of power procured by the distribution company comes from the Central Sector Generating Companies whose tariff is regulated by the Central Commission and the State owned Generation Companies whose tariff is regulated by the State Commissions. The Central Commission in its Tariff Regulations has already provided a formula for fuel price adjustment and the charges of the generation companies are increased as and when the fuel

prices are increased. In view of the present precarious financial conditions of the distribution companies, it would be necessary that the State Commissions also to provide for Power Purchase Cost Adjustment Formula as intended in the section 62(4) of the Act to compensate the distribution companies for the increase in cost of power procurement during the financial year. In the above situation, as indicated above it has become necessary for this Tribunal to give appropriate directions, to correct this situation by invoking the powers under Section 121 of the Act which is permissible under law. So, the second question is also answered accordingly.

65. In view of the analysis and discussion made above, we deem it fit to issue the following directions to the State Commissions:

(i) Every State Commission has to ensure that Annual Performance Review, true-up of past expenses and Annual Revenue Requirement and tariff

determination is conducted year to year basis as per the time schedule specified in the Regulations.

(ii) It should be the endeavour of every State Commission to ensure that the tariff for the financial year is decided before 1st April of the tariff year. For example, the ARR & tariff for the financial year 2011-12 should be decided before 1st April, 2011. The State Commission could consider making the tariff applicable only till the end of the financial year so that the licensees remain vigilant to follow the time schedule for filing of the application for determination of ARR/tariff.

(iii) In the event of delay in filing of the ARR, truing-up and Annual Performance Review, one month beyond the scheduled date of submission of the petition, the State Commission must initiate suo-moto proceedings for tariff determination in accordance

with Section 64 of the Act read with clause 8.1 (7) of the Tariff Policy.

(iv) In determination of ARR/tariff, the revenue gaps ought not to be left and Regulatory Asset should not be created as a matter of course except where it is justifiable, in accordance with the Tariff Policy and the Regulations. The recovery of the Regulatory Asset should be time bound and within a period not exceeding three years at the most and preferably within Control Period. Carrying cost of the Regulatory Asset should be allowed to the utilities in the ARR of the year in which the Regulatory Assets are created to avoid problem of cash flow to the distribution licensee.

(v) Truing up should be carried out regularly and preferably every year. For example, truing up for the

financial year 2009-10 should be carried out along with the ARR and tariff determination for the financial year 2011-12.

(vi) Fuel and Power Purchase cost is a major expense of the distribution Company which is uncontrollable. Every State Commission must have in place a mechanism for Fuel and Power Purchase cost in terms of Section 62 (4) of the Act. The Fuel and Power Purchase cost adjustment should preferably be on monthly basis on the lines of the Central Commission's Regulations for the generating companies but in no case exceeding a quarter. Any State Commission which does not already have such formula/mechanism in place must within 6 months of the date of this order must put in place such formula/mechanism.

66. We direct all the State Commissions to follow these directions scrupulously, and send the periodical reports by 1st June of the relevant financial year about the compliance of these directions to the Secretary, Forum of Regulators, who in turn will send the status report to this Tribunal and also place it on its website.

67. Before parting with this case, we are duty bound to record our heartfelt appreciation for the services rendered by all the learned Amicus Curiae Counsel namely **Mr. M G Ramachandran, Mr. R K Mehta , Mr. Amit Kapur, and Mr. Buddy A Ranganadhan** who made thorough preparation and filed their written submissions to enable this Tribunal to have a clarity over the core of the issues and to give suitable directions to all the State Commissions on a proper conclusion.

68. In particular, we shall make a special mention about Mr. **Amit Kapur**, the learned Amicus Curiae Counsel who argued the matter elaborately and effectively in a lucid language for a

number of days on behalf of all the Amicus Curiae Counsel which made our task easy. We express our gratitude to all the Amicus Curiae Counsel, who have rendered valuable services by taking enormous pain for preparation and presentation of the matter on all the hearings which were held on several days.

69. In view of their contribution, we feel that they are to be suitably remunerated. In fact they have not only spent time during several hearings but also they would have incurred expenditure in preparing the documents and copies of Regulations of all the State Commissions in all over India and filing the same in the spiral bound form in several volumes. Therefore, we deem it appropriate to fix their legal fees at Rs.1 lac each for all the 4 Amicus Curiae Counsel. Accordingly, the Registry is directed to pay the amount of Rs.1 lac each to the learned Amicus Curiae Counsel.

70. It is also our duty to record our appreciation for the prompt services rendered by the **Secretary of Forum of**

Regulators who collected all data and information from all the State Commissions and placed it before the Tribunal.

71. Similarly, the initiative taken by **Mr. P. Uma Shankar, the Secretary of the Power Ministry** to send a letter to this Tribunal giving the details about the snail-speed functioning of the various State Commissions and requesting us to intervene and to give suitable directions to all the State Commissions, which gave opportunity for us to deal with these legal as well as the technical issues in depth, and to give appropriate directions to make the statutory authorities functional, is quite commendable. Accordingly, we record our appreciation over the anxiety shown by the Power Ministry to take steps to make the Power Sector in whole of India more effective and energetic.

72. Similarly, we have to appreciate the learned Counsel appearing for the three State Commissions for having

presented the case well, even though we did not accept their plea made on behalf of these Commissions.

73. The Registry is directed to send copies of this judgment to all the State Commissions and the Secretary of the Forum of Regulators as well as to the Secretary of the Power Ministry and to the learned Amicus Curiae Counsel.

74. With these observations, this suo-moto petition is disposed of.

(V J Talwar)
Technical Member

(Rakesh Nath)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

Dated: 11th Nov, 2011

REPORTABLE/NON-REPORTABLE



Chhattisgarh State Electricity Regulatory Commission
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Petition No. 22 of 2021

In the matter of:

Determination of provisional tariff for sale of power to Chhattisgarh State Power Distribution Company Limited by M/s Madhya Bharat Power Corporation Ltd., from its 113 MW (2x56.5MW) Rongnichu Hydro-Electric Project situated in Sikkim.

M/s Madhya Bharat Power Corporation Ltd.		Petitioner
V.		
M/s Chhattisgarh State Power Distribution Co. Ltd. and other		Respondent

PRESENT : **Hemant Verma, Chairman**
Vinod Deshmukh, Member (Judicial)
Pramod Kumar Gupta, Member

APPEARANCE : Shri Sanjay Sen, Sr. Counsel, Shri Matrugupta Mishra, Counsel alongwith Shri Partho Dutta Gupta for petitioner
 Shri Abhinav Kardekar, Ms. Gurpreet Chawla, Counsels alongwith Shri Biplub Dutta, EE for respondent

Order
(Passed on 22/09/2021)

This order is passed in the petition filed by M/s Madhya Bharat Power Corporation Ltd (herein after referred as MBPCL or petitioner) for determination of provisional tariff of its 113 MW (2x56.5MW) Rongnichu Hydro-Electric Project situated in East Sikkim. The petition is filed under Sections 62 of the Electricity Act 2003 and Chhattisgarh State Electricity Regulatory Commission (Terms and Conditions for determination of tariff according to Multi-Year Tariff principles and Methodology and Procedure for determination of Expected revenue from Tariff and Charges) Regulations, 2015.

2. The Petitioner M/s MBPCL is a company incorporated under the Companies Act 1956 is a generating company under Section 2(28) of the Electricity Act 2003.

3. The Respondent, Chhattisgarh State Power Distribution Company Limited (hereinafter referred to as the “Respondent or CSPDCL”), is a company registered under the Companies Act, 1956 and functions as distribution licensee in the State of Chhattisgarh for supply of electricity.
4. The Government of Sikkim issued Letter of Intent (LoI) dated 01/03/2005 to MBPCL for implementation of the Rongnichu Hydro Electric Project on a Build, Own, Operate and Transfer (‘BOOT’) basis.
5. The MBPCL entered into an Implementation Agreement with the Government of Sikkim on 01/03/2006 for implementation and development of 96 MW Rognichu Hydro Electric Project.
6. The Detailed Project Report DPR of 96 MW hydel project was approved and Techno-Economic Clearance (TEC) was granted for the project cost of Rs. 492.32 crore on 01.10.2008 by the Energy & Power Department, Government of Sikkim (GoS).
7. The Petitioner based on the hydrology specified in approved DPR, revised the power potential of the Project from 96 MW to 115 MW and submitted the same to the GoS for approval.
8. The Government of Sikkim granted a No Objection Certificate (NOC) on 26.07.2019 for enhancement of the power potential from 96 MW to 115 MW.
9. MBPCL considering the Guaranteed Technical Parameters (GTP) of the generator, found it feasible to generate 113 MW from it.
10. MBPCL has approached Central Electricity Authority (CEA) for TEC of the above enhanced capacity of the project. CEA vide letter dated 17.11.2020, communicated the petitioner that as TEC was initially granted by the Government of Sikkim, the requisite approval may be obtained from the Government of Sikkim only.
11. Accordingly, Govt. of Sikkim vide letter dated 15/06/2020 accorded TEC to revised project capacity of 113 MW for project cost of Rs. 1453.34 crore.
12. The Petitioner has executed Power Purchase Agreement dated 04.01.2020 with the Respondent for supply of 96 MW of power, generated from the Project, for a period of 35 years. Subsequently, the filed a petition no. 52 of 2020 for approval of the PPA. During the pendency of the petition, the petitioner requested for amendment in the PPA for procurement of the 113 MW which has been accepted by the petitioner and allowed by the Commission. The order in this petition was passed on 31/03/2021. Accordingly, parties have entered in supplementary PPA on 28/05/2021, for supply of 113 MW.
13. MBPCL filed the instant petition on 06/03/2021 for determination of provisional tariff for supply of power to respondent as per PPA including supplementary PPA. The same was registered as Petition no. 22 of 2021.
14. Meanwhile during the pendency of this petition, Unit – 1 and Unit – 2 of the petitioner's power station had achieved COD on 25.06.2021 and 30.06.2021 respectively.
15. As a part of regulatory process, notices were published in the newspapers and copy of the petition was uploaded on the Commission's website for inviting objections/suggestions

from stakeholders. In response to the public notice, CSPDCL has filed objections/suggestions to the petition.

16. Objections/suggestions of the CSPDCL were mainly on following issues:

- a. Time overrun
- b. Land acquisition
- c. Geological surprises
- d. Change in civil and E&M contractors and litigation
- e. Funding issues
- f. Lockdown on account of Covid-19 pandemic
- g. COD
- h. Cost overrun
- i. Civil works
- j. Increase in insurance cost
- k. Establishment and E&M works
- l. Interest during construction
- m. Margin money for working capital
- n. Free power to home state
- o. Debt-Equity ratio

17. A public hearing on this petition was conducted on 26/08/2021. During hearing, MBPCL prayed for granting leave for filing rejoinder to the objections/suggestions filed by the CSPDCL during the determination of final tariff with the request for disposing the present petition.

18. CSPDCL submitted that they have no objection if provisional tariff is determined at this stage and agreed that the petitioner may be allowed to file rejoinder at the time of the disposal of the petition filed for determination of final tariff.

19. Considering the above submissions, the Commission decides to determine the provisional tariff in the present petition in accordance with the CSERC MYT Regulation, 2015. While computing the provisional tariff from 25.06.2021 to 31.03.2022, the Commission has segregated this duration in two parts (i) duration from 25.06.2021 to 29.06.2021 and (ii) duration from 30.06.2021 to 31.03.2022 as the Unit – 1 and Unit – 2 achieved COD on 25.06.2021 and 30.06.2021 respectively.

20. Capital Cost of the Project

Petitioner's submission

The Petitioner has submitted capital cost of Rs. 1620.73 Crore as on anticipated COD and computed the provisional tariff accordingly by condoning the delay in the execution of the project.

Commission's View

The petitioner vide submission dated 07.08.2021 has submitted audited accounts of the expenditure incurred upto 31/03/2021. According to this audited account, gross expenditure incurred on the project as on 31.03.2021 is Rs.1574.66 crore. CSERC MYT

Regulation 2015, does not specifies principles for determination of capital cost for provisional tariff. Here, it is also pertinent to mention that Section 61 of the Electricity Act 2003, provides that State Commissions shall be guided by the principles and methodology specified by the Central Commission while specifying the terms and conditions for determination of tariff. It may be worthy to mention that the senior counsel of petitioner during the course of hearing has submitted that the Central Commission considers 85% of the project cost for determination of provisional tariff. Accordingly, capital cost for determination of provisional tariff has been decided on the basis of principles followed by Central Commission while passing the order dated 07/08/2018 passed in petition no. 43/GT/2018 in respect of petition filed for provisional tariff for Kishanganga HE Project (330 MW). The relevant para of the order is reproduced below.

".....However, in view of the fact that capital cost for the purpose of provisional tariff has been allowed as 85% of cash expenditure as per latest available balance sheet, the deviated norms shall be applied on the same base....."

In the present petition, the latest audited expenditures incurred is Rs. 1574.66 crore, hence, we have considered an amount of Rs. 1338.46 crore (which is 85% of the Rs. 1574.66 Crore) as project cost for determination of provisional tariff. It may be noted that the project cost considered for determination of provisional tariff is less than the project cost approved by Govt. of Sikkim which is Rs. 1453.34 Crore. Consideration of approved project cost by Govt. of Sikkim is also provisional subject to prudence check by the Commission during final tariff determination.

21. **Return on Equity (RoE)**

Petitioner’s Submission

Petitioner has considered RoE @ 15.5% in accordance with the clause 22 of the MYT Regulations 2015 considering MAT rate @ nil. Submission of petitioner is as given in table below:

Table-1: RoE as submitted by the petitioner (Rs. Crore)

S. No.	Return on Equity	From 15.05.2021 to 31.03.2022 (Pro rata)
1.	Opening Equity	486.22
2.	Additions during the year	0.00
3.	Closing Equity	486.22
4.	Average Equity	486.22
5.	Rate of Return of Equity	15.50%
6.	MAT Rate	0.00%
7.	Effective rate of return on Equity	15.50%
8.	Return on Equity	66.28

Commission's View

The Commission has considered RoE @ 15.5% with MAT rate @ nil as per submission of the petitioner. While computing RoE, Commission has considered equity amount of Rs.200.77 crore for 5 days i.e. 25/06/2021 to 29/06/2021 and equity amount of Rs.401.54 crore for 275 days i.e. 30/06/2021 to 31/03/2022. Accordingly, computed an amount of Rs. 0.43 crore for 5 days and Rs. 46.89 crore for 275 days as RoE respectively. The computation of RoE is given in table below:

Table-2: RoE as approved by the Commission (Rs. Crore)

S. No.	Return on Equity	Up to 29.06.2021 (Unit - 1)	from 30.06.2021 to 31/03/2022 (Unit - 1 & Unit - 2)
1.	Opening Equity	200.77	401.54
2.	Additions during the year	0	0
3.	Closing Equity	200.77	401.54
4.	Average Equity	200.77	401.54
5.	Rate of Return of Equity	15.50%	15.50%
6.	MAT Rate	0.00%	0.00%
7.	Effective rate of return on Equity	15.50%	15.50%
8.	Return on Equity	0.43	46.89
9.	Total for FY 2021-22 (From 25.06.2021 to 31.03.2022)		47.32

22. Interest on loan**Petitioner's Submission**

Petitioner has considered interest of Rs. 127.88 crore @ of 13.03% on loan amount of Rs. 1134.51 crore as given in table below:

Table-3: Interest on loan as submitted by the petitioner (Rs. Crore)

S. No.	Interest on Loan	From 15.05.2021 to 31.03.2022 (Pro rata)
1.	Gross Loan	1134.51
2.	Cumulative repayment upto previous years	0.00
3.	Net Normative Loan opening	1134.51
4.	Addition	0.00
5.	Repayment during the year	60.91
6.	Net Normative Loan closing	1073.61
7.	Average Loan	1104.06
8.	Rate of Interest	13.03%
9.	Interest on Loan	127.88

Commission's View

The Commission has provisionally considered interest on loan @ 13.03%. As this interest rate is higher than the interest rate on the long term loans of State owned generating company i.e. CSPGCL and also higher than prevailing market interest rate in general. This issue of higher interest is also raised by the CSPDCL. In view of this, in the interest of the consumers of the State, the Commission directs MBPCL to make its effort to refinance the long term loans with loans of lower interest rate.

While computing interest on loan, Commission has considered loan amount of Rs.468.27 crore for 5 days i.e. 25/06/2021 to 29/06/2021 and loan amount of Rs.915.39 crore for 275 days i.e. 30/06/2021 to 31/03/2022. Accordingly, allowed an amount of Rs.0.84 crore for 5 days and an amount of Rs.89.87 crore for 275 days as interest on loan and the same is as given in the table below:

Table-4: Interest on loan as approved by the Commission (Rs. Crore)

S. No.	Particulars	Up to 29.06.2021 (Unit - 1)	from 30.06.2021 to 31/03/2022 (Unit - 1 & Unit - 2)
1.	Gross Loan	468.46	936.92
2.	Cumulative repayment upto previous years	0	0
3.	Net Normative Loan opening	468.46	936.92
4.	Addition	0	0
5.	Repayment during the year	0.39	43.06
6.	Net Normative Loan closing	468.07	893.86
7.	Average Loan	468.27	915.39
8.	Rate of Interest	13.03%	13.03%
9.	Interest on Loan	0.84	89.87
10.	Total for FY 2021-22 (From 25.06.2021 to 31.03.2022)		90.71

23. Depreciation

Petitioner's Submission

Petitioner has submitted that he has claimed depreciation in accordance with the Regulation 24 of the MYT Regulations 2015 as given in the table below:

Table-5: Depreciation as submitted by the petitioner (Rs. Crore)

S. No.	Depreciation	From 15.05.2021 to 31.03.2022 (Pro rata)
1.	Opening GFA	1620.73
2.	Additions	0.00
3.	Closing GFA	1620.73
4.	Average GFA	1620.73
5.	Useful life of the project	35
6.	Freehold land	0.00
7.	Rate of Depreciation	4.27%
8.	Depreciation	60.91

Commission's View

Commission has considered the submission of the petitioner and approved depreciation as given in table below:

Table-6: Depreciation as approved by Commission (Rs. Crore)

S. No.	Particulars	Up to 29.06.2021 (Unit - 1)	from 30.06.2021 to 31/03/2022 (Unit - 1 & Unit - 2)
1.	Opening GFA	669.23	1338.46
2.	Additions	0	0
3.	Closing GFA	669.23	1338.46
4.	Average GFA	669.23	1338.46
5.	Useful life of the project	35	35
6.	Freehold land	0	0
7.	Rate of Depreciation	4.27%	4.27%
8.	Depreciation	0.39	43.06
9.	Total for FY 2021-22 (From 25.06.2021 to 31.03.2022)		43.45

24. Interest on working capital

Petitioner's Submission

Petitioner claimed interest on Working Capital as per Regulation 25 of the MYT Regulations 2015. Accordingly, the interest on working capital is derived at the prevailing SBI base rate as on 30.09.2020 i.e. 7.40 % plus 350 basis points which corresponds to 10.90%. Interest on Working Capital as submitted by the petitioner is as given in table below:

Table-7: Interest on working Capital as submitted by the petitioner (Rs. crore)

S. No.	Interest on Working Capital	From 15.05.2021 to 31.03.2022 (Pro rata)
1.	O&M expenses (1month)	2.020
2.	Maintenance Spares @ 40%	9.696
3.	Receivable (1 month)	26.54
4.	Total	38.25
5.	Rate of IOWC	10.90%
6.	Interest on Working Capital	3.67

Commission's View

Commission has considered the submission of the petitioner. Accordingly, interest rate of 10.90% is allowed as interest on working capital. Interest on working capital as computed by the Commission is as given in the table below:

Table-8: Interest on Working Capital as approved by the Commission (Rs. Crore)

S. No.	Particulars	Up to 29.06.2021 (Unit - 1)	from 30.06.2021 to 31/03/2022 (Unit - 1 & Unit - 2)
1.	O&M expenses (1month)	0.14	1.64
2.	Maintenance Spares @ 40% of O&M	0.05	6.03
3.	Receivable (1 month)	0.19	21.52
4.	Total	0.38	29.20
5.	Rate of IoWC	10.90%	10.90%
6.	Interest on Working Capital	0.00	2.40
7.	Total for FY 2021-22 (From 25.06.2021 to 31.03.2022)		2.40

25. Operation and Maintenance Expenses**Petitioner's Submission**

Petitioner has claimed Operation and Maintenance (O&M) expenses in accordance with Regulation 38.5.3 of the MYT Regulations 2015. Accordingly, for the purpose of O&M expenses calculation, petitioner has deducted the R&R cost of INR 4.66 Cr from the Capital cost of the Project as on COD.

Table-9: O&M expenses as submitted by MBPCL (Rs crore)

S. No.	O&M Expenses	From 15.05.2021 to 31.03.2022 (Pro rata)
1.	Capital cost of the project	1620.73
2.	R&R cost	4.66
3.	O&M expenses	21.32

Commission's View

Commission has considered the submission of the petitioner and approved O&M expenses as given in table below:

Table-10: O&M expenses as approved by the Commission (Rs crore)

S. No.	Particulars	Up to 29.06.2021 (Unit - 1)	from 30.06.2021 to 31/03/2022 (Unit - 1 & Unit - 2)
1.	Capital cost of the project	669.23	1338.46
2.	R&R cost	2.33	4.66
3.	Capital cost eligible for consideration of O&M expenses	666.90	1333.80
4.	Normative O&M expenses=1.5% of the project cost excluding R&R expenses	1.50%	1.50%
5.	O&M expenses	0.14	15.07
6.	Total for FY 2021-22 (From 25.06.2021 to 31.03.2022)		15.21

26. Design Energy of the Plant

Petitioner’s Submission

The petitioner has submitted that the Project is a Run of River (ROR) scheme project having design Energy of 340.66 MUs on 90% dependable year. In addition to the design energy, petitioner has considered secondary energy of 68.44 MU for FY 2021-22 from the date of anticipated CoD i.e 15.05.2021. Petitioner has considered revenue on secondary energy @ Rs. 1.20/kWh.

Commission’s View

The Commission has considered the submission and computed design energy for FY 2021-22 (from 25/06/2021 to 31/03/2022) as 261.328 MU at generator terminal. It is to mention here that petitioner has considered secondary energy of 68.44 MU for FY 2021-22 from the date of anticipated CoD i.e 15.05.2021. As the actual CoD of the plant is on 25.06.2021 (Unit – 1) and 30.06.2021 (Unit – 2), the Commission has reassessed the secondary energy as 59.00 MU (pro-rata basis). Considering the submission of the petitioner, total energy at generator terminal and Ex-Bus for FY 2021-22 are computed as 320.328 MU and as 317.125 MU respectively.

27. Normative Annual Plant Availability Factor (NAPAF)

Petitioner’s Submission

The Project is a Run of River (ROR) scheme project having design Energy of 340.66 MUs capable of providing 3 hours peaking capacity to the project. In accordance to 10 daily flow of the river in 90% dependable year, the NAPAF of the project worked out as 78%.

Commission’s View

The Commission has provisionally accepted the NAPAF of 78% as submitted by the petitioner.

28. Auxiliary Energy Consumption

Petitioner’s Submission

Petitioner has claimed auxiliary energy consumption @1% of total energy generated in accordance with the provision in clause 40.4 in the MYT regulations 2015.

Commission’s View

The submission of the petitioner has been considered and computation of Ex-Bus energy is as given in table below:

Table-11: Auxiliary Consumption as approved by the Commission

S. No.	Particulars	Unit	Up to 29.06.2021 (Unit - 1)	from 30.06.2021 to 31/03/2022 (Unit - 1 & Unit - 2)
1.	Design Energy (Generator Terminal)	MU	4.667	256.662
2.	Normative Auxiliary Energy Consumption	%	1.0%	1.0%
3.	Normative Auxiliary Energy Consumption	MU	0.047	2.567
4.	Design Energy (Ex-Bus)	MU	4.620	254.095
5.	Secondary Energy (Generator Terminal)	MU	1.054	57.946
6.	Energy (Generator Terminal)	MU	5.720	314.608
7.	Total Energy (Generator Terminal)	MU		320.328
8.	Total Ex-Bus Energy for FY 2021-22	MU		317.125

29. Free power to home state

Petitioner’s Submission

Petitioner has submitted that as per the Implementation agreement entered between MBPCL and GoS on 01.03.2006, petitioner has to provide free power or money equivalent thereof 12% free power for first 15th years and 15% free power for the 16th to 35th years. Further, the Petitioner vide letter dated 15.04.2019, has requested GoS to defer its claim on Free power from the project given the extended timelines of the project stating that due to force majeure events project commissioning and completion got delayed consequently project cost increased. The company requested Govt. of Sikkim that due to high capital cost incurred on the project, because of the force majeure reasons, there would be increased outflow of fund in the initial 12-15 years from commissioning of the project. The company requested Government to defer the off take of free power share of Government.

GOS has accepted the request of the Petitioner and agreed to defer the payment of 9% (out of 12%) of its share of the free power for the initial 10 years. From 11th to 25th year the payment of the 9% deferred power will be recovered in 15 equal instalments with additional 1% free power. Free power to the home state is scheduled to be supplied as stipulated below;

Table-12: Details of the free power to home state as submitted by the petitioner

S. NO.	Period	Free Power to be supplied to Home state (Sikkim)	Company's free power supply obligation to the Govt.	Deferred Quantum of free power	Receivable by the Govt.
1.	COD to 10 th Year	12%	3%	9%	Money in Lieu of 3% of free power
2.	11 th to 15 th Year	12%	12%	Nil	Annual Installment +Additional 1% free power +12% free power entitlement
3.	16 th to 20 th Year	15%	15%	Nil	Annual Installment +Additional 1% free power +15% free power entitlement
4.	21 st to 25 th Year	15%	15%	Nil	Annual Installment +Additional 1% free power +15% free power entitlement
5.	26 th to 35 th year	15%	15%	Nil	15% free power entitlement

Commission's View

Commission has considered the submission of the petitioner. It is observed that petitioner has requested the Govt. of Sikkim for deferment of off take of free power so that deferred amount may be utilized to serve the debt taken for the project. As this arrangement is the bilateral agreed arrangement between petitioner and GoS, it will not affect the liability of CSPDCL for payment of 12% free power upto 15th year and 15% free power for the 16th to 35th years of the project. Hence, Annual Fixed Cost is being computed considering 12% free power to home state for FY 2021-22, accordingly, provision has been made in the AFC. As the benefit of the deferment of off take is being utilized by the petitioner, the cost of deferment shall be borne by the petitioner only. The issue raised by CSPDCL in its objection regarding the free power commitment of the petitioner to the home State shall be dealt during determination of final tariff.

30. Tariff from Secondary Energy

Petitioner's Submission

The petitioner has considered revenue from secondary energy @Rs.1.20/kWh.

Commission's View

There is no specific provision for energy charge rate for secondary energy in the CSERC MYT Regulation, 2015, therefore, the Commission has relied upon the Centre Commission

MYT Regulation, 2019 for this purpose. Hence, petitioner is allowed to bill secondary energy @ Rs. 1.20/kWh as provided at clause no 60 of CERC MYT Regulation 2019.

31. Annual Fixed Cost (AFC)

Petitioner's Submission

Petitioner has submitted tariff calculation based on capital cost of the project as Rs. 1620.73 crore and accordingly, prayed for a levelised tariff of Rs.6.88 per kWh for 35 years plant operation. The petitioner has considered secondary energy charge @Rs.1.20/kWh.

Commission's View

It is observed that petitioner has prayed for levelised tariff for the entire useful life of the plant but there is no such provision in the CSERC MYT Regulations 2015. Hence, the Commission is not accepting the petitioner's prayer for levelised tariff. However, we will take a final decision on this issue at the time of determining the final tariff.

At present, Commission is computing Annual fixed cost (AFC) of the plant based on various components of expenses, the summary of provisional AFC for FY 2021-22 is given in the table below:

Table-13: AFC as approved by the Commission (Rs. Crore)

S. No.	Particulars	Up to 29.06.2021 (Unit - 1)	from 30.06.2021 to 31.03.2022 (Unit - 1 & Unit - 2)	Total for FY 2021-22 (From 25.06.2021 to 31.03.2022)
1.	Return on Equity	0.43	46.89	47.32
2.	Interest on Loan	0.84	89.87	90.71
3.	Depreciation	0.39	43.06	43.45
4.	O&M expenses	0.14	15.07	15.21
5.	Interest on Working Capital	0.00	2.40	2.40
6.	Sub-Total	1.79	197.29	199.08
7.	Add cost of 12% free power to home state @ Rs.6.499/kWh corresponding to design energy	0.360	19.815	20.176
8.	Annual Fixed Charge	2.150	217.105	219.256
9.	Add cost of 12% free power to home state @ Rs.6.499/kWh corresponding to secondary energy	0.081	4.474	4.555
10.	Add cost of secondary energy	0.125	6.884	7.009
11.	Annual Revenue Requirement	2.357	228.463	230.820

32. Methodology for recovery of Annual Fixed Cost

As there is no provision for recovery of capacity charge and energy charge in the CSERC MYT Regulation, 2015, the Commission has relied on CERC MYT Regulation, 2015. Hence, petitioner is allowed to recover the Capacity Charge and Energy Charge as per the methodology specified as under:

- (i) The Annual fixed cost of Rs. 219.256 crore shall be recovered on monthly basis under capacity charge (inclusive of incentive) and energy charge.
- (ii) The capacity charge (inclusive of incentive) payable to a hydro generating station for a calendar month shall be:

$AFC \times 0.5 \times NDM / NDY \times (PAFM / NAPAF)$ (in Rupees) Where,

- AFC = Annual fixed cost specified for the year, in Rupees
- NAPAF = Normative plant availability factor in percentage
- NDM = Number of days in the month
- NDY = Number of days in the year
- PAFM = Plant availability factor achieved during the month, in percentage

- (iii) The PAFM shall be computed in accordance with the following formula:
N

$$PAFM = \frac{10000 \times \sum_{i=1}^N DC_i}{N \times IC \times (100 - AUX)} \%$$

Where

- AUX = Normative auxiliary energy consumption in percentage
- DC_i = Declared capacity (in ex-bus MW) for the ⁱth day of the month which the station can deliver for at least three (3) hours, as certified by the nodal load dispatch centre after the day is over.
- IC = Installed capacity (in MW) of the complete generating station
- N = Number of days in the month

- (iv) The energy charge shall be payable for the total energy scheduled to be supplied to the beneficiary during the calendar month, on ex-bus basis, at the computed energy charge rate. Total energy charge payable to the generating company for a month shall be:

$$\text{Energy Charges} = (\text{Energy charge rate in Rs. / kWh}) \times \{\text{Scheduled energy (ex-bus) for the month in kWh}\}$$

- (v) Energy charge rate (ECR) in Rupees per kWh on ex-power plant basis, for a hydro generating station, shall be determined up to three decimal places based on the following formula:

$$ECR = AFC \times 0.5 \times 10 / \{DE \times (100 - AUX)\}$$

Where,

DE = Annual design energy specified for the hydro generating station, in MWh,

Note: in case of any difficulty in relation to the recovery of capacity charge and energy charge, CERC MYT Regulation, 2019 shall be referred.

33. Tariff for payment to MBPCL by CSPDCL towards 12% free power to home state

For computing average energy charge rate for FY 2021-22 for payment by CSPDCL to MBPCL towards 12% free power to home State, the Commission has considered total revenue of Rs. 206.089 crore from 317.125 MU which transforms to energy charge rate of Rs. 6.499/kWh. Hence, CSPDCL shall pay @ Rs. 6.499/kWh monthly basis to MBPCL towards 12% free power to home State apart from payment of capacity charge and energy charge as specified in this order.

34. Reimbursement of expenditure

Petitioner's Submission

Petitioner prayed for reimbursement of petition filing fees, expenditure incurred on publication of notices in the newspapers, charges incurred towards RLDC fee.

Commission's View

As regards the above claim of the petitioner, the relevant provision of the MYT regulations 2015 reads as under;

“The application filing fee and the expenses incurred on publication of notices in the application for approval of tariff, be allowed to be recovered by the generating company or the transmission licensee/STU or the distribution licensee, as the case may be, directly from the beneficiaries or the transmission customers, as the case may be.”

In the light of the aforesaid provision, the claim of petitioner is allowed. Accordingly, the petitioner is at liberty to recover the application filing fee and the expenses incurred on publication of notices from the beneficiary i.e. CSPDCL.

35. Applicability of this order

The Order will be applicable till the issue of final Tariff Order.

36. We order accordingly.

Sd/-
(Pramod Kumar Gupta)
Member

Sd/-
(Vinod Deshmukh)
Member (Judicial)

Sd/-
(Hemant Verma)
Chairman

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**I.A. No. 32/2021
in
Petition No. 92/MP/2021**

**Coram:
Shri P.K. Pujari, Chairperson
Shri I.S.Jha, Member
Shri Arun Goyal, Member
Shri P.K.Singh, Member**

Date of order: 4.06.2021

In the matter of

Interlocutory application on behalf of Petitioner Essar Power Transmission Company Limited for interim relief of payment of Provisional Tariff for the Stage-1 assets from the PoC pool from July, 2020 with interest.

**And
In the matter of**

Essar Power Transmission Company Limited,
Lower Ground Floor, Hotel Treebo Conclave Riviera,
A-20, Kailash Colony, New Delhi- 110048

...Petitioner

Versus

1. Power Grid Corporation of India Limited,
(Through CTU)
B-9, Qutab Industrial Area,
Katwaria Sarai,
New Delhi-110016.

...Respondent No. 1

2. Western Regional Load Despatch Centre,
F-3, M.I.D.C. Area, Marol,
Andheri (East), Mumbai-400093.

...Respondent No. 2

3. M.P. Power Management Company Limited,
Shakti Bhawan, Rampur, Jabalpur,
Madhya Pradesh- 482008

...Respondent No. 3

4. National Load Despatch Centre
Power System Operation Corporation Limited
B-9 (1st Floor), Qutab Institutional Area,
Katwaria Sarai, New Delhi -110016 ...Respondent No.4
5. Western Regional Power Committee,
F-3, MIDC Area, Marol,
Opp. SEEPZ, Central Road,
Andheri (East), Mumbai-400093. ...Respondent No. 5
6. Essar Power M P Limited,
LGF, A-20, Kailash Colony, Hotel Conclave Complex,
Block A, Kailash Colony, Greater Kailash,
New Delhi- 110048 ...Respondent No. 6

Parties Present

Shri Alok Shankar, Advocate, EPTCL

ORDER

The Petitioner, Essar Power Transmission Company Ltd., has filed the present Interim Application, with the following prayers:

“a) Direct payment of Provisional Tariff for the Stage-1 assets from the PoC pool from July 2020 with interest.

b) Pass any other appropriate Order/ Directions.”

Background

2. Essar Power MP Limited (EPMPL) has set up a 1200 MW (2x600 MW) thermal power plant (in short, “the Generating Station”) at district Singrauli in the State of Madhya Pradesh and has entered into Long Term Power Purchase Agreement (PPA) with Essar Steel for supply of 450 MW of power for a period of 12 years. According to the PPA, power from the Generating Station was to be evacuated through the 400 kV D/C Mahan-Sipat Transmission Line terminating at WR Pooling Station at Bilaspur.

The evacuation system from the Generating Station was developed by the Petitioner, pursuant to inter-State transmission license granted by the Commission, vide Order dated 10.4.2008. The license was subsequently modified by Order dated 15.9.2009.

3. In terms of the transmission license granted by the Commission vide order dated 10.4.2008, the Petitioner was required to develop the following transmission lines and sub-stations:

Transmission lines

- (i) 400 kV (triple conductor) D/C transmission line from Mahan to Sipat Pooling sub-station.
- (ii) LILO of existing 400 kV S/C Vindyanchal-Korba transmission line of PGCIL at Mahan.
- (iii) 400 kV D/C (twin conductor) transmission line from Gandhar NTPC switch yard to Hazira.
- (iv) 400 kV D/C (quad conductor) transmission line from Mahan to Sipat Pooling sub-station.

Sub-stations

- (i) 3X500 MVA, 400/220kV sub-station at Hazira.
- (ii) 2x50 MVAR line reactors at Sipat pooling sub-station.
- (iii) 2x50 MVAR line reactors at Mahan.
- (iv) 1x80 MVAR, 420 kV Switchable bus reactors at Mahan TPS along with its associated 400 kV bay
- (v) 2 Number 400 kV line bays at Sipat pooling sub-station.
- (vi) 2 Number 400 kV line bays at Gandhar (NTPC) switchyard.
- (vii) Number 400 kV line bays at Mahan TPS.

4. SCOD for the transmission lines and sub-stations was divided into Stage-I and Stage-II as detailed below, with SCOD of both stages as 15.7.2011. Assets of Stage-I achieved CoD on 1.4.2013 after delay of 24 months and assets of Stage-II have achieved CoD on 22.9.2018.

Stage - I		
I	Transmission Lines	Units (in km)
(1)	400 kV D/C Twin conductor transmission line from Gandhar NTPC switchyard to Hazira	104.60
(2)	LILO of 400 kV S/C Vindhyanchal – Korba transmission line at Mahan	22.40
II	400/220 kV GIS Sub-station at Hazira	Units (in number)
(1)	500 MVA (400 kV / 220 kV) transformers at Hazira	3*
(2)	220 kV Bays at Hazira	2
(3)	440 kV S/S & line bays (GIS) at Hazira	5
(4)	400 kV line bays (GIS) at Gandhar	2 [#]

*2 out of 3 transformers commissioned

[#]2 Bays at Gandhar developed, owned, operated and maintained by NTPC Ltd.

Stage - II		
I	Transmission Lines	Units (in km)
(1)	400 kV D/C Quad Moose transmission line from Mahan TPP to Sipat Substation	336.70
II	Line Bays	Units (in number)
(1)	400 kV line bays at Mahan and Sipat	4
III	Reactors	Units (in number)
(1)	50 MVAR line reactors at Sipat pooling S/S	2
(2)	50 MVAR line reactors at Mahan TPS	2
(3)	80 MVAR bus reactor at Mahan TPS and its associated bay	1

5. Essar Power MP Limited had approached the Commission vide Petition No. 10/MP/2018 seeking continuation of interim LILO arrangement of 400 kV Vindhyachal-Korba circuit beyond 20.1.2018. The Commission vide order dated 19.1.2018 observed as under:

*“10. Keeping in view the decision in the minutes of the meeting in CEA held on 5.1.2018, **we direct the Petitioner to ensure completion of the Mahan-Sipat line by 31.3.2018.** Till that time, status quo shall be maintained. If the transmission line is not commissioned by the Petitioner on or before 31.3.2018, CTU shall take immediate necessary action for disconnection of the LILO arrangement with effect from 1.4.2018.*

11. The Petitioner is directed to submit the fortnightly progress report of the execution of transmission line.”

6. PGCIL filed Petition No. 132/MP/2018 seeking continuation of LILO of 400 kV S/c Vindhyachal-Korba transmission line (in short, ‘the LILO’) at Mahan Super Thermal Power Station subject to completion of 400 kV d/c Mahan-Sipat transmission line by the Petitioner. The Commission vide order dated 21.1.2020 has observed as under:

*“27. On perusal of submissions of the Petitioner and Respondent MPPMCL and reply of the Petitioner to the queries of the Commission vide RoP dated 20.12.2018, we observe that **though LILO was considered to be only a temporary element at inception**, subsequent system studies suggest that the LILO may be continued as a permanent element in order to enhance grid stability. While hearing the plea of the Respondent 1 and 2 to make the LILO a permanent element, APTEL had granted liberty to Respondents 1 and 2 to approach appropriate legal forum vide its order dated 27.03.2018. The prayer of the Petitioner in this Petition is “.... continuation of the LILO till finalization of suitable alternatives (if any) as may be identified through system studies to address the high short circuit level issue”. Thus, the Petitioner is similar to that for which liberty was granted to the Respondents 1 and 2 by APTEL.*

29. Keeping in view the fact that the Petitioner has stated that the 400 kV Essar Mahan to Sipat requires additional anchoring and that CEA, CTU, WRPC, Respondents 1 and 2 in a meeting held on 28.06.2017 agreed that the LILO would help to take care of oscillations in the grid under outage of one circuit of Mahan TPS Bilaspur pooling station 400 kV D/C line, we agree to the request of the Petitioner to continue the LILO for a further period of six months. However, since the current system studies point out that due to LILO, there is increase in fault level at Vindhyachal, the Petitioner is directed to complete the system studies within two months, deliberate the same in WRPC, discuss with CEA and take appropriate action for rectifying the fault level and submit a report to the Commission along-with copy of the system studies and deliberations for taking an appropriate view with regard to the continuance or otherwise of the LILO.

30. MPPMCL has submitted that continuation of LILO as a permanent element would burden the beneficiaries with the additional PoC charge of LILO of Vindhyachal – Korba 400kV S/c line at Mahan TPS. We observe that Essar Mahan has already relinquished its full LTA as on 30.4.2018 as noted in Order dated 7.10.2019 in Petition No. 187/MP/2017. We also observe that the instant LILO line is the dedicated line of Essar Mahan. Accordingly, the generating station is liable to pay transmission charges for same.....

.....
Accordingly, till the Commission takes a final view as per para 29 above, the Respondent No.1 will be liable to pay the transmission charges for the instant LILO line.

7. Vide the above-mentioned order dated 21.1.2020, in light of increase in fault level at Vindhyachal due to the LILO as per then available system study, the Commission directed CTU (the Petitioner in Petition No. 132/MP/2018) to complete system studies and submit a report to the Commission along with copy of the system studies and deliberations so as to enable the Commission in taking an appropriate view with regard to continuance or otherwise of the LILO. The Commission also directed that till the Commission takes a final view on the issue, EPMPPL shall bear the transmission charges for the LILO.

8. Subsequently, during the 2nd Meeting of the Validation Committee for the year 2020-21 held on 29.05.2020 for implementation of Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2010, following deliberations took place:

*“(v) As per CERC Order dated 20.01.2020 in Petition no: 132/MP/2018, CERC had directed M/s Essar Power Ltd. to pay transmission charges for LILO of 400kV Vindhyachal-Korba at Essar Mahan. **Thus, YTC of LILO of 400kV Vindhyachal-Korba at Essar Mahan is to be excluded from POC sharing mechanism.** However, CERC Tariff Order has no separate tariff for the said asset. The tariff was approved along with other assets (GIS S/s at Hazira and 400kV Hazira-Gandhar line vide CERC Order dated 19.12.18 in Petition No. 173/TT/2013 and 111/TT/2015.). The issue has been discussed in Validation Committee meeting. It was opined that in the absence of exclusive tariff for the LILO asset, the same cannot be excluded separately. Hence, it was decided to exclude entire tariff of the combined assets (i.e tariff for LILO of 400 kV Vindhyachal-Korba at Essar Mahan, GIS S/s at Hazira and 400kV Hazira-Gandhar line) from the POC computations in line with CERC Order dated 20.01.2020. Also, Implementing Agency was directed to inform M/s EPTCL to approach Commission to get the tariff of the LILO of 400kV Vindhyachal-Korba at Essar Mahan in appropriate time so that it can be excluded from the computations.”*

9. As deliberated in the above-mentioned meeting of the Validation Committee, in the absence of exclusive tariff for the LILO asset, entire tariff of the assets under Stage-I was excluded from the POC computations with effect from July 2020.

10. NLDC vide its email dated 29.5.2020 suggested the Petitioner to get separate tariff of the LILO determined and approved by the Commission so that only tariff of the LILO (and not the tariff for all the assets) are excluded from the PoC computations. Consequently, the Petitioner filed the Petition No. 92/MP/2021 seeking segregation of the tariff of the LILO from other assets under Stage-1.

11. The Petitioner has filed the present I.A. for grant of provisional tariff for the assets under Stage-1 by excluding the tariff of the LILO from the PoC pool from July 2020 with interest.

Capital Cost of Assets under Stage-I

12. The Petitioner initially claimed capital cost of Rs 495.87 crore and an annual tariff of Rs 112.71 crore for the assets under Stage-I. The Commission vide order dated 19.12.2018 in Petition No. 173/TT/2013 and Petition No. 111/TT/2015 approved capital cost of Rs. 366.23 crore and an annual tariff of Rs 79.92 crore. Out of Rs. 366.23 crore, the Commission has approved hard cost for the LILO as Rs. 26.50 crore.

13. The Petitioner in the instant petition has prayed for tariff determination of the LILO based on the Commission's approved capital cost of Rs. 27.25 crore (hard cost of Rs 26.50 crore plus apportioned soft cost of Rs 0.75 crore). The Petitioner has submitted that the annual tariff determined on the basis of the capital cost would be

around ₹ 5.77 crore and thus, the tariff for the assets under Stage-I excluding the LILO would be around Rs. 74.15 crore.

14. The Petitioner has further submitted that the capital cost of LILO is only about 7.25% of the approved capital cost of the entire assets under Stage-I and, therefore, pending adjudication of the main Petition No. 92/MP/2021, the Petitioner should be allowed a provisional tariff from the approved tariff for assets under Stage-I by excluding the tariff of the LILO i.e. Rs. 74.15 crore (Rs. 79.92 crore minus Rs. 5.77 crore).

Submissions during hearing on 27.4.2021

15. The Petitioner submitted that the instant IA and the main Petition No. 92/MP/2021 were admitted on 19.3.2021. Through the Record of Proceedings of the hearing dated 19.3.2021, the Commission had directed the parties as under:

- a) Directed the Petitioner to implead EPMPL as a party to the petition;
- b) Directed the CTU to submit the report with regard to the continuance or otherwise of the LILO as directed in the order dated 21.1.2020 in Petition No. 132/MP/2018; and
- c) Directed the Respondents, including EPMPL to file their reply to the petition and IA and the Petitioner to file rejoinder.

16. The Petitioner further submitted that none of the Respondents have filed their replies and that CTU has filed the study report with regard to the continuance or otherwise of the LILO.

17. During the hearing, the Petitioner reiterated that the capital cost of LILO is only about 7.25% of the approved capital cost of the entire assets under Stage-I and,

therefore, pending adjudication of the main petition, the Petitioner should be allowed provisional tariff from the approved tariff for the assets under Stage-I.

18. CTU submitted that it has submitted the study report as required by the Commission in terms of directions vide order dated 21.1.2020 in Petition No. 132/MP/2018 and has proposed to keep the Vindhyachal-Mahan TPS 400 kV line section normally open to control the fault current at Vindhyachal. It further submitted that the study report has been submitted to WRPC for deliberation. However, the WRPC meeting has not been held since January 2020.

Report of CTU on continuation of LILO

19. CTU vide reply dated 20.4.2021 has submitted its report on the LILO and has proposed to keep the Vindhyachal-Mahan TPS 400 kV line section normally open to control the fault current. The matter regarding reliable evacuation of power from 2x600 MW units of Mahan TPS under full dispatch and control of short circuit contribution from Mahan TPS towards Vindhyachal STPS was discussed in the 1st WRPC (TP) meeting held on 11.01.2020. During the meeting, following was agreed:

“i. Mahan TPS — Vindhyachal 400kV line section (formed after LILO of one circuit of Vindhyachal — Korba STPP 400kV D/c line at Mahan TPS) shall be kept open. The same may be kept hot charged from Mahan TPS end so that it may be used under any contingency condition by closing the breaker at Vindhyachal end. However, for operational flexibility, system operator may decide about the end from which Mahan TPS - Vindhyachal 400kV line section is to be kept charged.

ii. *On receipt of LTA application from M/S EPMPL, system studies would be carried out to finalize the transmission system augmentation including re-configuration of the LILO as may be required.”*

Analysis and Decision

20. We have heard the submissions of the Petitioner and the CTU. The Petitioner in the present I.A. has sought payment of provisional tariff for the assets under Stage-I (excluding the LILO), from the PoC pool from July 2020 with interest. In its support, the Petitioner has stated that the capital cost of the LILO is about 7.25% of the approved capital cost of the entire assets under Stage-I and, therefore, pending adjudication of the main Petition No. 92/MP/2021, the Petitioner should be allowed provisional tariff from the approved tariff for assets under Stage-I.

21. The Commission vide its order dated 15.6.2016 read with Orders dated 28.2.2018 in Review Petition No. 33/RP/2016, dated 19.12.2018 in Petition No. 173/TT/2013 and Petition No. 111/TT/2015 had determined the transmission tariff for the year 2013-14 of the 2009-14 tariff period and trued-up the Annual Fixed Cost in respect of assets under Stage-I as under:

8. *The apportioned approved cost, capital cost claimed, capital cost allowed in the order dated 15.6.2016 and the revised capital cost considered for tariff based on the order dated 28.2.2018 in Review Petition No. 33/RP/2016 are as follows :*

(Rs. in lakh)

<i>Particulars</i>	<i>Apportionment of project cost as per para 25(b) of order dated 15.6.2016 in Petition No. 173/TT/2013 and Petition No. 111/TT/2015</i>	<i>Capital cost claimed in Petition No. 173/TT/2013 and Petition No. 111/TT/2015</i>	<i>Capital cost allowed in order dated 15.6.2016 in Petition No. 173/TT/2013 and Petition No. 111/TT/2015</i>	<i>Additional capital cost allowed vide order dated 28.2.2018 in Petition No. 33/RP/ 2016</i>	<i>Revised capital cost pursuant to order dated 28.2.2018 in Petition No. 33/RP/2016</i>
1	2	3	4	5	6
LILO of 400 kV Vidhyanchal-Korba S/C transmission	2373.00	3089.00	2650.00	0.00	2650.00

<i>line of POWERGRID at Mahan</i>					
400 kV (twin conductor) D/C transmission line from Gandhar (NTPC) switchyard to Hazira including two additional typical foundation in Narmada river crossing and cost of pile foundation near Hazira plant	14633.00	30051.00	18402.00	6394.34	24796.34
400/220 kV GIS S/S at Hazira	10000.00	9450.00	8170.00	0.00	8170.00
Total Hard Cost	Included above	42590.00	29222.00	6394.34	35616.34
IEDC	Included above	459.00	69.02	107.77	176.79
IDC	Included above	6282.00	0.00	830.51	830.51
Total cost as on COD	----	49331.00	29291.02	7332.63	36623.65
Additional Capital Expenditure for 2013-14	-----	256.00	0.00	0.00	0.00
Capital cost as on 31.3.2014 for Stage-I	27006.00	49587.00	29291.02	7332.63	36623.65

22. The transmission charges determined by the Commission in respect of assets under Stage-I for the 2013-14 period are as under:

(Rs. in lakh)	
Annual Transmission Charges	
Particulars	2013-14
Depreciation	1916.21
Interest on Loan	3278.87
Return on Equity	2154.57

<i>Interest on Working Capital</i>	<i>189.78</i>
<i>O & M Expense</i>	<i>452.92</i>
<i>Total</i>	<i>7992.3</i>

23. We observe that the Commission had approved the total capital hard cost of the entire assets under Stage-I at Rs. 356.16 crore and the capital hard cost of the LILO at Rs. 26.50 crore, which amounts to 7.44% of the entire approved capital hard cost of assets under Stage-I. The transmission charges for assets under Stage-I has been determined as Rs. 79.92 crore and, therefore, excluding the pro-rata transmission charges for the LILO on basis of capital cost of the LILO, transmission charges for the assets under Stage-I (except the LILO) works out to Rs. 73.97 crore (92.56% of Rs. 79.92 crore).

24. However, we recognise that this tariff was granted for the year 2013-14. Considering the reduction in the loan component and recovery of depreciation during the intervening period, it would be appropriate to fix the provisional tariff at 90% of Rs. 73.97 crore, which works out to Rs. 66.537 crore.

25. Accordingly, we direct that the Petitioner shall be entitled to receive provisional transmission charges corresponding to Rs. 66.53 crore from the ISTS transmission charges Pool under CERC (Sharing of inter-State transmission charges and losses) Regulations, or the CERC (Sharing of inter-State transmission charges and losses) Regulations, 2020, as applicable, till the disposal of the Petition No. 92/MP/2021.

26. CTU is directed to submit its final report on the LILO, after deliberations in the WRPC meeting.

27. The IA No. 32/2021 is disposed of in terms of above. Petition No. 92/MP/2021 shall be listed for hearing in due course for which separate notice shall be issued.

Sd/
(Pravas Kr. Singh)
Member

Sd/
(Arun Goyal)
Member

Sd/
(I. S. Jha)
Member

Sd/
(P.K. Pujari)
Chairperson

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.160/GT/2012

**Coram: Dr. Pramod Deo, Chairperson
Shri V.S.Verma, Member
Shri M.Deena Dayalan, Member**

**Date of hearing: 23.10.2012
Date of Order: 24.12.2012**

IN THE MATTER OF

Determination of tariff of Udupi Thermal Power Station (2 x 600 MW) for the period from 11.11.2010 to 31.3.2014 (Unit-I) and from 1.4.2012 to 31.3.2014 for Unit-II

AND

IN THE MATTER OF

Grant of Provisional tariff of Unit-I (600 MW) of Udupi Thermal Power Station for the period from 11.11.2010 to 31.3.2014

AND

IN THE MATTER OF

Udupi Power Corporation Ltd, Bangalore

...Petitioner

Vs

1. Power Company of Karnataka Ltd, Bangalore
2. Bangalore Electricity Supply Company Ltd, Bangalore
3. Mangalore Electricity Supply Company Ltd, Mangalore
4. Gulbarga Electricity Supply Company Ltd, Gulbarga
5. Hubli Electricity Supply Company Ltd, Hubli
6. Chamundeshwari Electricity Supply Company Ltd, Mysore
7. Punjab State Power Corporation Ltd, Patiala

...Respondents

8. M/s Janajagrithi Samithi, Karnataka

...Objector

Parties present:

1. Shri J.J. Bhatt, Senior Advocate, UPCL
2. Shri L. Vishwanathan, Advocate, UPCL
3. Shri R.Parthasarathy, UPCL
4. Shri Soumyanarayanan, UPCL
5. Shri R.A.Mulla, UPCL
6. Shri M.G.Ramachandran, Advocate, PCKL, KPTCL
7. Shri Anand Ganesan, Advocate for Discoms of Karnataka
8. Shri V.G.Manjunath, PCKL
9. Shri Padamjit Singh, PSPCL
10. Shri Rohit Rao, Advocate for Objector

ORDER

This petition has been filed by the petitioner, Udupi Power Corporation Ltd (UPCL) for determination of tariff of Udupi Thermal Power Station (2 x 600 MW) (hereinafter referred to as “the generating station”) for the period from 11.11.2010 to 31.3.2014 for Unit-I and from 1.4.2012 to 31.3.2014 for Unit-II, based on the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 (hereinafter referred to as “the 2009 Tariff Regulations”).

2. The petitioner, formerly known as 'Nagarjuna Power Corporation Ltd' is a public Ltd company incorporated under the Companies Act, 1956 and was renamed as 'Udupi Power Corporation Ltd' on 8.2.2008. UPCL is a generating company as defined under Section 2(28) of the Electricity Act, 2003 (the Act). The project has been developed as a Mega Power project in line with the policy guidelines issued by the Ministry of Power, Government of India and is a first thermal power plant designed for 100% imported coal.

3. The Commission by its order dated 25.10.2005 in Petition No.40/2005 had accorded 'in-principle' approval of the capital cost of the project with a capacity of 1015

MW for ₹4299.12 crore, inclusive of Interest During Construction (IDC) and Financing Charges (FC). The petitioner has entered into a Power Purchase Agreement (PPA) on 26.12.2005 with the respondent Nos. 2 to 6 i.e. the distribution companies of Karnataka for sale of 90% of power generated from the project and PPA dated 29.9.2006 with respondent No.7, PSPCL for sale of the balance 10% of power. Subsequently, based on the recommendations of Justice (*Retd*) Gururajan Committee vide its report dated 23.9.2010, the Government of Karnataka by its order dated 25.10.2010 agreed for enhancement of the capacity of the generating station from 1015 MW to 1200 MW and for increase in the capital cost of the project by ₹583.85 crore, excluding IDC, subject to approval of the Commission. In the said order dated 25.10.2010, the petitioner was directed to file necessary particulars regarding increase in capital cost along with relevant documents before this Commission immediately.

4. The petitioner filed the present petition on 14.12.2011 for determination of tariff of Unit-I of the generating station which has been declared under commercial operation on 11.11.2010. As regards the Unit II, the petitioner has submitted that declaration of commercial operation of the unit which was expected on 1.4.2012 is still pending on account of non-commissioning of 400 kV transmission line.

5. The petitioner has filed this petition in compliance with Clauses (1) and (2) of Regulation 5 of the 2009 Tariff Regulations. The petitioner has also published the notice in the newspapers as regards the filing of tariff petition and has served copies of the petition on the beneficiaries, in line with Regulation 3(6) of the Central Electricity Regulatory Commission (Procedure for making of application for determination of tariff,

publication of the application and other related matters) Regulations, 2004 (the Procedure Regulations). Reply to the petition was filed by the respondent No. 1 (PCKL), and the respondent No.7 (PSPCL). In addition to this, objection to the tariff petition had also been filed by M/s Janajagrithi Samithi, an NGO based in Karnataka. The petitioner had filed its rejoinder to the replies filed by the Respondents, PKCL and PSPCL and its response to the objections filed by the Objector.

6. After notice to the parties including the Objector, the Commission heard the petition on 26.7.2012 for grant of tariff of Unit I of the generating station. During the hearing, the learned counsel for the petitioner, respondent No.7 and the learned for the Objector were present. After considering the submissions of the parties present and the documents available on record including the reply filed by respondent No.1, the Commission by order dated 27.8.2012 granted provisional tariff for Unit-I of the generating station for the period from 11.11.2010 to 31.3.2014. Aggrieved by the said order, the respondents 2 to 6 filed appeal (Appeal No. 190 of 2012 with I.A. No. 304 of 2012) before the Appellate Tribunal for Electricity ('the Tribunal') on the ground that the provisional tariff order dated 27.8.2012 had been passed by the Commission without hearing the said respondents. The Tribunal by its order dated 8.10.2012 set aside the order dated 27.8.2012 and remanded the matter to the Commission to pass appropriate order in accordance with law after hearing all the parties concerned.

7. Meanwhile, Unit-II of the generating station was declared under commercial operation on 19.8.2012. The petitioner filed Interlocutory Application (I.A. No. 49/2012 in Petition No. 160/2012) revising the tariff calculations, based on the actual audited

capital expenditure as on the date of commercial operation of Unit-I and the projected additional capital expenditure from the date of commercial operation of Unit-I (11.11.2010) to Unit-II (i.e 19.8.2012).

8. Petition No.160/2012 alongwith I.A.No.49/2012 were listed for hearing on 23.10.2012 and accordingly, by letter dated 10.10.2012 notices for hearing of the petition were served upon all the concerned parties, in terms of the order of the Tribunal to consider the grant of provisional tariff. The hearing was attended by the petitioner, all respondents and the Objector. During the hearing, the learned counsel for the respondents Nos. 1 to 6 has filed its reply with copy to the petitioner which has been taken on record. The learned counsel for the objector submitted that copy of the I.A filed by the petitioner has not been received and prayed that it may be granted some time to file its reply after service of the copies. Similar submission was made by the representative of the respondent No.7. In response, the learned counsel for the petitioner clarified that copy of the I.A had been served on all the respondents. He however undertook to handover copies of the I.A on the respondent PSPCL and the objector, in course of the day. After considering the submissions of the parties, we have decided that I.A No.49/2012 pertaining to tariff of Unit-II of the generating station would be taken up for hearing after completion of pleadings by all parties. Accordingly, the parties were directed to make their submissions in respect of the grant of provisional tariff for Unit-I of the generating station from the date of its commercial operation till 31.3.2014.

Submissions of Petitioner

9. The learned counsel for the petitioner mainly submitted the following:

- (a) The provisional tariff of ₹3.127/kWh for Unit-I of the generating station has not been determined by any authority. The Government of Karnataka vide its letter dated 27.9.2010 has approved the said tariff applicable from the date of commercial operation of Unit I till the tariff is determined by this Commission, subject to adjustment.
- (b) The petitioner is being paid this unilaterally determined provisional tariff by the respondents Nos.1 to 6, considering the project cost of ₹4882.97 crore for 1200 MW capacity, excluding IDC and including additional costs as recommended by Justice (Retd) Gururajan Committee which has been agreed to by the respondent No.1, by letter dated 10.11.2010.
- (c) Based on the approval of the Government of Karnataka vide its letter dated 3.2.2009, the capacity of the generating station was augmented from 1015 MW to 1200 MW even though the Power Purchase Agreement (PPA) dated 26.12.2005 between the petitioner and the respondent Nos. 2 to 6 still provides for a capacity of 1015 MW.
- (d) The PPA dated 26.12.2005 is not final as the petitioner by its letter dated 8.12.2005 had brought to the notice of the Government of Karnataka regarding the changes required to be made in the PPA in order to make the project viable and bankable and further by letter dated 26.12.2005, had informed the respondent No.1 that the signing of PPA was without prejudice to right of the petitioner to have certain issues decided by this Commission at the time of final determination of tariff.
- (e) In terms of Section 79(1)(b) of the Electricity Act, 2003, the Commission has the power to determine and regulate the tariff of the generating station which have either entered into PPA or otherwise have a composite scheme for generation and

sale of electricity for more than one state. Since the existing PPA entered into on 26.12.2005 has not yet been approved and keeping in view the fact that the tariff of ₹3.127/kWh is being provisionally paid by the respondent Nos. 2 to 6 based on the enhanced capacity for which no PPA exists, the Commission may determine the provisional tariff for Unit-I of the generating station in terms of the 2009 Tariff Regulations.

- (f) The respondent Nos.1 to 6 in their reply dated 22.10.2012 have submitted that the claims of the petitioner for IDC, interest on term loans, fuel cost at actuals, Interest on Working capital (IWC), Return on Equity, Station Heat Rate, Auxiliary Consumption and O&M charges should be considered as per provisions of the PPA dated 26.12.2005 which is permitted under Regulation 37 of the 2009 Tariff Regulations. The petitioner has submitted that the pleas of the respondents are not tenable since the PPA dated 26.12.2005 between the petitioner and respondent Nos.1 to 6 has not yet been approved by the State Commission. Moreover, tariff at the rate of ₹3.127/kWh is being provisionally charged which is not as per the rate agreed to in the PPA. Even the additional claim for ₹36.85 crore as establishment charges by the petitioner have also not objected to by the respondents although it is over and above the cost agreed to in the PPA. .
- (g) The provisional tariff of ₹3.127/kWh is not adequate to meet the fuel expenses, operating costs and debt servicing. As regards revision of capital cost for enhanced capacity, the Government of Karnataka by its order dated 25.10.2010 had approved an amount of ₹583 crore, excluding IDC, incurred upto the date of commercial operation and the same has been accepted and acted upon by the respondents Nos. 1 to 6. Subject to the approval of tariff by this Commission, the respondents are bound to off-take power from the generating station as per orders of the Government which have been accepted and acted upon by the said respondents.
- (h)The provisional tariff of the generating station be determined in terms of the 2009 Tariff Regulations specified by the Commission keeping in view the sustainability of

operation of the plant including the cost of fuel, oil, other consumables and overhead expenses.

- (i) The petitioner may be given liberty to file its rejoinder to the reply filed by the respondents 1 to 6 during the hearing.

Submissions of Respondent Nos. 1 to 6

11. In response to the above, the learned counsel for the respondent Nos. 1 to 6 mainly submitted as under:

- (a) The provisional tariff rate of ₹3.127/kWh for Unit-I agreed to by the parties, has been claimed by the petitioner from November, 2010 to December, 2011 and the same is being paid by the respondents. The said tariff has been agreed to as an interim measure, despite the actual tariff as per PPA being lower (2.101/kWh) considering the norms and parameters contained therein. Since, the present petition has been filed only on 14.12.2011, the provisional tariff to be determined by the Commission cannot be given retrospective effect.
- (b) The various norms and parameters provided in the PPA such as capital cost (including IDC), interest on loan, return on equity, O&M charges, Station Heat Rate etc are required to be applied. The provisions in the 2009 Tariff Regulations specified by the Commission are ceiling norms and since the norms provided in the PPA are less than the norms specified in the 2009 Tariff Regulations, the provisions of the PPA are binding and should be applied, in terms of Regulation 37 of the 2009 Tariff Regulations, for determination of tariff.
- (c) The application for approval of PPA is pending before the State Commission and the same has been deferred considering the pendency of tariff petition before this Commission. Regulation 37 specified by the Commission would be rendered meaningless, if provisions of the PPA are not considered for determination of tariff. Also, in terms of Rule 8 of the Electricity Rules, 2005, the tariff determined

by this Commission under Section 79(1) (a) & (b) would not be re-determined by the State Commission under Section 86 (1) and subject to this, the State Commission may determine whether a distribution licensee in the State should enter into Power Purchase Agreement or procurement process with such generating companies based on the tariff determined by the Central Commission.

- (d) Since the petitioner has entered into a composite scheme for generation and sale of electricity by PPA dated 26.12.2005, the same is required to be considered. The petitioner is required to limit its claim for a capital cost of ₹4430 crore (₹4299 cr + ₹131 cr) and no additional capital cost can be claimed for the purpose of determination of tariff. Hence, there is no justification for the petitioner to unilaterally claim a higher amount, at this stage.
- (e) Each of the parameters mentioned in the PPA has been specifically agreed to by the petitioner and the respondents. The provisional tariff rate of ₹3.127/kWh based on the parameters as approved by the Government of Karnataka vide its letter dated 27.4.2012 are without prejudice to the rights of the principal buyers conferred under the PPA dated 26.12.2005. Hence the PPA, which has a composite scheme, is sacrosanct and the petitioner is bound by the terms agreed upon by the parties.
- (f) The variable cost to be allowed to the petitioner may be considered in the backdrop of the conduct of the petitioner and its acts of omission and commission.
- (g) The delay in the commissioning of Unit-II has been occasioned due to the default of the petitioner to comply with the pollution control norms and not on account of the 400 kV evacuation facilities not being ready as alleged. Moreover, there is no Change in law and/or Force Majeure event involved in the matter and the disputes if any, between the petitioner and the EPC contractor are bilateral issues to be settled between them.

- (h) The petitioner has been raising bills based on the agreed interim rate of ₹ 3.127/kWh which is paid by the respondents. Hence, there is no reason for the petitioner to seek revision of provisional tariff in deviation to the terms of the PPA.
- (i) The respondents may be granted time to file detailed reply in the matter. Thereafter, the Commission may hear the parties and final tariff of the generating station may be determined.

12. In response to our query as to how the State Government of Karnataka has agreed to the rate of ₹3.127/kWh, despite the fact that the tariff rate in terms of the PPA was less, the learned counsel for the said respondents clarified that the said rate was provisional in nature, without prejudice to the rights of the buyers in terms of the PPA. The learned counsel for the petition reiterated that the tariff rate of ₹3.127/kwh approved by the State Government of Karnataka was agreed to and acted upon by the parties, subject to final adjustment of the tariff to be approved by the Commission.

Submissions of Respondent No. 7

13. The representative of the respondent No.7, Punjab State Power Corporation Ltd (PSPCL) mainly submitted as under:

- (a) The generating station of the petitioner has attained the status of an inter-state generating station (ISGS) only on account of the supply of balance 10% of power to the State of Punjab vide PPA dated 29.9.2006.
- (b) In Petition No. 40/2005, the Commission had given in-principle approval of capital cost for the project on the basis of BTG supply by M/s BHEL for 1015 MW capacity. Subsequently, order was placed on Dong Fang for 1200 MW for supply of Chinese BTG equipment for the project which would be lower than the cost of

1015 MW BHEL project. The petitioner has not approached the Commission for revision of capital cost and amendment of the in-principle order dated 25.10.2005, pursuant to augmentation of the capacity and the change in the EPC contractor. The actual incurred capital cost should be furnished by the petitioner. For assessment of capital cost, the project with similar capacity and similar make needs to be compared. In this regard, the response of the petitioner to the observations of the Commission in its order dated 7.8.2006 may be made known to the parties.

- (c) Since the Commission had observed in order dated 25.10.2005 that the capital cost for tariff purpose should not exceed the cost determined in Petition No. 40/2005, the capital cost of ₹4299 crore shall be firm. Hence, as per PPA with respondent No.7, the same capital cost should be considered.
- (d) The in-principle approval accorded by the Commission in its order dated 25.10.2005 as per the 2004 Tariff Regulations is subject to ceiling norms and no additional capital expenditure is admissible. As per CEA data available, the capital cost for the project of the petitioner is higher when compared to other similar projects. Hence for the grant of provisional tariff, the Commission may consider the same.
- (e) Since the generating station is an ISGS, the sale of infirm power should be accounted for and the same should be reduced from the capital cost, to the extent of the difference between the UI cost and the actual fuel cost.
- (f) The features of EPC contract with Dong Fang to determine the Liquidated damages for deviation in Heat Rate, Auxiliary consumption, etc may be submitted by the petitioner.
- (g) The petitioner may be directed to provide copies of letter/documents regarding the declaration of Unit-I and Unit-II, performance guarantee tests, auxiliary consumption as per actual /data of PG tests.

- (h) The 2009 Tariff Regulations do not provide for higher auxiliary norm in case of power consumption in jetty. The functioning of jetty involve the loading of coal, shifting of coal to stockyard and loading from stockyard to railway wagons for plant site, which is clearly a cost component of fuel and should be included in the landed cost of coal received in the plant. Hence, auxiliary consumption higher than 6% is not justified.
- (i) Station Heat Rate (SHR) should be lower of 2400 kcal/kWh or the SHR approved by the Commission for Karnataka ESCOMS (respondent Nos. 2 to 6) and the lowest figure in line with Regulation 37 may be adopted.
- (j) The debt-equity ratio of 80:20 may be adopted as agreed to by the petitioner in the PPA dated 29.9.2006 with this respondent and the petitioner should be called upon to clarify the lower GCV of coal.
- (k) Though the project is availing the benefit of lower capital cost being a mega project, this respondent has not been supplied with any kWh energy till date from this project. It is for the petitioner to arrange for long term open access from PGCIL.
- (l) The petitioner may not be permitted to disown the parameters and norms stipulated in the PPA which have been accepted by it. This respondent may be permitted to file detailed written submissions in the matter.

Submissions of the Objector

14. The learned counsel for the objector, mainly submitted as under:

- (a) The petitioner should have approached the Commission to charge the provisional tariff of ₹3.127/kWh. Hence, the said provisional tariff rate charged by the petitioner is excessive and without authority of law. This Commission only has

the authority to grant provisional tariff and any other arrangement by the parties should have been ratified and approved by the Commission.

(b) Provisional tariff should not be granted with retrospective effect, since the petitioner has filed this petition belatedly.

(c) Copy of the I.A filed by the petitioner as regards tariff of Unit-II of the generating station has been handed over by the petitioner now and accordingly, time may be granted to the objector to file its response to the same.

15. In response to the above, the learned counsel for the petitioner made his submissions as under:

(a) Though the scheme for supply of 90% of power from the generating station to the respondents 2 to 6 and the balance 10% of power to the respondent No.7, PSPCL was envisaged under the agreement entered into on 26.10.2005 and 29.9.2006 respectively, the same is subject to the approval of the Commission.

(b) Clause 14.2 under Article 14 of the PPA provides that the PPA shall come into force only after approval of the Government of Karnataka and the Commission and till then the agreement is not legally enforceable against either by the parties.

(c) Though PPA has been signed by the parties with lower tariff rate, the interim tariff of ₹3.127/kWh was approved by the Government of Karnataka keeping in view the changes in capacity and the capital cost, and the same has been implemented by the parties. However, by letter dated 16.11.2010, the petitioner had requested the respondent No.1, PCKL to have a re-look into the tariff computations and revise the same considering the correct parameters. Thus, considering the issues like change in capacity and capital cost, it is abundantly clear that the PPA has not been considered sacrosanct by the parties and the same is subject to the approval of this Commission.

- (d) Even during the signing of the PPA, the petitioner by its letter dated 26.12.2005 had made it clear that the said PPA has been signed without prejudice to the rights to take up the issues with the Appropriate Commission while final approval of tariff and PPA are accorded to the project. Since both the parties have deviated from the terms of the PPA, the Commission in exercise of its powers under Section 79(1)(b) shall determine the tariff of the generating station.
- (e) Regulation 37 of the 2009 Tariff Regulations envisage a situation wherein the improved norms of operation are agreed to by the parties to be made applicable for determination of tariff. It is also important to consider if the lesser/improved norms of operation if accepted, could be achieved by the generating station. Regulation 37 would be applicable if PPA is binding and has been accepted by the parties. In the instant case, issues were raised by the petitioner as regards amendment of PPA and consequently, interim tariff of ₹3.127/kWh was approved by the Government of Karnataka which has been agreed to by the parties, subject to final adjustment of tariff to be approved by this Commission. Hence, the question of application of Regulation 37 does not arise.
- (f) Bills have been raised on the respondents based on the interim rate of ₹3.127/kWh and the same is without prejudice to the final adjustment of tariff to be determined by this Commission. In this regard, the order of the Government of Karnataka dated 25.10.2010 is self explanatory.
- (g) The Government of Karnataka has not paid any amount for infirm power to the petitioner.
- (h) The Commission may consider to grant provisional tariff for Unit-I of the generating station, during the pendency of this petition. Thereafter, I.A. for tariff of Unit-II may be taken up after completion of pleadings by parties.

16. The learned counsel for the respondent Nos.1 to 6 clarified that no amendment to the PPA dated 26.12.2005 has been made. He also pointed out that the interim tariff rate of ₹3.127/kWh approved to by the Government of Karnataka is without prejudice to the rights of the principal buyers conferred under the PPA.

17. We have heard the parties and perused the documents on record. From the pleadings and submission of the parties, the following preliminary issues arise for our consideration:

- (a) Jurisdiction of the Commission to determine the tariff of the generating station;
- (b) Whether the PPA dated 26.12.2005 between the petitioner and Respondent Nos. 2 to 6 is legally binding on the parties and can be considered by the Commission while determining tariff?
- (c) What is the scope of Regulation 37 of the 2009 Tariff Regulations? Whether the provisions of the 2009 Tariff Regulations can be given a go by in favour of the terms and conditions of the PPA in view of Regulation 37 of 2009 Tariff Regulations?
- (d) Whether the tariff should be determined as per the provisions of the 2009 Tariff Regulations or as per the terms and conditions of the PPA?

Jurisdiction of the Commission

18. The petitioner has submitted that since there is a scheme to supply power from the generating station to more than one State i.e. Karnataka and Punjab, there is a composite scheme in terms of section 79(1)(b) of the Electricity Act, 2003 (the Act) and therefore, the jurisdiction of this Commission gets invoked and existence of the PPA is not relevant. Respondent No.1 to 6 in their written submission have submitted that the contention of the petitioner that the jurisdiction of the Commission even without the PPA is misplaced as there should be some legal basis for the generating company agreeing

to supply electricity to the purchaser. It has been stated that the term “otherwise have a composite scheme” is in the nature of being a statutory provision for the generating company supplying electricity to two states and in such cases the agreement is not relevant. The respondents have further submitted that in the present case, there is no requirement for application of “otherwise have a composite scheme” as there is a PPA duly signed by the petitioner with the distribution licensees in Karnataka and also with Punjab and based thereon, the composite scheme is claimed to invoke jurisdiction of this Commission under section 79(1)(b) of the Act. Therefore, the contention of the petitioner that the PPA should be ignored and the tariff is to be determined without considering that there is a PPA for sale of electricity is misplaced. The respondents have also contested the contention of the petitioner that the PPA was signed only for the purpose of achieving the financial closure and was not a valid document between the parties on the basis of which electricity is to be supplied to the petitioner.

19. We have considered the submission of parties. Section 79(1)(b) of the Act provides that this Commission shall discharge the function to regulate the tariff of generating companies other than those owned or controlled by the Central Government if such generating companies enter into or otherwise have a composite scheme for generation and supply of electricity in more than one State. Thus the main requirement is the existence of a composite scheme for generation and supply in more than one State. The Act envisages that the composite scheme may emerge through either of the two ways, namely, the generating company may enter into agreement with more than one state for generation and supply of electricity or the generating company may otherwise have a composite scheme for generation and supply of electricity in more

than one state. The words “otherwise have a composite scheme” would mean the scheme that has emerged other than through agreements. For instance, a generating company may be required under a statute to generate and supply electricity to more than one state. A generating company may have an agreement at the inception to supply to one state but subsequently it starts supplying power to more than one state. In the present case, the generating company has entered into agreements with Karnataka and Punjab for generation and supply of electricity from the generating station. This Commission while approving the in-principle capital cost of the project had the occasion to consider the question of jurisdiction of the Central Commission to determine the tariff of the generating station and in order dated 25.10.2005 in Petition No.40/2005 observed as under:

“25.According to the petition filed before us, PPAs for sale of power are being negotiated with Karnataka and Kerala. Clearly, the generating station has the scheme of sale to more than one State. The Central Government has accorded the Mega Power status on being satisfied that it will involve supply of power to more than one State. Hence the jurisdiction of the Commission in respect of the project is indisputable.”

Thus this Commission had based its finding on the issue of jurisdiction on the presentation of the petitioner that the PPAs for sale of power were under negotiation with Karnataka and Kerala. Though the PPAs were subsequently signed with Karnataka and Punjab, the fact remains that there is a composite scheme because the petitioner has entered into agreement with more than one state. Therefore, the composite scheme for generation and supply of electricity in more than one state emerges from the PPAs entered into by the petitioner with the distribution companies of Karnataka and Punjab. If the PPA with any one of them is terminated, it will no more remain a composite

scheme unless the petitioner is able to establish that it has otherwise a composite scheme for generation and sale of electricity in more than one state. It is not in dispute that the Commission derives its jurisdiction from the Act and not from the agreement between parties. However, when the Act presupposes that the composite scheme should be based on agreements between the generating company and the purchasing states and in the absence of any evidence that the generating company has otherwise a composite scheme for generation and sale of electricity in more than one state, the importance of the PPAs cannot be overlooked. In our view, based on the PPAs entered into by the petitioner with the distribution companies of Karnataka and Punjab for generation and sale of power from the generating station, a composite scheme has emerged and the Commission has the jurisdiction to regulate the tariff for such composite scheme under section 79(1)(b) of the Act.

Consideration of the PPA by the Commission

20. The petitioner has submitted that in view of the provisions of Article 14.2 of the PPA dated 26.12.2005, the PPA is not valid and cannot be enforced. Article 14.2 of the PPA reads as under:

“14.2 This Agreement shall come into force only after approval of the GoK and the Commission and till then this agreement is not legally enforceable against either by the parties.”

Respondent Nos.1 to 6 have submitted in their written submissions that the above clause deals with the conditions for enforcement of the PPA and does not say that the terms and conditions set out in the PPA are not agreed terms. The respondents have submitted that the intention of above stated clause is that the parties will approach the

Government of Karnataka and the Appropriate Commission in pursuance of the agreement reached for approval and this agreement will be enforced upon such approval. The respondents have further submitted that approval of the PPA by the Karnataka Commission is pending on account of the determination of the tariff by this Commission and Karnataka Commission has opined that the approval of the PPA will be taken after the tariff is determined by this Commission. The process is in terms of Rule 8 of the Electricity Rules, 2005 wherein the State Commission is to decide the power purchase after determination of tariff by this Commission. The respondents have submitted that the effect of the contention of the petitioner would be that once the PPA is approved by Karnataka Commission, this Commission would have to re-enter the entire process of tariff determination and once again determine the tariff in line with the norms and parameters provided for in the PPA, subject to ceiling norms in the 2009 Tariff Regulations.

21. We have considered the submissions of the petitioner and the respondents. This Commission does not approve the PPA in exercise of its power of tariff regulation or determination. This Commission determined tariff in accordance with the prevailing tariff regulations. The State Commission in exercise of its power under section 86(1)(b) “regulates the electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply of power within the State”. Therefore, the PPA between the petitioner and the respondents will be approved by the respective State Commission as

part of the power procurement process. In this connection, the observations of the Appellate Tribunal for Electricity in its judgment dated 4.9.2012 in Appeal No. 94 & 95/2012 with regard to the role of the Central Commission and the State Commission in the matter of determination of tariff of generating stations covered under Section 79(1)(a) and (b) are relevant and is extracted as under:

"42. The Electricity Act, 2003 carves out the regulatory control over the Central Sector Generating Companies like NTPC and the generating Companies having composite arrangements of generation and sale of electricity in two or more States. By virtue of those powers, the Central Commission will have to ensure for (a) uniformity in the tariff amongst more than one State beneficiary; and (b) common terms and conditions of supply of electricity to more than one State beneficiary as well as supply from the Central Sector Generating Companies.

43. Thus, these utilities are subjected to a special treatment and brought under the jurisdiction of the Central Commission.

44. The Central Commission has got a wide jurisdiction. In fact, the functions vested in the Central Commission are specific in nature. Whereas, the functions vested in the State Commissions are general in nature applicable to a particular State. The specific function will therefore, have to be given supremacy to the general functions vested in the State Commission. This is provided under Rule-8 of the Electricity Rules, 2005 which provides as under: *"The tariff determined by the Central Commission for generating companies under clause (a) or (b) of sub section (1) of Section 79 of the Act shall not be subject to re-determination by the State Commission in exercise of functions under Clauses (a) or (b) of sub-section (1) of Section 86 of the Act and subject to the above the State Commission may determine whether a Distribution Licensee in the State should enter into Power Purchase Agreement or procurement process with such generating companies based on the tariff determined by the Central Commission."*

45. In terms of the above Rule, the tariff determined by the Central Commission which would include the terms and conditions of supply also cannot be re-worked by the State Commission.

46. The role of the State Commission is only to decide whether the Power Purchase Agreement to be entered into between the NTPC and the Distribution Company for purchase of Electricity from NTPC Stations at the tariff determined by the Central Commission has to be approved or not from the point of view of deciding whether the power can be procured from other sources at a cheaper or in a more economical manner to supply the same to the concerned State.

47. The said power of scrutiny by the State Commission cannot be taken to mean that the State Commission has got the powers to suggest modifications to the terms and conditions or even reserving to deal with the implications of the terms and conditions at a later stage.

48. Therefore, in all respects, the Power Purchase Agreement shall be subject to the Regulation of Central Commission and certainly not of the State Commission"

22. Therefore, it emerges from the above judgment that the tariff of the generating station of the petitioner shall be determined by this Commission in accordance with the 2009 Tariff Regulations. The State Commission will decide whether the PPA entered into between the generator and the distribution companies at the tariff determined by this Commission shall be approved or not from the point of view of deciding whether the power can be procured from other sources at a cheaper or in a more economical manner to supply the same to the concerned State. It is to be noted that Article 14.2 of the PPA does not say that the PPA is not valid, but it predicates its enforceability on the approval by the State Commission. Therefore, the PPA can be considered for the purpose of tariff determination by this Commission to the extent it is permissible under the 2009 Tariff Regulations. However, the tariff so determined will come into effect only when the PPA is approved by the State Commission and the tariff determined by this Commission is adopted under Rule 8 of the Electricity Rules, 2005.

Scope of Regulation 37 and its applicability to PPA dated 26.12.2005

23. The petitioner has submitted that the tariff of the generating station should be determined in accordance with the 2009 Tariff Regulations. The Respondent No. 1 to 6 have submitted that the Commission need to consider and implement the improved norms of operation as agreed to between the generating companies and the purchasers as such improved norms become the applicable norms in accordance with the provisions of Regulation 37 in place of the norms specified in the 2009 Tariff Regulations. Respondent No. 1 to 6 have further submitted that the individual aspects

of tariff elements such as capital cost, return on equity, interest on loan, station heat rate, O&M expenses and auxiliary consumption being the improved norms as agreed to by the petitioner and the respondents have to be applied instead of the norms specified in the 2009 Tariff Regulations.

24. Regulation 37 of 2009 Tariff Regulations provides as under:-

"37. Norms of operation to be ceiling norms: - Norms of operation specified in these regulations are the ceiling norms and shall not preclude the generating company or the transmission licensee, as the case may be, and the beneficiaries and the long-term transmission customers from agreeing to the improved norms of operation and in case the improved norms are agreed to, such improved norms shall be applicable for determination of tariff."

25. The norms of operation have been enumerated under chapter 4 of the 2009 Tariff Regulations. The norms of operation include Normative Annual Plant Availability Factor (NAPAF), Gross Station Heat Rate, Secondary fuel oil consumption and Auxiliary Energy Consumption. Therefore, under Regulation 37 only parties can agree to the improved norms of operation in respect of these norms. Consequently, the factors like capital cost including IDC, debt equity ratio, return on equity, interest on loan and O&M charges are not covered under the norms of operation and cannot be decided by agreement between the parties. These elements of tariff have necessarily to be decided in accordance with the provisions of 2009 Tariff Regulations. The Hon'ble Supreme Court in PTC(I) Ltd-v- CERC & ors (2010) 4 SCC 603) has ruled that the Regulations made by the Commission in exercise of its power of subordinate legislation shall override the existing and future contracts. The relevant portion of the judgment is extracted as under:-

"A regulation under Section 178, as a part of regulatory framework, intervenes and even overrides the existing contracts between the regulated entities in as much as it casts a statutory obligation on the regulated entities to align their existing and future contracts with the said regulations."

In view of the above judgment, the provisions in the PPA between the petitioner and the respondents shall have to conform to the provisions of the 2009 Tariff Regulations in so far as determination of tariff is concerned. Accordingly, except for the norms of operation as stated in the preceding paragraphs, other elements of tariff shall be determined in accordance with the 2009 Tariff Regulations.

26. As already noted, the parties in terms of Regulation 37 can agree on improved norms of operation and in that event such norms shall be applicable for determination of tariff. The respondents have submitted that improved norms for gross station heat rate @ 2220 kcal/kWh (corresponding to net station heat rate of 2400 kcal/kWh) and the auxiliary consumption @ 6% as per the 2009 Tariff Regulations should be adopted for determination of tariff. The petitioner has submitted that the PPA provides for the heat rate of 2400 kcal/kWh and the same should be adopted. The respondents have submitted that the PPA provides for heat rate for net generation i.e. the net heat rate at 2400 kcal/kWh which translates into gross station heat rate of 2220 kcal/kWh. The respondents have further submitted that there can be no justification for the petitioner to pay the higher heat rate as provided in the PPA which is also better than the norms provided in the 2009 Tariff Regulations and the commitment given by the petitioner in its letter dated 10.12.2004. As regards the auxiliary consumption the petitioner has claimed @7.5% as per PPA which include jetty, coal handling arrangements, sea water pumping and condenser cooling and seawater arrangements for sweet water

requirements for boilers and provision of flue gas de-sulphurisers for plant as part of the auxiliary consumption. The respondents have submitted that inclusion of jetty consumption as a part of auxiliary consumption is incorrect as the same is located at a distance place and not supplied electricity by the petitioner as auxiliary consumption. The respondents have submitted that the auxiliary consumption for the generating station needs to be considered in terms of the 2009 Tariff Regulation which is 6% and the same is consistent with the provisions of EPC contract which specifies the auxiliary consumption of less than 6.5% for the generating stations including FGD and coal handling plant for 400 MW.

27. We have considered the submissions of the parties. The dispute regarding Station Heat Rate between the parties pertains to the interpretation of station heat rate provided in the PPA i.e. whether it is gross or net heat rate. This requires detailed examination and cannot be gone into at this stage. However, the 2009 Tariff Regulations provides for a formula for working out the heat rate of the new thermal generating station on achieving COD after 1.4.2009. It is also noted that the Government of Karnataka had appointed a committee under Justice (Retd) Gururajan who has recommended gross station heat rate of 2333.43 kcal/kWh and the auxiliary consumption of 6.5% after 1.4.2009. Accordingly, it cannot be said that there is an agreement between the parties with regard to the heat rate simply because one rate is agreed at the time of entering into the PPA. Further, the Government of Karnataka considering the report dated 8.4.2011 of Justice (Retd) Gururajan Committee had decided that the issue of determination of heat rate should be left to this Commission. The Station Heat Rate has been accordingly worked out on the basis of the formula

given in the 2009 Tariff Regulations for purpose of determination of provisional tariff. As regards auxiliary consumption, the interim tariff of ₹3.127/kWh has been worked out based on the auxiliary consumption of 7.5%. However, for the purpose of provisional tariff, the auxiliary consumption of 6% as per the 2009 Tariff Regulations has been considered. The claim of the petitioner for auxiliary consumption of 7.5%, after considering the additionalities like dedicated jetty and coal handling arrangements, sea water pumping and condenser cooling and seawater arrangements for sweet water requirements for boilers and provision of flue gas de-sulphurisers for plant will be considered at the time of determination of final tariff.

Principles to be adopted for determination of tariff

28. In view of the discussions in the preceding paragraphs, the following principles have been adopted for determination of provisional tariff of Unit-I of the generating station.

(a) All elements of tariff such as Capital cost, IDC, initial spares, additional capitalisation, debt-equity ratio, Return on Equity, Interest on loans, O&M expenses, and interest on Working capital have been worked out on the basis of the provisions of the 2009 Tariff Regulations after carrying out prima facie prudence check.

(b) Norms of operation such as NPAF, Station Heat Rate and Secondary Fuel oil consumption has been considered as per the provisions of the 2009 Tariff Regulations.

(c) Auxiliary Consumption has been considered as 6% as per the 2009 Tariff Regulations.

(d) The detailed prudence check of the expenditure incurred or projected to be incurred will be gone into at the time of final determination of tariff after considering the submissions of the parties.

29. Next we consider the grant of provisional tariff of Unit-I of the generating station with effect from the date of commercial operation, subject to adjustment as per proviso to clause (3) of Regulation 5 of the 2009 Tariff regulations. We direct accordingly.

30. Regulation 5 of the 2009 Tariff Regulations, amended on 2.5.2011, provides as under:

“(4) Where application for determination of tariff of an existing or a new project has been filed before the Commission in accordance with clauses (1) and (2) of this regulation, the Commission may consider in its discretion to grant provisional tariff upto 95% of the annual fixed cost of the project claimed in the application subject to adjustment as per proviso to clause (3) of this regulation after the final tariff order has been issued:

Provided that recovery of capacity charge and energy charge or transmission charge, as the case may be, in respect of the existing or new project for which provisional tariff has been granted shall be made in accordance with the relevant provisions of these regulations.”

31. The respondents 1 to 6 have submitted that the provisional tariff to be granted by the Commission should be prospective in operation. Similarly, the learned counsel for the objectors have also submitted that the provisional tariff of the generating station may not be granted with retrospective effect as the petition has been file belatedly. We have considered the objections of the respondents/objector. The 2009 Tariff Regulations is applicable for the entire tariff period 2009-14. The petitioner and the respondents have agreed on the interim tariff rate of ₹3.127/kWh subject to the determination of final tariff by this Commission. That being the case, it is not proper for the respondents to take a contrary view that the tariff determined by the Commission will not have its application from the date of commercial operation. In our view, the tariff determined by this Commission shall be applicable from the date of commercial operation till the end of the tariff period.

32. It is noticed that the petitioner has made a specific prayer (prayer (d) of the petition) for grant of provisional tariff at the rate of 95% of the annual fixed cost claimed along with actual variable charges in accordance with Regulation 5(4) of the 2009 Tariff Regulations. Regulation 5(4) of the 2009 Tariff Regulations, as quoted above, provides that only when the application has been made in accordance with Clauses (1) and (2) of Regulation 5 of the 2009 Tariff Regulations, the Commission may at its discretion allow upto 95% of the annual fixed cost claimed in the petition as provisional tariff, till the final tariff is determined. In other words, all procedural requirements under the Act and the regulations for making the application for tariff must have been complied with before the provisional tariff is granted. The petitioner having filed the tariff petition in terms of Clauses (1) and (2) of the 2009 Tariff Regulations, the Commission has the power under Regulation 5(4) to grant provisional tariff for Unit-I of the generating station of the petitioner. Based on this, the tariff petition filed by the petitioner on 14.12.2011 for determination of tariff for the period from 11.11.2010 till 31.3.2014 is subject to prudence check of the Commission in terms of the provisions of the 2009 Tariff Regulations. However, the grant of provisional tariff in terms of Regulation 5(4) of the 2009 Tariff Regulations would be subject to adjustment after final tariff is determined for the generating station.

33. It is noticed that though Unit-I of the generating station was declared under commercial operation on 11.11.2010, the petitioner has filed the present petition for determination of tariff only on 14.12.2011. For this, the petitioner in its petition has submitted that the petition for determination of tariff with respect of Unit-I could not be

filed till the response of the State Government of Karnataka/Principal buyers on certain outstanding issues like the Debt-Equity ratio, Gross Station Heat Rate, schedule for 400 kV transmission line, was not received by it and only after receipt of response, the petition was filed. In our view, mutual negotiation of any outstanding issues by the petitioner with the beneficiary states should not have detracted the petitioner from filing the petition for determination of tariff. Regulation 5(1) of the 2009 Tariff Regulations provides that the generating company or the transmission licensee, as the case may be, may make an application for determination of tariff, in respect of the units of the generating station or the transmission lines or sub-stations of the transmission system, completed or projected to be completed within six months from the date of application. The purpose of this provision is that the tariff is decided by the time the generating station or unit thereof is put to commercial operation. Moreover, the issues referred to by the petitioner which was allegedly responsible for the delay in filing the petition can be decided by the Commission in terms of the 2009 Tariff Regulations. Accordingly, it was incumbent upon the petitioner to file the petition before the Commission and seek the determination of tariff for the units, any time within six months prior to the date of commercial operation or immediately after commercial operation of the units of the generating station.

Delay in the commissioning of the project

34. The petitioner in its petition has submitted that the delay in commissioning of the generating station were on account of the major earthquake in China during 2008 due to which boiler manufacturing facilities of M/s Dong fang electric corporation (OEM) were

severely affected and due to the visa policy of the Government of India, due to which Chinese experts, who were required to be in site for pre-commissioning activities, had left India during the period from July, 2009 to October, 2009. Thus, the delay is on account of force majeure and is not attributable to the petitioner. It has also submitted that erection work of Unit-II got hampered due to non-readiness of 400 kV transmission lines, which was the responsibility of the Respondent Nos. 2 to 6 herein. The petitioner has also submitted that though Unit-II reached full capacity on 16.4.2011, declaration of COD was pending for want of 400 kV transmission lines. Accordingly, the petitioner has prayed that the delay on account of the above, leading to time and cost overrun is not attributable to it and the Commission may consider the same accordingly. The respondent No.1 to 6 during the hearing has submitted that the delay due to earthquake and change in visa policy cannot be considered as Force majeure and the delay is attributable to the petitioner. It has also submitted that the completion of 400 kV DC line from the project switchyard has been delayed for want of Stage-II clearance from the Ministry of Environment & Forests, Government of India and hence Force Majeure event has been invoked on the petitioner under Article 10 of the PPA dated 26.12.2005. The submissions of the parties, as to whether the delay in the commissioning of the generating station is on account of Force majeure or attributable to the parties are required to be looked into in detail after hearing all the parties on merit, at the time of determination of final tariff. However, keeping in view the time and cost overrun involved in the project and since only Unit-I of the generating station is to be granted provisional tariff by this order, we consider only 90% of the capital cost claimed by the petitioner for the purpose of grant of provisional tariff. Accordingly, after considering the documents

submitted by the parties upto the date of hearing, the provisional tariff of Unit-I of the generating station from 11.11.2010 to 31.3.2014 is determined in the subsequent paragraphs:

Capital cost

35. The petitioner has claimed a capital cost of ₹291732.40 lakh for Unit-1 as on the date of commercial operation i.e. 11.11.2010. Based on Form-9A (revised), the break-up of the capital cost claimed is as under.

	(₹ in lakh)
Gross block as on 1.4.2010	3642.00
Addition in gross block through CWIP during the period	276841.00
Total	280483.00
Projected Additional capital expenditure upto 31.3.2011	11249.00
Total	291732.00

36. The respondents have submitted that after considering the request of the petitioner for increasing in the capacity and examination of all relevant records, the respondents had agreed to increase in the capital cost by ₹131 crore. Accordingly, the total capital cost was agreed for ₹4430 crore for 1200 MW capacity which is including of interest during construction. The petitioner is required to limit its claim to the said amount and cannot claim extra capital cost for tariff determination. Further, it is not open to the petitioner to claim capital cost on the ground that the Government of Karnataka in the conciliation efforts referred to other capital cost. The respondents have further submitted that a substantial part of claim and since IDC has been increased due to delay in commissioning of the generating stations for reasons solely attributed to the petitioner, they additional IDC claimed by the petitioner should be denied.

37. We have considered submissions of the parties. The Commission had approved the capital cost of ₹ 4299 crores for development of 1015 MW generating station in the in principle approval order dated 25.10.2005 in Petition No. 40/2005. It is not in dispute that respondents have agreed to increase in the capital cost by ₹131.68 crore for a capacity of 1200 MW based on the report of the official committee. On the basis of the representation of UPCL to Govt. of Karnataka regarding reconsideration of the capital cost on account of the increase in the capacity of project from 1015 MW to 1200 MW, Govt. of Karnataka appointed an independent committee headed by Justice (retd) Gururajan. The said committee in its report submitted to the Government on 23.9.2010 had recommended increase in capital cost by ₹583.00 crore and suggested for appropriate amendment to the PPA. The Govt. of Karnataka in its order dated 25.10.2010 had approved the enhancement of project capacity from 1015 MW to 1200 MW and capital cost by ₹583 crore and had also directed the petitioner to file necessary particulars of increase in tariff along with relevant documents to the Central Commission for approval. It has been further mentioned in the said order that "subsequent to the approval of cost and tariff by CERC, the PPA between ESCOMS and M/s. UPCL has to be approved by Karnataka Electricity Regulatory Commission (KERC)". In view of the clear cut directions of the Govt. of Karnataka, it does not lie with the respondents to contend that the capital cost cannot be revised since it has not been agreed to by the respondents while agreeing to enhancement in project capacity. Accordingly, the Commission has considered the enhanced capital cost by ₹583 crore for purpose of determining the capital cost.

38. Considering the delay in commissioning of the project, 90% of capital cost claimed has been considered for the purpose of grant of provisional tariff. Since the period of claim for projected additional capital expenditure (upto 31.3.2011) is over, we restrict the same to actuals. As per the balance sheet and Form-9A to the petition, the closing gross block as on 31.3.2011 is ₹281052.00 lakh, which imply that the additional capital expenditure from the date of commercial operation (11.11.2010) to 31.3.2011 is ₹569.00 lakh. Out of this, ₹542.00 lakh is on account of Exchange Rate Variation. It is observed that the opening capital cost is on accrual basis, consisting of liabilities of ₹18800 lakh. Therefore, in terms of Regulation 7 of the 2009 Tariff Regulations, as amended on 21.6.2011, the capital cost, on cash basis, works out to ₹261683.00 lakh, after removal of projected additional capital expenditure. Accordingly, 90% of the opening capital cost, as on the date of commercial operation of Unit-I (600 MW) of the generating station (11.11.2010) considered for provisional tariff, works out to ₹235514.70 lakh, on cash basis. Similarly, the additional capital expenditure claimed for ₹569.00 lakh for 2010-11 and ₹15292.00 lakh for 2011-12, has been restricted to 90%, which works out to ₹512.10 lakh and 13762.80 for 2010-11 and 2011-12 respectively. This has been considered.

Debt Equity Ratio

39. The petitioner has claimed debt-equity ratio of 75.64: 24.36 for the purpose of tariff. The respondent 2 to 6 and PSPCL have submitted that the debt-equity ratio of 80:20 may be considered. Unit-I of the generating station has been declared under commercial operation on 11.11.2010. Since the equity actually deployed is less than

30% of the capital cost, in terms of the first proviso to Regulation 12 (1) of the 2009 Tariff Regulations, the actual debt-equity ratio as claimed by the petitioner has been considered.

Interest on Loan

40. The petitioner has claimed weighted average rate of interest on loans for the respective years as under:

	2010-11	2011-12	2012-13	2013-14
Weighted average rate of interest	12.3524%	12.9448%	13.4248%	13.4248%

41. The rates claimed as above have been considered for the purpose of provisional tariff.

Return on Equity

42. The petitioner has claimed grossed up Return on Equity @ 19.36% during 2010-11 and 19.38% for the years 2011-12, 2012-13 and 2013-14. Regulation 15 of the 2009 regulations provides as under:

“(1) Return on equity shall be computed in rupee terms, on the equity base determined in accordance with regulation 12.

(2) Return on equity shall be computed on pre-tax basis at the base rate of 15.5% to be grossed up as per clause (3) of this regulation.

Provided that in case of projects commissioned on or after 1st April, 2009, an additional return of 0.5% shall be allowed if such projects are completed within the timeline specified in Appendix-II.

Provided further that the additional return of 0.5% shall not be admissible if the project is not completed within the timeline specified above for reasons whatsoever.

(3) The rate of return on equity shall be computed by grossing up the base rate with the Minimum Alternate/Corporate Income Tax Rate for the year 2008-09, as per the Income Tax Act, 1961, as applicable to the concerned generating company or the transmission licensee, as the case may be.

(4) Rate of return on equity shall be rounded off to three decimal points and be computed as per the formula given below:

Rate of pre-tax return on equity = Base rate / (1-t)

Where t is the applicable tax rate in accordance with clause (3) of this regulation.

(5) The generating company or the transmission licensee, as the case may be, shall recover the shortfall or refund the excess Annual Fixed Charge on account of Return on Equity due to change in applicable Minimum Alternate/Corporate Income Tax Rate as per the Income Tax Act, 1961 (as amended from time to time) of the respective financial year directly without making any application before the Commission:

Provided further that Annual Fixed Charge with respect to the tax rate applicable to the generating company or the transmission licensee, as the case may be, in line with the provisions of the relevant Finance Acts of the respective year during the tariff period shall be trued up in accordance with Regulation 6 of these regulations.”

43. Regulation 5 provides that the generating company or the transmission licensee shall recover the shortfall or refund the excess annual fixed charge on account of return on equity due to change in MAT rate etc, of the respective financial year directly, without making any application before the Commission. Unit-I of the generating station has been declared under commercial operation during the year 2010-11, and the MAT rate applicable for the years 2010-11 and 2011-12 are known. Hence, the MAT rate for the years 2010-11 and 2011-12 has been considered for the purpose of provisional tariff.

Depreciation

44. The petitioner has claimed depreciation of 5.22576% for Unit-I. However, the depreciation rate of 5.1749% as worked out as per the 2009 Tariff Regulations has been considered.

O&M Expenses

45. O&M expenses as specified under Regulations 19 (a) of the 2009 Tariff Regulations has been considered.

Interest on working Capital

46. In terms of Regulation 18 (3) (ii) of the 2009 Tariff Regulations, amended on 21.6.2011, the SBI base rate of 7.5% as on 1.7.2010 with markup of 350 bps totaling 11%, has been considered.

Gross Station Heat Rate and Auxiliary consumption

47. In terms of the methodology specified under Regulation 26(II)(B)(a) of the 2009 Tariff Regulations, the Gross Station Heat Rate has been worked out as 2333.43 kcal/kWh and the same has been considered. As stated, the Auxiliary consumption of 6% has been adopted for the purpose of provisional tariff.

48. Based on the above discussions, the provisional tariff of the Unit-I (600 MW) of the generating station is allowed as under:

	(₹ in lakh)			
	2010-11	2011-12	2012-13	2013-14
Annual Fixed Charges	58618.06	60457.13	61403.53	60139.98

49. The provisional annual fixed charges determined on annualized basis as above, is applicable *pro rata* to the number of days the said Unit-I shall run from the date of commercial operation till 31.3.2014 or till the final disposal of the petition, whichever is earlier.

50. The provisional annual fixed charges allowed above is subject to adjustment as per proviso to Clause (3) of Regulation 5 of the 2009 Tariff Regulations.

Energy Charge Rate

51. Energy Charge Rate (ECR), considering the Station Heat Rate of 2333.43 kcal/kWh, the Auxiliary consumption of 6.0% and GCV and weighted average price of oil, coal and lime works out to ₹2.085/kWh and is allowed. ECR on month to month basis, shall be calculated in terms of Clauses 5 and 6 (a) of Regulation 21 of the 2009 Tariff Regulations.

52. As prayed for by the parties during the hearing, pleadings in the petition shall be completed before final hearing of the matter, the date for which shall be intimated to the parties.

53. As copies of the interlocutory application I.A. 49/2012 have been served on the respondents/objector, reply shall be filed by these parties, within two weeks, with advance copy to the petitioner, who shall file its rejoinder, within a week thereafter. The matter shall be listed for hearing for which the parties shall be intimated in due course.

Sd/-
[M.DEENA DAYALAN]
MEMBER

Sd/-
[V.S.VERMA]
MEMBER

Sd/-
[DR.PRAMOD DEO]
CHAIRPERSON