

**Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 63 of 2014

In the matter of

**Suo motu proceedings on the Report submitted by the Committee on Compensatory
Tariff for Tiroda power plant of Adani Power Maharashtra Limited in Case 68 of 2012**

Smt. Chandra Iyengar, Chairperson

Parties to the present case:

Adani Power Maharashtra Limited and
Maharashtra State Electricity Distribution Company Limited

Advocates/Representatives of
the Adani Power Maharashtra
Limited:

Shri Sanjay Sen, Advocate
Shri Kandarp Patel

Advocates/Representatives of
MSEDCL

Shri A.S. Chavan, MSEDCL
Shri Kiran Gandhi, Advocate

Consumer Representatives:

Ms. Ashwini Chitnis, Prayas Energy Group
Dr. Ashok Pendse, Thane Belapur Industries Association

ORDER

Dated: 5 May, 2014

The Commission had issued the Order in Case No. 68 of 2012 on 21 August, 2013 in the matter of Petition filed by Adani Power Maharashtra Limited related to its dispute with Maharashtra State Electricity Distribution Company Limited (hereinafter referred to as “MSEDCL”). In the said Order, the Commission directed the parties in Case No. 68 of 2012

to constitute a Committee, which was required to submit a report outlining the principles and the precise mechanism for calculation of compensatory charge within three (3) months from the date of said Order. A Committee was formed vide a resolution of Government of Maharashtra (hereinafter referred to as “GoM”) dated 9 December, 2013. The Committee has submitted its report (hereinafter referred to as “Committee Report”) to the Commission on 18 February, 2014. The Commission has carried out the suo motu proceedings on the Committee Report under the present Case, i.e., Case No. 63 of 2014.

A) Background of the Case

2. In Case No. 68 of 2012, APML approached the Commission under Section 86 (1) (f) of the Electricity Act, 2003 (hereinafter referred to as “EA-2003”) for adjudication of dispute and for return of performance guarantee pursuant to the termination of its Power Purchase Agreements (PPA) with MSEDCL on 16 February, 2011, and in the alternative, revise the Tariff under the PPA.
3. APML is a generating company developing a thermal power station at Tiroda (hereinafter referred to as “Tiroda TPS”). APML’s parent company, Adani Power Limited (APL) had participated in a Case 1 bidding process conducted by MSEDCL under Stage-I of the competitive bidding process. MSEDCL had conducted the said bidding process in accordance with the Guidelines for Determination of Tariff by Bidding Process for Procurement of Power by Distribution Licensees issued by Ministry of Power, Government of India under the provisions of Section 63 of the EA-2003 (hereinafter referred to as “Competitive Bidding Guidelines”). APL was selected in the RfQ stage. APL submitted its RfP response on 20 February, 2008 and specified Lohara (West) and Lohara (Extension) coal blocks (together referred hereinafter to as “Lohara coal blocks”) allocated to it as one of the sources of fuel. APL also stated that the balance requirement of fuel will be met by coal supply from (Coal India Limited) CIL or its subsidiaries and imported coal.
4. APL was selected under the above mentioned bidding process and subsequently, a Power Purchase Agreement (hereinafter referred to as “PPA”) was signed between APML and MSEDCL. APML received the Terms of Reference (ToR) for Lohara coal blocks on 16 May, 2008, from Ministry of Environment & Forest (MoEF).

5. On 25 November, 2009, MoEF decided to withdraw the said ToR as Lohara coal blocks were identified to be within the proposed buffer zone of the Tadoba Andheri Tiger Reserve (TATR). MoEF took the above decision after considering the reports of Government of Maharashtra (GoM), National Tiger Conservation Authority (NTCA) and based on the recommendations of the Expert Appraisal Committee (EAC). MoEF further recommended to the Ministry of Coal (MoC) for allocation of an alternate coal block for Tiroda TPS in lieu of Lohara coal blocks.
6. APML submitted that after the withdrawal of ToR, it applied to MoC for allocation of an alternate coal block on 3 December, 2009. Vide letter dated 2 January, 2010. APML informed MSEDCL, that the ToR in respect of Lohara coal blocks had been cancelled and the same has resulted in conditions akin to "force majeure".
7. MoEF informed APL vide its letter dated 7 January, 2010, about its decision of not considering Lohara coal blocks for environmental clearance. In the same letter, MoEF also conveyed that it has written to the MoC recommending the allocation of an alternate coal block to the company.
8. After several communications between the parties, APML sent the notice for termination of PPA to MSEDCL on 16 February, 2011. Subsequently, Several communications were made between the parties as there was a disagreement between the parties on the applicability of force majeure and validity of termination of PPA.
9. Subsequently, through its letter dated 11 April, 2012, APML requested MSEDCL to return the performance guarantee of Rs. 99 Crore submitted at the time of bidding, if MSEDCL is not revising the Tariff as requested by APML. Based on the dispute between the parties, the APML approach the Commission through its Petition dated 16 July, 2012, which was numbered as Case No. 68 of 2012.
10. The prayers of APML in the said Petition were as given below:

“a) Direct the Respondent to return the Performance Guarantee No. 007GM07082270001 dated 14.8.2008 to the Petitioner;

b) In the alternative, and without prejudice to prayer a), this Hon'ble Commission to:

i. direct the Respondent to consider revision of tariff and execution of a new

PPA, substantially based on terms of the PPA dated 8.9.2008, which PPA has since been terminated;

ii. consider the revised fuel cost for generation and supply of power from the Petitioner's power plant in order to enable revision of tariff;

c) Without prejudice to prayers (a) and (b) above, pending hearing and final disposal of the present petition, this Hon'ble Commission be pleased to allow the Petitioner to sell power, within or outside the State of Maharashtra;

d) Pass such and further orders, as the Hon'ble Commission may deem fit and appropriate keeping in view the facts and circumstances of the case”

11. The Commission, after hearing the parties, Authorised Consumer Representatives and the Amicus Curiae appointed in the above case issued an Order on 21 August, 2013. The said Order is annexed as Annexure-1 to this Order.
12. In the Order in Case No. 68 of 2012, the Commission set the parties to a consultative process and directed the parties to constitute a Committee. As per the directions of the Commission in Order dated 21 August, 2013, a Committee was formed as per the Government Resolution dated 9 December, 2013 issued by GoM. The Constitution of the Committee was as follows:

Sr. No.	Position in the Committee	Member
1	Chairman (Eminent Banker)	Shri Rajendra M. Malla, Former Chairman, IDBI Bank
2	Financial Analyst	M/s SBI Capital Markets Limited
3	Representative, GoM	Shri K.P. Bakshi, Additional Chief Secretary (Planning), Govt. of Maharashtra
4	Representative, MSEDCL	Shri Ajoy Mehta, Principal Secretary (Energy), Govt. of Maharashtra and MD, MSEDCL
5	Financial Expert and Technical Consultant	

13. The GoM, in its above said resolution has changed the composition of the Committee as ordered by the Commission and excluded the representative of APML as a member of the Committee. In the said GR, it is stated that APML will be called in the meetings as and when required.
14. During the proceedings of this case, the Commission took a note of the same. The Commission observed that although it had directed for formation of a Committee

including APML, GoM has altered the composition of the Committee, which was not open to its discretion. The consultative process as envisaged by the Commission in the Order in Case No. 68 of 2012 would have been hampered by not involving APML in the proceedings of the Committee. However, considering the views of GoM expressed in the GR dated 9 January, 2014, the Commission vide daily Order dated 9 January, 2014, directed that the composition of the Committee should include the Representative of the APML as a permanent invitee with access to the documents and deliberations of the Committee.

B) Proceeding of the Committee

15. Pursuant to the Government of Maharashtra (GoM) Resolution dated 9 December, 2013, first meeting of the Committee was called on 6 January, 2014. During the meeting, Dr. Satish Bagal (former Director of Accounts Treasuries, Government of Maharashtra) and Shri C. P. Singh (former Director, BHEL and Chairman of NTPC BHEL Power Project Company Private Limited) were appointed as financial analyst and technical consultant respectively. Further, Shri A. G. Karkhanis (former Executive Director, Legal, IDBI) was appointed to assist the Committee on legal issues.
16. In the second meeting of the Committee held on 20 January, 2014 KPMG was appointed as Independent Accounting Agency. KPMG's scope of work included assisting the Committee in assessing the revenues from sale of power and cost of coal for the project under the PPA with MSEDCL. Further, as per the daily Order of the Commission dated 9 January, 2014 in Case No. 150 of 2013, it was decided to invite the representatives from APML as the permanent invitees to the Committee. The Committee held two more meetings on 10 February, 2014 and 17 February, 2014. The Report of the Committee was submitted to the Commission on 18 February, 2014. The Committee Report was signed by Shri R.M. Malla, Shri V.G. Kannan (SBI Capital Markets Limited) and Dr. Satish Bagal. The Committee Report is annexed as Annexure-II.

C) Committee Report

17. The Report of the Committee comprised a brief overview of Order in Case No. 68 of 2012, proceedings of the Committee, Scope of the Committee, Company Analysis of APML, Industry Analysis, Analysis of Bid assumptions and principles,

Compensatory Tariff and other concerns. The analysis and recommendations of the Committee have been discussed in detail in the following paragraphs:

17.1. In the company analysis chapter, the Committee Report concludes as follows:

- During FY 2012-13, total income of APML was Rs.362 Cr. with EBIDTA of Rs. 139 Cr. and net loss of Rs. 319 Cr. (cash loss of Rs.176 Cr.). For 9 months ending 31 December, 2013, total income of APML was Rs. 2117.5 Cr. with EBIDTA of Rs. 650.36 Cr. and loss of Rs. 463.23 Cr. (cash loss of Rs. 43.22 Cr.).
- The CARE credit rating for APML for various long-term bank facilities has been BBB Negative since October 2012. Typically, the credit rating of the company improves after commencement of commercial operation. However, rating agencies have kept the credit rating for APML at the same level which can be attributed to its poor profitability and financial performance. The poor profitability and financial performance of the company has resulted in non-availability of sufficient funds for working capital. If the existing hardship of the Company continues, there may be further deterioration in performance as well as credit worthiness of the Company.
- Regarding the actual hardship from COD to 31 December, 2013, the Committee noted that the losses to be about Rs. 318.7 Cr. under 1320 MW PPA based on Statutory Auditor Certificate for this period after considering Interim relief. Without considering interim relief, the loss works out to Rs. 447.7 Cr.. It was further observed that the hardship on account of energy cost for PPA supply was Rs. 357.28 Cr. and on account of capacity cost (without RoE) was Rs. 133.98 Cr. APML is expected to incur losses not only on energy charges but also on account of capacity charges over quoted Tariff. However, the scope of the Committee is limited to evaluate and evolve mechanism to mitigate the hardship on account of energy charges.
- The Committee concluded that APML is suffering financial losses currently due to under recovery of capacity and energy costs. As also submitted by APML in its Petition in Case No. 68 of 2012, if the current operations of the plant continue with imported coal, the networth of APML may get eroded in a few years. In such a situation, APML may be forced to shut down its operations rather than continuously incur losses. In such a scenario, APML also runs the risk of lenders foreclosing and recalling the loans on account of deteriorating creditworthiness.
- Accordingly, the Committee recommended that a mechanism may be put in place for immediate mitigation of hardship and to avoid consequent repercussions on APML

enabling it to continue supply of power to MSEDCL under 1320 MW PPA.

- 17.2. In the chapter on industry analysis, the capital cost of Phase 1 and Phase 2 of Tiroda TPS have been compared with the projects currently being developed. It has been observed by the Committee that the cost per MW of APML Phase 1 and Phase 2 are comparable with similar projects being set up by other companies.
- 17.3. The Committee further analysed the Tariffs discovered in the recent Case 1 long-term and medium-term bids. The Committee also assessed the present bids in the light of changing business scenarios considering the various significant changes in some of the parameters which are used to determining Tariff vis-à-vis the year 2008, when APML signed the PPA with MSEDCL. The Committee observed that the cost of investment including finance cost, costs of domestic coal and coal transportation have increased substantially. The same corroborates the view that if performance of power supply obligations of APML under the PPAs in question is rendered impossible, new replacement supply arrangement is likely to be costlier. It was concluded that the Tariff of the PPA under question including compensatory charge is likely to be competitive.
- 17.4. In the chapter on bid assumptions, the Committee observed as follows:

“The compensation, if payable, would depend on the cost assumptions. Many of the assumptions made by APML are substantiated by such documents as Mining Plan and Geological Survey while some estimates are made by the company.

In order to assess the prudence of bid basis and to restrict compensation limited to 800 MW affected by withdrawal of Lohara coal block, the Committee decided to analyze in detail the bidding basis which was considered by APML while quoting the energy charges under the PPA. For the purpose of the analysis in this report, the bid assumptions for only Energy Charges have been considered / analyzed

The coal source assumed in the bid was Lohara coal block for 1000 MW and Linkage coal from SECL for balance 412 MW. The escalation rates for SECL fuel cost and transportation as well as for the Lohara coal were assumed as per respective CERC notified escalation rates at the time of the bid. The other parameters used to arrive at the bid nos. are as follows:”

17.5. The Committee noted that based on the assumptions, APML had arrived at two different bid streams for each of the fuel source. The overall bid numbers were based on a weighted average of the individual streams. The Committee Report noted the embedded stream numbers as follows:

Table 1: Yearly energy charge for Lohara and Linkage estimated at time of bid

Parameter/Year	Year of PPA	Energy charge for Linkage coal (412 MW)*	Energy charge for Lohara coal (1000 MW)*	Weighted Average Energy Charge for 1412 MW
FY 13	1	1.44	0.94	1.08
FY 14	2	1.53	0.83	1.03
FY 15	3	1.63	0.86	1.08
FY 16	4	1.73	0.90	1.14
FY 17	5	1.85	1.01	1.26
FY 18	6	1.97	1.06	1.33
FY 19	7	2.09	1.11	1.40
FY 20	8	2.23	1.22	1.51
FY 21	9	2.38	1.28	1.60
FY 22	10	2.53	1.34	1.69
FY 23	11	2.70	1.39	1.78
FY 24	12	2.88	1.47	1.88
FY 25	13	3.07	1.55	1.99
FY 26	14	3.28	1.63	2.11
FY 27	15	3.50	1.72	2.24
FY 28	16	3.74	1.64	2.26
FY 29	17	3.99	1.73	2.39
FY 30	18	4.26	1.83	2.54
FY 31	19	4.55	1.93	2.69
FY 32	20	4.86	2.04	2.86
FY 33	21	5.20	2.04	2.96
FY 34	22	5.55	2.19	3.17
FY 35	23	5.94	2.31	3.37
FY 36	24	6.35	2.45	3.58
FY 37	25	6.79	2.58	3.81
Levellised		2.46	1.23	1.59

* Includes a risk premium of 8 paise/unit

17.6. It was further noted that capacity and energy charges derived from the assumptions mentioned above needed to be modified in order to comply with Clause 6.5 of the PPA and also as APML had to ensure enough liquidity to service debt repayment and interest cost in the initial years of the PPA tenure. This also necessitated revision of bidding stream. In view of the above, APML modified the above Tariff stream and quoted the following Energy Charges in the Bid to achieve the same levellised Tariff of Rs. 1.59 per kWh.

Table 2: Energy charge stream of bid submitted by APML

Parameter/Year	Year of PPA	Energy charge for 1412 MW
FY 13	1	1.44
FY 14	2	1.44
FY 15	3	1.44
FY 16	4	1.44
FY 17	5	1.44
FY 18	6	1.46
FY 19	7	1.48
FY 20	8	1.50
FY 21	9	1.52
FY 22	10	1.54
FY 23	11	1.68
FY 24	12	1.70
FY 25	13	1.51
FY 26	14	1.57
FY 27	15	1.64
FY 28	16	1.89
FY 29	17	1.96
FY 30	18	2.03
FY 31	19	2.11
FY 32	20	2.19
FY 33	21	2.28
FY 34	22	2.36
FY 35	23	2.45
FY 36	24	2.55
FY 37	25	2.65
Levelling		1.59

17.7. In the chapter on Compensatory Tariff, the Committee has observed that based on the deliberations at the Committee meetings, discussions amongst Committee members, inputs and findings from various consultants, comments and views of MSEDCL and Company, the following may be recommended:

- A methodology may be formulated to compensate the Company for the prospective hardship on account of non-availability of coal from Lohara coal blocks.
- The Company may be compensated for losses on account of energy cost under recoveries from commencement of supply of power under the PPA limited to 800 MW capacity based on the above methodology.
- In respect of hardship being expressed by the Company for the balance capacity and energy charge for 520 MW capacity under the PPA due to short supply of coal under FSA and for changes in law and reasons beyond the control of the company, the Committee felt that it is not within its scope and the Company may

further approach MERC for the same.

- 17.8. The Committee further noted that while deciding compensation, it is necessary to remain within the scope of Commission's Order in Case No. 68 of 2012 in which, compensatory charge is to be given only for hardship on account of withdrawal of ToR for Lohara coal blocks. Accordingly, the methodology to be worked out has to take into account compensation only to the extent of actual energy cost incurred for coal in lieu of Lohara coal blocks.
- 17.9. As regards cost accounting records, the Committee noted that as per the Statutory Auditor report dated 4 May, 2013, the auditor has observed that prima facie, the prescribed cost records have been maintained as per the Companies Act, 1956. The Committee recommended that cost accounting records be maintained as per statutory requirements and the same be audited periodically.
- 17.10. The Committee observed that if actual costs towards fuel cost incurred by the Company for procurement of coal in lieu of Lohara coal blocks are considered in the composite Energy charge, it would mitigate the hardship suffered by APML on account of under recovery of fuel cost. The bid stream of Lohara coal blocks portion was cross-subsidizing the energy cost of the linkage portion.
- 17.11. The Committee felt that the principle of fixation of Compensatory Energy Charge should be simple to understand, transparent and reflect the true position. Considering the above, following methodology was proposed by the Committee for the purpose of formulating a compensatory Tariff mechanism for hardship on account of non-availability of coal from Lohara coal blocks:

“As per the methodology considered, the actual energy cost incurred for 800 MW capacity is compared with the energy charge arrived at based on APML's Bidding assumptions for Lohara Coal Block portion. Whereas in respect of 520 MW balance capacity linked to CIL linkage, tariff for linkage embedded in quoted/bid tariff will continue to be under operation”

- 17.12. Based on the above, the Committee suggested the following formulae:

“Energy Charge for Lohara Portion as per bid assumption for respective year: A

Actual Energy Cost incurred for 800 MW capacity for respective year: B

Compensatory Energy Charge for 800 MW : C = B – A

#As there is single billing for entire contracted capacity under the PPA, the tariff for 1320 MW would be arrived at based on the revised tariff including compensation for 800 MW and retaining the tariff embedded in the bid stream for the linkage coal (e.g. Rs. 1.53/kwh for FY 14)”

- 17.13. The Committee noted that the proposed mechanism will enable APML to recover its cost, which in turn will enable it to sustain its operations thus ensuring supply of contracted power to Consumers.
- 17.14. On the subject of capacity charges, the Committee noted that APML has informed that it is facing a substantial under recovery of capacity charge mainly on account of unprecedented depreciation of currency, increase in interest rates, increase in IDC, etc. Since the hardship on account of capacity charges is not within the scope of the Committee, the Company may approach the Commission for appropriate relief.
- 17.15. For operationalisation of the above methodology, determination of coal cost for 800 MW in lieu of Lohara coal blocks is one of the key steps. The Committee has suggested the following formula for the same.

$$D_{\#} = a \times D_t + b \times D_i$$

Where, a and b will be the proportions of tapering linkage and imported coal in terms of heat value

D_t will be cost of energy for tapering linkage coal and D_i will be cost of energy for imported coal, both in Rs per kWh”

D_t and D_i will be arrived based on landed cost of coal, SHR, Auxiliary consumption and GCV”

- 17.16. The cost of linkage coal shall be computed based on the following input parameters:

Table 3: Inputs for computation of cost of linkage coal

Parameter	Basis/Value
Technical Parameters	
SHR	2358 kcal/kWh as assessed by Technical Consultant or actual, whichever is lower
Auxiliary Consumption	Design of 6.89% (as assessed by Technical

Parameter	Basis/Value
	Consultant) or applicable CERC norms, whichever is lower
GCV	As certified by Third Party Sampling Agency based on sampling at Tiroda Plan
Parameters for landed cost	
Basic coal cost	As notified by CIL from time to time (including applicable taxes and duties)
Transportation from SECL to Tiroda TPP	Actual as incurred by the Company on the basis of contracts
Transit & Handling Losses	0.8% as per CERC norms
Transaction L/c and insurance charges	Actual , but will not exceed 3% of the landed cost
Loading supervision liasioning, co-ordination charges	Actual as incurred by the Company
Per unit cost of generation from tapering coal	
Specific Coal consumption with Aux	$((SHR/GCV)/(1-(Aux)))$
Per unit generation cost	=Specific consumption x Cost of landed cost of tapering coal as arrived above in Rs per kg

17.17. Similarly, the cost of imported coal shall be arrived at based on the following parameters:

Table 4: Inputs for estimating cost of imported coal

Parameter	Basis/Value
Technical Parameters	
SHR, Auxiliary Consumption and GCV	Same as that considered in Tapering Linkage generation cost
Parameters for landed cost	
FoB Price	Lowest of Actual or HBA Index or any other relevant indices
Ocean Freight	Actual as incurred by Company on basis of contracts; Capped to freight index or guidance suggested by CERC
Transaction L/c and insurance charges	Actual , but will not exceed 3% of the landed cost
Port Handling Charges	On actuals
Transit & Handling Losses	Lower of Actual or CERC Norms
Transportation from Port to Tiroda TPP	Actual as incurred by the Company based on contracts, On the basis of invoices, availability/capacity of port, Railway approval,/connectivity for movement of coal from port, etc
Domestic coal procured from other sources i.e., e-auction, traders,	On actual basis, duly certified by auditors, but the landed cost to be benchmarked/compared with landed cost of

Parameter	Basis/Value
	imported coal and e-auction coal, (landed cost in terms of GCV); To be procured if the cost of generation is lower than imported coal.
Loading supervision liasoning, co-ordination charges	Actual as incurred by company; Subject to determination by bidding or market norms
Per unit cost of generation for imported coal	
Specific Coal consumption with Aux	$((SHR/GCV)/(1-(Aux)))$
Per unit generation cost	=Specific consumption x Cost of landed cost of imported coal as arrived above in Rs per kg

17.18. The Committee has suggested the process for recovery of compensatory charge in Paragraph 7.3 of the report.

17.19. In the eighth chapter the Committee has dealt with the miscellaneous issues and the arguments raised by MSEDCL through its letter dated 15 February, 2014 to the Committee.

D) Comments by parties and Consumer Representatives on the Committee Report

18. The Commission initiated suo motu proceedings in the present Case and shared the report with both the parties and the Authorised Consumer Representatives. The Commission also uploaded the Report on the website of the Commission. The Commission invited comments on the Committee Report from the stakeholders.

18.1. MSEDCL made the submission in this regard on 20 March, 2014, in which, it inter alia, submitted comments on behalf of GoM. The Commission notes that GoM has given in principle acceptance to the Committee Report, subject to certain modifications, as outlined in the said submission by MSEDCL.

19. APML vide its submission dated 26 March, 2014 replied to the arguments raised in the MSEDCL's submission and prayed the Commission to accept the report in entirety.

20. The arguments put forth by MSEDCL/GoM, APML's reply, view of Authorised Consumer Representative on these arguments and Commission's observations on them are as follows:

Contours of Compensatory Charge/ Scope of the Committee

20.1. GoM submitted that as per the directives of the Commission, the Committee was required to look into the impact of non-availability of coal from Lohara coal blocks

and to determine the compensatory charge limited to 800 MW only. Therefore, irrespective of the coverage in the Committee Report, the Commission should consider only fuel/energy cost while determining compensatory charge. MSEDCL added that the escalation of capital expenditure and fixed cost or transportation cost because of foreign exchange rate fluctuations does not lie within the ambit of the Committee.

- 20.2. On this aspect, APML has replied that although it has requested for inclusion of hardship of the balance capacity, the compensatory charge has been confined to capacity of 800 MW only, which is affected by withdrawal of ToR for Lohara coal blocks as per the Committee Report.
- 20.3. **The Commission has noted in the Order in Case No. 68 of 2012 that APML has been affected by withdrawal of ToR for Lohara coal blocks, which would have supported a capacity of 800 MW. Therefore, the relief needs to be considered only for 800 MW.**

Determination of compensatory charge by Competitive Bidding

- 20.4. GoM and MSEDCL submitted that the best way to determine compensatory charge will be to conduct a competitive bidding process to discover Tariff afresh with a pre-determined cap on compensatory charge.
- 20.5. On this aspect, APML replied that the suggestion of MSEDCL is beyond the scope of the MERC Order in Case No. 68 of 2012. As seen from the Report, the Committee has also taken cognizance of the recent competitive bidding undertaken by various utilities while recommending the compensatory Tariff formula.
- 20.6. **The Commission has considered various issues involved in the matter in Case No. 68 of 2012 and has set the parties to a consultative process for arriving at a compensatory charge. There is no reason to deviate from the approach adopted by the Commission in the said Order.**
- 20.7. **Further, the Commission notes that the Committee has also compared various parameters like interest rates, coal prices, etc. at the time of bidding and at present and has found that the cost of investment including finance cost, costs of domestic coal and coal transportation has increased substantially. The Committee has further noted that if performance of power supply obligations of APML under the PPA in question is rendered impossible, new replacement**

supply arrangement is likely to be costlier. The Committee has also opined that Tariff of APML including compensatory charge is likely to be competitive.

Date of Applicability of Compensatory Charge/Revised Tariff

- 20.8. GoM and MSEDCL submitted that the compensatory charge/revised Tariff should be applicable prospectively from the date of Order of the Commission
- 20.9. **In the Order in Case No. 68 of 2012, the Commission had decided to provide interim relief to ensure continuous supply of power to the State from the project as noted in Paragraph 147 and the interim relief was to be applicable from the date of commercial operation of the project as noted in Paragraph 151. The Commission had further ruled in Paragraph 152 that the amount of interim relief will be adjusted when the final decision in the matter is taken subsequent to the submission of the report of the Committee. There is no reason to deviate from the decision taken by the Commission in Case No. 68 of 2012 in this regard.**

Mode and manner for deciding the Pricing of Coal: Mine related parameters

- 20.10. GoM, MSEDCL and Prayas have raised several doubts over the cost of mining, cost of transportation of coal from Lohara coal blocks, production profile from Lohara coal blocks, GCV of coal from Lohara coal blocks, Capital Expenditure on mine development, etc.
- 20.11. APML as well as the Committee have replied to various arguments of MSEDCL on each of the above parameters. The same are not discussion in detail as the Commission has decided to not go into the detail of each parameter, due to the following rationale.
- 20.12. **The Commission notes that in the Order in Case No. 68 of 2012, it has ruled that the relief will be in form of a compensatory energy charge which will be over and above the PPA Tariff. The Commission notes that the Committee has bifurcated the Tariff stream using the assumptions related to mining cost from Lohara, GCV of Lohara coal, etc. By doing so, the Committee has deviated from the approach of the Commission in the Order in Case No. 68 of 2012. The Commission finds no reason to deviate from its approach of using PPA Tariff as a base and thereby providing a compensation over and above the PPA Tariff.**

20.13. **Further, the Commission notes that the Committee has relied on the information provided by APLM for evaluating such embedded bid stream. The Commission notes that such values are assumptions for a mine, which has not even been opened till date and has rather been de-allocated by MoC. The Commission appreciates the lack of clarity on the assumptions for embedded bid stream as pointed out by MSEDCL and Prayas. The decision of the Commission in this Case relates to the capacity affected by Lohara coal blocks, which is 800 MW and the same does not affect the rights of either party to approach the Commission separately for the balance capacity.**

Operational Parameters

20.14. GoM and MSEDCL submitted that the Commission should decide the SHR based on the parameters set by the technical consultant or actual or applicable MERC/CERC norms, whichever is lower. Similar approach needs to be considered for Auxiliary Consumption. With regard to Coal transit loss, the pass through should be allowed on the basis of the actual losses or MERC norms whichever is lower. MSEDCL further submitted that the Technical Consultant should certify the optimal operational parameters and mention that this would be in the best interest of MSEDCL and its Consumers. Further, if better terms of any nature are considered at the instance of any of the Committee members including the views of the Commission or any other authority, MSEDCL should be entitled to benefits of such better terms.

20.15. APLM replied that as regards SHR, its assumption at the time of bid was 2350 kcal/kWh. However, in actual site conditions, operations cannot achieve design parameters. Therefore, there is a margin provided by CERC. Technical parameters considered in the report are as per the recommendations of the independent technical expert. It is important to note that the SHR has deteriorated as the specification of domestic coal is not available and not used. Instead the plant will be using imported coal with high moisture that will deteriorate SHR. The CERC Tariff Regulations 2009-14 have been notified now and the observation of MSEDCL that 4.5% margin is provided on account of degradation over the plant life is not correct. Further, Tiroda project was commissioned before 1 April, 2014.

- 20.16. **Observing the contention of MSEDCL on certain parameters, the Commission vide Daily Order dated 27 March, 2014 had asked both the parties to submit a computation of compensatory energy charge based on their respective views on the principles/assumptions used in Committee Report along with a detailed justification. The Commission notes that the computation submitted by APML and the computation carried out by SBI Caps as submitted by MSEDCL, have adopted a similar approach and there was only a minor deviation in the computation of compensatory energy charge, which was because of considering different SHR and Auxiliary Consumption. The Commission further notes that MSEDCL has not objected to the calculations submitted by SBI Caps while forwarding the same to the Commission. However, while deciding this Case, the Commission has deliberated and considered all the contentions raised by GoM and MSEDCL.**
- 20.17. **Having observed the above, the Commission has considered the CERC Tariff Regulations, 2014 for new generating stations, which are optimal operational parameters as per the current industry standards. The same has been dealt with in the subsequent paragraphs of this Order. However, if any party believes that performance of the plant is significantly deviating from the said CERC norms, either of them are free to approach the Commission.**

Nature of Compensatory Charges

- 20.18. GoM and MSEDCL submitted that since the Tariff quoted by APML was completely non-escalable, non-escalable parameters only should be applied while determining compensatory charge.
- 20.19. APML replied that escalation rates assumed by APML for linkage coal, Lohara coal and railway transport was that as per CERC notified rates. Further, the bid format did not allow quoting Tariff based on blended coal and hence APML did not have any option but to quote non-escalable Tariff.
- 20.20. **The Commission observes that the present case is about compensation for replacement of coal from Lohara coal blocks by costlier sources of coal, which is market driven. Therefore, the adoption of non-escalable parameters will not address the issues in the matter.**

20.21. **Further, the Commission notes that there is no default escalation in compensatory charge as per the methodology suggested by the Committee. As per the formula, the actual cost generation from imported coal needs to be considered after scrutinizing the cost of coal based on indexes and adopting specified performance parameters. Further, the price of imported coal used for computation of compensatory charge has been benchmarked to an index for imported coal.**

Cap on the Compensatory Tariff

20.22. GoM and MSEDCL submitted that while working out compensatory Tariff, a ceiling limit needs to be considered by the Commission, which will ensure that the Tariff for this PPA including the Compensatory Charge is not higher than the L2 bidder in the said bidding process. The onus will be on APML to try out all the feasible solution to reduce the cost and avail the best possible option to procure coal.

20.23. APML replied that a ceiling on compensatory Tariff may not be appropriate to compare with L2 Tariff as cost of generation varies for each project. Further the Committee has given justification for the principles of computation of Compensatory Energy Charge (CEC). APML added that it is also pertinent to note that L2 bidder is not supplying power as per PPA to MSEDCL. APML is willing to make all possible efforts to work out a feasible solution to reduce the cost and avail the best option to procure coal.

20.24. **As regards the above contention, the Commission agrees with the Committee Report that it may not be appropriate to consider the ceiling based on Tariff of L2 bidder, as each project has different cost structure. Keeping a ceiling on compensatory Tariff, which is dependent on market driven prices of coal, will defeat the purpose of this exercise.**

20.25. **The Commission further notes that the Ministry of Coal has amended the New Coal Distribution Policy and reduced the level of ceiling for short supply of linkage coal for levying disincentive. The MoP in its letter dated 31 July, 2013 has advised the Regulators to consider the request of IPPs to allow pass through of imported coal arising due to shortage of domestic coal on case to**

case basis. The Commission is not inclined to deviate from this thought process.

- 20.26. **Therefore, the Commission is not inclined to fix any ceiling; however, the parties are free to set a mutually agreed ceiling on compensatory charge.**

Year on year Audit

- 20.27. GoM and MSEDCL submitted that the Commission should direct that all the figures used for determination of compensatory charge must be audited by a reputed auditor.
- 20.28. **The Commission observes that the Committee has already accepted this suggestion of MSEDCL in the Report itself.**

Coal Accounting Mechanism

- 20.29. GoM and MSEDCL submitted that the Commission had specifically directed the Committee to look into the coal accounting process for Unit 2 and Unit 3 of APML's Tiroda TPS. The Committee has already directed APML to maintain such separate coal accounts. However, the Committee has not analysed the coal accounting process being followed in order to assess the effectiveness. Therefore, the Commission should ensure establishment of a scientific accounting method of consumption of various types of coal at Unit 2 and Unit 3.
- 20.30. APML replied that it has submitted the procedure being followed for coal accounting. The accounting practice carried out and all the required information regarding coal consumed has been submitted to an Independent Accounting Agency (KMPG) to their satisfaction.
- 20.31. **The Commission observed that the Committee has outlined the process being followed by APML for coal accounting. MSEDCL is directed to study the same and approach the Commission with the desired modifications, if any, in the coal accounting process, which will enable MSEDCL to scrutinize the compensatory charge workings and back-up invoices, etc. in an appropriate manner. Meanwhile, the procedure for coal accounting outlined in the Committee Report needs to be followed.**

Recommendation to Central Government

- 20.32. GoM and MSEDCL submitted that the Commission should recommend to Government of India for reduction in duties, taxes, etc. applicable on coal mining, coal transport, coal import and/or power generation in the interest of Consumers.
- 20.33. APML submitted that the said observation has been considered by the Committee. Both MSEDCL and APML shall continue to make efforts in order to minimize Compensatory Charges.
- 20.34. **APML and MSEDCL are directed to approach the relevant authorities for any possible reduction in duties, taxes, etc. considering the special circumstances of this case as further elaborated in Order in Case No. 68 of 2012. Further, the Commission will independently write to GoM to approach GoI and make an earnest effort for the same.**

Certificate of the Committee members

- 20.35. GoM and MSEDCL submitted that the Technical Consultant needs to verify and certify the bid assumptions pertaining to efficiency of the power plant and the landed cost of coal from Lohara coal blocks, as the same form the basis of determination of Compensatory Charge. Also, he needs to suggest the mix/blend of alternate coal and certify that the same are in the best interest of MSEDCL and its Consumers. Apart from signing of the report (or otherwise), the Legal and Technical Experts should also provide their independent opinion on the Committee recommendations which should be annexed to the report. It is submitted that the same shall facilitate in bringing out various aspects of the matter in a more elaborate manner.
- 20.36. **The Commission has noted in the Committee Report that the letter for no conflict of interest was already submitted by all the members of the Committee. The Commission further notes that the Report has been signed by the Committee members except Managing Director, MSEDCL, Additional Chief Secretary (Energy), GoM and the Technical Expert. The Technical Expert has submitted his report to the Committee.**

Report by Independent Auditor

- 20.37. GoM and MSEDCL submitted that the report of Independent Auditor appointed by the Committee is critical to determination of compensatory charge. Therefore, it

will be prudent that the Commission issues its final Order after the report from Independent Auditor is received.

20.38. APML has submitted that it will extend all the support necessary in the preparation of report by Independent Auditor.

20.39. **MSEDCL is directed to consider the Auditor's Report while allowing the compensation for the period from date of commercial operation of units under question to the date of Order in the present Case.**

Revenue from Higher Generation

20.40. GoM and MSEDCL submitted that it would like to avail its full share on the terms of PPA and entire power over and above 80% of the normative availability shall be made available to MSEDCL as per PPA.

20.41. **The Commission notes that as per the provisions of the PPA, it is entitled to the entire contracted capacity of 1320 MW. Therefore, this contention requires no comment from the Commission.**

Recommendation to Lenders

20.42. GoM and MSEDCL submitted that the Lenders to APML should reduce the rate of interest on debt. Such reduction in interest costs should be passed on to MSEDCL in the form of reduction in compensatory charges.

20.43. APML submitted that it is already experiencing higher capacity charges than bid as a result of various factors beyond its control. The existing RBI guidelines do not permit a reduction in interest rates.

20.44. **The Commission notes that as per the deliberations during the Committee meetings as can be inferred in the Minutes of Meeting of the Committee dated 20 January, 2014, there may a possibility of reduction of interest rates, once the compensatory charge is approved. Now since the Commission is approving the compensatory charge, APML should follow up with the lenders for a reduction in interest rates. APML should pass on the benefits of such reduction, if any, to MSEDCL.**

Sacrifice of RoE

- 20.45. GoM and MSEDCL submitted that since the sacrifice needs to be shared by each stakeholder, the promoters need to reduce the Return on equity claimed in capacity charges. While the Commission, in its interim Order, had considered a 50% reduction in return on equity, it should consider maximizing the same to the extent possible.
- 20.46. APMIL submitted that it has not been able to earn the mandatory return on equity due to under-recovery of capacity charge for various factors beyond its control. Therefore, it is not possible to share RoE.
- 20.47. **The Commission, in its Order in Case No. 68 of 2012 has held that all stakeholders must bear some burden of the hardship caused by withdrawal of ToR for Lohara coal blocks. Accordingly, the Commission had considered an aggressive reduction of 50% at the time of approving the interim relief in Case No. 68 of 2012. However, the Committee in its Report has now recommended that no RoE should be deducted considering the under recovery on account of capacity charges.**
- 20.48. **The Commission further observes that in a similar matter, the Hon'ble CERC, in its Order in Petition No. 159/MP/2012 dated 21 February, 2014, has adopted similar approach of sharing the hardships by all stakeholders. Hence, the Commission is not inclined to accept the recommendation of the Committee in this regard. However, considering the observations of the Committee, the Commission has decided to reconsider the level of RoE to be deducted. The Commission believes that the return on RoE should reflect the reduced level of risk profile of the project after the compensatory energy charge has been approved by the Commission. Considering various factors including the expected rate of interest for a project of this nature, the reduced risk profile, etc., the Commission believes that a reduction in RoE by 20% would be appropriate. For arriving at the per unit impact of reduction in RoE, the Commission has worked out the total RoE in paise per kWh based on the information given by APMIL in Case No. 68 of 2012.**

Right to Surrender Capacity

- 20.49. GoM and MSEDCL submitted that in case the power becomes unviable for MSEDCL due to higher compensatory charges, MSEDCL should have right to

surrender the contracted capacity or part thereof for certain periods within the term of the PPA without any payment of any capacity charges, compensatory charges or deemed charges. Therefore, power procurement from such project would not be binding on MSEDCL. Further, the term of agreement should also be extended for such period for which MSEDCL chooses to surrender the contracted capacity or part thereof.

- 20.50. APML submitted that in case the power generated from APML under the PPA becomes unviable, the same shall be governed by the merit order. The provisions under the PPA will continue to apply.
- 20.51. **The Commission notes that the term unviable is subjective and may vary based on the cost of power purchase, which is further dependent on the market driven prices of coal. MSEDCL is directed to approach the Commission with its proposal for a number or scenario in which the power will become unviable. However, till such time, the terms of the PPA will continue to apply.**

Tariff Determination under Section 62 or 63

- 20.52. GoM, MSEDCL and Prayas have submitted that the project was awarded to APML under Competitive Bidding Guidelines and as per Section 63 of the EA-2003, whereby the Commission has adopted the Tariff pursuant to the provisions of the EA-2003. However, the determination of compensatory charge on the basis of landed cost of coal and design SHR is akin to Tariff determination, at least to the extent of energy charges, pursuant to Section 62 of the Act. Therefore, the Commission needs to determine the additional compensatory charge every year which will be passed on to MSEDCL. Further, the Commission needs to approve such expenditure on account of the additional compensatory charge in the ARR of MSEDCL. There is also a need to enable MSEDCL to call for renegotiations in case the project becomes unviable to the MSEDCL through appropriate provision in the final Order.
- 20.53. APML submitted that in line with the scope of the Committee, only principles and mechanism of CEC were laid down; Compensatory charge shall finally be approved by the Commission.
- 20.54. **The Petition in the present matter, i.e., Case No. 68 of 2012 was filed under Section 86 (1) (f), which relates to resolution of dispute. In the Order in Case**

No. 68 of 2012, the Commission has clearly highlighted the special circumstances under which it has decided to intervene in this matter, which are elaborated in detail in the said Order. Further, the Commission is of the opinion that there is no ambiguity on the fact that the PPA under question is a contract signed under competitive bidding, the Tariff for which is adopted under Section 63 of the EA-2003.

- 20.55. **The Commission is outlining the principles and methodology for computation of compensatory charge in this Order, which are based on the Report submitted by a Committee set up under Case No. 68 of 2012. The process of determination of compensatory charge will be carried out as per the process laid down by the Commission.**

Billing Mechanism

- 20.56. GoM and MSEDCL submitted that since the recovery period as well as billing mechanism is not mentioned in the Commission's Order, clarity is required on the same. The Billing mechanism has been outlined in the Committee Report and the same should be followed by MSEDCL.
- 20.57. APML submitted that as per paragraph 7.3.1 of the report, the Committee has suggested that APML shall raise the claim for CEC for the past period within 15 days for the MERC Order and MSEDCL shall pay the same in 3 equal monthly instalments from the date of claim.
- 20.58. **The Commission observes that as correctly observed by APML, the Billing Mechanism has been covered in the Paragraph 7.3.1 of the Committee Report.**

Assurance from Generator

- 20.59. MSEDCL submitted that the Generator should give commitment for ensuring availability of 80% for the future period.
- 20.60. APML submitted that it would continue supplying power to MSEDCL beyond 80% of normative availability in accordance to the terms and conditions of the PPA.
- 20.61. **There is a penal mechanism for lower availability in the PPA. Therefore, the Commission does not deem such assurance to be necessary.**

Examination of Technical parameters by MERC

- 20.62. GoM and MSEDCL have submitted that the Commission should examine and adjudicate upon the following issues:-
- To examine SHR, Auxiliary Consumption, etc. subject to maximum ceiling as approved in MERC/CERC Tariff regulations.
 - To determine a formula for working out upfront Compensatory Charges so as to enable scheduling of power as per the merit/ protocol. These will be the ceiling rates subject to reduction as per the actual cost.
 - Undertake yearly truing up exercise taking into consideration ceiling rate for each month.
 - Since the compensatory charge is a temporary mechanism, the financial support received by the generator should be suitably restored to MSEDCL, once the generator recovers cost through normal mechanism.
- 20.63. APMIL has replied that the Committee members include technical and industry experts, who have visited the project, verified the records, etc. and the Committee has duly considered their recommendations and prepared the Report in consultation with all Committee members including MSEDCL. As per the mechanism suggested in the report, APMIL shall be claiming the compensatory charge on a monthly basis and this will facilitate scheduling by MSEDCL based on merit order. As far as point 4 is concerned, the Committee Report has suggested such a formulae that in case the hardship is lessened or removed, the Compensatory Tariff would reflect the same.
- 20.64. **As regards the first point on performance parameters, the Commission notes that the issue of operational parameters has already been dealt with in earlier paragraphs of this Order. As regards the second point, the methodology has been outlined by the Committee, which is being adopted subject to certain modifications as per the arguments by the parties and the views of the Commission on the same. The issue related to merit Order has been dealt with in the later part of this Order in Paragraph 42.**
- 20.65. **As regard the third point on yearly truing up, the Commission has agreed with the methodology for truing up prescribed by the Committee, which has been dealt with in the later part of this Order in Paragraph 43. The Commission does not find any reason to deviate from the methodology suggested by the Committee.**

20.66. **As regards the fourth point, the Commission agrees to the contentions of GoM and MSEDCL that the compensatory charge is a temporary mechanism and needs to be reconsidered whenever normal conditions are restored. The Commission directs both parties to approach the Commission, either jointly or independently, when the normal conditions are restored.**

No dilution of shares

20.67. GoM and MSEDCL submitted that APML and any other holding or investing company should not be permitted to dilute their stake or share holding through whatever means to any other entity.

20.68. APML has replied that the provision of PPA shall apply.

20.69. **PPA already has provisions related to lock-in period for equity. The Commission does not deem it necessary to modify such provision.**

Cost Accounting

20.70. MSEDCL submitted that as per order F. No. 52/26/CAB-2010 dated 2 May, 2011 issued by the Ministry of Corporate Affairs, GoI, all electricity companies with annual turnover of more than Rupees Twenty Crores shall get its cost accounting records audited. Therefore, the Commission may direct APML to maintain unit-wise cost accounting records and get the same audited by the certified cost accountant as part of compliance to the aforesaid order of the Ministry. Such audit shall then form an important basis for determination of the cost of alternate coal. Such financial and cost audit reports should be put in public domain so as to ensure transparency.

20.71. **The Commission directs that cost accounting should be carried out as per the provisions of applicable law. APML should share such cost accounting reports with MSEDCL.**

Lower Production of Lohara coal in initial years

20.72. MSEDCL submitted that considering the lower production of coal from Lohara coal blocks in the initial years, the assumed cost of generation at the time of bidding should have been higher. Thus, the compensatory charge must be lower in the initial years. Prayas has also agreed with the contentions of MSEDCL in this regard.

- 20.73. APML submitted that regarding production of coal from Lohara, MSEDCL and Prayas are wrong in assuming that as the Lohara coal blocks would have come in production in FY 2013-14. Prayas has argued that APML would have relied on the coal from tapering linkage and same must have been factored in the bid. In this regard, it is submitted that said assumption is absolutely incorrect for the reason that First unit (Unit 2 of Tiroda TPP) under the PPA was commissioned 30 March, 2013 and the power supply under the PPA virtually commenced from April, 2013 onwards. Moreover, FY 2013-14 is third year of operation from the "normative date of production" of Lohara coal blocks when the productions of 4 million tons were anticipated. Therefore, for APML to start generation there was no need for any tapering linkage. APML has submitted the mining model to SBI Caps and MSEDCL. As seen from the mining model, the mining cost is worked out based on YoY production and the Tariff quoted is also based on YoY coal production from mine.
- 20.74. **The Commission notes that APML has clarified that it had envisaged the coal from Lohara coal blocks to be available from the first year itself.**

No Loading in Capacity Charges

- 20.75. MSEDCL has submitted that the Commission may verify whether APML intended to recover part of the fuel cost by loading the capacity charges. If that is indeed the case, then such loading of capacity charge should be reduced from the Compensatory Charge.
- 20.76. **The Commission had already asked APML in Case No. 68 of 2012 to confirm whether it has built any cost of mining in the capacity charges, to which, it has replied that the capacity charges do not include the cost of mining and transmission assets, which is recorded at Paragraph 24.5 of the said Order.**

Contentions of APML regarding applicability of Change in law for 520 MW

- 20.77. In its submission on 26 March, 2014, APML has prayed for adoption of Committee Report, allow APML to recover the compensation as outlined in the Committee Report and allows APML to approach the Commission for shortfall of domestic coal for 520 MW and direct MSEDCL to amicably settle and compensate for additional/new taxes and duties under Change in Law.

- 20.78. MSEDCL has replied in this respect that APML's prayer to direct MSEDCL to amicably settle claim related to change in law within 30 days ought to be rejected. Any financial impact on account of change in law in the operation phase needs to be approved by the Commission as per Articles 13 and 17 of the PPA.
- 20.79. **As regards the issue of change in law and shortfall of coal for 520 MW, the Commission notes that APML has claimed that it is affected by events which are covered under Change in Law Clause of the PPA. The same is not relevant in the present matter, which deals with the hardships being faced for withdrawal of ToR for Lohara coal blocks.**

Contentions raised by Consumer Representatives

21. Prayas in their submission dated 15 April, 2014 and 25 April, 2014 and Dr. Pendse in his submission dated 24 April, 2014 have raised some additional issues. A summary of the same and Commission's observation on these issues is as follows:

Conflict of Interest

- 21.1. Agreeing with the contention of MSEDCL raised on the draft Committee Report, Prayas has submitted that the Commission should direct all members of the Committee and all its consultants to give undertaking pertaining to the following points:
1. Whether a member or a consultant has any personal interest (in the form of shares or investments) in the business of the project developer i.e. APML and/or its parent organisation, i.e., Adani Power Limited (APL).
 2. Whether the organization that the concerned Committee member or a consultant represents, has any stakes in the form of shares / investment in the Tiroda project or in APL.
 3. Whether the organization or its associate entity that the concerned Committee member or a consultant represents, is a lender or financier for the Tiroda project or any other project of APL or any other thermal power project which is seeking a similar relief in the form of revision of Tariff discovered through a competitive bidding process.
 4. Lastly, whether the organization that the Committee member or a consultant

represents is a lender / financier for MSEDCL.

- 21.2. In this regard, APML has submitted that the Committee has confirmed that an undertaking stating that no conflict of interest exists was obtained at the time of appointment of members of Committee as is evident from point no. 17 at page 79 of the Report.
- 21.3. **The Commission has noted in the Committee Report that the letter for no conflict of interest was already submitted by all the members of the Committee.**
- 21.4. **The Commission further notes that the Report has been signed by the Committee members except Managing Director, MSEDCL, Additional Chief Secretary (Energy), GoM and the Technical Expert. The Technical Expert has submitted his report to the Committee. MSEDCL and GoM have already submitted their arguments/observations to the Commission on the report and the same have been considered on merit.**

Appeal against Order in Case No. 68 of 2012

- 21.5. Prayas submitted that in October, 2013, it filed an Appeal before the Hon'ble ATE challenging the Order in Case No. 68 of 2012. MERC, MSEDCL and APML are Respondents in the same. The Appeal has been admitted (Appeal No. 296 of 2013). Hence, Prayas had urged the Commission to not initiate the present suo motu process.
- 21.6. **The Commission notes that Hon'ble ATE has not applied any stay on the proceedings in the matter. Further, the Commission believes that the proceedings in the present matter will not prejudice the rights of any party or Consumer Representative in the matter of the Appeal. Therefore, there is no case for holding the proceedings or Order in the present matter.**

Reliance on Committee Report

- 21.7. Prayas submitted that MSEDCL's submission also has a list of observations recorded by the Government of Maharashtra, which again highlight issues pertaining to assumptions used for deciding technical parameters, mining costs and

so on. Thus, both MSEDCL and the Government have not unequivocally accepted the Committee's methodology and/or its recommendations.

- 21.8. Prayas added that the above points make it clear that the four major stakeholders concerned in this decision, i.e., MSEDCL, project developer, Consumers and GoM do not accept the report unequivocally. The project developer was not a party to the Committee process and has participated as a mere invitee. Consumers were not consulted by the Committee and hence have no say in the Committee process. Both MSEDCL and GoM have made categorical observations highlighting issues pertaining to methodology, assumptions for technical and performance parameters, mining and capital expenditure related costs, etc. As these parameters and assumptions form the basis for deciding the need and extent of compensation, it becomes impossible to rely on the Committee's methodology and/or prescription for arriving at any decision. Further, in spite of a clear directive by the Commission, the Committee has failed to give computation of the actual impact on Tariff. Prayas requested that the Commission must independently evaluate this issue, after considering comments and suggestions from all the stakeholders, including the Consumers, MSEDCL and GoM and only post such detail analysis and due public process, the Commission should decide the final impact on Tariff, if any.
- 21.9. APML submitted in this regard that it denies that the four major stakeholders concerned in this decision, viz. MSEDCL, project developer, Consumers and the State Government do not accept the report unequivocally. In fact, APML has accepted the report of the Committee and vide its affidavit dated 26 March, 2014 has prayed to this Commission to adopt the report in entirety. The Committee constituted of members who are eminent in their respective fields like banking, finance, legal, technical, etc. The Committee was constituted pursuant to the GR of GoM and MSEDCL was included as one of the members of the Committee. It is correct that the project developer was not a party to the Committee process and has participated as a mere invitee.
- 21.10. APML further added that the Committee, including MSEDCL deliberated upon and dealt with all the issues raised before it and thereafter they have recommended methodology for calculation of compensatory charge. Therefore, it is wrong to state on the part of Prayas that the Committee's methodology and/or prescription cannot be relied upon for arriving at any decision, just because certain objections have been

raised by MSEDCL and GoM. It is also denied that the Committee has failed to give computation of the actual impact on Tariff. In view thereof, APML submits that the Commission may adopt the report of the Committee recommending the methodology of computation of Compensatory Charges in entirety as the same is in line with the mandate given by the Commission vide Order dated 21 August, 2013.

21.11. **The Commission notes that the assertion that APML was not a party to the proceedings of the Committee is incorrect. While formulating the Committee, GoM had kept out APML from the Committee and stated that APML shall be invited as and when required. During the proceedings of this case, the Commission took a note of the same. The Commission observed that it had directed for formation of a Committee including APML; however, GoM has altered the composition of the Committee, which was not open to its discretion. Accordingly, in line with the principle stated in Order in Case No. 68 of 2012, the Commission directed in its daily Order in Case No. 150 of 2013 that APML be a permanent invitee in the proceedings of the Committee and all documents will be shared with APML.**

21.12. **APML has accepted the Committee Report and in fact prayed the Commission to accept the Committee Report in entirety. GoM has also accorded in principle acceptance to the Committee Report with some modification suggested. Each of the contentions of MSEDCL and GoM have been considered on merit. Therefore, there is no question of not relying on the Committee Report.**

Public Hearing

21.13. Prayas has submitted that the Electricity Act, 2003 envisages Tariff determination to happen as per two provisions:

- a) Section 62 of EA-2003 defines the principles for determining Tariff which is to be decided by the concerned Regulatory Commission; and
- b) Section 63 of EA-2003 deals with discovery of Tariff based on competitive bidding. Any Tariff that is to be determined by the Commission must follow the due process as per the Section 64 of EA-2003.

- 21.14. In this regard, APML submitted that the provisions of Section 64 of EA-2003 are not applicable in the give circumstances. The procedure under Section 64 is applicable only in case of determination of Tariff under Section 62 of EA-2003. The process of deciding the compensatory Tariff will not convert the process of Tariff discovery under Section 63 of EA-2003 into a process of Tariff determination under Section 62 of EA-2003. Thus, the process of quantification of the amount of compensatory Tariff which is being undertaken by the Commission after receipt of the report of the Committee cannot be said to be determination of Tariff under Section 62 of EA-2003. Therefore, there is no need for any public hearing for determination of Compensatory Tariff.
- 21.15. **The Commission notes that the Petition in Case No. 68 of 2012 was filed under Section 86 (1) (f) of the Electricity Act, 2003, which relates to adjudication of dispute and not under Section 62 of the Electricity Act, 2003. The Commission, while providing relief, has exercised the power to regulate, which is available to the Commission under Section 86 (1) (b) of the EA-2003. Therefore, the Commission believes that a separate public hearing is not required in this matter.**
- 21.16. **As regards participation of Consumers in this process is concerned, the Committee Report was not only submitted to the Authorised Consumer Representatives, but was also uploaded on the website of the Commission. The Authorised Consumer Representatives have been given the opportunity to participate in the hearings, voice their opinions and make submissions in this matter. As regards participation of GoM, MSEDCL, in its submission dated 15 February, 2014, has submitted the comments of GoM in this matter. The Commission has considered the arguments of all the parties including GoM and Consumer Representatives while deciding each aspect in this matter. Therefore, the Commission is of the view that it has given a fair opportunity to all stakeholders and conducted the proceedings in a transparent manner.**
- 21.17. **As stated earlier, the Commission has decided to provide relief in this matter considering the special circumstances of the case as elaborately explained in Order in Case No. 68 of 2012. It is reiterated that the Commission is not determining the Tariff under Section 62 of the EA-2003 in this case. If that was**

the case, then there was no question of setting the parties to a consultative process and setting up a Committee to deal with the issues in this case.

Data on mining plan, etc.

- 21.18. Prayas has submitted that as per the daily Order dated 16 April 2014, the Commission has requested the Authorised Consumer Representatives to also make suggestions pertaining to methodology to be adopted for deciding compensation. In this regard, Prayas submitted that the compensatory Tariff calculation hinges on some crucial factors. Prayas has highlighted the data required for the analysis of compensatory Tariff.
- 21.19. Prayas has further submitted that without analyzing the above data, it is not possible to comment on the need, extent and appropriateness of the compensation required, if any. In the absence of this information, there might be concerns regarding the appropriateness of the compensation and whether it can lead to any undue enrichment for the project developer. Further, based on alternate source of coal that will be chosen, there can be various scenarios that can emerge. The Commission will have to ensure that the alternate coal is always procured at the least cost possible. Presently, it is not clear what kind of mechanism will be followed to ensure such least cost coal procurement.
- 21.20. **As regards the above contentions of Prayas, the Commission, in consistence with its stand in Case No. 68 of 2012, has used the PPA Tariff instead of the Embedded bid stream for Lohara coal block and linkage coal. The Bid Stream is a discovered number in the competitive bidding. The compensation formula suggested is for considering the actual cost minus the Energy Charge for PPA Tariff. Moreover, benchmark indices and performance parameters are available in the public domain. Therefore, the Commission believes that an analysis of compensatory charge could have been done on the best industry benchmarks.**

Two Streams after compensatory Tariff

- 21.21. On 24 April, 2014, Dr. Ashok Pendse (TBIA) made the following submissions:

21.22. Dr. Pendse submitted that the compensatory Tariff is applicable for 800 MW only. Hence there should be two distinct Tariff streams. The Tariff streams for 800 MW and the balance capacity cannot be mixed together for following reasons:

A. The generating units are of size 2*660 MW. During the course of operation, if only one of the units is working, then the applicable Tariff for first 520 MW will be the quoted Tariff and that for balance 140 MW will be the quoted Tariff plus Compensatory charge.

B. If the entire 1320 MW is available, but due to system constraints SLDC asks them to back down to 800 MW, then the applicable Tariff for first 520 MW will be quoted Tariff and that for the remaining 280 MW will be quoted Tariff plus compensatory charge.

C. The combined Tariff is based on the assumption that the entire 1320 MW will be despatched for the entire time/period. However, compensatory Tariff is only applicable to 800 MW out of 1320 MW contracted capacity. This is a basic difference between Tata Mundra and Adani case of MSEDCL.

21.23. Hence there should be separate stream of Tariffs and not a combined Tariff stream.

21.24. **The Commission in its Order in Case No. 68 of 2012 has already ruled that the compensatory energy charge will be applicable for 800 MW and will be over and above the PPA Tariff. As held in the Order, compensatory charge shall be applicable only for sale of power above the initial 520 MW. Therefore, there is no question of a weighted average Tariff being applied on 1320 MW.**

Present case is for replacement of Lohara coal block with linkage coal

21.25. Dr. Pendse submitted that CIL has failed to supply the coal quantity under the FSA. This results in a shortfall in coal. Hence, rest of the coal will be imported by CIL, which will be presumably to the tune 15 %. As per the MoP letter dated 31 July, 2013, the additional cost of coal is to be treated as pass through. However, the actual calculation and method for such pass through has been left to individual SERCs.

21.26. Dr. Pendse added that this issue is not only related to APML, but would also be applicable for MSPGCL and other private players. The Commission has to take a decision on certain aspects as far as this pass through mechanism is concerned, i.e.,

the method of computation, frequency, way in which consumers can check and the benchmark when the compensatory Tariff will become zero. Only after these aspects are evaluated can the pass through on account of imported coal be implemented.

- 21.27. Dr. Pendse added that the captive coal block allocated to APML has got cancelled. Hence, there is an increase in Tariff due to substitution of coal from Lohara coal blocks with linkage coal. Since linkage coal is not fully available, there is a need for imported coal, which has led to a further increase in Tariff. The impact of both of the above aspects, i.e., replacement of Lohara coal with linkage coal and shortfall in domestic coal and requirement to import coal, are not being dealt in this matter. Only the compensatory charge for the first aspect, i.e., replacement of Lohara coal with linkage coal, is relevant for the present case. As regards the other aspect, shortfall in domestic coal and requirement to import coal, the same can be considered only after the Commission arrives at a decision for allowing the cost of imported coal as pass through. Therefore, the compensatory charge should only Rs. 0.05 per kWh.
- 21.28. In this regard, APML has submitted that the compensation calculated by TBIA is totally wrong as it does not consider the actual fuel cost corresponding to 800 MW. By proposing to work out difference of actual cost and quoted Tariff of Rs. 1.44 per kWh, it also does not take into account the fact that quoted Tariff is not merely covering fuel cost based on Lohara only, but it is a combined Tariff stream for coal from Lohara as well as linkage. Therefore, the Committee, for the purpose of computation of compensatory Tariff has bifurcated based on the cost of coal from respective sources.
- 21.29. APML added that the assumption of the TBIA that coal supply received through tapering linkage would be adequate for generation of entire 800 MW is highly hypothetical and far from reality. It is to be noted that the expert Committee has analysed various issues in detail and ultimately recommended a pragmatic methodology taking into account the interest of all stakeholders. In any case, the benefit of the low cost coal will be pass through to the consumers.
- 21.30. **In this regard, the Commission observes that only if APML had linkage for 800 MW, the Commission could have dealt with the issue in the manner described**

by him. However, the Commission notes that APML does not have long-term linkage for 800 MW, but only has a tapering linkage, which it is getting for only 25% of the capacity as submitted by APML in its filings. Therefore, the present matter does not deal with the compensation for shortfall in quantity of coal, but for relief on account of non-availability of coal from Lohara coal blocks. Based on the above reasons, the approach suggested by him does not address the issues in the present matter completely and hence, cannot be adopted.

E) Computation of Compensatory Energy Charge

22. Considering the contentions raised by GoM, MSEDCL and Autorised Consumer Representatives on certain aspects of the methodology suggested by the Committee, the Commission asked both the parties to submit the computations of compensatory charge with the deviation that they deem to be appropriate.
23. On 10 April, 2014, APML submitted the working of the indicative compensatory charge to comply with the Commission's direction given in daily Order dated 27 March, 2014.
- 23.1. The following were the assumptions and principles considered by APML in working out the compensatory charge:
 - a) The Compensatory Charge is calculated based on the methodology suggested by the Committee in its report.
 - b) The tapering linkage quantities considered are based on ACQ. However, it is to submit that APML has represented for conversion of tapering linkage to long-term linkage. On conversion to long-term linkage the entitlement of ACQ will increase to 100% from existing 25%.
 - c) Quality of SECL coal varies from time to time between 3200 kCal/kg to 3700 kCal/kg. For the purpose of indicative Tariff calculation, APML has considered GCV of 3700 kCal/kg.
 - d) As per Committee recommendations, auxiliary consumption needs to be considered as lower of 6.89% or Applicable CERC norm. CERC has notified auxiliary consumption for period w.e.f. April, 2014 as 5.75%. For the purpose of indicative Tariff calculation, APML has considered auxiliary consumption of 5.75%.
 - e) The landed cost of domestic coal and imported coal will vary from time to time on the basis of notified prices of CIL, Railways, Foreign Exchange Rate, market prices of imported coal & Ocean Freight, applicable taxes and duties, port of

discharge, etc.

- f) Quality of imported coal will be dependent on factors such as quantity & quality of domestic coal received, technical parameters of boiler, etc. The indicative GCV of imported coal received is around 5250 kCal/ kg.

23.2. The following working was submitted by APML as an illustration:

Table 5: Illustration of CEC computation as submitted by APML

Parameters	Unit	Entitlement	
		100%	25%
Total Contracted Capacity	MW	1,320	1,320
Quantum to be considered for compensatory Charge	MW	800	800
ACQ of Tapering Linkage	MTPA	3.32	3.32
Entitlement of ACQ of tapering coal as per Tapering linkage policy	%	100%	25%
Materialisation	%	85%	85%
Availability of Tapering quantum	MTPA	2.822	0.706
Parameters			
Station Heat Rate	kCal/kg	2,355	2,355
Gross Calorific Value (Tapering)	kCal/kg	3,625	3,625
Gross Calorific Value (Imported)	kCal/kg	5,120	5,120
Auxiliary Consumption	%	5.75%	5.75%
Annual Generation for 800 MW	MU	5,606	5,606
Net SCC_Tapering	kg/ kWh	0.689	0.689
Annual Generation from Tapering Linkage	MU	4,094	1,024
Balance Generation from Imported Coal	MU	1,512	4,583
Net SCC_Imported	kg/ kWh	0.488	0.488
Quantum of Imported Coal required	MTPA	0.738	2.237
Compensatory Charge as per Committee Report			
Landed Cost of Tapering coal	Rs/ MT	2163	2163
Landed Cost of Imported Coal	Rs/ MT	5915	5915
Tapering Energy Charge	Rs/ kWh	1.49	1.49
Imported Energy Charge	Rs/ kWh	2.89	2.89
Weighted Average Energy Charge - 800 MW	Rs/ kWh	1.87	2.63
Energy Charge for Lohara Quantum as per Bidding	Rs/ kWh	0.83	0.83
Compensatory Charge as per Committee Report	Rs/ kWh	1.04	1.80
Tariff for 520 as per Bidding Stream	Rs/ kWh	1.53	1.53
Tariff for 1320 MW (Including CEC)	Rs/ kWh	1.73	2.20
PPA Quoted Tariff	Rs/ kWh	1.44	1.44
Net Impact per Unit for 1320 MW	Rs/ kWh	0.29	0.76

24. On 22 April, 2014, MSEDCL submitted the working of the CEC to comply with the Commission's direction in Daily Order dated 16 April, 2014.

24.1. MSEDCL submitted that the working was done by SBI Caps and MSEDCL was only forwarding the same, which is as follows:

Table 6: Working of CEC as submitted by MSEDCL

Parameters	Unit	Value	Basis / Remarks
PPA Capacity	MW	1,320	As per Committee Report
Quantity for compensatory Charge	MW	800	
PPA Quoted Tariff for FY 14	Rs/kWh	1.44	
Energy Charge as per Bid assumption - Lohara portion (FY	Rs/kWh	0.83	
Energy Charge as per Bid assumption - Linkage portion (FY	Rs/kWh	1.53	
Station Heat Rate	kCal/kWh	2,358	Figures taken as per Committee Report; Inputs to be given by Company subject to audit
Auxiliary Consumption	%	6.89%	
Quantum of Tapering Linkage	MTPA	3.32	Company Inputs; subject to audit
Tapering linkage percentage	%	25%	
Coal supply through linkage	%	85%	
Gross Calorific Value for Tapering Coal	kCal/kg	3,625	
Gross Calorific Value for Imported Coal	kCal/kg	5,120	
Landed Cost of Tapering coal	Rs/MT	2163	
Landed Cost of Imported Coal	Rs/MT	5915	
Availability of Tapering quantum	MTPA	0.706	Calculated Figures
Annual Generation for 800 MW	MUs	5606.4	
Specific Coal Consumption - Tapering	kWh		
Annual Generation from Tapering	MUs	1009.9	
Balance Generation from Imported	MUs	4596.5	
Specific Coal Consumption - Imported	Kg/kWh	0.49	
Actual EC for Tapering Coal	Rs/ kWh	1.51	Calculated Figures
Actual EC for Imported Coal	Rs/ kWh	2.93	
Weighted Average Actual Energy Charge - 800 MW	Rs/ kWh	2.67	
Compensatory Energy Charge - FY 14	Rs/ kWh	1.84	
Revised Tariff for 1320 MW (Including CEC)	Rs/kWh	2.22	
Net Compensation over 1320 MW	Rs./kWh	0.78	

Parameters	Unit	Value	Basis / Remarks
<p><i>Note: The above calculations are based upon eligibility of 25% coal quantity under tapering linkage with 85% supply. If the same eligibility is regularized to 100%, the compensation will get reduced to Rs.0.32 p/unit. The calculations as shown in the table above are based upon the figures taken in the Committee Report as well as the inputs provided by the Company for their calculations. As per the Committee Report, the inputs (e.g. coal quantity, coal price, operating parameters, etc.) provided by the Company for compensation may be audited by some agency for verification. The compensation figures may undergo change if there is any deviation in the inputs.</i></p>			

25. **The Commission notes that MSEDCL has raised certain arguments on the methodology outlined in the Committee Report. However, while forwarding the workings of compensatory energy charge computed by SBI Caps, it has not taken any objections or any contrary views to the number computed therein. The Commission has considered the contentions of MSEDCL and GoM while deciding the matter to arrive at a considered decision. Accordingly, the Commission notes that the computations submitted by both the parties are identical and the only difference in the computations is on the SHR and Auxiliary Consumption.**
26. Since both the parties have disagreed only on the performance parameters, the Commission has delved on the performance parameters as follows:
- **Station Heat Rate**
27. The Committee has suggested that Station Heat Rate to be considered for computation of actual cost of generation should be 2358 kcal/kWh as assessed by the Technical consultant or actual, whichever is lower. The Commission notes that the Committee has benchmarked the SHR against the then applicable CERC Norms, which has been noted as 2380 kCal/kg. However, the Commission observes that the new Tariff determination norms of CERC, i.e., Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 (hereinafter referred to as “CERC Tariff Regulations, 2014”) have been notified on 21 February, 2014, i.e., a few days after the Committee has submitted its Report to the Commission.
28. APML and MSEDCL have considered the SHR as 2355 and 2358 kCal/kWh respectively.

29. **The Commission deems it appropriate to consider the norm for SHR as per the applicable CERC Norms for supercritical units for new generating stations due to the following reasons:**

- **The Committee has benchmarked the SHR with the prevalent CERC norm;**
- **CERC has notified the new norms for Tariff determination recently, and therefore, is representative of the current benchmark as per the industry standards;**
- **The CERC norm for new generating stations is more stringent and therefore, promotes efficiency. Using this norm will have minimal impact on Consumers.**

30. As per the CERC Tariff Regulations, 2014, the ceiling for Design SHR for new generating stations for supercritical units with pressure rating of 247 kg/cm², which operates on sub-bituminous Indian coal, is 2151 kcal/kWh. The applicable SHR for such a project as per the regulation is 1.045 x Design SHR, with the ceiling of Design SHR as stated above. The Commission is not considering the SHR applicable to old generation station commissioned between 1 April, 2009 and 31 March, 2014 as per the CERC Tariff Regulations, 2014, as the norms for new generating station are more stringent and reflective of the current industry practices. **Therefore, the SHR to be used for computation of actual energy cost will be 2151 kCal/kWh with a margin of 4.5%.As per the recommendations of the Committee, in case the design SHR or actual SHR is lower than the above value of SHR, the benefits for the same will be passed on to MSEDCL.**

31. However, if any party believes that performance of the plant is significantly deviating from the said CERC norms, either of them are free to approach the Commission.

- **Auxiliary Consumption**

32. As per the Committee Report, the auxiliary consumption to be considered for computation of actual energy cost should be considered as the design value of 6.89% or applicable CERC norms, whichever is lower.

33. APMIL has considered auxiliary consumption of 5.75% as per the CERC Tariff Regulations, 2014. In the computation submitted by MSEDCL, the value has been considered as 6.89%, which is the design SHR as noted in the Committee Report.
34. **The Commission concurs with the stand of the Committee that the lower of the design auxiliary consumption of 6.89% and the applicable CERC norm, i.e., 5.75%, shall be considered for computation of compensatory energy charge.**

F) Commission's Order

35. **In the Order in Case No. 68 of 2012, the Commission had set the parties to a consultative process and form a Committee which was required to submit a Report outlining the principles and the precise mechanism for calculation of compensatory energy charge. The Committee has submitted its report to the Commission on 18 February, 2014. The Commission has conducted suo motu proceedings on the same and has heard the stakeholders in the hearings conducted in this matter. The Commission accepts the Committee Report subject to a few issues such as operational parameters, Commission's philosophy on sharing of RoE as mentioned in this Order.**
36. **After considering the submissions of the parties, Authorised Consumer Representatives and view of GoM on the Committee Report, the Commission rules as under:**
37. **The formula for computation of compensatory energy charge recommended by the Committee shall be applicable subject to amendments as outlined below:**
- **The SHR to be used for computation of actual energy cost will be 2151 kCal/kWh with a margin of 4.5% as per the applicable CERC norm for new generating stations. As per the recommendations of the Committee, in case the design SHR or actual SHR is lower than the above value of SHR, the benefits for the same will be passed on to MSEDCL.**
 - **The Compensatory energy charge will be applicable only for 800 MW, which will be over and above the Energy Charge as per PPA. While calculating compensatory energy charge, Energy Charge as per PPA should be reduced from the actual energy cost computed as per the methodology suggested by the Committee based on the performance parameters approved by the Commission subject to the modification on**

certain parameters, i.e., SHR and RoE. The mechanism of levying compensatory energy charge shall be as per the Paragraph 151 of Order in Case No. 68 of 2012.

- 37.1. The Commission, in its Order in Case No. 68 of 2012 has held that all stakeholders must bear some burden of the hardship caused by withdrawal of ToR for Lohara coal blocks. However, the Committee in its Report has now recommended that no RoE should be deducted considering the under recovery on account of capacity charges. The Commission further observes that in a similar matter, the Hon'ble CERC, in its Order in Petition No. 159/MP/2012 dated 21 February, 2014, has concurred with the view of this Commission regarding sharing the hardships by all stakeholders. Hence, the Commission is not inclined to accept the recommendation of the Committee in this regard.
- 37.2. The Commission had considered an aggressive reduction of 50% at the time of approving the interim relief in Case No. 68 of 2012. However, considering the observations of the Committee, the Commission is inclined to reconsider the level of RoE to be deducted. The Commission believes that the return on RoE should reflect the reduced level of risk profile of the project after the compensatory energy charge has been approved by the Commission. Considering various factors including the expected rate of interest for a project of this nature, the reduced risk profile, etc., the Commission believes that a reduction in RoE by 20% would be appropriate. The same works out to 4.8 paise per kWh and shall be deducted from the compensatory energy charge.
38. As suggested by the Committee, the Free on Board (FoB) prices of imported coal shall be the lower of actual FoB price or HBA Index adjusted for GCV. Similarly, as suggested by the Committee, the benchmark for ocean freight will be Singapore bunker price index as considered by CERC for notification of escalation rates.
39. The indicative compensatory energy charge at the current level of linkage (25%) works out to Rs. 1.01 per kWh. Considering this compensatory energy charge of 101 paise, the total power purchase cost from the 800 MW works out to Rs. 3.56 per kWh after reducing 20% of RoE. However, the said indicative

compensatory energy charge shall be reduced when APML progressively secures 100% domestic linkage coal for 800 MW.

40. **The Commission notes that APML has approached the relevant authorities for conversion of tapering linkage to permanent linkage. The Commission directs APML to pursue the relevant authorities for permanent linkage for 800 MW. The Commission directs MSEDCL to provide necessary assistance in this matter. Further, the Commission observes that all coal based generating stations are facing the issue of shortfall of domestic coal which is leading to an adverse impact on Consumer Tariffs. The Commission will independently write to advise GoM to approach appropriate authorities of Government of India for increasing coal availability to power stations in the State of Maharashtra. As and when APML secures 100% permanent linkage for 800 MW, it may approach the Commission for review of the reduction in RoE.**
41. **The Billing and payment shall be as per the terms and conditions of PPA and the recommendations of the Committee.**
42. **Since the compensatory energy charge will be determined only after the completion of the month, for the purpose of merit Order, the energy charge plus the compensatory energy charge last billed shall be considered. For the first month, APML shall provide the computation of compensatory energy charge within 3 days from the date of this Order, which will be only for the purpose of merit Order consideration for the first month. This indicative compensatory energy charge to be given within three days shall have no relevance for the purpose for billing, which shall be done as per the provisions outlined in this Order**
43. **As per the recommendations of the Committee, APML shall file a report to MSEDCL providing detailed calculation of actual energy costs incurred on the basis of principles/mechanism of the compensatory energy charge. The report must contain figures duly audited and authenticated by Company's statutory auditors. MSEDCL will be required to approve the same within 15 days of the receipt of the same. On approval of actual energy charges, the compensatory energy charge will be true up within 30 days. After the true up process, the difference between the trued up compensatory energy charge and the charges**

billed during the last year shall be payable by MSEDCL to the Company or vice versa within 30 days of approval. Since the Commission had ruled in Order in Case No. 68 of 2012 that the interim Tariff will be adjusted at the time of final decision in this matter, the invoices for the period from COD till the date of this Order will be adjusted accordingly.

44. **These directions of the Commission shall not alter any other terms and conditions of the PPA signed between the parties.**
45. **The compensatory energy charge, being a temporary mechanism, shall be reviewed after a period of 3 years from the date of this Order. APML or MSEDCL should approach the Commission for the same.**
46. **The Commission appreciates the efforts and contribution of the Committee members and the Authorised Consumer Representatives.**

With the above, Case No. 63 of 2014 is disposed off.

Sd/-
(Chandra Iyengar)
Chairperson