

**Before the**  
**MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**  
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**Smt. Chandra Iyengar, Chairperson**  
**Shri Vijay L. Sonavane, Member**

**Case No. 154 of 2013**

**In the matter of Petition filed by Indiabulls Power Limited for compensation in Tariff on account of increase in fuel and other incidental costs and dispute between a Generating Company and the Distribution Licensee, relating to the provisions of the Power Purchase Agreements (PPAs) dated 22nd April 2010 and 5th June 2010**

Indiabulls Power Ltd. .....Petitioner

V/s

Maharashtra State Electricity Distribution Co. Limited .....Respondent

Advocate/ Representative for the Petitioner Shri Sanjay Sen (Adv.)

Advocate/ Representative for the Respondent Smt. Deepa Chawan (Adv.)

Authorised Consumer Representatives: Smt. Ashwini Chitnis (Prayas)  
Shri Ashok Pendse (TBIA)

**Case No. 189 of 2013**

**In the matter of Petition of Adani Power Maharashtra Limited for compensation in Tariff on account of “Change in Law” under the PPAs dated 31.03.2010, 19.08.2010 and 16.02.2013**

Adani Power Maharashtra Ltd. .....Petitioner

V/s

Maharashtra State Electricity Distribution Co. Limited .....Respondent

Advocate/ Representative for the Petitioner Shri Sanjay Sen (Adv.)

Advocate/ Representative for the Respondent Smt. Deepa Chawan (Adv.)

Authorised Consumer Representatives: Smt. Ashwini Chitnis (Prayas)  
Shri Ashok Pendse (TBIA)

**AND**

**Case No. 118 of 2013**

**In the matter of Petition filed by JSW Energy Limited under Section 61, 86(1)(b) and other applicable provisions of the Electricity Act,2003**

JSW Energy Ltd. ....Petitioner

V/s

Maharashtra State Electricity Distribution Co. Ltd. ....Respondent

Advocate/ Representative for the Petitioner Shri Ramanuj Kumar (Adv.), JSW

Advocate/ Representative for the Respondent Smt. Deepa Chawan (Adv.)

Authorised Consumer Representatives: Smt. Ashwini Chitnis (Prayas)  
Shri Ashok Pendse (TBIA)

**ORDER**

**Date: 15 July, 2014**

Three Generators, namely, Indiabulls Power Limited (hereinafter referred to as “Indiabulls Power”), Adani Power Maharashtra Limited (hereinafter referred to as “Adani Power”) and JSW Energy Limited (hereinafter referred to as “JSW Energy”), which had executed Power Purchase Agreements (PPA) under the Case 1 Route of the “Guidelines for Determination of Tariff by

Bidding Process for Procurement of Power by Distribution Licensees” (hereinafter referred to as “Competitive Bidding Guidelines”) with Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL) in the year 2007 to 2009, have approached the Commission for compensation on account of shortfall in supply of domestic coal and increase in price of imported coal.

2. The three Petitions being considered before the Commission in this regard are as shown below:

**Table 1: Overview of Petitions filed before the Commission**

Case No.	Petitioner	Plant Size and location	Issue
154 of 2013	Indiabulls Power	1200 MW (Amravati)	Shortfall in supply of coal supplied by Coal India Limited (CIL) and quality of coal leading to under-recovery
189 of 2013	Adani Power	3 PPAs (1200 MW, 440 MW and 125 MW) MW (Tiroda)	Shortfall in supply of coal supplied by CIL and quality of coal leading to under-recovery
118 of 2013	JSW Energy	300 MW (Ratnagiri)	Increase in price of imported coal compared to that considered at time of bid

3. Summary of the three matters is given below:
- 3.1. Indiabulls Power filed the Petition in Case No. 154 of 2013 for compensation in Tariff on account of increase in fuel and other incidental costs.
- 3.2. Pursuant to the Case 1 Stage II bidding process, Indiabulls Power executed two PPAs for long term (25 years) supply of aggregate 1200 MW of power to MSEDCL. The PPAs were signed on 22 April, 2010 and 5 June, 2010 for supply of 450 MW and 750 MW respectively.
- 3.3. Indiabulls Power has sought the revision in Tariff on account of shortfall in coal due to change in quality of coal from that assured under the Letter of Assurance (LoA) by CIL and the decision of Cabinet Committee on Economic Affairs (CCEA) taken on 21 June, 2013.
- 3.4. Standing Linkage Committee (“SLC”) on 12 November, 2008, approved grant of linkage to the generating station of Indiabulls Power from Western Coalfields Ltd. (“WCL”) and South Eastern Coalfields Ltd. (“SECL”). Indiabulls Power obtained LoAs from SECL and WCL dated 6 June, 2009 and 12/13 June, 2009 respectively. The details of LoAs are given below:

**Table 2: Details of LoA – Indiabulls Power**

Sl. No.	CIL Subsidiary issuing LoA	LoA Date	Grade of Coal	LoA Quantity – Million Tons per Annum (MTPA)
1	Western Coalfields Ltd.	12/13 June, 2009	E	2.346
2	South Eastern Coalfields Ltd.	6 June, 2009	F	2.747
	Total			5.093

- 3.4.1. Pursuant to the award of LoAs, Indiabulls Power participated in the Case 1 Stage-II bidding process. However, due to shortage of coal at WCL, LoA quantity from WCL was subsequently transferred to SECL. Indiabulls Power, thereafter, executed Fuel Supply Agreement (FSA) with SECL on 22 December, 2012 for 4.97 MTPA corresponding to the PPA capacity as against the entire LoA capacity, being 5.093 MTPA (2.346 + 2.747 MTPA).
- 3.4.2. Instead of increasing the coal quantity to compensate for supply of ‘F’ grade coal against the original WCL linkage of ‘E’ grade coal, SECL has executed FSA for supply of ‘F’ Grade coal for the same quantity. Therefore, Indiabulls Power submitted that there is coal shortage due to supply of lower grade coal, and therefore, the coal supply is inadequate to achieve normative availability.
- 3.4.3. Indiabulls Power has claimed that there has been a substantial increase in the fuel cost due to shortfall in supply of quantity and change in grade of coal by the State owned coal supplier, i.e., Coal India Limited and its subsidiaries. Indiabulls Power has claimed that the Respondent has failed and neglected to accept its formal request vide letter dated 21 September, 2013 for allowing compensation in Tariff for addressing the issue of incremental fuel cost.
- 3.5. Adani Power has filed the Petition under Section 86 of the Electricity Act, 2003 for the appropriate compensation in Tariff under the PPAs dated 31 March, 2010, 9 August, 2010 and 16 February, 2013 executed with MSEDCL.
- 3.5.1. Pursuant to the Case 1 Stage I and Stage II bid processes conducted by MSEDCL, Adani Power has signed PPAs for supply of 3085 MW of capacity with MSEDCL, the details of which are as follows:

**Table 3: List of PPAs**

<b>Date of PPAs</b>	<b>Contracted Capacity (in MW)</b>
8 September, 2008	1320
31 March, 2010	1200
9 August, 2010	125
16 February, 2013	440
<b>Total</b>	<b>3085</b>

- 3.5.2. Adani Power submitted that it is seeking adjustment in Tariff quoted in the PPAs dated 31 March, 2010, 9 August, 2010 and 16 February, 2013 under Article 10 of the PPA pertaining to “Change in Law”.
- 3.5.3. Adani Power has submitted that decision of CCEA dated 21 June, 2013, amendment to New Coal Distribution Policy, 2007 (hereinafter referred to as “NCDP, 2007”) dated 26 July, 2013 and Ministry of Power’s (MoP) advice dated 31 July, 2013 qualify to be “Change in Law” as per Article 10 of the PPA’s signed with MSEDCL.
- 3.5.4. Adani Power has filed the Petition (i) to seek approval of the Commission of the impact of the Change in Law which has affected the Petitioner during the performance of its obligations under the PPAs and is also likely to increase the cost of generation from units which are to be commissioned shortly; and (ii) to allow the Petitioner to restore its original economic position as envisaged under the PPAs by recovering the amount of impact suffered on account of the Change in Law from the Respondent.
- 3.6. JSW Energy filed the Petition in Case No. 118 of 2013 under Section 61, 86 (1) (b) and other Applicable provisions of Electricity Act, 2003.
- 3.6.1. JSW Energy submitted that pursuant to the Case 1 Stage-I bidding process, it entered into a PPA with MSEDCL to supply 300 MW from its Ratnagiri power plant. Prior to the bid, JSW Energy had entered into a Fuel Supply Agreement (FSA) with M/s Sungai Belati Coal (SBC). According to the FSA, coal was to be supplied at the base price of \$35 per ton, which was at a discount to the prevailing market price of \$45-55 per ton. However, subsequently, the mining licence of SBC was revoked. JSW Energy contended that revocation of licence of SBC was a ‘Force Majeure’ event under the PPA and suitable compensation should be provided to JSW Energy. JSW Energy approached the Commission in Case No. 9 of 2011 to substantiate its claim for Force Majeure. However, the Commission vide its Order dated 16 November, 2011 in Case No. 9 of 2011 ruled that revocation of licence of SBC was not a Force Majeure event.
- 3.6.2. Thereafter, JSW Energy filed an Appeal (Appeal No. 20 of 2012) against the Commission’s Order before the Hon’ble Appellate Tribunal for Electricity (ATE). The Hon’ble ATE in its Judgment in the said Appeal has remanded the matter to the Commission for examining certain issues by Distribution Licensee regarding the knowledge of the Appellant on the on-going litigation and amendment to the Coal Supply Agreement and the facts thereon. The said matter on the Judgment is being

heard under a separate case.

3.6.3. However, JSW Energy has approached the Commission under Case No. 118 of 2013 praying for a suitable increase in Tariff to offset the increase in cost of importing coal claiming that factors underlying its bid have been fundamentally altered with, inter alia, cancellation of SBC mining licence, the promulgation of Indonesian Regulations and the significant increase in imported coal prices.

4. The Commission is cognizant of the coal supply issues being faced in the power sector. Further, the Petitioners have also cited the decision of CCEA dated 21 June, 2013, amendment to NCDP, 2007 dated 26 July, 2013, Ministry of Power's (MoP) advice dated 31 July, 2013 addressed to Central and State Electricity Regulatory Commissions and various Orders issued by Other Electricity Regulatory Commissions. Therefore, the Commission deems it necessary to understand the context in which MoP has advised the Appropriate Regulatory Commissions to consider the requests of generators which have tied up power under competitive bids for pass through of higher cost of imported coal on case to case basis.

4.1. A proposal was moved for approval of CCEA for import of coal by CIL in order to meet the shortfall in the domestic coal requirement of the thermal power plants (TPPs). The CCEA approved the following decision in the meeting on 21 June, 2013:

*“(i) Coal India Ltd. (CIL) to sign Fuel Supply Agreements (FSA) for a total capacity of 78000 MW including cases of tapering linkage, which are likely to be commissioned by 31.03.2015. Actual coal supplies would however commence when long term Power Purchase Agreements (PPAs) are tied up.*

***(ii) Taking into account the overall domestic availability and actual requirements, FSAs to be signed for domestic coal quantity of 65 percent, 65 percent, 67 percent and 75 percent of Annual Contracted Quantity (ACQ) for the remaining four years of the 12th Five Year Plan.***

*(iii) To meet its balance FSA obligations, CIL may import coal and supply the same to the willing Thermal Power Plants (TPPs) on cost plus basis. TPPs may also import coal themselves. MoC to issue suitable instructions.*

***(iv) Higher cost of imported coal to be considered for pass through as per modalities suggested by CERC. MoC to issue suitable orders supplementing the New Coal Distribution Policy (NCDP). MoP to issue appropriate advisory to CERC/SERCs including modifications if any in the bidding guidelines to enable the appropriate Commissions to decide the pass through of higher cost of imported coal on case to case basis.***

*(v) Mechanism will be explored to supply coal subject to its availability to the TPPs with 4660 MW capacity and other similar cases which are not having any coal linkage but are likely to be commissioned by 31.03.2015, having long term PPAs and a high Bank exposure and without affecting the above decisions.” (Emphasis Added)*

5. Pursuant to the above decision, Ministry of Coal amended the NCDP, 2007 through its Office Memorandum dated 26 July, 2013. The relevant extracts are given below:

*“2. Government has now approved a revised arrangement for supply of coal to the identified Thermal Power Stations (TPPs) of 78,000 MW capacity commissioned or likely to be commissioned during the period from 01.04.2009 to 31.03.2015. Taking into account the overall domestic availability and the likely actual requirements of these TPPs, it has been decided that FSAs will be signed for the domestic coal quantity of 65%, 65%, 67% and 75% of ACQ for the remaining four years of the 12th Plan for the power plants having normal coal linkages. Cases of tapering linkage would get coal supplies as per the Tapering Linkage Policy. To meet its balance FSA obligations towards the requirement of the said 78,000 MW TPPs, CIL may import coal and supply the same to the willing power plants on cost plus basis. Power plants may also directly import coal themselves, if they so opt, in which case, the FSA obligations on the part of CIL to the extent of import component would be deemed to have been discharged.*

*3. Para 2.2.and 5.2 of the New Coal Distribution Policy issued vide OM No. 23011/4/2007-CPD dated 18.10.2007 stand modified to the above extent.”*

6. With this background, in its advice dated 31 July, 2013, MoP has advised as follows:

*“2. After considering all aspects and the advice of CERC in this regard, Government has decided the following in June 2013:*

- (i) taking into account the overall domestic availability and actual requirements, FSAs to be signed for domestic coal component for the levy of disincentive at the quantity of 65%, 65%, 67% and 75% of Annual Contracted Quantity (ACQ) for the remaining four years of the 12th Plan.*
- (ii) to meet its balance FSA obligations, CIL may import coal and supply the same to the willing TPPs on cost plus basis. TPPs may also import coal themselves if they so opt.*
- (iii) higher cost of imported coal to be considered for pass through as per modalities suggested by CERC.*

*3. Ministry of Coal vide letter dated 26th July 2013 has notified the changes in the New Coal Distribution Policy (NCDP) as approved by the CCEA in relation to the coal supply for the next four years of the 12th Plan (copy enclosed).*

*4. As per decision of the Government, the higher cost of imported/market based e-auction coal to be considered for being made a pass through on case to case basis by CERC/SERC to the extent of shortfall in the quantity indicated in the LoA/FSA and the CIL supply of domestic coal which would be minimum of 65%, 65%, 67% and 75% of LOA for the remaining four years of the 12th Plan for the already concluded PPAs based on tariff based competitive bidding.*

*5. The ERCs are advised to consider the request of individual power producers in this regard as per the due process on a case to case basis in public interest. The Appropriate Commissions are requested to take immediate steps for the implementation of the above decision of the Government.” (Emphasis Added)*

7. Further, the Commission observed that similar matters related to compensation over and above Tariffs discovered in competitively bid PPAs have been considered by other Electricity Regulatory Commissions in the past. Some such instances are discussed below:

7.1. A similar matter has been dealt with by the Hon’ble ATE in its Judgment on Interim Applications in Appeal No. 56, 68 and 84 of 2013. In the said matter, two generating companies, namely, Nabha Power Limited and Talwandi Sabo Power Limited had approached the Hon’ble ATE for the permission to allow them to continue the tender process undertaken by the Applicants to import coal by conducting competitive bidding for procurement of imported coal to meet the shortfall in supply of coal for the project and to allow pass through of cost of imported coal discovered pursuant to conclusion of the tender process. The Hon’ble ATE in the Order on interim Application has held as follows:

*“9. We agree with the Learned Sr. counsel for the Appellants that advance action is required to be taken to meet the expected shortfall in availability of coal from the linked domestic sources during the pendency of these Appeals as tendering process for import of coal takes time. We, therefore, directed both the parties to suggest the safeguards to be followed by the Appellants in procurement process and supply of imported coal. Accordingly, both the parties filed their affidavits giving their suggestions. We have heard their submissions also.*

.....

*11. Learned counsel for the Appellants assured that no ‘take or pay’ liability on account of their contracts with suppliers of alternative sources of coal would be passed on to PSPCL. Further, the Appellants also undertake to receive the entire quantity of coal offered for supply by CIL/subsidiaries of CIL, including imported coal and not to put any restrictions on supply from the linked sources.*

*12. After considering the submissions of both the parties, we feel that suitable interim directions may be issued pending disposal of the above Appeals. Those are following:*

*(A) The Appellants may undertake a transparent competitive bidding process for procurement of imported coal or coal from alternative domestic sources for their projects to meet the expected shortfall in supply from linked sources in order to operate the power plant as per the terms and conditions of the PPA or a period of 12 months from the expected commencement of operation of the first unit of the project on coal subject to the following conditions:*

.....

*v) The Appellants immediately after opening of the price bids shall approach the State Commission by filing application to take approval of the State Commission regarding terms and conditions for procurement of coal and modalities for passing through the cost of coal procured from alternative sources to PSPCL. The State Commission shall then decide the matter and pass the order accordingly as per law as expeditiously as possible but not later than 60 days from the date of the filing of the application.” (Emphasis Added)*

- 7.2. Similarly, the Order in Case No. 871 and 891 of 2013 before the Hon’ble Uttar Pradesh Electricity Regulatory Commission (UPERC) in the matter of Petition filed by Lanco Anpara Power Limited deals with an identical matter. In the said matter, Lanco Anpara Power Limited claimed that the Anpara C Project was conceived as a ‘pit head Project’ with existing coal linkage from Northern Coal Fields Limited (NCL). However, due to the promulgation of various policy changes by the Government in respect of coal allocation/ supply, including but not limited to the NCDP, 2007, NCL was no longer obligated to supply the Anpara C Plant with the promised quantity and quality of long-term linkage coal from the Khadia mines. Consequently the Petitioner was required to sign an FSA with NCL for coal supply and claimed in its Petition that it was short supply of coal due the above mentioned issues. The Hon’ble UPERC in the said Order has held as follows:

*“Due to change in policies of NCDP, the coal availability position to lot of coal based thermal generating plants has been adversely affected in the country which includes the Anpara plant of LAPL. The availability of coal under FSA was reduced to the tune of 60% to 65% reducing the PLF of the plant by about 40% as claimed by LAPL.*

....

*26. Therefore, at this point in time, in view of legal position discussed and in light of the orders of Hon’ble CERC and Hon’ble MERC cited above and the willingness expressed both by LAPL and UPPCL, the Commission considers that the answer to the problem may lie in allowing without affecting the terms of existing PPA a “Compensatory Tariff” as acceptable to both the parties.*

*27. The Commission also feels that the non-availability of adequate fuel linkage from Coal India Limited for the project of the LAPL may be a temporary phenomenon which is likely to be resolved in future with the joint efforts of the Governments who are determined to improve the condition of this sector. Therefore, LAPL needs to be compensated for the intervening period with a compensation package over and above the tariff discovered through the competitive bidding. The compensatory tariff could be variable, proportionate to the hardship that the petitioner is suffering on account of the unforeseen events and could be only for the period that the hardship continues. As and when the hardship on account of non-availability of linkage coal is removed or lessened, the compensatory tariff shall be revised or withdrawn. The Commission considers that this is the most logical way to make the PPA workable while ensuring supply of power to the consumers at competitive rates.” (Emphasis Added)*

- 7.3. Similarly, the Hon’ble CERC in its two separate Orders in Petition Nos. 159/MP/2012 and 155/MP/2012 has allowed a compensatory charge over and above the PPA Tariff for Petitioners who had contracted power under Competitive Bidding Route considering the impact of change in Indonesian coal pricing regulations.
8. The Petitioners have relied upon the change in NCDP, 2007 and advisory issued by the MoP on 31 July 2013. As per said MoP’s letter, the problem has arisen due to inability of CIL to supply coal as per the LoA and arranging the shortfall through imported coal at higher cost. The MoP advice dated 31 July, 2013 could have long-term implications on the competitively discovered PPA rates under Section 63 of the Electricity Act, 2003 and also raises the question of “Sanctity of Contracts”. Therefore, the Commission felt that while each case needs to be dealt separately based on the facts of each case, overall environment needs to be taken into consideration and uniform methodology needs to be adopted. Further, taking into account the issues involved in the matter, the Commission directed Adani Power and Indiabulls Power to implead Government of Maharashtra (Energy Department) as a party in this matter and serve a copy of its Petitions on them.
9. Considering the common issues involved and similarity of grounds for relief submitted by the Petitioners, the present cases were heard jointly. Further, the Commission appointed KPMG as a consultant to provide independent advice on developing a framework for determining incremental coal cost pass through in case of projects which have entered into PPAs based on competitively discovered Tariff under Section 63 of Electricity Act, 2003.
10. The terms of reference for the consultant were circulated to the parties and Authorised Consumer Representatives. Further, KPMG was asked to discuss the issues involved in developing the said framework with the parties and the Authorised Consumer Representatives. Based on its study, KPMG submitted its presentation on “Providing Independent Advice on developing a framework for determining incremental coal cost

pass through” on 9 June, 2014. The same was circulated to all the stakeholders for their comments.

11. KPMG presented its findings during the hearing held on 13 June, 2014 highlighting the key aspects of the framework for determining incremental coal cost pass through. Subsequently, KPMG submitted the final report to the Commission on 20 June, 2014. The final report was also circulated to all the stakeholders.
12. The key analysis and recommendations of KPMG are as follows:
  - 12.1. The Petitioners have sought relief for various hardship factors such as shortfall in supply of linkage coal, increase in imported coal prices, and change in fuel sources etc., which have resulted in higher energy charges as compared to the Tariffs quoted in the PPA. Based on the study of the petitions and discussions with various stakeholders, possible hardship factors that have resulted in higher energy charges have been identified.
  - 12.2. Computation of energy charges include factors that can be classified into extrinsic and intrinsic. While the extrinsic factors have external dependencies, and in some cases may lead to changes that are not fully anticipated by the developers, intrinsic factors are operational parameters of the plant which are guaranteed by the vendors and are not affected by any external events.

**Table 4: Internal and External factors**

<b>External Factors</b>	<b>Internal Factors</b>
Coal quantity	Station Heat Rate (SHR)
Coal quality	Auxiliary Consumption
Base coal prices	
Inland/ Ocean Freight rates	
Forex rates	

- 12.3. Sudden and significant changes in some of the extrinsic factors have led to increase in cost of generation higher than as envisaged in the PPA. In order to arrive at all possible scenarios of hardships to developers, extrinsic factors leading to higher fuel costs have been considered.
- 12.4. The hardship factors faced by generators can be broadly classified into four (4) categories, namely change in source, quantity, quality and price, as shown in the following table:

**Table 5: Reasons for hardships**

Source at the time of bidding	Change in source	Change in quantity	Change in quality	Change in price
Domestic coal, but source not identified	Expected LoA has not materialized while bid is based on domestic coal Current arrangement is linkage under MoU/imported coal	-	-	-
Domestic coal from a captive mine	Mine got cancelled due to unforeseen reasons Current arrangement is LoA under NCDP/tapering linkages/imported coal	-	-	-
Domestic Coal linkage	LoA transferred to a different subsidiary/mine Current LoA is for a different quantity and quality of coal	Guaranteed quantity as per the FSA is less than LoA quantity	Actual GCV delivered is lower than the GCV as per FSA	-
Imported coal supply from a captive mine/FSA	Mine/FSA got cancelled due to unforeseen reasons Current supply is based on revised contracts/spot prices of imported coal	-	-	Increase in coal price on account of change in Indonesian coal price regulations
Imported coal from open market	-	-	-	Increase in coal price on account of change in Indonesian coal price regulations

12.5. The key principles to be applied for calculation of coal cost pass through were identified as follows:

12.6. Sanctity of intrinsic bid factors to be maintained: The cost pass through should be commensurate to the extent of increase in coal cost on account of approved hardship factors. The Sanctity of intrinsic factors (SHR, Auxiliary Consumption) as assumed in the bid, should be maintained.

12.7. Explore optimal blending of fuel sources: Developers should explore the optimal GCV of alternate/imported fuel sources to reduce energy charges without affecting the operational parameters of the generating stations. The developer should explore the

usage of imported coal with lowest landed coal cost per unit of energy, while ensuring that the blended GCV is in the range of plant's boiler design parameters.

- 12.8. Treatment of additional coal quantity: For any additional quantity of coal to be procured, on account of factors like shortage of domestic coal, unavailability of captive coal etc., the Commission may allow full cost pass through on the basis of landed cost of imported coal.
- 12.9. Additional measures to reduce compensation: The Commission may consider additional measures to reduce the impact of cost pass through on the consumers by following adjustments:
- 12.10. Percentage reduction in imported coal FOB (Free on Board) price, or curtailing the Return on Equity (RoE) of developers
- 12.11. Sharing incremental profits from developer's equity stake in overseas mines
- 12.12. The framework for the approval of higher cost is based on the principle of providing compensation for variation in fuel cost (due to uncontrollable factors) from an identified baseline – "Incremental Cost Approach".
- 12.13. The methodology for the computation of compensatory charge should be as follows:  
*Compensatory fuel charge per unit = Incremental costs/ Total Units*  
*Incremental costs = Current costs for such factors – Baseline costs as per conditions of bid escalated to the present\**  
*\*Escalation to be done based on CERC payment indices (for domestic coal) or escalation used in bid assumptions (for captive mine or imported coal)*
- 12.14. The Baseline cost, which is required to establish the fuel cost (and quantity) assumptions at the time of bid submission can be determined in one of the following two ways:
  - 12.14.1. Based on Reference Price: To be derived from published sources/indices/ contracts available at the time of bid submission. For instance:
    - Reference price for domestic coal cost can be based on CIL's notified prices.
    - Reference price of imported coal cost can be based on the price as mentioned in FSA Contracts.
  - 12.14.2. Based on Bid Assumptions: For cases where no relevant reference price is available (for example, in case of a captive mine source), the bid assumptions from bid model can be used as the reference price, after the verification through bid mapping and relevant benchmarks/studies.
- 12.15. The steps to determine incremental coal cost pass-through under the Incremental cost approach will be as follows:

**Table 6: Steps to determine coal cost pass through**

<b>Hardship factor</b>	<b>Steps to determine cost pass-through</b>	<b>Inputs required</b>
Change in Quantity	<ol style="list-style-type: none"> <li>1. Establish the baseline quantity and the shortfall quantity</li> <li>2. Assess the requirement of additional coal from alternate source</li> <li>3. Determine the cost of additional quantity of coal and compute the compensatory fuel charges</li> </ol>	<ul style="list-style-type: none"> <li>• Baseline quantity</li> <li>• Baseline Price</li> <li>• Baseline GCV</li> <li>• Shortfall quantity</li> <li>• Revised GCV of alternate source</li> <li>• Revised price of alternate source</li> </ul>
Change in Source	<ol style="list-style-type: none"> <li>1. Establish the baseline quantity, quality &amp; landed price. In case it is not possible to establish the base line parameters through bid mapping, compute the base line fuel costs based on bid quote parameters and net units generated at normative availability of 85%</li> <li>2. Assess the alternate coal source quantity, quality &amp; price</li> <li>3. Compute total cost difference compared to baseline cost of old source and hence determine the compensatory fuel charges</li> </ol>	<ul style="list-style-type: none"> <li>• Baseline quantity</li> <li>• Baseline GCV</li> <li>• Baseline price</li> <li>• Revised price of alternate source</li> <li>• Revised GCV of alternate source</li> </ul>
Change in Price	<ol style="list-style-type: none"> <li>1. Establish the baseline price and the price difference</li> <li>2. Assess the impact of change in price on base quantity and hence determine the compensatory fuel charges</li> <li>–. Assess the impact of change in price on base quantity and hence determine the compensatory fuel charges</li> </ol>	<ul style="list-style-type: none"> <li>• Baseline price</li> <li>• Actual quantity delivered</li> <li>• Baseline GCV</li> <li>• Shortfall in GCV</li> <li>• Revised price of alternate source</li> <li>• Revised GCV of alternate source</li> </ul>
Change in Quality	<ol style="list-style-type: none"> <li>1. Establish the baseline quality and shortfall in GCV</li> <li>2. Assess the requirement of additional quantity of coal from alternate source to offset energy difference</li> <li>3. Compute the cost of additional quantity of coal and compute the compensatory fuel charges</li> </ol>	<ul style="list-style-type: none"> <li>• Baseline quantity</li> <li>• Baseline GCV</li> <li>• Baseline price</li> <li>• Revised price</li> <li>• Revised GCV</li> </ul>

12.16. The factors to be assessed for calculation of compensatory fuel charge should be considered as per the following approach:

**Table 7: Benchmarks to be used**

<b>Factor Category</b>	<b>Factor</b>	<b>Description</b>
Intrinsic factors	Design GCV, SHR, Aux	Lower of plant's design, bid assumptions, actual, or relevant regulatory norms (CERC Tariff Regulations, 2014)
Baseline GCV	Domestic coal	<ul style="list-style-type: none"> <li>As per CIL's LoA submitted at the time of bid</li> <li>For cases where LoA has not been allotted, the baseline GCV shall be based on developer's application to SLC/CIL</li> </ul>
	Imported coal	<ul style="list-style-type: none"> <li>As per third party FSAs, or</li> <li>For open market sourcing, the GCV required to achieve an optimal coal blend, given the domestic coal supply</li> </ul>
Baseline Quantity	Domestic coal	<ul style="list-style-type: none"> <li>As per CIL's LoA submitted at the time of bid</li> <li>Or, based on developer's application to SLC/CIL if LoA has not been allotted</li> </ul>
	Imported coal	As per the normative coal requirement considering plant capacity and approved intrinsic factors (SHR, Aux. Con.) identified above; Supply from other sources also to be considered in arriving at baseline imported coal quantity
	Captive coal	As per the normative coal requirement considering plant capacity and approved intrinsic factors identified above; Supply from other sources also to be considered in arriving at baseline imported coal
Baseline Landed Price	Domestic coal	As per CIL's notified price at the time of bid submission, logistics costs as per relevant benchmarks Escalation of CIL prices shall be as per applicable CERC escalation rates for payment
	Imported coal	<ul style="list-style-type: none"> <li>As per the FSA signed with third party before the bid submission – subject to verification</li> <li>Otherwise, one year trailing average of prevalent benchmark index at the time of bid submission</li> <li>Escalation of imported coal prices shall be as per the bid assumptions ascertained through bid mapping</li> <li>Logistics costs as per relevant benchmarks</li> </ul>
	Captive coal	As per the assumptions at the time of bid submission – to be supported by bid mapping and/or suitable benchmarks/study with escalation as per the bid assumptions
Shortfall Quantity	Domestic coal	One year trailing average of actual shortfall from LoA quantity for the period under consideration
Revised Price	Domestic coal	As per CIL's notified price for the period under consideration; Logistics costs as per relevant benchmarks identified*
	Imported coal	One year trailing average of prevalent benchmark index for the period under consideration Logistics costs as per relevant benchmarks identified in subsequent section
Revised GCV	Domestic coal	As per average actual GCV delivered for the period under consideration – supported by report from a reputed third party

Factor Category	Factor	Description
		sampling agency based on sampling at plant
	Imported coal	As per actual GCV procured considering the optimal blending requirement (depending on shortfall of domestic coal and plant design GCV range)

12.17. The relevant indices/benchmarks to be used for the above approach have been proposed as follows:

**Table 8: Relevant Indices/ Benchmarks for imported coal**

Factor Category	Description
FoB price of imported coal	<p>Relevant indices as identified by CERC for composite imported coal escalation rates for the period Apr – Sep 2014.</p> <ul style="list-style-type: none"> <li>Platts (5000 Kcal/kg GAR) and Argus ( ICI3, 5000 Kcal/kg GAR) indices for Indonesian coal with equal weightage</li> <li>API4 index for South African coal</li> <li>Global COAL New Castle Index for Australian coal</li> </ul>
Forex rate	Reference exchange rate as published by RBI
Ocean Freight	<ul style="list-style-type: none"> <li>Base ocean freight as per appropriate index sourced from reputed publishers such as Clarkson, Lloyds, etc. for spot freight rates.</li> <li>In case of long term charter party agreement, where the rates are higher than spot rates, the Commission may require the developer to produce an independent opinion from a renowned logistics expert that prices are reflective of those of an arm's length contract.</li> <li>Base ocean freight once established can be escalated as per CERC norms for subsequent years</li> <li>Transit losses as per CERC norms</li> </ul>
Port handling charges	<ul style="list-style-type: none"> <li>Current base cost after studying published charges/ available arm's length contracts of various ports</li> <li>Escalation as per CERC norms on port handling rates</li> </ul>
Inland Transportation	<ul style="list-style-type: none"> <li>Commercial Freight rates as published by Indian railways</li> <li>Actual cost for road transport subject to a maximum of 110% of the rail freight for the same distance, as per new Case I SBD guidelines</li> </ul>
Transaction & Others costs	<ul style="list-style-type: none"> <li>Other costs which are legitimately incurred can be considered on a case to case basis based on merits by the Commission (e.g. LC, bank and financial charges, insurance and other transaction costs).</li> <li>These shall be at actual, subject to prudence check, as incurred by the company</li> </ul>

**Table 9: Relevant Indices/ Benchmarks for domestic coal**

Factor Category	Description
Ex mine price of coal	Based on CIL notified price structure and project specifics
Government duties and taxes	As per the relevant regulations
Inland Transportation	<ul style="list-style-type: none"> <li>Commercial Freight rates as published by Indian railways</li> <li>Actual cost for road transport subject to a maximum of 110% of the rail</li> </ul>

Factor Category	Description
	freight for the same distance, as per new Case I SBD guidelines
Other costs	Other costs which are legitimately incurred can be considered on a case to case basis based on merits by the Commission (e.g. additional security charges for areas with law and order challenges). These shall be at actual, subject to prudence check, as incurred by the company.
Ocean freight and port handling charges for coastal movement	As per indices/benchmarks identified for imported coal

12.18. KPMG has proposed the following process for computation of compensatory fuel charge:

1. The generator shall approach the Commission seeking compensatory fuel charges on account of identified hardship factors.
2. The Commission may or may not admit the hardship factors based on the merits of the particular case.
3. The Commission shall ask the developer to submit the proposal of provisional compensatory fuel charges based on the approved framework along with the supporting bid assumptions. While submitting the provisional compensatory fuel charges, the developer shall demonstrate that:
  - Imported coal GCV achieves optimal coal blend to reduce the generation cost
  - Imported coal FoB price is competitive procured with respect to the indices
  - Imported coal logistics is optimal
4. Commission may review the case in a hearing with the concerned stakeholders to issue the final compensatory fuel charges order.

12.19. KPMG has proposed the following checks and balances for the compensatory fuel charge:

12.19.1. True-up of provisional compensatory fuel charge shall be carried out by the Commission at the end of the financial year.

12.19.2. The developer shall demonstrate that –

- Choice of Imported coal source (GCV) achieves the optimal coal blend to reduce the generation costs supported by a technical study on plant's design GCV range
- The procured imported coal FOB and logistics cost is competitive with respect to benchmark prices

12.19.3. The Commission shall apply appropriate checks using indexes/benchmarks and other independent/regulatory studies.

12.19.4. The procurer would have complete rights to scrutinize the accounting of the

compensatory fuel charge. The developer shall maintain clear accounts and systems for the compensatory fuel charge determination. It would be available for scrutiny/inspection at the discretion of the procurer.

- 12.19.5. A periodic review of compensatory fuel charge is required on account of changes in the business environment related to coal demand-supply situation, prices of coal in the international market, etc. Accordingly, the Compensatory fuel charge should be reviewed by the Commission after every three years. Further, Procurers may approach the Commission intermittently for review of any aspect of the compensatory fuel charge with changing scenarios.
- 12.19.6. Developers shall actively look for purchasing coal through e-auctions which may be cheaper than imported coal. Developers should make all efforts for securing access to alternative mines or new coal linkages to meet the coal requirement. Future access to such mines should be preferentially directed to meet the shortfall of current project(s). Further, the Developers should demonstrate to the procurer the efforts taken to reduce the coal costs on a periodic basis.

### 13. **Submission by Stakeholders**

14. Dr. Ashok Pendse, Thane Belapur Industries Association (hereinafter referred to as “TBIA”), Authorised Consumer Representative submitted the following through his communication dated 11 June, 2014:
  - Prayas Energy Group has challenged the Commission’s Order in the matter of compensatory charge for Adani Power in Hon’ble ATE. Three hearings have taken place. Similarly, Energy Watch has challenged the Order of Hon’ble CERC in the matter of compensatory charge for Tata Mundra in Hon’ble ATE. All this discussion is subject to the decision of Hon’ble ATE. These aspects should have been part of KPMG’s presentation as abundant precaution.
  - As Compensatory fuel charge is similar to Fuel Adjustment Charge (FAC), entire calculation should be in public domain. This practice exists for all utilities in respect of FAC.
  - Certain parameters such as heat rate, captive coal price, etc. needs to be ascertained at the beginning and should not change thereafter.
  - Imported coal price is a debatable issue. Punjab State Electricity Regulatory Commission (PSERC) has formed a committee of Principal Secretary, Government, representative of generators and an external member. This committee invites tenders for coal and price thus obtained is used for Tariff calculation for Nabha and Talwandi Sabo. Thus, entire process of discovery of imported coal price in these cases is extremely transparent.
  - Other calculation parameters if not from government then should follow similar process.
  - Compensatory fuel charge should be used for future quarter for Merit Order Dispatch by MSEDCL.

- Calculations made are in general nature. It is essential to carry out actual calculation for all three generators as on the present date.
  - Compensatory fuel charge as per one of the sample calculation is as high as Rs.1.87 per kWh. Considering the same, the Commission should contemplate about a ceiling Tariff. If such high compensatory fuel charge is given, it will defeat the basic purpose of competitive bidding process.
15. Prayas Energy Group (hereinafter referred to as “Prayas”), Authorised Consumer Representative, made its submission regarding the matter mentioned in Case No. 154 of 2013 on 12 June, 2014. The arguments raised by Prayas in the said submission are as follows:
- 15.1. Prayas stated that it was premature and inappropriate to discuss modalities of pass through when applicability of the provisions of 'Change in Law' is being contested based on evidence and analysis. Prayas highlighted that the Consultant didn't address the legal issues. Only after the applicability issues are addressed, the modalities of the pass through could be discussed, if any.
- 15.2. Prayas submitted that 'Change in Law' provisions do not apply in the matter of Case No. 154 of 2013, for the following reasons:
- 15.2.1. Prayas submitted that the advice of MoP makes it clear that the SERC is merely advised to consider the request of generators as per due process and on a case to case basis. Thus, it clearly means that depending on the type of bidding, fuel arrangements, PPA terms and conditions and other relevant factors, the Commission will have to evaluate whether the provisions of 'Change in Law' become applicable and if so, determine impact on Tariff, if any. The letter issued by MoP is only advisory and not binding in nature as under the Electricity Act, 2003, the Central Ministry cannot issue any directives to a State Commission.
- 15.2.2. Prayas submitted that it would be pertinent to note that concerning the issue of open access, the MoP in a similar manner had issued a circular advising the ERCs on the steps to be taken to implement the certain provisions of the Electricity Act, 2003. Through a suo motu Petition (Case No. 50 of 2012), the Commission conducted a Public Hearing to decide whether it should implement the said advice given by the MoP. In the context of whether an advice given by MoP should be considered as binding by a State Commission, MERC ruled as follows:

*"136. The Commission is of the view that the MoP letter based on the opinion from M/o Law and Justice on Operationalization of Open Access in Power Sector is nature of suggestion/advisory for development of market in the Power Sector to the State Commissions and may be looked as 'Policy Vision' of the Central Government.*

*Conclusion- The MoP letter based on the opinion from M/o Law and Justice on Operationalization of Open Access in Power Sector is nature of suggestion/advisory for development of market in the Power Sector to the State Commissions and may be looked as 'Policy Vision' of the Central Government."*

- 15.2.3. Prayas submitted that the said MoP letter only advises the Commission to consider such issues on a case to case basis after following due process and keeping public interest in mind. Therefore, there is no larger policy implication for all contracts signed under competitive bidding on account of this advice from MoP. If the Commission wishes to act based on the said letter issued by MoP, such decision will be solely discretionary and the Commission will have to justify the same based on legal and regulatory principles.
- 15.2.4. A case is being made to project that any change in supply of domestic coal as assured in the LoA was never envisaged. Now that the shortfall in domestic coal availability has become a reality, it is being projected as 'change in scenario'. It is being claimed that this issue of shortages is now being redressed by the Government through the CCEA approved mechanism and amendment to the NCDP, 2007. However, before getting into these issues, it becomes essential to first establish whether there is indeed any change in the nature of assurance that was contractually guaranteed to the Petitioner, before and after the said events occurred.
- 15.2.5. Prayas submitted that the Petitioner is claiming that its bids were based on LoAs issued under the NCDP, 2007. However, as per the LoAs, there is no contractual assurance being given to the Petitioner with regard to quality, quantity or price. In case coal is imported to meet the domestic supply shortfall, the Petitioner is required to bear the entire cost of such imports.
- 15.2.6. Following the LoAs, the Petitioner has signed Fuel Supply Agreement (FSA) with the SECL dated 22 December, 2012. The FSA states the percentage of Assured Coal Quantity that the coal supplier will endeavor to supply domestic coal from its sources and the possibility of importing the remaining quantity, if necessary.
- 15.2.7. The following changes have been suggested to be made to the FSA on account amendment to the NCDP, 2007:

**Table 10: Suggested Changes in FSA as per amended NCDP, 2007**

Financial year	Domestic coal quantity to be supplied in a year as per:		
	Letter of Assurance	FSA dated 22 Dec 2012	FSAs to be signed as per amended NCDP
FY 13-14	No specific assurance	65% of ACQ*	65% of ACQ

Financial year	Domestic coal quantity to be supplied in a year as per:		
	Letter of Assurance	FSA dated 22 Dec 2012	FSAs to be signed as per amended NCDP
FY 14-15	No specific assurance	65% of ACQ	65% of ACQ
FY 15-16	No specific assurance	70% of ACQ	67% of ACQ
FY 16-17	No specific assurance	75% of ACQ	75% of ACQ
FY 17-18 onwards	No specific assurance	75% of ACQ	No specific assurance

- 15.3. As the table above shows, there is hardly any change in the FSA that the Petitioner has signed and the modifications to the FSAs proposed as per the amendment to NCDP, 2007 dated 26 July, 2013. In fact, the FSA signed by the Petitioner at least provides a better terms and more clarity in terms of the percent of the ACQ that will be met through domestic coal supply post FY 2016-17.
16. Prayas made another submission on 12 June, 2014 in the matter of Case No. 189 of 2013. In the same Prayas reiterated its submissions given in the submission under Case No. 154 of 2013 and further submitted the following additional points:
- 16.1. Prayas submitted that a case is being made to project that any change in supply of domestic coal as assured in the LoA was never envisaged. Prayas submitted the following:
- Since the time of bidding, Adani Power was planning to source its primary coal requirement through imports from South Africa.
  - Accordingly, FSA for importing coal of about 3 Million Ton per year was signed for this purpose on 25 June, 2009.
  - The decision to change the coal source from imported to domestic was willingly and voluntarily taken by Adani Power keeping in mind its own commercial interests and is not on account of the actions or inaction of any Indian Government Instrumentality.
  - Further, even the letters written by Adani Power seeking to modify the environment clearance based on change in the coal source from imported to domestic were issued post the CCEA decision and CERC and MoP advice, and hence cannot be considered under change in law related provisions.

- From the above points, it becomes clear that not only there is no possibility of applying 'Change in Law' related provisions to this case, but as imported coal is costlier than domestic coal, Adani Power will benefit in terms of reduced fuel cost on account of Change in its fuel source and hence there cannot be any upward impact on the quoted Tariff.
17. Subsequent to the hearing held on 13 April, 2014, JSW Energy, Indiabulls Power and Adani Power made their submissions on the methodology proposed by KPMG. The same has been discussed in subsequent paragraphs.
  18. MSEDCL submitted the following on 10 July, 2014:
    - 18.1. MSEDCL submitted that the Commission may consider the long term impact of allowing such framework for incremental coal cost pass-through on the Tariff bidding process under Section 63 of the Electricity Act 2003 and maintain the sanctity of the bidding process. If the Commission feels that compensatory fuel charges needs to be granted, then the same must be done on the basis of a fair and transparent mechanism after addressing the grievances of MSEDCL.
    - 18.2. MSEDCL added that considering that any decision in framing such incremental coal cost pass-through is going to impact the competition, policy, contractual obligations as well as Tariff of the electricity Consumers, the Commission may pass orders as may be required to balance the competition interests. It is further submitted that till such time the Commission does not pass a final Order on such incremental coal cost pass-through, the position as agreed in the PPAs may be maintained.
    - 18.3. Ministry of Coal vide office memorandum dated 26 July, 2013, amended NCDP, 2007 as for revised arrangement for supply of coal to the identified Thermal Power Stations(TPPs) of 78,000 MW capacity commissioned or likely to be commissioned during the period from 1 April, 2009 to 31 March, 2015. Taking into account the overall domestic availability and the likely actual requirement of these TPPs, it has been decided that, FSAs will be signed for the domestic coal quantity of 65%, 65%, 67% and 75% of ACQ for the remaining four years of the 12th Plan for the power plants having normal coal linkage. This memorandum also envisages that CIL may import the coal and supply the same to the willing power plants on cost plus basis. Power plants may also directly import coal themselves, if they so opt.
    - 18.4. MSEDCL submitted that the compensatory fuel charge to be determined by the Commission should be limited to the framework recommended by CCEA on 21 June, 2013 and as per MoC Office memorandum dated 26 July, 2013. The change in position due to revision in NCDP, 2007 has led to shortfall in desired coal quantity only.
    - 18.5. MSEDCL requested for evolving a formula for computations of quantity of coal with appropriate GCV for economical generation of power. The compensatory fuel charge, if allowed, should be as per MoC office memorandum dated 26 July, 2013, in which

applicability is limited to (i) power utilities including independent power producers were to be supplied 100 percent of the quantity as per their normative requirement through FSAs by CIL at fixed price to be declared / notified by CIL, (ii) Identified TPPs commissioned or likely to be commissioned during the period from 1 April, 2009 upto 31 March, 2015 and (iii) FSAs to be signed for the domestic coal quantity of 65%, 65%, 67% and 75% of ACQ for the remaining four years of the 12th Plan for the Power Plants having normal coal linkage.

- 18.6. MSEDCL submitted that the compensatory charges may strictly for the shortfall in quantity component as per mechanism approve by CCEA. The balance coal quantity to be imported should be considered so that the GCV of the imported coal after blending should be equivalent to the GCV as per original FSAs. Accordingly, the shortage coal quantity (coal quantity difference between as per FSA and CCEA approval mechanism considering both having same grade and same GCV) shall be computed. The compensatory charge towards quantity shortfall shall be determined as per indices.
- 18.7. As per CCEA's proposed mechanism, while computing the compensatory charge, actual quantity of coal, source, transport, slippage, foreign exchange deviation, capital cost, handling and insurance charges cannot be considered. MSEDCL should be the neutral to quantity slippage, grading slippage and transit loss etc. and same is required to be borne by the generator. The Commission may also formulate compensatory charge formula in such a way that it provides a ceiling limit.
- 18.8. Accordingly, MSEDCL proposed that the following should be considered as the energy gap in kilocalories:
- $$\text{Energy Gap (Kcal)} = (ACQ * GCV) - (0.65ACQ * GCV)$$
- (Note: GCV should be as per original FSA. The Grade/ GCV indicated in original FSA should remain unchanged and should be used for calculation of compensatory charge.)*
- 18.9. Only this energy gap (kCal) as derived above will be compensated as per original FSA. Framework for compensatory fuel charge should consider issues like Coal accounting, Optimum Operational Technical Parameters, Reference prices, Relevant Indices etc.
- 18.10. MSEDCL added that merely providing justification of hardship faced by developers/ generators and quantifying the past losses should not be accepted by the Commission. In case, the compensatory fuel charges are allowed, any pass through of such cost may not be undertaken on retrospective basis and should be only applicable from the date of final Order of the Commission.
- 18.11. Further, in the paragraph-wise reply, MSEDCL raised the following issues:
- 18.11.1. As regards the intrinsic factors identified by KPMG, MSEDCL submitted that extrinsic parameters involving cost factors may be reduced by hedging.

- 18.11.2. As regards the principles for coal cost pass through identified by KPMG, MSEDCL submitted that full cost pass-through should not be allowed, as amendment to NCDP, 2007 envisages only about shortage in quantity. Other expenditures, i.e., Forex translation, transportation cost, other cost, etc. should be borne by generator.
- 18.11.3. As regards the incremental cost approach, the proposed formula by KPMG is for full cost pass-through, which is not under the purview of revised NCDP, 2007. As regards formula for change in quality, MSEDCL further clarified that change in quality is outside the purview of revision in NCDP, 2007.
- 18.11.4. MSEDCL submitted that FoB price, forex rate, ocean freight, port handling charges, inland transportation, transaction cost, etc. are beyond the purview of amendment to NCDP, 2007. MSEDCL added that RoE reduction should be considered to reduce the impact of hardship.

### **Commission's Analysis**

19. The Commission is conducting the present proceedings based on the Petitions filed by three Generators which have approached the Commission citing the shortage of domestic coal, which has necessitated the import of coal at a higher price in order to maintain the contracted capacity. They have sought compensation for higher price of coal under the dispensation of the decision of CCEA dated 21 June, 2013, amendment to NCDP, 2007 dated 26 July, 2013 and MoP advice dated 31 July, 2013. The Commission noted the plea of the Petitioners.
20. The relevant excerpts of the CCEA decision are as given below:
- “(i) Coal India Ltd. (CIL) to sign Fuel Supply Agreements (FSA) for a total capacity of 78000 MW including cases of tapering linkage, which are likely to be commissioned by 31.03.2015. Actual coal supplies would however commence when long term Power Purchase Agreements (PPAs) are tied up.*
- (ii) Taking into account the overall domestic availability and actual requirements, FSAs to be signed for domestic coal quantity of 65 percent, 65 percent, 67 percent and 75 percent of Annual Contracted Quantity (ACQ) for the remaining four years of the 12th Five Year Plan.***
- (iii) To meet its balance FSA obligations, CIL may import coal and supply the same to the willing Thermal Power Plants (TPPs) on cost plus basis. TPPs may also import coal themselves. MoC to issue suitable instructions.*
- (iv) Higher cost of imported coal to be considered for pass through as per modalities suggested by CERC. MoC to issue suitable orders supplementing the New Coal Distribution Policy (NCDP). MoP to issue appropriate advisory to CERC/SERCs including modifications if any in the bidding guidelines to enable the***

*appropriate Commissions to decide the pass through of higher cost of imported coal on case to case basis.*

*(v) Mechanism will be explored to supply coal subject to its availability to the TPPs with 4660 MW capacity and other similar cases which are not having any coal linkage but are likely to be commissioned by 31.03.2015, having long term PPAs and a high Bank exposure and without affecting the above decisions.” (Emphasis Added)*

21. Similarly, the relevant excerpts of the MoP advice are as follows:

*“ 2. After considering all aspects and the advice of CERC in this regard, Government has decided the following in June 2013:*

*(i) taking into account the overall domestic availability and actual requirements, FSAs to be signed for domestic coal component for the levy of disincentive at the quantity of 65%, 65%, 67% and 75% of Annual Contracted Quantity (ACQ) for the remaining four years of the 12th Plan.*

*(ii) to meet its balance FSA obligations, CIL may import coal and supply the same to the willing TPPs on cost plus basis. TPPs may also import coal themselves if they so opt.*

*(iii) higher cost of imported coal to be considered for pass through as per modalities suggested by CERC.*

*3. Ministry of Coal vide letter dated 26th July 2013 has notified the changes in the New Coal Distribution Policy (NCDP) as approved by the CCEA in relation to the coal supply for the next four years of the 12th Plan (copy enclosed).*

*4. As per decision of the Government, **the higher cost of imported/market based e-auction coal to be considered for being made a pass through on case to case basis by CERC/SERC to the extent of shortfall in the quantity indicated in the LoA/FSA and the CIL supply of domestic coal which would be minimum of 65%, 65%, 67% and 75% of LOA for the remaining four years of the 12th Plan for the already concluded PPAs based on tariff based competitive bidding.***

*5. **The ERCs are advised to consider the request of individual power producers in this regard as per the due process on a case to case basis in public interest. The Appropriate Commissions are requested to take immediate steps for the implementation of the above decision of the Government.” (Emphasis Added)***

22. Three Generators who have contracted to supply around 3265 MW to MSEDCL under Case 1 route of the Competitive Bidding Guidelines have independently approached the Commission for compensation for increase in generation cost due to shortage of coal. Since the issues in these cases are similar and the MoP advice left it to the ERCs to deal the matter of shortfall of coal on case to case basis, the Commission felt that it will be appropriate to work out a common methodology for determination of compensatory

fuel charge for cases which fall under the ambit of CCEA decision and MoP advice. The Commission felt that such a methodology will create a common framework for addressing all such cases. Once the methodology is finalised, individual cases will be heard on merits and the applicability of the methodology will be determined on case to case basis.

23. The Commission is aware of acute shortage of domestic coal and the need to import coal for making power available to the Consumers in the State of Maharashtra. However, the Commission is not keen to set aside the Tariffs discovered through competitive bidding and create a situation where contractual obligations agreed to by both the parties in the PPA are reopened.
24. Considering the common issues involved and similarity of grounds for relief submitted by the Petitioners, the cases were heard jointly. Further, the Commission in consultation with stakeholders, appointed KPMG (“Consultant”) as a consultant to provide independent advice on developing a framework for determining incremental coal cost pass-through in case of projects which have entered into PPAs based on competitively discovered Tariff under Section 63 of Electricity Act, 2003. While doing so, the Consultant was asked to take into account the comments of the stakeholders. KPMG submitted the report and made a presentation on the hearing held on 13 June, 2014. The Commission asked the stakeholders to submit their comments on the methodology. The same has been submitted by the parties.
25. The Commission has analysed this matter under the following aspects:
  - A. Features of the Methodology proposed;
  - B. Analysis of Stakeholders comments on the proposed Methodology; and
  - C. Observations on the proposed Methodology.

#### **A. Features of the Methodology proposed**

26. In the present case, the Commission is dealing with the methodology for determining incremental coal cost pass-through on account of hardships faced by various Generators in Maharashtra. As per the Terms of Reference to the Consultant, it was required to evolve a methodology to address the differential between imported/alternative coal and domestic coal. The Consultant was to evolve the methodology taking into account the national/international indices. Parameters which involve subjective judgment by the Commission, stakeholders, experts, were to be kept minimum, if not avoided altogether.
27. The facts of the specific case raised by the parties will be dealt on a case to case basis separately.

28. The methodology proposed by KPMG for coal cost pass-through addresses the issues of change in quantity, quality, price of imported coal and its impact on Tariffs.
29. The proposed methodology is flexible so as to reflect the changing prices of coal and market situation. Benchmarks have been proposed wherever possible to ensure that no inefficient costs are passed through. Further, a periodic and multiple levels of true-up processes have been proposed to ensure that the Generators only recover the actual cost of coal and will not lead to profiteering.
30. Procurers have been given freedom to approach the Commission to review any aspect of the compensatory fuel charge. Further, they have been empowered to scrutinize the accounts of Developers to carry out the required due diligence.

#### **B. Analysis of Stakeholders comments on the proposed methodology**

31. The suggestions and objections of Parties and Authorised Consumer Representatives on the methodology and framework proposed by KPMG and the views of the Commission on each of them are as follows:

##### **31.1. Contradiction in baseline GCV and quantity to be considered**

###### **Submission of stakeholders**

**Indiabulls Power:** As defined in Slide 20 of the presentation of KPMG Baseline GCV is "As per CIL's LoA submitted at the time of bid" while in the illustration (Slide 25), the same is mentioned "As assumed in the bid"- both are contradictory to each other. Baseline GCV should be as per LoA. Furthermore, in Slide 25 the multiplying factor is the "FSA Quantity" which should be "Actual Quantity received".

###### **Commission's Analysis**

The Commission has dealt with the GCV to be considered in subsequent Paragraphs of this Order.

##### **31.2. Price of imported coal**

###### **Submission of stakeholders**

**Indiabulls Power:** Slide No. 21 of the presentation of KPMG defines Revised Price of Imported Coal as "One year trailing average of prevalent benchmark index for the period under consideration". This is not appropriate and the actual cost of imported coal/ coal from alternate sources should be considered. The latter has been used correctly in Slide 22 and 25 (Illustration), i.e. "Reference coal landed price based on relevant indexes for FOB and logistics cost" which means relevant benchmark index applicable at the time of import including all taxes, duties and transportation up to the plant site.

### **Commission's Analysis**

Indiabulls Power has referred to the presentation made by KPMG. However, the final report of KPMG provides the following:

As per the FSA signed with third party before the bid submission – subject to verification

-Otherwise, one year trailing average of prevalent benchmark index at the time of bid submission

-Logistics costs as per relevant benchmarks

-Escalation of imported coal prices shall be as per the bid assumptions ascertained through bid mapping

### 31.3. **Baseline Quantity**

#### **Submission of stakeholders**

**Indiabulls Power:** Baseline Quantity as defined in Slide No. 20 is "As per CIL's LoA submitted by the developer at the time of bid" However, as per Slide 22, the same is "As assumed in the bid". Both are contradictory to each other. This should be as per LoA.

#### **Commission's Analysis**

The Commission has dealt with the Quantity to be considered in subsequent paragraphs in this Order.

### 31.4. **Recovery of Expenditure**

#### **Submission of stakeholders**

**Indiabulls Power:** KPMG presentation is silent about the recovery of any expenditure that the Petitioner has to incur by way of additional capital expenditure to accommodate imported coal which otherwise was not envisaged by the Petitioner at the time of bid.

#### **Commission's Analysis**

The Commission believes that this a case specific issue and will be handled in the Petition filed by Indiabulls Power based on the methodology in this Order.

### 31.5. **Additional expenditure on freight**

**Indiabulls Power:** KPMG presentation doesn't capture the additional freight the Petitioner has to incur for transporting the inferior quality coal. It would be pertinent to mention here that railway freight remains same irrespective of the quality of coal. As

such, the Petitioner in the first instance would pay the freight for the quantity of coal of lower grade transported from CIL sources and again will have to bear the freight for the quantity of coal from alternate sources.

### **Commission's Analysis**

The Commission is addressing the issue of replacement cost of shortfall in domestic coal with imported (alternately sourced) coal for the shortfall quantity. Therefore, the aspect of cost of the domestic coal received under the LoA/ FSA is not relevant.

## **31.6. Escalation in Tariff**

### **Submission of stakeholders**

**JSW Energy:** The formula for compensation in fuel cost does not consider aspects of escalable Tariff components quoted by the Petitioner/s and the same may be considered (Slides 22-25 of the KPMG Report).

### **Commission's Analysis**

The Commission is addressing the issue of replacement cost of shortfall in domestic coal with imported (alternately sourced) coal. The Commission may consider escalable/ non-escalable components on a case to case basis, if required.

## **31.7. Indices for imported coal**

### **Submission of stakeholders**

**JSW Energy:** Indices for determining imported coal FOB price for Indonesian coal should be considered as per the HBA Index specified by Govt. of Indonesia as the bid of the Petitioner was based on the Indonesia coal. Further, HBA Index accurately reflects price movement of Indonesian Coal instead of CERC's Composite Coal Index (Slide no. 26 of the KPMG Report)

**Adani Power:** Concerned benchmark index or actual whichever is lower as per recent CERC/ MERC Orders on Compensatory Tariff needs to be used.

### **Commission's Analysis**

The relevant indices for each country have been specified in the methodology. The following indices shall be used for comparison with actual costs. The indices are as follows:

- Platts (5000 Kcal/kg GAR) and Argus ( ICI3, 5000 Kcal/kg GAR) indices for Indonesian coal with equal weightage
- API4 index for South African coal
- Global COAL New Castle Index for Australian coal

31.8. **Forex rate**

**Submission of stakeholders**

**JSW Energy:** The PPA provides Benchmark for forex rate as SBI TT buying rate and it is requested that the same may be considered as against RBI reference exchange rate suggested in KPMG report. This approach shall be in line with the provisions of the PPA (Slide no. 26 of KPMG Report)

**Commission's Analysis**

The reference exchange rate as specified in the PPA may be used to ensure uniformity. In case there is no reference exchange rate provided in the PPA, the rate as published by the Central Bank (RBI) shall be considered.

31.9. **Customs duty**

**Submission of stakeholders**

**JSW Energy:** The impact of customs duty on difference of price P (imported new) and P (imported old) has not been considered in the formula and the same may be incorporated as the same has an impact on the landed cost of Coal (Slide no. 26 of the KPMG Report)

**Commission's Analysis**

Change in taxes/ custom duty will be dealt based on the provisions of the PPA on a case to case basis.

31.10. **Fuel compensation payment**

**Submission of stakeholders**

**JSW Energy:** Fuel cost compensation may be paid on a monthly basis based on the average fuel cost compensation rate prevailing during the previous Quarter subject to truing up of the same at the end of each Quarter .

**Commission's Analysis**

The mechanism has been dealt with in the subsequent Paragraphs.

31.11. **Baseline quantity and quality**

**Submission of stakeholders**

**Adani Power:** NCDP, 2007 assures supply of 100% of the normative requirement,

Therefore, Baseline should be as per normative requirement, i.e., 85% of PLF and shortfall quantity shall be computed w.r.t. the normative requirement .

#### **Commission's Analysis**

The Commission has dealt with the Baseline Quantity and Quality to be considered in subsequent Paragraphs of this Order.

#### 31.12. **Intrinsic factors**

##### **Submission of stakeholders**

**Adani Power:** Relevant regulatory norms for this purpose shall mean the CERC Tariff Regulations applicable at the time of bid submission

##### **Commission's Analysis**

Wherever required, lower of actual and CERC/ MERC norms will be adopted

#### 31.13. **Baseline Landed coal price**

##### **Submission of stakeholders**

**Adani Power:** Actual landed cost of coal being supplied by CIL under long term FSA, duly certified by Auditor should be considered

##### **Commission's Analysis**

The Commission has dealt with the Quantity to be considered in subsequent paragraphs in this Order.

#### 31.14. **Revised price of domestic and imported coal**

##### **Submission of stakeholders**

**Adani Power:** Landed cost for Domestic & Imported coal to include all taxes, duties, other incidental cost such as transaction cost @ 3% (i.e. insurances, LC, other financial charges), loading supervision charges and transportation up to the plant site, etc. as allowed by CERC & MERC in the order passed in Petition No. 155/MP/2012 and Case No. 63 of 2014 respectively.

**MSEDCL:** MSEDCL submitted that FoB price, forex rate, ocean freight, port handling charges, inland transportation, transaction cost, etc. are beyond the purview of amendment to NCDP, 2007.

##### **Commission's Analysis**

The Commission has discussed the same in subsequent paragraphs.

31.15. **Port handling charges**

**Submission of stakeholders**

**Adani Power:** Escalation as per CERC norms on port handling rates should be taken into account only if the same is not provided in the Contract

**Commission's Analysis**

The Commission has addressed the issue in subsequent paragraphs.

31.16. **Inland transportation**

**Submission of stakeholders**

**Adani Power:** Road transport should be on actuals as there is huge difference in between the freight by rail transport and by the road transport for inland transportation

**Commission's Analysis**

Road transportation cost with appropriate benchmark has been considered in the methodology.

31.17. **Adjustments to reduce the Impact of cost pass through on the consumers**

**Submission of stakeholders**

**Adani Power:** The Petitioner's case is Change in Law in terms of the PPAs and main objective of adjustment in Tariff is only to compensate the Petitioner to restore economic position. Hence, curtailment of RoE or reduction of FoB prices doesn't arise. In any case, any such adjustment would vitiate the basic principle to allow Change in Law.

**Indiabulls Power:** There should be no reduction of RoE since the case falls under 'Change in Law'

**MSEDCL:** RoE reduction should be considered to reduce the impact of hardship.

**Commission's Analysis**

The same shall be considered on a case to case basis

31.18. **Scope of compensatory fuel charge**

**Submission of stakeholders**

**MSEDCL:** The Compensatory fuel charge should be limited to the scope of CCEA decision and the amendment to NCDP, 2007.

### **Commission's Analysis**

The Commission will consider the applicability of compensatory fuel charge as per the advice of MoP, which is based on the CCEA decision and the amendment to NCDP, 2007 and the facts of each case.

#### **31.19. Coal Accounting, Optimum Technical Parameters, Benchmarks**

##### **Submission of stakeholders**

**MSEDCL:** Framework should consider coal accounting, optimal technical parameters, and benchmarks.

##### **Commission's Analysis**

The Commission has considered these aspects while specifying the methodology and checks and balances.

#### **31.20. Transparency to be followed for parameters considered and ceiling on compensatory fuel charge**

##### **Submission of stakeholders**

**TBIA:** There needs to be transparency on values used and considering the higher compensatory fuel charge projected in certain scenarios, a ceiling on compensatory fuel charge may be considered

##### **Commission's Analysis**

Appropriate benchmarks and other checks and balances have been considered in the methodology so as to ensure that there is no profiteering on this account. Further, the Procurer has the liberty to approach the Commission intermittently for review of any aspect of the compensatory fuel charges with changing scenarios.

### **C. Observations on the proposed Methodology**

32. The Commission noted the following:

32.1. The objective of the Commission, while arriving at the methodology to determine compensatory fuel charge is to enforce the decision of CCEA dated 21 June, 2013 and MoP advice dated 31 July, 2013. The Commission noted that the methodology suggested by the Consultant includes issues other than that fall under the purview of the CCEA decision and MoP advice.

32.2. The Consultant has identified various hardship factors, for each of which, it has suggested a pass-through formula in its report. The advice of MoP is limited to considering shortfall in the quantity indicated in the LoA/ FSA. The Commission has

adopted the formula relevant for addressing the issue of shortfall in quantity of domestic coal as per the decision of CCEA dated 21 June, 2013 and MoP advice dated 31 July, 2013.

- 32.3. It was observed that the methodology proposed only deals with compensatory fuel charges considering 85% availability and does not consider a scenario of generation less/more than 85%.
- 32.4. The Commission noted that as per the methodology proposed, the shortfall of domestic coal to be met from alternate coal is not limited to the shortfall identified in the CCEA decision and the MoP advice, i.e., 65%-75% for the remaining years of the 12<sup>th</sup> five year plan.
- 32.5. Further, it is observed that the proposed methodology does not address the issue of difference of SHR used for computation to arrive at the linkage/FSA quantity and the actual SHR. The Generators are expected to utilise the coal available at most efficient operation parameters including SHR and Auxiliary Consumption.
- 32.6. In addition, the proposed compensatory fuel charge is loaded on the entire generation from the project. Therefore, the position in merit order of even those units, which are being generated based on the domestic coal will be impacted. Therefore, the Commission is loading the compensatory fuel charge only on the energy generated from alternate/ imported coal.
- 32.7. The Commission has accepted the methodology proposed by KPMG while keeping in view the above aspects.
- 33. The Commission has computed the shortfall in heat value corresponding to the shortfall in the contracted quantity as per the FSA/LoA and arrived at the requirement of alternate coal. The Compensatory fuel charge shall be applicable for units generated from imported/ alternate (the terms alternate coal and imported coal have used interchangeably for the purpose of this methodology) coal considering defined efficient operational norms only. Further, the shortfall quantity that needs to be procured from alternate coal shall be limited to the level of quantity assured as per FSA (65%, 65%, 67% and 75% for the balance period of 12<sup>th</sup> five year plan).

33.1.1. The amended methodology is as follows:

*Quantity of Alternate Coal in MTPA##*

$$= \frac{\text{Shortfall Quantity in MTPA} \times \text{Baseline GCV in } \frac{\text{kcal}}{\text{kg}}}{\text{Revised GCV in } \frac{\text{kcal}}{\text{kg}}}$$

Compensatory fuel charge (Rs. per kWh)

$$= \frac{((Q_{Alternate} \times P_{Alternate}) - (Q_{shortfall} \times P_{linkage}))}{Units\ generated\ from\ alternate\ coal}$$

Where:

Parameter	Unit	Description
Baseline quantity	MTPA	Coal quantity as per LoA/ FSA/ relevant documents
P <sub>Linkage</sub>	INR/MT	Existing Landed coal price based on CIL's notified prices and logistics cost linked to index/benchmark
Baseline GCV	kcal/kg	As per LoA/ FSA/ relevant documents. In case of range of GCV is given, the mid-point GCV of such range shall be considered
Shortfall quantity	MTPA	<p>Minimum of:</p> <p>(a) Baseline Quantity – Actual Quantity received from CIL; and</p> <p>(b) Baseline Quantity – Quantity assured under amended NCDP, 2007 (CIL to supply minimum 65%,65%,67%,75% for the remaining four years of 12<sup>th</sup> five year plan).</p> <p>For clarity, if there is an actual shortfall of 1 MTPA but as per the Amended NCDP, 2007, the shortfall from CIL was to be a maximum of 0.8 MTPA, the shortfall quantity shall be considered as 0.8 MTPA</p> <p>For computation of provisional compensatory fuel charge, one year trailing average of actual shortfall from Baseline quantity, or 65% of LoA quantity, as per CCEA notifications for the first year.</p>
Revised GCV of alternate source	kcal/kg	GCV of imported/ alternate coal required for achieving optimal blend
Revised price of alternate source	INR/MT	Landed price of imported/alternate coal, derived from relevant indices/ benchmarks (with reduction in transportation and other charges as discussed in subsequent paragraphs both for provisional and true-up)
Net SHR	kcal/kWh	For SHR and Auxiliary Consumption, lower of actual or CERC/ MERC norms. Shall be computed as (Gross SHR / (1 - Auxiliary Consumption ))
Units generated from alternate coal**	MU	'Quantity of Alternate Coal in MTPA' * 10 <sup>3</sup> x 'Revised GCV of imported/alternate source' (kCal/kg)/Net SHR (kCal/kWh)

## For the purpose of true up, in case the Generator imports lesser than the 'Quantity of Alternate Coal in MTPA', the values of  $Q_{shortfall}$  and  $Q_{Alternate}$  will need to be revised to take account of the actual coal

imported.  $Q_{Alternate}$  will be taken as actual quantity of coal imported and  $Q_{Shortfall}$  will be arrived based on the following formulae.

$$33.1.2. \quad * Q \text{ shortfall in MTPA} = \frac{(Q \text{ Actually imported/alternate in MTPA} \times \text{Revised GCV in kcal/kg})}{\text{Baseline GCV in } \frac{\text{kcal}}{\text{kg}}}$$

Further  $Q_{Alternate}$  will be limited to the Alternate/Imported Coal Requirement arrived at in the formula for 'Quantity of Alternate Coal in MTPA'.

Further, the Commission may consider additional measures to reduce the impact of cost pass through on the consumers by following adjustments: Percentage reduction in imported coal FOB price, curtailing the RoE of developers and sharing incremental profits from developer's equity stake in overseas mines.

\*\* At the time of true-up, the compensatory fuel charge payment will be computed as follows:

Step 1: Units from domestic coal = "(Baseline Quantity – Shortfall Quantity) x Baseline GCV/ Net SHR"

Step 2: Units from imported coal = Quantity of Alternate Coal in MTPA x 'Revised GCV of imported/alternate source'/Net SHR

Step 3: The denominator for the formula for compensatory fuel charge per unit shall be computed using the Units from imported coal in Step 2.

Step 4: Compensatory fuel charge payable shall be the compensatory fuel charge per unit payable in Step 3 multiplied by minimum of:

- (i) Actual units delivery at delivery point from the contracted capacity – Units from domestic coal as computed in Step 1
- (ii) Units from imported coal computed in Step 2

For clarity, if the  $((Q_{Alternate} \times P_{Alternate}) - (Q_{Shortfall} * P_{Linkage}))$  is Rs. 200 Crore and units generated from imported coal considering Net SHR is 1000 MU. The compensatory charge is Rs. 2/kWh. However, if the units generated from imported coal is 900 MU instead of 1000 MU, the generator shall recover only 900 MU \* Rs.2/kWh, i.e. Rs.180 Crore (instead of Rs. 200 Crore).

34. On the issue of transportation of alternate coal, the Commission notes that MSEDCL, which is the Procurer in the present cases, has submitted that as per the CCEA decision dated 21 June, 2013, while calculating the compensatory fuel charge, transport charges, handling and insurance charges, etc. cannot be considered. MSEDCL has added that NCDP envisages only about shortage in quantity and other expenditures like transportation cost and other costs need to be borne by Generator. While this Commission notes the concerns of MSEDCL, the purpose of this Order is to ensure availability of power to the State of Maharashtra. For that purpose, coal should be available at the power plants and the cost of coal transportation cannot be kept outside the purview of this Order. CIL was required to provide and supply 100% of the normative requirement of coal in accordance with the NCDP, 2007 at the time of bidding. The amendment to NCDP, 2007 reduces the liability of CIL in terms of

quantity to be supplied. However, it does not deal with the aspect of the additional burden on account of such deficit on Generators/retail Tariffs. Further, while MoP has also advised the SERCs to consider pass-through of cost of coal on case to case basis without providing any specific modalities, the aspect of consequent impact on retail Tariffs has not been dealt with. Allowing 100% pass-through on all additional costs would lead to a significant increase in Tariff for the Consumers. The Commission, therefore deems it appropriate at this stage to allow only 60% of the total of transportation and transaction costs (which includes, ocean freight, port charges, inland transportation and transaction charges) of alternate coal to be passed on to Consumers. The computation of transportation cost will be capped as per the indices and benchmarks outlined in this Order. The Generator is free to approach CIL for reimbursement of the amount as per the provisions in FSA, if any. In case the Generator recovers more than 40% of the total transportation cost from CIL, the same shall be passed on to Procurer/ Consumers without the need for separate approval from the Commission.

35. The Commission has also analysed each of the parameters and benchmarks as proposed by KPMG and the comments of the Petitioners. The Commission approves the following benchmarks after considering the same:

**Table 11: Approved Indices/ Benchmarks for imported coal**

<b>Factor Category</b>	<b>Description</b>
FoB price of imported coal	Relevant indices as identified by CERC for composite imported coal escalation rates <ul style="list-style-type: none"> <li>• Platts (5000 Kcal/kg GAR) and Argus ( ICI3, 5000 Kcal/kg GAR) indices for Indonesian coal with equal weightage</li> <li>• API4 index for South African coal</li> <li>• Global COAL New Castle Index for Australian coal</li> </ul>
Forex rate	Reference Exchange Rate as mentioned in the PPA; If the same is not mentioned then the exchange rate of RBI shall be used
Ocean Freight	<ul style="list-style-type: none"> <li>• Lower of : <ul style="list-style-type: none"> <li>• Ocean freight as per appropriate index sourced from reputed publishers such as Clarkson, Lloyds etc.; and</li> <li>• Actual ocean freight</li> </ul> </li> <li>• Transit losses as per CERC norms or actuals, whichever is lower</li> </ul>
Port handling charges	Lower of: <ul style="list-style-type: none"> <li>• Actual port handling charges, and</li> <li>• Port handling charges of nearest port approved by Tariff Authority for Major Ports.</li> </ul>
Inland Transportation	<ul style="list-style-type: none"> <li>• Commercial Freight rates as published by Indian railways</li> <li>• Actual cost for road transport subject to a maximum of 110% of the rail freight for the same distance, as per new Case I SBD guidelines</li> </ul>

**Table 12: Approved Indices/ Benchmarks for domestic coal**

<b>Factor Category</b>	<b>Description</b>
Ex mine price of coal	Based on CIL notified price structure and project specifics
Government duties and taxes	As per the relevant regulations
Inland Transportation	<ul style="list-style-type: none"> <li>• Commercial Freight rates as published by Indian railways</li> <li>Actual cost for road transport subject to a maximum of 110% of the rail freight for the same distance, as per new Case I SBD guidelines</li> <li>• Transit losses to be considered as per actual or CERC norms, whichever is lower</li> </ul>

36. The CCEA in its decision, dated 21<sup>st</sup> June 2013, has addressed two categories of projects. The first category projects are those which fall in the identified list of projects accounting for 78000 MW and for which CIL has to sign FSAs and which are to be commissioned by 31<sup>st</sup> March 2015. The second category projects are those which are likely to be commissioned by 31<sup>st</sup> March 2015 but do not have any coal linkage and have obligations to supply power under long-term PPA with high bank exposure.
37. With respect to the second category of projects, the CCEA decision mentions “(v) *Mechanism will be explored to supply coal subject to its availability to the TPPs with 4660 MW capacity and other similar cases which are not having any coal linkage but are likely to be commissioned by 31.03.2015, having long term PPAs and a high Bank exposure .....*”
38. The current Petitions before the Commission cover multiple projects. Of these projects mentioned in these petitions, the Commission notes that there are some units which fall under the second category. All the units which fall under second category are either commissioned or likely to be commissioned by 31<sup>st</sup> March 2015. The mechanism reflected in the CCEA decision for second category projects with no coal linkage is yet to be laid down. Till such time the mechanism is laid down, the Petitioners of such units may approach the Commission, with a proposed mechanism to address the issue. The Commission, after examining the merits of the cases, may decide to address the issue appropriately.

**Checks and Balances on compensatory fuel charge**

39. The following checks and balances shall be followed for the compensatory fuel charge:
- 39.1. The provisional compensatory fuel charge shall be 90% of the total compensatory fuel charge computed based on the above methodology. The provisional fuel charge shall be paid as a supplementary bill at the end of the month as per the billing provisions in the PPA. The remaining 10% and any shortfall/ excess recovery of compensatory fuel charge shall be adjusted during the true-up process.

- 39.2. The Generators and Procurer shall jointly develop a coal accounting process for compensatory fuel charge. The Procurer would have rights to scrutinize the accounting of the compensatory fuel charge. The Generator shall maintain separate accounts and systems for the compensatory fuel charge determination. It would be available for scrutiny/inspection at the discretion of the Procurer. The agreed process for coal accounting shall be submitted to the Commission by the parties within 30 days of this Order.
- 39.3. True-up of provisional compensatory fuel charge based on audited data shall be carried out every quarter jointly by the Procurer and the Generator. The Generator shall provide detailed audited calculations of relevant input parameters based on the actual costs incurred and the identified indices while carrying out such true-up.
- 39.4. Based on the submission, the Procurer shall scrutinize the computation of true-up of the Generator. Any benefit accrued to the Procurer/ Consumer with respect to the indices shall be adjusted. Any amount required to be adjusted based on the quarterly true-up shall be adjusted through a supplementary bill in the subsequent quarter. The Procurer and the Generator shall jointly submit the computations backed by documents certified by statutory auditor to the Commission for the approval at the end of each financial year. Imported/ Alternate coal shall be procured through a transparent and competitive bidding process. Generators shall actively look for purchasing coal through e-auctions which may be cheaper than imported coal. Generators should make all efforts for securing access to alternative mines or new coal linkages to meet the coal requirement. Future access to such mines should be preferentially directed to meet the shortfall of current project(s). The process of procurement of alternate coal shall be mutually decided by the Procurer and Generator. The Generators will inform the Procurer about the procurement of alternate coal on a quarterly basis.

### **Commission's Ruling**

40. **The Commission approves the formulae as described in Paragraph 33. The Commission has provided a framework for treatment of shortfall in quantity and will deal with the merits and facts of each of the cases separately.**
41. **Based on the approved methodology, the Petitioners may approach the Commission along with the justification for the pass-through on account of increase in fuel cost within 15 days in continuation of this Order.**
42. **The date of applicability of compensatory fuel charges, if any, shall be dealt with on a case to case basis.**
43. **A periodic review of compensatory fuel charge is required on account of changes in the business environment related to coal demand-supply situation, prices of coal in the international market, etc. Accordingly, the Compensatory fuel charge will**

be reviewed by the Commission after every three years. Further, Procurer may approach the Commission intermittently for review of any aspect of the compensatory fuel charge with changing scenarios.

44. For units that fall in the second category mentioned in para 36-38, the Petitioners may approach the Commission suggesting the proposed mechanism with detailed justification for the same.

With the above, Case No. 118, 154 and 189 of 2013 are disposed of.

sd/-

**(Vijay L. Sonavane)**  
Member

sd/-

**(Chandra Iyengar)**  
Chairperson