



VIPL termination: lapses and lessons for power purchase planning

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In 2013, Rlnfra, then one of the distribution company for suburban Mumbai, signed a power purchase agreement with its sister concern, VIPL, claiming that its tariff was comparable to the recent competitively bid tariffs in the country. However, the costs and charges of VIPL only ever exceeded these claims. The termination of the agreement by AEML, which took over the Mumbai electricity business from Rlnfra in 2018, and VIPL's subsequent case against the termination has brought to light the practices of these private electricity companies, which were aimed more at benefitting each other than the consumers of Mumbai. This analysis brings to light the challenges of regulating private distribution companies as well as the need for more transparency in power purchase planning.

In April 2019, Adani Electricity Mumbai Limited (or AEML), the successor company to Reliance Infrastructure/BSES (or Rlnfra)'s electricity business in Mumbai, terminated its power purchase agreement (PPA) with Vidarbha Industries Power Limited (or VIPL). VIPL is a subsidiary of Reliance Power Limited with a 600 MW coal-based thermal power plant in the Maharashtra Industrial Development Corporation (MIDC) Area of Butibori in Maharashtra. It was thus a sister concern of Rlnfra before its sale to AEML. From the beginning of the PPA signed in 2013, VIPL faced problems of domestic coal procurement which made its electricity very expensive for the consumers of Mumbai. However, it was the change of ownership from its sister concern to AEML that prompted the termination of this high-cost PPA. For the Indian electricity sector, the case of VIPL offers lessons for power procurement planning, sector governance and competition. We explore these issues in this commentary.

How did VIPL come to Mumbai?

BSES, the predecessor to Rlnfra, had been purchasing power from Tata Power's Mumbai generation units since the 1920s, but the companies had no written contract. Despite MERC's repeated directions, no PPA was signed between Rlnfra and Tata Power. In 2009, Tata Power decided to stop sale of power to Rlnfra. At this time, Rlnfra had only a firm PPA with its own generation station at Dahanu, which catered to 500 MW of its 1500 MW demand. Even as it pursued every legal avenue to get back Tata Power's supply, Rlnfra did not sign any other PPAs. Thus, by 2010-11, it was purchasing expensive short-term power to meet shortfalls.

In 2009-10, Rlnfra initiated competitive bidding for 1500 MW long-term power purchase. The process discovered tariffs between Rs. 3.4 and Rs. 4.5 per unit, and Wardha Power Company Limited emerged as the least-cost bidder, with Rlnfra's sister concern, Chitrangi Power Private Limited second. However, the process was scrapped by MERC because of irregularities⁴. Rlnfra then wanted to sign a PPA with Chitrangi Power, the second-place bidder in the now-vitiated process, but the MERC rejected this proposal since the bidding process had been scrapped⁵. Rlnfra did not sign a long-term PPA till 2013-14. In 2013, when it finally signed one, it was with another sister concern, VIPL. The PPA it ultimately signed with VIPL was not based on competitive bidding

and was instead a 25-year (long-term) 'cost-plus' PPA⁶, till March 31, 2039, with supply commencing from April 1, 2014⁷.

At the time of the approval of the contract, Rlnfra had claimed that VIPL's tariff was competitive when compared with tariffs discovered under competitive bidding in the country. It had stated before the Maharashtra Electricity Regulatory Commission (MERC)⁸:

*"the twin objectives of reliability of receiving the power and affordability of the cost are unlikely to be realized in the competitive bidding process. Rlnfra-D submitted that in view of the foregoing, Rlnfra-D has accepted the offer of VIPL for procurement of power on long-term basis ... Rlnfra-D submitted that it strongly believes that the VIPL offer is competitive compared to the Case-1 tariffs recently discovered in India and is in the best interest of the consumers."*⁹

However, the prices of VIPL have been increasing throughout, primarily due to increases in variable charges. Thus, the regulatory was unable to safeguard consumer interest and protect consumers from increased costs due to this project. In Case No. 91 of 2015, the Commission noted:

"Had a higher tariff been envisaged, the Commission might well not have approved the PPA under Section 62 and asked Rlnfra-D to explore other options and modalities."

Table 1 presents the variable charges of VIPL for 2014-15 and 2015-16, as well as the approved charges for the next four years.

Table 1: Variable charge of VIPL

Energy Charge (Rs./kWh)	Date	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20
(A) VIPL claim during provisional tariff	24 July, 2013	1.25	1.32				
(B) VIPL claim during capital cost determination	30 May, 2014	1.91	1.91				
(C) VIPL claim during multi-year tariff	10 July, 2015	3.62	3.16	2.88	2.89	2.89	2.89
(D) VIPL claim during mid-term review	20 Sept, 2018	3.63	3.01	2.55	2.91	2.95	2.95
(E) Approved by MERC	20 June, 2016	2.24	2.11	2.18	2.18	2.19	2.19
% change from 2013 to 2015	(D-A)/A	191%	128%				

Note: The charges from Case No. 91 of 2015 dated 15th July 2015 may not be the final tariff since MERC appeal is still pending in the Supreme Court.

Source: PEG compilation from various VIPL tariff orders by MERC.

As can be seen, the variable charge as claimed by VIPL increased 191% and 128% for 2014-15 and 2015-16 respectively on account of high fuel cost. MERC disallowed this high cost of fuel and kept the variable charges in the range of Rs. 2.2 per unit for the following four years. In the order, the Commission noted that true-up costs are at complete variance from estimates during PPA and the initial tariff approval¹⁰. By considering 100% coal utilization from SECL and WCL, the commission disallowed 1/3rd of the coal costs incurred by the generator preventing recovery from consumers due to the fuel price risk. Still, in both 2014-15 and 2015-16, VIPL was the

costliest source of power in RInfra's bundle and accounted for 38% and 44% of the total cost of power purchase, respectively. In fact, VIPL was the most expensive power source till the PPA termination, if one disregards the renewable energy purchases which were at a higher per unit rate.

Why are VIPL's costs so high?

The increase in costs is a result of VIPL's inability to get linkage coal supply at notified prices for its generation units. At the time of the PPA approval before the MERC, VIPL and RInfra had stated that VIPL will be able to meet its coal requirement from domestic coal, that VIPL had Letters of Allocation (LoA) from Coal India Limited (CIL) for coal supply, and that these would soon be converted into Fuel Supply Agreement (FSA) which would result in tariffs comparable to those discovered through competitive bidding. Even in the worst-case scenario, they had submitted, the energy charge would not exceed Rs. 1.74 per unit in 2014-15 and Rs. 1.79 per unit in 2015-16. However, VIPL had problems getting coal linkage supply from Coal India Limited from the get-go. While it did have LoAs, for reasons beyond the scope of this article¹¹, it failed to convert these into FSAs.

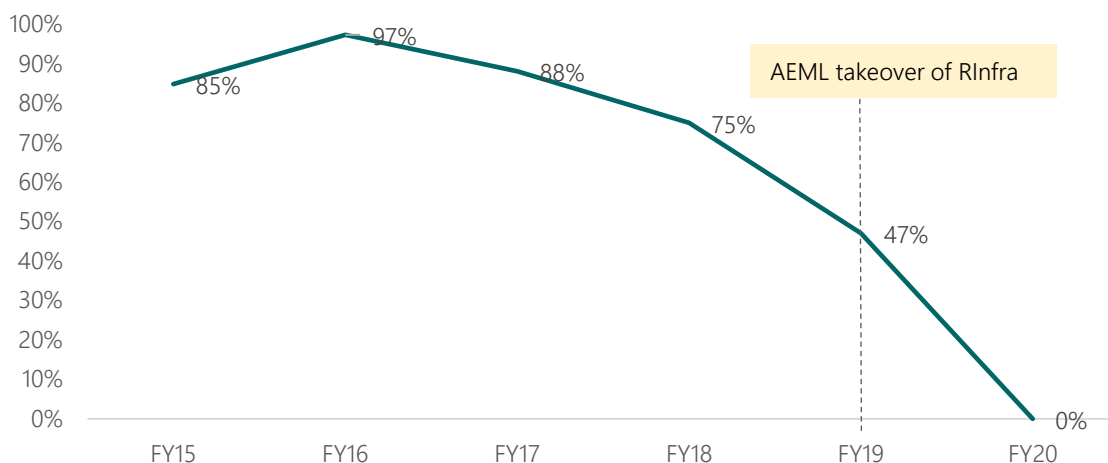
How then did VIPL procure its required coal quantity? In 2014-15, 20% of its coal requirement came from cost-plus FSA at a price higher than the CIL notified price¹², 63% was domestic coal from forward auctions and the open market, while 17% was imported coal¹³. Thus, instead of linkage coal, VIPL relied on e-auction, the domestic open market, and imports, which increased its prices. It claimed an energy charge of Rs. 3.62 per unit in 2014-15. As mentioned above, MERC disallowed the actual fuel cost, and its decision was appealed against by VIPL in the electricity tribunal¹⁴. Against the tribunal's judgment in favor of VIPL, MERC filed an appeal in the Supreme Court of India, which is still pending¹⁵. As a result of the pending Supreme Court judgment, MERC has reserved its order in VIPL's mid-term review case as well¹⁶. While the Commission's efforts to ensure higher costs due to fuel uncertainties are not passed onto consumers are commendable, currently, there is no finality to this matter.

What led to the termination letter from AEML?

In December 2017, Adani Transmission Limited (part of the Adani Group) entered into a share purchase agreement to purchase the electricity business of RInfra, which included the generation station at Dahanu, its Mumbai transmission business and the electricity distribution license. As the successor entity to RInfra, the PPA with VIPL continued for AEML.

On December 28, 2018, Unit 1 of VIPL was shut down, followed by Unit 2 on January 17, 2019. This was a result of VIPL's inability to procure coal due to cash flow and other financial problems. As can be seen from Figure 1, the availability of VIPL fell below the 85% norm in 2017-18, was 47% in 2018-19 and 0% in 2019-20 (till December 2019).

Figure 1: Availability (%) of VIPL



Source: PEG compilation from petition for Case no. 199 of 2017, MERC order in Case no. 325 of 2019, Case No. 91 of 2015.

On January 18, 2019, AEML sent a Preliminary Procurer’s Default Notice (PPDN) to VIPL, for its failure to achieve Normative Availability under Clause 11.1.1(iii) of the PPA. As per Clause 11.1.1(iii) the procurer can send a PPDN if the supplier is unable to meet the availability norm of 85% for a period of twelve consecutive months or non-consecutive months within any continuous 36 months. The PPDN was followed by a Termination Letter on April 20, 2019.

Around the same time, two other important events took place. VIPL received the Letter of Intent (LoI) from Western Coalfield Limited (WCL), a subsidiary of CIL, under the central government’s SHAKTI scheme on July 11, 2019, which gave it an opportunity to have a firm coal supply source for Unit 1. VIPL had participated in the second round of SHAKTI coal auctions and obtained coal under the scheme. A supplementary PPA was signed between VIPL and AEML to allow the discount in tariff of 4 paise/kWh under the scheme to be passed onto consumers¹⁷. In addition, as a result of default in loan repayment, on July 1, 2019, VIPL was declared a non-performing asset (NPA) and entered into an inter-creditor agreement (ICA) with its lenders, which gave it 180 days to implement a resolution plan, failing which it could be taken to the National Company Law Tribunal under the Insolvency and Bankruptcy Code, 2016.

On August 30, 2019, VIPL filed a petition with the MERC challenging the Termination Letter and praying that the commission declare both the PPDN and the Termination Letter as bad in law and contrary to the provisions of the PPA. Interestingly, the lenders to VIPL, represented by Axis Bank, were also made party to the case since the recovery of their dues depended on the operation of the generation plant.

What were the grounds for challenging the termination and how did the commission respond?

Incorrect inclusion of past period

VIPL’s main contention was that AEML could not rely on events prior to August 29, 2018 (referred to as ‘the appointed date’) to calculate the non-availability of the generation stations. This is the date from which the obligations and entitlements of AEML would commence with respect to the Mumbai electricity business. As per VIPL, AEML’s termination letter was without basis since it could not demonstrate non-availability for a

period of twelve consecutive months or non-consecutive months within any continuous 36 months from August 29, 2018.

MERC held that the appointed date was with respect to the financial/commercial agreement between the parties and did not absolve VIPL of its obligations under the PPA to achieve and maintain normative availability. It held that AEML was entitled to exercise all rights and interests of its predecessor under the PPA, and these rights were not limited by the appointed date.

Waiver of rights under PPA

Second, as per VIPL, Rlnfra and VIPL had issued letters to each other waiving certain rights. Rlnfra, in its letter dated August 22, 2018, had granted consent for waiver of Clause 11.1.1(iii) of the PPA, the very same used by AEML later to terminate the PPA, and confirmed that Rlnfra will remain liable to make the payment towards the outstanding amount accumulated till August 28, 2018 (referred to as 'the closing date'). VIPL had then issued a letter on August 23, 2018 that declared that all outstanding amounts as on closing date whether receivable from or payable to Rlnfra with respect to the PPA will be paid/received exclusively by Rlnfra. Thus, any claims arising from the PPA pertaining to the period prior to the closing date can only be made by Rlnfra. Hence, the clause for non-achievement of Normative Availability for this period cannot be invoked by AEML.

In this regard, MERC noted that the Supreme Court had in a different case held that no waiver which affects the interests of the consumers can be granted by the distribution licensee without prior approval of the concerned State Regulatory Commission¹⁸. Since no prior approval of the MERC was sought, the MERC said that the waiver does not stand.

Coal procurement

Third, VIPL claimed that the reduction in availability was due to the delay in signing a Fuel Supply Agreement by the Ministry of Coal for Unit 1, which had been held as a Force Majeure event by the electricity tribunal¹⁹, and AEML was aware of this situation throughout. Thus, non-availability as a result of a Force Majeure event cannot be considered as default by AEML for PPA termination.

MERC noted that VIPL did not notify AEML of the Force Majeure event as required under the PPA. In addition, the Force Majeure event was with respect to Unit 1 and not to Unit 2 for which an FSA existed. MERC noted that VIPL had been arranging fuel from alternate sources to generate power, and it was its responsibility to arrange fuel to maintain the normative availability. According to the MERC, VIPL could not now claim reduction in availability as a result of a Force Majeure event.

Irregular payments to VIPL

Fourth, VIPL stated that Rlnfra had been irregular in making monthly payments since FY 2016-17 and had made almost no payment to VIPL from May 2018. It also claimed that erratic payment since May 2018 resulted in a shortfall of Rs. 400 crore till the appointed date. As per VIPL, this had impaired its ability to procure coal and run the generation stations. Thus, since Rlnfra was in breach of its own obligations under the PPA during this period of time, the same period cannot be counted for alleging a default by VIPL.

It is unclear why these payments were not made since the commission has already approved the tariff for VIPL as well as Rlnfra for this period. MERC noted that the erratic payment from May 2018 till the appointed date were a result of non-payment by Rlnfra, not AEML. The commission also noted that VIPL had chosen not to

avail any remedies available to it under the PPA for these non-payments. MERC held that the failure to take legal action for recovery of dues cannot be a justification for failure to meet availability norms.

Payment set-off by AEML

Finally, VIPL claimed that post-acquisition, AEML had set off an amount of Rs. 266 crore against payment to VIPL, which had impacted VIPL's cash flow and its ability to procure coal. Since AEML was itself in breach of its obligations under the PPA, it could not terminate the PPA.

During the hearing, it was revealed that the set-off of Rs. 226 crore by AEML was part of an arrangement for the payment of outstanding SLDC dues owed by Rlnfra. VIPL had given an undertaking on December 15, 2018, wherein AEML was allowed to deduct the outstanding dues of Rlnfra from the bills raised by VIPL. VIPL was claiming that Rs. 266 crore was in excess of the Rs. 15 crore limit set in the PPA. MERC noted that VIPL had not availed any legal remedy against the offset and the amount was deemed to be received by VIPL. In addition, the offset was undertaken in the months of January to April 2019, and hence, could not be the reason for lower availability in the period prior.

Notice to the lenders

Axis Bank stated that AEML had failed to provide copies of the PPDN and the Termination Letter to the lenders as mandated under the PPA, and this had jeopardized their ability to exercise their rights of substitution. Since the procedure as per the PPA was not followed, it prayed that the PPDN and Termination Letter be struck down. It is interesting to note that as per the lenders, they were unaware of the arrangement between AEML and VIPL regarding payment set-off, and during the case hearings, asked that these arrangements be struck down as well since the set-off amount should have been used to pay the dues of the lenders.

MERC held that AEML had failed to follow due procedure in not serving copies to the lenders. However, the commission noted that even after being made aware of the termination notice, the lenders did not exercise their rights under the PPA. In addition, VIPL had been unable to demonstrate its financial and operational readiness to restart generation in the meantime. The commission decided to defer the substitution rights of the lenders, by allowing them to exercise them as per the PPA within 30 days of the MERC's order in this case.

Finally, in its order on December 16, 2019, the MERC held the Termination Notice as valid and deemed to be issued to the lenders on the date of the order²⁰. It stated that if the lender's defaulted in availing their rights of substitution, then AEML would be at liberty to arrange for power from alternate sources. In its tariff petition for the years 2020-21 to 2024-25, AEML has not projected any purchase from VIPL. [As per newspaper reports](#), Axis Bank has initiated insolvency proceedings against VIPL in January 2021. According to Reliance Power's Annual Report, WCL has issued a letter cancelling the coal allocation since the PPA has been terminated, and this is being contested by VIPL²¹. VIPL has appealed against the MERC's order regarding the termination in the electricity tribunal where it is currently pending²².

What lessons can be learnt from the VIPL saga?

Hesitant to sign a competitively bid PPA, Rlnfra signed a long-term, cost-plus PPA with its sister concern without a firm source of coal supply. Around the time of its sale, it signed away its rights to claim non-availability from the same sister concern. It also allowed VIPL, purportedly an 'independent' company, to off-set payments it had to make to AEML and the SLDC. Neither of these arrangements received concurrence from the MERC, even though Rlnfra's distribution arm is a regulated business, and it had a regulated PPA with VIPL. During the

hearings, it was also revealed that Rlnfra had not been making proper payments to VIPL, but VIPL never took any action against Rlnfra for non-payment.

Private companies are supposed to be more efficient since they are profit driven. Even when they sign contracts with their sister concerns, it is expected that they will nonetheless function as independent entities in carrying out the electricity business in keeping with the commission's regulations. However, as seen in the case of VIPL, this is not the case.

While public distribution companies have been criticized for high power procurement costs, significant cost-plus PPAs and reluctance to add capacity via competitive bidding, it is crucial to note that it is no different in the case of private distribution companies. Thus, both Tata Power and Rlnfra in Mumbai were reluctant to sign competitively bid contracts and instead relied on cost-plus contracts with their own sister concerns⁷. In fact, while the contract was between Rlnfra and VIPL, they acted as one entity. Even their approved PPA did not include provisions for Payment Security Mechanism through Letter of Credit and Collateral Arrangement, since they were group companies²³. It must be noted that the Commission did not highlight the lack of crucial provisions. In fact, while providing in principal approval at an earlier stage for the PPA, MERC had directed modifications to the PPA and none of them were to strengthen these crucial terms in the PPA²⁴. In addition, as noted above, Rlnfra took several inefficient steps that were more in the interest of protecting its sister concern than the consumers of Mumbai.

Equally concerning is the manner in which private contracts were signed between entities of which neither the MERC nor the lenders were apprised. In addition, it was only with the change in ownership and the letter of termination that these issues came to light. While MERC took a correct decision in holding the letters waiving rights as void, this event does bring to light the challenges in regulating private companies in the electricity sector. It also attests to the marginal role of lenders in ensuring the viability of projects before it is too late.

The PPA, as the contract defining the terms of sale, should include a framework for equitable distribution of risk between contracting parties, performance accountability and safeguarding consumer interests. The lack of these crucial provisions is sure to make MERC's role in enforcing contracts more challenging. While it is not possible for the PPA to cover every eventuality, cases like VIPL provide an opportunity for rethinking and redesigning aspects of the PPA and the regulatory process.

First, MERC was very aware of coal shortage issues around the time of approving this cost-plus PPA. As fuel risk was a major concern, MERC should have directed the entity to undertake competitive bidding to contract adequate capacity, which could have mitigated the risk due to variation in coal price and availability. In a cost-plus project, all the risk falls onto the consumer. Without firm coal supply, the VIPL contract amounted to leaving the price of electricity contingent on the generators ability to contract low-cost coal. At a time when the country was facing regular coal shortages, this was an unacceptably high risk for the electricity consumer. Moreover, approving PPA without evaluating cost-competitiveness, as evident from this quote from MERC order in Case no 2 of 2013, (dt. 20th Feb 2013) approving the PPA, *"the Commission has not analysed the details of tariff and its competitiveness as submitted by the Petitioners in this Order"* is shocking to say the least and clearly indicates regulatory failure. MERC should have been more vigilant and taken proactive steps to ensure that fuel linkage is available before approving a long term PPA. The regulator is empowered to ensure

performance accountability even beyond the PPA, and it is important for the regulator to take a much more active role in cost-plus projects.

Second, VIPL's case highlights that there is information pertinent to the finances of these regulated entities, and to consumer interest, that is not being captured by the regulatory process. In the case of VIPL, MERC was unaware of the many waivers that were signed between electricity entities, and in a different case the MERC was unaware of a termination notice sent by Adani Power Maharashtra Limited to MSEDCL²⁵. Such missed information has important ramifications for consumer electricity prices. The ERC needs to modify its regulations and practices such that there is much more monitoring and statutory reporting for these regulated entities in a cost-plus business. This is especially important in cases where contracts are being signed between sister concerns, as is the case with most PPAs in Mumbai.

Table 2: Timeline of events for VIPL

<i>Date</i>	<i>Event</i>
25-Jun-09	Tata Power informs Rlnfra of its intention to withdraw power supply from April 1, 2010
20-Feb-13	Order by MERC in the matter of PPA approval for VIPL (Case no. 2 of 2013)
19-Jul-13	MERC approved PPA between Rlnfra (now AEML) and VIPL (Case no. 76 of 2013)
17-Jan-14	MERC directs VIPL-G to expedite process of executing the Fuel Supply Agreement (FSA) for Unit- 1 (Case No. 91 of 2013)
10-Mar-14	VIPL signs FSA for Unit 2 with WCL for 1.11 MTPA along with a Side Agreement for coal from cost-plus mines. The supply of coal has started at the cost-plus price from October 2014; till then VIPL arranged coal for generation from alternate sources. Coal for Unit 1 was procured from alternate sources as well.
9-Mar-15	MERC directs that VIPL-G should continue efforts to expedite the execution of FSA so as to ensure the availability of linkage coal for Unit 1 (Case no. 115 of 2014)
20-Jun-16	MERC disallows actual cost of coal procured by VIPL (Case no. 91 of 2015)
3-Nov-16	APTEL allows VIPL's appeal with respect to fuel costs claim for Unit 1 to the extent allowed for Unit 2 under its FSA (Appeal no. 192 of 2016)
12-Jan-17	MERC files appeal in Supreme Court against the APTEL judgment (C.A. no. 372 of 2017); judgment still pending.
22-May-17	The Ministry of Coal notifies SHAKTI Policy
21-Dec-17	Adani enters into Share Purchase Agreement (SPA) with Rlnfra to purchase the Mumbai business
1-May-18	As per VIPL, Rlnfra had been irregular in making monthly payments to VIPL since FY 2016-17, and made no payments from May 2018
28-Jun-18	MERC order stating that the Generation, Transmission and Distribution Business (GTD Business) of Rlnfra was transferred to AEML (Case no. 140 of 2017)
22-Aug-18 & 23-Aug-18	Rlnfra granted consent for waiver of Clause 11.1.1 (iii) of the PPA and confirmed that it shall remain liable to make the payment towards entire outstanding accumulated till Closing Date i.e. 23.08.2018 to VIPL. VIPL grants letter to Rlnfra confirming that claims arising from the PPA pertaining to the period prior to the Closing Date shall solely be on the account of Rlnfra and not the successor entity.
28-Aug-18	"The Closing Date", the share purchase is completed.
29-Aug-18	"The Appointed Date", AEML successor-in-interest to Rlnfra
3-Sep-18	Letter signed by all three Parties namely VIPL, Rlnfra and AEML, by which AEML steps into the shoes of procurer as per the PPA
28-Sep-18	MERC approves an amended PPA between VIPL and AEML to add Payment Security Mechanism and Contract Performance Guarantee in PPA, reiterates its directions to VIPL to expedite the execution of FSA (Case no. 224 of 2018)

15-Dec-18	VIPL gives an undertaking for a set-off by AEML on the amount still payable by Rinfra to the SLDC.
28-Dec-18	VIPL shuts down Unit 1
17-Jan-19	VIPL shuts down Unit 2; no electricity produced from this day on
18-Jan-19	Preliminary Procurer's Default Notice (PPDN) from AEML to VIPL
21-Feb-19	Coal India Limited issues notices on 21 February 2019 and 7 March 2019 inviting registration and Expression of Interest (EOI) for linkage auction under SHAKTI Policy for power producers/IPPs having already concluded long-term PPAs as on 17 May 2017.
28-Mar-19	AEML issues a verification certificate dated 28 March 2019 to enable VIPL to participate in the linkage auction under the Shakti Policy. VIPL completes the registration process for its Unit 1 under SHAKTI and participates in the auction.
20-Apr-19	Termination Letter from AEML-D to VIPL under Clause 11 of PPA for non-achievement of availability for the period January 2016 to December 2018
1-Jul-19	VIPL becomes an NPA
6-Jul-19	VIPL enter into Inter-Credit Agreement (ICA) with its six lenders
11-Jul-19	Letter of Intent (LOI) under SHAKTI for VIPL which would then be converted into FSA for Unit 2
5-Aug-19	VIPL files petition for seeking amendment of the PPA (Supplementary PPA) for passing the discount in Tariff to the consumers for the balance period of the PPA as per the SHAKTI scheme. During hearing AEML agrees to sign an amended PPA subject to protection of its rights. Supplementary PPA is signed (Case no. 225 of 2019)
30-Aug-19	VIPL files for stay of Termination Notice
16-Dec-19	MERC is case no. 247 of 2019 finds no merit in VIPL's arguments and lets the Termination Notice stand, but allows lenders to exercise the right of substitution (Case no. 247 of 2019)

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³ This article is part of an ongoing series called Power Perspectives which provides brief commentaries and analyses of important developments in the Indian power sector, in various states and at the national level. The portal with all the articles can be accessed here: <https://prayaspune.org/peg/resources/power-perspective-portal.html>. Comments and suggestions on the series are welcome, and can be addressed to powerperspectives@prayaspune.org.

⁴ Case no. 53 of 2010. Maharashtra Electricity Regulatory Commission.

⁵ Case no. 13 of 2011. Maharashtra Electricity Regulatory Commission.

⁶ Case no. 2 of 2013. Maharashtra Electricity Regulatory Commission

⁷ For the full analysis of Mumbai's power sector and power purchases, see Prayas (Energy Group)'s [In the Name of Competition: The annals of 'cost-plus competition' in the electricity sector in Mumbai](#).

⁸ This is reminiscent of the observations made in the Foreign Investment Promotion Board (FIPB) meeting on 5th November 1993 which led to FIPB approval and consequently CEA clearance for the Enron Dhabol project. The records of the meeting noted:

'Finance Secretary observed that the question of cost of power has been looked into and it had been found that it was more or less in line with other projects being put up in Maharashtra...' (As documented in Power Play: A study of the Enron project by Abhay Mehta)

⁹ Case no. 2 of 2013. Maharashtra Electricity Regulatory Commission

¹⁰ In the Order in Case No. 2 of 2013, the PPA was approved by MERC considering projections of VIPL in which even in a pessimistic scenario (CIL supplying, out of the committed coal, 65% in FY 2014-15 and 70% in FY 2015-16, the rest being procured from the domestic open market and/or imports), the Energy Charge would still be competitive, at Rs 1.74 in FY 2014-15 and Rs. 1.79 in FY 2015-16.

¹¹ The case of VIPL Unit 1's coal supply is linked to the change in its status from a Group Captive Power Plant (CPP) to an Independent Power Plant. Unit 1 was issued a Letter of Assurance (LoA) by CIL, which was to turn into an FSA upon the completion of certain milestones. At the time of applying for this coal source, Unit 1 was classified as a CPP. VIPL converted the status of Unit 1 to an Independent Power Plant, and then signed the PPA with Rlnfra for supply of 600 MW from the plant. This change of status is one of the central issues in converting the LoA into an FSA, especially since, as per the coal providers, one of the milestones under the LoA was that the end use of the coal was for a CPP. See the High Court of Delhi order dated August 21, 2019 in LPA 169/2018 and LPA 173/2018 for more details.

¹² For coal supply for Unit 2, VIPL signed an FSA with WCL, along with a side agreement on March 10, 2014. This contract meant that WCL was selling coal to VIPL from its cost-plus mines, which was at a price higher than the notified price of CIL.

¹³ Case no. 91 of 2015. Maharashtra Electricity Regulatory Commission.

¹⁴ Instead, the MERC considered 100% of cost-plus coal from WCL for Unit 2 and 100% linkage coal from SECL (South Eastern Coalfields Limited) for Unit 1, which was the basis for approval of the tariff for FY 2014-15. It thus, disallowed cost from WCL e-auction, domestic open market purchases and imported coal. This was still a substantial increase in energy charge. The same basis was used for determining the generation tariff for the multi-year control period from 2016-17 to 2019-20.

¹⁵ VIPL filed an appeal against the disallowance of high fuel costs by the MERC, which was decided by the electricity tribunal in favor of VIPL (Appeal no. 192 of 2016). The MERC has appealed this judgment in the Supreme Court, where it is still pending. Hence, there is no information available on the actuals for 2016-17 onward.

¹⁶ Case no. 199 of 2017 (order reserved). Maharashtra Electricity Regulatory Commission.

¹⁷ Case no. 225 of 2019. Maharashtra Electricity Regulatory Commission.

¹⁸ Supreme Court order dated December 8, 2016 in All India Power Engineers Federation and Ors. versus Sasan Power Ltd. (Civil Appeal no. 5881-5882 of 2016).

¹⁹ Appeal no. 192 of 2016 in the Appellate Tribunal for Electricity. Judgment challenged by MERC and currently pending in Supreme Court.

²⁰ Case no. 247 of 2019. Maharashtra Electricity Regulatory Commission.

²¹ Based on [Annual Report 2019-20 of Reliance Power Limited](#).

²² Appeal no. 446 of 2019 in the Appellate Tribunal for Electricity.




²³ Case no. 224 of 2018. Maharashtra Electricity Regulatory Commission.

²⁴ Annexure 1 in Case no.76 of 2013. Maharashtra Electricity Regulatory Commission.

²⁵ The termination notice was sent on 16th February 2011 and APML contended that the PPA stood terminated since 23rd February 2011. After a series of subsequent events, the matter came before MERC for dispute adjudication only in July 2012 in Case no 68 of 2012. Also, read [PEG submissions](#) in the matter:

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