Committee Report for CERC

For determination of compensatory tariff-in the matter of Coastal Gujarat Power Limited

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Committee Report on Compensatory Tariff for Mundra power plant of Coastal Gujarat Power Limited (CGPL)

Pursuant to the Order of Hon'ble Commission dated 15th April 2013 in Petition No. 159/MP/2012 to work out and recommend a package for Compensatory Tariff, we hereby submit the report as per the Order.

We wish to place on record our sincere appreciation for the co-operation extended by all members. The Hon'ble Commission may be pleased to pass appropriate order(s) in this regard.

(Deepak Parekh)
Chairman of the Committee &
Chairman
HDFC

A. Bhattacharya
(Arundhati Bhattacharya)
Member (Independent Financial Analyst) &
Managing Director
SBI Capital Markets Ltd.

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List of Abbreviations

ACQ	Annual Contracted Quantity
ADB	Asian Development Bank
API4	Benchmark price reference for coal exported out of South Africa's Richards Bay terminal
ARB	As Received Basis
AVVNL	Ajmer Vidyut Vitaran Nigam Limited
BJI	Barlow Jonker Index
BNP	BNP Paribas Bank
BU	Billion Units
CCEA	Cabinet Committee on Economic Affairs
CEA	Central Electricity Authority
CERC	Central Electricity Regulatory Commission
CGPL	Coastal Gujarat Power Ltd
CIF	Cost Insurance Freight
CIL	Coal India Limited
COD	Commercial Operation Date
CSA	Coal Supply Agreement
CY	Calendar Year
DE	Debt Equity
DGMC	Director General of Minerals and Coal of Indonesia
DHBVNL	Dakshin Haryana Bijli Vidyut Nigam Ltd
EA	Electricity Act
EIA	Environmental Impact Assessment
EPC	Engineering Procurement Construction
EPS	Electric Power Survey
FOB	Free On Board
FSA	Fuel Supply Agreement
FY	Financial Year
GCT	Gross Compensatory Tariff
GCV	Gross Calorific Value
GEB	Gujarat Electricity Board
GMDC	Gujarat Mineral Development Corporation
GoG	Government of Gujarat
GoI	Government of India
GUVNL	Gujarat Urja Vikas Nigam Limited
HBA	Harga Batubara Acuan
HPB	Harga Patokan Batubara
HPGCL	Haryana Power Generation Company Ltd
IDC	Interest During Construction

IFC	International Finance Corporation
IIM	Indian Institute of Management
IMC	Inter-Ministerial Committee
INR	Indian Rupee
JaVVNL	Jaipur Vidyut Vitaran Nigam Limited
JoVVNL	Jodhput Vidyut Vitaran Nigam Limited
Kcal	Kilo Calories
KEIC	Korea Export Insurance Corporation
KEXIM	Export Import Bank of Korea
KPC	PT Kaltim Prima Coal
Kwh	Kilo Watt Hour
LC	Letter of Credit
LoI	Letter of Intent
MEMR	Ministry of Energy and Mineral Resources, Indonesia
MERC	Maharashtra Electricity Regulatory Commission
MMTPA	Million Metric Tonnes Per Annum
MoP	Ministry of Power
MoU	Memorandum of Understanding
MSEDCL	Maharashtra State Electricity Distribution Company Limited
MT	Metric Tonne
MTPA	Metric Tonnes Per Annum
MU	Million Units
MW	Mega Watt
NCDP	New Coal Distribution Policy
O&M	Operations & Maintenance
PAT	Profit After Tax
PLF	Plant Load Factor
PPA	Power Purchase Agreement
PSPCL	Punjab State Power Corporation Limited
QEFEC	Quoted Escalable Fuel Energy Charges
QNEFEC	Quoted Non Escalable Fuel Energy Charges
RBI	Reserve Bank of India
RfP	Request for Proposal
RfQ	Request for Quotation
SBD	Standard Bidding Document
SBICAP	SBI Capital Markets Ltd
SCOD	Scheduled Commercial Operation Date
SEB	State Electricity Board
SERC	State Electricity Regulatory Commission
SEZ	Special Economic Zone
SG	Steam Generator

SHR	Station Heat Rate
SLC	Standing Linkage Committee
SPV	Special Purpose Vehicle
T&D	Transmission & Distribution
TPCL	Tata Power Company Ltd
TPD	Tonnes Per Day
TPP	Thermal Power Plant
UHBVNL	Uttar Haryana Bijli Vidyut Nigam Ltd
UHV	Useful Heat Value
UMPP	Ultra Mega Power Plant
UPPCL	Uttar Pradesh Power Corporation Limited
USD	United States Dollar

Executive Summary

Coastal Gujarat Power Limited ("CGPL"), a subsidiary of Tata Power Company Ltd. ("TPCL" or "Tata Power") operates the 4,000 MW imported coal based Ultra Mega Power Project in Mundra, Gujarat ("Mundra UMPP"). The project was awarded to Tata Power through a case-2 bidding process in Dec 2006. CGPL entered into a Power Purchase Agreement (PPA) with procurers of Maharashtra, Gujarat, Rajasthan, Punjab and Haryana.

CGPL filed a petition (Petition No. 159/MP/2012) to Central Electricity Regulatory Commission ("CERC") in July 2012 seeking relief for the hardship faced on account of:

i. Unprecedented escalation in coal prices
ii. Promulgation of Indonesian Regulation which mandated coal miners in Indonesia to sell coal at prices not lower than the prices published by the Govt. of Indonesia

The Hon'ble Commission, vide its order dated 15th April 2013, opined that there was a prima facie case of CGPL being affected by the adoption of the Indonesian Regulations and escalation in coal prices, which however did not qualify for relief under the provisions of the PPA viz. Force majeure and Change in law. The order stated that the Hon'ble Commission had the jurisdiction to regulate tariff of CGPL determined by a competitive bidding process under Sec 79 of the Electricity Act, 2003 and accordingly directed CGPL and Procurers to constitute a committee consisting of the representatives of the Principal Secretary (Power) of the procurer states, Managing Directors of the Distribution Companies of the Procurers, Chairman of Tata Power Limited or his nominee, an independent financial analyst of repute and an eminent banker dealing and conversant with the infrastructure sector. The Committee was mandated to find out an acceptable solution in the form of compensatory tariff over and above the tariff decided under the PPAs to mitigate the hardship caused to CGPL.

The Committee was formed under the chairmanship of Mr. Deepak Parekh, Hon'ble Chairman of HDFC. The representatives of Procurers and CGPL are the other members of the Committee. It was decided to appoint SBI Capital Markets Ltd (SBICAP) as 'Financial Analyst' of the Committee, with Mr. Devi Singh, Director IIM Lucknow providing the necessary guidance to SBICAP. It was also decided to appoint M/s KPMG for accounting due diligence of the Indonesian coal mines of Tata Power, Mr A. G. Karkhanis as 'Legal Consultant' and Mr. Chandra Pratap Singh as 'Technical consultant' to assist the Committee to provide their expert advice on various legal, technical, audit related matters and also to authenticate/opine on the inputs to find out an acceptable solution in form of Compensatory Tariff.

The first Committee Meeting was held on May 11, 2013 to discuss the principles for arriving at the "compensatory tariff". The Second meeting of the Committee was convened on June 26, 2013 to discuss the progress made and way forward. The next meeting of the Committee was convened on July 11, 2013 to evaluate the options for arriving at the compensatory tariff. It was also decided in that meeting to call upon joint meeting of major domestic lenders in the projects. In this respect, major domestic lenders of CGPL were invited for a meeting on July 17, 2013 to discuss and take the views of the Lenders on reduction of rate of interest and other measures to mitigate the hardship faced by the Company. The fourth meeting of the Committee was convened on July 30, 2013 to discuss the comments of the members of the Committee on the draft report on Compensatory Tariff to CGPL.

The committee had analyzed various options to work out the compensatory tariff and concluded that the compensation package to CGPL may be calculated based on the under recovery of Fuel Energy Tariff Component vis-à-vis the Normative Fuel Energy charges incurred by CGPL. Accordingly, the Committee recommends the following formula for arriving at the compensation package to CGPL:

$$\boldsymbol{Gross\ Compensatory\ Tariff\ (GCT) = Normative\ Fuel\ Energy\ charges\ - Tariff\ recovered\ from\ Fuel\ Energy\ componets\ of\ PPA}$$

The advantages of this method of arriving at the compensatory tariff include:

- Avoiding re-negotiation of tariff components discovered through the process of competitive bidding
- Addressing the hardship caused by both the Indonesian Regulations and the unprecedented increase in coal prices
- Ensuring that the compensation provided is commensurate to the hardship incurred
- Passing on the benefits accruing to the generator during lower coal price regime to the procurers, thereby protecting interests of the consumers.
- Passing on the benefits of operational efficiency to the Procurers

Based on above recommended mechanism, using the coal prices of July 2013 and the normative technical parameters suggested by the technical consultant of the Committee, the compensatory tariff for FY 2013-14 is calculated as Rs 0.59/kWh (based on July 2013 prices). The mechanism for recovery of compensatory tariff is suggested in Sec 4.10

The Committee has also deliberated on the other issues raised by the Hon'ble Commission and procurers to reduce the burden of compensatory tariff and the recommendations of the Committee to the Hon'ble Commission for compensatory package to CGPL are as below:

A. The provisional compensatory tariff for each period may be calculated using the following formula

$$\begin{aligned}&\boldsymbol{Gross\ Compensatory\ Tariff\ (GCT)}\\&\boldsymbol{= Normative\ Fuel\ Energy\ charges}\\&\boldsymbol{- Tariff\ recovered\ from\ Fuel\ Energy\ componets\ of\ PPA}\end{aligned}$$

B. True-up of provisional compensatory tariff shall be done at the end of each financial year based on audited financial statements in a time bound manner with adjustments for:
   - ✓ Actual/Normative Fuel Energy expenses
   - ✓ Tata Power's share of profit/dividend from the Indonesian mining companies proportionate to the coal supplied to the UMPP. TPCL's share of profits/dividends shall be the summation of the dividends available to TPCL in India and the profits at the Indonesia mining level (reduced to the extent of dividends declared)

C. The ceiling limit of the compensatory tariff may be fixed (after consultation between the generator and procurers or as approved by CERC) as a pre-determined percentile of the power procurement cost of the procurers in that particular year as per the approved power purchase plan

D. Third party sale of power beyond the target availability of 80% may be permitted after making appropriate modifications in the extant PPA and the profit from such sale may be shared equally between the procurers and generator.

E. Blending of lower GCV coal is currently not commercially beneficial at prevailing prices of lower GCV coal as the savings in fuel energy charges are more than offset by the increase in transportation and handling charges and increase in capacity charges

F. Procurers and Generator may jointly continue to pursue all possible options with the concerned authorities for reduction in duties and taxes.

G. Lenders to the Project may explore all possible options including reduction of interest rates, extending moratorium on principal payment for a period of 2-3 years and elongation of loan repayment tenor to reduce the hardship faced

H. Domestic Banks, with the support of the Hon'ble Commission, may approach RBI for forbearance from the ambit of restructuring guidelines for reduction of interest rate and elongation of loan tenor for the Mundra UMPP project. The Committee strongly recommends special dispensation from RBI for sustainable viability of the Mundra UMPP.

The committee also recommends the following to be decided by the Hon'ble Commission

A. Methodology for compensation to CGPL for the period starting from COD of the Unit 1 till the date of implementation of Compensatory Tariff as per the final order on the compensatory tariff.

B. Billing mechanism of compensatory tariff

C. Frequency of recovery (viz. monthly, quarterly etc.) of compensatory tariff by CGPL after due consideration to the carrying cost of both generator and the procurers for recovery of compensatory package

1. CERC Order

1.1. Background

Coastal Gujarat Power Limited ("CGPL"), a subsidiary of Tata Power Company Ltd. ("Tata Power" or "TPCL") operates the 4,000 MW Ultra Mega Power Project in Mundra, Gujarat ("Mundra UMPP"). Mundra UMPP is an imported coal based power project and the power produced is to be supplied to the States of Gujarat, Haryana, Maharashtra, Punjab, Rajasthan ("Procurers").

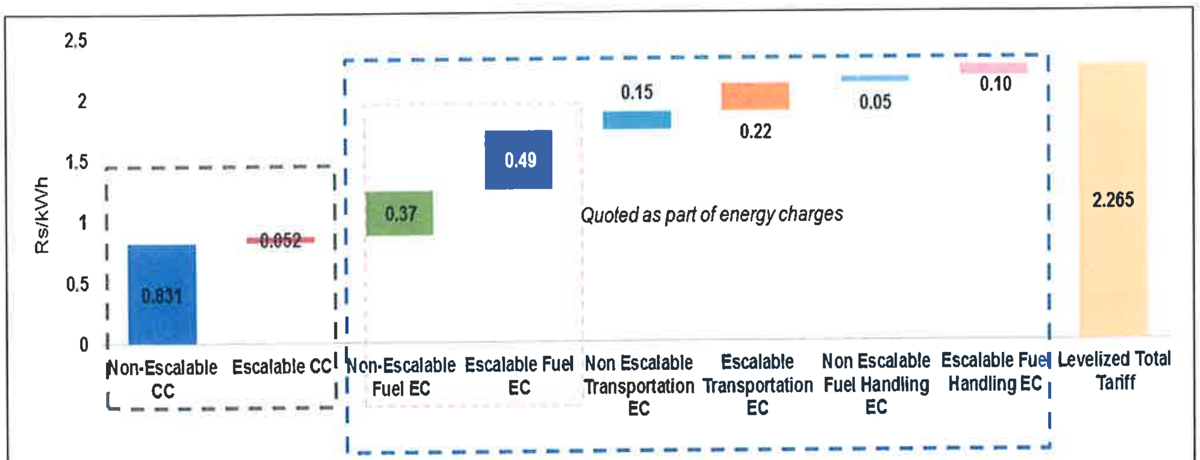
Government of India (GoI) selected TPCL through a competitive bidding process, in which Power Finance Corporation Ltd. (PFC) was the nodal agency. TPCL was declared as the successful bidder with a levelized tariff of Rs. 2.26/kWh and acquired 100% shareholding of CGPL. CGPL entered into power purchase agreements ("PPA") with the Procurers.

CGPL has a coal requirement of approx. 11 mil MT for the Mundra UMPP. CGPL entered into a Coal Supply Agreement ("CSA") with IndoCoal Resources, Caymen Islands in October 2008 for supply of 5.85 mil MT (+/- 20%) of imported coal and with TPCL for supply of the balance coal requirement on a best effort basis. Subsequently, TPCL also assigned one of its agreements with IndoCoal (entered into for the purpose of one of its other upcoming power facilities) in favor of Mundra UMPP.

As per the Request for Proposal ("RfP"), the tariff to be quoted by the bidders consisted of four main components:

- Capacity charges
- Fuel Energy charges
- Transportation energy charges
- Port handling energy charges

These four components were further split into escalable and non-escalable components which were based on their respective assumptions. The breakup of Tariff components is shown in figure below:



CC – Capacity charges EC – Energy charges

The first unit of Mundra UMPP was commissioned on March 7, 2012, second unit was commissioned on July 30, 2012, third unit was commissioned on October 27, 2012, fourth unit was commissioned on January 20, 2013 and the last unit was commissioned on March 22, 2013.

1.2. Summary of Petition

CGPL filed a petition (Petition No. 159/MP/2012) to Central Electricity Regulatory Commission ("CERC") in July 2012 against Gujarat Urja Vikas Nigam Limited ("GUVNL"), Maharashtra State Electricity Distribution Company Limited ("MSEDCL"), Ajmer Vidyut Vitaran Nigam Limited ("AVVNL"), Jaipur Vidyut Vitaran Nigam Limited ("JaVVNL"), Jodhpur Vidyut Vitaran Nigam Limited ("JoVVNL"), Punjab State Power Corporation Limited ("PSPCL"), Haryana Power Generation Corporation Limited ("HPGCL") and Union of India through Secretary, Ministry of Power ("MoP"). The major issues brought out by CGPL in its petition are set out below:

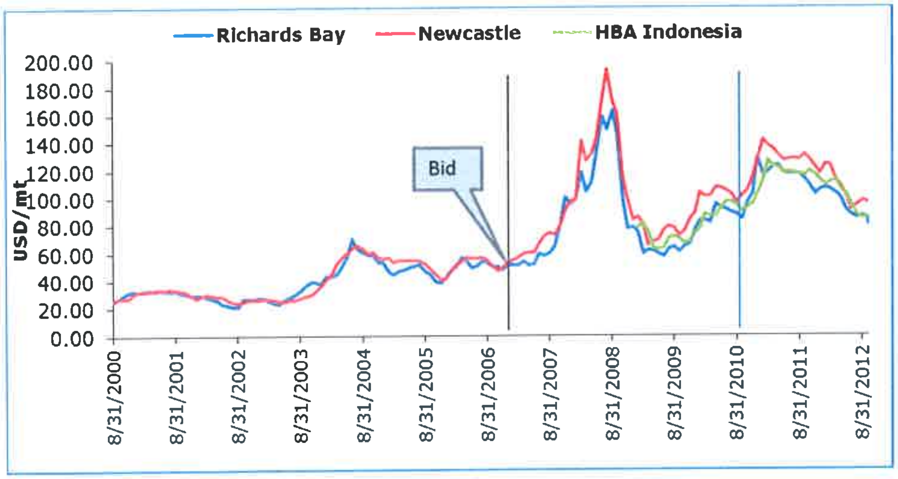
i. *Indonesian Regulations:*

The Government of Indonesia introduced the "Regulation of Minister of Energy and Mineral Resources No.17 of 2010 regarding the Procedure for Setting Mineral and Coal Benchmark Selling Price" (Indonesian Regulations) on 23rd September 2010. A summary of the Indonesian Regulations is attached in Annexure 7.6. According to the Indonesian Regulations, the holders of mining permits for production and operation of mineral and coal mines are required to sell mineral and coal in domestic and international markets including to their affiliates by referring to the benchmark price and the spot price of coal in the international markets. As per the Indonesian Regulation, all long term coal contracts for supply of coal from Indonesia were required to be aligned to the Indonesian Regulations within a period of 12 months from the date of the regulation i.e. by 23rd September 2011.

CGPL had entered into fuel supply contracts at a price less than the then prevailing benchmark price. As a result of the Indonesian Regulations, these fuel supply contracts were rendered null and void. CGPL amended the Coal Supply Agreements on May 23, 2012 and June 22, 2012 to align with the Indonesian Regulations. Due to adoption of the Indonesian Regulations, CGPL is supplying power to the procurers by purchasing coal at a price higher than the price envisaged at the time of bid.

ii. *Unprecedented escalation in coal prices*

CGPL had also submitted in its petition that it had been facing losses as the coal procurement cost has increased manifold due to escalation of international coal price. The following figure depicts the increased price level and volatility in the international coal market. CGPL has submitted that this escalation in coal prices after submission of its bid, mainly on account of increase in coal imports by India and China, had made it commercially unviable for CGPL to supply power at the bid out tariff and fulfill its obligations under the PPA.



CGPL has also represented in its petition that the annual loss to the project on account of the Indonesian Regulations coupled with escalation in coal prices is Rs 1873 crore as on July 2012. In the petition, CGPL sought relief under Article 12 (Force majeure) and Article 13 (Change in law) of the PPA and under sections 79, 61 and 63 of the Electricity Act. Under the petition CGPL requested for the following:

- Establish an appropriate mechanism to offset the adverse impact of the following in the tariff -
  - the unforeseen, uncontrollable and unprecedented escalation in the imported coal price
  - the change in law by Government of Indonesia
- Evolve a methodology for pass through of future fuel price to secure the economic viability of Mundra UMPP Project to a viable economic condition while building suitable safeguards to pass the benefit of any reduction in imported coal price to the Procurers
- Pass any other order that the Hon'ble Commission may deem fit in the facts and circumstances of the present case

The Hon'ble Commission was requested to resolve the following issues:

- Whether the adoption of the Indonesian regulation resulted in a situation that rendered the project commercially unviable and impossible to perform at the tariff agreed under the PPA
- If the above-mentioned issue is answered in the positive, whether the Petitioner's case falls under "force majeure" or "change in law" under the PPA
- Alternately, whether the Hon'ble Commission has the power, in the facts and circumstances to grant the Petitioner relief, without revising the tariff determined under the PPA

1.3. Summary of CERC Order

The Hon'ble Commission, through its order dated 15th April 2013, opined that by comparing the landed cost of coal on the date of the bid to the cost of coal pursuant to the Indonesian Regulation can help in determining the impact of Indonesian Regulation on the tariff and economic viability of the project. Based on the publicly available information as well as the provision for escalation in the relevant PPAs, the Hon'ble Commission observed that -

- CGPL had factored only 45% of the fuel price as escalable in the tariff payable under the PPAs
- As per the executed coal supply agreements, CGPL had envisaged to procure coal at USD 32/MT, i.e. at a discount as compared to the spot rate of USD 45/MT (pre-regulation price) prevailing at that point in time
- Post-regulation price of comparable quantities of coal (in terms of energy content) was FOB USD 89.25/MT which declined to FOB USD 70.42/MT in and around March 2013
- The option of arranging coal from alternate sources (domestic or international) was unviable

Consequently, as the operations at Mundra UMPP were wholly dependent on imported coal, the Hon'ble Commission concluded that prima facie, Mundra UMPP's operations were adversely affected by the adoption of the Indonesian Regulations. The Hon'ble Commission further opined that while TPCL had taken a risk by bidding certain non-escalable component for coal price, it had quoted the same based on the prevailing market conditions at that point in time and the Indonesian Regulation had altered the premises on which the tariff was quoted. This has primarily negated the competitive advantage that Mundra UMPP sought to achieve by hedging in coal prices.

The Hon'ble Commission opined that there appears to be a prima facie case of CGPL being affected by the adoption of the Indonesian Regulations. The Hon'ble Commission further contemplated the issue of relief for the Petitioner under the provisions of the PPA viz. Force majeure, Change in law and Section 79 of the Electricity Act, 2003 ("Act").

1.3.1. Force Majeure

CGPL submitted that the promulgation of Indonesian Regulation is an event completely outside the control of the petitioner and is therefore an event of force majeure within the meaning of Article 12.3 of the PPA as the said event has denied availability of fuel at pre-contracted price to the Mundra UMPP and as a consequence CGPL is unable to perform its obligation under the PPA. It was submitted that since in the present case the escalation in the fuel price is due to the promulgation of Indonesian Regulation, which is beyond the reasonable control of the petitioner and could not have been foreseen, it is a case of force majeure as provided under Article 12.4 of the PPA.

It was argued by the Procurers that the definition of force majeure under the PPA was inclusive in nature and in order for any event to qualify as force majeure, such event was required to wholly prevent or delay the performance of obligations under the PPA and since CGPL had failed to show that such was the case, the promulgation of the Indonesian Regulation did not amount to force majeure.

The Hon'ble Commission opined that the Indonesian Regulation does not prohibit either wholly or partly the export of coal from Indonesia or prohibited the operation of the Coal Supply Agreement (CSA) for the supply of coal to the Mundra UMPP. The impact of the Indonesian Regulation was only to align the export price of coal with the international benchmark price.

The Hon'ble Commission, after considering the relevant clause in the PPA opined that the rise in price of coal did not amount to a force majeure event. The Hon'ble Commission stated that

- The change in price of coal was a result of a regular market fluctuation
- The PPA has not been impacted in any manner by the change in price of coal which only affected the bilateral agreement between CGPL and its coal supplier, i.e. the CSA
- The rise in prices did not prevent the Petitioner from procuring coal in any manner

1.3.2. Change in Law

'Change in Law' in the PPA has been defined as change in consent/approvals or licences available or obtained for the project. Project under the PPA has been defined to be the power station undertaken for design, financing, engineering, procurement, construction, operation and maintenance. Further, the definition of Project Document includes Fuel Supply Agreements.

CGPL submitted that in the light of the back to back arrangement between the mining companies and IndoCoal, any impact or change in consent will have a direct bearing on the arrangement between the IndoCoal and CGPL. It further stated that the change in license/consent to the mining companies is a change in consent for the Project and this non-supply of fuel at the agreed price is because of the change in law i.e. the promulgation of the Indonesian Regulations.

It further submitted that the provision relating to "change in law", specifically the definition of law under the PPA should be read expansively to include foreign laws. Consequently, the change in foreign law viz. the promulgation of the Indonesian Regulation would fall within the ambit of Article 13 of the PPA. In case the fuel has to be procured at the escalated price which is due to Change in Law and due to circumstances which are beyond the control of the Petitioner, the provisions of PPA relating to restoration through monthly tariff payments come into play which provide for restoration of affected party, through monthly tariff payments, to the same economic position as if the change in law has not occurred. CGPL submitted that under the PPA, the affected party can claim a pass through for the escalated price owing to Indonesian Regulation.

It was argued by the Procurers that the relevant clause should be accorded a restricted reading and it refers only to Indian laws.

The Commission opined that the phrase "all laws" in Article 13 of the PPA referred only to Indian laws. The Commission opined that the phrase "all laws" would mean laws of India which was supported by an examination of the various provisions of the PPA.

1.3.3. Regulatory power of CERC under Section 79 of the Electricity Act

CGPL submitted that if a project lost its viability and it became commercially impossible for a party to perform its obligations under the contract, it could approach the Hon'ble Commission (appropriate commission for this Project) and request the Commission to use its powers under Section 79 of the Electricity Act, 2003 to revisit/restructure the tariff in manner which makes the project viable. CGPL also submitted that the powers of the Hon'ble Commission to regulate the tariff under Section 79 are comprehensive and extends to a change or revision of the tariff or correction of tariff which may include tariff adopted under Section 63 or determined under Section 62.

The Procurers submitted that Section 63 does not contemplate the Hon'ble Commission framing a regulation for the method and manner of determination of tariff through competitive bidding process. The procurers further submitted that under Section 63 of the Electricity Act 2003, the tariff is determined by a bidding process and the Hon'ble Commission does not have the regulatory power to re-determine tariff to correct for mistakes in bidding.

The Hon'ble Commission observed that while this case did not fall within the ambit of force majeure or change in law but Mundra UMPP had been adversely hit by the Indonesian Regulation, especially since it was entirely dependent for its coal supply upon imported Indonesian coal. The Hon'ble Commission agreed that there was a perceptible difference between the prices which were prevalent in the Indonesian market prior to the Indonesian Regulation and those prevalent subsequent to the Indonesian Regulation. Therefore, the Hon'ble Commission was of the opinion that Mundra UMPP should be compensated in order to make the Project commercially viable and maintain continuity of supply of electricity under the PPA.

The Hon'ble Commission opined that while the parties to a contract are expected to factor in all possible contingencies including price escalation, nonetheless some factors which are beyond the control and contemplation of parties will always remain and if their impact is not taken into consideration, the PPA would be rendered unworkable and the Project commercially unviable.

The Hon'ble Commission also opined that in the event that the issues confronted by Mundra UMPP continue, it may consequently default in the supply of electricity due to the escalation of coal price which would directly impact the consumers. Therefore, the Hon'ble Commission decided to intervene in the case and regulate the tariff. Further, the order stated that the Hon'ble Commission had the jurisdiction to regulate tariff of companies having a composite scheme of generating and supplying power to more than one State under Section 79(1)(b) of the Electricity Act and this power extended to tariff determined by competitive bidding process.

1.3.4. CERC Recommendations

The Hon'ble Commission opined that it had the power to provide relief even in situations where the tariff had been determined by a competitive bidding process and suitably adjust the same while retaining the sanctity of the bidding process. The Hon'ble Commission did not permit the renegotiation of the tariff because:

- The sanctity of the bidding process would not be maintained
- It would have brought uncertainty to the power sector
- There would have been a high probability of misuse of the renegotiation provision

Therefore, the Hon'ble Commission opined that to balance the interest of the consumers and the suppliers of electricity, the parties should confer and arrive at a compensation package to address the issues while maintaining the sanctity of the tariff arrived at by competitive bidding. Further, the order stated that such compensatory package should be

- Over and above the tariff agreed in the PPA
- Admissible for a limited period till the hardship persists
- Commensurate with the hardship faced by CGPL regarding coal supply and could be varied or withdrawn depending on when and if the hardship is lessened or is removed.
- Subject to periodic review by the parties to the PPA

The Hon'ble Commission further directed CGPL and Procurers to constitute a committee ("Committee") within one week consisting of the representatives of the Principal Secretary (Power), Managing Directors of the Distribution Companies of the Procurers, Chairman of Tata Power Limited or his nominee, an independent financial analyst of repute and an eminent banker dealing and conversant with the infrastructure sector (selected on mutual consent basis).

2. Scope of Committee & Consultants

2.1. Scope of the Committee

As per order of the Hon'ble Commission, the Committee needs to set down a consultative process to find out an acceptable solution in the form of compensatory tariff over and above the tariff decided under the PPA to mitigate the hardship arising out of the need to import coal at benchmark price on account of Indonesian Regulations. The Committee shall examine the impact of the price escalation of the Indonesian coal on the project viability and obtain all the actual data required with due authentication from independent auditors to ascertain the cost of import of coal from Indonesia and suggest a package for compensatory tariff which can be allowed to CGPL over and above the tariff in the PPA.

The Committee shall consider the following matters while working out and recommending the compensatory tariff applicable upto a certain period:

- The net profit less Govt. taxes and cess etc. earned by Tata Power's company from the coal mines in Indonesia on account of the bench mark price due to Indonesian Regulation corresponding to the quantity of the coal being supplied to the Mundra UMPP should be factored in full to pass on the same to the beneficiaries in the compensatory tariff.
- The possibility of sharing the revenue due to sale of power beyond the target availability of the Mundra UMPP to the third parties may be explored
- The possibility of using coal with a low GCV for generation of electricity for supply to the procurers without affecting the operational efficiency of the generating stations.

The Committee is also at liberty to suggest any further measures which can be practicable and commercially sensible to address the situation

2.2. Scope of work of Financial Analyst

The Committee appointed SBICAP as the Financial Analyst of the Committee and the scope of work of the Financial Analyst included:

- Due diligence of Project Documents of CGPL
- Calculate the Compensatory package for CGPL using different methods proposed by the Committee
- Present the study/analysis to the committee at regular intervals for guidance
- Carry out sensitivity analysis of key parameters on the compensatory tariff

It was also decided at the request of representatives from Haryana Discoms, that Mr. Devi Singh, Director IIM Lucknow, shall be co-opted as a member of the Committee and he will provide necessary guidance to the Financial Analyst. It was also decided that SBICAP would carry out the secretarial responsibilities of the Committee.

2.3. Scope of work of Legal Consultant

It was decided that Mr A G Karkhanis, former ED and Legal Advisor IDBI Limited, would provide guidance with respect to Legal matters i.e. scope of the Committee, period of Compensatory tariff, providing assistance to other co- consultants, assistance in finalizing report and opining on legal tenability of Committee recommendations.

2.4. Scope of work of Technical Consultant

It was decided that Mr Chandra Pratap Singh, former Director (Engineering and R&D) BHEL, would render technical assistance to the Committee on matter including exploring the possibility of using low GCV coal for generation, understanding the characteristics of Indonesian coal mines partially/fully owned by Petitioners, carrying out benchmarking study for cost of similar power projects in terms of technology and capacity, benchmarking fuel cost for various projects, analyse and authenticate the actual operating parameters vis–a-vis design parameters given by EPC contractor adjusted for site operating conditions and suggest operating parameters such as SHR, Auxiliary Consumption, optimum blend of coal, transmission losses and others related parameters.

2.5. Scope of work of Independent Consultant

It was decided that KPMG would render services as Independent Consultant including reading of FSA, sample checking of coal Supply invoices, PPA revenues from SCOD, coal purchases by power plants and assist in assessing revenues and profits earned by Petitioner's mining companies in Indonesia and power generating Company in India.

3. Committee Proceedings

As per the order of the Hon'ble Commission dated 15.04.2013 in respect of the petition no. 159/MP/2012 filed by Coastal Gujarat Power Ltd. ("CERC Order"), constitution of a Committee was recommended to suggest a package for "compensatory tariff". As per the order of the Hon'ble Commission, this Committee was to consist of Principal Secretary (Power) of the procurer States / Managing Directors of the distribution companies of the procurer states, the Chairman of Tata Power Limited or his nominee, an independent financial analyst of repute and an eminent banker dealing and conversant with infrastructure sector.

The directives of the Hon'ble Commission were carefully considered by Government of Gujarat and Maharashtra and the procurer states agreed to be part of the Committee subject to certain conditions which included:

- Participation in the Committee shall not bind GoG/GUVNL to any finding/recommendation of the Committee
- GOG/GUVNL will reserve the right to make an Appeal before the appropriate authority, on the final order
- Overall financial implication by way of providing "Compensatory Tariff" shall be equally shared amongst all the stakeholders

The Government Resolutions of the State of Gujarat and Maharashtra are presented in sec 7.10.

i. First Meeting – May 11, 2013

Pursuant to the above, a Committee was formed and its first meeting was convened on May 11, 2013 at HDFC office in Ramon House, Churchgate.

The Committee was chaired by Mr. Deepak Parekh. Also, it was agreed that SBI Capital Markets Ltd. (SBICAP) will be acting as the independent financial analyst for this Committee. Representatives of Govt. of Haryana/ Haryana utility had invited Prof. Devi Singh, Director, IIM-Lucknow to attend this meeting. All the members agreed that he may be co-opted as a member of this Committee and he will provide necessary guidance to financial analyst. It was also decided to appoint M/s KPMG for carrying out accounting due diligence of the Indonesian coal mines of Tata Power/CGPL.

In the first meeting, it was decided that a Finance Sub-group consisting of Mr. Deepak Parekh, Prof. Devi Singh and SBICAP would work out the compensatory package. It would present its study/findings to the Committee at regular intervals for guidance.

Considering the complexity of the scope of the work, it was decided to appoint Mr A. G. Karkhanis as 'Legal Consultant' and Mr. Chandra Pratap Singh as 'Technical consultant' to assist the Finance Sub-group to provide their expert advice on various legal, technical, audit related matters and also to authenticate/opine on the inputs to find out an acceptable solution in form of Compensatory Tariff. The members were informed about these appointments vide letter dated May 24, 2013.

Post the first committee meeting, GUVNL wrote a letter to the Chairman of the Committee regarding issues which fell outside the ambit of the Committee viz., escalation in capital expenditure due to adverse foreign exchange movement and identifying other alternatives to providing compensatory tariff for the Project such as providing domestic coal linkage to CGPL, arranging coal supply for the Project by procurers themselves. The letter from GUVNL dated May 20, 2013 and the response letter from CGPL dated May 27, 2013 are provided in sec 7.10.

ii. Second Meeting –June 26, 2013

The second meeting of the Committee was held on June 26, 2013 at HDFC office in Ramon House, Churchgate. SBICAP made a presentation outlining the recap of the last meeting, progress made so far and way forward. It was mentioned in the meeting that a Finance Sub-Group consisting of Chairman, Prof. Devi Singh and SBICAP had been carrying out the basic groundwork to achieve the Committee objectives.

It was followed by a presentation by KPMG on process flow and timelines proposed. It was also mentioned that most of the information has been received by KPMG and their report was expected to be available by the end of the first week of July.

iii. Third Meeting –July 11, 2013

The third meeting of the Committee was held on July 11, 2013 at Amadeus, NCPA, Nariman Point, Mumbai.

In this meeting, SBICAP made a presentation regarding the past losses incurred by the Petitioner with respect to both the PPAs. KPMG's findings were also discussed in the meeting. Different scenarios were presented for compensatory tariff. All the members were open to suggestion for mitigating the hardship caused on account of unprecedented increase of coal price and impact of Indonesian Regulation. The procurers also desired that all stakeholders should participate in arriving at a solution and accordingly insisted to schedule a meeting with the lenders of the projects to convince them for reduction in interest rate. Accordingly a meeting of the Procurers with the major banks of CGPL was arranged on July 17, 2013.

iv. Fourth meeting – July 30, 2013

The fourth meeting of the Committee was held on 30th July 2013 at Capital Court, Munirka, New Delhi. In this meeting the comments of the members of the Committee on the draft report of the committee were discussed. It was decided to finalize the report after incorporating the explanations to these observations. The chairman also suggested that a recommendation should be made in the report for according special dispensation by RBI for extending the loan tenor without attracting restructuring provisions. This issue will have to be taken up by the lenders with RBI separately for special dispensation in terms of classification as Standard assets post changes in terms of the underlying loans to these projects.

Minutes of Meeting for the first three Committee meetings and Lenders' Meeting and Record Note for the fourth Committee Meeting are appended in sec 7.2 for reference.

4. Compensatory Tariff – Exploring Alternatives

4.1. Framework for arriving compensatory tariff

For calculating the compensatory tariff, the Committee had taken guidance from Sec 86 of the order of the Hon'ble Commission which states:

> *"The petitioner had quoted the bids on certain assumptions and those assumptions have been negated on account of the unexpected rise in coal price in international market coupled with the promulgation of Indonesian Regulations, required all long term contracts to be adjusted to the international benchmark price. In our view, under the peculiarity of the facts of the present case and also keeping in view the interest of both project developer and consumers, we consider it appropriate to direct the parties to set down to a consultative process to find out an acceptable solution in the form of compensatory tariff over and above the tariff decided under the PPA to mitigate the hardship arising out of the need to import coal at benchmark price on account of Indonesian Regulations."*

The Committee had sought advice from the Legal consultant regarding the scope of the Committee. The Legal Consultant in his report dated July 31, 2013 had set the framework for arriving at a compensatory tariff mechanism as below:

- Finding a long term solution to the problem arising due to the Indonesian Regulation resulting in significant escalation in prices of imported coal from Indonesia
- Arriving at a compensatory tariff mechanism in such a way that the
  - Compensation is variable in nature commensurate with the hardship
  - Benefits arising to the generator in case of lower coal price regime are passed on to the procurers
- Taking into consideration the interests of consumer while arriving at a long term solution

The Committee also discussed in detail the underlying technical assumptions and market assumptions which may have been factored in while bidding and tried to establish the prudence of those assumptions. The Committee used inputs from the report of the technical consultant for validating these underlying assumptions of the bid. In order to validate the market assumptions regarding coal price assumptions, the committee had accessed publicly available information regarding coal price indices and a few classified documents to establish the price of imported coal for power plants in India.

The Committee has specifically analysed the impact of unprecedented increase in coal prices and promulgations of Indonesia Regulations.

The following sections discuss the methodology and compensatory tariff options in detail:

4.2. Technical Assumptions

CGPL had assumed a configuration of 5x800 MW while bidding for the Mundra UMPP. The following table summarizes the normative operating parameters given by the Technical

Consultant in his report dated July 31, 2013 and a comparison of the same against actuals for FY 2013 and CERC norms

		Normative parameters	Actual for FY 2013	CERC norm
GCV of coal	kcal/kg	5350	4593[1]	*2
SHR	kcal/kwh	2050	2124	2136[3]
Allowable Variation in Heat Rate	%	6.50%	-	6.50%
Aux consumption	%	7.75%	8.24%	8.5%
Coal transit losses	%	0.8%[4]	0.73%	0.8%

It is observed from the above table that the normative assumptions recommended by Technical Consultant are different from actual performance and CERC norms. Specific explanation was also sought from the Company regarding auxiliary power assumptions at the time of bid (4.75%) and the normative approved by the Technical Consultant. The Company informed that the design was changed from Steam Driven Boiler Feed Pumps (assumed at the time of bid) to Motor Driven Boiler Feed Pumps, which had resulted in higher auxiliary consumption. However CGPL also advised that the change in design allowed it use coal of lower GCV in an efficient and sustainable manner, thereby resulting in lower cost of generation. Analysis of the same received from CGPL is provided in sec 7.3. Further in case CGPL has to revert to the bid assumptions for auxiliary power and design coal, it would effectively increase the cost of generation due to the price difference between design coal and lower CV coal. The Technical consultant has also agreed with the above conclusions and in his report dated July 31, 2013 has submitted that the normative parameters assumed as above are optimal in terms of cost of generation. CGPL had also increased the gross generation capacity of the plant from 4000 MW to 4150 MW, so as to account for the additional auxiliary consumption due to use of Motor Driven Boiler Feed Pumps, while maintaining the net generation capacity at the contracted level of 3800 MW.

As CGPL has secured fuel supply arrangement for the entire coal requirement at coal specification mentioned in normative parameters, continuation of the same is also advisable from fuel security perspective. Since the coal under fuel supply arrangement shall be supplied

[1] *Different coal varieties ranging from 3988 – 6331 kcal/kg had been used in FY 2013 for blending trials. Invoices have been checked on a sample basis by KPMG and SBICAP*

[2] *Melawan Coal is a sub-bituminous coal while Eco coal is a Lignitic coal, which is inferior to Sub-Bituminous grade as per ASTM Code- D388. Further, CERC has not published Boiler Efficiency norms for Imported Sub-Bituminous coals. Hence, in the absence of any specific stipulation for Imported Sub-Bituminous coal, Boiler efficiency norm for Domestic Sub-Bituminous coals has been used*

[3] *Normative SHR is 2176 with Allowable Heat Rate of 2317 kcal/ kwh for a project using boiler driven feed pumps. Adjustment of 40 kcal/kWh is to made for motor driven feed pump.*

[4] *As per the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 the norm for transit losses for non-pithead power stations is 0.8% and the same has been used as a normative parameter for calculation of compensatory tariff. However, if the actual losses are lesser than the CERC norm, the same shall be accounted for in the annual true-up of compensatory tariff*

by a coal mining company, in which Tata Power has equity shareholding, same shall also lead to reduction of compensation on account of adjustment required from the share of net profit earned by Tata Power on coal supplied to Mundra UMPP. Hence, these normative parameters shall result in lesser burden to the procurers in terms of compensation payable to CGPL.

As regards technical and commercial feasibility of using further low grades of coal is concerned, it has been found to be economically unviable at present coal prices due to additional capital expenditure, shipping and port handling expenditure. The detailed analysis of the same has been dealt in sec 5.1.3. Considering the same, Normative Parameters of Station Heat Rate and Auxiliary consumption suggested by Technical Consultant and CERC norm for coal transit losses shall be assumed for evaluation and calculation of Compensatory Tariff. Regarding variation in Station Heat Rate, as CERC norm allows 6.50% variation and since Technical Consultant has also suggested the same, Allowable Station Heat Rate can be 6.50% of Base Heat Rate of 2050 i.e 2183 kcal/kwh.

4.3. Market Assumptions

Using the technical assumptions as discussed in sec 4.2 and the quoted bid tariff numbers, the committee attempted to establish the base price of imported coal assumed in the bid. The table below illustrates the methodology of arriving at the base price of imported coal using normative operating parameters:

Parameter		Unit	Value
Fuel Energy Tariff Components[5]			
QNEFEC – Year 1 (55%)	(1)	USD/kWh	0.00705
QEFEC – Year 1 (45%)	(2)	USD/kWh	0.00585
Total	(3)=(1)+(2)	USD/kWh	0.01290
Normative Parameters[6]			
Station Heat Rate	(4)	Kcal/kWh	2050
Average GCV of coal	(5)	Kcal/kg	5350
Aux consumption	(6)		7.75%
Transit losses	(7)		0.8%
Bid Coal Price estimation			
Specific coal consumption	(8) = (4)/(5)/(1-(6))/(1-(7))	Kg/kWh	0.4187
Coal price at Landing port	(9)=(3)/(8)x1000	USD/ton	30.81
Effective import duty as per bid documents	(10)		6.33%
FOB Coal price assumed in bid	(11) = (9)/(1+(10))	USD/ton	28.97

[5] *Schedule 11 of the PPA comprises the components of tariff. Fuel Energy tariff components are divided as Quoted Non Escalable Fuel Energy Charges (QNEFEC) and Quoted Escalable Fuel Energy Charges (QEFEC)*

[6] *As given by the technical consultant and discussed in sec 4.2*

After arriving at the FOB price of USD 28.97[7] per MT assumed in the bid, it was compared against the then prevailing market prices of imported coal to establish whether the discount was really available against the market price. In the absence of any published Indonesian coal index[8] during 2006, the committee had relied on the methodology[9] as adopted by the Hon'ble Commission which is a composite index using the indices API4, BJI and Global COAL for establishing the market price of coal. The market price of the coal in December 2006 arrived using this methodology is USD 49.79 per MT for GCV of 6322 kcal/kg. After making adjustments for GCV of 5350 kcal/kg, the adjusted market price is USD 42.13 per MT at the time of bidding. Hence, it was established that CGPL had a discount of approx. USD 13 per MT of coal at the time of bidding

It was further analysed whether the discount in the coal price assumed to the then prevailing market price was a prudent business decision. The Committee had accessed the following classified information provided by Tata Power:

i. An executed coal supply agreement between Tata Power and PT Adarro (one of the largest mining companies of Indonesia) dated May 2004 and amended in Aug 2006 for supply of 1 million ton to Tata Power Trombay Plant as per which
   - the base price of coal is USD 30 per ton for period between Aug 2006 and July 2007 for a coal quality of 5200 kcal/kg.
   - Using this reference price, the GCV adjusted price for 5350 kcal/kg is USD 30.86 per ton

ii. An Information Memorandum dated October 2006[10] prepared by Credit Suisse for PT Bumi Resources for potential sale of stake in KPC, Arutmin and Indocoal as per which
   - the estimated selling price of Melawan coal of 5400 kcal/kg is USD 30.4 per ton for CY 2006.
   - Using this reference price, CV adjusted price of 5350 kcal/kg is USD 30.11 per ton

The information furnished pertains to coal supply agreement with a leading coal trading company and pertains to Tata Power's Trombay Plant whose cost is under regulatory scrutiny of Maharashtra Electricity Regulatory Commission (MERC). Hence, this information may be

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[7] Derived FOB price is slightly different from representation of CGPL whereby it is stated that coal price of 33.90 USD has been taken for GCV 5700 and USD 30.14 for GCV 5350. Since difference in price is minimal and as objective is to understand appropriateness of discount, said difference may be considered acceptable.

[8] Govt of Indonesia started publishing the HBA index only from Jan 2009

[9] CERC methodology for calculating escalation index for payment of imported coal is a composite index giving 50% weightage to escalation to API4 (South African coal index), 25% weightage to escalation to Barlow Jonker Index (Australian Coal Index) and 25% weightage to GlobalCOAL (Australian coal index)

[10] PT Bumi Resources, one of the largest Indonesian mining companies, was running a process for potential stake sale in KPC, Arutmin and Indocoal Resources and had engaged Credit Suisse for sell-side advisory. Tata Power at that time was one of the interested buyers to whom the IM was circulated

considered reliable. The information provided under IM prepared by Credit Suisse may also be considered an independent view of the coal prices by PT Bumi Resources because the IM was released before the acquisition of stake in Indonesian mines by Tata Power and Tata Power was only one of the prospective investors of mines owned by PT Bumi Resources at that time.

Hence, it could be established that the prevailing selling price of imported coal of 5350 kcal/kg at the time of bidding was approx. USD 30 per MT and there was a practice of contracting coal at a discount to the GCV adjusted market price index. Considering the possibility of additional volume discount on account of the huge coal requirement of approx.. 11 Million tonnes for the project, the derived market price assumption of USD 28.97 per MT appears reasonable. Further the fact that Tata Power has been able to secure coal supply of around 11 Million tonnes from Indocoal Resources at base prices of 32 USD per tonne and 34.15 USD per tonne reflect availability at substantial discount to market price.

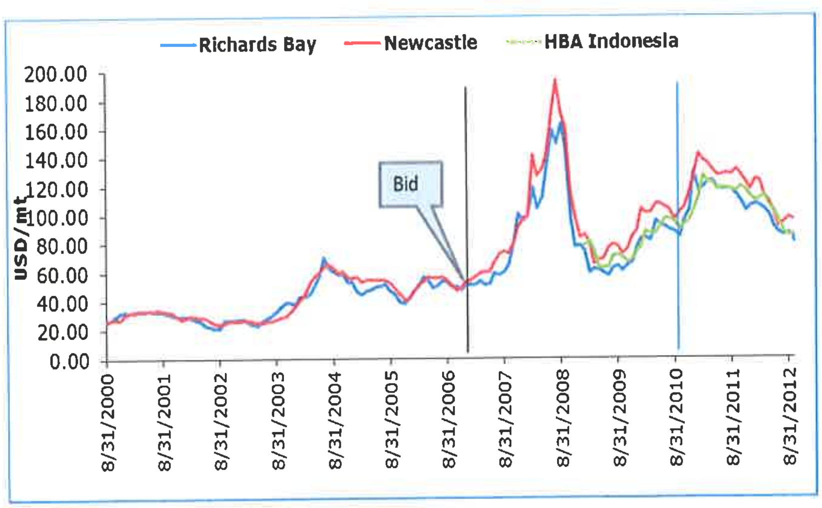
4.4. Changes in assumptions

4.4.1. Indonesian Regulations

The Government of Indonesia introduced the "Regulation of Minister of Energy and Mineral Resources No.17 of 2010 regarding Procedure for Setting Mineral and Coal Benchmark Selling Price" on 23rd September 2010. According to the Indonesian Regulations, the holders of mining permits for production and operation of mineral and coal mines are required to sell mineral and coal in domestic and international markets including to their affiliates by referring to the benchmark price and the spot price of coal in the international market. All long term coal contracts for supply of coal from Indonesia were required to be aligned to the Indonesian Regulations within a period of 12 months i.e. by 23rd September 2011.

4.4.2. Increase in coal prices

The figure below shows the movement of different coal price indices over the past 12 years:



As can be seen from the above graph, there was little volatility in coal prices till 2006. However, coal prices have increased multifold since 2006 on account of the huge demand coming from China and India without commensurate increase of supply. The increase in coal prices since 2006 can also be established by the comparing the CERC escalation rate for imported coal for bid evaluation, which is the average escalation rate of Barlow Jonker Index for the previous 12 years. The CERC escalation rate for bid evaluation which is basically average index movement over last 12 years during December 2006 was 3.46% as against the present 12.97%.

4.4.3. Impact on Fuel Energy Component of Tariff

The Indonesian Regulations had, in effect, eliminated the discount of 30% over market prices assumed by CGPL in its bid[11]. In that regard, Legal Consultant vide his opinion dated July 31, 2013 has advised that Indonesian Regulations has the effect of aligning coal prices with notified prices and hence consequently no discount can be given including those where commercial contracts were already in place. Further, even in case of existing coal supply agreements of CGPL with Indocoal, post Indonesian Regulations coming into effect, there has been substantial increase in coal price reflecting the non-availability of discount[12].

The impact on the non-escalable component is significant as it resulted in the erosion of discount assumed while quoting the non-escalable fuel energy component. As CGPL was in negotiations with PT Bumi Resources for purchase of stake in KPC and Arutmin, it had assumed at the time of bidding that at least 55% the coal requirement could be tied-up at substantial discount to market prices over the life of the project. The escalation in coal prices have accentuated the hardship caused by the Indonesian regulations in the non-escalable portion of tariff by resulting in substantially higher fuel expenditure. With respect to escalable component, the impact was broadly limited to the erosion of the discount assumed while quoting the escalable fuel energy component. The lower base escalable fuel energy component had in effect not shielded CGPL completely from the subsequent escalation in coal prices.

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[11] Annexure 7.8 provides an illustration of benefits accruing to each party on account of erosion of this discount in the negotiated fuel supply agreement pursuant to Indonesian Regulation

[12] All coal procured under existing coal supply agreement before the Indonesian Regulation came in effect was Melawan grade coal. The last shipment of Melawan coal before the Indonesian Regulation was procured on Sept 19, 2011 and was procured at a price of USD 49.05/MT for a GCV of 5158 kcal/kg. The HPB price prevailing in Sep 2011 adjusted to 5158 kcal/kg was USD 85.25/MT, reflecting approx. 42% discount to the then prevailing prices.

The first shipment after the promulgation of Indonesian Regulation was Ecocoal grade and it was procured on Dec 8, 2011 at a price of USD 55.8/MT for a GCV of 4106 kcal/kg. The HPB price adjusted to 4106 kcal/kg was USD 57.18/MT, reflecting 2.4% discount to the prevailing prices. This discount is on account of the deviations from the published specifications. Post Indonesian Regulation the first shipment of Melawan coal was procured only in June 2012 and was at price of USD 71.76/MT for a GCV of 5165 kcal/kg. The HPB price adjusted to 5165 kcal/kg was USD 71.77/MT, reflecting no discount to the prevailing prices.

4.5. Considerations for calculating Compensatory tariff

The Committee had taken guidance from the order of the Hon'ble Commission, sec 86 of the order in particular while deliberating and evaluating the alternatives for calculating the compensatory tariff:

- Avoiding re-negotiation of tariff components discovered through the process of competitive bidding
- Devising a mechanism in a manner where the compensation addresses the hardship caused by both the Indonesian Regulations and the unprecedented increase in coal prices
- Ensuring that the compensation provided is commensurate to the hardship incurred
- Passing on the benefits accruing to the generator during lower coal price regime to the procurers, thereby protecting interests of the consumers.
- To evaluate any other factors that may result in minimising the compensatory tariff

The Committee had also taken note of the recent CERC advice to MOP and CCEA order as discussed below:

4.5.1. CERC Advice to MOP

Ministry of Power vide letter No. FU-12/2011-IPC (Vol.-II) dated May 9, 2013 had sought advice of the Hon'ble Commission under section 79 (2) of the Electricity Act, 2003 regarding the impact on tariff on the concluded PPAs due to reduced domestic coal availability.

The Hon'ble Commission vide its letter dated May 20, 2013 has made the following observations:

- CERC appreciates the need for securing fuel supply for various projects in order to ensure optimum generation from the power plants in the country. Non availability of adequate quantum of coal has posed challenge to power generation in the country.
- The proposal to make Coal India Limited (CIL) supply imported coal on cost plus basis to all power projects commissioned or to be commissioned during the period from 1.4.2009 to 31.3.2015 and willing to take such coal would require appropriate change in the New Coal Distribution Policy (NCDP) and Fuel Supply Agreements (FSAs) between CIL/ its subsidiaries and the power producers.
- As regards allowing the additional cost of imported coal under the existing provisions of the PPA, Article 10.1.1. of the Standard PPA for Procurement of Power under Case I Bidding Procedure provided for Change in Law. For claiming any benefits under Change in Law, the Project Developer would have to move the appropriate Commission and the decision of that Commission in this regard would be final. The Appropriate Commission is expected to take decisions on case to case basis including the claims of the Project Developers for compensation on account of imported coal after consultation with the stake holders.

- The bidding guidelines under section 63 of the Electricity Act 2003 should be suitably modified to enlarge the scope of the regulatory intervention to take care of situation arising from the change in policy of the Sovereign Government.
- Suitable Amendments in the National Electricity Policy and Tariff Policy may be called for in the long run to provide for intervention by the appropriate commission to address the situation which has arisen and have been referred to by the Ministry.

4.5.2. CCEA Order

In the meeting held on February 5, 2013 the CCEA had laid down certain guidelines for import of coal on cost-plus basis/ pooling of prices for 78,000 MW capacity having linkage and also directed formation of an Inter-Ministerial Committee (IMC) to consider the cases of power plants with aggregate capacity of about 16000 MW which would be commissioned by 31.03.2015 but are not having any linkage for supply of coal.

The revised proposals submitted by Ministry of Coal (MoC) in pursuance of the above directions and in consultation with Ministry of Power and other Ministries were considered by the CCEA in the meeting held on June 21, 2013 and it has been decided as under:-

- Coal India Ltd (CIL) to sign Fuel Supply Agreements (FSA) for a total capacity of 78,000 MW including cases of tapering linkage, which are likely to be commissioned by March 31, 2015. Actual coal supply would however commence when long term PPAs are tied up.
- Taking into account the overall domestic availability and actual requirements, FSAs to be signed for domestic coal quantity of 65%, 65%, 67% & 75% of Annual Contracted Quantity (ACQ) for the remaining 4 years of the XII five year plan.(i.e. FY 2014 to FY 2017)
- To meet its balance FSA obligations, CIL may import coal and supply the same to the willing Thermal Power Plants (TPP) on cost plus basis. TPPs may also import coal themselves. MoC will issue suitable instructions.
- Higher costs 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.
- A mechanism will be explored to supply coal subject to its availability to the TPPs with 4,660 MW capacity and other similar cases which do not have any coal linkage but are likely to be commissioned by 31.03.2015, and have long term PPAs and a high bank exposure and without affecting the above decisions.

Thus the CCEA decision, in principle, suggests mitigating hardship by allowing pass-through of increase in fuel cost over quoted tariff.

4.5.3. MoC Notification for Change in NCDP

The notification for change in New Coal Distribution Policy was issued by Ministry of Coal vide F. No. 23011/90/2013-CPD dated July 26, 2013. A summary of the said notification is set out below:

The New Coal Distribution Policy (NCDP) was issued by Ministry of Coal vide Memorandum No. 23011/4/2007-CPD dated October 18, 2007 laying down the guidelines for distribution and pricing of coal to various sectors. As per para 2.2 of the said policy, Power Utilities including Independent Power Producers were to be supplied 100 per cent of the quantity as per their normative requirement through Fuel Supply Agreement(s) (FSAs) by Coal India Limited (CIL) at fixed prices to be declared/notified by CIL. As per para 5.2 of the said policy, in order to meet the domestic requirement, CIL was to import coal as required from time to time, if feasible and adjust the overall price accordingly.

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 April 1, 2009 to March 31, 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 which have existing 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.

Para 2.2 and 5.2 of the New Coal Distribution Policy issued vide OM No. 23011/4/2007 - CPO dated October 18, 2007 stand modified to the above extent.

The above guidelines will also be applicable to the distribution of coal from Singareni Collieries Company Limited (SCCL). CIL and its subsidiaries and SCCL were advised to take further action accordingly.

4.5.4. MoP Directive to CERC

After considering advice of CERC, the Ministry of Power issued notification vide FU- 12/2011-IPC (Vol-III) dated July 31, 2013 regarding the impact on tariff in the concluded PPAs due to shortage in domestic coal availability. The summary on the said notification is set out below:

In view of the demand for coal of power plants that were provided coal linkage by Govt. of India and CIL not signing any Fuel Supply Agreement (FSA) after March 2009, several meetings at different levels in the Government were held to review the situation. In February 2012, it was decided that FSAs will be signed for full quantity of coal mentioned in the letter of Assurance (LoAs) for a period of 20 years with a trigger level of 80% for levy of disincentive and 90% for levy of incentive. Subsequently, MoC indicated that CIL will not be able to supply domestic coal at 80% level of Annual Contracted Quantity (ACQ) and coal will have to be imported by CIL to bridge the gap. The issue of increased cost of power due to import of coal / e-auction and its impact on the tariff of concluded PPAs were also discussed and CERC's advice was sought.

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 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.

Ministry of Coal vide letter dated July 26, 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.

The Electricity Regulatory Commissions (ERCs) are advised to consider the request of individual power producers in this regard as per 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.

4.6. Evaluation of alternatives for calculating Compensatory Tariff

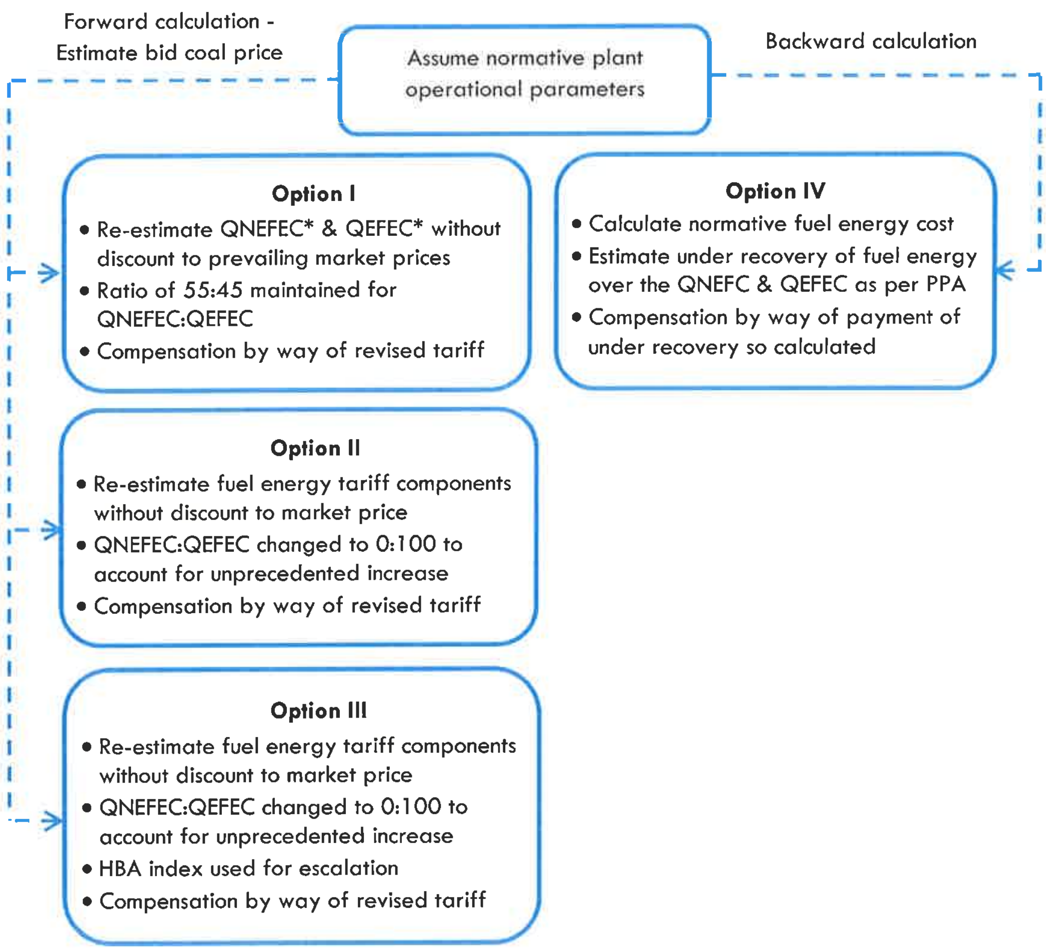
The Committee deliberated on various options to arrive at a compensatory package based on the considerations outlined in sec 4.5 and the recent directives from the Hon'ble Commission and CCEA.

The Committee while deliberating the options for compensatory tariff used two approaches:

i. Forward working – The underlying principle in this approach is that the quoted tariff components were based on certain assumptions, which had been vitiated by certain subsequent events thereby causing hardship to the Company. Accordingly, adjustments to the quoted tariff components have been made after factoring in the change in the assumptions caused by these subsequent events. The compensation package under this approach will in effect be the difference between the revised estimated tariff and original tariff as per the PPA. Options I-III discussed in the following sections are based on this approach.
ii. Backward working – In this approach, the actual hardship for the present period is estimated based on the normative plant operating parameters, prevailing coal prices and tariff quoted in the PPA. The compensatory package will be the under recovery

on the tariff quoted in the PPA. Option IV discussed in the following sections is based on this approach

The options are as follows:



* PPA of CGPL has 2 fuel energy components; Quoted Non escalable Fuel Energy Component (QNEFEC) and Quoted Escalable Fuel Energy Component (QEFEC). The fuel energy component of tariff for the period N is calculated as:

$$QNEFEC_N + QEFEC_{base} \times \text{CERC escalation index}_N$$

4.7. Options for Compensatory Tariff

- **Option I:** As it was established in sec 4.4.3, the Indonesian Regulations and the increase in coal prices had impacted both the non-escalable and escalable fuel energy components, this option explored a one-time adjustment to these components so as the hardship caused to CGPL is mitigated. Considering the same, Composite fuel energy charges are re-estimated using normative operating parameters and without any discount to the then prevailing market prices, as the discount factored in the components have been eroded by the Indonesian Regulations.

- **Option II**: The compensatory tariff derived by option I only addresses the impact of removal of discount assumed in the bid tariff compared to the market prices prevailing at the time of bid. However it does not addresses the other issue of Indonesian Regulations namely the need for alignment of coal price assumed under non-escalable portion to actual market price on an on-going basis. Considering the same in case of Option II, composite fuel energy charges are re-estimated using normative operating parameters and without any discount to the then prevailing market prices and entire fuel energy is loaded in the escalable component.
- **Option III**: The compensatory tariff derived by option II compensates the hardship caused by change in Indonesian Law and the coal price escalation, provided the CERC escalation index tracks the escalation in HBA prices exactly. However an analysis of the indices of CERC and HBA indicate a time lag in transmission of changes in HBA coal price to CERC escalation index. Option III is modified form of option II with the only change that the actual escalation in HBA prices has been used in place of CERC escalation index.
- **Option IV**: Under this option, the actual hardship for the present period is estimated based on the normative plant operating parameters, prevailing coal prices and tariff quoted in the PPA. The compensatory package will be the under recovery on the tariff quoted in the PPA vis-à-vis the fuel energy expenses.

Further explanation of all the four options with rationale for each is set out in sec 7.4.

4.8. Evaluation of options

The Committee deliberated on the merits and demerits of each of the options extensively. The following table summarizes the pros and cons of each of the options for determining the compensatory tariff.

Option – I	Option – II	Option – III	Option - IV
✓ Benefit of one-time adjustment in the bid tariff and continuation of existing PPA ✓ Requires changing components of tariff viz. Quoted Escalable Fuel Energy Charges and Quoted Non Escalable Fuel Energy Charges which will have legal implications ✓ In variance with the CERC order, as the order specifically prohibits changing the tariff components amounting to renegotiation ✓ Will not be a long term sustainable solution, as the coal price escalation in the non-escalable component (55% of total fuel energy component) is not factored in. ✓ Will work only if the coal price is around USD 42.13/ MT as the non-escalable component was fixed at these prices	✓ Benefit of one-time adjustment in the bid tariff and continuation of existing PPA ✓ Requires changing components of tariff viz. Quoted Escalable Fuel Energy Charges and Quoted Non Escalable Fuel Energy Charges which will have legal implications ✓ In variance with the CERC order, as the order specifically prohibits changing the tariff components amounting to renegotiation ✓ Due to lead/lag effect of CERC escalation index over HBA coal price index, the compensation is not commensurate to the hardship. Depending the index movement, there is a possibility of excess recovery / under recovery	✓ Benefit of one-time adjustment in the bid tariff and continuation of existing PPA ✓ Requires changing components of tariff viz. Quoted Escalable Fuel Energy Charges & Quoted Non Escalable Fuel Energy Charges and the methodology of calculating the escalation index which will have legal implications ✓ In variance with the CERC order, as the order specifically prohibits changing the tariff components amounting to renegotiation ✓ Compensation is commensurate to the hardship caused. As escalation index determined only by Indonesian coal prices, it eliminates the lead/lag effect of CERC escalation index[13] (used in other options) over the escalation in Indonesian coal price	✓ No change required in any of the tariff components nor in the escalation indices. Hence no change required in PPA, but requires introduction of additional component ✓ Can serve as a long term solution as only the exact under recovery based on normative fuel cost is compensated ✓ There is provision for refund of excess recovery, if actual fuel cost based on audited accounts is less than the normative fuel cost ✓ Operational efficiency gets passed on completely to off takers and operational in-efficiency is being borne by Generators ✓ Procurers also get to share the benefit, if coal prices decrease

[13] At present CERC escalation index for payment purposes is calculated using a composite index, constructed with 50% weight to API4 index (South African coal), 25% weight to Barlow Jonker Index / Coalfax (Australian coal) and 25% weight to GlobalCOAL (Australian coal). CERC by a notification dated 18.06.2013 has proposed a modified composite index with 50% weight to Platts Indo Coal Index (Indonesian Coal), 25% weight to API4 index (South African coal), 12.5% weight to BJI/Coalfax (Australian coal), 12.5% weight to GlobalCOAL (Australian coal) and invited comments on the same.

The Committee recommended Option IV as the method for evaluating the compensatory tariff on account of the following reasons:

- Option IV addresses the hardship caused both on account of the Indonesian Regulations and the escalation in coal prices
- Option IV does not involve any change in existing tariff components nor the escalation index, which if present will have legal implications as the Mundra UMPP project was awarded on competitive bid basis. Further in accordance with the order of the Hon'ble Commission which specifically prohibits changing the tariff components, this option only involves addition of a new component, which shall remain till the hardship remains.
- It serve as a long term solution as only the exact under recovery based on normative fuel cost is compensated
- The possibility of excess recovery / under recovery on account of lead / lag of CERC escalation index over the escalation of HBA prices (or an equivalent index accepted by CERC) never arises in case of option 4 and if the actual fuel expenses are lesser than the normative fuel expenses, it gets adjusted at the annual true-up.
- The marginal cost benefits of blending with lower grade coal are passed on to the procurers
- The benefit of decrease of coal prices below USD 42.13 per MT is passed on to the procurers only in this option.
- Option 4 truly captures the spirit of the order of the Hon'ble Commission i.e. compensatory tariff shall be available only till the hardship prevails and limited the extent of hardship

Accordingly the formula for gross compensatory tariff for each period is calculated as:

$$\begin{aligned} \textit{Gross Compensatory Tariff (GCT)} &= \textit{Normative Fuel Energy charges} \\ &- \textit{Tariff recovered from Fuel Energy componets of PPA} \end{aligned}$$

where,

1. $\textit{Normative Fuel Energy Charges} = \textit{Normative Fuel Consumption x HPB}^{14}\textit{ marker prices adjusted for GCV}$

2. $\textit{Normative Fuel Consumption} = \dfrac{\textit{Scheduled Energy}^{15}}{(1-\textit{Auxilliary Power Consumption})} x \dfrac{\textit{Normative Station Heat Rate}}{\textit{GCV of coal}} x \dfrac{1}{(1-\textit{Transportation losses})}$

where

- Station Heat Rate shall be 2050 kcal/kwh
- Auxiliary Power Consumption shall be 7.75%.
- Transportation losses shall be 0.80%

[14] HPB marker prices are published are published by Govt. of Indonesia for different grades of coal

[15] Scheduled Energy shall be subject to cap of Units corresponding to 80% availability.

3. $Tariff\ recovered\ from\ Fuel\ Energy\ componets\ of\ PPA = (QNEFEC\ + (QEFEC\ \ x\ CERC\ escalation\ index))\ x\ Scheduled\ Energy$

4.9. Illustrative Calculation of compensatory tariff for FY 2014

To illustrate the calculation of compensatory tariff, a sample calculation for FY 2014 is shown in this section. The major assumptions for calculations are listed below:

Assumption	Ref	Unit	Value	Remark
Contracted Capacity				
Contracted Capacity at bus bar	(1)	MW	3800	PPA
Normative Availability	(2)		80%	PPA
Units generated for sale	(3)[16]	mil units	26630	
Normative Plant operating parameters				
Normative Station Heat Rate	(4)	kcal/kWh	2050[17]	Technical consultant
Blended GCV	(5)	kcal/kg	5350	
Aux consumption	(6)		7.75%	Technical consultant
Transportation Loss of coal	(7)		0.80%[18]	CERC norm
Normative Quantity of coal consumed	(8)[19]	mil tons	11.08	
Tariff components				
Quoted NEFEC of tariff for FY 2014	(10)	USD/kWh	0.00707	PPA
Quoted EFEC	(11)	USD/kWh	0.00585	PPA
CERC Escalation index	(12)		196.41	CERC
Fuel Energy tariff component	(13)[20]	USD/kWh	0.01856	
Exchange Rate	(14)		59.7	
Coal Price				
HPB price of 5400 kcal/kg coal – July 13	(15)	USD/MT	64.38[21]	Govt. of Indonesia
HPB price of Melawan coal (5350 kcal/kg)	(16)	USD/MT	63.78	
Effective import duty of coal – FY 2007	(17)		6.33%	

[16] *No. of units is calculated as (1) * (2) * 8760/1000, where 8760 is the number of hours in a year*

[17] *As per report of technical consultant, Base Heat Rate is 2050 kcal/kWh and Allowable Heat Rate is 2183 kcal/kwh. For estimation of compensatory tariff, Base Heat Rate of 2050 kcal/kWh has been used*

[18] *As per discussion with CGPL, actual transportation loss for FY 2013 is also in line with the CERC norm.*

[19] *Normative Quantity of coal consumed is calculated as (3) / (1-(6)) * (4) / (5) * 1000 / (1-(7)) /10^6*

[20] *Fuel energy tariff component is calculated as (10)+(11)*(12)*

[21] *Govt. of Indonesia publishes the prices of different grades of coal for every month. The published price for Melawan coal (GCV of 5400 kcal/kg) for July 2013 is USD 64.38 / MT.*

For calculation purposes, it has been assumed that the July 2013 price of coal will be representative of FY 2014 and CERC escalation index for July 2013 will be representative of FY 2014.

As discussed in sec 4.8, the Gross Compensatory tariff is calculated by the following formula:

$$\textit{Gross Compensatory Tariff (GCT) per unit} = \frac{(\textit{GCV Adjusted HBA Index Price x Normative Quantity of coal imported})}{\textit{Units supplied under the PPA during the time period}} - (QNEFEC + (QEFEC \ x\ \textit{CERC escalation index}))$$

The compensatory tariff calculation for FY 2014 is shown below:

Item	Ref	Unit	Value
Units sold	(18)[22]	mil kWh	26630
Fuel charges (only FOB) as per tariff	(19)[23]	USD/kWh	0.01856
Fuel charges recovered	(20)[24]	mil USD	494.27
FOB cost of imported coal	(21)[25]	USD/ton	63.78
FOB cost of imported coal – adjusted for taxes	(22)[26]	USD/ton	67.82
Normative Quantity of coal imported	(23)[27]	mil ton	11.15
Normative Cost of coal imported	(24)[28]	mil USD	756.25
Gross Compensation	(25)[29]	mil USD	261.99
Gross Compensation	(26)[30]	mil INR	15640.53
Gross Compensation per unit	(27)[31]	INR/kWh	0.59

[22] Refer calculation (3). It is assumed that the entire power at normative 80% availability is dispatched.

[23] Refer calculation (13)

[24] Calculated as (18) * (19)

[25] Refer calculation (16)

[26] Calculated as (21) * (1 + (17))

[27] Refer calculation (8)

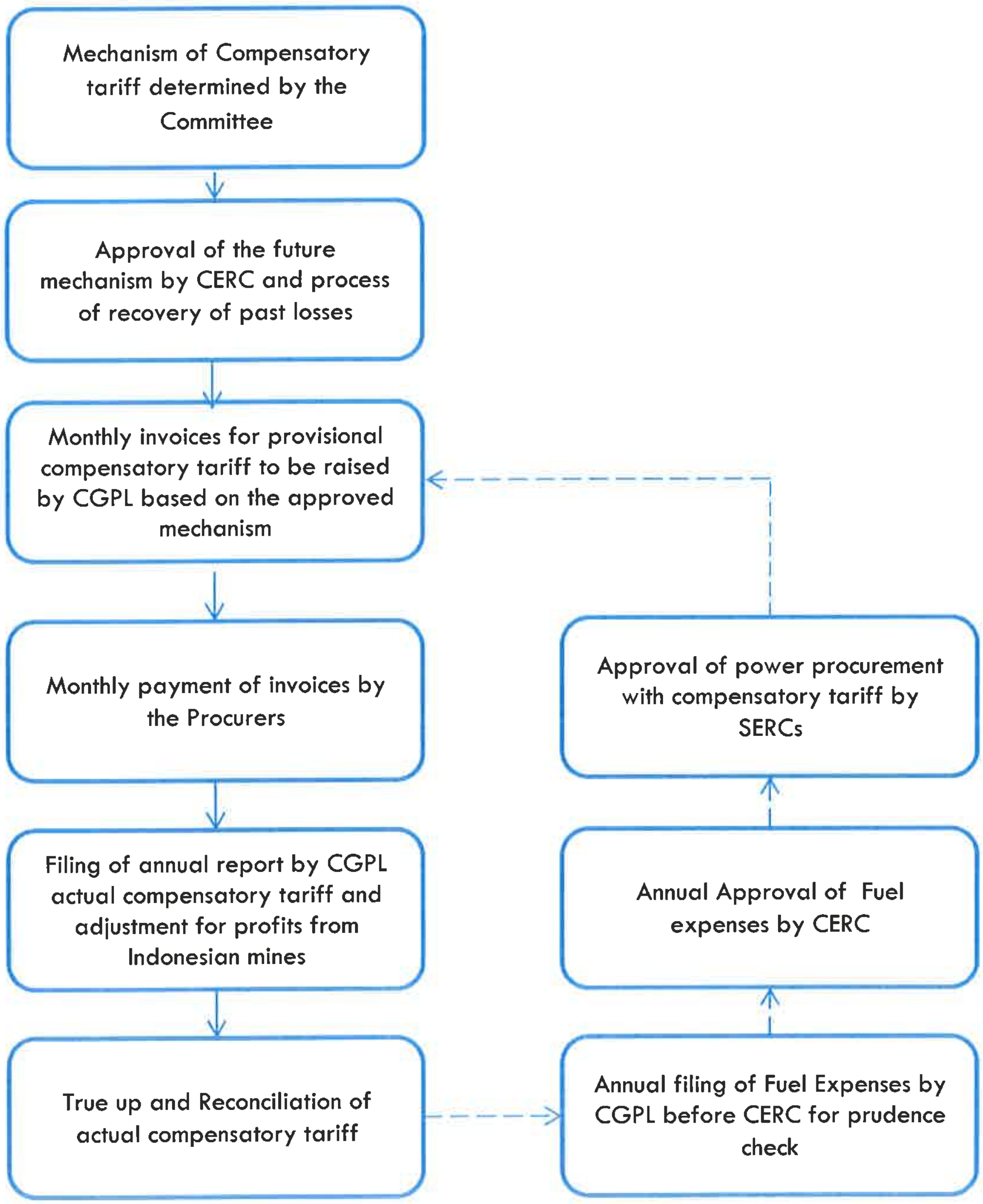
[28] Calculated as (22) * (23)

[29] Calculated as (24) – (20)

[30] Calculated as (25) * (14)

[31] Calculated as (26) / (18)

4.10. Process of Recovery of Compensatory Tariff



The process of recovery of compensatory tariff is illustrated in the flowchart above:

i. **Provisional Compensatory tariff to be charged in the monthly bill & quarterly reconciliation**

Provisional energy charges for a particular year may be calculated on the basis of the principles laid down by the Committee for calculating the compensatory tariff as described in sec 4.9. The provisional tariff may be calculated using the coal prices at the beginning of each financial year and used for monthly billing. *The developer shall submit quarterly statements of actual costs of coal within 30 days and thus reconcile each quarter, compensatory tariff vis-à-vis* *the billing already done with Provisional Energy charges and get settled the same as per payment mechanism agreed for monthly bills.*

ii. Calculation of Actual Compensatory Tariff at the end of the Particular Year

There may be certain differences in Actual energy charges and Provisional energy charges. Within 2 months from the end of a particular financial year, CGPL shall file a report with the respective Discoms providing detailed calculation of actual energy charges on the basis of principles so laid down by the Committee. The report to be submitted must contain figures duly audited and authenticated by auditors of repute.

iii. Adjustments for Profits accruing to the Promoters from the Indonesian mines

Within 2 months from the end of a particular financial year, CGPL shall file a report with the respective Discoms providing detailed calculation of net profit earned by Tata Power from the Indonesian mines corresponding to the quantity of coal supplied to CGPL on the basis of principles so laid down by the Committee. The adjustment of profits would be the summation of dividends available to TPCL in India and the profits at the Indonesia mining level (less of dividends declared). The report to be submitted must contain figures duly audited and authenticated by auditors of repute.

iv. Truing up/ Reconciliation exercise:

On the actual energy charges and adjustments of profits from the Indonesian mines being approved by the respective offtakers, the Compensatory tariff may be trued up. The trued up Compensatory tariff, once approved, will be payable by the respective party to others. Principles for actual cost determination and adjustment for other considerations and consequently true up are as follows:

	Particular	Remarks
A	Normative Coal Cost	To be computed as per formula given in sec 4.8
B	Actual Cost of Coal	Actual Coal cost incurred during the year as per audited accounts
C	Coal Cost to be recovered	Lower of (A) and (B)
D	Fuel Energy Charge Recovered from tariff	Actual Fuel Energy Charge recovered as per PPA invoices
E	Less: Profit from Indonesian coal mining operations	To be computed as per formula given in 5.1.1
F	Less: Profit from third party sale of power beyond Normative Availability	To be computed as per formula given in 5.1.2
G	Trued up cost	(G) = (C) – (D) – (E) – (F) If G>0, to be paid by procurers to CGPL Else to be paid by CGPL to procurers

The normative cost of coal may be determined using the following parameters:

Tech Assumption	Recommendation	Present CERC Norms
Station Heat Rate	2050 kcal/kWh as assessed by Tech consultant or applicable CERC norms whichever is lower	2136 kcal/kWh
Allowable variation in Heat Rate	6.5% as assessed by Tech consultant or CERC norm whichever is lower	6.5%
Aux consumption	7.75% as assessed by Technical consultant or CERC norm whichever is lower	8.5%
Coal Transit losses	Actual or CERC norm whichever is lower	0.8%
GCV of coal	Melawan grade coal of 5350 kcal/kg	-

Market Assumption	Recommendation	Remark
FOB prices of imported coal	Lower of Actual or benchmarked with HBA index or any other relevant indices	In case of change in pricing framework in Indonesia or change in source of coal to other country, relevant coal indices will be used.

v. Approval from CERC/SERC

CGPL shall file a petition with CERC every year presenting the fuel energy expenses for prudence check, under recovery expected, if any, over the tariff expected to be realised for fuel energy and compensation required over the PPA tariff. Subject to prudence check by the Hon'ble Commission and in accordance with decision of CERC, the procurers shall include such compensation package in their Aggregate Revenue Requirement (ARR) and get the requisite approvals from their respective SERCs.

The process described above is an illustrative process of recovery of compensatory tariff. Further guidance of the Hon'ble Commission is sought by the Committee on the following aspects:

- Billing mechanism of compensatory tariff
- Frequency of recovery (viz. monthly, quarterly etc.) of compensatory tariff by CGPL after due consideration to the carrying cost of both procurers and generators for recovery of compensatory package

4.11. Calculation of Fuel Energy Losses of CGPL for FY 2013

The past losses may be calculated as per audited accounts till the date of commencement of Compensatory Tariff as recommended in the Committee report. The CERC order had stated that Compensatory Tariff would be admissible for a limited period till the hardship persists and since the hardship commenced from COD of respective units, it was agreed during the Committee proceedings to quantify the past Fuel Energy losses of CGPL since the date of commissioning of Unit 1. The following table presents the calculation of losses accruing to CGPL for FY 2013[32] on the Fuel Energy component of the PPA:

Particular	Reference	Unit	Value
PPA sale (MU)	(1)	mil kWh	11565
Energy Charge recovered	(2)=(3)+(4)	INR crore	1730.25
Energy charge (Fuel) [33]	*(3)*	INR crore	*1274.54*
Energy charge (Transportation & Fuel handling)	*(4)*	INR crore	*455.71*
Energy Cost (Rs crore)[34]	(5)=(6)+(7)	INR crore	2169.46
Fuel cost (FOB)	*(6)*	INR crore	*1603.99*
Ocean Freight, Inland handling, Sec fuel	*(7)*	INR crore	*565.47*
Under recovery in fuel cost	**(8)=(6)-(3)**	**INR crore**	**329.45**
Fuel Cost recovered per unit	(9)=(3)*10/(1)	INR/kWh	1.10
Fuel cost incurred per unit	(10)=(6)*10/(1)	INR/kWh	1.39
Under recovery in Fuel charges per unit	**(11)=(8)*10/(1)**	**INR/kWh**	**0.29**[35]

As can be observed from the table above the under recovery in Fuel Energy charges is Rs 329.45 crore for FY 2013. As the CERC order does not provide clear guidance to the Committee on the recovery of past losses, the Hon'ble Commission may take an appropriate decision on the payment of compensation to CGPL for FY 2013.

[32] *Unit 1 of CGPL was commissioned in March 2012 and was operational only for 6 days in FY 2012. Hence loses for FY 2012 are not considered*

[33] *Based on PPA invoices for FY 2013*

[34] *Based on audited financial statements of CGPL for FY 2013*

[35] *Fuel under recovery for FY 2013 is lesser than the projected under recovery for FY 2014 on account of (i) use of inventory coal procured before promulgation of Indonesian coal; (ii) Lag effect of CERC escalation rates over HBA price escalation and (iii) exchange rate differences*

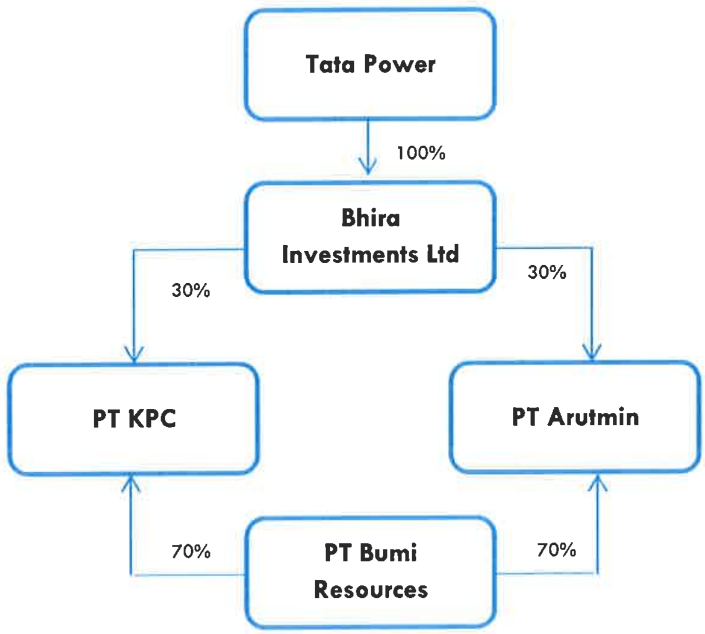
5. Other Measures

This chapter deals with the recommendations/ other issues raised by the Hon'ble Commission/ procurers for calculating/ recommending compensatory tariff. We have examined the impact of these suggestions/ recommendations on compensatory tariff and our analysis and recommendations are as follows:

5.1. Considerations suggested by CERC

5.1.1. Profits from Promoter shareholding in the Indonesian mines

Tata Power, the sponsor of CGPL has a 30% stake[36] in the Indonesian mining companies, PT Kaltim Prima coal (KPC) and PT Arutmin, from which the coal for Mundra UMPP project is sourced. Shareholding structure of the same is as follows:



The promulgation of Indonesian Regulations and the increase in coal prices, which resulted in hardship for the Mundra UMPP project, had resulted in increase in profits for the mining companies in Indonesia.

The Committee had taken guidance from sec 86 of the CERC order and the relevant text is quoted below:

> *The net profit less Govt. taxes and cess etc. earned by the petitioner's company from the coal mines in Indonesia on account of the bench mark price due to Indonesian Regulation*

[36] *30% stake in PT KPC and PT Arutmin is held by Bhira Investment Ltd, a wholly owned subsidiary of Tata Power incorporated in Mauritius*

corresponding to the quantity of the coal being supplied to the Mundra UMPP should be factored in full to pass on the same to the beneficiaries in the compensatory tariff.

The Committee after deliberations arrived at the following formula for adjustment to compensatory from Tata Power's share of profit from the Indonesian mining companies:

Adjustment to compensatory tariff = [Dividend declared from Tata Power Share of PAT from Indonesian mines x (1 –Taxes[37])] + [(Tata Power share of PAT from Indonesian mines – Dividend declared)]

where,

- ***Tata Power Share of PAT from the Indonesian mines = Net PAT Reported in Audited Financial Statements x (Revenue earned from coal sale to CGPL) / Total Revenue reported in Audited Financial Statements x Shareholding of Tata Power in the Mining companies***
- ***Taxes as on date includes all taxes post declaration of dividend at Indonesia which currently includes withholding tax in Indonesia, Mauritius and dividend tax rate in India at Tata Power Level.***

Going forward, the revenue earned by the mines from coal sale to CGPL shall be arrived at by an independent auditor appointed by offtakers. The net profit of KPC and Arutmin so calculated every year will be adjusted to the Gross Compensatory Tariff during the annual true-up operations

The Committee had appointed KPMG to analyse the revenue earned by KPC and Arutmin from coal sale to CGPL for FY 13. KPMG had conducted a due diligence on the coal sale invoices and estimated the net profit from KPC and Arutmin as below:

'000 USD

FY 2013	Reference	PT KPC	PT Arutmin
Revenue from quantity supplied to CGPL	[A]	64,782	176,243
Total Revenues	[B]	3,711,091	1,816,774
Net Profit after Tax	[C]	195,146	33,126
Net Profit after tax for quantity supplied to CGPL	[D] = [A / B * C]	3,407	3,213
Shareholding of Tata Power Ltd	[E]	30%	30%
Tata Power share of net profit after tax for quantity supplied to CGPL	**[F] = [D * E]**	**1,022**	**964**

As shown in the table above, Tata Power's share of net PAT from KPC and Arutmin for quantity of coal supplied to CGPL during FY 2013 aggregated to USD 1.986 million. These figures correspond to coal supplied to CGPL for a part load operation year of FY 2013, in which Units 2-5 were commissioned over the course of the year. During FY 2013, coal supplied to CGPL has been approx. 5.21 million MT. The impact of Tata Power's share of profit from

[37] Adjustment of taxes (withholding taxes, dividend distribution taxes) will be provided for only if the dividend is repatriated to India. As on date withholding tax rate in Indonesia is 10%, withholding tax rate in Mauritius is 0% and dividend tax rate at Tata Power level in India is 16.995%.

the Indonesian mines (corresponding to the quantity of coal supplied to CGPL) for FY 2013 on the compensatory tariff is calculated below:

Particular	Reference	Unit	Value
Tata Power share of net PAT from KPC	(1)	mil USD	1.022
Tata Power share of net PAT from Arutmin	(2)	mil USD	0.964
Total Tata Power share of Profit from KPC & Arutmin	(3)=(1)+(2)	mil USD	1.986
Exchange Rate	(4)	INR/USD	59.7
Total Tata Power share of Profit from KPC & Arutmin	(5)=(3)*(4)	Mil INR	118.564
Units supplied by CGPL to procurers in FY 2013	(6)	mil units	11565
Impact on Compensatory tariff	(7)=(5)/(6)	INR/kWh	0.01

The impact of Tata Power's share profit from the Indonesian mines on the compensatory package for FY 2013 is about 1 paise/kWh. This estimated figure of 1 paise/kWh may not be representative of future because:

- FY 2013 was a part load year, where coal consumption was approx. 5.2 mil MT as against the normative requirement of approx. 11 mil MT
- Almost 80% of the coal procured from the Indonesian mines was of Ecocoal grade (GCV 4200 kcal/kg) to support the blending trials. The profit margin for the mines on the Ecocoal grade is lesser than that of Melawan grade

The Committee had also evaluated another method of calculating Tata Power share of net profit from the mines based on the incremental profit earned by the mines due to Indonesian Regulation on the Fuel Supply Agreements with CGPL. The underlying principle of this method is that the Indonesian Regulation had resulted in incremental profits accruing to the mining companies KPC and Arutmin, by mandating these companies to sell coal to CGPL at a price higher than that contracted in the fuel supply agreements with CGPL.

The methodology of calculating the Tata Power share of net profit from the mines is explained below:

Particular	Reference
FOB selling price of the Indonesian mining company as per invoice	[A]
Contracted Price as per FSA	[B]
Incremental revenue to Indonesian mining company per ton	[C] = [A] – [B]
Less: Royalty @ 13.5%	[D] = [C * 13.5%]
Revenue net of Royalty per ton	[E] = [C] – [D]
Less: Income tax at marginal rate @ 45%	[F] = [E * 45%]
Incremental Profit to Indonesian mining company per ton	[G] = [E] – [F]
Quantity supplied to CGPL by the mining company	[H]
Net incremental PAT to Indonesian mining company	[I] = [G] * [H]
Tata Power share of net incremental PAT of mining company	**[J] = [I * 30%]**

Using the above method, KPMG had estimated the Tata share of net incremental PAT of PT KPC for FY 2013 for sale of Melawan grade coal as USD 1.053 million (as against the USD

1.022 million estimated using the earlier method of pro-rata PAT sharing). However, the incremental profit from PT Arutmin cannot be estimated by this method as CGPL was sourcing lower grade Ecocoal[38], for which there are no Fuel Supply Agreement at a discount to the market prices. In the absence of a Fuel Supply Agreement at discount to market prices, no incremental profit accrued to PT Arutmin on account of Indonesian Regulation. As this methodology had the drawback of inability to estimate the profit from grades of coal different from Melawan Coal and was not based on audited accounts, which has the benefit of being in accordance with regulatory requirements, the Committee decided to not to adopt this method.

5.1.2. Permitting Sale for availability beyond 80%

The Committee had taken guidance from the sec 86 of the CERC order and the relevant text is quoted below:

> *The possibility of sharing the revenue due to sale of power beyond the target availability of Mundra UMPP to the third parties may be explored*

As per the terms of the PPA, the entire power generation from the Mundra UMPP has to be sold to the procurers and third party sale is permitted only under the following scenarios:

- Power is not dispatched by a procurer and Right of First Refusal (ROFR) is not exercised by the other procurers. In this case any realization above energy charge bid shall be shared equally between Procurers and CGPL.
- Procurer has made a payment default and Right of First Refusal (ROFR) is not exercised by the other procurers. In this case any realization above energy charge bid shall be first used to extinguish outstanding payment of defaulting procurers and any remaining surplus shall be retained by CGPL.

The Legal consultant of the Committee in his report dated July 31, 2013 has also opined that any third party sale beyond the normative availability of 80% except in above scenarios shall require written consent from the procurers. It has also been opined by the Legal Consultant that the Procurers will have to forgo their right on this capacity. ***The Committee had analysed the impact of revenue from third party sale, if all the procurers consent for such sale.***

The Committee had sought inputs from the Technical Consultant on the maximum availability above the normative availability of 80% that can be declared by the Project on a sustainable basis, which can be used for third party sale. The Technical Consultant in his report dated July 31, 2013 has submitted that current CERC Tariff Regulations stipulates normative availability of 85%. Hence the Mundra UMPP should be able to declare maximum availability of 85% on a sustained basis. As per discussion with the CGPL, any availability beyond 85% may involve additional O&M expenditure and appropriate incentive mechanism for the generator may need to be built in for declaring higher availability.

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[38] *CGPL was performing blending trials in FY 2013 for which it had sourced lower grade Ecocoal (4200 kcal/kg) from PT Arutmin*

The extant PPA also has a provision for an incentive payment of Rs 0.25 per kWh for declaring availability beyond 85%. In case Procurers agree to waive or modify their right above the normative availability of 80%, right of CGPL to receive the incentive payment may be bilaterally discussed between CGPL and Procurers. In such a case the provision can be modified so that the right to avail contracted capacity above normative availability is relinquished by Procurer(s) and allowed to be sold to third parties, with equal sharing of excess realization over Energy Charges (including Compensatory Tariff) from such sale.

During the committee proceedings, some procurers were receptive of equal sharing of excess realisation over Energy Charges whereas a few procurers had reservations on relinquishing the right to avail the contracted capacity above normative availability at present. Considering that there is an under recovery in fixed charges without including the ROE component, explained in detail in sec 5.2.1, the Committee recommends that the third party sale of power beyond the target availability of 80% may be permitted after making appropriate modifications in the extant PPA and the profit from such sale may be shared equally between the procurers and generator. The Procurer share of profit from such third party sale shall help in reducing the compensatory tariff and the generator share of revenue shall help in reducing the hardship faced in under recovery of fixed charges discussed in sec 5.2.1. Equal sharing of profit from the third party sale of power will also incentivise the generator to declare higher availability and consequently assist procurers in reducing compensatory tariff.

The results of the analysis of equal sharing of profits of third party sale are summarised in the table below:

		Scenario 1	Scenario 2	Scenario 3	
Normative Availability	%	80%	80%	80%	As per PPA
Third party Sale*	%	5%	10%	20%	If allowed sale to third party
Third party sale Price	INR/kWh	4.00	4.00	4.00	
Energy Charges	INR/kWh	2.24	2.24	2.24	
Per Unit Surplus	INR/kWh	1.76	1.76	1.76	Sale price – Energy charges
Incentive to generator	INR/kWh	0.00	0.13	0.19	Incentive beyond 85% apportioned on entire quantum of 3rd party sale
Balance Surplus	INR/kWh	1.76	1.63	1.57	
Share of Procurers @50% of balance surplus	INR/kWh	0.88	0.82	0.79	50% share
Reduction in Gross Compensatory tariff	INR/kWh	0.055	0.1022[39]	0.1965[40]	Procurer share apportioned on 80%

[39] *In case CGPL and Procurers mutually decide to waive the generator's right to incentive payment under the PPA, the reduction in GCT is INR 0.11/kWh*

[40] *In case CGPL and Procurers mutually decide to waive the generator's right to incentive payment under the PPA, the reduction in GCT is INR 0.22/kWh*

In the analysis above, a tariff of Rs 4.00/kWh has been assumed for third party sale. The assumption is based on the results of the recent case-1 bids where tariffs quoted were in the range of Rs 4.4-7.00 per kWh for delivery at state periphery. After adjusting for transmission charges of approx. Rs 0.30 per kWh, the lowest tariff quoted will be approx. Rs 4.1 per kWh.

Further, if third party sale is consented by procurers, a condition may be stipulated that third party sale should be contracted on a transparent basis and that the average realisation for such sale shall be reasonably above that of Energy Charge under the PPA with the procurers, unless such lower rate is for a short-period within the Round-the-clock contract, making effective rate higher than PPA rate. Also in case sale of power is proposed to group company of generator, unless it is in accordance with competitive bidding guidelines, such sale shall be subject to approval of off-takers.

5.1.3. Blending with low GCV coal

Sec 86 of the CERC order gives direction to the committee to explore the possibility of blending with lower GCV coal.

> *The Committee shall keep in view while working out and recommending the compensatory tariff applicable upto a certain period, the possibility of using coal with a low GCV for generation of electricity for supply to the respondents without affecting the operational efficiency of the generating stations.*

The Committee had appointed a technical consultant to study the commercial feasibility of blending lower GCV Eco coal (4200 kcal/kg) with the Melawan coal to exploit the existing price differential between these two grades. The normative operating parameters and the additional capital expenditure required to be made at different levels of blending were established by the technical consultant. Based on these, a financial analysis was conducted to study the impact of blending on the compensatory tariff. The results of the analysis are summarized in the table below:

		Scenario 1 (100:0)	**Scenario 2 (80:20)**	**Scenario 3 (70:30)**	**Scenario 4 (30:70)**
Melawan (GCV – 5400)		100%	80%	70%	30%
Eco coal (GCV – 4200)		0%	20%	30%	70%
Blended GCV	kcal/kg	5350	5120	5005	4545
Total coal consumption	mil MT	11.15	11.81	12.16	13.75
Base SHR*	kcal/kWh	2050	2073	2084	2130
Allowable SHR*	kcal/kWh	2207	2231	2243	2315
Aux Power consumption*		7.75%	7.96%	8.07%	8.50%
Additional Capex*	mil INR	0	0	2129	13000
Blended price of coal[41]	USD/ton	63.78	59.89	57.94	50.15

[41] *For arriving at the blended price, the published prices of Melawan coal (5400 kcal/kg) adjusted for a GCV of 5350 kcal/kg and Ecocoal (4200 kcal/kg) for the month of July 2013 have been considered.*

		Scenario 1 (100:0)	Scenario 2 (80:20)	Scenario 3 (70:30)	Scenario 4 (30:70)
Gross savings in compensatory tariff (FOB)	**INR/kWh**	**0.0000**	**0.0095**	**0.0160**	**0.0516**
Increase in shipping and handling charges[42]	INR/kWh	0.0000	0.0240	0.0377	0.1052
Increase in fixed charge due to additional capex[43]	INR/kWh	0.0000	0.0000	0.0151	0.0921
Net savings in compensatory tariff	INR/kWh	**0.0000**	(0.0145)	(0.0368)	(0.1457)

** The figures for Base SHR, allowable SHR, auxiliary power consumption and additional capital expenditure have been taken from the report of the technical consultant dated July 31, 2013*

Blending with lower grade coal has the following implications:

i. Degradation in Station Heat Rate and increase in auxiliary power consumption on account of use of additional grinding mills
ii. Increase in Shipping and Port handling charges on account of increased quantity of coal consumption for the project
iii. Increase in capital expenditure on account of modification in the boiler, mills, ID and FD fans

As can be observed in the table above, there is a saving in the compensatory tariff at gross level (only considering FOB prices) with incremental blending of lower grade coal. However this saving is more than offset by the increase in shipping and handling charges and by the increase in fixed charges on account of additional capital expenditure. Hence blending of lower grade coal, although technically feasible option, does not appear to be commercially viable.

However, the blending with lower grade coal especially scenario II i.e. 80% Melawan and 20% Eco Coal may be explored in future if the cost economics becomes more favorable since same can be exploited by the Project without incurring any additional capital expenditure[44]. Any such benefits shall be passed on to the procurers

[42] CGPL has entered into long term freight contracts for 5 ships out of the total requirement of 7 ships as per which the prevailing freight rates are approx. USD 13/ton. CGPL is also contracting vessels on spot basis for the untied ships, to take advantage of prevailing low spot freight rates (approx. USD 6/ton). These spot rates are at historical lows and will not be representative of long term freight rates. For analysis of the effect of blending on long term basis, the freight rates are assumed at USD 12/ton. Inland port handling charges have been assumed as per the charges in the Port Services Agreement with MPSEZ

[43] Assuming the additional capital expenditure is funded at a debt:equity of 75:25, the fixed charge has been calculated based on CERC provisions, except that no additional O&M has been provided for.

[44] For the prevailing Melawan coal price (GCV – 5350 kcal/kg) of USD 63.78/MT and the prevailing CERC escalation index of 196.4143 for imported coal for the month of July 2013, blending would have been commercially feasible if the Ecocoal price was less than USD 42/MT. However as the prevailing Ecocoal price is USD 44.31/MT, blending is not commercially viable.

5.2. Considerations suggested by Procurers

The recommendations of the Gujarat discom vide its order GR No. APL-12-2013-280046-K and Mahadiscom vide its GR no Misc.2013/P.No.100/Urja-5 dated May 28, 2013 and other off-takers during discussion and its impact on compensatory tariff is as under:

5.2.1. Power producers may curtail their rate of return

During the Committee meetings, the Procurers stressed that the Promoters should sacrifice on the ROE component of the fixed charge of tariff. An analysis of fixed charge was conducted to estimate the maximum sacrifice on the ROE component in the fixed charges. The details of fixed charge recovery for FY 2014 are presented below:

		Total – FY 2014 (INR mil)	Per Unit – FY 2014 (INR)
Non Escalable Component – Fixed charge		23115	0.868
Escalable Component – Fixed charge – Base			0.033
CERC escalation index – July 2013			111.4207
Escalable Component – Fixed charge		979	0.037
Fixed cost recovered	(1)	24094	0.905
Fixed cost incurred			
Interest on Loans		12971	0.487
O&M Charges		3224	0.121
Depreciation		9012	0.338
Forex loss/(gain)		2256	0.085
Fixed costs incurred (w/o ROE)	(2)	27462	1.031
ROE		9349	0.351
Total Fixed cost (incl ROE)	(3)	36811	1.382
Under recovery of Fixed charges (w/o ROE)	(4)	3368	0.126
Under recovery of Fixed charges (with ROE)	(5)	12717	0.478

As can be seen from the table above, there is an existing under recovery of approx. 13p/unit in the fixed charges, even without including the ROE component. This is primarily on account of higher debt servicing expenses and adverse foreign exchange fluctuations increasing the debt service of foreign loans. With negative ROE earned by promoters for FY 2014, no sacrifice seems to be possible on the ROE component.

It can be inferred from the bid stream of the quoted escalable and non-escalable capacity charges that CGPL has quoted approx. 96% of capacity charges as non-escalable and the balance as escalable. There is very little variation[45] in the quoted non-escalable capacity charges for contract years 1-19 of the PPA period. Hence with little change in capacity charges recovery for the during this period and at present terms of debt servicing, foreign exchange rates and O&M charges escalated by CERC escalation rates the under-recovery in capacity charges is expected to persist[46]. During the contract years 20-26 the under recovery in capacity charges is expected to increase as there is a reduction in capacity charge recovery (as per the quoted tariff) without concomitant reduction in the fixed charges incurred.

5.2.2. Banks/Financial Institutions may be asked to waive the interest/reduce the rate of interest to the maximum extent possible.

The Mundra UMPP project is funded by a mix of domestic loans and foreign loans. The financing plan of the project included Rs 5850 crore of Rupee Term loans from Indian Banks and Financial institutions and USD 1726.66 million of ECA/ECB funding from foreign banks and multilateral funding agencies. The prevailing rate of interest for the senior lenders is presented below:

Lender	Amount	Interest Rate
Rupee Lenders	Rs 5850 cr	SBI BR + 280 bps
IFC & ADB (Tranche -1)	USD 700 mil	6-M LIBOR + 200 bps
KEIC-BNP	USD 326.6 mil	6-M LIBOR + 66.25 bps
KEXIM	USD 500 mil	6-M LIBOR + 200 bps
ADB (Tranche – 2)	USD 200 mil	6-M LIBOR + 185 bps

On the recommendation of the Committee a meeting of major Rupee Lenders (Banks and Financial Institution) of the project was called on 17th July 2013 to discuss and take the views of the Lenders on reduction of rate of interest and other measures to mitigate the hardship faced by the company on account of continued losses.

The Lenders appreciated the efforts made by the Committee to reduce the hardship faced by all the stakeholders. The Lenders submitted that as per the prevailing RBI regulations, interest rate can be reduced only on account of competitive considerations for such reduction to be not considered as loan restructuring. The Lenders also submitted that adopting a loan restructuring mode will have significant impact on their profitability due to provisioning requirements specified by RBI.

During the course of the meeting with the lenders, it was submitted that both the domestic and foreign lenders have presently capped the disbursement to the Mundra UMPP project to 83% of the sanctioned limits on account of the perceived unviability of the operations of the Project in the present scenario and no loan disbursements were made to the Project since July 2012.

[45] Quoted Non escalable capacity charges for contract year 1 is INR 0.872/kWh. It gradually reduces year-on-year and for contract year 19 is INR 0.819/kWh (total decrease of approx. 6% over 19 years). For contract years 20-26 it gradually decreases from INR 0.55/kWh to INR 0.516/kWh

[46] The under recovery in fixed charges will decrease gradually with the repayment of debt.

CGPL submitted that it had arranged funding from the promoters and other external sources in the intervening period to bridge this funding gap and completed the implementation of Project.

The lenders showed concern on the downgrade of ratings outlook of both CGPL and Tata Power. In such a scenario, lenders expressed their inability to reduce the interest rates from the present levels.

Period	Long term Credit Rating & Outlook CGPL
Nov 2012	CRISIL A+/negative
April 2012	CRISIL A+/stable
Prior to April 2012	CRISIL A+/positive

Period	Long term Credit Rating & Outlook of Tata Power
March 2013	ICRA AA / Negative
January 2012	ICRA AA / Stable
February 2011	ICRA AA/ Positive

The lenders submitted that the project will have a good case of interest rate reduction if the rating improves after the approval of compensatory tariff. It was then discussed that extending the tenor would also attract RBI restructuring guidelines. Restructuring requires provisioning by Banks and it will result into higher burden. It was assured by all the lenders that all the efforts would be made to consider the measures as suggested by the Procurers and the Company, including interest rate reduction.

The effective interest on the senior loans for FY 2014 approximates to Rs 1227 crore, of which Rs 671 crore is towards interest servicing of Rupee debt and the balance Rs 556 crore is towards interest servicing of foreign currency debt. The impact of reduction in interest rates of domestic lenders is given below:

Decrease in Interest Rates of Term loans (Basis points)	Quantum of Interest Saved (Rs crore)
5 bps	2.68
10 bps	5.37
25 bps	13.42
50 bps	26.84
75 bps	40.26
100 bps	53.67
150 bps	80.51
200 bps	107.34

The impact of reduction in interest rates of foreign lenders is given below:

Decrease in Interest Rates of Term loans (Basis points)	Quantum of Interest Saved (Rs crore)
5 bps	4.74
10 bps	9.48
25 bps	23.69
50 bps	47.38

During the discussion with the Lenders to the Project, minutes of the meeting attached in Sec 7.2.4, the off-takers opined that the hardship need to be shared by all the stakeholders, including Lenders. In light of the same, the Committee recommends the following:

- Lenders to the Project may explore all possible options including reduction of interest rates, moratorium on principal payment for a period of 2-3 years and elongation of loan repayment tenor to reduce the hardship faced
- Domestic lenders, with the support of the Hon'ble Commission, may approach RBI for forbearance from the ambit of restructuring guidelines for reduction of interest rate and elongation of loan tenor for the Mundra UMPP project

These will mitigate some of the challenges that developers have on the under-recovery on fixed costs as explained in 5.2.1.

5.2.3. GOI should reduce the import duty on Coal and other taxes etc.

Mundra UMPP is subject to royalty/duty on imported coal and currently it is estimated to be 6.29%. It is suggested that Procurers and CGPL may jointly continue to pursue all possible options with the concerned authorities for reduction in duties and taxes. The recommended mechanism for deriving Compensatory Tariff is comprehensive and variable in nature and if there is any reduction/removal of duty/taxes, benefits of the same will be embedded in the methodology to derive Compensatory Tariff. The Hon'ble Commission may make recommendation to the Government of India to this effect which will mitigate marginally the burden of compensatory tariff for the procurers.

5.2.4. Fixing a Ceiling for Gross Compensatory Tariff

As per the methodology recommended by the Committee, the compensatory tariff payable by the procurers is a function of coal prices, which is subject to volatility and consequently compensatory tariff shall be subject to similar variation. The need was felt to have a ceiling limit for the gross compensatory tariff determined by the present methodology.

The Committee explored various options for fixing a ceiling limit of the gross compensatory tariff and finalized on the following 4 options:

i. Based on competitiveness of power procured from CGPL against other sources of procurement
ii. Based on historical coal prices
iii. Based on tariff realized from recent case-1 bidding
iv. Based on fixed percentage increase from the compensatory tariff payable for FY 2014

Each of these options are discussed in detail in the following sections

5.2.4.1. Competitiveness of power procured from CGPL

In this option, the ceiling limit is fixed as a certain pre-determined percentile of the power procurement cost of the procurers in that particular year as per the approved power purchase plan. A summary of power purchase plan for FY 2014 of different procurers of CGPL, one representative procurer for each state[47] is given below:

Power Procurement plan	Maharashtra INR/kWh	Gujarat INR/kWh	Punjab INR/kWh	Rajasthan INR/kWh	Haryana INR/kWh
Top 10 percentile	2.04	1.87	1.19	2.18	1.65
Top 25 percentile	3.01	2.14	1.66	2.90	2.35
Top 50 percentile	3.14	2.84	2.61	3.59	3.89
Top 75 percentile	4.10	3.37	4.49	3.88	3.89
Top 90 percentile	4.50	3.99	5.33	4.76	5.23
Present CGPL tariff[48] (w/o compensation)	**2.44**				
CGPL tariff (with compensation)	**3.03**				

As can be observed from the table above, the tariff of Rs 2.44 per kWh payable to CGPL is amongst the top 25 percentile in the power procurement cost of most of the procurers. With the compensatory tariff of Rs 0.59 per kWh payable for FY 2014, as calculated in sec 4.9, the effective tariff payable to CGPL is Rs 3.03. This tariff ranks amongst the top 50 percentile in the power procurement merit order of the power procurement plan of most of the procurers.

As an illustration, the following table provides the ceiling limit of compensatory tariff at different levels of ceiling in the merit order of MSEDCL

Ceiling Limit on Merit Order	Ceiling on Effective Tariff (INR/kWh)	Ceiling on Compensation[49] (INR/kWh)
Top 50 percentile	3.14	0.70
Top 75 percentile	4.10	1.66
Top 90 percentile	4.50	2.06

5.2.4.2. Historical coal prices

In this option, the ceiling limit is fixed based on the volatility in historical coal prices. For illustration, the historical data of HPB marker price of Melawan coal (5400 kcal/kg), published by the Govt. of Indonesia on monthly intervals since January 2009, has been taken. The coal price data was sorted in the ascending order and the ceiling limit is fixed as the

[47] Power procurement plan of MSEDCL for Maharashtra, MGVCL for Gujarat, PSPCL for Punjab, JVVNL for Rajasthan and UHBVNL for Haryana approved by the respective SERC have used for analysis. As power procurement plan of MSEDCL for FY 2014 is not available yet, FY 2013 figures have been used.

[48] Effective tariff including capacity charges, fuel energy, ocean freight and inland handling charges

[49] For FY 2014 when the tariff as per extant PPA is Rs 2.44/kWh

compensation payable for a pre-determined percentile of historical coal prices. The results of the analysis are given below:

Ceiling Limit on historical coal prices	Price of Melawan coal (USD/MT)	Compensatory Tariff (INR/kWh)
Top 50 percentile	69.17	0.71
Top 75 percentile	84.24	1.10
Top 90 percentile	90.68	1.27

Thus if the ceiling of coal prices is fixed at top 75 percentile of historical coal prices, the corresponding ceiling limit on the compensatory tariff shall be Rs 1.10 per kWh. The published price of Melawan coal in July 2013 is USD 64.38 per ton and it ranks among the top 30 percentile. The compensatory tariff at this price is calculated as Rs 0.59 per kWh as discussed in sec 4.9.

5.2.4.3. Case-1 bidding

In this option, the ceiling on the compensatory tariff is fixed to such a level that the effective tariff payable to CGPL is not higher than the tariff realized from the Case-1 bids for the prevailing time period. For illustration purposes to set a ceiling on the compensatory tariff for FY 2014, the results of the recent case-1 bids of Tamil Nadu, Rajasthan and Uttar Pradesh have used. The results of the analysis are presented below:

State	Quantum (MW)	Month of Bid	L1 tariff (INR/kWh)	Tariff at bus bar[50] (INR/kWh)	Margin[51] (INR/kWh)
Tamil Nadu	1000	May 2013	4.91	4.63	2.19
Rajasthan	1000	April 2013	4.48	4.18	1.74
Uttar Pradesh	6000	Dec 2012	4.517	4.21	1.77

5.2.4.4. Fixed percentage increase from FY 2014 level

In this option, compensatory tariff payable for FY 2014 is taken as the base, and the ceiling is fixed as a certain percentage increase from the base levels.

Base Compensatory Tariff	Percentage increase allowed	Ceiling compensatory tariff
0.59	5%	0.62
0.59	10%	0.65
0.59	25%	0.74
0.59	50%	0.89

[50] *L1 tariffs are at state periphery and the same is adjusted for transmission charges using POC mechanism*

[51] *Calculated as difference of L1 tariff at bus bar and the present PPA tariff of INR 2.44/kWh payable to CGPL*

5.2.4.5. *Evaluation of options*

The committee evaluated the options listed above for fixing the compensatory tariff and opined that Option-I based on merit order is preferable:

- It ensures that power procurement cost of CGPL (post compensatory tariff) is competitive vis-à-vis other sources of power purchased by the procurers
- The ceiling limit is dynamic; each year's trigger limit is based on the approved power purchase plan

The ceiling limit based on merit order may be bilaterally negotiated between CGPL and Procurers upfront and in case no consensus is reached, the same be referred to the Hon'ble Commission for finalisation.

In the event, the procurement cost for beneficiary exceeds the merit order dispatch tariffs for periods exceeding 30 days of continuing non-dispatch, CGPL and Procurers can jointly decide the future course of action and in case of inability to arrive at solution, same can be referred to the Hon'ble Commission for approval of procurement tariff.

5.3. Additional Considerations:

5.3.1. Letter from GUVNL

Apart from these, following views/ comments were made by Gujarat Government/ GUVNL vide letter no. MD/ 28 dated May 20, 2013 subsequent to the Committee meeting held on May 11, 2013. Reply to the same has been received from CGPL vide their letter dated May 27, 2013. In the said letter, GUVNL has suggested the following 3 options to be considered by the Committee in the matter of determination of compensatory tariff in addition to the points already discussed above

First option:

The Committee should strongly recommend to the Ministry of Coal through Ministry of Power to immediately allocate coal blocks/ mines of adequate reserves with a tapering linkage for 3-4 years, pending long term allocation of mines or coal linkage. The generators may arrange for washing the coal to meet the design parameters of their plants.

The Committee appreciates the suggestion made by the procurer. However, due to the current policy framework where coal blocks are not allocated through a Govt dispensation route to private player, it may be difficult to have allocation of coal blocks/ mines/ tapering linkage to the developer.

Further it is suggested that subject to technical and legal feasiblity, procurers and developer jointly may continue to pursue all possible options with the concerned authorities for coal allocation. In future, positive outcome may result due to efforts made by procurers and developers. The methodology to derive Compensatory Tariff is comprehensive and variable in nature and it will include the benefits for procurers.

Second Option:

a. *Compensatory Tariff should be taken after considering sacrifices by different stakeholders viz. power producer in curtailing rate of return, Banks/FIs in reducing/waiving interest rates and GOI reducing import duties and other taxes on coal and Adani Port reducing port handing charges*

   The same has been considered/ discussed above.

b. *The investment in Coal mining companies should be transferred to power project companies and all returns of coal mining business should be adjusted in tariff.*

   The Committee has appointed M/s KPMG as an independent Auditor for assessment of sharing of profit net of taxes, royalty ,cess from Company's Indonesian operations accrued to the Indian investing Companies, to be adjusted against Compensatory tariff.

   As advised by KPMG, the mechanism has been recommended in sec 5.1.1 of the report to share actual profit from coal mining operation in Indonesia in proportion to the quantity consumed for energy supply under PPA duly adjusted with applicable tax structure.

c. *The Compensatory tariff arrived at should be considered as cap and in order to discover competitive tariff afresh with full transparency and should allow for substitution of the extant generators with any other eligible party, quoting the lowest tariff and to take over the assets of the company i.e. similar to following Swiss Challenge methodology.*
   Inviting fresh bids through competitive bidding and substitution of the extant generators may be a long drawn process. Moreover, results of the recent bids as discussed in the preceding chapters indicate that generation cost of other companies may be higher in comparison to that of CGPL.

d. *In case the competitive bidding does not materialize, then at the end of PPA term of 25 years, the generator shall pay back compensatory tariff alongwith carrying cost or transfer the project to the procurers without any residual value in good condition. During the 25 years, generator should bear the responsibility of sourcing affordable imported coal within the permissible price caps from various coal exporting countries.*

   In the full pass through of variable cost mechanism option suggested, the pay back of compensatory tariff is built in the formula. Transfer of residual assets at the end of PPA tenure without any residual value or paying back the compensatory tariff by the Generators may not be technically feasible or commercially viable solution in the long run.

Third Option

The Procurers may supply coal to the generators for the contracted capacity based on OEM guaranteed SHR. The Procurers shall pay only the O&M cost to the Generators as per the CERC norms and service the debt component after reduction in the rate of interest by financial institutions.

This suggestion will leave no incentive for any developer to continue to operate the power project in efficient manner as no return on investment is proposed to be allowed. In such a situation, cost of generation might increase due to inefficient operations. Besides, it will be against the principles laid down in the tariff policy of allowing reasonable returns.

5.3.2. Feedback from Procurers on Draft Report Compensatory Tariff

5.3.2.1. *Letter from GUVNL*

GUVNL vide letter no. GUVNL/COM/GM(Com)/42 dated July 29, 2013 had given comments/views of Govt. of Gujarat and GUVNL on the draft report on Compensatory Tariff to CGPL. A copy of the report is attached in Annexure 7.10. The responses of the Committee to the comments in the aforesaid letter are given below:

Sl No.	GUVNL Comment	Committee's Response
1	Procurer's contention on regulatory power of CERC not mentioned in sec 1.3	It has been appropriately addressed in sec 1.3.3 of the Final Report
2	Typographical error in sec 3 i	It has been corrected
3	Burden on account of subsequent change in operating parameters should not be passed to procurers	It has been discussed in sec 4.2
4	Correction of formula in sec 4.8	It has been corrected
5	Transit losses of Coal	The CERC norm for coal transit losses is 0.8%. CGPL has confirmed that the transit losses for FY 2013 are also in line with the CERC norm. Hence 0.8% has been assumed in the calculations
6	(a) Provisional tariff to remain the ceiling during true-up	It has been discussed in sec 4.10
	(b) True up should be only with reference to FOB	True up is based on actual fuel energy expenses on FOB basis
	(c) Compensatory tariff should be only from prospective date	Past losses of CGPL have been calculated in sec 4.11. Decision on recovery and compensation of past losses shall be taken by the Hon'ble Commission
7	Entire profit on quantum of coal supplied to CGPL from the Indonesian mines needs to be passed on and not limited to only 30% shareholding of Tata Power	As CERC order specifically mentions that net profit after taxes and duties earned by Tata Power corresponding to quantity of coal supplied to Mundra UMPP, it was advised in the committee meeting held on July 30, 2013 that the profit limited to Tata Power shareholding of 30% only will be used for adjustments to the Gross Compensatory Tariff.
8	Incentive for availability beyond 85% and Floor price of third party sale	It has been discussed in sec 5.1.2
9	Price at which blending with lower grade becomes beneficial	It has been discussed in sec 5.1.3 in footnote 44
10	Sacrifices from Banks and Financial institutions	It has been discussed in sec 5.2.2

Sl No.	GUVNL Comment	Committee's Response
11	Ceiling on compensatory tariff	The recommendations of committee on ceiling compensatory tariff are present in sec 5.2.4.5. The committee did not recommend fixing the ceiling based on a certain percentage variation from the present levels because the prevailing international coal prices are hovering near the bottom 25 percentile and this method will not adequately address the volatility in the coal prices.
12	Other Hardships of CGPL	The report merely presents the other hardships faced by CGPL and no compensation is recommended for the same.
13	GUVNL's right to make submission before CERC	It has been discussed in sec 6
14	Options suggested by GUVNL vide letter dated 20.05.2013	It has been discussed in sec 5.3.1

5.3.2.2. *Letter from MSEDCL*

MSEDCL vide letter no. MD-MSEDCL/CEPP/21644 dated August 1, 2013 had given its comments/views on the draft report on Compensatory Tariff to CGPL. A copy of the report is attached in Annexure 7.10. The responses of the Committee to the comments in the aforesaid letter are given below:

Sl No.	MSEDCL Comment	Committee's Response
1	Technical Parameters	The Technical Consultant has commented on the technical parameters in his report dated July 31, 2013
2	Discount in coal prices	The analysis on discount of coal prices at the time of bidding has been captured in sec 4.3 and in sec 7.8
3.a.	Revenue from higher generation	The Committee acknowledges the right of procurers under the PPA for availing the power beyond normative availability of 80% and the same has been presented in sec 5.1.2. However, during the committee proceedings, subject to additional availability being committed by CGPL, the other procurers were amenable to equal sharing of revenue from third party sale. The detailed calculation and rationale for equal sharing of profits from third party sale are also presented in sec 5.1.2
3.b.	Return on Equity	Analysis on ROE is presented in sec 5.2.1
3.c.	Discount on interest	It has been discussed in sec 5.2.2
4	Tariff determination under Sec 62 or Sec 63	It has been discussed in sec 4.10
5	Billing Mechanism	It has been discussed in sec 4.10

5.3.3. Other Hardships faced by CGPL

- CGPL has represented in its petition to CERC that the RFP documents proposed for CDM benefits for the Project and accordingly it had envisaged CDM benefits of approx. Rs 200 crore per annum, while arriving at the quoted capacity charge components. As per the Company due to no fault of theirs, the UNFCCC did not register the Mundra UMPP while they registered other supercritical projects having similar background.
- For FY 2014, the projected fixed charge requirement with ROE being excluded is expected to be Rs 1.03 /kWh, whereas the expected fixed charge recovery is Rs 0.90 / kWh. This under recovery in fixed charges is substantially on account of significant variation in the foreign exchange.
- Further based on analysis, assumptions of which are given in Annexure VIII, CGPL is expected to have under recovery of 71 paise per unit on total fuel cost i.e. including fuel FOB cost, ocean freight and fuel handling charges.
- A clean energy cess of Rs 50 per MT has been levied by the Govt of India for import of coal since 2010, which has further increased the hardship on fuel expenses
- These hardships, along with the hardship caused by Indonesian Regulation, escalation of coal prices and under recovery in fixed charges have resulted in deteriorating financials of CGPL which is discussed in the following section.

5.3.4. Financial position of CGPL

CGPL started commercial operations in March 2012 after commissioning its first unit of 800 MW and the balance four units were commissioned in FY 2012-13. A summary of the P&L and operational parameters of CGPL are as under:

(Rs. Cr.)

FY ending March 31,	**2012**	**2013**	**Q1 FY14**
Net Sales	8.05	2795.52	1359.40
Other income	2.07	15.69	10.82
Total	10.12	2811.21	1370.22
Fuel Cost	17.03	2169.46	1098.82
Employee Benefit Expense	1.21	25.44	14.98
Admin and others	305.38	281.83	295.28
Total	323.62	2476.73	1409.08
PBDIT	(313.50)	334.48	(38.86)
Depreciation & Amortisation	26.02	470.03	196.38
PBIT	(339.52)	(135.55)	(235.24)
Finance Costs	41.02	616.45	313.60
Profit before Exceptional items and Tax	(380.54)	(752.00)	(548.54)
Exceptional items-Impairment Losses	1800.00	850.00	
PBT	(2180.54)	(1602.00)	(548.54)
Total Taxes	0	0	

FY ending March 31,	2012	2013	Q1 FY14
PAT	**(2180.54)**	**(1601.00)**	**(548.54)**
Cash Loss	**(354.52)**	**(280.99)**	**(352.46)**
Equity	4112.08	5103.61	5167.61
Accumulated Losses	(2207.91)	(3809.91)	(4358.77)
Net Worth	1904.17	1293.70	808.84
PBT Margin	NA	NA	NA
PAT Margin	NA	NA	NA
Interest Coverage Ratio	NA	NA	NA

- As can be observed from the table the financials of CGPL are deteriorating primarily on account of various reasons, substantially on account of increased fuel expenses. For FY 2013, CGPL had incurred an loss of Rs 720 crore; of which Rs 281 crore pertains to losses under capacity charges, Rs 329 crore under fuel energy charge and Rs 110 crore under freight and inland handling charges. CGPL has already incurred cash loss of Rs 350 crore in Q1 of FY 2014
- CGPL has already made impairment provisions on its assets to the tune of 2650 crore over the last 2 years
- The net worth is being eroded continuously on account of unviable operations of CGPL. More than 80% of the net worth has already been eroded

6. Recommendations

The scope of the Committee is limited to evaluate and evolve a mechanism to mitigate the hardship on account of unprecedented increase in coal price and change in Indonesian Regulation. Considering the guidance provided under the CERC order and acknowledging that the procurers' right to make submissions before the Hon'ble Commission/ any other legal forum, the Committee recommends the following:

A. The provisional compensatory tariff for each period may be calculated using the following formula

$$Gross\ Compensatory\ Tariff\ (GCT) = Normative\ Fuel\ Energy\ charges - Tariff\ recovered\ from\ Fuel\ Energy\ componets\ of\ PPA$$

where,

1. $Normative\ Fuel\ Energy\ Charges = Normative\ Fuel\ Consumption\ x\ Published\ HPB\ marker\ prices\ adjusted\ for\ GCV$

2. $Normative\ Fuel\ Consumption = \frac{Scheduled\ Energy}{(1-Auxilliary\ Power\ Consumption)}\ x\ \frac{Station\ Heat\ Rate}{GCV\ of\ coal}\ x\ \frac{1}{(1-Transportation\ losses)}$

3. $Tariff\ recovered\ from\ Fuel\ Energy\ components\ of\ PPA = (QNEFEC + (QEFEC\ \ x\ CERC\ escalation\ index))\ x\ Scheduled\ Energy$

4. *Station Heat Rate, Auxiliary Power consumption shall be based on the normative parameters set by the technical consultant for the corresponding GCV of coal and Coal Transportation losses shall be based on the lesser of actual losses or CERC norm*

B. True-up of provisional compensatory tariff shall be done at the end of each financial year based on audited financial statements in a time bound manner with adjustments for:
   - Actual/Normative Fuel Energy expenses
   - Tata Power's share of profit/dividend from the Indonesian mining companies proportionate to the coal supplied to the UMPP. TPCL's share of profits/dividends shall be the summation of the dividends available to TPCL in India and the profits at the Indonesia mining level (reduced to the extent of dividends declared)

C. The ceiling limit of the compensatory tariff may be fixed (after consultation between the generator and procurers or as approved by CERC) as a pre-determined percentile of the power procurement cost of the procurers in that particular year as per the approved power purchase plan

D. Third party sale of power beyond the target availability of 80% may be permitted after making appropriate modifications in the extant PPA and the profit from such sale may be shared equally between the procurers and generator.

E. Blending of lower GCV coal is currently not commercially beneficial at prevailing prices of lower GCV coal as the savings in fuel energy charges are more than offset by the increase in coal transportation and coal handling charges and increase in capacity charges
F. Procurers and Generator may jointly continue to pursue all possible options with the concerned authorities for reduction in duties and taxes.
G. Lenders to the Project may explore all possible options including reduction of interest rates, extending moratorium on principal payment for a period of 2-3 years and elongation of loan repayment tenor to reduce the hardship faced
H. Domestic Banks, with the support of the Hon'ble Commission, may approach RBI for forbearance from the ambit of restructuring guidelines for reduction of interest rate and elongation of loan tenor for the Mundra UMPP project. The Committee strongly recommends special dispensation from RBI for sustainable viability of the Mundra UMPP.

The committee also recommends the following to be decided by the Hon'ble Commission

A. Methodology for compensation to CGPL for the period starting from COD of the Unit 1 till the date of implementation of Compensatory Tariff as per the final order on the compensatory tariff.
B. Billing mechanism of compensatory tariff
C. Frequency of recovery (viz. monthly, quarterly etc.) of compensatory tariff by CGPL after due consideration to the carrying cost of both generator and the procurers for recovery of compensatory package

7. Annexures

7.1. Annexure-I: Chronology of events for Mundra UMPP

Date	Activities / Milestones
February 2006	CGPL incorporated as a wholly owned subsidiary of PFC
March 2006	RFQ issued by CGPL
November 2006	RFP issued to 11 qualified bidders (including Tata Power)
December 2006	6 bidders responded to RFP; Tata Power declared successful bidder quoting lowest levelized tariff of Rs 2.26367 per kWh
March 2007	Coal Supply Agreement (CSA) executed between Tata Power and Indocoal, for supply of 5.85 ± 20% MMTPA to Mundra UMPP
April 2007	Tata Power acquired CGPL, PPA executed with procurers of 5 states
September 2007	CERC adopted tariff of Mundra UMPP discovered by competitive bidding
April 2008	Financial closure achieved
July 2008	Supplemental PPA executed, CGPL advanced SCOD
October 2008	Another CSA executed between Tata Power and Indocoal for supply of 3.51 ± 20%. CSA subsequently reassigned to CGPL in March 2011
September 2010	**New Indonesian Coal Pricing Regulation notified**
February 2011	Unit # 1 ready for Synchronisation testing
August 2011	CGPL informed GUVNL(Lead procurer) and Ministry of Power, GoI about change in Indonesian Coal policy / regulations
September 2011	CGPL organized Procurers' meeting to inform them about the challenges of procuring coal for the Project on account of the new Indonesian Regulations. One more Procurers' meeting organised for the same in November 2011.
December 2011	Tata Power made representations to various agencies (Planning Commission, MOP, CEA, Joint Monitoring Committee, Govt of Gujarat, Govt of Maharashtra) about Indonesian coal policy and unprecedented rise in cost of coal
February 2012	Issue of change in price of coal due to Indonesian Regulations discussed in 11th meeting of JMC. Procurers sought details on coal from CGPL CGPL approached Indonesian Govt. to exempt its CSA from the purview of the new Indonesian coal pricing regulations, without success.
March 2012	Declared Commercial Operation of Unit # 1
May 2012	Amendment to existing CSAs, w.r.t Indonesian Coal Price Regulation
July 2012	Commercial Operation of Unit # 2; CGPL approaches CERC (Petition No: 159/MP/2012)
October 2012	Commercial Operation of Unit # 3
January 2013	Commercial Operation of Unit # 4
March 2013	Commercial Operation of Unit # 5
April 2013	**CERC order issued for CGPL Petition (Petition No: 159/MP/2012) directing CGPL & procurers to constitute a committee to suggest a package for compensatory tariff**

7.2. Annexure-II: Minutes of Meeting

7.2.1. Minutes of First Meeting on May 11, 2013

Composition of the committee: The Committee was chaired by Mr. Deepak Parekh, who welcomed all the invitees and thanked them for attending the meeting. The composition of the committee was thereafter formalised amongst the members and Principal Secretary, EPD (Govt. of Gujarat) was requested to join the committee as a member. It was agreed that SBI Capital Markets Ltd. (SBICAP) will be acting as the Financial Analyst for this committee. Representatives of Govt. of Haryana/ Haryana utility had invited Prof. Devi Singh, Director, IIM-Lucknow to attend this meeting. All the members agreed that he may be co-opted as a member of this committee. He will be providing necessary guidance to the Financial Analyst.

Presentation by the Company: After the finalization of the composition of the committee, Mr. Anil Sardana, Chairman, Coastal Gujarat Power Ltd. (CGPL) and his team made a detailed presentation to the committee outlining all the issues and concerns of the PPAs with all the Procurers. Some of the important points raised by CGPL in their presentation are summarised as follows:

a. Quoted levelized tariff for the Mundra UMPP is Rs. 2.265/kWh of which escalable capacity charge is Rs. 0.831/kWh and non-escalable capacity charge is Rs. 0.052/kWh. Capacity charge was quoted lower than those derived from CERC norms due to efficiencies in equipment procurement, financing structure and plant operations.
b. Out of the balance i.e. fuel/energy tariff, 45% of the quoted fuel tariff was escalable and 55% was non-escalable.
c. Total coal requirement for the plant (at around 84% PLF) is around 11 million MTPA. Considering the non-escalable portion of fuel cost, the Company tied up substantial part of its coal requirement through fixed price contracts with low escalation and good discounts.
d. Due to significant increase in international coal prices and on account of change in the Indonesian Regulations, the cost of imported coal used as fuel by the Company has increased substantially.
e. CGPL is facing very high under-recovery in energy charges under the aforesaid PPAs due to this increased cost of imported coal.
f. CGPL also submitted that it is also not able to recover actual capacity cost at the quoted capacity charges under the aforesaid PPAs due to impact of Foreign Exchange variation on completed project cost and servicing of loans as well as non-receipt of CDM benefits, which was considered as income stream during bid submission.
g. Pending resolution of coal issues and establishment of viability of the project, domestic as well as foreign Lenders have expressed their inability to disburse the loan beyond 83% of their commitment. The promoters have provided support for the completion of the project.

Key Issues discussed:

a. After the presentation, the committee felt that a benchmarking study needs to be conducted for fuel cost (by neutralising the transportation cost) of projects across the country with similar fuel source. The information related to this will be provided by the Procurer states.

b. Govt. of Haryana represented that the claim of compensatory tariff should not include FERV and increase in capital cost.

c. A view was expressed, as also suggested by the Govt. of Gujarat, that all the stakeholders should participate in implementing the solution proposed by the Hon'ble Commission. The solution needs to include adjustment of profits made by developer from its captive coal mines in Indonesia.

d. Based on the discussions held, it was decided that a reputed accounting agency will be appointed as independent auditor from one of the big four auditing firms operating in India for accounting due diligence of the company holding equity stakes in Indonesian coal mines.

e. M/s Deloitte is the internal auditor for the Company. With the view of the members, it was decided to appoint M/s KPMG for this due diligence. This appointment will be facilitated by SBICAP and the fees for the same will be reimbursed by the procurers.

f. On the point regarding change in interest rate charged by various lenders, members of the committee opined that the report of the committee may mention that reduction in interest rate, from the current levels, by lenders may help in implementation of the solution proposed by the Hon'ble Commission.

g. The Financial Analysts would also carry out a separate sensitivity analysis in order to determine the impact of interest rate reduction on the tariff and the Company may negotiate with its lenders on a bilateral basis.

h. Financial Analyst will also evaluate the scenario if the coal cost is made a pass through in the PPA.

i. The Financial Analyst agreed to appoint a dedicated team for this assignment and start working on the financial due diligence along with the office of the Chair at the earliest and give the roadmap in the next committee meeting.

j. It was decided that SBICAP will also be carrying out the secretarial responsibilities of this committee.

k. Given the complexity of the situation and in light of the fact that the solution will impact many stakeholders, some members expressed that there should be high level representation from the Ministry of Power, Govt. Of India in this committee. It was decided that a communication will be sent to the Hon'ble Commission by the chair in this regard.

The meeting concluded with the vote of thanks by the chair and it was decided that next course of action will be conveyed to all the members shortly.

7.2.2. Minutes of Second Meeting on June 26, 2013

Presentation by SBICAP: The Committee was chaired by Mr. Deepak Parekh, who welcomed all the invitees and briefed them on agenda of the meeting. With kind permission from the Chairman, SBICAP made a presentation outlining the recap of the last meeting, progress made so far and way forward. It was mentioned in the meeting that Finance Sub-Group consisting of Chairman, Prof. Devi Singh and SBICAP has been carrying out the basic groundwork to achieve the Committee objectives. Major points covered during the presentation by SBICAP are as follows:

A. <u>CERC Order</u> – Apart from determining the Compensatory Tariff, the Committee has been asked to explore further issues to reduce the burden faced by Procurers due to hike in tariff. Some of them are specifically mentioned in the order like -

1. The net Profit less Govt. taxes and cess etc. earned by the Petitioner's company from the coal mines in Indonesia on account of the bench mark price due to Indonesian Regulation corresponding to the quantity of the coal being supplied to the plant should be factored to pass on the same in full.
2. Possibility of sharing the revenue due to sale of power beyond the target availability to third parties may be explored.
3. Possibility of using coal with low GCV for generation of electricity without affecting the operational efficiency.

The Order further states that the Committee is also at liberty to suggest any further measure which could be practicable and commercially sensible to address the situation.

B. <u>Appointment of Consultants</u> – In the first meeting, it was decided to appoint M/s KPMG as Independent Auditor to carry out accounting due diligence of Indonesian entities to bring clarity on point A-1 mentioned above. It was concurred in the meeting that only the profit corresponding to quantity of coal being supplied to power projects of APL and CGPL from the mines and resulting from coal price increase due to Indonesian regulation should be available for sharing. However, it was debated if the profit shared should be at Indonesia level or at repatriated level in India after appropriating taxes at different levels on notional basis. For the time being, KPMG has been asked to provide figures for both the scenarios.

Finance Sub-Group has appointed two more experts – Mr. C.P. Singh (Former Director, BHEL) as technical consultant and Mr. A.G. Karkhanis (Former ED - Law, IDBI) as legal consultant. They will provide assistance to the Finance Sub-Group on various issues including point A-2 and A-3 mentioned above. The members were informed about these appointments vide letter dated 24th May, 2013. All these consultants have started their work and they are expected to submit their reports in some time.

C. <u>Other issues raised by Procurers</u> – Gujarat and Haryana have suggested some more options through various communications to share the burden of tariff hike among all the stakeholders. All such issues were discussed in the meeting –

1. With regard to sharing the earnings from sale of power beyond normative availability for the capacity contracted under the PPAs, it was reaffirmed in the meeting that the Procurers have right over such power generation under the PPA. To facilitate such sale,

permission from Procurers will be required. However, it was decided to explore this option as mentioned in point A-2.

2. Procurers have suggested that all the stakeholders, including lenders, developers and government should also sacrifice/contribute to reduce the cost of generation.
3. The Committee also discussed other issues such as requesting governments for waiver of duties, exploring the possibility of domestic coal linkage, increase in capacity charge due to 'Change in Law' factors, impact on foreign exchange fluctuation on capacity charge, reduction of interest rate on loans as well as reduction in return made by promoters. Finance Sub-Group submitted that these issues are not directly related to CERC order. However, the members agreed that these points can be covered in the report as the Committee is also at liberty to suggest any further measure which could be practicable and commercially sensible.

SBICAP ended the presentation with the discussion on the way forward. Finance Sub-Group will study the reports submitted by the independent consultants and prepare a compensatory package. This package will be discussed with the members before finalizing the report.

Presentation by KPMG: M/s KPMG was then invited by the Chairman to give presentation on process flow and timelines proposed. KPMG presented the scope of work and their understanding of the situation. Members were satisfied with the scope of work given to KPMG. It was also mentioned that most of the information has been received by KPMG and their report may be available by the end of the first week of July.

Further points discussed: Apart from the presentation made by SBICAP and KPMG, some additional points were also raised by other members and discussed in the meeting.

- The Committee discussed the coal supply mechanism approved by Cabinet Committee of Economic Affairs (CCEA) on 21st June 2013. To meet the shortfall in coal supply with respect to domestic linkage, import of coal has been allowed. Higher cost of coal will be considered for pass-through as per the modalities suggested by CERC. Ministry of Coal will be issuing suitable orders supplementing the New Coal Distribution Policy. Ministry of Power will issue appropriate advisory to enable appropriate commissions to decide pass-through of higher cost of imported coal. The Committee noted that the above decision of CCEA reinforces the Hon'ble Commission's order for granting compensatory tariff.
- CGPL mentioned that they had assumed revenue from Certified Emission Reduction (CER) while bidding but they could not get registration under Clean Development Mechanism (CDM).
- CGPL submitted that sharp depreciation in Rupee has resulted in significant increase in their capital cost and debt servicing liability. Recent movements in currency have made the situation worse.
- Members acknowledged the problems faced by CGPL. Most of them were of the view that sacrifice/contribution would be required from all the stakeholders to reach an acceptable solution. All these losses incurred by CGPL may be considered as their sacrifice in the entire scheme of things. At the same time, it was also agreed that the project should be viable for the promoters also for sustainability. It was also suggested

to carry out an analysis of stress situation due to adverse foreign exchange regime and increased capital cost.

- CERC order has given liberty to the Committee to suggest any further measure which could be practicable and commercially sensible to address the situation. Maharashtra proposed the idea that the additional concerns raised by various parties may be covered in the report based on the same.
- Haryana suggested that different formulae can be derived to capture the understanding of the situation and then the Committee can deliberate for arriving at a decision to adopt the appropriate package for submission to the Hon'ble Commission. One of the formulae could be computing fuel cost on cost plus basis and the difference in actual fuel cost and quoted energy tariff may be considered as gross Compensatory Tariff.

At the end, the minutes of the last meeting were adopted with due permission from all the members. It was then proposed by the Chairman that a communication may be sent to CERC for extension of timeline for submission of report as there have been delays on account of formation of Committee and appointment of various consultants. The meeting concluded with the vote of thanks by the chair.

7.2.3. Minutes of Third Meeting on July 11, 2013

The Committee was chaired by Mr. Deepak Parekh, who welcomed all the invitees and briefed them on agenda of the meeting as also informed that indicative workings have been done to arrive at compensatory tariff based on various points discussed in the last meeting held on 26th June 2013. The representative of MSEDCL raised a query whether SBICAP, being an arranger for the project loans of CGPL, had a conflict of interest by being a member of the Committee. It was clarified that the role of SBICAP as the arranger of project loans of CGPL ended with the execution of loan documents in 2008. It was further clarified the term loan exposure has been taken by SBI and SBICAP presently has no existing relationship with CGPL. Considering the same, it was decided that SBICAP had no conflict of interest by being part of the Committee.

Then Chairman requested SBICAP to make the presentation outlining the recap of the last meeting, broad workings of Compensatory Tariff and way forward. Major points covered during the presentation by SBICAP are as follows:

A. Finalisation of Report of Consultants – As an Independent Auditor, M/s KPMG has carried out accounting due diligence of Indonesian entities to arrive at net Profit less Govt. taxes and cess etc. corresponding to the quantity of the coal being supplied to the plant. It has also determined the actual amount that may be repatriated against some dividend declared at Indonesian level. KMPG has submitted its draft report. Further, Mr. C.P. Singh (Former Director, BHEL) appointed as technical consultant and Mr. A.G. Karkhanis (Former ED - Law, IDBI) appointed as legal consultant; both have prepared their draft report on various technical and legal issues.

B. Hardship/Financial Stress – It was mentioned that the hardship on fuel cost to be proposed for recovery has been worked out in two parts - i) Past losses with respect to coal on actual basis from commencement of respective PPA up to cut-off date of 31st March 2013; and ii) Projected losses from 1st April 2013 onwards based on coal price assumptions/plant parameters, etc. Based on the audited financials submitted by CGPL, past losses for FY 2013 due to under-recovery of fuel energy charges (on FOB basis) vis-à-vis quoted fuel energy components (FOB cost, excluding ocean freight and inland port handling charges) on actual basis was about Rs 329.45 cr.

C. Compensatory Tariff – The financial analyst has evaluated two scenarios; (i) based on the difference in bid reference price and current HBA indexed price; and (ii) the difference in adjusted quoted fuel energy charge (with escalation adjusted corresponding to actual increase in coal prices) and actual/projected landed cost of coal arrived at based on current market conditions (i.e. "Fuel Price Adjustment"). The financial analyst also presented the pros and cons of both the methods. It was discussed that later scenario would not only ensure that any advantage of reduction in coal prices will be passed on to Procurers, but it will also be sustainable mechanism on long term basis. It was decided that while calculating the under recovery all the operating parameters like SHR/Auxiliary Consumption/losses should be considered on better of actual basis or normative parameters estimated by the technical consultant, capped by CERC norms so that any operational inefficiencies are not compensated.

D. Burden Sharing – The Hon'ble Commission in its order had suggested three more ways of sharing the burden of high fuel costs. Profit sharing from Indonesian entities has already been studied by KPMG. It was suggested that the PAT of the Indonesian mining companies adjusted for Tata Power's shareholding in the mines, CGPL's coal consumption and intervening tax leakages (if dividend from Indonesia is repatriated to India) shall be used for burden sharing. On possibility of sharing revenue due to sale of power beyond the target availability to the third parties/ merchant sales, it was highlighted that the same would need procurers' consent. The impact of revenue generated from third party sale on the compensatory tariff was presented by the financial analyst. With respect to usage of low GCV coal for generation of electricity to reduce the fuel cost, technical consultant has provided the opinion. These blending arrangements would result only in marginal commercial gain due to design constraints of boiler deterioration of operation parameters while using lower grade coal and also on account of incurring incremental capital expenditure to allow blending of lower grade coal beyond the worst case design coal of boiler.

E. Other Issues / Discussions

   i. During the presentation, the financial analyst also presented the estimates of under recovery in capacity charges for FY 2014 (first year of operation for full capacity) and fuel energy charge. CGPL highlighted that for FY 2013, actual under recovery in energy component i.e. (including ocean freight and inland port handling) is Rs 439.21 cr out of which under recovery on account of fuel energy charges is Rs 329.45 cr.

   ii. MSEDCL requested the financial analyst to do a comparative study of assumptions and workings of under recovery of fuel energy charges APL and CGPL.

   iii. With regards to reduction in interest rate by the lenders, it was presented that the company may seek rate reduction if the credit rating improves after a favourable compensatory package. It was decided by the Committee to seek opinion of major lenders on exploring the possibility of reduction in interest rates. In view of the same, it was decided to call upon meeting with selected major lenders of the projects on 17th July 2013.

The meeting concluded with the vote of thanks by the chair.

7.2.4. Minutes of Meeting with Lenders of CGPL on July 17, 2013

The Committee was chaired by Mr. Deepak Parekh, who welcomed all the invitees/major domestic lenders of CGPL and briefed them on scope of the committee as also agenda of the meeting. During the initial brief, Chairman mentioned that apart from determining the Compensatory Tariff, few of the Procurers have suggested that all the stakeholders, including lenders, developers and government should sacrifice/contribute in all possible way to reduce the burden due to hike in tariff and explore possibilities like – reduction in interest rates, reduction in duties, reduction in equity returns apart from profit sharing from Indonesian mines and sale of power beyond normative availability. It was discussed that power sector as a whole is currently marred by various issues like non-availability of domestic coal, deteriorating financial health of Discoms, sudden depreciation in forex rates, etc. and Government has initiated slew of initiatives like Discoms restructuring, pass-through of imported coal cost on account of non-availability of domestic coal. It was also reiterated that both APL and CGPL are facing the hardship due to increase in coal cost as also from various other reasons like increase in project cost, rupee depreciation, non-availability of CER and are already into stress with little or no ROE and would continue to bleed if the amicable solution is not arrived at. It was also felt that if the situation is dragged further, all will suffer and even power deficit country would be starved for power from operational plants of APL/CGPL. After that, Chairman requested all the invitees to express their views on the above:

A. CGPL's/APL's request to Lenders –

1. CGPL informed that Rupee Term Loans (RTL) of about Rs. 6000 crore and Foreign Currency Loan of around USD 1.7 billion is outstanding as of date and their principle repayment has already commenced. Due to the hardship as mentioned above, CGPL is facing stressed situation. It was also mentioned that losses of about Rs. 400 crore are accumulating on a quarterly basis. CGPL requested all the lenders to provide some relief so that the project is viable in long term.
2. CGPL submitted that the Compensatory tariff by way of increase in variable component would enable them to cut down on their losses. Any reduction in interest rate or elongation of loan tenor would improve the overall viability of both the projects. CGPL also mentioned that currently the interest servicing is regular and repayments are also made on time.

B. Procurers' views – Gujarat mentioned that it is imperative for all to have access to supply of reliable and quality power and hence lenders should extend their support to reduce the burden on Discoms. It was also mentioned that Discoms are already facing problems and they face lot of problems in passing on the burden to the consumers. Haryana also expressed that all the stakeholders including lenders should sacrifice so as to reduce the burden faced by Procurers. Maharashtra then pronounced the request for reduction in interest rate as also need to protect the consumer interest. Punjab also continued to mention that lenders need to support the project in order to keep up with plant operations.

C. Lenders' view – On hearing both Petitioner's/Respondent's views, request was made to all the lenders present to express their view on the possibility of reduction in rate of interest.

1. The representative of SBI (lead Bank for CGPL) appreciated the efforts made by the Committee to reduce the hardship faced by CGPL. He explained that the interest rate

can be brought down only due to competitive considerations else it is treated as restructuring of loans by RBI. The projects will have a good case of interest rate reduction if the rating improves after the approval of compensatory tariff. It was then discussed that extending the tenor would also attract RBI restructuring guidelines. Restructuring requires provisioning by Banks and it will result into higher burden. SBI also expressed that the current applicable interest rates are very competitive as both the groups are well placed in the market.

2. Canara Bank concurred with views expressed by SBI and mentioned that reduction in interest could be possible on improved rating due to compensatory package. It also expressed that the long term viability of the projects should be assessed.
3. HUDCO also mentioned that sympathetic view may be taken by the Committee for the hardship faced by CGPL, however on reduction in interest they will examine the same. Possibility of rate reduction can also be considered on improvement in rating.
4. PNB, Vijaya Bank and UCO Bank expressed that current applicable rates are competitive and it is difficult to reduce the same at the moment. However if rating improves, this request may be dealt positively at the time of reset.
5. It was also suggested by SBICAP that RBI could be approached for considering forbearance/special dispensation on account of reduction in interest and extension tenor and hence to avoid restructuring of account.
6. It was assured by all the lenders that all the efforts would be made to consider the measures as suggested by the Procurer's as also Petitioners.

It was then deliberated among all the Committee members that lenders' support is required for the project in order to keep up with plant operations and debt service in future. In this view, it was requested to all the lenders to provide some relief to these projects. It was also highlighted that both the projects are operational (there is no construction risk), have long tail of PPA of 25 years and extension of existing loan tenor up to 15-20 years could be considered which is as also prevalent practice internationally. It was also discussed that in case of extension of tenor of loan, RBI could be requested to consider special dispensation in both the cases so as to avoid additional provisioning requirement due to restructuring of accounts. The chairman agreed that the similar recommendations may be made in the report to be submitted to the Hon'ble Commission. Based on these recommendations, the banks may approach RBI to provide special dispensation to these projects.

It was then requested that all the Discoms could conclude their views on the calculations part in consultation with their respective senior management by next week. It was decided that next meeting could be called on 29th/30th July 2013 to conclude all the issues before submission of the final report to the Hon'ble Commission. The meeting concluded with the vote of thanks by the chair.

7.2.5. Record Note of Fourth Meeting on July 30, 2013

The Committee was chaired by Mr. Deepak Parekh, who welcomed all the invitees and briefed them on agenda of the meeting. The Chairman also informed that draft report has been circulated along with illustrative workings to arrive at compensatory tariff based on discussions held in earlier meetings. Then the Chairman summarized the issues discussed in the earlier meeting of APL which were applicable to CGPL.

A. Past losses – The petition filed by CGPL to CERC dated July 2012 did not explicitly mention recovery of past losses. The Legal consultant opined that the hardship of CGPL as mentioned in the petition commenced from the date of commissioning of the plant as the Indonesian Regulations had come in effect before the commissioning of the first unit of Mundra UMPP. In light of the same, it was decided the Committee shall quantify the past losses of CGPL in the final report and let the CERC to decide on the compensation for the past losses.

B. Compensatory Tariff Mechanism – It was discussed that the difference between actual fuel energy cost based on normative parameters and quoted fuel energy components of the tariff will be the recommended mechanism for "Compensatory Tariff". Provisional compensatory tariff would be determined for FY 2014 based on the mechanism recommended by Committee and monthly invoice would be raised by CGPL. At the end of the year, based on audited accounts, CGPL would file the report for true-up/reconciliation of actual compensatory tariff and for adjustment for profits from the Indonesian mines.

C. Recap of Lenders' Meeting held on 17th July 2013 – Procurers have been advising to ask lenders of the project to provide some relief to the project. This relief/comfort would help in reducing the under recovery in capacity charge and improve the project viability. Considering this, a meeting was arranged with all the major lenders of both the projects. While the request was made to lenders on possibility of reduction in interest rate, they suggested that the interest rate can be brought down only due to competitive considerations else it is treated as restructuring of loans by RBI. Further it was mentioned by Lenders that projects will have a good case of interest rate reduction if the rating improves after the approval of compensatory tariff. It was also discussed that in case of extension of tenor of loan, RBI could be requested to consider special dispensation so as to avoid additional provisioning requirement due to restructuring of accounts. The Chairman agreed that the similar recommendations may be made in the report to be submitted to CERC. Based on these recommendations, the banks may approach RBI to provide special dispensation to these projects.

D. Discussion with Procurers – Discussion were held by SBICAP with Procurers to explain the illustrative workings of compensatory tariff and various scenario analysis as per their requirement. Procurers have also conveyed their comments for consideration of the Committee.

In addition to the issues mentioned above, the following issues were raised by the Procurers were also discussed:

1. **Billing Mechanism and Recovery Period:** The procurers suggested that the billing mechanism and the frequency of recovery of the compensatory tariff may be decided by the CERC. The procurers also submitted that while determining the frequency of recovery of compensatory tariff, the carrying cost of procurers (on account of delay in recovery of the same from its end consumers) may also be factored in so that no additional burden is on the discom.
2. **Design Parameters:** The procurers submitted that the technical consultant needs to certify that the technical parameters considered for calculating the compensatory tariff are optimal in terms of cost of generation.
3. **Beneficiaries of Indonesian Regulation:** The procurers submitted that KPMG needs to estimate the quantum of benefit accruing to different parties including Tata Power on account of Indonesian Regulation which resulted in the erosion of discount of approx. USD 12/MT to the then prevailing market prices assumed while bidding.
4. **Gross Compensation Package:** The procurers submitted that the gross compensation recommended by the Committee in the report should not be more than the quantum mentioned in the petition of CGPL. CGPL submitted that the exchange rate assumed in the petition (as on July 2012) is lower than that of the rate assumed in draft report. Additionally SBICAP also clarified that the base figure for comparison while arriving at the annual losses is different in the petition and the draft report. The petition of CGPL used the coal price assumed in the bid escalated by actual escalation of HBA prices as the base, while in the draft report the actual tariff recovery on fuel energy components had been as the base for comparison
5. **Availability beyond 80%:** As a part of the promoter sacrifice in the compensation package, a few procurers suggested that CGPL should commit some additional capacity available to the procurers on a sustained basis beyond the normative availability of 80%. The procurers also suggested that that the incentive payable to CGPL will for such higher availability shall be governed by the terms of the extant PPA. CGPL explained that committing a higher availability on a sustained basis entails additional O&M expenditure and an appropriate incentive mechanism for the generator may need to be built in for declaring higher availability. The procurers requested that the technical consultant may cover as a part of his report the quantum of additional availability that may be declared by CGPL within the contractual parameters of the PPA.
6. **Third party Sale:** There was no consensus amongst the procurers on allowing third party sale of power beyond the normative availability of 80%. Some procurers had reservations on relinquishing the right to avail the contracted capacity above normative availability (as provided in the current PPA) at present, while a few procurers were receptive to the suggestion of allowing third party sale and equal sharing of excess realisation over Energy Charges.
7. **ROE:** Considering the negative returns to the Promoter from the Mundra UMPP at present, the representative from MSEDCL requested the financial analysts to analyse whether the Returns to the promoter are back-loaded such that present losses are

offset by future profits. It was further suggested the measures to mitigate the under recovery in fixed charges may also be presented in the report.

8. **Review by CERC:** The representative from MSEDCL suggested that with the introduction of compensatory tariff mechanism, the tariff determination of fuel energy charges of CGPL has in effect migrated from Sec 63 of the Electricity Act, 2003 (tariff determination through transparent process of bidding) to Sec 62 (tariff determination through Appropriate Commission). He further submitted that the compensatory tariff mechanism needs to be determined by the CERC every year and the additional expenditure on account of compensatory tariff shall be part of the ARR of the procurers which will be approved by the SERC. The Chairman and the financial analysts suggested that the CERC may review the existing mechanism annually and suggest changes instead of determining the compensation package afresh every year, as this will save time. The procurers also submitted that the compensatory tariff mechanism should also include suitable safeguards for the procurers if the power from the Mundra UMPP becomes expensive in future.

9. **Reduction in Customs Duty:** The representative from GUVNL submitted that as a part of sacrifice from the GOI, the Committee may recommend for reduction in customs duty as the same will reduce the burden of compensatory tariff on the procurers.

10. **Profit from Indonesian Mines:** The representative from GUVNL suggested that the entire profit on quantum of coal supplied to CGPL from the Indonesian mines needs to be passed on and not limited to only 30% shareholding of Tata Power. CGPL submitted that the CERC order specifically mentioned that net profit after taxes and duties earned by Tata Power corresponding to quantity of coal supplied to Mundra UMPP need to be adjusted. As the CERC order mentioned only sharing of profits limited to the extent earned by Tata Power from the mines, it was decided that the net profit limited to Tata Power shareholding of 30% only will be used for adjustments to the Gross Compensatory Tariff.

The chair permitted to adopt the minutes of last two meetings (26th June and 11th July) which have already been circulated.

All the procurers mentioned that their formal approval on Compensatory Tariff mechanism may be obtained only after the CERC order is issued after the submission of report. It was then decided that Committee would submit its final report to CERC after incorporating feedback/suggestions from the members. The meeting concluded with the vote of thanks by the chair.

7.3. Annexure-III: Explanation for difference in Auxiliary Consumption

CGPL had considered steam driven BFP while bidding due to which they had taken the following assumptions as stated in their petition.

Assumption	Value	Remark
Gross Capacity	4000 MW	Configuration of 5x800 MW
Auxiliary Power Consumption	4.75%	190 MW
Net contracted Capacity	3800 MW	

Post bidding and once the detailed design and engineering was finalised, it was decided to use MDBFP (Motor Driven Boiler Feed Pump) instead of SDBFP (Steam Driven Boiler Feed Pump). However in order to maintain the same net contracted capacity, CGPL adopted the following configuration:

Assumption	Value	Remark
Gross Capacity	4150 MW	Configuration of 5x830 MW
Auxiliary Power Consumption	8.43%	350 MW
Net contracted Capacity	3800 MW	

The cost of generation using lower CV coal seem to be lower (without considering additional capex requirements) as compared to using design coal with respective efficiency parameters for steam driven BFPs despite higher auxiliary power required for the MDBFP. Also it is seen that proposed norms are competitive than the CERC norms.

Particulars	Bid Design	Proposed	CERC Norms
CV of Coal(Kcal/Kg)	5700	5350	5700
SHR(Kcal/Kwh)	1992	2050	2136
APC(%)	4.75	7.75	8.50
FOB cost USD/t	73.85[52]	63.78	73.85
Cost(USD/Kwh)	0.0271	0.0265	0.0302
Exchange Rate	59.7	59.7	59.7
Cost(Rs/Kwh)	1.62	1.58	1.81

The choice of technology is evaluated based on overall competitiveness. CERC also provides both options to the developers and norms are stipulated for options of motor driven BFP and steam driven BFPs.

[52] The boiler of Mundra UMPP has been designed for a coal with sulphur content less than 1%. Hence the HPB marker price for coal of 5700 kcal/kg is selected as the average of prices of Pinang 5700 and Arutmin A5700, which comes to USD 70.85/MT for July 2013. However these prices are the base prices set by the Indonesian Govt and being higher grade coal, they command a minimum premium of USD 3/MT over the base prices. Hence price of USD 73.85/MT has been assumed as the price of coal of GCV 5700 kcal/kg

7.4. Annexure-IV: Explanation of options for Compensatory Tariff

Option I

The Indonesian Regulations and the increase in coal prices had impacted both the non-escalable and escalable fuel energy components, this option explored a one-time adjustment to these components so as the hardship caused to CGPL is mitigated. Following are the broad principles

- Composite fuel energy charges are re-estimated using normative operating parameters and without any discount to the then prevailing market prices, as the discount factored in the components have been eroded by the Indonesian Regulations
- The original quoted bid stream of CGPL had 55% non-escalable component and 45% escalable component. The revised composite fuel energy charge is also split in the same ratio as Non-escalable ($QNEFEC_{revised}$) and Escalable ($QEFEC_{revised}$) components of Fuel energy tariff.
- QNEFEC and QEFEC Tariff components of the existing PPA are revised as below
    - QNEFEC of the tariff schedule will be $QNEFEC_{revised}$ for all the contract years
    - QEFEC will be the $QEFEC_{revised}$ as calculated above
- Revised Fuel energy charges for each period = QNEFECrevised + QEFECrevised x CERC escalation index
- Accordingly the changes to QNEFEC and QEFEC for the contract year 1 are estimated as:
    - $QNEFEC_{\Delta} = QNEFEC_{revised} - QNEFEC_{Year\ 1}$
    - $QEFEC_{\Delta} = QEFEC_{revised} - QEFEC_{base}$
- Effective compensatory tariff for CGPL is:

  $QNEFEC_{\Delta} + QEFEC_{\Delta}$ x CERC escalation index

Option II

The compensatory tariff derived by option I only address the impact of discount assumed compared to market price available at the time of bid. However it does not addresses the other issue of of Indonesian Regulations namely the need for alignment of coal price assumed under non-escalable portion to actual market price in on-going basis. Hence option 2 was devised, as a modified form of option I:

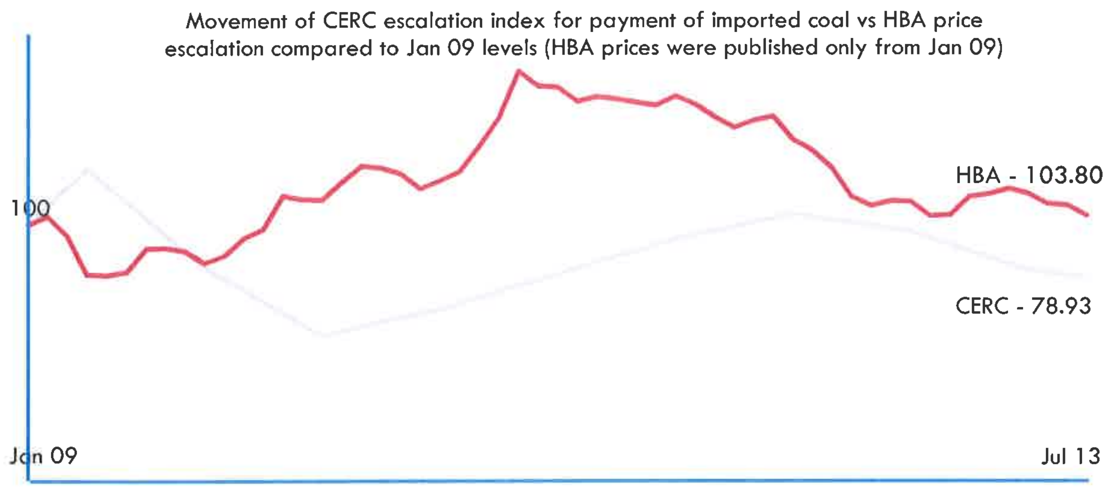
- Composite fuel energy charges are re-estimated using normative operating parameters and without any discount to the then prevailing market prices
- Load the entire fuel energy energy charge in the escalable component (QEFECrevised) and non-escalable component (QNEFECrevised) shall be made zero. Hence the ratio of 55:45 between non-escalable to escalable components has been altered to 0:100.
- QNEFEC and QEFEC Tariff components of the existing PPA are revised as below
    - QNEFEC of the tariff schedule will be the zero for all the contract years
    - QEFEC will be the $QEFEC_{revised}$
- Revised Fuel energy charges for each period = QEFECrevised x CERC escalation index
- Change in QNEFEC for each year and QEFEC is estimated as
    - $QNEFEC_{\Delta} = QNEFEC_{revised} - QNEFEC_{Year\ n} = - QNEFEC_{Year\ n}$
    - $QEFEC_{\Delta} = QEFEC_{revised} - QEFEC_{base}$

- Effective compensatory tariff for CGPL is:

$$QNEFEC_{\Delta} + QEFEC_{\Delta} \times \text{CERC escalation index}$$

Option III

The compensatory tariff derived by Option II compensates the hardship caused by change in Indonesian Law and the coal price escalation, provided the CERC escalation index tracks the escalation in HBA prices exactly. However an analysis of the indices of CERC and HBA indicate of a time lag in transmission of changes in HBA coal price to CERC escalation index. It is evident from the graph below:



Source: Website of CERC (www.cercind.gov.in) for CERC escaltion indices; Website of Directorate of Mineral, Coal and Geothermal, Ministry of Energy and Mineral Resources, Republic of Indonesia, (http://www.djmbp.esdm.go.id) for HBA prices

Two observations arise from the analysis of the graph:

- The quantum of change in both the indices is not the same. This is on account of difference in the composition of the two indices.
  - HBA is a composite index of Indonesian and Australian coal indices; 25% weightage to Argus Indonesian coal index, 25% weightage to Platts Kalimantan 5900 index; 25% weightage to Barlow Jonker Index and 25% to Newcastle GlobalCOAL index.
  - CERC escalation index is a composite index giving 50% weightage to escalation to API4 (South African coal index), 25% weightage to escalation to Barlow Jonker Index and 25% weightage to GlobalCOAL
  - Though coal prices of Australia, South Africa and Indonesia move in tandem overall, there will be fluctuations on account of differences in the inherent quality of coal from these countries.
  - The Hon'ble Commission has acknowledged this fact and vide public notice dated June 18, 2013 have proposed modification of weightage to 50% to Indonesian coal – Platts Indo Coal Index, 25% weightage to South African Coal –API4 index and 25% weightage to Australian Coal. The Hon'ble Commission has also

acknowledged that Indonesia remains the largest source of imported coal (77.93% in FY 2013) to India.

- There is a lag between change of HBA prices and change in CERC escalation index for payment of imported coal. This is primarily on account of frequency of publishing of indices. While HBA index published on monthly basis, the CERC escalation indices are published once in 6 months.

Option III for calculating compensatory tariff is modified form of option 2 with the only change that the actual escalation in HBA prices used in place of CERC escalation index. Accordingly, the effective compensatory tariff for CGPL is

$$QNEFEC_{\Delta} + QEFEC_{\Delta} \times \text{Escalation in HBA prices}$$

Option IV

The Options I-III as discussed above involved effecting a one-time change in tariff components and/or escalation indices to mitigate the hardship caused to CGPL. Changing the tariff components could have extensive legal implications and may not be in line with CERC Order. Hence another option, Option IV was devised to calculate the compensatory tariff. The principles used in calculating the compensatory tariff are as below:

- Using the normative operational parameters determined by the technical consultant for the Mundra UMPP, the normative fuel consumption of the plant is calculated.
- Based on the normative fuel consumption and the then prevailing coal prices, the normative fuel energy expenses are estimated
- Fuel charges recovered from the PPA are calculated as per the existing PPA
- The under recovery of fuel energy charges is calculated from the normative fuel energy expenses and fuel charges recovered from PPA
- Effective compensatory tariff for CGPL is the under recovery of fuel energy charges per unit
- Under recovery calculated on monthly basis are estimated based on normative fuel consumption and an annual true up of under recovery will be conducted at the end of FY based on audited financial statements.
- At the end of the financial year, actual fuel expenses are calculated based on the audited financial accounts. Any savings in fuel expenses compared to normative fuel expenses shall be appropriately adjusted in the annual true-up of under recovery

7.5. Annexure-V: Recent results of Case I bids and tariff

Bid type	State	Bidder	MW	Fuel Type	Levelised Tariff	Period
Medium Term	Tamil Nadu	JPL	200	Captive Coal block	4.91	1st Mar 2012 - 30th Sept 2017
		AEL	200	Blended	4.99	
		OPG	70	Imported	5.99	
Medium Term	Bihar	AEL	200	Blended Coal	4.41	1st Mar 2012 - 30th Sept 2017
		Sterlite	100	Domestic Coal	4.95	
		JPL	200	Captive Coal Block	5.16	
Medium Term	Kerala	PTC India- Balco	100	Domestic Coal	4.506	Mar'14- Mar'17
		NVVN	300	Domestic Coal	4.526	
		Jindal Power Ltd.	300	Captive Coal Block	4.543	
		Tata Power Trading	70	Domestic Coal	4.61	
		KSK Mahanadi Power Company Ltd.	200	Domestic Coal	5	
		KSK Wardha Power	120	Domestic Coal	5.356	
		Global Energy Pvt. Ltd.	25	Domestic Coal	5.892	
		Coastal Energen	150	Imported	6.041	
		JSW Power Trading	100	Imported	6.477	
		JSW Power Trading	200	Imported	6.815	
Long Term	AP	GMR	200	Domestic Coal	4.62	1st Oct 2012 - 31st Dec 2019
		Abhijeet	50	Domestic Coal	4,974	
		Balco	100	Domestic Coal	5.175	
Long Term	UP	NSL-Odisha	300	Domestic Coal	4.48	25 years
		PTC (TRN/ACB)	390	Domestic Coal	4.886	25 years
		Lanco Babandh	423.9	Domestic Coal	5.074	25 years
		RKM Powergen	350	Domestic Coal	5.088	25 years
		KSK Chhatisgarh	1000	Domestic Coal	5.443	25 years
		PTC Moserbaer	361	Domestic Coal	5.73	25 years
		Navyug-Krishnapatnam	800	Imported Coal	5.843	25 years
		Indiabulls-Nasik	1200	Domestic Coal	5.97	25 years
		PTC-DB Chhattisgarh	203	Domestic Coal	5.97	25 years
		Jindal	300	Captive Coal Block	6.115	25 years
		Indiabulls-Amravati	600	Domestic Coal	6.3	25 years
		Lanco-Amarkantak	1072.5	Domestic Coal	6.303	25 years
		NCC	200	Blended Coal	6.425	25 years
		Lanco-Vidharbha	454.2	Domestic Coal	6.643	25 years
		PTC (East Coast)	300	Blended	6.819	25 years
		PTC (DB Power MP)	302	Domestic Coal	7.101	25 years
Long	Raj	LBPL	100	Domestic Coal	4.943	25 years

Bid type	State	Bidder	MW	Fuel Type	Levelised Tariff	Period
term		Athena Chhattisgarh Power Ltd	200	Domestic Coal	5.143	25 years
		SKS Power Generation Chhattisgarh Ltd	100	Domestic Coal	5.3	25 years
		LVTPL	100	Domestic Coal	5.49	25 years
		Anuppur Thermal Power Project	200	Domestic Coal	5.517	25 years
		KSK Mahanadi Power Project (Chhattisgarh)	475	Domestic Coal	5.572	25 years
		Jindal Power Limited	300	Captive Coal Block	6.038	25 years
		LAPL	100	Domestic Coal	7.11	25 years

7.6. Annexure VI – Indonesian Regulations

As a part of the Indonesian Government's efforts to stop transfer pricing abuses which have resulted in the loss of production royalties in recent years, government of Indonesia issued Regulation No.17 of 2010 entitled "Procedures to Determine the Benchmark Price for Mineral and Coal Sales". The Regulation provides that mineral and coal producers are obliged to sell minerals and coal based on a regulated benchmark price, whether for domestic or export sales. Determination of benchmark price Regulation provides that the benchmark price for minerals and coal will be determined by the Director General of Minerals and Coal (DGMC).

Determination of Benchmark Price:

The benchmark Coal price is expected to provide optimum price and help government in calculating potential State Revenue. The new regulations will also allow the Indonesian government to get the right amount of royalty and the taxable revenues from the sector will also move up to the correct levels. It will also stop the practice of transfer pricing.

Different methods will be used to determine the benchmark price for different commodities. For coal, the DGMC will determine separate benchmark prices for metallurgical coal, thermal coal and low rank coal monthly. No formal definition of low rank coal exists, however in the past; MEMR has referred to low rank coal as any coal with gross calorific value(on Air Dry Basis) of less than 5100 kcal/kg. The benchmark price for thermal coal will use a formula that refers to the average coal prices based on local and international market indices. As a system government will determine Coal Price Reference (Harga Batubara Acuan or HBA) by averaging the calorie value of coal in four coal price indexes, namely:

- Newcastle Export Coal Index (formerly known as the Barlow-Jonker index),
- Global Coal Newscastle Index,
- Platts Kalimantan
- Argus-Indonesia Coal Index (ICI)

The first two indices represent international price and the last two indexes represent local coal prices. Each coal category has a weight of 25%. The coal category will divided based on coal quality, which is set at 6,322 kcal/kg (ARB i.e. As Received Basis), moisture content at 8% (ARB), sulphur content of 0.8% (ARB), and ash content at 15% (ARB).

After determining the Coal Price Reference (HBA), the benchmark coal price (HPB) is then determined. There will be 8 benchmark prices category, representing the quality of the coal, starting from 4,200 up to 7,000 kcal/kg.

For that price of coal other than 8 classes of HPB, prices are determined by interpolation approaches or determining HPB based on a certain formula.

Following is the chart of prices and an indication of trend of coal price index (HBA) for last 5 years:

Source: Declared by the Directorate of Mineral, Coal and Geothermal, Ministry of Energy and Mineral Resources, Republic of Indonesia, Coal Spot.com

It can be seen from above that the price level have come down from peak price of USD 123/ton in 2011 to around USD 82/ ton now.

Following is the table describing benchmark pricing for basic coal brands in Indonesia taking HBA into consideration:

Coal Band (Basic Coal band)	**GCV (GAR)**	**Total Moisture (GAR)**	**Total Sulphur**	**Ash**	**May-13 (USD/ ton)**	**June-13 (USD/ ton)**
Gunung Bayan I	7,000	10	1	15	91.13	91.13
Prima Coal	6,700	12	0.6	5	91.30	90.83
Pinang 6150	6,200	14.5	0.6	5.5	82.37	81.95
Indominco IM East	5,700	17.5	1.6	4.8	69.75	69.38
Melawan Coal	5,400	22.5	0.4	5	67.00	66.67
EnviroCoal	5,000	26	0.1	1.2	62.60	62.31
Jorong J-1	4,400	32	0.3	4.2	50.44	50.20
Eco Coal	4,200	35	0.2	3.9	45.98	45.76

Source: Declared by the Directorate of Mineral, Coal and Geothermal, Ministry of Energy and Mineral Resources, Republic of Indonesia, Coal Spot.com

Determination of Sale price

The benchmark price is set on the basis of the price paid for Coal at the point of Sale by way of FOB Vessel. Sales of coal can be made in the following manner:

- Free on Board (FOB) mother vessel or
- FOB barge basis.

- Sales can also be made to end users domestically or in the form of Cost Insurance Freight (CIF) or
- Cost and Freight (C&F)

For coal, sales are contemplated in the form of FOB mother vessel, FOB barge, within an island to an end user or on a CIF or CF basis. In calculating the sales price, holders of Production Operation IUPs for coal to be sold on FOB mother vessel must refer to the benchmark price. Again, for non-FOB mother vessel sales (including FOB barge sales), certain costs may be added or subtracted as approved by the DGMC.

Under the new sales price regime for coal, the production royalty for FOB mother vessel sales will effectively also be imposed on barge transportation and trans-shipment costs (as well as survey and insurance costs), which are not able to be subtracted from the selling price.

For sales in the barge, the reference price is reduced by barging and transshipment costs from barge to vessel. Government has recently issued a regulation (644.K/30/DJB/2013 dated 21 March 2013) to regulate or determine coal prices on FOB barge.

Government also fixed the freight for barging, surveyor, insurance and etc. to determine FOB barge price. Transshipment cost US$ 4.00/MT + Surveyor cost US$ 0.25/MT + Insurance 0.80% per shipment + Barging cost (for < 270 footer - (US$ 0.0221 X barging distance) + US$ 3.7406, for 270 - 330 footer - (US$ 0.0184 X barging distance) + US$ 3.1172 and > 330 footer - (US$ 0.0154 X barging distance) + US$ 2.6002.

The coal price reference is been established to fulfill the requirement of mining law 04/2009 and ministerial decree No.17/2010. In addition to that, it is aims to increase government revenue from royalties from coal producers.

Benchmark Price for calculation of royalties:

For coal sales made on FOB mother vessel basis, the Government will take the higher of the contractually-agreed price or the benchmark price for purpose of royalty calculation

For non-FOB mother vessel sales such as coal sales by way of FOB barge, the production royalties will be calculated using:

- the contracted sales price, if the contracted sales price is higher than the benchmark price, after adding or subtracting the adjustment amount (adjusted benchmark price); or
- the adjusted benchmark price, if the sales price is the same as or lower than the adjusted benchmark price.

Exemptions from benchmark price:

- Coal of certain types (including fine coal, reject coal and coal with certain impurities) for domestic use may be sold below the coal benchmark price, upon approval of the Government (DGMC).

- Coal to be used for certain purposes in the domestic market may be sold below the coal benchmark price, upon approval of the Govt.

The Govt will issue further regulations on the purposes that will be exempted. Regulation indicates that coal used for individual needs or for the development of underdeveloped or poorly developed regions will be exempted from the benchmark pricing requirements.

Impact on existing coal contracts:

All existing supply contracts (both Spot and term Contracts) with Indonesian mining firms will have to be brought in line with this new benchmark regulations by 22nd September 2011.

- Spot sale contracts must be adjusted by no later than six months after the effective date of Regulation No. 17 (that is, by 22 March 2011).
- Term sales contracts must be adjusted by no later than 12 months after the effective date of Regulation No. 17 (that is, by 22 September 2011).

7.7. Annexure VII - Major Assumptions

Input	Unit	Value
Melawan coal mix		100%
Eco coal mix		0%
Blended GCV	kcal/kg	5350
Base Station Heat Rate	kcal/kWh	2050
Aux consumption		7.75%
Transportation Loss of coal		0.80%
Contracted capacity	MW	3800
Normative Availability		80%
PLF		80%
Coal FOB cost		
HPB price of 5350 kcal/kg - July 2013[53]	USD/ton	63.78
HBP price of Eco coal (4200 kcal/kg) - July 2013	USD/ton	44.31
HBP price adjusted for blended GCV	USD/ton	63.78
Ocean Freight		
Transportation charges for FY 2014	USD/ton	12.00
Port Handling charges		
Fixed charges (1926 Million till 12 MMTPA)[54]	INR/ton	173.23
Variable charges	INR/ton	208.00
Transit and Handling Losses		0.25%
Transaction cost		3.00%
Taxes and Duties on imported coal		6.33%
Exchange Rate	INR/USD	59.7
Tariff for 3rd party sale	INR/kWh	4.00
Energy charges for FY 2014	INR/kWh	2.24
Tariff realised in excess of energy charges	INR/kWh	1.76
Percentage sharing with procurer		50%

[53] Derived from published price of USD 64.38 for a GCV 5400 kcal/kg

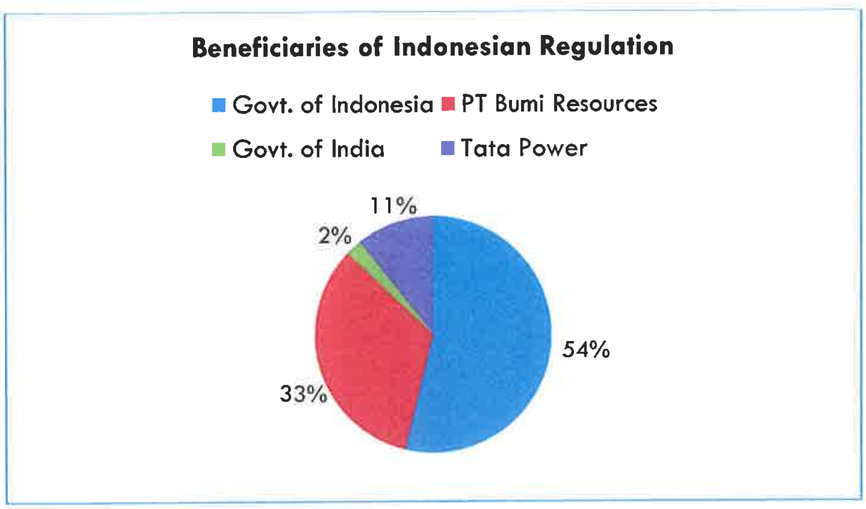
[54] In case coal handled is more than 12 MMTPA pro-rata increase has been taken

7.8. Annexure VIII - Beneficiaries of Indonesian Regulation

This section presents an analysis of the benefits accruing to Tata Power due to Indonesian Regulation from its shareholding in the Indonesian mining companies KPC and Arutmin. As discussed in sec 4.4.3, the Indonesian Regulation had in effect nullified the discount of approx.. USD 13/MT assumed by CGPL in the derived bid coal price of USD 28.97/MT. Accordingly the revenue of the Indonesian mining companies would have increased by USD 12.98/MT[55] on account of renegotiation of Fuel Supply Agreement pursuant to Indonesian Regulation. The following table calculates the benefit accruing to Tata Power on account of Indonesian Regulation.

Particular	Unit	Reference	Value
Incr in Revenue of Indonesian mining companies	USD/MT	(1)	13.16
Less: Royalty at 13.5%	USD/MT	(2)=(1)*13.5%	1.78
Less: Corporate Income Tax	USD/MT	(3)=((1)-(2))*45%	5.12
Incr in PAT of Indonesian mining companies	USD/MT	(4)=(1)-(2)-(3)	6.26
Tata Power share of PAT – Indonesian level	USD/MT	(5)=(4)*30%	1.88
Withholding taxes in Indonesia	USD/MT	(6)=(5)*10%	0.19
Dividend distribution tax in India	USD/MT	(7)=((5)-(6))*16.995%	0.29
Tata Power share of PAT – India level	**USD/MT**	**(8)=(5)-(6)-(7)**	**1.40**

As can be observed from the table above, the benefit accruing to Tata Power on account of surplus revenue of the Indonesian mining companies pursuant to Indonesian Regulation is USD 1.40/MT (approx. 11% of the resultant price increase). The following pie chart presents the benefits accruing to different parties on account of Indonesian Regulation.



However the actual profit accruing to Tata Power from the mines will vary depending upon the movement in other variable costs specially cost of tyres and diesel cost which are correlated to other energy equivalent cost.

[55] *Assuming CGPL had contracted coal from Indonesia at USD 28.97/MT, as per the bid assumptions.*

7.9. Annexure IX – List of Information collected

Sl No.	Information/Document
1.	Petition filed by CGPL to CERC dated July 2012
	PPA Related
2.	Copy of Power Purchase Agreement between CGPL and discoms of Gujarat, Maharashtra, Haryana, Punjab and Rajasthan dated April 2007; Copy of supplemental PPA dated July 2008
3.	Monthly break-up of sale of electricity since COD under different components of PPA
	Fuel Related
4.	Copies of Fuel Supply Agreement between Indocoal Resources and CGPL for supply of 5.85 mil MT (+/- 20%) dated March 2007; Copies of Fuel Supply Agreement between Indocoal Resources and Tata Power for supply of 3.51 mil MT (+/- 20%) dated October 2008 & Assignment Agreement of the same in favour of CGPL dated March 2012
5.	Characteristics of Melawan coal and Ecocoal used by CGPL during FY 2013
6.	Copies of invoices of coal imported by CGPL from Feb 2011 (first invoice during pre-commissioning) till March 2013
7.	Shipping contract between CGPL and Trust Energy Resources dated August 22, 2011; Shipping contract between CGPL and Energy Eastern Pte Ltd dated March 18, 2013
8.	Port Services Agreement between CGPL and MPSEZ dated April 22, 2007
9.	Extract from Steam Generator and Auxiliaries contract showing design specifications of typical coal and worst coal
	Fixed charges Related
10.	Project cost appraised by Lenders and Means of Finance as per Financing documents
11.	Key terms of financing of Domestic and Foreign Lenders
12.	Estimated Completed cost of the Mundra UMPP Project
13.	Actual O&M Expenses incurred for FY 2013 and estimate of O&M expenses for FY 2014
	Other Miscellaneous
14.	Audited Financial Statements of CGPL, Bhira Investment Ltd, PT KPC, PT Arutmin for FY 2013
15.	Coal supply agreement between Tata Power and PT Adarro (one of the largest mining companies of Indonesia) dated May 2004 and amended in Aug 2006 for supply of 1 mil ton to Tata Power Trombay Plant
16.	Information Memorandum dated October 2006 prepared by Credit Suisse for PT Bumi Resources for potential sale of stake in KPC, Arutmin and Indocoal

7.10. Annexure X – Correspondence from Procurers

7.10.1. GR of Govt. of Gujarat

Formation of a Committee in pursuance of Hon. CERC's Order dated 02.04.2013 in the matter of Petition No.155/MP/2012 filed by M/s.Adani Power Ltd and Hon. CERC's another order dated 15.04.2013 in the matter of Petition No.159/MP/2012 filed by M/s. Coastal Gujarat Power Ltd for obtaining recommendations of the Committee.

Govt of Gujarat
G.R.No.APL-12-2013-280046-K
Energy & Petrochemicals Department
Sachivalaya, Gandhinagar.
Dated the May 03, 2013.

Gujarat Urja Vikas Nigam Limited (GUVNL) signed a Power Purchase Agreement (PPA) with M/s.Adani Power Ltd. (APL) on 02.02.2007 for a contracted capacity of 1,000 MW of power at the levelised tariff of Rs.2.3495 per unit through the Competitive Bidding Process for purchase of power. Similarly, GUVNL also signed a PPA with M/s. Coastal Gujarat Power Ltd. (CGPL) on 22.04.2007, for supply of 1,805 MW of power, at a levelised tariff of Rs.2.26 per unit.

In view of the promulgation of Indonesian regulations about the pricing mechanism of coal and resultant financial implication of the same on the cost of generation of power, both the Developers i.e. M/s.APL and M/s.CGPL, filed Petitions, before the Hon. Central Electricity Regulatory Commission for evolving a mechanism regulating including changing and/ or revising tariff on account of frustration and/ or change in law events under the PPA.

Pursuant to the detailed hearings in the matter, Hon. CERC vide its order dated 02.04.2013 (M/s.APL) and another order dated 15.04.2013 (M/s.CGPL), have considered that Indonesian Regulations has financial implication on Generator, but it is not covered under the "Force Majeure" and "Change in Law" provisions of the PPA. However, Hon. CERC observed that in order to resolving the matter in a practical manner, "Compensatory Tariff" needs to be worked out by the Committee. Hon. CERC directed that the respective State Governments to constitute a Committee consisting of -

(1) Principal Secretary (Power), Govt of Gujarat/ Managing Director of GUVNL

(2) Principal Secretary (Power), Govt of Maharashtra/ Managing Director of Maharashtra State Electricity Distribution Company Ltd., Mumbai.

(3) Principal Secretary (Power), Govt of Rajasthan/ MDs of Discoms, Jaipur/Ajmer/ Jodhpur, Rajashtan State.

(4) Principal Secretary (Power), Govt of Punjab/ MD of Discom, Chandigarh.

(5) Principal Secretary (Power), Govt of Haryana/ MDs of UHBVNL & DHBVNL, Haryana.

(6) Chairman or his Nominee, M/s. Adani Power Ltd., Ahmedabad.

(7) Nominee from M/s. Coastal Gujarat Power Ltd., Mundra, Dist.Kutch-Bhuj.

(8) Independent Financial Analyst of repute

(9) An Eminent Banker of the commensurate level.

Hon. CERC further directed that the Committee shall go into the impact of the Price escalation of the Indonesian Coal on the Project viability and obtain all the actual data required with due authentication from Independent Auditors to ascertain the cost of import of coal from Indonesia and suggest a package for "Compensatory Tariff" which can be allowed to both the Petitioners i.e. M/s.APL and M/s.CGPL, over and above the tariff in the PPAs.

As per the directives of Hon. CERC, the Committee so constituted has to submit its report to the Hon. CERC for consideration and for further directions.

The matter related to the directives of the Hon. CERC, in this regard, as mentioned above, was examined by a High level Committee. While considering the directives of the Hon. CERC, in this regard and also keeping in view the pros and cons of the Hon. CERC's directives, the Committee considered the present "Power Sector" scenario at national level and examining the overall public interest, the Committee unanimously viewed that for arriving at a conclusion, the following aspects need to be kept in view.

(1) If the State Government / GUVNL doesn't accept the Hon. CERC directives and decide to file a Review Appeal before the Hon. CERC or file an Appeal before the Hon. Appellate Tribunal for Electricity, the final outcome will take a long time.

(2) Meanwhile, there is all possibility that if the directives of Hon. CERC are not accepted then in that eventuality in view of non-viability, the Power Plants operated by M/s.APL and M/s.CGPL may become non-operational and ultimately be closed. In such an eventuality, and in that case even if GoG/ GUVNL can recover the penalty as per the clause of PPA for not providing power, the State Government/ GUVNL will have to go for Competitive Bidding for purchase of that much quantum of power, for ensuring uninterrupted supply of Power in the State.

(3) The present installed capacity of the State is 18,270 MW out of which 4,172 MW is Gas based Generating Power Stations. Since the adequate Domestic Gas is not available, effectively the capacity remains idle. Thus, available capacity to meet the demand of the State, is almost 14,000 MW. Further, non-availability of power from both the Power Projects on imported Coal may lead to further reduction in the capacity by almost 2,805 MW. In that eventuality, in order to meet the continuous power supply to all the end consumers of the State, GUVNL will have to utilize Gas based Generating Capacity on spot RLNG

which is available at a price not less than US$ 12 – 15 per MMBTU. The cost of generation of Power to run on for such RLNG would be in the range of Rs.7 – Rs.8/- unit. This will result into huge financial implication on the end consumers by way of payment of additional FPPPA or the State Government will have to provide that much subsidy to the Discoms.

(4) It has been observed at the National level that there are some bottlenecks in availability of Domestic Coal Linkages / Coal from New Mines and allocation of New Coal Mines for Power Generation. Therefore, usage of Imported Coal will have to be increased. Hence, in order to ensure continuous supply of power to all the consumers in the State, the State Government/ GUVNL will have to generate power from Imported Coal based Power Stations. This will also lead to increase in cost of Power Generation.

(5) The likely cost of generation of power from the upcoming Thermal Power Plants implemented by the State Government PSUs like GIPCL, BECL and GSECL would be in range of Rs.3.50 – to Rs.4.50 per unit.

(6) If the State Government/ GUVNL do not accept the Hon. CERC's directives about forming a Committee for obtaining its recommendation for providing a Compensatory Tariff to the Power Developers for ensuing supply of power to the various segments across the State, GUVNL will have to invite fresh Competitive Bids, or the State's Gas based Power Plants will have to be run on costlier RLNG, as mentioned above. Further, the whole procedure for inviting fresh Competitive Bidding for tieing-up necessary power for the State may take a long time and the power to the State from the prospective Developers would be available only after 3 -4 years' time.

(7) The order from Hon.CERC for forming a Committee to resolve the issue of mitigating hardships on account of Indonesian Coal Regulations and non-availability of Domestic Coal, is to be considered to maintain continuity in power supply to the consumers and to prevent power shortages.

(8) Forming of a Committee for obtaining its suggestions about the "Compensatory Tariff" is not final, as based on the recommendation of such a Committee, Hon. CERC is to issue fresh and final directives and at that time, Government / GUVNL will have an option open to file an Appeal before the appropriate Authority i.e. Hon. Appellate Tribunal for Electricity.

Keeping in view the observations, as mentioned above, the High level Committee unanimously recommended to accept the directives of Hon. CERC and to go ahead with formation of a Committee, in pursuance of Hon. CERC's directives, subject to certain conditions.

The views of the High Level Committee, were carefully considered by the State Government and while deciding the matter, the State Government accorded utmost priority to ensure supply of power to the end consumers in the State,

RESOLUTION

After careful consideration of the views of High Level committee, Govt is, therefore, pleased to resolve that in pursuance of Hon. CERC's directives, the Committee may be formed, subject to the following conditions, over and above the conditions outlined in the Hon.CERC's order. :-

(i) Managing Director, GUVNL would represent GoG/ GUVNL in the Committee.

(ii) Participation in the Committee shall not bind GoG/ GUVNL to any finding/ recommendation of the Committee.

(iii) GoG/ GUVNL will reserve its right to make an Appeal before the appropriate Authority i.e. Hon. Appellate Tribunal for Electricity, on the final order to be issued by Hon.CERC.

(iv) GoG desires that the Committee will be chaired by Shri Deepak Parekh, Chairman, HDFC, or any other eminent Banker as per the consensus of the Committee.

(v) Over and above, the Financial Analyst as suggested in Hon. CERC's directives, GUVNL may engage an Independent Analyst who may also analyze the entire aspects with facts and figures.

(vi) Overall financial implication by way of providing "Compensatory Tariff" to the Power Developers shall have to be equally shared amongst the concerned. That is the Power Producers may curtail their Rate of Return, Financial Institutions/ Banks may be asked to waive the interest/ reduce the rate of interest to the maximum extent possible. GoI should reduce the Import Duty on Coal and other Taxes etc. In case of M/s.APL, since the Port Infrastructure is also owned by the same Group, Port Handling Charges in respect of Coal, may also be reduced by M/s.APL, so that implication of GoG/ GUVNL is minimized.

(vii) The Committee may also suggest any other measure for overall reduction in the cost of Generation of Power.

Government has further decided that on behalf of GoG, Managing Director, Gujarat Urja Vikas Nigam Limited, shall act as a Nodal Officer, for the purpose, for both the Projects.

Notwithstanding any thing as contained in this GR, the State Govt/ GUVNL reserves its right to recourse to any further action, as deemed fit, at any point of time.

This issues with the concurrence of Finance Department vide its note dated 30.04.2013 in this Department's file of even number.

By order and in the name of Governor of Gujarat,

(K.H.Chorera)
Officer on Special Duty (Power)
Energy & Petrochemicals Department

Copy forwarded with compliments to :

(1) The Accountant General, O\O the A.G., Audit Bhavan, Ahmedabad/ Rajkot.
(2) The Principal Secretary to H.E. the Governor of Gujarat, Raj Bhavan, Gandhinagar.
(3) The Addl. Chief Secretary to Hon.CM, Hon.CMO, Sachivalaya, Gandhinagar.
(4) The Secretary, Hon. Central Electricity Regulatory Commission, New Delhi.
(5) The Secretary, Hon. Gujarat Electricity Regulatory Commission, Ahmedabad.
(6) The PS to Hon.Minister (E&P), Sachivalaya, Gandhinagar.
(7) The PS to Chief Secretary, O\O the C.S., Sachivalaya, Gandhinagar.
(8) The Principal Secretary to Govt, Finance Department, Sachivalaya, Gandhinagar.
(9) The Principal Secretary to Govt, Energy & Petrochemicals Dept, Sachivalaya, Gandhinagar.
(10) The Principal Secretary (Power), Govt of Maharashtra, Mumbai.
(11) The Principal Secretary (Power), Govt of Rajasthan, Mantralaya, Jaipur, Rajshthan.
(12) The Principal Secretary (Power), Govt of Punjab, Secretariat, Chandigarh, Punjab.
(13) The Principal Secretary to Govt (Power), State Secretariat, Chandigarh, Haryana.
(14) The Managing Director of Maharashtra State Electricity Dist Company Ltd., Mumbai.
(15) The Managing Director, Jaipur Vidyut Vidtran Nigam Ltd., Jaipur.
(16) The Managing Director, Ajmer Vidyut Vidtran Nigam Ltd, Ajmer.
(17) The Managing Director, Jodhpur Vidyut Vidtran Nigam Ltd. Jodhpur, Rajasthan.
(18) The Managing Director, Gujarat Urja Vikas Nigam Limited, Vadodara.
(19) The Managing Director, Uttar Haryana Bijli Vitran Nigam Ltd., Haryana.
(20) The Managing Director, Dakshin Haryana Bijli Vitran Nigam Ltd., Haryana.
(21) The Managing Director, Punjab State Power Corporation Ltd., Chandigarh, Punjab.
(22) The Chairman, M/s.Adani Power Ltd., Ahmedabad.
(23) The Managing Director, M/s.Coastal Gujarat Power Ltd., Mundra, Kutch-Bhuj.
(24) The select file.

7.10.2. GR of Govt. of Maharashtra

TRANSLATED COPY

Appointing representatives of
The State Governments on the Committee
According to the directive of
Hon. Central Electricity Regulatory Commission reg.

GOVERNMENT OF MAHARASHTRA

Government Resolution No.Misc.2013/P.No.100/Urja-5
Industry, Energy & Labour Department, Mantralaya, Mumbai 400032.
Date: 28 May 2013

Introduction : MahaDiscom had entered into a Power Purchase Agreement with M/s.Coastal Gujarat Power Limited on 22.04.2007 for the purchase of 800 MW of power at Rs.2.26 per unit from their Mundra (UMPP) project. So also, Gujarat, Rajasthan, Punjab and Haryana States have entered into a Power Purchase Agreement for buying power from Mundra (UMPP).

2. M/s. Coastal Gujarat Power Limited had raised a petition to Hon. Central Electricity Regulatory Commission for a raise in power tariff as the cost of generating power rose due to a raise in sale prices of coal by the Indonesian government. A hearing was held by the Hon. Central Electricity Regulatory Commission on this petition. On 15.04.2013 the Hon. Central Electricity Regulatory Commission issued directives for constituting a Committee in this regard. It has been mentioned that in the said Committee as directed by the Hon. Central Electricity Regulatory Commission, Secretaries (Energy) of the relevant States / managing directors, representatives of distribution companies, representatives of M/s. Coastal Gujarat Power Limited, well known financial analysers and experienced bankers in this sector be included. Hon. Central Electricity Regulatory Commission has further directed that, the Committee shall ascertain the necessary date and arrive at the Compensatory Tariff package through an independent auditor to assess the feasibility of the project based on the Indonesian coal price hike, which should be independent of the power tariff in the agreement entered into by the petitioner with the power purchasing companies. Thereafter the Hon. Central Electricity Regulatory Commission will peruse the supplementary power tariff hike proposal presented by this Committee and give further directives. Upon presenting the directive of the Hon. Central Electricity Regulatory Commission to the board of ministers, the ministerial board, considering the current demand of energy on the national level and considering the welfare of the consumers as well, have taken following decisions :

1. In case MahaDiscom decides to appeal against the decision of Hon. Central Electricity Regulatory Commission, the process may consume lot of time.

2. In case it is decided to not to accept the directives of Hon. Central Electricity Regulatory Commission, the possibility that the project may be shut down as it may not remain viable for the company to run the project. In such a situation, MahaDiscom can recover fine from M/s. Coastal Gujrat Power Limited as per the terms of agreement. However, to satisfy the demand of power in the State, MahaDiscom will have to buy power from open market through competitive bidding and that will also consume lot of time. Also, power may be required to be purchase at higher rates.

3. Power generation in the state is adversely affected due to scarcity of gas and coal.

4. With the directive of Hon. Central Electricity Regulatory Commission to constitute a Committee, such a Committee has been established to deal with the issue of regulation of coal price by the Indonesian Government, to reduce the problems arising due to that; also, to overcome the adverse effect on power generation for want of indigenous coal, and to ride over the demand-supply deficit of power as well.

5. The Committee has been constituted for giving directives on the Compensatory Tariff and that is not the final decision in this regard. The right of MahaDiscom to appeal to the appellate tribunal against the final directive of the Hon. Central Electricity Regulatory Commission issued after the report submitted by the Committee shall not be taken away.

Considering the points stated above, the ministerial board has taken the following decision on joining the Committee for interim acceptance of the directive of the Hon. Central Electricity Regulatory Commission :

Government Resolution : After careful consideration of the directive of Hon. Central Electricity Regulatory Commission the State Government has, as per the directive of the Regulatory Commission, decided to join the Committee, provided that the following provisos are fulfilled :

(A) The Managing Director, MahaDiscom and the Principal Secretary (Energy) are being nominated on this Committee. The final decision of the Committee shall be submitted for approval to the State level Board of Ministers.

(B) The findings or notices of the Committee shall not be binding on the State Government or MahaDiscom by joining the Committee as a representative.

(C) The right of the State Government or MahaDiscom to appeal against the final directive given by the Hon. Central Electricity Regulatory Commission shall remain incontrovertible.

(D) Notwithstanding anything mentioned in this Government Resolution, the State Government or MahaDiscom reserves its authority of taking appropriate decision or to take appropriate action at any time in the future.

4. This Government Resolution is available on the Government of Maharashtra website www.maharashtra.gov.in and its code number is 201305221454255110.

In the name and by the order of the Governor of Maharashtra.

Signed
(Gulabrao K. Gorde)
Section Officer,
Government of Maharashtra

Copy to :

The Principal Secretary to Hon. Chief Minister, Mantalaya, Mumbai 400032.
The Secretary to Hon. Dy. Chief Minister, Mantalaya, Mumbai 400032.
The Private Secretary to Hon. Minister of State (Energy), Mantalaya, Mumbai 400032.
The Secretary, Hon. Central Electricity Regulatory Commission, New Delhi
The Secretary, Hon. Maharashtra Electricity Regulatory Commission, WTC No.1, Cuffe Parade, Mumbai 400005.
The Secretary, Ministry of Energy, Government of India, New Delhi
The Managing Director, MahaDiscom, Prakashgad, Bandar (E), Mumbai 400051.
M/s Coastal Gujarat Power Ltd. (Mundra UMPP), C/o The Tata Power Co. Ltd., 34, Sant Tukaram Road, Carnac Bunder, Mumbai 400009.

Office copy – Urja 5

Ends****

7.10.3. GUVNL Letter to the Chairman of the Committee dated May 20, 2013

GUJARAT URJA VIKAS NIGAM LIMITED

GUVNL

Raj Gopal IAS

Managing Direc

No. MD/ 18
Dated. 20.05.2013

To
Shri Deepak Parekh
Chairman
HDFC Bank
Ramon House, 169, Backbay Reclamation
H/T Parekh Marg, Churchgate
MUMBAI 400 020

Fax: +91 (22) 22048834

Sub: Comments/ Views of Government of Gujarat & GUVNL on Compensatory Tariff to CGPL and APL

Sir

This has reference to the Committee's meeting held on 11.5.2013 at Ramon House, Mumbai pursuant to CERC's orders concerning CGPL and APL regarding compensatory tariff.

On behalf of the Government of Gujarat and GUVNL, and without prejudice to the legal rights for challenging the outcome of the Committee Report or CERC's Order in Appellate Tribunal or Appellate Order, I herewith submit the following at this stage which may kindly be placed on record for consideration of the committee.

1. The committee is expected to deliberate only on the impact of the Indonesian notification on coal price. Escalation of capital expenditure and fixed cost because of forex rate fluctuations or otherwise is not part of the CERC's order and hence does not lie within the ambit of this committee.

2. The hardship for both the companies (generators) in supplying power as per the PPA rates has arisen apparently because of their inability in ensuring supply of coal at affordable rates as the notification of the Indonesian Government reportedly pushed the price of coal to unexpectedly high levels. The crux of the matter is making coal available at affordable rates. This is an extraordinary situation directly impacting two states, Haryana and Gujarat in case of APL and five states viz

Sardar Patel Vidyut Bhavan, Race Course, Vadodara 390 007
Phone 0265 2339148 Fax 0265 2338164 e-mail md.guvnl@gebmail.com Web Site www.guvnl.com

Maharashtra, Gujarat, Rajasthan, Punjab and Haryana in case of CGPL. First and foremost all options for ensuring affordable coal supply should be considered. This unprecedented and unexpected situation warrants special measures.

As the first option, the Committee should strongly recommend to the Ministry of Coal through the Ministry of Power, Government of India, to immediately allocate to both the companies domestic coal mines/ blocks of adequate reserves with a tapering linkage for 3-4 years, pending long term allocation of mines or coal linkage. The generators may arrange for washing this coal to meet the design specification/parameters of their plants.

3 Compensatory tariff should be taken only as a second option.

(i) As spelt out in the GoG, GR No. APL-12-2013-280046-K paragraph (vi), the burden of the compensatory tariff shall have to be equally shared by all the stakeholders concerned, whereby it is expected that power producer curtails the rate of return, financial institution /banks waive/reduce the interest, and the GoI reduces import duty and other taxes on coal, and Adani Ports should reduce port and handling charges. Any formula for working out a compensatory tariff shall have to capture this stipulation.

(ii) The investment of the generators in the coal mining companies should be transferred to the power project companies and all returns of coal mining business should be adjusted in the tariff.

(iii) The compensatory tariff thus arrived should be declared as a cap and in order to discover competitive tariff afresh with full transparency and equity the Ministry of Power should invite bids to obtain rates within the limits of the caps and should allow for substitution of the extant generator with any other eligible party, quoting the lowest hike in the tariff, to take over the assets of the companies and to continue to supply power to the contracted procurers. This process will be akin to following the Swiss Challenge methodology.

(iv) In case the competitive bidding does not materialize, then at the end of the term of the PPA i.e. after 25 years, the generator should pay back the compensatory tariff paid by the procurers along with its carrying cost or else transfer the power project to procurers without any residual value in good condition. During the 25 years the generators should bear the responsibility for sourcing affordable imported coal within the permissible price caps from various coal exporting countries.

4. As a third option, the procurers may supply coal to the generators for the contracted capacity based on OEM guaranteed Station Heat Rate. The procurers shall only pay O&M cost to the generators as per CERC norms and service the debt component after the reduction in the rate of interest by the financial institutions.

Yours faithfully

Raj Gopal

Forwarded to:

1. The' Principal Secretary (Power), Govt. of Maharastra, Mantralaya, Mumbai Fax: 022-26478672.
2. The Principal Secretary (Power), Govt. of Rajasthan, Mantralaya, Jaipur, Rajasthan, Fax: 0141 2227699
3. The Principal Secretary (Power), Govt. of Punjab, Secretariat, Chandigarh, Punjab. Fax: 0172-2748036
4. The Addl. Chief Secretary (Power), State Secretariat, Chandigarh, Haryana Fax. 0712 2727661, 23341518
5. The Managing Director, Maharashtra State Electricity Distribution Company Ltd, 5th Floor, Prakashgad, Bandhra (E), Mumbai – 400 051, Fax:022-26580645 Email: md@mahadiscom.in
6. The Managing Director, Jaipur Vidyut Vitran Nigam Ltd, Jaipur, Vidhyut Bhavan, Janpath, Jaipur – 302005 (Rajasthan) Fax:0141-2747015 Email: cmd@jvvnl.in
7. The Managing Director, Jodhpur Vidyut Vitran Nigam Ltd, Jodhpur, New Power House, Industrial Area, Jodhpur – 342003, Rajasthan, Fax: 0291 - 2741870 Email: cmd_jdvvnl@yahoo.com
8. The Managing Director, Uttar Haryana Bijli Vitran Nigam Ltd, Haryana, Shakti Sadan, Sector 6, Panchkula. Fax: 0172 - 3019100 Email: cmduhdh@gmail.com
9. The Managing Director, Dakshin Haryana Bijli Vitran Nigam Ltd, Haryana Fax: 0172 - 3019100

10. The Managing Director, Punjab State Power Corporation Ltd, The Mall, Patiala, Punjab – 147 001, Fax: 0175-2213199 Email: cmd-pspcl@pspcl.in
11. The Managing Director, Ajmer Vidhyut Vitran Nigam Ltd, Hathi Bhata, City Power House Road, Ajmer – 305001. Rajasthan, Fax: 0145-2630636 Email: avvnl0145@yahoo.com
12. Shri N. M. Mathur, Chairman & Managing Director, Rajasthan Rajya Vidyut Utpadan Nigam Ltd., Vidyut Bhawan, Jyoti Nagar, Janpath, Jaipur - 302005. Fax. 0141-2740633 (Representing Rajasthan DISCOMs)
13. Smt. Arundhati Bhattacharya, Managing Director & CEO, State Bank of India Capital Market Ltd, 202, Maker Tower "E" Cuffe Parade, Mumbai – 400 005, Fax No 022 2218 8332
14. The Chairman, Adani Power Ltd, Ahmedabad, Fax : 079 25557177
15. The Chairman, Coastal Gujarat Power Ltd & Managing Director, Tata Power Ltd Fax 022 66658877

7.10.4. CGPL Response to GUVNL Letter dated May 20, 2013

CGPL
Coastal Gujarat Power Limited

Krishna Kumar Sharma
Executive Director & CEO

CGPL/UMPP/CEO/CERC/3544
May 27, 2013

To,
Shri Deepak Parekh,
Chairman – Compensatory Tariff Committee,
Ramon House,
169, Backbay Reclamation,
H.T. Parekh Marg, Churchgate,
Mumbai – 400 020.

Sub: Comments/Views of Government of Gujarat and GUVNL on Compensatory Tariff to CGPL

Dear Sir,

1. This has reference to the GUVNL's letter dated 20.05.2013 addressed to Shri Deepak Parekh received by us on 20th May 2013 containing comments of Government of Gujarat and GUVNL on the issue of 'Compensatory Tariff' arising out of CERC's order dated 15.04.2013 in Petition No. 159/MP/2012 ("the Order"). Before responding to the contents, it is important to bear in mind that the Committee is a creature of the CERC Order which defines the mandate of the Committee and the guidelines for its mandate are quoted herein below:-

   *"...86.... In our view, under the peculiarity of the facts Order in Petition No.159/MP/2012(I) of the present case and also keeping in view the interest of both project developer and consumers, we consider it appropriate to direct the **parties to set down to a consultative process to find out an acceptable solution in the form of compensatory tariff over and above the tariff decided under the PPA to mitigate the hardship arising out of the need to import coal at benchmark price on account of Indonesian Regulations**. Accordingly, we direct the petitioner and the respondents to constitute a committee within one **week from the date of this order** consisting of the representatives of the Principal Secretary (Power)/ Managing Directors of the Distribution Companies of the procurer States, Chairman of Tata Power Limited or his nominee, an independent financial analyst of repute and an eminent banker dealing and conversant with infrastructure sector. The nominees of financial analysis and banker should be selected on mutual consent basis. **The Committee shall go into the impact of the price escalation of the Indonesian coal on the project viability and obtain all the actual data required with due authentication from independent auditors to ascertain the cost of import of coal from Indonesia and suggest a package for compensatory tariff which can be allowed to the Petitioner over and above the tariff in the PPA.** The Committee shall keep in view **inter-alia the following considerations while working out and recommending the compensatory tariff** applicable upto a certain period:*

Page 1 of 4

Coastal Gujarat Power Limited
(A Tata Power Company)
Ultra Mega Power Project

CGPL
Coastal Gujarat Power Limited

(a) *The net profit less govt. taxes and cess etc. earned by the petitioner's company from the coal mines in Indonesia on account of the bench mark price due to Indonesian Regulation corresponding to the quantity of the coal being supplied to the Mundra UMPP should be factored in full to pass on the same to the beneficiaries in the compensatory tariff.*

(b) *The possibility of sharing the revenue due to sale of power beyond the target availability of Mundra UMPP to the third parties may be explored.*

(c) *The possibility of using coal with a low GCV for generation of electricity for supply to the respondents without affecting the operational efficiency of the generating stations."*

2. Gujarat has provided three options to the Committee, with respect to which CGPL's option -wise response is as under:-

3. **Re. First option**
It contemplates recommendation to the Ministry of Coal through the Ministry of Power, Government of India to immediately allocate domestic coal mines / blocks of adequate reserves with a tapering linkage for 3-4 years, pending long term allocation of mines or coal linkage. The generator may arrange for washing this coal to meet the design specification / parameters of their plants.

CGPL does not have any objections to this option subject to the principles of compensatory tariff as enunciated by CERC in the order dated 15.04.2013 being honoured. However, CGPL must place on record its concern that this recommendation appears to be beyond the mandate of the committee. CGPL also expresses its concern that; (a) If Indian coal is washed to design coal requirements for Boilers installed at Mundra, the low yield achieved would make the cost of washed coal unviable; and (b) Adopting this approach will result in untoward and ruinous delays in solving the crisis at hand. Also, transportation and unloading arrangement of coal will have to be through Rail cum sea route as there is no coal rake unloading arrangement at Mundra UMPP.

4. **Re: Second option**
It contemplates arriving at a compensatory tariff with 4 components for each of which CGPL submissions are as under.

(a) As regard point 1 the term "equally shared" should be replaced by "proportionately shared" by all the stakeholders.

(b) The second aspect of GUVNL recommendation is beyond and contrary to the mandate given by CERC to the Committee and must be ignored. In this regard, Para 88A of the Order is noteworthy which provides that:-

Page 2 of 4

CGPL

Coastal Gujarat Power Limited

*"86(a) The net profit less Govt. taxes and cess etc. earned by the petitioner's company from the coal mines in Indonesia on account of the bench mark price due to Indonesian Regulation corresponding to the quantity of the coal being supplied to the Mundra UMPP **should be factored in full to pass on the same to the beneficiaries in the compensatory tariff**."*

(c) The third and fourth aspects of the second option are also beyond the scope of the mandate of the Committee. The Committee has not been given the power to decide whether the case at hand deserves fresh bidding or not. The mandate of the Committee was only to set down to a consultative process to find out an acceptable solution in the form of compensatory tariff over and above the tariff decided under the PPA to mitigate the hardship arising out of the need to import coal at benchmark price on account of Indonesian Regulations.

5. As far as third option is concerned, CGPL has no objection to the same ***provided the principles of compensatory tariff as enunciated in the Order are adhered to.***

Thanking you,

Yours faithfully,
For Coastal Gujarat Power Limited

Krishna Kumar Sharma

Copy to:-

1. The Principal Secretary, Energy & Petrochemicals Department, Govt. of Gujarat, Block No. 5, Sachivalaya, Gandhinagar - 382 010. Fax: 079-23250797
2. The Principal Secretary (Power), Govt. of Maharashtra, Mantralaya, Mumbai, Fax: 022-22470672
3. The Principal Secretary (Power), Govt. of Rajasthan, Mantralaya, Jaipur, Rajasthan, Fax: 0141-2227699
4. The Principal Secretary (Power), Govt. of Punjab, Secretariat, Chandigarh, Punjab, Fax: 0172-2740036
5. The Addl Chief Secretary (Power), State Secretariat, Chandigarh, Haryana, Fax: 0712-2727001, 23341516

Page 3 of 4

CGPL

Coastal Gujarat Power Limited

6. The Managing Director, Gujarat Urja Vikas Nigam Limited (GUVNL), Sardar Patel Vidyut Bhavan, Race Course, Vadodara - 390 007, Gujarat, Fax: 0265 – 2337918, 2338164, Email: md.guvnl@gebmail.com

7. The Managing Director, Maharashtra State Electricity Distribution Company Ltd., 5th Floor, Prakashgad, Bandra (E), Mumbai - 400 051, Fax: 022-26580645, Email: md@mahadiscom.in

8. The Managing Director, Jaipur Vidyut Vitran Nigam Ltd., Vidhyut Bhawan, Janpath, Jaipur – 302 005, Rajasthan, Fax: 0141-2747016, Email: cmd@jvvnl.in

9. The Managing Director, Jodhpur Vidyut Vitran Nigam Ltd., New Power House, Industrial Area, Jodhpur – 342 003, Rajasthan, Fax: 0291-2741870, Email: cmd_jdvvnl@yahoo.com

10. The Managing Director, Uttar Haryana Bijli Vitran Nigam Ltd., Haryana, Shakti Sadan, Sector 6, Panchkula, Fax: 0172-3019100, Email: cmduhbvn@gmail.com

11. The Managing Director, Dakshin Haryana Bijli Vitran Nigam Ltd., Haryana, Fax: 0172-3019100

12. The Managing Director, Punjab State Power Corporation Ltd., The Mall, Patiala, Punjab – 147 001, Fax: 0175-2213199, Email: cmd-pspcl@pspcl.in

13. The Managing Director, Ajmer Vidhyut Vitran Nigam Ltd., Hathi Bhata, City Power House Road, Ajmer – 305 001, Rajasthan, Fax: 0145-2630636, Email: avvnl0145@yahoo.com

14. Shri M. M. Mathur, Chairman & Managing Director, Rajasthan Rajya Vidyut Utpadan Nigam Ltd., Vidyut Bhawan, Jyoti Nagar, Janpath, Jaipur – 302 005, Fax: 0141-2740633 (Representing Rajasthan DISCOMS)

15. Smt. Arundhati Bhattacharya, Managing Director & CEO, State Bank of India Capital Market Ltd., 202, Maker Tower "E", Cuffe Parade, Mumbai – 400 005, Fax: 022-22188332

7.10.5. GUVNL comments on Draft Report of the Committee

GUJARAT URJA VIKAS NIGAM LIMITED

GUVNL

Raj Gopal IAS

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Date

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Sub: Comments/ Views of Government of Gujarat & GUVNL on Draft report on Compensatory Tariff to M/s CGPL.

Sir

This has reference to the e-mail dated 29th July 2013 from Vice President Project Advisory & Structured Finance, SBI Capital Markets Limited, forwarding draft report on Compensatory Tariff to M/s CGPL.

Without prejudice to the legal rights for challenging the outcome of the Committee Report or CERC's Order in Appellate Tribunal or Appellate Order, I herewith submit the following comments on the draft report to be placed on record for consideration of the committee:

1 *Para 1.3 - Summary of the CERC Order –*

The contentions of CGPL as well as procurers are narrated concerning 'Force Majeure' and 'Change in Law' under para 1.3.1 & 1.3.2. However, the procurer's contention regarding the regulatory power of the CERC under para 1.3.3 is not mentioned and needs to be included.

2 *Para 3 -- Committee Proceedings –*

In the first Minutes of meeting dated 11.05.2013 at the para 2 it is mentioned that " ...... It was decided to appoint M/s KPMG for carrying out accounting and due diligence of Indonesian coal mines of APL." This typographic error needs to be corrected as CGPL instead of APL.

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3 *Para 4 1 Compensatory Tariff*

The CERC's Order dated 15.04.2013 is very specific that the committee shall work out tariff compensation package to remove the hardships on account of promulgation of Indonesian Regulation. The technical parameters and assumptions as on bid date is stated at Para 7.3 Annexure – 3. However, the committee has proposed tariff compensation based on technical parameters suggested by the technical consultant that deviate from the technical parameters / assumptions as of the bid date. Further, it is to mention that CGPL cannot pass on any burden to the procurers on account of the subsequent changes in parameters. Moreover, it is to mention that the coal price worked out at Para 4.3 i.e. 29.15 USD / Tonne in place of original assumption at time of bid i.e. 34.90 USD / Tonne is on account of subsequent change in parameters. This input in the compensatory tariff is not relevant considering that CERC's recommendation for the blending of inferior coal to reduce cost of generation is not considered by the committee stating that by doing so, it would lead to increase in the cost of generation

4 *Para 4 8 – Evaluation of the options –*

The fuel consumption has to be worked only for the actual units scheduled and not for the normative units for working out the Gross Compensatory Tariff.

5 *Para 4 9 – Illustrative calculation of compensatory tariff –*

The transportation loss of coal at item no. 7 is considered as 0.80 % whereas in the remark at item no. 12, it is mentioned that transportation loss is likely to be much lower, hence for calculation purpose it has been assumed as 0.20 %. It needs to be verified and confirmed that the compensatory tariff has been calculated considering the transportation loss of coal as 0.20%.

6 *Para 4 10 – Process for recovery of compensatory tariff and past losses –*

In the draft report it is mentioned that the procurer shall pay the differential cost between provisional claim and claim after true up. It is pertinent to mention that the procurers schedule the power under Merit Order protocol wherein decision is taken based on available data. In case of increase in the cost of power during truing up exercise, it will lead to wrong decision by the procurer whereby the procurer would have lost the opportunity to schedule cheaper power. Therefore, the provisional tariff shall be the ceiling for trueup. Moreover, it is also relevant that the trueup should be with reference to the FOB imported coal price and not with the other parameters, otherwise it may be possible that the inefficiency on account of other parameters may be passed on to the procurers. For the losses during past period, it is to mention that the compensatory tariff may be considered from prospective date only and not from retrospective date as it will put a huge financial burden on Distribution companies and even lead to a situation where Distribution companies may not be in a position to either recover the past dues and may find it difficult to pay the future regular bills also.

7 *Para 5.1 – Profit from Promoter's share holding in Indonesia mines –*

The draft report proposes profit from Indonesian mines to be equivalent to coal utilized by CGPL and that also equivalent to 30% equity share holding. It is pertinent to mention that M/s TATA group owns 30% equity in Indonesian mines which allows 30% equivalent right over the coal output (Production).

As per the CERC's order, net profit less Govt. taxes and cess from the coal mines in Indonesia on account of benchmark price due to Indonesian Regulation corresponding to the quantum of coal being supplied to Mundra UMPP should be factored in full to pass on the same to the beneficiaries in the compensatory tariff.

Therefore, it is necessary that entire profit on quantum of coal supplied to CGPL needs to be passed on to the beneficiaries as part of compensatory tariff and not limited to 30%. Moreover, CGPL / group company of TATA has to take the risk of increase in cost of mining etc., therefore the profit should be calculated with reference to the base price considered for bidding and price notified by Indonesian government from time to time after adjustment of applicable taxes and duties.

8 *Para 5.1.2 – Permitting sale for availability beyond 80% -*

The incentive is payable if the availability is declared in excess of 85%. In case CGPL is not declaring any availability to procurers above 80%, it has no right to claim any incentive from procurers as otherwise procurers are paying entire fixed cost on 80% availability. Further, in case CGPL is given consent by procurer to sell power to any third party, the sale proceeds in excess of energy charges have to be shared equally with the procurers. Moreover, CGPL shall not offer power to any third party below the rate at which power is offered to procurers including capacity charges at generator bus bar.

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9 *Para 5.1.3 – Blending with lower GCV Coal*

As per the report, it is mentioned that presently the blending is not beneficial; however the indicative price shall also be worked out at which the blending becomes beneficial.

10 *Para 5.2.2 – Bank & Financial Institutions – (Waiver/reduction of interest)*

It is mentioned that the committee unanimously agreed that the foreign loans were contracted at fine rates and there was limited scope of reduction from this level. In this regard, GoG / GUVNL is of the view that bank shall also equally contribute towards mitigating hardships of the project by further reduction of interest rates. Moreover, the support from banks and financial institutions is required to improve the viability of the project which would improve the rating of the project.

11 *Para 5.2.4 – Fixing a ceiling for Gross Compensatory Tariff –*

It is very difficult to put a ceiling based on competitiveness of power procured from CGPL as it differs for each procurement and the dynamics changes with addition of new generation into the system of respective procurers. Further, it is also difficult to link it with historical coal price trend as it may lead to increase in imported coal price. Moreover, linking the tariff based on the quotes received in recent bids is also not correct as the terms and conditions of these bids would be different and it may not reflect the proper market conditions because of the hyped up issue of non availability of domestic coal and also because these projects are scheduled to be commissioned after 5 – 6 years. Therefore, the ceiling should be limited to a certain percentage of the compensatory tariff.

12 *Para 5.3.2 – Other hardships faced by CGPL –*

It is mentioned in the draft report that CGPL in its petition before CERC has represented that the RFP documents proposed for CDM benefit for the project and accordingly CDM benefit to the tune of Rs. 200 Crores per annum was envisaged but it was not actually available. In this regard it is to mention that RFP document has given an option to bidder either to consider or not to consider the CDM benefit while quoting the tariff. However, the bidder cannot raise any issue in this regard at this stage.

13 It should also be mentioned in the report explicitly that even though the report has been prepared in consultation with all stake holders, the report does not take away their right to make submissions in the matter before the CERC / any other legal forum.

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14 *Para 6 – Recommendation –*

We request that the options suggested by GUVNL through the letter dated 20 05 2013 be included as part of the final recommendations of the committee under Para 6 especially the allocation of coal by Government of India for blending purpose. reduction in Customs Duty & Taxes etc and reduction in rate of interest by Financial Institutions / Banks

Yours faithfully

24.3.13

Raj Gopal

Copy to

Principal Secretary, EPD. GoG

7.10.6. MSEDCL Comments on Draft Report

Ajoy Mehta
I.A.S.
Managing Director

MAHAVITARAN
Maharashtra State Electricity Distribution Co. Ltd.

MD-MSEDCL/CEPP/ 21644 Date : 01-08-2013

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CERC Committee for Compensatory Tariff,
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MUMBAI - 400 020

Subject: Comments of MSEDCL on Initial Draft Report submitted by SBICAP regarding Compensatory Tariff in respect of CGPL

Sir,

Coastal Gujarat Power Ltd. (CGPL) a subsidiary of TATA Power Co. Ltd. operates the 4000 MW Ultra Mega Power Project in Mundra, Gujarat. CERC in its Order dated 15th April 2013 opined that in the interest of the consumers and suppliers of electricity, the parties should confer and arrive at a compensation package to address the issues while maintaining the sanctity of the tariff arrived by competitive bidding. CERC further directed CGPL and the Procurers to constitute a Committee consisting of the representatives of the Principal Secretary (Power), Managing Directors of the Procurer Companies, Chairman of TATA Power Co. or his nominee, an independent financial analyst of repute and eminent banker dealing and conversant with the infrastructure sector.

The Committee has appointed SBICAP as the Financial Analyst of the Committee to do the financial due diligence, calculate the compensatory package for CGPL and carry out sensitivity analysis of key parameters on compensatory tariff. The Financial Analyst SBICAP has submitted its Initial Draft Report to MSEDCL (a Procurer) and MSEDCL have some comments to make on the said Report.

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1. **Technical Parameters**

   The Financial Analyst SBICAP has calculated the compensatory tariff considering certain technical parameters on normative, actual or CERC Norms. MSEDCL is of the opinion that the technical parameters such as GCV of Coal, SHR, Aux. Consumption etc. which are most optimal in terms of energy cost may be applied. In view of the above, it is suggested that Technical Consultant certify the optimal parameters and mention that this would be in the best interest of the Procurers.

2. **Discount in Coal Prices**

   Prima facie it appears that, during the year 2007, coal that was assumed for bidding, was sold at the spot price of around USD 45/MT in the Indonesian Market. As against then prevailing market price, the CGPL had arranged coal at the discounted price of around USD 32/MT. Thus, CGPL has got the coal with a Discount of about USD 13/MT. It would be prudent that the Financial Analyst SBICAP conducts a rigorous analysis to account for this difference and also explain and mention how this is being passed on to Procurers in today's scenario.

3. **Sacrifices need to be made by CGPL**

   a. **Revenue from Higher Generation**

      CERC in its Order dated 15th April 2013 directed the Committee to explore the possibility of sharing the revenue due to sale of power beyond the target availability of CGPL. As per the provisions of the Schedule 7 of the PPA, an incentive at the rate of 40% of the Quoted Non Escalable Capacity Charge subject to a maximum of 25 paise/kWh is allowed on the energy corresponding to the availability in excess of 85%. Considering the merchant power rates and an incentive of 25 paise/kWh, we feel that entire surplus power should be available to Procurers to offset the higher cost. In the event only part is to be made available, the Financial Analyst SBICAP should carry out detailed calculation together with justification for the same.

   b. **ROE**

      The Financial Analyst SBICAP has made an analysis to estimate the maximum sacrifice on the ROE Component in the fixed charges. As per the analysis made by the Financial Analyst SBICAP, CGPL is earning an ROE of around 35 paise per unit. In the said analysis, SBICAP has also stated that the under recovery of the fixed charges with ROE is around

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48 paise per unit and around 13 paise per unit without ROE. There is a need to conduct a rigorous analysis to confirm that today's loss is not going to be made up by profits in future. The Financial Analyst SBICAP to certify how the financial structuring has been done to take care of losses as is mentioned in the draft report.

c. **Discount on Interest**

As Procurers, we strongly feel that every party in the deal must come forward to make sacrifices to reduce the impact of the Compensatory Tariff. To this end, the Bankers must step forward to cut interest rates that should be passed on to the Procurers.

4. **Tariff Determination under Section 62 or 63**

The Mundra UMPP project was awarded to CGPL under Competitive Bidding as per the tariff guidelines issued by the Central Government. The CERC has adopted the Tariff pursuant to the provisions of the Section 63 of the Act. The CGPL has quoted the eight components of tariff and now CERC has approved revision in two components of energy charge. Therefore, tariff determination at least to the extent of energy charges has now become as good as pursuant to Section 62 of the Act.

Therefore, CERC need to determine the additional compensatory charge every year which will be passed on to the Procurers. Further, the respective SERCs need to approve such expenditure on account of the additional compensatory charge in the ARR of Procurers. There is also a need to suitably incorporate a clause to enable Procurers to call for renegotiations in case the project becomes unviable to the Procurer.

5. **Billing Mechanism**

The recovery period as well as billing mechanism for the compensatory tariff has not been mentioned in the CERC Order. Clarity is required on the recovery period for compensatory tariff. Therefore, CERC needs to decide the recovery period along with the Billing Mechanism.

Yours Faithfully,

Managing Director
MSEDCL

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