

BEFORE THE GUJARAT ELECTRICITY REGULATORY
COMMISSION GANDHINAGAR

Petition No. 972 of 2009

In the Matter of:

Petition for adjudication of disputes between the Petitioner and the Respondent on the interpretation and implementation of the Power Purchase Agreement dated 30th May, 1996.

Petitioner : Gujarat Urja Vikas Nigam Limited
Sardar Patel Vidyut Bhavan,
Race Course Circle, Vadodara - 390007.

Represented by : Senior Advocate Shri M. G. Ramachandran
Ms. Shailaja Vachchrajani
Shri S.S. Mistry

V/s.

Respondent : Essar Power Limited
Essar House, Mahalaxmi Road, Mumbai-
400034.

Represented by : Senior Advocate Shri Saurabh Soparkar
Advocate Shri Nisarg Desai

CORAM:

Shri Anand Kumar, Chairman
Shri K. M. Shringarpure, Member
Shri P. J. Thakkar, Member

Date: 27/12/2019.

ORDER

Background:

1. The present Petition is culmination of the earlier proceedings between the Petitioner and the Respondent in Petition No. 873 of 2006 in which the Commission decided the matter vide Order dated 18.02.2009.

2. Being aggrieved by the said Order both the Petitioner as well as the Respondent preferred appeal before the Hon'ble Appellate Tribunal for Electricity by filing an appeal. The Petitioner had filed an Appeal No. 77 of 2009 and the Respondent had filed Appeal No. 86 of 2009. The Hon'ble Appellate Tribunal passed a Common Order dated 22.02.2010 in the aforesaid appeals and held that Appeal No. 77 of 2009 filed by GUVNL is dismissed and the Appeal No. 86 of 2009 filed by Essar Power Ltd. is partly allowed.

3. Being aggrieved by the said judgment dated 22.02.2010 of the Hon'ble Appellate Tribunal for Electricity, the Petitioner GUVNL filed Civil Appeal No. 3455 of 2010 before the Hon'ble Supreme Court. The Hon'ble Supreme Court vide judgement dated 09.08.2016 set aside the judgment of the Hon'ble APTEL dated 22.02.2010 and upheld this Commission's Order dated 18.02.2009 in Petition No. 873 of 2009, the relevant part of the same is reproduced below;

27. " We thus, hold that the order of the Tribunal is erroneous. The said order has given rise to the substantial question of law which has been discussed above, i.e., the interpretation of the Agreement between the parties and the obligation of the respondent to declare availability of generated power in the ratio of 58 : 42 and consequence of default therein. The Tribunal erroneously held that there was no pleading for making the claim. Thus, the Tribunal has committed error of law as well as of record in recording its finding as demonstrated above. It may also be noted that the Commission has left actual working out of the loss to be worked out separately and on that basis the appellant has already filed its claim which was pending consideration before the Commission. The said proceeding can now be revived in the light of our finding.

28. Accordingly, we allow this appeal, set aside the order of the Tribunal and restore that of the Commission."

4. The Commission in para 10.22 of the Order dated 18.02.2009 in Petition No. 873 of 2006 had directed the parties to work out the accounts for the period starting from 14.09.2002 in the manner provided in the said Order and submit the same to the Commission for validation and further directions.
5. The Petitioner had worked out the amount receivable by it as provided in the aforesaid Order and forwarded the same to the Respondent vide letter No. GUVNL/GM(COM)/797 dated 07.05.2009. The Petitioner had also started deduction of approximately Rs. 10 Crore per month from the energy bill of the Respondent. The Respondent had disputed the correctness of the claim of the Petitioner vide letter No. EPOL/TSB/103, dated 16.05.2009.
6. The disagreement between the Parties with regard to the calculation carried out by the Petitioner continued. Though the parties tried to resolve the dispute amicably but the same could not be resolved and hence the present Petition is preferred by the Petitioner.
7. The present Petition has been filed by the Petitioner seeking the following reliefs:
 - i) hold that the calculations submitted by the Petitioner are correct and in accordance with the Order dated 18.02.2009;
 - ii) hold that the Petitioner is entitled to adjust in the tariff payable by the Petitioner to the Respondent for purchase of electricity all amounts recoverable from the Respondent as per the workings submitted in Appendix 8 to the Petition, as a result of wrong allocation of electricity and deemed generation incentive when Naphtha is proposed to be used as fuel.
8. The facts mentioned in the Petition in are stated below:

- 8.1. The Petitioner had earlier filed Petition No. 873 of 2006 for adjudication of the following issues:
- i. Wrong utilisation by the Respondent of the capacity of the generating station in favour of the group companies of which the Respondent is a part and against the rights and interests of the Petitioner.
 - ii. Incentive claimed by the Respondent on deemed generation when naphtha is proposed to be used as fuel.
- 8.2. The Commission passed Order dated 18.02.2009 and directed the Parties to work out the accounts for the period starting from 14.09.2002 in the manner provided in the said order and submit the same to the Commission for validation and further directions.
- 8.3. In compliance of the aforesaid decision and directives of the Commission, the Petitioner re-computed the amount to be recovered from the Respondent as per the Commission's Order dated 18.02.2009 and forwarded the same to the Respondent vide letter dated 07.05.2009 along with softcopy of the calculation for their confirmation.
- 8.4. The Respondent vide letter dated 16.05.2009 disputed the correctness of the computation made by the Petitioner.
- 8.5. In response, the Petitioner vide its letter dated 28.05.2009 requested the Respondent to inform which part of the calculation is not acceptable to them and invited the Respondent for discussion and clarification of the calculation.
- 8.6. The Respondent vide letter dated 02.06.2009 informed that they have many observations on the workings and would like to discuss them in person.
- 8.7. A discussion was held between the parties wherein the said calculations were explained and clarified to the Respondent, but the Respondent did not confirm the calculations due to interpretation of certain clauses of the Commission's Order dated 18.02.2009 in Petition No. 873 of 2006.
- 8.8. The Order of the Commission was challenged by both the parties before the Hon'ble APTEL vide Appeal No. 77 of 2010 by GUVNL and Appeal No. 86 of 2010 by Essar Power Ltd. In the aforesaid appeals the Hon'ble APTEL

gave its judgment dated 22.02.2010 which was challenged by GUVNL by filing Civil Appeal No. 3455 of 2010 before the Hon'ble Supreme Court. The Hon'ble Supreme Court passed its judgement dated 09.08.2016 in Civil Appeal No. 3455 of 2010 and upheld the Order of the Commission dated 9.8.2016 and set aside the order of the APTEL dated 22.02.2010.

9. The Respondent has filed its reply contending inter-alia stating that the Petitioner in compliance of the Commission's directive in the Order dated 18.02.2009 worked out the accounts for the period starting from 14.09.2002 onwards and forwarded the same to the Respondent vide its letter No. GUVNL/GM(COM)/797, dated 07.05.2009 with a request to confirm the same within 15 days .
- 9.1. Since the Petitioner had once again started deduction of an amount of Rs. 10 Crore per month from the energy bills raised by the Respondent for supply of the electricity, the Respondent vide letter No. EPOL/TSB/103 dated 16.05.2009 informed the Petitioner that the Petitioner as well as the Respondent have filed appeals against the Order of the Commission before the Hon'ble APTEL and the Hon'ble APTEL has clarified in its Order dated 14.05.2009 that it is open to the parties to have discussion with reference to para 10.22 of the Order and then approach the Commission. In the said letter the Respondent disputed the correctness of accounts prepared by the Petitioner and informed the Petitioner that it cannot legally adjust any amount effective from May, 2009, as threatened by the Petitioner.
- 9.2. The Petitioner sought specific details of disagreement by the Respondent in respect of the accounts prepared by the Petitioner. In response to which, the Respondent vide letter dated 02.06.2009 informed the Petitioner some of the reasons as to why the accounts prepared by the Petitioner are not in accordance with the Commission's order.
- 9.3. A meeting was held on 08.06.2009 between the Petitioner and the Respondent at the Petitioner's Office where the accounts prepared by the Petitioner were discussed at length. However, both the Petitioner and the Respondent failed to come to any agreement on the various points of difference between them. The present Petition is filed by the Petitioner on

07.07.2009 along with its statement of accounts for validation and further directions of the Commission.

- 9.4. A bare perusal of the Commission's Order dated 18.02.2009 in Petition No. 873 of 2006 specifically para 8.19 and 8.34 reveals that there are inconsistent observations. In para 8.19 the Commission has stated that the settlement in respect of claims for the period 1998 to Sept, 2004 made by the Petitioner cannot be reopened, while in 8.34, the Commission has observed that it will only consider the period of aforesaid claim from 14.09.2002. The Respondent therefore, filed an appeal being Appeal No. 88 of 2009 challenging the direction given in the Commission's Order including the inconsistent observations. The directions given in para 11(4) to 11(8) of the Order dated 18.02.2009 in Petition No. 873 of 2006 cannot be given effect to and the accounts cannot be worked out for the period starting from 14.09.2002 and therefore, the petition filed by the Petitioner for validation of accounts worked out by it in terms para 10.22 of the Commission's Order dated 18.02.2009 in Petition No.873 of 2006 is liable to be dismissed.
- 9.5. The accounts prepared by the Petitioner are not in accordance with the Order of the Commission in terms of Article 1 of the PPA, more specifically the definition of availability period and the Commission's observation in para 9.13 of the Order dated 18.02.2009. In Appeal No. 77 of 2009 filed by the Petitioner against the aforesaid Order of the Commission, the Petitioner at Para 7 (G) of the Memorandum of Appeal has categorically admitted that each time block for supply of electricity under the PPA is 1 hour and accordingly, the Respondent is obligated to declare and supply electricity under the PPA on an hourly basis as per the provisions of PPA, Order of the Commission and the Petitioner's own admission.
- 9.6. The Petitioner is required to work out the accounts on the basis that the Respondent is obligated to declare and supply the electricity to the Petitioner as well as Essar Steel up to the allocated Capacities only on hourly basis and not on half hourly basis or any other time block basis. The accounts prepared by the Petitioner for the period 14.09.2002 to 22.02.2005 are on hourly basis while for the period 23.02.2005 onwards,

the same are prepared on half hourly basis resulting in increase in financial liability on the Respondent. During the period 23.02.2005 to 30.06.2005, an additional financial burden of Rs. 40 Crore approximately, comes on the Respondent due to methodology adopted by the Petitioner in working out the accounts.

- 9.7. The Respondent referred para 9.11 and para 11.6 of the Order and submitted that the Commission has categorically held that when the Respondent has declared the capacity available from the entire generating station in terms of Schedule-VI of the PPA, as if the Petitioner has not scheduled energy to the extent declared available capacity under the proportionate principle, the Respondent in such a situation, can supply the additional power that is available only to Essar Steel/Sister Companies and that in such an event, the Respondent shall only reimburse the proportionate annual fixed cost to the Petitioner. This means that when the Petitioner does not off take power offered by the Respondent, then the Respondent has a right to sell the additional power only to Essar Steel/sister companies and the Respondent shall be liable to reimburse only the proportionate annual fixed cost to the Petitioner.
- 9.8. In breach of this directive, the Petitioner worked out the accounts providing for payment of compensation to the Petitioner calculated at HTP-1 rate where the Respondent has supplied the surplus power to Essar Steel which was on account of (i) the Petitioner not giving dispatch instructions to the Respondent and (ii) the Petitioner giving less dispatch instructions for supply of electricity than the available capacity declared by the Respondent. In either of the cases the Petitioner has worked out the accounts for reimbursement of proportionate fixed cost. However, the Petitioner has considered it as power supplied by him to Essar Steel, and for which HTP-1 tariff rate is applicable. The additional financial burden due to such working on the Respondent works out to approximately Rs. 80 Crore which is not legally liable to be paid by the Respondent.
- 9.9. The Respondent (EPL) referring to the directive No. (5) and para 9.13 of the Order dated 18.02.2009 in Petition No. 873 of 2006, submitted that the Commission has directed, if it has supplied excess power to Essar

Steel than its share calculated on the basis of the proportionate principle after 14.09.2004, it is liable to be compensated for such supplies at the prevailing HTP-1 rate less variable cost as per the principle accepted by the parties in November, 2004.

- 9.10. The Respondent has paid Rs. 64 Crore to the Petitioner for excess supply of power to Essar Steel, which was calculated in the manner set out as per letter dated 11.11.2004. The Respondent is not entitled for payment of (i) any fixed charges or (ii) any other charges such as delay payment charges, electricity duty etc. Therefore, the accounts prepared by the Petitioner are wrong.
- 9.11. The Petitioner's claim include Rs. 960.56 Crore towards delayed payment charges. The PPA is totally silent on payment of interest including in the form of delayed payment charges. Hence, the claim of Rs. 960.56 Crore is not allowed by the Commission. The additional financial burden on the Respondent on account of inclusion of these amounts works out to approximately Rs. 500.28 Crore which is not payable by the Respondent to the Petitioner under the Order.
- 9.12. The Petitioner is not entitled to payment of any interest on deemed generation incentive amount refundable as per Order of the Commission. However, the Petitioner has claimed payment of approximately Rs. 16 Crore on this account.
- 9.13. The claim of the Petitioner by way of unliquidated damages and for refund of amount towards deemed generation incentive is not permissible unless and until the claims of the Petitioner are adjudicated upon and such adjudication becomes final where-under that the Respondent is held liable to pay the adjudicated sum to the Petitioner.
- 9.14. The Petitioner has unilaterally and unauthorizedly started deduction of approximately Rs. 10 Crore per month once again from the energy bills raised by the Respondent. The Petitioner should be refrained from deducting any such money from the bills until the disputes are finally adjudicated upon in accordance with law.
- 9.15. The aforesaid submissions are summarised by the Respondent as under:

- 9.15.1. The accounts prepared by the Petitioner is not in accordance with the Commission's Order dated 18.02.2009 in Petition No. 873 of 2009.
 - 9.15.2. The accounts prepared and submitted by the Petitioner for validation by the Commission are in breach of the express provisions of the Order dated 18.02.2009.
 - 9.15.3. The claim of Petitioner towards diversion of energy to Essar Steel is Rs. 590.27 Crore while as per the Respondent's accounts the said amount works out to Rs. 89.99 Crore.
 - 9.15.4. The accounts prepared by the Petitioner includes a sum of Rs. 36.62 Crore towards refund of deemed generation incentive while as per the accounts of the Respondent the said amount is Rs. 34.42 Crore.
 - 9.15.5. After appropriation of the amounts already deducted by the Petitioner from the energy bills raised by the Respondent, the Respondent is entitled to receive a sum of Rs. 4.39 Crore from the Petitioner.
 - 9.15.6. Since no amount is due and payable by the Respondent, the Petitioner be directed not to recover any further amount from the bills of the Respondent until final adjudication of the disputes between the parties in accordance with the law.
10. The matter was heard on 15.10.2010, 19.02.2011, 07.05.2011, 20.08.2011, 17.09.2011, 19.11.2016, 16.09.2017, 22.12.2017, 20.01.2018, 31.05.2018 and finally on 08.06.2018.
 11. Learned Advocate Shri M.G.Ramachandaran on behalf of the Petitioner reiterated the facts stated in Para 8 above.
 - 11.1. He further submitted that the Commission has heard the arguments and submissions of the Petitioner and the Respondent on a number of occasions on the aspect of computation of the amount due from the Respondent to the Petitioner in pursuance of the decision of the Hon'ble

Supreme Court in its judgment dated 09.08.2016 in Civil Appeal No. 3455 of 2010.

11.2. He further submitted that all the details for such computations are provided for the claims of the Principal amount and the interest. Further, the interest has been calculated on compounding basis (as claimed by the Respondent for recovery of its dues) as well as on simple interest basis.

11.3. The Hon'ble Supreme Court has upheld the decision of the Commission dated 18.02.2009 in Petition No. 873 of 2006 and in terms of the said decision, the basic principle for computation of the amount due from the Respondent is clear as under:

- i) The quantum of the declaration of the generation which the Respondent ought to have made available to the Petitioner for purchase by the Petitioner is the excess quantum which the Respondent has supplied to its group companies namely Essar Steel Ltd.
- ii) The said excess quantum supplied by Essar Power to Essar Steel should be deemed to be a supply made by Essar Power i.e. Respondent to the Petitioner and the Petitioner in turns having supplied to Essar Steel.
- iii) Supply of electricity to Essar Steel Ltd. by the Petitioner is chargeable at the retail supply tariff applicable on the supply of power by DGVCL to Essar Steel i.e. HTP-1 tariff and the terms and conditions as determined by the Commission from time to time as payable by an Industrial consumer of the category of Essar Steel to DGVCL.
- iv) The difference between the retail supply tariff rate applicable for the supply by DGVCL to Essar Steel and power purchase rate under PPA entered into between the Respondent and the Petitioner shall be the measure of compensation payable which was duly accepted by the Respondent in the earlier proceeding

11.4. There is no real issue in the computation of the amount due from the Respondent in terms of the Hon'ble Supreme Court's judgement dated

09.08.2016. The Respondent has been time and again, raising vexatious and frivolous issues to complicate and delay the computation despite directive of the Hon'ble Supreme Court to decide the matter at the earliest. The claim of the Respondent that the computation of the amount due should not be at full HTP-1 tariff payable by Essar Steel to DGVCL is devoid of merit.

- 11.5. The contention of the Respondent that the computation of the amount of dues should not be to the extent of full HTP – I tariff payable by Essar Steel to DGVCL is on the face of it frivolous and devoid of merit.
- 11.6. The Respondent is raising the issue relating to PPA dated 30.05.1996 providing for time block as per the definition of availability period specified in Article 1 of the PPA and disputing the settlement period being considered as 30 minutes time block adopted by the Petitioner from 23.02.2005 to compute the amount due from the Respondent to the Petitioner. It is undisputed that PPA provides for 60 minutes settlement period time block, but on the principle adopted for computing the compensation i.e. the tariff at which the DGVCL would have supplied the same quantum of electricity to Essar Steel, the settlement period time block to be applied is 30 minutes and not 60 minutes. Accordingly, the methodology to be adopted for compensation is to be 30 minutes time block as mentioned above.
- 11.7. Such differential computation will not be consistent with the methodology and principles laid down by the Commission in its Order dated 18.02.2009 which stands approved by the Hon'ble Supreme Court in the decision dated 9.08.2016.
- 11.8. The methodology of settlement of 30 minutes time block was duly agreed between the parties as well as recorded in the letter dated 21.02.2005 of the CEA letter which confirms as under:
 - i. Since the opening of proposed circuit breaker in 220 KV bus may jeopardise the safety of the steel plant and EPOL is not demanding any charges for excess power flow from their new CPP to GEB,

installation of circuit breaker in the 220 KV was agreed to be not insisted.

- ii. Installation of accurate meters for accurate accounting of power both active and reactive as requested by GEB shall be provided at suitable locations using digital meters. If check meters are required, GEB can install them in parallel.
- iii. Recording of meters shall be half an hour on Essar Steel load side and power evacuation side.

There is no need of separating generation and evacuation on one side and load and other CPP on other side. Desired results can be achieved by suitable metering.

- 11.9. The Respondent, therefore, has no basis to raise the issue of the application of 60 minutes' time block. In accordance with the CEA's letter dated 21.02.2005 and after the installation of Apex Metering System as per CEA's recommendations which settles the issue then raised by the Respondent the 30 minutes time block has been implemented and there was no protest or reservation by Essar Power at the relevant time. In fact, Essar Power has taken the benefit of CEA's letter to avoid separation of the bus bar for supply of electricity by the Petitioner to Essar Steel and entered into their arrangement in lieu thereof.
- 11.10. Essar Steel has filed a report of Price Waterhouse Coopers(PWC) which deals with legal issues. So far as the legal issues are concerned, they are to be adjudicated by the Commission and PWC has no authority to deal with such legal issues. Further, the report has proceeded on unilateral manner and based on whatever submissions are made by Essar Power Ltd.. Moreover, the said report is contrary to the decision of the Commission in its Order dated 18.02.2009 in Petition No. 873 of 2006 and the judgment of the Hon'ble Supreme Court dated 09.08.2016 in Civil Appeal No. 3455 of 2010.
- 11.11. The Respondent has proposed to appoint an independent Chartered Accountant by the Commission to verify the computation given by both the parties so as to facilitate the Commission in deciding as to which

calculation should be accepted. The aforesaid proposal of the Respondent is with an intent to delay the process.

- 11.12. The principle for the computation of amount due has already been settled by the Commission in its order dated 18.02.2009 and the same has also been upheld by the Hon'ble Supreme Court in the judgement dated 09.08.2016. The Petitioner has already furnished the accounts and the Commission is now required to verify the same whether there is any mistake in the computation or in the methodology applied for computation, which is a judicial decision to be made by the Commission. These functions cannot be assigned to independent Chartered Accountant. Once, the Commission decides on the methodology to be applied, the remaining aspect is only mathematical calculation which can be verified by the staff of the Commission from the digital/computerised calculations given by the Petitioner to the Commission as well as to the Respondent. The Respondent has not raised any computational error but raising issue on the methodology to be applied.
- 11.13. The contention of the Respondent that there is inconsistency in observation made by the Commission in para 8.19 and 8.34 of the Order dated 18.02.2009 is not legal and valid. The Commission has clearly stated in para 8.19 that in view of the settlement acted upon by the parties, the Commission cannot reopen the same to the extent it relates to diversion of electricity to Essar Steel Ltd. in excess of 215 MW for the period from 1998 to September, 2004, therefore payment of Rs. 64 Crore cannot be revisited. It is also clarified that the question of limitation is only relating to diversion of electricity by Essar Power in violation of the proportionate principle of 300:215 MW. The limitation is not applicable to the diversion of electricity in excess of 215 MW and Rs. 64 Crore already recovered.
- 11.14. In Para 8.34 the Commission has clearly stated that period of limitation for diversion of electricity in violation of the proportionate principle of 300:215 MW can be considered for a period of 3 years prior to filing of the petition.

- 11.15. It is true that as per PPA the settlement period is 60 minutes' time block. However, the Respondent must note that the calculations made for recovery of the excess power are relating to ESTL who is a consumer of DGVCL having contract demand of 44.5 MVA and the compensation is based on HTP-1 tariff rate and fixed cost rate. Therefore, the calculations relating to excess power diverted to ESTL are to be charged by DGVCL to ESTL under the consumer account and accordingly, the calculations for recovery on account of excess energy delivered to ESTL by EPL has to be on 30 minutes time block.
- 11.16. The Respondent has never declared the capacity of the full generating plant to the Petitioner until February, 2009. Thus, for the period from September, 2002 to June, 2005 which is the foremost condition to be fulfilled by the Respondent under the PPA, the reimbursement of fixed cost is applicable only when the Respondent has fulfilled the pre-conditions of declaring capacity for entire generating station in terms of Schedule-VI of the PPA as per para-11.6 of the Commission's Order. The Petitioner has started reimbursement based on fixed cost rate from the date when the Respondent declare availability of the entire generating station from February, 2009.
- 11.17. The payment/ recovery of Rs. 64 Crore was ad-hoc based on energy charges. The excess power delivered to ESTL by EPL is to be treated as deemed sale by DGVCL to ESTL and accordingly, the tariff charges should be normal tariff that DGVCL as a distribution company is eligible to charge from an HT consumer. Hence, the claim of the Respondent that only energy charges are leviable for diversion of energy and no fixed charge, fuel charges, electricity duty, meter charges etc. to the Respondent is not correct.
- 11.18. The Respondent has ignored the first and foremost condition that the declaration should be proportionate which is a pre-condition and the Respondent has defaulted in the same.
- 11.19. As per the Commission's Order there cannot be any units for compensation at fixed cost after February, 2009, units for fixed cost compensation are to be worked out since the Respondent has declared

entire power station capacity only if dispatch instruction issued by the Petitioner is less than declaration. The units for fixed cost compensation are worked out by the Respondent where excess units are delivered to ESTL above its proportionate share only when the actual supply to both the parties is more than 95% of dispatch instruction which is in breach of the Commission's Order.

- 11.20. If the contention of the Respondent that EPL is liable to pay for diversion of energy by paying only the energy charges of HTP-1 tariff instead of considering the full cost and then the variable cost as per PPA is deducted out of it is accepted, the provisions of the Commission's Order as well as PPA will be violated.
 - 11.21. The Petitioner has submitted the computation for delayed payment surcharge on simple interest basis and non-compounding basis for the claim related to under allocation of power by Essar Power Ltd. without prejudice to the rights and contention that the Petitioner is entitled to interest/delayed payment surcharge on compounding basis. The Petitioner has also been discharging its debt/interest to the bank and financial institutions on compounding basis.
 - 11.22. The Petitioner has submitted the computation of the claim giving the principal amount and interest separately. Further, the Petitioner has also submitted the calculation sheet of interest on compounding basis as well as on simple interest basis.
12. Learned Senior Advocate Shri Saurabh Soparkar and Advocate Shri Nisarg Desai on behalf of the Respondent made their submissions reiterating the facts stated in para 9 above. It is further submitted that the entire claim of the Petitioner is baseless, misconceived and devoid of merit.
- 12.1. The Respondent has submitted the calculation methodology adopted by the Respondent for the period 14.09.2002 to 30.06.2005 as under:
 - 12.1.1. Total availability of the Respondent's plant was 11153.54 MUs. The capacity declared to the Petitioner was 6129.13 MUs and capacity declared to Essar Steel was 5024.46 MUs.

- 12.1.2. The total available capacity was re-calculated as per the Commission's Order in the ratio 300:215 MW. The capacity of the Petitioner increased by 368.07 MUs and the same was reduced from the share of Essar Steel Ltd. Thus, the share of the Petitioner in total capacity increased from 6129.13 MUs to 6497.21 MUs while the share of Essar Steel declined from 5024.46 MUs to 4656.33 MUs out of total available capacity of 11153.54 MUs.
- 12.1.3. The Petitioner issued despatch instructions to the tune of 3362.86 MUs against declared capacity of 6129.13 MUs. M/s. Essar Steel Ltd. had issued despatch instructions of 4393.20 MUs considering minimum of actual consumption, despatch instruction issued by Essar Steel Ltd. or proportionate share in total capacity as worked out in the ratio of 300:215.
- 12.1.4. From the above, it transpires that there was idle capacity not requisitioned by any customer to the tune of 3397.48 MUs ($11153.54 - 3362.86 - 4393.20 = 3397.48$). As per the Commission's Order, this capacity can be used by any customer on payment of proportionate of annual fixed charges.
- 12.1.5. The Respondent generated net power of 8241.25 MUs after excluding the auxiliary consumption i.e. $8478.65 - 237.40 = 8241.25$ MUs for the said period and supplied 3259.88 MUs to the Petitioner and 4981.37 MUs to Essar Steel Ltd.
- 12.1.6. Whenever any power was supplied to Essar Steel Ltd. over and above its share after meeting the Petitioner's despatch instructions from idle capacity, then compensation to the Petitioner is calculated as proportionate of the fixed charge as per directive 11.6 of the Order. Whenever the Petitioner issued despatch instruction up to declared capacity and more power was consumed by Essar Steel Ltd., then HTP-1 Variable Charge minus Essar Power Ltd. variable charge is considered as compensation to the Petitioner as per directive 11.5 of the Order.
- 12.1.7. M/s. Essar Steel Ltd. consumed 478.63 MUs of more power when the Petitioner did not issue despatch instructions up to declared capacity, calculating on hourly basis for the said period. Thus, M/s. Essar Steel

Ltd. is liable to pay proportionate of fixed charge for above units to the Petitioner. M/s. Essar Steel Ltd. also consumed 127.61 MUs when the Petitioner had issued dispatch instructions. Thus, for 127.61 MUs, HTP-1 Energy charge minus the Respondent's variable charge is payable to the Petitioner as compensation.

- 12.2. The Respondent submitted that the computation furnished by the Petitioner on 30.09.2009, 24.11.2016, 15.09.2017 and 15.01.2018 are denied. Further, the contention and submission of the Petitioner dated 07.03.2018 are baseless and unsustainable in law.
- 12.3. The Respondent has submitted its claim of Rs. 436.78 Crore against the Petitioner as set out in affidavit dated 24.11.2016, 15.09.2017 and 15.01.2018. Further, the Respondent has also corroborated the same with the report of PWC on the aforesaid subject.
- 12.4. The Respondent submitted that it was submitting weekly schedules with respect to the declared available capacity on weekly basis to the Petitioner as well as to Essar Steel from the inception itself and supplied electricity as per dispatch instructions given by the Petitioner and Essar Steel from time to time. Further, whenever the Respondent was unable to generate the electricity as per the schedule declared by it, it has compensated the Petitioner by paying deemed non-generation charge as per Clause 7.4.3 of Schedule VII of the PPA. The Respondent has also provided coal information with respect to weekly schedule of available power provided to ESIL from time to time along with its computation.
- 12.5. The Respondent relied on para 27 of the Hon'ble Supreme Court's judgment dated 09.08.2016 in Civil Appeal No. 3455 of 2010 and submitted that as per aforesaid decision the proceedings before the Commission is for limited purpose of working out the loss on the basis of Commission's decision dated 18.02.2009 in Petition No. 873 of 2006 and compensating the party who has suffered the loss. This means the present proceedings are in the nature of execution proceeding where the Commission has to simply execute its order without going behind it.
- 12.6. The Petitioner has vide affidavit dated 09.02.2017 raised its claim of Rs. 2276.29 Crore from the Respondent comprising of :

- i) Rs. 272.05 Crore towards principal amount; and
- ii) Rs. 2004.24 Crore towards Delayed Payment Charges (DPC)

Further, the principal amount of Rs. 272.05 Crore consists of ;

- a) Rs. 179.13 Crore claimed towards loss on account of wrongful allocation of electricity by the Respondent during the period from September, 2002 to September, 2004; and
- b) Rs. 56.29 Crores towards compensation for similar loss for the period between October, 2004 to April, 2010

12.7. The claim of Rs. 179.13 Crore is baseless and misconceived because the Respondent has settled all the claims of the Petitioner for the period between September, 2002 to September, 2004 by making payment of Rs. 64 Crore in full and final satisfaction thereof and the same was accepted by the Petitioner. The Commission has also in its order dated 18.02.2009 recorded the same. Moreover, the Hon'ble Supreme Court has also in its judgment dated 02.09.2011 upheld the same as under:

“.....

The appeal directed against the decision dated 22.02.2010 rendered by the Appellate Tribunal for Electricity in appeal No. 77/2009 upholding the finding of the State Commission that the claim of the appellant against the respondent for any period up to 14.09.2002 is barred by time except to the extent of Rs. 64 crores paid by the respondent to the appellant pursuant to the full and final settlement of claims for the period from 1998 up to September, 2004, is dismissed”.

12.8. It is an admitted position that the Respondent has fully and finally settled all the claims of the Petitioner for the period commencing from the Year 1998 to September, 2004 by making payment of Rs. 64 Crore which is evident from the Order dated 18.02.2009 and also confirmed by the Hon'ble APTEL as well as the Hon'ble Supreme Court.

12.9. Further, the claim of the Petitioner for principal amount of Rs. 56.29 Crore for the period from October, 2004 to April, 2010 is not in accordance with the methodology approved by the Commission in its Order dated 18.02.2009 as recorded in Para 9.13.

- 12.10. As regards the claim of DPC, the Petitioner during the hearing agreed to revise the claim of Rs. 2004.24 Crore by calculating the same on simple interest as against the compounding interest basis. Accordingly, the Petitioner reduced the DPC claim to Rs. 517.32 Crore. However, since the Respondent is not liable to pay the Principal amount of Rs. 272.05 Crore or any part thereof, there is no question of any DPC.
- 12.11. Moreover, except Article 5.4 of the PPA there was no provision in the PPA which provides for payment of delayed payment charges by the Respondent to the Petitioner. Further, the said Article also expressly provides that dispute notice needs to be issued within 30 days if there is any dispute with respect to any portion of the statement made by the Respondent under any invoices raised on the Petitioner by it. Further, it requires to be settled by mutual discussions and if necessary by arbitration. Only if it was determined that the Respondent owes an amount of money to the Petitioner, the Respondent has to pay the same within 14 days of receipt of such determination together with 2% over the average interest rate charged by the Petitioner's banks on working capital loans during the preceding 12 months calculated from the due date as defined in the PPA.
- 12.12. At no point of time the Petitioner disputed any statement made by the Respondent under invoice. The disputes that the Petitioner raised on receipt of invoices from the Respondent were in relation to matters on which such invoices are totally silent and the procedure specified in the PPA has not been followed. Therefore, the question of interest payment does not arise. The Respondent is not liable to pay the delayed payment charges claimed by the Petitioner as it is not entitled for the same.
- 12.13. The deemed generation incentive amount is of Rs. 34,41,95,219/- was paid by the Petitioner to the Respondent when Naphtha was used as fuel to generate the electricity. Against the aforesaid amount the Petitioner has recovered huge amount from the invoices for supply of power raised by the Respondent during the period October, 2004 to April, 2010 which is significantly higher than the refundable amount of incentive of deemed generation on Naphtha.

- 12.14. The amount claimed by the Petitioner based on calculation made by it on half hourly basis is against the express and explicit direction and decision of the Commission. The Commission has decided that computation should be on hourly time block basis and hence, the claim of the Petitioner on half hourly time block basis cannot be granted.
- 12.15. The claim of the Petitioner based on HTP-1 tariff is also contrary to the Order dated 18.02.2009 where the Commission has held that compensation is to be paid at HTP-1 energy charge less variable cost. The Commission has not allowed any other charges. Hence, the claim of the Petitioner towards fixed charge, electricity duty, delay payment surcharge etc. cannot be allowed as per the Commission's Order dated 18.02.2009.
- 12.16. Admittedly, the amount of Rs. 64 Crore was paid by the Respondent to the Petitioner in November, 2004 for excess supply of power to Essar Steel. The said amount calculated and furnished by the Petitioner to the Respondent provided for HTP-1 energy charge less variable charges without charging any fixed charge or any other charges such as delayed payment charges, electricity duty, fixed charge etc..
- 12.17. The Commission has not determined any final amount payable by either party on the basis of working. Hence, in the absence of determination of any final amount, it is not permissible to claim interest in the form of DPC by the Petitioner from the Respondent. The interest claimed by the Petitioner is excessive, exorbitant and extortionate in nature and it varies between 15% to 30% on quarterly basis.
- 12.18. The Respondent is entitled to receive an amount of Rs. 436.78 Crore which includes principal amount Rs. 124.63 Crore and DPC amount of Rs. 312.16 Crore.
- 12.19. The Respondent is entitled to receive the said principal amount of Rs. 124.63 Crore from the Petitioner since as per its calculation, the net compensation payable to the Petitioner will be only Rs. 49.58 Crore which includes Rs. 30.89 Crore towards HTP energy charges less variable charges and Rs. 18.69 Crore towards fixed charges reimbursement. GUVNL has illegally deducted an amount of Rs. 208.63 crores from the Respondent's invoices for the period from 01.10.2004 to 04.04.2010. The

Respondent has claimed from GUVNL payment of the said principal amount of Rs. 124.63 Crore which is net of the said sum of Rs. 34.42 Crore payable to GUVNL towards refund of incentive on deemed generation on Naphtha.

- 12.20. The Respondent is entitled to DPC of Rs. 312.16 Crore in view of Clause 5.3.4 of the PPA for the period between 01.10.2004 to 04.04.2010 as GUVNL has illegally deducted the amount from Respondent's invoices amount and has not made payment in full.
- 12.21. It is evident from the above that both the parties are at variance regarding the amounts claimed as due and payable from each other under the Order of the Commission dated 18.02.2009 read with the judgement of the Hon'ble Supreme Court dated 09.08.2016. Such variance is on account of serious disputes or differences existing between the parties in relation to monetary claims of hundreds of crores. The Respondent further submitted to appoint a reputed firm of Auditors to be assisted by a reputed Legal Firm for examination of the claims involved in the matter and submit a report to the Commission within a specified period so that the Commission can come to a proper conclusion and do complete justice to the parties by passing an appropriate order.
- 12.22. The Respondent submitted that with a view to assist the Commission to come to a proper conclusion with regard to amount payable by the Petitioner to the Respondent in terms of the judgment of the Commission and upheld by the Hon'ble Supreme Court, the Respondent availed the services of Price WaterhouseCoopers (PWC) to verify the correctness of the claims made by the Respondent against the Petitioner. The Report submitted by PWC on 04.06.2018 is brought on record for consideration of the Commission.
- 12.23. It is clear from the report that the claims of the Respondent against the Petitioner put up vide affidavit dated 15.01.2018 are just, proper and reasonable and have sound legal basis.
- 12.24. The Respondent started submitting weekly schedule with respect to availability of power generated from the generating station to the Petitioner from the month of February, 2009 after the Commission's Order dated

18.02.2009. The Respondent declared available capacity on weekly basis to the Petitioner as well as Essar Steel from the inception itself and further sold and supplied electricity as per the dispatch instructions given by them from time to time and that whenever the Respondent was unable to generate electricity as per the declared Schedule, it has compensated to the Petitioner by paying Deemed Non-Generation Charges as per Clause 7.4.3 of Schedule VII of the PPA.

- 12.25. The Respondent also contended that it has provided all the information with respect to weekly schedules of available power provided to Essar Steel from time to time along with its computations on 24.11.2016.
- 12.26. The deductions made by the Petitioner from the invoiced amounts in contravention of the relevant provisions of the PPA is also an issue required to be decided by the Commission. Further, the Respondent has claimed amount from the Petitioner which is a subject matter of Petition No. 1002 of 2010 in which the Commission passed its Order dated 22.10.2014. As per the aforesaid Order, the Respondent is entitled to receive amount from the Petitioner. The said Order is under challenge before the Hon'ble APTEL in Appeal No. 2 of 2015 filed by the Petitioner.
- 12.27. The Respondent is entitled and sought DPC for an amount of Rs. 3,12,15,73,956/- from the Petitioner as per Affidavit dated 24.11.2016. The Respondent is not liable to pay any DPC amount to the Petitioner.
- 12.28. As far as claim of principal amount of Rs. 179.13 crores or any part thereof by the Petitioner in concerned, the Respondent submitted that it is admitted fact that the Respondent had settled all the claims of the Petitioner for the period commencing from the year 1998 to September, 2004 by making payment of Rs. 64 Crore. The same is recorded by the Commission in its Order dated 18.02.2009. The said Order was challenged before the Hon'ble Appellate Tribunal by filing an Appeal No. 77 of 2009 by the Petitioner. In the said Appeal, Hon'ble Tribunal passed Order/Judgment and held the decision of the Commission in its Order dated 18.02.2009 in Petition No. 873 of 2005 with regard to the aforesaid issue. The decision of Hon'ble Tribunal was also challenged by the Petitioner by filing Civil Appeal No. 3454 of 2010 before the Hon'ble

Supreme Court. The Hon'ble Supreme Court through its judgement dated 02.09.2011 set aside the Order of the Hon'ble Appellate Tribunal for Electricity and upheld the decision of the Commission dated 18.02.2009. From the aforesaid, it is clear that all the claims of the Petitioner against the Respondent for the period of September, 1998 to September, 2004 have already been settled.

- 12.29. The claim of the Petitioner for the fixed charge, delayed payment charge, electricity duty, etc. is not permissible for the period 14.09.2002 onwards as per the order of the Commission. The Respondent is liable to pay and compensate the Petitioner for such supply of energy at the prevailing HTP-1 energy charge less variable cost as per the compensation previously accepted by the parties for diversion of energy by the Respondent as admittedly by the parties for payment of Rs. 64 Crore. Such being the position, the Petitioner is entitled to payment of compensation calculated in the aforesaid manner only. The claim of the Petitioner towards delay payment charge, fixed charge, electricity duty etc. is not permissible.
- 12.30. As regards, the claim of the Petitioner towards delayed payment charges, the Respondent submitted that the Petitioner has specifically read the award of interest on the amount claimed in the Petition against the Respondent in which the Commission passed Order dated 18.02.2009 in Petition No. 873 of 2005. However, there is no specific Order of the Commission on the aforesaid aspect. The order of the Commission is silent on the issue of award of interest claimed by the Petitioner against the Respondent. Further there is neither any Order of the Hon'ble APTEL nor the Hon'ble Supreme Court against the Appeals filed before them arising from Order dated 18.02.2009 of the Commission with regard to interest/DPC payable by the Respondent to the Petitioner. In absence of any specific Order by the Court/Tribunal on the prayer of the parties, it is deemed to have been refused or rejected and no further separate proceedings will lie for recovery of interest so refused.
- 12.31. The DPC is in nature of interest. The PPA executed between the parties does not contain any provision for payment of interest whether by way of DPC or otherwise by the Respondent to the Petitioner. Contrary the PPA

provides that the Petitioner is liable to pay interest/DPC to the Respondent in certain stated circumstances. On these grounds also the claim of interest/DPC by the Petitioner against the Respondent is completely misconceived and untenable in law and hence, the same is not awardable.

- 12.32. The Commission has not determined the final amount payable by either party to another party on the basis of working submitted by the parties. Hence, in absence of the approval of the Commission, the claim of the Petitioner is baseless and the same is not awardable.
- 12.33. The rate of interest claimed by the Petitioner is excessive, exorbitant and extortionate in nature which is higher than average working capital interest rate of the Respondent. The Petitioner has compounded the interest rate on quarterly basis in its claim which is without any basis and beyond the commercial parlance.
- 12.34. The Petitioner has claimed Rs. 447.37 Crore from the Respondent for the period from October, 2004 to 04.04.2010 after adjusting the variable charges of Rs. 10.4 Crore as on 31.12.2016. The Petitioner has, out of said amount of Rs. 447.37 Crore already recovered Rs. 390.72 Crore from the Respondent and in such circumstances the claim of the Petitioner from the Respondent is Rs. 56.29 Crore as principal amount along with Rs. 246.93 Crore as disputed by the Respondent. An amount of Rs. 447.37 Crore claimed by the Petitioner includes (i) Rs. 215.30 Crore consisting of (a) Rs. 98.69 Crore towards demand charge, (b) Rs. 65.25 Crore towards electricity duty and Rs. 51.36 Crore towards excess energy charges which are not recoverable by the Petitioner from the Respondent for the reasons as stated above. The Petitioner is not entitled for payment of any demand charges or electricity duty from the Respondent. The Commission's Order specifically provides that excess units supplied to Essar Steel Ltd. strictly supplied on hourly basis and not half hourly basis. However, the Petitioner has claimed the energy supplied on half hourly basis which is contrary to the Order of the Commission. Hence, the principal amount of Rs. 56.29 Crore claimed by the Petitioner is not legal and valid. Further, the claim of interest of Rs. 246.93 Crore on aforesaid principal amount for the period

between October, 2004 to April, 2010 is also not legal and valid and permissible.

12.35. The Petitioner has claimed refund of deemed generation incentive amount paid towards energy generated on Naphtha. The Respondent has earlier recovered huge amount. The principal amount is Rs. 36.63 Crore towards refund of incentive on DG on Naphtha. The interest/DPC claimed on aforesaid principal amount is not permissible as per Order dated 18.02.2009 of the Commission. Further, the interest rate is calculated by the Petitioner on compound basis quarterly which is incorrect or not permissible as per law.

13. Based on submissions made by both the parties, number of issues emerged for the consideration and decision of the Commission. These are as mentioned below :

- i. How to verify the correctness of data of availability and scheduled dispatch in line with the Order dated 18.02.2009 of the Commission as well as the judgement dated 09.08.2016 of the Hon'ble Supreme Court?
- ii. Whether the Respondent Essar Power Ltd. had declared the availability of the plant as per the PPA or not? What are the consequences of non-declaration of availability by Essar Power Ltd. as per the PPA?
- iii. Whether in the absence of hourly basis data, can the half hourly basis data be taken to verify as to whether the principle of proportionality is violated or not?
- iv. Whether the Respondent declared less availability to GUVNL and higher availability to Essar Steel Ltd. without declaring the availability based on 515 MW capacity of the plant and if so, whether the Respondent is liable to pay compensation as per the Commission's Order dated 18.02.2009 in Petition No. 873 of 2006?

- v. What is the methodology to be considered to determine the quantum of surplus energy, if any diverted by the Respondent to its Sister Company/Essar Steel in violation of the principle of proportionality for supply of energy to the Petitioner and ESIL by the Respondent?
 - vi. What is the methodology to be considered for determination of charges for diversion of energy? Whether the Petitioner is entitled to recover the fixed charges of HTP-1, delay payment charge, electricity duty, penalty for excess drawal of demand etc. on diversion of energy by the Respondent to Essar Steel Ltd./ its group companies?
 - vii. Is DPC payable on the Principal amount payable to the Petitioner by the Respondent and the methodology for computation of the same?
 - viii. Is the claim of the Petitioner for interest on deemed generation incentive which is required to be refunded by the Respondent legal and permissible?
 - ix. Whether the claim of the Petitioner for the period between 1998 to September, 2004 was settled against Rs. 64 Crore paid by the Respondent and the Petitioner is not eligible for any compensation for diversion of energy prior to September, 2004?
14. We have considered the submissions made by the parties. We note that the present proceeding is pursuant to the earlier Order of the Commission dated 18.02.2009 in Petition No. 873 of 2006. In the aforesaid Order, the Commission has decided the methodology/mechanism for various claims of the Petitioner against the Respondent and decided how to calculate the claim amount etc. The principles which have been decided and specified by the Commission in the aforesaid Order in Para 8, 9, 10 and in summary of para 11 is the basis for calculation of claim and counter-claim raised by the parties in Petition No. 873 of 2006.

- 14.1. The said Order of the Commission had been challenged before the Hon'ble APTEL by filing Cross-Appeals No. 77 of 2009 and 86 of 2009 by the Petitioner and the Respondent respectively. In the aforesaid appeals, the Hon'ble APTEL passed judgment dated 22.02.2010 and partly allowed Appeal No. 86 of 2009 filed by the Respondent. Being aggrieved of the said judgment, the Petitioner filed Civil Appeal No. 3455 of 2010 before the Hon'ble Supreme Court which gave its judgment on 09.08.2016 wherein the Order of the Hon'ble APTEL is set aside and the Order of the Commission is restored. Thus, the Order of the Commission dated 18.02.2009 in Petition No. 873 of 2006 is important for deciding the issues listed out at Para 13 above.
- 14.2. The Commission had in its Order dated 18.02.2009 in Petition No. 873 of 2006 decided in detail the various claims/counter claims of the parties in different paragraphs and the summary of the finding is given in para 11. For the sake of brevity, Para 11 of the Order dated 18.02.2009 is reproduced below:

“.....

11. In view of the aforesaid discussion, the Commission orders as follows:

- 1. EPL has the obligation at all times under the PPA to declare capacity for the entire generating station, in the manner provided in Schedule VI of the PPA.*
- 2. Once the declared availability for the entire plant is known, GUVNL may proceed to issue dispatch instructions to the extent of its allocated capacity in accordance with the terms of the PPA.*
- 3. The supply of electrical output will always be in proportion to the allocated capacity i.e. 300:215 MW, in accordance with the dispatch instructions.*
- 4. The claims of GUVNL for the period before 14.9.2002 on account of (i) diversion of allocation (except to the extent of settlement of Rs. 64 crores for diversion of electricity by EPL to Essar Steel / sister companies in excess of 215 MW for the period between 1998 to September, 2004) and (ii) adjustment of Deemed Generation Incentive, is barred by limitation.*

5. For the period after 14.9.2002, whenever EPL has failed to declare the entire capacity of the plant, all supplies made to Essar Steel / sister companies of EPL in excess of the proportionate principle referred to above is liable to be held as supply of electricity made by GUVNL to Essar Steel / sister companies of EPL. GUVNL shall be compensated for such supply at the prevailing HTP-1 tariff less variable cost, which principle of compensation has been previously accepted by the parties for diversions by EPL in excess of 215 MW.

6. For the period after 14.9.2002, if GUVNL has not scheduled energy to the extent allocated under the proportionate principle (when EPL has declared capacity for the entire generating station in terms of Schedule VI of the PPA), EPL can supply the additional power that is available only to Essar Steel / sister companies and shall only reimburse the proportionate of annual fixed cost to GUVNL.

7. On the issue of Deemed Generation Incentive, in view of the applicability of the Amendment Notification dated 6.11.1995, GUVNL is entitled to recover the Deemed Generation Incentive paid to EPL for the period between 14.9.2002 to 29.5.2006.

8. The parties are directed to work out the accounts for the period starting from 14.09.2002 in the manner provided in this order.

9. The amount that has been deducted and / or is being deducted by GUVNL on ad hoc basis from the invoices raised by EPL be adjusted in accordance with the principles set out in this order.

.....”

15. In the backdrop of above decision, we now deal with the issue as to whether the claim of the Petitioner for the period between 1998-99 to September, 2004 was settled between the parties against Rs. 64 Crore paid by the Respondent to the Petitioner and the Petitioner is not eligible to receive the compensation for diversion of energy prior to September, 2004. In this regard, it is necessary to refer the decision of the Commission in Order dated 18.02.2009 in Petition No. 873 of 2006 as reproduced below:

“.....

8. Finding and Decision of the Commission on the issue of limitation

8.1 *The Commission before entering into the merits of the case, is required to decide the issue of limitation in relation to each of the two claims made by GUVNL i.e. (i) the claim on account of diversion of power and (ii) the claim relating to adjustment of Deemed Generation Incentive. In the present case, the Respondent EPL admits that the period of limitation would commence on the date the amount claimed by the Petitioner for diversion of electricity was denied by the Respondent on 1.11.2003 and 1.12.2003. EPL has further submitted that the alleged amount claimed in the present petition became payable at the end of the respective months covered under the bills raised for the said months. Thus, the claim for the amount for energy charges for the period of July, 1996 can be said to have accrued in the month of August 1996 and so on. Therefore, according to EPL the present claim relating to the period from July 1996 to June 2005 which apparently has been raised in October, 2003, is barred by limitation.*

8.2 *The period of limitation is always a mixed question of fact and law, therefore has to be examined on the basis of the special facts of each case. Period of limitation is prescribed by a statute, with a consequence that an action begun after the period of limitation has expired, is not maintainable. In the present case, limitation has to be separately examined in respect of each of the two claims i.e. (i) the claim on account of wrongful diversion of power to sister company and (ii) adjustment of Deemed Generation Incentive.*

8.3 *From a review of the law on the subject, it is clear that in order to compute the period of limitation, the issue may be divided into three questions, which are as follows:*

1. *When does time start to run?*
2. *How long is the period of limitation?*
3. *What happens when time expires?*

8.4 *In the present case, the PPA was executed on 30.5.1996 and remains operational for a period of twenty years. Under the terms of the PPA, the generating company i.e. EPL is required to declare availability and supply of*

electricity for the entire duration of the PPA, while the Petitioner GUVNL has an obligation to purchase electricity and pay the tariff in terms thereof. The dispute appears to have arisen sometime in 1998-99, when the CAG Report for the year 1998-99 rejected the contention of the Government that there was no adverse financial impact as a result of diversion of power. Thereafter, on or around 10.2.2000, a meeting was conducted with the GEB to discuss the issue of diversion. On 17.2.2000, EPL subject to certain conditions accepted that power is required to be supplied on a 58:42 basis. Attempts were made to renegotiate the PPA. By a letter dated 23.4.2002, GEB wrote to EPL identifying certain key areas for negotiation of PPA. The issue of allocation of power was also part of the agenda. Since the issue of allocation of power could not be settled, GEB by its letter dated 29.10.2003 raised a claim of Rs. 537 crores for the period 1.7.1996 to 31.3.1999. EPL by its letters dated 1.11.2003 and 1.12.2003 denied the claim of GUVNL.

8.5 According to EPL, the cause of action for the present claim (relating to the period from July 1996 to June 2005) arose when EPL rejected GUVNL's claim by its letters dated 1.11.2003 and 1.12.2003. Hence, it is argued by EPL that the same is barred by limitation. However, EPL in its written submission has stated that "amount claimed in the present petition became payable at the end of the respective months covered under the bills raised for the said months. Thus, the amount for energy charges for the period of July, 1996 can be said to have accrued in the month of August 1996 and so on". Therefore, admittedly, the obligation to make such payment arises every time the invoice is raised and the payment becomes due.

8.6 In the present case it is admitted that GUVNL by a letter dated 29.10.2003 made a claim of Rs. 537 Crores on account of diversion of energy for the period of 1996-97, 1997-98 and 1998-1999. In the said letter the following break up was provided:

<i>Year</i>	<i>Energy diverted to ESL (MUs)</i>	<i>Rate of realization of GEB under applicable tariff Rate to ESL</i>	<i>Amount in Rs. (Crores)</i>
<i>1996-97</i>	<i>393</i>	<i>3.37</i>	<i>132</i>
<i>1997-98</i>	<i>283</i>	<i>4.13</i>	<i>117</i>
<i>1998-99</i>	<i>379</i>	<i>4.49</i>	<i>170</i>
<i>Total</i>	<i>1055</i>	<i>11.99</i>	<i>419</i>

8.7 On 1.11.2003, EPL responded to the aforesaid letter by stating as follows:

“We do not agree with the content of your letter and the claim raised by you is not based on facts but are frivolous in nature.

We wish to state that we have strictly followed the supply of power to GEB as per the Power Purchase Agreement and any non-supply has been penalised by GEB as Deemed Non-Generation.

We have not diverted the amount of energy as stipulated by you to Essar Steel.

It is unfortunate that GEB has not honoured its commitment as per PPA concerning payment to EPOL which has put us in serious financial problems and instead raised fictitious and untenable claim to divert the main issues. What has surprised us is that we have been meeting all top officials of GEB regularly for the last seven years and at no point of time till date this claim was even discussed nor we were given any opportunity to explain any doubt that you may have and this itself indicate that the claim raised in this letter are nothing but an attempt to confuse all concerned.

We hereby request you to withdraw this letter immediately as we have met all clauses of PPA both in letter and spirit.

8.8 Thereafter, GUVNL by its letter dated 5.11.2003 stated that it is looking into the contents of the allegation made by Essar and will revert back soon.

8.9 EPL by another letter dated 1.12.2003, expressly denied the liability alleged to have arisen on account of diversion of electricity. In the said letter, EPL gave a detailed chart showing the annual data regarding supply of power against allocated capacity to GUVNL and Essar Steel during the period 1.1.1998 to 30.09.2003, which GUVNL had been furnishing as Despatch Instruction and further alleged as follows:

a) GEB has always demanded power significantly lower than capacity declared by EPoL.

b) EPoL has supplied power from 1st April 1999 onwards in excess of the power demanded by GEB.

c) Whenever we have not supplied power as per Despatch instruction to GEB, we have been penalized financially on account of Deemed No. Generation.

d) EPoL has cumulatively supplied 368 mu's of excess energy to GEB during the period stated above for which EPoL has not been compensated either for fixed charges or Variable Charge.

e) Capacity Declared for ESTL has been within their Allocated capacity.

f) ESTL has drawn power lower than the capacity declared by EPoL.

Thus, GEB's contention that EPoL diverted power to ESTL from the capacity allocated to GEB is incorrect and not borne out by facts.

4. Conclusions:

No diversion of power from capacity allocated to GEB has been effected to ESTL. In other words, EPoL has not been earning any additional revenue on the capacity allocated to GEB. GEB has never demanded power EPoL even to the extent of the capacity declared as available by EPoL to have a cause of concern of being denied power supply by EPoL. The quantum of power demanded by GEB is far below the capacity made available by EPoL.

GEB has taken reference to the rightful position stated by EPoL vide its letter dated 17th February 2000 regarding the concept of supply from the Company's 515 MW Power Plant between GEB and ESTL in the ratio of 58.42 without caring to note the proviso's stated by it i.e. GEB not being in default concerning payment; availability of demand in GEB's system to

enable offtake of power to the extent of allocated capacity. We wish to bring to your notice that, the above issues were discussed in detail on various occasions during 1999-2000 with the Member Technical Member – Finance and other senior officials when the same question was raised GEB Officials after reassuring themselves that EPoL had not diverted any power to ESTL from the capacity allocated to GEB, agreed to release a considerable payment withheld by it on account of wrongful computation of Deemed Generation, Deemed Non generation and Excess Energy based on the resolution reached vide minutes of Meeting held on 30th March 2000. We hope we have provided a detailed account of our operations since the effective of the PPA to justify that we have not diverted any energy to ESTL more than its allocated capacity. It may be noted that ESTL has separate contract demand in GEB in case they are required to draw more power than what they are supplied to EPoL.

In case you need any further information we shall be pleased to furnish the same.

Thanking you,

Very truly yours

ESSAR POWER Limited

*Sd/-
A.K. Srivastava
Managing Director*

Encl: as above

CC: Member-Finance Gujarat Electricity Board Vadodra”

8.10 Thereafter, it appears from the correspondence negotiation took place between the parties resulting in writing of letters dated 29.7.2004, 31.7.2004, 7.8.2004, 5.10.2004 and 5.11.2004. Finally, by a letter dated 30.10.2004 GEB stated as follows:

*“To,
Shri A.K. Srivastava
Managing Director,
M/s Essar Power Limited
Essar House, P.O. Box No. 7945
Mahalaxmi, Mumbai-400 034*

Subject: Allocation of power by Essar Power Limited to Gujarat Electricity Board.

*Ref: COM/IPP/1498/1321/Dt. 29.10.03
COM/IPP/ESSAR/581/5th November,2003
COM/IPPEPoL/1292/29.7.2004
COM/CFM(COMM)/1583/13th August,2004
Essar letter Dt. 13th August 2004
Essar letter Dt. 5th October 2004*

Dear Sir,

This is in continuation to the above reference. An amount of Rs. 64 Crores (Rs. Sixty-Four Crores) shall be recovered from you pending monthly invoices of power purchase for diverting the energy of GEB's share from your 515 MW power plant at Hazira to your group company namely M/s Essar Steel Limited considering the same as deemed supply from GEB for the period from April 98 to September, 2004.

The recovery in respect of similar diversion of energy-from GEB's share to Essar Steel for the period from October 2004 onwards will also be done from the Monthly Invoice for power Purchase.

Thanking You,

Yours Faithfully

(H.K. Suthar)

General Manager (Com.)”

.....

8.11 This letter was followed by another letter of GEB dated 11.11.2004, in which it was stated as follows:

“To,
 Shri A.K. Srivastava
 Managing Director,
 M/s Essar Power Limited
 Essar House, P.O. Box No. 7945
 Mahalaxmi,
 Mumbai-400 034

Subject: Allocation of power by Essar Power Limited to Gujarat Electricity Board.

Ref: COM/3108/Dt. 30.10.04

Dear Sir,

This is with reference to your meeting with our Chairman in the first week of November 2004 and in continuation to the above communication. As discussed, the details of the working of Rs. 64 Crores are given herebelow:

Year	Energy diverted to ESTL more than 215 MW in Mus.	Amount recoverable as per HTP-1 Energy charge @ Rs. 4.10 per kWh (Rs. in Crore)	Reimbursement of the variable charges (Rs. in Crore)	Total recovery from Essar Steel (Rs. in Crore)
1998-99	96.41	27.80	16.29	11.50
1999-00	29.96	9.74	7.61	2.13
2000-01	37.41	13.32	11.56	1.76
2001-02	6.49	2.66	1.59	1.07
2002-03	57.56	23.60	13.01	10.59
2003-04	447.10	60.31	27.07	33.24
Upto Sept. 04	15.23	6.24	2.54	3.70
Total				64.00

Your proposal of 5% tolerance band on hourly basis and consideration of additional capacity of 20MW with effect from 1.4.2003 have not been accepted by Board. The Variable Cost has been allowed as per the fuel consumed and paid during the relevant period. The recovery of Rs. 64 Crores has been worked out without applying Electricity Duty for which we have sought the legal opinion. On receipt of legal opinion, we will inform you the amount recoverable on account of E.D. as the above recovery has been worked out considering deemed sale of power to ESSAR STEEL.

Thanking You,

Yours Faithfully

(H.K. Suthar)

General Manager (Com.)

This is without prejudice to GEB's rights under the provisions of PPA."

8.12 The aforesaid settlement was accepted by Essar in its letter dated 30.11.2004, in the following manner.

*"Shri H. K. Suthar
General Manager (Comm.)
Gujarat Electricity Board
Sardar Patel Vidyut Bhavan
Race Course, Vadodara-390 007.*

Dear Sir,

Ref: Your letter under Ref. No. COM/3420, dated 11th November,2004

We wish to convey that we have a view to close the discussion and correspondence on the matter regarding supply of power in excess of allocated capacity to Essar Steel Ltd. accept your claim of Rs. 64 Crores as part of the overall package.

We thank GEB Officials for having concluded the matter that has been under discussion over the past few years and trust that the methodology that has been finalized would be the basis adopted for future.

Thank you,

Yours faithfully,

Essar Power Limited

A.K. Srivastava

Managing Director”

8.13 Further, on the basis of the aforesaid settlement, which appears to be a product of a long drawn negotiation process, the Respondent EPL made payment to the tune of Rs. 64 crores. From the letter of GEB dated 30.10.2004 which has been referred to and fully set out above, it is clear that GEB agreed to recover an amount of Rs. 64 Crores from the pending monthly invoices of power purchase for diverting the energy of GEB’s share from EPL 515 MW power plant at Hazira to EPL’s group company namely M/s Essar Steel Limited in excess of 215 MW, considering the same as deemed supply from GEB for the period from April 1998 to September, 2004. In its letter dated 11.11.2004, GEB provided the details of how Rs. 64 Crores was arrived at. However, GEB in the said letter expressly stated that the payment of Rs. 64 crores was without prejudice to GEB’s rights under the provisions of PPA. EPL by its letter dated 30.11.2004 accepted the settlement offer and paid money in terms thereof.

8.14 However, GEB by its letter dated 31.12.2004 clarified that the amount of Rs. 64 Crores is not a final settlement of the issue nor is the methodology for energy diverted in excess of 215 MW final. In the said letter GEB stated that the recovery of Rs. 64 Crores was provisional and ad hoc.

“To,

Managing Director,

Essar Power Limited

Essar House, Mahalaxmi

11, Keshavro Khade Marg,

Mumbai

Sub: Under allocation of Power to GEB.

Dear Sir,

We refer to your letter dated 30.11.2004, conveying your acceptance of the claim of Rs. 64 Crores. We would like to bring to your notice that this amount of Rs. 64 Crores is not a final settlement of the issue nor is the methodology of charging for energy diverted in excess of 215 MW final. We would like to inform you that we have sought a legal opinion according to which, EPoL is bound to maintain declaration of power availability between GEB and Essar Steel in the ratio of 300:215. IN the event when total generation is less than 515 MW, Essar Steel can only get the availability from EPoL in proportionate share. Any excess quantity taken delivery by Essar Steel should be treated as supply of power from GEB. EPoL in its letter dated 17th Feb.,2000 had accepted the EPoL's obligation to pay and also the methodology of recovery.

It is also opined that if Electricity Duty is chargeable on such recover, GEB shall work out the final recovery amount by this method and inform EPoL accordingly.

Therefore, recovery of Rs. 64 Crores and Rs. 7.56 Crores are provisional and ad-hoc. It is not correct that there was any overall package to accept the above amount in full or final settlement.

This is without prejudice to the Board's rights to the provisions of the PPA.

Thanking you,

Yours faithfully,

(H.K. Suthar)

General Manager (Com.)”

8.15 By a letter dated 7.1.2005, EPL while expressing surprise and shock, strongly refuted the stand taken by GEB. This letter is also on record and has been seen by the Commission.

8.16 From the aforesaid sequence of events, it is quite clear that GEB/GUVNL agreed on a settlement of the issue relating to diversion of electrical output for the period between 1998 and September, 2004 for energy diverted by EPL to Essar Steel in excess of 215 MW. For this limited claim GEB/GUVNL proposed that the amount payable by EPL on account of such diversion (i.e. supply to Essar Steel in excess of 215 MW) up to September 2004 is Rs. 64 Crores. Even the methodology for arriving at the figure of Rs. 64 crores was disclosed. This is clear from the letter dated 30.10.2004 and 11.11.2004. It appears that the principle for arriving at the compensation amount excludes from the amount recoverable as per HTP1 energy charge for the diverted quantum of energy, the variable charges which were payable by the Board.

8.17 The communication as regards the settlement (being letters dated 30.10.2004, 11.11.2004 and 30.11.2004) are quite clear and unambiguous. GEB after working out the methodology of arriving at the compensation amount of Rs. 64 Crores on account of total recovery for diversion of energy from GEB's share under the PPA to Essar Steel in excess of 215 MW for the period between 1998 to September 2004 offered the same to EPL for its acceptance. EPL accepted the same as a part of an overall package and paid an amount of Rs. 64 crores in terms of the offer made by GEB. The settlement for the period between 1998 to September, 2004 to the extent it related to supply of power to Essar Steel in excess of 215 MW is conclusive and cannot be reopened.

8.18 The Petitioner GEB by its letter dated 31.12.2004, after the settlement was agreed to and acted upon by the parties, cannot unilaterally declare the same to be "provisional" or "ad hoc". Had the settlement been "provisional" or "ad hoc", GEB should have stated so in its letters dated 30.10.2004 and 11.11.2004. The said letters which proposed that an amount of Rs. 64 Crores will be recovered on account of diversion of energy is unqualified for diversion of electricity to Essar Steel more than 215 MW for the period upto September, 2004. The only qualification imposed by GEB in its letter dated 11.11.2004 is

that the proposal of EPL of a 5% tolerance band on hourly basis and consideration of additional capacity of 200MW to Essar Steel with effect from 1.4.2004 has not been accepted by the Board. The letter dated 11.11.2004 also confirms that variable costs has been allowed as per fuel consumed and will be adjusted for the relevant period. Further, it is stated by GEB in the said letter that the recovery of Rs. 64 Crores has been worked out without applying electricity duty, for which the GEB has sought legal opinion. GEB has reserved the right to recover electricity duty if the same becomes applicable.

8.19 In view of the settlement, which has been acted upon, this Commission, cannot reopen the same to the extent it relates to diversion of electricity to Essar Steel in excess of 215 MW for the period 1998 to September, 2004. Further, the Petitioner/GEB cannot be permitted to resale from the same. Therefore, the question of limitation is only relevant for the claim relating to diversion of electricity by EPL to its sister concern in violation of the proportionate principle i.e. 300:215 MW, which according to GUVNL has been taking place from the very beginning i.e. 1996.

8.20 Admittedly, by a letter dated 17.02.2000 EPL rejected GEB's claim on account of diversion on the basis that the proportionate principle could only be applied subject to fulfilment of certain conditions. Thereafter, from the record it appears that attempts were made to resolve the issue by negotiation. GEB by a letter dated 23.04.2002 wrote to EPL identifying certain key areas for negotiation of PPA. The issue of allocation of power was also a part of the said agenda. Since the matter could not be resolved, GEB by a letter dated 29.10.2003 raised a claim of Rs, 535 Crores on account of diversion of energy for the period 1996-97 up to 1998-99. This claim was denied by EPL by its letters dated 1.11.2003 and 1.12.2003.

8.21 For commencement of limitation one has to examine whether it is a single breach, continuing breach or successive breach. Although the concept of a single breach is easy to comprehend, there are certain fine distinctions in relation to the concept of continuing breach and successive breach of contract. It is necessary to appreciate these concepts so as to determine when the time starts running for purposes of limitation in the present case. Section 22 of the

Limitation Act contemplates continuing breach of a contract. This section can be applied when the wrong is continuing. In case of a continuing breach, time runs from the date when the breach ceases. Successive breach of contract is held to occur in those cases in which there are promises to be performed periodically, such as rents, annuities, insurances etc. In successive breaches time runs successively or separately from each breach and merely because suits or proceedings regarding earlier breach got barred, it will not affect the subsequent breaches. EPL in it's written submissions has relied on the judgment In Sankararu Vs. Sushila Devi AIR 1953 Travancore 193, where the court has held that in case of failure on the part of the defendants to make payment of amounts in case of a breach of contract, the plaintiff will have a cause of action on such breach and that the plaintiff is bound to sue within three years from the date of breach of contract to make annual payment.....

.....8.34 Hence, the Commission is of the view that the period of limitation for the past claims of GUVNL for diversion of electricity in violation of the alleged proportionate principle of 300:215 MW can be considered only for the period of three years prior to filing of the present petition. Since the Petition was filed on 14.09.2005, the Commission will only consider the period of the aforesaid claim from 14.09.2002.

Therefore, the Commission can proceed to adjudicate the past claims only for the period of three years prior to the filing of the present petition on 14.09.2005.

8.35 The issue of limitation for the claim relating to Deemed Generation Incentive has to be also dealt with in accordance with the principle stated above. In case of Deemed Generation Incentive, it is necessary to appreciate that the claim is based on the alleged ground that the said incentive was paid contrary to the statutory notification 06.11.1995, issued under Section 43A (2) of the Electricity (Supply) Act, 1948. The principle of Hari Shankar Singhania, which has been discussed and distinguished above, cannot be applied in relation to this claim also for the reason that a claim which is based on a binding statutory notification cannot be a subject matter of negotiation and settlement.

Such settlement/compromise will be contrary to the mandate of the statute and hence liable to be declared illegal. Neither of the parties have the ability to enter into a negotiated settlement in relation to a claim which is based on a statutory notification.

.....”

It is apparent that the aforesaid settlement is for diversion of excess energy above 215 MW of Essar Steel share in 515 MW capacity of the Respondent's plant. In para 8.19, it is specifically decided by the Commission that in view of the settlement, the Commission cannot reopen the same for diversion of electricity to Essar Steel by the Respondent in excess of 215 MW for the period from 1998 to September, 2004. Moreover, the Commission also decided that the Petitioner/GUVNL cannot be permitted to resile from the same.

It is also clear from the above that the claim of the Petitioner for diversion of energy by the Respondent to its group company between the period FY 1998-99 to September, 2004 was fully and finally settled for Rs. 64 Crore as offered to the Petitioner, when it was accepted by the Respondent and payment was made accordingly.

- 15.1. In para 8.34 of the aforesaid Order the Commission held that the Petitioner's claim prior to 14.9.2002 onwards is barred by the period of limitation and that the Commission will only consider the period of the Petitioner's claim from 14.09.2002. Thus, after 14.09.2002, when the declaration of whole plant was not made by the Respondent and supplied excess energy in violation of the proportionate principle of 58:42 to Essar Steel Ltd, the Respondent is liable to pay and compensate to the Petitioner for such diversion of power.
- 15.2. It is also necessary to refer the judgement dated 02.09.2011 of the Hon'ble Supreme court in Civil Appeal Number 3454 of 2010 where the Hon'ble Supreme Court has decided as under:

“..... The appeal directed against the decision dated 22.02.2010 rendered by the Appellate Tribunal for Electricity in appeal No.77/2009 upholding the finding of the State

Commission that the claim of the appellant against the respondent for any period upto 14.09.2002 is barred by time except to the extent of Rs.64 crores paid by the respondent to the appellant pursuant to the full and final settlement of claims for the period from 1998 upto September, 2004 is dismissed.....”

Thus, the Hon’ble Supreme Court has also while dismissing the Civil Appeal filed by the Petitioner against the decision dated 22.02.2010 of the Hon’ble APTEL recognized the findings of the State Commission that the claim of the Petitioner for the period prior to 14.09.2002 is time barred except to the extent of Rs. 64 Crore paid by the Respondent to the Petitioner towards full and final settlement of claims for the period from 1998 to September, 2004.

- 15.3. Now, we deal with other issues that have emerged and listed in para 13 above. These issues are inter-connected and are pertaining as to whether the proportionality principle with respect to available capacity declared by the Respondent and scheduled dispatch capacity by the Petitioner against it is violated by the Respondent or not-
- 15.4. In this regard, it is necessary to refer the relevant provisions of the PPA dated 30.05.1996 executed between the parties and subsequent amendment thereto as well as the Commission’s Order dated 18.02.2009 in Petition No. 873 of 2009 along with the judgment dated 22.10.2010 of the Hon’ble APTEL and the judgment dated 09.08.2016 of the Hon’ble Supreme Court in Civil Appeal No. 3455 of 2010.
- 15.5. Article 1 of the PPA contains definition of Availability Period which is reproduced below:

“..... Availability period” shall mean each of 24 consecutive periods of 60 minutes in each day. The first beginning at 00.00 hours and the last ending at 24.00 hours when the units are available for operation.

As per the aforesaid definition, the availability is required to be declared on hourly basis starting from 00.00 hours and ending at 24.00 hours when the units are available for operation. Hence, the availability is required to be declared on hourly basis as per the aforesaid provision of the PPA.

- 15.6. It is also necessary to refer the definition of available generation capacity as given in Article-1 of the PPA which is reproduced below:

“..... Declared available generating capacity” shall mean, with respect to each unit of the generating station, the generating capacity expressed in MW at the delivery point as declared by the company pursuant to schedule 6 to be made available to the Board up to allocated capacity.”

As per the aforesaid definition, it is required to declare the availability of each unit of generating station stating in MW terms at the delivery point as declared by the generating company i.e. Respondent to the Petitioner up to allocated capacity as per Schedule-VI of the PPA.

- 15.7. It is also necessary to refer Article 3 of the PPA as reproduced below:

ARTICLE 3

ALLOCATION OF CAPACITY

DELIVERY OF ENERGY AND DECLARATIONS OF AVAILABILITY

3.1 ALLOCATION OF CAPACITY

The Allocation of the Capacity shall be as under:

(a) During Open Cycle mode operation prior to commissioning of the Combined Cycle mode operation:

138 MW to the Essar Group Companies and

192 MW to the Board.

(b) During Combined Cycle mode:

215 MW to the Essar Group Companies and

300 MW to the Board.

The Company undertakes that, subject to the provisions and during the Term of this Agreement, it will fuel and operate the Generating Station to meet the requirements electrical output that can be generated corresponding to the Allocated Capacity, in accordance with its Dynamic Parameters so as to comply with the Operating characteristics except to the extent:

i) as anticipated under the Maintenance Programme during the period of Scheduled Outage

ii) that to do so would not be in accordance with Good Industry Practice;

iii) that may be necessary due to circumstances relating to safety (of personnel or plant apparatus);

iv) that to do so would be unlawful;

v) that may be necessary for reasons of Force Majeure, Natural or Non-Natural.

3.2 DELIVERY OF ACTIVE ENERGY

The Company shall deliver Active Energy and Reactive Energy to the Board at the Delivery Point in accordance with Dispatch Instructions issued by the Board under the Dispatch procedures as specified in Schedule VI. All Active Energy delivered by the Company shall have at the Delivery Point, the voltage, frequency and the other electrical parameters associated with active/reactive power as may be decided by the Board in accordance with the Operating Characteristics.

3.3 AVAILABILITY DECLARATIONS

From the date of Entry into Commercial Service of the first Unit the Company shall, submit to the Board from time to time, Declared Available Generation capacity as per the procedures set forth in Schedule VI.

.....”

As per the aforesaid Article 3, the Allocated Capacity to the Petitioner under Open Cycle mode is 192 MW and 138 MW to the Essar Group of companies(ESL) while during Combined Cycle mode it is 300 MW (GUVNL) and 215 MW (ESL) respectively out of 515 MW capacity of power plant. It is

also mandated to deliver Active and Reactive Energy to the Petitioner at the Delivery Point in accordance with the dispatch instruction of the Petitioner as per the Dispatch procedures provided in Schedule VI of the PPA. The Respondent is also mandated to submit to the Petitioner from time to time Declared Available Generation Capacity as per procedures stated in Schedule VI.

- 15.8. Since Article 3 makes reference to Schedule VI of the PPA, it is necessary to refer the same which is reproduced below:

“.....

SCHEDULE VI
DISPATCH PROCEDURES

6.1 SUBMISSION OF WEEKLY SCHEDULES

The Company will submit to the Board's Load Dispatch Centre at Jambua, Baroda weekly schedules indicating the times and Capacity which will be available from Generating Station and if not available the reasons therefor. These weekly schedules will be submitted on or before each Friday for the next week starting from Monday. If at any time after the issue of such schedule, there is any change in circumstances, the Company will notify the Board about the revisions necessary in the weekly schedule and the reasons therefor.

6.2 ISSUANCE OF REQUIREMENT SCHEDULE

The Board shall issue to the Company's Generating Station at Hazira a Schedule of its requirement with respect to the generation of the Allocated Capacity by the Generating Station during each day by 5.00 PM on the preceding day. This schedule will indicate the level of Active Power required to be produced by Generating Station.

6.3 ISSUANCE OF DISPATCH SCHEDULE

The Board may issue Dispatch Instruction at any time after issue of the schedule as mentioned in Clause 6.2 above. Dispatch Instruction may include requirement in respect of the reactive power output measured at the Delivery Point to be maintained by the Generating Station.

6.4 OPERATION OF GENERATING STATION

The Company, subject to the provisions contained in Article 3.3 of this Agreement, shall operate Generating Station in accordance with the relevant Dispatch Instructions given by the Board from time to time provided that the

Company shall not be obliged to comply with such instructions to the extent that it would require the Company to operate the Generating Station otherwise than the Dynamic Parameters applicable from time to time.

.....”

Clause 6.1 of the Schedule VI mandates the Respondent Essar Power Ltd. to submit weekly schedule to the Board’s (GEB) Load Dispatch Centre i.e. SLDC indicating the times and capacity which will be available from the power plant on or before each Friday for the next week starting from Monday. Further, it also states that if at any time after issuance of such Schedule there is any change in circumstances, the Respondent has to notify the same to the Petitioner about the revision in the weekly schedule along with reasons.

Clause 6.2 mandates the Petitioner to issue schedule of its requirement with respect to the generation of the allocated capacity by the generating station during each day by 5:00 PM on the preceding day indicating the level of Active Power required to be produced by the generating station.

Clause 6.3 provides that the Petitioner may issue dispatch instruction at any time after issuance of schedule and such dispatch instruction may include requirement in respect of reactive power output measured at the Delivery Point to be maintained by the generating station.

Clause 6.4 mandates the Respondent to operate generating station in accordance with the dispatch instructions given by the Petitioner from time to time.

- 15.9. Schedule VII of the PPA pertains to tariff and since the same is relevant in the present case, it is necessary to refer the same as reproduced below:

SCHEDULE – VII

TARIFF

7.1 TARIFF

The Tariff shall be determined as follows

- a) *Annual Fixed Charges to be determined in terms of Section 7.1.1.*

- b) *Variable Charges to be determined in terms of Section 7.2.*
- c) *Incentive Payment to be determined in terms of Section 7.3.*

7.1.1 Annual Fixed Charges: Computation and payment.

The Annual Fixed Charge shall be computed on the following basis:

a) Interest on Debt:

It shall be computed on the Debt as per the Financing Plan approved by the Board. Interest on Debt shall also include lease rentals payable in respect of lease assistance obtained by the Company towards financing the Capital Cost.

If the Financing Plan envisages variable rates of interest on any component of Debt, the Interest on Debt shall be recomputed by applying the prevailing rates of interest during the month on each such Debt.

In respect of interest on Foreign Debt, the interest liability on the applicable Foreign Debt shall first be computed in the applicable foreign currencies and thereafter be converted to Rupees by adopting the Base Exchange Rate and such amount shall be adopted for the purposes of computing Interest on Debt.

A Supplementary Invoice shall be raised for an amount equal to the difference between the amount of interest liability on Foreign Debt as determined on the basis of Base Exchange Rate and the amount of interest liability as on the due dates of the payment of interest as per the Financing Plan computed on the basis of the then prevailing exchange rate. If the amount payable to the Company is determined to be less, on account of foreign exchange variation, than the amount paid by the Board at the Base Exchange Rate, such difference shall be re-paid to the Board within 14 days from the date of the determination.

b) Operation and Maintenance Expenses (O&M Expenses):

O & M Expenses including Insurance Charges for the first full Accounting Year, after commissioning of Combined Cycle Operation of the Generating Station, shall be calculated at the rate of 2.5% of the Capital cost of Rs. 945 Crores in respect of the Allocated Capacity.

The expenditure on the O&M expense in each subsequent year shall be revised on the basis of the weighted Price Index based on the Wholesale Price Index and Consumer Price Index in the ratio of 70:30 respectively or at the rate of 10% progressively every year, whichever is lower. O & M expenses shall not qualify for foreign exchange variations.

c) Depreciation

Depreciation will mean the depreciation as notified by the Government of India from time to time and provided under the Electricity (Supply) Act, 1948 and shall be first computed on the assets of the Generating Station and thereafter apportioned for the purposes of the determining the Annual Fixed Charges as a proportion of the Allocated Capacity over the Nominal Installed Capacity.

d) Tax on Income:

Tax on Income shall be determined in accordance with the provisions of the Income Tax Act, 1961 every year as under:

$$\begin{array}{r}
 \text{Tax payable by the Company} \\
 \text{-----} \quad \times \quad \text{Return on Equity plus} \\
 \text{Total taxable Income} \quad \quad \quad \text{Incentive Payment}
 \end{array}$$

For the purposes of determination of the Annual Fixed Charges, the Tax on Income shall be computed on the estimated basis. Any under or over recovery of Tax on Income shall be adjusted every year on the basis of certificate of documentation of Tax paid and assessment by the Income Tax Officer concerned.

e) Return on Equity (RoE)

Return on Equity shall be computed on Equity at 16% per annum and shall include ROFE.

Return on Foreign Equity (ROFE) shall be computed at the rate of 16% on the amount of Foreign Equity in the applicable foreign currency and thereafter be converted to Rupees at the Base Exchange Rate and such amount shall be adopted for the purposes of computing ROFE.

A Supplementary Invoice shall be raised at the end of each Quarter in an Accounting Year, for an amount equal to the difference between the amount of ROFE determined on the basis of Base Exchange Rate and the amount of ROFE as the end of each Quarter computed on the basis of the then prevailing exchange rate. If the amount payable to the Company is determined to be less, on account of foreign exchange variation than the amount paid by the Board at the Base Exchange Rate, such difference shall be re-paid to the Board within 14 days from the date of the determination.

f) Interest on Working Capital:

The amount of working capital on the Allocated Capacity shall be computed on the basis of annual estimated level of generation adopting the following norms:

- i) Fuel Cost for liquid Fuels only for one month;*
- ii) Operation & Maintenance expenses (Cash) for one month;*
- iii) Maintenance Spares at actual but not exceeding one year's requirement, less value of One Fifth of initial spares already capitalized; and*
- iv) Receivable equivalent to two months' average billing for sale of electricity.*

The Interest on Working Capital shall be computed by applying the rate of interest as applied by the Company's bankers or the Board's Bankers whichever is lower on the amount of working capital computed above.

g) Base Foreign Debt Repayment Adjustment Amount:

In respect of the Foreign Debt, the amounts falling due for repayment during the Accounting Year shall be first computed in the applicable foreign currencies and thereafter be converted to Rupees by adopting the Base Exchange Rate. The difference between the amounts of repayment determined as above and the amount of repayment of Foreign Debt falling due during the relevant Accounting Year and expressed in rupees adopting the exchange rate as per the Financing Plan shall be included in the Annual Fixed Charges.

A Supplementary Invoice shall be raised for an amount equal to the difference between the amount of repayment on Foreign Debt determined on the basis of Base Exchange Rate and the amount of repayment on Foreign Debt as per Financing Plan on the then prevailing exchange rates. If the amount payable to the Company is determined to be less on account of foreign exchange variation than the amount paid by the Board at the Base Exchange Rate, such difference shall be re-paid to the Board within 14 days from the date of determination.

The amount of Annual Fixed Charges for the purposes of this Agreement shall be the aggregate of (a) to (g), but excluding the amounts of supplementary Invoices under (a), (e) and (g) above. For the purpose of monthly Invoice 1/12th of the Annual Fixed Charges will be claimed.

The Invoice in each month shall further specify the number of units of Active Energy and Deemed Generation expressed in Kwh achieved during such month and the cumulative Level of Generation including Deemed Generation less Deemed Non-Generation achieved up to end of such month.

7.1.2 Invoicing of Annual Fixed Charges

notify the same to the Petitioner for revision of such schedule with reasons and the Petitioner is thereafter required to revise its dispatch schedule.

- 15.11. We also note that the Petitioner as well as the Respondent have made amendment to PPA dated 30th May, 1996 by incorporating certain changes and executed Supplemental PPA dated 18th December 2003 as stated below:

***AMENDMENT TO POWER PURCHASE AGREEMENT DATED 30TH
MAY 1996***

This agreement (hereinafter referred to as the "SUPPLEMENTARY AGREEMENT" "SA" in short) entered into on this eighteenth day of the month of December, 2003

BETWEEN

The Gujarat Electricity Board, formed under the Electricity (Supply) Act, 1948 having its head office at Sardar Patel Vidyut Bhavan, Race Course, Vadodara 390007 hereinafter referred to as "Board", which expression shall mean and include its assigns and successors.

Whereas the Board and EPoL have entered into a Power Purchase Agreement on the 30th day of May 1996 whereunder the Board had agreed to purchase power from EPoL to the extent of power that can be generated from the capacity of 300 MW allocated to the Board from the 515 MW Combined Cycle Power Plant of EPoL on the terms and conditions as set out in the said Power Purchase Agreement (hereinafter referred to as "PPA") dated 30th May 1996.

Whereas the Board and the Government of Gujarat had been, through various correspondence and discussions, seeking a review of the Power Purchase Agreement and had for the purpose appointed a Negotiating Committee for discussing with EPoL, the modifications in the terms of the Power Purchase Agreement to enable reduction of Annual Fixed Charges payable by the Board to EPoL.

Whereas EPoL, and the Negotiating Committee had been holding discussions from time to time and have agreed upon the various terms of the Power Purchase Agreements to be amended.

Therefore, in consideration of the premises, mutual, covenants and conditions set forth in this Amendment Agreement, IT IS HEREBY AGREED BY AND BETWEEN THE Board and EPoL as under:

1. Amendment to Article 5.2 of the PPA:

For the figures '6000' appearing in this clause, the figures '6132' shall be substituted.

2. Amendment to Article 5.3.2 of the PPA:

For the figures '6000' appearing in this clause, the figures '6132' shall be substituted.

3. Amendment to Article 5.3.4 of the PPA:

For the figures "31st day" appearing in the clause, figure "61st day shall be substituted.

4. Amendment to sub-clause of clause 7.1.1 of Schedule-VII of the PPA

Depreciation for the period 1st July 2003 to 1st July 2013 shall be paid at the rate of Rs.4084.85 lakhs per annum.

5. Amendment to sub-clause e of clause 7.1.1 of Schedule VII of the PPA

For the figure '16%' appearing the figure '13%' shall be substituted.

6. Amendment to clause 7.3 of Schedule VII of the PPA

For the figure '6000' appearing in this clause, the figures '6132' shall be substituted.

7. Amendment to clause 7.4.3 of Schedule- VII of the PPA

For the figure '6000' appearing in this clause, the figures '6132' shall be substituted.

8. Effective Date of this Agreement

The effective date for operation of the above agreement shall be 1st July 2003. Subject to the aforesaid amendments, all other provisions of the Power Purchase Agreement dated 30th May 1996 shall remain valid and operative.

9. Payment of dues and future invoices. :

GEB agrees to effect payment of all amounts presently dues as mutually reconciled between EPoL and GEB within an agreed time framework as well as effect payment of the future invoices of EPoL on a timely basis as per the terms of the PPA.

This Supplementary Agreement is subject to both GEB and EPoL obtaining such approvals as are necessary to be obtained.

Signed on the date aforesaid by and between.

<p><i>For and on behalf of</i> GUJARAT ELECTRICITY BOARD <i>H.K.Suthar</i> <i>General Manager (Commerce)</i> <i>(1)</i></p> <p><i>(2)</i></p>	<p><i>For and on behalf of:</i> Essar POWER LIMITED <i>A.K. Srivastava</i> <i>Managing Director</i> <i>(1)</i></p> <p><i>(2)</i></p>
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As per the aforesaid agreement the Parties have agreed to make amendment in Article 5.2, 5.3.2, 5.3.4, Clause 7.1.1 of Schedule VII, sub-clause (e) of Clause 7.1.1, Clause 7.3 of Schedule VII, Clause 7.4.3 of Schedule VII, effective date and payment of dues and future invoices. The aforesaid agreement does not include the mechanism for diversion of energy, if any, and how the same may be treated for the payment. The aforesaid agreement was a part of previous proceedings i.e. Petition No. 873 of 2006, wherein the Commission passed Order dated 18.02.2009 deciding the dispute between the parties. The said order is confirmed by the Hon'ble Supreme Court in the judgement dated 9.08.2016 in Civil Appeal No. 3455 of 2010.

- 15.12. We note that there is no evidence on record or pleadings which provide that the parties have amended the PPA and signed the supplemental PPA with regard to declaration of availability of the generating units by the Respondent as well as dispatch schedule required to be declared by the

Petitioner. In the absence of such evidence, it is construed that as per the PPA, the availability is required to be declared by the Respondent generating company and dispatch schedule is required to be declared by the Petitioner GUVNL corresponding to such availability declared by the Respondent.

- 15.13. The procedures specified in the PPA with regard to Scheduled availability and Scheduled dispatch by the parties is as under:
- (i) The Respondent is required to declare availability of unit/plant to SLDC of the Board specifying the scheduled availability.
 - (ii) The Petitioner is required to schedule dispatch of energy against the scheduled availability declared by the Respondent.
 - (iii) Any change in availability needs to be notified to SLDC by the Respondent.
 - (iv) Correspondingly, the scheduled dispatch needs to be revised by the Petitioner notified to SLDC.
 - (v) Scheduled Availability on weekly basis or changes made in it later on and scheduled dispatch against such availability shall be on hourly basis.
 - (vi) Data for scheduled availability and scheduled dispatch of energy is maintained and certified only by the SLDC which may reflect in the energy account.

- 15.14. As the dispute has arisen between the parties, it is necessary to refer the Order of the Commission dated 18.02.2009 in Petition No. 873 of 2006, the relevant portion of which with regard to declared scheduled availability by the Respondent and declared dispatch instructions by the Petitioner is reproduced below:

“.....

2. Petitioner's Submission on Issue of Diversion of Power

.....2.4 (v) In the circumstances mentioned above it is argued that there cannot be any two views in regard to the allocation and entitlement of GEB/GUVNL and Essar Steel on the electricity output from the generating stations. This has to be in all respects in the proportion of 58% to GUVNL and 42% to Essar Steel. It was incumbent on EPL to declare Availability from the Generating Station for supply to GEB /its successor entity GUVNL and Essar Group of Companies maintaining the proportion of 58%: 42% for each time block. The time block for the purpose of present PPA is 1 Hour.

For example, if in the time block the declared Availability for the Station with 515 MW of the installed Capacity is only 400 MW, the same should be declared available to GUVNL to the extent of 233 MW and to Essar Group to the extent of 167 MW maintaining the proportion of 58%:42%.

.....

vi. In the above example, it is not valid for EPL to declare Availability in any time block to Essar Group companies to the extent of 215 MW towards their share and declare Availability to GUVNL only to the extent of 185 MW. Such an act would mean that Essar group is being preferred at the cost of GUVNL. As against the GUVNL's entitlement of 233 MW, they will get only 185 MW and therefore a deficit of 48 MW equivalent of electricity.

.....

2.5 GUVNL further submitted as follows:

..... (b) The declaration of total availability from the generating station of 515 MW for each time block of 1 hour for the relevant period.

c) The declaration of Availability from the generating station to Essar group and GUVNL respectively for each of the above time block of 1 hour during the relevant period.

e) The total quantum of actual generation of electricity generated of each of the above time block of 1 hour during the relevant period; and

f) The actual quantum of electricity supplied to Essar Group and GUVNL respectively for each of the above time block of 1 hour during the relevant period.

.....

The aforesaid submissions of the Petitioner in the Petition No. 873 of 2006 are recorded by the Commission in the Order dated 18.02.2009. The Petitioner has categorically submitted that the Respondent is required to declare availability of the 515 MW generating station to the Petitioner as well as Essar Group Companies for each time block of 1 hour. Further, the time block for the purpose of declared Availability and supply of electricity as per the PPA is 1 hour. The Petitioner has also submitted that the quantum of electricity supplied by the Respondent and dispatch

instructions given by the Petitioner is on hourly basis as per the provisions of PPA.

- 15.15. It is also necessary to refer the para-9 pertaining to findings and decision of the Commission on the issue of diversion of power as recorded in the Commission's Order dated 18.02.2009 in Petition No. 873 of 2006 as under:

'.....9. Finding and Decision of the Commission on the issue of Diversion of Power

9.1 The PPA was executed on 30.5.1996 and effective for a period of 20 years. The relevant clauses of the PPA have been examined. It is quite clear that under the PPA, GUVNL has an obligation to pay an annual fixed cost for the allocated capacity, which is 300 MW. Having paid the annual fixed cost for the said capacity, GUVNL has a right for an equivalent amount of electrical output. The purpose of paying annual fixed cost is to ensure that GUVNL alone has the right to the said capacity and that no part of the same can be sold to any other party. It is true that the normal industry practice is that unless the allocated capacity, for which fixed charges are being paid by the beneficiary is surrendered, the beneficiary has the ability to sell / negotiate any transaction for utilisation of such allocated capacity. In this context, reference is also made to the CERC (Terms and Conditions of Determination of Tariff) Regulations, 2004.

9.2 The question that arises for consideration is whether GUVNL can claim allocation on a proportionate basis i.e. to say, that if EPL is unable to declare 300MW capacity which is allocated to GUVNL under the PPA, EPL would then have to declare capacity proportionately in the ratio of 58:42 from the total declared capacity. In this context one is required to carefully review Article 3.1 of the PPA.

9.3 Although in the definition of allocated capacity, it is only mentioned that 192MW capacity during Open Cycle mode operation and 300MW capacity during Combined Cycle mode operation is allocated to GUVNL, the same is

further elaborated in Article 3.1. In Article 3.1, the parties have agreed as follows:

“3.1 The allocation of the Capacity shall be as under:

a) During Open Cycle mode operation prior to commissioning of the Combined Cycle mode operation: 138MW to the Essar Group of Companies; and 192 MW to the Board

b) During Combined Cycle mode: 215 MW to the Essar Group of Companies and 300 MW to the Board ;

The Company undertakes that, subject to the provisions and during the term of this Agreement, it will fuel and operate the Generating Station to meet the requirements of electrical output that can be generated corresponding to the allocated capacity, in accordance with its Dynamic Parameters so as to comply with the Operating Characteristics except to the extent:

(i) as anticipated under the Maintenance Programme during the period of Scheduled Outage.

(ii) That to do so would not be in accordance with Good Industry Practice;

(iii) That may be necessary due to circumstances relating to Safety (of personnel or plant apparatus);

(iv) that to do so would be unlawful;

(v) That may be necessary for reasons of Force Majeure Natural or Non - Natural.”

9.4 For the interpretation of the contract the following principle as laid down by the Supreme Court in Mrs. M.N. Clubwala v. Fida Hussain Saheb (1964) 6 SCR 642 has to be kept in mind:

Whether an agreement creates between the parties the relationship of landlord and tenant or merely that of licensor and licensee the decisive consideration is the intention of the parties. This intention has to be ascertained on a consideration of "all the relevant provisions in the agreement.”

“...The dispute may arise between the very parties to the written instrument, where on the construction of the deed one party contends that the transaction is a 'licence' and the other that it is a 'lease'. The intention to be

gathered from the document read as a whole has, quite obviously, a direct bearing.” (Underline Supplied).

Also, the Hon’ble Supreme Court has held in State of Andhra Pradesh. Vs. Kone Elevators India Ltd. (2005) 3 SCC 386:

“It is a settled law that the substance and not the form of the contract is material in determining the nature of the transaction”.

Therefore, it is necessary to read the PPA as a whole in order to give a correct interpretation to the terms therein contained. The definition of ‘Allocated Capacity’ in the PPA has to be read in conjunction with Article 3.1. Article 3.1 clearly records the allocation of capacity between two entities i.e. GUVNL as well as Essar Steel.

9.5 From the reading of the Article 3.1 of the PPA as also the corresponding Articles in the PPA with Essar Steel, it is clear that the intention of the parties was that the capacity of the generating plant will be shared between the two beneficiaries only. The fact that Article 3.1 of the present PPA records the capacity allocated to the Essar Group companies along with the capacity allocated to GUVNL shows that intention of the parties was to provide for allocation in the proportion of 138:192 (while working in open cycle mode) and 215:300 (while working in combined cycle mode). Otherwise there is no reason for mentioning in Article 3.1. of PPA about the quantum that is contracted with Essar Steel. Similarly, the fact that the PPA with Essar Steel states the allocation to GUVNL goes to show that the allocation was intended to be on a proportionate basis, between the two parties / purchasers only. During the arguments, the Learned Counsel for the Respondent also clarified that apart from the two purchasers of power there is no other third party sale that has taken place. The intention of EPL is to recover the fixed charges is only from the two beneficiaries, in proportion to the allocated capacity. This is clear from the reading of the two PPAs. Hence, EPL cannot argue that the PPA does not recognise the proportionate principle at all. If the proportionate principle is acceptable for recovery of fixed charges, it cannot be abandoned for allocation of supply.

9.6 The submission of EPL that there is no clause in the PPA that it cannot supply more than 215 MW to Essar Steel is also not correct. Once the entire

capacity has been allocated between the two parties in a particular proportion, EPL cannot violate the proportionate allocation for the benefit of any one party. Having sold the capacity of 300 MW to GUVNL and 215 MW to Essar Steel, for which fixed charges are paid in the said proportion, EPL cannot argue that it can sell power to Essar Steel beyond the capacity allocated to it. There is no spare capacity that allows EPL to do that. Under the procedure for dispatch in Schedule VI of the PPA, EPL had to declare weekly schedules of the "Capacity" that is available for the entire station (and not the "Allocated capacity"). On the basis of such declaration, requirement-schedule and dispatch instructions are issued. The obligation of EPL is clearly to declare the "Capacity" of the generating plant as a whole. Once the declared availability for the entire plant is known, the beneficiaries will proceed to issue dispatch instructions in accordance with the terms of the PPA. Hence, the argument of EPL that it does not have the obligation to declare capacity for the entire plant is incorrect and contrary to the terms of Schedule VI of the PPA. This submission is contrary to the procedure prescribed in the PPA as well as the normal industry practice. Once the capacity of the generating station as a whole is available, the allocation of capacity has to take place in the proportion that is contracted. Also, the submission of EPL that the Petitioner's only concern, under terms of the PPA, is that it must get electricity in accordance with its Dispatch Instructions, within the limits of allocated capacity is not entirely correct. The Petitioner has a right to be supplied electrical output proportionate to the declared capacity of the generating plant in terms of the PPA. EPL cannot ignore its obligation of declaring the entire capacity. Once the entire capacity of the generating plant is declared, the proportionate principle of allocation of capacity will become applicable and as a natural consequence, the electrical output will be allocated and supplied between the two beneficiaries on proportionate basis, in accordance with the dispatch instructions. It appears that EPL is avoiding its obligation to declare the entire capacity. The ability to recover deemed non generation due to difference in schedule generation and actual generation has nothing to do with the requirement to allocate capacity and supply electrical output on a proportionate basis.

9.7 In view of the aforesaid, the Commission accepts the submission made by GUVNL to the effect that, if in a time block the declared availability for the station with 515 MW of the installed capacity in only 400 MW, the same should be declared available to GUVNL to the extent of 233 MW and to Essar Group to the extent of 167 MW, maintaining the proportion of 58%:42% (300:215). It is not valid for EPL to declare available in any time block to Essar Group to the extent of 215 MW towards their share and declare available to GUVNL 185 MW. Such an act would mean that Essar Group is being preferred at the cost of GUVNL. As against the GUVNL's entitlement of 233 MW they will get only 185 MW and therefore a deficit of 48 MW equivalent of electricity. That certainly cannot be the intention of the parties.

9.8 Under the PPA, the obligation to supply power by EPL to GUVNL is limited to the electrical output equivalent to the allocated capacity of 300 MW. The fact that the EPL has an obligation to make payment of deemed non generation incentive and reduce annual fixed charges on a pro rata basis, cannot in any manner negate the proportionate principle of allocation when EPL declares availability less than the allocated capacity.

9.9 In this context, EPL's reliance on the letter of the Government of Gujarat dated 05.06.1995 to argue that only the surplus, after meeting the requirement of its sister companies, is to be supplied to GUVNL is not correct. Once the PPA has been executed, the parties are governed by the terms of the PPA. In fact Article 12.5 of the PPA clarifies that the PPA and the schedules attached thereto are a complete and exclusive statement of the terms of the agreement and that all prior written or oral understandings, offers or other communication of every kind pertaining to the sale or purchase of electrical output and dependable capacity between the parties is abrogated and withdrawn.

9.10 Furthermore, in the letter dated 17.02.2000, EPL categorically agreed to the concept that power should be supplied in the ratio of 58:42 provided certain conditions are fulfilled. The conditions mentioned in the said letter will demonstrate that each condition is either in the nature of additional

concessions / modification that were sought by EPL or alleged defaults on the part of GUVNL, which was not agreed to by GUVNL.

9.11 However, if GUVNL does not take the power declared available by EPL in terms of the aforesaid ratio, EPL will have the right to sell the power to its sister concern subject to reimbursement of the proportionate of the annual fixed charges. GUVNL cannot make a submission that although it will not purchase such power as declared available by EPL, EPL cannot sell the same to its sister concern. Such a submission would defeat the purpose of the Electricity Act, 2003 and the National Electricity Policy which promotes generation and encourages sale of surplus capacity. If GUVNL does not schedule the power to the extent of availability declared by EPL of the entire plant in terms of the PPA, it cannot complain if the power is sold to EPL's sister concern and the proportionate of the annual fixed cost is reimbursed.

9.12 The Commission is of the view that GUVNL is entitled to claim compensation for the energy diverted to Essar Steel from the capacity allocated to GUVNL under the PPA. EPL at all times has an obligation under the present PPA to declare availability for the entire plant and allocate the supply on the basis of 300:215 or 58:42.

9.13 As regards the quantum of compensation payable on account of diversion, the PPA is silent on the same. The parties in the settlement for dues on account of diversion for the period between 1998 and September, 2004 agreed on a particular methodology for determining such compensation. The parties had agreed that GUVNL is entitled to the HTP 1 energy tariff after excluding the variable cost. The diversion in the circumstance should be computed on an hourly basis. This appears to be a fair manner of determining the compensation that is to be paid for the period after September, 2004. The parties are required to reconcile the generation data and make final calculation on the basis of the aforesaid principle.

9.14 The Commission also directs that for the remaining period of the PPA, EPL has a legal obligation to declare availability for the entire capacity and that it shall not divert any power to its sister concern in a manner contrary to the proportionate principle. If GUVNL declines to purchase power allocated

on the proportionate basis, EPL will have the right to sell the power to its sister concern subject to reimbursement of proportionate of the fixed cost”.

In the aforesaid para, the Commission has recorded its decision with regard to the issue of diversion of power by the Respondent to its sister companies. As recorded in Para-9.7, the Commission has accepted the submissions made by GUVNL that even if in a time block the declared availability for the station is lower than the Installed Capacity of the station, the allocation to the Petitioner and to Group Companies of the Respondent has to be in the ratio of 58:42 . Further, in para 9.9, it is recorded by the Commission that once the PPA has been executed, the parties are governed by the terms of the PPA. Article 12.5 of the PPA clarifies that the PPA and the Schedules attached thereto are a complete and exclusive statement of the terms of agreement. The parties are governed by the provisions of the PPA and all the prior written or oral understanding, offers or communications pertaining to sale or purchase of electrical output and dependable capacity between the parties to the PPA stand withdrawn. The Commission recorded in para 9.13 that:

- (i) the PPA is silent about the quantum of compensation payable on account of diversion of energy by the Respondent.
- (ii) The parties had agreed to a particular methodology for determining such compensation which indicates that the Petitioner is entitled to HTP-1 energy tariff after excluding variable cost for diversion of energy during FY 1998-99 to September, 2004.
- (iii) The diversion in the circumstances should be computed on hourly basis.
- (iv) For determining the compensation for diversion of energy after September, 2004, the aforesaid methodology as agreed between the parties appear to be fair.
- (v) The parties are required to reconcile the generation data as well as final calculation on the basis of aforesaid principle.

The Commission has decided in para 9.14 that:

- (i) For the remaining period of the PPA, the Respondent has legal obligation to declare the availability for the entire capacity,
- (ii) It shall not divert any power to its sister concern in a manner contrary to the proportionate principle as decided by the Commission.
- (iii) If GUVNL declines to purchase power allocated on the proportionate basis, the Respondent has the right to sell such power to its sister concern subject to reimbursement of proportionate fixed cost to the Petitioner.

15.16. In para 11 of the Order dated 18.02.2009 in Petition No. 873 of 2006 the Commission has ordered that it is the obligation on the part of the Respondent at all times under the PPA to declare capacity for the entire generating station in the manner provided in Schedule-VI of the PPA and once the declared availability for the entire plant is known, the Petitioner may issue the dispatch instruction to the extent of its allocated capacity in accordance with the terms of the PPA.

15.17. The Order of the Commission was challenged before the Hon'ble APTEL and the Hon'ble APTEL vide its judgement dated 22.02.2010 held that the Petitioner is not entitled to any compensation for diversion of power by the Respondent to its sister concern (ESL). However, the Hon'ble Supreme Court has vide its judgment dated 09.08.2016, in Civil Appeal No. 3455 of 2010 quashed and set aside the judgment of the Hon'ble APTEL and upheld the Order of the Commission dated 18.02.2009 in Petition No. 873 of 2006 which is reproduced below:

“.....

22. The agreement clearly contemplates the proportion of allocation of a capacity. The EPL has to fuel and operate the generating station to meet the requirement of electric output that can be generated corresponding to the allocated capacity. The appellant has to pay annual fixed cost as determined in terms of clause 7.1.1 of Schedule VII of the Agreement. The Commission is thus, right in observing that once the entire capacity has been allocated in two parts in a particular proportion, the contention of

the EPL that it could sell power to ESL beyond the allocated capacity could not be accepted. The EPL was under obligation as per Schedule VI to declare weekly schedule of the capacity available and the dispatch instructions were to be issued on the basis of the said declaration. It could not thus be said that the EPL had no obligation to declare the capacity and the obligation of GUVNL to issue dispatch instructions was not dependent on declaration of the available capacity by the EPL. Contrary view of the Tribunal is clearly erroneous. In paras 45 and 46 and elsewhere in its judgment, the Tribunal erred in holding that there was no obligation to declare available capacity on proportionate basis. The finding of the Commission in paras 9.5 to 9.12 of its order quoted above is the correct interpretation of the Agreement. We hold accordingly.

.....

..... 27. We thus, hold that the order of the Tribunal is erroneous. The said order has given rise to the substantial question of law which has been discussed above, i.e., the interpretation of the Agreement between the parties and the obligation of the respondent to declare availability of generated power in the ratio of 58 : 42 and consequence of default therein. The Tribunal erroneously held that there was no pleading for making the claim. Thus, the Tribunal has committed error of law as well as of record in recording its finding as demonstrated above. It may also be noted that the Commission has left actual working out of the loss to be worked out separately and on that basis the appellant has already filed its claim which was pending consideration before the Commission. The said proceeding can now be revived in the light of our finding.

28. Accordingly, we allow this appeal, set aside the order of the Tribunal and restore that of the Commission.....”

15.18. The Petitioner has contended that the calculation of compensation has to be on the basis of 30 minutes time block and not 60-minutes time block which is consistent with the decision of the Commission as well as the Hon'ble Supreme Court and the principle followed for supply of electricity by DGVCL

to its HT consumers including the Respondent as well as Essar Steel Ltd. We note that the methodology for evaluation of diversion of energy is recorded in para 8.10 to 8.14 and 8.16 and 8.17 of the order dated 18.02.2009 in Petition No. 873 of 2006 and the parties were directed to follow the same. Further, the Commission while deciding the issue of diversion of power in para 9 to 9.14 has, specifically in para 9.13, decided that the diversion of energy be evaluated on hourly basis for determination of compensation of the amount payable by the Respondent to the Petitioner. Hence, the diversion of power by the Respondent to Essar Steel Ltd. is required to be worked out on hourly basis.

- 15.19. Based on the reading of the provisions of PPA and the decision of the Commission, it is clear that the scheduled available capacity is required to be declared by the Respondent EPL on hourly basis for each unit of the plant to the SLDC and the Petitioner GUVNL is required to issue dispatch instruction on receipt of scheduled availability declared by the Respondent. The time block of such declaration of availability as well as schedule of dispatch capacity is on hourly basis. Further, when there is any change in the aforesaid declaration, the Respondent is required to notify the same to the SLDC with reasons. Once the revised availability is declared by the Respondent, the Petitioner is required to revise its schedule of dispatch capacity.
- 15.20. The Commission in its Order dated 18.02.2009 has held that the schedule of availability by the generator and schedule of dispatch by the licensee i.e. GUVNL are as per the provisions of the PPA which states that the same is on hourly basis. Hence, it is necessary to verify the data of scheduled weekly availability declared on hourly basis by the Respondent Essar Power Ltd. along with any changes sought therein with reasons recorded for such changes simultaneously with the declared schedule for dispatch of power by the Petitioner along with the changes in original dispatch schedule made by the Petitioner. After comparing the above data whether the ratio of 58:42 between the Petitioner and the Respondent was maintained by the Respondent or not is required to be verified and if there is any deviation, whether the reasons for such deviation are recorded or not and corresponding actual schedule availability declared by the Respondent with the actual

dispatch schedule of the Petitioner to ascertain the diversion of energy as per the decision of the Commission.

- 15.21. It is also important to note that the present proceedings before the Commission is consequent up on the Commission's Order dated 18.02.2009 in Petition No. 873 of 2006 read with the judgment of the Hon'ble Supreme Court dated 09.08.2016 in Civil Appeal No. 3455 of 2010. The Commission examined the various issues with regard to PPA dated 30.05.1996 and decided the eligibility of the Petitioner to receive compensation from the Respondent for diversion of excess power to its sister concern as well as the methodology for compensation of claim by the Petitioner against the Respondent. The Commission has, as recorded in para 9.13 specifically, decided that the quantum of compensation payable on account of diversion of energy be evaluated based on the methodology for determination of compensation as per the settlement agreed between the parties for diversion of such energy during the period between 1998-99 to September, 2004 and the same methodology appears to be fair for determination of compensation for the period after September, 2004. Moreover, the parties have to reconcile the generation data and make final calculation based on the aforesaid principle, as the principle adopted for calculation of compensation based on the non-declaration of full capacity available from the units/power plant and proportionate share of 58% to the Petitioner by the Respondent is also applicable for the evaluation of compensation for the period after September, 2004.
- 15.22. Further on reading of para 8.10 to 8.16 of the order dated 18.2.2009 in Petition No. 873 of 2006, it transpires that the diversion of energy by the Respondent to its sister company i.e. Essar Steel Ltd. is evaluated on hourly basis in energy terms and based on it the amount recoverable from the Respondent by the Petitioner is evaluated i.e. at Rs. 64 Crore for the period from 1998-1999 to September, 2004. The said methodology is required to be applied for the further period from September, 2004 onwards while evaluating the compensation amount payable by the Respondent to the Petitioner.

- 15.23. It is essential that the schedule for availability and schedule for dispatch are declared by the Respondent and the Petitioner, respectively to the SLDC. It is also necessary that the said data is certified by the SLDC as to its correctness.
- 15.24. We note that while the Respondent contended that such data has to be on hourly basis in terms of the Commission's Order duly confirmed by the Hon'ble Supreme Court, in contrast, the Petitioner submitted that half hourly arrangement was agreed by the Respondent on the advice of CEA. We also note that the Petitioner contended that the Essar Steel India Ltd. is an industrial consumer of DGVCL and energy accounting for such consumers is carried out for billing purpose on half hourly basis as per the tariff schedule approved by the Commission. Hence, the diversion of energy is required to be evaluated on half hourly basis.
- 15.25. We also note that the Petitioner has submitted that the metering arrangement as well as the time frame for schedule of availability of plant and schedule of dispatch were later on changed by the parties when the issue of bus-bar as well as metering system at the Respondent's premises arose between the parties and the same was resolved by adopting the methodology of settlement of 30 minutes time block as per CEA's recommendations vide letter dated 21.02.2005 . It is, therefore, necessary to refer the said letter as reproduced below:

Annexure 1

No. CEA/TETD-/2005/M/Tech./140

21st February, 2005.

Member (Technical)

*Gujarat electricity board,
Sardar Patel Vidyut Bhavan,
Vadodara – 390 007.*

*Sub: 515 MW Combined Cycle Power Plant at Hazira–
Recommendation/views of CEA on the issue of metering scheme and
installation of circuit breaker in 220 k Bus.*

Sir,

M/s. Essar Power Ltd. (EPOL) vide their letter dated 24.1.2003 has sought the CEA's advice under the provisions of Section 73 of the electricity Act, 2003, regarding metering scheme and installation of circuit breaker in 220 kV Bus for 515 MW Combined Cycle Power at Hazira, Member (Thermal) held a meeting with GEB and EPOL on 17th February, 2005, in his chamber to discuss and sort out the issues. Based on the discussions/deliberations, CEA's views are given in the enclosed Annexure. The recommendations are brought out below for ready reference.

- i. since the opening of proposed circuit breaker in the 220 KV bus may jeopardise the safety of the steel plant and EPOL is not demanding any charges for excess power flow from their new CPP to GEB, installation of circuit breaker in the 220 KV was agreed to be not insisted*
- ii. Installation of accurate meters for accurate accounting of power both active and reactive as requested by GEB shall be provided at suitable locations using digital meters. If check meters are required, GEB can install them in parallel.*
- iii. Recording of meters shall be half an hour on Essar steel load side and power evacuation side.*
- iv. There is no need of separating generation & evacuation one side and load & other CPP on other side. Desired results can be achieved by suitable metering.*

Encl: as above.

Thanking you,

Yours faithfully,

*(S. Seshadri)
Chief Engineer*

.....

515 MW Combined cycle Power Plant at Hazira – Recommendation/ views of CEA on the issue of metering scheme and installation of circuit breaker in 220kV bus

Back Ground

M/s Essar Power Ltd. (EPOL) has set up 515 MW combined cycle Power Plant at Hazira in the State of Gujarat as LPP in the year 1996-97. They have entered into two separate Power Purchase Agreements one for 300 MW with Gujarat electricity Board (GEB) and the other for 215 MW with Essar Steel Ltd. ESIL). The power is supplied to them as per the respective Power Purchase Agreements (PPA) entered with them which are incidentally identical in nature. Before commissioning the Plant, EPOL have got all electrical drawings including metering scheme and 220 kV Switchyard drawings approved by Chief electrical Inspector/ GEB. The metering scheme as existing today is enclosed herewith as (Annexure-1).

As per PPA with GEB, they have to follow the dispatch instructions of LDC of GEB and supply the power and meet the contractual obligations of supply of power on hourly basis. Notwithstanding the existing approved metering scheme, GEB supply off power on hourly basis. Notwithstanding the existing approved metering scheme, GEB now desires to install the check meters duly sealed at point of total generation and at points of drawl of power by ESIL and GEB. EPOL has agreed with GEB for this arrangement. However, GEB also wants to install one circuit breaker in the main bus bar along with CT with the provision that Breaker would normally be closed to allow the flow of power continuously and simultaneously to GEB and ESTL. On being asked by EPOL what is the purpose of providing the circuit breaker. GEB has given the explanation that they want to separate the Bus-bar to supply power separately to GEB and ESTL which in their opinion is not correct.

Accordingly, M/s Essar Power ltd. (EPOL vide their letter dated 24-1-2003 submitted the issue regarding metering scheme and installation of circuit

breaker and sought the CEA's opinion / advice to the following queries as per the provisions of Section 73 of the electricity Act, 2003.

a) whether or not the metering scheme agreed to by us with GEB, without installing of Circuit breaker in the common Bus-bar, is correctly account for power generation and distribution.

b) Whether installation of Circuit breaker is warranted for measurement of power generation and supplied and whether keeping the circuit breaker in closed condition amounts to separation/segregation of Bus-bar as being claimed by GEB.

Discussion held in CEA on 17-2-05.

In order to sort out issues, a meeting was convened by CEA on 17-2-05 under chairmanship of M(T), where in GEB and EPOL also participated.

GEB's view:

During the meeting held by Member (T), GEB's made the following points in regard of their proposal of installing the circuit breaker in the 220kV bus:

a. Presently all the power generated from the EPOL (515MW) is evacuated on a 220 KV common bus which is connected to two numbers Iichapore lines, 2 nos. Sachin lines, existing CPP of 34 MW capacity and Essar steel switchyard.

b. Reactive power generated is not accounted/metered.

c. GEB's share in Reactive power is being utilized by Essar Steel.

d. EPOL is now connecting the additional CPP 55 MW on the 220 KV common bus.

e. To maintain stability of system, GEB has proposed to keep generation and evacuation on one side and load and additional CPP on the other side by shifting of the Iichapore lines on the space / Bays which are being utilized by EPOL for connection of their new CPP (as per scheme enclosed in Annexure-II)

f. Providing circuit breaker by isolating / segregating present arrangement, so that inadvertent power flow from new CPP can be averted by reverse power relay system.

g. To have the accurate accounting of the actual measured quantity of power flow to Essar Steel by installing meter on the bus sectionaliser circuit breaker.

EPOL's View:

Regarding installation of circuit breaker, M/s EPOL mentioned that their new steel plant is based on the latest technology having arc furnace and for the safety / smooth running of the plant, it has to be remain connected with "Grid in all conditions and they have obtained all the clearances from State / GEB before setting up the plant. Further, they mentioned that opening of the bus sectionaliser circuit breaker may jeopardize the safety of the plant. EPOL clarified that any excess power from new CPP made available on the bus shall not be chargeable to GEB and GEB's contention to avert the same by reverse power relay system is not justified.

Details of Discussions:

GEB mentioned that it is not possible to measure the actual power consumed by Essar steel and metering of power at bus sectionaliser circuit breaker is required essentially. GEB clarified that they need CB to rectify any problem in CT it was suggested that one redundant CT may be provided. Member (T) intimated that circuit breaker is not necessary. Further, provision of such circuit breaker may also cause inadvertent disruption of supply to steel plant which will be detrimental to the purchaser. GEB also agreed that circuit break may not be necessary.

M/s EPOL mentioned that in order to provide Generation on one side and loads on the other side, it is necessary to shift Ichhapore lines which will take six months' time and till that time they have to delay the generation in their new CPP of 155 MW which has already been almost completed. There will be huge financial loss to them on this account. GEB mentioned that meters installed on various feeders will be having different accuracy and

summation of such power shall be “Derived Quantity” and not the “Actual”. By providing separation between load and generation they can measure actual load flow through one-set of CTs. Member (T) intimated that there is no need to provide generation on one side and loads on other side in a bus Measurements can be made by summation / subtraction of the power by using number of meters. Such measurements are presently carried out in all substations/grid.

Recommendations:

Member(T) however has made the following recommendations after hearing both views as above:

(i) Since the opening of proposed circuit breaker in the 220Kv jeopardise the safety of the steel plant and EPOL is not demanding any charges for excess power flow from their new CPP to GEB, installation of circuit breaker in the 220kV was agreed to be not insisted.

(ii) Installation of accurate meters for accurate accounting of power both active and reactive is requested by GEB shall be provided at suitable locations using digital meters. If check meters are required, GEB can install them in parallel.

(iii) Recording of meters shall be half an hour of Essar Steel Load side and power evacuation side.

(iv) There is no need of separating generation and evacuation one side and load and other CPP on other side. Desired results can be achieved by suitable metering.

.....”.

15.26. On perusal of the aforesaid letter of CEA and the Annexure thereto, it transpires that the CEA was referred by the parties with regard to the issue of 220kV Bus and its breaker as well as energy metering at the Petitioner’s place at Essar Steel, Hazira. In the aforesaid letter, CEA has given its views and recommendations with regard to metering arrangement as well as installation of Circuit Breaker in 220kV Bus. It is observed that CEA has recommended that recording of meters shall be on half an hour basis on Essar Steel load side and power evacuation side.

It is also recommended that there is no need of separating generation and evacuation one side and load and other CPP on other side and desired results can be achieved by suitable metering. Based on the aforesaid recommendation of CEA both the Petitioner and the Respondent have acted upon and carried out the metering on the load side and power evacuation side of Essar Steel Ltd on half hourly basis. It is also observed that in accordance with this letter of CEA and after installation of apex metering system as per the recommendation of the CEA which settled the issue then raised by the Respondent, the 30 minutes' time block was implemented and there was no protest/reservation by the Respondent at that time. In fact, the Respondent took advantage of the CEA's letter dated 21.02.2005 to avoid separation of the Bus bar for supply of power by the Petitioner to Essar Steel and entered into the metering arrangement as per CEA in lieu thereof.

- 15.27. It is necessary to refer Article 12.1 of the PPA dated 30.05.1996 executed between the parties which states about amendments in the PPA as reproduced below:

“.....12.1 AMENDMENT

This agreement cannot be amended except by written agreement between the Parties.”

From the aforesaid Article it is clear that any amendment in the PPA is to be made only through a written agreement between the parties. We note that there is no any other agreement submitted on record by the parties.

We note that the recommendation of CEA vide letter dated 21.02.2005 wherein it was recommended that the recording of meters shall be on half hourly basis was accepted by both the parties. However, there is no amendment to that extent in the PPA. Since the parties have accepted the

said CEA recommendation, we decide that the scheduling and dispatch shall be on half hourly basis w.e.f. 23.02.2005.

- 15.28. We note that the Petitioner has calculated the diversion of energy on hourly MW basis till clarified by CEA on this issue vide its letter dated 21.02.2005 and then the same is considered by the Petitioner (GUVNL) on half hourly basis w.e.f. 23.02.2005 in the ratio of 58:42 to arrive at diversion of energy by the Respondent to its sister company. We note that the Respondent has submitted the data of diversion of energy on hourly basis. Therefore, the submission of the Petitioner seems to be in line with the intent of the Commission's Order and therefore it is considered for computing of diverted energy.
- 15.29. We note that the Respondent has not observed the declaration of total schedule of availability of the plant and scheduled available capacity to the Petitioner at 58% of the total plant available capacity during various months of different years and declared reduced available capacity sometimes to the Petitioner in violation of the proportionality principle of 58:42 and this qualifies as non-compliance of the provisions of the PPA. The details of such violation is evaluated and compensation is calculated which are given in Annexure-A to this Order.
- 15.30. We also note that the parties have admitted that after the Commission's Order dated 18.02.2009, the Respondent was declaring the availability in the ratio of 58:42 of total plant capacity of 515 MW. The diversion of energy by the Respondent to Essar Steel is to be evaluated as per the details provided by the Petitioner for declared scheduled availability and by the Respondent for declaring corresponding schedule dispatch instructions.
- 15.31. In this regard, it is necessary to refer the settlement between the parties with regard to diversion of energy during the period between 1998 and September, 2004 by the Respondent and the methodology for compensation agreed between the parties for such diversion of energy in the absence of specific terms and condition in the PPA. The aforesaid settlement arrived at between the parties is reflected in letters dated 30.10.2004 and 11.11.2004

of the Petitioner to the Respondent. Further, the settlement proposed in the aforesaid letters by the Petitioner was accepted by the Respondent vide its letter dated 30.11.2004 and accordingly the Commission had finally decided that the compensation payable by the Respondent to the Petitioner. The aforesaid letters are also recorded in para 8.10, 8.11,8.12 and 8.13 of the Order dated 18.02.2009 of the Commission in Petition No. 873 of 2006 and have been reproduced herein above.

15.32. From the letter dated 11.11.2004 of the Petitioner, it transpires as under:

(i) The energy diverted to Essar Steel Ltd. by Essar Power Ltd. in excess of 215 MW capacity, such diversion is evaluated in energy terms i.e. MUs worked out on year to year basis for the period from 1998-99 up to September, 2004.

(ii) The amount recoverable for such energy has been worked out as per HTP-1 energy charge @ Rs. 4.10 per kWh.

(iii) The variable cost of electricity generation of Essar Power Ltd. has been calculated as per the fuel consumed and surcharge paid during the relevant period by the beneficiaries to the Respondent. The said variable charges are factored as paid by the beneficiaries to the Respondent i.e. Essar Power Ltd. and the same has been adjusted against the amount recoverable for diversion of energy.

(iv) Total recovery for such diversion of energy has been worked out at Rs. 64 Crore without applying electricity duty for which the legal opinion was sought and on receipt of legal opinion, it was to be informed to the Respondent by the Petitioner for the amount recoverable towards electricity duty for deemed sale of power.

(v) The Respondent has vide its letter dated 30.11.2004 confirmed the aforesaid methodology and agreed to apply the same for future period also.

15.33. It is clear that the Petitioner is eligible to receive the energy charge of HTP-1 tariff rate for diversion of energy by the Respondent to i.e. Essar Steel . Further, the Respondent is also liable to pay the Petitioner the difference between the amount receivable @ energy charge of HTP-1 tariff minus the variable charge for diversion of excess energy in violation of the proportionate principle of 58:42.

15.34. We also note that there is also an issue as to whether electricity duty is leviable on such diversion of energy by the Respondent to Essar Steel being deemed sale of power and the Petitioner had sought legal opinion on this issue. However, no such opinion has been brought on record either during the proceedings of the Petition No. of 873 of 2006 or in the present proceedings. Hence, in the absence of any documents we are unable to give any decision on the same. Further, the present proceedings are in continuation of the earlier proceedings between the same parties in Petition No. 873 of 2006 and the judgement of the Hon'ble Supreme Court dated 19.02.2016 in Civil Appeal No. 3455 of 2010 upholding the Order of the Commission. This issue was not pleaded in these proceedings and hence, in the absence of any pleading of the parties in the earlier proceedings as well as in the present proceedings, it is incorrect to decide the issue of electricity duty, if any payable by the Respondent for diversion of energy to its sister concern in violation of the proportionate ratio. However, we make it clear that electricity duty being the revenue of the State Govt., the Petitioner is directed to obtain a decision on this issue from the State Govt. or its agency and ensure that there is no loss to the State exchequer by effecting the recovery thereof from the Respondent if the same is leviable.

15.35. The Petitioner submitted that the Respondent is liable to pay the fixed charge for diversion of the energy or less schedule made available to the Petitioner in violation of the proportionate principle and supplied higher quantum of energy to its sister concern i.e. Essar Steel Ltd. which qualifies as supply of energy by the Petitioner. It attracts the fixed cost component as well as the penalty for exceeding the contract demand by Essar Steel Ltd. who happens to be the consumer of DGVCL, the distribution licensee of the area. Further, the Respondent is also liable to pay delayed payment charges. There is also a dispute with regard to the interest, whether the same is compound interest or simple interest. The Petitioner has claimed the compound interest. In contrast, the Respondent submitted that it is not liable to pay any fixed charge, penalty amount for excess drawal of energy than contract demand on account of diversion of energy as well as

any delayed payment charges and electricity duty on the compensation amount as claimed by the Petitioner.

15.36. We note that the Petitioner contended that the Respondent is liable to pay the fixed charge as well as penalty amount, payable for diversion of energy to Essar Steel Ltd. These dues attract penalty for drawal of higher energy against the contract demand as per the tariff schedules approved by the Commission from time to time . However, this is not legal and valid in the present case because of the following reasons:

(i) The present proceedings are culmination of earlier decision dated 18.02.2009 in Petition No. 873 of 2006 read with Order dated 09.08.2016 in Civil Appeal No. 3455 of 2010 of the Hon'ble Supreme Court in which there is specific decision of the Commission with regard to diversion of energy by the Respondent to its sister company Essar Steel Ltd. by way of non-declaration of full available capacity to the Petitioner in gross violation of 58:42 ratio in total declared available capacity of the power plant of the Respondent. Such less declaration qualifies as diversion of energy to sister company as per the decision of the Commission in the said order and the same shall only qualify for payment of compensation by the Respondent to the Petitioner.

(ii) The Commission has in the Order dated 18.02.2009 specifically at para-9 to 9.14 decided about the case of diversion of power by the Respondent to its group company and the methodology to be followed for computation of compensation payable by the Respondent to the Petitioner for such diverted power.

(iii) As per settlement between the parties for the period 1998-99 to September, 2004, the compensation for diversion of energy does not consist of fixed cost amount or penalty amount if any for the excess drawal of energy beyond the contract demand by Essar Steel Ltd. on account of such diversion of energy by the Respondent.

(iv) The decision of the Commission dated 18.02.2009 has been upheld by the Hon'ble Supreme Court in its judgment dated 09.08.2016 and the

present proceedings are based on the aforesaid decision. Hence, the earlier decision of the Commission and the judgement of the Hon'ble Supreme Court thereon have attained finality. It is not permissible to revise or review the same in the present proceedings.

(v) As recorded above, since the component of fixed charge or penalty amount for drawal in excess of contract demand has not been considered or factored while determining the compensation in the Commission's Order dated 18.02.2009, the same is not permissible to allowed in the present proceedings which would amount to review of the earlier order of the Commission despite judgement of the Hon'ble Supreme Court.

15.37. We also note that in Order dated 18.02.2009 in Petition No. 873 of 2006 the Commission has decided that the settlement arrived at between the parties for dues prior to 14.09.2005 against the diversion of energy by the Respondent to its group companies in violation of 58:42 ratio above 215 MW which is a part of the calculations in the present petition as compensation. The energy diverted stated in the aforesaid settlement in different years and compensation payable at the rate of HTP-I tariff energy charge minus variable cost of such generation and total compensation for such diversion of energy works out to Rs. 64 Crore.

The aforesaid energy, HTP-I tariff energy charges minus variable cost for generation are reduced from the amount payable by the Respondent to the Petitioner and thereafter the calculations for the remaining amount payable by the Respondent to the Petitioner as per Order dated 18.02.2009 in Petition No. 873 of 2006 was determined and factored in the final calculations of this Order.

15.38. For the period 14.09.2002 to Sept.04, M/s EPoL has not considered where as GEB/GUVNL has considered this period and submitted the details to the Commission. The Commission has computed the compensation amount for instances where the total availability of M/s EPoL has been less than 515 MW. Accordingly, the diversion of energy has been computed where the share of M/s ESTL is less than 215 MW in the proportion of 58:42. The Hon'ble Supreme Court has also agreed with the

Commission. The Compensation amount for this diverted energy has been computed which is shown in Annexure-A to this Order. The diverted energy considered by excluding energy used by M/s ESTL above 215 MW has not been considered by the Commission for computing the compensation amount because of it is already recovered under Rs. 64 Crore. Wherever, the total availability of M/s EPoL has been less than 515 MW, the total diverted energy has been worked out as 302.83 MUs.

- 15.39. Essar Power Limited has calculated the excess units for the period from October 2004 to April 2010 as to 402,682 MWH. EPL has compared the two units i.e. gross generation & actual plant capacity declaration to ESL & GUVNL and selected higher unit. Thereafter, EPL has allocated the unit arrived in ratio of 300:215. Excess units being arrived by deducting the actual units supplied to ESL with the allocated share of units of ESL. The derived excess units have been further classified into 2 instances, viz (i) where GUVNL's dispatch instructions to EPL was more than the plant capacity declared to it, the derived total units are worked out to be 153,216 MWH, and (ii) where GUVNL's dispatch instructions was less than the plant capacity declared to it, the derived total units are worked out to be 249,466 MWh.
- 15.40. GUVNL has calculated the excess units for the period of October 2004 to April 2010 as 503,630 MWH. GUVNL has derived the total plant capacity by EPL, which is the summation of the actual declared plant capacity to ESL and GUVNL. The total plant capacity derived was proportionately allocated in the ratio of 300:215 i.e. 300 for GUVNL and 215 for ESL. The excess units were calculated based on the difference between actual units supplied to ESL and ESL's share of proportionate units derived. The entire bill was worked out based on the excess units taking into account demand charges, energy charges etc. to arrive at the amount of compensation.
- 15.41. We have considered the submissions of both the parties. We note that the Commission at para 9.7 of the order dated 18.02.2009 clearly stated that if EPL has not declared the total plant capacity to GUVNL, in such case,

GUVNL has the right to claim compensation for the excess units diverted to ESL.

- 15.42. The methodology and the date from which the Petitioner (GUVNL) is entitled to get the compensation in lieu of diversion of energy from EPL to ESL has been already provided in para 9.12 and para 9.13 of the Commission's Order dated 18.02.2209 in Petition No. 873 of 2006. The said paras are reproduced here with as mentioned below;

“Para 9.12: The Commission is of the view that GUVNL is entitled to claim compensation for the energy diverted to Essar Steel from the capacity allocated to GUVNL under the PPA. EPL at all times has an obligation under the present PPA to declare availability for the entire plant and allocate the supply on the basis of 300:215 or 58:42.

Para 9.13: As regards the quantum of compensation payable on account of diversion, the PPA is silent on the same. The parties in the settlement for dues on account of diversion for the period between 1998 and September, 2004 agreed on a particular methodology for determining such compensation. The parties had agreed that GUVNL is entitled to the HTP 1 energy tariff after excluding the variable cost. The diversion in the circumstance should be computed on an hourly basis. This appears to be a fair manner of determining the compensation that is to be paid for the period after September, 2004. The parties are required to reconcile the generation data and make final calculation on the basis of the aforesaid principle.”

- 15.43. We further note that EPL has bifurcated the excess units based on delivery instructions. In this regard, we are of the view that the question of bifurcation of the excess units does not arise in the first place as the order dated 18.02.2009 clearly stipulates that EPL had an obligation under the Power Purchase Agreement to disclose the entire plant capacity to GUVNL. Therefore, it is incorrect to say that because the delivery instructions of GUVNL was less, they had diverted the excess units to ESL. This has been made abundantly clear in Para 9.6 of the Commission's Order dated 18.02.2009 which is reproduced in the earlier part of this Order:

Therefore, the excess units are required to be arrived at based on the difference between the units actually supplied to ESL and its proportion of allocated plant capacity. The excess units shall not be further

bifurcated based on the delivery instructions of GUVNL. Accordingly, the issue is decided against the Respondent.

15.44. As observed earlier the calculation of excess units as submitted by GUVNL and EPL is different. EPL has calculated the excess units based the hourly based source data and GUVNL has computed based on the half an hourly source data. In this regard, the Commission has already decided this issue in the Order dated 18.02.2009 at para 9.13.

We note that the arrangement for metering and the practice followed then was for scheduling on hourly basis, which was changed from 23rd March, 2005 on half hourly basis. Hence, the data as submitted by GUVNL on half hourly basis is to be considered for the computation from 23rd March, 2005 onwards.

15.45. The energy diverted for the period September, 2002 to September, 2004 in excess of ESTL share when the generation was less than 515 MW is 302830 MWH and the energy diverted for the period from October, 2004 to April, 2010 in excess of ESTL share is 503630 MWH. That total diverted energy to ESTL works out to 806460 MWH, which has been considered for computing the compensation for the stated periods.

15.46. The compensation amount has been worked out based on the methodology as discussed, which is by taking into account the HTP-1 energy rate plus the Fuel and Power Purchase Price Adjustment (FPPPA) Charges applicable to the aforesaid category of consumers as per tariff schedule of GEB/GUVNL approved as per the Commission's directive time to time.

15.47. The variable charge has been considered as the fuel cost (Rs./Unit) of M/s EPoL in the respective monthly billings.

15.48. Further, it has been observed from the submission of the Petitioner that it has received some amounts from the Respondent from March, 2005 onwards. This amount has been factored in computation of the compensation amount.

15.49. In the aforesaid background and in view of the Commission's Order dated 18.02.2009 duly upheld by the Hon'ble Supreme Court, we decide that the Respondent is not liable to pay fixed charge and penalty for excess

drawal of power as the parties have already accepted the methodology while agreeing upon the compensation of Rs. 64 Crore. However, the Respondent is liable to pay the compensation to the Petitioner based on above observations and decisions for diversion of energy to Essar Steel when the overall capacity of power plant availability was not declared and the ratio of 58:42 of the availability of the plant to the Petitioner is not observed as shown in Annexure A to this Order, a summary of the same is given below:

Sr. No.	Year	Energy delivered to ESTL. (for 2002 to 2004 for the generation less than 515 MW and for 2004 to 2010 as per proportion of 58:42)	Amount recoverable as per HTP-1 Energy rate and FPPPA (Rs. Crore)	Reimbursement of Variable Charges (Rs. Crore)	Amount paid by M/s ESTL (Rs. Crore)	Cumulative total recovery from Essar Power after netting off the amount paid by M/s ESTL (Rs. Crore) (6)=(3-4-5+\$)
	(1)	(2)	(3)	(4)	(5)	(6)
1	14.09.02 to 31.03.03	104.35	42.78	20.87	0.00	21.91
2	2003-04	136.23	55.85	24.42	0.00	53.34
3	Apr.04 to Sep.04	62.25	25.52	10.83	0.00	68.03
4	Oct.04 to Mar.05	98.96	40.57	15.51	26.33	66.77
5	2005-06	134.16	55.01	20.03	53.02	48.73
6	2006-07	113.45	46.62	22.66	17.87	54.82
7	2007-08	85.61	35.70	18.73	18.28	53.51
8	2008-09	70.97	34.02	17.83	32.24	37.46
9	Apr.09 to Apr.10	0.48	0.24	0.15	10.13	27.42
11	May.10 to Mar.11					27.42
12	2011-12					27.42

13	2012-13					27.42
14	2013-14					27.42
15	2014-15					27.42
16	2015-16					27.42
17	2016-17					27.42
18	2017-18					27.42
19	2018-19					27.42
20	2019-20					27.42
	Sum Total	806.46	336.33	151.04	157.88	27.42

Note \$: This is the outstanding amount for previous year to be paid

The month wise detailed calculations for each year are kept at the Annexure-A.

15.50. The present petition is culmination of Petition No. 873 of 2005 and further proceedings in Hon'ble APTEL & Supreme Court. The data along with the set of calculations are as submitted by the Petitioner and the Respondent from time to time. Further, the Petitioner has also filed duly audited consolidated statement on 28th February, 2009. As far as Scheduling data is concerned SLDC finalizes the respective schedules of the generators and DISCOMs and monthly consolidated accounts are prepared based on which GUVNL makes the necessary payments to the different stakeholders. GUVNL as a holding company entrusted by the State Govt. to purchase power on behalf of the State owned DISCOMs and accordingly settles the bills and payments thereof. GUVNL also relies on the SLDC data for different stakeholders. Since both the entities are State government entities, the data as submitted by GUVNL in consultation with the SLDC has to be relied up on for arriving at the calculations of different components. Moreover, the Respondent has never challenged the veracity of GUVNL data, hence, the data submitted by GUVNL as per the records are relied.

15.51. Now we deal with the issue of delay payment charges. The Petitioner has claimed that the Respondent is liable to pay DPC as per the provisions of the PPA on the compensation amount for diversion of energy to Essar Steel whereas the Respondent has disputed the Petitioner's claim of DPC.

15.52. We note that the issue pertaining to delayed payment charges on the compensation amount, payable by the Respondent to the Petitioner was not before the Commission in earlier proceedings of Petition No. 873 of 2006 as past dues was already paid by ESTL and therefore, the said issue was not dealt with and decided by the Commission in its Order dated 18.02.2009. Moreover, there is no finding of the Hon'ble Supreme Court in its judgment dated 09.08.2016 in Civil Appeal No. 3455 of 2010. The Commission is now required to decide as to whether, the delayed payment charges claimed by the Petitioner are to be allowed or not.

15.53. In this regard, it is necessary to refer the provisions of PPA for delayed payment charges which is part of the billing and payment mechanism provided in Article 5, the relevant portion of which i.e. Article 5.1 to 5.4 are reproduced below :

ARTICLE 5

BILLING AND PAYMENT

5.1 MODE OF BILLING

- a) *Subject to the other provisions of this Article, the Board shall pay to the Company, on or before the Due Date, as laid down in Article 5.2, the monthly payment determined in accordance with Tariff calculated in accordance with Scheduled VII.*
- b) *Any Tax payable by the Company relating to generation and sale of power from the Generating Station to the extent of the Allocated Capacity as per prevailing laws of Central or State Government or any other authority or Statutory bodies shall be borne by the Board, which Taxes are otherwise not covered under any head of Tariff under Scheduled VII including O & M expenses.*

5.2 CONTENTS OF INVOICE

Commencing with the month following the month of the Effective Date, the Company shall submit to a designated officer of the Board, by the 3rd day of such and each succeeding month an Invoice (the "Invoice"), which shall be accepted within a period of 3 Days from the date of presentation failing which the Invoice shall be deemed to have been accepted by the Board. The format of the Invoice, shall be mutually decided.

The Invoice shall consist of the amounts to be paid as per Tariff computed in accordance with Scheduled VII of this Agreement and shall have (i) and (ii) or (i) and (iii) of the following:

- i) Variable Charges computed as per clause 7.2 of Schedule VII.*
- ii) Annual Fixed Charges computed as per clause 7.1.2 of Schedule VII; and*
- iii) Incentive Payments as per clause 7.3 of Schedule VII.*

The Invoice for the generation level during each month, upto such point when the cumulative Level of Generation from the beginning of the Accounting Year equals 6000 Hrs/Kw of the Allocated Capacity, shall consist of the amounts payable as per (i) and (ii) above and beyond such point the Invoice Amount shall consist of the amounts payable as per (i) and (iii) above.

5.3 DUE DATE AND PAYMENTS

5.3.1 Due Date:

All the Invoices mentioned under Article 5.2(i),(ii) and (iii) above shall become due for payment on the seventh (7th) Day (Due Date) of presentation thereof. The Board shall make payments on or before such Due Date. The amount Supplementary Invoices of Article 5.7 and Schedule VII shall be payable on the 14th (Fourteenth) day of the Presentation thereof.

5.3.2 Payment:

The Payment of Variable Charges in terms of Article 5.2 (i) shall be payable in each month within the Due Date.

The Payment for Fixed Charges in terms of Article 5.2 (ii) in each month shall be equivalent to 1/12th of the Annual Fixed Charges and shall be adjusted at the end of the Accounting Year in the event, the Level of Generation achieved by the Company during the Accounting Year is below 6000 Hrs/KW of the Allocated Capacity. For the first and last year of the Term the above 6000 Hrs./KW/AY shall be pro-rata reduced on 365 days basis in a year.

The Payment of Incentive Payment in terms of Article 5.2(iii) shall be payable from the month during which the Level of Generation exceeds the 6000 Hrs/KW of the Allocated Capacity during any Accounting Year. For the first and last year of the Term the above 6000 Hrs./KW/AY shall be pro-rata reduced on 365 days basis in a year.

All payment received by the Company shall be appropriated towards settlement of amounts due and payable on the Invoices in the order in which they have been raised, unless earlier Invoice(s) is disputed by the Board and remains unresolved for 30(thirty) days.

5.3.3 Rebate

The Company shall allow the following rebates on Invoices including Supplementary Invoices payable by Board;

- i) On payment made, in whole or in part within the due date, directly or through LC, a rebate of 2.5% shall be allowed on the extent of payment made.*
- ii) On payment made, in whole or in part directly or through LC within 23 days from the Due Date, a rebate of 1% (One percent) shall be allowed on the extent of payment made.*

5.3.4 Delayed Payment charges:

If payment in full is not remitted on or before the close of business on Due Date, delayed payment charges on the unpaid amount due for each day overdue will be imposed by the Company at the rate of 2% over the average interest rate charged by Board's banks on working capital loans during the preceding 12 months, from the 31st day of the last day of the period to which the bill pertains.

5.4 DISPUTES

If the Board disputes any portion of the statement under any Invoice, then it shall within 30 days of the receipt of such statement serve a notice on the Company indicating the amount of the dispute and the basis thereof (a "Dispute Notice"). The Dispute shall be settled by mutual discussion and, if necessary, as per Article 11. If it is determined that the Company owes an amount of money to the Board the Company shall, within fourteen (14) days after the receipt of such determination, pay such sum together with interest thereon at a rate of 2% over the average interest rate charged by the Board's banks on working capital loans during the preceding 12 months, calculated from the Due Date as hereinabove defined. Provided that provisions of this clause, mutatis mutandis will also be applicable for the statements issued by the Board.

In the event of the Company drawing payments against Letter of Credit and if subsequently it be found that the Company was not entitled to the same, then the Company shall repay such amount(s), together with all costs and expenses incurred by the Board in connection with such drawal, plus interest on such amount(s) at the rate of 2% over the average interest rate charged

by Board's banks on working capital loans during the preceding 12 months, compounded semi-annually, computed for the actual number of days elapsed on the basis of a 365 day year. Board shall have the right to set-off such amounts owed to Board by the Company against statement submitted by the Company after resolution of the matter as provided in the previous paragraph.

.....”

Article 5.1 says about the obligation of the Petitioner to make monthly payment of tariff as determined in terms of Schedule VII to the Respondent on or before the due date. Article 5.2 provides that the invoice shall consist of Variable Charges, computed as per clause 7.2 of the Schedule VII, Annual Fixed Charges as well as Incentive as per Clause 7.1.2 and 7.3 of Schedule VII. Article 5.3 pertains to due date and payments. Article 5.3.1 provides for the due date of payment of monthly as well as supplementary invoices raised by the Respondent on the Petitioner for supply of energy i.e. in 7th day and 14th day of presentation of the respective invoices.

15.54. Article 5.3.2 provides for payment of Variable Charge, Fixed Charge as well as Incentive payable in terms of PPA in each month within the due date and the appropriation of the payment so received by the Respondent in the Order in which the invoices have been raised.

Article 5.3.3 provides that the rebate is to be allowed by the Respondent if the Petitioner pays the amount within due date @ 2.5% and if the same is paid within 23 days, the rebate is allowed @1%.

Article 5.3.4 provides delayed payment charges on the unpaid amount due for each day overdue @ 2% over the average interest rate charged by the Petitioner's Banks on the working capital loans during the preceding 12 months from the 31st day of the last day of the period to which the bill pertains.

Article 5.4 provides that if the Petitioner disputes any portion of the Invoice, it has to serve a Dispute Notice on the Respondent within 30 days of receipt of invoice indicating the amount of the dispute and its basis . The Article also provides for settlement of dispute through mutual discussion and if

necessary, as per Article 11. It also provides that if it is determined that the Respondent owes money to the Petitioner, the Respondent shall, within 14 days after such determination pay such sum together with interest thereon @ 2% over the average interest rate charged by the Petitioner's banks on working capital loans during the preceding 12 months, calculated from the due date as defined in Article 5.2.1. It is also provided that the aforesaid provision mutatis mutandis will also be applicable for the invoice raised by the Petitioner.

15.55. In view of above provisions, the claim of the Petitioner as per the methodology agreed between the parties in the PPA as per Article 5.4 is accepted and taken into consideration for computation of delayed payment charges payable by the Respondent to the Petitioner on account of compensation towards diversion of energy to Essar Steel . Such computation is given in Annexure - B to this Order. The total delayed payment charges for the period of September,2002 to March, 2019 is worked out as Rs. 72.44 Crores.

15.56. Now, we deal with the issue as to whether the claim of GUVNL for the period prior to 14.09.2002 of deemed generation incentive is barred by period of limitation and what is the period for which the Petitioner is entitled to recover deemed generation incentive paid to the Respondent. In this regard, it is necessary to refer the decision of the Commission as recorded in Para 10.22 and 11(7) of the Order dated 18.02.2009 where the Commission has specifically held that the claim of the Petitioner for adjustment of deemed generation incentive for the period prior to 14.9.2002, being three years prior to the date of filing of the said Petition is not admissible and that the Petitioner is entitled to recover the deemed generation incentive paid to the Respondent for the period between 14.09.2002 to 29.05.2006.

In view of the above decision, the Commission has computed the deemed generation incentive of Rs. 36.62 Crore paid by the Petitioner to the Respondent during the period from Sept.02 to May.06 as shown in the table below.

Year	Deemed Generation Incentive payable by the Respondent (Rs. Crore)
14 th September, 2002 to 31 st March, 2003	2.21
2003-04	16.48
2004-05	11.17
2005-06	4.40
2006-up to 29.05.06	2.36
Total	36.62

The month wise details for the deemed generation incentive is given in Annexure-C to this Order.

- 15.57. The Petitioner has claimed delayed payment charges (DPC) on the principal amount as per PPA between the parties. The PPA contains provision for payment of DPC. The Petitioner has claimed the DPC based on the principle that if the Board/GUVNL disputes any portion of any invoice, then necessary action of issuing notice is taken and if the settlement is not done and the other party becomes liable to pay the sum, @2% over the interest rates charged by the Boards Banks on working capital loan of the preceding 12 months is to be paid on such sum. Since the present calculations are due to the culmination of disputes over the invoices, the DPC has been computed accordingly. The payment of interest in such cases is also consistent with the settled principles laid down by the Hon'ble Supreme Court. The Petitioner has submitted a compilation of the following judgements which are tabulated below in support of its arguments.

Sr. No.	Particulars
1	Secretary, Irrigation Department, Govt. of Orissa and Others vs. G.C.Roy (1992) 1 SCC 508
2	Alok Shanker Pandey vs. Union of India (UOI) and others (2007) 3 SCC 545
3	Central Bank of India vs. Ravindra and others (2002) 1 SCC 367
4	South Eastern Coalfield Ltd. Vs. State of Madhya Pradesh (2003) 8 SCC 648

5	Relevant Extracts from SLS Power Ltd. Vs. Andhra Pradesh Electricity Regulatory Commission – Appellate Tribunal for Electricity dated 20.12.2012 in Appeal No. 150 of 2011 and Batch
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15.58. As already outlined in this Order, the Commission has to decide on the present petition based on the judgement of Hon’ble Supreme Court dated 09.08.2016 which upheld the Commission’s Order dated 18.02.2009. Under Clause 10.22 of the said Order the Commission has recorded that “.....*the parties are directed to work out the Accounts for the period starting from 14.09.2002 in the manner provided in this order and submit the same to the Commission for validation and further directions*”.

During the pendency of this petition, various discussions were held between the Petitioner and the Respondent for confirming the calculations. Even the Hon’ble APTEL in its Order dated 14.05.2009 has recorded that *“it is open to the parties to have the talks with reference to the Para 10.22 and approach to the Commission.”*

From the submission of the parties, it is apparent that correspondence was exchanged between the parties vide letters 7.5.2009,16.05.2009, 28.05.2009 and 2.6.2009 in addition to holding meeting to resolve the issue, there was no resolution on the above issues between the parties.

The Commission has also received different set of calculations under this petition and on scrutiny it was found that neither party has adhered to the methodology of calculations which was adopted in the settlement of the claim of Rs. 64 Crore before the year 2002 which was finalized by the Commission and upheld by the Hon’ble Supreme Court. Therefore, the Commission has adopted the same methodology for the period from Sept. 2002 to April, 2010 to arrive at the principal amount on various heads. On this principal amount, the DPC as per the terms of the PPA has been charged to arrive at for the final entitlement of the Petitioner GUVNL for receiving payment from the Respondent. With regard to DPC issues, no party has objected to the principal of DPC during the proceedings.

15.59. The Commission has computed the Delayed payment charges of Rs. 64.70 Crore on the deemed generation incentive to be refunded by the Respondent as per the principle and methodology adopted as mentioned above Para, the detailed working of the same has been given in Annexure-D to this Order.

16. Summary of the decisions:

i. Entitlement of the Petitioner, GUVNL for payment on account of diversion of excess energy:

GUVNL has the right to claim the compensation amount for the excess units/energy diverted to M/s ESL, which is the difference between the units actually supplied to M/s ESL and its share in the proportionate of allocation plant capacity.

ii. Ratio of diversion:

The Hon'ble Supreme Court set aside the judgement of the Hon'ble APTEL and upheld the Commission's Order. It has reiterated that the interpretation of the Agreement between the parties and the obligation of the Respondent to declare the availability of generated power in the ratio of 58:42 to the Petitioner and Essar Steel.

iii. Amount recoverable for computing compensation on account of diversion of energy:

The Commission has considered the amount recoverable as per HTP-1 energy rate plus the Fuel and Power Purchase Price Adjustment (FPPPA) Charges applicable to the category of consumers as per applicable tariff schedule of GEB/GUVNL and/or as per the tariff approved and as per the directives of the Commission from time to time.

iv. The reimbursement of Variable Charge has been considered as the fuel cost (Rs./Unit) of M/s EPoL in the respective monthly billing.

v. The Respondent is not liable to pay the fixed charges and penalty amount for excess drawl of power to the Petitioner as per methodology approved by the Commission in Case No. 873 Of 2005 vide order dated 18.02.2009.

vi. The delayed payment charges are computed as per provisions of the PPA @ 2% over the average interest rate charged by the Petitioner's

banks on working capital loans during the preceding 12 months calculated from the due date.

- vii. The claim of the Petitioner prior to 14.09.2002, on account of (a) diversion of power to Essar Steel out of the Petitioner's entitlement and (b) refund of deemed generation incentive is barred by limitation.
- viii. The diversion of allocation of capacity by the Respondent to Essar Steel in excess of 215 MW for the period between 1998-99 to September, 2004 is settled on payment of Rs. 64 Crore made by the Respondent to the Petitioner, which is elaborated at Para 15.38.
- ix. **Compensation on account of Diversion of Energy**
 - a. The Respondent is liable to further pay on account of computation of energy charge of HTP-1 tariff and FPPPA charges less variable cost amounting to Rs. 27.41 Crore (Annexure-A) for diversion of energy to Essar Steel for the period from 14.09.2002 to April, 2010.
 - b. The delayed payment charges of Rs. 72.44 Crore (Annexure-B) is payable by the Respondent on aforesaid amount (a) above.

Refund on account of Deemed Generation Incentive

- a. The Respondent is liable to refund the deemed generation incentive of Rs. 36.62 Crore (Annexure-C) paid by the Petitioner for the period from 14.09.2002 to 29.05.2006.
 - b. The delayed payment charges payable of Rs. 64.70 Crore (Annexure-D) is by the Respondent on aforesaid amount (a) above.
- x. The delayed payment charges as stated at (ix) have been worked out till FY 2018-19. The Petitioner is eligible to receive the DPC up to the date of payment of due amount mentioned at (ix) above at the applicable rate of interest on working capital loans as per Para 16 (vi). The Petitioner is directed to work out the same accordingly.

xi. The Respondent is directed to make the aforesaid payments to the Petitioner within 30 days of receipt of this Order under intimation to the Commission.

17. We order accordingly.

18. With this order the present petition stands disposed of.

-Sd-
[P. J. THAKKAR]
MEMBER

-Sd-
[K. M. SHRINGARPURE]
MEMBER

-Sd-
[ANAND KUMAR]
CHAIRMAN

Place: Gandhinagar
Date: 27/12/2019.

Period	Mus	VC_EPOL-G (Rs./Unit)	HTP-I_EC (Rs./Unit)	Amount recoverable as HTP Tariff (In Rs. Crore)	Reimbursement of variable charges (Rs. in crores)	Amount paid by M/s EstL	Total recovery from Essar Power (Rs. in crores)
Sep-02	4.85	2.24	4.10	1.99	1.09		0.90
Oct-02	24.94	2.252	4.10	10.23	5.62		4.61
Nov-02	31.54	1.926	4.10	12.93	6.07		6.86
Dec-02	2.37	1.913	4.10	0.97	0.45		0.52
Jan-03	13.18	2.072	4.10	5.40	2.73		2.67
Feb-03	22.89	1.798	4.10	9.38	4.12		5.27
Mar-03	4.58	1.731	4.10	1.88	0.79		1.09
FY 2002-03	104.35			42.78	20.87		21.91
Apr-03	12.92	1.671	4.10	5.30	2.16		3.14
May-03	2.54	1.658	4.10	1.04	0.42		0.62
Jun-03	2.28	1.795	4.10	0.93	0.41		0.53
Jul-03	48.97	1.662	4.10	20.08	8.14		11.94
Aug-03	7.5	1.616	4.10	3.08	1.21		1.86
Sep-03	9.82	1.536	4.10	4.03	1.51		2.52
Oct-03	18.2	1.632	4.10	7.46	2.97		4.49
Nov-03	20.91	2.406	4.10	8.57	5.03		3.54
Dec-03	3.47	1.633	4.10	1.42	0.57		0.86
Jan-04	3.47	1.628	4.10	1.42	0.56		0.86
Feb-04	3.1	1.828	4.10	1.27	0.57		0.70
Mar-04	3.05	2.872	4.10	1.25	0.88		0.37
FY 2003-04	136.23			55.85	24.42		31.43
Apr-04	3.95	1.659	4.10	1.62	0.66		0.96
May-04	4.37	1.684	4.10	1.79	0.74		1.06
Jun-04	19.67	1.771	4.10	8.06	3.48		4.58
Jul-04	25.51	1.698	4.10	10.46	4.33		6.13
Aug-04	0.06	1.799	4.10	0.02	0.01		0.01
Sep-04	8.69	1.857	4.10	3.56	1.61		1.95
FY 2004-05_I	62.25			25.52	10.83		14.69
Principal Amount	302.83			124.16	56.12		
Oct-04	19.4	1.604	4.10	7.95	3.11		4.84
Nov-04	14.56	1.595	4.10	5.97	2.32		3.65
Dec-04	2.68	1.553	4.10	1.10	0.42		0.68
Jan-05	6.61	1.556	4.10	2.71	1.03		1.68
Feb-05	17.11	1.55	4.10	7.02	2.65		4.36
Mar-05	38.6	1.55	4.10	15.83	5.98	26.33	9.84
FY 2004-05	98.96			40.57	15.51	26.33	25.06
Apr-05	39.1	1.552	4.10	16.03	6.07	27.49	9.96
May-05	14.9	1.557	4.10	6.11	2.32	12.95	3.79
Jun-05	14.83	1.433	4.10	6.08	2.13	1.36	3.96
Jul-05	9.25	1.432	4.10	3.79	1.32	1.33	2.47
Aug-05	4.75	1.443	4.10	1.95	0.69	1.21	1.26
Sep-05	9.6	1.445	4.10	3.94	1.39	1.58	2.55
Oct-05	3.17	1.474	4.10	1.30	0.47	0.80	0.83
Nov-05	8	1.494	4.10	3.28	1.20	0.98	2.08
Dec-05	7.22	1.48	4.10	2.96	1.07	0.87	1.89
Jan-06	11.53	1.449	4.10	4.73	1.67	1.71	3.06
Feb-06	5.79	1.455	4.10	2.37	0.84	1.33	1.53
Mar-06	6.02	1.46	4.10	2.47	0.88	1.42	1.59

Annexure - A

FY 2005-06	134.16			55.01	20.03	53.02	34.97
Apr-06	16.87	2.452	4.05	6.83	4.14	1.33	2.70
May-06	11.31	2.545	4.05	4.58	2.88	0.96	1.70
Jun-06	9.3	2.158	4.05	3.77	2.01	1.19	1.76
Jul-06	19.61	1.624	4.05	7.94	3.18	1.94	4.76
Aug-06	11.48	1.622	4.17	4.79	1.86	3.72	2.93
Sep-06	11.16	1.695	4.17	4.65	1.89	1.12	2.76
Oct-06	0.97	2.096	4.17	0.40	0.20	1.41	0.20
Nov-06	1.37	2.056	4.17	0.57	0.28	0.44	0.29
Dec-06	7.69	2.593	4.17	3.21	1.99	0.99	1.21
Jan-07	6.07	1.865	4.17	2.53	1.13	1.02	1.40
Feb-07	13.47	1.809	4.17	5.62	2.44	2.76	3.18
Mar-07	4.15	1.573	4.17	1.73	0.65	0.99	1.08
FY 2006-07	113.45			46.62	22.66	17.87	23.96
Apr-07	1.69	2.598	4.17	0.70	0.44	0.88	0.27
May-07	15.79	2.366	4.17	6.58	3.74	0.98	2.85
Jun-07	15.28	1.951	4.17	6.37	2.98	2.93	3.39
Jul-07	5	1.69	4.17	2.09	0.85	1.93	1.24
Aug-07	8.32	1.512	4.17	3.47	1.26	1.27	2.21
Sep-07	6.45	2.137	4.17	2.69	1.38	1.87	1.31
Oct-07	9.28	2.969	4.17	3.87	2.76	2.42	1.11
Nov-07	2.8	2.102	4.17	1.17	0.59	1.20	0.58
Dec-07	6.65	1.958	4.17	2.77	1.30	1.01	1.47
Jan-08	8.24	1.969	4.17	3.44	1.62	0.88	1.81
Feb-08	2.61	4.068	4.17	1.09	1.06	1.46	0.03
Mar-08	3.5	2.165	4.17	1.46	0.76	1.47	0.70
FY 2007-08	85.61			35.70	18.73	18.28	16.97
Apr-08	1.52	3.806	4.35	0.66	0.58	1.18	0.08
May-08	7.19	3.142	4.70	3.38	2.26	2.16	1.12
Jun-08	2.54	3.614	4.70	1.19	0.92	2.31	0.28
Jul-08	43.66	2.112	4.80	20.96	9.22	3.45	11.74
Aug-08	8.18	2.139	4.80	3.93	1.75	16.70	2.18
Sep-08	0.54	2.277	4.80	0.26	0.12	0.51	0.14
Oct-08	0.89	6.532	4.80	0.43	0.58	1.10	-0.15
Nov-08	0.21	3.892	4.96	0.10	0.08	0.99	0.02
Dec-08	0.69	3.675	4.96	0.34	0.25	0.86	0.09
Jan-09	3.46	3.416	4.96	1.72	1.18	1.25	0.53
Feb-09	0.43	3.428	5.06	0.22	0.15	0.88	0.07
Mar-09	1.66	4.432	5.06	0.84	0.74	0.85	0.10
FY 2008-09	70.97			34.02	17.83	32.24	16.19
Apr-09	0.05	2.893	5.06	0.03	0.01	0.86	0.01
May-09	0.02	2.796	5.06	0.01	0.01	0.86	0.00
Jun-09	0.04	2.83	5.06	0.02	0.01	0.16	0.01
Jul-09	0	2.992	5.06	0.00	0.00	1.39	0.00
Aug-09	0	3.132	5.06	0.00	0.00	1.14	0.00
Sep-09	0.36	3.266	5.06	0.18	0.12	1.09	0.06
Oct-09	0	1.528	4.89	0.00	0.00	0.86	0.00
Nov-09	0	0	4.89	0.00	0.00	0.99	0.00
Dec-09	0	0	4.89	0.00	0.00	0.00	0.00
Jan-10	0	0	4.89	0.00	0.00	0.96	0.00
Feb-10	0	1.515	4.77	0.00	0.00	0.88	0.00
Mar-10	0.01	1.469	4.77	0.00	0.00	0.96	0.00
FY 2009-10	0.48			0.24	0.15	10.13	0.09
Apr.10	0	1.449	4.77				
Principal Amount-II	503.63			212.17	94.91	157.88	
Sum Total	806.46			336.33	151.04	157.88	27.41

	Amount Recoverable from EPol (in Rs. Crore)	DPC Rate as per GUVNL (PPA)	DPC Amount (in Rs. Crore)
Sep-02	0.90	15.39%	0.01
Oct-02	4.61	15.34%	0.07
Nov-02	6.86	15.30%	0.16
Dec-02	0.52	15.27%	0.16
Jan-03	2.67	15.23%	0.20
Feb-03	5.27	15.20%	0.26
Mar-03	1.09	15.16%	0.28
FY 2002-03	21.91		1.14
Apr-03	3.14	15.13%	0.32
May-03	0.62	15.08%	0.32
Jun-03	0.53	15.04%	0.33
Jul-03	11.94	14.98%	0.48
Aug-03	1.86	14.93%	0.50
Sep-03	2.52	14.88%	0.53
Oct-03	4.49	14.82%	0.58
Nov-03	3.54	14.72%	0.62
Dec-03	0.86	14.61%	0.63
Jan-04	0.86	14.49%	0.63
Feb-04	0.70	14.31%	0.63
Mar-04	0.37	14.11%	0.63
FY 2003-04	31.43		6.18
Apr-04	0.96	13.89%	0.63
May-04	1.06	13.67%	0.63
Jun-04	4.58	13.46%	0.67
Jul-04	6.13	13.25%	0.73
Aug-04	0.01	13.03%	0.72
Sep-04	1.95	12.78%	0.72
FY 2004-05_I	14.69		4.10
Principal Amount-I	68.04		11.43
Oct-04	4.84	12.48%	0.76
Nov-04	3.65	12.22%	0.78
Dec-04	0.68	11.97%	0.77
Jan-05	1.68	11.73%	0.77
Feb-05	4.36	11.55%	0.80
Mar-05	9.84	11.39%	0.88
FY 2004-05	25.06		4.76
Apr-05	49.24	11.24%	0.46
May-05	40.07	11.07%	0.37
Jun-05	42.67	10.90%	0.39
Jul-05	43.81	10.71%	0.39
Aug-05	43.86	10.54%	0.39
Sep-05	44.84	10.41%	0.39
Oct-05	44.87	10.32%	0.39
Nov-05	45.98	10.24%	0.39
Dec-05	47.00	10.15%	0.40
Jan-06	48.35	10.07%	0.41
Feb-06	48.55	10.00%	0.40
Mar-06	48.71	9.93%	0.40

Annexure - B

FY 2005-06	0.00		4.77
Apr-06	50.08	9.88%	0.41
May-06	50.82	9.85%	0.42
Jun-06	51.38	9.84%	0.42
Jul-06	54.20	9.87%	0.45
Aug-06	53.41	9.89%	0.44
Sep-06	55.05	9.95%	0.46
Oct-06	53.84	10.00%	0.45
Nov-06	53.69	10.09%	0.45
Dec-06	53.92	10.17%	0.46
Jan-07	54.30	10.26%	0.46
Feb-07	54.72	10.37%	0.47
Mar-07	54.81	10.54%	0.48
FY 2006-07	0.00		5.37
Apr-07	54.20	10.70%	0.48
May-07	56.07	10.91%	0.51
Jun-07	56.53	11.11%	0.52
Jul-07	55.84	11.30%	0.53
Aug-07	56.79	11.49%	0.54
Sep-07	56.23	11.66%	0.55
Oct-07	54.93	11.82%	0.54
Nov-07	54.30	11.96%	0.54
Dec-07	54.76	12.09%	0.55
Jan-08	55.70	12.22%	0.57
Feb-08	54.27	12.32%	0.56
Mar-08	53.50	12.36%	0.55
FY 2007-08	0.00		6.44
Apr-08	52.40	12.39%	0.54
May-08	51.37	12.37%	0.53
Jun-08	49.33	12.34%	0.51
Jul-08	57.62	12.32%	0.59
Aug-08	43.09	12.34%	0.44
Sep-08	42.72	12.41%	0.44
Oct-08	41.47	12.48%	0.43
Nov-08	40.50	12.58%	0.42
Dec-08	39.73	12.63%	0.42
Jan-09	39.01	12.69%	0.41
Feb-09	38.20	12.69%	0.40
Mar-09	37.45	12.70%	0.40
FY 2008-09	0.00		5.54
Apr-09	36.61	12.72%	0.39
May-09	35.75	12.69%	0.38
Jun-09	35.60	12.66%	0.38
Jul-09	34.22	12.61%	0.36
Aug-09	33.08	12.51%	0.34
Sep-09	32.05	12.35%	0.33
Oct-09	31.20	12.19%	0.32
Nov-09	30.21	12.00%	0.30
Dec-09	30.21	11.85%	0.30
Jan-10	29.25	11.69%	0.28
Feb-10	28.37	11.59%	0.27
Mar-10	27.41	11.48%	0.26
FY 2009-10	0.00		3.91
Apr.10	27.41	11.37%	0.26

Principal Amount-II				31.06
Principal/DPC Amount				42.49
May-10	27.41	11.30%		0.26
Jun-10	27.41	11.24%		0.26
Jul-10	27.41	11.19%		0.26
Aug-10	27.41	11.16%		0.25
Sep-10	27.41	11.16%		0.25
Oct-10	27.41	11.16%		0.26
Nov-10	27.41	11.18%		0.26
Dec-10	27.41	11.20%		0.26
Jan-11	27.41	11.26%		0.26
Feb-11	27.41	11.35%		0.26
Mar-11	27.41	11.46%		0.26
FY 2010-11				3.09
Apr-11	27.41	11.59%		0.26
May-11	27.41	11.71%		0.27
Jun-11	27.41	11.88%		0.27
Jul-11	27.41	12.06%		0.28
Aug-11	27.41	12.25%		0.28
Sep-11	27.41	12.44%		0.28
Oct-11	27.41	12.63%		0.29
Nov-11	27.41	12.82%		0.29
Dec-11	27.41	13.01%		0.30
Jan-12	27.41	13.15%		0.30
Feb-12	27.41	13.27%		0.30
Mar-12	27.41	13.35%		0.30
FY 2011-12				3.43
Apr-12	27.41	13.42%		0.31
May-12	27.41	13.50%		0.31
Jun-12	27.41	13.51%		0.31
Jul-12	27.41	13.51%		0.31
Aug-12	27.41	13.49%		0.31
Sep-12	27.41	13.43%		0.31
Oct-12	27.41	13.37%		0.31
Nov-12	27.41	13.30%		0.30
Dec-12	27.41	13.23%		0.30
Jan-13	27.41	13.18%		0.30
Feb-13	27.41	13.12%		0.30
Mar-13	27.41	13.06%		0.30
FY 2012-13				3.66
Apr-13	27.41	12.97%		0.30
May-13	27.41	12.88%		0.29
Jun-13	27.41	12.82%		0.29
Jul-13	27.41	12.75%		0.29
Aug-13	27.41	12.69%		0.29
Sep-13	27.41	12.62%		0.29
Oct-13	27.41	12.56%		0.29
Nov-13	27.41	12.51%		0.29
Dec-13	27.41	12.47%		0.28
Jan-14	27.41	12.43%		0.28
Feb-14	27.41	12.39%		0.28
Mar-14	27.41	12.38%		0.28

Annexure - B

FY 2013-14			3.46
Apr-14	27.41	12.38%	0.28
May-14	27.41	12.39%	0.28
Jun-14	27.41	12.39%	0.28
Jul-14	27.41	12.40%	0.28
Aug-14	27.41	12.41%	0.28
Sep-14	27.41	12.42%	0.28
Oct-14	27.41	12.42%	0.28
Nov-14	27.41	12.42%	0.28
Dec-14	27.41	12.42%	0.28
Jan-15	27.41	12.40%	0.28
Feb-15	27.41	12.39%	0.28
Mar-15	27.41	12.37%	0.28
FY 2014-15			3.40
Apr-15	27.41	12.35%	0.28
May-15	27.41	12.33%	0.28
Jun-15	27.41	12.31%	0.28
Jul-15	27.41	12.27%	0.28
Aug-15	27.41	12.24%	0.28
Sep-15	27.41	12.21%	0.28
Oct-15	27.41	12.18%	0.28
Nov-15	27.41	12.12%	0.28
Dec-15	27.41	12.07%	0.28
Jan-16	27.41	12.01%	0.27
Feb-16	27.41	11.96%	0.27
Mar-16	27.41	11.91%	0.27
FY 2015-16			3.33
Apr-16	27.41	11.86%	0.27
May-16	27.41	11.82%	0.27
Jun-16	27.41	11.78%	0.27
Jul-16	27.41	11.75%	0.27
Aug-16	27.41	11.72%	0.27
Sep-16	27.41	11.69%	0.27
Oct-16	27.41	11.66%	0.27
Nov-16	27.41	11.65%	0.27
Dec-16	27.41	11.64%	0.27
Jan-17	27.41	11.64%	0.27
Feb-17	27.41	11.64%	0.27
Mar-17	27.41	11.64%	0.27
FY 2016-17			3.21
FY 2017-18	27.41	11.64%	3.19
FY 2018-19	27.41	11.64%	3.19
Total DPC Amount	27.41		72.44

Annexure - C

Periods	Deemed Generation Incentive Payable by the Respondent (in Rs. Crore)
Sep-02	1.395
Oct-02	-5.738
Nov-02	-1.166
Dec-02	3.654
Jan-03	1.756
Feb-03	1.124
Mar-03	1.181
FY 2002-03	2.207
Apr-03	1.996
May-03	3.140
Jun-03	3.055
Jul-03	-5.390
Aug-03	3.644
Sep-03	-0.561
Oct-03	-1.448
Nov-03	0.199
Dec-03	2.891
Jan-04	4.084
Feb-04	3.660
Mar-04	1.216
FY 2003-04	16.484
Apr-04	1.478
May-04	1.347
Jun-04	1.304
Jul-04	0.945
Aug-04	1.750
Sep-04	-2.403
Oct-04	0.357
Nov-04	0.201
Dec-04	-
Jan-05	-
Feb-05	-
Mar-05	6.188

Annexure - C

FY 2004-05	11.168
Apr-05	0.362
May-05	0.374
Jun-05	0.362
Jul-05	0.374
Aug-05	0.374
Sep-05	0.362
Oct-05	0.374
Nov-05	0.362
Dec-05	0.374
Jan-06	0.374
Feb-06	0.338
Mar-06	0.374
FY 2005-06	4.406
Apr-06	0.735
May-06	1.627
Total Principal Amount (in Rs. Crore)	36.627

Annexure - D

Periods	Deemed Generation Incentive Payable by the Respondent (in Rs. Crore)	DPC Rate as per GUVNL (PPA)	DPC Amount (in Rs. Crore)
Sep-02	1.395	15.39%	0.02
Oct-02	-5.738	15.34%	-0.06
Nov-02	-1.166	15.30%	-0.07
Dec-02	3.654	15.27%	-0.02
Jan-03	1.756	15.23%	0.00
Feb-03	1.124	15.20%	0.01
Mar-03	1.181	15.16%	0.03
FY 2002-03	2.207	0.00%	-0.09
Apr-03	1.996	15.13%	0.05
May-03	3.140	15.08%	0.09
Jun-03	3.055	15.04%	0.13
Jul-03	-5.390	14.98%	0.06
Aug-03	3.644	14.93%	0.11
Sep-03	-0.561	14.88%	0.10
Oct-03	-1.448	14.82%	0.08
Nov-03	0.199	14.72%	0.08
Dec-03	2.891	14.61%	0.12
Jan-04	4.084	14.49%	0.17
Feb-04	3.660	14.31%	0.21
Mar-04	1.216	14.11%	0.22
FY 2003-04	16.484		1.43
Apr-04	1.478	13.89%	0.23
May-04	1.347	13.67%	0.25
Jun-04	1.304	13.46%	0.26
Jul-04	0.945	13.25%	0.26
Aug-04	1.750	13.03%	0.28
Sep-04	-2.403	12.78%	0.25
Oct-04	0.357	12.48%	0.24
Nov-04	0.201	12.22%	0.24
Dec-04	0.000	11.97%	0.24
Jan-05	0.000	11.73%	0.23
Feb-05	0.000	11.55%	0.23
Mar-05	6.188	11.39%	0.28
FY 2004-05	11.168	0.00%	2.98
Apr-05	0.362	11.24%	0.28
May-05	0.374	11.07%	0.28
Jun-05	0.362	10.90%	0.28
Jul-05	0.374	10.71%	0.28
Aug-05	0.374	10.54%	0.28
Sep-05	0.362	10.41%	0.28
Oct-05	0.374	10.32%	0.28
Nov-05	0.362	10.24%	0.28
Dec-05	0.374	10.15%	0.28
Jan-06	0.374	10.07%	0.28
Feb-06	0.338	10.00%	0.28
Mar-06	0.374	9.93%	0.28

Annexure - D

FY 2005-06	4.406	0.00%	3.370
Apr-06	0.735	9.88%	0.29
May-06	1.627	9.85%	0.30
Sum Total	36.627		
Jun-06		9.84%	0.30
Jul-06		9.87%	0.30
Aug-06		9.89%	0.30
Sep-06		9.95%	0.30
Oct-06		10.00%	0.31
Nov-06		10.09%	0.31
Dec-06		10.17%	0.31
Jan-07		10.26%	0.31
Feb-07		10.37%	0.32
Mar-07		10.54%	0.32
FY 2006-07		0.00%	3.67
Apr-07		10.70%	0.33
May-07		10.91%	0.33
Jun-07		11.11%	0.34
Jul-07		11.30%	0.34
Aug-07		11.49%	0.35
Sep-07		11.66%	0.36
Oct-07		11.82%	0.36
Nov-07		11.96%	0.36
Dec-07		12.09%	0.37
Jan-08		12.22%	0.37
Feb-08		12.32%	0.38
Mar-08		12.36%	0.38
FY 2007-08			4.27
Apr-08		12.39%	0.38
May-08		12.37%	0.38
Jun-08		12.34%	0.38
Jul-08		12.32%	0.38
Aug-08		12.34%	0.38
Sep-08		12.41%	0.38
Oct-08		12.48%	0.38
Nov-08		12.58%	0.38
Dec-08		12.63%	0.39
Jan-09		12.69%	0.39
Feb-09		12.69%	0.39
Mar-09		12.70%	0.39
FY 2008-09			4.58
Apr-09		12.72%	0.39
May-09		12.69%	0.39
Jun-09		12.66%	0.39
Jul-09		12.61%	0.38
Aug-09		12.51%	0.38
Sep-09		12.35%	0.38
Oct-09		12.19%	0.37
Nov-09		12.00%	0.37
Dec-09		11.85%	0.36
Jan-10		11.69%	0.36
Feb-10		11.59%	0.35
Mar-10		11.48%	0.35

Annexure - D

FY 2009-10			4.47
Apr-10		11.37%	0.35
May-10		11.30%	0.35
Jun-10		11.24%	0.34
Jul-10		11.19%	0.34
Aug-10		11.16%	0.34
Sep-10		11.16%	0.34
Oct-10		11.16%	0.34
Nov-10		11.18%	0.34
Dec-10		11.20%	0.34
Jan-11		11.26%	0.34
Feb-11		11.35%	0.35
Mar-11		11.46%	0.35
FY 2010-11			4.12
Apr-11		11.59%	0.35
May-11		11.71%	0.36
Jun-11		11.88%	0.36
Jul-11		12.06%	0.37
Aug-11		12.25%	0.37
Sep-11		12.44%	0.38
Oct-11		12.63%	0.39
Nov-11		12.82%	0.39
Dec-11		13.01%	0.40
Jan-12		13.15%	0.40
Feb-12		13.27%	0.41
Mar-12		13.35%	0.41
FY 2011-12			4.58
Apr-12		13.42%	0.41
May-12		13.50%	0.41
Jun-12		13.51%	0.41
Jul-12		13.51%	0.41
Aug-12		13.49%	0.41
Sep-12		13.43%	0.41
Oct-12		13.37%	0.41
Nov-12		13.30%	0.41
Dec-12		13.23%	0.40
Jan-13		13.18%	0.40
Feb-13		13.12%	0.40
Mar-13		13.06%	0.40
FY 2012-13			4.89
Apr-13		12.97%	0.40
May-13		12.88%	0.39
Jun-13		12.82%	0.39
Jul-13		12.75%	0.39
Aug-13		12.69%	0.39
Sep-13		12.62%	0.39
Oct-13		12.56%	0.38
Nov-13		12.51%	0.38
Dec-13		12.47%	0.38
Jan-14		12.43%	0.38
Feb-14		12.39%	0.38
Mar-14		12.38%	0.38

Annexure - D

FY 2013-14			4.62
Apr-14		12.38%	0.38
May-14		12.39%	0.38
Jun-14		12.39%	0.38
Jul-14		12.40%	0.38
Aug-14		12.41%	0.38
Sep-14		12.42%	0.38
Oct-14		12.42%	0.38
Nov-14		12.42%	0.38
Dec-14		12.42%	0.38
Jan-15		12.40%	0.38
Feb-15		12.39%	0.38
Mar-15		12.37%	0.38
FY 2014-15			4.54
Apr-15		12.35%	0.38
May-15		12.33%	0.38
Jun-15		12.31%	0.38
Jul-15		12.27%	0.37
Aug-15		12.24%	0.37
Sep-15		12.21%	0.37
Oct-15		12.18%	0.37
Nov-15		12.12%	0.37
Dec-15		12.07%	0.37
Jan-16		12.01%	0.37
Feb-16		11.96%	0.37
Mar-16		11.91%	0.36
FY 2015-16			4.45
Apr-16		11.86%	0.36
May-16		11.82%	0.36
Jun-16		11.78%	0.36
Jul-16		11.75%	0.36
Aug-16		11.72%	0.36
Sep-16		11.69%	0.36
Oct-16		11.66%	0.36
Nov-16		11.65%	0.36
Dec-16		11.64%	0.36
Jan-17		11.64%	0.36
Feb-17		11.64%	0.36
Mar-17		11.64%	0.36
FY 2016-17			4.29
FY 2017-18		11.64%	4.26
FY 2018-19		11.64%	4.26
Total Principal/DPC Amount (in Rs. Crore)	36.63		64.70