# APP Submissions on Draft Standard Bidding Documents for UMPPs

## Section I: General Comments

1.1. Before coming to the specifics, the question that needs to be asked is that do we need a UMPP bid at a stage when the installed 193 GW coal based capacity is running at ~60% PLF, and Power plants with almost 20 GW capacity are idling on account of absence of Power off-take agreements, with almost 50-60 GW capacity under-construction. Even the National Electricity Plan by CEA, after considering the renewable capacity addition plans by 2022, estimates the best-case scenario of PLF of only 52.8% for coal based capacity.

1.2. In this background, it would be appropriate to aggregate the demand that is to be met by the proposed UMPP(s), and then some nodal agency, such as PFC, can bid out asking for quotes for supply of Power from that year onwards. It would provide an opportunity for under-construction plants to bid, and to tailor their completion schedule to the proposed Power requirement. In the current situation of huge un-requisitioned surplus, efforts should be to provide off-take agreements for stranded/ under utilised projects.

1.3. Looking at the under-utilised, idling, and the under-construction capacity, APP would like to add that there should be a “Hiatus” in terms of building any new capacity, till the utilisation of built-up and under-construction Private sector capacity reaches 70%. At that point the country would still have good headroom (in terms of 3-4 years) to restart building new Coal based assets, while the capacity utilisation would move from 70% to 85%.

1.4. The Proposed Standard Bidding Documents (SBDs) are for Linkage based UMPP, where in land (critical), Coal linkage, and other clearances are to be provided by the Procurers and the project is to be awarded on basis of lowest tariff – levelised fixed cost, and variable cost as on first year. It is basically the same model as Case II bids. Earlier, the bid process has been carried out for 5 projects under this category – Jhajjar-CLP (Haryana), Aanpara C-Lanco, Karchna & Bara-Jaypee group (Uttar Pradesh) & Nabha-L&T (Punjab).

1.5. A review of these projects shows that all projects, except Karchna, were operationalised before the due date, and are working fine. Karchna project had to be abandoned as the State could not acquire the land due to farmer's agitation. Nabha project, had issue with energy charges as the State Regulator did not accord approval for Incontestable Change in Law items (taxes & levies increase), Coal washing charges, Road mode transportation charges etc. Finally, the Hon’ble Supreme Court overruled the State Regulator & APTEL, and allowed all these charges from the day of imposition/ expenditure.

1.6. Based on past experience of successful operations of these projects, all that was required was to make minor changes to resolve issues faced by Procurers & Developers. The Expert group would have saved a lot of effort and time if they had reviewed the operations of these projects (which have been running for over 5 to 6 years) and had a dialogue with Procurers & the Developers.

We are not aware of any such review or dialogue – an imperative for a "Comprehensive Review".

**1.7. It would not be out of place to quote Finance Minister's observations in the Budget speeches, on design of UMPP projects (failure of Tilaiya & Krishanapatnam UMPP, issues associated with Sasan and Mundra UMPP), where he advocated the following –**

**a) New UMPP projects would be awarded under 'plug-and-play' mode, wherein all clearances would be in place before award.**

**b) Need to develop more efficient dispute redressal mechanisms to counter the rigidities in contractual arrangements.**

1.8. Instead of incorporating the Finance Minister's observations, and following an issue resolution approach, the present SBDs try to reinvent the wheel, and have come up with untested new concepts – two SPV model, Partial Land Acquisition (dividing land required in two separate categories), termination by Procurers on not getting acceptable price of alternate Coal in case of failure of Coal India Limited (CIL) to supply ACQ (while Linkage is a part of project package).

1.9. It must be admitted that the proposed SBDs mention Fuel Transportation Agreement (FTA), which is a welcome change. However, past experience shows that Railways have always quoted some legal impediment in entering into FTAs, and transportation still continues on 'best effort basis'. If an FTA can be drafted, shared and implemented, it would be a big achievement.

1.10. In brief, we feel that the proposed SBDs, in their present form, may breed further Non-Performing Assets (NPAs). In this background, following suggestions merit consideration:

- Review the operations of earlier operational Case II Linkage projects, and have a dialogue with Procurers & Developers to understand their issues. Thereafter necessary changes can be introduced, instead of reinventing the wheel (which is not required). Power sector, in the current state of distress, cannot afford untested concepts – which have obvious complications as well established from earlier implementations, and continuation of those provisions which have resulted in endless litigations.

- In case the above is not acceptable, we would request for extensive discussions on these SBDs with Ministry of Power (MoP), the Expert Group and Lenders/ Bankers, to ensure that we do not add to the stock of NPAs.

1.11. Some of the key points that need review and clarifications are detailed below:

**1.11.1. The concept of two SPVs (not tested yet) needs clarification –**

- Our analysis indicates that the proposed two SPV model, along with the provisions of future land acquisition by the Operating SPV on behalf of the Infrastructure SPV and subsequent lease to the Operating SPV, may involve huge tax implications (GST) as follows:

- Land acquired prior to bidding by the Infrastructure SPV and handed over to the Operating SPV: This transaction will be considered as a service of providing right to use land by the Infrastructure SPV to the Operating SPV against Lease Rent and the consideration paid shall be subject to Service tax. However, the timing of the tax payable is not clear (whether upfront on lump sum amount or yearly proportionate rent).

- Draft Land Lease Agreement not available: A copy of the draft Land Lease agreement needs to shared with the bidders before the actual bidding process, to see the terms and conditions. Without this, it is very difficult to ascertain the implications of such lease arrangement from the legal and financial point of view.

- Land acquired after bidding process by the Operating SPV in the name of the Infrastructure SPV and leased to the Operating SPV under Lease Agreement: As provided presently, Developers have to procure/ acquire land, and then transfer it to the Infrastructure SPV. This can be construed as a service, and may imply Service Tax and Transfer Charges – which should be clarified. Further, GST would also be applicable on Lease charges for Land 2.

- There is no need for such a convoluted and complex arrangement. Apart from impact on tariff of taxation (when aim is to have affordable tariffs), it may also have practical difficulties. Those difficulties have been discussed in detail in subsequent points.

**1.11.2. The Segregation of Land for the project**

- SBDs propose segregation of Land into two parts – Critical and Non-critical, with initial acquisition limited to Critical Land and balance to be acquired by Developer & then to be transferred to the Infrastructure SPV.

- Before we come to the practical difficulties of such implementation, we need to recognize that the Land acquisition is the most difficult part in an implementation cycle – Karchna (Case II Linkage based), Tilaiya UMPP had to be abandoned, as the land could not be acquired for 3 to 4 years post bidding. In case of Sasan UMPP, the Over Burden land, as assured in conditions subsequent, is yet to be handed over.

- Segregation between Land-1 and Land-2: Distinguishing land as Critical & Non-critical, and making such demarcation case-specific will lead to varied interpretations and be subject to discretion of Procurers. To avoid uncertainties, it is suggested that no such distinction is made and land is simply defined as the total acreage required for construction and operation of the Power Plant as per its rated capacity. Defining critical land as being adequate to achieve COD is not appropriate since the elements of construction requiring land for Power generation facility are complementary, and not supplementary, in nature.

- Incompatibility with LARR Act: It may be clarified that the entire activity of land acquisition leading up to award under Section 23 of the Act would be undertaken for the entire land of the plant i.e. for Land 1 and Land 2. As per understanding, once you reach the stage of award under Section 23, there is no rationale to award it only for Land 1. If not so, the provision of identification of total land required for the power plant by the procurer but securing the Award under section 23 of LARR Act only for 'critical' land is not compatible with LARR Act. Under the LARR 2013, the Social Impact Assessment has to be initiated for the entire project and not for a part of the land for the project.

- Responsibility of acquiring Land 2/remaining land and uncovered risk on increase in cost and delays: **The responsibility of acquiring the balance Land (Land 2) exposes Seller to great financial and time over-run risk**. This goes against the concept of 'plug-and-play' model for UMPPs which was envisaged by the Government and also runs counter to the practical experience with the previous power projects like Karchana, Tilaiya UMPP wherein both the projects failed to lift off as the procurers failed to acquire the land.

- The document states that any additional cost incurred over the Declared Price of Land-2, for reasons other than Change in Law, will be considered as deemed Change in Law only to the extent of an increase of 10% and shall be eligible to be adjusted in Tariff subject to the approval of the Commission in accordance with Article 21 of the PPA. **This stipulation leaves the Seller open to financial risk.**

- **Way-Forward: The Power Station Land in terms of Recital A and Clause 1.1.148 of PPA Document should be treated as a single unit and not as two parcels of Land-1 and Land-2. Therefore, a logical consequence will be to complete the Award under section 23 of LARR Act for Power Station Land in its entirety. This will avoid uncertainties of determining the value of any balance parcels of land in connection with the power project in case such option is to be exercised in future. At the very least, even if the Power Station Land is segregated between Land-1 and Land-2, then Land-1 should be adequate to enable construction of all such facilities as mentioned under Article 1.1.142 (definition of "Power Station").**

- **In order to avoid a repeat of past experiences wherein UMPP projects have become mired in subsequent land acquisition issues, and in order to align the document with the envisaged 'plug-and-play' framework announced by the Finance Minister, it should be the responsibility of the Procurer to acquire the entire land and hand it over to the Seller. Else, in the event the responsibility of acquiring Land-2 is to be taken over by the Seller, the market value of such land should be as determined by the District Collector in terms of Section 27 of LARR Act and any increase over the Declared Price should be made fully allowable under Change in Law based on District Magistrate/ Competent Authority's certification without applying a ceiling.**

**1.11.3. Recovery of Variable charges –**

- Difficulties, inconsistencies and delays (up to 3-4 years without carrying charges) associated with recovering any increases in Coal and Coal Transportation cost, and various levies imposed by State/ its instrumentalities, post bidding, are well documented in our numerous communications – charges such as Coal Terminal Surcharge (recovery before it became a part of Freight), Busy Season Surcharge, Development Surcharge, Clean Energy Cess, among others, impact the cost of Generation significantly.

- Developers have no control over these increases and imposition of additional taxes & levies, which are arbitrary and done anytime during the year. Case in point is the recent imposition of Evacuation Facility Charges by CIL. It took Developers 3-4 years for getting approval of recovery of Clean Energy Cess, and now with nomenclature change to GST Compensatory Cess, the petition is pending at CERC for a decision. In the case of Busy Season Surcharge & Coal Terminal Surcharge, CERC, in it ingenuity, termed these as Commercial charges, and was thus disallowed. This case has been pending at APTEL for about 9 months now.

- No one will deny that these are Incontestable charges and are to be paid, MoP and Regulators both agree to this. MoP cannot change PPAs retrospectively (accepted position), Regulators say that the procedure has to be followed in every case – irrespective of items being Incontestable and time-consuming process. It becomes contestable as Distribution utilities, because of their precarious financial position, prefer to drag every case to court and take it to the highest level as they do not have to pay carrying charges. However, this puts unsustainable burden of increased working capital and under recovery of carrying charges on Developers.

- CERC indexation is faulty (recognised by CERC itself but not corrected) as in the index they take only base price of Coal. Presently the taxes and levies are about 103% over Base price, e.g. for G11 Coal base price is Rs. 810 per tonne, but with all additional components it reaches Rs. 1640 per tonne (Attached sheet shows the various levies and taxes). For each increase, every Developer has to file a case and get the tariff revised. Even for Base price it takes escalation rate from DIPP which is combination of Power & Non-power grade Coal and comes with a lag of minimum 6 months, depending on the time of increase. The below table shows difference in movement of actual price of Coal and the CERC escalation index:

| Month | Average price of G7 to G14 Coal (in Rs./ MT) | WPI |
|---|---|---|
| **Jan-16** | *875.00* | *113.30* |
| **Feb-16** | *875.00* | *113.30* |
| **Mar-16** | *875.00* | *113.30* |
| **Apr-16** | *875.00* | *113.30* |
| **May-16** | *875.00* | *113.30* |
| **Jun-16** | *1005.00* | *122.80* |
| **Jul-16** | *1005.00* | *122.80* |
| **Aug-16** | *1005.00* | *122.80* |
| **Sep-16** | *1005.00* | *122.80* |
| **Oct-16** | *1005.00* | *122.80* |
| **Nov-16** | *1005.00* | *122.80* |
| **Dec-16** | *1005.00* | *122.80* |
| | | |
| **Average Index (Jan-16 to Jun-16)** | **896.67** | **114.88** |
| **Average Index (Jul-16 to Dec-16)** | **1005.00** | **122.80** |
| | | |
| **Half Yearly Inflation** | **12.08%** | **6.89%** |
| **Yearly Inflation** | **24.16%** | **13.78%** |

- For Railways, only the basic freight is considered in indexation. For illustration, present base freight of Railways (for a distance of 450 km) is Rs. 803 per tonne, but with all additional components it reaches Rs. 1018 per tonne (Attached sheet shows the various surcharges and levies). Recovery of

increase in other charges is through petitions to the Regulators. This again leads to delays, with no carrying charges, also leads to under recoveries due to inconsistencies in orders.

- **Way-Forward: The facts stated above, and the difficulties, are accepted by MoP and the Regulators. However, in view of their current predicament, these issues have created huge burden of unpaid dues (Rs. 8,400 Cr currently).**

- **As all accept that these increases are to be given from the date of its imposition/ increase, therefore, it is imperative that this issue is addressed, and a mechanism is evolved to ensure that Incontestable increases are paid immediately as per the invoices raised by CIL and/or Railways.**

- **The present SBDs must address above mentioned issues, and evolve a mechanism for immediate pass through of Incontestable increases, without resorting to going to Regulators for approval. The step of approaching Regulators must be only in case of genuine disputes, and to avoid misuse PPA needs to provide for Carrying charges in case the same is adjudicated in favour of Developers. Alternatively, it can be paid as "provisional charge", and if the same is adjudicated against Developers, they should be asked to pay interest during the period of adjudication. The SBDs and the draft PPA must provide for Carrying charge during adjudication, to discourage frivolous litigations.**

#### 1.11.4. Arrangement of Alternate Coal

- For arrangement of alternate Coal, the provisions have already come up in CERC Tariff Regulations 2014-19 and it has been adopted by some states. Therefore, there was no need to go for different provisioning and even introducing the option of termination – if the cost of alternate Coal is not acceptable, or the Procurers do not exercise the option of arranging Coal themselves within one year. The Seller can not be held at fault in this scenario.

- This termination clause gives an easy option to Procurers, if in case of changed circumstances they find that they can procure cheaper Power (recent example is of many Distribution utilities renegotiating on their earlier commitment on account of cheaper Power/ Non-requirement of Power due to low demand).

- **<u>Way-Forward</u>: Accordingly, arrangement of alternate Coal should be allowed as per the mechanism defined by CERC under Regulation 30 of Tariff Regulation 2014-19 (Copy attached).**

### 1.11.5. <u>Unequitable treatment of Seller and Procurers</u>

- The clauses governing factoring in the Change in Law impact, Termination provisions, and payouts are not equitable. In many, the Procurer has been given right to make changes suo motu, whereas the seller has to move the Regulator. The proposed SBDs need to be balanced and equitable.

### 1.11.6. <u>Unforeseen events leading to Material Adversity situations</u>

- The present SBDs have made a welcome addition of a new clause of meeting situations cropping out of Unforeseen circumstances. This is a very positive step, and incorporates lessons from past learnings.

Our detailed clause-wise comments are covered in Section-II below.

# Section II: Specific Comments

## 2.1. Comments on the Draft Guidelines document

| # | Section/ Subject | Issue |
|---|---|---|
| 1. | **Preparation for inviting bids**<br><br>Clause 3.1 | It is submitted that the cost of breakup of project development activities be made available with RFQ to the Bidders. |
| 2. | **Preparation for inviting bids**<br><br>**Clause 3.2** | It may be noted that Ministry of power vide its notification no. 23/09/2014-R&R dated 5th may 2015 issued certain modifications/amendments in the guidelines & SBDs for procurement of power from Thermal power stations set up on DBFOO/Case-1 basis, in which MoP had amended that any deviation from the SBDs shall be made by the Distribution Licensees with the prior approval of the Appropriate Commission instead of Central Government.<br><br>Therefore, it is suggested that for any change/deviation in SBDs for procurement of power for Case-2/UMPPs Appropriate Commission should be Approving Authority of Central Government. |
| 3. | **Clause 3.3** | It is submitted that the ACQ committed and to be supplied under the FSA should be for the normative availability of the full contracted quantity and not limited to 80% of 85% of availability as presently done under the FSAs/ NCDP for which the Model FSA should also be enclosed with the bid document which cover aspects like ACQ and monthly variation in ACQ of coal and incentives and penalties for variation in coal quantity beyond the specified limits. In addition, source of coal supply and quality of coal proposed to be supplied need to be indicated in the RFP.<br><br>Bidders to be provided with coal quality reports for bid preparation. “Coal Quality for Boiler Design” should be given as a Schedule so that any deviations to the same could be considered by the Independent Engineer during the Performance Testing as well as during operations.<br><br>The contracted quality of the coal supplied should be to meet the environmental norms specified for the power station and specified upfront so that the plant design could be optimized. Any adverse consequences due of deviations in the contracted coal quality as certified by the Independent Engineer should be covered in the FSA.<br><br>It is submitted that many of the greenfield mines of CIL do not have rail connectivity. In the event the Bidder has to lift coal from such mines through road mode or road-cum-rail mode or any other mode till such time the rail connectivity is operationalized, the SBD should |

| # | Section/ Subject | Issue |
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| | | include provisions to cover for such situations and recovery of such cost by the Seller. |
| 4. | **Clause 3.4** | It is suggested that along with total land required for the power project, Procurers should identify the land required for facilities outside of power plant such as land for Coal conveyer belt, railway siding/MGR, water pipeline, Ash evacuation system/Ash pond etc.<br><br>In order to expedite the development of Power Project, it is suggested that clarification related to obligation of Infrastructure SPV for time to time procurement of all necessary notifications/ award/ possessions under applicable Land Acquisition Act for balance land required for Power plant and land required for facilities outside of power plant such as land for Coal conveyer belt, railway siding/MGR, water pipeline, Ash evacuation system/Ash pond etc.<br><br>It is suggested that Critical land for Power plant may be defined before inviting bids and critical land shall also be certified by the CEA or independent agency in order to avoid any ambiguity at later date |
| 5. | **Clause 3.4 (i)** | Please refer to Comments on Clause 8.2 and 8.3 of Draft PPA. |
| 6. | **Clause 3.4 (iv)** | CERC has proposed to replace Connectivity Regulation 2009 with GNA Regulations and notified a draft for comments. It is suggested that a reference to this be made in the SBD Guidelines. The phrase “as amended from time to time” may be added. |
| 7. | **Clause 3.5** | As per the Modus Operandi suggested in the Bidding guidelines, Operating SPV has to acquire the land in name of Infrastructure SPV which in turn shall lease the land to the Operating SPV. In this regard, following clarity may be provided:<br><br>a) It is not clear as to whether the acquisition of the balance land will be by way of private negotiation or will the Government issue necessary notifications under either Coal Bearing Act, 1957 (CB Act, 1957) or Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (LA Act 2013).<br><br>b) In case the Operating SPV is expected to enter into private negotiation with the present Occupants of the Land, the only right that will vest in Operating SPV is the right accruing in favour of present Occupant. Considering that a substantial (if not all) part of such land would be in occupation of agricultural tenants who themselves do not have legal title over the land, it is not clear as to |

| # | Section/ Subject | Issue |
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| | | how the title of the land will ever vest in the Operating SPV for it to transfer the same to the Infrastructure SPV.<br><br>c) Without prejudice, even presuming that the title can be acquired over the balance land by the Operating SPV, what would be the consideration for transferring title to the said land to the Infrastructure SPV? Further, would this modus need duplicity of obligation of paying stamp duty.<br><br>In view of the various ambiguities related to land acquisition of balance land it is suggested that a separate Approach Paper may be published by the government providing detail procedure/insight on this matter. |
| 8. | **Clause 3.6** | It is suggested that appointment of consulting firm as the Independent Engineer for the project should be mutually agreed between Procurers and successful bidder to avoid any disputes/conflicts at later date. |
| 9. | **Bidding Process**<br><br>**Clause 4.6** | Bidding process shall be cancelled only after Regulator's approval as in the past Utilities have cancelled & annulled the bidding process without giving any justification and tied up power at higher rate in subsequent bidding process.<br><br>It is not clear if the Successful Developer opts to develop the Power plant in two phases as provided in the PPA, how it will affect the levelised tariff and how the payment of tariff would be made to the Successful bidder. It is requested to suitably clarify the above issue. |

## 2.2. Comments on the Draft Request for Qualification (RFQ)

| # | Section/ Subject | Issue |
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| 1. | **Annex- IV**<br><br>**Details of Eligible Projects** | As per Guidance Note issued by ICAI, Statutory Auditor has to adhere to ICAI note for the format of such certificate. Hence, it is suggested that the certificate shall be in compliance with ICAI guidelines. |
| 2. | **Background**<br><br>**Clause 1.2.4** | It should be linked to per MW of Project size rather than estimated Project Cost calculated by the Utility to have more transparency and clarity. |
| 3. | **Clause 1.2.5** | As per clause, the lowest bidder shall be the Successful Bidder. The remaining Bidders shall be kept in reserve and may, in accordance with the process specified in the RFP, be invited to match the Bid submitted by the Lowest Bidder in case such Lowest Bidder withdraws or is not selected for any reason.<br><br>It is suggested to delete the clause of matching the bid of lowest bidder by other bidders in case lowest bidder is not selected for any reason, instead Procurer shall accept the bid of second lowest Bidder as the price quoted by the lowest bidder may be inappropriate or incorrect because of which lowest Bidder might have withdrawn the bid after awarding of the project. |
| 4. | **Clause 1.4** | It is not clear if the Successful Developer opts to develop the Power plant in two phases as provided in the PPA, how it will affect the levelised tariff and how the payment of tariff would be made to the Successful bidder for Phase II. It is requested to suitably clarify the above issue |
| 5. | **General**<br><br>**Clause 2.2** | Equity lock-in period/equity dilution restriction till 3 years from the date of COD is reasonable and therefore it is suggested that there further restriction on equity dilution beyond 3 years may be deleted. |

## 2.3. Comments on the Draft Request for Proposal (RFP)

| # | Section/ Subject | Issue |
|---|---|---|
| 1. | **Letter of Invitation** | "Please note that the Procurers reserves the right to accept or reject all or any of the bids without assigning any reason whatsoever."<br><br>This clause is unilateral & unreasonable and should be modified as disqualification of any bidders would be determined in accordance with the bidding process criteria and reasons for disqualification shall be recorded. |
| 2. | **Brief Description of Bidding Process**<br><br>**Clause 1.2** | To be modified as -<br><br>"The draft/approved R&R package, Feasibility Report prepared by the Procure/consultants of the Procurers, **EC/FC of power station, Land records for Power plant and** other study reports has been enclosed/will be provided to the Bidders at least 45 days period the Bid Due Date"<br><br>All necessary details having cost implications may be provided before 45 days of Bid Due Date. |
| 3. | **General**<br><br>**Clause 2.1.5** | Schedule 6 – Escalation Index of Model PPA specifies as<br><br>"*The Quoted Variable Charge shall comprise of two components – the fuel component and the non-fuel component, and the index for escalation of the two components shall be as per this Schedule*."<br><br>The bid format shows "Quoted Variable Charges" as on Bid due date in 'Rs/kWh' as one figure. The bid format may be modified to include the two components i.e. the fuel component and the non-fuel component.<br><br>Further, the methodology for computing evaluated tariff and levelized fixed charge under Clause 3.4.2 and Appendix XI need to be modified to include the two components i.e. the fuel component and the non-fuel component and their respective escalation indices as notified by Commission. The definitions of fuel components and non-fuel components be defined for the purpose of bidding as per our comments under Schedule 6. |
| 4. | **Clause 2.1.17** | It has been provided in the RFQ that only Applicants who agree and undertake to procure the boilers, turbines, and generators for the Projects from manufacturing facilities situated in India and owned and operated in India by an Indian company, a foreign company or a joint venture between an Indian and foreign company shall be eligible to participate. |

| # | Section/ Subject | Issue |
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| | | Limiting procurement to local manufacturers will limit competition. It would create unfair advantage in case a domestic manufacturer decide to bid for the UMPP whether on its own or through consortium.<br><br>In past, there have been instances of delay by domestic manufacturers.<br><br>Foreign manufacturer comes with option of cheaper Exim financing which lower down the tariff for the UMPP. |
| 5. | **Clause 2.3.1** | It is submitted that the Seller may be permitted to exit the project after 3 years and not be locked in for 10 years as proposed presently.<br><br>In this context, Cabinet has recently approved amendments in the Model Concession Agreement (MCA) for Port projects, and one major update is providing exit route to developers by way of divesting their equity upto 100% after completion of 2 years from the Commercial Operation Date (COD). This is similar to the MCA provisions of Highway Sector. |
| 6. | **Clause 2.13** | To be modified as-<br><br>"2.13.2 Generally, the Project will be awarded to the Bidder whose tariff is lowest on Levelized basis."<br><br>The selection of the bidder is based on the levelised tariff basis. |
| 7. | **Clause 2.19** | Following typo error should be corrected:<br><br>(e) to be replaced by (d) |
| 8. | **Clause 2.21** | As per RFP & PPA, the Successful Bidder may opt to develop the Power Plant in two phases. Under this option, it is not clear how the payment of tariff would be made for Phase II of the Power plant which will be commissioned after 4 years from the COD of Phase I. Request you to suitably clarify/amend the clause in case of phased development of the Power plant. |
| 9. | **Evaluation of Bids**<br><br>**Article 3**<br><br>**Appendix- XI: Methodology of computation of evaluated tariff and levelised fixed charge)** | Please refer to comments on Schedule 6 of Draft PPA |
| 10. | **Appendix-II** | It is suggested to add standard clause in the Bank Guarantee format: |

| # | Section/ Subject | Issue |
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| | **Bank Guarantee for Bid Security** | “Notwithstanding anything contained herein:<br><br>a) Our liability under this Bank Guarantee shall not exceed xxxxx,<br><br>b) This Bank Guarantee shall be valid up to xxxxx.<br><br>c) We are liable to pay the guaranteed amount or any part thereof under this Bank Guarantee only and only if a written claim or demand will be received at our counter on or before xxxxx,” |

## 2.4. Comments on the Draft Power Purchase Agreement (PPA)

| # | Section/ Subject | Issue |
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| 1. | **Definitions and Interpretations**<br><br>**Article 1** | Definitions to be added –<br><br>“Applicable Law of Other Country” shall mean in relation to this Agreement, all laws in force in a Country from which fuel or alternate fuel is procured and any statute, ordinance, regulation, notification, code, circular, policy, rule, or any interpretation of any of them by an Other Governmental Instrumentality and having force of law and shall further include all applicable rules, regulations, orders, notification, code, circular, policy, rule by an Other Governmental Instrumentality pursuant to or under any of them;<br><br>“Other Governmental Instrumentality” shall mean the Government of the Country from which alternate fuel is procured and any Ministry, department board, agency, or other regulatory or quasi-judicial authority in such Country; |
| 2. | **Clause 1.1.31** | It is suggested that definition of Commercial Operation or COD, Commissioning Tests should be aligned with the provisions of Indian Electricity Grid Code/ CERC Tariff Regulations 2014. |
| 3. | **Clause 1.1.34** | As per article, “*Competent Court shall mean any court or tribunal or any similar statutory, judicial or quasi-judicial body in India that has jurisdiction to adjudicate upon issues relating to this Agreement*”<br><br><u>The following **modification** is suggested:</u><br><br>“Competent Court shall mean any court or tribunal or any similar statutory, judicial or quasi-judicial body in India that has jurisdiction to adjudicate upon issues relating to this Agreement **and the Courts of the Country from which the fuel or alternate fuel is procured for the purposes of this Agreement**.” |
| 4. | **Clause 1.1.45** | As per article, “*Debt Due shall mean the aggregate of the following, expressed in Indian Rupees, outstanding on the relevant date: (a) the principal amount under the Financing Agreements excluding the principal amount that had fallen due for repayment 2 (two) years prior to the issuance of the Termination Notice by the Procurers and (b) Interest on Debt.*<br><br>*Provided that the amount payable in respect of any Debt Due expressed in foreign currency shall be computed at the Reference Exchange Rate for conversion into the relevant foreign currency as on the date of computation of Debt Due*;”<br><br>The principal amount that had fallen due for repayment 2 years prior to issuance of termination notice by the Procurer will lead to huge financial burden on the Seller as the obligation to repay continues on |

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| | | the Seller accounts even after the termination of the agreement. Apart from that, this clause may hinder the bankability of the project and/or Bank may load premium which will further lead to increase in quoting tariff. Thus, it should be based on actual Debt Due till the date of issuance of the Termination Notice by the Procurers.<br><br>The following **modification** is suggested:<br><br>*"*Debt Due shall mean the aggregate of the following, expressed in Indian Rupees, outstanding on the relevant date: (a) the principal amount under the Financing Agreements ~~**excluding the principal amount**~~ that ~~**had fallen**~~ is due ~~**for repayment 2 (two) years prior to the**~~ **on the date of** issuance of the Termination Notice by the Procurers and (b) Interest on Debt. |
| 5. | **Clause 1.1.54** | It is submitted that as per the prevailing CERC Connectivity Regulation 2009, a thermal generating station of 500 MW and above shall not be required to construct a dedicated transmission line to the point of connection and such stations shall be taken into account for coordinated transmission planning by the CTU and CEA. In view of the above, it is submitted that the UMPP project should be conceived without the requirement of a dedicated transmission line. The scope of the Seller should be limited to the development of the project till the station ex-bus. |
| 6. | **Clause 1.1.95** | The definition may be modified to<br><br>"**Installed capacity**" shall have the meaning as set forth in the CERC (Terms and Conditions of Tariff) Regulations, 2014; *or the regulations prevalent at the time of bidding.* |
| 7. | **Clause 1.1.97** | The definition may be modified to<br><br>"**Interconnection Facilities**" shall mean the equipment installed at the Delivery Point (i.e. the connection site) in accordance with the CERC (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2009; *or any succeeding set of regulations.*<br><br>The transmission system for evacuation of power should be designed on a n-1-1 basis so that any interruptions to Procurers is mitigated. |
| 8. | **Clause 1.1.98** | As per article, *"Interest on Debt" shall mean the interest which is due under the Financing Agreements but excluding (a) any interest, fees or charges that had fallen due 1 (one) year prior to the relevant computation date (b) any penal interest or charges payable under the Financing Agreements to any Lenders and (c) any pre-payment charges in relation to accelerated repayment of debt except where such charges have arisen due to a Procurer Event of Default;* |

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| | | Interest, fees or charges that had fallen due 1 (one) year prior to the relevant computation date will lead to additional financial burden on the Seller. Hence, it should be based on Interest on Debt till computation date.<br><br><u>The following **modification** is suggested:</u><br><br>"Interest on Debt shall mean the interest which is due under the Financing Agreements ~~**but excluding (a) any interest, fees or charges that had fallen due 1(one) year prior to the**~~ as on relevant computation date (b) any penal interest or charges payable under the Financing Agreements to any Lenders and (c) any pre-payment charges in relation to accelerated repayment of debt except where such charges have arisen due to a Procurer Event of Default;" |
| 9. | **Clause 1.1.102 and 1.1.103** | The operability of the model of Infrastructure SPV leasing land to Seller is subject to the conditions in the Lease agreement. However the draft agreement copy is not provided and without this it is very difficult to ascertain the implications of such lease arrangement from the legal and financial point of view.<br><br>Our analysis indicates that the proposed two SPV model along with the provisions of future land acquisition by the Operating SPV on behalf of the Infrastructure SPV and subsequent lease to the Operating SPV may involve service tax implications as follows:<br><br>• **Land acquired prior to bidding by the Infrastructure SPV and handed over to the Operating SPV** – This transaction will be considered as a service of providing right to use land by the Infrastructure SPV to the Operating SPV against Lease Rent and the consideration paid shall be subject to Service tax. However the timing of the tax payable is not clear (whether upfront on lump sum amount or yearly proportionate rent)<br><br>• **Land acquired after bidding process by the Operating SPV in the name of the Infrastructure SPV and leased to the Operating SPV under Lease Agreement** – This transaction will be considered as a service of providing right to use land by the Infrastructure SPV to Operating SPV against Lease Rent and the consideration paid shall be subject to Service Tax. However the timing of the tax payable is not clear (whether upfront on lump sum amount or yearly proportionate rent). |

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| | | Appropriate clarity is required on the above issues to avoid any future legal disputes arising out financial and taxation implications due to the two SPV model. |
| 10. | **Clause 1.1.124** | Normative Auxiliary Power Consumption of 5% is not adequate at all considering project specific additional facilities such as MGR/coal conveyor, Intake Pump House, Township and for equipment required for statutory compliances such as FGD. Hence, additional Aux Power Consumption should be allowed suitably for MGR/coal conveyor, Intake Pump House, Township and FGD etc.<br><br>It may be noted that since the bid parameter is Rs/kWh of delivered power, there is no need to put any restriction on Aux consumption as the Bidder will have already factored it into his bid by quoting Variable Charge. Any cap on Aux consumption is relevant only in cases where the Variable Charge needs to be computed separately.<br><br>In case Normative Auxiliary Power Consumption needs to be specified, then it should be as per CERC norms for super critical units and to be used only for effecting any Change in Law/ Force Majeure/ Unforeseen Event by adjustment in tariff. |
| 11. | **Clause 1.1.125** | As per article, "*Normative Availability shall mean an availability, equal to 90% (ninety percent) Availability at the Delivery Point on Contract Year* basis."<br><br>Normative availability @90% is high and it is covering non-availability on account of shortage of fuel, water scarcity and shutdown of power plant on account of any direction issued by Statutory Authority.<br><br>Hence, Normative Availability should be 85%, along with no incentive upto 90% and penalty only if it is below 80%, as coal linkage will be available for 85% in accordance to current NCDP policy and also need to exclude above mentioned cases while calculating Normative Availability.<br><br>Even if Normative Availability is 90%, then it is suggested that coal linkage has to be provided for 90% of required quantity for total capacity on take or pay basis.<br><br>The following **modification** is suggested:<br><br>Normative Availability shall mean availability, equal to 85% (Eighty Five percent) Availability at the Delivery Point on Contract Year basis **excluding non-availability on account of shortage of fuel, water** |

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| | | **scarcity and shutdown of power plant on account of any direction issued by Statutory Authority** |
| 12. | **Clause 1.1.129** | It is suggested that the Normative Availability should be aligned with CERC Regulation 2014 i.e. 85% |
| 13. | **Clause 1.1.188** | The definition needs to be modified in view of GST introduction. |
| 14. | **Clause 1.1.191** | It can be seen that at several clauses in the PPA, it has been stated that payment on account of termination would be limited to the amount as received from Central/State Government. The payment to Seller should be made by the Procurers and not by the Central/State Government, therefore, it is suggested not to limit the termination payment as received from Government.<br><br>Further, the definition has restricted Termination Payment as lower of amount incurred by Seller, Debt Due and Payment received from Central/State Government. This leaves a probability of significant amount remaining unpaid.<br><br>Also, it is suggested to provide the clear indication of the time frame for payment and amount to be paid by Procurers. The payment should not be linked to the amount received from the Govt. It exposes the Seller to an open risk |
| 15. | **Clause 1.1.194** | The definition shall be modified as defined at clause 9.6.1 B, Step-3 Option 2, i.e. Debt Due or any higher amount agreed between Procurers and Lenders or else the reference of the clause may be added to give required clarity. |
| 16. | **Clause 1.1.200** | The payment to be received from the Government on account of Termination cannot be subjective and firm value of the same should be defined or else it may be removed. The Termination payment cannot be lower than Debt Due. |
| 17. | **Term of the Agreement**<br><br>**Article 3** | It is not clear in tariff based bidding how the apportionment of capital cost between two phases is having any relevance.<br><br>Further, if the Successful Developer opts to develop the Power plant in two phases as provided in the PPA, it is not clear how the payment of tariff would be made for Phase II of the Power plant which will be commissioned after 4 years from the COD of phase I. |
| 18. | **Performance Guarantee and Additional Weekly** | The concept of Deemed Performance Guarantee is unclear and ambiguous and seems very onerous. This requirement may be dispensed with. |

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| | **Performance Guarantee**<br><br>**Article 4** | |
| 19. | **Conditions Subsequent**<br><br>**Article 5** | We suggest that the Fuel Supply Agreement and Fuel Transportation Agreement should be the responsibility of the BPC and these arrangements with SPV should already be in place at the time of award of project; listing these milestone under the Condition Subsequent for the Seller is not appropriate as the Seller does not have direct control in concluding such activities |
| 20. | **Clause 5.1.1** | One of the Condition Subsequent under this Article is the execution of FSA and Fuel Transportation Agreement (FTA) by the Seller. It is recommended that the delay in execution of FSA and FTA for reasons not attributable to the Seller should be exempted from the requirement of furnishing Additional Weekly PG.<br><br>Further, Fuel Transportation Agreement has not been defined under Article 1 and a model FTA be provided as part of the SBD. |
| 21. | **Clause 5.1.2** | It is submitted that for condition subsequent like signing of FSA and Fuel Transportation Agreement by the Seller, which are beyond the control of Seller, the validity of PG may be extended without any additional weekly PG. |
| 22. | **Clause 5.2** | Procurers must put in place payment security mechanism so execution of Escrow Agreement should be kept as Condition Subsequent or under Obligations of Procurers. |
| 23. | **Clause 5.4 (a)** | Footnote value of 133 1/3% of PG seems incorrect. As per the Article, Procurers shall recover LD equivalent to 133 1/3% of PG and then return the balance PG. It is submitted that the provision may be relooked and corrected. |
| 24. | **Clause 5.4 (b)** | The termination payment timeline cannot be subjective and should be clearly specified. |
| 25. | **Clause 5.4 (c)** | As per RFP Clause 1.5, the Successful Bidder has to pay only lease rent and not the cost of Power Station Land -1 hence it may be removed. |
| 26. | **Clause 5.4 (c)**<br><br>**Option 2** | It is submitted that the payment towards cost of power station land by the Procurer should be delinked from the receipt of the monies by the Procurers from the Government and any linkage would result in uncertainties in time and should be paid in 60 days. Secondly, the |

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| | | payment should not be linked to the amount received from the Govt. This Article exposes the Seller to an open risk. |
| 27. | **Clause 5.4 (d)** | BTG contract/Construction contract executed by the Seller are binding agreement with the supplier/contractor and cannot be terminated without any financial implication. Therefore, it is suggested that the clause may be deleted. |
| 28. | **Clause 5.5**<br><br>**Clause 5.6.1 (C)**<br><br>**Clause 9.6.2 (E)**<br><br>**Clause 9.6.3 (D)**<br><br>**Clause 15.4.6**<br><br>**Clause 19.6 (C)** | It is submitted that the payment towards cost of power station land by the Procurer should be delinked from the receipt of the monies by the Procurers from the Government and any linkage would result in uncertainties in time and should be paid in 60 days. Secondly, the payment should not be linked to the amount received from the Govt. This Article exposes the Seller to an open risk.<br><br>In the event, any failure to satisfy the Condition subsequent or Obligation by the Procurer or occurrence of Procurer's Event of Default or occurrence of Force Majeure event or termination for the reason not attributable to Seller which lead to termination then Procurer shall be liable to pay to Seller any amount incurred by the Seller for the project including the debt due and actual equity infused by the Seller till date of termination.<br><br>It is suggested to modify the mentioned Articles as occurrence of any such event, reason not attributable to Seller, then Seller shall be liable to receive the actual equity invested by Seller and any Debt Due for the project.<br><br>The following **modification** is suggested in the respective clauses due to occurrence of any events mentioned above, wherein the Procurer shall pay to the Seller:<br><br>1. Total amount of purchase price paid by the Successful Bidder to the then existing shareholders of the Seller to acquire 100% (Hundred percent) equity share capital of the Seller along with the price paid by the Successful Bidder for any other expenses as specified in the Share Purchase Agreement and not specifically covered under (2) to (4) below; **plus**<br>2. Total amount for Power Station Land out of the Declared Price of the Power Station Land paid by (a) the Successful Bidder prior to the acquisition of the equity share capital of the Seller and/or (b) the Seller after the Effective Date till the date of issuance of the notice by the Seller; **plus**<br>3. Amounts paid towards the Declared Price of the R&R and the R&R Package with regard to the Power Station land (a) by the Successful Bidder prior to the acquisition of the equity share |

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| | | capital of the Seller and/or (b) the Seller after the Effective Date till the date of issuance of the notice by the Seller; **plus**<br>4. Amounts paid by the Seller to any Indian Governmental Instrumentality towards any Taxes related to the Project after the Effective Date till the date of issuance of the notice by the Seller; ~~less~~ **plus**<br>5. Debt Due, If any; **plus**<br>6. **Total equity infused by the Seller for the project till the date of issuance of notice by the Seller; less**<br><br>Any monetary benefits availed of by the Seller/Successful Bidder on behalf of the Seller till the date of issuance of the notice by the Seller. |
| 29. | **Obligations of the Procurers**<br><br>**Clause 6.1** | As per Article *6.1 (ii) "be responsible for payment of the Transmission Charges and its part of the RLDC and SLDC charges as per the extant regulations;"*<br><br>Apart from above, Procurer shall be responsible for payment of connectivity charges in case, if applicable.<br><br>The following **modification** is suggested:<br><br>(ii) be responsible for payment of the Transmission Charges and its part of the RLDC and SLDC **and connectivity/GNA** charges as per the extant regulations; |
| 30. | **Obligations of the Seller**<br><br>**Clause 7.1** | As per Article *7.1 (iv) "procure the requirements of electricity at the Project (including construction, commissioning and start up power); to meet in a timely manner all formalities for getting such a supply of electricity; and to pay for the start-up power availed from the Procurer in whose state the Project is located or to such other entity from whom the start-up power has been availed at the prevailing rates."*<br><br>However, it is suggested that payment of energy drawn/injected for commissioning and start-up shall govern as per Central Electricity Regulatory Commission (Deviation Settlement Mechanism and related matters) Regulations, 2014 and seller shall pay for only construction of power at the prevailing rates.<br><br>The following **modification** is suggested:<br><br>(iv) procure the requirements of electricity at the Project (including construction, commissioning and start up power); to meet in a timely manner all formalities for getting such a supply of electricity; and to pay for the ~~start-up~~ **construction** power availed from the Procurer in whose state the Project is located or to such other entity from whom |

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| | | the **~~start-up~~ construction** power has been availed at the prevailing rates. **Provided further payment for energy drawn or injected for commissioning and start-up power shall govern as per Central Electricity Regulatory Commission (Deviation Settlement Mechanism and related matters) Regulations, 2014.** |
| 31. | **Clause 7.3.1** | To be modified as -<br><br>~~…….(c) 26% (twenty six per cent) thereof, or such lower proportion as may be permitted by the Lead Procurer during a period of 10 (ten) years following the COD of the Power Station~~.<br><br>Equity lock-in period/equity dilution restriction till 3 years from the date of COD is reasonable and therefore it is suggested that there further restriction on equity dilution beyond 3 years may be deleted. |
| 32. | **Construction of the Power Station**<br><br>**Clause 8.2 and 8.3** | <u>**Land for Power Project**</u><br><br>• In terms of Section 3.4 (i) & 3.5 (i) of Guidelines, Infrastructure SPV will be securing the Award u/s 23 of LARR Act for 'critical' land, which has been defined to be adequate for achieving COD of the project, and undertake lease transfer to Operating SPV. Such critical land is to be identified by Procurers on a case-to-case basis.<br><br>• Accordingly, land is being demarcated into Land-1 and Land-2, depending upon whether it is critical or not, as defined under Recital B(ii) of PPA Document.<br><br>• Clauses 1.1.47, 1.1.48 and 1.1.49 of PPA Document, have stipulated that Declared Price of the Power Station Land, will comprise Declared Price of Land-1 and Declared Price of Land -2, whereas Award u/s 23 of LARR Act will relate to Land-1 only, as also mentioned under Schedule 4 – Initial Consents.<br><br>• In terms of Clause 8.3.2 of PPA Document, additional cost to be incurred in acquisition of Land-2 to the extent of maximum 10% over Declared Price is to be construed as deemed Change in Law for the purpose of tariff adjustments.<br><br>• Issues that arise are:<br><br>i. **Segregation between Land-1 and Land-2** - Distinguishing land as critical and non-critical and making such demarcation case-specific will lead to varied interpretations and be subject to discretion of Procurers. To avoid uncertainties, it is suggested that no such distinction is made and land is simply |

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| | | defined as the total acreage required for construction and operation of the Power Plant as per its rated capacity. Defining critical land as being adequate to achieve COD is not appropriate since the elements of construction requiring land for power generation facility are complementary, and not supplementary, in nature. For instance all the items mentioned under Article 1.1.147 (definition of "Power Station") can be considered as critical for commissioning of a plant.<br><br>**ii. Incompatibility with LARR Act**<br><br>It may be clarified that the entire activity of land acquisition leading up to award under Section 23 of the Act would be undertaken for the entire land of the plant i.e. for Land 1 and Land 2. As per understanding, once you reach the stage of award under Section 23, there is no rationale to award it only for Land 1. If not so, the provision of identification of total land required for the power plant by the procurer but securing the Award u/s 23 of LARR Act only for 'critical' land is not compatible with LARR Act. U**nder the LARR 2013, the Social Impact Assessment (SIA) has to be initiated for the entire project and not for a part of the land for the project.** For instance, as per Section 4(4) (d) of the Act, the Social Impact Assessment Study also considers that the extent of land proposed for acquisition is the absolute bare minimum extent needed for the project. The SIA study requires that the extent of land and the affected families be quantified, and hence has a direct bearing on the determination of the R&R package. Accordingly, the developer may not be able to justify initiation of SIA again for acquisition of more land for the same project. Also, the "affected area" for the same project cannot be increased at a later date i.e. after the project is awarded. Further, as per Section 4(4) of the Act, Environmental Impact Assessment (EIA) has to be carried out simultaneously with SIA. The entire construction of Chapter II 'Determination of Social Impact and Public Purpose' of the LARR Act requires the SIA & EIA to be conducted for the entire project. Accordingly, securing the Award u/s 23 of LARR Act only for 'critical' land is fraught with operational difficulties and may not implementable. The intent of the Act with regards to R&R for the project is also observed in Section 2(3)(b) where it is provided that where a private company requests the appropriate Government for partial acquisition of land for public purpose, then the R&R entitlements shall be applicable for the entire area which includes the land purchased by the private company. Accordingly, award of compensation and |

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| | | R&R under section 23(b) for the project as a whole shall be the same as that of critical land.<br><br>iii. **Responsibility of acquiring Land 2/remaining land and uncovered risk on increase in cost of land acquisition** – While the Procurer ensures the award under Section 23 of LARR Act for the ‘critical’ land (the land defined as being adequate for achieving COD of the project), the responsibility for all remaining land acquisition activities is handed over to the Seller. This goes against the concept of ‘plug-and-play’ model for UMPPs which was envisaged by the Government and also runs counter to the practical experience with the previous power projects like Karchana, Tilaiya UMPP wherein both the projects failed to lift off as the procurers failed to acquire the land. Mr N.C. Saxena, erstwhile member of National Advisory Counsil had viewed that under the existing provisions of the Act, it would take not less than 4 years to acquire the land. Further, while the LARR Act provides for acquisition of land by the Government for private companies, there is no clarity in the provisions of the Act if a private company/seller can acquire land for Government/Infrastructure SPV.<br><br>iv. Another provision in the document states that any additional cost incurred over the Declared Price of Land-2, for reasons other than Change in Law, will be considered as deemed Change in Law only to the extent of an increase of 10% and shall be eligible to be adjusted in Tariff subject to the approval of the Commission in accordance with Article 21 of the PPA. This stipulation leaves the Seller open to financial risk because while Declared Price of Land-1 will conform to the value of land as determined under the Award, there will be no apparent basis to fix the Declared Price of Land-2, which is intended to be acquired at a later date. Past experience suggests that when procurement of such additional land is at a later date consequent upon setting up of power plant and associated facilities, land prices increase manifold because of public expectations of a higher sale value. It is thus quite likely that the actual cost incurred during acquisition of Land-2 may be significantly higher than Declared Price of Land-2 as informed to the Bidders in the RFP. It may also be mentioned that Article 21 allows tariff adjustment for an increase in cost under the change in law provision only if the aggregate financial effect of such an event exceeds Rs 50 (fifty) Crores for a Contract Year. Therefore, Article may make the compensation towards deemed change in law redundant if the financial burden in |

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| | | lower than Rs 50 Crore. Further, the regulatory process for approval takes time and defeat the purpose of declaring an event 'deemed change in law'.<br><br>• **Way Forward**<br><br>o **Power Station Land to be treated as a whole –** The Power Station Land in terms of Recital A and Clause 1.1.148 of PPA Document should be treated as a single unit and not as two parcels of Land-1 and Land-2. **Therefore, a logical consequence will be to complete the Award u/s 23 of LARR Act for Power Station Land in its entirety.** This will avoid uncertainties of determining the value of any balance parcels of land in connection with the power project in case such option is to be exercised in future.<br><br>**At the very least, even if the Power Station Land is segregated between Land-1 and Land-2, then Land-1 should be adequate to enable construction of all such facilities as mentioned under Article 1.1.142 (definition of "Power Station"). Also, in order to avoid complications and environmental objections in future, if Land-2 is to be procured in future, suitable provision is necessary that both the SIA study and R&R Package for Land-1 and Land-2 parcels are concluded before Award and expressly stated in the PPA Document.**<br><br>o **Ensure 'plug-and-play' mode of project implementation** - In order to avoid a repeat of past experiences wherein UMPP projects have become mired in subsequent land acquisition issues, and in order to align the document with the envisaged 'plug-and-play' framework announced by the Hon'ble Finance Minister, **it should be the responsibility of the Procurer to acquire the entire land and hand it over to the Seller. This was also the model followed in the earlier bidding documents for Case 2 projects including UMPPs.**<br><br>**Else, in the event the responsibility of acquiring Land-2 is to be taken over by the Seller, the market value of such land should be as determined by the District Collector in terms of Section 27 of LARR Act and any increase over the Declared Price should be made fully allowable under Change in Law based on District Magistrate/Competent Authority's certification without applying a ceiling.** In case of Rehabilitation and |

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| | | Resettlement (R&R), it is clarified in Clause 7.2 of PPA Document that any difference in Declared Price of the R&R vis-à-vis R&R Package is to be construed as deemed Change in Law. It is logical that a similar provision without ceiling should also apply to Land-2 in the event procurement is at a later stage.<br><br>Accordingly**,** the requirement to approach the Commission for deemed change in law event should be done away with to avoid delay due to process of regulatory approval. Alternatively, specific provisions should be made in Article 21 to include the event of deemed change in law. A timeline may be indicated for the regulators to approve such compensation for the seller. |
| 33. | **Synchronisation, Commissioning and Commercial Operation**<br><br>**Clause 9.3.4** | It is not clear how the Fixed Charge shall be paid with respect to such reduced contracted capacity -whether there will be proportionate reduction in Fixed charge or reduction would be as per clause 9.3.4 (a) (ii) or both. |
| 34. | **Clause 9.3.5** | To be modified to –<br><br>"9.3.5 (B) In case the Procurers decide not to purchase the whole or part of the Excess Tested Capacity, the Seller shall be free to sell such whole or part of the Excess Tested Capacity to any third party by using allocated Coal Linkage and the Unit's Contracted Capacity shall remain unchanged, notwithstanding that the Tested Capacity exceeded the Contracted Capacity."<br><br>In the event when the Seller has the option of selling the whole or part of the Excess Tested Capacity after the decision of procurers not to purchase that excess capacity, it may be specifically clarified that coal from allocated coal linkage may be allowed for generation of such excess capacity. |
| 35. | **Clause 9.6.1** | Schedule 11 does not contain the date of COD but Schedule 15 has the date of COD for each unit. |
| 36. | **Clause 9.6.2** | Arranging transmission facility is the responsibility of the Procurer on which Seller has no control and Seller is obligated to supply power at generator bus-bar, therefore; full Fixed Charges should be payable to the Seller on account of unavailability of transmission system.<br><br>Proposed Article shall be as follows: |

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| | | "(B) Sharing of Liquidated damages by the Procurers: The Procurers shall make payment to the Seller (as liquidated damages) of an amount equivalent to 100% of the fixed charges for the period of delay corresponding to Normative Availability".<br><br>It is also suggested that the transmission system for evacuation of power should be designed on a n-1-1 basis so that any interruptions to Procurers on account of disruption in transmission/evacuation system is mitigated. |
| 37. | **Declared Capacity**<br><br>**Clause 11.3.3** | When seller shall be entitled to sell un-availed declared capacity to any third person, than in that case realization from such sale in excess of Variable Charge should be first adjusted with Fixed Charge due to the Seller and any additional revenue thereafter shall be equally shared with the Entitled Procurer.<br><br>Further, it may be explicitly clarified that coal from allocated coal linkage may be allowed for generation of such Un-availed Capacity.<br><br>To be modified as –<br><br>"In such a case, the proceeds realized from such sale in excess of Variable Charge and after adjusting for Fixed Charge due shall be equally shared by the Seller with the Entitled Procurer" |
| 38. | **Clause 11.3.6** | In case, the Seller has sold the un-availed power by Procurer in open market, then Seller will recommence the power to Procurer as per the prevailing Regulations and Indian Electricity Grid Code.<br><br>The following **modification** is suggested:<br><br>"*Upon the Entitled Procurers, who have not availed allocated portion of their Declared Capacity as envisaged under the Articles 11.3.2 to 11.3.5 above, intimating the Seller of their intention and willingness to avail of the part of the Declared Capacity not availed of and therefore sold to the third party, the Seller shall, notwithstanding anything contained in the arrangement between the Seller and said third party, commence supply of such capacity to the Entitled Procurer from the later of 5 (five) hours from receipt of notice in this regard from the Entitled Procurer or from the time for commencement of supply specified in such notice, subject to the provisions of the Grid Code. It is hereby clarified that recommencement of supply of power to the Entitled Procurer after being sold to the other Procurers shall be not later than 2 (two) hours from the receipt of notice from the Entitled Procurer*, ***subject to the*** |

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| | | ***provisions of prevailing Regulations and Indian Electricity Grid Code.***<br><br>It is also submitted for consideration, that power sale on power exchanges be considered under the ambit of third party sale. |
| 39. | **Clause 11.4** | Power consumption by staff colony not covered under the definition. However, township area for Staff Colony is included under the definition of Power Station.<br><br>Typo error- b) is missing. |
| 40. | **Clause 11.6** | The obligation of Seller is to supply Contracted Capacity at bus bar. It would not be possible for the Seller to quantify the grid disturbances in his bid as they are outside Sellers control. It is not correct to either ask the Seller to bear that risk or share that risk or quote the tariff by loading the impact of such risks. It is therefore suggested not to subject Seller to the risks related to Grid Disturbance and compensate 100% Fixed charges to Seller on this account.<br><br>Further, in order to operationalize the provisions related to 'Grid Disturbance' and 'Grid Incident' as contained in the document, the relevant RLDC should certify that a 'Grid Disturbance' or 'Grid Incident' has occurred. Therefore, appropriate directions need to be issued to the RLDCs. |
| 41. | **Clause 11.8** | As per Article 11.8 of the PPA, the seller shall be compensated by way of increase in the Variable Charge or otherwise if the Power Station is directed by concerned RLDC to operate below 85% of Installed Capacity on account of grid security or due to the less schedule given by the Procurers in accordance with the provisions of {the CERC (Indian Electricity Grid Code) (Fourth Amendment) Regulations, 2016 and the Detailed Operating Procedure and the compensation Mechanism approved vide CERC order dated 05.05.2017.<br><br>As proposed above, net SHR should be quoted as a bidding parameter. Alternatively, if SHR is not a biddable parameter, SHR specified by CERC in its extant Tariff Regulations should be considered to determine the increase in the variable charge as per the CERC IEGC regulations in case of lower dispatch. |
| 42. | **Tariff**<br><br>**Clause 15.4.1** | On the aspect of Alternate Sourcing of Coal, it is suggested that the mechanism established by CERC under Regulation 30 of Tariff Regulation 2014-19 be adopted, which provides for use for alternate sourcing of fuel on account or shortage of fuel or optimization of operation through blending. In such cases, prior permission from procurers is not a pre-condition and the weighted average price of use |

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| | | of alternative source of fuel shall not exceed 30% of base price of fuel. In the event the energy charge rate based on the weighted average price of fuel including alternative source of fuel exceeds 30% of base energy charge rate, in this case approval of the Procurers will be sought.<br><br>As per the Article, sourcing of coal from alternate source is not permitted for default of coal supplier if it results in any offsetting compensation being payable to the Supplier in terms of the FSA. It is submitted that under the extant FSAs in vogue, the compensation for short supply is upto 50% of the base price of coal, which is not sufficient to compensate the Supplier for the loss/ under-recovery of fixed charges. Further, the level of supply permitted under the FSA are over-ridden by the decision taken by GoI based on the prevalent coal demand-supply situation, as has been experienced in recent past.<br><br>Even if there is compensation payable by coal supplier to the Seller, shortage of coal would remain and may require procurement of coal from alternate sources otherwise the generator/ Seller may suffer under-recovery full fixed charges. Any compensation provided to the Seller by the coal supplier under the FSA, shall be passed on to the Procurers as done in case of performance incentive paid to the coal supplier for meeting and exceeding the ACQ under FSA. Any penalties paid by the Seller to the coal supplier due to short lifting of coal by the Seller, which is due to low dispatch of the power plant by the Procurers, shall be recovered by the Seller from the Procurers.<br><br>The necessity to source coal from alternate sources may also arise due to grade slippage, transit loss and loss of GCV of coal as received and as fired. The Seller should be permitted to source additional coal under these circumstances and to achieve normative availability and the full cost on this account should be allowed to be recovered from the Procurers. |
| 43. | **Clause 15.4.2** | As per the Article, 52 (7+30+15) days have elapsed since the event of Coal Shortage has occurred. Adequate provision needs to be introduced to compensate the Seller for the reduction of plant availability for these ~52 days due to coal shortage while the intimation from the procurers is awaited. |
| 44. | **Clause 15.4.4** | It is suggested that guidelines for procurement of coal from additional sources may be specified upfront to avert any disallowance of additional costs on account of use of alternate coal by the Commission.<br><br>It is suggested that additional VC may paid provisionally by the Procurers subject to adjustment on determination by the Commission, otherwise the Seller will have to wait for payment till the charges are |

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| | | determined by the Commission which may take time and the Seller may suffer cash flow and loss of interest charges for this period. Necessary provision for provisional payment on account of additional cost of coal from alternate coal source may be provided. |
| 45. | **Clause 15.4.5** | It may be clarified that inability of the Procurers to arrange for alternate source of coal shall be construed to be a Procurers event of Default.<br><br>Inability of the Procurers to arrange for an alternate source of coal should not be a reason for automatic termination of the agreement. The provision is draconian and can be misused by the Procurers. The disagreement on the alternate source of coal would likely be on price of alternate coal which cannot be construed as an event which leads to automatic termination of the Agreement. |
| 46. | **Clause 15.5** | It is suggested that it may be clarified that during the period from COD of first unit to the Station COD, the incentive shall be calculated on the basis of weighted averages. |
| 47. | **Clause 15.6** | It is submitted that the penalty for availability less than 85% should not be imposed as the monthly fixed charge payment under 1.2.1 of Schedule 8 (Tariff) already penalises the Seller by way of pro-rata reduction in fixed charge recovery for availability below normative availability of 90%. |
| 48. | **Clause 15.8.1** | Taxes and duties which shall be subject to reimbursement pursuant to Article 7.5 refers to Service Tax, Value Added Tax or General Sales Tax, which have been subsumed under GST and accordingly needs to be clarified.<br><br>Further, it should be clearly specified in the PPA that any tax incidence arising out of transactions as envisaged in the bidding document between the Infrastructure SPV and the Operational SPV should be automatically passed through and reimbursed by the Procurer. |
| 49. | **New Clause addition** | 15.8.3. Any taxes and duties applicable on Auxiliary power consumption should be reimbursed by the Procurers.<br><br>15.9 The Seller shall have an option to supply power from alternate source in case of non-availability of generator on account of major failure of generator equipment. |
| 50. | **Billing and Payment**<br><br>**Article 16** | Billing and payment methodology should reflect taxes and duties. However, in the document, the new tax regime GST implications is not mentioned since GST includes various taxes that are applicable during construction as well as operational period. For example, from purchase |

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| | | of spares in construction period to the purchase of Coal during the operational period, GST is having huge impact over the cost.<br><br>Therefore, it is suggested to provide the clarity on GST over the project life cycle. |
| 51. | **Clause 16.2.4** | The credit period allowed for making payment without levy of any late payment surcharge is 30 days, hence any rebate allowance for early payment before the due date, needs to be linked to cost of working capital financing for 30 days. Consequently, the proposed rebate of 2% needs to be reduced to 1%, which amounts to 12% per annum, which is significantly higher than the current working capital interest rate.<br><br>Similarly, the rebate available for payment from day 3 to day 30 has been stipulated at flat 1% should reduce to 0.5%.<br><br>Presently, there is no incentive for the procurers to make early payment between day 3 and day 29, since a flat 1% rebate is allowed. It is proposed that a pro-rata reducing rebate (0.50%/28 days) on a daily basis be allowed from day 3 @ 1% reduced by 0.01852% per day till 0.5% on day 30. |
| 52. | **Clause 16.3.3** | Change in Law has been approved for various events which are out of the ambit of taxes such as clean energy cess, NMET, DMF, Royalty, Busy Season Charges, etc. Thus, no rebate shall be applicable on Supplementary Bills raised on account of any Change in Law.<br><br><u>The following **modification** is suggested:</u><br><br>"For the payment of the Supplementary Bills, prior to its Due Date, the Procurers shall be entitled to deduct 0.5% (zero point five percent) of the amount stated in the concerned Supplementary Bill by way of discount for early payment. However, no rebate shall be applicable *on Supplementary Bills raised on account of Change in Law* ~~***relating to Taxes***~~." |
| 53. | **Clause 16.7** | As per article, "*it is hereby clarified that foreign exchange fluctuations, if any, shall be entirely borne by the Seller.*"<br><br><u>The following **modification** is suggested</u>:<br><br>It is hereby clarified that foreign exchange fluctuations, if any, shall be entirely borne by the Seller, **Provided further in case if Commission approves imported coal as alternate source of coal then any forex exchange fluctuation shall be borne by Procurer.** |

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| 54. | **New Clause addition** | It is suggested to add clauses for Provisional bill in Article 16 - Billing & Payment.<br><br>As per old Case 1 & Case 2 PPA, Provisional Bill ensures early cash flow to Seller to meet its working capital requirements. However, Monthly bill based on REA, usually issued on 5th or 7th day of every month, delays cash flow by a week. Therefore, it is suggested to allow Provisional Bill based on RLDC data for Declared Capacity of the month and Scheduled Energy upto 25th day of the month on last day of billing month. |
| 55. | **Payment Security Mechanism**<br><br>**Clause 17** | The credit period allowed for making payment without levy of any late payment surcharge is 30 days, hence any rebate allowance for early payment before the due date, needs to be linked to cost of working capital financing for 30 days. Consequently, the proposed rebate of 2% needs to be reduced to 1%, which amounts to 12% per annum, which is significantly higher than the current working capital interest rate.<br><br>Similarly, the rebate available for payment from day 3 to day 30 has been stipulated at flat 1% should reduce to 0.5%.<br><br>Presently, there is no incentive for the procurers to make early payment between day 3 and day 29, since a flat 1% rebate is allowed. It is proposed that a pro-rata reducing rebate (0.50%/28 days) on a daily basis be allowed from day 3 @ 1% reduced by 0.01852% per day till 0.5% on day 30.<br><br>It is submitted that no remedy has been provided for default in providing the Payment Security by the Procurers and may be included as one of the defaults under Article 20.2 – Procurer's Event of Default. The remedy should be by way by third party sale with fixed charge obligation remaining on the defaulting procurer in addition to the remedies available under Article 20.2.2 |
| 56. | **Clause 17.2.1** | The last sentence looks incomplete |
| 57. | **Third Party Sales on Payment Default**<br><br>**Clause 18.2.1** | It should be explicitly mention that coal from allocated coal linkage may be allowed for generation of such default electricity.<br><br>Also, it is submitted that sale of default electricity should also be permitted on power exchange for the power not procured by other non-defaulting procurers and third party(s). |
| 58. | **Clause 18.3.1** | Article 18.3.1 calls for creation of additional LC and PSM within 7 days, whereas Article 18.3.2 seems to relax the requirement to two months. This may be corrected. |

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| 59. | **Clause 18.5** | It is submitted that it should be clarified that any cost incurred by the Seller towards such sale shall be adjusted for computing the surplus. 18.5 may be modified to include the words<br><br>" .. the adjustment of the net surplus revenue, after adjusting any costs incurred towards sale of the Default Electricity, over Variable Charge (applicable to the defaulting Procurer) attributable to such electricity sold, shall be adjusted as under:…" |
| 60. | **Force Majeure**<br><br>**Clause 19.1** | Any natural calamities shall be considered as Natural Force Majeure event without putting any additional condition of its statistical measures.<br><br>Termination option should be provided to both the Procurer and Seller in case of sustained Force Majeure Event.<br><br>It is not possible and appropriate to limit Force Majeure events to certain specified incidents as it would be difficult to envisage or foresee circumstances which may occur in future in spite of taking reasonable care by the Parties. It is therefore suggested to define Force Majeure as indicated below:<br><br>"The term 'Force Majeure' or 'Force Majeure Event' shall mean any event or circumstance or combination of events and circumstances including **but not limited** to the Natural Force Majeure Event and the Non-Natural Force Majeure Event (direct and indirect) as stated below occurring in India (unless otherwise provided herein), that wholly or partly prevents or unavoidably delays a Party ("Affected Party") in the performance of its obligations under this Agreement, but only if and to the extent that such events or circumstances have a Material Adverse Effect on the Affected Party and are not within the reasonable control, directly or indirectly, of the Affected Party and could not have been avoided even if the Affected Party had taken reasonable care or complied with Prudent Utility practices." |
| 61. | **Clause 19.6** | It is recommended that the escalation index employed to the Fixed Charge be defined. |
| 62. | **Events of Default**<br><br>**Article 20** | An Article on Instructions to RLDC/SLDC may be incorporated stipulating that RLDC/SLDC shall follow the instructions on scheduling of power in the event of termination of PPA by the SELLER done in accordance to the procedure laid in the PPA. This is in line with the recent CERC Order in Petition No. 231/MP/2015. |
| 63. | **Clause 20.1.2. (A)** | As per article, "*the Seller shall pay to the Procurers by way of compensation, all direct costs suffered or incurred by the Procurers as* |

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| | | *a consequence of Seller's event of default, within 1 month of receipt of the demand supported by necessary particulars thereof."*<br><br>It is suggested to have uniformity on both-side for payment of compensation either by adding similar compensation for Consequences of a Procurer's Event of Default **OR** delete the Article 20.1.2 (A) as it creates unnecessary financial implication on Seller's account. |
| 64. | **Clause 20.2.2** | It is suggested that the obligation of the defaulting procurer for its Allocated Contracted Capacity based on Normative Availability to the Seller should continue for atleast a maximum of 3 years instead of 1 year as provided currently. |
| 65. | **Change in Law**<br><br>**Article 21** | The articles provide for Change in law compensation to the Seller for the amount determined by the Commission in order to put the Seller in the same economic position. It is submitted that it be clarified that the amount so determined shall be inclusive of carrying cost applicable from the effective date of Change in law event. |
| 66. | **Clause 21.1** | The following **modification** is suggested:<br><br>The term "Change in Law" shall mean the occurrence of any of the following events after the Bid Due Date:<br><br>(i) the enactment, bringing into effect, adoption, promulgation, amendment, modification or repeal, of any Applicable Law **or Applicable Law of Other Country;**<br>(ii) the repeal, modification or re-enactment of any existing Applicable Law **or Applicable Law of Other Country;**<br>(iii) commencement of any Applicable Law **or Applicable Law of Other Country** which has not been made effective or notified until the Bid Due Date;<br>(iv) a change in interpretation of any Applicable Law **or Applicable Law of Other Country** by a Competent Court or an Indian Governmental Instrumentality **/ Other Governmental Instrumentality** provided such Competent Court or the Indian Governmental Instrumentality **/ Other Governmental Instrumentality** is the final authority under the Applicable Law **or Applicable Law of Other Country** for such interpretation;<br>(v) any change in the rates of any Taxes which have a direct effect on the Project;<br>(vi) change in any Permits, available or obtained for the Project, otherwise than for default of the Seller; |

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| | | Any change on account of the reasons stated in sub clauses (i) to (vi) to the (a) Declared Price of the Power Station Land or (b) the R&R Package, indicated under the RFP and this Agreement.<br><br>As per the SBD Guideline 3.4(ii), requisite proposal for the Environmental Clearance for Power Station in the name of the Operating SPV should have been submitted before the concerned administrative authority responsible for according final approval by the Procurers before the issuance of RFP. At the time of submission of bids, the bidders are unaware of the EC conditions and the cost that need to be incurred to comply with the conditions. As per the SBD Guideline 3.5 (ii), Environmental Clearance for the Power Station should have been obtained in the name of the Operating SPV before signing of the PPA by the Procurers.<br><br>It has been seen that in few bid out projects, the cost incurred towards compliance to EC conditions has not been allowed by the Commissions as a Change in Law and the project developer has had to bear the cost.<br><br>It is submitted that the expenditure to be incurred to comply with the EC conditions, which are known only after submission of the bid submission, should be considered as a Change in Law and recoverable through tariff. |
| 67. | **Clause 21.4** | It is suggested that any increase in cost under Change in Law shall not be limited to cost exceeding Rs. 50 Crore in a Contract Year. Further, the relief for Change in Law should be bifurcated into Change in Law events occurred during Construction period and Change in Law events during Operation period:<br><br>**1) Change in Law during Construction period:**<br><br>For any increase in cost or financial burden during construction period shall be reflected on tariff basis<br><br>Ex1. in the event, if Seller procures overseas equipment for the plant and any change in taxes/duty, etc. occurs in the country from where such equipment is being imported shall be covered under Change in Law.<br><br>Ex2. In the event, if Seller has sub-contracted some services and any change in GST during construction period shall be covered under Change in Law.<br><br>Also, Article 21.1 (v) states that Change in Law includes: "*any change in the rates of any taxes which have a direct effect on the project*". Therefore, if any change in the taxes/duties including |

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| | | foreign taxes occurs after Bid Due Date during construction period of the project which may have a direct effect on the project shall be covered under Change in Law and accordingly tariff should be changed to cover such Change in Law.<br><br>**2) Change in Law during Operation period:**<br><br>Any change in taxes and duties during operation period is payable to the Government by Seller, therefore there should not be any capping/limit for entitlement under Change in Law and thus, any increase in cost on account of Change in Law should be pass-through. However, in any case, the Seller suffers from an increase in cost or other financial burden due to Change in Law, the aggregate financial effect shall be limited to 1% of Letter of Credit.<br><br>Also, if Commission approves imported coal as alternate source of coal then Change in Law shall cover such events in countries from where the seller is procuring imported coal.<br><br>**3) Carrying cost:**<br><br>In addition to above, it is suggested that carrying cost incurred by Seller from the date of occurrence of any event under Change in Law till the date of approval of such Change in Law by Commission shall be payable by Procurer at the rate of base rate plus 3.50% since Seller has incurred such cost from the date of occurrence of event under Change in Law. |
| 68. | **Clause 21.5** | As per article, "If as a result of a Change in Law, the Seller benefits from a reduction in cost or incurs other financial gains, the aggregate financial effect of which exceeds Rupees 50 (fifty) Crores for a Contract Year, the Procurers shall, subject to the Seller complying with the notification obligation in terms of Article 21.3 and the furnishing of documentary proofs of such reduction in cost for establishing the impact of such Change in Law, failing which, the Procurers may suo motu notify the Seller in terms of Article 21.3.2, seek the necessary documentary proofs to amend the Tariff in order to place the Seller in the same economic position as it would have enjoyed had it not been for the occurrence of the Change in Law resulting in the decrease in cost or financial burden to the Seller. The revision in Tariff shall be subject to the approval of the Commission."<br><br>It can be seen that any increase in cost as a result of Change in Law, the Seller is compensated with an amount determined by the Commission while in reduction in cost as a result of Change in Law, the Procurer may suo motu notify the Seller to amend the tariff in order |

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| | | to place the Seller in the same economic position. As it is not appropriate to compensate the Seller in different manner during increase in cost and reduction cost as a result of Change in Law.<br><br>Therefore, it is suggested that Procurer and Seller should be treated in same manner for compensation on account of Change in Law. All Provisions of the PPA should hold both the Parties in equitable position. In both the above mentioned cases i.e. either increase in Cost or Reduction in Cost, the compensation under Change in Law should be payable by either party immediately after notifying such Change in Law. In case any over recovery or under recovery happened after approval of the Regulatory Commission, the same will be adjusted and/or paid by either party along with Carrying Cost. The same provision is also there in CERC Terms and Conditions of Tariff which can also be applicable in UMPP SBD. |
| 69. | **Clause 21.6** | It is suggested that Change in Law during Construction Period shall be covered and reflected through changed Tariff while Change in Law during Operational Period on account of any increase or decrease in cost of the Seller shall be adjusted in the Monthly Tariff Payment and shall be paid through a Supplementary Bill.<br><br>Apart from that, it is suggested that payment of 100% against claimed amount shall be made by the Procurer on provisional basis towards Supplementary Bill for Change in Law till the approval of commission for such Change in Law. |
| 70. | **Schedule 6**<br><br>**Escalation Index** | The present draft mentions that the variable charge shall be divided into fuel and non-fuel component; the fuel component shall be revised based on the price variations of the CIL price and the non-fuel component shall be escalated as per the CERC escalation index applied at the beginning of the contract year. However, there is no clarity on fuel and non-fuel components in the documents.<br><br>While we appreciate the intent of the document to ensure 100% pass through arrangement on the fuel side in the form of delivered cost of coal to the site, we suggest that the revision in all cost related to fuel i.e. base cost, washing expenses (if required), transportation, taxes and cess should be covered under the fuel cost and allowed as per actuals rather than just revising it based on CIL prices.<br><br>It is assumed that the non-fuel component comprises of transportation cost. The non-fuel component is proposed to be escalated annually based on CERC escalation rate. It is pertinent to mention that the existing CERC escalation rate for transportation is based on Basic Freight of Railways and excludes any other charges levied by Railways |

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| | | for transportation of coal. Railways has levied charges such as Coal transportation charges, Busy Season Surcharge and Development Surcharge which have not be allowed by CERC under change in law. These charges comprise of about 21% of the total cost of transportation leading to under recovery of cost for the seller. Therefore, as envisaged for coal price, transportation cost should also be revised as and when it varies. The under recovery due to cost relating to transportation and CIL price not covered in CERC escalation is about Rs 8400 Cr.<br><br>Most of the PPAs concluded so far under competitive bidding have been facing severe problems mainly due to under recovery of fuel cost for various reasons. Accordingly, APP recommends as under in the context of Variable Charge.<br><br>**APP Recommendation**<br><br>**Bidding based on Net SHR:**<br><br>Based on the past experience, we suggest that the bid should be carried out based on the quoted fixed heat rate model, wherein the Coal cost (inclusive of all taxes…. And trasportaiton cost inclusive of all….) is provided for evaluation purpose, and payment is made on actual basis. In Coal and Coal Trapsortaiton Index this is the only viable way-forwrard, as no one can factor in the increases and indexation as explained ealier has not served the purpose. thereby the Seller is responsible to maintain efficiency of the plant and the other fuel related risk (mainly price) is passed onto the Procurer's account. It also provides an incentive for efficient utilization of the scarce coal reserves. Similar fixed heat rate based model has been used in Case II projects like Barh, Lanco Anapara, CLP Jhajjar and are tried and tested. We believe that considering the uncertainty in fuel supplies/ prices, this arrangement is fair and transparent and balance the risk amongst the Procurer's and Seller. The provision for degradation of SHR may be provided in line with the bid Documents based on DBFOO model which provided for increase in SHR by 0.15% per annum for each successive anniversary of COD.<br><br>**Clarity need on the following provisions of the Draft Bid Document.**<br><br>Schedule 6 – Escalation Index of Model PPA specifies as<br><br>*"The Quoted Variable Charge shall comprise of two components – the fuel component and the non-fuel component, and the index for escalation of the two components shall be as per this Schedule."* |

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| | | The bid format shows "Quoted Variable Charges" as on Bid due date in 'Rs/kWh' as one figure. The bid format may be modified to include the two components i.e. *the fuel component and the non-fuel component.*<br><br>Disconnect in Evaluated Tariff computation between Article 3.4.2 and Appendix XI of RfP<br><br>As per Article 3, Bid has to be evaluated on Evaluated tariff which comprises summation of Levelised Fixed Charge and Quoted Variable Charge whereas Appendix-XI states that Procurer will evaluate the Evaluated Tariff based on summation of Levelised Fixed Charge and Levelised Variable Charge. The said discrepancy regarding methodology of Evaluated tariff as per Article 3 and Appendix XI of RFP need to be removed. It is suggested that the evaluation of financial bid shall be based on levelised Fixed Charge and First Year Variable charge based on Quoted Net SHR. Appendix XI may be modified accordingly. |
| 71. | **Schedule 7**<br><br>**Commissioning Tests** | It is submitted that in the event of partial loading due to instruction of RLDC, this period should be excluded for the 72 hours requirement of performance testing and without requirement a commensurate extension beyond 72 hours since, this is lower loading is not on account of the generator. Alternately, the cost of such extension may be compensated by the Procurers to the Seller.<br><br>Further, the seller having commenced the process of conducting the test for declaration of CoD, however the same could not be completed because of Grid Constraints and/ or reasons not attributable to the Seller, in such an eventuality the Seller has be entitled to charge the bided Tariff notwithstanding the fact that further/ subsequent commissioning test may be to be carried out. |
| 72. | **Schedule 8**<br><br>**Tariff** | The present draft mentions that the variable charge shall be divided into fuel and non-fuel component; the fuel component shall be revised based on the price variations of the CIL price and the non-fuel component shall be escalated as per the CERC escalation index applied at the beginning of the contract year.<br><br>To ensure 100% pass through arrangement on the fuel side in the form of delivered cost of coal to the site, we suggest that the revision in all cost related to fuel i.e. base cost, washing expenses (if required), transportation, taxes and cess shall be covered under the fuel cost and allowed as per actuals rather than just revising it based on CIL prices. |

| # | Section/ Subject | Issue |
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| | | We further suggest that the bid should be carried out based on the quoted fixed heat rate model thereby the Seller is responsible to maintain efficiency of the plant and the other fuel related risk ( mainly price) is passed onto the Procurer's account. Similar fixed heat rate based model has been used in case-2 projects and have been tried and tested. We believe that considering the uncertainty in fuel supplies/ prices, this arrangement is fair and transparent and balance the risk amongst the Procurer's and Seller. |
| 73. | **Schedule 10**<br><br>**Independent Engineer** | The document suggests that the lead procurer has discrete rights to terminate the Independent Engineer without any consent of the Developer; however, the Developer has to go through a dispute resolution process / consent process for expressing and terminating the IE.<br><br>We request an equal right to both Parties in such situation; moresover when the appointment / cost is to be borne equally by both the parties |
| 74. | **Schedule 14**<br><br>**Quoted Tariff** | It is submitted that Schedule 14 be modified in line with Schedule 6 – Escalation Index to include the fuel component and the non-fuel component. Schedule 6, first provision reads as "The Quoted Variable Charge shall comprise of two components – the fuel component and the non-fuel component, and the index for escalation of the two components shall be as per this Schedule". |
| 75. | **GENERAL COMMENTS** | Loss of GCV: Norms set by or to be set by CERC for the loss of coal GCV between "as received" and "as fired" be provided for to the bidder.<br><br>Grade Slippage and increased quantity requirement: The FSA should provide for enhancement of coal quantity to address the coal quality shortfall as established by third party sampling mechanism.<br><br>Washing of coal and associated cost: As per MoEF notification, CIL has to supply coal with ash less than 34% and thermal power plants have to use coal with ash < 34%. In the event, CIL doesn't supply coal with < 34% ash, and the Seller has to make arrangement for washing the coal to meet MoEF requirements, the cost so incurred toward washing coal and washing losses should be made a pass through and recovered from the Procurers. |
| 76. | **GENERAL COMMENTS** | PPA envisages Normative availability of 90%, duly taking into consideration fuel and water. In order to ensure this, the LOA and the terms of FSA should take into account coal required to generate power at the rate of 90% of plant installed capacity and this should be assured through Minimum Supply Obligation and stringent penalty provisions |

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| | | under the FSA, such that there shall be no gap between the FSA obligation and PPA obligation.<br><br>We therefore suggest that the linkage arrangement should provide adequate supply of coal in terms of GCV (i.e. coal quantity and quality) and the Seller should not suffer losses for the want of fuel.<br><br>Further we would also like to mention that, while PPA assures 65% offtake the consequences of not meeting the same are not articulated; in the event of any obligations to Seller on account of take or pay / level of lifting under FSA arising out of Procurer's action should be allowed as pass-through under the PPA and should be to Procurer's account. |

**Annexure 1**

**Illustration of total Coal cost with additional levies/ cess/ taxes**

| | **Particulars** | **Coal Rate (Rs./MT)** |
|---|---|---|
| **(A)** | **Basic Price** | **810.00** |
| | | |
| | Royalty @ 14% | 113.40 |
| | NMET @2% of Royalty | 2.27 |
| | DMF @30% of Royalty | 34.02 |
| | Sizing Charges | 87.00 |
| | Surface Transportation Charges | 57.00 |
| | Forest Cess | 15.00 |
| | CG Development Tax | 7.50 |
| | CG Environment Tax | 7.50 |
| **(B)** | **Sub-total of Cess, Taxes and Levies** | **323.69** |
| | | |
| | GST @5% | 56.68 |
| | GST Compensation Cess | 400.00 |
| **(C)** | **Sub-total of GST applicable** | **456.68** |
| | | |
| **(A + B + C)** | **Coal Total Cost** | **1590.37** |

*Not covered in Coal price escalation index*

## Annexure 2

## Illustration of total Coal Transportation cost

| Parameter | Unit | | Value |
|---|---|---|---|
| **Base Freight Railways (Distance-450 km)** | **Rs/Ton** | **A** | **803** |
| Busy Season Surcharge | | B | 15% |
| **Busy Season Surcharge** | Rs/Ton | C=A*B | 120 |
| Development Surcharge | | D | 5% |
| **Development Surcharge** | Rs/Ton | E=(A+C)*D | 46 |
| GST | | F | 5% |
| **GST** | Rs/Ton | G=(A+C+E)*F | 48 |
| **Total of Surcharge & Tax** | **Rs/Ton** | **H=C+E+G** | **215** |
| **Total Coal Transportation Charges by Railways** | **Rs/Ton** | **A+H** | **1018** |

*Not covered in Transportation price escalation index*

## Annexure 3

## Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014

To Quote -

**Chapter 7, Regulation 30**

*(10) In case of part or full use of alternative source of fuel supply by coal based thermal generating stations other than as agreed by the generating company and beneficiaries in their power purchase agreement for supply of contracted power on account of shortage of fuel or optimization of economical operation through blending, the use of alternative source of fuel supply shall be permitted to generating station:*

*Provided that in such case, prior permission from beneficiaries shall not be a precondition, unless otherwise agreed specifically in the power purchase agreement:*

*Provided further that the weighted average price of use of alternative source of fuel shall not exceed 30% of base price of fuel computed as per clause (11) of this regulation:*

*Provided also that where the energy charge rate based on weighted average price of use of fuel including alternative source of fuel exceeds 30% of base energy charge rate as approved by the Commission for that year or energy charge rate based on weighted average price of use of fuel including alternative sources of fuel exceeds 20% of energy charge rate based on based on weighted average fuel price for the previous month, whichever is lower shall be considered and in that event, prior consultation with beneficiary shall be made not later than three days in advance.*