



# ASSAM ELECTRICITY REGULATORY COMMISSION

FILE NO. AERC.483/2015

PETITION NO.: 8/2015

## ORDER SHEET

15.02.2016 Imperial APGCL Power Ltd. (IAPL) has filed a Petition (Petition No. 8/2015) before the Commission on 17.01.2015 for Determination of Tariff under Section 62, 63 and 86 (1) (f) of the Electricity Act'2003. The Petitioner has prayed the following:

- *To admit the Petition for determination of tariff under the relevant legal framework.*
- *To pass an order approving the tariff as prayed for.*
- *To approve the cost estimates of the project as Rs. 306.85 Cr at September, 2014 price level.*
- *To allow the determination/revision of the Tariff of the project on AERC norms except for the following:-*
  - *To allow the determination of variable cost of Tariff based on the fuel available from fuel linkage/Domestic Market/overseas as the case may be.*
  - *To allow determination of Station Heat Rate for both the units based upon the assessment of actual consumption of coal.*
  - *To allow O & M expenses for 1<sup>st</sup> year as 4% of Capital Cost with escalation based upon AERC norms. This is because, plant is of smaller capacity.*
- *Pass any other order as this Hon'ble Commission deems fit and appropriate under the circumstances of the case and in the interest of Justice.*

### **Procedural History of the case:**

1. The salient points of the Petition No 8/2015:

- Imperial APGCL Power Ltd. (IAPL) is a joint venture formed between M/S Imperial Energy & Construction Pvt. Ltd., M/S Imperial Fasteners Pvt. Ltd. & M/S Intelli Mine Inc (all three together 1<sup>st</sup> party) and APGCL (2<sup>nd</sup> party) for revival of 2X 30 MW Chandrapur Thermal Power Station (CTPS). Some of the Key points of Joint Venture Agreement (JVA) are:
  - The JV agreement was executed on 02/02/2010
  - The first year Tariff was capped at Rs 3.25/kWh
  - The plant with all related office etc will have to be accommodated within 16 Acres of Land
  - The 1<sup>st</sup> party will hold 74% of equity share and the 2<sup>nd</sup> party will hold 26% of equity share
  - After arranging fuel supply and environmental clearance the term loan sanction letter from financial institution has to be obtained by 1<sup>st</sup> party within 6 months
  - The role of 1<sup>st</sup> party will be to:
    - Revive CTPS of 2X30 MW capacity
    - Redesign, engineer, finance, construct, operate and maintain the CTPS
    - Obtain coal linkage and arrangement of coal for implementation of project including supply and handling of Coal Handling plant.
    - Obtain all approval/statutory clearances for the implementation of the Project
    - Prepare, develop and execute a Power Purchase Agreement to sell the power generated through the

Thermal Power Station in accordance with the terms and conditions of the Implementation.....Etc.

- The role of the 2<sup>nd</sup> party (APGCL) will be to:
  - Provide assistance as may be reasonably requested by IAPL for the purposes to enabling the implementation of the Project.
- IAPL shall furnish performance security by way of Bank Guarantee (BG) of Rs 5 Cr to APGCL. The performance security shall be valid for a period of three years in the first instance, extendable thereafter for 6 months at a time till Commercial Operation Date (COD) of the project.
- The petitioner submitted that the plant will run on Imported Coal till Coal Linkage is obtained. Regarding Fuel Supply Agreement (FSA), the Petitioner submitted that an FSA has been signed with World Trade raw Material for importing coal from Indonesia and submitted a copy of FSA. Some of the key points of the submitted FSA are:
  - The FSA was signed between IAPL (Purchaser), Orgakom Milindo GmbH (Miner Mandate) and World Trade Raw Materials Inc (Seller) on 08/05/2013.
  - The parties will sit together within 6 months of signing of the agreement for finalization of final working criteria.
  - The following conditions need to be fulfilled for making the FSA effective:
    - Signing of PPA between IAPL and APDCL
    - IAPL shall have delivered the delivery commencement notice at least 6 months before the commencement of Commissioning of Power Project.
  - IAPL will arrange for shipment of coal unless mutually decided otherwise.
- The Petitioner proposed that the scheduled date of Commissioning of the project is September, 2017 provided Power Purchase Agreement (PPA) is executed with Assam Power Distribution Company Ltd. (APDCL).
- The Petitioner submitted that the cost estimates have been prepared based on the cost estimates of the project as on September, 2014, accordingly project cost was proposed as Rs 306.85 Crore and levelised tariff of Rs 7.57/kWh for 25 years.
- Along with the Petition, the Petitioner submitted a copy of Memorandum of Understanding (MoU) dated 21/08/2013 signed with APDCL for sale of power. Some of the key points of the MoU are:
  - IAPL is in the process of revival of 60 (2X30) MW CTPS
  - The supply of coal will be allowed from overseas, domestic or Linkage coal from CIL.
  - IAPL shall acquire and maintain all required clearance, consents, permits, licenses and approvals.
  - Bank Guarantee of Rs. 5 Cr shall be submitted to APGCL on receipt of Ministry of Environment and Forests clearance or within 01/01/14 whichever is earlier.
  - The MoU is valid for a period of two years commencing from the date of execution
- Along with the Petition, the Petitioner also submitted a copy of Letter of Intent (LoI) dated 16/12/2009 issued by APGCL. The salient points of the LoI are:
  - Sign PPA with APDCL within 30 days from the date of signing of JVA.
  - Complete the RLA study with 31/1/2010
  - Complete the EIA study within 15/6/2010
  - Complete the DPR within 15/3/2010
  - Achieve Financial Closure by 30/6/2010
  - Furnish Performance Bank Guarantee in favor of MD, APGCL amounting to Rs. 5 Cr within 3 weeks from the date of issue of LoI.
  - First year Tariff is capped at Rs. 3.25/kWh and escalation clause will be applicable from the 2<sup>nd</sup> year of operation as per norms of AERC.

2. Thereafter, the Petition No 8/2015 was sent to APDCL for their comments vide Commission's Letter dated 02/03/2015. Some of the salient points of APDCL's submission are:
  - As per the JV agreement, the fuel to be used for generation of the station was confined to linked coal, where as the petition has been made only on imported coal.
  - 
  - As per the JV agreement, M/S Imperial Energy and Construction Pvt. Ltd. was required to submit a Bank Guarantee of Rs. 5 Cr within 3 weeks from Lol, however, no record of such submission has been made available.
  - The tariff shown in the petition is levellised at Rs. 7.57/kWh is far above the weighted average cost of power purchase from different sources by APDCL and even higher than the marginal cost of short term power purchase.
  - Being an existing project and considering that there was no cost against dismantling of redundant and unwanted assets(done by APGCL), the capital cost proposed to be incurred in the project at Rs 306.85 Crore i.e Rs.5.10 crore/MW appears to on the higher side.
  - The petitioner failed to maintain any time line and commitment made in the MoU dated 21/08/2013.
  - As APDCL is duty bound to supply power to its consumer at reasonable rates, this aspect also needs to be looked into.
  
3. IAPL replied to APDCL's letter vide their letter dated 04/05/2015. Some of the salient points of IAPL's submission are:
  - IAPL submitted that even though they have approached Ministry of Coal, Gol for coal linkage the same could not be obtained. Therefore, they have considered imported coal for all calculation.
  - IAPL acknowledged that as per the Lol, the 1<sup>st</sup> year tariff was Rs. 3.25/kWh with 4% escalation from 2<sup>nd</sup> year. However, considering hike in fuel price & capital cost the earlier determined rate was not viable. Also, submitted that an MOU was signed for use of the imported/domestic coal/linkage coal for revival of the project. The tariff would be revised based from the actual prices prevailing from time to time.
  - IAPL submitted that, they have submitted Bank Guarantee (BG) of Rs 5 Cr on 29/01/2010 and was renewed for 2<sup>nd</sup> year as well (01/02/2011 to 31/01/2012). However, considering long time taken for getting the clearances, BG was not renewed thereafter. They submitted that BG will be renewed once the PPA is signed with APDCL.
  - Regarding higher capital cost of the project, it is submitted that, since the existing plant is very old requiring replacement of almost all the major equipment except turbines for better efficiency.
  - IAPL submitted that timeline for various milestones envisaged in the MoU could not be maintained because of delay in obtaining various clearances.
  
4. Thereafter, APDCL replied to IAPL's reply dated 04/05/2015, vide letter dated 29/06/2015, the salient points submitted by APDCL are:
  - In the DPR, coal from Coal India Ltd is proposed as the primary source of fuel however now IAPL has proposed Indonesian coal, thereby increasing the cost substantially. APDCL also mentioned that steps should have been taken by IAPL at appropriate level for getting Domestic coal linkage, considering the fact that recently, Govt. of India has allotted coal blocks to such Developers through bidding process.
  - If the capped tariff @ 3.25 Rs/unit with 4% escalation factor as quoted in the Lol was not acceptable to the developer IAPL, the matter could have been brought to the notice of the stakeholders.
  - APDCL requested Commission to examine and ensure whether all statutory clearances are obtained.

- APDCL further submitted that in the interest of the ultimate consumers and future viability of the project under the changing trend of electricity market in the country, APDCL is interested in reduction in tariff facts and figures.
5. Thereafter, Commission raised certain queries to APGCL on 9/10/2015. Some of the salient points of the queries were:
- Details of the methodology adopted by APGCL for selection of IAPL as L1 bidder for the discovered tariff of Rs 3.25/kWh for 1<sup>st</sup> year (under Section 63 of Electricity Act'2003), instead of levelised tariff for useful life of the plant. APGCL was further asked to clarify why IAPL is now praying for determination of tariff under Section 62 of Electricity Act'2003.
  - Whether Commission was approached for adoption of the discovered Tariff?
  - In the Lol dated 16/12/2009, it was mentioned by APGCL that tariff for 2<sup>nd</sup> year onwards will be determined on the escalation norms to be fixed by the AERC. Whether any consent of Commission was received in that regard?
  - Provide status of transfer of land and water rights by APGCL to IAPL
6. APGCL replied to Commission's queries vide their letter dated 12/11/2015. Some of the salient points of their submission are:
- As per APGCL's Board resolution, National Competitive Bid (two part Technical & financial) was invited by APGCL for revival of CTPS by conversion of the existing boilers to coal fired fluidized bed boilers. On 19-06-2008 the technical bids were opened and two bidders namely, M/S Imperial Energy and Constructions Pvt Ltd, Gurgaon and M/S IMES participated in the bidding. However, M/S IMES was disqualified because of non fulfillment of conditions laid down in bid.
  - Thereafter, the Technical Evaluation Committee of APGCL evaluated the bids of M/S Imperial Energy and Constructions Pvt. Ltd. and concluded that the M/S Imperial Energy and Constructions Pvt. Ltd. has not scored the required minimum marks to technically qualify for the bids as per terms & conditions of RFP. The technical evaluation committee of APGCL also mentioned that Extent of works involvement and equipments requirement were not clearly mentioned in the technical proposal. Further, as the bidder has furnished the designed efficiency of the proposed boilers and expected heat rate of the revived plant, the cost of generation of the revived plant could not be worked out in a realistic and acceptable manner though the bidder has met the financial eligibility criteria through the JV route in which the weight of Turn over & Net worth was heavily staked in favor of a single member of the consortium. In fact the Turn Over of the lead member was Nil and the net worth was barely positive.
  - But due to poor response of participation in the NIT, even after extensions, and apprehending that re-tendering may not ensure participation of more bidders, the APGCL Board of Directors decided to invite M/S Imperial Energy and Constructions Pvt Ltd to APGCL HQ for a discussion related to deficiencies of their technical proposal.
  - After careful evaluation of the Technical & Financial bid proposals, and as per APGCL Board vide Resolution No. 6 dated 03/10/2008, APGCL in principle recommended the selection of consortium of M/s Imperial Energy & Construction Pvt. Ltd. (M/s Imperial Energy & Construction Pvt. Ltd. as a lead partner along with M/s Intelli-mine and M/s Imperial Fasteners Pvt. Ltd.) as Joint Venture (JV) partner with Assam Power Generation Corporation Limited for revival of CTPS on coal subject to approval of Govt. of Assam APGCL. The Govt. of Assam accordingly accorded approval to the same. Thereafter, APGCL issued Lol on 16/12/2009 for revival of CTPS, keeping first year tariff at Rs 3.25/kWh.
  - Furthermore, APGCL Board vide resolution No. 4 dated 31-03-2012 approved transfer of 67 acres of land along with existing water rights to the JV Company M/s IAPL. However, the Lease Deed Agreement for transfer of land could not be executed with M/s IAPL due to non extension of Performance Bank Guarantee. The

SPV had submitted the requisite BG for two years instance, but after expiry of the BG on 31-01-2012 they have not revalidated the BG.

7. A reference may also be drawn to Letter dated 31/12/2015, written by APGCL to IAPL regarding Extension of Performance Bank Guarantee. In the said the letter, APGCL mentioned that after expiry of BG on 31/1/2012, the BG have not been revalidated and no action has been taken from IAPL even after repeated requests from APGCL.
8. Furthermore, a meeting was held with APGCL at the office of the Commission to understand the status of revival of CTPS on 27/1/2016. Some of the salient points submitted by APGCL during the meeting are:
  - IAPL has received the Environment & Forest Clearance for the CTPS revival project. However, wildlife clearance and Pollution control Board clearance is yet to be received.
  - IAPL is yet to receive domestic coal linkage for the project. Even though, IAPL has signed a FSA with M/S World Trade Raw Materials Inc, USA, having selling rights of coal from Indonesia, the modalities of importing coal is yet to be finalised.
  - APGCL informed that Lease Deed Agreement for transfer of Land & Building of CTPS could not be executed with M/S IAPL because of non extension of Performance Bank Guarantee (JV agreement) amount of Rs 5 Crore which expired on 31.01.2012.
  - APGCL informed that the Joint Venture (JV) agreement for revival of CTPS (2X30 MW) is still valid although the 1<sup>st</sup> Party i.e. M/S Imperial & its consortium has violated some of the clauses.
  - APGCL acknowledged that the validity of MoU dated 21/08/2013 signed with APDCL is over.
9. Considering the possible change in certain facts, APDCL was again asked to submit comments on the Petition No 8/2015 vide Letter dated 29/01/2016. APDCL submitted their comments vide Letter dated 06/02/2016, salient points of their submission are:
  - APDCL stood by the earlier submitted replies dated 25/03/2015, 29/06/2015 and 06/07/2015, because there was no further development with regard to the project.
  - APDCL submitted that with changing scenario in the power market and gradual decrease in the cost of power the proposed rate of IAPL is too much on the higher side and will have a direct impact on the retail tariff of the consumers.
10. A Hearing prior to admission of the Petition was conducted in the office of the Commission at 03:00 P.M. on February 09, 2016 after due notices were served to the parties.
  - The following were present during the Hearing:
    - Mr. Rupanka Goswami appeared on behalf of the Petitioner.
    - Mr. M.K. Adhikary, GM (TRC) and Mr. A.N.Dev Choudhury, AGM (TRC) appeared on behalf of APDCL
    - Mr. S.N.Kalita, CGM (F&A), Mr. A Barkakati, GM (G) and Mr. H.N.Borah, AGM appeared on behalf of APGCL.
  - The Chairperson (I/C) & Member of the Commission initiated the Hearing, asking the parties to provide any additional views and comments:
  - Mr. Rupanka Goswami, IAPL, appearing on behalf of the Petitioner, started the submissions by giving a brief historical background of the case. The salient points submitted during the Hearing are:
    - M/S Imperial & Consortium was selected as first party of the JV, based on Tariff Based bidding. However, considering change in scenario IAPL is filing the petition for determination of Tariff under Section 62 of the Electricity Act'2003.
    - Mr. Goswami mentioned that they had earlier tried for domestic coal linkage, however, Ministry of Coal denied coal linkage in 2012.

- Performance Bank Guarantee was initially provided for 2 years, however, the same is not extended due to lack of development in various aspects of the project.
  - IAPL has received Environmental clearances subject to the approval by Pollution Control Board of Assam. Forest Clearance yet to be received
  - Financial Closure not yet done. The Petitioner submitted that Financial Closure will be done only after Tariff Fixation by the Commission.
  - The Memorandum of Understanding (MoU) signed with APDCL is not valid as on date, however, they will sign PPA with APDCL once Tariff is determined by the Commission.
- Mr. M K Adhikary, GM (TRC), representing the respondent APDCL submitted the following:
    - APDCL signed MoU with IAPL to expedite the project execution. However, IAPL has not honored some of the basic requirements of MoU.
    - Considering the present scenario in Electricity market, the Tariff proposed by IAPL in their petition is substantially high and impact on consumer Tariff also need to be considered.
    - He submitted that the coal policy and methodology of obtaining Domestic Coal linkage has changed as compared to 2012 and hence IAPL should try for obtaining Domestic Coal linkage
    - At present only Environment Clearance has been received, subject to clearance by State Pollution Control Board. None of other clearances are received.
    - Performance Bank Guarantee of Rs 5 Cr has not been extended by IAPL, thereby defaulting in one of the condition laid down in Lol and MoU.
  - Mr. S N Kalita, CGM (F & A), representing APGCL made the following submissions:
    - Performance Bank Guarantee of Rs 5 Cr not renewed since 31/01/2012
    - Only Environmental Clearance is received. Wild Life and Pollution Control Board clearance not yet received.
  - After hearing the submissions made by the Petitioner and Stakeholders, Commission made the following observations:
    - The petition is filed by IAPL under Section 62 of the Electricity Act' 2003, however, the project was awarded to IAPL by conducting Tariff based competitive bidding. Therefore, the petition should have been under Section 63 of the Electricity Act'2003.
    - After issuance of LOI to IAPL there appears to be no physical progress of the project.
    - At present there is no valid power sale arrangement.

#### **Commission's Analysis and Decision:**

1. Before going into the detail about the Petition No 8/2015, let us look into the provisions laid down in the Electricity Act'2003:
  - Section 62 of the Electricity Act'2003 provides for determination of Tariff, the relevant portion of the Section is reproduced below:
 

**“ Section 62. (Determination of tariff): --- (1) The Appropriate Commission shall determine the tariff in accordance with the provisions of this Act for –**  
**(a) supply of electricity by a generating company to a distribution licensee:**

*Provided that the Appropriate Commission may, in case of shortage of supply of electricity, fix the minimum and maximum ceiling of tariff for sale or purchase of electricity in pursuance of an agreement, entered into between a generating company and a licensee or between licensees, for a period not exceeding one year to ensure reasonable prices of electricity;*  
 .....
  - Section 63 of the Electricity Act'2003 provides for determination of Tariff by Bidding process, the relevant portion of the Section is reproduced below:

**“Section 63. (Determination of tariff by bidding process):**

*Notwithstanding anything contained in section 62, the Appropriate Commission shall adopt the tariff if such tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the Central Government.”*

- Further, Section 86 1(a) of the Electricity Act'2003 provides for the function of the State Commission for approval of Power Purchase by a Distribution Licensee. The relevant portion of the Section is reproduced below:

**Section 86. (Functions of State Commission):** --- (1) *The State Commission shall discharge the following functions, namely: -*

...

*(a) determine the tariff for generation, supply, transmission and wheeling of electricity, wholesale, bulk or retail, as the case may be, within the State: Provided that where open access has been permitted to a category of consumers under section 42, the State Commission shall determine only the wheeling charges and surcharge thereon, if any, for the said category of consumers;*

...

*(f) adjudicate upon the disputes between the licensees, and generating companies and to refer any dispute for arbitration;*

....”
  - From the above sections it may be concluded that, Tariff may be determined/adopted in two ways:-
    - i. Combination of Section 62 and Section 86 1(a): *Commission will determine Tariff for a generating company after scrutiny of submission made by the generating company*
    - ii. Combination of Section 63 and Section 86 1(a): *If the Tariff has not been determined under Section 62 of the Electricity Act'2003, Commission shall adopt the Tariff, if such tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the Central Government.*
  - Furthermore, both Section 62 & Section 63 of the Electricity Act'2003 are independent in nature and Section 62 & Section 63 cannot be applied together in any circumstances.
2. Now, coming to the question of this petition (Petition No 8/2015) filed by IAPL, the following key points need to be considered:
- i. IAPL is a Joint Venture formed between M/S Imperial Energy & Construction Pvt. Ltd., M/S Imperial Fasteners Pvt. Ltd. & M/S Intelli Mine Inc (all three together 1st party) and APGCL (2nd party) for revival of 2X 30 MW Chandrapur Thermal Power Station (CTPS).
  - ii. Based on the Lol dated 16/12/2009 issued by APGCL and subsequent submissions of APGCL, it is understood that the 1<sup>st</sup> party for the JV agreement was selected through a bidding process for revival of CTPS. But the criteria for financial evaluation were on the basis of offered Levelized Tariff (15 years). However, as per Regulatory system, the Levelized tariff should be for full tariff period i.e 25 years for coal based power stations. As such, there is a deviation made in the bidding from the principle of tariff regime of coal based power stations. Moreover, APGCL has selected 1<sup>st</sup> party (L1 Bidder) for JV agreement only based on Rs. 3.25/Unit on 1<sup>st</sup> year basis instead of Levelized tariff for full tariff period of 25 years. When asked for clarification on the same, APGCL could not give proper justification for the reasons for selecting L1 Bidder for JV agreement at Rs, 3.25/Unit on 1<sup>st</sup> year basis instead of levelized tariff for useful life of the plant.
  - iii. In the MOU signed with APDCL and IAPL, it is stated that IAPL is willing to sale entire saleable net energy i.e after exclusion of auxiliary consumption at bus bar of the project (deliver point) corresponding to its installed capacity of 60MW for a

period of 25 years with a provision of extension on mutual consent. But in the Bidding, the Levelized tariff was asked for 15 years.

- iv. Moreover, as per the Lol and submissions of APGCL, a first year Tariff of Rs. 3.25/kWh was discovered in the bidding process keeping a clause for escalation from 2nd year as per AERC norms. But, there is no such clause of tariff increase in any Regulations notified by AERC and the AERC was never approached before keeping such clause in the Lol. When asked to clarify the same, APGCL was not able to provide any suitable reply to the same.
- v. Based on the above, it is seen that the tariff for the project is the discovered tariff and through bidding process and as such, the petition should have been under Section 63 of the Electricity Act'2003 not under Section 62 of the Electricity Act'2003.

Furthermore, the Petitioner has referred to Section 86 1(f) of the Electricity Act'2003. However, this Section is related to adjudication of disputes between the licensees and generating companies, not determination/ adoption of Tariff. The extract of the Section is reproduced below for ready reference:

**“Section 86. (Functions of State Commission): --- (1) The State Commission shall discharge the following functions, namely: -**

.....

*(f) adjudicate upon the disputes between the licensees, and generating companies and to refer any dispute for arbitration;”*

- vi. In the JV agreement submitted by IAPL, it was mentioned that a separate Lease Deed Agreement will be signed between APGCL and IAPL for transfer of land, building etc. However, from the submissions of Petitioner & APGCL it is understood that the Lease Deed Agreement is yet to be executed i.e. after a lapse of more than 5 years from the signing of JV Agreement. APGCL also submitted that even though vide APGCL Board resolution No. 4 dated 31-03-2012, transfer of 67 acres of land along with existing water rights to the JV Company M/s IAPL was approved, the Lease Deed Agreement could not be executed with M/s IAPL due to non extension of Performance Bank Guarantee. IAPL had submitted the requisite BG for two years instance, but after expiry of the BG on 31-01-2012 they have not revalidated the BG.

In this regard, a reference may also be drawn to Letter dated 31/12/2015, written by APGCL to IAPL regarding Extension of Performance Bank Guarantee. In the said the letter, APGCL mentioned that after expiry of BG on 31/1/2012, the BG have not been revalidated and no action has been taken by IAPL even after repeated requests from APGCL.

Further, during meeting dated 27/01/2016 conducted at the office of the Commission, APGCL submitted that the 1<sup>st</sup> party of the JV has violated some of the clauses of JV agreement as well.

- vii. During meeting dated 27/01/2016 conducted at the office of the Commission, APGCL submitted that IAPL has received the Environment & Forest Clearance for the CTPS revival project. However, wildlife clearance and Pollution control Board clearance is yet to be received. It may be seen that there is substantial delay in getting various clearances, considering the fact that the Lol was issued way back in 16/12/2009 (more than 5 years earlier).
- viii. Regarding Coal Linkage, from the various submissions made by the Petitioner and Stakeholders, it is understood that IAPL is yet to finalise the modalities of getting coal delivered at the project site. Presently, IAPL does not have any domestic coal linkage and even though IAPL has got an FSA dated 08/05/2013, signed a FSA with



M/S World Trade Raw Materials Inc, USA, having selling rights of coal from Indonesia, the modalities of importing coal is yet to be finalized by IAPL. Also, it is also seen from submission that, IAPL has not explored the recent Gol guidelines regarding coal allocation through bidding route.

- ix. As per the submissions of the Petitioner, it is understood that no PPA is signed till date and only MOU with APDCL was signed on 21-08-2013. It may be noted that, as per the MOU, MOU is valid for two years after signing of Agreement i.e up to 20-08-2015 and if within this said period terms and conditions for sale of the aforesaid capacity between the parties (APDCL & IAPL) cannot be finalized, the MOU shall automatically be terminated unless the MOU is mutually agreed to be extended in writing. As such, as the submitted MOU has already expired and no extended MOU is submitted, the petitioner is not having any MOU with APDCL and hence no power sale arrangement exists. Moreover, as per the submissions of APDCL, IAPL has not met with various clauses of the MOU.

3. Based on the above, the following may be concluded:

- i. The Petition is not maintainable under Section 62 and Section 86 1(f) of the Electricity Act'2003.
- ii. IAPL is yet to execute Lease Deed Agreement for transfer of Land, Building etc after a lapse of more than 5 years from issuance of Lol. For any project land is the 1<sup>st</sup> basic requirement. It appears that the Petitioner is not in a position to meet the basic requirement for start of the project.
- iii. The Petitioner is yet to finalise modalities of getting coal delivered for the project, after a substantial time of issuance of Lol and execution of JV.
- iv. At present the Petitioner has not tied up with any party for sale of power. The MoU with APDCL got over last year itself i.e. on 20/08/2015 and no new MoU or PPA is submitted till date.
- v. The petitioner is yet to receive some of the basic clearances such as wildlife clearance, Pollution control Board clearance etc.

From the above, it may be concluded that:

- a) *The Petition is not maintainable in Law and under the present facts & circumstances. However, if the requirement as laid down under the Law is fulfilled then the Commission may perhaps be approached for determination of Tariff for revival of CTPS project.*
- b) *The Petitioner has not fulfilled some of the very basic requirements for executing a coal thermal project.*
- c) *The Petitioner is yet to get clearances from various agencies.*
- d) *The Petitioner does not have any Power Sale Arrangement at present.*

**With the above observations and decisions, the petition (Petition No. 8/2015) filed by IAPL is not admissible and stands disposed of at the admission stage itself.**

Sd/-  
(Subhash C Das)  
Member, AERC

Sd/-  
(Dipak Chakravarty)  
Chairperson (I/C) & Member, AERC