



Prakashgad, Plot No.G-9, Bandra (East), Mumbai – 400 051  
(O) 26474211 / 26472131, Fax- 26580645 Website: www.mahadiscom.in

REF: CE/PP/Case 1 Stage 1/ 32885

Date: 3 SEP 2015

To,  
**The Secretary,**  
**Maharashtra Electricity Regulatory Commission,**  
World Trade Centre, Centre No.1,  
13<sup>th</sup> Floor, Cuffe Parade,  
Colaba, Mumbai- 400005.

Subject: - Petition for seeking amendment in the PPA signed under Case 1 Stage 1 project in relation to ambiguity in definition of contracted capacity and installed capacity.

Dear Sir,

With reference to the above subject, please find enclosed herewith MSEDCL's Petition for seeking amendment in the PPA signed under Case 1 Stage 1 project in relation to ambiguity in definition of contracted capacity and installed capacity. This may please be taken on the record and placed before Hon'ble Commission.

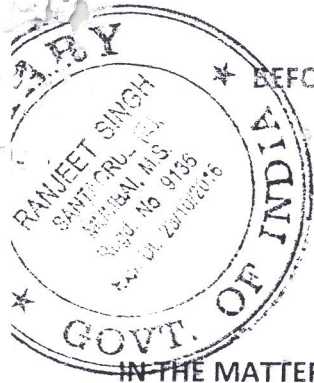
Thanking you.

Encl: 1. Original Petition with 6 copies.  
2. DD No. 930772 Dated 02.09.2015 for Rs. 10,000/-

Yours faithfully,

*Devalop*

**Chief Engineer (PP)**  
MSEDCL



BEFORE THE MAHARASHTRA ELECTRICITY REGULATORY COMMISSION,  
MUMBAI

FILING NO. :

CASE NO. of \_\_\_\_\_

IN THE MATTER OF:

PETITION FOR SEEKING AMENDMENT IN THE PPA SIGNED UNDER CASE I STAGE 1 PROJECT IN RELATION TO AMBIGUITY IN DEFINITION OF CONTRACTED CAPACITY AND INSTALLED CAPACITY.

AND

IN THE MATTER OF

SECTION 86 (1) (b) (f) OF THE ELECTRICITY ACT 2003

AND

IN THE MATTER OF

REGULATION 92,93,94 & 96 of MERC (CONDUCT OF BUSINESS) REGULATIONS 2004

AND

IN THE MATTER OF THE PETITIONER:

MAHARASHTRA STATE ELECTRICITY DISTRIBUTION COMPANY LIMITED, PRAKASHGAD, ANANT KANEKAR MARG, BANDRA (EAST), MUMBAI 400051.-  
PETITIONER

Affidavit in support of Petition

I, Ashok Sitaram Chavan, aged 57years, son of Shri. Sitaram Chavan having my office at MSEDCL, Prakashgad, Plot No.G-9, Anant Kanekar Marg, Bandra (E), Mumbai-400051 do solemnly affirm and say as follows:

I am, Chief Engineer (Power Purchase) of Maharashtra State Electricity Distribution Co. Ltd., the Petitioner in the above matter and am duly authorized by the said Petitioner to make this affidavit.

The statements made in the enclosed submission in the matter of Petition For Seeking Amendment In The PPA Signed Under Case I Stage 1 Project In Relation To Ambiguity In Definition Of Contracted Capacity And Installed Capacity, are based on the

information received from the concerned officers of the Petitioner and I believe them to be true.

I say that there are no proceedings pending in any court of law/tribunal or arbitrator or any other authority, wherein the Petitioner is a party and where issues arising and /or relief sought are identical or similar to the issues arising in the matter pending before the Commission.

I solemnly affirm at Mumbai on this 27<sup>th</sup> day of August 2015 that the contents of this affidavit are true to my knowledge, no part of it is false and nothing material has been concealed there from.

*A. S. Chavan*

**A. S. CHAVAN**  
Chief Engineer (Power Purchase)  
M. S. E. D. C. L.  
Deponent

Date: 27 AUG 2015

Place: Mumbai.

Identified before me

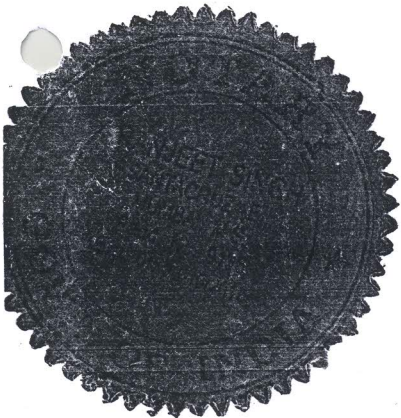
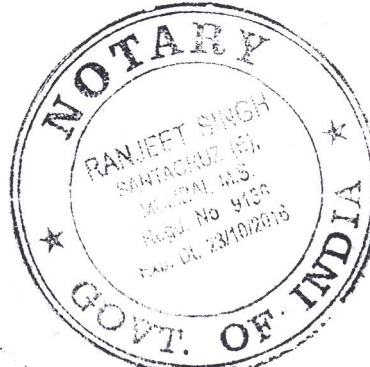
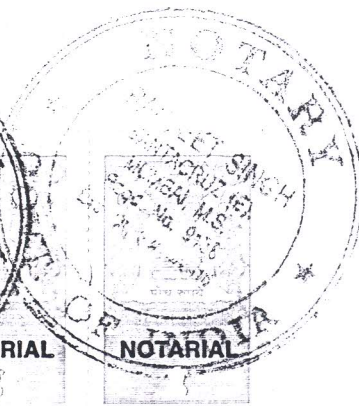
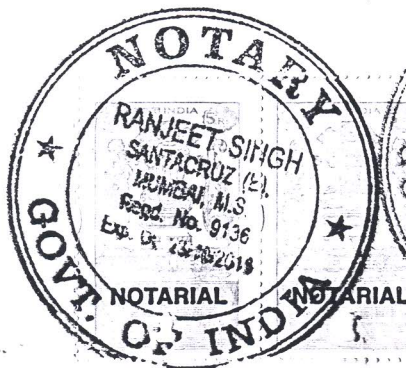
**BEFORE ME**

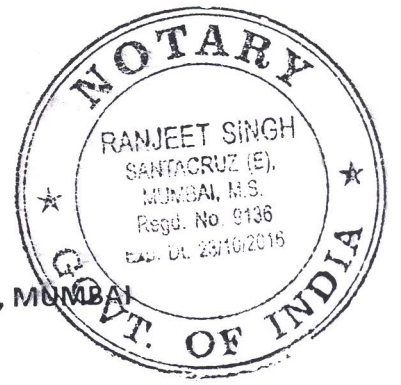
*[Signature]*  
**RANJEET SINGH**  
M.S. 11 B

NOTARY  
MAHARASHTRA  
GOVT. OF INDIA

27 AUG 2015

RANJEET SINGH  
SANTACRUZ (E),  
MUMBAI, M.S.  
Regd. No. 9136  
Exp. Dt. 23/10/2015





BEFORE THE MAHARASHTRA ELECTRICITY REGULATORY COMMISSION, MUMBAI

Filing No. : \_\_\_\_\_

Case No. : \_\_\_\_\_

IN THE MATTER OF:

PETITION FOR SEEKING AMENDMENT IN THE PPA SIGNED UNDER CASE I STAGE 1 PROJECT IN RELATION TO AMBIGUITY IN DEFINITION OF CONTRACTED CAPACITY AND INSTALLED CAPACITY.

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MAHARASHTRA STATE ELECTRICITY DISTRIBUTION COMPANY LIMITED, PRAKASHGAD, ANANT KANEKAR MARG, BANDRA (EAST), MUMBAI 400051.-  
PETITIONER

MAHARASHTRA STATE ELECTRICITY DISTRIBUTION COMPANY LIMITED RESPECTFULLY SUBMITS AS FOLLOWS:

**1. Background of the Petitioner**

1.1. Maharashtra State Electricity Distribution Co. Ltd. (hereinafter referred to as "MSEDCL") has been incorporated under Indian Companies Act, 1956 pursuant to decision of Government of Maharashtra to reorganize erstwhile Maharashtra State Electricity Board (herein after referred to as "MSEB"). The said reorganization of the MSEB has been done

by Government of Maharashtra pursuant to "Part XIII – Reorganization of Board" read with section 131 of The Electricity Act 2003. MSEDCL has been incorporated on 31.5.2005 with the Registrar of Companies, Maharashtra, Mumbai and has obtained Certificate of Commencement of Business on 15<sup>th</sup> Sep 2005. MSEDCL is a Distribution Licensee under the provisions of the Electricity Act, 2003 (EA, 2003) having license to supply electricity in the State of Maharashtra except some parts of city of Mumbai.

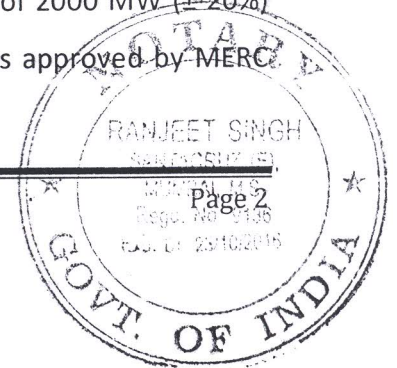
1.2. MSEDCL is a Company constituted under the provisions of Government of Maharashtra, General Resolution No. PLA-1003/C.R.8588/Energy-5 dated 25<sup>th</sup> January 2005 and is duly registered with the Registrar of Companies, Mumbai on 31<sup>st</sup> May 2005.

1.3. MSEDCL is functioning in accordance with the provisions envisaged in the Electricity Act, 2003 and is engaged, within the framework of the Electricity Act, 2003, in the business of Distribution of Electricity to its consumers situated over the entire State of Maharashtra, except some parts of Mumbai City .

## 2. Petitioner's Submission

2.1. In the year 2007, MSEDCL initiated Case 1 Stage 1 bidding process for procurement of 2000 MW power. However, Case 1 Bidding documents were not published by MoP at that time. Hence, as per modified Case 2 documents of the Ministry of Power, Government of India, Case 1 Bidding documents were prepared with some modifications and the same are approved by the Hon'ble Commission vide order dated 24<sup>th</sup> January 2008 in Case No. 38 of 2007.

2.2. Based on the above mentioned modified documents, duly approved by the Hon'ble Commission, MSEDCL initiated bidding process for power purchase of 2000 MW ( $\pm 20\%$ ) under case 1 stage 1. The bid document containing RFP and PPA as approved by MERC



were used and advertised accordingly. The process commenced in the year 2006 with the issue of the Request for Qualification (RFQ) documents, and the evaluation of financial proposals was concluded in the year 2008.

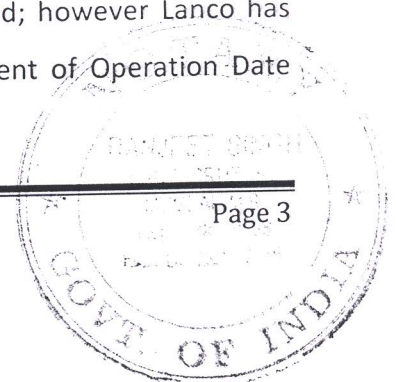
2.3. Consequent upon opening of bids and evaluation thereof, a High Power Committee, involving the Government of Maharashtra (GoM) was formed to negotiate the tariff with the three successful bidders namely, APML, Lanco Mahanadi Power Ltd. and JSW Energy Ltd. Based on the report of negotiating committee and order of GoM, Power Purchase Agreements (PPA) were signed with JSW and APML and Lanco for quantum of 1320 MW, 300 MW and 680 MW respectively. The details of the PPAs signed are as follows:

| Sr. No. | Name of the bidder | PPA quantum (MW) | PPA date                  | Levelised tariff | Units specified in PPA | Unit configuration |
|---------|--------------------|------------------|---------------------------|------------------|------------------------|--------------------|
| 1.      | APML               | 1320             | 8 <sup>th</sup> Sep 2008  | 2.64             | Unit 2 & 3             | 2*660 MW           |
| 2.      | JSW Energy Ltd     | 300              | 23 <sup>rd</sup> Feb 2010 | 2.71             | Unit 1                 | 300 MW             |
| 3.      | Lanco Vidarbha     | 680              | 25 <sup>th</sup> Sep 2008 | 2.71             | Unit 1 & 2             | 2*340 MW           |

2.4. The PPAs were signed exactly as per the Bidding documents published, made available to public and as approved by Commission, no deviation & no subsequent changes were made in the Tender documents.

2.5. The Hon'ble Commission has adopted the Tariff under Section 63 of the Electricity Act 2003, vide order dated 27<sup>th</sup> November 2009 (Case No. 39 of 2009) and 19<sup>th</sup> August 2013 (Case No. 24 of 2013) and are enclosed with this petition as Annexure 1.

2.6. The supply from APML and JSW Energy Ltd has been commenced; however Lanco has failed to commission the project as per Scheduled Commencement of Operation Date (SCOD).



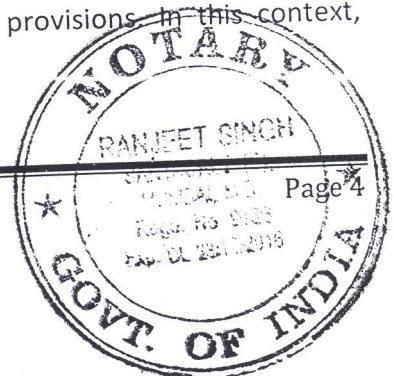
2.7. As per the PPA provisions, the contracted capacity is considered as 1320 MW and 300 MW for APML and JSW respectively and capacity charges are paid accordingly from CoD.

2.8. It is resubmitted that due to non-availability of Case 1 bidding Documents from MoP, the necessary modification were undertaken in available case 2 documents and Case1 bidding documents were prepared and submitted for Hon'ble Commission's approval. The revised bid documents were in compliance with the Competitive Bidding Guidelines issued by the Ministry of Power (MoP) and the commercial principles enumerated in Case 2 documents were followed, except those that were specific to case 1 bidding. The Standard Bidding Documents with the required modification were approved by Hon'ble Commission vide order dt. 24<sup>th</sup> Jan 2008 in case no. 38 of 2007.

2.9. MSEDCL has entered into the PPA with Respondents, which is approved by the Commission. However, some provisions within the PPA, which were in line with then available Case 2 Documents and adopted in the Case 1 PPA results into contradiction and MSEDCL's action as per PPA provision and CAG Audit observation thereof are highlighted in the following Paras. MSEDCL seeks clarification and revision from the Hon'ble Commission U/s. 86 (1) (b), (f) of the ACT and Regulation 92, 93, 94 & 96 of MERC (CONDUCT OF BUSINESS) REGULATIONS 2004.

### 3. Provisions of PPA

3.1. As per RfP document, contracted quantum is unit based, hence the supply of power shall be from specific unit specified in the bids by the bidder. It is submitted that the basic Gross rated Capacity of the respective power units were considered for determining the Contracted Capacity. However, within the provisions of the PPA, an ambiguity has been raised in relation to the understanding of the term "contracted capacity", "Installed Capacity" and the billing provisions considering the above provisions. In this context, some of the conditions of PPA are reproduced as below-



3.2. Contracted Capacity:

3.2.1. As per the PPA, Contracted capacity is rated as net capacity at the interconnection point, the relevant definition under Article 1 of the respective PPAs is extracted below:

**As per PPA with APML dated 8<sup>th</sup> September 2008-**

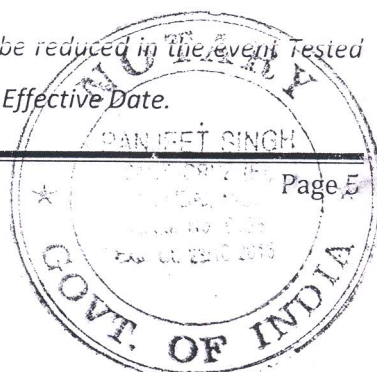
*“Contracted Capacity”- “Means (i) for the second unit 660MW and; (ii) for the third Unit 660MW, rated net capacity at the interconnection point offered to and accepted the procurer, and in relation to the power Station as a whole means 1320MW rated net capacity at the Interconnection Point offered to and accepted by the procurer, or such rated capacities as may be determined in accordance with Article 6.3.4 or Article 8.2 of this Agreement (i.e. derating capacity), where the rated capacity offered to and accepted by the procurer could be the entire rated net capacity of the unit or a portion thereof;”*

**As per PPA with JSW dated 23<sup>rd</sup> February 2010 -**

*“Contracted Capacity” - “Means (i) for the first unit 300MW rated net capacity at the interconnection point offered to and accepted the procurer, and in relation to the power Station as a whole means 300MW rated net capacity at the Interconnection Point offered to and accepted by the procurer, or such rated capacities as may be determined in accordance with Article 6.3.4 or Article 8.2 of this Agreement, where the rated capacity offered to and accepted by the procurer could be the entire rated net capacity of the unit or a portion thereof;*

*6.3.4 if a unit's Tested Capacity after the most recent Performance Test mentioned in Article 6.3.3 has been conducted, is less than its Contracted Capacity as existing on the Effective Date, the Unit shall be de-rated with the following consequences in each case with effect from the date of completion of such most recent test :*

- 1) The Unit's Contracted Capacity shall be reduced to its Tested Capacity at the most recent Performance Test.*
- 2) The quoted Non Escalable Capacity Charge (in Rs./kWh) shall be reduced in the event Tested Capacity is less than 95% of its Contracted Capacity as existing on Effective Date.*





3) The Seller shall not be permitted to declare the Available Capacity of the Unit at a level greater than its Tested Capacity.

4) The Availability Factor of the derated Unit shall be calculated by reference to the reduced Contracted Capacity.

5) The Capital Cost & each element of the Capital Structure Schedule shall be reduced in proportion.

### 3.3. Incentive payable

3.3.1. The Capacity Charges are payable upto 80% (normative availability) of the contracted capacity as per the PPA and incentive is payable above that. The relevant clauses as per the respective PPAs are as extracted below:

**As per PPA with APML dated 8<sup>th</sup> September 2008-**

**“Schedule 6: Tariff**

#### **1.2.4 Contract Year Energy Incentive Payment**

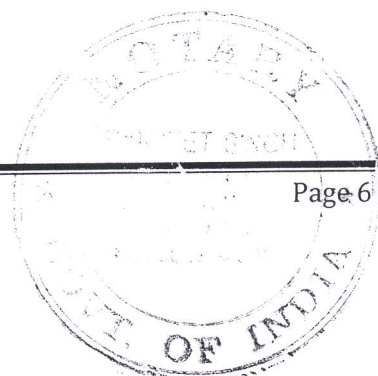
*If and to the extent the Availability in a Contract Year exceeds eighty percent (80%), an incentive at the rate of 40% of the Quoted Non Escalable Capacity Charges (in Rs. /kWh) for such contracted Year mentioned in Schedule 10 subject to a maximum of 25 paise/kwh, shall be allowed on the energy (in kwh) corresponding to the availability in excess of eighty percent (80%)”*

**As per PPA with JSW dated 23<sup>rd</sup> February 2010 -**

**“Schedule 6: Tariff**

#### **1.2.4 Contract Year Energy Incentive Payment**

*If and to the extent the Availability in a Contract Year exceeds eighty percent (80%), an incentive at the rate of 40% of the Quoted Non Escalable Capacity Charges (in Rs. /kWh) for such contracted Year mentioned in Schedule 10 subject to a maximum of 25 paise/kwh, shall be allowed on the energy (in kwh) corresponding to the availability in excess of eighty percent (80%)”*



3.4. Unit's Auxiliary load requirements (for both PPAs)

3.4.1. The Article 4.4 provides that the Seller shall supply power to the extent of contracted capacity to MSEDCL. However, Seller is allowed to use the Unit's auxiliary load from the contracted capacity which has resulted into ambiguity on the contracted capacity to be supplied to MSEDCL. The Article 4.4. states as follows:

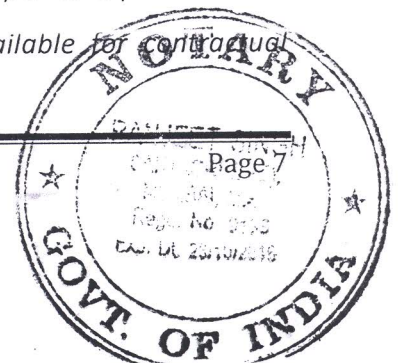
*"The Seller shall not itself use any of the electricity generated by the unit, to the extent of its contracted capacity during the term of this Agreement, except for the purpose of meeting the Unit's auxiliary load requirements, as per the norms laid down by the MERC, load requirements of the captive coal mine as per applicable Law (if applicable) and housing colony for the staff."*

4. Observation of the Government Auditors

4.1. MSEDCL further submits that it being a government company, it is subject to audit from time to time by Government auditors. Government Auditors have conducted the Performance Audit of PPAs signed by MSEDCL with Independent Power Producers (IPPs). In such an Audit, the Government Auditors have raised audit observation on the Contracted capacity under Case 1 stage 1; the same is as follows:

*"In the first two long term PPAs executed (September 2008 and February 2010) with Adani Power Maharashtra Limited (APML) for Units 2 & 3 and JSW Energy (Ratnagiri) Limited (JSWERL) for Unit 1, gross rated capacity of the respective power plants were considered for determining the contracted capacity. Whereas, in the other eight long term PPAs, the contracted capacity was determined on the basis of the net rated capacity of the Units after reckoning their auxiliary consumption. Since the quantum of power generated but consumed within the Unit was not available for sale, declaration of contracted capacity by considering their gross capacity in the first two PPAs was not found to be appropriate.*

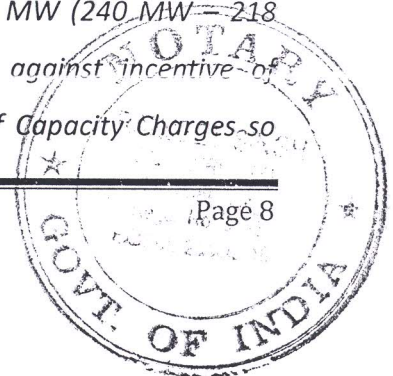
*After reckoning the normative auxiliary consumption of nine per cent prescribed in the Tariff Regulations, net rated capacity of the units available for contractual*



obligation worked out to 273 MW in respect of unit 1 of JSWERL and to 600.6 MW each in respect of Unit 2 and 3 of APML as against 300 MW and 660 MW each considered in the respective PPAs as contracted capacity at delivery point. We observed that declaration of contracted capacity on the gross rated capacity of the plants without reckoning their auxiliary consumption had resulted in excess payment of capacity charges, which, as per the contractual terms, was payable only up to 85 and 80 per cent of the contracted capacity respectively, being the normative availability. For the quantum of power supplied beyond the normative availability, the supplier was entitled to receive incentive at a lower rate in place of the capacity charges.

The excess amount of capacity charges so paid to JSWERL for the Unit 1 power supplied between September 2010 and 31 March 2013 worked out to Rs.31.12 crore. In respect of APML, the supplies commenced only in March and June 2013 from Unit 2 and Unit 3 respectively and hence the excess payment could not be ascertained. Unless the contractual terms as to the contracted capacity were amended to reflect the net rated capacity of the respective plants, such excess payment towards the capacity charges could not be avoided in future."

"In case of JSW, the Contracted Capacity is 300 MW and thus Normative Availability is 240 MW (80%). At present, Capacity Charges as quoted is being paid for actual availability up to 240 MW and thereafter incentive at Rs.0.25/ kWh. Considering Aux. consumption the net capacity of unit will be 273 MW. Thus at any point of time JSW can supply power maximum up to 273MW only out of scheduled quantity of 300MW. Had the PPA been executed for Net Rated Capacity, Contracted Capacity would be 273 MW (9% Normative Auxiliary Consumption) and Normative Availability (80%) would be 218 MW and thus incentive would have been applicable after 218 MW as against presently applicable after 240 MW. Thus, for this 22 MW (240 MW - 218 MW) capacity charge @ Rs.1.059 /unit in being paid as against incentive of Rs.0.25/kwh. According to Govt. Audit, the excess amount of Capacity Charges so



*paid to JSW for the Unit 1 power supplied between September 2010 and 31 March 2013 worked out to Rs.31.12 Crore.*

*The similar impact is seen in case of Adani Power Maharashtra Ltd. also."*

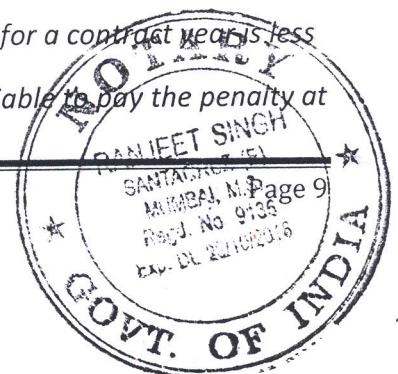
(Underline provided)

- 4.2. The observation of the Government Auditor is enclosed as Annexure 2 of this Petition.
- 4.3. The Government Auditors are also of the view that unless the contractual terms as to the Contracted Capacity were amended to reflect the Net rated Capacity of the respective plants, such excess payment towards the incremental incentive payment will continue.
- 4.4. MSEDCL has replied to the Government Auditor that the PPAs are signed exactly as per Bidding Documents published & made available to public. No deviation & no subsequent changes are made in the Bidding Documents. The bid document containing RfP and PPA as published by MoP and approved by MERC have been used and advertised accordingly. The reply to the auditor is reproduced below:

*At that time Case 1 bidding documents were not published by MoP, however the Case 2 document was published. Based on case 2 documents, the case 1 documents with some modifications were prepared and submitted to MERC for approval. Accordingly, bidding process was initiated under case 1 stage 1 for 2000 MW (-20% to +30%) as per the guidelines of MoP and as approved by MERC. Accordingly, PPAs have been signed with JSW & Adani for the approved quantum.*

*The Govt. Audit Team has stated out that, the declaration of contracted capacity on the gross rated capacity of the plants without reckoning their auxiliary consumption had resulted in excess payment of capacity charges, which, as per the contractual terms, was payable only up to 80 per cent of the contracted capacity respectively, being the normative availability and above that incentive is payable.*

*In this context it is to state that, as per PPA, in case availability for a contract year is less than 75%, the seller is liable to pay penalty. Thus, the seller is liable to pay the penalty at*



the earlier stage i.e. for the quantum supplied less than 225 MW in case of JSW & 990 MW in case of APML. Accordingly, MSEDCL has deducted penalty from JSW for the period 2010-11 & 2011-12.

However, as pointed out by the Auditor regarding fixation of contracted capacity, the matter will be referred to MERC as the Bid documents & PPA have been approved by MERC. As per decision of the MERC, appropriate action will be initiated.

4.5. However, in the report of CAG Audit 2012-13, the Government Auditors have re iterated the same issue & raised the observation as –

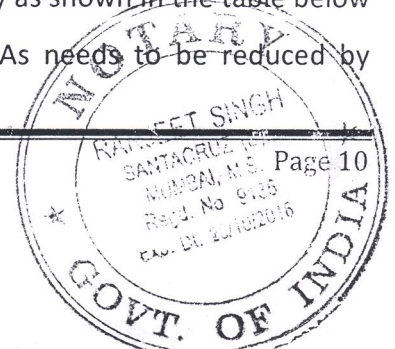
*“The Management replied that they would be approaching MERC for clarification regarding fixation of contracted capacity as the bid documents and PPA were approved by MERC and will take suitable action as per the directions of the MERC. The reply was not acceptable since contracted capacity was the net capacity at delivery point as per the bid document.”*

## 5. Impact on Tariff and billing

5.1. Considering the above provisions of the PPA, it is interpreted that the contracted capacity of 1320 MW for APML and 300 MW for JSW is at interconnection point but the same capacity is the installed capacity of the Unit also.

5.2. As per the above provisions 4.4, the seller is allowed to meet auxiliary consumption from the contracted capacity. In view of the audit observation that the declaration of contracted capacity by considering their gross capacity was not found to be appropriate and the net contracted capacity at interconnection point needs to be reduced to the extent of auxiliary consumption.

5.3. In view of the above, MSEDCL has calculated the Net Capacity as shown in the table below and accordingly the Contracted Capacity signed in the PPAs needs to be reduced by

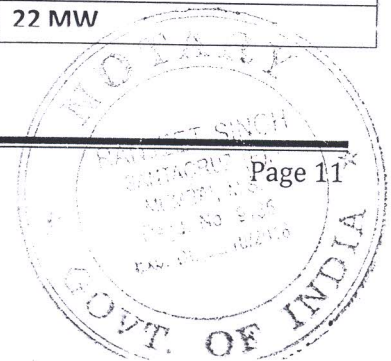


auxiliary consumption.

| Sr. No. | Name         | PPA (MW)    | Gross capacity (MW) | Auxiliary consumption as per MERC MYT Regulations 2011 | Net Capacity (MW) |
|---------|--------------|-------------|---------------------|--|-------------------|
| 1.      | APML         | 1320        | 660 MW X 2          | 6.5% for 660 MWX 2 = 86 MW                             | 1234              |
| 2.      | JSW          | 300         | 300 MW              | 9% for 300 MW = 27 MW                                  | 273               |
| 3.      | <b>Total</b> | <b>1620</b> | <b>1620</b>         | <b>113 MW</b>  | <b>1507</b>       |

- 5.4. Consideration of Gross Rated Capacity of the respective power plants as the Contracted Capacity is resulting into an excess payment of Capacity Charges. The Capacity Charges are payable upto 80% (normative availability) of the contracted capacity as per the PPA and incentive is payable above that.
- 5.5. Thus the threshold for payment of incentive is being reached at 80% of Gross rated Capacity rather than at Net rated Capacity (after auxiliary consumption). Also, the declaration of contracted capacity on the gross rated capacity of the plants, without reckoning their auxiliary consumption will have impact on capacity charges as well as incentive.
- 5.6. MSEDCL submits that due to consideration of 'Contracted Capacity' as Gross rated Capacity rather than Net rated Capacity, the threshold limit of applicability of incentive charges and capacity charges changes which is outlined in the following table:

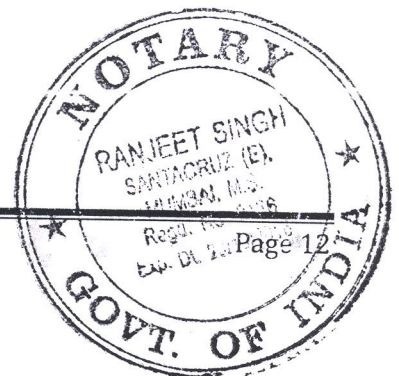
|  | Contracted Capacity | Incentive and capacity charges threshold |
|--|---------------------|--|
| <b>For APML</b>                            |                     |  |
| Gross Rated Capacity = Contracted Capacity | 1320 MW             | 1056 MW (80% of 1320)                    |
| Net Rated Capacity = Contracted Capacity   | 1234 MW             | 987 MW (80% of 1234)                     |
| <b>Difference</b>                          | <b>86 MW</b>        | <b>69 MW</b>                             |
| <b>For JSW</b>                             |                     |  |
| Gross Rated Capacity = Contracted Capacity | 300 MW              | 240 MW (80% of 300)                      |
| Net Rated Capacity = Contracted Capacity   | 273 MW              | 218MW (80% of 273)                       |
| <b>Difference</b>                          | <b>27 MW</b>        | <b>22 MW</b>                             |



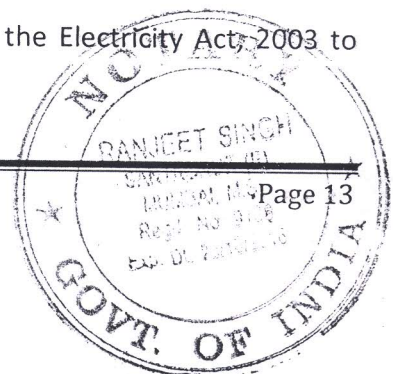
5.7. MSEDCL is paying capacity charges as per contracted capacity mentioned in PPA, however, considering auxiliary consumption the capacity charges can be higher, as stated by CAG and hence needs to be corrected. If the same is not corrected, MSEDCL and the consumers may continue to pay this erroneous incentive / capacity charges perpetually.

## 6. Submission of MSEDCL

- 6.1. MSEDCL has entered into the PPA with the Respondents for Gross Rated Capacity of the respective power plants and the same was considered for determining the Contracted Capacity, as per modified Case 2 Bidding documents.
- 6.2. In the bid JSW had offered one unit with the Rated capacity 300 MW and contracted capacity of 300 MW. Accordingly, PPA is executed for 300 MW for unit 1 from Ratnagiri plant. Similarly, APML had offered unit 1, 2 and 3 with rated capacity of 110, 660 and 660 MW respectively and contracted capacity of 110, 660 and 660 MW respectively with three separate price bids. As per the bid and subsequent negotiation with APML, PPA is signed for 1320 MW for unit 2 and 3 from Tiroda plant.
- 6.3. As per clause 6.3 of PPA, Independent Engineer has certified that the tested capacity of the unit of JSW and APML is not less than 95% of its contracted capacity through a trial run of 72 hrs.
- 6.4. As per PPA, the net capacity means unitwise rated net capacity at the interconnection point offered to and accepted by procurer. Since the installed capacities in concerned PPA are equal to the Net Capacity, considering the auxiliary consumption the same is not possible.



- 6.5. It is submitted that the PPAs under case 1 stage 1 are executed for Rated (Gross) capacity and PPAs under case 1 stage 2 are executed for Net capacity (after deducting auxiliary consumption) which has resulted into ambiguity within the PPA provisions.
- 6.6. The contradictory provisions in the PPA whereby the definition states the contracted net capacity at the interconnection point and clause 4.4.4 stating that the seller is allowed to meet auxiliary consumption from contracted capacity results in more confusion in relation to the calculation of the tariff and billing matters and therefore, this anomaly is required to be resolved.
- 6.7. Further, this anomaly leading to excess payment of Capacity Charges, as pointed out by Government Auditors whereby the capacity charges for the month are paid on net energy but the actual availability percentage is calculated on contracted capacity i.e. Gross Capacity. Thus, the Normative Availability units are more when calculated on Gross capacity than that of Net Capacity. The fixed charges recovery stops at 80% actual availability and above that incentive is calculated at later stage.
- 6.8. Therefore, Contracted capacity needs to be reduced to the extent of auxiliary consumption and accordingly clause 4.4. of PPA needs to be modified as under –  
*“The Seller shall not itself use any of the electricity generated by the unit, to the extent of its contracted capacity during the term of this Agreement.”*
- 6.9. MSEDCL has laid before the Hon’ble Commission the bare facts about the case and thus MSEDCL prays to the Hon’ble Commission to remove the difficulties being faced by MSEDCL. MSEDCL submits that the Hon’ble Commission has enough jurisdiction and it is within the vested powers of the Hon’ble Commission under the Electricity Act, 2003 to remove the difficulties faced by MSEDCL.





6.10. Hon'ble Commission is empowered to issue the Orders in the matter. Following provisions of the Electricity Act 2003 and MERC (Conduct of Business) Regulations 2004 empower the Hon'ble Commission.

6.11. As per the Section 86 (1) (b) and (f) of the Electricity Act 2003, Hon'ble Commission can address the issues as reproduced below:

*(b) regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State;*

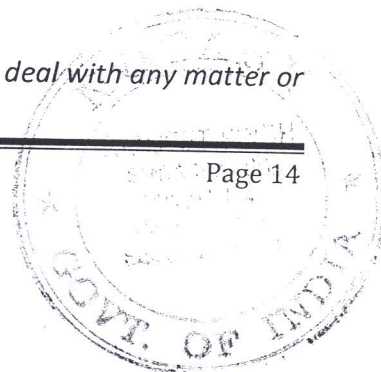
*(f) adjudicate upon the disputes between the licensees, and generating companies and to refer any dispute for arbitration;*

6.12. Regulations 92, 93 and 94 of the MERC (Conduct of Business) Regulations 2004 provide for saving of inherent powers of the Hon'ble Commission. The relevant Regulations are reproduced below:

*92. Nothing in these Regulations shall be deemed to limit or otherwise affect the inherent power of the Commission to make such orders as may be necessary for meeting the ends of justice or to prevent the abuse of the process of the Commission.*

*93. Nothing in these Regulations shall bar the Commission from adopting in conformity with the provisions of the Act, a procedure, which is at variance with any of the provisions of these Regulations including summary procedures, if the Commission, in view of the special circumstance of a matter or class of matters and for reasons to be recorded in writing, deems it necessary or expedient for so dealing with such a matter or class of matters.*

*94. Nothing in these Regulations shall bar the Commission to deal with any matter or*

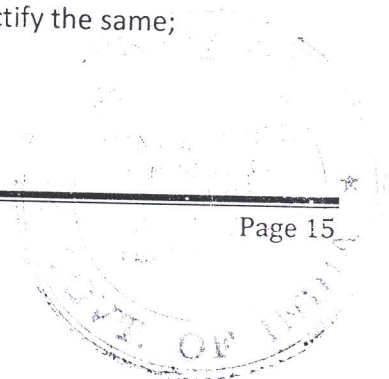


*exercise any power under the Act for which no regulations have been framed, and the Commission may deal with such matters, powers and functions in a manner it thinks fit.*

6.13. Thus, MSEDCL humbly submits that Hon'ble Commission is empowered with inherent powers to make Orders as may be necessary for meeting the ends of justice.

6.14. In view of the above the Petitioner most respectfully prays that the Hon'ble Commission may:

- a) To admit the Petition as per provisions of the Section 86 (1) (b) (f) of the Electricity Act 2003 and Regulation 92,93,94 & 96 of MERC (Conduct of Business) Regulations 2004;
- b) To allow the Petitioner to modify the PPA dated 8<sup>th</sup> Sep 2008 with APML and 23<sup>rd</sup> Feb 2010 with JSW Energy Ltd.
- c) To allow Petitioner to amend and reduce Contracted Capacity in the PPA of APML (1320 MW) & JSW (300 MW) to Net Rated capacity (i.e. Installed Capacity – Auxiliary consumption as per applicable MERC norms) as 1234 MW i.e. 1320-86 MW and as 273 MW i.e. 300-27 MW respectively.
- d) To modify the clause 4.4.4 as per definition of Contracted Capacity;
- e) To allow MSEDCL to make the reduction in Contracted Capacity of APML (1320 MW) & JSW (300 MW) with retrospective effect
- f) To allow the Petitioner to calculate the capacity charges as per revised Contracted Capacity with retrospective effect and adjust the differential amount in future bills;
- g) To grant any other relief as the Hon'ble Commission may deem fit;
- h) To pass any other order as the Hon'ble Commission may deem fit and appropriate under the circumstances of the case and in the interest of justice;
- i) To condone any error/omission and to give opportunity to rectify the same;

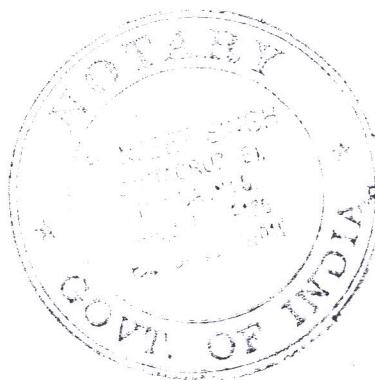


- j) To permit the Petitioner to make further submissions, addition and alteration to this Petition as may be necessary from time to time.

*Devaiah*

Chief Engineer (Power Purchase)

MSEDCL



BEFORE ME

*Ranjeet Singh*

RANJEET SINGH  
M.Sc.L.B

NOTARY  
MAHARASHTRA  
GOVT. OF INDIA

27 AUG 2015

