



ASSAM ELECTRICITY REGULATORY COMMISSION

FILE NO. AERC. 419/2016/Pt-IV

Petition No.:3/2016&5/2016

ORDER SHEET

31.12.2016

Before the Assam Electricity Regulatory Commission
APDCL Campus, Dwarandhar,
G. S. Road, Sixth Mile, Guwahati – 781 022

M/s Eastern India Powertech Limited (EIPL)	--- Petitioner
Government of Assam represented by Chief Secretary	----Respondent-1
Assam Power Distribution Company Ltd. (APDCL)	----Respondent-2

In the matter of

Computation of Amount due payment by
APDCL to EIPL

CORAM

Shri Naba Kr. Das, Chairperson
Shri Dipak Chakravarty, Member
Shri Subhash Ch. Das, Member

ORDER

1. Introduction

1.1. The Hon'ble Appellate Tribunal for Electricity (APTEL) vide Judgment dated 12.08.2014 in Appeal Nos. 76 of 2013 and 82 of 2013 filed by EIPL and APDCL against the Tariff Order dated 20.10.2011 for FY 2008-09 for EIPL's Adamtilla and Banskandi power plants, directed the Assam Electricity Regulatory Commission ('the Commission') to determine the tariff from FY 2009-10 to FY 2014-15. The relevant extract of the said Judgment is reproduced below:

"22. We feel that determination of tariff from FY 2009-10 onwards has to be carried out by the State Commission according to Section 62 and 64 of the Act, after obtaining the objections and suggestions of the public on the proposal of the generating company. In fact, there has been inordinate delay in determination of tariff for FY 2008-09. The tariff for FY 2008-09 was only determined on 20.10.2011 i.e. after 2½ years of commencement of FY

2008-09. Further, the tariff for FY 2009-10 onwards has not been determined by the State Commission even though the FY 2013-14 is already over and the current FY is 2014-15. Till now only provisional tariff is being paid by Assam Discom, which resulted in the financial crunch for EIPL. We, therefore, direct the State Commission to determine the tariff for EIPL's projects for the period 2009-10 to 2014-15 at the earliest."
[Emphasis Added]

- 1.2. In compliance to the above direction of Hon'ble APTEL, the Commission vide Orders issued on 30.12.2016, has determined the tariff for EIPL's Adamtilla and Banskandi plants for the period 2009-10 to 2014-15.
- 1.3. Hon'ble APTEL in its Judgment dated 12.08.2014 also directed that in the interim period, APDCL (erstwhile Assam State Electricity Board) will make payment for the electricity supplied by EIPL from FY 2009-10 onwards at the tariff determined by the Commission for FY 2008-09 in the main Tariff Order dated 20.10.2011, till the tariff for FY 2009-10 onwards is decided by the Commission.
- 1.4. In view of the above direction of Hon'ble APTEL, EIPL raised two invoices of amount Rs. 1825.42 lakh and Rs. 1287.48 lakh on APDCL. Aggrieved by non-payment of the claims, EIPL filed Execution Petition No. 2 of 2015 before the Hon'ble APTEL for execution of Judgment dated 12.08.2014. Hon'ble APTEL vide Order dated 23.09.2015 directed both the Parties to calculate the principal amount, which remained outstanding in FY 2008-09, and thereafter calculate the interest. Accordingly, both the Parties submitted their calculations, based on which, the Hon'ble APTEL observed huge variation. As an interim measure, vide its Order dated 18.11.2015, the Hon'ble APTEL directed APDCL to deposit an amount of Rs. 9 Crore and accordingly same was deposited on 18.03.2016. Further, Hon'ble APTEL also directed both the Parties to settle and arrive at the decretal amount, but the Parties failed to reach any consensus.
- 1.5. In light of above, Hon'ble APTEL vide its Judgment dated 18.05.2016, observed that there is a dispute on the payment due for the period beyond FY 2008-09 to FY 2013-14 and directed the Commission to issue a notice to both EIPL and APDCL to furnish the details of power injected into the grid of APDCL from the date of commissioning to shutting down of the generating units, and compute the actual amount due to EIPL after adjusting the payments made by APDCL.
- 1.6. Accordingly, the Commission initiated the proceedings (under Petition Nos. 3/2016 and 5/2016) for getting the details of power injected into the grid of APDCL from commissioning to shutting down of the generating units and for computing the amount due to EIPL after adjusting the payments already made by APDCL. After following the due regulatory process and giving an opportunity to EIPL and APDCL, the Commission is issuing this Order in

compliance to the direction given by Hon'ble APTEL vide its Order dated 18.05.2016.

2. Background and Summary of Proceedings

2.1. A Power Purchase Agreement (PPA) was executed between Assam State Electricity Board (ASEB) (later Assam Power Distribution Company Ltd (APDCL)) and DLF Power Company limited, New Delhi (later renamed as Eastern India Powertech Ltd (EIPL)) on February 9, 1995 to develop, finance, construct, own and operate the plants and sell the power to ASEB. Consequent to this, M/s DLF set up 9 MW and 15.5 MW Combined Cycle Gas Turbine (CCGT) plants in 1997-98 at Adamtilla and Banskandi, respectively.

Duration of Agreement: As per the terms of PPA, the duration of the PPA is defined as below:

“The duration of this PPA shall be for 33 years from the date of declaration by the parties that the agreement has become effective or thirty (30) years from the date of initial synchronization of Unit, whichever is later. Extension/s shall be subject to mutual agreement.”

COD of the Plants:

The plants achieved Commercial Operation on the following dates:

Table.1: Installed Capacity and COD

Units	Capacity	COD
Adamtilla	9 MW	4.07.1997
Banskandi	15.5 MW	5.09.1997

Addition of 33 years to effective date of PPA is February 8, 2028, and addition of 30 years to the COD works out to September 4, 2027. Thus, the PPA shall remain effective till February 8, 2028.

Gas Supply Agreement (GSA): EIPL signed GSA with Assam Gas Company Limited (AGCL) for supply of gas to both the generating stations on 19.10.1995. As per the terms of GSA, the Agreement shall remain valid for 15 years from the date of signing of GSA, i.e., the expiry date of GSA is 18.10.2010. From the GSA dated 19.10.1995, it is observed that APDCL or Govt. of Assam was not a party to the GSA.

2.2. APDCL (erstwhile ASEB) was purchasing power from these two power plants of M/s EIPL at a tariff based on terms and provisions of the PPA signed between EIPL and APDCL. After formation of the Commission in the year 2001, the power purchase quantum and cost from the EIPL plants were first approved by the Commission in the total power purchase cost of ASEB allowed in the Tariff Order dated 26.03.2003 for FY 2002-03. Subsequent to the first Tariff Order dated 26.03.2003 of the

Commission (i.e., the FY 2002-03 Tariff Order), the power purchase quantum and cost from the EIPL plants were approved as part of the total volume and cost of power purchase in respective Tariff Orders issued by the Commission till FY2007-08, based on the power purchase estimate submitted by APDCL.

2.3. APDCL (erstwhile ASEB) had filed Petition No. 19/2005 before the Commission, seeking fixation of tariff for EIPL plants as per the PPA in view of change in law under Section 86 (1)(a) of the Electricity Act, 2003, under which all powers of tariff fixation got vested with the Commission. During the proceedings on the above Petition, EIPL informed that it has filed Petition No. 136/2005 before the Hon'ble Delhi High Court under the Arbitration and Conciliation Act, 1996, along with a separate Petition to stay the proceedings before the Commission.

In the absence of any stay order from the Delhi High Court and in the interest of justice, the Commission disposed of the Petition vide its Order dated 20.05.2006 giving liberty to the parties to approach the Commission in case of grievances and directing ASEB to file all details along with the ARR Petition for approval of annual tariff.

2.4. Thereafter, on 27.02.2007, ASEB (APDCL) filed a Petition for determination of Tariff for EIPL (earlier DLF) plants for FY 2005-06 and FY 2006-07. However, as in the Tariff Order for FY 2005-06 (issued on 27.05.2005) and FY 2006-07 (issued on 28.07.2006), the Power Purchase Cost for EIPL plants had already been decided based on the submission of ASEB and as no review/appeal in prescribed manner had been filed by any Party against those Tariff Orders, the Commission dismissed the Petition vide its Order dated 19.03.2007.

2.5. The Delhi High Court, vide its Judgment dated 21.05.2008 directed EIPL to approach the appropriate Commission and held as follows:

“though there may be a provision for arbitration in the agreement between a power generating company and licensee but after the enactment of Electricity Act 2003, the arbitration cannot be resorted to and all disputes between the parties have to be referred to the State Commission / Central Commission (as the case may be) and such disputes are to be adjudicated by the State Commission / Central Commission itself or the person or persons to whom it is referred by the State Commission / Central Commission for arbitration.”

2.6. Thereafter, EIPL filed a Special Leave Petition (SLP) before the Hon'ble Supreme Court against the said Judgment of the Hon'ble Delhi High Court, however, the same was dismissed by Hon'ble Supreme Court vide Judgment dated 21.11.2008, as no ground was made out for interference by the Hon'ble Supreme Court under Article 136 of the Constitution.

2.7. In December, 2008, EIPL filed the Petition for determination of tariff for FY 2008-09 before the Commission at the request of ASEB. The ASEB requested the Commission to determine the tariff for EIPL plants as per the provisions of PPA read

with Govt. of India notification dated 30.03.1992 as well as the Tariff Regulations of AERC/CERC. The Commission approved the provisional tariff vide its Order dated 12.05.2009 comprising fixed and variable charges for Adamtilla and Banskandi power plants for FY 2008-09 in the interest of continuity of operation of the Adamtilla and Banskandi power plants.

2.8. EIPL, vide Appeal No. 136 of 2009, challenged the provisional Tariff Order dated 12.05.2009 before the Hon'ble APTEL. The Hon'ble APTEL, vide its Order dated 20.01.2011, remanded the matter back to the Commission for final determination of tariff for FY 2008-09. The Commission, vide its Order dated 20.10.2011, determined the final tariff for the two power plants of EIPL for FY 2008-09.

2.9. In the meanwhile, on 11.06.2010, EIPL filed a Petition before the Commission in the matter of Commercial Disputes and Non-Payment of contractually due payments by ASEB to EIPL (registered as Petition No. 4/2010). The same is being dealt separately by the Commission and is pending before the Commission for disposal.

2.10. Both APDCL (erstwhile ASEB) and EIPL filed Review Petitions before the Commission against the Tariff Order dated 20.10.2011. The Commission vide order dated 12.02.2013 disposed of Review Petitions by maintaining the same tariff as per the Tariff Order dated 20.10.2011 and additionally ruled that tariff (both fixed and variable components) in respect of Adamtilla and Banskandi shall also be applicable from FY 2009-10 onwards.

2.11. Both APDCL and EIPL filed cross Appeals before the Hon'ble APTEL on the Commission's Review Order dated 12.02.2013. The Hon'ble APTEL vide Judgment dated 12.08.2014, upheld the tariff determined for FY 2008-09 and directed the Commission to determine the tariff from FY 2009-10 to FY 2014-15. The Hon'ble APTEL further directed that for the period beyond FY 2009-10, APDCL has to make interim payment to EIPL at the rate approved for FY 2008-09 vide the Tariff Order dated 20.10.2011, till the time the Commission determines the Tariff from FY 2009-10 to FY 2014-15. The relevant extract of the said Order is reproduced below:

"26. In view of above, we direct that in the interim period the Distribution Licensee will make payment for the electricity supplied by the Generating company from 2009-10 onwards at the tariff determined by the State Commission for FY 2008-09 in the main tariff order dated 20.10.2011 till the tariff for the FY 2009-10 onwards is decided by the State Commission."

2.12. Thereafter, EIPL submitted two invoices to APDCL dated 04.09.2014 for the amount of arrears payable for FY 2008-09 along with interest @ 12.25% amounting to Rs. 1825.42 lakh payable up to July 2014, and for the amount of arrears payable for FY 2009-10 along with interest @ 13.49% amounting to Rs. 1287.48 lakh payable up to July 2014. Aggrieved by non-payment of the claims by APDCL, EIPL filed Execution Petition No. 2 of 2015 on 01.04.2015 before Hon'ble APTEL for execution of Judgment dated 12.08.2014.

2.13. The Commission, vide its letter dated 16.09.2015, directed EIPL to file its Tariff Petitions from FY 2009-10 upto the closure of the plants, as required under Hon'ble APTEL's Judgment dated 12.08.2014. In response, EIPL replied vide e-mail dated 14.10.2015 that in view of the APTEL Judgment dated 12.08.2014, it has raised invoices to APDCL for making payments as per the Tariff Order dated 20.10.2011, however, no response was received from APDCL. EIPL also requested the Commission to take up its pending Petitions under Section 11 (2) of the Act and Petition for adjudication of commercial disputes for the period up to 30.03.2008. In the e-mail, EIPL also submitted that no time frame for filing of Tariff Petition has been specified in the Hon'ble APTEL's Judgment dated 12.08.2014. EIPL further stated that in the interest of justice the Tariff Petitions for the years FY 2009-10 onwards may be preferred only after execution of EP.

The Commission, vide letter dated 07.11.2015, again directed EIPL to submit the Tariff Petitions at the earliest.

2.14. Hon'ble APTEL, vide its Order dated 18.11.2015, directed EIPL to submit the status of Tariff Petitions filed before the Commission for the period FY 2009-10 and onwards, within two weeks. The relevant extract of the said Order is reproduced below:

"The learned counsel for the Execution Petitioner is also directed to inform in writing whether the Execution Petitioner has filed any petition for determination of tariff since 2009-10 onwards before the State Commission so as to enable the State Commission to determine tariff after undergoing the procedure laid down in Electricity Act, 2003 for which two weeks' time is allowed."

Thereafter, on 01.12.2015, EIPL filed a combined Tariff Petition from FY 2009-10 to FY 2014-15 for both the plants, i.e., Adamtilla and Banskandi.

2.15. Hon'ble APTEL, vide its Order dated 18.11.2015 also directed APDCL to deposit an amount of Rs. 9 crore within 10 days, as an interim measure. The relevant extract of the said Judgment is reproduced below:

*"A letter from Commissioner and Secretary to the Government of Assam (Power), Power (Electrical) Department dated 12th June, 2015 addressed to the Managing Director, APDCL has been filed today by the learned counsel for the respondent nos. 1 & 2/Discoms. **We deem it proper to direct the respondent nos. 1 & 2 to deposit an amount of Rs. 9 crore within 10 days from today failing which we shall be constrained to proceed further as per the provisions of Order XXI CPC. We are to treat every entity at par whether it is a Government or non-Government body. This amount shall be subject to the adjustments subsequently.**" [Emphasis added]*

2.16. Thereafter, during the proceedings before the Hon'ble APTEL on 21.12.2015, APDCL deposited Cheque No. 496155 dated 16.12.2015 for Rs.9 Crore in favour of the Registrar, APTEL. As there was no official bank account in the name of

Registrar, APTEL, the aforesaid cheque was returned to APDCL with the direction to issue a fresh cheque of the same amount in favour of the Execution Petitioner, M/s Eastern India Powertech India within 10 days.

On 18.03.2016, the amount of Rs.9 Crore has been paid by APDCL to EIPL.

2.17. Hon'ble APTEL, vide its Order dated 18.05.2016, directed the Commission to issue a notice to both EIPL and APDCL to furnish the details of power injected from the date of commissioning to shutting down of the generating units into the grid of APDCL, compute the actual amount due to EIPL after adjusting the payments made by APDCL, and intimate the same to the Hon'ble APTEL within two months. The relevant extract of the said Order dated 18.05.2016 is reproduced below: -

“15. In view of the above, we direct Assam Electricity Regulatory Commission to issue a notice to the rival parties to furnish the details of power injected from the date of commissioning to shutting down of the generating units into the grid of Assam Distribution Company, compute the actual amount due to EIPL after adjusting the payments made by APDCL and intimate the same for execution of the Petition No. 2 of 2015, to this Tribunal within two months from today positively.” [Emphasis Added]

2.18. The Commission in compliance to Hon'ble APTEL's Judgment dated 18.05.2016, issued individual notices dated 04.06.2016 to both APDCL and EIPL for submission of full particulars and details of month-wise power injected for each plant and for each year from the date of commissioning till shutting down of the EIPL plants, corresponding rate of power, actual bill raised by EIPL, payments made thereof by APDCL, and amount due, on or before 20.06.2016.

2.19. APDCL, vide letter dated 17.06.2016, requested the Commission to extend the date of submission of the above-mentioned information to 30.06.2016, which was granted by the Commission vide its letter dated 21.06.2016.

2.20. The Commission received a letter from EIPL on 16.06.2016, vide which EIPL informed the Commission that it has filed Review Petition No. 11/2016 on 15.06.2016 against the Hon'ble APTEL's Judgment dated 18.05.2016, and requested the Commission to keep the exercise of seeking particulars as per Hon'ble APTEL's Judgment dated 18.05.2016 in abeyance till the Review Petition is heard and adjudicated by Hon'ble APTEL. The Commission, vide letter dated 23.06.2016, directed EIPL to submit its request in proper Petition format as per AERC (Conduct of Business) Regulations, 2004.

2.21. APDCL, vide letter dated 30.06.2016, submitted its partial reply to the Commission's Notice dated 04.06.2016 and requested the Commission to grant 10 more days to submit the remaining information. The Commission registered the reply submitted by APDCL on 30.06.2016 as **Petition No. 3/2016**. The Commission, vide letter dated 05.07.2016, granted additional time of 10 more days for submission of pending information by APDCL. APDCL, vide letter dated 12.07.2016, submitted the balance information in continuance to its letter dated 30.06.2016. The Commission

has considered the same under Petition No. 3/2016.

2.22. EIPL filed a Miscellaneous Petition on 15.07.2016, which the Commission registered as **Petition No. 4/2016**, requesting the Commission to keep in abeyance its direction vide letter dated 16.06.2016 seeking particulars as per Hon'ble APTEL's Judgment dated 18.05.2016, till the Review Petition is heard and adjudicated by Hon'ble APTEL.

2.23. Subsequently, EIPL submitted certain information/data on 18.07.2016 with regard to data required by the Commission for computation of amount due to EIPL after adjustment of payment already made by APDCL. The Commission registered the reply submitted by EIPL on 18.07.2016 as **Petition No. 5/2016**.

2.24. Hon'ble APTEL, vide its Order dated 20.07.2016 disposed of Review Petition No. 11 of 2016 filed by EIPL against the APTEL Judgment dated 18.05.2016. The Hon'ble APTEL also directed the Commission to compute the actual amount due to EIPL as directed in its Judgment dated 18.05.2016 passed in EP No. 2 of 2015 Hon'ble APTEL in the said Judgment allowed two months' period to the Commission to complete the exercise.

2.25. Thereafter, vide Notice dated 26.07.2016, the Commission fixed a Hearing on Petition No 3/2016, 4/2016 & 5/2016 on 05.08.2016.

2.26. The Commission, vide letter dated 26.07.2016, requested the Chief Secretary to GoA to submit his views on the above-mentioned Petitions. However, the Commission has not received any submission from GoA in this regard.

2.27. As scheduled, a Hearing was conducted on 05.08.2016. During the hearing, EIPL submitted that its Petition No. 4/2016 is not valid at this point of time and accordingly it will submit a withdrawal Petition. Upon hearing both the Parties, the Commission directed EIPL and APDCL as follows:

- i. EIPL and APDCL to submit their oral submissions made during the Hearing in written form on or before 17.08.2016.
- ii. EIPL to submit data as per the Commission's Notice dated 04.06.2016 on or before 17.08.2016.
- iii. EIPL to submit year-wise Tariff Petition for its plants from FY 2009-10 till closure of the plants on or before 24.08.2016.

In the Order dated 05.08.2016, the Commission fixed the next date of Hearing as 01.09.2016.

2.28. APDCL submitted its reply with regard to Petition No. 5/2016 on 17.08.2016. The submission of APDCL with regard to period of calculation of amount due is as follows:

- a. If the tariff for the entire period is not determined w.e.f. from the date of commissioning till the date of closure of the plants as per law and Regulations, the actual amount cannot be determined.
- b. The PPA was executed between APDCL and EIPL on 09.02.1995 for

establishment of two generating stations, namely Adamtilla and Banskandi, in the District of Cachar of Assam. As per the Agreement, the entire electricity generated from the two generating stations is to be received by APDCL (erstwhile ASEB) from the date of commercial operations of the generating units. The tariff would be determined in terms of PPA. The PPA was made under provisions of the Electricity (Supply) Act, 1948.

- c. The project was established through the MOU route and the applicable framework for the contract for power purchase was the Govt. of India Tariff Notification. The Govt of India Tariff Notification (hereafter called Gol notification) notified in exercise of power conferred by subsection (2) of section 42A of the Electricity (Supply) Act, 1948, stipulated the factors in accordance with which the tariff for sale of electricity by generating companies to the Board and to other persons shall be determined. The Gol notification was issued in March 1992 and was amended from time to time.
- d. The terms and conditions for determination of tariff for the generating stations situated in the State of Assam was notified by the Commission on 26.05.2006. Therefore, the tariff is to be determined from date of COD till 26.05.2006 as per Govt. notification.
- e. Prior to EA 2003, the Electricity Regulatory Commissions Act, 1998 (ERC Act, 1998) was enacted by the Central Government on 25.04.1998 (14 of 1998). The Commission was established under the ERC Act, 1998 in the month of August, 2001. Therefore, tariff was to be determined by the Commission under the provisions of the statute.
- f. EIPL has stated that they have submitted the Tariff Petition on 01.12.2015 before the Commission for the period from FY 2009-10 to FY 2014-15. However, APDCL has not received the copy of the same.
- g. Tariff determined under Clause (5) of Section 62 of the EA 2003 is expected tariff only, as the tariff is determined for future period. Therefore, unless the tariff is tried up, finality of the tariff cannot be achieved.
- h. Determination of tariff according to the provisions of the EA 2003 is required so that the excess amount can be refunded back to the consumer as per law.
- i. It is clear from Regulation 7 and 10 of the AERC Tariff Regulations, 2006 that the Tariff Petitions for the period from the date of COD of the generating stations till its closure is to be determined as per law and the actual amount is to be determined as directed by Hon'ble APTEL.
- j. EIPL has considered the carrying cost for the period from FY 2008-09 though the Hon'ble APTEL directed EIPL to raise the issue in the Tariff Petitions for the period from FY 2009-10 onwards. However, the Tariff Petitions are pending before the Commission for disposal. In this regard, it is to be noted that the Tariff Petitions were not filed by EIPL in time for the period from FY 2009-10 onwards as per Regulations. Therefore, the delay is attributable to EIPL only and EIPL is not entitled to any carrying costs. However, if any excess amount is recoverable from EIPL by

APDCL, the carrying cost shall be recoverable from EIPL.

- k. There is considerable amount to be recovered on account of energy received by EIPL from APDCL grid for their own use such as colony consumption, etc. Accumulated amount as on 31.10.2015 is about Rs. 2.31 Crore. Those amounts are to be recovered from EIPL.
- l. As per EIPL's own admission dated 21.02.2011, they recovered excess amount of Rs. 5.36 Crore for FY 2008-09 and FY 2009-10, which could not be recovered fully due to closure of their plants. The amount towards excess payment by APDCL is to be recovered as per law.

APDCL further made following prayers before the Commission:

- i. The Tariff for the period w.e.f. date of COD till the closure of Adamtilla and Banskandi be determined by the Commission after receiving the Tariff Petitions from EIPL.
- ii. Not to consider the carrying cost for those periods for which the Tariff Petitions were not filed in time.
- iii. The amount towards excess payment by APDCL is to be recovered as per law.
- iv. To recover the accumulated amount for energy consumed by EIPL from APDCL grid.
- v. To pass any order that the Commission may deem fit and proper under the facts and circumstances of the present cases.

2.29. EIPL filed a Petition on 17.08.2016 for withdrawal of Petition No. 04/2016 in view of the disposal of the Review Petition No11/2016 vide Hon'ble APTEL's Order dated 20.07.2016.

2.30. EIPL vide submission dated 17.08.2016, submitted month-wise generation data for its power plants from the date of commissioning till FY 2014-15, partially complying with Commission's Order dated 05.08.2016 with regard to Petition No. 5/2016 and Notice dated 04.06. 2016.. EIPL didn't submit data pertaining to rate of power, actual bill raised by EIPL, payment made thereof by ASEB/APDCL, amount due etc.

In its submission, EIPL has stated that the applicable time period for computing the decretal amounts arising out of the Judgment dated 12.08.2014 of the Hon'ble APTEL is from FY 2009-10 to FY 2014-15, which has again been confirmed vide Hon'ble APTEL's Judgment dated 21.12.2015. EIPL prayed before the Commission to compute the actual amount due to EIPL in terms of the direction and observation contained in paragraph 26 and 102 of the Hon'ble APTEL's Judgment dated 12.08.2014.

2.31. EIPL made the following submissions on 17.08.2016 with regard to Petition No. 05/2016 in the matter of hearing held by the Commission on 05.08.2016:

- a. EIPL referred to para 23 & 25 of the APTEL Judgment dated 12.08.2014 and stated that applicable time period for computation of amount due is from FY 2009-10 to FY 2014-15.

- b. EIPL requested the Commission to compute the actual amount due to EIPL in line with Para 26 and 102 of the main Judgment dated 12.08.2014.
- c. EIPL submitted its understanding of the Judgment dated 12.08.2014 as under:
 - i. Paragraph 24 inter-alia records the fact that APDCL caused financial difficulty, resulting in default in payment for gas supply.
 - ii. Paragraph 25 inter-alia records the fact that Tariff for FY 2009-10 to 2014-15 is likely to be of the same order or may be more.
 - iii. Paragraph 26 grants interim relief to EIPL on the basis of figures computed by the Commission vide its order dated 20.10.11. The para also gives direction for payment of full fixed charges during the interim period (FY 2009-10 to FY 2014-15).
 - iv. Paragraphs 67 and 68 inter-alia state that non-availability of gas is not attributable to EIPL meaning that deemed generation is to be allowed under these situations. Para 68 also upholds Article 3.9.2 of the PPA for computation of Deemed Generation.
 - v. Paragraphs 69 upholds the deemed generation as allowed by the Commission for FY 2008-09. The paragraph states:

"Thus, the State commission was correct in allowing the deemed generation due to non-supply or short supply of gas and permit recovery of full fixed cost for FY 2008-09."
 - vi. Paragraphs 71 and 104(v) contain directions to the Commission that deemed generation for FY 2009-10 onwards is to be determined as done in the Review Order dated 12.02.2013.
 - vii. Paragraph 94 gives liberty to EIPL to raise the issue of consideration of actual generation at generator terminals for the period from FY 2009-10 onwards.
 - viii. Paragraphs 102 directs APDCL to make payment of arrears as per the Tariff Order dated 20.10.2011 for FY 2008-09 along with Delayed Payment Surcharge (DPS) on arrears for FY 2008-09 as per AERC Regulations.
 - ix. Paragraphs 103 and 104 give liberty to EIPL to raise the issue of carrying cost on arrears from due date of payment for further years.
 - x. Paragraph 17 inter alia records the fact that non-payment of fuel charges by EIPL is not a subject matter of the Review Petition by APDCL.

2.32. EIPL made the following submissions on 24.08.2016 with regard to Petition No. 05/2016 on the reply/objection filed by APDCL:

- a. The submissions made by APDCL, correctness of which is denied and disputed by EIPL, do not deserve any consideration in view of the specific direction in Hon'ble APTEL's Judgment dated 18.05.2016. Without prejudice, it is submitted that it is nobody's case either before Hon'ble APTEL or before the Commission, that the Tariff for the past period (from COD) is to be determined by the Commission as per the provisions of Electricity (Supply) Act 1948, the ERC Act 1998, EA 2003 and PPA as is now being sought to be pleaded by APDCL for the very first time in their reply.

- b. Any consideration of the submission now raised by APDCL in its reply to the Petition No.5 of 2016 would tantamount to adoption of an additional exercise beyond the directives passed by the Hon'ble APTEL, which would/might constrain the Commission in adhering to the time period prescribed in the Judgment passed by the Hon'ble APTEL.
- c. In the premises, aforesaid, the Commission may not consider APDCL's submission made vide its reply dated 17.08.16 and if the Commission is considering APDCL's submission made in its reply dated 17.08.16, then EIPL may be allowed adequate time to submit its rejoinder to the reply filed by APDCL.

2.33. EIPL made the following submissions on 31.08.2016 with regard to Petition No. 05/2016 on the submissions made by APDCL:

- a. As regards to APDCL's contention regarding non-submission of Petitions on time, EIPL has already filed the required Tariff Petitions as per directions of Hon'ble APTEL and the Commission, while APDCL has deliberately failed to comply with the Tariff Order dated 20.10.2011. Further, Hon'ble APTEL in its Judgment dated 12.08.2014 also pointed out this non-compliance by APDCL, but till today the full fixed and variable charge along with DPS have not been paid by APDCL even for FY 2008-09, despite clear directions in the Judgment dated 12.08.2014.
- b. As regards to APDCL's contention regarding non-filing of the Tariff Petitions as per provisions of PPA, law, Rules and Regulations, EIPL submitted that in the event of any succeeding or superseding Regulations, whether repealed or saved under the law altering the PPA, it shall be and is protected by Article 12.2 of the PPA.
- c. As regards to APDCL's contention regarding timely filing of the Tariff Petitions as per AERC Tariff Regulations, 2006, EIPL submitted that the Tariff Petition filed by EIPL for FY 2008-09 has been accepted by the Commission against which the Commission has issued its Tariff Order and the same was upheld by Hon'ble APTEL. The Tariff Petitions for the period from FY 2009-10 to 2014-15 were filed by EIPL as per the directions of the Hon'ble APTEL and EIPL has also complied with the Order of the Commission dated 05.08.2016 and corrected the format of the Petitions.
- d. As regards to APDCL's contention that non-filing of Tariff Petitions for pre- and post-FY 2008-09 is clear contravention of law, Rules and Regulations and attracts penalty under Section 142 of the EA 2003, EIPL submitted that the Tariff Petition for the subsequent years have been filed by EIPL in pursuance to the directions passed by the Hon'ble APTEL and the Commission. In the matter of penalty, EIPL submitted that APDCL was/is in flagrant violation of the Commission's Orders and directions and did not pay to EIPL the amounts due as per Tariff Order dated 20.10.11.
- e. EIPL further submitted that determination of tariff from COD of the plants is beyond the scope of E.P. No. 2 of 2015. A mere perusal of the background of the said E.P would show that determination of tariff or computation of actual amounts from COD of the plants was never a subject matter of Appeal No. 76 or 82 of 2013, filed by the Parties before Hon'ble APTEL. APDCL did not raise the issue of determination of tariff from COD before the Commission in its

Review Petition against the Order dated 20.10.11. In 2010, EIPL filed its Petition No. 4/2010 before the Commission for the balance payment due for this period. EIPL further submitted that the direction passed by the Hon'ble APTEL to include the period from COD to stoppage of plants in its Order dated 18.05.16 is only for want of knowledge of the power supplied by EIPL and the amounts paid by APDCL but has nothing to do with the computation of amounts arising out of the E.P, which is required for execution of the Decree. EIPL further stated that there is no direction from Hon'ble APTEL to determine tariff from COD of the plants or to determine the tariff for the period prior to FY 2008-09.

- f. As regards to APDCL's contention regarding filing of the Tariff Petitions for FY 2009-10 to closure of the plants within the time frame specified by Hon'ble APTEL's Judgment dated 12.08.14 and 16.09.15, EIPL submitted that the Judgment dated 12.08.14 also contained independent directions to the Hon'ble Commission for determination of tariff for the period FY 2009-10 onwards. Accordingly, the Commission vide its letter dated 16.09.15 directed EIPL to file Tariff Petitions from FY 2009-10 onwards, which was complied by EIPL.
- g. As regards to non-payment of financial liabilities by APDCL on the grounds of delay in filing of Tariff Petitions for period prior to FY 2008-09 and period post FY 2009-10 till closure of the plants and determination of tariff and truing up of the audited Accounts being attributed to EIPL, EIPL submitted that Hon'ble APTEL has granted liberty to EIPL to raise the issue of carrying cost and accordingly it has raised the issue of carrying cost and DPS charges to be allowed on the dues of FY 2009-10 to FY 2014-15 from respective dates of passing of the final Tariff Orders.

2.34. As scheduled, the Commission conducted second combined hearing in Petition No. 03/2016, 04/2016 and 05/2016 on 01.09.2016. After Hearing the parties, the Commission issued the following directions vide its Order dated 01.09.2016:

- a. **The Petition No. 4 of 2016 filed by EIPL is hereby disposed of on withdrawal by EIPL.**
- b. EIPL is directed to submit all balance data certified by authorized Chartered Accountant, as asked for vide Commission's notice dated 04.06.2016, on or before 14.09.2016.
- c. The plant-wise Tariff Petitions filed by EIPL for the period FY 2009-10 to FY 2014-15 are being dealt through separate proceedings.

2.35. EIPL, vide letter dated 14.09.16, in Petition No. 3/2016, 4/2016 and 5/2016 requested the Commission to grant time up to 20.09.2016 for submission of the balance information, as sought by the Commission vide Notice dated 04.06.2016 and as directed vide Order dated 01.09.2016. The Commission granted additional time as sought for.

2.36. EIPL, vide letter dated 20.09.16, submitted the summary of billing and amount received from COD to closure of Adamtilla and Banskandi plant, certified by Chartered Accountant.

2.37. After scrutiny of the documents submitted by EIPL on 24.08.2016, 14.09.2016 and 20.09.2016, the Commission vide letter dated 05.10.2016 (in the matter of submission of balance data as directed vide Order dated 01.09.2016) informed EIPL that its submission is not as per the AERC (Conduct of Business Regulations), 2004 and raised certain queries on the submissions.

EIPL submitted its reply to the Commission's query dated 05.10.2016 on 14.10.2016 without affidavit and requested the Commission to allow EIPL to submit the reply on 25.10.2016 as the Guwahati High Court was closed and shall reopen on 24.10.2016.

The point wise reply submitted by EIPL on 14.10.2016 as against Commission's Letter dated 05.10.2016 are summarise below:

- a. Commission's Observation/Direction in Letter dated 05.10.2016: The Chartered Accountant(CA) Certificate provided vide submission dated 20.09.2016 is a combined certificate for both the plants. However, as the two plants are different with different parameters, EIPL is required to submit the CA Certificate separately for each plant.

EIPL's Reply dated 14.10.2016 EIPL submitted that since both the power plants are under one PPA, they are maintaining a single book of accounts since beginning for these power plants. Further, certain category of payments such as FERV and Deemed Income Tax are common for both power plants and billed under common invoices. Moreover, ASEB has also been making all payments under one head for both the power plants. Therefore, in the absence of bifurcation of payments made by ASEB/APDCL it is not possible to submit CA certificates separately for each plant.

- b. Commission's Observation/Direction in Letter dated 05.10.2016: EIPL has submitted the information on bills raised and amount received for Adamtilla Plant from July 1997 onwards and for Banskandi Plant from September 1997 onwards, while the COD of the plants were achieved on 04.09.1997 and 05.09.1997. EIPL to confirm that no bill was raised for Banskandi Plant for the months of July and August 1997.

EIPL's Reply dated 14.10.2016: EIPL submitted the COD of Adamtilla plant as 04.07.1997 and Banskandi Plant as 05.09.1997.

- c. Commission's Observation/Direction in Letter dated 05.10.2016: The details of units and rate billed by EIPL are not provided for October 1998 to March 1999. EIPL should clarify the same.

EIPL's Reply dated 14.10.2016 EIPL submitted that for the said period, the AFC computed by EIPL was divided month-wise and accordingly the invoices were raised. However, ASEB made the payment on adhoc rate best known

to them.

- d. Commission's Observation/Direction in Letter dated 05.10.2016: In the submitted data for the bills raised from July 1997 to March 1998, the details of units and rate passed by ASEB is not provided, while for the subsequent periods, this information is provided till March 2012. Further, from April 2012 to December 2012, the details of units, rate and amount passed by APDCL is not provided and only the amount received in the bank is provided. EIPL should clarify the same.

EIPL's Reply dated 14.10.2016 EIPL submitted that the rate used by ASEB is not known to it as ASEB was never transparent about the payments and deductions since beginning.

- e. EIPL was directed to submit the above data on or before 14.10.2016 in MS-Excel format. EIPL vide e-mail dated 10.10.2016 submitted the data as submitted on 20.09.2016 in MS Excel format.

2.38. After scrutiny of the documents submitted by APDCL on 30.06.2016 and 12.07.2016, the Commission vide letter dated 05.10.2016 (in the matter of submission of balance data as directed vide Order dated 01.09.2016) gave certain observations and directions to APDCL for submitting the data on or before 14.10.2016.

APDCL vide its affidavit dated 15.10.2016 requested the Commission to extend the time up to 30.10.2016.

2.39. In the meanwhile, the Commission filed an application before Hon'ble APTEL on 23.09.2016 seeking extension of time for compliance of directions issued by Hon'ble APTEL vide its Order dated 18.05.2016. The Commission in the said application also requested Hon'ble APTEL to direct EIPL to submit the complete data/information sought for determining the amount due and processing the petitions filed by EIPL for determination of tariff for both the plants for the period FY 2009-10 to FY 2014-15. In view of the Commission's request for time extension, Hon'ble APTEL vide Order dated 20.10.2016 extended the time up to 05.01.2017 for complying with its directions. The relevant extract of the said Order dated 20.10.2016 is reproduced below: -

"Admittedly, no appeal is preferred against Order dated 12.08.2014. Undoubtedly, therefore, the said order will have to be implemented. Counsel for the parties do not dispute this proposition. Mr. Sanjay Sen, learned senior counsel appearing for the State Commission seeks further time to complete the exercise directed to be conducted by this Tribunal vide its order dated 18.05.2016. Counsel states that certain data needs to be furnished by the Review Petitioner and also by the DISCOM. Counsel for the Execution Petitioner and counsel for the DISCOM state that the further data required by the State Commission shall be furnished to the State Commission if the State Commission intimates to them in writing what data is required. Counsel for the

State Commission states that a letter will be sent to the Execution Petitioner as well as to the DISCOM by tomorrow i.e. 21.10.2016 informing them what data is required. Counsel for the Execution Petitioner states that by 01.11.2016, the said data will be furnished to the State Commission. Counsel for the DISCOM also states that the DISCOM shall furnish the necessary data to the State Commission.

*We are not inclined to extend the time till February, 2017 as requested by Mr. Sen, learned senior counsel for the State Commission. **We extend the time till 05.01.2017.** We expect the parties to cooperate with the State Commission. If the required data is furnished by the parties, the State Commission shall comply with the direction issued by the State Commission vide its order dated 18.05.2016 by 05.01.2017 and shall not ask for further time.” [Emphasis added]*

2.40. The Commission vide letter dated 21.10.2016 directed APDCL to submit the required data / information sought vide Commission's notice dated 04.06.2016, Order dated 01.09.2016 and letter dated 05.10.2016, on or before 31.10.2016 as per direction of the Hon'ble APTEL in the hearing dated 20.10.2016, in hard as well as soft copies as per AERC (Conduct of Business) Regulations, 2004. APDCL submitted the reply on 31.10.2016, which has already been discussed above.

2.41. Thereafter, APDCL submitted its reply with regard to the data / information sought vide Commission's notice dated 04.06.2016, Order dated 01.09.2016, letter dated 05.10.2016 and letter dated 21.10.2016 on 31.10.2016.

The observations of the Commission and the reply of APDCL are provided below:

- a. In the submission dated 30.06.2016, for almost all the months, there is difference between the Energy Charge and Fixed Charge billed by EIPL vis-à-vis that considered by APDCL for both the plants. APDCL was directed to clarify the same.

APDCL's Reply dated 31.10.2016 APDCL submitted that deviation in amount claimed vis-a-vis amount admitted are because of the following reasons:

- i. Variance in quantum of energy claimed against admissible at point of interconnection as per the provisions of PPA.
 - ii. Reduction in admissible energy resulted in lower PLF thereby reducing the amount payable.
 - iii. Deviation in operating parameters viz. energy generated, SHR, gas rate from that admissible also resulted in difference in variable charges.
- b. In the submission dated 30.06.2016, no claim of EIPL is shown for variable charge since commissioning of the plants. As against this, APDCL has not considered variable charge upto FY 2007-08, but from FY 2008-09 onwards, APDCL has shown payment of variable charge.

APDCL's Reply dated 31.10.2016: APDCL resubmitted data sheets

considering the payments on account of variable charges (year-wise and month-wise) since COD till the closure of the plants.

c. Vide submission dated 12.07.2016, APDCL submitted a statement showing year-wise variable charges paid, incentive/disincentive paid, total FERV bill amount paid to EIPL, etc. In this statement:

- i. APDCL has not submitted monthly data of variable charges, incentives / disincentives paid, etc., as per Commission's requirement.

APDCL's Reply dated 31.10.2016

APDCL submitted month-wise data of variable charges and incentives/disincentives paid.

- ii. APDCL has not submitted how much amount was claimed under these heads by EIPL.

APDCL's Reply dated 31.10.2016

APDCL submitted the amount claimed under the head of Incentive / Disincentive charges.

- iii. In the data submitted vide letter dated 30.06.2016, APDCL had not shown variable charges claimed/paid upto FY 2007-08 but had shown variable charges paid from FY 2008-09 and beyond. This has created in 2 sets of data.

APDCL's Reply dated 31.10.2016

APDCL submitted the amount paid towards variable charges up to FY 2007-08.

- iv. APDCL has submitted a sheet showing calculations of unrecovered Recoverable amount by APDCL from EIPL. However, in the statement, there are certain discrepancies such as having yearly statement upto some period but monthly statement for some period, principal amount receivable increased initially but reduced subsequently, etc.

APDCL's Reply dated 31.10.2016

APDCL submitted that the Un-recovered recoverable amount of Rs. 2.31 Crore is towards unpaid electricity bills for the energy consumed from APDCL grid for EIPL's colony consumption/own use. For Banskandi plant, the amount is Rs.133.35 lakh up to 30.11.2015 and

for Adamtilla plant, the amount is Rs. 97.09 lakh, and total is Rs. 231.41 lakh, i.e., Rs. 2.31 Crore approximately. APDCL also submitted the copies of bills amounting to Rs. 231.41 lakh raised by it.

An amount of Rs. 1.01 Crore for the period FY 2008-09 and FY 2009-10 is to be recovered toward excess realization by EIPL along with the carrying costs.

- v. APDCL has stated that Electricity Bills to be recovered from EIPL is Rs. 2.31 Crore but no Electricity Bills are submitted.

APDCL's Reply dated 31.10.2016

APDCL submitted the electricity bills up to November 2015 and submitted that the bill amount would be increased further after addition of delayed payment charges. APDCL stated that it would submit the revised bill subsequently.

- vi. APDCL has stated that Rs. 2.10 Crore was subsumed in the Tariff Order dated 20.10.2011. However, no such treatment was made in the said Order.

APDCL's Reply dated 31.10.2016

APDCL submitted that EIPL recovered total excess amount of Rs. 5.36 Crore (excess realization of income tax of Rs.2.10 Crore and excess recovery towards Fixed Charges of Rs. 3.25 Crore) for FY 2008-09 and FY 2009-10, which was communicated vide letter dated 21.02.2011. The amount of Rs. 2.10 Crore was to be recovered towards income tax already recovered by EIPL through tariff. However, as per the Tariff Order, it was found that income tax was not allowed for FY 2008-09. Therefore, this amount still stands recoverable.

2.42. The Commission vide letter dated 21.10.2016 directed EIPL to submit the certain information on or before 31.10.2016 in hard as well as soft copies as per AERC (Conduct of Business) Regulations, 2004.

EIPL vide letter dated 03.11.2016 replied to the Commission's letter dated 21.10.2016.

The information/clarifications sought by the Commission and the reply submitted by EIPL on 03.11.2016 are as follows:

- a. The Chartered Accountant (CA) Certificate has not been provided plant-wise. Even though a single PPA existed for Adamtilla and Banskandi plants of EIPL, both the plants are located in separate locations with separate rate of power, separate COD, etc., therefore, separate CA certification has to be submitted for Adamtilla and Banskandi.

EIPL's Submission dated 03.11.2016

The said data pertains to the references of bills raised by EIPL for actual generation, deemed generation, incentive, variable charges, income tax and start up power, etc., for Adamtilla and Banskandi plants and the payments made by ASEB against these invoices. Thus, there are two types of data:

- i. Data for the bills raised
- ii. Data for the payments received.

Certain category of payments such as FERV and Deemed Income Tax under the PPA are common for Adamtilla and Banskandi plants and therefore, billed under common invoices. EIPL has already segregated the billing data for Adamtilla and Banskandi and submitted the same on 20.09.2016.

For type (II) data, plant-wise segregation for Adamtilla and Banskandi is not possible as ASEB has made only one combined payment against the plant-wise invoices of Adamtilla and Banskandi plants raised by EIPL.

EIPL submitted that in order to provide separate plant-wise CA certificate for the data, APDCL may be directed to furnish the breakup of plant-wise payments made by them against the plant-wise invoices raised by EIPL. After receipt of the above, it would be possible for EIPL to furnish separate CA certificates for the categories of invoices billed separately. However, there would still be certain category of billing and payments common for both the plants for FERV and Deemed Income Tax.

EIPL submitted that the period from COD till March 2008 for which the billing and payment data have been furnished by EIPL, is a subject matter of Petition No. 4/2010 which is still under adjudication by the Commission, for which the Commission has sought clarification from Hon'ble Guwahati High Court on whether the adjudication should be done by the Commission or by an Arbitrator.

EIPL submitted that the matter regarding amounts billed by EIPL, the amounts paid by ASEB and the balance amount due to EIPL for the period from COD to March 2008, is already under arbitration which involves filing of replies and rejoinders, leading evidences and cross-examination of witnesses, arguments from both the parties and eventually the arbitral award. Therefore, any outcome/conclusions drawn by the Commission for the period from COD to March 2008, without concluding the arbitral proceedings, will be against the law. EIPL submitted that for the period from COD to March 2008, the total bills raised by EIPL were for Rs. 87233.94 lakh, total amount paid by ASEB is Rs. 40642.5 lakh, and the balance amount due to EIPL is Rs. 46591.44 lakh.

- b. EIPL has not provided clarification regarding non-submission of information

related to details of units and rate billed by EIPL for October 1998 to March 1999. However, as per PPA, Clause for variable charge and fixed charge is different, hence, both should be shown separately. EIPL was directed to submit data related to units and rate for this period.

EIPL's Submission dated 03.11.2016

EIPL has raised the bills for the said period for the full fixed charges for each month and these bills are not raised on the basis of any rate, hence, the same cannot be provided.

2.43. APDCL submitted the soft copies of the balance data submitted by it on 31.10.2016 on 02.11. 2016. APDCL, vide e-mail dated 04.11.2016, submitted the soft copies of the data submitted by APDCL on 30.06.2016.

2.44. EIPL, vide letter dated 07.11.2016, filed a rejoinder to the data submitted by APDCL vide its letter dated 31.10.2016. In the said rejoinder, EIPL made the following submission:

- a. CA certificate provided by EIPL is on the basis of actual bills raised by EIPL and the payments received from APDCL by EIPL in its bank account.
- b. The submission made by APDCL that the quantum of energy claimed by EIPL is based on actual units at the generator terminal and the units considered by APDCL are on the basis of energy metered at the interconnection point, is incorrect because payment of fixed charges whether made on the basis of units measured at generator terminals or at the interconnection point will make a difference only on monthly payments and not on the yearly payments. At the end of the year, the payments are to be reconciled on the basis of PLF (Actual + Deemed), and if PLF achieved (Actual + Deemed) is in excess of the normative PLF agreed in the PPA, then full fixed charges are to be paid by APDCL to EIPL. In addition, for the additional PLF above normative PLF, 0.7% on the equity invested for each 1% increase in PLF is also to be paid by APDCL. APDCL cannot conveniently absolve itself from these contractual liabilities and now assign a reason to the variance in the amount billed by the Applicant and the amount paid by it.
- c. APDCL's submission that deviation in operating parameters, viz., energy generated, SHR, gas rate from that admissible resulted in difference in variable charges is correct as the operating parameters and prevailing conditions were in deviation to the design parameters. The SHR was disproportionately high because of non-existence of design conditions like full load operation, continuous operation, etc. which did not prevail during the actual operating conditions because of reasons such as (i) ASEB was not able to evacuate full power that can be generated by the power plants due to problems at ASEB end, (ii) grid failures and fluctuations resulting in frequent starts and stops of the generating sets, (iii) the unpredictable nature of grid availability and grid condition forcing generating sets to run in idle conditions in order to take the load quickly when grid becomes available, (iv) generating

sets forced to run on part load due to adverse grid conditions, non-availability of grid, non-availability or inadequate supply of gas and/or load restrictions imposed by ASEB, etc. The abysmally low part load conditions further resulted in open cycle operation as against the designed combined cycle operation. These situations forced EIPL to incur high variable charges. Therefore, EIPL has raised the bills of variable charges as incurred by it in operating these power plants as the situations leading to high variable cost were extraneous to the control of EIPL. Thus, EIPL has rightfully raised its bills for variable charges and APDCL ought to have honoured these bills and made the payments.

- d. Regarding the "data sheets compiled afresh" filed by APDCL, EIPL submitted that APDCL has presented a factually incorrect chart to the Commission. The 'amount paid to EIPL' as mentioned in APDCL's submission is not the actual amount paid to EIPL but the 'amount unilaterally computed as payable by APDCL'. EIPL denied that the said payments were made by APDCL and submitted that APDCL should provide strict proof thereof by producing copies of the instruments under which the alleged payments amounting to Rs. 447.05 Crore were made to EIPL. APDCL has wrongly computed a net total payment of Rs. 406.42 Crore to EIPL. Further, APDCL never revealed the details of unilateral deductions made, contemporaneously while making the payments to EIPL. Till date, APDCL has not filed the details of deductions made by it but is wrongly showing the gross amount calculated by them as 'amount paid to EIPL'. EIPL prayed that on this ground alone, the charts presented by APDCL are to be rejected and APDCL may be directed to file the chart of actual payments made to EIPL as per the earlier directions of the Commission.
- e. The figures shown by APDCL under the head of amount claimed towards incentive/disincentive charges are not calculated in accordance with PPA, and as per PPA for computing the PLF achieved, the deemed generation is to be added to actual generation. Further, the capital cost of the power plants should be calculated in accordance with PPA. EIPL pointed out the following errors in the figures computed by APDCL for incentive/disincentive charges.
 - i. Incentive payments ought to have been computed and made for the period beyond FY 2004-05, because for the purpose of PLF, Actual Generation shall be increased by Deemed Generation. The PLF was in excess of 80% in the subsequent years also.
 - ii. The equity figures considered by APDCL as Rs. 14.49 Crore and Rs. 26.65 Crore for Adamtilla and Banskandi are incorrect. The correct equity invested by EIPL are Rs. 18.33 Crore for Adamtilla and Rs. 33.41 Crore for Banskandi.
 - iii. APDCL has shown the incentive amounts as payable only for FY 1997-98 and FY 1998-99 which is in flagrant violation of the PPA Clauses 3.9.2 and 3.11.

- f. APDCL has shown the variable charge payment up to FY 2007-08, which is not in compliance of the directions of the Commission and Hon'ble APTEL as APDCL should have shown the variable charges paid by it from COD to shut down of the plants.
- g. APDCL's submission on Un-recovered recoverable amount of Rs. 2.31 Crore towards unpaid electricity bills for the energy consumed from APDCL grid for EIPL's colony consumption/own use, is denied by EIPL. EIPL does not have any colony in the premises of the power plants. Further, as per PPA clause 3.2 (b), the expenses towards start up and maintenance power is to be reimbursed by ASEB (APDCL). Further, EIPL has brought this issue to the notice of ASEB management several times in the past and its claims on this account, quantified earlier, are still unpaid by ASEB. EIPL also made the following observations:
 - i. These bills have been raised by APDCL after the power plants have stopped. The billing is arbitrary and does not match with the actual consumption of units at the plant end. It can be seen that while the plant was not running, the consumption was only for lighting load, which cannot be as high as that being billed by APDCL.
 - ii. In spite of EIPL's protest to switch the connection from Option-2 to Option-1 of HT-II Category with lesser fixed charges, APDCL has deliberately not taken any action.

In view of the above, EIPL submitted that the claim of Rs. 2.31 Crore of APDCL towards payment of electricity bills is illegal and the amount already recovered by APDCL are to be reimbursed to EIPL with carrying cost.

- h. EIPL denied the claim of APDCL on excess realization by EIPL for FY 2008-09 and FY 2009-10. APDCL has never paid EIPL for FY 2008-09 as per the Tariff Order dated 20.10.2011 and also did not honour the invoices raised by EIPL for FY 2009-10 onwards as per the Review Order dated 12.02.2013. Hence, there is no excess realization by EIPL. EIPL requested the Commission to direct APDCL to reimburse the already recovered amount of Rs. 32.55 lakh along with carrying cost to EIPL.
- i. As regards APDCL's claim of excess recovery of Rs. 5.36 Crore (Excess Realization of Income Tax of Rs. 2.10 Crore and excess recovery towards Fixed Charges of Rs. 3.25 Crore) by EIPL, EIPL expressed its denial in light of the following:
 - i. In the said certificate that was signed by EIPL, it was stated that "*is hereby agreed to be adjusted with the future claims of EIPL subject to reconciliation of payments received at our end*". This reconciliation never took place. Hence, in the absence of any reconciliation, the adjustment made by APDCL is illegal.

- ii. APDCL in its own affidavit of calculations filed before the Hon'ble APTEL on 23.11.15 and on 13.10.15 in EP No. 2 of 2015 has admitted the deduction of Rs. 4.34 Crore made by it out of the Rs. 5.36 Crore.

2.45. The Commission vide letter dated 03.12.2016 intimated both the Parties that after scrutinizing the submission of EIPL and APDCL, it is observed that, there are differences in the amounts received by EIPL vis-à-vis amounts paid by APDCL. The Commission further pointed out that none of the parties have not commented on the observed differences in the amount due submitted by them and directed the Parties to be present for the Technical Validation Session (TVS) on 16.12.2016 with relevant documents.

2.46. As schedules, the Commission held the TVS on 16.12.2016, during which the Commission pointed out that there are discrepancies in the submissions of APDCL dated 31.10.2016, 12.07.2016 and 30.06.2016 towards amount paid to EIPL for Variable Charge, Fixed Charge, Incentive, adjustments, etc. APDCL requested the Commission to consider the submission dated 31.10.2016 as the final submission in this regard.

The Commission further asked for clarification from EIPL and APDCL regarding the difference between the amount paid by APDCL to EIPL as submitted by APDCL and amount received by EIPL from APDCL as submitted by EIPL in almost all the months.

In reply, APDCL submitted that the difference may be because of consideration of rebate, adjustments, etc., as part of gross payment amount shown by APDCL. The Commission asked APDCL to submit the following plant-wise and year-wise details of amount paid to EIPL as mentioned in its submission dated 31.10.2016 to clarify the differences:

- Gross Amount paid as submitted by APDCL in its submission
- Amount of Rebate deducted along with basis of rebate
- Amount of Adjustments towards direct payment to Gas Supplier
- Other Adjustments, if any, along with details and amount
- Net amount paid through RTGS/Cheque/any other mode to EIPL
- Any other adjustments yet to be made

The Commission also asked APDCL to give its comments on the month-wise amount received by EIPL as per the detail submitted vide EIPL's submission dated 20.09.2016.

During the TVS, EIPL submitted that the month-wise amount received from APDCL, as submitted by it, is based on amount received in banks. As regards to amount received in bank being shown as negative for some of the months, EIPL informed that the negative entries are not towards the amount paid by EIPL to APDCL but reflects the amount deducted by APDCL towards one of the plants.

The Commission asked EIPL to explain various heads of its submission dated 20.09.2016 like amount received at bank, rebate, deductions towards gas, etc. In reply, EIPL submitted that it has made its submission based on certain assumptions. The Commission asked EIPL to submit the following:

- Month-wise plant-wise exact amount received in bank
- Basis for showing negative entries
- Assumptions considered towards the rebate amount shown
- Basis for the amounts shown under Deduction for Gas/ Power Imported
- Any other adjustments required to be considered.

The Commission directed APDCL and EIPL to submit the entire information sought during the meeting on or before 21.12.2016. APDCL and EIPL agreed to submit the soft copy in MS Excel as well as signed hard copy of the information on or before 21.12.2016.

2.47. As regards to the Commission's direction to EIPL given in the TVS held on 16.12.2016 for submission of certain clarification and data, vide e-mail dated 21.12.2016 EIPL submitted its' reply.

The replies submitted by EIPL on 21.12.2016 along with the Commission's observation on adequacy of the information submitted by the Parties are summarised below:

a. Month-wise plant-wise exact amount received in bank

EIPL's Submission dated 21.12.2016

As ASEB has made single payments in most of the cases against EIPL's plant-wise invoices, it is not possible to segregate the payments at EIPL's end. EIPL also submitted the date of actual payment received in bank.

Commission's Observations

EIPL has submitted the details of total payment received from APDCL, but has not submitted the details of payment received for each plant separately.

b. Basis for showing negative entries

EIPL's Submission dated 21.12.2016

Negative entries for the payment received means that EIPL was suffering from negative cash flow, which was because the amount deducted by APDCL was more than the amount passed by APDCL. EIPL resubmitted the amount received from APDCL.

Commission's Observations

The submission of EIPL has submitted the information sought.

c. Assumptions considered towards the rebate amount shown

EIPL's Submission dated 21.12.2016

The rebate amount purportedly deducted by APDCL has been assumed to be either 2.5% or 1% of the amount passed by APDCL, depending on case to case. However, APDCL has not been regularly providing EIPL the information on the deductions actually made by them towards rebate.

Commission's Observations

EIPL has submitted the information sought.

d. Basis for the amounts shown under Deduction for Gas/Power Imported

EIPL's Submission dated 26.12.2016

Deductions towards gas charges purportedly made by APDCL have been assumed on the basis of (a) design heat rates of 2110 kcal/kWh for Banskandi and 2500 kcal/kWh for Adamtilla, (b) landed price of gas, (c) GCV of gas and (d) actual generation.

Further, deductions towards import of power purportedly made by APDCL have been assumed on the basis of energy bills raised by APDCL's sub-stations. In case of non-availability of sub-station bills, it is arrived by trial and error method based on the net amount received. However, APDCL has not been regularly providing information on the deductions actually made by it towards gas and import power.

Further, the amounts deducted towards gas and import power by APDCL are disputed as these are actually reimbursable to EIPL as per PPA.

Commission's Observations

EIPL has submitted the information sought.

e. Any other adjustments required to be considered

EIPL's Submission dated 21.12.2016

As per ASEB Letter No. ACE(COM)/DLF/ERV Invoice/ 98/60 dated 24.06.2003 and DLF Letter Ref. No. DPL/ASEB/03/C dated 25.06.2003, the FERV on loan utilized for the power plants were agreed and paid. In this regard, EIPL submitted an MS Excel sheet showing "FERV bullet payment".

EIPL further mentioned that since there is no difference in the amount invoiced and amount paid, the total outstanding amount is Rs. 465.91 Crore.

Commission's Observations

EIPL has submitted the information sought.

2.48. As regards to the Commission's direction to APDCL given in the TVS held on 16.12.2016, APDCL vide letter dated 21.12.2016 requested the Commission to grant extension of time up to 23.12.2016 for submission of the desired information.

2.49. The queries raised/information sought by the Commission in the TVS held on 16.12.2016 and the replies submitted by APDCL on 23.12.2016 along with the Commission's observation on adequacy of the information submitted by the Parties are summarised below:

a. Gross Amount paid as submitted by APDCL in its submission

APDCL's Submission dated 23.12.2016

APDCL requested the Commission to consider its submission dated 31.10.2016.

Commission's Observations

APDCL has submitted the information sought.

b. Amount of rebate deducted along with the basis of rebate

APDCL's Submission dated 23.12.2016

APDCL submitted a statement showing year-wise rebate deducted and stated that the amount of rebate till the end of FY 2007-08 since inception was duly reconciled and settled on 03.06.2008. An amount of Rs. 2.08 Crore was also released to EIPL on 21.02.2011 on this account. It also submitted a copy of mutually agreed certificate and a copy of acknowledgement of receipt from EIPL.

Commission's Observations

APDCL has submitted the information sought.

c. Amount of adjustments towards direct payment to gas supplier

APDCL's Submission dated 23.12.2016

There is no scope for direct payment to fuel supplier by APDCL. However, EIPL has made arrangements for amount payable to fuel supplier through Letter of Credit (No. 32/02) in favour of EIPL by APDCL. Adjustment of fuel cost is based on gross generation at generator terminals adjusted for allowable station heat rate and gross calorific value of gas as declared by the fuel supplier. The calculated gas consumption thus obtained has been considered by APDCL for variable cost per month and additional outflow through Letter of Credit is adjusted subsequently.

Commission's Observations

APDCL has submitted the information sought.

d. Other adjustments, if any, along with details and amounts

APDCL's Submission dated 23.12.2016

Other adjustment primarily comprises of export energy bill to EIPL. However, subsequently adjustment on account of deduction of payment released on the basis of Tariff Order inforce for previous year was disallowed. APDCL submitted a table showing the same.

Commission's Observations

APDCL has submitted the information sought.

e. Net amount paid through RTGS/Cheque/any other mode to EIPL

APDCL's Submission dated 23.12.2016

APDCL submitted a statement depicting yearly net amount paid in agreement with EIPL submission along with the reconciliation of difference between the gross bill and net payment factoring the adjustments.

Commission's Observations

APDCL has submitted the information sought.

f. Recovery of Other Amounts

APDCL's Submission dated 23.12.2016

An amount of Rs. 1.02 Crore (principal) on account of excess amount for FY 2008-09 out of total Rs. 5.36 Crore along with carrying cost amounting to Rs. 2.66 Crore (as on 30.11.2016) is yet to be recovered. APDCL also submitted the calculation of the same.

APDCL also submitted that an amount of Rs. 4.31 Crore on account of export of energy charges is pending to be recovered.

Commission's Observations

APDCL has submitted the information sought.

In response to the Commission's direction for reconciliation of difference in amounts as submitted by APDCL and EIPL since inception till the closure of the plants during the TVS held on 16.12.2016, APDCL made the following submissions vide its reply dated 23.12.2016.

- a. The submissions of APDCL regarding payment to EIPL since inception till closure of the plants are on gross basis as per standard accounting practice.
- b. EIPL has submitted the amount of net inflow from APDCL to the exchequer without accounting for the admissible deductions as under:
 - i. Admissible rebate.
 - ii. On account of export of energy from APDCL.
 - iii. Adjustment of fuel cost based on gross generation at generator terminals

adjusted for allowable station heat rate and gross calorific value of gas as declared by the fuel supplier. The calculated gas consumption, thus obtained, is considered by APDCL for variable cost per month.

- iv. Other deduction as required from time to time, viz., deduction on account of payment released on the basis of Tariff Order in force for previous year subsequently disallowed.
- c. After duly factoring all the parameters, the gross bill amount as adopted by EIPL works out to Rs. 447.77 Crore against APDCL submission of Rs. 447.09 Crore. Period wise break-up is given below:

Table.2: Period Wise Break-up of Bill Amount

Since Inception till FY 2007-08	From FY 2008-09 till the closure	Total
Rs. 370.06 Crore	Rs. 77.71 Crore	Rs. 447.77 Crore

- d. Besides, EIPL has submitted receipt of lesser payment for the period from inception till FY 2007-08 concealing the fact of subsequent payment of Rs. 2,07,96,582/- on the basis of joint reconciliation on the mutually agreed amount on 03.06.2008.
- e. Additionally, EIPL has mentioned no payment against fuel charges since September, 2010 entirely concealing the subsequent withdrawal of all the invoices against the LC vide letter No. EIPL/ASEB/C/2011/1169 dated 09.03.2011 in response to APDCL letter No. ACE(Corn)/DLF/Final_Accountpt-II/04-05/32 dated 02.03.2011. Further, EIPL vide Letter No. EIPL/ASEB/C/10-11/395 dated 03.02.2011 has submitted undertaking for payment of invoices through alternate mode of payment other than Letter of Credit as under: "EIPL shall stop receiving invoice(s) against letter of credit (LC) when other mode of payment is in operation..."
- f. APDCL has switched to alternate mode of payment for greater interest of keeping the plants in operation only on prayer of EIPL vide its letter No. EIPL/ASEB/C/2011/1169 dated 09.03.2011
- g. EIPL has preferred not to file Tariff Petition as per amended Regulations after enactment of EA2003 and opted for other legal recourse. Only after failing at such endeavours, EIPL has filed Tariff Petition from FY 2008-09 onwards only. Further, Tariff Petitions for the period from FY 2009-10 onwards were filed only after directive from Hon'ble APTEL in the Execution Petition No. 02/2015.
- h. The Commission vide its order dated 19.03.2007 directed APDCL for submission of some information for incorporation of cost pertaining to EIPL in the ARR of APDCL. Accordingly, APDCL has been making payments as per Tariff Orders from time to time.
- i. Although both APDCL and EIPL have preferred Appeal against the Commission's Review Order dated 12.02.2013, subsequently on the verdict of Hon'ble APTEL, an amount of Rs.9 Crore was paid to EIPL against amount due for FY 2008- 09. Even after time to time directives from the Commission, EIPL has not shown positive attitude towards ensuring power generation and renewal of FSA.

3. Key Issues

3.1. Based on the submissions made by EIPL and APDCL, the key issues that need to be analysed to comply with the directions issued by Hon'ble APTEL vide its Order dated 18.05.2016, are as follows:

- Period for computation of Amount Due to EIPL
- Details of Power Injected into the grid of APDCL from the date of commissioning to shut down of the generating units
- Tariffs and other aspects to be considered for computation of Amount Due
- Payments already made by APDCL to EIPL
- Computation of actual Amount Due to EIPL after adjusting the payments made by APDCL

3.2. It is to be noted that both EIPL and APDCL have made rival submissions on above issues as well as on several other issues such as determination of tariff by the Commission from COD to closure of plants, non-compliance of provisions of PPA, non-compliance with the directions of Hon'ble APTEL and the Commission, etc. The Commission would like to emphasise that all the relevant submissions made by EIPL and APDCL have been considered while analyzing the above issues. The Commission in this Order has not analysed the other submissions made by the Parties which are not directly related to this Order.

4. Period for Computation of Amount Due

4.1. The Commission issued the Tariff Order for FY 2008-09 on 20.10.2011. Against the Tariff Order dated 20.10.2011, both the Parties filed Review Petitions before the Commission and subsequently the Commission issued the Review Order dated 12.02.2013. Both EIPL and APDCL filed cross Appeals before the Hon'ble APTEL against the said Orders of the Commission, which was decided by the Hon'ble APTEL vide its Judgment dated 12.08.2014. In the said Judgment, Hon'ble APTEL directed APDCL to make payment for the electricity supplied by EIPL from FY 2009-10 onwards at the tariff determined by the Commission for FY 2008-09 in the main Tariff Order dated 20.10.2011 till the tariff for FY 2009-10 onwards is decided by the Commission. In view of this, EIPL raised two invoices of the amount of Rs. 1825.42 lakh and Rs. 1287.48 lakh. Aggrieved by non-payment of the claims, EIPL filed Execution Petition No. 2 of 2015 before Hon'ble APTEL.

4.2. In view of the disagreement between the Parties regarding the amount due, Hon'ble APTEL vide its Order dated 23.09.2015 and 21.12.2015 in E.P. No.2 of 2015, directed both the Parties to calculate the outstanding amount right from the beginning year of the dispute, i.e., FY 2008-09. The relevant extract of the said Judgment is reproduced below:

“According to the decree holder/execution petitioner, the outstanding amount on the date of filing the Execution Petition is Rs. 166 Crores. On the contrary, according to the judgment debtor/discoms and the Government of Assam, there is huge difference between the amount calculated by the execution petitioner. Hence, we directed both the parties to calculate the outstanding amount right from the beginning year of the dispute i.e. FY 2008-09 and also directed each party to clearly calculate the principal amount which remained outstanding in Financial year 2008-09 and therefore

calculation of interest.”

4.3. Hon’ble APTEL in its Judgment dated 18.05.2016, noted that the dispute is regarding payment due for the period beyond FY 2008-09 to 2013-14 and also directed the Commission to issue notice to both EIPL and APDCL for furnishing details of the power injected from date of commissioning to shutting down, and compute the actual amount due to EIPL. The relevant extract of the said Judgment is reproduced below:

“14. There is a dispute for the payment due for the period beyond 2008-09 to 2013-14.

ORDER

15. In view of the above, we direct Assam Electricity Regulatory Commission to issue a notice to the rival parties to furnish the details of power injected from the date of commissioning to shutting down of the generating units into the grids of Assam Distribution Company, compute the actual amount due to EIPL after adjusting the payments made by APDCL and intimate the same for execution of the Petition No.2 of 2015, to this Tribunal within two months from today positively”.

4.4. Before going for further analysis in this matter, it would be prudent to go through the validity and expiry of the PPA and GSA signed by EIPL. The required details are as under:

Table.3: Details of Adamtilla and Banskandi Plant

Name of Plants	Adamtilla Plant	Banskandi Plant
Capacity	9 MW	15.5 MW
Location	Adamtilla, Karimganj District	Banskandi, Cachar District
Buyer of Power	ASEB	ASEB
PPA Signed on	09-02-1995	09-02-1995
Term of PPA	33 years from date of signing of PPA or 30 years from date of synchronisation, whichever is later	33 years from date of signing of PPA or 30 years from date of synchronisation, whichever is later
COD	July 4, 1997	October 5, 1997
Expiry of PPA	33 years from date of signing of PPA, i.e., February 8, 2028	33 years from date of signing of PPA, i.e., February 8, 2028
Gas Supply Agreement signed with	Assam Gas Company Ltd.	Assam Gas Company Ltd.
GSA signed on	19-10-1995	19-10-1995
Validity of GSA	15 years from date of signing	15 years from date of signing
Expiry of GSA	18-10-2010	18-10-2010
Plants Closed on	21-09-2010	08-01-2013
Reason for closure of Plant	Shortage / Non-availability of Fuel	Shortage / Non-availability of Fuel

4.5. It can be observed from above that the Adamtilla plant was shut down on 21.09.10 and

Banskandi plant was shut down on 08.01.13. The supply of gas from AGCL continued even after expiry of the Gas Supply Agreement on 18.10.2010, till 08.01.2013, to Banskandi Plant without renewal of the GSA. The Commission in its Tariff Orders dated 30.12.2016 has determined the tariff of Adamtilla plant (Petition No.s 20/2016, 21/2016, 22/2016, 23/2016, 24/2016 and 25/2016) and Banskandi Plant (Petition N.os 26/2016, 27/2016, 28/2016, 29/2016, 30/2016 and 31/2016) for FY 2009-10, FY 2010-11, FY 2011-12, FY 2012-13, FY 2013-14 and FY 2014-15 on normative basis as PPA is valid even after closure of plant due to shortage/non supply of gas. The Commission in the said Tariff Orders for respective plant has also discussed about the deemed generation due to shortage/non-supply of gas.

- 4.6. APDCL in its submissions highlighted that the amount due needs to be computed from the date of COD till closure of the plant after computing the tariff from the date of commissioning till closure of the plants.
- 4.7. EIPL in its submission highlighted that the determination of tariff from COD of the plants is beyond the scope of E.P. No. 2 of 2015 and the computation of actual amounts from COD of the plants was never a subject matter of Appeal No. 76 or 82 of 2013, filed by the Parties before Hon'ble APTEL. EIPL further submitted that the direction passed by the Hon'ble APTEL to include the period from COD to stoppage of plants in its Order dated 18.05.2016 is only for want of knowledge of the power supplied by EIPL and the amounts paid by APDCL, and has nothing to do with the computation of amounts arising out of the E.P, which is required for execution of the Decree. EIPL further stated that there is no direction from Hon'ble APTEL to determine tariff from COD of the plant or to determine the tariff for the period prior to FY 2008-09. Accordingly, the amount due is to be calculated from FY 2008-09 only and not prior to that.
- 4.8. From the Judgment dated 18.05.2016 of Hon'ble APTEL, it is clear that the Commission had to issue notice to EIPL and APDCL to furnish the details of power injected from the date of commissioning to shutting down of the generating units into the grid of APDCL. The Commission in compliance with the Hon'ble APTEL Judgment issued notices to both the Parties and obtained the details of energy injection from both the Parties. The Commission has analysed the submissions made by both the Parties and arrived at energy injected from the date of commissioning to shutting down of the generating units while analyzing the next issue.
- 4.9. As regards the computation of amount due to EIPL, it is important to note that EIPL has filed a Petition before the Commission in the matter of Commercial Disputes and Non-Payment of contractually due payments by ASEB to EIPL (registered as Petition No. 4/2010) and is under process. Therefore, the Commission considers it to be premature to calculate the amount due from the COD of the plant till FY 2007-08 before deciding the commercial dispute Petition filed by EIPL (Petition No. 4/2010) and the Commission will compute the amount due for the period from commissioning till FY 2007-08 after disposal of Petition No. 4/2010.
- 4.10. Accordingly, the Commission in this Order has calculated the amount due from FY 2008-09 onwards.

5. Actual Generation and Energy Injection

5.1. The Hon'ble APTEL vide its Judgment dated 18.05.2016 directed the Commission to issue notice to both the Parties for furnishing details of power injected from the date of commissioning to shutting down of the generating units into the grids of APDCL. Accordingly, the Commission issued individual notices dated 04.06.2016 to EIPL and APDCL for submission of the details of the power injection into the grid, as discussed above. EIPL and APDCL also made their submissions to the query of the Commission subsequently. The details submitted by the Parties are discussed below. Before discussing the submissions made by EIPL and APDCL, the Commission has discussed the relevant provisions of the PPA regarding the energy generated at generator terminal and energy injected in the grid.

- Clause 1.1. of the PPA defines the term "Actual Generation" and "Net Electrical Output" as follows:

Actual Generation means *"the energy measured (actual units-kWh, of electrical output) at Generator Terminals."*

Net Electrical Output means *"the units (kWh) sent out of the Project to the Grid as measured at the Inter-Connection point of respective Projects (after reducing the auxiliary consumption)"*

- Clause 1.2 of the PPA states that "**Auxiliary consumption** means the difference between Actual Generation and Net Electricity supplied in kWh." The Commission observed that Clause 1.2 of the PPA defines auxiliary energy consumption but, the level of auxiliary energy consumption in percentage terms is not specified in the PPA.
- Clause 1.28 of the PPA defines Inter Connection Point as "Inter Connection Point means the physical point where the company's transmission/power evacuation system and ASEB's grid system is connected...."
- Clause 1.32 defines Metering point as "the locations to be agreed between the parties where meters designed to measure (electricity delivered) are to be located."
- As per Clause 2.1, "In consideration of the tariff the Board shall purchase and company shall sell, in accordance with the terms of this PPA, all of the Net Electrical Supply."
- The Interconnection Point agreed for Adamtilla is Patherkandi sub-station and for Banskandi, it is Pailapool sub-station.

5.2. From the above provisions of PPA, it is clear that the payments are to be made by APDCL to EIPL for the net electrical energy supplied at the Inter Connection Point.

5.3. The Commission vide Tariff Order dated 20.10.2011 had approved auxiliary consumption level of 5.5% for FY 2008-09 and the same was upheld by the Hon'ble APTEL Judgment

dated 12.08.2014.

Further, for the period from FY 2009-10 onwards, the Commission has approved the auxiliary consumption level of 5.5% vide Tariff Orders dated 30.12.2016.

Accordingly, auxiliary energy consumption level @ 5.5%, as upheld by Hon'ble APTEL, is considered from FY 2008-09 onwards.

- 5.4. EIPL has submitted the following information with regard to the actual generation and energy delivered at interconnection point:

Table.4: Energy Details submitted by EIPL For Adamtilla Plant

Year	Actual generation at Generation Terminal as per PPA Clause 1.1 (kWh)	M3 Reading as Recd. By ASEB (kWh)
1997-98	30523632	28234360
1998-99	61670200	57022650
1999-00	59679500	54092920
2000-01	59479300	54398400
2001-02	59843900	54214720
2002-03	38874300	35091000
2003-04	48204500	43538260
2004-05	54986100	49684860
2005-06	41729300	36968880
2006-07	28043600	24001680
2007-08	24828500	20919320
2008-09	29118200	25032000
2009-10	17798800	18561880
2010-11	3658600	2868720
2011-12	0	0
2012-13	0	0
2013-14	0	0
2014-15	0	0

Table.5: Energy Details submitted by EIPL For Banskandi Plant

Year	Actual generation at Generation Terminal as per PPA Clause 1.1 (kWh)	M3 Reading as Recd. By ASEB (kWh)
1997-98	28187444	26598718
1998-99	78723000	73229100
1999-00	99899500	92379360
2000-01	92753800	85923000
2001-02	92554500	85526316
2002-03	85198600	78523680
2003-04	93066900	87028440
2004-05	91819000	85533735
2005-06	89919700	82914840
2006-07	86493500	79653605
2007-08	78481300	72043680
2008-09	74941000	68463960
2009-10	54716160	60032899
2010-11	63466360	58161440
2011-12	64385683	58775968
2012-13	31085400	28323583
2013-14	0	0

Year	Actual generation at Generation Terminal as per PPA Clause 1.1 (kWh)	M3 Reading as Recd. By ASEB (kWh)
2014-15	0	0

5.5. APDCL has submitted the following information with regard to the actual generation at generating terminal and energy receipt by ASEB/APDCL.

Table.6: Energy Details submitted by APDCL For Adamtilla Plant

Year	At Generating Terminal (kWh)	Energy receipt by ASEB/APDCL at IP (i.e., at Patherkandi) (kWh)
1997-98	28458060	28395954
1998-99	58280500	57022680
1999-00	55322300	54091920
2000-01	59154000	54395400
2001-02	59843900	53910883
2002-03	38874300	35091000
2003-04	48204500	43521123
2004-05	54986100	49684780
2005-06	41729300	36968880
2006-07	28029900	24001680
2007-08	25143600	20919320
2008-09	30118200	25032000
2009-10	21852700	18561880
2010-11	3658600	2868720
2011-12	0	0
2012-13	0	0
2013-14	0	0
2014-15	0	0

Table.7: Energy Details submitted by APDCL For Banskandi Plant

Year	At Generating Terminal (kWh)	Energy receipt by ASEB/APDCL at IP (i.e., at Pailapool) (kWh)
1997-98	-	26564073
1998-99	74088000	73229100
1999-00	93800000	92429860
2000-01	91786000	85923000
2001-02	92554500	85524720
2002-03	85198600	78523680
2003-04	93056900	87028440
2004-05	91819000	85533735
2005-06	89919700	82914840
2006-07	86495800	79425005
2007-08	75358600	72043680
2008-09	74941000	68463960
2009-10	66321160	60032899
2010-11	63735220	57992561
2011-12	63829400	58531145
2012-13	31645900	28838263

Year	At Generating Terminal (kWh)	Energy receipt by ASEB/APDCL at IP (i.e., at Pailapool) (kWh)
2013-14	0	0
2014-15	0	0

5.6. It can be observed from above submissions of EIPL and APDCL that there is variation in the actual energy generated at the Generator terminal as well as the energy supplied at Inter Connection Point, as submitted by EIPL and as submitted by APDCL for some of the years. Further, the Parties have not submitted any specific assumptions or computations pertaining to data submitted towards Actual Generation at generator terminal and Energy Passed and Billed. The comparison of year-wise actual energy generated at the Generator terminal as submitted by both the Parties is given in the Table below:

Table.8: Comparison of Energy Details for Adamtilla Plant (Figures in kWh)

Year	Submitted by EIPL	Submitted by APDCL	Difference	Submitted by EIPL	Submitted by APDCL	Difference
	Actual Generation at Generation Terminal as per PPA Clause 1.1 (kWh)	At Generating Terminal (kWh)		M3 Reading as Recd. By ASEB (kWh)	Energy receipt by ASEB/APDCL at IP (i.e. at Patharkandi) (kWh)	
	(a)	(b)	(c) = (a) – (b)	(d)	(e)	(f) = (d) – (e)
1997-98	305,23,632	0	305,23,632	28234360	283,95,954	-1,61,594
1998-99	616,70,200	582,80,500	33,89,700	57022650	570,22,680	-30
1999-00	596,79,500	553,22,300	43,57,200	54092920	540,91,920	1,000
2000-01	594,79,300	591,54,000	3,25,300	54398400	543,95,400	3,000
2001-02	598,43,900	598,43,900	0	54214720	539,10,883	3,03,837
2002-03	388,74,300	388,74,300	0	35091000	350,91,000	0
2003-04	482,04,500	482,04,500	0	43538260	435,21,123	17,137
2004-05	549,86,100	549,86,100	0	49684860	496,84,780	80
2005-06	417,29,300	417,29,300	0	36968880	369,68,880	0
2006-07	280,43,600	280,29,900	13,700	24001680	240,01,680	0
2007-08	248,28,500	251,43,600	-3,15,100	20919320	209,19,320	0
2008-09	291,18,200	301,18,200	-10,00,000	25032000	250,32,000	0
2009-10	177,98,800	218,52,700	-40,53,900	18561880	185,61,880	0
2010-11	36,58,600	36,58,600	0	2868720	28,68,720	0
2011-12	0	0	0	0	0	0
2012-13	0	0	0	0	0	0
2013-14	0	0	0	0	0	0
2014-15	0	0	0	0	0	0

Table.9: Comparison of Energy Details for Banskandi Plant (Figures in kWh)

Year	Submitted by EIPL	Submitted by APDCL	Difference	Submitted by EIPL	Submitted by APDCL	Difference
	Actual Generation at Generation Terminal as per PPA Clause 1.1 (kWh)	At Generating Terminal (kWh)		M3 Reading as Recd. By ASEB (kWh)	Energy receipt by ASEB/APDCL at IP (i.e. at Pailapool) (kWh)	
	(a)	(b)	(c) = (a) – (b)	(d)	(e)	(f) = (d) – (e)
1997-98	281,87,444	0	281,87,444	26598718	265,64,073	34,645
1998-99	787,23,000	740,88,000	46,35,000	73229100	732,29,100	0
1999-00	998,99,500	938,00,000	60,99,500	92379360	924,29,860	-50,500
2000-01	927,53,800	917,86,000	9,67,800	85923000	859,23,000	0
2001-02	925,54,500	925,54,500	0	85526316	855,24,720	1,596
2002-03	851,98,600	851,98,600	0	78523680	785,23,680	0
2003-04	930,66,900	930,56,900	10,000	87028440	870,28,440	0
2004-05	918,19,000	918,19,000	0	85533735	855,33,735	0
2005-06	899,19,700	899,19,700	0	82914840	829,14,840	0
2006-07	864,93,500	864,95,800	-2,300	79653605	794,25,005	2,28,600
2007-08	784,81,300	753,58,600	31,22,700	72043680	720,43,680	0
2008-09	749,41,000	749,41,000	0	68463960	684,63,960	0
2009-10	547,16,160	663,21,160	-116,05,000	60032899	600,32,899	0
2010-11	634,66,360	637,35,220	-2,68,860	58161440	579,92,561	1,68,879
2011-12	643,85,683	638,29,400	5,56,283	58775968	585,31,145	2,44,823
2012-13	310,85,400	316,45,900	-5,60,500	28323583	288,38,263	-5,14,680
2013-14	0	0	0	0	0	0
2014-15	0	0	0	0	0	0

5.7. The Commission fails to understand as to why there is difference between the figures of actual energy at generator terminal and the energy injected at Interconnection Point as submitted by EIPL and APDCL for some of the years. Further, both the Parties have not submitted any comments or observations on energy figures submitted by the other Party.

5.8. Further, it is observed that the difference between the actual energy at generator terminal data as submitted by APDCL and EIPL is higher as compared to difference between energy injected at Inter Connection point as submitted by APDCL and EIPL. Therefore, the Commission at this stage, has considered the energy injected at Inter Connection Point by taking the average of the values as submitted by EIPL and APDCL, for computing the amount due from FY 2008-09 onwards. The Commission has then grossed up the energy injected at Inter Connection Point with Auxiliary Consumption of 5.5% to arrive at actual energy at generator terminal for the year.

5.9. The summary of energy injected at Inter Connection Point as submitted by EIPL, as submitted by APDCL, and as considered by the Commission from FY 2008-09 to FY 2014-15 is given in the Table below:

Table.10: Energy Injected at Interconnection Point (Figures in kWh)

Year	Adamtilla Plant			Banskandi Plant		
	Submitted by EIPL	Submitted by APDCL	Considered by Commission	Submitted by EIPL	Submitted by APDCL	Considered by Commission
2008-09	25032000	25032000	25032000	68463960	68463960	68463960
2009-10	18561880	18561880	18561880	60032899	60032899	60032899
2010-11	2868720	2868720	2868720	58161440	57992561	58077001
2011-12	0	0	0	58775968	58531145	58653557
2012-13	0	0	0	28323583	28838263	28580923
2013-14	0	0	0	0	0	0
2014-15	0	0	0	0	0	0

6. Tariffs and Other Aspects to be considered for Computing the Amount Due

Approved Tariff for FY 2008-09 to FY 2014-15

6.1. The Commission vide its Tariff Order dated 20.10.2011 approved the following fixed charge for FY 2008-09 and vide its Tariff Orders dated 30.12.2016 approved the fixed charge for FY 2009-10 to FY 2014-15. The summary of year-wise approved Fixed Charge is given in the Table below:

Table.11: Approved Fixed Charge for Adamtilla Plant (Rs. Lakh)

Particulars	Approved vide T.O. dtd. 20.10.2011	Approved vide Tariff Orders dated 30.12.2016					
	FY 08-09	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15
Operation & Maintenance Expense	210.45	218.87	227.62	236.73	246.20	256.04	266.29
Depreciation	258.26	0.00	0.00	0.00	0.00	0.00	0.00
Return on Equity	236.83	236.83	236.83	236.83	236.83	236.83	236.83
Interest on Working Capital	25.09	27.98	29.71	34.08	40.11	40.66	43.01
Income Tax	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Annual Fixed Charge	730.63	483.67	494.16	507.64	523.13	533.53	546.13

Table.12: Approved Fixed Charge for Banskandi Plant (Rs. Lakh)

Particulars	Approved vide T.O. dtd. 20.10.2011	Approved vide Tariff Orders dated 30.12.2016					
	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15
Operation & Maintenance Expense	383.99	399.35	415.32	431.94	449.21	467.18	485.87
Depreciation	471.92	0.00	0.00	0.00	0.00	0.00	0.00
Return on Equity	477.15	477.15	477.15	477.15	477.15	477.15	477.15

Particulars	Approved vide T.O. dtd. 20.10.2011	Approved vide Tariff Orders dated 30.12.2016					
	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15
Interest on Working Capital	45.42	50.62	54.51	64.65	78.00	78.90	83.30
Income Tax	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Annual Fixed Charge	1,378.47	927.12	946.98	973.73	1,004.36	1,023.23	1,046.32

6.2. As highlighted in the Tariff Orders for the respective year, the Commission has determined the tariff from FY 2009-10 to FY 2014-15 in compliance with the direction of the Hon'ble APTEL in the Judgment dated 12.08.2014 in Appeal Nos 76 & 83 of 2016. The Commission in the said Tariff Orders has also mentioned that though the tariff has been determined, the applicability of tariff and payment to be made to EIPL will be based on the actual parameters achieved by EIPL.

Deemed Generation

6.3. The Commission has already discussed in detail the issue of deemed generation for the plants at Adamtilla and Banskandi in the respective Tariff Orders dated 30.12.2016 for the years from FY 2009-10 to FY 2014-15. The Commission, for the reasons recorded in the Tariff Orders dated 30.12.2016, has not allowed Deemed Generation for either plant during any of the years from FY 2009-10 to FY 2014-15. Hence, the Commission has not considered any deemed generation from FY 2009-10 onwards for computing the amount due.

However, as deemed generation for FY 2008-09 was already allowed in Tariff Order for FY 2008-09 and the same has been upheld by the Hon'ble APTEL, the Commission has considered the deemed generation for FY 2008-09 as allowed in Tariff Order for computing the amount due.

Computation of Annual Fixed Charges payable by APDCL to EIPL

6.4. As discussed above and in the Tariff Orders dated 30.12.2016 for FY 2009-10 to FY 2014-15, the Commission has not allowed any deemed generation and hence, the entitlement of EIPL towards Annual Fixed Charges (AFC) needs to be computed based on actual PLF achieved by the plants based on actual generation. Further, as discussed above, the Commission has grossed up the energy injected at the Interconnection Point with the auxiliary energy consumption of 5.5% to compute the gross generation and accordingly calculated the PLF. As the AFC worked out by the Commission is recoverable on achievement of normative PLF, the Commission has computed the AFC entitlement for EIPL based on actual PLF on pro-rata basis.

The AFC for FY 2008-09 has been considered as approved by the Commission vide the Tariff Order dated 20.10.2011 and full recovery of AFC for FY 2008-09 has been considered, as the Commission has allowed the Deemed Generation for FY 2008-09.

6.5. With this approach, the summary of EIPL's entitlement towards AFC for each year from FY 2008-09 to FY 2014-15 is given in the Table below.

Table.13: Fixed Charge Entitlement of EIPL for Adamtilla Plant

Particulars	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12 to FY 2014-15
Days in the Year	365	365	365	No AFC is payable from FY 2011-12 to FY 2014-15 as there is no actual generation in these years and the Commission has not allowed the Deemed Generation
Date of closure of Adamtilla Plant	21.09.2010			
Days of Operation	365	365	174	
Pro Rata AFC w.r.t. no. Of days of operation (in Rs. Lakh)	730.63	483.67	235.57	
Energy Injected at Interconnection Point (MU)	49.52	18.56	2.87	
Aux. Power Consumption (%)	5.50%	5.50%	5.50%	
Energy Generated (MU)	52.39	19.64	3.04	
Capacity (MW)	9.00	9.00	9.00	
Normative PLF (%)	66.46%	66.46%	66.46%	
PLF to be considered after Deemed Generation (%)	66.46%	24.91%	8.08%	
Pro Rata AFC as per calculated PLF (in Rs. Lakh)	730.63	181.33	28.63	

Table.14: Fixed Charge Entitlement of EIPL for Banskandi Plant

Particulars	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14 to FY 2014-15
Days in the Year	365	365	365	366	365	No AFC is payable from FY 2013-14 to FY 2014-15 as there is no actual generation in these years and the Commission has not allowed the Deemed Generation
Date of closure of Banskandi Plant	08.01.2013					
Days of Operation	365	365	365	366	283	
Pro Rata AFC (in Rs. Lakh)	1,378.47	927.12	946.98	973.73	778.72	
Energy Injected at Interconnection Point (MU)	68.46	60.03	58.08	58.65	28.58	
Aux. Power Consumption (%)	5.50%	5.50%	5.50%	5.50%	5.50%	
Energy Generated (MU)	72.45	63.53	61.46	62.07	30.24	
Capacity (MW)	15.50	15.50	15.50	15.50	15.50	
Normative PLF (%)	68.49%	68.49%	68.49%	68.49%	68.49%	
PLF to be considered after Deemed Generation (%)	68.49%	46.79%	45.26%	45.59%	28.73%	
Pro Rata AFC as per calculated PLF (in Rs. Lakh)	1,378.47	633.33	625.82	648.11	326.64	

6.6. As can be observed from the above Tables, the AFC for Adamtilla plant is payable only till FY 2010-11 i.e. till closure of the Adamtilla plant on 21.09.2010 and no AFC is payable from FY 2011-12 to FY 2014-15 as there is no actual generation in these years. Similarly, the AFC for Banskandi plant is payable only till FY 2012-13 i.e. till closure of the Banskandi plant on 08.01.2013 and no AFC is payable from FY 2013-14 to FY 2014-15 as there is no actual generation in these years.

Computation of Variable Charges payable by APDCL to EIPL

6.7. The Commission vide its Tariff Order dated 20.10.2011 approved the following variable charge for FY 2008-09 and vide its Tariff Orders dated 30.12.2016 approved the variable charge from FY 2009-10 onwards. Approved variable charge for the said period is provided as below:

Table.15: Approved Variable Charge for Adamtilla Plant

Particulars	Approved vide T.O. dtd. 20.10.2011	Approved vide Tariff Orders dated 30.12.2016		
	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12 to FY 2014-15
Energy Injected at Interconnection Point (MU)	49.52	18.56	2.87	0.00
Gross Station Heat Rate (kcal/kWh)	2500.00	2500.00	2500.00	2500.00
GCV of Gas (kcal/SCM)	8147.00	8164.00	8158.00	0.00
Landed Price of Gas (Rs./1000SCM)	2518.00	2469.63	3681.59	0.00
Net Variable Charge (Rs/Unit)	0.82	0.80	1.19	0.00

Table.16: Approved Variable Charge for Banskandi Plant

Particulars	Approved vide T.O. dtd. 20.10.2011	Approved vide Tariff Orders dated 30.12.2016				
	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14 & FY 2014-15
Energy Injected at Interconnection Point (MU)	87.88	60.03	58.08	58.65	28.58	0.00
Gross Station Heat Rate (kcal/kWh)	2110.00	2110.00	2110.00	2110.00	2110.00	2110.00
GCV of Gas (kcal/SCM)	8324.00	8343.00	8355.00	8342.00	8324.00	0.00
Landed Price of Gas (Rs./1000SCM)	2560.00	2517.89	4334.79	5147.89	5816.48	0.00
Net Variable Charge (Rs/Unit)	0.69	0.67	1.16	1.38	1.56	0.00

The Commission, for calculation of amount due to EIPL, has considered the variable charge as approved in the Tariff Orders for the respective years. The variable charges receivable by EIPL, based on the approved Net Variable Charge (Rs/Unit) and Energy Energy Injected at Interconnection Point (MU), are shown in the table below:

Table.17: Variable Charge payable for Adamtilla Plant

Particulars	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12 to FY 2014-15
	Energy Injected at Interconnection Point (MU)	49.52	18.56	2.87
Net Variable Charge (Rs/Unit)	0.8176	0.8003	1.1939	0.00
Total Variable Charge for Energy Supplied (in Rs Lakh)	404.86	148.55	34.25	0.00

Table.18: Variable Charge payable for Banskandi Plant

Particulars	Approved vide T.O. dtd. 20.10.2011	Approved vide Tariff Orders dated 30.12.2016				
	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14 & FY 2014-15
Energy Injected at Interconnection Point (MU)	87.88	60.03	58.08	58.65	28.58	0.00
Net Variable Charge (Rs/Unit)	0.6867	0.6739	1.1584	1.3779	1.5602	0.00
Total Variable Charge for Energy Supplied (in Rs Lakh)	603.47	404.53	672.79	808.17	445.92	0.00

6.8. Accordingly, the Commission has calculated the Annual Fixed Charge and Variable Charge for the period from FY 2008-09 till closure of plants as follows: -

Table.19: Total Charge Payable for Adamtilla Plant (Rs. Lakh)

Particulars	FY 2008-09	FY 2009-10	FY 2010-11
Annual Fixed Charge	730.63	181.33	28.63
Variable Charge	404.86	148.55	34.25
Total	1,135.49	329.87	62.88

Table.20: Total Charge Payable for Banskandi Plant (Rs. Lakh)

Particulars	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13
Annual Fixed Charge	1,378.47	633.33	625.82	648.11	326.64
Variable Charge	603.47	404.53	672.79	808.17	445.92
Total	1,981.94	1,037.86	1,298.61	1,456.29	772.56

7. Payments already made by APDCL to EIPL

7.1. EIPL, in its submission dated 20.09.16, submitted the amount received from APDCL since COD of the plants till FY 2014-15. Similarly, APDCL vide its submission dated 31.10.16 submitted the amount paid to EIPL since COD of the plants till FY 2014-15.

7.2. As the Commission in this Order is computing the amount due from FY 2008-09 to FY 2014-15, the Commission has analysed the details of payments made by APDCL for these years as submitted by APDCL and amount received by EIPL as submitted by EIPL.

7.3. The details of amount received as submitted by EIPL for both the plants is given in Table below:

Table.21: Amount Received as submitted by EIPL (Rs. Lakh)

Particulars	FY 08-09	FY 09-10	FY 10-11	FY 11-12	FY 12-13	Total
Adamtilla Plant						
AFC	375.84	293.51	32.05	0		701.40
Variable Charge	311.65	256.42	109.11	-		677.18
Total Amount	687.49	549.93	141.16	-	-	1,378.58
Rebate	9.40	7.34	0.69	-		17.42

Particulars	FY 08-09	FY 09-10	FY 10-11	FY 11-12	FY 12-13	Total
Deduction for Power	140.81	129.89	123.08	99.09		492.88
Net Amount	537.28	412.70	17.40	-99.09	-	868.28
Banskandi Plant						
AFC	1,042.07	1,026.22	1,052.01	1,385.34		4,505.64
Variable Charge	689.20	633.12	393.25	-		1,715.57
Total Amount	1,731.27	1,659.34	1,445.26	1,385.34	-	6,221.21
Rebate	26.05	25.66	13.04	15.87		80.62
Deduction for Power	234.13	244.91	251.41	187.06		917.50
Net Amount	1,471.09	1,388.78	1,180.82	1,182.41	-	5,223.09
Adamtilla & Banskandi Plant						
AFC	1,417.92	1,319.72	1,084.06	1,385.34		5,207.04
Variable Charge	1,000.84	889.54	502.36	-	-	2,392.75
Total Amount	2,418.76	2,209.26	1,586.42	1,385.34	-	7,599.79
Less Rebate	35.45	32.99	13.73	15.87	-	98.05
Less Deduction for Power	374.94	374.80	374.48	286.15	-	1,410.37
Income Tax Received	210.56					
Net Amount Recd. In Bank	2221.73	1801.47	1198.212	1083.32	499.13	6803.86
Net Amount Recd. Excl Income Tax						6593.30

7.4. The details of amount paid as submitted by APDCL for both the plants is given in Table below:

Table.22: Amount Paid as submitted by APDCL for Adamtilla Plant (Rs. Lakh)

Particulars	FY 2008-09	FY 2009-10	FY 2010-11
Annual Fixed Charge	375.84	293.51	30.56
Variable Charge	178.12	130.42	33.80
Income Tax	54.07	0.00	0.00
Total	608.04	423.93	64.36
Total amount paid to EIPL for FY 2008-09 to FY 2010-11	1,096.33		

Table.23: Amount Paid as submitted by APDCL for Banskandi Plant (Rs. Lakh)

Particulars	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13
Annual Fixed Charge	1,042.07	1,026.22	626.50	631.84	311.54
Variable Charge	456.89	394.01	666.57	751.42	415.51
Income Tax	156.49	0.00	0.00	0.00	0.00
Total	1,655.45	1,420.23	1,293.07	1,383.26	727.05
Total amount paid to EIPL for FY 2009-10 to FY 2012-13	6,479.07				

7.5. Thus, the total payment made for the period FY 2008-09 to FY 2014-15 as submitted by APDCL works out to Rs 7575.40 Lakh.

7.6. As discussed earlier in the Order, based on analysis of the submissions towards actual payment as submitted by EIPL and APDCL, the Commission held TVS with EIPL and APDCL on 16.12.2016 and directed both the Parties to submit certain details for reconciliation of the amounts paid as submitted by APDCL and amount received as submitted by EIPL. Both APDCL and EIPL have submitted the replies to the queries raised by the Commission and additional information for reconciliation of amounts. The

Commission has considered the replies and additional information as submitted by both the Parties.

7.7. The summary of total Gross Amount as considered by EIPL towards amount passed by APDCL, deductions and net payment received in bank accounts is summarized in the Table below:

Table.24: Gross Bill Amount passed, Deductions and Net Amount Received in Bank as submitted by EIPL (Rs Lakh)

Financial Year	Gross AFC	Variable Charge	Total Gross Bill Amount	Rebate	Other Deductions	Net Amount Received in Bank	IT	Total
2008-09	1,417.92	1,000.84	2,418.76	35.45	374.94	2,011.17	210.56	2,221.73
2009-10	1,319.72	889.54	2,209.26	32.99	374.80	1,801.47	-	1,801.47
2010-11	1,084.06	502.36	1,586.42	13.73	374.48	1,198.21	-	1,198.21
2011-12	1,385.34	-	1,385.34	15.87	286.15	1,083.32	-	1,083.32
2012-13	-	-	-	-	-	499.13	-	499.13
Total	5,207.04	2,392.75	7,599.79	98.05	1,410.37	6,593.30	210.56	6,803.86

7.8. The total gross amount of bill passed towards tariff payments as submitted by EIPL for FY 2008-09 of FY 2014-15 is Rs 7599.79 Lakh. However, as per the provisions of PPA, rebate for timely payment has been deducted by APDCL and further certain other adjustments, EIPL received an amount of Rs 6803.86 lakh in the bank accounts. Hence, for the purpose of computation of amount due, the total gross bill amount passed as admitted by EIPL needs to be considered.

7.9. The Commission during the TVS held on 16.12.2016 asked EIPL to submit the basis and assumptions for various deductions considered while submitting the gross amount passed by APDCL. EIPL in its replies submitted the broad reasons for deductions, but could not submit the complete details of basis of deductions made with supporting computations.

7.10. As observed from the above Table, the total amount received by EIPL in its bank accounts towards the Fixed Charges and Energy Charges after deduction is Rs. 6593 Lakh.

7.11. APDCL in its submissions dated 26.12.2016 confirmed that the amount of Rs 6593 lakh from FY 2008-09 to FY 2014-15 as submitted by EIPL towards net amount received in the bank account is correct. APDCL further submitted the figures of rebate deducted and other deductions made and arrived at the total gross bill as passed by ASEB as shown in the Table below:

Table.25: Reconciliation of Amount Paid and Gross Amount passed as submitted by APDCL for both the Plants (Rs. Lakh)

Since FY 2008-09 till closure of the plants	
Particulars	Amount in Rs. Lakh
Net amount received as per EIPL statement	6,593.30
Add	
a) Rebate amount deducted at source	
i. Adamtilla	17.47

ii. Banskandi	89.10
Sub-Total	106.57
b) Other deductions	
i. Adamtilla	193.00
ii. Banskandi	444.00
Sub-Total	637.00
c) Amount of recovery on account of excess payment	434.34
Total: (a+b+c)::	1177.90
Gross bill as admitted by EIPL	7771.20

7.12. It is observed that the gross bill amount admitted of Rs 7771.20 Lakh for the period FY 2008-09 to FY 2014-15 as submitted by APDCL as part of reconciliation statement does not match with the admitted gross bill submitted as part of summary of year-wise billing statement submitted earlier on 31.10.2016 as well as in recent submission dated 26.12.2016. The total gross bill amount passed by APDCL as submitted in year-wise billing statement is Rs 7575.40 Lakh, while the total gross bill amount passed by APDCL as admitted by EIPL is Rs 7599.79 Lakh. Hence there is minor variation in gross bill amount passed by APDCL as per APDCL and EIPL submissions.

7.13. As EIPL has not submitted the basis and details of deductions made, the Commission has decided to consider the gross amount passed by APDCL as submitted by APDCL towards the amount paid by APDCL to EIPL.

7.14. Further, as there is minor variation in gross bill amount admitted as submitted by APDCL in reconciliation statement and year-wise detailed statement, the Commission has decided to consider the figure as submitted in the year-wise detailed statement which is Rs 7575.40 Lakh. **Thus, the Commission has considered an amount of Rs. 7575.40 Lakh as payment made by APDCL to EIPL for the period FY 2008-09 to FY 2014-15.**

8. Computation of Actual Amount Due to EIPL after adjusting the payments made by APDCL

8.1. Based on amount payable by APDCL to EIPL in accordance with the Tariff Orders as discussed in Section 6 of the Order and amount paid by APDCL as discussed in Section 7 of the Order, the Commission has worked out the amount due to EIPL for the period FY 2008-09 to FY 2014-15, as shown in the Table below:

Table.26: Computation of Amount Due from FY 2008-09 to FY 2014-15 (Rs Lakh)

Particulars	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13
Adamtilla Plant					
Amount Payable by APDCL	1,135.49	329.87	62.88		
Amount Paid by APDCL	608.04	423.93	64.36		
Amount due for Adamtilla	527.45	-94.06	-1.48		
Banskandi Plant					
Amount Payable by APDCL	1,981.94	1,037.86	1,298.61	1,456.29	772.56
Amount Paid by	1,655.45	1,420.23	1,293.07	1,383.26	727.05

Particulars	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13
APDCL					
Amount due for Banskandi	326.48	-382.37	5.54	73.02	45.51
Total Amount Due for Both the Plants	853.94	-476.42	4.06	73.02	45.51
Amount Due for FY 2008-09	853.94				
Amount Due from FY 2009-10 onwards		-353.84			

8.2. Hence the total amount due for FY 2008-09 works out to be Rs 853.94 Lakh and for the period FY 2009-10 to FY 2012-13 works out to Rs -353.84 Lakh.

8.3. APDCL in its reply dated 12.07.2016 has submitted a certificate from EIPL towards full and final settlement of amount on account of rebate in which EIPL has agreed to adjust the claim of APDCL for Rs. 536.05 lakh subject to reconciliation of payment. The relevant extract of the certificate has been reproduced below:

“Further regarding the claim of Rs. 53605461/- (Rupees Five Crore Thirty-Six Lakh Five Thousand Four Hundred Sixty-One) of APDCL as detailed below vide letter No. ACE (Com-TVDLF/Capital Cost/Part-IV/Vol-II/106 dated 23.08.2010 is hereby agreed to be adjusted with the future claims of EIPL, subject to reconciliation of the payment received at our end.

a. Income Tax for FY 2008-09 : Rs. 2,10,55,971/-

b. Fixed Charge for FY 2008-09 & FY 2009-10: Rs. 3,25,49,490/-

Total : Rs. 5,36,05,461/-“

8.4. It can be observed from above that excess income tax of Rs. 210.56 Lakh has to be refunded by EIPL for FY 2008-09 to APDCL. As regards the fixed charges, as the Commission has computed the amount due considering the tariff approved by the Commission and payment made by APDCL, there is no need for separately adjusting the fixed charges. Thus, after adjusting the Income Tax of Rs 2,10,55,971/- for FY 2008-09, the total amount due for FY 2008-09 works out to be Rs. 643.38 Lakh.

9. Delayed Payment Surcharge

9.1. The Commission issued the Tariff Order for both the plants of EIPL for FY 2008-09 on 20.10.2011 and as per AERC Tariff Regulations, 2006, APDCL should have made payments to EIPL as per the tariff approved by the Commission. However, from the above calculations it can be observed that APDCL is yet to make payment of Rs. 527.45 lakh for Adamtilla plant and Rs. 326.48 lakh for the Banskandi plant of EIPL for FY 2008-09. Non-settlement of disputes prior to FY 2008-09 and non-determination of tariff subsequent to FY 2008-09 does not permit APDCL to keep the payment of EIPL pending till date. Thus, the Commission is of the view that EIPL is entitled to get Delayed Payment Surcharge for the amount due for the period FY 2008-09 till date. Hon'ble APTEL in its Judgment dated 12.08.2014 had held as under: -

“102. As far as payment of interest on arrears for FY 2008-09 on the basis of tariff order dated 20.10.2011 is concerned, EIPL is entitled to delayed payment surcharge as per the 2006 Tariff Regulations on the bills raised by EIPL after passing of the main tariff order. We find from the impugned order dated 12.2.2013 that the Assam Discom had not paid the arrears due to EIPL as per the main tariff order. The State Commission had not passed any interim order for stay of its main tariff order dated 20.10.2011 and, therefore, Assam Discom was bound to make payment of arrears as per the tariff order dated 20.10.2011 for FY 2008-09. In the Appeal 76 of 2013 this Tribunal had also not granted any stay of the tariff order dated 20.10.2011 and the review order dated 12.2.2013. Therefore, the Distribution Company is liable to pay delayed payment surcharge to the EIPL as per the Regulation.”[Emphasis added]

9.2. It can be seen from above that Hon'ble APTEL in its Judgment dated 12.08.2014 has given a clear direction that EIPL is entitled to delayed payment surcharge as per the AERC Tariff Regulations, 2006 on the bills raised by EIPL after passing of the main Tariff Order.

9.3. AERC Tariff Regulations, 2006 specifies Delayed Payment Surcharge as under: -

“28. Late payment surcharge

*28.1 In case the payment of bills of transmission charges, wheeling charges or charges for **electricity purchased by a person other than a consumer is delayed beyond a period of two months from the date of billing, a late payment surcharge at the rate determined by the Commission shall be levied by a generating company, the transmission licensee or the distribution licensee.***

28.2 For delay in payment of bill by a consumer beyond a period of fifteen days a late payment surcharge at the rate determined by the Commission shall be payable to the Distribution Licensee.

28.3 The amount recovered as late payment surcharge by a generating company or a licensee shall be considered as income from tariff.

28.4 The normal principle to be followed for adjustment of any arrear payments shall be that first adjustment shall be made against the delayed payment surcharge due and adjustment against energy charges shall be made only after the full recovery of the delayed payment surcharge.” [Emphasis added]

9.4. The PPA has the following provision for late payment of invoices: -

“5.5 Payments of invoices including any supplementary invoices made beyond the due date of payment shall carry an interest rate equal to that applicable to interest on Working Capital as mentioned in Clause 3.3 (c) calculated on days of delay. This does not give any right whatsoever to the Board to delay payments and accordingly is without prejudice to any other remedy the company may have for late payment by the

Board.”

9.5. The Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 has the provision of surcharge at the rate of 1.25% per month with regard to Delayed Payment Surcharge

*“35. Late payment surcharge. In case the payment of any bill for charges payable under these regulations is delayed by a beneficiary beyond a period of 60 days from the date of billing a **late payment surcharge at the rate of 1.25% per month** shall be levied by the generating company or the transmission licensee, as the case may be.”[**Emphasis added**]*

9.6. Hon'ble APTEL vide its Judgment dated 18.11.2015 directed APDCL to make an interim payment of Rs. 900 lakh to EIPL, which was subject to adjustment in future. The relevant extract of the said Judgment is extracted below for reference.

*“A letter from Commissioner and Secretary to the Government of Assam (Power), Power (Electrical) Department dated 12th June, 2015 addressed to the Managing Director, APDCL has been filed today by the learned counsel for the respondent nos. 1 & 2/Discoms. We deem it proper to **direct the respondent nos. 1 & 2 to deposit an amount of Rs. 9 crore within 10 days** from today failing which we shall be constrained to proceed further as per the provisions of Order XXI CPC. We are to treat every entity at par whether it is a Government or non-Government body. This amount shall be subject to the adjustments subsequently.”[**Emphasis added**]*

9.7. Accordingly, APDCL in its submission dated 30.06.2016 has mentioned to have paid Rs. 900 lakh to EIPL on 09.02.2016 vide Cheque No. 496155 dated 16.12.2015 as per Hon'ble APTEL's direction.

9.8. The Commission is of the opinion that APDCL is liable to pay Delayed Payment Surcharge (DPS) to EIPL for the amount due for FY 2008-09 in terms of AERC Regulations, 2006 and CERC Regulations, 2009. Further, the Commission is of the view that no DPS shall be applicable from FY 2009-10 to FY 2014-15 as the plant wise tariff petitions for these years have been filed by EIPL only on 24.8.2016 and thereafter, the Commission has issued the Tariff Orders on 30.12.2016.

9.9. Accordingly, the Commission has computed the amount due including DPS for the outstanding amount of FY 2008-09 as follows:

Table 27: Total Amount Due including DPS from FY 2008-09 to FY 2014-15 (Rs Lakh)

Date of Issuance of final Order for FY 2008-09 by the Commission	20.10.2011
Due date for Payment	19.12.2011
Number of Days for DPS	1513
Total amount to be paid to EIPL for FY 2008-09 (Rs. lakh)	3,117.42
Amount paid by APDCL to EIPL for FY 2008-09 (Rs. lakh)	2,263.49
Amount Due as per Tariff Order for FY 2008-09(Rs. lakh)	853.94
Income Tax to be adjusted for FY 2008-09	210.56
Net amount due for FY 2008-09	643.38
Date of Payment of Rs. 9 Crore by APDCL as per Hon'ble APTEL's Judgment dtd. 18.11.2015	09-02-2016
No. of days from Due Date for FY 2008-09 to 09.02.2016	1514
No. of months	50.47
Rate of Late Payment Surcharge per month (%)	1.25%
DPS to be paid by APDCL till payment of Rs. 900 lakh (Rs. lakh)	405.86
Total Amount Payable for FY 2008-09 including DPS (Rs. lakh)	1,049.24
Payment made on 9.2.2016(Rs. lakh)	900.00
Balance Payment yet to be made for FY 2008-09 (Rs. lakh)	149.24
Date of Issuance of this Order	31.12.2016
Number of days from 9.2.2016 to 30.12.2016	327
Number of Months	10.90
DPS to be paid on balance payment (Rs. lakh)	20.33
Balance Payment to be made for FY 2008-09 including DPS (Rs. lakh)	169.57
Payment Due from FY 2009-10 to FY 2014-15(Rs. lakh)	-353.84
Net Amount due from FY 2008-09 to FY 2014-15(Rs. lakh)	-184.27

9.10. Thus, as per the working of the Commission, EIPL is liable to pay an amount of Rs. 184.27 lakh to APDCL as on 30.12.2016 for both the plants of EIPL for the amount due for the period from FY 2008-09 to FY 2014-15. Further, as discussed in the Tariff Orders issued by the Commission, though the years FY 2008-09 to FY 2014-15 are already over, the Commission due to non-submission of adequate information by EIPL could not carry out the truing up for these years. Ideally, the amount due for the period which is already over should be computed after carrying out the true up. However, the Commission in compliance to the direction issued by Hon'ble APTEL has worked out the amount due for the period FY 2008-09 to FY 2014-15 at normative tariff, which may undergo change based on truing up for these years.

Sd/-
(Subhash Ch.Das)
Member
AERC

Sd/-
(Dipak Chakravarty)
Member
AERC

Sd/-
(Naba Kumar Das)
Chairperson
AERC