

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 12 of 2011

In the matter of
Petition filed by Reliance Infrastructure Ltd. for Adoption of Tariff determined through transparent process of bidding under Section 63 of the Electricity Act, 2003 in respect of Power Purchase Agreement (PPA) entered into between Reliance Infrastructure Limited and Vidharbha Industries Power Limited respectively

Shri V.P. Raja, Chairman
Shri Vijay L. Sonavane, Member

ORDER

Dated: May 31, 2011

Reliance Infrastructure Limited's (RInfra), submitted a Petition under affidavit dated on January 28, 2011 under Section 63 of the Electricity Act, 2003 (EA 2003) for Adoption of Tariff determined through transparent process of bidding in respect of Power Purchase Agreement (PPA) entered into between Reliance Infrastructure Limited and Vidharbha Industries Power Limited respectively.

2. The prayers in the Petition are as under:

- a) *that this Hon'ble Commission may be pleased to approve extension of time taken for the entire bidding process under Case 1- procurement of power on long term basis (which should be read as medium term) and to condone the delay under para 5.16 read with para 5.19 of the Guidelines;*

- b) *that this Hon'ble Commission may be pleased to note the certificate and relevant approvals and documents being Annexures I and J hereto.*
- c) *that this Hon'ble Commission may be pleased to adopt the tariff in the Power Purchase Agreement entered into between Reliance Infrastructure Ltd. and Vidharbha Industries Power Pvt. Ltd. dated 21st January 2011 along with the Addendum thereto (Annexure C and H hereto);*
- d) *that this Hon'ble Commission may be pleased to grant "in principle" approval to the proposed PPA to be entered into between RInfra and GEL pursuant to LOI dated 18th December, 2010 (Annexure "I" hereto).*
- e) *For such and further and other reliefs as the Hon'ble Commission may deem appropriate in the facts and circumstances of the case."***(Emphasis added)**

3. RInfra made the following submissions in the Petition dated January 28, 2011:

- a) RInfra is a company registered under the provisions of the Companies Act, 1956, and is also a generating company as well as a distribution licensee under the provisions of the EA 2003. RInfra generates 500 MW power at its Dahanu thermal power station. This power is brought by R-Infra to its area of supply i.e., the suburbs of Mumbai.
- b) RInfra filed a Petition in Case No. 94 of 2008 before the Commission for approval of proposed quantum of power for medium term power procurement (MTPP) through Competitive bidding route via Case 1 and approval of bid documents. The Petition was filed in consonance with the Guidelines issued by the Government of India, Ministry of Power, for determination of tariff for bidding process for procurement of power by distribution licensees dated January 19, 2005 as amended from time to time. The said Petition in Case No. 94 of 2008 was disposed of by the Commission vide Order dated July 21, 2009 which the Petitioner craves leave to refer to when produced.
- c) RInfra obtained approval from Commission for procurement of 1000/1200 MW of power on Medium Term basis for the period FY2011 to FY2014. RInfra issued a Request for Proposal (RFP) on 30th July , 2009 for procurement of power through Competitive Bidding process for Medium term .The Commission vide letter dated April 27, 2010 sought information on the actual status regarding Medium Term procurement. . RInfra replied and informed the Commission vide letter dated May 19, 2010 that the Letter of Intent(LoI)'s have been issued to two

bidders , i.e., Wardha Power Company Limited (WPCL) and Abhijeet MADC Nagpur Energy Pvt. Limited (AMNEPL) for supply of 260 MW and 55MW Power respectively for the Medium Term Power Procurement (MTPP). R-Infra further stated in the said letter that from April 1, 2010 financial negotiations were in progress with other bidders. The letter also contained details of the MTPP bids along with an Evaluation Report.

- d) Further RInfra through letter dated May 24, 2010 informed the Commission that LoIs have been issued to the successful bidders i.e., WPCL, AMNEPL as well as Vidarbha Industries Power Ltd. (VIPL), a group of R-Power The details of the LoIs issued on Medium Term are detailed here as under.:

Supply Period	Approved capacity-RTC (MW)	Approved capacity offered-RTC (MW)	Details	Levellised Rate (Rs./Unit)
Oct 09 to March 10	850	Nil		
Apr 10 to March 11	1000	Nil		
Apr 11 to March 12	1000	315	WPCL- 260MW AMNEPL-55MW	WPCL- Rs. 4.85 /Unit
Apr 12 to March 13	1200	449	WPCL- 260MW AMNEPL-55MW VIPL- 134 MW	AMNEPL- Rs. 4.80 /Unit
Apr 13 to March 14	1200	449	WPCL- 260MW AMNEPL-55MW VIPL-134 MW	VIPL- Rs. 4.80 /Unit

- e) In reply to Commission's letter dated 15th June 2010 R-infra vide letter dated 22/06/2010 appraised the status informing that PPAs have been signed with two bidders' ie. WPCL and VIPL. Third bidder AMNEPL has requested for extension of 45 days as more time is required by their bankers. Subsequently the Commission by letter dated October 24, 2010 advised RInfra to submit the current status of the power procurement process at the earliest.
- f) RInfra submitted that it has entered into a PPA with WPCL on June 4, 2010 and informed WPCL with regard to the Expression of Interest (EoI) invited by the Commission vide Public Notice dated October 6, 2010 and has, inter-alia, stated that they would be unable to proceed further as per the conditions subsequent to

be satisfied by R-Infra stipulated in the PPA executed between the parties. However, WPCL in its reply insisted on RInfra to comply with the said conditions. Correspondence has been exchanged between the parties thereafter.

- g) RInfra submitted that it has entered into a PPA with VIPL on June 16, 2010 and informed VIPL by letter dated December 10, 2010 about the status of EoI and the Petition filed by RInfra bearing Case No. 78 of 2010 on November 1, 2010 for renewal of R-Infra's Licence beyond August 15, 2011.
- h) VIPL by a letter dated December 18, 2010 replied, inter-alia as follows:

“

At the outset, we wish to clarify that we are in the process of finalizing Fuel Supply Agreement (FSA) and shall be in a position to execute the FSA within time period under the Power Purchase Agreement (PPA) dated 16th June 2010.

We are aware of the developments in your licensed area of business. Notwithstanding the various provisions available to us under the PPA dated 16th June, 2010, we are in principle agreeable and willing to waive our right to claim any relief from you whatsoever, within the terms and conditions of the said PPA dated 16th June, 2010, save and except to the extent limited to the 'developments' more particularly enumerated at your said letter dated 10th December, 2010 under reference to us.”

- i) RInfra vide letter dated January 7, 2011 replied to VIPL and requested VIPL to reduce the price keeping in view the prevailing market conditions (since the prevailing per unit price of power had substantially gone down). They also further informed VIPL that on the basis of the decision contained in the letter dated December 18, 2010, from VIPL, R-Infra would approach the Commission for adoption of Tariff.
- j) In response to R-Infra's communication dated 7th January 2011 VIPL vide their letter dated January 13, 2011 offered revised levelled tariff of Rs. 4.24 per kWh from their Butibori Project. VIPL further revised the quantity of power to be supplied from 134 MW to 414 MW.

Based on letter from VIPL, the PPA between VIPL & R-Infra which was signed On 16th June 2010 was amended & notable clauses are as follows

“

D] The following clause shall be inserted after article 5.2.1 (Allocation of Generation capacity)

5.2.2 The seller shall make available further 270 MW of contracted capacity to the procurer as per terms of this agreement.

E) The letter dated December 18, 2010 addressed by agreeing to waive all its rights to claim relief within the terms and conditions of the PPA dated 16.06.2010 save and except to the extent limited to the 'developments' more particularly set out in the letter dated 10.12.2010 addressed by Reliance Infrastructure Limited to Vidharbha Industries Power Limited shall form an integral part of the said PPA dated 16th June, 2010."

- k) RInfra by a letter dated December 21, 2010 informed Abhijeet MADC Nagpur Energy Pvt. Limited regarding issuance of EoI by the Commission. It also mentioned about inability of RInfra to proceed further as per the terms and conditions subsequent to be satisfied by as stipulated in Article 3.2 of the PPA. However, no reply was furnished by the Abhijeet Group.
- l) The status sought by the Commission with regard to, inter-alia, MTPP by a letter dated January 15, 2011 which RInfra craves leave to refer to when produced.
- m) RInfra submitted that in view of the regulatory uncertainty, inter-alia, in so far as (i) the EoI is concerned; (ii) the renewal of RInfra's distribution Licence is concerned; (iii) the migration of consumers of RInfra to TPC-D under the Order of Commission dated October 15, 2009 and (iv) the issue pending before the Commission with regard to recovery of the Cross- Subsidy Surcharge from the erstwhile consumers of RInfra who have shifted to TPC-D and who may revert back to RInfra or the present consumers who remain with RInfra after a decision on the issue of Cross- Subsidy Surcharge and other pending proceedings, including Case No. 13 of 2010, RInfra is approaching the Commission for adoption of tariff as contained in the PPA executed between RInfra and VIPL along with the addendum thereto. It is submitted that the provisions of the said PPA and in particular the addendum thereto protects interest of all concerned. However, WPCL and AMNEPL have not agreed to similar course of action which is a reasonable request keeping in view, inter-alia, and the interest of the consumers.
- n) The Commission had approved the quantum for MTPP as follows:
 - FY 2011-12 700 MW
 - FY 2012-13 1000MW
 - FY 2013-14 1200 MW
- o) RInfra further submitted that, they require more power on MTPP and therefore, they have issued an LoI to M/s. Global Energy Private Ltd. (GEPL) on December 18, 2010 for 300MW for Medium term at the rate of Rs. 3.90/kWh (Entry into WR system) and trading margin as per the terms and conditions of

LoI. The GEPL by letter dated December 29, 2010 accepted the said LoI along with the additional conditions with regard to the Contract Performance Guarantee amounting to Rs. 90 Crore i.e., Rs. 30 Lakh/MW. It also enclosed a letter dated December 28, 2010 from Jindal Power accepting the terms and conditions mentioned in the said LoI.

- p) RInfra submitted that a perusal of the said LoI issued to GEPL shows that the LoI is accepted subject to, inter-alia, the decisions of the Commission in Case No. 13 and 78 of 2010 and the approval of Tariff by the Commission. It is in process of entering into the PPA and seeks liberty of the Commission to approach to the Commission for approval of the proposed PPA under section 86(1) (b) of the EA 2003. It is also submitted that the rate is competitive even in comparison with the PPA entered into with VIPL.
- q) The Evaluation Committee of R-Infra has issued appropriate certification that the evaluation of the bid process is done in accordance with the provision of the issued RFP document and Procurer's certificate has also been issued regarding the Conformity of the bid process with the Guidelines.
- r) RInfra has submitted that the entire bidding process upto signing of the PPA with VIPL was completed on January 21, 2011. The delay in completion of the said process is on account of various factors, such as, the extension of the period for submission of bids requested by of the prospective bidders, time required to obtain competitive rates through negotiations. Thereafter, R-infra sought from bidder's waiver of certain conditions in PPA in view of uncertainty due to issuance of Expression of Interest by the Commission, pendency of R-Infra D licence renewal petition. RInfra has further submitted that the Commission has been kept duly informed; through its letter's dated May 19, 2010 and May 24, 2010. It has further requested the Commission to approve the deviations in the guidelines under paragraph 5.16 thereof by reason of RInfra having exceeded the stipulated period mentioned in the paragraph 5.19. RInfra has also further submitted that the approval of such deviation would not cause any loss or prejudice in as much as the price at which the PPA is entered into and the tariff which is requested to be adopted under section 63 of the EA 2003 is competitive and assured supply for a quantity of 404 MW would begin from April 1, 2012.

4. The Commission issued a notice on February 4, 2011 scheduling the hearing in the matter on February 17, 2011 and directed RInfra to serve copies of its Petition to the four Consumer Representatives authorised on a standing basis under Section 94(3) EA 2003.

5. During the hearing held in the matter on February 17, 2011 along with Case No. 11, 13 and 17 of 2011, Shri. Lalit Jalan, CEO, Shri. Kapil Sharma, Head Regulatory, and Shri. Bhatt, Sr. Advocate appeared on behalf of RInfra.
- a) Shri. Bhatt submitted that RInfra has approached to the Commission for the adoption of tariff of Vidharbha Industries Power Limited (VIPL) and Global Energy Pvt. Limited (GEPL). The Commission enquired about the reasons for approaching the Commission for adopting the tariff only for VIPL, whereas it has not approached for adoption of tariff from WPCL and AMNEPL.
 - b) Shri. Lalit Jalan of RInfra submitted that subsequent to the Expression of Interest invited by the Commission; RInfra vide its letters informed to the successful bidders about RInfra's inability to proceed with Article 3.2 of PPA. VIPL in its letter dated December 15, 2010 agreed to RInfra contentions limited to the developments related to Expression of Interest. VIPL further offered reduced rate to Rs. 4.24/ kWh as against Rs 4.85/kWh Further VIPL offered to supply 404 MW power as against 134 MW. WPCL and AMNEPL have not agreed to accept the RInfra's inability to proceed with Article 3.2 of PPA, subsequent to result of Expression of Interest.
 - c) The Commission enquired about the issue of LoI with GEPL, who was not the party of the bidding process. Shri. Jalan submitted that R-Infra had issued a separate tender for supply of power for three years, and GEPL offered to supply 300MW power at a levellised rate of Rs. 4.25/ kWh. RInfra further negotiated the price with GEPL and GEPL offered 300 MW at a levellised tariff of Rs.3.90/kWh. Shri. Jalan submitted that the negotiations are in the consumers interests.

6. As per the direction given by the Commission during hearing held on February 17, 2011, a meeting was held on February 18, 2011 between the staff of the Commission and the RInfra officials at the office of the Commission to discuss the various issues and rectify the deficiencies observed. During the meeting conducted on February 18, 2011, Shri. Kapil Sharma, Head Regulatory and others appeared on behalf of the RInfra and Shri. Rajendra Ambekar, Director Tariff, Shri. Prafulla Varhade, Director EE and others appeared on behalf of the Commission. The issues and discrepancies which were discussed and raised are as follows:

- a) RInfra in its prayer (a) of the petition has mentioned as 'Case 1- procurement of power on **long term basis**', the same should be modified as 'medium term'.

“

*a. that this Hon'ble Commission may be pleased to approve extension of time taken for the entire bidding process under Case 1- procurement of power on **long***

term basis (which should be read as medium term) and to condone the delay under para 5.16 read with para 5.19 of the Guidelines;”(emphasis added)

- b) RInfra may submit a separate petition for prayer (d) in Case No. 12 of 2011 for in – principle approval for proposed PPA to be entered into between RInfra and GEL in pursuance to the LoI issued on 18th December, 2010, as the cause of action and the process of entering into the proposed PPA are separate. This has been agreed by RInfra.
- c) RInfra is required to submit the Base-load and Peak Load forecast for FY 2011-12, FY 2012-13 and FY 2013-14 and whether it needs to review the quantum of power required for procurement of base load on medium term basis approved through order dated 15th July 2009 in Case No. 94 of 2008
- d) RInfra is required to submit detailed chronology of events /key milestones starting from initiation of RFP issued for Medium term Power Procurement (MTPP) bid process. It should comprise of various supporting documents such as a tender documents, RFP documents, non-financial bids of selected Bidders, quantum and levellised tariff quoted on the bid opening date and subsequent rates received during various stages of negotiations, documentary evidence of communication of negotiation held between the all the parties and reasons for deviation from CBG timeline, etc.
- e) RInfra is required to submit the comparative statement between provisions of Competitive Bidding Guidelines, the standard RFP documents with deviations approved by the Commission against present bidding process undertaken and signing of agreements (PPA’s etc.). It should include PPA, default ESCROW agreement, hypothecation agreement and any other agreement, as applicable.
- f) RInfra to clarify whether the standard adopted terms and condition of bids were circulated and equally with all bidders during the negotiation of financial bids.
- g) RInfra is required to submit PPA of VIPL of 134 MW dated 16th June 2010 along with the revised petition.
- h) RInfra needs to clarify that signing of agreements including PPA, escrow agreement, hypothecation agreement and any other agreement as applicable is the part of bid process/events as per CBG Guideline of GOI and hence adoption of tariff under Section 63 of EA 2003 arises after the completion entire bid process prescribed in CBG.
- i) RInfra-D in its petition may request the Commission regarding compliance with Clause 6.3 of CBG in case RInfra-D need to clarify from the Commission that at what stage it has to be complied. In case Clause 6.3 of CBG is the part of the bidding

process, the same need to be done before the adoption of tariff. In this regard, a legal opinion may be sought.

- j) RInfra is required to submit, whether it has complied with Clause 5.6 of CBG.
- k) RInfra is required to submit soft copies of excel sheets showing a detailed breakup which provides levelled tariff calculation for all parties at different negotiation stages.
- l) RInfra is required to submit the evaluation report of the evaluation consultants by Feedback Ventures for additional quantum of 270 MW and whether the bidding criteria specified RFP fulfils the same including requirement of land, fuel, water, environment and forest clearance required for total quantum of 404 MW.
- m) RInfra is required to clarify that agreement for 150 MW RTC power and 300 MW banking arrangement is a separate issue and there is relief to be sought in this Petition.
- n) RInfra is required to submit the rationale for not submitting the hypothecation agreement and ESCROW agreement and any other agreement required under PPA signed with VIPL (RPower's Butibori).
- o) The Non-technical bid evaluation for MTPP bids does not provide qualified bidders as the same is available under LTPP bids evaluations report. RInfra needs to clarify.
- p) RInfra needs to clarify that whether Feedback Venture, who has done non-technical bid evaluation for MTPP and LTPP bids, was part of evaluation committee.
- q) RInfra is required to submit profile of external member Sh. Mehul Parikh and documents related to its appointment as external member.
- r) RInfra is required to submit documentary evidence showing that the evaluation committee has sought the clarifications regarding the fuel linkages for entire 404 MW quantum and water linkages which is identified by Feedback Ventures while evaluating the non-financial bids.
- s) RInfra needs to clarify that whether the bid process for peak load requirement under MTPP has been undertaken as approved by the Commission dated 21st July 2009 in Case No. 94 of 2008.
- t) RInfra may submit the revised petition along with annexures after incorporating aforesaid comments. In the meantime RInfra should submit the all the necessary documents as communicated during the said meeting. Para 3 (Page 2) of the Petition states Govt. Of Maharashtra which may be replaced by Govt. Of India.

7. RInfra by letter dated March 1, 2011 replied to the issues and discrepancies raised by the Commission during the meeting and clarified them in the revised Petition submitted along with the above mentioned letter.

- a) RInfra reiterated the submissions made in the Petition. Further it has submitted that the Commission in its Tariff Order dated June 15, 2009 and subsequent Clarificatory Orders dated July 22, 2009 and October 15, 2009 allowed TPC-D to supply power to consumers in RInfra's area by utilising the distribution network of RInfra. The demand projections considered by Commission while giving approval has changed and RInfra has considered CSS would be applicable by March 31, 2011 and therefore no migration is envisaged thereafter. In view of this RInfra has frozen the peak demand of migrated consumer to 425 MW and considered natural growth for projecting the demand from FY 12 to FY 14.

RInfra Demand projection at G < > T interface is accordingly to be as follows:

Period	FY 11-12	FY 12-13	FY 13-14
RInfra Peak Demand in MW	1389	1489	1567

The Base Load (Average Demand for the year) and Peak Load forecast for RInfra is as follows:

Period	FY 11-12	FY 12-13	FY 13-14
Base Load in MW	1050	1129	1180
Peak Load in MW	339	360	387

RInfra has tied up 500 MW with its generating station at Dahanu. The Base Load requirement of RInfra is as below:

RInfra Availability/ Gap	FY 11-12	FY 12-13	FY 13-14
Base Load MW	1050	1129	1180
DTPS-Availability (Ex-Bus) MW	460	460	460
Gap MW	590	669	720

To meet the base load gap, RInfra has tied up the power with the following sources:

- i. 300 MW (entry into WR), i.e., 280 MW at Maharashtra InSTS from GEPL for the period FY 12 to FY 14. This is subject matter of Petition in Case No. 29 of 2011 filed before the Commission for seeking in principle approval of LoI issued to GEPL under section 86 (1) (b) of EA 2003.

- ii. 150 MW (entry into WR), i.e., 140 MW at Maharashtra InSTS RTC Power from GEPL for the period FY 12.
- iii. Banking Return of around 300 MW in FY 12 from April 2011 to October 2011.
- iv. 404 MW from VIPL for the period from FY 13 to FY 14 which is the subject matter of the Present Petition in Case No. 12 of 2011 before the Commission for adoption of tariff under Section 63 of EA 2003.

RInfra has tied up total quantum of 720 MW for FY 12 and 684 MW for FY 13 and FY 14 to bridge the gap of Base Load and Peak Load requirement and it will meet its additional peak load requirement through short-term purchases from Bilateral market or Power Exchange for specific peak load hours of the day.

- b) RInfra has further submitted in its revised Petition that paragraph 6.3 of the guidelines inter-alia stipulates that the name of the successful bidder shall be made public and that a notice requires to be published in at least 2 newspapers. Further RInfra has requested the Commission to provide the necessary clarification pertaining to the compliance of paragraph 6.3 of the guidelines in so far as whether the same is required to be published before or after the adoption of tariff by the Commission.
 - c) RInfra submitted that it has complied with the provisions in paragraph 5.6 of the Guidelines except for 5.6 (iii) where changes in Default Escrow Agreement and Agreement to Hypothecate cum Deed of Hypothecation were made to meet the requirement of the bankers of the bidder.
8. The Commission vide Notice dated March 4, 2011, scheduled a hearing in the matter on March 17, 2011 and directed the Petitioner to serve a copy of its Revised Petition along with its accompaniments to all the authorised Consumer Representatives latest by March 8, 2011.
9. During the hearing held on March 17, 2011, Shri. JJ Bhatt, Sr. Advocate appeared on behalf of Rinfra alongwith Shri. Kapil Sharma, Head Regulatory.
- a) The Commission directed RInfra to submit the current actual ground status of the generating projects of Vidharbha Power Company Ltd. from whom RInfra has proposed to purchase of 404 MW power along with the latest status of Coal and Water linkages.
 - b) Further Consumer Representative, Shri. Ashok Pendse submitted that the power supply from WPCL would start from April 1, 2011. Considering the power from WPCL, RInfra would have to procure additional 600 MW from bilateral whereas, if WPCL's

power is not considered then the gap would rise to about 860 MW. The Commission should take a decision, which would ultimately benefit the consumers.

- c) Shri. Sanjay Sen, Advocate for WPCL submitted that the PPA between WPCL and RInfra for procurement of 260 MW power for 3 years has been terminated by RInfra vide their letter dated March 7, 2011. Further, Shri. Sen submitted that there are two obligations w.r.t. the PPA. The first obligation of the bidder .i.e. WPCL is to sign the Fuel Supply Agreement (FSA) and the obligation of the procurer .i.e. RInfra is to file a Petition to the Commission for adoption of tariff. Shri. Sen submitted that WPCL has not yet signed the FSA. However; it has made alternate arrangement from the Vendors for supply of coal.
10. Considering all the issues, WPCL has filed an interim application dated March 15, 2011 with interim prayers. WPCL raised the intricacy of supply of the 260 MW power which is arisen because RInfra has issued a letter of termination dated March 7, 2011. Considering all the above, Shri. Sen submitted that WPCL has fulfilled all the conditions and hence, there lies no question of termination of PPA by RInfra.
11. The Commission vide Notice dated March 18, 2011, scheduled a hearing in the matter on March 30, 2011 and directed the Petitioner to serve a copy of its Revised Petition along with its accompaniments to all the authorised Consumer Representatives latest by April 8, 2011.
12. During the hearing held on March 30, 2011; Shri. Lalit Jalan, CEO, and Shri. Bhatt, Sr. Advocate appeared on behalf of Reliance Infrastructure Ltd. (R-Infra). Shri. Kaushik Trivedi, Project Head, appeared on behalf of VIPL. Shri. Trivedi made a presentation on the status of the Butibori Project. The presentation consists of details of status of implementation of the project including various statutory clearances and approvals required for the Project. The Commission directed VIPL to submit the detailed chronology of the Unit-wise Milestones of the Butibori Project to ensure RInfra shall be in position to get power from scheduled delivery date. The Commission further directed RInfra to submit the Letter of Assurance (LoA) issued by the Western Coalfields Ltd. for the first phase of the Project.
13. An Intervention application came to be filed by M/s. Wardha Power Company Ltd, Jubilee Hills, Hyderabad (“WPCL”) on April 1, 2011 on the ground that the reliefs prayed for by the Petitioner in the present matter affects the Intervener directly and substantially.

14. During the Hearing held on April 1, 2011 before the Commission, the Advocates of WPCL sought that their Intervention Application be allowed. WPCL submitted that they have informed RInfra that they would be present before Commission. However, none was present on behalf of RInfra. After hearing WPCL the Commission allowed the Intervention Application filed by WPCL and directed the office to provide them inspection and Copies of the petition/ Submissions, along with all annexures in Case No. 12 of 2011.
15. RInfra vide letter dated April 7, 2011 has submitted the information sought by the Commission during the hearing on March 30, 2011 pertaining to LoA for coal linkage of phase 1 and detailed information on the schedule to show preparedness to achieve CoD by March 2012 and details of power execution.
16. WPCL by its letter dated April 26, 2011, as an Intervener submitted as under:
 - a) It seeks to invoke the jurisdiction of the Commission to object to the adoption of tariff as prayed for by the Petitioner in the present Petition. It has further stated that the reliefs prayed for by the Petitioner directly, prejudicially and substantially affects the rights and interests of the Intervener pending final disposal of Case No. 11 of 2011 which is pending adjudication before the Commission. It has therefore prayed that the Commission ought not to allow the present Petition till the final disposal of Case No. 11 of 2011 since allowing the present Petition will render the proceedings of the said case as infructuous including the Appeal No. 53 of 2011, preferred by the Petitioner herein against the Interim Order dated April 15, 2011 granted by the Commission in favour of the Intervener in Case No. 11 of 2011.
 - b) The Commission vide its Order dated April 1, 2011 allowed the Intervention Application and directed to provide for supply of all the documents to the Intervener filed in the Present Petition. The Intervener, after going through the records of the Present Petition is filing its objections against allowing of the present Petition. The Intervener's submissions briefly stated are as follows -
 - c) WPCL is a generating company and is setting up a 540 MW (4*135 MW) coal based power generating plant in Warora MIDC, Chandrapur District, Maharashtra. The first three units of the generating station have already been commissioned. The Fourth unit of 135 MW has been synchronised with the grid on April 20, 2011 and is likely to achieve Commercial Operation on or around May 10, 2011. Whereas RInfra is a distribution licensee and has preferred the present Petition for adoption of tariff, pursuant to Case-I bidding process for MTPP in terms of a PPA dated June 16, 2010 which also includes an illegal addendum dated January 21, 2011 for supply of 270

MW of power even though the said quantum of power was not part of the said bid process, entered between the Petitioner and its sister Company VIPL.

d) The main objections raised by the Intervener for not allowing the present Petition are as follows:

i. The addendum dated January 21, 2011 is an attempt for backdoor entry of the sister company i.e., VIPL of the Petitioner since the Bidding Guidelines issued by the Central Government do not provide any clause about an addendum to a PPA as the same cannot be evaluated by the Evaluation Committee. The Evaluation Committee can only evaluate the quantum of power and tariff if the same has come through a bid process. However in the present case the addendum for supply of 270 MW of power was not part of the bid process and therefore, the same was not evaluated by the evaluation Committee and such of those bids which were not evaluated cannot be proposed for adoption of the Tariff.

ii. The quantum of power mentioned in the addendum is from the 2nd Unit of 300 MW of VIPL, who took part in the long term bidding process, for supply of electricity from 2014-15 onwards, conducted by the Petitioner for which an RFP was issued in July 2009. The Petitioner has relied upon documents of Feedback Ventures who have submitted non-financial bid evaluation Report for long term power procurement and not medium terms which is in issue in the present proceedings. Therefore, in the Petition, it appears that Chitrangi Power Private Ltd. is also listed as a bidder. Also, further without specifying the reasons to the Intervener, the entire report has not been filed and instead only few selected pages have been filed. Therefore, the Petitioner needs to clarify about the report of bid evaluation on the MTPP and the circumstances under which the Petitioner is relying on the long term non-financial bid evaluation report of M/s. Feedback Ventures in the present Petition related to the MTPP only. M/s. Feedback Ventures may clarify on Affidavit about the correctness with regard to the evaluation of the bid under the Medium Term. Examination of documents obtained by the Intervener pursuant to the Commission allowing the Intervention application shows that the evaluation of the MTPP bid was not done by M/s. Feedback Ventures. Thus, the said quantum of 270 MW of power was evaluated on the basis of the long term and the said evaluation cannot be a basis for supply of power in Medium Term. The bidders other than the sister company VIPL, who participated in the medium term bid process have to be given an opportunity to place their offers and it is only then the tariff and the quantum of power can be approved by the Commission.

iii. Therefore, the addendum dated January 21, 2011 to the PPA dated June 16, 2010 is illegal and needs to be set aside. Thus the aforesaid facts clearly signify that although the bid process was transparent and led to a market discovered price on the basis of which the LoI's were issued and the PPA's were executed. However, subsequently the Petitioner has herein initiated a backdoor process of promoting the interests of its sister company at the cost other bidders. Thus, the Commission needs to reject the addendum and restore the bid process on the basis of the PPA's which are executed by taking reference of the comments of the evaluation committee.

iv. The addendum dated January 21, 2011 was meant to knock off the Intervener who has come through a transparent bid process since the Petitioner has clandestinely by the present Petition filed before the Commission for approval of an addendum dated January 21, 2011 for an additional quantum of 270 MW of power to the PPA dated June 16, 2010 executed with its sister company VIPL. The original PPA was for supply of 134 MW at a levelled tariff of Rs. 4.80/kWh discovered through the transparent bidding process. However, the addendum dated January 21, 2011 was illegal and liable to be quashed since additional quantum of 270 MW of power was not part of a bid process. Thus the said action of the Petitioner is against the basis of the EA 2003 and solely intended to knock off the Intervener who is an L-1 bidder.

v. It was further submitted that the approach of the Petitioner was premeditated/ insofar as the termination of the Intervener's PPA dated June 4, 2010 was done solely to benefit its sister company VIPL. The supply period of VIPL as per the PPA dated June 16, 2010 is April 1, 2012 for a quantum of 134 MW of power. The supply period of the Intervener as per the PPA dated June 4, 2010 is April 1, 2011 for a quantum of 260 MW of power. Therefore, to completely kick out the Intervener, the Petitioner has first submitted an illegal addendum to the PPA dated June 16, 2010 for supply of an additional 270 MW of power from April 1, 2012 and thereafter tried to bring in a trader of Electricity, GEPL, through backdoor by entering into an Memorandum of Understanding (MoU) and issuing an LoI dated December 18, 2010 for supply of 300 MW of power for the supply period of April 1, 2011 to March 31, 2014. The Petitioner filed the Petition in Case No. 29 of 2011 for adoption of the said MoU. The Intervener has filed Intervention in the said matter and same has been allowed by the Commission vide Order dated March 31, 2011.

vi. The Petitioner in order to accommodate its sister company VIPL from April 2012 further issued another LoI divided in two parts, March 19, 2011 to GEPL for supply of 300 MW of power for supply period April 1, 2011 to March 31, 2012 so that the sister Company VIPL can easily fill in the boots from April 1, 2012. The Petitioner has mentioned in the said LoI that in case the Commission grants approval to the LoI dated December 18, 2010, the subsequent LoI dated March 19, 2011 will stand automatically terminated.

vii. The Intervener has further submitted that the Petitioner is fully aware of the fact that the above mentioned Case No. 29 of 2011 is bound to be rejected by the Commission there is no jurisdiction to determine tariff for supply by a generating company to a trader under Section 62 of the EA 2003. It is also because of this reason that the Petitioner issued a subsequent LoI dated March 19, 2011 to GEPL for a short term period of one year.

viii. Determination of tariff is a statutory function conferred over the Regulatory Commission under the EA 2003. The PPA is a statutory contract to the extent the determination of tariff is concerned and the same needs to be derived in a fair and transparent manner and not in an arbitrary way as the purport of the Petitioner herein by bringing an illegal addendum dated January 21, 2011 to an already concluded PPA.

ix. In the EA 2003 a tariff has to be determined only through Sections 62 and 63 i.e., the tariff has to be determined either by a Cost Plus method or through a bidding process. In the present Petition the Petitioner is trying to get its illegal addendum dated January 21, 2011 incorporated in an already concluded PPA dated June 16, 2010 and this cannot be allowed. The Commission has to take into notice that whether the said addendum is by way of a cost plus method and the same is not an attempt to promote its sister company (VIPL).

x. The Central Government bidding guidelines do not permit negotiation of tariff post execution of a PPA. The sanctity of a bid process goes if all concluded PPAs are subsequently renegotiated, over tariff and/or quantum of power with the sole intention of promoting the interests of a sister company and moreover if the same is done without even giving an opportunity to the other bidders.

xi. It has further stated that once the bids are accepted, the LoI's are issued and the PPA's are executed. The Commission does not have jurisdiction to provide a new tariff and that too over a quantum of power which was never a part of the bid

process. The Petitioner is attempting to promote the interests of its sister company by playing with the rules and regulations laid down under the provisions of the EA 2003, when the Act doesn't envisage such a situation as the Petitioner is trying to present. Therefore, the addendum dated January 21, 2011, which has neither been arrived pursuant to cost plus methods nor by a transparent process of bidding cannot be allowed to become a part of an already executed and existing PPA dated June 16, 2010.

xii. The dealings of the Petitioner with its sister company are not at arm's length: Non execution of a Fuel Supply Agreement (FSA), Collateral Agreement and the issue of the EOI in the licensed area of the Petitioner:

The Intervener was always ready and willing to fulfil its obligations under the PPA dated June 4, 2010 and supply of power equivalent to electrical output of 260 MW from April 1, 2011 and thus the Intervener vide a letter dated December 2, 2010 sought updation from the Petitioner regarding the status of transmission linkages for Open Access and the Order of the Commission for adopting tariff under section 63 of the EA 2003. In response the Petitioner by letter dated December 10, 2010 sought to terminate the PPA on the alleged grounds of Non execution of a Fuel Supply Agreement (FSA), Collateral Agreement and the issue of the EOI in the licensed area of the Petitioner are ex-facie frivolous and illegal.

xiii. Addendum is an afterthought:

After execution of the PPA's on June 4, 2010 with WPCL and June 16, 2010 with VIPL, the Petitioner herein enters into a further negotiation on tariff with VIPL only. From the documents produced it appears that no negotiation of Tariff was ever attempted with the Intervener and other bidders post execution of PPA's.

It clearly appears that a line of negotiation was continued with one of the preferred suppliers which line was not open for other suppliers. The Addendum dated January 21, 2011 for supply of additional quantum of 270 MW's of power is, thus, an afterthought as same was brought into knock off of the Intervener .

xiv. Validation of Long term bidding procedure is used to justify the addendum dated January 21, 2011 and the same is against bidding guidelines. The electricity from the VIPL's 2nd Unit was not offered in the Medium Term bid process. The Evaluation Committee report of the Medium term does not mention the said 270 MW's and therefore, the Commission cannot approve

the tariff of the renegotiated PPA dated June 16, 2010. The Commission cannot rely upon the Evaluation Committee report of the Long term bid process in the Medium Term bid process more so when the said evaluation of the long term bid process was for a period of FY 2014-15 onwards and not from 2012 onwards. Therefore, the Addendum, subject matter of the present petition, is bound to be rejected and only the original PPA dated June 16, 2010 should be allowed to proceed.

17. RInfra by letter dated May 3, 2011 has submitted its reply to objections filed by the WPCL on April 26, 2011 as follows:

- a) The Objections of the Intervener are misconceived and has got no Locus to seek quashing of the Addendum dated January 21, 2011, for supply of additional quantum of 270 MW by VIPL .It is submitted that intervener is not affected either directly or indirectly as alleged.
- b) The premise on which the intervener filed objections that VIPL is replacing the intervener is misconceived.
- c) It is denied that the addendum dated 21st January 2011 is an attempt for backdoor entry for VIPL. There is no question of promoting interest of sister concerned in as much as the negotiation resulting in benefit of consumer petition.

18. Having heard both the Petitioner, Vidarbha Industries Power Ltd. (VIPL) and the Intervener and after considering the materials placed on record, the Commission rules as under:

- a) The Commission notes that actions of the petitioner RInfra, in this case violates several fundamental aspects of Competitive Bidding which are as under:-
 - i. The petitioner submitted that the PPA was signed with VIPL on 16th June 2010 as well as they have signed the PPA with other two bidders, WPCL and AMNEPL. While RInfra has filed a petition for adoption of tariff in case of VIPL, they are silent on adoption of tariff for other two bidders.
 - ii. The process of competitive bidding was initiated by RInfra in July 2009 for procurement of power for medium term. M/s. Vidarbha Industries had participated and offered the quantum of 134 MW for the period April 2012 to March 2014 .This was against approved capacity of 1200 MW in RFP. Petitioner M/s. RInfra entered into PPA also with VIPL for the quoted quantity in month of June 2010. However, RInfra has amended the quantum to 404 MW in month of January 2011 which is far more than quoted quantity i.e., more than 200 %. In competitive bidding process,

ordering of quantity much more than quantity quoted is inappropriate, as apparently equal opportunity has not been provided to all players. Hence increase in quantum in disproportionate ratio is incorrect & thus does not merit consideration. In order to maintain sanctity of competitive bidding process, it is essential that the terms & conditions such as quantum, price etc. of original bid is deliberated in order to maintain transparency of the bidding process.

The addendum to the PPA (dated June 16, 2010) for supply of an additional 270 MW of power from April 1, 2012 reads as follows –

“(D) The following clause shall be inserted after Article 5.2.1 (Allocation of Generation Capacity)

5.2.2 The Seller shall make available further 270MW of Contracted Capacity to the procurer as per the terms of this Agreement”.

This arbitrary increase of quantum amounts to vitiating the competitive bidding process and the Commission does not approve the action of petitioner and rejects the addendum to PPA.

- iii. The Commission also notes that several rounds of negotiations were held with all the bidders at different stages. This is contrary to conditions of RFP which restricts negotiations during the process of evaluation. The contention of RInfra that the negotiations were held in the interest of consumers is also not acceptable as the process of negotiations was not transparent. The Commission is of the view that fair & equal opportunity was not given to all the bidders in process.
- b) On Perusal of project activities and progress of VIPL units, Commission is of the view that availability of power from April 2012 is unlikely. However, since the quantum and rate etc., are finalized based on competitive bidding process and also considering the PPA is for medium term till March 2014, the Commission approves supply of 134 MW of power by VIPL to RInfra as per original PPA signed on 16th June 2010. However, the rate applicable shall be as finalized in January 2011.

With this Order, the Commission disposes of RInfra’s Petition in Case No.12 of 2011.

Sd/-
(Vijay L. Sonavane)
Member

Sd/-
(V. P. Raja)
Chairman