

**MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION  
BHOPAL**

**Sub : In the matter of approval of Power Purchase Agreements.**

**Petition Nos.7, 8, 9, 10 & 12 of 2012**

**ORDER**

(Date of Order : 7<sup>th</sup> September, 2012)

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|---|---|--------------------|
| <ol style="list-style-type: none"><li>1. MP Power Management Co. Ltd., Jabalpur</li><li>2. MP Paschim Kshetra Vidyut Vitaran Co. Ltd. Indore</li><li>3. MP Poorv Kshetra Vidyut Vitaran Co. Ltd., Jabalpur</li><li>4. MP Madhya Kshetra Vidyut Vitaran Co. Ltd., Bhopal</li></ol> | } | <b>Petitioners</b> |
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Vs.

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| <ol style="list-style-type: none"><li>1. M/s. M.B. Power (Madhya Pradesh) Ltd., New Delhi (Petition No.7/2012)</li><li>2. M/s. Jhabua Power Ltd., Kolkatta (Petition No.8/2012)</li><li>3. M/s. D.B. Power (Madhya Pradesh) Ltd., Bhopal (Petition No.9/2012)</li><li>4. M/s. BLA Power Private Ltd., Mumbai (Petition No.10/2012)</li><li>5. M/s. Jaiprakash Power Ventures Ltd., Uttar Pradesh (Petition No.12/2012)</li><li>6. Energy Department, Government of Madhya Pradesh, Bhopal</li></ol> | } | <b>Respondents</b> |
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Shri Manoj Dubey, Advisor (Law), Shri P. Pachori, DGM and Shri M. Chincholkar, AGM appeared on behalf of MP Power Management Co. Ltd., Jabalpur.

Shri Kailash Shiva, CE (Comm.), Shri S. S. Tripathi, SE (Comm.) and Shri Anant Chaure, Law Officer appeared on behalf of M. P. Paschim Kshetra Vidyut Vitaran Co. Ltd., Indore.

Shri V. Ramesh Iyer, DGM appeared on behalf of MP Madhya Kshetra Vidyut Vitaran Co. Ltd., Bhopal.

Shri Ravi Arya, VP (Comm.), Shri Rameshwar Dubey, Head Corporate Affairs and Shri D. Mohapatra, AGM (Legal) appeared on behalf of Respondent No.1.

Shri Sanjiv Mediratta, Director appeared on behalf of Respondent No.2.

None appeared on behalf of MP Poorv Kshetra Vidyut Vitaran Co. Ltd., Jabalpur and Respondent No.3.

Shri D.B. Madan and Shri R. K. Katare appeared on behalf of Respondent No.4.

Shri Ashok Shukla, Sr. General Manager, Shri Venkatesh, Advocate and Shri S. K. Thakral appeared on behalf of Respondent No.5.

Shri Kafeel Ahmed, Dy. Secretary, Energy Department, GoMP appeared on behalf of Respondent No.6.

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The petitioners, M.P. Power Management Co. Ltd. and the three Distribution Companies of the State have jointly filed the power purchase agreements executed with the Independent Power Producers (IPPs) as per the details given below:

<b>S. No.</b>	<b>Private Power Developers</b>	<b>Unit No.</b>	<b>Installed capacity of each unit (MW)</b>	<b>Location</b>	<b>Quantum of power procured by MP Management Co. Ltd. (MW)</b>
1	M/s MB Power (MP) Ltd.	2	600	Anuppur Distt.	360
2	M/s D. B. Power (MP) Ltd.	2	660	Singrauli Distt.	396
3	M/s BLA Power Pvt. Ltd.	2	45	Gadarwara Distt.	27
4	M/s Jaiprakash Power Ventures Ltd.	2	660	Sidhi Distt.	396
5	M/s Jhabua Power Ltd.	1	600	Seoni Distt.	180

2. The petitions 7, 8, 9, 10, 11 & 12 of 2012 in the subject matter were clubbed together by the Commission since the petitioner stated that all the PPAs are in line with the model PPA approved by the State Government.

3. The Energy Department, GoMP was also noticed as respondent in the matter and case was heard on 25<sup>th</sup> June, 2012 when the representatives of the petitioner and respondents were informed about the following observations of the Commission while going through various provisions in PPAs filed with the Commission :

- a) The name of the Distribution Companies in the preamble is not correct. Senior Counsel appearing on behalf of the petitioner submitted that a supplementary agreement shall be filed with the Commission with all necessary corrections.
- b) The provisions in PPA signed with M/s Bina Power Supply Co. Ltd. are at variance with provisions contained in the model PPA approved by the State Government. Some of such provisions are as stated below :
  - (i) The agreement is for supply of **70%** (inclusive of 5% net generated power at variable cost only) of the installed capacity of proposed Ph-1 (2 x 250 MW) and there is no provision for revised scheduled CoD in the PPA.
  - (ii) There is no provision for establishing the necessary evacuation infrastructure beyond the delivery point under Article 4.2.
  - (iii) Clause for initial contract performance guarantee and contract performance guarantee are not provided.
  - (iv) An additional provision regarding interconnection and transmission facilities is provided in Sub-Article 4.8.
  - (v) Provision for escrow mechanism in future as provided at Para 10.5.8 of model document and other PPAs is missing.

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- (vi) The provisions for rebate in billing and payment and third party sale on default under Article-10 are also different.
- c) The PPAs in respect of M/s DB Power (MP) Ltd. and M/s Jaiprakash Power Ventures Ltd. have following distinct provisions :

**M/s DB Power (MP) Ltd.**

- (i) In the PPA signed with M/s D.B. Power (MP) Ltd., an additional definition for coal linkage LOA for Unit No.2 is provided as under :

*“Coal linkage LOA for Unit No.2: shall mean letter of allotment of long term coal linkage for 660 MW Unit No.2 of Phase-I of this project issued by Ministry of Coal companies to the Company against its application.”*

This definition is not available in the Model PPA approved by the State Government.

**M/s Jaiprakash Power Ventures Ltd.**

- (i) There is a provision of **7.5%** of the net power to be purchased by GoMP at variable cost while this is only **5%** in other PPAs.

- 4.** The Commission further observed that the following provisions under various Articles/Sub-Articles in the PPAs need a review by the parties to the PPA :

**a) Conditions Subsequent and Development of the Project**

- (i) Provision regarding satisfaction of conditions by the procurer under sub-article 3.2.(i), 3.2.(ii) and procurer’s obligation for evacuation infrastructure beyond the delivery point under sub-article 4.2 (ii) and availability of interconnection facilities under sub-article 4.2.(iv).
- (ii) Modalities for operation of provision regarding making available contracted capacity from an alternative source of power supply to mitigate and damages payable by the company to the procurer under sub-article 4.3.7.

**b) Capacity, Availability and Despatch**

Provision regarding conditions for Available Capacity of the procurer in the event of Declared Capacity being less than the net power under article 6.1.2.

**c) Tariff, Billing and Payment**

Clarity for implementation of conditions under sub-article 10.1.1 and what tariff rate will be applicable for power and energy consumed for construction and start up and commissioning of the power station under sub-article 10.10.1.

**d) Force Majeure**

Force Majeure Conditions under sub-article 11.2.4.

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- e) Certain blanks were observed in a few places like Sub-Article 10.3.3 and Schedules 1A and 1B related to the format of the “Initial Contract Performance Guarantee” and the “Contract Performance Guarantee” while these Schedules are required to be submitted on non-judicial stamp paper as per clause 3.5 of the PPA itself.

**5.** In view of the above observations, the Commission vide order-sheet dated 30<sup>th</sup> June, 2012 issued following directives :

- (i) The petitioners and the respondents were directed to review the articles/sub-articles referred to by the Commission in Paras 5 & 6 of the aforesaid order-sheet and confirm whether these provisions are appropriate and adequate. It was also mentioned in the same order-sheet that the modification, if any, required be submitted to the Commission in terms of provision in PPA itself.
- (ii) Energy Department, GoMP was asked to confirm whether they were in agreement with the provisions referred to in Para 5 & 6 of the aforesaid order-sheet and whether their rights are correctly mentioned in PPAs in terms of the prevailing policy.
- (iii) All respondents (IPPs) in the matter were directed to confirm on affidavit that no PPA had been executed as on date by them with any party other than the petitioners in the matter for sale of power from the project under Section 62 of the Electricity Act, 2003.
- (iv) The Commission decided to delink petition No.11/2012 in respect of PPA executed with M/s Bina Power Supply Co. Ltd. from common hearing as that PPA was found to be distinctly different from other PPAs.

**6.** The petitioners and the respondents were directed to file their response with the Commission on the above-mentioned issues by 20<sup>th</sup> July, 2012. The Commission received their responses on the dates as mentioned below :

- (i) Energy Department, GoMP on 23<sup>rd</sup> July, 2012
- (ii) All three Distribution Companies on 23<sup>rd</sup> July, 2012
- (iii) MP Power Management Co. Ltd., Jabalpur on 19<sup>th</sup> July, 2012
- (iv) M/s D. B. Power (Madhya Pradesh) Ltd., Mumbai on 23<sup>rd</sup> July, 2012.
- (v) M/s M. B. Power (Madhya Pradesh) Ltd., New Delhi on 24<sup>th</sup> July, 2012.
- (vi) M/s BLA Power Private Ltd., Mumbai on 27<sup>th</sup> July, 2012.
- (vii) M/s Jaiprakash Power Ventures Ltd., Uttar Pradesh on 27<sup>th</sup> July, 2012.

No response was received from M/s Jhabua Power Ltd., Kolkatta.

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7. The petitioners and the respondents broadly stated the following in their above-mentioned submissions :

**(i) Energy Department, GoMP**

Energy Department, GoMP confirmed that the PPAs entered into with the developers of the projects have been as per the prevailing policy of the Govt. of Madhya Pradesh and have necessary approval of the Government.

**(ii) Distribution Companies**

The East Discom, Jabalpur authorized MP Power Management Co. Ltd. for submission on their behalf. However, Central Discom, Bhopal and West Discom, Indore submitted the same response as filed by MP Power Management Co. Ltd.

**(iii) MP Power Management Co. Ltd., Jabalpur**

MP Power Management Co. Ltd. filed its issue-wise response to observations at Para 5 & 6 in the Commission's order-sheet dated 30<sup>th</sup> June, 2012 as given below :

*"1. The Petitioners have perused the Record of Proceedings dated 30.6.2012 and wish to submit as under:*

**A. In clarification to para observation at 5(a):-**

*The Petitioners have signed the Supplemental Agreement with concerned Generating Companies/Respondents in regard to the formal change of name of the distribution companies recorded in the concerned Power Purchase Agreements, namely, by substitution of the word 'Company' for the word "Nigam". The Description of the names of petitioners 2 to 4 in the Power Purchase Agreements as 'NIGAM' instead of 'COMPANY' was a mistake and the same is being corrected. The Supplemental Agreement has been forwarded to the generating companies & distribution companies and upon receipt, the same will be placed on the record of the Hon'ble Commission.*

**B. In clarification to para observation at 5(b)(i):**

*As regards the Power Purchase Agreement dated 05-01-2011 signed with Messrs Bina Power Supply Company Limited is concerned, it is submitted that the Memorandum of Understanding and matters relating to the development of the Project of Bina Power Supply Company Ltd and procurement of power from the said Company have been in vogue since the year 2008. The principal terms with the Bina Power Supply Company Ltd was deliberated and finalised much earlier to the other Companies dealt in the Record of Proceedings dated 30.6.2012 and much before the Notification of the Standard Bid Documents. The Govt. of Madhya Pradesh vide its letter No. 3517/13/2011, Bhopal Dated 18<sup>th</sup> April 2011 had approved the PPA for 70% instead of 42% of the installed capacity of 2x250 MW of Phase-1 of Bina Power Supply Co. Ltd. The quantum of supply from the Bina Power Supply Company Ltd at 70% of the installed capacity exclusive of 5% to the State*

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*Government share at variable cost was pursuant to these earlier discussions and is, therefore, at variance with the other projects wherein 30% of the quantum of the installed capacity inclusive of 5% to the State Government share at variable cost have been finalised. The project being in advanced stage and as assured by developer, provision for change in Scheduled CoD was not considered. The first unit is expected to get commissioned by 31<sup>st</sup> July 2012.*

**C. In clarification to para observation at 5(b)(ii):**

*As regards the provision for establishing the necessary evacuation infrastructure beyond the delivery point, reference is invited to Clause 4.8 of the PPA, which mentions of a dedicated transmission line of 400 KV to be constructed by the Company from the Delivery Point to 400 KV S/s. of M. P. Transco at Bina. 400 KV line for evacuation has since been completed.*

**D. In clarification to para observation at 5(b)(iii) to (vi):**

*In view of the fact that the contract with Bina Power Supply Company Ltd was a continuation of the past and further that there was substantial progress in the construction of the power plant as compared to the other projects, the provisions of the clauses relating to the contract, performance guarantee and escrow mechanism are different. Similarly, the commercial terms relating to rebate in billing and payment and third party sales provisions are different. It is pertinent to note that M/s. Bina Power Supply Co. Ltd. has already invested considerable amount on its revival as mentioned in Clause No. 3.3.1 of the PPA. Further in a meeting held on 17.6.2008, M/s Bina Power Supply Co. Ltd. has dispensed away with requirement of escrow but insisted for establishment of Letter of Credit upto for an amount equivalent to 1.05 times payment towards monthly bills on normative availability.*

**E. In clarification to para observation at 5(c)(i):-**

*As regards the provisions of coal linkage with DB Power (Madhya Pradesh) Limited, the additional definition has been provided because of the existence of a Letter of Allotment of long term coal linkage from the Ministry of Coal. The definition captures the position prevalent in the case of the project of DB Power (Madhya Pradesh) Limited. Whereas in the other cases, the coal linkage was to be subsequent to the signing of the Power Purchase Agreement.*

**F. In clarification to para observation at 5(c)(ii):-**

*As regards the power to be purchased by the Government of Madhya Pradesh from various Projects at variable cost is concerned, it is respectfully submitted that these are not subject matter of proceedings before the Hon'ble Commission in regard to the purchase of power by the Petitioners. The purchase of power by the Government of Madhya Pradesh is independent of the purchase of power by the Petitioners. The Government of Madhya Pradesh in its wisdom had decided to purchase 7.5% of the net power in cases where the captive coal block allocated to the Company is within the State of Madhya Pradesh and 5% in other cases. Messrs Jaiprakash Power Ventures Limited falls under category 1.*

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**G. In clarification to para observation at 6(a)(i):**

*As regards evacuation of power from the various Projects is concerned, it is the responsibility of the Procurer, namely, the Petitioners to arrange for the evacuation. The Procurer is dealing with the Transmission Companies for arranging such evacuation. In so far as the contract between the Procurer and the Project Developer are concerned, the delivery of power is at the bus bar and, therefore, the provisions relating to the evacuation infrastructure to be arranged has not been dealt in the Power Purchase Agreement except that the Procurer has assumed the obligation. The Procurer is filing the details of the evacuation infrastructure in respect of each of the Projects. The Procurer has to arrange for such evacuation facilities before the commissioning of the respective Projects.*

**H. In clarification to para observation at 6(b) to 6(d):**

*The obligation of the Project Developers to arrange for alternative sources of power is provided in Article 4.3.7 of the Power Purchase Agreements as a win-win situation for both the parties. The Petitioners are entering into the agreements essentially to get power and not for damages. The damages have been provided for as compensation in case of non supply of power. The above Article provides for the project developer to make available the power from alternate sources without any extra cost to the Petitioner and thereby mitigate the payment of compensation. So long the petitioners get the power their interests will be adequately protected.*

**I. In clarification to para observation at 6(e):**

*As regards blanks in the documents is concerned, it is submitted that the Company shall supply the detail of such account atleast 90 days before the dispatch of the first monthly bill to the Procurer and the quantum of Initial Contract Performance Guarantee and the Contract Performance Guarantee were to be calculated as per the capacity. The Initial Contract Performance Guarantees and the Contract Guarantees as were required from the respective Power Producers have now been furnished by them.*

**2.** *In the facts and circumstances mentioned herein above, it is respectfully submitted that the Hon'ble Commission may be pleased to take on record the above particulars and approve the Power Purchase Agreement and procurement of power.*

Besides aforesaid response, MP Power Management Co. Ltd. submitted that the Initial Contract Performance Guarantee and the Contract Performance Guarantee as were required from the respective IPPs have now been produced by them. The company enclosed the details of Bank Guarantees and the Contract Performance Guarantees with its submission.

**(iv) M/s D. B. Power (Madhya Pradesh) Ltd., Mumbai**

The company on affidavit confirmed that M/s D. B. Power (Madhya Pradesh) Ltd. has executed the PPA with MP Power Management Co. Ltd. on 5<sup>th</sup> January, 2011 for supply of power from DB Power (Madhya Pradesh) Ltd.'s upcoming thermal power plant at Village Gorgi, Dist. Singrauli, Madhya Pradesh.

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The company further confirmed that DB Power (Madhya Pradesh) Ltd. has not executed any PPA other than the aforesaid PPA with any party for supply of power under Section 62 of the Electricity Act, 2003.

**(v) M/s M. B. Power (Madhya Pradesh) Ltd., New Delhi**

The company in its response submitted the following :

1. *“The answering respondent has perused the order dated 30<sup>th</sup> June, 2012 and therefore, wish to submit that it agrees to the amendments being sought in the Power Purchase Agreement (PPA) dated 5<sup>th</sup> January, 2011 with respect to the change in names of the petitioners. That except for the aforesaid amendments, the answering respondent after examination of the Commission’s observations hereby reiterates its agreement with the terms and conditions of the PPA already executed with the petitioner.*
2. *That the formats i.e. terms and conditions of initial contract performance guarantee and the contract performance guarantee were agreed to in the Schedule to the PPA at the time of signing of PPA. Therefore, since the names and addresses of the banks were not decided by the answering respondent at that point of time and amounts for each of such instruments were to be calculated as per the capacity, the same were left blank for filling up at the time of issue of the guarantees. It is submitted that the initial contract performance guarantee and the contract performance guarantee have now been furnished by the answering respondent, copies of which are attached herewith as annexure for information only. The answering respondent shall intimate the bank name, address and the bank account details for receipt of bill amounts as per sub-article 10.1.1 of the PPA in due course to the petitioners and prior to dispatch of the first invoice.*
3. *That the answering respondent hereby confirm that as on date it has not executed any power purchase agreement with any party other than the petitioners in the matter for sale of power from the project under Section 62 of the Electricity Act, 2003.”*

M/s M. B. Power (Madhya Pradesh) Ltd. also enclosed a copy of documents regarding the bank guarantees.

**(vi) M/s BLA Power Private Ltd., Mumbai**

M/s BLA Power Pvt. Ltd. offered no comments to Articles/Sub-Articles 3.2, 6.1, 10.3.3, 10.9 and 11.2 of the PPA. However, BLA Power offered the following comments to clause 4.2 (ii) & (iv), 4.3.7 and 10.1.1 of the PPA:

- a) 4.2(ii) : *Instead of Procurer, IPP has constructed the evacuation line and also the switchyard end bays at the procurer end at its own cost under the supervision of the Procurer. The cost needs to be reimbursed.*
- b) 4.2(iv) : *Interconnection facilities provided by the IPP at its own cost. This cost needs to be reimbursed.*

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- c) 4.3.7 : *The words – “or any other reasons beyond our control” be added after the words “Force Majeure Event or due to Procurer Even of Default”.*
- d) 10.1.1 : *This provision is not envisaged either in MoU dated 10<sup>th</sup> August, 2007 or in Implementation Agreement dated 1<sup>st</sup> September, 2008 executed with Govt. of Madhya Pradesh. Further, economic conditions at a future bid date may necessitate a higher/lower bid than cost-plus tariff. It is unfair to link the cost-plus tariff to the bid tariff, as the considerations for such bid tariff are likely to be different from the cost-plus tariff. Further, no decision to adopt any tariff should be taken without taking consideration the petitioner’s view/objections. Hence this clause may be modified accordingly.*

BLA Power in its written submission further confirmed that no PPA has been executed by M/s BLA Power Pvt. Ltd. as on date with any party other than the petitioners in the matter for sale of power from the project under Section 62 of the Electricity Act, 2003.

**(vii) M/s Jaiprakash Power Ventures Ltd., Uttar Pradesh**

The company in its response submitted the following :

- 1. *“It is submitted that the Answering Respondent has perused the Record of Proceedings dated 30.6.2012 and in view of the same, the Answering Respondent would like to submit as under :*
  - A. *The Answering Respondent humbly submits that the Respondent’s name at serial No.6 in paragraph 2 of this Hon’ble Commission’s Order may be amended as Jaiprakash Power Ventures Limited – Unit: Jaypee Nigrie Super Thermal Power Plant.*
  - B. *Further, this Hon’ble Commission in paragraph 5 of its Order dated 30.6.2012 has sought clarifications from the Respondents and the response to the same is herein below :*
    - i. *It is submitted that the clarification sought by this Hon’ble Commission in paragraph 5 (b) (i) to (vi) do not pertain to the Answering Respondent and hence needs to response.*
    - ii. *It is submitted that the clarifications sought by this Hon’ble Commission in paragraph 5 (c), the Answering Respondent submits that a response to the said observation can only be provided by the Answering Respondent upon receipt of submissions by the petitioner, if any.*
  - C. *It is further submitted that in paragraph 6 of this Hon’ble Commission’s Order, the Hon’ble Commission has observed that various Articles/Sub-Articles in the PPA such as Conditions Subsequent and Development of the project; Capacity, Availability and Dispatch; Tariff, Billing and Payment; Force Majeure; and certain blanks observed in few places, need to be reviewed. In view of the same, the Answering Respondent submits that a response to the said observation can only be provided by the Answering Respondent upon receipt of submissions by the Petitioner, if any.*

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*D. It is submitted that in paragraph 7 of this Hon'ble Commission's Order, the Hon'ble Commission has directed the Petitioner and the Respondents to review the articles and sub-articles in the PPA. It is submitted that the Answering Respondent would only be in a position to comply with such directions of this Hon'ble Commission upon receipt of submissions on behalf of the Petitioner.*

*E. It is submitted that in paragraph 9 of this Hon'ble Commission's Order, the Hon'ble Commission has directed the Respondents to that no PPA has been executed as on date by the Respondent with any party other than the Petitioner for sale of power from the Project. In view of the same the Answering Respondent confirms that it has not executed any PPA with any other party other than the Petitioner for sale of power from the Project, as on date.*

*2. It is humbly submitted that the Answering Respondent be given an opportunity to provide its response on the submissions of the Petitioner and the delay in submission of reply be condoned.*

*3. In the facts and circumstances mentioned herein above, it is respectfully submitted that this Hon'ble Commission may be pleased to take on record the above particulars and approve the Power Purchase Agreement and procurement of power."*

**8.** It was brought to the notice of the Commission that the written submissions filed by the petitioners and the Respondent No.4 & 5, as mentioned above were not served on one another. The petitioners and the aforesaid respondents were directed to serve copies of their submissions on the parties. The Respondent No.4 & 5 were directed to file their response to the petitioner's submission by 20<sup>th</sup> August, 2012. Similarly, the petitioner was also asked to file its response to the submission made by Respondent no. 4 & 5 by 20<sup>th</sup> August, 2012.

**9.** In response to the above directions, M.P. Power Management Co. Ltd., on affidavit dated 16.08.2012 submitted the following in response to the submissions filed with the Commission by the Respondent Nos. 1, 4 &5 on the dates mentioned at **Para 6** of this order.

**i) Response to the written submission filed by M/s M.B. Power Ltd., New Delhi:**

- a) The contents of para 1& 2 are accepted.
- b) The contents of para 3&4 need no comments from the Petitioner.

**ii) Response to the written submission filed by M/s BLA Power Pvt. Ltd., Mumbai**

- a) The comments offered by the Respondent on Clause 6 of the Hon'ble Commission's order dated 30.06.2012 are strongly denied, because the PPA has been finalized after taking due consent of the Respondent and on mutual consent of all the parties.

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**iii) Response to the written submission filed by M/s Jaiprakash Power Ventures Ltd., Uttar Pradesh:**

- a) The contents of para 1(A) are accepted.
- b) With regard to contents of para 1 (B)(i)&(ii), para 1(C) and para 1 (D), it is submitted before the Hon'ble Commission that the petitioner no.1 had already submitted detailed written submission dtd. 19/07/2012 and it needs no further reply.
- c) In reply to para 1 (D) it is submitted that all Articles and sub-articles in the PPA have been finalized after taking due consent of the Respondent and therefore, no modification is required.
- d) The contents of para 1(E) and para 2&3 need no comments from the petitioner.

**10.** In compliance to the directions issued in **Para 5** of the Commission's order dated 4<sup>th</sup> August, 2012, M/s Jaiprakash Power Ventures Ltd. and M/s BLA Power Pvt. Ltd. also filed their response to the written submission filed by the petitioner:

- a) M/s Jaiprakash Power Ventures Ltd. offered no comments on the contention of the petitioner .
- b) M/s BLA Power Pvt. Ltd., stated the following:
  - i) *“Since we have signed the said PPA, we continue to adhere by it. However, it is requested that any changes if made in the approved PPA at a later date in other similar cases, shall also be made available to us.*
  - ii) *We have already made the change in the names of the Petitioner nos. 2 to 4 from 'NIGAM' to 'COMPANY' and the corrected PPA duly signed has already been submitted to the Petitioner No. 1 and the Respondent No. 7.”*

**11.** The Commission observed that the procurer's obligation under sub-article 3.2 and 4.2 of the PPAs to establish the necessary evacuation infrastructure/facilities beyond the interconnection point for evacuation of the contracted capacity is inconsistent with the submissions made by the Respondent No.4 and Petitioner No.1. It has been confirmed that dedicated transmission line for necessary evacuation infrastructure beyond the delivery point is being erected/got erected by the respondents.

**12.** In view of the above and written submissions filed by the petitioners and the respondents during the proceedings held in the matter, the Commission hereby accords approval to the Power Purchase Agreements filed by the petitioners subject to the incorporation of the following additions/modifications in various clauses being ordered on strength of provisions in Sub-Article 3.2(iii) of the PPAs:

- i) The name of Distribution Companies in the preamble of PPAs be corrected.

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- ii) Definition of “Scheduled Connection Date’ in Sub-Article 1.1 in Article 1 of the PPAs be amended :

**“Scheduled Connection Date shall mean the date on or before which the availability of evacuation facilities for the Contracted Energy beyond the Delivery Point shall be ensured by the Procurer, which shall be the date falling two hundred and ten (210) days before the Scheduled COD or Revised Scheduled COD, as the case may be, of the first Unit.”**

- iii) Sub-Article 3.1.1.2 be added in Article 3 of the PPAs:

**“Within 15 days of this amendment or before commencement of supply of power, whichever is later, the company shall have obtained the concurrence of Procurer to the fuel supply agreement entered into by it with its fuel supplier for long term fuel supply including the rates, terms and conditions thereof.”**

- iv) Sub-Article 3.2 (ii) in Article 3 of the PPAs be amended :

**“The Procurer shall have ensured the availability of necessary evacuation infrastructure beyond the Delivery Point required for evacuation of the Scheduled Energy at least 210 days prior to Commissioning of the first Unit.”**

- v) Sub-Article 4.1.1(iii) be modified as given below :

**“The Company shall enter into appropriate arrangements for long term supply of Fuel for all or part of the capacity of the Unit(s) upon prudent terms and conditions materially consistent with the extant policy of the Government of India, if any. The Company shall have obtained the concurrence of the Procurer, as required under Section 3.1.1.2, for such fuel supply arrangements.”**

- vi) Sub-Article 4.2(ii) in Article 4 of the PPAs be deleted.

- vii) Sub-Article 10.9.1 in Article 10 of the PPAs be amended :

**“The Company shall be liable to pay, for the power and energy consumed for construction and start-up and Commissioning of the Power Station, to the distribution Licensee(s) in whose area the Power Station is located, if such power is sourced from them, at the rates as may be specified by the Commission.”**

- viii) Sub-Article 11.2.4 in Article 11 of the PPAs be amended :

**“Similarly, any event of Force Majeure affecting the ability of Procurer in ensuring availability of interconnection facilities and/or transmission facilities shall be deemed to be an event of Force Majeure affecting Procurer only.”**

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**13.** The supplementary agreements with all additions/modifications be filed with the Commission at the earliest in terms of Sub-Article 3.2(iii) of the agreements.

**14.** With the above directions, the petitions are disposed of.

sd/-  
**(C.S. Sharma)**  
**Member**

sd/-  
**(Rakesh Sahni)**  
**Chairman**