

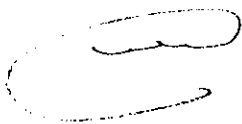


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## 1.0 DEFINITIONS

The words/expressions used in this Agreement unless repugnant to the context shall have the same meaning assigned to them by Indian Electricity Act, 1910, Electricity (Supply) Act, 1948 and Electricity Regulatory Commissions Act, 1998, as amended from time to time and the Rules framed thereunder. The words/expressions mentioned below shall have the meanings respectively as assigned hereunder;

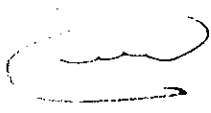
- i) **GOI:** Shall mean Govt. of India.
- ii) **CEA:** Shall mean Central Electricity Authority, which is a statutory Authority.
- iii) **CERC:** Shall mean Central Electricity Regulatory Commission established under section-3 of the Electricity Regulatory Commissions Act, 1998.
- iv) **Powergrid:** Shall mean Power Grid Corporation of India Ltd. a company owned by GOI and incorporated under the Companies Act, 1956.
- v) **WREB:** Shall mean Western Regional Electricity Board duly established by Government of India vide Resolution No.EL-II-35 (2)/63 dated 28.03.1964 and subsequent amendment / resolution thereof and as defined in the E (S) Act.
- vi) **WRLDC:** Shall mean Western Regional Load Despatch Centre
- vii) **NREB:** Shall mean Northern Regional Electricity Board duly established by Government of India vide Resolution No.EL-II-35 (3)/63 dated 13.2.1964 and subsequent amendment / resolution thereof and as defined in the E(S) Act.
- viii) **NRLDC:** Shall mean Northern Regional Load Despatch Centre



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- ix) EREB: Shall mean Eastern Regional Electricity Board duly established by Government of India vide Resolution No.EL-II-35(7)/63 dated 06.03.1964 and subsequent amendment / resolution thereof and as defined in the E(S) Act.
- x) ERLDC: Shall mean Eastern Regional Load Despatch Centre
- xi) CTU: Shall mean Central Transmission Utility
- xii) Busbars: Shall mean 765 KV or 400 KV or 220 KV Busbars of the station (as the case may be) to which outgoing feeders are connected.
- xiii) Main Import/Export Meter: Shall mean Meter for measurement of import/export of active energy on the outgoing feeders at Kahalgaon Stage-II, Phase-I Busbars for Energy Accounting.
- xiv) Check Import/Export Meter: Shall mean Meter on the outgoing feeders at Kahalgaon Stage-II, Phase-I Busbars for maintaining a check on performance of Main Import/Export meter.
- xv) Reactive Import/Export Meter: Shall mean Meters for measurements of import/export of reactive energy on the outgoing feeders at Kahalgaon Stage-II, Phase-I Busbars.
- xvi) Regional Energy Account: Shall mean periodic Energy Accounting (including amendments thereof, if any) prepared by EREB/NREB/WREB as per procedure agreed by the concerned REBs.
- xvii) Charges for supply of energy: Shall mean and include all charges to be paid by Bulk Power Customer(s) in respect of supply of power to them by NTPC in accordance with the provisions of this Agreement.
- xviii) LC: Shall mean Irrevocable Revolving Letter(s) of Credit.



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- xix) Commercial Operation Date: Shall mean the date of Commercial operation declared by NTPC in respect of generating unit(s) on the basis of guidelines issued by the Government of India/CEA/other appropriate authority from time to time.
- xx) PPA: Shall mean Power Purchase Agreement

**2.0 INSTALLED CAPACITY**

The nominal capacity of Kahalgaon Stage-II, Phase-I shall be 1000 MW (2 x 500 MW). The nominal capacity of Kahalgaon Stage-II, Phase-I is subject to change after placement of orders for the main plant equipment. The installed capacity is, however, subject to derating / rerating of the generating units as determined from time to time, after following the prescribed procedure as laid down by CEA/other appropriate authority.

**2.1 Allocation of power**

2.1.1 Presently various Bulk Power Customers have indicated their power requirements from Kahalgaon Stage-II, Phase-I as given below.

<b>Bulk Power Customers</b>	<b>Power Requirements indicated by Bulk Power Customers for Kahalgaon STAGE-II (MW)</b>
UPPCL	250
MPEB	500
CSEB	132
GEB	250 X
DNH	15
HVPN	250
RRVPN	132
TRANSCO	500
PSEB	132
HPSEB	66
UTC	15
BSEB	198
GRIDCO	132
WBSEB	283
<b>TOTAL</b>	<b>2855</b>

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However, the allocation of power from Kahalgaon Stage-II, Phase-I (nominal capacity of 1000 MW) amongst the Bulk Power Customers shall be made by Govt. of India, subject to the signing of PPA by the Bulk Power Customers. Such allocation of power by the Government of India, Ministry of Power, shall form an integral part of this Agreement.

2.1.2 In case any Bulk Power Customer does not sign the PPA on the same or mutually agreed terms and conditions, the allocation of power from Kahalgaon Stage-II, Phase-I would be finalised without taking into consideration its requirement of power as indicated in clause 2.1.1 above or its entitlement in terms of the allocation guidelines of the Government of India.

2.1.3 The unallocated capacity shall stand allocated from time to time as per decision of CEA/Ministry of Power. Balance unallocated capacity, if any, after the above allocations shall be deemed to have been allocated to various Bulk Power Customers in proportion to their allocated shares.

2.1.4 The right of each Bulk Power Customer to draw power against the above allocations shall be limited to the amount of LC opened by them.


2.1.5 The station will be operated as a base load Inter-Regional Power Station subject to backing down instructions from ERLDC and the power generated from the station will be shared by the Bulk Power Customers in the Northern Region, Western Region and Eastern Region as per allocation decided/notified by GOI from time to time.

2.1.6 It is understood and agreed by and between the parties that NTPC shall operate this station as per the guidelines of GOI/CERC/other appropriate authority as applicable from time to time, and directives issued by EREB/ERLDC in consultation with NREB/WREB/NRLDC/WRLDC based on the above guidelines.

2.17 UPPCL shall have the right to indicate their actual requirement of power out of their entitled share from Kahalgaon Stage-II, Phase-I upto one year prior to the scheduled date of commissioning of the first unit of the Kahalgaon Stage-II, Phase-I.

**2.2 Commercial Operation Date of generating units**

The dates of commercial operation of generating units of Kahalgaon Stage-II, Phase-I shall be as defined under clause 1.0 above.



**2.3 Drawai of Power**

The power from Kahalgaon Stage-II, Phase-I shall be drawn by the Bulk Power Customers directly and/or by method of displacement. Bulk Power Customers shall draw their share of power from Kahalgaon Stage-II, Phase-I through transmission system of Powergrid and/or the transmission system(s) of Bulk Power Customer(s)/other agency (ies).

**3.0 TRANSMISSION / WHEELING OF POWER**

The transmission system for evacuation of full capacity from Kahalgaon Stage-II, Phase-I, matching with its commissioning schedule, will be implemented by Powergrid and/or other agency (ies). Bulk Power Customers will permit wheeling of power from Kahalgaon Stage-II, Phase-I through their transmission system subject to system constraints. Bulk Power Customers shall extend their full co-operation in transmission of power from Kahalgaon Stage-II, Phase-I to other Bulk Power Customer(s) through their transmission system. For wheeling of Kahalgaon Stage-II, Phase-I power beyond Kahalgaon Stage-II, Phase-I bus bars, the charges for utilisation of transmission system(s) owned by Powergrid and/or Bulk Power Customer(s) and/or other agency (ies) shall be mutually settled and paid for directly between Powergrid and/or such agency (ies) and the concerned Bulk Power Customer(s). NTPC shall not be responsible for the payment of such charges.

**4.0 ENERGY ACCOUNTING**

4.0.1 EREB shall furnish to NREB the energy exported from Kahalgaon Stage-II, Phase-I to NR Bulk Power Customers. Regional Energy Accounts shall be prepared latest by 5th day of every month based on the above (or on a provisional basis in the absence of the above) and the monthly joint energy meter readings furnished to the NREB by NR Bulk Power Customer(s) and other agencies.

4.0.2 Regional Energy Accounts, whether they are final or provisional, shall account for total net energy sent out on all the outgoing feeders at Kahalgaon Stage-II, Phase-I and shall indicate monthly drawal by each of the Bulk Power Customers from Kahalgaon Stage-II, Phase-I for billing purposes.

4.0.3 The total energy sent out at the bus bars of Kahalgaon Stage-II Phase-I shall be on net basis i.e. difference between export and import meter readings. However the import of power will be in the exceptional circumstances.

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4.0.4 NTPC shall prepare and submit bills to the Bulk Power Customers for the energy supplied to them on the basis of Regional Energy Accounts.

4.0.5 Regional Energy Account issued by NREB shall be binding on all the parties for billing and payment purposes.

4.0.6 Any change in the methodology of Regional Energy Accounting shall be done only as per the decisions taken in the concerned REB forum and no unilateral deductions by any Bulk Power Customer shall be made from bills of NTPC on this account.

4.0.7 In the event of delay in receiving meter readings, Member-Secretary, NREB shall issue Regional Energy Accounts on provisional basis by the 5th day of every month (if 5th day is a holiday for the Secretariat of NREB, the next working day will be applicable), which shall be binding on NTPC and Bulk Power Customers for billing and payment purposes and shall be subject to adjustments, if any, as and when final Regional Energy Accounts are issued.

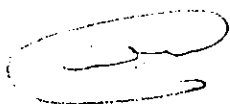
4.0.8 Diversion of share due to non-payment in case of regulation of power shall be done as per guidelines issued by CERC / GOI/ CEA/other appropriate authority from time to time

#### 4.1 Metering System

4.1.1 A set of Main and Check Energy Meters of 0.2 accuracy class, as per IEGC, shall be installed on all outgoing feeders at Busbars of Kahalgaon Stage-II, Phase-I. Each of the Main and Check meters will be a pair of Export and Import meters.

4.1.2 All the meters shall be jointly calibrated, inspected and sealed on behalf of the parties and shall not be interfered with except in the presence of other party or for joint testing and calibration and/or replacement and/or any other purposes for which due notice of 7 (seven) days will be given by NTPC so that this is done in the presence of the authorised representative of the Bulk Power Customer.

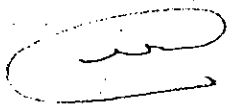
4.1.3 All the meters shall be checked for accuracy annually or as per decision of EREB at site by NTPC and Bulk Power Customer with a meter of the same or better accuracy class and shall be treated as working satisfactorily so long as the errors are within the limits prescribed in relevant Indian Standard (or British Standard where Indian Standard does not exist) for meters of the said class. The meter readings of main meters



shall form the basis of the Regional Energy Accounts so long as the annual calibration check results thereof are within prescribed limits. If the check meters are found to be beyond permissible limits during the annual checks, these shall be immediately calibrated/replaced. Where the annual checks indicate errors in the main meter(s) beyond limits but no error is noticed in check meter(s) during annual checking, computation of total net energy sent out at Busbars of Kahalgaon Stage-II, Phase-I or the month shall be done on the basis of check meter(s) and main meter(s) shall be calibrated/replaced immediately. If during the annual calibration check, both the main meter(s) and the corresponding check meter(s) are found to be beyond the permissible limits of error both the meter(s) shall be immediately calibrated/replaced and the correction applicable to main meter shall be applied to the consumption registered by the main meter(s) to arrive at the correct consumption of energy for the purpose of Energy Accounts for the month from the date of last meter reading upto the time of replacement of correct main meter. Billing for the period thereafter till the next monthly meter reading shall be as per calibrated/replaced main meter. During this period of calibration/ replacement of main and check meter(s), another set of main and check meters duly calibrated and sealed will be installed at Kahalgaon Stage-II, Phase-I in the presence of Bulk Power Customer(s) and jointly sealed. The Regional Energy Accounting during the period of calibration/replacement of original meters shall be as per the readings of the substituted main meters. In case spare meters are not available, the main/check meters shall be calibrated/ replaced by rotation. During the period of removal of main meter, the Regional Energy Accounting will be done based on check meter readings applied with correction factor of the check meter obtained during testing/ calibration of check meter.

4.1.4 All the Main and Check Energy Meter(s) shall be calibrated once in every 2-3 years jointly by the parties, irrespective of the calibration that might have been done, where necessary, during the annual check. It shall be endeavour of the parties that errors are adjusted as close to zero as possible. If the error found at the time of calibration (once in 2-3 years) are beyond permissible limits the same procedures applicable to the annual test checks shall be followed.

4.1.5 If, in any month, the readings of the Main Energy Meter(s) differs from the readings of corresponding Check Energy Meter(s) by more than 0.4% (Zero point four per cent), the Main and Check Energy meter(s) shall be tested in turn and the errors at various levels as per standard procedures would be determined. If on such testing Main Energy Meter error is found to exceed  $\pm 0.2\%$  (plus/minus zero point two per cent) the energy figures





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recorded by the Main Energy Meter(s) for the relevant period shall be revised accordingly and the Main Energy Meter(s) shall be recalibrated or replaced by correct energy meter(s). Pending the results of such testing, billing and payment shall continue to be based on the energy recorded by the Check Energy Meter(s) applied with correction factor of the check meter(s) obtained during testing/calibration of the check meter(s).

**4.1.6** All the tests during annual checks and calibration on the Main and Check Energy Meter(s) shall be conducted in the presence of authorised representatives of NTPC and the Bulk Power Customer and the results/correction so arrived at shall be applicable and binding on NTPC and Bulk Power Customers.

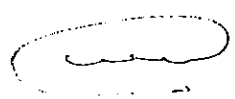
**4.1.7** Corrections in billing, whenever necessary, shall be applicable for the period between the previous meter reading and the date and time of the replacement of recalibrated correct meter and this correction shall be for the full value of the absolute error. For the purpose of the correction to be applied, the meter shall be tested as per Indian Standard (British Standard where Indian Standard does not exist). The error at the load and power factor nearest to the average monthly load served at the point during the period shall be taken as the error to be applied for correction.

**4.1.8** If both the Main and Check Energy Meter(s) fail to record or if any of the PT fuses are blown out, then the energy will be computed on a mutually agreeable basis between NTPC and the Bulk Power Customer for that period of defect. In case there is no mutual agreement, the decision of Member Secretary of EREB would be final and binding.

**4.1.9** For the purpose of test and calibration, the substandard meter of better than 0.2 accuracy class duly calibrated and sealed by Government Authorised Meter Testing House/Laboratory shall be utilised. This substandard meter shall be got calibrated once in every 2-3 years at the Government Authorised Meter Testing House/Laboratory.

**4.1.10** The readings of the meters shall be taken jointly by the concerned parties. The parties installing meters shall also be responsible for properly maintaining their respective meters.

**4.1.11** Joint meter readings of the Main as well as Check Meters at various Regional Energy Accounting points as identified by EREB/NREB/WREB shall be taken by the concerned parties as mentioned above at 00:00 hours on the 1st day of each calendar month. The readings taken at Kahalgaon



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Stage-II, Phase-I shall be submitted by NTPC to EREB so as to reach EREB on or before 2nd day of the month. The meter readings at other metering points would be submitted by concerned Bulk Power Customer and/or other concerned agency so as to reach EREB on or before 2nd day of the month. In case any of the concerned parties is not available for joint meter readings at the specified time, the meter readings will be taken by the other party and shall be binding on all the Bulk Power Customers and shall be taken into account for preparation of Regional Energy Accounts.

4.1.12 If at any time any party to the Agreement feels that a meter is not recording correctly it shall give notice to the other party. NTPC shall then undertake testing and calibration of the concerned meters located at Kahalgaon Stage-II, Phase-I in co-ordination with the other party.

**5.0 TARIFF**

**5.1 Terms and conditions:**

The tariff and terms and conditions for the energy to be supplied by NTPC from Kahalgaon Stage-II, Phase-I shall be as determined/ approved by the Central Electricity Regulatory Commission/ other competent authority and applicable from time to time, including the norms and terms and conditions for the tariff determination w.e.f. 1.4.2004, if and as applicable and also including the provisions of Availability Based Tariff. The following guidelines are presently applicable for working out tariff.

5.1.1 Return would be 16% on equity or as revised from time to time by GOI/CERC.

5.1.2 The Debt:: Equity ratio shall be 70:30 or as approved for the project.

5.1.3 Incentive shall be payable by the Bulk Power Customer(s) in accordance with the tariff as applicable from time to time. Incentive shall be payable by the Bulk Power Customers on monthly basis with cumulative adjustment in each month of the financial year.

5.1.4 No incentive/ disincentive will be applicable on account of Force Majeure events.

No disincentive will be applicable on account of NTPC resorting to restriction of generation or stopping generation altogether on account of non- payment of dues. Charges during the period of regulation would be payable by the Bulk Power Customer(s) as per the directions issued by CERC/ other competent authority from time to time.

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The issue regarding disincentive in case of generation loss due to non-availability of fuel will be discussed between NTPC and Bulk Power Customers and agreed separately.

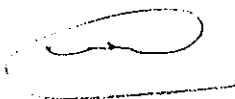
5.1.5 The tariff will include provision for water charges, cess, royalty and other levies on water at rates prevailing on the date of approval of tariff. In case revision of rates by the concerned authorities results in higher payment by NTPC as compared to the charges payable on the effective date of approval, such excess shall, on certification by the statutory auditors of NTPC, duly supported by documents, be recoverable additionally from Bulk Power Customers in the same proportion as Fixed Charges billed by NTPC for that financial year.

5.1.6 Any expenditure incurred towards the Capital Cost of the station denominated/funded in one or more foreign currencies shall be converted into rupee equivalent at the exchange rate prevailing on 31st March each year as per Accounting Standard of the Institute of Chartered Accountants of India which provides that long term loan liabilities incurred for the acquisition of fixed assets and changes on account of exchange rate variations in respect thereof should be regarded as an adjustment of cost and should be included in the carrying amount of the related fixed assets.

5.1.7 All the above provisions are subject to the guidelines of the Govt. of India/CERC/other appropriate authority as applicable to the tariff of this Station from time to time.

5.1.8 In case the tariff, as provided above, is not determined / approved by CERC/other competent authority prior to commencement of commercial operation of the 1st unit, the same would be worked out by NTPC based on the above provisions and the guidelines for tariff as applicable from time to time and within capital cost as approved by CEA/ other competent authority for the project. This would be mutually discussed between the Bulk Power Customers and NTPC at REB forum, and if not agreed within one month from date of first unit commissioning, the same shall be billed by NTPC on provisional basis subject to retrospective adjustment as and when the tariff is determined / approved by CERC/ other competent authority.

5.1.9 Infirm power, i.e., sale of energy prior to commercial operation of the unit, will be billed by NTPC based on norms for variable charges as applicable during the period of stabilisation of a newly commissioned unit as per guidelines of Govt. of India/CERC/other appropriate authority, applicable from time to time.



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## 5.2 Levies, Taxes, Duties, Cess etc.

5.2.1 The above tariff is exclusive of any statutory taxes, levy, duties, cess, royalty fees or any other kind of imposition(s) whatsoever imposed/charged by any Government (Central/State) and/or CERC and/or any other local bodies/authorities on generation of electricity including auxiliary consumption or any other type of consumption including water, transmission, environment protection, sale or on supply of power/energy and/or in respect of any of its installations associated with: Generating Stations and/or on Transmission System.

The total amount of such levies/taxes/duties/cess/royalty/fees etc. as indicated above payable by NTPC to the authorities concerned in any month shall be borne and additionally paid by Bulk Power Customers to NTPC and the same shall be charged in the monthly bills raised by NTPC on the Customers in proportion to the fixed charges paid by them for this power station.

5.2.2 Incidence of tax liability on NTPC as per the provisions of the Income Tax Act applicable from time to time, duly certified by Statutory Auditors of NTPC, shall be recovered from the Bulk Power Customers.

### 5.2.3 Tax Payment Account

NTPC shall estimate the tax liability two months before the commencement of each year and intimate to UPPCL

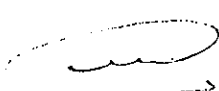
UPPCL shall open a separate Income Tax Payment Account for discharging its liability for payment of Income Tax as follows:

UPPCL shall pay each month an amount equal to the monthly instalment corresponding to the estimated annual tax liability intimated by NTPC. NTPC shall withdraw the amounts for settling the advance/final tax liability on presentation to the Bank a certificate from the Company's Statutory Auditors stating that such amounts are immediately due and payable to the Tax Authority. Similarly, NTPC shall pay into the tax account the UPPCL's share of any refund received from the Tax Authority.

## 6.0 BILLING AND PAYMENT

### 6.1 Billing:

All charges under this Agreement shall be billed by NTPC and shall be paid by the Bulk Power Customers in accordance with the following provisions:



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6.1.1 NTPC shall present the bills after the end of each calendar month for energy supplied to Bulk Power Customers from Kahalgaon Stage-II Phase-I as per Regional Energy Account issued by NREB.

6.1.2 Billing Centre of NTPC shall carry out billing and associated functions. The authority of Bulk Power Customer to whom the bills have to be submitted would be informed by the Bulk Power Customer to NTPC failing which NTPC would submit the bills to the Chief of Finance and Accounts wing of the Bulk Power Customer.

6.1.3 The monthly bill for Kahalgaon Stage-II, Phase-I shall be aggregate charges in accordance with the provisions of the Agreement. If for certain reasons some of the charges cannot be included in the main monthly bills, such charges shall be billed as soon as possible through supplementary bill (s).

6.1.4 The bill (s) of NTPC shall be paid in full subject to the condition that

- i) there is no apparent arithmetical error in the bill (s )
- ii) the bill (s) is / are claimed as per tariff referred to in clause 5.0
- iii) they are in accordance with the energy accounts referred to in clause 4.0

6.1.5 In disputed cases, Bulk Power Customer shall file a written objection with NTPC within 45 days of presentation of the bill, giving following particulars:

- i) Item disputed, with full details / data and reasons of dispute
- ii) Amount disputed against each item.

Provided, however, that non-acceptance of tariffs determined / approved by CERC/other competent authority shall not be a valid ground for dispute unless the same is struck down by an order of the Appellate Court.

NTPC shall resolve the above dispute (s) with Bulk Power Customer as soon as possible.

6.1.6 In case, the dispute is not resolved, and in the event it is decided to proceed with the Arbitration as provided in clause 7.0, then the Bulk Power Customer shall pay 95 % of the disputed amount forthwith and refer the dispute for arbitration as provided in this Agreement. The amount of excess/shortfall with respect to the said 95 % payment based on final award of arbitration shall be paid / adjusted with interest @ 15 % per annum from the date on which the amount in dispute was payable/ refundable.

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## 6.2 Establishment of Letter of Credit (LC) and payment of bills:

6.2.1 Payment of bills for supply of power from Kahalgaon Stage-II, Phase-I shall be made by Bulk Power Customer(s) through irrevocable revolving Letters of Credit (LC) established in favour of NTPC with a public sector bank at least one month prior to the commencement of power supply from Kahalgaon Stage-II, Phase-I.

6.2.2 The LC shall cover one month estimated billing based on 80 % PLF for the allocated share from Kahalgaon Stage-II, Phase-I plus an amount equal to 105 % of the average monthly billing for the preceding 12 months in respect of power supplied from all other power stations of NTPC.

6.2.3 The amount of LC shall be reviewed each half-year commencing April and October in each financial year and its amount shall be enhanced / reduced accordingly.

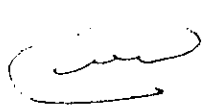
6.2.4 The LC shall be established for a minimum period of one year. Bulk Power Customer shall ensure that LC remains valid at all times during the entire / extended validity of this Agreement.

6.2.5 LC shall specify the manner and dates when bill(s) can be presented to Bank by NTPC. The bills so presented by NTPC to the Bank shall be promptly paid on their presentation. The LC charges shall be borne by the Bulk Power Customer.

6.2.6 UPPCL assures that it shall regularly recoup and periodically renew / enhance LC to ensure full payment of NTPC bills and that there will be no default in LC payments to NTPC in respect of supply of power from all its power stations.

## 6.3 Rebate and Surcharge

Rebate on payments and surcharge on delay in payments, if any, shall be as per the provisions of tariff determined/ approved by CERC/ other competent authority and applicable from time to time in respect of Kahalgaon Stage-II, Phase-I and other concerned power stations of NTPC.



#### 6.4 Tripartite Agreement:

In case the payment of bills for power supplied from all NTPC power stations, including power supply from Kahalgaon Stage-II, Phase-I, is delayed by more than 90 days from the date of billing, NTPC shall have right to get the payments inclusive of surcharge directly from GOI through adjustments against release to the Uttar Pradesh Government on account of Plan assistance, State's share of central taxes and any other grant or loan automatically, without referring the matter further to the State Government/ UPPCL, as per the Tripartite Agreement under the Scheme of One -Time Settlement of SEB Dues circulated by GOI vide letter dated 20.05.2002 and signed by Government of Uttar Pradesh, Govt. of India and RBI. Copy of the signed Tripartite Agreement is enclosed at Annexure-I to this Agreement.

#### 6.5 Non-payment of bills and non-establishment of LC

UPPCL shall open/enhance and maintain LC covering the monthly payments towards power supplied from Kahalgaon Stage-II, Phase-I and various other stations of NTPC. In the event of failure to establish LC and/or enhance LC within the specified period and/or make full payment of NTPC bills as detailed above, NTPC shall inform NREB to reduce supply of power from Kahalgaon Stage-II, Phase-I and various other power stations of NTPC and enforce other penal provisions as given below.

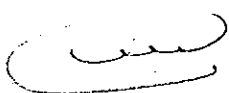
- (i) In case LC of required amount is not opened by the first day of the month in which bill is raised, NTPC shall inform REB/RLDC under intimation to UPPCL regarding reduction in entitlements from power station(s) of NTPC to the extent of 2.5% of average daily supply to the defaulting beneficiary for the preceding 90 days or the average of all the days, if supply has been so for less than 90 days. REB/RLDC shall correspondingly effect reduction in power supply by reducing the drawl schedule of the defaulting beneficiary.
- (ii) In case payments are not made within 60 days from the date of billing, NTPC shall advise REB/RLDC that the entitlement from power stations of NTPC shall be reduced by 5% (inclusive of reduction in supply of electricity as provided in preceding para)

of the average daily supply to the defaulting beneficiary of the preceding 90 days. In case payments are not made within 75 and 90 days of the billing, reduction in entitlement shall be further increased to 10% and 15% respectively. REB/RLDC shall correspondingly reduce the drawl schedule of the defaulting SEB(s)/ beneficiary (ies).

- (iii) In the event that payment default by the Beneficiary continues for 90 days from the date of billing, NTPC shall approach the Ministry of Finance under the provisions of the Tripartite Agreement and the Ministry of Finance, on behalf of NTPC, shall recover such amounts through adjustment against releases to the State Government on account of plan assistance, State's share of central taxes and any other grant or loan, and pay the same to NTPC.
- (iv) Notwithstanding the above, if any bills remain unpaid for a period exceeding two months from the date of issue of the bill for the power supplies from various NTPC power stations to Bulk Power Customer(s), NTPC shall have the authority to discontinue/reduce supply of power from Kahalgaon Stage-II, Phase-I and various other power stations of NTPC to Bulk Power Customer(s) and inform NREB accordingly.
- (v) No disincentive will be applicable on account of NTPC resorting to restriction of generation or stopping generation altogether as a result of regulation measures on account of non-payment of dues by UPPCL. However, for the purpose of calculating the availability, the machine will be considered as available to the extent of regulation if any on this account and recovery of capacity charges will be made accordingly.

**7.0 ARBITRATION**

7.1 Subject to the Statutory provisions for arbitration under the ERC Act 1998, all other differences or disputes between the parties arising out of or in connection with this Agreement shall be settled through arbitration as provided herein.



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7.2 In the event of such differences or disputes between the parties, any party may by a written notice of 30 days to the other party request for appointment of a Sole Arbitrator to be decided mutually by the parties and in case of disagreement, to be decided by the Chairman of CEA. The arbitration shall be in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and any statutory modifications thereto. The Arbitrator shall give a speaking and reasoned award. The decision of the Arbitrator shall be final and binding on the parties. The venue of the arbitration shall be Delhi. The Courts at New Delhi shall have the exclusive jurisdiction in all matters arising under this Agreement.

7.3 The Arbitrator shall reasonably decide in what proportion his fee and cost of arbitration proceedings shall be borne by the parties.

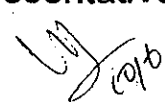
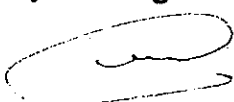
7.4 Notwithstanding the existence of any question, disputes and differences referred to arbitration, the parties hereto shall continue to perform their respective obligations under this Agreement.

**8.0 FORCE MAJEURE**

The parties shall ensure due compliance with the terms of this Agreement. However, no party shall be liable for any claim for any loss or damage whatsoever arising out of failure to carry out the terms of the Agreement to the extent that such a failure is due to force majeure events such as war, rebellion, mutiny, civil commotion, riot, strike, lock-out, forces of nature, accident, act of God and any other reason beyond the control of concerned party. But any party claiming the benefit of this clause shall reasonably satisfy the other party of the existence of such an event and give written notice within a reasonable time to the other party to this effect. Generation/drawal of power shall be started as soon as practicable by the parties concerned after such eventuality has come to an end or ceased to exist.

**9.0 IMPLEMENTATION OF THE AGREEMENT**

All discretions to be exercised and directions, approvals, consents and notices to be given and actions to be taken under these presents unless otherwise expressly provided herein, shall be exercised and given by the signatories to this Agreement or by the authorised representative(s)



that each party may nominate in this behalf and notify in writing to the other party by Registered Post. Any other nomination of authorised representative(s) shall be informed likewise in writing to/by Bulk Power Customer(s) within one month of signing of the Agreement. Notwithstanding any nomination, the Executive Director (NCR), NTPC, NCR HQ, Engineering Office Complex, Sector-24, Noida - 201 301 (U.P.) as well as Executive Director(Commercial), NTPC, SCOPE Complex, 7, Institutional Area, Lodhi Road, New Delhi-110 003 or their authorised representative(s) shall be authorised to act for and on behalf of NTPC.

## **10.0 NOTICE**

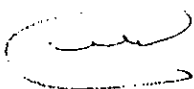
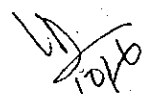
All notices required or referred to under this Agreement shall be in writing and signed by the respective authorised signatories of the parties mentioned herein above, unless otherwise notified. Each such notice shall be deemed to have been duly given if delivered or served by registered mail/speed post of Department of Posts with an acknowledgement due to the other party in terms of Clause 9.0 above.

## **11.0 EFFECTIVE DATE AND DURATION OF AGREEMENT**

The Agreement shall come into force from the date of signing of this Agreement for all purposes and intent and shall remain operative upto completion of Twenty Five (25) years from the date of commercial operation of last unit of Kahalgaon Stage-II, Phase-I provided that this Agreement may be mutually extended, renewed or replaced by another Agreement on such terms and for such further period of time as the parties may mutually agree. In case Bulk Power Customer continue to get power from Kahalgaon Stage-II, Phase-I even after expiry of this Agreement without further renewal or formal extension thereof then all the provisions of this Agreement shall continue to operate till this Agreement is formally renewed, extended or replaced.

## **12.0 SUCCESSORS AND ASSIGNS**

In case any of the Bulk Power Customer is wound up and/or its generation, transmission and distribution activities are taken over by other organisation(s)/agency (ies), partly or wholly, the Agreement shall be binding mutatis mutandis upon the successor organisation(s)/agency (ies), and guarantee by the concerned State Government, shall continue to remain valid with respect to the obligations of the successor organisation(s)/agency (ies). In such an event, the Tripartite Agreement

arrangement referred to in para 6.4 and LC arrangement referred to in para 6.2 above shall also be binding in respect of the successor organisation(s)/agency (ies) with such modifications and changes as may be considered necessary.


13.0 This Power Purchase Agreement shall be subject to CERC/ any other competent authority's norms and notification applicable for Tariff determination w.e.f. 1.4.2004 or any modification thereof from time to time.

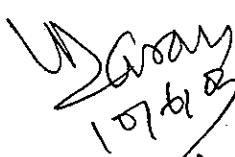
14.0 Notwithstanding the terms and conditions contained in this Agreement, NTPC agrees that in case more favourable terms and conditions for power supply from Kahalgaon Stage -II, Phase-I are settled with any other Bulk Power Customer(s) in Northern Region unfavourable to UPPCL, the same shall be made at par forthwith on a reference from UPPCL.

IN WITNESS WHEREOF the parties have executed these presents through their Authorised Representatives on the date mentioned herein above.

WITNESS

1.


  
(S.D. BHARGADWA)  
CGM, UPPCL

  
(उदय नारायण)  
निदेशक (वाणिज्य)  
स.प्र. पावर कारपोरेशन लि.  
ब्लॉक 14, बसोक मार्ग,  
लखनऊ

For and on behalf of

Uttar Pradesh Power Corporation Ltd.

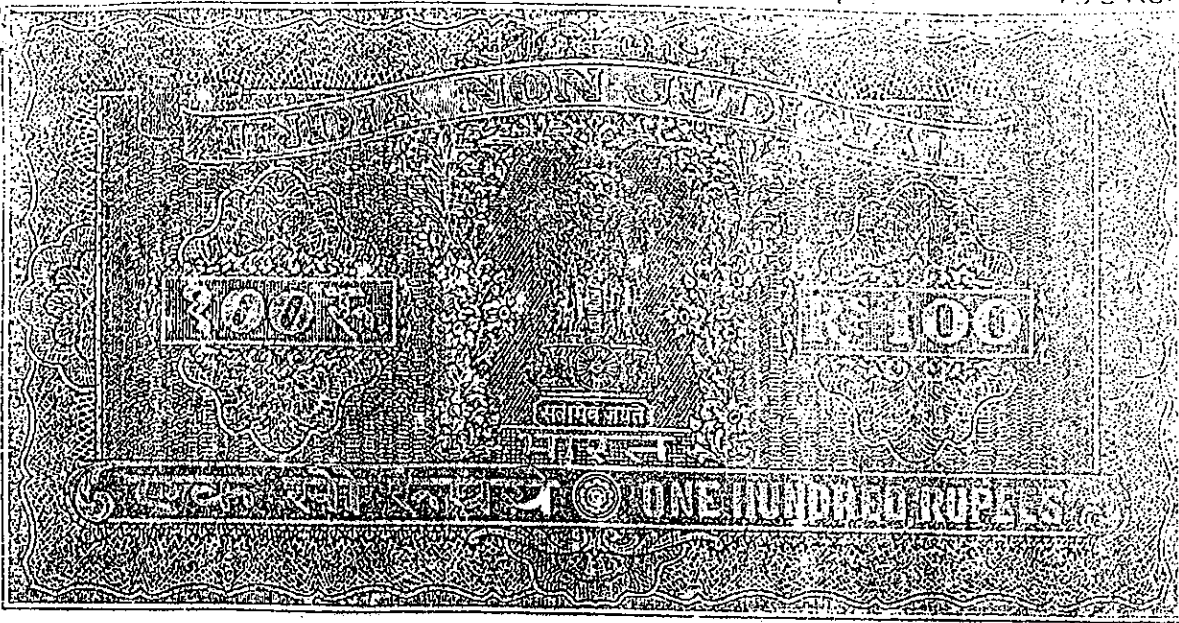
2.

  
- 10-6-2003  
S.B. AGRAWAL  
ED(CNR)  
NTPC

For and on behalf of

National Thermal Power Corporation Ltd.

(K.K. GARG)  
General Manager (Commercial)



TRIPARTITE AGREEMENT

This TRIPARTITE AGREEMENT (the "Agreement") is made at New Delhi on the 20th day of APRIL, 2002. *March, 2003*

AMONG

1. The President of India acting through Joint Secretary, Ministry of Finance, Government of India (the "GOI"),
2. The Governor of UTTAR PRADESH acting through Sanjeev S. Ahluwalia, Secretary, Finance, Government of UTTAR PRADESH (the "State Government") ; and
3. The Reserve Bank of India (the "RBI") constituted under the Reserve Bank of India Act, 1934, Acting through \_\_\_\_\_ Executive Director, Reserve Bank of India.

WHEREAS:

- A. The U.P. Power Corporation Limited and Uttar Pradesh Rajya Vidyut Utpadan Nigam Limited (the "SEB") has large outstanding dues payable to the CPSUs specified herein, and has requested GOI to permit their conversion into long-term bonds, to be issued by the State Government in favour of the CPSUs (hereinafter referred to as "Securitisation").
- B. The State Government has agreed to issue the aforesaid bonds and has further agreed to assume the liability to discharge the payment obligations of the SEB (as a principal debtor) in the event of a default arising out of the agreements signed between the CPSUs and the SEB for (a) supply of Power, (b) transmission of Power, (c) supply of fuel, or (d) transportation of fuel (the "Agreements").

*[Handwritten signatures and initials]*

*[Handwritten signature]*

- C. The State Government and the SEB have requested GOI to enter into this Agreement, for securing the aforesaid payments (as a principal debtor) in the event of default by the SEB, and the GOI has acceded to this request.
- D. The State Government and SEB have agreed to comply with the terms and conditions laid down in the Settlement Scheme a copy of which is annexed hereto and marked as Annex-A to form part of this Tripartite Agreement.

NOW, IT IS HEREBY AGREED as follows:

1. DEFINITIONS

- 1.1 In this Agreement the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively assigned to them:

"CPSU" shall mean any of the following, namely National Thermal Power Corporation (NTPC), National Hydro-electric Power Corporation (NHPC), Nuclear Power Corporation of India (NPC), Neyveli Lignite Corporation (NLC), North-Eastern Electric Power Corporation (NEEPCO), Damodar Valley Corporation (DVC), Power Grid Corporation (PGCIL), Coal India Limited (CIL) and its subsidiaries, and the Railways, and includes their respective successors, assigns and permitted substitutes;

"GOI shall mean the President of India acting through the Joint Secretary, Ministry of Finance;

"GOI Interest Rate" shall mean the highest rate of interest charged by GOI for any loan given by it to the State Government in the immediately preceding financial year;

"RBI" shall mean the Reserve Bank of India;

"RBI Agreement" shall mean the agreement dated 7<sup>th</sup> day of July, 1937 entered into between the State Government and RBI under sub-section (1) of section 21A of the Reserve Bank of India Act 1934;

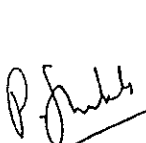
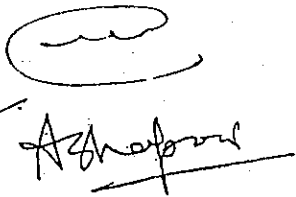
"SEB" shall mean the U.P. Power Corporation Limited and Uttar Pradesh Rajya Vidyut Utpadan Nigam Limited and includes its successors, assigns and permitted substitutes so long as they are owned or controlled by the State Government;

"Settlement Scheme" shall mean the Scheme for Settlement of SEB Dues as at Annex-A;

"State Government" shall mean the Governor of UTTAR PRADESH acting through the Finance Secretary, Government of UTTAR PRADESH.

"Supply Agreement" shall mean the agreement entered into between the SEB and the respective CPSU for supply of electricity or its transmission, or supply of fuel or its transportation; and

"Supply Payments" shall have the same meaning as assigned to the payments due to a CPSU from the SEB in terms of their respective Supply Agreements and include any payments due under the Settlement Scheme.

## 2. UNDERTAKINGS BY THE STATE GOVERNMENT

2.1 In consideration of the GOI agreeing to discharge certain obligations under the Settlement scheme, the State Government hereby irrevocably undertakes and agrees to abide by the covenants set forth in this Clause 2.1 as follows, in the event of the SEB failing to discharge its the payment obligations to the CPSUs arising out of or in connection with the Supply Agreements.

- (a) The State Government shall, in all events, abide by the terms of the Settlement Scheme.
- (b) The State Government shall ensure that the SEB abides by the terms of the Settlement Scheme and makes the Supply Payments due to the CPSUs within the period specified in the Supply Agreements. In the event of the SEB committing a breach of any of the terms, the State Government shall, independently and as a principal debtor, become liable for the due performance of such term, including the terms relating to Supply Payments.
- (c) In case any amount is paid to CPSU by the GOI, on behalf of the SEB, on account of any sum under the Supply Agreement remaining due after a period of 90 days from the date of billing, as specified in Settlement Scheme, such amount shall be recoverable by GOI from the State Government together with interest calculated at the GOI interest Rate. It is clearly accepted by the State Government that any payment made by GOI to any CPSU under this Agreement shall be deemed to be a payment for and on behalf of the SEB, and shall be recoverable from the State Government hereunder as if it were a payment made by the GOI, on behalf of the State Government.
- (d) Subject to the provisions of sub-clause (e) of this Clause 2.1, the State Government hereby irrevocably and unconditionally authorises GOI to instruct RBI to debit forthwith, (and further directs the RBI to act according to such instruction), from the account of the State Government maintained with RBI, and credit the same to the account of GOI, any amounts paid to any CPSU by the GOI, on behalf of the SEB, pursuant to the provisions of this Agreement and the Settlement Scheme. All amounts payable under this Agreement by the State Government to GOI shall be intimated as such by GOI to RBI for debit from the account of the State Government.
- (e) Notwithstanding the provisions of the RBI Agreement, the State Government hereby irrevocably and unconditionally authorises the GOI to instruct RBI to act promptly on the instructions of GOI as per Sub-clause (d) of this Clause 2.1 and debit the State Government account maintained with RBI by credit to the account of GOI or to such account as GOI may specify, and correspondingly directs the RBI to act as per this instruction. The State Government agrees that if at any time, the balance in the State Government account is inadequate to meet the aforesaid debit, its account may be debited to the extent of availability of funds, and the remaining amount may be debited subsequently as and to the extent funds become available in its account. Until the entire dues of GOI are recovered from the State Government, RBI shall not make any other payment on behalf of the State Government out of the balance in the State Government accounts.


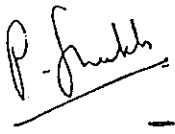
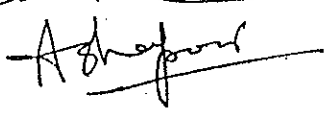
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Explanation:

The balance in the State Government account means the amount held in such account including the minimum balance required to be maintained in the account under the RBI Agreement, and the authorised limit of the normal ways and means advances, the operative limit of the special ways and means advances, or any other authorised advances that may be made by RBI to the State Government but not including any unauthorised overdraft that may have emerged in such account.

- (f) Notwithstanding the provisions of Clause 13 of the RBI Agreement, the State Government hereby undertakes not to exercise the option of terminating the RBI Agreement while this Agreement remains in force, and the State Government and the RBI accept that the option of the State Government under the RBI Agreement stands modified to this extent.
- (g) Without prejudice to the other provisions of this Tripartite Agreement, GOI shall have the unconditional and irrevocable right to make recovery of amounts due to it from the State Government under the provisions of this Agreement by making necessary deductions from the amounts due or becoming due from GOI to the State Government on account of central plan assistance, share of central taxes, loans and grants, and the State Government shall not make any protest or contest, when such adjustments are made.
- (h) While this Agreement is in force, the State Government will fully indemnify the GOI against any loss or liability caused by any act or omission of the State Government or SEB that may prove harmful or prejudicial to the interest of the GOI. Further, the State Government will fully indemnify GOI against any form or manner of revocation of this Agreement during the entire duration of the Settlement Scheme.
- (i) No failure to exercise and no delay in exercising, on the part of GOI, any right, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof, or the exercise of any other power or right. The rights and remedies herein provided to GOI are cumulative and not exclusive of any rights or remedies provided by law.
- (j) The liability of the State Government to GOI under this Agreement shall not be impaired or discharged by reason of any time or other indulgence, which may be granted by GOI or by any forbearance whether as to payment, time or performance.
- (k) No obligation of the State Government or RBI herein may in any way be discharged or impaired by reason of any indulgence granted by the CPSUs to the SEB or by any variation in the Supply Agreements or by any act or omission whereby but for the provisions of this sub-clause, the State Government or RBI would be discharged of such obligations.
- (l) Whether by any act, omission or otherwise, the State Government shall not revoke, withdraw or in any manner render this Agreement ineffective either wholly or partially so long as it is in force.
- (m) All the amounts payable under this Agreement and the Settlement Scheme shall be deemed to have been paid at the request of and on behalf of the

State Government and shall be deemed as "debt charges" for which the State Government is liable. The payment of such "debt charges" shall be expenditure chargeable to the Consolidated Fund of the State of UTTAR PRADESH in terms of Article 202(3) of the Constitution of India.

- (n) As a separate and alternative stipulation, the State Government irrevocably agrees that any sums expressed to be payable by it under this Agreement and the Settlement Scheme, but which for any reason whatsoever whether existing now or in future are not recoverable from the State Government on the basis of this Agreement, shall nevertheless be payable by and recoverable from the State Government, and the State Government shall indemnify GOI and hold harmless accordingly. RBI shall carry out the necessary transfers arising thereof in the same manner as stipulated in Sub-clauses (d) and (e) of this Clause 2.1.

### 3. REPRESENTATIONS OF THE STATE GOVERNMENT

- 3.1 The State Government represents that it has obtained all requisite approvals for the execution of this Agreement and that this Agreement has been signed by its duly authorised signatory. The State Government further represents that it is fully empowered to make this Agreement and abide by the terms and conditions herein.

### 4. UNDERTAKINGS BY RBI

- 4.1 Subject to the provisions of Sub-clauses (d) and (e) of Clause 2.1 of this Tripartite Agreement, RBI irrevocably and unconditionally undertakes and represents that it shall carry out forthwith the instructions issued from time to time by GOI pursuant to the provisions of this Tripartite Agreement, and that it shall not accept any instructions to the contrary from the State Government at any time. This undertaking and representation by RBI is itself irrevocable.

### 5. DURATION OF THE AGREEMENT

- 5.1 This Agreement shall come into force immediately and shall remain in force until 31.10.2016 unless terminated earlier in accordance with the provisions of this Clause 5.
- 5.2 This Agreement shall expire upon divestment of the ownership or control of the SEB in favour of any entity not owned or controlled, directly or indirectly, by the State Government.
- 5.3 Notwithstanding the termination or expiry of this Tripartite Agreement, the rights of GOI and the undertakings and obligations of the State Government under this Agreement and the undertakings of RBI under this Agreement shall survive in respect of demands for payments received by the GOI from the CPSUs in terms of this Agreement and the Settlement Scheme.

### 6. DISPUTE RESOLUTION

- 6.1 Any dispute, difference or claim arising out of or in connection with this Agreement which the parties are unable to resolve amicably shall be decided by reference to arbitration by a sole arbitrator (being a retired judge of the Supreme Court) to be nominated by the Chief Justice of India or any person or institution designated by him. The venue of all arbitration proceedings shall be Delhi. The arbitration shall be

*P. J. Singh*  
*Adhikari*



conducted in accordance with Indian Laws. The arbitrator shall give reasons for his award and the award shall be final and binding upon the parties.

IN WITNESS WHEREOF, THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN, IN FIVE COPIES, EACH OF WHICH SHALL CONSTITUTE AN ORIGINAL OF THIS AGREEMENT.

For and on behalf of THE PRESIDENT OF INDIA

(Name) Mr. R. S. Sahoo (Signature)  
(Designation) MRUTUNJAY SAHOO  
Jt. Secretary & Financial Adviser

Ministry of Power  
Government of Uttar Pradesh  
THE GOVERNOR OF UTTAR PRADESH.

(Name) Sanjeev S. Adhikari (Signature)  
(Designation) Secretary

For and on behalf of THE RESERVE BANK OF INDIA

(Name) MOHAMMAD TAHIR (Signature)  
(Designation) EXECUTIVE DIRECTOR

Agreed, Accepted and Countersigned For and on behalf of The Ministry of Power, GOI by.

(Name) SAURABH KUMAR (Signature)  
(Designation) उप सचिव

Agreed, Accepted and Countersigned For and on behalf of The U. P. Power Corporation Limited by

(Name) Pradeep Shukla (Signature)  
(Designation) Managing Director  
U.P. Power Corporation Ltd.  
LUCKNOW.

Agreed, Accepted and Countersigned For and on behalf of Uttar Pradesh Rajya Vidyut Nigam Limited by  
(Name) Abhay Saran Kapoor (Signature)  
(Designation) Chairman and Managing Director  
U. P. Rajya Vidut Utpadan Nigam Ltd.  
4-B, Cakhalo Marg, Lucknow.

(Signature)

## Scheme for Settlement of SEB dues

### A. Preamble

Soon after Independence, the electricity industry was nationalised under the Electricity (Supply) Act, 1948 that created the State Electricity Boards (SEBs). Although the amendments of 1991 and 1998 enabled private participation in generation and transmission respectively, this can occur only through long-term contracts with State-owned entities. As such, SEBs continue to be the nerve-centres of the electricity industry except in States where unbundling has been carried out.

2. The SEBs can claim credit for expanding the network over the years and extending electric supply to areas unserved earlier. However, the system has been managed in a way which has brought them to the verge of financial collapse owing to mismanagement, high transmission and distribution (T&D) losses, irrational tariffs, degraded plant and machinery, bloated workforce etc. Their financial unviability is reflected in the rising overdues of Central Public Sector Undertakings (CPSUs) that are no longer sustainable.
3. Restoration of financial viability of the SEBs must receive urgent attention and calls for restructuring of the electricity industry on modern lines; extensive reforms in the system of fixing tariffs; reductions in operational inefficiencies in generation, transmission and most of all, distribution; major investments for upgrading the network and equipment; institutional changes for ensuring accountability; and professionalising management. This is necessarily a time consuming process, though absolutely essential.
4. It is difficult to believe that SEBs can undertake reforms and simultaneously clear the overhang of past dues unless very large tariff increases are mandated, beyond levels justified by current costs to cover past dues. In the circumstances, it is appropriate that a one-time settlement of outstanding dues should be attempted by shifting the burden of clearing these dues to State Governments while providing a package of relief in this context and also a set of penalties and incentives favouring discipline and future reforms.

**B. Securitisation of past dues**

5. In respect of the overdues of CPSUs, the following scheme of securitisation would be deemed to be effective from 01.10.2001:

**Reckoning of past dues**

6.1 All CPSUs that have receivables relating to electricity and fuels supplied or transmitted by them to the SEBs shall be eligible for a one-time settlement under this scheme. The scheme covers the outstanding dues payable by the SEBs to the National Thermal Power Corporation (NTPC), National Hydro-electric Power Corporation (NHPC), North-eastern Electric Power Corporation (NEEPCO), Power Grid Corporation (PGCIL) and Damodar Valley Corporation (DYC) under the Ministry of Power, Coal India Limited (CIL) & its subsidiaries and Neyveli Lignite Corporation (NLC) under the Department of Coal, Nuclear Power Corporation of India (NPC) under the Department of Atomic Energy and the Ministry of Railways.

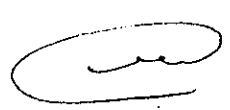
6.2 The cut-off date for reckoning of outstanding payments in respect of the aforesaid CPSUs shall be 30.09.2001, and all amount payable by the SEBs in respect of electricity supplied or transmitted, or coal supplied or transported until that date shall be eligible hereunder. In calculating the amounts payable to a CPSU by an SEB the receivables, if any, due to the SEB from such CPSU shall be deducted, and only the net amount due shall be reckoned hereunder.

6.3 All bonds issued after 01.03.1998 by any SEB in favour of the aforesaid CPSUs shall be eligible for conversion under this scheme to the extent of amounts outstanding as on 30.09.2001.

6.4 No waiver or re-scheduling of SEB dues towards financial institutions such as REC and PFC is envisaged under this scheme nor does it include suppliers of equipment such as BHEL. The CPSUs are owed moneys that relate to capital expenditure for creation of assets and have, therefore, been excluded from the purview of this scheme.

**Partial write-off**

7. All surcharge and interest payable by the SEBs on the overdues of CPSUs shall be written off to the extent of 60 (sixty) per cent thereof.



Securitisation of dues

8.1 All amounts payable in accordance with the above shall be <sup>converted</sup> converted into long-term loans to be repaid by the State Governments over a period of 15 years in 20 equal 6-monthly instalments commencing from 01.10.2006 i.e. after a moratorium of 5 years. The State Governments would issue bonds to the respective CPSUs who will be free to trade them in the market in a phased manner i.e. 10 per cent of the bonds will be eligible for trading in the secondary market every year on a cumulative basis, thus releasing all the bonds for trading in a period of 10 years.

8.2 To facilitate trading and redemption of the bonds, the total amount of loan would be divided into 20 equal parts and each part will carry a fixed tenor with bullet redemption. The first set of bonds would thus be redeemed on 01.10.2006 with similar redemption falling due once every six months until all bonds are redeemed.

8.3 These bonds would be treated as SLR eligible securities and managed by RBI in the same manner as the other market borrowings of State Governments.

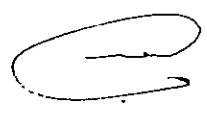
Interest

9. The bonds issued by the State Governments through RBI shall carry a nominal tax-free interest rate of 8.5 per cent per annum. Interest shall be payable once every six months and the first such payment shall be due on 31.03.2002.

Disputed amounts

10.1 Disputes relating to payments due shall be resolved in accordance with the due process of law. As and when a dispute is settled, the amount awarded shall be payable in the manner specified in paragraph 8, as if the bonds had been issued as on 01.10.2001, with the exception that the rate of interest for the period between 01.10.2001 and the actual date of securitisation shall be 12 per cent per annum, to be paid upfront. Similarly, any amounts required to be refunded by the CPSUs shall be adjusted through cancellation of equivalent bonds with retrospective effect as from 01.10.2001, along with refund of interest calculated @ 12% per annum.

10.2 While determining the dues to be settled under this scheme, no dispute arising from fixation of power tariffs or coal prices shall be reckoned. In the event that such a dispute is settled subsequently through the due process of law,

 (13)

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and any amount is due to be refunded to the SEB, it shall be refunded in the manner specified in paragraph 10.1 above.

### C. Payment of current dues

11. Upon securitisation of past dues as aforesaid, the following shall apply in respect of the current payments due to the CPSUs on or after 01.10.2001 from the SEBs or their successor entities as long as they are controlled by the respective State Governments:

#### Time limit for making payments

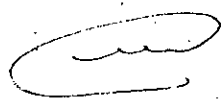
12. All CPSUs will continue to raise and collect their current bills against the SEBs or their successor entities in accordance with the existing practice or such other arrangement as may be mutually determined. Notwithstanding any mutual arrangement, payment of such bills shall be made no later than 60 days from the date of billing, or within 45 days of their receipt, whichever is later.

#### Letter of Credit (LC)

13.1 SEBs or their successor entities shall open and maintain irrevocable LCs that are equal to 105 per cent of their average monthly billing for the preceding 12 months. The amount shall be revised once in six months, based on the said average.

13.2 The requisite LCs shall be opened no later than 30.09.2002, and failure to do so shall attract reduction in supplies from all CPSUs equal to 2.5 per cent of the average daily supply for the preceding 90 days, in addition to the suspension of APDRP as mentioned in paragraph 16 below. These penal provisions shall also apply if the LCs are not maintained in future. However, SEBs shall be free to establish any other security mechanism that is mutually acceptable to the contracting parties.

13.3 SEBs or their successor entities that open the requisite LCs or establish acceptable security mechanisms by 30.06.2002, and operate them without any default until 31.12.2002 shall be entitled to a cash incentive equal to 2 per cent of the nominal value of bonds issued to the respective CPSUs. The incentive shall be paid in cash by the CPSUs to the eligible SEBs on or before 31.01.2003.



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**Interest on delayed payments**

14. Payments made after the period specified in paragraph 12 above shall attract interest at the rate of 15 per cent per annum, compounded quarterly.

**Reduction in supply**

15.1 In the event that payments are not made within the period specified in paragraph 13 above, the supply of electricity shall be reduced forthwith by 5 per cent, (inclusive of the reduction, if any, under the provisions of paragraph 13 above) as compared to the average daily supply for the preceding 90 days. The reduction in supply shall be increased to 10 per cent and 15 per cent after 75 and 90 days of billing respectively. Supplies of coal, lignite etc. shall also be reduced in a similar manner.

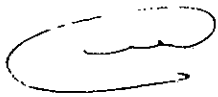
15.2 In case supplies are made by a CPSU without making the aforesaid reductions, payments in respect of the supplies that are equivalent to the specified reduction shall be computed separately, and shall not qualify for the measures stipulated in this scheme. Such payments would have to be recovered by the respective CPSUs entirely on their account and no intervention either from the Central Government or from the respective State Governments shall be sought for this purpose.

**Suspension of APDRP**

16. Defaults in making current payments shall attract suspension of Accelerated Power Development & Reforms Programme (APDRP). As such, any CPSU facing a payment default beyond 90 days from the date of billing shall request the Ministry of Power to suspend APDRP disbursements to the defaulting State, whereupon the Central Government shall withhold any further releases until the default is cured.

**Recovery of over dues from State Governments**

17. Payments that remain outstanding after 90 days from the date of billing shall be recovered, on behalf of the CPSUs, by the Ministry of Finance through adjustment against releases due to the respective State Government on account of plan assistance, States' share of Central taxes and any other grant or loan.



Disputed amounts

18. In the event that an SEB or its successor entity disputes any bill or part thereof, as raised by a CPSU, it shall pay 95 per cent of the disputed amount forthwith and refer the dispute for arbitration in accordance with law. The amount exceeding/beneath the said 95 per cent that is finally awarded shall be paid/adjusted with interest at the rate of 15 per cent per annum, to be calculated from the date on which the amount in dispute was payable/refundable.

**D. Reform-based Performance Milestones**

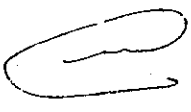
**Memoranda of Understanding (MOU)**

19. At the initiative of the Ministry of Power (MOP), several State Governments have signed MOUs with the former committing themselves to an agreed reform agenda. As a condition precedent to the extension of this scheme to the remaining States, the respective State Governments would sign similar MOUs with the MOP. For purposes of this scheme, the provisions contained in the MOUs signed by the Ministry of Finance with the respective State Governments, insofar as they relate to the power sector, shall be deemed to be part of the MOUs hereunder. Further, with a view to accelerating the pace of reforms, the State Governments shall, in particular, fulfil the Performance Milestones specified in paragraph 20 below.

**Reform-based milestones**

20.1 The Electricity Regulatory Commissions Act, 1998 enables the State Governments to set up State Electricity Regulatory Commissions (SERCs). So far, SERCs have been set up in 21 States but only 12 of them had issued tariff orders until recently. The following stipulation should apply to all the States:

- (a) In States where an SERC has been set in place but a tariff petition is yet to be filed, the SEB shall file a petition no later than 30.06.2002;
- (b) In States where an SERC has not been constituted, it shall be set in place no later than 01.08.2002 and a tariff petition shall be filed no later 31.08.2002; and
- (c) The State Governments and SEBs shall abide by the tariff orders issued by the respective SERCs and implement them within such period as may be stipulated in the tariff orders, but not later than



60 days from the date of an order. This would, however, not detract from any legal remedies that may be available to the affected parties.

20.2 The SEB shall comply with the following:

- (a) Energy audit at all 11 KV feeders shall be made effective by 31.12.2002 or such later date as may be specified in the MOU; and
- (b) Metering of all distribution feeders shall be completed by 31.12.2002 or such later date as may be specified in the MOU.

20.3 The SEB shall, over a period of five years commencing from 01.04.2002, eliminate the gap between average cost of power and average realisation, in accordance with the annual milestones specified in the MOU.

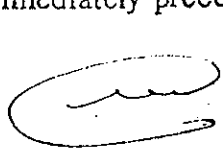
20.4 For the states in the North East, milestones would be notified separately.

**Monitoring of reform-based Performance Milestones**

21. MOP would set up a panel (including representatives from the Finance Ministry and the Planning Commission) that would review the progress of MOUs and the aforesaid Performance Milestones jointly with the respective State Governments and SEBs once every six months. The Panel will submit a report to MOP, and in particular, highlight the items that have a direct bearing on the revenues and losses of the respective SEBs. If the Panel is of the view that the measures taken by the respective State Government/SEBs are inadequate, it will recommend suitable reductions in the discretionary allocations of power from the regional stations of CPSUs as well as cuts in the central assistance under APDRP. Based on the recommendations of the Panel, MOP would make suitable reductions in power supply as well as in APDRP allocations.

**Incentive for compliance**

22. States that comply with the aforesaid provisions without committing any default during a block of six months in the years 2002-03, 2003-04, 2004-05, and 2005-06 shall be eligible for a financial incentive. For purposes of reckoning incentives hereunder, default would mean an event that attracts reduction in supplies from the CPSUs or recovery of overdues by the Ministry of Finance. The bi-annual incentive shall, in 2002-03, be equal to 3 per cent of the nominal value of bonds issued to the respective CPSUs, and shall be paid in cash by the CPSUs to the eligible SEBs on September 30 and March 31 in respect of the immediately preceding six months. Similarly, the bi-annual incentive payable





for 2003-04 shall be to 2.5 per cent while that for 2004-05 and 2005-06 shall be 2 per cent.

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## E. Other Provisions

### Incentive for better-managed SEBs

23. The better-managed SEBs would be eligible for financial support under this scheme. All SEBs or their successor entities whose aggregate payables to all CPSUs are less than thrice the aggregate average monthly billing for the preceding 12 months shall qualify for this purpose. Their respective State Governments may, at their option, issue bonds for an amount equal to the difference between their outstanding dues as on 30.09.2001 and three months' average billing, but subject to a maximum amount not exceeding one month's average billing. To the extent of these bonds, the SEBs shall be entitled to draw power, coal etc. and use the revenues thereof for capital investment in up gradation of their network.

### Non-conforming States

24.1 Any State that does not give its consent to this scheme within 60 days of its entry into force shall be denied any share in the discretionary allocation of 15 per cent from the regional power stations of CPSUs as well as any assistance under APDRP. If the over dues of such State exceed Rs. 50 crore in respect of any CPSU, it shall also attract reduction in supplies as stipulated in paragraph 15 above.

24.2 A non-conforming State Government may subsequently convey its consent to abide by this scheme and in that event, this scheme would be deemed to apply to such State with effect from 01.10.2001. The schedule of repayment of bonds and the terms thereof would remain unchanged, but the interest on such bonds for the period between 01.10.2001 and the date of consent shall be paid upfront at the rate of 12 per cent per annum.

### Entry into force

25. This scheme shall enter into force from the date of announcement of this scheme, viz. 17-04-2002. This scheme shall be deemed to be effective from 01.10.2001.

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**Duration of the Agreement**

26.1 This Scheme shall remain in force until 31.10.2016. It will, however, cease to operate in relation to purchase of power, fuel, etc by a successor entity of the SEB that is not owned or controlled by the State Government; provided that the expiry of this scheme, upon divestment of State ownership or control, shall not affect the incentives payable to a State for compliance of this scheme.

26.2 No supplies made by a CPSU to any private entity shall qualify for the coercive measures specified under this scheme. The former shall, however, be free to enforce such other coercive measures as may be permissible under law.

**Transparent and fair application**

27. The application of this scheme must always remain above suspicion so that the prospects of its compliance are enhanced. For this purpose, the MOP shall review the implementation of this scheme at the end of each quarter and circulate its report to all the State Governments and SEBs no later than 30 days after the close of each quarter. The report shall also be placed on the website of the MOP for general information.

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