

**ULTRA MEGA POWER PROJECTS
UNDER SPECIAL PURPOSE
VEHICLES**

MINISTRY OF POWER

**PUBLIC ACCOUNTS
COMMITTEE
2014-2015**

SEVENTEENTH REPORT

SIXTEENTH LOK SABHA



**LOK SABHA SECRETARIAT
NEW DELHI**

SEVENTEENTH REPORT

PUBLIC ACCOUNTS COMMITTEE (2014-15)

(SIXTEENTH LOK SABHA)

ULTRA MEGA POWER PROJECTS UNDER SPECIAL PURPOSE VEHICLES

MINISTRY OF POWER

Presented to Lok Sabha on 29 April, 2015

Laid in Rajya Sabha on 29 April, 2015



LOK SABHA SECRETARIAT
NEW DELHI

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COMPOSITION OF THE PUBLIC ACCOUNTS COMMITTEE
(2014-15)

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18. Dr. Satyanarayan Jatiya
19. Shri Bhubaneswar Kalita

* Elected *w.e.f.* 3rd December, 2014 *vice* Shri Rajiv Pratap Rudy who has been appointed as Minister *w.e.f.* 9th November, 2014.

** Elected *w.e.f.* 3rd December, 2014 *vice* Shri Jayant Sinha who has been appointed as Minister *w.e.f.* 9th November, 2014.

*** Elected *w.e.f.* 3rd December, 2014 *vice* Dr. M. Thambidurai who has been chosen as Hon'ble Deputy Speaker, Lok Sabha and has since resigned from the membership of the Committee.

(iv)

20. Shri Shantaram Naik
21. Shri Sukhendu Sekhar Roy
22. Shri Ramchandra Prasad Singh

SECRETARIAT

- | | | |
|------------------------|---|------------------------|
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COMPOSITION OF THE PUBLIC ACCOUNTS COMMITTEE
(2013-14)

Dr. Murli Manohar Joshi — *Chairperson*

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- ††20. Dr. V. Maitreyan
21. Shri N.K. Singh
22. Smt. Ambika Soni

* Elected *w.e.f.* 14th August, 2013 *vice* Dr. Girija Vyas appointed as Minister of Housing, Urban Development and Poverty Alleviation *w.e.f.* 17th June, 2013.

† Elected *w.e.f.* 3rd September, 2013 *vice* Dr. V. Maitreyan ceased to be a Member upon his retirement as a Member of Rajya Sabha *w.e.f.* 24th July, 2013.

†† Elected *w.e.f.* 3rd September, 2013 *vice* Dr. E.M. Sudarsana Natchiappan appointed as Minister of State for Commerce and Industry *w.e.f.* 17th June, 2013.

COMPOSITION OF THE PUBLIC ACCOUNTS COMMITTEE
(2012-13)

Dr. Murli Manohar Joshi — *Chairperson*

MEMBERS

Lok Sabha

2. Shri Anandrao Vithoba Adsul
3. Dr. Baliram
4. Shri Sandeep Dikshit
5. Dr. M. Thambi Durai
6. Shri T.K.S. Elangovan
7. Shri Anant Kumar Hegde
8. Shri Bhartruhari Mahtab
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15. Shri Dharmendra Yadav

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17. Shri Prakash Javadekar
18. Shri Satish Chandra Misra
19. Shri Sukhendu Sekhar Roy
20. Shri J.D. Seelam
21. Shri N.K. Singh
22. Prof. Saif-ud-Din Soz

* Elected *w.e.f.* 6th December, 2012 *vice* Shri Sarvey Sathyanarayana appointed as Minister on 28th October, 2012.

† Elected *w.e.f.* 6th December, 2012 *vice* Dr. Shashi Tharoor appointed as Minister on 28th October, 2012.

INTRODUCTION

I, the Chairperson, Public Accounts Committee (2014-15), having been authorised by the Committee, do present this Seventeenth Report (Sixteenth Lok Sabha) on 'Ultra Mega Power Projects under Special Purpose Vehicles' based on C&AG Report No. 6 of 2012-13, Union Government (Performance Audit) relating to the Ministries of Power and Coal.

2. The Report of the Comptroller and Auditor General of India was laid on the Table of the House on 11th May, 2012.

3. The Public Accounts Committee (2012-13), the Public Accounts Committee (2013-14) and the Public Accounts Committee (2014-15) took up the subject for detailed examination and report. The predecessor Committee procured written replies and took evidence of the representatives of the Ministries of Power and Coal on the subject at their sitting held on 22nd January, 2013. The draft Report on the subject was finalized and approved by the then Hon'ble Chairperson. However, due to dissolution of the Fifteenth Lok Sabha, the draft Report could not be considered for adoption by the Public Accounts Committee (2013-14).

4. The subject was subsequently carried forward by the successor Committee (2014-15) for examination. The Committee took further oral evidence on the subject on 18.02.2015 and the updated draft Report which was placed before the Committee was considered and adopted at their sitting held on 9th April, 2015. Minutes of the sittings form Appendices to the Report.

5. For facility of reference and convenience, the Observations/Recommendations of the Committee have been printed in thick type and form Part II of the Report.

6. The Committee thank their predecessor Committee for taking oral evidence of the Ministries of Power and Coal and obtaining the requisite information on the subject.

7. The Committee would also like to express their thanks to the representatives of the Ministries of Power and Coal for tendering evidence before the Committee and furnishing information in connection with the examination of the subject.

8. The Committee place on record their appreciation of the assistance rendered to them in the matter by the office of the Comptroller and Auditor General of India.

NEW DELHI ;
27 April, 2015

7 Vaisakha, 1937 (Saka)

PROF. K.V. THOMAS
Chairperson,
Public Accounts Committee.

REPORT

PART I

I. INTRODUCTORY

Energy is one of the most critical components of infrastructure that determines the economic development of a country. The growth rate of demand for power is generally higher than the GDP growth rate. Studies point that in order to have 8 per cent GDP growth per annum, power supply needs to grow around 12 per cent annually. Against a target of 41,110 MW power generation capacity addition during the X Plan period, the achievement was 21,080 MW only. Similarly, during the XI Plan period, against the power generation capacity addition target of 62,374 MW, the achievement was 54,964 MW. Therefore, a need was felt to develop large capacity projects at the National level to meet the power requirements of a number of States through tariff based competitive bidding. One of the main objectives of the tariff policy was to promote competition, efficiency in operations and improvement in quality of supply. The policy *inter alia* stipulates, in line with the Electricity Act, 2003 and the National Electricity Policy, that all future requirement of power needs to be procured competitively by distribution licensees, except in cases of expansion of existing projects where regulators will need to resort to tariff determination based on norms. In short, the policy aimed at introducing competition in different segments of the electricity industry which in turn would lead to significant benefits to the consumers through reduction in capital costs and also efficiency in operations. The XI Five Year Plan emphasized the need for removing infrastructure bottlenecks for sustained growth. It, therefore, proposed an investment of around ₹21 lakh crore (US \$500 billion) in infrastructure sectors through a mix of public and private sectors to reduce deficits in identified infrastructure sectors. Public Private Partnership (PPP) model was introduced to augment resource availability as well as to improve the efficiency of infrastructure service delivery.

2. With a view to augment the power generation capacity, the Government of India (GoI) decided in November 2005 to develop Ultra Mega Power Projects (UMPPs) using Super Critical Technology. The UMPPs would meet the power needs of a number of States/distribution companies located in the States and were to be developed on Build, Own and Operate (BOO) basis through creation of Special Purpose Vehicles (SPVs). Each UMPP was projected to have a capacity of around 4,000 MW with a cost of ₹16,000- 20,000 crore per project. This initiative aimed at delivering power at competitive cost to the consumers by achieving economies of scale. The identification of the Project Developer was to be done on the basis of tariff based competitive bidding as per the "Guidelines for determination of tariff by bidding process for procurement of power by distribution licensees" issued by the Ministry in January 2005.

3. An Empowered Group of Ministers (EGoM) chaired by the Minister of Power with the Ministers of Finance, Law & Justice, Science & Technology and Earth Sciences and the Deputy Chairman, Planning Commission as Members was constituted on 14th June, 2007 for facilitating expeditious decisions on all major issues concerning UMPPs. While the 1st meeting of EGoM took place on 20th June 2007, the last (14th) meeting was held on 28th April 2012 as revealed by Audit.

4. The Ministry of Power (MoP), Government of India are primarily responsible for the development of electrical energy in the country. It is concerned with perspective planning, policy formulation, processing of projects for investment decision and enactment of legislation for power generation, transmission and distribution. Electricity is a concurrent subject under the Constitution of India.

5. The MoP have a crucial role in the development of UMPPs. Some of the key areas requiring MoP's intervention include coordination with Central Ministries/ Agencies for ensuring coal block allotment/coal linkage, environment/forest clearances, water linkage etc. MoP designated (November 2005) Power Finance Corporation Limited (PFC) as the nodal agency for the purpose of development of UMPPs and Central Electricity Authority (CEA) as the technical partner.

6. The MoP prescribed the SPVs route for the UMPPs. SPV is a legal entity (usually a limited company or a limited partnership) created to fulfil narrow, specific or temporary objectives and are typically used by companies to isolate them from financial risk. As per the methodology followed, SPVs acted as the 'Authorised Representative' for carrying out the bidding process on behalf of the procurers and facilitated preliminary activities like site identification with CEA, land acquisition, coal block allocation (in the case of pithead stations) obtaining various clearances relating to environment, forest etc. After the bidder was identified, the SPV was transferred to the successful bidder on execution of the Share Purchase Agreement and payment of the acquisition price to PFC.

7. The SPVs, being separate companies, were managed by a Board of Directors (BoDs). The Chairmen of the BoDs were nominated by PFC from its own Functional Directors. The day to day affairs of each SPV were looked after by its Chairman and Chief Executive, who was also represented in the BoDs.

8. Initially, nine UMPPs were identified to be taken up and later on seven more projects were added to the list of UMPPs. Out of the 16 UMPPs identified till March 2012, PFC floated 12 shell companies (SPVs) as its wholly owned subsidiaries, each with a paid-up share capital of ₹5 lakh during 2005-06 to 2011-12 for development of UMPPs at six pithead sites and six coastal sites. The six pithead sites are Sasan in Madhya Pradesh; Talaiya in Jharkhand; Surguja in Chhattisgarh; and Sundergarh, Sakshigopal & Ghogarpalli in Odisha. The six coastal sites are Mundra in Gujarat; Krishnapatnam in Andhra Pradesh; Tadri in Karnataka; Munge in Maharashtra; Cheyyur in Tamil Nadu; and Tatiya in Andhra Pradesh. Pithead projects are envisaged to utilize the indigenous coal whereas coastal projects are based on the imported coal. The SPVs invited bids from prospective bidders for six UMPPs during March 2006 to March 2012. Bidding process had been completed and contracts were awarded in

respect of four UMPPs viz. Sasan, Mundra, Krishnapatnam and Tilaiya. The remaining eight UMPPs (out of 12) were yet to be awarded (March 2012). Details of the four UMPPs awarded so far are tabulated below:—

Name of the UMPP	Name of the SPV	Developer to whom awarded	Levelised Tariff accepted (₹ per unit of electricity)*	Tariff collection for 25 years (₹ in crore)®	Current Status
Mundra 4000 MW (5 x 800 MW)	Coastal Gujarat Power Limited (incorporated on 10-02-2006)	Tata Power Company Limited	2.264	1,67,784	One unit of 800 MW commissioned in February 2012 and the Project is scheduled to be commissioned on 30th October 2013.
Sasan 3960 MW (6x660 MW)	Sasan Power Limited (incorporated on 10-02-2006)	Reliance Power Limited	1.196	87,749	Not yet commissioned as scheduled date of commissioning of first unit of 660 MW is 31- 01-2013. The Project is scheduled to be commissioned by 30th June 2014.
Krishnapatnam 3960 MW (6x660 MW)	Coastal Andhra Power Limited (incorporated on 24-08- 2006)	Reliance Power Limited	2.333	1,71,169	Not yet commissioned. Scheduled date of commissioning of first unit and the Project is September 2013 and October 2015 respectively. However, Developer has stopped work at Project site citing new regulation of Government of Indonesia as a reason which prohibits sale of coal below benchmark market price.
Tilaiya 3960 MW (6x660 MW)	Jharkhand Integrated Power Limited (incorporated on 02-01- 2007)	Reliance Power Limited	1.77	1,29,862	Not yet commissioned as scheduled dates of commissioning of first unit and Project are May 2015 and June 2017 respectively.

*Note: Levelised tariff is the weighted average tariff.

®Worked out on levelised tariff basis.

9. Audit conducted performance review of the implementation of the Ultra Mega Power Projects (UMPPs) from January 2009 to March 2012 with the objectives of assessing whether Standard Bidding Documents were comprehensive without any ambiguity; selection of consultants for bid process was made through a transparent system; bid process management was carried out efficiently and in transparent manner; and land and coal linkages provided to the UMPPs were justified. The Audit review had revealed several lapses/deficiencies in Bid Process Management, Bid Evaluation, granting permission for diversion of surplus coal as well as undue financial benefit to Reliance Power Limited, the project developer of Sasan UMPP. The gist of the Audit's main findings *inter alia* is as under:—

- (i) Though the lowest bidder (M/s ICRA) was declared technically qualified for the consultancy assignments for Sasan and Mundra UMPPs by the bid evaluation committee, their bid was not considered and the contract was awarded at a higher price to M/s Ernst & Young (E&Y) on the ground that they had advised on bid process management of a power project in Bangladesh.

- (ii) The Bid Documents used for calling bids in respect of UMPPs awarded were not vetted by the Department of Legal Affairs.
- (iii) Several conditions like change in the equity holding requirement of the Parent/Affiliate Company, reduction of normative availability and penalty, dilution of equity lock-in requirements for the sponsoring entity, lower networth requirement for bidders etc. were compromised by the Ministry of Power from time to time based on the feedback received from the bidders and recommendation of the Power Finance Corporation (PFC).
- (iv) Though only capital cost of the projects commissioned during the last ten years was to be considered as project experience, Reliance Power Ltd. (RPL) was awarded three UMPPs on the basis of additions to the fixed assets as project experience.
- (v) Excess land was allocated for Mundra and Krishnapatnam UMPPs and the EGoM allowed the excess land to be retained by the Developers instead of utilizing the same for other public purposes.
- (vi) RPL was allowed to use surplus coal from the blocks allotted to Sasan UMPP for its other projects where power was sold through tariff based bidding. It resulted in financial benefit of ₹ 29,033 crore with a Net Present Value (NPV) of ₹11,852 crore to RPL.
- (vii) Permission to utilize surplus coal for projects with tariff based competitive bidding was violated since tariff for Chitrangi Project, for which such permission was granted, was already fixed before permission was given.
- (viii) The condition purportedly permitting diversion of surplus coal was not explicitly spelt out in the bid document.
- (ix) The advice of the MoP in October, 2006 that Sasan UMPP would require an additional coal block was based on insufficient data as mining plan of Moher and Moher-Amlohri Extension was not available.
- (x) The EGoM was not provided accurate information about the adequacy or otherwise of coal availability in the two blocks initially allocated to Sasan UMPP leading to their decision permitting usage of surplus coal.

Against the above backdrop, the Committee selected the subject for examination and report. In the process, the Committee obtained the requisite information/material/ written reply from the Ministry of Power. The Committee also took oral evidence of the representatives of the Ministry. Based on the information gathered from the Ministry and the Audit inputs, the Committee have discussed the issues in detail in the succeeding paragraphs.

II. BID PROCESS MANAGEMENT

(a) Appointment of Bid Process Management Consultant

10. Competitive bids were invited for appointment of Consultants to assist PFC in conducting the bid process for five UMPPs. The scope of Consultants involved

participation in preparation and issue of Bidding Documents (RFQ & RFP), participation in pre-bid and post-bid conferences, evaluation of Bid documents and assisting in finalizing the agreement with successful bidders. Audit found that the lowest bids of M/s. ICRA of ₹54.50 lakh and ₹44.50 lakh for the consultancy assignments of Sasan and Mundra UMPPs respectively were not considered though the bidder was declared technically qualified. The work was awarded to M/s. Ernst & Young (M/s. E & Y) at higher rates of ₹1.28 crore each on the ground that they were managing bid process of Anpara power project in Bangladesh. Further, ICRA had quoted ₹54.50 lakh for Krishnapatnam UMPP. However, the consultancy job for this UMPP was awarded to M/s. E&Y at ₹60 lakh as against ₹1.28 crore first quoted by them. For Tilaiya UMPP, the job was awarded to M/s. E&Y at ₹60 lakh without inviting any bid.

11. Audit thus pointed out that the principle of equity in public procurement as laid down in Rule 160 of General Financial Rules (GFR) was not followed in the appointment of Consultants which resulted in extra expenditure of ₹1.68 crore. Audit further noticed that PFC had to subsequently debar M/s. E & Y for a period of three years w.e.f. July, 2011 from future assignments due to deficiencies in the Bid evaluation. The Ministry have also issued a show cause notice to the Consultant for their omission and commission in the evaluation of bid documents of Sasan and Mundra UMPPs.

12. In the above context, the Committee desired to know the technical parameters on which the bidders for consultancy assignment for UMPPs were judged. In reply, the Ministry of Power stated that the technical parameters on which the bidders for consulting assignment for UMPPs were judged were given in the bidding documents. The Ministry further stated that the following evaluation criteria were stipulated in the bidding documents for consultancy assignment for UMPPs:—

- (i) The Firm's relevant past experience.
- (ii) Adequacy of the proposed methodology and work plan in responding the ToR (Terms of Reference).
- (iii) Qualification and competence of key personnel.

As mentioned in the bid documents: 'firms securing a minimum of 60% of marks shall be considered technically responsive'.

13. Enquired about M/s. ICRA's previous experience in such consultancy assignment and subsequent qualification, the Ministry apprised as under:—

"As per the bid submitted, ICRA had shown experience in the following assignments:

- Evaluation of RFQ bids for allotment of Hydro electric plant sites for capacity of 100 MW and above for development by private sector firms for Uttaranchal Jal Vidyut Nigam Ltd. (UJVNL).
- Financial Advisory service for commercial and financial evaluation of tenders for tugs and launches for Ennore Port Ltd.

- Further, ICRA had also shown general experience for clients viz. Powergrid, Enercon, Airport Authority of India (AAI), IRCTC etc."

14. Asked to state the mechanisms put in place to evaluate the bid documents, the Ministry submitted that the bid evaluation committee consisting of five officers from PFC with three members at the level of AGM and two members at the level of Manager evaluated the bids as per bid evaluation criteria and technical score of ICRA as per bid evaluation report is given in the table below:—

Particulars	Maximum Technical Score	Technical Score (ICRA)
The Firms relevant past experience	40	20.5
Adequacy of the proposed methodology and work plan in responding the ToR	20	14
Qualification and competence of key personnel	40	34.67
Total	100	69.17

The Bid Evaluation Committee declared ICRA technically responsive as ICRA scored more than 60 marks which was required for being technically responsive.

15. The Committee then called for an explanation for not awarding consultancy assignment for Sasan, Mundra and Krishnapatnam UMPPs to M/s. ICRA which was technically qualified and had quoted lower price. In reply, the Ministry *inter alia* stated that with regard to tender for consultancy assignment for Sasan and Mundra UMPPs, M/s. ICRA ((formerly Investment Information and Credit Rating Agency of India Limited) did not have enough adequate relevant experience for taking up an assignment of this size. Further, the technical consortium partners in the assignment were individual experts (retired professionals only) without any organizational support. The High Level Committee constituted by the Ministry (which had representation of State Bank of India, CEA, IDBI, IDFC and PFC) did not consider M/s. ICRA suitable for award of the consultancy assignment, regardless of the price quoted by them. The Ministry further stated that M/s. Ernst & Young (M/s. E&Y) had relevant experience in managing the bid process of projects notably the bid process management for 1000 MW Anpara 'C'. Considering the above, the High Level Committee found M/s. E&Y most suitable for the assignment for Sasan and Mundra UMPPs, and accordingly made recommendation for the award of assignment related to Sasan and Mundra UMPPs to M/s. E&Y.

16. Responding to a specific query, the Ministry further apprised that as per the tender documents, there was no specific bar on the retired professionals being engaged by M/s. ICRA for the assignment. Taking note of the Ministry's response, the Committee further enquired the reasons for rejecting the bid of M/s. ICRA on the above ground. In reply, the Ministry clarified that the decision was taken by the High Level Committee on the basis of the presentation made to them. The High Level Committee observed

that all the technical partners were individual retired professionals and there was no organizational support. After the presentation by the three companies, the High Level Committee found that E&Y would be more suitable for these assignments.

17. The Committee then enquired whether the Bangladesh Power Project, for which M/s. E&Y had rendered consultancy service, was comparable with the UMPPs in terms of capacity and investment. In reply, the Ministry of Power submitted that the UMPP assignment was for assistance in selection of developer through tariff based competitive bidding. As per the bidding documents, experience in rendering consultancy services for projects comparable in capacity and investment to UMPPs was not a criterion. Power projects of the size of 4000 MW were being developed for the first time in India and projects of such magnitude were being awarded through tariff based bidding for the first time. The bids were evaluated mainly on the basis of experience of the firms in bidding process management which meant experience in RFQ/RFP process, PPA/financial closure, Port/coal sector, and general experience in power sector and other areas.

18. The Ministry further submitted that as per the bid submitted by M/s. E&Y, experience was shown for providing consultancy services to Essar Power Ltd. (EPL) for the bidding process of a gas fired Power Project in Bangladesh on Build Own Operate (BOO) basis at Sirajganj in Bangladesh and providing assistance for achievement of project financial closure if the project was awarded to EPL. The Bangladesh Project was awarded through a bidding process as in UMPPs.

19. The Committee specifically pointed out that the work of evaluation of bids for Anpara Project was a work which M/s. E&Y had in hand when it submitted the bid for the UMPP consultancy job and thus it was not a past experience. On being asked to explain the basis for concluding that M/s. E&Y had relevant experience in managing the bid process of projects, the Ministry reasoned as under:—

"PFC has informed that at the time of evaluation of E&Y's bids for award of consultancy assignments for Sasan/Mundra UMPPs in February 2006, RFQ stage of 2x500 MW Anpara 'C' project was over, the bidders had been shortlisted for RFP stage, RFP documents had been approved by UPERC and the same had been issued to bidders. This effectively was considered as relevant past experience in managing bid process for projects.

Besides, E&Y had experience of assisting Essar Power Ltd. in the bidding process including preparing financial model, analysis of contractual arrangements, preparation of financial bids, etc. for Sirajganj Power Project in Bangladesh, Tariff based advisory to NTPC including review of RFP documents, financial modeling for estimating bid tariff preparation of bid, etc. for 550 MW project in Sohar, Oman.

E&Y also had experience related to PPA (i) for Kudankulam project for NPCIL, (ii) for a mini power plant in Andhra Pradesh and debt syndication for metcoke plant of Venkatesh Coke and Power Ltd. in Tamil Nadu."

20. When the Committee desired to hear the view of the Secretary, MoP on the above matter, he deposed in evidence as under:—

"There was this question of E & Y not having experience of Bangladesh project. They did have experience of Bangladesh project; they had looked at the bid process management. Here, what we are asking is that the potential bidder for this consultancy should have bid process management experience; they had this experience of Bangladesh project and that is why they were considered. The scores and technical evaluation, the parameters for technical evaluation are already there, were there with PFC at that point in time, those parameters were used for assessing the technical experience of different bidders and give them marks."

21. The Ministry further informed that for Krishnapatnam and Odisha UMPPs, combined bidding process was carried out for selection of consultant, on the basis of combined technical and financial scores. M/s. E&Y was the highest ranked bidder and M/s. ICRA was the second highest ranked bidder. Therefore, the Bid Evaluation Committee recommended to High Level Committee for award of the assignment of Krishnapatnam and Odisha UMPPs to M/s. E&Y. The High Level Committee accepted the recommendation of the Bid Evaluation Committee and asked M/s E&Y to match the price bid of M/s. Deloitte (₹60 lakh each) which was the second lowest bidder (L2) on the basis of price bids (the L1 being M/s. Feedback which quoted ₹54 lakh and ₹57.60 lakh for Krishnapatnam and Odisha UMPPs respectively).

22. As stated above, the lowest price of ₹54 lakh for Krishnapatnam UMPP was quoted by M/s. Feedback. The Committee desired to know the reasons for not asking the successful bidder, M/s. E&Y to match the lowest price quoted by M/s. Feedback instead of asking the bidder to match the second lowest price of ₹60 lakh quoted by M/s. Deloitte. In reply, the Ministry stated as under:—

"E&Y was the highest ranked bidder, therefore the assignment was awarded to E&Y. There was no requirement in the tender document to match the price to the lowest quoted bidder. However, the High Level Committee comprising of senior representatives *i.e.* MD-SBI, Executive Director-IDBI, MD & CEO-IDFC, Director (Projects)-PFC and Member (Thermal)-CEA got the price reduced even from the highest ranked bidder to match the price with the next lowest Bidder in the combined score *i.e.* Deloitte."

23. On being asked to state the reasons for not calling any bids for consultancy work for Tilaiya Project, the Ministry of Power submitted as under:—

"PFC has informed that E&Y was awarded assignment for Odisha UMPP through a tender process. Odisha project was kept in abeyance due to delay in resolving the issues by State Government, whereas Tilaiya UMPP was on fast track. Therefore, E&Y was awarded the assignment for Tilaiya UMPP in lieu of Odisha UMPP. The scope of work for both the assignments was same, they being pit-head based UMPPs and the assignment for Tilaiya UMPP was awarded at the same cost and terms and conditions as the Odisha UMPP wherein E&Y was the highest ranked bidder."

24. When the Committee raked up the matter in evidence, the Secretary, Power submitted as under:—

"There was also a question of the Tilaiya Project not being bid for but being allotted. Sir, what we are looking at is allocation of consultancy work in bid process management. At that point in time, the particular project for which this was thought was not coming through. They were looking at Odisha Project. The Odisha Project was slow in taking off and Tilaiya Project was coming on faster. So, in place of the Odisha Project, Tilaiya Project was substituted. The work involves is the same which is assisting the PFC in bid process management. Replacing Odisha by Tilaiya is not a problem. It is fully justified because it is just the bid process that you have to manage. It could be Tilaiya Project, it could be Krishnapatnam Project. So, we do not believe that there has been a problem here and this was perfectly in order and again I would refer to the High Level Committee which looked at all this bid process management and suggested this."

25. Keeping in view the fact that M/s. E&Y was subsequently debarred for a period of three years from future assignments due to deficiencies in bid evaluation, the Committee desired to know the circumstances under which the officials concerned took the decision to award the consultancy assignment to M/s. E&Y. In reply, the Ministry of Power *inter alia* explained that the decision to debar M/s. E&Y was taken due to their failure to perform in one of the assignments *i.e.* Sasan UMPP. The debarment related to a subsequent development based on the performance/experience in that assignment. PFC had debarred E&Y for a period of three years from July 19, 2011. Therefore, the subsequent action of debarring of E&Y cannot be linked to its appointment.

(b) Bid Documentation

26. Audit scrutiny revealed that the bid documents for the UMPPs (RFQ and RFP) were prepared by the Consultant (M/s. E&Y) based on the 'Standard Bidding Documents' (SBDs) developed and notified (March, 2006) by the MOP. Audit further pointed out that the EGoM in its meeting held on 06/07 September, 2007 directed that the SBDs being utilized for UMPPs may be got vetted from a Solicitor/law consultancy firm having sufficient experience in dealing with international power sector contracts. Accordingly, two legal firms, M/s. K.L. Gates (International Law Firm) and M/s. Fox and Mandal (Indian interface for legal vetting of the documents) were engaged for this work but on getting their divergent view on the SBDs, the EGoM in its meeting held on 15 January 2010 directed that the comments of the Planning Commission, Department of Legal Affairs and Department of Economic Affairs should be obtained on SBDs. Audit observed that bids for infrastructure projects of such huge magnitude had, thus, been called for on the basis of bid documents which were not vetted by the Department of Legal Affairs.

27. In the above context, the Committee enquired about the reasons for floating bid documents without appropriate/requisite legal vetting. In reply, the Ministry stated that Section 63 of the Electricity Act, 2003 provided for determination of tariff by bidding process in accordance with the guidelines issued by the Central Government.

Accordingly, the Central Government issued Guidelines for procurement of power by distribution licensees through tariff based competitive bidding in 2005. Para 3.1(i) of these Guidelines provided for issuance of Standard Bid Documents by the Central Government. Bidding in respect of UMPPs was carried under SBD for Case-2 projects. The Ministry reasoned that the Guidelines did not provide for vetting of the SBD by the Department of Legal Affairs.

28. On being asked about obtaining the opinion of the Planning Commission and the Department of Economic Affairs on SBDs as advised by the EGoM in January 2010, the Ministry stated that in the meeting of EGoM on UMPPs held on 15.1.2010 it was decided that in the light of divergent views of M/s. K L Gates and M/s. Fox & Mandal, the comments of Planning Commission, Department of Legal Affairs and Department of Economic Affairs should be obtained. It was also decided that PFC might also do the consultation with stakeholders/investors/developers of UMPP. Accordingly the comments of the Planning Commission and the Department of Economic Affairs were obtained, examined and suitably incorporated. Based on the comments of the said Ministries/Departments, the modified SBDs for UMPPs were uploaded on Ministry of Power's website in February, 2012 for seeking comments of stakeholders and a copy of the same was also forwarded to Principal Director of Audit.

29. The Ministry further explained that to examine the comments/suggestions of stakeholders on the documents, a Committee was constituted in the Ministry which held a number of meetings and deliberations with stakeholders. Based on the deliberations and decisions taken, a Drafting Committee was constituted for the purpose of drafting of the document which had prepared a draft Model Power Purchase Agreement for Case-2 and with the approval of Minister of Power, the same had also been circulated on 7.9.2012 to the stakeholders including private developers, financial institutions, State Governments/Discoms and Ministries/Departments concerned for seeking their comments. A copy of the Draft Model Power Purchase Agreement for Case-2 (applicable for UMPPs) was also forwarded to the Principal Director of Audit on 7th September, 2012. In addition, an Inter-Ministerial Group had been constituted with the representatives of Ministries of Law & Justice, Finance, Coal, and Environment & Forests and Planning Commission and Central Electricity Authority (CEA) to fine tune the documents based on the comments/suggestions of the stakeholders.

30. The Ministry summed up that the SBDs for UMPPs were under revision and being finalized and would be placed before the EGoM for finalization of the same.

31. In evidence, the Committee asked whether the bid documents for RFQs, RFPs etc. were prepared by the Ministry themselves or they outsourced the job. In reply, the Power Secretary submitted:—

"The bidding documents are prepared with the help of outside people and also in consultations with a number of stakeholders. We have been holding meetings repeatedly with a large number of stakeholders. So, a lot of people go into the making of these documents."

32. The Committee asked whether certain conditions could be imposed on the companies about the method and the format in which bidding should be done as the Ministry were giving them coal. In reply, the Secretary, MOP submitted:—

"We can do that. That is why, when we engage the PFC to run this business, PFC would have a consultant and tell them how the bid format should be framed and all this will be done prior to receiving the bids. There we will mention all these things."

33. Asked to state whether PFC had the requisite expertise to do the needful, a representative of the PFC submitted that as far as technical requirements were concerned all the bidders had prior information that the Statutory Auditor's certificate would be required to be submitted.

34. Further asked to state about the authority who appointed the Statutory Auditor, the representative of the PFC apprised:—

"The Company itself appoints the Statutory Auditor."

35. In response to another specific query, the Power Secretary submitted that the State in which the Project was loaded was the lead procurer of power. Asked to state whether the States had got any role in determining the tariff, the Power Secretary responded:—

"No, the lead procurer has no role in it."

36. Further questioned to state whether the States could impose any conditions on their tariff, the Additional Secretary of the Ministry submitted:—

"Sir, basically, there are two types of procurement of electricity, which is done by different distribution companies. One is short-term power, and the other is long term power."

37. Asked to state categorically whether the State could sell surplus power in the market, they being the lead procurer, the Additional Secretary, MOP, deposed:—

"In this particular instance of the Ultra Mega Power Project, the procurers are not the State Government; they are the distribution utilities of the State Government. So, it is not that the State Government will procure this power and sell it wherever they want. The distribution utilities which forms the Special Purpose Vehicle are the recipients of this electricity."

38. The Committee then contended if the States had no role in this regard, then whether the line 'they are the lead procurer' under the head 'Role of States' as shown in the power point presentation, should be interpreted as there could be a large number of lead procurers. The Additional Secretary, MOP responded:—

"I think there is a mistake here. The host State is the lead procurer. That is all."

39. Asked to throw more light on the role of the States in purchase and sale of power, the Additional Secretary, MOP submitted:—

"..... The procurement is done under the Power Purchase Agreement. The Power Purchase Agreement is signed by all the States, including the host State. That lays down the terms and conditions of purchase."

40. Asked to elaborate, the Additional Secretary further stated:—

"The procurement function is one, the supply function is different. Procurement functions are governed by this (PPA); supply functions or sale functions further on, if there is a surplus which the State cannot use and can be sold outside, is not governed by this PPA."

41. When the Committee desired to know the checks and balances put in place to protect the interest of the consumers against the whims of the discoms in raising the tariff, another representative of the Ministry submitted:—

"Sir the developer does not get anything over and above his tariff quoted, except the incentive built up under the PPA. So, the benefit of power will certainly go to the consumers and the discoms supply that power to the consumer at reasonable rate, which is ensured by the State Electricity Regulatory Commission. So, we have a system in all the States, and the Electricity Act mandates that function on the State Electricity Regulatory Commission."

42. Asked to state categorically whether the PPA provided for the share of different States from the UMPPs and contractual obligations on the part of the project developers, the Secretary, Power deposed:—

"The Power Purchase Agreement exactly mentions what will be the share of all the participating States. For instance, the Power Purchase Agreement in the case of Madhya Pradesh also provides for 1400 MW from 4000. In some other States, the host State goes as much as 2000 MW, fifty per cent. So, the Power Purchase Agreement says which State will get how much and the private sector developer is tied down by that contract. He can not violate that contract. If he violates that contract, he will face the legal consequences while ending the contract. So, if you look at one more project, Krishnapatnam, Andhra Pradesh, out of 4000, gets 1600 MW; Karnataka gets 800 MW; Tamil Nadu 800 MW and Maharashtra also 800 MW. These are contractual agreements signed between the developer and the participating States. If the contractor breaks this agreement then the legal consequences will follow. So, that is the way it works."

43. When the Committee desired to know whether the clauses in PPA had been made foolproof so as to prohibit the private companies to take the Government and the people for a ride, the Secretary submitted:—

"Absolutely. To take care of this serious concern of yours, we have a regulatory system which looks at what cost can be allowed to be passed on to the consumer and what cannot be allowed. So, in a distribution business, if the person is saying that he has invested so much, the regulator keeps on mind what has been invested

and what can be a reasonable charge which can be taken into account when the tariff for the consumer is fixed."

(c) Change in equity holding requirement of Parent/Affiliate Company

44. As per the bid criteria, a bidding company could take 100 per cent benefit of the technical and financial capability of a Parent or its Affiliates for the purpose of qualification. As per the initial bid document issued in March 2006, the equity holding requirement of such Parent/Affiliate in the bidding company was 51 per cent but after pre-bid conference with bidders, the equity holding requirement was scaled down from 51 per cent to 26 per cent in May, 2006. This amended criteria was made effective in the bidding documents of all four UMPPs awarded so far. Audit pointed out that the change which was made on the request of the bidders and advice of the Consultant M/s. E & Y violated the basic principles of 'ownership' and 'control' given in Accounting Standards Interpretation (ASI) 24, issued by the Institute of Chartered Accountants of India. ASI 24 defines 'control' as 'the ownership, directly or indirectly through subsidiary(ies), of more than one-half of the voting power of an enterprise or control of the composition of the Board of Directors in the case of a company so as to obtain economic benefits from its activities'. Model RFQ document of Government of India for PPP Projects has also prescribed more than 50 per cent share holding as the criteria.

45. The recommendation for making the amendments was sent by PFC in May, 2006. Audit found that initially the MOP had reservations about the dilution and stated that management control should be included as a condition in addition to 26 per cent equity holding. This view was, however, changed later on citing discussions held with the Consultant M/s. E & Y who explained that it would be difficult to describe 'effective management control' and assured that 26 per cent shareholding meant control.

46. At the time of bid submission by RPL for Sasan, Mundra and Krishnapatnam UMPPs, Reliance Energy Limited (REL) had an equity holding of only 26 per cent in RPL. RPL did not have any technical or financial capability of its own and had used that of REL.

47. In response to the Audit observations the Ministry stated (March, 2012) that the bidders were required to submit an undertaking supported by Board Resolution for equity commitment in the project to enable the bidding company to draw upon the experience of the Parent/Affiliate. The Ministry further added that in all the UMPPs, the same criteria were followed for all the bidders without having any specific Developer in mind and that in no case, the bidder defaulted for want of financial and technical support of the Parent/Affiliate.

48. According to Audit, the reply did not take into account the fact that shareholding of 26 per cent would only enable an entity to block any special resolutions requiring three-fourth majority whereas the power to pass ordinary resolutions by way of 51 per cent shareholding was needed to draw upon the experience of the Parent/Affiliate to execute a large project.

49. In the above context, the Committee desired to know the rationale in originally prescribing the 51 per cent norm and then scaling down it to 26 per cent at the request

of the bidders though the model RFQ document of Government of India for PPP projects required more than 50 per cent share holding. In reply the Ministry of Power stated as under:—

"Scaling down of equity holding for being considered as the 'Parent' and 'Affiliate' from 51% to 26% was done in the Standard Bidding Documents in May 2006, following which the same was incorporated in the RFQ documents for UMPPs. The amendment was carried out in the SBDs by MOP to bring in more competition as per the feedback received by PFC from bidders for Sasan and Mundra UMPPs.

Further, even with a holding of 26%, the entity has the right to block any major resolution(s) which require three-fourth majority as per Companies Act.

It may be mentioned here that even with these conditions, 13 bidders could qualify in case of Sasan UMPP and 11 in case of Mundra UMPP. Out of these 10 RFP bids were received for Sasan UMPP and only 6 were received for Mundra UMPP.

Further, it may be noted that the process of competitive bidding through which successful bidder were selected for UMPPs should be judged on the basis of final outcome achieved which in the case of Sasan and Mundra UMPP was an extremely competitive tariff especially when compared to the cost plus power projects. It may be further noted that the bidding guidelines and the SBDs are not static in nature and are subject to change based on the experience gathered in the process of implementation and in the context of change in circumstances."

50. Asked whether the condition had been modified in the revised SBDs, the Ministry of Power replied that matter was under consideration.

51. The Committee further desired to be apprised of precautions taken up to prevent selection of bidders without desired competence to commission and manage the UMPPs in long term following the dilution of ownership and control criteria. In reply, the Ministry of Power apprised as under:—

"Table below shows the status of bids received for UMPPs:—

UMPP	Qualified bidders at RFQ stage	RFP bids received
Sasan	13	10
Mundra	11	6
Krishnapatnam	13	3
Tilaiya	11	5

Had the criterion been more stringent, the number of bids might probably have been less and sufficient competition might not have resulted.

Further, in order to ensure that bidders not suited for the project are not selected, minimum financial requirements like network, turnover and Internal Resource

Generation were also prescribed in RFQ. The bidders were also required to have experience of developing projects of ₹3000 crores out of which one project was required to be of at least ₹500 crores as a qualifying criteria. As a result, reputed bidders have been pre-qualified."

(d) Reduction of normative availability and penalty

52. Audit scrutiny revealed that in the original version of SBDs (March 2006), the normative availability for UMPPs was prescribed at 80 per cent. Based on the suggestions of CERC and the concern of the procuring States like Gujarat about the incentive above 80 per cent availability being too liberal, the normative availability was raised to 85 per cent in the revised Standard Bidding Documents issued in August 2006.

53. The normative availability was however, reduced from 85 per cent stipulated in the RFP issued in August 2006 to 80 per cent in September 2006 on the suggestion of PFC to bring down the risk of Developers. Though penalty is used as a deterrent to avoid any slippages in envisaged terms and conditions by the Project Developers, the base for levy of penalty was also reduced from 80 per cent to 75 per cent before receiving financial bids. These two amendments were made effective in the bidding documents of all four UMPPs awarded so far. Audit observed that since the UMPPs were meant to have higher operational efficiency, reduction of normative availability from 85 per cent to 80 per cent as well as penalty base from 80 per cent to 75 per cent were not in the interest of operational efficiency of UMPPs.

54. Responding to the Audit observations, the Ministry stated that as per the SBDs, the normative availability shall be aligned to the level specified in the tariff regulations of CERC prevailing at the time of bid process (which was 80 per cent). The Ministry also added that there was a need to instill confidence in the Power Project Developers since they had a higher risk perception and that high performance parameters would generally lead to high cost and result in higher tariff.

55. According to Audit, the reply was not acceptable since as per amendment to the Guidelines for Determination of Tariff by Bidding Process for Procurement of Power by Distribution Licensees notified in August 2006, the normative availability shall be higher by a maximum of 5 per cent of the level specified in the tariff regulations of the Central Electricity Regulatory Commission (CERC) prevailing at the time of the bid process. In view of this, the reduction of normative availability in September, 2006 was not in accordance with the Guidelines. Moreover, while revising the normative availability to 85 per cent in January 2009, CERC observed that the average availability of NTPC thermal power stations for the period 2004-05 to 2007-08 having 200 MW sets and above was in the range of around 86 to 97 per cent.

56. In the above context, the Committee desired to know the reasons for deviation in the requirement of normative availability in SBDs from the amendments to the "Guidelines for Determination of Tariff by Bidding Process for Procurement of Power by Distribution Licensees" notified in August, 2006. In reply, the Ministry *inter alia* submitted that there appeared to be no deviation in the SBDs in August, 2006 from the bidding guidelines amended in August 2006.

57. The Committee's scrutiny of the matter however revealed that from September, 2006 onwards, SBDs were not in accordance with the Guidelines as the normative availability which ought to have been 85 per cent (September 2006) and 90 per cent (April 2009 till now) remained at 80 per cent and 85 per cent respectively.

58. When asked to further justify the deviation in the requirement of normative availability in SBDs from the Guidelines, the Ministry responded as under:—

"The applicable guidelines stipulated that Normative Availability may be kept at a level higher by maximum 5% above the normative figure as laid down by CERC. Whereas the norms for the Normative Availability in the SBDs was kept at 80% which was the same as CERC norms applicable to cost plus projects at that time, the penalty provisions for reduction in Normative Availability below 75% was over and above the CERC norms regarding reduction in Fixed Cost with respect to Normative Availability. Accordingly, the SBDs were not in contravention with either the then guidelines or CERC norms applicable for cost plus projects at that point of time."

59. On being asked whether CERC was consulted prior to the reduction in the normative availability, the Ministry submitted that though it was not mandatory but consultation was done with CERC at all stages. CERC suggested normative availability of 85% in the PPA on the ground that the incentive above 80% was too liberal.

60. The Committee then specifically sought justification for reducing normative availability to 80 per cent when coal blocks were allocated on the basis of 90 per cent PLF and when most of the NTPC power stations had average availability between 86 per cent to 97 per cent. The Ministry *inter alia* replied as under:—

"To take care of the concern of the procuring States about the incentive being liberal and to balance the risk of developers of losing capacity charge in case availability fell below 85%, PFC suggested reducing the normative availability to 80% but giving the incentive only for availability beyond 85%. These changes were agreed to and changes made in SBD in September, 2006.

The following structure was suggested:—

- (i) Normative Availability would be at 80%. However, incentive would be payable only for availability beyond 85%.
- (ii) Though the incentive would be paid at the rate of 40% of the non-escalable component of the capacity charge but it would be subject to cap of 25 paise per unit.
- (iii) Availability would also include availability of adequate fuel to generate electricity according to declared availability.
- (iv) There would be pro-rata reduction in capacity charges for availability below 80%.
- (v) An additional penalty of 20% would be levied if availability falls below 75%.

Thus, the SBDs contained the reduction in capacity charges as well as penal provisions whereas the tariff regulations of the CERC prevailing at the time of bid process of Sasan & Mundra UMPP did not contain any provision for penalty over and above the proportionate reduction in capacity charges.

For the purpose of more clarity it may be mentioned that normative availability and PLF are both performance parameters but have different connotations. Capacity charge which is one of the bidding parameters is payable if the plant is available for production. Whereas the PLF is the indicator of actual utilization of the plant. When the normative availability is sought to be increased after a point it has incremental cost in terms of investment in auxiliaries, etc. Therefore, for the project to be bid on a competitive route it needs to be seen that the norms are balanced because keeping it high will increase the tariff and keeping it low will affect production of electricity. It may however be mentioned that in a fair competition, the effect of such norms gets captured in tariff. Based on this logic the above formulation was suggested to balance the cost of the procurer and risk of the bidder.

No incentive or penal clause is attached to PLF which measures the actual running of the plant. As any modern plant will normally run at more than 90% PLF, to make sufficient coal available the norms are kept as such for allocation of captive coal plant. Therefore, the norms for availability and for PLF are not comparable."

61. The Committee queried whether the reduction in the base from 80 per cent to 75 per cent for the levy of penalty did not amount to unjustified concession to the bidder. In reply, the Ministry *inter alia* stated that the normative availability was kept at 80%. It was only for the penalty purposes that it was 75%. If there was reduction in availability from 80% to 75% the proportionate capacity charge payable to the bidder would have reduced proportionately in any case. It was only for the purpose of levy of penalty that this limit was brought down. If there was sufficient competition in the market in terms of bidding, the treatment to these parameters actually got reflected in the tariffs received. For example, if this limit had been kept at 80% even for penalty reasons, then the bidder would perceive it as a risk and will load this risk in terms of higher tariff. Since this norm was common to all the bidders, the Ministry reasoned that it could not be said that it caused unjustified concession to any particular person/entity.

62. Asked to elaborate, the Secretary, MoP deposed in evidence as under:—

"The normative availability is the time period for which the plant will be available. The CERC guidelines mention 80 per cent. The Central Electricity Regulatory Commission's guidelines for normative availability of plant is mentioned at 80 per cent. The Ministry's guidelines say that it could be upto a maximum of five per cent more on the CERC guidelines. This is not a mandatory stipulation. It could be five per cent more. We need to do two things. We need to look at the fact that whatever we said in terms of normative availability was part of the bidding process upfront. It was not done later."

63. He added:—

"It was in line with the CERC guidelines. This matter of what should be the normative availability was discussed with all the stakeholders including the CEA. As I mentioned, these are new plants whose experience was not there before. The country has experience of plants of 500 mw or less capacity and the country knows what can be the normative availability. These plants are based on different technology whose experience this country did not have."

(e) Dilution of equity lock-in requirements for the sponsoring entity

64. Audit scrutiny revealed that equity lock-in requirement for the selected bidder in the SPV, was reduced (September 2007) from 12 years from Commercial Operation Date (COD) to 5 years from COD for Krishnapatnam and Talaiya UMPPs after the award of Sasan and Mundra UMPPs. Further, the Developers were permitted to cede managerial control (*i.e.* equity holding can be reduced from 51 per cent to 26 per cent) in all the four UMPPs after two years of commercial operation, though the quoted tariff was valid for 25 years. A comparison of initial and revised equity lock in requirements for UMPPs is tabulated below:—

Initial equity lock-in requirements		Revised equity lock-in requirements	
(a)	51 per cent up to a period of two years after COD of the power station	(a)	51 per cent up to a period of two years after COD of the power station
(b)	26 per cent for a period of ten years thereafter	(b)	26 per cent for a period of three years thereafter

65. In response to the Audit findings, the Ministry stated that equity lock-in had been ensured in the pre-COD phase of the project when the investment was to be made in the project in the form of equity and debt and that the project risk was comparatively less once the project was commissioned. The Ministry further stated that equity lock-in provisions were changed after the approval of the EGoM based on inputs provided by the Ministry.

66. Audit observed that UMPPs are mega projects using super critical technology and their economic, efficient and effective operation is very important throughout the 25 years of their operation by the Developers to ensure supply of energy to consumers at agreed rates. Thus, allowing the Developers to cede management control after 5 years of the COD may not be advisable since adequate backing of the sponsoring entity would be lacking for SPVs during the major part of the operational period which may adversely affect the operational performance of UMPPs resulting in non-availability of power to consumers at agreed rates. Moreover, this does not provide safeguard against the Developer using substandard capital equipment which may breakdown frequently during the operational period after control is ceded.

67. In brief, some of the key conditions of the Standard Bidding Documents were diluted citing the need for increasing competition or providing comfort to the Developers. However, these measures decreased the maintenance safeguards for the projects.

68. The Ministry of Power informed in the Exit Conference held on 21 February 2012 that the Audit concerns would be considered in the revised Standard bidding documents which were under finalisation.

69. In the above context, the Committee sought the justification for diluting the equity lock-in requirement in respect of Krishnapatnam and Tilaiya UMPPs *vis-a-vis* the first two UMPPs *viz.* Sasan and Mundra. In reply, the Ministry submitted as under:—

"An Inter-Ministerial Group (IMG) was constituted in pursuance to the decision of Empowered Group of Ministers (EGoM) meeting held on 30.7.2007. As per the Inter-Ministerial Group (IMG) Report dated 3.9.2007 it was proposed that 'There shall be only one Lead Member, who commits at least 26% equity stake in the Bidding Consortium, meets the technical requirement as per clause 2.1.4 and cannot be changed till 12 years of the COD of Power Station.' The report was submitted to EGoM.

EGoM in its meeting held on 6th and 7th September 2007 decided that 'the present requirement of equity lock-in of the Lead Member of the Consortium till 12 years after COD needs to be reduced to 5 years after the commissioning of the power station.' Accordingly amended RFP of the bid documents was issued on 21.9.2007."

70. The Committee then asked about the mechanism put in place to ensure that the new promoters (in case of dilution of equity holding) would ensure adherence to all the contract conditions and be capable of running the project efficiently for the balance period of PPA. In reply, the Ministry stated as under:—

"As per the equity lock-in provisions, the Selected Bidder is required to maintain 51% holding in the project company for a period of two years after the COD of the project and 26% for a total period of five years after COD of the project. The PPAs are signed between the Project Company and procures. The project company remains the same throughout term of the PPA. The contract is governed by the terms and conditions of the PPA and there are performance based provisions for incentives and penalties in the PPA.

The Competitive Bidding Guidelines issued by Ministry of Power require that the minimum and maximum capacity charge (including both the non-escalable component and the escalable component incorporating escalation as per index being used for the purpose of evaluation) over the term of the Power Purchase Agreement (PPA) shall not be less than 0.7 to avoid excessive front loading or back loading during the period of contract. Such provisions ensure that the successful bidder and also the subsequent shareholders, in case the successful bidder exits from the project, will have interest in the operating the project and supply power to the procurers as per the terms and conditions of the PPA."

(f) Lower networth requirement for bidders

71. As per the Ministry of Finance Guidelines for PPP projects costing ₹1000 crore or more, the requirement of net worth of the bidders should not be less than 15 per cent. However, in the case of UMPPs, the minimum net worth for bidders was

₹1000 crore or equivalent USD which was around 5 per cent of Project Cost of around ₹20000 crore. The Ministry of Power stated that the qualification requirements enabled wide competition among the bidders and had a reflection in lower tariff. But Audit observed that fixing low net worth criteria involved unwarranted risk for the UMPPs.

72. In the above context, the Committee desired to know the basis for assuming that developers with network of ₹1,000 crore would possess adequate competence to build UMPPs requiring investment of ₹16,000—20,000 crore particularly in the background of the Ministry of Finance Guidelines of 15 per cent net worth requirement for PPP projects costing ₹1,000 crore or more. In reply, the Ministry submitted that the financial criteria for the UMPPs had been based on the following reasons:—

- (i) UMPPs are capital intensive value projects with long gestation periods as compared to DMRC or PGCIL as brought out by the Audit team also.
- (ii) As private participation in power sector is relatively of recent origin and the tariff based competitive bidding was a new concept for the power sector, it was expected that sufficient competition was not generated in the event of more stringent criteria as adopted by other CPSUs. To ensure the bidding process to be fairly competitive, these criteria have been adopted and one to one comparison with DMRC and PGCIL may not be valid.

73. The Ministry further stated that the qualification requirements were prescribed in the SBDs in proportion to the quantum of power proposed to be procured. Further, the project cost of UMPPs and the project cost of DMRC and Powergrid were not comparable (₹20,000 crores for UMPPs and about ₹1200 crores for DMRC and powergrid projects) *i.e.* more than 16 times. With the same qualification requirements as that of DMRC or Powergrid none of the bidders for Sasan or Mundra UMPP (except may be NTPC) could have qualified. The absolute amount of the project cost could not be ignored. The Ministry reasoned that thus the same percentage as for much lower value projects could not be applied. Besides the design of the SBDs needed to be seen in totality rather than only one condition in isolation.

74. The Ministry explained that network was not kept as the only qualifying criteria for UMPPs in the SBDs notified by MoP. In addition to network the bidders were also required to meet the minimum Turnover of ₹ 2400 crore in any of the past three years and Internal Resource Generation (IRG) of ₹1140 crores computed as five times the maximum internal resources generated in any of the last five years. Net-worth denoted the size of the bidder but was not an indicator of liquidity available for the project. In a project funding scenario, the ability of the developer to raise the requisite funds depended to a large extent on his past performance.

75. Elaborating the issue, the Ministry further explained as under:—

"IRG represents the cash generation of the bidding company in any particular year and signifies the capability of the bidding company to bring its portion of equity in the project. A sufficient IRG will provide comfort to the lenders at the time the project goes for debt financing. IRG reflects present/current profitability

of the Company resulting its capability to set aside surplus cash available for the future growth of the company.

Turnover of a company represents the scale of operations of a company. All the three financial criteria (*i.e.* Networth, Annual Turnover and IRG) are linked to each other and minimum requirement for all the three were stipulated to ensure a comprehensive analysis of the financial capability of the bidding company to bring up the project.

The three criteria ensure size, liquidity and project experience. The bidders are required to meet all the three parameters for being shortlisted.

Ministry of Finance documents specify only networth as qualifying requirement. It specifies higher networth as compared to the SBDs but does not have any requirement for IRG or Turnover.

The MoF guidelines are for Public Private Partnership projects on Design Build Finance Operate Transfer (DBFOT) basis whereas SBDs are for projects on Build Own Operate (BOO) basis."

76. Asked to state categorically the empirical basis on which the Government concluded that diluting the criteria resulted in lower tariff, the Ministry submitted that 13 bidders had qualified for Sasan UMPP and 11 for Mundra UMPP. Out of these, 10 RFP bids were received for Sasan UMPP and 6 were received for Mundra UMPP. Higher numbers of bidders in the RFP stage was enabled through the qualifying requirements stated in the bidding documents for UMPPs. The Ministry contended that the general principle was that more bidders would lead to increasing the competition and a higher probability of discovering a competitive tariff.

77. When asked whether enhancing the minimum requirements of networth was considered, the Ministry stated that revision of the SBDs was under process.

78. Since fixing low networth criteria involved unwarranted risk for the UMPPs, the Committee desired to know the reasons for not following the Ministry of Finance's Guidelines of 15 per cent networth requirement for a PPP Project costing ₹1,000 crore or more. In reply, the Ministry submitted as under:—

"The qualifying requirements are to be seen in terms of all the parameters *i.e.* definition of parent/affiliate, Net worth, technical experience requirements, Internal Resource Generation, Annual Turnover, Annual Audited Accounts, Board Resolution, Certificate of Auditors and Normative availability and penalty and not only on the basis of Net worth of ₹1000 crore. The qualification of the Bidders based on all the parameters even with Net worth of ₹1000 crore taken together establishes the desired competence of the prospective Bidders.

Considering the investment required for the project to be ₹20,000 crore, the equity required would be ₹6000 crore (70:30 Debt: Equity ratio). It is not expected that the entire ₹6000 crore equity will be contributed by the Bidder. Instead it is required to be established whether the Bidder is capable of raising resources to fulfill the total equity requirement. Moreover, the total equity is required to be

invested over a period of the ensuing 5 to 6 years. Therefore, any company having net worth of ₹1000 crore and meeting the other criteria is considered to be capable of raising required equity.

The qualifying requirements of ₹1000 crore net worth was stipulated to increase competition. Had the qualifying requirements been 25% of networth as specified in GoI Guidelines for PPP projects, hardly any bidder other than NTPC would have qualified."

79. The Committee then specifically pointed out that though lower level of criteria might attract more bidders, it might increase the risk of unsuitable bidders entering the fray and asked about the precautions taken to address this risk. In reply, the Ministry *inter alia* submitted that it could be seen that the list of bidders who qualified for the four UMPPs were all reputed companies. The entire investment for the project was to be done by the selected developer through equity and debt. There were provisions for Liquidated Damages in the PPA in case of failure of the selected developer to operate the power station as specified in the PPA. Moreover, the provisions of Condition Precedent & Condition Subsequent regarding execution of Fuel Supply Agreement, handing over the possession land, site clearance from Ministry of Environment & Forests for coal mines, water clearance etc. and consequent default payment for non-compliance ensured project certainty and participation of serious bidders.

III. GAPS IN BID EVALUATION

(a) Non-fulfilment of qualifying criteria by the selected bidder

80. Audit pointed out that as per the minimum technical qualifying criteria stipulated in RFQ document, the Bidding Company or a Consortium Member (including Lead Member) and Affiliate must meet technical requirement of having experience of developing projects in the last 10 years whose aggregate capital costs must not be less than ₹3000 crore. Out of these projects, the capital cost of at least one project should be equivalent to or more than ₹500 crore. Developing Project was defined as "successful commissioning of a Project in which the bidder held equity stake of not less than 26 per cent at the time of commissioning".

81. Reliance Power Limited (REGL at the time of bid submission) in its bid responses for Sasan and Mundra UMPPs, claimed an experience of ₹4416.60 crore (aggregate capital cost) which also included (i) Generation, Transmission & Distribution (T&D) Projects executed by the parent company *i.e.* REL, (ii) Distribution Projects pertaining to two affiliate companies and (iii) Augmentation of T&D network of three Odisha Distribution Companies. In case of Krishnapatnam and Tilaiya Projects, RPL claimed an experience of ₹3430.21 crore and ₹3505.41 crore respectively which included Generation, Transmission & Distribution (T&D) Projects executed by the parent company.

82. Audit noted that major part of the experiences claimed by RPL was based on additions to the fixed assets instead of capital expenditure pertaining to projects commissioned during the last 10 years. RPL did not furnish details of such Projects. Audit also noticed that in the case of Sasan UMPP, despite agreeing (14 June 2007) to

furnish the details of the commissioned Projects, RPL did not furnish the details before issuance of LOI on 1 August 2007. The required details were neither furnished by RPL nor asked for by the various evaluation committees in the case of Krishnapatnam and Tilaiya Projects as well.

83. The Bid Process management consultant M/s. E&Y in its factual note on Sasan Project mentioned that the experience of REL and affiliates pertained to ongoing projects. Therefore, out of total experience claimed by RPL, the experience of ₹ 3123.88 crore (Sasan & Mundra), ₹ 2137.49 crore (Krishnapatnam) and ₹ 2254.61 crore (Tilaiya) might not conform to the stipulated qualifying requirements. Thus, the bid evaluation process was completed and LOI issued to RPL in case of all three projects (Sasan, Krishnapatnam and Tilaiya) without verifying the admissibility of experience claimed by RPL.

84. In response to the Audit observations, the Ministry stated that the kind of projects which were eligible was not specified in the Standard Bidding Document. Land, building, plant and machinery, vehicle, furniture and fixtures, electric fittings and apparatus, refrigerators etc. formed an integral part of the project cost and hence they were capitalized in the books of accounts of respective companies as fixed asset and these figures were taken (for evaluation). The Ministry also contended that it was unlikely that the expenditure incurred in the last 10 years would pertain to projects commissioned prior to this period, since capitalization of any project would be based on actual expenditure incurred so far along with the liabilities/likely expenditure of the project. Further, as a conservative approach, expenditure incurred on plant & machinery, GIS Software and distribution system could be considered. Regarding experiences of affiliates, the Ministry stated that expenditure incurred on transformers, switchgears, underground and overhead cables etc. could be considered for qualification.

85. According to Audit, the reply of the Ministry is not tenable in view of the following:—

- In the absence of details of Projects-wise expenditure incurred by RPL for projects commissioned during the last 10 years, the additions to fixed assets, claimed by RPL as experience may also be due to: (i) additional capital cost incurred on projects commissioned more than 10 years back, (ii) individual completed assets of ongoing projects, (iii) assets not forming part of any particular project or (iv) additional capitalizations on projects separately considered for qualification.
- The Auditor's certificate submitted by RPL with the bid gives only project cost incurred in generation and up-gradation of transmission and distribution network etc. during April 1996 to March 2006 by Reliance Energy Limited without mentioning the names of the projects which were commissioned during the last ten years and capital costs of such individual projects.
- Having defined, the term 'developing project', it was not proper to allow the capital cost on account of plant & machinery, GIS Software etc. without

verifying whether these pertained to projects commissioned during the last 10 years.

- Ministry's argument regarding experience of affiliates is not acceptable since the consultants had stated that these pertain to ongoing works.

86. In the above context, the Committee specifically enquired as to the methodology adopted by the Ministry to ascertain RPL's claim that they had met technical requirement of having experience of developing projects by including the ineligible non-capital expenditure pertaining to the projects. In reply, the Ministry *inter alia* stated that as per the bid documents the bidder was required to submit a certificate on project experience signed and certified as true by the Company Secretary and Auditor appointed by the Bidding Company or Lead Member, in case of a consortium. The Auditor must be a qualified Chartered Accountant. Against this requirement, Reliance Power Ltd. (formerly Reliance Energy Generation Ltd.) claimed to have experience of developing projects for ₹ 4416 crore and submitted the certificate signed by Director and Auditor. [As per the evaluation report of E&Y, Director had signed instead of Company Secretary since the Company was not statutorily required to employ a full time Company Secretary. The director had signed the document pursuant to an authorization by the Board resolution]. All the bidders were evaluated on the basis of the certificates submitted by them.

87. The Ministry further stated that on the basis of the certificate submitted in the bid by Reliance Power Ltd. (RPL), E&Y had concluded that RPL was qualified. Based on the evaluation report of E&Y, the bid evaluation committee recommended for shortlisting RPL and the same was accepted by High Level Committee. The Ministry categorically submitted that no non-capital expenditure was considered in the technical experience.

88. Drawing attention to the fact that the Auditor certificate furnished with the bid of RPL pertained to the projects commissioned during the last 10 years, the Committee asked whether the Ministry agreed that this certificate was in accordance with the prescribed criteria. In reply, the Ministry apprised as under:—

"Yes, the Auditor certificate furnished with the bid of RPL, as informed by PFC, stated that 'the Bidding Company has experience of developing projects in the last 10 years whose aggregate capital costs is not less than ₹ 3000 crore. Out of these projects, the capital cost of at least one project is equivalent or more than ₹500 crores. This Technical Requirement has been calculated as per the instructions provided in the RFQ.....'

This certificate is as per the format provided in the RFQ and shows that the bidding company had experience of developing projects of more than ₹3000 crore in the last 10 years.

As informed by PFC, the Auditor certificate furnished by RPL was in accordance with the prescribed criteria."

89. On being asked about the failure of the Bid Evaluation Committee and the High Level Committee to detect the inadequacy in the Auditor certificate furnished by Reliance Power Ltd. and its subsequent improper evaluation by E&Y, the Ministry submitted that the PFC informed that the Auditor certificate was provided as per the format given in the RFQ. There was no inadequacy in the Auditor certificate furnished by Reliance Power Ltd. The auditor certificate was furnished by all the bidders in the format prescribed in the RFQ.

90. The Committee then desired to know the reasons for issuing the Letter of Intent (LoI) to RPL without obtaining the details of the commissioned projects which RPL agreed to furnish in June 2007. The Ministry *inter alia* clarified that RPL in its letter dated 14th June 2007 had explained that they were collating the details regarding commissioned projects and the same would be submitted in due course. However, pursuant to a decision taken by EGoM on 30th July 2007, LoI was issued to RPL on 1st August 2007. The Ministry further replied as under:—

"Since E&Y had confirmed that RPL is a qualified bidder, PFC did not consider it necessary to wait for further information from RPL before issuing LoI. Further, in accordance with the direction of EGoM, the matter was placed before the BoD of Sasan Power Ltd. (SPL) and after approval of BoD of SPL, LoI was issued to RPL on 01.08.2007."

91. On being specifically asked to state the rationale for issuing the Letter of Intent to RPL when information vital to establish the qualification of RPL was pending, the Ministry apprised as under:—

"PFC has informed that the qualification of the bidders was to be established based on certification of the Company Secretary and Auditor appointed by the Bidder. The certificate was submitted by Reliance Power Ltd. as per requirement. E&Y had confirmed that RPL is a qualified bidder during the RFQ evaluation in June 2006 and also subsequently in May, 2007 in the factual note regarding qualification status of four bidders/members of consortium.

The additional information asked for from RPL was not necessary to establish its qualification as RPL was a qualified bidder in the evaluation done in June 2006 and its qualification was reconfirmed by E&Y in May 2007 in the Factual Note giving the following conclusion regarding RPL 'Hence, it can be seen that even if we consider the most conservative scenario, then based on the above methodology, it does not change the technical qualification of Reliance Energy Generation Ltd.'

Therefore, LoI was issued to RPL — a qualified bidder on the basis of the tariff quoted by it and decision of EGoM conveyed to Sasan Power Ltd."

92. The Committee enquired whether the EGoM was informed about the pending information from RPL. In response, the Ministry submitted as under:—

"No, the EGoM was not informed about any information pending from RPL as RPL was a qualified bidder. The qualification of the bidders was to be established based on certification of the Company Secretary and Auditor appointed by the Bidder. The certificate had been submitted by Reliance Power Ltd. as per requirement. E&Y had confirmed that RPL is a qualified bidder during the RFQ

evaluation in June 2006 and also subsequently in May 2007 in the factual note regarding qualification status of four bidders/members of consortium.

PFC has informed that the RFQ bid evaluation report submitted by E&Y in June 2006 and the factual note submitted by E&Y in May 2007 contained the credentials of RPL. Both the Evaluation report and the factual note submitted by E&Y were placed before the EGoM.

E&Y in the evaluation report gave the following conclusion regarding RPL. *'The Bidder, Reliance Energy Generation Ltd. meets the Technical Requirement as per the terms and conditions of the RFQ.'*

E&Y in the factual note gave the following conclusion regarding RPL. *'Hence, it can be seen that even if we consider the most conservative scenario, then based on the above methodology, it does not change the technical qualification of Reliance Energy Generation Ltd.'*

The additional information asked for from RPL was not necessary to establish its qualification. Hence, there was no other pending information and no lapse."

93. Asked to explain about PFC allowing RPL's experience pertaining to ongoing projects as admissible for conforming to qualifying requirements, the Ministry submitted as under:—

"PFC has informed that the qualification of the bidders was to be established based on certification of the Company Secretary and Auditor appointed by the Bidder. The certificate had been submitted by Reliance Power Ltd. as per requirement. E&Y had confirmed that RPL is a qualified bidder during the RFQ evaluation in June 2006 and also subsequently in May 2007 in the factual note regarding qualification status of four bidders/members of consortium.

E&Y in the factual note gave the following conclusion regarding RPL *'Hence, it can be seen that even if we consider the most conservative scenario, then based on the above methodology, it does not change the technical qualification of Reliance Energy Generation Ltd.'*

All the projects which were considered for qualification requirement were completed projects which is established from the Auditor's Certificate submitted by the RPL.

Further, for distribution companies, the projects would be ongoing business and project completion *per se* would not be terminal point. The distribution companies capitalise value of various assets on ongoing basis and there is a provision in the Bid Document to consider all projects. However, if distribution projects are not considered, the distribution companies would be at a disadvantage and these companies would get excluded from the tariff based competitive bidding process which was not the intention of qualifying requirements. Therefore, such projects are considered admissible for qualifying requirements."

94. When pointedly asked what action has been taken against the erring officers for allowing inadmissible experience of RPL as admissible experience, the Ministry stated as under:—

"As informed by PFC, no inadmissible experience of Reliance Power Ltd. was considered for qualification of RPL. As per the Bid Document, the experience of developing projects was to be submitted in the required format and certified by the Company Secretary and Auditor appointed by the Bidding Company. The Auditor's certificate submitted by RPL stated that it had experience of developing projects of more than ₹ 3000 crore in the last 10 years. The certificate stated value of the projects completed/capitalized during the last 10 years. As no inadmissible experience was considered, there is no question of action against any officers."

95. The Committee then desired to be apprised of the measures taken/contemplated to improve the bid evaluation mechanism. In reply, the Ministry stated that learning from the initial experience of the award of UMPPs, various steps had been taken to improve the bid evaluation mechanism which were as follows:—

“Bid Evaluation Committee

In case of first four UMPPs (Sasan, Mundra, Krishnapatnam and Tilaiya UMPPs), Apex Evaluation Committee was constituted for evaluation of RFP bids. Based on the experience of these UMPPs, the Apex Evaluation Committee is now being constituted for evaluation of RFQ bids also for subsequent UMPPs.

Further, as per MOP's OM dated 03.07.2008, *‘keeping in view the different expertise/skills required for evaluation of the RFQ and RFP bids, the composition of members should in fact differ in respect of the different committees being set up for evaluation of these documents. However, Chairman of both the Apex Evaluation Committee for RFQ and RFP (set up to finally evaluate the RFQ and RFP bids and thereafter to submit their Evaluation Reports to the Board of the SPV for its acceptance) should be the same person who should invariably be an outside independent expert.’*

Accordingly, from Orissa UMPP onwards, the Apex Evaluation Committee is being constituted for evaluation of RFQ responses whereas earlier the Apex Evaluation Committee was constituted only for RFP bids.

Verification of the technical qualification requirements

Tilaiya and Orissa UMPPs

In case of first three UMPPs (Sasan, Mundra and Krishnapatnam UMPPs), RFQ evaluation was done on the basis of certification submitted by the bidder. The bids formats regarding financial and technical requirement were to be certified by Company Secretary and Auditor of the bidder.

The MoP vide OM No. 23/11/2004-R&R (vol. vi) dated 03.08.2007 constituted an Inter-Ministerial Group (IMG) in August 2007, to review the Standard Bidding Documents being used for preparing bidding documents for UMPPs. The IMG

was chaired by Secretary (Power) and consisted of Additional Secretary (R&R), MoP and representatives of Department of Legal Affairs and Department of Corporate Affairs. IMG recommended the following in its report regarding bid evaluation.

The IMG recommends that the (i) Statements relating to financial and technical requirements should be required to be signed by the Managing Director/Chief Executive Officer, being a full time Director on the Board of the company, and the statutory auditor of the Company, (ii) In case of a Bidding Consortium, each member shall be required to submit certified information separately at the qualifying level as in (i) above. Further, the SBDs should contain the formats also.

The Ministry submitted that the recommendations of the IMG were incorporated in the SBDs in September 2007, after approval of EGoM.”

(b) Excess Acquisition of Land

96. Audit scrutiny revealed that the CEA finalized its report on land requirements for thermal power plants only in December 2007 though the process of UMPPs started in 2005 itself. Audit observed that when compared to the new norms, the land agreed for two UMPPs was in excess by 2634 acres (Mundra: 1538 acres and Krishnapatnam: 1096 acres). The issue of excess land was deliberated in the EGoM meeting held in May 2008 wherein it was decided that since the land requirement had already been worked out in respect of these projects, it was now up to the Project Developers themselves to take a view on excess land thus agreed upon. Further it was decided that land requirement for yet to be awarded UMPPs be worked out by CEA based on its report.

97. In response to the Audit observations, the Ministry replied that land requirement for UMPPs was estimated on the basis of prevalent norms for thermal power projects and the CEA constituted a committee in April 2007 to optimize land requirement for thermal power plants in view of large capacity to be added in the XI Plan. The committee submitted its report in December 2007 and the issue was again revisited and another report circulated in September 2010. The Ministry further explained that extra land, if available, could be used for power generation purpose in future.

98. Audit pointed out that as per CEA's new norms, land requirement for coastal power plant of the size of around 4000 MW is 1530 acres. Audit therefore suggested that the usage of excess land should be monitored to ensure usage in power projects/ benefit to consumers.

99. In the above context, the Committee enquired about the mechanism developed by the Ministry to prevent misutilisation of the excess land by the project developer. In reply, the Ministry submitted that land was acquired for a particular purpose and any change in its use had to be first approved by the State Government concerned.

100. Asked to state the planning and monitoring system put in place to ensure utilization of the excess land for the benefit of the consumers, the Ministry submitted

that generally land was acquired for specific project/purpose and the State Governments permission was required for any other use. The MoP would further write to the States to ensure that this benefited the power consumers.

101. On being asked whether there was any proposal to take back the excess land from the project developer, the Ministry informed that there was no such proposal.

IV. FINANCIAL BENEFIT TO PROJECT DEVELOPER IN PERMITTING USAGE OF SURPLUS COAL

(a) Allocation of surplus coal

102. Audit scrutiny revealed that Sasan Power Limited (an SPV created for development of Sasan UMPP) was initially allocated (September 2006) two coal blocks—Moher (Geological reserves of 402 million tonne) and Moher-Amlohri Extension (Geological reserves of 198 million tonne) to meet its coal requirement. In the Request for Proposal document for the Sasan UMPP, the bidders were informed that coal blocks with reserves of about 700-800 million tonne would be allocated and the project would require the development of a coal mine with production of 18-20 million tonne coal per annum. The allocation was made based on Geological reserves and as the production from the above two blocks was considered insufficient by the Ministry of Power, the Secretary (Power) requested (9th October 2006) the Ministry of Coal (MOC) to allocate another block to Sasan UMPP. Accordingly, the MoC allocated (26 October 2006) Chhatrasal coal block after de-allocating the same from NTPC Limited prior to the opening of the financial bids (7 December 2006) for Sasan UMPP. The total Geological reserves of the three coal blocks were estimated at 700-800 million tonne against the requirement of 16 million tonne per annum for Sasan UMPP. At the time of allocation of coal blocks, data regarding actual availability of coal for the project was not available in the absence of the mining plan. The Sasan UMPP was subsequently awarded to Reliance Power Ltd. which quoted the lowest levelised tariff for 25 years and the contract agreements were signed on 7 August 2007 for transfer of Sasan Power Limited (the SPV) to RPL.

103. In November 2007, the Chief Minister of Madhya Pradesh requested the Prime Minister, to allow RPL to use the surplus coal from the captive blocks of Sasan UMPP in the power plant being set up by RPL at Chitrangi tehsil in the vicinity of these mines. The matter was referred to the EGoM and the issue was deliberated in the two EGoM meetings held on 28 May 2008 and 14 August 2008 subsequent to which the EGoM recommended that RPL be allowed to use the surplus coal from blocks allotted to Sasan UMPP for its other projects where power was sold through tariff based bidding. Accordingly, permission was accorded for use of surplus coal by Chitrangi Project, tariff for which was already fixed. According to Audit, this decision resulted in financial benefit of ₹ 29,033 crore to RPL with a Net Present Value (NPV) of ₹11,852 crore.

104. As pointed out by Audit, a detailed analysis of the chronology of events which took place in granting permission for use of surplus coal at Chitrangi Project from the coal blocks allocated for Sasan Project is as under:

- (i) It is not clear how the MoP on 9 October 2006 came to the conclusion that initially allocated two blocks for the Sasan UMPP would be inadequate.
- (ii) The basis on which MoC was prevailed upon in October 2006 itself to allot an additional block (Chhatrasal) of coal to Sasan UMPP by de-allocating it from the Public Sector NTPC is not clear.
- (iii) Till March 2009, the MoC was taking the stand that coal from two blocks (Moher and Moher-Amlohri Extension) was sufficient for the Sasan UMPP and that there is no justification for allocating a third block (Chhatrasal) to the Developer.
- (iv) In March 2008, RPL maintained that there was no possibility to enhance production beyond 12 million tonne from the two blocks of Moher and Moher-Amlohri Extension.
- (v) However, on 6 August 2008, RPL intimated of their intention to use latest world class technology leading to increased recovery factor and higher annual production leading to the mined coal from these three blocks becoming surplus to the requirement of Sasan UMPP.
- (vi) This indeed was the position which the Chief Minister of Madhya Pradesh was aware of when he wrote to the Prime Minister in November 2007 itself seeking diversion of the surplus coal to Chitrangi.
- (vii) This revelation by RPL, provided to the EGoM in its meeting on 14 August 2008, led to their decision that indeed surplus coal would be available and this could be diverted to Chitrangi.

(b) Vitiating of the Bidding Process

105. Audit further pointed out that the permission to use surplus coal in other projects of the developer vitiated the sanctity of the bidding process since it amounted to post bid concessions to the developer having significant financial implication as explained below:—

- (i) The EGoM in its meeting held on 28 May 2008 had sought information about structure in respect of ownership, mode of sale of power and tariff of Chitrangi Project. Since the required information was not furnished, the EGoM recommended (14 August 2008) granting of permission for usage of incremental coal.
- (ii) The EGoM in its meeting held on 14 August 2008 had recommended that power generated by utilizing incremental coal from captive coal blocks of Sasan UMPP would be sold through tariff based competitive bidding. But RPL was granted permission by MoC (February 2010) to use the surplus coal in Chitrangi Project the tariff of which was already accepted in

May 2008 at ₹ 2.45 per unit i.e. prior to the EGoM decision on usage of surplus coal for Chitrangi Project. For this purpose RPL had bid along with other bidders citing independent fuel arrangement (from Mahanadi Coalfields Limited/112.22 million tonne of coal reserves in the Rampia and dip-side of Rampia non-coking coal blocks in the State of Odisha) and Government was not required to provide coal blocks/linkage.

106. In response to the Audit findings, the Ministry of Power stated that since every qualified bidder had information about the clauses of the coal block allocation letter prior to submission of financial bid, there was no vitiation of commercial condition. The contention of the Ministry was not acceptable to Audit in view of the following:—

- (i) The clauses of the coal allocation letter did not explicitly state that Central Government would indeed grant permission to the Developer to use the surplus coal in their other projects. This fact was not disclosed upfront in the allocation letters and in the absence of clarity on this issue, it was left to the bidders to interpret the implication of the clauses of the allocation letter. The relevant clauses in the allocation letter are reproduced below:—

'The coal produced from these mines would be exclusively used in the Sasan UMPP'.— Clause (i).

'The modalities of disposal of surplus coal/middlings/rejects, if any, would be as per the prevailing policy/instructions of the Government at the relevant point in time and could also include handing over such surplus coal/middlings/rejects to the local CIL subsidiary or to any person designated by it at a transfer price to be determined by the Government'.— Clause (vi).

'No coal shall be sold, delivered, transferred or disposed of except for the stated captive mining purposes except with the previous approval of the Central Government'.— Clause (xii).

- (ii) A normal understanding of reading these three clauses would imply the meaning that they were restrictive and designed to ensure non-diversion of coal.
- (iii) This seems to have been the conclusion that even NTPC came to as they did not factor into their bid the possibility of using the surplus coal from the captive mines of Sasan UMPP.
- (iv) M/s. Tata Power Company Limited, which was also a bidder for the Sasan UMPP had also contested the post-bid allocation of surplus coal diversion facility to RPL as that was not their understanding either, from a reading of the pre-bid conditions. A special leave petition filed (May 2009) by Tata Power Limited against permission to RPL to use surplus coal from captive coal mines of Sasan UMPP was pending in the Supreme Court of India.

- (v) The Inter-Ministerial Group (IMG), while deliberating on the safeguards issue against misuse of coal mine, noted in September 2007 that the allocation of coal mine had an explicit condition that its coal should be used solely for the purpose of the Sasan UMPP or else the lease was liable to be cancelled.
- (vi) Since fuel cost is an important aspect of commercial consideration in arriving at the tariff, any relaxation of condition subsequent to bidding would vitiate the bidding process. As explicit mention of usage of surplus coal in other projects was not unambiguously spelt out in the coal block allocation letters, the bidders who lost out did not have equal opportunity to bid under the relaxed condition.

107. According to Audit, the summary of conclusions that could be drawn are:—

- (i) The advice of MOP in October 2006 that Sasan UMPP would require an additional coal block was based on insufficient data as mining plan of Moher and Moher-Amlohri Extension was not available.
- (ii) The condition purportedly permitting diversion of surplus coal was not explicitly stated in the bid document.
- (iii) The EGoM evidently was not provided accurate information about adequacy or otherwise of coal availability in the two blocks initially allocated to Sasan UMPP leading to its decision permitting usage of surplus coal.
- (iv) Permission to utilize surplus coal for projects with tariff based competitive bidding has been violated since tariff for Chitrangi Project, for which such permission was granted, was already fixed before permission was granted.

108. Regarding financial impacts, the Ministry replied that costs and tariff for two projects could not be compared. Similar views were expressed by RPL citing variations in project structure such as point of delivery of electricity, comfort of clearances for Sasan UMPPs and the lack of it for Chitrangi Project etc. However, Audit were of the opinion that the comparison between Sasan and Chitrangi Projects was not out of place since both the Projects (Sasan and Chitrangi) are (i) of 3960 MW; (ii) located in the same vicinity; and (iii) sourcing coal from the same coal mines.

109. In the above context, the Committee desired to know the precise reasons cited by the EGoM in allowing diversion of surplus coal for Chitrangi project. In reply, the Ministry *inter alia* explained that the EGoM in its meeting held on 28th May 2008 considered a request from the Chief Minister, Madhya Pradesh for allowing diversion of surplus coal of Sasan UMPP for Chitrangi Project. The EGoM observed "while there was clear consensus that coal from any coal mine allocated for development of a tariff based UMPP should be utilized for generation of power, it was generally agreed that in the first instance any developer should implement the UMPP for which coal mines had been allocated. Thereafter, it should be ascertained whether surplus coal was available from the allotted mines. It would also be appropriate to sell any additional power generated through a tariff bidding route".

110. The matter was further deliberated in the EGoM meeting held on 14th August 2008 in which it was agreed that for expeditious implementation of coal based thermal power projects, which would also increase the generation capacity of the country, and for optimal utilization of coal reserves in the blocks allotted to UMPPs, incremental coal may be permitted to be used by other projects of the same developer of the UMPP subject to necessary safeguards. It must be ensured that the allotted UMPPs and procurers from UMPPs do not suffer for lack of coal and also that incremental coal is not misused by the developer. In terms of Ministry of Coal allotment letter of coal blocks for Sasan Ultra Mega Power Project dated 26th October 2006, it was noted that permission to utilize the incremental coal was granted with the previous approval of the Central Government.

111. The Committee then enquired about the basis on which the Chief Minister of Madhya Pradesh concluded in November 2007 itself that there was surplus coal whereas RPL in March 2008 expressed its inability to increase projection beyond 12 million tonne per annum from the two blocks of Moher and Moher-Amlohri Extension. In reply the Ministry apprised as under:—

"Facts have been ascertained from Government of Madhya Pradesh (GoMP). GoMP conveyed the following *vide* their letter No. F-3/21/13/07 dated 3.11.2012:—

Ministry of Coal, GoI *vide* letters dated 13.09.2006, 26.10.2006 & 20.11.2006 allocated Captive Coal Blocks for Sasan UMPP. These allocation letters prescribed that no coal shall be sold, diverted, transferred or disposed of except for the stated captive mining purposes except with the previous approval of the Central Government. The allocation letters created a possibility that surplus coal if any from mines allocated to Sasan Project could have been allowed to be used elsewhere by GoI at terms and conditions decided by it.

4000 MW TPP at Chitrangi, being set through MoU route was in the vicinity of captive mines. Therefore, GoMP *vide* CM'S letter dated 2.11.2007 had requested Hon'ble Prime Minister to approve use of surplus coal in Captive Coal blocks, as per approved Mining Plan and after meeting the requirement of Sasan UMPP for power generation in 4000 MW TPP at Chitrangi Tehsil, for which GoMP had executed MoU on 20.09.2007. The full impact of this letter should be seen in the light of the following facts:—

- (a) The letter was written almost 13 months after the allocation of coal blocks for Sasan UMPP. The allocation letter of coal blocks created a possibility to use excess coal, if any, in other projects.
- (b) Excess coal, if any, would have been known only after the approval of the mining plan and accordingly, the letter mentioned that use of surplus coal, if any, be allowed only after giving due importance to mining plan.
- (c) The requirement of the coal for Sasan UMPP has priority and was clearly emphasized in the letter.

- (d) Chitrangi project had been planned in the close vicinity of Sasan UMPP and, therefore, the best candidate for use of surplus coal, if any, after meeting the full requirement of the UMPP. Madhya Pradesh was definitely keen that this coal not be diverted to use in any other project outside the State.
- (e) The quantity of coal to be used in Chitrangi was not quantified and conditions to be or not to be imposed for such use were entirely as per Government of India's discretion.

Government of Madhya Pradesh and the Chief Minister have not concluded in the November 2007 regarding availability of surplus coal but were merely adverting to the possibility of surplus coal being available, after the mining plan was finalized and suggesting best use thereof."

112. Asked to state categorically the basis on which it was ascertained that surplus coal was available from the mines allotted for a particular UMPP, the Ministry submitted that availability of surplus coal was known on the basis of approved mining plan and stated requirement of end-use plant.

113. When queried about the specific considerations on which the EGoM decided to allow RPL to use surplus coal of Sasan UMPP for Chitrangi Project in the absence of the requisite information from the Government of Madhya Pradesh, as recommended by themselves earlier, the Minister submitted as under:—

"The EGoM decided the following in its meeting of 14.8.2008:—

'It was agreed that for expeditious implementation of coal based thermal power projects, which would also increase the generation capacity of the country, and for optimal utilization of coal reserves in the blocks allotted to UMPPs, incremental coal may be permitted to be used by other projects of the same developer of the UMPP subject to necessary safeguards. It must be ensured that the allotted UMPPs and procurers from UMPPs do not suffer for lack of coal and also that incremental coal is not misused by the developer. It was noted that in terms of Ministry of Coal allotment letter of coal blocks for Sasan mega Power Project, dated 26th October, 2006, it was permitted to utilize the incremental coal with the previous approval of the Central Government.'

Considering the above, EGoM decided to recommend to the Coal Ministry the use of incremental coal from coal blocks allotted to Sasan UMPP, by other projects of Reliance Power Ltd. subject to certain undertakings by the developer."

114. On being asked whether the Ministry of Coal and the Ministry of Power were aware of the fact that the tariff of Chitrangi Project had already been fixed at ₹ 2.45 per unit as against ₹ 1.19 per unit in the case of Sasan UMPP, the Ministry of Power stated that they were not aware of the fact that a power procurement contract for 1241 MW was already concluded between Reliance Power and MP Power Trading Company prior to the decision taken by EGoM on 14.8.2008.

115. The Central Electricity Authority was of the view that if surplus coal was available, it would be used by the Sasan UMPP itself during its extended span beyond 25 years. In that context, the Committee asked whether the concerns of the CEA were taken into consideration before arriving at a decision to allow RPL to use the surplus coal in its other projects. In reply, the Ministry submitted as under:—

"On the request of using excess coal from the coal blocks allocated to Sasan UMPP for the proposed project at Chitrangi Tehsil, MoP took the inputs from CEA and had submitted *inter alia* the following, before the EGoM's meeting on 28.5.2008 for considerations:—

- (a) Coal Ministry's allocation letters clearly state that the coal produced from these mines would be exclusively used in the Sasan UMPP;
- (b) The extractable coal reserves from Moher, Moher-Amlohri Extension and Chatrasal Block coal blocks may be just sufficient for the Sasan UMPP taking into account the consumption of Sasan UMPP over the already signed PPA term of 25 years;
- (c) Since mining activity at the site has not commenced as yet, therefore, at present there is no basis to conclude that surplus coal will be available from these blocks;
- (d) If surplus coal is available, it could be used by the Sasan project itself during its extended span beyond 25 years; and
- (e) Furthermore, decision regarding disposal of surplus coal, if any, can be taken only on the basis of the prevailing policy/instructions of the Government at the relevant point of time as already stipulated in the allocation letter of the Coal Ministry.

The EGoM considered the agenda note and all relevant factors before taking the decision."

116. Replying to a related query, the Ministry of Power submitted that Condition (xii) of the Allocation Letter for Chhatrasal coal block issued by the Ministry of Coal on 26th October 2006 clearly stated as under:—

"No coal shall be sold, delivered, transferred or disposed of except for the stated captive mining purposes except with the previous approval of the Central Government."

117. The Ministry further stated as under:—

"It was clarified *vide* Ministry of Coal letter dated 20.11.06 that 'condition of bank guarantee as well as all other conditions mentioned in the allocation letter of Chhatrasal block will also apply to all other coal blocks for Sasan UMPP'."

118. In this regard, the Secretary, MOP elaborated in evidence as under:—

"The allocation letter does not straight away mention that it can be used. Allocation letter only says that the end use project is this and no coal from this

particular block can be sold, delivered or transferred except with the express permission of Government. So, it is not an allocation letter in itself to use it elsewhere, it can be seen as an enabling provision, that is why, the EGoM looked at it in that light and took a decision. So, the reason why EGoM had to take a decision was because October 2006 letter does not directly give anybody permission to use the coal elsewhere."

119. As the EGoM recommended in August, 2008 that the power generated by utilizing the surplus coal of Sasan UMPP would be sold through tariff based competitive bidding, the Committee desired to know the reasons for giving permission for diversion of coal to Chitrangi Project where the tariff had already been fixed in May 2008 and whether the Government ensured that the benefit would be passed on to the consumers. In reply, the Ministry *inter alia* submitted that the letter of RPL did not disclose that in May 2008, they had already received Lol for 1241 MW of power from Chitrangi Project from the Government of Madhya Pradesh.

120. Chitrangi Project, even though a tariff based project, was under case 1 tariff based bidding where land, fuel linkages and clearances were to be arranged by the developer himself whereas Sasan was a UMPP under case 2 tariff based bidding where land, fuel linkages and clearances were to be arranged by the SPV with the assistance from the Government. In this context, the Committee enquired whether the Ministry of Power examined and brought to the notice of the EGoM that granting permission for usage of surplus coal from Sasan UMPP to Chitrangi Project would lead to inequities in the award process of Sasan UMPP as well as Chitrangi Project resulting in benefit to the developer and vitiating the level playing field. In reply, the Ministry stated that the agenda notes for EGoM meetings dated 28.5.08 and 14.8.08 did not propose for grant of permission for use of surplus coal from Sasan UMPP to Chitrangi project. In the EGoM meeting dated 28.5.2008, it was decided that the Government of Madhya Pradesh should be asked how the proposed project has been structured in respect of ownership, mode of sale of power and tariff. It was decided that the above information should be obtained and placed before the next meeting of the EGoM for its further consideration of the request made by the Chief Minister of Madhya Pradesh. Accordingly, the GoMP were requested to provide the above information, but the same was not received before the next EGoM meeting held on 14.8.2008 and it was stated in Agenda Note for the meeting. Moreover, the fact that RPL had been awarded the Power Procurement Contract by MP Govt. was not known to MoP or EGoM, when decision was taken.

121. The Committee then specifically asked whether it was not prudent on the part of the Ministry of Power, being the nodal agency for power projects, to have the basic information regarding power projects especially that of the Chitrangi Project and to provide the EGoM all the vital inputs on the tariff structure of Chitrangi Project before it took the decision. In reply, the Ministry stated that after enactment of the Electricity Act 2003, sanction/Techno Economic Clearance (TEC) of Central Government/CEA was not required for thermal power projects. The purchase of power by discoms was completely within the domain of the State Government concerned and the States were not expected to send data on power procurement through competitive bidding to MOP or CEA.

122. The Committee asked whether the Ministry had made any exercise to arrive at a transfer price in the context of clause (vi) of the coal block allocation letters which mentioned handing over of surplus coal to the CIL/subsidiaries. In reply, the Ministry stated that the agenda placed before EGoM were to formulate the Ministry of Power's comments on the letter of Chief Minister, Madhya Pradesh. Hence occasion to do the above exercise did not arise.

123. Asked whether the Ministry could claim that the Agenda Note for the EGoM contained all the vital information required to arrive at an informed decision, the Ministry submitted that the Agenda Note for EGoM was placed with certain suggestions to be communicated to the MoC in response to the comments sought by them on the letter of the Chief Minister of Madhya Pradesh. In this context, all the available and relevant information was submitted to EGoM.

124. When enquired about the Ministry of Power's failure to link Madhya Pradesh Chief Minister's letter of November 2007 with RPL's letter dated 6th August 2008 so as to present a complete picture before the EGoM, the Ministry submitted that the letter of RPL dated 6.8.2008 could not be processed in MOP before the EGoM meeting dated 14.8.2008 as the letter was received in the division concerned only on 9.8.2008 and there was not enough time to process the letter and place it before the EGoM.

125. The Committee then enquired about the pressing reasons for allotting the three coal blocks namely, Moher, Moher-Amlohri Extension and Chhatrasal for Sasan UMPP before final bids and without finalizing proper mining plan. The Ministry replied as under:—

"In case-2 (like UMPP) bidding, the blocks are indicated before the bids are called. The developer who wins the bid prepares the mining plan. This process was followed for all the UMPPs based on captive coal blocks. The three captive coal blocks namely Moher, Moher-Amlohri Extension and Chhatrasal were allocated for Sasan UMPP before final bids so that the details of allocated coal blocks could be given to the bidders for quoting competitive price for the tariff taking into account the coal from the allocated coal blocks."

126. Asked to mention the mechanism put in place to ensure that the coal would not be diverted for the Chitrangi Project (having higher tariff as compared to Sasan UMPP) to the detriment of the Sasan project, the Ministry submitted that a suitable mechanism to monitor the safeguards stipulated by the EGoM was being developed in consultation with the Ministry of Coal and Central Electricity Authority.

127. As per the RPL Mining Plan, Moher and Moher-Amlohri Extension coal blocks would produce 20 Million Tonne (MT) of coal per annum against the requirement of 16 MT coal. In this context, the Committee enquired about the reasons for not de-allocating the excess coal block *i.e.* Chhatrasal which would produce 5 MT of coal per annum. In reply, the Ministry stated as under:—

"The CAG in its follow up report dated 12.10.2011 had *inter alia* recommended that the permission to use excess coal in other project should be reviewed as no benefit on this account was passed on to the customer.

Ministry of Power had placed *inter alia* the issues related to use of surplus coal and present status of Chitrangi project of RPL as well as audit's recommendation before the EGoM in its meeting held on 5th December, 2011. One of the proposal for consideration of EGoM was:—

'In case where more than one coal block has been allocated for a UMPP, MoC to review the coal blocks allocated to the pithead UMPPs in consultation with MoP to ascertain that a complete coal block is not becoming incremental after meeting the requirement of the UMPP for which the block/s have been allocated.'

EGoM directed on 5.12.2011 that proposals 'pertaining to incremental coal be examined in detail by Ministry of Coal in consultation with the Ministry of Power, the Department of Legal Affairs and the Attorney General of India and the matter placed before the EGoM in its next meeting.'

EGoM in meeting on 28.4.2012 considered the agenda note dated 27.4.2012 from the Ministry of Power and noted the opinion of the Ld. Attorney General for India in the matter wherein it was, *inter alia*, observed that 'the decision taken by the EGoM on 14.8.2008 was a well considered decision'. AGI has opined that These blocks formed the basis of the bids... These coal blocks were identified and offered to the bidders... These three blocks were meant to be available for 25 years and as repeatedly mentioned, were meant to be the very basis on which the bids were received. In my opinion, there is no question of any coal block becoming incremental. The allocations were final. If subsequently a more effective mining plan is submitted, this cannot have the effect of rendering any part of the coal blocks as having become 'incremental'. Thereafter, the question of any 'review' does not arise.

Based on AGI's opinion, EGoM on 28.4.12 decided that "the EGoM decision of 14.8.2008, to recommend to the Ministry of Coal to permit the use of incremental coal for other projects of RPL and subsequent decisions taken by Ministry of Coal, culminating in the notification dated 17.2.2010, notifying Chitrangi as the end use project, were affirmed".

128. The Committee then specifically asked the Ministry to reconcile the RPL Mining Plan of producing 20 MT of coal per annum from Moher and Moher-Amlohri Extension coal blocks and RPL's statement of March 2008 expressing inability to increase production beyond 12 Million Tonne per annum from the two blocks. In reply, the Ministry submitted as under:—

"As informed by Ministry of Coal, the Mining Plan (March 2008) of Moher and Moher-Amlohri Extension Coal Block envisaged a production capacity of 12 million tonnes per annum (MTPA) with a net geological reserve of 575 million tonnes and extractable reserves of 470.43 million tonnes (446.91 million tonnes considering additional 5% mining loss) with a life of 40 years. The depth of the operation was planned upto 290 meters. This was approved by the Standing Committee on 14/05/2008.

The Revised Mining Plan (September 2008) of Moher and Moher-Amlohri Extension Coal Block envisaged a production capacity of 20 MTPA with the same net geological reserve base *i.e.* 575 million tonnes and 470.43 million tonnes of extractable reserves. The depth of operation of about 290 meters was same, but the life of the mine was got revised to 29 years due to faster rate of extraction. Enhancement in production capacity was possible mainly on the strength of better layout and design of quarry and deployment of bigger size of Heavy Equipment Mining Machinery (HEMM). The Revised Mining Plan was approved by the Standing Committee on 9.2.2009. All the three coal blocks namely Moher, Moher-Amlohri Extension and Chhatrasal were allotted for Sasan UMPP before the final bids and were part of the bid documents."

129. Pointing out the Government's obligation regarding project specific fuel arrangement for UMPPs, the Committee enquired about the system put in place to allow diversion of surplus coal from the coal block allotted to the UMPPs to other projects of the same developer. In reply, the Ministry replied as under:—

"Arranging fuel for pithead UMPPs is the obligation of Government/procurers. For coastal projects, developer arranges imported coal. The coal blocks asked by MOP were for the exclusive use of a UMPP which has been designed for 3960- 4000 MW, depending on the unit size the developer decides to go for. As per terms and conditions of allocation letter "No coal shall be sold, delivered, transferred or disposed of except for the stated captive mining purposes except with the previous approval of the Central Government". Considering the above and for expeditious implementation of coal based thermal power projects, which would also increase the generation capacity of the country, and for optimal utilization of coal reserves in the blocks allotted to UMPPs, EGoM on 14th August 2008 decided to recommend to Coal Ministry the use of incremental coal from coal blocks allotted to Sasan UMPP by other projects of RPL subject to certain safeguards."

130. In response to a query as to whether allotment of coal blocks for UMPPs was free of cost, the Secretary, MoP deposed in evidence as under:—

"Coal blocks are allotted free of cost, including Sasan. It is not only Sasan that gets free of cost but every other expenditure to be incurred to develop that block is on the developer, to buy the land, to bring in the machinery and to do the machinery, etc. all that is done by the developer and the developer also pays on the coal royalty to the Government as per the rate fixed. So, coal blocks are given free of cost but development cost is with the developer who gets the coal blocks."

131. He added:—

"This is the first instance of its kind where excess coal has been given anywhere. What we are dealing with is the first project, Sasan and the connected project of Chitrangi. There are no other examples. Sir, you have asked as to what is our experience, this is the first instance we are dealing with and Sasan project, like I mentioned, is starting its first unit commissioning very soon."

132. In a related matter, the Hon'ble Supreme Court in its judgment dated 25th August 2014 in the Writ Petition (Criminal) No. 120 of 2012 *inter alia* observed as under:—

"In some cases the Government has allowed diversion of coal from UMPP to other end uses *i.e.* for commercial exploitation. Having regard to this, it is directed that the coal blocks allocated for UMPP would only be used for UMPP and no diversion of coal for commercial exploitation would be permitted."

V. POLICY ON USE OF SURPLUS COAL

133. Audit pointed out that coal blocks (Kerandari B & C) for Tilaiya UMPP were also allocated with the same conditions for usage/disposal of surplus coal as applicable to Sasan UMPP. As per the Mining Plan, the production from the coal blocks allotted for Tilaiya Project would be 40 million tonne per annum. The requirement for the Tilaiya UMPP would be only 16 million tonne per annum and hence 24 million tonne per annum would be incremental coal available from the coal blocks allotted to this Project.

134. At the time of opening of the financial bid (December 2008) for the Tilaiya UMPP, there was a lack of clarity as to whether similar permission for use of incremental coal would be granted to the developer by the Government of India since the earlier (August 2008) decision of the MoC, on the recommendation of EGoM, was specific for the Sasan project.

135. In January 2010, the EGoM agreed to the suggestion of the Coal Secretary that a clause could be inserted in the allocation letter for coal blocks for UMPPs that the Government of India (MoC) may allow the use of incremental coal, if available, from the coal blocks allocated for UMPP, after legal vetting. The MoC were in the process of obtaining legal vetting as of March 2012.

136. In March 2011, RPL which had won the Tilaiya bid as well, made a request that permission might be granted to use the surplus coal from the Tilaiya coal blocks to meet the demands for its other power projects.

137. On 28 April 2012, the EGoM while considering the issue of diversion of surplus coal from Sasan Project also considered the request of RPL to use the surplus coal from the Tilaiya Coal Blocks in its other Projects. In the meeting, the EGoM decided to endorse the decision taken in its meeting held on 14 August 2008 for permission of diversion of surplus coal from Sasan coal blocks to Chitrangi Project and further decided that the permission given for use of 9MTPA incremental coal of Sasan Coal Block for Chitrangi Power Project of RPL could not be withdrawn. The financial impact of the permission of usage of surplus coal from Sasan and Tilaiya Projects in other Projects of RPL as worked out in CAG's draft report issued to the Ministry of Power on 01.03.2012 was also brought before the EGoM meeting on 28.04.2012. The financial impact of the permission was, however, not made available to the EGoM in its meeting held in August 2008.

138. In the same meeting (28 April 2012) regarding permission of surplus coal from Tilaiya Project, the EGoM however, decided that the application of RPL for use

of surplus coal from the coal blocks allotted to Tilaiya Project be processed under the yet to be formulated new policy on surplus coal.

139. Further, the decision taken in August 2008 EGoM meeting was based on inadequate data as the structure of the Chitrangi Project called for by the EGoM on 28 May 2008 from the Madhya Pradesh Government was not available before the EGoM.

140. One of the conditions stipulated by the EGoM in August 2008 while recommending permission for usage of surplus coal from Sasan Project was that the power generated by utilizing incremental coal from these captive coal blocks would be sold through tariff based competitive bidding. However, the tariff of Chitrangi Project had already been fixed in May 2008, which was also not brought before the EGoM in August 2008, as elaborated above.

141. Thus, the EGoM in April 2012 decided to uphold its decision of August 2008, which was taken with inadequate data.

142. In the above context, the Committee enquired about the reasons for not taking a holistic view on the request of RPL to use surplus coal from both Sasan and Tilaiya Projects, pending framing of the policy, particularly in the background that inequities amongst UMPP players (case II bidding for Sasan UMPP) and also players of non-UMPP projects (case I bidding for Chitrangi Project) had arisen. In reply, the Ministry stated as under:—

"The recommendation of EGoM to permit use of incremental coal was made on 14.8.08. Ministry of Coal (MoC) granted in principle approval to this on 18.11.2008. MoC had further approved the mining plan for Moher and Moher-Amlohri blocks on 2.3.09 and Chhatrasal block on 30.3.09 and notified Chitrangi as end use project for this incremental coal on 17.2.2010. Tata Power had gone to Delhi High Court against the decision to permit use of incremental coal. The high Court in April 2009 dismissed the case and Tata Power has filed SLP in Supreme Court, which is pending. Reliance Power Ltd. (RPL) requested in July 2010 and March 2011 for approval for utilization of incremental coal from Kerandari B and C coal blocks allocated to Jharkhand Integrated Power Limited (Tilaiya UMPP). Since the case with regard to permission to use of incremental coal from Sasan UMPP is pending in the Supreme Court (Tata Power has gone in appeal against the Delhi High Court's order on Sasan UMPP's incremental coal issues), Ministry of Power decided to wait for the outcome of the above petition before processing the request of M/s. RPL.

The CAG in its follow up report dated 12.10.2011 had *inter alia* recommended that "the permission to use excess coal in other project should be reviewed as no benefit on this account was passed on to the customer". Ministry of Power had placed *inter alia*, issues related to use of surplus coal and present status of Chitrangi project of RPL as well as audit's recommendation before the EGoM in its meeting held on 5th December 2011.

After deliberating the matter, the EGoM directed that the issue pertaining to incremental coal be examined in detail by the Ministry of Coal in consultation with the Ministry of Power, the Department of Legal Affairs and the Attorney General of India and the matter placed before the EGoM in its next meeting. MOP prepared a background note on the issues and sent them to the Ministry of Coal for their reference to Department of Legal Affairs for the opinion of Ld. AGI.

A request was received from Reliance Power Ltd. (RPL) dated 3.1.2012 wherein they requested for approval to utilize incremental coal from Kerandari B&C coal blocks allotted to Tilaiya UMPP.

The Ministry of Power (MoP) had placed both the issues for consideration of EGoM meeting held on 28.4.12. The EGoM considered the note dated 27.4.2012 from the Ministry of Power and noted the opinion of the Ld. Attorney General for India in the matter wherein it was, *inter alia*, observed that the decision taken by the EGoM on 14.8.2008 was well considered. The EGoM decision of 14.8.2008, to recommend to the Ministry of Coal to permit the use of incremental coal for other projects of RPL and subsequent decisions taken by Ministry of Coal, culminating in the notification dated 17.2.2010, notifying Chitrangi as the end use project, were affirmed by EGoM.

Further, the application of RPL to use of surplus coal from coal blocks allocated to Tilaiya UMPP and the agenda note of the Ministry of Power were considered by EGoM. The EGoM was also apprised of surplus coal policy being finalised by MoC. As MoC was already under the process of finalizing surplus coal policy with Inter Ministerial consultations, EGoM directed that the new policy will be formulated by Ministry of Coal keeping in view the opinion given by Ld. AGI for use of surplus/incremental coal with the approval of the Cabinet Committee on Economic Affairs after necessary inter-ministerial consultations and after obtaining recommendations of the Committee of Secretaries and the application for use of surplus coal from Tilaiya mines be processed under the new policy. The EGoM further decided that the policy will have prospective effect and will not affect the permission already given for use of Sasan coal blocks incremental coal for Chitrangi project of RPL."

143. On being asked whether the Government have already finalized the policy on usage of surplus coal of captive mines, the Ministry submitted as under:—

"EGoM in its meeting held on 28.4.2012 decided that the Ministry of Coal will formulate a policy keeping in view the opinion given by Ld. Attorney-General for use of surplus/incremental coal with the approval of the Cabinet Committee on Economic Affairs (CCEA) after necessary inter-ministerial consultations and after obtaining recommendations of the Committee of Secretaries. The MoC indicated that draft policy is to be placed before the Committee of Secretaries for their approval."

PART II

OBSERVATIONS AND RECOMMENDATIONS

Introductory

1. Considering the critical role played by energy in the economic development and expansion of the power sector in the country, the Government of India decided in November 2005 to develop Ultra Mega Power Projects (UMPPs) using Super Critical Technology to augment the country's power generation capacity and sustain the high growth rate. The UMPPs would meet the power needs of a number of States and were to be developed on Build, Own and Operate (BOO) basis through creation of Special Purpose Vehicles. Each UMPP was projected to have a capacity of around 4,000 MW with a cost of ₹ 6,000-20,000 crore per project. This initiative aims at delivering power at competitive cost to consumers by achieving economies of scale. The identification of the Project Developer was to be done on the basis of tariff based competitive bidding as per "Guidelines for determination of tariff by bidding process for procurement of power by distribution licensees" issued by the Ministry of Power (MoP) in January 2005. The MoP have a crucial role in the development of UMPPs which include coordination with Central Ministries/Agencies for ensuring coal block allotment/coal linkage, environment/forest clearances, water linkage, etc. In November 2005, the Ministry designated the Power Finance Corporation Limited (PFC) as the nodal agency for the purpose of development of UMPPs through Special Purpose Vehicles (SPVs) and the Central Electrical Authority (CEA) as the technical partner. An Empowered Group of Ministers (EGoM) chaired by the Minister of Power with the Ministers of Finance, Law and Justice, Science & Technology and Earth Sciences and the Deputy Chairman, Planning Commission as Members was also constituted on 14th June 2007 for facilitating expeditious decisions on all major issues concerning UMPPs. As of September 2012, bidding process had been completed and contracts were awarded in respect of four UMPPs viz. Sasan, Mundra, Krishnapatnam and Talaiya. While Mundra UMPP was awarded to Tata Power Company Limited, Sasan, Krishnapatnam and Talaiya UMPPs were awarded to Reliance Power Limited. The Committee's examination of the subject has revealed several glaring lapses/deficiencies in the Bid Process Management, Bid Evaluation, granting permission for diversion of surplus coal as well as undue financial benefit to Reliance Power Limited, the project developer of Sasan UMPP. These lapses/deficiencies alongwith the considered opinion/recommendations of the Committee have been dealt with in the succeeding paragraphs.

Appointment of Bid Process Management Consultant be undermining bid conditions

2. The Committee are seriously concerned to note the manner in which the Ministry of Power proceeded with the appointment of Bid Process Management Consultant in respect of Sasan, Mundra, Krishnapatnam and Talaiya UMPPs. The lowest bids of ICRA of ₹ 54.50 lakh and ₹ 44.50 lakh for the consultancy assignments of Sasan and Mundra UMPPs respectively were ignored though the bidder was declared technically qualified by the Bid Evaluation Committee and was at the top position both in the financial score and the combined score. The work was instead awarded to E and Y at higher rates of ₹ 1.28 crore each on the ground that they had more experience and were managing bid process of Anpara Power Project in Bangladesh. This was done pursuant to the Bid Evaluation Committee's recommendation that "Ultra Mega Power Project being a prestigious assignment and as there is a large variation in the technical rating and price quoted by the consultancy firms, the first three highest ranked firms viz. ICRA, E and Y and CRISIL be called for making presentation to the High Level Committee". The Committee find that it was contrary to the bid conditions which stipulated that the top 5 bidders were to be called for negotiations mainly for the purpose of price reduction to match the lowest price quoted and the bidder who got the highest score as per the combined technical and financial weightage formula was to be awarded the work. There was no provision in the laid down procedure for further screening like presentation and comparative evaluation during the negotiation process once the ranking based on combined technical and financial score of bidders had been done. Subsequently, the High Level Committee constituted by the Ministry and which had representation by SBI, CEA, IDBI, IDFC and PFC rejected ICRA and selected E and Y by observing that ICRA had only limited experience in bid process management since they had assisted in evaluation of RFQ bids of only 100 MW hydro-electric plants in Uttarakhand and was having retired professionals. The reasoning of the HLC is not tenable as having declared ICRA as technically qualified, it was not proper to go into relative merits of the bidders since the selection process specified at the time of invitation of bids did not envisage it. Moreover, the retired professionals came through ICRA and not as individual experts and as per the tender documents there was no specific bar on having retired professionals being engaged by ICRA for the assignment, as also admitted by the Ministry. Thus, the High Level Committee's action of disregarding ICRA's bid was erroneous. The Committee also find that the work of evaluation of bids for Anpara Project was not completed by E and Y on the date of bid submission for Sasan and Mundra consultancy work. Since the bid criteria allowed consideration of successfully completed assignments as relevant past experience, it is not fair to conclude that E and Y had the past experience of Anpara project required to secure qualification. The Committee further note that the other areas of experience claimed by E and Y mainly related to bid documentation whereas in the case of UMPPs, the significance of bid evaluation experience was more than bid documentation experience. As such, the evidence on record does not suggest that E and Y had

relevant experience more than that of ICRA in managing the bid process of projects. The subsequent developments, *viz.* the failure on the part of E and Y (the consultant) to point out the shortcomings/deficiencies in the technical experience claimed by Reliance Power Ltd. and the PFC's decision to debar E and Y for a period of three years *w.e.f.* 19th July 2011 for their failure to perform in one of the assignments *i.e.* Sasan UMPP, raise serious doubts about the award of the consultancy assignment to E and Y besides reinforcing the Committee's apprehension that the appointment of E and Y was not made in a transparent manner. In yet another instance of irregularity, the Committee find that the lowest price of ₹ 54 lakh for Krishnapatnam UMPP was quoted by Feedback but in contravention of the bid conditions, E and Y, which emerged as the highest ranked bidder, was not asked to match their price with the price quoted by Feedback. The Ministry's submission that though there was no requirement in the tender document to match the price of the lowest quoted bidder, the HLC got the price reduced, fails to impress the Committee as E and Y was asked to match the price of ₹ 60 lakh quoted by the second lowest bidder. Worse, bids for consultancy work for Tilaiya UMPP were not called for but the work was awarded to E and Y at a cost of ₹ 60 lakh based on the contention that Tilaiya UMPP was on fast track. The Ministry claimed that the assignment for Tilaiya UMPP was awarded at the same cost and terms and conditions as the Odisha UMPP and the scope of work for both the assignments was same, they being pit-head based UMPPs. In view of the fact that bids for different project may turn out to be different due to time factor and market conditions even if the projects are of similar nature, the Committee are of the considered opinion that the Ministry ought to have taken matching action to ensure appointment of bid consultant for Tilaiya UMPP through a proper tendering process instead of resorting to flimsy excuses. All the above cited facts lead the Committee to conclude that undue favours were extended to E and Y by flouting the bidding conditions and undermining transparency and accountability. The Committee, therefore, recommend that the entire process followed for the appointment of E and Y as consultant for four UMPPs be thoroughly investigated by an appropriate agency to unearth possible manipulations and fix responsibility. The Committee also desire that robust checks and balances be put in place so as to ensure transparency and accountability in any such appointment of consultants in future.

Deficient Bid Documentation

3. The Committee are perturbed to note that bids for infrastructure projects of such magnitude as the UMPPs had been called on the basis of bid documents not vetted by the Department of Legal Affairs, prompting the Empowered Group of Ministers (EGoM) to direct the Ministry of Power to obtain comments *inter alia* of the Department of Legal Affairs on the Standard Bidding Documents (SBDs) developed and notified by the Ministry in March 2006 based on which the bid documents for the UMPPs (RFQ and RFP) were prepared by the consultant, E and Y. The Ministry defended their action by stating that the guidelines do not provide for vetting of the SBD by the Department of Legal Affairs. The Committee's examination of the issue has, however, revealed that these Guidelines for procurement of power by distribution licensees through tariff-

based competitive bidding were notified by the Ministry of Power in January 2005 whereas the decision to establish the UMPPs was taken in November 2005. Thus, the guidelines were framed without factoring in the changed conditions and requirements associated with the UMPPs. As the Ministry of Power were awarding the power projects of such magnitude for the first time and long term commitments by way of power purchase agreement for 25 years were being entered into with private developers, the Committee believe that getting the SBDs vetted by the Department of Legal Affairs could have been instrumental in protecting the Government interest. The absence of legal vetting was also taken note of by the EGoM in its meeting held on 6th and 7th September 2007. Thus, the guidelines were deficient to that extent. The Committee have now been informed that pursuant to an EGoM directive, a draft Model Power Purchase Agreement applicable for UMPPs has been prepared and an Inter-Ministerial Group has been constituted with the representatives of the Ministries of Law and Justice, Finance, Coal and Environment and Forests and Planning Commission and Central Electricity Authority to fine tune the documents based on the comments/suggestions of the stakeholders. The Ministry have further informed that the SBDs for UMPPs were under revision and being finalized and would be placed before the EGoM for consideration. The Committee feel that these are belated actions, which should have been resorted to right from the time when the UMPP initiative commenced in 2005. Nevertheless, the Committee would urge the Ministry of Power to finalise the Model Power Purchase Agreement and the SBDs for UMPPs with promptitude and prudence and ensure the requisite legal vetting by the Department of Legal Affairs so that the Government interest is duly protected.

Need for a foolproof system of bid management

4. The Committee were informed that all the bidders had prior information that the Statutory Auditor's certificate would be required to be submitted alongwith the bid documents. Notably, these Statutory Auditors are appointed by the Companies themselves and there is obviously no assurance that there would be suppression or distortion of facts and manipulation of the bid documents. The Committee further observe that the bid documents for RFQs, RPFs, etc. are prepared not by the Ministry alone but with the help of outside people and also in consultation with a number of stakeholders. Under the circumstances, the Committee are of the considered view that onus lies with the Ministry to tie up all the loose ends in the bid preparation and submission process with special emphasis on verifying the veracity of the certificate of the Statutory Auditors who are appointed by the Companies/bidders themselves. As assured by the Secretary, MoP in evidence, the Committee trust that the Ministry would impose certain strict conditions on the bidders about the method and format in which bidding should be done so as to ensure a foolproof system of bid management.

Scaling down of equity holding requirement of Parent/Affiliate of a bidding company

5. The Committee are distressed to note that the Ministry of Power scaled down the equity holding requirement of Parent/Affiliate of a bidding company

for UMPP projects from originally envisaged 51 per cent in March 2006 to 26 per cent in May 2006 on the request of bidders and advice of the consultant E and Y. In the process, the basic principles of ownership and 'control' given in Accounting Standards Interpretation (ASI) 24 issued by the Institute of Chartered Accountants of India was violated. This was also against the spirit of Model RFQ document of Government of India for PPP Projects which also prescribes more than 50 per cent holding as the criteria. Such a change in equity holding requirement of Parent/Affiliate directly benefited Reliance Power Limited which did not have any technical or financial capability of its own to bid for Sasan, Mundra and Krishnapatnam UMPPs but did so by using technical and financial capability of Reliance Energy Limited which had an equity holding of only 26 per cent in Reliance Power Limited. The Committee are not convinced with the Ministry's submission that the amendment was carried out to bring in more competition and even with a holding of 26 per cent, the entity had the right to block any major resolution(s) which require three-fourth majority as per the Companies Act. The Committee are also not satisfied with the Ministry's contention that the bidding guidelines and the SBDs were not static in nature and were subject to change based on the experience gathered in the process of implementation and in the context of change in circumstances. Considering that the requirement of effective ownership and control was a significant criterion during the time of selection of bidders, the Committee feel that allowing the bidding company to claim technical and financial experience of another company called the 'parent' or 'affiliate' as if such experiences were its own especially with only 26 per cent equity holding is fraught with risks. Needless to say, with the relaxed criteria, one of the significant and vital requirements to evaluate the experience and competence of a bidder to execute a mega sized project was diluted. The Committee are of the firm opinion that the level of competition depends on various factors and cannot be solely linked to dilution of bidding criteria, therefore, retaining earlier provision of 51 per cent equity holding would have been more prudent since the bidding company could have full backing and support of such parent/affiliate company to develop the project. The Committee were, however, subsequently informed that the matter regarding modifying the relevant condition in the revised Standard Bidding Document was under consideration. The Committee would like the Ministry to consider in detail all the pros and cons of such a move and effect the changes in such a way so as to ensure successful completion, operation and sustenance of a mega project as well as to protect the interest of the Government to the maximum extent possible. As for the UMPPs awarded with the relaxed criteria, in the considered view of the Committee, the onus lies with the Ministry of Power to impress upon the developers to not only complete and operate the projects successfully but also ensure their sustenance for the requisite period.

Reduction of normative availability and penalty

6. The Committee note that the Ministry of Power reduced the normative availability for UMPPs from 85 per cent stipulated in the RFP issued in August 2006 to 80 per cent in September 2006, to bring down the risk of developers.

Simultaneously, the base for levy of penalty, which was used as a deterrent to avoid any slippages in envisaged terms and conditions by the Project Developers, was also reduced from 80 per cent to 75 per cent before receiving financial bids. The Committee find that these two amendments did not augur well for the operational efficiency of the UMPPs since the UMPPs were meant to have higher operational efficiency. The Ministry while claiming that there appeared to be no deviation in the SBDs in August 2006 from the bidding guidelines amended in August 2006, asserted that the SBDs were not in contravention with either the then guidelines or CERC norms applicable for cost plus projects at that point of time. The Committee, however, find that as per amendment to the guidelines for Determination of Tariff by Bidding Process for Procurement of Power by Distribution Licensees notified in August 2006, the normative availability shall be higher by a maximum of 5 per cent of the level specified in the tariff regulations of the Central Electricity Regulatory Commission prevailing at the time of the bid process. Against this norm, from September 2006 onwards, SBDs were not in accordance with the guidelines as the normative availability which ought to have been 85 per cent in September 2006 and 90 per cent from April 2009 onwards remained at 80 per cent and 85 per cent respectively. Thus, the performance parameters have been lowered below the benchmark mentioned in the guidelines unduly benefiting the bidders, notwithstanding the Ministry's reasoning to the contrary. Moreover, it was not rational to reduce the normative availability from 85 per cent to 80 per cent when coal blocks were allocated to take care of 90 per cent PLF (since the plant would normally run at more than 90 per cent PLF) and when the average normative availability of NTPC thermal power stations for the period 2004-05 to 2007-08 having 200 MW sets and above was in the range of around 86 to 97 per cent. The Committee, therefore, exhort the Ministry to revisit their decision of reducing the normative availability for the UMPPs and take requisite corrective measures accordingly so that efficiency of the mega power projects and more value and benefits to the consumers are ensured.

Dilution of equity lock in requirements for the sponsoring entity

7. The Committee note that the Ministry of Power reduced in September 2007 the equity lock-in requirement for the selected bidder in the SPV from 12 years from the Commercial Operation Date (COD) to 5 years from COD for Krishnapatnam and Tilaiya UMPPs. Further, the Developers were permitted to cede managerial control by allowing reduction in equity holding from 51 per cent to 26 per cent in all the four UMPPs *i.e.* Sasan, Mundra, Krishnapatnam and Tilaiya UMPPs after two years of commercial operation though the quoted tariff was valid for 25 years. Since UMPPs are mega projects using super critical technology and their economic, efficient and effective operation is very important throughout the 25 years to ensure supply of power to the consumers at the agreed rates, the Committee feel that allowing the developers to cede managerial control after 5 years of the COD would certainly result in lack of adequate backing of the sponsoring entity for SPVs during the major part of the operational period. It may also adversely affect the operational performance of the UMPPs even to the extent of non-availability of power to the consumers at the agreed rates. Moreover, this does not provide safeguard against

the Developer using sub-standard capital equipment which may breakdown frequently during the operational period after control is ceded. Thus, dilution of such key conditions of the Standard Bidding Documents as equity lock-in requirements for the sponsoring entity on the plea of the need for increasing competition or providing comfort to the Developers, would compromise the very maintenance safeguards for the UMPPs. The Ministry of Power assured that the provisions of the Competitive Bidding guidelines issued by them would ensure that the successful bidder and also the subsequent shareholders (in case the successful bidder exits from the project) will have interest in operating the project and supply the power to the procurers as per the terms and conditions of the PPA. While disapproving the questionable dilution of the equity lock-in requirements for the sponsoring entity, the Committee, trust that the Ministry of Power as assured, would put in place more stringent mechanisms to ensure efficient running of UMPPs and adherence to all the contract conditions throughout the entire life of UMPPs irrespective of any change in their ownership or equity holding pattern.

Lower net worth requirement for bidders

8. The Committee find that against the minimum requirement of 15 per cent for PPP projects costing ₹ 1,000 crore or more as per the Ministry of Finance guidelines, which state that "...net worth could be suitably reduced but should be no less than 15 per cent of project cost", the Ministry of Power fixed the minimum net worth for bidders of UMPPs at ₹ 1,000 crore (or equivalent USD) which was around 5 per cent of project cost of approximately ₹ 20,000 crore. Justifying the move, the Ministry have reasoned that the lower qualification requirements enabled wide competition among the bidders and had a reflection in lower tariff. But, according to the Committee the level of competition depends on various factors and cannot be solely linked to or justified on dilution of criteria. The Ministry have further claimed that a combination of parameters such as Internal Resource Generation, Annual turnover, etc. are assessed as a precaution and the equity required would be around ₹ 6,000 crore which was not expected to be contributed entirely by the bidder and moreover, the total equity was required to be invested over a period of the ensuing 5 to 6 years. The Ministry have thus contended that any company having net worth of ₹ 1,000 crore and meeting the other criteria is considered to be capable of raising the required equity. As for desisting the unsuitable bidders from entering the fray, the Ministry insisted that the requirement of doing entire investment for the project by the selected developer through equity and debt and provisions of liquidated damages in the Power Purchase Agreement (PPA) would do the needful. From the Ministry of Power's submission, the Committee find that the Ministry, while allowing lower net worth criteria, had considered only the equity portion of the project cost whereas the Ministry of Finance guidelines do not provide for such segregation between debt and equity. Further, spreading the cost over the project period was also not envisaged in the MoF guidelines while setting the minimum net worth requirement as 15 per cent of the project cost. The Committee are also of the considered opinion that though financial investment is that of the developer, a UMPP being a service utility, substantial resources like land and coal blocks are

also provided to the developer by the Government thereby easing the burden on the developer. Moreover, provisions relating to liquidated damages are deterrents applicable at the project implementation and operation stage and cannot substitute minimum selection criteria. Even if lower level of criteria attract more bidders, they increase the risk of unsuitable bidders entering the fray as it may not be reasonable to assume that a bidder having net worth of ₹ 1,000 crore would successfully execute a project of ₹ 20,000 crore notwithstanding the fact that other aspects of financial capability like Turnover and Internal Resources Generation of the bidders are also assessed as claimed by the Ministry. While deprecating the reduction of the net worth criterion of the bidders in contravention of the MoF guidelines, the Committee, urge the Ministry of Power to enhance the minimum requirement of net worth of the bidders of UMPPs to the prescribed 15 per cent of the project cost so as to ensure successful implementation and seamless operation of the UMPPs through capable and efficient bidders.

Non-fulfilment of qualifying criteria by the selected bidder

9. The Committee are perturbed to note that the bid evaluation process of Sasan, Krishnapatnam and Tilaiya UMPPs was completed and Letter of Intent (LoI) issued to RPL without verifying the admissibility of experience claimed by it. As a result, this company, which did not fulfil the minimum technical qualifying criteria stipulated in the RFQ document, was selected as the successful bidder. The Committee note that major part of the experiences claimed by RPL was based on additions to the fixed assets instead of the prescribed capital expenditure pertaining to projects commissioned during the last 10 years. In the case of Sasan UMPP, despite agreeing on 14th June 2007 to furnish the details of the commissioned projects, RPL did not honour the commitment. Surprisingly, such details were not asked for by the various Evaluation Committees in the case of Krishnapatnam and Tilaiya Projects. Even the bid process management consultant, E and Y in its factual note on Sasan Project had also mentioned that the experience of RPL's parent company REL and Affiliates pertained to the ongoing projects so much so that out of the total experience of ₹ 4416.60 crore, ₹ 3430.21 crore and ₹ 3505.41 crore as claimed by RPL in Sasan and Mundra, Krishnapatnam and Tilaiya UMPPs respectively, the actual experience to the tune of ₹ 3123.88 crore (Sasan and Mundra), ₹ 2137.49 crore (Krishnapatnam) and ₹ 2254.61 crore (Tilaiya) may not conform to the stipulated qualifying requirements. The Committee are constrained to find that all these deficiencies/irregularities were overlooked by the multi-layered Evaluation Committees and all the experiences claimed by the bidder were accepted *in toto* without detailed examination. The Ministry have contended that RPL submitted an experience certificate signed by the Director and Auditor on the basis of which E and Y had concluded that RPL was qualified leading to its selection. The Committee, however, find that this Auditor's certificate did not specifically indicate whether the costs pertained to the projects commissioned during the last ten years. Worse, RPL only indicated yearwise breakup of project cost incurred instead of projectwise details of the commissioned projects that was required as per the qualifying criteria specified in clause 2.1.4 of RFQ document, signifying the possibility of inclusion

of non-project expenditure in RPL's submission. Needless to mention, the certificate was not in accordance with the stipulated criteria and relying on it to establish fulfilment of the qualification criteria was improper. It was also a lapse on the part of E and Y, the consultant, not to have pointed out the shortcomings at the time of evaluation of RFQ and RFP. The Committee are not satisfied with the Ministry's submission that the kind of projects which are eligible for qualification were not specified in the RFQ as the nature of project would be different for companies depending on their nature of business. The Ministry's contention is not tenable since criteria required not just project completion but commissioning as well. Moreover, every such capital expenditure especially on land and building cannot be construed as 'developing a project' as per the definition given in the criteria. The fact that the ongoing experiences were not claimed by RPL for Krishnapatnam UMPP indicates inconsistencies in its stand regarding experience in terms of commissioned projects. Interestingly, RPL in its letter of 14th June 2007 stated that they were collating the details regarding commissioned projects and the same would be submitted in due course. However, the Letter of Intent was issued to RPL on 1st August 2007 without obtaining this vital information based on a decision taken by the EGoM which conspicuously was not informed of the pending information. Thus, the Ministry selected an ineligible bidder for the three UMPPs. As regards remedial measures, the Ministry claimed that learning from the initial experience of the award of UMPPs, they had initiated certain steps to improve their bid evaluation mechanism in 2007 and 2008. However, the Committee find that this has not yielded the desired results as RPL was declared qualified for Tilaiya UMPP and awarded the project in February 2009 without furnishing the requisite details about the commissioned projects. As the Ministry failed to display prudence and alacrity on more than one occasion in obtaining the requisite details from RPL before issuing the Letter of Intent to the Company, which may seriously compromise the intended higher operational efficiency of the UMPPs, the Committee are of the firm opinion that a thorough probe into the matter by an appropriate agency is highly warranted so as to fix responsibility and plug the extant loopholes in the selection process. The Committee are also of the considered view that it is high time the Ministry streamlined the bid evaluation process and ensured absolute compliance to the qualifying criteria by the prospective bidders for the UMPPs.

Allotment of excess land

10. The Committee regret to note that the Central Electricity Authority could not finalize norms regarding land requirements for thermal power plants especially of the larger ones in sync. with the process of UMPPs which started in 2005. Action in this regard was initiated only in April 2007 and the requisite norms were finalized in December 2007 when the land for Mundra and Krishnapatnam UMPPs had already been agreed upon. When compared to the new norms, the land agreed for the two UMPPs was in excess by a whopping margin of 1538 acres in the case of Mundra and 1096 acres in the case of Krishnapatnam. The Committee were informed that the matter was deliberated

by the EGoM in their meeting held in May 2008 wherein it was decided that since the land requirement had already been worked out in respect of these projects, it was now upto the project developers themselves to take a view on the excess land so agreed upon. However, the EGoM decided that land requirement for yet to be awarded UMPPs be worked out by CEA based on its norms. Unfortunately, the decision of the EGoM based on deficient feedback leaves enough scope for the project developers to probably utilize the excess land in a manner other than the purpose approved by EGoM. Besides, excess land of the magnitude of 2634 acres is too large to be ignored and left at the mercy of private project developers. Needless to say, permitting excess land to the project developers was obtained based on deficient feedback given to the EGoM. Since land was acquired by the project developers for tariff based bidding projects, the Committee impress upon the Ministry to put in place robust checks and balances to prevent utilization of such land for any other purpose including creating merchant power capacity by the developers failing which excess land allotted to the Project Developers be taken back from them wherever warranted. The Committee also urge the Ministry/CEA to work out precisely the land requirement for the yet to be awarded UMPPs as per the new norms prescribed by the CEA in December 2007 so as to ensure rationale allotment of land and its utilization for the avowed objective.

Allocation of surplus coal

11. The Committee are dismayed to observe that the Ministry of Coal do not have a reliable mechanism for ensuring correct estimation and allocation of coal blocks for UMPPs with the result that three coal blocks namely, Moher, Moher-Amlohri Extension and Chhatrasal were allocated for Sasan UMPP before final bids and without finalizing a proper mining plan leading to availability of surplus coal which unduly benefited the private developer, RPL. Initially in September 2006, two coal blocks—Moher (having geological reserves of 402 million tonne of coal) and Moher-Amlohri Extension (having geological reserves of 198 million tonne of coal) were allocated for Sasan UMPP on the estimation that the project would require the development of a coal mine with production of 18-20 million tonne per annum. However, the Ministry of Power considered the above two blocks insufficient and on the request of the then Secretary (Power), the Ministry of Coal allocated in October 2006 another block, Chhatrasal to Sasan UMPP after de-allocating it from NTPC Limited. Later it became clear that the actual coal requirement of Sasan UMPP would be only 16 million tonne per annum whereas Moher and Moher-Amlohri Extension coal blocks would yield as much as 20 million tonne per annum and another 5 million tonne per annum would be extractable from Chhatrasal block thus leaving a surplus of 9 million tonne per annum. This raises serious credibility issues as to how the Ministry of Power in October 2006 came to the conclusion that initially allocated two blocks for the Sasan UMPP would be inadequate and the Ministry of Coal, which was taking a stand till March 2009 that coal from two blocks (Moher and Moher-Amlohri Extension) was sufficient for the Sasan UMPP and

that there was no justification for allocating a third block (Chhatrasal) to the developer, was prevailed upon to allot this additional block of coal (Chhatrasal) to the project by de-allocating it from the Public Sector NTPC. The Committee find that in March 2008 the project developer, RPL was asked to increase coal production from Moher and Moher-Amlohri Extension blocks to 16 million tonne per annum, the total quantity required for the Sasan UMPP but it maintained that there was no possibility to enhance production beyond 12 million tonne from the two blocks. Surprisingly, however, after obtaining necessary permission for use/diversion of surplus coal in August 2008, RPL submitted in September 2008 a revised mining plan of producing the higher yield of 20 million tonne per annum. The Committee further find that the allocation of coal block was made based on Geological reserves and in the absence of mining plan, data regarding actual availability of coal for the project was not available at the time of allocation of coal blocks. Moreover, bids for UMPPs were called on the basis of coal blocks with Geological reserves and the mineable reserves are assessed by the successful developer by preparing the mining plan after the award of the contract. This dependence on insufficient data is fraught with risk as there is enough scope for connivance and manipulation leading to unwarranted exploitation of such a critical natural resource as coal. As both the Ministry of Power and the Ministry of Coal have failed to exercise due diligence in the matter, the Committee impress upon them to work in unison and put in place a reliable and foolproof mechanism which *inter alia* should include preparation of appropriate mining plan before award of the contract to ensure correct estimation and allocation of coal blocks for UMPPs. The Committee further desire that the Ministry of Power's October 2006 conclusion that the two coal blocks of Moher and Moher-Amlohri Extension would be inadequate for Sasan UMPP and the subsequent allocation of Chhatrasal Coal block by the Ministry of Coal be investigated by an appropriate agency to fix responsibility and initiate requisite penal action against all those who indulged in misleading and corrupt practices.

Concealing of vital information

12. Under the general terms and conditions of the allocation letter issued by the Ministry of Coal for Sasan UMPP, the coal produced from the allocated mines would be exclusively used for that project. Even in the bid document, the condition purportedly permitting diversion of surplus coal was not explicitly stated. The Committee are, however, shocked to find that the Ministry of Coal in February 2010 vitiated the sanctity of the bidding process by extending post bid concession to RPL by permitting it to use the surplus coal amounting to 9 million tonne per annum from blocks allotted to Sasan UMPP for its other project *i.e.* Chitrangi and in the process doled out financial benefit of ₹ 29,033 crore with a net present value of ₹ 11,852 crore to the Company. Such a benefit was extended to RPL pursuant to a request from the Chief Minister of Madhya Pradesh, made in November 2007. The Ministry have submitted that the reason for allowing diversion of surplus coal was the need for expeditious implementation of coal based thermal power projects, which would also increase the generation capacity of the country, and for optimal utilization of coal reserves in the blocks allotted

to UMPPs. But the Committee are of the view that the permission of diversion of coal should not lead to inequities in the award process of Sasan UMPP *vis-a-vis* Chitrangi Project consequentially resulting in benefit to the developer and vitiating the level playing field. In other words, this should have been done in a transparent and just manner by obtaining more economical tender rates and also keeping in mind the interest of the Government and the consumers. Contrarily, the Committee note that the EGoM in its meeting held on 28th May 2008 had sought information about the structure in respect of ownership, mode of sale of power and tariff of Chitrangi Project. However, it is unfortunate that due to deficient feedback, the EGoM recommended on 14th August 2008 for grant of permission for usage/diversion of surplus coal. While this remains an ambiguous decision, the Committee find that the EGoM evidently was not provided with the accurate information about adequacy or otherwise of coal availability in the two blocks initially allocated to Sasan UMPP, leading to its decision of permitting usage/diversion of surplus coal. To illustrate, vital information regarding status of award of Letter of Intent (LoI) for Chitrangi Project to RPL in May 2008 (before EGoM's recommendation permitting usage of surplus coal) as revealed in the letter of Chief Minister of Madhya Pradesh, status of the revised mining plans for coal blocks of Sasan UMPP as revealed in RPL letter dated 6th August 2008 were not brought before the EGoM by the Ministry of Power. Worse, the Ministry of Power did not take the Ministry of Coal's comments while processing the request of RPL, nor did they ascertain/deliberate the policy of the Government or the practice followed by the Ministry of Coal in such cases. Obviously, RPL took advantage of the lack of communication and coordination between these Ministries for its own gain. Secondly, when the Government of Madhya Pradesh informed in February 2009 that the Letter of Intent for Chitrangi Project had been issued to RPL in May 2008 *i.e.* before the EGoM's recommendation permitting usage/diversion of surplus coal, there was an opportunity for the Ministry of Power to examine and ensure extension of the benefit of surplus coal to the consumers as final permission was yet to be given to the developer. The Ministry of Power also failed to process RPL's letter of 6th August 2008 and linked it with the letter of the Chief Minister of Madhya Pradesh regarding availability of surplus coal and the proposal for its utilization in already sanctioned Chitrangi Project. Besides, the Ministry failed to ascertain the status of the mining plans examined and commented about the transfer price for surplus coal in terms of clause (vi) of the coal block allocation letters before approaching EGoM for a final decision. Even the financial impact of the permission was not made available to EGoM. The Committee feel that denial and concealment of these vital information might have obviously prevented the EGoM from taking an informed decision. While expressing sheer disappointment in the matter, the Committee recommend that the matter be investigated by an appropriate agency and responsibility fixed on those officials concerned in both the Ministries of Power and Coal for their abject failure in coordinating and presenting a comprehensive and correct information to the EGoM which paved the way for a controversial decision and the consequential loss to the exchequer. The Committee also desire that henceforth both the Ministries should unfailingly arm the EGoM like highest

decision making bodies with all the requisite vital information/inputs before any major decision is taken so as to ensure transparency and accountability as well as to avoid recurrence of such incidents. Further, as the intended benefits did not pass on to the consumers, it is imperative that a foolproof mechanism be evolved and firmly put in place to ensure that the benefits pass on to the consumers.

Need for de-allocating excess coal block

13. The Committee find that the EGoM in its meeting held on 14th August 2008, while permitting diversion of coal for Chitrangi Project, had recommended that power generated by utilizing surplus coal from captive coal blocks of Sasan UMPP would be sold through tariff based competitive bidding. This was obviously intended to pass on the benefit of cheaper coal to the consumers. However, the Committee are concerned to note that the tariff of Chitrangi project had already been fixed in May 2008 at ₹ 2.45 per unit (as against ₹ 1.19 per unit in the case of Sasan UMPP) *i.e.* before the permission was granted, citing independent fuel arrangement and non-requirement for the Government to provide coal blocks/linkage. This effectively means that the diversion of surplus coal was allowed for a project whose tariff was already fixed based on coal linkage from costlier sources and hence the permission given by the Ministry of Coal for diversion of surplus coal for Chitrangi Project did not ensure that the spirit of the EGoM decision was followed, rendering the EGoM decision ineffective. The Committee further note that an Inter Ministerial Group constituted by the Ministry of Power on the recommendation of EGoM to review the Standard Bidding Procurement for UMPPs had opined in September 2007 that the allocation of coal mine had an explicit condition that its coal should be solely for the purpose of Sasan UMPP or else the lease was liable to be cancelled. Moreover, since fuel cost is an important aspect of commercial consideration in arriving at the tariff, any relaxation of condition subsequent to bidding certainly vitiates the bidding process. As explicit mention of usage of surplus coal in other projects has not been unambiguously mentioned in the coal block allocation letters, the bidders who lost out did not have equal opportunity to bid under the relaxed condition. The Ministry of Power claimed that they had proposed for reviewing allocation of the surplus coal block to the EGoM and the matter was referred in December 2011 to Attorney General of India who *inter alia* opined that 'the decision taken by the EGoM on 14th August 2008 was a well considered decision'; 'these coal blocks formed the basis of the bids'; there is no question of any coal block becoming incremental; the allocations were final; if subsequently a more effective mining plan is submitted, this cannot have the effect of rendering any part of the coal blocks as having become "incremental."; and thereafter, the question of any "review" does not arise. Based on the AG's opinion, the EGoM affirmed on 28th April 2012 its decision of 14th August 2008 permitting diversion of surplus coal from Sasan to Chitrangi project. The Committee feel that the Ld. AG's view does not take into account the vitiation of the level playing field in the bidding process by offering post bid concession to RPL; inequities in the award process of Sasan UMPP and Chitrangi Project as well as violation of the spirit of EGoM permission which stipulates that power generated by utilizing surplus coal from captive coal blocks

of Sasan UMPP would be sold through tariff based competitive bidding resulting in undue benefit to the developer. Further, the coal blocks for UMPPs were allocated only on their geological reserves which are highly unreliable and the Ld. Attorney General overlooked the fact that RPL suppressed the actual output capacity of coal blocks when it wanted to garner more coal/coal blocks and shared the actual higher output capacity when it wanted to divert surplus coal for Chitrangi project and got the permission for the same. Besides, allowing diversion of surplus Sasan coal for Chitrangi project is inconsistent with another EGoM decision taken on 28th April 2012 in respect of Tilaiya Project wherein similar request of RPL was to be processed under new policy on surplus coal. Not inclined to agree with the opinion of the Ld. A.G., the Committee are of the considered view that the Government need to put in place a system under which vital decision regarding use of natural resources are not held hostage by the legal opinion of one individual. Furthermore, the Committee find that the Hon'ble Supreme Court in its judgement dated 25th August 2014 in the Writ Petition (Criminal) No. 120 of 2012 observed that the coal blocks allocated for UMPP would only be used for UMPP and no diversion of coal for commercial exploitation would be permitted. This further strengthens the Committee's views on the need for preventing diversion of surplus coal/coal block from Sasan UMPP. The Committee, therefore, recommend the Government to de-allocate the surplus coal/coal block from Sasan UMPP and utilize the same for sovereign national interest in consonance with the avowed objectives of passing on the benefit of cheaper coal to the consumers. The Committee further recommend that actual production capacity of coal blocks allocated for other UMPPs be re-assessed as per the latest technology and yet to be formulated new policy on surplus coal and any surplus coal/coal block found, be de-allocated thereafter and utilized in the larger interest. The Committee further desired that the market price of the coal diverted for commercial purposes, be determined and recovered with interest from the defaulting companies immediately.

Special Leave Petition in Supreme Court

14. The Committee note that Tata Power had gone to the Delhi High Court against the decision to permit use of incremental/surplus coal from Sasan UMPP for Chitrangi Project. Though the Delhi High Court dismissed the case in April 2009, Tata Power has filed Special Leave Petition in the Supreme Court against the Delhi High Court's order and the case is pending. The Committee would like to impress upon both the Ministries of Power and Coal to make available all the relevant information pertaining to the case to the Supreme Court and plead the case in right earnest so that the apex Court takes an informed decision in the larger interest of the nation.

Finalization of policy on use of surplus coal

15. The Committee note that Kerandari B & C coal blocks for Tilaiya UMPP

(also awarded to RPL) were also allocated with the same conditions for usage/disposal of surplus coal as applicable to Sasan UMPP. The Committee find that against the requirement of only 16 million tonne per annum for Tilaiya UMPP, production from the coal blocks allotted for the project would be 40 million tonne per annum thus leaving a surplus of 24 million tonne per annum. In March 2011, RPL made a request that permission be granted to it to use the surplus coal from the Tilaiya coal blocks to meet the demands for its other power projects. In April 2012, the EGoM, however, decided that the application of RPL for use of surplus coal from the coal blocks allotted to Tilaiya Project be processed under the yet to be formulated new policy on surplus coal. The Committee feel that permission given to RPL to use surplus coal from Sasan in Chitrangi Project was not an appropriate decision. However, while urging for the early finalization of the new policy on surplus coal, the Committee trust that the policy would address all the concerns of allocation of coal blocks for UMPPs including the need for proper assessment of the actual production capacity of coal mines as per the latest technology and allocation of the precise coal blocks afterwards to the successful bidder with explicit prohibition of diversion of surplus coal. A suitable monitoring mechanism with mandated responsibility centres should also be introduced to enforce the conditions stipulated by the new policy in the offing.

Power Purchase Agreement (PPA)

16. The Committee note that though the host States are the lead procurer of power, they have no role in determining the tariff. That is because while procurement functions are governed by the Power Purchase Agreement signed by all the States including the host State, supply and sale functions are not governed by the PPA. The Committee were informed that the PPA stipulates which State will get how much power from the UMPP and the private sector developer is tied down by the contract, violation of which will attract legal consequences. The Committee were further informed that the State Electricity Regulatory Commission set up in all the States under the Electricity Act is mandated to ensure supply of power to the consumers by the discoms at reasonable rates. Though there is a regulatory system which looks at what cost power can be passed on to the consumers, as claimed by the Secretary, MoP in evidence, the Committee are of the candid view of that the Government should consider incorporating in built clauses in the PPA itself to enable the participating States to have their recommendation duly considered in tariff determination of the surplus power generated from the UMPPs. Such a move will certainly make the extant system more foolproof for the benefit of the consumers.

Need for Studying the Best International UMPP Management Practices

17. The Committee note that the concept of UMPP is new to our country

and the Ministries concerned are finding it difficult to manage the issues pertaining to the UMPPs. The Committee, however, believe that there would have been many countries which have proved very successful in establishing/implementing and managing UMPPs. A country like India which is new to this type of projects needs to study their models for learning broad lessons towards ensuring successful implementation of UMPPs in the country. The Committee, therefore, urge the Ministries of Power and Coal to find best international benchmarks/practices in the realm of UMPPs and suitably formulate benchmarks befitting the national need.

NEW DELHI;

27 April, 2015

7 Vaisakha, 1937 (Saka)

PROF. K.V. THOMAS

Chairperson,

Public Accounts Committee.

APPENDIX I

MINUTES OF THE TWENTY-FIRST SITTING OF THE PUBLIC ACCOUNTS COMMITTEE (2012-13) HELD ON 22ND JANUARY, 2013

The Committee sat on Tuesday, the 22nd January, 2013 from 1500 hrs. to 1730 hrs. in Room No. '53', Parliament House, New Delhi.

PRESENT

Dr. Murli Manohar Joshi — *Chairperson*

MEMBERS

Lok Sabha

2. Shri Anandrao Vithoba Adsul
3. Shri Sandeep Dikshit
4. Dr. M. Thambi Durai
5. Shri Bhartruhari Mahtab
6. Shri Shripad Yesso Naik
7. Shri Abhijit Mukherjee
8. Shri Ashok Tanwar

Rajya Sabha

9. Shri Prakash Javadekar
10. Shri Sukhendu Sekhar Roy
11. Shri J.D. Seelam
12. Prof. Saif-ud-Din Soz

SECRETARIAT

- | | | |
|------------------------|---|-------------------------|
| 1. Shri Devender Singh | — | <i>Joint Secretary</i> |
| 2. Shri D.R. Mohanty | — | <i>Deputy Secretary</i> |
| 3. Shri S.L. Singh | — | <i>Under Secretary</i> |

Representatives of the office of The Comptroller and Auditor General of India

- | | | |
|-----------------------|---|--|
| 1. Shri A.K. Patnaik | — | Deputy C&AG |
| 2. Shri P. Sesh Kumar | — | Director General |
| 3. Shri A.M. Bajaj | — | Principal Director (ESM) |
| 4. Shri P.K. Singh | — | Principal Director of
Commercial Audit and
<i>Ex-Officio</i> MAB-III |

Representatives of the Ministry of Power

- | | | |
|---------------------------|---|------------------------|
| 1. Shri P. Uma Shankar | — | Secretary |
| 2. Shri Ashok Lavasa | — | Additional Secretary |
| 3. Shri Devendra Choudhry | — | Additional Secretary |
| 4. Smt. Jyoti Arora | — | Joint Secretary |
| 5. Shri I.C.P. Keshari | — | Joint Secretary |
| 6. Shri Rakesh Jain | — | Joint Secretary and FA |
| 7. Smt. Rita Acharya | — | Joint Secretary |

Representatives of Central Electrical Authority

- | | | |
|---------------------|---|----------------|
| 1. Shri A.S. Bakshi | — | Chairperson |
| 2. Shri M.S. Puri | — | Chief Engineer |

Representatives Of Power Finance Corporations

- | | | |
|----------------------|---|-----------------|
| 1. Shri Satnam Singh | — | CMD |
| 2. Shri M.K. Goel | — | Director (Com.) |
| 3. Shri N.D. Tyagi | — | CEO, PFCCL |

Representatives of the Ministry of Coal

- | | | |
|----------------------|---|--------------------------|
| 1. Shri A.K. Bhalla | — | Joint Secretary |
| 2. Shri D.N. Prasad | — | Advisor (Projects) |
| 3. Shri A.K. Debnath | — | Director (Tech.), CMPDIL |

2. At the outset, the Chairman welcomed the Members, the representatives of the Office of the Comptroller and Auditor General of India and the Ministries of Power and Coal to the sitting of the Committee. Apprising that the meeting had been convened to have a preliminary briefing by the representatives of the Ministry of Power on the subject "Ultra Mega Power Projects under Special Purpose Vehicles" based on the C&AG Report No. 6 of 2012-13, the Chairman impressed upon the witnesses not to disclose the contents of the deliberations of the Committee to any outsider, especially to the members of the Print and Electronic media.

3. The Chairman then asked the Secretary, Ministry of Power to give a brief account of the UMPPs and the Ministry's stance on the Audit findings. Upon a request made by the Power Secretary, the Chairman gave permission for a Power Point presentation on the subject.

4. The Secretary, Ministry of Power and his colleagues, accordingly, gave a Power Point presentation on the initiative of UMPPs highlighting their implementation, present position, experience, achievements, etc. The representatives of the Ministries

also attended to the various queries, raised by the Committee, which *inter alia* included irregularities in the Bid Process Management, Bid Evaluation and granting permission for diversion of surplus coal for Sasan project.

5. As some queries required detailed and statistical reply/information, the Chairman observed that a consolidated questionnaire incorporating all those points in addition to some other points would be sent to the Ministry seeking written reply. He asked the Secretary, Ministry of Power to furnish the requisite reply within 15 days of the receipt of the questionnaire. The Power Secretary assured that he would comply.

6. The Chairman thanked the representatives of the Ministries for appearing before the Committee and furnishing the available information on several issues on the subject.

The witnesses, then, withdrew.

A copy of the verbatim proceedings was kept on record.

The Committee, then, adjourned.

APPENDIX II

MINUTES OF THE SEVENTEENTH SITTING OF THE PUBLIC ACCOUNTS COMMITTEE (2014-15) HELD ON 18TH FEBRUARY, 2015

The Committee sat on Wednesday, the 18th February, 2015 from 1130 hrs. to 1430 hrs. in Room No. '62', Parliament House, New Delhi.

PRESENT

Prof. K.V. Thomas — *Chairperson*

MEMBERS

Lok Sabha

2. Shri S.S. Ahluwalia
3. Shri Nishikant Dubey
4. Shri Neiphiu Rio
5. Shri Shiv Kumar Udasi
6. Dr. P. Venugopal

SECRETARIAT

- | | | |
|------------------------|---|----------------------------|
| 1. Smt. Anita B. Panda | — | <i>Director</i> |
| 2. Shri Jaya Kumar T. | — | <i>Additional Director</i> |
| 3. Shri S.L. Singh | — | <i>Under Secretary</i> |

Representatives of the Office of the Comptroller and Auditor General of India

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|----------------------------|---|-----------------------------|
| 1. Shri P. Mukherjee | — | Dy. C&AG |
| 2. Shri P. Sesh Kumar | — | DG (Commercial) |
| 3. Ms. Tanuja S. Mittal | — | Principal Director, MAB-III |
| 4. Shri Purushottam Tiwary | — | Principal Director (PAC) |

Representatives of the Ministry of Power

- | | | |
|-----------------------------|---|------------------------|
| 1. Shri Pradeep Kumar Sinha | — | Secretary |
| 2. Shri R.N. Choubey | — | Special Secretary |
| 3. Shri Major Singh | — | Member (Planning), CEA |
| 4. Shri M.K. Goel | — | CMD, PFC |

5.	Dr. Pradeep Kumar	—	Joint Secretary & Financial Advisor
6.	Shri Anil Kr. Singh	—	Joint Secretary
7.	Shri I.C.P. Keshari	—	Principal Secretary (Energy), Government of M.P.
8.	Shri P.D. Siwal	—	Chief Engineer, CEA
9.	Shri C. Gangopadhyay	—	CEO, PFCCL

Representatives of the Department of Coal

1.	Shri Anil Swarup	—	Secretary
2.	Shri A.K. Bhalla	—	Additional Secretary
3.	Shri D.N. Prasad	—	Advisor (Projects)
4.	Shri S. Bhattacharya	—	CMD, Coal India Ltd.
5.	Shri R.K. Chopra	—	Director, (T/P&D), CMPDIL
6.	Shri T.K. Nag	—	CMD, NCL

2. At the outset, the Chairperson welcomed the Members and representatives of the Office of the C&AG to the sitting of the Committee. Apprising that the sitting had been convened to take further oral evidence of the representatives of the Ministries of Power and Coal on the subject 'Ultra Mega Power Projects under Special Purpose Vehicles' based on C&AG Report No. 6 of 2012-13, the Chairperson invited the Audit Officers to brief the Committee on the finer points of the subject. The Audit Officers accordingly briefed the Committee explaining various issues pertaining to the subject.

3. The representatives of the Ministries of Power and Coal were then called in. Welcoming them, the Chairperson impressed upon those attending the sitting not to disclose any information regarding the proceedings of the sitting to anybody else before the Report on the subject is presented to Parliament. He then highlighted serious lapses on the part of Ministries of Power and Coal by not providing all relevant information, data, feed back and other background material to the highest decision-making authority *i.e.* EGOM which *inter alia* included non-disclosure of the contract concluded between Reliance Power Limited and Madhya Pradesh Power Trading Corporation to EGOM; failure of the Ministry of Power to link the letter of November 2007 of the Chief Minister of Madhya Pradesh with the RPL letter dated 14th August 2008; non-issuing of Section VI of the Coal block allocation letter; concealing of the LoI for 1241 MW Power for Chitrangi Project from the Government of Madhya Pradesh by RPL; concealing of information and data by the officials of the Ministries of Power and Coal; excess acquisition of land for Mundra and Krishnapatnam UMPPs thereby benefiting the private developers; excess allotment of 9 million tonne per annum of coal for Moher and Moher-Amlohri extension for Sasan UMPP alongwith Chhatrasal Coal block after de-allocation from NTPC etc. The Chairperson also drew the attention of the representatives of the Ministries to the Supreme Court Judgment given on 25th August 2014 on Writ Petition (Crl.) No. 120 of 2012, which *inter alia* had some

implications on coal block allocation for UMPPs. Thereafter, he asked the Secretary, Power and the Secretary, Coal to give a brief account of their Ministries' response to the Audit findings on the subject under discussion and attend to queries from the Committee on various issues of the subject.

4. The representatives of the Ministry of Power explained their position by giving a powerpoint presentation on the Audit findings and the response of the Ministries thereon. They apprised that the objective behind the UMPPs was to ensure cheaper tariffs, catering to the needs of the States and that the projects were awarded on the basis of competitive bidding by setting up project specific SPVs which are subsequently transferred to the successful bidders. The Chairperson pointed out that after technically qualifying the three firms, there should have been draw of lots before awarding the Sasan and Mundra UMPPs to E and Y. Thereafter, the representatives of the Ministries of Power and Coal attended to the queries of the Members, on such issues as non-issuing of notice under section 6 of the Land Acquisition Act; violation of the principle of equity in public procurement laid down in the General Financial Rules in awarding the contract for the Sasan and Mundra UMPPs to E and Y, changes in the standard bidding document favouring private companies; diversion of surplus coal allotted to Sasan UMPP for Chitrangi project and opting of legal opinion following the cancellation of diversion of surplus coal to UMPPs consequent upon the Supreme Court ruling in this regard etc.

5. As some queries required detailed and statistical reply/information, the Chairperson asked both the Secretaries to furnish the requisite written reply expeditiously. The Secretaries assured that they would comply.

6. The Chairperson thanked the representatives of the Ministries for appearing before the Committee and the representatives of the Office of the C&AG of India for providing assistance to the Committee in the examination of the subject.

The witnesses, then, withdrew.

A copy of the verbatim proceedings was kept on record.

The Committee, then, adjourned.

APPENDIX III

MINUTES OF THE NINETEENTH SITTING OF THE PUBLIC ACCOUNTS COMMITTEE (2014-15) HELD ON 9TH APRIL, 2015

The Committee sat on Thursday the 9th April 2015 from 1430 hrs. to 1700 hrs.
in Committee Room 'D', Parliament House Annexe, New Delhi.

PRESENT

Prof. K.V. Thomas — *Chairperson*

MEMBERS

Lok Sabha

2. Shri S.S. Ahluwalia
3. Shri Nishikant Dubey
4. Shri Gajanan Kirtikar
5. Shri Bhartruhari Mahtab
6. Shri Dushyant Singh
7. Shri Janardan Singh Sigriwal
8. Shri Shiv Kumar Udasi
9. Dr. Kirit Somaiya
10. Shri Anurag Thakur

Rajya Sabha

11. Shri Bhubaneswar Kalita
12. Shri Shantaram Naik

SECRETARIAT

- | | | |
|------------------------|---|----------------------------|
| 1. Shri A.K. Singh | — | <i>Joint Secretary</i> |
| 2. Smt. Anita B. Panda | — | <i>Director</i> |
| 3. Shri Jaya Kumar T. | — | <i>Additional Director</i> |
| 4. Shri S.L. Singh | — | <i>Under Secretary</i> |
| 5. Smt. Anju Kukreja | — | <i>Under Secretary</i> |

Representatives of the Office of the Comptroller and Auditor General of India

- | | | | |
|----|--------------------|---|--------------------------|
| 1. | Shri A.K. Singh | — | Dy. CAG(RC) |
| 2. | Smt. Shubha Kumar | — | Director General (RC) |
| 3. | Shri Satish Loomba | — | Director General |
| 4. | Shri L.S. Singh | — | Principal Director (PAC) |

Representatives of the Ministry of Health and Family Welfare

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|----|--------------------|---|--------------|
| 1. | Shri B.P. Sharma | — | Secretary |
| 2. | Dr. Jagdish Prasad | — | D.G.H.S. |
| 3. | Shri N.S. Kang | — | AS&DG (CGHS) |

Representatives of the Ministry of Chemicals and Fertilizers (Department of Chemicals and Pharmaceuticals)

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|----|-------------------|---|----------------------|
| 1. | Dr. V.K. Subburaj | — | Secretary |
| 2. | Shri Kalyan Nag | — | Adviser (Cost), NPPA |

Representatives of the Ministry of Chemicals and Fertilizers (Department of Chemicals and Petrochemicals)

Shri Surjit K. Chaudhary — Secretary

2. At the outset, the Chairperson welcomed the Members and the representatives of the Office of the C&AG of India to the Sitting of the Committee. The Chairperson then apprised the Members that during the Sitting, the Committee would take further oral evidence of the representatives of the Ministry of Health and Family Welfare and Ministry of Chemicals and Fertilizers (Department of Pharmaceuticals and Chemicals and Petrochemicals) on the subject "Procurement of Allopathic drugs in CGHS" based on Para No. 6.3 of the C&AG Report No. 19 of 2013 in the first instance. Thereafter, the Committee would consider three draft Reports for adoption.

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| 3. | *** | *** | *** |
| 4. | *** | *** | *** |
| 5. | *** | *** | *** |
| 6. | *** | *** | *** |

The witnesses, then, withdrew.

A copy of the verbatim proceedings of the Sitting was kept on record.

7. The Committee then took up the following draft Reports one by one for consideration:—

- (i) Draft Report on the subject "**Ultra Mega Power Projects under Special Purpose Vehicles**" based on C&AG Report No. 6 of 2012-13.
- (ii) *** *** *
- (iii) *** *** *

8. Giving an overview of the issues contained in the draft Reports and comments of the Committee thereupon, the Chairperson solicited the views/suggestions of the Members. After some discussions, the Committee adopted the two draft Reports mentioned at Sl. Nos. (ii) and (iii) without any modifications. As regards the draft Report mentioned at Sl. No. (i), some Members suggested certain modifications and authorized the Chairperson to incorporate them suitably in the Report.

9. The Committee then authorized the Chairperson to finalize the Reports in the light of the factual verifications, if any, made by Audit and present them to Parliament on a convenient date.

The Committee, then, adjourned.

*** Matter not related to this Report.