



South Eastern Coalfields Limited

'MINIRATNA' CATEGORY-I COMPANY

(A Subsidiary of Coal India Limited)

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SECL/BSP/S&M/COMM/358/LOA/ 1739

Date: 11.03.2010

NOTICE

This is for information of all concerned that as approved in CIL Board in its 254th Meeting dated 30.01.2010, certain modifications have taken place in the letter of Assurance (LOA) for CPP sector.

The modified LOA of CPP along with Annexure of activity/milestones is annexed as **Annexure-I**.

Encl: As above.

D. R. Sharma
11/3/10
Chief General Manager(S&M/QC)

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To

[Name & Address of the Assured]

Dear Mr./Ms.[_____]

Subject: Letter of Assurance

Preamble

In consideration of the request by [*insert name of the applicant and address of the unit/planf*] (hereinafter referred to as “**the Assured**”) for issuance of Letter of Assurance (hereinafter referred to as “**LOA**”) requiring [*insert quantity*] tonnes per annum (tpa) of [*insert Grade of coal*] Grade coal for its [*insert capacity*] MW Captive Power Plant [to be] located at [*insert name of the location of the captive power plant*] (hereinafter referred to as “**CPP**”), from about [*insert the date of commencement of coal supplies*], as requested by the Assured, [*insert name of the CIL subsidiary*] (hereinafter referred to as “**the Assurer**”) hereby provisionally assures that it would endeavour to supply coal to the Assured subject to the following terms and conditions:

1. Scope of Assurance

1.1 Quantity & Grade of coal

Subject to the Assured fulfilling its obligations in accordance with Clause 2 to the satisfaction of the Assurer within the period of validity of this LOA and the signing of the Fuel Supply Agreement (FSA) within three (3) months thereafter, the Assurer shall endeavour to supply, as per the normative requirement of the CPP, [*insert quantity*]tonnes per annum (tpa) of [*insert Grade of coal*] Grade(s) coal to the Assured, which shall be subject to review and assessment by the Assurer of the actual coal requirement of the Assured as well as the incremental availability of coal from the mines of the Assurer and/or of imported coal. It is expressly clarified that in the event that the incremental coal supplies available with the Assurer (after meeting out the commitments already made) is less than the incremental coal demand, such incremental availability shall be distributed on pro-rata basis and the balance quantity of coal requirement shall be met through imported coal available with the Seller, which too shall be distributed on pro-rata basis.

1.2 Price of coal

The price of coal assured herein shall be as per the notified price of CIL from time to time. Notwithstanding, in case the quantity of normative requirement, as

stated in Clause 1.1 above, necessitates opening of a dedicated mine, then coal shall be priced at the higher of the cost plus reasonable return or such notified price. The quantity of imported coal that may be supplied to the Assured, as mentioned in Clause 1.1, shall be charged at the landed cost plus service charge. Such service charge shall be notified by the Assurer from time to time. The Assured shall be liable to pay all applicable taxes and statutory levies.

1.3 Change in law

In the event of an enactment, promulgation, amendment or repeal of any statute, policy, decree, notice, rule or direction by any government instrumentality that would have an impact on the coal supply terms assured hereof, the Assurer shall be free to amend or repeal this LOA without any liabilities or damages, whatsoever, payable to the Assured.

1.4 Force-Majeure affecting the Assurer

In the event that development of the coal block identified by the Assurer for the purpose of meeting the normative requirement stated in Clause 1.1 is delayed or terminated for reasons including de-allocation of such block by the Government and inordinate delays faced in acquiring land or receiving environmental/forest clearances; Or that imports of coal required for the purpose of meeting the portion of normative requirement stated in Clause 1.1 is reasonably withheld owing to such factors as global shortage or a Force-Majeure event affecting the source(s) of imported coal or logistical bottlenecks faced in transportation and unloading; which are not within the control of and not caused by the negligence or fault of the Assurer; the Assurer shall be free to amend or repeal this LOA without incurring any liability whatsoever, including the liability for payment of damages to the Assured.

2. Fulfillment of Assured's obligations

2.1 Time-bound achievement of milestones

The Assured shall undertake to complete all the activities, as mentioned in Annexure 1 to this LOA, within twenty four (24) months from the date of issue of LOA and each activity within the time-period mentioned against it. For the avoidance of any doubt, the time-period of twenty-four (24) months, as aforesaid, shall include any Force Majeure Act that may occur during the validity of the LOA.

2.2 Reporting Requirement

The Assured shall submit the status of each activity/milestone including the documentary evidence in relation to such status within the time-period as mentioned in Annexure 1.

2.3 Verification by the Assurer

The Assurer reserves the right to independently verify the status of each milestone, as mentioned in Annexure 1, and satisfy itself of its authenticity; and in the event of any significant or reasonable discrepancy found by the Assurer in respect of the status reported /documentary evidence submitted by the Assured, the Assurer shall notify the Assured forthwith upon which the Assured shall correct the discrepancy so noted by the Assurer within seven (7) days. Further, in the event that the Assured fails to correct the discrepancy as provided herein the Assured shall be liable to submit additional Commitment Guarantee, as per Clause 3.3.

3. Commitment Guarantee by the Assured

3.1 Amount of Commitment Guarantee

Prior to the date of issue of this LOA, the Assured have provided to the Assurer, a Commitment Guarantee (CG), in cash / bank guarantee, for a sum of Rs. [*insert amount in figures and words*] equivalent to ten percent (10%) of base price of Grade [*insert Grade of coal**] Run-of-Mine (ROM) coal of the Assurer prevalent on the date of application for issue of LOA, multiplied by the quantity of coal mentioned in the Preamble, {Note:in no case shall the CG be less than Rs.3,00,000/- (Indian Rupees Three lakhs only) or be more than Rs.6,00,00,000/- (Indian Rupees Sixty Million only) per mtpa of coal quantities requested by the Assured or part thereof.} Such CG shall be non-interest bearing, and in case of it being deposited in the form of bank guarantee it should comply with the format specified by the Assurer and issued by a scheduled bank acceptable to the Assurer.

3.2 Validity & Conversion of Commitment Guarantee

The Commitment Guarantee (CG) shall remain valid until four (4) months after the expiry of the LOA period of twenty-four (24) months. Thereafter, the CG shall stand converted into the Contract Performance Guarantee (CPG) that would be the condition precedent to signing of the FSA, in which case validity of the CG shall be extended in accordance with the terms of the FSA. For the avoidance of any doubt, the Assured shall be liable to submit the guarantee for such further

amount that may result from the difference between the CPG under FSA and the CG under this LOA.

3.3 Additional Commitment Guarantee

If any activity/milestone is not duly performed or completed by the Assured within the time stipulated against each such activity/milestone, as specified in Annexure 1, then the Assured shall be liable to furnish to the Assurer one tenth (1/10th) of the amount of CG for each such non-performed or incomplete milestone, as additional Commitment Guarantee, within fifteen (15) days from the date such activity/milestone is falling due for completion. For the avoidance of any doubt, such additional CG may need to be deposited multiple times subject to partial/non-fulfillment of each activity/milestone at the end of each half-yearly interval, as mentioned in Annexure 1. The aggregate of additional CG(s) in no case shall exceed the amount of CG, as specified in Clause 3.1 above. Further, such additional CG(s) shall at all times be deemed to be a part of the CG and all related provisions of this LOA shall be equally applicable for additional CG.

3.4 Encashment of Commitment Guarantee

3.4.1 Cancellation or withdrawal of LOA

In the event that any of the activities/milestones is delayed beyond the period specified against each such activity/milestone in Annexure 1 and the Assured fails to furnish the additional CG to the Assurer in accordance with Clause 3.3 hereof, or the Assured furnishes additional CG to the Assurer in accordance with Clause 3.3 hereof but fails to fulfill all the activities/milestones within the total period of twenty-four (24) months, as specified in Annexure 1, the Assurer shall have the right to cancel or withdraw this LOA after duly notifying the Assured in writing at least seven (7) days in advance. For the avoidance of doubt, all the milestones, as specified in Annexure 1, shall need to be fully completed and any partial completion of any activity/milestone at the end of validity of LOA shall entitle the Assurer to cancel or withdraw this LOA. Upon such cancellation/withdrawal of this LOA, the Assurer shall encash the CG including any additional CG submitted by the Assured. It is clarified for removal of doubt that this Clause shall survive the cancellation/ withdrawal of this LOA.

3.4.2 Failure to sign the FSA

The Assurer shall have the right to encash the CG in the event of failure by the Assured to sign the FSA within three (3) months from the expiry of validity of the LOA or the satisfactory achievement of all the milestones, as shown in Annexure

1, whichever is earlier. It is also clarified to the Assured that the percentage of annual contracted quantity fixed with respect to Take or Pay obligations in the FSA may be reviewed by the Seller in light of its coal availability and coal commitments, and amended on year-to-year basis during the term of the FSA.

4. Validity of the LOA

The LOA shall remain valid for a period of twenty-four (24) months from the date of issue of this LOA, and shall stand annulled upon expiry of such period.

5. Assignment of the LOA

The Assured shall not, without the express prior written consent of the Assurer, assign to any third person the LOA, or any right, benefit, obligation or interest therein or thereunder.

6. End-use of coal

The total quantity of coal assured pursuant to this LOA is for use at the CPP, and the Assured shall not re-sell or trade the coal assured or supplied hereunder to any third party. If at any time in the reasonable opinion of the Assurer, the Assured has entered into an arrangement for such resale or trade of such coal supplies, the Assurer shall cancel/withdraw this LOA without incurring any liability whatsoever, including the liability for payment of damages to the Assured.

** In case of multiple Grades mentioned in Clause 1.1, Grade with the highest Useful Heat Value (UHV) shall be considered for the purpose of calculation of Commitment Advance.*

Annexure 1: Milestones to be achieved by the Assured during the validity of LOA – Captive Power Plant

S.No.	Activity/ Milestone	Timeline from the date of LOA	Document to be submitted by the Assured on achievement of milestone	Issuing Authority	Waival
1	Existence of business entity	within 6 months	Certificate of Incorporation/ Commencement of Business Certificate	State Registrar of Companies, Ministry of Company Affairs, Government of India	1) In case of Partnership firm - Copies of the Acknowledgement Receipts of the Income Tax Returns of respective Partners for the immediately preceding financial year and the State Sales tax/ VAT number and/or CST registration number; 2) In case of Proprietary firm - Copy of the Acknowledgement Receipt of the Income Tax Return of the Proprietor for the immediately preceding financial year and the State Sales tax/VAT number and/or CST registration number
2	Approval of the Investment Decision	within 6 months	Certified copy of the decision of the Board of Directors. In case of a Group CPP, copy of the Shareholders' Agreement certifying the criteria for qualification stipulated by the Central Government alongwith the approval, and copies of the decisions of the Boards of the respective members of such Group CPP approving respective investments	Company Secretary under the Company Seal	1) In case of Partnership firm - Partnership Agreement/ Deed duly identifying the business activity for which coal is requested; 2) In case of Proprietary firm - Affidavit undertaking the business activity for which coal is requested
3	Technical Feasibility Studies &	within 6 months	Detailed Project Report (DPR)	Independent Agency/ Expert	Self-attested DPR in case it is prepared in-house

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S.No.	Activity/ Milestone	Timeline from the date of LOA	Document to be submitted by the Assured on achievement of milestone			Issuing Authority	Waival
4			Pvt. Land	Govt. Land	State Industrial Development Corporation (SIDC)		-
	Land acquisition	within 6 months	Notification under Section 6 of the Land Acquisition Act, 1894	Application filed by the Assured for requirement of land	Application filed by the Assured for requirement of land (if applicable)	State Government (in case of proceedings under the Land Acquisition Act 1894)	In case of Pvt. Land being purchased from the owner directly, notifications under Section 6 or Section 11 would not be applicable; and in such case Land registration/ Transfer deed/ Land lease agreement would only be applicable.
	Land in possession (90% of the total land, as considered in the DPR, acquired)	within 24 months	Award by the Collector under Section 11 of Land Acquisition Act, 1894; Or Land Registration/ Transfer deed/ Land lease agreement	Land Registration/ Transfer deed/ Land lease agreement	Land Registration/ Transfer deed/ Land lease agreement	State Government/ Collector's Office/ SIDC	
5	Environment Clearance	within 6 months	Approved Terms of Reference (TOR)			Expert Appraisal Committee (EAC) of MoEF(Central Govt.) for Category 'A' Projects or State Expert Appraisal Committee (EAC) for Category 'B' projects, as applicable	-

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S.No.	Activity/ Milestone	Timeline from the date of LOA	Document to be submitted by the Assured on achievement of milestone	Issuing Authority	Waival
		within 12 months	Final clearance	MOEF (Central Govt.) for Category 'A' projects or State Environment Impact Assessment Authority (SEIAA) - for category 'B' projects, as applicable	-
6	Forest Clearance, if applicable	within 12 months	Recommendation for Forest clearance	State Government	-
		within 24 months	Forest Clearance	MoEF (Central Government)	
7	Water Allocation	within 6 months	In-principle water allocation	State Water Supply Authority	In case of utilization of ground water, relevant permission from relevant department of the State Government.
		within 6 months	Clearance, if applicable	Central Ground Water Authority (CGWA)	-
		within 12 months	Sanction Letter for firm water allocation	State Water Supply Authority	In case of utilization of ground water, relevant permission from relevant department of the State Government.
8	Funding of investment, as identified in the DPR	within 18 months	Board's resolution on the amount of equity investment in the CPP and/ or Sanction Letter from the Bank/Financial Institution	Company Secretary under the Company Seal and/or Bank/ Financial Institution	In case of Proprietary/ Partnership firm; Bank statements of the Proprietor/ Partners for the last twelve months

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S.No.	Activity/ Milestone	Timeline from the date of LOA	Document to be submitted by the Assured on achievement of milestone	Issuing Authority	Waival
					shall be submitted for justification of the equity commitment
9	Notice to proceed for the main plant and equipment	(a) For CPP within 24 months	Notice to Proceed/ Work order / Contract		-
		(b) For end-use plant within 24 months	Notice to Proceed/Work order/Contract		Where the mother end-use plant is already in operation, a certificate for the same from a Chartered Engineer/ Company Secretary.

NOTE: The Fuel Supply Agreement will have a 'Condition Precedent' that the mother plant/end-use plant would be ready for commissioning as certified by a Chartered Engineer/EPC/Contractor, prior to drawl of coal under FSA.