

Airports Economic Regulatory Authority of India

Order No. 19/2011-12

**AERA Building,
Administrative Complex,
Safdarjung Airport,
New Delhi – 110 003**

**Date of Order: 26th July, 2011
Date of Issue: 25th October, 2011**

In the matter of Multi Year Tariff Proposal submitted by Indian Oil Skytanking Limited for Into Plane Service Fee at Bangalore International Airport, Bengaluru for the 1st control period commencing 01.04.2011

M/s Indian Oil Sky Tanking Ltd. (IOSL), have vide application dated 10.03.2011, submitted their Multi Year Tariff Proposal (MYTP) for the first control period commencing 01.04.2011, in respect of the tariff for Into Plane Service (ITP) provided at Bangalore International Airport, Bengaluru. Further, vide their letters dated 14.03.2011 and 15.03.2011, IOSL have submitted additional clarifications. IOSL have also submitted the Annual Tariff Proposal (ATP) for the 1st year of the Control period, i.e., 2011-12 along with the MYTP and in addition, have separately made an application, vide letter No. AV/TSD/ BIAL-ITP dated 21.02.2011 for the approval of the 5% revision in tariff w.e.f 01.06.2010 upto 31.05.2011, for ITP services at Bangalore International Airport, Bengaluru.

2. Briefly the facts of the case are as under:

- (i) IOSL have sought approval for the tariff for ITP services for the control period based on a "light touch approach" as prescribed in Chapter V of the Airports Economic Regulatory Authority of India (Terms and Conditions for Determination of Tariff for Services Provided for Cargo Facility, Ground Handling and Supply of Fuel to the Aircraft) Guidelines, 2011 (the Guidelines).
- (ii) As stipulated in the Guidelines, the Authority shall follow a three stage process for determining its approach to the regulation of a regulated service –
 - (i) Materiality Assessment;
 - (ii) Competition Assessment;
 - (iii) Assessment of reasonableness of the User Agreements between the service providers and the users of the regulated services.

The materiality index, with respect to services provided for supplying fuel to aircraft at Bangalore airport, is 8.07% which is more than 5%. Hence, the service is deemed as "material", in terms of Clause 4.2 of the Guidelines.



- (iii) The Guidelines (Clause 5.1) provide that where a Regulated Service is being provided at a major airport by two or more Service Provider(s), it shall be deemed "competitive" at that airport and if such service is provided by less than two Service Provider(s), it shall be deemed "not competitive". Further, the Guidelines also provide that the Authority may in its discretion consider such other additional evidence regarding reasonableness of competition, as it may deem fit and the determination of number of Service Provider(s) at a major airport shall include the Airport Operator, if the Airport Operator is also providing Regulated Service(s) at that major airport.
- (iv) In the instant case, the ITP services at Bangalore International Airport, Bengaluru are being provided by M/s IOSL as well as M/s Bharat Star Services Private Ltd (BSSPL). Since the service is provided by two or more Service Provider(s), the service is deemed to be "competitive".
- (v) IOSL submitted that the information furnished by them is sensitive to their business. Hence, they have requested that the agreements entered into between them and BIAL, and other financials should not be uploaded or made public. In their additional submissions, vide letter no. AV/TSD/BIAL-ITP dated 18.05.2011, they have specifically requested that the following information may not be uploaded:
- Calculation of proposed Aggregate Revenue Requirement (ARR) and historical ARR
 - Copy of Tender document
 - Agreement between IOSL and BIAL
 - Enclosure pertaining to sanction of foreign currency term loan and credit facilities
 - Financial Information in Form F2-historical and projected Balance Sheet; Form F3-historical and projected P&L account; Form F 4-historical and projected cash flow statement;
 - Documents supporting estimate of operating costs.
- (vi) It had earlier come to the notice of the Authority that the existing ITP charges (@Rs.200/KL) were increased by 5%, without previous approval of the Authority with effect from June 2010. No proposal was received from the into plane service providers for any approval/fixation of these charges.
- (vii) The Authority considered the issue in its Nineteenth Meeting (No.13/2010-11) held on 23.09.2010 wherein it decided that BIAL and the ITP service providers namely BSSPL and IOSL should be immediately apprised of the legal position and requested to submit their comments and explanation in the matter failing which coercive action may have to be contemplated.
- (viii) IOSL, vide their letter AV/TSD/BIAL dated 21.02.2011, submitted that the ITP agent is an agent of the fuel supplier and hence it is doubtful whether the ITP services can be construed as an 'aeronautical service'. Further, IOSL stated that the direction issued by AERA seems to proceed under the misconception that no person can fix or revise any tariff without notice or permission of AERA, even



where AERA has not fixed any tariff for such activity and that the provisions of the statute do not support this understanding. Further, the notice has the effect of bringing fueling of Aircraft to a complete stand still. IOSL submitted that IPT service fee was determined through a process of Open commercial competitive bidding process and the fee was frozen at the lowest quote and frozen for one year subject to an annual enhancement on basis of any increase of WPI (such enhancement, if any, cannot exceed 5% of the prevailing fee).

- (ix) IOSL, vide their letter no. AV/TSD/BIAL dated 10.12.2010 stated that the increase in rates is due to increase in cost of input and enhancement in rates is very nominal and is in line with industry practice. However, they did not submit any financial details/copies of agreements.
- (x) In the meanwhile, Authority finalized its regulatory philosophy and general framework for economic regulation of services provided for cargo facility, ground handling and supply of fuel to aircraft by Independent Service providers (ISP) at the major airports. The Guidelines for determination of tariff in respect of services provided for cargo facility, ground handling and supply of fuel to aircraft by ISP(s) were issued on 10.01.2011. Since the final Guidelines were issued, IOSL was requested to resubmit their proposal in terms of the Authority's published Guidelines.
- (xi) Pursuant thereto, IOSL, vide letter dated 21.02.2011, confirmed that based on the Authority's advice, the 5% increase effective from June, 2010 has been reversed in January, 2011 and confirmed billing at the existing rates of Rs. 200/KL pending approval of the rates by this Authority.
- (xii) IOSL, vide their letter No. AV/TSD/BIAL-ITP dated 21.02.2011, submitted their proposal for determination of the tariff for ITP services at Bangalore Airport, for the period 01.06.2010 to 31.05.2011. IOSL also submitted the ATP for the 1st year of the Control period i.e., 2011-12 along with the MYTP for the first control period and have sought for approval of the ITP charges with 5% revision, i.e., Rs.220.50/KL.
- (xiii) The Authority, vide its Order No.17/2010-11 dated 31.03.2011, while extending the timeline for submission of MYTP by the ISP(s) up to 30.4.2011 also decided that in the interim, all ISP(s) may continue to charge the tariffs as prevalent on 01.09.2009 or as may have been approved/determined by this Authority thereafter with effect from 01.04.2011 and upto the date when the new tariffs as may be approved by the Authority became applicable and that this interim arrangement would be subject to the condition that the concerned ISP(s) submit the MYTP latest by 30.04.2011. In case any service provider(s) fails to submit MYTP on or before 30.04.2011, the interim arrangement in respect of such service provider (s) would cease to be effective.
- (xiv) Further, the Authority also noted that IOSL have submitted the MYTP for ITP services at Bangalore International Airport; that IOSL have been providing ITP services at Bangalore airport from 2008 onwards; that the charges thereof were also fixed prior to 01.09.2009, i.e., the date when provisions of the Airports Economic Regulatory Authority of India Act, 2008 (the Act) regarding determination of tariff by the Authority were made effective.



- (xv) Keeping in view the above position, the Authority felt that the proposals submitted, inter alia, by IOSL in respect of ITP services be immediately taken up for examination.
- (xvi) Further, in terms of Clause 7.3 & 7.4 of the Guidelines, the Authority shall upon due consideration of the MYTP and stakeholder consultations thereon make a Multi Year Tariff Order (MYTO) for a Control Period. After issuance of the MYTO, the service provider shall submit its ATP. The ATP for the first tariff year of the first control period is required to be submitted within 75 days of the issue of MYTO. As per Clause 11.2, the ATP is required to be submitted in the manner and form provided in AI.8.1 of Appendix I. The proposal is required to be supported by the following:-
- Details of consultations with stakeholders
 - Evidence of User Agreements clearly indicating the Tariff proposal by the service provider and agreed to by the User.

In the instant case, IOSL had submitted the ATP for 2011-12, i.e., the first tariff year of the first control period along with the MYTP itself. The tariffs proposed are supported by the User Agreements.

3. In the 41st meeting held on 07.06.2011, the Authority considered the matter in detail and tentatively decided as under:

- The ITP service provided by IOSL at Bangalore International Airport, Bengaluru is 'material but competitive'. Hence, the Authority may adopt a "Light Touch Approach" for determination of tariff for the 1st Control period w.e.f. 01.04.2011.
- As per agreements between BIAL and IOSL, IOSL was entitled to increase the ITP service fee by 5% w.e.f. 01.06.2010 for a period of 1 year. Another 5% revision has become due w.e.f. 01.06.2011 for a period of 1 year. Since in absence of Authority's approval IOSL has not been able to charge the aforesaid increase, the ITP fee for the period 01.06.2010 to 31.05.2011 and for the period 01.06.2011 to 31.03.2012, as a special case, may also be approved at this stage itself.
- IOSL's request to ensure confidentiality of their financials as well as client confidentiality may be accepted. **Therefore**, while placing MYTP etc. for stakeholders consultation relevant information should be redacted.
- As per Clause 7.3 & 7.4 of the Guidelines, the Authority shall upon due consideration of the MYTP and stakeholder consultations thereon make a Multi Year Tariff Order (MYTO) for a Control Period. After issuance of the MYTO, the service provider shall submit its annual tariff proposal (ATP). However, in the present case, the service provider IOSL has submitted the ATP for the first tariff year 2011-12 along with the MYTP itself. It was observed that IOSL have been rendering services since 01.06.2010 without receiving the enhanced payment, i.e., the 5% upward revision in charges. This has happened as IOSL did not seek the approval of this Authority in respect of the enhanced tariff, as required under S.13 (1) (a) of the AERA Act, 2008. However, it is understood that the Oil



Companies were paying the enhanced fee w.e.f. 1.6.2010 before this Authority's intervention in the matter. Therefore, if a strict compliance with Guidelines is insisted upon, the matter of approval of tariff would get postponed further which would not be in the interest of economic and viable operation of the service provider. In this light, the Authority, as a special case, decided to propose approval of the ATP for the tariff year 2011-12 for stakeholders consultation at this stage itself.

4. Accordingly, a Consultation Paper (No. 06/2011-12), on the above lines, was issued on 07.06.2011 soliciting comments/views of the stakeholders by 21.06.2011.

5.1 Following entities furnished their comments on the Consultation Paper (No.06/2011-12):

- (i) Bangalore International Airport Ltd (BIAL)
- (ii) Bharat Petroleum Corporation Ltd (BPCL)
- (iii) Hindustan Petroleum Corporation Ltd (HPCL)
- (iv) Indian Oil Corporation Ltd (IOCL)
- (v) International Air Transport Association (IATA)

The comments received from the stakeholders were forwarded to M/s IOSL seeking their views on the issues raised therein. M/s IOSL have, vide their letter dated 04.07.2011, submitted their comments on the issues raised by the stakeholders. The comments of the stakeholders and clarification furnished by IOSL have been examined by the Authority in its 44th Meeting held on 26.07.2011. A table indicating the stakeholder comments, IOSL's clarifications and the views of the Authority thereon are indicated, in detail, at Annexure-I.

5.2 It has been observed that IOSL have clarified various issues raised by the stakeholders and that these clarifications are found to be broadly acceptable.

5.3 The ITP rates sought for approval by IOSL, on the basis of User Agreement, are as under:

Period	Maximum Price (in Rs/ Kilo litre)				
	Fuelling Aircraft	Defuelling Aircraft		Re-fuelling De-fuelled Product into an Aircraft	
		Within 48 hrs.	Beyond 48 hrs.	Within 48 hrs.	Beyond 48 hrs.
01.06.2010 to 31.03.2011	210.00	210.00	252.00	231.00	252.00
01.04.2011 to 31.05.2011	210.00	210.00	252.00	231.00	252.00
01.06.2011 to 31.03.2012	220.50	220.50	264.60	242.55	264.60

5.4 Upon careful consideration of material available on record, submissions made by the stakeholders and submissions made by the IOSL, the Authority, in its 44th meeting held on 26.07.2011 approved the proposal made by IOSL.



5.5 The instant Order is being issued pursuant to the Order dated 19.10.2011, issued by the Hon'ble Appellate Tribunal in Appeal No. 12 of 2011, wherein the Tribunal ordered that;

"....It is made clear that even if any final order is passed by the respondent – Airports Economic Regulatory Authority the same shall not be given effect to without leave of this Court."

ORDER:

In exercise of powers conferred by Section 13(1)(a) of the Act, the Authority hereby approves that the Into Plane Service provided by Indian Oil Sky Tanking Ltd. at Bangalore International Airport, Bengaluru, will be regulated under 'Light Touch Approach' during the first control period of 5 years commencing 01.04.2011 and the tariff for the ITP services provided by IOSL at Bangalore International Airport, Bengaluru for the period 01.06.2010 to 31.03.2011 and for the first tariff year 2011-12 is determined, as indicated in para 5.3 above.

This order is subject to the order of the Hon'ble Appellate Tribunal referred to in para 5.5 above viz. that this order of Authority shall not be given effect to without leave of the Appellate Tribunal.

**By the Order of and in the
Name of the Authority**


**(Capt. Kapil Chaudhary)
Secretary**

To

**Indian Oil Skytanking Ltd.,
Fuel Farm Facility,
Bangalore International Airport
Devenhalli,
Bengaluru – 560 300
(Through: Shri T. S. Dupare, CEO)**



Tabulated Statement showing Comments of Stakeholders received in response to the Consultation Paper No.06/2011-12 dated 07.06.2011 on the MYTP submitted by M/s IOSL for ITP Service fee at Bangalore International Airport, Bengaluru.

Annexure-I

Stakeholder	Sl No	Comments by the Stakeholder	Response by Service provider	Remarks of the Authority
Hindustan Petroleum Corporation Ltd	1	IOSL had increased the ITP charges more than double within a span of 7 months of its operation at BIAL. Subsequently the rates were further enhanced w.e.f 01.06.2010 as indicated in the table contained in clause 5 (ii) of the Consultation Paper Nos. 6/2011-12. As such the further revision in ITP Service Fee by 5% w.e.f. 01.06.2011 does not appear to be justified considering that the same has been revised more than double in 01.01.2009 and further increased w.e.f. 01.06.2010.	<p>a. We would like to mention that two agreements were executed one between IOSL and BIAL called the Into Plane Fuelling Service Agreement and the second one called the ITP Agent Agreement was entered into between ITP Service Provider Right Holder (SPRH) i.e. IOSL and the Suppliers.</p> <p>b. The Tariff for ITP Service Fee has been specified in the above agreements.</p> <p>c. Further, as per the ITP Fuelling Service Agreement the rates given show an escalation of 5% year on year.</p> <p>d. Further, the ITP Agent Agreement stipulates that the agency fee shall be subject to revision by ITP Agent, in accordance with the limits set by BIAL from time to time and the Suppliers have agreed to the same and accordingly executed the Agreement.</p> <p>e. In accordance with the above clause, BIAL had revised the Agency Fee w.e.f. 01.01.2009 for the basic rate of fuelling from Rs.73.99 per KL to Rs.200 per KL (as per the table given in HPCL's letter) which had been accepted by all the suppliers and payments have also been made.</p>	<p>After extensive stakeholder consultation process, the Authority has decided to adopt a light touch approach for determination of tariff in the cases where:</p> <p>(a)Service is deemed to be non material</p> <p>(b)Service is deemed to be material but competitive</p> <p>(c)Service is deemed to be material and non competitive but the Authority is assured of the reasonableness of the user agreements.</p> <p>In the present case, the service is deemed material and competitive. Therefore, unless evidence is made available, which would require further analysis/review of the tariff proposal, the tariff proposed by the service provider would normally be approved.</p>



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Stakeholder	Sl No	Comments by the Stakeholder	Response by Service provider	Remarks of the Authority
			<p>f. The Airport operations in Bangalore commenced on 24th May 2008 and we follow the period from 1st June to 31st May as the operational accounting year and the tariff rates are therefore revised every year from 1st June. As mentioned at "c" above and as per the ITP Fuelling Service Agreement the rates show an escalation of 5% year on year basis and therefore the escalation of 5% w.e.f. from 01.06.2010 and another 5% w.e.f. 01.06.2011 are in accordance with the escalation mechanism provided in the ITP Fuelling Service Agreement entered into by IOSL with BIAL.</p> <p>g. We would like to bring to your notice that the input costs including salary & wages, electricity, diesel and other utilities are increasing steadily and hence a 5% cost escalation is justified. The current India Inflation Rate is 8.72% which also justifies the proposed escalation.</p>	
	2	<p>The tariff was arrived on the basis of tender by BIAL, however, HPCL were not privy to the process of fixation and revision of the charge. The charge can be validated by an independent agency for its aptness.</p>	<p>h. The tariff rates were determined by BIAL through a competitive tendering process. Thus, the tariff was determined by BIAL as per the lowest quote and since the same was done through a tendering process and accepted by all the Suppliers in line with the provisions of the agreement,</p>	<p>Refer comments at Sl.No. 1 above.</p>



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Stakeholder	Sl No	Comments by the Stakeholder	Response by Service provider	Remarks of the Authority
			there is no need for another independent agency to validate the same for its aptness.	
	3	As the Agency fee is a pass through item for the Suppliers, i.e. the fee is recovered from the Customers and passed on to the Service Provider (ITP); it would be difficult for us to recover these charges from the customers in the event they are made applicable on retrospective basis. In view of above, it is requested that any upward revision in Charge, as approved by AERA, for the First tariff year 2011-12 should be made from the prospective date only.	i. The escalated rates for the current control period have been submitted to AERA for approval on 10 th March, 2011. The consultation process being undertaken by AERA with respect to the tariff is resulting in a delay in approval of the same. Since the first control period commenced on 1 st April 2011 as per AERA Guidelines and since the rates are escalated as per the duly executed contracts, the rates are to take effect as per the contracts and as per AERA Guidelines. It would be pertinent to point out that payments have already been made by the Suppliers when the rates were revised w.e.f. 01.06.2010. However, on the advice of AERA to IOSL to continue the old rates existing as on 01.01.2009 ie. Rs.200 per kl till AERA determines the tariff, we had refunded the excess amount received ie. Rs.10 per KL back to the suppliers by adjustment from future payments by affording credit to them. Therefore, the suppliers are already aware of the escalation of 5% from 01.06.2010 and have billed and realised the same already from the Airlines. Pending approval by AERA,	IOSL have been rendering services since 01.06.2010 without receiving the payment i.e. the 5% upward revision in charges. This has happened as IOSL did not seek the approval of this Authority in respect of the enhanced tariff, as required under S.13 (1) (a) of the AERA Act, 2008. However, it is understood that the Oil Companies were paying the enhanced fee w.e.f. 1.6.2010 before this Authority's intervention in the matter. Therefore, on balance, the request of IOSL is found to be acceptable.



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Stakeholder	SI No	Comments by the Stakeholder	Response by Service provider	Remarks of the Authority
			<p>the Suppliers have already had the benefit of a credit period of over one year for the differential fees of Rs.10 per KL.</p> <p>j. Since the escalated rates to be paid by the Suppliers can be easily recovered by the Suppliers from the airlines by raising debit notes and for reasons stated above, we do not find any merit in making the rates applicable on a prospective basis or continuing the earlier rates until the day AERA approves the proposed tariff.</p>	
Bharat Petroleum Corporation Ltd	4	At Bangalore International Airport, two service providers are providing ITP services and both are charging the same tariff. Therefore, in effect there is no competition between the ITP service providers.	<p>At the outset, we would like to inform you that BPCL avails the ITP services provided by BSSPL only for all their refuelling requirements at Bangalore International Airport and not of IOSL. However, we offer our replies to their comments/views as given below:</p> <p>It has been mentioned that the two ITP Service Providers at Bangalore International Airport are charging the same tariff and hence in effect there is no competition between the ITP Service Providers. We would like to mention that as per the terms and conditions of a competitive tendering process floated by BIAL, BIAL will award two Service Provider Rights for Into Plane Fuelling to two independent parties and the</p>	The Authority is of the opinion that price alone is not the sole criteria indicative of competition or otherwise. Quality of service is equally important and the users have a clear choice on this count itself.



Tabulated Statement showing Comments of Stakeholders received in response to the Consultation Paper No.06/2011-12 dated 07.06.2011 on the MYTP submitted by M/s IOSL for ITP Service fee at Bangalore International Airport, Bengaluru.

Stakeholder	Sl No	Comments by the Stakeholder	Response by Service provider	Remarks of the Authority
			lowest rate quoted by a party would be the tariff for the ITP services and the other party would also provide the ITP services matching the lowest rate. Though the tariff is the same, there are other important criteria to be met by the Service Providers which relate to the quality of ITP Service provided by them which has to meet the international standards of service parameters and on time performance.	
	5	The ITP charges with provision of 5% annual escalation was unilaterally fixed by the Airport operator without taking any inputs/consultations with users. BPCL would like AERA to look into the basis of the ITP charges and also the escalation factor as the business operation at Bangalore airport have been growing every year.	Their contention that the ITP charges with provision of 5% escalation was unilaterally fixed by the Airport Operator without taking any inputs/consultations with users is not correct as the ITP Agent Agreement entered into by the suppliers (users) was discussed and agreed by them and then only the same was executed. The ITP agent agreement has provision for annual escalation of 5% per annum.	Refer comments at Sl.No. 1 and 4 above.
	6	From the Consultation Paper (No 06/2011-12) Para 3.4 it is seen that IOSL for the period 01.06.2010 to 31.05.2011 has indicated higher rate of tariff. The tariff pertaining to past period if approved by AERA, would result in additional expenditure for fuel suppliers without any scope to recover the same from their customers. BPCL has requested AERA to look into the	As regards their view that the ITP Charges should be approved on prospective basis instead of retrospective basis, we have already covered our views in our responses above at 1 & 10 to HPCL's submissions.	Refer comments at Sl.No. 3 above.



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Stakeholder	Sl No	Comments by the Stakeholder	Response by Service provider	Remarks of the Authority
		basis of fixing ITP charges, escalation formula and competition it creates among the ITP service providers. Till the ITP tariff is finalised, BPCL has requested for permission to pay ITP charges that are currently being charged and whenever AERA approves the ITP charges it may please be approved on prospective basis and not with retrospective date.		
Indian Oil Corporation Ltd	7	<p>(i) ITP charges for various fuelling/ defueling services for the period 01.06.2010 to 31.03.2011 have been arrived at after escalating the earlier charges by 5%. For the period 01.04.2011 to 31.05.2011, same charges have been continued. However since the charges were not approved by AERA at that time, IOCL had not considered the escalated rates for recovery.</p> <p>(ii) The rates indicated for the period 01.06.2011 to 31.03.2012 have been arrived at after escalating the previous year tariff by 5%.</p> <p>(iii) Vide their letter ref. AV/RS/AERA dated 23.03.2011 IOCL had requested AERA that approval of tariffs/rates/including fuel throughput charges for the first control period may please be finalised at the earliest possible and revisions if any, may be made from prospective date. This is important as these charges, which are pass through item for the Suppliers, can be recovered from the customers only on prospective basis.</p> <p>(iv) IOCL has suggested that AERA may</p>	<p>IOCL had mentioned that they have not considered the escalated rates for recovery. When the escalated rate of Rs.210 per KL was made applicable from 01.06.2010, they had made payment to IOSL for the ITP Fees at these Revised Rates from June 2010 to Dec.2010. The differential amount of Rs.10 per KL was refunded by us through credit note in Dec.2010 after we had received instructions from AERA to us not to charge the new rates. So they are very much aware about the escalated rates and have recovered the same from the various Airlines. Similarly, they are also aware of 5% escalation in rate of fees every year as per the ITP agent agreement they have executed with IOSL and therefore their suggestion to AERA to approve the tariff on Prospective Basis as the same can be recovered from their Airline Customers on Prospective Basis only is</p>	Refer comments at Sl.No. 3 above.



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Stakeholder	Sl No	Comments by the Stakeholder	Response by Service provider	Remarks of the Authority
		<p>approve the tariffs, as proposed under clause 5(ii) of the Consultation Paper 06/2011-12, as under:</p> <p>a) Continuation of the ITP rates prevalent on 1.09.2009, in line with AERA order no. 17/2010-11, till the last day of the month in which final order is issued by AERA.</p> <p>b) ITP rates are as mentioned for the period 01.06.2011 to 31.03.2012. However, the same may be made effective on prospective basis, from the first day of the subsequent month, in which AERA issues the order.</p>	<p>not justified. Please also refer our comments given in clause no 1 i & j above relating to our views in our responses to HPCL's submissions.</p>	
International Air Transport Association	8	<p>LATA is of the strong view that the into-plane service fee currently levied by Indian Oil Skytanking Limited (IOSL) of 210 Rs/KL is already on the high side and a further 5% increase in fee to 220.50 Rs/KL from 1st June 2011 is unjustified and unwarranted. The reasons are as follows:</p> <p>(i) The assumption for annual volume growth of 1% is much too low when the AAI projection for annual traffic growth is 10% and for annual aircraft movement growth is 8.4%. If AAI's projected growth percentages were used (all else being unchanged), it would show up that the 5% increase in into-plane fee sought by IOSL would be unjustified.</p>	<p>a. The AAI projection for annual traffic growth of 10% and for annual aircraft movement growth of 8.4% is in general for all Airports taken together and not one particular airport like Bangalore International Airport which accounts for only 8.07% of total fuel throughput in KL of the 14 major airports mentioned in AII 1.3 of Appendix II of the AERA Guidelines of 10th Jan.2011. Moreover, the rate of fees to be charged is very much competitive rate. The other parameters like economies of scale and increased operational efficiency were already factored in the fees and the escalation mechanism.</p>	Refer comments at Sl. No. 1 above.
	9	<p>(ii) IOSL's proposal shows no increase in employee numbers. In the absence of available information in the Consultation Paper based</p>	<p>b. LATA has looked at only the constant employee numbers in isolation and formed a conclusion that IOSL would</p>	Refer comments at Sl. No. 1 and 4 above.



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		<p>on the steady headcount between 2009-10 and 2015-2016, it is expected that IOSL would be able to improve on staff productivity with increasing volumes handled. On that postulation, a reduction in unit cost can be expected and under a truly competitive environment, IOSL would be passing this through as a reduction in fee to its customers (rather than seeking an increase).</p>	<p>be able to improve on staff productivity with increasing volumes handled and has suggested to pass this through a reduction in fee. Considering the inflationary trend in cost of living, the salaries and other allowances would undergo an increase every year due to annual and special increments that need to be given to nurture and retain the best talent over a period of time. The other parameters like economies of scale and increased operational efficiency were already factored in the fees and escalation mechanism. The average salary hike in India is approximately 14% due to robust economic growth experienced in the country.</p>	
	10	<p>(iii) Entities that truly compete should not expect to receive a guaranteed rate of return in the first place. Nonetheless, the post-tax Rate of Return of 12.33% is on the high side for a company supposedly operating in a competitive environment. It is also not clear how the beta value of 0.39 was obtained.</p>	<p>c. Any business entity would definitely expect a fair rate of return on its business. We have submitted to AERA the format prescribed (Form – F5) under the AERA Guidelines which reflects the Post Tax Fair Rate of Return which is reasonable in our view considering the investments made by IOSL in the imported equipments (Hydrant dispensers) which meet world standards for which Long Term Loans from Banks have been taken. IOSL employs technically qualified personnel for providing the refuelling services.</p>	<p>Refer comments at Sl. No. 1 and 4 above.</p>



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			Also the ITP Service provider takes risk for any downward trends in the throughput volumes. Considering the scenario of high Bank Interest Rates prevalent and taking into account that it is only a forecasted figure, the return is not at all on the higher side and rather it is very much in line with the business trends in India.	
	11	(iv) The current rate of 210 Rs/KL is 35% higher than the rate recently approved by AERA for into-plane service fee (applicable from 01.04.2011 - 31.03.2012) at Indira Gandhi International Airport (IGIA). The rate at IGIA is already higher than what is charged at many of the major international airports in the region. If anything, the current rate of 210 Rs/KL at Bangalore International Airport should be reduced by 40-50% to be more in line with regional norms.	d. The rates quoted for both Bangalore and Delhi are based on competitive Tendering Process. Taking into account various factors of cost of operation involved and the volume, etc. the parties who have quoted the lowest rates have been selected to provide ITP Services by the respective Airport Operator namely DIAL at Delhi and BIAL at Bangalore. The rate of fees to be charged was determined through the tender and is a competitive rate and is lower than the rate prevalent anywhere in Europe or USA. It may please be noted that in Europe and USA, the ITP Service rates are varying from USD 5 to 10 per KL and the prevalent rates at Bangalore and Delhi are much lower than those rates.	Refer comments at Sl. No. 1 and 4 above.
	12	(v) Entities operating in a truly competitive environment cannot expect fee increases to be automatic every year. As an analog airlines	e. The fee increase of 5% every year is factored only towards cost escalation. WPI is the most prevalent factor in	Refer comments at Sl.No. 1 and 4 above.



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		<p>do not increase their fares by a guaranteed quantum every year because the nature of a competitive market dictates that airlines need to derive their margins by increasing cost efficiency and improving the value proposition to the customers. AERA must not inadvertently become an avenue for entities operating in a supposedly competitive environment to legitimize unjustified fee increases.</p>	<p>arriving at the escalation of prices. The other parameters like economies of scale and increased operational efficiency were already factored in while quoting during the tendering process. All such factors were considered at the time of bidding and accordingly the lowest quotes were submitted by the bidders. Considering all such factors, the escalation mechanism was incorporated in the Concession Agreement with BIAL and DIAL. Keeping in mind increasing input costs and other parameters stated above, the escalation mechanism was determined and set out in the Concession Agreement. Hence, it would be incorrect to say that the escalation is automatic. As regards, the analogy quoted by IATA the same is not realistic. Not only the fares have been increased every year, they have been increased every time be it a week or a fortnight or a month by all the airlines quoting increase in the cost of fuel, ATF as the reason for increase. Till today no single airline or their associations or body like IATA can give justification for the difference in fares in the same sector they operate and the charges for the same flight they operate where one passenger pays Rs.18,000/- for a seat for which another passenger has paid as</p>	



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			low as Rs.3,000/-. There have also been instances of freebies given by the airlines like travelling in a particular sector "x" number of times entitles one to a free return fare or a free to and fro ticket, etc. The variation in the fares at times are more ridiculous and unjustified and defies any logic that a body like IATA could not answer even during the consultation process that AERA organised for all the stakeholders before formulation of the guidelines. Compared to that the charges for services rendered by ITP Service Providers at the same airport is the same irrespective of the type of aircraft, airlines, number of refuelling, etc.	
	13	(vi) Entities operating in a competitive environment should not have the same fee structure. When two entities openly charge the same, it is a duopoly and it is irrefutable evidence that a competitive environment does not exist. IATA would like to seek clarification from IOSL through AERA that it would be prepared to contract directly with airlines on a negotiated rate if the airlines choose to enter into such an arrangement with it.	f. We would like to mention that as per the terms and conditions of a competitive tendering process floated by BIAL, BIAL will award two Service Provider Rights for Into Plane Fuelling to two independent parties and the lowest rate quoted by a party would be the tariff for the ITP services and the other party would also provide the services matching the lowest rate. Though the tariff is the same, there are other important criteria to be met by the Service Providers which relate to the quality of ITP Service provided by them which has to meet the accepted international standards of service and	Refer comments at Sl. No. 4 above. However, this may not be treated as the Authority's agreement with the IOSL's submissions made herein.



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			<p>the requirements of individual Air Carriers so that there are no aircraft delays due to into-plane fuelling. IATA's contention that entities operating in a competitive environment should not have the same fee structure can be proved wrong in this case of ITP Services. This is because in case the fee structure is not the same and discount in rates is given to the Suppliers on case to case basis then the particular Supplier would get advantage of the same and grab the fuel supply business from other Suppliers. This would be discriminatory and biased and would, in fact lead to unfair competition and do away with the effective service competition in existence. Considering the other way also, if one ITP Service Provider charges a lower rate than the other and all suppliers start utilising his services alone and the other service provider closes down its business at the airport, it will lead to a situation where only one ITP Service Provider will exist. The lone Service Provider after driving out the other competitor(s) may start dictating terms to the airlines and suppliers of fuel by either hiking his rates (and recovers more than what he discounted in the rate earlier) or becoming complacent that there is no competitor leading to drop in the level</p>	



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			<p>of service leading to flight delays, compromising on safety aspects, etc. As regards IATA's query seeking clarification from IOSL through AERA that it would be prepared to contract directly with airlines on a negotiated rate; our clarification is as given below: The business model prevalent at Bangalore and Delhi is different and would not support the above. The Scheme of insurance and fuel supply contemplates that the ITP Service Provider is an agent of the Supplier. This is necessary to ensure adequate coverage under the Aircraft Refuelling Risk Liability Insurance. As such it is the Supplier who enters into contracts with the Aircrafts at the best possible rates, with the ITP Agents fee being fixed and transparent. Any independent contracting by the ITP Agent is not contemplated in the scheme for fuel supply arrangement adopted by BIAL and DIAL and all other Airports in India. This was not part of terms and conditions of the tenders floated by BIAL and DIAL. In fact if the ITP Agent was expected to maintain a marketing team, related infrastructure and hold negotiations directly with Airline Companies, the ITP fee would be much higher than its present levels.</p>	



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			We would also like to bring to the attention of IATA that ITP Service provider having commercial transactions with the Airlines is not in vogue in India and also such transactions as mentioned above were not part of the terms and conditions of the tenders floated by BIAL and DIAL.	

AERVA
2019.03.11.07

