

Airports Economic Regulatory Authority of India

Order No. 5/2013-14

**AERA Building,
Administrative Complex,
Safdarjung Airport,
New Delhi -110003**

**Date of Order: 4th April, 2013
Date of Issue: 23rd April, 2013**

In the matter of the Multi Year Tariff Proposal and Annual Tariff Proposal submitted by Indian Oil Skytanking Limited for Fuel Farm Services Provided at Bangalore International Airport, Bengaluru.

M/s Indian Oil Sky Tanking Ltd. (IOSL), had vide their application dated 10.03.2011, submitted their Multi Year Tariff Proposal (MYTP) for the first control period of 5 years commencing from 01.04.2011 for Fuel Farm Services at Bangalore International Airport, Bengaluru, (BIA) and thereafter made further submission in this regard.

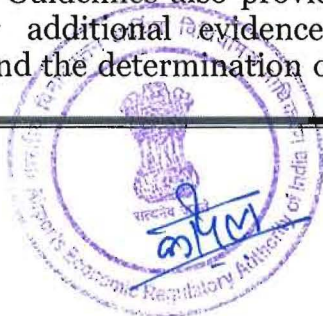
2.1 IOSL sought approval for the tariff for Fuel Farm services for the first control period based on a "light touch approach" as prescribed in Chapter V of the Airports Economic Regulatory Authority of India (Terms and Conditions for Determination of Tariff for Services Provided for Cargo Facility, Ground Handling, and Supply of Fuel to the Aircraft) Guidelines, 2011 (the Guidelines).

2.2 As stipulated in the Guidelines, the Authority followed 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.

2.3 The materiality index with respect to services provided for supplying fuel to aircraft at BIA, based on the information for the year 2010-11, is 9.5% which is more than 5% materiality index fixed for assessing the materiality of the subject regulated service. Hence the service is deemed "material".

2.4 The Guidelines 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". 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.

2.5 In the instant case, the Fuel Farm services at BIA are being provided only by IOSL and hence it is deemed to be “not competitive”.

2.6 Further, as per the Guidelines, based on the assessment of materiality and competition, when such regulated service is deemed “material and not competitive”, the Authority shall then assess the reasonableness of existing User Agreement(s) and where the Authority is assured of the reasonableness of the existing User Agreement(s), the Authority shall determine Tariff(s) for the service providers based on a light touch approach.

2.7 The Guidelines also provide that the Authority shall consider the existing User Agreement(s) as reasonable provided that:

“(i) The service provider submits existing User Agreement(s) between the Service Provider and all the User(s) of the Regulated Service(s), clearly indicating the tariff(s) that are agreed to between the Service Provider and the User(s) of the Regulated Service(s), and

(ii) The User(s) of the Regulated Service(s) have not raised any reasonable objections or concerns in regard to the existing User Agreement(s), which have not been appropriately addressed.

Provided that the Authority may in its discretion consider such other additional evidence regarding reasonableness of User Agreement(s), as it may deem fit.”

2.8 IOSL submitted copies of agreements with M/s Indian Oil Corporation Ltd., Hindustan Petroleum Corporation Ltd, Bharat Petroleum Corporation Ltd, Shell MRPL A.F.S.P.L. and Reliance Industries Limited and stated that all terms of these user agreements are identical and that there is no discrimination amongst the users, as these agreements are executed in consultation with the users after incorporating the users’ viewpoints. IOSL further submitted that existing charges, which include Throughput Fees payable to the airport operator M/s Bangalore International Airport Limited i.e. (BIAL), was introduced prior to 01.09.2009 and the same is being paid by all the users.

3 Further, with reference to Appeal No. 12/2011 filed by BIAL against the Authority’s Order No.05/2010-11, 12/2010-11 & 17/2010-11 and Direction No. 4/2010-11, the Hon’ble AERA Appellate Tribunal (i.e. The Tribunal), vide its order dated 19.10.2011 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.”

The above order passed by the Tribunal is still in force.



4. After careful consideration of the proposal, the Authority issued a Consultation Paper no. 46/2012-13 dated 14.03.2013 (i.e. the Consultation paper) to consider the MYTP and ATP submitted by IOSL for Fuel Farm Services provided at BIA, Bengaluru, wherein the Authority made the following proposal for stakeholder consultation:-

- (i) *The tariff proposal, i.e., MYTP and ATP submitted by IOSL in respect of supply of fuel service provided by way of operation of fuel farm at Bangalore airport be considered. This service is "material and not competitive" at Bangalore airport. But, since IOSL has entered into user agreements, it was tentatively decided to determine tariffs for supply of fuel service provided by IOSL at Bangalore International Airport under "Light Touch Approach" for the current control period.*
- (ii) *The Authority noted that the IOSL is charging Rs. 1500/KL and has termed it as "Fuel Throughput Fee". This "Fuel Throughput Fee" has two components – "Airport Operator Fee" (viz., Rs. 1067/KL) and "Operating Cost and Reserve Fund" (viz., Rs. 433/KL).*
- (iii) *The Authority decided that the "Airport Operator Fee" component of the said "Fuel Throughput Fee" charged by IOSL is to be determined as part of exercise of determination of aeronautical tariffs in respect of Bangalore International Airport.*
- (iv) *The Authority tentatively decided to determine, for the time being, the amount of "Airport Operator Fee" at Rs. 1067/KL towards the component of fuel supply service provided by BIAL at Bangalore International Airport, till its final determination as part of aeronautical tariffs in respect of Bangalore International Airport, based on the tariff proposal submitted by BIAL. Hence, this amount viz., Rs. 1067/KL, which is being charged by BIAL as Airport Operator Fee, will continue to be charged by it presently. BIAL has been charging this fee since about 2008 and not made any increase thereto.*
- (v) *The Authority tentatively decided to determine the "Operating Cost and Reserve Fund" component of the said "Fuel Throughput Fee" at Rs.433/KL for the current control period (w.e.f. 1.04.2011 to 31.03.2016).*
- (vi) *The above tentative decisions are subject to the order of the Hon'ble AERA Appellate Tribunal.*

5.1 In response to the Consultation Paper, the following two stakeholders gave their comments on the proposal contained therein:-

- (i) Indian Oil Corporation Limited and,
- (ii) Shell MRPL Aviation Fuels and Services Ltd.

5.2 Indian Oil Corporation Limited, vide their letter no. AV/RS/AERA dated 28th March, 2013, stated that;



(i) "we agree to the proposal for determining tariffs for service provided by IOSL for supply of fuel at Bangalore International Airport under "Light Touch Approach" for the current control period.

(ii) Indian Oil has been paying IOSL the Throughput Fee of Rs. 1500 per KL, w.e.f. 1st January, 2009, towards storage and handling of Indian Oil's Aviation Turbine Fuel at the Fuel facility at Bangalore International Airport, Bengaluru.

(iii) It is noted that the breakup of Throughput Fee of Rs.1500 per KL has been mentioned as Rs. 1067 per KL towards "Airport Operator Fee" and Rs.433 per KL as "operating Cost and Reserve Fund", both of which elements the Authority proposes to approve. Indian Oil is agreeable for this proposal."

5.3 Shell MRPL Aviation Fuels and Services Ltd., vide their letter dated 28th March 2013, stated that;

"We note that AERA has tentatively decided airport operator fee at Rs. 1067/KL for the time being and not made any increase thereto.

Also we note that AERA has tentatively decided to determine the "Operating cost and Reserve Fund" component of the fuel throughput fee at Rs. 433/KL for the control period for 01.04.2011 to 31.03.2016.

As the above fees are being charged at present at the same levels and there is no increase in these fees, we do not have any specific issues with this consultation paper"

6. The Authority has noted the above comments and observed that the proposals placed for stakeholder consultation have been supported by the stakeholders.

ORDER:

7. Upon careful consideration of material available on record, the Authority, in exercise of powers conferred by Section 13(1)(a) of the Airports Economic Regulatory Authority of India Act 2008, hereby orders that:

- (i) The fuel farm services being provided by M/s Indian Oil Skytanking Ltd. at Bangalore International Airport Limited, Bengaluru are "material and not competitive". In view of the reasonableness of user agreements entered into by Indian Oil Skytanking Ltd. with the users, the Authority decides to adopt 'Light Touch Approach' for determination of tariffs in respect of this service for the first Control Period w.e.f 01.04.2011.
- (ii) The Authority notes that the tariff item, i.e., "Fuel Throughput Fee" has two components: - "Airport Operator Fee" and "Operating Cost & Reserve Fund." The Authority decides to determine the "Airport Operator Fee" component of the tariff items, "Fuel Throughput Fee" as part of the exercise of determination of tariffs for aeronautical services provided by M/s



Bangalore International Airport Pvt. Ltd. (i.e., the Airport Operator) at Bangalore International Airport, Bengaluru.

- (iii) The Authority also decides that, purely for the time being, the "Airport Operator Fee" component of "Fuel Throughput Fee" is determined at Rs. 1067/KL, till it's appropriate final determination as part of aeronautical tariffs in respect of Bangalore International Airport – based on the tariffs proposal submitted by BIAL. This "Airport Operator Fee" is being charged by BIAL as Airport Operator, towards the aeronautical service of supply of fuel provided by it.
- (iv) The Authority determines the "Operating Cost and Reserve Fund" component of the "Fuel Throughput Fee" tariff item as Rs. 433/KL for Fuel Farm Services provided by M/s Indian Oil Skytanking Ltd. at Bangalore International Airport, Bengaluru for the current control period (i.e., from 1.4.2011 to 31.3.2016).
- (v) These tariffs are subject to the order of the Hon'ble AERA Appellate Tribunal in Appeal no 12/2011, viz. *"it is made clear that even if final order is passed by the respondent –Airports Economic Regulatory Authority, the same shall not be given effect to without leave of this court."*

By the Order of and in the Name of the Authority


[Capt. Kapil Chaudhary (Retd.)]
Secretary

To

**Indian Oil Skytanking Ltd. Fuel Farm Facility,
Bangalore International Airport,
Devanhalli, Bangalore -560 300
(Through: Shri T.S. Dupare, Chief Executive Officer)**

