

**[F. No. AERA/20015/DAFFL/2010-11]**  
**Airports Economic Regulatory Authority of India**  
**Order No. 07/2011-12**

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

**Date of Order : 26<sup>th</sup> August, 2011**  
**Date of Issue : 29<sup>th</sup> August, 2011**

**In the matter of the MYTP submitted by Delhi Aviation Fuel Facility Private Limited for approval of Fuel Infrastructure Charges at IGI Airport, New Delhi.**

M/s Delhi Aviation Fuel Facility Private Limited (DAFFPL) had vide their letter No. DAFFPL/AERA dated 09.03.2011 submitted their Multi Year Tariff Proposal (MYTP) for approval of the Infrastructure charges on light touch approach w.e.f 28.07.2010 and pending approval of the tariff as an interim arrangement sought approval to collect the proposed infrastructure charges from users since 28.07.2010.

**2.1 To recapitulate :**

- (i) DAFFPL, vide their letter no.nil dated 26.07.2010, stated that they propose to charge an infrastructure charge (to maximum of) Rs.987.25/KL which will be effected from 28.07.2010; that they have taken over the existing facilities from M/s.Bharat Petroleum Corporation Ltd (BPCL) (storage tanks, hydrants, IT & SCADA systems, equipments, plant, building and ancillary facilities; that they are additionally investing on infrastructure for integrating the existing facility with T-3; that the estimated cost of the project provisionally comes to around Rs.546 crores; that the valuation of assets offered by BPCL was under finalization; and that they have paid an amount of Rs.80 crores to BPCL.
- (ii) The request for approval of charges was made by DAFFPL on 26.07.2010, which was received in the office of the Authority only on 29.07.2010, and the proposed charges were implemented, without waiting for the consideration of the Authority; w.e.f. 28.7.2010, i.e., even before the request was received by the Authority.
- (iii) The Authority, which was in the process of considering the request made by DAFFPL for approval of the new fuel facility infrastructure charges was of the opinion that without the withdrawal of the charges levied by DAFFPL it would not be in a position to effectively discharge its function of determination of the fuel facility infrastructure charges as proposed by them and was further of the opinion that the continuance of the levy of



these charges would be a continuing violation of the provisions of the Act.

- (iv) Accordingly, in terms of powers conferred on it under Section 15 read with Section 13 of the Act, the Authority directed DAFFPL to stop charging the fuel facility infrastructure charges, at IGI Airport, New Delhi, with effect from 28.07.2010 until their request for approval of the charges is decided by the Authority. (Direction No. 02/2010-11 dated 15.09.2010)

2.2 Subsequently, DAFFPL vide their letter No. DAFFPL/AERA dated 09.03.2011 submitted the MYTP seeking approval of the proposed tariff based on light touch approach on their understanding that:

- (i) Service of supply of fuel to aircraft is a material and not competitive service;
- (ii) There are existing reasonable user agreements with the present fuel suppliers at IGI Airport.

2.3 DAFFPL had enclosed "Supplier Agreements" along with the MYTP for considering their proposal on the basis of existing reasonable user agreements. However, it was observed that the "Supplier Agreements" had been entered into by the Operator of the fuel farm facility Indian Oil Sky Tanking (IOSL ) with the fuel suppliers, namely, Indian Oil Corporation Limited (IOCL); Bharat Petroleum Corporation Limited (BPCL); Hindustan Petroleum Corporation Limited (HPCL) and Shell MRPL Aviation Fuels and Services Private Limited (Shell MRPL).

As per Schedule Q of the Concession and Operating Agreement (COA) furnished by DAFFPL, the Supplier Agreement governs how ATF is delivered to, stored and handled in the facility and how the Throughput fee is discharged. Article 22 of the COA provides that the Operator shall enter into Supplier Agreements with qualified and interested suppliers as determined by DIAL

As per the Guidelines issued by the Authority for determination of Tariff in respect of subject services, the Authority shall consider the existing user agreements as reasonable provided that 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).

2.4 The minutes of the stakeholder consultation meeting held by DAFFPL on 10.02.2011 at New Delhi, state that DAFFPL had proposed the annual infrastructure charges as Rs.1018/KL. However, the same was finally agreed at the common figure of Rs.987.25/KL with DAFFPL agreeing to share the details with the users. However, breakup of the tariff had not been furnished and this common figure of Rs.987.25/KL was already communicated to the Suppliers vide DAFFPL's letter dated 27.07.2010.

2.5 In their application, DAFFPL had submitted that though the Annual Infrastructure charges is worked out to be Rs.1018.30/KL, but to honor the existing user agreement Rs.987.25 may be approved w.e.f 28.07.2010 based on light touch approach. Confirmation of agreeing to the infrastructure charges of Rs.987.25, proposed by DAFFPL, is available only from IOCL, vide an email dated 22.02.2011. Further, while DAFFPL had addressed some of the concerns raised by the





stakeholders w.r.t the tariff proposed, one of the stakeholder (Essar Oil Ltd) has expressed the need for more transparency regarding the figures shared and have also observed that the airlines should be made part of the consultative process since the costs are finally borne by them.

3.1 In view of the above and also considering that DAFFPL had not submitted certain information as part of the MYTP, vide letter dated 13.04.2011, DAFFPL were informed that on a preliminary scrutiny of the documents, it would, prima-facie, appear that DAFFPL's claim for being regulated under the "light touch regulation" was not duly supported by reasonable user agreements, specifically with respect to the user charges and that the MYTP does not contain several information which may be furnished to the Authority by 25.04.2011 for further examination.

3.2 DAFFPL submitted that the existing PSU Oil suppliers are in line of agreement to pay the proposed infrastructure charges of Rs.987.25/KL pending approval of this Authority and submitted the following for consideration:

- a) The erstwhile Owner and service provider BPCL used to recover Rs.755/KL as Hydrant charges for IGIA Terminal 2 and Cargo area, and that the same has been confirmed by one of the user of the facility IOCL. BPCL's hydrant charges are prior to the date of 01.09.2009 i.e., before the determination of tariff by AERA.
- b) Additional investment of Rs.211 crores has been made to integrate the facility and creating new hydrant system at Terminal, so the proposed Infrastructure charges of Rs.987.25/KL (increase of Rs.987.25-Rs.755.00=Rs232.25) is reasonable considering the additional investment.
- c) In view of payment embargo DAFFPL has been defaulting in payment of statutory dues, debt servicing, creditors payments, meeting day to day operational expenses and the facility being quite old there is an urgent need to upgrade the infrastructure to maintain safety standard, which is getting delayed due to fund problem.

Hence DAFFPL requested the Authority for an interim relief.

3.3 DAFFPL, vide letter dated 17.05.2011, submitted that as an implication of the Authority's Direction (No.2/2010-11, dated 15.09.2010), DAFFPL was unable to charge infrastructure component of the fuel throughput charges, and as a result is under severe financial crunch and submitted the following for the Authority's consideration:

- a) DAFFPL have taken over the erstwhile facility of BPCL on 14.07.2010 and providing uninterrupted fuelling service, which is an essential service at Terminal-3, without inflow of any revenue since 28.07.2010.
- b) The Operator of fuel farm facilities, IOSL, is managing the facilities without any payment of expenditure, since there was no inflow of cash. There are many areas especially related to safety of operation, which require immediate maintenance which is not being undertaken due to financial crisis. Such non maintenance may jeopardize the total operation of fuel farm and in turn may halt the fuelling operation at airport.
- c) In recent past fuel farm facility has experienced major power failures, one of failures lasted for 58 hours. During the power outage period the total operation was run and managed by genset. The massive power outage was due to ill



maintained and old electrical system. The existing system with no additional back up genset, is unable to sustain the requirement of new terminal and due to financial crisis DAFFPL is unable to procure modern equipments to overhaul the existing system.

- d) Recently, DAFFPL have experienced leakage in the fuel tanks as they are old and need heavy repair and maintenance. Due to financial scarcity, the old leaking fuel tanks are not being repaired and are being kept out of operation leading to less product storage, less backup stock, hamper the fuelling service at airport.
- e) The hydrant pit valves at Terminal 2 and cargo terminal are old and do not comply with international standard. IATA has raised concern on these on their various audit of fuel farm. Hydrant pits valves are not being upgraded due to lack of funds.
- f) The fuelling system in the airport is undertaken with various safety precautions and leak detection system is one of them. Due to fund problem DAFFPL is not able to install leak detection in Hydrant system.
- g) There are many issues which need urgent capital expenditure but the same have not been undertaken because of non availability of funds.

3.4 Apart from the aforesaid indicative operational issues which in DAFFPL's assessment may bring the fuelling operation at airport to a halt, DAFFPL also submitted that:

- a) Apart from contribution from equity holders, DAFFPL has taken a loan to fund the project and there is interest burden of Rs.1.75 crore every month. In the past DAFFPL have defaulted in regular payment of interest and as of date DAFFPL is left with fund for interest payment of May'2011 only. Further repayment of principal is going to begin from July 1, 2011; however there is no fund to honour the repayment of the principal amount.
- b) DAFFPL have defaulted in paying the statutory dues like paying Income tax under provision of Income tax and defaulted in regular paying of tax deducted at source.

4. The matter was considered by the Authority, in its 45<sup>th</sup> Meeting held on 04.08.2011, when upon careful consideration of all the material available on record, the Authority observed that:

- (i) The Oil Companies, who were users of the hydrant facility, appear to have provisioned for an amount of Rs. 987.25 per KL during the period 28.07.2010 to 31.03.2011. DAFFPL had claimed this to be an evidence to support their claim that all users have agreed to the proposed charge of Rs. 987.25 per KL. However, the position is not unambiguous in as much as the DAFFPL had, suo moto, advised the oil companies of their intention to charge Rs. 987.25 per KL w.e.f. 28.07.2010. Therefore, in order to ensure that the advised amount is recovered, the Oil Companies may have provisioned for the same irrespective of whether they agree with the amount or otherwise.
- (ii) BPCL, who were earlier operating this facility, had confirmed vide letter ref HOAV.DAFFPL dated 01.10.2010 that before handing over of the facility to DAFFPL they were charging Rs. 755 per KL as hydrant charges from other users namely IOCL and HPCL.





- (iii) In respect of the charge of Rs. 987.25 per KL while there was an agreement by IOCL and HPCL, BPCL have not agreed to the same. BPCL, vide their letter no. HO.AV.DAFFL dated 20.06.2011, requested this Authority for approval of a charge of Rs. 500 per KL. Therefore, one plausible view is that all Users have agreed to pay to the extent of Rs. 500 per KL only.
- (iv) However, prima facie, there is no evidence that there is an unambiguous user agreement on any of the rates. Therefore, for the first Control Period, the Authority may have to adopt an intrusive price cap regulation.
- (v) DAFFPL had been rendering services since 28.07.2010 but have not been able to charge for their services. Therefore, there is a need to put in place an arrangement in respect of the period 28.07.2010 to 31.03.2011 so as to ensure safe, economical and viable operation of the fuel supply.
- (vi) Keeping in view the above, on balance, the Authority was of the opinion that continuation of charge Rs. 755 per KL, which was being charged by BPCL prior to taking over the facility by DAFFPL w.e.f. 28.07.2010 and upto 31.03.2011 may be the fair option.

5. Shri Prabin Dokania, CFO, DAFFL, who was present to assist the Authority, agreed that since the facility had been taken over from BPCL and BPCL was charging Rs. 755 per KL, for the period 28.07.2010 to 31.03.2011, the Authority may consider this rate as agreed rate. He also requested that for the subsequent period, i.e., 01.04.2011 onwards, the Authority may determine the rates on the basis of their claim made in the proposal.

6. The Authority accordingly decided to make the following proposal for stakeholder consultation:

- (i) The infrastructure charge in respect of the fuel farm services provided by DAFFPL at IGI airport, New Delhi may be determined @ Rs.755/KL for the period 28.07.2010 to 31.03.2011.
- (ii) Prime-facie, there is evidence that there is an unambiguous user agreement on the rates proposed by DAFFPL. Therefore, for the first control period, the Authority may adopt intrusive price cap regulation.

Accordingly, Consultation Paper No.12/2011-12 was issued on 8<sup>th</sup> August 2011, inviting comments of the stakeholders latest by 23.08.2011.

7.1 In response to the above, comments have been received from the following stakeholders:-

- (i) Indian Oil Corporation Limited (IOCL)  
(ii) Hindustan Petroleum Corporation (HPCL)  
(iii) Indian Oil Skytanking Pvt. Ltd. (IOSL)  
(iv) Essar Oil Limited (Essar)  
(v) Reliance Industries Limited (RIL)  
(vi) Mumbai International Airport Pvt. Ltd. (MIAL)  
(vii) Delhi Aviation Fuel Facility (P) Ltd. (DAFFPL)

7.2 The submissions made by the stakeholders are summarized hereunder:

- (i) **IOCL** have stated that BPCL was charging Rs. 755 per KL as hydrant charges from IOCL and HPCL for the period prior to 28.07.2010 for its erstwhile fuel facilities which were catering to T-2 and Cargo Terminals and this rate has been



recognized by the Authority and is now proposed to be approved for the period 28.07.2010 to 31.03.2011.

IOCL have submitted that for commissioning of fuel facilities for Terminal T- 3 and integrating the same with the existing fuel facilities of BPCL, DAFFPL had invested additional amounts to the tune of Rs. 211 crores apart from an additional amount of Rs. 93 crores for purchase of fuel facilities from BPCL.

IOCL have also stated that the infrastructure recovery fees being charged the fuel farm at GHIAL, Shamshabad, with much lesser infrastructure is around Rs. 1500 per KL and considering the above mentioned additional investments by DAFFPL for the additional infrastructure totaling more than Rs. 300 crores, as well as much higher rate prevailing at GHIAL airport, the amount of Rs. 987.25 per KL towards recovery of infrastructure charges appeared reasonable and accordingly acceptance for the same was conveyed by them.

As regards to the proposal contained in the Consultation Paper, IOCL have submitted that the quantum of charges may be decided after taking into consideration the concerns of affected stakeholders and that Indian Oil is agreeable for the charges as long as the same are not more than Rs. 987.25 per KL for the period 2010-2011. Further, they have also submitted that after signing of the Suppliers Agreement with Operator of the facility, the Suppliers had received communication dated 27.07.2010 from DAFFPL for Infrastructure charges of Rs. 987.25 per KL, which to their knowledge was not disproved by any Supplier, and the same was considered for recovery from airlines. However, they have stated that they are not in a position to comment, whether this arrangement tantamount to unambiguous agreement necessitating an intrusive price cap regulation.

IOCL have further requested the Authority for finalizing the infrastructure charges for DAFFPL for the further period from 01.04.2011 at the earliest.

(ii) **HPCL**, vide letter dated 19.08.2011, have indicated that they have no comments regarding the proposed Infrastructure charges in respect of Fuel Farm services provided by DAFFPL at IGI Airport, New Delhi and that the proposed infrastructure charge @ Rs. 755/- per KL for the period 28.07.2010 to 31.03.2011 would be paid to DAFFPL on the basis of AERA's approval. HPCL have no comments on the Authority's proposal for a price cap mechanism for DAFFPL in the 1<sup>st</sup> Control Period.

(iii) **IOSL** have observed that Rs. 755 per KL was earlier charged by erstwhile BPCL as Hydrant Charges for the Hydrant System catering to Terminal T2 and Cargo Terminal. These Hydrant Charges were exclusive of the Operating cost of the Fuel Farm. With the commissioning of Terminal T3, the complete Hydrant System now consists of Hydrant lines of Terminal T2, Cargo and Terminal T3 and that for Terminal T3, the new Hydrant line (longest Hydrant line at any Indian Airport) has been installed at a cost of approximately Rs. 200 Crores and additionally DAFFPL have also paid Rs.93 crores to BPCL as consideration for the existing Fuel Farm facility. DAFFPL through the Operator, Indian Oil Skytanking Limited are operating the Fuel Farm and Hydrant lines of Terminal T2, Cargo and Terminal T3 and considering the additional investments that DAFFPL has made by installing additional assets for enabling the fuelling services at Delhi airport which are





incidentally much more than the ones that were used by erstwhile BPCL, the infrastructure charges of Rs. 987.25 per KL seem to be reasonable.

IOSL have also submitted that due consultation process was followed while finalizing the Suppliers' agreement (User Agreements) and the concerns of suppliers have been addressed and incorporated in the Suppliers agreement; that the User Agreements are based on the guidelines given in the Concession Agreement executed between the Airport Operator, Concessionaire and Fuel Farm Operator. Concession Agreement envisages the mechanism of user charges and service levels and the User Agreements have drawn the mechanism of user charges and services levels from Concession Agreement. IOSL have submitted that the user agreements are identical for all the users and there is no discrimination amongst the users for these and the rates were also informed to the users by DAFFPL prior to the commencement of services and the same have been accepted by all the Suppliers in line with the provisions of the agreement and that it is understood that the suppliers have recovered these charges from the airlines customers which inter alia indicates their acceptance of infrastructure rates.

(iv) **Essar Oil Limited**, vide their mail dated 24.08.2011, have indicated that access by other suppliers to DAFFPL is restricted because:

- Agreement and charges for offsite facility and pipeline owned by PSU's and connecting to the DAFFPL facility is not finalized.
- Direct shipment of product of DAFFPL without the off-site facility is commercially and logistically unviable.

Essar have also stated that the Infrastructure Charges, in their opinion, should be linked to the actual investments done on the facilities and should not be based on earlier charges which were finalized between the PSUs.

(v) **RIL**, vide letter dated 23.08.2011, have submitted that they were one of stakeholders involved in the discussions right from the beginning for finalizing the Suppliers' Agreement with DAFFPL. During discussions, they have always insisted that the access to the ATF On- Site facility should be on Open Access basis, without any discriminatory conditions. However, the Supplier Agreement was offered with restrictive conditions such that the fuel supply can only be made competitively by using the Off- Site facilities, which are controlled by PSU Oil Marketing Companies. Further, RIL have also submitted that the access to Off-Site facility has not yet been offered by the facility owners as yet & thereby preventing RIL to make use of DAFFPL On- Site facility to supply ATF at T3, T2 & Cargo Terminals.

RIL have been following- up with DAFFPL and also with PSU OMCs for getting an access to the Off- Site facilities and the same has remained inconclusive due to denial by PSU OMCs for not being able to extend the access to the Off- Site. In view of this, RIL as well as other Private Sector ATF Suppliers have not been able to meet the requirement of its customers at Delhi Airport.

As regards the infrastructure charges being claimed by DAFFPL, RIL have referred to the meeting called by DAFFPL with all the stakeholders on 10.02.2011 wherein certain queries were raised by RIL as well as other Suppliers on the workings of the infrastructure charges provided by DAFFPL. RIL have stated that, subsequently, though DAFFPL provided certain clarifications, it was not exhaustive and adequate.



Therefore, the consultation process on arriving at consensus on the Infrastructure Charges has remained inconclusive till date.

RIL have submitted that the Infrastructure charges and the workings submitted by DAFFPL require closer scrutiny and validation before their comments and consent could be given and have stated that the suppliers who have agreed to pay the infrastructure charges as claimed by DAFFPL are the PSU OMCs who have successfully blocked entry of RIL and other Private ATF Suppliers to Delhi Airport by not offering the Off- Site facility which is a critical infrastructure support required for accessing DAFFPL On –Site Facility.

In view of the above and as there has been no consensus arrived at in finalizing the Infrastructure Charges, RIL have requested the Authority to take necessary decision with regard to the approach for evaluation the MYTP submitted by DAFFPL on the subject.

(vi) **MIAL**, vide their letter dated 23.08.2011, have submitted that the Authority may consider the documents of user agreements even if they are agreed/ signed and submitted after submission of MYTP, as long as they are submitted to AERA before taking a final decision and that this may be required due to certain practical limitations such as meeting the deadline for filing the proposal pending receipt of formal agreement with users or completion of consultation process with users etc. MIAL have submitted that;

- (i) Infrastructure charge of Rs. 755 per KL as proposed by the Authority may be accepted for the period till 31.03.2011.
- (ii) AERA may consider the user agreements received later also and adopt light touch approach for 1<sup>st</sup> Control Period.

(vii) **DAFFPL**, vide letter dated 18.08.2011, have stated that while the consultation paper is comprehensive and exhaustive, they are of the view that the following few paragraphs and facts require modifications, as mentioned in the columns captioned ‘Comments’:

Para No	Stated	Comments
2.2	It was observed that the “Supplier Agreements” had been entered into by the Operator of the fuel farm facility Indian Oil Sky Tanking (IOSL) with the fuel suppliers, namely Indian Oil Corporation Limited (IOCL); Bharat Petroleum Corporation Limited (BPCL); Hindustan Petroleum Corporation Limited (HPCL) and Shell MRPL Aviation Fuels and Services Private Limited (Shell MRPL)	It is clarified that as per the Concession and Operating Agreement (COA), the Operator is authorized to enter into ‘Suppliers’ Agreement. Further Clause 13.1 of the ‘Supplier’s Agreement’ envisaged that throughput fees will be notified by DAFFPL to the suppliers.





Para No	Stated	Comments
3.3.2	However, it was not clear from the documents submitted whether HPCL had made an unqualified payment or not.	HPCL has made the payment without any qualification/ conditions.
3.3.5	As per DAFFPL, BPCL have also agreed to the proposal and have confirmed vide an email that they will abide by the provisions of the Suppliers Agreement in connection with the Concession Agreement and will pay the infrastructure charges accordingly. However, the email dated 29.04.2011 from BPCL is also post submission of the MYTP by DAFFPL.	The Suppliers Agreement was signed with BPCL on 13.07.2010 and email dated 29.04.2011 was only a reconfirmation that they continue to abide by the clause of the Suppliers Agreement including clause 13.1
4.1(i)	Therefore, in order to ensure that the advised amount is recovered, the Oil Companies may have provisioned for the same irrespective of whether they agree with the amount or otherwise.	It is our understanding that the oil companies have already recovered this amount from Airlines.
4.1(iii)	In respect of the charge of Rs. 987.25/ KL while there is an agreement by IOCL and HPCL, BPCL has not agreed to the same. BPCL have vide their letter no. HO.AV.DAFFPL dated 20.06.2011, requested this Authority for approval of a charge of Rs.500 per KL. Therefore, one plausible view is that all Users have agreed to pay to the extent of Rs. 500/ KL only.	BPCL vide letter no. HO.AV.DAFFPL dated 20.06.2011, requested the Authority for approval of Rs. 500/KL purely as an adhoc arrangement till the time the Authority approved the final charges. Para 5 of BPCL's subject letter dated 20.06.2011, clearly confirms that BPCL is willing to pay additional amount as per the final order in such an eventuality. It may kindly be noted that the other two suppliers have already agreed to pay the Infrastructure charges Of Rs. 987.25/KL

In respect of the Authority's proposal for determining the rate of Rs.755/- KL for the period 28.07.2010 to 31.03.2011, DAFFPL have submitted that Rs.755 per KL was already in vogue. The infrastructure service was rendered by BPCL as "Hydrant Charges" for the Hydrant System catering to the Terminal 2 and the Cargo Terminal and with the commissioning of Terminal 3, DAFFPL took over the hitherto existing Hydrant Infrastructure of Terminal 2 and Cargo at a consideration of Rs.93 crore



(excluding transfer cost) from BPCL, while incurring additional capital expenditure of Rs.212 crore for the new Hydrant System at Terminal 3 and integration of same with the hitherto existing facility. Further as part of concession condition, DAFFPL had to make deposit of Rs. 75 crore as interest free security deposit and the charge of Rs. 987.25 / KL was determined, considering all the above referred infrastructure costs as well as the day operational costs that are incurred by the facility operator.

In response to the Authority's proposal for adopting a price cap mechanism, DAFFPL have submitted the following for consideration:

- a) In accordance with Suppliers' Agreement Clause No.13.1 DAFFPL had intimated about the proposed infrastructure charges of Rs. 987.25 / KL to existing fuel suppliers vide letter ref DAFFPL/ 2010-11/37 dated 27.07.2010.
- b) IOCL and HPCL have confirmed acceptance of infrastructure charges of Rs. 987.25/KL
- c) BPCL had confirmed through e-mail that they will abide by the provisions of the Suppliers Agreement in connection with the Concession Agreement and will pay the infrastructure and other charges accordingly.
- d) Presently, only three PSU oil suppliers are operating from IGAI Terminal 3 and other suppliers, viz RIL, Essar Oil Limited and Shell MRPL Aviation Fuels and Services Private Limited have not yet started using the infrastructure facility, although open access facility exists at IGIA, Terminal 3.
- e) The existing oil suppliers of IGIA, Terminal-3 have already factored Rs. 987.25/KL as Infrastructure Charges (including the Operating charges) in their pricing to airline customers and same is being recovered by them from the airlines since 28.07.2010 onwards.
- f) All the fuel suppliers, including BPCL have confirmed the quantity uplifted during the period 28.07.2011 to 31.03.2011 and have made provision in the respective books of accounts F@ Rs. 987.25/KL on account of 'Infrastructure Charges'.

Based on the above facts, DAFFPL have submitted that it can be established that present oil suppliers at Terminal 3 are in reasonable agreement to pay the proposed Infrastructure Charges of Rs. 987.25/ KL.

8.1 The Authority, in its 48<sup>th</sup> Meeting held on 26.08.2011, considered the submissions made by the stakeholders and observed that the stakeholders have essentially submitted the following :-

- (i) MIAL have agreed to the infrastructure charges of Rs.755/- KL proposed in consultation paper. Further, they have also submitted that the Authority may consider the user agreements and adopt a light touch approach for the 1<sup>st</sup> control period.
- (ii) IOCL have submitted that the quantum of charges may be decided after taking into consideration the concerns of affected stakeholders and they are agreeable for the charges as long as the same are not more than Rs.987.25/- KL for the period 2011-12.
- (iii) HPCL, have not offered any comments but have submitted that the Infrastructure charges @ Rs.755/- KL for the period 28.07.2010 to 31.03.2011 would be paid to DAFFPL on the basis of AERA's approval.
- (iv) IOSL have submitted that the rate of Rs.987.25/- KL, which include the operating charges of the Operators (i.e. IOSL), seem to be reasonable and have





also submitted that reasons justifying the reasonableness and unambiguous nature of the user agreements and to consider the proposal under light touch mechanism.

- (v) RIL and Essar have submitted that the Supplier Agreements offered were with restrictive conditions such that fuel supply can only be made competitively by using the off-site facility controlled by the PSU Oil Marketing Companies and access to off-site facility has not yet been offered by the facility owners and thereby preventing them to make use of DAFFPL on site facility. The submission made by RIL and Essar appear to be issues which require to be resolved by the PSU Oil Companies and not DAFFPL and hence not relevant.
- (vi) While Essar have submitted that the infrastructure charges should be linked to actual investments and not based on the earlier charges RIL have submitted that the same requires to be evaluated as per the MYTP submitted by DAFFPL.
- (vii) DAFFPL have through their submissions requested the Authority to consider the charge of Rs.987.25/- KL and have also stated that the existing oil suppliers at T3 are in reasonable agreement to pay the infrastructure charges of Rs.987.25 KL.

8.2 The Authority also observed from the stakeholder comments that HPCL, one of the existing users of the facility, have even at this stage not agreed to the charge proposed by DAFFPL and have submitted that the Infrastructure charges @ Rs.755/- KL for the period 28.07.2010 to 31.03.2011 would be paid to DAFFPL on the basis of AERA's approval. Further, BPCL have not furnished any comments. This only further substantiates the view that there is no evidence that there is an unambiguous user agreement on any of the rates. Therefore, for the first Control Period, the Authority may adopt an intrusive price cap regulation.

8.3 The Authority noted that the rate to be determined is for the period prior to the control period, i.e., 28.07.2010 to 31.03.2011 and BPCL, who have been rendering the service prior to 28.07.2010, have been charging infrastructure charges of Rs.755/KL (confirmed by BPCL vide letter ref HOAV.DAFFPL dated 01.10.2010 before handing over of the facility to DAFFPL). Any determination for 1<sup>st</sup> control period starting from 01.04.2011, shall be based on the rates determined under the intrusive price cap regulation when the issues regarding capital investment etc raised by IOCL, IOSL and DAFFPL and their impact on the charges would be examined in detail.

8.4 As regards the comments of RIL and ESSAR regarding the present arrangement not being a truly open access system are arising out of their inability in coming to an arrangement with the PSU Oil Companies regarding usage of pipe lines/ off-site facilities owned by the PSU-Oil Companies. The Authority felt that these are relevant issues as they indicate likelihood of unfair trade practices/competition issues which further substantiate the need for adoption of a price cap approach. However, the remedy in these matters lies with the Competition Commission of India. Therefore, in case RIL and ESSAR so deem fit they may approach the competent authority for redressal of their grievances. The Authority also observed that both RIL and ESSAR are, presently, not the users of the subject facility and the charges are being, at present, proposed to be determined for the limited period of 28.07.2010 to 31.03.2011.

## ORDER



9. After careful consideration of the material available on record including stakeholder submissions and keeping in view its observations/findings above, the Authority in exercise of powers conferred by Section 13(1)(a) of the Act, hereby orders that :

- (i) The infrastructure charge in respect of the fuel farm services provided by DAFFPL at IGI airport, New Delhi is determined @ Rs.755/KL (inclusive of operator's fee) for the period 28.07.2010 to 31.03.2011;
- (ii) The tariff for the first control period may be determined under price cap regulation.

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

  
**(Sandeep Prakash)**  
**Secretary**

**To,**

Delhi Aviation Fuel Facility (P) Ltd.  
New Udaan Bhawan, Terminal 3,  
Opp. ATC Complex,  
International Terminal IGI Airport,  
New Delhi - 110 037  
**(Through : Shri Prabin Dokania, Chief Financial Officer)**

