BEFORE THE ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION

11-4-660, Singareni Bhavan, Lakdi ka pool, Red Hills, Hyderabad – 500 004

Submission made by M. Thimma Reddy on behalf of People's Monitoring Group on Electricity Regulation on 23-05-2011 (in I.A. No.5 of 2011 in O.P. Nos. 11 of 2009)

1.1 In spite of the importance of the issues involved in the amendments proposed to PPA with Konaseema Gas Power Limited and its implications on PPAs with other three companies namely GVK, Gauthami and Vemagiri no public notice was issued before the APERC initiated hearings on the same under I.A.No. 5 of 2011 in O.P.No.11 of 2009. Besides this, while the petition was admitted under O.P.No. 11 of 2009 the other parties to this petition other than Konaseema Gas Power Limited and APDISCOMs were not notified about the admission of the petition and ensuing hearings. One of the parties to the present petition Mr. M. Venugopala Rao came to know about the hearing and alerted other parties who were participating in the process on behalf of the public. If Mr. Venugopala Rao had not chanced upon the hearings on amendments to PPA with Konaseema Gas Power Limited such an important issue that has huge financial burden on the consumers would have been decided without the participation or knowledge of those who had participated in the proceedings in the past, let alone the public. This goes against participatory and transparent regulatory process envisaged in the AP Electricity Reforms Act 1998 and the Electricity Act 2003. According to Section 86 (3) of the Electricity Act 2003 "The State Commission shall ensure transparency while exercising its powers and discharging its functions."

1.2 Konaseema Gas Power Limited in its petition submitted that the two open cycle gas based power generating units were ready prior to July 2006 and steam generating unit was ready by October 2006, and 01-07-2006 ought to be taken as the date from which Konaseema was ready to commission its gas turbines. In other words 01-07-2006 ought to be taken as the start date for computation of capacity charge. It contended that the APTRANSCO, APDISCOMs and GoAP colluded to see that it was denied inter connection facility, start up power and gas supply to declare COD by the above date. To redress this it is demanding a recovery of capacity charges to the extent of Rs. 1411.88 crore through imposing additional fixed charge of Rs. 0.70 per unit of power generated in the coming days. We are of the considered opinion that there are no grounds to concede the remedy sought by Konaseema Gas Power Limited.

INTERCONNECTION RELATED ISSUES

2.1 Konaseema Gas Power Limited in its submission dated 17th March 2011 stated that capacity charge payable by APDISCOMs from the start date of 01-07-2006 and end date of 30-06-2010 is Rs. 1411.88 crore. One of the reasons for the recovery of these capacity charges was that inter connection facility and start up power were not provided even though their machinery was ready for power generation. According to their own submission dated 17-03-2011 at paragraph number 8 inter connection facility and start-up power were provided in July 2006. Then this implies that lack of inter connection facility and start-up power cannot be a reason to claim recovery of capacity charges from July 2006.

2.2 The above facilities were provided under a mutually agreed agreement outside the PPA and it was meant for performance testing but not for declaration of COD. Konaseema Gas Power Limited had agreed to this provision. Now to say that it was not provided above facilities is not correct. The developers cannot claim losses on account of refusal of DISCOMs to provide interconnection facility.

GAS RELATED ISSUES

3.1 Another reason attributed by the Konaseema Gas Power Limited for delay in declaring COD, even though their plant was ready for power generation, was lack of gas supply. They want the consumers to bear this burden of delay in supply of gas.

3.2 Here it is important to note that according to Government of India's Ministry of Power Resolution A-27/94 – IPC (Vol-II) dated 06th November 1995 "the responsibility of either indigenous or imported fuel linkage would be that of the Independent Power Producer (IPP) and any fuel supply risks would have to be shared between the IPP/Fuel supplier. The State Electricity Board will not take any fuel supply risk." As this Resolution is quite clear as to who has to bear the risk of non-availability of fuel, gas in the present case, the Konaseema Gas Power Limited cannot escape from its responsibility of bearing this fuel risk.

3.3 Konaseema Gas Power Limited entered in to one sided Fuel Supply Agreement (FSA) with GAIL. While it imposes take or pay clause in the event of failure of Konaseema Gas Power Limited to utilize gas allocated to it there is no corresponding provision to make GAIL pay compensation in case it fails to supply the agreed quantity of gas. According to Article 5.02 of the Fuel Supply Agreement with GAIL dated 9th October 2000 "Upon the BUYER failing to lift the aforesaid minimum guaranteed quantity of GAS during any month, the BUYER undertakes to pay for the said minimum

guaranteed monthly quantity for such month." In the case of failure of SELLER in the present case GAIL there is no provision for penalty or disincentive. According to Article 5.01 of the FSA GAIL will supply gas "subject to availability of GAS and SELLER's ability to supply the same." Now this one sided agreement is being forced on to the consumers in the form of additional fixed charges. Instead of forcing the gas supplier to meet its obligations they have taken the consumers as an easy prey. The same trend also seems to continue with the gas supply from RIL.

3.4 The IPP had obtained consent for PPA and made investments based on the assurance/agreement with ONGC, GAIL, GoI and GoAP. If these assurances/agreements are not honoured then other parties to this agreement like GAIL and ONGC should make good whatever losses the developer is speaking about, but the same cannot be forced on the consumers. Konaseema Gas Power Limited in its submission dated 02-04-2009 in the hearing on O.P. No. 11 of 2009 stated, "…the same GAIL within a short time thereafter, lifted their hands and wriggled out of the GSAs leaving IPPs high and dry…"(Paragraph. 7). Then, why did the IPPs not question the GAIL? Why did they not seek legal redress for violation of a legal agreement? In the same submission they stated, "In all this Government interference and control, it is unthinkable that IPPs can take "Fuel Risk". If that was case, how could they enter in to Gas Supply Agreement with GAIL in the first place? If the Governments' policy stance was so uncertain why they never questioned it?

3.5 While Konaseema Gas Power Limited is moving all the bodies to force gullible consumers to pay up for this lack of gas, they never questioned the gas suppliers or the policy makers who are behind this constant changes in the gas supply policy in any judicial body.

3.6 According to Article 7.2 (g) of PPA dated 31st March 1997 with Oakwell Engineering Limited the Board (later DISCOMs) agrees to "make all reasonable efforts to assist the Company to obtain the issuance of the Fuel Linkage i.e., the required Permits from the GOAP and GOI allocating to the Project the right to obtain and use quantities of fuel to generate electricity at a PLF of 100% (the "Fuel Linkage"), subject to any actions of the Company, which may be required in connection therewith, within sixty (60) days of the date of execution of this Agreement or as soon thereafter as practicable provided that the Scheduled Date of Completion of the last Unit and all prior dates for the Company's performance hereunder shall be deemed to be extended day-for-day for each day of delay reckoned from 61st day in the issuance of the Fuel Linkage." This implies that Board/DISCOMs will help or assist the Company in obtaining the fuel linkage but it is not binding on the Board/DISCOMs to obtain fuel linkage for the Company. In the PPA dated 26th May 2003 with Konaseema Gas Power Limited the Article 7.2 (g) is "Intentionally left blank". This means that KGPL did not want any 'assistance' in this regard. Various items listed under Article 7.2 refer to obligations of APTRANSCO

(DISCOMs) under the PPA. These include inter connection facility, procurement of land and water, electricity for construction, start up, commissioning and testing, and GoAP's Guarantees. But this section did not include the obligation of APTRANSCO (DISCOMs) to secure fuel linkage. When there is no obligation under the PPA on APTRANSCO (DISCOMs) to secure fuel linkage for the power plant why impose additional fixed charges in order to recover losses said to be incurred by the developer due to lack of gas to operate the plant?

3.7 The APERC vide its Order dated 14.12.2004 stated, "Having given assurances about adequate supply of natural gas during the entire duration of PPA, the Commission expects that the developer shall make all reasonable efforts to ensure that uninterrupted supply of natural gas is available at least from 01-01-2007." From this also it is clear that the obligation on securing adequate supply of natural gas was on the developer, but not on the DISCOMs.

3.8 It is very important to note that as mentioned by APDISCOMs in their reply affidavit submitted on 2nd April 2011 (paragraph 4(d)) even after providing gas connection the company took 15 months to establish readiness and declare its availability. So lack of gas availability cannot be shown as a reason to claim capacity charges from a previous date. Their claim that the plant is ready by July 2006 cannot be considered as a fact. Because of this the claim of Konaseema Gas Power Limited for Rs. 1411.88 from July 2006 cannot be maintained.

3.9 The Commission in its Order dated 05-12-2009 in O.P.Nos. 9 to 12 of 2009 stated, "In all the above options, the issue of future gas risk beyond 31-03-2009 would have to be appropriately addressed." (paragraph 61) As the Central Government's fuel policy makes it abundantly clear that the fuel risk is with the developer but not with the Board (DISCOMs) there are no grounds to shift the fuel risk even in future on to the DISCOMs and in turn on to the consumers.

ALTERNATE FUELS RELATED ISSUE

4.1 The developers claim that they have done a service by not using alternate fuels. The developers are claiming that they could have declared COD by using alternate fuels but they were forced by the APDISCOMs and the GoAP from not doing so. But the fact is that those fuels are not available in sufficient quantities to run these plants. These alternate fuels are also in short supply. In the past Dhabol power plant in Maharashtra and two NTPC plants in Gujarat could not source sufficient quantities of these alternate fuels though there was demand in those states even for costly power. Experience during the year 2008-09 in our state showed that the IPPs, which were allowed to generate power with alternate fuel were not able to source sufficient quantity of these fuels.

4.2 Here it is pertinent to note that IPPs have appended only the Gas Supply Agreements to the amended PPAs of 2003. Fuel supply agreements for the supply of alternate fuels like naphtha were not made part of the above PPAs. Here it is to be noted that they did not have Fuel Supply Agreements for alternate fuel. At present there is no allocation of alternate fuel to this plant. It is to be reaffirmed that even this Gas Supply Agreement is toothless. It is the developers' responsibility to source sufficient fuels.

4.3 Initially in 1997 EPS Oakwell Power Limited were issued Furnace Oil Linkage. This linkage was provided only for 7 years. Considering the non availability of this fuel for the PPA period fuel was changed to natural gas in 1998. (Paras 7 to 9 of Recital, of the PPA dated 26th May 2003). Now the developer company is saying that they should be paid fixed charges for not using the alternative fuel. Fuel was changed to gas because of lack of availability of these alternative fuels. When PPA was first signed the capacity of the plant was 100 MW. They were not sure about the availability of furnace oil (alternate fuel in terms of the present PPA but it was the only fuel mentioned in the earlier PPA signed in 1997) for 100 MW plant. Now the plant capacity was revised upwards to 445 MW. When they were not able to source liquid fuel for 100 MW plan can they source such fuel for 445 MW plant? Even the fuel supply agreements were entered only for gas but not for alternate/liquid fuels.

4.4 A kind of scare is being created that once COD is declared fixed charges need to be paid to the developer. But the fixed charges need to be paid only if the DISCOMs direct the developer to backdown the plant. If the plant is not generating power at minimum PLF because of the failure of the developer to secure fuel or for other reasons for which the developer is responsible then the developer need to pay penalty as laid down in Section 3.6 of the PPA. But this aspect of the responsibility of the developer is concealed and only one sided story of the need to pay fixed charges is being repeated.

4.5 Just to take as an example, the LVS mini power plant at Visakhapatnam was paid fixed charges every year to the tune of Rs. 25 crore without it producing a single unit of electricity as it was asked not to generate power using 'costly' alternate fuel, in this case HSD. Even when the DISCOMs were purchasing power at higher rates in the open market it did not ask LVS to generate power. In the name of saving consumers from high cost power white elephants like LVS are being thrust on the gullible consumers. It is important to take lid off this bluff. There are not enough alternative fuels to run hundreds of MWs of power plants. But in order to save the developers from fuel risk and the obligation to pay penalties in the event of lower PLF they are being given various concessions in the name of lessening the burden on the consumers.

4.6 We would like to know whether at present Konaseema Gas Power Limited's power plant has dual fuel facility, i.e., whether necessary machinery is installed to use alternate

fuel/furnace oil in power generation in the absence if gas availability. The Commission may verify this fact. If the necessary machinery for dual fuel usage was not put in place and the alternate fuel provision were removed along with some concessions for not using alternate/dual fuel the developer would be getting undue benefit without incurring corresponding expenditure.

4.7 Under the original PPA signed in 1997 there was no provision for alternate fuel. Furnace oil/liquid fuel was the only fuel. Now in the name of not allowing alternate fuels undue benefits are being given to the developer at the cost of the consumers in the state.

COD RELATED ISSUES

5.1 Another issue related to the date from which COD is to be taken as effective is the Commission's Order dated 14-12-2004 [in re file No.E-357 (A)]. In this Order the Commission laid down that the Schedule Date of Completion (SDoC) shall be extended day-to-day for any delay resulting from non-availability of gas before January 1, 2007. This Order was given after the DISCOMs and Developers including the Konaseema Gas Power Limited placed mutually agreed suggestions before the Commission to postpone the SDoC. At the minimum any date earlier to this cannot be considered as COD. Following this it is quite obvious that the date of 01-07-2006 cannot be taken as a start date for calculation of recovery of capacity charges.

5.2 Konaseema Gas Power Limited argued that as they were denied gas linkage in time they could not declare COD. But while gas linkage was provided from February 2009 Konaseema Gas Power Limited could declare COD only on 30-06-2010 i.e., 15 months after gas was supplied. This shows that the plant was not ready all these days.

5.3 Konaseema Gas Power Limited also has come up with a novel idea of imposing Force Majeure provisions to conceal its inability to declare COD before 30-06-2010. According to section 10.1 (ii) (5) of the PPA one of the Non-Political Force Majeure events may comprise catastrophic failure of major components or equipment excluding however, normal wear and tear or inherent defects or flaws in materials or equipment. Konaseema Gas Power Limited in its submission dated 17-03-2011 claimed that on account of a catastrophic failure of major components of the steam turbine it was unable to commence operation of steam turbine (para 15). But this is just a ruse to cover up its gross inability to operate the system efficiently. In the letters appended to the above submission as Annexures 59 – 61 the problems are mentioned as 'unforeseen problems', 'unexpected technical problems' and 'unresolved technical snags'. Nowhere these problems or snags give an indication of an incident of catastrophic proportions. This is a pure and simple case of the plant not being ready to generate power. But they are trying to conceal it as a case of Force Majeure.

5.4 Konaseema Gas Power Limited has attributed the failure of the machinery to the delay in operationalising the machinery long after their installation. The KGPL argument is that the steam turbine failed due to keeping the plant idle for 3 year. Konaseema Gas Power Limited itself has stated that it had procured the services of TDS Technical Drying Services (Asia) Pvt. Ltd. with the responsibility of 'preservation of Gas Turbines & Generators, Steam Turbine Generators, Condenser, Extraction Pumps, High Pressure Boiler Feed Pumps' (Annexure – R-38). If the machinery failed even after dry maintenance contract the contracted agency shall pay for it, not the consumers. If the failure of the machinery was because of the idle conditions of the machinery and improper preservation of the machinery Konaseema Gas Power Limited may claim damages from TDS Technical Drying Services (Asia) Pvt. Ltd., but not from consumers.

5.5.1 The Commission in its Order dated 05-12-2009 observed, "…Any quantification of the entitlement of IPPs for fixed charges prior to 01-04-2009 has to be done keeping in view the circumstances of the negotiations which preceded the filing of the request for the consent for the amendments and the state of readiness on the part of the IPPs, but for these circumstances, to declare COD…" (paragraph 15) Availability of natural gas, the primary fuel, in adequate quantities is the important condition of 'readiness' to declare COD. COD can be declared with natural gas, the primary fuel only. As the natural gas was not available to the plant before the date mentioned above COD cannot be declared before that. In these circumstances it is to be understood that "the negotiations which preceded the filing of the request for the consent for the amendments" was meant to save the IPPs from fuel risk and transfer the entire burden on DISCOMs and in turn on to consumers. And this was not done in public interest.

5.5.2 The Commission in its above Order also observed, "…Theoretically, the IPPs would have declared COD on a date prior to 01-04-2009 and theoretically, fixed charge payment might have become due for the period from the date of COD to 01-04-2009." (paragraph 14) We would like to submit that even this theoretical possibility is premised on fulfilling two important conditions. One of it is that inter connection facility and startup power are provided. Second one is the availability of primary fuel, natural gas in the present context. Power inter connection facility and startup power were provided way back in the year 2006. But natural gas was not available prior to the above date. Given this fact it has to be concluded that "theoretically" also it is not possible to declare COD prior to 01-04-2009.

5.5.3 The Commission in the above Order felt, ""…It would not be fair to deny fixed charges entitlement to the IPPs on the ground of non-declaration of C.O.D., as such by them." (paragraph 15) According to the existing PPA the project is not entitled for fixed charges before the declaration of COD.

5.6 The existing PPA or the extant Acts or Rules and Regulations do not provide for notional COD. Only the actually occurred CODs need to be taken in to account for any computation. In the present case the COD that the need to be taken in to account is 30-06-2010 when the combined cycle plant became operative.

LIQUIDATED DAMAGES

6.1 According to section 1.1 (54) of the PPA dated 26 May 2003 with Konaseema Gas Power Limited, "In case of a delay in achieving the scheduled date of completion of the last unit, the company shall pay as liquidated damages to the APTRANSCO, a sum of Rs. 50,000 per day for the first one hundred and eighty (180) days of delay and Rs. 3,50,000 per day for delay in excess of one hundred and eighty (180) days, for each 100 MW of capacity or any part there of." According to the Commission's Order dated 14-12-2004 the COD was postponed to 01-01-2007. According to the submissions of Konaseema Gas Power Limited while open cycle COD was declared on 04-06-2009 project COD was declared on 30-06-2010. The developer according to the provisions in the PPA is obliged to pay liquidated damages for the period 01-01-2007 to 30-06-2010, for 445 MW capacity plant. Given the above provisions we request the Commission to direct the APDISCOMs to recover liquidated damages to the tune of Rs. 155 crore from the developer.

DISINCENTIVES

7.1 The amendment to Explanation to Article 3.6 is as follows, "Provided that the Company shall not be liable **to pay** any penalty under this **Article** to the extent it is due to lower PLF arising out of non-availability **or partial availability of Fuel to operate the project at installed Capacity**." This is nothing but a clear and open attempt to shift the fuel risk from the developer to the consumer. This shall not be given consent by the Commission.

BALANCING OF INTERESTS OF ALL STAKEHOLDERS

8.1 The regulatory process is intended to balance the interests of all stakeholders of power sector in the state. According to Section 11(e) of the Andhra Pradesh Electricity Reform Act, 1998 the Commission shall be responsible "to regulate the purchase, distribution, supply and utilization of electricity, the quality of service, the tariff and charges payable keeping in view both the interest of the consumer as well as the consideration that the supply and distribution cannot be maintained unless the charges for the electricity supplied are adequately levied and duly collected". According to Section 11(f) the Commission shall be responsible "to promote competitiveness and progressively involve the participation of private sector, while ensuring fair deal to the consumers". Similarly, according to the preamble to the Electricity Act 2003 one of the objectives of

the Act is protecting interest of consumers. The present petition filed by the DISCOMs only addresses the losses said to be suffered by the developer who has set up a gas based power plant in the state. They do not address burden borne by the consumers because of the failure of the Developer to start power generation from these plants in time as envisaged in the PPAs. Consumers suffered heavily as they are forced to pay higher tariffs as power from costly sources was procured in the absence of power generation from these plants. State government also had to meet huge expenditure because of this high cost power purchases. Added to this consumers had to suffer from frequent, long power supply interruptions. 5372.37 MU of power was procured from the market during the year 2008-09 at a cost of Rs. 4,298.39 crore with an average market price of Rs. 8 per unit. If the same power was generated from these plants it would have cost less than Rs. 2.50 per unit. This implies that consumers in the state paid Rs. 5.50 per unit more to access power in the market. This implies that at the aggregate level the consumers in the state had to pay Rs. 2,955 crore because of the market purchases. Compared to this all the four Developers including Konaseema Gas Power Limited are said to have lost Rs. 1020 crore in a year because of non-realization of fixed charges. Consumers' burden is nearly three times more than that of the Developers. The proposal to recover non-realised fixed charges from consumers implies burdening those who had already bore more than their share. It is the developers who are responsible for the present predicament and their burden cannot be shifted on to the consumers simply because they do not have a voice to articulate their legitimate grievance. The present Konaseema Gas Power Limited proposal to recover Rs. 1411.88 crore through imposing Rs. 0.70 per unit of power supplied by it up to the year 2019 cannot be accepted.

HIGH COURT BENCH JUDGEMENT

9.1 A Division Bench of High Court of Andhra Pradesh consisting of Chief Justice Sri G.S. Singhvi and Justice Sri C.V. Nagarjuna Reddy in W.P. No. 358 of 2007, related to commencement of supply of gas to Gautami and GVK projects for the purpose of commissioning of their units diverting gas supply from the existing plants, while setting a side the Order of the Single Judge in their Order dated 18-06-2007 observed, "When the action of the state and/or its agencies/instrumentalities is challenged on the ground of violation of legal or constitutional right of the petitioner and there is a clash of the right of the individual or group of individuals on the one hand and the right of the public at large on the other hand, the Court must carefully examine the entire matter and ensure that the public interest is not sacrificed in the name of protecting the individual right", and "If the injury likely to be suffered by the writ petitioners on account of non-supply of gas for commissioning their project is weighed against the injury likely to be caused to the various segments of the population of the state and particularly those engaged in

productive activities, it is impossible to say that the balance of convenience is in favour of the writ petitioners" and "We are further of the view that it will be totally against public interest to compel respondent No.6 to supply gas to the writ petitioners by curtailing supply to the existing units engaged in the generation of electricity" and "On the basis of the above discussion , we hold that the learned Single Judge arbitrarily exercised the discretion to pass interlocutory order without considering three important factors, i.e., irreparable injury, balance of convenience and public interest and, therefore, the orders under challenge are liable to be declared as vitiated by an error of law apparent on the face of the record and is liable to be set aside". In keeping with the above we urge the Commission to uphold the public interest as the above proposal to impose additional fixed charge of Rs. 0.70 per unit on all electricity consumers of the state is an unjust burden.

COMMISSION'S ORDER DATED 05-12-2009

10.1 The Commission in its Order dated 05-12-2009 at paragraph No. 68 observed, "During the public hearing a number of other issues were raised by the objectors and the IPPs and DISCOMs including the very admissibility of fixed charge entitlements in the context of COD and Gas availability, the scope for claiming liquidated damages, sharing of the capacities, PLF factors and certain technical issues like fuel supply committee etc., in the context of PPAs. The Commission is not going in to the merits of these issues since consent is not being given to the package of amendments in their present form. For the same reasons, and since the working out of the modalities of any possible revised amendments formulation is being left to the parties to the PPA, the Commission is not going in to the details of financial implications of the amendments, technical amendments or detailed analysis of judicial decisions relied upon by the respective parties."

8.2 The Commission without going in to the merits of the issues like the very admissibility of fixed charge entitlements in the context of COD and Gas availability, the scope for claiming liquidated damages, and sharing of the capacities has come to a conclusion that "it would not be fair to deny fixed charges entitlement to the IPPs on the ground of non-declaration of C.O.D., as such by them" (para. 15). The Commission according to this Order is of the view that "consumer interest, DISCOM interest as well as the public interest would be best served by evolving some mechanism for enabling the IPPs to recoup their likely foregone fixed charge entitlements without depriving the DISCOMs of this 20% PPA capacity" (para. 10). We are of the view that without examining the very admissibility of fixed charges it would not be proper to come to a conclusion that it would not be fair to deny fixed charge entitlement to the IPPs. As the fuel supply risk is with the IPPs "enabling the IPPs to recoup their likely foregone fixed charge entitlements" would amount to burdening the consumers with additional

expenditure and as such adversely affecting their interest. In the background of clear provisions in the related policy as well as in the PPA that show that the fuel risk is with the IPPs we request the Commission not to transfer the burden of fixed charges on to the consumers.

PRAYER TO THE COMMISSION

11.1 The grounds stated by Konaseema Gas Power Limited for recovery of additional fixed charges at the rate of Rs. 0.70 per unit are not maintainable. The Company was provided with inter connection facility and start up power in the year 2006 itself. So not providing inter connection facility and start up power cannot be a ground for recovery of 'foregone fixed charge entitlements'. Similarly, as fuel supply risk is with the IPP lack of fuel cannot be a ground for recovery of foregone fixed charge entitlements. Following this we appeal to the Commission not to give consent to the above proposal to impose additional fixed charges.

M. Thimma Reddy,

Convenor,

People's Monitoring Group on Electricity Regulation,

3-4-142/6, Barkatpura, Hyderabad - 27

BEFORE THE ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION

11-4-660, Singareni Bhavan, Lakdi ka pool, Red Hills, Hyderabad – 500 004

Supplementary submission made by M. Thimma Reddy on behalf of People's Monitoring Group on Electricity Regulation on 27-05-2011 (in I.A. No.5 of 2011 in O.P. Nos. 11 of 2009)

1. Some of the oral submissions made by me during the hearing on the above mentioned petition on 23-05-2011 was not included in my written submission. Through this supplementary submission I would like to submit the same in writing for the record.

2. Most of the submissions made before the Commission by different parties to the present petition paid attention to amendment to Clause 3.2 that dealt with recovery of capacity charge. There are other amendments which are equally disturbing. I would like to draw attention of the Commission to these amendments.

3. Amendment No. 7 refers to new Clause 3.3 ©. According to it "The Company, at its option, maintain multiple Fuel Supply Agreements to meet its obligations under this Agreement. Notwithstanding anything to the contrary contained in this Agreement, all the obligations of the APDISCOMs under this Agreement shall be limited to the Fuel quantity required to meet the obligations of the Company under this Agreement to operate the Project to generate the energy corresponding to the Installed Capacity." Amendment No.10 refers to new Clause 3.11. According to this Clause, "The Company agrees that it shall make best endeavours to seek a Fuel Supply Agreement comparable with other fuel supply agreements in the same area and available to similar consumers." Amendments Nos. 16 and 17 deal with deletion of Schedule I. The Schedule I deals with Fuel Supply Committee. If at all there are multiple Fuel Supply Agreements that are 'comparable' with such other Fuel Supply Agreements there is a need for Fuel Supply Committee mechanism to oversee that the Fuel Supply Agreements so crafted and the fuel quantities, quality and its price are in best interest of the public in the state. Following this we request the Commission not give consent to the Amendments 16 and 17. At the same time necessary conditionalities need to be inserted in to the Amendments 7 and 10 to protect public interest.

4. Amendment No. 13 refers to changes to Clause 9.2(f). This amendment implies that if the Project fails to issue an Availability Declaration due to unavailability of Fuel the same should not be taken in to account. This amendment will be detrimental to the interests of the public. As the developer is responsible to secure adequate quantities of fuel agreeing to this amendment leads to shifting the burden on to the consumers. We request the Commission not to give consent to this amendment.

M. Thimma Reddy, Convenor, C/o CEC, 3-4-142/6, Barkatpura, Hyderabad – 27.