

BEFORE THE ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION * HYDERABAD

1.1 A Public Notice was published on 8th January, 2002 in The Hindu by the APTRANSCO calling for comments/objections on the PPA (original, modified and amended versions) entered into with M/s GVK Industries Ltd

1.2 The PPA related to the GVK Industries Ltd and the supporting documents which were made public as a part of the public scrutiny and public hearing did not include some very important documents like Techno Economic Clearance from the CEA and Indicative Tariff calculations from APTRANSCO. Without these it is impossible to comprehend and understand the implications of the PPA. Besides these, unlike other PPAs which were made public until now, the Schedule A: Technical Limits, and Schedule F: Test Procedures of the said PPA mention that these are according to the EPC contract. But unfortunately the said EPC contract and the O&M contracts are not made available along with the supporting documents. Without examining these documents it will not be possible to evaluate the concerned PPA. We also requested the Licensee, i.e., APTRANSCO to make these documents also available to the public at the earliest to make the public intervention fruitful and meaningful (Annexure – D). But until now the same is not made public. Hence, we request the Commission to make these vital documents public and allow some more time to study these documents and for filing comments/objections.

No Need for Capacity addition

2.1 This PPA with GVK industries was signed at a time when additional demand projection of 8000 MW by the end of 9th Five year plan, i.e., by March 2002 had firm grip over the decision makers in the state. The March 2002 has come and gone but there was no such huge demand. As this PPA is signed on the basis of misleading power demand projection the same should be scrapped.

2.2 Any addition of new plant to the capacity should be based on the need for it. But as the conditions that prevail at present or any indications of the future show that there is no need for new additions for some more time to come. As the data provided by the Licensee in different documents show that there is already power surplus situation. During the year 2001-02 while available power is more than 45,000 million units only about 41,000 mu are purchased by the Licensee for distribution to the consumers signifying that the state is already surplus in power. As we understand for the year 2002-03 also while the total power available is about 48,000 mu the quantum of power to be procured will be about 39,500 mu which show that the surplus power at the disposal of the state is increasing. In this circumstance it would not be correct to add any new power plant to already surplus situation.

2.3 The existence of surplus power in the prevailing system where power is being procured according to the PPAs according to which the IPP need to be paid towards fixed charges even when its power is not being used. In other words, surplus power instead of being a source of strength it becomes a serious debilitating burden on the Licensee and in turn on the end consumers who ultimately have to shoulder the burden. We request the Commission not to add any more burden on the consumers by giving consent to the proposed PPA.

2.4 The information presented to the public by the Licensee at the time of hearing on PPAs of BPL and BSES AP on the power procurement is sketchy. While they mention about their consultant's study on future power demand the same was not made public. The Commission has accepted the power procurement plant submitted by the Licensee at the time of hearing on PPA entered in to with BPL through an order dated 16th August, 2001. While the Commission's order on BPL's PPA was circulated to the objectors, the order on the power procurement was not circulated to the objectors. In response to our letter the Secretary of the Commission had replied that we can see the order in the Commission's Office. We are of the opinion that a separate and detailed public scrutiny of power demand forecasts and power procurement plan should precede any debate or discussion on PPAs for addition of new plants to the state's grid. Hence we request the Commission not to give consent to the proposed PPA until power demand forecasts and power procurement plans are finalised. We also request the Commission to order the Licensee to make public all the documents related to this. We further request the Commission to circulate its order on the power forecasting and power procurement to all the objectors and make accessible to the public all studies carried out by the Commissions staff on all the issues related to this aspect.

2.5 Article 6.3 of this PPA provides for terminating the agreement with out liability or obligation in the event that Financial Closure has not occurred within 12 months of the signing of this Agreement. Nearly five years have passed by and still there is no sign of Financial Closure. According to a news item in Economic Times dated 18th January, 2002 the financial institutions have decided to withdraw from GVK's Jeegurupadu (Phase.II) plant. As the present demand projections also show that this plant is not needed we request the Commission to terminate this PPA without any liability or obligation to APTRANSCO.

Fresh bidding – all parameters have changed

3.1 While some of the IPPs in the state of AP took MoU route others took ICB route. The state government as well as the APTRANSCO took the parameters of the Gautami plant which came into being through ICB route as the bench mark. The present PPA under consideration, GVK, came into being through MoU route and later it was made equal to a plant that came into being through ICB route. But over the period since signing the original PPA with the GVK as well as with all other IPPs almost all the parameters on the basis of which bids were won had changed. These parameters include nature of the plants, capacity of the plants, capital costs of the plants, tariff structure of the plants. In the changed circumstances, when additional demand is projected then only fresh bids need to be floated in order to select economical, efficient, and optimal power suppliers. Hence we request the Commission not to give consent to all the PPAs including GVK which have come before the Commission and instead order the Licensee to float fresh bids to select economical and efficient power suppliers.

PPA – Original and Amended

4.1 The proposal for the present PPA has a decade long history starting from the letter dated 14-2-1992 from the Goernment of AP to GVK Industries giving permission to the latter to set up a 400 MW plant to the present through which the private producers through its phase-II plants wants to add 440 MW additional power to the states capacity. We request the Commission to direct the Licensee to make public all the documents including the original

PPA according to which the phase-II with 240 MW was proposed and different versions of this PPA i.e., original proposal for 400 MW to phase I with 216 MW and phase II with 235 MW to phase II with 240 MW, to phase II with 360 MW to phase II with two stages of 220 MW each.

4.2 Article 6 of the preamble to the Draft Power Purchase Agreement states, “Whereas on receipt of GOAP decision on 15.9.98 APSEB informed the Company on 23.9.98 that the Company’s proposal to set up 240 MW under Phase-II has been enhanced to 360 MW so as to maintain the tariff and other conditions applied to SGPP’s selected under ICB...”. We would like to know what are these tariff and other conditions/considerations that made the state government and the APSEB/APTRANSCO to change the capacity of the phase II of the plant from 240 MW to 360 MW and later further to two stages consisting of 220 MW. These changes ultimately result in 65% addition to the original proposed capacity (while the original approval is for 400 MW with the proposed additions through phase II with two stages total capacity would be 655 MW). Allowing this addition in the background of surplus power is inexplicable and unacceptable. We request the Commission to direct the Licensee to provide the objector as well as the public all the information including their analysis in arriving at these decisions.

4.3 While the need for stage I of the phase II is itself questionable, to sought consent to stage II of phase II also through the same PPA is mischievous. Article 17 of the preamble to the Draft Power Purchase Agreement states, “Whereas, both the Parties mutually agree that this Power Purchase Agreement is applicable to the second 220 MW of the Extension Project...”. With stage I (220MW) of Phase II itself it would have reached the original capacity. We request the Commission to restrict the applicability of this PPA to stage one only. If stage II were also allowed it would become unbearable burden on the consumers. The stage two is highly questionable.

4.4 The manner in which the capacity of GVK’s Jeegurupadu plant is altered gives rise to a strong impression that these proposed capacity additions have no relation to any demand forecasting. This also calls for a fresh look at demand forecasting and proposed capacity additions.

Capital costs

5.1 According to Article 1.1 (11) of the PPA states capital cost as Rs. 760 crore. From this it is not clear as to whether this is for two stages or for one stage only. If we take that this is only for stage I of the plant it will be on higher side. For similar size of the plant BSES AP plant’s capital cost is Rs. 700 crore only. If we take into account the fact that while BSES AP is a green field project the proposed GVK plant is only an extension of the plant and already infrastructure costs are claimed under phase I of the plant. Given the high capital costs the same should not be given consent.

5.2 The documents made available do not show how the capital for this project is being mobilised/structured. What part of it comes in the form of equity and what part comes in the form of debt? What is the return guaranteed on the equity and on what terms debt is being contracted? What is the loan amount, rate of interest, and repayment schedule? What is the debt: equity ratio? What is the foreign exchange component and on what terms foreign investment is being obtained? Whether there is any foreign equity participation? If yes, on

what terms? Without proper response to these questions and related issues it would not be possible to evaluate the PPA? As this PPA does not contain this vital information we request the Commission not to give consent to this PPA.

5.3 As the original PPA is an outcome of MoU route there should have been a TEC given by the CEA! Whether techno-economic parameters of this TEC are retained under new dispensation or altered completely? If changes are made, what are they?

Fixed Charges

6.1 According to the Draft PPA Foreign Debt Service Charge (FDSC) will be US\$ 0.006, and Other Fixed Costs (OFC) will be Rs 0.699. The PPA documents do not show how these rates on per unit basis are arrived at. Before Short Gestation Project tariff and other conditions are applied to the GVK's proposed plant it was approved on the basis of TEC given by the CEA and the capital cost negotiated between the parties to this PPA. We would like to know what are the capital costs according to the original PPA and how these are sought to be changed? What would be the capital costs if it is calculated according to depreciation and Return on Equity? As this PPA is lacking in crucial information to evaluate it, the same should not be given consent.

6.2 The CAG has raised serious questions about the capital cost of Phase-I and also expenditure incurred on land and infrastructure development. Some of the capital costs are already included in the Phase I. So phase II is not a green field project so the same cannot be compared with Gautami. Following this fixed costs/FDSC and OFC should be considerably less than the Gautami plant and as such Gautami should not be taken as a bench mark to assess Phase-II of the GVK Industries plant.

6.3 The presence of FDSC shows that the foreign component of the capital is quite substantial. Given the dangers of foreign exchange volatility the foreign component of the capital need to be kept to the minimum.

Incentive

7.1 According to the Draft PPA with GVK Industries incentive will be paid to the generator if the PLF in a year is more than 80 percent. If PLF is between 80% and 85% the generator will be paid according to 'Committed Incentive Energy', i.e., 10% of the OFC. If it operates at more than 85% the generator will be paid 25% of the OFC.

7.2 When the generator is already assured of 16 percent return and the state government has given the guarantee there is no need to provide for further incentives burdening the Licensee and the consumers.

7.3 Besides this, there is no uniformity in incentives incorporated in the PPAs. For example, even in the case of GVK's Jeegurupadu Phase-I unit the incentive is 0.7 percent of ROE. In the case of BPL's Ramagundam unit it is 0.525 percent. In the case of RTPP's second stage it is Rs. 0.215 per kWh. Also among the units that are going to come into being through ICB route also there appears to be no uniformity. For BSES AP's plant the incentive

will be paid if PLF is more than 85% at the rate of 2% of OFC for every 1% increase in PLF. Even if incentives are allowed it is to be seen that it is uniform for all generators including APGENCO.

7.4 While the generating company will be getting incentive if it operates at more than 80% PLF, in turn it will be paying to its contractors, if we take the example of BSES AP, if PLF is more than 90% and will be collecting damages if PLF is below that with guaranteed supply being 88%. (As the EPC and O&M contract documents are not made public we could not quote the exact figures. We have written to the Licensee to provide the same. But we did not receive any reply for the same). If the provisions of these contracts are taken into account the returns to be received will be more than the guaranteed ones. And this will be at the cost of the consumers.

7.5 A comparison of incentive provisions in the PPA and the EPC and Maintenance contract show that these are adverse to the interests of the consumers. The Licensee will be paying incentives to the developer at a lower PLF than that at which developer will be paying to his contractors.

7.6 According to Schedule-D, Section-3.4(iii) the aggregate duration of back down of generation pursuant to Dispatch Instructions shall not exceed twelve hundred (1200) hours. This implies that under any circumstances the plant will be working at 86% PLF, automatically attracting incentive payment. Given the present technical conditions where plants are working at more than 90% it is unjustified to award incentives at a lower PLF. As a result of these incentive and backing down conditions the developer will be getting incentives even for normal working. As this is against the interests of the consumers the same should not be given consent by the Commission.

Disincentives

8.1 According to the PPA in question disincentives will be levied if the PLF is less than 68.5%. According to the earlier versions of all PPAs PLF of 68.5% is the threshold level and if the plant operates above this level it will be paid incentive and if it is below this level it will attract disincentives. While the threshold level for incentives is changed, for disincentives the same is not changed. In the background of changes made to incentives and also in accordance with the relevant provisions in the EPC and Maintenance contracts these disincentives also need to be changed. In keeping with changing technical conditions disincentives should be levied if PLF is below 90%.

Escrow and other Guarantees

9.1 The PPA calls for opening an Escrow account. As a provision is already made for opening a Letter of Credit and also the state government of AP has guaranteed assured return on equity and the monthly payments there is no need to provide another facility which will be redundant on one hand and on the other a needless burden on the Licensee and the consumers. Hence we request the Commission not to allow Escrow facility. We also would like to know the escrow capacity of APTRANSCO, number of escrow accounts opened by APTRANSCO and in whose favour. What will be additional financial burden for operating the escrow account in the case of the PPA in question?

9.2 A part of Section 5.10 of the PPA is as follows, “Such instructions shall be irrevocable during the term of this Agreement subject to the right of the APTRANSCO to substitute other circles/areas with the concurrence of the Company and its Lenders”. How can APTRANSCO pledge circles as they are under the jurisdiction of DISCOMS? Is not this provision a violation of the Reforms Act as this circumvents the autonomy and independence of the DISCOMS?

9.4 The said PPA also includes guarantee from the state government against default by the Licensee. From this it is not clear the rate of return to be guaranteed by the state government. If it is to guarantee total payments then it would be like a noose around the neck of the state government! These need to be clarified by the parties to this PPA.

9.5 The guarantee (1.(B)) talks about payment covering debt, both foreign and Indian, as per PPA. But the same PPA does not talk about any debt in clear quantity terms. To give guarantee on such unclear terms is nothing less than walking in to a trap. The state government should desist from giving such dangerous guarantees.

Commercial Operation Date and the Power Procurement Plan

10.1 Compatibility of the dates: In the Power Procurement Plan up to 2006-07 presented to the Commission during the Public Hearing on 16th January, 2002 with regard to BSES AP plant gas based plants are mentioned as CC-1, CC-2, CC-3, CC-4, but the names of the plants/companies are not mentioned. By this it is difficult to make out which plant is going to be added and when.

10.2 The Plan mentions only four CC plants. If BSES AP is one of these plants only three other plants are going to be added to the grid before 2006-07. But on 8th January, 2002 four Public Notices were issued for consent to four PPAs. Then which one of these four plants is not going to be added before 2006-07 and why that said plant’s PPA is being placed before the Commission for consent now?

10.3 According to the PPA Scheduled Date of Completion (SDOC) is 24 months from the date of financial closing. Further the Commercial Operation Date (COD) should precede SDOC. These dates depend on financial closure. None of the plants have declared that they have achieved financial closure. At the same time all of them claim that they have tied up with the lenders and if there is any adverse change in the PPA consequent to public process lenders may not agree to it. In other words they claim on the one hand that they have not achieved financial closure and on the other hand they claim that they have already tied up with the lenders. Then, what is financial closure? It has become a mysterious object which cannot be described precisely. In this context we suggest that the date of the Memorandum of Agreement between APTRANSCO and IPPs be taken as the date of financial closure and SDOC and COD be calculated accordingly.

Non-availability of Gas

11.1 There are grave reservations about the availability of gas for the power plants being contemplated. For all the gas based power plants gas is going to be supplied from Krishna – Godavary basin. Available estimates show that the available gas will not be sufficient to meet the fuel needs of the proposed plants. Regarding the availability of gas itself estimates differ.

While according to CEA's Fourth National Power Plan 1997-2002 total gas available in K-G basin is 16.36 BCM, according to FICCI Taskforce Report – 2000 it is 37.35 BCM, and according to the Handbook on Indian Petroleum and Natural Gas Industry and Investment Scenario it is 40 BCM.

11.2 The existing gas based power plants in the state, including BSES Andhra Power Ltd require 2 BCM of gas per year. Already other users of gas from this basin account for 2.6 BCM. The proposed four plants would need 2.64 BCM per year. In total gas requirement per year in the state is more than 7 BCM. On this basis, given the estimates of gas availability, gas would last only for 3 to 8 years only. The proposed plants' minimum life is 15 years. Then what will happen after exhausting the gas?

11.3 In the absence of gas the plant would be forced to depend on costlier fuels like naphtha. This will only lead to pricing the power beyond the reach all consumers.

11.4 With the coming to an end of APM of petroleum products there is every possibility of gas prices also climbing up. In such possibility the use of these gas based plants will also come down, adversely affecting the PLF. Given the take or pay conditions in the Gas Supply Agreement and the treatment of fixed charges, per unit cost of total fixed charges burden on the consumers will increase. Hence, the setting of this power plant along with the other three need to be reconsidered.

Gas Supply Agreement:

12.1 Period of contract: According to the PPA the agreement will be for 15 years from the COD. But according to the Gas Supply Agreement the agreement is only upto 31st December, 2010. After this date supply of gas is in doubt. This makes the future of the plant doubtful. Also given the fact that APM of petroleum products has come to an end drawing to a close the situation is highly uncertain, and fraught with many dangers. Though the Gas Supply Agreement provides for extension of the agreement wide Article-3 given the inadequate gas availability this extension appears to be highly unlikely. This demands that this PPA should be put on hold.

12.2 In the case of GVK Jegurupadu Phase I plant of 216 MW capacity gas allocation was halved from 1.5 to 0.75. The plant is being run on both gas and naphtha as the allotted gas is not sufficient to run the plant. In the case of Phase II it is 1.1 MCMD. Whether this quantity is sufficient to run the plant of 220 MW?

12.3 According to Article-5.02 of the GSA for the first year of GAS supply or for the period upto 30-6-2004, which ever is earlier the BUYER guarantees to pay the SELLER for actual quantity of the GAS supplied by the SELLER to the BUYER subject to the minimum of 80% of the monthly forecast quantities. We would like to know whether the payment made by the power developer to the gas seller even before the operation of the plant will be loaded on to the consumers? What measures are contemplated by the APTRANSCO to insulate the consumers from such avoidable burdens?

12.4 According to the Article 4.03 of the GSA Buyer shall pay to the Seller monthly transmission charges of Rs. 2,18,84,060 plus Rs. 46,28,553 towards Gas Dehydration Unit.

These are over and above the security deposit and bank guarantee. All these charges vary from plant to plant. We would like to know on what basis these amounts are arrived at?

12.5 According to the Article 5.02 the BUYER shall pay to the SELLER for the actual quantity of GAS supplied by the SELLER to the BUYER subject to the minimum of 80% of the monthly quantity on the basis of the quantities mentioned in clause 5.01 which is referred to as Minimum Guarantee Offtake/Quantities. This implies that even if the said quantity of gas is not used for power generation the same should be paid for. Article-3.3 (b) of the PPA states that the APTRANSCO shall reimburse the Company for charges paid in respect of its failure to rake delivery of minimum levels of primary fuel. This implies that the consumers will be burdened not only with the fixed capital costs but also with monthly transmission charges and minimum fuel charges even if they do not use power from this plant. In the present circumstances, where already full installed capacities are not being used, this 'take or pay' conditions will mean untold suffering to the consumers. In the interests of the consumers we appeal to the Commission not to give consent to this PPA.

12.6 By the provision 'Minimum Guarantee Offtake' of 80% of gas supply we understand that the Company is given gas allocation on firm basis. We would like to draw the attention of the Commission to the fact that BSES AP power plant which PPA has come before the Commission much before the four PPAs now brought before the Commission is allotted gas on fall back basis only. How come that earlier plants were not given firm allocation but later plants were given firm allocation? On what basis did Ministry of Petroleum & Natural Gas allocate gas to different plants? As the MoP&NG allocates gas on the recommendations of the state governments, on what basis did the state government of Andhra Pradesh recommend gas allocations to different power plants?

12.7 While existing gas based power plants were allotted a part of the gas needed by them it is not meaningful to allot gas to other plants while already existing plants are not given full allocation of gas needed by them. Full capacity of the existing plants needs to be used before adding new capacities. If gas is available the same should be first allocated to the existing plants and new plants should be allotted gas only afterwards. Otherwise this will lead to unnecessary burden on the consumers. We appeal to the Commission to see that unnecessary capacity additions are not made to the state grid.

Prayer to the Commission:

- I. Not to give consent to PPA entered in to with GVK Industries for PhaseII of the Jeegurupadu gas based power plant as vital information regarding the viability of the project is concealed and the likely outcome of the project will be harmful to the interests of the consumers.
- II. Not to give consent to this PPA as there is inadequate demand for power and if it is added it will be a huge burden to the consumers
- III. Not to give consent to this PPA because of uncertainties in gas availability and its prices.
- IV. To direct the Licensee and the Company to make public all the contracts entered into with GVK Industries Ltd including EPC contract and O&M contract well in advance to the public hearings.
- V. To allow the petitioner to appear in person before APERC takes any decision on this petition

ANNEXURE - I

PEOPLE'S MONITORING GROUP ON ELECTRICITY REGULATION

C/o Centre for Environment Concerns, 3-4-142/6, Barkatpura, Hyderabad – 500 027

Telefax: 756 4959; Tel: 756 3017; e-mail: cenvicon@hd2.vsnl.net.in

Date: 25 – 01 - 2002

To,
The Chairman and Managing Director,
APTRANSCO,
Vidyut Soudha, Hyderabad – 500 082.

Dear Sir,

Sub:- Request to make documents related to the PPAs available to the public.

Ref:- Public Notices published in The Hindu on 8th January, 2002 by APTRANSCO with regard to Application for Consent to four PPAs with M/s BSES Andhra Power Ltd.

This is to bring to your notice that the PPAs related to the Vemagiri, Konaseema EPS Oakwell, GVK Phase-II, and Gautami and the supporting documents which were made public as a part of the public scrutiny and public hearing did not include some very important documents like Techno Economic Clearance from the CEA and Indicative Tariff calculations including fixed and variable costs at different PLFs. In these PPA documents it was specifically mentioned that these companies had obtained TEC from CEA, and still they were not included in the documents made public.

Besides this, some parts of these PPAs like Schedule A: Technical Limits and Schedule F: Test Procedures of the said PPA mention that these are according to the EPC contract. But unfortunately the said EPC contracts are not made available along with the supporting documents. Like EPC contract O&M contracts are also not made public.

Recently the APTRANSCO has entered into Memorandums of Agreement with IPPs in the state, which have far-reaching consequences to the health of the utility.

Without examining these documents it will not be possible to evaluate these PPAs. Hence, we request the Chairman and Managing Director of APTRANSCO to make all these documents also available to the public at the earliest, well before 8th February, 2002, to make the public intervention fruitful and meaningful.

Thanking you.

Yours Sincerely,

M.Thimma Reddy,
Convenor.