

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 entered into with M/s Ispat Power Ltd

1.2 The PPA related to the Ispat Power 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 Though the PPA was entered into in 1997, in present conditions, we need to look closely at the need for any new plant. It can be seen that *there is no need for additional capacity in the present prevailing conditions or also into the distant future*. There is already a power surplus situation in Andhra Pradesh. 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.

2.2 Given such a surplus situation, the PPA with ISPAT POWER envisages that the IPP needs 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 consumers who ultimately have to shoulder the burden. This PPA would increase the financial burden on all the consumers and the government, tying up precious resources to a project which does not help in anyway to the economy and development, except the promoters. This in turn constitutes a entirely new form of subsidy on the energy economy of the State. Thus, it constitutes a ‘grave error’ and a retrograde step, and has the potential to bring about a chaotic situation in the reform process. Hence, we request the Commission not to add any more burden on the consumers by giving consent to the proposed PPA.

2.3 Power procurement strategy of the Licensee (APTRANSCO) is very sketchy. It was mentioned, at the hearing on PPAs with BPL and BSES Andhra, that a consultant has made a study on future power demand in the State, but the same was not made public. The Commission has accepted the power procurement plan submitted by the Licensee at the time of hearing on PPA entered into 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 could see the order in the Commission's Office.

2.4 *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 Commission's staff on all the issues related to this aspect.*

Notwithstanding this fundamental objection, we would like to share some of the following comments before the Commission:

Need for Fresh Bidding as all parameters have changed

3.1 While some of the IPPs in the State of AP took MoU route others took ICB route to obtain the consent to establish the power plants. The present PPA under consideration, Ispat Power, came into being through MoU route, signing an agreement dated 31st March, 1997. Without even completing the financial closure (a prerequisite for the binding of the parties to the contract), the agreement underwent several changes and was made equal to a plant that came into being through ICB route. This is a mockery of the public bidding process and the principle of competition to which the Licensee claims to adhere to.

3.2 Over a period since the signing the original PPA with the ISPAT POWER and today, almost all the parameters on the basis of which bids were won had changed. These parameters include nature of the plant, capacity of the plant, capital costs of the plants, and the tariff structure of the plants.

3.3 It is apparent that in the changed circumstances there is a need for fresh bids in order to select economical, efficient, and optimal power suppliers. Hence we request the Commission not to give consent to all the PPAs including ISPAT POWER which have come before the Commission and instead order the Licensee to float fresh bids to select economical and efficient power suppliers. The Licensee is within the rights provided by the original PPAs to cancel them without attracting any penal provisions, since none of them have achieved financial closure within 12 months from the date of agreement (31.03.1997).

3.4 We request the Commission to ask the Licensee to prepare and present a paper to the Commission on all the PPAs it has entered into since 1997, explaining the present position on each of them, and what it intends to do further with each of these PPAs given the changed circumstances. This is important considering that enormous amounts of public funds and the power reform process hinges on developing an understanding of the role of private companies in the power sector.

PPA – Original and ‘Amended’

4.1 The original PPA mentions that ISPAT POWER has agreed to execute liquid fuel based 468 MW project at Vemagiri in the year 1997. Subsequently, ISPAT POWER obtained techno-economic clearance from the Central Electricity Authority for 492 MW Combined Cycle power plant. Presently, Ms/Vemagiri Power Generation Ltd., has subsequently changed the capacity to 520 MW, divided into two stages (370+150).

The reasons and factors which necessitated such changes in the capacities remain unknown, nor any rational information was provided in this regard.

4.2 The ‘Amendment’ agreement with M/s Vemagiri Power Generation Ltd., is purportedly for capacity of 370 MW project under stage I. But the next sentence (Point No. 17, Page No.4) says: “However, all commercial terms and conditions governing stage II of the project shall be the same as per terms and conditions of this Amendment Agreement”.

Does this mean this Agreement covers the second stage? If so, how can the Licensee enter into an Agreement when the project (Stage II) does not have a firm fuel supply agreement?

If not, then how the same conditions apply to a project “which is not even on paper”?

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.

4.3 It appears the project-holders by entering into an agreement wayback in 1997 are using the same as an instrument to perpetuate their objectives at will and under the conditions defined by them. This amounts to a monopolization process, which is again a major threat to the reform process.

4.4 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 (letter dated 19.5.2000). going by this, all the four PPAs (ISPAT POWER, GVK II, OAKWELL and GAUTAMI) should have matching terms related to capacity charge, FDSC, OFC, repayment period, station heat rate, incentives and other benefits. When the fuel availability and supply positions are different, on which the capacity charge, FDSC, OFC, repayment period and other benefits are predicated, for each of the plant, blanket application of terms is inexplicable. What is the impact of such application on APTRANSCO needs to be assessed, especially the financial burden. We request the Commission to ask the Licensee to assess such blanket application before taking any decision in this regard.

4.5 We request the Licensee to clarify upon the differentiation in the dates of Agreement with all the four parties, even while Gautami is mentioned as the benchmark.

4.6 We would like to draw the attention of the Commission to the Memorandum of Agreement signed between Government of AP, Power Finance Corporation and IDBI on 10th August, 2001. It was reported that this MOA would ‘benefit’ 6 IPP projects, of which ISPAT POWER is one. However, the revised PPA between ISPAT POWER and APTRANSCO does not mention this at all. Does this mean the MOA is outside the PPA?

4.7 We request the Commission to direct the Licensee to provide a copy of the MOA entered into and how it 'benefits' the IPPs under consideration of the Commission.

Escrow Cover

5.1 We need clarification on the GOAP Guarantee and ESCROW cover, as per the original PPA of ISPAT POWER. As per the MOA, these provisions are no longer necessary for financial closure. Under such circumstances, does the revised Agreement mean ISPAT POWER has already achieved financial closure. If so, can there be a financial closure without even the consent of the Regulatory Commission?

We request the Commission to seek clarifications in this regard from GOAP, APTRANSCO, ISPAT POWER and VEMAGIRI POWER GENERATION LTD.

Capital costs

6.1 According to Article 1.1 (11) of the original PPA (31.3.1997) states the capital cost of the project as Rs.1437 crore for 468 MW. The TEC of CEA mentions the capital cost as US \$248 million + Rs.638.22 crores at a foreign exchange rate of Rs.42/\$ (14.1.99). The revised PPA mentions the capital cost as Rs.1043 crores (though there is no clarity whether this is for 370 MW or 520 MW). Thus, there is no linkage between original proposals and the present one. Capital cost also does not match the other PPAs with similar fuel source.

6.2 The documents made available do not show how the capital for this project is 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.

Fixed Charges

7.1 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 ISPAT POWER's proposed plant, the project 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.

7.2 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.

Committed Incentive Charge

8.1 What is this Committed Incentive Charge? It was not mentioned in the original PPA (with ISPAT POWER LTD.) in 1997. If this was negotiated subsequently, the revised PPA becomes a entirely new agreement. We request the Commission to seek clarifications in this regard.

8.2 According to the Draft PPA with M/S. VEMAGIRI POWER GENERATION Ltd., 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 the plant operates at more than 85% the generator will be paid 25% of the OFC.

8.3 As we understand, when the project is already assured of 16 percent return and GOAP has given the guarantee, there is no need to provide for further incentives burdening the Licensee and the consumers.

8.4 Besides this, we can see that 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.

8.5 If Gautami is the benchmark, then why there is a variation in incentives? We request the Commission to take a close look at this incentives regime, and disallow any incentives which are going to be a burden on the consumers and APTRANSCO. We really cannot forget the Dabhol experience.

8.6 We further request the Commissions that even if incentives are allowed, it has to be seen whether they are uniform for all generators including APGENCO.

8.7 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 the PLF is more than 90%; and will be collecting damages if PLF is below than 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 by the developer will be more than the guaranteed ones. Unfortunately, this will be at the cost of the consumers.

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.

8.8 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

this is against the interests of the consumers the same should not be given consent by the Commission.

Disincentives

9.1 According to the PPA under consideration, 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%.

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 combined cycle (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.

Gas Procurement Strategy

11.1 The PPA does not include any gas procurement strategy, and how the plant will overcome the supply and demand problems of gas. Apart from the availability, gas is also prone to cost fluctuations depending on the availability and supply channels (imported, pipeline, shipped, stored, etc). Such fluctuations would impinge on the PLF, and all types of charges. In such a scenario, we request the Commission to ask the Licensee and the IPPs to assess the situation for the next twenty years and present a strategy for the consideration of the Commission. This assessment should include how the costs arising out of supply problems would be internalized and/or passed on down the chain of consumption.

11.2 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 (less than 9 years, depending on the development of the plant). After this date, supply of gas is not assured, and is prone to availability of gas (domestic and imported). This makes the future of the plant doubtful.

11.3 Gas price fluctuations are quite frequent and high. Also given the fact that APM of petroleum products is drawing to a close the situation is highly uncertain, and fraught with many dangers. There is no agreement in GSA on the price of the gas to be procured.

11.4 Further, 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.

11.5 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 Vemagiri Phase I, it is 1.64 MCMD. Whether this quantity is sufficient to run the plant of 370 MW?

11.6 According to Article-5.02 of the GSA for the first year of GAS supply or for the period upto 30-12-2005, whichever 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 would be loaded onto the consumers? What measures are being contemplated by the APTRANSCO to insulate the consumers from such avoidable burdens?

11.7 According to the Article 4.03, of the GSA Buyer shall pay to the Seller monthly transmission charges of Rs.3,46,14,137 and additional charges towards Gas Dehydration Unit. These are over and above the security deposit and bank guarantee. Also, Article 2.02 (i) stipulates a security deposit of Rs.5,65,80,000, plus bank guarantee of Rs.16,97,40,000. All these charges vary from project to project. We would like to know on what basis these amounts are arrived at? And, how they would be accounted for? Since these are huge amounts, the Commission would be within its right to seek clarifications in this regard.

11.8 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 herein after referred as Minimum Guarantee Offtake/Quantities. Further, the first offtake date for VEMAGIRI POWER GENERATION LTD., is 31 December, 2004. Would the company be able to comply with this? If not, who would bear the burden accruing from such failure? Can such circumstances be explained by Force Majeure (Article 10)?

11.9 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 take 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.

11.10 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?

11.11 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.

11.12 The proviso in the GSA allowing the BUYER (in this Vemagiri Power Generation Ltd.) to transfer or assign its rights and obligations to any other company and the SELLERS equal rights compromise on the rights and obligations of VEMAGIRI POWER GENERATION Ltd., as per the PPA with the APTRANSCO and would impinge on the larger interests of the consumers and APERC to bring in rational power regime in the State.

11.13 In general, the GSA is not in consonance with the incentives provided for in the PPA between the IPP and APTRANSCO. We request the Commission to examine this matter and help in protecting the interests of the other power generators, transmission companies and consumers.

Fuel Supply Committee

12.1 The role of Fuel Supply committee, described in the original PPA with ISPAT POWER Ltd., is not clear in the changed circumstances, especially with the presence of AP Electricity Regulatory Commission. The functions envisaged in the PPA (schedule I) are almost similar to what APERC has to perform as the sole regulator of the power sector in Andhra Pradesh. Fuel Supply Committee per project would be a misnomer.

12.2 Under the same Schedule, point no.8, the Fuel Supply Committee is given the mandate to change the fuel at will, and also the energy charges. This would be mean a parallel process of power generation can be done, without APERC coming into the process, by mutual agreement of the parties, in this case, VEMAGIRI POWER GENERATION and APTRANSCO.

Intentionally Left Blank

13.1 Such provisions in the Agreement might be perfect in the corporate world, they cannot be accepted in the public domain when the interests of people is at stake. We request the Commission to clarify upon these, and ask the parties to explain clearly in writing.

Prayer to the Commission:

- I. Not to give consent to PPA entered in to with Ispat Power Limited for a gas based power plant at Vemagiri 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 Ispat Power 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

M.Thimma Reddy
22-04-2002

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.