

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 Konaseema EPS Oakwell Power Ltd

1.2 The PPA related to the Konaseema EPS Oakwell 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 – I). 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 plan 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.

Fresh bidding – all parameters have changed

3.1 Over the period since signing the original PPA with the Oakwell Engineering Ltd 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. Originally two Power Projects were contemplated, later they were merged into one Project. Location of the project changed from Kakinada to Devarapalli. Capacity of the plant also changed from 2x100 MW to 445 MW. While according to the original plan it is to be a barge mounted project. But alter it was changed to land based project. Financial components like tariff structure and loans have also changed. Incentive scheme has been modified. Scheduled date of completion has been changed several times. 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.

Capital costs

4.1 The capital cost of the project is stated as Rs 1362.39 crore. However, since the payment of capacity charge for this project is not dependent on capital cost, the capital cost becomes irrelevant. If we calculate the fixed costs for the stated capital cost using debt repayment Obligation of the developer and return on equity as allowed for the other IPP projects, the payment obligation for APTRANSCO and the burden on the consumers will be much less.

4.2 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.

4.3 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?

Incentive

5.1 According to the Draft PPA 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. This new provision in the form of committed incentive is incorporated in the PPA. This will increase the total fixed cost payment obligation.

5.2 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.

5.3 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.

5.4 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 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 will be more than the guaranteed ones. And this will be at the cost of the consumers.

5.5 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.

5.6 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

6.1 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

7.1 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?

7.2 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?

7.3 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.

7.4 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.

Non-availability of Gas

8.1 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.

8.2 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?

8.3 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.

8.4 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:

9.1 It is stated that total natural gas allocation to the current project is 2.0 MCMD. Out of the above 0.4 MCMD is on fall back basis. Thus, there is no firm commitment on the supply of natural gas on a regular basis to this extent. Hence, the project will depend on other costly fuels for generation. This will result in increased variable cost of the energy generated. Also the total fixed cost payment obligation for APTRANSCO will increase.

9.2 While the life of the Project is for fifteen years, the gas supply agreement is valid only for a period of 8 years. I.e. from 31.08.2002 to 31.12.2010. If we presume that the project will start generation two years from now, the actual life of the gas supply agreement will work out to only six years. Thus, even this firm allotment of natural gas is only for a period of six years, afterwards the project may invariably depend on other costly fuels. The entire process of allocation of natural gas will be reviewed afresh by the MOP & NG based on the available reserves at that point of time, and there is guarantee that this project will again get natural gas allocations that too on firm basis. Thus there is high risk associated with the gas based projects.

9.3 During the currency of the CONTRACT irrespective of the total/ partial/ non-supply/ drawal of quantity of gas by GAIL, APTRANSCO shall pay to the GAIL, monthly transmission charges and taxes there of , in addition to the payment of invoice for supply of gas. Thus there is no commitment from the GAIL for supply of gas, but APTRANSCO shall pay huge amounts towards transmission charges and other taxes etc.,

9.4 The gas supply agreement consists of take or pay provisions for supply of gas. These provisions will abnormally increase the burden of fixed charges on APTRANSCO than what is stated in the PPA.

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

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

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

25-01-2002

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.

