

# Amendments to PPAs with 4 Gas Power Projects

( Gautami Power Limited, Konaseema Gas Power Limited,  
GVK Industries Limited & Vemagiri Power Generation Limited

Suggestions/ Objections-2  
On I.As.Filed by GVK and GPL  
& O.Ps filed by 4 IPPs

By

K.Raghu

Certified Energy Manager & Auditor

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# Dispute or Amendment?

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- It is not clear **under which section(s)** OPs have been filed by the DISCOMS.
- IPPs in their IAs have stated that (GPL-Para 20, GVK-Para-16), the Original Petitions have been filed by DISCOMS
  - under **S.86(f)** of E.Act 2003 and
  - S.11(e) of APERA'1998.

# Dispute or Amendment?

- **E.Act'2003, Section 86(1)(f):** (Functions of State Commission):

The State Commission shall discharge the following functions, namely: -

- adjudicate upon the disputes between the licensees, and generating companies and
- to refer any dispute for arbitration;

# Dispute or Amendment?

- **DISCOMS** are requested to clarify whether they view this case as a
  - ‘dispute’ to be resolved by the Commission, or
  - ‘mere amendments’ to the existing PPA to be consented to by the Commission.
- When this objector pointed out that
  - the **SLP** filed by GPL before Supreme court is **still not vacated** and **parallel proceedings** are taking place before APERC,
  - learned counsel for DISCOMS stated that, the IPPs have filed SLP before SC **on the issue of supply of natural gas** for testing and commissioning, and as the testing is already over, the matter **can be treated as in fructuous.** <sup>5</sup>

# Dispute or Amendment?

- When there is **no pending dispute** between the parties, **why section 86.1.f** is referred to by the IPPs in their IA?
- **This may be clarified by the IPPs and DISCOMS.**
- **Clarity on whether this issue**
  - is a **'dispute'** or a **'mere Amendment'** is important, because
  - the **treatment of proposals** for amendments would be altogether different for the above two situations.

# Dispute or Amendment?

- If the matter is **viewed as a dispute**, then
  - The compensation is paid to IPPs as a **matter of obligation** and
  - The benefits that accrue to DISCOMS (say due to deletion of alternate fuel clause) **need not be commensurate with compensation** paid to IPPs.
- If the matter is viewed as ‘mere amendments’ (and no dispute exists), then
  - The amendments shall be **mutually beneficial**
  - The compensation paid to IPPs **must be commensurate** with the benefits that accrue to DISCOMS.
  - Also **IPPs have no right to seek any remedies** as provided in the PPA under Article 9 , regarding termination of PPA, penalties etc.,. (as there is no dispute)

# Dispute or Amendment?

- IPPs have made a claim at Para-21(GPL) that they have right to invoke Art 9 of PPA and terminate PPA, claim damages etc,.
- Thus it is clear that the IPPs are treating the 'entire issue' as a 'dispute'.
- All the claims made by IPPs now are based on the grounds that
  - DISCOMS have not provided interconnection facilities
  - DISCOMS have not recommended for diversion of natural gas from the existing projects for them to test and commission the projects
  - The above delays have caused them the financial losses for which the DISCOMS are responsible.
- These are the grounds on which the SLP has been filed.



# Dispute or Amendment?

- Thus the
  - proceedings before the Supreme Court as part of SLP and
  - the proceedings now taking place before the Regulatory commission
  - are on the same matter.
  - **This amounts to parallel proceedings** and appears not in order.
- If DISCOMS thought SLP before the Supreme Court would be in fructuous with the supply of natural gas now, then the **present proceedings before the Commission have no basis.**

# Dispute or Amendment?

- If IPPs thought the dispute will be treated as over,
  - only when the ‘settlement’ reached between IPPs and DISCOMS is **consented to by the Commission ‘without any modifications’** (this is mentioned by the IPP at para-21 of IA),
  - the **same should have been mentioned** in the ‘settlement’ now reached between the parties and filed before the SC for further orders.
- Otherwise it amounts to **making APERC** as one of the **parties to the ‘dispute’** without referring the **same in the SLP**

# Dispute or Amendment?

- The SLP is still not vacated and **listed on 17-08-2009**.(already listed five times earlier)
- Commission is requested to **direct DISCOMS and IPPs to first vacate the SLP** and place amendments before APERC for consent later.
- Commission is also requested to **direct DISCOMS and IPPs to clearly state sections** under which the OPs and IAs have been filed.

# illegal Claims by IPPs

# illegal Claims by IPPs

- GVK and GPL have stated that (para-21)
  - “ in view of the aforesaid breaches of the respondents of their obligations under the PPA,
  - the applicant even now has a right to invoke its right under Article 9
  - and to terminate the PPA
  - and to claim damages from the respondents in this regard
  - in the event the approval of the APERC for amendments is withheld or not approved for any reason,
  - the Applicant reserves its right to take appropriate steps in accordance with law as it may be advised to do so at the relevant point of time.”

# illegal Claims by IPPs

- The statements made by the Applicants are **highly objectionable** and amounts to contempt of the Commission.
- We would like to know from the IPPs which law makes it mandatory for the Commission to give its approval for the amendments now proposed without going into the details/merits of the case.
- Using the word 'withheld' is derogatory and amounts to attributing motives to the commission.

# illegal Claims by IPPs

- It is important to **examine the legal status** of the present issue before the matter came up before the commission.
- **Chronology of Events:**
  - 11.07.2006:
    - GPL submitted proposals to GoAP indicating that they are **willing to agree** for amendments on similar lines of Vemagiri- i.e. deletion of alternate fuel.
  - 28-02-2007:
    - while the proposals are under examination by Govt., GPL suddenly **without notice filed writ petition** in AP High Court and obtained interim order for supply of natural gas and interconnection facilities for testing and commissioning.<sup>15</sup>

# illegal Claims by IPPs

- 12-06-2007:
  - APTRANSCO and GoAP filed Writ Appeals against this interim order. Division Bench of HC of AP **set aside** the Single Judge's order dt: 27-04-2007.
- GPL **filed SLP** before Supreme Court. Supreme Court **adjourned** the matter to enable the parties to reach a settlement.



# illegal Claims by IPPs

- Present proceedings are taking place as a consequence to
  - filing of SLP before Supreme Court by GPL for supply of natural gas and providing interconnection facilities to their project for testing and commissioning.
  - and subsequent proposal to SC to settle the matter through negotiations

# illegal Claims by IPPs

- Though IPPs have stated that ‘Supreme Court adjourned the matter to enable the parties to negotiate and resolve the differences.....’ ,
  - It is reliably learnt that the **proposal** for negotiated settlement **first came from the IPP**, when they sensed that the **SLP may be dismissed** by the SC.
- It is also learnt that the
  - SLP filed by the GPL was **not even admitted** by the SC, and
  - Infact, SC **did not serve any notices** to APTRANSCO.

# illegal Claims by IPPs

- As things stand now, the **decision given by the Division Bench** of High Court of AP in DISCOMS' favour stands valid.
- Division Bench of HC in its order stated that ' We are of the view that **it will be totally against public interest** to compel respondent no. 6 (i.e. GAIL) to supply gas to the writ petitioners by curtailing supply to the existing units engaged in the generation of electricity'.

# illegal Claims by IPPs

- It is interesting to note that **even the Single Judge of HC** who ordered for supply of natural gas to IPPs for testing/ commissioning purpose, specifically made it clear that
  - **“the APTRANSCO shall not be exposed to any additional financial commitment or burden on account of such commissioning.”**
- This was given when DISCOMS raised **apprehension** that the IPPs may declare COD soon after testing of the project is over and claim fixed charges.
- From the above it is clear that, **no Court had ever entertained the idea of paying fixed charges to IPPs without the availability of natural gas.**

# illegal Claims by IPPs

- Keeping all this in mind, IPPs have settled
  - for a negotiated settlement with DISCOMS.
- Infact IPPs have sought for
  - ‘Compensating **at least a part of the losses** (*not full*) suffered by them....’ (GPL Para-13.c of IA).
- The ‘**partial compensation**’ offered by GOAP and DISCOMS through these amendments
  - is more on ‘**sympathetic grounds**’ than any legitimate reasons.

# illegal Claims by IPPs

- Statements made by GVK and GPL at para-21 of IA that
  - They would invoke Article 9 and terminate the PPA and claim damages, in the event the approval of APERC for the amendments is **withheld or not approved for any reason.....**
  - should be seen in the above context.
- The losses claimed by the IPPs are already proved to be **illegal, irrational and highly manipulated**, and they are only trying to pressurise the commission to take a decision in their favour.
- It appears from the statements of IPPs that the Commission has **no role except to give consent** to whatever the proposals made by the IPPs.

# illegal Claims by IPPs

- **Many objections were raised** by the objectors on the proposed amendments and IPPs have not furnished any replies to them, but preferred to file this IA.

Time Required to Recover  
'Losses' – 9 months or 15 years?



# Time Required to Recover Losses

- Assuming that the claims made by the IPPs as legitimate & genuine:
  - Projected 'loss' recovery by GVK and GPL through sale of 20% Project Capacity and Excess capacity over a period of 15 years:
    - GVK: Rs 176 cr
    - GPL: Rs 314.90 cr
    - Total: Rs 490.90 cr**
- Let us examine how much time IPPs will take to recover the above amounts under the **present market conditions** ( Conditions are only going to worsen in future )

# Time Required to Recover Losses

## 3. ACTUAL POWER SUPPLY POSITION

Period	Peak Demand (MW)	Peak Met (MW)	Peak deficit/ Surplus (MW)	Peak Deficit/ Surplus (%)	Energy Requirement (MU)	Energy Availability (MU)	Energy Deficit/ Surplus (MU)	Energy Deficit/ Surplus (%)
9TH PLAN END	8585	6873	-1712	-19.9	48394	44302	-4092	-8.5
2002-03	8491	6858	-1633	-19.2	47258	44049	-3209	-6.8
2003-04	8679	7769	-910	-10.5	48080	46680	-1400	-2.9
2004-05	8093	7903	-190	-2.3	50416	50061	-355	-0.7
2005-06	8999	8542	-457	-5.1	53030	52332	-698	-1.3
2006-07	10208	8641	-1567	-15.4	60964	58280	-2684	-4.4
2007-08	10048	9162	-886	-8.8	64139	61511	-2628	-4.1
APR.-MAR,2009	10823	9997	-826	-7.6	71592	66754	-4838	-6.8
MARCH , 2009	10823	9997	-826	-7.6	7163	6472	-691	-9.6

## 5. LIKELY POWER SUPPLY POSITION AT THE END OF 2011-12\* (DEMAND AS PER 17<sup>TH</sup> EPS)

Period	Peak Demand (MW)	Peak Met (MW)	Peak deficit/ Surplus (MW)	Peak Deficit/ Surplus (%)	Energy Requirement (MU)	Energy Availability (MU)	Energy Deficit/ Surplus (MU)	Energy Deficit/ Surplus (%)
<b>2011-12</b>	<b>14721</b>	<b>12417</b>	<b>-2304</b>	<b>-15.7</b>	<b>89032</b>	<b>80858</b>	<b>-8174</b>	<b>-9.2</b>

# Time Required to Recover Losses

- **Capacity available for Merchant Sale:**
  - **GVK (220MW):**
    - 20% share: 44 MW
    - Excess capacity: 10.50 MW
    - Total capacity: **54.50 MW**
  - **GPL(464 MW):**
    - 20% share: 92.80 MW
    - Excess capacity: 5.00 MW
    - Total capacity: **97.80 MW**
  - **Combined capacity available:**
    - $54.50 + 97.80 =$  **152.30 MW**
  - **Expected Generation in one year** (Assuming 100% gas availability): **1334.148 MU**

# Time Required to Recover Losses

- Average Traded Price from Apr'08 to Apr'09 is **Rs 7.46 per unit** ( Based on Monthly reports of CERC ):

Month	Avg. Traded Price (Rs/unit)
Apr-June' 08	7.21
Aug'08	7.29
Sept'08	6.9
Oct'08	8.51
Nov'08	8.35
Dec'08	8.04
Jan'09	7.23
Feb'09	6.58
March'09	7.43
April'09	7.21
<b>Avg.price</b>	<b>7.46</b>

# Time Required to Recover Losses

- Total expected Revenue from Merchant sale:
  - $133.41 \times 7.46 =$  Rs 995.23 cr.
- Total Expenditure:
  - Energy cost @ Rs 1.85 per unit ( RIL cost )
    - $133.41 \times 1.85 =$  Rs 246.80 cr
  - Fixed cost:
    - $133.41 \times 1.00 \times 0.8 =$  Rs 106.72 cr
    - Total Expenditure:  $246.80 + 106.72 =$  Rs 353.52 cr
- Net profit in 1 year:
  - $995.23 - 353.52 =$  Rs 641.71 cr

# Time Required to Recover Losses

- Time required to recover projected losses:
  - $490.90/641.71 = 0.76$  years = 9 Months 5 days
- Hence, it is very clear that GVK and GPL have
  - grossly underestimated the revenues from merchant sale, and
  - manipulated figures (many more examples can be given to show how all the IPPs manipulated figures to justify their claims and made mockery of the whole process)
  - to justify allocation of 20% share + Excess tested capacity.

# Time Required to Recover Losses

- Now they are **trying to pressurise** the Commission as they fear that all these manipulations will see light if Commission makes a detailed examination.
- Since the state is reeling under **severe power shortages**, and the shortages are likely to continue for many more years, DISCOMS will be **compelled to purchase the above power** at very exorbitant prices.
- The expected burden on DISCOMS will be about **Rs 1405 cr/year.** ( $641/684 * 1500$ )

No additional Financial  
Commitment to Discoms?



# No additional Financial Commitment to Discoms?

- GVK and GPL have stated that (Para-14 of IA)
  - “ Initially during the negotiations the IPPs sought for a **moderate increase in tariff** to compensate the losses suffered.
  - However, APTRANSCO **did not agree** for the same.
  - Instead the APTRANSCO and GoAP suggested to IPPs to find an alternate method whereby there is **no additional financial burden** on the Respondents.”

# No additional Financial Commitment to Discoms?

- GVK and GPL have further stated that (Para-18 of IA)
  - ‘proposals for amendments (20% share to IPPs) were further considered at length by the High Powered Committee constituted by the GoAP in its meeting dt: 19-02-2008 and
  - accordingly the committee accepted the above proposals
  - as the same were in **public interest**
  - and the same **will not cause any additional financial commitment** to the Discoms’.

# No additional Financial Commitment to Discoms?

- From the above It is clear that GoAP and DISCOMS presumed that loss of capacity to the tune of 20%+Excess tested capacity **can be compensated through additional power purchases** at no extra cost to GoAP/ APDISCOMS.
- But it is already shown that the additional **burden on APDISCOMS is huge** (about Rs 1405 cr/year) and this burden will have to be borne by the GoAP as subsidy.

# No additional Financial Commitment to Discoms?

- Commission has rightly directed DISCOMS to submit **how they propose to make for the loss of 20% capacity.** (obviously... without additional financial burden on DISCOMS)
- Commission has also made it clear to the DISCOMS that
  - it is **not going to treat** the amendment proposals as policy directions given to it by the Govt, and
  - it will treat them as only **guidelines to DISCOMS** from the Government.
- So far **no clarification submitted on all these issues** from either DISCOMS or IPPs.
- Instead IPPs preferred to file this IA **without any justification.**

# Prayer

# Prayer

- Commission is requested to:
  - direct DISCOMS and IPPs to first vacate the SLP and place amendments before APERC for consent later.
  - direct DISCOMS and IPPs to clearly state sections under which the OPs and IAs have been filed.
  - not to give any relief as sought for in the IAs filed by GVK and GPL and
  - take a decision on Amendments filed by the DISCOMS & IPPs only after thorough examination of all the issues involved.
  - Direct DISCOMS and IPPs to furnish replies to the objections/issues raised in this and earlier submissions.
  - Take this presentation on record
- Thank You