Amendments to PPAs with 4 Gas Power Projects

(Gautami Power Limited, Konaseema Gas Power Limited,

GVK Industries Limited & Vemagiri Power Generation Limited

Supplementary

Suggestions/ Objections-1

By

K.Raghu

Certified Energy Manager & Auditor

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Proposed Amendments to PPAs Cost-Benefit Analysis

Proposed Amendments to PPAs- Cost-Benefit Analysis

- Commission wanted Baseline analysis for taking a decision on proposed amendments.
- Baseline being
  - provisions of ‘existing PPAs’ i.e. PPA dt: 18-06-2003 for GVK, Gautami and Konaseema and
  - PPA dt: 02-05-2007 for Vemagiri project.
- GAIN/Loss shall be assessed based on the amendments now proposed w.r.t the baseline.

Proposed Amendments to PPAs- Cost-Benefit Analysis

- **Cost-Benefit Analysis for IPPs:**
- Cost/Risk:
  - Deletion of alternate fuel clause.
    - If natural gas is not available in future, IPP will suffer loss of Fixed charges.
- Benefit:
  - '20% project capacity + Excess capacity over project capacity' allowed for third party sale
    - to allow IPP to recover 'losses already incurred' due to non-availability of gas.
  - Extension of FDSC recovery period.
  - Deletion of clause relating to 'limiting the cost of natural gas if procured from alternate sources to that of GAIL supply cost.'
  - exemption from liquidated damages.
  - Deletion of Fuel Supply Committee.

Proposed Amendments to PPAs- Cost-Benefit Analysis

- **Cost-Benefit Analysis for DISCOMS/Consumers:**
- Cost/Risk:
  - Loss of project capacity - ‘20% project capacity + Excess capacity over project capacity’ to IPPs.
  - Additional burden due to extension of FDSC recovery period.
  - Deletion of clause relating to ‘limiting cost of gas from alternate sources to GAIL supply cost.’
  - Exemption of IPPs from liquidated damages.
  - Deletion of Fuel Supply committee.
- Benefit:
  - Deletion of alternate fuel clause.
    - If natural gas is not available in future DISCOMS/consumers need not pay fixed costs.

Amendments to PPAs – Financial Projections by IPPs- Manipulated OR Real?

Projections by IPPs- Manipulated OR Real?

- From the submissions made by the IPPs, it can be seen that:
  - All the IPPs have estimated their losses based on BAU (Business As Usual) scenario – as if they had achieved COD as per the conditions laid down in the PPA.
  - Losses have to be estimated from the COD of the project.
  - There is no unanimity/agreement on COD among IPPs and DISCOMS.
  - If DISCOMS COD are taken into consideration, there wouldn't be any losses to IPPs.

Projections by IPPs- Manipulated OR Real?

- Vemagiri:
  - Detailed analysis is given.
  - BUT - Old PPA Dt: 18-06-2003 on par with other 3 projects is taken for Baseline analysis instead of existing PPA dt: 02-05-2007.
  - They tried to manipulate the figures and Hide certain facts to show that :
    - Proposed amendments are slightly beneficial compared to the existing provisions in PPA dt: 02-05-2007 (With the fear that Commission may not agree for new amendments if they are not shown to be more beneficial).
    - Even the new amendments also do not fully make up for losses suffered by them when compared to original PPA 2003 (This is to gain sympathy from the commission).

Projections by IPPs- Manipulated OR Real?

- GVK & Gautami:
  - Have not submitted Complete analysis/baseline analysis.
  - Instead projected analysis based on wrong assumptions. (To be shown later).
- Konaseema
  - Analysis submitted by Konaseema has the same limitations – Assumptions made are wrong
  - They propose to sell balance power to Karnataka
  - Konaseema made unilateral request for deletion of proviso to Cl 2.1 and Limiting the capacity available to Discoms to 70% instead of 80% now proposed.

Analysis of Vemagiri Projections

Projections by IPPs-

Manipulated OR Real?

Analysis of Vemagiri Projections

- WHICH GIVES MORE REVENUE FOR IPP-
New Amendments (PPA 2009) or Existing PPA 2007?
- Vemagiri have projected that:
  - NPV of total revenues from PPA 2009: Rs 1730 cr.
  - NPV of total revenues from PPA 2007: Rs 1605 Cr.
  - Additional gain in NPV projected due to new amendments: Rs 125 cr.
- Thus even according to Vemagiri if amendments are not carried out, they would incur a loss of Rs 125cr over a period of 23 years, i.e. around Rs 5.3 cr/Year, which is insignificant.
- Considering the risk associated with the merchant sale (As per new amendments) Vs Assured returns from DISCOMS (As per existing clauses), the gap of Rs 125 cr is negligible.

Projections by IPPs-

Manipulated OR Real?

Analysis of Vemagiri Projections

- Lets now see whether this loss figure of Rs 125 cr is correct or Manipulated?
- Manipulation- 1:
  - APERC Order dt: 30-12-2006 on Vemagiri Amendments, Chapter-III, Para 10-viii, it is clearly stated that even with the extension of PPA period upto 23 years, VPGL would be still losing about Rs 54 cr (NPV).
  - Thus when PPA 2007 was signed vemagiri was ready to absorb a loss of Rs 54 cr (NPV).
  - However there is no consideration of this fact in present Vemagiri analysis.
  - Thus actual additional gain to Vemagiri due to new amendments is only Rs 71 crore (125-54).

Projections by IPPs- Manipulated OR Real?

Analysis of Vemagiri Projections

- Manipulation- 2:
  - Vemagiri PPA 2007, cl 3.2 states that " Provided that the shortfall, if any, in payment of FDSC per unit on account of unavailability of Fuel till 31-03-2008 or till such a later date, when full availability of natural gas of 1.64 MCMD is available for a full month for the first time shall be paid to the company in the tariff years immediately succeeding the 11th annual anniversary of the COD of the last generating unit till such time that a short fall in FDSC, on account of such short fall in FDSC, on account of such unavailability of fuel, is recovered by the company.

Projections by IPPs- Manipulated OR Real?

Analysis of Vemagiri Projections

- Now it is clear that natural gas upto 80% PLF would not be available before oct’2009, FDSC payment period should be extended beyond 11 year for a further period of 3years.
- However, Vemagiri, in its financial projections conveniently ignored this factor, to manipulate the data, and show less revenues from existing PPA (PPA 2007).

Projections by IPPs-

Manipulated OR Real?

Analysis of Vemagiri Projections

- Considering additional FDSC payments beyond 11th year for 3 year period:
  - Present value of FDSC payments(not considered by Vemagiri):

Year	FDSC Rs cr	Disc. factor	PV Rs cr
12th	78	0.319	24.88
13th	78	0.290	22.62
14th	78	0.263	20.51
Total	234		68.01

Projections by IPPs-

Manipulated OR Real?

Analysis of Vemagiri Projections

- Thus actual additional gain to Vemagiri due to new amendments is only Rs 3 crore (71-68) in a total period of 23 years.
- Even this figure is an over estimate!!!

Projections by IPPs-

Manipulated OR Real?

Analysis of Vemagiri Projections

- Manipulation -3: Encroaching into Discoms share:
  - Vemagiri has assumed annual PLF of 85%
  - As per the new amendments 80% of this should go to DISCOMS and only the balance power would be available for IPP.
  - However Vemagiri have assumed that power would be shared equally, i.e. 85% in respective shares between DISCOMS and IPP. (i.e. 85% of 80% Installed capacity to DISCOMS and 85% of 20% excess capacity to IPPs),
  - This has led to higher realisation with the new amendments.
  - If this 'manipulation' is corrected, it is clear that revenue realisation from new amendments would be far less than what is projected by Vemagiri and is lower than revenue realisation from 'existing PPA'.

Projections by IPPs-
Manipulated OR Real?
Analysis of Vemagiri Projections

- From the above analysis it is clear that Vemagiri Project have tried to manipulate data to establish that proposed amendments would result in additional revenues to IPP when compared to existing PPA 2007.
- Whereas, for the projected/assumed revenues from merchant sale, IPP would infact end up in further losses.
- This shows that IPP has some hidden motives.

Projections by IPPs-

Manipulated OR Real?

Analysis of Vemagiri Projections

- As already discussed, Vemagiri while preparing financial projections, had 2 things in mind:
  i. To show that revenues from PPA 2009 are higher than revenues from PPA 2007 (to get approval for amendments), and
  ii. To show that revenues from PPA 2009 are less than PPA 2003 (to gain sympathy from the commission).
- This has resulted in IPP projecting absurd figures.

Projections by IPPs- Manipulated OR Real?

Analysis of Vemagiri Projections

- Sale price (merchant) less than cost price??
  - Certain figures projected by Vemagiri clearly show their intent to manipulate the outcome.
  - For ex:
    - the merchant sale price in the 23^{rd} and 24^{th} years is lower than the Generation cost, resulting in losses due to merchant sale.
    - Constant sale price and escalating variable cost (Generation cost).

Analysis of GVK & GPL Projections

Projections by IPPs- Manipulated OR Real?

Analysis of Gautami and GVK

- GVK and Gautami (GPL) have stated that they have incurred losses due to delay in commissioning of the project in two ways:
  1. Increase in Project Cost (IDC, Mobilisation and De-mobilisation charges etc,.) and
  2. Loss of Capacity Charges during this period.
- It is stated that they would recover part of the losses incurred, through sale of 20% project capacity and excess capacity if any, through third party sale.

Projections by IPPs- Manipulated OR Real?
Analysis of Gautami and GVK

- Both GVK and GPL assumed that plant would operate at 85% PLF. However they wrongly assumed that entire generation would be shared in the ratio of 80:20. This is not correct.
- In their reply to this objector [Para 6(o)], both GVK and GPL have clearly admitted that "During the discussions (with the Government), GVK /GPL had requested for 20% of the generation to be allowed to be sold to third parties. However, when the approval was granted, the first 80% of the generation will have to be sold to DISCOMS and only the balance remaining after this sale to DISCOMS can be sold by the Company to third parties"

Projections by IPPs- Manipulated OR Real?

Analysis of Gautami and GVK

- Thus, at 85% PLF, DISCOMS would get 80% and balance 5% would go to IPPs.
- Both GVK and GPL assumed profit from merchant sales as 50 ps/Unit (with marginal escalation of 2ps/year)
- It can be proved that at this level of realisation from merchant sales, they would incur further losses - leave alone recovery of losses already suffered.

Projections by IPPs-
Manipulated OR Real?
Analysis of GPL Profit/Loss (Case I- 85% PLF)

GPL 464 MW	**If Entire Power is sold to DISCOMS**	**If 20% Allowed for 3rd Party sale as per Amended PPA**
Capacity for FC recovery from DISCOMS	464x0.8 = 371.2 MW	371x0.8 = 296.96 MW
Capacity Available to GPL for Merchant Sale	0 MW	464x0.85-371.2= 23.2MW
FC Payable by Discoms to GPL Rs.Cr	371.2 x 8.76x1.00/10= 325.17	296.96x8.76x1.00/10= 260.13
Incentive Rs.Cr	1.40	1.14
Projected Profit through Merchant sale @ 50 Ps/Unit in Rs.Cr+100 FC	0.0	23.2x8.76x1.50/10 = 30.48
Net Revenue to IPPsRs.Cr	326.57	291.75
Loss to IPPs		Rs 34.82 Cr

Projections by IPPs-
Manipulated OR Real?
Analysis of GPL Profit/Loss (Case II- 80% PLF)

GPL 464 MW	**If Entire Power is sold to DISCOMS**	**If 20% Allowed for 3rd Party sale as per Amended PPA**
Capacity for FC recovery from DISCOMS	464x0.8 = 371.2 MW	371x0.8 = 296.96 MW
Capacity Available to GPL for Merchant Sale	0 MW	0 MW
FC Payable by Discoms to GPL Rs.Cr	371.2 x 8.76x1.00/10= 325.17	296.96x8.76x1.00/10= 260.13
Incentive Rs.Cr	1.40	1.14
Projected Profit through Merchant sale @ 50 Ps/Unit in Rs.Cr	0.0	0.0
Net Revenue to IPPsRs.Cr	326.57	261.27
Loss to IPPs		Rs 65.30 Cr

Projections by IPPs-

Manipulated OR Real?

Analysis of Gautami and GVK

- It is clear that GPL makes an additional loss of:
  - Rs 34.82 Cr/Anum @ 85 PLF and
  - Rs 65.30 cr/Anum @ 80% PLF

  if Proposed Amendments are carried out.
- It can be shown that even at 90% PLF GVK and GPL make losses.
- These calculations clearly establish that selling entire capacity to DISCOMS (thus getting assured additional Fixed cost recovery of 16%) is more beneficial to IPP than 20% third party sale.
- However GVK and GPL can make profit only through encroaching into DISCOMS capacity (by circumventing the Government intent in giving the benefit of first units generated upto 80% to DISCOMS) by adopting unfair means/misinterpreting PPA provisions.

Analysis of Konaseema Projections

Projections by IPPs-
Manipulated OR Real?
Analysis of Konaseema

- Konaseema also made similar assumption as GVK and GPL
- Konaseema assumed that plant would operate at 85% PLF. However they wrongly assumed that entire generation would be shared in the ratio of 80:20. This is not correct.
- Hence the defects noted in GVK and GPL analyses would also be applicable to Konaseema analysis.

Projections by IPPs- Manipulated OR Real?

Analysis of Konaseema

- Assuming Konaseema Projections to be true:
- Konaseema propose to sell 20% project capacity to Karnataka @ uniform rate of Rs 3.65/unit.
- Assumed energy charge at the end of 9th year is Rs 2.76/unit
- If fixed charge of Rs 1.00 is added, total cost/unit would be Rs 3.76/unit > Rs 3.65/unit
- Thus Konaseema would be making losses from merchant sales from 10th year onwards.

Projections by IPPs- Manipulated OR Real?

Analysis of Konaseema

- Konaseema assumed average energy charge of Rs 2.75/unit ((3.70+1.70)/2) during the merchant sale period.
- If Fixed charge of Rs 1.00 payable by DISCOMS is also taken into consideration, expenditure to Konaseema/unit would be 2.75 + 1.00 = Rs 3.75 > Rs 3.65
- This is higher than tariff payable by Karnataka.
- Thus through third party sales, konaseema would be making additional losses, instead of recovering losses already incurred.

Projections by IPPs- Manipulated OR Real?

Analysis of Konaseema

- In fact Konaseema considered only transmission losses and ignored transmission charges payable to Transco/Powergrid, SLDC/RLDC charges and wheeling charges payable.
- If all these factors are also included losses to Konaseema would be much more.
- Hence sale to sale to DISCOMS under existing PPA (without alternate fuel clause) would be more beneficial to IPP.

Conclusions on Analysis of Financial Projections made by IPPs

Conclusions on Analysis of Projections made by IPPs

- It is clear that IPPs have tried to manipulate the data to get desired projections, in order to get approval from the commission for the proposed amendments.
- Even the losses that are projected are not based actual (DISCOM projected) CODs of the project.
- It is also clear that even with the assumptions made by IPPs, existing PPAs (without alternative fuel clause) would be more beneficial to IPPs than the new amendments providing for merchant sale/third party sale.

Conclusions on Analysis of Projections made by IPPs

- Vemagiri Model (Existing PPA with Vemagiri) is beneficial for both IPPs and DISCOMS.
  - For IPPs it gives assured cash flows, and
  - for DISCOMS it provides additional capacity to meet consumer demand (9Hr power supply to Agriculture)
- Several complexities viz: parallel PPAs (for natural gas & alternate fuel), treatment of UI charges, interpretation of various clauses, treatment of ‘take-or-pay’ provisions in gas supply contracts etc,. Can be avoided.

Conclusion on Analysis of Projections made by IPPs

- In view of the above Commission is requested to
  - adopt the Vemagiri Model for three other IPPs also i.e. GVK-extn, Gautami and Konaseema projects. (Detailed Options available are discussed at the end of this presentation).
  - If GVK, GPL and Konaseema do not agree for Vemagiri model:
    - PPA 2003 will prevail, and
    - as gas is now available (70%now & 90% from Oct'2009) IPPs would be the losers and no additional burden on DISCOMS and Consumers.

Are IPPs Really Making Losses?

Are IPPs Really Making Losses?

- All the IPPs are claiming losses b'cos of delay in commissioning of units leading to
  - Increase in project costs (IDC, EPC, Insurance etc,.)
  - Loss of capacity charges:
- Following are the claims of IPPs:
  - GVK Extn: Rs 252.30 cr
  - Gautami: Rs 383.80 cr
  - Vemagiri: Rs 188.00 cr
  - Konaseema: ------
- However it can be shown that these claims are misleading and wrong:

Are IPPs Really Making Losses?

- IPPs in their projections ignored terminal value of the project while evaluating the NPV.
- It is established practice that salvage value/terminal value shall be considered for evaluating NPV of any project.
- PPA clearly states the procedure to be adopted for evaluating the ‘Terminal Value’.
- Schedule G deals with Buy out procedure and calculation.

Are IPPs Really Making Losses?

- Terminal Value or TV shall be equal to 50% of Depreciated Replacement Cost:
  - The value of projects right, title and interest in land, buildings etc,. Calculated on the DRC basis, and
  - The value of all Plant, machinery and equipment owned by project calculated reference to the 'net current replacement cost'.
- If Terminal Value is taken into consideration all the IPPs make profit in spite of all the delays.

Are IPPs Really Making Losses?

- Hidden Profits:
  - Actual heat rate for all the IPPs is learnt to be 1750 Kcal/KWH, whereas the normative heat rate adopted is 1850 Kcal/KWH.
  - i.e. ((1850-1750)/1750)x 100 = 5.7% savings on energy charges.
  - At 85% PLF (as projected by Vemagiri) total hidden profit for every 100 MW would be = 100x8.76x0.85x0.97x0.057= 41 MU

Are IPPs Really Making Losses?

- Hidden Profits:
  - For 1500 MW total hidden savings would be 15x41 = 615 MU/Year.
  - Assuming Rs 3.00/Unit as the variable cost, HIDDEN SAVINGS would be Rs 184.50.00 cr/Year.
  - Higher the fuel cost, higher would be the profits for the IPPs (i.e. IPPs have advantage in using costlier fuels)

- A detailed analysis of all other factors (inflated capital costs etc,.) would show that IPPs are making huge profits and their claims on losses are farcical.

Why IPPs are not interested in Vemagiri Model?

Why IPPs are not interested in Vemagiri Model?

- IPPs are not interested in Vemagiri Model because:
  - IPPs believe they can take over the project at the end of 15 years, because of confusion on buy-out clause. (They believe they have the first option to sell or retain the project at the end of 15 years)
  - NPV of 'Terminal value' at the end of 15 years would be more than NPV of terminal value at the end of 23 years.
    - (at 10% DF – 113% higher)
  - Hidden profits involved (savings in heat rate)
  - Scope for encroaching into DISCOMS capacity (by unfair means – through under declaration)
  - Additional gains through operation of parallel PPA.

Confusion on Buy-Out Clause

Confusion on Buy-Out Clause

- There is some confusion on Buy-out clause.
- Buy-out clause is incorporated in the PPA to facilitate purchase of project by DISCOMS at the end of PPA period.
- However for ‘some reasons’ some errors have crept in to this clause giving scope for interpretation that IPP gets first choice to take over the plant at the end of PPA period.

Confusion on Buy-Out Clause

- We raised this issue during Vemagiri hearings in 2006, and commission passed orders to correct the clause to give first option of purchase to DISCOMS only.
- However it is learnt that IPPs have approached AT and brought stay orders.
- It is not clear whether any appeal is made in the Supreme Court either by DISCOMS or APERC.

Confusion on Buy-Out Clause

- Stand taken by DISCOMS during public hearings on amendments to Vemagiri PPA 2006 before APERC also compounded the problem.
- APERC order in OP No 19 of 2006 dt: 30-12-2006 on Vemagiri (Para 15-j) Discoms stated that… ‘ It is true that the option to sell or to retain the plant after the expiry of the agreement period rests with the developer as per the PPA terms’.

Confusion on Buy-Out Clause

- This statement is wrong as there is nothing in the PPA in clear terms to conclude that the first option to sell or retain the plant rests with the IPP.
- Infact there are many provisions in the PPA which clearly state that DISCOMs have the first option to purchase the plant after expiry of term of agreement.
- Article 6.2 (first para) states that:
  - " ….If the parties do not mutually agree to renew this agreement or otherwise upon the expiry of the initial term of this agreement, the Board shall have the first option to purchase the project at the terminal value plus any transfer costs and transfer taxes…."

Confusion on Buy-Out Clause

- Under definitions of Schedule –G of the PPA it is clearly stated that
  - “ Buy-out means a purchase by the Board of the project pursuant to the issue of Buy-out notice.”
  - “ Completion -means the receipt by the company of the Buy-out price in immediately available funds and the transfer of the project to the Board”
- The above clauses and several other clauses in the PPA establish beyond doubt that the first option to purchase the plant lies with the DISCOMS only.

Confusion on Buy-Out Clause

- However confusion arose as result of some words in the Article 6.2, para-2 which state, interalia, that:
  - …..company shall notify the Board of its acceptance or rejection of the option within 60 day period or 15 days after the date of Board's offer which ever is later.
- If Article 6.2 is studied as a whole, it is clear that instead of 'Board' the word 'Company' appears in the sentence in para-2.
- This is because offer by the Board for sale of the plant does not arise as the project belongs to the IPP only.

Confusion on Buy-Out Clause

- Moreover the offer price is to be evaluated as per the Buy-out procedure in Schedule-G, where it is clearly stated that "Completion -means the receipt by the company of the Buy-out price in immediately available funds and the transfer of the project to the Board".
- In the light of the above, I request the DISCOMS to correct their stand and Commission may clarify on the Buy-out clause as it exists now and correct the error that crept in Article 6.2 para (2) of the PPA. (This need not be an amendment)

Issues of Major Concern in the Proposed Amendments

Issues of Major Concern in the Proposed Amendments

- Deletion of Review Powers of DISCOMS of Fuel Supply Agreements.
- Deletion of Fuel Supply Committee.
- Sharing of Project Capacity- Scope for encroaching into DISCOMS capacity
- Deletion of GAIL price as the Ceiling price
- If DISCOMS like to back down completely when gas is available- what will happen to IPP share?
- UI charges, Take or pay provisions in the GSPA, NCV/GCV,- Not reflected in the PPA.
- Parallel PPA with use of Alternate Fuel

Deletion of
Review Powers of DISCOMS
of Fuel Supply Agreements

Deletion of Review Powers of DISCOMS of Fuel Supply Agreements

- Presently any Fuel Supply Agreement (FSA) entered by IPPs with fuel suppliers are submitted to DISCOMS for their approval.
- This is done as per Cl. 3.3 of the PPA which states that " APTRANSCO has the right to review and approve the Fuel Supply Agreement through the fuel supply committee in accordance with and subject to Schedule-I."
- Even the latest agreements of IPPs with GAIL for supply of R-LNG and agreement with RIL for supply of natural gas are submitted to DISCOMS for approval on the strength of this clause only.
- Thus this clause is very important for DISCOMS to protect its own and consumers interests from the arbitrary actions of IPPs.

Deletion of Review Powers of DISCOMS of Fuel Supply Agreements

- For ex: DISCOMS can reject option of using R-LNG if they felt that it is very expensive and does not fall in their merit order.
- This can be done without paying any termination charges to Fuel Suppliers as approval of DISCOMS is sought before signing the FSA.
- However deletion of this clause will give total freedom to IPP to chose the supplier of natural gas at whatever the cost.

Deletion of Review Powers of DISCOMS of Fuel Supply Agreements

- DISCOMS in their reply to this objector have stated that ‘ operating plants are taking prior approval from the APPCC whenever gas price is increased by the gas supplier. The new IPPs also will follow the same principle.’
- It is not clear under which clause IPPs would seek the approval of DISCOMS of new/revised FSAs, once the existing clause providing for review of FSAs is deleted?

Deletion of Fuel Supply Committee

Deletion of Fuel Supply Committee.

Deletion of FSC:

- The existing PPA provides that ‘ in the event of purchase of natural gas from sources other than GAIL, the cost ‘C’ shall be the cost as per GAIL price or the cost of alternative fuel supplier whichever is less.
- However if alternate fuel (Naphtha, HSD etc,.) is used, cost of fuel shall be as decided by the Fuel supply committee
- Provided that the APTRANSCO has the right to review and approve the Fuel Supply Agreement through the FSC in accordance with and subject to Schedule-I.

Deletion of Fuel Supply Committee.

Deletion of FSC:

- Schedule-I provides for elaborate procedure for finalising the fuel cost through bidding process.
- Infact chairman of the FSC shall be nominated by APTRANSCO/DISCOMS.
- This is a very advantageous clause for DISCOMS as it protects the consumers from arbitrary price fixation, manipulations by the developers in entering FSAs.

Deletion of Fuel Supply Committee.

Deletion of FSC:

– DISCOMS in their reply have stated that

- the fuel supply Committee was provided in PPA mainly for the purpose of alternate fuel.
- Since alternate fuel provisions are deleted, the FSC has no significance.
- Further, as it requires unanimous consent and chairman does not have any VETO power the purpose of FSC would not be meaningful.

Deletion of Fuel Supply Committee.

Deletion of FSC:

– The above assertions by DISCOMS are not correct

- Schedule-I deals with both primary fuel as well as alternate fuel.
- It clearly states that FSC shall act by unanimous agreement.
- This implies that non acceptance of any decision will lead to ‘NO UNANIMITY’ and decision can not be enforced.
- Thus it gives VETO power to DISCOMS in accepting or rejecting FSAs entered by the IPPs.

Deletion of Fuel Supply Committee.

Deletion of FSC:

– Infact para-3 of Schedule-I provides that

- Tender documents for procurement of fuel shall be subjected to review and approval by the FSC
- FSC shall review the bids received by the Company
- FSC shall award the bid based upon consideration of the cost of fuel and the reliability, financial strength and the capabilities of the proposed fuel suppliers.

Deletion of Fuel Supply Committee

Deletion of FSC:

- Thus there is a specific advantage to DISCOMS in retaining the FSC clause which also protects the interests of the consumers.
- On the other hand deletion of FSC makes whole process of gas price determination arbitrary, vulnerable and highly disadvantageous to DISCOMS and consumers.
- It is not clear why DISCOMS would like to forego all these rights which in no way harm the interests of IPPs.

Deletion of Fuel Supply Committee

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- Thus there is a specific advantage to DISCOMS in retaining the FSC clause which also protects the interests of the consumers.
- On the other hand deletion of FSC makes whole process of gas price determination arbitrary, vulnerable and highly disadvantageous to DISCOMS and consumers.
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Sharing of Project Capacity- Scope for encroaching into DISCOMS capacity

Sharing of Project Capacity- Scope for encroaching into DISCOMS capacity

- Committee appointed by the Govt. accepted
  - " to permit the companies to sell 20% of PPA capacity plus any tested capacity over and above the PPA capacity to third parties. However available gas would be first utilised upto the installed capacity (i.e. 80% of project capacity) for APDISCOMs, and the company would not sell excess capacity to third party, unless availability declaration upto 80% has been made to the APDISCOMs".
- Thus the intention of the Govt was:
  - If Gas is available for less than 80% capacity, entire capacity should go to DISCOMS, and
  - If gas is available for more than 80% capacity, 80% capacity should go to DISCOMS and only excess capacity over 80% should go to IPP.

Sharing of Project Capacity- Scope for encroaching into DISCOMS capacity

- However this decision is not reflected in the amendments now proposed.
- In the illustration given under cl.3.3 (amendment) it is proposed to share the project capacity in the ratio of 80:20 whatever the availability of gas.
- It is also stated that
  - ‘ in the event there is reduction in declared capacity of the project resulting ‘solely’ from a shortage of fuel, the company shall not sell such excess capacity to third parties until and unless the company has made availability declaration upto installed capacity’

Sharing of Project Capacity- Scope for encroaching into DISCOMS capacity

- By inserting the word ‘solely’, the intent of the Committee is totally defeated.
- It is inexplicable why IPP should get ‘additional share’, for reduction in declared capacity for ‘other reasons’, for which he is not entitled otherwise.
- It obviously prompts IPP to under declare project capacity to encroach into DISCOMS share.

Sharing of Project Capacity- Scope for encroaching into DISCOMS capacity

- Reply of DISCOMs to this objector on this issue does not address the central issue raised, i.e. ‘ how IPP gets additional benefit/share for under declaration?’
- DISCOMs further stated that ‘ the proposed amendment incorporates the decision of the committee which was approved by GoAP’.
- The Committee recommendations and proposed amendments approved by the GoAP that are placed on web site do not contain these details.

Sharing of Project Capacity- Scope for encroaching into DISCOMS capacity

- Infact in their reply to this objector [Para 6(o)], both GVK and GPL have clearly admitted that "During the discussions (with the Government), GVK /GPL had requested for 20% of the generation to be allowed to be sold to third parties. However, when the approval was granted, the first 80% of the generation will have to be sold to DISCOMS and only the balance remaining after this sale to DISCOMS can be sold by the Company to third parties"

Sharing of Project Capacity- Scope for encroaching into DISCOMS capacity

- Thus there is no ambiguity in stating that governments decision in allocation of share in project capacity is not reflected in the amendments.
- In view of the above if Commission decides to approve the amendments, it is requested that entire Cl 2.1 may be suitably modified to ensure that IPPs would not encroach into DISCOMS share under any circumstances.

Sharing of Project Capacity- Scope for encroaching into DISCOMS capacity

- Following method is suggested:

  Case (i): If available gas is <=80% & for both Outage and no Outage conditions:

  – Entire 80% capacity should go to DISCOMS

  – (As IPP is not losing any capacity due to outage)

  Case (ii): If available gas is > 80% & no outage condition:

  – First 80% should go to DISCOMS and balance should go to IPP.

Sharing of Project Capacity- Scope for encroaching into DISCOMS capacity

Case (iii): If available gas is > 80% and Plant Outage condition:

- First assess the ratio of project shares for the available gas for no outage condition.
- Then divide actual generation in the above ratio.
- (this is to compensate the IPP of the loss of generation due to outage)

Sharing of Project Capacity- Scope for encroaching into DISCOMS capacity

- Illustration:
  - Plant capacity :100 MW
  - Gas availability :90 MW
  - Actual Generation : 60 MW (Due to outage)
- then by applying above formula (Case-iii):
  - Share of DISCOM and IPP for no outage condition:
    - DISCOM: 80 MW
    - IPP : 10 MW
  - % share of DISCOMS and IPP w.r.t. gas availability of 90MW:
    - Share of DISCOMS: (80/90) x 100 = 88.89%
    - Share of IPP : (10/90)x 100 = 11.11%
  - Then divide actual generation of 60 MW in the above ratio:
    - Share of DISCOM : 60 x 0.8889= 53.34 MW
    - Share of IPP : 60 x 0.1111 = 6.66 MW

Deletion of GAIL price as Ceiling Price

Deletion of GAIL price as Ceiling Price

Use of Natural Gas From Alternative Suppliers

- The existing clause in the PPAs (cl 3.3. case-ii) states that in the event of purchase of Natural gas from sources other than GAIL, the cost of Fuel shall be cost as per GAIL price or the cost of alternative fuel supplier whichever is less.
- However the proposed amendments delete the above clause and instead provide for ‘Weighted average cost’ of gas from all the sources.

Deletion of GAIL price as Ceiling Price

- The purpose of restricting to GAIL price is two fold:
  1. If GAIL has sufficient gas to supply to IPPs but IPPs prefer to purchase gas from other sources.
  2. If GAIL doesn't have sufficient gas resources and IPPs prefer to purchase from alternate costly sources (say imported LNG) which does not fall in the merit order or DISCOMS
- In both the cases the cl 3.3. case-ii protects the interests of the DISCOMS.

Deletion of GAIL price as Ceiling Price

- Case-I: If GAIL has sufficient gas resources:
  - We can not predict the future, but in future, if GAIL has sufficient resources, then having cl 3.3, case-ii would be in the interest of DISCOMS.
  - Otherwise DISCOMS would be exposed to the risk of high cost purchases by the IPPs.
- Case-II: If GAIL doesn't have sufficient Gas:
  - This is applicable for the present scenario where GAIL doesn't have sufficient gas to supply.
  - RIL is making partial supply of gas.
  - Hence IPP may prefer to purchase balance gas from costly sources, such as imported LNG, which does not fall in the merit order of DISCOMS. (Fixed cost recovery for IPP is upto 80%)

Deletion of GAIL price as Ceiling Price

- Such purchases can be avoided by DISCOMS if cl 3.3 case-II is retained.
- Thus there is definite advantage with the retention of above clause to DISCOMS.
- However Commission may make the above clause 'non-operative' when purchases are made from alternate gas suppliers with the consent of the DISCOMS, till the period GAIL has sufficient gas supplies. (this will take care of purchase of natural gas from sources like RIL and R-LNG).
- This will avoid burden on IPPs.
- But deletion of the above clause altogether will harm DISCOMS interests.

Can DISCOMS back-down??

Can DISCOMS backdown??

- DISCOMS in their reply (17-06-2007) stated that:
  - state may end up in surplus situation in future, and that
  - ‘ there may also be likelihood of backing down of the gas projects during the course of time….’
- Under ‘power sharing agreement’ with IPPs, how is it possible to completely back-down the units without affecting the share of IPP?

Can DISCOMS backdown??

- For Ex: Assuming
  - sufficient gas is available (above 80%PLF), and
  - DISCOMS want to completely back-down:
- DISCOMS in their reply to this objector have clearly stated that IPP share under no circumstances would exceed (20%+ Excess tested capacity if any)
- Then in such a case it is not technically feasible to run the plant at 20% capacity.

Can DISCOMS back-down??

- Excess generation is possible only violating the limit imposed on IPP share.
- This is against the intent of the Government.
- Hence a clause should be incorporated in the amendments to provide that
  – IPP can not claim its share in the event of complete backing down of the units.

Non Inclusion of Certain Variables in the Proposed Amendments

Non Inclusion of Certain Variables

- Amendments now proposed require inclusion of certain additional provisions in the PPA.
- Earlier, as there was no sharing of capacity with IPPs, PPAs did not have exclusive provisions delineating the roles of DISCOMS and IPPs.
- As proposed amendments provide for sharing of project capacity,
    - various provisions in GSPAs, GTAs and others affecting DISCOMS & IPPs interests should be clearly incorporated in the PPAs, well in advance, to avoid future litigations/complications/misunderstandings.

Non Inclusion of Certain Variables

- For Ex :
  - RLDC directions:
    - Under certain conditions RLDC may direct DISCOMS to reduce generation from state units and draw from CGS to prevent under drawals from CGS.
    - Since it is not a outage condition, the impact of such declarations on the reduction of shares of DISCOMS and IPPs should be clearly spelt out.
  - Sharing of UI Charges:
    - DISCOMS/IPPs have to pay/receive UI charges for the variations in the scheduled and actual generations as per the system conditions.
    - Procedure for payment/receipts of UI charges by DISCOMS/IPPs is not included.

Non Inclusion of Certain Variables

- Procedure for compiling capacities of IPPs (Scheduled, Actual etc.) and declaration of capacities to SLDC/RLDC in not incorporated in the PPAs
  - Usually any developer incurs certain expenditure towards this work.
  - Will DISCOMS deliver ‘free service’ to IPPs for all these transactions or ‘charge’ is not clear.
- Take or Pay provisions in the GSAs/GTAs:
  - GSAs/GTAs contain certain take or pay provisions.
  - Procedure for sharing of such liability is not defined in the proposed amendments.

Non Inclusion of Certain Variables

- Also GSAs provide that RIL may ‘make up’ for short-fall in gas supply in a particular period in future periods. (Make Up gas-Cl 11-d, Short fall gas-12-e of GSPAs)
  - For ex:
  - If RIL is supposed to supply gas (Contracted quantity) at 90PLF
  - and is supplying gas only at 80PLF,
  - and it may compensate this short fall in future.
- In such a scenario:
  - What will be the share of DISCOMs and IPPs for the Present and Future?
  - i.e. will DISCOMS and IPPs share project capacity even when the gas supply is at 80PLF, since RIL ‘may’ supply balance gas in future ?

Non Inclusion of Certain Variables

- GCV Vs NCV:
  - Existing PPAs provide for heat rate in terms of Gross Calorific Value based on provisions of GSA with GAIL.
  - However RIL is supplying gas based on NCV.
  - Hence the concerned clause should be amended to incorporate NCV.

Parallel PPA for Alternate Fuel

Parallel PPA for Alternate Fuel

- DISCOMS propose to enter Parallel PPA (for alternate fuel) with IPP which is applicable when natural gas is not available.
- The Nature and content of this 'Parallel PPA' is not known.
  - How fixed charges are paid?
  - In the existing PPA with alternate fuel, DISCOMS need not pay for 'Minimum Fuel Off-take Charges' for using 'Alternate Fuel'.
  - Cl 3.3 (b) provides that ' The APTRANSCO shall reimburse the company for charges paid in respect of its failure to take delivery of minimum levels of primary fuel only……'
  - It is not clear whether the above condition will remain in the 'parallel PPA'?
  - There will be many issues in the parallel PPA which will have bearing on the main PPA.

Parallel PPA for Alternate Fuel

- Moreover, permitting ‘parallel PPA’ would amount to amending the existing PPA.
- Suitable clauses shall be incorporated in the proposed amendments regarding nature of parallel PPA.
- Also, given the sensitive nature of PPAs, Commission is requested to finalise the ‘Parallel PPA’ along with these amendments, to avoid future litigations.

Mixed Fuel Capability

Clarification Needed

- It is not clear whether these Gas projects have mixed fuel capability, i.e. whether they can run using both the fuels simultaneously i.e. primary and secondary? (Existing Gas projects have this capability)
- It is learnt that these 4 projects do not have mixed fuel capability.
- This is important because-
  – Under the existing PPAs, IPPs can use alternate fuel only in the event of non availability of primary fuel.

Clarification Needed

– Total non-availability of primary fuel in future does not arise

– Even if partial/small quantity of natural gas is available , he can not use alternate fuel for balance capacity and claim fixed charges, as the plants do not have mixed fuel capability.

– Even in the event of complete non-availability of natural gas,

  - IPPs can be directed to use R-LNG (imported or domestic) and limit the price to GAIL price under existing PPA conditions.
  - If IPP is not willing to limit the price to GAIL price, DISCOMS will not have liability to pay Fixed Charges.

Clarification Needed

- Thus the question of paying fixed charges for use of alternate fuel does not arise at all.
- I request the Commission to examine this aspect of lack of ‘Mixed Fuel Capability’, before any decision is taken on amendments now proposed.

Comments on Reply Filed by DISCOMS on 17-06-2009

Comments on Reply Filed by DISCOMS

- DISCOMS have submitted that the directions from the Govt to DISCOMS should be treated at policy directions/guidelines and commission is bound by such direction (APTEL order on small hydro is quoted in this context).
- Commission may note that the APTEL order is contested by DISCOMS and the matter is now pending with the Supreme Court.
- It is also not clear how a direction given to DISCOMS would become a direction to APERC?

Comments on Reply Filed by DISCOMS

- S.108 of E.Act 2003 states that:
  - ‘ In the discharge of its functions the state commission shall be guided by such directions in matters of policy involving public interest as the state government may give to it in writing’.
- In the instant case, written direction was not given to APERC, hence can not be treated as policy direction.

Comments on Reply Filed by DISCOMS

- Even if it is treated as a direction to Commission:
- according to Section 65, "…the State Government shall, notwithstanding any direction which may be given under section 108, pay, in advance and in such manner as may be specified, the amount to compensate the person affected by the grant of subsidy in the manner the State Commission may direct, as a condition for the licensee or any other person concerned to implement the subsidy provided by the State Government".
- In this we request the DISCOMs and GoAP to clarify whether the GoAP will be compensating the DISCOMs from the loss/burden incurred by the DISCOMs/consumers in the state as they would be forced to pay higher price in the market for the capacity which legitimately belongs to them.

Comments on Reply Filed by DISCOMS

- Discoms have stated that,
  - GoAP considering totality of circumstances and overall view of the matter of the power sector in the state,
  - without going into microscopic examination of mathematics submitted by the Companies,
  - has issued directions to DISCOMS, to amend the PPA, in the public interest.
- Where as the preamble to the proposed amendments (Gautami Amendments, para 15) clearly state that
  - " Government after detailed examination of and
  - noting that no additional financial commitments have arisen in the amendments proposed,
  - accepted the recommendations of the committee and conveyed approval vide GoAP letter dt: 20.05.2008 for the amendments proposed".

Comments on Reply Filed by DISCOMS

- From the above para it is very clear that the GoAP have clearly gone into the minute details of financial implications of proposed amendments and concluded that there wouldn’t be any additional financial burden on GoAP.
  - Govt approval for the amendments proposed is subject to this observation.
- This obviously means that Govt is not going to compensate, under S.65 of E.Act,2003, any losses that arise out of allocation of share in these projects to IPPs, as GoAP presumes that ‘no additional financial commitments have arisen in the amendments proposed’.

Comments on Reply Filed by DISCOMS

- Hence it is for the commission to decide whether the proposals now made have any additional financial implications or not.
- This necessitates detailed & microscopic examination of all the aspects involved and arrive at the financial burden on DISCOMS/Consumers.
- It is for the commission to ensure that
  - ‘benefit to IPPs’ from allocated share in the project capacity would be equal and not exceed the ‘financial losses’ suffered by them due to the fault of DISCOMS.
  - If the GoAP insists on 20% share to IPPs, Commission may direct GoAP to pay the resulting loss as advance subsidy to DISCOMS.

Prayer

Prayer

- The proposed amendments are neither
  - in the interest of IPPs (no apparent additional financial benefit without encroaching into DISCOMS share, infact they incur additional losses)
  - nor DISCOMS (Reduction in capacity available)
- There will be many complications in interpreting various clauses and also complexities in implementation.
- If will be very difficult to foresee all the possibilities/eventualities and finalise amendments
- There will be conflict of interest between DISCOMS and IPPs.
- There is also scope for adopting unfair practices by the IPPs to get undue benefits.

Prayer

- In view of the above, following options are suggested in the order of their preference:
- Option-1:
  - Presently gas is available from RIL and hence no risk of alternate fuel.
  - Thus there is no advantage now in deleting this clause to DISCOMs.
  - Hence accepting amendments would amount to compensating IPPs for the losses they have suffered with no definite advantage to DISCOMS.

Prayer

- If Commission decides to compensate the losses, it amounts to accepting the claim of IPPs that DISCOMS are responsible for delay of COD of these projects and consequent losses they have suffered.
- This would be against the stand taken by DISCOMS before Supreme Court.
- Hence, Commission is requested not to allow the amendments now proposed.

Prayer

- Option-2:
  - If Commission decides to compensate the losses suffered by the IPPs, it may adopt the Vemagiri model. i.e. extension of PPA period to recover FC loss, for all the three projects viz: GVK, GPL and Konaseema.
  - There is no case for consideration of amendments to Vemagiri PPA, as alternate fuel clause is already deleted and the only way they could be compensated further losses was through further extension of PPA period.

Prayer

– Vemagiri now claims that further extension beyond 23 years is not possible, hence they can not recover additional losses they suffered due to delay in availability of natural gas.
– It is not clear how they have earlier signed amendments accepting for extension of agreement period beyond 23 years.
– It is clear from the details submitted, Vemagiri will recover all their losses within 23 years.

Prayer

- However, if commission thinks
  - Vemagiri can not recover their losses within 23 years and
  - it is not technically possible to extend the PPA period beyond 23 years,
  - Commission may compensate un recovered losses by allowing the same to be added to the fixed charges payable in the 23rd year.
- However a clause shall be incorporated to the effect that
  - this amount shall not be allowed, if it is found based on technical assessment at the end of 23rd year that Project can still generate power and PPA period can be further extended.

Prayer

- Option-3:
  - If Commission decides to share project capacity between DISCOMs and IPPs, it should be ensured that
    - IPP would not encroach in to DISCOMS share by completely modifying the proposed amendment to Cl 2.1. as suggested.
    - Also ensure that IPPs sells their share to DISCOMS only at additional fixed cost of 50ps/unit with a ceiling price on total cost of Rs 4.50/unit (As per the projections of IPPs themselves). (This will avoid unnecessary purchases from Traders at exhorbitant costs).
    - IPPs should not have any objection to the above arrangement as their expectations on tariff are fulfilled by the DISCOMS and in addition risk of merchant sales is avoided.
    - However the GoAP shall pay advance subsidy under s.65 of E.Act to DISCOMS for the losses suffered by them.

Prayer

- Option-4:
  - If commission decides to allow IPP to encroach in to DISCOMS share*, then
    - i. reduce IPP share, say to 10%
    - ii. Direct IPP to sell entire capacity to DISCOMS only at additional Fixed cost of 50ps/unit with ceiling on total cost at Rs 4.50/unit.

    - *(*This arrangement is not as per GoAP directions).*

Prayer

- Other Prayers:
  - Before a decision is taken, Commission is requested to examine all the records of IPPs on project cost (E.Act 2003 permits this) as there appear many anomalies in the figures given by IPPs. (For ex: IDC for GVK 220MW project is higher than IDC for GPL 464MW project).

Prayer

– To re-define primary fuel to ensure that ‘Natural Gas’ not to include R-LNG. (This is incase commission decides to delete the cl 3.3, case-ii)
  - This will prevent use of imported and other costly R-LNG for power production to claim fixed charges.
  - However IPPs can use R-LNG with the prior consent of DISCOMS

– If any further modifications are made to the existing proposals, opportunity may be given to the objector to be heard.

– To take this presentation on record as a supplementary petition.

– Thank You