Consultative Paper of APERC on Fixation of Tariffs/Power Purchase Price

for

Existing & New NRE Projects

Views/Suggestions/ Objections

K.Raghu

28-02-2009

Overview…

- Scope of Consultative Process-Critical issues
- Directions from the state Government
- Issues involved in National Electricity Policy & National Tariff Policy.
- Key Issues raised by the Commission
- Other Issues

Scope of Consultative Process-Critical issues

Scope of Consultative Process

- The present consultative process is limited to

i. Existing NRE projects(Para 3.6) - i.e.

   a. PPAs entered into in terms of the APERC order dated 20-03-2004 or

   b. where the rates determined in terms of the APERC order dt: 20-03-2004 are followed and

   c. in so far as it is relevant to the PPAs executed in terms of the RPPO order dt: 27-09-2005.

ii. PPAs that are going to be entered into, in terms of the order determining tariff going to be issued pursuant to these proceedings.

Scope of Consultative Process

- It is stated that commission is not inclined to review any aspect of the PPAs covered by the Appellate Tribunal order dt: 02-06-2006
- Thus the present consultative process does not include in its scope:
    1. PPAs that have been signed before commission came into existence
    2. PPAs that have been signed after Commission came into existence and till the Commission’s order dt: 20-03-2004 was issued
    3. Third party sales and wheeling agreements signed earlier.

Financial Burden Due to Old NRE Projects

- There is huge financial burden on DISCOMS on account pendency of case in Supreme court as the DISCOMS are compelled to pay half the price differential of Tariff existing before order dt: 20-03-2004 and tariff as determined by the Commission as per the above order.
- Even the old wheeling agreements are lopsided, as the assumed losses in kind was only 2% for most of the projects.

Financial Burden Due to Old NRE Projects

- Example: Burden on consumers due to faulty Wheeling agreements:
  - Actual loss ~ 12% (say at 33 KV level)
  - As per wheeling agreement ~ 2%
  - For every 100 units at generation end
    - Actual units to be supplied ~ 88
    - Supply as per wheeling agreements ~ 98
    - Additional units supplied ~ 98-88 = 10 units
    - Additional units to be purchased accounting for losses
      - 10/0.88 = 11.50 units
    - Cost of marginal power ~ Rs 8/unit
    - Additional burden on utilities = 11.5 x 8 = Rs 92/-
    - BURDEN ON CONSUMERS = 92/88 = Rs 1.04/unit
    - i.e. CONSUMER HAS TO BEAR A BURDEN OF **Rs 1/-** FOR EVERY ONE UNIT SUPPLIED BY NCE DEVELOPER TO THIRD PARTIES

Can We Avoid this Burden?
What AT order dt: 02-06-2006 says?

- Para 114 (ix) of the AT order dt: 02-06-2006 states the following:
  - Appeals preferred by the NCE developers are allowed
  - Proceedings of APERC are set aside
  - Direction to APTRANSCO and DISCOMS to “ continue to the power purchase and at the same rate at which the power generated by NCE developers supplied to them are paid before passing of the impugned order dt: 20-03-2004 with all differences and arrears thereof, up to date and
  - Continue to pay at the same rate UNTIL A NEW PPA IS ENTERED BY AGREEMENT BETWEEN THEM IN TERMS OF STATE GOVERNMENT POLICY DIRECTION THAT MAY BE MADE HEREAFTER AND APPROVED BY THE REGULATORY COMMISSION.

What AT order dt: 02-06-2006 says?

- The main contention of AT was that the APERC can not decide the tariff issue without a policy direction from the state govt.
- On the other hand APERC feels it automatically gets the power to fix/review the tariff as per various provisions of the APERA1998 and EAct 2003.
- The authority & Jurisdiction of APERC to fix generation tariff in the above case to be settled by the Supreme court.

What AT order dt: 02-06-2006 says?

- In the mean time (till the authority and jurisdictional issues of APERC are settled by the Supreme court)
  - unnecessary extra payments (50% of the price differential) that are being made by DISCOMS
  - could have been avoided if the state government had clarified its position in clear terms and
  - issued a policy direction to APERC to fix/review tariff for all the NCE projects as suggested by AT
  - and allowed new PPAs to be signed between NCE developers and DISCOMS.

What AT order dt: 02-06-2006 says?

- The term ‘new PPA’ doesn’t refer to PPA being signed after the expiry of entire term of PPA i.e. 20 years as the entire reliance of AT in its order was on policy direction from the state government.
- As no specific policy direction was issued by the state Government as stated by AT, new PPAs are not yet signed and DISCOMS shall continue to pay the PRICE DIFFERENTIAL till the matter is finally settled by the Supreme court.

What AT order dt: 02-06-2006 says?

- Atleast now, state government, without waiting for the Supreme Court's judgement, should issue specific policy direction to APERC clarifying its position and directing APERC to fix/review tariffs of all those projects and ensure signing of new PPAs as suggested by the AT.
- This will not in any way prejudice the position taken by APERC/DISCOMS/State Govt before the Supreme Court in the above case.
- I request the Commission & DISCOMs to initiate steps in this direction and take up fixing/review of tariff for all the old projects.

NCE Projects Completing 10yrs

- There shall also be review of purchase price with specific reference to each project completing 10 yrs from the date of commissioning of the project.
- Commission has not taken up review for several projects which have already completed 10 yrs
- DISCOMS continue to pay huge sums to these projects as the matter is pending before the Supreme Court.

NCE Projects Completing 10yrs

- In fact as loans from the Financial Institutions for these projects would have been already repaid, the tariff to be fixed for these projects would be substantially lower.
- I request the Commission & DISCOMs to initiate steps for issue of policy direction from the state government for review/fixing of price for these projects also.
- As it is not possible to adopt different approaches for each of these projects, I request the Commission to finalise general guidelines of review in consultation with all the stakeholders before the review of price for individual project completing 10 years is taken up.

CERC guidelines on Promotion of Cogeneration and Electricity from RSE

- Under Section 6.4(3) of the National Tariff Policy, CERC is required to lay down the guidelines for pricing of non-firm power, especially from non-conventional sources, to be followed in cases where such procurement is not through competitive bidding.
- The CERC had issued draft guidelines and yet to issue final orders.
- As the proposed procurement process by APERC is not through competitive bidding process, will the commission repeat the whole exercise if the orders issued now as a result of this consultative process are not in line with the final CERC guidelines?

Directions from the state Government

Directions from the State Government to DISCOMS

- Government of AP has issued several directions to DISCOMS in general as well as on NCE tariff related issues for implementation.
- For Ex: Adhoc enhancement for power purchase price at Rs 3.79 per unit from Bio-mass power projects vide Lr dt: 12-11-2008 valid for one year period.
- DISCOMS have already started implementing the above directives.

Directions from the State Government to DISCOMS

- The issue is whether DISCOMS can implement a tariff based on a direction from the state government without having approval from the Regulatory commission.
- Under Section 62 and 86 of EAct 2003 only the Regulatory commission can fix tariffs. State Government can only give policy directions under Section 108.
- Hence the above procedure appears not in order.

Directions from the State Government to DISCOMS

- In BSES Ltd Vs Tata Power Co Ltd 2004 I SCC 195, the Supreme Court held that the Regulatory commission has been conferred with power to determine the tariff in terms of the provisions of the Act and no tariff can be implemented unless the tariff has been approved by the Regulatory Commission.
- In view of the above position, Commission is requested to look into the above issue and issue suitable orders.

Treatment of Directions from the State Government to APERC

- Recently the State Government has issued several directions to APERC on NCE related issues.
- Commission in its consultative paper requested the stakeholders views on these issues.
- The directions issued by the State Government can be categorised as below:

1. Directions relating to Tariff Related issues.
2. Directions relating to non-tariff issues.
3. Directions on non-tariff issues under Section 108.
4. Directions on Tariff related issued under Section 108 but with a mention that ‘ as decided by the Regulatory Commission’
5. Directions on Tariff related issues under Section 108.

Treatment of Directions from the State Government to APERC

- On 1 & 2 i.e. directions relating to Tariff Related issues and non-tariff issues, without specific reference to Section 108, Commission may examine and may defer with the state government on these issues.
- On 3, i.e. regarding directions on non-tariff issues under Section 108, it is mandatory for the Commission to implement the same, but it may send its views to the state government on the issues where it defers.
- On 4, i.e. directions on Tariff related issued under Section 108 but with a mention that ‘ as decided by the Regulatory Commission’- Commission has entire discretion to decide on the matter.

Treatment of Directions from the State Government to APERC

- On 5, i.e. regarding directions on Tariff related issues under Section 108, Commission shall implement the same, but the additional financial burden if any, in case Commission defers on the tariff suggested by the State Government, shall be borne by the State Government (Section 65 of EAct 2003).
- Commission may take view on various directions given by the state government accordingly.

Treatment of Directions from the State Government to APERC

- Section 108 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.
- Hence even if any GO is issued by the State Government, as it is not specifically addressed to the Commission, it may not be treated as a policy direction in terms of Section 108 of EAct 2003.

Issues in
National Electricity Policy &
National Tariff Policy

Issues in National Electricity Policy & National Tariff Policy

- Para 6.4.2 of National Tariff Policy states that:
  - " ….procurement by Dist. Licensee for future requirements shall be done, as far as possible, through competitive bidding process under S.63 of the Act within suppliers offering energy from the same type of NCE sources. In the long term these technologies would need to compete with other sources in terms of full costs"
  - " As far as" doesn't mean 'no Competitive Bidding at all'.

Issues in National Electricity Policy & National Tariff Policy

- From Para 6.4.2 it is very clear that Commission should ensure two things
  1. Competitive Bidding Process(As far as possible)
  2. Tariff for NCE in the long term should compete with conventional sources.

1. Competitive Bidding Process:
   - As it is not possible to introduce CBP immediately, Commission is requested to continue the existing practice of Fixing " Ceiling Tariff" and allow DISCOMS to negotiate with the developers to arrive at " Competitive Price" & avoiding formation of Cartel by the developers.

Issues in National Electricity Policy & National Tariff Policy

2. Competing with conventional sources:
   - There are rapid technological developments taking place in NRE field which could substantially reduce the cost of production.
   - To ensure that developers do not take advantage of Preferential tariffs offered now, control period fixed by the Commission should not be very long.
   - There should be a clause in the PPAs to ensure that ‘ If there are technological developments in future, that can be adopted by the existing projects, which significantly reduces the cost of production, the benefit of such reduction shall be passed on to the consumer”

Issues in National Electricity Policy & National Tariff Policy

- Environmentally Friendly?
- The underlying assumption in the National Electricity Policy to encourage and promote NCE projects is that these projects are environmentally friendly (Cl. 5.12.1)
- However some of these plants, especially Biomass/Industrial waste plants are highly polluting and plants located in populated areas are causing severe health hazards to general public.
- Some of these projects are destroying forests for the sake of fuel for power generation.
- Commission may examine this issue, not leaving the matter entirely to Pollution Control Board, and take steps to discourage plants that are polluting and harming public.

Key Issues raised by the Commission

Views on Key Issues Raised by the Commission

- On Issues 1,2,4,5,6,7,8,10,11,16,17,18,19,20-- agree with the DISCOMS Completely.
- On Issue- 3: Whether Tariff should be specific or uniform for all the projects falling in a Category:
  - Broad categorisation within each category should be done where ever possible.
  - For Ex: Mini Hydel Power Projects can be broadly categorised into
    1. Run-of-the-River Projects
    2. Reservoir Based Projects.

Views on Key Issues Raised by the Commission

- Though both fall under MHPP category, the costs involved significantly differ.
  - Additional costs involved for ‘Run-of-the-River Projects’ are:
    - Land development
    - Construction of Weir, Intake structure, Diversion channel
    - Unreliable inflows
    - Higher O&M
    - Longer gestation period
    - Higher Insurance costs
    - High Risk

Views on Key Issues Raised by the Commission

- However ‘ Reservoir Based MHPPs’ have several advantages:
  - 40-50% reduction in Civil Construction costs, which is a major component in overal project cost.
  - Reliable inflows
  - Less insurance burden
  - Less O&M
  - Shorter gestation period
  - Risk free
- Hence a sub-category within MHPP category is very much essential. Otherwise ‘Reservoir Based MHPPs’ will take undue advantage of higher capital cost allowed by the commission.
- I request the Commission to carry out similar sub-categorisation for all the NCE sources.

Views on Key Issues Raised by the Commission

- Suggested Capital Costs for MHPPs in Rs.Cr/Mw:

Type of MHPP	Scheduled Area(APTRIPCO Projects)		Plain Area(Private Projects)
	Hilly	Non-Hilly	
Run-of-the River	7.0	6.0	5
Reservoir Based	6.0	5.0	3.5

Views on Key Issues Raised by the Commission

- Issue 6: On Rate of Incentive:
  - Various developers wrongly claim that the incentive allowed by the Commission is very low
  - Infact they ignore the CDM benefit attached to each unit produced for energy produced beyond threshold PLF
  - For ex: For 1 MW MHPP producing at 50% PLF estimated CDM benefits at present market rate are Rs 22 Lakhs/year.
  - This amounts to 350 ps/every unit generated above threshold PLF of 35%.
  - Even if 50% of CDM benefit is passed on to the DISCOMS as a pass through, the total incentive would be 175+25 = 200ps/unit for generation above threshold PLF.
  - Hence, I request the Commission not to increase the incentives already announced by the Commission

Views on Key Issues Raised by the Commission

- Issue 9: On failing to ground the projects within control period:
  - NEDCAP is presently monitoring private NCE projects.
  - However it lacks man power to monitor & control the progress of huge volume of works.
  - Hence DISCOMS should be involved in review of progress of works of private parties.
  - DISCOMS suggestion with regard to termination of PPA may be applied to Private parties only.
  - For Government projects within scheduled areas, APTRIPCO is the authority to implement the projects and should be given 5 yr period for completion of the project as projects are remotely located and mostly ‘Run-of-the-River Projects’.

Views on Key Issues Raised by the Commission

- Issue 12: On wind policy:
  - It is issued in the form of GO and is not specifically addressed to the Commission in writing.
  - Hence Commission can take its own stand
  - DISCOMS have already entered agreements with some of the developers at Rs 2.70 /unit.
  - With the technological developments it should be possible to further reduce the capital costs.
  - Hence we request the Commission to fix tariff as per the order of APERC dt: 20-03-2004 and allow the DISCOMS to negotiate with the developers under RPPO.

Views on Key Issues Raised by the Commission

- In the amended GO regarding third party sales it is stated that "…the DISCOMS may pay for such unutilised energy at the rate of 85% of the tariff as amended"
- This is highly disadvantageous to DISCOMS and takes away entire risk from the developer.
- Developers would now prefer to sell to third parties without risk of losing any money, as they have assured customer in DISCOMS.
- Hence, Commission is requested to allow this unutilised banked energy to be lapsed.

Views on Key Issues Raised by the Commission

- On Issue 15: can tariffs announced in order dt: 20-03-2004 can be extended to all the projects, without reduction by DISCOMS (as opined by NEDCAP):
  - Commission should allow the same tariffs as determined in 20-03-2004 order, with a provision for fuel cost escalation where ever such escalation is involved.
  - These tariffs should be ‘ceiling tariffs’ only
  - DISCOMS should have freedom to negotiate with the Developers to arrive at a competitive price.

Views on Key Issues Raised by the Commission

- On Issue 16: On Subsidies to the NRE projects:
  - Commission is requested to obtain latest information from various agencies like- MNRE, IREDA etc,. On various subsidies/benefits extended to NRE projects, as the benefits keep changing from time to time.
  - If a developer gets any subsidy benefit under any new scheme after he signs PPA, Commission should ensure that such benefit is passed on to the DISCOMS.

Views on Key Issues Raised by the Commission

- On Issue 17: On share in CDM benefits:
  - Several costs are involved in obtaining CDM benefits.
  - However these benefits are very significant. Say Rs 20-30 Lakh/MW/Year
  - Hence, Commission is requested to pass on atleast 50% of the total CDM benefits may be passed on to the DISCOMS.

Other Issues

- GCV & Heat rate for Biomass Plants:
  - Since biomass plants are allowed to use coal upto 25%, while calculating GCV and Heat rate, weighted average values of Coal and Biomass fuel shall be taken.
- Right of Refusal: In PPAs it is stated that after 20 years Discoms shall have the first right of refusal.
  - This clause shall be properly worded so that the developer, after 20 yrs, offers the same rate as existing in 20th year to the Discoms.
  - Commission is requested to amend the Clause suitably.

- Thank You