BEFORE THE ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION * HYDERABAD

In response to the Public Notice issued regarding suggestions/objections on the PPA entered into between APTRANSCO and BSES Andhra Power Ltd we have filed a set of objections before the Honourable Commission on 20th November, 2001. The APTRANSCO sent its replies to our objections which we received on 29th December, 2001.

In reply to our objections in para No.1.2 they have mentioned, "The indicative levalised tariff calculations with spread sheets are enclosed". But the same was missing in the material sent to us. We informed the same to the Licensee through a letter dated 31st December, 2001. We received a reply on 10th January, 2002. But the levelised tariff calculations provided contained only fixed charges but not the levelised tariff including variable/energy charges. To that extent the reply is inadequate.

What is the capacity of the plant? 220 MW or 230 MW?
Different documents related to the power plant to be set up at Peddapuram by BSES Andhra Power Ltd mention different capacities of the plant. While the modified PPA, subsequent to the merger of the two units, mentions the plant capacity as 200 MW, the proposed amendments proposes to change it to 220 MW. But the EPC contract document and Maintenance contract document both mention the capacity of the plant as 230 MW. The EPC and Maintenance contracts were signed on 3rd August,1999 and 9th August, 1999 respectively. We would like to know the exact capacity of the plant. We would like to know whether change proposed in the PPA is based on the EPC and Maintenance contract contents. If it is so what explains this difference.

This difference in the capacity has different implications. The total power to be produced, in terms of units, by the two capacity plants will be different. The total units produced will imply different PLF/PLA. This in turn has other implications like incentives.

Further, According to the liquidated damages incorporated in the EPC contract entered in to with BSES (Section-14.2) in case of short fall in output, BSES will pay the owner a sum of Rs. 51,000 per each kw short fall. If the plant set up is according to the PPA, i.e., 220 MW, then according to the EPC contract the output will be short by 10 MW. Following this whether the developer, in the present case BSES Andhra Power Ltd, will be receiving damages from the EPC contractor, in the present case BSES, towards the output shortfall. If so whether this accrual to the developer will be adjusted to the capital cost of the plant.

Incentives: According to the PPA incentives will be paid if PLF is above 85%.
According to the EPC contract the EPC contractor has to ensure 93% of plant availability, otherwise he has to pay liquidated damages as fallows:
Rs. 8,500,000 for every 1% reduction in availability from 93% to 92%
Rs. 12,750,000 for every 1% reduction in availability from 92% to 90%
Rs. 17,000,000 for every 1% reduction in availability from 90% to 88%

According to the same contract plant availability shall not be below 88%.

According to the Maintenance contract the average plant availability shall be more than 90% (in case of two overhauls) and 92% (in case of one overhaul) in order for the maintenance contractor to receive incentive. Incentive will be at the rate of US $ 100,000 for every 1% increase in plant availability above the norm. Guaranteed plant availability is 90% in the case of one overhaul and 88% in the case of two overhauls. In case contractor fails to provide required services resulting in shortfall in the guaranteed plant availability the contractor shall be liable for the payment of liquidated damages at the rate of US $ 200,000 for each year excluding the first, for every 1% shortfall.

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. The above facts show that the developer will be benefiting unduly because of incentives being pegged to the PLF of 85% only while the Maintenance contractor will receive incentives only when plant availability is more than 90-92%. The difference between the two will be unearned income for the developer. We fail to understand why the Licensee accepted the lower PLF. As a result of these discriminatory provisions the developer will be getting undue benefits at the cost of the consumers.

According to the PPA fixed cost to be paid per unit are already decided. Usually full fixed costs will be paid if PLF reaches 85%. As in the present case it is on per unit basis, even after the achievement of 85% PLF fixed costs will be paid on per unit basis. If PLF is more than 85% they will be paid incentives in two forms at the same time: (1) payments for fixed capital on per unit basis, and (2) incentives as stipulated in the PPA. In other words, the power producer will be receiving incentive payments twice!

Disincentives
Though the PPAs originally signed with the developers contained provisions relating disincentives (Section-3.6) in case the developers failed to achieve agreed norms, these were not changed in the subsequent changes made to the PPAs. The original PPA took PLF of 68.5% as threshold level. 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. As provided in the EPC contract if the plant availability is below 93% the developer should pay damages to the Licensee. And amount of damages should also equivalent to the one provided in the EPC contract.

In our original filing we have raised the question: how capacity charge rates/fixed costs (FDSC and OFC) (FDSC and OFC)are arrived at? But the answer provided in their replies do not shed any light on it. Further some of the replies provided to other questions further obfuscate the issue. Following are some of the answers provided by the Licensee to our questions that have bearing on the fixed costs:

2.2: “Since this is a Tariff based Bid the capital cost and equity has no bearing on the Tariff”.

2.4: “the capital cost of the project…is 700 crore. However, the capital cost has no bearing on Tariff since this is a Tariff based project”.

3.1: “The capital cost mentioned in the PPA is only estimated capital cost and has no relevance for fixing tariff since this is a tariff based Bid”.

3.2: “The APTRANSCO pays for the purchase of energy a Capacity Charge for the 220 MW plant at the rate of 0.6 cents plus 69.9 paise per kWh at 85% PLF and energy charge based on station heat rate of 1900 Kcal/kWh…”.

3.3: “The financing structure is not a concern of APTRANSCO as the capacity charge is fixed at 0.6 cents per kWh irrespective of the debt/equity component in foreign currency and 69.9 ps per kWh irrespective of the interest on the debt and Return on Equity”.

According to the PPA fixed cost to be paid per unit is already decided. Usually full fixed costs will be paid/recovered if PLF reaches 85%. As in the present case it is on per unit basis, even after the achievement of 85% PLF fixed costs will be paid on per unit basis. If PLF is more than 85% then the power producer will be paid more than the fixed capital cost. In other words, this provision unduly benefits the power producer at the cost of the consumer.

In the EPC contract it is described as a base load plant. If according to the merit order dispatch if only part of the capacity of the plant is utilised, will they accept the payment according to the per unit fixed costs as mentioned in the PPA or will they want to realise all the fixed costs on the units supplied according to the merit order dispatch.

In reply to our objections it was stated that there is no guaranteed rate of return, and amount of capital is not the criteria. But in other reply (3.2) they have mentioned that 85% of PLF is taken for calculating. This also implies that they must have taken into account certain rate of return. Besides this, the PPA contains a proforma of the counter guarantee agreement to be signed by the state government guaranteeing the payments from APTRANSCO. According to the general policy of the government to encourage private investment in the power sector it has guaranteed 16% of rate of return to the independent power producers. If it is not the rate of return on the basis of which guarantee is provided, on what basis the guarantee is provided? Whether it will guarantee 16% rate of return or guarantee repayment of cost of supply of power as agreed to between the licensee and the developer irrespective of rate of return?

According to the gas supply agreement with GAIL one million standard cubic meters per day of gas is allotted to BAPL on fall back basis only. This raises two issues. One is whether this amount of gas is sufficient to run the 220/230 MW plant? Another question is as the gas is provided on fall back basis only, and also given grave doubts about actual availability of gas on sustained basis, there is need to arrange for alternative fuel supply. Proposed amendments to the Modified PPA also mention, “in case of unavailability of primary fuel, Naphtha or low sulphur HSD or LNG and the like as alternate fuel” (1.1.27). With this spirit we raised the same question in our original filing (para No.5.3). In the replies provided by the Licensee we wee told that PPA provided for constituting Fuel Supply Committee (FSC) which will finalise all the issues relating to ‘fuel’. In this regard we would like to know whether FSC is constituted or not? If it was constituted what are its decisions? What are the implications of these decisions on tariff?

The PPA as well as the Gas Supply Agreement with GAIL make it clear that this is a dual fuel plant. According to the Gas Supply Agreement, “…there is no guarantee of supply of GAS on regular basis and the BUYER shall retain/provide/maintain dual fuel system in their plant for meeting their fuel requirement through existing fuel as when GAS is not available for supplying to the BUYER” (5.01). Is it easy to shift from one fuel to the other? What are its implications on tariff?

In replies provided to our objections by the Licensee it was mentioned, “ The Government took a policy decision in March 2000 not to allow projects on Naphtha”(2.2). Then the gas is available on fall back basis only but not on firm basis. We are of the opinion that the plant should not be allowed as it is not assured of fuel supply but the generating company, in turn the licensee and the consumers have to bear the fixed costs of the power plant as well as monthly gas transmission charges (nearly Rs. 2 crore per month) even if power is not generated. The Commission should consider only those gas based power plants which have assured gas supply. As the BSES plant has no assured gas supply the same should not be permitted.

PRAYER

We request the Andhra Pradesh Electricity Regulatory Commission not to give consent to PPA entered in to with BSES Andhra Power Ltd as the likely outcome of the project will be harmful to the interests of the consumers of the state of Andhra Pradesh.