

BEFORE THE ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION

11-4-660, Singareni Bhavan, Lakdi ka pool, Red Hills, Hyderabad – 500 004

Submission made by M. Thimma Reddy on behalf of People's Monitoring Group on Electricity Regulation on 10-07-2009 (I.A of O.P. Nos. 9 and 10 of 2009)

1. The following submissions are in response to Interim Applications by Gautami Power Private Limited and GVK Industries Limited in O.P Nos. 9 and 10 of 2009.

2.1. Before deciding on interim relief, the important issue to decide is whether relief is to be provided or not. The main petition deals with it. Without settling it issues related to interim relief cannot be addressed. First whether the losses that they are claiming to have incurred need to be compensated or not is to be decided. If developers so-called losses are to be reimbursed what about the high cost power purchase burden borne by the consumers in the state because of the failure of the developers to start power generation in time.

2.2. Also, the interim order sought is practically the same as the final relief and so can not be granted.

3.1. One of the important contentions of the Developers is that they had incurred heavy losses because of delay in availability of gas. But the PPAs clearly mention that the Schedule Date of Completion (SDOC) need to be postponed in case of delay in availability of gas implying that it is for the developers to bear the fuel risk. The following passages from PPA of Gautami Power Private Limited testify this:

3.2. Gautami Power Private Limited, PPA dated thirty first March 1997 Section 7.2 (g) states, “make all reasonable efforts to assist the Company to obtain the issue of the Fuel Linkage i.e., the required Permits from the GOAP and GOI allocating to the Project the right to obtain and use quantities of Naptha to generate electricity at a PLF of 100%, subject to any actions of the Company, which may be required in connection there with, within sixty (60) days of the date of execution of this Agreement or as soon thereafter as practicable provided that the Schedule Date of Completion of the last Unit and all prior dates for the Company's performance hereunder shall be deemed to be extended day-for-day for each day of delay reckoned from 61st day in the issuance of the Fuel Linkage”

3.3. Subsequently the Gautami Power Private Limited submitted Amendments dated 12th December 2001 to the Commission and the same were approved by the Commission in 2003. At paragraph 15 of introduction to these amendments it was mentioned “the GOAP decided to convert the Short Gestation Power Projects to operate on Natural Gas

only instead of Naptha to have ‘Least Cost Generation’. Paragraph 16 of the same Introduction states as follows, “the MOP&NG allocated natural gas of 1.22 MCMD to M/s Gautami Power Private Limited and 0.74 MCMD to M/S NCC Power Corporation Limited. As the gas allocations made are not sufficient to run the projects at full capacity, the GOAP gave option to the companies (i) to restrict their capacities to the quantities of gas allocated (ii) to form a consortium with other Developers to implement the Project with allocated gas (iii) to implement the project in two stages. M/s Gautami Power Private Limited and M/s NCC Power Corporation Limited submitted a proposal on 25-10-2000 for merger of the projects to implement the combined Project of 597.9 MW in two stages – 464 MW in Stage-I with the combined allotment of 1.96 MCMD and balance 133.9 MW in Stage-II after obtaining additional gas required”. Paragraph 17 (ii) states, “It is the responsibility of the developers to secure the additional gas required for the Stage-II of the project with a capacity of 133.9 MW and the government at best use their good offices but cannot be held responsible for securing the additional gas allocation”. As part of these amendments section 7.2(g) is removed. This implies that the fuel risk continues to be with the developers.

3.4. In the case of GVK Phase 2 though the developer planned to set up a plant with a capacity of 359 MW in the wake of gas allocation planned to implement the new project with a capacity of 440 MW in two stages Stage I of 220 MW with the allocated gas of 1.1 MCMD and Stage II Of 220 MW after getting balance gas allocation. In this PPA the section 7.2(g) is left blank implying that it has same significance as that of Gautami.

3.5. So, the developers cannot claim losses on account of non-availability of gas.

4.1. Another reason attributed by the developers for their losses was the refusal of DISCOMs to provide interconnection facilities. According to Section 7.2(a) of PPA with Gautami DISCOMs have to “ make all reasonable efforts for making arrangements (including financing and construction) for Inter Connection Facility so that the Interconnection Facility is completed three (3) months before the Scheduled Date of Completion of the first Generating Unit of the Project...”. In the case of GVK Industries it is six (6) months. As the Scheduled Date of Completion is being postponed on account of non-availability of gas the date for providing interconnection facility is also to be postponed.

4.2. So, the developers cannot claim losses on account of refusal of DISCOMs to provide interconnection facility.

5. The developers are claiming that they could have declared CoD by using alternate fuels. Here it is to be noted that they did not have Fuel Supply Agreements for alternate fuel. Here it is also to be noted that these alternate fuels are also in short supply. Experience during the year 2008-09 in our state shows that the IPPs which were allowed to generate power with alternate fuel were not able to source sufficient quantities of these fuels.

6. According to Paragraph 13 of Gautami's IA the Supreme Court adjourned the SLP No.10826 Of 2007 to enable the Parties to negotiate and resolve the differences and arrive at mutually amicable solution. Accordingly, the representatives of the developer, the DISCOMs and the GoAP had extensive negotiations and discussions. One of the proposals submitted by the developer included apart from recommending supply of gas and providing interconnection facility the issue of compensating at least a part of the losses suffered by the developer. And according to Paragraph 14 of this application the GoAP and the DISCOMs allowed the developer to sell 20% of the capacity and also any additional tested capacity over and above. These Paragraphs show that the present amendments placed before the Commission are part of the negotiations conducted under the above SLP before the Supreme Court. A search of the Supreme Court's website showed that the above SLP is still pending. We are not aware of the contents of the adjournment order if any by the Supreme Court. We do not know whether the Supreme Court directed the parties to come before it once they arrived at mutually amicable solution or directed the parties to approach the APERC once they arrived at such solution. The APERC may ascertain the status of SLP and take suitable action.

7. We take exception to contents of paragraph 21 of IA of Gautami as it is in threatening note. In this paragraph it is stated, "...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".

M. Thimma Reddy,