

**BEFORE THE ANDHRA PRADESH ELECTRICITY REGULATORY
COMMISSION * 11-4-660, 5th Floor Singareni Bhavan, Lakdi-ka-pool,
Red Hills, Hyderabad – 500 004**

1.1 The following suggestions and objections are in response to 3 Public Notices published on 5th February 2009 with regard to proposed amendments to PPAs with Gautami Power Limited, Konaseema Gas Power Limited and GVK Industries Limited for Jeegurupadu extension project, and a Public Notice published on 11th February 2009 with regard to amendments proposed to PPA with Vemagiri Power Generation Limited. We request the Commission to take the following submission on record and allow us to be heard in person.

2.1 The present Public Notices were issued in the wake announcement in the Legislative Assembly of AP that gas would be available from 25th February 2009. All the amendment issues revolve round availability of gas, and mitigating the risk of fixed/capacity charge payment faced by IPPs because of non-availability of gas.

2.2 We would like to draw the attention of the Commission to the fact that during public hearing held in December 2002 on the PPAs with four gas based power plants several consumers including the present objector brought out lack of natural gas to operate these plants. We representing the public with limited or no access to crucial information was able to point out five years back at the time of public hearing on these PPAs that gas was not available for these plants at that time and hence shall not be allowed. But the IPPs who are privy to the information, knowing very well that gas was not available were able to get one sided FSA with GAIL, which did not impose any responsibility on GAIL for failure to supply. Despite this the Commission gave consent to the PPAs based on the assurances of developers and gas agencies (Commission order dated 12-4-2003). While consumers and the general public had limited access to the information on fuel availability, developers and the gas agencies are privy to the crucial information. And it is based on this information, disregarding the caution sounded by the consumers; Commission gave consent to the PPAs in question. Later the Commission issued another order dated 14-12-2004 [In re file No.E-357 (A)] according to which the Scheduled Date of Completion (SDoC) shall be extended day-to-day for any delay resulting from non-availability of natural gas before January 1, 2007. In the same Order the Commission has observed, “Having given **assurances about adequate supply of natural gas during the entire duration of the PPA**, the Commission expects that the Developer shall make all reasonable efforts to ensure that uninterrupted supply of natural gas is available at least from 01-01-2007 onwards” [Para 10(ii)] (emphasis ours). The Commission’s Order dated 31-12-2006 on the then proposed amendments to PPA with Vemagiri plant at paragraph 50 mentioned, “Applicants have not thrown any light on the future availability of gas”. The Amended documents presently placed before the Commission mention that gas would be available from December 2008. Until now there is no sign of gas being supplied from KG basin gas fields.

2.3 As mentioned above, the Governor of AP in his address to the Legislative Assembly on 2nd February 2009 announced that gas supply would commence from 25th of this month. But while this Assembly session was in progress at a national conference on Coal and Gas held in Hyderabad one of the senior officials explained that gas from KG basin fields would be available some time in March. News reports later mentioned that this supply might take place in April. To put an end to this we request the Commission to direct the IPPs to file new Fuel Supply Agreements that unambiguously state the availability of gas as well as obligations of the gas supplier in the event of failure to supply gas. Otherwise this charade will go on.

2.4 But unfortunately while the decision was taken on the basis of the information provided by the developers and gas suppliers, the consumers are being forced to bear the burden of this wrong decision in the form of ensuring capacity charge payment even in the absence of gas availability. This is being done to minimize the risk of the developers. The presently proposed amendments are only meant to minimize the risk of the developers. Risk involves both profit as well as loss. But in the name of minimizing risk and encouraging private investment while profits are awarded to the developers losses are being imposed on the consumers. It is the developers who are responsible for setting up these plants knowing well that required gas is not available. If there is any burden arising out of these plants that should be totally borne by the developers, but not the consumers.

2.5 The proposed amendments are meant to shift the uncalled for burden on the consumers. Consumers are being forced to bear the burden. The proposed amendments are being introduced in the name of mitigate the risk of payment of fixed charges due to non-availability of natural gas and protect the consumers' interests. But in fact these are meant to minimize the risk of the developers at the cost of the consumers.

2.6 Why should consumers bear the burden when consent was given much against their pleadings, and on grounds, which proved to be false? **The fundamental questions are: Who is responsible for this situation and who will be bearing the burden?** We are of the opinion that it is not fair to impose the burden on the consumers.

2.7 DISCOMs and APTRANSCO invested huge sums on the basis of their claims of gas availability for evacuation and transmission of power to be generated at these plants. With no supply of power from these plants these investments also have become dead investments. But, who will bear the burden of this expenditure, including investment burden? Not the consumers! Logically, this burden shall be transferred / placed on the IPPs responsible. Then what about compensation to consumers/ GoAP who had to purchase high cost power as these plants are not generating power as planned? During the year 2008-09 additional power purchases cost was Rs. 3,919 crore. During the same year the total deficit faced by all the DISCOMs together after receiving subsidy support from the GoAP stood at Rs. 5,219 crore. According to the AP Electricity Reforms Act 1998 and Electricity Act 2003 role of the Regulatory Commission is to balance the interests of all the stakeholders. As we understand the Orders issued by the Commission hitherto with regards to PPAs were in favour of the IPPs only. In the background of the huge burden borne by the Licensees as well as the consumers in the state as explained above because

of the failure of the IPPs to generate power from these plants (who were given a go ahead in 2003) we earnestly request the Commission to put in place mechanisms to mitigate burden of the Licensees as well as consumers in the state.

2.8 Here it is to be mentioned that RTPP-II for which PPA was finalized much later had begun contribution of power long time back. Similarly, if PPAs were entered in to for setting up of coal based thermal plants the state would not have been in such a sorry state. The whole blame for this shall be placed on these gas based plants, and they should bear the burden for their failure to start power generation at these plants.

2.9 We propose that the SDoC shall be postponed to a future date when gas will be available to run the plant at 85% PLF and any burden arising out of this delay shall be totally borne by the developers as the consent was given at their instance. Consumers shall not be made scapegoats in this as they have cautioned against these plant at the first opportunity available to them.

AMENDMENT ISSUES

3.1 The documents that are made available as part of the Public Notices do not provide any rationale for the proposed amendments, particularly their implications for the consumers and for the state.

3.2 First, they should place the New Fuel Supply Agreements before the Commission, before they make any references to them, For e.g.,. Clause 3.3 among other things it says that APDISCOMs to reimburse the termination charges as per the Fuel Supply Agreement. But, where is that Fuel Supply Agreement?

3.3 One of the amendments proposed permits the company to sell 20% of the PPA capacity plus any tested capacity over and above the PPA capacity to third parties. No rationale was provided for this amendment. In the Order dated 31-12-2006 in the case of the then proposed amendments to Vemagiri PPA the Commission allowed sale of excess capacity to third parties. The sale of this excess capacity is enough to recover whatever 'losses' incurred by the developers. The proposed sale of 20% of PPA capacity shall not be allowed.

3.4 Even this is proposed in a very ambiguous manner. According to Clause 2.1, "The obligation of the Company to sell capacity to the APDISCOMs under this PPA shall, in each settlement period, be 80% of the Declared Capacity of the Project ...subject to a maximum of the installed capacity". (Gautami PPA). In the name of clarifying doubts about calculation of the above 80% the following table is provided in the PPA:

Declared Capacity	282 MW	400 MW	469 MW
Entitlement of APDISCOMs	185.6 MW	320 MW	371.2 MW (80% of 464 MW)
Entitlement of the Company to sell to 3rd Party	46.4 MW	80 MW	97.8 MW

From the above table it is clear that it is not 80% of the PPA capacity as mentioned in Clause 1.1.35 but declared capacity of the project. If the Commission chooses to allow 20% of the PPA capacity for sale to third party, this shall be 20% of the PPA capacity but not the declared capacity. In other words Company may be allowed to sell to the third party only after fulfilling the full obligations (371.2 MW in the above table) to the APDISCOMs.

3.5 Usually plants are designed for a margin of 10% of its rated capacity. This implies that, for eg., Gautami plant has the capacity to generate 46.4 MW surplus capacity to dispose off. This open ended provision also creates conditions for misdeclaring its capacity/availability. Already an example on misdeclaration of capacity is there before us. This relates to Lanco power plant. If the provision is open ended it provides opportunity to the developers to declare capacity according to their convenience. In order to obviate the possibility of misusing this provision capacity of the plant need to be strictly defined.

3.6 It is to be noted that the excess capacity is for sale to third parties only. The excess capacity shall not be used for captive purposes. Given the fact that some of the IPPs have other industrial plants there is scope for this. If this is done it will lead to loss to the DISCOMs as they lose surcharge. And to this extent it will be an additional burden on the consumers.

3.7 In the interests of the health of the plant also restrictions shall be placed on utilization of the excess capacity. The utilization of excess capacity shall be within the technical and prudent limits of maintenance of the plant.

3.8.1 Capital expenditure and fixed cost payments are based on dual fuel mode. Even when gas is taken as the only fuel, in case of non-availability of gas, and in case other alternate fuels appear not costly, DISCOMs may take decision on the use of alternate fuels.

3.8.2 The total plant is committed for DISCOMs, and they can decide on use of power generated at this plant. One of the proposed amendments mentions that in the case of non availability of gas APDISCOMs have first right of refusal if power is generated with alternate fuels and if it refuses this power the Company can sell total capacity to the third party. It is to be noted that the total plant is committed to APDISCOMs and it is for the

DISCOMs to decide if the plant is to be run with alternate fuels or this power to be sold to the third parties and whatever revenue shall accrue to APDISCOMs only.

Vemagiri Power Generation Limited

4.1 The Commission by Order dated 14-12-2004 postponed the CoD for all the plants to 1-1-2007. But Vemagiri declared CoD as 6-9-2006. It was it seems done with gas diverted from other plants in the name of testing the plant. Why and how did the DISCOMs agree for this CoD? For the first time it was mentioned in the ARR for the Second Control period 2009-14. It was not mentioned in ARRs for the intervening period.

4.2 In the earlier filing Vemagiri claimed that it was sourcing gas from new wells of ONGC. What is the progress? What is the price? Is there a FSA? We did not hear about the new wells of ONGC for quite some time!

Prayer to the Commission:

1. To direct the developers to file new Fuel Supply Agreements
2. To postpone the COD until gas becomes available to run the plant at 85% PLF.
2. Any consequent burden is to be borne by the developers only.
3. Not to permit sale of 20% of PPA capacity to 3rd parties by the developers.
4. To be heard in person

16 -02 - 2009
Hyderabad