

**The Secretary
Telangana State Electricity Regulatory Commission
11-4-660, 5th floor
Singareni Bhavan, Red Hills
Hyderabad - 500 004**

June 5, 2021

Respected Sir,

Sub : Submissions in OP Nos.15 to 19 of 2021 relating to 11 PPAs between TS Discoms and TS Genco

With reference to your public notice dated 2.6.2021, inviting suggestions, objections and comments in the subject petitions, I am submitting the following preliminary points for the consideration of the Hon'ble Commission:

- 1. In the public notice dated 2.6.2021 relating to the subject petitions, it is stated that TS Discoms Southern Power Company of Telangana Limited and Northern Power Company of Telangana Limited “have submitted before the Telangana State Electricity Regulatory Commission (TSERC) the proposal for consent of PPAs entered between the TSDISCOMs and TSGENCO. These PPAs have been taken on record by the Commission in O.P. Nos. 15 to 19 of 2021. Copies of the PPAs referred are uploaded on the Commission’s website www.tserc.gov.in. Based on the submissions made by TSDISCOMs, the Commission has initiated the Suo-Moto proceeding for approval of PPAs entered between TSDISCOMs and TSGENCO.” However, it is found that, except the public notice, neither the 11 PPAs, nor copies of petitions or proposal and submissions of TS Discoms, are uploaded in the website of the Hon’ble Commission. We request the Hon’ble Commission to get the same uploaded in its website and make the same accessible to interested objectors to enable them to study the same and file their submissions.**
- 2. If the two Discoms had submitted the proposal for consent of PPAs, the Hon’ble Commission should have made the said proposal public by uploading it and copies of the PPAs in its website and decided to conduct public hearings, involving both the petitioner Discoms and respondent TS Genco. If “based on the submissions made by TSDISCOMs, the Commission has initiated the Suo-Moto proceeding for approval of PPAs,” the submissions of the Discoms also should be made public for the purpose of public hearing. If the “proposal for consents of PPAs” and “submissions” of the TS Discoms are the basis for initiating proceeding for approval of PPAs, it is difficult to understand how the proceeding for approval of PPAs is suo moto.**
- 3. The public notice says that submissions, suggestions and comments of all stakeholders and public at large are invited so as to reach Secretary of the Commission by 18.6.2021. Contrary to the standard procedure being adopted for holding public hearings, the public notice has not asked the objectors to send copies of their submissions to the petitioners, i.e., the TS Discoms. Moreover, virtual public**

hearing is scheduled to be held on 24.6.2021, i.e., within five days from the last date for submission of objections, etc., to the Commission. This approach is deficient for the following reasons, among others:

- a) Unless the said “proposal” and “submissions” of the Discoms are made public, and unless the Hon’ble Commission directs objectors to send copies of their submissions to the Discoms and the latter to respond to the same, it is difficult to understand whether the Discoms would respond to the submissions of the objectors.
- b) Relating to issues like inflated capital costs of the projects of TS Genco with whom the Discoms had entered into PPAs, delay in execution of the projects, payment of penalties for such impermissible delays, etc., whether the Discoms made their stand clear in their “proposal” and “submissions” also is not known. During the virtual public hearing on the petitions of TS Genco for determination of capital costs of, and tariffs for, their projects, the Discoms did not participate in the public hearing held on 31.5.2021, except the mere presence of the CMD of TSSPDCL, and make any submissions.
- c) As petitioners the TS Discoms, and as respondent the TS Genco, have to participate in the public hearings and respond to the submissions of the objectors. But, in the contents of the said public notice, there is no indication even to this effect.
- d) Having examined the PPAs, whether the Hon’ble Commission is satisfied with the information submitted by the Discoms for holding public hearing or whether it has sought further relevant information and clarifications from them also is not known. If further relevant information and clarifications are sought by the Hon’ble Commission and submitted by the Discoms, the same should be made public by uploading the same in the website of the Commission, as was done in the case of several petitions earlier and especially the latest petitions of TS Genco for determination of capital costs and tariffs of its projects on which public hearing was held and orders were reserved on 31.5.2021.
- e) When the said PPAs were submitted to the Hon’ble Commission and by whom and when “proposal” and “submissions” for approval of the PPAs were made by the Discoms is not known. Despite our earlier requests to take up the PPAs one by one for public hearing to enable interested public to study the same and make submissions, the Hon’ble Commission has clubbed the PPAs of 11 projects and decided to hold public hearing on the same together. Since most of the projects are old and their CODs were already declared, taking the same on record of the Hon’ble Commission by giving the said OP Nos., may be recently, shows that either submission of the PPAs is very much delayed, or the Hon’ble Commission has taken up the same for public hearing belatedly. In view of the same, the need and justification for holding public hearing on the PPAs in the manner as proposed in the said public notice is difficult to understand. Needless to say, to study the 11 PPAs and other related and relevant information, if any, analyse the same and prepare detailed and relevant submissions by interested objectors will take considerable time. 16 days is not sufficient for this purpose for various reasons. Moreover, five days from the last date of submission of suggestions and

- objections by objectors, a period of five days also will not be sufficient for Discoms to send their responses to the objectors and for the latter to study the same and submit further submissions during the scheduled virtual public hearing. We therefore request the Hon'ble Commission to extend the last date for submissions of objectors, say, up to 2nd July, and public hearing, say, upto 15th July, 2021, and direct and the Discoms to send their responses to submissions of objectors within one week to enable the latter to study the responses of the Discoms and make further submissions during the public hearing. In this connection, I would like to remind the Hon'ble Commission that public hearing on the petitions of TS Genco for determination of capital costs and tariffs of its projects were postponed twice by the Hon'ble Commission for a considerably longer period.
- f) Without participation of the petitioner Discoms and respondent TS Genco in the public hearing, and their responses to the submissions of objectors, there will be no transparency and accountability. Therefore, we request the Hon'ble Commission to direct the Discoms and TS Genco to participate in the public hearing, make their submissions, and respond to the submissions of objectors, as has been the standard and meaningful practice since the inception of ERCs.
4. We look forward to a prompt and favourable response of the Hon'ble Commission to our above-mentioned requests and submissions.

Thanking you,

Yours sincerely,

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June 18, 2021

Respected Sir,

Sub : Further submissions in OP Nos.15 to 19 of 2021 relating to 11 PPAs between TS Discoms and TS Genco

Further to my preliminary submissions dated June 5, 2021 in the subject petitions, I am submitting the following additional points for the consideration of the Hon'ble Commission:

- 1. I thank the Hon'ble Commission for extending time for filing submissions in the subject petitions up to 24.6.2021 and postponing virtual public hearing to 30.6.2021, both by 6 days each. I hope that the Hon'ble Commission also has taken appropriate decisions in response to my preliminary submissions and directed TS Discoms and TS Genco to make their submissions in the subject petitions and make the same available to interested objectors.**
- 2. The subject Power Purchase Agreements are full of deficiencies in their terms and conditions and fail to protect the interests of the Discoms and of their consumers of power. They also contain one-sided provisions to ensure undue benefit to Genco at the cost of the Discoms and their consumers of power, bereft of level playing field. The failures of commission and omission in the terms and conditions of the PPAs need to be corrected by applying regulations applicable at the time of taking up the projects concerned for their execution by the developer and in their operation later during the period of PPAs. Present regulations should not be applied to them with retrospective effect.**
- 3. A power purchase agreement (PPA) should be judged fundamentally from three angles: (a) need for purchasing power from the project concerned for the period specified to meet demand growth, (b) cost effectiveness and various options available to get power at the lowest possible or competitive tariff in given circumstances, various options available for selecting generator/supplier of power and the legality and propriety of the procedure adopted for the same and (c) propriety and legality of provisions in the PPA and their adverse impact on tariffs to be paid by the consumers. Even for projects selected through the process of competitive bidding, all these requirements need to be met. It is all the more imperative in the subject case, because power from the TS Genco's projects is being purchased by the Discoms straight away entering into PPAs, without adopting any competitive bidding for selecting the same, and even without getting consents of the Hon'ble Commission to the PPAs.**

4. **The PPAs do not contain time schedule for completion of the projects and declaration of their commercial operation dates unit-wise. Liquidated damages to be paid by the developer of projects to the Discoms for impermissible delay in execution of the projects do not figure in the terms and conditions of the PPAs. To escape from such responsibility, the trick of signing PPAs belatedly has been followed. Since projects of TS Genco have been intended to supply power solely to TS Discoms, there is absolutely no justification in signing and submitting PPAs belatedly for the consideration of the Hon'ble Commission. This glaring lacuna gives scope for claims for leaving TS Genco free of any accountability for impermissible delays in execution of the projects and resultant escalation of capital cost, including interest during construction, thereby leaving scope for imposing avoidable additional burdens on the Discoms, which mean their consumers of power, during the long-term of the PPAs. If the Hon'ble Commission disallows impermissible components of capital costs, including additional IDC, of the projects for the failures of commission and omission of the developer, as per regulations applicable during that period, to that extent that will prevent imposition of unjustified burdens on the Discoms and their consumers. At the same time, if penalties are not imposed on, and collected from, the developer Genco for failures to generate and supply power to the Discoms in permissible time, it will do injustice to the Discoms and their consumers of power. Due to delay in execution of the projects, if the developer fails to generate and supply power to the Discoms, the latter would be constrained to purchase power from other sources in the market leading to imposition of additional burdens on consumers of power. That is the reason why the Discoms should be compensated for the additional burdens arising out of the failure of the developer to execute projects in time, generate and supply power to the Discoms. The contention that it would lead to imposition of dual burdens on the developer in the form of disallowing impermissible components of capital cost, on the one hand, and imposition of penalties on the developer, on the other, is untenable. By disallowing impermissible components of capital costs of the projects, the developer is made to suffer losses for their failures of commission and omission. For the Discoms and their consumers of power, it is just a legitimate protection from imposing unjustified and avoidable burdens in the form of impermissible and inflated capital costs, including additional IDC during the periods of delay, and avoidable long-term burdens in the form of higher tariffs. It does not compensate them for the additional costs they have to bear for purchasing power in the market due to failure of the developer in executing projects in time, and generating and supplying power to the Discoms during the period of impermissible delay. For compensating the Discoms for such additional costs in power purchase during that period, penalties need to be imposed on, and collected from, the developer. If PPAs are signed between the Discoms and the developer in time, incorporating the said terms and conditions providing for disallowing impermissible components of capital costs of the projects and imposition of penalties for delay in execution of the projects, it would make the developer accountable for their actions and failures of commission and omission, on the one hand, and ensure protection of the legitimate interests of the Discoms and of their consumers of power, on the other. That is the reason why PPAs should be signed in time by the Discoms and the developer and**

submitted to the Hon'ble Commission for its consideration and approval. When Genco is taking three to four years for implementation of projects, there is absolutely no justification in not signing PPAs and submitting the same for the consideration of the Hon'ble Commission well in time, preferably at the time of starting implementation of the projects. Simply because TS Genco is a company of the State Government, it should not be allowed to escape from its accountability at the cost of the Discoms and their consumers of power. An effective regulatory process should encompass such provisions in the applicable regulations which should be implemented strictly. Moreover, commissioning of the projects and their timing should be in consonance with requirement of power by the Discoms to meet growing demand periodically. Without such time schedules, declaring CoDs implies the untenable and unrealistic presumption that as and when the projects declare CoDs then only the Discoms require power, unrelated to their actual requirement for power. Needless to say, timely implementation of the projects benefits the developer as well as the Discoms and their consumers of power. That is the reason why it is generally considered that time is the essence of an agreement.

5. The capital costs of projects are getting inflated, mainly on account of delay in their execution due to various reasons. As per the subject PPAs, the estimated/provisional capital costs of the projects of TS Genco being taken up by the Hon'ble Commission in the subject O.Ps are given hereunder (cost in crore Rupees):

Name of the project	Capacity in MW	Provisional cost	Cost per MW
1. Yadadri TPS	4x800	29965.48	7.49
2. Bhadradri TPS	4x270	8536.98	7.90
3. KTPS Stage VII	1x800	5548.44	6.935
4. KTPS Stage VI	1x500	2325.08	4.65
5. Kakatiya TPP Stage II	1x600	4334.11	7.233
6. Kakatiya TPP Stage I	1x500	2960.00	5.92
7. PJHES	6x39	546.81	2.336
8. SRHPS Stage II unit 4	1x9	27.7543	3.08
9. Pulichintala HES	4x30	438.32	3.65
10. LJHES	6x40	1180.14	4.917

11. The PPA dated 17.9.2019 pertains to thermal and hydel stations commissioned between 1956 and 1998. Three thermal projects with a total installed capacity of 982.50 MW and eight hydel power stations with a total installed capacity of 1838.76 MW are covered under the PPA. Capital costs and fixed charges based on the same of all such old plants need to be considered after taking into account the depreciation charges paid to them from the date of their CoDs as per terms and conditions in their PPAs after the Hon'ble Commission examines them and as per the order to be given by it. In the PPAs, depreciation is defined as it "means the sum of the amounts of depreciation on buildings, equipment and other capital facilities of the Project on the date thereof, and in respect of any asset, shall be allowed up to 90% of the approved capital cost and shall cease so soon as its net book value equals the residual value i.e., 10% of its approved capital cost."

6. For some of these projects TS Genco is claiming additional capital costs, as submitted by it to the Hon'ble Commission in OP Nos.5 and 6 of 2021. TS Genco also is claiming tariffs based on such inflated capital costs. It will make claims for further increase in capital costs, and resultant increase in tariffs and true-up claims, in future also. Such exorbitant costs, if permitted by the Hon'ble Commission, would be detrimental to legitimate interests of consumers of the Discoms on a long-term basis. Such claims of TS Genco need to be examined in conjunction with PPAs concerned to take a holistic and comprehensive view. Therefore, I request the Hon'ble Commission to consider my submissions in the subject petitions in conjunction with my submissions made in OP Nos.5&6 of 2021 and vice versa. In this connection, it may be noted that Article 10.8 of Regulation No.1 of 2008 of the Commission says, inter alia, that "the Capital Cost as determined above, shall also include further capital expenditure incurred if any up to the first financial year closing one year after the date of commercial operation of the last unit of the project, its stage or the unit, as the case may be, is admitted by the Commission." The same regulation should be applied to projects which were being implemented during the period when the said regulation continued to be in force.
7. As parties to the said PPAs, TS Discoms are expected to participate in the regulatory process and submit their responses to the claims of TS Genco, especially in view of inflated capital costs and claims for determination of such capital costs and tariffs based on the same and need for proper interpretation and even amending questionable provisions in the PPAs. It is imperative on the part of the Discoms to agitate their concerns before the Hon'ble Commission in order to protect their interests and those of their consumers of power. Taciturnity or silence is no virtue when the TS Discoms should be making their forthright submissions openly, clearly and firmly. Silence or non-response of the Discoms is tantamount to shirking their responsibility and allowing themselves to act mechanically, or not to act, maybe at the behest of higher authorities. Such forced or self-imposed helplessness shows the Discoms in a bad light, as if they were bereft of functional independence to protect their interests and those of their consumers of power. Higher authorities concerned may get elated on the silence or non-response of the TS Discoms without questioning what is questionable in the claims of TS Genco in the hope that such a stance of non-response of the Discoms would leave scope for getting undue benefit by the developer of the projects, depending on how the Hon'ble Commission decides the issues finally. However, any claims or provisions that would be detrimental to larger consumer interest, if permitted in the case of a public sector utility like TS Genco, would provide ground for private developers also to make similar questionable claims relating to their projects with whom the Discoms enter into PPAs. We expect higher authorities concerned to keep larger interests of consumers of power at large for serving whom the power utilities of the State Government are intended and direct the latter to be fair and reasonable in seeking protection of their interests.

- 8. Provisions for opening of letter of credit and escrow account by the Discoms are incorporated in the PPAs. In principle, opening of LC and escrow are unwarranted, as one of these accounts would serve the intended purpose and avoid additional expenditure for the Discoms for opening and operating the second account. It is incorporated in some of the PPAs that “TSDISCOMs shall open an Escrow account by entering Escrow Agreement with a Nationalised Bank (for the entire period of PPA) thirty days (30) prior to effective date, to cover one month receivables valid for the tenure of the PPA as a backup to the Letter of credit.” Unless Commission’s consent is given to the PPA, it cannot come into force. Without PPA coming into force, effective date cannot be considered and the question of opening escrow account by the Discoms thirty days prior to effective date does not arise. It shows need for getting consent of the Hon’ble Commission to the PPA well in time. Moreover, TS Discoms and TS Genco being companies of the same State Government and working in coordination through the TS Power Coordination Committee in which higher authorities of power utilities of the State Government are represented, incidentally, with the same officer holding the posts of CMD of both TS Transco and TS Genco and of chairman of TSPCC, transactions between TS Discoms and TS Genco can be managed harmoniously. As of now, what is the position of payments to be made by TS Discoms for power being supplied by TS Genco? Are there any accumulated dues from the Discoms to Genco?**
- 9. Questionable provisions like treating stoppage of generation by stations of TS Genco due to problems in power evacuation as deemed generation for the purpose of computation of availability for payment of fixed charges are incorporated in the PPAs. Evacuation of power from the station concerned has to be carried out by transmission utility, here, TS Transco. For any failure of TS Transco leading to stoppage of generation by a station of TS Genco, Discoms and their consumers of power should not be penalised. Therefore, such provisions in the PPAs should be rejected by the Commission to protect legitimate interests of consumers of power in general. Just as TS Genco should not be allowed to escape from its responsibility and accountability relating to adverse consequences arising out of impermissible delay in execution of its projects and resultant escalation of capital costs, TS Transco also should not be allowed to escape from its responsibility and accountability relating to evacuation of power from the stations of TS Genco. In the PPAs, emergency is defined as : “Emergency means a condition on or affecting TSGENCO electrical system which is beyond the reasonable control of TSTRANSCO and which threatens the safe and reliable operation of the system or which is likely to result in the disruption of safe, adequate and continuous electric supply by TSTRANSCO or which endangers life or property, and which condition is aggravated by continued deliveries of energy from TSGENCO electrical system.” When such safeguards are provided for both TS Transco and TS Genco for not holding them accountable and responsible for consequences arising from factors beyond their reasonable control, similar safeguards should be provided in the PPAs to TS Discoms also for their inability to take power from the projects of TS Genco due to factors beyond their reasonable control.**

10. Under Force Majeure, it is incorporated in the PPAs that “no party shall be liable for any claim for any loss or damage whatsoever arising out of failure to carry out the terms of the agreement to the extent that such a failure is due to force majeure events such as war, rebellion, mutiny, civil commotion, riot, strike, lock-out, forces of nature, accident, act of God and any other reason beyond the control of concerned party. But any party claiming the benefit of this clause shall reasonably satisfy the other party of the existence of such an event and give written notice within a reasonable time to the other party to this effect. Generation/drawl of power shall be started as soon as practicable by the parties concerned after such eventuality has come to an end or ceased to exist.

“The generator is entitled to claim full fixed charges upon declaration of plant availability and cannot claim any consequent losses during Force Majeure period.”

Conditions of force majeure, as defined in the PPA, are “beyond the control of concerned party” and that “no party shall be liable for any claim for any loss or damage whatsoever arising out of failure to carry out the terms and of agreement to the extent that such a failure is due to force majeure events.” When such is the case, the provision allowing generator to claim full fixed charges upon declaration of plant availability during force majeure period is contradictory to the condition that no party shall be liable for any claim for any loss or damage whatsoever arising out of failure to carry out the terms and of agreement to the extent that such a failure is due to force majeure events. Moreover, when conditions of force majeure are at play, by simply declaring plant availability, Genco can claim payment of fixed charges, that is, obviously, without generating and supplying power to the Discoms. If the Discoms cannot take power from Genco due to conditions of force majeure, the question of their paying fixed charges to Genco does not arise. If power is generated and supplied by Genco to the Discoms, the question of force majeure does not arise. Therefore, we request the Hon’ble Commission to reject and delete the provision in the PPA that “The generator is entitled to claim full fixed charges upon declaration of plant availability and cannot claim any consequent losses during Force Majeure period.” Or, modify the clause to: “The generator, even by declaring plant availability, cannot claim any consequent losses, including fixed charges, during Force Majeure period, if generation and supply of power to the Discoms do not take place.” For the purpose of backing down also, declaration of the generator on plant availability should not be taken for granted, but factual ground reality whether the generator is really in a position to generate and supply power and to what extent needs to be ascertained by the Discoms as and when such a situation arises.

11. It is provided in the PPA of KTSP stage VII for payment of incentive @ 25 paise per kwh for the normative generation over and above the target plant load factor. Instead of “normative generation” it should be actual generation over and above the target plant load factor. A similar provision should be incorporated or modified, if it is different, in all the subject PPAs making provision for payment of incentive @ 25 paise per kwh, not more than that, accordingly.

12. I request the Hon'ble Commission to provide me an opportunity to make further submissions in person during the public hearing on the subject issue and after receiving and studying responses, if any, of TS Discoms and TS Genco to my submissions.

Thanking you,

Yours sincerely,

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