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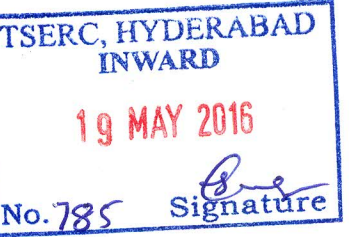
Ravindra Modi  
Sr. Vice President

FTAPCCI/1036/Energy/2015-16

May 19, 2016

## The Secretary

Telangana State Electricity Regulatory Commission  
11-4-660, 5<sup>th</sup> floor  
Singareni Bhavan, Red Hills  
Hyderabad - 500 004



Respected Sir,

**Sub:** Submission of suggestions and objections in O.P.No.10 of 2016 on PPA between NTPC Limited and TSSPDCL for supply of power for a period of 25 years from Telangana super thermal power project phase I with a capacity of 1600 MW (2X800 MW) at Jyoti Nagar in Karimnagar district.

With reference to your public notice and PPA signed between NTPC and SPDCCL on 18.1.2016, we hereby submit our objections/suggestions for the consideration of the Hon'ble Commission:

1. In its letter dated 4.2.2016 to the Hon'ble Commission, submitting the subject PPA seeking its consent for the same, TSSPDCL has rightly pointed out that A.P. Reorganisation Act, 2014, mandated at 13<sup>th</sup> Schedule (infrastructure – clause -7) that “NTPC shall establish a 4000 MW power facility in the successor State of Telangana after establishing necessary coal linkages.” It has further pointed out that, accordingly, NTPC is developing 4000 MW Telangana Super Thermal Power Project (TSTPP) in two phases, phase-I for 2X800 MW at Ramagundam and balance 3X800 MW under phase-II for the State of Telangana. TSSPDCL has made it clear that TSTPP “is wholly dedicated to Telangana State.” When the entire capacity of 4000 MW of TSTPP is dedicated to Telangana State, there is no point in incorporating the

CHAIRMAN PESHI

No : 543

DATE : 20/5/16

MEMBER (F) PESHI

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MEMBER (T) PESHI

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clause in the PPA that “2.2.1 Allocation of capacity from the Station to the State of Telangana shall be as decided by GOI.” NTPC is setting up the 4000 MW TSTPP as per the A.P.Reorganisation Act passed by the Parliament, not in normal course as a part and parcel of its planned activities. If at all there was any nagging doubt to NTPC about setting up this project to be dedicated to the State of Telangana, it should have got clarification and consent from the Government of India on the same before proceeding with the process of setting up the project. Since the Reorganisation Act came into force nearly two years back, NTPC had more than sufficient time to get required clarification and consent from the GoI on allocation of capacity from the project to the State of Telangana, leaving no scope for ambiguity or uncertainty about the same, simultaneously at the time of starting the process of setting up the project itself. That NTPC has not done so is the height of its irresponsibility and reflects its mischievous intent of keeping issues ambiguous and uncertain and leave scope for retaining a part of the installed capacity of the project for itself to be allotted to any other State by the GoI or for diverting to its trading wing NVVNL.

2. TSSPDCL, in its letter, has pointed out that “the clauses in the PPA are reported to have been vetted by the Legal Advisor at Central Government level and is also Legally vetted by Law Attachee/TSTRANSCO.” Obviously, the reported legal vetting has been found wanting in making the position of allotment of the entire capacity of the project to the State of Telangana clear even at the stage of drafting the PPA. When the draft PPA is reportedly vetted by “the Legal Advisor at Central Government level,” by implication, it is clear that the GoI wanted to continue uncertainty about allocation of entire capacity of the project to the State of Telangana for the reasons best known to itself. Moreover, the letter of TSSPDCL makes it clear that, though it is a signatory to the PPA, it has no role in preparing the draft PPA and getting it vetted legally, except signing on the dotted lines, with clauses like 2.2.1 incorporated therein which are contrary to the claims it has made in its letter to the Commission. By implication, it seems that TS Transco has played second fiddle to GoI and NTPC in getting the draft PPA vetted by its Law Attachee in its present questionable form, unmindful of the possible loss of a part or even 50% of installed capacity of the project that can be caused to the State of Telangana under the existing

categorically and the same be submitted to the Commission and made public in connection with public hearing on the subject PPA.

4. Clause 3.2 of the PPA says: “For timely and expeditious development of the required transmission system for evacuation of power from the said project to its various beneficiaries, NTPC shall initially make an application for Connectivity and Long-Term Access to the CTU, POWERGRID on behalf of the beneficiaries. The Procurer(s) hereby consents for NTPC to make the said application on its behalf. The Procurer(s) also agrees to subsequently sign all necessary agreements, including LTAA/TSA/BPTA, with POWERGRID/other transmission licensees developing the identified transmission system, corresponding to their share of allocated capacity from the project.” These questionable clauses have the following serious implications with adverse impact on the interests of TSSPDCL and consumers of power in Telangana, among others:

- a) First, it is a deliberate mischief to mention “various beneficiaries” for evacuation of power from the said project, when TSSPDCL is and should be the sole beneficiary with entire capacity of the project to be allotted to it. It again indicates the devious intention of the GoI and NTPC not to allocate entire capacity of the project to TSSPDCL.
- b) Second, when “it shall be the obligation and responsibility of Procurer(s) to make the required arrangement for evacuation of electricity from such delivery points of NTPC,” TSSPDCL should make required arrangement for the same in time. Since the project is being set up in Telangana and power is going to be transmitted and supplied within Telangana, the network of TS Transco can be used for evacuation of power from TSTPP. Involvement of various transmission utilities, including central transmission utility, for this purpose is unwarranted and would unnecessarily increase the burden of wheeling charges and transmission and transformation losses to the Discom and its consumers of power.

- c) Third, when NTPC talks of “timely and expeditious development of the required transmission system for evacuation of power from the said project,” it should categorically specify the date of commercial operation (COD) of TSTPP so that the required transmission system can be planned and put in place in time a few months before declaration of COD of the station, as is the standard practice, to start evacuation of infirm power also. As such, COD from the date of signing the PPA or from the date of financial closure, which also should be categorically specified, should be incorporated in the PPA.
- d) Fourth, when clause 3.2 says that TSSPDCL as procurer has to sign all necessary agreements with transmission licensees developing the identified transmission system “corresponding to their share of allocated capacity from the project,” it shows the need for specifically confirming the share of TSSPDCL in the capacity of TSTPP so that the latter can make an application for connectivity and long-term access to the transmission utility concerned. Therefore, it should be incorporated in the PPA that the entire capacity of TSTPP is allocated to TSSPDCL.
- e) Fifth, in the name of unknown “various beneficiaries,” NTPC cannot arrogate to itself the authority to make such an application to different transmission utilities as it likes and force TSSPDCL to sign on dotted lines of all necessary agreements related thereto as per its dictates, when it is the obligation and responsibility of SPDCL to make the required arrangement in time for evacuation of electricity from delivery points of TSTPP.
- f) Sixth, when Clause 3.1 of the PPA says: “sale of electricity shall be at the busbars of the Station and it shall be the obligation and responsibility of Procurer(s) to make the required arrangement for evacuation of electricity from such delivery points of NTPC,” it leaves scope for divergent interpretations. If it is from “such delivery points of NTPC,” it will give scope for interpreting that arrangements need to be made by TSSPDCL to evacuate power from “such delivery points of NTPC” to mean delivery points of any of the projects of NTPC as decided by the latter, irrespective of whether such additional transmission capacity from the

existing transmission network is available and can be obtained for evacuating power. It can put TSSPDCL to disadvantage and loss and lead to avoidable legal disputes. Therefore, it should be incorporated in the PPA that power shall be evacuated from delivery point of TSTPP, not from delivery points of NTPC.

g) Seventh, implementation of the project and creation of transmission capacity required to evacuate power to be generated by the project should be simultaneous. If, for any reason, NTPC cannot declare COD as per scheduled date and it gets further delayed for any reason, then the transmission network created for evacuation of power from the project gets stranded. In such an eventuality, NTPC should pay charges for the contracted and stranded transmission capacity as per terms and conditions in the agreement between TSSPDCL and the transmission utility/utilities concerned. In various PPAs, such clauses are incorporated in tune with standard practices. Therefore, a clause to this effect should be incorporated in the PPA. NTPC, if it is allowed to make an application for connectivity and long-term access to the transmission utility concerned on behalf of TSSPDCL, is capable of manipulating terms and conditions in agreements TSSPDCL has to sign with transmission utility/utilities in such a way that the burden of paying penalty/charges to the transmission utility for keeping the capacity of its network idle in case NTPC fails to complete its project and declare COD as per agreed time schedule also falls on the Discom itself.

5. Clause 4.1 says, inter alia, that “NTPC shall make declaration of the capacity at the busbars of the Station after taking into account the capability of the Station to deliver Ex-Bus which shall be considered while calculating Declared Capacity (DC).” Further, clause 4.2 says: “Notwithstanding the following, Station shall be deemed as available to the extent of DC declared by the station for any time period: a. Failure on account of Bulk Power Customer(s) to transmit and wheel electricity from the Ex-Bus of the Station. b. Any other reason not attributable to NTPC restricting scheduling and dispatch of capacity at the Ex-Bus of the Station.” These clauses have the following implications, among others:

- a) As per the regulations of the Central Electricity Regulatory Commission, the threshold level of plant load factor (PLF) for coal based thermal power stations is 85%, i.e., full fixed costs have to be adjusted and paid for power generated with a PLF of 85%. If the declared capacity is less than that, NTPC should pay penalty to TSSPDCL, as has been the standard practice relating to various PPAs. As such, a clause to this effect should be incorporated in the PPA specifying that NTPC should pay penalty equivalent to the tariff for reduction of generation and supply of power below the threshold level of PLF, keeping in view the fact that during such period TSSPDCL will have to pay wheeling charges to the transmission utility concerned for that part of contracted capacity not utilised.
- b) Just as “failure on account of Bulk Power Customer(s) to transmit and wheel electricity from the Ex-Bus of the Station” the Station shall be “deemed available to the extent of DC declared by the Station for any time period,” meaning that TSSPDCL should pay tariff for the power not evacuated by it from the ex-bus of TSTPP, the failure of the project of NTPC to generate and supply power at threshold level of PLF also should put the obligation on the NTPC to pay penalty to TSSPDCL equivalent to tariff for such lesser generation of power. If NTPC has to backdown its generation and cannot supply that power to any other customer to the extent TSSPDCL cannot evacuate it and the Discom has to pay capacity charges for the same, as incorporated in the PPA, the Discom also has to buy power from market sources at higher tariffs, if available, to meet its scheduled demand or else it will have to impose power cuts, if TSTPP generates and supplies power below the threshold level of PLF.
- c) Clause 4.2 b that notwithstanding “any other reason not attributable to NTPC restricting scheduling and dispatch of capacity at the Ex-Bus of the Station,” the Station shall be deemed as available to the extent of DC declared by the Station for any time period is too sweeping and unjustified, because it can be interpreted that for any other reason not attributable to TSSPDCL restricting scheduling and dispatch of capacity at the Ex-Bus of the Station, the Station shall be deemed as available to the extent of DC declared by the Station for any time period and as

such TSSPDCL should pay tariff for capacity declared but power is not generated and evacuated. Therefore, a sub clause that, if, for any other reason not attributable to TSSPDCL, scheduling and dispatch of capacity at the Ex-Bus of the Station is restricted, then the Station shall not be deemed as available to the extent of DC declared by the Station for any time period, should be incorporated in the PPA.

6. Clause 5.1.1 says that “the tariff for the electricity supplied from the Station would be as determined by CERC from time to time.” The capital cost and operating norms for thermal power projects determined by CERC are already liberal and pro-developer. The estimated capital cost of phase I of TSTPP (2x800 MW) is shown as Rs.9954.20 crore. It works out to Rs.6.22 crore per MW. What would be the capital cost by the time the project is completed is to be seen. Therefore, at the time of taking up the issue of determination of tariff for TSTPP with CERC, TSSPDCL should make effective submissions for carrying out prudent check up of capital cost of the project and the competitive bidding procedures adopted and works allotted for its implementation so that what is questionable and not permissible should be avoided from the projected capital cost.
7. SPDCL has informed that Mandakini-B coal mines in the State of Odisha has been allotted to NTPC for TSTPP (4000 MW) on 10.9.2015 and that in-principle approval for tapering coal linkage (phase-I of 2x800 MW) is given from Coal India Limited. The Discom has further informed that Coal India Ltd. has to indicate the source of coal for 2x800 MW of phase-I of TSTPP. Needless to say, cost of transportation of coal from Odisha coal mines is higher compared to cost of coal available from mines of Singareni Collieries Company Limited in view of their vicinity to the TSTPP. Hon’ble Chief Minister Sri K. Chandrasekhar Rao had repeatedly announced that SCCL had untapped deposits of coal which would meet requirements of thermal power projects upto a total capacity of 10,000 MW. Therefore, the possibility for getting coal allocation to TSTPP from mines of SCCL may be explored by taking up the issue with GoI at appropriate level, at least, in the near future as and when additional coal from SCCL is available. It would substantially reduce variable cost of

power to be purchased from TSTPP running into hundreds of crores of Rupees over the period of 25 years of the PPA and benefit consumers of power immensely.

8. We would like to reiterate that any 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 tariff to be paid by the consumers. For this purpose, the Discom has to submit a long-term load forecast report which should contain projections of demand growth, availability of installed capacity, plans for timely addition of installed capacity and procurement of power, plans for enhancing capacities of transmission and distribution networks of TS Transco and TS Discoms to transmit and distribute required power to meet growing demand. Without such a long-term report and time-bound concrete plan of action to implement the same, decisions and actions would turn out to be haphazard and may go haywire, leading to avoidable difficulties and loss. It will reflect on the functioning of the Government of Telangana and its power utilities.
9. Clause 5.1.2 says: "NTPC shall approach CERC for determination of Tariff before Commercial Operation Date of any unit of the station. In case this Tariff is not determined for any reason by CERC prior to commencement of commercial operation of such unit of the Station, the Parties agree that billing and payment shall be done on ad hoc basis as per the proposal of NTPC submitted to CERC. NTPC shall inform Procurer(s) of such ad hoc tariff and pending determination of such Tariff by CERC, billing on provisional basis would be carried out, subject to adjustment as and when such Tariff is determined by CERC." It should be amended that NTPC shall approach CERC for determination of Tariff well in advance so that the tariff is determined well before declaration of COD. In view of the period taken for implementation of the project, it would not be difficult to approach CERC accordingly and get its order on determination of tariff well in time. If for any reason,



determination of tariff is not done before COD, NTPC shall seek determination of ad hoc tariff by CERC, with TSSPDCL participating in the proceedings before the Commission, subject to adjustment as and when tariff is determined by CERC, it should be further incorporated in the PPA.

10. Clause 12.4 says: “In other cases NTPC shall have the right to terminate this Agreement. In the event of termination of this Agreement, Procurer(s) shall be liable and continue to pay the Capacity Charges each month till firm arrangement for sale of Procurer(s) share with alternate customers substituting the Procurer(s) is tied up.” The reasons for termination of the agreement should be specific and justifiable. Contrary to that, Clause 12.4 is too vague, too general and too sweeping that NTPC can misuse it to its undue advantage and to the disadvantage of TSSPDCL and its consumers. Therefore, Clause 12.4 should be deleted from the PPA.
11. Seeking Letter of Credit from TSSPDCL to cover 105% of one month’s estimated billing in respect of electricity supplied from the Station to Procurer(s) (Clause 6.2.2), on the one hand, and making provision for ‘Escrow Agreement’ (Clause 6.2.9), on the other, in addition to seeking payment of capacity charges during period of regulation/diversion of capacity or till the capacity is re-allocated to other bulk power customers(s)/third party/parties under various Clauses incorporated in the PPA, is like imposing Shylock-like conditions. Therefore, provision for Escrow Agreement should be deleted from the PPA.
12. Clause 11.0 says, inter alia, that “Agreement shall remain operative up to completion of twenty five (25) years from the date of commercial operation of last unit of the Station, unless it is specifically extended on mutually agreed terms.” During the PPA period of 25 years or even earlier, NTPC will recover much more than the entire capital cost of the project, including debt and equity, with interest on debt and return on equity, as a part and parcel of fixed charges. As such, having borne the burden of frontloading the tariff, the consumers of power of TSSPDCL are in all justification entitled to get the benefit of frontloading the tariff even after expiry of the term of the PPA in the form of nominal depreciation charges, etc. If the term of the PPA is to be

extended “on mutually agreed terms,” NTPC in all likelihood would try to demand its pound of flesh by insisting on unreasonable terms or to deny extension of term of PPA much to the detriment of the consumers of power, notwithstanding the fact that by then it will have recovered much more than the entire capital cost of the project from the consumers of TSSPDCL. Therefore, in all fairness, in the place of clause 11.0, it should be incorporated that after completion of the term of the PPA for 25 years, the project shall be handed over to TSSPDCL by NTPC, without any liabilities and with all rights.

13. We request the Hon’ble Commission to direct the parties to the PPA to send their responses to the above submissions and hold a public hearing, provide us an opportunity to make further submissions in person after studying their responses, and consider the above points, among others, before issuing its order.

Thanking you,

Yours sincerely,



Anil Reddy Vennam  
President, FTAPCCI

Copy To:

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