



केन्द्रीय विद्युत विनियामक आयोग
CENTRAL ELECTRICITY REGULATORY COMMISSION



Alok Kumar, IAS
Secretary

D.O. No.9/7/2010-Reg.Aff.-GC/MOP/CERC
Dated 28th September, 2010

Dear Sir

Please refer to Ministry's letter No. 331/1/2010-R&R dated 26th July, 2010 on the subject matter of Implementation of the recommendations/decision taken at the 19th Meeting of the Eastern Zonal Council held at Ranchi on 30th May, 2005- Orissa's request to allow the power producing State to collect tax from power generation/sale of power outside the State.

2. The whole issue of the benefits being sought by the resource rich States from the thermal power projects considered in the Commission and a self-contained note including the issues involved and suggested course of action is enclosed.

With regards

Yours sincerely,

Alok Kumar
(Alok Kumar)

Encl: As above.

Shri Ashok Lavasa
Joint Secretary
Ministry of Power
Shram Shakti Bhavan
New Delhi.

Concessional/preferential procurement of electricity by the Host States under MOU route from private sector IPPs

1. According to section 10 of the Electricity Act, 2003 a generating company may supply electricity to any licensee in accordance with the Act and the rules and regulations made thereunder and may, subject to the regulations regarding open access to consumers, supply electricity to any consumer.

Further, according to the Tariff Policy notified by the Central Government under the provisions of the Electricity Act, all future requirement of power should be procured competitively by distribution licensees. There was an exception to this policy prescription for five years in cases of expansion of existing projects or where a state controlled/owned company was an identified developer. Cost plus tariff was permitted in these exceptions. The five year period will end on 5th January, 2011.

The Electricity Act mandates that the Electricity Regulatory Commissions shall be guided by the National Electricity Policy, National Electricity Plan and Tariff Policy published under the Act while discharging their functions.

2. A number of State Governments have issued policies which are not in accordance with the provisions of the Electricity Act and the Tariff Policy notified under the Act. Some examples are given below:

Chhattisgarh

According to the Energy Policy of the Chhattisgarh Government, surplus power from power producers could be sold to other states after meeting requirement of Chhattisgarh and the State Government shall extend all possible help in this regard. **Sale of power to other states shall be through Chhattisgarh State Electricity Board but the responsibility to identify buyer state/organization shall rest with the power producer.** A similar dispensation has been provided in respect of sale of surplus power from a captive power plant.

Orissa

According to the notification dated 8th August, 2008 of the Energy Department of Government of Orissa, the following provisions have been enforced in respect of IPPs under MOU route :

- i) For the IPPs having existing MOU, 7% power at variable cost will be made available to the state by the IPPs who have been allocated coal blocks within the State. Others will provide 5% power at variable cost. The variable cost will be determined by the OERC.
- ii) For the existing as well as future IPPs, a nominated agency(s) authorized by the State Govt. will have the right to purchase 14% of the power sent out from the Thermal Power Plant at variable cost from the IPPs who have been allocated coal blocks within the State. Others will provide 12% power at variable cost. The tariff for such power will be determined by the OERC.
- iii) An annual contribution @6 paise per unit of the energy sent out, from the plant, but not sold in the State to be made by the developer towards Environment Management Fund.

Punjab

According to Power Generation Policy notified by the State Government on 21st June, 2010,

- (i) State Government through its nominated agency shall have first right but not obligation for purchase of power up to 70% of the installed capacity from the power projects (to be located in the State of Punjab and also to Pit head/Coastal Thermal Power Plants with an installed capacity of 250 MW or more at single location) at the tariff which shall be got approved from the Appropriate Electricity Regulatory Commission. The first right of refusal for purchase of aforementioned 70% power shall be exercisable by the Government or its nominated agency within 3 months from the approval of tariff by the appropriate regulator or 18 months of signing of the MOU with the Government and/or its nominated

agency, whichever is earlier. PPA shall be executed between the Government nominated agency and the developer initially for a period of 25 years which can be extended on mutually agreed terms and conditions.

- (ii) For the expansion plan (additional capacity), the developer shall offer 5% of the installed capacity of the additional units to the State Government through its nominated agency at **variable cost** (quoted variable cost as approved by the Regulator) and additional 10% of the installed capacity of the additional units at already quoted tariff that has been approved by the Regulator.

Uttar Pradesh

The State Government has amended its Energy Policy 2009 which now provides the following:

- i) The Government, the State distribution utilities or their assignees will not guarantee purchase of power from additional units by the Developer. However in the case of a project selected under the competitive bidding process in which the coal linkage for the original number of units has been provided by the Government of Uttar Pradesh, the Government shall have the first right to purchase power upto 20% (Twenty percent) of the aggregate capacity of the additional generating units which may be set up by the developer on the basis of his own arrangement for sourcing the fuel, at the rate determined by the bidding process. This condition will be applicable to capacities added by the developer within a period of two years from the commissioning of the last unit of the project supported by the coal linkage provided by the State of Uttar Pradesh.
- ii) In the case of additional capacity, for the project being setup by a developer which are commissioned more than two years after the date of commissioning of last unit of the project supported by coal linkage being provided by the State of Uttar Pradesh, the State Government or its assignee shall have the first right of refusal to purchase power upto

30% (Thirty percent) of the aggregate additional capacity from such generation units at a rate to be decided by the Uttar Pradesh Electricity Regulatory Commission.

- iii) In the case of a project being setup by a developer outside the competitive bidding process on the basis of Joint Venture/ captive with his own arrangement for sourcing of fuel for the project, the State Government or its assignee or its nominated agency shall have the first right of refusal to purchase power upto 30% (Thirty percent) of aggregate capacity of such generating units at the rate to be decided by the Uttar Pradesh Electricity Regulatory Commission.
- iv) The right of refusal will be exercised by the Government each time the Developer is in the process of finalizing its Power Purchase Agreement (PPA). However, the Government would provide its concurrence or otherwise to the PPA to the Developer within three months of the receipt of the same. The PPA term shall be twenty-five years. The PPA shall be approved by the Uttar Pradesh Electricity Regulatory Commission.

3. Information was obtained from CTU in respect of the private sector projects which have sought long term open access.

(a) According to the information available, the following **projects in Orissa** have mentioned home state share but not included the same in the open access quantum sought

Sl No	Applicant	Home State	Total capacity (MW)	Share (MW)
1	Jindal India Thermal Power Ltd.	Orissa	1200	270
2	GMR Energy Ltd	Orissa	1050	450
3	Lanco Babandh Power Pvt. Ltd	Orissa	2640	660
4	Navabharat Power Private Ltd (Phase-I)	Orissa	1050	263
5	Sterlite Energy Ltd	Orissa	2400	660
6	Ind Barath Pvt. Ltd.	Orissa	700	84

(b) In respect of the **projects in Chhattisgarh** it has been informed that Chhattisgarh (through state govt entity) has applied for Long Term Access for about 6300 MW from the IPP generation projects in Chhattisgarh against its home share of which details are given below:

IPP IN CHHATTISGARH IN RAIGARH/CHAMPA/RAIPUR COMPLEX – LONG TERM ACCESS QUANTUM FOR CHATTISGARH STATE (HOME STATE)

S.No	Applicant	Capacity (MW)	LTA (home state) (MW)
RAIGARH COMPLEX			
1	RKM Powergen Ltd.(4x360)	1440	497
2	Athena Chhattisgarh Power Ltd.(2x600)	1200	421
3	Jindal Power Ltd.(4x600)	2400	769
4	Jindal Power Ltd. (225 MW from Dongamahua CPP(4x135 MW)+ 175MW from existing Tamnar TPS (4x250 MW))	400	0
5	SKS Power Gen. (Ch) Ltd.(4x300)	1200	384
6	Korba West Power Co. Ltd.(1x600)	600	192
7	DB Power Ltd.(2x600)	1200	384
8	Visa Power Ltd.	1200	384
9	TRN Energy**	600	210
	sub-total	10240	3241
JANJGIR-CHAMPA COMPLEX			
1	KSK Mahanadi Power Co. Ltd (6x600)	3600	1153
2	BALCO(4x300)	1200	384
3	Vandana Vidyut Ltd.(2x135+1x270)	540	173
4	Lanco Amarkantak Power Pvt. Ltd.(2x660)	1320	423
5	Chhattisgarh Steel & Power Ltd.(1x35+1x250)	285	91
	sub-total	6945	2224
RAIPUR COMPLEX			
1	GMR Chhattisgarh Pvt. Ltd.	1370	438
	Total	18555	5903

IPP IN CHHATTISGARH IN BILASPUR COMPLEX – LONG TERM ACCESS QUANTUM FOR CHATTISGARH STATE (HOME STATE)

Sno	Developer	Capacity (MW)	LTA (home state) (MW)
1	Maruti Clean Coal(1X300 MW)	300	96
2	Dheeru Power Gen (3x350 MW)	1050	336
	Total	1350	432

4. The following issues arise for consideration:

- i) What is the statutory status of such policies issued by the State Governments which are not consistent with the statutory Tariff Policy under the Electricity Act, 2003? The Electricity Regulatory Commissions are mandated to be guided by the policies issued under the Act. This question will definitely arise when these IPPs approach the SERCs for determination of tariff for the share of power agreed to be given to the host State Government.
- ii) In case of interstate sale of its share by a host State Government, the regulatory jurisdiction would lie with CERC if the sale is on long term basis. For example, the State Government of Chhattisgarh has applied for long term access to CTU for about 6300 MW as its share from the IPP generation projects proposed in the state. CERC may not be in a position to determine tariff on cost plus basis for such sale as it is statutorily required to be guided by the Tariff Policy.
- iii) Such concessional sale of power to host states would lead to increase in cost of electricity to distribution utilities of other states
- iv) Competition is one of the main objectives of the Electricity Act. Acquiring large quantities of power at concessional rates by the host State Governments as their share from IPPs would definitely impact the competition in the electricity markets if these governments enter in the

electricity markets. The powers available to Electricity Regulatory Commissions under section 60 of the Act to prevent and act against market domination is applicable only in respect of licensees and generating companies. The State Governments who are purchasing power as their share from the IPPs and undertaking sale of such power could perhaps be considered as trading licensees and would be subjected to regulatory jurisdiction in respect of any market domination. However, this formulation needs further examination from legal angle. Moreover, this proposition would be difficult to implement from practical considerations.

Suggested course of action

5. In view of the likely problems on policy and regulatory fronts on account of these practices by the State Governments to acquire power as a condition to support the power projects under MOU route, there is an urgent need to evolve an appropriate policy. Ideally, the State Governments should not intervene in power procurement and trading of electricity which is the obligation of the distribution licensees. Though the Electricity Act provides for transmission, distribution and trading by the State Governments under section 14 of the Act, in the interest of promoting competition in the electricity industry such activities by the State Governments should only be an exception.

To take care of the concerns of the states regarding adverse impact of power projects on local areas, a national policy needs to be evolved to appropriately compensate the project affected families and the local areas where the power projects are being set up by reviewing the present rehabilitation and resettlement policy , if considered necessary.

Further, to meet the demand of resource rich (coal bearing) states that they need to be compensated by way of some economic benefits on the lines of free power to hydro states, one could look at adequacy of royalty on mining of coal.
