

**BEFORE THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION  
LUCKNOW**

Petition no. 560/08

**IN THE MATTER OF:** Approval of Request for Proposal (RFP) for setting up 2X660 MW Sangam Thermal Power Project at Karchana, Distt. Allahabad through competitive bidding.

**AND**

**IN THE MATTER OF**

**Petitioner:**

M/S Sangam Power Generation Company Ltd.  
3<sup>rd</sup> floor, Shakti Bhawan Extension  
14, Ashok Marg, Lucknow.

The following were present:

1. Mr. Pradeep Shukla, Chairman, UPPCL.
2. Mr. A.K. Awasthi, M.D., UPPCL.
3. Mr. Prashant Mehrotra, EE, UPPCL.
4. Mr R.K. Jain, Advisor, Jai Prakash Associates Ltd.
5. Mr. Sitesh Mukherjee, Advocate, Jai Prakash Associates Ltd.
6. Ms. A. Thakha, Consultant, Jai Prakash Associates Ltd.
7. Mr Sumeet Notani, Reliance Power Limited.
8. Mr. A.K. Arora, CESC Ltd.
9. Mr. Shubhrendu Saxena, Engineer, Adani.
10. Mr. Sanjay S., Branch Manager, L&T-Lucknow.
11. Mr. M.P. Singh, Manager, L&T, Lucknow.
12. Mr. Deepak Raizada, Sr. AE, UPPCL
13. Mr. Prafull Katiyar, Feedback Ventures Private Ltd.
14. Mr Joyant Nayak, Feedback Ventures Private Ltd.
15. Mr. S.A. Faruqi, EE, UPPCL.
16. Mr. R.P. Purohit, UPPCL.
17. Mr. Sameer D., Feedback Ventures Pvt. Ltd.
18. Mr. Lal Chand, CE, (Project), Sangam Power Gen Co. Ltd.
19. Mr. Jawahar Lal, CE (Transmission), UPPTCL, Lucknow.
20. Mr. Arun, Director (D), UPPCL, Lucknow.
21. Mrs. K. Sinha, S.E., UPPCL, Lucknow.
22. Mr Shailesh Joshi, Feedback Ventures Private Ltd.

**ORDER**

**(Date of hearing 16.9.08)**

(1) The Petitioner Sangam Power Generation Company Ltd (SPGCL) is a Special Purpose Vehicle (SPV) created under Companies Act 1956 for development of

2X660 MW Thermal Power Project at Karchana, Distt.Allahabad. SPGCL has been identified by GoUP as the Nodel Agency and authorized by the distribution companies owned by UPPCL viz. Pashchimanchal Vidyut Vitran Nigam Limited, Poorvanchal Vidyut Vitran Nigam Limited, Madyanchal Vidyut Vitran Nigam Limited, Dakshinanchal Vidyut Vitran Nigam Limited, Kanpur Electricity Supply Company Limited (jointly referred to as "Procurers"), to initiate Competitive Bidding Process for selection of developer for 2X660 MW Sangam Power generation Company Limited as per Guidelines issued by the Central Government.

The two stage bidding process has been established in which Commission has already approved RFQ vide its order dt. 20<sup>th</sup> August, 2008. This petition is seeking approval of RFP document for the said project.

The Commission published a Notice dt.26.8.08 in the newspapers and invited comments, objection and suggestions of stakeholders and interested parties on RFP document by 16.9.08, the date of hearing in the petition. The provisional sale of documents to the successful applicant of RFQ stage was also allowed.

- (2) Written comments of four Companies, M/s Jaiprakash Associates Ltd., M/s Adani Enterprises Ltd., M/s Reliance Power and M/s KSK Energy Ventures Ltd. have been received by the Commission.

M/s Jaiprakash Associates Ltd. (JPL) has stated that contracted capacity should be 90% of the installed capacity taking in to account 7.5% auxiliary consumption. It further suggested that the term 'net capacity' in PPA be changed to 'contracted capacity' and the contracted capacity from additional unit should not be less than 20%/30% as per the provisions of the GoUP policy on Thermal Power Generation. JPL has also commented on terms scheduled generation, availability factor, available capacity and declared capacity as defined under ABT and suggested certain modifications. The term, 'additional unit' is being sought to be defined as 1X660 MW unit and brought within the meaning of 'power station'. A clarification has been sought if the schedule of specified COD shall also be applicable for additional unit and the procurers providing transmission system for evacuation of 10% capacity and additional

power from additional unit outside the State. Doubts have been raised on adequacy of coal from coal linkage to maintain plant load factor at 80% as per existing norm of station heat rate of CERC.

M/s Adani Enterprise Ltd.(AEL) seeking clarification on contracted capacity, removal of word 'negotiation' from the definition of letter of intent (LoI) and payment of incentive if to be paid over and above the capacity charges and energy charges. The issue of insufficient coal from the linkage has also been raised and additional linkage sought. AEL suggests that the gap of 5 months in commissioning should not be insisted as long as the second unit is commissioned on or before 59 months and force majeure conditions should also be made to include non-fulfillment of conditions on part of procurers. It is further stated that escalation of non-escalable capacity charges by 2.5 is insufficient. It is suggested to be 10%. It is further stated that recommencement of supply within 2 hours is not feasible as per provision of CERC Open Access Regulation effective from 1<sup>st</sup> April,08 and it should be linked to the minimum time required for revision of scheduled. AEL is also seeking as to how the monthly energy charge shall be calculated under schedule 7, clause 1.2.3 of PPA.

The Reliance Power Ltd.(RPL) has suggested removal of word 'negotiation' from definition of letter of intent in RFP, acquisition of land in lieu of the land de-notified along the national highway/railway line as per TOR of MoEF, a letter of assurance of Indian Railways be obtained to transport coal from the mine to the plant, procurers to provide assistance in execution of fuel supply agreement and to establish consistency as to meaning of 'contracted capacity' in RFP & PPA. Clarifications are sought if cost of shifting 400 KV line of PGCIL and 132 KV line of UPPTCL passing over the identified land for the project shall be borne by the developer. RPL requires the hydrological, geological, meteorological and seismological data 60 days prior to bid dead line to enable it to verify the same. The minimum off-take guarantee of 65% of the total contracted capacity is being sought from the procurers. Suitable amendment of clause 4.7.1 (a) of PPA, regarding payment to the developer due to unavailability of transmission system, is required to indicate a qualified

amount. It is commented that the intention of clause 1.4.7 and 1.7 of RFP should be captured in clause 4.4.6 and 6.3.5 of PPA. RPL has objected to payment of Income tax at actual saying that such provision would defeat the spirit of competitive bidding and same is neither included in the competitive bidding guidelines nor in the standard bid documents.

M/s KSK Energy Ventures Ltd. (KSK) is requiring time till 6.11.08 for submission of technical and financial bids and more time than 8 days provided under clause 2.1.3.2 of RFP for execution of 'share purchase agreement'. The KSK has commented that format under Annexure 4 of RFP should be amended to indicate escalable and non-escalable charges as well as fuel transportation.

- (3) Sri. Shitesh Mukherjee, Advocate for JPL raised the issue of contracted capacity whether contracted capacity was 90% (1188MW) or 7.5% less than 90% (1099MW). Sri. Shailesh Joshi, the Consultant to the Petitioner, clarified that as per definitions in the PPA, contracted capacity was 1188 MW while net contracted capacity should not be less than 1099 MW after discounting auxiliary consumption of 7.5% from 1188 MW. Sri. Mukherjee further added that the factors like availability, scheduling etc. should also be considered on the basis of net contracted capacity. Sri A.K. Awasthi, M.D., UPPCL clarified that availability, scheduling etc would be taken care of on the basis of net contracted capacity albeit the bidder was free to offer net contracted capacity more than 1099 MW. Mr. Awasthi further assured that the same principle would also apply to additional capacity. Sri. Mukherjee submitted that the transmission facility should also be provided for additional unit. Sri Pradeep Shukla, Chairman, UPPCL assured that the transmission facility would be made available for additional unit also. It was also submitted on behalf of JPL that the coal provided under the coal linkage was not enough for generation at 80% plant load factor if calculated on GCV 4175 kcal/kg, given in the document, taking SHR as mentioned for supercritical thermal unit in CERC discussion paper. Mr. Awasthi replied that the GCV given in the document was indicative and for the purpose of evaluation and actual figure might change as coal supplied from the collieries might have different values. Moreover, the details about the quality and price of fuel could be ascertained at the time of Fuel

Supply Agreement (FSA). JPL sought support of the procurers support in finalization of FSA. JPL objected to use of “as is where is” used in clause 1.8 to which the Petitioner agreed.

Sri. Shubhrendu Saxena of M/s Adani Enterprises Ltd. expressed concern about availability and price of the coal. He said that in case of non-availability of sufficient coal, the seller had no other option than to buy coal from other source or import coal. The imported coal might have higher GCV at higher prices. The prices could be higher in other arrangements of coal as well. The tariff Schedule 7 as given in PPA provided weighted average principle for calculation of tariff which might not be sufficient to cover such higher cost. Sri. Saxena suggested that the word, “negotiations” from the definition of LOI should be omitted. Sri. Saxena reiterated the written submissions made in respect to incentive, commissioning of units and recommencement of supply. Regarding re-commencement of supply Mr. Awasthi stated that since ABT charges were too high, the extension in time could not be afforded though extension up to 6 hours could be considered in view to facilitate scheduling of electricity.

Sri. M.P Singh submitted on behalf of M/s L &T that additional land acquisition be given a time frame to which Sri.Pradeep Shukla, Chairman replied that section-4 notices would be issued before RFP. Sri. Shukla further sought the opinion of the representatives of companies present, whether the section-4 for the land required for additional unit should be issued before or after finalization of bid. On this question, JPL was of the opinion that it could be provided after bid process was over while L&T and AEL were of the view that it should be provided before the submission of bids.

Sri. Sumeet Notani of RPL reiterated the written submissions made in respect to de-notified land, hydrological and other data and shifting of transmission lines. Regarding de-notification of land, Mr. Awasthi submitted that the plant was located at highway and as per government norms no electricity generation activity could be undertaken within 500 meters along the highway and he assured that land required as per CEA norms shall be made available. Sri. Notani stressed the need of facilitation of ROW through the de-notified land by the procurers.

Regarding submission of bids, Sri. Mukerjee of JPL required 30 days after the final documents were made available while other representatives of other companies present in the hearing did not object.

No opinion was expressed by the representatives of various companies present in the hearing on behalf of the petitioner or the procurers on the question of fixing net quoted station heat rate or providing a band of the same in the RFP in view of difficulty experienced which led to re-bidding. The Commission allowed the parties to the proceedings to submit their written submission in that regard within 2 days.

- (4) The Commission has received no submission from any party in respect to fixing or providing a band of net quoted station heat rate in RFP.
- (5) The concerns of the parties present in the hearing, in respect to contracted capacity, actions to be taken by the procurers prior to bid opening, submission of performance guarantee and transfer of 100% equity, RoW, scheduled date of commissioning, gap between commissioning of two units, and the effects of fulfillment of condition precedent on part procurers or seller and evacuation of power, have already been addressed in Order dt.24.1.08 passed in Pet.no.502/07 passed in the matter of *'Approval of Request for Proposal (RFP) and other related documents for setting up 2X660 MW Sangam Thermal Power Project at Karchanna, Distt-Allahabad based on super critical technology through competitive bidding process* and those decisions shall also hold good in this petition including allocation of power to NPCL. All other decisions or pleas of the petitioner accepted by the Commission in the above mentioned order shall also prevail in this petition unless otherwise reviewed in this order.

The issue of incentive has been clarified by the Commission vide Order dt.24.3.08 passed in petition no.524/08 and 523/08 and the same order shall also be applicable in this petition. This incentive shall not apply to additional unit.

'Net contracted capacity' shall mean not less than 1099 MW arrived at from contracted capacity of 1188 MW after deduction of 7.5% auxiliary

consumption at the point of delivery. RFP and PPA shall be harmonized as to the meaning of contracted capacity and net contracted capacity.

Purchase from additional unit shall be as provided under GoUP policy.

The terms scheduled generation, availability factor, available capacity and declared capacity shall bear the same meaning as specified under the order issued by CERC on Availability Based Tariff or that attached to in UPERC (Terms & Conditions of Generation tariff) Regulations, 2004 as amended from time to time.

Additional unit means a unit of 1x660 MW. This unit shall form a part of the project as and when implemented. In case of commissioning of the additional unit, the Net Contracted Capacity of such unit shall accordingly be 7.5% less than 20%/30% of the capacity of the additional unit as the case may be.

Time frame for an additional unit shall be as provided under GoUP policy for thermal power generation.

The petitioner submitted in the proceeding of petition no.502/07 vide order dt.24.1.08 that work of railway track has been entrusted to M/s Rites and details may be provided in due course. This information shall be provided by the petitioner to the bidders with the RFP and the successful bidder shall enter into an agreement for transport of coal with the Indian Railways. Although, the coal linkage and fuel supply agreement has inbuilt feature of an assurance of transport of coal by the Indian Railways.

Bids are being invited on net quoted heat rate without specifying station heat rate. In past, the variable cost has been loaded in the fixed cost; a practice not conducive to commercial arrangement envisaged for the bid process and operation of the plant as it impacts the quantity of fuel tied up through coal linkage. Therefore, the quoted SHR must be reasonable which addresses the requirement of fuel for supply of contracted power at target availability. It may be a range or a fixed number.

Schedule 7 of PPA regarding tariff is self explanatory and needs no clarification further.

The Petitioner, SPV, for this project has secured a coal linkage from Ministry of Coal for supply of 4.68 MPTA against payment of commitment guarantee of Rs.30 Cr. The Petitioner shall pay full amount towards commitment guarantee by 30.9.08 for which time extension has already been granted.

- (6) In view of the written or oral submissions made by the parties to the proceedings, the Commission directs as below:
- (i) Omit the word 'negotiations' from the definition of LOI.
  - (ii) Shifting of 400 kv transmission lines of PGCIL and UPPTCL shall be carried out by respective agency and cost to be borne by the developer. The information like Hydrological, Geological, Meteorological and Seismological data shall be furnished to the bidder before 15 days of submission of bids.
  - (iii) The RFP must provide that transmission system for evacuation of power from additional unit shall be considered in revised transmission plan on confirmation of intention of setting up additional units by the successful bidder.
  - (iv) It is necessary for strengthening, expansion and execution of transmission plans that an, 'Empowered Committee' is constituted by GoUP for discharge of such functions as stipulated under Clause-14 of the Central Government's 'Guidelines for Encouraging Competition in Development of Transmission Projects' dt.13.4.06. Managing Director of State Transmission Utility shall necessarily be the Member of the Empower Committee. A request to CEA may also be made for nomination of Member (Power System) or Member (Transmission) and their representative. The Committee may also include Principal Secretary (Energy) and a member representing State Planning Department.
  - (v) The responsibility of the procurers for acquisition of land shall end with the acquisition and possession of entire land for 2X660 MW project. Provision must be made in RFP for facilitation of acquisition of land for additional units by identifying the person who would be responsible for such facilitation.

- (vi) The additional unit at the project shall require additional water, fuel, transport, right of way for conveyance of water and transmission line, besides forest and environment clearance. In light of GoUP policy for thermal power development, the State or its assignee is to receive power from such additional unit. Since the procurers may have interest in power from additional unit, the RFP must explicitly lay down support which the Government may extend in providing additional water, right of way for conveyance of water and transmission line. However, the responsibility of forest and environment clearances shall rest with the selected bidder. Further, the Successful bidder shall be responsible for arranging fuel, also signing of fuel supply agreement and transport for such additional unit.
- (vii) In case of insufficiency of coal obtained from the linkage required for day to day operations, the selected bidder or seller shall be allowed to purchase coal from other sources and energy charges shall be calculated in the manner provided in the RFP and PPA based on cost of procurement and GCV of the coal.
- (viii) If the unit could not be commissioned due to non-availability of transmission line it shall be treated as deemed commissioning of the plant and capacity charges ( escalable plus non-escalable) shall be paid by the procurers in proportion to their allotted capacity.
- (ix) In case the tested capacity is found to be more than the contracted capacity then the tested capacity shall be used for calculation of contracted capacity.
- (x) In case of re-commencement of supply, the time allowed shall be linked to the minimum permissible time allowed by SLDC for rescheduling.
- (xi) 'Net Heat Rate' be specified in the range of 2200 K.cal/KWh to 2420 Kcal/KWh and the bidders shall quote 'net quoted heat rate' within this range and energy charge accordingly. Net heat rate be properly defined in the bid document.
- (xii) The quoted rates shall be net meaning thereby that it would not include income tax which shall be paid by the procurers to the seller at actual and any change in rate of income tax shall be considered under Change in

- Law and treated accordingly. The income tax shall be paid on income derived by the seller from power supplied to the procurers and it would not include any incentive or income from unscheduled interchange in the grid or any other income not connected with supply of power to the procurers.
- (xiii) The schedule of providing construction power shall be decided by UPPCL in consultation with the successful bidder and acted upon accordingly.
  - (xiv) Under clause 13.2(b) of PPA , 'Central Electricity Regulatory Commission' shall be corrected to 'UP Electricity Regulatory Commission'
  - (xv) Delete phrase 'on as is where basis' from clause 1.8 of RFP.
  - (xvi) Bid shall be submitted on 24.10.08 and subsequent time lines shall be indicated in RFQ by the Petitioner.
- (7) The Petitioner shall make appropriate amendments in RFP and PPA in view of the observations or clarifications made in Para-5 and directions given in Para-6 above.
- Any mistake of grammar or language and inconsistency between the provisions of RFP and PPA discovered while amending RFP and PPA, corrections may be made or consistency established with intimation to the Commission provided that do not change the basic intent of such documents or observations, orders and directions of the Commission.
- (8) This order shall be the essential part of RFP. If any question arises as to the interpretation of any provision of the RFP document, the intent of this order shall be final.
- (9) The petition is disposed of.

(R.D. Gupta)  
Member

(P.N Pathak)  
Member

(Vijoy Kumar)  
Chairman

Lucknow; Dated: 22<sup>nd</sup> Sep, 2008