

**BEFORE THE HON'BLE ANDHRA PRADESH ELECTRICITY REGULATORY
COMMISSION**

At its office at 4th Floor, Singareni Bhavan, Red Hills, Hyderabad

O.P.No. 8 of 2018

In I.A. NO. of 2018

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In the matter of: Renewal of PPA with M/s Lanco Kondapalli Power Limited

Between:

1. Southern Power Distribution Company of Andhra Pradesh Ltd.,
D. No. 19-13-65/A, Tiruchanoor Road
Tirupathi, Chittoor District, Andhra Pradesh
2. Eastern Power Distribution Company of Andhra Pradesh Ltd.,
Corporate Office, P&T Colony, Seethammadhara,
Visakhapatnam

....Petitioners

AND

M/s Lanco Kondapalli Power Limited
Regd. Office: "LANCO House",
Plot No 4, Software Unit Layout,HITEC City
Madhapur, Hyderabad- 500081

....Respondent

AND

GMR Vemagiri Power Generation Ltd
Having its registered office at Skip House,
25/1, Museum Road, Bangalore
Rep. by its Manager-Corporate Relations
Kalyan Chakravarthy, s/o Y. Raja Rao, Age 40

...Intervention Petitioner

**INTERVENTION CUM OBJECTION PETITION ON BEHALF OF GMR VEMAGIRI
POWER GENERATION LIMITED ("GVPGL") TO THE PETITION FILED UNDER
SECTION 86 (1) (b) OF THE ELECTRICITY ACT, 2003**

The Applicant Most Respectfully Submit:

1. That the instant objection application is being filed on behalf of M/s. GMR Vemagiri Power Generation Limited (hereinafter referred to as "GVPGL") challenging the process of renewal of the expired PPA of M/s. Lanco Kondapalli Power Limited/ Respondent, which has lived its life and recovered the capital cost, *inter-alia*, on the ground that the Discoms have not followed the tenets and objectives of Electricity Act, 2003 of treating all players in the field on an equal footing, promoting competition, efficiency, ensuring cheaper power to the consumer, and transparency in the power procurement process.



2. That the petition filed by the AP Discoms seeking approval for renewal of LANCO's PPA is contrary to the abovementioned principles as set out by the existing legal /regulatory regimes and as approved by the Hon'ble Apex Court from time to time. The Hon'ble Supreme Court in a number of landmark judgments has emphasized the public trust doctrine and the duty enjoined upon state machineries in matters of distribution of natural and national resources. Before advertng to the legal contentions/objections to the Petition for renewal of the PPA of LANCO, that has been filed by AP Discoms, it is necessary to set out the brief facts of the case as stated below.
3. Pursuant to the electricity reforms undertaken enabling the participation of private sector in the power and electricity domain, the then State of Andhra Pradesh invited proposals from various private sector participants to set up Gas Based Power Plants on the then available projection of the availability of Natural Gas. Natural Gas based power plants were sought to be incentivized and promoted in view of Natural Gas being a clean fuel for generation of electricity as compared to the highly pollutant thermal power industry which formed the bulwark of Indian Power Sector Generation (other than hydel power generation).
4. GVPGL herein is a Company incorporated under the provisions of the Companies Act, set up specifically for the purpose of setting up a 370 Megawatt Gas Based Power Plant at Vemagiri in the State of Andhra Pradesh. Thereafter GVPGL entered into a Power Purchase Agreement with the then APSEB on 31.03.1997 for supply of 370 MW power from the power plant proposed to be set up at Vemagiri. A copy of the relevant extracts of power purchase agreement is annexed herewith as Annexure A.
5. The Power Purchase Agreement (PPA), *inter-alia*, guaranteed operation of the power plant at 80% PLF (Plant Load Factor) and the said amount was to be paid on a 'deemed generation' basis irrespective of whether any generation was made or not. This Power Purchase Agreement was in line with similar Power Purchase Agreements entered earlier by the then APSEB with a few other power plants including the Respondent herein.
6. The said clauses relating to guaranteed operation of the plant at 80% of plant load factor (on deemed generation basis) was highly critical for the purpose of ensuring that private



sector participants would invest huge capital amounts into setting up of power plants, as they would then be assured of a guaranteed off-take or else payment of capacity charges in the event of non-off take of the power Pursuant to such assurances, representations and covenants held out by the State in public domain, GVPGL set up a power plant by investing a total amount of around Rs.1200 Crores during the relevant time. And on the strength of the PPA, the Ministry of Petroleum and Natural Gas (Respondent No. 9) on 05.06.2000 allocated 1.64 MMSCMD of natural gas (under administered price mechanism) to GVPGL on a firm basis. A copy of the said letter of MOPNG is annexed herewith as Annexure B. Pursuant to such allocation, the Gas Authority of India Ltd., (GAIL) entered into a Gas Supply Agreement with GVPGL for supply of gas till 31.03.2020. A copy of the Gas Supply Agreement Dt. 31.08.2001 and amendment Dt. 29.01.2003 is annexed herewith as Annexure C.

7. Subsequent to the PPA and the firm gas allocation made, GVPGL proceeded to set up gas based power plant with a total capital outlay of around Rs.1200 crores. The said plant was set up with state of the art facilities to provide for an optimum Heat Rate Generation and with the latest technology. After the investments were made by GVPGL and when the plant was close to its Commercial Operations Date ('COD'), the availability of gas was discovered to be lesser than what was originally projected. Accordingly, there was a shortage in the quantity of gas that was to be supplied in relation to the various firm allotments made by MOPNG and the Gas Supply Agreements executed by GAIL.
8. It is respectfully submitted that on any equitable or rationale principle, upon such shortage visiting the Gas Supply arrangement, it would be apposite that the available gas ought to have been apportioned amongst the allotted members, rateably and proportionately. This, in fact, is generally the policy pursued by the MOPNG and GAIL in relation to various power projects across the country.
9. Realizing that the obligations cast under the Power Purchase Agreements would obligate the then APSEB and the State and its entities to pay the minimum amounts to the private sector generators on account of the 'deemed generation' clause, tremendous pressure was built upon the then non-commissioned plants including GVPGL to agree for deletion of an alternative fuel clause and for dropping the deemed generation clause. Based on the



representations made with regard to appropriate ameliorative steps being taken by the State in future and yielding to the larger public interest, GVPGL had hesitatingly consented to an amendment of PPA providing for deletion of alternative fuel clause and also for the dropping of the 'deemed generation' clause placing complete faith in the representations and proposed future actions of the Government of Andhra Pradesh and its power utilities.

10. Pursuant to consent granted, the PPA was amended on 18.06.2003 incorporating natural gas as primary fuel and in case of unavailability Naphtha/ LSHS as alternative fuel. It is pertinent to mention that the PPA was subsequently amended again in 2007, *inter-alia*, deleting the deemed generation clause and an alternate fuel clause. Vide the said amendment; the term of the PPA was further extended till 16.09.2029 (initially the PPA was for a period of 15 years). Copies of the amendments dated 18.08.2003 and 02.05.2007 to the PPA dated 31.03.1997 are being filed herewith as Annexures D and E respectively.

11. Consistent with the representations held out to the Private Power Project Proponents, on 06.12.2004, the then Government of Andhra Pradesh recommended to MOPNG and GAIL to ensure a pro-rata supply of available gas to all the gas projects. Thus, the gas was to be supplied to all the firm allottees in a rateable manner which would have ensured an equitable distribution of the natural and national resource of natural gas to all the allottees justly. After pressurizing GVPGL to a position of amending the Power Purchase Agreement the then Government of Andhra Pradesh, having either failed to exert similar pressure upon the previously commissioned projects or to discriminatively favor them, could not ensure any amendment of the PPAs for such commissioned projects including the PPA of Respondent herein. A copy of recommendations letter Dt. 06.12.2004 is annexed herewith as Annexure F.

12. This resulted in a peculiar situation where the commissioned projects continued to have the deemed generation clause benefit and the pre-commissioned projects being compelled to abide by the amended clause in the PPA. It is respectfully submitted that this situation entirely resulted out of the actions of Petitioners in exercising their dominant monopolistic position with regard to the yet to be commissioned projects, supplemented



by their further representation of a fair and equitable consideration with regard to all aspects concerning PPAs with such future projects and their proponents.

13. This meant that the State continued to remain bound by the 'deemed generation' clauses in relation to the commissioned projects. Taking a completely commercial view and at odds with the constitutional spirit/duty enjoined upon the State, the then Government of Andhra Pradesh resiled from its previous recommendations of a pro-rata allotment amongst all firm allottees (vide its letter dated 06.12.2004) and changed tracks to look at its pure commercial interest and recommended to MOPNG and GAIL vide its letter dated 22.11. 2005 and 05.12.2005 inter alia suggesting that the allotment be made firstly to such commissioned power projects including the Respondent herein and only after the obligation of achieving 80% PLF of those plants, surplus gas, if any, was directed to be allotted to the new projects. The letter addressed by the Government of Andhra Pradesh through its Honb'le Minister inter alia recorded as follows:

"State government have subsequently reviewed the implications of pro-rata allocation of the available gas. If Pro-rata allocation of the available gas is made to all the projects, the generation from the existing 4 projects would fall down appreciably and Government of Andhra Pradesh/APTRANSCO will have to pay about Rs. 333 Crores up to 31.12.2006 towards deemed generation without availing full generation from these 4 existing projects. This additional burden of about Rs. 333 Crores can be avoided if the available gas is first supplied to the existing 4 gas based projects to the extent required for achieving threshold PLF."

A copy of letters dated 22.11. 2005 and 05.12.2005 are annexed herewith as Annexure G and Annexure H.

14. It is submitted that the said recommendations are wholly repugnant to the duty enjoined upon the State in the manner of dealing with national and natural resources. These resources have now been emphatically held by the Hon'ble Supreme Court to be owned by the State in public trust for the general benefit of citizens at large. The concept of public trusteeship has now been well recognized and the Hon'ble Supreme Court has also



held specifically in relation to the subject of natural gas in *Reliance Natural Resources Ltd. and Ors v Reliance Industries Ltd. and Anr. (2010) 7 SCC 1* that, the State must attend to its duties of public trusteeship with fairness and non-discrimination for ensuring an equitable and proper discharge of its trustees role.

15. The State ought to therefore take into account various elements of public interest and not merely its private commercial interest while recommending and dictating the policy to be adopted in the manner of allocation of natural resources. The recommendation made by the State, to allocate gas exclusively to the four existing power projects including Respondent herein, at the cost of supply to be made ratable to all the firm allottees would be entirely unconscionable as it is dictated by commercial considerations rather than the constitutional principles of fairness, rationality and objectivity which are required to be observed by all state machineries including the DISCOMS. However, in view of the then representations held by the State and its entities, that they would work out appropriate remedial measures in respect of the new power plants, GVPGL was impressed upon not to precipitate any issue, as the State undertook to prevail upon MOPNG of Union of India to allocate gas on a priority basis to the new power plants like GVPGL.

16. As GVPGL was entirely dependent upon the State support towards its fuel needs, no steps were taken for challenging such recommendations made by the State Government at that point of time. These recommendations of the State Government led to MOPNG recommending GAIL continue supplies to the existing power plants on a priority basis and consider allotment of only the surplus gas to the new Power Plants.

17. In furtherance of GVPGL efforts to engage with the State and MOPNG, to alter the priorities with regard to allocation of natural gas, GVPGL along with all the other new power plant owners, had engaged in a series of steps with MOPNG and its Empowered Group of Ministries (EGOM) for giving a priority to the Gas Based Power Plants over other sectors such as Fertilizers, CNG etc., or to at least bring it on parity for ensuring allocation of gas. Also the prospect's relating to discoveries in Krishna-Godavari basin allocated to Reliance ('KG-D6'), fuelled the hope of the GVPGL that additional gas would soon be available for the purpose of firing the GVPGL's plant.



18. In the meantime, GAIL continued supplying the APM Gas to the four previously existing power plants even though GVPGL's power plant achieved Commercial Operations Date (COD) on 16.09.2006. As the matters in relation to APM gas had settled by then and GVPGL was persuaded not to challenge such action on various representations and hopes held out, GVPGL reconciled to the position that during the currency of the Power Purchase Agreement with the previously existing power plants, such gas would continue to be supplied on a priority basis.

19. However, GVPGL had a legitimate expectation that continuation of the said policy would mean that after the expiry of the term of the PPA of the previously existing power plants when the monitory obligation would no longer be binding on the power utilities of the State, the APM gas would be supplied to GVPGL on the then acquired priority by virtue of the GVPGL being the previous and existing PPA holder.

20. It is pertinent to mention that GVPGL's PPA executed originally on 31.03.1997 is valid till 16.09.2029, whereas the PPA executed with the Respondent herein expired on 01.01.2016. Once such PPAs are expired, the State and DISCOMS were under no obligation to renew the PPA of the Respondent. The PPA only provided for a clause for renewal at APSEB's option. Similarly APSEB had an option of exercising a buyout right of the power plant from the Respondents. Both these possibilities are only optional and exercisable at the will of APSEB and there is no obligation upon them to resort to one or the other.

21. On account of the priority given to the previously existing plants, a situation has now resulted where the said plants continued to operate and avail the benefit of payment, including on 'deemed generation' clause, leading to recovery of capital cost substantially if not entirely. However GVPGL's total investment of around Rs.1200 crores has not seen any tangible benefits as its Power Plant has been completely shut down from the period of COD i.e., 16.09.2006 till date, except for brief intermittent periods of Feb.2008-May, 2008; Dec.2008-March, 2009; April 2009-Feb.2013; April 2013 and April 2015. Huge capital outlay and expenditure employed in a vital infrastructure industry for the nation has gone unutilized and this has also resulted in GVPGL not being able to either generate power or provide employment or other GDP benefits for the nation including



taxes. GVPGL was thus resting only on the hope of gas supplies commencing after the completion of the State's contractual obligation in relation to the PPAs with the previous existing power plants.

22. As stated earlier, the PPA with Respondent herein expired on 01.01.2016. However to GVPGL's surprise and consternation, AP DISCOMS (Petitioners herein) instead of being relieved of various onerous conditions which were continued only in relation to the previous existing PPAs (while being amended in relation to the new PPAs including GVPGL), decided for some irrational, incomprehensible and strange reason to continue availing power from the Respondent herein, instead of supplying gas to GVPGL and availing power from GVPGL, whose PPA continues to be in subsistence till 2029.

23. Aggrieved by the aforesaid discriminatory actions of the Petitioners herein, GVPGL immediately approached the concerned authorities by addressing communications dated 05.05.2017 and 10.05.2017, *inter-alia*, specifying the following:-

- a. PPA of Respondent has expired and the Capital Cost for the Plant has already been recovered;
- b. Sub optimal efficiency of the plant operated by Respondent compared to that of GVPGL's plant;
- c. Lower Station Heat Rate of Petitioner and other similarly situated plants would save up to Rs. 0.22/unit;
- d. Respondents Higher Capacity Charges in comparison to GVPGL;
- e. Advantages under GVPGL's PPA include No 'alternate fuel' or 'deemed generation' clauses;

Copies of the communications dated 05.05.2017 and 10.05.2017 addressed by GVPGL to the State authorities are annexed herein as Annexure I and Annexure J respectively.

24. It is pertinent to mention that vide a communication Dt. 27.07.2017 addressed by the Chief General Manager of APSDCL to the Secretary APERC, that was available on the website of this Hon'ble Commission, it was communicated that *inter-alia* that the PPA's with LANCO and several others have expired on 18.04.2016 and it is '*decided not*



to procure power from them'. In the said communication it was also noticed that several other IPP's including GVPGL are in commercial operation in the state thereby indicating that the Petitioners were exploring the feasibility of utilizing the power plants of GVPGL and other such entities whose PPA's are in subsistence as on today. A copy of Letter Dt. 27.07.2017 along with relevant extract of resource plan is being filed herewith as Annexure K.

25. Notwithstanding such communications Dt. 27.07.2017 wherein the Petitioners themselves decided not to avail power from LANCO and others whose PPA's have expired and notwithstanding the representations by GVPGL, GVPGL was surprised to learn that the Petitioners in complete reversal of their decision Dt. 27.07.2017, have approached this Hon'ble Commission seeking its consent for availing continued power supply from the Respondent till 31.03.2018 i.e., on a short term basis. When public hearing in relation to such proposals were taken up by this Hon'ble Commission, GVPGL learnt of the said decision made by the Hon'ble Commission. Consequent thereto, GVPGL approached Petitioners herein once again, requesting them to utilize the facilities set up by GVPGL which would be more beneficial for the State in terms of economic as well as effective utilization of a scarce resource like Natural Gas, generating higher quantity of electricity because of the more advance capital machinery and technology employed by GVPGL.

26. While GVPGL's request went disregarded, it appears that various tenable objections were made in the public hearing before the Hon'ble Commission against continuing the onerous conditions in favor of the Respondent while availing power from them on a temporary basis.

27. GVPGL learnt that, thereafter, the Hon'ble Commission vide orders Dt. 29.11.2017 granted its consent to procure power from, *inter-alia*, the Respondent, subject to the following specific conditions:

- i. To procure power from the Respondent herein at a fixed cost of Rs. 0.96 ps and variable cost of Rs. 2.33 ps making a total of Rs. 3.29 ps per unit for the financial year 2017-18.



- ii. That during the short term power purchase they shall not be liable to pay any fixed charges/penalty/deemed generation charges and no reworking of fixed charges based on actual generation.

A copy of the order dated 29.11.2017 is annexed herein as Annexure L.

28. Even while GVPGL harbored a hope that GVPGL's request for supplying gas to its power plant and availing power supply from it on far more beneficial terms should fall on a reasonable consideration with the Petitioners herein, GVPGL was shocked to learn that the Petitioners herein, in a blatant and flagrant display of favoritism towards the Respondent, have now approached the Hon'ble Commission and filed O.P.No 8 of 2018 for the purpose of seeking consent for the extension/renewal of PPA, by contending that the Petitioners have only two options, i.e., either to agree for the extension of the PPA or to buy out the power plant from the Respondent. It is pertinent to mention that the Hon'ble Commission vide its order dated 29.11.2017 in L.A.No. 8 of 2017 in O.P.No's 28 and 29 of 2016 permitted the Petitioners to purchase power on a temporary basis from the Respondent. The request of Petitioners for permission from the Hon'ble Commission to renew the PPA of the Respondent for a period of 10 years is now pending adjudication before this Hon'ble Commission.

29. GVPGL submits that the very actions of the Petitioners in undertaking steps for renewal of PPA of the Respondent reeks of arbitrariness, non-application of mind, favouritism and breach of constitutional principles of appropriation of natural resources for the reasons elaborated here-under.

30. Further it is pertinent to mention that a bare reading of the PPA entered with the Respondent herein makes it evident that the contention of Petitioners that they have only two options, i.e., either to agree for the extension of the PPA or to buy out the power plant from the Respondent is wholly misconceived. The Petitioners have deliberately not brought to the notice of this Hon'ble Commission the existence of a third option as provided under clause 6.2 of the expired PPA of Respondent. Under this option, the Respondent has the right to dispose off its plant or sell the power to third parties with a "Right of First Refusal" (ROFR) by Petitioners. Therefore, a mere perusal of the said clause of the expired PPA of the Respondent would reveal that it is not a mandatory



condition for the Petitioners to renew the PPA with the Respondent. It is further submitted that in the event the Respondent decides to exercise the third option, i.e. selling power to the third parties, the Government of AP has right to interfere and recommend to MoPNG for diversion of APM gas to GVPGL's plant, similar to the line of recommendation as was made in the past, wherein, gas slated to have been allocated to the 4 new IPPs, including GVPGLs plant, was diverted to the 4 old IPPs, including the Respondent herein.

31. Furthermore, as the PPA executed between APSEB and the Respondent expired on 01.01.2016 and it is legitimately expected that any renewal of PPA cannot be only on a mutually acceptable basis between Petitioners and Respondent. While exercising such option of renewal, the Govt. of A.P and Petitioners are bound to take into account various prevailing circumstances, policies and guidelines, including, *inter-alia*, the following:

- a. The guidelines of central government for procurement of power on long term basis;
- b. The rationale for renewal of Respondent's PPA after expiry and refusal of TS Discoms to participate in renewal process; and
- c. Commercial Justifications for renewal of PPA of Respondent.

GVPGL craves leave to advert to the above-mentioned brief points in detail.

a. Guidelines of central government for procurement of power on long- term basis:

- i. As per the Tariff policy dated 06.01.2006 bearing gazette notification No.23/2/2005-R&R(Vol.III) read with the tariff policy resolution dated 28.01.2016 bearing gazette notification No. 23/2/2005-R&R (Vol-IX) under Section 3 of the Electricity Act 2003, the Ministry of Power has categorically stated that, all long- term power procurement through PPA's (ie. PPA's signed for more than 7 years) shall be done essentially under a transparent competitive bidding process. The relevant extracts of the tariff policy resolution dated 28.01.2016 of the Ministry of Power, Government of India, is reproduced herein-below for ready reference:

"5.0 GENERAL APPROACH TO TARIFF:



5.1 Introducing competition in different segments of the electricity industry is one of the key features of the Electricity Act, 2003. Competition will lead to significant benefits to consumers through reduction in capital costs and also efficiency of operations. It will also facilitate the price to be determined competitively. The Central Government has already issued detailed guidelines for tariff based bidding process for procurement of electricity by distribution licensees.

5.2 All future requirement of power should continue to be procured competitively by distribution licensees except in cases of expansion of existing projects or where there is a company owned or controlled by the State Government as an identified developer and where regulators will need to resort to tariff determination based on norms provided that expansion of generating capacity by private developers for this purpose would be restricted to one time addition of not more than 100% of the existing capacity.

..... "

(emphasis supplied)

It is submitted that this guideline was not followed by the Petitioners and was given a complete "go-by" in the instant long-term power procurement proposal/renewal from Respondent. Copies of the Tariff policy dated 06.01.2006 and Tariff policy resolution dated 28.01.2016 of Ministry of Power are annexed hereto and marked as Annexure M (colly).

b. Renewal of PPA of the Respondent without the participation of Telangana State DISCOMS:

- i. The PPA of Respondent was initially entered into with APESB which was later transferred to the four Discoms of erstwhile State of AP through various transfer schemes announced by the Government of AP from time to time. Pertinently, after the enactment of AP Reorganization Act, 2014, the successor States of AP and Telangana got two Discoms each and power under various PPAs was to be distributed in prescribed ratio of 46.11% and 53.89% between the successor States of AP and Telangana, respectively. Consequently, the capacity of the PPA of Respondent was allocated to Telangana at the above stated ratio. After expiry of the PPA of Respondent, TS Discoms declined to continue with the PPA of the Respondent and did not undertake any renewal



process. In such a situation, where the PPA of the Respondent has expired for all the purposes it cannot be considered for renewal only by the AP Discoms/Petitioners.

c. No commercial justifications for renewal of PPA of the Respondent:

- i. Before initiating any renewal process of the expired PPA of the Respondent, Petitioners ought to have examined comparativeness of tariff and technical parameters of the plant of Respondent in contradistinction with the existing PPA's of the 4 new IPPs, including that of GVPGL.
- ii. After expiry of Respondent's PPA, Petitioners have approached this Hon'ble Commission seeking its consent for renewal of PPA of the Respondent herein without doing its due diligence as stated above. In this regard, GVPGL, vide its letters dated 05.5.2017 and 10.5.2017 informed the Respondents its willingness to supply power at much lower cost as compared to the tariff of Respondent if the available APM Gas is diverted to GVPGL's plant.
- iii. Curiously, the Petitioners have neither responded to GVPGL's offer nor brought this aspect before this Hon'ble Commission for the reasons best known to them. These actions of Petitioners reek of non-transparency and non-application of mind resulting in failure of its obligation to bring down tariff and ensure cheaper power to the consumers.
- iv. While the per unit cost according to PPA with the Respondent is Rs. 0.71, owing to the clause containing guaranteed 80% PLF and payments mandated towards fixed/capacity charges, the effective cost of Per Unit turns out to be Rs. 1.42 @ 40% PLF. Whereas the current gas supply to the plant can generate around 34% PLF thereby increasing the per unit fixed cost liability to Rs. 1.67. In juxtaposition, GVPGL's per Unit cost is only Rs. 0.699, as per the PPA of GVPGL, the fixed cost is payable only on actual gas availability (owing to deletion of the deemed generation clause by way of an amendment).



Further the Petitioners in their proposal have sought for increased Station Heat Rate from 1900 Kilo Calories per KWH to 1995 Kilo Calories per KWH in the renewed

PPA with Respondent. This has been done solely to allow Respondent to operate at decreased efficiency. It is pertinent to mention that GVPGL, due to advanced technology and a comparatively newer power plant, will be able to operate at Station Heat Rate of 1850 Kilo Calories per KWH, therefore making GVPGL more efficient to operate. Consequently, GVPGL will be able to produce more amount of electricity with the same amount of APM gas supplied to its power plant.

- vi. It is also pertinent to note that vide the said extension/renewal, Petitioners have provided for an additional refurbishment cost of Rs. 200 crores to the Respondent which is neither required nor contemplated under the renewal clauses of the expired PPA with Respondent.
- vii. GVPGL is providing a detailed comparative analysis of various parameters between its plant and the plant of Respondent to highlight that commercial considerations lean in favor of supplying gas to GVPGL's power plant instead of a renewal of PPA of Respondent herein:

Comparative analysis of the Objection Petitioner's (GVPGL) and Respondent's plants qua efficiency/ commercial considerations:

Particulars	Units	ILANCO	GVPGL	Remarks
Installed Capacity	MW	361.92	370	
PLF	%	34%	36%	GVPGL PLF is more due to better SHR
Approx. Gas Available	MMSCMD	0.65	0.65	Current APM gas availability
PPA Extension	Years	10.00		Extension as proposed
Gross SHR	kCal/kWh	1995	1850	GVPGL SHR as



				per PPA
Mus Generated/Year	MUs	1078	1162	Due to better SHR of GVPGL
Additional MUs generated by GVPGL w.r.t LANCO	MUs	85		Due to better SHR of GVPGL
Domestic Natural Gas Price (From 01.04.2018 onwards)	\$/mmbtu	3.06	3.06	
Fixed Cost	Rs/kWh	1.67	0.699	Considering Fixed Cost of Rs 180 Crs/Annum as proposed in the draft PPA of LANCO GVPGL – Fixed Cost is considered based on PPA
Variable Cost	Rs/kWh	2.41	2.23	Based on SHR
Total Cost	Rs/kWh	4.08	2.93	Sum of Fixed Cost and Variable Cost



32. Therefore in the light of facts stated above, the actions of Petitioners, being state instrumentalities, in according priority to the Respondent, vide the proposal for renewal of its PPA is thus predicated on entirely false premises and suffers from irrationality and non-application of mind. In any event, such actions of Petitioners are completely pejorative of public interest and the State's interest, as any extension favoring the Respondent apart from being discriminatory against the Petitioner, does not besiege itself to any rational consideration of any economic/tangible benefit that can be gained by the State or the general public.

33. It is respectfully submitted that apart from such aspects of commercial benefit for the general public, the action of the Petitioner's in seeking to ask for renewal of expired PPA would not stand to a legal scrutiny, including, *inter-alia*, for the following:-

- i. The State ought to reasonably and rationally act in the manner of allocation of natural resources such natural resources cannot be mobilized or utilized for any person's exclusive benefit. Once firm allotments were made in favor of various people, in the very first instance itself, the State ought to have continued with its originally correct policy of recommending a pro-rata allocation.
- ii. If the State were guided by its commercial compulsions and therefore resorted to a "first come first serve" policy, the State must necessarily continue with the same policy for the purpose of maintaining a rational continuity. It is respectfully submitted that upon the expiry of PPA with the Respondent, the PPA of GVPGL moves to the front of the queue enabling it to be next "served".

34. It is a trite principle of law, that every renewal of any agreement is equivalent to entering into of a new agreement afresh. Such renewal will only relate to the date of renewed agreement and does not relate back to the date of the original agreement, so even if the Petitioners intend to renew the PPAs of the Respondent, GVPGL's application would be anterior in point of time.

35. Further, there is absolutely no justification/ rationale in the actions of Petitioners in seeking to renew the PPA with Respondent having the onerous conditions of 'deemed



generation' clause, which were discriminatively continued even for the earlier period in their favor.

36. Since the allocation of scarce natural resources must be done in a just and equitable manner, such principles of equity and justice necessarily demand that GVPGL, having invested substantial amounts and having been denuded the benefit of any allocation in the past in view of the State economic compulsions must be attended to by the State as it is its duty to do so.
37. This would be an even beneficial apportion, more so as GVPGL was compelled to give up a similar 'deemed generation' clause in its favor on the State's representation that appropriate steps would be taken for addressing GVPGL's grievance at a later point of time. GVPGL therefore, has a right of legitimate expectation in the manner of being accorded a priority for the allotment of APM gas, upon expiry of PPA of the Respondent.
38. As allotment made to GVPGL would result in better utilization of the scarce natural resource, on a more economical cost, the principle of trusteeship ordained upon the Petitioners entail them to adopt a rational approach and allot Natural Gas to the GVPGL in priority over Respondent.
39. As the Petitioners have acted entirely contrary to such constitutional principles, even in the manner of deciding to extend the PPA of Respondent till 31.03.2018 and further to renew the PPA of Respondent apart from applying to this Hon'ble Commission for seeking consent for extension of the PPA of the Respondent, the Petitioner is approaching this Hon'ble Commission seeking a rejection of the present petition filed by the Petitioners.



PRAYER

In the light of the above stated facts and circumstances of the case, it is most respectfully prayed that this Hon'ble Commission may be pleased to:-

- a) Allow the instant intervention application;
- b) Dismiss the instant petition filed by the AP Discoms for renewal of the expired PPA dated 31.03.1997 executed with M/s Lanco Kondapalli Power Limited;
- c) Such other relief as this Hon'ble Commission may deem fit in the facts and circumstances of the instant case.

In the interim, this Hon'ble commission may direct the AP Discoms to request to Gas Authority of India Limited ("GAIL") to divert the APM gas from Repondent's Plant to GVPGL on temporary basis.



DEPONENT

**BEFORE THE HON'BLE ANDHRA PRADESH ELECTRICITY REGULATORY
COMMISSION**

At its office at 4th Floor, Singareni Bhavan, Red Hills, Hyderabad

O.P.No. 8 of 2018

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In the matter of: Renewal of PPA with M/s Lanco Kondapalli Power Limited

Between:

1. Southern Power Distribution Company of Andhra Pradesh Ltd.,
D. No. 19-13-65/A, Tiruchanoor Road
Tirupathi, Chittoor District, Andhra Pradesh

2. Eastern Power Distribution Company of Andhra Pradesh Ltd.,
Corporate Office, P&T Colony, Seethammadhara,
Visakhapatnam

.... Petitioners

AND

1. M/s Lanco Kondapalli Power Limited
Regd. Office: "LANCO House",
Plot No 4, Software Unit Layout, HITEC City
Madhapur, Hyderabad- 500081

.... Respondent

AND

1. GMR Vemagiri Power Generation Ltd
Having its registered office at Skip House,
25/1, Museum Road, Bangalore
Rep. by its Manager-Corporate Relations
Kalyan Chakravarthy, s/o Y. Raja Rao, Age 40

...Intervention Petitioner

Verification Affidavit

I, Kalyan Chakravarthy, s/o Y. Raja Rao, Age 40, Occ: Manager-Corporate Relations, GMR Vemagiri Power Generation Ltd, R/o 6-3-866/1/G1, Green Lands, Begumpet, Hyderabad-50016

Do solemnly affirm and state on oath as follows.

1. I am the Manager-Corporate relations of the GMR Vemagiri Power Generation Ltd, therefore competent and authorized by the Intervention Petitioner to affirm, swear, execute and file this submission in the present proceeding.
2. I have read and understood the contents of the accompanying affidavit drafted pursuant to my instructions. The statements made in the accompanying affidavit now shown to me are true to my knowledge and derived from official records made available to me and based on information and advice received which I believe to be true and correct.

DEPONENT



VERIFICATION

The above named deponent solemnly affirm at Hyderabad on 23rd day of April, 2018 that the contents of the above affidavit are true to my knowledge, no part of it is false and nothing material has been concealed there from.



