
Power Purchase Agreements

- K.P. Gupta

Gujarat Electricity Regulatory Commission

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Power Purchase Agreements

- Meaning
- Legal Provisions
- Features of PPA
- Issues

What is a Contract?

- An Agreement signed by two parties who are competent to enter into a contract
- Contract: Indian Contracts Act, 1872

Power Purchase Agreements (PPA)

- The PPA sets out the rights and obligations of the buyer and seller over a time horizon of 15 or 20 or 25 or 35 years, as the case may be.
- PPA is all about allocation of risks between buyer and seller;
- Allocate risks to the party which can better manage the risk;

Contd.

Power Purchase Agreements (PPA)

- PPA decides the revenue stream of the project;
- In case of non-recourse financing, the project and project documents like PPA are the only covenants ;
- Other assets of the developer/promoter will not act as covenants to the project being developed on non-recourse basis;
- The Lenders would evaluate the PPA to ascertain the financial strength of the project.

Power Purchase Agreements (PPA)

Electricity Act: Section 62 (1):

“The Appropriate Commission shall determine the tariff in accordance with the provisions of this Act for:

(a) supply of electricity by a generating company to a distribution licensee;

Provided that the Appropriate Commission may, in case of shortage of supply of electricity, fix the minimum and maximum ceiling of tariff for sale or purchase of electricity in pursuance of an agreement, entered into between a generating company and a licensee or between licensees, for a period not exceeding one year to ensure reasonable prices of electricity;

Power Purchase Agreements (PPA)

Electricity Act : Section 63:

“Notwithstanding anything contained in Section 62, the Appropriate Commission shall adopt the tariff if such tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the Central Government”.

- Guidelines issued by the Central Government for Determination of Tariff by bidding process for procurement of power by Distribution Licensees:
 - (i) Case I: Where Location, technology or fuel not specified by procurer
 - (ii) Case II: For load center projects, hydro-power projects or location specific projects with specific fuel allocation

Typical Provisions in PPA

- Definitions and interpretation of terms/references in the agreement
- Term of agreement

Typical Provisions in PPA

- Development of the project:
 - Responsibility of Seller for:
 - obtaining (in addition to Initial Consents), maintaining and arranging all required Consents as per Agreement and Law
 - executing the Project in a timely manner
 - owning the Project throughout the term of this Agreement free and clear of encumbrances
 - Responsibility of Procurer for:
 - procuring the Interconnection and Transmission Facilities
 - make all reasonable arrangements for the evacuation of the Infirm Power, etc.

Typical Provisions in PPA

- Construction
 - Responsibility of Seller for designing, constructing, erecting and commissioning the Power Station
- Insurance
 - Responsibility of seller to effect and maintain during the Construction Period and Operating Period Insurances against risks as per Prudent Utility Practices
- Synchronisation and commercial operation

Typical Provisions in PPA

- Operation and maintenance:
 - The Parties comply with the provisions of the applicable Law regarding operation and maintenance of the Power Station and as per Prudent Utility Practices
- Availability and dispatch
 - Responsibility of both seller and buyer to comply with the provisions of the applicable Law regarding Availability including the provisions of the ABT and Grid Code

Typical Provisions in PPA

- Metering and energy accounting
 - For installation of appropriate metering arrangements as per provisions of the Central Electricity Authority (Installation and Operation of Meters) Regulations, Grid Code and ABT.

Typical Provisions in PPA

- Billing and payment
 - Responsibility of Procurer to pay the Seller the Monthly Tariff Payment on / before the Due Date as per the agreement
 - Provisions relating to Payment and priority of appropriation of payment towards the late payment surcharge / unpaid bill / current bill, etc.
 - Provisions relating to credit support
 - Letter of credit in favour of the Seller, escrow account
 - Provisions relating to disputed bills, periodical reconciliation, etc.
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Typical Provisions in PPA

- Capacity charge
 - Interest including interest on working capital
 - Depreciation
 - O&M charges
 - Taxes
 - Return on Equity
- Energy Charge

In case of tariff based bidding model, the PPA contains only the quoted tariff along with the escalation parameters and escalation index is mentioned.

Typical Provisions in PPA

- Force majeure
 - Event or circumstance or combination of events and circumstances that wholly or partly prevents or unavoidably delays an Affected Party in the performance of its obligations under the Agreement
- Governing law and implications of change in law
- Dispute resolution
- Miscellaneous provisions
 - Amendment, confidentiality, etc.

Typical Provisions in PPA

- Events of default (of seller or procurer) and termination
- Liability and indemnification
 - Procedure for claiming indemnity
- Representations and warranties of seller and procurer
- Assignments and charges
 - Agreement not to be assigned except by mutual consent
 - Provisions for creation of charge – receivables / assets

Schedules appended to the PPA

- Description of Power Station;
- Clearances;
- Development milestones;
- Inter-connection and transmission facilities;
- Commissioning and testing;
- Metering Standards and Testing;
- Dispatch Procedures;
- Tariff Schedule
 - Capacity payment
 - Energy payment

Off-take Issues

■ Evacuation

- ❑ Systems in place for facilitating transmission open access – however, getting open access is a nightmare.
- ❑ Open Access in the state network – conflict of interest issue
- ❑ Issue of who pays for strengthening – typically, access should be created first & traffic will follow – can't be other way round
- ❑ Open access for merchant power plants.

■ Power Off-take

- ❑ Negotiated PPA no longer permitted
- ❑ Tariff Based bidding mandatory
- ❑ Merchant Power Plants

Backward Linkages

■ Fuel Supply

- Coal to continue as the predominant source of energy
- No additional coal block in the offing – allocated blocks mostly unexplored
- Imported coal market has significantly hardened.
- Assured supply at pre-determined price is critical to success.

■ Equipment Supply/EPC

- Power equipment market has significantly hardened
- OEMs not willing to keep their offer in terms of pricing/delivery firm for more than few months.
- Package contracts more cost effective than EPC contracts.

Power Purchase Agreement for renewable energy generation projects

Why PPA?

- To establish clarity on various aspects of dealings
- To resolve possible disputes, apart from contract to buy & sell

ARTICLE 2

LICENCES, PERMITS

- The RE Power Producer, at its sole cost and expense, shall acquire and maintain in effect all clearances, consents, permits, licences and approvals required from time to time by all regulatory / statutory competent authority(ies) in order to enable it to perform its obligations under the Agreement

ARTICLE 3

CONSTRUCTION AND OPERATION

- RE power producer shall complete the Construction of the project before the Scheduled date of Completion.
- Construction Default or an O & M Default other than due to Force Majeure Events, Discom shall give notice of 90 days in writing to the Company, calling upon the Company to remedy such default and if the Company fails to take steps to remedy such default within the aforesaid period the Agreement shall stand terminated.

ARTICLE 4

UNDERTAKINGS

- The RE generator shall obtain all statutory approvals, clearances and permits necessary for the Project.
- The RE generator shall construct the Project including the Interconnection Facilities and the Substation.
- The RE generator shall seek approval of GETCO in respect of Interconnection Facilities and the Sending Station.

ARTICLE 4

UNDERTAKINGS

Obligations of Distribution Licensee:

- To expeditiously grant the Company the necessary approvals including but not limited Interconnection Facilities to be constructed by the Company and for construction of the project.
- To allow Company to the extent possible to operate the Project as a base load-generating station.
- To grant Must Run Status to the Project subject however to Emergency conditions.
- To undertake maintenance of the transmission lines at its own cost after Commercial Operation Date.
- To provide start up power required for the plant.

ARTICLE 5

RATES AND CHARGES

- **Monthly Energy Charges:** Discom(s) would pay a rate of Rs.3.37 (rate determined by the Commission) per kWh for power supplied during the 20 year life of the project.
- for each KVARH drawn from the grid, the RE generator shall pay at the rate of as determined by the Commission to GETCO from time to time for each KVARH drawn

ARTICLE 6

BILLING AND PAYMENT

- GETCO, Discom and Developer shall jointly read the Metering System on the first (1st) day of every month at the Delivery Point
- Letter of Credit
- Rebate for early payment
- Penalty for late payment
- Dispute

ARTICLE 7

METERING AND COMMUNICATION

- Main meter, Check meter
- Sealing and maintenance of meter
- Record of the data
- CEA metering standard to be followed

ARTICLE 8

FORCE MAJEURE

- acts of God;
- typhoons, floods, lightning, cyclone, hurricane, drought, famine, epidemic, plague or other natural calamities;
- strikes, work stoppages, work slowdowns or other labour dispute which affects a Party's ability to perform under this Agreement;
- acts of war;
- any requirement, action or omission to act pursuant to any judgment or order of inability despite complying with all legal requirements to obtain, renew or maintain required licenses or Legal Approvals;
- earthquakes, explosions, accidents, landslides; fire;
- expropriation and/or compulsory acquisition of the Project in whole or in part;
- chemical or radioactive contamination or ionising radiation; or
- damage to or breakdown of transmission facilities of either Party;
- breakdown of generating equipment of the Company;
- breakdown of the Project equipment;

ARTICLE 9

TERM, TERMINATION AND DEFAULT

- **Term of the Agreement:** period of twenty (20) years from the Commercial Operation Date

- **Events of Default:**
 - **Company's Default:**
 - O&M Default on part of Company
 - Failure or refusal by Company to perform any of its material obligations under this Agreement

 - **Discom's default**
 - Failure or refusal by Discom to perform its financial and other material obligations under this Agreement.
 - Any payment default by the Discom for a continuous period of forty five (45) days.

ARTICLE 10

DISPUTE RESOLUTION

- All disputes or differences between the Parties arising out of or in connection with this Agreement shall be first tried to be settled through mutual negotiation.
- In the event that such differences or disputes between the Parties are not settled through mutual negotiations within sixty (60) days, after such dispute arises, then it shall be got adjudicated by the Commission in accordance with Law.

THANK YOU