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## KENYAN ELECTRIC UTILITIES & REGULATORS TRAIN ON BEST PRACTICES IN POWER PURCHASE AGREEMENTS & PUBLIC-PRIVATE PARTNERSHIPS

Nairobi, Kenya – Through funding from the U.S. Agency for International Development (USAID) Kenya mission, USEA organized two trainings on power purchase agreements (PPA) and public-private partnerships (PPP) for Kenya's electricity sector. Today, over 2,295 MW of electricity is sourced from Kenya Electricity Generating Company (KenGen), the Geothermal Development Company (GDC) and independent power producers (IPPs) through PPAs. Additionally, the Kenyan power sector is increasingly considering public-private partnerships (PPPs) as a potential cooperative arrangement in the development of their infrastructure.



The first was a two-week long intense training on key aspects of a well-constructed power purchase agreement, organized for Kenya Electricity Generating Company and Kenya Power & Lighting Company (Kenya Power). Kenya Power, being the main off-taker/distributor has been mandated to contract with IPPs to achieve the Vision 2030 Goals of an industrialized nation. Further, Kenya Power's role is to ensure that transactions related to procurement of energy exhibit the elements of quality, sustainability, competence, efficiency, predictability, and timeliness.

### Background

Kenya Power formed a special task force about one year ago whose purpose is to vet PPA applications for generation submitted by developers. The PPA Task Force is comprised of eight Kenya Power staff members, with backgrounds in engineering, legal and finance. The Task Force has recently been modified to also include Attorney General Chamber members, who will now serve as a one-stop shop for the review and approval of PPAs. Once the Task Force has approved a draft PPA, it is then submitted to the Kenya Power Board of Directors and then the regulator. However, the Task Force is expected to be the prime expert on the subject matter.

The second training was conducted for Kenya Power and KenGen boards of



directors, and the Energy Regulatory Commission (ERC) and focused on PPAs and PPPs. The executives studied the nuances of PPPs as a governance mechanism, when it is appropriate, its associated risk allocations, funding arrangements and transparency requirements. The high-level officials were taken through best practices in contractual frameworks, financing, tariff structures, credit support and security issues, risk allocation and arbitration issues related to a PPA.

## Kenya Energy Sector Overview

The Government of Kenya has set forth its “Vision 2030,” a program to transform Kenya into a “newly industrializing, middle-income” country. Provision of adequate, reliable and cost-effective electricity is a key enabler for achieving the economic pillar of the Vision. Yet, Kenya has only 2,366 MW of installed generation capacity to serve its population of more than 43 million, which constrains economic growth. Kenya is believed to possess more than 7,000 MW of undeveloped geothermal energy resources in the Rift Valley. Wind and biomass energy are also significant potential sources for power generation. Power Africa is helping Kenya reduce reliance on expensive diesel-fueled generation and other high-cost fossil resources.

Kenya’s energy sector development plans are outlined in the current 2015-2035 Transmission and Generation Master Plan. The plan projects that electrical demand will increase from the current 1,726 MW to 2,880 by 2020, and 6,833 by 2030, driven primarily by industrialization growth. To enable this growth, the Government of Kenya is focused on sustaining a stable investment climate for allowing private-sector participation in energy; developing expanded transmission and distribution networks to deliver power to customers; maintaining a creditworthy off-taker; maintaining cost-reflective tariffs; and reducing inefficiency in the sector to support more affordable end-user tariffs.

## Training Highlights

### Executive Training on PPA and PPP for Kenya Power and KenGen Boards of Directors, and ERC

Over the course of five days, experts in the area of PPA and PPP best practices, delivered presentations to a group of 10 directors from Kenya Power and KenGen boards of directors, and ERC commissioners. Below is a short summary of the topics covered in the training.

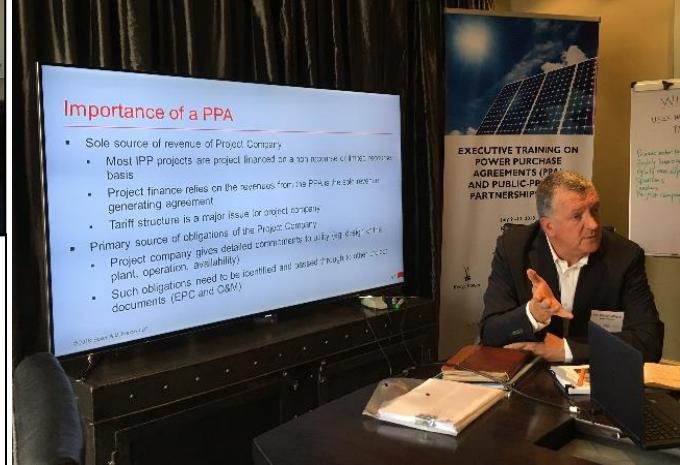
- Infrastructure finance for a PPP project
- PPP framework
- An introduction to project finance & implementing a PPP project
- PPA auctions, hot issues for multilateral development banks and a brief overview of guarantees
- Analyzing PPAs – standardized PPAs, negotiations, legal issues
- Causes of disputes in power contracts; dispute risk avoidance/mitigation in default and termination of PPA concessions
- Arbitration as a dispute resolution procedure and selection arbitration rules
- Investment arbitration and BITs, and co-relation with state entity contracts
- Kenyan and international enforcement
- Best practices in drafting governing law and arbitration clauses



Lisa Walker, OEGI Deputy Office Chief, and Energy, Finance and Investment Team Lead, USAID/Kenya welcomed the executives from Kenya Power, KenGen and ERC, and emphasized the importance PPAs and PPPs will play in the future of Kenya's energy security.



Above: Luis Vintimilla, ex-Executive Director of the National Electricity Regulatory Agency in Ecuador, provides an overview of a global renewable energy PPP/PPA project on the Galapagos Islands – one of Earth's most fragile and important ecological treasures – that has helped avoid many tanker loads worth of risky diesel fuel imports since 2007, reduced the archipelago's greenhouse gas emissions and preserved critically endangered species.



Above: Volunteer speaker Kieran Whyte, Partner, (shown) and Associate Attorney Shalini Soopramanien, Baker McKenzie LLP provided directors from Kenya Power and KenGen's boards of directors, and ERC commissioners with a "PPA 101" course, including training on project finance, key issues specific to renewable energy technologies, PPA auctions, matters when dealing with multilateral development banks, and guarantees for PPAs.



Above: Commissioner Dr. Sellah Kebenei (middle) of the Energy Regulatory Commission discusses the Kenyan energy sector and international enforcement, including Kenyan statutes and Kenya's role in international conventions.

### **Executive Training on PPA for Kenya Power PPA Task Force and KenGen**

Over the course of ten days, experts in PPA best practices, delivered presentations to a group of 12 executives from Kenya Power's PPA Task Force and KenGen responsible for review and negotiation of PPAs. Below is a short summary of the topics covered in the training.

- Energy resources and resource/reserve assessment; power generational technologies – key characteristics
- Power generation project front-end engineering and design; power plant execution; power plant testing and handover to commercial operation; commercial operation and maintenance activities
- Overview of project and O&M activities, parties and responsibilities
- Landscape of project agreements
- EPC contract
- Performance guarantees, provisions and LDs
- OEM role, contract overview, interface
- Transmission connection agreements & transmission services agreements
- Fuel, water supply agreements; provisions; LDs
- PPA terms and provisions; technical clauses and schedules; provisions; LDs

- PPAs as they pertain to operations: reliability, availability, scheduling and unit commitment, risk and mitigation; energy modeling & forecasting, dispatch and operation; risk and mitigation
- Determining bankability
- How to develop a project model, wind and solar resource studies
- Financial models – managing risk, how models impact PPA negotiations, identifying hidden cost, optimization from the bottom up.
- Overview of PPA players, contract, and roles
- Financial provisions/liquidated damages
- Risk sharing
- Default and termination
- Direct agreements
- Project accounts
- Arbitration



**John Stiekema** (left), Senior Project Manager/Technical Director – Energy Division, Thermal Power Sub-division at the Mott MacDonald Group provided two days of training to the Kenya Power PPA Task Force and KenGen on key characteristics of various power generation technologies (particularly variable renewable energy), key provisions of a PPA, and PPAs as they pertain to power plant operation and monitoring.

**Robert Parra** (above right), Lead Transaction Advisor of the Power Africa Transactions and Reforms Program (PATRP) and a team of his colleagues provided four days of the training to the same group. The PATRP team covered many of the key aspects of the training, including understanding PPPs, an overview of the PPA players, contracts, roles, bankability, financial provisions/liquidated damages, risk sharing, default and termination, direct agreements, and project accounts.



Above: Wairimu Karanja, Director, EnVantage Law, provided both groups with introductory training on dispute resolution. Ms. Karanja's presentations covered causes of disputes in power contracts, dispute risk avoidance and mitigation, arbitration as a dispute resolution procedure, Kenyan and international enforcement, and drafting good governing law.

## Trainers

- Luis Vintimilla, Consultant & ex- Executive Director of the National Electricity Regulatory Agency in Ecuador
- Kieran Whyte, Partner, Baker McKenzie LLP
- Shalini Soopramanien, Associate Attorney, Baker McKenzie LLP
- Wairimu Karanja, Director, EnVantage Law
- John Stiekema, Senior Project Manager/Technical Director – Energy Division, Thermal Power Sub-division, Mott MacDonald Group
- Diane Uwitonze, Head of the Strategic Investment Department/Public Private Partnership (PPP) Unit, Rwanda Development Board
- Robert Parra, Lead Transaction Advisor, Power Africa Transactions and Reforms Program (PATRP)
- David Mwangi, Transaction Advisor (Technical), Power Africa Transactions and Reforms Program (PATRP)
- David Kagiri, Transaction Advisor (Geothermal), Power Africa Transactions and Reforms Program (PATRP)
- Wangeci Wanyahoro, Transaction Advisor (Legal), Power Africa Transactions and Reforms Program (PATRP)

## Participants of 5-day training on PPAs & PPPs

Kenya Power & Lighting Company Board of Directors

- 1) Hon. Zipporah Kering, Director
- 2) Mrs. Beatrice Gathirwa, Director

Kenya Electricity Generating Company Ltd. Board of Directors

- 1) Mrs. Rebecca Miano, MD & CEO
- 2) Mr. Maurice Nduranu, Board member
- 3) Mr. Kairu Bachia, Board director
- 4) Mr. Joseph Sitati, Board member

Energy Regulatory Commission

- 1) Dr. Sellah Kebenei, Commissioner
- 2) Mr. Nixon Lenana, Commissioner
- 3) Mr. Njenga Mwangi, Commissioner
- 4) Mr. Samuel Maugo, Commissioner



## Participants of 10-day training on PPAs

Kenya Power & Lighting Company PPA Task Force

- 1) Mr. Patrick Mawala, Manager (Leader, PPA Task Force)
- 2) Mr. Mohamed Somo, Manager (Deputy Leader, PPA Task Force)
- 3) Ms. Pamela Makena, Chief Accountant
- 4) Mr. Kennedy Nengo, Chief Engineer
- 5) Mr. Romans Oronni, Principal Legal Officer
- 6) Ms. Emily Kirui, Legal Officer
- 7) Ms. Elsie Mworia, Legal Officer



Kenya Electricity Generating Company Ltd.

- 1) Mr. Alfred Oseko, Regulatory Affairs Manager
- 2) Mr. Francis Kioko, Chief Technical Affairs – Engineer
- 3) Mr. Patrick Kinyhua, Chief Energy Economist
- 4) Ms. Joan Chahenza, Senior Energy Economist
- 5) Ms. Gertrude Cherono, Technical Affairs Engineer

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