

Report

A committee has been constituted vide Office Order No.11/30/2004-PG dated 11th May, 2007. The constitution of the Committee is as follows:-

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|------|--|-------------------|
| i) | Shri A.K. Khurana, AS, MOP | Chairman |
| ii) | Shri V. Ramakrishna, Member(PS), CEA | Member |
| iii) | Shri Gireesh B. Pradhan, JS (Trans), MOP | Member & Convenor |

2. The terms of reference of the Committee are the following:-

- (a) Whether or not the buy-out provisions should be provided in the Standard Bidding Documents; and
- (b) The payment security mechanism to be provided for in the bidding documents.

3. The Committee had its deliberations on 16.5.2007 in the Committee Room of Ministry of Power. The following officers assisted the deliberations of the Committee:-

- i) Shri A.K. Asthana, Chief Engineer, CEA
- ii) Shri Jiwesh Nandan, Director, MOP

4. The Committee also held discussions with the representatives of Power Finance Corporation and with representatives of Power Grid Corporation of India Ltd. After considering all the aspects of buy-out provisions and Payment Security Mechanism the following recommendations were made:-

- i) As far as buy-out provision during construction of a transmission line is concerned, it was felt that the construction risk has to be taken by the developer of the transmission line and the lenders/financial institutions financing the project. There is no reason to incorporate buy-out provisions for sharing the construction risk. Section 19 to 24 of the Electricity Act deals with revocation of license and other actions that the appropriate Commission is competent and required to take.
- ii) In case of default by the developer of the transmission line during operation of transmission line, it was felt that any violation of the terms and conditions regarding performance standards can be made part of the transmission license granted by the Appropriate Commission. Any violation of the conditions of standards of performance will then be treated as a violation of the terms of conditions of the license and hence, the transmission license can be revoked. Therefore, in the event of default on part of the developer during operation of the transmission line also, there is no need for any buy-out provisions and this can be taken care of by the Sections 19-24 of the Electricity Act.

- iii) In case of Force Majeure default, the same provisions of the Electricity Act can be used.
- iv) The Guidelines for Encouraging Competition in Development of Transmission Projects and Tariff based Competitive Bidding Guidelines for Transmission Service provide for the following Payment Security Mechanism:-

Letter of credit backed by credible escrow arrangement. It also provides "RLDC will assist the developer in case there is any default in payment by any utility/licensee. For this transmission services could be regulated if transmission charges become overdue from any utility/consumer."

In the case of Ultra Mega Power Projects, the Payment Security Mechanism was ensured through Letter of Credit backed by adequate Default Escrow Agreement with the minimum revenue flow in the "Default Escrow Account" (DEA) being at least equal to the amount required for the Letter of Credit. Further, if the procurer does not make payment into the DEA within seven days after notice, the seller has the option of offering 25% of the contracted capacity pertaining to such defaulting procurer to the non-defaulting procurer and if they do not elect to receive the default electricity, the seller can sell the capacity to any consumer of any licensee. If the payment is not made by the defaulting procurer within 30 days of the notice, then the full contracted capacity could be offered to non-defaulting procurer and if they don't elect to receive whole or part of the default electricity, the seller can sell the capacity to any consumer or any licensee.

In the case of transmission system, since the charges are payable for providing transmission service/transmission facilities, there is no mechanism to re-assign or divert the sale of the services to any other party. In this case, the developer has no recourse to recover his due in the event of default by diverting the service that he is providing. Therefore, some alternate Payment Security Mechanism is considered necessary. One of the options could be to authorize the Regional Load Despatch Centre to sell part of the allocated power of the defaulting utility in the power market and transmission service provider can be compensated with the default amount. This is also in line with the provision made in the guidelines for encouraging competition in the development of transmission line projects by way of regulation through the RLDC.

The Committee recommends that the following provisions may be appropriately incorporated in the Standard Bidding Document for private sector projects in transmission:

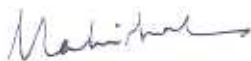
In case of default by the procurer of the transmission service i.e. the default in payment of transmission charges, a trigger point of default can be defined in the Transmission Service Agreement. A provision can be incorporated in the TSA whereby (once this trigger point is reached) the procurer of the transmission service would authorize the concerned RLDC for altering the schedule of dispatch of lowest cost power of the defaulting utility from

Central Generating Stations. The quantum of electricity to be rescheduled for dispatch will be equal to the amount of default of the transmission charge. This electricity will then be dispatched to other utilities by the concerned RLDC during the peak hours i.e. 7 p.m. to 10 p.m. The price of this electricity will be determined as per the Unscheduled Inter-change rate. If the amount so realized is more than the amount of default of transmission charges then the excess will be credited to the defaulter utility and amount equal to the default will be credited to the Transmission Service Provider.

In the light of the above there is no need for any "Buy Out Provisions" to be incorporated in the Standard Bidding Document.



(Gireesh B. Pradhan)
Joint Secretary



(V. Ramakrishna)
Member (PS)



(A.K. Khurana)
Addl. Secretary