

ANNEXURE-1

Objections, Comments/suggestions and Commission's decisions

1. In response to the Draft standard PPA notified by the Commission, BESCO, Indian Wind Power Association (IWPA), M/s Acciona Energy India Private Limited and Sri R. Venkatesh, Bangalore, have furnished their oral/ written comments/ suggestions. The list of persons who have made written submissions is enclosed at Appendix-1 and the list of persons who have participated in public hearing on 09.04.2015 and 29.04.2015 is enclosed at Appendix-2.
2. The provisions/ clauses of the standard PPA formats proposed to be amended and the reasons thereof, the comments/suggestions in brief received from the stakeholders and the Commission's decisions are as follows:

(1) Recital:

(i) Deletion of the word 'Draft':

The PPA executed between the parties with the standard format is not a draft. Hence, the word "draft" was proposed to be deleted in the recital portion of the current PPA format by the Commission.

Commission's decision:

No comments / suggestions have been received in this regard. Hence, the word "draft" is deleted as proposed.

(ii) Deletion of the reference of the Commission's approval to the agreement:

It was proposed to delete the reference. M/s Acciona Energy India Limited has submitted that, deletion of the reference of the Commission's approval would mean that, the Commission's approval is not required to sign the PPA.

Commission's decision:

The reference to the Commission's approval was proposed to be deleted for the reason that, the approval of the Commission takes place only after the PPA is signed by the parties. Accordingly the Commission decides to delete it.

However, it is clarified that the approval of the Commission shall be obtained within 6 months from date of signing the agreement and annexed to the PPA.

- (iii) IWPA has suggested inclusion of the reference of "Limited Liability Partnership Act 2008".

Commission's decision:

As the generators may register their firms under any of the relevant Acts, the suggestion made by IWPA is accepted and the reference of the "Limited Liability Partnership Act 2008" shall be included in the revised Standard PPA Format.

- (iv) IWPA has suggested inclusion of the reference of section 7 of the Electricity Act, 2003. IWPA has further suggested that the references to the sanctions obtained from the Government of Karnataka for establishing generating stations should not be included in schedule-4 of the PPA.

Commission's decision:

As per Section 7 of the Electricity Act, 2003, a Generating Company does not require any licence for establishing the Generating station. However, clearances from Forest and Environmental department, Airport authorities etc., are required even without they being insisted upon by the ESCOMs. Hence, while there may not be any requirement of obtaining license from the State Government to setup a Generating Station, other clearances, etc. would be required as specified in schedule-4 of the agreement. Hence, the suggestion made is not accepted.

- (v) IWPA has suggested that the third party creating interconnection facilities should be made a party to the agreement.

Commission's decision:

The Commission notes that, though a third party may provide interconnection facilities, it would be on behalf of the company, which has this responsibility

and the same cannot be shifted to the third party. Hence the suggestion made by IWPA is not accepted.

(2) Article-1: Definitions

(i) 'Billing Period' and 'Billing Date':

BESCOM has suggested to modify these definitions for replacing the words "Metering Date" by the words "Meter Reading Date" in the definitions so as to have clarity in defining the terms.

Commission's decision:

The suggestion made by BESCOM is accepted by the Commission.

(ii) 'Construction default':

The Commission had proposed to make a minor amendment to the definition so as not to treat completion of the project on the scheduled date of completion of the project as a 'default'.

M/s Acciona Energy India Private Limited and IWPA have also suggested modification of the definition of 'construction default' on the lines suggested by the Commission.

Commission's decision:

Considering these, the proposed amendment is confirmed and the definition of "construction default" shall be modified accordingly.

(iii) 'Delivery point' or 'interconnection point':

The Commission had proposed to modify the definition of 'delivery point' to read as "'Delivery point' or 'Interconnection point' shall be the point at which the power is injected into the substation bus of the ESCOM/ Corporation'.

IWPA has suggested retention of the existing definition with explanatory note specifying that 'responsibility of establishing the evacuation lines rests with the CTU/STU/DISCOMs as the case may be'. Further, IWPA has suggested considering adoption of the definition of the term "interconnection point" as per the CERC Regulations 2012.

The CERC has defined the term as follows:

"Interconnection Point shall mean interface point of renewable energy generating facility with the transmission system or distribution system, as the case may be:

- (i) in relation to wind energy projects and Solar Photovoltaic Projects, inter-connection point shall be line isolator on outgoing feeder on HV side of the pooling sub-station;
- (ii) in relation to small hydro power, biomass power and non fossil fuel based cogeneration power projects and Solar Thermal Power Projects the, inter-connection point shall be line isolator on outgoing feeder on HV side of generator transformer; "

BESCOM has suggested to define "delivery point" or "Interconnection point" as follows:

"delivery point" or "Interconnection point" shall be the point or points at which electricity is delivered in to the Grid system of the ESCOM/corporation and is at the voltage side of step-up transformer installed at the receiving station.'

Commission's decision:

The Commission notes that the Generic Tariff determined by the Commission for the RE generators includes the cost of evacuation lines, and thus the responsibility of establishing the evacuation lines rests with the generator. Further, the definition for interconnection point as per the CERC Regulations, does not specify anything about the evacuation line between the line isolator on the outgoing feeder on HV side of the pooling substation/ Generation

Transformer(GT) and the line isolator at ESCOM's/ corporation's substation bus. Hence, the suggestions made are not accepted. However, the Commission decides to modify the definition as proposed to have clarity on the evacuation line.

(iv) 'Delivered Energy':

The Commission had proposed to amend the definition so as to delete the provision for deducting energy supplied by the ESCOM to the project from the energy delivered by the generator to the ESCOM for the purpose of calculation of energy delivered.

BESCOM has suggested to provide for deducting the energy supplied by the ESCOMs and the transmission losses from the Delivered Energy.

Commission's decision:

For deducting the energy supplied by the ESCOMs to the generators from their bills, provision has been made separately in the PPA under clause 5.4 and provision for computation of monthly bills has been made under clause 6.1. In view of this, the Commission decides to modify definition of 'Delivered Energy' as proposed so as to delete the provision for deducting the energy supplied by the ESCOMs under this definition.

(v) 'Due Date of Payment':

The Commission had proposed to revise the due date of payment from 15 days to 30 days. Modification to this definition was proposed by the ESCOMs so as to specify 30 days' time limit as against the existing 15 days, for payment of invoices raised by the generators.

M/s Acciona Energy India Private Limited and IWPA have suggested to retain the existing definition with 15 days' time limit for payment of invoices raised by the generators.

Commission's decision:

As the time allowed to the ESCOMs to recover the energy bills from their consumers is about 25 days, the Commission considers the request of the ESCOMs to be reasonable and decides to amend the definition accordingly.

(vi) "Government Instrumentality":

The Commission had proposed deletion of this definition as the term is not used anywhere in the PPA. BESCO has suggested retention of the definition without giving any reason for retaining it.

Commission's decision:

The Commission decides to delete the definition.

(vii) 'Interconnection Facilities':

In the case of common pooled stations, individual generators do not maintain the interconnection facilities. In such cases, on behalf of the generators, a developer /other person may maintain the common interconnection facilities. Hence, the definition for "interconnection facilities" was proposed to be modified by adding the words "**or by any other person acting on its behalf**" to fix the responsibility or obligation on the generator to get the interconnection facilities installed, by the person acting on its behalf.

IWPA had submitted that the other person acting on behalf of the company should also to be made party to the agreement if the definition for the term "interconnection facilities" is modified as indicated above. It had suggested retention of the existing definition as the PPA does not recognize the third party. However, later IWPA has suggested to modify the recital by including the third party who creates the interconnection facilities as a party to the agreement.

BESCO has also suggested for deletion of the words "or by any other person acting on behalf of..."

Commission's decision:

The other person who creates any works on behalf of the company cannot be a party to the agreement for the reasons explained earlier. However, the proposed amendment to the definition only seeks to recognise the possibility of creation / maintenance of Interconnection Facilities by third parties and the same is retained.

(viii) "Law", "Monthly Charge" and "Tariff Invoices":

The Commission had proposed to delete these definitions as not being necessary.

BESCOM has suggested to retain the above definitions.

Commission's decision:

The Commission decides to delete these definitions as no justifiable reasons have been adduced for their retention.

(ix) 'Receiving Station or Pooling Station':

On the lines of the revised definition of 'Interconnection facilities', the definition of 'Receiving Station or Pooling Station' was also proposed to be modified by adding the words 'Company or byat.....Village acting on its behalf' to fix the responsibility or obligation on the generator to get the Receiving/Pooling station constructed and maintained by any other person acting on its behalf.

Commission's decision:

As no comments/suggestions have been received in this regard, the Commission decides to modify the definition as proposed in PPAs relating Wind Mill Power Projects.

Further, the Commission considers inclusion of this modified definition in the PPAs in respect of Mini Hydrel, Co-Generation, and Biomass projects also as an

additional definition to facilitate the connection of several number of generating projects to the receiving station/pooling station, as in the case of Wind Mill Power Projects.

(x) 'Scheduled date of Commencement':

IWPA has suggested for specifying the time limit for the scheduled date of Commencement as six months from the date of achievement of Financial Closure as against the existing three months. It has also suggested that the 'scheduled date of commencement' should be 12 months from the date of signing of the agreement.

Commission's decision:

Provision of six months' time limit for achievement of financial closure is made under clauses 2.1.1 & 2.2. If, to it, three months' time limit from the date of achievement of Financial Closure is added, it results in 9 months' time, which would be an unduly long period for commencement of the project. Hence, the Commission considers it fit to retain the existing definition which has the scheduled date of commencement as three months from the date of achievement of financial closure.

(xi) 'Specific Performance Security':

ESCOMs in their petition in OP No. 5/2015 have suggested to include the definition of 'Specific Performance Security'.

Commission's decision:

As the agreement is for RE projects and the power generated by these projects is treated as infirm power, the Commission considers that it is not appropriate to insist on Performance Security.

(xii) 'Scheduled date of Completion':

ESCOMs have suggested modification to the definition by deleting the words "or 30 months from the date of signing of the agreement whichever is later".

Commission's decision:

The Commission notes that the PPA provides for 6 months' time limit for achieving the financial closure. Thus, the time limit set for completion of the Project will be 30 months from the date of signing the PPA in the case of Hydel projects. Hence, ESCOM's suggestion is not accepted.

(xiii) 'State Load Despatch Centre':

The Commission had proposed modifications in the definition of 'State Load Despatch Centre' so as to define it as the State Load Despatch Centre established under sub-section (1) of the section 31 of the Electricity Act, 2003, to be in line with the definition under the Electricity Act, 2003. No objections/suggestions have been received in this regard. Such proposal is confirmed.

(xiv) 'Tariff':

Consequent to renumbering of the clauses in Article 5 of the PPA, the Commission decides to modify the definition of 'Tariff' to match the renumbered Articles.

(xv) Miscellaneous suggestions:

IWPA has suggested that additional definitions should be incorporated for (a) Developer; (b) obligations of Developer; (c) Generating Company; and (d) Pooling substation.

Commission's decision:

The Commission considers that the suggested definitions are not necessary.

(3) Article 2: Conditions Precedent

(i) Clause 2.1.1: Condition Precedent

IWPA has suggested to include sub-clause (c) as follows in this clause:

“(c) Audited cost of the project to be made available to ESCOM and KERC within 12 months from COD”

Commission's decision:

As the tariff agreed to in the PPA for the RE project is as per the generic tariff determined by the Commission on the basis of approved parameters, furnishing of the audited cost of project to the Commission and the ESCOMs is not required. Hence, the suggestion for inclusion of the said clause is not accepted.

(ii) ESCOMs in their petition in OP No; 5/2015 have proposed modification of clauses 2.1.1 (a) and (b) specifying the time limit for fulfilling the condition precedent as under:

“(a) The Company shall be in possession of all permits, clearances and approvals (whether statutory or otherwise) as are required to execute and operate the Project (As specifically listed out in schedule IV A) (hereinafter referred to as “Approvals”) within 12 months from the date of signing of the Agreement. The date, on which the company fulfils any of the Conditions Precedent pursuant to clause 2.1, it shall promptly notify the ESCOM of the same and furnish the copies of permits and clearance so obtained.

(b) The company shall achieve the financial closure within six (6) months from the date of signing of the agreement.”

BESCOM has further suggested modification of the clause 2.1.2 for indicating the time limit for fulfilment of conditions precedent.

Commission's decision:

The time limit for obtaining all permits, clearances and approvals (whether statutory or otherwise) is specified in Schedule-4 and the provisions for notifying ESCOMs of obtaining approvals etc., and the consequences of non-fulfilment of conditions precedent have been made in 2.1.2. Hence, modification proposed by ESCOMs in this regard in clause 2.1.1 is considered not necessary.

Similarly, specifying the date for achievement of financial closure in this clause is also considered as not necessary as the same is provided in clauses 2.2 (a) and 3.4. However, inclusion of the provisions to require the generating company to notify ESCOM about fulfilment of any conditions precedent is considered.

(iii) Clause 2.2 (a) and (b) Non fulfilment of Condition Precedent:

The Commission had proposed to amend this clause so as to entitle the ESCOM to terminate the agreement in case of non-fulfilment of any of the conditions precedent instead of the earlier provision for automatic termination and also to provide for intimation of any termination to all the concerned. IWPA has suggested for modification of the clause 2.2 to read as under:

“(a) Non-Fulfilment of any of the following Conditions Precedent:

- i) in case of non- fulfilment of the Conditions Precedent (a) before COD,
- ii) in case of non-fulfilment of the Conditions Precedent (b) within six (6) months from the date of signing of the Agreement as stipulated in clause 2.1.1,
- iii) in case of non-fulfilment of the Conditions Precedent (c) within 12 months from COD,

...ESCOM shall be entitled to terminate this Agreement as provided in clause 9.3.1.

(b) Information of termination pursuant to Clause 2.2 (a) shall be notified by ...ESCOM to the Company and the concerned authorities from whom

such of the permits, clearances, approvals and Licenses have been obtained as specified in clause 2.1.1 (a).”

Further, ESCOMs in their petition, have proposed for modification of the clause 2.2 to read as under:

“Non-fulfilment of conditions Precedent within the 12 (Twelve months) from the date of signing of the agreement where the delay has not occurred for any reasons attributable to ESCOM or due to Force Majeure, shall give the right to the ...ESCOM to :

1. Without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the performance Security amount as Damages for such company default or conditions precedent. In the event of partial encashment and appropriation from the Performance Security, the Company shall, within 30 days thereof, replenish to its original level, the Performance Security, and in case of appropriation of the entire Performance Security provide a fresh performance Security, as the case may be, and the Company shall, within the time so granted, replenish or furnish fresh Performance Security as aforesaid.”

ESCOMs have also proposed for inclusion of additional clause 2.3 for performance security, as under:

“Towards due and punctual performance of its obligations under this Agreement, relating to the Project, the Company has this day delivered an irrevocable and revolving Bank Guarantee from a branch of a Schedule Bank situated in Karnataka for an amount of Rs.as Performance Security as per the format provided in schedule 3 and having validity up to 1 year from the Commercial Operation Date”.

BESCOM has further submitted as follows:

“Formula to ascertain quantum of Performance Security is to be evolved. One possibility is to calculate the loss that would be incurred due to non-availability of energy from a project at the approved PLF and calculate

the difference in escalation of capital cost between different tariff control periods and multiply the same by 2. Multiplier of 2 is adopted taking the gestation period for a new project being about 24 months."

Commission's decision:

As the agreement is for the RE projects and the power generated by the projects is treated as infirm power, it would not be appropriate to insist on furnishing of performance security and its replenishment by the generator. However, to avoid the PPA being terminated by itself in case of non-fulfilment of condition precedent within 6 months from the date of signing of the agreement, and to have clarity on the terms of the PPA, clause 2.2 (a) was proposed to be modified by replacing the words "shall render this agreement null and void automatically and the ...ESCOM shall stand discharged of all obligations" with the words "as stipulated in clause 2.1.1 ...ESCOM shall be entitled to terminate this agreement as provided in clause 9.3.1." Further, Clause 2.2 (b) was proposed to be added requiring the ESCOM to notify the intention of termination pursuant to the above clause 2.2 (a). The Commission decides to confirm these proposals and renumber the clause as 2.3.

(4) Article 3: Construction and Operation:

(i) Clause 3.4:

To avoid the PPA being terminated automatically, in case the company does not achieve financial closure within 6 months from the date of signing of the agreement, and to have clarity on the terms of the PPA, clause 3.4 was proposed to be modified by replacing the words "this agreement shall automatically become null and void and the ...ESCOM shall stand discharged of all obligations" with the words "ESCOM shall be entitled to terminate this agreement as provided in clause 9.3.1."

ESCOMs in their petition, have suggested similar modification.

Commission's decision:

Clause 3.4 shall be modified as proposed.

(ii) Clause 3.5, Clause 3.6 and Clause 3.7:

These clauses specify termination of PPA on construction default or O&M default, other than due to force majeure events. The Commission had proposed to delete Clause 3.5 and make minor amendments in clause 3.7. ESCOMs in their petition have proposed modification of different terms of clauses 3.5 and 3.6. However, subsequently, BESCO has suggested retention of clause 3.5 without any modification.

Commission's decision:

As, in the event of the default on any material obligation, the agreement is liable for termination and, construction and O&M are the material obligations of the generator as specified in Article 4 read with Article 9.2.1 (b), the provision for termination, in case of non-fulfilment of these obligations are made in 9.3.1, the existing clause 3.5 shall be deleted to avoid duplication of clauses. Further, the existing clauses 3.6 and 3.7 shall be renumbered as clauses 3.5 and 3.6 respectively with minor additions and corrections.

(5) Article 4: Undertakings:

(i) Clause 4.1(ii):

The Commission notes that this clause in respect of wind projects included a part requiring the generating company to construct receiving station apart from interconnection and evacuation facilities. The Commission considers that as in the case of windmill projects, the other RE projects namely Mini Hydel, Co-generation and the Biomass projects should also be connected to the receiving station or pooling station. If the project is connected to the receiving station or pooling station across the Corporation's grid, it should be made the obligation of the generator to construct the receiving station or pooling station. Hence the Commission decides to amend this clause in the PPA formats of Mini Hydel, Co-Gen and Biomass plants also to provide for the said obligation.

(ii) Clause 4.1 (iii):

The Commission had proposed to make minor amendments in this clause to have consistency and clarity in its terms. No objections/ suggestions have been received in this regard. The Commission decides to confirm the proposed amendments.

(iii) Clauses 4.1 (v) & 4.2 (iv):

IWPA has suggested to include 'seeking of /providing for evacuation approval' in addition to 'seeking of / providing for inter-connection facilities' under the obligations of Company and ESCOMs as the case may be.

Commission's decision:

As the interconnection facilities and evacuation approval are different requirements as per the PPA, the suggestion of IWPA is accepted and relevant clauses shall be modified accordingly.

(iv) Clauses 4.1(vi) and (vii):

In case, any other person on behalf of the generator, carries out the construction/ up-gradation of interconnection facilities/ transmission lines/ Receiving station, or in case, any other person on behalf of the generator maintains the interconnection facilities and receiving stations including the dedicated transmission lines, then to fix the responsibility or obligations on the generator to the above works done by him, the clause was proposed to be modified by inserting the words "by itself or by any other person acting on its behalf" after the words "the company", at the beginning of the clause.

IWPA has submitted that the other person on behalf of the company mentioned in the clause should also be the party to the agreement, if the definition is modified by adding the said words.

Commission's decision:

As observed earlier, it is not necessary to make the other person acting on behalf of the generating company/ generator as a third party to the

agreement, as the construction / up-gradation activities is the responsibility of the generator and not the responsibility of the third party acting on behalf of the generator. Hence, the suggestion is not accepted. The Commission, however, decides to confirm proposed modification.

(v) Clause 4.1 (x):

As the generation Tariff Regulations provides for CDM benefits to be shared among the generator and ESCOMs, the Commission had proposed to include this as additional clause 4.1 (x). No objections/ suggestions have been received in this regard. The Commission decides to confirm the proposed amendment.

(vi) Clause 4.2 – Obligation of ...ESCOM:

The Commission had proposed to make a minor clarificatory amendment to this clause. In the public hearing, IWPA has suggested to incorporate the late payment surcharge at the rate of 1.25% per month payable to the company under Article-4 relating to obligations of ESCOMs.

Commission's decision:

The Commission has considered the suggestion under clause 6.3 as discussed later.

Further, as clause 4.2 of the PPA indicates the obligations of the ESCOMs, the words "...ESCOM agrees" at the beginning of the clause 4.2 are not necessary and hence the Commission decides to delete these words as proposed.

(vii) Clause 4.2 (ii):

ESCOMs in their petition have suggested to modify the clause 4.2(ii) by adding the following:

“However backing down of generation for any reason whatsoever shall be in accordance with the Grid Code and other regulations as notified by the Commission from time to time.”

Commission’s decision:

As the grid operations are governed by the Grid Code, Commission considers that inclusion of the above clause is not necessary.

(viii) Clause 4.2(iii):

ESCOMs have prayed for modifying clause 4.2 (iii) as under:

“(iii) to make tariff payments to the Company as set out in Article.5, for energy restricting to the contracted capacity on a monthly basis. For energy exported over and above the contracted capacity only 50% of the existing tariff as per PPA shall be paid”.

Commission’s decision:

The Commission considers that the suggested clause results in discouraging the promotion of Renewable Energy. Hence the suggestion is not accepted.

(ix) Clause 4.2 (v):

Based on the definition of KPTCL as specified in Article 1, clause 4.2(v) was proposed to be modified to mention KPTCL as “**Corporation**”.

In Clause 4.2 relating to Obligations of ESCOMs, ESCOMs have suggested for additional terms as under:

“To bill the start-up power at the HT industrial tariff when the plant is not under operation”

Commission’s decision:

As the above suggested terms are provided in Article-5 and the material obligations lie with both the parties, the Commission considers that indicating

the same again under the Clause 4.2 as suggested is not necessary. The Commission, however, decides to confirm the proposed modification to clause 4.2 (v).

(6) Article 5: Rates and charges:

(i) Clause 5.1:

The Commission had proposed to make minor amendment to this clause to delete certain terms considered not necessary.

M/s Acciona has submitted that in case the tariff determined is for twenty years, the same can be reflected in PPA i.e. up to twenty years without any re-determination in 11th year. In case the new tariff is determined for 10 years, the company should be offered the prevailing tariff determined as per the latest Tariff Order for 11th year and up to 20th year. That, either of the Parties, ESCOM and company should be able to terminate PPA if the new tariff is not agreeable.

IWPA has submitted that the APTEL in its order dated 25.11.2014 has directed the Commission to fix the tariff for the life of the project i.e., 20/25 years and hence this clause has to be modified as:

‘(a) Monthly Energy Charges: ...ESCOM shall, for the Delivered Energy pay, from the Commercial Operation date, to the Company every month at the rate of Rs. ...(Rupees only) per Kilowatt-hour without any escalation for the period of PPA.’ It has further suggested that Sub-clause 5.1 (b) to be deleted.’

Commission’s decision:

In the case of Wind Mill power projects and Mini Hydel power projects, the Commission has determined the levellised single part tariff for the life of the projects. However, in the case of Co-Generation plants and Bio Mass Power plants, only fixed cost is levellised for the life of the projects, whereas the variable cost has been determined for a control period with annual escalation

in the fuel cost and it varies from year to year. Pursuant to the above terms of the order, the Commission decides to modify, clause 5.1 as proposed specifying the tariff for the entire life of the projects and to delete the earlier clause 5.2 which provides for specifying the tariff applicable from 11th year onwards as the tariff is now levelled for the entire life of the project.

(ii) Clauses 5.2 and 5.3 (renumbered):

The Commission had proposed to retain the current rates specified for KVARH drawn from the grid by the generator and also the lumpsum amount payable towards providing of MVAR capacity at the substation of KPTCL/ESCOM. However it had proposed for payment of revised rates if so determined by the Commission.

ESCOMs have prayed to indicate Rs 1/- for each KVARH against the existing 40 Paise for each KVARH drawn, in case induction generators are used for generation of energy and to indicate a rate of Rs 100000/- per MW of installed capacity against the existing rate of Rs 37000/- per MW of installed capacity for the sole purpose of providing required MVAR capacity Capacitor Bank at substation of KPTCL/ESCOMs to which the Project is interconnected to supply the requisite reactive power to the Grid system.

Commission's decision:

The Commission decides to retain the existing rates as they are adequate and to make other modifications in these clauses as proposed.

(iii) Clause 5.4 (renumbered):

The Commission had proposed to amend renumbered clause 5.4 so as to provide for deduction of 115% of the start-up power consumed by the generating company from the energy pumped into the grid by it.

ESCOMs have suggested for permitting the generator to use 10% of the installed capacity for start-up, after inspection by the concerned officers of the ESCOM and to deduct 120% (as against proposed 115%) of such energy

provided by the ESCOM for start-up purposes from the energy pumped into the grid by the Company for determining the amount to be paid by the ESCOM to the generating Company.

Commission's decision:

Commission considers that it is proper to deduct 15% of the start-up power from the energy pumped in to the grid by the generator to compensate the distribution losses, as the Commission is targeting reduction in distribution losses to a level below 15 %.

(7) Article 6: Billing and Payment:

(i) Clause 6.1:

The Commission had proposed minor modifications so as to require the generating company to set forth amounts payable by it to the ESCOM in the Tariff Invoice.

In their petition, ESCOMs have suggested to include the following in clause 6.1:

"If tariff invoices are produced at a later date for the total bill amount covering several months, ESCOM can release the payment in equal no. of monthly instalments commensurate with No. of months of delay. Further, such instalment payment shall not carry/bear any interest".

Commission's decision:

The modification suggested by ESCOMs is not acceptable as the payment to the bills raised by the generator, for the energy delivered, is one of the obligations of ESCOMs. Delay in submission of the bills by the generator should not deter the ESCOMs from fulfilling their obligation for payment of bills raised by the generators. While confirming the modifications proposed by it, the Commission considers it appropriate to modify clause 6.1 in the case of Mini Hydel, Co-Generation and Bio Mass projects to include the calculations required for arriving at the percentage transmission line loss incurred in the

transmission line between the project and receiving station, if any, as in the case of Wind Mill power projects.

(ii) Clause 6.2:

The Commission had proposed to modify the clause so as to provide 30 days instead of existing 15 days' time to the ESCOM to make payments towards an invoice and also requiring the generating company to make payment of amounts due by it to the ESCOM within 30 days.

M/s Acciona Energy Private Limited has suggested retention of the existing terms specifying 15 days for payment of generators' bills by ESCOMs.

ESCOMs in their petition have suggested indicating 60 days for payment of generators' bills by them.

Commission's decision:

The Commission notes that, ESCOMs have suggested modifying the definition for "Due Date of Payment" as being 30 days from the date of receipt of invoices by the designated official of the ESCOM, which is contrary to their suggestion regarding clause 6.2.

Further, the Commission considers that, allowing ESCOMs two months' time for making payment is too long and a generator cannot be expected to sustain on such delayed revenues and hence, the proposed 30 days time is reasonable. The proposed amendment is therefore confirmed.

(iii) Clause 6.3:

The Commission had proposed a late payment surcharge of 1.25% per month for delay in any payment by the ESCOM or the generator in place of earlier clause requiring the ESCOM to pay interest at SBI medium term lending rate for any delay in payment by it.

ESCOMs in their petition, had suggested reduction in the existing late payment surcharge at SBI medium term lending rate per annum to a rate of 8 % per annum (0.67% per month).

IWPA has suggested to revise the late payment surcharge to the rate of 1.25% per month. Further it has also suggested interest payment by the ESCOM at the rate of 1.25% per month on the applicable tariff, if the payment is delayed beyond 30 days.

Commission's decision:

The Commission considers late payment surcharge at 1.25% per month as most reasonable, as against the existing rate SBI medium term lending rate. This rate is being applied in the case of conventional energy generators also. Further, as the payment obligation may arise in respect of both the parties to the agreement, the clause indicating the late payment surcharge is modified accordingly.

(iv) Clause 6.4:

The Commission had proposed only to correct a minor drafting error in the clause.

ESCOMs in their petition have prayed to modify the clause 6.4 to provide for payment of the total monthly invoice amount excluding the disputed amount by ESCOMs, as against the existing provision for payment of the total monthly invoices including the disputed amount.

Commission's decision:

Commission considers that prayer made is not justifiable and decides to retain the existing clause with a minor correction as proposed.

(v) Clause 6.5 (v):

The Commission had proposed to make a clarificatory amendment to the clause to state that the LC account rebate could be deducted from the monthly invoice amount by the ESCOM.

M/s Acciona Energy India Private Limited had suggested that the rebate should be made as an one-time rebate to enable recovery of LC opening charges incurred. That further this should be limited to actual charges incurred or 1.8 % of average monthly invoice amount, whichever is higher and deductible only once from the following monthly invoice.

IWPA has submitted that all other Regulatory Commissions like the Commissions of Gujarat, Rajasthan, Andhra Pradesh etc., are allowing rebate options, if the payments are made before the due date and only KERC has determined rebate for issuance of LC. Issuance of LC is a payment security mechanism and there should not be any rebate to be levied on such payment security mechanism instruments.

The ESCOMs have sought a higher rebate of 2% as per CERC (Terms and Conditions for determination of tariff of RE sources) Regulations dated 16.09.2009.

Further, ESCOMs have suggested inclusion of the following additional clauses 6.7 and 6.8.

“ 6.7. In the event of the Company selling power to a third party during the subsistence of a PPA, the Company shall pay to the ESCOM the difference between the applicable PPA rate for the relevant period and the average short term power purchase rate for bilateral transaction determined by the CERC for the relevant period.

6.8. 2 % rebate will be allowed for payments made by ESCOM within 7 days from the date of presentation of tariff invoice by the Company and 1% thereafter till 30th day.”

Commission's decision:

The Commission decides to retain the existing provision of 1.8% rebate on the invoice value to the ESCOMs for providing LC as this payment security

mechanism has achieved its objective and generally benefitted the generators.

The Commission notes that in case of a subsisting PPA, Open Access is not permitted and thereby the company cannot sell power to a third party till completion of term of the PPA. Hence, the question of payment towards the difference of the PPA rate and the average short term power purchase rate as suggested does not arise.

(8) Article 7: Metering and Communication:

(i) Clause 7.1:

ESCOMs in their petition, have suggested to modify the existing clause to read as follows:

“The delivered energy shall be metered by the generator either at receiving station (injection point) or at switching station (pooling station) or on the HV side of the step up transformer in the Sub Station as applicable at the relevant points.”

Commission’s Decision:

The comprehensive evacuation scheme which is approved by the ESCOM/KPTCL, specifies the Delivery point where the delivered energy is metered. Hence, the Commission considers that specifying the position of the meter is not required in this clause.

(ii) Clause 7.2:

The Commission had proposed to change the accuracy of the electronic Tri-vector meters to be installed by the generators from 0.2% to 0.2 class. The ESCOMs in their petition have suggested that the existing clause should be amended to read as follows:

"Metering equipment shall be electronic Tri-vector meter with ABT feature of accuracy class 0.2 required for the Project (both main and check meters) The main meter shall be installed and owned by the Company, whereas check meters shall be installed and owned by the ...ESCOM. Dedicated core of both CT's and PT's of required accuracy shall be made available by the Company to ...ESCOM. The metering equipment shall be maintained in accordance with electricity standards. Such equipment shall have the capability of recording every 15 minutes and monthly readings. The Company shall provide such metering results to the ...ESCOM. The meters installed shall be capable of recording and storing half hourly readings of all the electrical parameters for a minimum period of 35 days with digital output."

Commission's Decision:

The Commission notes that, the metering equipment shall be maintained in accordance with the standards specified by the Central Electricity Authority. As the existing terms specifies maintenance of the metering equipment in accordance with the standards specified by the Central Electricity Authority, the Commission considers that no other modification in the clause other than the one proposed by it is required.

(iii) Clause 7.3:

The ESCOMs in their petition have suggested to amend the existing clause to read as follows:

"The monthly meter readings (both main and check meters) at the Project Site and Receiving station shall be taken simultaneously and jointly by the Parties on the first day of the following month at 12 Noon. The recorded metering data shall be downloaded through meter recording instrument. At the conclusion of each meter reading an appointed representative of the Jurisdictional ESCOM and the company shall sign documents indicating the number of kilowatt hours indicated by the meter. The Company shall pay to the ... ESCOM charges, as notified by the ... ESCOM from time to time, to

read, record and calibrate each additional energy meter installed by the ESCOM."

Commission's Decision:

The Commission notes that a provision for joint meter reading already exists in the PPA. The terms for inter-ESCOM arrangement for taking meter reading on behalf of other ESCOMs have to be mutually agreed to between the ESCOMs and it cannot be made a part of PPA. Hence, the Commission finds the suggestion as not acceptable.

(iv) Clause 7.4:

The Commission had proposed to modify the accuracy of the energy meters from 0.2% to 0.2 class. The same is confirmed as it is not objected to by any stakeholder.

(v) Clause 7.5 including sub-clause (iv):

The Commission had proposed to modify the accuracy of the portable standard meter to be used for testing the energy meters from 0.1% to 0.1S class and the accuracy of the energy meters from 0.2% to 0.2S class. ESCOMs have suggested to amend clause 7.5 to read as follows:

"All the main & check meters shall be tested for accuracy every calendar quarter with reference to a portable standard meter which shall be of an accuracy class of 0.2 S. Generators are liable to pay meter testing/calibration charges (main & check meters) and Meter Reading at the rate determined by ...ESCOM for each calibration and reading. These charges can be recovered from the monthly tariff invoices of the generators."

Commission's Decision:

The Commission notes that for recording energy, main meter and the check meter are installed by the parties to the agreement as per the CEA standards. It is the obligation of both the parties to keep them in good working condition

and within the permissible limits of accuracy. Hence, the expenses for testing and maintenance shall have to be borne by respective parties. This clause need not be a part of the agreement. The Commission therefore decides to confirm the modification proposed by it to these clauses.

(9) Article-8: Force Majeure:

8.1(a)&(b):

The Commission had proposed to make a minor amendment in clause 8.1(a) to specify that “the party affected by” delay or failure on account of a Force Majeure Event instead of “the party experiencing” delay or failure on an account of a Force Majeure Event, is not held as responsible, etc for it. Further, in clause 8.1 (b), the wrong cross reference to 8.1(a) was also proposed to be corrected. No objections / suggestions have been received in this regard. The proposed amendments are confirmed.

(10) Article 9: Term, Termination and default.

(i) Clause 9.1:

The Commission had proposed to amend the clause to, (a) specify that the Agreement will become effective only on approval of the Commission; (b) increase the term of the PPA from 20 years to 25 years in respect of windmill projects and 35 years in respect of Hydel projects; and (c) provide for ESCOM to renew the PPA for further period at the tariff determined by the Commission.

Acciona Energy India Private Limited while accepting the Commission's proposal has suggested that both the company and ESCOM should mutually negotiate the tariff and seek Commission's approval, 90 days prior to the expiry of term of the PPA.

IWPA while accepting the Commission's proposal has suggested that the clause should be amended to provide for willingness of the generating company also for renewal of the PPA by the ESCOM.

Commission's Decision:

As the determination of the tariff is the exclusive domain of the Commission, and the power purchases of ESCOMs is regulated by the Commission through agreements, negotiation of the tariff by the parties themselves cannot be permitted. Hence, the suggestion of Acciona Energy India Private Limited is not acceptable. Further, the Commission has determined the tariff in respect of NCE projects to ensure that the capital cost of the project is recovered during the term of the PPA which is equal to ordinary life of the project. Hence the Commission considers that the ESCOM alone which has reimbursed the cost of the project to the generating company should have the right to renew the PPA. The suggestion of IWPA is therefore not acceptable. The proposed amendment is confirmed.

(ii) Clause 9.2.1:

Acciona Energy India Private Limited has suggested that KERC should provide for a curing period within which the company's default could be cured.

Commission's views & Decision:

Such period has been provided under clause 9.3.1. Hence, the suggestion to modify clause 9.2.1 is not accepted.

(iii) Clause 9.2.2:

The Commission had proposed to modify this existing clause relating to 'ESCOM Default' and to specify the 'ESCOM Default' as "Failure or refusal by ...ESCOM to pay two consecutive monthly tariff or to perform its financial and also material obligations under this Agreement"

ESCOMs in their petition, have suggested for modification of this clause as follows:

"The occurrence of any of the following at any time during the Term of this Agreement shall constitute an Event of Default by ...ESCOM:

- a. Failure or refusal by ...ESCOM to perform its financial and other material obligations under this Agreement.
- b. In the event of any payment default by theESCOM for a continuous period of three months, the Company shall be permitted to sell Electricity to third parties by entering into a Wheeling & Banking agreement with the ..ESCOM for which it shall pay transmission and any other charges to the ESCOM at the rates applicable from time to time, as approved by the Commission.
- c. Upon default being cured by the ESCOM, the Company shall resume supply of electricity in terms of this Agreement not later than 3 months from the date of curing of the defaults giving rise to such third party sale."

Acciona Energy India Private Limited has objected to the ESCOMs' suggestion and submitted that, in that case the Feed in Tariff in the PPA should be at company's discretion. Because the company would have to make commitments to sell power to entities other than ESCOM under a new off-take agreement and would not be able to break those commitments and return back to the ESCOM.

Commission's views & Decision:

The Commission considers that its proposed amendment is in the larger interests of the sector and finds that the suggestions received are not acceptable. The suggestion of ESCOMs regarding sale of power by the generating company to third parties during the period subsequent to Event of Default by ESCOM is considered in clause 9.2.3. The Commission, therefore, decides to confirm the proposed amendment to this clause.

(iv) Clause 9.2.3:

The Commission had proposed to amend clause 9.2.3 so as to provide for sale of electricity by the generating companies to third parties in the event of failure to pay three consecutive monthly tariff invoices by ESCOM instead of the earlier clause of enabling it in the event of any payment default by the

ESCOM for a continuous period of three months. In the light of discussions supra, this proposal is confirmed.

(v) Clause 9.3.1:

The Commission had proposed to amend clause 9.3.1 to provide for issue of default notice by ESCOM to the Generating Company for non-fulfilment of the conditions precedent set out in clause 2.2 in addition to the event of default set out in clause 9.2.1. It was also proposed to require the ESCOM to give at least 30 days' time to the generating company to remedy its default instead of maximum 90 days provided earlier. It was also proposed to correct a minor drafting error.

Acciona Energy India Private Limited has suggested that the notice period should be reduced to 30 days from 90 days.

IWPA has suggested to maintain the notice period at 120 days as the default notice may be issued for various reasons. That mitigation of O&M defaults may depend on various factors like availability of spares / technical challenges / local and statutory issues and also may give room for disputes that have to be resolved under Article 10 for which 120 days is provided. That any lesser period would not be fair to the generating company.

Commission's views & Decision:

The default notice period to be specified by ESCOMs has to be reasonable and it cannot be less than 30 days, and would logically depend on the nature of default. Hence, the apprehension about the generating companies being given unreasonably lesser period even for a default requiring longer period to remedy it is misplaced. Further, unlike earlier it can exceed 90 days if so required. Hence the proposed amendment is confirmed.

(vi) Clause 9.3.2:

In line with the amendment proposed to clause 9.3.1, the Commission had proposed to amend clause 9.3.2 to require the generating company to give

at least 30 days' time to the ESCOM to remedy ESCOM's default instead of 90 days provided earlier. The same is confirmed.

(vii) Clause 9.3.3:

The Commission had proposed to include a new clause 9.3.3 specifying the continuance of the rights and obligations of the parties to the agreement, even after the termination / expiry of the PPA. No objections/ suggestions have been received in this regard and the same is confirmed.

(11) Article-12: Miscellaneous Provisions:

The Commission had proposed minor modifications in the Clause 12.11 to bring in more clarity. No objections/ suggestions have been received in this regard. The proposal is confirmed.

(12) Schedule-2

The Commission had proposed minor modifications in the Schedule-2 in which Technical Limits are specified, to be in line with the prevailing Grid Code. The same are confirmed.

(13) Schedule-4

The Commission had proposed to amend schedule 4 of PPA so as not to make obtaining approval of PPA from the Commission, a pre-condition for signing the PPA, considering that the Commission approves a signed PPA.

IWPA has suggested modification of the Schedule-4 of the PPA as under;

“Permits, Clearances, Approvals, Statutory and Non-Statutory Permits and Clearances as applicable for Mini Hydel Power Project:

- I. To be obtained before signing of the Agreement;
 - 1) Consent from the Corporation ...ESCOM for the comprehensive evacuation scheme for evacuation of the power generated by the proposed power projects of M/s..... obtained vide letter no;

- II. To be obtained within 12 months of signing the Agreement:
 - 2) Permission from all other statutory and non-statutory bodies required for the project;
 - 3) Clearances from the Department of Forest, Ecology and environment. If applicable otherwise self-declaration by the company on non-applicability of such approvals;
 - 4) Any other approvals/permits specific to the project;
 - 5) Clearances from the Airport Authority of India. If applicable otherwise self-declaration by the company on non-applicability of such approvals;
- III. After completion of the construction of the project and before commissioning of the generating unit/s.
 - 6) Approval of the Corporation / ...ESCOM for interconnection of the Project to the Grid System.
 - 7) Approval of the Electrical Inspectorate, Government of Karnataka for commissioning of the transmission line for evacuation of power from the project and for commissioning of the generating unit/s installed at the project site.
- IV. After commissioning of the project:
 - 8) Certification of commissioning of the Project issued by ...ESCOM.”

Commission's views & Decision:

The Commission decides to confirm its proposed modification of Schedule- 4 based on the terms specified in the PPA, while rejecting the suggestions made which are not justified.

Appendix-1

The List of persons who have made written submissions

- i. Acciona Energy India Limited
- ii. IWPA
- iii. BESCOM
- iv. R. Venkatesh

Appendix-2

The list of persons who have participated in public hearing 09.04.2015 and 29.04.2015

- i. K.R. Srinivas, IWPA
- ii. Just Law on behalf of BESCOM