Approved for tabling in the House.
SNA
2/6/2022.

REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY

DATE: 02 JUN 2022 Thursday

TABLED BY: CHAIR PIC HON. ABDULSWAMAD SHERIFF

CLERK-AT THE-TABLE: IN ZSR MWALE

HARAMBEE

TWELFTH PARLIAMENT

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NATIONAL ASSEMBLY – SIXTH SESSION

THE PUBLIC INVESTMENTS COMMITTEE

# THE REPORT ON CONSIDERATION OF THE SPECIAL AUDIT REPORT ON THE LAKE TURKANA WIND POWER PROJECT

THE DIRECTORATE OF COMMITTEE SERVICES
THE NATIONAL ASSEMBLY,
PARLIAMENT BUILDINGS,
NAIROBI

JUNE, 2022

Contents

## LIST OF ABBREVIATIONS/ACRONYMS

| | | |
|---|---|---|
| Ag. | - | Acting |
| CEO | - | Chief Executive Officer |
| CS | - | Cabinet Secretary |
| DGE | - | Deemed Generated Energy |
| EPRA | - | Energy & Petroleum Regulatory Authority |
| KPLC | - | Kenya Power & Lighting Company |
| KETRACO | - | Kenya Electricity Transmission Company |
| KV | - | KiloVolt |
| LTWP | - | Lake Turkana Wind Power |
| MoE | - | Ministry of Energy |
| OAG | - | Office of the Auditor General |
| PFMA | - | Public Finance Management Act,2012 |
| PFMR | - | Public Finance Management Regulations |
| PIC | - | Public Investments Committee |
| PPAD | - | Public Procurement and Asset Disposal Act, 2015 |
| PPP | - | Public Private Partnership |
| PS | - | Principal Secretary |
| TI | - | Transmission Interconnector |
| TI Delay DGE | - | Transmission Interconnector Delayed Deemed Generated Energy |

# CHAIRPERSON'S FOREWORD

The Public Investments Committee is mandated by Standing Order 206 of the National Assembly to examine the working of public investments, with a particular focus on financial oversight on use of appropriated public funds.

The Committee examines the annual audited accounts of State Corporations as well as special audit reports by the Office of the Auditor General that are submitted to the National Assembly.

The special audit report on the Lake Turkana Wind Power Project (LTWP) was submitted to the House by the Office of the Auditor General on 5th August 2021. The special audit was requested by the then Principal Secretary in the Ministry of Energy and Petroleum, and focused on Deemed Generated Energy costs incurred by the Government of Kenya due to delays in completing the transmission line to evacuate energy generated from the LTWP Project.

The LTWP Project was identified as a key flagship project of the Kenya Vision 2030 under the Energy Sector. The Project sought to address power supply capacity deficit and lack of adequate reserve capacity to take care of emergencies that occasioned importation of auto diesel fired emergency power to stabilize supply against rising demand.

At conceptualization, the LTWP Project was meant to enhance Kenya's power generation capacity and diversify the energy mix in the country by providing a reliable, complementary electricity supply source to hydropower generation that was impacted adversely by droughts.

In conducting the inquiry, the Committee sought to establish the circumstances under which a project meant to alleviate energy costs in the country ended up incurring an additional, avoidable financial burden to the government and Kenyan taxpayers. During the inquiry, the Committee received evidence from various government entities including the Ministry of Energy and Petroleum, The National Treasury, Kenya Power, Kenya Electricity Transmission Company and the Energy & Petroleum Regulatory Authority. The Committee also received evidence from Lake Turkana Wind Power Limited and The Consortium of NARI Group Corporation & POWERCHINA GUIZHOU Engineering Co. Ltd; two private entities that were involved in the implementation of the Project.

The Committee observed that this Public Private Partnership (PPP) Project lacked competitiveness and was poorly managed. The omissions and commissions by the relevant government entities involved in the Project led to incurred additional cost in the form of Deemed Generated Energy (DGE), totalling to Kshs.18,499,082,672 paid by the Government and Kenyan tax payers. Further, interest on the delayed payments continue to accrue to date. The recommendations of the Committee are to provide remedy for the mismanagement in the Project conceptualization and implementation for projects of this magnitude, sealing technical loopholes in the management of PPPs in the Country to avoid a repeat of the failures that occasioned avoidable loss to the Kenyan taxpayers and immediate settlement of any outstanding payments including interest to avoid further accumulation of interest or any potential claims.

On behalf of the Committee, I would like to take this opportunity to thank the various government agencies and private entities that provided information to the Committee during its inquiry. I also take this opportunity to commend the Members of the Committee for their commitment and diligence in undertaking this complex inquiry which involved detailed review of a highly technical report as they sought to unearth the crux of the matters. Finally, I wish to record the Committee's appreciation to the Office of the Speaker and the Clerk of the National Assembly for facilitating the work of the Committee in fulfilment of its mandate.

It is my pleasant duty, pursuant to Standing Order 199 (6) to present the Report of the Public Investments Committee on the inquiry into the Lake Turkana Wind Power project for consideration by the House.

**THE HON. ABDULLSWAMAD SHARRIF NASSIR, MP**

**CHAIRPERSON, PUBLIC INVESTMENTS COMMITTEE**

## EXECUTIVE SUMMARY

The Public Investments Committee is mandated to examine the reports and accounts of the public investments to ascertain whether the affairs of the public investments are being managed in accordance with sound financial or business principles and prudent commercial practices.

In undertaking this mandate, the Committee examined the Special Audit Report on the Lake Turkana Wind Power Project that was submitted to the House by the Office of the Auditor General on 5th August 2021. The said report's Terms of Reference were generally based on:

a) Historical background of the project;
b) Budgeting for Deemed Generated Energy and construction of the transmission line;
c) Project implementation and Power Purchase Agreements (PPA);
d) Deemed Generated Energy Expenditure, and;
e) Construction of the Transmission Line.

This report has five sections; the executive summary, the preface, background, the committee observations and recommendations by the Committee.

In its consideration of the Special Audit Report, the Committee found that the Ministry of Energy, through Kenya Power and Kenya Electricity Transmission Company (KETRACO), engaged in a public private partnership with Lake Turkana Wind Power Ltd who were involved in the Financing, Designing, Procuring, Constructing, Installing, Testing, Commissioning, Operation and Maintenance of the Lake Turkana wind plant. Despite the project being one of Kenya's least cost power projects and having a medium to long term beneficial value for electricity production in Marsabit, the LTWP Project was not subjected to any competitive bidding as per the applicable legal frameworks (Public Procurement and Disposal Act, 2005 and Regulations, 2006 (Repealed), the Public Procurement and Assets Disposal Act, 2015 and its Regulations and the Public Private Partnership Act, 2013.

The Committee also established that the Spanish Government offered the Government of Kenya (GOK) a concessionary loan in October 2009 to construct the Transmission Interconnector (TI) with a condition that a Spanish company is awarded the contract to build the transmission line. This decision led to cancellation of an earlier approval for LTWP Ltd to build the transmission line under the Build, Own, Operate and Transfer framework of the PPP model. A steering committee comprising of Kenya Power and KETRACO officials assisted by LTWP Ltd undertook a process where M/s Isolux of the Kingdom of Spain was identified as the preferred bidder due to a higher technical and financial evaluation score based on concessionary funding.

The inquiry further noted that the implementation of the TI project faced delays as the negotiation for financing arrangement between the GOK and the Kingdom of Spain was completed in 2014. M/s Isolux was given the Final Notice to Proceed (FNTP) with the project on 13th August 2014 despite having signed the contract in December 2011. In addition, KETRACO failed to meet its contractual obligations by failing to provide access to the wayleave for construction of the transmission line. KETRACO entered into a contract with M/s Isolux on 30th December 2011 for a period of 24 months from the date of the FNTP. The wayleaves along the 428 kilometer-stretch were required to be availed to M/s. Isolux within 210 days from FNTP but documents availed before the Committee show that the process of wayleave acquisition was still ongoing up until February 2018; way beyond the agreed timelines for provision of wayleave access as per KETRACO's obligations.

The Committee noted with concern that due to delays in completion of the TI, the GOK accrued Deemed Generated Energy (DGE) penalties claims amounting to Kshs.18,499,082,672 (EURO 167,261,145) for the period from 27th January, 2017 to 10th September, 2018. The LTWP plant was ready by 27th January 2017 but the Transmission Interconnector (TI) was not completed until 10th September 2018; almost 19-months later. In accordance with the terms of the Power Purchase Agreement (PPA) and the GOK Letter of Support (issued by the GOK on 28th February 2013), LTWP Ltd was entitled to GOK Transmission Interconnector Delay DGE Payments from the date of the plant completion until the TI was operational.

The Committee also established that The Consortium of NARI Group Corporation & POWERCHINA GUIZHOU Engineering Co. Ltd which emerged as the most responsive out of the five (5) bidders, was recommended for the award. The process was undertaken through a specially permitted procurement procedure that was approved by Dr. Kamau Thugge, then PS at the National Treasury. The company was contracted on 30th January 2018, and completed the transmission line on 10th September, 2018. A total of Kshs.9,510,758,935 had been paid to NARI

Group Corporation, leaving an outstanding balance of Kshs.1,786,853,615. The consortium was still owed the amount of Kshs.1,786,853,615 plus any accrued penalties which is approximately amounting to Kshs.1.1 Billion as at the time of the inquiry. It was not clear why the Government has not settled to amounts due to NARI group that continue to accrue hefty interest.

The Committee further noted that after the termination of the contract agreement between KETRACO and M/s. Isolux, whom had already by paid Kshs.10,827,050,072 for works done, a further cost of Kshs.11,061,698,560 was incurred to complete the Transmission Interconnector. This resulted in an additional cost of Kshs.3,179,062,348 and a 17 per cent variation over the original contract sum agreed with M/s. Isolux Ingenieria SA of Kshs.18,920,339,899, which was within the threshold of 25 percent as per the Public Procurement Laws.

The Committee noted with concern that the Lake Turkana Wind Power Plant sits on disputed land which is the subject of a court case between Marsabit residents and the Lake Turkana Wind Power Plant Company. LTWP Limited was granted a lease of 99 years with effect from 2009. The High Court in Meru nullified title deeds for the land saying it was acquired irregularly and gave the Marsabit County government, the Attorney-General, the Chief Land Registrar and the National Land Commission one year to regularise the process. Despite the Lake Turkana Wind Power Project being granted the lease for 150,000 acres, the Project was only occupying 40,000 acres of land, denying the local community land for their rightful use.

The Committee recommends, amongst other recommendations that the Government of Kenya, through the National Treasury, should urgently all pending the payments due to The Consortium of NARI Group Corporation & POWERCHINA GUIZHOU Engineering Co. Ltd that has been accruing interest since they fell due; revision of the lease agreement in which LTWP project occupies to comply with a court order *Mohamud Iltarakwa Kochale & 5 others V Lake Turkana Wind Power Ltd & 9 Others (2021) eKLR;* the Attorney General should be involded in drafiting and or reviewing Power Purchase Agreement and investigation of various public officers that mismanaged the procurement and implementation of the project among others.

# CHAPTER ONE

## 1.0 PREFACE

### 1.1 COMMITTEE MANDATE

1. The Public Investments Committee is one among three watchdog/investigatory committees of the House established under National Assembly Standing Order (S.O.) 206 and is responsible for the examination of the working of public investments based on their audited reports and accounts.

2. It is mandated to-

   (i) examine the reports and accounts of the public investments;
   (ii) examine the reports, if any, of the Auditor-General on the public investments; and
   (iii) examine, in the context of the autonomy and efficiency of the public investments, whether the affairs of the public investments, are being managed in accordance with sound financial or business principles and prudent commercial practices;

3. The Committee is guided by the following pieces of legislations and codes in carrying out its mandate: -

   a) the National Assembly Standing Orders;
   b) the Constitution of Kenya;
   c) the National Assembly (Powers and Privileges) Act, 2017;
   d) the State Corporations Act (Cap. 446);
   e) the repealed Public Procurement and Disposal Act, 2005;
   f) the repealed Public Procurement and Disposal Regulations, 2006;
   g) the Public Procurement and Assets Disposal Act, 2015
   h) the Public Finance Management Act, 2012;
   i) the repealed Public Audit Act 2003, and
   j) the Public Audit Act, 2015, among others.

### 1.2 COMMITTEE MEMBERSHIP

4. The Committee on Public Investments constituted by the House in December 2017 comprises of the following Members: -

| Name of Member | Constituency | Party |
|---|---|---|
| The Hon. Abdullswamad Sharrif Nassir, MP<br>**Chairperson** | Mvita | ODM |
| The Hon. Ahmed Abdisalan Ibrahim, MP<br>**Vice- Chairperson** | Wajir North | ODM |
| The Hon. Raphael Bitta Sauti Wanjala, MP | Budalangi | ODM |
| The Hon. Thomas Joseph Kajwang', MP | Ruaraka | ODM |
| The Hon. Omar Mohamed Maalim Hassan, MP | Mandera East | EFP |
| The Hon. Mishi Mboko, MP | Likoni | ODM |
| The Hon. Julius Kibiwott Melly, MP | Tinderet | JP |
| The Hon. Joshua Kandie, MP | Baringo Central | MCCP |
| Hon. Babu Owino Paul Ongili, MP | Embakasi East | ODM |
| Hon. James Githua Kamau Wamacukuru, MP | Kabete | JP |
| The Hon. Mathias Nyamabe Robi, MP | Kuria West | JP |
| Hon. Mary Wamaua Njoroge, MP | Maragwa | JP |
| Hon. Mohamed Hire Garane, MP | Lagdera | KANU |
| The Hon. Rahab Mukami Wachira, MP | Nyeri County | JP |
| Hon. Paul Kahindi Katana, MP | Kaloleni | ODM |
| Hon. Rashid Kassim Amin, MP | Wajir East | WDM-K |
| Hon. Teddy Mwabire, MP | Ganze | ODM |
| Hon. Zachary Kwenya Thuku, MP | Kinangop | JP |

### 1.3 COMMITTEE SECRETARIAT

5. The secretariat facilitating the Committee comprises -

**Evans Oanda** - Principal Clerk Assistant II

**Mohamed Boru** - Clerk Assistant II

**Marlene Ayiro** - Principal Legal Counsel II

| | | |
|---|---|---|
| **Joash Kosiba** | - | Principal Fiscal Analyst II |
| **Cyril Mutali** | - | Fiscal Analyst |
| **Deborah Mupusi** | - | Media Relations Officer III |
| **Euridice Nzioka** | - | Audio Recording Officer |

## 1.4 COMMITTEE PROCEEDINGS

6. In its consideration of the Special Audit Report on the Lake Turkana Wind Power project, the Committee held fifteen sittings in which it received both oral and written evidence from the current and immediate former Principal Secretaries, State Department of Energy, the Principal Secretary, National Treasury, the Acting CEO, National Lands Commission, the Acting Managing Director, KETRACO, the Acting Managing Director, Kenya Power and the Director-General of Energy and Petroleum Regulatory Authority (EPRA). The Committee also received submissions from private entities involved in the implementation of the LTWP project including the Chief Executive Officer of Lake Turkana Wind Power Limited and the Project Manager of the NARI Group consortium.

7. The records of evidence adduced, documents and notes received by the Committee formed the basis of the observations and recommendations as outlined in the Report and can be obtained in the Minutes of the Committee proceedings hereto annexed.[1]

8. The recommendations in this report provide a recourse against individuals and entities that occasioned such actions as well as suggestions for improving the management of public private partnerships.

[1] Committee Minutes

# CHAPTER TWO

## 2.0 INTRODUCTION AND BACKGROUND

### 2.1 INTRODUCTION

9. Lake Turkana Wind Power (LTWP) Project is an energy generating project located in Marsabit County. The wind farm provides 310 MW of renewable energy to Kenya's national grid to be bought at a fixed price by Kenya Power and Lighting Company Ltd (Kenya Power) over a 20-year period, in accordance with the Power Purchase Agreement (PPA).

10. The project is owned by a consortium of six entities comprising of:
    i. Anergi Turkana Investments Limited,
    ii. KP&P Africa B.V,
    iii. Danish Climate Investment Fund I K/S,
    iv. Vestas Eastern Africa Limited,
    v. Finnfund – the Finnish Fund for Industrial Cooperation; and
    vi. Sandpiper Ltd.

11. The LTWP project is comprised of 365 wind turbines, each with a capacity of 850KW, and a high voltage substation.

12. The Project location was not serviced by any transmission line network, and in order to supply the power to the National Grid through Kenya Power with which LTWP had entered into a Power Purchase Agreement (PPA), there was need for the development of a transmission line from Loiyangalani to Suswa where the wind farm was to interconnect to the national high voltage network.

13. In this regard, the Government of Kenya was to construct a new 400 KV sub-station near Loyangalani (initially operated at 220Kv), and a 220Kv substation near Suswa and all associated works. This is in accordance to the Power Purchase Agreement (PPA) on definition of "Transmission Interconnector" or "TI".

## 2.2 SPECIAL AUDIT BY THE OFFICE OF THE AUDITOR GENERAL

14. The National Assembly passed a resolution on 13th June, 2019 in respect of the Supplementary Appropriation Bill (National Assembly Bill No. 4 of 2019). The House requested the Auditor-General to carry out a special audit on the LTWP Ltd and on the payment of GOK TI Delay DGE and other outstanding payment obligations for the project following additional payment claims by LTWP Ltd.

15. Following the House resolution, the Principal Secretary to the Ministry of Energy vide letter reference ME/CONF/3/2/73A, requested the Auditor-General to conduct a Special Audit on the Lake Turkana Wind Power (LTWP) regarding payments of Government of Kenya (GOK) Transmission Interconnector Delay Deemed Generated Energy (GOK TI DELAY DGE).

16. The special audit reviewed transactions covering the financial years 2010/2011 to 2018/2019 in regard to agreed Terms of References. The scope of work was limited to transactions at Ministry of Energy (MOE) Headquarter Offices, Kenya Electricity Transmission Company Ltd (KETRACO) and the Lake Turkana Wind Plant in Loiyangalani and Suswa Sub-Station.

17. The special audit identified the following as key stakeholders involved in the project:

| | **Entity** | **Role** |
|---|---|---|
| 1 | Ministry of Energy | Provided GoK letter of support to LTWP |
| 2 | Kenya Electricity Transmission Company Ltd (KETRACO) | To construct transmission inter-connector (TI) from Loiyangalani at Lake Turkana Wind Power Plant (LTWP) to Suswa Sub-station. The scope entailed 434.6 kms of transmission line and associated Sub-stations at Loiyangalani and Suswa. |
| 3 | KPLC | Purchase, transmit and distribute electricity from Lake Turkana wind power |
| 4 | Energy & Petroleum Regulation Authority (EPRA) formerly Energy Regulation commission (ERC) | Offer oversight and Regulate electricity Tarrif setting and approving the changes in energy tariff. |
| 5 | Lake Turkana Wind power Project (Private Entity) | Generate wind power and sell to KPLC exclusively |

# CHAPTER THREE

## 3.0 EVIDENCE AND SUBMISSIONS FROM WITNESSES

**Introduction**

18. This Section contains evidence submitted both orally and in writing by key witnesses invited to adduce evidence before the Committee. Committee Observations on each of the witness submission is also recorded.

19. The Public Investments Committee as mandated by Standing Order 206 commenced its consideration of the Special Audit Report on the Lake Turkana Wind Power project on 8th December, 2021 and has since received oral and written submissions from the following –

    i. Principal Secretary, State Department of Energy,
    ii. Principal Secretary, National Treasury,
    iii. Principal Secretary, State Department of Petroleum and immediate former Principal Secretary in the State Department of Energy;
    iv. Ag. CEO, National Lands Commission;
    v. Acting Managing Director, KETRACO;
    vi. the Acting Managing Director, KPLC;
    vii. Director General, EPRA.
    viii. Chief Executive Officer of Lake Turkana Wind Power Limited and
    ix. Project Manager of the NARI Group consortium.

## 3.1 EVIDENCE BY PRIVATE ENTITIES INVOLVED IN THE PROJECT

### 3.1.1 LAKE TURKANA WIND POWER LIMITED

**Mr. Phylip Leferink, the Chief Executive Officer of Lake Turkana Wind Power Limited accompanied by Mr. Rizwan Fazal (Advisor) appeared before the Committee to adduce evidence on the Special Audit Report on Lake Turkana Wind Power Project.** He informed the Committee thus:

20. Lake Turkana Wind Power Limited (LTWP) was a private company limited by shares which was incorporated under the Companies Act (Chapter 486, Laws of Kenya) on 01st October 2007.

21. In addition to the above, the Lake Turkana Wind Power Project was financed by various multilateral and bilateral development finance institutions such as (European Investment Bank; African Development Bank; The Trade and Development Banks (TDB), formerly the PTA Bank; East African Development Bank (EADB); PROPARCO; Netherlands Development Finance Company (FMO); Deutsche Investitions- und Entwicklungsgesellschaft (DEG); Eksport Kredit Fonden of Denmark (EKF); and EU Africa Infrastructure Fund (EU-AITF)) and LTWP was therefore subjected to intense scrutiny on matters of corporate governance and compliance pursuant to the financing agreements it has entered into with the aforesaid institutions.

22. Renewable energy resources assessment was one of the key stages in renewable energy resources development. Before a decision is made to develop the resource, an assessment was done to determine commercial viability of a project. This is critical in securing project financing.

23. At the early development stage of the Project, and as Kenya did not have an existing wind atlas, there was no reliable information available regarding the wind regime in the wider geographical area around the identified potential wind farm location. There were, most certainly, general expectations that the winds were more than adequate to successfully build and operate a wind farm but to ensure an accurate/exact reflection of the prevailing wind

regime and the subsequent business case, it was necessary to go through a wind measurement campaign with a reputable wind measurement company or institute.

24. LTWP appointed one of the world's most renowned wind energy institutes, DEWI (Deutsche Windenergie Institut), to run its wind measurement study. DEWI assisted Lake Turkana Wind Power in setting up 9 met masts (in 2007/2008). LTWP collected wind data throughout which resulted in a refined and bankable understanding of the prevailing annual wind conditions on the designated project site.

25. Bearing in mind that substantial amount of risk capital was going to be expended on wind data acquisition and analysis to ascertain the areas suitability and viability for wind power development, GOK did not object to the study being done by LTWP. If the studies had indicated an inadequacy of wind resource, the project proposers would have taken the loss in terms of money and time spent and government would not have compensated them for this effort. All development related work was undertaken at the sole risk and cost of LTWP and its shareholders. The onus was on LTWP and its shareholders to carry out the relevant supply side investigations in order to demonstrate to GOK (and other stakeholders) that it was viable to develop a large-scale wind farm facility on the proposed site.

26. The LTWP Project involved the construction of a power generation facility. The obligation to develop the high voltage transmission interconnection infrastructure required to offtake power from any power generation facility would ordinarily be a public sector obligation. However, based on extensive discussions with GOK, it was initially concluded that packaging the wind farm and transmission works together would be a more efficient course of action and would enable LTWP to manage the inherent project on project risk and may also have benefits in terms of procuring a more attractive rate of financing for all the infrastructure works required.

27. Upon expiry of the power purchase agreement, the transmission infrastructure would be transferred to GOK or any governmental authority nominated by GOK. Consequently and given that the power generation project could not be implemented without certainty as to the power evacuation infrastructure, LTWP approached the GOK with a view to having GOK award a concession to LTWP (or an affiliate of LTWP) to undertake the development

of the 400kV, circa 428km double circuit transmission line together with the relevant substations in Loiyangalani and Suswa (the Transmission Interconnector). This way, the entire power generation and transmission line project would be undertaken and financed by the private sector thereby insulating GOK / KPLC / public sector from any project-on-project risk which would result in the delay of either the generation project of the transmission project.

28. To this end, and with respect to the Transmission Interconnector, an ad hoc steering committee was created which comprised of members of the Kenya Electricity Transmission Company (KETRACO), KPLC and GOK and LTWP. It was through this ad hoc steering committee that the procurement process for a contractor to build the Transmission Line was to be implemented (including tender evaluation). KEMA (Later acquired by DNV GL) and KPMG, a private consulting firm were also introduced as part of this steering committee as independent advisors to ensure that an open and transparent procurement process was followed. (Appendix 1)

29. Following the issuance of the relevant request for proposals and subsequent evaluation of bids, but before any contractual award was made by LTWP, the Kingdom of Spain made available certain concessional financing and grants to GOK to be utilized by GOK in the financing for that portion of the Transmission Works comprising the circa 428km transmission line from Loiyangalani to Suswa. (Appendix 2)

30. Following bilateral discussions between GOK and the Spanish Government, LTWP were subsequently informed by GOK that the new part of the Transmission Interconnector would be carried out on a concessional basis by LTWP but would be undertaken solely by the public sector as one of the first legacy projects to be implemented by KETRACO (which at the time was newly created following the unbundling of the energy sector). At this point, LTWP ceased to be involved in the further evaluation of any technical or financial bids for the Transmission Works.

31. LTWP were informed by GOK that financing of the Transmission Interconnector would be provided through concession loans and grants from the Spanish Government and budgetary allocations to be made by GOK and to this end it was LTWP's understanding that GOK

took the requisite steps under the Public Finance Management Act to procure the external funding required by KETRACO in connection with the construction of the Transmission Interconnector.

32. However, given that successful implementation of the Transmission Interconnector was intrinsically linked to the bankability of the generation project, LTWP expressed its willingness to provide support to KETRACO (given it was newly incorporated and did not initially have the requisite capacity), as and when required by KETRACO, in order to assist KETRACO with the implementation of the Transmission Works. To this end, KETRACO and LTWP entered into a co-ordination and interface agreement largely focused on resettlement and land acquisition issues, so as to ensure that as far as commercially possible, LTWP could ensure that KETRACO was complying with its contractual obligations under the contracts relating to the Transmission Interconnector and was able to deliver the relevant rights of way / wayleaves to KETRACO's contractor so as to ensure the timely completion of the Transmission Works.

33. KETRACO (and by extension GOK through the Ministry of Energy and the National Treasury) undertook the review of, and approved, all contracts entered into by the State Corporation in connection with the Transmission Interconnector (including analyzing the risks allocated to and assumed by KETRACO under these contracts). In LTWP's understanding, the approval process included procuring the requisite KETRACO's board approvals as well as clearance through all GOK internal approval processes (as a result of budgetary support being required to make contractual payments). KETRACO was the entity which had to satisfy itself as to the satisfaction of conditions precedent required for the issuance of the Full Notice To Proceed (FNTP) under the relevant construction contracts.

34. LTWP was not responsible for contract management of the construction contracts for the Transmission Works. The completed Transmission Interconnector were to be owned by KETRACO and managed by KETRACO and KPLC with no involvement from LTWP. In accordance with the provisions of the Kenyan Grid Code, LTWP had entered into a grid connection agreement with KETRACO pursuant to which it had the right to evacuate

power from the LTWP Plant through the Transmission Interconnector.

35. Pursuant to the PPA, the LTWP plant was ready by 27th January 2017, but the Transmission Interconnector (TI) was delayed until 10th September 2018.

36. In accordance with the terms of the PPA and the GOK Letter of Support (issued by the GOK on 28th February 2013), LTWP was entitled to GOK TI Delay DGE Payments from the date – 27th January 2017 until the TI was Operational - in this case, 10th September 2018.

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37. Following a series of meetings, LTWP, GOK and KPLC reached an agreement in which:

   i. LTWP agreed to write-off any GOK TI Delay DGE from 27th January 2017 – 15th May 2017 (an amount of EUR 17.72 Million);

   ii. For the period 15th May 2017 – 31st May 2018, the GOK TI Delay DGE amounted to EUR 127Million;

   iii. Although LTWP was entitled to the EUR 127M, the GOK could not pay the full amount and requested a payment structure with LTWP that was mutually beneficial.

38. To record the above-mentioned agreement, the Parties entered into the Second Variation Agreement whereby LTWP agreed to the start date of GOK TI Delay DGE Payments to be 15th May 2017 instead of 27th January 2017 (in this case LTWP gave GOK a discount of EUR 17.72 Million);

39. With respect to GOK TI Delay DGE for the period 15th May 2017 to 31st May 2018 ("Initial TI Delay DGE Period"), GOK agreed to pay LTWP a lumpsum of EUR 46,000,000 before 31st August 2017, which was to cover debt obligation to Lenders;

40. To compensate for the difference between the lumpsum payment of EURO 46,000,000 and the actual GOK Initial TI Delay DGE for the period from 15th May 2017 to 31st May 2018 (i.e. EUR 127M), LTWP agreed to receive a tariff increase of EURO 0.00845 per kWh ("DGE Recovery Period Tariff"), which was to be paid by KPLC /GOK during the period

from 1st June, 2018 to 31st May 2024 ("DGE Recovery Period"); and

41. Any TI Delay beyond 1st June 2018 would result in LTWP being paid GOK TI Delay DGE in the normal manner.

42. From June 1st 2018 until the TI Operation Date, additional TI Delay DGEs which were incurred and paid by GOK amounted to EURO 45,190,003

43. Further discussions were held with GOK on the above amounts, and it was agreed that LTWP would waive a further amount of EUR 5,512,986, for the DGE's incurred for the period between 11 – 23 September, 2018.

44. As per LTWP obligations under the PPA, LTWP undertook a reconciliation of all amounts paid to LTWP as TI Delay DGEs.

45. The GOK TI Delay DGE was purely based on the estimates and the parties agreed that, upon TI operation date to the expiry of 381 days from the TI operation date (the calculation date), if the actual revenue generated over that period is less than EUR 127,577,128.32 paid out as GOK TI Delay Payment to LTWP, then LTWP would refund the excess to GOK.

46. At the calculation date, LTWP did the calculation and established that there was an excess of €6,173,296 refundable to GOK.

47. LTWP notified GOK of the excess and requested GOK to provide bank details to facilitate the refund.

**Transmission Interconnector Roles and Timelines**

48. LTWP proposed to erect a 300MW Wind Farm (the Project) to be located near Loiyangalani in Laisamis District, Marsabit on land leased by LTWP from the County Council of Marsabit for this purpose. The studies carried out by LTWP and verified by independent wind energy consultants since 2005 proved the viability of the Project. Following through on this, and with the support of the Ministry of Energy, LTWP commenced the negotiations for a Power Purchase Agreement (PPA) with Kenya Power and Lighting Corporation (KPLC) to sell/purchase the energy which would be generated by the Project.

49. The negotiations of the PPA and tariff were strictly for power produced and only delivered to KPLC at the wind farm "gate" as is customary for any Independent Power Producer (IPP) in the Country. The negotiations with KPLC proceeded and the PPA finalization (including tariff) and Project were subject to approval and clearance from the Cabinet Sub-Committee on Infrastructure (which approval was received on 03rd June 2009).

50. In the absence of any TI infrastructure, LTWP commissioned a route feasibility study to establish how it could connect to the national grid via the point of national interconnect at Suswa – approximately 428KM from the proposed wind farm site. This, along with technical studies by VTT International and KEMA (now DNV GL) was a requirement for the detailed technical schedules of the PPA whereby the plant characteristics, grid-code requirements and (grid) system details were all required to ensure the safe integration of (intermittent) wind power into the Kenyan grid and to ensure compliance by both parties to the PPA.

51. In various discussions with KPLC and GOK, the question of how much the TI would cost was raised and given that KEMA was already working on the technical specifications of the TI, they were asked by LTWP to establish for information purposes, what the indicative bill of quantities be and a plan for how such a TI implementation could be procured.

52. Given the foregoing, and to ensure that project-on-project risk was mitigated, the Ministry of Energy, KPLC and LTWP held extensive meetings on the matter and GOK / KPLC were of the view that to the extent possible, the TI should be built under a Build Own Operate and Transfer (BOOT) basis given that KETRACO was a nascent entity whilst KPLC, under the Energy Act and unbundled sectoral policies, could not develop the TI.

53. LTWP was requested by MOE (vide their letter Ref: ME/CONF/3/2/73A dated 16 January 2009) to lead the initial phase of the TI implementation starting with the design elements to construction. By the same authority, MOE instructed LTWP to work under the supervision of KPLC who was to evaluate and endorse every stage of the route, technical design, tender and construction process also on behalf of MOE. It is crucial to note that KETRACO was a fledgling entity incorporated just a month earlier on 2nd December 2008 and had one employee seconded from KPLC.

54. In response, LTWP approached the KPLC on 28th January 2009 requesting that to ensure

compliance with the MOE directive and that the TI and the Wind Power Project were developed in tandem with each other, that a Steering Committee comprising the various stakeholders be established.

55. On 10th February 2009, KPLC responded (Ref: KPLC1/7/6C/JMK/enm) to the LTWP letter and appointed 5 KPLC staff (including the seconded KPLC staff member the new KETRACO staff) to a Steering Committee and invited parties to the first meeting of the Steering Committee on 16th February 2009 at KPLC offices. Terms of Reference for the KPLC / LTWP Steering Committee were agreed between the parties whose scope was first included to review, confirm and approve the work thus far carried out on the TI by Schicon B.V and KEMA of the Netherlands namely:
    i. Route survey;
    ii. Route selection;
    iii. Transmission Line design;
    iv. Transmission Line BQ; e. Proposed sub-stations as designed by KEMA;
    v. Proposed Switching stations; g. Invitation for Expression of Interest; and;
    vi. Draft tender documents as proposed by KEMA for both Transmission Line and substations. (Appendix 3)

56. LTWP was informed by KPLC on 04th June 2009 (Ref: KPLC1/2/4/1K) that the Government has approved development of the plant. Further the Government had decided that Lake Turkana Wind develops the 400kV 428 km transmission lines from Laisamis District to Suswa, Naivasha District which is necessary to evacuate the power from the plant on a BOOT basis. [Appendix 4]

57. The tender package that had been compiled by KEMA with input at every stage from involved stakeholders, was approved for issuance by the Steering Committee meeting No. 9 of 3rd July 2009 comprising MOE, KPLC, KETRACO and LTWP.

58. Seven bidders were prequalified by KEMA and invited to participate in the tender with a closing date of 19th October 2009. However, before conclusion of the process by KEMA, on 9th October 2009, the GOK received a letter from the Spanish Ministry of Industry, Tourism and Trade and addressed to the Kenyan Ministry of Finance offering concessional

tied financing from the Government of Spain under a Bilateral Financial Cooperation Agreement provided a Spanish company was awarded the contract. The Government of Spain provided the Spanish contractors with letters confirming the same

59. LTWP was made aware of the developments in mid-October 2009 and the Steering Committee requested KEMA and KPMG to continue with the technical and financial evaluation and to consider the two variants of financing solutions for the GOK's information and evaluation. It was abundantly clear that no decision on which option i.e. ~~public sector (i.e. GOK via KETRACO) or private sector (i.e. LTWP BOOT)~~ implementation would be taken until after completion of the tender evaluation process "to ensure that the integrity of the procurement process was maintained".

60. KEMA presented its Technical Evaluation Report dated 06th January 2010 and KPMG presented the Financial Evaluation Report dated 07th January 2010. LTWP led the process, and it is for this reason that the reports were addressed to it – given that KEMA could not contract with a noncorporate entity. This did not mean that "LTWP would in itself select the successful bidder" – this had been and would have continued to be the realm of the Steering Committee – which included the GOK. [Appendix 5]

61. In line with the tacit understanding with GOK that the final decision on which option i.e. public or private sector implementation would be undertaken by GOK, LTWP wrote to MOE on 11 January 2010 to: (i) provide an update on the tender evaluation process; (ii) request the Government's formal decision on the implementation structure (i.e. public or private); (iii) seek the Government's undertakings towards the take-or-pay obligations contained in the PPA; and (iv) understand how the GOK / KETRACO wished the remainder of the tender process i.e. contract negotiations and award, to be undertaken. [Appendix 6]

62. Full disclosure and unequivocal clarity that each step and process thus far had been sanctioned by the Steering Committee was evident in this communication and there was no hint whatsoever that LTWP had selected any preferred bidder. MOE sought clarification from LTWP in regard to project implementation timelines and LTWP responded on 14 January 2010 on the same

63. MOE wrote to the Economics and Commercial Counsellor, Embassy of Spain in Nairobi on 14 January 2010 attaching the KEMA and KPMG Evaluation Reports, the Environmental Impact Assessment (EIA) License and letters of reliance from VTT International and KEMA (to MOE and KPLC) dated August 2009 and requested an additional contribution towards the cost of the TI based on Isolux's base offer of EUR136,970,018 which was the lowest offer. [Appendix 7] The Spanish Government responded on 19 January 2010 confirming the increase in financial support to EUR 110 Million and this was communicated to LTWP by MOE (Ref: ME/CONF/3/2/8) on 20 January 2010. [Appendix 8]

64. LTWP, following receipt of the letter wrote to MOE again on 21st January 2010 requesting that: (i) GOK confirm that the TI would be implemented through the public-sector; and (ii) authorise the Steering Committee to proceed to discussing with the successful bidder their tender proposal and commence contractual negotiations. [Appendix 9]

65. The GOK formally communicated its decision to undertake a public-sector implementation of the TI project through KETRACO vide a letter referenced ME/CONF/3/2/8 and dated 30th January 2010. [Appendix 10] This was followed by KETRACO taking over all communication and discussions whereby KETRACO invited M/s. Isolux to negotiations prior to contract award at KETRACO's offices on 01 and 02 March 2010 vide a letter addressed to Isolux dated 17 February 2010 and copied to LTWP. [Appendix 11]

66. Following this meeting, the parties signed minutes dated 18th March 2010 – which incidentally included the current Ag. MD of KETRACO.

67. Following conclusions of the negotiation phase between KETRACO and M/s. Isolux, and once the final price had been reached, LTWP sought a confirmation from MOE on 28th May 2010 that there was no funding gap that could delay the TI project and its implementation. MOE, vide a letter dated the same date responded and confirmed that the funding for the total TI project - including for wayleaves acquisition was in place. [Appendix 12]

68. KETRACO was the party negotiating with M/s. Isolux and discussing contractual terms

and that LTWP never appointed Isolux nor entered into the EPC Contract with it. It is therefore a matter of fact that it is solely KETRACO who must take full responsibility for entering into the EPC Contract and all subsequent addendums. [Appendix 13]

69. As had been correctly captured in the OAG Report, KETRACO entered into the Contract on 30th December 2011 but then issued the Final Notice To Proceed (FNTP) to M/s. Isolux on 13th August 2014 - a period of 32 months later. During this interluding period, the financing arrangements and satisfaction of all the covenants and conditions were being undertaken between GOK, Government of Spain, the (Spanish) Commercial Banks providing the export credit facility and other stakeholders.

70. The EPC Contract that was signed on 30th December 2011 had a Time for Completion of 22 months (i.e. a Completion Date of October / November 2013).

71. The TI delay had been largely blamed on Isolux's financial woes and as a result, the focus had primarily been on why a "bankrupt" company was involved in the original tender process. It was a matter of public record that at the time of the tendering in 2009, the Isolux group revenue was over EUR 3 billion with EBITDA of EUR 255 million. Their business portfolio increased by 66% to EUR 25.8 billion of which 79% was attributable to international markets and orders. It employed more than 7,800 employees globally. In 2010, their revenues grew by 7% to EUR 3.24 billion and EBITDA of EUR 311 million. It had consolidated its position in the energy business as a reference world-wide in power transmission and distribution with thousands of kilometres of transmission lines and infrastructure built to their credit. Isolux was technically and financially capable at the time of its procurement and contract award.

72. M/s. Isolux's financial problems started in 2016 and on 31st March 2017, M/s. Isolux Corsán filed for protection from creditors under the Spanish Insolvency Act to negotiate a fresh injection of funds to reactivate operations.

73. With a Notice to Proceed of 13th August 2014, Completion should have occurred by 13th June 2016 (Time for Completion was extended subsequently by 2 months between Isolux and KETRACO). With the various buffers in place, and with LTWP only able to claim

GOK TI Delay DGE from 27th January 2017, Isolux and KETRACO had 29 months to complete the TI.

74. M/s. Isolux's financial woes therefore emerged after KETRACO had issued the NTP. Had the payment and wayleave access obligations been adhered to, M/s. Isolux would have been able to complete the construction before its financial woes. It should also be noted that funding for Isolux's payments were provided through Spanish Concessionary financing from the Government of Spain and hence, funding was ring-fenced for this project.

75. Very little attention had been given to understanding the delays occasioned in KETRACO awarding M/s. Isolux with the Final Notice to Proceed and thereafter ensuring that KETRACO's two primary obligations in the EPC Contract were fulfilled: (A) providing wayleaves access; and (B) making payments in accordance with the employer obligations in the EPC Contract signed on 30th December 2011.

76. The KETRACO – Isolux contract was based on the Conditions of Contract for EPC/Turnkey Project First Edition 1999 published by the Federation Internationale des Ingenieurs-Conseils (FIDIC). This FIDIC Silver Book form of EPC Contract is one of the most rigid forms of contract and represents a turnkey, fixed price, lump sum arrangement, whereby the contractor assumes the majority of key construction risks. It is recognisable to the vast majority of the international contracting community and has gained a foothold as a useful template on which to base an EPC contract.

77. The contractor assumes the majority of risk on key matters such as design, specifications, time, price, site conditions and certain unforeseen risks. This sets it apart from previous EPC Contracts in use by the public sector in Kenya, where the Employer retains a number of these key risks and has often been the reason for large price escalations and delays in project implementation.

78. This form of Contract that KETRACO entered into with Isolux, had provisions for an Employer's Requirement which, if properly overseen and managed by the Owner's Representative under the Contract who was DNV GL (formerly KEMA and procured directly by KETRACO on 21 December 2011), was a very effective form of EPC Contract.

79. The multiple addendums – and more specifically to the Employer's Obligations with respect to the Access Schedule along with KETRACO's seeming unwillingness to either appreciate the role of its own Owner's Representative (DNV GL) and / or failure to appreciate the consequences of acting as Employer under the EPC Contract when it had an Owner's Representative who was, per the EPC Contract, to be the key interface with the Employer (KETRACO), was a harbinger of failures to come right from the onset.

80. A key learning for KETRACO ought to be the more prudent oversight and management of the construction interfaces and the legal ramifications of non-compliance with Employer obligations in contracts of this nature.

81. Finally, in respect of the biggest challenge that KETRACO faced – that of wayleave acquisition and provision of Access to Isolux, whilst access for all wayleaves along the entire 428 kilometres stretch were required to be availed to M/s. Isolux within 210 days from FNTP i.e. by approximately 13th March 2015. However, KETRACO issued Notice to Proceed (NTP) for various sections such as AP19-21 (18KM) on 31st July 2015, AP21-23 (57KM) on 21st October 2015 and AP29-45 (70KM) on 18th January 2016 – dates that were way overdue as per KETRACO's obligations.

82. As late as May 2017, the Resettlement Action Plan by KETRACO shows the delays, challenges and variances from its original wayleave acquisition plan. KETRACO on 02 June 2016, committed to the African Development Bank to have the compensation of PAPs completed by end of June 2016, however minutes of the Wayleave Coordination Progress Meetings of 08 June2017, 20 June 2017, 14 July 2017, 13th October 2017 and 12th February 2018 – all of which show that the wayleave acquisition process was incomplete. (Appendix 14)

**Conclusion**

83. LTWP's background role in the Transmission Interconnector (TI) project was premised under the auspices of a GOK / KPLC Steering Committee put in place in February 2009 - barely two months after KETRACO was established and following a GOK decision communicated to LTWP that it should develop the TI under a Build, Own, Operate and

Transfer (BOOT) structure;

84. The procurement process of the TI contractor was started by LTWP as instructed by GOK, but with involvement and approval at each stage by the Steering Committee / MOE. This is confirmed in Clauses 1.5.62 and 1.5.65 on Page 22 of the OAG Report;

85. LTWP's responsibility for the TI implementation ended mid-stream during the procurement / tendering phase when the Government received a financing offer from the Government of Spain for a public-sector implementation and as a result, the GOK revoked the BOOT structure implementation by LTWP. Accordingly, KETRACO which was now more established and had been fully involved in the Steering Committee, took-over the remaining procurement/ contracting and negotiation process and consequently, full responsibility for the timely completion of the TI project was transferred to KETRACO;

86. LTWP neither appointed M/s. Isolux Corsan S.A. (Isolux) as the TI Contractor, nor did it set-out the construction timeframe. The former was done by KETRACO and the latter was provided by Isolux in their tender submission (18 months) and negotiated by KETRACO to consider the additional time KETRACO required to provide wayleave access to the Contractor (a total of 22 months). KETRACO obtained the approval and mandate from its Board to negotiate and enter into a contract with Isolux in July 2011 – almost one and a half years after LTWP was stripped of the responsibility to implement the TI project. Contrary to the allegation made in the OAG Report (Clause 1.5.61 on Page 21), LTWP is not and has never been affiliated with Isolux;

87. Whilst the TI delay had been largely blamed on Isolux's financial woes, seemingly less analysis seems to have been undertaken as to the reason(s) for the actual delays emanating largely from delays in awarding (Isolux) Final Notice to Proceed (issued on 13 August 2014, whereas KETRACO signed the contract with Isolux on 30 December 2011 – almost 32 months earlier), and thereafter in ensuring that KETRACO's two primary obligations - wayleave access provision and timely payments in the EPC Contract were adhered to; and

88. It is LTWP's view, that has been shared with key stakeholders and forums at various stages, that the combination of the following factors (as highlighted) were largely

responsible for the delay in completion of the TI and consequently of GOK TI Delay DGE Payments crystalising and being paid to LTWP:

89. Delay in issuing FNTP to Isolux and thereby delaying the start of construction due to protracted matters pertaining with getting the financing from the Government of Spain (GOS) and the Commercial Banks under the buyer credit arrangements. Whilst the GOK received the GOS's first indication of its willingness to finance the TI project on 09 October 2009, the commercial banks provided a term sheet for the export credit portion of ~~the facility on 25 July 2012 and the resolution of their interpretation of Clause 3(c) of the~~ Public Finance Management Act, 2014 ("PFMA 2014") and specifically, the definition of what constitutes, under clause 3(c), a "Government to Government loan" was only resolved in June 2014.

90. Non fulfilment by KETRACO of some of its contractual obligations under the EPC Contract to provide Isolux with access as per the Access Schedule. KETRACO's original wayleave access obligation (to Isolux), as per the 30 December 2011 EPC contract, was changed pursuant to the first addendum dated 02 August 2013 exposing KETRACO to open-ended claims for extension of time (EoT). As an illustration, whilst access for ALL wayleaves along the entire 428 kilometres stretch were required to be availed to Isolux within 210 days i.e. by approximately 13 March 2015.

91. KETRACO issued Notice to Proceed (NTP) for various sections such as AP19-21 (18KM) on 31 July 2015, AP21-23 (57KM) on 21 October 2015 and AP29-45 (70KM) on 18 January 2016 – dates that were way overdue as per KETRACO's obligations. This lack of appreciation or understanding of the very complex interface obligations and resultant contractual ramifications (the role of the Owner's Representative) under the EPC Contract (including other technical interface and coordination aspects that were evidenced throughout the TI Construction period e.g. delays by KETRACO in identifying and procuring shunt reactors until 2017 when the TI ought to have been completed) was the difference of how LTWP and KETRACO managed and oversaw the implementation of the two projects to achieve timely completion.

### 3.1.2 EVIDENCE BY NARI CONSORTIUM

**Mr. Chen Chao, the Project Manager for NARI Group Consortium appeared before the Committee to adduce evidence on the Special Audit Report on Lake Turkana Wind Power Project.**

He briefed the Committee as follows:

92. The Consortium of NARI Group Corporation and Powerchina Guizhou Engineering Co. Ltd was invited to a competitive tender on 30th November, 2017 for the completion of the transmission interconnector for Lake Turkana Wind Power project. The tender was then awarded to the consortium on 26th January, 2018.

93. The Consortium won the tender with a contract value of USD 94,541,188.42 and completed the project within six months.

94. The final account of works done was USD 109,224,308.48. The Consortium was paid USD 99,712,246.19 with an outstanding balance of USD 9,744,623.50.

95. The Loiyangalani-Suswa 400KV transmission line is the only power evacuation line for Lake Turkana Wind Power project. The Consortium came on board at a critical moment and completed the project within six months which saved tens of millions of Euros for the Kenyan taxpayer.

96. The pending bills have not been completed by KETRACO more than three years after completion of the project.

97. Interest on delayed payment was about KES 1.1 billion as at February 2022. The Consortium of NARI Group Corporation and Powerchina Guizhou Engineering Co. Ltd was willing to negotiate and discount on the interest component if the Government of Kenya is to pay the principal amount which has been due for almost four years.

## 3.2 EVIDENCE BY STATE CORPORATIONS INVOLVED IN THE LAKE TURKANA WIND POWER PROJECT

The Committee received evidence from the Kenya Electricity Transmission Company (KETRACO), Kenya Power & Lighting Company and the Energy and Petroleum Regulatory Authority on the Special Audit on the Lake Turkana Wind Power project.

### 3.2.1 EVIDENCE FROM KENYA ELECTRICITY TRANSMISSION COMPANY

**Eng. Anthony Wamukota, the Ag. Managing Director of Kenya Electricity Transmission Company accompanied by CPA Henry Choge (Manager, Project Accounts) appeared before the Committee to adduce evidence on the Special Audit Report on Lake Turkana Wind Power Project.**

He briefed the Committee as follows:

98. KETRACO was not involved in the conceptualization of the LTWP project.

99. M/s Isolux Ingenieria SA was awarded the contract for the transmission line on the recommendation of the Consultant, KEMA, who had been hired by LTWP Ltd.

100. When M/s Isolux Ingenieria SA failed to deliver on their mandate, KETRACO, with approval of the Attorney General terminated their contract. KETRACO then sought the approval of the National Treasury to use the Specially Permitted Procedure to procure a new contractor. Using this procurement method, KETRACO entered into a contract with the Consortium of NARI Group Corporation and Power China Guizhou Engineering Co. Ltd to complete the project.

101. M/s Isolux Ingenieria SA faced two major challenges. When the '*Full Notice to Proceed*' was issued, way leaves for the construction corridor had not been acquired. During execution of the project, there were intermittent stoppages by landowners who demanded huge sums in compensation. The Contractor also experienced cash flow challenges which impacted on project implementation. This was ultimately manifested when they were declared bankrupt.

102. M/s Isolux was procured by Lake Turkana Wind Power Ltd. through an evaluation carried out by their consultant, KEMA and not KETRACO.

103. The three Addenda were done on the contract with M/s Isolux Ingenieria SA prior to the company filing for bankruptcy.

104. Addendum No. 3 changed the scope of the contract due to re-alignment of the southern part of the line due to way leave acquisition issue that had pending court cases leading to an increase in contract price by Euro 3,265,049. The addendum also extended time for completion of the works by two and a half months to 30th December 2016.

105. Addendum 4 provided a change in scope due to re-alignment of the northern part of the line to avoid 'the flash flood prone area' leading to an increase in the contract price by Euro 687,076.

106. Addendum 5 extended the time of completion by twelve months to 31st December 2017 to allow for completion of the works and disbursement of the funds from the financier.

107. Termination of the contract with M/s Isolux Ingenieria SA was in accordance with contract provisions under Clause 15.2 (h) that allowed termination when the contractor becomes bankrupt. The consortium of NARI Group Corporation and PowerChina Guizhou Engineering Company was competitively procured on 30th January 2018 and completed the construction of the transmission interconnector by 31st August 2018.

108. He denied being part of a KETRACO group that participated in the award of a contract to M/s Isolux Ingenieria SA.

### 3.2.2 EVIDENCE FROM KENYA POWER AND LIGHTING COMPANY

**Eng. Rosemary Oduor, the Ag. Managing Director of Kenya Power & Lighting Company appeared before the Committee on 3rd February and 16th February, 2022 to adduce evidence on the Special Audit Report on Lake Turkana Wind Power Project.**

She briefed the Committee as follows:

109.In 2005 during conceptualization of the project, the Country was going through power supply capacity deficit. Demand was growing and there was an increased lack of adequate reserve capacity to take care of emergencies. In 2008, the 300MW Lake Turkana Wind Power Plant (LTWP) was identified as a key flagship project of the Kenya Vision 2030 under the Energy Sector as one of the many power generations identified to address the above concerns. Other projects conceptualized at the same period included; KenGen Olkaria I&IV (280 MW), Orpower 4 (52 MW), and KenGen Ngong Wind (20 MW.)

~~110.Normally, the Attorney-General did not approve PPAs between KPLC and other Parties~~ before execution. The role of AG was confined to review and approval of the GoK letter of support and issuance of legal opinion in respect of all GOK obligations (in this case the obligation to pay GOK TI Delay DGE Payments in the event the TI was delayed). The Attorney-General's legal opinion on the validity of the Letter of Support iwa a Condition Precedent to the PPA Effectiveness under the PPA which opinion is sought by the National Treasury prior to the issuance of the Letter of Support as the case may be. In addition, the PPA was approved by the Regulator (EPRA) before execution.

111.LTWP project was not procured under the Feed-in Tariff Policy. It was a Privately Initiated Project and the tariff negotiated based on project Costs and projected output from the wind farm.

112.Ordinarily transmission lines and power stations are constructed at the same time unless a power station is to be constructed in an area adequately served by an existing transmission line. The twenty-six (26) months line construction period included in the PPA was negotiated based on the eighteen months that LTWP had put in the tender as one of the conditions for bidders for the line construction to be pre-qualified.

113.Therefore the wind power plant and the line had to be completed at the same time in order to avoid having costly idle power generation capacity. In addition, there was the need to keep the validity of the tender prices of various components of the wind farm contract and subcontracts.

114. Deemed Energy Generated (DEG) arises where the power plant is available to generate but unable to deliver to the Offtaker's system electrical energy in the following events:

i. a Power System Interruption;

ii. a stoppage or curtailment of the Plant arising out of a specific dispatch instruction

iii. a breach by the Buyer of its obligations under the PPA; or

iv. Unavailability of the grid other than during maintenance

115. This was a common industry practice worldwide especially for the variable renewable power plants (Solar and Wind) to improve the bankability of these projects given the variable nature of the resource.

116. Therefore, a decision having been made for development of the line by the Government through KETRACO, the developer's financiers requested for a security underwriting in the event of a delay in the completion and commissioning of the construction of the 428Km, 400kV line; this was in form of payment for deemed generated energy.

117. The request for risk underwriting was made because the developer no longer had any control over the construction of the line and any delay could lead to a stranded asset - the wind power plant – for which debt repayments would be due. The developer and their financiers therefore required a provision to protect the project against the risk of delay in construction of the transmission line connecting the power plant to the grid resulting in stranded investment.

118. The developer demonstrated to the GOK (and this was ascertained by AFDB, EIB and various other international financers) that its bi-annual debt service repayment was EUR 37M i.e. EUR 74M per annum and without the DGE assurance, the project was simply un-bankable. It should also be noted that LTWP gave the GOK discounts on the DGE claimed of EUR 17.72 Million.

119. The PPA between Kenya Power and Lake Turkana Wind Power provided conditions for DGE to include the electrical energy that was not generated and/ or delivered at the Delivery Points.

120. The PPA provided an on-demand performance bond in the amount of Euro 10 Million drawn by an internationally recognized bank or a recognized bank in Kenya acceptable to KPLC and in a form acceptable to the Parties. This was to protect KPLC against the risk of delays in construction of the power plant or failure to commence construction by the required Construction Start Date.

121. LTWP invited tenders on behalf of KETRACO in accordance with the agreement of the Special Task Force (comprising MoE, KPLC, KETRACO and LTWP) that was established between the Parties to facilitate this process. KETRACO was newly incorporated in 2008 and participated in the Task Force with KPLC, MOE and LTWP. KETRACO was the contracting party.

122. The procurement of the Escrow Agent and LC Bank by KPLC for collecting and remitting into an escrow account the security support facility according to clause 10.9.5(a)of the PPA was concluded pending GoK approval. The GoK had since approved an alternative arrangement through a Partial Risk Guarantee (PRG) by AfDB.

123. Regarding the account details that was to receive a refund from KETRACO, it was provided to LTWP and refund made accordingly. Delays in provision correct bank details were occasioned through bureaucracies in government (Central Bank of Kenya, Ministry of Energy and the National Treasury).

124. There was a tariff increase of EUR 0.00845 passed to consumers to cater for part of the DGE that would lapse in 2024.

#### 3.2.3 EVIDENCE FROM ENERGY AND PETROLEUM REGULATORY AUTHORITY

**Mr. Daniel Bargoria, the Director General of the Energy and Petroleum Regulatory Authority accompanied by Dr. John Mutua (Ag. Director, Economic Regulation &**

**Strategy) appeared before the Committee to adduce evidence on the Special Audit Report on Lake Turkana Wind Power Project.**

125. Section 6 (j) of the Energy Act, 2006 gave powers to the Commission (now EPRA) to approve electric power purchase and network service contracts for all persons engaging in electric power undertakings.

126. Kenya Power and LTWP jointly submitted an initialed Power Purchase Agreement on 9th November 2009. The Authority (Commission then) approved the initialed PPA at its 24th Meeting held on the 11th December 2009. The approval process took 32 days from the time of submission of the PPA which was within the stipulated requirement of 90 days. The approval process was in accordance with the Energy Act, 2006.

127. Among the Conditions Precedent in the PPA between Kenya Power and LTWP is the requirement for a generation license having been issued to the LTWP. This therefore meant that for the PPA to become effective, then LTWP ought to have been issued with a generation license after approval of the PPA by the Authority. The PPA is normally approved before issuance of the license for purposes of unlocking finances for the developer and to enable the developer attain financial close.

128. LTWP entered into a PPA with KPLC on 29th January 2010. The PPA was amended through agreements dated 29th September 2011, 14th September 2012 and 13th May 2013, Variation Agreement dated 31st July 2014 and Variation Agreement dated 19th September 2017 to address various issues as tabulated below:

129. Summary of PPA Variations:

| Item | Variation | Justification for Variation | Correspondences |
|---|---|---|---|

| | | | |
|---|---|---|---|
| 1 | Dated 29th September 2011 | Change in security package being provided to Lake Turkana Wind Power (LTWP) by Kenya Power and Lighting Company (KPLC) and Government of Kenya (GOK).<br><br>Recognition that the Transmission Interconnector (TI) is being developed, owned and operated by Kenya Electricity Transmission Company (KETRACO).<br><br>To increase the energy charge rate and review the energy threshold set out in the original PPA, in view of the increase in total costs for the project since the execution of the original Power Purchase Agreement (PPA). | Instrument of Approval issued on 2nd September 20111 |
| 2 | Agreement dated 14th September 2012 | Addition of a Condition Precedent that 90 days will have expired from the issuance by KETRACO of Notice to Proceed for the Transmission Interconnector<br><br>Change the Target Effective Date from 31st December 2011 to 31st December 2012<br><br>Correction of an error in the formula for Calculation of Energy Charges when the cumulative aggregate of the Net Electrical Output and the KPLC, Deemed Generated Energy (DGE), GOK Transmission Interconnector (TI) Delay DGE and TI Interruption DGE in the Operating Year is greater than Discounted Energy Threshold. | Instrument of Approval issued on 4th September 2012 |
| 3 | Amended and Restated PPA dated 13th May,2013 | The original PPA was amended and restated to incorporate the contents of the agreements dated 29th September 2011 and 14th September 2012 | Instrument of Approval issued on 6th May 2013 |
| 4 | Variation Agreement dated 31st July 2014 | Through Agreement dated 31st July 2014 (Variation Agreement in respect to PPA dated 13th May 2013), the Parties amended the PPA to vary the definition of Long Stop Effective Date and provide for Conditions Precedent. | ERC approval letter dated |

| | | | |
|---|---|---|---|
| 5 | Variation Agreement dated 19th September 2017 | Through agreement dated 19th September 2017 (Second Variation Agreement in respect of the PPA dated 13th May 2013 and as amended on 31st July 2014), Parties agreed to amend the PPA to address the Transmission Interconnector Delay for the period 15th May 2017 to 31st May 2018. The financial impact of the TI delay was addressed through a combination of a lump sum payment and a change in tariff | Instrument of Approval issued on 6th September 2017. |

## 3.3 EVIDENCE BY STATE DEPARTMENTS INVOLVED IN THE LTWP PROJECT

### 3.3.1 EVIDENCE BY THE PRINCIPAL SECRETARY, STATE DEPARTMENT OF ENERGY

**Major Gen. (Rtd.) Gordon Kihalangwa, the Principal Secretary for Energy appeared before the Committee on 9th December, 2021 and 24th March, 2022 to adduce evidence on the Special Audit Report on Lake Turkana Wind Power Project.**

He briefed the Committee that:

130. Between 2005 and 2009 during conceptualization of the Project, the Republic of Kenya was going through power supply capacity deficit, the growing demand and lack of adequate reserve capacity to take care of emergencies. This undesirable situation resulted in importation by GOK of up to 230 MW of auto diesel fired emergency power to stabilize supply against rising demand.

131. In 2008, the 300MW Lake Turkana Wind Power Plant (LTWP) was identified as a key flagship project of the Kenya Vision 2030 under the Energy Sector as one of the many power generations identified to address the above concerns. Other projects conceptualized at the same period included; KenGen Olkaria I&IV (280 MW), Orpower 4 (52 MW), and KenGen Ngong Wind (20 MW).

132. In terms of financial viability LTWP, with a tariff of Euro cents 7.52 for the twenty-year PPA term was at the time of the proposal competitive and comparable to the KENGEN geothermal energy power generation projects which were and still are subsidized by the

government through provision of funds for geothermal drilling and exploration costs. The ability of KenGen to obtain concessional financing thus lowers the financing costs, which helps them to achieve lower tariffs.

133. Electricity production in Marsabit, which had a very big unexploited wind power potential, would command a lower tariff because the substation infrastructure was already in place together with a 220/400kV double circuit line for its evacuation and the dynamic reactive power compensators (DRPCs) at the LTWP sub-station which offers grid stability to the ~~national grid. This line had a capacity to evacuate up to 900MW.~~

134. LTWP project was properly developed, within the LCPDP, and remained one of Kenya's least cost power projects, to date. It was a strategic investment, in line with Kenya's policy on exploiting the potential of our natural resources and remained a critical asset in the energy sector.

135. The Attorney-General did not approve PPAs between KPLC and other Parties before execution. As per the Energy Act, the role of approving the PPA was vested with EPRA. The role of AG was confined to review and approval of the GoK Letter of Support and issuance of Legal Opinion in respect of all GOK obligations (in this case the obligation to pay GOK TI Delay DGE Payments in the event the TI was delayed).

136. The Attorney-General's Legal Opinion on the validity of the Letter of Support was a Condition Precedent to the PPA Effectiveness under the PPA which opinion is sought by the National Treasury prior to the issuance of the Letter of Support as the case may be. In addition, the PPA is approved by the Regulator (EPRA) before execution.

137. There were several procurement methods that were used to procure power generation projects in the Country. These are:

i. Competitive Bidding and Public Private Partnerships (PPPs); Taken either through a competitive bidding process guided by the applicable Laws (Public Procurement and Disposal Act, 2005 and Regulations, 2006 (Repealed), the Public Procurement and Assets Disposal Act, 2015 and its Regulations and the Public Private Partnership Act, 2013.

ii. Projects proposed through Feed-in-Tariff Policy;

iii. Geothermal Concession Blocks pursuant to the Energy Act, 2019;

iv. Capacity development by Government entities such as KenGen, GDC, REREC, KVDA, KTPC and TARDA; and

v. Regional power trade with neighboring countries

138.The LTWP was initiated by the investor who proposed to undertake and finance their own wind data collection and studies on wind power at Loyangalani in Marsabit that would culminate if proven viable with construction of a power plant. The developer undertook all the technical studies and proved to the Ministry that the wind resource available on site was adequate to develop the 300MW power plant.

139.The project was considered viable and the developer put together a group of equity investors and lending institutions to fund the project to construction and commissioning. The Project would therefore qualify for a Private Initiated Investment Project.

140.There was in place a Feed-In-Tariff policy of 2008 which provided maximum tariffs for respective renewable energies technologies. LTWP's tariff was significantly lower than the one provided for under FiT. The FiT policy was developed to spur growth of renewable energy sources by providing for a prescribed rate for the renewables. Technologies included in the policy are wind, solar PV, biomass and small hydro plants.

141.Not significant amount of wind regime data had previously been collected and analyzed to ascertain commercial viability of the proposed wind power project in Marsabit or any other part of Kenya to facilitate private sector participation in wind power development to warrant floatation of a public tender for development of wind power plants. LTWP took all upstream wind energy risk whilst installing grid stability equipment that has been beneficial to Kenya's national grid in addition to socio-economic-political benefits that the project brought to the region and the communities.

142. MOE was of the view that the project was good for Kenya as it was going to generate electricity at substantially lower tariff than oil based thermal power plant including the private sector developed geothermal power plant that existed at that time;

143. Despite the government commitment to undertake wind resources assessment in the Country as stipulated in Session No. 4 on Energy, this was yet to be done due to competing government priorities.

144. Sections 2 (b) and 74 of the repealed Public Procurement and Disposal Act, 2005 and ~~Section 3 (2) of the Public Procurement and Disposal (Public Private Partnerships)~~ Regulations, 2009 were not applicable herein.

145. The original Power Purchase Agreement (PPA) dated 29th January 2010 between Lake Turkana Wind Power (LTWP) and Kenya Power and Lighting Company (KPLC) had an energy charge rate of 7.22 Euro¢/kWh of which 6.206 Euro¢/kWh was non escalable while 1.014 Euro¢/kWh was escalable. This charge rate was to be applied for all units delivered and deemed generated energy up to a ceiling of 55% annual load factor amounting to 1,445.4GWh annually. Any energy supplied above the 55% load factor would attract reduced tariff of 3.61 Euro ¢/kWh equivalents to a 50% of the full tariff.

146. In September 2010, the LTWP requested the Ministry of Energy and KPLC to consider increasing the Energy Charge by 0.30 Euro¢/kWh to 7.52 Euro¢/kWh due to increase of the total project cost by 37% from Euro 451 Million in 2008 when the tariff was agreed to Euro 617 Million. The increase in the project was attributed to: (a) increase in engineering procurement and contract prices; (b) cost of funding; and (c) cost of Dynamic Reactive Power Compensator (DRPC) to enhance voltage stability of the plant and the national grid.

147. The Ministry of Energy was agreeable to LTWP's request subject to approval by the Energy & Petroleum Regulatory Authority (then Energy Regulatory Commission).

148. On the 15th August 2011, LTWP jointly with KPLC submitted an amended and restated power purchase agreement for the 300MW power generating plant at Loyangalani in Marsabit County for approval by EPRA pursuant to the provisions of the Energy Act, 2006 (now Repealed by the Energy Act,2019). The application also provided that the transmission

interconnector was to be done by the Kenya Electricity Transmission Company (KETRACO). In the initial agreement, the transmission line cost was to be borne by LTWP.

149. Deemed Energy Generated (DEG) arises where the power plant is available to generate but unable to deliver to the Offtaker's system electrical energy in the following Events:

i. a Power System Interruption;

ii. a stoppage or curtailment of the Plant arising out of a specific dispatch instruction;

iii. a breach by the Buyer of its obligations under the PPA; or

iv. Unavailability of the grid other than during maintenance

150. This was a common industry practice worldwide especially for the variable renewable power plants (Solar and Wind) to improve the bankability of these projects given the intermittent nature of the resource.

151. Therefore, a decision having been made for development of the transmission line by the Government through KETRACO, the developer's financiers requested for a security underwriting in the event of a delay in the completion and commissioning of the construction of the 428Km, 400kV line; this was in form of payment for deemed generated energy. This was to have a bankable project and to ensure that the Financier's debt service requirements were met by the LTWP.

152. The request for risk underwriting was made on the basis of the fact that the developer no longer had any control over the construction of the line including wayleaves acquisition and any delay could lead to a stranded asset - the wind power plant – for which debt repayments would be due. The developer and their financiers therefore required a provision to protect the project against the risk of delay in construction of the transmission line connecting the power plant to the grid resulting in stranded investment.

153. The developer demonstrated to the GOK (and this was ascertained by AFDB, EIB and various other international financers) that its bi-annual debt service repayment was EUR

37M i.e. EUR 74M per annum and without the DGE assurance, the project was simply un-bankable.

154. The PPA between Kenya Power and Lake Turkana Wind Power provided conditions for DGE to include the electrical energy that is not generated and/ or delivered at the Delivery Points as result of transmission line delay or transmission line interruption-when the DGE amount in an operating year exceed Euros 600,000

155. A Sovereign guarantee was not given for the LTWP project. Instead, a Government Letter of Support (GLoS) was given to the project lenders. Issuance of this type of letter had been done to all IPPs previously. These IPPs included Tsavo Power, OrPower 4, Rabai Power, Thika Power, Gulf Power and Triumph Power.

156. The Letter of Support (LoS) covered political risks including but not limited to acts of war, foreign invasion, insurrection, change in law and/or change in tax, riots civil disturbances, failure by GoK to meet its obligations under the LoS and Force Majeure affecting KPLC. Under the LoS the government is also required to pay claims by LTWP for GoK TI Delay DGE and GoK TI Interruption DGE.

157. LTWP entered into a PPA with KPLC on 29th January 2010. The PPA was amended through agreements dated 29th September 2011, 14th September 2012 and 13th May 2013 to address various issues.

158. The first PPA variation dated 29th September 2011 factored in the change in security package being provided to LTWP by KPLC and recognition that the Transmission Interconnector (TI) is being developed, owned and operated by KETRACO.

159. Further the first variation approved the increase of the energy charge rate and reviewed the energy threshold, set out in the original PPA, in view of the increase in total costs for the project since the execution of the original PPA.

160. The second variation of the Agreement dated 14$^{th}$ September 2012 was for addition of a Condition Precedent that 90 days will have expired from the issuance by KETRACO of

Notice to Proceed for the Transmission Interconnector. The variation also changed the Target Effective Date from 31st December 2011 to 31st December 2012

161. The second PPA variation also provided for correction of an error in the formula for Calculation of Energy Charges when the cumulative aggregate of the Net Electrical Output and the KPLC DGE, GOK TI Delay DGE and TI Interruption DGE in the Operating Year is greater than Discounted Energy Threshold.

162. The third PPA variation was dated 13th May 2013 where the original PPA was amended and restated to incorporate the contents of the agreements dated 29th September 2011 and 14th September 2012.

163. The fourth variation agreement dated 31st July 2014 (Variation Agreement in respect to PPA dated 13th May 2013), the Parties amended the PPA to vary the definition of Long Stop Effective Date and provide for Conditions Precedent.

164. In the fifth PPA variation dated 19th September 2017 (Second Variation Agreement in respect of the PPA dated 13th May 2013 and as amended on 31st July 2014), Parties agreed to amend the PPA to address the Transmission Interconnector Delay for the period 15th May 2017 to 31st May 2018. The financial impact of the TI delay was addressed through a combination of a lump sum payment and a change in tariff.

165. The World Bank withdrew from negotiations on funding of the project due to a number of reasons detailed in a letter to the Ministry of Finance and Ministry of Energy dated 6th October, 2012. The World Bank raised concern that the large size of the plant could impact on the reliability of systems supply and advised that the power plant should be developed gradually in smaller lots of (50-100MW).

166. The lender further warned that the take or pay obligations in the PPA exposed KPLC to unacceptable high financial risk and that the timeline of the 26-month for construction of the transmission line from Loiyangalani was very short.

167. The Ministry had been vindicated as injection into the national grid of the entire 300 megawatt of wind power daily by LTWP did not have any negative impact on the power

system stability and reliability. If anything, it had helped to substantially reduce the amount of Heavy Fuel Oil (HFO) used daily to fire Medium Speed Diesel (MSD) power plants in the Nairobi Metropolitan.

168. Energy projects took long periods to implement, potentially 20 to 30 years, and usually required loans to finance them. These clauses were effectively designed to protect the generator in this case LTWP by providing a guaranteed income even if the purchaser (KPLC) does not use electricity; giving them the assurance that electricity generated will be sold and making the energy generation project commercially viable.

169. Pursuant to the PPA, the LTWP plant was ready by 27th January 2017, but the Transmission Interconnector (TI) was delayed until 10th September 2018. In accordance with the terms of the PPA and the GOK Letter of Support (issued by the GOK on 28th February 2013), LTWP was entitled to GOK TI Delay DGE Payments from the date – 27th January 2017 until the TI was Operational - in this case, 10th September 2018.

170. Following a series of meetings, LTWP, GOK and KPLC reached an agreement in which:

i. LTWP agreed to write-off any GOK TI Delay DGE from 27th January 2017 – 15th May 2017 (an amount of EUR 17.72 Million);

ii. For the period 15th May 2017 – 31st May 2018, the GOK TI Delay DGE amounted to EUR 127M;

iii. Although LTWP was entitled to the EUR 127M, the GOK could not pay the full amount and requested a payment structure with LTWP that was mutually beneficial.

171. To record the above-mentioned agreement, the Parties entered into the Second Variation Agreement. LTWP agreed to the start date of GOK TI Delay DGE Payments to be 15th May 2017 instead of 27th January 2017 (in this case LTWP gave GOK a discount of EUR 17.72 Million).

172. With respect to GOK TI Delay DGE for the period 15th May 2017 to 31st May 2018 ("Initial TI Delay DGE Period"), GOK agreed to pay LTWP a lumpsum of EURO 46,000,000 (Euro Forty-Six Million) before 31st August 2017, which was to cover debt obligation to Lenders;

173. To compensate for the difference between the lumpsum payment of EURO 46,000,000 and the actual GOK Initial TI Delay DGE for the period from 15th May 2017 to 31st May 2018 ( i.e. EUR 127M), LTWP agreed to receive a tariff increase of EURO 0.00845 per kWh ("DGE Recovery Period Tariff"), which was to be paid by KPLC /GOK during the period from 1st June, 2018 to 31st May 2024 ("DGE Recovery Period"); and

174. Any TI Delay beyond 1st June 2018 would result in LTWP being paid GOK TI Delay DGE in the normal manner.

175. In view of the foregoing, during the period between 15th May 2017 up to the time the TI Operation occurred (in this case 10th September 2018), a total of Kshs. ***10,298,690,000*** which were due and payable to LTWP, were transferred to KPLC by Ministry of Energy for onward remission to LTWP - being GOK TI Delay DGE Payments as per the PPA.

176. A Special Task Force/Steering Committee comprising MoE, KPLC, KETRACO and LTWP was established between the Parties to facilitate the process of construction of the transmission interconnection infrastructure. KETRACO was newly incorporated in 2008 and participated in the task force with KPLC, MOE and LTWP.

177. LTWP invited tenders on behalf of Kenya Light & Power Co (KPLC) in accordance with the agreement of the Special Task Force/Adhoc Steering Committee. The Ministry was a participant in the Taskforce but no decision was made by MOE directly or individually. Ultimately, KETRACO was the contracting party.

### 3.3.2 EVIDENCE BY THE PRINCIPAL SECRETARY, NATIONAL TREASURY

**Dr. Julius Muia, the Principal Secretary at the National Treasury accompanied by Eng. Stanley Kamau (Director of Investments) and Ms. Isabella Kogei (Parliamentary Liaison Officer) appeared before the Committee to adduce evidence on the Special Audit Report on Lake Turkana Wind Power Project.**

The Committee was briefed as follows:

178. On 12th July, 2010, the Office of the Deputy Prime Minister and Minister of Finance and the Ministry of Energy submitted a cabinet memorandum seeking (a) to appraise Cabinet on the proposed programmes to expand the country's power generation capacity to 3000 MW by 2013 and (b) to obtain cabinet approval of the programme and measures that the Kenyan Government will need to take to ensure effective implementation of this programme. The investments were to help mitigate pending power rationing at the time.

179. Documents from KPLC indicate that LTWP and KPLC entered into a power purchase agreement (PPA) on 29th January 2010. The parties subsequently amended and restated the PPA on 29th September, 2011, 14th September, 2012 and 13th May, 2013.

180. Through a variation agreement dated 31st July, 2014, the parties amended the PPA (dated 13th May, 2013) to address definition of Long Stop Effective date and provide for Conditions Precedent. Further, a second variation agreement dated 19th September, 2017 amended the PPA to address the Transmission Interconnector Delay for the period 15th May, 2017 to 31st May, 2018.

181. The Ministry of Energy requested the then Office of the Deputy Prime Minister and Ministry of Finance to provide Government support to Independent Power Producers. The support requested from GoK by IPPs was creation of an Escrow account where government would deposit money to be drawn incase KPLC failed to meet its payment obligations under the PPAs.

182. This was later addressed when the government made a policy decision to instead use Partial Risk Guarantee from the Development Finance institutions such as World Bank, Multilateral Investment Guarantee Agency (MIGA) and Africa Development Bank (AfDB). The purpose of the PRG was to backstop the commercial risks of KPLC. The Lake Turkana Wind Power project benefited from a PRG from AfDB.

183. In addition, the government was required to issue a Letter of Support (LoS) with respect to political risks and compensation payable to LTWP upon termination of the PPA. It is

instructive that LoS were not explicit guarantees and were cleared by the Attorney General before they are issued.

184. The LTWP Power Purchase Agreement had provided for exceptions which were to be factored in the determination of the tarrif. The financing model had therefore taken into consideration the exceptions contained in the PPA. The exceptions were aimed at lowering the cost of production and making energy affordable to the consumers.

185. The taxes to be paid by GoK were in respect to items that were not covered by the law but had been agreed to be exempted during the PPA negotiations between KPLC and LTWP Ltd.

Government agreed to tariff increase through the Second Variation Agreement to shoulder the additional obligation on DGE payments amounting to Euro 127 Million.

186. To cater for deferred amount, a tariff increase of Euro 0.00845 Kw/h was agreed to offset the amount owed to LTWP for a period of six years (2018-2024). The increase in tariffs was in lieu of payments that would have been made by Government to LTWP.

187. The National Treasury did not undertake due diligence on banks owned/or recommended by foreign governments. This was in regard to the loan agreement between Instituto Credito Official of the Kingdom of Spain, Deutsche Bank and the Kenya Ministry of Finance for construction of the Transmission Interconnector by M/s Isolux.

188. The National Treasury did not issue a sovereign guarantee on the LTWP project but issued a Letter of Support. Payments made to LTWP emanated from the Vote of the Ministry of Energy in line with the PPA between KPLC and LTWP and not the Consolidated Fund.

189. TI delay DGE for the period 15th May 2017 to 31st May 2018 (381 days) was estimated at 1,652,764,752 kw/h based on an assumed capacity factor of 0.62. This translated to TI DGE amount of Euro 127,577,128.32 of which GoK paid Euro 46,000,000 to LTWP and the balance was to be factored into tariff under the Second Variation agreement. (Euro 81.5 million).

190. Following further delays to the TI operationalization, LTWP invoiced GoK an additional Euro 39,684,035 for the months of June, July, August and September 2018. The Ministry of Energy through KPLC settled the amount. This addition increased the total GoK TI DGE delay liability to Euro 167,261,163.32 comprising of the initial DGE Euro 127,577,128.32 and the additional DGE of Euro 39,684,035.00.

191. The Capacity factor obtained for the period of 381 days from the TI operation date (10th September 2018 to 25th September 2019) is 0.54. The second variation agreement had ~~provision for the correction of capacity factor from estimated 0.62 to actual 0.54 obtained~~ during actual production, yielded a GoK TI delay DGE payment refund of Euro 6,173,293. Therefore the total GoK Ti delay DGE obligation as per the PPA is Euri 161,087,870.32.

192. As per the signed PPA, the government was required to issue a Letter of Support with respect to political risks and compensation payable to LTWP upon termination of the PPAs. LoS are not explicit guarantees. All LoS are cleared by the Attorney General before signature.

193. On 26th March, 2011 the LoS for the LTWP project was jointly signed by the Permanent Secretaries in the Ministry of Finance and Energy, the MD, KPLC and an authorized representative of LTWP Ltd.

194. To ensure transparency, the government had consistently disclosed the signed LoS with IPPs in Annual Public Debt Report and Budget Policy Statement submitted to Parliament every 30th September and 15th February respectively.

195. As per the terms of the PPA, Government was exposed to pay DGE in the event that there was TI disruptions and KPLC was not able to evacuate generated power and the payment liability in any given year in respect of interruptions exceeds Euro 600,000.

196. The interest clauses for the LTWP PPA were contained in clause 10.4 and LoS clause 10.2.5 and 11.10 for the amended LoS. The clauses generally provided that "Any amount (PPA termination or DGE payments) agreed or determined pursuant to the agreements shall bear an interest at the default rate from due date until payment. So far, no interest payment has been made.

197. The validation process of the Kshs. 2,785,429,737 VAT payable to LTWP was undertaken and payments were made by the Ministry of Energy through KPLC.

198. Regarding the delay in provision of the correct bank details to receive a refund from LTWP, this was caused by government bureaucracies to ensure that the details were correct.

### 3.3.3 EVIDENCE BY THE PRINCIPAL SECRETARY, STATE DEPARTMENT OF PETROLEUM

**Dr. Eng. Joseph K. Njoroge, the former Principal Secretary at the State Department of Energy accompanied by Eng. Stanley Kamau (Director of Investments) appeared before the Committee to adduce evidence on the Special Audit Report on Lake Turkana Wind Power Project.**

He briefed the Committee as follows:

199. The terms and conditions of the PPAs were standard terms because they defined the respective obligations of the generator (LTWP) and the off-taker (KPLC). The terms were also based on international best practices of such project financed investments. Additionally, the project was approved by KPLC's Board, the Energy Regulatory Commission (ERC) now Energy & Petroleum Regulatory Authority (EPRA) and subjected to legal opinion/clearance by the Attorney General on several occasions

200. Normally, the Attorney-General did not approve PPAs between KPLC and other Parties before execution. As per the Energy Act, the role of approving the PPA is vested with EPRA. The role of AG was confined to review and approval of the GoK Letter of Support and issuance of Legal Opinion in respect of all GOK obligations (in this case the obligation to pay GOK TI Delay DGE Payments in the event the TI was delayed).

201. The Attorney-General's Legal Opinion on the validity of the Letter of Support was a Condition Precedent to the PPA Effectiveness under the PPA which opinion is sought by the National Treasury prior to the issuance of the Letter of Support as the case may be. In addition, the PPA is approved by the Regulator (EPRA) before execution.

202. Ordinarily transmission lines and power stations were constructed concurrently unless a power station was to be constructed in an area adequately served by existing transmission line.

203. The twenty-six (26) months line construction period included in the PPA was negotiated based on the eighteen months that LTWP had put in the tender as one of the conditions for bidders for the line construction to be pre-qualified. Therefore, the wind power plant and the line had to be completed at the same time to avoid having costly idle power generation capacity. In addition, there was the need to keep the validity of the tender prices of various components of the wind farm contract and subcontracts.

204. Renewable energy resources assessment was one of the key stages in renewable energy resources development. Before a decision was made to develop the resource, an assessment was done to determine commercial viability of the project. This was critical in securing project financing.

205. As stipulated in the Sessional Paper No. 4 on Energy, the government committed to promote renewable energy resources assessment among them Wind. Whereas the government prioritized geothermal resource assessment that culminated in creation of GDC, a detailed Wind resources assessment was yet to be undertaken due to lack of funds. Renewable resource assessment was a highly technical field requiring both specialized equipment and human resources. In the Feed-In-Tariff Policy it was therefore envisaged that the Private Investors would undertake search for land and carry out feasibility study for their projects. This is in contrast with more mature markets where private sector access reliable data to set up wind farms.

206. The private firm then approached the Ministry with a view of undertaking a detailed wind resource assessment at their own cost to determine the viability of the project. This involved installation of wind masts and data loggers at their own cost to collect data at Loyangalani, Marsabit. This would culminate, if proven viable, with construction of a power plant.

207. Bearing in mind that substantial amount of risk capital was going to be expended on wind data acquisition and analysis to ascertain the sites suitability and viability for wind power

development, the Ministry did not object to the study being done by LTWP Ltd. LTWP Ltd was the only company which had come forward with the proposal for wind power development in Marsabit. If the studies had indicated that there was no enough resource, the project proposers would have taken the loss in terms of money and time spent and government would not have compensated them for this effort. The project remains the single largest private investment in Kenya's history at EUR 685M (KES 85B)

208. Other factors which informed MOE decision not to object were that the country was experiencing devastating power supply deficits which were mitigated through importation of expensive diesel fired generators between 2006 and 2009 as shown in the figure 1 above, whose cost per kWh ranged between 17 and 20 US cts/kWh, even with tax exemption subsidy. Those generators were highly subsidized by GoK through budget support in order to protect consumers from an increase in power tariffs. Additionally, in Sessional Paper Number 4 of 2004 and in the ensuing Energy Act of 2006, GoK had committed to promote development of renewable energy sources for electricity generation, amongst social economic activities.

209. Therefore, the Ministry gave the project proposers the rights to undertake surveys and the studies at their own risk while the Council of Marsabit leased land to LTWP in 2009 and were issued with a Leasehold Certificate.

210. All major power generation projects undertaken by IPP developers floated open tenders for transmission line construction on behalf of KPLC. The construction costs were to be reimbursed to IPPs through consumer tariff increases as part of the total project implementation costs. To ensure that their construction was costs effective and at least cost, KPLC participated in the development of the tender documents and evaluation of bids for the award of contracts. With the creation of KETRACO by GOK this process became a joint responsibility for both KPLC and KETRACO, due to the inclusion of power evacuation terms in PPAs.

211. There were several procurement methods that are used to procure power generation projects in the Country. These are:

a. Competitive Bidding and Public Private Partnerships (PPPs); Taken either through a competitive bidding process guided by the applicable Laws (Public Procurement and Disposal Act, 2005 and Regulations, 2006 (Repealed), the Public Procurement and Assets Disposal Act, 2015 and its Regulations and the Public Private Partnership Act, 2013.

b. Projects proposed through Feed-in-Tariff Policy;

c. Geothermal Concession Blocks pursuant to the Energy Act, 2019;

d. Capacity development by Government entities such as KenGen, GDC, REREC, KVDA, KTPC and TARDA; and

e. Regional power trade with neighboring countries.

212. The LTWP was initiated by the Investor who proposed to undertake and finance their own wind data collection and studies on wind power at Loyangalani in Marsabit that would culminate if proven viable with construction of a power plant. The developer undertook all the technical studies and proved to the Ministry that the wind resource available on site was adequate to develop the 300MW power plant.

213. The project was viable and the developer put together a group of equity investors and lending institutions to fund the project to construction and commissioning. The Project would therefore qualify for a Private Initiated Investment Project.

214. The reasons why competitive bidding was not used are:

a. There was in place a Feed-In-Tariff policy of 2008 which provided maximum tariffs for respective renewable energies technologies. LTWP's tariff was significantly lower than the one provided for under FiT. The FiT policy was developed to spur growth of renewable energy sources by providing for a prescribed rate for the renewables. Technologies included in the policy are wind, solar PV, biomass and small hydro

b. Not significant amount of wind regime data had previously been collected and analyzed to ascertain commercial viability of the proposed wind power project in Marsabit or any other part of Kenya to facilitate private sector participation in wind power development to warrant floatation of a public tender for development of wind power plants. LTWP took all upstream wind energy risk whilst installing grid stability equipment that had been beneficial to Kenya's national grid in addition to socio-economic-political benefits that the project brought to the region and the communities.

c. MOE was of the view that the project was good for Kenya as it was going to generate electricity at substantially lower tariff than oil based thermal power plant including the private sector developed geothermal power plant that existed at that time;

d. Despite the government commitment to undertake wind resources assessment in the Country as stipulated in Session No. 4 on Energy, this was yet to be done due to competing government priorities. It should be noted however that the government had prioritized geothermal resource assessment that culminated in creation of GDC and thus detailed wind resource assessment development was yet to be undertaken at that time.

215. Sections 2 (b) and 74 of the repealed Public Procurement and Disposal Act, 2005 and Section 3 (2) of the Public Procurement and Disposal (Public Private Partnerships) Regulations, 2009 were not applicable herein.

216. Deemed Energy Generated (DEG) arises where the power plant is available to generate but unable to deliver to the Offtaker's system electrical energy in the following Events:

i. a Power System Interruption;

ii. a stoppage or curtailment of the Plant arising out of a specific dispatch instruction

iii. a breach by the Buyer of its obligations under the PPA; or

iv. Unavailability of the grid other than during maintenance

217. This was a common industry practice worldwide especially for the variable renewable power plants (Solar and Wind) to improve the bankability of these projects given the intermittent nature of the resource.

218. Therefore, a decision having been made for development of the transmission line by the Government through KETRACO, the developer's financiers requested for a security underwriting in the event of a delay in the completion and commissioning of the construction of the 428Km, 400kV line; this was in form of payment for deemed generated energy. This was to have a bankable project and to ensure that the Financier's debt service requirements were met by the LTWP.

219. The request for risk underwriting was made on the basis of the fact that the developer no longer had any control over the construction of the line including wayleaves acquisition and any delay could lead to a stranded asset - the wind power plant – for which debt repayments would be due. The developer and their financiers therefore required a provision to protect the project against the risk of delay in construction of the transmission line connecting the power plant to the grid resulting in stranded investment.

220. The developer demonstrated to the GOK (and this was ascertained by AFDB, EIB and various other international financers) that its bi-annual debt service repayment was EUR 37M i.e. EUR 74M per annum and without the DGE assurance, the project was simply un-bankable.

221. The PPA between Kenya Power and Lake Turkana Wind Power provides conditions for DGE to include the electrical energy that is not generated and/ or delivered at the Delivery Points as result of Transmission line Delay or Transmission line Interruption-when the DGE amount in an operating year exceed Euros 600,000

222. Having ascertained that the project area had a huge potential for power generation and the generation tariff was lower than the maximum set in the Feed-In-Tariff Policy, the Ministry decided to support the project.

223. The Sovereign guarantee was not given; instead, a Government Letter of Support (GLoS) was given to the project lenders. Issuance of this type of letter had been done to all IPPs previously. These IPPs included Tsavo Power, OrPower 4, Rabai Power, Thika Power, Gulf Power and Triumph Power.

224. The Letter of Support (LoS) covered political risks including but not limited to acts of war, foreign invasion, insurrection, change in law and/or change in tax, riots civil disturbances, failure by GoK to meet its obligations under the LoS and Force Majeure affecting KPLC. Under the LoS the government was also required to pay claims by LTWP for GoK TI Delay DGE and GoK TI Interruption DGE.

225.LTWP entered into a PPA with KPLC on 29th January 2010. The PPA was amended through agreements dated 29th September 2011, 14th September 2012 and 13th May 2013 to address various issues as tabulated below:

| Item | Variation | Justification for Variation | Correspondences |
|---|---|---|---|
| 1 | Dated 29th September 2011 | Change in security package being provided to Lake Turkana Wind Power (LTWP) by Kenya Power and Lighting Company (KPLC) and Government of Kenya (GOK).<br><br>Recognition that the Transmission Interconnector (TI) is being developed, owned and operated by Kenya Electricity Transmission Company (KETRACO).<br><br>To increase the energy charge rate and review the energy threshold set out in the original PPA, in view of the increase in total costs for the project since the execution of the original Power Purchase Agreement (PPA). | Instrument of Approval issued on 2nd September 20111 |

| | | | |
|---|---|---|---|
| 2 | Agreement dated 14th September 2012 | Addition of a Condition Precedent that 90 days will have expired from the issuance by KETRACO of Notice to Proceed for the Transmission Interconnector<br><br>Change the Target Effective Date from 31st December 2011 to 31st December 2012<br><br>Correction of an error in the formula for Calculation of Energy Charges when the cumulative aggregate of the Net Electrical Output and the KPLC, Deemed Generated Energy (DGE), GOK Transmission Interconnector (TI) Delay DGE and TI Interruption DGE in the Operating Year is greater than Discounted Energy Threshold. | Instrument of Approval issued on 4th September 2012 |
| 3 | Amended and Restated PPA dated 13th May,2013 | The original PPA was amended and restated to incorporate the contents of the agreements dated 29th September 2011 and 14th September 2012 | Instrument of Approval issued on 6th May 2013 |
| 4 | Variation Agreement dated 31st July 2014 | Through Agreement dated 31st July 2014 (Variation Agreement in respect to PPA dated 13th May 2013), the Parties amended the PPA to vary the definition of Long Stop Effective Date and provide for Conditions Precedent. | ERC approval letter dated |
| 5 | Variation Agreement dated 19th September 2017 | Through agreement dated 19th September 2017 (Second Variation Agreement in respect of the PPA dated 13th May 2013 and as amended on 31st July 2014), Parties agreed to amend the PPA to address the Transmission Interconnector Delay for the period 15th May 2017 to 31st May 2018. The financial impact of the TI delay was addressed through a combination of a lump sum payment and a change in tariff | Instrument of Approval issued on 6th September 2017. |

226. Pursuant to the PPA, it is important to note that the LTWP plant was ready by 27th January 2017, but the Transmission Interconnector (TI) was delayed until 10th September 2018. In accordance with the terms of the PPA and the GOK Letter of Support (issued by the GOK on 28th February 2013), LTWP was entitled to GOK TI Delay DGE Payments from the date – 27th January 2017 until the TI was Operational - in this case, 10th September 2018.

227. Following a series of meetings, LTWP, GOK and KPLC reached an agreement in which:

a. LTWP agreed to write-off any GOK TI Delay DGE from 27th January 2017 – 15th May 2017 (an amount of EUR 17.72 Million);

b. For the period 15th May 2017 – 31st May 2018, the GOK TI Delay DGE amounted to EUR 127M;

228. Although LTWP was entitled to the EUR 127M, the GOK could not pay the full amount and requested a payment structure with LTWP that was mutually beneficial.

229. To record the above-mentioned agreement, the Parties entered into the Second Variation Agreement. LTWP agreed to the start date of GOK TI Delay DGE Payments to be 15th May 2017 instead of 27th January 2017 (in this case LTWP gave GOK a discount of EUR 17.72 Million).

230. With respect to GOK TI Delay DGE for the period 15th May 2017 to 31st May 2018 ("Initial TI Delay DGE Period"), GOK agreed to pay LTWP a lumpsum of EURO 46,000,000 (Euro Forty-Six Million) before 31st August 2017, which was to cover debt obligation to Lenders;

231. To compensate for the difference between the lumpsum payment of EURO 46,000,000 and the actual GOK Initial TI Delay DGE for the period from 15th May 2017 to 31st May 2018 ( i.e. EUR 127M), LTWP agreed to receive a tariff increase of EURO 0.00845 per kWh ("DGE Recovery Period Tariff"), which was to be paid by KPLC /GOK during the period from 1st June, 2018 to 31st May 2024 ("DGE Recovery Period"); and

232. Any TI Delay beyond 1st June 2018 would result in LTWP being paid GOK TI Delay DGE in the normal manner.

233. In view of the foregoing, during the period between 15th May 2017 up to the time the TI Operation occurred (in this case 10th September 2018), a total of Kshs. 10,298,690,000 which were due and payable to LTWP, were transferred to KPLC by Ministry of Energy for onward remission to LTWP - being GOK TI Delay DGE Payments as per the PPA.

### 3.3.4 SUBMISSION BY THE NATIONAL LANDS COMMISSION

**Ms. Kabale Tache, the Ag. Chief Executive Officer of the National Lands Commission accompanied by Mr. Brian Ikol (Deputy Director, Legal Services) and Mr. Joseph Ngaruthi (Principal Land Administration Officer) appeared before the Committee to adduce evidence on the Special Audit Report on Lake Turkana Wind Power Project.**

The Committee was briefed as follows:

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234. The land in question was subject of a court case No. 163 of 2014 filed in Environment and Land Court in Meru.
235. The Court issued a judgment on 19th October, 202and the titles issued to Lake Turkana Wind Power Limited were declared irregular and unlawful. The parties in the suit (Marsabit County Government, Attorney General, Chief Land Registrar and the National Land Commission) who were enjoined in the case were given one year to strictly comply with the existing law on setting apart, failing which the impugned titles would stand cancelled and the suit land shall revert to the community.

# CHAPTER FOUR

## 4.0 COMMITTEE OBSERVATIONS AND FINDINGS

The Committee made the following observations and findings:

**Historical Background of the Project**

236. Lake Turkana Wind Power (LTWP) project is an energy generating plant located in Marsabit County. The wind farm provides 310 MW of renewable energy to Kenya's national grid to be bought at a fixed price by Kenya Power and Lighting Company PLC (Kenya Power) over a 20-year period, in accordance with the Power Purchase Agreement (PPA).

237. The Project was identified as a key flagship project of the Kenya Vision 2030 under the Energy Sector in 2008. The wind plant was identified to address the over-reliance on hydro-generated power, power supply capacity deficit as energy supply could not meet the growing demand and lack of adequate reserve capacity to take care of emergencies.

238. LTWP project was developed within the *Least Cost Power Development Plan*, and is one of Kenya's least cost power projects to date. It was a strategic investment, in line with Kenya's policy on exploiting the potential of our natural resources and remains a critical asset in the energy sector.

239. The project has medium to long term beneficial value for electricity production in Marsabit, which has big wind power potential. Wind power production would command a lower tariff because the substation infrastructure is already in place together with a 220/400kV double circuit line for its evacuation and the dynamic reactive power compensators (DRPCs) at the LTWP sub-station which offers grid stability to the national grid. This line has a capacity to evacuate up to 900MW.

240. Lake Turkana Wind Power Limited (LTWP) is a private company limited by shares which was incorporated under the Companies Act (Chapter 486, Laws of Kenya) on 1st October 2007.

241. The Lake Turkana Wind Power Project is financed by various multilateral and bilateral development finance institutions including (European Investment Bank; African Development Bank; The Trade and Development Banks (TDB), formerly the PTA Bank; East African Development Bank (EADB); PROPARCO; Netherlands Development Finance Company (FMO); Deutsche Investitions- und Entwicklungsgesellschaft (DEG); Eksport Kredit Fonden of Denmark (EKF); and EU Africa Infrastructure Fund (EU-AITF).

242. The company conducted wind tests in Marsabit and submitted a proposal to Government to ~~Finance, Design, Procure, Construct, Install, Test, Commission, Operate and Maintain the~~ plant in accordance with Prudent Operating Practice, and sell the net electrical output exclusively to KPLC.

243. The LTWP project was initiated by the investor who proposed to undertake and finance wind data collection and studies on wind power at Loyangalani in Marsabit that would culminate if proven viable with construction of a power plant. The developer privately undertook all the technical studies and proved to the Ministry that the wind resource available on site was adequate to develop the power plant.

244. The Ministry of Energy and Kenya Power engaged in a public private partnership with LTWP Ltd who were involved with in the Financing, Designing, Procuring, Constructing, Installing, Testing, Commissioning, Operation and Maintenance of the Lake Turkana wind plant. The project was not subjected to competitive bidding as per the applicable Laws (Public Procurement and Disposal Act, 2005 and Regulations, 2006 (Repealed), the Public Procurement and Assets Disposal Act, 2015 and its Regulations and the Public Private Partnership Act, 2013.

245. LTWP Limited was granted a lease of 99 years with effect from 2009. The land upon which the power plant is located was the subject of a court case in Meru (Mohamud Iltarakwa Kochale & 5 others V Lake Turkana Wind Power Ltd & 9 Others (2021) eKLR determined on 19th October 2021 that nullified title deeds for the land on which the Lake Turkana Wind Power project sat.

246. The Court held that the Constitution was not followed when 150,000 acres of community land was allocated to Lake Turkana Wind Power Ltd and that the impugned land belonged to the Marsabit Community by dint of Section 29 of the Community land Act. It however declined to cancel the title deeds, but it instead gave the Marsabit County government, the Attorney-General, the Chief Land Registrar and the National Land Commission one year to regularise the process.

247. The Committee condemns the conduct of the Acting CEO for the National Land Commission for her failure to submit historical background information (when the lease was given out, to which company, a copy of the title and lease agreement) of the impugned land when she appeared before the Committee and subsequent failure to honour committee invitations to address the same.

248. Despite the Lake Turkana Wind Power project being granted a lease for 150,000 acres, the plant was only occupying 40,000 acres of land, needlessly denying the local community land for their use.

249. The court ruled that if the process is not completed by the end of the 12 months, the title deeds for the power producer will automatically be cancelled and the land will revert to the community.

250. As at the time of compiling this report, the Committee established the Commission is engaging with the relevant stakeholders as part of the process of regularization of the land issue.

**Construction of Transmission Line**

251. The Committee established that it was the initial government intention to have LTWP develop the transmission line alongside the power plant. This however changed in the middle of negotiations after contracting LTWP to build a power plant with the construction of a Transmission Line given to M/s. Isolux SA as demonstrated below. The genesis of major challenges affecting the project can be traced to construction of the transmission interconnector.

252. LTWP commissioned a route feasibility study for construction of a transmission line to link the wind power plant at Loiyangalani to the national grid at Suswa sub-station, approximately 428 kilometres from the proposed wind farm site. The feasibility and technical studies by VTT International and KEMA (now DNV GL) was required for technical schedules of the PPA to ensure the safe integration of (intermittent) wind power into the Kenyan grid and to ensure compliance to contractual timelines and obligations by both parties to the PPA.

253. The Ministry of Energy requested Lake Turkana Wind Power Limited to lead the initial phase of the TI implementation including the design elements to construction. MOE further instructed LTWP to work under the supervision of KPLC who was to evaluate and endorse every stage of the route, technical design, tender and construction process also on behalf of MOE.

254. KPLC appointed members to a steering committee on 10th February 2009, to work on the Transmission Interconnector and ensure it was constructed in tandem with the wind power plant as per the Ministry of Energy directive. The Steering Committee comprised of 5 KPLC staff members, the acting KETRACO MD and a LTWP representative.

255. KPLC via a letter on 4th June 2009 (Ref: KPLC1/2/4/1K) informed LTWP that the *"Government has approved development of the plant. Further the Government has decided that Lake Turkana Wind develops the 400kV 428 km transmission lines from Laisamis to Suswa, which is necessary to evacuate the power from the plant on a BOOT basis"*

256. The tender package for construction of the transmission line was compiled by KEMA which was consulting for the Steering Committee, and was approved for issuance by the Steering Committee meeting.

257. The Government of Spain offered concessional tied financing under a Bilateral Financial Cooperation Agreement on 9th October, 2009 with the condition that a Spanish company was awarded the contract for construction of the transmission interconnector. The Government of Spain provided the Spanish contractors with letters confirming the same.

258. With the concessional financing by the Spanish Government and the strategic need to own the transmission line, the Government of Kenya delinked the construction of the power plant to the transmission interconnector. It should further be noted that this decision informed inclusion of a DGE clause in the contract with LTWP to cushion it from any loss that could occur in case of a delay in completion of a transmission interconnector.

259. The Steering Committee invited seven bidders who were prequalified by KEMA to participate in the tender with a closing date of 19th October 2009. KEMA and KPMG presented the technical and financial evaluation to the Steering Committee on 6th and 7th January, 2010 respectively.

260. The technical and financial evaluation reports concluded that Elecnor (a Spanish company) would be the preferred bidder for the project under a BOOT model with KEC International placing second in the ranking and Isolux SA third. In normal procurement processes, Elcnor should have been awarded the contract for the transmission interconnector.

261. The Committee notes that there was a further evaluation not known in law where the bidders underwent financial evaluation on the basis that government taking over the implementation of the transmission line project would avail concessionary funding. In such a scenario, only the Spanish companies would be eligible for further evaluation.

262. With GoK taking over the transmission line, the two Spanish companies would be eligible with M/s Isolux being the preferred bidder ahead of M/s. Elecnor supposedly based on concessionary funding.

**Project implementation**

263. The Ministry of Energy wrote to Embassy of Spain in Nairobi on 14th January 2010 attaching the technical and financial evaluation reports by KEMA and KPMG, the Environmental Impact Assessment (EIA) License and letters of reliance from VTT International and KEMA (to MOE and KPLC) dated August 2009 and requested an additional contribution towards the cost of the TI of EUR 136,970,018 based on the bid by M/s. Isolux that had been identified as the preferred bidder. The Spanish Government responded on 19th January 2010 confirming the increase in financial support to EUR 110

Million. This confirms that the procurement was done by the Government of Kenya through KETRACO and not the LTWP.

264. The GOK formally communicated its decision to undertake a public-sector implementation of the TI project through KETRACO vide a letter referenced ME/CONF/3/2/8 dated 30th January 2010.

265. KETRACO took charge on construction of the transmission line and invited M/s. Isolux to negotiations prior to contract award on 1st and 2nd March 2010 vide a letter addressed to M/s. Isolux dated 17th February 2010 and copied to LTWP.

266. KETRACO entered into the Contract on 30th December 2011 for a period of 24 months from the date of the Final Notice to Proceed. The date was extended the first time to 30th June, 2014, and further extended a second time for 2.5 years to 30 December, 2016. The contract was delayed by a 32-month period between the contract signing and issuing of the final notice to proceed (FNTP) to Isolux on 13th August 2014.

267. The delay was occasioned by the financing arrangements and satisfaction of all the covenants and conditions being undertaken between GOK, Government of Spain, the (Spanish) Commercial Banks providing the export credit facility and other stakeholders.

268. Despite several extensions, the transmission line was not completed in time, resulting in a further third extension to 31st December, 2017.

269. Following the issuance of the Final Notice To Proceed, the M/S Isolux had a timeline of 13th June, 2016 to complete the transmission interconnector which was before the company started facing financial challenges.

270. The Project faced further delays due to wayleave acquisition challenges encountered by KETRACO. The wayleaves along the 428-kilometer stretch was required to be availed to Isolux within 210 days from FNTP i.e. by approximately 13th March 2015. However, there were delays in acquisition of wayleave along the stretch of the transmission line. KETRACO issued Notice to Proceed (NTP) for various sections beyond the 210-day timeline. Such sections include AP19-21 (18KM) on 31st July 2015, AP21-23 (57KM) on

21st October 2015 and AP29-45 (70KM) on 18th January 2016 – dates that were beyond the agreed timelines for provision of wayleave access as per KETRACO's obligations.

271. The KETRACO Chairperson wrote a letter to the Cabinet Secretary for Energy on 14th September, 2016 informing him on the delay in completion of the Transmission Interconnector and requesting for permission to negotiate with LTWP Ltd. to avoid incurring Deemed Generated Energy from January 2017. No response was provided to indicate if this permission was granted. Further, the Committee invited the then Cabinet Secretary for Energy to provide information on this matter but he failed to honour the Committee's invitation.

272. The Resettlement Action Plan of May 2017 by KETRACO indicated that the delays, challenges and variances from its original wayleave acquisition plan and meetings of the wayleave Coordination Progress Meetings held in February 2018 confirmed that the wayleave acqusition was still incomplete. This was significantly beyond the DGE TI delay timeline of 27th January, 2017.

273. KETRACO therefore failed to meet its contractual obligation in construction of the transmission line by failing to secure wayleave access within the agreed contractual timeline. This may not have been solely KETRACO's blame; the government through the parent Ministry in charge of Energy should have foreseen this and secure all the necessary wayleaves before entering into contracts with the LTWP and M/s. Isolux SA.

274. M/s. Isolux faced financial challenges in 2016 and filed for insolvency on 31st March 2017. This timeline coincided with the period when the transmission interconnector would have been completed. It also coincided with the period when KETRACO had challenges in wayleave acquisition. The failure of Isolux SA to complete the transmission line within the relevant timelines to avoid TI DGE Delay payments by GoK can be attributed to the delay in wayleave acquisition as well as the financial challenges faced by the company.

275. KETRACO invoked, Clause 15.2(h) of the PPA, terminated the contract with M/s Isolux and recalled the performance security of Kshs.1,576,200,000 (EUR14,200,000) on 14th August, 2017. At the time of termination of the contract, out of the varied contract sum of

Kshs.17,406,159,818 (EUR145,990,227), a total of Kshs.10,827,050,072 (EUR83,542,053) had been paid to M/s. Isolux Ingeniers SA by KETRACO.

276. The Consortium of NARI Group Corporation and Powerchina Guizhou Engineering Co. Ltd was invited on 30th November, 2017 for the completion of the transmission interconnector for Lake Turkana Wind Power project.

277. The Consortium was procured through a specially permitted procurement procedure approved by Dr. Kamau Thugge, then PS at the National Treasury on 10th January, 2018 was declared the most responsive and recommended for the award.

278. The consortium was contracted on 30th January 2018, and completed the transmission line on 10th September, 2018. The Consortium had agreed to a special contractual condition where they committed to pay the 'Deemed Generated Energy' of 10 million euros per month if they failed to complete the project within the stipulated contractual timeline.

279. As at 1st March 2022, a total of USD 99,712, 246.19 had been paid to the Consortium of NARI Group Corporation and Powerchina Guizhou Engineering Co. Ltd, leaving an outstanding balance of USD 9,774,623.48 plus accrued penalties.

280. After the termination of the contract agreement between KETRACO and M/s. Isolux, a total of Kshs.11,061,698,560 was incurred to complete the transmission interconnector, an additional cost of Kshs.3,179,062,348 and a 17% variation over the original cost, which was within the threshold of 25 percent as per the Public Procurement Laws.

281. It was curious to the Committee that the NARI Group had agreed to negotiate on the demand of Kshs1.1 billion interest and penalty charges from the Government of Kenya. However, this option has not been exercised by the Ministry of Energy to date.

**Deemed Generated Energy (GOK TI DELAY DGE) Expenditure and Budgeting for Deemed Generated Energy (DGE)**

282. The Committee noted that LTWP Ltd completed the power generation plant on 27th January, 2017 but the transmission line was completed on 24th September, 2018, leading to a 21-month delay that led to payment of DGE penalties by the Government of Kenya.

283. The delay in completion of the transmission line by M/s. Isolux SA, energy was not evacuated from the LTWP plant resulting in accrued penalties to GOK arising from Deemed Generated Energy (DGE) claims amounting to Kshs.18,499,082,672 (Euro 167,261,145) for the period 27th January, 2017 to 10th September, 2018.

284. Following a series of meetings, LTWP, GOK and KPLC reached an agreement in which:

a. LTWP agreed to write-off any DGE claims from 27th January 2017 – 15th May 2017 (an amount of EUR 17.72 Million);

b. For the period 15th May 2017 – 31st May 2018, the DGE amounted to EUR 127M;

285. Although LTWP was entitled to the EUR 127M, the GOK could not pay the full amount and requested a payment structure with LTWP that was mutually beneficial. To record the above-mentioned agreement, the Parties entered into the Second Variation Agreement in which TI Delay DGE Payments to be 15th May 2017 instead of 27th January 2017. LTWP gave GOK a discount of EUR 17.72 Million.

| | Payment period | No of days | Amount (Euro) | Exchange Rate | Amount (Kshs) |
|---|---|---|---|---|---|
| 1 | 15th May 2017- 31st May 2018 | 381 | 127,577,128 | 110.60 | 14,110,030,392 |
| 2 | 1st June 2018-10 September 2018 | 101 | 39,684,017 | 110.60 | 4,389,052,280 |
| | | | 167,261,145 | | 18,499,082,672 |

286. With respect to DGE claim for the period 15th May 2017 to 31st May 2018 ("Initial TI Delay DGE Period"), GOK agreed to pay LTWP a lumpsum of Euro 46,000,000 (Euro Forty-Six Million) before 31st August 2017, which was to cover debt obligation to Lenders.

287. To compensate for the difference between the lumpsum payment of EURO 46,000,000 and the actual DGE amount for the period from 15th May 2017 to 31st May 2018 ( i.e. EUR 127M), LTWP agreed to receive a tariff increase of EURO 0.00845 per kWh ("DGE Recovery Period Tariff"), which was to be paid by KPLC /GOK during the period from 1st June, 2018 to 31st May 2024 ("DGE Recovery Period"); and any TI Delay beyond 1st June 2018 would result in LTWP being paid GOK TI Delay DGE in the initially agreed manner.

288. The increase in tariff by EURO 0.00845 kw/h arising from poor execution of the contract is being borne by the power consumers through increased power charges.

289. The agreement on Deemed Energy Generated provided that if the actual revenue generated over the DGE period is less than EUR 127,577,128.32 paid out as GOK TI Delay Payment to LTWP, then LTWP shall refund the excess to GOK. At the calculation date, it was established that there was an excess of €6,173,296 refundable to GOK.

290. LTWP wrote to Kenya Power on several occasions from 30th September, 2019 seeking for details of remittance details for refund of the excess of €6,173,296. Vide a letter ref.MOE/3/1(44) dated 3rd February, 2022, the Ministry of Energy wrote to the National Treasury indicating that the details of the bank account for refund of excess DGE payment made to LTWP Ltd. that had been provided to the company were insufficient and the amounts remitted had been bounced back. The correct account has since been provided and the National Treasury has confirmed receipt of the same.

291. The Committee noted with concern that this back and forth between the government departments lasting over 32 months and the failure to submit the correct bank details to the LTWP unnecessarily denied taxpayers resources that could have been utilized in different sectors of the economy or even settle pending bills due to the Consortium of NARI Group Corporation and Powerchina Guizhou Engineering Co. Ltd. Further, it was inconceivable that provision of a correct bank details can take more than two years. It was not lost on the

Committee that had this money been owing to the LTWP or any other party, the said amount could have attracted interest on delayed payment.

**Purchase Power Agreement**

292. Purchase Power Agreements were negotiated by the parties and approved by the Energy Regulatory Commission (ERC) on 11th December, 2009 and executed on 29 January, 2010 between KPLC and LTWP Ltd. Among the Conditions Precedent in the PPA between Kenya Power and LTWP is the requirement for a generation license having been issued to the LTWP. This therefore meant that for the PPA to become effective, then LTWP ought to have been issued with a generation license after approval of the PPA by the Energy and Petroleum Regulatory Authority (then Energy Regulatory Commission). The PPA is normally approved before issuance of the license for purposes of unlocking finances for the developer and to enable the developer attain financial close.

293. The Power Purchase Agreements had a total of three amendments dated 29th September, 2011, 14th September, 2012 and 13th May, 2013 and a further two variations

294. The first amendment to the PPA between LTWP Ltd and KPLC dated 29th September, 2011 was to incorporate a change in the security support that was being provided to LTWP Ltd by the Government of Kenya and amend the fact that the Transmission Interconnector was now to be developed and owned by KETRACO and not LTWP Ltd. The Committee notes that this was the genesis of the DGE; had LTWP been responsible to do the TI, such a clause could not have been included in the Agreement.

295. Under clauses 10.9 and 14.6(c) of the PPA, the Government of Kenya was to provide a Sovereign Guarantee to LTWP Ltd for a commercial default if KPLC was unable to fulfil its payment obligations under the agreement. However, in May 2010 the government resolved that the Sovereign Guarantee could not be provided, and instead attempted to structure an alternative security package with the World Bank and the Multilateral Investment Guarantee Agency (MIGA) to cover payments in the event of a termination of PPA (political risk mitigation). This alternate also comprised a letter of credit guaranteed by the International Development Association (IDA) to cover payment default (KPLC credit risk mitigation).

Further the first amendment approved the increase of the energy charge rate and reviewed the energy threshold, set out in the original PPA, in view of the increase in total costs for the project since the execution of the original PPA.

296. The Committee noted that the World Bank withdrew from the agreement basing its decision on among other factors high political risks, perceived inability of the country to utilize the capacity being generated and that the 26 months proposed for construction of the TI being adequate. It was however noted that the fears of the World Bank were disapproved as the concluded TI was able to evacuate all the generated energy, political environment was stable and that the TI could be concluded within 26 months going by the evidence that NARI group was able to conclude majority of the TI within six months.

297. The government made a policy decision to instead use Partial Risk Guarantee from the Development Finance institutions such as World Bank, Multilateral Investment Guarantee Agency (MIGA) and Africa Development Bank (AfDB). The purpose of the PRG was to backstop the commercial risks of KPLC. The Lake Turkana Wind Power project benefited from a PRG from AfDB.

298. In addition, the government was required to issue a Letter of Support (LoS) with respect to political risks and compensation payable to LTWP upon termination of the PPA. The LoS are not explicit guarantees and are cleared by the Attorney General before they are issued. The Committee noted with concern that the Attorney General does not draft Letters of Support and that that they are only presented to the Attorney General's office for clearance. It was not clear the kind of clearance the Office of the Attorney General does considering that the contract they seek to clear are already signed.

299. It was further noted with concern that the office of the Attorney General did not draft the PPA between LTWP and KPLC considering that such contracts bind the government.

300. Payments made to LTWP emanated from the Vote of the Ministry of Energy in line with the PPA between KPLC and LTWP and not the Consolidated Fund.

# CHAPTER FIVE

## 5.0 COMMITTEE RECOMMENDATIONS

The Committee made the following recommendations:

1. The Accounting Officer at the Ministry of Energy and The National Treasury should be guided by the provisions of Article 226 of the Constitution and ensure competition whenever contracting for goods and services. The same applies to Accounting Officers for both the Kenya Power and the Kenya Electricity Transmission Company.

2. The then Accounting Officers at the Ministry of Energy and KETRACO should be held accountable for not conducting an independent legal risk assessment prior to execution of contracts for a capital project of this magnitude. The project was the single largest public private partnership in Kenya and no risk analysis was carried out to establish potential challenges to the project such as delayed construction of transmission line. These infractions exposed the Government, taxpayers and other partners to value for money and litigation risks for delayed payments to contractors.

3. The then Accounting Officers (between 2019 to 2022) for the Ministry of Energy and The National Treasury should be reprimanded for their inordinate procrastination (for more than 30 months) in providing correct bank details to the LTWP in which a refund of €6,173,296 was to be deposited.

4. The EACC should investigate the KETRACO management on the contract management and implementation for the transmission interconnector including the failure to secure wayleaves and signing addenda to the TI contract that led to delay in the completion of the line and exposed Kenyan taxpayers to GOK TI DGE Delay payments amounting to Kshs.18,499,082,672 and higher energy bills.

5. The Government of Kenya should build technical and financial capacity of Public Finance Management Officers in implementing projects through Public Private Partnerships (PPP). This will enhance efficiency and effectiveness in executing such projects.

6. The Office of the Attorney General should be involved in drafting and or reviewing provisions of Purchase Power Agreements before they are signed to ensure terms included in such agreements are competitive and do not disadvantage the Kenyan taxpayers.

7. The Cabinet Secretary for the Ministry of Energy should urgently convene a stakeholders' meeting to reconcile all the outstanding payments due to the Consortium of NARI Group Corporation & POWERCHINA GUIZHOU Engineering Co. Ltd and settle them.

8. The Cabinet Secretary for The National Treasury should urgently avail funds for settlement of claims due to The Consortium of NARI Group Corporation & POWERCHINA GUIZHOU Engineering Co. Ltd. Part of the said funds should be drawn from the €6,173,296 refunded by LTWP to GoK in March 2022.

9. The management of the Lake Turkana Wind Power land, the Governor of Marsabit County government, the Attorney-General, the Chief Land Registrar and the National Land Commission should expedite orders issued in *Mohamud Iltarakwa Kochale & 5 others V Lake Turkana Wind Power Ltd & 9 Others (2021) eKLR*. As the team regularizes the title, it should be guided by the provisions of the Community Land Act, 2016 on Marsabit Community interests and exploitation of the 110,000 of idle land for their economic interests.

10. The Cabinet Secretary for the Ministry of Lands and the Chairperson of the National Land Commission should always adhere to the Land Community Land Act 2016 whenever community land is converted to other categories of land tenure.

**Signed ..........................................................................** **Date...31/05/2022...........**

**The Hon. Abdullswamad Sharrif Nassir, MP**

**(Chairperson)**

KENYA NATIONAL ASSEMBLY

PUBLIC INVESTMENTS COMMITTEE

ADOPTION LIST: THE REPORT OF THE PUBLIC INVESTMENTS COMMITTEE ON ITS CONSIDERATION OF THE SPECIAL AUDIT REPORT ON THE LAKE TURKANA WIND POWER PROJECT

| | NAME | SIGNATURE |
|---|---|---|
| 1. | The Hon. Abdullswamad Shariff Nassir, MP *(Chairman)* | |
| 2. | The Hon. Ahmed Abdisalan Ibrahim, MP *(Vice-Chairman)* | |
| 3. | The Hon. Tom Joseph Kajwang, MP | |
| 4. | The Hon. Kandie Kipyegon Joshua, M.P | |
| 5. | The Hon. Raphael Bitta Sauti Wanjala, MP | |
| 6. | The Hon. Teddy Mwambire, MP | |
| 7. | The Hon. Esther Muthoni Passaris, MP | |
| 8. | The Hon. Mary Wamaua Njoroge, MP | |
| 9. | The Hon. Rahab Mukami Wachira, MP | |
| 10. | The Hon. Rashid Kassim Amin, MP | |
| 11. | The Hon. Thuku Zachary Kwenya, M.P | |
| 12. | The Hon. Omar Mohamed Maalim Hassan, MP | |
| 13. | The Hon. Mathias Nyamabe Robi, MP | |
| 14. | The Hon. Mishi Mboko, MP | |
| 15. | The Hon. James Kamau Githua Wamacukuru, M.P | |
| 16. | The Hon. Julius Kibiwott Melly, MP | |
| 17. | The Hon. Babu Owino Paul Ongili, MP | |
| 18. | The Hon. Paul Kahindi Katana, MP | |
| 19. | The Hon. Mohamed Hire Garane, M.P. | |

# Committee Minutes

## MINUTES OF THE 111TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON WEDNESDAY 8TH DECEMBER, 2021 IN THE COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 10.30 A.M.

**PRESENT**

1. The Hon. Abdullswamad Sharrif Nassir, MP **(Chairman)**
2. The Hon. Rashid Kassim Amin, MP
3. The Hon. Esther Muthoni Passaris, MP
4. The Hon. Omar Mohamed Maalim Hassan, MP.
5. The Hon. Mohamed Hire Garane, M.P
6. The Hon. Julius Kibiwott Melly, MP
7. The Hon. Thuku Zachary Kwenya, M.P
8. The Hon. Teddy Mwambire, MP

**ABSENT WITH APOLOGY**

1. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
2. The Hon. Paul Kahindi Katana, MP
3. The Hon. Tom Joseph Kajwang, MP
4. The Hon. Raphael Bitta Sauti Wanjala, MP
5. The Hon. Joshua Kipyegon Kandie, MP
6. The Hon. Mishi Mboko, MP
7. The Hon. Babu Owino Paul Ongili, MP
8. The Hon. Mathias Nyamabe Robi, MP
9. The Hon. Rahab Mukami Wachira, MP
10. The Hon. Mary Wamaua Njoroge, MP
11. The Hon. James Kamau Githua Wamacukuru, M.P

**IN ATTENDANCE**
**NATIONAL ASSEMBLY SECRETARIAT**

| | | |
|---|---|---|
| 1. Mr. Evans Oanda | - | Senior Clerk Assistant |
| 2. Mr. Mohamed Boru | - | Second Clerk Assistant |
| 3. Ms. Euridice Nzioka | - | Audio Recording Officer |
| 4. Mr. Cyrille Mutali | - | Fiscal Analyst |
| 5. Mr. Moses Musembi | - | Sergeant-at-Arms |
| 6. Mr. Abdimalik Ahmed | - | Intern |

**IN ATTENDANCE**

| | | |
|---|---|---|
| 1. Mr. Fredrick Odhiambo | - | Deputy Auditor General |
| 2. Mr. Andrew Kintu | - | Deputy Director, Audit |
| 3. Mr. Dickson Ocharo | - | Manager, Audit |
| 4. Mr. Henry Manegene | - | Manager, Audit |

**MIN/PIC/2021/755: PRELIMINARIES**

At the early development stage of the project, and as Kenya did not have an existing wind atlas, there was no reliable information available regarding the wind regime in the wider geographical area around the identified potential wind farm location. There were, most certainly, general expectations that the winds were more than adequate to successfully build and operate a wind farm but in order to ensure an accurate/exact reflection of the prevailing wind regime and the subsequent business case, it was necessary to go through a wind measurement campaign with a reputable wind measurement company or institute.

LTWP appointed one of the world's most renowned wind energy institutes, DEWI (Deutsche Windenergie Institut), to run its wind measurement study. DEWI assisted Lake Turkana Wind Power in setting up 9 met masts (in 2007/2008). LTWP collected wind data throughout which resulted in a refined and bankable understanding of the prevailing annual wind conditions on the designated project site.

Bearing in mind that substantial amount of risk capital was going to be expended on wind data acquisition and analysis to ascertain the areas suitability and viability for wind power development, GOK did not object to the study being done by LTWP. If the studies had indicated an inadequacy of wind resource, the project proposers would have taken the loss in terms of money and time spent and government would not have compensated them for this effort.

**MIN/PIC/2021/759: WHETHER THE GOK HAD ENTERED INTO A CONTRACT WITH LTWP TO UNDERTAKE TESTS ON VIABILITY OF A WIND POWER PROJECT IN LAKE TURKANA**

GOK had not entered into a contract with LTWP to undertake tests on the project's viability or, for that matter, any other project development related activity.

All development related work was undertaken at the sole risk and cost of LTWP and its shareholders. The onus was on LTWP and its shareholders to carry out the relevant supply side investigations in order to demonstrate to GOK (and other stakeholders) that it was viable to develop a large-scale wind farm facility on the proposed site.

**MIN/PIC/2021/760: CONTENTS OF NEEDS ANALYSIS REPORT FOR THE PROJECT AND ITS VIABILITY WITH REGARD TO INCREASE OF KENYA'S POWER GENERATION**

The needs analysis with respect to the Project (from a demand perspective) was undertaken by the GOK (with input from the Ministry of Energy and the Energy Regulatory Commission (now Energy Petroleum Regulatory Authority)) as well as by Kenya Power and Lighting Company PLC (KPLC). It is this information which informed the findings and planning strategy of GOK which is provided for in the Least Cost Power Development Plan 2011 - 2031. In addition to the aforesaid, we would highlight the following:

iv. The Least Cost Power Development Plan (LCPDD) recognized wind power generation in Marsabit to be competitive with other sources of power electricity generation. The plan also recognizes potential future hydro sites will not be competitive for hydropower generation and therefore recognized the need for accelerated wind power development;

v. The LTWP Project also provides various ancillary services e.g. injecting reactive power (capacitive and inductive) into the Kenyan Grid. This enhances the network's voltage control capability and brings increased stability to the Grid. These services are provided by the Project at no additional cost to KPLC.

(d) In terms of financial viability LTWP, with a tariff of Euro cents 7.52 for the twenty-year PPA term was at the time of the proposal competitive and comparable to the KENGEN geothermal energy power generation projects which were and still are subsidized by the government through provision of funds for geothermal drilling and exploration costs. The ability of KenGen to obtain concessional financing thus lowers the financing costs, which helps them to achieve lower tariffs. Furthermore, development of an additional wind power capacity in Marsabit which has a very big unexploited wind power potential, would command a lower tariff because the substation infrastructure is already in place together with a 220/400kV double circuit line for its evacuation and the dynamic reactive power compensators (DRPCs) at the LTWP sub-station which offers grid stability to the national grid. This line has a capacity to evacuate up to 900MW. LTWP has also displaced fuel surcharges which is approximated at about to EUR 100 Million per annum.

(e) Therefore, LTWP project was properly developed, within the LCPDP, and remains one of Kenya's least cost power projects, to date. It was a strategic investment, in line with Kenya's policy on exploiting the potential of our natural resources and remains a critical asset in the energy sector.

**MIN/PIC/2021/761: CIRCUMSTANCES UNDER WHICH LTWP WAS INVOLVED IN PART OF THE PROCUREMENT PROCESSES SUCH AS INVITATION TO TENDER (SUPPOSEDLY ON BEHALF OF KPLC OF KPLC FOR LOT 3), AND 400KV TRANSMISSION LINE FROM LOIYANGALANI1 AND THE CONSTRUCTION OF THE TRANSMISSION LINE (LOT 3).**

LTWP has always undertaken the development of the LTWP Project on an open and transparent basis and with the aim of including and accommodating the views of all stakeholders.

The LTWP Project involved the construction of a power generation facility. The obligation to develop the high voltage transmission interconnection infrastructure required to offtake power from the any power generation facility would ordinarily be a public sector obligation. However, based on extensive discussions with GOK, it was

However, given that successful implementation of the Transmission Works was intrinsically linked to the bankability of the generation project, LTWP expressed its willingness to provide support to KETRACO (given it was newly incorporated and did not initially have the requisite capacity or bandwidth), as and when required by KETRACO, in order to assist KETRACO with the implementation of the Transmission Works. To this end, KETRACO and LTWP entered into a co-ordination and interface agreement largely focused on resettlement and land acquisition issues, so as to ensure that as far as commercially possible, LTWP could ensure that KETRACO was complying with its contractual obligations under the contracts relating to the Transmission Works and was able to deliver the relevant rights of way / wayleaves to KETRACO's contractor so as to ensure the timely completion of the Transmission Works.

Notwithstanding the good faith support offered by LTWP, it was KETRACO (and by extension GOK (through the Ministry of Energy and the National Treasury)) who undertook the review of, and approved, all contracts entered into by KETRACO in connection with the Transmission Works (including analyzing the risks allocated to and assumed by KETRACO under these contracts). As we understand it, the approval process included procuring the requisite KETRACO board approvals as well as clearance through all GOK internal approval processes (as a result of budgetary support being required to make contractual payments). KETRACO is the entity which had to satisfy itself as to the satisfaction of conditions precedent required for the issuance of the full notice to proceed under the relevant construction contracts.

LTWP was not in any way responsible for contract management of the construction contracts for the Transmission Works. The Committee should note that the completed Transmission Works are owned by KETRACO and are managed by KETRACO and KPLC with no involvement from LTWP. In accordance with the provisions of the Kenyan Grid Code, LTWP has entered into a grid connection agreement with KETRACO pursuant to which it has the right to evacuate power from the LTWP Plant through the Transmission Works.

**MIN/PIC/2021/762: WHY LTWP FAILED TO INSTALL A FUNCTIONAL METERING SYSTEM FOR PURPOSES OF MEASURING TOTAL PRODUCTION UNITS AND DETERMINING ACCURATELY THE PRODUCTION AND PURPORTED ENERGY CHARGES. FURTHER, LACK OF INSTALLING THE SCADA TO CONFIRM QUANTITY OF POWER GENERATED BY THE TURBINE.**

The Metering System for the delivery point to KPLC (identified as Delivery Point B in the PPA), connected at 220kV voltage level, consisting of the Main Metering equipment and Back-up Metering equipment, that can meter both the exported power and the imported power between LTWP and KPLC, were installed and ready for power evacuation by 26th September 2016. The other delivery point referred to in the PPA

the date - 27th January 2017 until the TI was Operational - in this case, 10th September 2018.

Following a series of meetings, LTWP, GOK and KPLC reached an agreement in which:

1. LTWP agreed to write-off any GOK TI Delay DGE from 27th January 2017 - 15th May 2017 (an amount of EUR 17.72 Million);
2. For the period 15th May 2017 - 31st May 2018, the GOK TI Delay DGE amounted to EUR 127M;
3. Although LTWP was entitled to the EUR 127M, the GOK could not pay the full amount and requested a payment structure with LTWP that was mutually beneficial.

To record the above-mentioned agreement, the Parties entered into the Second Variation Agreement whereby:

1. LTWP agreed to the start date of GOK TI Delay DGE Payments to be 15th May 2017 instead of 27th January 2017 (in this case LTWP gave GOK a discount of EUR 17.72 Million);
2. With respect to GOK TI Delay DGE for the period 15th May 2017 to 31st May 2018 ("Initial TI Delay DGE Period"), GOK agreed to pay LTWP a lumpsum of EUR 46,000,000 (Euro Forty-Six Million) before 31st August 2017, which was to cover debt obligation to Lenders;
3. To compensate for the difference between the lumpsum payment of EURO 46,000,000 and the actual GOK Initial TI Delay DGE for the period from 15th May 2017 to 31st May 2018 (i.e. EUR 127M), LTWP agreed to receive a tariff increase of EURO 0.00845 per kWh ("DGE Recovery Period Tariff"), which was to be paid by KPLC /GOK during the period from 1st June, 2018 to 31st May 2024 ("DGE Recovery Period"); and
4. Any TI Delay beyond 1st June 2018 would result in LTWP being paid GOK TI Delay DGE in the normal manner.
5. From June 1st until the TI Operation Date, the table below sets out the additional TI Delay DGEs which were incurred and paid by GOK (as per the analysis done by LTWP):

| GOK TI Delay DGE Invoice Number | GOK TI Delay DGE Period | Amount Invoiced excl. VAT |
|---|---|---|
| 100010 | Jun-18 | € 11,784,768 |
| 100011 | Jul-18 | € 12,177,593 |
| 100012 | Aug-18 | € 12,177,593 |
| 100013 | 1 Sep to 23 Sep 2018 | € 9,057,049 |
| | Total | € 45,197,003 |

activity. All development related work was undertaken by LTWP and its shareholders.

5. With respect to the transmission works comprising the construction of 428km transmission line from Loiyangali to Suswa, an ad hoc steering committee was created which comprised of members of the Kenya Electricity Transmission Company (KETRACO), KPLC and GOK and LTWP. It was through this steering committee that the procurement process for a contractor to build the Transmission Line was to be implemented (including tender evaluation).
6. Following the issuance of the relevant request for proposals and subsequent evaluation of bids, but before any contractual award was made by LTWP, the Government of Spain made available certain concessional financing and grants to GOK to be utilized by GOK in the financing for that portion of the Transmission Works comprising the circa 428km transmission line from Loiyangali to Suswa.
7. Following bilateral discussions between GOK and the Spanish Government, LTWP were subsequently informed by GOK that the no part of the Transmission Works would be carried out on a concessional basis by LTWP but would be undertaken solely by the public sector as one of the first legacy projects to be implemented by KETRACO (which at the time was newly created following the unbundling of the energy sector). At this point, LTWP ceased to be involved in the further evaluation of any technical or financial bids for the Transmission Works. LTWP were informed by GOK that financing of the Transmission Works would be provided through concession loans and grants from the Spanish Government and budgetary allocations to be made by GOK.
8. In accordance with the terms of the PPA and the GOK Letter of Support (issued by the GOK on 28th February 2013), LTWP was entitled to GOK TI Delay DGE Payments from the date - 27$^{th}$ January 2017 until the TI was Operational - in this case, 10$^{th}$ September 2018.
9. To record the above-mentioned agreement, the Parties entered into the Second Variation Agreement whereby LTWP agreed to the start date of GOK TI Delay DGE Payments to be 15th May 2017 instead of 27th January 2017 (in this case LTWP gave GOK a discount of EUR 17.72 Million);
10. With respect to GOK TI Delay DGE for the period 15$^{th}$ May 2017 to 31$^{st}$ May 2018 ("Initial TI Delay DGE Period"), GOK agreed to pay LTWP a lumpsum of EUR 46,000,000 (Euro Forty-Six Million) before 31st August 2017, which was to cover debt obligation to Lenders;
11. To compensate for the difference between the lumpsum payment of EURO 46,000,000 and the actual GOK Initial TI Delay DGE for the period from 15th May 2017 to 31st May 2018 (i.e. EUR 127M), LTWP agreed to receive a tariff increase of EURO 0.00845 per kWh ("DGE Recovery Period Tariff"), which was

**MINUTES OF THE 113TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON THURSDAY 9TH DECEMBER, 2021 IN THE COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 10.30 A.M.**

**PRESENT**

1. The Hon. Abdullswamad Sharrif Nassir, MP **(Chairman)**
2. The Hon. Rashid Kassim Amin, MP
3. The Hon. Esther Muthoni Passaris, MP
4. The Hon. Omar Mohamed Maalim Hassan, MP.
5. The Hon. Mohamed Hire Garane, M.P
6. The Hon. Julius Kibiwott Melly, MP
7. The Hon. Thuku Zachary Kwenya, M.P
8. The Hon. Teddy Mwambire, MP
9. The Hon. Babu Owino Paul Ongili, MP

**ABSENT WITH APOLOGY**

1. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
2. The Hon. Paul Kahindi Katana, MP
3. The Hon. Tom Joseph Kajwang, MP
4. The Hon. Raphael Bitta Sauti Wanjala, MP
5. The Hon. Joshua Kipyegon Kandie, MP
6. The Hon. Mishi Mboko, MP
7. The Hon. Mathias Nyamabe Robi, MP
8. The Hon. Rahab Mukami Wachira, MP
9. The Hon. Mary Wamaua Njoroge, MP
10. The Hon. James Kamau Githua Wamacukuru, M.P

**IN ATTENDANCE**

**NATIONAL ASSEMBLY SECRETARIAT**

1. Mr. Evans Oanda - Senior Clerk Assistant
2. Mr. Mohamed Boru - Second Clerk Assistant
3. Ms. Marlene Ayiro - Legal Counsel
4. Ms. Euridice Nzioka - Audio Recording Officer
5. Mr. Cyrille Mutali - Fiscal Analyst
6. Mr. Moses Musembi - Sergeant-at-Arms
7. Mr. Abdimalik Ahmed - Intern
8. Ms. Brenda Wekesa - Intern

**IN ATTENDANCE**

1. Mr. Fredrick Odhiambo - Deputy Auditor General
2. Mr. Andrew Kintu - Deputy Director, Audit
3. Mr. Dickson Ocharo - Manager, Audit
4. Mr. Henry Manegene - Manager, Audit

situation resulted in importation by GOK of up to 230 MW of auto diesel fired emergency power to stabilize supply against rising demand.

(b) In 2008, the 300MW Lake Turkana Wind Power Plant (LTWP) was identified as a key flagship project of the Kenya Vision 2030 under the Energy Sector as one of the many power generations identified to address the above concerns. Other projects conceptualized at the same period included; KenGen Olkaria I&IV (280 MW), Orpower 4 (52 MW), and KenGen Ngong Wind (20 MW). These projects were meant to

i. Enhance Kenya's power generation capacity

ii. Diversify energy mix in the country at least cost, by tapping geothermal energy, wind, solar and biomass resources;

iii. Mitigate the high cost of electricity to consumers by reducing or totally eliminating expensive thermal power generation in Kenya's electricity supply matrix; and

iv. Provision of reliable, environmentally, secure and cost-effective complementary electricity supply sources to hydropower generation which is sharply impacted adversely by droughts.

(c) Wind power generation complements hydropower generation and is therefore critical in the energy mix for the following reasons:

i. It enables reduction of water utilization at hydropower stations to meet average power demand, thus saving significant amount of water for use to generate electricity to meet morning and evening peak power demand, instead of using relatively more expensive thermal power plants to meet peak demand.

ii. Under dry hydrology (dry season) wind speeds rise substantially, thus boosting load factors of wind power plants and by extension helps to conserve the little available water in the reservoirs for use during peak power demand hours while at the same time mitigating the demand for increased thermal power generation. This benefit has already been realized by the country since the LTWP Project became operational resulting in savings of over KES 31 billion as a result of the country being able to rely on the power generating by the LTWP Project as opposed having to dispatch thermal plants whilst at the same time allowing for the preservation hydro resources.

iii. Given high wind regime speeds registered in Marsabit, the average load factor of LTWP is even better than for many hydro power plants;

iv. The Least Cost Power Development Plan (LCPDD) recognized wind power generation in Marsabit to be competitive with other sources of power electricity generation. The plan also recognizes potential future hydro sites will not be

The Ministry of Energy to submit a needs analysis report on the energy needs of the country at the time of conceptualizing the LTWP project.

i. Justifications of the Terms and Conditions of the Power Purchase Agreement and whether this was validated by the Attorney-General.

**MIN/PIC/2021/776: WHY THE POWER PURCHASE AGREEMENT (PPA) WAS EXECUTED WHILE AWARE THAT THERE WAS NO SUBSTATION AT LOIYANGALANI AND NO TRANSMISSION LINE TO LINK THE LTWP PROJECT WITH THE NATIONAL GRID AT THE SUBSTATION IN SUSWAT?**

Ordinarily transmission lines and power stations are constructed concurrently unless a power station is to be constructed in an area adequately served by existing transmission line.

The twenty-six (26) months line construction period included in the PPA was negotiated on the basis of the eighteen months that LTWP had put in the tender as one of the conditions for bidders for the line construction to be pre-qualified.

Therefore, the wind power plant and the line had to be completed at the same time in order to avoid having costly idle power generation capacity. In addition, there was the need to keep the validity of the tender prices of various components of the wind farm contract and subcontracts.

**Committee Observations**

**The Committee made the following observations:**

1. The decision by the Ministry of Energy to delink LTWP Ltd. from the construction of the transmission line and award it to a third party - M/s Isolux - on the ground that the Spanish Government was financing Isolux was responsible for the delay in construction and also payments for the DGE.
2. It was further irregular for M/S Isolux to be awarded a contract when it was not the least evaluated bidder.

**Committee Resolution**

The Ministry of Energy to provide correspondences with the Spanish Govt relating to financing of the project the Isolux.

**MIN/PIC/2021/777: THE JUSTIFICATION FOR GRANTING LTWP LTD, A PRIVATE ENTITY, THE EXCLUSIVE RIGHTS TO SURVEY THE PROJECT AREA AND WIND RESOURCES AND FURTHER INVITE TENDERS ON BEHALF OF KENYA POWER.**

Renewable energy resources assessment is one of the key stages in renewable energy resources development. Before a decision is made to develop the resource, an

It should also be noted that all major power generation projects undertaken by IPP developers floated open tenders for transmission line construction on behalf of KPLC. The construction costs were to be reimbursed to IPPs through consumer tariff increases as part of the total project implementation costs.

To ensure that their construction was costs effective and at least cost, KPLC participated in the development of the tender documents and evaluation of bids for the award of contracts. With the creation of KETRACO by GOK this process became a joint responsibility for both KPLC and KETRACO, due to the inclusion of power evacuation terms in PPAs.

**Committee Observations**

**The Committee made the following observations:**

1. There was lack of clarity on the details of the lease granted to LTWP for the project. The Principal Secretary indicated that the lease was granted in 2005 while the LTWP averred that it was granted in 2009. Further there was no document to support these assertions.
2. The justification that LTWP had made substantial investments and has to recoup its finances as a ground for granting LTWP Ltd. exclusive rights to survey the project area cannot be sustained as there was no analysis done on potential risk

**Committee Resolutions**

1. The Ministry to confirm the exact date of the lease granted for the LTWP project.
2. The Minsitry to provide analysis and correspondence with LTWP on the potential risk it could suffer had it not been granted exclusive rights for survey of the peoject area.

**MIN/PIC/2021/778: WHETHER THE MINISTRY OF ENERGY CONDUCTED A COMPETITIVE BIDDING PROCESS IN THE IDENTIFICATION OF LTWP LTD AS PER THE REQUIREMENTS OF SECTIONS 2 (B) AND 74 OF THE REPEALED PUBLIC PROCUREMENT AND DISPOSAL ACT, 2005 AND SECTION 3 (2) OF THE PUBLIC PROCUREMENT AND DISPOSAL (PUBLIC PRIVATE PARTNERSHIPS) REGULATIONS, 2009.**

There are several procurement methods that are used to procure power generation projects in the Country. These are:

a) Competitive Bidding and Public Private Partnerships (PPPs); Taken either through a competitive bidding process guided by the applicable Laws (Public Procurement and Disposal Act, 2005 and Regulations, 2006 (Repealed), the

due to competing government priorities. It should be noted however that the government had prioritized geothermal resource assessment that culminated in creation of GDC and thus detailed wind resource assessment development was yet to be undertaken at that time.

It then follows that Sections 2 (b) and 74 of the repealed Public Procurement and Disposal Act, 2005 and Section 3 (2) of the Public Procurement and Disposal (Public Private Partnerships) Regulations, 2009 were not applicable herein.

**Committee Observation**

There was no competitive procurement done but there was an indication that the PPOA approved the Ministry of Energy's request to directly engage the M/s Isolux.

**Committee Resolution**

Ministry of Energy to provide the approval from the PPOA.

**MIN/PIC/2021/780: WHAT INFORMED INCLUSION OF A CLAUSE FOR GOVERNMENT OF KENYA TRANSMISSION INTERCONNECTOR (TI) DELAY DEEMED GENERATED ENERGY (DGE) CLAIMS IN THE POWER PURCHASE AGREEMENT**

Important to note Deemed Energy Generated (DEG) arises where the power plant is available to generate but unable to deliver to the Offtaker's system electrical energy in the following Events:

a) a Power System Interruption;

b) a stoppage or curtailment of the Plant arising out of a specific dispatch instruction

c) a breach by the Buyer of its obligations under the PPA; or

d) Unavailability of the grid other than during maintenance

This is a common industry practice worldwide especially for the variable renewable power plants (Solar and Wind) to improve the bankability of these projects given the intermittent nature of the resource.

Therefore, a decision having been made for development of the transmission line by the Government through KETRACO, the developer's financiers requested for a security underwriting in the event of a delay in the completion and commissioning of the construction of the 428Km, 400kV line; this was in form of payment for deemed generated energy. This was to have a bankable project and to ensure that the Financier's debt service requirements were met by the LTWP.

The request for risk underwriting was made on the basis of the fact that the developer no longer had any control over the construction of the line including

Having ascertained that the project area had a huge potential for power generation and the generation tariff was lower than the maximum set in the Feed-In-Tariff Policy, the Ministry decided to support the project.

The Sovereign guarantee was not given; instead, a Government Letter of Support (GLoS) was given to the project lenders. Issuance of this type of letter had been done to all IPPs previously. These IPPs included Tsavo Power, OrPower 4, Rabai Power, Thika Power, Gulf Power and Triumph Power.

The Letter of Support (LoS) covered political risks including but not limited to acts of war, foreign invasion, insurrection, change in law and/or change in tax, riots civil disturbances, failure by GoK to meet its obligations under the LoS and Force Majeure affecting KPLC. Under the LoS the government is also required to pay claims by LTWP for GoK TI Delay DGE and GoK TI Interruption DGE.

**MIN/PIC/2021/782:** **THE BASIS OF THE THREE AMENDMENTS TO THE PPA DATED (I) 29TH SEPTEMBER, 2011 (AMEND THE FACT THAT THE TRANSMISSION INTERCONNECTOR WAS NOW TO BE DEVELOPED AND OWNED BY KETRACO AND NOT LTWP LTD), (II) 14TH SEPTEMBER, 2012 AND (II) 13TH MAY, 2013. FURTHER, PROVIDE RATIONALE OF TWO ADDITIONAL VARIATIONS OF 31ST JULY, 2014 AND 19TH SEPTEMBER, 2017.**

LTWP entered into a PPA with KPLC on 29th January 2010. The PPA was amended through agreements dated 29th September 2011, 14th September 2012 and 13th May 2013 to address various issues as tabulated below:

Summary of PPA Variations:

| Item | Variation | Justification for Variation | Correspondences |
|---|---|---|---|
| 1 | Dated 29th September 2011 | Change in security package being provided to LTWP by KPLC and GOK<br>Recognition that the Transmission Interconnector (TI) is being developed, owned and operated by KETRACO.<br>To increase the energy charge rate and review the energy threshold, set out in the original PPA, in view of the increase in total costs for the project since the execution of the original PPA. | Instrument of Approval issued on 2nd September 2011 |

**Committee Observations**

The instruments of approval were not attached in the response: The Principal Secretary to provide them to the Committee and all the correspondences including financial implications of all the variations.

**MIN/PIC/2021/783: THE REASONS BEHIND THE WORLD BANK'S WITHDRAWAL OF ITS INTENT TO PROVIDE PARTIAL RISK GUARANTEE (PRG) SUPPORT OF THE PROJECT.**

The Government position was at variance with the World Bank's views and therefore progressed with the project considering its socio-economic impact to the country.

ii. The Ministry of Energy and other key stakeholders of the project were convinced that the project was viable and as a result proceeded to engage African Development Bank (AfDB) for the issuance of a Partial Risk Guarantee (PRG) instrument for the project. The AfDB was convinced of the bankability of the project and went ahead to not only issue the Partial Risk Guarantee (PRG) but also a senior loan to the project.

iii. The reasons for World Bank's withdrawal from the project are contained in a letter dated 6th October 2012 that was addressed to the Permanent Secretary, Ministry of Finance and copied to the Permanent Secretary, Ministry of Energy among others. The following are details of the World Bank concerns and the reasons why the Ministry did not agree with them:

**a) The large size of the plant could impact on the reliability of systems supply and advised that the power plant should be developed gradually in smaller lots of (50-100MW).**

The project would not have made any financial and technical sense to wheel 50-100MW of power over a distance of 428km through a 400kV line. Power losses would be very high and the consumer tariff would also be high.

The Ministry has been vindicated as injection into the national grid of the entire 300 megawatt of wind power daily by LTWP has not had any negative impact on the power system stability and reliability. If anything, it has helped to substantially reduce the amount of Heavy Fuel Oil (HFO) used daily to fire Medium Speed Diesel (MSD) power plants in the Nairobi Metropolitan. These Medium Speed Diesel (MSD) Power Plants have a combined capacity of 300MW of firm power.

**b) The take or pay obligations in the PPA exposed KPLC to unacceptable high financial risk.**

Take or pay clause is well established and widely used clauses in Power Purchase Agreement (PPAs) across the world. Kenya is considered the most successful in

a) LTWP agreed to write-off any GOK TI Delay DGE from 27th January 2017 - 15th May 2017 (an amount of EUR 17.72 Million);

b) For the period 15th May 2017 - 31st May 2018, the GOK TI Delay DGE amounted to EUR 127M;

c) Although LTWP was entitled to the EUR 127M, the GOK could not pay the full amount and requested a payment structure with LTWP that was mutually beneficial.

To record the above-mentioned agreement, the Parties entered into the Second Variation Agreement whereby:

a) LTWP agreed to the start date of GOK TI Delay DGE Payments to be 15th May 2017 instead of 27th January 2017 (in this case LTWP gave GOK a discount of EUR 17.72 Million);

b) With respect to GOK TI Delay DGE for the period 15th May 2017 to 31st May 2018 ("Initial TI Delay DGE Period"), GOK agreed to pay LTWP a lumpsum of EURO 46,000,000 (Euro Forty-Six Million) before 31st August 2017, which was to cover debt obligation to Lenders;

c) To compensate for the difference between the lumpsum payment of EURO 46,000,000 and the actual GOK Initial TI Delay DGE for the period from 15th May 2017 to 31st May 2018 (i.e. EUR 127M), LTWP agreed to receive a tariff increase of EURO 0.00845 per kWh ("DGE Recovery Period Tariff"), which was to be paid by KPLC /GOK during the period from 1st June, 2018 to 31st May 2024 ("DGE Recovery Period"); and

d) Any TI Delay beyond 1st June 2018 would result in LTWP being paid GOK TI Delay DGE in the normal manner.

e) In view of the foregoing, during the period between 15th May 2017 upto the time the TI Operation occurred (in this case 10th September 2018), the following amounts which were due and payable to LTWP, were transferred to KPLC by Ministry of Energy for onward remission to LTWP - being GOK TI Delay DGE Payments as per the PPA.

*Table 1: Amounts Transferred from MOE to KPLC*

| *Financial Year* | *Date* | *Amount Paid (Kshs)* |
|---|---|---|
| *2017/2018* | *6th Sept 2017* | *5,658,690,000* |
| *2017/2018* | *June 2018* | *1,160,000,000* |
| *2018/2019* | *12th Sept 2018* | *1,422,972,444* |

No other business arose.

**MIN/PIC/2021/787: ADJOURNMENT**

The meeting was adjourned at two minutes past two O'clock.

**Signed ..................................................... Date 24/05/2022**

**The Hon. Abdullswamad Sharrif Nassir, MP**

**(Chairperson)**

**MINUTES OF THE 114TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON THURSDAY 9TH DECEMBER, 2021 IN THE COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 2.00 P.M.**

**PRESENT**

1. The Hon. Abdullswamad Sharrif Nassir, MP **(Chairman)**
2. The Hon. Rashid Kassim Amin, MP
3. The Hon. Esther Muthoni Passaris, MP
4. The Hon. Omar Mohamed Maalim Hassan, MP.
5. The Hon. Mohamed Hire Garane, M.P
6. The Hon. Julius Kibiwott Melly, MP
7. The Hon. Thuku Zachary Kwenya, M.P
8. The Hon. Teddy Mwambire, MP
9. The Hon. Babu Owino Paul Ongili, MP

**ABSENT WITH APOLOGY**

1. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
2. The Hon. Paul Kahindi Katana, MP
3. The Hon. Tom Joseph Kajwang, MP
4. The Hon. Raphael Bitta Sauti Wanjala, MP
5. The Hon. Joshua Kipyegon Kandie, MP
6. The Hon. Mishi Mboko, MP
7. The Hon. Mathias Nyamabe Robi, MP
8. The Hon. Rahab Mukami Wachira, MP
9. The Hon. Mary Wamaua Njoroge, MP
10. The Hon. James Kamau Githua Wamacukuru, M.P

**IN ATTENDANCE**

**NATIONAL ASSEMBLY SECRETARIAT**

| | | |
|---|---|---|
| 1. Mr. Evans Oanda | - | Senior Clerk Assistant |
| 2. Mr. Mohamed Boru | - | Second Clerk Assistant |
| 3. Ms. Marlene Ayiro | - | Legal Counsel |
| 4. Ms. Euridice Nzioka | - | Audio Recording Officer |
| 5. Mr. Cyrille Mutali | - | Fiscal Analyst |
| 6. Mr. Moses Musembi | - | Sergeant-at-Arms |
| 7. Mr. Abdimalik Ahmed | - | Intern |
| 8. Ms. Brenda Wekesa | - | Intern |

**IN ATTENDANCE**

| | | |
|---|---|---|
| 1. Mr. Fredrick Odhiambo | - | Deputy Auditor General |
| 2. Mr. Andrew Kintu | - | Deputy Director, Audit |
| 3. Mr. Dickson Ocharo | - | Manager, Audit |
| 4. Mr. Henry Manegene | - | Manager, Audit |

2. Minutes of the 72nd Sitting were confirmed as a true record of the proceedings as proposed Hon. Thuku Zachary Kwenya, M.P and seconded by Hon. Mohamed Hire Garane, MP;

3. Minutes of the 73rd Sitting were confirmed as a true record of the proceedings as proposed by the Hon. Esther Passaris, MP and seconded by the Hon. Teddy Mwambire, MP;

4. Minutes of the 74th Sitting were confirmed as a true record of the proceedings as proposed Hon. Mohamed Hire Garane, MP and seconded by Hon. Thuku Zachary Kwenya MP;

5. Minutes of the 75th Sitting were confirmed as a true record of the proceedings as proposed Hon. Esther Passaris, MP and seconded by Hon. Thuku Zachary Kwenya;

6. Minutes of the 76th Sitting were confirmed as a true record of the proceedings as proposed Hon. Teddy Mwambire, MP and seconded by Hon. Mohamed Hire Garane, MP;

7. Minutes of the 77th Sitting were confirmed as a true record of the proceedings as proposed Hon. Mohamed Hire Garane, MP and seconded by Hon. Teddy Mwambire, MP;

8. Minutes of the 78th Sitting were confirmed as a true record of the proceeding as proposed by the Hon. Teddy Mwambire, MP and seconded by the Hon. Thuku Zachary Kwenya, MP;

9. Minutes of the 79th Sitting were confirmed as a true record of the proceedings as proposed Hon. Thuku Zachary Kwenya, MP and seconded by Hon. Mohamed Hire Garane, MP;

10. Minutes of the 80th Sitting were confirmed as a true record of the proceedings as proposed Hon. Esther Passaris, MP and seconded by Hon. Teddy Mwambire, MP;

11. Minutes of the 81st Sitting were confirmed as a true record of the proceedings as proposed Hon. Mohamed Hire Garane, MP and seconded by Hon. Thuku Zachary Kwenya, MP;

12. Minutes of the 82nd Sitting were confirmed as a true record of the proceedings as proposed Hon. Esther Passaris, MP and seconded by Hon. Teddy Mwambire, MP;

13. Minutes of the 83rd Sitting were confirmed as a true record of the proceedings as proposed Hon. Teddy Mwambire, MP and seconded by Hon. Mohamed Hire Garane, MP;

14. Minutes of the 84th Sitting were confirmed as a true record of the proceedings as proposed Hon. Thuku Zachary Kwenya, MP and seconded by Hon. Abdullswamad Sharrif Nassir, MP;

15. Minutes of the 85th Sitting were confirmed as a true record of the proceeding as proposed by the Hon. Omar Mohamed Maalim Hassan, MP and seconded by the Hon. Babu Owino Paul Ongili, MP;

16. Minutes of the 86th Sitting were confirmed as a true record of the proceedings as proposed Hon. Esther Passaris, MP and seconded by Hon. Abdullswamad Sharrif Nassir, MP;

17. Minutes of the 87th Sitting were confirmed as a true record of the proceedings as proposed Hon. Esther Passaris, MP and seconded by Hon. Abdullswamad Sharrif Nassir, MP;

18. Minutes of the 88th Sitting were confirmed as a true record of the proceedings as proposed Hon. Teddy Mwambire, MP and seconded by Hon. Mohamed Hire Garane, MP;

19. Minutes of the 89th Sitting were confirmed as a true record of the proceedings as proposed Hon. Thuku Zachary Kwenya, MP and seconded by Hon. Mohamed Hire Garane, MP;

20. Minutes of the 90th Sitting were confirmed as a true record of the proceedings as proposed Hon. Thuku Zachary Kwenya, MP and seconded by Hon. Mohamed Hire Garane, MP;

21. Minutes of the 91st Sitting were confirmed as a true record of the proceedings as proposed Hon. Teddy Mwambire, MP and seconded by Hon. Mohamed Hire Garane, MP;

22. Minutes of the 92nd Sitting were confirmed as a true record of the proceeding as proposed by the Hon. Thuku Zachary Kwenya, MP and seconded by the Hon. Teddy Mwambire, MP;

23. Minutes of the 93rd Sitting were confirmed as a true record of the proceedings as proposed by the Hon. Thuku Zachary Kwenya, MP and seconded by the Hon. Teddy Mwambire, MP;

24. Minutes of the 94th Sitting were confirmed as a true record of the proceedings as proposed by the Hon. Thuku Zachary Kwenya, MP and seconded by the Hon. Teddy Mwambire, MP;

25. Minutes of the 95th Sitting were confirmed as a true record of the proceedings as proposed by the Hon. Thuku Zachary Kwenya, MP and seconded by the Hon. Teddy Mwambire, MP;

26. Minutes of the 96th Sitting were confirmed as a true record of the proceedings as proposed by the Hon. Thuku Zachary Kwenya, MP and seconded by the Hon. Teddy Mwambire, MP;

27. Minutes of the 97th Sitting were confirmed as a true record of the proceedings as proposed Hon. Mohamed Hire Garane, MP and seconded by Hon. Thuku Zachary Kwenya, MP;

28. Minutes of the 98th Sitting were confirmed as a true record of the proceedings as proposed Hon. Teddy Mwambire, MP and seconded by Hon. Esther Passaris, MP;

29. Minutes of the 99th Sitting were confirmed as a true record of the proceeding as proposed by the Hon. Mohamed Hire Garane, MP and seconded by the Hon. Abdullswamad Sharrif Nassir, MP;

30. Minutes of the 100th Sitting were confirmed as a true record of the proceedings proposed by the Hon. Mohamed Hire Garane, MP and seconded by the Hon. Abdullswamad Sharrif Nassir, MP;

31. Minutes of the 101st Sitting were confirmed as a true record of the proceedings as proposed Hon. Thuku Zachary Kwenya, MP and seconded by Hon. Teddy Mwambire, MP;

32. Minutes of the 102nd Sitting were confirmed as a true record of the proceedings as proposed Hon. Teddy Mwambire, MP and seconded by Hon. Thuku Zacchary Kwenya, MP;

33. Minutes of the 103rd Sitting were confirmed as a true record of the proceedings as proposed Hon. Thuku Zachary Kwenya, MP and seconded by Hon. Mohamed Hire Garane, MP;

34. Minutes of the 104th Sitting were confirmed as a true record of the proceedings as proposed Hon. Mohamed Hire Garane, MP and seconded by Hon. Teddy Mwmabire, MP;

35. Minutes of the 105th Sitting were confirmed as a true record of the proceedings as proposed Hon. Mohamed Hire Garane, MP and seconded by Hon. Teddy Mwmabire, MP;

36. Minutes of the 106th Sitting were confirmed as a true record of the proceeding as proposed Hon. Mohamed Hire Garane, MP and seconded by Hon. Teddy Mwmabire, MP;

37. Minutes of the 107th Sitting were confirmed as a true record of the proceedings as proposed Hon. Teddy Mwambire, MP and seconded by Hon. Thuku Zachary Kwenya, MP;

38. Minutes of the 108th Sitting were confirmed as a true record of the proceedings as proposed Hon. Mohamed Hire Garane, MP and seconded by Hon. Teddy Mwambire, MP;

39. Minutes of the 109th Sitting were confirmed as a true record of the proceedings as proposed Hon. Mohamed Hire Garane, MP and seconded by Hon. Teddy Mwambire, MP;

40. Minutes of the 110th Sitting were confirmed as a true record of the proceedings as proposed Hon. Thuku Zachary Kwenya, MP and seconded by Hon. Mohamed Hire Garane, MP;

**MIN/PIC/2021/791: ANY OTHER BUSINESS**

No other business arose.

**MIN/PIC/2021/792: ADJOURNMENT**

The meeting was adjourned at forty-nine minutes past two O'clock. The next meeting will be held on notice.

**Signed ..........................................................** **Date** 24/05/2022

**The Hon. Abdullswamad Sharrif Nassir, MP**

**(Chairperson)**

**MINUTES OF THE 2ND SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON THURSDAY 27TH JANUARY, 2022 IN THE COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 11.00 A.M.**

**PRESENT**

1. The Hon. Abdullswamad Sharrif Nassir, MP **(Chairman)**
2. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
3. The Hon. Paul Kahindi Katana, MP
4. The Hon. Joshua Kipyegon Kandie, MP
5. The Hon. Mishi Mboko, MP
6. The Hon. Omar Mohamed Maalim Hassan, MP.
7. The Hon. Mohamed Hire Garane, M.P
8. The Hon. Julius Kibiwott Melly, MP
9. The Hon. Teddy Mwambire, MP

**ABSENT WITH APOLOGY**

1. The Hon. Rashid Kassim Amin, MP
2. The Hon. Esther Muthoni Passaris, MP
3. The Hon. Thuku Zachary Kwenya, M.P
4. The Hon. Babu Owino Paul Ongili, MP
5. The Hon. Tom Joseph Kajwang, MP
6. The Hon. Raphael Bitta Sauti Wanjala, MP
7. The Hon. Mathias Nyamabe Robi, MP
8. The Hon. Rahab Mukami Wachira, MP
9. The Hon. Mary Wamaua Njoroge, MP
10. The Hon. James Kamau Githua Wamacukuru, M.P

**IN ATTENDANCE**

**NATIONAL ASSEMBLY SECRETARIAT**

| | | |
|---|---|---|
| 1. Mr. Mohamed Boru | - | Second Clerk Assistant |
| 2. Mr. Wilson Angatangoria | - | Sergeant-at-Arms |
| 3. Ms. Euridice Nzioka | - | Audio Recording Officer |
| 4. Mr. Moses Musembi | - | Sergeant-at-Arms |

**IN ATTENDANCE**

| | | |
|---|---|---|
| 1. Mr. Fredrick Odhiambo | - | Deputy Auditor General |
| 2. Ms. Jane Kariuki | - | Ag. Director, Audit |
| 3. Mr. Stephen Waweru | - | Principal Auditor |
| 4. Mr. Henry Manegene | - | Manager, Audit |

**MIN/PIC/2022/005: PRELIMINARIES**

The Chairperson called the meeting to order at six minutes past eleven O'clock and prayed.

**MIN/PIC/2022/006: EXAMINATION OF THE SPECIAL AUDIT REPORT ON LAKE TURKANA WIND POWER PROJECT**

**Mr. Daniel Bargoria, the Director General of the Energy and Petroleum Regulatory Authority accompanied by Dr. John Mutua (Ag. Director, Economic Regulation & Strategy) appeared before the Committee to adduce evidence on the Special Audit Report on Lake Turkana Wind Power Project.**

**MIN/PIC/2022/007: JUSTIFICATION FOR GRANTING AN APPROVAL TO ENTER INTO A POWER PURCHASE AGREEMENT BETWEEN KENYA POWER AND LTWP LTD WITHIN TWO DAYS AND WHETHER THERE WAS COMPLIANCE WITH THE PROVISIONS OF SECTIONS 6 (A), 27 AND 31 OF THE ENERGY ACT, 2006.**

Section 6 (j) of the Energy Act, 2006 gave powers to the Commission (now EPRA) to approve electric power purchase and network service contracts for all persons engaging in electric power undertakings.

Kenya Power and LTWP jointly submitted an initialed Power Purchase Agreement on 9th November 2009. The Authority (Commission then) approved the initialed PPA at its 24th Meeting held on the 11th December 2009. The approval process took 32 days from the time of submission of the PPA which was within the stipulated requirement of 90 days. The approval process was in accordance with the Energy Act, 2006.

**MIN/PIC/2022/008: THE JUSTIFICATION FOR GRANTING AN APPROVAL TO ENTER INTO A POWER PURCHASE AGREEMENT BETWEEN KENYA POWER AND LTWP LTD BEFORE LTWP HAD OBTAINED A LICENSE TO GENERATE ELECTRIC POWER.**

Among the Conditions Precedent in the PPA between Kenya Power and LTWP is the requirement for a generation license having been issued to the LTWP. This therefore meant that for the PPA to become effective, then LTWP ought to have been issued with a generation license after approval of the PPA by the Authority. The PPA is normally approved before issuance of the license for purposes of unlocking finances for the developer and to enable the developer attain financial close.

**MIN/PIC/2022/009: CORRESPONDENCE AND JUSTIFICATION FOR APPROVAL OF THE THREE AMENDMENTS TO THE POWER PURCHASE AGREEMENT (PPA) DATED (I) 29TH SEPTEMBER, 2011 (II) 14TH SEPTEMBER 2012 AND (III) 13TH MAY 2013. FURTHER PROVIDE JUSTIFICATIONS FOR THE TWO ADDITIONAL VARIATIONS OF 31ST JULY 2014 AND 19TH SEPTEMBER 2017**

LTWP entered into a PPA with KPLC on 29th January 2010. The PPA was amended through agreements dated 29th September 2011, 14th September 2012 and 13th May

2013, Variation Agreement dated 31st July 2014 and Variation Agreement dated 19th September 2017 to address various issues as tabulated below:

Summary of PPA Variations:

| Item | Variation | Justification for Variation | Correspondences |
|---|---|---|---|
| 1 | Dated 29th September 2011 | Change in security package being provided to Lake Turkana Wind Power (LTWP) by Kenya Power and Lighting Company (KPLC) and Government of Kenya (GOK).<br><br>Recognition that the Transmission Interconnector (TI) is being developed, owned and operated by Kenya Electricity Transmission Company (KETRACO).<br><br>To increase the energy charge rate and review the energy threshold set out in the original PPA, in view of the increase in total costs for the project since the execution of the original Power Purchase Agreement (PPA). | Instrument of Approval issued on 2nd September 20111 |
| 2 | Agreement dated 14th September 2012 | Addition of a Condition Precedent that 90 days will have expired from the issuance by KETRACO of Notice to Proceed for the Transmission Interconnector<br><br>Change the Target Effective Date from 31st December 2011 to 31st December 2012<br><br>Correction of an error in the formula for Calculation of Energy Charges when the cumulative aggregate of the Net Electrical Output and the KPLC, Deemed Generated Energy (DGE), GOK Transmission Interconnector (TI) Delay DGE and TI Interruption DGE in the Operating Year is greater than Discounted Energy Threshold. | Instrument of Approval issued on 4th September 2012 |
| 3 | Amended and Restated PPA dated 13th May,2013 | The original PPA was amended and restated to incorporate the contents of the agreements dated 29th September 2011 and 14th September 2012 | Instrument of Approval issued on 6th May 2013 |
| 4 | Variation Agreement dated 31st July 2014 | Through Agreement dated 31st July 2014 (Variation Agreement in respect to PPA dated 13th May 2013), the Parties amended the PPA to vary the definition of Long Stop Effective Date and provide for Conditions Precedent. | ERC approval letter dated |

| | | | |
|---|---|---|---|
| 5 | Variation Agreement dated 19th September 2017 | Through agreement dated 19th September 2017 (Second Variation Agreement in respect of the PPA dated 13th May 2013 and as amended on 31st July 2014), Parties agreed to amend the PPA to address the Transmission Interconnector Delay for the period 15th May 2017 to 31st May 2018. The financial impact of the TI delay was addressed through a combination of a lump sum payment and a change in tariff | Instrument of Approval issued on 6th September 2017. |

**Committee Observations**

**The Committee made the following observations:**

1. The approval process for KPLC and LTWP to enter into a PPA took 32 days from the time of submission of the PPA on 9th November 2009 to the approval on 11th December 2009. This was within the stipulated requirement of 90 days and the approval process was in accordance with the Energy Act, 2006.
2. The PPA is normally approved before issuance of the license for purposes of unlocking finances for the developer.
3. The PPA was amended five times through agreements dated 29th September 2011, 14th September 2012 and 13th May 2013, Variation Agreement dated 31st July 2014 and Variation Agreement dated 19th September 2017 to address various issues including the construction of the transmission interconnector.

**MIN/PIC/2022/010: EXAMINATION OF THE AUDITED ACCOUNTS OF KENYA NATIONAL QUALIFICATION AUTHORITY**

**Mr. Juma Mukhwana, the Chief executive Officer of the Kenya National Qualfiications Authority accompanied by Mr. Stanley Maindi (Director, Technical Services) and Ms. Blandina Malimu (Finance Officer) appeared before the Committee to adduce evidence on the audited accounts of the Authority for the financial years 2018/19 and financial year 2019/20.**

The Authority was issued with unqualified audited accounts for the two financial years under consideration.

**MIN/PIC/2022/011: APPROPRIATION-IN-AID AND FUNCTIONS OF THE KENYA NATIONAL QUALIFICATIONS AUTHORITY**

**The Committee was briefed as follows:**

1. There was lack of clarity on whether the Kenya National Qualification Authority Regulations (2018) were approved by the National Assembly.

No other business arose.

**MIN/PIC/2021/062: ADJOURNMENT**

The meeting was adjourned at eleven minutes past one O'clock.

**Signed ..............................................................** **Date** 24/05/2022

**The Hon. Abdullswamad Sharrif Nassir, MP**

**(Chairperson)**

MINUTES OF THE 3RD SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON TUESDAY 1ST FEBRUARY, 2022 IN THE COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 11.00 A.M.

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**PRESENT**

1. The Hon. Abdullswamad Sharrif Nassir, MP **(Chairman)**
2. The Hon. Paul Kahindi Katana, MP
3. The Hon. Mishi Mboko, MP
4. The Hon. Mary Wamaua Njoroge, MP
5. The Hon. Thuku Zachary Kwenya, M.P
6. The Hon. Teddy Mwambire, MP
7. The Hon. Mohamed Hire Garane, M.P
8. The Hon. Raphael Bitta Sauti Wanjala, MP
9. The Hon. Joshua Kipyegon Kandie, MP
10. The Hon. Rashid Kassim Amin, MP
11. The Hon. Esther Muthoni Passaris, MP

**ABSENT WITH APOLOGY**

1. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
2. The Hon. Omar Mohamed Maalim Hassan, MP.
3. The Hon. Julius Kibiwott Melly, MP
4. The Hon. Babu Owino Paul Ongili, MP
5. The Hon. Tom Joseph Kajwang, MP
6. The Hon. Mathias Nyamabe Robi, MP
7. The Hon. Rahab Mukami Wachira, MP
8. The Hon. James Kamau Githua Wamacukuru, M.P

**IN ATTENDANCE**

**NATIONAL ASSEMBLY SECRETARIAT**

| | | |
|---|---|---|
| 1. Mr. Evans Oanda | - | Senior Clerk Assistant |
| 2. Mr. Mohamed Boru | - | Second Clerk Assistant |
| 3. Mr. Cyrille Mutali | - | Fiscal Analyst |
| 4. Mr. Wilson Angatangoria | - | Sergeant-at-Arms |
| 5. Ms. Euridice Nzioka | - | Audio Recording Officer |
| 6. Mr. Moses Musembi | - | Sergeant-at-Arms |

**IN ATTENDANCE**

| | | |
|---|---|---|
| 1. Mr. Fredrick Odhiambo | - | Deputy Auditor General |
| 2. Mr. Henry Manegene | - | Manager, Audit |
| 3. Mr. Michael Muturi | - | Inspectorate of State Corporations |

**MIN/PIC/2022/014: PRELIMINARIES**

The Chairperson called the meeting to order at fourteen minutes past eleven O'clock

**MINUTES OF THE 4TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON WEDNESDAY 2ND FEBRUARY, 2022 IN THE COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 10.00 A.M.**

**PRESENT**

1. The Hon. Abdullswamad Sharrif Nassir, MP **(Chairman)**
2. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
3. The Hon. Paul Kahindi Katana, MP
4. The Hon. Mishi Mboko, MP
5. The Hon. Teddy Mwambire, MP
6. The Hon. James Kamau Githua Wamacukuru, M.P
7. The Hon. Rashid Kassim Amin, MP
8. The Hon. Esther Muthoni Passaris, MP
9. The Hon. Mary Wamaua Njoroge, MP
10. The Hon. Raphael Bitta Sauti Wanjala, MP
11. The Hon. Tom Joseph Kajwang, MP

**ABSENT WITH APOLOGY**

1. The Hon. Omar Mohamed Maalim Hassan, MP.
2. The Hon. Julius Kibiwott Melly, MP
3. The Hon. Thuku Zachary Kwenya, M.P
4. The Hon. Mohamed Hire Garane, M.P
5. The Hon. Joshua Kipyegon Kandie, MP
6. The Hon. Babu Owino Paul Ongili, MP
7. The Hon. Mathias Nyamabe Robi, MP
8. The Hon. Rahab Mukami Wachira, MP

**IN ATTENDANCE**

**NATIONAL ASSEMBLY SECRETARIAT**

1. Mr. Evans Oanda - Senior Clerk Assistant
2. Mr. Mohamed Boru - Second Clerk Assistant
3. Ms. Marlene Ayiro - Legal Counsel
4. Mr. Cyrille Mutali - Fiscal Analyst
5. Mr. Wilson Angatangoria - Sergeant-at-Arms
6. Ms. Euridice Nzioka - Audio Recording Officer
7. Mr. Moses Musembi - Sergeant-at-Arms

**IN ATTENDANCE**

1. Mr. Fredrick Odhiambo - Deputy Auditor General
2. Mr. Michael Muturi - Inspectorate of State Corporations

**MIN/PIC/2022/018: PRELIMINARIES**

The Chairperson called the meeting to order at fourteen minutes past eleven O'clock

**The Committee made the following observations:**

1. The submission presented to the Committee did not have any attachments as part of the evidence.
2. The Government of Kenya did not issue a sovereign guarantee on the Lake Turkana Wind Power project but issued a Letter of Support. Payments to LTWP were made from the vote of the Ministry of Energy in line with the PPA between KPLC and LTWP and not from the Consilidated Fund.
3. GoK obligation under the LoS is to safeguard investments of the Independent Power Producer in case of political events. LoS is not a guarantee but a contingency liability. It is not a sovereign guarantee and is not included in the national debt.
4. Draft Letters of Support are approved by the Attorney General before they become effective.
5. The Principal Secretary indicated that he was unaware of the excess amount of Kshs. 790 Million paid to LTWP Ltd as Deemed Generated Energy by KPLC. This is despite the fact that the Principal Secretary was copied in various correspondences between LTWP Ltd and KPLC where the former repeatedly sought to refund the amount unsuccessfully.
6. The Principal Secretary requested the Committee for additional time to prepare detailed response on the chronology of events that led to variations and determined the cost of the project.

**Committee Resolution**

**The Committee made the following resolutions:**

1. The Principal Secretary was asked to resubmit the responses to all the questions asked in the letter of invitation to the meeting of 2nd February 2022. The submission including attachments to be submitted by 4th February, 2022.
2. The Principal Secretary to submit the following additional information:
    a. Provide evidence showing approval of the L.O.S by the Attorney General.
    b. Submit a copy of the Letter of Support;
    c. Indicate the circumstances under which the Government of Kenya was required to pay Deemed Generated Energy amounting to EURO 127 million and whether verification of the amount was done;
    d. Indicate whether a comparative analysis was done on the companies that were to implement LTWP project and the best option chosen;
    e. A copy of the Letters of Support done on implementation of LTWP project and the circumstances under which they were given - what convinced the National Treasury to sign them;
    f. Interest clauses in the LTWP project, their implications, how much interest has accrued so thus far, how much interest has been paid and how much is still pending;

**MINUTES OF THE 5TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON THURSDAY 3RD FEBRUARY, 2022 IN THE COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 10.00 A.M.**

**PRESENT**

1. The Hon. Abdullswamad Sharrif Nassir, MP **(Chairman)**
2. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
3. The Hon. Paul Kahindi Katana, MP
4. The Hon. Mishi Mboko, MP
5. The Hon. Mary Wamaua Njoroge, MP
6. The Hon. Julius Kibiwott Melly, MP
7. The Hon. Thuku Zachary Kwenya, M.P
8. The Hon. Joshua Kipyegon Kandie, MP
9. The Hon. Teddy Mwambire, MP

**ABSENT WITH APOLOGY**

1. The Hon. Omar Mohamed Maalim Hassan, MP.
2. The Hon. Mohamed Hire Garane, M.P
3. The Hon. James Kamau Githua Wamacukuru, M.P
4. The Hon. Rashid Kassim Amin, MP
5. The Hon. Esther Muthoni Passaris, MP
6. The Hon. Raphael Bitta Sauti Wanjala, MP
7. The Hon. Tom Joseph Kajwang, MP
8. The Hon. Babu Owino Paul Ongili, MP
9. The Hon. Mathias Nyamabe Robi, MP
10. The Hon. Rahab Mukami Wachira, MP

**IN ATTENDANCE**

**NATIONAL ASSEMBLY SECRETARIAT**

| | | |
|---|---|---|
| 1. Mr. Evans Oanda | - | Senior Clerk Assistant |
| 2. Mr. Mohamed Boru | - | Second Clerk Assistant |
| 3. Mr. Cyrille Mutali | - | Fiscal Analyst |
| 4. Mr. Wilson Angatangoria | - | Sergeant-at-Arms |
| 5. Ms. Euridice Nzioka | - | Audio Recording Officer |
| 6. Mr. Moses Musembi | - | Sergeant-at-Arms |

**IN ATTENDANCE**

| | | |
|---|---|---|
| 1. Mr. Fredrick Odhiambo | - | Deputy Auditor General |
| 2. Mr. Henry Manegene | - | Manager, Audit |
| 3. Mr. Michael Muturi | - | Inspectorate of State Corporations |

**MIN/PIC/2022/022: PRELIMINARIES**

The Chairperson called the meeting to order at fourteen minutes past eleven O'clock

- ✓ MoE letter dated 25th May 2009
- ✓ MoE letter dated 2nd July 2009
- ✓ MoE letter dated 25th Sept. 2009
- ✓ MoE letter dated 27.09.2010
- ✓ MoE letter dated 20.08.2009

3. **Why the Feed-in-tariff policy adopted for the Power Purchase Agreement that allowed LTWP to sell generated electricity to KPLC at a pre-determined tariff for a given period ie ata a rate of ksh. 7,65 (EUR 0.0722) per kilowatt (kwh), which was lower than the EPRA recommended fee-in Tariff amount of Ksh.11**

LTWP project was not procured under the Feed-in Tariff Policy. It was a Privately Initiated Project and the tariff negotiated based on project Costs and projected output from the wind farm.

4. **Justification for executing Power Purchase Agreement while aware there was no transmission line from Loiyangalani to Suswa.**

a. Ordinarily transmission lines and power stations are constructed at the same time unless a power station is to be constructed in an area adequately served by an existing transmission line.

b. The twenty-six (26) months line construction period included in the PPA was negotiated on the basis of the eighteen months that LTWP had put in the tender as one of the conditions for bidders for the line construction to be pre-qualified.

c. Therefore the wind power plant and the line had to be completed at the same time in order to avoid having costly idle power generation capacity. In addition, there was the need to keep the validity of the tender prices of various components of the wind farm contract and subcontracts.

5. **Justification for inclusion of the clause in the PPA for GOK transmission interconnector (TI) delay deemed generated Energy claims pursuant to clause 7.3 of the PPA and Clause 9.5.1 and Schedule 6, part B Paragraph 2 of the third amendment.**

Important to note Deemed Energy Generated (DEG) arises where the power plant is available to generate but unable to deliver to the Offtaker's system electrical energy in the following Events:

a. a Power System Interruption;
b. a stoppage or curtailment of the Plant arising out of a specific dispatch instruction
c. a breach by the Buyer of its obligations under the PPA; or

7. **Why was M/S Isolux Ingeneria SA and KEMA procured by LTWP Ltd instead of KPLC?**

LTWP invited tenders on behalf of Kenya Lighting & Power Co (KPLC) in accordance with the agreement of the Special Task Force (comprising MoE, KPLC, KETRACO and LTWP) that was established between the Parties to facilitate this process. KETRACO was newly incorporated in 2008 and participated in the Task Force with KPLC, MOE and LTWP. KETRACO was the contracting party.

8. **Justification for initiation of payments for the TI interruption DGE without any independent review to confirm readiness of power generation by LTWP Ltd.**

The Commissioning of LTWP is provided in the PPA and witnessed by the Independent Engineer.

The Commissioning was also witnessed by the Sector representatives.

9. **Justification for the approval of the three amendments to the PPA**

The amendments and justifications are summarized in the attached Appendix I

10. **The circumstances under which the World Bank withdrew its intent to provide PRG support of the project**

The circumstances for World Bank (WB) withdrawal from the project are contained in their letter to GoK dated 6th October, 2012 (attached). The Government did not agree with the WB views and therefore progressed the project considering the Social Economic impact to the Country.

11. **The rationale for not collecting and remitting into an escrow account the security support facility according to clause 10.9.5(a)of the PPA**

The procurement of the Escrow Agent and LC Bank by KPLC was concluded pending GoK approval. The GoK has since approved an alternative arrangement through a Partial Risk Guarantee (PRG) by AfDB.

12. **What informed the negotiations of the DGE total amount owed, paid and written off by LTWP Ltd?**

The details of GOK TI delay DGE amounts is summarized in Appendix II attached.

13. **Involvement in the tendering process of the construction of Transmission line (lot 3)**

KPLC was not involved in contracting the Transmission line contractors.

**Committee Observations**

**The Committee made the following preliminary observations:**

12. KPLC had failed to provide bank details for refund of excess DGE payments made to LTWP despire repeated requests by the company to refund the amount.
13. On Isolux contract, Eng. Oduol stated that it was LTWP that did the procurement process.

**Committee Resolution**

**The Committee made the following resolutions:**

1. Kenya Power Management to submit correspondence on refund of excess DGE payment by LTWP.
2. KPLC management to re-appear on Wednesday 16th Feb 2022 to continue with submission of their responses with all the relevant supporting documents and staff who are familiar with the matters under consideration.

**MIN/PIC/2022/024: ANY OTHER BUSINESS**

1. OAG should audit the KPLC accounts as resolved by the House and committee communications to KPLC on the matter.
2. KEHNA could not make it in today meeting due to late receipt of the invitation letter.

**MIN/PIC/2022/025: ADJOURNMENT**

The meeting was adjourned at eight minutes past twelve O'clock.

**Signed** ...................................................... **Date** 24/03/2022.

**The Hon. Abdullswamad Sharrif Nassir, MP**

**(Chairperson)**

**MINUTES OF THE 11TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON WEDNESDAY 16TH FEBRUARY, 2022 IN THE COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 10.00 A.M.**

**PRESENT**

1. The Hon. Abdullswamad Sharrif Nassir, MP **(Chairman)**
2. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
3. The Hon. Paul Kahindi Katana, MP
4. The Hon. Julius Kibiwott Melly, MP
5. The Hon. Joshua Kipyegon Kandie, MP
6. The Hon. Teddy Mwambire, MP
7. The Hon. Esther Muthoni Passaris, MP
8. The Hon. Thuku Zachary Kwenya, M.P
9. The Hon. Mishi Mboko, MP
10. The Hon. Omar Mohamed Maalim Hassan, MP.
11. The Hon. James Kamau Githua Wamacukuru, M.P
12. The Hon. Rahab Mukami Wachira, MP
13. The Hon. Babu Owino Paul Ongili, MP
14. The Hon. Tom Joseph Kajwang, MP

**ABSENT WITH APOLOGY**

1. The Hon. Mohamed Hire Garane, MP
2. The Hon. Rashid Kassim Amin, MP
3. The Hon. Mary Wamaua Njoroge, MP
4. The Hon. Raphael Bitta Sauti Wanjala, MP
5. The Hon. Mathias Nyamabe Robi, MP

**IN ATTENDANCE**

**NATIONAL ASSEMBLY SECRETARIAT**

| | | |
|---|---|---|
| 1. Mr. Evans Oanda | - | Senior Clerk Assistant |
| 2. Mr. Mohamed Boru | - | Second Clerk Assistant |
| 3. Mr. Cyrille Mutali | - | Fiscal Analyst |
| 4. Ms. Euridice Nzioka | - | Audio Recording Officer |
| 5. Mr. Moses Musembi | - | Sergeant-at-Arms |

**IN ATTENDANCE**

| | | |
|---|---|---|
| 1. Mr. Fredrick Odhiambo | - | Deputy Auditor General |
| 2. Mr. Henry Manegene | - | Manager, Audit |
| 3. Mr. Michael Muturi | - | Inspectorate of State Corporations |

**MIN/PIC/2022/054: PRELIMINARIES**

The Chairperson called the meeting to order at thirty minutes past ten O'clock and prayed.

- ✓ MoE letter dated 25th May 2009
- ✓ MoE letter dated 2nd July 2009
- ✓ MoE letter dated 25th Sept. 2009
- ✓ MoE letter dated 27.09.2010
- ✓ MoE letter dated 20.08.2009

3. **Why the Feed-in-tariff policy adopted for the Power Purchase Agreement that allowed LTWP to sell generated electricity to KPLC at a pre-determined tariff for a given period ie ata a rate of ksh. 7,65 (EUR 0.0722) per kilowatt (kwh), which was lower than the EPRA recommended fee-in Tariff amount of Ksh.11**

LTWP project was not procured under the Feed-in Tariff Policy. It was a Privately Initiated Project and the tariff negotiated based on project Costs and projected output from the wind farm.

4. **Justification for executing Power Purchase Agreement while aware there was no transmission line from Loiyangalani to Suswa.**

a. Ordinarily transmission lines and power stations are constructed at the same time unless a power station is to be constructed in an area adequately served by an existing transmission line.

b. The twenty-six (26) months line construction period included in the PPA was negotiated on the basis of the eighteen months that LTWP had put in the tender as one of the conditions for bidders for the line construction to be pre-qualified.

c. Therefore the wind power plant and the line had to be completed at the same time in order to avoid having costly idle power generation capacity. In addition, there was the need to keep the validity of the tender prices of various components of the wind farm contract and subcontracts.

5. **Justification for inclusion of the clause in the PPA for GOK transmission interconnector (TI) delay deemed generated Energy claims pursuant to clause 7.3 of the PPA and Clause 9.5.1 and Schedule 6, part B Paragraph 2 of the third amendment.**

Important to note Deemed Energy Generated (DEG) arises where the power plant is available to generate but unable to deliver to the Offtaker's system electrical energy in the following Events:

a. a Power System Interruption;
b. a stoppage or curtailment of the Plant arising out of a specific dispatch instruction
c. a breach by the Buyer of its obligations under the PPA; or

7. **Why was M/S Isolux Ingeneria SA and KEMA procured by LTWP Ltd instead of KPLC?**

LTWP invited tenders on behalf of Kenya Lighting & Power Co (KPLC) in accordance with the agreement of the Special Task Force (comprising MoE, KPLC, KETRACO and LTWP) that was established between the Parties to facilitate this process. KETRACO was newly incorporated in 2008 and participated in the Task Force with KPLC, MOE and LTWP. KETRACO was the contracting party.

8. **Justification for initiation of payments for the TI interruption DGE without any independent review to confirm readiness of power generation by LTWP Ltd.**

The Commissioning of LTWP is provided in the PPA and witnessed by the Independent Engineer.

The Commissioning was also witnessed by the Sector representatives.

9. **Justification for the approval of the three amendments to the PPA**

The amendments and justifications are summarized in the attached Appendix I

10. **The circumstances under which the World Bank withdrew its intent to provide PRG support of the project** .

The circumstances for World Bank (WB) withdrawal from the project are contained in their letter to GoK dated 6th October, 2012 (attached). The Government did not agree with the WB views and therefore progressed the project considering the Social Economic impact to the Country.

11. **The rationale for not collecting and remitting into an escrow account the security support facility according to clause 10.9.5(a)of the PPA**

The procurement of the Escrow Agent and LC Bank by KPLC was concluded pending GoK approval. The GoK has since approved an alternative arrangement through a Partial Risk Guarantee (PRG) by AfDB.

12. **What informed the negotiations of the DGE total amount owed, paid and written off by LTWP Ltd?**

The details of GOK TI delay DGE amounts is summarized in Appendix II attached.

13. **Involvement in the tendering process of the construction of Transmission line (lot 3)**

KPLC was not involved in contracting the Transmission line contractors.

**Committee Observations**

**The Committee made the following preliminary observations:**

Signed ..........................................................

The Hon. Abdullswamad Sharrif Nassir, MP

(Chairperson)

Date......24/05/2022

**MINUTES OF THE 12TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON THURSDAY 17TH FEBRUARY, 2022 IN THE COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 10.00 A.M.**

**PRESENT**

1. The Hon. Abdullswamad Sharrif Nassir, MP **(Chairman)**
2. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
3. The Hon. Paul Kahindi Katana, MP
4. The Hon. Mishi Mboko, MP
5. The Hon. Omar Mohamed Maalim Hassan, MP.
6. The Hon. Babu Owino Paul Ongili, MP
7. The Hon. Teddy Mwambire, MP
8. The Hon. Rahab Mukami Wachira, MP
9. The Hon. Esther Muthoni Passaris, MP
10. The Hon. Joshua Kipyegon Kandie, MP
11. The Hon. Mohamed Hire Garane, M.P

**ABSENT WITH APOLOGY**

1. The Hon. Julius Kibiwott Melly, MP
2. The Hon. Mary Wamaua Njoroge, MP
3. The Hon. Thuku Zachary Kwenya, M.P
4. The Hon. Raphael Bitta Sauti Wanjala, MP
5. The Hon. Rashid Kassim Amin, MP
6. The Hon. Tom Joseph Kajwang, MP
7. The Hon. Mathias Nyamabe Robi, MP
8. The Hon. James Kamau Githua Wamacukuru, M.P

**IN ATTENDANCE**

**NATIONAL ASSEMBLY SECRETARIAT**

| | | |
|---|---|---|
| 1. Mr. Evans Oanda | - | Senior Clerk Assistant |
| 2. Mr. Mohamed Boru | - | Second Clerk Assistant |
| 3. Mr. Cyrille Mutali | - | Fiscal Analyst |
| 4. Mr. Wilson Angatangoria | - | Sergeant-at-Arms |
| 5. Ms. Euridice Nzioka | - | Audio Recording Officer |
| 6. Mr. Moses Musembi | - | Sergeant-at-Arms |

**IN ATTENDANCE**

| | | |
|---|---|---|
| 1. Mr. Fredrick Odhiambo | - | Deputy Auditor General |
| 2. Mr. Henry Manegene | - | Manager, Audit |
| 3. Mr. Manases Kuria | - | Manager, Audit |
| 4. Mr. Victor Momanyi | - | Inspectorate of State Corporations |

**MIN/PIC/2022/058: PRELIMINARIES**

Corporation and Power China Guizhou Engineering Co. Ltd to complete the project.

4. M/s Isolux Ingenieria SA faced two major challenges. When the '*Full Notice to Proceed*' was issued, way leaves for the construction corridor had not been acquired. During execution of the project, there were intermittent stoppages by landowners who demanded huge sums in compensation. The Contractor also experienced cash flow challenges which impacted on project implementation. This was ultimately manifested when they were declared bankrupt.
5. M/s Isolux was procured by Lake Turkana Wind Power Ltd. through an evaluation carried out by their consultant, KEMA and not KETRACO.
6. The three Addenda done on the contract with M/s Isolux Ingenieria SA prior to the company filing for bankruptcy.
    a. Addendum No. 3 changed the scope of the contract due to re-alignment of the southern part of the line due to way leave acquisition issue that had pending court cases leading to an increase in contract price by Euro 3,265,049. The addendum also extended time for completion of the works by two and a half months to 30th December 2016.
    b. Addendum 4 provided a change in scope due to re-alignment of the northern part of the line to avoid 'the flash flood prone area' leading to an increase in the contract price by Euro 687,076.
    c. Addendum 5 extended the time of completion by twelve months to 31st December 2017 to allow for completion of the works and disbursement of the funds from the financier.
7. Termination of the contract with M/s Isolux Ingenieria SA was in accordance with contract provisions under Clause 15.2 (h) that allows termination when the contractor becomes bankrupt. The consortium of NARI Group Corporation and PowerChina Guizhou Engineering Company was competitively procured on 30th January 2018 and completed the construction of the transmission interconnector by 31st August 2018.

### Committee Observations

**The Committee made the following preliminary observations:**

1. Lake Turkana Wind Power Limited invited tenders on behalf of Kenya Power in accordance with the agreement of the Special Task Force established between the two parties for the LTWP project. This was a conflict of interest since LTWP Ltd. stood to earn revenue from 'Deemed Generated Energy' in the event that the transmission line was not complete within the stipulated contractual timelines.
2. M/s Isolux Ingenieria SA was awarded the contract for the transmission line on the recommendation of the Consultant, KEMA, who had been hired by LTWP Ltd to conduct technical evaluation.

No other business arose.

**MIN/PIC/2021/062: ADJOURNMENT**

The meeting was adjourned at eleven minutes past one O'clock.

**Signed ..........................................................**

**The Hon. Abdullswamad Sharrif Nassir, MP**

**(Chairperson)**

**Date**........24/05/2022

**MINUTES OF THE 19TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON TUESDAY 1ST MARCH, 2022 IN THE COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 4.00 P.M.**

**PRESENT**

1. The Hon. Abdullswamad Sharrif Nassir, MP **(Chairman)**
2. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
3. The Hon. Paul Kahindi Katana, MP
4. The Hon. Julius Kibiwott Melly, MP
5. The Hon. Joshua Kipyegon Kandie, MP
6. The Hon. Teddy Mwambire, MP
7. The Hon. Omar Mohamed Maalim Hassan, MP.
8. The Hon. James Kamau Githua Wamacukuru, M.P

**ABSENT WITH APOLOGY**

1. The Hon. Mohamed Hire Garane, M.P
2. The Hon. Rashid Kassim Amin, MP
3. The Hon. Esther Muthoni Passaris, MP
4. The Hon. Mishi Mboko, MP
5. The Hon. Mary Wamaua Njoroge, MP
6. The Hon. Thuku Zachary Kwenya, M.P
7. The Hon. Raphael Bitta Sauti Wanjala, MP
8. The Hon. Tom Joseph Kajwang, MP
9. The Hon. Babu Owino Paul Ongili, MP
10. The Hon. Mathias Nyamabe Robi, MP
11. The Hon. Rahab Mukami Wachira, MP

**IN ATTENDANCE**

**NATIONAL ASSEMBLY SECRETARIAT**

| | | |
|---|---|---|
| 1. Mr. Evans Oanda | - | Senior Clerk Assistant |
| 2. Mr. Mohamed Boru | - | Second Clerk Assistant |
| 3. Mr. Cyrille Mutali | - | Fiscal Analyst |
| 4. Ms. Euridice Nzioka | - | Audio Recording Officer |
| 5. Mr. Moses Musembi | - | Sergeant-at-Arms |

**IN ATTENDANCE**

| | | |
|---|---|---|
| 1. Mr. Fredrick Odhiambo | - | Deputy Auditor General |
| 2. Mr. Henry Manegene | - | Manager, Audit |

**MIN/PIC/2022/113: PRELIMINARIES**

The Chairperson called the meeting to order at thirty minutes past ten O'clock and prayed.

6. M/s Isolux signed a contract worth Kshs. 18 billion and were paid Kshs. 10 billion for a completion rate below 30%. No refund was sought from M/s Isolux by KETRACO.

**Committee Resolutions**

**The Committee made the following resolutions:**

The Project Manager to submit the following additional information:

1. Completion certificates with a breakdown of the works done worth USD 109,224,308.48.
2. Correspondence on follow up with KETRACO regarding outstanding payment.
3. Breakdown of the claim amount of USD 24,515,913.75 made to KETRACO and breakdown of the appraised amount of USD 16,133,782.41.

**MIN/PIC/2022/115: ANY OTHER BUSINESS**

No other business arose.

**MIN/PIC/2022/116: ADJOURNMENT**

The meeting was adjourned at thirty seven minutes past five O'clock.

**Signed** .............................................. **Date** 24/03/2022

**The Hon. Abdullswamad Sharrif Nassir, MP**

**(Chairperson)**

**MINUTES OF THE 26TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON TUESDAY 22ND MARCH, 2022 IN THE COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 11.30 A.M.**

**PRESENT**

1. The Hon. Abdullswamad Sharrif Nassir, MP **(Chairman)**
2. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
3. The Hon. Paul Kahindi Katana, MP
4. The Hon. Mishi Mboko, MP
5. The Hon. Teddy Mwambire, MP
6. The Hon. Esther Muthoni Passaris, MP
7. The Hon. Joshua Kipyegon Kandie, MP
8. The Hon. Thuku Zachary Kwenya, M.P
9. The Hon. Mathias Nyamabe Robi, MP

**ABSENT WITH APOLOGY**

1. The Hon. Omar Mohamed Maalim Hassan, MP.
2. The Hon. Julius Kibiwott Melly, MP
3. The Hon. Mohamed Hire Garane, M.P
4. The Hon. Babu Owino Paul Ongili, MP
5. The Hon. James Kamau Githua Wamacukuru, M.P
6. The Hon. Rashid Kassim Amin, MP
7. The Hon. Mary Wamaua Njoroge, MP
8. The Hon. Raphael Bitta Sauti Wanjala, MP
9. The Hon. Tom Joseph Kajwang, MP
10. The Hon. Rahab Mukami Wachira, MP

**IN ATTENDANCE**

**NATIONAL ASSEMBLY SECRETARIAT**

| | | |
|---|---|---|
| 1. Mr. Evans Oanda | - | Senior Clerk Assistant |
| 2. Mr. Mohamed Boru | - | Second Clerk Assistant |
| 3. Ms. Marlene Ayiro | - | Legal Counsel |
| 4. Mr. Cyrille Mutali | - | Fiscal Analyst |
| 5. Mr. Wilson Angatangoria | - | Sergeant-at-Arms |
| 6. Ms. Euridice Nzioka | - | Audio Recording Officer |
| 7. Mr. Moses Musembi | - | Sergeant-at-Arms |

**IN ATTENDANCE**

| | | |
|---|---|---|
| 1. Mr. Henry Managene | - | Manager, Audit |
| 2. Mr. Michael Muturi | - | Inspectorate of State Corporations |

**MIN/PIC/2022/158: PRELIMINARIES**

The Chairperson called the meeting to order at thirty-four minutes past eleven

termination of the PPA. It is instructive that LoS are not explicit guarantees and are cleared by the Attorney General before they are issued.

7. The LTWP Power Purchase Agreement had provided for exceptions which were to be factored in the determination of the tarrif. The financing model had therefore taken into consideration the exceptions contained in the PPA. The exceptions were aimed at lowering the cost of production and making energy affordable to the consumers.
8. The taxes to be paid by GoK were in respect to items that were not covered by the law but had been agreed to be exempted during the PPA negotiations between KPLC and LTWP Ltd.
9. Government agreed to tariff increase through the Second Variation Agreement to shoulder the additional obligation on DGE payments amounting to Euro 127 Million.
10. To cater for deferred amount, a tariff increase of Euro 0.00845 Kw/h was agreed to offset the amount owed to LTWP for a period of six years (2018-2024). The increase in tariffs was in lieu of payments that would have been made by Government to LTWP.
11. The National Treasury does not undertake due diligence on banks owned/or recommended by foreign governments. This is in regard to the loan agreement between Instituto Credito Official of the Kingdom of Spain, Deutsche Bank and the Kenya Ministry of Finance for construction of the Transmission Interconnector by M/s Isolux.
12. The National Treasury did not issue a sovereign guarantee on the LTWP project but issued a Letter of Support. Payments made to LTWP emanated from the Vote of the Ministry of Energy in line with the PPA between KPLC and LTWP and not the Consolidated Fund.
13. TI delay DGE for the period 15th May 2017 to 31st May 2018 (381 days) was estimated at 1,652,764,752 kw/h on the basis of an assumed capacity factor of 0.62. This translated to TI DGE amount of Euro 127,577,128.32 of which GoK paid Euro 46,000,000 to LTWp and the balance was to be factored into tariif under the Second Variation agreement. (Euro 81.5 million).
14. Following further delays to the TI operationalization, LTWP invoiced GoK an additional Euro 39,684,035 for the months of June, July, August and September 2018. The Ministry of Energy through KPLC settled the amount. This addition increased the totak Gok TI DGE delay liability to Euro 167,261,163.32 comprising of the initial DGE Euro 127,577,128.32 and the additional DGE of Euro 39,684,035.00.
15. The Capacity factor obtained for the period of 381 days from the TI operation date (10th September 2018 to 25th September 2019) is 0.54. The seconf variation agreement had provision for the correction of capacity factor from estimated 0.62 to actual 0.54 obtained during actual production, yielded a GoK TI delay

relevant officials who failed to provide the bank account details for refund of the amount.

5. There was no independent assessment to confirm the DGE amount claimed by LTWP Ltd. of Euro 161,087,870.32.
6. Despite the failure to follow up on the refund from LTWP Ltd., the project faces additional interest costs from NARI Consortium who finished the construction of the transmission line after the insolvency of the original contractor, M/s Isolux. The failure to pay NARI was attributed to lack of funds.
7. The PPA obligates Government to pay DGE in the event that, payment liability in any given operating year in respect of DGE on Transmission Interconnector interruptions exceed Euro 600,000.

Committee Resolution

**The Committee made the following resolutions:**

1. The Ministry to confirm which part of the contract provides for taxes to be paid by GoK with respect to the project as highlighted in para 1.5.53 of the audit report.
2. Treasury to confirm the genesis on change in tariff including which party proposed the increase in tariff in the second variation agreement.

**MIN/PIC/2022/160: ANY OTHER BUSINESS**

No other business arose.

**MIN/PIC/2022/161: ADJOURNMENT**

The meeting was adjourned at eight minutes past twelve O'clock.

**Signed** ............................................................ **Date**....24/05/2022....

The Hon. Abdullswamad Sharrif Nassir, MP

**(Chairperson)**

**MINUTES OF THE 27TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON WEDNESDAY, 22ND MARCH 2022 IN THE COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 3:30 P.M**

**PRESENT**

1. The Hon. Abdullswamad Sharrif Nassir, MP (Chairman)
2. The Hon. Mishi Mboko, MP
3. Hon Esther Muthoni Passaris, MP.
4. The Hon. Rashid Kassim Amin, MP
5. The Hon. Rahab Mukami Wachira, MP.
6. The Hon. Paul Kahindi Katana, MP
7. The Hon. Joshua Kipyegon Kandie, MP
8. The Hon. Mohamed Hire Garane, MP.

**ABSENT WITH APOLOGY**

1. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
2. The Hon. Julius Kibiwott Melly, MP
3. The Hon. Babu Owino Paul Ongili, MP
4. The Hon. Omar Mohamed Maalim Hassan, MP.
5. The Hon. James Kamau Githua Wamacukuru, M.P.
6. The Hon. Mary Wamaua Njoroge, MP
7. The Hon. Raphael Bitta Sauti Wanjala, MP
8. The Hon. Tom Joseph Kajwang, MP
9. The Hon Thuku Zachary Kwenya,MP.
10. The Hon. Mathias Nyamabe Robi, MP
11. The Hon. Teddy Mwambire, MP

**IN ATTENDANCE**

**NATIONAL ASSEMBLY SECRETARIAT**

| | | |
|---|---|---|
| 1. Mr. Evans Oanda | - | Senior Clerk Assistant |
| 2. Mr. Rodgers Kilunje | - | Audio Recording Officer |
| 3. Mr. Moses Musembi | - | Office Attendant |

**MIN/PIC/2022/162: PRELIMINARIES**

The Chairperson called the meeting to order at forty minutes past three O'clock and prayed.

**MIN/PIC/2022/163: SPECIAL AUDIT REPORT ON KETRACO**

The Chairman informed the Committee that Hon. Charles Keter, former Cabinet Secretary for the Ministry of Energy, who was meant to appear before the Committee had written to the Committee indicating that the issues raised in the invitation letter could be addressed by the current office holder of the Ministry of Energy.

The Chairman further informed the Committee that upon looking at the request, he directed that Secretariat to share with the Hon. Keter a copy of the letter dated 14th September 2016 that was done by the Chairman of KETRACO warning that the Transmission Line would not be completed and therefore requested approval to enter into negotiations with LTWP to allow for an extension of project implementation time without invoking a DGE TI penalty. In the

**MINUTES OF THE 28TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON WEDNESDAY 23RD MARCH, 2022 IN THE COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 10.30 A.M.**

**PRESENT**

1. The Hon. Abdullswamad Sharrif Nassir, MP **(Chairman)**
2. The Hon. Tom Joseph Kajwang, MP
3. The Hon. Paul Kahindi Katana, MP
4. The Hon. Mishi Mboko, MP
5. The Hon. Teddy Mwambire, MP
6. The Hon. Joshua Kipyegon Kandie, MP
7. The Hon. Julius Kibiwott Melly, MP
8. The Hon. Mohamed Hire Garane, M.P
9. The Hon. Rashid Kassim Amin, MP
10. The Hon. Esther Muthoni Passaris, MP
11. The Hon. Babu Owino Paul Ongili, MP
12. The Hon. Raphael Bitta Sauti Wanjala, MP

**ABSENT WITH APOLOGY**

1. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
2. The Hon. Thuku Zachary Kwenya, M.P
3. The Hon. Mathias Nyamabe Robi, MP
4. The Hon. Omar Mohamed Maalim Hassan, MP.
5. The Hon. James Kamau Githua Wamacukuru, M.P
6. The Hon. Mary Wamaua Njoroge, MP
7. The Hon. Rahab Mukami Wachira, MP

**IN ATTENDANCE**

**NATIONAL ASSEMBLY SECRETARIAT**

1. Mr. Evans Oanda - Senior Clerk Assistant
2. Mr. Mohamed Boru - Second Clerk Assistant
3. Ms. Marlene Ayiro - Legal Counsel
4. Mr. Cyrille Mutali - Fiscal Analyst
5. Mr. Wilson Angatangoria - Sergeant-at-Arms
6. Ms. Euridice Nzioka - Audio Recording Officer
7. Mr. Moses Musembi - Sergeant-at-Arms

**IN ATTENDANCE**

1. Mr. Henry Managene - Manager, Audit
2. Mr. Michael Muturi - Inspectorate of State Corporations

**MIN/PIC/2022/166: PRELIMINARIES**

The Chairperson called the meeting to order at thirty-three minutes past ten O'clock

ii. The twenty-six (26) months line construction period included in the PPA was negotiated on the basis of the eighteen months that LTWP had put in the tender as one of the conditions for bidders for the line construction to be pre-qualified.

iii. Therefore, the wind power plant and the line had to be completed at the same time in order to avoid having costly idle power generation capacity. In addition, there was the need to keep the validity of the tender prices of various components of the wind farm contract and subcontracts.

**3. The justification for granting LTWP Ltd, a private entity, the exclusive rights to survey the project and wind resources and further invite tenders on behalf of Kenya Power and Lighting Company:**

i. Renewable energy resources assessment is one of the key stages in renewable energy resources development. Before a decision is made to develop the resource, an assessment is done to determine commercial viability of the project. This is critical in securing project financing.

ii. As stipulated in the Sessional Paper No. 4 on Energy, the government committed to promote renewable energy resources assessment among them Wind. Whereas the government prioritized geothermal resource assessment that culminated in creation of GDC, a detailed Wind resources assessment was yet to be undertaken due to lack of funds. Renewable resource assessment is a highly technical field requiring both specialized equipment and human resources. In the Feed-In-Tariff Policy it was therefore envisaged that the Private Investors would undertake search for land and carry out feasibility study for their projects. This is in contrast with more mature markets where private sector access reliable data to set up wind farms.

iii. The private firm then approached the Ministry with a view of undertaking a detailed wind resource assessment at their own cost to determine the viability of the project. This involved installation of wind masts and data loggers at their own cost to collect data at Loyangalani, Marsabit. This would culminate, if proven viable, with construction of a power plant.

iv. Bearing in mind that substantial amount of risk capital was going to be expended on wind data acquisition and analysis to ascertain the sites suitability and viability for wind power development, the Ministry did not object to the study being done by LTWP Ltd. It is also important to note that LTWP Ltd was the only company which had come forward with the proposal for wind power development in Marsabit. If the studies had indicated that there was no enough resource, the project proposers would have taken the loss in terms of money and time spent and government would not have compensated them for this effort. The project remains the single largest private investment in Kenya's history at EUR 685M (KES 85B)

v. Other factors which informed MOE decision not to object were that the country was experiencing devastating power supply deficits which were mitigated through

ii. The LTWP was initiated by the Investor who proposed to undertake and finance their own wind data collection and studies on wind power at Loyangalani in Marsabit that would culminate if proven viable with construction of a power plant. The developer undertook all the technical studies and proved to the Ministry that the wind resource available on site was adequate to develop the 300MW power plant.

iii. The project was a viable project and the developer put together a group of equity investors and lending institutions to fund the project to construction and commissioning. The Project would therefore qualify for a Private Initiated Investment Project.

iv. The reasons why competitive bidding was not used are:

a) There was in place a Feed-In-Tariff policy of 2008 which provided maximum tariffs for respective renewable energies technologies. LTWP's tariff was significantly lower than the one provided for under FiT. The FiT policy was developed to spur growth of renewable energy sources by providing for a prescribed rate for the renewables. Technologies included in the policy are wind, solar PV, biomass and small hydro

b) Not significant amount of wind regime data had previously been collected and analyzed to ascertain commercial viability of the proposed wind power project in Marsabit or any other part of Kenya to facilitate private sector participation in wind power development to warrant floatation of a public tender for development of wind power plants. LTWP took all upstream wind energy risk whilst installing grid stability equipment that has been beneficial to Kenya's national grid in addition to socio-economic-political benefits that the project brought to the region and the communities.

c) MOE was also of the view that the project was good for Kenya as it was going to generate electricity at substantially lower tariff than oil based thermal power plant including the private sector developed geothermal power plant that existed at that time;

d) Despite the government commitment to undertake wind resources assessment in the Country as stipulated in Session No. 4 on Energy, this was yet to be done due to competing government priorities. It should be noted however that the government had prioritized geothermal resource assessment that culminated in creation of GDC and thus detailed wind resource assessment development was yet to be undertaken at that time.

v. It then follows that Sections 2 (b) and 74 of the repealed Public Procurement and Disposal Act, 2005 and Section 3 (2) of the Public Procurement and Disposal (Public Private Partnerships) Regulations, 2009 were not applicable herein.

6. **Details of the Government's commitment to the project and the Sovereign Guarantee to cover Political Risks and payment defaults by KPLC:**

i. Having ascertained that the project area had a huge potential for power generation and the generation tariff was lower than the maximum set in the Feed-In-Tariff Policy, the Ministry decided to support the project.

ii. The Sovereign guarantee was not given; instead, a Government Letter of Support (GLoS) was given to the project lenders. Issuance of this type of letter had been done to all IPPs previously. These IPPs included Tsavo Power, OrPower 4, Rabai Power, Thika Power, Gulf Power and Triumph Power.

iii. The Letter of Support (LoS) covered political risks including but not limited to acts of war, foreign invasion, insurrection, change in law and/or change in tax, riots civil disturbances, failure by GoK to meet its obligations under the LoS and Force Majeure affecting KPLC. Under the LoS the government is also required to pay claims by LTWP for GoK TI Delay DGE and GoK TI Interruption DGE.

7. **The basis of the three amendments to the Power Purchase Agreement (dated 29th September, 2011; 14th September, 2012; and 13th May, 2013) and the rationale of two additional variations of 31st July, 2014 and 19th September, 2017:**

i. LTWP entered into a PPA with KPLC on 29th January 2010. The PPA was amended through agreements dated 29th September 2011, 14th September 2012 and 13th May 2013 to address various issues as tabulated below:

ii. Summary of PPA Variations:

| Item | Variation | Justification for Variation | Correspondences |
|---|---|---|---|
| 1 | Dated 29th September 2011 | Change in security package being provided to LTWP by KPLC and GOK<br>Recognition that the Transmission Interconnector (TI) is being developed, owned and operated by KETRACO.<br>To increase the energy charge rate and review the energy threshold, set out in the original PPA, in view of the increase in total costs for the project since the execution of the original PPA. | Instrument of Approval issued on 2nd September 2011 |
| 2 | Agreement dated 14th | Addition of a Condition Precedent that 90 days will have expired from the issuance by | Instrument of Approval issued |

**8. Why implementation of the project was not suspended as per the World Banks advisory**

i. The Government position was at variance with the World Bank's views and therefore progressed with the project considering its socio-economic impact to the country.

ii. The Ministry of Energy and other key stakeholders of the project were convinced that the project was viable and as a result proceeded to engage African Development Bank (AfDB) for the issuance of a Partial Risk Guarantee (PRG) instrument for the project. The AfDB was convinced of the bankability of the project and went ahead to not only issue the Partial Risk Guarantee (PRG) but also a senior loan to the project.

iii. The reasons for World Bank's withdrawal from the project are contained in a letter dated 6th October 2012 that was addressed to the Permanent Secretary, Ministry of Finance and copied to the Permanent Secretary, Ministry of Energy among others. The following are details of the World Bank concerns and the reasons why the Ministry did not agree with them:

**a) The large size of the plant could impact on the reliability of systems supply and advised that the power plant should be developed gradually in smaller lots of (50-100MW).**

The project would not have made any financial and technical sense to wheel 50-100MW of power over a distance of 428km through a 400kV line. Power losses would be very high and the consumer tariff would also be high.

The Ministry has been vindicated as injection into the national grid of the entire 300 megawatt of wind power daily by LTWP has not had any negative impact on the power system stability and reliability. If anything, it has helped to substantially reduce the amount of Heavy Fuel Oil (HFO) used daily to fire Medium Speed Diesel (MSD) power plants in the Nairobi Metropolitan. These Medium Speed Diesel (MSD) Power Plants have a combined capacity of 300MW of firm power.

**b) The take or pay obligations in the PPA exposed KPLC to unacceptable high financial risk.**

Take or pay clause is well established and widely used clauses in Power Purchase Agreement (PPAs) across the world. Kenya is considered the most successful in development of IPP in sub Saharan region, because of its balanced PPA structure, and its longevity in usage since 1997.

Energy projects take place over long periods, potentially 20 to 30 years, and usually require loans to finance them. These clauses are effectively designed to protect the generator in this case LTWP by providing a guaranteed income even if the purchaser

of EURO 46,000,000 (Euro Forty-Six Million) before 31st August 2017, which was to cover debt obligation to Lenders;

c) To compensate for the difference between the lumpsum payment of EURO 46,000,000 and the actual GOK Initial TI Delay DGE for the period from 15th May 2017 to 31st May 2018 (i.e. EUR 127M), LTWP agreed to receive a tariff increase of EURO 0.00845 per kWh ("DGE Recovery Period Tariff"), which was to be paid by KPLC /GOK during the period from 1st June, 2018 to 31st May 2024 ("DGE Recovery Period"); and

d) Any TI Delay beyond 1st June 2018 would result in LTWP being paid GOK TI Delay DGE in the normal manner.

e) In view of the foregoing, during the period between 15th May 2017 upto the time the TI Operation occurred (in this case 10th September 2018), the following amounts which were due and payable to LTWP, were transferred to KPLC by Ministry of Energy for onward remission to LTWP - being GOK TI Delay DGE Payments as per the PPA.

***Table 1: Amounts Transferred from MOE to KPLC***

| *Financial Year* | *Date* | *Amount Paid (Kshs)* |
|---|---|---|
| *2017/2018* | *6th Sept 2017* | *5,658,690,000* |
| *2017/2018* | *June 2018* | *1,160,000,000* |
| *2018/2019* | *12th Sept 2018* | *1,422,972,444* |
| *2018/2019* | *7th Nov, 2018* | *897,027,556* |
| *2019/2020* | *31st July 2019* | *1,160,000,000* |
| ***TOTAL*** | | ***10,298,690,000*** |

**Committee Observations**

**The Committee made the following observations:**

1. The Lake Turkana Wind Power has a project term of 20 years from full commercial operation date.
2. The project had a construction security in the form of a performance bond amounting to Euro 10 Million to protect KPLC against the risk of delays in construction of the power plant or failure to commence construction by the required start date.

**MINUTES OF THE 29TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON THURSDAY 24TH MARCH, 2022 IN THE COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 10.30 A.M.**

**PRESENT**

1. The Hon. Abdullswamad Sharrif Nassir, MP **(Chairman)**
2. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
3. The Hon. Esther Muthoni Passaris, MP
4. The Hon. Omar Mohamed Maalim Hassan, MP.
5. The Hon. Paul Kahindi Katana, MP
6. The Hon. Joshua Kipyegon Kandie, MP
7. The Hon. Raphael Bitta Sauti Wanjala, MP
8. The Hon. Teddy Mwambire, MP
9. The Hon. Mohamed Hire Garane, M.P
10. The Hon. Thuku Zachary Kwenya, M.P
11. The Hon. Mishi Mboko, MP

**ABSENT WITH APOLOGY**

1. The Hon. Rashid Kassim Amin, MP
2. The Hon. Julius Kibiwott Melly, MP
3. The Hon. Babu Owino Paul Ongili, MP
4. The Hon. Tom Joseph Kajwang, MP
5. The Hon. Mathias Nyamabe Robi, MP
6. The Hon. Rahab Mukami Wachira, MP
7. The Hon. Mary Wamaua Njoroge, MP
8. The Hon. James Kamau Githua Wamacukuru, M.P

**IN ATTENDANCE**

**NATIONAL ASSEMBLY SECRETARIAT**

1. Mr. Evans Oanda - Senior Clerk Assistant
2. Mr. Mohamed Boru - Second Clerk Assistant
3. Mr. Sidney Lugaga - Legal Counsel
4. Mr. Job Oaga - Audio Recording Officer
5. Mr. Cyrille Mutali - Fiscal Analyst
6. Mr. Moses Musembi - Sergeant-at-Arms
7. Mr. Abdimalik Ahmed - Intern

**IN ATTENDANCE**

1. Mr. Fredrick Odhiambo - Deputy Auditor General
2. Mr. Edwin Murimi - Inspectorate of State Corporations

**MIN/PIC/2022/170: PRELIMINARIES**

The Chairperson called the meeting to order at fifty-seven minutes past ten O'clock

9. Vide a letter ref.MOE/3/1(44) dated 3rd February, 2022, the ministry of Energy wrote to the National Treasury indicating that the details of the bank account for refund of excess DGE payment made to LTWP Ltd. that had been provided to the company were insufficient and the amounts remitted had been bounced back. The correct account has since been provided and the National Treasury has confirmed receipt of the same.

**Committee Observations**

**The Committee made the following observations:**

1. The Legal opinion by the Attorney General was not an opinion on the Purchase Power Agreement between LTWP Ltd. and Kenya Power but an opinion on the Government of Kenya Letter of Support issued to Lake Turkana Wind Power Limited for the LTWP project.
2. The Attorney General has been reviewing PPAs between Kenya Power and Independent Power Producers after they have been signed.
3. The Ministry of Energy is in negotiations with IPPs with a view to review the signed PPAs. State Counsel from the Attorney General's office have been seconded to the Ministry to assist in the review.
4. KETRACO Management stated that they did not appraise the Ministry of Energy and Kenya Power on the addenda to the contract with M/s Isolux for the transmission interconnector. The variations had extension-of-time elements which would eventually lead to incurring the Deemed Generated Energy charges.
5. The three addenda were signed by the former KETRACO CEO Eng. Joel Kiilu and the former KETRACO Company Secretary, Mr. Duncan Macharia. There was no confirmation whether KETRACO Board had approved the three addenda.
6. The technical evaluation for the bidders of the transmission interconnector undertaken by KEMA on behalf of Lake Turkana Wind Power Limited ranked M/s Isolux Corsan lowest with a score of 56.9%. Two other companies had a lower financial score with bids lower than Isolux's bid.
7. The report further noted that the final ranking would be determined by LTWP Limited which was a conflict of interest since the company stood to benefit from DGE if the transmission line was not completed in time.
8. Despite the financing agreement between the Spanish and Kenyan Governments prioritizing Spanish companies for the construction of the transmission interconnector, Isolux was not the highest ranked Spanish company. M/s Elecnor, another Spanish company that bid for the contract had a technical evaluation score of 75.6% compared to Isolux's score of 56.9%.
9. KETRACO was not involved in the procurement of M/s Isolux. The procurement was undertaken by Lake Turkana Wind Power Limited and KEMA on behalf of KETRACO, a clear conflict of interest.

# Appendix 1

MANAGING DIRECTOR'S OFFICE

TELEPHONE: 243366
TELEGRAMS:
'ELECTRIC' NAIROBI
FAX: 250067
P.O. BOX 30099-00100
NAIROBI, KENYA.

The Kenya Power & Lighting Co. Ltd.

STIMA PLAZA
KOLOBOT ROAD
PARKLANDS, NAIROBI
KENYA

KPLC1/7/6C/JMK/enm

February 10, 2009

Mr. Christopher Staubo
Director
Lake Turkana Wind Power Limited
P.O Box 63716 - 00619
**NAIROBI**

Dear Christopher,

**RE: CONSTRUCTION OF 426 KM 400KV DOUBLE CIRCUIT TRANSMISSION LINE LOYIANGALANI TO SUSWA – STEERING COMMITTEE**

Reference is made to your letter dated 28th January 2009 regarding the above mentioned.

The following staff from KPLC have been appointed to be members of the Steering Committee (Task Force) for this project.

1. Mr. David Mwangi
2. Mr. Joel Kiilu
3. Mr. Sammy Muita
4. Mr. Peter Gitura
5. Mr. Erastus Kirunja

Please let us have a list of the members from Lake Turkana Wind Power Limited. We are also proposing a meeting of this committee on 16th February 2009, 2.30 pm at the KPLC offices.

Yours Sincerely,

**ENG. JOSEPH NJOROGE, MBS**
**MANAGING DIRECTOR & CEO**

# Appendix 2

MINISTRY OF INDUSTRY,
TOURISM AND TRADE
OF SPAIN

THE DIRECTOR GENERAL FOR
TRADE AND INVESTMENT
Antonio Sánchez Bustamante

Mr. Joseph Kinyua
Permanent Secretary
Ministry of Finance
P.O Box 30007 - 001100
Nairobi
Republic of Kenya

Madrid, 9th October 2009

Dear Sir,

With respect to the Bilateral Financial Cooperation Agreement between the Ministry of Finance of the Republic of Kenya and the Ministry of Industry, Tourism and Trade of the Kingdom of Spain, I am glad to inform you that the Government of Spain is willing to financially support the construction of the electric infrastructures of the Lake Turkana Wind Power Project.

We have been informed that several Spanish companies are participating in the internationa' competitive tender called by Lake Turkana Wind Power Limited for the Transmission Project (lot 2 "*400/33kV substation Loyangalani, 400/220kV substation Suswa including SCADA*" and lot 3 "*400kV transmission line from Loyangalani to Suswa, 220kV tie in at Suswa*").

Therefore, we would like to offer financial support for this project on the following terms and conditions:

- Maximum amount of 80 million euros under the following conditions:
  - 50 million euros concessional loan available from the Spanish "Fondo de Ayuda al Desarrollo" (FAD).
  - 30 million euros commercial export credit with official support from CESCE (Spanish Export Credit Insurance Company), under OECD Consensus conditions.

- The financial conditions for the 50 million euros concessional loan would be:
  - Repayment Period: 30 years
  - Grace Period (included in the repayment period): 10 years
  - Rate of interest: 1.12

The former financial terms could be improved if the Government of Spain is granted a preferential price regarding the Certificates of Emission Reduction (CERs) generated by the Lake Turkana Wind Power Project.

The final agreement on this loan will require the Sovereign Guarantee of the Republic of Kenya.

This financial facility could be used to finance either lot 2 or lot 3, or both, provided that a Spanish company is awarded the lot in the international competitive bid.

e-mail: [illegible]

PASEO DE LA CASTELLANA, [illegible]
28046 MADRID (SPAIN)

TEL.: [illegible]
FAX: [illegible]

LTWP and KPLC realize the importance of completing the erection of the Transmission Line by June/July 2011 in conjunction with the start-up of the Wind Farm envisaged for the same date above.(the Objective)

In view of the task before them, the Parties have jointlyrecommended the creation of a Task Force comprising specialists from LTWP and KPLC, vested with the authority to lead, obtain all necessary consents and approvalsand complete all the stages required to achieve the Objective.

LTWP and KPLC have already agreed and nominated the members of the Task Force, these are:

**For KPLC:**

1) Mr. David Mwangi
2) Mr. Joel Kiilu
3) Mr. Sammy Muita
4) Mr. Peter Gitura
5) Mr. Erastus Kirunja

**For LTWP:**

1) Mr. Carlo van Wageningen
2) Mr. Christopher Staubo
3) Mr. Ed Schike
4) Mr. Willem Dolleman
5) Mr. Nick Taylor

The purpose of the present document is to outline in detail the responsibilities and tasks to be carried out by the Task Force:

**Terms of Reference:**

The task Force will be responsible for all the process involved in ensuring the timely delivery of the Transmission Line in order to avoid a situation of stranded assets, in particular this includes:

1) Review, confirm and approve the work this far carried out on the Transmission Line by LTWP, namely:

a) Route survey
b) Route selection
c) Transmission Line design
d) Transmission Line BQ
e) Proposed sub-stations as designed by KEMA
f) Proposed Switching stations
g) Invitation for Expression of Interest
h) Tender document as Proposed by KEMA for both Transmission Line and sub-stations.

2) Assign and time the remaining works to be carried out by a qualified Surveyor Company, namely:

a) Topographical Survey and cartography of the Transmission Line route
b) Wayleaves acquisition
c) Soil investigation
d) Pegging
e) Bush clearing

3) Select the best option on the proposed Financial Structure recommended by LTWP and KPLC, in order to meet the Objective, including where necessary obtaining the necessary GoK support for the financing structure.

4) Obtain all necessary approvals from each of the Parties' respective Boards and any other parties that may be required including but not limited to the MoE, KETCO and the MoF, for the entering into of any contract or agreement that shall form the basis of the Project;

5) Obtain all necessary approvals, consents and endorsements required to enter into and execute the concession agreement for the eventual transfer of the TransCo to KETCO / KPLC.

4) Shortlist qualified contractors to be invited to bid for the Tender

5) Evaluate bids submitted by the shortlisted qualified contractors and select the winning bid

6) Award the Contract.

7) Select and assign external independent advisory be it legal, technical or other as may be required and where such expertise is not available within LTWP and/or KPLC

8) Minute all proceedings of meetings and copy the same to the Permanent secretary of MOE, the Managing Director of KPLC and the Legal Advisors of LTWP and KPLC

9) Supervise all stages of the Transmission Line and Sub-stations erection or assign the same to a an agreed third party

10) Perform any other task that the Task Force may be called upon to perform to ensure a smooth process to achieve the Objective.

# Appendix 4

MANAGING DIRECTOR'S OFFICE

TELEPHONE: 243366
TELEGRAMS:
'ELECTRIC' NAIROBI
FAX: 250067
P.O. BOX 30099-00100
NAIROBI, KENYA

The Kenya Power & Lighting
Co. Ltd.

STIMA PLAZA
KOLOBOT ROAD,
PARKLANDS, NAIROBI
KENYA

***Our Ref*:** KPLC1/2/4/1K

4th June, 2009

Christopher Staubo
Director
Lake Turkana Wind Power
P.O. Box 63716
NAIROBI

Dear Christopher,

**DEVELOPMENT OF A 300MW WIND POWER PLANT NEAR LAKE TURKANA AND ASSOCIATED TRANSMISSION LINE**

We refer to the negotiations held between KPLC, Lake Turkana Wind and the Ministry of Energy on your proposal for the development of a 300MW Wind Power Plant near Lake Turkana in Marsabit District. Following the negotiations, Parties agreed on a tariff of Euro Cts 7.22/kWh for the energy to be generated from the plant, subject to approval by the Government.

We are pleased to inform you that the Government has approved development of the plant. Further, the Government has decided that Lake Turkana Wind develops the 400kV 428 km transmission lines from Laisamis District to Suswa, Naivasha District which is necessary to evacuate the power from the plant on a BOOT basis.

We now expect parties to work diligently on the Project so as to complete the Power Purchase Agreement within the shortest time possible. The KPLC team is reviewing the draft PPA and will revert to you by end of next week.

Yours Sincerely

**ENG. JOSEPH NJOROGE, MBS**
**MANAGING DIRECTOR & CEO**

# Appendix 5

KEMA

30813134-Consulting 09-2700

# Lake Turkana Wind Power Project
# Lot 3: Transmission lines

## Technical tender evaluation report

Arnhem, 6 January 2010

By order of Lake Turkana Wind Power


| | | | | | |
|---|---|---|---|---|---|
| author : A.J.H. Linssen/J.F. Groeman | | | | reviewed | : W.G. Kuijpers |
| B | 40 pages | 0 annexes | JFG | approved | : K.J. van Oeveren |

## 1.2 Course of the tender procedure for Lot 3

Prior to the tendering process, KPMG has requested for expressions of interest for each of the Contract Lots. KPMG has carried out this prequalification of tenderers resulting into the following 7 pre-qualified bidders for Contract Lot 3:

- Cobra/Chidhiya
- Elecnor
- Isolux
- Jyoti
- Kalpataru
- KEC
- Transrail/Gammon.

The tendering procedure has been executed according to FIDIC Tendering Procedure, second edition 1994.

The tender package has been compiled by KEMA and reviewed by the KPLC/Ketraco/LTWP Task Force. Final approval by KPLC/Ketraco/MoE to issue the tenders has been received in the Task Force Meeting no. 9 of 3 July 2009[1].

KEMA has co-ordinated the tendering process and issued invitations and the complete set of specifications to tender on 10 July 2009 to all 7 bidders. The tenders had to be submitted into separate sealed parts: technical and financial envelopes.

During the tendering process, the following tender bulletins were issued:

- TB 6, 8 ,9, 10 regarding the submission of tenders (e.g. closing date, details of the tender opening, evaluation methodology)
- TB1, 2, 3, 4, 4a, 5 and 7, concerning technical, financial and legal clarifications and amendments to the tender package

The tender closing date was set for Monday 19 October 2009.

Five companies have timely submitted a tender:

- Elecnor, Spain
- Isolux Corsán, Spain
- Kalpataru, India
- KEC, India

[1] Minutes of meeting [illegible]

- Transrail/Gammon, India.

The technical tender opening has taken place on 19 October 2009 at KPMG in presence of LTWP, KPLC, Ketraco, KEMA and Lot 3 bidders who had submitted a bid. A presence list is enclosed.

KEMA has received one copy of the technical envelopes and one set of CDs with technical information only from each tender for evaluation at the KEMA offices in Arnhem, The Netherlands.

After the initial technical evaluation, the financial tender opening has taken place on 20 November 2009 at KPMG in presence of LTWP, KPLC, KEMA an LTWP financing party, the Lot 3 bidders who had submitted a bid. One Lot 2 contractor, who had been deemed non-responsive, was not present. After the opening of the Financial envelopes KEMA received also a CD-rom of the financial proposal of each tenderer in order to do necessary evaluation if required.

In the initial evaluation, it was found that all tenderers have given very little information on the actual project design and the approach for execution. Therefore it was decided to issue one request for clarifiaction to all the tenderers on 1st December 2009, in order to get better information on the system approach, the design process, the execution and logistics considerations of the tenderers.

## 1.3 Evaluation Lot 3

### 1.3.1 General

The tender evaluation has been split into separate technical and financial evaluations, carried out by KEMA and KPMG, respectively. The results of these evaluations will be joined into a final ranking by LTWP. The scope of this report is the result of the technicial evaluation.

In KEMA a group of engineers/specialists, also responsible for the specifications, has technically evaluated the submitted tenders. This evaluation has been performed based on an evaluation matrix system, prepared prior to the receipt of the Tenders. The full procedure is descibed in Tender Bulletin # 9 which is attached.

After receipt of the Tenders, a check on completeness and responsiveness has been executed. From this first evaluation it was concluded that all five tenders submitted are responsive for the technical part. The responsiveness for the financial envelope would be determined by KPMG.

In the next sections the technical evaluation of each individual tender will be described in detail. The deviations will be discussed and points of interest for the contract negotiations will be given.

### 1.3.2 Evaluation aspects

All technical evaluations will contain the following aspects:

- General information on the Tenderer
- General impression on Tender completeness and responsiveness
- Availability of overall project documents e.g. Project Plan, Planning, HS&E plan, Quality Plan
- Approach for the project execution, e.g. planning, manpower, heavy equipment, logistics, security.
- Technical description of the project, e.g. system approach, studies to be executed, design
- Proposed and described components

Conclusions:

- Score table
- Points of interest for contract negotiations
- Deviations to the scope

### 1.3.3 Scoring system, monetary value of deviations

Each item in the tender documents will be scored. The score bidders receive for each item will depend on the degree that they fulfil the requirements for that particular item. When they fully comply with a clause the item gets a 10, the 100% score. If they don't or just partly comply they get a representative part of the percentage.

The score on all items will be weighed to determine the total score. An evaluation form in XLS format has been filled in for each bidder separately. The sum of several individual requirements have been weighted again in comparison to other summed clauses within the system. A third level weighing is available for systems within the total contract lot. The weigh factor approximately reflects the economical interest of the respective sub-topics. Because of the large number of evaluation items and the implemented weigh factors, misjudgement of one item hardly influences the overall score.

In this way an objective and transparent, clearly weighted evaluation is possible, giving the required level of importance to each sub-system/system/equipment.

In the final ranking (see Common evaluation procedure and ranking), the final price for each proposal will be adjusted for its technical score by determining the monetary value of technical deviations at a percentage of 100%-$S_{tech}$ of the "Corrected Lump Sum Price" (see below). Example: one gets 95% score $S_{tech}$. The monetary value of technical deviations will then be calculated as +5% of the average "Lump Sum Price".

This monetary value of deviation is in some cases quite a large sum, due to the relatively low score of the tenderers evaluation. This monetary value of deviations is not only to be seen as the "defective" amount of money required to compensate scope of supply deviations in the Tender. Due to lack of information or unclarity of the information given, it cannot excluded that there might be apparent deviations in the scope. During contract negotiations these unclarities will be discussed and in many cases these deviations are not apparent or can be included into the contract without additional costs. Using this approach it is very likely that the contract can be awarded with minimal increase of the initial lump sum price, because too large increase (the lump sum is higher then the next best) would implicate that negotiations with the second in line would have to be started.

# 2 ELECNOR, SPAIN

## 2.1 General impression of Tender issued

The Tender was issued in 1 volume and a CD rom with the information in digital form. The information was properly structured and was in accordance to the CD-rom. On the CD-rom no content description was found.

## 2.2 Project documents

Most of the requested project documents are present and give a good overview of the project organsiation.

The resumés show a good mix of expertise and young people. Most of the personnel has been with Elecnor for quite some time.

The HS&E plan seems a standard product that will need to be tailored to the project. This is a good approach since in this way the HS&E precautions will be universal over all the projects and this is easiest to maintain for both the workers as well as the HS&E officers.

Elecnor has not delivered a maintenance plan.

## 2.3 Design approach

There is adequate design for the civil construction proving that Elecnor is able to do the design work properly.

There is adequate tower design, including mechanical load calculations and drawings proving that Elecnor is able to do the design work properly.

Elecnor does not state to submit design reports for approval to the Engineer in due course. There is no proof that Elecnor will execute the insulation co-ordination study required. The insulators are already determined. This is a point of attention.

## 2.4 Execution approach

### 2.4.1 Planning

The planning chart shows that after contract award the engineering and design will be executed in three months. For the approval a period of 2,5 months is defined. Both durations are considered adequate.

Elecnor will need 18 months after contracting for the execution of the complete project, which is in line with the requirements

### 2.4.2 Logistics

Elecnor will work from 2 base camps. It is not clear how many teams there will be along the the line.

Elecnor has done a quick scan on the possibilites for camps and logistics. They have evaluated possible transport routes from Mombasa to Suswa and up to Lake Turkana. A commitment for a more detailed logistic plan is made after contract-award.

### 2.4.3 Workflow

Elecnor doesn't give a detailed description of the execution workflow.

### 2.4.4 Manpower and heavy equipment

The following forecast for manpower was issued by Elecnor. The total of all the manmonth forecasted by Elecnor is 6162. The number of 6162 manmonths considered low in comparison to the estimates of KEMA for this amount of work.

Seee appendix 1 for the Manpower forecast for Elecnor.

### 2.4.5 Security

Stores and Camps will be fenced and for guarding each camp will be supplied with 8 guards. Along the line, whenever Elecnor leaves tools and tackles and heavy equipments, separate security shall be deployed in the night time

## 2.5 Technical description of the components

Elecnor lists reputed manufacturers of components for line equipment. Not all the required data sheets have been completed. In case of contracting, the missing spaces should be ~~completed.~~

Below find the scores for the individual equipments specifications.

| | | | | |
|---|---|---|---|---|
| | Lot 3 | Elecnor | | |
| 09-0311.3. | Evaluation Part 3: System design | | | Score |
| 09-0370 | Conductor generic | 5% | Elecnor | 8,0000 |
| 09-0371 | Conductor project specification | 5% | Elecnor | 8,0000 |
| 09-0372 | Spacers Generic | 5% | Elecnor | 8,0000 |
| 09-0373 | Spacers detailed | 5% | Elecnor | 7,0000 |
| 09-0374 | Clamps and fittings generic | 5% | Elecnor | 7,0000 |
| 09-0376 | Dampers Generic | 10% | Elecnor | 7,0000 |
| 09-0378 | Fasteners Generic | 10% | Elecnor | 9,0000 |
| 09-0379 | Steel | 20% | Elecnor | 8,0000 |
| 09-0383 | Material clamps and fittings Generic | 10% | Elecnor | 8,0000 |
| 09-0684 | Generic specification OPGW | 5% | Elecnor | 8,0000 |
| 09-0687 | Groundwork and foundations | 5% | Elecnor | 5,0000 |
| 09-1013A | Generic insulator spec suspension | 5% | Elecnor | 8,0000 |
| 09-1014A | Generic Insulator spec Linepost | 5% | Elecnor | 8,0000 |
| 09-1058 | Detailed specification for OPGW | 5% | Elecnor | 8,0000 |
| 0 | subtotal control | | | |

## 2.6 Scope deviations

Elecnor has clearly stated not to have any deviations to the scope or the specifications.

However, the following deviations were found:

- Elecnor does not state to submit design reports to the Engineer, among others regarding insulation co-ordination. The insulators are already determined.

## 2.7 Total technical score

The total technical score of Elecnor is 7,56 or 75,6% of the maximum score. This means the Technical Deviation is 100% - 75,6% = 24,4%. The table below shows how this is built up.

| Overall | | Weighing | Score |
|---|---|---|---|
| Part 0 - 1 | 9.15 | 10% | **0.92** |
| Part 2 | 7.20 | 60% | **4.32** |
| Part 3 | 7.75 | 30% | **2.33** |
| | | 100% | **7.56** |

# 3 ISOLUX CORSÁN, SPAIN

## 3.1 General impression of Tender issued

The Tender was issued in a set of 3 volumes and a CD rom with the information in digital form. Volume 1 contains the most relevant material, the project description and the project documents. Volume 2 and 3 mainly contain printed matter on reference projects, the materials proposed and type test reports.

## 3.2 Project documents

The "Work Methodology" document gives a clear description of the project approach even though it is not mentioned in the index as such at all. This makes that it is not recognized as such in the beginning. It decribes in detail the individual steps that are taken for the route survey, the tower spotting, the preparation and installation of the foundations, the earting, the tower erection, installation of spacers and dampers, stringing, OPGW installation, testing and commissioning.

The project plan describes the organisational approach of the project. This doesn't contain to much detail. The resumés show one senior manager (1964) and many medior engineers (1975+) for the actual work. All personnel listed is Spanish of lives in Spain. Many of them work for Isolux Corsan (Cobra) for longer period. Some of them come from utilities of from other industrie (e.g. ABB and Elecnor).

The HS&E plan is a standard plan that is tailored to the project. This is a good approach since in this way the HS&E precautions will be universal over all the projects and this is easiest to maintain for both the workers as well as the HS&E officers. For each activity in the process there is a chapter on the expected risk and how they are mitigated. Toghether with a chapter on general risk mitigation (e.g. working at heights, working near live parts...) it is a good start for the actual HS&E plan for the execution. The chapter "On Site Prevention Control" gives sufficient confidence that Isolux can execute work like this in a safe manner.

The comprehensive maintenance plan gives a complete description of how maintenance will be executed but the exact scope of the maintence work and the interval of the activities for the Lake Turkana Wind Power transmission line is not give. The document is an overall maintenance handbook in tha sence. It is unclear what can be expected when they are granted the maintenance contract.

## 3.3 Design approach

In the main proposal some design approach is given for the electrical parameters and the loading calculations for the towers. The civil design (foundations) is not detailed.

There are some tower and earthing typical drawings delivered. They give relatively little detail. There are a lot of detailed drawings for the individual components present but this all together doesn't give a good impression on the systems approach.

Isolux proposes a full connection as requested to the Suswa S/S. There is a principle drawing present of the proposed solution. This has to be detailed in the contract negotiations.

## 3.4 Execution approach

### 3.4.1 Planning

The gant chart planning shows that after contract award the initial engineering and design will be executed in three months. There is no time reserved for the approval of the drawings and correction of the flaws. This is a potential risk. Another concern is the fact that manufacturing is already in progess before the final design is approved.

The tower structures are not tested, this shall be negotiated.

The total planning is 18 months form project start to first powering up of the complete line. This is in line with the requested planning.

### 3.4.2 Logistics

Isolux hasn't given any detailed description of the approach for their logistics plan, not even after the clarification. This makes it hard to evaluate their approach and their ability to execute a project of this size and type.

### 3.4.3 Workflow

The Work Methodology as described under 3.2 gives a good impression on the workflow. There is some more detail given in the "Construction Work Plan" which was issued after the clarification round. Therefor the amount of detail given is hardly sufficient to do a thorough evaluation.

### 3.4.4 Manpower and heavy equipment

The following forecast for manpower was issued by Isolux. In the initial tender the total of all the manmonths forecasted was 16242. The forecast after the clarifiaction round was increased to 17687. This is a slight manpower increase probably due to rounding and reallocation. The number of 17687 manmonths is higher then the estimated 9760 ~~manmonths by KEMA for this amount of work.~~

Seee appendix 2 for the Manpower forecast for Isolux.

The listed heavy equipment, issued after the clarification round, seems reasonable for this amount of work.

### 3.4.5 Security

Isolux doesn't give any detail on the security emphasised for this project. It is only mentioned that Isolux will arrange "guarding and fencing".

## 3.5 Technical description of the components

Isolux proposes a number of possible manufacturers of components for line equipment. For each component several possible vendors are mentioned. No clear choice for one preferred vendor or equipment is made. Based on the proposed equipment specification and filled in data sheets the evaluation of the individual components information is done by KEMA specialist, in comparisson to the specification.

The list below shows the evaluation score and the weighing of the components in the overall component score.

Multiple alternative offers (vendors/equipment) for the line components are given, which results into unclarity about the final delivery. On the other hand, data sheets for key components contain correct data and Kalpataru declares not to have any deviations to the specifications. It must be assured that the right equipment will be delivered.

Below find the scores for the individual equipments specifications.

| | | | | | |
|---|---|---|---|---|---|
| 09-0311.3.A | Lot 3<br>Evaluation Part 3: System design | Isolux | | Score | 8,0500 |
| 09-0370 | Conductor generic | 5% | Isolux | 9,0000 | 0,4500 |
| 09-0371 | Conductor project specification | 5% | Isolux | 9,0000 | 0,4500 |
| 09-0372 | Spacers Generic | 5% | Isolux | 8,0000 | 0,4000 |
| 09-0373 | Spacers detailed | 5% | Isolux | 7,0000 | 0,3500 |
| 09-0374 | Clamps and fittings generic | 5% | Isolux | 7,0000 | 0,3500 |
| 09-0376 | Dampers Generic | 10% | Isolux | 7,0000 | 0,7000 |
| 09-0378 | Fasteners Generic | 10% | Isolux | 7,0000 | 0,7000 |
| 09-0379 | Steel | 20% | Isolux | 9,0000 | 1,8000 |
| 09-0383 | Material clamps and fittings Generic | 10% | Isolux | 8,0000 | 0,8000 |
| 09-0684 | Generic specification OPGW | 5% | Isolux | 8,0000 | 0,4000 |
| 09-0687 | Groundwork and foundations | 5% | Isolux | 9,0000 | 0,4500 |
| 09-1013A | Generic insulator spec suspension | 5% | Isolux | 8,0000 | 0,4000 |
| 09-1014A | Generic Insulator spec Linepost | 5% | Isolux | 8,0000 | 0,4000 |
| 09-1058 | Detailed specification for OPGW | 5% | Isolux | 8,0000 | 0,4000 |
| 0 | subtotal control | 100% | | | |

## 3.6 Deviations

Isolux has given a long list of deviations to the tender specifications mentioned as "Scope of Works" and have not given a written statement that they fully comply to the specifications given.

For the Basic solution Isolux states that the offer satisfies all the requirements as per Employer's Specifications and is in accordance to tower quantaties, foundations and preliminary route survey indicated by LTWP and that all costs will be adjusted as per real quantaties at contract execution. This is a major deviation since the route survey and the foundation type and quantaties information issued by LTWP in document 30813134 – Consulting 09-1703 was for information only. This is clearly stated in item 4 of that document.

It shall be clearly communicated that the project is to be executed as a lump sum project, that there is no possibility for claims due to changed quantaties.

Other deviations that need clarification are:

- Connection between 400 kV TL dead-end tower and the Suswa S/S gantries shall be under Lot 2 contractor's scope.
- Connection between 400 kV TL dead-end tower and the Loyangalani S/S gantries shall be under Lot 2 contractor's scope.
- Connection between 220 kV LILO dead-end towers and Suswa S/S gantries shall be under Lot 2 contractor's scope.
- Water supply for civil works is not under Lot 3 contractor's scope.
- Water transportation and storage from Loyangalani to Site is under Lot 3 contractor's

scope.

## 3.7 Total technical score

The total technical score of Isolux Corsan is 5,69 or 56,9% of the maximum score. This ~~means the Technical Deviation is 100% - 56,9% = 43,1%. The table below shows how this is~~ built up.

| Overall | Score per item | Weighing | Score |
|---|---|---|---|
| Part 0 - 1 | 8,18 | 10% | **0,82** |
| Part 2 | 4,10 | 60% | **2,46** |
| Part 3 | 8,05 | 30% | **2,42** |
| | | 100% | **5,69** |

# 4 KALPATARU, INDIA

## 4.1 General impression of Tender issued

The Tender was issued in a set of 5 volumes and a CD rom with the information in digital form. The information was properly structured and was in accordance to the content description. There was clear reference from the printed files to the PDF documents on the CD-rom.

## 4.2 Project documents

Most of the requested project documents are present and give a clear overview of the organisation.

The resumés show a good mix of expertise, personnel that has been with Kalpataru for quite some time, but also new personnel from companies like KEC and Jyoti that have been in the active in the Tendering proces.

A complete project plan is missing, only some organisational charts are present.

The HS&E plan is clearly a standard document that is tailored to the project. This is a good approach since in this way the HS&E precautions will be universal over all the projects and this is easiest to maintain for both the workers as well as the HS&E officers. There is clear desrciption on the roles and responsibilities for the various positions in the project team as well as a clear risk evaluation. The presence of procedures for fire fighting, site access, alcohol and housekeeping show that this plan is well prepared.

Kalpataru has delivered a comprehensive maintenance plan complete with description and the interval of the activities. This gives a clear overview of what can be expected when they are granted the maintenance contract.

## 4.3 Design approach

There is adequate design for the civil construction from which it shows that Kalpataru most likely is able to do the design work properly.

There is adequate tower design, including calculations and drawings proving that Kalpataru is able to do the design work properly.

Kalpataru proposes a T-connetion at Suswa. This is not in accordance to the specifications of KEMA. Kalpataru can offer an other arrangement on request but the risks and the costs will have to be negotiated at forehand.

## 4.4 Execution approach

### 4.4.1 Planning

The gant chart planning shows that after contract award the initial engineering and design will be executed in five months. Inclusive approval this is an adequate period. There is potential risk in this. Another concern is the fact that the field work for the civil part and the construction are already in progess before the final design is approved and the tower structures are tested.

Initially Kalpataru would first install and commision one complete circuit. The second circuit would therefore have to be stringed while the first circuit is in operation. The HS&E plan doesn't pay special attention to this. A clear procedure for this shall be put into place.

In the planning issued with the clarification round the overall planning is shrunk from 24 months to 18 months and stringing is done in parallel. There has been a significant change in approach. The reasoning is certainly worth asking for.

### 4.4.2 Logistics

Kalpataru will be divided the line of 428 KM into 4 sections.
Section 1 : South Horr / Baragoi Terminal Tower to AP 7 – 113 KM :
Section 2 – Marlal AP 7 to AP 9 – 95 KM :
Section 3 – Rumaruti – AP 9 – AP 13 – 107 KM
Section 4 – Naivasha – AP 13 – Suswa Terminal Tower – 113 KM

Kalpataru has shown in its description of the approach after the clarification that they are well aware of the risk and problems in each of the mentioned sections. They treat every section as a seperare project. All aspects like risk, problems in the terrain, logistics, security are well described for each of the sections.

### 4.4.3 Workflow

Kalpataru gives clear description of the execution workflow. This gives great confidence in their approach. It seems that the manpower forecast is well tuned to the workflow as described.

### 4.4.4 Manpower and heavy equipment

The following forecast for manpower was issued by Kalpataru. In the initial tender the total of all the manmonth forecasted by Kalpataru was 19380. The forecast after the clarifiaction round is down to 8986. This is a significant drop in manpower forecast that needs explanation. The number of 8986 manmonths is better in line with the estimations of KEMA for this amount of work.

Seee appendix 3 for the Manpower forecast for Kalpataru.

The listed heavy equipment seems reasonable for this amount of work.

### 4.4.5 Security

Kalpataru will keep stores and camps that will be fenced and measures for security will be taken. In the day time wherever necessary after Rumuruti, especially in the area of Baragoi/South Horr etc., each team will be accompanied by the security personnel. Along the line, whenever Kalpataru leaves their tools and tackles and heavy equipments, separate and security shall be deployed in the night time.

In Mugie area with the due approval from concerned authority and with the help of Forest RangersKalpataru shall divert the wild life to refrain from that region during construction.

Below you will find the score table with the weighing factors for the individual sections of the Part 2 documents, related to the scope of work and the overall system approach.

## 4.5 Technical description of the components

Kalpataru lists a large number of reputed manufacturers of components for line equipment. For each component several possible vendors are mentioned. No clear choice for one preferred vendor or equipment is made. Based on the proposed equipment specification and filled in data sheets the evaluation of the individual components information is done by KEMA specialist, in comparisson to the specification.

The list below shows the evaluation score and the weighing of the components in the overall component score.

| | | | | | |
|---|---|---|---|---|---|
| 09-0311.3. | Lot 3<br>Evaluation Part 3: System design | Kalpataru | | Score | 8,1500 |
| 09-0370 | Conductor generic | 5% | Kalpataru | 7,0000 | 0,3500 |
| 09-0371 | Conductor project specification | 5% | Kalpataru | 7,0000 | 0,3500 |
| 09-0372 | Spacers Generic | 5% | Kalpataru | 9,0000 | 0,4500 |
| 09-0373 | Spacers detailed | 5% | Kalpataru | 9,0000 | 0,4500 |
| ~~09-0374~~ | ~~Clamps and fittings generic~~ | ~~5%~~ | ~~Kalpataru~~ | ~~9,0000~~ | ~~0,4500~~ |
| 09-0376 | Dampers Generic | 10% | Kalpataru | 7,0000 | 0,7000 |
| 09-0378 | Fasteners Generic | 10% | Kalpataru | 9,0000 | 0,9000 |
| 09-0379 | Steel | 20% | Kalpataru | 9,0000 | 1,8000 |
| 09-0383 | Material clamps and fittings Generic | 10% | Kalpataru | 7,0000 | 0,7000 |
| 09-0684 | Generic specification OPGW | 5% | Kalpataru | 9,0000 | 0,4500 |
| 09-0687 | Groundwork and foundations | 5% | Kalpataru | 6,0000 | 0,3000 |
| 09-1013A | Generic insulator spec suspension | 5% | Kalpataru | 8,0000 | 0,4000 |
| 09-1014A | Generic Insulator spec Linepost | 5% | Kalpataru | 8,0000 | 0,4000 |
| 09-1058 | Detailed specification for OPGW | 5% | Kalpataru | 9,0000 | 0,4500 |
| 0 | subtotal control | | | | |

Multiple alternative offers (vendors/equipment) for the line components are given, which results into unclarity about the final delivery. On the other hand, data sheets for key components contain correct data and Kalpataru declares not to have any deviations to the specifications. It must be assured that the right equipment will be delivered.

## 4.6 Deviations

Kalpataru has declared not to have any deviations to the tender specifications.

However, the following possible deviations were found:

- No insulation co-ordination study mentioned
- Tower design approval not mentioned
- Multiple alternative offers (vendors/equipment) for the line components are given, which results into unclarity about the final delivery
- The tie-in at Suswa offered (hard T instead of full tie-in) is not correct.

## 4.7 Total technical score

The total technical score of Kalpataru is 6,08 or 60,8% of the maximum score. This means the Technical Deviation is 100% - 60,8% = 39,2%. The table below shows how this is built up.

| Overall | Score per item | Weighing | Score |
|---|---|---|---|
| Part 0 - 1 | 7,6 | 10% | **0,76** |
| Part 2 | 4,8 | 60% | **2,88** |
| Part 3 | 8,2 | 30% | **2,45** |
| | | 100% | **6,08** |

# 5 KEC, India

## 5.1 General impression of Tender issued

The Tender was issued in a set of 4 volumes and a CD rom with the information in digital form. Volume 1 contains the most relevant material, the project description and the project documents. Volumes 2, 3 and 4 mainly contain printed matter on brochures, reference projects, the materials proposed, Quality handbook and type test reports. A clear index of the material delivered is missing on the CD.

## 5.2 Project documents

The "Project Approach" document gives a full description of the project approach. Even it decribes in detail the individual steps that are taken for the route survey, foundation classification and proposed overhead line construction. The latter section is a comprehensive description of all the activities involved when constructing the transmission line, from foundation installation, through tower erection, stringing and OPGW installation. The testing and commissioning are not described here.

The project plan describes the organisational preparation of the project and doesn't contain too much detail. It's all pretty obvious what is described here.

From the "Project Organisation" description it shows that KEC will approach the project as 4 independent subprojects, each with it's own team, headed by 2 projectmanagers and one country manager for the overall project management. This assumption is confirmed by the descriptionof the project approach after the clarification round.

The resumés show one senior manager (1956) and many medior engineers (1971+) for the actual work. All key personnel listed is Indian. Many of them have long working experience in KEC. It is remarkable that the country manager gained experience at KEC in Saudi-Arabia and worked for Kalpataru for 2 years.

The HS&E plan is a standard plan that describes the Health, Environmental Management Plan (HEMP) a methodology adapted by KEC. The document gives a description of the approach by KEC. The document is very general in its descriptions and doesn't contain detail of or relation to the construction of the transmission line. The theoretical approach is okay, the link to the practical exection cannot be found. A risk table for the project is missing.

There is no maintenance plan available. No spare parts were offered.

## 5.3 Design approach

Only after the clarification round it became clear that KEC is capable of doing the transmission line engineering and tower design themselves. In the document "DESIGN INFRA STRUCTURE & CAPABILITIES" KEC describes the appraoch and the software tools that KEC has in use for this kind of engineering work.

There are some minimal tower and earthing typical drawings delivered. They give relatively little detail. There are a lot of detailed drawings for the individual components present, like for all the tenderers, but this all together doesn't give good impression on the systems approach.

The KEC Tie-in at Suswa S/S is not described in much detail. It is unclear how this Tie-in will be realized. This has to be detailed in the contract negotiations to avoid additional costs in execution.

## 5.4 Execution approach

### 5.4.1 Planning

The total execution planning is now 16 months form project start to first powering up of the complete line. The engineering is not mentioned in the planning but is a clear item in the Work Plan issued. This is in line with the requested planning.

The Gant chart planning shows the first activity "Receipt of approved tower design drawings from client". It seems that KEC wants to "buy" project execution time by shifting the project start date to a day after the design is approved. This is certainly an issue to discuss in detail during negotiations.

There is no testing of the tower structures mentioned in the planning. It is mentioned in the Work Plan issued after the clarification round.

### 5.4.2 Logistics

KEC will supply the work from 4 camps and 5 subcamps. This is stated after the clarification round. The supply of the tower material will all be done from the KEC owned factories in India. KEC claims to have a large amount of standard material in stock. It shall be verified that this material is of the right quality. The special tower elements will only be released after approval. Components will be supplied by various worldwide vendors with which KEC claims to have long lasting relationship. All other required raw material e.g. cement and sand will be purchased locally.

#### 5.4.3 Workflow

There is no real description of the workflow as such. The amount of detail given is insufficient ~~to do a thorough evaluation.~~

#### 5.4.4 Manpower and heavy equipment

The following forecast for manpower was issued by KEC. In the initial tender the total of all the manmonth forecasted was 25545. The forecast after the clarifiaction round has remained the same. This number of about 2.5 times the estimated 9760 manmonths by KEMA for this amount of work. KEMA thinks this needs reconsideration.

Seee appendix 4 for the Manpower forecast for KEC

The listed heavy equipment, issued after the clarification round, seems rather high too for this amount of work.

#### 5.4.5 Security

KEC doesn't give any detail on the security emphasised for this project. It is only mentioned that KEC will arrange "Security Agencies to provide teams of armed guards, unarmed guards. We would also take assistance of local police as and when required".

### 5.5 Technical description of the components

Like all other tenderers KEC proposes a number of possible international vendors of components for line equipment. In volume 3 and 4 for each component several possible vendors are mentioned. No clear choice for one preferred vendor or equipment is made. Based on the proposed equipment specification and filled in data sheets the evaluation of the individual components information is done by KEMA specialist, in comparisson to the specification.

The list below shows the evaluation score and the weighing of the components in the overall component score.

Multiple alternative offers (vendors/equipment) for the line components are given, which results into unclarity about the final delivery. On the other hand, data sheets for key components contain correct data and KEC declares (like all the others) not to have any deviations to the specifications. It must be assured that the right equipment will be delivered.

| 09-0311.3. | Lot 3<br>Evaluation Part 3: System design | KEC | | Score |
|---|---|---|---|---|
| 09-0370 | Conductor generic | 5% | KEC | 7,0000 |
| 09-0371 | Conductor project specification | 5% | KEC | 7,0000 |
| 09-0372 | Spacers Generic | 5% | KEC | 7,0000 |
| 09-0373 | Spacers detailed | 5% | KEC | 7,0000 |
| 09-0374 | Clamps and fittings generic | 5% | KEC | 7,0000 |
| 09-0376 | Dampers Generic | 10% | KEC | 7,0000 |
| 09-0378 | Fasteners Generic | 10% | KEC | 5,0000 |
| 09-0379 | Steel | 20% | KEC | 5,0000 |
| 09-0383 | Material clamps and fittings Generic | 10% | KEC | 8,0000 |
| 09-0684 | Generic specification OPGW | 5% | KEC | 4,0000 |
| 09-0687 | Groundwork and foundations | 5% | KEC | 6,0000 |
| 09-1013A | Generic insulator spec suspension | 5% | KEC | 9,0000 |
| 09-1014A | Generic Insulator spec Linepost | 5% | KEC | 9,0000 |
| 09-1058 | Detailed specification for OPGW | 5% | KEC | 5,0000 |
| 0 | subtotal control | 100% | | |

## 5.6 Deviations

Kalpataru has declared not to have any deviations to the tender specifications.

However, the following possible deviations were found:

- No calculations for the foundations were found
- Indian standards mentioned for the conductor and the line equipment
- No standards on the OPGW mentioned, no test reports available
- Multiple alternative offers (vendors/equipment) for the line components are given, which results into unclarity about the final delivery

## 5.7 Total technical score

The total technical score of KEC is 6,80 or 68,0% of the maximum score. This means the Technical Deviation is 100% - 68,0 % = 32,0%. The table below shows how this is built up.

| Overall | Score per i | Weighing | Score |
|---|---|---|---|
| Part 0 - 1 | 7,4 | 10% | **0,74** |
| Part 2 | 6,9 | 60% | **4,14** |
| Part 3 | 6,4 | 30% | **1,92** |
| | | 100% | **6,80** |

# 6 TRANSRAIL/GAMMON, INDIA

## 6.1 General impression of Tender issued

The Tender was issued in 2 volumes and a CD rom with the information in digital form. The information was poorly structured. Hence, it is not easy to see if an item is missing or just not found.

## 6.2 Project documents

The construction method is described only generally, but the design method is only stipulated in the clarification.

The resumés show mainly very experienced people with >30 years of experience, partly in HR positions (i.e. irrelevant) or management. It is questionable whether these people will actually be available for the project. Further, the resumés do not show in detail the relevance of the experience.

The provisional HS&E plan consists of presentation materials but not a sufficiently detailed document. Many (valuable) do's and don'ts, but the responsibilities and organization are missing. In case of contracting, a detailed HS&E plan should be required.

Transrail has not delivered a maintenance plan.

## 6.3 Design approach

The proposed tower design is much more compact (smaller clearances of only 2.8 m) than the typical tower design specified in the tender documents (assuming 4 m clearance). This is in principle acceptable, provided the contractor can show the design complies with the starting points in the tender documents, especially lightning performance. However, Transrail does not plan to execute the insulation co-ordination study required to determine the clearances. A higher tower has a significant impact on the tower design and cost.

The starting points proposed by Transrail need further scrutiny. The detailed calculations provided do not cast doubt that Transrail is able to do the design work properly.

The list of design documents substantiating the design that Transrail-Gammon is proposing to submit to the Engineer for approval (to show that the design complies with the requirements) does not comply with (Part 2 of) the tender documents. For instance, there is no proof that Transrail will execute the insulation co-ordination study required. This is a point of attention: in case of contract negotiations, it should be specified that each starting point for the design calculations will need approval.

## 6.4 Execution approach

### 6.4.1 Planning

The planning chart shows that after contract award the engineering and design will be executed in eight months. For the approval a period of 8 months is defined as well. Both durations are considered adequate (pretty long in comparison to others, parallel construction??). However, in the adjudication stage it shall be brought to the attention of the Contractor that detailed engineering drawings per tower shall be submitted for information only (hence keeping the responsibility with the Design-Build Contractor).

Transrail will need 18 months after contracting for the execution of the complete project, which is adequate.

### 6.4.2 Logistics

Transrail intends to have 2 storage sites, near Suswa and at Rumuruti. Details on the logistics from the factory or Mombasa to the storiage sites are not given.

### 6.4.3 Workflow

Transrail gives a general description of the construction on site, but not all details have been established yet, e.g. the number of storage sites (initially two).

The foundations and towers will be constructed/erected by 10 teams along the route, the stringing by 6 teams: 3 teams for the phase conductors and 3 teams for the ground wires (OPGW).

In case of contract negotiations, it should be made sure that no risk will be atributed to the Employer in this respect.

### 6.4.4 Manpower and heavy equipment

The following forecast for manpower was issued by Transrail. The total of all the manmonth forecast is 7105. The number of 7105 manmonths considered low in comparison to the estimates of KEMA for this amount of work.

Seee appendix 5 for the Manpower forecast for Gammon Transrail

#### 6.4.5 Security

From the tender: "All stores and camping facilities will be provided with round the clock Armed Security guards, deployed through reputed Local Security Agencies. All the equipments which will be kept at the site will also be provided with night armed security. Where required, armed security guards will be provided to workmen at work places."
This is considered adequate.

### 6.5 Technical description of the components

Transrail lists reputed manufacturers of components for line equipment. For some components, more than one manufacturer is specified. Not all the required data sheets have been completed.

### 6.6 Scope deviations

Transrail has clearly stated not to have any deviations to the scope or the specifications.

> 8. It is confirmed that our proposal is consistent with all the requirements of submission as stated in the RFP and subsequent communications from LTWP or KEMA or KPMG.

However, the following possible deviations were found:

- Transrail does not state to submit design reports to the Engineer, among others regarding insulation co-ordination. The insulators are already determined.
- Transrail has offered a smaller tower design, possibly leading to deviations in price for steel structures and foundations.

### 6.7 Total technical score

The total technical score of Transrail is 7,06 or 70,6% of the maximum score. This means the Technical Deviation is 100% - 70,6% = 29,4%. The table below shows how this is built up.

| Overall | | Weighing | Score |
|---|---|---|---|
| Part 0 - 1 | 7.43 | 10% | **0.74** |
| Part 2 | 6.40 | 60% | **3.84** |
| Part 3 | 8.25 | 30% | **2.48** |
| | | 100% | **7.06** |

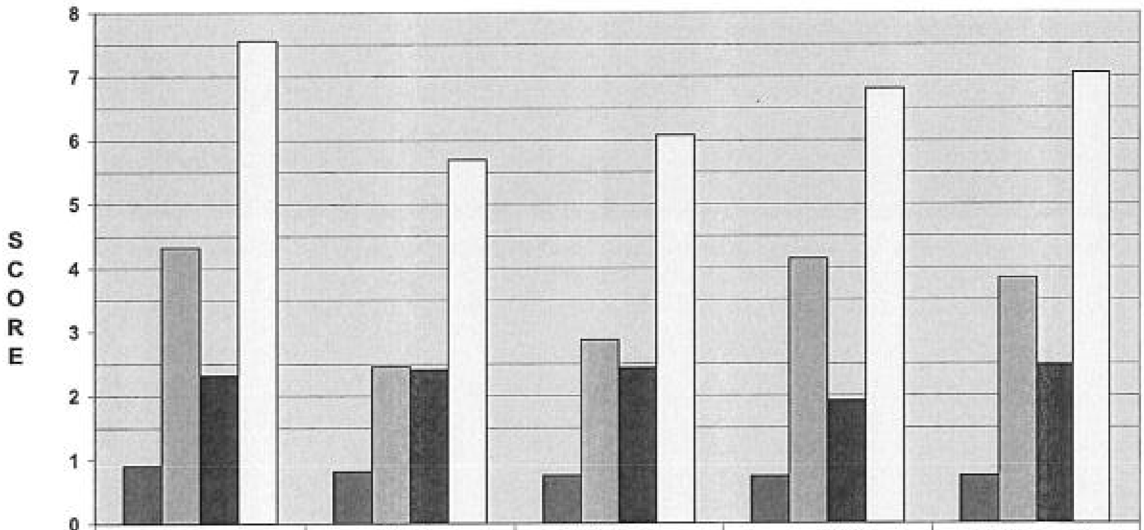
For Transrail, due to the expected necessary correction of the clearances (insulation co-ordination), it is expected that the contract can only be awarded with a significant increase of the initial lump sum price.

# 7 OVERALL COMPARISON AND CONCLUSION

## 7.1 Technical score

The table and graph below give the total technical scores for all 5 bids.

| | Subscores | | | | |
|---|---|---|---|---|---|
| | 1 - Elecnor | 2 - Isolux | 3 - Kalpataru | 4 - KEC | 5 - Transrail |
| Part 0-1 | 9.15 | 8.18 | 7.56 | 7.43 | 7.43 |
| Part 2 | 7.20 | 4.10 | 4.80 | 6.90 | 6.40 |
| Part 3 | 7.75 | 8.05 | 8.15 | 6.40 | 8.25 |
| | **Weighed subscores** | | | | |
| | 1 - Elecnor | 2 - Isolux | 3 - Kalpataru | 4 - KEC | 5 - Transrail |
| Part 0-1 | 0.92 | 0.82 | 0.76 | 0.74 | 0.74 |
| Part 2 | 4.32 | 2.46 | 2.88 | 4.14 | 3.84 |
| Part 3 | 2.33 | 2.42 | 2.45 | 1.92 | 2.48 |
| Total | 7.56 | 5.69 | 6.08 | 6.80 | 7.06 |




| | 1 - Elecnor | 2 - Isolux | 3 - Kalpataru | 4 - KEC | 5 - Transrail |
|---|---|---|---|---|---|
| Part 0-1 | 0.92 | 0.82 | 0.76 | 0.74 | 0.74 |
| Part 2 | 4.32 | 2.46 | 2.88 | 4.14 | 3.84 |
| Part 3 | 2.33 | 2.42 | 2.45 | 1.92 | 2.48 |
| Total | 7.56 | 5.69 | 6.08 | 6.80 | 7.06 |

## 7.2 Monetary value of technical deviations

The average (corrected by KPMG) tender price was EUR 146,163,668. The table below shows how the price for all five tenders should be corrected.

| LOT 3: FINAL TECHNICAL FINANCIA | Elecnor Euro | Kalpataru Euro | KEC International Euro | Isolux Corsan Euro | Gammon India Ltd Euro |
|---|---|---|---|---|---|
| Lumpsum excluding maintenance | 159,305,477 | 145,005,999 | 145,624,096 | 136,970,018 | 143,912,751 |
| *Technical score* | 75.6% | 60.8% | 68.0% | 56.9% | 70.6% |
| Monetary Value of Technical Deviation | 35,663,935 | 57,296,158 | 46,772,374 | 62,996,541 | 42,972,119 |
| NPV Maintenance | 15,923,791 | 15,100,767 | - | 10,747,432 | 16,084,977 |
| NPV Spares | 128,200 | - | 14,333,187 | - | - |
| **Total Final Technical Financial Score** | **211,021,404** | **217,402,924** | **206,729,658** | **210,713,991** | **202,969,847** |

Note: this score is exclusive of the monetary value of the financial offer/conditions and financing solution.

## 7.3 Further steps

The final ranking of the tenders will be determined by LTWP, taking into account the financial offer/conditions and financing solution.

Appendix: 1, Manpower forecast Elecnor

| Forecast on construction labour and staff | | | | | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | | | | | | | | | | | | |
| Project manager | | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | |
| Office personel | | 8 | 8 | 8 | 12 | 12 | 12 | 12 | 12 | 12 | 12 | 12 | 12 | 12 | 12 | 12 | 12 | 12 | 12 | |
| Engineer | | | | 6 | 6 | 12 | 12 | 12 | 12 | 12 | 12 | 12 | 12 | 12 | 12 | 12 | 12 | 12 | 12 | |
| Surveyor | | | | 2 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | | |
| QA officer | | | | 3 | 3 | 3 | 3 | 3 | 3 | 3 | 3 | 3 | 3 | 3 | 3 | 3 | 3 | 3 | 3 | |
| Store keeper | | | | | 8 | 8 | 8 | 8 | 8 | 8 | 8 | 8 | 8 | 8 | 8 | 8 | 8 | 8 | 8 | |
| Supervisor civil | | | | | | | | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | | | | |
| Supervisor tower | | | | | | | | | | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | | | |
| Supervisor stringing | | | | | | | | | | | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | |
| Civil workers | | | | | | | | 172 | 172 | 172 | 172 | 172 | 172 | 172 | 172 | 172 | | | | 1 |
| Tower workers | | | | | | | | | | 176 | 176 | 176 | 176 | 176 | 176 | 176 | 176 | | | 1 |
| Stringing workers | | | | | | | | | | 210 | 210 | 210 | 210 | 210 | 210 | 210 | 210 | 210 | | 1 |
| Security | | | | | 32 | 32 | 32 | 32 | 32 | 32 | 32 | 32 | 32 | 32 | 32 | 32 | 32 | 32 | 32 | |
| Assistance | | | | | | | 8 | 8 | 8 | 8 | 8 | 8 | 8 | 8 | 8 | 8 | 8 | 8 | 8 | |
| | | | | | | | | | | | | | | | | | | | | |
| | Totals | 9 | 9 | 20 | 66 | 72 | 80 | 256 | 256 | 646 | 650 | 650 | 650 | 650 | 650 | 650 | 474 | 294 | 80 | 6 |

Appendix: 2, Manpower forecast Isolux

| | | | | | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Project manager | | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 18 |
| Office personel | | 6 | 6 | 6 | 6 | 6 | 6 | 6 | 6 | 6 | 6 | 6 | 6 | 6 | 6 | 6 | 6 | 6 | 6 | 108 |
| Eng | | 7 | 7 | 7 | 7 | 7 | 7 | 7 | 7 | 7 | 7 | 7 | 7 | 7 | 7 | 7 | 7 | 7 | 7 | 126 |
| Surveyor | | 3 | 3 | 3 | 3 | 3 | 15 | 15 | 15 | 15 | 15 | 15 | 15 | 15 | 15 | 15 | 15 | 5 | 5 | 190 |
| QA officer | | | | | 3 | 3 | 3 | 3 | 3 | 3 | 3 | 3 | 3 | 3 | 3 | 3 | 3 | 3 | 3 | 45 |
| Store keeper & assistant | | | | | 6 | 6 | 6 | 6 | 6 | 6 | 6 | 6 | 6 | 6 | 6 | 6 | 6 | 6 | 6 | 90 |
| Supervisor civil | | | | | 1 | 1 | 10 | 10 | 10 | 10 | 10 | 10 | 10 | 10 | 10 | 10 | 10 | 10 | | 122 |
| Supervisor towers | | | | | | | | 10 | 10 | 10 | 10 | 10 | 10 | 10 | 10 | 10 | 10 | 10 | 10 | 120 |
| Supervisor stringing | | | | | | | | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 48 |
| Civil workers | | | | | 80 | 80 | 475 | 475 | 475 | 475 | 475 | 475 | 475 | 475 | 475 | 475 | 475 | | | 5385 |
| Tower workers | | | | | | | | 800 | 800 | 800 | 800 | 800 | 800 | 800 | 800 | 800 | 800 | 40 | | 8040 |
| Stringing workers | | | | | | | | | 280 | 280 | 280 | 280 | 280 | 280 | 280 | 280 | 280 | 280 | 280 | 3080 |
| Security | | | | | 15 | 15 | 15 | 15 | 15 | 15 | 15 | 15 | 15 | 15 | 15 | 15 | 15 | 15 | 15 | 225 |
| Assistance | | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 90 |
| Tower teams | | | | | | | | | | | | | | | | | | | | 0 |
| Stringing teams | | | | | | | | | | | | | | | | | | | | 0 |
| | Totals | 22 | 22 | 22 | 127 | 127 | 543 | 1357 | 1637 | 1637 | 1637 | 1637 | 1637 | 1637 | 1637 | 1637 | 1637 | 392 | 342 | 17687 |

Appendix: 3, Manpower forecast Kalpataru

| Forecast of engineering and construction labour and staff | | | | | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Project manager expat | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 18 |
| Construction manager expat | 2 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 72 |
| Survey | 3 | | | | | | | | | | | | | | | | | | | |
| surveyor | | | 4 | 4 | 4 | 4 | | | | | | | | | | | | | | 16 |
| technician expat | | | 8 | 8 | 8 | 8 | | | | | | | | | | | | | | 32 |
| local | | | 8 | 8 | 8 | 8 | | | | | | | | | | | | | | 32 |
| Soil investigation | 4 | | | | | | | | | | | | | | | | | | | |
| supervisor | | | | 4 | 4 | 4 | 4 | 4 | 4 | 4 | | | | | | | | | | 28 |
| technician expat | | | | 8 | 8 | 8 | 8 | 8 | 8 | 8 | | | | | | | | | | 56 |
| local | | | | 8 | 8 | 8 | 8 | 8 | 8 | 8 | | | | | | | | | | 56 |
| Access roads | 5 | | | | | | | | | | | | | | | | | | | |
| supervisor | | | | | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | | | | | | 40 |
| technician expat | | | | | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | | | | | | 40 |
| local | | | | | 16 | 16 | 16 | 16 | 16 | 16 | 16 | 16 | 16 | 16 | | | | | | 160 |
| Foundation | 6 | | | | | | | | | | | | | | | | | | | |
| engineer | | | | | | | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | | | 44 |
| surveyor | | | | | | | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | | | 44 |
| supervisor | | | | | | | 12 | 12 | 12 | 12 | 12 | 12 | 12 | 12 | 12 | 12 | 12 | | | 132 |
| technician expat | | | | | | | 96 | 96 | 96 | 96 | 96 | 96 | 96 | 96 | 96 | 96 | 96 | | | 1056 |
| local | | | | | | | 104 | 104 | 104 | 104 | 104 | 104 | 104 | 104 | 104 | 104 | 104 | | | 1144 |
| Erection | 7 | | | | | | | | | | | | | | | | | | | |
| engineer | | | | | | | | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | | 44 |
| supervisor | | | | | | | | 16 | 16 | 16 | 16 | 16 | 16 | 16 | 16 | 16 | 16 | 16 | | 176 |
| technician expat | | | | | | | | 40 | 40 | 40 | 40 | 40 | 40 | 40 | 40 | 40 | 40 | 40 | | 440 |
| local | | | | | | | | 40 | 40 | 40 | 40 | 40 | 40 | 40 | 40 | 40 | 40 | 40 | | 440 |
| Stringing | 8 | | | | | | | | | | | | | | | | | | | |
| engineer | | | | | | | | | | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 40 |
| supervisor | | | | | | | | | | 12 | 12 | 12 | 12 | 12 | 12 | 12 | 12 | 12 | 12 | 120 |
| technician expat | | | | | | | | | | 200 | 200 | 200 | 200 | 200 | 200 | 200 | 200 | 200 | 200 | 2000 |
| local | | | | | | | | | | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 1000 |
| Store | 9 | | | | | | | | | | | | | | | | | | | |
| store keeper | | | | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 64 |
| ass. Store keeper | | | | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 32 |
| technician expat | | | | 30 | 30 | 30 | 30 | 30 | 30 | 30 | 30 | 30 | 30 | 30 | 30 | 30 | 30 | 30 | 30 | 480 |
| local | | | | 40 | 40 | 40 | 40 | 40 | 40 | 40 | 40 | 40 | 40 | 40 | 40 | 40 | 40 | 40 | 40 | 640 |
| Overhead | 10 | | | | | | | | | | | | | | | | | | | |
| project engineer | | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 18 |
| QAQC/HSE | | 8 | 8 | 8 | 8 | 8 | 8 | 8 | 8 | 8 | 8 | 8 | 8 | 8 | 8 | 8 | 8 | 8 | 8 | 144 |
| Commercial Incharge expat | | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 18 |
| commercial ass. | | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 72 |
| local staff | | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 72 |
| local peons/drivers | | 12 | 12 | 12 | 12 | 12 | 12 | 12 | 12 | 12 | 12 | 12 | 12 | 12 | 12 | 12 | 12 | 12 | 12 | 216 |
| | | 35 | 55 | 151 | 175 | 175 | 375 | 475 | 475 | 791 | 771 | 771 | 771 | 771 | 747 | 747 | 747 | 527 | 427 | 8986 |

Appendix: 4, Manpower forecast KEC

| Project construction local manpower schedule (after questioning | | | | | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Country manager | | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | | | 16 |
| Project manager | | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | | | 32 |
| Construction manager | | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | | | 64 |
| Commercial manager | | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | | | 16 |
| Office personel | | 9 | 9 | 9 | 9 | 9 | 9 | 9 | 9 | 9 | 9 | 9 | 9 | 9 | 9 | 9 | 9 | | | 144 |
| Civil engineer | | | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | | | | | 52 |
| Engineer Tower erection | | | | | | | | 8 | 8 | 8 | 8 | 8 | 8 | 8 | 8 | 8 | 8 | | | 80 |
| Surveyor | | | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | | | | | 26 |
| QA officer | | | | | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | | | 26 |
| Store keeper | | | | 4 | 4 | 4 | 9 | 9 | 9 | 9 | 9 | 9 | 9 | 9 | 9 | 9 | 9 | | | 111 |
| Supervisor civil | | | 4 | 4 | 25 | 25 | 25 | 25 | 21 | 21 | 21 | 21 | 14 | 14 | 14 | | | | | 234 |
| Supervisor tower | | | | | | 14 | 14 | 14 | 14 | 14 | 14 | 14 | 14 | 14 | 14 | 14 | | | | 154 |
| Supervisor stringing | | | | | | | | | | 10 | 10 | 10 | 10 | 10 | 10 | 10 | 10 | | | 80 |
| civil workers | | | 120 | 126 | 208 | 810 | 810 | 820 | 820 | 820 | 820 | 820 | 820 | 820 | 820 | | | | | 8634 |
| tower erection workers | | | | | | | | 550 | 550 | 550 | 550 | 550 | 550 | 550 | 550 | 550 | | | | 4950 |
| stringing workers | | | | | | | | | | 500 | 500 | 500 | 500 | 500 | 500 | 500 | 500 | | | 4000 |
| Security | | 41 | 82 | 83 | 128 | 195 | 196 | 340 | 264 | 382 | 310 | 311 | 300 | 301 | 302 | 330 | 152 | | | 3717 |
| Store workers | | 139 | 148 | 148 | 148 | 148 | 148 | 177 | 177 | 177 | 168 | 170 | 192 | 194 | 196 | 247 | 247 | | | 2824 |
| Miscellaneous works | | | | | | 10 | 7 | | | | | | 32 | 32 | 32 | 132 | 140 | | | 385 |
| | | | | | | | | | | | | | | | | | | | | |
| | Totals | 197 | 377 | 388 | 538 | 1231 | 1234 | 1968 | 1888 | 2516 | 2435 | 2438 | 2474 | 2477 | 2480 | 1819 | 1085 | 0 | 0 | 25545 |

Appendix: 5, Manpower forecast Gammon Transrail

| Months | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | Total |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Project Manager | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 18 |
| Office Personnel | 2 | 2 | 4 | 6 | 8 | 12 | 14 | 14 | 14 | 14 | 14 | 14 | 14 | 12 | 10 | 6 | 4 | 4 | 168 |
| Engineer | 1 | 1 | 2 | 2 | 4 | 4 | 6 | 6 | 6 | 6 | 6 | 6 | 6 | 6 | 4 | 3 | 3 | 3 | 75 |
| Surveyor | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 1 | 1 | 1 | 33 |
| QA Officer | 0 | 1 | 1 | 1 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 31 |
| Store Keeper | 0 | 0 | 0 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 30 |
| Supervisor Civil | 0 | 0 | 2 | 2 | 2 | 4 | 4 | 6 | 6 | 6 | 6 | 6 | 6 | 4 | 2 | 2 | 1 | 1 | 60 |
| Supervisor Tower | 0 | 0 | 0 | 0 | 0 | 4 | 8 | 8 | 8 | 8 | 8 | 8 | 8 | 8 | 4 | 2 | 2 | 2 | 78 |
| Supervisor Stringing | 0 | 0 | 0 | 0 | 0 | 0 | 4 | 8 | 10 | 12 | 12 | 12 | 12 | 12 | 12 | 12 | 12 | 12 | 130 |
| Civil Workers | 20 | 30 | 30 | 90 | 150 | 200 | 200 | 200 | 200 | 200 | 200 | 200 | 150 | 100 | 120 | 60 | 20 | 20 | 2190 |
| Tower Workers | 0 | 0 | 0 | 0 | 0 | 20 | 120 | 150 | 200 | 250 | 250 | 250 | 250 | 250 | 250 | 200 | 150 | 100 | 2440 |
| Stringing Workers | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 30 | 150 | 225 | 225 | 225 | 225 | 225 | 225 | 1530 |
| Security | 4 | 4 | 8 | 12 | 12 | 12 | 20 | 20 | 20 | 20 | 30 | 30 | 30 | 20 | 20 | 20 | 20 | 20 | 322 |
| Assistance | | | | | | | | | | | | | | | | | | | 0 |
| Total | 30 | 41 | 50 | 118 | 183 | 263 | 383 | 419 | 471 | 523 | 563 | 683 | 708 | 644 | 654 | 536 | 443 | 393 | 7105 |

# APPENDIX 7

Carlo Van Wageningen
Chairman
Lake Turkana Wind Power Limited
P O Box 63716-00619
Nairobi, Kenya

Our ref Z922/22/jk07012010

7 January 2010

Dear Carlo,

**Lake Turkana Wind Power Limited – Transmission Grid Lot 3 Bids Evaluation Results**

As part of the financial advisory services, we were requested by the Lake Turkana Wind Power Limited to evaluate the financial bids for Transmission Grid. The technical evaluation was to be carried out by KEMA. This letter summarises the results of our evaluation of the Lot 3 bids which also took into account the financial costs imputed by KEMA following their assessment of the Technical Bids.

## 1 Evaluation Criteria

The evaluation criteria involved a two stage process as follows:

Stage 1:

First, a technical evaluation by KEMA based on which the non-responsive bids were dropped. Further KEMA were required to quantify the technical deviations of all the responsive bids and then monetise the same for purposes of giving KPMG the pricing adjustments needed to be made to the financial proposals.

Stage 2:

The second stage was the domain of KPMG. Under this Phase, KPMG was required to assess the financial proposals received and then mark them as follows:

- *75% financial score*: made up of the results of the financial bids submitted by bidders *plus* the sum of technical deviations and or losses assessed by KEMA.
- *25% financial score*: made up of the results of the evaluation of the financing solutions given by the various bidders in their financial proposals.

The marking scheme and all subsequent revisions were communicated to the bidders under the request for proposals and various special bulletins. We understand that none of the bidders had expressed dissatisfaction to the concerned evaluation criteria.

## 2 Results

The evaluation results were concluded on the 6 Jan 2010. These results have been assessed on a two criteria basis as follows:

**Criteria 1: Assumes that the Transmission Line will be the responsibility of the Lake Turkana Wind Power Limited pursuant to the BOOT arrangement**

In this case the financial scores are based on sum of the financial bids and the technical deviations (which have been marked out of 75%), and the financing solution (which has been marked out of 25%). The ranking determined on this basis is summarised below.

**Lot III ranking**

| Bidder | Financial proposal | Maintenance and spares | Technical Deviations | Total price adjusted for deviations | % score | Financing Solution | Overall score | Rank |
|---|---|---|---|---|---|---|---|---|
| Elecnor | 159.3 | 16.0 | 35.7 | 211.0 | 72.17% | 25.00% | 97% | 1 |
| Kalpataru | 145.0 | 15.1 | 57.3 | 217.4 | 70.03% | 0.00% | 70% | 5 |
| KEC International | 145.6 | 14.3 | 46.8 | 206.7 | 73.67% | 7.50% | 81% | 2 |
| Isolux Corsan | 137.0 | 10.7 | 63.0 | 210.7 | 72.25% | 6.25% | 79% | 3 |
| Gammon India | 143.9 | 16.1 | 43.0 | 203.0 | 75.00% | 0.00% | 75% | 4 |
| **Lowest bid lot 3** | **136.97** | | | **203.00** | | | | |

Under this criteria, the financing solution was considered to be very significant to the successful implementation of the project and hence the allocation of 25% marks. If funding was not a constraint, then this criterion would not have been relevant.

**Criteria 2: Assumes that the Transmission Line will be the responsibility of the Government of Kenya (GoK)**

Assuming that the Transmission Line will be the responsibility of the GoK, then the financial score attached to the worth of the financing solution would cease to be of great significance, so long as, the concerned bidders are able to provide concessional funding under a Government Guarantee. We reviewed the list of bidders who had expressed willingness to provide concessional funding under the GoK guarantee. Based the proposals received only Isolux and Elecnor had provisions for concessionary funding. Accordingly, the ranking made under this criteria, is as given here below.

**Lot III ranking**

| Bidder | Financial proposal | Maintenance and spares | Technical Deviations | Total price adjusted for deviations | % age score | Concess-ional funding | Rank |
|---|---|---|---|---|---|---|---|
| Elecnor | 159.3 | 16.0 | 35.7 | 211.0 | 72.17% | Yes | 2 |
| Kalpataru | 145.0 | 15.1 | 57.3 | 217.4 | 70.03% | No | N/A |
| KEC International | 145.6 | 14.3 | 46.8 | 206.7 | 73.67% | No | N/A |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| Isolux Corsan | 137.0 | 10.7 | 63.0 | 210.7 | 72.25% | Yes | 1 |
| Gammon India | 143.9 | 16.1 | 43.0 | 203.0 | 75.00% | No | N/A |
| **Lowest bid lot 3** | **136.97** | | | **203.00** | | | |

It should be noted that we have made one overriding assumption, that is, both Isolux and Elecnor would give concessional funding of the same amount. The ranking could if this proved to be untrue. Due regard should be given to this fact.

## 3 Conclusions

You should be aware that the assessment of the financial score attributable to the financing solution as well as the prices imputed under technical deviations could be subjective. As a result the worth of the financing solution and the validity of the costs imputed on technical deviations can only be properly determined once negotiations have been held. As such, the final discussions and award decisions should take account of these facts.

I trust that you will find the above to be in order and in case you need further clarification please let me know.

Yours sincerely,

**John Kiruthu**
Partner & Head Corporate finance, Transaction Services & Global Infrastructure

---

I/we confirm that the above constitutes the understanding of the bids evaluation methodology and the results articulated by both KPMG and KEMA.

For and on behalf of Turkana Wind Power Limited

Signature ..........................................................................................

Name ..........................................................................................

Position ..........................................................................................

# Appendix 6

REPUBLIC OF KENYA

MINISTRY OF ENERGY

Telegrams: "MINPOWER, Nairobi
Telephone: Nairobi 310112
e-mail: ps@energymin.go.ke
Fax: 240910 or 228314
When replying please quote

OFFICE OF THE
PERMANENT SECRETARY
P. O. Box 30582
NAIROBI

Date: January 14, 2010

Ref. No. ME/CONF/3/2/8

**Mrs. Rocio Kessler Grijalvo**
Economics & Commercial Counselor
Embassy of Spain
CBA Building, Upper Hill
**NAIROBI**

Dear Rocio

**RE: TENDER EVALUATION REPORT ON THE LAKE TURKANA TRANSMISSION LINE PROJECT**

This letter is a follow up on our (Grijalvo/Nyoike) several telephone discussions this week on the above captioned subject during which we agreed that I would give you a copy of the report.

Attached hereto please find a copy of a self explanatory letter from Mr. Carlo Van Wageningen, Chairman, Lake Turkana Wind Power Limited dated January 11, 2010 forwarding the report on the above captioned subject for your perusal and consideration.

The report contains the following documents:

1. Technical tender evaluation report by KEMA, and referenced 30813134- consulting 09-2700;
2. Transmission Grid Lot 3 Bids Evaluation Results by KPMG, and referenced Z922/22/jk07012010;
3. Environmental Impact Assessment (EIA) License, Registration Number 0003865;
4. Letter addressed to Ministry of Energy dated July 13, 2009;

5. Letter of Reliance issued by VTT International to Ministry of Energy dated August 17, 2009;
6. Letter of Reliance issued by KEMA to Ministry of Energy dated August 24, 2009; and,
7. Letter received from KPLC on June 4, 2009.

As you may ascertain from the report (Lot 3), Isolux Corsan had offered the lowest price for the construction of the line at Euro 136,970,018. The report further states that if development assistance would be provided by the Kingdom of Spain to Kenya Government, then Isolux Corsan would be the preferred bidder.

The purpose of this letter, therefore, is to seek confirmation from you regarding enhancement of your development assistance for construction of the line, given that you had already indicated that your Government would consider proving Euro 80 million which is rather inadequate.

I would like to request that you consider increasing your contribution to Euro 110 million to take into account the elements that have been included in the evaluation report by KEMA Engineering Consultants, which have substantially enhanced the cost. Some of these costs can be reduced significantly as they include huge stocks of spares to last a number of years. KfW has indicated its willingness to contribute Euro 30 million for the project, subject to appraisal.

Please expedite.

Yours sincerely

Patrick M. Nyoike, CBS
**PERMANENT SECRETARY**

**COPY TO:**

**Mr. Joseph K. Kinyua, CBS**
Permanent Secretary
Office of the Deputy Prime Minister &
Ministry of Finance
Treasury Building
**NAIROBI**

**Mr. Jackson N. Kinyanjui**
Director, External Resources Department
Office of the Deputy Prime Minister &
Ministry of Finance
Treasury Building
**NAIROBI**

**Eng. Joseph K. Njoroge, MBS**
Managing Director
Kenya Power & Lighting Company
Stima Plaza A, Parklands
**NAIROBI**

**Eng. Joel M. Kiilu**
Managing Director
KETRACO
Caparo Place, Upper Hill
**NAIROBI**

**Mr. Piet KleffMann**
Country Director
KFW/DEG Regional office
P.O Box 52074 - 00200
Riverside Westlands
Off Riverside Drive
**NAIROBI**

**Mrs. Mathilde Bourd-Laurans**
Program Officer
AFD Regional Office
Royal Ngao House, Hospital Road
Upper Hill
**NAIROBI**

**Mr. Kurt Simonsen**
Regional Representative
European Investment Bank
P.O Box 40193 - 00100
Hospital Road
**NAIROBI**

**Ms. Paivi Koljonen**
Task Team Leader
World Bank Mission - Kenya
Hill Park Building
Upper Hill
**NAIROBI**

# Appendix 8

LAKE TURKANA
WIND POWER

Mr. Patrick Nyoike, CBS.,
Permanent Secretary
Ministry of Energy - Republic of Kenya
25th Floor, Nyayo House
NAIROBI

January 21, 2010

22 JAN 2010

RE: LAKE TURKANA TRANSIMISSION LINE PROJECT

Dear Sir,

We are in receipt of your letter dated January 20, 2010 and referenced ME/CONF/3/2/8 on the above captioned subject and most gratefully acknowledge your support and effort in facilitating the Spanish Government's increased financial support for the Transmission Line project.

In order to move forward and to provide the debt financiers of the wind farm with the comfort they need to bring the project to a financial close, we kindly request you to:

1. Confirm the Government of Kenya's undertaking to implement the 428KM Loiyangalani – Suswa Transmission Line Project, for which Lake Turkana Wind Power Limited was previously mandated to implement under a Build-Own-Operate- Transfer (BOOT) structure, and that the Power Purchase Agreement shall be amended to cater for the public sector implementation and its associated undertakings including those that may be required under the Government Guarantee being sought for this Project for KPLC's take-or-pay obligations under the approved PPA; and

2. Authorise the Task Force comprising KETRACO, KPLC, KEMA, KPMG and LTWP to proceed to discussing with the successful bidder their tender proposal and commence contractual negotiations to ensure the speedy implementation of the Project to coincide with the wind farm's expected first commissioning date of March 2012, and to provide the agreed form of the final contract to the Ministry for ratification and onward implementation by March 31st 2010. Given that Lake Turkana Wind Power has, along with KEMA and KPMG and together with the Task Force that comprises KPLC and KETRACO conducted the tender evaluation procedure thus far, and in the interests of ensuring that the same technical team that evaluated the bids is involved, this will be the most efficient manner to tackle the remainder of the procurement process.

We once again, sincerely thank you for your assistance and support on this project, and reiterate our commitment to you to work diligently towards achieving the agreed milestones and to ensure that there are no delays in commissioning of this Project.

Yours sincerely,

Carlo Van Wageningen
Chairman,
Lake Turkana Wind Power Limited

# Appendix 10

REPUBLIC OF KENYA

MINISTRY OF ENERGY

Telegrams: "MINPOWER, Nairobi
Telephone: Nairobi 310112
e-mail: ps@energymin.go.ke
Fax: 240910 or 228314
When replying please quote

VERY URGENT

OFFICE OF THE
PERMANENT SECRETARY
P. O. Box 30582
NAIROBI

Ref. No. ME/CONF/3/2/8

Date: JANUARY 30, 2010

**Mr. Carlo Van Wageningen**
Chairman
Lake Turkana Wind Power Limited
P.O Box 63716
**NAIROBI** **Fax: 2718349**

Dear Carlo

**RE: LAKE TURKANA TRANSMISSION LINE PROJECT**

Please refer to your letter dated January 14, 2010 seeking confirmation that the proposed 400KV double circuit transmission line will be undertaken by the Government of Kenya (*copy attached for ease of reference*).

I would like to confirm that the subject line will be undertaken by the government through its transmission company, the Kenya Electricity Transmission Company (KETRACO). As I have already informed you, the Government of the Kingdom of Spain has formally communicated its support for Isolux Corsan (an EPC contractor who went through your bidding process) through a concessionary loan of Euro 110 loan out of the Euro 137 million required to construct the line.

I hope this information will facilitate Turkana Wind to reach a financial close by June 30, 2010. I would also like to inform you that your request for a sovereign guarantee is being considered. I have also received a similar request from ADB which is also one of your co-financiers of the 300MW wind farm project.

Yours sincerely

Patrick M. Nyoike, CBS
**PERMANENT SECRETARY**

**COPY TO:** **Hon. Kiraitu Murungi, EGH, MP**
Minister for Energy
Nyayo House
**NAIROBI**

**Mr. Joseph K. Kinyua, CBS**
Permanent Secretary
Office of the Deputy Prime Minister &
Ministry of Finance
Treasury Building
**NAIROBI**

**Dr. Geoffrey N. Mwau**
Economic Secretary
Economic Affairs Department
Office of the Deputy Prime Minister &
Ministry of Finance
Treasury Building
**NAIROBI**

**Eng. Joel M. Kiilu**
Managing Director
KETRACO
Caparo Place, Upper Hill
**NAIROBI**

# Appendix 11

30813134 Consulting 10-0448
2010-03-10 JFG
Lake Turkana Wind Power

MINUTES of Technical Contract Negotiations with Isolux Corsan for Lot 3

| | | |
|---|---|---|
| Date | : | 1 and 2 March 2010 |
| Start | : | 11:00 on Monday 1 March |
| Place | : | Holiday Inn, Nairobi |

## AGENDA

1. Opening and welcome
2. Introduction round
3. Agreement on the agenda and the program
4. Presentation by Isolux regarding preliminary issues list
5. Next actions
6. Draft minutes of meeting
7. Next meeting

## PRESENT

| | | | |
|---|---|---|---|
| 1) Nick Taylor | LTWP | 11) Frederik Groeman | KEMA |
| 2) Duncan Macharia | KETRACO | 12) Peter Mungai | KPLC |
| 3) Lydia Wanja | KETRACO | 13) Maurice Odhiambo | MoE |
| 4) Eng. Wamukota A.T. | KETRACO | 14) Eneko Alvarez | Isolux |
| 5) Eng. Justin Muna | KETRACO | 15) Joaquin Navarro | Isolux |
| 6) Eng. Samson Akuto | KETRACO | 16) Paolo Geronella | Isolux |
| 7) Rupen Shah | KPMG | 17) Marcel Cabral | Isolux |
| 8) John Kiruthu | KPMG | 18) Iván Ruíz | Isolux |
| 9) Christopher Staubo | LTWP | 19) Daniel Njuguna | Ketraco |
| 10) Andries van der Wal | KEMA | | |

## MINUTES

The following matters have been discussed. See also attached Isolux presentation addressing these issues.

Technical matters

- **Please clarify implications of Alternative Proposal, both technical and commercial**
  Isolux recommends the Alternative Proposal. KEMA clarifies that the quantities provided "for information" by KEMA in TB4 (used for the "Basic Proposal") are a rough estimate, not based on detailed engineering, and that it is the Contractor's responsibility to come up with an optimized design, which is the "Alternative proposal".

- **Clarify statement that 'cost will be adjusted as per the real quantities.'**
  This applies for the basic offer only, see above.

- **Clarify statement that 'design is made by the customer according the quantities given.' What 'quantities given' are referred to. The contractor shall make the final design and shall include all works and supplies to obtain full and proper working installations.**
  This applies for the basic offer only, see above.

- **Clarify statement that 'any other work that is not clearly specified in this document is not included under Lot 3 Contractor's scope'. The contractor shall make the design and shall include all works and supplies to obtain full and proper working installations.**
  Isolux's offer excludes way leaves/right of way/crop compensation, port clearance, bush clearing, line route survey. Regarding port clearance, the Employer states this is the responsibility of the Contractor, and taxes/duties will not be paid directly by the Employer. DDP delivery is required. Isolux's offer was as per TB1#10. Isolux shall specify the goods to be imported to the Employer. Wording in tender (exclusions) will be changed.

- **Advise whether both the basic and the alternative proposals based on existing tower designs.**
  Neither – a new tower design will be made in both cases.

- **Which software will be used to design the towers and the overhead line?**
  Tower® and PLSCADD.

- **Please specify the loads and load cases as proposed for the tower and overhead line designs.**
  Handed over at the meeting

- **Please elaborate on the planning for the design stage and list the documents and drawings to be submitted**
  Isolux confirms to comply with Part 2 Chapter 6.

- **Foundation design is not shown for the basic proposal. Is it identical to the design of the alternative proposal?**
  No, for the basic proposal no design was made, the quantities were based on TB4. Isolux will choose the right foundation for the alternative case.

- **Dampers and spacer dampers are not mentioned in section 1, but details are given elsewhere. Please confirm that all necessary dampers and spacer dampers are included.**
  Confirmed. Spacer dampers in the phase conductors and vibration dampers in the OPGW. Installation will be as per manufacturer's recommendations.

- **Confirm that all type test in accordance with the tender specification documents are included.**
  Isolux confirms for the proposed equipment in the offer. Other standards (e.g. national Spanish standards) are subject to approval.

- **Confirm that all documents in accordance with tender documents part 2 are included in the offer.**
  Confirmed.

- **The tower structures are not tested.**
  Isolux states that full-scale testing would impact planning and cost, and was not mandatory in the tender documents, but could be requested. KEMA confirms that calculations would be sufficient, but KPLC states that full-scale testing is standard requirement in KPLC. Isolux will provide an indication of cost and planning implications. **(action item Isolux).** Ketraco/KPLC will consider the requirement for full-scale testing **(action item Ketraco/KPLC).**

- **Last span between dead end/terminal tower (Lot 3) and substation gantry (Lot 2).**
  Isolux confirms that this last span is included as per Part 2.

- **Holding/Witnessing of quality of concrete.**
  Isolux shall do relevant concrete tests according to regulations and requirements, but the work will not be halted for testing. The Employer may witness tests or/and carry out independent tests periodically as and when he wishes.

- **Trucks/transportation volume**
  LTWP asks for an indication of the number and size/weight of vehicles of Lot 3 between Laisamis and the wind farm site **(action item Isolux)**

- **Water supply for Lot 3**
  Isolux understood as per TB3#39 that water will be available on the wind farm site. LTWP however states that it is the Contractor's responsibility to make the necessary arrangements for the water needed.

- **Water supply form Lot 3 boreholes for local communities**
  Isolux clarifies that the water will be tested, both for concrete production and as drinking water. LTWP stresses that any water supplied to local communities must have an EIA to justify the quality of the water that will be supplied to the local communities, which Isolux undertakes to do. Boreholes that do not pass the relevant tests for drinking water shall be closed up while those suitable shall be handed over to the communities after the project in order to avoid unnecessary repercussions to the Client in the future.

- **Tie-in of Suswa**
  Isolux mentions that a 7 working days outage in the line NairobiNorth-Olkaria is needed for the tie-in of Suswa. KPLC states this is not acceptable. Isolux is asked to prepare a proposal for a temporary bypass of one line circuit **(action item Isolux)**. KPLC will provide relevant info on the existing line around the substation site up to the tension/angle towers on either side **(action item KPLC)**.

- **Terminal point locations**
  KEMA advises that the substation sites for Suswa and Loyangalani will be moved. KEMA will inform Isolux on the substation sites and new line route from AP1 into Loyangalani substation **(action item KEMA)**.

- **Loss calculation**
  Isolux presents a calculation of the losses of the line and recommends a 0.96 power factor for operation. KEMA states that the transmission losses are a consequence of the line design and are not a responsibility of the Lot 3 Contractor.

MM

– **Earthing of the tower**

Isolux proposes an "internal" earthing connection between the tower leg and the reinforcing bars of the foundation in order to decrease maintenance and theft (Eskom specification). Isolux will send a proposal **(action item Isolux)**.

– **Optical telecommunication**

Isolux proposes to shift the interface between Lots 2/3 to joint boxes at the substation gantry. Isolux will prepare a proposal containing **(action item Isolux)**:

- Technical description of interface and standards (for Lot 2 interface)
- Testing
- Price reduction.

– **Wind speed**

Tender document contained only "estimated and informative (30813134-Consulting 09-0311, Part 2: Employer's General Requirements)" value of 26.75 m/s, and was to be verified by the Contractor. It was agreed that KEMA will provide final reference wind speed to Isolux, after discussion with KPLC/Ketraco **(action item KEMA/KPLC/Ketraco)**.

**Project approach**

Please elaborate on how the project will be executed with respect to engineering and construction. The lack of a clear description of the actual approach of the project resulted in as very low score on the highly weighted Part 2 of the Tender, which lead to a huge Monetary Value of Deviations in the technical evaluation compared to other bidders. The main topics that need clarification are listed below:

– **Isolux hasn't given any detailed description of the approach for their logistics plan and the workflow, not even after the clarification. The approach on the execution of a project of this size and type is a critical success factor. Please elaborate on the logistics and the workflow.**

On this particular issue, the presentation (attached) gave the necessary clarification. **The Gantt chart planning shows that after contract award the initial engineering and design will be executed in three months. How much time is reserved for the approval of the drawings and correction of the flaws. This is a potential risk. Please elaborate and include time in the planning for review of documents by the client.**

Isolux considers the 18 month delivery time critically short. There is no margin in the planning. Isolux proposes 2 week review time. Employer will consider this proposal. **(action item Ketraco/LTWP/KEMA)**

- **Constraints due to delivery of others are not visible in the planning (water, bush clearance, .....). Amend the planning accordingly. All interfaces shall be clearly mentioned.**
  Some interfaces are mentioned in the "Constraints" section of the attached presentation.

- **In the initial tender the total of all the manmonths forecasted was 16242. The forecast after the clarification round was increased to 17687. This is a slight manpower increase probably due to rounding and reallocation. Please explain the manpower usage, how many workers will be employed per site, at how many sites will be worked simultaneously, etc.**
  Isolux clarified that an exact estimate is not possible until the start of the work on site. See presentation.

- **The proposed key personnel are all of Spanish Origin. Confirm that all these persons will be part of the actual design team when contract is awarded.** Not confirmed. Isolux will employ local personnel where possible. Unskilled labor will be recruited from local communities. For excavation & foundations, the majority of the personnel will be local, for the tower erection and the stringing, teams will be mainly specialists from abroad.

- **No names or resumés of personnel for the execution phase are given. What will the actual construction team look like? How will the project execution be managed from Spain in terms of quality and progress? Are there any subcontractors foreseen? What subcontracting firms are proposed? What is their track-record?** Isolux will propose key staff at contracting and at personnel changes for approval. Among others for security & civil works, local firms might be subcontracted.

- **In the main proposal some design approach is given for the electrical parameters and the loading calculations for the towers. The civil design (foundations) is not detailed. Please elaborate on this.**
  For the alternative proposal, preliminary design is included in the tender.

- **At peak over 1600 men will be working on the line simultaneous. Isolux doesn't give any detail on the security emphasised for this project. It is only mentioned that Isolux will arrange "guarding and fencing". Elaborate on the proposed logistics, housing and sanitary, water and food, safety, security....**

On this particular issue, the presentation gave the necessary clarification.

- **Another concern is the fact that manufacturing is already in progress before the final design is approved. How will possible late design changes be taken along in the manufacturing?**
  Isolux explains that there will be partial approvals which do not overlap.

- **Isolux proposes a number of possible manufacturers of components for line equipment. For each component several possible vendors are mentioned. No clear choice for one preferred vendor or equipment is made. Multiple alternative offers (vendors/equipment) for the line components are given, which results into unclarity about the final delivery. Which supplier will ultimately be chosen for the materials (conductor, OPGW, insulators, dampers, fasteners)?**
  Ultimate choice will be made after the contract comes into force.

- **Will multiple suppliers per material item be used?**
  No, a single supplier per material.

- **If only one supplier per material item is used, how will the risk for late delivery or insufficient quality be mitigated?**
  See presentation. For the concrete, insulators and conductors, no problems are foreseen (if there is a local shortage of concrete, Isolux will purchase it overseas). Tower steel may be critical – Isolux will deploy an engineer at the steel plant during manufacturing to monitor progress and quality. The Employer may witness .

- **If several suppliers per material item are used, how will the quality of the different supplied materials be verified? How will be tracked what materials will be installed in which part in case of trouble?**
  N/A.

- **A transportation route survey has not been executed yet, what are the risk in the planning for this? The financial implications will not be reimbursable.**
  Included, no financial implications.

- **Training program is very shallow. There seems to be no training on maintenance. Please elaborate on the training program.**
  A training program was presented and should be discussed later. The maintenance training program may be in Kenya.

- **Clearance fees**
  Refer to the item "Clarify statement that 'any other work that is not clearly specified in this document is not included under Lot 3 Contractor's scope'. The contractor shall make the design and shall include all works and supplies to obtain full and proper working installations."

Financial matters

- **The interconnection of the line Nairobi North ⇔ Olkaria seems a very costly one with 8 additional towers. Please propose a more cost-effective solution given the fact that the Suswa substation can be built further away from the existing line.**
  Isolux presents a design with 4 towers. Final location of the Suswa substation and information regarding the existing line will be sent to Isolux **(action item KEMA)**, who will amend the proposal accordingly **(action item Isolux)**.

- **Tender validity date 30 June**
  Isolux is requested to extend the tender validity from 19 February until 30 June, the planned Financial Close date. Isolux requests a formal request **(action item KEMA)**.

Maintenance and spare parts

- **The maintenance plan gives a complete description of how maintenance will be executed but the exact scope of the maintenance work and the interval of the activities for the Lake Turkana Wind Power transmission line is not given. It is unclear what can be expected when they are granted the maintenance contract. Please clarify.**
  Isolux has presented an annual scope of work.

- **Part 8 of the Isolux offer gives the amount of manhours and equipments per (1) year. The costs for this maintenance are M€ 1.9,= per year. Is this amount fixed for 10 years?**
  No, only for the first year. For further years, Isolux would revise the cost for inflation and raw material variations.

- **The price for recommended spare is given for one (1) year. How shall this be interpreted? What is the price for 10 years? What happens with the equipments after 10 years?**
  Unit prices are included for spares recommended for 3 years. Equipment will remain Isolux property. Isolux is requested to prepare an offer for selected maintenance tools/equipment **(action item Isolux).**

- **It is unsure how Isolux will take care of the safety and security of their people and their assets. This is a potential risk for the progress and the financial implications of this.**
  See presentation.

- **The alternative offer gives a possible price reduction of M€ 8,=. What are the risks for the Employer in the alternative design with respect to the base case (route survey, ROW, footing of the towers....)?**
  See above.

**Other issues**

The following items were raised in the meeting:

- Isolux mentions that absence of fixed project dates brings uncertainty, among others due to the dates that inter-government loans will come into force.

- Isolux mentions that the Employer may change from Lake Turkana to Ketraco/GoK, and would like to receive information about tax consequences etc. **(action item LTWP/KPMG)**

- Isolux indicates that new financing sources may require more Spanish content, which may require a change in suppliers/subcontractors.

- Isolux indicates that material prices of aluminium and steel have increased since the tender date. Isolux proposed to use a revision formula. **To be discussed in the financial meeting.**

- Isolux indicates that the EUR/USD exchange rate has changed. There was disagreement regarding the interpretation of TB4#12 and TB5#18 regarding currency and exchange rate of the submitted tender. **To be discussed in the financial meeting.**

- Isolux mentions that the delivery time is challenging, and the project should start as soon as possible.

- KEMA to incorporate the tender bulletins into the tender documents Parts 1-4, indicating the changes for comments by Isolux (**action item KEMA**).

**Wrap-up**

Isolux handed over a copy of the presentations given, which is attached.

KEMA will send draft minutes of meeting by 3 March for comments by all participants by 5 March. Next, KEMA will send out the 2nd draft minutes of meeting by 10 March for initialing at the second meeting.

Isolux will supply additional information by Wed 10 March latest.

| Action item | Responsible | Due date | Ready date |
|---|---|---|---|
| Cost and planning implications of full scale tower testing | Isolux | 2010-03-10 | 2010-3-10 |
| Consider requirement for full-scale testing | Ketraco/KPLC | 2010-03-10 | |
| Indication of number and size/weight of vehicles between Laisamis and wind farm site to LTWP | Isolux | 2010-03-10 | 2010-3-10 |
| Proposal for temporary bypass of one line circuit Olkaria-Nairobi North during Suswa tie-in finalization | Isolux | 2010-03-10 | Wait for KPLC |
| Provide relevant info on the existing line around the substation site up to the tension/angle towers on either side to Isolux | KPLC | 2010-03-05 | |
| Provide substation site and line route information from AP1 to Loyangalani substation to Isolux | KEMA | 2010-03-19 | 2010-03-15 |
| Proposal for "internal" earthing connection between tower leg and foundation rebars | Isolux | 2010-03-10 | 2010-3-10 |
| Proposal to define the interface at joint boxes (3 parts) | Isolux | 2010-03-10 | 2010-3-10 |
| Wind speed reference value | KPLC/Ketraco/ KEMA | 2010-03-05 | |
| Reaction on Isolux proposal to shorten approval time from 3 to 2 weeks | KPLC/Ketraco/ KEMA | 2010-03-10 | |
| Final location of Suswa substation to Isolux | KEMA | 2010-03-05 | Wait for Lot 2 bidder |
| New location of Suswa substation: adapt tie-in design Suswa S/S and final portion of 400 kV line route | Isolux | 2010-03-10 | Wait for Lot 2 bidder |
| Formal tender validity extension request to Isolux | KEMA | 2010-03-02 | 2010-03-02 |
| Proposal for line maintenance tools/equipment | Isolux | 2010-03-10 | 2010-03-10 |
| Change of Employer: tax consequences etc. | LTWP/KPMG | 2010-03-10 | |
| Incorporate tender bulletins into the tender documents Parts 1-4 | KEMA | 2010-03-05 | 2010-03-05 |

**Next meeting**

The next meeting is tentatively scheduled to be on 17 and 18 March. To be confirmed until 5 March.

Topics: technical finalization and financial/legal issues.

**Action item list**

Following action items were agreed:

For approval:

| LTWP: | KETRACO / KPLC | KEMA | ISOLUX |
|---|---|---|---|
| Nick Taylor | Peter Mungai | Anton Lintsen | Joaquin Navarro<br>Marcel Cabral |
| Date:<br>18/3/2010 | 18-03-2010 | 18-3-2010 | |
| Sign | | | |

# Appendix 12

REPUBLIC OF KENYA
MINISTRY OF ENERGY

Telegrams: "MINPOWER"
Telephone: +254-20-310112
Fax: +254-20-2228314/2240910
Email: ps@energymin.go.ke
p.nyoike@kenya.go.ke
When replying please quote

URGENT

OFFICE OF THE
PERMANENT SECRETARY
NYAYO HOUSE
P. O. Box 30582
NAIROBI

May 28, 2010

Ref. No. ME/CONF/3/2/8
and date

**Mr. Chris Staubo**
Deputy Managing Director
Lake Turkana Wind Power
Capital Hill Towers, 5th Floor
P.O. Box 63716
**NAIROBI**

**Fax No. 2718349**

Dear Mr Staubo

**RE: LAKE TURKANA TRANSMISSION LINE PROJECT**

Please refer to your letter, dated May 28, 2010 on the above captioned subject.

I would like to confirm that the Government of Kenya through the Ministry of Energy will provide at least Euro 35 million to KETRACO to cover the financing gap for the Loyangalani-Suswa 427km double circuit line for evacuation of power from the proposed 300MW wind power development by Lake Turkana Wind Farm. This funding will be provided in two financial years, commencing 2010/11.

As you are aware, the Government of the Kingdom of Spain has already agreed to provide to the Government of Kenya a soft credit of Euro 110 million out of about Euro 137 million required for construction of the line. KETRACO's funding will also include acquisition of the way leave (right of way) and resettlement costs for any affected persons.

Yours

PATRICK M. NYOIKE, CBS
PERAMNENT SECRETARY

Copy to: Mr. Joseph K. Kinyua, CBS
Permanent Secretary
Office of the Deputy Prime Minister and
Ministry of Finance
Treasury Building
**NAIROBI**

**Mr. Jackson N. Kinyanjui**
Director
External Resource Department
Office of the Deputy Prime Minister and
Ministry of Finance
Treasury Building
**NAIROBI**

**Eng. Joel M. Kiilu**
Managing Director
KETRACO
Caparo Place, Upper Hill
**NAIROBI**

# Appendix 13

OFFICE OF THE MANAGING DIRECTOR

KETRACO

# KENYA ELECTRICITY TRANSMISSION CO. LTD.

2nd Flr. Caparo Place • Chyulu Rd • Upperhill
P. O. Box 34942 – 00100, NAIROBI
Phone: +254 20 4956000
Cell: +254 719018000
Cell: +254 732128000

KETRACO/2/14G/4/DM/bmk

12th July, 2011

Mr. Carlo Van Wageningen
Lake Turkana Wind Power
P O Box 63716
**NAIROBI**

Dear Carlo,

**RE: OUTSTANDING ISSUES: LTWP - KETRACO INTERFACE LOIYANGALANI SUSWA 400KV T/LINE**

The above project refers.

As you are aware, we are in the penultimate stage of executing the EPC Contract for implementation of the above project. Lake Turkana Wind Power Ltd. (LTWP) and KETRACO have worked closely for the last two years since KETRACO became the implementing agent for the project on behalf of the Government.

This is now to request LTWP to confirm if there are any outstanding issues and related expenses and/or commitments that KETRACO is expected to assume or settle as we reach closure of negotiations on this project.

Meanwhile, we record our appreciation for the due diligence, unwavering support and commitment that the team of LTWP and its associates extended towards realization of the various milestones in reaching agreements between all the parties and stakeholders involved in this and associated facilities.

We wish you every success in bringing the wind farm project to its full realization and successful wind generation of 300MW as envisaged to add green energy to the national grid.

Yours Sincerely

ENG. JOEL M. KIILU
**MANAGING DIRECTOR & CEO**

KETRACO

# Meeting Minutes

## Wayleave Coordination Progress Meeting

*Update following separate LTWP/Ketraco meeting*

**Monday, February 12th, 2018**

**Red Court Inn**

| Ketraco | LTWP |
|---|---|
| John Macharia | Valerie Akinyi |
| Daniel Mukanda | Felix Rottmann |
| Rufus Rono | |
| Stephen Munzyu | |
| Noah Kimaru | |
| Lucy Theuri | |

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**This document contains 22 pages.**

# Civil Works and Tower Erection - Tamani Construction Zone

*Tower 995 - 932 (TP – AP36)*

## Twr 958 (HAK tower)

**Oct. 13th:** The local residents are claiming ownership of this parcel of land, but they don't actually own it. They are demanding compensation nonetheless. In the meantime, they are blocking access to construction: the foundation has not been started yet. Ketraco is exploring the option of using security to access the location (Tamani is in the area and needs to get to this location asap). **Lucy Theuri is to liaise with Nelson Bosuben about when security is required.**

## TWRS 992 - 995

***April 24th:*** *Ketraco has security on standby for Isolux to access towers 992-995, as well as in the section between 981-990 (for tower erection). The Tamani teams are both now working NORTH of the Naivasha highway – one working at tower 931 and the other working at tower 872. They will inform Ketraco when they are ready to move back to tower 992; their intention is to leave this section till last, so that the DEK foundation design is complete before they go there. In the meantime, Isolux will work on all the skipped foundation locations elsewhere.*

***May 8th Update:*** *Even though Ketraco had mobilized security to the towers south of the Narok-Maimahiu highway in early April to enable works to resume, the workers refused to work on tower 992 as they were afraid of being attacked by the locals, should the security not be there. As a result, the teams moved northwards to 984. The crews made up a number of excuses for going northwards, rather than southwards, but at the end of the day, it came down to the fact that the workers were scared of reprisals by the local community against them personally once security was not on hand. As a result, Isolux is going to leave this section to last, to coincide with the arrival of the DEK foundation design (required for the last two/three towers into Suswa), which is still being finalized by Isolux Engineering.*

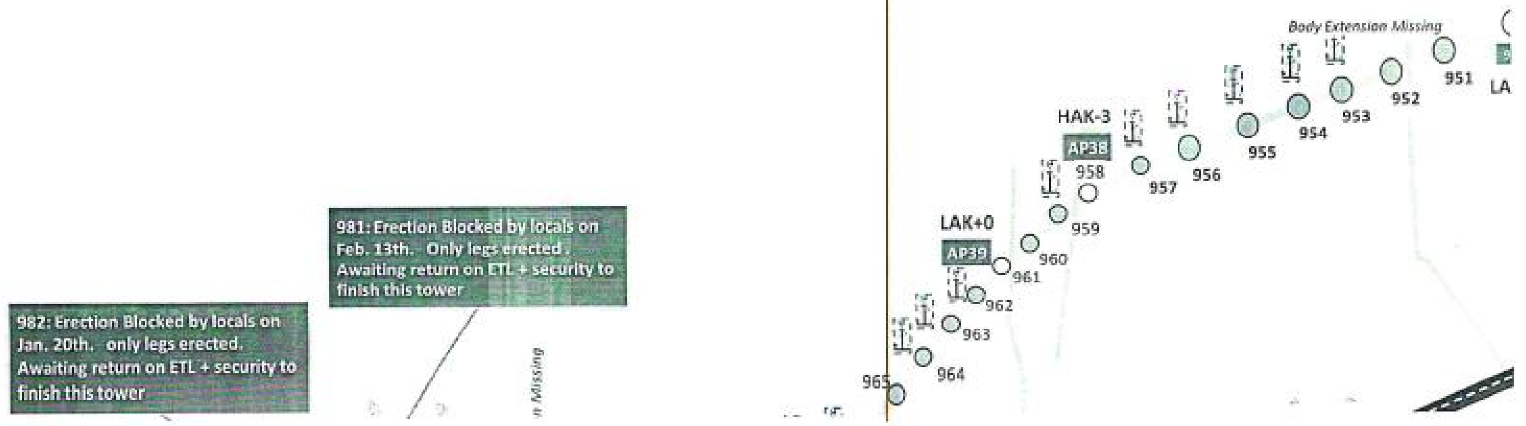
***May 19th: Tower 991:*** *Tamani managed to complete concreting works, but during backfilling, they were stopped by the sand harvesters again.*

***The Tamani supervisor will provide details on any other issues in this section by the end of today.*** *The note on Towers 992-995 under May 8th's entry still applies.*

***June 8th*** *: Remains that when Isolux is ready to move here, they will inform Ketraco who will in turn arrange for security.*

***July 14th:*** *No change.* ***Isolux to notify Ketraco when construction south of tower 991 is to commence.***

**Oct. 13th:** The ownership dispute remains. Access will be gained only by the use of security. Since Tamani is very reluctant to work under security for fear of reprisals against their local workers by the person claiming to be the owner, these locations will be left till last. HOWEVER, the time is very rapidly approaching when the civil works will have to proceed here: Tamani is excavating at a rapid pace and will run out of locations to excavate very soon.



## Iamani Construction Zone

*Tower 876-932 (AP32 – AP36)*

### 1. Tower 868 – Payment Made: Location Imminently Open to Construction

*July 14th:* **Tower erection stopped on July 7th.** *This land is owned by the family that also used to own Magari's land, before they sold it (following the death of their father). This is a large family – and some members of the family have blocked access to tower erection, even though the family does not have the title deed, which has prevented payment to date (i.e. they allowed civil works, but have now blocked tower erection because they are worried about not receiving any payment). John told the meeting that while the title deed is being sorted out, Ketraco can pay 50% of the compensation due so that tower erection can proceed. There is a memo in circulation within Ketraco, but owning to the size of the payment, it must go through a number of signatures before payment will be released.* ***John to confirm as soon as the money has been wired to the landowners' account.***

**Oct. 13th:** John Macharia received information from Ketraco Finance on Oct. 6th that the payment had been made, but it was returned by the bank because the account number given was not active. Finance has asked the family to reactivate their account; the payment was remade this week. We are awaiting confirmation from the family that the payment has gone through.

### 2. Twrs 870 & 869: Land Offer Requested by Magari on Oct. 11th, 2017

***Feb. 17th:*** *A meeting was to be arranged with Ketraco's CEO with Magari, but this has not yet taken place.* ***Sites remain blocked.***

***March 3rd:*** *A meeting was arranged between Magari and Mr. Barasa (Ketraco CEO) last week, but the meeting didn't materialize. Johnson is still trying to organize a meeting.*

***March 17th:*** *Johnson agreed with the family through the Chief that they perform an official search for the title. Once the title is obtained, we can evaluate what the next steps will be.*

***Apr. 24th:*** *These locations remain blocked (according to Ketraco)*

***May 8th: PS Magari is simply not cooperating on these locations and they remain blocked to civil works.***

***May 19th: Still no movement with PS Magari: these two locations remain closed.***

***June 9th: No progress since the previous meeting.***

***June 20th: No progress since the previous meeting. Magari does not have title deeds!***

***July 14th:*** *All avenues have been exhausted. Ketraco and Isolux to coordinate the use of security to complete these two locations.*

**Oct. 13th:** This still remains unresolved. However, Magari himself has asked for the letters of offer from Ketraco (latest communication received by John was dated Tuesday, Oct. 11th). The wayleaves team has issued a request to the GM of Technical Services (Dr. Siror) to approve the generation of the offer (at a rate of KSH2million/acre), which is where the process sits as of today. **John Macharia to follow up.**

### 2. Twr 924 – Structure too close to the excavation point to allow construction to proceed

***May 19th:*** *This location was removed from the minutes after the March 31st WLC meeting, assuming that the issue was resolved. However, Isolux' construction team insists that with the lady's structure still standing only 20m from the tower location, work cannot proceed*

***June 8th: No progress. Steven Munzyu*** *is supposed to lead this exercise, as it involves legal, social and land economists. Isolux again emphasized that the structure is blocking construction, even though it is located 20m from the tower location. Their suggestion is that it be valuated and compensated for following the structure engagement process. Ketraco to deliberate internally and* ***Mukanda to provide an update before the next WL Coordination Meeting on 23 June '17.***

***June 20th:*** *Ketraco have agreed to resettle structure, meaning that structure payment will be made along with payment for land owner to obtains some land somewhere else. Muthoka signed off on this on 20th June '17*

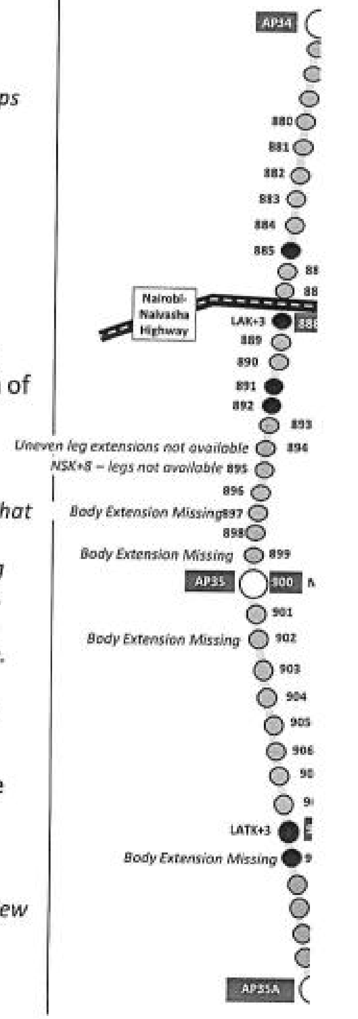
***July 14th:*** *The owner has still not been paid, owing to some procedural issues that have arisen relating to documentation, but the matter was forwarded to the GM, Finance yesterday. Payment should follow shortly.*

**Oct. 13th:** The owner has been paid. However, another structure has subsequently been built right next to the tower/foundation location by someone. The wayleaves team is looking into the situation and is in the field trying to resolve the issue.

### 3. Twr 866 (MAK Tower): LOCATION OPEN TO CONSTRUCTION

***May 19th:*** *Nelson was not at today's meeting to provide an update – but it appears that the issue with the missing title documents remains unresolved. John Macharia to review the situation with his team and get back to DNV ASAP.*

***June 8th:*** *No progress to date. Macharia/Mukanda to work no this aspect, which relates to succession issue and some missing documents. Mukanda to collaborate with the legal team.*



# Elemech Construction Zone

*Tower 713-856 (AP24–AP32 )*

- **Twr 825** *ACCESS BLOCKED TO CONSTRUCTION*

*__Apr. 24th:__ Some documentation has been signed, but there are succession issues and missing documentation that needs to be clarified before the location can be opened up. John Macharia is working on this.*
*__May 8th:__ John had a meeting with the owner last Thursday, May 4th; a part payment was done in 2014 on the original valuation (of ~500k/acre); the owner said he was not aware of any payment having ever been made – and that he had never signed a letter of offer. He was therefore told by John to check his bank records, as Ketraco has records that show that he was paid the initial valuation in 2014. He is nevertheless entitled to a top-up payment (compensation has been increased from KES43,500 to KES 67,860 – the owner is owed KES 24,360).*
*__May 19th:__ John has requested account details from Finance so that he can engage the landowner and agree on a way forward. Site remains blocked.*
*__June 8th: Status remains unchanged.__ Ketraco needs another week to progress and then to provide feedback to DNV.GL, Isolux and LTWP.*
*__June 20:__ Land owner has been paid according to evidence; but land owner claims not to have signed easement and notto have received payment. Site is theoretically __OPEN__ to construction, but there is __high risk of stoppage__.*
*__July 14th:__ John Macharia has received unofficial information form Finance that the landowner was paid the initial amount in 2014 or 2015 (before land values were revised upwards) by cheque – but was never cashed – and furthermore, they have not received the top-up payment yet. The original payment has not been reissued either. Compounding this, there have been issues of succession on the land, since the landowner registered on title has died and his heirs cannot sign the easement until those succession issues are resolved. This notwithstanding, the landowners can be paid, according to documentation in John's possession. Alice confirmed that the tower was moved 12m (to avoid large leg extensions) and has forwarded the coordinates to John Macharia.*
***John Macharia to prepare the internal memo to initiate the payments to the landowner.***

**Oct. 13th:** Access was granted by the landowner on October 9th, as Ketraco sorts out the payments. **Site now open to construction**

- **Twr 826** *ACCESS BLOCKED TO CONSTRUCTION*

**July 14th:** It was thought that tower 826 was part of an informal subdivision that had been cleared. However, it turns out that it is actually within TWO informal subdivisions, the second of which was not resolved, so when the CW crew went to site, the owner chased them away. John Macharia and his team have engaged the landowner and processed documents and signed the easement. Payment is currently in progress and should be paid by next week. At that point, the location will be open for construction.
**John Macharia to issue WLSR form to isolux as soon as the location becomes open.**

**Oct. 13th:** The landowner was paid in the July-August period. **The site is now open to construction.**