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A costly power struggle

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BY **BEN SHANE LIM**

To cut a long story short, Tenaga Nasional Bhd (TNB) is taking the government to court to prevent YTL Power International Bhd from executing the extension of its Paka power plant that was awarded through an open tender.

The entire situation is unprecedented, to say the least, and may affect not just the industry but also the nation's electricity supply. If the utility giant is successful in court, it would effectively scuttle a legitimately awarded concession to an independent power producer (IPP).

Even if TNB fails, YTL Power's extension, which was supposed to begin in March, will be delayed even further at a time when the additional capacity is needed.

The government decided to extend the operations of three power plants — including YTL Power's — last year to serve as a temporary stopgap measure to ensure that the country has sufficient generation capacity in reserve.

That additional capacity became nearly crucial on June 1 when the national grid issued an "orange alert" following "a sudden additional shortfall of 3,679MW generating capacity caused by forced outages".

The forced outages included "2 blocks of new Prai (1,040MW), Segari Block 1 (652MW), Tanjung Bin Unit 2 (700MW), MPSS GT2 (161MW), Paka GT2 (126MW) and Tanjung Bin Unit 4 (1,000MW)", TNB explains in a memo to all generators.

"We expect this condition to persist for a period of time until those units are made available," it says.

In layman's terms, TNB issued a warning that electricity supply may be cut to certain areas for "load shedding" because there was a possibility of insufficient supply. While no load shedding occurred, it shows that the grid is still vulnerable to shortfalls.

Meanwhile, 800MW of capacity in Paka that has been ready for use since March is sitting idle because TNB is said to be locked in a land dispute with YTL Power.

Just a land dispute?

YTL Power's Paka plant is sitting on land leased from the utility giant. But the actual discord runs much deeper.

Over the years, TNB has been openly critical of the lucrative power purchase agreements (PPAs) that the first-generation IPPs enjoyed.

While YTL Power's first-generation PPA had been heavily criticised over the years, an open tender forced it to submit a competitive tariff for the extension. In fact, according to various sources with knowledge of the matter, YTL Power had submitted the lowest bid.

The Energy Commission (EC) also granted extensions to Edra Global Energy Bhd's Teluk Gong power station and Malakoff Corp Bhd's Port Dickson power station. They do not seem to be facing any problem, so far.

However, following the award of the extension, YTL Power still has to negotiate and sign the PPA with TNB.

Both TNB and YTL Power did not respond to questions from *The Edge* as at press time.

Currently, TNB is refusing to sign a new PPA with YTL Power unless the latter signs a new land lease agreement (LLA). YTL Power's existing LLA expires in December 2018. However, it is understood that the existing LLA provides for extensions as long as the company can secure a PPA extension.

"YTL Power pays a nominal sum to lease the land from TNB. It may be one-sided but that was the contract that TNB signed 21 years ago. And as long as YTL Power's plant gets an extension, TNB has to extend the land lease. In a way, the lease can be extended forever if YTL Power keeps getting extensions," explains one industry veteran.

It is a one-sided land lease agreement — and this is a sore point for TNB. To be fair, the utility giant may think it is necessary to get a fairer deal from YTL Power.

Legally, TNB is bound by the existing LLA.

But according to industry sources, one of the conditions precedent (CPs) set by TNB for the PPA extension is the signing of a new LLA. YTL Power had refused these terms, which has delayed the PPA by almost half a year.

"The EC awarded the extension based on competitive bidding. In fact, YTL Power offered the lowest tariff. TNB has no locus standi to impose these CPs on [YTL Power's] PPA. In the EC's view, the remaining lease [that YTL Power has] of two years and 10 months was good in law and substance," explains one official with knowledge of the matter.

He points out that the EC would not have granted the extension to YTL Power in the first place if the IPP could not lease the land.

Subsequently, the government intervened in April. On instructions from the Minister of Energy, Green Technology and Water, the EC issued a directive that compels TNB to remove the said CPs from YTL Power's PPA.

As it has been reported, TNB is now seeking to quash the directive from the minister as well as the EC.

What is at stake?

If a judicial review is granted, the process could take months, further delaying YTL Power's extension.

While the revenue contribution from Paka is relatively small compared with the group's Wessex Water concession in the UK, YTL Power is not exactly in a position to be picky.

It has seen a sharp decline in revenue contributions from YTL PowerSeraya Pte Ltd, its power operations in Singapore, due to oversupply in the island nation. The Singapore-based utility saw its pre-tax profit crash to S$2 million, from the S$60 million to S$90 million it used to earn.

Note that the equipment in Paka power station had to be refurbished for the extension. YTL Power has already incurred the cost but is unable to operate the plant. Including keeping its personnel on standby, there is a substantial opportunity cost for the group.

However, YTL Power will likely demand a fair share of reimbursement.

The extension was supposed to run until end-2018 but it is understood that YTL Power will push for the full concession of two years and 10 months that it was awarded. This means that the plant will likely operate beyond 2018.

Even if TNB wins the judicial review and forces YTL Power to sign a new LLA, it should not have a severe impact on the latter.

"Even if TNB were to renegotiate the LLA, what would it do? Increase the costs for YTL Power? YTL Power is simply going to factor that back into the tariff to maintain its IRR (internal rate of returns) and pass the costs back to TNB," explains the industry veteran.

A new LLA, however, would give TNB leverage over YTL Power, especially if it allows TNB to dictate the terms of every extension. Given their history, that is not a comfortable position for YTL Power to be in, he adds.

Meanwhile, TNB may argue that it has a duty to safeguard its interests too.

Beyond YTL Power, however, it is ultimately the Malaysian consumers who always have to bear the cost of any problem in the power sector.

The grid uses power plants starting from the lowest cost and works its way up to the most expensive. As a combined cycle power plant, Paka would definitely be cheaper than the peaking plants that are substantially less efficient.

During the heat wave earlier in the year, for example, TNB would have saved on fuel costs if Paka had been available to fire. Similarly, when the forced outages occurred, causing the orange alert, utilising Paka would have been cheaper than firing up the expensive peaking plants.

That said, lopsided agreements, like the ones signed in the past, can be very costly to the nation as well and should not be repeated.

But in carrying out its task to extract the best value from an IPP, TNB, being the sole power distributor, has to always strike a balance.

When all is said and done, the big picture should always be taken into account by all relevant parties and they should put the public's interest as their top priority. E

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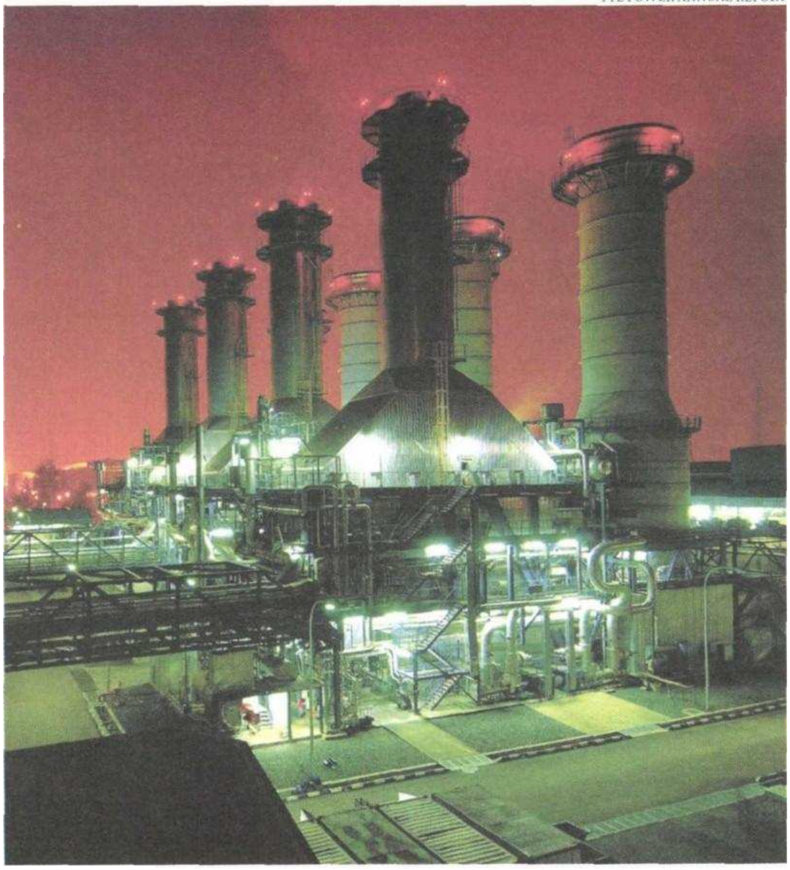
YTL POWER ANNUAL REPORT



YTL Power's 800MW Paka power station ... the plant sits on land leased from TNB