

# Food for Thought

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## **PRESS RELEASE: TANJUNG BIN AND JIMAH EAST DELAY: IS IT TOO DIFFICULT FOR ENERGY COMMISSION TO FOLLOW ITS OWN LAWS?**

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FRIDAY, JANUARY 30, 2015 | Comments(0)

PRESS RELEASE - 29th JANUARY 2015 (THURSDAY)

### **TANJUNG BIN AND JIMAH EAST DELAY: IS IT TOO DIFFICULT FOR ENERGY COMMISSION TO FOLLOW ITS OWN LAWS?**

Association of Water and Energy Research Malaysia (AWER) has raised the issue of delay in Tanjung Bin and Jimah East power plant construction few times. According to AWER's modelling, delay in Tanjung Bin 1000MW power plant construction will cause additional fuel cost about RM 321.97 million for a 6 months delay and for a 1 year delay can be around RM 643.94 million. Meanwhile, 6 month delay in Jimah East 2000MW power plant construction will cause additional RM 643.94 million in fuel cost if we benchmark with the estimated additional fuel cost caused by Tanjung Bin delay. To prevent the additional fuel cost to be passed to electricity tariff, AWER has suggested to Energy Commission to decide by 23rd January 2015 to ensure Tanjung Bin bears all the additional cost and given 3 choices for Jimah East delay. The 3 choices are as following:

- i. Choice 1: Cancel the award of Jimah East Coal Power Plant to 1MDB and call for a new competitive bidding for Combined Cycle Gas Turbine (CCGT) power plant;
- ii. Choice 2: Ensure 1MDB bears all the additional cost due to delay in completion of Jimah East Coal Power Plant; and
- iii. Choice 3: Additional cost due to delay in completion of Jimah East Coal Power Plant to be paid by cabinet and ministry officials who allow extension.

Unfortunately, Energy Commission still tight lipped over these issues till date. Let's look at reality:

- i. Who is Energy Commission protecting when the laws require them to protect the consumers?
- ii. Why Energy Commission keeps mum on the decision (whether to allow extension and who will bear the additional cost) when they are given the power to do so?

AWER would like to shed more light on the power plant delay issues for members of public and businesses to judge the situation themselves more accurately.

## **1. WHAT DOES THE LAW SAY?**

The following are the functions and powers given to Energy Commission by both Energy Commission Act 2001 and Electricity Supply Act 1990 (Amended 2001):

### **I. Energy Commission Act 2001**

- a. Section 14(1)(b) - to advise the Minister on all matters relating to the generation, production, transmission, distribution, supply and use of electricity as provided under the electricity supply laws;
- b. Section 14(1)(d) - to implement and enforce the energy supply laws;
- c. Section 14(1)(g) - to promote efficiency, economy and safety in the generation, production, transmission, distribution, supply and use of electricity and in the supply of gas through pipelines and the use of gas supplied through pipelines;
- d. Section 14(1)(m) - to carry out any function conferred by or under the energy supply laws;
- e. Section 14(1)(n) - to review the energy supply laws and to make the necessary recommendations to the Minister; and
- f. Section 14(1)(o) - to carry on all such activities as may appear to the Commission requisite, advantageous or convenient for the purpose of carrying out or in connection with the performance of its functions under the energy supply laws.

### **II. Electricity Supply Act 1990 (Amended 2001)**

- a. Section 4(b) - to exercise regulatory functions in respect of the service of providing electricity by the licensee including the determination of performance standards and standards of facilities and services and the enforcement thereof;
- b. Section 4(d) - to promote the interests of consumers of electricity supplied by licensees in respect of -
  - (i). the prices to be charged and the other conditions of electricity supply;
  - (ii). the continuity of electricity supply; and
  - (iii). the quality of the electricity supply services provided;
- c. Section 4(e) - to secure that all reasonable demands for electricity are satisfied;
- d. Section 4(f) - to secure that licensees are able to finance the carrying on of the activities which they are authorized by their licences to carry on; and
- e. Section 4(m) - to carry on all such other activities as may appear to the Commission requisite, advantageous or convenient for the purpose of carrying out or in connection with the performance of his functions and duties under this Act.

The laws have stipulated the functions and powers of Energy Commission clearly. Now, why is it so difficult for Energy Commission to act in line with the laws when deal with Tanjung Bin and Jimah East power plant delay issues? What is blinding Energy Commission's judgment?

## **2. DELAY IN COMPLETION OF MALAKOFF'S 1000 MW TANJUNG BIN COAL POWER PLANT PROJECT**

In normal business operation, a contractor is subjected to a penalty for any delay and the contract can be terminated if the problem remains unsolved. Any losses incurred due to the delay will be fully borne by the contractor. Moreover, the contractor also would not write in to request for an extension to escape from paying the penalty or any additional cost incurred due to the delay. Why is Energy Commission dragging its feet to ensure Tanjung Bin bears all the additional cost incurred due the delay, just like any other business?

In addition to that, in view of Tanjung Bin extension application and normal business practices, does Tenaga Nasional Berhad (TNB) or the government have the option of canceling the Power Purchase Agreement (PPA) or even taking over the delayed 1000MW coal power plant project if the construction problem remains unsolved?

## **3. DELAY IN COMPLETION OF 1MDB'S 2000 MW JIMAH EAST COAL POWER PLANT PROJECT**

Why is 1MDB applying for 6 months extension within a year of winning Jimah East 2000 MW Coal Power Plant? Is the delay caused by financial or technical (land reclamation, construction, etc) problem? Energy Commission must reveal the actual reasons for Jimah East delay. This is because Section 4(f) of Electricity Supply Act 1990 has very specifically given the power to Energy Commission to ensure the licensees are able to finance the project awarded. In addition to that, Section 4(d)(ii) and 4(e) of Electricity Supply Act 1990 mandates Energy Commission to ensure electricity supply security is not breached as well as Section 4(d)(i) of the same act mandates Energy Commission to protect consumers interest and not to pass unnecessary cost to electricity tariff.

Generally, a bidder that fails to secure financing within a stipulated timeframe will lose the award. For a power plant project, the timeframe to secure financing can fall within 6 to 12 months after the project is awarded. Based on Section 4(f) of Electricity Supply Act 1990 and the business norm, the PPA must have a clause to practice the cancelation of the agreement when the project winner fails to secure financing for the project within a stipulated timeframe. This is also in line with the functions of Energy Commission stipulated in Section 4(b), (d) and (e) of Electricity Supply Act 1990 to ensure electricity supply security is not breached and no unnecessary cost is passed to electricity tariff due to incompetence at the licensee level.

The options to cancel the award of Jimah East coal power plant project to 1MDB and call for open bidding for Combined Cycle Gas Turbine (CCGT) power plant or penalising Jimah East for the delay in power plant construction (including Jimah East bears all the additional cost) is in line with Energy Commission Act 2001 and Electricity Supply Act 1990 (Amended 2001). Again, will Energy Commission exercise its powers as stipulated in both acts or continue to be a group of "professional" ostrich?

## **CONCLUSION**

The government has repeatedly mentioned that the new generation PPAs is more consumers friendly but the silence by Energy Commission in imposing harsh punishment for Tanjung Bin and Jimah East power plant delay is not convincing. The delay issue related to Jimah East and Tanjung Bin has been with Energy Commission for few months. It only proves that the Energy Commission has failed numerous times to carry out its duties outlined in Energy Commission Act and Electricity Supply Act. Why is Energy Commission not making decisions that protect the interest of the nation, businesses and consumers? Who is going to take action against Energy Commission's Chairman, commissioners and its officers for failing to carry out its duties that are clearly stipulated in both the laws (Energy Commission Act and Electricity Supply Act) that were approved in the Parliament?

AWER do hope that the elected representatives exercise their power to ensure the wrong doers are punished immediately. We also urge the Minister of Energy, Green Technology and Water as well as Cabinet to take stern actions against Energy Commission for failing to protect the nation, businesses and the consumers.

People First, Performance Now, please deliver!

Piarapakaran S.

President

Association of Water and Energy Research Malaysia (AWER)

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