

8th June 2017

PRINCIPAL SECRETARY
The National Treasury
Treasury Building
P. O. BOX 30007-00100
NAIROBI.

PRINCIPAL SECRETARY
Ministry of Energy & Petroleum
Nyayo House
P.O. BOX 30582
NAIROBI.

HON. ATTORNEY GENERAL
State Law Office
Harambee Avenue
P. O. BOX 40112
NAIROBI

Dear Sirs:

REF: DEMAND FOR FULL DISCLOSURE OF GOVERNMENT EXPOSURE IN THE LAMU COAL-FIRED POWER PLANT

Kenyans for Justice and Development (KEJUDE) Trust, a legal trust incorporated in Kenya and founded on republican principles, was set up with the purpose of promoting democratic governance, economic development, and prosperity.

We are reliably informed that Amu Power Company intends to build, on a build-own-operate model, a 1,050 MW capacity private coal-fired thermal power plant in Kwasasi area of Lindi, about 21km north of Lamu Town, along Kenya's Indian Ocean coast, with private financing to the tune of US\$ 2 billion (Kshs 200 billion).

We are aware that, though it is a private venture, President Uhuru Kenyatta led a delegation of investors to sign a Kshs 200 billion deal in China completing the funding needs of the project. Media reports also indicate that the company has signed a 25 year Power Purchase Agreement (PPA) with Kenya Power.

Currently, Kenya is experiencing excess power production with an installed capacity of about 2,400 MW whereas peak power demand (consumption) is below 1,800 MW. Even when expensive thermal power is decommissioned, installed power will still be way above the 1800 MW peak demand.

Kenya's geothermal power potential is estimated at more than 10,000MW. In the next five years alone, the expected increase in government power production is about 1,700 MW. The proposed Tharaka Nithi dam will produce about 700 MW. KenGen and the Geothermal Development Corporation (GDC) are in the process of producing close to 1,000 MW of geothermal power.

The Lake Turkana Wind Power project is ready and will inject an extra 300 MW into the national power grid once the transmission lines are completed. Thus the Government and the Turkana power will inject about 2,000 MW into the national grid in the near future.

This will bring the installed power capacity to over 4,000 MW against a projected power demand of at most 3,000 MW. This gives a cushion of about 1,000 MW which is enough to cater for occasional increase in power demand even in drier months when hydro power production is low.

Increase in power demand is an economic factor which follows economic growth since power usage largely increases as a result of economic growth and the connection of new domestic users. With economic growth projected at about 6%, the annual increase in demand for power can at most only be slightly above the 6%. Thus, expected power increase in the next five years is about 600MW. Newly connected households may demand an extra 300 MW bringing total power demand in the foreseeable future to just about 1,000 MW.

The above scenario clearly shows that the Government can meet the expected growth in demand for power in the foreseeable future, and that there is no market to justify the setting up of the coal-fired power plant in Lamu.

If there is no demand for power, does the PPA compel Kenya Power to buy power from the power plant or does it restrict Government investment in power production?

As a result of there being no foreseeable local demand for power produced by the Lamu coal power plant to justify the hefty investment, we are reasonably apprehensive that the Government has made concessions against the public interest, including that Kenya Power will be compelled to purchase power it does not need or face punitive sanctions.

It is also reasonable to suspect that the Government has undermined the public interest by entering into concessions to restrict its own investments in power generation so as to accommodate the Lamu coal-fired power plant.

Hindpal Jabbal, a former chairman of the Energy Regulatory Commission, is on record having said that Kenyan taxpayers will pay about Kshs 36 billion per year as capacity charges for the Lamu coal-fired power plant whether we use the electricity or not.

Given the very grave concerns above, it is very important and very urgent that the Government makes full disclosure of its dealings with Amu Power Company. Further and in particular, pursuant to Articles 10(2), 35(1) & (3), 46(1)(b), 73(2)(d), and 232(1)(b), (e) & (f) of the Constitution, we request to be given the following information and documents:

1. A copy of the PPA signed between Kenya Power (or the GOK) and Amu Power Company.
2. Details of any loans the PPA has been used to secure or guarantee.
3. Details of any loan guarantees by the GOK or any of its agencies for the Lamu coal power plant.

Kindly, note that failure on your part to act in the public interest by disclosing the information and documents requested above will necessitate our recourse, at your sole risk as to costs and other consequences, to the High Court of Kenya for orders to compel compliance.

Thanking you and looking forward to your prompt and favourable response, I remain,

Yours faithfully,



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