

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 88/AT/2019**

**Coram:**

**Shri P. K. Pujari, Chairperson**

**Dr. M.K. Iyer, Member**

**Shri I.S.Jha, Member**

**Date of Order: 24<sup>th</sup> of May, 2019**

**In the matter of:**

Application under Section 63 and Section 79 (1) (b) of the Electricity Act, 2003 for adoption of tariff for supply of power to NBPDC and SBPDCL by JITPL and SKS Power Generation (Chhattisgarh) Ltd. with back to back agreement with the PTC India Ltd.

**And**

**In the matter of:**

Bihar State Power (Holding) Company Ltd.  
On behalf of NBPDC and SBPDCL  
Vidyut Bhawan, Jawahar Lal Nehru Marg,  
Patna-800 021

.....**Petitioner**

**Vs.**

1. PFC Consulting Ltd.  
1st Floor, Urja Nidhi-1,  
Barakhamba Lane, Connaught Place,  
New Delhi-110 001

2. PTC India Ltd.  
Second Floor, NBCC Tower,  
15, Bikaji Cama Palace,  
NewDelhi-110 066

3. Jindal India Thermal Power Ltd.  
Plto No. 2, Pocket C  
2<sup>nd</sup> Floor, Nelson Mandela Road,  
Vasant Kunj, New Delhi-110 070

4. SKS Power Generation (Chhattisgarh) Ltd.  
501B, Elegant Business Park,  
Andheri Kurla Road,  
J.B.Nagar, Andheri (East), Mumbai-400 059

**Respondents**

**The following were present:**

Shri R.B. Sharma, Advocate, BSP(H)CL  
Shri Mohit Mudgal, Advocate, BSP(H)CL  
Shri Hemant Singh, Advocate, JITPL & SKS Power  
Shri Soumya Singh, Advocate, JITPL & SKS Power  
Shri Vishrov Mukherjee, Advocate, PTC India

**ORDER**

The Petitioner, Bihar State Power (Holding) Company Ltd., has filed the present Petition under Section 63 of the Electricity Act, 2003 (hereinafter referred to as the 'Act') for adoption of tariff for procurement of 200 MW power by it on behalf of the generators, namely Jindal India Thermal Power Ltd. (hereinafter after referred to as 'JITPL') and SKS Power Generation (Chhattisgarh) Limited (hereinafter referred to as "SKS Power") by participating in pilot scheme introduced by the Ministry of Power, Government of India.

**Background:**

2. Government of India, Ministry of Power vide its letter dated 6.4.2018 introduced a Pilot Scheme to facilitate procurement of aggregated power of 2500 MW for three years covered under the medium-term from the generating companies having coal-based power plants. Subsequently, Government of India, Ministry of Power vide its Resolution No. 23/17/2013-R & R (Vol-IV) dated 10.4.2018 issued Guidelines (hereinafter referred to as "Guidelines") under Section 63 of the Act for Procurement of Power under Pilot Scheme for medium-term through PFC Consulting Limited as Nodal Agency and PTC India Limited as Aggregator. The salient features of the Guidelines are as under:

- a) The Guidelines are applicable for procurement of power through tariff based competitive bidding to be conducted by PFC Consulting Limited (hereinafter

referred to as 'PFCCL') as Nodal Agency. In order to facilitate the procurement and supply of power between the successful bidder(s) and the Distribution Licensees(s), PTC India Ltd. (hereinafter referred to as PTC) acting as the Aggregator would sign Pilot Agreement for Procurement of Power (PAPP) for Procurement of power with the successful bidder(s) and back to back Pilot Power Supply Agreement (PPSA) with the Distribution Licensees.

b) PAPP and PPSA under these Guidelines are applicable for a period of three years.

c) The tariff shall comprise of fixed charges of Rs. one paisa/kWh and variable cost to be quoted by the bidders in accordance with the Standard Bidding Documents.

d) For supply of power, the trading margin would be as approved by the Appropriate Commission.

e) The tariff determined through the DEEP e-Bidding portal based on the Guidelines shall be adopted by the Appropriate Commission as per the provisions of the Section 63 of the Act.

(f) Any deviation from the Model Pilot Bidding Documents shall be made by the Nodal Agency, Aggregator or Distribution Licensees only with prior approval of the Appropriate Commission.

3. As per the Guidelines, PFCCL issued bid for procurement of power on DEEP e-bidding portal under the Pilot Scheme on 1.5.2018. The bid of successful bidders was opened on 6.7.2018 and RKM Power emerged as lowest bidder (L-1) with quoted tariff of Rs. 4.24/kWh to supply 550 MW of power. L-1 price was matched by total capacity of 1900

MW only and Bihar Discoms were allotted only 200 MW against the requested quantum of 300 MW Power. Out of 200 MW, 125 MW and 75 MW have to be supplied by JITPL and SKS Power respectively. On 26.10.2018, PTC signed PAPP with JITPL and SKS Power respectively. On 29.10.2018, PTC signed PPSA with Bihar Discoms, namely SBPDCL and NBPDCCL for 125 MW and 75 MW respectively.

**Submission of Petitioner:**

4. Pursuant to the execution of the above mentioned PAPP and PPSA, the Petitioner on behalf of DISCOMs under clause 5 of Guidelines dated 10.4.2018 and Clause 4.1.2 of the above Agreements approached the Bihar Electricity Regulatory Commission (hereinafter referred to as “BERC”) for adoption of tariff and approval of PPSA entered into between PTC and Bihar DISCOMs. During the adjudication of the said Petition, one of the issues raised before BERC was as to whether BERC was the appropriate Commission to adopt tariff in a case where PFCCL is a Nodal Agency (being a Central Agency) and PTC is an aggregator.

5. BERC vide its order dated 10.1.2019 approved the proposal of procurement of 200 MW Power subject to adoption of the discovered tariff by this Commission. Relevant portion of the said order is as under:

*“The Power Supply Agreement (PSA) in the instant pilot scheme is to be entered into with PTC a trading licensee whose license has been issued by the CERC and the disputes, if any, arising between the signatories, would be adjudicated by CERC under Section 79(1)(f) of the Electricity Act, 2003. The PSA and PPA documents are part of the RfS documents (bid documents) of nodal agency PFC-which is also a Govt. of India undertaking due to which this Commission cannot modify the terms and conditions of such documents. Therefore, the Commission is of the considered view that BERC is not empowered to approve the PSA. This stand is also in line with APTEL order dated 04/09/2013 passed in Appeal No. 94 and 95 of 2013 – BSES Rajdhani Power Ltd. &Ors. Vs. DERC &Ors.”*

6. While BERC declined to adopt the tariff and approve the PSA, it accorded approval for procurement of 200 MW power by the Petitioner on behalf of NBPDC and SBPDCL by participating in pilot scheme introduced by the Ministry of Power, Govt. of India. BERC further directed the Petitioner to approach this Commission for adoption of tariff.

7. Subsequently, the Petitioner preferred Review Petition against the said order dated 10.1.2019 before BERC for seeking reconsideration of the last line of para 5 "subject to adoption of discovered tariff by CERC". BERC in its order dated 8.3.2019 in Review Petition being Case No. 02/2019 observed that it does not have the jurisdiction to adopt the tariff in the present case and disposed of the said Review Petition reiterating its observations as held in its order dated 10.01.2019 in Petition No. 46/2018.

8. The Petitioner has submitted the following key benefits of the procurement of 200 MW power:

- (a) Fixed tariff/ No escalation: Tariff is fixed for the entire duration of contract period (three years) of the Agreement and there shall be no escalation in the said tariff.
- (b) Flexibility to meet daily and seasonal load requirement without paying fixed charges for un-scheduled power, as minimum off take requirement is only 55%.
- (c) There is no fixed/ capacity charge liability for less or nil offtake of power.
- (d) Nominal compensation: In case of less than 55% off take, the Distribution Company needs to pay only nominal compensation equal to difference between tariff and IEX price.

(e) Profit Sharing: Even if offtake is less than 55% and IEX price is more than the tariff, Distribution Company will get 50% of the upside realization, instead of payment of capacity/ fixed charges.

(f) Discount in tariff: In case offtake is more than 55%, Distribution Companies will get incentive in the form of discount in tariff @1% of tariff for every 5% incremental increase in off-take beyond 55%.

9. Accordingly, the Petitioner has filed the present Petition with the following prayers:

*“(a) Accord approval for adoption of tariff for procurement of 200 MW power by BSPHCL on behalf of NBPDC and SBPDCL by participating in pilot scheme introduced by the Ministry of Power, GOI discovered through competitive bidding under Section 63 of the Electricity Act, 2003.*

*(b) Admit the petition as per provisions of Section 63 and Section 79(1)(b) of the Electricity Act, 2003.”*

10. Notices were issued to the Respondents to file their replies. Vide ROP dated 16.4.2019, PTC was directed to submit its reply along with the method of payment security mechanism. Reply to the Petition has been filed by the Respondents, SKS Power, JITPL and PTC.

11. The Respondents, SKS Power and JITPL in their replies dated 24.4.2019 have undertaken that they would comply with the provisions of the Article 11.5 (Billing and Payment), Article 11.7 (Discount for early payment), Article 12.1 (Payment of Security, Letter of Credit), Clause 12.2 (Recovery from sale of contracted capacity) of the PPSA dated 26.10.2018 executed with Respondent No. 2. i.e. PTC/ Aggregator.

12. PTC in its reply affidavit dated 26.4.2019 has submitted that PTC has executed the Pilot Agreements for Procurement for Power dated 26.10.2018 with JITPL and SKS Power for supply of 125 MW and 75 MW respectively. On 29.10.2018, PTC executed PPSA with Bihar DISCOMs, namely NBPDC and SBPDCL for supply of 125 MW and 75 MW in terms of the PAPPs of JITPL and SKS Power respectively. PTC has submitted that PAPPs of JITPL and SKS Power and PPSA with Bihar Discoms form a back-to-back arrangement for procurement and sale of power with PTC being the aggregator. Article 12 of the PAPP provides for payment security mechanism to be complied with by the parties to the present Petition.

**Analysis and Decision:**

13. Pursuant to the direction of BERC, the present Petition has been filed by the Petitioner under Section 63 of the Act for adoption of tariff for procurement of 200 MW power by BSPHCL. The Respondents have not raised objection with regard to jurisdiction of the Commission to adopt the tariff in the present case.

14. The Petitioner on 6.11.2018 filed Petition before BERC on behalf of North Bihar Power Distribution Co. Ltd. (NBPDC) and South Bihar Power Distribution Co. Ltd. (SBPDCL) for adoption of tariff and approval of procurement of the allotted 200 MW Power. BERC vide its order dated 10.1.2019 approved the proposal of procurement of 200 MW power off taking 100% power on RTC basis for three years by participating in pilot scheme introduced by Ministry of Power, subject to adoption of the discovered tariff by CERC. Subsequently, BERC vide its order dated 8.3.2019 in Review Petition No. 02/2019

held that since the generating stations are supplying power to more than two States, they shall be governed under composite scheme which attracts Section 79 (1) (b) of the Act and not Section 65(5) of the Act.

15. It is noticed that the Respondent Nos. 3, JITPL has also entered into PPAs with KSEB and GRIDCO and the Respondent No. 4, SKS Power has entered into PPAs with Distribution companies of Chhattisgarh and Noida Power Company Ltd, U.P. Sub-section (b) of Section 79(1) of the Act provides that the Central Electricity Regulatory Commission shall regulate the tariff of generating company, if such generating company enters into or otherwise have a composite scheme for generation and sale of electricity in more than one State. The Hon'ble Supreme Court vide its judgment dated 11.4.2017 in Civil Appeals titled Energy Watchdog v CERC &Ors.[ (2017 (4) SCALE 580)] has explained the composite scheme and decided the jurisdiction of this Commission for regulating the tariff of projects meeting the composite scheme as under:

*“22. The scheme that emerges from these Sections is that whenever there is inter-State generation or supply of electricity, it is the Central Government that is involved, and whenever there is intra-State generation or supply of electricity, the State Government or the State Commission is involved. This is the precise scheme of the entire Act, including Sections 79 and 86. It will be seen that Section 79(1) itself in subsections (c), (d) and (e) speaks of inter-State transmission and inter-State operations. This is to be contrasted with Section 86 which deals with functions of the State Commission which uses the expression “within the State” in sub-clauses (a), (b), and (d), and “intra-state” in sub-clause(c). This being the case, it is clear that the PPA, which deals with generation and supply of electricity, will either have to be governed by the State Commission or the Central Commission. The State Commission’s jurisdiction is only where generation and supply takes place within the State. On the other hand, the moment generation and sale takes place in more than one State, the Central Commission becomes the appropriate Commission under the Act. What is important to remember is that if we were to accept the argument on behalf of the appellant, and we were to hold in the Adani case that there is no composite scheme for generation and sale, as argued by the appellant, it would be clear that neither Commission would have jurisdiction, something which would lead to absurdity. Since generation and sale of electricity is in more than one State obviously Section 86 does not get attracted. This being the case, we are constrained to observe that the expression “composite scheme” does not mean anything more than a scheme for generation and sale of electricity in more than one State.”*

16. In light of the decision of the Hon'ble Supreme Court, this Commission has the jurisdiction to regulate the tariff of the Project of the Respondent Nos. 3 and 4 under Section 79(1)(b) of the Act since they have entered into the PPAs for supply of electricity to the distribution companies located in more than one State.

17. Clause 6 of the Guidelines provides as under:

*"The tariff determined through the DEEP e-bidding process based on these Guidelines for the purpose of Agreement for Procurement of Power and Power Supply Agreement shall be adopted by Appropriate Commission in pursuance of the provisions of Section 63 of the Act."*

Section 63 of the Act provides as under:

***"Section 63: Determination of tariff by bidding process: Notwithstanding anything contained in section 62, the Appropriate Commission shall adopt the tariff if such tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the Central Government."***

18. In contrast to tariff determination under Section 62 of the Act, role of the Commission in case of tariff discovery through the competitive bidding process undertaken under Section 63 of the Act is essentially confined to adoption of tariff, on being satisfied that transparent process of bidding in accordance with the guidelines have been followed in determination of such tariff. While adopting the tariff discovered through the competitive bidding process, the Commission is not required to go into the merits or analysis of the tariff so discovered.

19. We have perused the application and other relevant documents placed on record by the applicant. We have to examine whether the process as per provisions of the Guidelines has been followed in the present case for selection of the successful bidder. Our observations are as under:

(a) Clause 2 of the Guidelines provides that the application of these Guidelines shall be restricted to projects from which power is procured in accordance with an Agreement for Procurement of power for a period of three years. Therefore, the Guidelines are applicable for procurement of power from the projects of Respondent Nos. 3 and 4.

(b) Clause 3 of the Guidelines provides that for the purpose of Agreement for Procurement of Power, the tariff shall comprise of (i) a Fixed Charge of Rs. 0.01 (One Paisa only)/ kWh and (ii) variable charge to be quoted by the Bidders as per the Standard Bidding Document. As such, after matching the tariff of L-1 bidder, the quoted tariff of JITPL and SKS Power under the PAPP works out to be Rs. 0.01 per kWh as Fixed Charge and Rs. 4.230 per kWh as variable charge. Discount in tariff shall be at the rate of 1% of the tariff for every 5% incremental increase or part thereof in off-take beyond 55% of the Contracted Capacity.

(c) Clause 4 of the Guidelines provides that for the purpose of PPSA, the tariff shall comprise of (i) tariff under the PAPP; and (ii) a trading margin as approved by the Appropriate Commission for the Pilot Scheme. The trading margin would be Rs. 0.05 (five paise) per kWh.

(d) Clause 5 of the Guidelines provides that the tariff determined through the DEEP e-Bidding process as per the Guidelines shall be adopted by the Appropriate Commission as per Section 63 of the Act. Therefore, the tariff discovered through the DEEP e-Bidding process has to be adopted by the Commission for the purpose of supply of power to the Petitioner under the PAPP and PPSA.

(e) Clause 7 of the Guidelines provides that any deviation from the Model Pilot Bidding Documents can be made by the Nodal Agency, Aggregator or Distribution Licensees only with the prior approval of the Appropriate Commission. However, no such deviation has been brought to the notice of the Commission and hence no approval is sought in this regard.

20. PFCCL, as Nodal Agency appointed by Ministry of Power, Government of India invited proposals for selecting the bidders in accordance with the Guidelines issued by the Central Government under Section 63 of the Act dated 10.4.2018 by its Request for Qualification and Request for Proposal dated 1.5.2018. After evaluation of the bid received, the Nodal Agency accepted the bid of JITPL and SKS Power as the successful bidders and issued Letter of Award dated 12.10.2018 to them. Relevant portion of the Letter of Award given to JITPL is extracted as under:

***“Sub: Letter of Award (LOA) for signing of Pilot Agreement for Procurement of Power (PAPP) and supply of 125 MW for three years under Pilot Scheme.***

*Ref: 1. Bidding Documents issued on 1.5.2018 in respect of “Procurement of Aggregated Power of 2500 MW” along with corrigendum.*

*2. Event No. PFFCL/Aggregated Thermal Power/18—19/ET/43 on DEEP Portal*

*3. Bidder’s covering letter No. NIL dated 21.6.2018 submitted along with the BID on DEEP Portal*

*Dear Sir,*

*With reference to the above and in pursuance of provisions under clause 4 of the Section B OF Bidding Documents, we are pleased to place Letter of Award (LOA) in favour of Jindal India Thermal Power Limited for signing of PAPP with Aggregator (PTC India Limited) as per terms of the Bidding Documents under the Pilot Scheme. The source of supply, period, tariff etc. is given hereunder:*

<i>Period</i>	<i>Timings</i>	<i>Successful Bidder</i>	<i>Quantum (MW)</i>	<i>Source</i>	<i>Tariff (Rs./kWh) at delivery point</i>
<i>(1.10.2018 to 30.9.2021)</i>	<i>Round the Clock</i>	<i>Jindal India Thermal Power Limited</i>	<i>125</i>	<i>Jindal India Thermal Power Station village</i>	<i>4.24</i>

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1. *Delivery point shall be interconnection point of the Power Station with the CTU System.i.e Point of Grid Connection.*
2. *Jindal India Thermal Power Ltd. is required to execute PAPP with Aggregator and to submit Performance Security in line with Bidding Documents.*
3. *The other terms and conditions shall be as stipulated in the Bidding Documents referred above.*

*This LoA is further contingent upon your satisfying the conditions as stipulated under sub-clause 2.17.7 of Part B of Bidding Document:*

*The Bid Security shall be forfeited as Damages without prejudice to any other right or remedy that may be available to the Nodal Agency as per terms of the Bidding Documents and/or under the PAPP, if the Jindal India Thermal Power Limited fails to fulfil the conditions mentioned under the Bidding Documents and/or under the PAPP and/or is in breach of the terms of the Bidding Documents and/or under the PAPP.*

*This LoA is being issued to you in duplicate. We request you to return the duplicate copy of this LOA duly signed and stamped on page by the authorised signatory of your company as a proof of your acknowledgment and confirmation with 7 days of issuance this LoA.”*

21. Pursuant to Letter of Award dated 26.10.2018, the Aggregator i.e. PTC signed PAPP with JITPL and SKS Power for procurement of 125 MW and 75 MW respectively under the Pilot Scheme. On 29.10.2018, NBPDC and SBPDCL entered into PPSA with PTC.

22. Articles 11.5 and 12 of PAPP provides as under:

*11.5.1 Commencing from the month following the month in which the Appointed Date occurs, the Supplier, by the 5<sup>th</sup> (fifth) day of such and each succeeding month (or, if such day is not a Business Day, the immediately following Business Day), submit in triplicate to the Aggregator, an invoice in the agreed form (the 'Monthly Invoice') signed by the authorised signatory of the Supplier setting out the computation of the Tariff to be paid by the Aggregator to the Supplier in respect of the immediately preceding month in accordance with the provisions of this Agreement.*

*11.5.2 The Supplier shall, with each Monthly Invoice submit (a) a certificate that the amounts claimed in the invoice are correct and in accordance with the provisions of the Agreement; (b) proof of Availability for the period billed, comprising evidence of communications regarding the extent of Non-Availability from time to time; (c) detailed calculations of the Incentives and/or Damages in accordance with the provisions of Clause 11.3; (d) details in respect of taxes/duties payable/reimbursable in accordance with the provisions of this*

Agreement; € details in respect of Damages or Incentives payable in accordance with the provisions of this Agreement; and (f) the net amount payable under the Monthly Invoice.

11.5.3 The Aggregator shall, within 32 (thirty two) days of receipt of a Monthly Invoice in accordance with Clause 11.5.1 (the "Payment Due Date"), make payment of the amount claimed directly, through electronic transfer, to the nominated bank account of the Supplier, save and except any amounts which it determines as not payable or disputed (the "Disputed Amounts")

11.5.4 All Damages and any other amounts due and payable by the supplier in accordance with the provisions of this Agreement may be deducted from the Tariff due and payable to the Supplier and in the event the deductions hereunder exceed the Tariff in that month, the balance remaining shall be deducted from the Tariff due and payable to the Supplier for the immediately following month.

## 12. Payment of Security

### 12.1 Letter of Credit

12.1.1 The Aggregator shall, not later than 30 (thirty) days prior to the likely date of the Appointed Date, provide to the Supplier, an unconditional, revolving and irrevocable letter of credit with for an amount equivalent to the 1.1 times of estimated Monthly invoice computed at minimum guaranteed off-take (the "Letter of Credit"), which may be drawn upon by the Supplier for recovery of this Agreement. The Letter of Credit shall be substantially in the form specified in Schedule-C and shall come into effect on the Appointed Date, and shall be modified once every year to reflect the revision in 1.1 times of estimated Monthly Invoice computed at minimum guaranteed off-take in accordance with the provisions of this Agreement.

12.1.2 The letter of Credit shall be procured by the Aggregator from a bank where at least 30% (thirty per cent) of the Aggregator's total monthly revenues are normally deposited ("Default Escrow Bank"). All costs and expenses relating to opening and maintenance of the Letter of Credit shall be borne by the Aggregator.

12.1.3 In the event of Aggregator's failure to pay the Monthly invoice before the 27<sup>th</sup> (twenty seventh) day of the month in which the relevant payment due date occurs, the Supplier may, in its discretion, invoke the Letter of Credit for recovery of the amount due, without any reference to the Aggregator, pay the amount due upon the Supplier presenting the following documents, namely

- (a) a copy of the Monthly Invoice which has remained unpaid; and
- (b) a certificate from the Supplier to the effect that the Monthly Invoice is in accordance with this Agreement and that the amount due and payable has remained unpaid.

12.1.4 In the event that the amount covered by the Letter of Credit is at any time less than the 1.1 times of estimated Monthly Invoice computed at minimum guaranteed off-take or is insufficient for recovery of payment due against the Monthly Invoice, the Aggregator shall, within a period of 7 days (seven) days from the date on which such shortfall occurred, cause the Letter of Credit to be replenished and reinstated to the extent specified in clause 12.1.1. For the avoidance of doubt, the Parties agree that the Letter of Credit shall not be revised solely on account of revision in 1.1 times of estimated Monthly Invoice computed at minimum guaranteed off-take, except to give effect to such revision once every year.

12.1.5 *The Parties may, by mutual agreement, substitute the Letter of Credit by an unconditional and irrevocable bank guarantee or any equivalent instrument as may be mutually agreed upon.*”

23. Further, Article 12.2 of the PAPP dealing with recovery from sale of contracted capacity provides as under:

*“12.2.1 In the event, the Supplier is unable to recover its Tariff through the Letter of Credit, and if the Tariff or part thereof remains unpaid for a period of 1 (one) month from the Payment Due Date, then notwithstanding anything to the contrary contained in this Agreement, the Supplier shall have the right to sell the whole or part of the Contract Capacity to any Buyer for recovery of its dues from the Aggregator. For the avoidance of doubt, the Parties expressly agree that the Supplier shall be entitled to appropriate the revenues from sale hereunder for recovering the Tariff due and payable to it for sale of such Contract capacity, if any, shall be appropriated for recovery of its dues from the aggregator.*

*12.2.2 The sale of Contracted Capacity pursuant to Clause 12.2.1 shall not extinguish any liability of the Aggregator or any claim that the Supplier may have against the Aggregator, save and except to the extent of amounts recovered under the provisions of Clause 12.2.1.*

*12.2.3 Supply of electricity to the Aggregator in accordance with the provisions of this Agreement shall be restored not later than 7 (seven) days from the day on which the Aggregator pays, or its deemed to have paid the arrears due to the Supplier in accordance with the provisions of this Agreement, renews the Letter of Credit.”*

24. The Respondents, SKS Power and JITPL in their affidavit dated 24.4.2019 have undertaken that they would comply with the above provisions of the PAPP dated 26.10.2018.

25. The Respondent No. 2, PTC was directed to submit the methodology of payment security mechanism agreed between PTC and the generators, JITPL and SKS Power. PTC in its affidavit dated 26.4.2019 has undertaken that it has executed PAPP dated 26.10.2018 with JIPTL and SKS Power for supply of 125 and 75 MW respectively. On 29.10.2018, PTC executed PPSA with NBPDC and SBPDCL for supply of 125 MW and 75 MW in terms of the PAPPs of Jindal PPA and SKS Power respectively. PTC has submitted that PAPPs of JIPTL and SKS Power and PPSA form a back-to-back

arrangement for procurement and sale of power with PTC being the aggregator. Article 12 of the PAPP provides for payment security mechanism to be complied with the parties to the present Petition. PTC has undertaken that it would abide by the provisions of payment security mechanism as provided under Article 12.1 of the PAPP. Therefore, the provisions of Article 12 of the PAPP shall be abided by all the concerned parties to the present Petition including the Bihar Discoms i.e. NBPDCCL and SBPDCL.

26. Regulation 7(h) of the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of trading licence and other related matters) Regulations, 2009 provides as under:

*“(h) The licensee shall carry out trading in accordance with the agreed terms and conditions, and may take such safeguards as he may consider necessary with regard to payment security mechanism from the buyers, but shall always ensure timely payment of dues to the seller for purchase of the agreed quantum of electricity either through a letter of credit or any other appropriate instrument or as may be mutually agreed between the seller and the licensee.”*

As per the above provision, the trading licensee is required to always ensure payment to the seller for the purchase of agreed quantum of electricity either through letter of credit or any other appropriate instrument or as may be mutually agreed between the seller and the licensee. Therefore, the Respondent No. 2, PTC shall ensure compliance of the provisions contained under Regulation 7(h) of the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of trading licence and other related matters) Regulations, 2009 during the tenure of the PAPPs and PPSA.

27. Based on the submissions in the Petition and the documents placed on record, we find that tariff discovery through DEEP e-Bidding process as per the Model Pilot Bidding Documents for procurement of power by the Petitioner (SBPDCL and NBPDCCL) from the

Respondent No. 3 (JITPL) and Respondent No. 4 (SKS Power) through the Respondent No. 2 (PTC) has been carried out in conformity with the “*Guidelines for Procurement of Power under Pilot Scheme for Medium Term through PFCCL as Nodal Agency and PTC India Ltd. as Aggregator*”. Accordingly, in terms of Section 63 of the Act and our observations made under para19 above, we adopt the tariff of Rs. 4.24/ kWh as quoted and agreed by the selected bidders i.e. Respondent No. 3 and 4 under the PAPPs, for supply of power to the procurers (i.e. NBPDCCL and SBPDCL) as per their respective shares. The trading margin of Rs. 0.05 (five paisa only) per kWh to be claimed by the Respondent No. 2 under the PPSA is also approved in terms of the provisions contained under Clause 4 of the aforesaid Guidelines.

28. The Petition No. 88/AT/2019 is disposed of in terms of the above.

Sd/-  
**(I. S. Jha)**  
Member

sd/-  
**(Dr. M.K.Iyer)**  
Member

sd/-  
**(P.K. Pujari)**  
Chairperson