



the bids submitted by the petitioner, the generating station was to be put under commercial operation during 2000 at a levelised tariff of Rs.2.97/kWh. However, the Power Purchase Agreement was not executed by the State Government.

3. The petitioner in the present petition has stated that the location of the generating station is proposed to be changed from Pratabpur to a place near Singrauli in Sonbhadra District. The petitioner initially proposed a levelised tariff of Rs.3.222008/kWh for 15 year tariff period. The petitioner subsequently submitted levelised tariff for 25 years, which includes the levelised fixed charges @ Rs.1.989522/kWh and the levelised variable charges @ Re.0.56110/kWh. As stated by the petitioner, the levelised fixed charges and the energy charges are subject to annual OMI adjustment at the rate of 3% per annum. In this manner, the petitioner has arrived at the levelised tariff of Rs.2.553281/kWh for a period of 25 years.

4. A meeting was held on 23.5.2003 by the Ministry of Power whereat it was decided that the project was to be accorded the status of mega power project and the sale of power from generating station would be through PTC. Thus, the other state utilities could be supplied power from the generating station. The petitioner is stated to have negotiated with the utilities in the States of Punjab and Haryana for purchase of power generated at the proposed generating station. According to the petitioner, there are likely to be three beneficiary states namely, State of UP, State of Punjab and State of Haryana. The Government of UP is reported to have

guaranteed an off-take of 500 MW of power and the remaining power would be available for supply to other states. The petitioner has placed on record a letter of intent from Punjab State Electricity Board (PSEB) according to which PSEB was interested in a long-term purchase of 500 MW of power from the proposed generating station. Haryana Vidyut Prasaran Nigam Ltd. (HVPNL) in its reply to the petition has stated that the case for purchase of power at the tariff approved by the Commission was under consideration for decision of Haryana Government. Uttar Pradesh Power Corporation Ltd. (UPPCL) has issued a letter of intent in favour of the petitioner on 7.2.2004 for purchase of power at a tariff of Rs.2.00/kWh. The representative of PSEB, who appeared before the Commission at the hearing on 24.5.2004 had stated that the tariff proposed by the petitioner was very high and was not acceptable to PSEB. Thus, there is no firm commitment on the part of any of the State Utilities to buy power from the generating station proposed to be set up by the petitioner at the tariff proposed by the petitioner. Be that as it may, we have to consider the request of the petitioner in the light of Section 63 of the Act since the petition is filed for approval of tariff under that specific section.

5. Section 63 of the Act lays down that the 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. When in February 1995, the State Government of UP invited international bids, guidelines for competitive bidding route for private power projects were already issued by the

Central Government under Secretary, Ministry of Power D.O. letter dated 18.1.1995. These guidelines envisaged that the typical bid solicitation document should include:

- (a) Request for Qualification;
- (b) Request for Proposals;
- (c) Power Purchase Agreement; and
- (d) Implementation Agreement between the developer and the State Government.

6. According to the petitioner, these guidelines were followed by the State Government of UP while inviting international bids in February 1995, and therefore, tariff proposed by the petitioner qualified to be adopted under Section 63 of the Act. The petitioner has placed reliance particularly on that part of the notice inviting international bids which stated that “the investment pattern shall be as per the guidelines of Government of India, and foreign equity participation up to 100% is permitted”. According to the petitioner, the notice inviting international bids makes it clear that the Government of India guidelines were followed.

7. UPPCL in its response has informed that in a meeting held on 23.12.1995, the Standing Committee of the State Government had cancelled the bidding process as the rate offered by the petitioner was high. The Committee had, also recommended re-tendering. However, the petitioner subsequently, submitted its revised proposal for consideration by the Standing Committee which was agreed to by the Committee with certain conditions. Accordingly, the letter of intent in favour of the petitioner was issued by the Government of UP. However, the draft

Power Purchase Agreement presented by the petitioner did not incorporate the conditions stipulated by the State Government and despite a number of meetings held between the State Government and the representatives of the petitioner, no agreement could be arrived at on certain issues. Therefore, the Power Purchase Agreement was not signed and the State Government cancelled its approval to the letter of intent earlier issued in favour of the petitioner. The proposal of petitioner is stated to have been revived subsequently. However, because of non-resolution of the pending issues, a fresh cancellation order was issued on 22.10.1999. At the instance of the petitioner, UPPCL on 7.2.2004 informed the former that it would be able to buy 500 MW of power if the tariff is around Rs.2/kWh. In the specific context whether the proposal of the petitioner could be said to be based on the guidelines issued by Ministry of Power, UPPCL has stated that the present proposal made by the petitioner cannot in any manner be linked with the earlier offer of 2000 MW thermal power station at Pratabpur against the bids invited in February, 1995 since the entire process was cancelled by the State Government.

8. We have considered the matter in the light of submissions made by the petitioner, the response of the State Utilities impleaded in the petition and the guidelines issued by the Central Government in Ministry of Power. As we have already noted, the guidelines issued by the Central Government envisaged four stages for solicitation of bids, namely, request for qualification; request for proposals; Power Purchase Agreement and Implementation Agreement between

the developer and the State Government. From the notice it is not clear whether the first two stages were distinctly followed while inviting international bids, though the petitioner has filed along with the petition a copy of the request for proposals. Even if it is presumed that with the issue of letter of intent these stages are deemed to have been achieved, the remaining two stages have not been implemented since the process never reached the stage of signing of Power Purchase Agreement between the State Government of UP and the petitioner. In fact, it is also noted that Ministry of Power under its letter dated 12.8.1996 had advised the State Government of Uttar Pradesh to develop the project in accordance with guidelines contained in the letter dated 18.1.1995, references to which are already made. It would only imply that these guidelines were not followed by the State Government while inviting international bids. Therefore, it is not a case where the tariff was actually "determined through transparent process of bidding in accordance with the guidelines issued by the Central Government," to meet the conditions of Section 63 of the Act. For a slew of other reasons also, the tariff proposed in the petition by the petitioner cannot be said to have been result of competitive bidding process. When the proposal was invited, the State of UP was the only beneficiary. However, subsequently, the other states namely, the State of Punjab and State of Haryana have also been added as the beneficiaries. Also, there is change in location of the generating station from Pratabpur to a place near Singrauli. The project is proposed to be given the status of mega power project, with a number of concessions. There is also change in certain other terms and conditions including the tariff proposed. Accordingly, the

petitioner's prayer for approval of tariff under Section 63 of the Act is not maintainable.

9. However, the petitioner is granted liberty to approach the Commission for approval of tariff under Section 62 of the Act based on the terms and conditions of tariff notified by the Commission on 26.3.2004, applicable for a period 1.4.2004 to 31.3.2009. For this purpose, the petitioner shall be required to file a fresh petition with all the necessary details in support of the tariff claimed, as per the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2004.

10. With the above observations, the petition stands disposed of at the admission stage itself.

Sd/-  
**(BHANU BHUSHAN)**  
**MEMBER**

Sd/-  
**(K.N.SINHA)**  
**MEMBER**

Sd/-  
**(ASHOK BASU)**  
**CHAIRMAN**

New Delhi dated 30<sup>th</sup> July, 2004