

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 249/AT/2021

Coram:

Shri P. K. Pujari, Chairperson

Shri I. S. Jha, Member

Shri Arun Goyal, Member

Shri P. K. Singh, Member

Date of Order: 22nd December, 2021

In the matter of:

Petition under Section 63 of the Electricity Act, 2003 for adoption of tariff for procurement of aggregated power of 2500 MW under Pilot Scheme-II for three years (covered under medium term) as notified by Government of India.

And

In the matter of:

PTC India Limited,

2nd Floor, NBCC Tower,
15, Bhikaji Cama Place,
New Delhi – 110 066.

...Petitioner

1. PFC Consulting Limited,

(A Wholly Owned Subsidiary of Power Finance Corporation Limited),
9th Floor, A Wing, Statesman House,
Barakhamba Road, Connaught Place,
New Delhi – 110 001

2. Jindal India Thermal Power Limited,

Plot No. 2, Pocket C, 2nd Floor,
Nelson Mandela Road, Vasant Kunj,
New Delhi – 110 070.

3. Jaiprakash Power Ventures Limited,

JA House, 63, Basant Lok, Vasant Vihar,
New Delhi – 110 057.

4. MB Power (Madhya Pradesh) Limited,

239, Okhla Industrial Estate, Phase-III,
New Delhi – 110 020.

5. DB Power Limited,

3rd Floor, Naman Corporate Link,
C-31, G-Block, BKC, Bandra (E),
Mumbai – 400 051.

6. SKS Power Generation (Chhattisgarh) Limited,

Unit No. 201 & 207, Centre Point Premises Co-op Society Limited,
2nd Floor, J.B. Nagar, Andheri-Kurla Road, Andheri (East),
Mumbai – 400 059, Maharashtra.

7. Tamil Nadu Generation and Distribution Corporation Limited,

6th Floor, Eastern Wing, No.-144,
Anna Salai,
Chennai – 600 002.

8. Kerala State Electricity Board Limited,

8th Floor, Vydyuthi Bhavanam, Pattom,
Thiruvananthpuram – 695 004, Kerala.

9. Jammu and Kashmir Power Corporation Limited,

SLDC Building, Gladni Grid Complex, Narwal,
Jammu – 180 006.

...Respondents

The following was present:

Shri Ravi Kishore, Advocate, PTCIL

ORDER

The Petitioner, PTC India Limited (in short, 'PTC'), 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 aggregated power of 2500 MW under Pilot Scheme-II for three years (covered under Medium-Term) as notified by the Ministry of Power, Government of India. The Petitioner has made the following prayers:

"a) Admit the present Petition;

b) Adopt the tariff discovered through the transparent competitive bidding process conducted by PFC Consulting in terms of the Guidelines issued by Government of India.

c) Pass any other or further order which this Commission may deem fit and proper in the facts and circumstances of this case.”

Background

2. Ministry of Power, Government of India, vide its letter dated 30.1.2019 introduced a Pilot Scheme-II to facilitate procurement of aggregated power of 2500 MW for three years from the generating companies having coal-based power plants which are already commissioned but are without a Power Purchase Agreement. Along with the said letter, the Ministry of Power also issued (i) Bidding Documents for Pilot Scheme-II, (ii) Draft Agreement for Procurement of Power under Pilot Scheme-II; and (iii) draft Power Supply Agreement under Pilot Scheme-II (collectively, ‘the Bidding documents’) to be adopted by Nodal Agency for procurement of power through a process of open and transparent competitive bidding through an electronic platform (DEEP e-bidding Portal). Subsequently, Government of India, Ministry of Power vide its Resolution No. 23/78/2017-R & R dated 1.2.2019 issued ‘Guidelines for procurement of aggregated power of 2500 MW under Pilot Scheme-II for three years (covered under Medium Term) facilitated by PFC Consulting Limited as Nodal Agency and through an Aggregator’ (hereinafter referred to as “the Guidelines”) under Section 63 of the Act for procurement of power under Pilot Scheme-II for medium-term through PFC Consulting Limited (‘PFCCL’) as Nodal Agency and PTC India Limited, which was appointed as Aggregator, by PFCCL. The salient features of the Guidelines are as under:

(a) The Pilot Scheme-II envisages procurement of power through competitive bidding process to be conducted by PFCCL as the Nodal Agency. In order to facilitate the procurement and supply of power between the

successful bidder(s) and distribution licensees, an Aggregator for the purpose of these Guidelines may be appointed by Nodal Agency, PFCCL.

(b) The Aggregator will sign an Agreement for Procurement of Power ('APP') with the successful bidder(s) and back-to-back Power Supply Agreement ('PSA') with the distribution licensee(s).

(c) Terms and conditions specified in the Bidding documents for Pilot Scheme-II shall by reference forms part of these Guidelines and shall be treated as such.

(d) Application of the Guidelines shall be restricted to the projects from which power is procured in accordance with the draft APP under Pilot Scheme-II.

(e) For the purpose of the APP, the tariff shall comprise of (i) variable charge (ii) fixed charge which shall be equal to the generating cost of electricity which is included in variable charge, to be quoted by the bidders in accordance with the bidding documents. For the purpose of payment under PSA, the payment shall comprise of (i) tariff payment under the APP and (ii) trading margin. The trading margin shall be as approved by the Appropriate Commission for this Scheme.

(f) Tariff shall be determined through reverse auction on DEEP e-bidding portal based on these Guidelines for the purpose of APP and PSA and shall be adopted by the Appropriate Commission in pursuance of the provisions of Section 63 of the Act.

(g) Any deviation from the bidding documents of Pilot Scheme Phase-II during bidding process shall be made by the Nodal Agency with prior approval of the Central Government. Any deviation from the Bidding documents of Pilot Scheme-II after bidding process shall be made by the Nodal Agency, Aggregator or distribution licensee with the prior approval of the Appropriate Commission.

3. As per the Guidelines, on 17.12.2019, PFCCL issued e-tender for appointment of Aggregator under Pilot Scheme-II. On 27.12.2019, PFCCL carried out e-reverse auction for selection of Aggregator and final result of the same was declared on 30.12.2020. PFCCL issued a Letter of Award on 8.1.2020 to the Petitioner, PTC India Limited for appointment of 'Aggregator' under Pilot Scheme-II.

4. On 1.1.2020, PFCCL issued the Bid documents along with draft Agreement for Procurement of Power (APP) and Power Supply Agreement (PSA) for procurement of power under the Pilot Scheme-II through e-Tender and e-reverse auction on DEEP e-bidding portal. The last date for submission of bid was 31.1.2020 and the e-reverse auction was conducted on 7.2.2020. On the basis of e-reverse auction conducted on DEEP e-bidding portal, PFCCL vide letter dated 10.2.2020 communicated the final result and L1 matching along with discovered tariff of Rs.3.26/kWh at CTU interconnection point of power station. On 10.6.2020, PFCCL intimated to the Petitioner ranking of successful bidders and advised to contact the State/ distribution companies to ascertain the power requirement. Subsequently, the Petitioner approached various distribution companies for sale of power under Pilot Scheme-II. However, due to Covid-19 pandemic, which resulted in substantial disruption of business activities and also dampened the demand of power, out of 12, only five generator(s)/successful bidder(s) gave extension of bid validity. Accordingly, on 8.10.2021, PFCCL issued Letters of Award to such five successful bidders/generators, namely, Jindal India Thermal Power Limited, Jaiprakash Power Ventures Limited, MB Power (Madhya Pradesh) Limited, SKS Power Generation (Chhattisgarh) Limited and DB Power Limited for an aggregate capacity of 820 MW.

Pursuant to the issuance of Letters of Award, the Petitioner has signed APPs with the aforesaid five generators and on that basis back-to-back PSAs have been signed with Distribution companies, namely, Tamil Nadu Generation and Distribution Corporation Limited ('TANGEDCO'), Kerala state Electricity Board Limited ('KSEBL') and Jammu & Kashmir Power Corporation Limited ('JKPCL'). The Petitioner has submitted that under the PSAs, the trading margin payable to the Petitioner is 1.73 paise/kWh, which has been agreed to by the Distribution Companies.

5. The Petitioner has further submitted that as the generators and the distribution companies are located in various States, this Commission alone has the jurisdiction to adopt the tariff in terms of Section 63 of the Act and that the adoption of the above-mentioned tariff will be consistent with the Guidelines and the provisions of the Act. It has been submitted that the price discovered for procurement of power from the generators under the competitive bidding process is attractive and beneficial to the distribution companies as well as their consumers and is market aligned. It has also been submitted that distribution companies of Tamil Nadu (TANGEDCO) and Kerala (KSEBL) have already approached the respective State Commission i.e. Tamil Nadu State Electricity Regulatory Commission and Kerala State Electricity Regulatory Commission for procurement of power and the same has been approved vide orders dated 9.6.2020 and 7.10.2021 respectively.

6. The case was called out for virtual hearing on 14.12.2021. During the course of hearing, learned counsel for the Petitioner reiterated the submissions made in the Petition which are not repeated for the sake of brevity. The representatives of the

Respondent No.2, Jindal India Thermal Power Limited and the Respondent No. 4, M B Power (Madhya Pradesh) Limited requested the Commission to adopt the tariff.

Analysis and Decision

7. We now proceed to consider the prayer of the Petitioner as regards adoption of tariff in respect of procurement of 820 MW power as discovered pursuant to the competitive bid process carried out in terms of the Guidelines issued by the Ministry of Power, Government of India under Section 63 of the Act. The Respondents have not raised objection with regard to adoption of tariff.

8. 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.”

9. Thus, in terms of Section 63 of the Act, the Appropriate Commission is required to adopt the tariff on being satisfied that transparent process of bidding in accordance with the guidelines issued by the Government of India under Section 63 of the Act has been followed in determination of such tariff.

10. At the outset, the Petitioner has pointed out that the selected generators and the distribution companies under the Pilot Scheme-II are located in the various States and, therefore, this Commission alone has the jurisdiction to adopt the tariff in terms of Section 63 of the Act. We also observe that the sale of electricity by the generator(s) under the APPs to the distribution companies, on the basis of back-to-back PSA, is in the nature of inter-State supply, as the generators being located

in the States of Odisha, Madhya Pradesh and Chhattisgarh are supplying power to the distribution companies located in the States/UTs of Kerala, Jammu & Kashmir and Tamil Nadu and, therefore, each generator has composite scheme of generation and supply of electricity in more than one State as envisaged in Section 79(1)(b) of the Act.

11. The expression 'composite scheme' and the jurisdiction of the Central Commission in regulating the tariff of the project meeting the 'composite scheme' under the Act has been explained by 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)] (in short, 'Energy Watchdog Judgment') 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 sub-sections (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.***

23. This also follows from the dictionary meaning [(Mc-Graw-Hill Dictionary of Scientific and Technical Terms (6th Edition), and P.Ramanatha Aiyar’s Advanced Law Lexicon (3rd Edition)] of the expression “composite”:

(a) 'Composite' – "A re-recording consisting of at least two elements. A material that results when two or more materials, each having its own, usually different characteristics, are combined, giving useful properties for specific applications. Also known as composite material.

(b) 'Composite character' – "A character that is produced by two or more characters one on top of the other."

(c) 'Composite unit' – "A unit made of diverse elements."

The aforesaid dictionary definitions lead to the conclusion that the expression "composite" only means "consisting of at least two elements". In the context of the present case, generation and sale being in more than one State, this could be referred to as "composite".

24. Even otherwise, the expression used in Section 79(1)(b) is that generating companies must enter into or otherwise have a "composite scheme". **This makes it clear that the expression "composite scheme" does not have some special meaning – it is enough that generating companies have, in any manner, a scheme for generation and sale of electricity which must be in more than one State.**

12. As per the above findings of the Hon'ble Supreme Court, the moment generation and sale takes place in more than one State, the Central Commission becomes the Appropriate Commission under the Act. Therefore, combined reading of Section 79(1) and Section 63 of the Act and the decision of Hon'ble Supreme Court in Energy Watchdog Judgment makes it clear that this Commission has the jurisdiction to proceed with the adoption of tariff in the present case under Section 63 of the Act.

13. The Ministry of Power, Government of India has notified the Guidelines under Section 63 of the Act vide Resolution No. 23/78/2017-R&R dated 1.2.2019. The provisions of the Guidelines and our observations thereon 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 Agreement for Procurement of Power for a period of three years. Therefore, the

Guidelines are applicable for procurement of power from the projects of the Respondent No. 2 to Respondent No. 6.

(b) Clause 3 of the Guidelines provides that for the purpose of Agreement for procurement of power, the tariff shall comprise (i) variable charge and (ii) fixed charge equal to generating cost of electricity which is included in variable charge, to be quoted by the bidders as per the bidding documents. Therefore, after matching the tariff of L-1 bidders, the quoted tariff of the generators, namely, Jindal India Thermal Power Limited, Jaiprakash Power Ventures Limited, MB Power (Madhya Pradesh) Limited, SKS Power Generation (Chhattisgarh) Limited and DB Power Limited works out to be Rs. 3.26/kWh which includes variable charge and fixed charge.

(c) Clause 4 of the Guidelines provides that for the purpose of payment under PSA, the tariff shall comprise of (i) tariff under APP, and (ii) a trading margin as approved by the Appropriate Commission for the Pilot Scheme-II. The trading margin would be 1.73 Paise/kWh.

(d) Clause 5 provides that 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 is required to be adopted by the Commission for the purpose of Agreement for Procurement of Power and Power Supply Agreement under Pilot Scheme-II.

(e) Clause 7 of the Guidelines provides that any deviation from the Bidding documents shall be made by the Nodal Agency, Aggregator or distribution licensee 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.

14. PFCCL, as Nodal Agency appointed by Ministry of Power, Government of India invited proposals for selecting the bidders in accordance with the Guidelines by issuance of Bidding documents along with draft APP and PSA through e-tender and e-reverse auction on DEEP e-bidding portal on 1.1.2020 for procurement of 2500 MW aggregated power. Last date of submission of bid was 31.1.2020 and e-reverse auction was carried out on 7.2.2020 in the presence of representatives of PFCCL and the Petitioner. PFCCL vide its letters dated 10.2.2020 and 10.6.2020 informed the Petitioner about result of e-reverse auction along the discovered tariff of Rs.3.26/kWh at CTUIL inter-connection point as under:

Sr. No.	Name of Bidder	Location of Power Station	Quantum (MW)	Tariff (Rs/kWh) at CTU Intersection Point
1	Raigarh Energy Generation Limited	Village: Bade Bhandar Chote Bhadar, Tehsil: Pussaur, Raigarh, Chhattisgarh	350	3.26
2	Raipur Energen Limited	Village: Raikheda, Gayatra and Chicholi, Block: Tilda, Raipur, Chhattisgarh	350	
3	Jindal Power Limited	2x600 MW O P Jindal Super TPP, Tmnr, Raigarh, Chhattisgarh	315	
4	Jindal India Thermal Power Limited (JITPL)	2x600 MW TPP at Derang, District: Angul, Odisha	270	
5	Essar Power MP Limited	Mahan, District: Singrauli Madhya Pradesh	260	
6	Jaypee Nigrie Super Thermal Power	1320 MW TPP, District: Singrauli, Madhya Pradesh	200	
7	MB Power (Madhya Pradesh) Limited	2x600 MW TPP at Anuppur, Madhya Pradesh	150	
8	Sembcorp Energy India Limited	2x 660 MW TPP, Ananthavaram Village, Varkavipudi Panchayat, TP Gudur Mandal, Nellor (A.P)	150	
9	SKS Power Generation (Chhattisgarh) Limited	600 MW TPP, Binjkot, Raigarh, Chhattisgarh	100	
10	DB Power Limited	Baradarha, Dist. Janjgir Champa, Chhattisgarh	100	

11	GMR Kamalanga Energy Limited	Kamalanga, via Meramundali, PS-Kantabania, Dhenkanal, Odisha	150	
12	Jindal Power Limited	4x250 MW O P Jindal Super TPP, Tamnar, Raigarh, Chhattisgarh	105	
		Total	2500	

15. PFCCL vide its afore-mentioned letters dated 10.2.2020 and 10.6.2020 also requested the Petitioner to contact with the States/ distribution licensees to ascertain the power requirement and communicate the requirement of power received from various utilities.

16. According to the Petitioner, it approached various distribution companies for sale of power under the Pilot Scheme-II. However, due to covid-19 pandemic, there was substantial disruption of business activities, which also dampened the demand of power and, therefore, it could not tie up the entire power selected under the Pilot Scheme-II. It has been submitted that, in the meantime, while the validity of bid was extended from time to time by the successful bidders up to 31.10.2021, certain successful bidders/ generators did not extent the validity of bid thereafter and out of 12 (Twelve), only 5(Five) successful bidders accorded their consent for further extension of validity of bid. Accordingly, PFCCL issued Letters of Award to these five bidders, namely Jindal India Thermal Power Limited, Jaiprakash Power Ventures Limited, MB Power (Madhya Pradesh) Limited, SKS Power Generation (Chhattisgarh) Limited and DB Power Limited. Relevant portion of Letter of Award issued to one of the generators, namely, Jindal India Thermal Power Limited is extracted as under:

“With reference to the above and in pursuance of provisions under clause 5.7 of the Bidding Document, we are pleased to place Letter of Award (LoA) in favour of Jindal India Thermal Power Limited for signing of APPP-II with Aggregator (PTC India

Limited) as per terms of the bidding document under the Pilot Scheme-II. The source of supply, period, tariff etc. is given as hereunder:

Period	Timings	Successful Bidder	Quantum (MW)	Source	(Tariff (Rs./kWh) at delivery point)
[As per APPP-II]	Round The Clock	Jindal India Thermal Power Limited	270	Jindal India Thermal Power station village Derang	3.26

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 Limited is required to execute APPP-II with Aggregator and to submit Performance Security in line with Bidding Document.
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 1.2.11 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 APPP-II, if the Jindal India Thermal Power Limited fails to fulfil the conditions mentioned under the Bidding Documents and/or under the APPP-II and/or is in breach of the terms of the Bidding Documents and/or under the APPP-II.

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 acknowledgement and confirmation with 7 days of issuance of this LoA.”

17. Pursuant to the issuance of Letters of Award, the Petitioner approached distribution companies of various States and was able to sign PSAs with the distribution companies of the States of Tamil Nadu, Kerala and Jammu and Kashmir. Accordingly, the Aggregator, PTC India Limited signed APPs with the generators and back to back PSAs with distribution companies under the Pilot Scheme-II for the total capacity of 820 MW as under:

Sr. No.	Generators/ Supplier	PPA Quantum	Distribution companies	PSA Quantum	Date of signing of the APP and PSA
1.	Jindal India Thermal Power Limited State: Orissa	270 MW	Kerala State Electricity Board Limited	270 MW	APP dated 25.10.2021 PSA dated 27.10.2021
2.	Jaiprakash Power Ventures Limited State: Madhya Pradesh	150 MW	J&K Power Corporation Limited	150 MW	APP dated 18.10.2021 PSA dated 20.10.2021
3.	Jaiprakash Power Ventures Limited State: Madhya Pradesh	50 MW	Tamil Nadu Generation and Distribution Corporation Limited	50 MW	APP dated 18.10.2021 PSA dated 22.10.2021
4.	MB Power (Madhya Pradesh) Limited State: Madhya Pradesh	150 MW	Tamil Nadu Generation and Distribution Corporation Limited	150 MW	APP dated 28.10.2021 PSA dated 22.10.2021
5.	SKS Power Generation (Chhattisgarh) Limited State: Chhattisgarh	100 MW	Tamil Nadu Generation and Distribution Corporation Limited	100 MW	APP dated 18.10.2021 PSA dated 22.10.2021
6.	DB Power Limited State: Chhattisgarh	100 MW	Tamil Nadu Generation and Distribution Corporation Limited	100 MW	APP dated 20.10.2021 PSA dated 22.10.2021
	Total	820 MW	Total	820 MW	

18. Article 11.8 and Article 12.1 of the APP provides as under:

“11.8 Billing and Payment

11.8.1 Commencing from the month following the month in which the Appointed Date occurs, the Supplier, by the 5th (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.

11.8.2 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 Fixed Charge for Availability in accordance with this Article 11, (d) detailed calculations of the Variable Charge in respect of electricity dispatched and official documents in support of the variation in WPI, (e) detailed calculations of the Incentives and/or Damages in accordance with the provisions of Clause 11.5; (f) details in respect of taxes/duties payable/reimbursable in accordance with the provisions of this Agreement; (g) details in respect of Damages or Incentives payable in accordance with the provisions of this Agreement; and (h) the net amount payable under the Monthly Invoice.

11.8.3 The Aggregator shall, within 32 (thirty two) days of receipt of a Monthly Invoice in accordance with Clause 11.8.1 (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")

11.8.4 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.

11.8.5 The Supplier shall raise Supplementary Invoices for reimbursement of charges for inter-state transmission of electricity and RLDC fees/charges as per the actual bills of CTU/RLDC etc. Payment due date, late payment surcharge, rebate for early payment etc. for such Supplementary Invoices shall be as per the actuals bills of CTU/RLDC etc."

...

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 20% (twenty percent) of the annual Capacity Charge (the "Letter of Credit"), which may be drawn upon by the Supplier for recovery of payment due against the Monthly Invoice in accordance with the provisions 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 20% (twenty percent) of the annual Capacity Charge 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. 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 27th (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 20% (twenty percent) of the annual Capacity Charge 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 20% (twenty percent) of the annual Capacity Charge, 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.”

19. Further, Article 12.2 of the APP 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 to Aggregator and the surplus remaining, 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 is deemed to have paid the arrears due to the Supplier in accordance with the provisions of this Agreement, renews the Letter of Credit.”

20. Thus, all parties are required to abide by the above provisions of payment security mechanism as provided under Article 12.1 of the APP.

21. Clause (10) of Regulation 9 of the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of trading licence and other related matters) Regulations, 2020 (hereinafter referred to as “the Trading Licence Regulations”) provides as under:

“9. (10) The Trading Licensee shall make payment of dues by the agreed due date to the seller for purchase of the agreed quantum of electricity through an escrow arrangement or irrevocable, unconditional and revolving letter of credit in favour of the seller. Such escrow arrangement or irrevocable, unconditional and revolving letter of credit in favour of the seller shall be equivalent to:

(a) one point one (1.1) times the average monthly bill amount (estimated average of monthly billing amounts for three months or actual monthly billing amount for preceding three months as the case may be) with a validity of one year for long term contracts;

(b) one point zero five (1.05) times of contract value for short term contracts.”

22. The above provisions provide for payment security mechanism to be complied with by the parties to the present Petition. Accordingly, the provisions of Article 11.8 and Article 12.1 of the APPs and Clause (10) of Regulation 9 of the Trading Licence Regulations shall be abided by the concerned parties to the present Petition during the tenure of the APPs and PSAs.

23. As per Clause 4 of the Guidelines, the Commission is required to approve the trading margin. In this regard, Clause (1)(d) of Regulation 8 of the Trading Licence Regulations provides as under:

“For transaction under long term contracts, the trading margin shall be decided mutually between the Trading Licensee and the seller.”

This provision gives choice to the contracting parties to mutually agree on trading margin for long-term transaction/ contract (i.e. where the period of contract of trading licensee with either seller or buyer or both is more than one year).

24. However, Proviso to Regulation 8(1)(d) of the Trading Licence Regulations provides as under:

*“8(1) (d) * * * * **

Provided that in contracts where escrow arrangement or irrevocable, unconditional and revolving letter of credit as specified in clause (10) of Regulation 9 is not provided by the Trading Licensee in favour of the seller, the Trading Licensee shall not charge trading margin exceeding two (2.0) paise/kWh.”

25. Regulation 8(1)(f) of the Trading Licence Regulations provides as under:

“For transactions under Back to Back contracts, where escrow arrangement or irrevocable, unconditional and revolving letter of credit as specified in clause (10) of Regulation 9 is not provided by the Trading Licensee in favour of the seller, the Trading Licensee shall not charge trading margin exceeding two (2.0) paise/kWh.”

26. Therefore, in case of failure by trading licensee to provide escrow arrangement or irrevocable, unconditional and revolving letter of credit to the generators, trading margin shall be limited to Rs.0.02/kWh as specified in Regulation 8(1)(f) of the Trading Licence Regulations. In the present case, the trading margin agreed under the PSAs is 1.73 Paise/kWh.

27. Based on the submissions in the Petition and the documents available on record, we find that tariff discovery through DEEP e-bidding portal as per the Bidding documents for Pilot Scheme-II for procurement of power by the Respondent No. 7 to Respondent No. 9 from Respondent No. 2 to Respondent No. 6 through the Petitioner (PTC) has been carried out in conformity with the *“Guidelines for Procurement of Power of 2500 MW under Pilot Scheme-II for three years (Covered under Medium Term) facilitated by PFC Consulting Limited as Nodal Agency and through an Aggregator”*. Accordingly, in terms of Section 63 of the Act and our observations made under paragraph 16 and paragraph 17 above, we adopt the tariff of Rs.3.26/kWh as quoted and agreed by the selected bidders i.e. Respondent No. 2

to Respondent No. 6 under the APPs, for supply of power to the procurers- Respondent No. 7 to Respondent No. 9 (i.e. TANGEDCO, KSEBL and JKPCCL) as per their respective shares and for an aggregate capacity of 820 MW.

28. The Petition No. 249/AT/2021 is disposed of in terms of the above.

Sd/-
(P.K.Singh)
Member

sd/-
(Arun Goyal)
Member

sd/-
(I. S. Jha)
Member

sd/-
(P.K. Pujari)
Chairperson