ORDER
OF THE
WEST BENGAL ELECTRICITY REGULATORY COMMISSION
IN CASE NO. WBERC/PPA-94 /18-19

IN REGARD TO THE APPLICATION SUBMITTED BY WEST BENGAL STATE ELECTRICITY DISTRIBUTION COMPANY LIMITED (WBSEDCL) FOR APPROVAL OF POWER PURCHASE AGREEMENT EXECUTED ON 08.01.2019 BETWEEN TATA POWER TRADING COMPANY LIMITED (TPTCL) AND THE WEST BENGAL STATE ELECTRICITY DISTRIBUTION COMPANY LIMITED (WBSEDCL) FOR PURCHASE OF HYDRO ELECTRIC POWER BY WBSEDCL FROM THE DAGACHHU HYDRO POWER CORPORATION LIMITED, A COMPANY DULY INCORPORATED UNDER THE LAWS OF BHUTAN, FROM THE DATE OF SUPPLY OF POWER TO 28TH FEBRUARY, 2023 THROUGH TPTCL IN TERMS OF REGULATIONS 2.1.5(1), 7.4.1 AND 7.8.3 OF THE WEST BENGAL ELECTRICITY REGULATORY COMMISSION (TERMS AND CONDITIONS OF TARIFF) REGULATIONS, 2011, AS AMENDED.

PRESENT:
SRI DURGADAS GOSWAMI, MEMBER

DATE: 15.02.2019
Facts in brief:

1.0 This is in regard to the application submitted by the West Bengal State Electricity Distribution Company Limited (WBSEDCL) for approval of power purchase agreement (PPA) executed on 08.01.2019 between Tata Power Trading Company Limited (TPTCL) and the West Bengal State Electricity Distribution Company Limited (WBSEDCL) for purchase of hydro electric power by WBSEDCL from Dagachhu Hydro Power Corporation Limited (DHPCL), a company duly incorporated under the laws of Bhutan, from 1st February, 2019 to 28.02.2023 through TPTCL in terms of regulations 2.1.5(i), 7.4.1 and 7.8.3 of the West Bengal Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2011, as amended (in short ‘Tariff Regulation’).

2.0 WBSEDCL submitted an application on 10.01.2019 for approval of purchase of hydroelectric power through TPTCL from Dagachhu Hydro Power Corporation Limited from 1st February 2019 to 28th February 2023.

3.0 Gist of the application for approval of PPA inviting objections and suggestions from the stakeholders was published on 20.01.2019 in “The Times of India”, “The Telegraph” and “The Ananda Bazar Patrika”. However, no comments /objections / suggestions were received within the scheduled date.

4.0 In their petition WBSEDCL submitted that TPTCL has been established with an objective, inter-alia, to carry on the business of purchase of electrical power from Independent Power Producers (IPPs), Captive Power Plants (CPPs), other Generating Companies, State Electricity Boards (SEBs), State Governments, power plants in neighboring countries, power distribution companies, other trading licensees etc., for subsequent sale of this power to SEBs, other utilities, power distribution companies, other organizations and bulk power consumers etc., in India and abroad.
Approval of Power Purchase Agreement executed on 08.01.2019 between Tata Power Trading Company Limited (TPTCL) and the West Bengal State Electricity Distribution Company Limited (WBSEDCL) for purchase of hydro electric power by WBSEDCL from the Dagachhu Hydro Power Corporation Limited through TPTCL in terms of regulations 2.1.5(i), 7.4.1 and 7.8.3 of the West Bengal Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2011. as amended.

5.0 WBSEDCL has also submitted that Dagachhu Hydro Power Corporation Limited (hereinafter referred to as "DHPC") a company duly incorporated under the laws of Bhutan and having its registered office at Dagana, Bhutan, has set up a 126 MW (63 MW X 2 units) run of the river Hydro Power plant ("Project") on the river Dagachhu at Khebisa Gewog, Dagana in Bhutan.

6.0 WBSEDCL further submitted that TPTCL has signed a Power Purchase Agreement (PPA) with DHPC wherein DHPC has exclusively authorized TPTCL to sell power from the Project in India.

7.0 WBSEDCL submitted that TPTCL had, vide its letter (Ref: TPTCL-LTC-OFFER-WBSED-RA-FY-18-TS-001) dated 7th February, 2018 offered to sell 126 MW of power and corresponding energy from the project to WBSEDCL up to 28th February 2023 copy of which is also given in WBSEDCL's application.

8.0 WBSEDCL submitted that WBSEDCL, vide their letter Ref: PTP/MTOA/TPTDHP/322 dated 13th October, 2018 had given their in-principle acceptance for purchase of power on medium term basis for a period of five years.

9.0 WBSEDCL also submitted that all charges and losses up to the Delivery Point including but not limited to transmission charges and losses of Bhutan transmission system, auxiliary consumption etc. shall be borne by TPTCL. In the Power Purchase Agreement (PPA) dated 08.01.2019 the delivery point is the interconnection of Bhutan and Indian grid in Eastern Region in India.

10.0 WBSEDCL further submitted that the tariff of power during the contractual period shall be as follows:

West Bengal Electricity Regulatory Commission

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11.0 WBSEDCL also submitted that tariff of hydro electric power stations viz. TLDP-III, Rangit HEP determined under section 62 of the Electricity Act 2003 comes to more than Rs.4.00/kWh for the year 2017-18 whereas negotiated price of above hydro electric power from DHPC is substantially less.

12.0 Regarding need for procurement of power WBSEDCL submitted that as per the recent planning of Load Generation Balance Report it is observed that there will be shortfall ranging from 731 MW to 1199 MW over the span of five years i.e. from 2019-2020 to 2023-2024 as per the power scenario of WBSEDCL in respect of the projected availability vis-a-vis system demand of WBSEDCL for the aforesaid period.

13.0 WBSEDCL also submitted that WBPDCIL has also been drastically reducing their actual sent out generation with respect to their commitments thereby leaving no other option but to purchase the deficit power at exorbitant high rates on the exchange platform even up to Rs. 18.00 per kwh.

14.0 It is further submitted by WBSEDCL that with an objective to procure power in the Short Term mode through competitive bidding on the ‘DEEP’ portal, it was found from the recently concluded tender event WBSEDCL/PTP/e-NIT/02/2018 dated 15.09.2018, that not only bids for the entire requisitioned quantum were not received, but the prices discovered were abnormally high also, to the extent up to Rs. 7.25/- per kwh for RTC Power during the period from March 2019 to June 2019.
Approval of Power Purchase Agreement executed on 08.01.2019 between Tata Power Trading Company Limited (TPTCL) and the West Bengal State Electricity Distribution Company Limited (WBSEDCL) for purchase of hydro electric power by WBSEDCL from the Dagachhu Hydro Power Corporation Limited through TPTCL in terms of regulations 2.1.5(i), 7.4.1 and 7.8.3 of the West Bengal Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2011. as amended.

15.0 WBSEDCL submitted that purchase of hydropower will improve the Hydro-Thermal mix and it will provide peak load support.

16.0 Accordingly, as submitted by WBSEDCL, a Power Purchase Agreement dated 08.01.2019 has been executed by and between the aggregator TPTCL & WBSEDCL for purchase of 126 MW power by WBSEDCL through TTPCL from the DHPC from 01.02.2019 to 28.02.2019 on mutually agreed basis as per regulation 2.1.5(i) of the Tariff Regulations. The copy of PPA has been submitted by WBSEDCL along with their application.

17.0 From the projection submitted by WBSEDCL it is revealed that a total amount of Rs. 12891.60 lakh considering levelised tariff of Rs. 3.581 per kWh will be the cost for each year for purchase of 360 MU (with 90% dependability) of power during each year.

18.0 In view of above, WBSEDCL has prayed before the Commission to approve the Power Purchase Agreement dated 08.01.2019 executed by and between Tata Power Trading Company Limited (TPTCL) & West Bengal State Electricity Distribution Company Limited (WBSEDCL) for purchase of 126 MW power by WBSEDCL through TPTCL from Dagachhu Hydro Power Corporation Limited, a company duly registered under the laws of Bhutan, from 01.02.2019 to 28.02.2019 on mutually agreed basis in terms of regulations 2.1.5(i), 7.4.1 and 7.8.3 of the West Bengal Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2011 as amended.

19.0 Subsequent to a meeting held in the office of the Commission on 25.01.2019 regarding this cross-border import of power from Bhutan and justification towards requirement of power, WBSEDCL submitted further clarification and documents vide their letter no PTP/SERC/447 dated 29.01.2019 and PTP/SERC/454 dated 31.01.2019.

20.0 WBSEDCL in their letter dated 29.01.2019 submitted the followings:

(i) TPTCL have intimated WBSEDCL vide letter dated 28.01.2019 that TPTCL has taken all due approvals from relevant authorities for sale of power from DHPC in
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India. The letter of TPTCL is also enclosed, wherein it is revealed that TPTCL entered into PPA with DHPC for 25 years on 25.06.2008 for onward sale to entities in India. Ministry of Power, Government of India vide letter no 11/11/2013-BBMB dated 11.11.2013 has advised TPTCL that there is no need to obtain a licensee from DGFT for importing electricity from Bhutan. CEA vide their communication dated 28.08.2014 has taken a stand that there is no bar to import power from Bhutan and by orders dated 11.09.2014 and 16.02.2016 CERC had facilitated the import of electricity by TPTCL from DHCP. TPTCL also mentioned that clause 1.2 of the guideline issued by MoP, GoI on 18.12.2018 contemplates saving of all steps taken or which appears to have been taken in furtherance of / for the purpose of cross border trade of electricity. As the PPA between TPTCL and DHPC was executed prior to the notification of guidelines and was in existence at the time of the notification of guidelines and CEA had already permitted TPTCL for importing power from Bhutan, therefore it shall be saved and deemed to have been done in accordance with the guidelines, no prior approval of the Designated Authority may be required.

(ii) WBSEDCL clarified that the tariff for sale of power is inclusive of trading margin of TPTCL. WBSEDCL also enclosed related confirmation from TPTCL which inter-alia mentions that the trading margin included in the tariff is as per CERC regulations.

(iii) WBSEDCL also stated that though the average power purchase cost approved in the Tariff Order from WBSEDCL for the year 2017-18 is 339.53 paisa / kWh, the actual average power purchase cost is 380.56 paisa/kWh and for long term power it is 366.65 paisa/kWh. WBSEDCL has also submitted the MVCA sheets of WBSEDCL upto November 2018 in support of their claim. Accordingly WBSEDCL submitted that the tariff of power purchase from DHPC is found to be reasonable.
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21.0 WBSEDCL in its letter dated 31.01.2019 submitted the basis of their peak demand assumptions and breakup of source wise generation availability for FY-20 to FY-24. In their submission WBSEDCL mentioned that they have projected the demand for FY-20 to FY-24 considering growth rate of 4.43%, the CAGR between FY-15 & FY-17, and accordingly projected the demand for FY-20 as 6856 MW. WBSEDCL has considered 900 MW from PPSP and 40 MW from other hydro units based on the past record for determination of net shortfall. WBSEDCL further stated that they propose to procure round the clock power and any seasonal surplus during other times will be utilized for pumping / banking / sale in the market.

22.0 As the documents mentioned under 20 (i) were not submitted by WBSEDCL, the Commission vide Letter No. WBERC/PPA-94/18-19/3606 dated 07.02.2019 requested WBSEDCL to submit copies of the letters/ orders of the relevant authorities. Accordingly, WBSEDCL vide letter dated 08.02.2019 submitted copies of the relevant documents.

23.0 WBSEDCL vide Letter No. PTP/SERC/475 dated 13.02.2019 also submitted copy of the agenda placed in the 81st meeting of the Board of Directors of WBSEDCL held on 12.11.2018 regarding, inter-alia approval of procurement of power from Dagachhu Hydro Power Corporation (126 MW for five years through TPTCL) and copy of the minutes of the said Board Meeting approving the above procurement. In the minutes of the said board meeting it is also noted that in-principle clearance from MoP, Government of West Bengal was accorded for the power purchase proposal.

Observations of the Commission:

24.0 Commission observes that the Ministry of Power, Government of India has vide No. 14/1/2017-Trans dated 18.12.2018 issued the “Guidelines for Import/ Export (Cross Border) of electricity -2018”. As per clause 4.4 of the guidelines any entity proposing to
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Import or Export electricity may do so only after taking approval of the Designated Authority. At the same time clause 1.2 of the guidelines specifies the followings:

"Notwithstanding anything done or any action taken or purported to have been done or taken for import/ export of electricity with neighboring country(ies) shall be deemed to have been done or taken under provisions of these guidelines (Guidelines for Import/ Export (Cross Border) of Electricity- 2018) and shall continue to be in place till the expiry of the existing contracts. The Guidelines on Cross Border Trade of Electricity issued in 2016 shall stand repealed after the issuance of “Guidelines on Import/ Export (Cross Border) of Electricity- 2018”.

Now considering the submissions of WBSEDCL as mentioned in paragraph 20.0(i) above, the Commission is of the view that no separate approval from designated authority is required for this import of power from DHPC, Bhutan through TPTCL.

25.0 The Commission, from the MOMs of SLCF meetings issued by SLDC, observed that the average peak demand for 2017 – 18 was 5759 MW. Considering the CAGR for FY-15 to FY-17 of 4.43%, as submitted by WBSEDCL, the average peak demand for 2019 – 20 comes to 6280 MW. Now considering 5% spinning reserve and 5% cold reserve as per provisions of Schedule – II of the Tariff Regulations, it comes to 6908 MW. Accordingly, the projected requirement of 6856 MW of WBSEDCL is considered reasonable.

26.0 Commission further observes that regulation 2.1.5(ii) of the Tariff Regulation is applicable for determining the reasonability of purchase of power through negotiated route. Regulation 2.1.5(ii) inter-alia specifies for benchmarking process with the price found out from tariff determined under section 62 or 64(5) on normative basis or levelised tariff accepted under investment approval by the Commission or tariff adopted under section 63 of the Act in case of similar type of power procurement. Now the average power purchase cost excluding short-term power, Bundled power and radial power as considered in Tariff Order comes to comes to 331.76 paisa/ kWh. Considering the present level of MVCA

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claimed by WBSEDCL of 23 paisa / kWh, the average power purchase cost comes to 354.76 paisa / kWh. WBSEDCL in their submission dated 29.01.2019 stated that present actual average cost of long-term power comes to 366.65 paisa/kWh. In view of the above the Commission finds that the tariff of DHPC power including trading margin is reasonable.

Order:

27.0 The Commission after considering the above facts and to ensure reliable and quality power supply in the State approves the Power Purchase Agreement signed by and between the WBSEDCL and TPTCL for purchase of 126 MW of power through TPTCL from DHPC upto 28.02.2023 on mutually agreed basis as per the following rate in terms of regulations 2.1.5(ii), 7.4.1 and 7.8.3 of the West Bengal Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2011 as amended:

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28.0 The petition is thus disposed of. Let a copy of the order be served upon WBSEDCL.

Sd/-
(DURGADAS GOSWAMI)
MEMBER

Dated: 15.02.2019