



ORDER
OF
WEST BENGAL ELECTRICITY REGULATORY COMMISSION
IN THE MATTER OF

CASE NO. OA-417/22-23

APPLICATION UNDER SECTION 86(1)(F) AND SECTION 86(1)(B) OF THE ELECTRICITY ACT, 2003 READ WITH REGULATION 2.1.3 (D) OF WBERC (CONDUCT OF BUSINESS) REGULATIONS FOR ADJUDICATION OF DISPUTES AND / OR WITHDRAWAL OF THE APPROVAL OF THE PROCUREMENT OF 100 MW POWER IN TERMS OF THE POWER SUPPLY AGREEMENT (PSA) DATED 05.01.2011 GRANTED BY THE COMMISSION VIDE ORDER DATED 15.12.2011.

PRESENT:

SRI SUTIRTHA BHATTACHARYA, CHAIRPERSON
SRI PULAK KUMAR TEWARI, MEMBER

DATE: 29.07.2022



Application under section 86(1)(f) and section 86(1)(b) of the Electricity Act, 2003 read with regulation 2.1.3 (d) of WBERC (Conduct of Business) Regulations for adjudication of disputes and / or withdrawal of the approval of the procurement of 100 MW power in terms of the Power Supply Agreement (PSA) dated 05.01.2011 granted by the Commission vide order dated 15.12.2011.

- 1.0 West Bengal State Electricity Distribution Company Ltd. ("**WBSEDCL**") has filed the present Petition on 27.04.2022 under Section 86(1)(b) & (f) of the Electricity Act, 2003 ("**Electricity Act**") read with Regulation 2.1.3(d) of the WBERC (Conduct of Business) Regulations, 2013 seeking adjudication of dispute and/or revocation/rescission of the approval dated 15.12.2011 for procurement of 100 MW power in terms of Power Supply Agreement ("**PSA**") dated 05.01.2011 executed between WBSEDCL and PTC India Ltd. ("**PTC**"), granted by this Commission.
- 2.0 Power is being supplied to WBSEDCL from the thermal power plant of Adhunik Power and Natural Resources Ltd. ("**APNRL**") located in State of Jharkhand in terms of the following arrangement: -
 - (i) PSA dated 05.01.2011 executed between WBSEDCL and PTC read with Supplementary PSA dated 01.12.2011; and
 - (ii) Power Purchase Agreement ("**PPA**") dated 25.03.2011 read with Amendment Agreement No.1 dated 26.04.2011 and Amendment Agreement No.2 dated 01.12.2011 executed on back-to-back basis between PTC and APNRL

The said arrangement was approved by this Commission by Order dated 15.12.2011.

- 3.0 During the hearing in the present Petition on 29.06.2022, the Commission observed that there is a possibility for the parties to amicably resolve the issues between them. Accordingly, WBSEDCL, APNRL and PTC were guided to sit together and explore all avenues to resolve the issues involved by the Commission's Order dated 07.07.2022.
- 4.0 Pursuant to the discussions between the parties, viz. WBSEDCL, APNRL and PTC, the parties have arrived at a mutual agreement to resolve the issues. Accordingly, on 25.07.2022, WBSEDCL, APNRL and PTC have filed a joint application under Section 64(5) of the Electricity Act, 2003 read with Order XXIII Rule 3 of the Code of Civil



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Procedure, 1908 before the Commission to place on record the terms of settlement agreed between the parties.

5.0 The terms of settlement as agreed between the parties and as filed before the Commission by way of the joint application is extracted below: -

"3. WBSEDCL, APNRL and PTC have agreed to seek disposal of the present Petition based on the following terms of settlement: -

- (i) **TARIFF:** With effect from 01.04.2022, tariff shall be determined by this Hon'ble Commission under Section 62 and 64(5) of the Electricity Act, 2003 in accordance with the WBERC Tariff Regulations as prevalent from time to time in respect of procurement of 100 MW power in terms of the PSA dated 05.01.2011 & PPA dated 25.03.2011. Accordingly, computation of capacity charges, energy charges, incentive, penalty, etc. with respect to normative parameters shall be as per the applicable regulations of this Hon'ble Commission.
- (ii) **APPLICABILITY:** Except to the extent modified by the terms of this settlement, all other terms of the PSA dated 05.01.2011 and PPA dated 25.03.2011 shall remain unmodified.
- (iii) **INTERIM PAYMENT:** Till the time tariff is determined by this Hon'ble Commission, APNRL/PTC to supply power to WBSEDCL at an **interim tariff** of Rs. 4.40/kWh.
- (iv) **CHANGE IN LAW CLAIMS RE. COAL PRICE / CHANGE IN COAL SOURCE:** The dispute regarding Change in Law issue related with coal price will be settled on the basis of the outcome of the proceedings before superior courts (i.e. Supreme Court or Appellate Tribunal for Electricity) and both parties agree to abide by the same



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(v) CHANGE IN LAW CLAIMS RE. TAXES & DUTIES AS PER HON'BLE CERC ORDER IN PETITION NO. 255/MP/2017, PETITION NO. 260/MP/2019 AND PETITION NO. 292/MP/2019: Regarding payment on Change in Law issue related with Tax etc.: -

- (a) Out of Rs 119 crores, Rs. 78 crores already paid.
- (b) 60% of the balance amount (other than Rs. 119 Crores) as calculated based on the orders passed by the CERC in Petition No. 255/MP/2017, Petition No. 260/MP/2019 and Petition No. 292/MP/2019, applicable laws, regulations and PSA / PPA terms as agreed and acceptable mutually between the parties shall be paid in 3 monthly instalments (40%, 30%, and 30%) starting from August, 2022 after the Order of the Hon'ble WBERC in the present case. The calculation for the balance amount as per Hon'ble CERC order in Petition No. 255/MP/2017, Petition No. 260/MP/2019 and Petition No. 292/MP/2019, shall be finalized within 10 to 12 days of the WBERC order in the instant matter.
- (c) For the balance amount of payment on Change in Law issue related with Tax etc. [i.e. (Rs. 119 Crores - Rs.78 Crores) and 40% of amount arrived at under point (b)], the same shall be referred mutually by APNRL & WBSEDCL to a Government agency like REC/PFC/etc. for verification. All parties agree to abide by the final report of the said agency and payments will be made/refunded based on the report of the said Govt. Agency.
- (d) The Govt. agency shall be finalized by July'2022 end. Report of Govt. Agency shall be readied at the earliest and in any event not later than 60 days of the Agency finalization. Payment as finalized by the said Agency shall be released within 90 days of agency report. Parties undertake to fully cooperate and assist the agency in preparation of the Report.



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(vi) **WITHDRAWAL OF CASES:** WBSEDCL, APNRL & PTC agree to withdraw all the pending cases immediately pursuant to issuance of this Hon'ble Commission's Order in the present matter except the matters involving coal price due to change in coal source.

(vii) **POWER SUPPLY:** APNRL & PTC shall ensure 100% scheduling of power supply to WBSEDCL in terms of the PSA and PPA dated 05.01.2011 & 25.03.2011, respectively, within 60 days after the issuance of Order in the present matter by this Hon'ble Commission.

4. All the parties agreed to abide by the terms and conditions as mentioned. Non-adherence to any of the conditions shall be treated as a material breach of this settlement..."

6.0 In view of the aforesaid terms of settlement agreed between WBSEDCL, APNRL and PTC, the Commission hereby takes the aforesaid terms of settlement on record and binds the parties, viz. WBSEDCL, APNRL and PTC in terms of the terms of settlement stated at paragraph 5.0 of this Order. Each party will adhere to these terms of settlement.

Order

7.0 The agreement is found to be just, proper and legally binding upon the parties in dispute. The agreement is made part of the order.

8.0 The petition under consideration is thus disposed of in terms of the agreement amongst the parties.

9.0 Let a copy of the order be posted in the website of the Commission.



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- 10.0 WBSEDCL, APNRL and PTC shall download the copy of the order from the website of the Commission and act on it. Certified copy of the order, if applied for, be given to the parties on completion of formalities laid down in the West Bengal Electricity Regulatory Commission (Conduct of Business) Regulations, 2013 as amended and on submission of necessary fees.

**Sd/-
(PULAK KUMAR TEWARI)
MEMBER**

**Sd/-
(SUTIRTHA BHATTACHARYA)
CHAIRPERSON**

DATED: 29.07.2022

**Sd/-
SECRETARY**