



**ORDER
OF THE
WEST BENGAL ELECTRICITY REGULATORY COMMISSION
IN CASE NO. OA-465/23-24**

IN REGARD TO THE PETITION SUBMITTED BY CESC LIMITED FOR APPROVAL OF DEVIATION OF 200 MW HYDRO POWER FROM PROJECTS SET UP UNDER FOO BASIS THROUGH COMPETITIVE BIDDING UNDER SECTION 86 (1) (b) AND OTHER APPLICABLE PROVISIONS OF THE ELECTRICITY ACT, 2003 AND IN TERMS OF APPLICABLE REGULATIONS OF THE WEST BENGAL ELECTRICITY REGULATORY COMMISSION.

PRESENT:

**DR MALLELA VENKATESWARA RAO, CHAIRPERSON
SRI PULAK KUMAR TEWARI, MEMBER**

DATE: 06.03.2024



Approval of deviation from the Model Bidding Documents (medium term) for procurement of 200 MW Hydro power from projects set up under FOO basis through competitive bidding under Section 63, Section 86 (1) (b) and other applicable provisions of the Electricity Act, 2003 and in terms of applicable Regulations of the West Bengal Electricity Regulatory Commission



Facts in brief:

- 1.0 CESC Limited submitted an application dated 17.10.2023 for approval of deviations from the Model Bidding Documents (medium term) for procurement of 200 MW Hydro power from projects set up under Finance, Own and Operate (“**FOO**”) basis through competitive bidding under Section 63, Section 86 (1) (b) and other applicable provisions of the Electricity Act, 2003 (“**Act**”) and in terms of applicable Regulations of the West Bengal Electricity Regulatory Commission. After scrutinizing the submissions made by CESC Limited, a meeting was held on 07.12.2023 with representatives of CESC Limited to discuss various issues on the deviations sought by the Licensee. On 15.12.2023, CESC Limited submitted revised deviations and supporting documents. CESC Limited has thereafter submitted a Supplementary Application on 19.12.2023. The Commission has admitted the application, along with the additional documentation and Supplementary Petition in Case No. OA – - 465/23-24 on 22.12.2023.
- 2.0 The application of CESC Limited read with the additional submissions and supplementary petition inter-alia states the following:
 - 2.1 CESC Limited has planned to procure 200 MW power for a period up to 5 years (medium term) from hydro-electric sources through competitive bidding to partially meet the peak demand shortage and to fulfil renewable purchase obligations.
 - 2.2 The procurement of 200 MW from Large Hydro Power Projects (“**LHP**”) will be Round-the-Clock (“**RTC**”) from 1st May to 30th September of each year with Assured Peak Supply and overall, 85% availability. The procurement is planned to be commenced from 01.05.2024 with firm, non-escalable Fixed and Variable Charge.
 - 2.3 The Ministry of Power notified the Guidelines for procurement of power from projects set up on FOO basis through competitive bidding on medium term basis on 30.01.2019. The Standard Bidding Documents (“**SBD**”) for power procurement from such FOO projects over medium-term period comprising the Model Request for Qualification and Model Request for Proposal were notified on 29.01.2019 along with the Model Agreement for Procurement of



Power ("**Model PPA**"). Revised Model PPA was notified on 19.12.2022, which was subsequently amended on 12.05.2023.

- 2.4 CESC Limited has proposed few deviations from the Model PPA, which would be necessary to enable wider participation of sellers in the competitive power procurement process. In terms of the Guidelines dated 30.01.2019, any deviation from the Model Bidding Documents will require prior approval of the Appropriate Commission. The Guidelines also require adoption of tariff by the Appropriate Commission.
- 2.5 The Delivery Point in the instant case being within the State of West Bengal, it is submitted that the Commission is the Appropriate Commission. Moreover, as this Commission determines the retail tariff for CESC Limited and entire licensed distribution business of CESC Limited being under regulatory superintendence of the Commission, this Commission is the Appropriate Commission in the instant case. Further, under Sections 86 (1) of the Act, this Commission has the jurisdiction to regulate electricity purchase and procurement process of a distribution licensee and to promote purchase of electricity from co-generation and renewable sources.
- 2.6 Deviations, such as, obviating multi-layered payment security mechanism, Delivery Point of power at West Bengal State Periphery (i.e., interconnection between STU with CTU-ER) and transmission charges / losses allocation between power seller and procurer under the GNA framework, guaranteed supply during designated hours of peak demand, non-escalable tariff, removal of clauses not applicable for hydro-electric sources etc. are being contemplated by CESC Limited in consumer interest and to improve bid participation and for appropriate risk sharing. CESC Limited submitted a modified list of deviations on 15.12.2023 by decoupling Availability from generation capacity of the source, consideration of records of load despatch centre for computation of availability, matters relating to condition precedents to be fulfilled by the Procurer like introducing performance security mechanism by the Procurer etc.
- 2.7 Further, in the submission dated 19.12.2023, CESC Limited prayed that such approval for procurement of power from LHP may be granted for a period of up to 5 years instead of for



a period of 5 years to keep the option of procuring power from other renewable sources open.

- 2.8 It is submitted that the proposed 200 MW Hydro power procurement on RTC basis during May to September is expected to bring down inadvertent but unavoidable DSM transactions as RTC procurement will pare down the very high peaks of import requirements to a much manageable limits which can be sourced through Term Ahead Market / Day Ahead Market / Real Time Market and is expected to reduce dependence on power exchange.
- 2.9 The actual peak power demand met by CESC Limited in 2023 has already crossed 2600 MW. The peak demand met by CESC Limited in 2023 has surpassed the previously recorded highest demand by a wide margin of about 250 MW. The projected demand of distribution network of CESC Limited, as communicated to the West Bengal State Electricity Transmission Company Limited for Annual and Rolling Plan for next five years (2023-24 to 2028-29) are 2606 MW, 2681 MW, 2752 MW, 2826 MW, 2893 MW and 2978 MW respectively.
- 2.10 CESC Limited has about 1350 MW of committed resources in the form of embedded generating stations and long-term thermal power source. In addition, CESC Limited has contracted short-term power through competitive bidding, procures power from co-generation source and has also arrangements for power banking / swapping mechanism for the summer / monsoon months. CESC Limited has also recently contracted 250 MW of wind-solar hybrid power. Even after considering all these sources, there is still a large gap to be met. To bridge this gap partially, 200 MW power procurement on RTC basis from hydro-electric sources has been proposed. Regulations of the Commission also stipulate spinning reserve up to 5% of the demand needs to be considered while contracting power.
- 2.11 LHP of more than 25 MW capacity has been declared as renewable energy source vide Government of India notification dated 08.03.2019. The Commission considers LHPs as "Green Energy" in terms of Regulation 2.1 (bb) read with Regulation 2.4 of the West Bengal Electricity Regulatory Commission (Open Access) Regulations, 2022 for the purpose of Open Access. As per notifications of the Government of India, energy from LHP fulfils



distribution licensee's purchase obligation under Section 86 (1) (e) of the Act. Procurement of power from LHP also helps distribution licensees to fulfil purchase obligations under Section 86 (1) (e) of the Act in terms of the West Bengal Electricity Regulatory Commission (Cogeneration and Generation of Electricity from Renewable Sources of Energy) Regulations, 2013.

- 2.12 In view of the above, CESC Limited has prayed to: (i) approve the procurement of 200 MW power from LHP projects set up on FOO basis for a medium-term period of up to five years for the months of May to September of each year, through competitive bidding under Section 63 of the Act; (ii) allow CESC Limited to make necessary changes in the bidding documents.

Observations of the Commission:

Requirement of power purchase:

- 3.1 The Commission has noted that as per the Draft Distribution Perspective Plan 2030 of Central Electricity Authority (CEA), the peak demand in CESC area will be 3002 MW in 2029 – 30 from 2515 MW in 2024 – 25. Thus, there is a requirement of procurement of power by CESC Limited to meet the demand.
- 3.2 The Commission being guided by the Tariff Policy, noted that the Ministry of Power (MOP) vide Order dated 22.07.2022 has specified the long-term growth trajectory of Renewable Purchase Obligation upto 2029-30 in terms of paragraph 6.4 (1) of the Tariff Policy, 2016. The Commission observes that as per the proposal, CESC Limited will get 200 MW power from May to September each year from LHP. It is observed that in FY 2022 – 23, CESC Limited could not achieve Total RPO target set in terms of West Bengal Electricity Regulatory Commission (Cogeneration and Generation of Electricity from Renewable Sources of Energy) Regulations, 2013. Thus, this procurement will help CESC Limited in its RPO obligation.

Deviations from Model Bidding Documents

- 3.3 CESC Limited has submitted the petition seeking approval of the deviations from the Model PPA. In terms of the 'Guidelines for Procurement of Electricity for medium term from Power



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Stations set up on Finance, Own and Operate (FOO) basis (the "Guidelines") dated 30.01.2019, issued by the Ministry of Power, Government of India, any deviation from the Model Bidding Documents shall be made by the Distribution Licensees only with the prior approval of the Appropriate Commission. The Commission finds that proposed deviations submitted by CESC Limited dated 15.12.2023 and 19.12.2023 are not restricting the competition.

Price of power purchase:

- 3.4 The Commission observes that the Tariff will be discovered through transparent process of competitive bidding in accordance with the Guidelines. It is also observed from the application that the procurement process is under Section 63 of the Electricity Act, 2003 and CESC Limited will purchase such power at discovered price.
- 3.5 In view of the above, the Commission concludes the followings:
- (i) The hydro-electric power will help CESC Limited to meet its RPO target, improve renewable energy portfolio and meet the increasing demand in CESC's licensed area in the coming years.
 - (ii) The proposed deviations dated 15.12.2023 and 19.12.2023 are towards improving bidder participation and in consumers' interest.

Order:

- 4.1 The Commission after considering the above facts, approves the deviations, attached with this order as Annexure – I, from the Model Bidding Documents (medium term) for procurement of 200 MW Hydro power from projects set up under FOO basis through competitive bidding under Section 63, Section 86 (1) (b) and other applicable provisions of the Electricity Act, 2003 and in terms of applicable Regulations of the West Bengal Electricity Regulatory Commission.



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- 4.2 In terms of Regulation 7.4.1 of the West Bengal Electricity Regulatory Commission (Terms and Condition of Tariff) Regulations, 2011, as amended, CESC Limited will take prior approval of the Commission before issuing any further deviations from the Model Bidding Documents during bidding process as well as before effectuating any agreement for power procurement.
- 4.3 The petition is thus disposed of.
- 4.4 A copy of the order shall be posted in the website of the Commission.
- 4.5 CESC Limited 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/-

**(MALLELA VENKATESWARA RAO)
CHAIRPERSON**

Dated: 06.03.2024

**Sd/-
(SECRETARY)**



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Annexure – I
Deviations from the Model Bidding Documents approved by the Commission

Sl. No.	Clause Ref	Original Text	Revised Text approved by the Commission
1.	Recital A	(A) The Utility has resolved to procure electricity from a power generating station that would deliver a Contracted Capacity of *** MW at the Delivery Point corresponding to ***MW of gross generation ² on finance, own and operate (the "FOO") basis,[by sourcing coal from the Allocated Coal Linkage in terms of the Letter of Assurance issued/to be issued in the name of the Supplier and the Fuel Supply Agreement to be executed between the Supplier and the Coal Supplier,] ³ in accordance with the terms and conditions to be set forth in an agreement for procurement of power to be entered into under and in accordance with the provisions of the Electricity Act, 2003.	(A) The Utility has resolved to procure electricity from a power generating station that would deliver a Contracted Capacity of *** MW at the Delivery Point corresponding to ***MW of gross generation² on finance, own and operate (the "FOO") basis, [by sourcing coal from the Allocated Coal Linkage in terms of the Letter of Assurance issued/to be issued in the name of the Supplier and the Fuel Supply Agreement to be executed between the Supplier and the Coal Supplier,] ³ in accordance with the terms and conditions to be set forth in an agreement for procurement of power to be entered into under and in accordance with the provisions of the Electricity Act, 2003.
2.	4.1.2	The Supplier may, upon providing the Performance Security to the Utility in accordance with Article 9, at any time after 15 (fifteen) days from the date of this Agreement or on an earlier day acceptable to the Utility, by notice require the Utility to satisfy any or all of the Conditions Precedent set forth in this Clause 4.1.2 within a period of 30 (thirty) days of the notice, and the Conditions Precedent required to be satisfied by the Utility shall be deemed to have been fulfilled when the Utility shall have: (a) executed and procured execution of the Default Escrow Agreement in accordance with the provisions of Clause 13.1; (b) executed the Deed of Hypothecation in	The Supplier may, upon providing the Performance Security to the Utility in accordance with Article 9, at any time after 15 (fifteen) days from the date of this Agreement or on an earlier day acceptable to the Utility, by notice require the Utility to satisfy any or all of the Conditions Precedent set forth in this Clause 4.1.2 within a period of 30 (thirty) days of the notice, and the Conditions Precedent required to be satisfied by the Utility shall be deemed to have been fulfilled when the Utility shall have: (a) Omitted executed and procured execution of the Default Escrow Agreement in accordance with the provisions of Clause 13.1; (b) Omitted executed the Deed of Hypothecation in



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		<p>accordance with the provisions of Clause 13.1.2;</p> <p>(c) procured approval of the Commission for payment of Tariff by the Utility to the Supplier in accordance with the provisions of this Agreement; and</p> <p>(d) [(d) Obtained the letter of assurance, dated [**] issued by [**]9 ("Coal Supplier") in the name of the Supplier for the supply on a linkage basis, [**] tonnes per annum of [**] grade coal for the entire Term of this Agreement ("Letter of Assurance" appended herein as Annexure 1) for the purposes of the Project.]10</p> <p>(e) provided Performance Security to the Supplier;</p> <p>(f) Provided to the Supplier, an unconditional, revolving and irrevocable Letter of Credit in accordance with the provisions of Clause 13.2.1.</p> <p>Provided that upon request in writing by the Utility, the Supplier may, in its discretion, grant extension of time, not exceeding 90 (Ninety) days, for fulfilment of the Conditions Precedent set forth in this Clause 4.1.2.</p>	<p>accordance with the provisions of Clause 13.1.2;</p> <p>(c) procured <u>submitted petition for</u> approval of the Commission for payment of Tariff by the Utility to the Supplier in accordance with the provisions of this Agreement; and</p> <p>[(d) Obtained the letter of assurance, dated [**] issued by [**]9 ("Coal Supplier") in the name of the Supplier for the supply on a linkage basis, [**] tonnes per annum of [**] grade coal for the entire Term of this Agreement ("Letter of Assurance" appended herein as Annexure 1) for the purposes of the Project.]10</p> <p>(e) provided Performance Security to the Supplier;</p> <p>(f) Provided to the Supplier, an unconditional, revolving and irrevocable Letter of Credit in accordance with the provisions of Clause 13.2.1.</p> <p>Provided that upon request in writing by the Utility, the Supplier may, in its reasonable discretion, grant extension of time, not exceeding 90 (Ninety) days, for fulfilment of the Conditions Precedent set forth in this Clause 4.1.2.</p>
3.	5.1.2	<p>The Supplier shall [ensure that the Developer shall if Supplier is a Trading Licensee] operate and maintain the Power Station in accordance with the Specifications and Standards and the Maintenance Requirements such that the Availability of the Contracted Capacity of the Power Station is at least [85% (eighty five per cent) thereof During</p>	<p>The Supplier shall [ensure that the Developer shall if Supplier is a Trading Licensee] operate and maintain the Power Station in accordance with the Specifications and Standards and the Maintenance Requirements such that the Availability of the Contracted Capacity at the Delivery Point of the Power Station is at least 85% (eighty-five per</p>



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		<p>[Designated Hours of] each year of the Contract Period (the "Normative Availability").</p> <p>Explanation: Availability of the Power Station to its full capacity shall, in respect of any hour, mean the capacity of the Power Station to the extent it is offered by the Supplier for producing and supplying electrical energy equal to $\square \square$ kWh per mega watt of Contracted Capacity over a period of one hour, after accounting for auxiliary consumption, and transmission losses upto the Delivery Point, and for any month or year, as the case may be, the hours during that month or year when the Contracted Capacity of the Power Station is fully available for production of electricity shall be expressed as a percentage of total hours in that month or year, as the case may be, (the "Availability").</p> <p>For the avoidance of doubt, the Parties agree that Availability shall, during the months when Appointed Date or the date of Termination occurs, be determined with reference to the number of days when the Power Station was in operation, and shall be determined likewise for any single day of operation. The Parties further agree that if the Contracted Capacity of the Power Station is not Available for production of electricity to its full capacity during any hour, or part thereof, not being less than a quarter of an hour, such hour or part thereof shall, in the computation of Availability, be reduced proportionate to the Non-Availability during that hour. The Parties also agree that the determination of Availability hereunder shall be</p>	<p>cent) thereof for the contractual period (May to September) <u>pertaining to</u> During [Designated Hours of] each year of the Contract Period (the "Normative Availability").</p> <p>Explanation: Availability of the <u>Contracted Capacity</u> Power Station to its full capacity shall, in respect of any <u>time block</u> hour, mean:</p> <p>(Power scheduled at the Delivery Point in the particular time block by the Supplier) \div (Contracted Capacity at the Delivery Point) the capacity of the Power Station to the extent it is offered by the Supplier for producing and supplying electrical energy equal to $\square \square$ 1000 kWh per mega watt of Contracted Capacity over a period of one hour, after accounting for auxiliary consumption, and transmission losses upto the Delivery Point, and for any month or year, as the case may be, the hours during that month or year when the Contracted Capacity of the Power Station at the Delivery Point is fully available for production of electricity shall be expressed as a percentage of total hours in that month or year, as the case may be, (the "Availability").</p> <p>For the avoidance of doubt, the Parties agree that Availability shall, during the months when Appointed Date or the date of Termination occurs, be determined with reference to the number of days when the Power Station was in operation, and shall be determined likewise for any single day of operation. The Parties further agree that if the</p>



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		solely for the purposes of this Agreement and shall not in any manner affect the rights and obligations of the Supplier for and in respect of scheduling and despatch of electricity under Applicable Laws and the rules and regulations thereunder.	Contracted Capacity of the Power Station is not Available for production of electricity to its full capacity during any hour, or part thereof, not being less than a quarter of an hour, such hour or part thereof shall, in the computation of Availability, be reduced proportionate to the Non-Availability during that hour. The Parties also agree that the determination of Availability hereunder shall be solely for the purposes of this Agreement and shall not in any manner affect the rights and obligations of the Supplier for and in respect of scheduling and despatch of electricity under Applicable Laws and the rules and regulations thereunder. <u>Power Scheduled at the Delivery Point by the Supplier shall be computed from the records / certificate (s) of the Load Despatch Centre (s).</u>
4.	5.3	<i>Obligations relating to transmission charges</i> The inter-state transmission of electricity shall be undertaken solely at the risk and cost of the Utility and all liabilities arising out of any failure of inter-state transmission shall be borne by the Utility. If the Power Station is connected to intra-state transmission system of a state other than the state where the Utility is located, such intra-state transmission of electricity shall be undertaken solely at the risk and cost of the Supplier and all liabilities arising out of any failure of intra-state transmission shall, subject to the provisions of Clause 11.4.3, be borne by the Supplier.	<i>Obligations relating to transmission charges</i> The inter-state transmission of electricity shall be undertaken solely at the risk of <u>Supplier</u> and all liabilities arising out of any failure of inter-state transmission shall be borne by the <u>Supplier</u> . Cost due to inter-state transmission charges will be <u>as per applicable laws</u> . If the Power Station is connected to intra-state transmission system of a state other than the state where the Utility is located, such intra-state transmission of electricity shall be undertaken solely at the risk and cost of the Supplier and all liabilities arising out of any failure of intra-state



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		<p>A. Inter State Transmission Charges The Utility shall be liable for inter-state transmission charges under Applicable Laws.</p> <p>B. Intra State Transmission Charges Transmission Charges up to the Deliver Point shall be borne by the Supplier.</p>	<p>transmission shall, subject to the provisions of Clause 11.4.3, be borne by the Supplier.</p> <p>A. Inter State Transmission Charges The Utility shall be liable for inter-state transmission charges under Applicable Laws.</p> <p>B. Intra State Transmission Charges <u>Intra State</u> Transmission Charges up to the Delivery Point shall be borne by the Supplier.</p>
5.	5.4	<p>Obligations relating to transmission losses</p> <p>A. Inter-State Transmission losses: The Utility shall be liable for inter-state transmission losses under Applicable Laws.</p> <p>B. Intra-State Transmission Losses The Supplier shall bear transmission losses up to the Delivery Point. For avoidance of doubt the parties agree that the Contracted Capacity shall be delivered at the Delivery Point.</p>	<p>Obligations relating to transmission losses</p> <p>A. Inter-State Transmission losses: The Utility shall <u>not</u> be liable for inter-state transmission losses under Applicable Laws.</p> <p>B. Intra-State Transmission Losses The Supplier shall bear <u>intra-state</u> transmission losses up to the Delivery Point. For avoidance of doubt the parties agree that the Contracted Capacity shall be delivered at the Delivery Point.</p>



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6.	6.1.2	The Utility shall provide and facilitate non-discriminatory open access to its network for enabling the Supplier to supply electricity to Buyers in the licence area of the Utility in accordance with the provisions of sections 42 and 49 of the Act.	Omitted. The Utility shall provide and facilitate non-discriminatory open access to its network for enabling the Supplier to supply electricity to Buyers in the licence area of the Utility in accordance with the provisions of sections 42 and 49 of the Act.
7.	10.1	10.1 Contracted Capacity <i>Pursuant to the provisions of this Agreement, the Supplier shall dedicate a capacity of *****MW to the Utility as the capacity contracted hereunder [for and in respect of Designated Hours] (the "Contracted Capacity")¹⁸ and the Contracted Capacity shall at all times be operated and utilised in accordance with the provisions of this Agreement.</i>	10.1 Contracted Capacity <i>Pursuant to the provisions of this Agreement, the Supplier shall dedicate a capacity of *****MW to the Utility as the capacity contracted <u>at Delivery Point</u> hereunder [for and in respect of Designated Hours] (the "Contracted Capacity <u>at Delivery Point</u>")¹⁸ and the Contracted Capacity shall at all times be operated and utilised in accordance with the provisions of this Agreement.</i>
8.	10.4	Supply during Designated Hours The Supplier shall ensure the Availability of the Power Station during designated hours of the day comprising [*****hours] and [*****hours] ("Designated Hours"). However, the Utility may with a notice of 30 (thirty) days, require the Supplier a change in the Designated Hours subject to mutual agreement between the parties.	Supply during Designated Hours Omitted. The Supplier shall ensure the Availability of the Power Station during designated hours of the day comprising [*****hours] and [*****hours] ("Designated Hours"). However, the Utility may with a notice of 30 (thirty) days, require the Supplier a change in the Designated Hours subject to mutual agreement between the parties.
9.	10.5	Supply on Round the Clock Basis The Supplier shall ensure the Availability of the Power Station on round the clock basis. The Utility may opt for a	Supply on Round the Clock Basis The Supplier shall ensure the Availability, equivalent to Contracted Capacity, of the Power Station on round the



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		lower capacity requirement during pre-specified hours comprising [****]hours between ***** hours and*****hours.	clock-basis during peak hours of the day comprising <u>2 (two) hours upto or before 08:00 (eight hundred) hours in the morning, 2 (two) hours during 13:00 [thirteen hundred] and 17:00 [seventeen hundred] in the afternoon and 2 (two) hours from or after 20:00 (twenty hundred) hours</u> in the evening, at the timing to be specified by the Utility with a notice of 30 (thirty) days to the Supplier (the " Peak Hours "). The Supplier shall Supply balance energy for a day, after provisioning for energy during Peak Hours, as per the hydrology (water inflow) of the plant subject to Supply of the Contracted Capacity during Off-Peak hours which are the balance hours of a day not covered under Peak Hours (the " Off-Peak Hours ").
10.	11.2	Base Fixed Charge The Parties agree that the fixed charge payable for Availability [during Designated Hours] ²¹ shall, in accordance with the offer of the Supplier for the Base Year, be Rs.....(Rupees)\$ per kWh (the " Base Fixed Charge "), which shall be revised annually in accordance with the provisions of Clause 11.3 to determine the Fixed Charge for the relevant Accounting Year.	Base-Fixed Charge The Parties agree that the fixed charge payable for Availability during <u>May – September every year</u> shall, in accordance with the offer of the Supplier for the <u>entire contract period</u> Base Year, be Rs.....(Rupees)\$ per kWh (the " Base-Fixed Charge "), which shall <u>not</u> be revised annually in accordance with the provisions of Clause 11.3 to determine the Fixed Charge for the relevant Accounting Year.
11.	11.3	Fixed Charge For determining the Fixed Charge due and payable to the Supplier, the Base Fixed Charge shall be revised annually to reflect 20% (twenty per cent) of the variation in WPI occurring between January 31 immediately preceding the	Fixed Charge Omitted. For determining the Fixed Charge due and payable to the Supplier, the Base Fixed Charge shall be revised annually to reflect 20% (twenty per cent) of the variation in WPI



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		Bid Date and January 31 immediately preceding the Accounting Year for which such revision is undertaken. For the avoidance of doubt and by way of illustration, if (a) the Bid Date occurs in March 2015; (b) the appointed date occurs in May 2019; and (c) WPI increases by 20% (twenty percent) between January 31, 2015 and January 31, 2019, the Fixed Charge for the Accounting Year commencing from April 1, 2019 shall be 104% (one hundred and four percent) of the Base Fixed Charge.	occurring between January 31 immediately preceding the Bid Date and January 31 immediately preceding the Accounting Year for which such revision is undertaken. For the avoidance of doubt and by way of illustration, if (a) the Bid Date occurs in March 2015; (b) the appointed date occurs in May 2019; and (c) WPI increases by 20% (twenty percent) between January 31, 2015 and January 31, 2019, the Fixed Charge for the Accounting Year commencing from April 1, 2019 shall be 104% (one hundred and four percent) of the Base Fixed Charge.
12.	11.4.1	Subject to the provisions of this Clause 11.4, the Base Fixed Charge, as corrected for variation in WPI Index in accordance with Clause 11.3 shall be the Fixed Charge payable for Availability in each month of the relevant Accounting Year.	Subject to the provisions of this Clause 11.4, the Base Fixed Charge, as corrected for variation in WPI Index in accordance with Clause 11.3 shall be the Fixed Charge payable for Availability in each <u>applicable</u> month of the relevant Accounting Year.
13.	11.4.2	The obligations of the Utility to pay Fixed Charges in any Accounting Year shall in no case exceed an amount equal to the Fixed Charge due and payable for and in respect of the Normative Availability of 85% (eighty five per cent) [during Designated Hours] ²² computed with reference to the Contracted Capacity (the "Capacity Charge").	The obligations of the Utility to pay Fixed Charges <u>for the contractual period (May to September)</u> in any Accounting Year shall in no case exceed an amount equal to the Fixed Charge corresponding to the Normative Availability of 85% (eighty five per cent) [during Designated Hours]²² computed with reference to the Contracted Capacity <u>at Delivery Point</u> (the "Capacity Charge") <u>in terms of Clause 5.1.2, subject to maintaining at least 85% availability by the Supplier at the Delivery Point corresponding to the Contracted Capacity at the Delivery Point.</u> <u>Provided that if Availability in a particular month falls below 85%, the Utility shall pay Fixed Charge corresponding to actually achieved Availability on a pro-rata basis, as</u>



Approval of deviation from the Model Bidding Documents (medium term) for procurement of 200 MW Hydro power from projects set up under FOO basis through competitive bidding under Section 63, Section 86 (1) (b) and other applicable provisions of the Electricity Act, 2003 and in terms of applicable Regulations of the West Bengal Electricity Regulatory Commission



Sl. No.	Clause Ref	Original Text	Revised Text approved by the Commission
		Provided that the Availability to be considered for calculation of Fixed Charges shall be reconciled annually on cumulative basis.	ascertained from the record (s) / certificate (s) of the Load Despatch Centre (s). Provided that the Availability to be considered for calculation of Fixed Charges shall be reconciled annually <u>calculated on cumulative basis (for the contractual period of May to September) and reconciled annually for the specified months (May to September) for each year of the contract period.</u> <u>It is being clarified that for energy beyond 85% Normative Availability, only Energy Charge shall be payable by the Utility.</u>
14.	11.4.4	In the event that any shortfall in supply of electricity to the Utility occurs on account of shortage of Fuel, Availability shall be deemed to be reduced in accordance with the provisions of Clause 11.5.3. Provided, however, that the Non-Availability arising as a consequence of shortage of Fuel caused by any event of Force Majeure shall, for the purpose of payment of Fixed Charge, be deemed to be availability to the extent of 30% (thirty per cent) of the Non-Availability hereunder.	Omitted. In the event that any shortfall in supply of electricity to the Utility occurs on account of shortage of Fuel, Availability shall be deemed to be reduced in accordance with the provisions of Clause 11.5.3. Provided, however, that the Non-Availability arising as a consequence of shortage of Fuel caused by any event of Force Majeure shall, for the purpose of payment of Fixed Charge, be deemed to be availability to the extent of 30% (thirty per cent) of the Non-Availability hereunder.
15.	11.5.1	11.5 Declaration of Availability 11.5.1 Unless otherwise notified by the [Supplier if Supplier is NOT a Trading Licensee, or Developer through the Supplier if Supplier is a Trading Licensee], the declared Availability shall, be deemed to be 100% (one hundred per cent) thereof at all times.	11.5 Declaration of Availability Omitted 11.5.1 Unless otherwise notified by the [Supplier if Supplier is NOT a Trading Licensee, or Developer through the Supplier if Supplier is a Trading Licensee], the declared Availability shall, be deemed to be 100% (one hundred per cent) thereof at all times.
16.	11.5.3	In the event that any shortfall in supply of electricity to the Utility occurs on account of shortage of Fuel, the	Omitted



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		<p>Availability shall be deemed to be reduced to the extent of reduction in generation of electricity, and such reduction shall be deemed as Non- Availability on account of shortage of Fuel. For the avoidance of doubt and by way of illustration, the Parties agree that if the deficiency in generation is equal to 20% (twenty per cent) of the Contracted Capacity, the Availability shall be deemed to be 80% (eighty per cent) and the Non-Availability hereunder shall be notified by the [Supplier if Supplier is NOT a Trading Licensee, or Developer through the Supplier if Supplier is a Trading Licensee]to the Utility forthwith.</p> <p>Provided that where the Fuel is being supplied under allocated coal linkage, the Supplier shall have an option to arrange the Fuel from an alternate source. The Utility shall be intimated if the increase in Variable Charge is greater than 30 % (thirty percent).</p> <p>Provided that if the Utility does not schedule the power, the Supplier shall have the option to offer such power in the power exchange.</p> <p>Provided further that compliance of any order issued by the central government in respect of blending of imported fuel shall be binding on the parties.</p> <p>Provided also that in case of shortage of linkage coal and the Supplier arranges coal from alternate sources, the Energy Charge shall be calculated as per methodology specified in Schedule F.</p>	<p>In the event that any shortfall in supply of electricity to the Utility occurs on account of shortage of Fuel, the Availability shall be deemed to be reduced to the extent of reduction in generation of electricity, and such reduction shall be deemed as Non-Availability on account of shortage of Fuel. For the avoidance of doubt and by way of illustration, the Parties agree that if the deficiency in generation is equal to 20% (twenty per cent) of the Contracted Capacity, the Availability shall be deemed to be 80% (eighty per cent) and the Non-Availability hereunder shall be notified by the [Supplier if Supplier is NOT a Trading Licensee, or Developer through the Supplier if Supplier is a Trading Licensee]to the Utility forthwith.</p> <p>Provided that where the Fuel is being supplied under allocated coal linkage, the Supplier shall have an option to arrange the Fuel from an alternate source. The Utility shall be intimated if the increase in Variable Charge is greater than 30 % (thirty percent).</p> <p>Provided that if the Utility does not schedule the power, the Supplier shall have the option to offer such power in the power exchange.</p> <p>Provided further that compliance of any order issued by the central government in respect of blending of imported fuel shall be binding on the parties.</p> <p>Provided also that in case of shortage of linkage coal and the Supplier arranges coal from alternate sources, the Energy Charge shall be calculated as per methodology specified in Schedule F.</p>



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17.	12.2	<p>Base Variable Charge</p> <p>The Parties agree that the variable charge, in accordance with the offer of the Supplier for the Base Year, shall be Rs.(Rupees)\$ per kWh, [comprising Rs....(Rupees....)²³ per kWh as the cost of Fuel/generating cost and Rs....(Rupees....) per kWh as the cost of transportation of which Rs.....(Rupees....) per kWh shall be in respect of domestic transportation,²⁴ (the "Base Variable Charge") which shall be revised in accordance with the provisions of Clause 12.3 to determine the Variable Charge for the relevant period</p>	<p>Base-Variable Charge</p> <p>The Parties agree that the variable charge, in accordance with the offer of the Supplier for the <u>entire contract period</u> Base Year, shall be Rs.(Rupees)\$ per kWh, [comprising Rs....(Rupees....)²³ per kWh as the cost of Fuel/generating cost and Rs....(Rupees....) per kWh as the cost of transportation of which Rs.....(Rupees....) per kWh shall be in respect of domestic transportation,²⁴ (the "Base-Variable Charge") which shall <u>not</u> be revised <u>and would remain firm for the entire contract period in accordance with the provisions of Clause 12.3 to determine the Variable Charge for the relevant period</u></p>
18.	12.3.2	<p>The Parties agree that the generating cost component of Base Variable Charge specified in Clause 12.2 shall be increased for every Accounting Year following the Base Year so as to reflect 50% (fifty per cent) of the variation in WPI occurring between January 31 immediately preceding the Base Year and January 31 immediately preceding the Accounting Year for which such revision is undertaken. For the avoidance of doubt and by way of illustration, if (a) the Base Variable Charge specified hereinabove is assumed as 80 paise (eighty paise) and (b) WPI between the two aforesaid dates, the latter being 1 (one) year after the first such date, increases by 5% (five per cent), the Variable Charge in the Accounting Year following the first Accounting Year shall be 82 paise (eighty two paise).</p>	<p>Omitted.</p> <p>The Parties agree that the generating cost component of Base Variable Charge specified in Clause 12.2 shall be increased for every Accounting Year following the Base Year so as to reflect 50% (fifty per cent) of the variation in WPI occurring between January 31 immediately preceding the Base Year and January 31 immediately preceding the Accounting Year for which such revision is undertaken. For the avoidance of doubt and by way of illustration, if (a) the Base Variable Charge specified hereinabove is assumed as 80 paise (eighty paise) and (b) WPI between the two aforesaid dates, the latter being 1 (one) year after the first such date, increases by 5% (five per cent), the Variable Charge in the Accounting Year following the first Accounting Year shall be 82 paise (eighty two paise).</p>
19.	12.4	<p>Shortage of Fuel</p> <p>In the event the Supplier anticipates a shortfall in the production of electricity for supply to the Utility from Contracted Capacity on account of a shortfall in Fuel</p>	<p>Shortage of Fuel</p> <p>Omitted.</p> <p>In the event the Supplier anticipates a shortfall in the production of electricity for supply to the Utility from</p>



Approval of deviation from the Model Bidding Documents (medium term) for procurement of 200 MW Hydro power from projects set up under FOO basis through competitive bidding under Section 63, Section 86 (1) (b) and other applicable provisions of the Electricity Act, 2003 and in terms of applicable Regulations of the West Bengal Electricity Regulatory Commission



Sl. No.	Clause Ref	Original Text	Revised Text approved by the Commission
		for reasons beyond the control of the Supplier, the Supplier shall, as soon as practicable but in any event no later than 7 (seven) days from the date when it anticipated the shortage of Fuel, notify the Utility of the nature, extent and period of shortage of Fuel and the reasons thereof. For the avoidance of doubt, the Parties expressly agree that no Tariff shall be payable to the Supplier for any shortfall in Availability occurring on account of shortage of Fuel, save and except as provided in Clause 11.4.4.	Contracted Capacity on account of a shortfall in Fuel for reasons beyond the control of the Supplier, the Supplier shall, as soon as practicable but in any event no later than 7 (seven) days from the date when it anticipated the shortage of Fuel, notify the Utility of the nature, extent and period of shortage of Fuel and the reasons thereof. For the avoidance of doubt, the Parties expressly agree that no Tariff shall be payable to the Supplier for any shortfall in Availability occurring on account of shortage of Fuel, save and except as provided in Clause 11.4.4.
20.	12.5	Take or Pay supply of Fuel The Parties expressly acknowledge and agree that the [Supplier if supplier is NOT a Trading Licensee, or Developer if Supplier is a Trading Licensee] shall produce electricity for supply thereof under this Agreement by utilising gas procured under a fixed supply contract which shall require the Supplier to pay for supply of gas even if it is not utilised, and in the event such electricity is not Dispatched by the Utility or sold to a Buyer in accordance with the provisions of this Agreement, the Utility shall pay to the Supplier the cost incurred by it for the gas that has remained unutilised.]	Take or Pay supply of Fuel Omitted. The Parties expressly acknowledge and agree that the [Supplier if supplier is NOT a Trading Licensee, or Developer if Supplier is a Trading Licensee] shall produce electricity for supply thereof under this Agreement by utilising gas procured under a fixed supply contract which shall require the Supplier to pay for supply of gas even if it is not utilised, and in the event such electricity is not Dispatched by the Utility or sold to a Buyer in accordance with the provisions of this Agreement, the Utility shall pay to the Supplier the cost incurred by it for the gas that has remained unutilised.]
21.	13.1.1	The Utility and the Supplier shall, prior to the Appointed Date, execute a default escrow agreement with the Utility's bank substantially in the form specified in Schedule-C (the "Default Escrow Agreement") for the establishment and operation of the default escrow account (the "Default Escrow Account") in favour of the Supplier. -----	Omitted. The Utility and the Supplier shall, prior to the Appointed Date, execute a default escrow agreement with the Utility's bank substantially in the form specified in Schedule-C (the "Default Escrow Agreement") for the establishment and operation of the default escrow account (the "Default Escrow Account") in favour of the Supplier.



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22.	13.1.2	The Utility and the Supplier shall, prior to the Appointed Date, execute a deed of hypothecation substantially in the form specified at of Schedule-D (the " Deed of Hypothecation "), whereby the Utility shall hypothecate to the Supplier an amount equal to Monthly Payment, to be deposited every month in the Default Escrow Account for discharging the liabilities arising out of and in relation to the Secured Obligations.	Omitted. The Utility and the Supplier shall, prior to the Appointed Date, execute a deed of hypothecation substantially in the form specified at of Schedule-D (the "Deed of Hypothecation"), whereby the Utility shall hypothecate to the Supplier an amount equal to Monthly Payment, to be deposited every month in the Default Escrow Account for discharging the liabilities arising out of and in relation to the Secured Obligations.
23.	13.1.3	The Parties acknowledge and agree that during the period commencing from the 25 th (twenty fifth) day of every month and until discharge of any Monthly Invoice due and payable on or prior to that day, an amount equal to the Monthly Payment shall be withheld in the Default Escrow Account for payment to the Supplier against such Monthly Invoice and the balance remaining shall be available to the Utility for withdrawal or transfer in accordance with the provisions of the Default Escrow Agreement.	Omitted. The Parties acknowledge and agree that during the period commencing from the 25th (twenty fifth) day of every month and until discharge of any Monthly Invoice due and payable on or prior to that day, an amount equal to the Monthly Payment shall be withheld in the Default Escrow Account for payment to the Supplier against such Monthly Invoice and the balance remaining shall be available to the Utility for withdrawal or transfer in accordance with the provisions of the Default Escrow Agreement.
24.	13.1.4	The Utility shall ensure that the Supplier has the first priority charge on the Revenues deposited into the Default Escrow Account, in accordance with the terms of the Default Escrow Agreement and the Deed of Hypothecation, but not exceeding the Monthly Payment for and in respect of any month.	Omitted. The Utility shall ensure that the Supplier has the first priority charge on the Revenues deposited into the Default Escrow Account, in accordance with the terms of the Default Escrow Agreement and the Deed of Hypothecation, but



Approval of deviation from the Model Bidding Documents (medium term) for procurement of 200 MW Hydro power from projects set up under FOO basis through competitive bidding under Section 63, Section 86 (1) (b) and other applicable provisions of the Electricity Act, 2003 and in terms of applicable Regulations of the West Bengal Electricity Regulatory Commission



Sl. No.	Clause Ref	Original Text	Revised Text approved by the Commission
			not exceeding the Monthly Payment for and in respect of any month.
25.	13.2.2	The Letter of Credit shall be procured by the Utility from a bank where at least twice the value of the Monthly Payment are normally deposited, and which shall have been appointed as the Default Escrow Bank. All costs and expenses relating to opening and maintenance of the Letter of Credit shall be borne by the Utility.	The Letter of Credit shall be procured by the Utility from a <u>scheduled commercial</u> bank where at least twice the value of the Monthly Payment are normally deposited, and which shall have been appointed as the Default Escrow Bank. All costs and expenses relating to opening and maintenance of the Letter of Credit shall be borne by the Utility.
26.	13.2.3	Addition of a new clause	If for any reason whatsoever, any amount due and payable in respect of the Monthly Invoice for and in respect of the preceding month is not paid in accordance with the provisions of the Agreement for Procurement of Power, the Supplier may, at any time after the 27th (twenty seventh) day of the month in which the Payment Due Date falls on the strength of Letter of Credit.
27.	13.3.1	In the event the Utility fails to pay the Monthly Invoice on or before the relevant Payment Due Date(s) or the amount covered by the Letter of Credit is at any time less than the Monthly Payment or is insufficient for recovery of payment due against the Monthly Invoice or the Supplier is unable to recover its Tariff through the Default Escrow Account and the Letter of Credit, as the case may be, and if the Tariff or part thereof remains unpaid for a period of 1 (one) month from the Payment Due Date, then the recovery shall be made in accordance with the procedure provided in the applicable rules issued by the Ministry of Power, as amended from time to time.	In the event the Utility fails to pay the Monthly Invoice on or before the relevant Payment Due Date(s) or the amount covered by the Letter of Credit is at any time less than the Monthly Payment or is insufficient for recovery of payment due against the Monthly Invoice or the Supplier is unable to recover its Tariff through the Default Escrow Account and the Letter of Credit, as the case may be, and if the Tariff or part thereof remains unpaid for a period of 1 (one) month from the Payment Due Date, then the recovery shall be made in accordance with the procedure provided in the applicable rules issued by the Ministry of Power, as amended from time to time.
28.	13.3.3	Supply of electricity to the Utility in accordance with the provisions of this Agreement shall be restored no	Supply of electricity to the Utility in accordance with the provisions of this Agreement shall be restored no later



Approval of deviation from the Model Bidding Documents (medium term) for procurement of 200 MW Hydro power from projects set up under FOO basis through competitive bidding under Section 63, Section 86 (1) (b) and other applicable provisions of the Electricity Act, 2003 and in terms of applicable Regulations of the West Bengal Electricity Regulatory Commission



Sl. No.	Clause Ref	Original Text	Revised Text approved by the Commission
		later than 7 (seven) days from the day on which the Utility pays, or is deemed to have paid, the arrears due to the Supplier in accordance with the provisions of this Agreement, restores the Default Escrow Account and renews the Letter of Credit.	than 7 (seven) days from the day on which the Utility pays, or is deemed to have paid, the arrears due to the Supplier in accordance with the provisions of this Agreement, restores the Default Escrow Account and renews the Letter of Credit.
29.	13.4	Payment Security for Termination The Parties agree and acknowledge that upon Termination and on failure of the Utility to make the Termination Payment within 30 (thirty) days of demand by the Supplier, Revenues equal to the Monthly Payment, deposited into the Default Escrow Account in accordance with the provisions of this Agreement and the Default Escrow Agreement, shall be appropriated every month and paid to the Supplier until discharge of the Termination Payment and any interest thereon. For the avoidance of doubt, the Utility expressly agrees and undertakes that 30% (thirty per cent) of its total monthly Revenues shall continue to be deposited into its account with the Default Escrow Bank until its liability for an in respect of the Termination Payment is fully discharged.	Payment Security for Termination The Parties agree and acknowledge that upon Termination and on failure of the Utility to make the Termination Payment within 30 (thirty) days of demand by the Supplier, <u>the Supplier will be at liberty to invoke the Stand by Letter of Credit to the extent of Termination Payment due.</u> Revenues equal to the Monthly Payment, deposited into the Default Escrow Account in accordance with the provisions of this Agreement and the Default Escrow Agreement, shall be appropriated every month and paid to the Supplier until discharge of the Termination Payment and any interest thereon. For the avoidance of doubt, the Utility expressly agrees and undertakes that 30% (thirty per cent) of its total monthly Revenues shall continue to be deposited into its account with the Default Escrow Bank until its liability for an in respect of the Termination Payment is fully discharged.
30.	23.1.3	If in spite of their best efforts, the parties fail to resolve the dispute, the same shall be referred for resolution under the Conciliation Committee of Independent Experts (CCIE) constituted by the Appropriate Government.	<u>If in spite of their best efforts, the parties fail to resolve the dispute, the same shall be referred for resolution to the West Bengal Electricity Regulatory Commission in terms of the Electricity Act, 2003, under the Conciliation Committee of Independent Experts (CCIE) constituted by the Appropriate Government.</u>



Approval of deviation from the Model Bidding Documents (medium term) for procurement of 200 MW Hydro power from projects set up under FOO basis through competitive bidding under Section 63, Section 86 (1) (b) and other applicable provisions of the Electricity Act, 2003 and in terms of applicable Regulations of the West Bengal Electricity Regulatory Commission



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31.	26.1	<p>"Delivery Point" means any point in the Inter-State Transmission System where the Power Station of the Supplier is delivering power either through ISTS connectivity, or through a dedicated transmission line or through the Intra state transmission system of the state in which it is located</p> <p>Provided that in case this agreement has been signed pursuant to the bidding carried out by utilities located in the same state, Delivery Point, for the Supplier located in this state, shall mean any point in the Intra-State grid where the electricity is delivered by the Supplier;</p>	<p>"Delivery Point" means any point in the Inter-State Transmission System <u>having interface with the West Bengal STU where the electricity supplied under this Agreement is received by the Supplier</u> where the Power Station of the Supplier is delivering power either through ISTS connectivity, or through a dedicated transmission line or through the Intra state transmission system of the state in which it is located.</p> <p>Provided that in case this agreement has been signed pursuant to the bidding carried out by utilities located in the same state, Delivery Point, for the Supplier located in this state, shall mean any point in the Intra-State grid where the electricity is delivered by the Supplier.</p>
32.	Schedule B		<p>Paragraph Inserted:</p> <p>"12. Our liability under this bank guarantee shall not exceed INR _____. This bank guarantee shall be valid upto _____ and unless a written demand or claim in writing is made by the Supplier on the Bank under this Guarantee on or before _____, all rights under this guarantee shall be forfeited and we shall be relieved and discharged from all our liabilities thereunder."</p>
33.	Schedule C		Deleted
34.	Schedule E	Letter of Credit	Letter of Credit as per Bank's format.