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**ORDER
OF THE
WEST BENGAL ELECTRICITY REGULATORY COMMISSION**

IN CASE NO. OA – 506 / 24 – 25

IN REGARD TO THE APPLICATION SUBMITTED BY WEST BENGAL STATE ELECTRICITY DISTRIBUTION COMPANY LIMITED UNDER SECTION 86 (1) READ WITH SECTION 63 OF THE ELECTRICITY ACT, 2003 FOR SEEKING APPROVAL OF THE DEVIATIONS FROM THE MODEL REQUEST FOR PROPOSAL AND MODEL POWER SUPPLY AGREEMENT OF THE MINISTRY OF POWER, GOVERNMENT OF INDIA READ WITH THE DEIVATIONS APPROVED BY THE COMMISSION VIDE ORDER DATED 26.11.2024 IN CASE NO. OA – 503 / 24 – 25 FOR PROCUREMENT OF 1600 MW POWER UNDER LONG TERM FROM A NEW POWER STATIONS OF 2 X 800 MW TO BE SET UP ON DESIGN, BUILD, FINANCE, OWN AND OPERATE (DBFOO) IN THE STATE OF WEST BENGAL.

PRESENT:

DR. MALLELA VENKATESWARA RAO, CHAIRPERSON

DATE: 06.01.2025



Application submitted by West Bengal State Electricity Distribution Company Limited under Section 86 (1) read with Section 63 of the Electricity Act, 2003 for seeking approval of the deviations from the Model Request for Proposal and Model Power Supply Agreement of the Ministry of Power, Government of India read with the deviations approved by the Commission vide order dated 26.11.2024 in Case No. OA – 503 / 24 – 25 for procurement of 1600 MW power under long term from a new power stations of 2 x 800 MW to be set up on Design, Build, Finance, Own and Operate (DBFOO) in the state of West Bengal.



Facts in brief:

- 1.0 West Bengal State Electricity Distribution Company Limited (WBSEDCL) submitted a petition on 30.12.2024 seeking approval of the deviations from the Model Request for Proposal and Model Power Supply Agreement read with the deviations approved by the Commission vide order dated 26.11.2024 in Case No. OA – 503 / 24 – 25 for procurement of 1600 MW power under Long Term Arrangement from a new Power Station of 2 x 800 MW in terms of Section 86 (1) (b) read with Section 63 of the Electricity Act, 2003. Subsequently, WBSEDCL submitted a supplementary petition on 02.01.2025 giving reasons for their proposed deviations. The petition dated 30.12.2024 along with the supplementary petition dated 02.01.2025 has been admitted by the Commission in Case No. OA – 506 / 24 – 25.
- 2.0 In the petition, WBSEDCL has inter-alia stated the following:
 - (i) WBSEDCL proposes to procure power from 1600 MW plant to be setup on Design, Build, Finance, Own and Operate (DBFOO) model in the State of West Bengal through competitive bidding under Section 63 of the Electricity Act, 2003. In this regard, WBSEDCL has adopted a two-stage process viz. 'Qualification Stage' and 'Bid Stage' for selection of the Bidder to award the Project. Accordingly, WBSEDCL had already sought approval on the deviations from the 'Model Request for Qualification', 'Model Request for Proposal' and 'Model Power Supply Agreement' and the Commission had approved the same with certain directions vide orders dated 19.09.2024 in Case No. OA – 489/ 24 – 25 and 26.11.2024 in Case No. OA – 503 / 24 – 25. WBSEDCL submitted that the RFP, draft PSA, draft Fuel Supply Agreement, draft Letter of Assurance from Coal India Limited has been published on 02.12.2024 in the portal of Telecommunications Consultants India Limited (TCIL) for the pre-qualified bidders from the RFQ stage.
 - (ii) WBSEDCL submitted that some additional modification request from the pre-qualified bidders in reference to the published RFP and draft PSA has been received during the process of seeking pre-bid clarification. WBSEDCL has agreed to approach the Commission for considering the modifications / deviations.



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- (iii) The rationale for the additional deviations proposed in the instant application is to update the recent sectoral changes, giving flexibility to the bidders and to provide additional clarity on the clauses. WBSEDCL has also submitted references of the other State-owned Distribution Utilities who have provided such deviations under the DBFOO guidelines.

- 3.0 In view of the above, WBSEDCL in accordance to Clause 4 of the Guidelines of Ministry of Power dated 06.03.2019 has sought approval of the deviations/ modifications in RFP and PSA of Model Bidding Documents from the Commission.

Observations of the Commission:

- 4.0 The Commission observed that, WBSEDCL proposes to purchase power from the proposed 1600 MW (2 x 800 MW) plant to be developed through competitive bidding process under section 63 of the Electricity Act 2003, where linkage coal will be to the proposed plant provided under SHAKTI scheme. In terms of section 63 of the Electricity Act 2003, the Commission shall adopt the tariff if such tariff is determined through transparent process of bidding in accordance with the guidelines issued by the Government of India. Any deviation from the guideline and Model Bidding Documents (RFQ, RFP and PSA) needs prior approval of the Commission.
- 5.0 In the instant petition, WBSEDCL proposed following deviations in the RFP and PSA:
- A. RFP Document: The Commission observed that the proposed deviations by WBSEDCL in the RFP of the Bidding Documents are primarily related to the bid parameter sheet given in Appendix VIII wherein WBSEDCL has provided the indicative *ex mine* cost as on date. WBSEDCL submitted that it will provide additional clarity to the bidders to bid more realistically and will also help the Nodal Agency and the Utility for the purpose of bid evaluation. Also, a referencing error has been deleted in the RFP document.



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B. PSA Document:

- (i) Petitioner has proposed for supply contract for 29 years and 6 Months from the Appointed Date in place of 30 years given in the Model PSA, considering the COD of the last unit as 54 months.
- (ii) The timeline for satisfying the conditions precedent by the Supplier has been proposed to be extended to 12 months in place of 180 days given in the Model PSA so as to provide flexibility to the bidders for obtaining different approvals and financial closure in developing a green field project.
- (iii) A new proviso has been proposed for inclusion wherein the Utility shall return the damages recovered from the Supplier on account of delay in fulfilling the Conditions Precedent if the Supplier achieves the COD of the units within the Scheduled Completion Date considering the Utility's primary goal is to secure power supply before the SCOD.
- (iv) The computation of Fixed Charges has been proposed to be on cumulative availability in place of monthly availability as given in the Model PSA. It is submitted that the Model PSA also provides for cumulative reconciliation at the end of financial year.
- (v) Under fuel transportation cost, specific provision for road transportation is proposed to be incorporated following the same principles of Model PSA.
- (vi) The determination of average GCV has been proposed to be on 'As Received Basis' of coal. A new proviso has been proposed for inclusion to appoint independent agency by the Utility in accordance with relevant rules and guidelines of the Ministry of Power who shall provide certification and classification of GCV of coal.
- (vii) It is proposed to allow a margin of GCV loss for staking of coal in line with WBERC (Terms & Conditions of Tariff) Regulations, 2011, as amended from time to time.



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- (viii) A new clause related to raising of Supplementary Invoice has been proposed to be incorporated to safeguard the settlement of Provisional Monthly Invoice against State Energy Accounting/ Regional Energy Accounting and recovery against any Change in Law.
- (ix) It is proposed to reduce the equity transfer provisions relating to transfer of contract to a Nominated Company as provided in the Substitution Agreement of Schedule P from 75% to 51% citing the aspect of “controlling interest” provided in the Companies Act, 2013 and suggestions received in pre-bid meeting.
- (x) Beside these, few modifications have been proposed to give more clarity to the bidders along with incorporating recent sectoral changes related to provisions of Electricity (Late Payment Surcharge and Related Matters) Rules, 2022 as amended from time to time and Central Electricity Authority (Flexible Operation of Coal based Thermal Power Generating Units) Regulations, 2023. Some typographical errors have also been modified.

6.0 The Commission finds the proposed deviations are primarily related to the requirement of the project, evaluation of the bid through e-reverse bidding which had been also approved by the Commission in RFQ and providing additional clarity to the bidders and therefore is found reasonable except for the following:

- (i) **Proposal for Determination of GCV on ‘As Received Basis’:** The Commission observes that the Power Supply Agreement of the Model Bidding Documents of the Ministry of Power, Government of India in clause 22.3.2 explicitly provides that the average GCV is to be determined in accordance with the provisions of fuel supply agreement and the certification and classification provided by the Fuel Supplier. Further, in the event the certification is provided by the Fuel Supplier refers to a band of GCV, the mean value of such band shall be reckoned as the GCV. The average GCV determined in accordance with such certification shall form the basis of computation of Fuel Charge. Further, the harmonious reading of clause 22.2.2, 22.3.2 and 22.3.8 of the Model PSA gives the expression that no impact on the event of deviation of GCV is passed on to the Utility/ Consumers. Thus, the Model Bidding



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Documents prepared in terms of Section 63 of the Electricity Act safeguards the interest of the consumers by improving efficiency and enhancing the competition.

However, the petitioner in the instant application has proposed that “as received GCV” measured at the plant end would be used as basis for computation of the fuel cost.

The Commission observes that, the basic difference between the “average GCV” mentioned in the Model PSA and “as received GCV” proposed by petitioner is related to the point of measurement of GCV. Ideally, there should not be any difference and in case of deviations in terms of grade slippage there are established procedure to take up the issue with coal supplier and get refund / credit note against grade slippage.

For existing generators whose tariff are determined under section 62 of the Electricity Act 2003 are allowed to compute energy charge based on “as received GCV” with due adjustment to the amount received from coal supplier against grade slippage during the truing up process, subject to prudent analysis by the Commission. It may also be noted that the Commission time and again through different Tariff Orders has opined that it is the responsibility of the generating stations to take up the issue of any grade slippage with the coal company/ supplier.

Thus, the Commission is of considered opinion that, the concept of “as received GCV” under section 62 is associated with the provisions of prudent check and adjustment of recoverable against grade slippage, whereas under section 63, tariff is market based and adopted by the Commission. So, the deviation proposed by WBSEDCL tantamounts to change the principle.

Also, the clause 22.3.2 of the proposed deviation by WBSEDCL to appoint independent agency by themselves and again a provision for disputing the result of GCV by their appointed independent agency before the Commission as mentioned in clause 22.3.6 of the proposed deviations appears to be contradictory in nature.

- (ii) **Proposal to reduce the equity transfer provisions relating to transfer of contract to a Nominated Company as provided in the Substitution Agreement:** The petitioner has proposed to reduce the equity transfer provisions relating to transfer of contract to a Nominated Company as provided in the Substitution Agreement from



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75% to 51% stating that it will help the bidders to achieve the timely financing and mitigate the execution issues with the Substitution Agreement and delay in financial closure. WBSEDCL has also contended that intended reduction to 51% of the equity aligns with the aspect of “controlling interest” provided in the Companies Act, 2013

The Commission after going through the relevant provision of the Model Power Supply Agreement, finds no reason to deviate from the stipulations contained therein.

Order:

- 7.0 In view of the above, the Commission accords its approval of the deviations proposed by WBSEDCL in the RFP and PSA from the Model Request for Proposal and Model Power Supply Agreement – DBFOO read with the deviations approved in the Order dated 26.11.2024 except for the following clauses as tabulated below:

SI No	Clause	Direction of the Commission
1	22.3.1, 22.3.2, 22.3.3, 22.3.4, 22.3.6, 22.3.7, 22.3.8	WBSEDCL shall retain the provisions of Determination of GCV as specified in the Model PSA notified by the Ministry of Power, Government of India under competitive bidding guidelines. WBSEDCL may provide a storage/ stacking loss of 120 kCal/ Kg in their draft PSA.
2	3.4.5 of Schedule P	WBSEDCL shall retain the provisions of equity transfer as specified in the Model PSA notified by the Ministry of Power, Government of India under competitive bidding guidelines.
3	5.1.4	WBSEDCL shall delete the word 'Normative' from the 2 nd sentence of clause 5.1.4 of the PSA.
Note: For all other clauses, WBSEDCL shall maintain the provisions of Model Bidding Documents except the deviations approved by the Commission read with the directions given in this order.		

- 8.0 WBSEDCL may proceed with the bidding process with an intimation to the Commission. WBSEDCL shall also submit a fresh copy of the RFP and PSA for record of the Commission within two (2) days from the date of issuance of the order.
- 9.0 WBSEDCL shall seek approval from the Commission of the Power Supply Agreement entered with the Successful Bidder in terms of the provisions of the Tariff Regulations.
- 10.0 A copy of the order shall be posted in the website of the Commission.



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11.0 WBSEDCL 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/-
(DR. MALLELA VENKATESWARA RAO)
CHAIRPERSON

Dated: 06.01.2025

Sd/-
(SECRETARY)