



सत्यमेव जयते

**ORDER
OF THE
WEST BENGAL ELECTRICITY REGULATORY COMMISSION
IN CASE NO. PPA-101 /19-20**

IN REGARD TO THE APPLICATION SUBMITTED BY WEST BENGAL STATE ELECTRICITY DISTRIBUTION COMPANY LIMITED (WBSEDCL) FOR APPROVAL OF AGREEMENT DATED 30.08.2019 EXECUTED BY AND BETWEEN PTC INDIA LIMITED (PTC) AND THE WEST BENGAL STATE ELECTRICITY DISTRIBUTION COMPANY LIMITED (WBSEDCL) FOR PURCHASE OF POWER BY WBSEDCL FROM THE MANGDECHHU HEP IN BHUTAN THROUGH PTC, FOR A PERIOD OF 35 YEARS IN TERMS OF REGULATIONS 2.1.5, 7.4.1, 7.8.1, 7.8.2 AND 7.8.3 OF THE WEST BENGAL ELECTRICITY REGULATORY COMMISSION (TERMS AND CONDITIONS OF TARIFF) REGULATIONS, 2011, AS AMENDED.

PRESENT:

**SRI SUTIRTHA BHATTACHARYA, CHAIRPERSON
SRI DURGADAS GOSWAMI, MEMBER
SRI PULAK KUMAR TEWARI, MEMBER**

DATE: 28.01.2020



Certified true Copy



Approval of Agreement dated 30.08.2019 executed by and between PTC India Limited (PTC) and the West Bengal State Electricity Distribution Company Limited (WBSEDCL) for purchase of power by WBSEDCL from the Mangdechhu HEP in Bhutan through PTC in terms of regulations 2.1.5, 7.4.1, 7.8.1, 7.8.2 and 7.8.3 of the West Bengal Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2011, as amended.



Facts in brief:

- 1.0 The West Bengal State Electricity Distribution Company Limited (WBSEDCL) has submitted an application dated 11.09.2019 for approval of agreement dated 30.08.2019 executed by and between PTC India Limited (PTC) and the West Bengal State Electricity Distribution Company Limited (WBSEDCL) for purchase of power by WBSEDCL through PTC from Mangdechhu HEP (MHEP) for a period of 35 years in terms of regulations 2.1.5, 7.4.1, 7.8.1, 7.8.2 and 7.8.3 of the West Bengal Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2011, as amended (in short 'Tariff Regulation'). WBSEDCL has submitted a copy of the Power Sale Agreement dated 30.08.2019 also and relevant documents along with the application. Subsequently, WBSEDCL has submitted additional information on 26.11.2019 as subsequent submission to their application dated 11.09.2019. The Commission admitted the applications of WBSEDCL dated 11.09.2019 and 26.11.2019 (altogether referred to as 'application') on 03.12.2019 in case no. PPA-101/19.20.
- 2.0 The application of WBSEDCL read with the Power Sale Agreement dated 30.08.2019 inter-alia states the following:
- 2.1 The Government of India (GOI) and the Royal Government of Bhutan (RGOB) have entered into an agreement dated 30.04.2010 to sell the surplus power available from the Mangdechhu Hydroelectric Project (MHEP) [having a total capacity of 4x180 MW] of the Royal Govt. of Bhutan to the Govt. of India, and the Govt. of India have agreed to purchase all the surplus power from MHEP. Further, the Govt. of India and the Royal Govt. of Bhutan through the protocol to the agreement dated 23.04.2019 having validity for a period 35 years, have authorized PTC India Limited (PTC) and Druk Green Power Corporation Limited as the nodal agencies in India and Bhutan respectively for inter country sale of MHEP power thereby entering into a Power Purchase Agreement (PPA) for sale and purchase of said surplus power available from MHEP. Subsequently, Ministry of Power, Gol vide its order dated 06.05.2019 has designated PTC India Limited (PTC) as the nodal agency for transfer of power generated by MHEP.





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- 2.2 Ministry of Power, GOI vide its order dated 07.03.2019 allocated 85 % power (612 MW) from MHEP in Bhutan to the states of North Eastern and Eastern Region viz. Assam (122.50 MW), Bihar (225.64 MW), Odisha (67.15 MW) and West Bengal (196.71 MW). Further, Ministry of Power, GOI vide order dated 28.08.2019 allocated the remaining 15% (108 MW) unallocated power to the states in the same proportion as allotted in the order dated 07.03.2019. Thereby, West Bengal got an additional allocation of 34.71 MW to the already allocated share of 196.71 MW. The total allocation of West Bengal comes to 231.42 MW.
- 2.3 Accordingly, Power Sale Agreement (Agreement) is executed on 30.08.2019 by and between PTC and WBSEDCL including other beneficiaries like North Bihar Power Distribution Company Limited, South Bihar Power Distribution Company Limited, Grid Corporation of Orissa Limited and Assam Power Distribution Company Limited for purchase of power from MHEP in Bhutan through PTC for a period of 35 years.
- 2.4 Indo-Bhutan international border at Jigmeling shall be deemed to be the delivery point.
- 2.5 A protocol has been signed between the Government of Republic of India and the Royal Government of Bhutan on 23.04.2019 through which the tariff has been mutually decided for 35 years as below:

Year	Tariff (Rs/kWh)	Year	Tariff (Rs/kWh)	Year	Tariff (Rs/kWh)
1	4.12	13	4.99	25	5.76
2	4.12	14	4.99	26	6.05
3	4.12	15	4.99	27	6.05
4	4.12	16	5.49	28	6.05
5	4.12	17	5.49	29	6.05
6	4.54	18	5.49	30	6.05
7	4.54	19	5.49	31	6.35
8	4.54	20	5.49	32	6.35
9	4.54	21	5.76	33	6.35
10	4.54	22	5.76	34	6.35
11	4.99	23	5.76	35	6.35
12	4.99	24	5.76		

The above tariff is exclusive of Trading margin to PTC @ 7 paise / kWh.





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- 2.6 As the 100% power from Mangdechhu HEP has been allocated by the Central Government to the beneficiary states of Assam, Bihar, Odisha and West Bengal for long term period of 35 years, therefore, scheduling of power is being done by ERLDC under the deemed long term access. Further, Mangdechhu HEP being a run-of-river having limited pondage capacity for diurnal peaking support, scheduling of power is to be done by ERLDC in consultation with Bhutan authorities considering the demand profile of the eastern region and water availability at the generating station so as to avoid spillage of water and to provide peaking support in the eastern region. The purchase of this hydropower will also improve the Hydro-Thermal mix.
- 2.7 Regarding need for power procurement, WBSEDCL stated that there is a shortfall between Base Generation and Base Demand during Summer and Monsoon along with significant peak shortage. Therefore, WBSEDCL plans to mitigate the significant peak shortage with the procurement of power from Mangdechhu which has capability of three hours peak support and is suitable/ fit for WBSEDCL' s existing power purchase portfolio. Due to the seasonal variation of demand there will be surplus during winter season which is proposed to be managed in real time through sale of power by market participation and also allowing annual overhauling of generating units along with bilateral power banking arrangement. WBSEDCL submitted Load Generation Balance Report (LGBR) data in support of their submission.
- 2.8 WBSEDCL also submitted that, they had explored the Short-Term power procurement through competitive bidding in the 'DEEP' portal vide tender event no WBSEDCL/PTP/e-NIT/02/2018 dated 15.09.2018. But, no bids for the entire requisitioned quantum were received and the prices discovered were abnormally high i.e. to the extent up to Rs. 7.25/- per kWh for RTC Power. Further, cost of purchase of the deficit power on the exchange platform even goes up to Rs. 18.00/- per kWh which is exorbitantly high.
- 2.9 WBSEDCL also mentioned that, Bihar Electricity Regulatory Commission (BERC) vide its order dated 08.11.2019 has accorded approval for procurement of Mangdechhu power by Bihar Discoms.





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3.0 In view of above, WBSEDCL has prayed before the Commission to –

- a) approve the Agreement dated 30.08.2019 executed by and between PTC India Limited (PTC) & West Bengal State Electricity Distribution Company Limited (WBSEDCL) for purchase of power by WBSEDCL through PTC for a period of 35 years from the date of commercial operation of the project as per allocation of Mangdechhu Power and / or decided by Ministry of Power, Government of India from time to time on mutually agreed basis in terms of regulations 2.1.5, 7.4.1, 7.8.1, 7.8.2 and 7.8.3 of the West Bengal Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2011 as amended; and
- b) accord approval to give retrospective effect of power purchase from 01.09.2019 by WBSEDCL from MHEP through PTC under the agreement dated 30.08.2019.

4.0 The Commission directed WBSEDCL to publish the gist of their application as approved by the Commission in terms of Paragraph 8.12 of Tariff Order for 2017-18 of WBSEDCL. WBSEDCL accordingly published the gist of the petition in (i) "The Telegraph", (ii) the "Anandabazar Patrika" and (iii) the "Aajkal" on 14.12.2019 inviting suggestions and objections on their petition within 10 days (including the date of publication) of publication of the notice in Newspaper. No suggestion and objection were received by the Commission within the stipulated time-period.

5.0 WBSEDCL vide letter dated 30.12.2019 further submitted that, power flow from Mangdechhu HEP has been started with effect from 01.09.2019 based on the order of Ministry of Power, GOI dated 28.08.2019 and subsequent revised allocation dated 30.08.2019 of ERPC, over which WBSEDCL had no control. WBSEDCL thus requested the Commission to approve the agreement dated 30.08.2019 and the power purchase from Mangdechhu HEP with effect from 01.09.2019 as a special case. In the letter WBSEDCL also submitted that, they have tried to negotiate to reduce the trading margin of 7 paise/unit with PTC India Limited, who is engaged as sole trading licensee for the power from Mangdechhu as per order of Govt. of India, but PTC did not agree to reduce the trading margin.





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Point of determination:

- 6.0 Clause (b) of sub-section (1) of section 86 of the Electricity Act 2003 inter-alia specifies that, while discharging its function the State Commission shall regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State.
- 7.0 Accordingly, provision of prior approval of Power Purchase Agreement (PPA) has been specified in the Tariff Regulations notified by the Commission. The extent of review of the PPA as specified in the regulation 7.4.2 of the Tariff Regulations is produced below:

"7.4.2 The Commission shall review an application for approval of power purchase agreement / arrangement for a period exceeding one year having regard to the following factors, as appropriate.

- (a) Requirement for power procurement;
- (b) Adherence to a transparent process of bidding in accordance with guidelines issued by the Central Government;
- (c) Adherence to the tariff determined by the Central Electricity Regulatory Commission for the purchase of power from Central generating company;
- (d) Adherence to the agreed tariff for purchase of energy from international sources;
- (e) Adherence to policy approved by the Commission for purchase of power from captive and non-conventional sources;
- (f) Availability (or expected availability) of capacity in the Intra-State transmission system for evacuation and supply of power procured under the agreement / arrangement;
- (g) Adherence to Purchase of power from any source, other than those mentioned from (a) to (e) above in pursuance to different provisions of these regulations;
- (h) Need to promote cogeneration and generation of electricity from renewable sources of energy."

Observations of the Commission:

- 8.0 Requirement of power procurement:
- 8.1 From the Load generation Balance Report (LGBR) submitted by WBSEDCL it is observed that there is a shortfall to meet the peak demand as well as base demand during summer and monsoon seasons. However, during winter season there is surplus of energy. It is also noted that, WBSEDCL has proposed to manage such inevitable winter surplus during real time through sale of power in market, bilateral power banking arrangement and allowing overhauling of generating units. From the subsequent submission dated 26.11.2019 it is also





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observed that WBSEDCL has considered demand growth of 4.29% along with 10% spinning reserve while projecting their requirement for upcoming years. WBSEDCL has also considered availability from WBPDC as 61.85%, 64.94% and 67.05% for 2019-20, 2020-21 and 2021-22 respectively and for all ISGS generating stations, generation trend of previous financial year has been considered. WBSEDCL has suitably adjusted the pumping load and generation of PPSP with the demand curve to identify the shortfall and surplus in the upcoming years.

- 8.2 The Commission observed that the distribution licensee has been allowed to make provision of spinning reserve upto 5% and cold reserve upto 5% in the Tariff Regulations to ensure reliable and uninterrupted supply. Further, the Commission observed that Mangdechhu HEP is a run-of-river project having limited pondage capacity for diurnal peaking support. Hence, purchase of 231.42 MW power from Mangdechhu HEP in Bhutan will help in achieving reliable and uninterrupted power supply by WBSEDCL in its supply area and will also help WBSEDCL to meet its peak demand during summer and monsoon seasons.
- 9.0 Price of the power purchase:
- 9.1 Clause (b) of sub-section (1) of section 86 of the Electricity Act 2003 inter-alia specifies that, while discharging its function the State Commission shall regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured.
- 9.2 For this instant application for approval of agreement, it is submitted that the tariff is mutually decided by Government of Republic of India and Royal Government of Bhutan through a protocol signed on 23.04.2019. Further clause 7.1.2 of the Guidelines for Import/ Export (Cross Border) of Electricity, 2018 by Govt. of India specifies that the tariff for import of electricity shall be final if mutually agreed by the Govt. of India and Govt. of the neighboring countries. The relevant clause is produced below:





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“Notwithstanding anything contained in sub-clause 7.1.1 where the tariff for import of electricity is mutually agreed by the Government of India and the Government of neighbouring country, involving the participating entities of the two countries, the same shall be final....”

Hence, the tariff is considered in line with clause (d) of Regulation 7.4.2 of the Tariff Regulations and admitted by the Commission.

- 9.3 The Commission also observed that Govt. of India vide order dated 06.05.2019 has designated M/s PTC India Limited as the nodal agency for transfer of power generated by Mangdechhu HEP and thus PTC is the sole trading licensee. From the petition it is noted that PTC has charged a trading margin of 7 paise/unit over and above the agreed tariff. From the letter dated 30.12.2019 of WBSEDCL, the Commission further noted that WBSEDCL has tried to negotiate with PTC to reduce the trading margin of 7 paise/unit, but PTC did not agree to reduce the trading margin. In this regard it is observed that the proposed trading margin is within the limits specified by CERC in the Central Electricity Regulatory Commission (Fixation of Trading Margin) Regulations, 2010. The relevant provision of the regulation is produced below:

“Trading Margin: The licensee shall not charge trading margin exceeding seven (7.0) paise/kWh in case the sale price is exceeding Rupees three (3.0)/kWh and four (4.0) paise/kWh where the sale price is less than or equal to Rupees three (3.0)/kWh. This margin shall include all charges, except the charges for scheduled energy, open access and transmission losses. The trading margin shall be charged on the scheduled quantity of electricity.....”

Thus, the Commission admits the trading margin of 7 paise/unit to PTC in terms of Central Electricity Regulatory Commission (Fixation of Trading Margin) Regulations, 2010.

- 10.0 Regulation 7.8.3 of the Tariff Regulation inter-alia specifies that PPA for long-term or mid-term procurement shall not be operative unless the PPA is approved by the Commission whereas WBSEDCL in the instant application prayed for giving retrospective effect of power purchase from 01.09.2019 by WBSEDCL from MHEP through PTC. In this respect, the Commission observed the following:
- 10.1 The power purchase from Mangdechhu HEP of Bhutan is a part of international treaty between Government of India and Royal Government of Bhutan and Government of India





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has allocated the share of power amongst the constituents of Eastern Region and North Eastern Region.

- 10.2 From the minutes of the meeting held on 30.08.2019 between PTC India Limited and beneficiaries of Mangdechhu HEP of Bhutan (i.e. Assam, Bihar, Odisha and West Bengal), it transpires that the agreement was signed by and between PTC and the aforesaid beneficiaries of the project on 30.08.2019 in presence of Member Secretary, ERPC. In the meeting it was also decided that the scheduling of power from Mangdechhu shall be effected from 00:00 hours of 01.09.2019 and accordingly ERPC has been requested to issue necessary direction to ERLDC for scheduling of the power.
- 10.3 WBSEDCL vide letter dated 30.12.2019 submitted that it had no control over the date of power flow.
- 10.4 In view of the above, the Commission observes the fact that the agreement is a fall out of the international treaty between two sovereign governments and the date of scheduling was done by ERLDC based on a uniform decision by all other beneficiaries which includes Assam, Bihar, Odisha and West Bengal. Thus, WBSEDCL has no control over the date of power flow. Therefore, the Commission finds it suitable to approve the agreement dated 30.08.2019 with effect from 01.09.2019 as an exception, using its inherent power under Regulation 8.4 of the Tariff Regulations.

Order:

- 11.0 The Commission after considering the above facts and to ensure reliable and quality power supply in the State approves the Agreement dated 30.08.2019 executed by and between PTC India Limited and the WBSEDCL for purchase of 231.42 MW of power through PTC from Mangdechhu HEP for a period of 35 years as per the following rate along with trading margin @ 7 paise/ kWh in terms of regulations 2.1.5(ii), 7.4.1, 7.8.1, 7.8.2 and 7.8.3 of the West Bengal Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2011 as amended with effect from 01.09.2019.





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8	4.54	20	5.49	32	6.35
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10	4.54	22	5.76	34	6.35
11	4.99	23	5.76	35	6.35
12	4.99	24	5.76		

12.0 The Commission also directs that in future, WBSEDCL shall strictly ensure compliance on power procurement status as per provision of Regulation 7.8.3 of Tariff Regulations.

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

Sd/-
(PULAK KUMAR TEWARI)
MEMBER

Sd/-
(DURGADAS GOSWAMI)
MEMBER

Sd/-
(SUTIRTHA BHATTACHARYA)
CHAIRPERSON

Certified true Copy

Dated: 28.01.2020



(T. K. MUKHERJEE)
SECRETARY

