



**ORDER
OF THE
WEST BENGAL ELECTRICITY REGULATORY COMMISSION
IN CASE NO. PPA- 30/10 – 11 (II)**

IN REGARD TO THE APPLICATION SUBMITTED BY WEST BENGAL STATE ELECTRICITY DISTRIBUTION COMPANY LIMITED (WBSEDCL) FOR APPROVAL OF SUPPLEMENTARY AGREEMENT EXECUTED ON 14.09.2020 TO THE POWER PURCHASE AGREEMENT DATED 12.03.2003 (PRINCIPAL AGREEMENT) EXECUTED BY AND BETWEEN NHPC LIMITED AND WBSEDCL FOR PURCHASE OF ENTIRE POWER FROM 132 MW TEESTA LOW DAM – III POWER STATION OF NHPC LIMITED AT DARJEELING, WEST BENGAL FOR THE PERIOD FROM 01.04.2019 TO 18.05.2053 (I.E., BALANCE USEFUL PERIOD OF PLANT) IN TERMS OF REGULATION 7.4.1 OF THE WEST BENGAL ELECTRICITY REGULATORY COMMISSION (TERMS AND CONDITIONS OF TARIFF) REGULATIONS, 2011 AS AMENDED

PRESENT:

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

DATE: 15.06.2022



In regard to the application submitted by West Bengal State Electricity Distribution Company Limited (WBSEDCL) for approval of Supplementary Agreement executed on 14.09.2020 to the Power Purchase Agreement dated 12.03.2003 (Principal Agreement) executed by and between NHPC Limited and WBSEDCL for purchase of entire power from 132 MW Teesta Low Dam – III Power Station of NHPC Limited at Darjeeling, West Bengal for the period from 01.04.2019 to 18.05.2053 (i.e., balance useful period of plant) in terms of regulation 7.4.1 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) submitted an application vide letter dated 11.11.2020 for approval of Supplementary Agreement executed on 14.09.2020 to the Power Purchase Agreement dated 12.03.2003 (Principal Agreement) executed by and between NHPC Limited and WBSEDCL for purchase of entire power from 132 MW Teesta Low Dam III Power Station of NHPC Limited at Darjeeling, West Bengal for the period from 01.04.2019 to 18.05.2053 (i.e., balance useful period of the plant) in terms of regulation 7.4.1 of the West Bengal Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2011, as amended from time to time (in short 'Tariff Regulations'). Further, WBSEDCL vide letters dated 11.02.2021, 23.08.2021 and 25.10.2021 has submitted additional information on their application. The Commission admitted the application along with additional submissions in Case No. PPA – 30/10-11 (II).
- 2.0 The application of WBSEDCL read with the Supplementary Agreement dated 14.09.2020 and additional information inter-alia state the following:
 - 2.1 WBSEDCL and NHPC Limited has entered into a Power Purchase Agreement (PPA) on 12.03.2003 for purchase of entire 132 MW power from TLDP III of NHPC as per allocation of Government of India (GOI) with a contract period of 5 years from the date of commercial operation of the first unit of the plant. The PPA was approved by the Commission on 30.07.2013 in Case No. PPA – 30/10 – 11.
 - 2.2 Now, through a supplementary agreement, WBSEDCL and NHPC agreed to extend the PPA upto 18.05.2053 (i.e., balance useful life of the plant) at mutually agreed single part tariff lower than the normative tariff determined by CERC.
 - 2.3 In the supplementary agreement, both the parties agreed to a year wise tariff schedule from 01.04.2019 to 18.05.2053. The first-year tariff is stated to be Rs. 4.48/kWh and a levelized tariff of Rs. 5.41/kWh for the balance useful life which is lower than the normative tariff of Rs. 5.90/kWh determined by CERC for 2018 – 19.



In regard to the application submitted by West Bengal State Electricity Distribution Company Limited (WBSEDCL) for approval of Supplementary Agreement executed on 14.09.2020 to the Power Purchase Agreement dated 12.03.2003 (Principal Agreement) executed by and between NHPC Limited and WBSEDCL for purchase of entire power from 132 MW Teesta Low Dam – III Power Station of NHPC Limited at Darjeeling, West Bengal for the period from 01.04.2019 to 18.05.2053 (i.e., balance useful period of plant) in terms of regulation 7.4.1 of the West Bengal Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2011 as amended



- 2.4 WBSEDCL vide letter dated 25.10.2021 submitted that no further cost on account of additional capitalization, shortfall of generation, true-up for tariff and arbitration cost, etc. will be payable by WBSEDCL. Only variation in existing statutory levies as well as any new statutory levy introduced will be claimed / adjusted by the affected party. Regarding fulfillment of legal requirement on the applicability of mutually agreed single part tariff for the entire contract period. WBSEDCL also submitted that NHPC has approached the Central Electricity Regulatory Commission (CERC) for approval of the same.
- 2.5 WBSEDCL further stated that NHPC has agreed to refund the excess amount estimated as Rs. 157.12 Crores paid by WBSEDCL for energy supplied from 01.04.2019 to 31.08.2020.
- 2.6 In view of above, WBSEDCL has prayed before the Commission to approve the following:
- (i) Accord in-principal clearance to give effect the mutually agreed tariff as per supplementary agreement so that WBSEDCL get a refund of excess power cost of TLDP III from NHPC.
 - (ii) Accord approval of the supplementary agreement for purchase of entire power from 132 MW TLDP III of NHPC on issuance of order by CERC.
- 3.0 The Commission had directed WBSEDCL to publish the gist of their application as approved by the Commission in terms of paragraph 8.12 of Tariff Order dated 04.07.2018 of WBSEDCL. WBSEDCL, accordingly had published the gist of the petition in (i) the "Bartaman", (ii) the "The Telegraph", (iii) the "Ananda Bazar Patrika" and (iv) the "Millennium Post" on 06.05.2021 inviting suggestions and objections on their petition to be submitted within 14 (fourteen) days of publication of the gist. No suggestion and objection were received by the Commission within the stipulated time-period.
- 4.0 Subsequently, WBSEDCL vide letter dated 28.04.2022 has submitted that the Central Electricity Regulatory Commission has approved the tariff mutually agreed by the parties for the period 2019 – 24 vide order dated 13.04.2022 in Petition No. 702/GT/2020 and forwarded a copy of the order.



In regard to the application submitted by West Bengal State Electricity Distribution Company Limited (WBSEDCL) for approval of Supplementary Agreement executed on 14.09.2020 to the Power Purchase Agreement dated 12.03.2003 (Principal Agreement) executed by and between NHPC Limited and WBSEDCL for purchase of entire power from 132 MW Teesta Low Dam – III Power Station of NHPC Limited at Darjeeling, West Bengal for the period from 01.04.2019 to 18.05.2053 (i.e., balance useful period of plant) in terms of regulation 7.4.1 of the West Bengal Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2011 as amended



Observations of the Commission:

- 5.1 The Ministry of Power vide letter no. 8/1/2003-NHPC (Vol II) dated 20.12.2012 has allocated 100% share of power from TLDP III i.e., 132 MW to West Bengal viz. WBSEDCL being the State Government Enterprise.
- 5.2 The Power Purchase Agreement between WBSEDCL and NHPC has already been approved by the Commission vide order dated 30.07.2013 in Case NO. PPA-30/10 – 11 following due process.
- 5.3 The tariff of NHPC TLDP III, being a Government of India enterprise, is regulated by CERC under section 79 (a) of the Act.
- 5.4 In the instant petition, it is stated that WBSEDCL has expressed its difficulty to increase the rate of tariff on account of revised project cost and accordingly both WBSEDCL and NHPC under the supplementary agreement mutually agreed to a single part tariff being lower than the normative tariff determined by CERC with the following conditions:
 - (i) Year wise tariff schedule from 01.04.2019 to 18.05.2053 has been agreed with the first-year tariff stated to be Rs. 4.48 / kWh and a levelized tariff of Rs. 5.41 / kWh for the balance useful life of the plant.
 - (ii) The tariff shall be paid for 'generating ex-bus' of TLDP III plant. NHPC TLDP III shall be treated as 'must-run' power station and any reduction in schedule approved by SLDC in comparison to the schedule given by NHPC shall be considered as deemed generation and shall be paid at the tariff specified in the tariff schedule.
 - (iii) No further cost on account of additional capitalization, shortfall of generation and arbitration, etc. shall be paid by WBSEDCL. Only variation in existing statutory levies as well as any new statutory levy introduced will be claimed/ adjusted by the affected party.
- 5.5 Subsequent to the supplementary agreement, NHPC has approached before CERC for approval of charging lower tariff for the period from 01.04.2019 to 18.05.2053, in deviation



In regard to the application submitted by West Bengal State Electricity Distribution Company Limited (WBSEDCL) for approval of Supplementary Agreement executed on 14.09.2020 to the Power Purchase Agreement dated 12.03.2003 (Principal Agreement) executed by and between NHPC Limited and WBSEDCL for purchase of entire power from 132 MW Teesta Low Dam – III Power Station of NHPC Limited at Darjeeling, West Bengal for the period from 01.04.2019 to 18.05.2053 (i.e., balance useful period of plant) in terms of regulation 7.4.1 of the West Bengal Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2011 as amended



from the norms specified in CERC Tariff Regulations 2019 in respect of TLDP III, under regulation 66 and regulation 77.

- 5.6 CERC in its order dated 13.04.2022 has approved the proposed lower mutually agreed tariff only for the period from 01.04.2019 to 31.03.2024 in terms of regulation 66 (2) and 66 (3) of the CERC Tariff Regulations 2019. CERC, in its order, observed that for the period beyond 31.03.2024, NHPC is required to seek approval to charge mutually agreed tariff at the time of truing up of the tariff along with the tariff petition in terms of applicable tariff regulations for the next tariff period.
- 5.7 Accordingly, CERC in its order has approved the tariff mutually agreed by WBSEDCL and NHPC for the period 2019 – 24 being lower than the tariff determined under the provision of the CERC Tariff Regulations 2019, as below:

In Rs / kWh				
2019-20	2020-21	2021-22	2022-23	2023-24
4.48	4.75	5.03	5.30	5.57

Order:

- 6.0 The Commission, after careful consideration of the above facts, gives the following order:
- The Supplementary Agreement dated 14.09.2020 executed by and between WBSEDCL and NHPC for purchase of entire power (132 MW) from Teesta Low Dam III Power Station by WBSEDCL for the period from 01.04.2019 to 18.05.2053 (i.e., balance useful period of the plant) in terms of regulation 7.4.1 of the West Bengal Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2011 as amended is approved by the Commission.
 - The tariff of such purchase of power shall be mutually agreed tariff approved by CERC in its order dated 13.04.2022 for the period from 01.04.2019 to 31.03.2024. as given in paragraph 5.7 above.



In regard to the application submitted by West Bengal State Electricity Distribution Company Limited (WBSEDCL) for approval of Supplementary Agreement executed on 14.09.2020 to the Power Purchase Agreement dated 12.03.2003 (Principal Agreement) executed by and between NHPC Limited and WBSEDCL for purchase of entire power from 132 MW Teesta Low Dam – III Power Station of NHPC Limited at Darjeeling, West Bengal for the period from 01.04.2019 to 18.05.2053 (i.e., balance useful period of plant) in terms of regulation 7.4.1 of the West Bengal Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2011 as amended



- (iii) For the period beyond 31.03.2024, NHPC is required to seek approval to charge mutually agreed tariff at the time of truing up of the tariff along with the tariff petition in terms of applicable tariff regulations for the next tariff period.
- (iv) WBSEDCL shall Amend the tariff schedule of the supplementary agreement dated 14.09.2020 in line with the observations of the CERC dated 13.04.2022 and submit the same before the Commission for record.
- (v) For subsequent period beyond 31.03.2024, WBSEDCL shall amend the tariff schedule as and when approved by CERC and submit the same before the Commission for record.

7.0 The petition is thus disposed of.

8.0 A copy of the order shall be posted in the website of the Commission.

9.0 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/-

(PULAK KUMAR TEWARI)
MEMBER

Sd/-

(SUTIRTHA BHATTACHARYA)
CHAIRPERSON

Dated: 15.06.2022

Sd/-
SECRETARY