

# Delhi Electricity Regulatory Commission

Viniyamak Bhawan, 'C' Block, Shivalik, Malviya Nagar, New Delhi – 17.

No. F.11(1627)/DERC/2018-19/6304

## Petition No. 04/2019

In the matter of: **Petition under Section 86 read with Section 63 of the Electricity Act, 2003 seeking adoption of tariff for purchase of 100 MW of wind power from PTC India Limited and for the approval of the Power Sale Agreements dated 21 July 2017 entered into between the Petitioner and PTC India Limited in terms of the DERC (Renewable Purchase Obligations and Renewable Energy Certificate Framework Implementation) Regulations, 2012 read with DERC Comprehensive Conduct of Business Regulation, 2001.**

**BSES Rajdhani Power Limited**

**....Petitioner**

**Coram: Hon'ble Mr. Justice S S Chauhan, Chairperson**

### Appearance:

1. Mr. Buddy A Ranganathan, Adv. BRPL

### ORDER

(Date of Hearing: 17.12.2018)

(Date of Order: 11.01.2019)

1. The aforesaid Petition has been filed by BSES Rajdhani Power Limited (**BRPL**) for seeking adoption of tariff for purchase of 100 MW of wind power from PTC India Limited and for the approval of the Power Sale Agreement (**PSA**) dated 21 July 2018 entered into between the Petitioner and PTC India Limited in terms of the DERC (Renewable Purchase Obligations and Renewable Energy Certificate Framework Implementation) Regulations, 2012. The petitioner has made the following prayers in its petition:
  - a) Adopt the tariff of Rs. 3.46/kWh plus the trading margin of Rs. 0.07/kWh (i.e., a total of Rs. 3.53/kWh) under Section 63 of the Electricity Act, 2003 for procurement of power by the petitioner from PTC and pass a suitable order in this regard; and
  - b) To approve the terms and conditions of the two PSAs dated 21 July 2018 executed between the Petitioner and PTC for 50 MW each.

2. The petitioner submissions are as under:

i. That after the Commission notified the DERC (Renewable Purchase Obligations and Renewable Energy Certificate Framework Implementation) Regulations, 2012, the petitioner has been mandated to procure electricity from renewable sources in order to fulfil its defined Renewable Power Obligations (**RPO**). The RPO obligations provide that any long term power purchase agreement shall be made only with the approval of this Commission.

ii. On 14.06.2016, Ministry of New and Renewable Energy (**MNRE**) sanctioned a scheme for setting up of 1000 MW Inter state transmission system connected wind power projects. The scheme provides for formulation of Guidelines by MNRE for implementation of the scheme. In furtherance of the MNRE guidelines, Solar Energy Corporation of India (**SECI**) prepared and floated a Request for Selection (**RFS**) dated 28.10.2016 against the said RFS, the following entities were declared as successful bidders:

- a. A consortium led by **M/s Green Infra Wind Energy Ltd. hereinafter referred to as Wind Power Developer-I**, which was awarded a letter of Award dated 05.04.2017.
- b. **M/s Inox Wind Infrastructure Services Ltd., hereinafter referred to as Wind Power Developer-II**, which was awarded a letter of Award dated 05.04.2017.

iii. In view of the mandate of the MNRE Guidelines, on 21 July 2017, the following set of back-to-back agreements were entered into:

**A. Wind Power Developer -I:**

- a. A Power Purchase Agreement (**PPA**) between the Wind Power Developer-I and PTC for purchase by PTC from the Wind Power Developer-I a quantum of 50 MW of wind power for a period of 25 years at a discovered tariff of Rs. 3.46/kWh;
- b. A PSA between the petitioner herein and PTC for purchase by the petitioner from PTC a quantum of 50 MW of wind power for a period of 25 years at a discovered tariff of Rs. 3.46/kWh plus PTC's trading margin of Rs. 0.07/kWh totalling to Rs. 3.53/kWh.

**B. Wind Power Developer-II:**

- a. A PPA between the Wind Power Developer II and PTC for purchase by PTC from the Wind Power Developer II a quantum of

50 MW of wind power for a period of 25 years at a discovered tariff of Rs. 3.46/kWh;

b. A PSA between the petitioner herein and PTC for purchase by the petitioner from PTC a quantum of 50 MW of wind power for a period of 25 years at a discovered tariff of Rs. 3.46/kWh plus PTC's trading margin of Rs. 0.07/kWh totalling to Rs. 3.53 kWh.

- iv. Thereafter, on 28<sup>th</sup> July 2017, the petitioner issued a letter to this Commission inter alia requesting to approve the above two PSAs.
- v. That this Commission in response to the petitioner's aforesaid letter of 28 July 2017 issued a letter dated 04 October 2017 wherein this Commission was pleased to approve the PSAs entered into by the Petitioner for 100 MW of wind power subject to compliance with the competitive bidding process. The petitioner was accordingly directed to submit details of adoption of tariff under Section 63 of the Electricity Act, 2003. In compliance of the directives of the Commission contained in its letter dated 31 May 2018, the petitioner is filing the present petition.
- vi. That Section 86(1)(b) provides that 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.
- vii. That Section 64(5) provides that Notwithstanding anything contained in Part X, the tariff for any inter-State supply, transmission or wheeling of electricity, as the case may be, involving the territories of two States may, upon application made to it by the parties intending to undertake such supply, transmission or wheeling be determined under this section by the State Commission having jurisdiction in respect of the licensee who intends to distribute electricity and make payment therefor.
- viii. That the Hon'ble Appellate Tribunal for Electricity (**APTEL**) in its judgement dated 31.08.2016 in Appeal No. 168 of 2014 in the matter of PTC India Ltd. vs. Utrakhand Electricity Regulatory Commission has held that so long as there is nexus between the first sale and the second sale or they are back to back arrangements, the State Commission where the distribution licensee is located would have jurisdiction over the transaction.
- ix. That in another case of Lanco 3, the Hon'ble APTEL came to the finding that PPA and the PSA were not back to back and said that though this

principle is correct that whether it is back to back it goes to State Commission and where it is not back to back it would not go to the State Commission.

3. The submissions made by the Petitioner have been considered and it is observed that the instant case falls under the category of back to back arrangement of sale of power. The observation of Hon'ble APTEL in PTC India Ltd. vs. Uttrakhand Electricity Regulatory Commission is as under:

*"it is necessary to recapitulate material facts essential to the determination of the dispute. PTC, an inter-State trading licensee entered into PPA dated 24.08.2005 with Swasti, which is a generator having its Project in Uttrakhand under which PTC was to purchase power from Swasti. PTC entered into PSA dated 23.03.2006 with PSPCL which is successor-in-interest of PSEB to sale the power purchased from Swasti to PSPCL. For deciding which State Commission has jurisdiction, in-depth examination of PPA dated 24.08.2005 and PSA dated 23.03.2006 is necessary to find out whether there is any nexus between the sale to PTC by Swasti under the PPA and the sale by PTC to PSPCL under the PSA. In fact, this issue has been conclusively decided by this Tribunal in several cases. This Tribunal has taken a view that so long as there is nexus between the first sale and the second sale, or they are back to back arrangements, the State Commission where the distribution licensee is located would have jurisdiction over the transactions....."*

4. Hon'ble APTEL in the same judgment referred to its earlier decision in Lanco Power case wherein similar issue was involved and similar fact situation was present. In Lanco case Hon'ble APTEL had held that:

*"16. If a generating company enters into an agreement for sale of power generated by it, knowing the place where the power generated is going to be consumed, the generating company acts with the nexus to such consumers. This nexus leads to the fact that the State Regulatory Commission of the place where the electricity is to be consumed is the appropriate commission to exercise jurisdiction. If the sale and purchase of power has a nexus to the State, the concerned State Commission will have jurisdiction, notwithstanding the fact that there is no direct contractual arrangement between the generating company and the distribution licensee.*

*17. This provision thus clarifies that the State Commission having jurisdiction in respect of the licensee who intends to distribute electricity shall be the appropriate commission. In the present case, it is not*

*disputed that the electricity generated in the State of Chhattisgarh is intended to be transmitted through the inter-State transmission system to the State of Haryana for distribution to the consumers of the State of Haryana by the distribution licensees of the Haryana. Thus, the present case squarely falls within the provision of Section 64(5) of the Act.*

.....

*21. So, the combined reading of the above provisions brings out the scheme of the Act. A trader is treated as an interme diary. When the trader deals with the distribution company for re-sale of electricity, he is doing so as a conduit between generating company and distribution licensee. When the trader is not functioning as merchant trader i.e. without taking upon itself the financial and commercial risks but passing on all the risks to the purchaser under re-sale, there is clearly a link between the ultimate distribution company and the generator with trader acting as only an intermediary linking company.*

.....

*29. The appropriate commission is, therefore, the State Commission which approves the Tariff for purchase and sale of power by PTC, i.e. the same State Commission, and as per definition the State Commission, competent to determine the Tariff for the project. From the perusal of the above clauses, it is apparent that the State Commission which is deciding on the Tariff for the licensee situated in the State of Haryana, i.e. the procurement of power being for the consumers in the state is the appropriate commission for the purposes of matters raised in the present case."*

5. In the instant case also, M/s PTC India has made two agreements in respect of each transaction, one PPA with the generator and back to back PSA with Petitioner for supply of power to the Petitioner. As the power under PSA has to be ultimately consumed in the State of Delhi, as per the ratio of aforesaid judgments of Hon'ble APTEL, this Commission has jurisdiction to adopt the tariff and approve PSAs.
  
6. From the records submitted by the Petitioner it is observed that the tariff is determined through a competitive bidding process as per the guidelines issued by the Central Government (MNRE), which lay down the requisite parameters, with SECI being designated as the nodal agency responsible for conducting the bidding process has followed the MNRE Guidelines. In view of the aforesaid the Commission hereby adopts a tariff of Rs. 3.46/Kwh plus Rs. 0.7/Kwh as trading margin (i.e., a total of Rs. 3.53/kWh) under Section 63 of the Electricity Act, 2003 for

procurement of power by the petitioner from PTC in respect of two agreements of 50 MW each.

7. The terms of following two PSAs on examination are found to be in order and therefore, the Commission accords approval to the following PSAs:

i. PSA dated 21 July 2018 executed between the Petitioner and PTC for 50 MW (in respect of power from M/s Green Infra Wind Energy Ltd.);

ii. PSA dated 21 July 2018 executed between the Petitioner and PTC for 50 MW (in respect of power from M/s Inox Wind Infrastructure Services Ltd.).

8. Ordered accordingly.

**Sd/-**  
**(Justice S S Chauhan)**  
**Chairperson**