

approve the trader margin of five paise (5) per unit quoted by PTC for the Pilot Scheme apart from transmission charges.

2. We have heard the submissions of Thiru M.Gopinathan, the learned Standing Counsel for TANGEDCO. He has reiterated the submissions made in the petition filed before the Commission.

3. The above P.P.A.P. petition is the sequel of the quantity approval already given by this Commission in M.P. No.20 of 2018 dated 10-12-2018, wherein the Commission has *inter alia* approved the procurement of 550 MW RTC through PTC at Rs.4.24 per unit (ex-bus) at 55% PLF and also directed TANGEDCO to negotiate with PTC for having arrears / monthly PLF for the purpose of incentive and penalties.

4. The learned Standing Counsel for TANGEDCO submitted that, following are the salient features of the Pilot Scheme initiated by MoP/GOI

- (i) Lumpsum tariff, constant throughout the term of contract of three years.
- (ii) Minimum off-take is 55% (RTC) of contracted capacity and there is no liability for back down up to this threshold limit.
- (iii) Penalty for off-take less than 55% of contracted capacity will be difference between IEX day average discovered for RTC power and tariff.
- (iv) Any downward revision on daily schedule given on preceding day, then energy corresponding to reduction in schedule shall be paid at tariff under this agreement.

- (v) If deviation in declaration is more than 15% of contracted quantum, then Aggregator (PTC) shall pay compensation on monthly basis at the rate, which will be the difference between agreed tariff and daily MCP for the shortfall exceeding the permitted deviation.
- (vi) Utility shall bear Interstate and intrastate transmission charges.
- (vii) Utility shall provide LC as payment security within 30 days.
- (viii) If off-take is more than 55% of contracted capacity on monthly basis, incentive @ 1% of tariff for every 5% incremental increase in off take.
- (ix) If off-take is less than 55% of contracted capacity on monthly basis, utility shall pay compensation. The difference of Tariff and IEX discovered daily RTC average on such date.
- (x) If IEX discovered rate is higher than the tariff, PTC shall pass on half of difference between daily average RTC for such date and tariff.
- (xi) Utility shall bear the transmission charges for the entire approved quantum of power under MTOA.
- (xii) Monthly payment.
- (xiii) Due date for payment is 30 days from the date of invoice.
- (xiv) Incentive @ 1%, if payment made within 5 days .
- (xv) Any interest payable shall accrue on daily outstanding basis and compounded on the basis of quarterly rests.

5. The learned Counsel has also submitted the following with regard to Force Majeure and compensation:-

- (i) Upon occurrence of Force Majeure Events (Non-political), the contract period shall be extended. Parties shall bear their respective cost.

- (ii) Upon occurrence of a Political Force Majeure Event, cost attributable to such Political Event shall be reimbursed by Utility. The cost may include interest payments on debt, O&M Expenses and all cost directly attributable to Force Majeure event. It shall not include loss of Tariff, revenues from sale of Electricity to others or debt repayment obligation.
- (iii) Relief for Unforeseen Events:
- (iv) Upon occurrence of an Unforeseen Event, the relief is to be determined by conciliation tribunal consisting of Judges.
- (v) For any material breach or default of this Agreement, Utility, by way of compensation, shall pay all direct costs suffered or incurred. It shall include interest on debt, O & M expenses and all costs directly attributable to such material breach or default. It shall not include loss of tariff, revenues from sale of electricity to others or debt repayment obligation.
- (vi) In the event of material breach or default, PTC shall pay all costs directly incurred or suffered a consequence of material breach or default.
- (vii) The defaulting party shall pay the other party, on termination, by way of termination payment, an amount equal to 3 months Tariff payable for normative availability.
- (viii) Procurer shall compensate for any increase or decrease in expenses to the Seller on account of Change in Law for any change in taxes (excluding taxes on corporate income), duties, cess or introduction of any tax, duty, cess made applicable for supply of power.

6. It is stated that as per the bid document, the discovered tariff is lumpsum tariff constituting fixed charge of Rs.0.01 per Kwh and the balance of Rs.4.23 per Kwh as variable charge, comprising the entire cost of production and supply of electricity from the Power Station up to the Delivery Point (Upto interconnection with CTU), including but not limited to the transmission charges and transmission losses.

7. M/s. PTC had quoted the trader margin as five paise (5) and stated that it shall be approved by the appropriate Commission for the Pilot Scheme.

8. As per the regulation, power is being procured on least cost basis and on Merit Order Despatch. Since the tariff of Rs.4.23 finds the last place among the fossil based power plants and will hardly be dispatched, PTC was requested to negotiate the discovered tariff of Rs.4.24 per Kwh and trader margin of five paise per Kwh and also clarification sought to limit the procurement to non-wind season i.e. January to May and October to December in a year.

9. TANGEDCO over and above the Power Supply Agreement notified by the Ministry of Power proposed some changes in certain clauses of the Power Supply Agreement which are advantageous to TANGEDCO. M/s.PTC has agreed to the following changes proposed by TANGEDCO and the followings have been agreed between the parties. However at the time of signing of the Power Supply Agreement, TANGEDCO made it clear that signing of the PSA is subject to negotiation of tariff and trader margin and approval of TANGEDCO Board and the Commission.

(i) During the term of the contract, Utility / Aggregator will ensure minimum monthly off-take of 55% of Contracted Capacity for nine months, excluding June, July & August every year. This period of 3 months (June, July & August) will be treated as No Obligation Period and Aggregator/Supplier shall not claim any compensation during No Obligation Period.

(ii) Utility will have right to offtake even during wind season (June, July and August) if power is required, subject to availability from the Supplier / Aggregator. During No Obligation Period, Utility can schedule power from supplier through Aggregator, subject to availability of power station and capacity is not contracted with any third party.

(iii) Utility / Aggregator shall have the right to refuse supply through alternate sources without any liability on the payment of tariff subject to Utility / Aggregator shall not claim compensation for non-supply or non-availability of power station / supplier.

(iv) Supplier has agreed for applying for Inter State Open Access from the nearest interconnection point of the Power Station with CTU till the State Periphery Point of Utility as preferred and on behalf of Utility. Utility shall reimburse all the applicable POC charges within the timeline as per relevant CERC Regulations.

(v) In case Utility is not in a position to schedule 55% of Contracted Capacity on RTC basis during emergency and festive season, supplier agrees to shut down the unit once (1 stop/1 start) per month during emergency and festive season. However Utility shall ensure to offtake at least 55% of contracted capacity during that month and provide sufficient time in advance for the restart of the unit.

(vi) For ease of calculation and commercial settlement of all the three parties, it was also agreed that Compensation for off-take less than the specified quantum shall be calculated on monthly basis using Monthly Average (RTC) MCP of Power Exchange (IEX) for the respective month subject to Utility / Aggregator scheduling not less than 55% of Contracted Capacity on RTC basis. Similarly, if declared availability by Supplier/ Aggregator is less than the specified quantum, compensation shall be calculated on monthly basis using the Monthly Average (RTC) MCP at the Power Exchange (IEX) for such month and if IEX price is lower than Tariff, no compensation shall be required to be paid by Supplier /Aggregator.

10. In response to the negotiation meeting, M/s.PTC vide letter dated 20-11-.2018 has stated that-

(i) As the tariff emerged is during the E-bidding and Reverse Auction process and the tariff and trading margin have been agreed to by other stake holders, M/s PTC expressed their inability to alter the tariff and trading margin.

- (ii) However, M/s.IL&FS offered an additional discount of 2% on the tariff instead of 1% on the tariff for off take of power beyond 55% and up to 80% of the contracted capacity on monthly basis.
- (iii) On account of discount offered .by M/s.IL&FS ,the weighted average tariff is tabulated below.

| Percentage of Schedule | Weighted average tariff for 1% discount in Rs/Kwh | Weighted average tariff for 2% discount in Rs/Kwh |
|------------------------|---|---|
| Upto 55% | 4.240 | 4.240 |
| 55% to 60% | 4.237 | 4.233 |
| 60% to 65% | 4.230 | 4.220 |
| 65% to 70% | 4.222 | 4.204 |
| 70% to 75% | 4.212 | 4.183 |
| 75% to 80% | 4.200 | 4.161 |

11. Monthly financial commitment towards the procurement of 55% offtake of the contracted capacity (55% of 550 MW) at the discovered tariff of Rs.4.24 per Kwh is Rs.92.35 crores besides trading margin and transmission charges.

12. Board of TANGEDCO in its 85th meeting has approved the procurement of 550 MW RTC power under medium term contract for a period of three years through aggregator M/s. PTC India Ltd. under “Pilot Scheme” with amended terms as mentioned above.

13. As per the provisions of the agreement, appointed date shall be the date of commencement of the contract and contract period means earlier of 3rd anniversary of the appointed date and date of termination of agreement.

14. TANGEDCO has further submitted that M/s. PTC has quoted the trader margin as five paise (5), during the term of the contract, utility / Aggregator will ensure minimum monthly off take of 55% of contracted capacity for nine months, excluding June, July and August every year. This period of 3 months will be treated as No Obligation period and the Aggregator / supplier shall not claim any compensation during that period.

15. TANGEDCO have submitted that the negotiation meeting was conducted with PTC and they have expressed their inability to alter the tariff and the trading margin as the tariff merged was through e-bidding and reverse auction process and the tariff and trading margin had been agreed to by other stakeholders. However, M/s. IL & FS offered an additional discount of 2% on the tariff instead of 1% on the tariff for off take off power beyond 55% and upto 80% of the contracted capacity on monthly basis.

16. During the hearing held on 16-07-2019, the Commission directed to issue notice to M/s.PTC India Ltd. Accordingly, notice has been issued to M/s.PTC India Ltd. by TANGEDCO on 20-08-2019, the Relationship Manager of M/s. PTC India Ltd. appeared and filed a Memo stating that they have no objection for adoption of tariff.

17. Ongoing through the petition filed for adoption, we see that there is justification for the present procurement in view of the further requirement of 550 MW of RTC power for a period of 3 years through the aggregator M/s. PTC under Pilot Scheme. Under section 63 of the Electricity Act, 2003, the Commission

adopts the rates of Rs.4.24 per unit upto the delivery point, discovered in the e-bidding process framed by the Ministry of Power, GOI for the procurement of 550 MW RTC power through the aggregator M/s. PTC.

Ordered accordingly.

(Sd.....)
(K.Venkatasamy)
Member (Legal)

(Sd.....)
(Dr.T.Prabhakara Rao)
Member

(Sd.....)
(M.Chandrasekar)
Chairman

/True Copy /

Secretary
Tamil Nadu Electricity
Regulatory Commission