

TAMIL NADU ELECTRICITY REGULATORY COMMISSION
(Constituted under section 82 (1) of the Electricity Act, 2003)
(Central Act 36 of 2003)

PRESENT:

Thiru M. Chandrasekar

and

... Chairman

Thiru K. Venkatasamy

M.P. No.48 of 2021

... Member (Legal)

Tamil Nadu Generation and Distribution
Corporation Limited
Represented by the Chief Engineer / PPP
144, Anna Salai
Chennai – 600 002.

... Petitioner
(Thiru. M. Gopinathan
Standing Counsel for TANGEDCO)

Adv. AshwinRamanathan
on behalf of M/s. Manikaran Power Limited

and

M/s. SaiWardha Power Generation Limited
(Intervenors)

**Dates of hearing : 21-12-2021; 19-01-2022; 01-02-2022;
15-02-2022; 22-02-2022; 08-03-2022
22-03-2022and 29-03-2022**

Date of Order : 31-03-2022

The M.P.No.48 of 2021 came up for final hearing on29-03-2022. The Commission, upon perusal of the petition and after hearing the submissions of the petitioner hereby makes the following order:-

ORDER

1. Prayer of the Petitioner in M.P No. 48 of 2021:-

The prayer of the petitioner in this petition is to accord approval to float a medium term tender under FOO guidelines with the deviations proposed in the Bidding Documents in line with Pilot Scheme -II for purchase of 1500 MW RTC power for a period of 5 years appointing M/s. PTC as an Aggregator.

2. Facts of the Case:-

This petition has been filed seeking approval for proposed deviation and floating of tender by the petitioner, TANGEDCO for procurement of 1500 MW RTC power for a period of five years through the Aggregator M/s. PTC India Ltd.

3. Contentions of the Petitioner:-

3.1. The petitioner, Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO), incorporated under the Companies Act, 1956, and the successor entity of erstwhile Tamil Nadu Electricity Board and engaged in the business of Generation, Distribution activities and a distribution licensee in the State of Tamil Nadu for distribution of electricity to various categories of consumers in the State of Tamil Nadu and the electricity so required is availed from various sources such as its own generating stations, and purchase of power from various Central Generating Stations of its share, Independent Power Plants, Captive Power Plants, Wind generators, Co-generation plants, Bio – mass plants, Merchant power plants, Power exchanges etc.

3.2. This Miscellaneous Petition is filed seeking approval from the Commission for proposed deviation from the Model Bidding Document and floating of Medium Term Tender for procurement of 1500 MW RTC power for a period of five years through the Aggregator M/s.PTC India Ltd under FOO (Finance, Own, Operate) Guidelines.

3.3. All time high demand met by TANGEDCO and the all time high consumption in the State of Tamil Nadu is as below.

In Tamil Nadu State, an all time high demand of 16846 MW met on 10.04.21 and all time high consumption of 372.702 MU was met on 09.04.2019.

Restriction and Control measures (R&C) in the state have been lifted with effect from 05.06.2015 and directions of the GOTN issued under Section-11 of Electricity Act 2003 have been revoked with effect from 01.06.2016.

3.4. As per the MoP's Guidelines for Determination of Tariff by bidding Process for Procurement of power by Distribution Licensee, the demand forecast shall be based on the latest available Electric Power Survey published by the Central Electricity Authority. Based on the projection in 19th EPS Survey, demand and availability upto 2027 has been assessed and deficit projected without considering the renewable energy. The workings of long term projection of peak demand, energy and peak availability for the period from 2022-23 to 2026-27 as per 19thEPS survey is detailed below:-

Year	Projected Demand during the Period (in	Projected Availability during the period (in	Surplus / Deficit in MW	Expected Projects availability during the year considered under "Availability" in
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	MW)	MW)		Col.5
1	2	3	4	5
2021-22	16846	15501	-1345	511
2022-23	17613	15498	-2115	618
2023-24	18415	17952	-462	2394
2024-25	19253	18367	-886	355
2025-26	20129	18379	-1751	0
2026-27	21046	20161	-585	2046

3.5. The estimated capacity additions for the period from 2023 to 2027 in the ongoing projects considered at Ennore SEZ STPS, Udangudi stage I project and Kudankulam APS unit 3 are also getting delayed and expected to be commissioned and contribute to grid beyond the forecasted period. Hence the present proposal will help in managing the demand and supply position.

3.6. TANGEDCO is meeting the demand from the Installed Capacity of conventional sources of 14,783 MW (TANGEDCO Thermal 4320 MW + Gas 516 MW + IPP 416 MW + CGS Share 6151 MW + LTA 2830 MW+MTOA550 MW). Considering a PLF of 85%, the net availability will be 12,565 MW. The demand projection for the FY 22-23 to FY 26-27 was based on the ongoing projects in Tamil Nadu State and Central share.

3.7. The Ministry of Power, through a Resolution dated 29.01.2019 had issued revised guidelines and Model Bidding Documents (MBDs) for procurement of electricity for Medium Term from Power Stations set up on Finance, Own and Operate (FOO) basis under the provisions of Section 63 of the Electricity Act, 2003.

Coal Linkage Allocation Policy for Power Sector known as “Scheme for Harnessing and Allocating Koyala (Coal) Transparently in India (SHAKTI Policy) was issued by the Ministry of Coal on 22.05.2017. Under the SHAKTI scheme, use of linkage coal has also been allowed in Medium Term Power procurement.

3.8. Initially, TANGEDCO decided to purchase 500 MW RTC power through medium term contract for a period of three years under Pilot Scheme -II @ of Rs.3.26 per Kwh (Fixed cost - Rs.1.63 and Energy cost - Rs.1.63 per Kwh). The TANGEDCO Board and Commission had approved the proposal for purchase of 500 MW RTC power.

3.9. Out of the approved quantum of 500 MW, TANGEDCO had executed Power Supply Agreement (PSA) with M/s.PTC India Ltd for supply of 400 MW RTC power sourced from the following generators.

Sl. No.	Name of the Generator / Developer	Quantum (MW)
1	Jai Prakash Power Ventures Ltd.	50
2	SKS Power Generation Chhattisgarh Ltd.	100
3	DB Power Ltd.	100
4	MB Power (Madhya Pradesh) Ltd.	150
	Total	400

TANGEDCO has decided to off take 400 MW RTC power under STOA from 20.01.2022 till medium term open access is allotted which is expected during May 2022.

The Commission vide its order dated 30.11.2021 has reserved the Tariff Adoption order for the petition filed by TANGEDCO for purchase of 400 MW RTC power under Pilot Scheme-II.

3.10. In addition to the above, TANGEDCO had filed Miscellaneous Petition No.41 of 2021 requesting approval for purchase of additional quantum of 1000 MW for a period of three (3) years under Pilot Scheme-II. The Commission pronounced its order on 16.11.2021 approving the proposal of TANGEDCO.

Accordingly, M/s.PTC was addressed vide letter dated 18.11.2021 to furnish the list of generators to supply 1100 MW RTC power to TANGEDCO under Pilot Scheme II and also make arrangements to execute Power Supply Agreement at the earliest.

3.11. In response to the above, M/s.PTC vide letter dated 22.11.2021 had expressed their inability to execute Power Supply Agreement for the balance quantum of 1100 MW RTC power under Pilot Scheme -II since the generators did not extend their bid validity and further requested to consider the following as a way-forward for procurement of balance quantum of 1100 MW.

TANGEDCO to appoint PTC as Aggregator / preferred trader for procurement of 1100 MW power for 3 to 5 years under Medium Term as suitable to TANGEDCO.

1. PTC will prepare Bid documents including draft PPA and PSA to be floated by TANGEDCO for selection of generators in line with Pilot Scheme –II of MoP.
2. After finalisation of the modalities, TANGEDCO to float a tender for procurement of 1100 MW RTC power.
3. Generators will submit their bids on DEEP e- bidding platform for discovery of Tariff through a transparent bidding process.
4. Aggregator on behalf of TANGEDCO will sign PPA with successful bidders and Back to Back PSA with TANGEDCO
5. TANGEDCO shall pay Aggregator, an Aggregator margin under this Agreement.

3.12. The power obtainable from already signed long/medium term PPAs are as below:

- * Due to rise in price of the imported coal, the Intra State generators in Tamil Nadu viz Coastal Energen Ltd (CEPL), OPG and IL&FS who have contracted 558 MW, 74 MW and 540 MW with TANGEDCO had stopped supply of power from September 2021 onwards and again started supplying from Dec'21 onwards.
- * On an average under Merit Order Despatch, TANGEDCO could avail only 55% of the contracted capacity i.e around 650 MW from the above Intra State generators and the unavailed quantum is 45% ie 522 MW.
- * In addition to the above, the Power Supply Agreement under Pilot Scheme -I executed for supply of 550 MW RTC power @ 4.24 per unit sourced from M/s.IL&FS is expiring on 31.03.2022.

3.13. The reason for floating new tender with M/s.PTC as Aggregator is to meet out the above shortfall in quantum, it is suggested that if a medium term tender under FOO (Finance, Own, and Operate) guidelines in line with Pilot Scheme –II appointing M/s.PTC as Aggregator is floated through DEEP e-bidding portal, the expected tariff would be less than the present tariff paid under long and medium term PPAs in TANGEDCO.

3.14. The abstract of Medium Term Contract (FOO) Guidelines as below:

- * The guidelines provides for Model Bidding Documents comprising RFP, RFQ and PPA.
- * The guidelines provide for purchase of power between one and five years.
- * The tariff determined through DEEP e- bidding process using e- reverse Auction comprising Model Bidding Documents shall be adopted by Appropriate Commission as per provision in Section 63 of Electricity Act.
- * As per para (4) of the guidelines issued by Ministry of Power dated 30.01.2019, any deviation from the Model Bidding documents shall be made only with the prior approval of the Appropriate Commission.

Provided, however, that any specific modifications expressly permitted in the Model Bidding Documents shall not be construed as deviations from the Model Bidding Documents.

3.15. The salient features of (Finance, Own and Operate) FOO guidelines after incorporating deviations to be sought by TANGEDCO from the Model Bidding Document.

- * Contract period is fixed for 5 years
- * Contracted Capacity is 1500 MW RTC power
- * Availability @ 85 % of the contracted capacity
- * If availability is more than 85%, incentive @ 50% of Fixed charge
- * If availability is less than 85%, penalty @ 100% of Fixed charge
- * Obtaining Open Access from plant to TANGEDCO periphery is the responsibility of the bidder.
- * Due date for payment of monthly energy bill is 30 days from the receipt of invoice.
- * Rebate of 2% if paid within 5 days and 1% if paid within 30 days.
- * Late payment surcharge is @bank rate on the outstanding amount
- * Payment Security is Standby Letter of Credit with an amount equal to one month energy bill @ Normative availability.
- * Bid Security @ of Rs.5,00,000 per MW
- * Performance Security @ Rs.8,00,000 per MW valid for 6 months and after that Deemed Performance Security for a like amount is deemed to be created for entire contract period.
- * Change in Law shall be in accordance with Ministry of Power Notification dated 22.10.2021.
- * No FC for non supply due to shortage of fuel
- * If supply from alternate supply is denied by TANGEDCO, no FC need to be paid.
- * If sold to third party, revenue received from buyers shall be applied first towards reduction of fixed charge payable by the utility and only the balance remaining shall be appropriated by the supplier.
- * Termination for default by Utility - Failure to make payment to the Aggregator and unable to recover through Standby Letter of Credit within specified time period in this Agreement

- * Termination for default by Aggregator – In breach of Agreement sale of power to Third party and fails to pay damages. Fails to achieve monthly availability of 70% for a period of 4 consecutive months or for a cumulative period of four months within any continuous period of (12) months except for Force Majeure condition.

Force Majeure

- * Non political event-act of god, lightning, earth quake cyclone, flood, volcanic eruption, fire etc
- * Indirect political event- act of war, invasion, armed conflict or act of foreign enemy etc
- * Political event – change in law ,compulsory acquisition in national interest, unlawful or unauthorised or without jurisdiction revocation of, or refusal to renew or grant any clearance license, permit consent, approval etc.,

Relief for Unforeseen Events:

- * Upon occurrence of an Unforeseen Event, the relief is to be determined by conciliation tribunal consisting of Judges.

Conditions Precedent:

- * Utility shall provide Letter of Credit and get the approval from TNERC for payment of tariff.
- * Aggregator shall provide Performance Security.
- * Failure to fulfil the conditions precedent by the utility, damages @0.1% of Performance Security for each day of delay subject to the maximum of 20% of Performance Security.
- * Failure to fulfil the conditions precedent by the Aggregator, damages @0.3% of Performance Security for each day of delay subject to the maximum amount equal to Bid Security.

Termination

- * Non commencement of supply within 120 days from the date of agreement, the agreement is deemed to be terminated by mutual agreement and utility can encash the Performance Security as damages in addition to termination payment of 6 months of fixed charges @ 85% availability.
- * Failure to make payment by the Utility- Damage of payment of Fixed charge @ 85% availability for a period of 3 months.

3.16. TANGEDCO on the basis of Model Bidding Documents issued by Ministry of Power has prepared the draft bid documents. TANGEDCO intends to make certain deviations to Model Bidding Documents to ensure commercial clarity with respect to provisions in the Agreement, to safe guard the interest of TANGEDCO and to avoid cost implication on TANGEDCO and the details of deviations /modifications proposed in the Model Bidding documents is as below:

Sl. No.	Provisions in FOO(Medium Term Model Bid Document)	Deviations sought by TANGEDCO
1.	Agreement for Procurement of Power (APP) to be signed between Discom and successful bidder(s)	<p>Agreement for Procurement of Power (APP) to be signed between PTC/Aggregator and successful bidder(s) and back to back Power Supply Agreements (PSAs) to be signed between Discom and PTC/Aggregator for respective APP.</p> <p>Accordingly in APP, Utility will be replaced with Aggregator where ever applicable.</p> <p>In line with APP, PSA shall be issued by</p>

		Utility wherein Supplier shall be replaced with Aggregator where ever applicable.
2.	<p>RFQ 1.2.13 Lumpsum Tariff</p> <p>The Bidder shall quote a Base Variable Charge comprising the generating cost of electricity, the transmission charges and the transmission losses. Based on its Bid, a lumpsum tariff shall be paid to the Supplier comprising of (a) a Base Variable Charge, and (b) a Base Fixed Charge, as per the provisions of Clause 12.3.1 of the APP. The Tariff shall be revised as per the terms of the APP. The Bid for the Project shall, therefore, comprise the Base Fixed Charge and the Base Variable Charge and the Bidder seeking the lowest Tariff shall be the Selected Bidder.]</p>	<p>RFQ 1.2.13 Lumpsum Tariff</p> <p>The Bidder shall quote a Base Variable Charge comprising the generating cost of electricity, the transmission charges and the transmission losses. Based on its Bid, a lumpsum tariff shall be paid to the Supplier comprising of (a) a Base Variable Charge, and (b) a Base Fixed Charge, as per the provisions of Clause 12.3.1 of the APP. The Tariff shall be revised as per the terms of the APP. The Bid for the Project shall, therefore, comprise the Base Fixed Charge and the Base Variable Charge and the Bidder seeking the lowest Tariff shall be the Selected Bidder.</p> <p>In this Section A, the term “Lowest Bidder” shall mean the Bidder who is offering the lowest Tariff.</p> <p>It is clarified that the Bidder shall be paid only Fixed Charge and Variable Charge comprising generating cost of electricity only (At interconnection Point i.e. from the Power Station to the nearest CTU). ISTS and Tamil Nadu intra-state transmission charges and losses shall be to the account of the Utility. The Bidder shall quote ISTS transmission charges and ISTS transmission losses as provided by the</p>

		<p>Utility. Bidder connected to Tamil Nadu STU system transmission charges and transmission losses shall be zero.</p> <p>The Bidder shall consider all cost and charges, except as provided herein, in the quoted Tariff.</p>
3.	<p>RFQ -2.2 Eligibility of Bidders</p> <p>2.2.1 For determining the eligibility of Bidders for their pre-qualification hereunder, the following shall apply:</p> <p>(a) The Bidder should be a corporate entity;</p> <p>(b) The Bidder should either be the owner and operator of the Power Station from where electricity shall be supplied [or a Trading Licensee;</p> <p>(c) In case of Bidder being a Trading Licensee, such Trading Licensee should have executed a power purchase agreement or an equivalent arrangement with the Developer for atleast the Capacity for which the Application has been made];</p>	<p>RFQ -2.2 Eligibility of Bidders</p> <p>2.2.1 For determining the eligibility of Bidders for their pre-qualification hereunder, the following shall apply:</p> <p>(a) The Bidder should be a corporate entity;</p> <p>(b) The Bidder should be the owner and operator of the Power Station from where electricity shall be supplied;</p> <p>(c) The Applicant should not have an existing power purchase agreement for the quantum of power quoted under this Bid;</p> <p>(d) Commercial Operation Date (COD) of the Power Station should be on or before the Bid Due Date.</p>
4.	<p>RFQ 2.2 Eligibility of Bidders</p> <p>2.2.1 (d) the Power Station has access to an assured supply of Fuel;</p>	<p>RFQ 2.2 Eligibility of Bidders</p> <p>2.2.1 (d) the Power Station has access to an assured supply of Fuel; An Undertaking or commitment letter for firm fuel arrangement for supply of power may be submitted by Bidders.</p>

5.	<p>RFQ Article 2.2.2 (A)</p> <p>For demonstrating technical capacity and experience (the "Technical Capacity"), the Applicant shall own and be responsible for operation of Power Station having an installed capacity equivalent to the twice of the capacity for which the Bidder is willing to Bid.</p>	<p>RFQ Article 2.2.2 (A)</p> <p>For demonstrating technical capacity and experience (the "Technical Capacity"), the Applicant shall own and be responsible for operation of Power Station having an installed capacity atleast equivalent to the capacity for which the Bidder is willing to Bid.</p>
6.	<p>RFQ Article 2.2.2 (B)</p> <p>Financial Capacity: The Bidder shall have a minimum Net Worth (the "Financial Capacity") equivalent to Rs. 1 crore (Rs. one crore) per MW of the capacity the Bidder is willing to Bid, at the close of the preceding financial year. Bidders shall not be allowed to increase their capacity at e-Reverse Auction Stage or L1 Matching round greater than for which Financial Capacity has been demonstrated.</p>	<p>RFQ Article 2.2.2 (B)</p> <p>Deleted.</p>
7.	<p>Agreement for Procurement of Power (APP)</p> <p>Article 3.1.1</p> <p>.....Provided that at any time 3 (three) months, prior to the expiry of the Contract Period specified herein above, the Parties may with mutual agreement extend the Contract Period for such further period as they may determine,</p>	<p>Agreement for Procurement of Power (APP)</p> <p>Article 3.1.1</p> <p>Deleted.</p>

	but not exceeding the lower of 25% (twenty five per cent) of initial contract period or one year whichever is lower.	
8.	<p>Agreement for Procurement of Power (APP)</p> <p>Article 5.5 Obligations relating to transmission charges</p> <p>The Supplier shall be liable for payment of all charges, due and payable under Applicable Laws, for inter-state and intra-state transmission of electricity from the Point of Grid Connection to the Delivery Point. For the avoidance of doubt, the Parties expressly agree that inter-state and intra-state transmission of electricity shall be undertaken solely at the risk and cost of the Supplier and all liabilities arising out of any failure of inter-state and intra-state transmission shall, subject to the provisions of Clause 11.4.4, be borne by the Supplier. The Parties further agree that the obligation of the Supplier to pay the regulated charges for transmission of electricity shall be restricted to the tariffs and rates applicable on the Bid Date for and in respect of the Contracted Capacity and any differential arising from revision of the regulated tariffs and rates thereafter shall be payable or</p>	<p>Agreement for Procurement of Power (APP)</p> <p>Article 5.5 Obligations relating to transmission charges</p> <p>5.5.1 The Supplier shall be liable for payment of all charges, due and payable under Applicable Laws, for intra-state transmission of electricity from the Power Station to the point of interconnection with the inter-state transmission system.</p> <p>5.5.2 The Aggregator shall be liable for payment of all charges, due and payable under Applicable Laws, for inter-state transmission of electricity up to the Delivery Point.</p>

	<p>recoverable, as the case may be, by the Utility. The Parties also agree that the regulated charges applicable for transmission of electricity referred to hereinabove as on the Bid Date shall be deemed to be Rs. (Rupees) for and in respect of the Contracted Capacity\$, which charges shall at all times be due and payable by the Supplier.</p>	
<p>9.</p>	<p>Agreement for Procurement of Power (APP) Article 5.6 Obligations relating to transmission losses</p> <p>5.6.1 The Supplier shall be liable for the transmission losses in all inter-state and intrastate transmission of electricity from the Point of Grid Connection to the Delivery Point. For the avoidance of doubt, the Parties expressly agree that transmission of electricity shall be undertaken solely at the risk and cost of the Supplier and all liabilities arising out of any transmission losses on inter-state and intra-state transmission lines shall be borne by the Supplier. The Parties further agree that the obligation of the Supplier to bear the transmission losses shall be restricted to the level of losses</p>	<p>Agreement for Procurement of Power (APP) Article 5.6 Obligations relating to transmission losses</p> <p>5.6.1 The Supplier shall be liable for the transmission losses in all intra -state transmission of electricity from the Power Station to the point of interconnection with the inter-state transmission system.</p> <p>5.6.2 The Aggregator shall be liable for the transmission losses in all inter-state transmission of electricity up to the Delivery Point.</p>

<p>determined by the Central Commission as on the Bid Date for this Project and any differential (higher or lower) arising from revision in the level of losses thereafter by the Central Commission shall be borne by the Utility.</p> <p>5.6.2 The Supplier represents and warrants that it has ascertained and assessed the applicable transmission losses from the Point of Grid Connection to the Delivery Point as determined by the Appropriate Commission for and in respect of the Bid Date, and expressed in the form of their proportion to the electricity supplied hereunder at the Point of Grid Connection. The Supplier acknowledges, agrees and undertakes that the product of such transmission losses (expressed in kWh) and the Tariff shall be due and payable by the Supplier to the Utility and shall be adjusted in the relevant Monthly Invoice. For the avoidance of doubt and by way of illustration, the Parties agree that if the transmission losses in any month are equivalent to 1 (one) lakh units and the Tariff payable for that month is Rs. 3 (Rupees three) per kWh, an amount of Rs. 3,00,000/- (Rupees three lakh) shall be due and payable by the Supplier to</p>	
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	the Utility and shall be adjusted in the Monthly Invoice for that month.	
10.	<p>Agreement for Procurement of Power (APP)</p> <p>Article 5.7 Obligations relating to SLDC and RLDC charges</p> <p>The Supplier shall be liable for payment of all the charges, due and payable under Applicable Laws by the Supplier to the SLDC and RLDC for and in respect of all its supplies to the Utility.</p>	<p>Agreement for Procurement of Power (APP)</p> <p>Article 5.7 Obligations relating to SLDC and RLDC charges</p> <p>5.7.1 The Supplier shall be liable for payment of all the charges, due and payable under Applicable Laws by the Supplier to the SLDC and RLDC for and in respect of all its supplies to the Aggregator.</p> <p>5.7.2 In the interim period till MTOA becomes operational, the Utility shall have the right to schedule power on Short Term Open Access (STOA) basis. Further, the Aggregator ensure that the Utility shall obtain the STOA and shall be liable for payment of all charges, due and payable under Applicable Laws in respect of STOA including Application Fee, SLDC, RLDC charges etc.</p>
11.	<p>Agreement for Procurement of Power (APP)</p> <p>Article 9.1.1 Performance Security</p> <p>The Supplier shall, for the performance</p>	<p>Agreement for Procurement of Power (APP)</p> <p>Article 9.1.1 Performance Security</p> <p>The Supplier shall, for the performance of</p>

	<p>of its obligations hereunder, provide to the Utility no later than 30 (thirty) days from the date of this Agreement, an irrevocable and unconditional guarantee from a Schedule Bank for a sum equivalent to Rs. ***** crore (Rupees ***** crore)4 in the form set forth in Schedule-B (the "Performance Security") for a period of 6 (six) months.</p>	<p>its obligations hereunder, provide to the Aggregator no later than 30 (thirty) days from the date of this Agreement, an irrevocable and unconditional guarantee from a Schedule Bank for a sum equivalent to Rs. ***** crore (Rupees ***** crore)4 in the form set forth in Schedule-B (the "Performance Security") upto expiry of the Agreement.</p>
12.	<p>Agreement for Procurement of Power (APP) Article 10.3 Substitute Supply In the event the Availability of the Power Station is reduced on account of scheduled maintenance, unscheduled maintenance, shortage of Fuel or Force Majeure, the Supplier may, with prior consent of the Utility, which consent the Utility may deny in its sole discretion or convey acceptance with such conditions as it may deem fit, supply electricity from any alternative source, and such supply shall, for payment of Fixed Charge and Variable Charge, be deemed to be supply under and in accordance with the provisions of this Agreement. For the avoidance of doubt, the Parties agree that in the event the Utility rejects any supply of electricity offered here under from an alternative source, the</p>	<p>Agreement for Procurement of Power (APP) Article 10.3 Substitute Supply In the event the Availability of the Power Station is reduced on account of scheduled maintenance, unscheduled maintenance, shortage of Fuel or Force Majeure, the Supplier may, with prior consent of the Aggregator, which consent the Aggregator may deny in its sole discretion or convey acceptance with such conditions as it may deem fit, supply electricity from any alternative source, and such supply shall, for payment of Fixed Charge and Variable Charge, be deemed to be supply under and in accordance with the provisions of this Agreement. Provided that Aggregator shall have the right to refuse supply of power through alternate source without any liability on the payment of Fixed Charge to Supplier and the Aggregator</p>

	Supplier shall be deemed to be in compliance with this Agreement for the purpose of determination of Availability and payment of Fixed Charge.	shall not claim compensation/damages from Supplier for non-supply or non-availability of power station for such duration.
13.	<p>Agreement for Procurement of Power (APP)</p> <p>Article 11.3 Fixed Charge</p> <p>For determining the Fixed Charge due and payable to the Supplier, the Base Fixed Charge shall be revised annually to reflect 20% (twenty per cent) of the variation in WPI occurring between January 31 immediately preceding the Bid Date and January 31 immediately preceding the Accounting Year for which such revision is undertaken. For the avoidance of doubt and by way of illustration, if (a) the Bid Date occurs in March 2015; (b) the appointed date occurs in May 2019; and (c)WPI increases by 20% (twenty per cent) between January 31, 2015 and January 31, 2019, the Fixed Charge for the Accounting Year commencing from April 1, 2019 shall be 104% (one hundred and four per cent) of the Base Fixed Charge.</p>	<p>Agreement for Procurement of Power (APP)</p> <p>Article 11.3 Fixed Charge</p> <p>The Parties agree that the Fixed Charge payable for Availability shall be the Base Fixed Charge as provided in clause 11.2, which shall remain constant for the entire Contract Period. Fixed Charge is fifty percent of the total tariff which is inclusive of taxes and duties.</p>
14.	<p>Agreement for Procurement of Power (APP)</p> <p>Article 11.4.4</p>	<p>Agreement for Procurement of Power (APP)</p> <p>Article 11.4.4</p>

	<p>In the event that any shortfall in supply of electricity to the Utility occurs on account of deficiency in transmission between the Point of Grid Connection and Delivery Point, Availability shall be deemed to be reduced and the Non-Availability arising as a consequence thereof shall, for the purposes of payment of Fixed Charge, be deemed to be Availability to the extent of 50% (fifty per cent) of the Non-Availability hereunder. Provided, however, that the Supplier may, in its sole discretion, Despatch the Power Station to the extent of full or part Non-Availability hereunder for supply to other Buyers, and to the extent of full or part Non-Availability hereunder for supply to other Buyers, and to the extent of such Despatch, the Utility shall not be liable to payment of any Fixed Charge due and payable in accordance with the provisions of this Clause 11.4.4.....</p>	<p>In the event that any shortfall in supply of electricity to the Aggregator occurs on account of deficiency in transmission between the Point of Grid Connection and Delivery Point, Availability shall be deemed to be reduced in accordance with the provisions of Clause 11.5.2 and the Aggregator shall not be liable for payment of any Fixed Charge for the Non-Availability arising as a consequence thereof.</p>
<p>15.</p>	<p>Agreement for Procurement of Power (APP)</p> <p>Article 11.4.5</p> <p>In the event that any short fall in supply of electricity to the Utility occurs on account of shortage of Fuel, Availability</p>	<p>Agreement for Procurement of Power (APP)</p> <p>Article 11.4.5</p> <p>In the event that any shortfall in supply of electricity to the Aggregator occurs on account of shortage of Fuel, Availability</p>

	<p>shall be deemed to be reduced in accordance with the provisions of Clause 11.5.3. Provided, however, that the Non-Availability arising as a consequence of shortage of Fuel caused by any event of Force Majeure shall, for the purpose of payment of Fixed Charge, be deemed to be availability to the extent of 30% (thirty per cent) of the Non-Availability hereunder.</p>	<p>shall be deemed to be reduced in accordance with the provisions of Clause 11.5.3. Provided, however, that the Aggregator shall not be liable to payment of any Fixed Charge for the Non-Availability arising as a consequence of shortage of Fuel.</p>
16.	<p>Agreement for Procurement of Power (APP) Article 11.6.2</p> <p>In the event that Availability in any month is less than the Normative Availability, the Fixed Charge for such month shall be reduced to the extent of shortfall in Normative Availability and in addition, any reduction below the Normative Availability shall be multiplied by a factor of 0.25 (zero point two five) to determine the Damages payable for such reduction in Availability. For the avoidance of doubt, the Parties agree that the Damages to be deducted for any reduction in Normative Availability shall be 25% (twenty five per cent) of the Fixed Charge which is reduced on account of shortfall in Availability below Normative availability.</p>	<p>Agreement for Procurement of Power (APP) Article 11.6.2</p> <p>In the event that Availability in any month is less than the Normative Availability, the Fixed Charge for such month shall be reduced to the extent of shortfall in Normative Availability and in addition, for any reduction below the Normative Availability, the Aggregator shall pay 100% of the Fixed Charges to the Utility as Damages payable for such reduction in Availability.</p> <p>For the avoidance of doubt, the Parties agree that the Damages to be deducted for any reduction in Normative Availability shall be 100% (One Hundred percent) of the Fixed Charge which is reduced on account of shortfall in Availability below</p>

		<p>Normative availability.</p> <p>However, it is clarified that no Damages shall be payable for reduction in Availability on account of transmission constraint.</p>
17.	<p>Agreement for Procurement of Power (APP)</p> <p>Article 11.8 Taxes and duties</p> <p>11.8.1 The Parties expressly agree that the Tariff shall be inclusive of all taxes and duties, save and except the taxes and duties specified in Clause 11.8.2. It is further agreed that the Supplier shall pay all taxes and duties, including the taxes and duties specified in Clauses 11.8.2, in accordance with Applicable Laws.</p> <p>11.8.2 The Tariff and Incentives payable by the Utility under this Article 11 shall be exclusive of Service Tax, Electricity Duty, Value Added Tax or General Sales Tax, Custom Duty on Fuel or any replacement thereof, if applicable, and any Service Tax, Electricity Duty, Value Added Tax or General Sales Tax and Custom Duty on fuel thereon shall be paid by the Supplier and reimbursed by the Utility upon submission of necessary</p>	<p>Agreement for Procurement of Power (APP)</p> <p>Article 11.8 Taxes and duties</p> <p>11.8.1 The Parties expressly agree that the Tariff shall be inclusive of all taxes and duties. It is further agreed that the Supplier shall pay all taxes and duties, including the taxes and duties specified in Clauses 11.8.2, in accordance with Applicable Laws.</p> <p>11.8.2 The Tariff and Incentives payable by the Aggregator under this Article 11 shall be inclusive of Service Tax, Electricity Duty, Value Added Tax or General Sales Tax, Custom Duty on Fuel or any replacement thereof, if applicable, and any Service Tax, Electricity Duty, Value Added Tax or General Sales Tax and Custom Duty on fuel thereon shall be paid by the Supplier.</p> <p>11.8.3 Any payment to be made by the Aggregator shall be subject to any tax deduction at source, if required to be</p>

	<p>particulars by the Supplier.</p> <p>11.8.3 Any payment to be made by the Utility shall be subject to any tax deduction at source, if required to be made by the Utility as per Applicable Laws.</p>	<p>made by the Aggregator as per Applicable Laws.</p>
18.	<p>Agreement for Procurement of Power (APP) Article 11.9.3</p> <p>The Aggregator shall, within 30 (thirty) days of receipt of a Monthly Invoice in accordance with Clause 11.9.1 (the "Payment Due Date"), make payment of the amount claimed directly, through electronic transfer, to the nominated bank account of the Supplier, save and except any amounts which it determines as not payable or disputed (the "Disputed Amounts").</p>	<p>Agreement for Procurement of Power (APP) Article 11.9.3</p> <p>The Aggregator shall, within 32 (thirty two) days of receipt of a Monthly Invoice in accordance with Clause 11.9.1 (the "Payment Due Date"), make payment of the amount claimed directly, through electronic transfer, to the nominated bank account of the Supplier, save and except any amounts which it determines as not payable or disputed (the "Disputed Amounts").</p>
19.	<p>Agreement for Procurement of Power (APP) Article 11.11 Discount for early payment</p> <p>The Parties expressly agree that in the event the Utility pays the Tariff within 5 (five) days of the date of submission of the invoice thereof, it shall be entitled to deduct 1% (one per cent) of the amount comprising the Tariff by way of discount for early payment.</p>	<p>Agreement for Procurement of Power (APP) Article 11.11 Discount for early payment</p> <p>The Parties expressly agree that in the event the Aggregator pays the Tariff within 5 (five) days of the date of submission of the invoice thereof, it shall be entitled to deduct 2% (two per cent) of the amount comprising the Tariff by way of discount for early payment. However, in case the Aggregator pays the tariff after 5</p>

		days till Due Date, it shall be entitled to deduct 1% (one per cent) of the amount comprising the Tariff.
20.	<p>Agreement for Procurement of Power (APP)</p> <p>Article 13 Payment Security:</p> <p>13.1 Default Escrow Account and Deed of Hypothecation</p> <p>13.2 Letter of Credit</p>	<p>Agreement for Procurement of Power (APP) Article 13 Payment Security:</p> <p>13.1 Deleted</p> <p>13.2 Letter of Credit</p>
21.	<p>Agreement for Procurement of Power (APP)</p> <p>Article 14.2 Settlement of UI charges</p> <p>14.2.1 All payments due to or from the Supplier on account of any unscheduled interchange in terms of the UI Regulations (the "Unscheduled Interchange" or "UI") shall be solely to the account of and borne by the Supplier, save and except as provided in Clause 14.2.2 and 14.2.3.</p>	<p>Agreement for Procurement of Power (APP)</p> <p>Article 14.2 Settlement of UI charges</p> <p>14.2.1 All payments due to or from the Supplier on account of any unscheduled interchange in terms of the DSM Regulations (the "Deviation Settlement Mechanism" or "DSM") shall be solely to the account of and borne by the Supplier.</p>
22.	<p>Agreement for Procurement of Power (APP)</p> <p>Article 21 Change in Law</p> <p>Detailed provisions w.r.t. Change in Law is available.</p>	<p>Agreement for Procurement of Power (APP)</p> <p>Article 21 Change in Law</p> <p>Change in Law shall be in accordance with the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 published in the Extraordinary Gazette No. 608 dated October 22, 2021 of the Central</p>

		Government.
23.	<p>Agreement for Procurement of Power (APP)</p> <p>Article 25.4 Delayed payments.</p> <p>The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein, and if no such period is specified, within 30 (thirty) days of receiving a demand along with the necessary particulars. Unless otherwise specified in this Agreement, in the event of delay beyond such period, the defaulting Party shall pay interest for the period of delay calculated at a rate equal to 5% (five per cent) above the Bank Rate, and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof.</p>	<p>Agreement for Procurement of Power (APP)</p> <p>Article 25.4 Delayed payments</p> <p>The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein, and if no such period is specified, within 30 (thirty) days of receiving a demand along with the necessary particulars. Unless otherwise specified in this Agreement, in the event of delay beyond such period, the defaulting Party shall pay interest for the period of delay calculated at a rate equal to the Bank Rate, and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof.</p>
24.	<p>Agreement for Procurement of Power (APP)</p> <p>SCHEDULE –E Letter of Credit (Foot note)</p> <p>As provided in the Agreement for Procurement of Power, this amount shall be equal to 20% of the annual Capacity Charge payable by the Utility to the</p>	<p>Agreement for Procurement of Power (APP)</p> <p>SCHEDULE –E Letter of Credit (Foot note)</p> <p>As provided in the Agreement for Procurement of Power, this amount shall be equal to 1 month energy bill payable by the Utility to the Supplier for Normative</p>

Supplier for Normative Availability of the power station during a period of one month. The Letter of Credit shall be modified and renewed once every year to reflect the revision in Minimum Monthly Payment in accordance with the provisions of the Agreement.	Availability of the power station. The Letter of Credit shall be modified and renewed once every year to reflect the revision in Average Monthly Payment for previous year.
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3.17. The need for Power Procurement of 1500 MW RTC Power is stated below:

1. Out of the approved quantum of 1500 MW by Hon'ble TNERC under Pilot Scheme -II, the untied quantum is 1100 MW.
2. Power Supply Agreement executed under Pilot Scheme-I for supply of 550 MW expiring during March 2022.
3. Unavailed quantum of power is approximately 500 MW from the Intra State long term generators under MOD.
4. On the whole, the shortfall in quantum of RTC power is 2150 MW.

In order to meet the power requirement and with an objective of optimization of power purchase cost, TANGEDCO to start with intends to procure 1500 MW RTC power through competitive bidding process on medium term contract from Power Stations set up on Finance, Own and Operate (FOO) for a period of five years from April 2022 to March 2027 appointing M/s.PTC as an Aggregator.

3.18. Approval of the Board through circulation is under process for floating Medium Term Tender for procurement of 1500 MW RTC power for a period of

five years through the Aggregator M/s.PTC India Ltd under FOO (Finance, Own, Operate) Guidelines.

3.19. The floating of medium term tender is as per the MoP FOO (Finance, Own and Operate) guidelines through transparent competitive bidding process and approval of the State Commission has to be obtained under Section 63 of Electricity Act, 2003.

4. Additional Affidavit filed on 7.2.2022:-

4.1. The MP No.48 of 2021 filed on 17.12.21 before the Commission seeking approval for the proposed deviations in the Model Bidding Documents and floating of Medium Term Tender for procurement of 1500 MW RTC power for a period of five years through the Aggregator M/s.PTC India Ltd under FOO (Finance, Own, Operate) Guidelines.

4.2. The Commission vide its daily order dated 21.12.21 ordered to go ahead with the process of inviting tender for procurement of power.

4.3. M/s.PTC India Ltd vide its letter dated 20.12.21 suggested to retain the deviations proposed in the clauses with respect to Substitute supply, penalty charges and delayed payments as per the original Model Bidding Documents and TANGEDCO had accepted PTC's suggestion and incorporated the same in the

model bidding documents and floated the tender in anticipation of approval from Commission.

4.4. TANGEDCO floated medium term tender for procurement of 1500 MW RTC power for a period of five years through the Aggregator M/s.PTC India Ltd under FOO (Finance, Own, Operate) Guidelines with the proposed deviations sought in MP No.48 of 2021.

4.5. The pre-bid meeting for the above tender held on 03.01.2022 through online and offline to clarify the queries/doubts raised in the Model Bidding Document (MBD) with the generators. 11 Nos. persons came in person for the meeting and around 26 Nos. were participated through online.

During the meeting, TANGEDCO had clarified the queries/doubts raised by the generators in the Model Bid Documents and some generators had opposed the deviations proposed by TANGEDCO in the Model Bid Documents (MBD) and suggested to retain as per the original Bid Documents.

4.6. TANGEDCO has proposed the following deviations in the tender documents floated for procurement of 1500 MW power under medium term and to be issued as Corrigendum.

1. Fixed Charges: TANGEDCO in line with the Pilot Scheme-II proposed Fixed Charge as constant for Five Years. But the generators opposed stating that Pilot Scheme-II is for 3 years and the present tender is for a period of five years. Hence, the generators suggested that Fixed Charge

cannot be constant for five years and requested for escalation as per MBD. From the past, it is ascertained that the cost of domestic coal has changed once in three years period.

2. Condition Precedent: In order to meet out the demand during forthcoming summer, TANGEDCO has fixed the Appointed Date as 01.04.2022 in the MBD.

As per MBD, the time period for fulfilment of the condition precedent is 90 days.

But the finalization of the tender is expected in the month of January /February'2022, therefore the generators requested for postponement of Appointed Date in order to avail the condition precedent time period as prescribed in the MBD.

TANGEDCO has not accepted the above. However incorporated the Conditions Precedent timeline as "90 days from the date of the Agreement but not later than 1st April, 2022"

3. Performance Security: As per MBD, the Performance security validity is for six months but TANGEDCO proposed the validity upto the contract period which has not been accepted by the generators and requested to be in line with the MBD. TANGEDCO has proposed validity for six months and amount payable by the procurer for the supply made by the supplier will be treated as deemed Performance Security in line with MBD.
4. Damages: TANGEDCO has clarified that no Damages shall be payable for reduction in Availability on account of transmission constraint as requested by the generators.

4.7. Many generators raised queries in the MBD and sought clarifications through emails apart from pre-bid meeting for which TANGEDCO has to upload

its replies in the DEEP-e-PORTAL. The queries raised and TANGEDCO response is enclosed with the Additional Affidavit.

4.8. The corrigendum for the deviations proposed in the MBDs is enclosed with the Additional Affidavit.

4.9. From the outcome of the pre-bid meeting it is expected that more generators are likely to participate in the tender. In order to get competitive rates, TANGEDCO has accepted the genuine request of the generators.

5. Additional Affidavit based on Daily Order dated 15-02-2022 and 22-02-2022:-

5.1. TANGEDCO floated medium term tender for procurement of 1500 MW RTC power for a period of five years through the Aggregator M/s.PTC India Ltd under FOO (Finance, Own, Operate) Guidelines with the proposed deviations sought in MP No.48 of 2021 on 20.12.21 in anticipation of approval from the Commission.

5.2. The Commission vide its daily order dated 21.12.21 ordered to go ahead with the process of inviting tender for procurement of power.

5.3. TANGEDCO had filed additional affidavit on 07.01.2022 intimating the queries/doubts raised by the generators in the Model Bid Documents during the pre-bid meeting for the above tender held on 03.01.2022 through online and

offline and TANGEDCO response for the queries and the same was uploaded in the DEEP Portal.

5.4. The technical bid of the medium-term tender was opened on 31.01.2022 at 14.30 Hrs. Eleven bidders had participated in the tender and the details are tabulated below:

Sl. No.	Name of the Bidder	Location	Offered Capacity (MW)
1	GMR Kamalanga Energy Limited	Kamalanga, Odhisha	150
2	Jindal Power Limited	Tanmar, Raigarh, Chattisgarh	200
3	MB Power (Madhya Pradesh Limited)	Anuppur, Madhya Pradesh	175
4	IL&FS Tamil Nadu Power Company Ltd.	Cuddalore, TN	550
5	Shree Cement Limited	Ajmer, Rajasthan	285
6	DB Power Limited	Janjgir-Champa, Chhattisgarh	200
7	RKM Power Gen.Pvt. Ltd.	Janjgir-Champa, Chhattisgarh	350
8	Raipur Energen Ltd.	Raipur, Chhattisgarh	300
9	Sembcorp Energy India Ltd.	Nellore, Andhra Pradesh	150
10	OPG Power Generation Pvt. Ltd.	Gummidipondi, Tamil Nadu	300
11	Surya Dev Alloy and Power Pvt. Ltd.	Thiruvallur, Tamil Nadu	104
	Total		2764

5.5. As per the provisions of RFQ and RFP, the responsiveness check of technical bids submitted by all the bidders was carried out on 11 bidders

participated in the tender. All the eleven bids were checked for compliance as per the requirement of qualification prescribed in RFQ and RFP. All the 11 bidders participated in the tender were selected as qualified bidders.

5.6. TANGEDCO had intimated all 11 bidders as qualified bidders on DEEP Portal on 09.02.2022 @ 11.00 Hrs and the price bid of 11 bidders were downloaded from DEEP Portal and the details are tabulated below:

Sl. No.	Name of the Bidder	Bid Quantity (in MW)	Fixed Cost	Cost of Generation	Cost of Transmission Charges	Cost of Transmission Losses	Total Cost
			(Rs. / Kwh)				
1	GMR	102	2.02	2.02	0.44	0.18	4.66
2	IL&FS	430	2.135	2.135	0.44	0.19	4.99
3	MB Power	175	2.25	2.25	0.44	0.20	5.14
4	Jindal Power	200	2.29	2.29	0.44	0.20	5.22
5	RKM Powergen	350	2.37	2.37	0.44	0.22	5.40
6	Raipur Energen	300	2.5	2.5	0.44	0.22	5.66
7	DB Power	100	2.62	2.62	0.44	0.23	5.91
8	OPG Power	125	2.85	2.85	-	-	5.70
9	Suryadev	104	2.95	2.95	-	-	5.90
10	Sembcorp	100	3.1	3.1	0.44	0.27	6.91
11	Shree Cement	100	3.63	3.63	0.44	0.31	8.01
	Total	2086					

5.7. The process of e-Reverse Auction was started at 13.00 Hrs on 09.02.2022 in the DEEP Portal with lowest tariff of Rs.4.66/Kwh (Inclusive of Transmission Charges and Losses). On closing of Reverse Auction Event, three Bidders DB Power, MB Power and Jindal Power had matched L1 rate of Rs.4.66/Kwh.

5.8. After closing of e-Reverse Auction, L1 matching Event appeared on the screen and at the end of the event the system generated report informed that three bidders matched the L1 rate with the revised quantum and the details of bidders are as below:

Sl. No.	Name of the Bidder	Bid Quantity (in MW)	Fixed Cost	Cost of Generation	Cost of Transmission Charges	Cost of Transmission Losses	Total Cost
			(Rs. / Kwh)				
1	GMR	102	2.02	2.02	0.44	0.18	4.66
2	Jindal Power	200	2.29	2.29	0.44	0.20	5.22
3	DB Power	100	2.62	2.62	0.44	0.23	5.91
4	MB Power	175	2.25	2.25	0.44	0.20	5.14
	Total	577					

5.9. The letters were addressed to the four selected bidders requesting to negotiate the rate further and also to increase the quantum for two bidders (M/s.GMRKamalanga and M/s.DB Power). On response to the above, none of the bidders reduced the price and increased the quantum.

5.10. Since only three bidders matched L1 rate, and the quantum tied up with L1 rate was only 577 MW, in order to procure the remaining capacity of 953 MW, letters were addressed to the remaining qualified bidders requesting to match L1 rate and to submit fresh bids matching L1 rate.

In response to the above M/s.OPG, M/s.Shree Cement and M/s.RaipurEnergen had replied their inability to match the L1 price and no reply was received from others.

But M/s.DB Power Ltd vide letter dated 16.02.2022 without reducing the price increased the quantum from 100 MW to 150 MW. The offer of M/s.DB Power after L1 matching process in the DEEP e Portal was accepted by TANGEDCO since the increased quantum is at the L1 rate of Rs.4.66 per unit. With this the offered quantum in the medium term tender is 627 MW @ Rs.4.66 per unit. The details are as below:

Sl. No.	Name of the Bidder	Bid Quantity (in MW)	Fixed Cost	Cost of Generation	Cost of Transmission Charges	Cost of Transmission Losses	Total Cost
(Rs. / Kwh)							
1	GMR	102	2.02	2.02	0.44	0.18	4.66
2	Jindal Power	200	2.29	2.02	0.44	0.18	4.66
3	DB Power	150	2.62	2.02	0.44	0.18	4.66
4	MB Power	175	2.25	2.02	0.44	0.18	4.66
	Total	627					

5.11. The following is the justification of price discovered in medium term tender:

1. Details of Medium Term Tender in other States:

a) GUVNL's Tender Medium Term/Lumpsum Tariff/2021-22/ET-5:

During August 2021, GUVNL had finalized medium term tender for purchase of 1000 MW RTC power for a period of 23 months i.e from September 2021 to July 2023 and PPA signed. The details are as below:

Sl. No.	Name of the Bidder	Bid Quantity (in MW)	Fixed Cost	Cost of Generation	Cost of Transmission	Cost of Transmission	Total Cost
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					Charges	Losses	
(Rs. / Kwh)							
1	Adani Enterprises / Essar Power	500	1.535	1.535	0.48	0.13	3.68
2	TATA Power Trading / Jindal India Thermal Power Plant	200	1.535	1.535	0.48	0.13	3.68
3	Semcorp Energy India Ltd	100	1.545	1.545	0.48	0.11	3.68
4	GMR Warora Energy	150	1.535	1.535	0.48	0.13	3.68
5	Manikaran Power / DB Power	50	1.54	1.54	0.48	0.12	3.68
	Total	1000					

b) REMCL Medium Term tender:

Railway Energy Management Company Ltd (REMCL) during December 2021 had finalized medium term tender for purchase of 600 MW RTC power for a period of three years and PPA signed. The details are as below:

Bid Result (e-Reverse Auction dated 28.12.2021)

Sl. No.	Name of the Bidder	State	Bid Quantity (in MW)	Fixed Cost	Cost of Generation	Cost of Transmission Charges	Cost of Transmission Losses	Total Cost
(Rs. / Kwh)								
1	Jindal Power	Uttar Pradesh	60	1.75	1.75	0.49	0.13	4.12
2	Jindal Power	Jharkhan	70	1.77	1.77	0.47	0.13	4.14

		d						
3	Jindal Power	Gujarat	90	1.77	1.77	0.46	0.13	4.13
4	Jindal Power	Madhya Pradesh	120	1.8	1.8	0.42	0.13	4.15
5	Dhariwal	Maharashtra	210	1.735	1.735	0.5	0.13	4.10
6	TPTCL	Karnataka	50	1.805	1.805	0.39	0.13	4.13
	Total		600					

2. Short Term Tender

To meet out the demand, TANGEDCO had placed short term tender for the months from Oct'21 to Dec'21 and from Mar'22 to May '22 for RTC and peak power. Since the rate was high in some tenders, TANGEDCO had lodged the tenders and only for Mar'22 LOA was issued the details are tabulated below:

Tender No.	Period	Quantum floated (MW)	Quantum offered by Bidders (MW)	Rate offered by bidders Rs./Kwh	Remarks
Tender 14	October 2021/ RTC Power	500	220	6.49 to 7.50	Lodged due to high price
	October 2021 / Peak Power	600	40	14.00	
Tender 15	November 2021 & December 2021 / Peak Power	600	-	-	No response
Tender 16	November 2021 / Peak Power	600	340	6.90 to 9.42	Lodged due to high price
	December 2021 / Peak	600	340	7.00 to 9.42	

	Power				
Tender 17	March 2022 / RTC Power	1000	515	5.02 to 8.95	*

*After Negotiation, LOA was issued for purchase of 475 MW out of 515 MW at the rate of Rs.4.82 to Rs.4.84 per kwh.

3. Power purchased through Exchanges

Further, to meet the demand in case of shortage of wind and solar power, outages of our plant, power purchase through exchange was made. The average cost of purchase during the months from Apr'21 to Jan'22 was Rs.5.51 per unit at TANGEDCO periphery. The details of power purchase made through exchanges and bilateral are tabulated below:

Month	Short Term Purchase		Energy Purchase	
	Energy in MU	Avg Rate (Rs./Kwh)	Energy in MU	Avg Rate (Rs./Kwh)
April 2021	649.017	3.29	407.81	4.09
May 2021	464.733	3.30	301.43	3.55
June 2021			428.33	4.45
July 2021			243.33	4.03
August 2021			483.71	4.82
September 2021	107.506	4.50	381.52	6.25
October 2021			961.38	8.15
November 2021			396.37	4.68
December 2021			250.30	5.74
January 2022			286.79	4.63
Total	1221.256	3.40	4140.96	5.51

4. LOI issued under short term for Mar'22 to May'22:

To meet the summer demand, TANGEDCO floated short term tender for procurement of 1000 MW RTC power and 1000 MW Peak power (17 to 23 Hrs)

for the months for March'22 to May'22. The price bids were opened on 16.02.2022 and the rates offered by the bidders @ TANGEDCO Periphery (inclusive of transmission charges and losses) are too high as detailed below:

Period	RTC/Peak	Quantum Floated (MW)	Quantum offered by Bidders (MW)	Rate offered by bidders Rs./Kwh	Details of LOI issue in process after negotiation	
					Quantum (MW)	Rate (Rs./Kwh)
March 2022	RTC	1000	350	5.24 to 6.75	50	4.82
April 2022		1000	505	5.24 to 6.75	250	5.10 to 5.24
May 2022		1000	445	5.24 to 6.75	150	5.10 to 5.24
March 2022	Peak (17 to 23 Hrs.)	1000	200	9.97	-	-
April 2022		1000	300	8.95 to 9.97	-	-
May 2022		1000	300	8.95 to 9.97	-	-

The landed cost discovered through the short-term tender is too high as compared to the tariff under medium term tender @ Rs.4.66/kwh (inclusive of transmission charges and losses) at TANGEDCO Periphery.

5. Long Term Tender Power Purchase Cost:

The per unit tariff of long term generators for the month January 2022 is detailed below:

Sr. No.	Bidder Name	Contracted quantum	Capacity Charge	Energy Charge	Cost of Transmissi	Cost of Transmission	Total Cost
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		(MW)			on Charges	Losses		
	Long Term		All figures are in Rs./Kwh					
1	PTC	100	2.9410	1.4161	0.4400	1.9312	4.87	
2	Dhariwal	100	1.2003	2.8764	0.4400	3.4506	4.65	
3	BALCO 1	100	1.0706	3.1424	0.4400	3.7274	4.80	
4	BALCO 2	100	1.0707	3.1424	0.4400	3.7274	4.80	
5	GMR	150	2.1762	2.2994	0.4400	2.8503	5.03	
6	DB	208	2.1050	2.3474	0.4400	2.9002	5.01	
7	Jindal	400	2.2540	2.1770	0.4400	2.7229	4.98	
8	KSK	500	2.0000	2.4355	0.4400	2.9919	4.99	
9	OPG	74	1.5000	4.5495	0.4400	-	6.05	
10	IL&FS	540	1.8012	3.1906	0.4400	3.7775	5.58	
11	Coastal	558	1.4740	4.1647	0.4400	4.7911	6.27	
	Medium Term							
12	IL&FS (Pilot I)	550	0.1000	4.2300	0.4400	4.8590	4.96	
	Total	3380						

5.12. The reasonableness of the discovered tariff in the present MTOA tender:

- * The tariff discovered under Pilot Scheme-II was for 3 years, GUVNL tender was for 23 months only and REMCL tender was for 3 years i.e. at different timeframes and for different contract durations. Further, with the capacity being already tied up in these tenders, there is limited bid capacity based on domestic coal is available. Therefore, it may not be prudent to compare the tariff discovered under the subject tender with tenders floated earlier.
- * It is well known fact that revision in coal prices and freight rates are due from some time and are expected to be revised once elections in five states are completed. At-least two such revisions are expected during a period of 5 years.
- * It is pertinent to mention that domestic coal supply constraints are still prevailing and there is limited availability of coal in spot e-auctions leading

- to higher prices. Further, prices of imported coal are still very high and are not expected to reduce in near future.
- * Due to coal related issues as mentioned above, electricity prices at power exchanges are high and very volatile.
 - * Generators are generally inclined to have firm contract for longer duration with certainty of price and dispatch of power which helps them in meeting financial commitments to lenders and other mandatory expenses, instead of selling power on power exchanges on day ahead basis or on short term basis for few months.
 - * The tariff structure is purely based on the Coal price at the time of bidding, the period of supply and duration of payment of monthly bills.
 - * The cost of Domestic coal was Rs.640 Per Tonne during Bid Due Date (06.03.2013) which has increased to Rs.955 Per Tonne as on Dec'21.
 - * Each State have different financial structure and unique system of payment and some Discom make payment within 5 days of receipt of invoices after availing 1% rebate for early payment.
 - * In spite of advance payment made by TANGEDCO for purchase of power through Exchanges, the actual cost of expenditure incurred for purchase for the year 2021-22 was Rs.5.51 per unit (including transmission charges and losses).
 - * Supply through long term contracts commenced during August 2015, where the tariff of generators using domestic coal was less than Rs.4.00 per unit and with imported coal tariff was Rs.5.29 per unit excluding transmission charges and losses.
 - * The Exchange rate during March 2013 was Rs.53.46 per dollar and now it has reached to the extent of Rs.75.0153 per Dollar. The exchange rate determines the tariff of imported coal based plants and likely to increase further.

- * Imported coal price of Indonesian coal jumped from \$60/tonne in March'2013 to \$200 in September'2021 / October'2021 of 5000 GAR (Gross as received) coal. The imports decreased in comparison to 2019-20 due to import substitution and rising prices. The reduction in imports is compensated by the domestic coal for power generation, hence increasing the demand for domestic coal further.
- * Thermal power plant outages on account of coal shortage were reported for a capacity of about 13,000 MW which led to increase in power exchange prices up ₹20/kWh. After intervention of CMT, now the outage has come down to 6,960 MW and power exchange prices are at about ₹7 per kWh.
- * Under long term contract, tariff for the plant using domestic coal is computed by escalating the quoted tariff by the escalation rate notified by the CERC once in six months based on the increase in WPI index for cost of the coal and transportation cost notified by Railways.
- * This has resulted in increase of tariff and the present tariff for the month of Jan'22 for domestic coal is in the range of Rs.4.65 to Rs.5.03 per unit and imported coal is in the range of Rs.5.58 to Rs.6.27 per unit including transmission charge and losses around 62 paise per unit which is likely to increase further in upcoming days till expiry of contract in 2028.
- * Tariff under this medium term tender of Rs.4.66/Kwh @ Tamil Nadu State Periphery excluding trading margin of Rs.0.0173/Kwh is more competitive than the tariff at which TANGEDCO is getting power under long term PPAs and the tariff discovered under short term tenders floated by TANGEDCO recently i.e on 16.02.22 is in the range of Rs.5.12 to Rs.6.15 per unit for RTC power and Rs. 8.83 to 9.85 per unit for supply of power from March'22 to May'22 unit including the transmission charge and losses.
- * The tariff discovered in the present Medium term Tender under FOO guidelines is Rs.4.04 per unit (excluding transmission charges and losses)

Every year, the base price of Fixed Charge and Variable Charge will be escalated to the extent of 20% and 50% of increase in the WPI index of all commodities respectively. It is expected that the tariff will increase approximately five to six paise in the total tariff for every year.

- * To sum up, the comparative statement of tariff at interconnection with CTU for all type of tenders is detailed below:-

Type of Tender	Tariff (Fixed and Variable Charges at Interconnection point excluding Transmission charges and losses (Rs./Kwh)
Medium Term Tender FOO method (RTC Power)	4.04
Long term tender (RTC Power)	4.07 to 6.05
Power purchased through Exchanges during 2021-22	5.39
Short term tender (RTC Power for March 2022)	4.70
Discovered tariff in Short Term Tender (April 2022 to May 2022)	4.98 to 5.12

In view of the above points, the discovered tariff of Rs 4.66 per kwh at Tamil Nadu state periphery appears to be reasonable considering 5 years tenure with a nominal WPI escalation when compared to other short term, long term and purchase through Power exchanges.

6. Objections filed by M/s. Manikaran Power Limited (Trading Licensee) and M/s. SaiWardha Power Generation Pvt. Ltd.

6.1. The Intervenor/Respondent No.1, Manikaran Power Limited is a company existing under the provisions of the Companies act, 2013 having its registered

office at Manikaran Tower, Kilburn Colony, P.O. Hinoo, Ranchi, Jharkhand-834002 and Corporate office at 3rd Floor, D21 Corporate Park, Dwarka Sector 21, New Delhi-110077. The Respondent No.1 is an interstate trading licensee, having been granted a license under Category-1 by the Central Electricity Regulatory Commission.

6.2. The Intervenor/Respondent No. 2, M/s SaiWardha Power Generation Pvt. Ltd., is a generating company, owning and operating a 540 MW coal-based generating station at Warora in the state of Maharashtra. The Respondent No. 2 has been supplying electricity to another distribution licensee namely, BEST in the State of Maharashtra through the Respondent.

6.3. The objections being made herein are to the bidding process being undertaken by the Petitioner, Tamil Nadu Generation and Distribution Company Limited (hereinafter called TANGEDCO) and more particularly to the terms and conditions of the bidding documents circulated by TANGEDCO.

6.4. The primary challenge to the bidding terms and conditions is the condition of excluding traders from participating in the present bidding process, which is in deviation of the standard bidding documents notified by the Government of India for the purposes of medium-term procurement on the DEEP Portal.

6.5. It is also evident from the records publicly available that TANGEDCO has also not taken the prior approval of the Commission for the bidding terms and conditions and the deviations from the standard bidding documents notified by the Government of India.

6.6. TANGEDCO had on 20th December 2021 circulated the Request for Qualification (RFQ) and Request for Proposal (RFP), being the bidding documents for procurement of medium term electricity for a capacity of up to 1500 MW. This bidding process is by way of invitation for e-Tender and e-Reverse Auction for Medium Term Procurement of Electricity on DEEP Portal.

6.7. While the TANGEDCO claimed the bidding process to be in terms of the bidding documents notified by the Government of India, there are however certain crucial amendments that have been unilaterally carried out by TANGEDCO as against the bidding documents notified by the Government of India. In this regard, primarily the following clauses are relevant:

- (a) In clause 2.2.1(b) of the RFQ, the eligibility of the bidder has been prescribed as to be the owner and operator of the power station from where electricity is to be supplied;
- (b) In clause 2.2.2 of the RFQ, the technical capacity has been prescribed for the bidder to be the owner and operator of the power generating station;

6.8. In this regard, TANGEDCO has unilaterally made amendments to the above process to exclude trading licensees from participating in the bidding process. This is specifically contrary to the provisions of the model bidding documents notified by the Government of India, which is required to be adopted by TANGEDCO.

6.9. Under the model bidding documents, the trading licensee is permitted to participate under clause 2.2.1 of the RFQ. Further, the technical capacity is required to be fulfilled by the Developer in case the bidder is a trading licensee as provided in clause 2.2.2 of the RFQ of the model bidding documents.

6.10. The Government of India has clearly permitted the bidders to include both the generating station as well as trading licensees. In terms of Clause 2.2.1 (b) and (c) of the model bidding documents, the only situation where the trading licensees can be excluded from participating the bidding process is when the choice of fuel is allocated coal linkage to be arranged for by the utility. This is specifically provided in the model bidding documents notified by the Government of India.

6.11. There is also a clear rationale for the above provisions. The objective of the bidding process is to ensure that competition is encouraged and as many number of bidders are permitted to participate, fulfilling the technical criteria and the qualifications as prescribed by the Government of India. This is in public interest.

6.12. Restricting the number of bidders to participate in the bidding process at the unilateral decision of TANGEDCO would reduce competitive forces operating and would be contrary to public interest also as there is also no rationale or justification provided by TANGEDCO for any such restriction to be imposed.

6.13. The bidding documents were circulated by TANGEDCO. Admittedly, there is no judicial order that TANGEDCO has obtained from the Commission seeking any deviation to the bidding documents notified by the Government of India.

6.14. There are only three daily orders of the Commission in public domain, dated 21/12/2021, 15/02/2022 and 22/02/2022. In the order dated 21/12/2021, the Commission had directed TANGEDCO to go ahead with the process of inviting tender for procurement of power.

6.15. However, it appears that TANGEDCO had not highlighted the deviations in the bidding process being undertaken by it, before the Commission. If the same was pointed out, the Commission would have examined the issue and decided the same. This is clearly not the case.

6.16. Any decision of TANGEDCO to deviate from the standard bidding documents has to be based on a clear rational and has to be in public interest. It is not open to TANGEDCO to unilaterally provide for any such deviations, without justifying the same at the touchstone of the consumer interest and public interest.

6.17. By excluding trading licensees, TANGEDCO is in fact excluding a large number of prospective bidders, who would only increase the competition in the bidding process and thereby reduce the tariff for the consumers in the state. It also cannot be the contention of TANGEDCO that permitting trading licensees to participate in the bidding process would result in distortion of the bidding process, as the Government of India has prescribed the qualification criteria which includes trading licensees.

6.18. In any event, trading licensees being bidders in the bidding process would require the identification of a developer being the person owning and operating

the generating station. There are large number of long-term and medium-term PPAs operational in the country, wherein the bids have been placed by trading licensees with identified developers, which PPAs are being duly performed. TANGEDCO itself is currently procuring power from trading licensees under back to back PPAs.

6.19. For any deviation to restrict the qualification criteria for bidders and excluding the trading licensees, TANGEDCO would need to justify a clear rational for such restriction, which on the face of it is restricting competitive forces and is contrary to public interest.

6.20. The Respondents in the present case itself are supplying power under a medium-term tender to BEST, the distribution licensee in the state of Maharashtra. The Respondents are clearly in a position to participate in the bidding process initiated by TANGEDCO , but are being prevented only on account of the wrongful restriction of the trading licensees from participating in the bidding process.

6.21. Even apart from the Respondents herein, many other trading licensees will also be in a position to participate in the bidding process, which would be in the interest of TANGEDCO and the consumers at large. There is therefore no justification whatsoever for TANGEDCO to restrict the qualification criteria in the bidding process as against the qualification criteria provided for by the Government of India in the model bidding documents.

6.22. Even assuming that TANGEDCO has valid justification for such restriction is to be imposed, the deviations if any can only be with the prior approval of the Commission. In the present case, it is evident that the bidding documents have been circulated without any such prior approval that is available in the public record. This by itself vitiates the bidding process being undertaken by TANGEDCO.

6.23. Quite apart from the fact that the bidding documents and guidelines including the qualification criteria have been prescribed by the Government of India under the Electricity Act, 2003, which is sought to be wrongfully restricted by the TANGEDCO contrary to the provisions of the Electricity Act and the guidelines framed thereunder, TANGEDCO being a public utility is also required to act in a just and fair manner and not take arbitrary actions.

6.24. The restriction of trading licensees being disqualified in the bidding process is clearly arbitrary and contrary to public interest, even considered de-hors the mandatory provisions of the bidding guidelines and the model bidding documents. The selection process and the conditions prescribed are required to be fair, just and not arbitrary in nature. The actions of TANGEDCO goes contrary to the basic principles of transparency and fairness which are required to be followed. (Ref: *MaheshVarma&Anr. V. State of Maharashtra AIR 2009 Bom 29, Gharda Chemicals Limited v. Central Warehousing Corpn. 2005 (80) DRJ 542 (DB)*)

6.25. In the facts and circumstances mentioned above, the present objections are being filed by the Respondents to the bidding process being undertaken by TANGEDCO by unilaterally amending the provisions of the model bidding documents and restricting the participation of trading licensees in the bidding process.

6.26. The bidding process including the adoption of tariff being subject to the jurisdiction of the Commission, the present objections may be considered by the Commission. It is submitted that the bidding documents issued by TANGEDCO ought to be revised to bring the same in line with the model bidding documents notified by the Government of India under Section 63 of the Electricity Act as allowed by the participation by the qualified bidders as per the criteria provided for by the Government of India.

6.27. The Respondents herein qualify as eligible bidders in terms of the qualification criteria prescribed by the Government of India under the model bidding documents. It is only because of the restrictions imposed by TANGEDCO that the Respondents are disqualified from participating the bidding process, which is erroneous

6.28. In the facts and circumstances mentioned above, it is respectfully submitted that the Commission ought to direct TANGEDCO to align the bidding documents as per the model bidding documents notified by the Government of India under Section 63 of the Electricity Act. TANGEDCO ought to admit trading licensees to participate in the bidding process, in line with the qualification criteria

as prescribed in the model bidding documents notified by the Government of India.

7. Rejoinder for objections raised by M/s. Manikaran Power Limited (Trading Licensee) and M/s. SaiWardha Power Generation Pvt. Ltd. (Generator) to the bidding terms and conditions notified by the Petitioner:-

(i) Finance, Own and Operate (FOO):-

7.1. The Ministry of Power (MoP) through a Resolution dated 29.01.2019 had issued Standard Bidding Document for Medium Term Procurement of Electricity from Power Stations set up on Finance, Own and Operate (FOO) basis.

(ii) Pilot Scheme-II

7.2. The above FOO Standard Bidding Document (SBD) was modified/amended and approved by Government of India.

7.3. In the modified version some clauses were amended in the FOO SBD for procurement of power through medium contract for a period of three years under Pilot Scheme-II, in which one of the modifications was made in RFQ Article 2 "INTSTRUCTION TO BIDDERS" Clause 2.2.1 point (c) wherein the provision for participation in tender by Trading Licensee has been deleted. Based on the modifications, Ministry of Power (MoP) had issued a gazette notification through a Resolution dated 30.01.2019 for procurement of aggregated quantum of 2500 MW RTC power from the generating companies having coal based power plants

which are already commissioned and not having Power Purchase Agreements through a process of open and transparent competitive bidding process through an electronic platform (DEEP e-bidding Portal) for a period of three years through medium term under "Pilot Scheme-II" by appointing M/s.PFC Consulting Ltd being as Nodal Agency and M/s.PTC India Ltd (PTC) as an aggregator for which the guidelines was issued by MoP vide Resolution dated 01.02.2019 .

From the above notification, it is clearly understood that power traders are not allowed. The rate discovered under Pilot Scheme-II was Rs.3.26/Kwh at Interconnection Point.

7.4. Initially TANGEDCO had proposed to procure 500 MW RTC Power through medium term for a period of three years under "Pilot Scheme-II" initiated by Gol/MoP for which the Commission approved the proposal of TANGEDCO vide order dated 09.06.2020 in MP No.12 of 2020. Out of 500 MW, TANGEDCO executed Power Supply Agreement for 400 MW RTC Power on 22.10.2021. TANGEDCO is in receipt of 100 MW from 20.01.2022 and the balance quantum is likely to flow in the coming months.

7.5. TANGEDCO had proposed to procure additional 1000 MW RTC Power through medium term tender for a period of three years under "Pilot Scheme-II" initiated by Gol/MoP for which the Commission approved the proposal of TANGED CO vide order dated 16.11.2021 in MP No.41 of 2021.

7.6. TANGEDCO could not execute Power Supply Agreement (PSA) for the balance quantum of 1100 MW as M/s.PTC had expressed their inability to execute PSA since the generators did not extend their bid validity.

7.7. Considering the untied quantum of 1100 MW under Pilot Scheme-II and expiry of Pilot Scheme -I Power Supply Agreement (PSA) for 550 MW on 31.03.2022, TANGEDCO proposed to procure 1500 MW RTC power through competitive bidding process on medium term contract in line with Pilot Scheme-II from Power Stations set up on Finance, Own and Operate (FOO) for a period of five years from April 2022 to March 2027 appointing M/s.PTC as an Aggregator.

7.8. MP No.48 of 2021 filed on 15.12.21 before the Commission seeking approval to float a medium term tender under FOO guidelines with the deviations proposed in the Bidding Documents in line with Pilot Scheme -II for purchase of 1500 MW RTC power for a period of 5 years appointing M/s.PTC as an Aggregator. TANGEDCO Board also had approved the above proposal.

7.9. Since TANGEDCO proposed to float medium term tender in line with Pilot Scheme II, approval was sought for many deviations in the Original Model Bidding Documents wherein the deviation in RFQ 2.2 Eligibility of Bidders was one among them.

7.10. TANGEDCO floated medium term tender in DEEP Portal for procurement of 1500 MW RTC power for a period of five years through the Aggregator M/s.PTC India Ltd under FOO (Finance, Own, Operate) Guidelines with the

proposed deviations sought in MP No.48 of 2021 on 20.12.21 in anticipation of approval from the Commission.

7.11. The Commission vide its daily order dated 21.12.21 in MP No.48 of 2021 ordered "to go ahead with the process of inviting tender for procurement of power" and orally directed TANGEDCO to get approval of the Commission before finalizing the price discovered in the tender.

7.12. After Commission's Order dated 21.12.21 in MP No.48 of 2021 TANGEDCO uploaded the tender documents in TANGEDCO website on 21.12.21 @16 Hrs and arrangements made to publish the tender specifications in two leading Tamil and English Newspapers on 22.12.2021.

7.13. The pre-bid meeting for the above tender was held on 03.01.2022 through online and offline to clarify the queries/doubts raised in the Model Bidding Document (MBD) with the generators. 11 Nos. persons came in person for the meeting and around 26 Nos. were participated through online.

7.14. Many generators raised queries In the MBD and sought clarifications through emails apart from pre-bid meeting in which M/s. Manikaran Power Ltd was one among them.

7.15. TANGEDCO had filed additional affidavit No.1 on 07.01.2022 intimating the queries/doubts raised by the generators with respect to terms and conditions in the Model Bid Documents during the pre bid meeting for the above tender held

on 03.01.2022 through online and offline and also TANGEDCO response for the queries. The same was uploaded in the DEEP Portal.

7.16 M/s.SaiWardha Power Generation Pvt. Ltd one the intervenor in MP NoA8 of 2021 had also participated in the pre bid meeting (offline) conducted but not participated in the tender process.

7.17. The complete tender process was carried out through online in DEEP Portal. Any changes in the schedule of bidding process and deviations proposed were uploaded as corrigendum in a transparent manner. All generators/traders were aware of each and every process of the tender.

7.18. The hearing dates of MP NoA8 of 2021 are 21.12.2021, 19.01.2022, 01.02.2022, 15.02.2022, 22.02.2022, 08.03.2022 and 15.03.2022. The objections were raised by M/s. Manikaran Power Ltd and M/s.SaiWardha Power Generation Pvt. Ltd only during the hearing held on 08.03.2022 after knowing that the tender process had reached its finality from the time schedule uploaded in the DEEP Portal and no objections were raised during the previous hearings which clearly indicates the intention of intervenors to delay the power purchase activities of TANGEDCO.

7.19. The only traders were not allowed to participate in the tender but M/s.saiWardha Power Generation Pvt. Ltd being the generator could have very well participated in the tender. It is learnt that M/s.SaiWardha Power Generation Pvt. Ltd located in Maharashtrastate and the plant is connected to State

Transmission Utility (STU) not to Central Transmission Utility (CTU) wherein power could be scheduled only within the State of Maharashtra and to schedule power through CTU, the generator has to bear the transmission charges and loss which will add to the generation cost. For these reasons, M/s. Sai Wardha Power Generation Pvt. Ltd would not have participated in the recent medium term tender floated by GUVNL, REMCL for Indian Railways tender. That be the case, now raising objections clearly shows their malafied intention only to vitiate the process of finalization of the tender floated by TANGEDCO.

7.20. TANGEDCO had filed additional affidavit No.2 on 04.03.2022 intimating the price details of the tender and praying to allow TANGEDCO to finalize the discovered landed cost tariff of RsA.66 /Kwh (Fixed Cost - Rs.2.02 per unit and Variable Cost - RS.2.02 per unit excluding transmission charges and transmission loss) in the medium term tender floated for a period of five years and to issue Letter of Acceptance (LOA) to successful bidders and Signing of Power Supply Agreements with the aggregator.

7.21. TANGEDCO got approval of the commission to procure 1500 MW power under Pilot Scheme-II issued by Ministry of Power, Govt. of India. However, as generators did not extend their Bid validity, PTC India Ltd. (Aggregator under Pilot Scheme-H) could not allocate the entire quantum and allocated only 400 MW power to TANGEDCO. Agreements for which were signed in October, 2021 and subsequently Tariff was adopted by the Commission.

7.22. To meet the balance power requirement of the state of Tamil Nadu, TANGEDCO proposed to float a tender in line with Pilot Scheme-II with some changes as suitable to TANGEDCO. Accordingly, TANGEDCO floated a tender on 20.12.2021 for procurement of 1500 MW power on Medium Term basis for 5 years after obtaining TANGEDCO Board approval and further obtained direction to go ahead with the tender process from the Commission.

7.23. TANGEDCO had submitted the draft tender document along with 6 deviations from standard bidding document well in advance i.e on 15.12.2021 wherein it was clearly indicated that the tender document has been prepared to align with Pilot Scheme-II wherein Generating companies are eligible bidders and obtained the direction to go ahead with the tender process from the Commission.

7.24. Bidding process followed by TANGEDCO is in terms of Bidding Documents notified by the Government of India with certain deviations for which TANGEDCO obtained approval from the Commission.

7.25. There are many guidelines issued by government of India wherein 10 trading licensees are not eligible to participate. Namely Pilot Scheme-I for procurement of 2500 MW power under Medium Term, Pilot Scheme-II for procurement of 2500 MW power under Medium Term. Trading licensees are also not eligible to participate in Model Bidding Document issued by Government of India for procurement of power under Long Term. Further, in the same Model Bidding Document the intervenor is referring, trading licensees are excluded from

participating when the choice of fuel is allocated coal linkage. Therefore, participation of a trading licensee is not mandatory for procurement of power. Trading licensees participate on behalf of a generator. In case trading licensees are not eligible to participate, generators participate directly in the bidding process. Financial criteria was waived off for the generators/bidders. Generators to fulfil technical criteria only which they do even when they participate through a trading licensee.

7.26. As TANGEDCO floated tender for procurement of power in line with Pilot Scheme-I wherein generators were eligible to participate in the tender, accordingly, TANGEDCO incorporated the deviations in Model Bidding Document issued by Government of India and obtained direction to go ahead from the Commission. The Commission has all the powers to approve the deviations in Model Bidding Documents issued by Government of India for procurement of power.

7.27. The objective of the bidding process is to ensure competition and & 12 TANGEDCO is well aware and has taken care of it. All the generating companies whether CTU connected or STU connected, within the state of Tamil Nadu or outside the state of Tamil Nadu, operating on imported coal or domestic coal including renewable energy were eligible to participate. Financial Criteria like net worth was also waived-off in line with Pilot Scheme -II so that every generator who are willing to participate can participate. A trading licensee participates on

behalf of generator. In case trading licensees are not eligible to participate, generators participate directly in the bidding process. Therefore, TANGEDCO has ensured full competition in the tender.

7.28. TANGEDCO has submitted the Petition to the Commission to 15 along with the proposed deviation from the Model Bidding Document. Proposed deviations were separately submitted to the Commission wherein eligibility criteria of bidders were clearly mentioned. The Commission vide daily order dated 21.12.2021 directed TANGEDCO to go ahead with the process. Therefore, the question of not highlighting the Commission about the deviation does not arise.

7.29. TANGEDCO had submitted the Petition to the Commission along with the proposed deviation from the Model Bidding Document. Proposed deviations were separately submitted to the Commission wherein eligibility criteria of bidders were clearly mentioned. The Commission vide daily order dated 21.12.2021 directed TANGEDCO to go ahead with the process. Therefore, the Commission was well appraised by TANGEDCO and eligibility criteria was clearly mentioned. Further deviations after Pre-bid meeting were also submitted to the Commission.

7.30. Bidding process including the adoption of tariff is within the jurisdiction of the Commission and therefore TANGEDCO has appraised and brought the proposed deviations to the Commission and obtained go ahead. There is no need to revise the bidding document issued by TANGEDCO as the Commission's concurrence has already been obtained on the deviations from the Model Bidding

Document. Further, bidding process has been concluded and the same has been appraised to the Commission. Final approval/adoption of the commission is sought for issuance of LOAs and signing of agreements.

7.31. There are no restrictions imposed by TANGEDCO to disqualify a generating company to participate. M/s SaiWardha Power Generation Pvt.Ltd, or any generator for that matter, in case willing to participate in the tender process could have participated and submitted the Bid like other generating companies. In case there is any arrangement between M/s Manikaran Power Limited and M/s SaiWardha Power Generation Pvt. Ltd., TANGEDCO is not aware of any such arrangement. Even in such cases where there are prior arrangements between a trading licensee and a generating company for sale of power, generating company participates directly for sale of power in case trading licensees are not eligible to participate. Therefore, TANGEDCO did not restrict any party from selling its power to TANGEDCO through this tender and did not compromise with the extent of competition. TANGEDCO only followed the process and sought the deviations from the Model Bidding Document and obtained the go ahead from the Commission and also appraised the commission from time to time about other deviations and progress on the bidding process.

7.32. Further, almost all the distribution licensees take deviations from the Model Bidding Document and obtain approval/concurrence/go ahead from their respective regulatory commission. TANGEDCO has also done the same and

obtained go ahead from the Commission. Queries raised by participants were well addressed in Pre-bid meeting and suitable Amendments/clarifications were issued subsequently after apprising the same to Commission. No objections were brought to the notice of this Commission in last two and half months for the same. Now after discovery of tariff and selection of successful bidders, all of a sudden objections are raised by M/s Manikaran Power Limited/ Ms.SaiWardha Power Generation Pvt. Ltd. with the Commission with malafide intention only to vitiate and delay the process.

7.33. In fact, it would have been more appropriate for SaiWardha to explain the difficulty which has prohibited it from participating in the tender given the fact that total 11 nos. of generators have participated in the tender without any difficulty and financial criteria have removed to enable larger participation of generators.

7.34. It is not the last available opportunity for the Intervenors for selling power which would cause irreparable damage to them. In fact, a new opportunity has come for the Intervenors to participate in the 1000 MW medium term tender floated by Haryana Utilities. On the other hand, in case this tender process is vitiated then it will cause irreparable damage to the public of Tamil Nadu as the successful bidders are likely to move for other available opportunities in the current market scenario.

7.35. In the facts and circumstances mentioned above, the Commission reject the objection filed by M/s Manikaran Power Limited/ M/s. SaiWardha Power

Generation Pvt. Ltd. and grant the approval/adoption for issuance of LOAs and signing of Agreements so that much needed power supply can start for benefit of the state of Tamil Nadu.

7.36. It is therefore prayed that the Commission may accord approval for the following:-

1. Allow TANGEDCO to finalise the discovered tariff of Rs.4.66 /Kwh at Tamil Nadu Periphery in the medium term tender floated for a period of five years.
2. To issue Letter of Acceptance (LOA) to successful bidders Mis. M/s.GMRKamalanga Energy Ltd (102 MW), M/sJindal Power Ltd (200 MW) M/s.D.B.Power Ltd (150 MW) and M/s.MB Power Madhya Pradesh Ltd (175 MW) for purchase of 627 MW RTC Power through medium term for a period of five years based on FOO (Finance, Own, Operate) guidelines through Aggregator M/s.PTC India Ltd.
3. To sign Power Supply Agreement with the aggregator M/s.PTCIndia Ltd.

8. Findings of the Commission:-

8.1. The petitioner filed M.P No.48 of 2021 seeking approval for the deviations from the Model Bidding Document to float a medium term tender.

The prayer of the petitioner is as follows:

- i) To accord approval to float a medium term tender under FOO guidelines with the deviations proposed in the bidding documents in line with Pilot Scheme II for procurement of 1500 MW RTC power for a period of 5 years appointing M/s.PTC as aggregator.
- ii) To pass any other order as deemed fit in the interest of justice in the facts and circumstances of the present case.

8.2 Ministry of Power has issued revised guidelines and model Bidding documents for procurement of electricity for Medium Term from power stations set up on Finance, Own and Operate (FOO) basis under section 63 of the Electricity Act 2003.

The important features of the Guidelines are as follows:

- i) The application of these Guidelines shall be restricted to projects from which power is procured in accordance with an Agreement for Procurement of Power for a period between one and five years, with a provision to extend the period up to 25% of the initial contract period or one year whichever is lower, with mutual consent.
- ii) The tariff determined through the DEEP e-Bidding process using e-reverse Auction based on these Guidelines comprising the Model Bidding Documents

shall be adopted by the Appropriate Commission in pursuance of the provisions of Section 63 of the Act.

iii) Any deviation from the Model Bidding Documents shall be made by the Distribution Licensees only with the prior approval of the Appropriate Commission. Provided, however, that any project specific modifications expressly permitted in the Model Bidding Documents shall not be construed as deviations from the Model Bidding Documents from Power Stations set up on Finance, Own and Operate (FOO) basis.

8.3 The provisions as per the model bidding documents and the deviations sought by the petitioner have been detailed in para 3.16 of this order.

The deviations sought are encapsulated below:

- i) Signing of the Agreement for Procurement of Power between PTC, the aggregator and successful bidder and back to back Power Supply Agreements between the Distribution Licensee and PTC.
- ii) Bidder to be paid only Fixed charge and Variable charge with transmission charges and losses to the account of utility.
- iii) Bids called only from owner and operator of the power stations. The applicants not to have any PPA for the bid quantum.
- iv) In addition to an assured supply of fuel, an undertaking /commitment letter for firm fuel arrangement for supply of power.
- v) The bidder to have an installed capacity at least equivalent to the capacity to be bid.
- vi) Financial capacity of Rs.1 crore per MW and provision to increase the capacity at e-reverse auction;

- vii) Deletion of Option to extend the contract period prior to 3 months of expiry of contract.
- viii) Aggregator liable for payment of all charges under applicable laws for inter State transmission of electricity upto the Delivery point.
- ix) Aggregator liable for transmission losses upto delivery point.
- x) Supplier liable for payment of all charges applicable to SLDC,RLDC to the aggregator. Right to schedule power on Short Term Open Access (STOA) basis till MTOA becomes operational.
- xi) Performance security upto expiry of agreement.
- xii) Right to refuse power through alternate source without any liability on payment of fixed charge to supplier without claim on compensation/damages from supplier.
- xiii) Fixed charge to remain constant for the entire contract period.
- xiv) For reduction of deemed availability for any shortfall in supply of electricity due to transmission constraints, aggregator not liable for payment of any fixed charge.
- xv) Aggregator not liable to pay fixed charge for non availability arising due to fuel shortage.
- xvi) 100% of fixed charge deduction for any reduction in normative availability.
- xvii) Taxes and duties where payable by/ to the utility to be paid to the aggregator.
- xviii) Payment by aggregator within 32 days
- xix) Rebate of 2% in bill for payment within 5 days.
- xx) Payment security through Default Escrow Account and hypothecation deleted.
- xxi) The term 'UI' regulations referred as 'Deviation Settlement Mechanism' regulations.
- xxii) Change in Law in accordance with the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 dated October 22, 2021 .
- xxiii) Defaulting party to pay interest at rates equal to the Bank rate.

xxiv) Letter of credit equal to one month's energy bill payable by utility to supplier for normative availability and to be renewed once every year to reflect the revision in average monthly payment of previous year.

8.4. The main prayer of the petitioner was to conduct the bidding in line with Pilot II scheme introduced by the Ministry of Power with PTC as aggregator who signs back to back to power purchase and power sale agreements. The bid of the petitioner was to include all generators.

8.5. Initially, Commission approved purchase of 500 MW of RTC power through the Pilot scheme II at a tariff of Rs.3.26 per unit in June 2020 for a period of 3 years of which TANGEDCO could contract 400 MW of power. In M.P No.41 of 2021, Commission approved for purchase of additional quantum of power for 1000 MW for a period of 3 years under pilot scheme II.

8.6. The petitioner has submitted that M/s PTC was addressed vide letter dt.18.11.2021 to furnish the list of generators to supply 1100 MW RTC power to TANGEDCO under Pilot scheme II and make arrangements to execute Power Supply agreement. However, the power procurement as per the approval accorded by the Commission in M.P No.41 of 2021 could not be made due to the refusal of the generators to extend the price validity. The petitioner has thus come with this alternative proposal to float the bid with PTC as aggregator.

8.7. The deviations sought to the model bidding document by way of relaxing technical capacity of the bidders to have a capacity equal to the bidding and relaxation of the 'net worth' conditions does not fetter competition. In view of the

urgency and inability to procure power based on previous approvals, and to obviate any delay in processing bids and procuring at best rates to tide over the peak summer and deficits in supply, during the hearing on 21.12.2021 Commission approved in principle to commence the bidding process. Since the petitioner failed to secure bids for the approvals granted earlier, this petition was kept live to note the end process.

8.8. After the pre-bid meeting on 3.1.2022, the following deviations have been retained as per the Model Bidding Document:

- i) Providing Performance security has been retained to a period of six months instead of the entire contract period.(Article 9.1.1.)
- ii) Clause on Substitute supply retained as per bid document(Article 10.3)
- iii) Revision of fixed charge annually on the basis of 20% variation in Whole sale Price Index(Article 11.3) and payments in shortfall in supply (Article 11.4.4 and 11.4.5)
- iv) Damages payable for reduction in availability(Article 11.6.2); Damages are not payable for reduction in Availability on account of transmission constraint

8.9. The deviations sought by the petitioner are mainly to safeguard its interests in guaranteeing supply and manage billing and payments.

8.10. After nearly two months of hearing of the case, the intervenors M/s.Manikaran Power Ltd. and M/s SaiWardha Power Generation Pvt. Ltd. have raised objections to the bidding process conducted by TANGEDCO. Their objections primarily relate to the eligibility of the bidders prescribed in the bid document as to be 'the owner and operator of the power station' by not including

'trading licensee'. Their main contention is that TANGEDCO has unilaterally made the amendments and has carried out the bidding process before obtaining approval of the Commission and competition has been thwarted by not including trading licensees.

8.11. TANGEDCO in their rejoinder to the aversions made by the intervenors have explained that the inability to tie up with PTC under the Pilot II scheme for the approval already accorded by the Commission in M.P No.41 of 2021 to procure 1000 MW RTC power, due to the non extension of validity of price bids, made them go for a bid process in line with the Pilot scheme II and as a result has sought for many deviations to fall in line with the conditions of pilot scheme II of which one was the clause on 'eligibility' criteria of bidders to call for bids from generators. The petitioner further states that no objections were raised by M/s.Manikaran and M/s.SaiWardha during hearings prior to 8.3.2022 and raising objections after knowing that the tender process is at its final stage during the hearing on 8.3.2022 was to delay the power purchase activities. TANGEDCO also contends that there are many guidelines issued by the Government of India where trading licenses are not eligible to participate like in Pilot schemes I & II, model bidding document for long term power purchase and therefore participation of a trading licensee is not mandatory for procurement of power. Trading licensees participate on behalf of a generator. The petitioner has further stated that if this tender process is vitiated, it will cause damages to the consumers of this State whereas the successful bidders would move out for other available

opportunities and has indicated that a 1000 MW medium term tender has been floated by Haryana utilities.

8.12. Clause 4, extracted below, of the Revised Guidelines of the Ministry of Power for Procurement of Electricity for Medium term from Power Stations set up on Finance, Own and Operate(FOO) basis provides for the Distribution Licensee to make deviations from the Model Bidding Documents with prior approval of the Commission.

‘Any deviation from the Model Bidding Documents shall be made by the Distribution Licensees only with the prior approval of the Appropriate Commission. Provided, however, that any project specific modifications expressly permitted in the Model Bidding Documents shall not be construed as deviations from the Model Bidding Documents.’

8.13. Accordingly, the petitioner has floated the bid after obtaining approval of the Commission on 21.12.2021 which approval was accorded considering the deviations filed by the petitioner. As to the allegation of thwarting competition, the relaxation of many of the conditions like technical capacity, financial worth provided a wide reach to all generators and therefore the contention of the intervenors lacks rationale. TANGEDCO submits that the generator M/s.SaiWardha is connected to the State Grid of Maharashtra and to schedule power through CTU, the generator has to bear the transmission charges and losses which would only add to the generation cost. Let alone the cost of

generation, M/s.SaiWardha being a generator could have very well participated in the bidding process conducted by the petitioner.

8.14. The intervention of M/s.Manikaran and M/s.SaiWardha after the bidding process was over is an afterthought and lacks credibility. To a query to the intervenor whether power could be supplied below the rates discovered in the bid process for medium term power procurement, the intervenors remained silent. M/s.SaiWardha has participated in the pre bid meeting and could have participated in the bidding. Without participating in the bidding, M/s.SaiWardha has chosen to contest the action of the petitioner in conducting the e bidding and e reverse auction.

8.15. The petitioner has filed the petition seeking approval to conduct the bid in line with Pilot scheme II with M/s.PTC as aggregator, and has accordingly proposed for deviations from the Model Bidding Documents for medium term procurement of power on FOO basis for approval from the Commission which is in accordance with the guidelines of Ministry of Power, and Commission has accorded approval to conduct the bidding. The petitioner after obtaining approval has conducted the bidding process in a transparent manner. A pre-bid meeting has been conducted and all clarifications have been issued. According to section 63 of the Electricity Act 2003 reproduced below, Commission has to adopt the tariff when such tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the Central Government.

8.16.In the petition filed on 4.3.2022, the petitioner has requested to allow them to finalise the discovered tariff of Rs.4.04 per unit added with transmission charges, losses and to issue letter of acceptance to successful bidders and sign the Power Supply Agreement with the aggregator M/s.PTC.

8.17.The tariff of Rs.4.04 per unit (fixed cost of Rs.2.02 and variable cost of Rs.2.02) for supply at interconnection point as stated by the petitioner is less than all the present power purchase costs through short term, power exchanges, long term and some of the petitioner's own power stations. The annual escalation is stated to be 5 to 6 paise per unit which at the end of the contract period added with the transmission charges, losses would still be less than Rs.5 per unit. The petitioner is presently purchasing power under short term and from the power exchange where per unit costs exceeds Rs. 5/-.

8.18. Commission approves the deviations sought and modified by the petitioner after the pre bid meeting with the bidders. Adoption of tariff is possible only when a petition is filed for adoption. However, in view of the submissions made, considering the urgency, in principle approval is accorded to finalise the process and approach the Commission through a petition, namely P.P.A.P for adoption of tariff paying required fee.

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

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

/True Copy /

Secretary
Tamil Nadu Electricity
Regulatory Commission