



**Chhattisgarh State Electricity Regulatory Commission**  
**Vidhyut Niyamak Bhawan**  
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**Petition No. 21 of 2017 (M)**

**In the Matter of :**

**“Adoption of tariff under section 63 of the Electricity Act, 2003 for short term power procurement by CSPDCL”.**

Chhattisgarh State Power Distribution  
Company Limited (CSPDCL)  
Daganiya, Raipur – (C.G.)

.... Respondent

**PRESENT : Narayan Singh, Chairman**  
**: Arun Kumar Sharma, Member**

**ORDER**

**(Passed on 20.06.2017)**

1. CSPDCL vide letter No. 02-02/ACE-I/636 dated 25.05.2017 submitted a proposal for procurement of short term power to meet its power requirement for the month of June to November 2017. According to CSPDCL, the rates of short term power has been discovered through DEEP e-bidding portal route.
2. The proposal of CSPDCL is as under:

	Period	Duration					
		00:00-05:00	05:00-10:00	10:00-13:00	13:00-18:00	18:00-23:00	23:00-24:00
A	RTC power 01.06.17 to 30.11.17	200 MW					
B	TOD Power (in MW) June'17	100	0	0	0	250	200
	July'17	150	150	0	0	200	200
	August'17	0	0	0	0	100	100
	Sept	0	0	0	0	250	200
	Oct'17	150	50	0	0	200	100

After reverse auction, rates obtained for RTC power is tabulated here under:

S. No.	Month	Quantum	Rate	Trader	Supplier
1.	01.06.17-30.06.17	50	3.20	PTC Inadia Ltd.	JNSTPP
		100	3.20	NTPC Vidyut Vyapar Nigam Ltd.	JPL
		50	3.21	PTC India Ltd.	JPL
2.	01.07.17-31.07.17	50	2.99	PTC India Ltd.	JPL
		50	2.99	NTPC Vidyut Vyapar Nigam Ltd.	JPL
		100	3.00	GMR Energy Trading Ltd.	DB Power Ltd.
3.	01.08.17-31.08.17	79	2.70	Tata Power Trading Comp. Ltd.	TPTCL
		50	2.70	Tata Power Trading Comp. Ltd.	SV Power P. Ltd.
		71	2.71	PTC India Ltd.	JNSTPP
4.	01.09.17-30.09.17	79	2.70	Tata Power Trading Comp. Ltd.	TPTCL
		50	2.70	Tata Power Trading Comp. Ltd.	SV Power P. Ltd.
		71	2.71	PTC India Ltd.	JNSTPP
5.	01.10.17-31.10.17	79	2.67	Tata Power Trading Comp. Ltd.	TPTCL
		121	2.67	PTC India Ltd.	JNSTPP
6.	01.11.17-30.11.17	200	2.84	PTC India Ltd.	JNSTPP

The rates obtained for TOD power through reverse auction are tabulated hereunder:

S. No.	Month	Period	Quantum	Rate	Trader	Supplier
1.	01.06.17-30.06.17	00:00-05:00	100	3.12	Adani Enterprises Ltd.	APL Mundra
		18:00-23:00	250	4.0	PTC India Ltd.	MPPMCL
		23:00-24:00	100	3.43	Adani Enterprises Ltd.	APL Mundra
			100	3.43	PTC India Ltd.	JNSTPP
2.	01.07.17 – 31.07.17	00:00-05:00	50	3.00	Tata Power Trading Comp. Ltd.	SKS Power Genration
			50	3.30	GMR Energy Trading Ltd.	DB Power Ltd.
			50	3.39	Tata Power Trading Comp. Ltd.	MPPMCL
		05:00-10:00	75	2.83	PTC India Ltd.	JNSTPP
			75	2.84	Tata Power	MPPMCL

S. No.	Month	Period	Quantum	Rate	Trader	Supplier
					Trading Comp. Ltd.	
		18:00-23:00	200	3.29	Tata Power Trading Comp. Ltd.	MPPMCL
		23:00-24:00	50	3.40	Tata Power Trading Comp. Ltd.	SKS Power Generation
			50	3.49	GMR Energy Trading Ltd.	DB Power Ltd.
			100	3.72	MSEDCL	MEDCL's Pool Power
3.	01.08.17-31.08.17	18:00-23:00	100	3.38	Tata Power Trading Comp. Ltd.	MPPMCL
		23:00-24:00	100	3.30	PTC India Ltd.	JNSTPP
4.	01.09.7-30.09.17	18:00-23:00	250	3.35	Tata Power Trading Comp. Ltd.	MPPMCL
		23:00-24:00	100	3.49	PTC India Ltd.	MPPMCL
			100	3.50	Tata Power Trading Comp. Ltd.	MPPMCL
5.	01.10.17-31.10.17	00:00-05:00	150	3.10	PTC India Ltd.	JNSTPP
		05:00-10:00	50	3.03	PTC India Ltd.	JNSTPP
		18:00-23:00	200	3.59	PTC India Ltd.	JNSTPP
		23:00-24:00	100	3.64	MSEDCL	MSEDCL's Pool Power

3. Para 11.4 of the guidelines No.23/25/2-011-R&R (Vol-III), dtd. 30<sup>th</sup> March 2016 issued by Government of India is reproduced below:

"If the quantum of power procured and tariff determined are within the blanket approval granted by the Appropriate Commission in Annual Revenue Requirement (ARR) of the respective year, then the same will be considered to have been adopted by the Appropriate Commission. In all other cases, the Procurer(s) shall submit a petition to the Appropriate Commission for adoption of tariff within 2 days from the date of signing of PPA, Appropriate Commission should communicate the decision within 7 days from the date of submission of petition."

4. In view of the mandate in the guidelines, a suo-motu petition was registered based on CSPDCL proposal communicated through letter no.

636 dtd 25.05.2017. Following the mandate of the Act, queries were raised relating to the procedure followed in bidding and other techno commercial aspects of power transactions for the month of April and May 2017. The Commission also heard the officers of CSPDCL, CSPTCL and SLDC in meetings called for this purpose on 29.05.2017, 30.05.2017 and 31.05.2017 and thereafter, decided to pass an interim order for approval of short term power procurement for the month of June 2017 only. Accordingly, an interim order was passed on 01.06.2017.

5. The proposal of CSPDCL and interim order was posted in Commission's website: [www.cserc.gov.in](http://www.cserc.gov.in) on 01.06.2017. In the referred interim order passed on June 1<sup>st</sup> 2017, CSPDCL was advised to explore possibilities of minimising power purchase cost of short-term power purchase.
6. CSPDCL submitted the desired information regarding short term power purchase. The information submitted by CSPDCL are as under:

**CSPDCL submission**

- a) The bidding process has been done in accordance with the guidelines dtd. 15.05.2012 read with guidelines dtd. 30.03.2016 notified by Ministry of Power for procurement of short term power.
- b) CSPDCL has appointed Power Finance Corporation Consulting Ltd. (PFCCL) as its authorized representative to undertake bidding process for purchase of short term power in accordance with terms and conditions issued by Govt. of India under competitive bidding under section 63 of the Act. All activities associated with bidding process have been undertaken by PFCCL. The nominated agency has performed the work of inviting bids, accepting, evaluating bids and thereafter through electronic process specified under clause 7.3 to 7.14 of the guidelines dated 30.03.2016 the selection of bidder is undertaken.
- c) Time table for bid process as specified in para 9 of the guidelines has been followed. However, time lines mentioned in the guidelines are tentative, the process of competitive bidding process through E-portal should preferably be completed within 10 days.

- d) The bid documents is as per guidelines issued by Ministry of Power. System generated mails are sent to registered bidders, hence publication of notice is not done.
  - e) The rates discovered through E-bidding process are inclusive of rates, taxes and duties, trading margin etc., hence question of separate trading margin of the bidders does not arise.
  - f) Inter-state transmission charges are an obligation of supplier as can be seen from cause 5.2 and 5.3 of the guidelines dt: 30.03.2016 issued by Govt. of India. Hence breakup of this charges cannot be provided by CSPDCL.
7. Public notice seeking suggestions/comments on hearing was published in newspapers Central Chronicle and Navbharat on 02.06.2017. Hearing on the petition was conducted on 07.06.2017. Representatives of State Government and CSPDCL participated in the hearing. CSPDCL reiterated its comments offered through written submission. The representative of State Government submitted that it is mandatory to follow guidelines notified by Govt. of India for short-term power procurement through DEEP portal bidding route under Section 63 and the Commission is required only to either adopt the tariff discovered through this route or disapprove it.

### **Analysis and Decision**

8. Section 62 of the Act reads as under....
- (1) The Appropriate Commission shall determine the tariff in accordance with the provisions of this Act for-***
- (a) supply of electricity by a generating company to a distribution licensee:***
- PROVIDED that the Appropriate Commission may, in case of shortage of supply of electricity, fix the minimum and maximum ceiling of tariff for sale or purchase of electricity in pursuance of an agreement, entered into between a generating company and a licensee or between licensees, for a period not exceeding one year to ensure reasonable prices of electricity;***
9. According to the mandate of Act under Section 62 read with section 86(1)(b) of the Electricity Act, 2003, approval was given to Chhattisgarh State Power Distribution Co. Ltd. (CSPDCL) to procure short term power vide Order dated 14.07.15 in suo-motu P.No. 14 of 2015 in the matter of "Terms and conditions and pricing of power to be purchased in short-term by the Chhattisgarh State Power

Distribution Company Ltd. for the year 2015-16.” In this order maximum ceiling price for short-term power purchase has been specified. As no order has been passed after this, the rates specified in this order dated 14.07.2015 is still applicable for purchase of short-term power for 2017-18.

10. As the price discovered through the e-bidding for certain period is higher than the maximum ceiling rates specified in P.No. 14 of 2015, CSPDCL forwarded a letter for approving the rates discovered in bidding along with quantum of short-term power purchase for month of June to November 2017. Similar procedure was followed by CSPDCL for seeking approval of power purchase for the month of May 2017. Looking to weather condition and increased demand due to summer, in order to meet consumers power requirement, approval was accorded vide order dated 11.05.2017 to purchase short term power as per proposal by CSPDCL for the period of 11.05.17 to 31.05.17.
11. Under Section 63 of the Act, Central Government had notified guidelines through resolution dated 16.05.2012 for procurement of short-term power by distribution licensees through tariff based bidding process. As per these guidelines 2012, as and when considered appropriate (not later than 5 years from the issue of these guidelines), the Central Government would examine and introduce a system of 'Reverse Auction' through an e-platform. In view of this, the Central Government notified the revised guidelines through resolution dated 30 March 2016 for short term (i.e. for a period of more than one day to one year) Procurement of Power by Distribution Licensees through Tariff based bidding process inter alia introducing system of 'Reverse Auction' through an e-Bidding Portal w.e.f. 1<sup>st</sup> April, 2016. The specific objective of these guidelines has been narrated in para 1.5 of these guidelines which is reproduced below:

**"1.7. The specific objectives of these Guidelines are as follows:**

**i) Promote competitive procurement of electricity by Distribution Licensees for their short term demand (for a period of more than one day to one year);**

**ii) Reduce the Power Purchase cost of Distribution Licensees through a process of planned procurement based on transparent guidelines;**

**iii) Provide benefit to consumers;**

**iv) Facilitate transparency and fairness in procurement processes; and**

**v) Introduce a system of e-Tendering and e-Reverse Auction."**

12. The objective of these guidelines is very clear i.e. to reduce the power purchase cost of distribution licensee which ultimately benefits consumers, through competitive and transparent way of power purchase. Clause 1.8 of the guidelines further clarifies that:

*"1.8. These Guidelines shall be read along with the relevant provisions of the Electricity Act, 2003, Policies made thereunder and other applicable regulations issued by the Appropriate Commission. In case of any conflict, clarifications shall be issued by the Central Government."*

13. The guidelines clarify that these guidelines has to be made effective harmoniously with other relevant provisions of Act. The other relevant provisions of the Act, primarily, may be as under:

- (1) Section 86(1)(b), which mandates State Commission to regulate power purchase of distribution licensee,
- (2) Section 62, which mandates Appropriate Commission to fix maximum ceiling price of short-term power purchase.
- (3) Section 79(1)(j) and Section 86(1)(j) which requires Appropriate Commission to fix trading margin, if felt necessary.
- (4) Section 60 which requires Appropriate Commission to issue directions if considered appropriate in case of market domination by entities.
- (5) Section 66 which mandates Appropriate Commission to develop power market.

14. Regarding functions of the State Commission in case of power procurement through bidding route i.e. under Section 63 of the Act, the observations of Hon'ble Supreme Court needs to be referred. In para 18 of Civil Appeal no 9035 of 2014, 5399-5400, 5347, 5348, 5364, 5346, 5351, 5352, 5415, 9635-9642 of 2016, Hon'ble Supreme Court has held as under:

*"18. The construction of Section 63, when read with the other provisions of this Act, is what comes up for decision in the present appeals. It may be noticed that Section 63 begins with a non-obstante clause, but it is a non-obstante clause covering only Section 62. Secondly, unlike Section 62 read with Sections 61 and 64, the appropriate Commission does not "determine" tariff but only "adopts" tariff already determined under Section 63. Thirdly, such "adoption" is only if such tariff has been determined through a transparent process of bidding, and, fourthly, this transparent process of bidding must be*

in accordance with the guidelines issued by the Central Government. **What has been argued before us is that Section 63 is a standalone provision and has to be construed on its own terms, and that, therefore, in the case of transparent bidding nothing can be looked at except the bid itself which must accord with guidelines issued by the Central Government. One thing is immediately clear, that the appropriate Commission does not act as a mere post office under Section 63. It must adopt the tariff which has been determined through a transparent process of bidding, but this can only be done in accordance with the guidelines issued by the Central Government. Guidelines have been issued under this Section on 19th January, 2005, which guidelines have been amended from time to time. Clause 4, in particular, deals with tariff and the appropriate Commission certainly has the jurisdiction to look into whether the tariff determined through the process of bidding accords with clause 4.**

19. It is important to note that the regulatory powers of the Central Commission, so far as tariff is concerned, are specifically mentioned in Section 79(1). This regulatory power is a general one, and it is very difficult to state that when the Commission adopts tariff under Section 63, it functions de hors its general regulatory power under Section 79(1)(b). For one thing, such regulation takes place under the Central Government's guidelines. For another, in a situation where there are no guidelines or in a situation which is not covered by the guidelines, can it be said that the Commission's power to "regulate" tariff is completely done away with? According to us, this is not a correct way of reading the aforesaid statutory provisions. The first rule of statutory interpretation is that the statute must be read as a whole. **As concomitant of that rule, it is also clear that all the discordant notes struck by the various Sections must be harmonized. Considering the fact that the non-obstante clause advisedly restricts itself to Section 62, we see no good reason to put Section 79 out of the way altogether.** The reason why Section 62 alone has been put out of the way is that determination of tariff can take place in one of two ways – either under Section 62, where the Commission itself determines the tariff in accordance with the provisions of the Act, (after laying down the terms and conditions for determination of tariff mentioned in Section 61) or under Section 63 where the Commission adopts tariff that is already determined by a



*transparent process of bidding. In either case, the general regulatory power of the Commission under Section 79(1)(b) is the source of the power to regulate, which includes the power to determine or adopt tariff. In fact, Sections 62 and 63 deal with "determination" of tariff, which is part of "regulating" tariff. Whereas "determining" tariff for inter-State transmission of electricity is dealt with by Section 79(1)(d), Section 79(1)(b) is a wider source of power to "regulate" tariff. It is clear that in a situation where the guidelines issued by the Central Government under Section 63 cover the situation, the Central Commission is bound by those guidelines and must exercise its regulatory functions, albeit under Section 79(1)(b), only in accordance with those guidelines. As has been stated above, it is only in a situation where there are no guidelines framed at all or where the guidelines do not deal with a given situation that the Commission's general regulatory powers under Section 79(1)(b) can then be used."*

15. It may be purposeful to refer to observations of Honourable Tribunal in appeal no 88 Of 2015:

*"21. The points which arose for consideration before this Tribunal inter alia were whether the compliance with Competitive Bidding Process as envisaged in Clause 5.1 of the National Tariff Policy is mandatory for procurement of power by a distribution company and whether Section 63 of the Electricity Act is the exception to Section 62 and the guidelines issued by the Central Government will operate only when the tariff is being determined by the Competitive Bidding Process. **This Tribunal observed that there are two routes and options provided under the Electricity Act: (a) tariff determination under Section 62(1)(a) by the Appropriate Commission in terms of Section 79 and Section 86 of the Electricity Act and (b) tariff discovery in terms of the Competitive Bidding Process in accordance with the Guidelines issued by the Government of India which shall be binding on the Appropriate Commission under Section 63 of the Electricity Act.** This Tribunal considered Section 63 of the Electricity Act and Clause 5.1 of the National Tariff Policy which provides that the power procurement for future should be through a transparent Competitive Bidding Process using Guidelines issued by MoP on 19.1.2005 and also considered clarificatory circular dated 28.8.2006 issued by MoP and held that Section 63 is optional route for procurement of power by a distribution licensee through*

Competitive Bidding Process and in case the same is followed, the Appropriate Commission is required to adopt the said tariff. **However, after referring to relevant judgments of the Supreme Court, this Tribunal held that the power under Section 62(1)(a) and Section 62(1)(b) conferred on the State Commission for determination of tariff through negotiated route cannot in any manner be restricted or whittled down by way of a policy document or a subordinate legislation or notification issued by the Government/Executive and any rules or executive instructions or notifications which are contrary to any provisions of the tariff statute shall be read down as ultra vires of the parent statute. This Tribunal rejected the contention that tariff determination under Section 62(1)(a) without adopting Competitive Bidding Process will render Clause 5.1 of the National Tariff Policy redundant as the distribution licensees in future will procure power from the generating companies through the negotiated route.** This Tribunal observed that the said submission cannot be accepted as it is always open to the State Commission to direct the distribution licensee to carry out power procurement through Competitive Bidding Process only in case where the rates under the negotiated agreement are high. **This Tribunal clarified that the State Commissions have been given discretionary powers either to choose Section 62, 62(1)(a) to give approval to the PPA or to direct the distribution licensee to resort to the Competitive Bidding Process as per Clause 5.1 of the National Tariff Policy read with Section 63 of the Electricity Act.**

22. We find that the State Commission was mindful of this judgment. It has made a reference to it, but it has not discussed it at length or applied it to the facts of the instant case. The State Commission has taken a view that the said judgment relates to period prior to 5.1.2011. The State Commission has observed that after 5.1.2011 no MoU route long term agreement has been allowed by it in line with MoP Guidelines. It has then given a categorical finding that after 5.1.2011 for long term power purchase only competitive route is available. It is pointed out to us that on 5.1.2011, MoP had only brought in the procurement of power from the Government Generating Companies also under the Guidelines for Competitive Bidding Procurement which was notified in 2006. There was no other change in

*the Guidelines to conclude that the procurement of power from non-Governmental Generating Companies was modified on 5.1.2011 and, therefore, BSES Rajdhani will continue to apply to the present case. We do not want to express any opinion on this aspect but we find that the State Commission has not considered this submission. We say so because there is no discussion in the impugned order in regard to this submission. The State Commission's observation that for long term power purchase, only competitive route is available appears to be in teeth of the clear finding of this Tribunal in BSES Rajdhani that the procurement of power through the negotiated route and not through the competitive route is permissible under Section 62 of the Electricity Act notwithstanding Section 63 thereof and MoP Guidelines mandating such Competitive Bidding Process for procuring power on long term basis. Undoubtedly, this Tribunal has also laid down that the State Commissions have been given discretionary powers either to choose Section 62, 62(1)(a) to give approval to PPA or to direct the distribution licensee to resort to the Competitive Bidding Process as per Clause 5.1 of the National tariff Policy. The State Commission, therefore, can in its discretion choose either course.*

16. In Civil Appeal No 3510 - 3511 OF 2008, Hon'ble Supreme Court has held as under:

*"Section 86 provides for the functions of the State Commission, clause (a) of sub-section (1) thereof empowers it to determine the tariff for generation, supply, transmission and wheeling of electricity. Clause (b) empowers it to regulate electricity purchase and procurement process of distribution licensees. Inevitably it speaks of PPA. PPA may provide for short term plan, a midterm plan or a long term plan. Depending upon the tenure of the plan, the requirement of the distribution licensee vis-à-vis its consumers; the nature of supply and all other relevant considerations, approval thereof can be granted or refused"*

17. The functions of the State Commission under Section 63 read with 86(1)(b) and other relevant Sections has been clearly interpreted by Hon'ble Apex Court and Hon'ble Tribunal and so no further observations need to be deliberated by this Commission. The queries sought from CSPDCL in this petition is in accordance with the spirit of the Act.

18. From the reply submitted by CSPDCL, it appears that whole process of bidding including evaluation of bids for short-term procurement has been done by its authorized representative Power Finance Corporation Consulting Ltd.(PFCCL). So no separate evaluation committee was constituted by CSPDCL for evaluations of bids. According to Clause 11.2 of the guidelines the procurer has to provide a certificate on the conformity of the bid process to these Guidelines to the Appropriate Commission. In the reply submitted, CSPDCL has submitted that bid process has been in accordance with the guidelines.
19. The bids offered indicate that the bidders are mainly inter-State traders. According to Section 79(1)(j) of the Act, trading margin has been specified by Central Commission and is required to be regulated. But from the reply of CSPDCL, it appears that CSPDCL is also unaware how much trading margin is being levied by traders (bidders) and also whether there is chain of traders in this power transactions.
20. According to para 30 of the Appendix I of the Standard Bidding Document Invitation for e-Tender and e-Reverse Auction for Medium Term Procurement of Power on DEEP Portal, the bidder declares as under:
- “A Tariff of Rs.....and paise.....\$ (Rupees....and paise.....) per kWh comprising a Base Variable Charge of Rs.....and paise.....\$ (Rupees ....and paise ....) per kWh including (i) Rs.....and paise...\$ (Rupees....and paise....) per kWh as the cost of generation (ii) Rs.....and paise...\$ (Rupees....and paise....) per kWh as the cost of transmission charge and (iii) Rs.....and paise...\$ (Rupees....and paise....) per kWh as the cost of transmission loss”
- But from the reply submitted by CSPDCL, the breakup of offered bid for short-term power by bidders i.e. transmission charges, losses, etc. is not available.
21. The technical details regarding power availability (long-term) and projected demand was also called from CSPDCL. The details of power transactions for the month of April, May and upto 14<sup>th</sup> June has also been examined. It is observed that in the month of April and May 2017, CSPDCL has surrendered certain quantum of long term power of Central generating station, power stations of State owned generating stations were backed down and simultaneously short-term power was also procured. Based on power transactions upto 14<sup>th</sup> June, it appears that the short-term power requirement estimated by CSPDCL and

proposal for quantum of short-term power purchase appears to be on higher side.

22. The annual weighted average rate of short-term power purchase for few preceding years is well within the maximum ceiling price fixed by the Commission for short-term power purchase. In the tariff order 2017-18, the estimated annual weighted average rate of power purchase is well within the specified maximum ceiling price. If the proposal of CSPDCL is accepted in totality it may have an adverse impact on consumer tariff. From the proposal of CSPDCL for purchase of RTC power for the month of June 2017 to November 2017, it is observed that except for the month of June 2017, the bids offered for the month of July to November 2017 is within the approved maximum ceiling price. While purchasing power for the month of July to November 2017, proper estimation of the required power should be done in the relevant months and power should be procured if it is essential. As such CSPDCL should reassess the quantum of short-term power for July to November 2017 and place order accordingly. Regarding TOD power, the offered bids which are above maximum ceiling price cannot be approved as it may adversely impact consumer's tariff. CSPDCL may procure short-term power from alternative platform such as power exchanges, unrequisioned power of CGS, CGP/IPPs of State, other sources etc. to meet its power requirement, but the rates of short-term power purchase should be within the maximum ceiling specified in order P.No. 14 of 2015.

We order accordingly.

**Sd/-**  
**(ARUN KUMAR SHARMA)**  
**MEMBER**

**Sd/-**  
**(NARAYAN SINGH)**  
**CHAIRMAN**

**List of the persons attended public hearing on 07.06.2017**

<b>No.</b>	<b>Name</b>	<b>Organization/ Designation</b>
1.	Shri M.S. Ratnam	Energy Dept. (Special Secretary GoCG)
2.	Shri G.C. Mukherjee	Director (C&RA), CSPDCL
3.	Shri D.S. Bhagat	CE (RA & PM) CSPDCL
4.	Shri M.H. Prasad	SE (RA & PM) CSPDCL
5.	Shri V.A. Deshmukh	EE RAC, O/o. CE (RA&PM), CSPDCL