

**MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION
BHOPAL**

Sub: In the matter of petition under Section 86(1) and 63 of the Electricity Act, 2003, for adoption of Tariff determined through transparent process of bidding for long term procurement of 1230 MW Electricity from Thermal Power Station of 1320 MW to be set up on Design, Build, Finance, Own and Operate (DBFOO) basis in accordance to MoP Guidelines issued on 5th March' 2019.

Petition No. 28 of 2020

ORDER

(Date of Hearing: 14th May' 2020)

(Date of Order: 26th May' 2020)

M.P. Power Management Company Ltd.,
Block No. 7, Shakti Bhawan, Rampur, Jabalpur – 482008

- **Petitioner**

Shri Ashish Bernard, Advocate and Shri S.K. Nema, DGM (Commercial) appeared on behalf of petitioner.

M.P. Power Management Company Ltd. has filed the subject petition under Section 86(1) and Section 63 of the Electricity Act, 2003, for adoption of Tariff determined through transparent process of bidding for long term procurement of 1230 MW Electricity from Thermal Power Station of 1320 MW to be set up on Design, Build, Finance, Own and Operate (DBFOO) basis in accordance with the Guidelines issued by Ministry of Power on 5th March' 2019.

2. The subject petition was admitted in motion hearing on 19.03.2020 and the case was fixed for further hearing on 24.03.2020. However, due to outbreak of COVID 19 virus followed by country-wide lockdown, the hearings scheduled for various dates in March'2020 and April'2020 were adjourned/postponed. All hearings earlier scheduled on 24th March' 2020 and postponed thereafter due to outbreak of COVID 19 were rescheduled and conducted through video conferencing on 14th May' 2020.

3. The subject matter was heard through video conferencing on 14.05.2020 when Ld. Counsel of the petitioner while referring some other petitions (P-27/2019 and P- 36/2019) for the background of subject matter has mentioned the detailed process followed by M.P. Power Management Company Ltd, Jabalpur vis-à-vis the guidelines issued by Ministry of Power on 5th March' 2019 for determining the lowest tariff through competitive bidding under Section 63 of the Electricity Act'2003 for procurement of 1230 MW power from thermal power station of 1320 MW to be set up on Design, Build, Finance, Own and Operate (DBFOO) basis in accordance with the Guidelines issued by Ministry of Power on 5th March' 2019.

4. Ld. Counsel of the petitioner quoted the Judgement dated 11.04.2017 passed by Hon'ble Supreme Court in Civil Appeal Nos.5399-5400 of 2016 in the matter of Energy Watchdog and Others. He stated that this Judgement deals with the scope of Section 63 of the Act and the role of the Commission for adoption

of tariff. This judgement is also reported in (2017) 14 SCC 80. He read Para 18 of the aforesaid Judgment as below:

“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.....”

5. During the course of hearing held on 14.05.2020, Ld. Counsel appeared for the petitioner was asked to clarify/explain certain issues in the subject matter and submit their reply along with supporting documents at the earliest.

6. In subject petition, the petitioner has broadly submitted the following:

“1. It is most respectfully submitted that the Ministry of Coal, Govt. of India has notified the SHAKTI (Scheme for Harnessing and Allocating Koyala (Coal) Transparently in India) Policy (“SHAKTI Policy”) on 22.05.2017. Para B(iv) of the SHAKTI Policy provides for earmarking of coal linkages to States and the State may indicate these linkage to Discoms / SDA’s and based on such linkages to undertake tariff based competitive bidding for long-term and medium-term procurement of power as per the guidelines issued by Ministry of Power and may recommend grant of these linkages to successful bidders. Para B(iv) of the SHAKTI Policy is reproduced hereunder:

“(iv) Coal linkages may also be earmarked for fresh PPAs, by pre-declaring the availability of coal linkage with description, to the States. States may indicate these linkages to Discoms/SDAs.

I. The States/Discoms may, based on such linkages, undertake tariff based competitive bidding for long-term and medium-term procurement of power as per the guidelines issued by Ministry of Power and may recommend grant of these linkages to successful bidders. In case of the commissioned capacities, FSA shall be signed with the successful bidder after completion of the auction process. In case of the likely to be commissioned capacities, a Letter of Assurance may be issued by CIL/SCCL to the

successful bidder and FSA shall be signed on commissioning of the unit. The successful bidder shall be required to meet the conditions specified in the Letter of Assurance and FSA. The existing FSA/LoA holders may also participate in the competitive bidding for PPA and, if successful, shall surrender proportionate quantity of the FSA/LoA for the corresponding tenure; or

- II. The States/Discoms may recommend grant of the earmarked linkages to capacities that are covered under exceptions and proviso clauses of para 5.2 of the Tariff Policy dated 28.01.2016. A Letter of Assurance may be issued by CIL/SCCL to such capacities and FSA shall be signed on commissioning of the unit.*

Provided

- (a) The priority between (iv) I and (iv) II above will be decided by the State Government concerned considering its public interest and based on its requirements.*
- (b) The quantity remaining unutilized for 2 years continuously shall lapse. Detailed policy guidelines for sub para (iv) shall be formulated by Ministry of Power.”*

In regards to this WCL has allocated coal for the project (under subject petition) vide letter dated 15.10.2019 from basket of 6 Mines with varying quantum year on year, which in turn shall be allocated to the successful bidder. (Annexure 1)

- 2. It is most respectfully submitted that, the Ministry of Power in exercise of powers conferred under Section 63 of the Electricity Act, 2003 has issued/notified the Guidelines (the “Guidelines”) and Model Bidding Documents (the “Model Bidding Documents / MBD”) for long term Procurement of Electricity from Thermal Power Stations set up on Design, Build, Finance, Own and Operate (DBFOO) basis and sourcing fuel as provided under Model Bidding Documents including allocation of coal under B (I), B(III) and B(IV) of SHAKTI (Scheme for Harnessing and Allocating Koyala (Coal) Transparently in India) Policy vide GoI Notification No. 23/17/2013-R&R (Vol-VI) Part 4 dated 06.03.2019.*
- 3. That earlier, a Committee constituted by the Energy Department, GoMP, vide order No. F-3 /137/2010/13/(Vol-II) dated 05.02.2018, for assessment of demand and supply scenario in the state has submitted its detailed report dated 24.07.2018 on the possible scenario of demand and availability of power and requirement of future capacity addition. With the expected change in dynamics of electricity demand in the future on the basis of the actual position of 2018-19, the Committee felt the need to review various parameters in its report. The Committee after detailed study submitted the revised report on 13.05.2019. Key recommendations of the Report are reproduced below:*

- *It may be seen from the Demand and Availability scenario of the future, in terms of Peak (in MW), the State may start facing deficit during Rabi season from FY 2023-24 onwards as against FY 2024-25 envisaged earlier.*
 - *The Peak deficit in Rabi season may reach upto 762 MW, 1114 MW, 1481 MW, 1782 MW, 2342 MW, 2903 MW and 3505 MW during 2023-24 to 2029-30 respectively.*
 - *To overcome the Peak deficit, Generation Capacity to the tune of 3960 MW may be required from 2023-24 and onwards upto FY 2028-29.*
 - *Looking to the year wise quantum of the Peak Deficit, it may be needed to add one 660 MW each in the year 2023-24 to 2028-29 respectively.*
 - *On the basis of the Committee's Report dated 24/7/2018, Energy Department, vide letter dated 8/8/2018 has already issued instructions for installation of 2X660 MW units by MP Genco and 2X660 MW under Case 2 Competitive Bidding*
 - *The State may tie up additional 2X660 MW generation capacity through Competitive Bidding.*
 - *The Committee recommends that the long term demand and availability scenario of the State may be revisited by the State Planning Cell (SPC) on yearly basis and all the stakeholders in two years or as may be felt necessary by SPC.*
4. *It is most respectfully submitted that the Petitioner has filed a Petition before this Hon'ble Commission being Petition No. 27 of 2019, seeking in-principle approval for the power procurement plan as per Committee Reports dated 24.07.2018 and 13.05.2019, with the following prayers:*
- *Be pleased to grant in-principle approval for Power Procurement by the Petitioners for the State of MP as per Committee Reports dated 24/7/2018 and 13/5/2019 for the Review of Demand and Availability of power in the State up-to FY 2029-30 and accordingly, Finalization of Capacity Addition Plan under Section 86(1)(b) of the Electricity Act, 2003 read along with the MPERC (Power Purchase and Procurement Process) Regulations, 2004, Revision 1, 2006 (RG – 19(I) of 2006);*
 - *Be pleased to pass any other order in the interest of justice*
5. *It is further submitted that the Hon'ble Commission, vide Daily order dated 02.08.2019 in the matter of Pet. No. 27/2019, directed as follows :*
- "4. The Commission accepting the request has allowed the petitioner to submit the revised assessment of long term power demand in the State of Madhya Pradesh and availability of power by incorporating the additional availability and capacity addition programme accordingly."*
- The Commission further directed the petitioner to submit the filings comprehensively.*
6. *Thereafter, a revised report dated 22.08.2019 on the possible scenario of demand & availability of power and requirement of future capacity addition after incorporating the*

availability of power from Tilaiyya UMPP also was submitted to the Government of MP. According to this report, the proposed Capacity Addition of 6x600 MW, as recommended by the Committee in its report dated 13.05.2019, still remains same, and thus, to cater the future demand, the State needs to add one unit of 660 MW each during 2023-24, 2024-25, 2025-26, 2026-27, 2027-28 and 2028-29.

7. It is most respectfully submitted that in the meanwhile the Petitioner had also filed an Interim Application before this Hon'ble Commission interim approval on Petition No. 27 of 2019, for commencing the Bid Process for procuring 1320 MW through competitive bidding route (1/3 of the total requirement of 3960 MW), with the following prayers:
 - It is, therefore, prayed that this Hon'ble Commission may at present kindly be pleased to grant as an interim approval for commencing the process of procuring 1320 megawatts through the competitive bidding route;
 - Any other order which this Hon'ble Commission deems fit and proper in the facts and circumstances of the case.
8. Hon'ble Commission, vide Order dated 17.09.2019 in the above IA, observed as follows :

"12. Considering the contention of the petitioner in the subject I.A. and its submissions during the hearing, this I.A. is allowed and the petitioner may commence the process of procuring 1320 MW power through competitive bidding route subject to final outcome of petition No.27 of 2019."
9. It is submitted that in terms of the Guidelines issued by MoP, GoI dated 06.03.2019 for procurement of power under DBFOO competitive bidding process, approval of the Appropriate Commission has been required in case any deviations are made to the Model Bidding Documents, save and except those modifications which are expressly permitted under the Model Bidding Documents. The relevant clause of the Guidelines is reproduced hereunder:

I. "...

7. Any deviation from the Model Bidding Documents shall be made 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...."
10. It is most respectfully submitted that this Hon'ble Commission vide orders dated 24.09.2019, 08.11.2019, 27.12.2019 and 14.02.2020 had accorded its approval on deviations to the Request for Qualification (RFQ), Request for Proposal (RFP) and Power Supply Agreement (PSA) documents in accordance with Cl. 4 of the Guidelines above, for long term procurement of electricity from Thermal Power Stations set up on DBFOO basis.

11. It is further submitted, that the in accordance with the the Guidelines issued by MoP, Gol dated 06.03.2019 for procurement of power under DBFOO competitive bidding process, reproduced hereunder:

“Based on above and to introduce e-bidding process for procurement of power under long term, the Central Government has, vide its letter No. 23/17/2013-R&R(Vol-VI) dated 5th March, 2109 issued the Model Bidding Documents comprising the Model Request for Qualification - DBFOO (the “MRFQ-DBFOO”), the Model Request for Proposals - DBFOO (the “MRFP - DBFOO”) and the Model Power Supply Agreement - DBFOO (the “MPSA- DBFOO”) (collectively, the “Model Bidding Documents -DBFOO”), to facilitate the use of coal as per para B (I), B(III) and B(IV) of SHAKTI Policy , to be adopted by distribution licensees for procurement of electricity from the aforesaid power producers through a process of open and transparent competitive bidding based on offer of the lowest tariff from thermal power generating stations constructed and operated on DBFOO basis and sourcing fuel as provided under Model Bidding Documents including allocation of coal under B (I, III and IV) of SHAKTI Policy; through an electronic platform (DEEP e-Bidding portal) developed by PFC Consulting Limited”

12. Further, it is most respectfully submitted that the Petitioner has carried out the whole bid process in a transparent manner and in accordance with the Guidelines issued by MoP, Gol dated 06.03.2019 for procurement of power under DBFOO competitive bidding process. The Bid Process was conducted on DEEP e-Bidding Portal developed by PFC Consulting Limited and M/s Price Waterhouse Coopers Pvt. Ltd. (PwC) was appointed as the Bid process consultant for the Bid Process.

13. As per the decision of Board of Directors of MPPMCL, a Bid Evaluation Committee was constituted, for opening and techno-commercial evaluation of bids. The members of the Committee were as under:

- CGM (Commercial), C-2, MPPMCL - Member
- CFO, MPPMCL - Member
- CE (Procurement), MP Transco - Member
- Sr. GM (Commercial) C-2, MPPMCL – Member (Convener)

14. It is most respectfully submitted that the “Invitation for Qualification” was published in newspapers viz. “Dainik Bhaskar”, “Times of India” and “Economic Times” in addition to “DEEP Portal” of PFC Consulting Limited as per sacrosanct requirement of Ministry of Power, Govt. of India Notification dated 06.03.2019, subsequent to the Hon’ble Commission allowed the petitioner to commence the process of procuring 1320 MW power through competitive bidding route. The RfQ was also uploaded on Petitioner’s Website on 18.09.2019 and the last date for submission of response towards the same was 01.11.2019.

15. *It is most respectfully submitted that the initial Application Due Date was 09.10.2019 and subsequently extended to 21.10.2019 and again thereafter up to 04.11.2019. Accordingly, the opening of the RFQ Applications was done on 04.11.2019 at 3:30 PM and based on the preliminary evaluation, letters for the infirmities in the Application were issued to the respective Applicants on 08.11.2019. The responses were received from all the Applicants via email and in original within the time schedule prescribed.*
16. *It is most respectfully submitted that M/s PwC had submitted the RfQ Evaluation Summary to the MPPMCL. Copy of the same is attached in Annexure 2. Subsequently, the Bid Evaluation Committee convened meeting on 13.11.2019 and deliberated upon the RfQ Application along-with the report submitted by PwC. The Bid Evaluation Committee, inter alia, found that on grounds of completeness, all the five Applications are found to be in order and qualified in accordance with the provisions of the RfQ.*
17. *It is most respectfully submitted that at the end of the RfQ Stage, following five (5) Applicants were declared as Pre-qualified Bidder:*
 1. *Adani Power Limited,*
 2. *JSW Energy Limited,*
 3. *MB Power (MP) Limited,*
 4. *DB Power (MP) Limited and*
 5. *Moher Power Limited.*
18. *It is most respectfully submitted that subsequent to the above, the Request for Proposal (RfP-DBFOO) document was issued to all the Applicants who qualified in the RfQ stage (Bidders) through individual "Letter of Invitation" on 14.11.2011. As per Corrigendum- 5 Re-Revised (Bid Stage) dated 05.02.2020 to NIT No: CGM (Comm-2)/1265/ dated 18.09.2019, the last date for submission of "Enclosure of the Bid" was 17.02.2020. As on 17.02.2020, MPPMCL has received the Enclosures of the Bid from following three Bidders:*
 1. *Adani Power Limited;*
 2. *JSW Energy Limited; and*
 3. *MB Power (MP) Limited.*
19. *It is most respectfully submitted that the evaluation of the Enclosures of the Bids was done by M/s PwC and accordingly an evaluation report was submitted in this regard to the Bid Evaluation Committee on 19.02.2020 wherein it was concluded in the above Report, that compliance of all the three bidders namely, Adani Power Limited, JSW Energy Limited, and MB Power (MP) Ltd. is as per requirement. A copy of the said report is annexed herewith as Annexure 3.*
20. *It is most respectfully submitted that the initial Bid Due Date was 02.01.2020, which was subsequently extended to 15.01.2020, 30.01.2020, 14.02.2020 and then up to 20.02.2020.*

Accordingly, the opening of the Bids was done on the Bid Due Date i.e. 20.02.2020 at 1600 hours (IST) in accordance with clause 3.1.1 of the RfP-DBFOO in the presence of Bidders representatives and the members of the Expert Bid Evaluation Committee formed vide its Order No. 05-01/249 dated 20.02.2020 had formed an Expert Bid Evaluation Committee for opening and techno-commercial evaluation of bids received during bid stage. The members of the Committee were as under:

- Director, Commercial, MPPGCL
- Chief Finance Officer, MPPMCL
- CE (Procurement), MP Transco
- CGM (Commercial-2), MPPMCL
- Addl. CGM (IPC), MPPMCL

Representatives from M/s Adani Power Limited and M/s MB Power (MP) Limited were present and representative of M/s JSW Energy Limited were not present during the Bid opening. Bids of three Bidders were uploaded on the DEEP Portal on the date and time prescribed in Clause 2.12.1. of RFP, namely,

1. Adani Power Limited;
2. JSW Energy Limited; and
3. MB Power (MP) Limited.

21. It is most respectfully submitted that the Bids were invited for the Project on the basis of a tariff to be offered by the Bidders for and in respect of the project in the prescribed format "Letter Comprising the Bid" (Appendix-I) to RFP -DBFOO which was required to be uploaded on the DEEP portal only. The quoted Total Tariff to be the arithmetic sum of Fixed Charge and Fuel Charge to be quoted in Rs./kWh. The Bidder quoting the lowest Tariff to be the Selected Bidder.

22. The Tariff offered by the Bidders is tabulated as under:

Bidder Name	Fixed Charge Rs. / kWh	Fuel Charge Rs. / kWh	Total Tariff Rs. / kWh	Ranking of Bidder
Adani Power Limited	2.898	1.892	4.790	Lowest 1
MB Power (MP) Limited	3.077	2.330	5.407	Lowest 2
JSW Energy Limited	3.350	2.146	5.496	Lowest 3

23. It is most respectfully submitted that PwC in their Bid Evaluation Report submitted to MPPMCL (Annexure 4) have indicated as under:

"The lowest tariff of Rs. 4.790 per unit has been quoted by the M/s Adani Power Limited. Considering that this is the lowest price quoted by the bidder and as per provision 3.5.2 of the RfP-DBFOO which states that "the Bidder seeking the lowest

Tariff shall be the Selected Bidder” and the Bid is responsive, the aforementioned bidder is recommended to the Bid Evaluation Committee to be considered as the Selected Bidder.”

24. *It is most respectfully submitted that the Expert Bid Evaluation Committee convened meetings on 24.02.2020, 25.02.2020 and 26.02.2020 and deliberated upon the bids received along-with the above-mentioned reports by PwC. The Expert Bid Evaluation Committee, inter alia, found that on grounds of responsiveness and completeness, all the three Bids were in order and that M/s Adani Power Limited has quoted the Lowest tariff of Rs. 4.790 per unit and stands as the Selected Bidder.*
25. *It is most respectfully submitted that PwC has also carried out a detailed evaluation of the reasonability of tariffs quoted in the Bid. A copy of the said report is annexed herewith as Annexure 5. The report was put to the Expert Bid Evaluation Committee. Further, in respect of reasonability of rates discovered through the competitive bidding process, the Expert Bid Evaluation Committee has determined that the tariff quoted by the Lowest Bidder as Rs. 4.790 / kWh is reasonable and recommended for further consideration by the Board of the Petitioner.*
26. *It is most respectfully submitted that the Petitioner, in its Board Meeting held on 02nd March 2020, inter alia, resolved that the rate discovered through the competitive bidding process may be referred to the Energy Department, Govt. of MP for decision regarding acceptance of discovered Tariff. Accordingly, the matter was discussed in the Cabinet Meeting held on 06.03.2020 wherein the approval was accorded for acceptance of the tariff as quoted by the Selected Bidder i.e M/s Adani Power Limited.*
27. *It is most respectfully submitted that on 09.03.2020, Letter of Award (LoA) was issued to M/s Adani Power Limited which M/s Adani Power Limited acknowledged and unconditionally accepted on 09.03.2020. Subsequent to the acceptance, the Power Supply Agreement (PSA) was executed between MPPMCL and M/s Adani Power Limited on 12.03.2020. A copy of the executed PSA is attached in Annexure 6.*
28. *It is most respectfully submitted that Section 63 of the Electricity Act 2003 stipulates as below:*
“63. Determination of tariff by bidding process – Notwithstanding anything contained in Section 62, the Appropriate Commission shall adopt the tariff if such tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the Central Government.”

It is submitted that as per Section 63 the appropriate Commission shall adopt the tariff if such tariff has been determined through transparent process of bidding, in accordance with

the guidelines issued by the Central Government. The Ministry of Power, Govt. of India, has issued the Standard Bidding Documents (SBD) and Guidelines dated 05th March 2019 & 06th March 2019 for procurement of Long-Term Power from Power Stations set up on DBFOO basis and sourcing coal through Allocated Coal Linkage.

- 29. It is, therefore, most respectfully submitted that this Hon'ble Commission is the Appropriate Commission and has the power and jurisdiction to adjudicate on the present Petition under the provisions of the Electricity Act, 2003.*
- 30. Further, as already submitted in earlier paragraphs, the Petitioner has sought the concurrence of the Hon'ble Commission on the all the issues through filing the appropriate petitions for:*
 - I. seeking in-principle approval for the power procurement plan of the Petitioner (Petition No. 27 of 2019 and IA No. 3 in Petition No. 27 of 2019) -*
 - a. Hon'ble Commission initially allowed the petitioner to commence the process for procurement of 1320 MW long term power through competitive bidding route vide Order dated 17.09.2019 in the matter of IA No. 3 filed in Petition No. 27 of 2019.*
 - b. Hon'ble Commission subsequently allowed procurement of 1320 MW long term power through competitive bidding process vide Order date 13.01.2020.*
 - II. seeking approval of the deviations in Model Bidding Documents (Petition No. 36 of 2019) -*
 - a. Hon'ble Commission approved deviations in "Request for Qualification" (RFQ) document vide Order dated 24.09.2019 with the directions to petitioner to ensure filing of Corrigendum if any, issued after holding pre-application conference in the subject matter, which the petitioner complied entirely.*
 - b. Hon'ble Commission approved deviations in "Request for Proposal" (RFP) and Power Supply Agreement (PSA) documents vide Order dated 08.11.2019. Thereafter, RFP and PSA uploaded on DEEP Portal for Qualified Bidders.*

Hon'ble Commission had been kind enough to further approve the deviations, vide Order dated 27.12.2019, incorporated in the RFP and PSA documents after receiving of the queries from the bidders and response of petitioner to the queries and also suo-moto amendments envisaged by the petitioner."

Prayer

- 31. In view of the above-mentioned facts and submissions, the Hon'ble Commission may be pleased to:*

- a. *Adopt the tariff quoted by the Successful Bidder as discovered through the transparent process of bidding carried out by the Petitioner in accordance with the guidelines issued by the Central Government, and also in accordance with the terms and conditions of the Model Power Supply Agreement duly incorporating the deviations approved by this Hon'ble Commission.*
- b. *Pass any such orders or directions as this Hon'ble Commission may deem just and proper in the circumstances of the case.*

7. The petitioner has filed the following documents with the subject petition:

- (i) Letter dated 15.10.2019 from Western Coalfields Limited to Energy Department, Government of MP in the matter of coal linkage under Para B(iv) of SHAKTI policy for the State of Madhya Pradesh indicating proposed sources subject to terms and conditions.
- (ii) Recommendation of Bid Evaluation Committee dated 19.02.2020 on the RfQ Evaluation summary report submitted by M/s PwC.
- (iii) Evaluation report of M/s PwC (Bid Process Consultant) for verification of "Enclosures of the Bid"
- (iv) Recommendation Report of the Expert Bid Evaluation Committee for reasonability of the tariff quoted by the lowest Bidder.
- (v) Report of Rate Reasonability by M/s PwC.
- (vi) Power Supply Agreement (PSA-DBFOO) dated 12.03.2020 executed between MP Power Management Company Limited and M/s Pench Thermal Energy (MP) Limited.

8. Vide letter No. 05-01/Comml2-IPC/DBFOO/Petition/128 dated 18.05.2020, the petitioner has submitted its reply along with documents to the issues flagged by the Commission during hearing held on 14.05.2020. In its aforesaid letter, the petitioner has submitted the following:

"Hearing for Petition no. 28/2020 was held through VC on date 14.05.2020 on the subject matter. As directed, a copy of the Order no. 05-01/249, Bhopal dated 20.02.2020, regarding constitution of "Expert Bid Evaluation Committee", mentioned as Appendix-1 at page no. 253 of the petition, is submitted herewith for kind perusal please. Hon'ble Commission has also enquired about Appendix-II, III & IV of the "Report of the Expert Bid Evaluation Committee". It is most respectfully submitted that these Appendix are annexed in the Petition at page no. 255 to 287, 281-282, 288 to 298 respectively. Further, Hon'ble Commission has pointed out the date of Letter of Invitation, as mentioned in point no. 24 of the petition as 14.11.2011. The same may please be read as 14.11.2019."

9. The petitioner has enclosed the copy of its Order no. 05-01/249, Bhopal dated 20.02.2020, regarding constitution of "Expert Bid Evaluation Committee", mentioned as Appendix-1 in the "Recommendation Report of the Expert Bid Evaluation Committee for reasonability of the tariff

quoted by the lowest Bidder". The petitioner has also enclosed the copy of its order for change in OIC of the instant matter.

Legal Framework for adoption of tariff determined through competitive bidding

10. Section 63 of the Electricity Act provides as under:

"63 Determination of tariff by bidding process. Notwithstanding anything contained in Section 62, the Appropriate Commission shall adopt the tariff if such tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the Central Government"

Guidelines issued by the Central Government:

11. Government of India, Ministry of Power vide resolution dated 6th March' 2019 issued guidelines for long term procurement of electricity from thermal power stations set up on Design, Build, Finance, Own and Operate (DBFOO) basis and sourcing fuel as provided under Model Bidding Documents including allocation of coal under B(I), B(III) and B(IV) of SHAKTI (Scheme for Harnessing and Allocating Koyala (Coal) Transparently in India) Policy.

12. Government of India, Ministry of Power vide letter No. 23/17/2013-R&R (Vol-VI) dated 5th March' 2019 also issued the Model Bidding Documents comprising the Model Request for Qualification (RfQ) – DBFOO, Model Request for Proposal (RfP) – DBFOO and the Model Power Supply Agreement (PSA)– DBFOO to facilitate the use of coal as per B(I), B(III) and B(IV) of SHAKTI Policy to be adopted by Distribution Licensee for procurement of electricity through a process of open and transparent competitive bidding based on offer of the lowest tariff from the thermal power generating stations constructed and operated on DBFOO basis and sourcing fuel as provided under Model Bidding Documents including allocation of coal under B(I), B(III) and B(IV) of SHAKTI Policy through an electronic platform.

13. The above guidelines issued by the Ministry of Power are subject to the following terms and conditions:

- "(i) The terms and conditions specified in the Model Bidding Documents –DBFOO referred to hereinabove shall, by reference, form part of these Guidelines and shall be treated as such.*
- (ii) The application of these Guidelines shall be restricted to projects constructed and operated in accordance with a Power Supply Agreement signed for Supply of electricity for a period of 7 years and above upto a period of 25 years from the Date of Commencement of supply of Power with provision of extension of 5 years at the option of either party in accordance with the Power Supply Agreement.*
- (iii) The tariff determined through the bidding process 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.*

- (iv) *Any deviation from the Model Bidding Documents shall be made 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.*
- (v) *The 'Guidelines for Procurement of Electricity from Thermal Power Stations set up on Design, Build, Finance, Own and Operate (DBFOO) basis' issued on 9th November 2013, as amended from time to time, including the Model Bidding Documents issued on 8th November' 2013 and amended from time to time thereunder, are hereby repealed.*

Provided, however, that any agreements signed or actions taken prior to the date hereof shall not be affected by such repeal of the said Guidelines of 2005/ 2013/ 2015 and shall continue to be governed by the Guidelines repealed hereunder."

14. The subject petition is examined and dealt with by the Commission in terms of abovementioned model bidding documents and the terms and conditions articulated in the guidelines issued by the Ministry of Power on 6th March' 2019.

Commission's observations and findings :

15. The petitioner, had filed Petition No. 36 of 2019 under Section 86(1) of the Electricity Act, 2003 read with clause 4 of the Guidelines issued by the Government of India, Ministry of Power vide resolution dated 6th March, 2019 for approval of the deviations in Model Bidding Documents for Long Term Procurement of power from Thermal Power Station to be set up on Design, Build, Finance, Own and Operate (DBFOO) basis and sourcing fuel as provided under Model Bidding Documents including allocation of coal under B (I), B(III) and B(IV) of SHAKTI (Scheme for Harnessing and Allocating Koyala (Coal) Transparently in India) Policy.

16. The above petition was filed pursuant to Commission's order dated 17.09.2019 in IA No. 03/2019 in petition No. 27 of 2019 wherein the petitioner has been allowed to commence the process of procuring 1230 MW power through competitive bidding route subject to outcome of the main petition. The aforementioned petition No. 27 of 2019 has been filed with this Commission by the petitioner seeking in-principle approval for procurement of additional 3960 MW power up to FY 2028-29 to ensure continuity of 24X7 power supply in the state.

17. Vide Commission's order dated 24th September' 2019 in the above mentioned petition, the deviations in "Request for Qualification" (RFQ) document from the Model Bidding Document (issued by the Ministry of Power) as filed by the petitioner were approved by the Commission.

18. Vide subsequent orders dated 8th November' 2019 and 27th December' 2019 in the same petition, the Commission accorded approval, in terms of clause 4 under terms and conditions of the

Guidelines issued by the Government of India, Ministry of Power vide resolution dated 6th March, 2019, to the deviations in RFP and PSA from the Model Bidding Documents as filed by the petitioner.

19. Subsequently, vide order dated 14.02.2020, the Commission in continuation of its earlier orders dated 8th November'2019 and 27th December' 2019 in the same petition accorded further approval to the following, in terms of clause 4 under terms and conditions of the Guidelines issued by the Government of India, Ministry of Power vide resolution dated 6th March, 2019:

- (i) The Deviations in PSA from the Model Bidding Documents as filed by the petitioner as Annexure-4 on 05.02.2020 by affidavit dated 01.02.2020.
- (ii) The changes/revision in Schedule of Bidding Process under RFP made by the petitioner vide Corrigendum-5 dated 05.02.2020 which was annexed as Annexure-5 filed on 05.02.2020 by affidavit dated 01.02.2020.

20. Thereafter, the petitioner initiated the competitive bidding process. The "Invitation for Qualification" was published in newspapers viz. "Dainik Bhaskar", "Times of India" and "Economic Times" in addition to "DEEP Portal" of PFC Consulting Limited as per sacrosanct requirement of Ministry of Power, Govt. of India Notification dated 06.03.2019. The RFQ was also uploaded on Petitioner's Website on 18.09.2019 and the last date for submission of response towards the same was 01.11.2019.

21. As per the decision of Board of Directors of MPPMCL, a Bid Evaluation Committee was constituted, for opening and techno-commercial evaluation of bids. The members of the Committee were as under:

- CGM (Commercial), C-2, MPPMCL – Member
- CFO, MPPMCL – Member
- CE (Procurement), MP Transco – Member
- Sr. GM (Commercial) C-2, MPPMCL – Member (Convener)

22. The initial Application due date was 09.10.2019, which was subsequently extended to 21.10.2019 and again thereafter extended up to 04.11.2019. Accordingly, the opening of the RFQ Applications was done on 04.11.2019 at 3:30 PM and based on the preliminary evaluation, letters for the infirmities in the Application were issued to the respective applicants on 08.11.2019. The responses were received from all the Applicants via email and in original within the time schedule prescribed.

23. M/s. Price Waterhouse Coopers Pvt. Ltd. (PwC) was appointed as the Bid process consultant for the Bid Process. M/s. PwC had submitted the RFQ Evaluation Summary to MPPMCL.

Subsequently, the Bid Evaluation Committee convened meeting on 13.11.2019 and deliberated upon the RFQ Application along with the report submitted by PwC. The Bid Evaluation Committee, inter

alia found that on grounds of completeness, all the five Applications were in order and qualified in accordance with the provisions of the RFQ.

24. At the end of the RFQ Stage, the following five Applicants were declared as Pre-qualified Bidder:

1. Adani Power Limited
2. JSW Energy Limited
3. MB Power (MP) Limited
4. DB Power (MP) Limited
5. Moher Power Limited

25. Subsequent to the above, the Request for Proposal (RFP-DBFOO) document was issued to all the Applicants who qualified in the RFQ stage (Bidders) through individual "Letter of Invitation" on 14.11.2019. As per the provisions of RFP documents, a pre-bid meeting for the clarification of the queries raised by the bidders was held on 17.12.2019. Thereafter, based on the queries and requests received from the qualified bidders, as mentioned in preceding part of this order, the Commission vide orders dated 08.11.2019, 27.12.2019 and 14.02.2020 had accorded approval on certain deviations to the Request for Proposal (RFP) and Power Supply Agreement (PSA) documents in accordance with clause. 4 of the Guidelines above.

26. The initial Bid due date was 02.01.2020, which was subsequently extended to 15.01.2020, 30.01.2020, 14.02.2020 and 20.02.2020 respectively. Further, as per Corrigendum – 5 Re-Revised (Bid Stage) dated 05.02.2020 to NIT No: CGM (Comm.-2)/1265/ dated 18.09.2019, the last date for submission of "Enclosure of the Bid" was 17.02.2020. As on 17.02.2020, the petitioner received the Enclosures of the Bid from the following three Bidders:

1. Adani Power Limited
2. JSW Energy Limited
3. MB Power (MP) Limited

27. The evaluation of the "Enclosures of the Bids" was done by M/s. PwC and accordingly an evaluation report was submitted by M/s PwC to the Bid Evaluation Committee on 19.02.2020 wherein the compliance of all the three bidders namely Adani Power Limited, JSW Energy Limited and MB Power (MP) Limited was found as per requirement.

28. The petitioner, MPPMCL vide its Order no. 05-01/249 dated 20.02.2020 had formed an Expert Bid Evaluation Committee for opening and techno-commercial evaluation of bids received during bid stage. The members of the Committed were as under:

- Director, Commercial, MPPGCL
- Chief Finance Officer, MPPMCL
- CE(Procurement), MP Transco
- CGM (Commercial-2), MPPMCL

- Addl. CGM (IPC), MPPMCL

29. The opening of the Bids was done on the Bid Due Date i.e. 20.02.2020 in accordance with Clause 3.1.1 of the RfP-DBFOO in the presence of Bidders representatives and the members of the Expert Bid Evaluation Committee. The representatives from M/s. Adani Power Limited and M/s. MB Power (MP) Limited were also present. During the Bid opening, Bids of following three Bidders were found uploaded on the DEEP Portal on the date and time prescribed in Clause 2.12.1 of RfP, :

1. Adani Power Limited
2. JSW Energy Limited
3. MB Power (MP) Limited

30. The Bids were invited for the Project on the basis of a tariff to be offered by the Bidders for and in respect of the project in the prescribed format "Letter Comprising the Bid" (Appendix-I) to RFP-DBFOO which was required to be uploaded on the DEEP Portal only. The summary of the tariff discovered in the Financial Bids is as under:

Bidder Name	Fixed Charge Rs./ kWh	Fuel Charge Rs./ kWh	Total Tariff Rs./ kWh	Ranking of Bidder
Adani Power Limited	2.898	1.892	4.790	Lowest 1
MP Power (MP) Limited	3.077	2.330	5.407	Lowest 2
JSW Energy Limited	3.350	2.146	5.496	Lowest 3

31. Thereafter, PwC in their bid evaluation report submitted to the petitioner has concluded that the lowest tariff has been quoted by M/s. Adani Power Limited and that its bid is responsive. It is also concluded that as per provision 3.5.2 of the RfP-DBFOO which states that "the Bidder seeking the lowest Tariff shall be the Selected Bidder" M/s. Adani Power Limited is recommended to the Bid Evaluation Committee to be considered as the Selected Bidder.

32. The Expert Bid Evaluation Committee convened meetings on 24.02.2020, 25.02.2020 and 26.02.2020 and deliberated upon the bids received alongwith the above-mentioned reports by M/s PwC. The Expert Bid Evaluation Committee, inter alia, found that on grounds of responsiveness and completeness, all the three Bids were in order and that M/s. Adani Power Limited has quoted the lowest tariff of Rs. 4.790 per unit and stands as the Selected Bidder.

33. M/s PwC has also carried out a detailed evaluation for reasonability of tariffs quoted in the Bid and a report on the same was put up to the Expert Bid Evaluation Committee. In respect of reasonability of rates discovered through the competitive bidding process, the Expert Bid Evaluation Committee found that the tariff quoted by the Lowest Bidder as Rs. 4.790/ kWh is reasonable and recommended for further consideration by the Board of the Petitioner. The Expert Bid Evaluation Committee has broadly mentioned the following in its report:

6. “Accordingly, the Committee submits its findings as under:
- On grounds of responsiveness, all the three Bids are found to be in order.
 - On grounds of completeness, all the three Bids are found to be in order except for the Stamp duty, and
 - M/s. Adani Power Limited has quoted Lowest tariff of Rs. 4.790 per unit and stands as the Successful Bidders as per Clause 3.3.1, as per the table below:

S. No.	Bidder Name	Quoted Charge Rs./ kWh	Fixed	Quoted Charge Rs./ kWh	Fuel	Total Tariff Rs./ kWh	Rank
1	Adani Power Limited	2.898		1.892		4.790	Lowest 1
2	MP Power (MP) Limited	3.077		2.330		5.407	Lowest 2
3	JSW Energy Limited	3.350		2.146		5.496	Lowest 3

7. Further, a report has also been provided by M/s. PwC on “Study of Rate Reasonability” (enclosed as **Appendix-IV**). The report reveals that the rates discovered for projects commissioned in 2014 to 2016 under DBFOO mode are in the range of Rs. 3.90/kWH to Rs. 4.75/kWH in present days scenario. Further, tariff of NTPC Plants recently commissioned and to be commissioned ranges from Rs. 4.92/kWH to Rs. 4.96/kWH.
8. Further PwC has worked out the Capital Cost of project similar to recently commissioned project of SSTPP Khandwa PH-II of MPPGCL, after correcting for the additional cost towards brown field to green field project and withdrawal of Mega Policy. The Capital cost of project expecting CoD in FY 2026-27 has been computed as Rs. 8.66 Cr./MW. Fixed cost element of NTPC’s Ghatampur project (Rs. 8.71 Cr/MW) and Nabi Nagar project (Rs. 8.74 Cr/MW) have fixed cost elements of Rs. 2.85/kWH and Rs. 2.90/kWH respectively. The same are also comparable with the lowest bid’s fixed cost element of Rs. 2.898/kWH.
9. PwC has also compared the Fixed Cost element of the lowest bidder (Rs. 2.898/kWH) with the projects likely to be commissioned in FY 2025-26 on CERC norms, which works out to Rs. 3.09/kWH.
10. Considering this, the tariff quoted by the Lowest Bidder as Rs. 4.79/ kWh in 2026-27 appears reasonable and recommended for further consideration by MPPMCL.
11. The Report of the Committee dated 26.02.2020 is hereby submitted to MP Power Management Company Limited, for consideration and further needful please.”

34. The Board of MPPMCL, in its meeting held on 02.03.2020, resolved that the rate discovered through the competitive bidding process may be referred to the Energy Department, Govt. of MP for decision regarding acceptance of discovered Tariff. Thereafter, the matter was put up before the

Cabinet and in the Meeting held on 06.03.2020, the approval was accorded by the Cabinet for acceptance of the tariff as quoted by the Selected Bidder i.e. M/s. Adani Power Limited.

35. Thereafter, the Letter of Award (LoA) was issued to M/s. Adani Power Limited on 09.03.2020 and M/s. Adani Power Limited acknowledged and unconditionally accepted the LoA on 09.03.2020. Subsequent to the above, the Power Supply Agreement (PSA) was executed between MPPMCL and M/s. Pench Thermal Energy (M.P.) Ltd. on 12.03.2020. In Para 33 of the subject petition, it is mentioned that the Power Supply Agreement was executed between MPPMCL and M/s Adani Power Limited on 12.02.2020 whereas, the PSA filed with the Commission as Annexure-6 of the petition is executed between MPPMCL and M/s. Pench Thermal Energy (MP) Ltd. Therefore, the petitioner was asked to clarify this issue.

36. In response, the petitioner vide letter No. 05-01/Comm/2-IPC/DBFOO/Petition/131 dated 22nd May' 2020, the petitioner submitted the following:

"Hearing on Petition No. 28/2020 was held through VC on 14.05.2020 Hon'ble Commission made query that as per point No. 33 of the petition. PSA is executed between MPPMCL and M/s. Adani Power Ltd. on 12.03.2020, whereas the copy of PSA annexed in the petition, shows that is executed between MPPMCL nad M/s. Pench Thermal Energy (MP) Ltd. (PTEMPL).

In this regard, it is to clarify that M/s. Adani Power Ltd. (M/s. APL) vide letter dated 09.03.2020 (copy enclosed) informed MPPMCL that in accordance with the Clause 2.2.6 of the RfQ and Clause 1.1.2 of the RfP, the PSA may be executed by a SPV of the Selected Bidder (M/s. APL) (copy of relevant part of RfQ & RfP enclosed) and same will be executed by M/s. PTEMPL, an SPV of M/s. APL.

The matter was considered and accordingly PSA was executed with M/s. PTEMPL. The ex-post facto approval was also accorded by the Board of MPPMCL on date 20.03.2020 for signing of the PSA, with M/s. PTEMPL."

The petitioner has also enclosed the following documents with the aforesaid letter:

- i. Copy of letter by M/s APL dated 09.03.2020.
- ii. Copy of Clause 2.2.6 of the RFQ.
- iii. Copy of the Clause 1.1.2 of the RFP.
- iv. Copy of its Board Resolution passed in 93rd Meeting held on 20th March' 2020.

37. The Commission has observed that as per Clause 4 of the Guidelines issued by the Central Government as referred in preceding part of this order, any deviations to the Model Bidding Documents shall be made only with prior approval of the Commission. The Petitioner had sought this Commission's approval on certain changes to the Request for Qualification (RFQ), Request for Proposal (RFP) and Power Supply Agreement (PSA) documents in accordance with the provisions under Guidelines and this Commission vide orders dated 24.09.2019, 08.11.2019, 27.12.2019 and

14.02.2020 had accorded its approval to the deviations in Bidding Documents as sought by the petitioner.

38. The Commission has observed that the Bidding Process has been carried out transparently with the Notice Inviting Tender (NIT) being published in 3 widely circulated newspapers and also being posted on the DEEP Portal of PFC and on the website of the Petitioner. Further, the Bidding Process was also conducted online on the DEEP Portal. Further, as per provision in the RFP document, the LoA was issued to the successful bidder within the stipulated time of 30 days from the bid due date and the Power Supply Agreement was also signed within the required time frame.

39. Further, on perusal of the recommendation of the Expert Bid Evaluation Committee and report of M/s. PwC, the Commission has observed that all provisions with respect to completeness and responsiveness of the Bids have been adhered to. The Commission has also observed that based on the rate reasonability report submitted by M/s PwC, the Expert Bid Evaluation Committee comprising senior officers has found the bid process open and transparent and recommended that the lowest tariff as discovered in the bidding process is reasonable.

40. The petitioner also specifically informed that the Board of Directors of the MPPMCL (petitioner) and thereafter, Govt. of MP Cabinet has approved on 6.3.2020, the tariff discovered in the abovementioned bidding process.

41. Based on all aforementioned facts and documents placed on record by the petitioner, the Commission has noted that the tariff has been discovered by the petitioner through a transparent process of competitive bidding in accordance with the guidelines issued by the Central Government. Therefore, the Commission hereby adopts the tariff of Rs. 4.790/kWh in terms of Section 63 of the Electricity Act'2003 for long term procurement of 1230 MW from thermal power station of 1320 MW to be set up on Design, Build, Finance, Own and Operate (DBFOO) basis in accordance with the Guidelines issued by the Central Government on 5th March' 2019. The aforesaid tariff is adopted by the Commission in accordance with the terms and conditions in the Power Supply Agreement dated 12.03.2020 executed between M.P. Power Management Company Ltd., Bhopal and M/s Pench Thermal Energy (MP) Ltd. and filed with the subject petition as Annexure 6.

With the above directions, the subject petition is disposed of.

Sd/-
(Shashi Bhushan Pathak)
Member

Sd/-
(Mukul Dhariwal)
Member