

**Before the**  
**MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**  
**World Trade Centre, Centre No.1, 13th Floor, Cuffe Parade, Mumbai 400005**  
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**CASE No. 89 of 2020**

Case of Tata Power Company Limited seeking approval for extension of the Power Purchase Agreement between the Distribution Business of The Tata Power Company Limited and the Wind Energy Business of The Tata Power Company Limited.

Tata Power Company Limited.

.....Petitioner

Appearance

For the Petitioner

:Shri. Peyush Tandon (Rep.)

**Coram**

**I.M. Bohari, Member**  
**Mukesh Khullar, Member**

**ORDER**

**Date: 4 June, 2020**

1. Tata Power Company Limited- Distribution (**TPC-D**) has filed this Case dated 27 April, 2020 seeking approval of extension of the Energy Purchase Agreement (**EPA**) with Wind Energy Business of The Tata Power Company Limited under Section 86(1)(b) read with Regulation 92 and 94 of MERC (Conduct of Business) Regulations, 2004
2. **Main Prayers of TPC-D are as follows:**
  - a) *Give approval to the extension of the term of the EPA in the form of an amended Terms and Conditions dated 14th March, 2020 executed between the Petitioner and TPCW for purchasing power from Khandke and Bramanwel Wind Projects till the completion of 13 years of commercial operation for respective projects i.e., till 7th May 2020 for Bramanwel and till 14th December 2020 for Khandke as per the tariff applicable for the 13th year;*
  - b) *To pass any other order/relief as the Hon'ble Commission may deem fit and appropriate under the circumstances of the case and in the interest of justice.*

3. **TPC-D in its Petition has stated as under:**
- 3.1 TPC-D has filed the instant Case under Section 86(1) (b) read with Regulation 92 and 94 of MERC (Conduct of Business) Regulations, 2004 for Tariff to be considered for procurement of power from The Tata Power Company Limited - Wind (**TPC-W**) from its 50.40 MW Khandke and 11.25 MW Bramanwel Wind Project located in Maharashtra.
- 3.2 The Commission vide its Order dated 24 November, 2003 in Case No. 17(3), 3, 4 & 5 of 2002 determined the power purchase and procurement process including, among other things, the price for procurement of power and the tenure of EPA by the MSEB, other Utilities and Licensees in the State of Maharashtra from Wind Power Projects. The Commission by the said Order directed that the wind power projects which will be commissioned after 1 April 2003 during the balance period of the 10<sup>th</sup> Plan ending 31 March 2007 will be classified as Group III projects. The tenure of EPA as per this Order is 13 years from date of commissioning of the project.
- 3.3 On 16 August 2006, the Commission vide its Order in Case No. 6 of 2006 determined the Regulatory Framework for long term development of renewable energy sources namely, Renewable Purchase Specification (**RPS**), within the State of Maharashtra. As per the said Order, the Commission extended the validity of the tariff determined in said Order dated 24 November 2003 in Case No. 17(3), 3, 4 & 5 of 2002, upto 31 March 2010 under RPS Policy Framework.
- 3.4 On 2 February 2007, TPC-D and TPC-W entered into Minutes of Meeting agreeing that the two wind power projects viz. Bramanwel and Khandke will supply power to TPC-D and the Tariff applicable would be as per the Commission's Order dated 24 November, 2003.
- 3.5 Subsequently, TPC-D started procuring power from these two wind projects of TPC-W i.e. Bramanwel Wind Project of 11.25 MW which got commissioned on 9 May, 2007 and Khandke Wind Project of 50.4 MW which got commissioned on 15 December, 2007. As per the Orders of the Commission, these Wind Project qualify as Group III Projects and hence, were eligible for a tariff recovery period of 13 years, from the date of commissioning of the respective projects.
- 3.6 Thereafter, on 31 March 2010, TPC-D and TPC-W executed terms and condition (referred as Original Terms and Conditions) for sale of wind energy from Khandke Wind Project and Bramanwel Wind Project. TPC-D and TPC-W were mindful of the Commission's Orders, the applicable Tariffs at the time of executing the Original Terms and Conditions, however the tenure of the respective power purchase arrangements was agreed till 31 March, 2020, instead of completion of 13 years of operation of the respective projects. Further, it was also agreed in the Original Terms and Conditions that prior to the expiration of the validity of the power purchase arrangement, the validity may be renewed or extended only by written understanding / arrangement between TPC-D and TPC-W on mutually agreed terms and conditions.

- 3.7 On 7 June, 2010, the Commission had notified the MERC (Terms and Conditions for determination of RE Tariff) Regulations, 2010, subsequently, on 14 July, 2010, the Commission in Case No. 20 of 2010 issued the Generic Tariff under Regulation 8 of the RE Tariff Regulations. The Commission in the said Generic Tariff Order stipulated the tariff for existing wind energy projects in FY 2010-11 as under:

*“3.12. TARIFF FOR EXISTING WIND ENERGY PROJECTS IN FY 2010-11*

*In accordance with Regulation 3.2 of the MERC (Terms and Conditions for determination of RE Tariff) Regulations, 2010, the tariff and other terms and conditions of existing RE Projects shall be governed by respective RE Tariff Orders and amendments thereof as issued from time to time by the Commission and the tariff, tariff structure and other conditions as specified under respective RE Tariff Order shall continue to be applicable for such existing RE projects over the duration of the Tariff Period as stipulated under respective RE Tariff Orders.*

*The Commission had issued a Tariff Order for Wind power technology dated November 24, 2003 in Case No. 17(3), 3, 4 & 5 of 2002. The validity of the Tariff Order as stipulated in the said Order was initially till March 31, 2007, which was further extended to March 31, 2010 through the RPS Order dated August 16, 2006 (Case No.6 of 2006) issued by the Commission. The applicability of the same was subsequently extended vide Order dated March 31, 2010 (Case No. 116 of 2009) till issuance of new Tariff Orders for FY 2010-11.*

*In the above mentioned Tariff Order, Wind Power Projects were classified into three distinct groups, namely Group-I, Group-II and Group-III Projects based on the date of commissioning of such Projects. Wind Projects commissioned before December 27, 1999 belonged to Group-I, Projects commissioned after December 27, 1999 but on or before March 31, 2003 belonged to Group-II, and Projects commissioned from April 1, 2003 onwards belong to Group-III class of Projects.”*

- 3.8 The Original Terms and Conditions, had a tenure of less than 13 years of operation of respective projects. Hence, before the expiry of the validity of EPA and to regularize / utilize the 13 year tariff period, TPC-D and TPC-W, mutually agreed to extend the same. Accordingly, on 14 March, 2020 TPC-D and TPC-W amended the Original Terms and Conditions and extended the term of the power purchase arrangement to make it coterminous with the 13 years tariff period as determined by the Commission vide its above Orders.
- 3.9 The Original Terms and Conditions for the subject wind power projects were valid till 31 March 2020. Even though the arrangements under the Original Terms and Conditions were expiring on 31 March 2020, the EPA tenure of 13 years for the respective projects as per the Commission’s Order dated 24 November 2003, remained valid.
- 3.10 TPC-W's Khandke Wind Project of 50.4 MW got commissioned on 15 December 2007 and Bramanwel Wind Project of 11.25 MW got commissioned on 9 May 2007. As per the Commission’s Order, the tariff determined in the respective tariff Orders becomes

applicable for a period of 13 years from the date of commissioning of the project. Both the Projects are currently in their 13<sup>th</sup> year. The 13 year tariff period for Khandke Project ends on 14 December 2020 and for Bramanwel project ends on 8 May 2020.

- 3.11 TPC-D is cognizant of the prevalent Regulations stipulating that all future procurement of short-term or medium-term or long-term power, including Renewable Energy, shall be undertaken through competitive bidding in accordance with Guidelines notified by the Government of India under Section 63 of the Act. The terms and conditions dated 31 March 2010 have only been amended and extended mutually so that the same can become coterminous with the validity / applicability of the tariff as per the Commission's Order dated 24 November 2003.
- 3.12 TPC-D requests the Commission to approve extension of EPA under the amended terms and conditions dated 14 March 2020 and allow TPC-D to continue to procure power as per the 13 year tariff applicable in the Generic Tariff Order for the Khandke and Bramanwel Projects till 14 December 2020 and 8 May 2020 respectively.
4. At the e-hearing through video conferencing held on 29 May 2020, the representative of TPC-D reiterated its submissions in the Petition. To the query of the Commission the representative of TPC-D stated that the rate for the 13<sup>th</sup> year of EPA is Rs.5.30 per unit and TPC-D is seeking approval for extension of EPA till completion of 13 years operation from the date of commissioning of project. The representative of TPC-D further stated that subsequent to end of 13 years, the TPC-D will procure the power through Competitive bidding only.

#### **Commission's Analysis and Ruling:**

5. TPC-D in the instant Case is seeking the extension of the term of the EPA in the form of amended Terms and Conditions dated 14 March 2020 executed between TPC-D and TPC-W for purchasing power from Khandke and Bramanwel Wind Projects till the completion of 13 years of commercial operation for respective projects i.e., till 8 May 2020 and 14 December 2020 for Bramanwel and Khandke Wind Projects, respectively.
6. The Commission in the past by its Order dated 24 November, 2003 in in Case No. 17(3), 3, 4 & 5 (**Wind Order, 2003**) through public consultation had determined the power purchase and procurement process including the price for procurement of power by the MSEB, other Utilities and Licensees in the State from Wind Power Projects. The Commission by Wind Order, 2003 had classified the wind projects in three groups and determined the Tariff for these three groups viz. Group-I (Wind power projects commissioned before 27 December,1999 i.e. before the Commission notified its Regulations), Group-II (Wind power projects commissioned after 27 December, 1999 but before 1 April, 2003) and Group- III (wind power projects to be commissioned after 01 April, 2003 during the balance period of 10<sup>th</sup> plan ending 31 March, 2007). For Group-III projects ( applicable to the projects in the instant Case) the Commission has approved Rs.3.50 for first year with escalation of Rs.0.15 per unit every year for first 13 years from the date of the commissioning. Relevant dispensation provided in the Wind Order, 2003 regarding EPA tenure and Tariff is reproduced as under:

#### “3.4.12

.....

*However..... Hence, by allowing a grace period of atleast 2 years, the tenure of agreement will be only 8 years for Group II projects. For Group III (new) projects, it will be 13 years. (for details please refer to the Commission’s rulings under section 2.2.14)*

#### 3.5 Determination of Tariff

##### Group III Projects

*For wind power projects to be commissioned after 01st April 2003 during the balance period of the 10th Plan ending 31st March 2007, the tariff prescribed by the Commission is as follows:*

##### For Sale to MSEB and other Utilities/ Licensees in the State

*Rs. 3.50 per unit for the first year from the date of commissioning of the project.*

*The purchase rate shall be increased at 15 paise per unit every year for a period of thirteen years from the date of commissioning of the project.*

#### 3.7 Review of the Tariff Rate and Tariff Structure

*The Commission shall review the tariff rate and the tariff structure for wind power projects after 31st March, 2007 or on addition of 750 MW of additional wind capacity after 1st April, 2003, whichever is earlier.*

*During this review the Commission will not revisit any old projects.*

*The tariff rates for wind projects, which have already been commissioned or will be commissioned before the next review, are linked to the year of operation of the wind project and not to the fiscal year.*

#### 3.8 Energy Purchase Agreement (EPA) & Energy Wheeling Agreement (EWA)

*It is not the intention of the Commission to approve the EPA/EWA for each wind project individually. The Commission, however, has formulated the principles of EPA/EWA, which have been elaborated in the Order. The Commission directs the MSEB and other utilities/ licensees to modify draft EPA/EWAs to reflect the tariff provisions and principles of EPA / EWA as approved in the Order before executing the EPA/EWA with developers. The Commission further directs the MSEB and other utilities/ licensees to make all such EPAs/EWAs public*

7. Subsequently the Commission extended the validity of the tariff determined in Wind Order, 2003, upto 31 March 2010 by its Order dated 16 August, 2006, in Case No. 6 of 2006 while determining the Regulatory Framework for long term development of

Renewable Energy sources namely, Renewable Purchase Specification (**RPS**), within the State of Maharashtra. Relevant extract of the Order is reproduced as under:

*“2.3.21 In view of above, the Commission rules that the tariff rates and tariff structure as approved under respective Tariff Orders in case of (a) non-fossil fuel based (qualifying) co-generation projects; (b) non-fossil fuel based (non-qualifying) cogeneration projects; (c) wind energy projects, (d) municipal solid waste to energy projects, and (e) small hydro projects, shall be extended for further period upto 31<sup>st</sup> March 2010 under RPS Policy Framework as formulated under this Order.”*

*2.3.22 Further, the Commission rules that above extension of validity of Tariff Orders covers only the tariff rate and tariff structure as stipulated under the respective Tariff Orders. Other terms and conditions stipulated under the Orders such as reactive energy charges, transmission and wheeling charges, etc. shall continue to be applicable so long as they are not inconsistent with any subsequent Orders and Regulations such as State Grid Code Regulations, as notified by the Commission from time to time.*

8. The Commission in its Wind Order, 2003 has formulated the principles of EPA with intention not to approve each and every EPA of wind projects. Hence the Commission had directed in the said Order that MSEB and other utilities/ licensees to modify draft EPA to reflect the tariff provisions and principles of EPA as approved in the Order before executing the EPA with developers.
9. After commissioning of Bramanwel and Khandke projects on 9 May, 2007 and 15 December, 2007 respectively, TPC-D and TPC-W executed terms and condition only on 31 March, 2010 for both the projects for the tenure till 31 March, 2020 with the condition that validity will be renewed/ extended by mutual written arrangement by TPC-D and TPC-W. The Commission fails to understand as to why after commissioning of the projects in 2007, TPC-D executed the EPA in March, 2010 and that too valid upto 31 March 2020 and not for tariff period of 13 years as approved in Commission’s Wind Order, 2003.
10. As the terms executed by TPC-D and TPC-W are valid till 31 March, 2020 and not till the completion of 13 years from the commissioning of the projects, they have amended the terms on 14 March, 2020 till completion of 13 years from the date of commissioning i.e. 8 May, 2020 and 14 December,2020 for Bramanwel and Khandke projects respectively to ensure the compliance of the Commission’s Wind Order of 2003. TPC-D is now seeking the Commission’s approval for amended terms dated 14 March 2020.
11. It is a fact that original EPA between TPC-D and TPC-W was not required to be approved by the Commission as Wind Order, 2003 had laid down the principles of EPA which all contracting parties were required to comply with. However, from the submissions of TPC-D, it is observed that to comply with condition of EPA tenure of 13 years in present case, TPC-D has amended these EPAs so as to comply with the condition of EPA tenure of 13

years from the date of commissioning i.e. 8 May, 2020 and 14 December,2020 for Bramanwel and Khandke projects, respectively.

12. The Commission notes that TPC-D has option of not extending these EPA and procure power through competitive bidding which would be much cheaper than the last year tariff of Rs. 5.30/kWh for these projects. However, considering the fact that these EPAs were based on Wind Order, 2003 and extension sought is just around a month for Bramanwel project and 9 months for Khandke project, in order to maintain equity for all the wind EPAs in the State and also to be consistent with the provisions of the Commission's Wind Order, 2003, the Commission is inclined to allow such extension of EPA. Hence the Commission doesn't have any objection for amending the terms of EPA till completion of 13 years from the date of commissioning.
13. The Commission notes that TPC-D has not requested for the extension beyond completion of 13 years period from the commissioning of the projects. If TPC-D desires to procure power from the projects whose initial EPA has expired after completing their tenures as specified in relevant Order of MERC, TPC-D will have to procure the same through competitive bidding route only.
14. Hence, the following Order:

### **ORDER**

1. **The Case No. 89 of 2020 is allowed.**
2. **The Commission accepts the extension of EPA terms till completion of 13 years from the date of commissioning as executed through amended terms dated 14 March, 2020 executed between the parties to EPA.**
3. **Subsequent to expiry of EPA post completion of tenure as stipulated in relevant Order of the Commission, Tata Power Company Limited- Distribution shall procure power from the projects, through competitive bidding route only.**

Sd/-  
(Mukesh Khullar)  
Member

Sd/-  
(I. M. Bohari)  
Member

  
(Abhijit Deshpande)  
Secretary

