

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 88 of 2021

**Petition seeking approval for additional short-term RE Power Purchase for RPO
Compliance of Tata Power -D for FY 2021-22.**

The Tata Power Company Limited- Distribution (TPC-D)

..... Petitioner

Coram
Sanjay Kumar, Chairperson
I.M. Bohari, Member
Mukesh Khullar, Member

Appearance:

For the Petitioner

: Shri Prashant Kumar

ORDER

Date: 11 October 2021

1. The Tata Power Company Limited- Distribution Business (TPC-D), has filed this Case dated 13 July 2021 seeking approval to the additional power purchase for fulfilling the Non-Solar RPO obligation for FY2021-22. For sufficing the claim, TPC-D has relied upon Regulation 22 of MERC (Multi Year Tariff) Regulations, 2019 and Regulation 7.1 of MERC (Renewable Purchase Obligation, its Compliance and Implementation of Renewable Energy Certificate Framework) Regulations, 2019.
2. **Main prayers of the Petitioner are as follows:**
 - i) *To approve the additional power purchase to fulfill the Non-Solar RPO obligation for FY2021-22*

3. **TPC-D in its Petition has stated as follows:**

- 3.1. TPC-D, in line with the applicable MYT Regulations notified by the Commission, had filed a Multi-Year Tariff (MYT) Petition (Case No.326 of 2019) for i) Truing up of FY 2017-18, ii) Truing up of FY 2018-19 & iii) Provisional Truing up of FY 2019-20 as per the requirements of MYT Regulations, 2015 and iv) Aggregate Revenue Requirement (ARR) and Tariff determination for the Fourth Control Period of FY 2020-21 to FY 2024-25.
- 3.2. The Commission in its Order dated 30 March 2020 in Case No. 326 of 2019 accorded its approval to power purchase cost including purchase of Renewable Energy for RPO compliance. The relevant para reads as follows:

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5.3.2 Renewable Purchase Obligation

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Commission's Analysis and Ruling

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In view of the above, the Commission has considered the purchase from the existing long-term Solar and Non-Solar RE sources for FY 2020-21 and FY 2021-22 at the preferential tariff applicable to such sources. It has considered the balance requirement of Solar and Non-Solar RPO target to be met through REC procurement. For deriving cost for REC purchase, floor rate of Rs. 1/kWh has been considered. For the period from FY 2022-23 to FY 2024-25, the Commission has considered that entire RPO requirement would be met through RE purchase only. For projection of cost of RE purchase from new sources, the rate of Rs. 2.83/kWh has been considered as proposed by TPC-D. The actual cost incurred on future tie-ups for meeting the incremental increase in RPO requirements shall be considered at the time of MTR subject to prudence check.

.....”

- 3.3. MERC (Renewable Purchase Obligation, Its Compliance and Implementation Of Renewable Energy Certificate Framework) Regulations, 2019 specifies quantum of purchase from Renewable Energy sources as follows:

“

7.1 Every Obligated Entity shall procure electricity generated from eligible RE sources to the extent of the percentages, out of its total procurement of electricity from all sources excluding energy from Hydro power in a year, set out in the following Table :—

Year	Quantum of purchase (in %) from Renewable Energy sources (in terms of energy equivalent in kWh)		
	Solar	Non-Solar (other RE)	Total
	(a)	(b)	(c)
2020-2021	4.50%	11.50%	16.00%
2021-2022	6.00%	11.50%	17.50%
2022-2023	8.00%	11.50%	19.50%
2023-2024	10.50%	11.50%	22.00%
2024-2025	13.50%	11.50%	25.00%

- 3.4. It is pertinent to note that Hon'ble APTEL has stayed the trading in RECs vide its interim Order dated 24 July 2020 in the matter of Appeal No. 118 of 2020. Hence, RECs are not available in the market to fulfill the RPO target.
- 3.5. In view of the uncertainty in trading of RECs pursuant to stay by Hon'ble Tribunal, TPC-D floated a short-term tender on 23 February 2021 for procurement of up to 100 MW capacity for the period from April 2021 to March 2022 to fulfill the Non-Solar RPO target for FY 2021-22 and at the same time meet the consumer demand on short-term basis through tariff based competitive bidding process.
- 3.6. The bidding was carried out as per the Guidelines for short-term procurement of power notified by the Ministry of Power vide Resolution dated 30 March 2016 (the Guidelines), through Discovery of Efficient Electricity Price (DEEP) portal of MSTC.
- 3.7. Only M/s The Tata Power Company Limited – Wind Division, participated and offered the quantum of 99.60 MW (approximately 174.80 MU) at the tariff of Rs. 3.27/kWh, for the period from April 2021 to March 2022.
- 3.8. Power Purchase in from April 2021 to June 2021 as per the aforesaid tariff is as below:

Month	Power Purchase from the Tata Power Co. Ltd.- Wind Division (MU)
April-2021	11.05
May-2021	17.44
June-2021	21.16
Total	49.65

- 3.9. Regulation 22 of Maharashtra Electricity Regulatory Commission (Multi Year Tariff) Regulations, 2019 provides that the Distribution Licensee may undertake additional power

procurement during the year, over and above the power procurement plan for the Control Period approved by the Commission as below:

"

22. Additional power procurement-

22.4 Where the Distribution Licensee has identified a new short-term source of supply from which power can be procured at a Tariff that reduces its approved total power procurement cost, it may enter into a short-term power procurement agreement or arrangement with such supplier without the prior approval of the Commission

.....

22.6 Within fifteen days from the date of entering into an agreement or arrangement for short term power procurement for which prior approval is not required, the Distribution Licensee shall submit to the Commission its details, including the quantum, Tariff computations, duration, supplier particulars, method of supplier selection and such other details as the Commission may require so to assess that the conditions specified in this Regulation have been complied with."

- 3.10. The Commission has approved the short-term power procurement for TPC-D in the MYT Order dated 30 March 2020 in Case No 326 of 2019 as follows:

"The Commission has considered the power purchase from TPC-G and RE sources as detailed in the earlier paragraphs, and the remaining requirement has been considered from short-term sources. The Commission has taken procurement from short-term sources at Rs. 3.56/kWh, as approved in the provisional truing-up of FY 2019-20."

- 3.11. The Commission in MYT Order dated 30 March 2020 has considered purchase of RECs during FY 2020-21 and FY 2021-22 for meeting the RPO requirements during the respective FYs. By considering the short-term power purchase cost of Rs.3.56 per kWh plus an additional Rs 1 per kWh towards the REC price for RPO compliance, the landed cost of RE may attain the tariff upto Rs 4.56 per kWh. The present discovered tariff of Rs. 3.27 per kWh for RE procurement during the period April 2021 to March 2022 may result in a saving of Rs 1.29 per kWh ($3.56 + 1.00 - 3.27$) in short-term RE power procurement cost for TPC-D in comparison of cost approved towards short term power procurement and cost of REC.

- 3.12. As per the Regulation 22 of Maharashtra Electricity Regulatory Commission (Multi Year Tariff) Regulations, 2019, it is required to intimate the Commission when the Distribution Licensee procures additional power and approval is not required for such power purchase,

however inadvertently the TPC-D sought approval from the Commission vide letter dated 31 March 2021. Further, the Commission vide email dated 29 June 2021 directed TPC-D to file the Petition as such approvals are to be granted by the Commission through its Orders against Petitions. Accordingly, TPC-D requested the Commission to approve the additional power purchase to fulfill the Non-Solar RPO obligation for FY2021-22.

4. For ascertaining prudence of power procurement, the Office of the Commission vide email dated 27 August 2021 and 7 September 2021 raised data gaps and clarification with regards to power procurement envisaged in the Petition.
5. TPC-D vide email dated 2 September 2021 and 7 September 2021 submitted replies to the data gaps. Data-gap and Reply of TPC-D are as mentioned below:

5.1. Details about Generator:

- a. Short term tied up capacity in the present petition is from the units for which earlier PPA have expired.

Details of Wind Generators considered under the Short-Term Contract

Sr. No.	Project	Location	Capacity (MW)	Group	Date of Expiry of PPA
1	Khandke	Khandke Wind Farm, At Post-Kaudgoan, Taluka Ahmednagar, District Ahmednagar, Maharashtra-414 002	12	Group III	14 December 2020
2	Khandke	Khandke Wind Farm, At Post-Kaudgoan, Taluka Ahmednagar, District Ahmednagar, Maharashtra-414 002	18.4	Group III	
3	Khandke	Khandke Wind Farm, At Post-Kaudgoan, Taluka Ahmednagar, District Ahmednagar, Maharashtra-414 002	20	Group III	
4	Bramanvel	Suzlon Wind Farm, At Post-Chadwel, Taluka Sakhri, District-Dhule, Maharashtra- 424304	6.25	Group III	9 May 2020
5	Bramanvel	Suzlon Wind Farm, At Post-Chadwel, Taluka Sakhri, District-Dhule, Maharashtra- 424304	5	Group III	
6	Nivade	Vankusawadi Wind Park- Section III, At Post- Dafalwadi, Taluka Patan, District-Satara, Maharashtra-415206	7.35	Group II	31 March 2020
7	Nivade	Vankusawadi Wind Park- Section III, At Post- Dafalwadi, Taluka	5.25	Group II	

Sr. No.	Project	Location	Capacity (MW)	Group	Date of Expiry of PPA
		Patan, District-Satara, Maharashtra-415206			
8	Nivade	Vankusawadi Wind Park- Section III, At Post- Dafalwadi, Taluka Patan, District-Satara, Maharashtra-415206	7.35	Group II	
9	Supa	Supa Wind Farm, At Post-Shahajapur, Taluka-Parner, District-Ahmednagar, Maharashtra-431204	1	Group II	
10	Supa	Supa Wind Farm, At Post-Shahajapur, Taluka-Parner, District-Ahmednagar, Maharashtra-431204	8	Group II	
11	Supa	Supa Wind Farm, At Post-Shahajapur, Taluka-Parner, District-Ahmednagar, Maharashtra-431204	9	Group II	

b. All the above units are located in Maharashtra and are connected to transmission network of MSETCL.

5.2. Rationale for considering discovered tariff of Rs.3.27 Per unit:

- a. TPC-D had floated the short-term open Tender for @ 200 MU to fulfil the Non-Solar RPO for FY 2021-22 and at the same time to meet the consumer demand on short term basis through tariff based competitive bidding process through the DEEP Portal, with flexibility of supplying 5 to 100 MW power during any or all the months.
- b. For increasing the participation, based on the past experience, no ceiling tariff was kept in the tender.
- c. Most of the tariff of RE power discovered through competitive bidding at rates less than Rs. 3.00 per unit are pertaining to long term contract whereas the present contract is for short term procurement of RE power. The tariff of power variation is always higher under short term arrangement as compared to the long-term arrangement.
- d. TPC-D has also tied up long term capacity through hybrid sources at rates lower than Rs. 3.00 per unit in the recent past.
- e. TPC-D is taking all the efforts for buying the economical Renewable power (RE) from various sources including power from GTAM through IEX as per available opportunities. However, the quantum of Non-Solar RE Power being traded in GTAM is less and the average landed tariff of trading of Non-Solar RE Power at IEX was Rs 4.06 PU (at Regional periphery excluding Transmission charges & drawl losses).

- f. The renewable power procurement is also required to meet the demand of TPC-D. If this power is not procured, the alternate power (Conventional) would have to be procured to meet TPC-D demand. The prevalent rates of power under IEX are more than Rs.4 per unit. Considering all these factors, TPC-D has accepted the tariff of Rs. 3.27/kWh discovered through competitive bidding process as per guidelines approved by the competent authority.

5.3. Matrix of shortfall and availability for non-solar and solar RE for FY 2021-22.

- a. The estimated shortfall and availability for non-solar and solar RE for standalone FY2021-22 is as follows:

Estimated Shortfall in RPO for FY2021-22

Approved InSTS Requirement less Hydro	Non-Solar RPO 11.5%	Non-Solar availability from Wind Contracts	Non-Solar Shortfall (+ve)/Surplus (-Ve)	Solar RPO 11.5%	Solar availability from Wind Contracts	Solar Shortfall (+ve)/Surplus (-Ve)	Total RPO Shortfall (+ve)/Surplus (-Ve)
4321.16	497.36	165	332.36	259.49	338	-78.51	253.85

- b. The detailed break-up of power considered from the long term contracted generators for Non-Solar Power is as below:

Estimated Non-Solar Power from Long Term Contracted Generators

Long Termed Contracted Wind Generators	Estimated MU
Sadawaghapur	24
Visapur 6 MW	9
Visapur 4 MW	6
Visapur (GSW) 24 MW	28
Visapur (GSW) 8 MW	9
Agaswadi	89
Total	165

- c. There is a shortfall of around 354.36 MU in fulfillment of Non-Solar RPO targets for FY 2021-22 on standalone basis. In view of this the procurement of wind energy through aforesaid short-term contract with M/s The Tata Power Company Limited – Wind Division for fulfillment of RPO is justified as the long-term contract with those generators have expired.

6. E-Hearing in this matter was held on 3 September 2021. During the hearing, TPC-D reiterated submissions made in the Petition and requested to approve such power procurement for meeting their non-solar RPO.

Commission's Analysis and Rulings:

7. TPC-D in the instant Case has sought approval for the additional power purchase for fulfilling the Non-Solar RPO for FY2021-22. Initially vide its letter dated 31 March 2021, TPC-D intimated the Commission regarding short term RE procurement for RPO compliance and sought approval for the said procurement. However, as such approval can only be given through Order for which Petition needs to be filed, TPC-D was informed by the secretariat of the Commission to file Petition for the same. Accordingly, in its present Petition, TPC-D has relied upon Regulation 22 of MERC (Multi Year Tariff) Regulations, 2019 and Regulation 7.1 of MERC (Renewable Purchase Obligation, its Compliance and Implementation of Renewable Energy Certificate Framework) Regulations, 2019. For contracting the power, TPC-D has opted bidding route as per the Guidelines dated 30 March 2016, through DEEP portal and discovered Tariff of Rs.3.27/kWh after bidding exercise. TPC-D has contended that as per Regulation 22 of Maharashtra Electricity Regulatory Commission (Multi Year Tariff) Regulations, 2019, it is required to intimate to the Commission when the Distribution Licensee procures additional power and approval is not required for such power purchase.
8. Based on the pleadings and submission available, following principal issues emerge in the instant matter for consideration:
 - a. Whether approval for short term power procurement is needed?
 - b. Whether TPC-D has followed the Guidelines dated 30 March 2016 meticulously?
 - c. Whether discovered tariff is reasonable, justified and as per the prevalent market conditions and needs to be adopted by the Commission?

The Commission is addressing above issues in following paragraphs.

9. Issue A: Whether approval for short term power procurement is needed?

- 9.1 TPC-D has stated that the Commission in its Order dated 30 March 2020 in Case No. 326 of 2019 has accorded its approval to power purchase cost including purchase of Renewable Energy for RPO compliance. For RE procurement, the Commission has considered the purchase from the existing long-term Solar and Non-Solar RE sources for FY 2020-21 and FY 2021-22 at the preferential tariff applicable to such sources. Further, it has considered

the balance requirement of Solar and Non-Solar RPO target to be met through REC procurement. However, as APTEL has stayed the trading in RECs vide its interim Order dated 24 July 2020 in the matter of Appeal No. 118 of 2020, RECs are not available in the market to fulfill the RPO. Therefore, TPC-D has opted for procurement option of Non-Solar RE power for the period from April 2021 to March 2022 to fulfill the Non-Solar RPO for FY 2021-22 through tariff based competitive bidding process.

- 9.2 TPC-D has relied upon Regulation 22.4 and 22.6 of MERC MYT Regulations, 2019 which provides as follows:

*“22.4 Where the Distribution Licensee has identified **a new short-term source of supply** from which power can be procured at a Tariff that **reduces its approved total power procurement cost**, it may enter into a short-term power procurement agreement or arrangement with such supplier without the prior approval of the Commission.*

.....

22.6 Within fifteen days from the date of entering into an agreement or arrangement for short term power procurement for which prior approval is not required, the Distribution Licensee shall submit to the Commission its details, including the quantum, Tariff computations, duration, supplier particulars, method of supplier selection and such other details as the Commission may require so to assess that the conditions specified in this Regulation have been complied with.”

Considering the above provision, TPC-D has contended that as discovered tariff (Rs.3.27 per kWh) is below the rate considered (Rs. 3.56/kWh) by the commission for procurement from short-term sources in MYT Order dated 30 March 2020, approval of the Commission is not required for such power procurement.

- 9.3 In this regards the Commission notes that while approving ceiling tariff of Rs. 3.56/kWh for short-term power procurement in its MYT Order dated 30 March 2020, the Commission has made following observations:

“5.3.3 Power Purchase from Bilateral Sources:

TPC-D's Submission

After considering the generation availability from TPC-G and RE sources, the balance energy requirement is proposed to be met through procurement from Bilateral Sources.

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Commission's Analysis and Ruling

The Commission has considered the power purchase from TPC-G and RE sources as detailed in the earlier paragraphs, and the remaining requirement has been considered from short-term sources. The Commission has taken procurement from short-term sources at Rs. 3.56/kWh, as approved in the provisional truing-up of FY 2019-20.

Vide Resolution dated 30 March, 2016, the MoP has issued Guidelines for short-term power procurement (beyond the stipulated minimum period) by Distribution Licensees through tariff-based bidding under Section 63 of the Electricity Act, 2003. In accordance with the Guidelines, TPC-D should procure all future short-term power only through the e-bidding portal. In accordance with the Guidelines, if the power procured and the Tariff determined are within the above blanket approval given by the Commission in the ARR of the respective years, it will be considered to have been adopted by the Commission. In all other cases, TPC-D shall submit a Petition to the Commission for adoption of tariff as required under the Guidelines.”

As per above, tariff of Rs. 3.56/kWh is approved for short-term sources which does not include power procurement from TPC-G and RE sources as same has been accounted differently. Approved power purchase quantum and rate in MYT Order of 30 March 2020 is reproduced below:

“5.3.6 Total Power Purchase Cost

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Commission’s Analysis and Ruling:

The Summary of power purchase quantum, cost and rate approved by the Commission for the 4th Control Period is as shown in Table below:

Table 5-30: Total Power Purchase Quantum and Cost approved for 4th Control Period (Rs. Crore)

Particulars	FY 2020-21			FY 2021-22			FY 2022-23			FY 2023-24			FY 2024-25		
	MU	Rs./kWh	Rs Crore	MU	Rs./kWh	Rs Crore	MU	Rs./kWh	Rs Crore	MU	Rs./kWh	Rs Crore	MU	Rs./kWh	Rs Crore
Tata Power-G	3,799.84	4.36	1,656.33	3,843.70	4.45	1,710.24	3,773.46	4.56	1,720.17	3,788.23	4.66	1,764.70	3,866.99	4.77	1,843.41
Non-Solar+ Solar Generation + REC	373.85	6.59	246.46	373.85	5.85	218.78	881.26	3.66	322.65	1,044.71	3.46	361.88	1,253.46	3.34	418.98
Bilateral Power Purchase	687.31	3.56	244.57	813.67	3.56	289.54	574.63	3.56	204.48	625.80	3.56	222.69	603.47	3.56	214.74
Standby Charges			99.98			99.72			99.46			99.19			98.92
Transmission Charges			258.03			258.79			259.13			258.90			255.80
SLDC Charges			1.29			1.20			1.28			1.37			1.39
Total	4,861.01	5.16	2,506.66	5,031.22	5.12	2,578.28	5,229.35	4.99	2,607.17	5,458.74	4.96	2,708.73	5,723.92	4.95	2,833.24

As can be seen from the above, bilateral power purchase quantum and cost is approved separately than quantum and cost for TPC-G and RE Sources. TPC-D in its MYT Petition has also proposed the same approach. Hence, it is expected that ‘short-term sources’ includes

non-RE sources which is to be procured through competitive bidding on DEEP portal and only in such a case if the tariff discovered is lower than Rs. 3.56/kWh, then it would be considered as deemed approved and Petition need not be filed for approval of the Commission.

- 9.4 TPC-D in the present Petition has used the above ceiling rate of Rs. 3.56/kWh, which is for non-RE sources, for comparing its non-Solar RE procurement rate of Rs. 3.27/kWh. As these two rates are not comparable, as has been explained in para 9.3 above, the Commission cannot consider TPC-D's justification that the discovered tariff is lower than the ceiling rate of Rs 3.56/kWh. Therefore, the contention of TPC-D that such power procurement does not require approval of the Commission is incorrect.
- 9.5 Further, considering the necessity of load generation balance and the impact of the likely variation in generation from RE sources, Distribution Licensee is required to balance it with increase or decrease in generation from other sources of energy, which may have additional impact on power purchase expenses of Distribution Licensee. Therefore, without considering the overall impact, including the balancing cost, it is improper to conclude on the quantum of reduction on the power purchase cost. Thus, conclusion on the basis of the bare cost of the tariff of RE sources is not appropriate. It needs to be considered that in this petition the proposed RE power is infirm in nature and would not be available in RTC nomenclature unlike the scheduled short-term power which can be procured during the selected blocks of the day depending on the load generation balance. Thus, the balancing requirement for this RE Power could have an additional impact due to grid code requirement.
- 9.6 TPC-D has also relied upon Regulation 22.4 of MYT Regulations 2019 (reproduced at para 9.2 above) which states that in case Distribution Licensee enters into short term power procurement which lowers the approved power procurement cost then prior approval of the Commission is not required. In this regard, the Commission notes that such 'short term source of supply' referred in the Regulation 22.4 never intended to include RE sources, beside the fact that has been explained in subsequent para 11.4, the Commission opines that considering the prevalent market conditions, power procurement from RE sources envisaged in this Petition could have been at lower tariff than proposed tariff of Rs. 3.27/kWh.
- 9.7 Section 86 of the Electricity Act, 2003 mandates Commission to regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured. The Commission is aware of the fact that in a process of procurement through transparent bidding, specifying a ceiling tariff is not mandatory. The Commission however opines that there is no bar on specifying a ceiling tariff based on the

prevailing market conditions, which would serve as a prudent procurement policy. As the tariff discovered by TPC-D for short term power procurement of non-solar RE sources is not covered by a reasonable ceiling tariff that could have been specified for non-RE short term power procurement, the Commission needs to scrutinise the short term non-solar RE power procurement covered in the present Petition and then approve it, if found prudent.

10. Issue B: Whether TPC-D has followed the MoP Guidelines dated 30 March 2016 meticulously?

10.1 The Commission notes that TPC-D floated a short-term tender on 23 February 2021 for procurement of up to 100 MW capacity for the period from April 2021 to March 2022 to fulfill the Non-Solar RPO for FY 2021-22 and at the same time meet the consumer demand on short-term basis through tariff based competitive bidding process as per Guidelines dated 30 March 2016. The bidding was carried through DEEP portal of MSTC.

10.2 The Commission notes that a single bidder i.e. M/s The Tata Power Company Limited – Wind Division participated in tender process and offered 99.60 MW @ Rs.3.27 /kWh.

10.3 Bidding Guidelines dated 30 March 2016 envisaged such possibility of receiving single bid and for ensuring competitiveness, the Guidelines stipulates the following:

“

7. Bid submission and evaluation

7.1. To ensure competitiveness, the minimum number of Bidders should be at least two for each requisition. If the number of Bidders responding to the RfP is less than two, and Procurer still wants to continue with the selection process, the selection of that single Bidder may be done with the consent of the Appropriate Commission.”

Thus, as per Guidelines, prior consent of the Commission is mandatory for proceeding with single bid. But in the present case, contrary to the stipulated provisions, TPC-D has never approached the Commission seeking such consent and has started power procurement from such single bidder in the month of April 2021 and till September 2021. TPC-D has already procured 49.65MU till June 2021 at the tariff of Rs. 3.27/kWh.

10.4 Therefore, it is clearly established that TPC-D has not meticulously followed the bidding guidelines and processes notified by the Central Government under Section 63 of the Electricity Act, 2003.

11. Issue C: Whether the discovered tariff is reasonable, justified and as per the prevalent market conditions and needs to be adopted by the Commission?

11.1 The role of the Commission in the process of tariff adoption under Section 63 of the Electricity Act, 2003 (EA) has been well laid down by the judgments of the Hon'ble Supreme Court and Appellate Tribunal for Electricity (APTEL). In its Judgement dated 16 December 2011 in Appeal No. 82 of 2011 (Essar Power Ltd. Vs UPERC and others), APTEL has categorically held that the Commission has to ensure that tariff discovered through competitive bidding process under Section 63 of the Electricity Act, 2003 is in accordance with market conditions. Relevant part of APTEL Judgment is reproduced below:

“77. As indicated above, the bid process under Section 63 of the Act is entirely different from normal procurement of goods through competitive bidding process which is not governed by specific statutory scheme and guidelines. The bidding process under Section 63 is wholly based upon the objective of section 61 of the Act as well as the objectives of the Government of India guidelines. The Government of India guidelines have been framed to comply with the principles specified under Section 61 of the Act. The Government of India guidelines contained the mandate to safeguard the consumer's interest as well as to encourage competition, efficiency and economical use of the resources. Let us quote Section 63 of the Act for better understanding.

“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.”

78. Thus the competitive bidding process as contemplated under Section 63 of the Act must meet the following mandatory statutory requirements:

- (a) **Competitive bidding process under Section 63 must be consistent with the Government of India guidelines and Request for Proposal (RFP) including the finalized PPA approved by the State Commission***
- (b) **The process must discover competitive tariff in accordance with market conditions from the successful bid – consistent with the guiding principles under Section 61 of the Act as well as the Government of India guidelines which strike a balance between the transparency, fairness, consumer interest and viability.***

Further, Supreme Court in its Judgment dated 11 April 2017 in the matter of Energy Watchdog has ruled that the Commission cannot act as a mere post office under Section 63 of the Electricity Act, 2003 and it has to look into the process followed and merits of the tariff discovered. Relevant part of the Judgment is reproduced 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 stand alone 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 a 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.”

The above judgments have clearly laid down that Section 63 of the Electricity Act, 2003 is just one of the ways of tariff determination which must be consistent with the objectives of Section 61 of the Electricity Act, 2003 i.e. safeguarding consumer’s interest, encouraging competition, efficiency and economical use of the resources etc. Mandate of regulating power procurement under Section 79 [86 for State Commission] is much wider than Section 63 of the EA. Hence, if Commission finds that the tariff discovered through competitive bidding process is not as per market conditions, then in order to safeguard consumer’s interest, by using its powers to regulate power procurement of Distribution Licensee, it can decide whether to allow/disallow the adoption, based on the provisions of the Act and based on the discovered rates vis-à-vis the rates prevailing in market.

- 11.2 In the present case, tariff discovered for procurement of short term non-solar energy (Wind Energy) is Rs. 3.27/kWh. For justifying its competitiveness, TPC-D has stated that there is no discovered tariff for procurement of short-term non-solar RE sources as all the RE procurement is being undertaken on long term basis. However, it has referred to rate discovered on Green Term ahead market on power exchanges which is in the range of Rs. 4/kWh and stated that its discovered tariff of Rs. 3.27/kWh is lower than such rate.
- 11.3 In this regard, Commission notes that Green Term ahead Market is in evolving stage and longest duration product available is week ahead. Therefore, based on overall demand-supply situation in the country, rates of power exchanges including Green Term ahead Markets may undergo change frequently. TPC-D has contended there is no discovered tariff for one year tenure of RE Power and hence has indicated that comparing the rates of Long term RE Power with the present case is incorrect since the obtained rate is for only one year. On similar lines comparing the rates of one year RE Power with that of GTAM may not be market reflective since GTAM is in evolving stage and the product offered is only week ahead (against the one year tenure in the present case). Such tariff cannot be considered as reference tariff for power procurement referred in present petition.

11.4 Further, the Commission notes that capacities proposed in present Petition are from the Wind Turbine Generators who have earlier signed EPAs with TPC-D under generic tariff mode and the same have now expired on completion of tenure mentioned in that EPAs. Under similar circumstances, Maharashtra State Electricity Distribution Co. Ltd. (one of the other Distribution Licensee in the Maharashtra) had approached the Commission in Case No. 155 of 2017 seeking approval for procurement of power on short term basis from WTG whose EPA had expired. The Commission vide Order dated 15 November 2017 has allowed MSEDCL to procure power from such WTGs on short term basis through competitive bidding at ceiling tariff of Rs. 2.25/kWh for Group-I WTGs and at Rs. 2.52/kWh for Group II to IV WTG. These rates are lower than the rates at which MSEDCL was purchasing wind power from those Wind Generators. Based on such approval of the Commission, MSEDCL has procured 500 to 1000 MW of power from such WTGs in last 2 to 3 years on short term basis. The Commission thus rules that tariff of Rs. 3.27/kWh proposed in this petition, where the offer is received only from one party, is higher than the short-term tariff discovered in the State of Maharashtra for similar projects. Also, the justification of this discovered price is on the wrong premise and wrong understanding of TPC-D of the directions of the Commission in the MYT Order.

12. In view of the above, TPC-D's Wind Energy power procurement on short term basis at tariff of Rs. 3.27/kWh cannot be allowed on account of following:

- a. As mentioned in para 10.4 above, TPC-D has not followed provisions of competitive bidding guidelines stipulated by the Central Government under Section 63 of the EA 2003.
- b. As mentioned in para 11.4 above, tariff of Rs. 3.27/kWh is clearly higher than market discovered tariff of Rs. 2.25kWh or 2.52/kWh for similarly placed Wind generator in the State of Maharashtra.

Therefore, the Commission rejects adoption of tariff of Rs. 3.27/kWh discovered by TPC-D for short term procurement of Wind Energy.

13. Having ruled as above, the Commission notes that TPC-D without waiting for approval of the Commission has already started procuring power from single bidder i.e. M/s The Tata Power Company Limited – Wind Division at the tariff of Rs. 3.27/kWh with effect from April 2021. Such high-cost power purchase cannot be allowed to be passed to the end consumers especially when alternate source at cheaper tariff could have been available. Hence, irrespective of TPC-D's agreement with its generator for short term supply of Wind Energy, the Commission shall allow such energy in power purchase cost of TPC-D at tariff of Rs.

2.25 (Group I) or 2.52/kWh (Group II to IV). The Commission notes that in FAC approvals of TPC-D, such energy has been considered at tariff of Rs. 3.27/kWh, same shall be recalculated and impact of the same shall be adjusted in upcoming FAC approvals. At the same time such energy shall be considered for meeting non-solar RPO of TPC-D.

14. Although the Commission has not adopted the tariff of Rs. 3.27/kWh, in case M/s The Tata Power Company Limited – Wind Division is ready to supply energy at tariff of Rs. 2.25 or 2.52/kWh, then TPC-D is allowed to sign amended agreement. Otherwise, M/s Tata Power Company Limited – Wind Division shall be allowed to terminate the PPA/EPA and TPC-D may initiate fresh bidding process. While doing so, TPC-D should explore, study and adopt the best industry practice for their procurement of power. TPC-D, if it so desires, may also consider the process adopted by the MSEDCL for procurement of Wind Energy on short term basis so as to get more response in bidding process and to procure power at market reflective price.

15. Hence, the following Order.


ORDER

- 1. The Case No. 88 of 2021 is partly allowed.**
- 2. The Commission does not adopt the Tariff of Rs 3.27/kWh proposed in this tariff as Tata Power Co. (Distribution) did not comply with provisions of competitive bidding guidelines notified by the Central Government under Section 63 of the Electricity Act, 2003 and also tariff discovered is not reflective with market conditions.**
- 3. As ruled in para 13 above, energy procured till date shall be allowed at tariff of Rs. 2.25 or 2.52/kWh, as may be applicable. Thereafter, Tata Power (Distribution) shall take steps as stipulated in para 14 above.**
- 4. The Wind power procured as above shall be considered for meeting the non-Solar renewable purchase obligation requirement of TPC-D.**

Sd/-
(Mukesh Khullar)
Member

Sd/-
(I.M. Bohari)
Member

Sd/-
(Sanjay Kumar)
Chairperson


(Abhijit Deshpande)
Secretary

