

**MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION
BHOPAL**

Subject: In the matter of approval and adoption of tariff for procurement of 1241 MW under Section 63 of the Electricity Act, 2003.

Petition No.10 of 2007

ORDER

(Date of Hearing: 24th November, 2009)

Date of Order : 6th January, 2010

M. P. Power Trading Company Ltd., Jabalpur - Petitioner

Shri Rajesh Mehta, ACE appeared on behalf of the Petitioner - M. P. Power Trading Company Ltd. (MP Tradeco), Jabalpur.

Shri N. K. Bihonde, EE appeared on behalf of M. P. Power Transmission Co. Ltd., Jabalpur and Shri Kafeel Ahmed, Deputy Secretary appeared on behalf of the Energy Department, Govt. of M. P.

The petition is in the matter of approval/adoption of tariff under Section 63 of the Electricity Act, 2003.

2 The background of the case and findings of the Commission during the past proceedings are given below :-

- (i) MP Tradeco vide its petition No.10 of 2007 filed in March, 2007 had applied to the Commission for approval of its Request for Proposal (RFP) documents. The RFP document was prepared for procurement of power on a long term basis from developers/generators for supply of minimum 20 MW and maximum 2000 MW power through tariff based bidding process in accordance with the competitive bidding guidelines issued by the Ministry of Power. It is indicated in Clause 5.16 of the guidelines that,

“In case there is any deviation from these guidelines, the same shall be subject to approval by the Appropriate Commission. The Appropriate Commission shall approve or require modification to the bid documents within a reasonable time not exceeding 90 days.

- (ii) The Commission had accorded in-principle no objection on the RFP document, which was proposed to be issued by the petitioner, subject to the condition that as and when final bids are received, the petitioner had to approach the Commission for approval of the final bid cost for purchase of power by Distribution Licensees or its representatives.

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- (iii) In compliance to the above directive of the Commission and also as required under the competitive bidding guidelines, the petitioner filed an application before the Commission to approve/adopt the quoted tariff (levelized) of Rs.2.34/kwh by M/s LANCO Infratech Ltd. for supply of 600 MW power.
- (iv) As per the petitioner, the competitive bidding process was initiated on 10th April, 2006 with the publication of global invitation for pre-qualification of the bidders for supply of power upto 2000 MW.
- (v) The petitioner has further informed that in response, 18 companies procured the RFQ documents during 10th April, 2006 to 24th April, 2006. Considering the amendment in the standard bid documents for Case-2 and request of the bidders, the petitioner adopted revised evaluation criteria based on Request for Qualification (RFQ) for Case-2 and issued revised RFQ notification. In response to the revised RFQ notification, 19 additional companies purchased RFQ documents and 16 companies submitted response to the RFQ on the last date of submission i.e. 30th August, 2006. 25 bidders were declared qualified for the contracted capacity as per the criteria specified in the RFQ documents. The evaluation of the RFQ bids was undertaken by an expert committee. The RFP bid document was issued on 12th February, 2007 and the RFP technical and financial bids were opened on 27th November, 2007 and 12th December, 2007 respectively.
- (vi) It was informed by the petitioner that out of 25 bidders qualified at the RFQ stage, only 4 bidders submitted their RFP documents as given below :-

Sl. No.	Bidder	Contracted (MW)	Capacity
1	Lanco Infratech Limited (LIL)	600	
2	Reliance Power Limited (RPL)	1241	
3	Essar Power Limited (EPL)	600	
4	KSK Energy Ventures Limited (KSK)	300	

- (vii) It was submitted by the petitioner that the bid submitted by M/s KSK Energy Ventures Ltd. was rendered non-responsive by the expert committee. The price bid of the responsive bidders were opened on 12th October, 2007 in presence of the bidder's representatives and the expert committee along with the consultants. The levelized tariffs as per the bid evaluation report prepared by the expert committee were as under :-

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Sl. No.	Bidder	Contracted Capacity (MW)	Computed levelized tariff (Rs./kwh)	Ranking
1	Lanco Infratech Limited (LIL)	600	2.340	L1
2	Reliance Power Limited (RPL)	1241	2.701	L2
3	Essar Power Limited (Mahan)	300	2.955	L3
4	Essar Power Limited (Tori)	300	3.044	L4
		2441		

- (viii) The expert committee in its meeting held on 24th December, 2007 recommended the following :-
- As per MPERC order No.MPERC/P-10 of 07/2091 dated 16th October, 2007 RFP document was approved subject to the condition that as and when final bids are received, the petitioner shall have to approach the Commission for approval of the final bid cost for purchase of power by Distribution Licensees or its representatives. Therefore, approval of the bid cost is required from the MPERC before issuance of the Letter of Intent (LOI).
 - In view of above, the Expert Committee feels that the bid of M/s Lanco Infratech Limited (L1) for supply of 600 MW power can be considered for recommendation to the MPERC mentioning in particular that the payment of the transmission charges shall be as indicated by them in their bid i.e. the WR-ER Transmission Link charges shall not be paid.
 - Further, M/s Reliance Power Ltd. (L2) may be called for negotiation to reduce the quoted tariff (at Delivery Point).
 - Subsequently, M/s Essar Power Limited (L3) may be called for further negotiations to reduce the quoted tariff for procurement of balance power.
- (ix) The petitioner filed an application dated 7th January, 2008 requesting the Commission for approval and adoption of tariff quoted by M/s LANCO being L-1. The petitioner had also requested that it would again approach the Commission for approval of the tariff for other bidders, if found suitable after negotiations.
- (x) The Commission vide its order passed on 7th March, 2008 in the subject matter accepted that the tariff discovery for the Case-1 bidding process, carried out by MP Tradeco in the subject case, has been carried out through a transparent process of bidding in conformity with the guidelines for determination of tariff by bidding

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process for procurement of power by Distribution Licensees. The Commission in the same order accorded its approval/adoption of the evaluated leveled tariff of Rs.2.34/kwh for procurement of 600 MW of power from M/s LANCO. The approval/adoption was subject to the following conditions :-

- Signed copy of the power purchase agreement shall be submitted to the Commission immediately after signing.
- The above approval is for evaluated leveled tariff for a period of 25 years. However, actual payment shall be regulated as per the provisions of the RFP bid documents.
- MP Power Trading Co. Ltd. is also directed that the outcome of negotiations with L-2 and L-3 bidders be placed before the Commission before the expiry of the bid validity.

- (xi) Later on, MP Tradeco had filed a written submission on affidavit on 12th May, 2008 mentioning that they had appointed M/s ICRA as the consultant for long term basis for procurement of power through competitive bidding. It was further submitted by the petitioner that as per the recommendations of the expert committee and approval of the Commission conveyed vide its order dated 7th March, 2008, the negotiation committee was constituted for negotiation of tariff for procurement of balance 1400 MW power with M/s Reliance Power Ltd. and M/s Essar Power Ltd.
- (xii) The negotiation committee in its meeting held on 1st May, 2008 found that the revised bids of M/s Essar were not in line with the RFP documents and it was proposed by the negotiation committee to ask M/s Essar to accept the delivery point as per the RFP documents. On the other hand, the revised bid of M/s Reliance Power was found to be justified and was considered for acceptance. The petitioner had also submitted that M/s Reliance Power has substantially reduced the tariff after negotiation from Rs.2.701/kwh to Rs.2.45/kwh (leveled).
- (xiii) In response to the submission filed by the petitioner on 9th May, 2008 wrongly interpreting that the Commission had accorded approval to carry out the exercise of negotiation, the Commission vide its letter No.1231 dated 7th June, 2008 asked the petitioner to explain as to why not the application for adoption/approval of 1241 MW of power purchases be rejected by the Commission when there is no provision for negotiation either in the guidelines issued by the Ministry of Power, GoI or in the RFP documents. The Commission in its order dated 26th August, 2008 had also recorded this issue along with several other issues, which could not be replied appropriately by the petitioner to the satisfaction of the Commission.

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- (xiv) The Board of Directors of MP Tradeco approved the acceptance of revised offer of RPL for supply of 1241 MW at evaluated levelized tariff of Rs.2.45/kwh subject to adoption/approval of the Commission. The petitioner filed an application on 12th May, 2008 requesting for adoption/approval of the Commission for procurement of 1241 MW from RPL at evaluated levelized tariff of Rs.2.45/kwh. The Commission vide its letter No.2008/LA/1515 dated 9th July, 2008 directed the petitioner to clarify the following issues :-
- a) The RFP document does not have any provision for negotiation.
 - b) No explicit approval was granted by the Commission to carry out the exercise of negotiation as wrongly interpreted by the petitioner in its submission dated 9th May, 2008.
 - c) Even the State Government's approval vide its letter No.1479/13/2008 dated 29th February, 2008 to negotiate long term power procurement with RPL and Essar was given at the lowest rate and not at rates higher than the lowest rates.
- (xv) The petitioner vide its letter No.07/11/IPC/700/547 dated 20th August, 2008 responded to the above queries raised by the Commission and also informed the Commission that M/s Lanco Infratech has expressed its inability to sign the RFQ project documents stating that,
- (a) *"The State is yet to issue the notification under Section-4(1) of the Land Acquisition Act for the land identified by us for the project to be followed by notification under Section-6(1) and land acquisition despite our best efforts subsequent to signing MoU with the State in September, 2006.*
 - (b) *After taking stock of the status of the project, the current situation indicates that land acquisition by the Orissa Government Agencies would further take considerable time which would adversely affect project implementation schedule in supply of power as offered in the bidding stage."*
- (xvi) During the course of hearing on 26th August, 2008, the Commission asked the petitioner to clarify the delivery point for purchase of 1241 MW power from RPL as the petitioner had mentioned that the transmission charges and losses are included in the tariff quoted by M/s RPL. The Commission had also inquired whether the evacuation transmission system is in the scope of RPL or MPPTCL/STU of M. P. will evacuate the power from the switchyard of Reliance Generating Station. The Commission expressed that the delivery point has impact in terms of cost to Discoms and the petitioner should analyze all cost components in the matter including hidden or subsidized cost.

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- (xvii) The Commission in Para 11 of its order dated 26th August, 2008 in the subject matter observed that *the power plant of Reliance through which power would be supplied to the petitioner is near to the Sasan Ultra Mega Power Plant. It is understood that Reliance intends to use the coal supply from the same captive coal block of Sasan UMPP to this new plant, for which Govt. of Madhya Pradesh has made recommendations to the Central Government. It is noted that with the bid of M/s Essar Power adjudged as non-compliant, bid of M/s Reliance Power has become the sole bid. Regarding reasonability of price obtained after negotiation, the contention of petitioner that since it is lower than rates agreed in some other States such as Gujarat, Haryana etc. it is reasonable, is not tenable on account of obvious difference in coal cost of plants being compared. As the power being purchased as also the period for which it is being purchased are both substantial and the revised rate offered by Reliance Power remains higher than the rate quoted by the lowest bidder, the avenues of purchasing power at the lowest quoted rate need to be explored further. To this end, if necessary, intervention of the State Government could be sought.*
- (xviii) The petitioner sought some more time to respond to the issues related to the negotiated rate and delivery point. The Commission directed the petitioner to consult all concerned including the State Government and file a comprehensive reply to the queries of the Commission. Notices were issued to Energy Department, GoMP and MPPTCL also.
- (xix) During the course of next hearing held on 29th September, 2008, the representatives of the Energy Department, GoMP and MPPTCL also appeared before the Commission. The representative of Energy Department, GoMP had no comments to offer at that time while the representative of MPPTCL submitted that it shall undertake the system studies for further transmission of power to Discoms once the delivery system is firmed up between the procurer and the generator. It was also stated by MPPTCL that the evacuation of 1241 MW power shall require 2x400 KV transmission lines. Since the petitioner will ultimately supply power to the three Discoms of MP, the petitioner must finalize the allotment of power to each Discom and the respective delivery point(s). Since the delivery of power at single point or at multiple STU interconnections carry high cost implications hence, the petitioner was advised to be clear on these issues to avoid any controversy at a later stage. The Commission expressed that it will take its considered view in the matter after having clarity on the issue of delivery point as also on other issues raised by the Commission.

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- (xx) The Commission had also observed from the submissions of the petitioner that certain provisions of the MoU signed between GoMP and RPL were referred to by the petitioner. Hence, the Commission asked a copy of the same. It was observed by the Commission from Clause 12 of the MoU that the State Government or its nominated agencies has the first right to purchase power upto 30% i.e. 1200 MW out of aggregate capacity of 4000 MW. This 1200 MW of power shall be supplied at the rate approved by the appropriate Regulatory Commission.
- (xxi) While observing clause 12 of the MoU, the Commission asked the petitioner to clarify whether this 1241 MW of power in accordance with Section 63 of the Electricity Act, 2003 being procured is over and above 30% of the aggregate capacity as mentioned in Clause 12 of the MoU. If it is so, it is further required to clarify whether it will be possible to have differential tariff from the same source i.e. one decided by the appropriate Commission in accordance with Section 62 of the Electricity Act, 2003 and other through the bidding route. The Commission had also asked the petitioner whether the validity of MoU which was signed on 20th September, 2007 for a period of one year, has been extended by the State Government or not.
- (xxii) The petitioner during the course of hearing held on 18th November, 2008 informed the Commission that the proposal for extension of validity of MoU signed with RPL is under consideration of GoMP.
- (xxiii) The Commission during the course of proceedings held on 18th November, 2008 observed that the bid submitted by M/s Reliance Power is not a stand-alone bid but is linked to MoU signed between GoMP and M/s Reliance Power on 20th September, 2007. It was also observed that there is lack of clarity on the issue whether 30% of the aggregate capacity under MoU, of which GoMP or its nominated agencies has the first right to purchase, is included in 1241 MW. If not, whether this 30% power shall be in addition to the 1241 MW already offered under Case-1 project to MP Tradeco. The case was closed for orders after receipt of replies from the petitioners and the respondents. The Commission received no response and therefore, listed the case for hearing on 24th November, 2009.
- (xxiv) The Commission has received a letter from the petitioner on 30th October, 2009 requesting the approval/adoption of the Commission for procurement of 150MW of power by M/s Essar Power Ltd. (EPL) at a levelized tariff of Rs.2.45/kwh at the delivery point of 220 KV Sidhi sub-station of MPSTU under the provisions of the RFP documents. The petitioner in its letter dated 29th October, 2009 on affidavit has mentioned that GoMP has been requested to submit an affidavit on the issue

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whether 30% of the aggregate capacity under MoU, on which GoMP or its nominated agencies has the first right to purchase, is included in 1241 MW or not and if not, whether this 30% power shall be in addition to the 1241 MW already offered under Case-1 to MP Tradeco.

- (xxv) The petitioner has also mentioned that the matter is under process with GoMP. The petitioner has further submitted that negotiations with M/s EPL were also held to submit their revised offer of levelized tariff of Rs.2.45/kwh for the contracted capacity of 150MW. It is also mentioned by the petitioner that EPL has substantially reduced the tariff to supply 150 MW of power at a levelized tariff of Rs.2.45/kwh against their earlier quote of Rs.2.955/kwh. The Letter of Intent (LoI) dated 24th July, 2009 has been placed on EPL for supply of 150MW power from their Mahan Thermal Power project at a levelized tariff of Rs.2.45/kwh subject to approval/adoption of tariff by MPERC. The petitioner has also confirmed that the delivery point shall be at 220KV Sidhi sub-station of MPSTU.
- (xxvi) The Commission has received a letter on 24th November, 2009 from Additional Secretary, Energy Department, GoMP bearing no.8573/13/2008 dated 23rd November, 2009 mentioning the following :-
- a) RPL has signed MoU with GoMP for installation of 4000 MW thermal power station at Singrauli.
 - b) GoMP has taken the following decision in relation to the proposal for supplying electricity to MP Tradeco under Case-1 from the thermal power station of RPL at Singrauli district.:-
 - (i) If the levelized tariff i.e. Rs.2.45kwh for the electricity under Case-1 for 1241 MW to be supplied by M/s RPL is assessed less than the power to be supplied by M/s RPL under MoU with GoMP, then the quantum of power to be supplied by M/s RPL under MoU shall be offset from 1241 MW and other terms and conditions shall be applicable as per Case-1.
 - (ii) If the rate of levelized tariff for the power under MoU is assessed less than the quantum of levelized tariff i.e. Rs.2.45/kwh for 1241 MW under Case-1, then M/s RPL shall have to supply 30% power separately under the provisions of MoU signed with the State Government and this power shall not be offset from 1241 MW under Case-1.
 - (iii) M/s RPL shall be required to file all requisite documents with the appropriate Commission for determination of tariff for the power to be supplied under MoU from the respective project.

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3 During the course of hearing on 24th November, 2009, the representative of MP Power Trading Company Ltd., Jabalpur in his oral submission informed the Commission that they are again negotiating with M/s Reliance Power Ltd for bringing down the tariff since M/s Reliance Power Ltd has changed the location of the source of coal. He has also informed that the negotiation committee has been formed on 9th November, 2009 to negotiate with M/s Reliance Power Ltd.

4 The following new issues have come before the Commission during the course of hearing on 24th November, 2009 :-

- (i) The issues like point of injection of power (delivery point) and fuel source are yet to be finalized in case of Reliance Power Ltd (i.e. L-2).
- (ii) The petitioner is again negotiating with RPL for bringing down the tariff.
- (iii) The delivery point in case of M/s EPL (i.e L-3) has also been changed from CTU to 220KV Sidhi sub-station at MPSTU on negotiation.

5 Based on the past proceedings and the proceedings held today, the following facts of the case emerged before the Commission:-

- (i) There is no provision for negotiation during or after the bidding process in the “guidelines for determination of tariff by bidding process...” issued by the Ministry of Power, Govt. of India. However, the State Government had asked for the negotiation to arrive at the lowest rate. It is also noted that the negotiations with the second lowest bidder i.e. M/s RPL were still on, as on the date of last hearing. It is further observed that the rate offered by M/s RPL (Rs.2.45/kwh) after negotiation is not the lowest as compared to the L-1 bidder (Rs.2.34/kwh). The petitioner was still engaged in negotiation with M/s RPL regarding the change in source of coal and for bringing down the tariff.
- (ii) It is also noted that the petitioner has not obtained any approval of the Commission to go for the negotiation. He has simply interpreted and assumed that the approval of the Commission for negotiation had been accorded while the facts were not like this. The process of negotiation is not provided under the given framework. However, negotiations may sometimes result in an appropriate discovery of price to protect consumers’ interest to make them avail the electricity at lowest price. The word ‘lowest’ sets the benchmark and is most significant in any negotiation process and in no way it can be the rate higher than the rate quoted by the lowest bidder in any competitive bidding process. One of the objectives of the guidelines issued by the Ministry of Power for procurement of power by bidding process should not be overlooked, which states that *the guidelines facilitate transparency and fairness in procurement process.*

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(iii) Regarding delivery point, Clause 2.12 of the RFP document states that,

“The delivery point shall be the power station Madhya Pradesh STU inter connection in case the station is located within Madhya Pradesh. In case the station is connected to any other transmission utility, the delivery point shall be the CTU MPSTU inter connection point. The bidder shall be responsible for obtaining all the clearances/ approvals including open access, whether required from Central/ State Government and statutory bodies for supply of power up to the delivery point.”

As per the definition in PPA submitted by the petitioner, *the delivery point is the point of delivery of power for fulfilling the obligation of the seller to deliver the contracted capacity to the procurer.* The delivery point as mentioned in the schedule 8 of the PPA is also similar to the RFP document.

(iv) As submitted by the petitioner vide its submission on affidavit dated 9th May, 2008, M/s Essar Power Ltd in its offer dated 30th April, 2008 had mentioned that the delivery of power shall be the 400KV plant switchyard bus bar of 2X 600MW Mahan Thermal Power plant. The Commission has observed from the same submission that the negotiation committee had recommended the following-

“The revised bid of M/s Essar Power Ltd is not in line with RFP documents and therefore it is proposed to ask M/s Essar Power Ltd to accept delivery point as per our RFP documents, otherwise their offer may not be considered further for negotiation (as their rates are still higher)”

In view of the above recommendations of the negotiation committee the conversion of the bid offered by M/s Essar Power Ltd from non-responsive to responsive has no clarity. However, on 30-10-2009 ,after a gap of long period, the petitioner has informed the Commission that M/s Essar Power Ltd has submitted their revised offer dated 17th January, 2009 at levelised tariff of Rs. 2.45 per KWH for the contracted capacity of 150 MW confirming the delivery point at 220 KV Sidhi sub station of MPSTU.

(v) M/s Reliance Power Ltd. had not specified any delivery point in Annexure-4, Form 2 of the bid, while delivery point is required to be mentioned as procurer’s requirement in Clause 5.4(i) of the bidding guidelines. The Commission is of the view that the delivery point has cost implications to Discoms hence all cost components including hidden or subsidized cost should have come up-front and should have formed part of bid evaluation and recommendation of the evaluation

Committee. The delivery points of the power to be procured for three Discoms of MP must have been finalized to avoid any controversy at a later stage. The

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Commission has noted that the issue of finalizing the delivery point in case of M/s Reliance Power Ltd is unresolved till today.

- (vi) The Commission has received response from the petitioner and GoMP after a period of more than a year from the last order issued by the Commission on 18th November, 2008. The State Government / petitioner in their reply have not clarified whether it will be possible to have differential tariff for the generation of Power from the same source i.e. one to be decided by the appropriate Commission in accordance with the provisions under Section 62 of the Electricity Act, 2003 and the other through the competitive bidding route.

However, it is clear from the contention of the GoMP in its letter dated 23rd November, 2009 that the 30 % power under the provisions of MoU signed between the State Government and M/s Reliance Power Ltd shall be either offset from 1241 MW power (under case -1) or be separately supplied by M/s Reliance Power Ltd as the case may be.

- (vii) It is observed that the petitioner had initiated the process of competitive bidding on 10-04-2006 with the publication of global invitation for RFQ and a period of more than 3 years has elapsed from the date of starting the process, which is now much beyond the time table for bid process stipulated under clause 5.18 of the bidding guidelines issued by the Ministry of Power. Clause 5.18 of the bidding guidelines, which provides that-

“(a) In the two stage bid process, (i) a minimum period of 45 days shall be allowed between the publication of RFQ and last date of submission of responses to RFQ and (ii) a minimum period of 150 days shall be allowed between the issuance of RFP and the last date of RFP bid submission.

Subject to the completion of necessary milestones in respect of project preparatory activities as given in clause 3.2 of these guidelines, the timetable for the bid process is indicated in Annexure-I. In normal circumstances, the bid process is likely to be completed in a period of 270 days.

The Procurer may give extended timeframe than indicated in the Annexure-I. However, if the bidding process is likely to take more than 730 days, approval of the Appropriate Commission shall be obtained in accordance with clause 5.16.”

It is worthwhile to note from the petition filed by the petitioner on 22nd March, 2007 that the petitioner had originally initiated the process of competitive bidding

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in the subject petition on 10th April, 2006 with the publication of global invitation for RFQ. The petitioner had revised and re-published the RFQ again in the month of July, 2006 and January, 2007. Even, if the days are counted from the publication of latest revised RFQ on 1st January, 2007, 270 days expired on 28th September, 2007 and 730 days expired on 31st December, 2008.

(viii) The Appellate Tribunal for Electricity in its judgement dated 4th September, 2009 under appeal no. 109/2009 in the matter of M/s Lanco Infratech Ltd. verses Punjab State Electricity Regulatory Commission & others has concluded that,

- (i) *“Section 63 of act would be binding on the Commission only if the process of competitive bidding had been completed strictly in accordance with bidding guidelines issued by the Central Government.....”.*
- (ii) *“When there is a single bidder, the State Commission alone is the competent and final authority to give consent for the bid process.....”.*
- (iii) *“The important ingredient of the guidelines as provided in clause 5.15 of the guidelines is that the lowest rate quoted must be apprised by the evaluation committee which is empowered to reject the same if it finds that the said rate is not aligned with the prevailing market rates. Since the evaluation committee has not undertaken the process of finding out whether the rate quoted is in line with the prevailing market price even though it found that the price is on the higher side, the State Commission in this case has correctly undertaken the task of finding out whether the price quoted is reasonable or on the higher side in comparison with the prices fixed for other project situated in the very same State and on that basis, it has come to the right conclusion”.*
- (iv) *“The negotiation process and the revised bid of the Appellant and the options suggested by the Negotiation Committee and the decision of the Council of Ministers are not contemplated by the bidding guidelines laid down by the Central Government.....”.*

6 To conclude, the Section 63 of the Electricity Act, 2003 provides as under :-

“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”.*

7 From the narrative contained in the forgoing paras, the Commission is of the view that the process adopted in respect of L2 and L3 bidders does not conform to the requirement of Section 63 of the Electricity Act, 2003 and also the guidelines of the Central Government mainly in respect of the following :-

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- (a) The original bids have undergone changes in substantive issues like delivery point, source of fuel etc. and that these changes have substantial tariff implications.
- (b) The negotiations held are not provided for either in the guidelines of the Central Government nor in the RFP document pursuant to which these bids were invited. The negotiations also did not have prior approval of the Commission.
- (c) The bidding process has been extended way beyond the time lines of even 730 days from the date of publication of RFQ as specified in Clause 5.18 of the guidelines and what is more significant to mention is that still the tariff in case of L2 bidder is again proposed to be renegotiated.

8 In view of the forgoing, the Commission concludes that requirements of Section 63 of the Act have not been fully met and hence case for adoption of tariff is not sustainable.

9 This petition stands disposed off.

(C. S. Sharma)
Member (Eco.)

(K. K. Garg)
Member (Engg)

(Dr. J. L. Bose)
Chairman