

Draft Supplementary Power Purchase Agreement

Between

Paschimanchal Vidyut Vitran Nigam Ltd.

("Procurer 1")

and

Poorvanchal Vidyut Vitran Nigam Ltd.

("Procurer 2")

and

Madhyanchal Vidyut Vitran Nigam Ltd.

("Procurer 3")

and

Dakshinanchal Vidyut Vitran Nigam Ltd.

("Procurer 4")

and

M/s Welspun Energy UP Private Ltd.

("Seller")

BEFORE THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION LUCKNOW

PETITION No.

In the matter of: Approval of Supplementary PPA for Mirzapur Thermal Power Project (1320 MW) under clause -126 of UPERC (Conduct of Business) Regulation 2004.

In the matter of:

U.P Power Corporation Ltd
14–Ashok Marg
Lucknow..... Petitioner

M/s Welspun Energy UP Private Limited
Welspun House , 7th Floor ,
Kamala City Senapati Bapat Marg,
Lower Parel , Mumbai-400013 Respondent

The undersigned is presently posted as Chief Engineer, Power Purchase Agreement Directorate, U.P Power Corporation Limited, Shakti Bhawan , Lucknow and has been authorized to file the present petition.

It is most humbly prayed by the Petitioner :-

- 1- That in compliance to the GoUP Energy Policy -2009, a MOU dated 31-12-10 was signed in between **M/s Welspun Energy UP Private Limited** and GoUP for setting up 1320 MW Thermal Project at Ghazipur in Distt. Ghazipur. Subsequently a Power Purchase Agreement for purchase of 100% power, generated from this project, was signed by UPPCL on behalf of DISCOMS on 04-01-11 for which approval had already been accorded by UPERC vide it's order dated 18-11-2010.
- 2- That the Cl. No. (3.1.2) of the aforesaid PPA provides certain conditions which are required to be fulfilled by the Developer within 18 months from signing of PPA unless such completion is affected due to Procurers failure to comply with their obligations under Article 3.1.2A or by Force Majeure event or if any of the activities is specifically waived off in writing by the Procurers. This clause at 3.3.4 further provides that any extension/increase in time period shall lead to equal increase in the period of Bank Guarantee and a new scheduled COD will be decided with the approval of the Commission.
- 3- That as per the request of **M/s Welspun Energy UP Private Limited** for change of the project location from Gazipur to Mirzapur and for extension of the above period to fulfill the conditions subsequent, GoUP vide order dated 8-6-12 (**copy at Annexure-1**) have accorded permission on change of location and the extension of time limit for a further period of 18 months or as requested by the seller (whichever is lesser) with the condition that additional IDC on account of above extension shall not be admissible to the seller.
- 4- That subsequently, the extension for fulfillment of condition subsequent under Article 3.1.2 was again requested vide letter dated 30-09-13 mainly on the ground that important conditions like MOEF clearance and coal linkage for the project has not been granted.
- 5- GoUP vide its order dated 09-12-13 (**copy at Annexure-2**) giving last chance have accorded permission on extension of time limit for a further period of 18 months or as requested by the seller (whichever is lesser) with the conditions given therein.
- 6- Subsequently again on request of developer for third time extension, GoUP vide its order dated 19-12-2016 (**copy at Annexure-3**) have accorded permission on extension of time limit upto 31-03-2017 for fulfilling the conditions subsequent under Article 3.1.2 with the conditions given therein.
- 7- That the Developer has accepted the conditions stipulated in GO dated 19-12-2016 as given below :-

We hereby agree for ceiling of Rs. 4.35 per kWh for the first contract year tariff.
We also agree to following:-

- (I) In case the tariff determined for first contract year is more than Rs. 4.35 per kWh, then the fixed charge as determined by UPERC shall be scaled down so that total tariff is Rs. 4.35 per unit. Therefore, for the purposes of bringing it down to Rs. 4.35/Unit, a discount factor for fixed charge shall be determined. However, in case the tariff determined by the Commission on actual capital cost comes below Rs 4.35/unit the same shall be the applicable tariff for the first contract year.
- (II) UPERC would determine fixed charges for first and subsequent years of operation in accordance with applicable regulation for Terms & Condition of determination of tariff. Fixed cost so determined shall be scaled down by the same discount factor for relevant period as determined in point no.(1). However, variable charge for first and subsequent years shall be calculated on actual price of linkage coal, oil, actual transportation cost in accordance with applicable regulation.
- (III) The ceiling rate of first contract year as Rs. 4.35/ unit is based on foreign exchange rate and prevailing rates of taxes & duties as on 05-02-2016 i.e. the date on which proposal of 3rd extension of MOU is placed before BOD i.e. 05-02-2016. In case there is change in dollar exchange rate and/or taxes & duties, the change due to variation in dollar exchange rates & taxes as capped in tariff determined by Commission in % term shall be adjusted on proportionate basis in the re- determined fixed cost.
- (IV) The ceiling of Rs. 4.35 per kWh for the first contract year tariff is based on prevailing cost of linkage coal (for grade that will be specified in FSA) and railway transportation as on 05-02-2016 i.e. the date on which proposal of 3rd extension of MOU is placed before BOD i.e. 05-02-2016. In case there is change in price of coal supplied by CIL and/or railway freight the ceiling of Rs.4.35 per kWh for the first contract year tariff shall be adjusted accordingly to reflect such change.
- 8- A draft Supplementary PPA containing the mutually agreed conditions as per GOUP order dated 19-12-2016 is enclosed at **(copy at Annexure-4)** for UPERC approval.

In view of the foregoing paragraphs, the Commission is requested to approve the draft supplementary PPA and /or otherwise pass the appropriate directions so that the same may be finally signed with the Company.

Enclosure: As above

(V.P. Srivastava)
Chief Engineer (PPA)

VERIFICATION

I, the above deponent, do hereby verify that the contents of this affidavit are true to my knowledge and belief, no part of it is false and nothing material has been concealed.

Signed and verified this _____

(V.P. Srivastava)
Chief Engineer (PPA)

This Supplementary Power Purchase Agreement is made on the

---th day of -----, 2017

Between

(1) **Paschimanchal Vidyut Vitran Nigam Ltd**, a company incorporated in India and registered under the Companies Act, 1956, having its registered office at Victoria Park Meerut-250001 (Hereinafter referred to as **"Procurer 1"**, which expression shall, unless repugnant to the context or meaning thereof, be deemed to include their respective successors, nominees and permitted assigns); and

(2) **Poorvanchal Vidyut Vitran Nigam Ltd**, a company incorporated in India and registered under the Companies Act, 1956, having its registered office at Vidyut Nagar, P.O. DLW, Varanasi-2201010 (Hereinafter referred to as **"Procurer 2"**, which expression shall, unless repugnant to the context or meaning thereof, be deemed to include their respective successors, nominees and permitted assigns); and

(3) **Madhyanchal Vidyut Vitran Nigam Ltd**, a company incorporated in India and registered under the Companies Act, 1956, having its registered office at 4A, Gokhale Marg, Lucknow-226001 (Hereinafter referred to as **"Procurer 3"**, which expression shall, unless repugnant to the context or meaning thereof, be deemed to include their respective successors, nominees and permitted assigns); and

(4) **Dakshinanchal Vidyut Vitran Nigam Ltd**, a company incorporated in India and registered under the Companies Act, 1956, having its registered office at Urja Bhawan. NH2, Sikandra, Agra (Hereinafter referred to as **"Procurer 4"**, which expression shall, unless repugnant to the context or meaning thereof, be deemed to include their respective successors, nominees and permitted assigns)

THROUGH

UTTAR PRADESH POWER CORPORATION LIMITED ("UPPCL") a company incorporated in India and registered under the Companies Act, 1956, having its registered office at Shakti Bhawan, 14, Ashok Marg, Lucknow, U.P duly authorised by each of the above Procurers to enter into this

Agreement on their behalf

(The "Procurer 1", "Procurer 2", "Procurer 3" and "Procurer 4" are (hereinafter collectively referred to as the "Procurers" and individually as a "Procurer")

And

M/s Welspun Energy UP Private Limited (the "Seller"), a company incorporated in India and registered under the Companies Act, 1956, having its registered office at Welspun House, 7th Floor, Kamala City Senapati Bapat Marg, Lower Parel, Mumbai-400013.

(each of the "Procurer 1", "Procurer 2", "Procurer 3", "Procurer 4" and or "Procurers" and "Seller" are individually referred as "Party" and collectively to as the "Parties")

WHEREAS:

- A- Power Purchase Agreement Dated 04-01-11 was signed between **M/s Welspun Energy UP Private Limited** - and Procurer for purchase of 100% Saleable Energy from 1320 MW Thermal Power Generating Plant situated at Ghazipur (UP), in accordance with GoUP Energy Policy-2009 (as amended) issued by Department of Energy, GoUP.
- B- In accordance with Article-3.1 under "conditions subsequent to be satisfied by the seller and the procurers." of aforesaid PPA, the seller was required to perform and complete the various prescribed activities within 18 months from the effective date i.e. date of signing of PPA.
- C- As per the request of Developer for change of the project location from Ghazipur to Mirzapur and for extension of the above period to fulfill the conditions subsequent, GoUP vide order dated 8-6-12 have accorded permission on change of location and the extension of time limit for a further period of 18 months or as requested by the seller (whichever is lesser) with the condition that additional IDC on account of above extension shall not be admissible to the seller.
- D- GoUP vide its order dated 09-12-13 (copy at Annexure-1) giving last chance have accorded permission on extension of time limit for a further period of 18 months or as requested by the seller (whichever is lesser) with the conditions given therein.
- E- GoUP vide its order dated 19-12-2016 (**copy at Annexure-3**) have accorded permission on extension of Third time extension upto 31-03-2017 with the conditions given therein. M/s Welspun Energy UP Private Ltd., have agreed as follows :-

We hereby agree for ceiling of Rs. 4.35 per kWh for the first contract year tariff.
We also agree to following:-

- (I) In case the tariff determined for first contract year is more than Rs. 4.35 per kWh, then the fixed charge as determined by UPERC shall be scaled down so that total tariff is Rs. 4.35 per unit. Therefore, for the purposes of bringing it down to Rs. 4.35/Unit, a discount factor for fixed charge shall be determined. However, in case the tariff determined by the Commission on actual capital cost comes below Rs 4.35/unit the same shall be the applicable tariff for the first contract year.

- (II) UPERC would determine fixed charges for first and subsequent years of operation in accordance with applicable regulation for Terms & Condition of determination of tariff. Fixed cost so determined shall be scaled down by the same discount factor for relevant period as determined in point no.(1). However, variable charge for first and subsequent years shall be calculated on actual price of linkage coal, oil, actual transportation cost in accordance with applicable regulation.

- (III) The ceiling rate of first contract year as Rs. 4.35/ unit is based on foreign exchange rate and prevailing rates of taxes & duties as on 05-02-2016 i.e. the date on which proposal of 3rd extension of MOU is placed before BOD i.e. 05-02-2016. In case there is change in dollar exchange rate and/or taxes & duties, the change due to variation in dollar exchange rates & taxes as capped in tariff determined by Commission in % term shall be adjusted on proportionate basis in the re- determined fixed cost.

- (IV) The ceiling of Rs. 4.35 per kWh for the first contract year tariff is based on prevailing cost of linkage coal (for grade that will be specified in FSA) and railway transportation as on 05-02-2016 i.e. the date on which proposal of 3rd extension of MOU is placed before BOD i.e. 05-02-2016. In case there is change in price of coal supplied by CIL and/or railway freight the ceiling of Rs.4.35 per kWh for the first contract year tariff shall be adjusted accordingly to reflect such change.

F- UPPCL on behalf of Procurers and the Seller have mutually agreed to this Supplementary Agreement in respect of Generating Plant being set up and the same has been duly approved by UPERC vide its Order dated-----

NOW, THEREFORE, in consideration of the foregoing and respective covenants and agreements set forth in this PPA and other consideration, the receipt, sufficiency and adequacy of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

- 1- The time period for fulfillment of conditions subsequent under Article-3.1 of PPA is now extended upto dated 31-03-2017 from the date of expiry of the previously extended period (30-06-2015) as per GO dated 09-12-2013.
- 2- GoUP vide its order dated 19-12-2016 (**copy at Annexure-3**) have accorded permission on extension of Third time upto 31-03-2017 with the conditions given therein & which are mentioned in Para E above.
- 3- The validity of original Bank Guarantee earlier submitted and additional Bank guarantee shall be maintained equal to the presently extended period.
- 4- The scheduled commercial Operation Dates (COD) will be counted from the date of achieving financial closure.
- 5- In case, the generation from power project is not started by the time power evacuation system becomes ready, the seller will be legally responsible and liable to pay entire transmission tariff to transmission contractor and a legal agreement will be signed with your company / promoter separately to this effect.

All other terms and conditions of PPA dated 04-01-11 shall remain unaltered.

IN WITNESS WHEREOF the Parties have executed these presents through their authorized representatives at Lucknow.

For and on behalf of

For and on behalf of

[Procurers]

[THE Seller]

Signature with seal

Signature with seal

Witness:

Witness:

1.

1.

2.

2.

