

**Before the**  
**MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**  
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**Case No. 85 of 2011**

**In the matter of**  
**Petition filed by Reliance Infrastructure Limited (RInfra) for adoption of Tariff determined through transparent process of bidding under section 63 of the Electricity Act, 2003 in respect of power purchase agreement entered into between Reliance Infrastructure Limited and Wardha Power Company Ltd. (WPCL)**

**Shri V.P. Raja, Chairman**

**ORDER**

**Dated: July1, 2011**

Reliance Infrastructure Limited (RInfra) submitted a Petition under affidavit before the Commission on June 14, 2011 for adoption of tariff determined through transparent process of bidding under Section 63 of the Electricity Act, 2003 (EA 2003) in respect of Power Purchase Agreement (PPA) entered into between Reliance Infrastructure Limited and Wardha Power Company Ltd .

2. The main prayers of the Petitioner, RInfra are as under:

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- a) *That this Hon'ble Commission may be pleased to approve extension of time taken for the entire Bidding Process under Case-1 procurement of power on medium term basis and to condone the delay under Para. 5.16 read with Para. 5.19 Of the Guidelines.*
- b) *That this Hon'ble Commission may be pleased to adopt the tariff in the Power Purchase Agreement entered into between Reliance Infrastructure Ltd. And Wardha Power Company Ltd. Dated August 4, 2010. (Which should be read as June 4, 2010)*

- c) *That this Hon'ble Commission may be pleased to note the certification certificates provided by the Evaluation Committee and RInfra being Annexures "B" and "C" hereto.*
- d) *That this Hon'ble Commission may please clarify whether the compliance of clause 6.3 of CBG is required before or after adoption of tariff by Hon'ble Commission.*
- e) *For such and further and other reliefs as the Hon'ble Commission may deem appropriate in the facts and circumstances of the case. "*

***(Emphasis Added)***

3. The Petitioner in its Petition submitted as under:

- a) RInfra is a company registered under the provisions of the Companies Act, 1956, and is the Generating Company as well as Distribution Licensee under the provisions of the Electricity Act, 2003.
- b) RInfra generates 500 MW power at its Dahanu thermal power station. This power is brought by RInfra to its area of supply i.e. the suburbs of Mumbai.
- c) RInfra filed a petition before the Commission for approval of proposed quantum of power for Medium Term Power Procurement (MTPP) through Competitive Bidding route via Case1 and approval of bid documents in consonance with the Competitive Bidding Guidelines, 2005 (CBG) issued by the Government of India, Ministry of Power, for determination of tariff through bidding process. The said petition was disposed off by the Commission by its Order dated July 21, 2009 in Case No 94 of 2008.
- d) After the approval of quantum of power for MTPP for period FY 2011 to FY 2014, RInfra issued a request for proposal (RFP) in or about July 30, 2009 for procurement of power through Competitive Bidding process for Medium term.
- e) Wardha Power Company Ltd. participated in the bidding process by placing an offer vide its letter dated September 10, 2009 for supply of 260 MW power on medium term basis for period of 2 years at a levellised tariff of Rs.5.248/kWh.
- f) The bid validity was extended from time to time and after several rounds of negotiations, WPCL confirmed vide its letter dated January 15, 2010 that it is ready and willing to supply 260 MW power on medium term basis for a period of 3 years at a reduced levellised tariff of Rs. 4.945/kWh .
- g) RInfra on May 10, 2010 issued a Letter of Intent (LoI) for power purchase; WPCL vide its letter dated May 12, 2010 acknowledged and unconditionally accepted the LoI issued by RInfra.

- h) RInfra vide its letter dated May 19, 2010 to the Commission stated that the LoI for supply of 260 MW has been issued to WPCL and also stated that financial bid negotiations were in progress with other bidders.
- i) RInfra executed Power Purchase Agreement (PPA) with WPCL on June 4, 2010.
- j) RInfra informed WPCL about its inability to comply with the conditions stipulated in the PPA due to the Expression of Interest (EoI) invited by the Commission vide its Notice dated October 6, 2010.

RInfra vide its letter dated December 10, 2010 informed WPCL that it is unable to proceed further with PPA and upon enquiry by WPCL vide its letter dated December 21, 2010 stated about the uncertainty of the fuel

- k) On January 24, 2011, WPCL filed a petition being Case No.11 of 2011 before the Commission under the provision of Section 63, Section 86 (1)(b) and Section 86(1)(f) of the EA, 2003 read with the Competitive Bidding Guidelines issued by MoP, GoI and the Commission's Order dated July 21, 2009 in Case No.94 of 2008
- l) First hearing regarding the same matter was held on February 17, 2011 and the matter was then heard from time to time. The Commission issued Interim Order dated April 15, 2011 and directed RInfra to procure power from WPCL as detailed below:

Sr. No.	Period of Supply	Timing (hrs.)		Quantum
1	Starting from April 20, 2011 to April 30, 2011	Round the Clock		120 MW
2	Starting from April 20, 2011 to April 30, 2011	0.00	12.00	Additional 120 MW
3	Starting from May 1, 2011	Round the Clock		260 MW

This Order was challenged before the Appellate Tribunal for Electricity (ATE)

- m) As per the directions of ATE, hearings were conducted before the Commission on May 16 and May 17, 2011 and the Commission disposed of the said petition by Order dated May 31, 2011 in Case No. 11 of 2011 and directed RInfra to immediately file an appropriate petition/application under Section 63 of the

Electricity Act, 2003 along with requisite documents, information and details for adoption of tariff through Transparent bidding process.

- n) In compliance with the said Order dated May 31, 2011 in Case No. 11 of 2011 of the Commission, RInfra is filing the present Petition without prejudice to its right as provided under the Electricity Act, 2003.
- o) Evaluation Committee of RInfra has issued appropriate certification that the Evaluation of the Bid process is done according to the provisions of the issued RFP document and Procurer's certificate has also been issued regarding conformity of the Bid process with the Guidelines.
- p) RInfra is in the process of taking necessary steps to ensure that the Default Escrow Agreement and Hypothecation Agreement are executed with WPCL and this agreement will be filed before the Commission shortly.
- q) Clarification on Article 6.3 of the CBG:  
Article 6.3 of the CBG, states that the name of the successful bidder shall be made public and that a notice regarding the same should be published in at least two newspapers. RInfra requested the Commission for providing clarification on the same that whether the same is required to be published before or after the adoption of tariff by the Commission.
- r) RInfra also requested the Commission to condone the delay in the Bidding Process due to various factors, including the extension of the period for receipt of bids by reason of the prospective bidders requesting the same as well as RInfra endeavor to reduce the Financial Bids as originally received by them.

4. The Commission vide Notice dated June 17, 2011 scheduled a hearing in the matter on June 28, 2011 at 15.00 hrs. in the presence of authorised Consumer Representatives under Section 94 (3) of the EA 2003.

5. During the hearing held on June 28, 2011, Shri. G.J. Thakkar, Senior Manager appeared on behalf of RInfra. Consumer Representative Shri. S.L. Patil and Shri. Ashok Pendse on behalf of Thane Belapur Industries Association (TBIA) was present for the hearing.

6. Shri. G.J. Thakkar from RInfra submitted that Rinfra has signed a PPA with WPCL on June 4, 2010 and in pursuant to the Commission Order dated May 31, 2011, RInfra has submitted this Petition for adoption of tariff. He further submitted that RInfra has signed

the Default Escrow Agreement and Hypothecation Agreement with WPCL and the same will be submitted to the Commission. Further, he requested for clarification on the Clause 6.3 of the CBG.

7. Adv. R.R. Tripathi representing Vegan Inc. NGO informed that an intervention Petition has been filed.

8. An Intervention Application was received on June 28, 2011 filed by a Non-Government Organization (NGO) Vegan Inc. which is a registered trust under the Bombay Public Trust Act, 1950.

9. The prayers in the Intervention Application are as under:

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- a) *In recent past the applicant has noticed several news items in the print media, reporting the directive by MERC to RInfra to purchase the costly Power from WPCL, despite availability of much cheaper power from other sources.*
- b) *That Applicant and its members are resident of Mumbai. Some of its Members are electricity consumers of RInfra, and are, therefore directly affected by any purchase of costly power by RInfra and the consequent Increase in consumer tariff.*
- c) *In view of the facts and circumstances stated here in above, it is Prayed From this Commission that the applicant be impleaded as a party in Case No. 85 of 2011 and parties be directed to give the Applicant copies of all documents filed before the Commission. ”*

10. On hearing the Intervener the Commission explained that the Power Procurement process on Medium Term was initiated by RInfra in the year 2009 and RInfra has followed the Competitive Bidding Guidelines issued by GoI. Further, the Authorized Consumer Representatives have been attending various hearings in the matter and it is last stage of this process, which is for adoption of tariff. The Commission therefore rejected the intervention application.

11. Adv. Sanjay Sen. representing WPCL submitted that he supports the Petition.
12. Having heard the Petitioner and WPCL, the Commission holds as follows:

The Commission in the matter issued an Interim Order dated April 15, 2011 in Case Nos. 11 and 42 of 2011 and issued the following directions.

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- g) *The Commission is of the view that the PPA has been entered between WPCL and RInfra as well as AMNEPL and RInfra and are based on Competitive bidding process in terms of the Government of India guidelines. There should be a presumption in favor of the validity of the Competitive Bidding process, unless the outcome of the same is set-aside after final hearing and, therefore, termination of PPA vitiating the Competitive Bidding process, at the interim stage, is neither in the interests of justice nor desirable. The Commission accordingly as an interim measures stays the termination letter issued by RInfra to WPCL on March 7, 2011. The PPA shall not be terminated until further orders.*
- h) *Keeping in mind all the factors and circumstances in the present cases, as an interim measures, the ends of justice will be met by the following order:-.*
- i) *The Commission directs RInfra to procure power from WPCL as detailed below:*

<b>Sr. No.</b>	<b>Period of Supply</b>	<b>Timing (hrs)</b>		<b>Quantum</b>
1	Starting from April 20, 2011 to April 30, 2011	Round the Clock		120 MW
2	Starting from April 20, 2011 to April 30, 2011	0.00	12.00	Additional 120 MW
3	Starting from May 1, 2011	Round the Clock		260 MW

”

Further, the Commission issued the Final Order dated May 31, 2011 in Case No.11 of 2011 directing RInfra to give effect to the Letter of Intent dated 10.05.2010 and PPA dated June4, 2010. The Commission also directed RInfra to file an appropriate Petition/application under Section 63 of the EA 2003 along with requisite documents, information and details for adoption of the tariff discovered through transparent bidding process as per Competitive Bidding guidelines of Ministry of Power, Government of India.

13. In light of the above, the Commission is of the view as under:
- a. As regards the timelines for the single stage bid process, the Competitive Bidding Guidelines and its amendments carried out up to 21.7.2010 stipulate that in normal circumstances, the bid process is likely to be completed in a period of 120 days and the Procurer may give extended timeframe, if required. However, if the bidding process is likely to take more than 195 days, approval of the Appropriate Commission shall be obtained in accordance with Clause 5.16. In this regard, RInfra has submitted that due to various factors, including the request for extension of the period for receipt of the bids by the prospective bidders as well as RInfra's endeavor to reduce the Financial Bids as originally received by it, completion of the bidding process was to be extended. In the circumstances stated above, the Commission condones the extended time taken in the bidding process and directs RInfra to adhere to the timelines stipulated in the Competitive Bidding Process for new bidding processes in future.
  - b. The Commission approves the adoption of the tariff for 260 MW as per the schedule mentioned in Order dated May 31, 2011 in Case No. 11 of 2011 consequent to the selection process in accordance with the terms and conditions as finalised in the RFP bid documents. The levelled tariff approved for adoption is Rs. 4.85/kWh. The Commission notes that the PPA shall expire on March 31, 2014.
  - c. The Commission directs RInfra to submit the final PPA with Wardha Power Company Ltd. along with duly signed Escrow Agreement and Hypothecation agreement to the Commission.
  - d. The Commission further directs RInfra to adhere to the following provisions :-

*“6.3 For the purpose of transparency, the procurer shall make the bids public by indicating all the components of tariff quoted by all the bidders, after signing of the PPA or PPA becoming effective, whichever is later. While doing so, only the name of the successful bidder shall be made public and details of tariffs quoted by other bidders shall be made public anonymously. The procurer shall also make public the PPA signed in accordance with clause 6.1.*

*For above purpose, a notice will be published in at least two national newspapers and full details shall be passed on the website of the procurer for at least thirty days.*  
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Accordingly, RInfra shall comply with the provisions under Para 6. 3 of the Competitive Bidding Guidelines issued by the Ministry of Power quoted above, with immediate effect.

With the above observations and rulings, RInfra Petition in Case No.85 of 2011 stands disposed of.

Sd/-  
(V. P. Raja)  
Chairman