

**APP Comments on Draft Guidelines for Short-term (i.e. for a period of more than one day to one year) Sale of Power by Power Generating Company and Distribution Licensees (the 'Seller') through Tariff based bidding process**

Clause no.	Existing provision	Amendment suggested by APP	Rational for proposal made/Suggestions
2.1	These guidelines are being issued under the provisions of Section 63 of the Act for sale of power by seller and procurement of power by distribution licensee, open access consumers/ persons (Procurer / Bidder) for short-term i.e, for a period of more than one day to one year.	These guidelines are being issued under the provisions of Section 63 of the Act for sale of power by seller and procurement of power by distribution licensee, open access consumers/ persons, <b>Trading Companies</b> (Procurer / Bidder) for short-term i.e, for a period of more than <b>three months</b> to one year.	The procedures and modalities outlined in the draft guidelines are lengthy and time consuming, especially for sale of power for short duration of a few weeks.  Keeping practicality of process in mind, it is suggested that these guidelines may be made applicable for sale of power for a period between 3 months to one year.
2.1	Explanation: For the purpose of these Guidelines, the term 'Procurer/Bidder(s)' shall mean, the Distribution Licensees, Open Access consumers/persons or the authorized representative (AR) of the Distribution Licensees, Open Access consumers/persons including PFC Consulting Ltd. (PFCCL) to perform.....	Explanation: For the purpose of these Guidelines, the term 'Procurer/Bidder(s)' shall mean, the Distribution Licensees, <b>Trading Licensee</b> , Open Access consumers/persons or the authorized representative (AR) of the Distribution Licensees, Open Access consumers/persons including PFC Consulting Ltd. (PFCCL) to perform.....	The term Trading Licensee may be included separately as the Electricity Act 2003 recognizes trading in electricity as a distinct activity.

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2.1	Sellers shall have the option to conduct the bid process through an AR including PFC Consulting Ltd. (PFCCL)	Sellers shall have to conduct the bid process <b><u>only through PFC Consulting Ltd. (PFCCL).</u></b>	<p>For the sake of clarity, 'Authorized Representative' should be clearly defined in the guidelines.</p> <p>In the present Short Term Guidelines for purchase of power, only PFC Consulting Ltd. is allowed to conduct the bid process on behalf of procurer. Given the experience gained by PFC Consulting with such processes, the same scenario may be considered for these guidelines also.</p>
2.3	Unless explicitly specified in these Guidelines, the provisions of these Guidelines shall be binding on the Procurer(s) & seller.	This clause should be removed.	Bilateral short term transactions should continue to be allowed as this market has proved to be a natural hedging mechanism for both buyers and sellers.
2.4	Selling by more than one Seller through a combined bid process shall be permitted and in such a case the Sellers shall have the option to conduct the bid process through PFC Consulting Ltd. (PFCCL) as an Authorized Representative. For such combined procurement, each Seller shall provide the necessary information required as per these Guidelines. To ensure standardization in evaluation of		The modalities of the bid process for selling of power by more than one Seller through a combined bid process, is not very clear. More clarity is required on the criteria for allocation of power from the multiple Sellers to the successful Bidder(s), etc.

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	bids, the payment security and other commercial terms offered to the Bidders by the various Sellers shall not vary. The price offered by the Bidders shall be same for Sellers inviting the bid.		
2.5	Under these Guidelines only Distribution Licensees, Open Access consumers/persons are authorised to participate for procurement of power in the e-Tendering process.	Under these Guidelines only Distribution Licensees, <b><u>Trading Licensee</u></b> , Open Access consumers/persons and <b><u>Authorized Representatives</u></b> are authorized to participate for procurement of power in the e-Tendering process.	The terms Trading Licensee and Authorized Representative may be included to maintain uniformity.
4.1	<p>The seller(s) shall indicate any one option from the following before inviting bid for selection of Bidder i.e,</p> <p>(i) Quantum of power (In MW) available at Reserve Price (In Rs/kwh)</p> <p>OR</p> <p>(ii) Quantum of power (In MW) available along with the options for the Bidders to quote less, equal or more than the</p>	<p>This clause to be re-worded as follows:</p> <p><b><u>Before inviting bids for selection of Bidder, the Seller(s) shall indicate the quantum of power (in MW) available and the Reserve Price (in Rs/kwh).</u></b></p> <p><b><u>Bidder will have to quote tariff which should be equal or more than the Reserve Price.</u></b></p>	<p>In an auction for sale of power by the Seller, there can only be a forward auction since the Seller will set his minimum acceptable price (considering the cost of power generation) as the Reserve Price.</p> <p>Giving the bidder the option to quote below the Reserve Price is not feasible since the Seller would not want to sell below the Reserve Price. A contract is valid only when Buyer and Seller agree for a mutually agreed price, and this is the very intent of having a Reserve Price.</p>

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	Reserve Price (In Rs/kwh)  OR  (iii) Quantum of power (In MW) available along with the tariff which should be equal of more than the Reserve Price		Even if reverse bidding is to be allowed at all, the Seller must be given the right to refuse any bid below the Reserve Price.
5.3	For avoidance of doubt , intra state open access charges, and losses along with PoC injection charges , PoC drawal charges , losses along with intra-state /inter-state open access, transmission charges and losses and all taxes, duties , cess etc imposed by Central Govt / State Govt / Local bodies are on Bidder's account.	To be added:  <b><u>In case of any revision against scheduled open access quantum by Bidder, any liability or cancellation/surrender charges etc., being applicable due to said revision shall also be on Bidder's account.</u></b>	The suggested changes will address situations where the Bidder may seek a revision against scheduled open access quantum.
New clause	New clauses to be added after 5.3	<ul style="list-style-type: none"> <li>The successful bidder(s) shall apply for booking of the open access transmission corridor to nodal RLDC/SLDC. He shall be fully responsible for the timely filing of open access application before the nodal RLDC and coordinating with the relevant RLDC / SLDC so as to get the timely booking of the open access corridor.</li> </ul>	The suggested additions are required to ensure that responsibility of booking open access lies with the Bidder.

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		<ul style="list-style-type: none"> <li>In case the successful bidder fails to apply for full contracted capacity, compensation will be levied @ 20% of tariff per kWh for the capacity for which open access has not been applied for.</li> </ul>	
6.4 (iv)	<p>iv) Contract Performance Guarantee (CPG)</p> <p>(a) The successful Bidder(s) may be required to furnish CPG within 7 days from the date of selection of successful bidder (s) for an amount calculated at Rs 2 Lac per MW per month (30 days, 24 hours) of contract period or part thereof. The CPG for the procurement of power on hourly basis shall be calculated on prorata basis as per the example given above for calculating EMD.</p>		<p>This may be an onerous condition in case the period for sale of power is quite less (for eg., for a few days). In such cases, the EMD itself may be considered as a contract performance guarantee or some alternate mechanism may be considered.</p>
6.4 (v)	<p>Validity period of offer of Bidder shall be till the time of signing of Short-term Power Supply Agreement (SPSA).</p>		<p>New clause with a clear timeline for signing of Short-term Power Supply Agreement (SPSA) is required.</p>

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6.4(vi)(c)	<p>c. Change in Law -Change in Law shall include</p> <ul style="list-style-type: none"> <li>• Any change in transmission charges.....</li> <li>• Any change in taxes (excluding income tax), duties, cess or introduction of any tax, duty, cess made applicable for supply of power by the Seller.</li> </ul>	<p>c. Change in Law -Change in Law shall include</p> <ul style="list-style-type: none"> <li>• Any change in transmission charges.....</li> <li>• Any change in taxes (excluding income tax), duties, cess or introduction of any tax, duty, cess made applicable for <b><u>Generation</u></b> &amp; supply of power by the Seller</li> </ul>	<p>This is to avoid any confusion or ambiguity since at present several litigations are going on at different forums / courts on the issue that the Change in Law provision in the long-term PPAs would be applicable only for taxes that are related to “supply” of power and the levies such as clean energy cess etc. which is applicable for generation of power are not entitled for reimbursement by the Procurers.</p>
6.4(vi)(e)	<p>e. Payment of Liquidated Damages for failure to supply the Instructed Capacity:</p> <ul style="list-style-type: none"> <li>• Both the parties would ensure that actual scheduling does not deviate by more than 15% of the contracted power as per the approved open access on monthly basis.</li> </ul>	<p>e. Payment of Liquidated Damages_for failure to supply <u>/ off-take the <b><u>Contracted Capacity subject to Force Majeure as mentioned in 6.4(vi)(b):</u></b></u></p> <ul style="list-style-type: none"> <li>• Both the parties would ensure that actual scheduling does not deviate by more than 15% of the <b><u>contracted energy</u></b> as per the approved open access on monthly basis.</li> </ul>	<p>Any shortfall in supply / off-take due to Force Majeure events should be out of the scope of Liquidated Damages</p>

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6.4(vi)(f)	<p>f. Payment term/Payment security to be made available by the Procurer:</p> <ul style="list-style-type: none"> <li>The Procurer(s) may be required to provide revolving Letter of Credit (LC) equivalent to 100% of the weekly energy corresponding to Contracted Capacity at the tariff indicated in SPSA. LC shall be opened prior to commencement of supply of power.</li> </ul>	<p>f. Payment term/Payment security to be made available by the Procurer:</p> <ul style="list-style-type: none"> <li>The Procurer(s) <del>may</del> <b>shall</b> be required to provide revolving Letter of Credit (LC) equivalent to 100% of the weekly energy corresponding to Contracted Capacity <b><u>for the entire Contracted Period</u></b> at the tariff indicated in SPSA. LC shall be opened <b><u>at least 1 week</u></b> prior to commencement of supply of power, <b><u>failing which the Seller shall have the option to withdraw the contract without any penalty or compensation.</u></b></li> </ul>	<p>Letter of Credit (LC) should be treated as a mandatory payment security mechanism and accordingly 'may be required' is to be changed to 'shall be required'.</p> <p>The Payment Security should be valid for the entire duration of contract.</p> <p>The said LC needs to be opened at least 1 week before commencement of power supply otherwise seller shall have the option to withdraw the contract without any compensation.</p>
6.4	<p>New clauses to be added in this sub-section</p>	<ul style="list-style-type: none"> <li><b>LATE PAYMENT SURCHARGE:</b> A delayed payment surcharge of 1.5% (one and half percent) per month shall be leviable on all dues remaining unpaid for more than 30 days from the date of receipt of the bill. Surcharge will be liable for payment for the period beyond 30 days till date of payment.</li> <li>The Seller shall have the right to terminate the SPSA in the event of default in payments by the successful</li> </ul>	

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		bidder(s) without any liability on the Seller arising due to such termination.	