



**Delhi Electricity Regulatory Commission**  
**Viniyamak Bhawan, 'C' Block, Shivalik, Malviya Nagar, New Delhi – 17.**

No. F.11(1656)/DERC/2018-19/6371

**Petition No.24/2019**  
**(Diary No. 7273)**

**In the matter of :** Petition for in furtherance to the in-principal approval, dated 25.08.2014 accorded by the Commission for procuring 20 MW power on a long term basis from Solar Energy Corporation of India Limited (SECI) and seeking to allow the power procurement process and the solar Tariff through a transparent process of competitive bidding.

**Tata Power Delhi Distribution Ltd.**

**....Petitioner**

**Coram: Hon'ble Mr. Justice S S Chauhan, Chairperson**

**ORDER**

(Date of Order: 01.03.2019)

1. The aforesaid Petition has been filed by TPDDL in furtherance to the in-principle approval dated 25.08.2014 accorded by this Commission for procurement of 20 MW Solar Power from Solar Energy Corporation of India (SECI) under Batch-1. Phase-II of the Jawaharlal Nehru National Solar Mission (JNNSM), for seeking this Commission to allow the power procurement process at a market aligned tariff discovered through a competitive bidding conducted by SECI. The petitioner has made the following prayers in its petition:
  - a) To adopt the tariff of Rs. 5.50/kWh including the trading margin of Rs. 0.05/kWh under Section 63 of the Electricity Act, 2003 for procurement of power by Tata Power-DDL from SECI;  
and
  - b) To approve the terms and conditions of the PSA dated 16.10.2014 executed between Tata Power-DDL and SECI for the approval of the Power Sale Agreement in terms of DERC (Renewable Purchase Obligation and Renewable Energy Certificate Framework Implementation) Regulations, 2012.

2. The brief facts of the case are as follows:
- I. In continuation to the Ministry of New and Renewable Energy (MNRE) circular dated 15.10.2013, conveying the approval of the Government of India for Implementation of 'Scheme for setting up of 750 MW of Grid Connected Solar PV Power Projects under Batch-1, Phase-II of JNNSM with viability Gap Funding supported from National Clean Energy Fund', through SECI in close association with NTPC Vidyut Vyapar Nigam Limited (NVVN), the Ministry issued the final Guidelines for Implementation of the scheme on 25.10.2013.
  - II. As per the said guidelines, SECI was to make viable the solar power to the distribution companies at a fixed tariff of Rs. 5.50/kWh for 25 years (including Trading Margin of SECI @ 5 paisa/kWh).
  - III. On 28.10.2013 SECI prepared and floated the RFS document for inviting bids vis a vis setting up of grid connected Solar PV Projects in India on 'Build Own Operate' (BOO) basis for an aggregate capacity of 750 MW (375 MW x 2). This RFS document was subsequently amended by document dated 09.01.2014. As per the RFS document SECI shall enter into a power purchase agreement with the successful Bidders selected for the purchase of Solar Power for a period of 25 years based on the terms, conditions and provisions of the RFS document. The bidders were required to submit the Techno-Commercial and Financial Bid together in separate envelopes. The selected bidders were to be issued a letter of intent by SECI.
  - IV. On 19.11.2013, the petitioner approached the Commission *vide* its letter of the same date and indicated its intent of off-taking 20 MW power from SECI as per the above RFS. It is submitted that the solar tariff through VGF scheme was discovered as at a fixed tariff of Rs. 5.50/kWh.
  - V. On 07.08.2014, the petitioner herein, wrote to the Government of NCT of Delhi, apprising them that the petitioner is keen to enter in to PSA with SECI for securing 20 MW allocation under the Scheme as owing to the VGF being provided, the power shall certainly be cheaper than any other power procured through direct competitive bidding with no such funding and shall help the petitioner to meet its specific solar RPO requirement at a cheaper cost for its consumers.
  - VI. This Commission *vide* its letter dated 25.08.2014 accorded approval to the petitioner for procurement of 20 MW of power through SECI. The Government of NCT of Delhi *vide* its letter dated 02.10.2014, conveyed its approval to the petitioner to execute the PSA with SECI

since the same has already received an approval from this Commission on 25.08.2014.

- VII. Subsequently, the petitioner entered into a PSA dated 16.10.2014 with SECI for the procurement of 20 MW of solar power on a long-term basis from the SECI Project for the fulfilment of its RPO targets/requirements.
  - VIII. The PSA executed between the Petitioner and SECI has been issued as a standard document as part of the Guidelines issued by the Government of India in this regard. It is submitted that the contents and provisions of the PSA dated 16.10.2014 has already been put before the Commission at the time of seeking in-principle approval from this Commission. Therefore, this Commission's approval dated 25.08.2014 has been accorded after pursuing through the terms and provisions of the PSA dated 16.10.2014.
3. The counsel for the Petitioner submitted that the present petition may also be allowed on the line of a similar petition (No. 04/2018) filed by BSES Rajdhani Power Limited (BRPL), which has been allowed by this Commission vide Order dated 19.01.2019.
  4. Regarding adoption of Tariff it is observed from the records submitted by the Petitioner that the instant case is different from the matter in petition (No. 04/2018) filed by BSES Rajdhani Power Limited (BRPL). In Petition No. 04/2018, there were back to back agreements signed by M/s PTC India Ltd., for procurement and sale of power to BRPL. There was a nexus between procurement and sale and M/s PTC India Ltd. was an intermediary. Hon'ble APTEL in PTC India Ltd. vs. Uttrakhand Electricity Regulatory Commission has held that so long as there is nexus between the first sale and the second sale, or they are back to back arrangements, the State Commission where the distribution licensee is located would have jurisdiction over the transactions. Whereas, in the instant matter SECI being designated as the nodal agency responsible for conducting the bidding process has followed the MNRE Guidelines for setting up grid connected Solar PV projects on Built Own Operate (BOO) basis for an aggregate capacity of 750 MW (375 MW x 2). A total of forty seven bidders had been successful. However, as the generation and sale of power will take place in more than one state, the jurisdiction to determine the tariff lies with Central Electricity Regulatory Commission (CERC) under section 79(1) (b) of the Electricity Act, 2003. Moreover, in the instant Petition there is no back to

back agreement so as to demonstrate nexus between the first sale and the second sale. In such a situation, CERC has the jurisdiction to adopt the tariff. Therefore, this Commission can not adopt the tariff under Section 63 of the Electricity Act, 2003 for procurement of power by the petitioner of 20 MW Solar power from SECI Project. The Petitioner may approach CERC in this regard.

5. The terms and conditions of PSA dated 16.10.2014 between SECI and the Petitioner have been examined keeping in view the submissions made by the Petitioner that the present PSA is intended to meet the Renewable Purchase Obligation of the applicant and the fact that the Tariff in the instant petition has to be adopted by CERC and not this Commission. In view of the aforesaid, Article 5 of the terms and conditions of the PSA related to the applicable Tariff have to modified as under:

*“5.1.1. The applicable Tariff For Solar power shall be the Maximum possible fixed tariff as adopted by the concerned Regulatory Commission (CERC) plus trading margin of Rs.0.05/kWh fixed for the entire term of this Agreement and the buying utility shall make the Tariff payments to SECI as per the provisions of this Agreement.”*

6. In view of the foregoing discussions, the PSA dated 16.10.2014 between SECI and the Petitioner is hereby approved subject to the modifications as indicated in para 5 above. The Petitioner is directed to file a copy of duly signed modified PSA to this Commission within a month. The prayer to adopt the tariff of Rs. 5.50/kWh under Section 63 of the Electricity Act, 2003, cannot be granted by this Commission being beyond its jurisdiction.
7. Ordered accordingly.

**Sd/-**  
**(Justice S S Chauhan)**  
**Chairperson**