



Delhi Electricity Regulatory Commission
Viniyamak Bhawan, 'C' Block, Shivalik, Malviya Nagar, New Delhi – 110017.

No. F.11(1852)/DERC/2020-21/7036

Petition No. 21/2021

In the matter of: **Petition under section 86(1)(b) read with Section 63 of the Electricity Act, 2003 seeking approval of the Power Sale Agreement dated 2nd August 2018, in terms of the DERC (Renewable Purchase Obligation and Renewable Energy Certificate Framework Implementation) Regulations, 2012 read with DERC Comprehensive (Conduct of Business) Regulations, 2001.**

BSES Yamuna Power Limited

....Petitioner

Vs.

1. Solar Energy Corporation of India

2. Mahoba Solar (UP) Private Limited

...Respondents

Coram:

Hon'ble Justice (Retd.) Jayant Nath, Chairperson

Appearance:

Mr. Buddy A Ranganadhan, Advocate, BYPL

Ms. Anushree Bardhan, Advocate, SECI

ORDER

(Date of Order: 08.01.2024)

1. The instant Petition has been filed by BYPL seeking approval of the Power Sale Agreement (hereinafter PSA) dated 2nd August, 2018 in terms of DERC (Renewable Purchase Obligations and Renewable Energy Certificate Framework Implementation) Regulations, 2012 read with DERC Comprehensive Conduct of Business Regulations, 2001:

a. To approve the PSA dated 2nd August 2018 executed between the petitioner and SECI.

Submissions by the Petitioner

2. The petitioner has submitted that:

i. On 1st October, 2012 the Commission notified the DERC (Renewable Purchase Obligations and Renewable Energy Certificate Framework Implementation) Regulations, 2012 (hereinafter "RPO Regulations") in terms

of which, the Petitioner is mandated to procure electricity from renewable sources in order to fulfil its defined Renewable Purchase Obligations (hereinafter "RPO Obligations"). The said RPO Regulations further provide that an obligated entity (like the Petitioner) may meet its RPO Obligations by way of its own generation or by way of purchase from other sources or by way of purchase of Renewable Energy Certificates (hereinafter "RECs") or by way of a combination of any of the above methods. The RPO Regulations also provide that any long-term power purchase agreement(s) shall be made only with the approval of the Commission.

- ii. In addition to the RPO Regulations, the Commission has also notified the DERC Business Plan Regulations, 2017 (hereinafter "Business Plan Regulations") which, *inter alia*, specified the minimum percentage of renewable power to be procured by the Petitioner as a percentage of total sale of power to its retail consumer in its area of supply excluding procurement of hydro power.
- iii. On 3rd August 2017, the Ministry of Power (MoP) issued the Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar Power Projects ("MoP Guidelines"). The said MoP Guidelines relate to the procurement of Solar power through a transparent bidding process under Section 63 of the Electricity Act, 2003 for the long-term procurement of electricity through competitive bidding process.
- iv. On 30th January 2018, in compliance with the MOP Guidelines, the Solar Energy Corporation of India Ltd. (SECI) floated its Request for Selection (RfS) document for setting up of 2000 MW ISTS-Connected Solar Power Projects (Tranche-I).
- v. On 6th July 2018, SECI communicated the Petitioner of its ability to provide 50 MW of Solar power (50 MW from M/s Mohaba Solar (UP) Pvt. Ltd) to the petitioner. On 14 August 2018, the Petitioner applied for and the Commission granted *in-principle* approval for signing the PSA with SECI for procurement of 150 MW Solar Power. On 2nd August 2018, the Petitioner signed a Power Sale Agreement with SECI, wherein the Petitioner, subject to approvals from the Commission, agreed to buy 150MW for Solar power from SECI. In terms of the PSA, the Petitioner agreed to purchase the power at a pooled tariff of Rs. 2.54/kWh plus trading margin of Rs. 0.07 per kWh.
- vi. On 30th November, 2018 SECI entered into a Power Purchase Agreement (hereinafter PPA) with a Solar Power Developer, namely, M/s Mahoba Power

(UP) Pvt. Ltd. (hereinafter SPD) for purchase of 50MW of Solar power from the Wind Power Developers (WPD) on the terms and conditions set out in the PPA.

- vii. On 28th February 2020, the Hon'ble CERC in Petition No. 187/AT/2019 adopted the Tariff u/S 63 of the Act for the projects covered under the PSA and PPA signed by SECI for setting for 2000 MW Solar Power Projects (Tranche-I) connected to the Inter-State Transmission System ISTS.
- viii. The SECI has followed the MOP Guidelines is evident from the following tabular representation, which illustrates the manner in which the MOP Guidelines have been followed by SECI whilst conducting the bidding process:

MoP Guidelines	RfS floated by SECI
2.1.1. These Guidelines are being issued under the provisions of Section 63 of the Electricity Act, 2003 for long term procurement of electricity by the 'Procurers', from grid-connected Solar PV Power Projects ('Projects'), having size of 5 MW and above, through competitive bidding.	Clause 2.0: Ministry of Power (MoP) has issued "Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Power Projects" vide Gazette Resolution dated 03.08.2017. These Guidelines have been issued under Section 63 of the Electricity Act, 2003. for long-term procurement of electricity by the 'Procurer(s)', from grid- connected Solar PV Power projects having size of 5 MW and above, through competitive bidding. This RfS document has been prepared in line with the above guidelines issued by MoP dated 03.08.2017.
Clause 2(c)(ii): The Intermediary Procurer shall enter into a PPA with the Solar Power Generator and also enter into a Power Sale Agreement (PSA) with the End Procurer. The PSA shall contain the relevant provisions of the PPA on a back to back basis. The trading margin, as notified by the Appropriate Commission (or in the absence of such notification, as mutually decided between the Intermediary Procurer and the End Procurer), shall be payable by the End Procurer to the Intermediary Procurer.	14.1 SECI shall enter into Power Purchase Agreements (PPA) with bidders selected based on this Rfs. 14.4 Back-to-back Power Sale Agreements (PSAs) will be executed by the SECI with the State Buying Utilities for sale of power from them.

<p>Clause 5.1: PPA Period: As the PPA period influences the tariff by determining the period over which the investment is returned to the investor/ SPD, longer PPA is favoured for lower tariffs. The PPA period should thus be not less than 25 (twenty-five) years from the date of the Scheduled Commissioning Date (SCD).</p>	<p>Clause 14.1 SECI shall enter into Power Purchase Agreement (PPA) with bidders selected based on this RfS. The PPA's shall be valid for a period of 25 Years from the Scheduled Commissioning Date of the Projects</p>
<p>Clause 6. BIDDING PROCESS 6.1. The Procurer shall call for the bids adopting a single stage bidding process to be conducted through Electronic mode (e-bidding). The Procurers may adopt e-reverse auction if it so desires.</p>	<p>Clause 19 Structuring of the Bid Selection process 19.1. Single stage, double envelope bidding followed by e-reverse auction has been envisaged under this RfS. Bidders have to submit both Techno-commercial bid and Financial bid together in response to this RfS online</p>
<p>Clause 7.2: Qualification requirements to be met by the Bidders. Clause 7.2.1: Technical Criteria Clause 7.2.2: Financial Criteria</p>	<p>Section-III Qualifying Requirements for Bidders Clause B: Technical Eligibility Criteria Clause C: Financial Eligibility Criteria</p>
<p>Clause 7.1: Bid Responsiveness: The bid shall be evaluated only if it is responsive and satisfies conditions including inter alia:</p> <ul style="list-style-type: none"> • bidder or any of its Affiliates is not a wilful defaulter to any lender • there is no major litigation pending or threatened against the bidder or any of its Affiliates which are of a nature that could cast a doubt on the ability or the suitability of the bidder to undertake the project. 	<p>Section 3 Clause A.8: The Bidder or any of its Affiliates should not be a wilful defaulter to any lender, and that there is no major litigation pending or threatened against the Bidder or any of its Affiliates which are of a nature that could cast a doubt on the ability or the suitability of the Bidder to undertake the Project. The Bidder shall submit an undertaking to this effect.</p>
<p>Clause 15: Commercial Operation Date (COD) shall be the date on which the commissioning certificate is issued upon successful commissioning of the full capacity of the Project or the last part capacity of the Project as the case may be.</p>	<p>Clause 17: The Commercial Operation Date (COD) shall be the date on which the commissioning certificate is issued upon successful commissioning of the full capacity of the Project or the last part capacity of the Project as the case may be.</p>

The Petitioner craves leave of the Commission to refer to and rely upon the MOP Guidelines and the RfS document issued by SECI to further substantiate this submission.

- ix. The PSA, which is the result of the competitive bidding process, is also aligned with the RfS issued by SECI and consequently, the MOP Guidelines. This is evident from the following:

Particulars	RfS	PSA
COD	The Commercial Operation Date (COD) shall be the date on which the commissioning certificate is issued upon successful commissioning of the full capacity of the Project or the last part capacity of the Project as the case may be.	COD shall mean issuance of the commissioning certificate for the Solar Power Project. In case of part commissioning, COD will be declared only for that part of project capacity (If applicable).
Delivery/Metering Point	Delivery Point means the point at 220 kV or above where the power from the Solar power projects is injected into the identified CTU substation (including the dedicated transmission line connecting the Solar power Project with the substation system) as specified in the Rfs document. Metering shall be done at this interconnection point where the power is injected into. For interconnection with grid and metering, the SPDs shall abide by the relevant CERC/SERC Regulations, Grid Code, and Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006 as amended from time to time.	Delivery Point shall mean the point at 220 kV or above where the power from the Solar power project(s) will be injected into the ISTS i.e the delivery point. For interconnection with grid and metering, the SPD shall abide by the relevant CERC Regulations, Grid Code, and Central Electricity Authority Regulations as amended from time to time.
Transmission charges	The Buying Entity will be responsible for all transmission charges and losses and any other charges as applicable under the respective regulations beyond Delivery Point and up to the Drawl Point.	As per the applicable Regulation(s) of appropriate Commission(s), all charges pertaining to Open Access, CTU charges, Scheduling charges if any.....shall be directly paid or reimbursed by the buying utility. Buying Entity shall be liable to bear all the transmission losses

		in respect of the power evacuated from the Delivery Points to its receiving substation(s).
Term	25 years	25 years

- x. The tariff at which the Petitioner will be able to procure power under the present PSA, i.e. Rs. 2.54/kWh (exclusive of the Rs. 0.07/kWh trading margin to be charged by SECI) is market aligned and is one of the most competitive in the renewable energy category. Therefore, it is not only in the Petitioner's interest but also in the interest of consumer at large that this Commission may be pleased to allow the present Petition the terms prayed. The Commission has the jurisdiction in terms of 63 read with Section 86 of the EA 2003 to not only approve the PSA but also adopt the competitively discovered tariff. This is on account of the fact that the PPA (entered into between SECI and the Solar Power Developer) and the PSA (entered into between the Petitioner and SECI) are back-to-back arrangements/contracts and since the beneficiary of the same (i.e. the Petitioner) is within the jurisdiction of the Commission, it is the Commission which has jurisdiction over the matter. In this regard, the Petitioner craves leave of the Commission to refer to and rely upon the decision of the Hon'ble Appellate Tribunal for Electricity PTC vs. UERC & Ors., Appeal No. (and batch) wherein the Hon'ble Tribunal after referring to its earlier decision on this point *inter alia*, held as under;

"16. This Tribunal has taken a view that so long as there is nexus between the first sale and second sale, or they are back to back arrangements, the State Commission where the distribution licensee is located would have jurisdiction over the transactions."

- xi. The Petitioner submits that not only is there a clear and cogent nexus between the PPA and the PSA, the same are in fact back-to-back arrangements and thus, this Commission has the jurisdiction since the distribution licensee (i.e., the Petitioner) is within the jurisdiction of this Commission.
- xii. The Commission in a similar case of the BRPL being Petition No. 04/2019 has already approved a similar the PSA and adopted the tariff thereon. In the said Petition also, the PPA and the PSA were back-to-back arrangements and the Commission held that it had the jurisdiction to not only approve the PSA but also adopt the tariff which was the result of competitive bidding.

- xiii. The co-relation between the PPA and the PSA (i.e., the first sale and the second sale) is evident from the following:

Particulars	PPA	PSA
Recital	Recital F: SECI has agreed to purchase such Solar Power from SPD as an intermediary procurer and sell it to Buying Utilities on back to back basis as per the provisions of the above stated scheme, accordingly SECI has agreed to sign/has a Power Sale Agreement with Buying Entity(ies) to sell such power as per the provisions of the above said scheme.	Recital D: Copy of the PPA(s) shall be submitted to the Buying Entity within thirty (30) days of the signing of the PPA(s) and such PPA(s) shall become integral part of this Agreement (Buyer-Buying Entity PSA).
Term	25 years	25 years
Tariff	Rs. 2.54/kWh	Rs. 2.54/kWh plus Rs. 0.07/kWh towards trading margin
Rebate	(a) 2% if payment made with 10 days; (b) 1% if payment made after 10 days but before or upto Due Date. (c) No rebate on bills raised on account of Change in Law relating to taxes, duties, cess etc. and on Supplementary Bills.	(a) 2% if payment made with 3 days of presentation of Bill through e-mail; (b) 1% if payment made after 3 days but before or upto Due Date. (c) No rebate on bills raised on account of Change in Law relating to taxes, duties, cess etc and on Supplementary Bills.
LCs	Subject to opening and maintenance of Letter of Credit by the Buying Entities (as per terms of Buyer-Buying Entity PSA) in favour of the Buyer, the Buyer shall provide to the WPD, in respect of payment of its Monthly Bills and/or Supplementary Bills, a monthly unconditional, revolving and irrevocable letter of credit ("Letter of Credit"), opened and maintained which may be drawn upon by the WPD in accordance with this Article.	Buying Entity shall provide to SECI, in respect of payment of its Monthly Bills, an unconditional, revolving and irrevocable Letter of credit ("Letter of Credit"), opened and maintained by the Buying Entity, which may be drawn upon by SECI in accordance with this Article. Buying Entity shall provide SECI draft of the Letter of Credit proposed to be provided to SECI two (2) months before Scheduled Commissioning Date.
Quarterly and Annual Reconciliation	Within 30 days of the end of each quarter.	Within 30 days of the end of each quarter.
Termination		In case of termination of SECI-SPD PPA, this Agreement shall

		automatically be of reduced capacity but only to the extent of that particular SECI-SPD PPA Capacity.
Governing law and jurisdiction	Indian Law and Courts in Delhi to have jurisdiction.	Indian Law and Courts in Delhi to have jurisdiction.

Submissions by Respondent No. 1, SECI

3. The Respondent No. 1, SECI, vide Affidavit dated 27.07.2023, have submitted the following:
 - a) The present Petition has been filed by the Petitioner for approval for procurement of 50MW Solar Power from SECI under Power Sale Agreement dated 02.08.2018 read with Addendum dated 02.08.2018 to PSA read with Supplementary PSA dated 10.09.2021.
 - b) Respondent No. 2, Mahoba Solar (UP) Private Limited formed project company namely Kilaj Solar (Maharashtra) Private Limited (hereinafter 'Kilaj Solar') for implementation of 50MW Solar Power Project. On 30.11.2018, Kilaj Solar and SECI entered into the PPA dated 30.11.2018 for generation and sale of electricity from 50MW Solar Power Project to be established by Kilaj Solar. The Power Project established by Kilaj Solar under the PPA has been identified for supply of 50MW Solar Power to the Petitioner under the PSA.
 - c) SECI is procuring power from the power project of Kilaj Solar since 25.07.2020 for resale of the power to the Petitioner. In terms of the above, the power flow to the Petitioner has commenced and is continuing.
 - d) The Central Commission (CERC) vide its Order dated 28.02.2020 passed in Petition No. 187/AT/2019 and IA 86/2019 has adopted tariff of the individual project of each generator (bidder) including tariff of Mahoba Solar (UP) Private Limited selected in pursuance of the Competitive Bidding for ISTS Tranche-I Solar Scheme.
 - e) The Commission may be pleased to approve the procurement of 50 MW Solar Power at tariff of Rs. 2.54/kWh plus trading margin of Rs. 0.07/kWh by the Petitioner from SECI under PSA dated 02.08.2018 read with Addendum dated 02.08.2018 to PSA read with Supplementary PSA dated 10.09.2021.

Commission Analysis

4. The Petitioner BYPL, in terms of DERC (Renewable Purchase Obligations and Renewable Energy Certificate Framework Implementation) Regulations, 2012 read with DERC Comprehensive Conduct of Business Regulations, 2001 has filed the instant Petition seeking approval of the PSA dated 02.08.2018 executed between BYPL and SECI for purchase of 50 MW Solar Power on long term basis by

BYPL. As per the terms of PSA, the Petitioner shall pay the fixed tariff of Rs 2.54/Kwh plus trading margin of Rs 0.07/kWh of the procurement of 50 MW Solar Power on long term basis. The Power Project established by Kilaj Solar under the PPA has been identified for supply of 50 MW Solar Power under the PSA.

5. On 14 August 2018, the Commission had granted an 'in-principle' for signing of PSA with SECI for procurement of power from Respondent No. 1.
6. The PPA signed between SECI and Respondent No. 2 and as also the PSA signed between the Petitioner and SECI are back to back arrangement/contracts. The Hon'ble CERC in the decision dated 28.02.2020 in Petition No.187/AT/2019 and IA No. 86/2019 has adopted the tariff of the individual project of each Generator (bidder) including tariff of Mahoba Solar (UP) Private Limited selected in pursuance of the Competitive Bidding for ISTS Tranche-I Solar Scheme.
7. During the pendency of the present Petition, the parties entered into a Supplementary Power Sale Agreement on 10.09.2021 incorporating certain terms and conditions agreed between them. As per Supplementary PSA dated 10.09.2021 the tariff payable by BYPL is as follows;

S. No.	Name of the Solar Power Developer	Quantum allocated to BYPL for resale (MW)	Applicable tariff as per SECI-SPD PPA (Rs. /kWh)	Trading Margin (Rs. /kWh)	Total Applicable Tariff payable under PSA to SECI (Rs. /kWh)
1.	Mahoba Solar (UP) Pvt. Ltd.	50	2.54	0.07	2.61

8. The Commission vide its Order dated 31.12.2020 had disposed of the Petition No. 65 of 2019 in the matter of TPDDL Vs. SECI with following direction. The relevant part of the order is extracted below:

“24. In view of the aforesaid discussions, a Trading Margin of 2 paise/kWh is allowed to SECI; and the PSA dated 26/06/2019 is approved subject to the condition that the applicable tariff shall be as approved by CERC with a trading margin of 2 paise/kWh. Consequently, the clauses of Article 1 of the PSA related to applicable Tariff shall be modified accordingly. It is also held that the Order dated 20/11/2019 of CERC has bearing in respect of

Tariff for procurement of solar power for which the Petitioner TPDDL has entered into PSAs with SECI. Therefore, the Tariff as approved by CERC with a trading margin of 2 paise/kWh shall be applicable also to the PSAs approved by this Commission vide Orders dated 01/03/2019 in Petitions No. 24 of 2019 and 25 of 2019

The Petition is disposed of accordingly with the direction to the Petitioner to submit duly signed copy of PSAs modified as indicated above to the Commission within a period of one month."

9. Thereafter, SECI filed an Appeal No. 52 of 2021 before the Hon'ble APTEL against the Commission's order dated 31.12.2020 in Petition No. 65 of 2019 whereby the Commission had reduced the Trading Margin in respect of the Appellant from Rs. 0.07/unit to Rs. 0.02/unit. On 02.07.2021, Hon'ble APTEL has passed its judgement in the abovementioned appeal and set-aside the order dated 31.12.2020 passed by this Commission with respect to lowering the Trading Margin and restored the trading margin to 7paise/kWh.
10. The Commission filed Civil Appeal bearing No. 6310 of 2021 against the Hon'ble APTEL's Judgement dated 02.07.2021 in Appeal No. 52 of 2021 before the Hon'ble Supreme Court. The Respondent, SECI, also had filed two IAs bearing Nos. 102603/2022 and 77402/2023 before the Hon'ble Supreme Court of India praying that the Petitions on the subject pending before the Commission be disposed of subject to the final outcome of the Civil Appeal No. 6310 of 2021. The said IAs were disposed of on 04.05.2023 by the Hon'ble Supreme Court with the following directions:

"Having heard learned counsel for the respective parties and in the facts and circumstances of the case, we direct the appellant- Delhi Electricity Regulatory Commission to decide and dispose of the petitions filed before it for approval of procurement of renewable power in other schemes involving SECI, as stated in para 9 of the present Application, in accordance with law and on its own merits, however, subject to the ultimate outcome of the present proceedings. IAs stand disposed of."
11. Accordingly, the Commission listed the matter on 06.06.2023, 13.07.2023, and 29.11.2023 wherein, the Commission admitted the Petition, directed the parties to submit affidavits in support of their oral contentions that the power is currently flowing from the generators, file short written submissions and reserved the Order. The Petitioner has filed their written submissions on 05.12.2023.
12. The Petitioner submitted that the terms and conditions of PSA dated 02.08.2018 and Supplementary PSA dated 10.09.2021 between SECI and the Petitioner is intended to meet the Renewable Purchase Obligation of the Petitioner and the fact that tariff is

discovered through competitive bidding and are composite in nature, therefore, the tariff as held in Petition No. 187/AT/19 by the Hon'ble CERC would be applicable in the instant PSA also.

13. In view of the foregoing discussion and also the fact that Hon'ble APTEL vide its Judgement dated 02.07.2021 in Appeal No. 52 of 2021 has set aside the Order of the Commission dated 31.12.2020 in IA No. 1 of 2020 in Petition No. 65 of 2019 wherein the Commission had reduced the trading margin from Rs. 0.07/kWh to Rs. 0.02/kWh, the PSA dated 02.08.2018 and the Supplementary PSA dated 10.09.2021 between Petitioner and the SECI for 50 MW power from Mahoba Solar (UP) Pvt. Ltd. is hereby approved at a total tariff of Rs.2.61/kWh viz. tariff of Rs. 2.54/kWh plus Rs. 0.07/kWh as trading margin as per Hon'ble APTEL Judgement dated 02.07.2021. However, the trading margin of Rs. 0.07/kWh shall be subject to the final outcome in the Civil Appeal No. 6310 of 2021, as directed by the Hon'ble Supreme Court of India vide its Order dated 04.05.2023.
14. Ordered Accordingly.

Sd/-
(Justice (Retd.) Jayant Nath)
Chairperson