



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

No. F.11(1665)/DERC/2018-19/6382

Petition No. 25/2019
(Diary No. 7294)

In the matter of : **Petition for in furtherance to the in-principal approval, dated 14.08.2014 accorded by the Commission for procuring 300 MW solar 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 for in furtherance to the in-principle approval dated 14.08.2018 accorded by the Commission for procurement of 300 MW Solar Power from SECI- ISTS Connected Generation Projects and 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. 2.54/kWh plus the trading margin of Rs. 0.07/kWh (i.e., a total of Rs. 2.61/kWh) for 100 MW solar power under Section 63 of the Electricity Act, 2003 till the commissioning of total SECI-ISTS solar project. Thereafter, a weighted average tariff of Rs. 2.502/kWh plus a trading margin of Rs. 0.07/kWh (i.e., a total of Rs. 2.572/kWh) will be payable for the balance term of PPA once the cumulative awarded capacity by SECI under the RfS document has been considered;
and
 - b) To approve the terms and conditions of the PSA dated 06.09.2018 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. The Commission vide its DERC Business Plan Regulations, 2017 read with the RPO Regulations, requires the petitioner (obligated entity) to procure renewable energy to fulfil the defined minimum percentage of the total quantum/consumption under the RPO. Pursuant to such obligations and specific directions of this Commission, the petitioner approached the Commission for approval of procurement of 300 Mw Solar Power through SECI-ISTS solar projects. On 16.07.2018, the petitioner vide its letter of the same date, apprised this Commission that as per the Business Plan Regulations, 2017, the petitioner is under the obligation to procure renewable power and achieve its RPO.
- II. The petitioner in its endeavour to meet the RPO in an optimum manner envisaged following tie ups:
 - a) Procurement of 100 MW Solar Power from SECI under 2000 Mw ISTS Solar Project; and
 - b) Procurement of 200 MW Solar Power from SECI under 3000 MW ISTS solar project.
- III. This Commission was pleased to grant approval to such procurement plan of the petitioner vide its letter dated 14.08.2018.
- IV. On 30.01.2018 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 2000 MW (250 MW x 8). This RFS document was subsequently amended by document dated 01.05.2018, 22.05.2018 and 06.06.2018. 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 selection of the bids was to be carried out through e-bidding and followed by e-Reverse Auction process.
- V. The bidding undertaken by SECI has been initiated pursuant to the 2017 Guidelines issued by the Government of India and squarely falls within the ambit of Section 63 of the Electricity Act, 2003. Since process adopted by the Government of India and this Commission has to merely allow the [power procurement arrangement

executed between the petitioner and SECI and allow the competitively discovered tariff of INR 2.54/kWh plus its trading margin of INR 0.07/kWh as the power procurement cost of the petitioner for 100 MW Solar power. It is important to note here that the power procurement cost of INR 2.61.kWh for 100 MW solar powers is till the commissioning of total SECI-ISTS solar project capacity of 2000 MW. Thereafter, a weighted average tariff of INR 2.502/kWh plus a trading margin of INR 0.07/kWh i.e. a total of INR 2.572.kWh will be payable for the balance term of the PPA once the cumulative awarded capacity by SECI under the RfS document has been commissioned.

- VI. On 18.06.2018 SECI vide its letter of same date apprised the petitioner that upon conducting the aforesaid bidding for setting up of 2000 MW (250 MW x 8) ISTS-connected solar power projects, it is offering power to the extent of 100 MW to the petitioner at the maximum possible fixed tariff i.e. INR 2.54/kWh excluding the trading margin of INR 0.07/kWh, upto the commissioning of the cumulative awarded capacity by SECI under RfS document i.e. 2000 MW.
 - VII. Subsequently, the petitioner entered into a PSA dated 06.09.2018 with SECI for the procurement of 100 MW of solar power on a long-term basis from the SECI Project for the fulfilment of its RPO targets/requirements.
 - VIII. It is respectfully submitted that the entire process of procurement of renewable power in terms of the Business Plan Regulations, 2017 and specific directions of this Commission has been undertaken consequent to the in-principle approval of the Commission.
3. We have considered the submissions of the petitioner that the power procured through SECI 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.
 4. 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.
 5. 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. Uttarakhand 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 2000 MW and has arrangement of power supply from a total of six successful bidders. 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 100 MW Solar power from SECI Project. The Petitioner may approach CERC in this regard.

6. The terms and conditions of PSA dated 06.09.2018 between SECI and the Petitioner have been examined in light of the fact that the Tariff in the instant petition has to be adopted by CERC and not this Commission. Therefore, Article 5 of the terms and conditions of the PSA related to the applicable Tariff have to be modified as under:

"5.1.1. From SCD and subject to the provisions of the Article 6.7, the Buying Entity shall pay Maximum possible fixed tariff as adopted by the concerned Regulatory Commission (CERC) plus trading margin of Rs.0.07/kWh fixed upto commissioning of the cumulative awarded capacity/ accepted cumulative capacity by SECI under RfS.

5.1.2 Weighted average tariff as approved by CERC plus trading margin of Rs.0.07/kWh fixed shall be applicable upon commissioning of the cumulative awarded capacity/ accepted cumulative capacity by SECI under RfS for the balance term of this Agreement for the energy supplied as per provisions of this agreement."

7. In view of the foregoing discussions, the PSA dated 17.07.2018 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. 2.54/kWh under Section 63 of the Electricity Act, 2003, cannot be granted by this Commission being beyond its jurisdiction.
8. Ordered accordingly.

Sd/-
(Justice S S Chauhan)
Chairperson