

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

No. F.11(1611)/DERC/2018-19/6268

Petition No.19/2019
(Diary No. 4810)

In the matter of : **Petition u/s 86(1)(b) and 86(1)(e) read with Section 63 of the Electricity Act, 2003 seeking adoption of the tariff for purchase of 50 MW wind power from Solar Energy Corporation of India Limited under Section 63 of the Electricity Act, 2003 and for the approval of the Power Sale Agreement in terms of DERC (Renewable Purchase Obligation and Renewable Energy Certificate Framework Implementation) Regulations, 2012.**

Tata Power Delhi Distribution Ltd.

....Petitioner

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

ORDER

(Date of Order: 18.02.2019)

1. The aforesaid Petition has been filed by TPDDL in respect of purchase of 50 MW wind power from Solar Energy Corporation of India Limited (SECI) which has discovered the price for such power through the transparent process of competitive bidding. The petitioner has made the following prayers in its petition:
 - a) To adopt the tariff of Rs. 2.52/kWh plus the trading margin of Rs. 0.07/kWh (i.e., a total of Rs. 2.59/kWh) under Section 63 of the Electricity Act, 2003 for procurement of power by Tata Power-DDL from SECI and pass a suitable order in this regard and
 - b) To approve the terms and conditions of the PSA dated 17.07.2018 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 Petitioner has made following submissions:
 - I. The Commission notified the DERC (Renewable Purchase Obligation and Renewable Energy Certificate Framework Implementation) Regulations, 2012 (RPO Regulations) in terms of which the petitioner is

mandated to purchase electricity from the renewable energy sources for the fulfilment of the defined minimum percentage of total consumption under the RPO. The relative quantum of percentage to be procured from the renewable resources qua the total consumption in a year has also been prescribed by this Commission vide the said RPO Regulations.

- II. The RPO Regulations further provide that the petitioner may meet its RPO target by way of its own generation or by way of purchase from other licensees/sources or by way of purchase of Renewable Energy Certificate (REC) or by way of combination of any of the above options. The said RPO obligations also prescribe that any long-term power purchase arrangements shall be made only with the prior approval of this Commission.
- III. Further, in the event of failure on the part of the Delhi Discoms including the Petitioner in achieving the afore-stated RPO targets, a penalty at the rate of 10% of the weighted average floor price of solar and non-solar renewable energy certificate as specified by the CERC for the relevant year, is stipulated under the Business Regulations.
- IV. That the Ministry of Power had issued the 'Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Wind Power Projects' vide Gazette Resolution dated 08.12.2017 (Guidelines). These Guidelines were formulated for the procurement of wind power through transparent process of bidding under Section 63 of the Electricity Act, 2003 for the long-term procurement of electricity through competitive bidding process, by the procurers from grid-connected wind power projects having:
 - a) Individual size of 5 MW and above at one site with minimum bid capacity of 25 MW for intra-state projects; and
 - b) Individual size of 50 MW and above at one site with minimum bid capacity of 50 MW for inter-state projects.
- V. In line with the aforesaid Guidelines issued by the MOP and as part of the MNRE scheme, SECI had prepared and floated the RFS document for setting up of 2000 MW ISTS connected wind power projects (Tranche IV) (SECI Tranche IV projects) on 05.02.2018, SECI had invited the bids vis a vis setting up of wind power projects in India

on 'Build Own Operate' (BOO) basis and thereby, selling the power generated from such wind power projects to it.

- VI. Thereafter, the bids (based on reverse auction) for the SECI Project was opened on 05.04.2018 wherein the bidders quoted wind power tariffs as low as Rs. 2.51/kWh & Rs. 2.52/kWh for 2000 MW of wind power contracts.
- VII. The SECI wrote to the petitioner on 10.04.2018 appraising it of the aforesaid bidding conducted by it for the Tranche IV Projects on 05.04.2018 and offered power to the petitioner at the discovered tariff i.e. Rs. 2.52 per kWh excluding its trading margin of Rs. 0.07/kWh. SECI requested the petitioner to confirm its requirement of power from the SECI Tranche IV Projects.
- VIII. Subsequently, the petitioner wrote to the Commission *vide* its letter dated 13.04.2018 highlighting its earlier letter dated 16.02.2018 written to this Commission to grant an approval for the procurement of 100 MW wind power from the previous bidding cycle of SECI for the setting of 2000 MW wind power projects (Tranche III) wherein the price discovered was Rs. 2.45/unit excluding SECI trading margin of Rs. 0.07/kWh. The petitioner further highlighted to this Commission, the letter issued by this Commission dated 14.03.2018 wherein, it had granted its in-principle approval for the said procurement. However, SECI could only allocate 50 MW to Tata Power-DDL from the Tranche III Projects out of a requested quantum of 100 MW on account of limited availability and interest shown by various States for the cheaper power.
- IX. In addition to the above, the petitioner in its aforesaid letter dated 13.04.2018 also brought to the notice of this Commission, SECI's aforesaid letter dated 10.04.2018 intimating the petitioner of the bidding process conducted by it on 05.04.2018 and the discovered tariff i.e. Rs. 2.52 per kWh excluding its trading margin of Rs. 0.07/kWh.
- X. Furthermore, considering that the competitive price of power from the SECI Project i.e. Rs. 2.52 per kWh excluding its trading margin of Rs. 0.07/kWh when compared to short term market rates and also keeping in view the RPO targets mandated by this Commission, the petitioner proposed to procure an additional 50 MW of power from the SECI Project. The petitioner thereby, requested the Commission to grant its approval for the procurement of 50 MW of power from the

SECI Project at the rate of Rs. 2.59/kWh (including the trading margin of Rs. 0.07/kWh).

- XI. The petitioner also highlighted to the Commission that the aforesaid procurement of 50 MW of power from the SECI Tranche IV Projects would fulfil the total requirement of 100 MW of power for which the Commission had accorded its "In Principle" approval vide its letter dated 14.03.2018.
 - XII. The petitioner has further submitted that if it procures the aforementioned power from SECI, it will not only meet its RPO target but will also cater to the power demand of its consumers at a very low tariff i.e. Rs. 2.59/kWh. It is humbly submitted that the petitioner resorts to the procurement of non-solar REC at the applicable cost i.e. Rs. 1.00/kWh as determined by the CERC (subject to the final order by CERC), it will have to incur an additional expenditure towards the procurement of power for meeting the demands of its consumers. Therefore, in the event this Commission adopts the tariff at the rate of Rs. 2.59/kWh from the SECI Project, it is in effect approving a tariff at the rate of Rs. 1.59/kWh (Rs. 2.59/kWh i.e. the tariff for procurement of power from SECI Project less Rs. 1.00/kWh i.e. the current applicable cost of procuring non-solar REC) and thereby, ensuring the most competitive tariff to be ultimately paid by the consumers.
 - XIII. The petitioner has also submitted that in addition and without prejudice to the above, the PSA dated 17.07.2018 entered into between the Petitioner and SECI for the procurement of 50 MW wind power from SECI Project was pursuant to the 'In Principle' approval accorded by this Commission for the procurement of the said quantum of wind power vide its letters dated 14.03.2018 and 04.05.2018.
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 tariff in the instant matter has been determined through a competitive bidding process as per the guidelines issued by the

Central Government (MNRE), which lays down the requisite parameters. 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. A total of six 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. The matter in Petition No. 04/2018 is not identical with that of the present petition. 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. Accordingly, Tariff in the aforesaid petition No. 04/2018 has been approved by this Commission. Whereas, in the instant Petition there is no back to back agreements 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 50 MW wind power from SECI Project. The Petitioner may approach CERC in this regard.

5. The terms and conditions of PSA dated 17.07.2018 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 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."

6. 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. 2.52/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