

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 174/AT/2021

- Subject : Petition under Section 63 of the Electricity Act, 2003 for adoption of usage charges for 1,692 MW Solar Photovoltaic (PV) Power Station (Tranche-I & II) connected to the inter-State Transmission System and selected through competitive bidding process under Central Power Sector Undertaking ('CPSU') Scheme Phase-II dated 5.3.2019 as per the Standard Bidding Guidelines of Ministry of Power dated 3.8.2017.
- Date of Hearing : 12.10.2021
- Coram : Shri I. S. Jha, Member
Shri Arun Goyal, Member
Shri P. K. Singh, Member
- Petitioner : NTPC Limited (NTPC)
- Respondents : Solar Energy Corporation of India Limited (SECI) and 2 Ors.
- Parties Present : Shri Venkatesh, Advocate, NTPC
Shri Ashutosh K Srivastava, Advocate, NTPC
Ms. Mehak Verma, Advocate, NTPC
Shri Rishub Kapoor, Advocate, NTPC
Shri Abhiprav Singh, Advocate, NTPC
Shri I. Uppal, NTPC
Shri Manoj Kumar, NTPC

Record of Proceedings

Case was called out for virtual hearing.

2. The learned counsel for the Petitioner submitted that the present Petition has been filed for adoption of usage charges for 1,692 MW Solar PV Power Projects (Tranche I & II) connected to inter-State Transmission System and selected through competitive bidding process under Central Sector Undertaking ('CPSU') Scheme Phase-II dated 5.3.2019. The learned counsel mainly submitted the following:

(a) NTPC has filed the instant Petition in its capacity as generator pursuant to selection as a successful bidder for setting up of 1,692 MW Solar PV Power Projects in the competitive bid process conducted by SECI under CPSU Scheme Phase-II dated 5.3.2019.

(b) CPSU Scheme Phase-II has been notified by the Ministry of New and Renewable Energy, Government of India under Section 63 of the Act for setting up 12,000 MW grid-connected Solar PV Power Projects by the Government Producers with Viability Gap Funding ('VGF') support for self-use or use by Government/ Government entities, either directly or through Distribution Companies ('Discoms').

(c) Government producer for the purpose of the Scheme has been defined as an entity which is either directly controlled by the Central Government or State Government or is under the administrative control of Central Government or State Government or a company in which Government is having more than 50% shareholding. A Government producer is eligible for assistance in setting-up the Solar PV Project. Thus, NTPC, being a Central PSU, qualified as the Government producer under the Scheme.

(d) Under the Scheme, SECI was entrusted with the task of conducting the bidding amongst Government producers for allocation of Solar Power Project capacity with VGF as a bid parameter to select the project proponent. While the maximum permissible VGF was kept at Rs. 0.70 crore/MW, the actual VGF to be given to Government producer was to be decided through a competitive bid process with VGF as a bid parameter.

(e) In terms of the aforesaid Scheme, SECI issued two Requests for Selection ('RfS') documents, namely RfS-1 for 2000 MW (Tranche-I) capacity and RfS-2 for 1500 MW (Tranche-II) capacity. Pursuant to the competitive bid process conducted by SECI with VGF as bid parameter, the Petitioner has been awarded the aggregate capacity of 1,692 MW (769 MW under Tranche-I and 923 MW under Tranche-II).

(f) Pursuant to being selected as a successful bidder, the Petitioner has entered into several Power Usage Agreements ('PUAs') with the Telangana Discoms for supply of solar power generated through its Solar Power PV Project at the Usage Charges of Rs. 2.86/kWh for 1323 MW capacity and of Rs. 2.69/kWh for 369 MW capacity, which are within the ceiling specified in the Scheme.

(g) Thereafter, NTPC vide its letter dated 12.1.2021 requested SECI, the Bid Process Coordinator, to approach the Commission for approval and adoption of the bids carried out by it under the Scheme. However, SECI vide its letter dated 1.3.2021 refused to undertake the aforesaid course of action in view of Clause 10.4 of the Bidding Guidelines dated 3.8.2017, which required the distribution licensee or intermediary procurer to approach the Appropriate Commission for adoption of tariff.

(h) NTPC vide letter dated 24.3.2021 requested Telangana Discoms to approach TSERC for approval of power procurement. In response, Telangana Discoms vide their letter dated 15.4.2021 intimated the Petitioner to approach CERC for adoption of tariff and to communicate the order of CERC to Telangana Discoms for seeking consent of TSERC. Accordingly, the present Petition has been filed by the Petitioner seeking adoption of the Usage Charges.

(i) Since the Solar PV Projects are to be set-up by NTPC in the States of Rajasthan, Gujarat and Tamil Nadu and would be supplying power to Telangana Discoms, there is a composite scheme of generation and supply of power in more than one State as envisaged in the Section 79(1)(b) of the Act. Also, NTPC being the generating company controlled by the Central Government as envisaged in Section 79(1)(a) of the Act, this Commission is the 'Appropriate Commission' and has the necessary jurisdiction in the present case.

3. After hearing the learned counsel for the Petitioner, the Commission queried as to whether the Usage Charges can be termed as tariff determined through transparent process of bidding as specified under Section 63 of the Act. In response, the learned counsel submitted that in the present case, the competitive bid process has been conducted with VGF as the bid parameter specified in the Scheme whereas the Usage Charges, the term that has been specified in the Scheme itself, are charges that have been mutually agreed between the Petitioner and Telangana Discoms within the ceiling of Rs. 3.5/kWh specified in the Scheme.

4. The learned counsel also placed reliance on the 'Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Power Projects' dated 3.8.2017 ('Standard Bidding Guidelines') and submitted that apart from the tariff as a bid parameter, the Standard Bidding Guidelines also recognizes VGF as a bid parameter, wherein a pre-determined tariff payable to Solar Power Developer and the maximum amount of VGF available to the Solar Power Developer are pre-specified and the selection of the developer/ bidder is required to be done on the basis of VGF support quoted by the bidder.

5. The Commission observed that contrary to the pre-specified tariff in the VGF based bid process, the Usage Charges in the present case are mutually agreed rates between the parties despite there being VGF-based bidding and such rate is within the ceiling rate specified in the Scheme. The Commission further observed that the issue in the instant case appears to be approval of the rate agreed between the parties rather than the adoption of the tariff/rate. The Commission also observed that the bid conducted in the present case was also limited/ restricted to the Government producers only and not an open tender/ bid process.

6. In light of aforesaid primary observations on the 'maintainability' of the present Petition, the Commission directed the Petitioner and the Respondents to file their respective response on or before 26.10.2021 on the aforesaid observations/ queries of the Commission including as to how the mutually agreed Usage Charges can be adopted under Section 63 of the Act. The Respondent, SECI was also directed to file all the details relating to the bidding process conducted by it under the Scheme e.g. Bid documents including amendments thereto, bid evaluation report, conformity certificate and key milestones, etc., on affidavit, along with its response.

7. The Petition shall be listed for hearing in due course for which separate notice will be issued.

By order of the Commission

**Sd/-
(T.D. Pant)
Joint Chief (Law)**