

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 179/AT/2021

- Subject : Petition under Section 63 of the Electricity Act, 2003 for adoption of tariff for the 1110 MW Wind-Solar Hybrid Power Project (Tranche-III) connected to the inter-State Transmission System and selected through competitive bidding process as per the guidelines dated 14.10.2020 of Ministry of New and Renewable Energy, Government of India.
- Date of Hearing : 23.11.2021
- Coram : Shri P. K. Pujari, Chairperson
Shri I. S. Jha, Member
Shri Arun Goyal, Member
Shri P. K. Singh, Member
- Petitioner : Solar Energy Corporation of India Limited (SECI)
- Respondents : ABC Renewable Energy Private Limited and 10 Ors.
- Parties Present : Shri M. G. Ramachandran, Sr. Advocate, SECI
Ms. Tanya Sareen, Advocate, SECI
Ms. Poorva Saigal, Advocate, SECI
Shri Shubham Arya, Advocate, SECI
Ms. Rakshita Kaul, Advocate, AMP Green Energy
Ms. Jyotsna Khatri, Advocate, AMP Green Energy
Shri Sourya Choudhary, Advocate, AMP Green Energy
Shri Ankur Sharma, Advocate, AMP Green Energy
Shri Abhilash Yadav, Advocate, AMP Green Energy
Shri Anirban Mondal, Advocate, ABC Renewable
Shri Vivek Hooda, Advocate, ABC Renewable
Shri Atulya Kumar Nain, SECI
Shri Shibasish Das, SECI
Shri Mudit Jain, SECI

Record of Proceedings

Case was called out for virtual hearing.

2. The learned senior counsel for the Petitioner submitted that the present Petition has been filed for adoption of tariff for 1110 MW Wind-Solar Hybrid Power Project (Tranche-III) connected to inter-State Transmission System that has been selected through competitive bidding process as per the 'Guidelines for Tariff Based Competitive Bidding Process for procurement of power from Grid Connected Wind Solar Hybrid Projects' issued by the Ministry of New and Renewable Energy, Govt. of India dated 14.10.2020 ('the Guidelines'). The learned senior counsel for the Petitioner further submitted the following:

- (a) Pursuant to the competitive bidding conducted by SECI in terms of the Guidelines, three developers for the capacity of 1110 MW wind-solar hybrid

projects have been selected. The Power Purchase Agreements ('PPAs') have been signed with the project developers and correspondingly, the Power Supply Agreements ('PSAs') have been signed for the awarded capacities with the various buying entities.

(b) In the present case, certain deviations have been taken in the bid documents from the provisions of the Guidelines with regard to the Change in Law provisions. However, such deviations have been approved by the Ministry of New and Renewable Energy, Government of India and SECI has placed on record such approval vide its affidavit dated 20.10.2021.

(c) Accordingly, SECI has furnished Conformity Certificate to the effect that no deviation were made in regard to Bidding Guidelines (except normal consequential addition/ deletion) and to the effect that the Bid Evaluation Committee has conducted the bid evaluation in conformity with the provisions of RfS.

(d) As per Article 12.1.3 of the PPA and Article 8.2 of the PSA, change in rates of Safeguard Duty, GST and Basic Custom Duty after 7.12.2020 and resulting in change in project cost, will be treated as Change in Law and the quantum of compensation payment on account of change in rates of such duties shall be provided to the affected party by the other party as per Article 12.2.3, subject to the provisions that Appropriate Commission recognizes such provisions at the time of adoption of tariff.

(e) Under Article 12.2.3 of the PPA, a methodology for arriving at quantum of compensation for Change in Law events has been provided whereby for every net increase/ decrease of Rs. 1 lakh per MW in the project cost, there shall be corresponding increase/ decrease of an amount equal to Rs. 0.0049/kWh. The aforesaid methodology/ formula equally applies to Change in Law events covered under Article 12.1.3 of the PPA i.e. change in rates of Safeguard Duty, GST and Basic Custom Duty and also other events as approved by the Commission under Article 12.1.2 of the PPA.

(f) Accordingly, the Commission may recognize that in terms of Article 12.2 of the PPAs and Article 8.2 of the PSAs, the change in rates of Safeguard Duty, GST and Basic Customs Duty after 7.12.2020, if any, will be considered as Change in Law subject to the fulfilment of conditions contained therein.

(g) The Respondent No. 3 and Respondent No. 6 vide their replies to the Petition have sought declaration that certain events which relate to imposition/ increase in Safeguard Duty, Basic Custom Duty and GST are Change in Law in terms of the above. In addition, the Respondents have also sought declaration that the order of Hon'ble Supreme Court dated 19.4.2021 in W.P (C) No. 838 of 2019 in M.K. Ranjitsinh & Ors. v. UoI and Ors., issuing directions/ measures to be adopted towards existing and future laying of overhead transmission lines in priority and potential habitats of Great Indian Bustard as Change in Law by relying upon the order of the Appellate Tribunal for Electricity ('APTEL') dated 12.10.2021 in Appeal No. 251 of 2021 in the matter of Green Infra Renewable Energy Ltd. v. RERC and Ors. ('Green Infra Case').

3. The learned counsel for the Respondent No. 3 and Respondent No. 6 submitted that the Respondent No.3, pursuant to its selection as the successful bidder, has entered into PPA with SECI for setting up of a 130 MW hybrid project at a tariff of Rs. 2.41/kWh through its project company, Respondent No.6. She further submitted that the Respondents have already filed their replies, whereby the Respondents have sought for declaration of certain events as Change in Law which relate to imposition/ increase in Basic Custom Duty, Safeguard Duty and GST and also the judgment of Hon'ble Supreme Court dated 19.4.2021 in W.P (C) No. 838 of 2019 in M.K. Ranjitsinh & Ors. v. UoI and Ors., issuing directions/ measures to be adopted towards existing and future laying of overhead transmission lines in priority and potential habitats of Great Indian Bustard. The learned counsel added that the aforesaid order of Hon'ble Supreme Court dated 19.4.2021 has already been recognized as Change in Law event by the APTEL in its order dated 12.10.2021 in Appeal No. 251 of 2021 in Green Infra Case. Accordingly, the Commission may declare the aforesaid events as Change in Law events in terms of Article 12 of the PPA and may also recognize the methodology for payment of compensation towards additional cost incurred due to Change in Law event as stipulated in Article 12.2.3 of the PPA in order to avoid multiplicity of proceedings in future.

4. The learned counsel for the Respondent No.4, ABC Renewable Energy (RJ-03) Private Limited submitted that the Respondent has no objection towards the submissions made by SECI and the Commission may, accordingly, adopt the tariff.

5. Considering the submissions made by the learned senior counsel for the Petitioner and the learned counsel for the Respondents, the Commission reserved the matter for order.

By order of the Commission

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