

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 210/AT/2021

- Subject : Petition under Section 63 of the Electricity Act, 2003 for adoption of tariff discovered through competitive bidding process for procurement of power from 190 MW grid-connected Solar PV Power Projects at Nokh Solar Park (under open category) in Rajasthan as per the Standard Bidding Guidelines of Ministry of Power, Government of India dated 3.8.2017 and its amendments thereof.
- Date of Hearing : 16.11.2021
- Coram : Shri P. K. Pujari, Chairperson
Shri I. S. Jha, Member
Shri Arun Goyal, Member
Shri P. K. Singh, Member
- Petitioner : NTPC Limited (NTPC)
- Respondents : Rising Sun Energy (K) Pvt. Ltd. and Anr.
- Parties Present : Shri Venkatesh, Advocate, NTPC
Shri Suhael Buttan, Advocate, NTPC
Shri Jatin Ghuliani, Advocate, NTPC
Shri Anant Singh Ubeja, Advocate, NTPC
Shri Rishub Kapoor, Advocate, NTPC
Shri Ishpaul Uppal, NTPC
Shri V. V. Sivakumar, NTPC
Shri Arvind Banerjee, CSPDCL

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 tariff discovered through the competitive bid process for procurement of power from 190 MW grid-connected solar PV projects at Nokh Solar Park, Rajasthan as per the 'Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Power Projects' issued by the Ministry of Power, Government of India on 3.8.2017 and its amendments thereof (in short, 'the Guidelines'). The learned counsel mainly submitted the following:

(a) On 12.1.2021, the Petitioner issued a Request for Selection ('RfS') for the purpose of selection of Solar Power Developer ('SPD') for setting-up of a 190 MW grid connected solar PV power project in Nokh Solar Park Rajasthan being developed by Rajasthan Solar Park Development Co. Ltd. i.e. Solar Power Park Developer.

(b) After conclusion of bid process conducted as per the Guidelines, Respondent No.1, Rising Sun Energy (K) Private Limited was declared as the



successful bidder and was issued a Letter of Award dated 2.3.2021 for setting up of a 190 MW solar PV project at tariff of Rs. 2.25/kWh.

(c) The Petitioner has entered into a Power Purchase Agreement with the Respondent No.1 on 30.3.2021 and on that basis, a Power Supply Agreement has been entered into with the Respondent No.2, Chhattisgarh State Power Distribution Company Limited ('CSPDCL') for onward sale of power generated from the solar PV project to be set-up in the Nokh Solar Park.

(d) The Petitioner, in its capacity of Intermediary Procurer, has approached this Commission as per Clause 10.4 of the Guidelines for adoption of tariff under Section 63 of the Act.

(e) While Clause 2.1.1(a) of the Guidelines states that in case of a single distribution licensee being the Procurer, the Appropriate Commissions to be the State Commission of the concerned State where the distribution licensee is located, the said clause does not apply in the present case as in the present case, there is an involvement of Intermediary Procurer and the generation and supply is in more than one State i.e. solar power generated from the solar PV projects located in Nokh Solar Park in the State of Rajasthan is being supplied to CSPDCL in the State of Chhattisgarh.

(f) Pertinently, RfS document was not issued on behest of any particular end-Procurer and thus, the end-Procurer was not identified at the time of issuance of RfS. Even though this is not a case of combined procurement where the distribution licensees are located in more than one State as per Clause 2.1.1(b) of the Guidelines, the Appropriate Commission is the Central Commission in the present case as per the decision of the Hon'ble Supreme Court in the case of Energy Watchdog v. Central Electricity Regulatory Commission and Ors. [(2017) 14 SCC 80], whereby it has been held that the moment generation and supply takes place in more than one State, the Central Commission becomes the Appropriate Commission under the Act.

(g) The Petitioner has furnished all relevant details along with the Petition and the Commission may adopt the tariff in respect of 190 MW solar PV project as discovered through the competitive bid process.

(h) CSPDCL has also approached the State Commission for seeking approval of the PSA and the trading margin, which is pending for consideration before the State Commission.

3. In response to the specific query of the Commission whether any deviations is taken by the Petitioner in the bid documents (RfS, PPA and PSA) from the provisions of the Guidelines, the learned counsel replied in negative.

4. The representative of the Respondent No.2, CSPDCL objecting to the jurisdiction of the Commission submitted that in the present case, this Commission does not have the jurisdiction to adopt the tariff. It was further submitted that in the present case, neither the generating company is owned or controlled by the Central Government in terms of Section 79(1)(a) of the Act nor does the generating company have the composite scheme as provided under Section 79(1)(b) of the Act as the entire power would be supplied to only one State i.e. Chhattisgarh. The representative of CSPDCL submitted that Clause 2.2.1(a) of the Guidelines provides that in case of a single distribution licensee being the procurer, the Appropriate Commission would be the State Commission of the concerned State where the distribution licensee is located. He added that though clause (III) of the PPA provides

that after signing of the PPA, NTPC will approach the Central Commission for adoption of tariff, at Article 6.7 (Compliance with Law), it has been provided that the provisions of the agreement shall be deemed to be amended to the extent required to bring it into compliance with the provisions of the Act, or any rules and regulations made thereunder. Accordingly, the Appropriate Commission in the present case would be the State Commission.

5. In rebuttal, the learned counsel for the Petitioner submitted that as already settled by the Hon'ble Supreme Court in the case of Energy Watchdog case, the jurisdiction of the State Commission applies only in case where both the generation and supply is intra-State. The present case is of inter-State generation and supply, and the Appropriate Commission under the Act is the Central Commission. The learned counsel further submitted that the provisions of the PPA are not in deviation with the provisions of the Act and is an admitted document which provides for approaching the Central Commission for adoption of tariff.

6. After hearing the learned counsel for the Petitioner and the representative of the Respondent, the Commission directed the Petitioner to file an undertaking, within a week, on affidavit to the effect that no deviations have been taken from the provisions of the Guidelines in the bid documents (RfS, PPA and PSA).

7. Subject to the above, the Commission reserved the order in the matter.

By order of the Commission

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