

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 286/AT/2021

- Subject : Petition under Section 63 of the Electricity Act, 2003 for adoption of tariff for 8800 MW Solar Power Plant connected to Inter-State Transmission System linked with Setting-up of Solar Manufacturing Plant, selected through competitive bidding process as per the Guidelines dated 3.8.2017 of the Central Government as amended from time to time and interpreted and modified by the Central Government vide subsequent communications.
- Date of Hearing : 10.3.2022
- 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 : Azure Power India Private Limited and 10 Ors.
- Parties Present : Shri M. G. Ramachandran, Sr. Advocate, SECI
Ms. Tanya Sareen, Advocate, SECI
Ms. Anusha Nagarajan, Advocate, TANGEDCO
Ms. Neha Singh, SECI
Shri Atulya Kumar Naik, SECI
Shri Shibasis Das, SECI
Shri Mudit Jain, SECI
Shri Dipak Panchal, Adani Renewable
Shri Tanmay Vyas, Adani Renewable
Ms. Akriti Gandotra, Azure Power
Shri Gaurang Sethi, Azure Power
Shri Payyaula Keshav, Objector

Record of Proceedings

Case was called out for virtual hearing.

2. Learned senior counsel for the Petitioner submitted that the present Petition has been filed seeking adoption of tariff for 8800 MW solar power plants linked with setting up of 2200 MW solar manufacturing plant selected through competitive bidding process as per the 'Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar Power Projects' issued by Ministry of Power, Government of India on 3.8.2017 (in short, 'the Guidelines') along with subsequent amendments thereto and interpreted and modified by the Government of India vide their subsequent communications. Learned senior counsel mainly submitted the following:

(a) In terms of liberty granted by the Commission vide Record of Proceedings for the hearing dated 9.2.2022, the Objector has filed the written submission and SECI has filed response thereof.

(b) The Objector has contended that RfS is contrary to the provisions of the Electricity Act, 2003 ('the Act') as there are no existing Guidelines for combining solar power plants and solar manufacturing plants. However, the Guidelines have to be read along with notifications issued by Ministry of New and Renewable Energy ('MNRE') dated 20.4.2017, 14.8.2019, 9.10.2019 and 22.5.2020 specifically dealing with and authorising combination of solar power generation linked with establishment of manufacturing plants ('the Scheme'). Further, the solar power linked manufacturing scheme in any event has a direct nexus to the promotion of renewable energy under the provisions of Section 61(h) and Section 86(1)(e) of the Act.

(c) The Objector has further contended that the tariff put forth for adoption has been revised after conclusion of the bid, which is not permissible under the provisions of the Act. Notably, the successful bidders have voluntarily, on their own, reduced the tariff from Rs. 2.92/kWh to Rs. 2.54/kW for the Package-I related to 1800 MW (i.e. capacity to be sold to GRIDCO Ltd., Chhattisgarh State Power Distribution Company Limited and TANGEDCO). The commencement of supply under this package is in the year 2023.

(d) Similarly, the successful bidders have voluntarily reduced the tariff from Rs. 2.92/kWh to Rs.2.42/kWh for Packages II, III and IV related to 7000 MW (i.e. capacity to be sold to Andhra Pradesh Discoms) and commencement of supply under these packages is from the year 2024 and spread till 2026. Reference was also made to the Undertakings dated 15.7.2021 and 3.11.2021 issued by the successful bidders thereby voluntarily reducing the tariffs.

(e) As per the principle laid down by the Hon'ble Supreme Court, it is permissible in a competitive bid process for selected bidders to reduce the tariff discovered in the bidding process where it is in consumers/public interest. Reliance was placed on the judgment of Hon'ble Supreme Court in the case of Air India Ltd. v. Cochin International Airport Ltd. [(2002) 2 SCC 617].

(f) As regards the objections relating to timeline for project completion and green shoe options, such provisions are in line with the notifications issued by MNRE referred above.

(g) The Objector has raised certain issues relating to decisions of Government of Andhra Pradesh in respect of procurement of 7000 MW by AP Discoms which are not relevant to the present case.

(h) Procurement of power by GRIDCO, TANGEDCO and the AP Discoms under the PSAs has already been approved by the concerned State Electricity Regulatory Commissions.

(i) After filing of the Petition, the Petitioner has also tied up 100 MW (from the untied capacity under Package-I @ Rs.2.54/kW) with Power Development Department, Jammu and Kashmir by signing the PSA and PPAs in this regard. Thus, the total tied up capacity has now increased to 8900 MW in Package-I. The Petitioner may be permitted to place on record the aforesaid PPAs and PSA by way of an additional affidavit.

3. In response to the query of the Commission as to whether the notifications of MNRE as relied upon and/or the changes to the bid documents were prior to bid deadline, learned senior counsel referred to the comparative statement filed by SECI indicating steps and process followed by SECI while conducting bidding/tender mapping the corresponding provisions of the Guidelines as amended from time to time and interpretation/clarification issued by the Central Government. Learned senior counsel submitted that all such notifications and the amendments to the bid documents were issued prior to the bid deadline of 13.11.2019. Learned senior counsel added that the last amendment to the RfS (i.e. Amendment No. VI) was issued on 7.11.2019. Learned senior counsel submitted that all the amendments were published on e-publishing system of Government of India.

4. In response to another query regarding timeline for setting-up of the manufacturing plants, learned senior counsel submitted that the successful bidders are required to operationalize the manufacturing plants within the period of 24 months. He further submitted that bid documents provide that in case the operation date of the manufacturing plants is delayed beyond 12 months from its scheduled date, the tariff shall stand further reduced by Rs. 0.18/kWh.

5. With the leave of the Commission, the Objector made the following submissions:

(a) RfS is contrary to the provisions of the Act as there exists no Guidelines for combining the solar power plants and solar manufacturing plants. RfS goes beyond the objective and applicability of the Guidelines.

(b) SECI has stated that RfS has been issued in furtherance to MNRE's Scheme for setting up of solar PV manufacturing plant linked with setting up of solar PV plant as part of 'Aatmanirbhar Bharat' vision envisaged by Government of India. However, the 'Aatmanirbhar Bharat' initiative was announced at a much later date on 13.5.2020 whereas RfS was issued on 25.6.2019.

(c) MNRE has been issuing the amendments to the Guidelines from time to time by way of resolutions backed by Gazette Notifications. Whereas, the OMs/Notifications relied upon by the Petitioner are merely internal communications and details thereof are not available in public domain.

(d) Inclusion of manufacturing as part of RfS has resulted in inordinate increase in tariff and curtailed the number of participants thereby affecting the competitiveness of the bid.

(e) As per the provisions of the Guidelines, in case of any deviation from the Guidelines, the prior approval of the Commission is required. In the present case, no such approval had been sought.

(f) The decisions relied upon by SECI to justify revision of tariff post bid are distinguishable as they all relate to the contracts governed under the Contract Act, 1956 and not the Act.

6. In rebuttal, learned senior counsel for the Petitioner submitted the following:

(a) Clause 20 of the Guidelines empowers MNRE to issue clarifications or modifications to the Guidelines with the approval of the Minister, MNRE. Therefore, the Guidelines have to be read along with the notifications issued by

MNRE dated 14.8.2019, 9.10.2019 and 22.5.2020 clarifying the scope and application of the Guidelines in regard to the implementation of the Scheme.

(b) All the above notifications have been filed along with the Petition and copies thereof have also been provided to the Objector.

(c) It is not possible for the Guidelines to cover each and every minute detail therein as it only lays down the broad framework. Whereas RfS, PPA and PSA (bid documents) contain the provisions of the Guidelines in detail.

(d) It is wrongly contended that inclusion of manufacturing as a part of the bidding process/RfS has resulted in any increase in cost to the consumers particularly to AP Discoms when the tariff stands finalised at Rs. 2.42/kWh, which is very competitive and in the interest of the consumers.

(e) Other objections have already been dealt with by SECI in its response to the written submission filed by the Objector.

7. In response to another query of the Commission regarding pending litigation involving RfS/bidding process, learned senior counsel submitted that a Writ Petition has been filed in this regard before the Hon'ble Andhra Pradesh High Court. However, no stay has been granted by the Hon'ble High Court.

8. Considering the request of the Petitioner, the Commission permitted the Petitioner to place on record the PPAs and PSA as entered into by the Petitioner after tying up of 100 MW with Power Development Department, J & K on affidavit within a week. The Petitioner was further directed to accordingly modify its prayer for adoption of tariff so as to include this additional 100 MW.

9. After hearing the learned senior counsel for the Petitioner and the Objector, the Commission reserved the order in the matter.

By order of the Commission

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