



नई दिल्ली
NEW DELHI

याचिका संख्या./ Petition No. 26/RP/2024

कोरम/ Coram:

श्री जिष्णु बरुआ, अध्यक्ष/Shri Jishnu Barua, Chairperson
श्री रमेश बाबू वी., सदस्य/Shri Ramesh Babu V., Member
श्री हरीश दुदानी, सदस्य/Shri Harish Dudani, Member

आदेश दिनांक/ Date of Order: 18th of November, 2024

IN THE MATTER OF:

Review of the order dated 16.05.2024 passed by the Commission in the petition filed by National Load Despatch Centre for advance procurement and despatch of 150 MW/300 MWh Battery Energy Storage Systems out of the 500 MW/1000 MWh (2 hours storage) standalone ISTS connected BESS pilot project at 400/220 kV Fatehgarh-III (Rajasthan) substation of Northern Region.

AND IN THE MATTER OF:

Solar Energy Corporation of India Limited (SECI),
6th Floor, Plate-B, NBCC Office Block Tower 2,
East Kidwai Nagar, Kidwai Nagar,
New Delhi, Delhi 110023

...Review Petitioner

Versus

1. National Load Despatch Centre (NLDC)
C/o Grid Controller of India
(Formerly Power System Operation Corporation Ltd.)
B-9 (1st Floor), Qutab Institutional Area,
Katwaria Sarai, New Delhi -110016.

2. JSW Renew Energy Five Limited (BESS Developer) (JREFL)
JSW CENTRE, Bandra Kurla Complex Bandra-(East)
Mumbai City, Maharashtra- 400051
3. Central Transmission Utility of India Limited (CTUIL)
First Floor, Saudamini, Plot No.– 2,
Sector– 29, Gurgaon – 122 001 Haryana
4. Member Secretary, Northern Regional Power Committee (NRPC)
18-A, Qutab Institutional Area,
Shaheed Jeet Singh Marg,
Katwaria Sarai, New Delhi-110016

...Respondents

Parties Present: Shri. M. G. Ramachandran, Senior Advocate, SECI
Ms. Anushree Bardhan, Advocate, SECI
Ms. Shirsa Saraswati, Advocate, SECI
Ms. Surbhi Kapoor, Advocate, SECI
Mr. Aneesh Bajaj, Advocate, SECI
Shri Aman Anand, Advocate, JREFL
Shri Aman Dixit, Advocate, JREFL
Ms. Natasha, Advocate, JREFL
Shri Gajendra Singh, NLDC

आदेश/ ORDER

The Review Petitioner, Solar Energy Corporation of India Limited (SECI), has filed the present petition seeking review of the order dated 16.05.2024 passed by this Commission in Petition No. 249/MP/2023 (impugned order dated 16.05.2024).

2. The Review Petitioner has made the following prayers:

- (a) admit the review Petition, condoning the delay of 11 days;
- (b) review and modify the order dated 16.05.2024 on the limited aspect of the admissibility of the additional trading margin of Rs. 0.07/kWh to SECI for facilitating sale/purchase, scheduling, accounting, charging and discharging of BESS for Grid Ancillary Services through IDAM/RTM/TAM/Bilateral mode on behalf of the NLDC/Grid Controller and clarify that the trading margin of 0.5% of capacity charges

is payable to SECI by NLDC/ Grid Controller irrespective of any utilization of BESS for ancillary services by NLDC/Grid Controller;

(c) clarify the inadvertent error in Para 57 of the order dated 16.05.2024 wherein it has been recorded that trading margin is to be paid to Respondent no. 2 (BESS Developer) instead of Respondent no.1 (SECI); and

(d) pass any other order, as this Hon'ble Commission may deem fit.

3. The review petition was filed on 12.07.2024. The review is being sought inter alia on the decision that SECI will not be entitled to the additional trading margin of Rs. 0.07/kWh for facilitating the sale/ purchase, scheduling, accounting, charging, and discharging of BESS for Grid Ancillary Services (150 MW) portion through IDAM/ RTM/TAM/Bilateral mode on behalf of the National Load Despatch Centre (NLDC)/Grid Controller of India. The Review Petitioner has also sought clarity on the inadvertent error in Para 57 of the order dated 16.05.2024 along with condonation of delay of 11 days.

Submission by the SECI

4. The SECI submitted as follows:

(a) The issue of trading margin of Rs. 0.07/kWh is applicable when NLDC/Grid Controller of India engages and takes the services of the intermediary to procure power from third party sources to enable charging of the BESS wherever it becomes necessary and also for discharging the power from the BESS to the Grid and by way of sale to third parties wherever it becomes necessary and for scheduling, accounting, etc. of the BESS capacity allocated for ancillary services. Such procurement or sale of power would involve arranging the supplier or procurer of power, as the case may be on behalf of the NLDC/Grid Controller, the scheduling, accounting, etc. of the BESS capacity allocated for ancillary services. Such operation of procurement and/or sale of power from or to outside parties will not be on a continuous basis but will arise only from time to time as per the exigencies. Such operations are, therefore, of the nature of commercial dealing independent of automatic charging and discharging of BESS in the normal course from GRID operation itself and distinct and separate from Ancillary Services otherwise undertaken by NLDC/ Grid Controller of India itself whereunder procurement of power through IDAM/ RTM/TAM/Bilateral mode will not be necessary for meeting ancillary services.

- (b) The developer which is installing the BESS and recovering the charges by way of tariff, which is computed at INR 10,83,500/MW/Month, will not be undertaking the sale of electricity or purchase of electricity (i.e., charging and discharging of BESS) for Reserve Ancillary Services on behalf of the NLDC/Grid Controller of India, where it has to be arranged from the outside parties.
- (c) The aspect of additional trading margin is applicable to such scheduling and despatch to be undertaken in the purchase and sale of electricity through the services of an intermediary trader, which is during the TRAS and market operations and not for any automatic charging and discharging which is during the PRAS and SRAS.
- (d) It is not mandatory or necessary for NLDC/Grid Controller of India to enter into an agreement with the intermediary trader for the purchase of electricity from outside parties or sale of electricity during the Reserve Ancillary Services, and such purchase and sale could be undertaken directly by NLDC/Grid Controller of India.
- (e) For the same BESS project- 150 MW capacity has been tied up with Gujarat utilities where the Gujarat Discoms arrange for charging and discharging of the BESS capacity. There is no involvement of an intermediary for charging and discharging of BESS; hence, there is no trading margin of Rs 0.07/kWh.
- (f) The services undertaken by SECI in relation to installation, commissioning, operation, and maintenance of the BESS by the developer have nothing to do with the services to be rendered by intermediary trader towards procurement or sale of electricity from or to outside sources, charging and discharging of BESS which is optional and commercial in nature.
- (g) In the present case, the trading margin of 0.5% of the capacity charges is not in any manner related to the purchase and sale of electricity. This trading margin, akin to a rental charge, is payable irrespective of any charging and discharging of BESS for providing any ancillary services to NLDC. NLDC had decided that it would be appropriate for them to procure the services of the intermediary trader (earlier NVVN and now through SECI) for the purposes of arranging the power requirement from outside sources for charging of the BESS or for discharge of the BESS or for sale of power from BESS to outside source, in case of such eventuality when it arises. The trading margin of Rs. 0.07/kWh is for facilitating the sale/ purchase, scheduling, accounting, charging and discharging of BESS for Grid Ancillary Services through IDAM/ RTM/TAM/Bilateral mode.

- (h) The services so sought are required to be paid by the NLDC in accordance with the trading margin of Rs. 0.07/kWh as provided in the 'Guidelines for Procurement and Utilization of BESS as part of Generation, Transmission, and Distribution Assets, along with Ancillary Services' dated 10.03.2022 and in the various meetings held with the Ministry of Power.
- (i) There was no dispute raised by NLDC in regard to the obligation to pay the trading margin for such additional services of the intermediary trader in the procurement and/or sale of electricity for charging and discharging of the BESS during the proceedings and as duly recorded in the pleadings of the Petition No. 249/MP/2023.
- (j) The interpretation of the stipulation contained in the guidelines and bidding documents and the minutes of the meetings with the Ministry of Power in regard to the trading margin of 0.5% of the capacity charges and Rs. 0.07/kWh being towards the same set of services and to be considered as cumulative as it would lead to double payment of trading margin for the same quantum of power is wrong. The margin of 0.5%, which is with reference to the capacity charges, is for a distinct and different purpose and the additional trading margin of Rs. 0.07/kWh is for a completely distinct and different purpose. Both services cannot be considered as part of the same services to be rendered by SECI in regard to BESS.
- (k) As mentioned, there is no additional trading margin of Rs. 0.07/kWh in the case of Gujarat Utilities, and SECI would not have been entitled to any additional trading margin of Rs. 0.07/kWh if NVVN or any other trader is engaged by NLDC/Grid Controller of India to arrange the services of purchase and sale of electricity for charging and discharging of BESS, scheduling, accounting of BESS portion associated with Grid Ancillary Services.
- (l) The trading margin associated with the capacity charges (akin to rental charges) at the rate of 0.5% of capacity charges is not in any manner related to the purchase and sale of electricity by the Intermediary Trader for charging and discharging of BESS. The trading margin of Rs. 0.07/kWh is restricted to the quantum of sale and purchase for electricity for charging and discharging of BESS through IDAM/RTM/TAM/Bilateral mode, which is undertaken by SECI on behalf of NLDC/Grid Controller of India and for scheduling, accounting of BESS portion.
- (m) The quantum of trading margin is thus restricted to the purchase and sale of power as and when undertaken by SECI and would not arise at all if there was no eventuality of

procuring such power from outside or sale of any power to outside parties for charging and discharging of BESS for providing ancillary services. Accordingly, it will not be appropriate to hold that there is any double payment of trading margin for the same quantum of power as stated in the order dated 16.05.2024.

(n) SECI was not envisaged to provide the services of an intermediary trader for facilitating the sale/ purchase, scheduling, accounting, charging, and discharging of BESS for Grid Ancillary Services on behalf of the NLDC under the guidelines notified by the Central Government, as part and parcel of the consideration of getting 0.5% of the capacity charges. SECI had undertaken the services, which were envisaged under the guidelines and the bidding documents, related to the margin, which SECI is entitled to with regard to the capacity charges. It would be harsh, unjust, and inequitable to require SECI to undertake the services of an intermediary trader for charging and discharging the BESS on behalf of the NLDC/Grid Controller and other additional activities as mentioned above without allowing the additional specified trading margin of Rs. 0.07/kWh.

(o) Further, it is pertinent to mention that *Central Electricity Regulatory Commission (Procedure, Terms, and Conditions for grant of trading licence and other related matters) Regulations, 2020*, provides as under:

8. *Trading Margin:*

(1) *Trading Licensee shall comply with the trading margin as given below:*

.....

(a) *For transactions under long term contracts, the trading margin shall be decided mutually between the Trading Licensee and the seller*

(p) As mentioned above, NLDC, in the pleadings filed in Petition no. 249/MP/2023 has duly agreed to an additional trading Margin of Rs 0.07/ kWh to SECI for the purpose of facilitating the sale/ purchase, scheduling, accounting, charging, and discharging of BESS for Grid Ancillary Services through IDAM/RTM/TAM/Bilateral mode in addition to 0.5% of applicable capacity charges.

(q) For the reasons mentioned hereinabove, the order dated 16.05.2024 is liable to be reviewed and modified holding that SECI is entitled to the additional trading margin of Rs. 0.07/kWh for its services to be rendered to NLDC for facilitating sale/ purchase, scheduling, accounting, charging and discharging of BESS for Grid Ancillary Services through IDAM/ RTM/TAM/Bilateral mode on behalf of the NLDC. SECI will suffer serious financial prejudice if the above error of not allowing the additional trading margin of Rs. 0.07/kWh to SECI is not considered by the Commission.

- (r) Also, Paragraph 57 of the impugned Order dated 16.05.2024 has inadvertently stated that trading margin is to be paid to Respondent no. 2 (BESS Developer) instead of Respondent no.1 (SECI), and the same may be clarified.
- (s) Further, the order dated 16.05.2024 was communicated to SECI on 17.05.2024. There is a delay in filing the Review Petition. The delay is mainly on account of the time required by SECI to consult its legal advisors and in the context of the non-availability of the counsel during summer holidays. The short delay in the filing of the Review Petition, may kindly be condoned.

Hearing dated 08.08.2024:

5. During the hearing dated 08.08.2024, the Review Petitioner (SECI) submitted that initially, the charging and discharging of the BESS project was to be undertaken by NVVN. However, subsequently, SECI agreed to the NLDC's proposal to undertake such activities for an additional trading margin of Rs.0.07/kWh. There was no dispute raised by NLDC in regard to the obligation to pay the additional trading margin for the additional services of the intermediary trader to be provided by SECI. *Per-contra*, NLDC submitted that it does not wish to make any submissions and the Commission may decide these matters as may deem fit. Further, Respondent No. 2 (JSW) pointed out that in the proceedings of Petition No. 249/MP/2023, all the parties had made a joint submission and agreed to the additional trading margin of Rs 0.07/kWh to SECI for charging and discharging the BESS for Grid Ancillary Services. After hearing the learned counsels, the Commission directed SECI and the NLDC to provide, on an affidavit, the per unit impact of trading margin of 0.5% of Capacity Charge plus additional trading margin towards the charging/discharging of BESS. The Commission reserved its order in the said case on maintainability.
6. In compliance to the above, subsequently, SECI submitted that the tentative per unit impact of the fixed trading margin comes out in the range of 4.5 paise/kWh to 6.1 paise/kWh during the various years of the project life, with the levelized fixed trading margin of 5.1paise /kWh. While NLDC, Grid India also submitted the details for the same, and according to Grid-India, per unit impact of fixed trading margin comes out as 4.45 paise/kWh (without annual degradation of BESS)

Analysis and Decision

7. We have heard the learned counsels for the SECI and the Respondents and have carefully perused the records.

8. SECI has submitted that there has been a delay of 11 days in filing the present review petition. The Order dated 16.05.2024 was communicated to the SECI on 17.05.2024. The delay was mainly on account of the time required by the SECI to consult its legal advisors and in the context of the non-availability of counsel during the summer holidays. Accordingly, the short delay in the filing of the review petition may kindly be condoned.

9. The Commission observes that *Regulation 52 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 2023*, stipulates as under:

52. REVIEW OF ORDERS, DECISIONS AND DIRECTIONS

(1) The Commission shall exercise jurisdiction to review its own orders, decisions, and directions in accordance with Clause (f) of sub-section (1) of Section 94 of the Act read with Section 114 and Order 47 of the Civil Procedure Code.

*(2) Any person aggrieved by a direction, decision, or order of the Commission, from which no appeal has been preferred, may file a review petition on the following grounds **within forty days** of the making of such decision, direction, or order:*

(a) Upon the discovery of new and important matter or evidence that, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the direction, decision, or order was passed or;

(b) On account of some mistake or error apparent from the face of the record, or;

(c) If there is any other sufficient reason to review the matter.

...

10. We observe that SECI has submitted that Order in Petition No. 249/MP/2023, was pronounced on 16.05.2024, and the instant review petition was filed on 12.07.2024. Hence, there is a delay of about 17 days in filing the review petition. We are of the view that the delay in filing the review petition is procedural in nature and not intentional by the SECI. Accordingly, the delay in filing the review petition is hereby condoned.

11. From the submissions of the parties, the following issues emerge for adjudication before the Commission:

Issue No.1: *Correction of the inadvertent error in Para 57 of the order dated 16.05.2024 wherein it has been recorded that trading margin is to be paid to Respondent no. 2 (BESS Developer) instead of Respondent no.1 (SECI)*

Issue No.2: *Whether the order dated 16.05.2024 needs to be reviewed/modified on the limited aspect of the admissibility of the additional trading margin of Rs. 0.07/kWh to SECI for facilitating the sale/ purchase, scheduling, accounting, charging, and discharging of BESS for Grid Ancillary Services through IDAM/RTM/TAM/Bilateral mode on behalf of the NLDC/Grid Controller?*

12. We will now discuss the issues.

Issue No.1

Correction of the inadvertent error in Para 57 of the order dated 16.05.2024 wherein it has been recorded that trading margin is to be paid to Respondent no. 2 (BESS Developer) instead of Respondent no.1 (SECI)

13. Regulation 52 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 2023, stipulates as under:

52. REVIEW OF ORDERS, DECISIONS AND DIRECTIONS

...
(2) Any person aggrieved by a direction, decision, or order of the Commission, from which no appeal has been preferred, may file a review petition on the following grounds **within forty days** of the making of such decision, direction, or order:

- (a) Upon the discovery of new and important matter or evidence that, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the direction, decision, or order was passed or;
- (b) On account of some mistake or error apparent from the face of the record, or;
- (c) If there is any other sufficient reason to review the matter.

...

14. We observe that in the impugned Order, inadvertently, it was recorded in paragraph no. 57 and 61 that the trading margin is to be paid to Respondent no. 2 (BESS Developer) instead of Respondent no.1 (SECI). Therefore, paragraphs 57 and 61 stand replaced as under:

*“57. The Commission also notes that the Commission fixes only the ceiling of trading margin, and within the ceiling the contracting parties, are expected to make mutual agreement for the trading margin to be paid/received, subject to the provisions of the Trading Regulations, 2020. The instant case being a pilot project, it would be in the interest of the power sector to optimise cost wherever possible.. In view of the above discussion and in line with Regulations 8(2) of the Trading Regulations, 2020, the Commission hereby directs that for Order in Petition No. 249/MP/2023 Page 29 of 43 the quantum of power earmarked for Ancillary Services, **Respondent No. 1(SECI)** shall be entitled to charge trading margin such that the cumulative value of the trading margin (i.e. the trading margin of 0.5% of the Capacity Charge plus the additional trading margin towards charging and discharging of BESS) should not exceed Rs. 0.07/kWh. Further, in case charging of power is arranged through ancillary services by the Petitioner, no additional trading margin (over and above the 0.5% of the Capacity Charge) shall be payable to the **Respondent No.1 (SECI).**”*

“61. The Commission agrees with the view of the Petitioner that the despatch of the BESS portion earmarked with the NLDC is for providing Ancillary Service. NLDC as a statutory body, is entrusted with the responsibility of dispatch of reserves under the Ancillary Service Regulations and the Grid Code. However, considering the concerns raised by Respondent No. 1, SECI, it is clarified that the Regulations and Orders of the Commission would suffice to offer an adequate payment security mechanism for the BESS portion earmarked with the Petitioner without any additional requirement of signing a sale agreement. Accordingly, the Commission directs that all payments

*towards the portion of the pilot project earmarked for ancillary service, including fixed charges, trading margin, GST applicable, incentive/disincentive etc., shall be made from the DSM and Ancillary Pool Account. Accordingly, **Respondent No.1(SECI)** shall raise an invoice in the name of GRID-INDIA as per the methodology outlined in the agreed procedures submitted by the parties. Further, the Commission allows liberty to the parties to approach the Commission in case of any future issues that may arise. Being a pilot project of its kind, the Commission also directs the Petitioner to submit periodic reports on the performance and any issues arising during the course of operation of the pilot project.”*

15. The issue no.1 stands disposed of in terms of the above.

Issue No. 2

Whether the order dated 16.05.2024 needs to be reviewed/modified on the limited aspect of the admissibility of the additional trading margin of Rs. 0.07/kWh to SECI for facilitating the sale/ purchase, scheduling, accounting, charging, and discharging of BESS for Grid Ancillary Services through IDAM/RTM/TAM/Bilateral mode on behalf of the NLDC/Grid Controller?

16. We observe that paras 54-57 of the impugned order dated 16.05.2024 stipulated as under:

54. All the parties, in compliance with the Commission’s directions, have made a joint submission and agreed that the additional trading margin of Rs 0.07/kWh should be payable to SECI for charging and discharging the BESS from the market operations. In case the charging of power is arranged through ancillary services by the Petitioner, no additional trading margin shall be payable to SECI. It was also suggested that the Commission may provide suitable direction(s) for payment of additional trading margin to SECI from the DSM pool along with other payments.

55. The Commission, during the course of the hearing, enquired about providing only one trading margin either at Rs 0.07/kWh or 0.5% of the capacity charge envisaged in the BESS guidelines issued by the MoP. SECI, in its reply, has submitted that the intermediary agency is entitled to 0.5% of the capacity charge discovered through the bid process from the end procurer. The additional trading margin of Rs. 0.07/kWh corresponds to the additional responsibility of charging and discharging the BESS capacity through market operations.

56. The Commission notes that though the MoP guidelines do not envisage the responsibility for SECI to charge and discharge the ancillary portion of the BESS capacity, providing an additional trading margin of Rs. 0.07/kwh would result in an additional financial burden on the statutory DSM and Ancillary Services Pool Account and also tantamount to double payment of trading margin for the same quantum of power. In fact, to avoid such instances of double payment, the Central Electricity Regulatory Commission (Procedure, Terms, and Conditions for grant of trading licence and other related matters) Regulations, 2020 (“Trading Regulations, 2020”) provided in Regulation 8(2) as under:

(2) The trading margin specified under these regulations shall be the cumulative value of the trading margin charged by all the traders involved in the chain of transactions between the generator and the ultimate buyer, that is to say, trading

margin in case of multiple trader-to-trader transactions and shall not exceed the ceiling of trading margin specified under these regulations.

*57. The Commission also notes that the Commission fixes only the ceiling of trading margin, and within the ceiling the contracting parties, are expected to make mutual agreement for the trading margin to be paid/received, subject to the provisions of the Trading Regulations, 2020. The instant case being a pilot project, it would be in the interest of the power sector to optimise cost wherever possible. In view of the above discussion and in line with Regulations 8(2) of the Trading Regulations, 2020, the Commission hereby directs that for Order in Petition No. 249/MP/2023 Page 29 of 43 the quantum of power earmarked for Ancillary Services, **Respondent No. 1(SECI)** shall be entitled to charge trading margin such that the cumulative value of the trading margin (i.e. the trading margin of 0.5% of the Capacity Charge plus the additional trading margin towards charging and discharging of BESS) should not exceed Rs. 0.07/kWh. Further, in case charging of power is arranged through ancillary services by the Petitioner, no additional trading margin (over and above the 0.5% of the Capacity Charge) shall be payable to the **Respondent No.1 (SECI)**.*

17. From the above, we observe that the aspect of the additional trading margin for charging and discharging of BESS for Grid Ancillary Services (150 MW) portion through IDAM/RTM/TAM/Bilateral mode on behalf of the NLDC/Grid Controller of India has been dealt in detail in Petition No. 249/MP/2023 and a conscious view has been taken by the Commission in this respect. We observe that the SECI has failed to point out the discovery of new and important matter or evidence, any mistake or error apparent, or any other sufficient reason which may at any time be corrected by the Commission either of its own motion or on the application of any of the parties. SECI has also failed to point out any reason for invocation of Regulation 52 of the CERC (Conduct of Business) Regulations, 2003. Accordingly, we hold that there is no error apparent as such and that a review of the impugned order dated 16.05.2024 is not required on this aspect.

18. Hence, Issue No. 2 is answered against the SECI.

19. Review Petition No. 26/RP/2024 in Petition No. 249/MP/2023 is disposed of in terms of the above.

Sd/-

हरीश दुदानी
सदस्य

Sd/-

रमेश बाबू वी.
सदस्य

Sd/-

जिष्णु बरुआ
अध्यक्ष