

Rajasthan Electricity Regulatory Commission

Petition No. RERC-1905/21

Petition filed for adoption of tariff for 1070 MW Solar PV power under Section 63 of the Electricity Act, 2003

Coram:

Dr. B.N. Sharma,	Chairman
Sh. S. C. Dinkar,	Member
Sh. Prithvi Raj,	Member

Petitioner : Rajasthan Urja Vikas Nigam Ltd.

Respondents : 1. Solar Energy Corporation of India (SECI)
2. Green Infra Wind Energy Ltd. (Green Infra)
3. AEW Company (AEW)
4. NTPC Ltd. (NTPC)

Date of hearings : 22.06.2021, 02.07.2021 and 15.07.2021

Present : 1. Sh. Bipin Gupta, Advocate for Petitioner
2. Sh. M.G. Ramachandran, Sr. Advocate for SECI
3. Sh. Sajan Poovayya, Sr. Advocate for M/s Green Infra
4. Sh. Shri Venkatesh, Advocate for M/s AEW and NTPC

Order Date: **23.07.2021**

ORDER

1. Petitioner, Rajasthan Urja Vikas Nigam Ltd. (RUVN) has filed this petition on 24.03.2021 under Section 63 of the Electricity Act, 2003 for adoption of tariff

for 1070 MW Solar PV power to be purchased by three Discoms for which bidding was conducted by SECI.

2. Notice was issued to Respondent SECI on 24.03.2021 for filing reply to the petition.
3. M/s Green Infra Renewable Projects Ltd. on 20.06.2021 filed an Interlocutory Application for impleadment as Respondent in the matter.
4. The matter was heard on 22.06.2021. Sh. Bipin Gupta, Advocate appeared on behalf of the Petitioner. Sh. M.G. Ramachandran, Sr. Advocate appeared for SECI. Sh. Sajan Poovayya, Sr. Advocate appeared for M/s Green Infra.
5. Commission while disposing Interlocutory Application filed by M/s Green Infra directed to implead all successful Generators in the bid as Respondents.
6. The successful Generators were issued notices for filing reply to the petition. Accordingly, Green Infra filed its reply on 01.07.2021 and AEW and NTPC filed its reply on 14.07.2021.
7. The matter was heard finally on 15.07.2021. Sh. Bipin Gupta, Advocate appeared on behalf of the Petitioner. Sh. M.G. Ramachandran, Sr. Advocate appeared for SECI. Sh. Sajan Poovayya, Sr. Advocate appeared for M/s Green Infra. Sh. Shri Venkatesh, Advocate appeared for M/s AEW and NTPC.
8. Petitioner in its petition and during hearing has submitted as under:
 - 8.1. The Petitioner is a Company dealing with power procurement for three Discoms of the State and also liable to see the RPO being fulfilled.

- 8.2. In its Board Meeting dated 11.03.2020, it was decided to procure 1070 MW of solar power with minimum size of 10 MW plant each connected to STU in the State of Rajasthan through transparent State specific competitive bidding by SECI without any upper cap and trading margin of Rs.0.07/kWh.
- 8.3. Intermediary procurer i.e. SECI issued Request for Selection (RFS) of Solar Power Developers for Setting up of 1070 MW grid connected solar PV power project in Rajasthan on 16.07.2020.
- 8.4. Request for Selection (RFS) has been issued completely in consonance with the guidelines issued by the Ministry of Power (MoP) for tariff based competitive bidding issued on 03.08.2017 along with amendment of 22.08.2019.
- 8.5. In pursuance of the RFS, SECI has discovered tariff as Rs. 2.00/kWh for 600 MW and Rs. 2.01/kwh for 470 MW. Accordingly, a Power Sale Agreement (PSA) has been signed with SECI on 13.01.2021.
- 8.6. As per RFS and guidelines, after having entered into PSA there is requirement of adoption of tariff by the Commission under Section 63 of the Electricity Act, therefore, the present petition is being filed for adoption of tariff as mentioned in PSA given as under:

Solar Power Developers	Project Capacity (MW)	Rate(INR/kWh)
Aliomaih Energy and Water Company	200	2.00
Green Infra Wind Energy Ltd.	400	2.00
NTPC Ltd.	470	2.01

- 8.7. Tariff discovered is much below the earlier bidding and even if the trading margin of 0.07 /kWh is included the discovered tariff is lower than earlier bidding.

- 8.8. Petitioner has also filed an additional affidavit stating that SECI after completion of bid process has certified that the Bidders L1 to L3 have been found to be qualified as per the requirements of RFS. In this regard a certificate has been obtained from SECI by Petitioner.
- 8.9. The tariff in the present matter has been discovered through a transparent bidding process as per guidelines of Govt. of India, therefore, tariff may be adopted by the Commission as claimed in the PSA.
9. Respondent SECI during the hearing submitted that they are supporting the adoption of tariff and prayer made in the petition. However, SECI has not filed any written reply in the matter.
10. Respondent Generators in their replies and during the hearing mainly submitted as under:
 - 10.1. Following Change in Law, Force Majeure events and the events leading to delay in project activities which have occurred after the bid submission date i.e., 28.10.2020 will have a direct impact on the tariff and the timelines for construction of the Project as agreed between the SECI and the Rajasthan Discoms under the PPA and PSA:
 - (a) Order dated 19.04.2021 passed by Hon'ble Supreme Court in Writ Petition (Civil) No. 838 of 2019 titled M.K. Ranjitsinh & Ors. v. Union of India & Ors in terms of which all existing and future overhead low and high voltage power lines in the priority and potential habitats of Great-Indian Bustard shall be undergrounded.
 - (b) Levy of Basic Customs Duty on import of Solar Cells, Modules/Panels pursuant to Ministry of New and Renewable Energy Office Memorandum dated 09.03.2021.

- (c) Increase in rates of Basic Customs Duty on import of Solar Inverters pursuant to Ministry of Finance Notification dated 01.02.2021 whereby custom duty exemption notification dated 6 January 2011 has been rescinded.
 - (d) Imposition of lockdown on account of Covid-19 by Home Department, Government of Rajasthan.
 - (e) Strike by Patwaris in Rajasthan from 15.01.2021 till Last week of April 2021.
- 10.2. Article 12.1.2 provides that if a Change in Law event occurs up to inter-alia SCOD of the Projects, successful Generators will be entitled for compensation subject to the condition that such 'Change in Law' is recognized by the Appropriate Commission.
- 10.3. Further, Article 12.1.3 specifically provides that in case of change in rates of safeguard duty, GST and basic customs duty after 28.10.2020 and resulting in change in Project Cost, then such change will be treated as 'Change in Law' and the quantum of compensation payment on account of change in rates of such duties and shall be provided to the affected party by the other party as per Article 12.2.3, subject to the provision that Appropriate Commission recognizes such provisions at the time of adoption of tariff.
- 10.4. Projects are within the potential habitat of the Great Indian Bustard. As a result of the SC Order dated 19.04.2021, it is impossible to commence planning and construction of the Projects till the necessary modalities and compliances stipulated by the SC Order are completed. This will inevitably delay the Project schedule as originally contemplated under the PPA.
- 10.5. At the time of bidding and as of the effective date of the PPA there was no mandatory condition of undergrounding of transmission lines. Thus,

presently, there is complete uncertainty regarding the Project with respect to feasibility of undergrounding. These requirements and uncertainty cannot be clearly ascertained with a firm timeline as regards resolution. Thus, achieving financial closure will not be possible within the timelines prescribed under the PPA and Generators will be unable to proceed with any Project works till these issues are decided and suitably addressed.

- 10.6. The actual impact on the project timelines can be assessed only after the approval process and notification of conduct guidelines by the Committee. It is submitted that compliance of the SC order will prevent performance of obligations, it qualifies as a Force Majeure Event under the PPA.
- 10.7. Imposition of lockdown by, Government of Rajasthan qualifies as Force Majeure under Article 11.2.2(d) of the PPA which provides that any action of a Government authority having material adverse effect including but not limited to a Change in Law may be considered a Force Majeure Event.
- 10.8. Strike by Patwaris from 15.01.2021 till last week of April 2021 qualifies as Force Majeure event as the same prevented Generators from complying with its obligations under the PPA and were outside the reasonable control of them.
- 10.9. Claims raised in the present replies are maintainable since tariff adoption and approval of the PPA by the Commission under Section 86 of the Electricity Act, 2003 is under the exercise of general regulatory powers of the Commission as held by the Hon'ble Supreme Court in Energy Watchdog vs. CERC & Ors. reported as (20 1 7) 14 SCC 80.
- 10.10. Thus, in view of the foregoing, it is prayed to hold as follows-

- (a) MNRE's Office Memorandum dated 25.02.2021 as well OM dated 09.03.2021 which imposes imposed Basic Customs Duty on Solar PV Cells & Modules/Panels is a Change in Law event in terms of Article 12 of the PPA.
- (c) Increase in rates of Basic Customs Duty on import of Solar Inverters pursuant to Ministry of Finance Notification dated 01.02.2021 whereby custom duty exemption notification dated 06.01.2011 has been rescinded is a Change in Law event under the PPA;
- (d) Order dated 19.04.2021 passed by Hon'ble Supreme Court in W.P(C) No. 838 of 2019 titled M.K. Ranjitsinh & Ors. v. Union of India & Ors qualifies as a Change in Law event and Force Majeure event under the PPA;
- (e) Patwari Strike constitutes a Force Majeure event under the PPA;
- (f) Imposition of lockdown/curfew in the state of Rajasthan due to Covid-19 qualifies as Force Majeure event under the PPA and Generators are entitled to compensation including extension of timelines for the period of pendency of the present petition.

Commission's view

11. Commission has considered the submissions of the Petitioner and Respondents in light of Section 63 of the Act.
12. Petitioner submitted that for procurement of 1070 MW solar power, it had conducted competitive bidding through SECI.
13. Petitioner submitted that SECI in accordance with guidelines issued by the Ministry of Power (MoP) for tariff based competitive bidding discovered tariff as Rs. 2.00/kWh for 600 MW and Rs. 2.01/kwh for 470 MW. Accordingly, a Power Sale Agreement has also been signed between SECI and Petitioner.

14. Petitioner prayed to adopt the tariff as mentioned in the PSA which was discovered through a transparent bidding process as per guidelines of Govt. of India.
15. Respondent Generators prayed that at the time of adoption of tariff itself Commission should declare some events, as mentioned in their replies as Change in Law/Force Majeure events in terms of the PPA. They also prayed for extension of timelines for the period of pendency of the present petition.
16. We observe that petition has been filed under Section 63 of the Act for adoption of tariff. Section 63 of the Act reads as under:

“Section 63 Determination of tariff by bidding process: Notwithstanding anything contained in section 62, the Appropriate Commission shall adopt the tariff if such tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the Central Government.”
17. In contrast to tariff determination under Section 62 of the Act, role of the Commission in case of tariff discovery through the competitive bidding process undertaken under Section 63 of the Act is essentially confined to adoption of tariff, on being satisfied that transparent process of bidding in accordance with the guidelines issued by Gol have taken place.
18. Petitioner vide its affidavit has submitted that the process of competitive bidding is in conformity with the Guidelines issued by Ministry of Power, GOI. Further, no party contended these facts and opposed the adoption of tariff.
19. In the light of the above, it emerges that selection of the successful bidders and the tariff of the Project has been carried out by SECI through a transparent process of competitive bidding in accordance with Guidelines issued by Ministry of Power, GOI under Section 63 of the Act.
20. Accordingly, in terms of Section 63 of the Act, the Commission adopts the tariff for the projects as agreed by the successful bidders for 1070 MW solar

power as mentioned in the PSA dated 13.01.2021 between SECI and RUVNL.

21. Commission at this stage, deems it appropriate to not look into the merits of the issues raised by the Respondent Generators regarding declaration of Change in Law and Force Majeure events. However, parties are at liberty to file fresh petitions to raise such issues at appropriate time.
22. The Petition is disposed of, accordingly.

(Prithvi Raj)
Member

(S. C. Dinkar)
Member

(Dr. B.N. Sharma)
Chairman