

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 292 of 2019

Case of Tata Power Company Limited seeking approval for adoption of Tariff discovered for Long Term Procurement Solar Power from Grid Connected Solar PV Projects of 150 MW capacity through Competitive Bidding Process.

Coram

Anand B. Kulkarni, Chairperson
I.M. Bohari, Member
Mukesh Khullar, Member

Tata Power Company Limited- Distribution Petitioner

Tata Power Renewable Energy Ltd. Impleaded Party

Appearance

For the Petitioner : Smt. Swati Mehandale

For Impleaded Party : Shri. Rakesh Singh

ORDER

Date: 4 December, 2019

1. Tata Power Company Limited- Distribution (**TPC-D**), has filed this Case dated 31 October, 2019 seeking approval of tariff for adoption under Section 63 of the Electricity Act, 2003 (**EA**), for long term procurement of Solar power from Grid Connected Solar PV Projects of 150 MW capacity through Competitive Bidding Process for meeting its Solar Renewable Purchase Obligations (**RPO**).

2. **TPC-D's main prayers are as follows:**

a) *To admit the Petition as per the provisions under Section 63 of the Electricity Act, 2003;*

- b) *To accord approval for adoption of tariff as discovered in the competitive bidding process as mentioned in table under para **Error! Reference source not found.**;*
- c) *To accord approval for purchase of power for a period of 25 years and subsequent signing of PPA, with successful bidder for 150 MW;*
- d) *To accord approval to make this power eligible for meeting the Solar RPO requirement of the Petitioner.*

3. TPC-D in its Case has stated as follows:

- 3.1 The Commission vide Order dated 2 August 2019 in Case No. 136 of 2019 has accorded approval to the TPC-D for initiating the competitive bidding process with some deviations in the MoP’s Bidding Guidelines for procurement of 150 MW Solar power to meet its RPO.
- 3.2 A tender was floated on MSTC’s e-bidding ‘DEEP Portal’ on 21 August 2019. The initial last date for bid submission was 16 September 2019 which was further extended up to 25 September 2019.
- 3.3 Four bidders viz. Renew Power, Tata Power Renewable Energy Limited (**TPREL**), Azure Power and Avaada Energy Private Limited (**AEPL**) raised their queries in writing. The Pre-bid conference was held on 4 September 2019.
- 3.4 TPC-D modified few conditions in the bid document approved by the Commission vide its Order in Case No. 136 of 2019 to ensure better participation in the bidding process based on the representations received from the bidders and in line with standard bidding documents. The modified conditions are provided as under:

No.	Original Clause	Modification	Justification
1	The Bidder shall identify 100% land required for the project at the time of submission of bid in Format 6.1. It is clarified that the Bidder shall not be allowed to change the location of the project after the submission of the Bid.	“The Bidder shall identify 100% land required at the time of bid submission in Format 6.1. However, the Bidder shall be allowed to change the location of the project once at the time of achievement of Financial	The bidders explained the difficulties in land acquisition process and indicated that the proposed modification will not impact the commissioning schedule as per the bid documents. Similar clauses have also been referred in SECI (Dondaicha Solar Park 250 MW), NTPC (1200 MW) and MSEDCL

No.	Original Clause	Modification	Justification
		Closure i.e. Within 9 (nine) months from the date of execution of the Power Purchase Agreement for projects being set up in Solar park, and within 12 (twelve) months for projects being set up outside Solar park.	(500 MW) tender documents.
2.	<p>1.1.1 The Project shall be commissioned by the Scheduled Commercial Operation Date. In case of failure to achieve this milestone, Tata Power - D shall forfeit the Performance Bank Guarantee (PBG) in the following manner.</p> <p>i) Delay up to six (6) months from SCOD – The total PBG amount shall be encashed on per day basis and proportionate to the balance capacity not commissioned. For example, in case of a Project of 150 MW capacity, if commissioning of 100 MW capacity is delayed by 25 days from the scheduled date, then the penalty shall be: PBG amount for project months</p>	<p>1.1.2 The Project shall be commissioned by the Scheduled Commercial Operation Date. In case of failure to achieve this milestone, Tata Power - D shall forfeit the Performance Bank Guarantee (PBG) in the following manner:</p> <p>i) Delay up to six (6) months from SCOD – The total PBG amount shall be encashed on per day basis and proportionate to the balance capacity not commissioned. For example, in case of a Project of 150 MW capacity, if commissioning of 100 MW capacity is delayed by 25 days from the scheduled date, then the penalty shall be: PBG amount for project capacity X (100/150) X (25/180).</p>	The penalty clause for delay in SCOD was modified, as there was a typographic error in the document.

No.	Original Clause	Modification	Justification
	<p>from SCOD – In addition to the encashment of PBG above, the tariff discovered after e-Reverse Auction shall be reduced at the rate of INR 0.50/kWh per day of delay for the delay in such remaining capacity which is not commissioned for the entire term of the PPA. The maximum time period allowed for commissioning of the full Project Capacity with encashment of Performance Bank Guarantee and reduction in the fixed tariff shall be limited to 21 months (for projects being set up outside solar parks) / 24 months (for other projects) from the date of execution of PPA or till the Tariff becomes zero, whichever is earlier.</p>	<p>In case the commissioning of the project is delayed beyond Six (6) months from SCOD – In addition to the encashment of PBG above, the tariff discovered after e-Reverse Auction shall be reduced at the rate of 0.50 paise/kWh per day of delay for the entire term of the PPA for the delay in such remaining capacity which is not commissioned. The maximum time period allowed for commissioning of the full Project Capacity with encashment of Performance Bank Guarantee and reduction in the fixed tariff shall be limited to 24 months (for projects being set up in solar parks) / 27 months (for projects being set up outside solar park) from the date of execution of PPA or till the Tariff becomes zero, whichever is earlier.</p>	
3.	1.1.3 Ceiling Tariff: INR 2.75 per unit	1.1.4 Ceiling Tariff: Rs. 2.85 per unit	The Commission had allowed the Petitioner to fix the ceiling tariff. Initially the ceiling tariff was fixed at Rs. 2.75 per unit. The

No.	Original Clause	Modification	Justification
			bidders requested to review the ceiling tariff (in the range of Rs. 2.90 per unit to Rs.3 per unit) during the pre-bid process citing concerns on the viability of the project at indicated tariff. Subsequently the Petitioner decided to raise the prevailing tariff to Rs. 2.85 per unit basis the prevailing market conditions & bidders concern.
4.	1.1.5 The bidder will declare the CUF of the project at the time of submission of response to RfS, which shall be allowed to be modified at the time of signing of PPA. Thereafter, the CUF for the project shall remain unchanged for entire term of the PPA. The declared CUF shall in no case be less than 19% over a year. They shall maintain generation so as to achieve CUF in the range of $\pm 10\%$ of their declared value during PPA duration. The lower limit will, however, be relaxed by Tata Power - D to the extent of grid non-availability for evacuation which is beyond the control of the developer.	The bidder will declare the CUF of the project at the time of submission of response to RfS, which shall be allowed to revise the same once within first year of COD. Thereafter, the CUF for the project shall remain unchanged for entire term of the PPA. The declared CUF shall in no case be less than 19% over a year. They shall maintain generation so as to achieve CUF in the range of $\pm 10\%$ of their declared value during PPA duration. The lower limit will, however, be relaxed by Tata Power - D to the extent of grid non-availability for evacuation which is beyond the control of the developer. 1.1.6	Bidders requested for flexibility in declaring the final CUF number during Pre-Bid meeting to attain maximum benefits through the evolving technologies. Similar clauses have also been referred in SECI (Dondaicha Solar Park 250 MW) (1200 MW ISTS), Torrent Power Limited (300 MW) and MSEDCL (500 MW) tender documents.
5.	1.1.7 "Government	Government	Ministry of Power had issued

No.	Original Clause	Modification	Justification
	Instrumentality" shall mean the GoI, the GoM and their ministries, inspectorate, departments, agencies, bodies, authorities, legislative bodies	Instrumentality "shall mean the Government of India, Governments of state(s).....[Insert the name(s) of the state(s), in India, where the power Project, Tata Power - D and Solar Power Producer are located] and any ministry, department, board, authority, agency, corporation, commission under the direct or indirect control of Government of India or the above state Government or both, any political sub-division of any of them; including any court or Appropriate Commission(s) or tribunal or judicial or quasi-judicial body in India;"	<p>"Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Power Projects" on 3rd August 2017 which had the following provision on "Change in Law"</p> <p><i>5.7.1. In the event a Change in Law results in any adverse financial loss/ gain to the Solar Power Generator then, in order to ensure that the Solar Power Generator is placed in the same financial position as it would have been had it not been for the occurrence of the Change in Law, the Solar Power Generator/ Procurer shall be entitled to compensation by the other party, as the case may be, subject to the condition that the quantum and mechanism of compensation payment shall be determined and shall be effective from such date as may be decided by the Appropriate Commission.</i></p> <p><i>5.7.2. In these Guidelines, the term Change in Law shall refer to the occurrence of any of the following events after the last date of the bid submission, including (i) the enactment of any new law; or (ii) an amendment, modification or repeal of an existing law; or (iii) the requirement to obtain a new consent, permit or license; or (iv) any modification to the prevailing conditions prescribed for</i></p>

No.	Original Clause	Modification	Justification
			<p><i>obtaining an consent, permit or license, not owing to any default of the Solar Power Generator; or (v) any change in the rates of any Taxes which have a direct effect on the Project. However, Change in Law shall not include any change in taxes on corporate income or any change in any withholding tax on income or dividends.</i></p> <p>Accordingly, SECI in its tenders have defined Government Instrumentality as below:</p> <p><i>"Government Instrumentality" shall mean the Government of India, <u>Governments of state(s)..... [Insert the name(s) of the state(s) in India, where the Power Project, SECI and SPD are located]</u> and any ministry, department, board, authority, agency, corporation, commission under the direct or indirect control of Government of India or the above state Government(s) or both, any political sub-division of any of them; including any court or Appropriate Commission(s) or tribunal or judicial or quasi-judicial body in India."</i></p> <p>Accordingly, the definition should have included reference to states wherein the Power Project and the Procurer is located.</p>

3.5 The Bid Clarification and Corrigendum regarding modified clauses of bidding document were published on TPC-D's website and DEEP portal and compliance was followed and fulfilled in a transparent manner.

3.6 Details of the bids received on the bid submission date i.e. 25 September, 2019, for total bidding capacity of 150 MW are as follows:

Sr.No.	Name of Bidder	Cumulative Bidding Capacity (MW)	Location of the Project
1	Avaada Energy Private Limited (AEPL)	150	Bikaner, Rajasthan
2	Tata Power Renewable Energy Limited (TPREL)	150	Jaisalmer, Rajasthan

3.7 As per MoP guidelines and the approved tender documents, there is a provision for minimum number of two qualified Bidders. As the tender received the minimum number of bidders, TPC- D proceeded with the bidding process. The technical bid was opened on 26 September, 2019. Both the Bidders qualified technically and were eligible for the financial bid opening and e-reverse auction.

3.8 The financial bids for the two technically qualified bidders were opened on 10 October, 2019 at 12:00 hours followed by E-Reverse Auction at 14:00 hours on the same date. The result of reverse auction is as under:

Sr. No.	Bidder Name	Initial Bid		E-Reverse Auction	
		Capacity (MW)	Rate per unit	Capacity (MW)	Rate per unit
1.	Avaada Energy Private Limited	150	2.85	150	2.84
2.	Tata Power Renewable Energy Limited	150	2.85	150	2.83

3.9 The Commission is requested to adopt the following tariff discovered through competitive bidding process under Section 63 of the EA and to allow for signing of Power Purchase Agreement (PPA) for a period of 25 years to fulfill its Solar RPO.

Bidder Name	Capacity (MW)	Rate (Rs/unit)
Tata Power Renewable Energy Limited	150	2.83

3.10 As per the MoP guideline and bidding process, the Letter of Award (LOA) is to be issued to the winning bidder. Accordingly, LOA is issued to the TPREL being L1 bidder with a condition that PPA will be signed subject to the approval of the Commission.

4. At the hearing held on 15 November, 2019 representative of TPC-D reiterated its submissions as made in the Petition and representative of TPREL supported the submission made by TPC-D.

Commission's Analysis and Rulings:

5. TPC-D under the instant Case has sought approval for adoption of tariff for 150 MW Solar power on long term basis from Grid Connected Solar PV Projects. The Tariff was discovered through Tariff based competitive bidding process and the same is prayed to be adopted. TPC-D has also requested that this power procurement be made eligible for meeting its Solar RPO requirement.
6. TPC-D through its Case No. 136 of 2019 had approached the Commission for certain deviations for procurement of 150 MW Solar Power. The Commission by its Order dated 2 August, 2019 accorded approval for initiating the competitive bidding process with deviations. However, certain deviations were not allowed by the Commission in standard bidding document. The commission ruled as under:

“ 2. The Commission accords approval for procurement of 150 MW Solar power from grid connected Solar PV projects for a PPA period of 25 years through Competitive Bidding process.

3. The Commission has no objection to the RfS and PPA documents prepared by the Tata Power Co Ltd. (Distribution Business) subject to deviation approved in para 15, 18, 23 and 24 above.

4. The Tata Power Co Ltd. (Distribution Business) shall fix the ceiling rate as per its own due diligence and the prevailing market conditions.

5. The Solar power procured from these projects shall be eligible towards fulfilment of the Tata Power Co Ltd. (Distribution Business)'s Solar RPO for the respective periods.

7. TPC-D in the said Case, in addition to deviations had also sought approval to certain changes which according to TPC-D might not qualify deviations as such, from bidding guidelines. The Commission by its Order dated 2 August, 2019 has dealt with it and provided the dispensation as under:

“25. Other Changes: In addition to deviation sought as above, TPC-D has also highlighted various Clauses like, RfS document fees, processing fees, Net Worth, Liquidity etc. and stated that although they may not qualify as deviation from Bidding Guidelines, it seeks

Commission's approval for the same. In this regard, the Commission is of the opinion that if these are not deviation from the Bidding Guidelines, it would not be approving or rejecting the same. If guidelines require bidders to undertake due diligence in specifying these details without seeking approval for deviation, Distribution Licensee shall not approach this Commission for approval. At the time of tariff adoption process, Distribution Licensee to assist the Commission in satisfying that provision of competitive bidding guidelines has been complied with.

8. The Commission notes that TPC-D in the instant Case has stated that based on representation received from the prospective bidders and for better participation in the bidding process, it has modified some clauses/conditions. TPC-D has also mentioned that such types of modifications have already been carried out by SECI and MSEDCL in the bidding document based on which they conducted their recent bidding process. The clauses/conditions which were modified by TPC-D in its bidding document pertain to the following issues:
- i) Identification of land and change in location of the Project within 9/12 months of signing of the PPA.
 - ii) The penalty clause for delay in SCoD – forfeiting proportionate Performance Bank Guarantee
 - iii) Revision in ceiling Tariff based on request received during pre-bid meeting and market conditions
 - iv) Revising the declared CUF within first year of CoD
 - v) Including name of the State where project is located in the definition of Government instrumentality.

The provision in the bidding document as approved by the Commission, modification incorporated by TPC-D and justification given by TPC-D for such modification is cited under Para 3.4 of this Order. The Commission notes that TPC-D in the instant Case has not specially sought approval for such changes/modifications. The Commission observes that such modifications are not radically deviating from bidding guidelines and are consistent with the clauses incorporated by SECI and MSEDCL in their bidding document. Further, with regard to the States where Change in Law would be applicable, the Commission is of the opinion that the State in which Project is located in the definition of the Government Instrumentality, the Commission finds such modification provides clarity on the aspect of Change in Law resulted on account of project hosting State Government's actions which may have positive or negative impact on the project. Also, it clarifies that action by Other State Governments excluding GoM and project State would not be covered under Change in Law provision. Thus, the Change in Law (positive or negative) effect over and above the Change in Law effected by GoI, would be available only for the Change in Law effected in the State where the injection point is located and the State of Maharashtra (drawl point).The

Commission is of the view that by considering such modifications in the bidding document, the basic premise of bidding guideline remains unaltered. Hence, the Commission has no objection to incorporate such changes/modifications in the bidding document prepared by TPC-D.

9. The Commission notes that TPC-D has conducted transparent process of competitive bidding for procurement of Solar power and discovered Tariff of Rs. 2.83 per unit which is slightly higher than the rates earlier approved by the Commission for MSEDCL (Rs. 2.72/kWh). However, such earlier adopted rates were prior to imposition of Safeguard Duty and hence were eligible for Change in Law compensation under the PPA. If such impact is incorporated in the Change in Law on earlier adopted Solar power rate, then present discovered tariff of Rs. 2.83 per unit looks comparable. Further, in the recent bids called by SECI in May, 2019 for 250 MW Solar Park (Phase-1) at Dondaicha Dist. Dhule, Maharashtra, it discovered Tariff between Rs.2.87 to Rs.2.91 per unit (out of 250 MW Tata Power has quoted Rs. 2.88 per unit for 100 MW). In the present Case, after considering market dynamics in Solar Industries particularly due to exchange rate variation, the rate discovered by TPC-D seems to be comparable with market trends.
10. In view of the foregoing, and in line with the mandate under Section 63 of the EA, the Commission thinks it fit to adopt and approves Tariff of Rs 2.83 per unit for procurement of 150 MW of Solar power on long term basis (for the period of 25 years) from grid connected Solar projects for meeting its Solar renewable purchase obligations.
11. Hence, the following Order.

ORDER

1. **The Case No. 292 of 2019 is allowed.**
2. **The Commission accords approval for procurement of 150 MW on long term basis from grid connected Solar power project as under and allows Tata Power Company Ltd. – (Distribution) to enter into Energy Purchase Agreement with the successful bidder for a period of Twenty-Five years.**

Sr. No.	Name of Bidder	Capacity (in MW)	Rate (Rs per unit)	EPA Tenure (years)
1	Tata Power Renewable Energy Limited	150	2.83	25 years.

3. The Solar power procured from the above supplier shall be considered for meeting the Solar renewable purchase obligation requirement of Tata Power Company Ltd. (Distribution)

Sd/-
(Mukesh Khullar)
Member

Sd/-
(I.M. Bohari)
Member

Sd/-
(Anand Kulkarni)
Chairperson


(Abhijit Deshpande)
Secretary

