

**BEFORE THE HARYANA ELECTRICITY REGULATORY COMMISSION
BAYS No. 33-36, SECTOR-4, PANCHKULA- 134112, HARYANA**

Case No. HERC/PRO – 45 of 2020

DATE OF HEARING : 14.09.2020
DATE OF ORDER : 14.09.2020

IN THE MATTER OF:

Petition under Section 86(1) (b) of the Electricity Act, 2003 for approval of source and draft power purchase agreement (PPA) to be executed with M/s Amplus Sun Solutions Private Limited for purchase of 50 MW solar power from grid interactive solar PV based power project located at Village, Khanak, Tehsil, Tosham, District Bhiwani at a tariff determined by the Commission under Section 62 of the Electricity Act, 2003, in terms of HERC Regulations in vogue.

Petitioner

Haryana Power Purchase Centre, Panchkula (HPPC)

Respondent

M/s Amplus Sun Solutions Private Limited

Present On behalf of the Petitioner, through Video Conferencing

Shri Vikas Kadian, Xen, HPPC

Present On behalf of the Respondent, through Video Conferencing

Sh. Vishrov Mukherjee, Advocate
Sh. Rahul Kinra, Advocate

Quorum

**Shri D.S. Dhesi,
Shri Pravindra Singh Chauhan,
Shri Naresh Sardana,**

**Chairman
Member
Member**

ORDER

Brief Background of the case

1. HPPC has filed the petition seeking approval of source & draft PPA to be executed with M/s. Amplus Sun Solutions Private Limited for purchase of 50 MW Solar Power for 25 years, from

grid interactive solar PV based power project located at Village, Khanak, Tehsil, Tosham, District Bhiwani, at a tariff to be determined by the Commission under Section 62 of The Electricity Act, 2003, in terms of HERC Regulations in vogue.

2. HPPC has submitted as under:-

- a) That, the Petitioner, Haryana Power Purchase Centre (hereinafter referred to as 'HPPC') is a joint forum created and owned by the State Distribution Licensees, namely, Uttar Haryana Bijli Vitran Nigam Limited and Dakshin Haryana Bijli Vitran Nigam Limited (hereinafter collectively referred to as 'Haryana Distribution Utilities' or 'Discoms'), with a mandate to arrange/procure economical, reliable and cost effective power including renewable and non-conventional sources for the Haryana Distribution Utilities in order to meet the universal service obligations of providing electricity to their consumers.
- b) That, the Respondent envisaged to set up a 50 MW grid interacted solar power project at Village, Khanak, Tehsil, Tosham, District Bhiwani (herein after also refer to as "Project"). This Project has been envisaged as an Open Access/Captive Power Project under the Haryana State Solar Policy, 2016 for sale of power to industrial and commercial consumers in the State of Haryana as amended from time to time. The Project was registered with Haryana Renewable Energy Development Agency (hereinafter also referred to as "HAREDA") vide letter dated 15.07.2019 under Haryana State Solar Policy, 2016 (herein after may also be referred to as "Solar Policy") for Captive Consumption. The Project was granted final connectivity for sale of power under Open Access on 28.08.2019. The Respondent, on the basis of final connectivity approval, started construction of the Project. The construction of Project is in advance stage and Project is near completion. Considering that the Project is in advance stage of Completion and is located within Haryana, the parties involved in the matter were exploring ways to resolve the dispute such that the Project is not stranded and invaluable renewable energy is not lost. The Commission in its order dated 24th August 2020 in PROs bearing no. 23, 25 and 26 of 2020 has remarked as under:-

"Commission feels that it would be a positive development if this long pending issue could be resolved amicably through mutual consultations because the ultimate aim of all stakeholders is to achieve the national target of 100 GW Solar Power by 2022."

- c) That, in the meanwhile, the Petitioner has offered 50 MW solar power to HPPC/Haryana Discoms, for 25 year, from 50 MW grid interactive solar power project being set up at Village, Khanak, Tehsil, Tosham, District Bhiwani (herein after also refer to as "Project") at a tariff to be determined by the Commission under Section 62 of The Electricity Act, 2003 (hereinafter may also be referred to as 'Act'), in terms of HERC Regulations in vogue.

- d) That, the Haryana Electricity Regulatory Commission (Terms and Conditions for determination of tariff for Renewable Energy Sources, Renewable Purchase Obligation and Renewable Energy Certificate) Regulations has set the solar and non-solar RPO targets as under: -

FY	RPO (%) as per HERC RE Regulations, 2017	
	Non Solar	Solar
2020-21	3.00	7.00
2021-22	3.00	8.00

- e) That, the Commission in its ARR order dated 01.06.2020 has considered the Submissions of DISCOMs and inter alia decided to waive off the current backlog of RPOs as a onetime measure. The Commission, however, directed the Discoms to make every possible endeavour to meet the RPO targets as given to them by the Commission in timely manner in true letter and spirit. The Commission has also directed Discoms to perform cost benefit analysis including trade-off between purchase of REC and RE power before rushing with proposal to procure RE power.
- f) That Government of India has set a target of installing 175 GW of renewable energy capacity by the year 2022, which includes 100 GW from solar, 60 GW from wind, 10 GW from bio-power and 5 GW from small hydro-power. From a pure macro-economic perspective, reaching 175 GW RE by 2022 could dramatically reduce the coal import bill in 2022. Then there are environmental benefits (less pollution), social benefits (local employment opportunities) and investment inflows, which may need to be monetized to assess the complete range of benefits. Further, Ministry of Power (MoP), vide notification dated 14.06.2018, has pegged the RPO targets for both solar and non solar RE power at 10.50% each by FY 2021-22
- g) That addressing a joint sitting of both Houses of Parliament during January, 2020, Hon'ble President of India had announced as under:

"Keeping environment conservation in mind, my Government has enhanced the target for producing renewable energy to 450 gigawatts (GW). Under the Pradhan Mantri-KUSUM Yojana, it has been targeted to provide more than 17 lakh solar pumps to farmers across the country."

Earlier, in September, 2019 at the United Nations Climate Action Summit, Hon'ble Prime Minister of India had announced increasing the renewable energy target to 450 GW by 2030 from 175 GW by 2022.

From the perusal of above, it is apparent that the Government vision is to achieve 450 GW of renewable portfolio by 2030.

- h) That, considering the above, the Renewable Purchase Obligations are expected to increase in order to enable achievement of above goal by 2030.
- i) That MoP in its Order dated 17.4.2020 has proposed amendment to Electricity Act, 2003, wherein heavy penalties have been imposed as brought out here under:-

“(2) Notwithstanding anything contained in sub-section (1), in case any complaint is filed before the Appropriate Commission by any person or if that Commission is satisfied that any person, with effect from such date as may be notified by the Central Government, has not purchased power from renewable or hydro sources of energy as specified by it using its powers under the Act, the Appropriate Commission shall after giving such person an opportunity of being heard in the matter, by order in writing, direct that, without prejudice to any other penalty to which he may be liable under this Act, such person shall pay, by way of penalty, a sum calculated at the rate of fifty paise per kilowatt-hour for the shortfall in purchase in the first year of default, one rupees per kilowatt-hour for the shortfall in purchase in the second successive year of default and at the rate of two rupees per unit for the shortfall in purchase continuing after the second year.”

Requirement of solar power for fulfilment of RPOs

- j) That the existing solar power capacity available with Haryana DISCOMs through long term agreements is 125.8 MW and 238 MW through solar rooftop. Whereas, 267.8 MW is currently available from non-solar RE sources. Besides this, HPPC has made the following tie-ups for procurement of RE Power in order to fulfil the mandated RPOs:-

NON SOLAR

Sr. No.	Name of the firm and/or Scheme	Contracted Capacity (MW)	Date of Signing of PPA	Expected Commissioning of Project
Wind Power Projects				
1.	SECI, ISTS Wind T-II 1000 MW Scheme	150	13.12.2017	March, 2021
2.	SECI, ISTS Wind T-III 2000 MW Scheme	350	17.05.2018	250 MW in Sept, 2020 50 MW in Oct, 2020 50 MW on 31.03.2021
3.	SECI, ISTS Wind T-III 2000 MW Scheme	590	21.01.2019	115 MW in April 2021 175 MW in Dec, 2020 300 MW on 28.02.2020
4.	SECI, ISTS Hybrid (Wind+Solar) T-I 1200 MW Scheme	110	11.07.2019	07.05.2021
Waste to energy Projects				
4	JBM Environment Management Pvt. Ltd	6.77	21.09.2018	January, 2021

5	Ecogreen Energy Gurgaon Faridabad Pvt. Ltd	25	Yet to be signed	2021-22
Biomass Based Projects				
6.	Small Biomass projects (10 Nos)	65	2018 & 2019	2020-21 & 2021-22
	TOTAL	1296.77		

SOLAR

Sr. No.	Name of the firm	Contracted Capacity (MW)	Date of Signing of PPA	Expected Commissioning of Project
1.	SECI, ISTS Solar T-I 2000 MW Scheme	100	27.11.2018	31.01.2021
2.	SECI, ISTS Solar T-II 3000 MW Scheme	400	28.05.2019	07.01.2022
3.	SECI (ISTS Hybrid (Wind+Solar) T-I 1200 MW Scheme)	330	11.07.2019	07.05.2021
4.	SECI (ISTS Solar T-IV 1200 MW Scheme)	250	19.03.2020	01.01.2022
5.	NIT-77 (241 MW on long term basis)	241	06.07.2020 (240 MW) 19.06.2020 (1 MW)	2021-22
6.	HPGCL (Solar)	93	Under process	2021-22
7.	PM KUSUM	14.57	01.07.2020 (2 MW)	2020-21
	Total	1428.57		

In addition to above, 100 MW per year is expected to be added every year through solar rooftop.

- k) That with the above arrangements/tie-ups, the total installed capacity to the tune of 1993 MW and 1565 MW of solar and non-solar RE power is expected to be available by the end FY 2021-22 to meet RPO targets besides energy requirement. Solar and non-solar RPOs to the level of 9.78% and 12.67% respectively are expected to be achieved through current sources during the FY 2022-23. Considering the anticipating upward revision of solar RPO targets beyond 10.5%, additional solar power shall be required for fulfilment of anticipated solar RPOs of Discoms for FY 2022-23 and thereafter.
- l) That, the extant Project, is already constructed and is ready for commissioning and therefore, can immediately supply power which will count towards meeting RPO for FY 2020-21 onwards.

Power to determine Project Specific Tariff Under Section 62 of The Electricity Act, 2003.

- m) That the Commission under Regulation 6 (1) (h) of the HERC (Terms and Conditions for determination of Tariff from Renewable Energy Sources, Renewable Purchase Obligation and Renewable Energy Certificate) Regulations, 2017 (hereinafter also referred to as "RE

Regulations, 2017”) is empowered to determine the project specific tariff from the Solar Power Project if the developers opt for the project specific tariff.

- n) That, the Chapter-8 RE Regulations, 2017 i.e. “Technology specific parameters for Solar PV Power Project” inter alia provides that the Commission shall not determine generic tariff under these Regulations and only project specific tariff, if required, shall be determined.
- o) The Commission in the past has exercised powers under the Section 62 of the Electricity Act, 2003 to approve the tariff as per Section 62 read with Section 86 (1) (b) of the Electricity Act, 2003, reliance in this regard is placed on Order dated 10.04.2018 passed in Case No. HERC/PRO-15 of 2016, wherein this Commission held that:-

“d) The petitioner has submitted that the Tariff Policy cannot override the provisions of the Electricity Act, 2003. It has been submitted that the Appellate Tribunal for Electricity in Appeal Nos. 106 and 107 of 2009- BSES Rajdhani Power Ltd. Vs. DERC & others, vide judgement dated 31.03.2010, has considered the matter and has held that notwithstanding the National Tariff Policy requiring procurement of electricity only through Competitive Bidding Process, the State Commission will have the jurisdiction under Section 62 of the Electricity Act, 2003. The relevant extracts from the decision of the Hon’ble Appellate Tribunal are as under:-

....
....

In view of the above, the Commission is fully empowered and authorized to entertain the petition for approval of the PPA including the price as per Section 62 read with Section 86 (1) (b) of the Electricity Act, 2003.”

- p) That, this Commission in its order dated 19.09.2016 passed in Case No. HERC/PRO-9 of 2016 has categorically observed that:

*“6. Before parting with the **ibid** Order, the Commission observes that the **Hon’ble APTEL in the matter of Appeal Nos 106 and 107 of 2009, has held that the State Commissions have discretionary power either to choose Section 62(1) to approve the PPA or to direct the Discoms to resort to competitive bidding in accordance with the National Tariff Policy read with Section 63 of the Electricity Act, 2003. It has been further held that it is purely a decision of the State Commission to decide whether to approve a negotiated tariff under Section 62 of the Act or to direct the Discoms to adopt competitive tariff discovery through competitive bidding.**”*

That, scheme of The Electricity Act, 2003 inter alia provides for project specific tariff determination under Section 61 and 62 of the Act or adoption of tariff discovered through competitive bidding under Section 63 of the Act. Section 61 & 62 of the Act provide for tariff

Regulation and determination of tariff of generation, transmission, wheeling and retail sale of electricity by the Appropriate Commission. Section 63 of the Act states that “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.”

As such, it is open to the Commission to determine project specific tariff under Section 62 read with Section 61 & subject to prudent checks.

Mandate under the National Tariff Policy

- q) That, the Government of India had notified new National Tariff Policy on 20 January, 2016 (“hereinafter also referred to as NTP, 2016”). The National Tariff Policy has been formulated and notified in continuation of the National Electricity Policy (NEP) which in turn is notified under Section 3 of the Electricity Act, 2003. NTP, 2016 has primarily focused on renewable energy, energy security and ensuring affordable tariffs. NTP, 2016, vouch for power procurement by Discoms through competitive bidding. However, the NTP, 2016 also provides that the CERC and SERC shall be guided by the tariff policy in discharging their functions including framing the regulations. As such, NTP, 2016 is a guiding Policy for Regulators for discharging of various functions, however, has no binding mandate under the Act. Relevant portion of ‘Legal Position’ of NPT, 2016 is reproduced as under:-

“2.0 LEGAL POSITION

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2.2 *Central Electricity Regulatory Commission (CERC) and State Electricity Regulatory Commissions (SERCs) shall be guided by the tariff policy in discharging their functions including framing the regulations.*
2.3
2.4

- r) Notwithstanding to above, the clause 5.2 of the NTP, 2016 inter alia provides for tariff determination under Section 62 of the Act in respect of the Projects set up/envisaged under the Policy notified by the State to encourage investment in the State by allowing setting up of renewable generating plants. Relevant provision is reproduced as under:-

5.2 All future requirement of power should continue to be procured competitively by distribution licensees except in cases of expansion of existing projects or where there is a company owned or controlled by the State Government as an identified developer and where regulators will need to resort to tariff determination based on norms provided that expansion of generating capacity by private developers for this purpose would be restricted to one time addition of not more than 100% of the existing capacity.
Provided further that the Appropriate Commission, as defined in the Electricity Act, 2003, shall ensure that in case of expansion of such projects, the benefit of sharing of

infrastructure of existing project and efficiency of new technology is passed on to consumers through tariff.

Provided also that the State Government can notify a policy to encourage investment in the State by allowing setting up of generating plants, including from renewable energy sources out of which a maximum of 35% of the installed capacity can be procured by the Distribution Licensees of that State for which the tariff may be determined under Section 62 of the Electricity Act, 2003.

Provided that notwithstanding the provision contained in para 5.11(j) of the policy, the tariff for such 35% of the installed capacity shall be determined by SERC.

However, the 15% of power outside long term PPAs allowed under para 5.7.1 of National Electricity Policy shall not be included in 35% allowed to be procured by Distribution Licensees of the State.

(emphasis supplied)

Haryana Solar Power Policy, 2016

- s) The Government of Haryana had formulated Haryana Solar Power Policy 2016 (herein after may also be referred to as “**Solar Policy**”) to promote the generation of power from solar energy. The Solar Policy was notified by the Haryana Government Renewable Energy Department on 14.03.2016. Solar Policy as per its Vision statement aims as under:-
- a. Promote generation of green and clean power;
 - b. Create conditions that would be conducive to the participation of the private as well as public sector in the setting up of solar energy projects in the country;
 - c. To encourage and promote a feasible Investment environment for the same;**
 - d. Spread environmental consciousness among all citizens of the state
 - e. Aim for a decentralized and diversified management of the energy sector;
 - f. To work consistently towards an increase of the share of the renewable solar power;
 - g. To attain its target of Solar Renewable Purchase Obligation (Solar RPO) which is just 0.25% at present and would be scaled up to at least 8% by 2021-22;
 - h. To ultimately create a technology driven state with the right ‘energy mix’.
- t) That the Solar Policy, in lieu of National solar targets of 100 GW, aims to achieve total solar capacity of 3200 MW by the year 2021-22 which include 1600 MW through rooftop solar project under net metering.

Benefit to Haryana Discoms, consumers at large and State economy

- u) That this Project was conceptualised as an Open Access/ Captive Power Project. In case this Project starts selling power under the captive route, this will lead to loss of Cross Subsidy Surcharge and Additional Surcharge from the industrial consumers who will be the captive users of this Project. At this stage, these charges amount to Rs.1.77 / kWh (CSS of Rs. 0.62/-

and AS of Rs. 1.15/-) and that will be a direct loss to the Discoms which is ultimately borne by the end consumers by the way of distribution and retail supply tariff. In the overall interest of the consumers of the state, it may be preferred that these projects sell power to the Discoms rather than selling to consumers under captive route.

- v) That the Project has been set up in Bhiwani, near the load centre, therefore, there shall be a reduction of power distribution losses. Additionally, the State shall also be eligible to the State's 50% share of Goods and Supply Tax of the total Project cost.
- w) That, the Project is for a duration of 25 (twenty five) years and shall contribute significantly in the generation of employment for local population as well as shall also provide lease rentals to the farmers for approximately next 25 (twenty five) years in the State of Haryana.
- x) That for the reasons mentioned in the subsequent paragraphs, HPPC considers that the sourcing of solar power from this Project by the Discoms will be in the overall interest of all concerned including consumer of Discoms.
- y) Following prayers have been made:-
 - a. To approve source and draft PPA to be executed with M/s Amplus Sun Solutions Private Limited for purchase of 50 MW Solar Power from grid interactive solar PV based power project located at Village, Khanak, Tehsil, Tosham, District Bhiwani at a Tariff determined by the Hon'ble Commission under Section 62 of The Electricity Act, 2003, in terms of HERC Regulations in vogue.
 - b. Pass such further order(s) or direction(s) as may be deemed necessary and fit in the circumstances of the case.

Proceedings in the Case

3. The matter was heard on 14th September, 2020 as scheduled, through virtual court (Video Conferencing). Sh. Vikas Kadian, XEN, HPPC, appeared for the Petitioner and mainly reiterated the contents of the Petition, which for the sake of brevity have not been reproduced herein. Further, Sh. Vishrov Mukherjee, Ld. Advocate appearing on behalf of the Respondent agreed to the contentions of the Petitioner and requested the Commission to allow the present Petition and approve the initialed draft Power Purchase Agreement.

Commission's Analysis and Order

4. The Commission observes that HPPC has to meet the Solar RPO targets fixed by the Commission, under Haryana Electricity Regulatory Commission (Terms and Conditions for determination of Tariff from Renewable Energy Sources, Renewable Purchase Obligation and Renewable Energy Certificate) Regulations, 2017 (HERC RE Regulations, 2017). The Commission, in its ARR Order dated 01.06.2020, has already observed that DISCOMs have defaulted in meeting the Solar RPO obligations. The shortfall in meeting Solar RPO upto FY 2018-19 was 1850 MUs. Further, during FY 2019-20 (till Dec., 2019), shortfall in meeting

Solar RPO was 1532 MUs. Although, the Commission, as a one time measure in view of the Covid- 19 Pandemic, decided to waive off the current backlog of RPO, but, directed Discoms to make every possible endeavour to meet the RPO targets as has been given to them by the Commission in timely manner in true letter and spirit. Undoubtedly, such like projects in the kitty of DISCOMs shall enable them to achieve their RPO targets, which is expected to increase substantially in the coming years.

5. The Commission has further perused the provisions of National Tariff Policy, 2016, Haryana Solar Policy, 2016 as well as Regulation 6 (1) (h)/47 of HERC RE Regulations, 2017. The combined reading of all these provisions has enabled the Commission to reach to a conclusion that it is empowered to determine the project specific tariff from the Solar Power Project.
6. In view of the above, the Commission considering the request of HPPC, approves the source under section 86(1)(b) of the Electricity Act, 2003 as well as draft PPA to be executed with M/s Amplus Sun Solutions Private Limited for purchase of 50 MW Solar Power, for 25 years, from grid interactive solar PV based power project located at Village, Khanak, District Bhiwani at a Tariff to be determined by the Commission under Section 62 of The Electricity Act, 2003, on a separate petition to be filed by the Generator.
7. The Petition is disposed of accordingly.

This order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 14.09.2020.

Date: 14.09.2020	(Naresh Sardana)	(Pravindra Singh Chauhan)	(D.S. Dhesi)
Place: Panchkula	Member	Member	Chairman