

BEFORE THE HARYANA ELECTRICITY REGULATORY COMMISSION AT PANCHKULA

Case No. HERC/Petition No. 28 of 2022

Date of Hearing : 14.07.2022
Date of Order : 18.07.2022

In the Matter of

Petition under Section 86(1)(b) of the Electricity Act, 2003 read with Haryana Electricity Regulatory Commission (Conduct of Business) Regulations, 2019 seeking approval of source as well as approval of the Draft Power Supply Agreement (PSA) for procurement of 150 MW Renewable Energy (RE) Power with Assured Peak Power supply under ISTS Tranche VII Scheme from Solar Energy Corporation of India Limited (SECI) at a levelized weighted average tariff of not more than Rs. 3.96/kWh at the Haryana periphery with off-peak tariff of Rs. 2.88/kWh and a peak tariff of Rs. 6.85/kWh (levelized) plus a trading margin of Rs. 0.07/kWh for a period of 25 years.

Petitioner

Haryana Power Purchase Centre, Panchkula (HPPC)

Respondent

Solar Energy Corporation of India Limited (SECI)

Present on behalf of the Petitioner

1. Ms. Sonia Madan, Advocate
2. Sh. Randeep Singh, Chief Engineer, HPPC

Present on behalf of the Respondent

1. Ms. Tanya Sareen, Advocate
2. Sh. Tarun Mukhija, Deputy Manager, SECI

Quorum

Shri R.K. Pachnanda
Shri Naresh Sardana

Chairman
Member

ORDER

Brief Background of the case

1. The present petition has been filed by HPPC, seeking approval for procurement of 150 MW RE Power from SECI (Inter-State Trading Licensee), for 25 years, at a levelized tariff of Rs. 3.96/kWh with off-peak tariff of Rs. 2.88/kWh and a peak tariff of Rs. 6.85/kWh, plus a trading margin of Rs. 0.07/kWh.
2. Petitioner's submissions are as under:-
 - 2.1 That on 20.12.2021, SECI vide its letter communicated to HPPC regarding the various offers of power supply available with the SECI which can be procured by HPPC for the State of Haryana. Further, the SECI requested the HPPC to convey their requirement of

- quantum of power from the mentioned offers so that further steps can be initiated to complete the process at the earliest.
- 2.2 That on 03.03.2022 HPPC vide its letter to SECI sought information regarding the tentative date by which the RE power will be available with respect to the offers/proposals. HPPC also enquired if there's any availability of RE power for supply on short-term basis.
 - 2.3 That SECI in response to the letter dated 03.03.2022, answered the queries of HPPC vide its letter dated 04.03.2022 regarding the tentative date of commissioning of all the projects. SECI further stated that it is looking for possibilities of trading the power on a short-term basis and shall intimate HPPC once it is finalized.
 - 2.4 That on 07.03.2022, SECI sent another letter to HPPC containing the revised offer for the quantum of power available under different schemes. Further on 08.03.2022, HPPC emailed SECI requesting it to provide the tentative impact of Basic Custom Duty (BCD), Goods and Services Tax (GST), etc. if any, on the projects. Further, it sought information on the applicability of ISTS losses on power from respective projects in terms of the MoP order dated 23.11.2021.
 - 2.5 That on 09.03.2022, in response to the above email, the HPPC received a letter from SECI wherein it provided the details with respect to ISTS losses, the impact of BCD, GST, and comfort provided by developers on the projects for various available schemes.
 - 2.6 That HPPC deliberated all the four schemes/offers of SECI in the 62nd and 63rd meeting of the Steering Committee of Power Planning (SCPP) which considered the proposals and decided to obtain information from SECI, if the offered schemes are being procured through competitive bidding.
 - 2.7 That pursuant to the decision of SCPP, HPPC vide its letter dated 16.03.2022 intimated SECI to clarify the issue that whether the power offered by SECI has been/is being procured through competitive bidding as per the mandate of the National Tariff Policy. SECI via letter dated 17.03.2022 clarified that the tenders are brought out under the standard bidding guidelines formulated under the National Tariff Policy.
 - 2.8 That after considering the competitiveness of the offer made by SECI, HPPC vide letter dated 11.04.2022, intimated its consent to procure 150 MW RE Power at levelized weighted average not more than Rs. 3.96/kWh at Haryana periphery with off-peak tariff of Rs. 2.88/kWh and a peak tariff of Rs. 6.85/kWh (levelized) plus SECI's trading margin of Rs. 0.07/kwh. HPPC also made a request to SECI to consider a reduction in the trading margin from the existing Rs. 0.07/kwh. Further, HPPC requested SECI to communicate its acceptance of the above-specified transaction so that further steps can be taken for statutory approvals for the procurement of power.

2.9 That on 19.04.2022, the Steering Committee of Power Planning (SCPP) in its 65th meeting deliberated regarding the procurement of 150 MW RE power from SECI and accorded approval for the same subject to the approval of this Commission.

2.10 That HPPC through its letter dated 27.04.2022 again communicated its acceptance to procure 150 MW RE power, however, HPPC specifically stated that the consent to procure power is subject to the approval of power source from this Hon'ble Commission.

2.11 That Section 63 of the Electricity Act, 2003 provides provision for adoption of tariff determined through competitive bidding process 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.”

SECI has confirmed that they will file the petition in Hon'ble Central Electricity Regulatory Commission (CERC) for adoption of tariff in terms of Section 63 of the Electricity Act.

Hon'ble CERC is empowered to adopt the tariff, on being satisfied that the transparent process of bidding in accordance with the guidelines issued by the Central Government has been followed in determination of such tariff. The Ministry of Power, Government of India has notified the Guidelines under Section 63 of the Act. SECI has been designated as the nodal agency for implementation of scheme for setting up of ISTS connected / State specific solar / wind power projects with the mandate to invite bids under Tariff Based Competitive Bidding process, enter into Power Purchase Agreements (PPAs) at the tariff discovered in the competitive bid process conducted and enter into Power Sale Agreements (PSAs) with the distribution licensees to enable them to fulfil their Renewable Purchase Obligations under Section 86(1)(e) of the Act.

2.12 That in the instant case, SECI has clarified that the offered tariff has been discovered through transparent competitive bidding process. The selection of the successful bidder and determination of tariff of the Projects has been carried out by SECI through a transparent process of competitive bidding in accordance with Guidelines issued by Ministry of Power, Government of India under Section 63 of the Act.

2.13 That HERC (Terms and Conditions for determination of Tariff from Renewable Energy Sources, Renewable Purchase Obligation and Renewable Energy Certificate) Regulations, 2021 has set the solar and non-solar RPO targets as under: -

FY	RPO (%) as per HERC RE Regulations, 2021			
	Other Non Solar	Large Hydro	Total Non Solar	Solar
2021-22	3.00	0.00	3.00	8.00
2022-23	5.00	0.35	5.35	9.00
2023-24	6.00	0.66	6.66	10.00

- 2.14 That the Hon'ble Commission in its ARR order dated 30.03.2021 had approved 1088.1 MUs and 2901.8 MUs from Non-solar and Solar sources for compliance of RPO for the FY 2021-22. The Hon'ble Commission has allowed carrying forward of the RPO backlog of FY 2020-21 to FY 2021-22. The Hon'ble Commission in its ibid order has mentioned that the RPO backlog for the FY 2020-21 shall form part of the total power purchase volume approved for the FY 2021-22 and set off against the costliest power in the merit order.
- 2.15 That the 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. Accordingly, the MoP on the other hand 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.
- 2.16 That further, the Central Government has raised the target to 450 GW RE installed capacity by 2030. Considering the above, the Renewable Purchase Obligations are expected to increase to 30% and 24% for solar and other non-solar respectively in order to enable the achievement of the above goal by 2030. Ministry of Power, Government of India (MoP) in its Order dated 17.04.2020 has proposed an amendment to the Electricity Act, 2003 wherein heavy penalties have been imposed as brought out hereunder:-

“(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.”

2.17 That the existing solar power capacity available with Haryana Discoms through long-term agreements is 618.8 MW with a solar rooftop having a capacity of about 384 MW. Whereas, 617.2.07 MW is currently available from non-solar RE sources. Break up of current RE sources as on date i.e. 30.04.2022 is as under: -

Source	Contracted Capacity in MW
Small Hydro	73.20
Wind	413
Biomass	131
Solar Ground Mounted	618.8
Solar Rooftop	384
Total	1620

In addition to the above, the following tie-ups are also made by HPPC for the procurement of RE Power in order to fulfill the mandated RPOs:

NON SOLAR

S. 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	20 MW Commissioned. 30 MW expected by 15.05.2022 100 MW FY-2022-23
2.	SECI, ISTS Wind T-III 2000 MW Scheme	350	17.05.2018	Already commissioned 262.5 MW rest 87.5 MW expected by 30.06.2022
3.	SECI, ISTS Wind T-V 2000 MW Scheme	590	21.01.2019	175 MW by 15.05.2022 300 MW by 19.08.2022 115 MW by 05.09.2022
4.	SECI, ISTS Hybrid (Wind+Solar) T-II 1200 MW Scheme	110	11.07.2019	25 MW commissioned on 29.08.2021 under STOA, Rest 85 MW by 30.06.2022
Waste to Energy Projects				
5	Ecogreen Energy Gurgaon Faridabad Pvt. Ltd	25	06.08.2020	FY 2022-23
Biomass-Based Projects				
6.	Small Biomass projects (10 Nos)	60.3	2018 & 2019	30MW commissioned up to 15.02.2022 and Rest Expected by FY 2022-23
	Total Expected Capacity (in MW)			947.8

SOLAR

Sr. No.	Name of the firm	Contracted Capacity (MW)	Date of Signing of PPA	Expected Commissioning of Project
1.	SECI, ISTS Solar T-II 3000 MW Scheme.	400	28.05.2019	30.03.2023

2.	SECI (ISTS Hybrid (Wind+Solar) T-I 1200 MW Scheme)	330	11.07.2019	122 MW commenced on 29.08.2021 under STOA, rest expected by FY 2022-23
3.	SECI (ISTS Solar T-IV 1200 MW Scheme)	250	19.3.2020	12.05.2022
4	NIT-77 (241 MW on long term basis) (240 MW from Avaada and 1 MW from Geotech Power Pvt. Ltd.)	241	06.07.2020 (240MW) 19.06.2020 (1 MW)	151.35 MW out of 240 MW commissioned and the rest 88.65 MW is expected by 11.05.2022. 1 MW by the end of August-22.
5.	PM KUSUM	10.57	01.07.2020 2 MW under UHBVN, 8.57 MW on dated 21.08.2020 under DHBVN	31.12.2022
Total (in MW)				958.22

In addition to the above, 50 MW to 100 MW per year is expected to be added every year through the solar rooftops.

- 2.18 That with the above arrangements/tie-ups, the total installed capacity to the tune of 2050 MW (including about 450 MW from rooftop solar under net metering) solar and 1565 MW non-solar (including 1300 MW wind generation) respectively shall be available with Haryana Discoms by the end of FY 2022. Solar and Non-Solar RPOs to the level of 9.80 % and 11.04% respectively are expected to be achieved through current sources during the FY 2023. Considering the anticipating upward revision of solar RPO targets beyond 10.5%, additional solar power shall be required for the fulfilment of anticipated solar RPOs of Discom's for FY 2022-23 and thereafter. Further, additional Wind Power shall enable Discom's to meet Non-Solar RPO obligations.
- 2.19 That HPPC has negotiated with SECI for trading margin. However, SECI has been providing for such trading margin at Rs 0.07/kWh for all the Procurers. It is appropriate to mention that the trading margin of Rs 0.07/kWh has been approved by Kerela State Electricity Commission, Joint Electricity Regulatory Commission for the State of Goa as well as by Hon'ble CERC for procurement of power by Rajasthan Discoms. SECI has also entered into PSA with Odisha, UP and Chhattisgarh for the sale of power with the trading margin of Rs 0.07/unit. Therefore, the trading margin quoted by SECI is the uniformly charged trading margin.

2.20 That the Hon'ble CERC in its Order dated 20.11.2019 in Petition No. 215/AT/2020 in the matter of SECI vs MNRE & Others, while adopting the tariff discovered under Tranche-VI Wind Scheme in terms of Section 63 of the EA-2003 has dealt with the trading margin at Para 29 as under:-

“29. The Petitioner has prayed to adopt the Trading Margin of Rs. 0.07/kWh. It is observed that Section 79(1)(j) of the Act requires the Commission “to fix the Trading Margin in the inter-State trading of electricity, if considered, necessary”. Accordingly, the Commission, being of the opinion that it was necessary to fix Trading Margin for inter State trading in electricity, exercised the powers conferred under Section 178 of the Act and conceived Central Electricity Regulatory Commission (Fixation of Trading Margin) Regulations, 2010 8 (hereinafter referred to as „Trading Margin Regulations”) applicable to the short-term-buy-short-term sell contracts for the inter-State trading in electricity undertaken by a licensee. Trading Margin Regulations provide for the ceiling of the Trading Margin in short term-buy-short-term-sell contracts for the inter-State trading. Trading Margin Regulations do not provide for any Trading Margin for long term transactions and, therefore, it is up to the contracting parties to mutually agree on Trading Margin, if any, in such cases. In any case, the Commission does not fix Trading Margin on case to case basis. The spirit of the Act read with the Trading Margin Regulations gives freedom and choice to the contracting parties to mutually agree on Trading Margin for any kind of trading transaction, subject to the ceiling Trading Margin, whenever applicable. Accordingly, the Commission cannot fix or adopt any Trading Margin for long-term transactions under the provisions of the present Trading Margin Regulations. In view of the above, the prayer of the Petitioner to adopt the Trading Margin is decided accordingly.”

2.21 That considering the foregoing, the power procured from SECI would be considered for meeting solar and non-solar renewable purchase obligations (RPO) and will help provide green and clean electricity to Haryana at economical rates. Hybrid power will lead to optimum cost utilization and will enable Discom's to fulfill its Renewable Solar and Non-Solar Purchase Obligation.

2.22 That the tariff offered by SECI is lower than the variable cost of the power sourced from thermal stations and lower than the short-term power procured from other sources. The excess power would help Discom's to lower its procurement cost and meet future RPO targets.

2.23 That the Petitioner-HPPC is making constant efforts to arrange a reliable and feasible power supply. Considering the position of power deficit in the State, growing requirement of power over the years, the unreliability of procurement of thermal power under Long

term PPA, HPPC considers that the sourcing of hybrid power from SECI will be in the overall interest of all concerned including consumer of Discom's.

2.24 In view of the above submissions, the petitioner has prayed as under:-

- a. Grant Source approval for procurement of 150 MW RE power of Solar Energy Corporation of India Limited (SECI) with Assured Peak Power at a levelized annual weighted average tariff not be more than Rs. 3.96/kWh at Haryana Periphery with off peak tariff of Rs. 2.88/kWh and a peak tariff of Rs. 6.85/kWh plus trading margin of Rs. 0.07/kWh for a period of 25 years.
- b. Grant approval to draft Power Supply Agreement (PSA); and
- c. Pass any other order(s) and or direction(s), which the Hon'ble Commission may deem fit and proper in the facts and circumstances of the case.

Commission's Order

3. The case was heard on 14.07.2022, wherein Ms. Sonia Madan, the learned counsel for the petitioner averred that necessary contracts have been entered into for meeting Solar and Non-Solar RPO requirement. The proposed power is to be procured for meeting the peaking power requirement at a most cost-effective rate.
4. Sh. Randeep Singh, Chief Engineer, HPPC, highlighted the salient features of the present proposal. He averred that the power is proposed to be procured through M/s. ReNew Solar Pvt. Ltd. having a capacity of 300 MW with provision for 50% battery backup, which will provide assured peak hours supply for 50% capacity for 6 hours to be chosen from "18.00 hrs to 24.00 hrs" and "06.00 hrs to 09.00 hrs". As per the Power Sale Agreement (PSA), compensation on account of shortfall in off peak power shall be calculated @ 50% of the off-peak tariff and in case of any shortfall in the supply of peak power the same shall be calculated at the full peak tariff i.e. Rs. 6.85 / kWh. Shri Singh further submitted that the State has already witnessed a peak demand of 12768 MW on 28.06.2022, which is expected to increase with the Haryana's GDP growth. Therefore, the proposal is a viable option to meet the peak demand of the State.
5. Ms. Tanya Sareen, learned counsel for SECI, submitted that after signing of the PSA between SECI and HPPC, a PPA will be signed between the generator – M/s. ReNew Solar Pvt. Ltd. and SECI. The SCoD of the project is 18 months from the date of signing of the PPA. Out of the capacity of 300 MW tied up with M/s. ReNew Solar Pvt. Ltd., 150 MW has already been agreed to be supplied to the State of Goa. The present petition is for approval to supply the balance power of 150 MW to Haryana Discoms / HPPC.

6. The Commission heard the parties at length. It is observed that the provisions of liquidated damages, for delay in commissioning or non-commissioning of the project, are not there in the PSA. The back to back draft PPA to be executed between SECI and the Generator, has not been made part of the present petition under consideration of the Commission.
7. In order to gain clarity in the matter, the Chief Engineer / HPPC (the petitioner herein) present in the hearing, was asked to clarify the issue of penalty as well as liquidated damages as the project developer, in the present case, is still to construct the project. Hence, the risk of non-supply or delayed supply as well as curtailed supply during off-peak and peak period cannot be brushed aside till the time the project is actually commissioned and the power flow starts. The Chief Engineer, submitted that for any shortfall during the agreed upon off-peak supply, the compensation is at 50% of the off-peak tariff of Rs. 2.88 / kWh due to the fact that generation, in the present case, is dependent on natural factors i.e. solar insolation and wind speed during any given day and time. However, he averred, that power supply during the peak hours is assured and is from Battery Storage, hence the compensation / penalty for any shortfall in supply is to be calculated at 100% of the tariff .
8. The Commission has taken note of the fact that a back to back PPA, which is a mirror image of the PSA under consideration, has still to be executed between SECI and the project developer. However, the draft PPA has not been made a part of the present petition.
9. The Commission further observes that the petition emphasized the need for procurement of the ibid power from SECI for meeting solar and non-solar renewable purchase obligations (RPO). However, during the hearing, the learned counsel for the petitioner submitted that sufficient tie-ups have been made for meeting the RPO targets and as such the proposed power is not required for meeting the RPO targets. The solar component in the present offer is 33% and the balance is wind power. The Commission observes that the HPPC/Discoms, may have made adequate arrangements for complying with the RPO trajectory as it exists today. However, going forward, to meet the ambitious national target of 450 MW by 2030 and the commitment for achieving carbon neutrality in the long run, would require larger integration of renewable power tied up at a reasonable cost based on long term perspective. .
10. In view of the above discussions and in the absence of the draft Power Purchase Agreement (PPA) between the respondent herein i.e. SECI and the project developer M/s ReNew Solar Pvt. Ltd. the Commission has considered the following two issues based on

the averment of the Chief Engineer / HPPC (the petitioner) and the learned counsels for the parties present in the hearing.

i. that the compensation / penalty payable to HPPC for non-supply of power during the peaking periods / hours, the lone justification given by the learned counsel for the petitioner in the hearing, that the present source is required during the peak period / hours which has been assured by the respondent herein at a competitive rate. Further, for any non-supply / curtailed supply of power during the assured / agreed upon peak hours, the penalty payable to the petitioner is 100% of the tariff.

Additionally, in support of the competitive cost argument the petitioner cited that INR 187.1 crore is the annual payment obligation towards fixed cost of thermal power (IGSTPP) vis-à-vis INR 112.50 crore annual payment liability for peak power in the present case.

ii. On the issue of Liquidated Damages (LD) and the duration of assured peak hours, the learned counsel (s) of the parties submitted that the terms are as per the Standard Bidding Documents notified by the Central Government. As a corollary, the Commission, on the averments of the parties, believes that the LD Clause, for non-supply, curtailed supply during peak / off peak periods and non-commissioning of the project during the stipulated time period of 18 will also be enforceable under the PSA before this Commission.

11. The Commission, subject to the above, allows the petition.
12. Having decided as above, the Commission observes that there is a significant gap between peak demand and base load demand in Haryana. Hence, besides planning for meeting the peak load demand, the Discoms/HPPC should vigorously pursue Demand Side Management (DSM). Such DSM measures will not only shave the peak but also fill the valley wherein surplus power is being disposed of in an un-economical manner resulting in trading losses.
13. In terms of the above order, the present petition is disposed of.

This order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 18.07.2022.

Date: 18.07.2022
Place: Panchkula

(Naresh Sardana)
Member

(R.K. Pachnanda)
Chairman