BEFORE

THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION

LUCKNOW

Petition No.1110/2016, 1157/2016, 1171/2017, 1194/2017, 1220/2017, 1223/2017, 1225/2017

PRESENT:

Hon'ble Sri Suresh Kumar Agarwal, Chairman

IN THE MATTER OF : Adoption of tariffs discovered through Tariff Based Competitive Bidding Process as per the bidding procedure specified by Ministry of New & Renewable Energy (MNRE), GoI for procurement of 215MW Solar Power

Petitioners:

1. SudhakarInfratech Pvt. Ltd.
   Plot No.3-6-661, Flat No.301,
   Sai Sandya Apartment, Street No.9,
   Himayath Nagar,
   Hyderabad-500 029
2. Technical Associates Limited
   8th KM, Faizabad Road, Vijaypur,
   Gomti Nagar, Lucknow-226010
3. M/s Sahasradhara Energy Pvt. Ltd.
   New No.25, Old No.10, Sir Madhavan Nair Road,
   Mahalingapuram, Nungambakkam,
   Chennai-600034
4. M/s Pinnacle Jackson
   T-15, 2nd Floor, Green Park Main
   New Delhi – 110 016, India
5. M/s Adani Green Energy (Uttar Pradesh) Ltd.
   Achalraj Opp. Mayor Bungalow,
   Lal Garden
   Ahmedabad-380 006

6. Avadh Rubber Prop Madras Elastomers ltd.
   B-13. Industrial Area
   OppAmausi Aerodrome,
   Lucknow-226008

Respondents:

1. M/s UP Power Corporation Ltd. (UPPC)
   Shakti Bhawan, 14-Ashok Marg,
   Lucknow, U.P. – 226 001
2. UP New & Renewable Energy Development Agency (UPNEDA)
   VibhuthiKhand, Gomti Nagar,
   Luckow-226 010

In the presence :

1. Sri Awdhesh Kumar Verma, Chairman, UP Rajya Vidyut Upbhokta Parishad
2. Sri Rama Shanker Awasthi
3. Sri V.K. Asthana, CE, PPA, UPPCL
4. Sri R.D. Pal, Ex. E.O.
5. Ms Sangeeta Saxena, SE, UPPTCL
6. Smt. Namrata Kalra, SPO, UPNEDA

ORDER
(Date of hearing 31.01.2018)

The Commission had passed an order on 23.1.2018 proposing to adopt tariff of Rs. 5.21 per unit for the above named six bidders for a period of 12 years and after that for next 13 years the APPC will be applicable as per the provisions in the PPA, subject to a ceiling of Rs. 5.21 per Kwh. In this order the Commission had also expressed its view that the recommendations of UPPCL and UPNEDA regarding termination of the aforesaid six PPAs cannot be accepted. The Commission had fixed the public hearing on the proposed tariff on 31.01.2018 and accordingly a notice for public hearing was issued. The public hearing was held on 31.1.208. In the public hearing public representatives expressed their views as under:

1. Sri Awdhesh Kumar Verma, Chairman, UP RajyaVidyutUpbhoktaParishad

   Sri Awdhesh Kumar Verma pleaded that the proposed tariff of Rs.5.21 is on the higher side and determination of this tariff is not within the rights of the

Commission. He also stressed that CVC guidelines and the policy framed by the Government of India does not permit this action. Sri Verma submitted order dated 3.8.17 of Uttrakhand Electricity Regulatory Commission and order dated 9.2.17 of Karnataka Electricity Regulatory Commission to prove the point that the proposed capital cost of Rs.4.80 crore per MW is on the higher side. He also emphasized that in the draft paper issued by UPERC, the Commission had proposed the capital cost of Rs.4.65 crore per MW. Sri Verma was of the view that presently the tariff of Grid Connected Solar Power Station is between Rs.3.00 to Rs.4.00 per unit and the proposed rate is on the higher side when compared to the rates discovered elsewhere in the country. Sri Verma raised the issue that when the term of PPA in other parts of the country is 25 years then why the Commission is accepting the term of 12 years. Sri Verma also informed the Commission that in Tamilnadu a bid had been called in which 16 bidders had participated and the minimum rate discovered in the bid is Rs.4.40 per unit. This bid was done for FY 2016-17. Therefore in 2017-18 this rate would come down at Rs.4.00 per unit. Sri Verma has proposed that the Commission should keep a ceiling of Rs.4.00 per unit and should go for reverse bidding as has been done in Tamilnadu.

2. Sri Rama Shaker Awasthi

Sri R.S. Awasthi stated that Petition no.1110 of 2016 has already been disposed of by the Commission therefore the same petition cannot be heard again. He further stated that CERC has not done any benchmarking of capital cost for FY 2017-18 therefore CERC's capital cost benchmarking for the earlier years cannot be used for benchmarking of capital cost of FY 2017-18. He also pointed out that under Section 63 the Commission cannot determine the tariff. Sri Awasthi also stated that if UPPCL is not interested in going ahead with the above PPAs then why the Commission is insisting on continuation of PPAs. Sri Awasthi has also made written submissions reiterating the points already mentioned herein. He has also relied on a Supreme Court Judgement dated 25.02.1987 in Civil Appeal No. 481/1987 (State of Uttar Pradesh vs Brahm Datt Sharma and others in support of his contention that a petition which has been disposed of cannot be heard again.

3. Sri Rakesh Goel

Sri Rakesh Goel stated that no investment will come for solar projects if the IRR from the project is below 13%. He also stated that the tariff of solar power stations depends on the rate of interest that the promoters have to pay to the financial institutions and the returns that the promoter expects from the project. He is of the view that reverse bidding is a better way. He stated that tariff for the current projects should be determined at a capital cost of around Rs.4.00 crore per MW excluding the cost of land.

2. After hearing the public representatives, the Sr. Project Manager, UPNEDA was asked to give her views. Sr. Project Manager, UPNEDA stated that in view of the policy of the State Government and the future scenario the above six PPAs should not be cancelled when the rates are being rationalized.

3. The representative of UPPCL Sri Asthana, Chief Engineer (PPA) was also asked to give the views of the UPPCL. Sri Asthana stated that regarding termination of the PPA, UPPCL management has not firmed up any new stand. Regarding proposed tariff of Rs.5.21 he stated that he has apprised the management about the order of the Commission but the management has not taken a decision on the issue so far.

4. After the above, the concerned promoters were asked to appraise the Commission about their views. The representatives of bidders raised the following points:

M/s Technical Associates Ltd.

Sri Dhruv Mathur, Advocate appearing on behalf of M/s Technical Associates Ltd. stated that for determining the cost per MW for FY 2017-18, the benchmark cost of FY 2015-16 as determined by CERC should be considered. Further 5 months period proposed by the Commission for commissioning should be with a rider that if UPPTCL does not complete the transmission line within 5 months then the period for commission shall be extended to the date when the transmission line becomes operational. He further stated that Govt. of India has proposed a safeguard duty on solar modules and if the promoter has to pay safeguard duty then a provision should be kept for allowing the revision of tariff on account of safeguard duty. Sri Mathur also stated that the proposed tariff of Rs.5.21 per unit has been worked out for a term of 25 years but the same has been applied for 12 years tariff, which is not fair. In their written submissions the developer has mentioned that they have invested around Rs. 21.25 crore on the project and are bearing interest burden @ 13% on this investment. Further they have stated that the procurers did not start the construction of evacuation system but expected the developer to complete the project. They have intimated that their capital cost is expected to be Rs. 5.82 crore per MW. They have raised the issue that the proposed tariff of Rs. 5.21 per unit is based on 25 year's PPA but in the instant case the procurer's liability is to purchase power is only for 12 years. In such a situation the uncertainty post 12 years would render significant losses to the petitioner.

M/s Adani Green Energy (Uttar Pradesh) Ltd.

Sri Deepak Chopra, Advocate appearing on behalf of M/s Adani Green Energy (Uttar Pradesh) Ltd. stated that his client has completed the entire project during FY 2017-18 and 6 out of other nine bidders to whom tariff of Rs.7.02 per unit has been allowed, have also completed their project in FY 2017-18. Therefore they should also be allowed tariff of Rs.7.02 per unit. Sri Chopra also stressed that his client has procured modules much earlier and had to incur higher cost. In their written submission they have stressed that delay in commissioning of the project was mainly due to the fact that the procurers did not take adequate steps to lay the transmission line required for evacuation of power. Further they have stated that absence of finality of tariff they were not sure of viability of the project. They have also mentioned that they have incurred almost the same cost for modules as the other nine bidders have incurred. In their written submissions they have also raised the issue of difference in CUF, degradation factor, applicability of GST and auxiliary consumption.

M/s Sahasradhara Energy Pvt. Ltd

Sri DD Chopra, Advocate appearing on behalf of M/s Sahastradhara Energy Pvt. Ltd. stated that his client has also completed the project and the transmission line is about to complete. He clarified that in case of his client the transmission line is to be constructed at the cost of the developer at a cost of about Rs.125 lakh, therefore, the element of cost for transmission line should have been allowed in the tariff. He also stated that his client has procured the Indian make solar panels which were costlier than the Chinese make solar panels therefore his client has incurred higher capital cost of about Rs. 80 lakh. They have prayed for allowing tariff of Rs.7.02.

Avadh Rubber Prop Madras Elastomers ltd.

The representative of M/s Avadh Rubber Prop Madras Elastomers Ltd. stated that when the Commission had asked the State Government to revisit the rates obtained in the competitive bidding they were called for a negotiation and had matched the rate of L-I bidder at Rs.7.02 therefore they should be allowed the negotiated tariff. Further in their written submissions they have stated that 25 year tariff of Rs.5.21 should not be a basis for determining the tariff of the present PPAs. They have stated that their cost is around Rs. 5.76 crore per MW as against

Rs. 4.80 considered by the Commission. They have also raised the similar issues as raised by other developers.

M/s Pinnacle Jackson

Sri Saurav Roy, Advocate appearing on behalf of M/s Pinnacle Jackson stated that as per the instructions from his client the tariff of Rs.5.21 may not be feasible and they should be allowed time to submit their response to UPPCL. Sri Roy further stated that public representative say that the Commission can only adopt the tariff but are expecting the revision of tariff through reverse bidding and negotiations which is a non- starter in the scheme under Sec 63 of Electricity Act 2003. Mr. Roy pointed out that the bidding guidelines for Grid Connected Solar Power issued in 2012 permitted the term of PPA to be 7 years and above, therefore there is no anomaly in the term of PPA as far as the guidelines are concerned. He also cited following three judgments of the Hon'ble APTEL in support of his argument that the Commission can not tinker with the tariff in case of Section 63 procurement :

1. Indiabulls CSEB, Bhaiyathan Power Limited Vs Chhatisgarh Electricity Regulatory Commission, Chhatisgarh Power Holding Limited, Chhatisgarh State Electricity Board.
2. Vidharbha Industries Power Limited Vs MERC, Reliance Infrastructure Limited and Wardha Power Company Ltd.
3. M/s Essar Power Limited Vs UPERC and Noida Power Company Limited

On the basis of above three judgments of the Hon'ble APTEL, Mr. Roy pleaded that under Sec. 63 of the Electricity Act 2003 the State Regulatory Commission has no scope to tinker the tariff if the process is as per the guidelines and transparent. Mr. Roy also mentioned that the PPA of his client is still valid as the Commission had earlier decided that the Commission would take a call on the tariff of the above named six PPAs. Mr. Roy indicated that as per their computation the capital cost should be Rs.5.49 crore per MW and the tariff should be Rs.6.50 per unit if the tenure is of 25 years and Rs.8.47 per unit if the tenure is 12 years.

5. The Commission would first like to deal with the arguments of the public representatives:

(i) The Commission has gone through the orders and discussion papers referred to by Sri Awdhesh Kumar Verma in his submissions. The brief facts about these documents are as under:

(ii) UERC order dated 3.8.2017

UERC has issued an order dated 3.8.2017 in which the Commission has fixed the benchmark capital cost for grid connected solar power plants for FY 2017-18 at Rs.415.63 lacs per MW. In the same order under para 6.2, the Uttarakhand Electricity Regulatory Commission has referred an order dated 17.5.2017 in which the gross tariff of Rs.6.10 per unit has been worked out as per tariff principles stipulated in the RE regulations 2013.

(iii) Discussion paper of Karnataka Electricity Regulatory Commission

The Commission has gone through the Discussion Paper regarding revision of tariff of megawatt scale Solar Power Plants. In this discussion paper the Commission has proposed a capital cost of Rs.463.76 lacs per MW and a levelised tariff of Rs.4.51 per unit for a period of 25 years for FY 2017-18. The KERC has not given the break -up of cost in the discussion paper therefore it is not possible to compare the same with the cost worked out by UPERC.

(iv) **The order of the HPERC dated 12.1.2018**

This is again a discussion paper on the proposed capital cost and tariff for FY 2017-18. In this paper the Commission has proposed a capital cost of Rs.452.7 lacs per MW for projects in FY 2017-18. No tariff is indicated in this discussion paper.

(v) **Order of TNERC dated 10.7.17**

Sri Verma has also submitted an order of TNERC dated 10.7.17 which deals with the e-bidding of 500MW solar power. In this bidding 20 bids were received for a total capacity of 122 MW. TANGEDCO accepted two bids for total 20 MW capacity at a tariff of Rs. 4.50 per unit. Further TANGEDCO was allowed for reverse bidding and in this bidding the lowest rate of Rs.4.40 per unit for 25 years has been adopted by the Commission for 224 MW capacity.

While dealing with the observations of Sri Verma, the Commission would like to make it clear that the documents relating to Uttrakhand Electricity Regulatory Commission, KERC and HPERC are not the tariff orders under Sec 63 rather they are the discussion papers. In case of Tamilnadu the tariff has been approved at Rs. 4.50 and Rs. 4.40 per unit for 25 years.These orders and discussion papers are issued in FY 2017-18 and the respective Commissions have notified the rules of the game before the bidding. Now it is for the bidders to consider these capital costs and tariff and decide whether they want to bid or not but in the present case before this Commission, the bidding was done in FY 2015-16 and the parties have made an investment on the basis of costs and tariffs prevailing at that time. Further all the Regulatory Commissions have considered the tariff for 25 years where as in the present case the certainty about tariff is only for 12 years. Therefore it is clear that the present 6 cases cannot be decided on the basis of costs and tariffs explored by other Commissions. This is the reason that this Commission has chosen to go ahead with the tariff adoption on the bench marked cost of CERC for FY 2016-17, after making necessary revision in the module prices.

(vi) Regarding observations of Sri R.S. Awasthi, the Commission would like to clarify that the Commission has not finally disposed of the petition no.1110/2016 so far. While adopting the tariff for 9 bidders, the Commission had categorically stated that the decision regarding remaining six PPAs would be taken later. Therefore the contention of Sri Awasthi that Petition No.1110/2016 cannot be heard by the Commission is totally misplaced. The Commission has worked out the approximate capital cost of these six bidders at the CERC benchmark of FY 2016-17, as the benchmark capital cost was not available for FY 2017-18. CERC is the apex regulatory institution and takes into account the national perspective in consideration, while benchmarking the capital cost, whereas the states do it on the basis of state specific input. The Commission has relied on CERC benchmark of FY 2016-17 in order to have the realistic estimate of cost. Regarding forcing UPPCL to buy power from these generators it is to be clarified that in these cases the petitioners have filed petitions under Section 86(1)(f) for adjudication against termination notice and the Commission has to consider the fact that these bidders were issued LOI and PPA were also signed before coming to Commission. The Commission cannot allow UPPCL to terminate the PPAs at their sweat will after the developers have made sizable investment in the project. Therefore the contention of Mr. Awasthi is not based on principle of natural justice.

(vii) Regarding observations of Sri Goel the Commission finds that the suggestion of reverse bidding given by Mr. Goel cannot be resorted to at this stage. Further, the estimate of capital cost submitted at 4.00 crore per MW is not substantiated by any data.

6. In this matter UPNEDA the proponent of the project who has conducted the bidding process is agreeable to continuation of the PPAs subject to rationalization of tariff. UPPCL is only a procurer and is liable to pay only APPC. The tariff beyond APPC is being reimbursed to UPPCL by the State Government. Since UPNEDA has given its consent to continue with the PPAs subject to rationalization of tariff, therefore, the Commission do not have any constraint in adopting the tariff for the above six PPAs.

7. As far as the promoters are concerned they have stressed that under Section 63 of Electricity Act 2003 the Commission cannot tinker the tariff discovered in the bidding if the guidelines have been followed and the bidding has been conducted in a transparent manner. Further they have pointed out that their cost is more than what is worked out by the Commission. They have stressed that the Commission is proposing to allow the tariff of Rs.5.21 which is a levelised tariff for 25 years on the capital cost of Rs.4.80 crore per MW. In this case the tariff for 12 years would be certain but for remaining 13 years uncertainty about tariff can land them in financial losses. Further their contention is that the procurers did not make arrangement for evacuation of power and the tariff was not certain therefore, the projects could not be commissioned in time. Regarding contentions of Mr. Saurav Roy regarding limited powers of the Commission under Section 63, it is to be clarified that after the bidding process in the present case was over the solar tariffs started going down in the country due to reduction in the module prices and the Commission found that the rates received in the bidding are not aligned to market rates. Further in many cases the higher courts have ruled that the Commission while adopting the tariff under Section 63 has to see the discovered tariffs in the light of various other provisions of the Act. Considering all the issues the Commission in its earlier order dated 22.02.2017 has given the reasons for revisiting the tariff as the tariff discovered was not aligned to the market rates. This order of the Commission has not been challenged by the petitioners and now at this stage the Commission cannot recall its earlier order but can adopt a tariff which is aligned to market rates keeping in view the current costs.

8. The Commission has considered the cost of RS. 4.80 crore per MW while proposing the tariff of RS. 5.21 but after hearing views of the public representatives and the petitioners the Commission has re-examined the capital cost and has found that while making an estimate of capital cost the Commission has considered module cost at Rs. 2.80 crore per MW after accounting for taxes and degradation but on revisiting these rates the Commission would like to revise the module cost at Rs. 2.65 crore per MW . After considering rest of the costs as per CERC bench mark of 2016-17 the total cost works out to Rs. 4.65 crore per MW. On this cost the levelised tariff works out to Rs. 5.07 per unit.

9. In view of above the Commission adopts the tariff of Rs. 5.07 per unit for a period of 12 years and for remaining 13 years APPC with a ceiling of Rs. 5.07 will be applicable as per the terms of the PPA already signed. The PPAs of these six bidders shall be amended to give effect to the adopted tariff. Those bidders who are not willing to accept this adopted tariff shall be allowed to quit from the PPA and their bank guarantees would be returned.

The Commission in its earlier order had allowed five months' time for Commissioning of the projects but this will be subject to completion of evacuation system by the procurers otherwise the Commissioning date will automatically be extended without any penalty.

11. Accordingly petition no. 1110/2016, 1157/2016 1171/2017, 1194/2017, 1220/2017, 1223/2017 and 1225/2017 stand disposed of.

(Suresh Kumar Agarwal)
Chairman

Place: Lucknow
Dated: 12.02.2018