Petition No. 1106 of 2016

BEFORE

THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION

LUCKNOW

**Date of Order: 22.12.2016**

**PRESENT:**

1. **Hon’ble Sri Desh Deepak Verma, Chairman**
2. **Hon’ble Sri Suresh Kumar Agarwal, Member**

**IN THE MATTER OF:** Adoption of Tariff for purchase of power from M/s RKM Powergen Pvt. Ltd. obtained through process of case-1 bidding in accordance with the guidelines issued by the Central Government.

UP Power Corporation Limited

7th Floor, Shakti Bhawan

14- Ashok Marg, Lucknow.

**--------------- Petitioner**

The following were present:

1. Shri R. K. Sharma, ED (Planning), UPPCL
2. Sri A.H. Khan, CE(P), UPPCL
3. Sri Deepak Raizada , SE(Planning), UPPCL
4. Sri Avadhesh Kumar Verma, Chairman, Uttar Pradesh Rajya Vidyut Upbhokta Parishad
5. Sri Rama Shanker Awasthi, Consumer
6. Sri Kavin Gulati, Sr. Advocate, M/s RKM Powergen Pvt. Ltd.
7. Sri Kamal Budhiraja, Advocate, M/s RKM Powergen Pvt. Ltd.
8. Sri Sgopalakri Shnan, Advisor, M/s RKM Powergen Pvt. Ltd.
9. Sri Bhushan Rastogi, Partner, Mercados

**ORDER**

**(Date of Public Hearing 29th November, 2016)**

* 1. UPPCL signed PPA with M/s RKM Powergen Pvt. Ltd. on 15.03.2016 and filed this Petition (Petition No. 1106 of 2016), for adoption of Tariff under Section 63 of the Electricity Act 2003, with prayer as follows:
     + - 1. To take the Petition on record
         2. To adopt the Tariff of M/s RKM Powergen Pvt. Ltd. under Section 63 of the Electricity Act, 2003;
  2. The Commission convened public hearing, considering the fact that the electricity is being procured through bidding process under section 63 of the Act which states that the Commission shall adopt the Tariff if such Tariff has been determined through transparent process of bidding. The Public Hearing ensures opportunity to all the stakeholders and to the public at large.
  3. UPPCL in its submission dated 29.11.2016 has stated that M/s RKM Powergen Pvt. Ltd in its letter dated 15.03.2016 and 18.04.2016 requested UPPCL for a permission to supply electricity from a date earlier than what was agreed to i.e. 30.10.2016. UPPCL also submitted that M/s RKM Powergen Pvt. Ltd has fully complied with the obligations imposed upon it and thereafter the Tariff may be approved by the Commission under Section 63. UPPCL also enclosed the agreement for long term open access and medium term open access between RKM and PGCIL for 200 MW northern region (under long term) and 150 MW (medium term). He further submitted letter dated 04.11.2016 and 18.11.2016 of PGCIL confirming operationization of LTOA and MTOA respectively.

UPPCL has submitted that the levelized tariff by M/s RKM Powergen Pvt. Ltd at Rs. 5.088/ kWh can be considered to be in the consumers’ interest and in the interest of the State. UPPCL has also stated that the bid price of M/s RKM Powergen Pvt. Ltd is a fair price and is ought to be accepted.

* 1. During the hearing Sri Avadhesh Kumar Verma, Chairman, UP Rajya Vidyut Upbhokta Parishad raised objections that since the new Case-I bidding process has been initiated by UPPCL which has discovered lower Tariffs, the prayer of UPPCL for adoption of levelized Tariff of Rs. 5.08 / kWh should not be considered. He further stated that cost of the power available through this PPA should also be compared with the cost of power available through the power exchange.
  2. Sri Rama Shankar Awasthi, Consumer filed written objections dated 13.10.2016 as under:

1. As a preliminary objection, the consumer requested not to place the matter before Hon’ble Shri S.K. Agarwal, as he has been associated with the bid process in the capacity of member of Bid Evaluation Committee as Director (Finance), UPPCL.
2. It is submitted that after cancellation of LoI, UPPCL ought to have acted in the manner as prescribed in Clause 2.5 of SBG, and the same has not been complied with, thereafter, the petition for adoption of Tariff is liable to be rejected.
3. It is submitted that UPPCL sough the dismissal of Petition No. 1008 of 2015 on the ground of fresh bid process for procurement of 3800 MW power under new bidding guidelines. He further submitted that PPA entered between Procures and RKM on earlier bid process is neither transparent nor in accordance with the SBG.
4. It is submitted that in the fresh process initiated by UPPCL for 3800 MW capacity, the levelised Tariff quoted by RKM is Rs. 4.635 / kWh, whereas in earlier process for 6000 MW capacity, the levelised Tariff quoted by RKM is Rs. 5.088 / kWh.
5. He further submitted that according to SBG, in the power procurement process through competitive bidding, the Government has no role to play.
6. The Commission ought to have enquired from UPPCL for their contradictory stand in the matter of power procurement. He submitted that the whole process of power procurement by UPPCL is neither transparent nor in accordance with SBG.
7. The commission not to adopt Tariff and the Commission may annul / cancel / revoke the Power Purchase Agreement dated 15.03.2016 between M/s RKM Powergen Pvt. Ltd. and PVVNL, PuVVNL, DVVNL & MVVNL.
   1. The Commission desired to know from UPPCL about the present position of power supply from the generators whose tariffs have been earlier adopted by the Commission namely L2, L3, L5 & L6 bidders. The Commission further desired to know the reasonability of the Tariff of Rs. 5.088 / kWh in view of the existing prices for long term power procurement. UPPCL was directed to make submission on these points.
   2. Sri Rama Shankar Awasthi, Consumer filed additional written objections dated 07.12.2016 as under:
8. It is submitted that if at all Tariff has to be adopted then it can be adopted only on the terms and conditions as stated in RFP documents in the bid process for procurement of 6000MW.
9. It is submitted that standard bidding guidelines does not specify anything regarding the restoration of LoI and neither there was anything regarding RFP & RFQ documents, thereby the Commission’s Order dated 11.02.2016 in Petition no. 1078 of 2015 is out of jurisdiction.
10. Change in source of coal was not in the RFP documents and in the SBD documents, he questioned that under what clause the Commission approved the same in its Order dated 11.02.2016 in Petition No. 1078 of 2015.
11. Bidders are required to maintain qualification till the completion of bidding process including the signing of the PPA and adoption of tariff while RKM Powergen had qualified solely on the basis of captive coal block of fatehpur East, which got de-allocated by Supreme Court Order in 2014.
12. Absence of clarity on escalation factors to be used for payment purpose, a difference of around Rs. 7800 Crore can be observed during the PPA terms for 25 years.
13. He submitted in the power procurement of remaining 3800MW by UPPCL through case-1 competitive bidding process, total number of 10 bidders have quoted lower tariff than RKM.
14. RKM Powergen has been allowed to change fuel source from captive coal block to linkage coal block and the tariff quoted by RKM Powergen in UPPCL’s DBFOO bid is far lower than the energy charge of Rs. 1.43 / kWH quoted in its previous case1 bid to UPPCL.
15. Favorable treatment to RKM Powergen by not en-cashing the bid bond as per RFP documents
16. In-ordinate delay in completion of bidding process for RKM Powergen
17. It is submitted that other bidders which were disqualified in all previous case1 bid of UPPCL must be provided again with similar opportunites.
18. He submitted that Commission must conduct an enquiry in the entire process of power procurement of RKM as well as UPPCL.
19. It is submitted to dismiss the present petition and to not to adopt tariff of M/s RKM Powergen u/s 63 of EA, 22003.
    1. The Commission considers that since, as a public representative, Sri R. S. Awasthi has made written objections on dated 13.10.2016 and 07.12.2016, it would be necessary that UPPCL and M/s RKM Powergen should reply on the points. Hence, it is directed that the objections of Sri Awasthi be sent to UPPCL and M/s RKM Powergen with a copy of this Order. UPPCL and M/s RKM Powergen shall submit their replies on Sri Awasthi’s objections within a period of 7 days from the date of this Order.
    2. The next hearing shall be held on 04.01.2017 at 11:30 hrs.

(Suresh Kumar Agarwal) (Desh Deepak Verma)

Member Chairman

Place: Lucknow

Dated: 22.12.2016