



BEFORE
THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION
LUCKNOW
Petition No.1110/2016

PRESENT:

Hon'ble Sri Suresh Kumar Agarwal, Chairman

IN THE MATTER OF : Adoption of tariff 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. 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)
Vibhuthi Khand, Gomti Nagar,
Lucknow-226 010

Respondents:

1. Essel Infraprojects Ltd.
513/A, 5th Floor, Kohinoor City,
Kior Road, LBL Marg,
Kurla (W), Mumbai-400 070
2. Surana Telecom & Power Ltd.
5th Floor, Surya Tower, SP Road,
Secunderabad-500 003
3. Sudhakar Infratech Pvt. Ltd.
Plot No.3-6-661, Flat No.301,
Sai Sandya Apartment, Street No.9,
Himayath Nagar,
Hyderabad-500 029

4. Lohia Developers (India) Pvt. Ltd.
S-569, 2nd Floor, Greater Kailash-II, New Delhi-110 048
5. Ferromar Shipping Pvt. Ltd.
Anand Bhavan,
Old Station Road,
Margoa, Goa-403601
6. Technical Associates Limited
8th KM, Faizabad Road, Vijaypur,
Gomti Nagar, Lucknow-226010
7. M/s Sahasradhara Energy Pvt. Ltd.
New No.25, Old No.10, Sir Madhavan Nair Road,
Mahalingapuram, Nungambakkam,
Chennai-600034
8. M/s Pinnacle Jackson
T-15, 2nd Floor, Green Park Main
New Delhi – 110 016, India
9. M/s Adani Green Energy (Uttar Pradesh) Ltd.
Achalraj Opp. Mayor Bunglow,
Lal Garden
Ahmedabad-380 006
10. Avadh Rubber Prop Madras Elastomers Ltd.
B-13. Industrial Area
Opp Amausi Aerodrome,
Lucknow-226008
11. N.P. Agro India Industries Ltd.
581, Kali bari, Bareilly
Shree Radhey Radhey Ispat Pvt. Ltd.
122.235, Plot No.17,
Fazalganj,
Kanpur-208 012
12. Sukhbir Agro Energy Ltd. (20MW)
A-16, Narain House, green Park
New Delhi
13. Sukhbir Agro Energy Ltd. (20MW)
A-16, Narain House, green Park
New Delhi
14. Sukhbir Agro Energy Ltd. (10MW)
A-16, Narain House, green Park
New Delhi



In the presence :

1. Sri Awdhesh Kumar Verma, President, UP Rajya Vidyut Upbhokta Parishad, Lucknow
2. Sri ML. Arora, Director
3. Sri Adish Jain, PSPN, Synergy Pvt. Ltd.
4. Sri DD Chopra, Advocate
5. Sri Khalid Nadeem, COO, SAEL
6. Sri Lalit Kr. Bari, VP Aryovann Renewable
7. Sri L.N. Bari, Ferromar

ORDER
(Date of hearing 25.10.2017)

Uttar Pradesh Power Corporation Ltd., (UPPCL) and UP New & Renewable Energy Development Agency (UPNEDA) had filed petition No.1110/2016 for adoption of tariff under Section 63 of Electricity Act 2003 discovered through competitive bidding process for setting up of grid connected solar power plants of 215 MW capacity. This matter was heard on 29.11.2016 and a detailed order was passed on 22.02.2017.

2. In this matter the Commission has examined the scope of Commission's purview while adopting the tariff under Section 63. Since the rates obtained through the competitive bidding process appeared to be on much higher side the commission taking a cue from various orders of the Hon'ble Supreme Court and Hon'ble APTEL and had directed as under:

"Considering the entire circumstances of the case, the legislative intent of the statute, the law laid down by Hon'ble Supreme Court and Hon'ble APTEL, we are of the considered opinion that matter should be reconsidered and the petitioner should take appropriate decision in the background of the law laid down by the authorities, the then prevailing and also the present market rate for solar energy. However, at present we do not express any finding approving or disapproving the rates."

3. After the above order Director, UPNEDA and Chief Engineer (PPA) UPPCL submitted reply/additional information before the Commission on 3.10.2017. In this reply UPNEDA and UPPCL have stated that as per the directions of UPERC, matter of tariff adoption was put up to Empowered Committee constituted under State Solar Policy 2013 headed by Chief Secretary, Govt. of UP. In their meeting held on 26.5.2017 the Empowered Committee has noted that the lowest tariff of Rs.7.02 per unit obtained in the bid is below the prevailing CERC bench mark tariff of Rs. 7.06/unit for the year 2015-16.



4. The Empowered Committee directed for negotiation with bidding companies to match the lowest tariff of Rs.7.02/unit. The empowered committee also constituted a negotiation committee under the Chairmanship of Principle Secretary (Energy)/ Renewable Energy , Principle Secretary (Finance) and Director UPNEDA as members of the committee.

5. Negotiation Committee meeting was held on 6.7.2017 and the negotiation committee recommended for adoption of tariff at Rs. 7.02/unit for all the nine bidders whose projects have been commissioned as per details given below:

Sl.No.	Name of Bidding Company	Capacity	Tariff Offer/Kwh for 12 years in Rs./Kwh	Status of the Project
1.	M/s Essel Infra Project Ltd., Mumbai	50	7.02	Commissioned
2.	M/s Surana Telecom and Power Ltd., Secunderabad	5	7.40	Commissioned
3.	M/s Lohia Developers India Pvt. Ltd., New Delhi	5	7.95	Commissioned
4.	M/s Ferromar Shipping P. Ltd., Goa	5	8.09	Commissioned
5.	M/s Sukhbir Agro Energy Ltd, New Delhi	20	8.23	Commissioned
6.	M/s Sukhbir Agro Energy Ltd, New Delhi	20	8.43	Commissioned
7.	M/s NP Agro India Industries Ltd., Bareilly	5	8.496	Commissioned
8.	M/s Sukhbir Agro Energy Ltd, New Delhi	10	8.60	Commissioned
9.	M/s Shree Radhy Radhey Ispat Pvt. Ltd., Kanpur	15	8.60	Commissioned

6. Regarding the six projects which are not commissioned, the committee expressed a view that these six bidders are not even entitled for L-1 tariff of Rs. 7.02/Unit and the decision for adoption of tariff for these projects may be deferred in the light of the preliminary procurer's notice of default.

7. The recommendations of the negotiation committee have been endorsed by the Empowered Committee.

8. The Commission observed that out of the nine projects which have been commissioned the following bidders have not agreed to accept the tariff of Rs.7.02/unit:
 1. M/s Lohia Developers India Pvt. Ltd., New Delhi (5 MW)
 2. M/s Sukhbir Agro Energy Ltd, New Delhi (20MW)
 3. M/s Sukhbir Agro Energy Ltd, New Delhi (20MW)
 4. M/s Sukhbir Agro Energy Ltd, New Delhi (10MW)
 5. M/s NP Agro India Industries Ltd., Bareilly
 6. M/s Shree Radhy Radhey Ispat Pvt. Ltd., Kanpur
9. To decide the issue in the light of new recommendations , the Commission held another public hearing in the matter on 25.10.2017 in which two public representatives namely Sri Avdhesh kumar Verma, Chairman, Rajya Vidyut Upbhokta Parishad and Sri R.S. Awasthi participated.
10. Sri Awasthi raised a primary objection that how the UPPCL could execute the Power Purchase Agreement with these successful bidders before adoption of tariff by the Commission and further how they are taking power from these generators without the adoption of tariff. He also stated that in the present situation the bidders are divided into three categories i.e. one who are willing to accept the tariff at Rs.7.02 per unit, second, those who are not willing to accept this tariff and third, the six bidders who have been issued the pre termination notices. He also stressed that UPPCL should not make any payment to these generators until the tariff is adopted by UPERC.
11. Sri Avdhesh Verma raised the issue that the Government of India guidelines have not been followed in this bidding therefore this bidding should be cancelled. Further he argued that these PPA should have been for 25 years instead of 12 years provided in the UP Government solar policy. He also pointed out that preamble of Electricity Act 2003 provides that the consumer interest is supreme therefore current bench mark tariff of CERC should be given to these generators.
12. Smt. Namrata Kalra, Sr. Project Manager, UPNEDA answered the objections of the public representatives and stated that these bids were conducted in financial year 2015-16 for which the indicative tariff of CERC was Rs.7.06 per unit applicable for 25 years but since the L-1 bidder has agreed for tariff of Rs.7.02 per unit for a period of 12 years therefore the committee has recommended the tariff of Rs.7.02 per unit for adoption for all the projects which have been commissioned. She further stated that 12 years period for the PPA was as per the solar power policy of Government of UP. Chief Engineer (PPA), UPPCL stated that the tariff of Rs.7.02



per unit should be admissible for 12 years and after that for remaining 13 years the rates should be determined by the Commission keeping in view the provision of Section 61 of Electricity Act 2003.

13. Sri DD Chopra appearing on behalf of some bidders stated that three tariffs cannot be decided against one bid. He pleaded that the Commission should decide the similar tariff for all the bidders. He also stressed that Section 61 of the Electricity Act 2003 also provides for recovery of cost to generators while safeguarding the interest of consumers.
14. The Commission after hearing the concerned parties is of the view that the revised tariff recommended by UPNEDA and UPPCL is somewhat near the benchmark tariff indicated by CERC on the basis of cost structure of FY 2015-16 in which the bidding was carried out. In order to enable the aforesaid nine bidders to recover their cost of generation with adequate return on their equity and also safeguarding the interest of consumers , in the public interest it will be fair to adopt the tariff of Rs. 7.02/unit for aforesaid nine bidders whose projects have been commissioned.
15. The Commission adopts the tariff of Rs. 7.02/Unit for the aforesaid 9 bidders for a period of 12 years and for next period of 13 years the bidders shall be bound to supply power to UPPCL at APPC as agreed in PPA, subject to a ceiling of Rs. 7.02 /Unit. The Commission also approves the PPA of these nine bidders with the directions that necessary modifications be made in the signed PPA, according to these orders.
16. Regarding remaining 6 bidders whose projects have not been commissioned , UPPCL has intimated the Commission that they want to terminate these PPAs. But the petitions of these 6 bidders against the pre termination notice is under consideration of the Commission therefore the Commission will pass necessary orders separately on respective petitions.

(Suresh Kumar Agarwal)
Chairman

Place: Lucknow
Dated: 21.11.2017