



Petition No. 1606 of 2020

BEFORE

THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION

LUCKNOW

Date of order: - 23 .03.2021

PRESENT:

1. Hon'ble Sh. Raj Pratap Singh, Chairman
2. Hon'ble Sh. Kaushal Kishore Sharma, Member
3. Hon'ble Sh. Vinod Kumar Srivastava, Member (Law)

IN THE MATTER OF: Seeking approval of Request for Selection (RfS) and Power Purchase Agreement (PPA) for procurement of Power through Tariff Based Competitive Bidding Process from small capacity (0.5 MW to 2 MW) Grid Connected Solar PV Power Projects to be implemented under "Pradhan Manti Kisan Urja Suraksha evam Utthaan Mahabhiyan" Yojna (PM KUSUM) Component A of Ministry of New and Renewable Energy (MNRE) Government of India.

1. SPO, M/s U.P. New & Renewable Energy Development Agency (UPNEDA),
Vibhuti Khand, Gomti Nagar,
Lucknow - 226010
2. M/s U.P. Power Corporation Ltd.,
(through its Chief Engineer-DSM),
Shakti Bhawan, 14-Ashok Marg,
Lucknow - 226001

----- **Petitioner**

Following were present:

1. Sh. Deepak Raizada, CE-PPA, UPPCL
2. Ms. Namarta Kalra, SPO, UPNEDA
3. Ms. Varalika Dubey

ORDER

(Date of Hearing 18.02.2021)

1. The instant petition is filed jointly by UPNEDA as nodal agency (BPC) and UPPCL for approval of deviations sought from MNRE guidelines and for approval of bid documents namely RFS & PPA.



2. The Petitioner has prayed as follows: -

- a. Issue necessary orders for approval of deviations sought by the Petitioner from the Guidelines issued by Ministry of New and Renewable Energy.
- b. Issue necessary orders for approval of Bid documents namely the Request for Selection and Power Purchase Agreement.
- c. Condone any inadvertent omissions/errors/shortcomings.
- d. Pass suitable order as deemed fit.

Brief Facts of the Case:

3. The National solar Mission, an ambitious target of 100 GW of Solar Power generation to be achieved by 2022 has been set up by Ministry of New and Renewable Energy (MNRE). While Large Utility Scale Solar power generation are being installed to achieve this target, it has been planned to simultaneously develop decentralized Solar energy and other renewable energy generation Plants of capacity up 0.5 MW to 2 MW which could be connected directly to existing 33/11 kV or 66/11kV or 110/11 kV sub-stations of Distribution Company, thus saving in transmission system requirement apart from T&D losses.
4. Ministry of New and Renewable Energy (MNRE) has issued Scheme namely "Pradhan Mantri Kisan Urja Suraksha evam Utthaan Mahabhiyan Yojna" (PM KUSUM Yojna) for Farmers with following components:
 - **Component-A:** Setting up of Decentralized Ground/Stilt Mounted Grid Connected Solar or other Renewable Energy based Power Plants of capacity 0.5 Mw to 2 MW
 - **Component-B:** Installation of Stand-alone Solar Agriculture Pumps.
 - **Component-C:** Solarisation of Grid Connected Agriculture Pumps.
5. The State Government have issued GO dated 31.12.2019 for implementation of component -A of under PM KUSUM Yojna and it is



proposed to implement ground mounted grid connected Solar PV Power Plants at 33/11 Kv sub-station under the Yojna.

6. The petitioners have proposed to invite for procurement of 160 MW capacity i.e. 30% of capacity of sub-station taken as spare capacity available for injection at sub-station. Further, UPPCL has provided a ceiling tariff of Rs. 3.10 per unit. Therefore, the Petitioner has filed the instant Petition and has sought approval of deviations in RFP and PPA from Standard Bidding document issued by MNRE.
7. After filing of this Petition, and subsequent proceedings in the matter, MNRE issued Amendments/clarification in implementation guidelines of PM KUSUM Scheme vide OM no. 32/645/2017 – SPV division dated 13.11.2020. MNRE issued following amendments vide OM dated 13.11.2020 in the bidding document: -
 - a. Besides barren, fallow and agricultural land, solar power plants can also be installed on pasture lands and marshlands of farmers.
 - b. To support small farmers, the solar power projects smaller than 500 KW may be allowed by States based on techno-commercial feasibility.
 - c. The selected Renewable Power Generator (RPG) should commission the solar power plant within twelve months from the date of issuance of LOA.
 - d. There shall be no penalty to RPG for shortfall in solar power generation from minimum prescribed CUF.
8. Meanwhile, when the clarification was issued by MNRE on 13.11.2020, Ministry of Finance, Government of India vide its OM No. F.9/4/2020-PPD dated 12th November 2020 issued instructions that “notwithstanding anything contained in Rule 171 of GFRs (General Financial Rules) 2017 or any other Rule or any provision contained in the Procurement Manuals, no provisions regarding Bid Security should be kept in the Bid Documents in future and only provision for Bid Security Declaration should be kept in the Bid Document.



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9. Subsequently, Ministry of New and Renewable Energy vide OM No. 32/645/2017-SPV Division (Part-3) dated 7th December 2020 also issued directions that Bid Security Declaration shall be obtained as per DoE OM dated 12.11.2020 for tenders conducted under PM-KUSUM Scheme in place of EMD.
10. Thereafter, in view of the developments that took place subsequent to filing of instant Petition and subsequent proceedings held by the Commission, the Petitioners submitted an application as the additional submission on 15-01-2021 based on the clarification and directions issued by MNRE and requested the Commission to approve revised deviations proposed in the RFS and PPA from guidelines approved by MNRE.

Record of Proceedings

11. The Commission heard the matter first on 13.10.2020 and during the hearing, Commission directed the parties to submit the RFP and PPA in line with the deliberation held during the hearing. However, the Petitioners filed an application as an additional submission on 15-01-2021. The Petitioner in its application dated 15.01.2021 submitted that certain amendments/clarification were issued by MNRE in implementation guidelines of PM KUSUM Scheme vide OM no. 32/645/2017 – SPV division dated 13.11.2020. Therefore, it has filed revised deviations after amendments/clarification were issued by MNRE and requested the Commission to approve revised deviations proposed in the RFS and PPA from guidelines approved by MNRE.
12. The Commission after receipt of application dated 15-01-2021, heard the matter on 18.02.2021 and during the hearing, the Commission deliberated upon the proposed deviations which are discussed in subsequent paras. The Commission had directed the Petitioner to prepare final RFP and PPA in line with the deliberations held during the hearing and submit the same for the approval of the Commission. **The revised deviations proposed in RFP and PPA from the standard Bidding document issued by MNRE are attached as Annexure-A.**
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Commission's Analysis and Decision

13. The following deviations were deliberated during hearing held on 18.02.2021:

- a. Guideline Clause 1: (RFS document) Ceiling tariff:** The Petitioners have proposed a ceiling tariff of Rs 3.10/unit. The Commission during the hearing asked the reasons for keeping high ceiling tariff in view of falling prices in tariff based competitive bidding for solar project. UPNEDA submitted that these projects will be implemented for lower capacity between 500kW to 2 MW only, therefore, the tariff would not be comparable with the large ground mounted projects. **Therefore, the Commission approved the ceiling tariff of Rs.3.10 per unit to allow maximum participation for discovery of competitive price in the bid.**
- b. Guideline Clause 3: (RFS document) Lease rent not to be paid directly by DISCOM to farmer.** The Petitioners have proposed that leasing of land will be a bi-partite agreement between the farmer and the developer and Procurer/DISCOM should not be held responsible for the failure in getting the land leased out to a developer. Accordingly, deviation is sought that Lease rent will be paid directly by developer to farmer. The Commission is of view that onus of payment to small farmers may not be left to Private Developers. **Therefore, the Commission, to encourage small farmers' participation in the scheme and safeguarding the interest of the participating farmers, is not inclined to approve this deviation. The applicable provision of Guidelines in the regard shall prevail.**
- c. Guideline Clause 3I: (RFS document) Capacity of less than 0.5 MW:** The Petitioners have submitted that MNRE guidelines through clarification issued on 13.11.2020 has also allowed participation of bidders having Solar Power Projects with capacity lesser than 0.5 MW. As it will be difficult for Discom to manage the projects lesser than 0.5 MW, therefore, deviation is proposed that projects less than 0.5 MW may not



be allowed. **The Commission thus approved this deviation w.r.t standard bidding document.**

d. Guideline Clause 3Ig: (RFS document) bank Guarantee against

EMD: The Petitioners have submitted that Ministry of Finance Notification Ministry of Finance, Government of India vide its OM No F.9/4/2020-PPD dated 12th November 2020 and MNRE OM No 32/645/2017-SPV Division (Part -3) dated 7th December 2020 has mentioned that bidder will submit a bid security declaration instead of EMD. The Commission finds that MNRE has issued directions vide OM dated 07.12.2020 that in place of EMD/bid security, Bid Security declaration to be obtained for tenders conducted under PM-KUSUM scheme. **Therefore, there is no deviations in this regard as the same is approved by MNRE.**

e. Guideline Clause 3Ii: (RFS document) Minimum CUF:

The Petitioners have proposed that provision of Penalty regarding minimum CUF declared by SPG be deleted in line with MNRE Guidelines. **The Commission finds that there is no deviation in this regard as MNRE has provided the same in revised guidelines dated 13.11.2020 document. Therefore, the same is in line with the standard bidding document issued by MNRE.**

f. Additional Clause in PPA at 4.7 (Grid Connectivity):

The Petitioners have proposed that in the standard PPA, details about Grid Connectivity have not been mentioned therefore, the same is required to be indicated. **The Commission finds that the conditions for grid connectivity is provided in Regulation 27 and 28 of CRE Regulations, 2019, and it is line with the Regulations, therefore, the Commission allowed this deviation.**

g. Clause 10.2.1 of PPA (Delivery and Content of Monthly Bills/Supplementary Bills):

The Petitioners have submitted that MNRE provides that *"the RPG shall issue to DISCOM hard copy of a signed Monthly Bill for the immediately preceding Month based on the JMR/Energy Account along with all relevant documents (payments made*



by RPG for drawl of power, payment of reactive energy charges, Metering charges or any other charges as per regulations of SERC/SLDC, if applicable".

However, this provision has been modified as per Standard PPA's signed by UPPCL for procurement of power from Grid connected Solar PV Projects and as per PPA documents approved by the Commission for 4th Phase bidding for procurement of 500 MW Power under Solar Energy Policy - 2017. The modified clause is as below: -

"the Seller shall issue to each Procurer a signed Monthly Bill for the immediately preceding Month not later than four (4) days of the next Month. In case the Monthly Bill for the immediately preceding Month issued after four (4) days of the next Month, the Due Date for payment of such Monthly Bill shall be thirty (30) days from such date."

The Commission approves this deviation as the same was already approved by the Commission for 4th Phase bidding for procurement of 500 MW Power under Solar Energy Policy - 2017.

h. Clause 10.3.3 of PPA (late payment Surcharge): The Petitioners have sought deviation in respect of increase of applicability of late Payment Surcharge from 30 days to 60 days. The Petitioner have submitted that this is kept in line with Standard PPA 's signed by UPPCL for procurement of power from Grid connected Solar PV Projects and as per PPA documents approved by the Commission for 4th Phase bidding for procurement of 500 MW Power under Solar Energy Policy -2017. **The Commission thus approves this deviation as the same was already approved by the Commission for 4th Phase bidding for procurement of 500 MW Power under Solar Energy Policy -2017.**

i. Clause 10.3.5 of PPA (Rebate): The Petitioners have proposed that Rebate will be claimed by the Procurer on payments made in 10 days



instead of 7 clear working days kept under standard bidding document. The Petitioner have submitted that this is kept in line with Standard PPA 's signed by UPPCL for procurement of power from Grid connected Solar PV Projects Also same and as kept in PPA documents approved by the Commission for 4th Phase bidding for procurement of 500 MW Power under Solar Energy Policy -2017. **The Commission approves this deviation as the same was already approved by the Commission for 4th Phase bidding for procurement of 500 MW Power under Solar Energy Policy -2017.**

- j. Clause 13.4 of PPA (Procedure for cases of DISCOM Event of Default):** The Petitioners have submitted that since UPPCL may not have funds to purchase the asset, therefore condition of defaulting Procurer to either takeover the Project assets by making a payment of the termination compensation equivalent to the amount of the debt due and the 150% (one hundred and fifty per cent) of the adjusted equity, has been deleted. The Petitioners have submitted that this clause is kept as per the Standard PPA document executed for Procurement of Solar Power by UPPCL. **The Commission finds that since there are other mechanisms available with the developers in the PPA, therefore, the Commission approved this deviation.**

Commission's View

- 14.** The Commission, in terms of details at para 13 (a) to (j) above, approves the proposed amendments to the RFS and PPA document as Annexed to this Order.
- 15.** The Petition is disposed of accordingly.

(Vinod Kumar Srivastava)
Member (Law)

(Kaushal Kishore Sharma)
Member

(Raj Pratap Singh)
Chairman

Place: Lucknow

Date: 23, 03.2021

Annexure -A Final Deviation Statement

S.No.	Point No MNRE guidelines for scheme	Provision in Guidelines	Proposed in Bidding Document (RFS & PPA)	Justification submitted by Petitioner
1	1	The Distribution companies (DISCOMs) will notify sub-station wise surplus capacity which can be fed from such RE power plants to the Grid and shall invite applications from interested beneficiaries for setting up the renewable energy plants. The renewable power generated will be purchased by DISCOMs at a pre-fixed levelised tariff. In case, the aggregate capacity offered by Applicants is more than notified capacity for a particular sub-station, bidding route will be followed by DISCOMs to select Renewable Power generator and in such cases the prefixed levelised tariff will be the ceiling tariff for bidding	UPPCL have provided a ceiling tariff of Rs 3.10/unit. Tariff based Bidding to be done on State e-procurement portal. Spare capacity at each identified substation to be allocated through bucket filling mechanism.	Deviation e-tender with ceiling tariff proposed as per directions of Hon'ble UPERC.
2	3	The farmer(s) may opt for payment of lease rent directly in their bank account by the DISCOM, from the payment due to the developer. A model Land Lease Agreement to facilitate the beneficiaries has been prepared by MNRE and is attached at Annexure-II. However, the terms of Land Lease Agreement may be finalised on mutual consent of concerned parties.	2.12 Leasing of land will be a bi-partite agreement between the farmer and the developer and Procurer/DISCOM will not be held responsible for the failure in getting the land leased out to a developer. Lease rent will be paid directly by developer to firm.	Deviation lease rent not to be paid directly by DISCOM to farmer.
3	3i	Under this component, solar or other renewable energy based power plants (REPP) of capacity 500 kW to 2 MW will be setup by individual farmers/ group of farmers/ cooperatives/ panchayats/ Farmer Producer Organisations (FPO)/Water User associations (WUA) hereinafter called Renewable Power Generator (RPG). To support small farmers, the solar power projects smaller than 500 KW may be allowed by States based on techno-commercial feasibility.	Under this component, solar or other renewable energy based power plants (REPP) of capacity 500 kW to 2 MW will be setup by individual farmers/ group of farmers/ cooperatives/ panchayats/ Farmer Producer Organisations (FPO)/Water User associations (WUA) hereinafter called Renewable Power Generator (RPG)	Solar Power Projects with capacity lesser than 0.5 MW not allowed.
4	3 i g	The Bank Guarantees against EMD shall be returned to the selected RPG on submission of valid PBGs	Bidder will submit a bid security declaration instead of EMD as per the format provided as annexure -6	As per Ministry of Finance Notification Ministry of Finance, Government of India vide its OM No F.9/4/2020-PPD dated 12th November 2020 and MNRE OM Guidelines OM No 32/645/2017-SPV Division (Part -3) dated 7th December 2020 no Bid security as EMD is required to be deposited,
5	3ii	Shortfall in minimum generation During PPA, if for any year, it is found that the RPG has not been able to generate minimum energy corresponding to CUF of 15% or as prescribed by DISCOMs; There shall be no penalty to RPG for shortfall in solar power generation from minimum prescribed CUF. (Amendment in Guidelines)	In PPA - 4.2 Minimum CUF Limits 4.2.1 deleted No penalty kept	Provision of Penalty deleted in line with amendment issued by Ministry vide OM dated 13/11/2020. (Annexed as Annexure 3)
6		Addition in PPA at 4.7	4.7 Grid Connectivity i) Solar Power Plant of capacity of 0.5MW to 2 MW set up will be connected to 33/11KV substations through 11 kV line. ii) Selected SPG will be responsible for construction of dedicated 11 KV line from Solar Power Plant to sub station, construction of bay and related switchgear at sub-station where the plant is connected to the grid and metering is done. The DISCOM will facilitate the SPG in getting right of way for laying of 11 kV line. iii) SPG can get constructed the 11 kV lines through DISCOM by paying the applicable cost and other charges. iv) SPG shall be responsible for construction, Operation & maintenance of this dedicated 11 kV line upto the point of connectivity. Such arrangement shall be as per the regulations specified by the Appropriate Commission, as amended from time to time. v) In case more than one bidders are awarded Solar Power Plants to be connected to same Sub-station.	In the standard PPA details about Grid connectivity have not been mentioned therefore the same is proposed to be added.
7	PPA 10.2.1	10.2 Delivery and Content of Monthly Bills/Supplementary Bills 10.2.1 The RPG shall issue to DISCOM hard copy of a signed Monthly Bill for the immediately preceding Month based on the JMR/Energy Account along with all relevant documents (payments made by RPG for drawal of power, payment of reactive energy charges, Metering charges or any other charges as per regulations of SERC/SLDC, if applicable.)	10.1 Delivery and Content of Monthly Bills 10.2.1 The Seller shall issue to each Procurer a signed Monthly Bill for the immediately preceding Month not later than four (4) days of the next Month. In case the Monthly Bill for the immediately preceding Month issued after four (4) days of the next Month, the Due Date for payment of such Monthly Bill shall be thirty (30) days from such date	As per Standard PPA 's signed by UPPCL for procurement of power from Grid connected Solar PV Projects Also same to as kept in PPA documents (also approved by Hon'ble UPERC) for 4th Phase bidding for procurement of 500 MW Power under Solar Energy Policy -2017
8	PPA 10.3.3	In the event of delay in payment of a Monthly Bill by DISCOM beyond thirty (30) days of its Due Date, a Late Payment Surcharge shall be payable to the RPG at the rate of 1.25% per month on the outstanding amount calculated on a day to day basis. The Late Payment Surcharge shall be claimed by the RPG through the Supplementary Bill.	10.3.3 Late Payment Surcharge In the event of delay in payment of a Monthly Bill by the Procurers sixty (60) days beyond its due date, a Late Payment Surcharge shall be payable by the Procurers to the Seller at the rate of 1.25% per month on the outstanding amount calculated on a day to day basis. The Late Payment Surcharge shall be claimed by the Seller through the next Monthly Bill.	Deviation delay in payment beyond 60 days is considered As per Standard PPA 's signed by UPPCL for procurement of power from Grid connected Solar PV Projects Also same to as kept in PPA documents (also approved by Hon'ble UPERC) for 4th Phase bidding for procurement of 500 MW Power under Solar Energy Policy -2017
9	PPA 10.3.5	10.3.5 Rebate For payment of any Bill on or before Due Date, the following Rebate shall be paid by the RPG to DISCOM in the following manner and the RPG shall not raise any objections to the payments made under this article. a) A Rebate of 2% shall be payable to the DISCOM for the payments made within a period of seven clear working days of the presentation of hard copy of Bill along with required supporting documents at DISCOM office. b) Any payments made after seven clear working days of the date of presentation of hard copy of the Bill along with the required supporting documents at DISCOM office up to the Due Date shall be allowed a rebate of 1%.	10.3.4 Rebate For payment of any Bill within due date, the following Rebate shall be paid by the Seller to the Procurers in the following manner. a) A Rebate of 2% shall be payable to the UPPCL for the payments made within a period of 10 (ten) days of the presentation of hard copy of bill along with required supporting documents at UPPCL Office. b) Any payments made after ten (10) days of the date of presentation of hard copy of the bill along with the required supporting documents at UPPCL office up to the Due date shall be allowed a rebate of 1%.	Deviation instead of 7 days Rebate of 2% will be claimed by the Procuree on payments made in 10 days. This is as per Standard PPA 's signed by UPPCL for procurement of power from Grid connected Solar PV Projects Also same to as kept in PPA documents (also approved by Hon'ble UPERC) for 4th Phase bidding for procurement of 500 MW Power under Solar Energy Policy -2017

S.No.	Point No MNRE guidelines for scheme	Provision in Guidelines	Proposed in Bidding Document (RFS & PPA)	Justification submitted by Petitioner
10	PPA 13.4	<p>13.4 Procedure for cases of DISCOM Event of Default 13.4.1 Upon the occurrence and continuation of any DISCOM Event of Default specified in Article 13.2, the RPG shall have the right to deliver to DISCOM, a RPG Preliminary Default Notice, which notice shall specify in reasonable detail the circumstances giving rise to its issue. 13.4.2 Following the issue of a RPG Preliminary Default Notice, the Consultation Period of ninety (90) days or such longer period as the Parties may agree, shall apply and it shall be the responsibility of the Parties to discuss as to what steps shall be taken with a view to mitigate the consequences of the relevant Event of Default having regard to all the circumstances. 13.4.3 During the Consultation Period, the Parties shall continue to perform their respective obligations under this Agreement. 13.4.4 After a period of two hundred ten (210) days following the expiry of the Consultation Period and unless the Parties shall have otherwise agreed to the contrary or DISCOM Event of Default giving rise to the Consultation Period shall have ceased to exist or shall have been remedied, DISCOM under intimation to RPG shall, subject to the prior consent of the RPG, novate its part of the PPA to any third party, including its Affiliates within the stipulated period. In the event the aforesaid novation is not acceptable to the RPG, or if no offer of novation is made by DISCOM within the stipulated period, then the RPG may terminate the PPA and at its discretion require DISCOM to either (i) takeover the Project assets by making a payment of the termination compensation equivalent to the amount of the debt due and 150% (one hundred and fifty per cent) of the adjusted equity or, (ii) pay to the RPG, damages, equivalent to 6 (six) months, or balance PPA period whichever is less, of charges for its contracted capacity, with the Project assets being retained by the RPG. Provided further that at the end of three (3) months period from the period mentioned in this Article 13.4.4, this Agreement may be terminated by the RPG.</p>	<p>13.4.1 Upon the occurrence and continuation of any Procurers Event of Default specified in Article 13.2 the SPG shall have the right to deliver to Procurers, a SPG Preliminary Default Notice, which notice shall specify in reasonable detail the circumstances giving rise to its issue. 13.4.2 Following the issue of a SPG Preliminary Default Notice, the Consultation Period of sixty (60) days or such longer period as the Parties may agree, shall apply and it shall be the responsibility of the Parties to discuss as to what steps shall be taken with a view to mitigate the consequences of the relevant Event of Default having regard to all the circumstances. 13.4.3 During the Consultation Period, the Parties shall continue to perform their respective obligations under this Agreement. 13.4.4 After a period of seven (7) days following the expiry of the Consultation Period and unless the Parties shall have otherwise agreed to the contrary or Procurers Event of Default giving rise to the Consultation Period shall have ceased to exist or shall have been remedied, the SPG shall be free to sell the Contracted Capacity to any third party of the SPG's choice. Provided further that at the end of three (3) months period from the period mentioned in this Article 13.4.4, this Agreement may be terminated by the SPG and at its discretion require the defaulting Procurer to pay to the Solar Power Generator, damages, equivalent to 6 (six) months, or for balance PPA period whichever is less, of charges for its contracted capacity, with the Project assets being retained by the Solar Power Generator. In the event of termination of PPA, damages or charges payable to the STU/ CTU , for the connectivity of the plant, shall be borne by the Procurer for six months only.</p>	<p>Deviation from the standard PPA .This Clause is kept as per the Standard PPA document executed for Procurement of Solar Power by UPPCL.Hence b(i) condition of defaulting Procurer to either takeover the Project assets by making a payment of the termination compensation equivalent to the amount of the debt due and the 150% (one hundred and fifty per cent) of the adjusted equity , has been deleted since UPPCL does not have funds to purchase the assets of Solar Power Generator.</p>