



THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION

LUCKNOW

Petition No. 2062 of 2023

QUORUM

Hon'ble Shri Arvind Kumar, Chairman

Hon'ble Shri Vinod Kumar Srivastava, Member (Law)

Hon'ble Shri Sanjay Kumar Singh, Member

IN THE MATTER OF

Petition under section 86(1)(b) & 86(1)(e) of the Electricity Act, 2003 read with Regulation 15 of the UPERC (Conduct of Business) Regulations, 2019 seeking approval of RFS and PPA along with the deviations in the RFS and PPA for procurement of 5MW Power from Grid Connected Solar PV Power Projects through Tariff Based Competitive Bidding (TBCB) Process in accordance with Ministry of Power Guidelines for TBCB process for Procurement of Power from Grid Connected Solar PV Power Projects.

AND

IN THE MATTER OF

1. U.P. New & Renewable Energy Development Agency (UPNEDA),

Vibhuti Khand, Gomti Nagar, Lucknow-226010

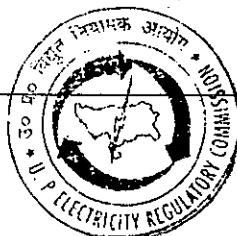
2. Uttar Pradesh Power Corporation Ltd. (UPPCL),

Shakti Bhawan, 14-Ashok Marg, Lucknow-226001

..... Petitioner(s)

FOLLOWING WERE PRESENT

1. Sh. Deepak Raizada, C.E(PPA), UPPCL
2. Mrs. Namrata Kalra, Advisor, UPNEDA
3. Sh. Narendra Singh, SPO, UPNEDA
4. Sh. Divyanshu Bhatt, Advocate, UPPCL & UPNEDA
5. Sh. Sashwat Singh, Advocate, UPPCL & UPNEDA





ORDER

(DATE OF HEARING: 13.02.2024)

1. The Petitioner(s) have filed this Petition seeking approval of Bidding Documents (i.e., RFS & draft PPA) for procurement of power from grid connected Solar PV based power plant (SPP) of 5MW capacity under section 63 of the Electricity Act, 2003.

Prayers:

2. The prayer of the Petitioner(s) are as follows:
 - a) Admit the Petition; and
 - b) Approve the RFS and the PPA along with the proposed Deviations, as annexed to this petition for procurement of 5MW Power from Grid Connected Solar PV Power Projects through Tariff Based Competitive Bidding Process in Mau District, Uttar Pradesh; and
 - c) Pass such Orders that this Commission deems fit.

Background as submitted in the Petition:

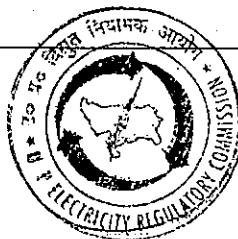
3. UPNEDA and UPPCL had previously filed a Petition No. 2001/2023 before this Commission seeking similar relief. However, this Commission, vide Order dated 30.08.2023 in the aforementioned Petition, directed that since new guidelines dated 28.07.2023 for TBCB had already been issued by the Ministry of Power (MoP), for procurement of power from grid connected PV project, the bidding documents need to be accordingly modified. Accordingly, UPNEDA prepared revised draft of RFS and PPA in accordance with MoP guidelines dated 28.07.2023 along with proposed deviation and the same has been placed for approval of the Commission in present Petition filed by UPPCL and UPNEDA.
4. UPNEDA is in possession and ownership of 11.868 hectares of land in Saraysadi village in Mau District in the state and to promote and expand the use of renewable power, it was decided by UPNEDA to establish a 5MW SPP on the aforementioned land. On 16.02.2023, UPNEDA informed UPPCL and Uttar Pradesh Power Transmission Corporation Limited (UPPTCL) about the proposal for establishment of





5MW SPP on the 11.868 hectares of the said land. In response, on 21.03.2023, UPPCL provided its consent to the proposal of UPNEDA for establishment of 5MW SPP and suggested that a ceiling tariff of Rs 2.98 per unit may be indicated in the proposed tender. Further, on 22.03.2023, UPPTCL provided its consent to the proposal of UPNEDA's 5MW SPP.

5. On 19.09.2023, UPNEDA requested UPPCL to remove the ceiling tariff because MNRE vide F. No. 283/29/2018- Grid Solar Part (2) dated 05.03.2020 had directed that "Cap" or ceiling tariff will not be included in the future bids being invited by NTPC, State Discoms and all implementing agencies. Therefore, ceiling tariff cannot be kept, and renewable power can be purchased by these institutions as per their procurement policy. On 26.12.2023, UPPCL informed to UPNEDA that provision of setting the ceiling rate in the subject tender is to be ensured and the ceiling rate has been revised from the previously fixed Rs. 2.98 per unit to Rs. 3.10 per unit.
6. The annexed RFS and PPA have certain deviations from the MOP Guidelines dated 28.07.2023 to accommodate certain clauses to keep the conditions conducive for the proposed project. The reason for accommodation of certain clauses in the RFS and PPA, which are different from the MOP Guideline, is only because either certain clauses are not provided for in the said MOP Guidelines or the clauses have been incorporated for the fact that the capacity of the proposed Solar PV project is 5MW. Further, the time period for the PPA has been kept for a period of 25 years in consensus with UPPCL and since the site has already been identified by UPNEDA, the provisions with respect to identification of sites have also been modified accordingly in the PPA as well as RFS.
7. UPNEDA as well as UPPCL had certain apprehension that since the capacity of the proposed power plant is small (i.e., 5MW), many prominent firms may not bid since the larger firms participate in bidding process where the proposed capacity is larger than 50MW. Therefore, to encourage participation of smaller firms in the bidding process, no technical eligibility criteria has been specified in the bidding process. Further, deviations have been proposed in the timeline for commencement of power supply as well.





8. As per the provision in the Guidelines, the prescribed time period is 24 months from the date of execution of the PPA, where the quantum allotted to the Developer / Solar Power Generator is not more than 1000 MW, which has been proposed to be 15 months from the Effective date of the PPA.
9. The Chart incorporating the deviations accommodated in the RFS /PPA and the reasons for all such deviations has been annexed along with this Petition. It is the contention of the Petitioner that these deviations are necessary and expedient to implement the proposed Solar PV project. However, in terms of the extant law, the approval of the same is required to be granted by the Commission.

Additional affidavit filed on 12.02.2024.

10. The Additional Affidavit has been filed by the Petitioners with the following submissions:
 - (a) Applicability of UPERC (Captive and Renewable Energy Generating Plants) Regulations, 2019 (i.e., CRE Regulations) in determination of tariff and justification for arriving upon the ceiling tariff of Rs 3.10 per unit.
 - i) Schedule-II(E) of the CRE Regulations provide for the methodology of determination of tariff for solar power generation plants.
 - ii) The Commission, vide Order dated 21.07.2022 in Petition no. 1846/2022 had adopted the tariff of Rs. 2.98 per unit in the case of procurement of 125MW power under 'Solar Parks and Ultra Mega Solar Projects Scheme.'
 - iii) The proposed project is a 5MW SPP in Mau and the bids for the same shall be invited by the Petitioner through a TBCB process. The ceiling tariff in the instant case has been revised from Rs. 2.98 per unit to Rs. 3.10 per unit.
 - iv) On 04.04.2020, UPPCL through communication to UPNEDA informed that for the determination of ceiling tariff in PM KUSUM-A projects, the ceiling tariff for the PM KUSUM-A projects shall be Rs. 3.10 per unit. At this instance, it is pertinent to mention that the installed capacity of the projects under the KUSUM-A Scheme varied between 0.5MW to 2MW.
 - v) The reason/justification for arriving at the tariff figure of Rs.3.10/kWh is that the final selection of the solar power developer shall be done through TBCB





and to attract bidders, tariff of Rs. 3.10/kWh was computed to be a competitive figure.

(b) Incorporation of amended guidelines as directed by the MoP vide gazette notification dated 02.02.2024.

i) In accordance with the amendments proposed vide the notification dated 02.02.2024, Petitioners have proposed two modifications in the RFS as well as the PPA to incorporate the directions proposed by MOP at clause 13.3 and 13.5 which deal with 'Delay in commencement of Supply of Power' and 'Part Commencement of Supply of Power' respectively.

(c) Amendment in Annexure-D of the RFS.

Records of Proceedings:

11. During the hearing, Sh. Divyanshu Bhatt, Counsel of Petitioner(s) submitted that instant Petition was for seeking approval of RFS and PPA along with deviation for procurement of 5MW Solar power. On the specific query of the Commission, Sh. Bhatt responded that the Commission vide Order dated 21.07.2022 in Petition No. 1846/2022 adopted the tariff of Rs. 2.98/kWh, which was revised by UPPCL on 26.12.2023 to Rs. 3.10/kWh as ceiling tariff in the matter which is linked to PM-KUSUM Component-A Scheme. Further, Sh. Bhatt stated that in terms of Schedule-II (E)(ii) of the CRE Regulations, tariff for Solar projects equal to or less than 5MW shall be the weighted average tariff of solar projects above 5MW discovered through competitive bidding in last financial year.
12. Further, on the Commission's enquiry that why the ceiling tariff of Rs. 3.10 per unit has been kept against the adopted tariff of Rs. 2.98 per unit for projects above 5MW during FY2022-23 in terms of Schedule II(E)(ii) of the CRE Regulations, 2019, Mrs. Kalra responded that even after revising the ceiling tariff of Rs. 3.10/kWh for the PM-KUSUM Component -A scheme i.e., 0.5-2MW capacity project, there were less participation of bidders. Therefore, UPPCL has agreed to revise the tariff to Rs. 3.10/kWh for the instant case of 5MW capacity.
13. On the Commission's enquiry of why not more than 5MW was planned on 11.868 hectares land, Mrs. Kalra replied that they would be able to utilize only 10 hectares





out of 11.868 hectares of land because of plantation etc. requiring additional clearance from the appropriate authority. Sh. Deepak Raizada on behalf of UPPCL stated that Regulations do provide for ceiling tariff for Competitive Bidding process but in order to prevent higher tariff, they kept the ceiling tariff in the consumer interest. Mrs. Kalra submitted that if the Commission opined ceiling tariff to be lower than the Rs. 3.10/kWh, they would accept the same without any objection. Further, Mrs. Kalra submitted that CUF of 19% should be considered instead of 17% (being typo error) for the instant Bidding documents.

Commission's View:

14. It is observed that in the instant matter, the Petitioner(s) is seeking approval of the bidding documents for procurement of 5MW Solar PV-based power project to be installed at 11.868 hectares (i.e., 29.2 acre) of identified land in Mau (Distt.) in the state under Tariff Based Competitive Bidding process.
15. Schedule-II(E)(ii) of the UPERC CRE Regulations, 2019 provides that tariff for Solar project equal to or less than 5MW shall be weighted average tariff of Solar project above 5MW discovered through competitive bidding process in the last financial year. The relevant extract of the said Schedule-II has been reproduced for ready reference as under:

"(ii) Tariff for projects commissioned after FY2018-19

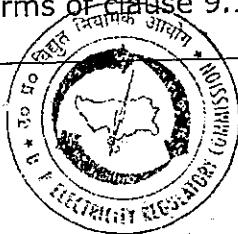
The tariff for projects above 5MW shall be as discovered through competitive bidding under section 63 of the Act.

The tariff for the projects equal to or less than 5 MW shall be the weighted average tariff of Solar projects above 5MW discovered through competitive bidding in last financial year and adopted by the Commission or rate agreed between the parties in the PPA, whichever is lower."

16. It is to note that the Commission vide its Order dated 21.07.2022 in Petition No. 1846/2022 had adopted the tariff of Rs. 2.98 per unit for Solar PV based power during the financial year 2022-23. In this case it is pertinent to mention that land for the 5MW project is being provided by UPNEDA on lease rent of Rs. 15,000/- per acre per annum for 30 years. Further, in terms of clause 9.1.4 (i.e., Incentive), the

by

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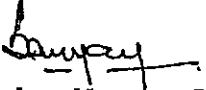




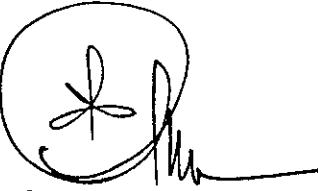
state government would bear the cost for construction of 10 km transmission line length. Therefore, the Commission is of the view that it would be appropriate to fix ceiling tariff of Rs. 2.98 per unit instead of Rs. 3.10 per unit for this bid as per Schedule II(E)(ii) of the UPERC CRE Regulations, 2019. Accordingly, the Petitioner is directed to make changes for Declared Annual CUF of 19% as admitted by UPNEDA and ceiling tariff of Rs. 2.98 per unit in this bidding document.

17. With above directions, the Commission approves the instant bidding document for procurement of Solar PV-based power from 5MW project to be installed at identified 11.868 hectares land of UPNEDA at Mau district in the state along with the claimed deviation as annexed in the Petition and additional affidavit.

This Petition stands disposed of in terms of the above.


(Sanjay Kumar Singh)

Member


(Vinod Kumar Srivastava)

Member (Law)


(Arvind Kumar)

Chairman

Place: Lucknow

Dated: 05.03.2024



