

Bihar Electricity Regulatory Commission

Vidyut Bhawan-II, J.L. Nehru Marg, Patna 800 021

Case No. 07/2020 & Case No. 08/2020

In the matter of:

Petition u/s 86(1)(b) of Electricity Act, 2003 r/w regulation 10.2.8 of BERC (Power Purchase and Procurement Process of Licensee) Regulations, 2018 seeking regulatory approval for procurement of 300 MW & 150 MW of solar power from NTPC Ltd. & SECI respectively on long term basis.

And

Bihar State Power Holding Company Ltd. (BSPHCL) on behalf of
NBPDCCL & SBPDCL

.....Petitioner

Vs.

NTPC Ltd. & Solar Energy Corporation of India Limited (SECI)

.....Respondents

Quoram:

- | | | | |
|----|-------------|---|----------|
| 1. | S. K. Negi | - | Chairman |
| 2. | Rajeev Amit | - | Member |

Appearance:

1.	Sh. Mithilesh Kumar, ESE (PMC)	On behalf of BSPHCL
2.	Sh. Amit Kumar, AEE (PMC)	
3.	Sh. Sunit Kumar, AGM (Commercial)	On behalf of NTPC
4.	Sh. Faisal Ahmad, DGM (Commercial)	

Date of hearing: - 19.05.2020

ORDER

Date: 29.05.2020

1. Introduction:

The Chief Engineer (PMC), BSPHCL has filed two petitions on behalf of North Bihar Power Distribution Co. Ltd. (NBPDCCL) & South Bihar Power Distribution Co. Ltd. (SBPDCL) for regulatory approval for the procurement of total 450 MWs (300 MWs from NTPC and 150 MWs from SECI) of solar power for Bihar on long term basis (i.e. 25 years) at the price discovered through competitive bidding on e-Reverse auction

mode and approved by the Central Electricity Regulatory Commission (CERC) in order to meet the Renewal Purchase Obligation (RPO) mandated by the Bihar Electricity Regulatory Commission (BERC).

The two petitions were registered as case no 07/2020 and 08/2020 for NTPC and SECI respectively and posted for 19/5/2020 for hearing the cases. Notices were issued to the parties also except SECI which was not invited for hearing due to lock down imposed on account of Covid-19 pandemic.

The prayers made by the petitioner-BSPHCL (petitioner common in both the petitions) are as under;

(1) Accord regulatory approval of procurement of aforesaid 450 MWs of Solar Power including the tariff at which the procurement is to be done from the NTPC and SECI under u/s 86(1)(b) of Electricity Act, 2003 r/w regulation 10.2.8 of BERC (Power Purchase and Procurement Process of Licensee) Regulations, 2018;

(2) Condone the delay in filing the petition by the petitioner before the BERC for regulatory approval of the contracted capacity of 300 MWs from NTPC; and

(3) Pass such order as the Commission deem fit and proper.

2. Hearing:

Commission heard the petitioner and the respondent NTPC on 19/5/2020 in its court room duly complying with laid down **Social Distancing**. During the hearing necessary clarifications on certain issues with respect to the cases in consideration were obtained from the parties concerned. Since the petitioner is common in both the instant cases and the subject matter is also similar in nature, Commission after perusing the petitions and hearing the submissions and contentions of the parties present during the hearing decided to dispose of these two cases through a common order. Accordingly, the order after hearing the cases was reserved.

3. Submission of the Petitioner: The upshot of the submissions of the petitioner in its written petitions and advanced during the hearing are as under:

3.1 It has been submitted that the Bihar Electricity Regulatory Commission (BERC) in exercise of powers conferred u/s 86 (1) (e) of the Electricity Act 2003 has set following RPO trajectory up to FY 2021-22 for the obligated entities of State of Bihar:-

Long Term RPO trajectory	FY 2019-20	FY 2020-21	FY 2021-22
Non-Solar	6.75%	7.5%	9.00%
Solar	4.75%	6.75%	8.00%
Total	11.5%	14.25%	17.00%

3.2 The calculation of anticipated requirement and deficit of Solar Power to meet above RPO trajectory has been tabulated as below:-

S.N.	Description	FY 2019-20	FY 2020-21	FY 2021-22
A	Total conventional Energy Consumption by DISCOMS (MUs)	21224	24574	32302.56
B	% Solar RPO Target (as per trajectory)	4.75%	6.75%	8.00%
C	Total Solar RPO Required (MUs) (AXB)	1008.14	1658.75	2584.2
D	Solar capacity available (in MUs) through Intra State Generation	198	198	198
E	RPO Deficit in MUs (C-D)	810.14	1460.75	2386.2
F	Solar Availability in MW through SECI under ISTS scheme (Tranche II-150MW & Tranche III-300 MW)	0	450	450
	In MUs @ Minimum generation as per agreement	0	323.06	1,017.97
G	Solar Availability in MW through NTPC (under ISTS scheme)	0	300	300

	In MUs @ Minimum generation (631.15 MW) as per agreement	0	278.4	631.15
H	Solar Availability in MW through upcoming SECI ISTS scheme (Tranche V)	0	0	480
	In MUs @ Minimum generation as per agreement	0	0	499.82*
I	Total MUs (F+G+H)	0	601.45	2148.94
J	Surplus(+)/Deficit(-) solar power in MUs (I-E)	-810.14	-859.29	-237.26
K	BREDA Floating Project	2	2	2
	In MUs @CUF 19%	0	0	1.66
L	Net Surplus(+)/Deficit(-) solar power in MUs (J-K)	-810.14	-859.29	-235.6* SECI Tranche V

* SECI Tranche V (480 MW) solar PV project and BREDA (2 MW) floating solar power project are expected to commission in Sep'21 as per their respective offers

3.3 The petitioners, therefore, in order to meet the required solar RPO as indicated in the above table proposes to procure solar power from the NTPC & SECI on long term basis (i.e. 25 years) as per the given details :-

Quantum (MW)	ISTS Scheme	Implementing Agency/Trader	PSA Signing Date	Commencement date of supply
300	ISTS Solar Scheme	NTPC	08.03.19	22.10.20
150	Solar Scheme (Tranche-II)	SECI	13.06.19	08.11.20

3.4 NTPC & SECI has issued Request for Selection (RfS) along with draft Power Purchase Agreement (PPA) and Power sale Agreement (PSA) documents for setting up of 2000 MW & 3000 MW respectively, ISTS

connected Solar Power Projects and tariff has been arrived through e-tender cum reverse auction.

- 3.5 The winning bidders; the discovered tariff; the trading margin and the details of case filed for adoption of the discovered tariff before the CERC for procurement of the instant 300 MW solar power from ISTS connected solar Power Projects through NTPC and 150 MW solar power from ISTS connected solar Power Projects through SECI are detailed below:-

Name of solar power Generator	Quantum (MW)	Implementing Agency/Trader	Discovered tariff (Rs./unit) as per PSA	Trader trading margin (Paisa/unit) as per PSA	Petition no & date of order by which CERC has adopted the tariff
SB Energy Six Pvt. Ltd.	300	NTPC	Rs. 2.60	7	57/AT/2020, Order dated 24.02.2020
Acme Solar Holdings Ltd.	150	SECI	Rs. 2.44	7	396/AT/2019, Order dated 26.02.2020

- 3.6 The discovered tariff has been adopted by CERC in Petition no 57/AT/2020 and 396/AT/2019, u/s 63 of the Electricity Act, 2003 for adoption of tariff for 600 MW (ISTS- NTPC) and Solar PV Projects connected to the Inter-State Transmission System (ISTS) and selected through competitive bidding process as per the Standard Bidding Guidelines dated 03.08.2017.

- 3.7 The PSA (Power Sale Agreement) was executed with M/S NTPC Ltd on 08.03.2019 and subsequently an amended PSA was executed with M/S NTPC Ltd. on 15.01.2020 for supply of 300 MW solar powers and the PSA with M/S SECI was executed on 13.06.2019 for supply of 150 MW solar powers to Bihar DISCOMs.

- 3.8 With respect to the solar power to be procured through NTPC the condition laid down in the amended PSA signed on 15/1/2020 that *"notwithstanding the Effective date, the condition precedent for the enforcement of the obligations of either party against the other under this Agreement shall be that till 31st March 2020, the NTPC shall obtain the order of CERC adopting the tariff and the Discoms shall duly obtain the order of the Bihar Electricity Regulatory Commission approving the procurement of contracted capacity"*the petitioner through its supplementary petition dated 19/5/2020 has prayed that due to COVID outbreak and a nationwide lockdown, the petition as per above direction of BERC dated 19.03.2020 (involving BERC case no. 07/2020) could not be filed before 31st March 2020. It has also mentioned that Hon'ble CERC has already adopted the discovered tariff vide petition no. 57/AT/2020 order dated 24.02.2020.
- 3.9 Citing Section 86 (1)(b) of Electricity Act 2003, the petitioner has submitted that the Commission is bestowed with a power to regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured, therefore in the light of the submission made by it the instant proposal be approved.

4 Submission of Respondent NTPC

The representatives of the NTPC namely Shri Sunit Kumar, AGM and Shri Faisal Ahmad, DGM concurred with the submissions of the petitioner. They were in agreement with the provision relating the para 7 of Letter of Intent regarding Safeguard Duty and assured that the same would be complied with. They also submitted that they would abide by the provisions laid down in section 8 (f) and 8(d) of the CERC Trading license Regulations with respect to trading margin.

5. Commission's analysis:

Having examined the written & oral submissions of the petitioners and replies of the respondents present in the court, the commission finds that:

- 5.1 NTPC issued Request for Selection (RfS) document, along with draft PPA and PSA documents for setting up of 2000 MW ISTS-connected Solar PV Power Projects on 09.03.2018. Similarly, SECI issued Request for Selection document, along with draft PPA and PSA documents for setting up of 3000 MW ISTS-connected Solar Power Projects (Tranche II) on 27.2.2018. Both the intermediaries (NTPC and SECI) are said to have performed this procurement process in accordance with the guidelines issued by the Ministry of Power, Government of India on “*Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Power Projects*” under Section 63 of the Electricity Act, 2003.
- 5.2 As per the Guidelines, NTPC & SECI in the capacity of intermediary agency, invited proposals for setting up of ISTS-connected Solar PV Power Projects on pan-India basis, on “**Build, Own, and Operate**” basis for an aggregate capacity of 2000 MW & 3000 MW respectively and for procurement of solar power from the projects being set up in relation thereto. As per the arrangements, NTPC & SECI is to procure the power by entering into PPAs with the successful bidders with back-to-back PSAs for sale of power to the Buying Utilities/ Distribution Licensees.
- 5.3 Accordingly, NTPC conducted e-Reverse auction for 2000 MW capacity on 14.08.2018 and issued Letter of Intent to selected bidders on 17.10.2018. The relevant portion of the one of the Letter of Intent issued to the Project Developer is as under:

“.....6.0 The Tariff for electricity generated from the Solar Power Project to be developed by the Solar Power Developer for the entire period of twenty five (25) years of Power Purchase Agreement (PPA) to be entered into between the Solar Power Developer and NTPC for this project shall be Rs.2.60/kWh (Rupees Two and Sixty paise only per Kilowatt hour).

7.0 The tariff quoted by you is inclusive of implication of Safeguard Duty imposed on import of “Solar Cell whether or not assembled in modules or panels” by the Ministry of Finance, Govt. of India vide Notification No. 01/2018-Customs (SG) dated 30.07.2018 {please

*refer to your offline submission of implication on Original Tariff on 13.08.2018 in response to NTPC letter dated 08.08.2018 brought at para 1.0(e)&(f) above). **In case Safeguard Duty is not paid by the Solar Power Developer on procurement of ‘Solar Cell whether or not assembled in modules or panels’ for the solar projects to be developed under the subject RfS for whatsoever reason, the Implication of Rs.0.25/kWh of Safeguard Duty quoted by you, shall be deducted from the Final Tariff of Rs.2.60/kWh quoted by you in Reverse Auction. In such case, the final tariff payable to Solar Power Developer shall be Rs.2.35/kWh for 25 years of PPA duration.....”***

The concerned parties present during the hearing before this commission acknowledged the para 7 of Letter of Intent regarding Safeguard Duty and accordingly committed to abide by this provision as desired by the commission.

5.4 Similarly, SECI conducted e-Reverse auction for 3000 MW capacity on 13.07.2018 and issued Letter of Intent to selected bidders on 10.08.2018. The relevant portion of the one of the Letter of Intent issued to the Project Developer is as under:

“In reference to above and subject to the provisions of RfS, we confirm having accepted your final offer concluded as a result of e-RA and issue this letter of Award as per the following details:

Allotted Project ID	Project Capacity (MW)	Project Location	Sub-station details for connectivity	Applicable Tariff (INR/kWh) in figures	Applicable Tariff (INR/kWh) in words
SPD-ISTS-T2-ASHL-P2-300	300	To be intimated later	To be intimated later	Rs.2.44	Rupees Two and Forty-Four paise only

1.1 The applicable tariff payable shall be fixed for 25 years from Scheduled Commissioning Date, as discovered through e-bidding and e-Reverse Auction.”

5.5 Pursuant to Letters of Intent of NTPC and request of power procurement by Distribution Licensees, the capacity of 600 MW was

allocated to NBPDCCL & SBPDCL at the tariff of Rs. 2.60/ Kwh and accordingly. NTPC executed PSA on 08.03.2019 with Discoms. Thereafter, NTPC entered into PPAs with the successful bidders but later on one of the successful bidders i.e. Azure Power India Private Limited (for 300 MW) terminated its PPA.

However, Pursuant to Letters of Intent of SECI and request of power procurement by Distribution Licensees, the capacity of 150 MW of another successful bidder ACME was allocated to NBPDCCL & SBPDCL at the tariff of Rs. 2.44/ Kwh. Accordingly, SECI executed PSA on 13.06.2019 with Discoms and entered into PPAs with ACME on 7.12.2018.

- 5.6 Further, NTPC & SECI in the capacity of intermediary agency approached CERC for adoption of discovered tariff. CERC as per section 63 of the Electricity Act, 2003, in its order dated 24.02.2020 in case no 57/AT/2020 and vide another order dated 26.02.2020 in 396/AT/2019 adopted discovered tariff of Rs. 2.60/ Kwh and Rs. 2.44/ Kwh for NTPC & SECI respectively and approved mutually agreed trading margin of Rs. 07 Paisa /Kwh as per the Standard Bidding Guidelines issued on 03.08.2017.
- 5.7 Accordingly, in the instant petitions, the petitioner-BSPHCL on behalf of NBPDCCL & SBPDCL is seeking regulatory approval for procurement of remaining 300 MW of solar power from NTPC Ltd under u/s 86(1)(b) of Electricity Act, 2003. and 150 MW of solar power from SECI on long term basis discovered and CERC adopted tariff of Rs. 2.67/Kwh (inclusive of trading margin) and 2.51/ Kwh (inclusive of trading margin) respectively.
- 5.8 Commission's role u/s 86(1)(b) of the Electricity Act, 2003 with regard to instant subject matter relates to:-
- (a) Whether the agreed 300 MW & 150 MW power from NTPC & SECI respectively is required for the Discoms or not?
 - (b) Whether the instant discovered and CERC adopted tariff rates that are proposed to be procured by Bihar Discoms from NTPC & SECI are reasonable and cost effective?

5.9 As regards to the requirement of 300 MW & 150 power from NTPC & SECI respectively, the Commission as per the BERC (Renewable Purchase Obligation, its Compliance and REC Framework Implementation) Regulations, 2010 as amended from time to time, long term RPO trajectory for Bihar up to 2021-22 has been specified in pursuance to the various letters of the MNRE and in exercise of powers u/s 86(1)(e) of the Electricity Act, 2003. The current trajectory has been mentioned in the para 3.1 of this order as submitted by the petitioner. The state Discoms which are important obligated entities for RPO fulfillment in the State, are in dearth of solar power to meet the said RPO target as submitted by the petitioner in para 3.2 of this order. Therefore allowing the Discoms to procure instant quantity of solar power from the project developers of the present proposal will mitigate the shortage of solar power to some extent and save the Discoms from incurring additional expenditure on purchase of Renewable Energy Certificates (RECs). Therefore, in this sense there is a need for additional solar power to meet the solar RPO requirement in the State.

However, Commission would like to record a note of caution here. Commission as well as the Discoms is aware that the DICOMS are saddled with excess contracted capacity especially conventional thermal power as the growth of demand for power has not been keeping pace with the projections which has serious implication in the increase in consumer tariff rates as the fixed cost of the unscheduled power are loaded on the consumers. Any addition in the already access capacity burdened power procurement portfolio of the Discoms will worsen the situation unless the Discoms take effective preventive steps to gainfully utilise those excess capacities in the interest of consumers. Purchase of RE power such as the present one cannot be avoided in the interest of fulfillment of RPO targets but innovative and effective measures to utilize the excess capacity will go a long way in making affordable supply of quality electricity to consumers. Commissions expects that the Discoms will pursue it in right earnest. Commission will review the

steps taken by the Discoms in this respect during the annual tariff setting exercise.

- 5.10 Further, as regards approval for purchase of aforesaid quantity of solar power at tariff of Rs. 2.60/ Kwh & Rs. 2.44/Kwh for NTPC & SECI respectively, Commission observes that the discovered tariffs for the proposed procurement from NTPC & SECI are competitive and in consonance with the prevailing solar power rates in the market besides it is much lower than the APPC of Discoms (SBPDCL & NBPDCCL) for FY 2020-21. Hence the discovered and adopted rates are the cost effective.
- 5.11 Petitioner-BSPHCL has submitted that, in addition to discovered tariff, the intermediaries NTPC & SECI would also be charging the trading margin of Rs.0.07/KWh for the transaction of power in the instant case..

However, in this respect it will be pertinent to highlight para no. 28 of CERC order in case of 57/AT/2020 dated 24.02.2020 and para no. 29 of CERC order in case of 396/AT/2019 dated 26.02.2020 which read as:

“However, Proviso under Regulation 8 (d) of the Trading Licence Regulations provides as under:

*“8.(d) * * * * * Provided that in contracts where escrow arrangement or irrevocable, unconditional and revolving letter of credit as specified in clause (10) of Regulation 9 is not provided by the Trading Licensee in favour of the seller, the Trading Licensee shall not charge trading margin exceeding two (2.0) paise/kWh.”*

In addition, Regulation 8 (f) of the Trading Licence Regulations provides as under:

“8. (f). For transactions under Back to Back contracts, where escrow arrangement or irrevocable, unconditional and revolving letter of credit as specified in clause (10) of Regulation 9 is not provided by the Trading Licensee in

favour of the seller, the Trading Licensee shall not charge trading margin exceeding two (2.0) paise/kWh.”

The Petitioner, NTPC shall also be governed by the above provisions of the Trading Licence Regulations.”

As mentioned in the CERC order the trading margin is to be determined as per the mutual arrangement between the Discom and intermediary but at the same is subject to the provisions laid down in regulation 8(f) and regulation 8(d) of the CERC Trading License Regulations. Therefore when apprised of these provisions to the petitioner and respondents during the hearing by the commission, the parties present especially NTPC undertook to adhere to these provisions. The provision shall also be applicable to SECI equally

- 5.12 In addition to above, point no. 01 of page 4 of supplementary PSA dated 15.01.2020 of NTPC stipulates that:

*“Notwithstanding the Effective date, the condition precedent for the enforcement of the obligations of either party against the other under this Agreement shall be that till 31st March 2020, the NTPC shall obtain the order of CERC adopting the tariff and the Discoms shall duly obtain the order of the Bihar Electricity Regulatory Commission approving the procurement of contracted capacity.
.....”*

In view of above provisions, petitioner has submitted its clarification vide its letter no. 91 dated 19.05.2020 stating that due to COVID outbreak and a nationwide lockdown it could not file the required petition before 31st March 2020. The petitioner has also mentioned that Hon’ble CERC has already adopted the discovered tariff vide petition no. 57/AT/2020 order dated 24.02.2020. In light of above it has requested the commission to accept the petition and approve the procurement of 300 MW solar power from NTPC on long term basis to meet solar RPO of Discoms.”

Keeping in view the circumstances mentioned by the petitioner in delay in filing of petition, commission is inclined to condone the delay in filing the petition.

- 5.13 From the close scrutiny of the two PSAs of NTPC and SECI by the office of the BERC it is observed that many clauses of two PSAs are in variance to each other. There is no uniformity in the format of the PSA. This calls for examination and further necessary action at the end of Discoms at one and NTPC and SECI on the other so that this does not give rise to any possibility of litigation in future. Commission is of the view that there should be uniform/standard format for PSA which should be adopted by all stakeholders.

6. Order

Considering the facts and circumstances mentioned above, Commission condones the delay in filing the petition and approves:

- 6.1 The proposal of procurement of 300 MW of solar power from NTPC and 150 MW of solar power from Solar Energy Corporation of India Ltd. (SECI) on long term for 25 years at the discovered rate of tariff duly adopted by the CERC on with the terms and conditions set forth in the said orders of CERC.
- 6.2 The NTPC and SECI shall as assured abide by the para 7 of the Letter of Intent with respect to implication of safe guard duties on the discovered tariff of the solar power to be procured from Azure Power India Limited;
- 6.3 The intermediaries NTPC and SECI shall adhere to the provisions as laid down in regulation 8(f) and regulation (d) of the Trading License Regulations with respect to rate of Trading charges.
- 6.4 The Discoms shall explore all available avenues to utilise the excess contracted conventional energy in order to avoid/minimise the burden of fixed cost due to unscheduled power.

The petition is disposed off with these observations & directions.

Sd/-
(Rajeev Amit)
Member

Sd/-
(S.K Negi)
Chairman