

Before the  
**MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**  
World Trade Centre, Centre No.1, 13th Floor, Cuffe Parade, Mumbai 400005  
Tel. 022 22163964/65/69 Fax 22163976  
Email: [mercindia@merc.gov.in](mailto:mercindia@merc.gov.in)  
Website: [www.merc.gov.in](http://www.merc.gov.in)

**Case No. 181 of 2020**

**Case of Tata Power Company Limited - Distribution seeking approval for change in the execution entity of 225 MW grid connected Wind-Solar Hybrid Power Projects from M/s Tata Power Green Energy Limited, a 100% subsidiary of The Tata Power Company Limited to M/s TP Saurya Limited, another 100% subsidiary of The Tata Power Company Limited.**

Tata Power Company Limited - Distribution.

..... Petitioner

Tata Power Green Energy Limited.

TP Saurya Limited.

..... Respondents.

**Coram**

**I.M. Bohari, Member  
Mukesh Khullar, Member**

**Appearance**

For the Petitioner

: Shri. Peyush Tandon (Rep.)

For the Respondent No.1

: Shri. Paresh Bhatt (Rep.)

For the Respondent No.2

: Shri. Sunil Miranda (Rep.)

**ORDER**

**Date: 22 October 2020**

1. Tata Power Company Limited-Distribution (**TPC-D**) seeking approval for change in the execution entity of 225 MW grid connected Wind-Solar Hybrid Power Projects from Tata Power Green Energy Limited (**TPGEL**) a 100% subsidiary of The Tata Power Company Limited (**TPCL**) to M/s TP Saurya Limited (**TPSL**) another 100% subsidiary of TPCL.

**2. TPC-D's main prayers are as follows:**

- a) To approve the change in execution entity of 225 MW grid connected Wind-Solar Hybrid Power Projects from TPGEL to TP Saurya Limited.*
- b) Condone any inadvertent omissions/errors/shortcomings and permit Tata Power-D to add/change/modify/alter this filing and make further submissions as may be required at a future date.*

**3. TPC-D in its Case has stated as follows:**

- 3.1 TPC-D has approached the Commission in Case No 152 of 2020 for approval of adoption of tariff for procurement of 225 MW grid connected Wind-Solar Hybrid capacity on long term basis to meet its RPO targets. The Commission by its Order dated 10 August 2020 has accorded the approval for tariff of Rs 2.59 per unit.
- 3.2 The power is being sourced through TPGEL from 225 MW Wind Solar Hybrid Power Project. TPGEL is a 100% subsidiary of TPCL and had submitted the bid with financial support of TPCL. Subsequent to the approval by the Commission, TPC- D issued a Letter of Award (**LOA**) dated 20 August 2020 to TPGEL to set up the 225 MW Wind-Solar Hybrid Project.
- 3.3 Post issuance of the LOA, TPGEL, through its Letter dated 26 August 2020, informed TPC-D that its Parent Company, TPCL has decided to develop all its new projects under one company for the purpose of ease of cashflow management, better governance and improved oversight and accordingly, the Board of TPCL has recently granted in-principle approval to set up an Investment Infrastructure Trust (**InvIT**) for this purpose. Thereafter, TPCL has incorporated TPSL (another 100% subsidiary of TPCL) with a view to consolidate the entire new renewable energy portfolio under TPSL for the ease in transfer at a later date to the InvIT after the projects are developed.
- 3.4 In view of this, TPGEL has requested TPC-D to agree to the proposal of changing the execution entity from TPGEL to TPSL for setting up of the 225 MW hybrid power project as both these entities are 100% subsidiary of TPCL. TPSL, by its letter dated 26 August 2020 has informed TPC-D about its acceptance to develop 225 MW Hybrid Power Project.
- 3.5 Upon receipt of the aforesaid request letter from TPGEL and the aforesaid acceptance letter from TPSL regarding change in execution of the project, TPC- D has reviewed the

request considering the following point:

- a. Whether the request materially changes any of the bidding requirements of TPC-D:

Eligibility Criteria specified in the RfS were:

i) Technical Criteria:

Commercially established and operational technologies to be used duly approved by MNRE. The bidder to provide information about solar PV panels and wind turbines to be installed at the time of Financial Closure.

ii) Financial Criteria:

- a) Net-Worth: Net-Worth of the Bidder should be equal to or greater than INR 1 Crores/ MW (of the quoted capacity), as per the latest available audited financial statements. TPGEL used the credentials of its Parent company -TPCL for Net-Worth criteria.
- b) Liquidity: Bidders were required to submit documentary evidence on any one of the three financial criteria - (i) Minimum Annual Turnover of INR 75 Lakhs/MW, (ii) Minimum PBDIT of INR 15 Lakhs/MW or (iii) Sanction Letter from Lending Institution/Bank committing a line of credit for a minimum amount of INR 18.75 Lakhs/MW. TPGEL used the credentials of its Parent company-TPCL to meet the Liquidity criteria.

3.6 TPC-D, during the bid evaluation, has verified that TPGEL met the bid requirements by being a 100% subsidiary of TPCL and met the specified financial criteria. Similarly, TPSL, being a 100% subsidiary of TPCL, qualifies the bid requirement on similar lines. TPC-D has reviewed the Memorandum of Association (**MOA**) and Article of Association (**AOA**) documents of TPSL and found them to be meeting the bidding criteria. Also, TPSL has agreed to execute the project at the same terms and conditions as those applicable to TPGEL. Hence, practically there is no change as far as the requirements of TPC-D are concerned.

3.7 TPC-D has evaluated the RfS/PPA document and there is no provision forming part of the RfS document approved by the Commission which allows TPC-D to agree for the requested change in the entity which may execute PPA with TPC-D for the development of the 225 MW Hybrid Project without the approval of the Commission. A reference is drawn to the clause 3.12.1 of the RfS as below:

*A copy of Standard Power Purchase Agreement to be executed between Tata Power – D and the HPD shall be provided along with this RfS. The PPA shall be signed within 30 days from the date of issue of Letter of Award (LoA) (Subject to MERC approval), if not extended by Tata Power - D. PPA will be executed between Tata Power-D and Selected Bidder for each Project. The PPAs shall be valid for a period of 25 years from Commercial Operation Date for new projects and from the signing of PPA for existing projects as per provisions of PPA.*

- 3.8 The RfS was duly approved by the Commission in Case No. 88 of 2020. Hence, any change to the provisions of the RfS shall require the approval of the Commission. Hence TPC-D has approached the Commission in its jurisdiction under Section 86 (1) (k) of the Electricity Act read with Regulation 92 and 94 of Maharashtra Electricity Regulatory Commission (Conduct of Business) Regulations, 2004 and all the enabling powers in this regard including the inherent powers and expansive regulatory authority vested unto the Commission, seeking approval from the Commission for the change in execution entity of 225 MW grid connected Wind-Solar Hybrid Power Projects from TPGEL to TPSL.
4. The Respondents viz. TPGEL and TPSL have not made any written submission in the matter.
5. At the e-hearing through video conferencing held on 6 October 2020, the representative of TPC-D reiterated its submission in the Petition. The representative of TPGEL and TPSL stated that they have nothing to say in the matter. To the query of the Commission as to why TPC-D wants to make changes in name of execution entity at this stage and it may do it later stage for other projects prospectively, the representative of TPC-D stated that it is doing so now for operational flexibility.

#### **Commission's Analysis and Rulings:**

6. TPC-D under the instant Case has sought approval for change in execution entity of 225 MW grid connected Wind-Solar Hybrid Power Projects from TPGEL to TPSL. Both companies viz. TPGEL and TPSL are 100 % subsidiary of TPCL. Earlier TPC-D had approached the Commission in Case No. 88 of 2020 seeking certain deviations in the bidding document. The Commission by its Order dated 1 June 2020 had approved RfS document for long term procurement of 225 MW capacity from grid connected Wind-Solar Hybrid Power Projects through competitive bidding process. The Tariff discovered through competitive bidding process was approved by the Commission vide its Order dated 10 August 2020 in Case No 152 of 2020 in which TPGEL was found to be the lowest selected bidder, hence LOA was issued by TPC-D to TPGEL.

7. TPC-D has now stated that TPGEL which was awarded the contract to set up the 225 MW Wind-Solar Hybrid Project has requested TPC-D the change of the execution entity from TPGEL to TPSL, as TPCL has recently incorporated TPSL as its 100% subsidiary to develop all its new projects under one company and to consolidate the entire new renewable energy portfolio under TPSL. TPC-D has further stated that like TPGEL, TPSL is meeting the technical and financial bidding requirements and TPSL has agreed to undertake all obligations specified in RfS to execute the project at the same terms and conditions as those applicable to TPGEL. Any changes in the provisions of approved RfS and PPA requires Commission's approval, hence TPC-D has approached the Commission for change of the execution entity from TPGEL to TPSL.
8. The Commission notes that while submitting the Petition, TPC-D in its forwarding letter of the Petition has clearly stated that as RfS does not provide for transfer of execution right to an Affiliate, hence TPC-D is filing the instant Petition for changes in the provisions of RfS for change in the execution entity. From the document placed on record it is observed that for the said project, the financial bids were opened on 11 July 2020 and after completing the transparent bidding process, TPC-D had approached the Commission on 21 July 2020 for approval of discovered tariff. During the bidding process or post completion of process, TPSL was not in existence as a separate legal entity because it was incorporated only on 2 August 2020. It is settled position in law that bidding conditions cannot be changed post completion of bidding process but in the instant Case, the Commission is surprised to note that TPC-D is seeking altogether the change of executing entity which was selected/finalized after transparent process of competitive bidding to a new entity which did not exist at the time to participate in the competitive bidding. Such request of TPC-D is against the statutory guidelines of process of transparent bidding.
9. The Commission notes that TPC-D has given the reason for change of executing entity as operational flexibility and for consolidating the entire new renewable energy portfolio under new entity for the ease in transfer of asset at a later date. TPC-D has not revealed anything about the existing/ongoing obligations of TPGEL and subsistence of TPGEL after incorporation of new entity. The Commission is of the view that as per bidding conditions, selected bidder has the option of forming SPV for execution of the project and such SPV can enter into PPA on behalf of parent company which is the selected bidder. But in present case, TPC-D is requesting to allow signing of PPA by an altogether different legal entity which is not SPV of selected bidder. As this purported change is not as per approved RfS which has been duly acted upon, at this stage the change cannot be allowed. Further, modification to RfS can only be possible before bid submissions and under such circumstances, sufficient time needs to be given to prospective bidders to study such change.

10. In view of the foregoing the Commission is not inclined to approve the change in executing entity of 225 MW grid connected Wind-Solar Hybrid Power Projects from TPGEL to TPSL
11. Hence, the following Order:

**ORDER**

1. The Case No. 181 of 2020 is rejected.

**Sd/-**  
**(Mukesh Khullar)**  
**Member**

**Sd/-**  
**(I.M. Bohari)**  
**Member**

