



**Petition No. 1593 of 2020**

**BEFORE**

**THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION**

**LUCKNOW**

**Date of Order (19 .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:** Approval of Power Sale Agreement signed by UP Power Corporation Ltd. dated 01-10-2019 with Solar Energy Corporation India Ltd. For purchase of ISTS – connected 380MW wind power on Long Term Basis.

M/s UP Power Corporation Ltd.  
(through its Managing Director),  
Shakti Bhawan Extn., 14 - Ashok Marg, Lucknow

----- **Petitioner**

M/s Solar Energy Corporation of India Ltd.,  
1<sup>st</sup> Floor, A-Wing, D-3, District Central, Saket, New Delhi - 110017

----- **Respondent**

Following were present:

1. Sh. M.G. Ramachandran, Senior Advocate, SECI
2. Sh. Deepak Raizada, CE, PPA-RE, UPPCL
3. Representative from SECI
4. Sh. B.K. Saxena, Advocate, UPPCL

**ORDER**

**(Date of Hearing 28.01.2021)**



1. The instant Petition is filed by UPPCL for approval of Power Sale Agreement dated 01.10.2019 signed by UPPCL with SECI for purchase of ISTS connected 380 MW wind power on long term basis.
2. The Petitioner has prayed as follows: -
  - a. Admit the Petition.
  - b. Approve Power Sale Agreement dated 01.10.2019.
  - c. Pass such order that may be deemed fit and proper in the facts and circumstances of the case.

**Brief Facts of the Case:**

3. Ministry of Power, Govt. of India has notified "Guidelines for Tariff Based Competitive Bidding for Procurement of Power from Grid Connected Wind Power Projects" (in short Guidelines) vide Resolution no. 23/54/2017-R&R dated 08-12-2017.
4. Under these guidelines the Govt. of India has made a target of addition of new Wind Power Capacity of 60 GW by the year 2022. The power under these guidelines, is to be procured through competitive biddings under section 63 of the Electricity Act 2003 and for this purpose the Request for selection (RfS), draft Power Purchase Agreement (PPA) and Power Sale Agreement (PSA) are to be made in accordance with the said Guidelines. In case of deviation from the guidelines or standard bid documents, the same is required to be approved from the Appropriate Commission.
5. Under these Guidelines intermediary is considered as trader buying power from wind power generator and selling the same to one or more distribution licensee and as such, intermediary is allowed to charge trading margin as notified by the Appropriate Commission.
6. The Ministry of Power has designated SECI a Nodal Agency, authorized it to act as intermediary procurer for implementation of MNRE schemes for setting up interstate connected solar and wind power projects. Further, SECI has invited proposals for setting up ISTS connected Wind Power Projects on build, own and operate basis (BOO) for an aggregate capacity of 1200MW (Tranche-VII). The bids are invited for the purpose of procurement of wind power from such projects through power purchase agreement signed with the successful bidders with back-to-back power supply agreement signed with distribution licensee for sale of power.



7. SECI issued Request for Selection (RfS) from Wind Power Developers on 22-02-2019 along with draft PPA and PSA for setting up ISTS connected Wind Power Projects on build, own and operate basis for an aggregate capacity of 1200MW (Tranche VII) for procurement of wind power as per the Guidelines issued by MOP on 08-12-2017. The technical and commercial parts of bids were opened on 15-04-2019 and financial part on 09-05-2019. Four bidders submitted their bids for a cumulative capacity of 600 MW.
8. The reverse auction for 600 MW capacity was carried out on 14.05.2019 and the following bidders were declared successful for 480 MW as below:

Sl. No.	Bidders	Tariff (INR/kWh)	Allotted Capacity (MW)
1.	Betam Wind Energy Pvt. Ltd.	2.79	200
2.	Ostro Energy Pvt. Ltd.	2.81	50
3.	Sprng Vaayu Urja Pvt. Ltd.	2.82	100
4.	Adani Renewable Energy Park Gujarat Ltd.	2.83	130

9. UPPCL has given consent to SECI for the purchase 380 MW of such power and signed a Power Sale Agreement with SECI on 01-10-2019. SECI has signed following PPAs with the successful bidders:

Sl. No.	Bidders	Date of PPA	Date of PSA signed
1.	Betam Wind Energy Private Limited	Yet to be signed	01.10.2019 (UPPCL & SECI) Signed
2.	Ostro Energy Private Limited	25-10-2019	
3.	Sprng Vaayu Urja Private Limited	16-03-2020	
4.	Adani Renewable Energy Park Gujarat Limited	19-11-2019	



10. The salient features of PPAs signed between WPG with SECI are as below: -

Particular	Betam Wind Energy Pvt. Ltd.	Ostro Energy Pvt. Ltd.	Sprng Vaayu Urja Private Limited	Adani Renewable Energy Park Gujarat Ltd.
Date of PPA	To be signed	25-10-019	16-03-20	19-11-2019
Project Capacity (MW)	200	50	100	130
Term of Agreement	25 Years. The Agreement shall be valid for a term from the effective date until the expiry date and extendable for a mutually agreed term and conditions 180 days prior to the expiry date			
Fixed Tariff (Rs./kWh) effective from SCD. In case of early part commissioning, SECI may purchase generation at 75% of the tariff till full commissioning of the project.	2.79	2.81	2.82	2.83
Scheduled Commissioning date		18.04.2021		18.04.2021
Effective Date of PPA		18.10.2019		18.10.2019
Billing	Monthly subject to Late Payment Surcharge (1.25% per month) and rebate 2% for payment within 10 days otherwise 01%. No rebate on taxes, duties, and cess etc. and on supplementary bill.			
Payment Security	Payment through Letter of Credit. Payment Security Fund sufficient for 3 months payment			
Expiry date	25 years from Schedule Commissioning Date or from the date of full commissioning of the project, whichever is earlier.			
Trading Margin	Rs. 0.07/kWh			



11. SECI filed a Petition No. 382/AT 2019 before the CERC under Section-63 of Electricity Act, 2003 for adoption of tariff discovered by it for purchase of 480MW wind power under (Tranche VII). The Central Commission passed Order dated 28-02-2020 and adopted the tariff. The relevant part of the order is reproduced as below:

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"22. The petitioner has prayed to adopt the tariff discovered in the competitive bid process for the individual projects. In the light of the above discussion, in terms of section-63 of the Act, the Commission adopts the following tariff for the projects as agreed by the successful bidders subject to signing of PPAs with WPDs, which shall remain valid throughout the period covered in PSA and PPAs."

<b>Sl. No.</b>	<b>Bidders</b>	<b>Tariff (INR/kWh)</b>	<b>Allotted Capacity (MW)</b>
1.	Betam Wind Energy Private Limited	2.79	200
2. -	Ostro Energy Private Limited	2.81	50
3. -	SprngVaayu Urja Private Limited	2.82	100
4. - "	Adani Renewable Energy Park Gujarat Limited	2.83	130

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12. UPPCL has renewable power obligation under UPERC (Promotion of Green Energy through Renewable Purchase Obligation) Regulation-2010. According to UPERC (Promotion of Green Energy through Renewable Purchase Obligation) (1<sup>st</sup> Amendment) Regulation, 2019, UPPCL has minimum renewable purchase obligation of 6% of the total energy consumed under non-solar category for year 2020-21 and 2021-22. As on FY 2019-20, UPPCL has purchased 4098.15MU under non-solar capacity which is 4.22% of total energy consumed by the distribution licensee. As, UPPCL has not met its renewable purchase obligations, the Petitioner is willing to purchase wind power under non-solar category to meet the demand of the consumers in the areas of supply of its subsidiary distribution companies.

13. The Commission vide letter dated 14-08-2020 asked the petitioner to submit the following document for beginning the proceedings in the matter:



- a. Communication between procurer/Authorized Agency before and after bidding including offer letter sent by authorized agency to Procurer and consent letter of Procurer, as applicable.
- b. Standard bidding guidelines along with standard bidding documents including amendments, if any and approval for any deviations from those guidelines and bidding document, if any
- c. Signed copies of all the PPAs and PSAs
- d. Event chronology till signing of PPAs /PSAs
- e. Detailed note on jurisdiction of Commission
- f. Conformity Certificate to bidding process and No Deviation Certificate to PPAs and PSAs
- g. Status of tariff adoption

14. In compliance of Commission's letter dated 14.08.2020, the Petitioner submitted the following documents on dated 12-11-2020: -

- a. Communication dated 25.06.2019, 28.08.2019, 05.09.2019 and 25.09.2019 between UPPCL and SECI regarding consent of supply of 380 MW wind power procurement.
- b. Standard bidding guidelines along with standard bidding documents including amendments, if any and approval for any deviation from those guidelines and bidding document.
- c. PPAs signed by SECI with, Ostro Energy Private Limited, Adani Renewable Energy Park Gujarat Limited, Sprng Vaayu Urja Private Limited and Betam Wind Energy Private Limited (Not yet Signed).
- d. PSA dated 01.10.2019 signed between SECI and UPPCL.
- e. Calendar of Events.
- f. Note on Jurisdiction of the Commission stating that the Commission has jurisdiction to approve PSA under section 86 (1) (b) read with Section 63, 79(1) (b) of the Electricity Act, 2003. The PSA's shall be subject to approval of the concerned State Commission, where the distribution licensee procuring power is



located, for the purpose of 'regulations of electricity purchase' and 'procurement process', excluding the regulation of 'price' under Section - 86 (1) (b) read with Clause -3 (3.1) (c) (vii), 4.0 and 12 of the said Guidelines. In this proceeding, the distribution licensee shall satisfy the State Commission that power was essentially required for supply to consumers in its area of supply and intermediary had followed the Guidelines, bid process concluded and tariff adopted.

- g. Conformity Certificate of the Evaluation Committee formed by SECI provides that 50 MW and 130 MW Wind Power PPAs signed with Ostro Energy Private Limited and Adani Green Energy Five Limited on dated 25.10.2019 and 19.11.2019 respectively are in accordance (excluding normal consequential addition/deletion) with RfS No. SECI/C&P/WPD/1200MW/T7/RfS/022019 dated 22.02.2019, and as per the guidelines of Tariff based Competitive Bidding Process issued by Ministry of Power, Government of India on December 08, 2017 for procurement of power from Grid connected Wind Power Projects.
- h. CERC order dated 28.02.2020 passed in Petition no. 382/AT/2019 filed by SECI for adoption of tariff.

### **Record of Proceeding**

15. The Commission heard the matter on 28.01.2021 and during the hearing, Sh. B.K Saxena, Counsel of UPPCL submitted that the Renewable Purchase obligations specified under UPERC (Promotion of Green Energy through Renewable Purchase Obligation) Regulation-2010 as amended from time to time are minimum obligation and wind power is environmentally benign power which is available comparatively at low rate on fixed tariff. The Petitioner is desirous of purchasing wind power under non-solar category to meet the demand of the consumers in the areas of supply of its subsidiary distribution companies.
16. The Commission asked the parties to clarify on following issues: -
- a. Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of trading license and other related matters) Regulations, 2020 dated 02.01.2020 has allowed trading margin of maximum of Rs. 0.02 per kWh. Therefore, why UPPCL has sought trading margin of Rs. 0.07 per kWh.



- b. Why some PPA are yet to be signed and not submitted before the Commission.
- c. Conformity Certificate of the Evaluation Committee formed by SECI that 100 MW Wind Power PPAs signed with Sprng Vaayu Urja Private Limited dated 16.03.2020 is in accordance with RfS No. SECI/C&P/WPD/1200MW/T7/RfS/022019 dated 22.02.2019, and as per the guidelines of Tariff based Competitive Bidding Process issued by Ministry of Power, Government of India on December 08, 2017 for procurement of power from Grid connected Wind Power Projects.

17. On the first query raised by the Commission, Sh. M.G. Ramachandran learned Counsel of SECI submitted that the trading margin of Rs. 0.02/kWh is capped by CERC in case escrow arrangement or irrevocable and revolving letter of credit is not provided by the Trading Licensee in favor of the seller. Whereas, in the present case the same is not applicable as SECI has provided the payment security mechanism. He therefore requested the Commission to approve the Power Sale Agreement. The relevant extract of CERC (Procedure, Terms and Conditions for Grant of Trading License and other Related Matters) Regulations, 2020 is as below:

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*8(1)(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 favor of the seller, the Trading Licensee shall not charge trading margin exceeding two (2.0) paise/kWh.*

*8(1)(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 favor of the seller, the Trading Licensee shall not charge trading margin exceeding two (2.0) paise/kWh.*

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18. On the second query raised by the Commission, Sh. M.G. Ramachandran learned Counsel of SECI submitted that M/s Betam Wind Energy Private Limited has not yet signed the PPA despite number of reminders. However,

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SECI is exploring legal and other options to deal with the issue. Further, he submitted that since all the PPAs are on similar lines as part of same bid document, therefore, the Commission may approve the PSA subject to signing of PPA.

### **Commission's analysis and decision**

19. The Commission noted that the Petition is being filed before the Commission for limited issue of approval of PSA dated 01.10.2019 and tariff is to be adopted by the appropriate Commission. Therefore, the Commission has examined the material on record and submission of parties in the context of prayers. Accordingly, the Commission has deliberated its views in subsequent paras.

### **Issue I: Trading Margin**

20. The Commission has noted that SECI has prayed to adopt the trading margin of Rs. 0.07/kWh before CERC. However, Regulation 8(1)(d) of the Trading License Regulations provides as under:

*"8(1)(d) For the transactions under long-term contracts, the trading margin shall be as mutually decided between the Trading licensee and the seller:"*

The Commission is of the view that the above provision gives choice to the contracting parties to mutually agree on Trading Margin for long-term transaction. The PSA transactions shall be governed by the above provisions of the Trading License Regulations. Accordingly, CERC has not adopted any Trading Margin.

### **Commission's View**

**The Commission, therefore, decides that the Trading margin for long term transaction is open for mutual agreement between the contracting parties. In the present case, parties have mutually agreed through PSA dated 01.10.2019 for a Trading Margin of 7 paise per unit. The Commission approves the trading margin of 7 paise per unit in the present case and directs UPPCL that in future it should endeavor to economize on the trading margin through mutual agreement and the same shall be allowed considering the efforts made by UPPCL.**

**Issue II: Conformity certificate of by SECI for 100 MW Wind Power PPA signed with Sprng Vaayu Urja Private Limited dated 16.03.2020**



21. The Commission has observed that the Petitioner has submitted "No Deviation Certificate dated 15.05.2020" which provides that 50 MW and 130 MW Wind Power PPAs signed with Ostro Energy Private Limited and Adani Green Energy Five Limited on dated 25.10.2019 and 19.11.2019 respectively are in accordance with the guidelines of Tariff based Competitive Bidding Process issued by Ministry of Power, Government of India on December 08, 2017 for procurement of power from Grid connected Wind Power Projects and there is no deviation from the guidelines. However, "No Deviation Certificate" is not provided for other two projects. The PPA dated 16.03.2020 being integral part of the PSA dated 01.10.2019, the Commission directs SECI to place on record the Conformity Certificate by SECI that 100 MW Wind Power PPAs signed with Sprng Vaayu Urja Private Limited dated 16.03.2020 is in accordance with RfS No. SECI/C&P/WPD/1200MW/T7/RfS/022019 dated 22.02.2019, and as per the guidelines of Tariff based Competitive Bidding Process issued by Ministry of Power, Government of India on December 08, 2017 for procurement of power from Grid connected Wind Power Projects, within a month of this order.

#### **Commission's View**

**The conformity certificate for PPA dated 16.03.2020 for Sprng Vaayu Urja Private Limited dated shall be placed on record within one month of this order.**

#### **Issue III: Approval of PSA dated 01.10.2019 between UPPCL and SECI**

22. The following three (3) PPAs were signed and submitted before the Commission and one PPA with Betam Wind Energy Private Limited is yet to be signed:

<b>Sl. No.</b>	<b>Bidders</b>	<b>Date of PPA</b>	<b>Date of PSA signed</b>
1.	Betam Wind Energy Private Limited	Yet to be signed	01.10.2019
2.	Ostro Energy Private Limited	25-10-2019	
3.	Sprng Vaayu Urja Private Limited	16-03-2020	
4.	Adani Renewable Energy Park Gujarat Limited	19-11-2019	



23. The PPA which is to be signed by Betam Wind Energy Private Limited is stated to be similar in nature with other approved PPAs as being part of same bidding process. However, in case, SECI is not able to sign the PPA with Betam Wind Energy private Limited, the quantum of power under the PSA dated 01.10.2019 would stand reduced as 280 MW from earlier 380 MW and pooled tariff of Rs. 2.8091 per unit as per Schedule I in the PSA may increase. **The Commission directs UPPCL to place on record the modified PSA, if any.**

**The Commission is of the view that the pooled tariff as per Schedule I to the PSA dated 01.10.2019 should be protected by making suitable adjustment to the trading margin by SECI.**

24. Therefore, the PSA dated 01.10.2019 is approved for all the above PPAs subject to:

- (a) SECI placing on record the conformity certificate for PPA dated 16.03.2020 for Sprng Vaayu Urja Private Limited within a month of this order and
- (b) SECI signs PPA for Betam Wind Energy Private Limited is signed in terms of the PSA dated 01.10.2019 & bidding documents and
- (c) Pooled tariff for UPPCL remains the same as per Schedule I to the PSA dated 01.10.2019 based on tariff adopted by the Central Commission vide order dated 28.02.2020 in Petition No. 382/AT 2019.

The Petition is disposed of in terms of above.

(Vinod Kumar Srivastava)  
Member (Law)

(Kaushal Kishore Sharma)  
Member

(Raj Pratap Singh)  
Chairman

Place: Lucknow

Date: 19 03.2021