



**Delhi Electricity Regulatory Commission**  
**Viniyamak Bhawan, 'C' Block, Shivalik, Malviya Nagar, New Delhi – 110017**

F.11(1816)/DERC/2020-21/6945

**Petition No. 44/2020**

**In the matter of: Petition for seeking approval for the Bidding documents for long term procurement of 300MW capacity from grid connected Wind-Solar Hybrid Power Projects through competitive bidding process for meeting the RPO based on policy dated 14.05.2018.**

**Tata Power Delhi Distribution Ltd.**

**.... Petitioner**

**Coram:**

**Hon'ble Shri Justice S. S. Chauhan, Chairperson**  
**Hon'ble Dr. A. K. Ambasht, Member**

**Appearance:**

Mr. Anand K. Srivastava, Adv., TPDDL

**ORDER**

(Date of Order: 08.04.2021)

1. The instant Petition has been filed by Tata Power Delhi Distribution Ltd. (TPDDL) seeking approval of the following in the prayer;
  - (i) To approve the Bidding documents i.e., Draft RFS and Draft PPA prepared for procurement of wind solar hybrid power from grid connected Wind-Solar Hybrid Power Projects
  - (ii) To accord approval for initiation of competitive bidding process for procurement of 300MW Hybrid power from grid connected Wind-Solar Hybrid Projects; long term procurement (25 years) of 300MW capacity from grid connected Wind-Solar Hybrid Power Projects through competitive bidding process for meeting the RPO based policy dated 14.05.2018.

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- (iii) To accord approval to the deviations in Draft RfS and Draft PPA from the Bidding Guidelines
- (iv) To consider the procurement of such power from grid connected Wind-Solar Hybrid Power Projects as purchase towards meeting the total RPO.
- (v) To approve publishing of notice to Invite tender through two national e-newspaper if the Petitioner is unable to publish it through print newspaper due to the current COVID-19 situation.
- (vi) Condone any inadvertent omissions/errors/shortcomings and permit the Petitioner to add/change/modify/alter this filing and make further submissions as may be required at a future date.

2. The Petitioner has submitted the following:

- a) The Ministry of New and Renewable Energy ("MNRE") issued the National Wind-Solar Hybrid Policy on 14.05.2018 ("Hybrid Policy"). The primary objective of the Hybrid Policy is to provide a framework for the promotion of grid-connected wind-solar PV hybrid system. It aims at reducing the variability in renewable power generation, achieving better grid stability and increasing efficiency in operations. Pursuant to the issuance of the Hybrid Policy, MNRE has released the competitive bidding guidelines for wind-solar hybrid dated 14.10.2020. ("Bidding Guidelines")
- b) The Petitioner, in the backdrop of the Hybrid Policy and Bidding Guidelines, *vide* the Petition is seeking approval for the bid documents i.e. Draft Request for Selection ("**Draft RfS**") and Draft Power Purchase Agreement ("**Draft PPA**") (collectively referred as "**Bidding Documents**"), initiation of bidding process for the long term procurement of power from grid connected Wind-Solar Hybrid Power Projects for meeting its Renewable Purchase Obligations ("**RPO**") and approval of certain deviations from the Bidding Guidelines.
- c) Hon'ble commission has issued DERC (Renewable Purchase Obligation and renewable Energy Certificate Framework Implementation) Regulations, 2012 ("RPO Regulations") and DERC (Business Plan) Regulations, 2019 ("Business Plan Regulations"). As per these

Regulations, obligated entity is required to fulfil a defined minimum percentage of the total quantum/consumption from eligible renewable energy sources i.e. the Petitioner as a Distribution licensee has to procure certain percentage of its power requirement through renewable sources to meet its RPO.

d) The Petitioner hereby proposes to procure 300 MW capacity from grid connected Wind-Solar Hybrid Power Projects under competitive bidding route for meeting its current and future RPO.

3. The Petitioner states that as per Clause 6.1 of the Bidding Guidelines dated 11.10.2019, it is required that the procurer shall inform the Appropriate Commission and seek approval of deviation from the Bidding Guidelines. Accordingly, the Petitioner in the instant Petition is also seeking approval of the following deviations:

S. No.	Bidding Guidelines	Deviation	Rationale
1.	Guideline 8.2.1 stipulates that the Generator shall achieve annual CUF not less than 90% of the declared value (i.e. Minimum CUF) and not more than 120% of the declared CUF value (i.e. Maximum CUF)	Draft RFS and Draft PPA stipulates minimum CUF to be 80% of the declared value. [Please refer to Clause 3.9A of the RFS and Clause 4.4.1 of the PPA]	The CUF has been kept 80% in order to attract greater participation of the bidders. This will also lead to a competitive tariff which in turn will be beneficial for the consumers.
2.	Guidelines 8.5 [Change in Law] – provides for increase/decrease in cost and provides expeditious manner through a	Draft RFS and Draft PPA stipulate that any change in law event has to necessarily be approved by the appropriate	The necessary approval of the commission for any 'change in law' shall ensure greater transparency in

S. No.	Bidding Guidelines	Deviation	Rationale
	<p>formula. The Appropriate Commission shall only verify the computation and true-up the rate.</p>	<p>commission [Please refer to Clause 1.3.2 of the RFS and Article 12 of the PPA]</p>	<p>operations without any subjectivity and minimising the scope for any dispute in this regard.</p>
3.	<p>Guidelines 15.2 states that in case the Generator is unable to attain Financial Closure within 12 months from the execution of the PPA, the Procurer shall encash the PBG/ LoU unless the delay is on account of delay in allotment of land by the Government not owing to any action or inaction on the part of the Generator or caused due to a Force Majeure</p>	<p>Under the Draft RFS and Draft PPA the only exception for encashment of PBG is a 'Force Majeure' event. Please refer to Clause 3.16 (ii) of the RFS and Clause 3.2.1 of the PPA</p>	<p>The removal of exception to encashment of PBG in case of failure of the generator in achieving financial closure within 12 months from the execution of the PPA shall ensure greater accountability on the part of the generator. The generator's compliance with the timeline as stipulated under the Draft PPA shall further ensure that the procurer is able to meet the RPO obligations on time and also procuring the power in order to supply it to its consumers in an efficient manner.</p>
4.	<p>Guideline 17.3 (i) stipulates that the</p>	<p>Under the Draft RFS and Draft PPA the SCD</p>	<p>SCD has been kept as 24 months in order</p>

S. No.	Bidding Guidelines	Deviation	Rationale
	projects shall be commissioned, within a period of 18 (eighteen) months from the date of execution of the PPA.	of the project is 24 months from the effective date. [Please Clause 3.17 of the RFS and Definition of "SCD" in the PPA]	attract greater participation from the bidders.
5.	Delivery Point	Under the guidelines of Wind Solar Hybrid dated 14.10.2020 issued by MNRE, Delivery Point has not been defined specifically but as a general understanding it emerges that it has been considered as an ISTS substation.	For the sake of clarity and to ensure that no undue liability of Transmission charges/ losses comes on TPDDL in future due to any change in Regulations or for any reason (whatsoever it may be), Delivery point has been considered at TPDDL's periphery.

4. The Petitioner in its written submissions has further submitted that:
- a) Pursuant to the issuance of the Hybrid Policy, MNRE issued draft guidelines on 11.10.2019. Under the draft guidelines, the Clause 6 was applicable on all the procurers and it is provided that in case of any deviation from the guidelines the same may be approved by the Appropriate Commission. The relevant extract of the draft guidelines reads as under:
 

*"6. PREPARATION FOR INVITING BID AND PROJECT PREPAREDNESS*  
*The Procurer shall meet the following conditions:*

*6.1. Bid Documentation:*

    - a) *Prepare the bid documents in accordance with these Guidelines and Standard Bidding Documents (SBDs) [consisting of Model Request for Selection (RfS) Document, Model Power*

*Sale Agreement (PSA)], notified by the Central Government, except as provided in sub clause(c) below.*

- b) Inform the Appropriate Commission about the initiation of the bidding process.*
- c) Seek approval of the Appropriate Commission for deviations, if any, in the draft RfS, draft PPA, draft PSA (if applicable) from these Guidelines and/ or SBDs, in accordance with the process described in Clause 23 of these Guidelines*

### **23. DEVIATION FROM PROCESS DEFINED IN THE GUIDELINES**

*In case there is any deviation from these Guidelines and/or the SBDs, the same shall be subject to approval by the Appropriate Commission. The Appropriate Commission shall approve or require modification to the bid documents within a reasonable time not exceeding 60 (sixty) days.”*

- b) Pursuant to the above, MNRE issued the final competitive bidding guidelines for wind-solar hybrid dated 14.10.2020 (“Bidding Guidelines”). Under the Bidding Guidelines the applicability of clause 6 has been limited to “intermediary procurer” such as SECI and Clause 23 is applicable to procurers such as the Petitioner herein. the relevant extract of the Bidding Guidelines is reproduced herein below:

#### **“6. PREPARATION FOR INVITING BID AND PROJECT PREPAREDNESS**

*The Intermediary Procurer shall meet the following conditions prepare the bid documents in accordance with these guidelines and shall approach the Ministry for any deviations (if required) from these Guidelines.*

Whilst Clause 6.1 is limited to intermediary procurer, the Clause 23 read with Clause 3.4 is applicable on the procurer such as the Petitioner. Clause 3.4 and Clause 23 of the Bidding Guidelines have been reproduced hereunder:

*“3.4. Unless explicitly specified in these Guidelines, the provisions of these Guidelines shall be binding on the Procurer and Intermediary Procurer. The process to be adopted in event of any deviation proposed from these Guidelines is specified in Clause 23 of these Guidelines.”*

*23. DEVIATION FROM PROCESS DEFINED IN THE GUIDELINES*

*In case there is any deviation from these Guidelines and/or the SBDs, the same shall be subject to approval by the Appropriate Commission. The Appropriate Commission shall approve or require modification to the bid documents within a reasonable time not exceeding 60 (sixty) days.”*

- c) The Petitioner further states that the order dated 01.06.2020 passed by Hon'ble Maharashtra Electricity Regulatory Commission (“MERC”), wherein the Commission had approved the bidding documents submitted by The Tata power Company Ltd-Distribution for long term procurement (25 years) of 225 MW capacity from grid connected Wind Solar Hybrid Power Projects through competitive bidding process for meeting its RPO. The bidding documents submitted by the Tata Power Company Ltd- Distribution were also based on Draft Bidding Guidelines wherein the deviations were also allowed by MERC.

**COMMISSION ANALYSIS**

5. Present Petition is filed seeking approval for the deviation in Bidding documents for long term procurement (25 years) of 300 MW capacity from grid connected Wind-Solar Hybrid Power Projects through competitive bidding process for meeting the Renewable Purchase Obligations based on National Wind-Solar Hybrid Policy dated 14/05/2018 along with Wind Solar Hybrid guidelines dated 14/10/2020 issued by MNRE.
6. It is to be noted that in Para 3.3 of the Petition, the Petitioner approached the Commission specifically in the petition stating therein that he is approaching under Clause 6.1 for approval of deviation from the Bidding Guidelines. The specific portion of the petition is quoted as under:

*“Further, as per the Clause 6.1 of the Bidding Guidelines, it is required that the procurer shall inform the appropriate Commission and seek approval of deviation from the Bidding Guidelines. Accordingly, the Petitioner in the instant Petition is also seeking approval of following deviations*

*...”*

The aforesaid clause goes to indicate that the petitioner has specifically approached under Clause 6.1 which relates to Intermediary Procurer seeking deviation from the bidding documents. The Clause 6.1 of the MNRE guidelines dated 14.10.2020 is quoted as under:

*“6.1. Bid Documentation:*

*It shall prepare the bid documents in accordance with these guidelines and shall approach the Ministry for any deviations (if required) from these Guidelines”.*

7. It is to be noted that the guidelines promulgated aforesaid are very clear in this respect and the petitioner has placed himself in the capacity of Intermediary Procurer seeking deviation from the bidding documents. The Guidelines are very clear and specific and deviation from the Guidelines can only be sought from the MNRE. The petitioner has failed to make any claim as contemplated in Clause 23 of the Guidelines which gives opportunity to the petitioner to approach in different circumstances. The Clause 23 is quoted as under:

*“In case there is any deviation from these Guidelines, the same shall be subject to approval by the Appropriate Commission. The Appropriate Commission shall approve or require modification to the bid documents within a reasonable time not exceeding 60 (sixty) days”*

8. Clause 23 also talks about deviation from guidelines but powers have been given to the Appropriate Commission in different situation. When the petitioner has placed himself into the shoes of the Intermediary Procurer and claims deviation from bidding documents then there is no escape to any other view except the view that the petitioner has to approach the MNRE.



The petitioner is bound by the contention raised in the petition. The petitioner cannot withdraw from the contention. The Commission gave thoughtful consideration to the issue in question and came to the conclusion that the petitioner is supposed to approach MNRE for deviation for seeking approval to the deviation in respect of bidding documents.

9. Hence, the prayer of the Petitioner to accord approval to the deviations in Draft RfS and Draft PPA from the Bidding Guidelines issued by MNRE dated 14.10.2020 cannot be granted by this Commission.
10. The matter is disposed off.
11. Ordered Accordingly.

**Sd/-**  
**(Dr. A.K. Ambasht)**  
**Member**

**Sd/-**  
**(Justice S. S. Chauhan)**  
**Chairperson**