

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 126/AT/2021

Subject : Petition under Section 63 of the Electricity Act, 2003 for adoption of tariff for inter-State Transmission System connected 1200 MW, ISTS connected Solar PV Power Projects under open category and selected through competitive bidding process as per the Standard Bidding Guidelines issued by Ministry of Power dated 3.8.2017.

Date of Hearing : 23.7.2021

Coram : Shri P. K. Pujari, Chairperson
Shri I. S. Jha, Member
Shri Arun Goyal, Member
Shri P. K. Singh, Member

Petitioner : NTPC Limited (NTPC)

Respondents : TBEA Solar (India) Private Limited and 2 Ors.

Parties Present : Ms. Swapna Seshadri, Advocate, NTPC
Ms. Ritu Apurva, Advocate, NTPC
Shri Harini Subramani, Advocate, NTPC
Shri Pawan Kr. Sharma, ABC Renewable

Record of Proceedings

Case was called out for virtual hearing.

2. Learned counsel for the Petitioner submitted that the present Petition has been filed seeking adoption of tariff for 300 MW Solar PV Projects connected to inter-State Transmission System (ISTS') and selected through competitive bid process as per the "Guidelines for tariff based Competitive Bidding Process for procurement of Power from Grid Connected Solar PV Power Projects" ('the Guidelines') issued by Ministry of Power dated 3.8.2017. Learned counsel further submitted the following:

(a) The Petitioner had conducted a competitive bid process for selection of Solar Power Developers (SPDs) for setting up of 1200 MW ISTS connected Solar PV Projects anywhere in India in terms of the Guidelines. Pursuant to the said bid process, TBEA Solar (India) Private Limited has been declared as successful bidder for capacity of 300 MW @ Rs.2.63/kWh.

(b) The Petitioner has entered into Power Purchase Agreement ('PPA') with ABC Renewable Energy (RJ-01) Pvt. Ltd. (i.e. Project Company/ SPV of the successful bidder) and Power Supply Agreements ('PSAs') with Madhya Pradesh Power Management Company Limited and Government of Puducherry on back-to-back basis.

(c) In terms of Request for Selection ('RfS') document, solar power to be purchased by NTPC from the SPDs was either to be sold to State utilities/

distribution companies/ any other beneficiaries through back-to-back PSA or to be utilised for flexible operation of its thermal plants as per the 'Flexibility Scheme' introduced by Ministry of Power vide Notification dated 30.8.2019. However, in the present case, the Petitioner has tied up the solar power to be purchased from the SPDs with the buying utilities/ distribution companies through back-to-back PSAs.

3. In response to a query of the Commission regarding the Petitioner having published the RfS notice as per clause 6.4 of the Guidelines, learned counsel replied in affirmative and submitted that details of publication has been filed along with the Petition. In response to another query of the Commission regarding the Petitioner having informed the 'Appropriate Commission' about the initiation of bid process as per clause 3.1.1(b) of the Guidelines, learned counsel submitted that the Petitioner has not separately intimated the Commission regarding initiation of the bid process. However, its publication of RfS notice ought to be considered as prior intimation about initiation of the bid process including the Commission. Learned counsel submitted that henceforth the Petitioner will take into the account the aforesaid requirement under the Guidelines.

4. In response to another query of the Commission regarding the Petitioner having taken any deviation in the bid documents (RfS, PPA and PSA) from the provisions of the Guidelines, learned counsel replied in negative. Learned counsel submitted that Petitioner has not taken any deviation in the bid documents from the provisions of the Guidelines as prevalent at that time and the Petitioner has placed on record the copy of certificate to the effect that no deviations were made in regard to Request for Selection (RfS) Bidding Guidelines (excluding normal consequential addition/ deletion).

5. The Commission observed that clause 5.7.1 (Change in Law) of the Guidelines provides for restitutionary principle so as to put the party affected by Change in Law to the same economic position as if such Change in Law had not occurred. However, perusal of Article 12 (Change in Law) of the PPA *prima facie* reveals that such restitutionary principle has not been incorporated. The learned counsel vehemently argued that it may not amount to a deviation and that the articles of the PPA have exactly the same intention as per clause 5.7.1 of the Guidelines. However, the Commission observed that the aforesaid exclusion *prima facie* appears to be a deviation from the provisions of the Guidelines and accordingly, deemed it necessary to consider the views of the project developer and the buying utilities /distribution companies thereof.

6. Considering the submissions of learned counsel for the Petitioner, the Commission ordered as under:

- a) Admit. Issue notice to the Respondents;
- b) The Petitioner to serve copy of the Petition on the Respondents immediately, if not already served and the Respondents to file their reply including on the above observation of the Commission regarding *prima facie* deviation from the provisions of the Guidelines, if any, within two weeks after serving copy of the same to the Petitioner, who may file its rejoinder, if any, within a week thereafter;
- c) The Petitioner is also directed to file the following details/ information on affidavit by 1.8.2021:

(i) Details of publication of notice in compliance with requirement of clause 6.4 of the Guidelines;

(ii) Details of deviations taken in the bid documents (RfS, PPA and PSA) from the provisions, particularly, clause 5.7.1 of the Guidelines, if any, along with reason thereof and whether approval of the Appropriate Commission was obtained in accordance with clause 3.1.1(c) and clause 18 of the Guidelines. In case, no deviations have been taken, an undertaking to the effect that 'no deviations have been taken in the bid documents from the provisions of the Guidelines'.

d) Parties to comply with above direction within the specified timeline and no extension of time shall be granted.

7. The Petition shall be listed for hearing in due course for which separate notice will be issued.

By order of the Commission

**Sd/-
(T.D. Pant)
Joint Chief (Law)**