

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 97/AT/2023

Coram:

Shri Jishnu Barua, Chairperson

Shri I.S. Jha, Member

Shri Arun Goyal, Member

Shri P.K. Singh, Member

Date of Order: 9th July, 2023

In the matter of

Petition under Section 63 of the Electricity Act, 2003 for adoption of tariff for 15 MW Floating Solar PV Project connected to BBMB Inter-State Transmission System and selected through competitive bidding process as per the Standard Bidding Guidelines dated 3.8.2017 including its amendments/ clarification issued thereof.

And

In the Matter of:

Bhakra Beas Management Board,

SLDC Complex, Industrial Area Phase-1,
BBMB, Chandigarh-160 002

..... Petitioner

Versus

1. Satluj Jal Vitran Nigam Limited,

Sakti Sadan, Corporate Office Complex Shanan,
Shimla, Himachal Pradesh – 170 006

2. SJVN Green Energy Limited,

Corporate Headquarters, Sakti Sadan,
Shanan, Shimla, Himachal Pradesh - 171 006

...Respondents

Parties present:

Shri Soumitra Chatterjee, Advocate, BBMB

Ms. Sriparna Chatterjee, Advocate, BBMB

Ms. Ruchi Sharma, BBMB

Shri Sanjay Sidana, BBMB

Shri Rajiv Garg, BBMB

Shri Gagan Deep, BBMB

Ms. Anita Goel, BBMB

ORDER

The Petitioner, Bhakra Beas Management Board ('BBMB') has filed the present petition under Section 63 of the Electricity Act, 2003 (hereinafter referred to as 'the Act') for the adoption of tariff for a 15 MW floating Solar PV Project connected to the BBMB Inter-State Transmission System (ISTS) and selected through a competitive bidding process as per the "Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar Power Projects" ('the Solar Guidelines') notified by the Ministry of Power, Government of India, vide Resolution dated 3.8.2017 along with the subsequent amendments thereto under Section 63 of the Act. The Petitioner has made the following prayers:

"a) Admit the present Petition;

b) Approve/ Adopt the tariff at the rate of Rs. 3.26/kWh to be recovered by the FSPD from the BBMB upon commissioning of the awarded capacity/ accepted capacity by BBMB as per the terms of PPA signed with FSPD.

c) Pass any other or further order which this Commission may deem fit and proper in facts and circumstances of this case...."

2. BBMB has been constituted under the provisions of Section 79(1) read with Section 80(6) of the Punjab Re-Organisation Act, 1966, by the Central Government. It is submitted that the Projects of BBMB were set-up pursuant to the arrangement entered into between the erstwhile composite State of Punjab and the State of Rajasthan. After the re-organisation of the composite State of Punjab on 1.11.1966, the successor States of Punjab viz. Punjab, Haryana and Himachal Pradesh along with the State of Rajasthan became the partner States of BBMB. Two entities, namely, the Beas Construction Board (BCB) and the Bhakra Management Board (BMB) were constituted by the Central Government under the provisions of Section 79 and Section 80 of the Punjab Re-Organisation Act, 1966, for the construction of

Bhakra-Nangal & Beas Projects and the Administration, Operation, and Maintenance of Bhakra-Nangal & Beas Projects respectively. The BMB, which was constituted as per the provisions of Section 79(1) of the Punjab Re-Organisation Act by the Government of India vide Notification dated 1.10.1967, was later renamed the BBMB as per the provisions of Section 80(6) of the Punjab Re-Organisation Act by the Government of India vide Notification dated 15.7.1976 when the first completed component of the Project by BCB was transferred to it.

3. It is submitted that all expenses for operation & maintenance of the BBMB projects (currently, the total installed capacity of the BBMB Hydro Power Projects is 2936.73 MW) are borne by all partner States in the agreed ratio. Also, energy generated at BBMB power houses is apportioned amongst the partner/ beneficiary States in the agreed ratio. All the receipts and expenditures incurred by BBMB are passed on to the Partner States/Power Utilities as per their agreed shares.

4. It is further submitted that the Ministry of Power, Government of India, vide its letter dated 19.7.2017 desired that all the offices under their control be made environment friendly, i.e. 100% net zero buildings. As a contribution towards the National Solar Mission, the Petitioner has also launched various schemes for setting up '3375.90 kW Roof Top Solar Power Plants' at various locations under the control of BBMB. Also, the Ministry of New & Renewable Energy, Government of India, vide Reference No. 283/20/2019-Grid Solar dated 6.9.2019 has assigned the Petitioner with Solar Power Project target of 500 MW. In order to meet this Solar Power target, the Petitioner has been exploring the usage of surplus vacant land/ water bodies/ roof-top for installation of Solar Power Projects and the generation of this solar power will benefit the Partner States and also protect the encroachment of land/ water bodies. The Partner States of BBMB can consider the solar power generated

at various sub-stations and project stations under the control of the Petitioner for fulfilment of their Solar Renewable Purchase Obligation (RPO) as set by their respective State Regulators.

5. In the above backdrop, the Petitioner, BBMB, entrusted Solar Energy Corporation of India Limited ('SECI') in the capacity of a Project Management Agency to invite the Proposals on behalf of BBMB for the setting-up of a 15 MW grid connected floating Solar PV Power Project at Nangal Pond, near Village Neila, District Bilaspur, BBMB in Himachal Pradesh as per the Solar Guidelines. The Solar Guidelines have been formulated for long-term procurement of solar power at a tariff to be determined through a transparent process of bidding under Section 63 of the Act by the "Procurer(s)" from grid connected Solar Power Projects having a size of 5 MW and above through competitive bidding. It is submitted that as per the arrangements, BBMB is to procure the power by entering into the Power Purchase Agreement (PPA) with the successful bidder for the apportionment of power to the Partner States/beneficiaries of BBMB viz. Punjab, Haryana, Rajasthan, Himachal Pradesh, and the Union Territory of Chandigarh in the agreed ratio.

6. Accordingly, SECI issued the Request for Selection document along with a draft PPA for the setting-up of a 15 MW grid connected Floating Solar Power Project at Nangal Pond in line with the Solar Guidelines on 2.7.2020 on the Bharat Electronics Tender Portal. In response, 3 (three) bids were received, and out of them, 2 (two) bidders met the technical criteria. Thereafter, the financial bids of 2 bidders were opened on 22.2.2022, which was followed by an e-Reverse Auction on 25.2.2022 on the Bharat Electronics tender portal. After the conclusion of the e-Reverse Auction, SJVNL has been selected as the successful bidder at the discovered tariff of Rs. 3.26/kWh. The Board of the Petitioner, BBMB, which is

represented by its members from the partner States, also approved the above in its 242nd Meeting held on 15.7.2022, and consequently, a PPA was entered into between the Petitioner and the Successful Bidder, SJVN Green Energy Limited (SPV/ Project Company of SJVNL Limited) on 19.12.2022.

Hearing dated 10.5.2023

7. During the course of the hearing, the representative of the Petitioner mainly reiterated the submissions made in the Petition, as already captured above. After hearing the Petitioner, the Commission expressed certain apprehensions with regard to the entire arrangement falling under the scope of the Solar Guidelines. The Commission indicated that *prima facie*, the expression 'Procurer' under the Solar Guidelines refers to the distribution licensee(s) or an intermediary procurer who procures power on behalf of distribution licensees in the capacity of an electricity trader. However, BBMB *prima facie* does not appear to fall under any of these categories. Accordingly, the Commission directed the Petitioner, BBMB to file a short written submission on the aspect as to how the entire arrangement, especially the agreement between BBMB and the Solar Power Developer would fall under the confines of the Solar Guidelines and admissibility of the Petition. The Commission further directed SECI (the project management company) and Respondents to file their respective comments on the above aspects within two weeks. Accordingly, the Commission reserved its order on 'admissibility' of the matter.

8. Pursuant to the above, the Petitioner has filed its written submission on the aspect of t admissibility and neither the Respondents nor SECI have filed any submissions in the matter.

9. The Petitioner, vide its written submissions dated 22.5.2023, has mainly submitted as under:

(a) Keeping in view that there is no intermediary procurer or trader in the procurement of electricity from SJVN Green Energy Limited (SGEL) and there is only a sale/supply of electricity generated by SGEL to the beneficiaries States, namely, Punjab, Haryana, Rajasthan, Himachal Pradesh, & the UT of Chandigarh, represented by the Petitioner, there is only a PPA and no Power Supply Agreement as in the case of some other procurements through intermediary traders.

(b) BBMB is constituted under Section 79(1) read with Section 80(6) of the Punjab Re-Organisation Act, 1966, by the Central Government for administration, operation & maintenance of Bhakra Nangal & Beas Projects with 2936.73 MW generation and distribution of water & power to the States of Punjab, Haryana, Rajasthan, Himachal Pradesh, & the UT of Chandigarh. Although, the administration, operation & maintenance of these projects are being undertaken by the Petitioner, these assets at all time from the very beginning are owned by the beneficiary States before the re-organisation under the Punjab Re-Organisation Act.

(c) The Petitioner is only a representative/manager of the participating Governments and their respective electricity utilities to manage, maintain, and operate the generating stations and also the transmission lines & assets as provided in Sections 78 to 80 of the Punjab Re-Organization Act. The ownership of the electricity generated vests in the participating States in a fixed proportion as agreed in the historical agreements/ determined by the Central Government. The ownership of the electricity generated does not vest in the Petitioner.

(d) As per the provisions of the Punjab Re-Organisation Act, the Petitioner is not the owner of the generating stations or any of the assets pertaining to the generation & supply of electricity, and all the expenditure required by the Petitioner is contributed by the participating/ partner States. The Petitioner does not have any profit & loss account and it does not earn return on equity. The Petitioner does not maintain a business account in the shape of P&L accounts, and Balance Sheet and it only maintains the statement of revenue contributed by the participating/partner States. Thus, the Petitioner acts only

as a representative/ manager of the participating States by virtue of the authority given to the Petitioner under the Punjab Re-Organisation Act.

(e) Thus, with the ownership of the generating stations and transmission assets being with the participating States and the Petitioner being only an operation and management entity, the generated units belong to the participating States without there being any sale or transfer of ownership in the electricity generated by the Petitioner to the participating States in any manner.

(f) Keeping in view the peculiar structure of the Petitioner, the Commission has made certain special provisions, at Regulations 35(1) and 73, in the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019 for the period 2019-24.

(g) The Board of the Petitioner, which comprises members from the partner States and the Central Government, in its 233rd meeting held on 20.12.2019 had accorded in-principle approval to the Petitioner for the implementation of Solar Power Projects. Also, the reference of the Ministry of Power, Government of India, dated 4.5.2020, assigning the Petitioner with the work of setting-up of Solar Power Plants of various types, viz. Rooftop/ Ground mounted/ Floating, etc. has to be read in context of the provisions of Section 79(3)(d) of the Punjab Re-Organisation Act.

(h) While the Solar Power Project is being undertaken by SGEL in its status as a generator, the procurer of the power generated from the said Project is, in effect, the individual beneficiary States or the entities designated by the respective States, namely, PSPCL, Haryana Discoms, Rajasthan Discoms, HPSEB, and the Energy Deptt. of the Union Territory of Chandigarh. The Petitioner is the agency statutorily recognized by the Punjab Re-organization Act to act on their behalf, and the action of the Petitioner for all intents and purposes for the procurement of electricity from SGEL is the procurement by the respective entities for the partner States for their benefits. The provisions of the PPA, in particular Article 4.4 (Right to Contracted Capacity & Energy) are also reflective of this aspect.

(i) Since the Petitioner is acting on behalf of the beneficiaries States/their Utilities, it is, under the provisions of Section 63 of the Act, obliged to get the

tariff adopted by this Commission as it has been determined through the transparent process of bidding and in accordance with the provisions of the Solar Guidelines issued by the Central Government.

Analysis and Decision

10. We have considered the submissions of the Petitioner and perused the documents available on record. Section 63 of the Act provides that, notwithstanding anything contained in Section 62 of the Act, the Appropriate Commission shall adopt the tariff if such a tariff has been determined through a transparent process of bidding in accordance with the Guidelines issued by the Central Government. In this case, the Petitioner, BBMB, has approached the Commission for adoption of a tariff that has been determined through the transparent process of bidding in accordance with the *Solar Guidelines* issued by the Ministry of Power, Government of India. However, in view of certain *prima facie* apprehensions of the Commission, including as to whether the entire arrangement, especially the agreement between the Petitioner, BBMB, and Solar Power Developer, SGEL, would fall within the scope of the Solar Guidelines, the matter was reserved for an order on admissibility, and the parties were also directed to file their brief written submission on the above aspect. Thus, the only issue for our consideration, at this admission stage is whether the Petitioner is the appropriate entity to approach the Commission for adoption of a tariff in terms of the Solar Guidelines.

11. In this regard, we may gainfully refer to the relevant clauses of the Solar Guidelines relating to the 'Scope of the Solar Guidelines':

"2. Scope of the Guidelines:

2.1. These Guidelines are being issued under the provisions of Section 63 of the Electricity Act, 2003 for long term procurement of electricity by the 'Procurers', from

grid-connected Solar PV Power Projects ('Projects'), having size of 5 MW and above, through competitive bidding.

Explanation:

- a) *'Procurer': The term 'Procurer', as the context may require, shall mean the distribution licensees, or the Authorized Representative(s) or an Intermediary Procurer.*
- b) *'Authorised Representative' of the Procurer: In cases, where the Power Purchase Agreement (PPA) signing agency and the agency carrying out the tendering/ bidding process are different, the agency carrying out the tendering/ bidding process shall be deemed to be the Authorized Representative of the 'Procurer' and will on behalf of the Procurer be responsible for fulfilling all the obligations imposed on the 'Procurer' during the bidding phase, in accordance with these Guidelines.*
- c) *'Intermediary Procurer' & 'End Procurer':*
 - i. *(a) In some cases, an intermediary, between the distribution licensees and the generator ('Solar Power Generator'), may be required either to aggregate the solar power purchased from different Solar Power Generators and sell it to the distribution licensee(s), or to enhance the credit profile. In such cases, the 'Procurer' would be a trader, buying power from the Solar Power Generators and selling the same to one or more distribution licensees, such distribution licensees shall be the 'End Procurer' and the trader shall be 'Intermediary Procurer' for the purpose of these Guidelines.*
 - ii. *(a) The Intermediary Procurer shall enter into a PPA with the Solar Power Generator and also enter into a Power Sale Agreement (PSA) with the End Procurer.....*

(b) The trading margin of Rs. 0.07/kWh shall be payable by the End Procurer to the Intermediary Procurer....."

As seen from the above, the Solar Guidelines have been issued for long-term procurement of electricity by the 'Procurers' from grid connected Solar PV Power Projects having a size of 5 MW and above through competitive bidding. The Solar Guidelines define the term 'Procurer' as the distribution licensees or the Authorised Representative(s) or an Intermediary Procurer, as the context may require therein. An authorised Representative is an entity different from the PPA signing agency that is primarily vested with the responsibility of carrying out the tendering/bidding process and is responsible for fulfilling all obligations imposed on the procurer during the bidding process. Intermediately, a procurer is a trader who buys power from the generating company by entering into a PPA and sells power to the distribution

licensees by entering into a PSA and is entitled to a trading margin. SECI has carried out the bidding and selected SJVNL Green Energy Limited as the generating company to supply power. The Petitioner has submitted that its Board, which is supported by Members of partner States, has approved that the Petitioner enter into a PPA with SGEL on behalf of the Partner States. Accordingly, the Petitioner has entered into a PPA and has approached the Commission for adoption of a tariff. Thus, SECI is an authorised representative.

12. In the present case, the Petitioner, who has entered into a PPA with SGEL for procuring the power to be generated from the 15 MW floating Solar Power Project, essentially for its partner/beneficiary States and/or their assigned utilities/distribution licensee, cannot be considered an intermediary procurer, as the Solar Guidelines envisage the role of an intermediary procurer as that of an electricity trader-who purchases the power from the solar power developer and resells such power to the distribution licensees on a back-to-back basis for a trading margin. The Petitioner, BBMB, as such, does not possess any licence for trading in electricity under Section 14 of the Act, and thus, its role under the arrangement in question, cannot be considered that of intermediary procurer under the Solar Guidelines.

13. The term 'Procurer', as noted above, also includes the 'Authorised Representative' of the procurer(s). However, the Solar Guidelines envisage the role of Authorised Representative, when the agency signing the PPA and the agency carrying out the bidding process are different, and, in such cases, the agency carrying out the tendering/ bidding process shall be deemed to be Authorized Representative of the 'Procurer' who will be signing the PPA. In the present context, the Authorized Representative is SECI, who, on behalf of the Petitioner, BBMB, floated the tender and conducted the bid process, and upon completion thereof, it

was the Petitioner, BBMB who executed the PPA with the successful bidder, SGEL. Thus, the expression 'Authorized Representative' under the Solar Guidelines cannot be assigned to the Petitioner even though it is procuring the electricity to be generated by SGEL on behalf of its partner/beneficiary States.

14. The only remaining meaning of the term 'Procurer' under the Solar Guidelines is the distribution licensee(s). Admittedly, it is not the case of the Petitioner, BBMB, that it qualifies to be a distribution licensee. However, at the same time, we are also conscious of the peculiar structure and role of the Petitioner, BBMB, under the Punjab Re-Organization Act, 1966, as brought out in detail by the Petitioner in its written submission, and its implications in the context of the present arrangement for procurement of electricity from SGEL. Some of these noteworthy characteristics are as under:

(a) Under the provisions of Sections 78 to 80 of the Punjab Re-Organisation Act, 1966, the Petitioner has been entrusted with managing, maintaining, and operating the Bhakra Nangal and Beas Projects and the transmission lines & other assets of the participating Governments and their respective electricity boards/licensees - in the capacity of their representative/manager only. As such, the ownership of the generating stations and transmission assets is with the participating States only and not with the Petitioner.

(b) The Petitioner merely acts as manager/representative and operator - for and on behalf of - the participating States and the ownership of the electricity generated therein also vests in the participating States in a fixed proportion as agreed in the historical agreements and/or as determined by the Central Government.

(c) Section 79(3)(d) of the Punjab Re-Organisation Act, 1966 further lays down that the functions of BBMB shall include such other functions as the Central Government may, after consultation with the Governments of the States of Haryana, Punjab and Rajasthan entrust to it. Board of the Petitioner, which comprises the members of participating States and the Central Government, in 233rd meeting held on 20.12.2019 has assigned the task to the Petitioner to go ahead with the tendering process for the execution of Solar Power Projects (ground-mounted as well floating Solar Power Projects). In this context, the Ministry of Power, Government of India, vide its letter dated 4.5.2020 has also concurred with the proposal of BBMB for assigning the work of setting-up solar power plants of various types, viz. Rooftop/ Ground mounted/ Floating Solar Power Projects.

(d) There is no intermediary procurer or trader in respect of the procurement of electricity from SGEL. The sale/supply of electricity is only to the beneficiary States/their designated entities, namely, PSPCL, Haryana Discoms, Rajasthan Discoms, HSEB, and the Energy Department, the UT of Chandigarh as represented by the Petitioner, – a statutory body constituted as the agency to undertake the various activities on behalf of or for the benefit of them. The power to be available from SGEL is to be apportioned amongst the above entities in the same proportion as in the case of the power generation managed by the Petitioner i.e. as per the direction of the Ministry of Power, Government of India, dated 31.10.2011 issued under the Sections 78, 70, and 80 of the Punjab Re-Organisation Act, 1966.

The Petitioner has submitted that under the PPA with SGEL, the sale/supply of electricity is essentially limited to the partner/beneficiary States and their assigned

utilities/distribution licensees, which are being represented by the Petitioner by virtue of its status under the Punjab Re-Organisation Act, 1966, and that the Petitioner has entered into the PPA merely in the capacity of their representative and that there is no trading of electricity in the concerned transaction. In view of the peculiar and unique role assigned to the Petitioner under the Punjab Re-Organisation Act, 1966, in order to facilitate the arrangement of supply between the Successful Bidder, SGEL and the distribution licensees of the beneficiary/partner States of the Petitioner, the present Petition is being admitted.

15. The Petitioner is, however, directed to implead the utilities/distribution licensees of its partner/beneficiary States, namely, PSPCL, Rajasthan Discoms, Haryana Discoms, HPSEB, and the Energy Department, the UT of Chandigarh as parties to the Petition and file a revised memo of parties. Also, since the bid process has been conducted by SECI in the capacity of the authorised representative of the Petitioner, the Petitioner shall also implead SECI as proforma respondent to the Petition. The Petitioner shall serve a copy of the petition along with this order on all the Respondents, who shall file their reply to the petition, if any, within three weeks from the date of issuance of this order with a copy to the Petitioner, who may file its rejoinder, if any, within two weeks thereafter.

16. The Petitioner and/or SECI will also provide the following details/information on affidavit, within three weeks from the date of this order.

(i) Proof of publication of the RfS notice as per Clause 6.4 of the Solar Guidelines;

(ii) Certificate from the Evaluation Committee as per Clause 10.2 of the Guidelines; and

(iii) Declaration/Undertaking that the Bid documents (RfS & PPA) have been prepared as per the provisions of the Solar Guidelines only and that no deviations were taken in them from the provisions of the Solar Guidelines. In the event of any deviations, approval of the Competent Authority for incorporating such deviations.

17. The Petition shall be listed for hearing on 16.8.2023.

Sd/-
(P.K. Singh)
Member

sd/-
(Arun Goyal)
Member

sd/-
(I.S. Jha)
Member

sd/-
(Jishnu Barua)
Chairperson