

**BEFORE THE HARYANA ELECTRICITY REGULATORY COMMISSION AT
PANCHKULA**

Case No. HERC/Petition No. 66 of 2023

**Date of Hearing : 05.01.2024
Date of Order : 05.01.2024**

In the Matter of

Petition under Section 86(1) (b) and Section 63 of the Electricity Act, 2003 read with Haryana Electricity Regulatory Commission (Conduct of Business) Regulations, 2019 seeking source approval and adoption of tariff for procurement of 67 MW solar power from 7 nos. Grid Connected Solar PV Power Projects at the discovered tariff of Rs. 3.37/kWh through Competitive bidding.

Petitioner

Haryana Power Purchase Centre, Panchkula (HPPC)

Present on behalf of the Petitioner

1. Ms. Aerika Singh, Advocate
2. Sh. Gaurav Gupta, Xen, HPPC

Quorum

Shri Naresh Sardana

Member

ORDER

Brief Background of the case

1. The present petition has been filed by HPPC, a joint forum of Haryana Distribution licensees for power purchase/trading, seeking source approval and adoption of tariff for procurement of 67 MW solar power from 7 nos. Grid Connected Solar PV Power Projects at the tariff of Rs. 3.37/kWh discovered through a transparent process of competitive bidding.
2. **HPPC's submissions: -**
 - 2.1 That the petitioner (HPPC) has been mandated to procure power from Renewable Energy Sources as per the provisions of Section 86 (1)(e) of the Electricity Act, 2003 and HERC RE Regulations in vogue. Further, Section 63 of the Electricity Act, 2003 provides that the Appropriate Commission shall adopt the tariff if such tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the Central Government.
 - 2.2 That section 86(1)(b) of the Electricity Act 2003 provides that the State Commission shall discharge the following functions, namely –
"regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies

or licensees or from other sources through agreements for purchase of power for distribution and supply within the State."

- 2.3 That the petitioner had prepared Bidding document including RfS and PPA in accordance with the MNRE Guidelines, 2017. Further, in accordance with Clause 3.1.1 read with Clause 18 of the MNRE Guidelines, 2017, the petitioner had sought approval from this Hon'ble Commission regarding the deviations made from the Standard Bidding documents issued by the MNRE.
- 2.4 That the Hon'ble Commission, vide Order dated 29.03.2023 (Petition no. 13 of 2023), approved the bidding document with deviations and ordered as under –
- "4. The Commission has considered the submissions of the petitioner including the reasons for certain deviations from the SBD. Admittedly, there is a need to procure renewable energy including solar energy not only to fulfill RPO obligations but also to promote larger integration of clean sources to mitigate green house gas effect and move towards carbon neutrality. Further, setting up of such projects in Haryana will have the spin-off benefits in terms of reduction of transmission and distribution losses as solar power will be generated and consumed locally. Additionally, it will enable peak load management and thereby avoid investments, to a certain extent, in transmission and fossil fuel generation capacity.*
- 5. The deviations proposed from the SBD is also approved as the same has been considered to impart clarity and is no way hinders tariff based competition amongst the interested bidders.*
- 6. In terms of the above discussions, the bidding document along with the proposed deviations irrespective of the capacity is approved. Accordingly, the present petition stands disposed of."*
- 2.5 That pursuant to the ibid order, HPPC issued a tender dated 17.04.2023, for procurement of 500 MW of Solar power with maximum of 10 MW from single solar power developer on a long-term basis. The technical and financial bids were opened on 18.08.2023 and 29.09.2023, respectively.
- 2.6 That the discovered tariff after e-reverse auction is tabulated below: -

Name	Project Capacity in MW	Quoted tariff (Rs/kWh)
Avaada Energy Private Limited	10	3.37
MPCL INDUSTRIES LIMITED	10	3.37
EKI ENERGY SERVICES LIMITED	10	3.37
GANESH ELECTRICALS PRIVATE LTD	10	3.37
ROOP RAM EDUCARE PRIVATE LTD	10	3.37
SAI GR IMPEX PRIVATE LIMITED	7	3.37
ADARSHBADLI CONSTRUCTION P LTD	10	3.37
TOTAL	67	

2.7 That the adoption of the tariff of Rs. 3.37 per kWh by this Hon'ble Commission will be consistent with the tender and provisions of the Electricity Act, 2003 as provided in the Preamble, Section 61(h) and Section 86 of the Electricity Act, 2003, the National Electricity Policy and National Tariff Policy notified by the Central Government under Section 3 of the Electricity Act, 2003 as well as the policies of the Government of Haryana. The relevant extracts from the above-mentioned provisions are reproduced hereunder:

a) The Preamble of the Electricity Act, 2003 reads as under:

*"An Act to consolidate the laws relating to generation, transmission, distribution, trading and use of electricity and generally for taking measures conducive to development of electricity industry, promoting competition therein, protecting interest of consumers and supply of electricity to all areas, **rationalization of electricity tariff , ensuring transparent policies regarding subsidies, promotion of efficient and environmentally benign policies,** constitution of Central Electricity Authority, Regulatory Commissions and establishment of Appellate Tribunal and for matters connected therewith or incidental thereto."*

(Emphasis Supplied)

b) Section 86 (1) (e) of the Electricity Act, 2003 dealing with the functions of the State Commission provide as under:

"Section 86. (Functions of State Commission): --- (1) *The State Commission shall discharge the following functions, namely: -*

.....

(e) promote co-generation and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity to any person, and also specify, f or purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of distribution licensee;"

c) Section 86 (4) of the Electricity Act, 2003 read as under:

"(4) In discharge of its functions, the State Commission shall be guided by the Notional Electricity Policy, National Electricity Plan and tariff policy published under section 3."

d) The National Electricity Policy, 2005 notified by Government of India on 12.02.7005, inter-alia reading as under:

"5.12 COGENERATION AND NON-CONVENTIONAL ENERGY SOURCES

5.12.1 Non-conventional sources of energy being the most environment friendly there is an urgent need to promote generation of electricity based on such sources of energy. For this purpose, efforts need to be made to reduce the capital

cost of projects based on non-conventional and renewable sources of energy. Cost of energy can also be reduced by promoting competition within such projects. At the same time, adequate promotional measures would also have to be taken for development of technologies and a sustained growth of these sources.

5.12.2 The Electricity Act 2003 provides that cogeneration and generation of electricity from nonconventional sources would be promoted by the SERCs by providing suitable measures for connectivity with grid and sale of electricity to any person and also by specifying, for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of a distribution licensee. Such percentage for purchase of power from non-conventional sources should be made applicable for the tariffs to be determined by the SERCs at the earliest. Progressively the share of electricity from non-conventional sources would need to be increased as prescribed by State Electricity Regulatory Commissions. Such purchase by distribution companies shall be through competitive bidding process. Considering the fact that it will take some time before non-conventional technologies compete, in terms of cost, with conventional sources, the Commission may determine on appropriate differential in prices to promote these technologies.”

- e) On 28.01 .2016, the Central Government notified the National Tariff Policy, 2016 in exercise of the powers under section 3 of the Electricity Act, 2003. The National Tariff Policy, 2016 provides as under:

“6.4 Renewable sources of energy generation including Co-generation from renewable energy sources:

(1) Pursuant to provisions of section 86(1)(e) of the Act, the Appropriate Commission shall fix a minimum percentage of the total consumption of electricity in the area of a distribution licensee for purchase of energy from renewable energy sources, taking into account availability of such resources and its impact on retail tariffs. Cost of purchase of renewable energy shall be taken into account while determining tariff by SERCs. Long term growth trajectory of Renewable Purchase Obligations (RPOs) will be prescribed by the Ministry of Power in consultation with MNRE.

(2) States shall endeavour to procure power from renewable energy sources through competitive bidding to keep the tariff low, except from the waste to energy plants. Procurement of power by Distribution Licensee from renewable energy sources from projects above the notified capacity, shall be done through

competitive bidding process, from the date to be notified by the Central Government.

However, till such notification, any such procurement of power from renewable energy sources projects, may be done under Section 62 of the Electricity Act, 2003. While determining the tariff from such sources, the Appropriate Commission shall take into account the solar radiation and wind intensity which may differ from area to area to ensure that the benefits are passed on to the consumers.

.....

(5) In order to promote renewable energy sources, any generating company proposing to establish a coal lignite based thermal generating station after specified date shall be required to establish such renewable energy generating capacity or procure and supply renewable energy equivalent to such capacity, as may be prescribed by the Central Government from time to time after due consultation with stakeholders. The renewable energy produced by each generator may be bundled with its thermal generation for the purpose of sale. In case an obligated entity procures this renewable power, then the SERCs will consider the obligated entity to have met the Renewable Purchase Obligation (RPO) to the extent of power bought from such renewable energy generating stations.”

- 2.8 That the following prayers have been made: -
- a. Admit the instant Petition
 - b. Grant approval of source for the procurement of 67 MW solar power from 7 nos. Grid Connected Solar PV Power Projects as per the *Guidelines for tariff based competitive bidding process for procurement of power from Grid connected Solar PV Power projects* issued by MNRE, GOI as amended from time to time for a period of 25 years;
 - c. Adopt tariff i.e. Rs 3.37/kWh discovered through competitive bidding under Section 63 of Electricity Act, 2003.
 - d. Pass any such further order(s) or direction(s) that this Hon'ble Commission may deem fit and necessary in the facts and circumstances of the case.

Proceedings in the Case

3. The case was heard on 05.01.2024, in the court room of the Commission, wherein the petitioner (HPPC) mainly reiterated the contents of its petition, which for the sake of brevity are not being reproduced here.

Commission's Order

4. The Commission heard the arguments of the petitioner at length as well as perused the written submissions placed on record by the petitioner. At the outset, the Commission observes that the primary objective of competitive bidding as provided in the Electricity Act, 2003 and the National Tariff Policy notified thereunder, is to impart transparency to the entire process of power procurement by the distribution licensees and to ensure least cost that can be passed on to the electricity consumers.

In the above backdrop, the Commission has examined the present petition for source approval and adoption of tariff under Section 63 of the Electricity Act, 2003. After due deliberations, the Commission is of the considered view that adoption of tariff under Section 63 of the Act is not a mechanical exercise i.e. it goes beyond the fact that the Commission has to ensure that the bidding process has been carried out as per the guidelines notified by the Central Government and deviations to the standard bidding document has the approval of the state commission. In order to settle the issue, the Commission has examined the entire gamut of source approval and 'tariff adoption' as under:-

The petitioner (HPPC) has submitted that mandate to procure power from the Renewable Energy Sources is given by the relevant provisions of Section 86(1)(e) of the Electricity Act, 2003 and Haryana Electricity Regulatory Commission (Terms and Conditions for determination of Tariff from Renewable Energy Sources, Renewable Purchase Obligation and Renewable Energy Certificate) Regulations, 2010, as amended from time to time ('HERC RE Regulations').

In this regard, the Commission has perused Section 86 (1)(e) of the Electricity Act, 2003, reproduced hereunder: -

"86. Functions of the State Commission. – (1) The State Commission shall discharge the following functions, namely:-

.....

(e) promote cogeneration and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity to any person, and also specify, for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of a distribution license;"

A plain reading of Section 86 (1) (b) of the Electricity Act, 2003 makes it crystal clear that the said Section has not mandated HPPC/Discoms to procure RE power, as averred by them; rather it is one of the functions entrusted to this Commission to promote generation of electricity from RE sources and prescribe the percentage of

renewable purchase obligations (RPO). Accordingly, this Commission has prescribed the RPO trajectory for the financial years from 2023-24 to 2029-30 and apportioned the same into 'wind RPO', 'HPO' and 'other RPO'. Thus, solar power is covered under 'other RPO'. The Discoms/HPPC were allowed to comply with the RPO trajectory for the FY 2022-23, in accordance with the RPO trajectory specified by the Ministry of Power (MoP), vide order dated 22.07.2022, which had specified 'other RPO' as 23.44% of the electricity consumption. Admittedly, the Discoms/HPPC, have complied with the same (including backlog of earlier year) and have sought REC for 4059 MUs on account of excess purchase of RE power under the head 'other RPO'. It is evident from the above, that Discoms/HPPC has already complied with the RPO obligations and have tied up sufficient capacity to achieve the trajectory specified for the ensuing years. Therefore, the approval for purchase of solar power, sought in the present petition, cannot be attributed to Section 86 (1) (b) of the Electricity Act, 2003 or HERC RE Regulations, in vogue. The purchase of RE power in excess of RPO obligations, needs to be treated on merits taking into account its dispatchability and the likely burden it will impose on the grid (given its intermittent nature) and the ultimate consumer.

The Commission has taken note of the petition filed by HPPC under section 86 (1)(b) of the Electricity Act, 2003 for approval of power procurement source and under section 63 of the Act for adoption of tariff. It has been contended that the mandate provided under section 63 of the Act is to be followed by the Commission while adopting the tariff discovered by way of the bidding process. The Commission has to see *“whether the process stipulated under the competitive bidding guidelines has been strictly followed or not and whether there were any deviations taken from the Standard Bidding Document (SBD) with the prior approval of the Commission.”*

The Commission is bound to follow the statutory duty *‘to regulate’* the entire gamut of electricity purchase and procurement process, so that an uninterrupted and reliable power at a reasonable rate, is made available to the electricity consumers. Hence, a visit to the jurisprudence, so evolved, in the context of the State Electricity Regulatory Commission’s power *“to regulate”* under section 86 of the Act has been undertaken as under: -

The Hon’ble Appellate Tribunal for Electricity in its judgment dated 28th January, 2021 in Appeal No. 271 of 2019 dwelt at length on the issue of the Commission’s power to regulate. The Hon’ble APTEL cited the following observations of the Hon’ble Supreme

Court. In *K.Ramanathan v. State of T.N.*, (1985) 2 SCC 116:1985 SCC, the apex court observed: -

“...the power to regulate carries with it full power over the thing subject to regulation and in absence of restrictive words, the power must be regarded as plenary over the entire subject.”

Further, the word “regulate” was interpreted by the Hon’ble Supreme Court in *State of T.N. vs. Hind Stone* (1981) 2 SCC 205, as to include ‘prohibition’ within its fold and differs according to the nature of the thing to which it is applied.

In *Bharat Sanchar Nigam Limited v. Telecom Regulatory Authority of India* (2014) 3 SCC 222, the Hon’ble Apex Court while deliberating on the scope of the regulatory jurisdiction of the telecom regulator observed that *“the term ‘regulate’ is elastic enough to include the power to issue directions or to make regulations. It covers not only the tariff issues but also control the conduct of the parties; if so required by issuing enforceable directives, couched even in prohibitory terms, requiring them to adjust, restrict, manage or modify, the overall objectives to be sub-served by such regulation as defined in the law on the subject being the prime considerations”*.

It can be inferred from the case laws cited above that the Commission’s ‘power to regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies’, is for the purpose of preventing un-productive and avoidable expenditure including entering into frivolous litigations. The jurisdiction thereby conferred on the State Commission by the Electricity Act, 2003, gives it the power to “regulate” the “electricity purchase and procurement process” undertaken by the “distribution licensees” for distribution and supply within the State and approvals to be taken also covers matters “including the price at which electricity shall be procured” by the regulated entity from “the generating companies” such procurement being invariably “through agreements for purchase of power” which consequently are also subject to regulation. The power to regulate procurement process of a Distribution Licensee is wide ranging power. There is no provision in the Act which overrides the said powers of the State Commission.

It flows from the above, that the provisions of Section 63 of the Act, do not override / take away the powers of this Commission under Section 86(1)(b) of the Act. In fact, there is no provision in the Electricity Act, 2003 and or in catena of cases decided by the Courts/ Tribunal of Competent Jurisdiction in Electricity matters that overrides the powers of the Commission under Section 86(1)(b) of the Act.

Consequently, this Commission, while exercising its powers taking into consideration of the mandate under Section 86 (1) (b) of the Electricity Act, 2003 i.e. to regulate electricity purchase and procurement process of distribution licensee including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreement for purchase of power for distribution and supply within the State, observe that the lowest discovered tariff in June, 2019 was Rs. 2.50/kWh (SECI's auction for 750 MW solar PV power in Rajasthan). In November 2020, Solar PV power tariff has fallen to Rs. 2.00/kWh (SECI's auction of 1070 MW solar PV projects in Rajasthan). In March 2021, the discovered levelized tariff was Rs. 2.20/kWh (GUVNL's auction to purchase 500 MW solar PV power) after the imposition of basic customs duty (BCD) on imported solar PV panels and cells. In April 2023, the discovered minimum tariff for solar power was Rs. 2.55/kWh (REC power development and Consultancy's auction for purchase of 1250 MW solar PV power). The stagnancy in the tariff rate discovered through competitive bidding, in spite of inflation, from the year 2019 to 2023, indubitably reflects that the hike in the cost of some components out of various constituents of the capital cost of a solar power project, has been absorbed by decline in the cost of some other components. In this regard, it is also significant to note the news item in 'the Energy World' dated 11.07.2023, specifying that the prices of Chinese solar modules have dropped to a historic low of \$0.196 per watt in June, 2023 from the level of \$ 0.24 per watt in June, 2021. The Commission further observes that in the project specific tariff determination proceedings before it, the solar PV tariff determined, vide its order dated 18.01.2021 (petition no. 59 of 2020 for 50 MW, in the matter of M/s. Amplus), 17.09.2021 (petition no. 70 of 2020 for 20 MW in the matter of M/s. LR) and 11.11.2021 (petition no. 16 of 2021 for 50 MW in the matter of M/s. Avaada) was Rs. 2.58/kWh, Rs. 2.48/kWh and Rs. 2.86/kWh, respectively. Needless to add that the slump in cost and tariff for solar PV power plants is continuing. The applicable tariff in Mumbai (BEST) for 234 MWp and Tripura for 100 MWp have been Rs. 2.54/kWh only. The Commission observes that Hon'ble Punjab Electricity Regulatory Commission has recently approved procurement of 400 MWp solar power from NHPC @ R. 2.45/kWh. It may be worthwhile to add here that this Commission, in the case of 10.72 MW solar power from Greenyana Solar Pvt. Ltd., based in Haryana, had approved a ceiling tariff of Rs. 2.75/kWh agreed upon by the parties. Additionally, on 04/01/2024, NTPC, through competitive bidding awarded 300 MWp to M/s. Anboto Solar @ Rs. 2.60/kWh and to a few others @ Rs. 2.65/kWh.

In view of the above, the Commission is of the considered view that the tariff of Rs. 3.37/kWh discovered by HPPC, through bidding is not competitive and aligned to the

prevalent market conditions. Therefore, the Commission, rejects the petition filed by HPPC for adoption of Tariff under section 63 of the Electricity Act, 2003 and for source approval. The Commission is mindful that such decisions are in the best interest of the electricity consumers of Haryana, which are to be supplied continuous, reliable and cost-effective power. This Commission has been entrusted with the statutory functions to balance the interest of all stakeholders, so as to ensure that quality power is made available to the consumers at a reasonable rate.

The Commission has taken note of the order (s) of Hon'ble HPERC and JERC (J&K and Ladakh) placed on record by the counsel in the hearing held on 05/01/2023. The Commission has perused the orders and observe that in the case of HPERC the determined tariff was generic not having any co-relation with the market forces which is sine quo non in the case of Haryana. Further, the order of JERC is based on negotiations subject to "written consent on acceptance of this rate" (Rs. 4.65/unit). Hence, both the orders are on a different footings and not strictly comparable with the present case.

The Commission has further observed that SJVN, in November 2023, has allotted contract to supply 750 MW renewable energy with storage @ Rs. 4.38/kWh. Renewable energy with storage @ Rs. 4.38/kWh is reasonable for meeting peaking demand and HPPC may also explore such possibilities.

HPPC, if required, may invite fresh Competitive Bids for reasonable and competitive rates, after following the due process prescribed for the purpose and design the bid document (seek approval, if required), in such a way that the tariff discovered is the least cost option that stands the scrutiny of market forces and avoids the pitfall such as that witnessed in the present case i.e. quoted tariff was uniformly 1 paise/unit below the ceiling tariff. Such co-incidence, if at all, impinges upon and fails when tested on the anvil of transparency as it tantamount to collusion, that ought to be avoided.

In terms of the above order, the present petition is disposed of.

This order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 05.01.2024.

Date: 05.01.2024
Place: Panchkula

(Naresh Sardana)
Member