

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 222/AT/2023

Subject : Petition under Section 63 of the Electricity Act, 2003 for Adoption of Tariff discovered through Competitive Bidding Process for selection of solar power developers for setting up of 500 MW ISTS-connected Solar PV Power projects in India under tariff-based competitive bidding under Scheme for flexibility in Generation and Scheduling of Thermal/ Hydro Power Stations through bundling with Renewable Energy and Storage Power.

Petitioner : Damodar Valley Corporation (DVC).

Respondent : ReNew Solar Power Private Limited and 22 Ors.

Petition No.233/AT/2023

Subject : Petition under Section 63 of the Electricity Act, 2003 for adoption of tariff for procurement of 1250 MW power from ISTS connected Solar PV Power Projects in India for utilization under scheme for flexibility in Generation and Scheduling of Thermal/Hydro Power Stations through bundling with Renewable Energy and Storage Power as per the Guidelines for Tariff Based Competitive Bidding Process notified by the Ministry of Power, Government of India vide its Gazette Notification dated 27.8.2022.

Petitioner : NTPC Limited (NTPC).

Respondent : Solairedirect Energy India Private Limited & 48 Ors.

Date of Hearing : **29.11.2023**

Coram : Shri Jishnu Barua, Chairperson
Shri Arun Goyal, Member
Shri P. K. Singh, Member

Parties Present : Shri Venkatesh, Advocate, DVC & NTPC
Shri Anant Singh, Advocate, DVC & NTPC
Ms. Nehal Jain, Advocate, DVC & NTPC
Shri Ashutosh Shrivastava, Advocate, DVC
Shri Bharat Gangadharn, Advocate, DVC
Shri S. Vallinayagam, Advocate, TANGEDCO
Shri S. SethuRaman, TANGEDCO
Shri Kartikey Trivedi, Advocate, DVC
Shri Anant Singh, Advocate, NTPC
Ms. Nehal Jain, Advocate, NTPC
Shri Sakya Singha Chaudhuri, Advocate, WBSEDCL
Shri Shubham Hasija, Advocate, WBSEDCL
Shri Ritam Biswas, RECPDCL
Shri Ravi Nair, Advocate, PSPCL



Shri Shubhranshu Padhi, Advocate, Karnataka Discoms
Shri N. Sukirthy, Advocate, Karnataka Discoms
Ms. Kanupriya Sharma, REMCL
Shri Vineet Pandey,
Shri Tarun Kalyani,
Shri Vishal Saxena

Record of Proceedings

Learned counsel for the Petitioners submitted that the present Petitions have been filed seeking the adoption of tariff for the procurement of power from ISTS-connected Solar PV Power Projects in India for utilization under the Scheme for Flexibility in Generation and Scheduling of Thermal/Hydro Power Station through Bundling with Renewable Energy and Storage Power ('RE Bundling Scheme') dated 12.4.2022 and as per the Guidelines for Tariff Based Competitive Bidding Process notified by the Ministry of Power, Government of India, vide Notification dated 27.8.2022. Learned counsel submitted that vide the Record of Proceedings for the hearing dated 30.8.2023 and 20.9.2023, the Commission had sought certain details/clarifications from the Petitioners, and the Petitioners have, accordingly, filed their respective affidavits in compliance thereof. Learned counsel further referred to the said affidavit(s) and mainly submitted as under:

(a) Insofar as the relevant tariff at which the Petitioners will be supplying the solar generation (in replacement of its thermal generation) to its beneficiaries and the relevance of the adopted tariff in the context of transaction between the Petitioner and beneficiaries is concerned, the Clause 6.7 of the RE Bundling Scheme provides that the RE power supplied to the beneficiaries by the Petitioner shall be at a tariff (ECR) which is less than the original tariff under the existing PPAs. Such reduced tariff shall also include the balancing cost and the tariff risk for replacement of thermal power with renewable generation in terms of the said Scheme.

(b) Also, as per Clause 6.8 of the RE Bundling Scheme, the net savings from the supply of the RE instead of thermal energy under the existing PPA shall be shared between the generators/Petitioners and the beneficiaries in the ratio of 50:50 on a monthly basis. Thus, the supply of RE power under the RE Bundling Scheme will not lead to any additional costs to the beneficiaries and will only result in savings as the tariff for such RE supply shall be less than the ECR of the thermal generating station.

(c) The tariff to be adopted in these cases is relevant in the transaction between the Petitioners and Solar Power Project Developers (and not the Petitioners' beneficiaries), and the Petitioners have approached the Commission in accordance with Clause 10.4 of the Guidelines dated 27.8.2022 issued by the Ministry of Power, Government of India under Section 63 of the Act.

(d) As regards the consent to be taken from the beneficiaries in terms of Clause 10.5 of the Guidelines, as such, no consent was taken from the beneficiaries in Petition No. 233/AT/2023 and the Petition in itself is to be treated as consent/notice to the beneficiaries. Whereas, in Petition No. 222/AT/2023, a letter has been issued to the beneficiaries, and as on date, none of the Respondents have filed any concern showing their disagreement with the bundling of power under the said RE Bundling Scheme.

(e) Pertinently, the Ministry of Power, vide its letter dated 28.9.2022, has amended the RE Bundling Scheme by deleting Paragraphs 9.2 and 9.4.3 of the said Scheme

while stating that certain procedures, as laid down in the Scheme are redundant and delaying the implementation of the Scheme. The said amendment was carried out by the Ministry to emphasize that the obligation of the generator is to supply electricity to the procurer at a price equal to or less than that laid down in the PPA, and this obligation will need to be adhered to by the generator and the procurer sharing the gains as laid down in the Scheme. Therefore, to fast track the implementation of the scheme and considering the importance of clean energy transition, the MoP decided to remove Paras 9.2 and Para 9.4.3 of the said scheme. Thus, it can be construed that consent from the beneficiaries is not required as long as the generator is able to supply electricity to the procurer/beneficiary at a price equal to or less than that laid down in the existing PPA.

(f) Insofar as the execution of the PPAs is concerned, as per Clause 10.5 of the Guidelines, PPAs can be signed by the parties only after the adoption of the tariff by the Appropriate Commission. Thus, the Petitioners can enter into a PPA with the successful bidders only after the adoption of the tariff by this Commission.

(g) In Petition No. 233/AT/2023, none of the Respondents/beneficiaries have filed any reply. Whereas in Petition No. 222/AT/2023, two beneficiaries, PSPCL and WBSEDCL, have filed their respective reply. Though these Respondents/beneficiaries have raised certain objections regarding the RE Bundling Scheme, none of them have raised any concern regarding the consent & adoption of the tariff.

(h) Further, pursuant to the direction of this Commission, Bid Process Coordinator, REC Power Development & Consultancy Limited has also filed its affidavit in these matters stating that Bid Documents were in line with the provisions of RE Bundling Guidelines and no deviations were taken from the provisions of the Guidelines.

2. Learned counsel for Respondent No. 33, TANGEDCO, in Petition No. 233/AT/2023, pointed out that the Ministry of Power's Scheme for Pooling of Tariff of those Plants whose PPAs have expired has been stayed by the Hon'ble High Courts of Delhi and Madras and hence, generation and supply of power in connection to such plants/stations would be in violation to the aforesaid stay orders. Learned counsel also questioned the rationale for sharing benefits in the ratio of 50:50 with the Petitioner/NTPC. Learned counsel sought liberty to file a reply in the matter and urged for another oral hearing in the matter thereafter.

3. Learned counsel for Respondent No. 10, West Bengal State Electricity Distribution Company Limited (WBSEDCL) in Petition No. 222/AT/2023 also expressed concerns with regard to the provisions of the RE Bundling Scheme and submitted that the Petitioner cannot override the provisions of the Act and/or Regulations notified by the Commission. Learned counsel submitted that under the RE Bundling Scheme, the generator/the Petitioner would be acting as a trading licensee, which may not be permissible. Learned counsel also pointed out that under the Scheme, the generator/Petitioner is buying power from the RE Projects and, consequently, selling it to the beneficiaries with certain added costs (balancing costs and tariff risks), whereas the beneficiaries can themselves procure such RE power by directly approaching RE generators. Learned counsel also submitted that the Balancing Cost and Tariff Risk are not defined anywhere, and despite the specific direction by the Commission, the Petitioner has not stated at what rate the RE power will be supplied to the beneficiaries. Learned counsel further added that the implementation of the RE Bundling Scheme would also require implementing a necessary legal framework, which is not present as on date. Learned counsel added

that while Respondent as such has no objection to the adoption of tariffs by the Commission as provided in the Guidelines, it ought not to be treated as creating any right in the favour of the Petitioner for compulsorily supplying such power to Respondent.

4. Learned counsel for Respondent No.7, Punjab State Power Corporation Limited (PSPCL), submitted that PSPCL has no objection regarding the adoption of the tariff by the Commission. However, PSPCL, in its reply, has pointed out certain operational aspects of the RE Bundling Scheme, which may be considered by the Commission.

5. In rebuttal, learned counsel for the Petitioners submitted that the Scheme which has been stayed by the Hon'ble High Courts, as pointed out by TANGEDCO, is not the RE Bundling Scheme as in these cases. Learned counsel also submitted that apprehension of Respondent, WBSEDCL that supply under this RE Bundling Scheme hinders/restricts its right to directly purchase the RE power from RE generator is misplaced as he is always at liberty to go for such procurement. Learned counsel also submitted that it may not be correct to term the role of the generators/Petitioners herein as trading licensee as even under the extant PPAs/Guidelines, generators are allowed to supply the power from the alternate /substitute sources. Learned counsel stated that certain operational/ implementation aspects of the RE Bundling Scheme would require consideration of the Commission but they cannot be a basis for deferring the adoption process and they may be taken up separately by keeping the contentions of all the parties open in this regard.

6. Learned counsel for the Respondents, Karnataka Discoms, in Petition No. 222/AT/2023 sought liberty to file written submissions in the matter.

7. After hearing the learned counsel for the parties, the Commission permitted the parties in Petition No. 222/AT/2023 to file their respective written submissions, if any, within three weeks with a copy to the other side, subject to which the Commission reserved the matter for order.

8. Whereas, in Petition No.233/AT/2023, the Commission permitted the Respondents, including TANGEDCO, to file their reply, if any, within two weeks with a copy to the Petitioner who may file its rejoinder, if any, within two weeks thereafter.

9. Petition No.233/AT/2023 will be listed for hearing on **10.1.2024**.

By order of the Commission

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