

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 174/AT/2021

- Subject : Petition under Section 63 of the Electricity Act, 2003 for adoption of usage charges for 1,692 MW Solar Photovoltaic (PV) Power Station (Tranche-I & II) connected to the inter-State Transmission System and selected through competitive bidding process under Central Power Sector Undertaking ('CPSU') Scheme Phase-II dated 5.3.2019 as per the Standard Bidding Guidelines of Ministry of Power dated 3.8.2017.
- Date of Hearing : 16.11.2021
- 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 : Solar Energy Corporation of India Limited (SECI) and 2 Ors.
- Parties Present : Shri Venkatesh, Advocate, NTPC
Shri Suhael Buttan, Advocate, NTPC
Shri Jatin Ghuliani, Advocate, NTPC
Shri Anant Singh Ubeja, Advocate, NTPC
Shri Rishub Kapoor, Advocate, NTPC
Shri M. G. Ramachandran, Sr. Advocate, SECI
Ms. Tanya Sareen Advocate, SECI
Ms. Poorva Saigal, Advocate, SECI
Shri Ishpaul Uppal, NTPC
Shri V V Sivakumar, NTPC
Ms. Neha Singh, SECI
Shri M. Karukkuvel, SECI

Record of Proceedings

Case was called out for virtual hearing.

2. The learned senior counsel for the Respondent, SECI submitted that vide Record of Proceedings for the hearing dated 12.10.2021, the Commission had directed the Respondent, SECI to file its response on certain observations of the Commission regarding 'maintainability' of the Petition along with details relating to bid process conducted by it under the Central Public Sector Undertaking ('CPSU') Scheme Phase-II dated 5.3.2019 (in short, 'the Scheme'). The learned senior counsel, referring to his response, mainly submitted the following:

- (a) As to the observation regarding participation in the bid process being restricted to 'Government producers' and it not being open bid process, the CPSU Scheme Phase-II was for setting up of 12,000 MW grid-connected solar PV power projects by the 'Government producers' only with Viability Gap

Funding ('VGF') support for self-use by Government/ Government entities, either directly or through distribution companies. Such mechanism was in order to be in compliant with the requirements under Article III:8 (a) of the GATT, 1994 which deals with the 'Government Procurement' derogation.

(b) Usage charges i.e. charges to be paid by the power users (Government entities/ CPSUs/ State PSUs) in respect of supply of electricity to them by the Government producer is provided in the Scheme at Rs. 3.50/kWh as ceiling and subject to the same, the usage charges are to be mutually agreed between the two Government entities.

(c) The Scheme contemplates Usage Agreement between the Government producer and the power user either directly or through local distribution company for making available the renewable power at the specified usage charges.

(d) Tariff based competitive bid process in terms of Section 63 of the Act was carried out for selection of the Government producer based on the bidding for VGF. The Government producers were selected in the ascending order with the lowest quoted VGF till the total offered capacity was exhausted.

(e) For a competitive bid process what is essential is that the selection is based on the competitively quoted amount in respect of any of the criteria. It is valid to freeze all other parameters and competitive bid be held on one parameter such as VGF support as in the present case.

(f) In the case of VGF Scheme under the Guidelines for implementation of the Scheme for setting up of 750 MW grid connected solar PV projects under Batch-I Phase-II dated 25.10.2013, the tariff was fixed at Rs.5.45/kWh and the competitive bid was for VGF support, which has been adopted by the Commission vide order dated 1.3.2021 in Petition No. 160/AT/2019. In the present case, the usage charges are to be mutually agreed subject to fixed ceiling of Rs.3.5/kWh and competition is for VGF support.

(g) Since SECI is yet to file its response, liberty may be granted to file its response along with all details relating to the bid process such as the conformity certificates, bid results, bid evaluation reports, LoAs and key milestones, etc.

3. In response to the specific query of the Commission as to whether the provisions of the Scheme allow negotiation/ reduction of usage charge after conclusion of the bid process, the learned senior counsel for SECI replied in affirmative and submitted that the Scheme permits mutually agreed rate between the Government producer and power users i.e. the Government/ Government entities, either directly or through distribution companies subject to the ceiling of Rs.3.5/kWh. In response to the Commission's further query regarding any specific provision in the Scheme itself providing for adoption of tariff by the 'Appropriate Commission', the learned senior counsel replied in negative. However, the learned senior counsel submitted that this Commission can adopt the tariff under Section 63 of the Act read with decision of the Hon'ble Supreme Court in Energy Watchdog case. The learned senior counsel added that the Commission may also consider adopting the VGF based tariff along with ceiling tariff and recognizing that the Scheme permitted the mutually agreed usage charges within the ceiling and thus, the usage charges arrived in the present case are arrived at by way of mutual negotiation.

4. The learned counsel for the Petitioner adopting the submissions made by the learned senior counsel for SECI submitted that *de hors* Section 63 of the Act, NTPC being a generating company controlled by the Central Government is also subject to the regulatory jurisdiction of this Commission under Section 79(1)(a) of the Act. In addition, since it is a composite scheme of generation and supply of the electricity in more than one State, this Commission is the appropriate Commission under Section 79(1)(b) of the Act and consequently, has the jurisdiction to adopt the tariff. The learned counsel further submitted that in the open tender where the bidding is conducted on VGF basis, the tariff is pre-specified and in case VGF is not warranted, tariff lower than the pre-specified tariff is offered. However, in the present case, in departure from the above after conclusion of VGF based bidding, the Scheme permitted the Government producer to mutually agree the tariff albeit with the ceiling rate.

5. In response to the another query of the Commission regarding arrangement of supply, the learned counsel for the Petitioner submitted that under the Power Usage Agreements entered into between the Petitioner and the Telangana Discoms, the power produced by the Petitioner, as Government Producer, is to be supplied to Telangana Discoms for power end users in compliance with WTO regulations and as per the terms and conditions specified in the CPSU Scheme Phase-II.

6. Based on the request of learned senior counsel for the Respondent, SECI, the Commission permitted SECI to file its response by within two days with copy to the Petitioner.

7. Subject to the above, the Commission reserved the matter for order.

By order of the Commission

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