



**THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION
LUCKNOW**

Petition No. 2054 of 2023

QUORUM

Hon'ble Shri Arvind Kumar, Chairman

Hon'ble Shri Vinod Kumar Srivastava, Member (Law)

IN THE MATTER OF

Petition filed under section 63 read with section 86(1) (b) of the Electricity Act, 2003 for approval of procurement of 450 MW of Wind Power in terms of the Power Sale Agreement dated 28.06.2022 on long term basis procured through tariff based competitive bidding process held under the Inter State Transmission System Tranche-XI Scheme.

AND

IN THE MATTER OF

Uttar Pradesh Power Corporation Ltd. (UPPCL),

Shakti Bhawan, 14-Ashok Marg, Lucknow-226001.

..... Petitioner

VERSUS

Solar Energy Corporation of India Limited (SECI),

6th Floor, Plate-B, NBCC Office Block Tower-2, East Kidwai Nagar,

New Delhi-110023

..... Respondent

FOLLOWING WERE PRESENT

1. Shri Manish Dwivedi, S.E, UPPCL
2. Shri Divyanshu Bhatt, Advocate, UPPCL
3. Ms. Surbhi Kapoor, Advocate, SECI.

ORDER

(DATE OF HEARING: 09.05.2024)

1. The Petitioner, UPPCL, has filed the captioned case for approval of procurement of 450 MW of Wind Power on long term basis procured through tariff based on competitive bidding process held under the Inter State Transmission System





Tranche-XI Scheme by the Petitioner from SECI under section 63 of the Electricity Act, 2003.

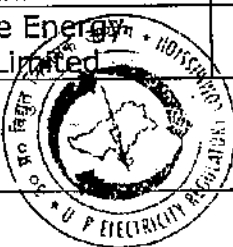
2. The prayer of the Petitioner are as follows:

- (a) Approve the procurement of 450 MW of Wind Power on long term basis procured by UPPCL from SECI through tariff based competitive bidding process held under the Inter State Transmission System Tranche-XI Scheme.
- (b) Approve the Power Sale Agreement executed on 28.06.2022 executed between Solar Energy Corporation of India Limited and UPPCL.
- (c) Pass any further order(s) as this Hon'ble Commission may deem fit in the facts and circumstances of the case.

3. **Background of the case as submitted by petitioner.**

- i. SECI, the central nodal agency for developing and facilitating establishment of grid connected Wind Power capacity, floated RFS dated 25.05.2021 for 1200 MW Wind power as per MoP guidelines dated 08.12.2017. RFS was amended vide amendment dated 28.06.2021 with a clarification document dated 28.06.2021 bearing reference no. RfS No. SECI/C&P/WPD/1200MW/T11/RfS/052021 (Clarification) by way of which, SECI had clarified its stand on various clauses of the RFS.
- ii. Pursuant to the scrutinising the bids received, SECI entered into PPAs with 4 WPDs as per following details:

| S. No. | WPD Name | Capacity (MW) | Date of PPA | Applicable Tariff (Rs. /kWh) |
|--------|--|---------------|-------------|------------------------------|
| 1 | Renew Naveen Urja Pvt. Ltd. | 300 | 29.08.2022 | 2.69 |
| 2 | Green Infra Wind Energy Ltd. | 180 | 26.08.2022 | 2.69 |
| 3 | Anupavan Renewables Pvt. Ltd. | 150 | 25.07.2022 | 2.69 |
| 4 | Azure Power India Pvt. Ltd. | 120 | 31.08.2022 | 2.70 |
| 5 | Adani Renewable Energy Holding Fifteen Limited | 450 | | 2.70 |

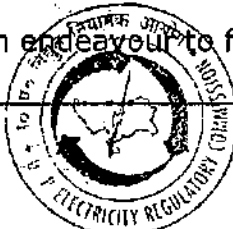




- iii. PSA dated 28.06.2022 was signed between UPPCL and SECI to receive the tariff as above along with trading margin @Rs. 0.07/unit in the terms of Article 5.1.1 of the PSA.
 - iv. The procurement of Wind Power from the above WPDs by the UPPCL is also an endeavor to fulfil its non-solar RPO.
4. Section 63 of the Act requires the Commission to adopt the tariff discovered through TBCB for the procurement of power by a distribution licensee. The Section 86(1)(a) & 86(1)(b) of the Act require the Commission to discharge functions related to adoption of the tariff determined during such process and regulate the procurement process.
 5. SECI has approached CERC for adoption of tariff by way of Petition No. 353/AT/2022 and the same has been reserved for Orders.
 6. Further, as per the observation of this Commission in Petition no. 1629/2020, which was jointly filed by UPPCL as well as SECI for approval of procurement of power, it was held by the Commission that unless the tariff gets adopted by the appropriate Commission, the approval of PPA as well PSA will not be justified. Therefore, in compliance with the aforementioned precedent, UPPCL filed the instant Petition as soon as the Orders for adoption for tariff in the instant case have been reserved by the CERC.

Record of Proceedings.

7. The Commission during the hearing dated 13.02.2024 allowed UPPCL 4 weeks' time to file its response regarding justification for (i) procurement of 450 MW Wind Power (ii) delay in filing in the Petition and (iii) quantification of change in law relief in deviation the bidding guidelines as observed by CERC in its RoP dated 07.02.2023 in the matter tariff adoption before CERC in the instant case.
8. During the next hearing dated 19.03.2024 the Commission allowed one more week time to UPPCL to file the requisite details. The Commission during the hearing dated 04.04.2024 granted further 3 weeks' time to UPPCL to file its submission and asked both UPPCL and SECI to make an endeavour to file a joint reply to the change in law





issues. UPPCL vide its additional affidavit 01.05.2024 has submitted its response to Commission's query. The Commission, after hearing the parties, on 09.05.2024 concluded the hearing.

9. Additional affidavit dated 01.05.2024 filed by UPPCL:

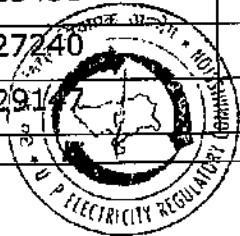
i. On 01.05.2024, UPPCL filed its affidavit in compliance to the Commission's Order dated 20.02.2024 and has submitted the following:

a) The CEA has proposed the following considering year on year increase of 7% in demand up to FY 2032 and thereafter 5.50% in FY 2033 and 5% in FY 2034.

| FY | Thermal (MW) | Hydro (MW) | Wind (MW) | Solar (MW) | Distributed RE (MW) | Total (MW) |
|--------------|--------------|-------------|-------------|--------------|---------------------|--------------|
| 2026-27 | 5027 | 250 | 800 | 8000 | - | 14077 |
| 2027-28 | 2131 | 250 | 800 | 8000 | - | 11181 |
| 2028-29 | - | 250 | 800 | 8000 | - | 9050 |
| 2029-30 | - | 250 | 1800 | 3624 | 710 | 6384 |
| 2030-31 | - | - | 800 | 5444 | 1617 | 7861 |
| 2031-32 | 458 | - | 800 | 4895 | 1801 | 7954 |
| 2032-33 | 1186 | - | 800 | 4104 | 1808 | 7898 |
| 2033-34 | 3199 | - | 800 | 2484 | 1896 | 8379 |
| Total | 12001 | 1000 | 7400 | 44551 | 7832 | 72784 |

b) The forecasted demand and availability up to FY 2034 have been reproduced below:

| Apr-Mar (Average) | | | |
|-------------------|------------------|------------------|----------------------|
| Year | Avg. Supply (MW) | Avg. Demand (MW) | Surplus/Deficit (MW) |
| 2024-25 | 21596 | 19421 | 2175 |
| 2025-26 | 24408 | 20781 | 3627 |
| 2026-27 | 24592 | 22236 | 2356 |
| 2027-28 | 24592 | 23792 | 800 |
| 2028-29 | 24592 | 25458 | -866 |
| 2029-30 | 25219 | 27240 | -2021 |
| 2030-31 | 29126 | 29147 | -21 |





| | | | |
|----------------|-------|-------|--------------|
| 2031-32 | 29126 | 31187 | -2061 |
| 2032-33 | 29126 | 33370 | -4244 |
| 2033-24 | 29126 | 35706 | -6580 |

- c) In view of MoP vide notification dated 20.10.2023, the RPO obligation of the Discoms have doubled from 15% (FY 2023-24) to 29.91% (FY2024-25) and therefore, UPPCL has no option but to substantially increase the purchase of renewable power. It has also been submitted that RPO obligation further increases to 41.36% in FY 2028-29.
- d) MoP has also directed Discoms to plan ahead in order to comply with the renewable energy consumption norms as stated in the Energy Conservation (Amendment) Act, 2022. In accordance with section 12(3) of the Act, for non-compliance of the directions as mentioned, a penalty shall be levied from the Discoms which shall not exceed Rs. 10 lakhs for each failure.
- e) MNRE vide notification dated 01.02.2024 has further notified that additional penalty shall also be levied to the tune of Rs. 3.72/- unit for each unit of shortfall in meeting RE consumption norms.
- f) The RPO projection analysis by UPPCL reveals a significant shortfall in the Wind and other RPO categories spanning from FY 2024-25 to FY 2033-34. Recognising the 100% fungibility permitted among Wind, Hydro and other RPO categories, a strategic roadmap has been proposed below to address this deficit:

| Capacity (MW) to be contracted in respective year to meet RPO (with fungibility) | | | | | | | | | | |
|---|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|---------------|
| Category/ (FY) | 2023- 24 | 2024- 25 | 2025- 26 | 2026- 27 | 2027- 28 | 2028- 29 | 2029- 30 | 2030- 31 | 2031- 32 | Total |
| Solar | 3000 | 2000 | 2000 | 1000 | 500 | - | - | - | - | 8500 |
| Wind | - | 2000 | 2000 | 1500 | 1000 | - | - | - | - | 6500 |
| Hydro | - | 4000 | 1000 | 1000 | 500 | - | - | - | - | 6500 |
| Cumulative | 3000 | 8000 | 5000 | 3500 | 2000 | - | - | - | - | 21500* |

*Out of 21500MW as proposed, UPPCL has already contracted 3000MW RE power in FY 2023-24 and remaining 18500MW is to be contracted in upcoming years.



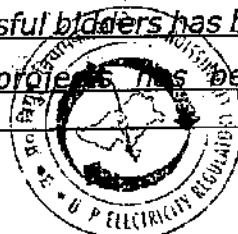


- g) In compliance with the Commission's Order dated 30.07.2020 passed in Petition No. 1629/2020, UPPCL had preferred instant Petition as soon as Orders for adoption for Tariff in the Instant case had been reserved by the CERC.
- h) In response to the CERC's RoP dated 07.02.2023, SECI submitted that proposed changes in the PPA were discussed at length in a meeting held on 04.08.2022 between SECI and Wind Power Developers. Further, SECI stated that change in law provision has been in terms of the MNRE notification dated 01.03.2021 read with the post facto approval duly received by SECI from MNRE on 19.02.2023.

Commission's analysis and decision

10. UPPCL has filed this Petition seeking approval of procurement of 450 MW wind power along with approval of PSA dated 28.06.2022. This wind power procurement shall facilitate the fulfilment of RPO obligations of UPPCL. UPPCL has filed the Petition as soon as CERC has reserved its Order in the matter of tariff adoption petition filed by SECI as the Commission vide its Order dated 30.07.2021, in Petition no. 1629/2020, had held that unless the tariff gets adopted by the appropriate Commission, the approval of PPA as well PSA cannot be justified.
11. Regarding the justification for quantification of change in law in the bidding guidelines, UPPCL, vide its affidavit dated 01.05.2024 has submitted that while adjudicating Petition No. 353/AT/2022, i.e., the Petition filed by SECI for adoption of tariff, the Ld. CERC has been conscious of the aforementioned issue that certain amendments had been unilaterally carried out to the terms of the PPAs post the submission of bid by the bidders. Further, it has been submitted that after due consideration by the Ld. CERC pertaining to the pre-determined Change in law relief as recorded in the paras 38-48 of the order dated 09.03.2024 in Petition no. 353/AT/2022, the Ld. CERC approved the tariff adoption and para 57 of the order reads as under: -

"In view of the aforesaid discussions, it emerges that the selection of the successful bidders has been done, and the tariff of the wind power projects has been discovered by the



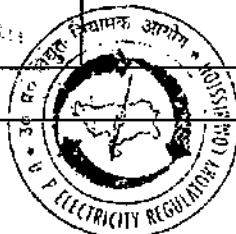


Petitioner, SECI, through a transparent process of competitive bidding in accordance with Guidelines (read with ex post facto approval vide letter dated 1.3.2021 of MNRE) issued by the Ministry of Power, Government of India under Section 63 of the Act. Further, the Petitioners have also consciously and voluntarily signed the respective PPAs. Therefore, in terms of Section 63 of the Act, the Commission adopts the individual tariff for the solar power project, as agreed to by the successful bidder(s), and for which PPA has been entered into by SECI on the basis of the PSAs with the distribution licensees, which shall remain valid throughout the period covered in the PPA and PSAs".

12. The relevant extract of the quantum of power executed under the PSA by UPPCL as observed in the CERC's Order dated 09.03.2024 in Petition No. 353/AT/2022 are as follows:

"36. Based on their requisition, SECI has entered into PSAs with all the buying utilities/distribution licensees as under:

| S. No. | Buying Utilities | Date of signing PSA | PSA Capacity (MW) | Applicable Tariff to Buying Utility (Rs. /kWh) |
|--------|---|---------------------|-------------------|---|
| 3. | Uttar Pradesh Power Corp. Limited (UPPCL) | 28.06.2022 | 450 | As per Article 5.1.1 read with schedule 1 of the PSA: Rs. 2.69/kWh (for 112.5 MW from ReNew Naveen Urja Pvt. Ltd. Plus Rs. 0.07/kWh (Trading Margin) Rs. 2.69/kWh (for 67.5 MW from Green Infra Wind Energy Ltd. Plus Rs. 0.07/kWh (Trading Margin) Rs. 2.69/kWh (for 56.25 MW from Anupavan Renewables Pvt. Ltd. Plus Rs. 0.07/kWh (Trading Margin) Rs. 2.70/kWh (for 168.75 MW from Adani Renewables Energy Holding Fifteen Ltd. Plus Rs. 0.07/kWh (Trading Margin) |





| | | | | |
|--|--|--|--|---|
| | | | | Rs. 2.70/kWh (for 45 MW from Azure Power India Pvt. Ltd. Plus Rs. 0.07/kWh (Trading Margin) |
|--|--|--|--|---|

13. UPPCL and SECI have agreed to a trading margin of Rs.0.07/kWh as agreed in PSA, which is in consonance with CERC Trading License Regulations, 2020. However, in case of failure by SECI to provide an Escrow arrangement or irrevocable, unconditional revolving letter of credit to wind generators, the trading margin can be limited to Rs.0.02/kWh in terms of aforesaid trading license Regulations, 2020.

Commission's View

14. In view of above, the Commission approves the power procurement of 450 MW wind power at the tariff as mentioned at Para 12 above along with trading margin of Rs.0.07/kWh in terms of CERC Trading License Regulations, 2020. The Commission also approves the PSA dated 28.06.2022 executed between UPPCL & SECI.

(Vinod Kumar Srivastava)

Member (Law)

Place: Lucknow

Dated: 24.05.2024

(Arvind Kumar)

Chairman

