



**THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION**

**LUCKNOW**

**Petition No. 2086 of 2024**

**QUORUM**

Hon'ble Shri Arvind Kumar, Chairman

Hon'ble Shri Sanjay Kumar Singh, Member

**IN THE MATTER OF**

Petition under section 63 read with section 86(1)(b) of the Electricity Act, 2003 for approval of tender documents including the Request for Selection (RfS) and Draft Power Purchase Agreement (PPA) to be floated by UPPCL for procurement of 2000MW of Solar Power.

**AND**

**IN THE MATTER OF**

**Uttar Pradesh Power Corporation Ltd. (UPPCL),**

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

..... Petitioner

**FOLLOWING WERE PRESENT**

1. Sh. Divyanshu Bhatt, Advocate, UPPCL
2. Sh. Shashwat Singh, Advocate, UPPCL
3. Sh. Deepak Raizada, C.E(PPA), UPPCL
4. Sh. Manish Dwivedi, S.E, UPPCL
5. Sh. Vikash Gupta, E.E, UPPCL
6. Sh. C.P. Maurya, A.E, UPPCL
7. Sh. Siddharth, Consultant, UPPCL

**ORDER**

**(DATE OF HEARING: 06.08.2024)**

1. The Petitioner, UPPCL filed this Petition seeking approval of the Bidding documents i.e., Request for Selection (RfS) and Draft PPA for procurement of 2000 MW Solar PV based power. The prayers of the Petitioner are as follows:

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- (a) Allow the Instant Petition; and
- (b) Approve the tender documents annexed as Annexure P-1 and P-2 to this Petition.
- (c) Pass such Orders that this Commission deems fit in the present facts and circumstances of the case.

**Brief facts as stated in Petition:**

2. The Government of India (GOI) has announced the Policy for promotion of the renewable energy-based project installation in the country and has set an ambitious target to achieve 500GW of non-fossil-based installed capacity by the year 2030.
3. The instant bidding document i.e., (RFS and PPA) has been prepared in line with the Ministry of Power (MoP) "Guidelines for Tariff based Competitive Bidding Process for procurement of power from grid connected Solar PV power projects", dated 28.07.2023 including subsequent amendments and clarifications issued until the last date of bid submission of this RFS without any deviation from the Guidelines.
4. In line with the aforementioned guidelines, UPPCL has invited proposals for setting up grid connected Solar PV Power projects in India, on Build Own Operate & Maintenance (BOOM) basis for an aggregate capacity of 2000MW. The duration of the PPA entered between UPPCL and successful bidders shall be of 25 years and the benefits outlined in the Uttar Pradesh Solar Policy 2022 shall apply to the Solar PV Projects proposed for development in the state of Uttar Pradesh by the Bidders.
5. Regarding selection of bidder, the RFS in clause 38.2(c) &(d) provide that at the time of e-Reverse Auction in case of a tie between two bidders time preference shall be given to the Bidder quoting his last tariff earlier than others. However, if there's still a tie, higher rank will be given to the Bidder who is planning to set-up the Project in the State of Uttar Pradesh to promote infrastructural development in the state.
6. UPPCL has given following justification for the proposed procurement of Solar PV based power based on the Central Electricity Authority's (CEA) report on 'Resource Adequacy Planning:

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a) CEA has proposed the following category of capacity required up to FY 2033-34 for the State of Uttar Pradesh:

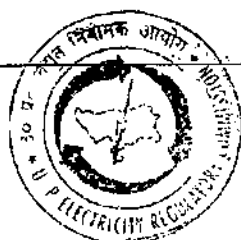
FY	Thermal (MW)	Hydro (MW)	Wind (MW)	Solar (MW)	Distributed RE (MW)	Total (MW)
2026-27	5027	250	800	8000	-	14077
2027-28	2131	250	800	8000	-	11181
2028-29	-	250	800	8000	-	9050
2029-30	-	250	1800	3624	710	6384
2030-31	-	-	800	5444	1617	7861
2031-32	458	-	800	4895	1801	7954
2032-33	1186	-	800	4104	1808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

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

Year	Apr-Mar (Average)		
	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
<b>2028-29</b>	<b>24592</b>	<b>25458</b>	<b>-866</b>
<b>2029-30</b>	<b>25219</b>	<b>27240</b>	<b>-2021</b>
<b>2030-31</b>	<b>29126</b>	<b>29147</b>	<b>-21</b>
<b>2031-32</b>	<b>29126</b>	<b>31187</b>	<b>-2061</b>
<b>2032-33</b>	<b>29126</b>	<b>33370</b>	<b>-4244</b>
<b>2033-24</b>	<b>29126</b>	<b>35706</b>	<b>-6580</b>

7. The MOP vide notification dated 20.10.2023 had mandated the power distribution companies to prepare a RPO roadmap and it was further stated that the RPO obligation on discoms for FY 2024-25 shall be 29.91%. Prior to the issuance of the aforementioned notification by the MOP, UPPCL was complying with the UPERC (Promotion of Green Energy Through Renewable Purchase Obligation) Regulations, 2019 to fulfil its RPO obligations and accordingly, the RPO obligation for FY 2023-24 was 15%. Therefore, it is evident that vide the MoP notification dated 20.10.2023, Renewable Purchase Obligation of the UPPCL has almost doubled from 15% to 29.91% and therefore, UPPCL has no option but to substantially increase the purchase of renewable power.

8. MOP has also provided a segregated target in the different sources of power generation to meet the aforementioned obligation which are as follows:





- a) Wind: Wind RPO shall be met from the Wind Power Projects commissioned after 31.03.2024.
- b) Hydro: Hydro RPO shall be met only from Hydro Power Projects (Including pump storage and small hydro projects) commissioned after 31.03.2024.
- c) Other RPO: Other RPO can be met by energy produced from any RE projects other than specified under Wind, Hydro, and Distributed RPO and shall comprise energy from all WPPs and Hydro Power Projects (including Pump Storage and Small Hydro Projects), including free power, commissioned before 01.04.2024.
- d) Distributed RE: Distributed RE RPO shall be met only from energy generated from RE projects that are less than 10MW in size.

9. In accordance with section 12(3) of the Energy Conservation (Amendment) Act, 2022, for non-compliance of the renewable energy consumption norms, a penalty up to Rs. 10 Lakh shall be levied on the Discoms for each failure. The MNRE, vide notification 01.02.2024, had further notified that additional penalty shall also be levied to the tune Rs. 3.72 per unit for each unit of shortfall in meeting RE consumption norms.

10. The RPO projection analysis by UPPCL reveals that 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:

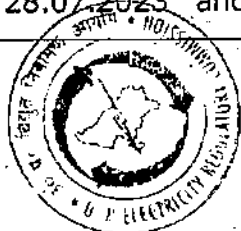
Capacity (MW) to be contracted in respective year to meet RPO (with fungibility)										
Category/ (FY)	2023- 24	2024- 25	2025- 26	2026- 27	2027- 28	2028- 29	2029- 30	2030- 31	2031- 32	Total
Solar	3000	2000	2000	1000	500	-	-	-	-	8500
Wind	-	2000	2000	1500	1000	-	-	-	-	6500
Hydro	-	4000	1000	1000	500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

#### Records of Proceedings:

11. During the hearing on 21.05.2024, Sh. Divyanshu Bhatt submitted that instant bidding documents were prepared in accordance with MoP guidelines for grid connected Solar PV power projects dated 28.07.2023 and its subsequent amendments dated

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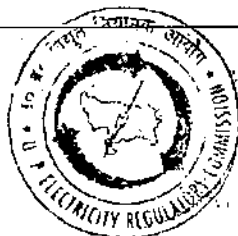
17.11.2023& 02.02.2024. On specific enquiry of the Commission regarding e-Reverse Auction proposed, Sh. Raizada responded that revised offer would be open for all the bidders who participate in the e-Reverse Auction and are willing to establish power project in the Uttar Pradesh state. The Commission observed that as per MoP guidelines dated 28.07.2023, approval of appropriate Government was necessary for approval of the deviation/modification in the bidding documents.

12. On hearing dated 30.05.2024, UPPCL sought more time to get the Government of U.P. approval on the deviation, which was allowed by the Commission. On hearing dated 09.07.2024, on the request of the UPPCL, the Commission adjourned the hearing. On 01.08.2024, UPPCL filed its additional submissions. During the hearing dated 06.08.2024, Sh. Divyanshu submitted that additional submission dated 01.08.2024 regarding approval of the Govt. of U.P. with respect to the deviation from the MoP guidelines had been placed on record. Sh. Raizada stated that since the quantum of bid was quite large at 2000MW and the minimum bid quantum was only 50MW, keeping ceiling tariff as well as the percentage range bids may not be appropriate for selection of the bidder in competitive bidding. Further, he submitted that clause 36.5 of the RfS was modified to two attempts instead of three to provide greater flexibility and quicker resolution.

13. On 01.08.2024, UPPCL filed its submission wherein UPPCL mainly stated the following:

- a) UPPCL received a communication dated 18.07.2024 from the Govt. of U.P. wherein certain deviation/modifications have been approved.
- b) UPPCL also provided the details of Bid evaluation methodology in the RfS document to Govt. of Uttar Pradesh wherein it was emphasized that the adopted evaluation methodology aims to support the Uttar Pradesh Solar Policy 2022 by attracting Solar Power Developers to establish Solar projects in the state of Uttar Pradesh. Govt. of Uttar Pradesh in its letter dated 18.07.2024 has stated that "This is to be a part of detailed RfS hence, there is no deviation involved for Standard Bidding Guidelines, so no approval needed."
- c) The deviation statement as proposed by UPPCL and as approved by the Govt. of U.P. is as follows:

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Sr. No.	SBG dated 28.07.2023 along with amendments dated 17.11.2023 and 02.02.2024	Current Tender Documents	Remarks
1.	<p><b>Return of Performance Bank Guarantee</b></p> <p><b>Clause 11.3:</b> In addition to the other remedies, this PBG (or alternatives provided thereto as per these Guidelines) can be encashed to recover any damages/dues of the generator in terms of the PPA. It is hereby clarified that the damages/dues recovered by the Intermediary Procurer by encashing the PBG, upon the default of the generator under the PPA, shall be credited to the Payment Security Fund to be maintained by the Intermediary Procurer under Clause 6.3 of these Guidelines. PBG (or alternatives provided thereto as per these Guidelines) <b>shall be returned to the generator within 45 days of the SCSD</b> of the project. In case of part commencement of supply of power, PBG corresponding to such part capacity, should be released within 45 days.</p>	<p><b>Clause 3.3.1:</b> Subject to Article 3.2, UPPCL shall return/release the Performance Bank Guarantee/ Payment on Order Instrument <b>within 30 days after the successful commencement of Power supply</b> from the Project after taking into account any liquidated damages/penalties due to delays in commencement of power supply beyond SCSD as per provisions stipulated in this Agreement. PBG may be returned on pro-rata basis subsequent to commencement of supply from part-capacity of the Project, based on the request by the SPD.</p>	<p>In the SBG, the release of Performance Bank Guarantee (PBG) is linked to SCSD; which is not correct as the PBG must be released only after the commencement of supply i.e., date of commercial operation of the project to safeguard the commercial interest of UPPCL.</p> <p>Accepted by GoUP vide letter dated 18.07.2024</p>
2.	<p><b>Timeline of Tariff Adoption Post e-RA</b></p> <p><b>Clause 6.6(b):</b> Subject to provisions of the Act, the distribution licensee or the Intermediary Procurer, as the case may be, shall approach the Appropriate Commission for adoption of tariffs discovered, in terms of Section 63 of the Act, <b>within 15 (fifteen) days of the discovery of the tariffs through e-reverse auction</b> or otherwise, in the transparent competitive bidding process conducted in accordance with these Guidelines.</p>	<p>Subject to provisions of the Act, the distribution licensee or the Intermediary Procurer, as the case may be, shall approach the Appropriate Commission for adoption of tariffs discovered, in terms of Section 63 of the Act, <b>within 30 (thirty) days of the discovery of the tariffs through e-reverse auction</b> or otherwise, in the transparent competitive bidding process conducted in accordance with these Guidelines.</p>	<p>The e-Reverse Auction, a detailed analysis is performed to check the financial and commercial viability of the discovered rates, and necessary approvals are to be obtained. This process requires a longer duration of time.</p> <p>Accepted by GoUP vide letter dated 18.07.2024.</p>
3.	<p><b>Fixation of Ceiling Limit:</b></p> <p><b>Clause 5.4:</b> The bidding evaluation parameter shall be the tariff per unit supply of solar power, fixed for the entire term of</p>	<p><b>Clause 5.4:</b> The bidding evaluation parameter shall be the tariff per unit supply of solar power, fixed for the entire term of the RPA. The Procurer shall</p>	<p>Total bid is to the tune of 2000 MW, while minimum limit is 50 MW, the L1+X%</p>

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	<p>the PPA. The Procurer shall invite bids wherein the bidder shall quote the Tariff in Rs./kWh. The bidder shall be selected on the basis of least quoted Tariff. Subsequent to the e-reverse auction, the bidder (called the L1 bidder) quoting the least Tariff (called the L1 tariff) shall be allocated the quantum of power offered by him. The capacity allocation shall be on the basis of Bucket filling i.e., capacity quoted by L1 bidder at L1 rates shall be allocated first, then the capacity quoted by the next lowest bidder (called the L2 bidder) at the rates quoted by him (called the L2 rates) may be allocated and so on.</p> <p><b>However, the allocation will only be made to the bidders whose bid falls within a pre-defined "Range" from the L1 tariff, as stipulated in the RfS. Thus, after arranging the bidders in the ascending order of tariff, the Project capacities will be awarded only to those bidders whose final price bids are within a range of "L1+x%", in terms of INR/kWh; while the value of "x" generally be two (2) to five (5) and shall be fixed in the RfS.</b></p>	<p>invite bids wherein the bidder shall quote the Tariff in Rs./kWh. The bidder shall be selected on the basis of least quoted Tariff. Subsequent to the e-reverse auction, the bidder (called the L1 bidder) quoting the least Tariff (called the L1 tariff) shall be allocated the quantum of power offered by him. The capacity allocation shall be on the basis of Bucket filling i.e., capacity quoted by L1 bidder at L1 rates shall be allocated first, then the capacity quoted by the next lowest bidder (called the L2 bidder) at the rates quoted by him (called the L2 rates) may be allocated and so on.</p>	<p>formula would not be used, Accepted by GoUP vide letter dated 18.07.2024.</p>
4.	<p><b><u>Compensation related to CUF in case of Termination.</u></b></p> <p><b>Clause 6.6 (b):</b> In the event the Generator fails to maintain energy supply corresponding to the minimum CUF as declared in the PPA, the Generator shall be in default and the PPA shall be liable to be terminated. Further, the Generator shall be liable to pay to the Procurer, damages, equivalent to 24 (twenty-four) months, or balance PPA period, whichever is less, of tariff for its contracted capacity with the stipulated <b>minimum CUF.</b></p>	<p><b>Clause 10.4.1 (PPA)</b> Subject to the terms of this Agreement, upon occurrence of a SPD Event of Default under this Agreement, the SPD shall be liable to pay to UPPCL, penalty, as provided in Article 4.6 of the PPA for failure to commence supply of power within the stipulated time and Article 4.4.1 for failure to supply power in terms of the PPA. For other cases, the SPD shall be liable to pay to UPPCL, damages, equivalent to 24 (twenty-four) months, or balance PPA period, whichever is less, of tariff for its</p>	<p>The current tender clause is linked to the annual CUF instead of the minimum CUF. Since the annual CUF is greater than the minimum CUF, this ensures a greater recovery of damages in case of an SBD event of default.</p> <p>Additionally, to maintain parity, the damages have been kept the same in the</p>

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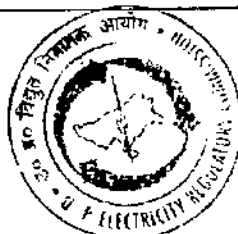


		<p>Contracted Capacity, corresponding to the committed <b>annual CUF.</b></p> <p><b>Clause 13.4.3 (PPA):</b> After a period of two hundred ten (210) days following the expiry of the Consultation Period and unless the Parties shall have otherwise agreed to the contrary or UPPCL Event of Default giving rise to the Consultation Period shall have ceased to exist or shall have been remedied, UPPCL and the SPD shall, subject to the prior consent of the SPD, novate its part of the PPA to any third party, including its Affiliates within the stipulated period. In the event the aforesaid novation is not acceptable to the SPD, or if no offer of novation is made by UPPCL within the stipulated period, then the SPD may terminate the PPA and at its discretion require UPPCL to pay to the SPD, damages, equivalent to 24 (twenty-four) months, or balance PPA period, whichever is less, of charges of its Contracted Capacity corresponding to the committed <b>annual CUF.</b></p>	<p>case of a Procurer event of default.</p> <p>Accepted by GoUP vide letter dated 18.07.2024.</p>
5.	<p><b>Ensuring Competitiveness in Bid:</b></p> <p><b>Clause 5.5(e):</b> To ensure competitiveness, the minimum number of qualified bidders should be two. If the number of qualified bidders is less than two, even after <b>three</b> attempts of bidding and the Procurer still wants to continue with the bidding process, the same may be done with the consent of the Appropriate Commission.</p>	<p><b>Clause 36.5 (RfS):</b> To ensure competitiveness, the minimum number of qualified bidders should be two. If the number of qualified bidders is less than two, even after <b>two</b> attempts of bidding, and the Procurer still wants to continue with the bidding process, the same may be done with the consent of the Appropriate Commission.</p>	<p>This Change aims to provide greater flexibility and a quicker resolution.</p> <p>Accepted by GoUP vide letter dated 18.07.2024.</p>

**Commission's View:**

14. The Commission, after hearing the matter and perusing the documents placed on record, approve the bidding document with deviations contained at para

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13(c) above for procurement of 2000MW Solar PV based power through competitive bidding. UPPCL shall ensure alignment of tender document with above deviations and only then proceed with bidding. A copy of final bidding document shall be placed for record of the Commission.

The Petition stands disposed of in terms of above.

(Sanjay Kumar Singh)  
Member

(Arvind Kumar)  
Chairman

Place: Lucknow

Dated: 13 .08.2024



