

**JOINT ELECTRICITY REGULATORY COMMISSION
FOR THE STATE OF GOA AND UNION TERRITORIES
GURGAON**

Quorum
Shri M.K. Goel, Chairperson

Petition No. 14/2019

Date of Hearing: 16th March 2020

Date of Order: 06-10-2020

In the matter of:

Power Sale Agreement for Sale of 40 MW Wind Power on Long Term Basis.

And in the matter of:

The Superintending Engineer,
Electricity Department,
Electricity Operation Circle, Room No. 511,
5th Floor, U.T. Secretariat, Deluxe Building,
Sector-9-D,
UT Chandigarh-160 009

..... Petitioner

And in the matter of:

Solar Energy Corporation of India Limited (SECI)
1st Floor, PRIUS Platinum, "A" Wing,
D-3, District Centre, Saket,
New Delhi-110017

..... Respondent

Present

For the Petitioner

1. Shri. U.K. Patel, Executive Engineer,

For the Respondent

1. Shri Atulya Kumar Naik, Asstt. General Manager (PS)
2. Shri Anil Yadav, Dy. Manager (PS)

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ORDER

The Commission heard the Petitioner and the Respondent at length.

Mr U K. Patel, Executive Engineer for the Petitioner advanced his arguments in detail. The brief of the arguments made on behalf of the Petitioner are as under: -

- I. That the Petitioner has entered into the Power Sale Agreement (PSA) with the Respondent for 40 MW of wind power under 1200 MW ISTC Tranche-VI. The Respondent shall act as Intermediary Procurer under the Guideline for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Wind Power Projects issued by MoP.
- II. That the PSA was signed with the Respondent on 30th August 2019 **subject to final approval of Hon'ble JERC** as all buying utilities under said project except Chandigarh has already signed PSA. Further signing of this PSA is linked with Signing of PPA with Wind Power Developers (WPDs).
- III. That the Petitioner shall pay the maximum possible fixed tariff of INR 2.83/kWh plus trading margin of INR 0.07/kWh fixed up to commissioning of the cumulative awarded capacity/accepted cumulative capacity by the Respondent under the Request for Selection (RfS).
- IV. That the Petitioner is fulfilling its Non-Solar RPO obligations by purchasing RECs through Power Exchange with an average price of INR 1.5/unit. Such RECs together with APPC price per unit of INR 3.67/ kWh for the FY 2019-20, effectively works out much higher than the price of approx. INR 2.90/kWh including trading margin, under this PSA. The deal is therefore economically beneficial for the Respondent.
- V. That the power from projects mentioned above is necessary for UT Chandigarh to meet its RPO obligations.
- VI. That the GOI had directed the Petitioner to become 100% RE UT by phasing out the Non-RE Power.
- VII. That the Respondent has discovered the very economical rate of wind power i.e INR 2.90 per unit (INR 2.83 per unit + INR 0.07 per unit as trading margin) after competitive bidding of 1200 MW ISTC under Tranche -VI wherein the petitioner is allocated 40 MW of Wind Power.

Mr. A.K Naik, Assistant General Manager (PS), SECI, also advanced his arguments, the brief of the arguments on behalf of the Respondent are as under: -

- I. That the Respondent has been designated as the Nodal Agency for implementation of scheme for setting up of Inter-State Transmission System (ISTS) connected Wind Power Projects with the mandate to call for bids under a Tariff Based Competitive Bidding process, enter into Power Purchase Agreements (PPAs) at the tariff discovered in the competitive bid process, enter into Power Sale Agreements (PSAs) with

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the Distribution Licensees/Buying Entities to enable them to fulfil the Renewable Purchase Obligations under Section 86(1)(e) of the Act and with the Petitioner, acting as an Intermediary Agency in purchase and sale of power under the PPAs and PSAs on a back-to-back basis.

- II. That the Request for Selection (RfS) Document issued by the Respondent on 31.12.2018, in pursuance of Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Wind Power projects (Guidelines) notified by Government of India on 08.12.2017, for setting up of ISTS connected Wind Power Projects (Tranche-VI) provides for the pooled tariff as under;

1.3.4. Buying Entities which require wind power to fulfil their non-solar RPO under respective RPO regulations will be eligible to buy wind power under this scheme. SECI shall sign PPAs with the WPDs at the respective tariffs discovered after e-reverse auction and back-to-back Power Sale Agreements (PSAs) with the Buying Entities at a pooled price of the total capacity allotted (rounded off to two decimal places)

- III. That the aspect of pooled tariff/ weighted average tariff forms part of the PSA dated 30.08.2019, executed between SECI and Chandigarh Administration, which governs the rights and obligations of parties in regard to sale and purchase of 40 MW capacity of Wind Power. It is to be noted that the PSA was a part of the Bidding Documents issued in accordance with the Guidelines notified by the Central Government.
- IV. That as the scheme by its very nature, involved aggregation of power supply from different Wind Power Developers establishing Wind Power Projects at different places for resale of the said power to the number of Buying Entities of different states.
- V. That the Respondent, by issuance of RfS, had invited bids for setting up the ISTS connected Wind Power Projects with the stipulation that the maximum tariff payable to each Wind Power Developer is INR.2.85/kWh. The Selection of bidders for setting up the Wind Power Projects was undertaken through a Competitive Bidding process in terms of the Guidelines notified by the Central Government. The criteria of Competitive Bidding process was the tariff quoted by the Bidder. The bidder wise tariffs discovered through the e-reverse auction for the cumulative awarded capacity of 1200 MW has been set out as under:

BIDDERS	TARIFF (Rs./kWh)	AWARDED CAPACITY(MW)
Adani Renewable Energy Park (Gujarat) Limited	2.82	250
Ostro Energy (P) Limited	2.82	300
Srijan Energy Systems Pvt. Limited	2.82	150
Powerica Limited	2.82	50.60
Zenataris Renewable Energy (P) Limited	2.83	125
SBESS Services Project Co. Two (P) Ltd.	2.83	324.4
Total		1200

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- VI. That the above tariff discovered through competitive bidding process was adopted by the Central Electricity Regulatory Commission under Section 63 of the Electricity Act, 2003 by order dated 20.11.2019 in Petition No,215/AT/2019 of SECI for adoption of tariff for the 1200 MW (Tranche VI) Wind Power Projects.
- VII. That the Central Commission was considering the adoption of the tariff of the generators in pursuance to the competitive bid process and the tariff of each of the generators has been adopted. The tariff adopted has to be read with the terms and conditions contained in the PPA and PSA which were part of the bidding documents. The pooled tariff/Weighted Average tariff is a derivative from the individual Tariff discovered in the competitive bid process of the Wind Power Developers and adopted by the Central Commission with a view to sell the Wind power to the Buying utilities of different states at uniform price. Further if PSAs are entered into for each Wind Power Developer qua each distribution companies and the average had been taken the result would have been the same. The pooled tariff is nothing but a convenient mode of description and has non-adverse impact on the buying utility.
- VIII. That the pooled tariff/Weighted Average tariff has been arrived at by way of arithmetic calculation namely $\text{SUM}(\text{Individual capacity selected Bidder } n \times \text{individual tariff-Selected Bidder } n) / \text{Total Commissioned Capacity}$.
- IX. That the Respondent is undertaking the purchase of power from the Wind Power Developers under the PPA (for 25 years) for sale of the procured power to the Buying Entities (including the Petitioner) under the PSA, in its capacity as an Intermediary Procurer and is entitled to consideration, namely trading margin of INR 0.07/kWh payable by the Petitioner (Buying Entity) i.e Chandigarh Administration in terms of the Guidelines, RfS and the PSA.
- X. That in this regard, the Guidelines, RfS and PSA deals with trading margin as under:

GUIDELINES-

"2.1.1....."

C)- 'Intermediary procurer' and 'End Procurer'

ii. *The intermediary Procurer shall enter into a PPA with WPG(s) and also enter into a Power Sale Agreement (PSA) with the distribution licensee(s). The PSA shall contain the relevant provisions of the PPA on a back to back basis. The Intermediary Procurer may charge trading margin, as notified by the Appropriate Commission or in the absence of such notification as mutually agreed with distribution licensee (s).*

RFS DOCUMENT:

"Trading Margin" means the trading margin as mutually agreed between Buying Entities and the SECI or as decided by CERC for the long-term power purchase, whichever is less.

PSA:

ARTICLE 5: APPLICABLE TARIFF

5.1.1 From SCD and subject to the provision of Article 6.7, the Buying Entities shall pay the Maximum Possible fixed tariff of INR 2.83/kWh plus trading margin of INR. 0.07/kWh fixed up to commissioning of the cumulative awarded capacity/accepted cumulative capacity by SECI under the RFS.

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5.1.2 *Until the commissioning of the cumulative awarded capacity/cumulative capacity commissioned as accepted by SECI under the RfS, the applicable tariff payable by Buying Entity shall be the tariff as per Article 5.1.1 Plus the trading margin of INR 0.07/kWh.*

Subsequently, the applicable tariff payable by the Buying Entity shall be the pooled tariff arrived as per Schedule-1 of this Agreement of the commissioned Project Capacity of all the Projects accepted by SECI, till the end of the Term of the agreement. The Buying Entity shall make the Tariff Payments to the Buyer as per the provisions of this Agreement. Trading margin of INR 0.07/kWh will be applicable over and above discovered pooled tariff.

5.1.4 *As per the provisions of PPA, the WPDs are permitted for full commissioning as well as part commissioning of the Project even prior to the SCD. In cases of early part-commissioning, till the achievement of full commissioning or SCD, whichever is earlier, the Buying Utility shall purchase the generation till SCD, at 75% (Seventy-five percent) of the tariff as per Article 5.1.1 plus trading margin of INR 0.07/kWh (seven paise per kWh). In case of full commissioning of the Project(s) prior to SCD, Buying Utility shall purchase the power at tariff per Article 5.1.1 1 plus trading margin of INR. 0.07/kWh (Seven paise per kWh)*

- XI. That the Central Commission is empowered under Section 79 (j) of the Electricity Act, 2003, to fix the trading margin in respect of Inter-State trading of electricity if considered necessary.
- XII. That the Central Electricity Regulatory Commission Regulations (Fixation of Trading Margin) Regulations 2010 (Trading Margin Regulations, 2010) were notified by the Central Commission on 11.01.2010. The Trading Margin Regulations 2010, were applicable to the short term buy-short term sell contracts, namely contracts where duration of PPAs and PSAs is less than 1 year, for the inter-State trading in electricity undertaken by a licensee.
- XIII. That the Central Commission has dealt with the aspect of trading margin in its order dated 20.11.2019 in Petition No.215/AT/2019 filed by SECI for adoption of tariff under Section 63 of the Electricity Act, 2003 for the present scheme as under:

29. The Petitioner has prayed to adopt the Trading Margin of INR. 0.07/kWh. It is observed that Section 79(1)(j) of the Act requires the Commission "to fix the Trading Margin in the inter-state trading of electricity, if considered, necessary". Accordingly, the Commission, being of the opinion that it was necessary to fix Trading Margin for inter-State trading in electricity, exercised the powers conferred under Section 178 of the Act and conceived Central Electricity Regulatory Commission (Fixation of Trading Margin) Regulation 2010 (hereinafter referred to as 'Trading Margin Regulations') applicable to the short-term-buy-short-term sell contracts for the inter-state trading in electricity undertaken by a licensee. Trading Margin Regulations provide for the ceiling of the Trading Margin in short-term-buy-short-term-sell contracts for the inter-state trading. Trading Margin Regulations do not provide for any Trading Margin for long term transactions and, therefore, it is upto the contracting parties to mutually agree on Trading Margin, if any, in such cases. In any case, the Commission does not fix Trading Margin on case to case basis. The spirit of the Act read with the Trading Margin Regulations gives freedom and choice to the contracting parties to mutually agree on Trading Margin for any kind of trading transaction, subject to the ceiling Trading Margin, whenever applicable. Accordingly, the Commission cannot fix or adopt any Trading Margin for long-

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term transactions under the provisions of the present Trading Margin Regulations. In view of the above, the prayer of the Petitioner to adopt the Trading Margin is decided accordingly.

- XIV. That in the above decision, in the absence of the Trading Margin Regulations 2010 providing for long-term transactions, the Central Commission has left the aspect to be as per the mutual agreement between the parties. The above course is also in accordance with Clause 2.1.1 of the applicable Guidelines which leave the Trading Margin to be mutually decided between the parties.
- XV. That subsequently, on 02.01.2020, the Central Commission had notified Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of trading licence and other related matters) Regulations, 2020 [Trading license Regulations, 2020]. The aforesaid regulations repealed the Trading Margin Regulations, 2010.
- XVI. That the Chapter-IV of the Trading License Regulations, 2020 deals with Trading Margin. The relevant provisions of the Trading License Regulations, 2020 have been reproduced as under;

7. Applicability of Trading Margin:

Trading margin shall be applicable to the following transactions undertaken by the Trading Licensee:

.....

(b) Transactions under long term contracts (where period of the contract of the Trading Licensee with either the seller or the buyer or both is more than one year);

8. Trading Margin:

(1) Trading Licensee shall comply with the trading margin as given below:

.....

(d) For transactions under long term contracts, the trading margin shall be decided mutually between the Trading Licensee and the seller:

Provided that in contracts where escrow arrangement or irrevocable, unconditional and revolving letter of credit as specified in clause (10) of Regulation 9 is not provided by the Trading Licensee in favour of the seller, the Trading Licensee shall not charge trading margin exceeding two (2.0) paise/kWh.

- XVII. That the Central Commission in a subsequent decision dated 28.02.2020, in Petition No.382/AT/2019 filed by SECI for adoption of tariff for Tranche-VII Wind Scheme, has considered the aspect of trading margin in light of the Trading License Regulations 2020, inter-alia, as under:

27. SECI has prayed to adopt the trading margin of Rs. 0.07/kWh. Regulation 8(1)(d) of the Trading Licence Regulations provides as under:

"8(1)(d) For the transactions under long-term contracts, the trading margin shall be as mutually decided between the Trading licensee and the seller:

28 The above provision gives choice to the contracting parties to mutually agree on Trading Margin for long-term transaction. Accordingly, the Commission cannot adopt any Trading Margin. The Petitioner shall be governed by the above provisions of the Trading Licence Regulations. In view of the above, the prayer of SECI to adopt the Trading Margin is decided accordingly.

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XVIII. That the Hon'ble Appellate Tribunal in the recent decision dated 27.02.2020 passed in Appeal Hos. 368, 369, 370, 371, 372 a 373 of 2019 in the matter of Ayana Ananthapuramu Solar Private Limited -vs- Andhra Pradesh Electricity Regulatory Commission & Ors, while considering the issue of trading margin in context of a similar PSA executed between SECI and Andhra Pradesh Discoms has held as under:

70. It is also seen from the reply of AP Discoms that APERC (Intra-State Electricity Trading) Regulations of 2005 have not provided any trading margin for long term transactions. The Judgment of CERC dated 20.11.2019 above, actually says that trading margin regulation gives freedom and choice to the contracting parties to mutually agree on trading margin for any kind of trading transaction, subject to the ceiling whenever applicable. There are no trading margin regulations of the State of Andhra Pradesh Regulatory Commission for long term transactions. Therefore, the only reliance that can be placed is on the mutually agreed upon terms which are spelt out as rights and obligations of the parties under PSA. Therefore, in the light of the PSA indicating Rs.0.07 as trading margin and in the absence of any Regulations that are applicable to the case on hand, we are of the opinion that trading margin of 7 paise per kWh has to be paid. The PSA between AP Discoms and NTPC/SECI is the final binding document which speaks about tariff and also trading margin on the transaction of sale of power to AP Discoms.

XIX. That in terms of the above, the trading margin of Rs.0.07/kWh as mutually agreed between the parties in the contract i.e. PSA, is applicable and payable by the Chandigarh Administration to SECI. The same is consistent with Order dated 20.11.2019 of the Central Commission, Trading Margin regulations 2020 and provisions of the Guidelines, Bidding Document such as RfS and the PSA.

XX. That it is submitted that the parties i.e. SECI and Chandigarh Administration had voluntarily agreed to and accepted the trading margin of Rs.0.07/kWh when they entered into the PSA dated 30.08.2019. Having agreed to and accepted the terms and conditions of the PSA, the parties are bound by the same.

XXI. That in terms of the above submissions, the Respondent respectfully submits that the pooled tariff/ Weighted Average Tariff and Trading Margin forming part of the PSA, which has been duly executed between SECI and Chandigarh Administration is entitled to be approved by the Hon'ble Commission In terms of Section 86 (1) (b) of the Electricity Act 2003.

The Commission has examined in depth the arguments advanced by the Petitioner and the Respondent. It has also carefully examined the entire record placed before it in this matter along with additional information filed by both the parties after passing of the interim order dated 28.03.2020 by the Commission. It has also examined the relevant provisions of the Electricity Act, 2003 rules and regulations made thereunder, the relevant order of CERC in the petition filed by the SECI for adoption of tariff under section 63 of Electricity Act and the guidelines issued by the Government of India 08.12.2017 for Tariff based competitive bidding process for procurement of power from grid connected wind power projects for setting up of ISTS connected wind power projects.

The Commission has noted that the Petitioner has entered into the power sale agreement (PSA) with the Respondent for 40 MW wind power under 1200 MW ISTC Trench-6. The said PSA was signed with the respondent on 30.08.2019 subject to final approval by the Commission. The Petitioner further submitted

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that they would pay the maximum possible fixed tariff of Rs 2.83/kWh plus trading margin of Rs 0.07/kWh fixed with commissioning of the cumulative awarded capacity/accepted cumulative capacity by the respondent under the request of selection (Rfs).

The Commission has further noted that the Petitioner has justified the purchase of the said 40 MW of wind power as it has submitted that it is fulfilling its non-solar RPO obligations by purchasing RECs through power exchange for an average price of Rs 1.5 per unit, which, after considering the APPC price of power, turns out to be much more expensive than INR 2.90/kWh. The purchase of the said wind power will help in reducing the burden on electricity department Chandigarh and also substantially help it in meeting its RPO obligations in future. This will also help in making some progress towards meeting the Govt. of India's direction to the Petitioner to become 100% renewable energy Union Territory by phasing out the non-renewable energy sources.

According to the petitioner SECI has discovered the very economical rate of wind power i.e INR 2.90 per unit inclusive of 7 paisa trading margin which has been mutually agreed.

The Commission has observed that the Respondent has been designated as the Nodal Agency for implementation of scheme for setting up of Inter-State Transmission System (ISTS) connected Wind Power Projects with the mandate to call for bids under a Tariff Based Competitive Bidding process, enter into Power Purchase Agreements (PPAs) at the tariff discovered in the competitive bid process, enter into Power Sale Agreements (PSAs) with the Distribution Licensees/Buying Entities to enable them to fulfil the Renewable Purchase Obligations under Section 86(1)(e) of the Act and with the Petitioner acting as an Intermediary Agency in purchase and sale of power under the PPAs and PSAs on a back-to-back basis.

That the Request for Selection (Rfs) Document issued by the Respondent on 31.12.2018, in pursuance of Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Wind Power projects (Guidelines) notified by Government of India on 08.12.2017, for setting up of ISTS connected Wind Power Projects (Tranche-VI) provides for the pooled tariff as under;

1.3.5. Buying Entities which require wind power to fulfil their non-solar RPO under respective RPO regulations will be eligible to buy wind power under this scheme. SECI shall sign PPAs with the WPDs at the respective tariffs discovered after e-reverse auction and back-to-back Power Sale Agreements (PSAs) with the Buying Entities at a pooled price of the total capacity allotted (rounded off to two decimal places)

That the aspect of pooled tariff/ weighted average tariff forms part of the PSA dated 30.08.2019, executed between SECI and Chandigarh Administration, which governs the rights and obligations of parties in regard to sale and purchase of 40 MW capacity of Wind Power. It is to be noted that the PSA was a part of the Bidding Documents issued in accordance with the Guidelines notified by the Central Government.

That the tariff discovered through competitive bidding process was adopted by the Central Electricity Regulatory Commission under Section 63 of the Electricity Act, 2003 by order dated 20.11.2019 in Petition No,215/AT/2019 of SECI for adoption of tariff for the 1200 MW (Tranche VI) Wind Power Projects.

The Respondent has explained that the pooled tariff or weighted average tariff is a derivative from the individual tariff figures discovered in the competitive bidding process of the wind power developers and

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adopted by the Central Commission with a view to sell the wind power to the Buying Utilities of different states at uniform price. Further if PSAs are entered into for each wind power developer qua each distribution companies and the average taken the result would have been the same. The pool tariff is nothing but a convenient mode of selling power at uniform tariff and has no adverse impact on the Buying Utility.

The Commission is inclined to accept the arguments advanced by both the parties in favour of selling/purchasing of the said 40 MW wind power at a rate of Rs 2.83 per kWh plus trading margin of Rs. 0.07 per kWh to the Respondent.

The Commission feels that in order to fulfil its RPO obligations in near future the purchase of 40 MW power will be of advantage to the Petitioner and will contribute in making Union Territory of Chandigarh 100% renewable energy powered Union Territory in future.

The Commission has also noted that under Section 86(e) of the Electricity Act, it is duty bound to 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 from the total consumption of electricity in the area of a distribution licensee.

Further section 61 of Electricity Act provides that the appropriate Commission shall, subject to the provisions of this act, specify the terms and conditions for the determination of tariff, and in doing so, shall be guided by the following, namely: -

(h) the promotion of cogeneration and generation of electricity from renewable sources of electricity

Keeping in mind the national policy for promotion of power from renewable energy sources, Commission is of the considered view that the purchase of the said 40 MW wind power from SECI at a price of Rs 2.90 per kWh inclusive of trading margin of 7 paisa per kWh is quite reasonable.

In view of the above Commission exercises its power under section 86 (1)(b) and accords its approval to the said power sale agreement for 40 MW of wind power from SECI.

The said power sale agreement for 40 MW of wind power executed between the Electricity Department Chandigarh and SECI on dated 30.08.2020 placed on record before the Commission in petition number 14/2019 has become an integral part of this order.

Ordered accordingly.

Sd/-
(M.K GOEL)
CHAIRPERSON

(Certified Copy)
Rakesh Kumar

(Rakesh Kumar)
Secretary, JERC