

PUNJAB STATE ELECTRICITY REGULATORY COMMISSION
SITE NO. 3, BLOCK B, SECTOR 18-A, MADHYA MARG, CHANDIGARH

Petition No. 09 of 2022
Date of Order: 28.04.2022

Petition under Section 63, 86 (1) (b) and (e) of the Electricity Act, 2003 read with Punjab State Electricity Regulatory Commission (Power Purchase and Procurement process of Licensees) Regulations, 2012 and Regulation 46 of the Punjab State Electricity Regulatory Commission (Conduct of Business) Regulations, 2005 for adoption of tariff for grid connected 150 MW Solar Power projects located anywhere in Punjab and approval of power procurement in respect thereof.

In the matter of: Punjab State Power Corporation Ltd., The Mall, Patiala,
Punjab

Petitioner

Present: Sh. Viswajeet Khanna, Chairperson
Ms. Anjuli Chandra, Member
Sh. Paramjeet Singh, Member

ORDER

1. PSPCL has filed the present petition seeking adoption of tariff for 150 MW Solar Power Projects (located anywhere in Punjab) selected through competitive bidding process and approval of the power procurement in respect thereof. The submissions of PSPCL are summarized as under:

- a) That PSPCL is undertaking the generation and distribution of electricity in the State of Punjab and is a distribution licensee under the provisions of the Electricity Act, 2003. It is mandated to procure power from Renewable Energy Sources as per the

- provisions of Section 86(1)(e) of the Electricity Act, 2003 and in terms of PSERC (Renewable Purchase Obligation and its compliance) Regulations, 2011, as amended from time to time.
- b) That Section 63 of the Electricity Act 2003 provides that Appropriate Commission shall adopt the tariff if such tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the Central Government.
- c) That Section 86(1)(b) of the Electricity Act 2003 provides that the State Commission shall regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured for distribution and supply within the State.
- d) That the National Tariff Policy, 2016 formulated by the Ministry of Power has provided specific guidance on purchase of power generated from renewable energy sources. Section 6.4(2) of the National Tariff Policy provides that the procurement of power from Solar PV Projects shall be done through competitive bidding process.
- e) That the Ministry of Power (**MoP**), Government of India notified “Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar Power Projects” (hereinafter ‘**Guidelines**) vide Gazette Resolution dated 03.08.2017 and subsequent amendments. The Guidelines have been formulated for long term procurement of solar power at a tariff to be determined through transparent process of bidding under Section 63 of the Electricity Act, 2003. Clause 3.1.1 of the said Guidelines provide for the following conditions to be met by Procurer –

- “a) Prepare the bid documents in accordance with these Guidelines and Standard Bidding Documents (SBDs) [consisting of Model Request for Selection (RfS) Document, Model Power Purchase Agreement and Model Power Sale Agreement], notified by the Central Government, except as provided in sub clause (c) below.*
- b) Inform the Appropriate Commission about the initiation of the bidding process.*
- c) Seek approval of the Appropriate Commission for deviations, if any, in the draft RfS, draft PPA, draft PSA (if applicable) from these Guidelines and/ or SBDs, in accordance with the process described in Clause 18 of these Guidelines.*

i. However, till the time the SBDs are notified by the Central Government, for purpose of clarity, if the Procurer while preparing the draft RfS, draft PPA, draft PSA and other Project agreements provides detailed provisions that are consistent with the Guidelines, such detailing will not be considered as deviations from these Guidelines even though such details are not provided in the Guidelines.

ii.”

- f) That PSPCL had prepared the Bid Documents i.e. the RfS and the Draft PPA in accordance with the Guidelines, along with certain deviations. Accordingly, it filed a Petition No. 31 of 2021 before the Commission seeking approval for the deviations in the Bidding Documents from standard bidding guidelines for procurement of 250 MW of power from grid connected Solar Power Projects (located anywhere in Punjab) through Competitive Bidding (followed by e-reverse auction). By Order dated 22.07.2021 in Petition No. 31 of 2021, the Commission approved certain deviations sought by PSPCL.

g) That PSPCL had issued the Tender (RfS No. 28/PSPCL/IPC/SOLAR/250MW/ 2021/ET-2 dated 18.05.2021) for procurement of 250 MW solar power from projects located anywhere in Punjab on the DEEP e-bidding portal of MSTC. Tender was published on 21.05.2021, the minimum project/bid capacity was indicated as 10 MW and the ceiling tariff was fixed at Rs. 2.50/kWh. The last date for bid submission was upto 30.06.2021, which was extended to 30.07.2021. Thereafter, for better participation of the bidders, minimum project/bid capacity was reduced to 5 MW and ceiling tariff was fixed as Rs. 2.70/kWh vide Corrigendum No.3 dated 23.07.2021. The requisite amendments in the tender documents as per the Commission's Order dated 22.07.2021 were carried out by issuing Corrigendum No. 5. The financial year for the purpose of meeting financial criteria by the bidders was also amended from "FY 2020-21" to "FY 2019-20 or FY 2020-21" for better participation of the bidders. The last date for bid submission was extended to 31.08.2021 and then to 15.09.2021.

h) That the other salient aspects of the RfS were as under:

- (i) The bidders are free to locate their Solar PV Projects anywhere in Punjab on the land to be identified and purchased/leased by the bidder.
- (ii) The successful bidder shall set up Solar PV Projects including the transmission network up to the delivery point at its own cost and in accordance with the provisions of the RfS document. The SPD shall also pay the grid connectivity

charges for creation of proper facility for receiving power at the receiving substation of PSPCL/PSTCL.

(iii) All approvals, permits and clearances required for setting up the Project (including connectivity and land registration) and those required from State/Central Government and local bodies shall be in the scope of the bidder.

i) That in terms of the above, PSPCL proceeded with Competitive Bidding Process (by e-reverse auction) as under:

(i) Tender was floated on DEEP e-bidding portal of MSTC (A Govt. of India Enterprise) on 21.05.2021. As per NIT, the last date for Bid submission was up to 30.06.2021. Subsequently, the last date for bid submission was extended to 30.07.2021, 31.08.2021 and finally upto 15.09.2021 by issuing Corrigendum No. 2, Corrigendum No. 4 and Corrigendum No. 6 respectively;

(ii) The non-financial bids (including requisite EMD, Bid Processing Fee and cost of Tender Documents) of the following two bidders were received by the due date:

- a) SJVN Limited (100 MW capacity)
- b) SAEL Limited (50 MW capacity)

(iii) The Bid evaluation committee evaluated the documents submitted by the bidders and both the bidders fulfilled the requisite criteria as per provisions of the tender documents.

(iv) Thereafter, financial bids of the bidders were opened on 22.10.2021 at 11:00 followed by e-RA from 13:00 hrs onwards. As per the final result of e-RA on DEEP e-bidding

portal, M/s SJVN Limited quoted Rs. 2.69/KWh for 100 MW and M/s SAEL Limited quoted Rs. 2.69/KWh for 50 MW.

- j) Subsequent to the e-reverse auction, both the bidders were invited by PSPCL for negotiation of tariff on 05.12.2021. During the meeting, SJVN Limited reduced the quoted tariff to Rs. 2.65/kWh for 100 MW capacity. SAEL Limited initially indicated its inability to reduce the tariff, however subsequently vide its letter dated 03.02.2022 agreed to reduce the tariff to Rs. 2.65/kWh.
- k) The guidelines of the Central Government do not prohibit any such negotiation which is beneficial to the interest of the procurers. The reduction in price by the selected bidders in a competitive bid process is valid, beneficial and is in consumer interest.
- l) That PSPCL placed on record the following information/documents in regard to the Bidding/tendering process and the selection of the successful Bidders:
 - (i) A copy of the Guidelines and that no deviations were made in regard to the bidding guidelines (excluding normal consequential addition/deletion and the Order dated 22/07/2021 passed by this Commission).
 - (ii) A copy of the RfS Document and the draft PPA alongwith subsequent amendments/corrigendums/clarifications.
 - (iii) A copy of the Document demonstrating publication of the RfS on the e-publishing system/newspapers.
 - (iv) A copy of the Notification regarding constitution of Bid Evaluation Committee.

- (v) A copy of the conformity certificate to the effect that the Bid Evaluation Committee had conducted the bid in conformity with the provisions of the RFS document.
- (vi) A copy of the bid results after e-Reverse auction.
- (vii) A copy of letters received from both the bidders regarding the negotiations of tariff.
- m) That the adoption of the tariff of Rs. 2.65/kWh offered by SJVN Limited for 100 MW capacity and by SAEL Limited for 50 MW capacity will be consistent with the provisions of the Electricity Act, 2003, the National Electricity Policy and National Tariff Policy notified by the Central Government as well as the policies of the Government of Punjab.
- n) That by way of the Notification dated 02.01.2019, the Commission had prescribed a Solar RPO of 8% for the FY 2022-23. The Solar RPO is set to increase for the ensuing period as well. The SCODs of the Projects are 18 months from the date of execution of the PPA and should be achieved in FY 2023-24 and would help PSPCL meet its RPO requirements.
- o) That the rate of Rs. 2.65/kWh is competitive keeping in view that the projects will be set up in Punjab. This is particularly true considering that it was clarified in the bidding stage itself that the Basic Custom Duty being imposed by GoI on Solar Modules/Cells on and after 1st April, 2022 would not be considered as a Change in Law. Also, with the Solar Power Projects being located closer to the agriculture loads in transmission/ distribution network, the transmission /distribution losses will get reduced. Further, utilizing power from sources within the State ensures that the Available

Import Transmission Capacity (ATC) is not blocked as in case of interstate power. For the foreseeable time, there is no significant generation capacity which is likely to be added within the State from other sources. Accordingly, there would be increased dependence on procurement of power from sources outside Punjab. In such a scenario, this power purchase will not create an obstacle for the power arrangements made from outside Punjab, especially for the shorter period during paddy season. It is also in the interest of PSPCL to create a diversified portfolio from mixed sources.

p) That subsequent to the bid submission date, the Ministry of Finance, Central Government had issued the Notification dated 30.09.2021 increasing the GST rate from 5% to 12% on solar power based devices and solar power generators i.e. modules and invertors.

q) That in the above background, and in accordance with Section 63 read with Section 86(1)(b) and (e) of the Electricity Act 2003. PSPCL prayed that the Commission to:

(i) Admit this Petition;

(ii) Adopt the tariff of Rs. 2.65/kWh on the terms and conditions contained in the Tender Documents including the draft Power Purchase Agreement;

(iii) Approve the procurement of 100 MW of Solar Power by PSPCL from SJVN Limited and 50 MW from SAEL Limited at the tariff of Rs. 2.65/kWh on the terms and conditions contained in the Tender Documents including the draft Power Purchase Agreement;

(iv) Pass any other Order as the Commission may deem fit and appropriate under the circumstances of the case.

2. Based on the submissions made in the petition, the petition was admitted vide Commission's Order dated 24.03.2022 and listed for hearing on 20.04.2022. During the hearing, the Ld. Counsel for PSPCL reiterated the submissions made in the petition and prayed to the Commission for adoption of the said discovered tariff for 150 MW Solar Power from projects located in Punjab and approval of power procurement in respect thereof. On specific queries by the Commission, the Ld. Counsel informed that:

- a) It was clarified in the bidding documents itself that the Basic Custom Duty would not be considered as a Change in Law.
- b) That PSPCL intends to decrease its reliance on the outside power in view of the transmission corridor constraints, particularly so, during the peak period.
- c) No bid was received with the ceiling tariff of Rs. 2.50/kwh and PSPCL has to raise the ceiling tariff to Rs. 2.70/kWh.
- d) That the tariff discovered for procurement of power under the present bidding process is competitive and beneficial to PSPCL as well as the consumers of PSPCL, keeping in view higher land rates and lower solar radiation levels in Punjab as compared to other solar power producing States.

3. **Analysis and Decision of the Commission**

The Commission has examined the submissions made by the petitioner PSPCL. The Commission refers to the relevant Sections of the Electricity Act and PSERC Regulations framed under the powers

conferred therein for regulating the Power Purchase and Procurement process of the Licensee, which specifies as under:

The Electricity Act, 2003

“63. Determination of tariff by bidding process:

Notwithstanding anything contained in section 62, the Appropriate Commission shall adopt the tariff if such tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the Central Government.

86. Functions of State Commission:

(1) The State Commission shall discharge the following functions, namely: -

.....

(b) regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State;

.....

181. Powers of State Commissions to make regulations:

(1) The State Commissions may, by notification, make regulations consistent with this Act and the rules generally to carry out the provisions of this Act.”

The Punjab State Electricity Regulatory Commission (Power Purchase and Procurement Process of Licensee) Regulations 2012:

“10 Criterion for Power Purchases

(i).....

(ii) *While effecting power purchase, the Distribution Licensee(s) shall adhere to the principle of least cost plan (least financial cost to the Distribution Licensee), the ultimate objective being to make available secure and reliable power supply at economically viable tariffs to all consumers while satisfying power supply planning and security standards.*

13. Power Purchase Arrangements or Agreements

Any new long term power purchase arrangement or agreement and amendments to existing PPA entered into by Distribution Licensee(s), shall be subject to prior approval of the Commission under section 86 of the Act, in respect of:-

(i) *Necessity;*

(ii) *Reasonability of cost;*

(iii) *Promoting efficiency, economy, equitability and competition;*

.....
(viii) *Conformity with policy directives of the State Government and policies issued by the Government of India viz. National Electricity Policy, Tariff Policy, long term and short term power procurement guidelines.”*

Thus for adoption of the said tariff and approval of long term power purchase arrangement in respect thereof, the Commission is mandated to ascertain whether the said tariff has been determined through a transparent process of bidding in accordance with the guidelines issued by the Central Government and to further also examine the same on the criteria of its need/necessity, and whether the same has reasonable cost and is economical in the prevalent circumstances. Accordingly, the Commission proceeds to analyse the same as hereunder:

4.1 Whether the said tariff has been determined through a transparent process of bidding in accordance with the guidelines issued by the Central Government:

The salient features of the Guidelines vis-à-vis the compliance thereof by PSPCL is as under:

4.1.1 Bid Documentation

The Guidelines specify that:

“3.1.1. Bid Documentation:

a) Prepare the bid documents in accordance with these Guidelines and Standard Bidding Documents (SBDs) [consisting of Model Request for Selection (RfS) Document, Model Power Purchase Agreement and Model Power Sale Agreement], notified by the Central Government, except as provided in sub clause (c) below.

b) Inform the Appropriate Commission about the initiation of the bidding process.

c) Seek approval of the Appropriate Commission for deviations, if any, in the draft RfS, draft PPA, draft PSA (if applicable) from these Guidelines and/ or SBDs...

.....

5. The draft PPA proposed to be entered into with the successful bidder and draft PSA (if applicable) shall be issued along with the RfS.....”

The Commission observes that, in petition no. 31 of 2021 filed by PSPCL, informing about the initiation of the bidding process and for seeking approval of deviations in the Guidelines the Commission, vide Order dated 22.07.2021 has approved some of the deviations sought by PSPCL. PSPCL has specifically stated and placed on record that; “No deviations were made in regard to the bidding guidelines, excluding normal consequential addition/deletion and the Order dated 22.07.2021 passed by the Commission.”

4.1.2 BIDDING PROCESS:

The Guidelines specify that:

“6.1. E-procurement platforms with a successful track record and with adequate safety, security and confidentiality features will be used.

.....

6.4. The Procurer shall publish the RfS notice in at least two national newspapers and its own website to accord wide publicity.

6.5. The Procurer shall provide opportunity for pre-bid conference to the prospective bidders.....

.....

9.1. In the bidding process, a minimum period of 30 (thirty) days shall be allowed between the issuance of RfS documents and the last date of bid submission.”

The Commission observes that:

- (i) PSPCL has used the DEEP e-bidding portal of MSTC (A Govt. of India Enterprise) for the bidding.
- (ii) The Tender Enquiry was published on 20.05.2021/21.05.2021 and PSPCL has submitted the copy of the documents demonstrating publication of the same in the newspapers namely Times of India, Indian Express, Telegraph India and New Indian Express.
- (iii) Perusal of documents also reveals that the bid information sheet was also provided for pre-bid conference to the prospective bidders.
- (iv) As per the NIT, the last date for bid submission was kept as 30.06.2021 (i.e. more than 30 days), which was subsequently extended to 30.07.2021, 31.08.2021 and finally upto 15.09.2021.

4.1.3 BID SUBMISSION AND EVALUATION

The Guidelines specify that:

“8.2. The Procurer shall constitute committee for evaluation of the bids (Evaluation Committee), with at least three members, including at least one member with expertise in financial matters/bid evaluation.

.....

8.6. To ensure competitiveness, the minimum number of qualified Bidders should be two...

.....
 10.2. After the conclusion of bidding process, the Evaluation Committee constituted for evaluation of RfS bids shall critically evaluate the bids and certify as appropriate that the bidding process and the evaluation has been conducted in conformity to the provisions of the RfS.”

The Commission observes that:

- (i) PSPCL has submitted a copy of its Office Order dated 10.09.2021 demonstrating constitution of Bid Evaluation Committee of three members (including a CAO) for evaluation of the bids as per the evaluation criteria set out in the RfS, as under:

| S.No. | Members of the Committee |
|-------|--------------------------|
| 1. | CAO/PPR, PSPCL |
| 2. | Dy.CE/ISB-2, PSPCL |
| 3. | Dy.CE/IPC, PSPCL |

- (ii) Both the participating bidders were found eligible for submission of financial bids.
- (iii) PSPCL has also submitted the copy of the conformity certificate by the Bid Evaluation Committee, certifying that the bidding process and evaluation of the techno-commercial bids is in conformity to the provisions of the RfS.

In view of the above, the Commission is inclined to agree with the PSPCL's submission that a transparent process of bidding, in accordance with the guidelines issued by the Ministry of Power, Government of India under Section 63 of the Electricity Act, has been followed in the discovery of the said tariff.

4.2 “Necessity” and “Reasonability of Cost” of the power procurement in the prevalent circumstances:

PSPCL has submitted that by way of the Notification dated 02.01.2019; the Commission had prescribed a Solar RPO of 8% for the FY 2022-23 and the same is set to increase for the ensuing period. The Scheduled Commercial Operation Dates of the Projects are 18 months from the date of execution of the PPA and should be achieved in FY 2023-24, which would help PSPCL meet its RPO requirements.

The Commission in its Order dated 22.07.2021 in petition no. 31 of 2021, while considering the approval of deviation in Bidding Guidelines, has already held as under:

“..The Commission notes that as per the projections submitted by PSPCL in its ARR for FY 2021-22, it is falling short of its Solar RPO by 458 MU. The deficit is going to increase further with progressive increase in the Solar RPO targets. As such, PSPCL's plan to initiate the process for procurement of solar power through competitive bidding process is in line with the requirement of solar power in the State.”

The Commission also notes PSPCL's submission that the rate of Rs. 2.65/kWh is competitive keeping in view that the projects will be set up in Punjab and considering that it was clarified in the bidding

documents that the Basic Custom Duty would not be considered as a Change in Law. Also, with the Solar Power Projects being located closer to the agriculture loads in transmission/distribution network, the transmission /distribution losses will get reduced. Further, utilizing power from sources within the State ensures that the Available Import Transmission Capacity (ATC) is not blocked in cases of inter-State power transmission, especially during the peak demand period of the paddy season.

In view of the above, the Commission decides to allow the PSPCL's prayer in the petition for adoption of tariff of 150 MW Solar Power from Power projects located in Punjab selected through competitive bidding process and approval of power purchase arrangements i.e. 100 MW from M/s SJVN Limited and 50 MW from M/s SAEL Limited at the stated tariff of Rs. 2.65/kWh.

Further, PSPCL is directed to publicly disclose the name(s) of the successful bidder(s) and the tariff quoted by them, after the execution of the PPAs, in accordance with clause 10.3 of the guidelines.

The petition is disposed of in terms of the above.

Sd/-
(Paramjeet Singh)
Member

Sd/-
(Anjuli Chandra)
Member

Sd/-
(Viswajeet Khanna)
Chairperson

Chandigarh
Dated: **28.04.2022**