PUNJAB STATE ELECTRICITY REGULATORY COMMISSION

SITE NO. 3, BLOCK B, SECTOR 18-A MADHYA MARG, CHANDIGARH

Petition No. 29 of 2020
& IA No. 09 of 2019
Date of Order: 01.02.2021

Petition under Section 86 (1) (B) of the Electricity Act, 2003 seeking approval of Procurement of 500 MW Wind-Solar Hybrid Power from SECI Limited on Long Term Basis in accordance with the Power Sale Agreement dated 03.01.2020.

AND

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

....Petitioner

Present: Ms. Kusumjit Sidhu, Chairperson
Ms. Anjuli Chandra, Member
Sh. Paramjeet Singh, Member

ORDER

PSPCL has filed the present petition for approval of procurement of 500MW Wind-Solar Hybrid Power from the Solar Energy Corporation India Limited (SECI) on long term basis as per the Power Sale Agreement dated 03.01.2020 executed between SECI and Punjab State Power Corporation Limited (PSPCL). PSPCL prayed as under:

a) To Approve the procurement of the contracted capacity on the terms and conditions contained in the PSAs dated 03/01/2020 and Amendment No.1 in PSA dated 10.06.2020 entered into between the SECI and PSPCL read with the terms and conditions contained in the PPAs entered into between SECI and HPD
b) To Approve the tariff and the trading margin of (two) 2 paisa/kWh to SECI; and
c) To Pass such other further order(s) as the Commission may deem just in the facts of the present case.

2. The petition was taken up for hearing on admission on 07.10.2020 and after hearing the counsel for PSPCL, the Commission observed that the PSA dated 03.01.2020 executed between SECI and PSPCL provides for trading margin of 7 paisa/kWh whereas PSPCL is seeking approval of 2 paise/kWh which is in conflict with the mutually agreed terms and conditions between the parties. It was not found appropriate to admit the petition at this stage and vide Order dated 21.10.2020, the Commission directed that the parties may agree on the trading margin, reconcile/amend the PSA and then approach the Commission.

3. PSPCL filed affidavit vide memo No. 5206 dated 17.11.2020 submitting that the Regulation override the contract between the parties and irrespective of the fact that the agreement provides for Rs. 0.07 per unit, the trading margin ought to be only Rs. 0.02 per unit in view of the terms of the Regulations framed by the CERC. The said affidavit was taken on record as an IA No. 09 of 2020 and the petition was admitted vide order dated 11.12.2020. Notice was issued to SECI to file its reply to the petition. SECI filed its reply dated 17.12.2020 and PSPCL filed rejoinder thereto vide memo No. 5456 dated 28.12.2020. After hearing the parties, Order was reserved vide Order dated 07.01.2021.

4. SECI, vide its reply dated 17.12.2020, submitted that it is acting as an intermediary at the instance of the Govt. of India to facilitate the establishment of solar power projects, wind power projects, wind solar hybrid power projects etc. for purchase and resale of electricity from such projects to the distribution licensees in various States for which SECI requires a Trading License under the provisions of the Electricity Act, 2003. SECI has to evolve in an aggressive manner, the development of the solar and wind power projects, hybrid projects etc. in India to facilitate the

implementation of the ambitious programme of the Govt. of India to reach a higher quantum of green power to be consumed in India and progressively the reduction of the consumption of power generated by use of fossil fuel.

SECI submitted that it has to constantly invest in resources for initiation of the programme for the development of solar-park, wind-park, identification of the areas of development, identification of the resource potential available at various places for setting up of the non-conventional projects. Unlike other Trading Licensees, SECI has not been established to undertake the trading with the existing generator and existing distribution licensees. SECI on the other hand, actively promotes further development of solar, wind, hybrid power projects etc.

SECI further submitted that there have also been instances where it has to invest in the project itself to undertake generation particularly to evolve mechanism for development of renewable project in green field areas and green field projects including in remote areas like Lakshadweep, Andaman & Nicobar and new non-conventional energy sources. For the said purposes, SECI requires some revenue for meeting its financial requirements.

Further, there are payment security mechanisms such as letter of credit to be administered by SECI. The Renewable Developers demand energy payment from SECI in respect of the generation and supply of electricity under the PPA independent of SECI receiving the same from the Buying Entities. SECI has to constantly take steps to recover such payment from the Buying Utilities in regard to the power supplied under the PSA. SECI has to explore the possibility of selling power to third party in case of default on the part of Buying Utility. SECI is constantly involved in the litigation of the one side by the Renewable Power Developers and on the other side by the Buying Utilities. SECI has to constantly evolve new schemes for further development of the non-conventional energy in large scale.

5. **Observations and Decision of the Commission**

The Commission has examined the petition, the additional affidavit submitted by PSPCL, reply filed by SECI Limited, rejoinder filed by PSPCL and after hearing the counsels of the parties, decides as under:

The Commission is mandated by the Act as per Section 86(1)(b) of the Electricity Act, 2003 and Rule 8 of the Electricity Rules, 2005 to regulate the electricity purchase and procurement process of the distribution licensee in the State. Further, in accordance with Section 61 (d) of the Electricity Act, 2003, the Commission has to safeguard the interest of the consumers of the State and also ensure recovery of cost of electricity in a reasonable manner.

In the petition, PSPCL has requested the Commission to approve the procurement of the contracted capacity of 500 MW Hybrid (Wind plus Solar) power from SECI at a tariff of Rs. 2.69/kWh plus trading margin of (two) 2 paisa/kWh. The Commission notes that in the PSA dated 03.01.2020 executed between PSPCL and SECI, the trading margin is mentioned as Rs. 0.07/kWh. SECI has made submissions to justify the levy of trading margin of Rs. 0.07/kWh and has submitted that similar arrangements of trading margin of Rs. 0.07/kWh has been made with other State Discoms and have been approved by some SERCs.

The Commission observes that as per Section 86(1)(b) of the Electricity Act, 2003 read with Rule 8 of the Electricity Rules, 2005, the

Commission is not to re-determine the tariff determined by CERC for generating companies under clause (a) or (b) of subsection (1) of section 79 of the Act. Section 86(1)(b) of the Act and Rule 8 of Electricity Rules provides as under:

> *"Section 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."*

Rule 8 of Electricity Rules, 2005

> *"8. Tariffs of generating companies under section 79.- The tariff determined by the Central Commission for generating companies under clause (a) or (b) of subsection (1) of section 79 of the Act shall not be subject to re-determination by the State Commission in exercise of functions under clauses (a) or (b) of sub-section (1) of section 86 of the Act and subject to the above the State Commission may determine whether a Distribution Licensee in the State should enter into Power Purchase Agreement or procurement process with such generating companies based on the tariff determined by the Central Commission."*

The Commission is, therefore, not deliberating upon the tariff as it has already been approved by CERC at Rs. 2.69/kWh in Petition No. 307/AT/2020.

As regards contention of the SECI on trading margin that Hon'ble APTEL in its Order dated 27.02.2020 in Appeal No. 368-373 of 2019 has held that DISCOMS cannot seek unilaterally reduction of trading margin, the same is not applicable in the present case. As per Section 61(d) of the Electricity Act, 2003, the Commission has to safeguard the consumer's interest and at the same time provide recovery of the cost of electricity in a reasonable manner. The Commission, therefore, in its bounden duty to safeguard the interest of the consumers is deliberating upon the limit of trading margin so that the intermediate procurer can recover its cost and at the same time the interest of consumers of Punjab is also protected.

It is to be noted that CERC while deciding the matter of tariff in the Petition No. 307/AT/2020 has approved the tariff of Rs. 2.69/kWh based on competitive bidding and has not approved the 7 paise trading margin and held that the trading margin should be mutually decided. With regard to the contention of SECI Limited that MNRE Guidelines prescribe a trading margin of Rs. 0.07/kWh for sale of power to willing State Utilities/ DISCOMs/other Bulk consumers for 25 years, the Commission notes that the CERC Regulations have overriding effect on any other Guidelines. CERC vide its notification dated 02.01.2020 has issued CERC (Procedure, Terms and Conditions for grant of trading license and other related matters) Regulations, 2020 wherein Regulation 8(1)(d) stipulated as under:

"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."

Further, CERC (Procedure, Terms and Conditions for grant of trading license and other related matters) Regulations, 2020 in Regulation 8(1)(f) stipulates as under:

"For transactions under Back to Back 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 (2.0) paise/kWh."

CERC's Regulations however do not cover the exigency of a Discom providing a back to back arrangement of a letter of credit with the trader.

The Commission notes that Articles 10.4.1 and 10.4.2 of the PPA executed between SECI and HPD states as under:

"10.4.1 Subject to opening and maintenance of Letter of Credit by the Buying Entities (as per terms of Buyer-Buying Entity PSA) in favour of the Buyer, the Buyer shall provide to the HPD, in respect of payment of its Monthly Bills and/or Supplementary Bills, a monthly unconditional, revolving and irrevocable letter of credit ("Letter of Credit"), opened and maintained which may be drawn upon by the HPD in accordance with this Article.

10.4.2 Subject to Article 10.4.1, not later than one (1) Month before the start of supply, Buyer through a scheduled bank open a Letter of Credit in favour of the HPD, to be made operative from a date prior to the Due Date of its first Monthly Bill under this Agreement. The letter of Credit shall have a term of twelve (12) Months and shall be renewed annually, for an amount equal to:

i) for the first Contract year (post COD), equal to the estimated average monthly billing;

ii) for each subsequent Contract Year, equal to the average of the monthly billing of the previous Contract Year."

Further, Article 2.5.1 of the PSA executed between PSPCL and SECI dated 03.01.2020 states that PSPCL shall provide to SECI, in respect of payment of its monthly bills, a single, unconditional, revolving and irrevocable Letter of Credit (LC) opened and maintained by PSPCL, which may be drawn upon by SECI. Article 2.5.7 of the PSA mentions that all costs related to opening, maintenance of the Letter of Credit shall be borne by PSPCL.

Article 2.5 ‘Payment Security Mechanism’ of the PSA provides as under:

“2.5 Payment Security Mechanism

(A) Letter of Credit (LC):

2.5.1 The Buying Entity shall provide to SECI, in respect of payment of its Monthly Bills, a single, unconditional, revolving and irrevocable letter of credit (“Letter of Credit”), opened and maintained by the Buying Entity, which may be drawn upon by SECI in accordance with this Article. The Buying Entity shall provide SECI draft of the Letter of Credit proposed to be provided to SECI two (2) months before the Scheduled Commissioning date.

*2.5.2 Not later than one (1) Month before the Start of Supply, the Buying Utility shall through a scheduled bank at [**Patiala]** open a Letter of Credit in favour of SECI, to be made operative at least 15 days prior to the Due Date of its first Monthly Bill under this Agreement. The Letter of Credit shall have a term of twelve (12) Months and shall be reviewed for every six (6) months, and revised w.e.f. April and Sept for an amount equal to:*

i) for the first Contract Year, equal to 1 month of estimated average monthly billing;

ii) for each subsequent Contract Year, equal to 1.05 times of the average of the monthly Tariff Payments of the previous Contract Year.

In case Non-availability of State Government Guarantee then

(i) For the first Contract, year, equal to 2.10 times of estimated average monthly billing;

ii) For each Contract Year, equal to 2.10 times of average monthly Tariff payments of the previous Contract Year.

2.5.3 SECI shall not draw upon such Letter of Credit within 30 days from the due date of the relevant Monthly Bill, and shall not make more than one drawl in a Month provided that there are no outstanding dues.

2.5.4 Provided further that if at any time, such Letter of Credit amount falls short of the amount specified in Article 2.5.2 due to any reason whatsoever, the Buying Entity shall restore such shortfall within seven (7) days.

2.5.5 The Buying Entity shall cause the scheduled bank issuing the Letter of Credit to intimate SECI in writing regarding establishing of such irrevocable Letter of Credit and any of the changes therein.

2.5.6 The Buying Entity shall ensure that the Letter of Credit shall be renewed not later than thirty (30) days prior to its expiry.

2.5.7 All cost relating to opening, maintenance of the Letter of Credit shall be borne by the Buying Entity.

2.5.8 If the Buying Entity falls to pay a Monthly Bill or part thereof within thirty days from the Due Date, then, subject to Article 2.5.3 and 2.7, SECI may draw upon the Letter of Credit, and accordingly the bank shall pay without any reference or instruction from the Buying Entity, an amount equal to such Monthly Bill or part thereof, by presenting to the schedule bank issuing the Letter of Credit, the following documents:

> *i) a copy of the Monthly Bill which has remained unpaid by the Buying Entity;*
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> *ii) a certificate from SECI to the effect that the bill at item (i) above, or specified part thereof, is in accordance with the Agreement and has remained unpaid beyond the Due Date;*

(B) State Government Guarantee

The Buying Utility shall extent the State Government Guarantee, in a legally enforceable form, such that there is adequate security, both in terms of payment of energy charges and termination compensation if any [for the purpose of this clause, the Tri-Partite Agreement (TPA) signed between Reserve Bank of India, Central Government and State Government shall qualify as State Government Guarantee covering the security for payment of energy charges]. SECI shall ensure that upon invoking this guarantee, it shall at once, pass on the *same to the HPD(s), to the extent the payments to the HPD(s) in terms of the PPA are due.*

(C) Payment Security Fund

In addition to provisions contained in Article 2.6 below, the Buying Entity may provide Payment Security Fund, which shall be suitable to support payment of at least 3 (three) months, billing, of all the Projects tied up with such fund. The parties agree that proceeds of encashment of PBGs upon default of the HPD under the respective PPA shall be passed on to the Buying Utility subsequent to opening of the above Payment Security Fund.

It is hereby clarified that the State Government guarantee shall be invoked only after the SECI has been unable to recover its dues under the PSA by means of the Letter of Credit and the Payment Security Fund."

In view of the above, the Commission observes that obligation to maintain the payment security mechanism i.e. maintaining the Letter of Credit by SECI for the Hybrid Power Developer is subject to opening of Letter of Credit by PSPCL and thereby there is no independent obligation of SECI. SECI is only opening a revolving letter of credit in favour of the HPD whereas PSPCL is providing a letter of credit, payment security fund as well as giving State Govt. guarantee to SECI. It is observed that the risk of SECI is totally covered by the three types of securities being rendered by PSPCL.

Further, as regards the contention of SECI that it has to develop/promote other solar projects in green field area and green field projects including in remote areas like Lakshadweep, Andaman & Nicobar and new non-conventional energy sources for which SECI requires some revenue for meeting its financial requirements from the trading margin, the Commission is of the view that this activity is distinct from the Trading activity of SECI. Such activities cannot be funded through trading margin chargeable to PSPCL and in-turn the consumers of Punjab. Therefore, the Commission after considering the Power Sale Agreement between SECI & PSPCL, Power Purchase Agreement between SECI & HPD, Trading Margin Regulations of CERC and the contentions put forth by SECI, feels that there is no reason to give trading margin higher than 2 paisa.

The Commission notes that the power procurement being hybrid in nature shall be helpful for PSPCL in fulfilling its Renewable Solar and Non-Solar Purchase Obligation. The Commission, therefore, approves the procurement of 500 MW Hybrid (Solar plus Wind) power from SECI at the tariff of Rs. 2.69/kWh with a trading margin of Rs. 0.02/kWh. Accordingly, the Commission directs PSPCL to execute the amended PSA with SECI at the approved tariff (including trading margin of Rs. 0.02/kWh) and submit a copy to the Commission within 15 days from the date of issuance of this Order.

Sd/-	**Sd/-**	**Sd/-**
(Paramjeet Singh) **Member**	**(Anjuli Chandra)** **Member**	**(Kusumjit Sidhu)** **Chairperson**

Chandigarh
Dated: **01.02.2021**