

PUNJAB STATE ELECTRICITY REGULATORY COMMISSION

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

Petition No. 41 & 42 of 2023

Date of hearing: 20.07.2023

Date of Order: 21.07.2023

Petition Under under Section 63, Section 86 (1)(b)&(e) of the Electricity Act, 2003 read with PSERC (Power Purchase and Procurement Process of Licensees) Regulations, 2012 and Regulation 46 of the PSERC (Conduct of Business) Regulations, 2005 for adoption of Tariff for Procurement of power from grid connected 1000 MW Solar Power from Projects located anywhere in India & 200 MW Solar Power from Projects located anywhere in Punjab and approval of Power Procurement in respect thereof.

AND

In the matter of: Punjab State Power Corporation Limited, The Mall, Patiala,
Punjab-147001

..Petitioner

Versus

M/s SJVN Green Energy Limited, Shakti Sadan, Corporate
Office Complex, Shanan Shimla, HP—171006.

..Respondent

Commission: Sh. Viswajeet Khanna, Chairperson
Sh. Paramjeet Singh, Member

PSPCL: Ms. Poorva Saigal, Advocate

SJVN: Sh. Pushkar Verma, DGM

ORDER

1. The Petitioner PSPCL has filed the present petitions seeking adoption of tariffs for procurement of power from grid connected Solar Power Projects selected through a competitive bidding process and approval of the Power Procurement in respect thereof. The petition No. 41 of 2023 and 42 of 2023 involve a similar issue and are being disposed of through this common order. The submissions of PSPCL are summarized as under:

1.1 The present Petitions are being filed pursuant to the Order dated 31.05.2023 passed in Petition No. 10 of 2023 and 11 of 2023, wherein the Commission has, *inter-alia*, advised PSPCL to invite bids again, if it so desired. The relevant extracts from the Order reads as under:

“Thus, the Commission observes that:

- a) Although the process followed by the petitioner as discussed above in Para 7.1 can be said to meet the test of transparency as required under Section 63 of the Act, it has not complied with the MoP Guidelines on the “bidding process” as pointed out in Para 7.2 above and in the interim Orders dated 20.04.2023 and during the hearings.*
- b) The Commission is mandated to adhere to the provisions of Section 63 of Electricity Act, 2003 and MoP Guidelines issued under this Section to ensure the sanctity of the bidding process in order to ensure fair competition and competitiveness.*
- c) The Commission feels that the law as laid down in Section 63 of the Act would be violated since the Guidelines have not been adhered to in Letter and Spirit in the “bidding process” followed and is thus unable to adopt the tariffs and allow the prayers in the present petition.*

d) *The Commission also wishes to point out that it does not approve the draft PPA's terms and conditions. These are to be decided mutually between the contracting parties.*

The Commission advises the Petitioner to invite bids again, if it so desires, keeping in view the MoP Guidelines as discussed above and in light of the deviations already allowed by the Commission in Petition Nos. 42 and 43 of 2022."

1.2 Pursuant to the above, on 07.06.2023, PSPCL issued notice inviting tenders under Swiss Challenge Method (SCM). The SCM notice, inter-alia, reads as under:

"The e-bidding shall be conducted under Swiss Challenge Method where the offer in hand with PSPCL as described above (termed as "Base Bid"). PSPCL invites bids (termed as "Challenger Bids") from eligible bidder(s) on terms and conditions set out in the tender documents. The tender documents including RfS No. /PSPCL/IPC/SOLAR/.....MW/2022/ET-3 and Dated 19.04.2022 along with corrigenda/ addenda and draft PPAs are attached herewith as Annexure-I.

The process to be followed is detailed below:

a) *Interested bidder(s) shall submit the technical bid [as detailed in the tender documents (refer clause 3.18 of the RfS)], as well as the financial bid on the ETS portal <https://www.bharat-electronictender.com/> portal before the scheduled date/ time. Hard Copy of the Financial Bid SHALL NOT be sent to this office.*

b) *The bid(s) shall be submitted for only MW Solar Power Projects to be set up/located Bids for partial capacity shall not be permissible.*

c) *The interested bidder may offer bid at a price only lower than the base bid price after taking into account the minimum decrement value as mentioned at point (d) below.*

d) *The minimum difference required for the challenger bid less than the base bid is fixed at Rs. 0.01/kWh. Bidders can only quote any value (as challenger bid) lower than the base bid value taking into consideration of the minimum decrement value mentioned above. However, increase in tariff will not be permissible.*

e) *If no counter bid less than the base bid value is received, the base-bid becomes the winning bid subject to final approval by competent authority.*

f) *If counter bid(s) less than the base bid value are received, the lowest counter bid becomes the challenger bid.*

g) *The Base Bid provider would be invited to match the challenger bid. If the Base Bid provider matches or offers lower price than the challenger bid, such bid shall become the winning bid; else, the challenger bid shall be the winning bid.*

h) *Acceptance of the offer shall be at the sole discretion of the PSPCL and shall be subject to approval of the competent authority.”*

The Notice was published on the PSPCL website as well as in the Newspapers. PSPCL had also intimated the Commission on 08.06.2023 that it was proceeding to issue the tender under SCM. The last date for submission of bids was 30.06.2023. However, PSPCL did not receive any bids as against the base bid prices (Rs 2.53/kWh for Pan-India projects and Rs. 2.75/kWh for the projects situated in Punjab).

1.3 In the circumstances, PSPCL is now seeking the adoption and approval of procurement of:

- a) 1000 MW Solar Power from Grid Connected Solar PV Power Projects located anywhere in India at a tariff of Rs. 2.53/kWh.
- b) 200 MW Solar Power from Grid Connected Solar PV Power Projects located in Punjab at a tariff of Rs. 2.75/kWh.

1.4 The Swiss Challenge method has been upheld by the Hon'ble Courts as a valid and legitimate procurement method.

a) In the case of *Ravi Development v. Shree Krishna Prathisthan & Ors.*; (2009) 7 SCC 462, the Hon'ble Supreme Court held that the Swiss Challenge method is a "viable mode of private public procurement for infrastructure projects". The Hon'ble Supreme Court also held that the Swiss Challenge method is "fair and transparent" and that it "ensures that the government gets the best possible price for a project".

b) The validity and legality of the Swiss Challenge method has also been considered and upheld by the Hon'ble High Court of Kerala in the case of *Dr. Raju Mathew v. State of Kerala* (Order dated 26.12.2014 passed in WP 881 of 2015) –

"9. Before proceeding further, the very concept of 'Swiss Challenge Method' has to be considered and analysed to understand its scope. The said method is a bidding process to help private sector initiative in core sector projects. The 'Swiss Challenge Method' will ensure that the Private Sector initiatives will be combined with a process to secure the best commercial advantage for the State. After securing the Project proposal from the Proponent to the satisfaction of the Government, an online tender is floated for determining the commercial benefit that the State must secure from the project. The original proponent does not participate in the tender floated. The best market offer for

the identified commercial parameter is secured through the tender process. Then the original proponent gets the right to match this offer and implement the project. If the proponent does not match the offer of the best bidder, then the Government would award the project to the best bidder for execution and commercial exploitation. The Best bidder would however be liable to compensate the original Proponent for his ideas, efforts and expenses incurred, upon award.”

- 1.5 The above cases establish that the SCM is a valid and legitimate procurement method and is fair, transparent and in the public interest. The new tender was floated and bid invited in compliance with the directions of the Commission in its Order dated 31.05.2023. Further, as per the bidding guidelines, the comparison of bids shall be on the basis of the fixed tariff and the e-bidding conducted under SCM was also on the basis of fixed tariff.
- 1.6 After initiating the tender under the SCM and not receiving any response by 30.06.2023, PSPCL has approached the Commission by way of the present Petition. PSPCL is yet to issue the LoA and/or sign the PPA with SJVN. The same will be issued subject to and after the approval by the Commission.
- 1.7 In view of the above, it has been prayed by PSPCL that the Commission may approve the bidding process conducted under the Swiss Challenge Method, adopt the tariffs offered by M/s SJVN for procurement of Solar Power from these Grid Connected Solar PV Projects and approve the power procurement in respect thereof.
- 1.8 By way of Notification dated 12.12.2022, the Commission has prescribed RE Energy RPO of 27% for the FY 2023-24 which shall

increase every year up to 43% for the FY 2029-30. The RPOs are set to increase for the ensuing period as well. The Scheduled Commercial Operation Date of the Project is 18 months from the date of execution of the PPA and should be achieved in FY 2024-25 and would help PSPCL meet its RPO requirements/Commitments.

1.9 With regard to the reasonability of tariff, it is submitted that the tariffs discovered under the present bidding process are competitive and beneficial to PSPCL as well as the consumers of PSPCL, as is evident from the following:

a) Pan-India Tariff:

The tariff discovered by the other States for procurement of Solar Power from the Plants situated anywhere in India are as under

State	Capacity (MW)	Tariff (Rs./kWh)	Tender Result Date
Gujarat Urja Vikas Nigam Limited (GUVNL)	500	2.71-2.75	April, 2023

b) Intra-State Tariff:

The tariffs discovered by the other States for procurement of Solar Power from the Plants to be established in their respective states are as under:

State	Capacity (MW)	Tariff (Rs./kWh)	Tender Result Date
Haryana Power Purchase Centre (HPPC)	500	3.38	May, 2023
Maharashtra State Electricity Distribution Company Limited (MSEDCL)	500	2.87-2.88	April, 2023

Further, in terms of MoP notification dated 23.11.2021, the transmission charges are waived off for the projects which will be commissioned by 30.06.2025. There is therefore a possibility that the impact of the ISTS transmission charges may be loaded in the tariff under any future tenders, which may lead to significant financial impact due to increased tariffs.

2. The petitions were placed before the Commission for admission and after considering the averments, the petitions were admitted vide the Commission's Orders dated 14.07.2023, directing as under:

“M/s SJVN Green Energy Limited, the Solar Power Developer, is a necessary party for the adjudication of the matter and is therefore impleaded as a respondent in the petition. Notice be issued to M/s SJVN Green Energy Limited. M/s SJVN Green Energy Limited may file reply to the petition by 17.07.2023.”

In compliance thereof, on 17.07.2023, SJVN filed its reply endorsing the PSPCL's prayers in the petitions to adopt the tariffs of Rs. 2.53/kWh for 1000 MW Solar power to be located anywhere in India and Rs. 2.75/kWh for 200 MW Solar power to be located anywhere in Punjab and for approval of the Power Procurement thereof.

3. In the hearing held on 20.07.2023, Ld. Counsel for the Petitioner pleaded for an early approval of its prayers in the Petitions.

4. Analysis and Decision

The Commission has examined the submissions made by the Petitioner, PSPCL and the Solar Power Developer, SJVN. The petitioner is seeking to adopt the tariffs and approve the power procurement arrangements by

PSPCL from M/s SJVN Green Energy Limited on the terms and conditions contained in the Tender Documents for:

- 1000 MW grid-connected solar power at a tariff of Rs. 2.53/kWh from the projects situated anywhere in India.
- 200 MW grid-connected solar power at the tariff of Rs. 2.75/kWh from the projects situated anywhere in Punjab.

In order to examine the same, the Commission refers to the relevant Sections of the Electricity Act and PSERC Regulations framed thereunder for regulating the Power Purchase and Procurement process of the Licensee, which specifies as under:

A. 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;

.....

(e) 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,...

“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.”

B. The PSERC (Power Purchase and Procurement Process of Licensee) Regulations 2012:

“12. Long-term Power Procurement Procedure

- (i)*;
- (ii) Unless otherwise approved by the Commission by a general or special order, long-term power purchase or procurement by the Distribution Licensee(s) shall be done through a competitive procurement process;*

.....

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;*

.....”

Thus, for adoption of the tariff, the Commission is mandated to ascertain whether the said tariff has been determined through a transparent and

competitive procurement process of bidding in accordance with the guidelines issued by the Central Government. And, for approval of any long term power purchase arrangement in respect thereof, the Commission is mandated to examine the same primarily on the criteria of its 'Necessity' and 'Reasonability of cost', and whether the same has reasonable cost and is economical in the prevalent circumstances. Accordingly, the Commission proceeds to analyse the PSPCL's proposal as hereunder:

4.1 Whether the said tariff has been discovered through a transparent and competitive procurement process of bidding:

With regard to the aspect of "Transparency", the Commission in Order dated 31.05.2023 (common to petitions nos. 10 and 11 of 2023) had already observed that the process followed by the petitioner (as discussed in Para 7.1 of the said Order) can be said to meet the test of transparency as required under Section 63 of the Act. Subsequently, on 07.06.2023, PSPCL has issued notices inviting tenders under the Swiss Challenge Method vide Tender Enquiry No. 42/PSPCL/IPC/SOLAR/1000MW/ET-3/SCM & 43/PSPCL/IPC/SOLAR/200MW/ET-4/SCM respectively for purchase of power from 1000 MW solar projects located anywhere in India and 200 MW power from solar plants located anywhere in Punjab. The Notices were published on the PSPCL website on 07.06.2023 as well as widely in the Newspapers i.e. Hindustan Times, The Times of India, The Economic Times, Business Standard and Deccan Chronicle on 09.06.2013. However, PSPCL did not receive any challenger bid less than the base bid prices (Rs 2.53/kWh for Pan-India projects and Rs. 2.75/kWh for the projects situated in Punjab).

Accordingly, the Commission agrees with PSPCL that the said tariffs have been discovered through a transparent and competitive procurement process of bidding.

4.2 Criteria of its 'Necessity' and 'Reasonability of cost'

The Commission observes that in the prevailing circumstances, when PSPCL is finding it hard to meet its RPO targets specified by the Commission under Sections 86 (1)(e) of the Electricity Act 2003, there cannot be any issue with regard to the criteria of 'Necessity' in case of procurement of power from the RE sources. Further, with regard to the issue of 'Reasonability of Cost', the Commission notes PSPCL's submission that the tariffs discovered under the present bidding process is competitive and beneficial to PSPCL as well as the consumers of PSPCL as is evident from the following:

c) Tariff of Solar Power from Projects located anywhere in India:

The tariff discovered by the other States for procurement of Solar Power from the Plants situated anywhere in India are as under:

State	Capacity (MW)	Tariff (Rs./kWh)	Tender Result Date
GUVNL	500	2.71-2.75	April, 2023

d) Tariffs from the Projects located within the State:

The tariffs discovered by the other states for procurement of Solar Power from the Plants to be established in their respective States are as under:

State	Capacity (MW)	Tariff (Rs./kWh)	Tender Result Date
HPPC	500	3.38	May, 2023
MSEDCL	500	2.87-2.88	April, 2023

Further, in terms of MoP notification dated 23.11.2021, the transmission charges are waived-off for the projects commissioned by 30.06.2025. There is therefore a possibility that the impact of the ISTS transmission charges may be loaded on to the tariffs quoted against any new tenders floated in the future, keeping in mind the lead time required to implement the projects. With the SCoD of the proposed solar projects mandated not to exceed 18 months from the date of execution of the PPAs, the said arrangement is likely to reap the benefit of the waiver in the transmission charges.

Accordingly, the Commission agrees with PSPCL that the discovered tariffs are reasonable and economical in the prevalent circumstances.

In view of the above, the Commission decides to adopt and approve the said discovered tariffs of Rs. 2.53/kWh for 1000 MW Solar power projects to be located anywhere in India and Rs. 2.75/kWh for 200 MW Solar power projects to be located anywhere in Punjab and approves PSPCL's proposal for power procurement arrangement in respect thereof.

The petition is disposed of in terms of the observations and directions above.

Sd/-

(Paramjeet Singh)
Member

Sd/-

(Viswajeet Khanna)
Chairperson

Chandigarh

Dated: **21.07.2023**