

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

**Petition No. 10 of 2023**  
**Date of Order: 31.05.2023**

Petition under Section 63, Section 86 (1) (b) and (e) of the Electricity Act, 2003 read with the 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 procurement of power from Grid Connected 1000 MW Solar Power Projects located anywhere in India and Approval of Power Procurement in respect thereof.

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

Petitioner

Vs

M/s SJVN Green Energy Limited, Shakti Sadan, Corporate office Complex, Shanan Shimla- 171006, Himachar Pradesh.

Respondent

And

**Petition No. 11 of 2023**

Petition under Section 63, Section 86 (1) (b) and (e) of the Electricity Act, 2003 read with the 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 procurement of power from Grid Connected 200 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. (PSPCL), The Mall,  
Patiala.

Petitioner

Vs

M/s SJVN Green Energy Limited, Shakti Sadan,  
Corporate office Complex, Shanan Shimla- 171006,  
Himachar Pradesh.

Respondent

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

PSPCL: Ms. Poorva Saigal, Advocate

SJVNL: Sh. Shashi Bhushan.

## **ORDER**

1. PSPCL has filed the present petitions seeking adoption of tariffs for solar power projects selected through a competitive bidding process and for approval of the power procurement in respect thereof. The petition No. 10 of 2023 and 11 of 2023 involve a similar issue and are being disposed of through this common order. The submissions of PSPCL are summarized as under:

- a) PSPCL is a distribution licensee in the State of Punjab 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 read with PSERC (Renewable Purchase Obligation and its compliance) Regulations, 2022.
- b) Section 63 of the Electricity Act 2003 provides that the Appropriate Commission shall adopt the tariff if such tariff has been determined

through a transparent process of bidding in accordance with the guidelines issued by the Central Government. Further, Section 86(1)(b) of the Electricity Act 2003 provides that the State Commission shall regulate the electricity purchase and procurement process of the distribution licensees including the price at which electricity shall be procured for distribution and supply within the State.

c) The National Tariff Policy, 2016 formulated by the Ministry of Power, in terms of Section 3 of the Electricity Act, has provided specific guidance on purchase of power generated from renewable energy sources. Section 6.4(2) specifies that the procurement of power from Solar PV Projects shall be done through a competitive bidding process.

d) Accordingly, the Ministry of Power (MoP), Government of India, on 03.08.2017, notified the “Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar Power Projects”, which was amended from time to time (hereinafter referred as ‘Guidelines’). Clause 3.1.1 of the said Guidelines provide for the following conditions to be met by the Procurer -

*(i) 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.*

*(ii) Inform the Appropriate Commission about the initiation of the bidding process.*

*(iii) 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....”*

e) PSPCL prepared the Bid Documents i.e. the Request for Selection (RfS) and the Draft PPA in accordance with the Guidelines, along with certain deviations. Accordingly, it filed Petition nos. 42 & 43 of 2022 before the Commission on 12.07.2022 seeking approval for the deviations in its Bidding Documents from the standard bidding guidelines for procurement of 1000 MW of power each from grid connected Solar Power Projects located anywhere in India (Pan-India) and located anywhere in Punjab (Intra-State) through a Competitive Bidding process (followed by e-reverse auction). By Orders dated 04.08.2022, the Commission approved the deviations sought by PSPCL.

f) PSPCL issued the Tenders for procurement of 1000 MW Solar power each from projects located anywhere in India on the Bharat-Electronic Tender portal of ISN-ETS. The salient aspects of the RfS were as under:

- (i) In order to identify the Successful Bidder, PSPCL shall follow a Bidding Process comprising of e-Tender followed by e-Reverse Auction. Bidding would be carried out through the electronic process on the Bharat-Electronic Tender portal, followed by e-reverse auction.
- (ii) The successful bidders shall set up these Solar PV Power Project(s) including the transmission network up to the Delivery Point at its own cost. All approvals, permits and

clearances required for setting up of the Project (including connectivity and land registration) and those required from State/Central Government and local bodies shall be in the scope of work of the successful bidder. The bidders are free to set-up their Solar PV Project(s) anywhere on the land to be identified and purchased/leased by the bidders at their own risk and costs.

(iii) **Petition No. 10 of 2023** (Pan India Projects- i.e. located anywhere in India)

For all Projects (Inter-state or Intra-state), the minimum project and bid capacity shall be 50 MW, which shall be quoted only in multiples of 10 MW. All charges and losses relating to transmission of power from the project up to Delivery Point shall be borne by the Solar Power Developers. ISTS charges beyond the Delivery Point through the ISTS up to Punjab periphery are exempted for all projects achieving CoD till 30.06.2025 for a period of 25 years from CoD to the extent specified in the Ministry of Power, Government of India Notification No. 23/12/2016-R&R dated 23.11.2021 and 30.11.2021. In case the above exemption/waiver is not applicable, for any reason whatsoever, including in cases where commissioning of the Project gets delayed beyond the applicable date of ISTS waiver, the liability of transmission charges up to Punjab periphery would be that of the Solar Power Developers. Further, the liability of transmission losses up to Punjab periphery would also be of the bidder/project developer.

**Petition No. 11 of 2023** (Intra State Projects i.e. located within Punjab)

For all Projects, the minimum project and bid capacity shall be 5 MW, which shall be quoted only in integral values. Solar Power Developer (SPD) shall also pay grid connectivity charges for creation of a proper facility for receiving power at the receiving substation of PSPCL/PSTCL on behalf of SPD. These charges shall be paid by the SPD to PSPCL/PSTCL within 15 days of receipt of the feasibility clearance. The charges shall include cost of complete line bay and related switchgear (including civil works) and its inter-connections with existing electrical system i.e., bus bar. After successful commissioning of the project, all equipment of complete line bay and related switchgear shall become the asset of PSPCL/PSTCL, as the case may be. The O&M of the complete line bay and related switchgear at the receiving substation shall be done by PSPCL/PSTCL at its own cost for the term of the agreement.

g) In terms of the above, PSPCL proceeded with the Bidding Process (e-reverse auction) as under:

**A. Petition No. 10 of 2023 (Pan-India Projects)**

- (i) On 22.04.2022, the tender was floated on Bharat-Electronic Tender Portal of ISN-ETS with the ceiling tariff of Rs. 2.30/kWh and last date for submission of the Bid as 20.06.2022;

- (ii) On 02.06.2022, the Pre-Bid Meeting was held with the prospective bidders and the last date for submission of the Bid was extended to 01.08.2022 through **Corrigendum No. 1**. Thereafter, based upon queries of the bidders, a **Corrigendum No. 2** was issued on 05.07.2022 and consolidated reply of the queries of the bidders was uploaded on the portal on 20.07.2022. The last date for submission of the Bid was further extended to 26.08.2022 through **Corrigendum No. 3**;
- (iii) The requisite amendments in the tender documents, as per the Order dated 04.08.2022 of the Commission in Petition No. 42 of 2022 (allowing for deviations), were communicated by issuing **Corrigendum No. 4** on 18.08.2022 and the last date for submission of the Bid was extended to 16.09.2022 through **Corrigendum No. 5**;
- (iv) Thereafter, for a wider participation of the bidders, on 05.09.2022, the ceiling tariff was increased to Rs. 2.50/kWh *vide* **Corrigendum No. 6** and the last date for submission of the Bid was extended to 30.09.2022 through **Corrigendum No. 7**;
- (v) Subsequently, on 30.09.2022, the ceiling tariff was further increased to Rs. 2.60/kWh and last date for submission of the Bid was extended to 21.10.2022 through **Corrigendum No. 8**. While Corrigendum No. 8 was in operation, SJVN submitted its bid for the entire 1000 MW capacity on 21.10.2022. As there was only one bidder which had submitted the bid, due dates, as per Bid Information Sheet of the RfS, were further extended vide

**Corrigendum No. 9** (Bid deadline: 11.11.2022) and **Corrigendum No. 10** (Bid deadline: 02.12.2022). In view of the above, it was submitted by PSPCL that it had complied with Clause 8.6 of the Guidelines;

- (vi) The non-financial bid submitted by SJVN on Bharat-Electronic Tender portal of ISN-ETS as well as original documents submitted offline were opened on 06.12.2022 at 11:00 a.m. The Bid evaluation committee evaluated the same and found that it fulfilled the requisite criteria as per provisions of the tender documents;
- (vii) Thereafter, on 25.01.2023, the financial bid of SJVN was opened at 11:00 followed by e-RA from 15:00 hrs. to 16:00 hrs. As per the final result of e-RA on Bharat-Electronic Tender portal, SJVN had quoted Rs. 2.59/KWh for supplying 1000 MW Solar Power;
- (viii) Subsequent to the e-reverse auction, the bidder i.e., SJVN Green Energy Limited was invited for negotiation of tariff. During the meeting held at Patiala on 07.02.2023, SJVN reduced the quoted tariff from Rs. 2.59/kWh to Rs. 2.53/kWh for the 1000 MW quoted capacity.

**B. Petition No. 11 of 2023 (Intra-State Projects)**

- (i) Tender was floated on Bharat-Electronic Tender Portal of ISN-ETS on 25.04.2022; with the ceiling tariff of Rs. 2.55/kWh and the last date for submission of the Bid as 21.06.2022;
- (ii) On 07.06.2022, a Pre-Bid Meeting was held with the prospective bidders and the last date for submission of the Bid was extended to 02.08.2022 through **Corrigendum**



**No.1.** Thereafter, based on the queries of bidders, a **Corrigendum No. 2** was issued on 22.07.2022 and a consolidated reply of the queries of the bidders was uploaded on the portal on 25.07.2022. The last date for submission of the Bid was extended to 29.08.2022 through **Corrigendum No. 3;**

(iii) The requisite amendments in the tender documents, as per the Order dated 04.08.2022 of the Commission in Petition No. 43 of 2022 (allowing for deviations), were communicated by issuing **Corrigendum No. 4** on 16.08.2022. The last date for submission of the Bid was further extended to 19.09.2022 through **Corrigendum No. 5;**

(iv) Thereafter, for wider participation of the bidders, the ceiling tariff was increased to Rs. 2.70/kWh, *vide* **Corrigendum No. 6** dated 05.09.2022. The last date for submission of the Bid was also extended to 03.10.2022 through **Corrigendum No. 7;**

(v) Subsequently, on 03.10.2022, the ceiling tariff was further increased to Rs. 2.80/kWh and the last date for submission of the Bid was extended to 28.10.2022 through **Corrigendum No. 8.** Due to the non-receipt of any bid, the last date for submission of the Bid was extended to 18.11.2022 through **Corrigendum No. 9.** While Corrigendum No. 9 was operating, SJVN submitted its bid for the 200 MW capacity on 18.11.2022. As there was only one bidder which had submitted the bid, due date for submission of bids was further extended to 09.12.2022 *vide*

**Corrigendum No. 10.** In view of the above, it was submitted by PSPCL that it has complied with Clause 8.6 of the Guidelines;

(vi) The non-financial bid submitted by SJVN on Bharat-Electronic Tender portal of ISN-ETS as well as original documents submitted offline were opened on 13.12.2022 at 11:00 a.m. The Bid evaluation committee evaluated the same and found that it fulfilled the requisite criteria as per provisions of the tender documents;

(vii) Thereafter, on 23.01.2023, the financial bid of SJVN was opened at 11:00 am followed by e-RA from 15:00 hrs. to 16:00 hrs. As per the final result of e-RA on Bharat-Electronic Tender portal, SJVN had quoted Rs. 2.79/KWh for 200 MW Solar Power.

(viii) Subsequent to the e-reverse auction, the bidder i.e., SJVN Green Energy Limited was invited for negotiation of tariff. During the meeting held at Patiala on 07.02.2023, the bidder reduced the quoted tariff from Rs. 2.79/kWh to Rs. 2.75/kWh for the 200 MW quoted capacity and the same was informed to PSPCL *vide* Letter dated 08.02.2023.

h) It is submitted that the Guidelines of the Central Government do not prohibit negotiation which is beneficial to the interest of the Procurers. The reduction in price by the selected bidders in a competitive bidding process is valid, beneficial and is in the consumer interest as held in a catena of judgments by the Hon'ble Supreme Court and High Courts.

- i) PSPCL placed on record the following information/ documents in regard to the Bidding/Tendering process and the selection of the successful bidders –
- (i) Copy of the “Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar Power Projects” issued by MoP, Government of India on 03.08.2017 (alongwith subsequent amendments and clarifications).
  - (ii) A statement that no deviations were made in regard to the bidding guidelines (excluding normal consequential addition/ deletion and the order dated 04/08/2022 passed by this Commission).
  - (iii) Copy of the Document demonstrating publication of Request for Selection (RfS) on the e-publishing system and publication of the RfS notice in national newspapers/PSPCL’s own website.
  - (iv) Copy of the Request for Selection (RfS) Document alongwith subsequent amendments *vides* corrigendum and the draft Power Purchase Agreement.
  - (v) A copy of the Notification regarding constitution of Bid evaluation committee.
  - (vi) 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.
  - (vii) A copy of the bid results of the present tender after e-Reverse auction.
  - (viii) A copy of letter by SJVN to PSPCL after negotiating the tariff during the meeting dated 07.02.2023.

- j) It is further submitted by PSPCL that the adoption and approval of the above-mentioned tariffs by the Commission will be:
- (i) 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.
  - (ii) By way of the Notification dated 12.12.2022, this Commission had prescribed the RPO target of 27% for the FY 2023-24, which shall increase every year up to 43% for the FY 2029-30. The RPO are set to increase for the ensuing period as well. The Scheduled Commercial Operation Date of the Projects 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.
  - (iii) Further, the tariffs discovered are competitive and beneficial to PSPCL as well as the consumers of PSPCL.
- k) PSPCL has prayed that in view of the above background and in accordance with Section 63 read with Section 86(1)(b) and (e) of the Electricity Act 2003, the Commission may be pleased to admit the Petitions and:
- (i) Allow PSPCL to continue with the procurement processes from the only qualified bidder as per clause 8.6 of the Guidelines;
  - (ii) 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 including the draft Power Purchase Agreement for:

- 1000 MW of Solar Power at the tariff of Rs. 2.53/kWh, from the projects situated anywhere in India.
- 200 MW of Solar Power at the tariff of Rs. 2.75/kWh, from the projects situated anywhere in Punjab.

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

2. The petitions were admitted vide Orders dated 02.03.2023 with directions that notice be issued to M/s SJVN Green Energy Ltd (SJVN) to file its reply for adjudication of the matter and PSPCL to submit the “Reasonability of Cost” of the discovered rates.

3. On 21.03.2023, SJVN submitted its reply seconding the prayers made by the Petitioner PSPCL. On 28.03.2023, PSPCL filed an Additional Affidavit with regard to the ‘Reasonability of Cost’ of the proposal submitting as under:

- a) The tariffs are aligned with the prevalent market rates.
- b) Pan-India Tariff:

The tariffs for grid connected interstate solar projects on long term basis discovered by GUVNL in the bid conducted in January, 2023 for procurement of 500 MW solar power, is as under:

Name of the Bidder	Capacity (MW)	Tariff (Rs./kWh)
Sprng Energy	200	2.51
IB Vogt	130	2.52
Hinduja	120	2.52
Blupine	50	2.52

**c) Intra-State Tariff:**

The tariff of Rs. 2.75/kWh is commensurate with the prevalent market rates after accounting for the higher cost of land in the State of Punjab. Moreover, with the Solar Power Projects being located close to agriculture loads the transmission/distribution losses get reduced. Further, utilizing power from sources within the State ensures that the Available Import Transmission Capacity (ATC) is not blocked. Also, it is in the interest of PSPCL to create a diversified portfolio from mixed sources. The tariffs discovered by other Discoms for FY 2022-23 are as under:

- (i) The tariffs discovered in the bid conducted by MSEDCL in December, 2022 for procurement of power from 500 MW grid connected intra-State solar projects on long term basis are as under:

Name of the Bidder	Capacity (MW)	Tariff (Rs./kWh)
Solar Arise	100	2.90
SJVN Green Energy Ltd.	200	2.95
Tata Power RE	200	2.97

- (ii) The tariffs discovered in the Bid conducted by MSEDCL in August, 2022 for procurement of power from 500 MW grid connected intrastate solar projects on long term basis -

Name of the Bidder	Capacity (MW)	Tariff (Rs./kWh)
SJVN Green Energy Ltd.	200	2.90
Juniper Green Energy	75	2.90
Tata Power RE	150	2.91
SAEL	50	2.91
Avaada Energy	25	2.91

(iii) The Tariff approved by HERC for FY 2021-22 in the case of Avaada Green HN Project Pvt. Ltd is Rs. 2.86/kWh.

d) The project's commissioning is slated to be in 18 months from the effective date of PPA. Currently, PSPCL is expected to be in deficit of cumulative RPOs by 1049 MUs. The power generated from these Solar Projects would enable PSPCL to meet its RPO obligations from FY 2024-25 onwards in terms of PSERC (RPO and its compliance) Regulations, 2022.

e) In light of above, the Commission may be pleased to adopt the aforesaid tariffs of Rs. 2.53/kWh and Rs. 2.75/kWh respectively.

4. In the hearing held on 13.04.2023, on the issue of PSPCL's prayer to allow PSPCL to continue with the procurement process from the only qualified bidder as per clause 8.6 of the Guidelines, the Commission observed that the said guideline refers to the 'bidding process' and not 'procurement process'. The representative of PSPCL informed that due approval of the Board was obtained to proceed with the single tender subject to approval of the Commission. Accordingly, the Commission vide Order dated 20.04.2023 directed PSPCL to submit the copy of the same on affidavit.

5. On 02.05.2023, PSPCL filed an additional affidavit submitting as under:

a) The 97<sup>th</sup> Board Meeting was conducted on 21.11.2022, wherein, the issue with regard to opening and evaluating the bid submitted by SJVN Green Energy Ltd was discussed. The minutes of the meeting, *inter-alia*, read as under:

*"The decision taken by the Board in its 97 meeting held on 21.11.2022 at Chandigarh on the subject cited agenda is as under:*

.....

*"RESOLVED THAT approval be and is hereby accorded to open and evaluate the only bid received from M/s SJVN Green Energy Limited against the tender for setting up of Solar Power Projects of 1000 MW capacity located anywhere in India and continue with the procurement process even if no other bid is received subject to approval by Hon'ble PSERC as per MNRE Guidelines for procurement of Solar Power 2017 (read with subsequent amendments)*

*FURTHER RESOLVED THAT approval be and is hereby accorded to open and evaluate the only bid received from M/s SJVN Green Energy Limited against the tender for setting up of Solar Power Projects of 1000 MW capacity located anywhere in Punjab and continue with the procurement process even if no other bid is received subject to approval by Hon'ble PSERC as per MNRE Guidelines for procurement of Solar Power 2017 (read with subsequent amendments)."*

- b) PSPCL had attempted three rounds of bidding (Corrigendum No. 8, 9 and 10) in terms of Clause 8.6 of the Guidelines but only a single bidder had come forth i.e., M/s SJVN Green Energy Ltd.
- c) As per the Board approval, PSPCL proceeded to open and evaluate the only bid received from M/s SJVN. Immediately, after finalizing on the final tariff i.e., after post bid negotiations which resulted in a reduction of 6 paise/kWh and 4 paise/kWh respectively, PSPCL has approached the Commission seeking post facto approval of the bidding process along with the power procurement approval. PSPCL is yet to issue the Lol and sign the PPAs with M/s SJVN, which will be done only after to the approval by the Commission.
- d) The bid validity of the bidder has been prescribed as 6 months from the last date of bid submission. Whether the bid submitted by the



bidder is valid in terms of the submission of requisite documents can be found only subsequent to opening of the bid. With the intent to prevent any undue delay, the measures, as listed above, were undertaken by PSPCL in order to secure the most economical rate in the interest of its consumers and to fulfil its RPO requirements at the earliest possible instance.

e) In light of the above submissions, the tariffs of Rs. 2.53/kWh and Rs 2.75/kWh may be adopted by the Commission.

6. In the hearing held on 17.05.2023, Ld. Counsel of PSPCL while reiterating its written submissions made in the petition pleaded for immediate approval of the said power purchase arrangement. The Commission reserved its order at the close of the hearing.

## **7. Observations and Decision of the Commission**

The Commission has examined the submissions made by the Petitioner PSPCL and the Solar Power Developer SJVN. The observations and decision of the Commission on the prayers made by the Petitioner and the SPD are as under:

### **7.1 Prayer to adopt the tariffs discovered in the bidding and approve the procurement of solar power on the terms and conditions contained in the Tender Documents including the draft Power Purchase Agreement.**

In order to examine the same, the Commission refers to Section 63 of the Electricity Act, which reads as under

#### ***“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.”*

Thus, for adoption of any tariff, the Commission is mandated to ascertain whether the said tariff has been determined through a transparent process of bidding in accordance with the MOP guidelines issued under Section 63 of the Act.

To analyse the transparency of the process, the Commission refers to the salient features of the Guidelines relating to the transparency of the process vis-à-vis the compliance thereof as under:

**a) 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, drafts 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 PSPCL had filed Petitions Nos. 42 & 43 of 2022, informing the Commission about the initiation of the bidding process for procurement of 1000 MW power each from grid connected pan-India solar projects and inta-State projects and for seeking some deviations from the Guidelines. The deviations sought for were allowed by the Commission vide Orders dated 04.08.2022. PSPCL has submitted that the said deviations were communicated to the prospective bidders through a Corrigendum No. 4. Further, PSPCL has also specifically placed on record that, “No deviations were made in regard to the bidding guidelines (excluding normal consequential addition/deletion and based on the Order dated 04.08.2022 passed by the Commission).”

**b) 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 floated the tender on the Bharat-Electronic Tender portal of ISN-ETS.
- (ii) PSPCL has submitted the copy of documents demonstrating publication of the tender enquiry in various newspapers namely Hindustan Times, Indian Express, Times Nation and Business Standard/The Hindu.
- (iii) A pre-bid conference with the prospective bidders was also held and consolidated reply of the queries of the bidders was uploaded on the bidding portal by PSPCL.
- (iv) Perusal of documents submitted along with the petition reveals that a period in excess of 30 (thirty) days, as mandated in the guidelines, was allowed between the issuance of RfS documents and the last date of bid submission.

**c) BID SUBMISSION AND EVALUATION**

The Guidelines specify that:

*“8.2. The Procurer shall constitute a 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.*

.....

*10.2. After the conclusion of the 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) Perusal of the document submitted regarding the constitution of the Bid Evaluation Committee reveals it to be consisting of four members, including a Chief Accounts officer.
- (ii) PSPCL has also submitted the copy of the conformity certificate by the Bid Evaluation Committee to the effect that the bidding process and the evaluation has been conducted in conformity to the provisions of the RfS.

**7.2 Prayer to allow PSPCL to continue with the procurement process from the only qualified bidder as per clause 8.6 of the Guidelines.**

The Commission refers to clause 8.6 the “Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Power Projects” issued by the Ministry of Power (MoP), Government of India under the provisions of Section 63 of the Electricity Act, 2003; which specify as under:

*“8.6 To ensure competitiveness, the minimum number of qualified Bidders should be two. If the number of qualified bidders is less than two, even after three 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.”*

However, the Commission observes that the said process was not followed in the instant cases. Although only one bid was received in both these cases, Petitioner PSPCL never sought the consent of the Commission to continue with the bidding process. In fact, contrary to the MOP guidelines, PSPCL had already completed the bidding process i.e. opened, evaluated and even negotiated the final tariff with the single bidder before filing these petitions. Even the prayer before

the Commission now in these petitions is to be allowed to complete the “procurement process” from the only qualified bidder as per clause 8.6 of the guidelines. Clause 8.6, however relates to the “bidding process” and not the “procurement process” as prayed for.

On pointing out the same to PSPCL in the hearings held on 13.04.2023 and interim Orders dated 20.04.2023, PSPCL filed an additional affidavit on 28.04.2023 submitting that PSPCL had attempted three rounds of bidding but only one single bidder had come forth and it proceeded to open and evaluate the same as per their Board’s approval.

The Commission is of the view that the process adopted by PSPCL in completing the bidding process i.e. opening, evaluating and negotiating the final tariff with the single bidder without the consent of the Commission is a violation of the competitive bidding guidelines issued by the MoP under Section 63 of the Electricity Act, 2003.

**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.

The petitions are disposed of as per the above observations.

Sd/-

(Paramjeet Singh)  
Member

Sd/-

(Viswajeet Khanna)  
Chairperson

Chandigarh

Dated: 31.05.2023