

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

Petition No. 18 of 2021
Date of Order: 28.04.2022

Petition under Section 86 (1) (b) of the Electricity Act, 2003 seeking approval of procurement of 300 MW Solar Power on long term basis under the Power Sale Agreement dated 15.10.2020 entered into between Punjab State Power Corporation Ltd. and NHPC Ltd.

In the matter of: Punjab State Power Corporation Ltd., The Mall, Near Kali Mata Mandir, Patiala-147001 (Punjab)

Petitioner

Versus

1. NHPC Limited, NHPC Office Complex, Sector-33, Faridabad, Haryana- 121003.
2. M/s Avaada Sunrays Energy Pvt. Ltd. C-11, Sector-65, Noida, Gautam Buddha Nagar, Uttar Pradesh-201301.

Respondents

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

ORDER

1. Punjab State Power Corporation Ltd. (PSPCL) has filed the present petition for approval of procurement of 300 MW Solar Power on long term basis at the tariff of Rs. 2.56/kWh discovered through competitive bidding. Submissions made in the petition are summarised as under:

- a) That the petitioner PSPCL is a distribution licensee enjoined under the universal supply obligation to procure power from various sources for supply to the consumers in the State. In the process, it is under a

statutory mandate to ensure fulfilment of its RPO. It is to meet its supply commitments and in part-fulfilment of the said RPO that it has entered into a Power Sale Agreement dated 15.10.2020 with an intermediary procurer NHPC, a GoI undertaking, for procurement/sale of 300 MW solar power from the Solar Power Project to be setup by Avaada Sunrays Energy Pvt. Ltd. (SPD) in Rajasthan on the terms and conditions contained in the PPA dated 19.10.2020 entered into between NHPC and the SPD on back to back basis.

- b) That in line with the MoP tariff based competitive bidding Guidelines for procurement of power from grid connected solar power projects, NHPC issued a Request for Selection (RfS) on 03.09.2019 for 2000MW ISTS connected solar power projects to be set up anywhere in India. In response thereof nine bidders submitted their bids which were opened on 04.02.2020 and after techno-commercial evaluation seven bidders qualified for opening of price bid. E-RA was conducted on 16.04.2020 with an initial L1 quoted price of Rs. 2.71/kWh. Amongst them M/s Avada Energy Pvt. Ltd. was allotted a capacity of 320 MW with a final quoted tariff of Rs. 2.56/kWh. In furtherance of the above bidding process, NHPC vide letter dated 18.04.2020 informed PSPCL regarding the availability of the same along with the trading margin of Rs. 0.07/kWh payable to NHPC.
- c) That in response to above letter, an in-principal consent for purchase of 300 MW solar power under above scheme was conveyed by PSPCL vide letter dated 04.06.2020 and NHPC vide letter dated 09.07.2020 confirmed the allotment of the same. Thereafter, vide e-mails dated 09.07.2020 and 13.08.2020, PSPCL requested NHPC for reduction in the trading margin from Rs. 0.07/kWh to Rs. 0.02/kWh,

however NHPC expressed its inability to accept the same. Accordingly a PSA dated 15.10.2020 was executed between PSPCL and NHPC and subsequently on 19.10.2020 a PPA was executed between NHPC and the SPD. Under the terms of the PPA/PSA, the SPD is liable to commission the project within 18 months of the effective date and the expiry date of the PSA was agreed to be the date occurring 25 years from the CoD unless extended by the parties.

- d) That the subject solar power is being procured by PSPCL for compliance of its solar RPO, besides also being a low-cost power source. The procurement of said Solar Power at Rs. 2.56/kWh plus trading margin of Rs. 0.07/kWh is cheaper in comparison to the procurement of 500 MW hybrid power through SECI as per the PSA dated 03.01.2020 @ Rs. 2.69/kWh plus Rs. 0.02/kWh trading margin already approved by the Commission vide Order dated 01.02.2021 in petition no. 29 of 2020 and is much cheaper than the variable cost of power being supplied by IPPs of the State and will be at economical rate in the interest of consumers.
- e) That as per Clause 3 of the PSA, there is a condition precedent for the enforcement of the obligation of either party that within 60 days from the date of submission of the petition, the petitioner is required to obtain all requisite approvals including approval of PSA by the Commission. It is therefore prayed to:
- (i) Allow the present petition.
 - (ii) Approve the procurement of 300 MW solar power by the petitioner from the Respondent on long term basis in accordance with the Power Sale Agreement dated 15.10.2020

executed between the Petitioner and the Respondent at a tariff of Rs. 2.56/kWh plus applicable trading margin.

(iii) Pass such further and other Order(s) as the Commission may deem fit in the facts and circumstances of the present case.

2. The petition was admitted vide Commission's Order dated 24.03.2021, with directions to NHPC to file its reply to the petition.
3. NHPC filed its reply to the petition vide reply dated 17.04.2021, submitting as under:
 - a) That NHPC has entered PSA with PSPCL on 15.10.2020 for sale of 300 MW Solar Power on long term basis on mutually agreed Trading Margin of Rs. 0.07/kWh which is in accordance with clause no. 2.1.1(c)-ii of the amended guidelines of MNRE for Tariff based Competitive Bidding Process for Procurement of Power Grid Connected Solar PV Power Projects notified on 22.10.2019 under the provision of Section 63 of the Electricity Act, 2003.
 - b) As per the aforesaid agreement, NHPC shall supply power through "M/s Avada Energy Private Limited" a Solar Power Developer (SPD) at applicable tariff of Rs. 2.56 /kWh plus Trading Margin of Rs. 0.07/kWh to PSPCL for 25 years from CoD of the Project.
 - c) PSPCL has prayed for approval of PSA at discovered tariff of Rs. 2.56/kWh plus applicable trading margin. However, it should be tariff of Rs. 2.56/kWh plus trading margin of Rs. 0.07/kWh for which 'in principle' consent was given by PSPCL and PSA was signed with trading margin of Rs. 0.07/kWh only.
4. The petition was taken up for hearing on 05.05.2021 and keeping in view the pendency of the matter with regard to the issue of trading margin with

the CERC as well as the Hon'ble APTEL, the petition was adjourned to 14.07.2021.

5. PSPCL filed additional affidavit dated 13.07.2021 to bring the additional facts and subsequent developments on record for consideration of the Commission as under:

- a) That the CERC vide Order dated 02.06.2021 in petition no. 721/AT/2020, filed by NHPC under Section 63 of the Electricity Act 2003 for adoption of tariff, has allowed the petition approving the discovered tariff of various entities including that of M/s Avaada Energy Limited (SPD) at the rate of Rs. 2.56/kWh and a trading margin of Rs. 0.07/kWh.
- b) SECI had challenged the Order dated 01.02.2021 passed by the Commission in petition No. 29 of 2020 before the Hon'ble APTEL and the Hon'ble APTEL vide Order dated 02.07.2021 in Appeal No. 70 of 2021 has set aside and vacated the Order dated 01.02.2021 to the extent of reduction of trading margin of 7 paise/kWh. Further, review petition in respect of trading margin filed by PSPCL against the CERC Order dated 24.02.2020 in petition No. 57/AT/2020 for approval of 600 MW Solar Power through NTPC limited under Section 63 of the Electricity Act 2003 was also dismissed.
- c) Ministry of Power, GoI, in order to promote renewable energy had issued notifications dated 05.08.2020 and Order dated 15.01.2021, which provided that interstate transmission charges and losses will not be levied on the transmission of power generated from solar and wind power plants which were to get commissioned on or before 30.06.2023. However, vide Office Order dated 21.06.2021, the MoP has clarified that the above said waiver is only limited to

transmission charges and not transmission losses. Therefore, PSPCL apprehends that the transmission losses which would now be applicable on the transmission of all renewable power, would increase the landed cost of power in Punjab. The impact of the levy of transmission losses would be about 10 paise per unit which may also be considered by the Commission while adjudicating the present petition.

- d) That on 09.03.2021, the MNRE has issued a notification regarding imposition of Basic Customs Duty (BCD) on import of Solar PV Cells & Modules/Panels in order to boost the domestic solar panel and equipment market. As per the notification, BCD on solar modules and solar cells will be 40% and 25% respectively with effect from 01.04.2022. There is likelihood of a substantial financial implication. If the SPD imports the solar equipment after the cut-off date of 01.04.2022, and in case the same is allowed as change in law. The project was evaluated by PSPCL and approval was sought for from the Commission on the assumption that the quoted tariff would remain the same and the Solar Modules and the cells would not be subjected to imposition of BCD. However, in view of the above notification, in case of import of Solar modules by the SPD goes beyond 31.03.2022, it would lead to an escalation in cost. Any consequent plea by the SPD for increase in the quoted tariff citing change in law would render the power procurement by PSPCL to be uneconomical and uncompetitive. Therefore, the Commission may consider the approval of the procurement of power only if the power purchase cost is not impacted by the levy of basic customs duty, as applicable beyond 31.03.2022.

6. In the hearing held on 14.07.2021, the learned counsel appearing for NHPC requested for time to file reply to the affidavit dated 13.07.2021 filed by PSPCL. NHPC was directed to file its reply to the affidavit within two weeks with a copy to PSPCL and the petition was listed for hearing on 18.08.2021. In compliance thereof, NHPC filed its reply dated 29.07.2021 to the additional affidavit filed by PSPCL as under:
- a) The PPA and PSA have already been signed on back-to-back basis. The transmission charges and losses are to be borne by the SPD upto interconnection point with ISTS system i.e. delivery point and thereafter the same shall be borne by buyer/discom.
 - b) MoP vide its Office Order dated 21.06.2021 has extended the waiver on Inter-State System (ISTS) charges on transmission of electricity generated from solar and wind sources power projects to be commissioned upto 30.06.2025. This waiver is allowed for inter-state transmission charges only and not losses.
 - c) As per PPA, Scheduled Commissioning Date (SCD) is 18.04.2022. As per terms and conditions of the PPA, any changes in tax structure after the last date of bid submission date is defined under Article 12 (Change in Law) of the PPA. Any issue related to this shall be decided by the CERC. Further, in terms of clause IX and XIII of PSA, all the terms and conditions provided in NHPC-SPD Power Purchase Agreement shall mutatis mutandi apply to the PSA between NHPC and Discoms on back-to- back basis.
7. PSPCL vide its rejoinder dated 17.08.2021, reiterated that the power procurement may be approved at a tariff of Rs. 2.56/kWh plus applicable trading margin subject to the power purchase cost not being adversely

affected due to levy of basic customs duty due to import of solar equipment by the SPD beyond 31.03.2022.

8. In the hearing held on 18.08.2021, in response to PSPCL's submission that NHPC is non-committal about the commissioning of the project, the Ld. Counsel for NHPC requested the Commission to implead the Solar Power Developer as a party to the petition. Accordingly, the Commission decided to implead the SPD (M/s Avada Sunrays Energy Pvt. Ltd.) as a respondent in the petition with direction to file its reply to the petition within two weeks with a copy to the petitioner and the respondent.
9. In the hearing held on 15.09.2021, the counsel for the SPD appeared before the Commission. The counsel for PSPCL pointed out that the SPD is required to give a firm commitment about import of solar PV cells and module/panels before the applicability of Basic Custom Duty (BCD), otherwise the procurement of power will become uneconomical and would not be in the interest of the consumers. Accordingly, the Commission directed the SPD i.e. M/s Avada Sunrays Energy Pvt. Ltd to file an affidavit regarding its timelines for import of solar PV cells and module/ panels for the project under consideration, within 10 days with copy to the other parties and asked PSPCL to file its reply to the same within a week thereafter, with a copy to the other parties. In compliance thereof, the SPD vide reply dated 19.10.2021 submitted that:
 - a) The SPD is fully committed to complete the project in a timely manner and will fully comply with the terms of the PPA. Various steps towards implementation of the project have already been taken. Articles 2.1.3 and 2.1.4 of the PPA contemplate and provide that within 60 days from the date of submission of the petition; the Discom shall obtain all requisite approvals including approval of Power Sale Agreement

(including adoption of tariff) from the Commission, on the terms and conditions of the PPA and PSA.

- b) In March, the present petition was filed before the Commission seeking approval of the said procurement. SPD has no objection to the reliefs sought in the petition and supports the same.
- c) That pursuant to the PPA, it is in the process of constructing and commissioning the 320 MW Solar Power project and has taken substantial steps for timely completion of the project. In this regard it seeks to place on record the present status of the project as under:
- (i) It has already received the equity component of the funding for the project.
 - (ii) Power Finance Corporation has sanctioned term loan for the project vide its sanction letter dated 28.09.2021.
 - (iii) The land acquisition process for the project is already underway and it has already entered into agreements for approximately 70% of the required land.
 - (iv) It has executed the EPC agreement.
 - (v) It has already placed orders for the long lead items, such as inverters, transformers, electrical switches, converters etc. required for the development and construction of the solar power project.
 - (vi) The timelines for the import/shipment/delivery of solar PC cells and modules/ panels are set out below:
November 2021 - 50 MW, December 2021 - 160 MW, January 2022 - 100 MW, February 2022 - 50 MW and March 2022 - 98 MW.

- (vii) It is fully committed to complete the project in a timely manner and will make every effort to comply with the planned timelines. The aforesaid planned timelines are based on certain assumptions, including timely approval of the PPA and PSA by the respective Commission, timely achievement of financial closure by the SPD and normal market condition prevailing during the remaining period to complete the project.
 - (viii) It shall fully comply with its duties and obligations under the PPA.
 - (ix) In view of the aforesaid, it is prayed that the Commission may allow the petition and approve the procurement of 300 MW solar power by PSPCL on long term basis in accordance with the PSA at the stated tariff.
- 10.** In the hearing held on 27.10.2021, the Commission noted that the SPD has filed the affidavit dated 20.10.2021 giving the time lines for the import/shipment/delivery of Solar PV cells and modules/panels. However, the learned counsel for PSPCL submitted that the affidavit submitted by the SPD is inconclusive. The Commission directed PSPCL to file its reply to the affidavit filed by the SPD within a week with a copy to the other parties and listed the petition for further hearing on 07.12.2021. In compliance thereof, PSPCL vide its memo dated 15.11.2021 submitted that the affidavit filed by SPD is inconclusive and vague; the SPD has merely narrated a monthly anticipated import schedule, failing to provide any firm commitment towards the timelines for import of solar PV modules/panels as anticipated by it within the cut-off date after which the Notification for imposition of BCD is to come in force. In the absence of any firm commitment on part of the SPD towards import of solar PV

modules/panels before the cut-off date of 31.03.2022, leading to an escalation in the cost and consequent increase in the quoted tariff on account of change in law, the power procurement would not be economical and competitive for PSPCL. The Commission may consider the approval of the procurement of power only if the power purchase cost is not impacted by the levy of basic customs duty, as applicable beyond 31.03.2022.

- 11.** In the hearing held on 07.12.2021, the learned counsel appearing for SPD submitted that PSPCL has filed the affidavit dated 13.07.2021 wherein certain assertions have been made which may affect Avaada Sunrays. The copy of the same has not been received by Avaada Sunrays who wish to submit their reply to the same. Accordingly, directions were issued that PSPCL shall supply the copy of the said affidavit to Avaada Sunrays at the earliest, for filing its reply to the affidavit dated 13.07.2021 within two weeks with a copy to other parties. In the hearing held on 25.01.2022, the learned counsel appearing for the SPD submitted that copy of affidavit filed by PSPCL has been received and due to impact of COVID-19 pandemic requested for a further three week time to file its reply to the affidavit. The Commission allowed the same with directions that the reply be filed within three weeks with a copy to the other parties and listed the petition for hearing on 02.03.2022.
- 12.** In the hearing held on 02.03.2022, the learned counsel for PSPCL reiterated that the SPD has not clearly mentioned in its affidavit that the import of Solar PV cells and modules/panels shall be ensured before 31.03.2022 thereby obviating the impact of BCD nor has given an assurance that any such BCD impact will not lead to a case for change in agreed tariff. The learned counsel for the SPD requested for time to file

affidavit in this regard. The Commission allowed the same with directions that it be filed within a week with a copy to the other parties. The SPD vide its submission dated 21.03.2022 filed an affidavit stating that that it will not claim levy of Basic Customs Duty on solar cells and solar modules with effect from 1st April 2022 in terms of office memorandum dated 09.03.2021 issued by the MNRE.

- 13.** In the hearing held on 24.03.2022, the Commission heard the parties at length. The Learned Counsel for PSPCL submitted that NHPC has signed PPA dated 19.10.2020 with the SPD on back to back basis and as per terms and conditions of the PPA, any changes in tax structure after the last date of bid submission date is defined under Article 12 of the PPA. As per Article 12 of the PPA the aggrieved party can approach the central Commission for seeking approval of change in law and decision of the Central Commission shall be final and binding on all the parties. The Learned Counsel for PSPCL submitted that Avaada Sunrays Pvt. Ltd. should specifically undertake that they shall not claim the impact of BCD under article 12 of the PPA. The Learned Counsel for Avaada Sunrays submitted that they have no objection regarding the same and their statement in this regard be taken on record. Accordingly, while noting the assertion of Ld. Counsel for the SPD, directions were given to the SPD to also submit an affidavit in this regard within 2 days with a copy to PSPCL and NHPC and for PSPCL to file its reply, if any. The Commission reserved the Order subject to the above affidavit being filed.
- 14.** The SPD has submitted a supplementary affidavit dated 29.03.2022 stating that it has expedited the import schedule of the solar modules and intends to complete the import of the entire solar PV cells and panels/modules for the project on or before 31.03.2022 and to the extent

that it relates to the procurement by PSPCL of solar power generated from 300 MW project capacity out of 320 MW solar power project, it will not make a claim under Article 12 of PPA dated 19.10.2020 on account of BCD, if any paid, on solar cells and modules.

PSPCL vide its affidavit dated 21.04.2022 has submitted that in view of the unequivocal undertaking tendered by the SPD vide Supplementary Affidavit dated 29.03.2022, the concerns raised by it have been addressed and the Commission may consider the approval of the procurement of power as sought in the petition accordingly.

15. Observations and Decision of the Commission

The Commission has examined the submissions made in the petition, replies filed by the respondents, rejoinders thereof by PSPCL and written submissions/undertaking by the parties pursuant to the arguments before the Commission and related Orders of the Commission detailed above. The observation and decision of the Commission is as under:

15.1 The Commission refers to the Electricity Act, 2003 and PSERC Regulations framed under the powers conferred therein for regulating the Power purchase and procurement process of the Licensee. The same are reproduced here under:

The Electricity Act, 2003

“86. Functions of State Commission-

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

(a)

(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;

.....

Section 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.”*

The Commission observes that the Electricity Act, 2003 read with the provisions specified in PSERC Regulations mandates the Commission to examine all long term power purchase arrangements entered into by the Distribution Licensee on the criteria of its need/necessity, reasonability of cost, promoting of competition and Conformity with policy directives of the State Government and policies of the Government of India.

15.2 PSPCL has submitted that it is under a statutory mandate to ensure fulfilment of its power distribution and RPO commitments and it is in part-fulfilment of the same that it has entered into a Power Sale Agreement (PSA) dated 15.10.2020 with an intermediary procurer NHPC for procurement of 300 MW solar power. Being a low-cost power source i.e. at Rs. 2.56/ kWh plus trading margin of Rs. 0.07/kWh, it is much cheaper than the variable cost of power being supplied by IPPs of the State and will be in the interest of consumers, provided it is not affected adversely on account of levy of BCD due to delay in import of solar equipment by the SPD beyond 31.03.2022. It has been also informed that, the said tariff has been adopted by CERC vide Order dated 02.06.2021 in petition no. 721/AT/2020 filed by NHPC under Section 63 of the Electricity Act 2003. Vide their respective replies, the respondents NHPC and the SPD also submitted that the PSPCL's said petition for power procurement be approved. Further, the SPD vide its

supplementary affidavit dated 29.03.2022 has stated that it has expedited the import schedule and intends to complete the import of the entire solar PV cells and panels/modules for the project on or before 31.03.2022. It has also given an undertaking that to the extent it relates to the procurement by PSPCL of solar power generated from 300 MW project capacity out of 320 MW solar power project, it will not make a claim under Article 12 of PPA dated 19.10.2020 on account of any impact of BCD, if any paid, on solar cells and modules.

The Commission observes that as per the status of RPO compliance indicated in the recently issued Tariff order, by the end of FY 2022-23, PSPCL is projected to have cumulative Solar RPO shortfall in excess of 800 MWh, indicating the requirement/need of addition in its solar power capacity. The deficit is likely to increase further with progressive increase in the Solar RPO targets in line with the growth targets for solar power envisaged by the Government of India and those mandated by the Commission. Further, the Commission notes that the said tariff stands adopted by the CERC with the observation that the same has been discovered by NHPC through a transparent process of competitive bidding, thus fulfilling the criteria of competition and conformity with the Government policy directives. Also, the Commission notes PSPCL's submission that the procurement of the said Solar Power at Rs. 2.56/kWh plus trading margin of Rs. 0.07/kWh is much cheaper than the variable cost of power being supplied by IPPs of the State and will be economical and in the interest of consumers, provided it is not adversely affected on account of levy of BCD due to delay in import of solar equipment

by the SPD beyond 31.03.2022. The Commission also notes the SPD's undertaking that it will not make a claim on account of BCD, if any paid, on solar cells/modules relating to supply of power of 300 MW to PSPCL.

In view of the above, the Commission decides to allow the PSPCL's prayer in the Petition for approving its long term power purchase arrangement for 300 MW solar power subject to the condition that no claim is preferred by the SPD on account of BCD as per Article 12 of PPA dated 19.10.2020 in case of delay by the SPD in procuring solar cells/modules beyond 31.03.2022 as already committed by the SPD.

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