

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

Petition No. 26 of 2021
Date of Order: 22.07.2021

Petition under Section 63 read with Section 86 of the Electricity Act, 2003 and Clause 3.1.1 (c) and 18 of the Guidelines for Tariff Based Competitive Bidding Process notified by Ministry of Power on 03.08.2017 for Procurement of Power from Grid Connected Solar PV Power Projects - for approval of deviations from the said Guidelines.

AND

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

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

ORDER

1. PSPCL has filed the present petition for approval of deviations from the Ministry of Power (MoP) Guidelines dated 03.08.2017 for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Power Projects. It has been submitted that:
 - 1.1 PSPCL is undertaking the generation and distribution of Electricity in the State of Punjab and is desirous of Procurement of Power From Grid Connected Solar PV Power Projects for procurement of 250 MW of power from grid connected Solar Power Projects (located anywhere in India) through Competitive Bidding (followed by e-reverse auction).

1.2 The Ministry of Power has published the “Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Power Projects” dated 03.08.2017. Clause 3.1.1 of the said Guidelines provide for the following conditions to be met by the Procurer.

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

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

c) Seek approval of the Appropriate Commission for deviations, if any, in the draft RfS draft PPA, draft PSA (if applicable) from these Guidelines and/ or SBDs, in accordance with the process described in Clause 18 of these Guidelines.

1.3 That there are no Standard Bidding Documents issued by the Central Government. PSPCL has prepared the Bid Documents i.e. the RfS and the draft Power Purchase Agreement in accordance with the Guidelines with certain deviations from the Guidelines dated 03.08.2017, as amended from time to time and has submitted the same as Annexure D of the petition. PSPCL has submitted that the said deviations provide certainty and clarity on various provisions and are in the interest of the consumers of the State of Punjab.

1.4 PSPCL vide its additional affidavit dated 11.05.2021 has prayed to:

a) To admit the Petition.

b) To approve the deviations from the Guidelines dated 03.08.2017 (as amended) as incorporated in the Draft RfS (Annexure-B) and PPA (Annexure-C) as proposed by the Petitioner as per Annexure D in the petition.

- c) To grant liberty to PSPCL to approach the Commission for approval of the power procurement process based on draft RfS and PPA, after the price/quantum have been discovered through bidding.
 - d) Pass any other Order as the Commission may deem fit and appropriate under the circumstances of the case.
2. The petition was taken up for hearing on admission on 12.05.2021. It was observed that the proposal for deviations is not comprehensive. Accordingly, vide Order dated 13.05.2021, PSPCL was directed to submit its proposal in the tabulated format depicting the provisions of the MoP's Guidelines vis-a-vis the proposed deviations. PSPCL submitted its proposal in the tabulated form vide memo No. 6223 dated 25.05.2021. After hearing the learned counsel for PSPCL, the petition was admitted vide order dated 02.06.2021. The learned counsel explained the deviations sought to be approved, however, PSPCL was directed to submit its reply regarding the penalty for shortfall in energy. PSPCL filed its reply vide memo No. 6494 dated 18.06.2021 providing clarification for retaining the minimum penalty of 25% as provided in the Guidelines.

3. Observations and Decision of the Commission

The Commission has carefully gone through the submissions made in the petition, replies by the petitioner and arguments made during the hearings. The Commission notes that as per the projections submitted by PSPCL in its ARR for FY 2021-22, it is falling short of its Solar RPO by 458 MU. The deficit is going to increase further with progressive increase in the Solar RPO targets. As such, PSPCL's plan to initiate the process for procurement of solar power through competitive bidding process is in line with the requirement of solar power in the

State. Further, regarding the issue of deviations proposed by PSPCL from the MoP's Guidelines as enclosed at Annexure-I of this Order, the findings and decision of the Commission is as here under:

3.1 Section 63 of the Electricity Act, 2003 states as hereunder:

“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.”

Further, the National Tariff Policy, 2016 (NTP) formulated by the MoP, has specific guidance on purchase of power generated from renewable energy sources, specifying as under:

“6.4(2) “States shall endeavor to procure power from renewable energy sources through competitive bidding to keep the tariff low, except from the waste to energy plants.....”

Accordingly, the Ministry of Power (MoP) vide its Resolution dated 3rd August, 2017 issued the Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Power Projects, with the following specific objectives:

“1.2. Objectives

1.2.1. The specific objectives of these Guidelines are as follows:

- a) To promote competitive procurement of electricity from solar PV power plants, by distribution licensees, to protect consumer interests;*
- b) To facilitate transparency and fairness in procurement processes / and to provide for a framework for an Intermediary Procurer as an Aggregator/Trader for the inter-state/intra-state sale-purchase of long term power.*

c) To provide standardization and uniformity in processes and a risk-sharing framework between various stakeholders, involved in the solar PV power procurement, thereby encouraging investments, enhanced bankability of the Projects and profitability for the investors.”

Since, to promote competitive procurement, facilitate transparency, fairness, standardization and uniformity in processes are the chief objectives of the Guidelines; all the stakeholders need to endeavour sincerely, to comply with these guidelines. However, in order to address the practical difficulties which may arise during implementation, these guidelines also empowers the Commission to allow deviation(s) from the bidding guidelines. Therefore, while considering the deviation(s), the Commission intends to ensure that basic premises of bidding guidelines remains unaltered. Allowing of deviation(s) which are contradicting/ radically deviating from bidding guidelines will undermine the very basis of having standardization of the bidding Guidelines under Section 63 of the Electricity Act, 2003.

3.2 The MoP Guidelines provide for the following conditions to be met by the Procurer:

“3.1.1. Bid Documentation:

.....
 c) Seek approval of the Appropriate Commission for deviations, if any, in the draft RfS draft PPA, draft PSA (if applicable) from these Guidelines and/ or SBDs, in accordance with the process described in Clause 18 of these Guidelines.

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

Guidelines even though such details are not provided in the Guidelines.”

The above provision in the Guidelines specifies that, providing of detailed provisions that are consistent with the Guidelines is not considered a deviation. Thus, such changes do not require any intervention by the Commission. The procurer is expected to undertake the due diligence so as to retain the standardization and uniformity in processes.

3.3 Accordingly, the Commission is of the opinion that the changes in the provisions referred at S.No. 2, 4, 6, 7, 9, 11, 12, 15, 18, 19, 20 and 22 of Annexure 1 are detailing of the provisions for clarity and cannot be construed as deviations from the Bidding Guidelines. As such, the Commission would not be approving or rejecting the same.

Further, the Commission finds it appropriate to deal with the deviations i.e. the changes that are not consistent with the Guidelines, mandating specific approval of the Commission, as here under:

a) Clause 3.2.3 (e) of MoP Guidelines (S.No. 1 of Annexure 1)

In addition to the detailing of “CTU” as “ISTS Licensee/CTU”, PSPCL has proposed the deletion of the following provision:

“If the Project site is located in the same State as the Procurer/End Procurer, State Govt. shall endeavor to provide necessary support to facilitate the connectivity of the plant to STU/CTU substation.”

Commission’s Analysis:

The Commission observes that, PSPCL being an independent commercial organization cannot cast any obligation on the State Govt. As such, the Commission allows the said deviation proposed by PSPCL.

b) Clause 4.3.1 of MoP Guidelines (S.No. 3 of Annexure 1)

The Guidelines provides as under:

“...The Procurer shall specify that the tariff quoted by the bidder cannot be more than the tariff for grid-connected solar PV power plants, notified by the Appropriate Commission, if any, for the financial year in which the bids are invited....”

PSPCL has proposed as under:

*“However, Bidder shall quote a single tariff for entire of its projects’ capacity offered. The competitive tariff to be initially quoted by the bidders during the bidding process shall be firm and **cannot be more than Rs. 2.50/-per kWh. This would be followed by the e reverse auction.”***

Commission’s Analysis:

The Commission is the view that the reverse auction is expected to result in a more competitive tariff. However, since the Commission is following the CERC RE Tariff Regulations and do not determine the Generic tariff for grid-connected solar PV power plants, the procurer may specify the ceiling tariff at its own due diligence. The Commission will be examining the competitiveness of final discovered tariff at the time of tariff adoption.

c) Clause 5.3.1 (b)&(c) of MoP Guidelines (S.No. 5 of Annexure 1)

PSPCL has proposed to limit the payment security to the Letter of Credit and deletion of the following provisions:

“b) Payment Security Fund, which shall be suitable to support payment for at least 3 (three) months’ billing of all the Projects tied up with such fund;

c) In addition to a) & b) above, the Procurer may also choose to provide State Government Guarantee, in a legally enforceable form, ensuring that there is

adequate security to the Solar Power Generator, both in terms of payment of energy charges and termination compensation if any.”

Also, PSPCL is proposing to insert a new provision as under:

“6.5.5 All the cost incurred by PSPCL for opening, maintenance and other cost related to establishment of Letter of Credit shall be borne by the SPD.”

Commission’s Analysis:

The Commission observes that the provision of the State Government Guarantee in the Guidelines is an optional provision and hence deletion of the same is not strictly a deviation. As such, the Commission allows the same.

However, the Commission is of the view that, deletion of the provision for Payment Security Fund can lead to increase in risk to the Generator and quoting of escalated tariff in the bidding. Also, loading of all the costs incurred by PSPCL for opening, maintenance and establishment of Letter of Credit on the generating company will also leads to an escalated tariff. As such, the Commission is not agreeable to the said deviation.

d) Clause 5.4.8.2(b)(i) of MoP Guidelines (S.No. 8 of Annexure 1)

Termination due to Non-Natural Force Majeure Event

While merging of termination due to Natural and Non-Natural Force Majeure Events, PSPCL has proposed to delete the following provision:

“(i) the Procurer shall pay to the Generator, ‘Force Majeure Termination Compensation’ equivalent to the amount of the Debt Due and the 110% (one hundred and ten per cent) of the Adjusted Equity, as defined in these Guidelines, and takeover the Project assets.”

Commission’s Analysis:

The Commission observes that PSPCL has proposed to merge the clauses for termination due to Natural and Non-Natural Force Majeure Events, with common provisions for both and hence allows the same.

e) Clause 5.5.2 (d) of MoP Guidelines (S.No. 10 of Annexure 1)

PSPCL has proposed to delete the following provision

“(d).The details of back-down/ curtailment, including justifications for such curtailment, to be made public by the concerned Load Dispatch Centre.”

Commission’s Analysis:

The Commission is of the view that said clause need to be retained for the sake of fairness and transparency. As such, the Commission is not agreeable to the said deviation.

f) Clause 5.6.2(b)&(c) of MoP Guidelines (S.No. 13 of Annexure 1)

Procurer Event of Default

PSPCL has proposed to:

- i) Vest the discretion to “either take over the project or to pay damages” with itself in place of the Generator;
- ii) Deletion of the following provision:

“c) In the event of termination of PPA, any damages or charges payable to the STU/CTU, for the connectivity of the plant, shall be borne by the Procurer.”

Commission’s Analysis:

- i) PSPCL’s proposal to vest itself with the discretion to either take over the project or to pay the damages, in place of the Generator seems to be justifiable and hence the Commission allows the same.
- ii) However, the deletion of the provision that “in the event of termination of PPA, any damages or charges payable to the STU/CTU, for the connectivity of the plant, shall be borne by the

Procurer” in the event of Procurer Event of Default, is not justifiable. As such, the Commission is not agreeable to the said deviation.

g) Clause 5.7.1 of MoP Guidelines (S.No. 14 of Annexure 1)

Change in Law

PSPCL has proposed rewording of the definition of change in law to make it more exhaustive and elaboration of the related provisions. PSPCL has also specified the quantum of compensation in the event of Change in law as under:

“In case of Change in Law as approved by PSERC, the SPD/ PSPCL (as the case may be) shall be entitled for relief as follows:

Every net increase/decrease of Rs. 1 lakh per MW in the Project Cost (i.e cost incurred by the SPD for the supply and services in the Project concerned, upto Schedule Commissioning Date or extended Schedule Commissioning Date, for reasons other than those wherein such extension is on account of payment of liquidated damages, penalty or any other charges, as the case may be), shall be liable for corresponding increase/decrease of an amount equal to Rs 0.005 /kWh.”

Commission’s Analysis:

The Commission is of the view that the rewording of “Change in Law” and corresponding changes are to minimize ambiguity which are in line with that contained in the bidding documents of SEC/NTPC. Moreover, the compensation specified is to provide clarity on the mechanism for relief under Change in Law. Accordingly, the Commission allows the same.

h) Clause 10.4 of MoP Guidelines (S.No. 16 of Annexure 1)

PSPCL has proposed to substitute *“In case, the Commission does not decide upon the same within sixty days of such submission, the tariffs shall be deemed to be have been adopted by the Commission”* with :

“It is presumed that the tariff will be adopted by the Commission within 60 days of such submission. However, any delay in adoption of tariff by the Appropriate Commission beyond 60 (sixty) days shall entail a corresponding extension in Scheduled Commissioning Date i.e. for an equal number of days for which the PSERC order has been delayed beyond such 60 days period.”

Commission’s Analysis:

The Commission observes that, the proposed deviation is to provide extension of Scheduled Commissioning Date in case of any delay in adoption of tariff by the Commission beyond the stipulated period and hence the Commission allows the same.

i) Clause 11.1 & 11.2 of MoP Guidelines (S.No. 17 of Annexure 1)

PSPCL has proposed that:

- a) To accept Earnest Money deposit (EMD) and Performance Guarantee (PG) only in the form of Bank Guarantee;
- b) PSPCL shall release the PG within 45 days upon successful commissioning of full contracted capacity after adjusting Penalty (if any)....”
- c) Deletion of the provision for replacement of BG with Payment on Order instrument/Letter(s) of Undertaking from IREDA/PFC/REC.

Commission’s Analysis:

The Commission observes that the Guidelines provide option for submission of EMD and Performance Bank Guarantee in the form of

Bank Guarantee or other means i.e. Payment on Order instrument/Letter of Undertaking from IREDA/PFC/REC. In view of PSPCL's submission that it does not have any umbrella agreement with IREDA/PFC/REC, the Commission is agreeable to the said deviation proposed by PSPCL

j) Clause 16.5 of MoP Guidelines (S.No. 21 of Annexure 1)

PSPCL has proposed to substitute *“All expenses including wheeling charges and losses in relation to the transmission and distribution beyond the metering Point shall be borne by the Procurers”* with :

“Further all charges and losses beyond the Delivery Point through the ISTS up to Punjab periphery are exempted for all projects achieving CoD till 30.06.2023 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 15.01.2021. If the commissioning of the Project gets delayed beyond the applicable date of ISTS waiver due to Force Majeure event, the Ministry of Power, Government of India Notification No. 23/12/2016-R&R Dt. 15.01.2021 provides for extension of the waiver. However, in case the waiver is not applicable for any reason whatsoever, including the cases where commissioning of the Project gets delayed beyond the applicable date of ISTS waiver, the liability of transmission charges and losses up to Punjab periphery would be of the SPD. Further no change in charges / losses of ISTS shall be covered under Change in Law provision for any increase in tariff under this agreement.”

Commission's Analysis:

The Commission observes that since, all the charges and losses beyond the Delivery Point through the ISTS up to Punjab periphery

are exempted for all solar projects achieving CoD till 30.06.2023 for a period of 25 years from CoD. Charging of the same, if any, due to delay in CoD, to the account of the Generator is justified. As such, the Commission is agreeable to the said deviation.

The petition is disposed of in terms of above.

Sd/-

(Paramjeet Singh)
Member

Sd/-

(Anjuli Chandra)
Member

Sd/-

(Viswajeet Khanna)
Chairperson

Chandigarh

Dated: 22.07.2021

[Click here for Annexure](#)

