



Delhi Electricity Regulatory Commission
Viniyamak Bhawan, 'C' Block, Shivalik, Malviya Nagar, New Delhi – 17

No. F. 11(1617)/DERC/1018-19/

IA No. 02/2018
in
Petition No. 58/2014

In the matter of: Petition seeking adoption of tariff determined through transparent process of Case 1 RE-Bidding Procedure under Section 63 of the Electricity Act, 2003 and of approval of signing of the proposed Power Purchase Agreement in terms of the DERC (Renewable Purchase Obligation and Renewable Energy Certificate Framework Implementation) Regulations, 2012 read with DERC Comprehensive Conduct of Business Regulations, 2001

Tata Power Delhi Distribution Ltd.
Through its Managing Director
Grid Sub Station Building
Hudson Lines, Kingsway Camp,
Delhi 110 009

....Applicant

Coram: Hon'ble Mr. Justice S S Chauhan, Chairperson
Hon'ble Mr. B.P. Singh, Member

Appearance:

1. Mr. Aniket Prasoon, Adv. TPDDL
2. Mr. Abhishek, Adv. TPDDL
3. Mr. Anurag Bansal, TPDDL
4. Mr. Mithun Chakraborty, TPDDL
5. Mr. Bharat Bhadawat, TPDDL
6. Ms. Kanupriya, TPDDL

ORDER

(Date of Hearing: 04.09.2018)

(Date of Order: 18.09.2018)

1. The present Application has been filed by Tata Power Delhi Distribution Ltd. (TPDDL) for the approval of the Supplementary Power Purchase Agreement (SPPA) executed on 03.08.2018 for amending the Power Purchase Agreements (PPAs) dated 15.07.2015 to revise the quoted Tariff and also for seeking the approval for extending the time frame for commissioning of the 6X30 MW Solar Photo Voltaic (PV) power generating stations at Madhya Pradesh (Projects).

2. The brief facts of the case are as follows:

- I. The Applicant had initiated a competitive bidding process by way of issuing RFP for selecting a Successful Bidder for long term procurement of power from renewable energy sources (including Solar, Wind, Biomass, SHP, Waste to Energy etc.) for meeting the Applicant's Renewable Purchase Obligation (RPO) as per the DERC (Renewable Purchase Obligation & REC) Regulations, 2012.
- II. Pursuant to the bidding process, SunEdison Holding (Singapore) Pte. Ltd. (SunEdison) was identified as the selected bidder for sale and supply of the Contracted Energy from its projects.
- III. Accordingly, a petition bearing No. 58 of 2014 was filed by the applicant before this Commission under section 63 of the Electricity Act, 2003 for seeking adoption of the discovered tariff and execution of the Power Purchase Agreements. This Commission by way of its Order dated 13.04.2015 adopted the tariff in the aforesaid petition.
- IV. Subsequently, the six different PPAs dated 15.07.2015 executed between the parties for sale of power were approved by this Commission.
- V. In terms of the PPAs, SunEdison was to commence supply of power from June 2017/April 2018 in line with the waiver granted by the Ministry of Power to solar power projects supplying power using the inter-state transmission system from the payment of the interstate transmission charges.
- VI. In a subsequent development the parent company of M/s SunEdison faced financial crisis and vide letter dated 23.11.2016 requested TPDDL to allow them to execute the above mentioned projects in collaboration with a new partner viz. M/s Green Co. Group.
- VII. The applicant verified that the Project activities were yet to Commence and Engineering, Procurement and Construction (EPC) contract had also not been finalized. In view of these developments and considering downward revision of tariff tend

during the ensuing period, TPDDL requested M/s SunEdison to revisit the PPA tariff.

- VIII. At the same time, the applicant vide letter dated 13.02.2017 requested the Commission to allow to terminate the PPAs with M/s SunEdison. The Commission accorded to the proposal to terminate the PPA mutually in consumer interest without any adverse impact on ARR of TPDDL.
- IX. However, the Applicant continued to negotiate on the issue of tariff reduction with M/s SunEdison, which ultimately gave its consent to supply power at a reduced levelised tariff of Rs.3.96 per unit. However M/s SunEdison requested that the time frame for commissioning of Rewa project of 18 months shall also be provided to M/s SunEdison projects.
- X. The Applicant sought approval of the Commission for revision of tariff and extension of time frame for commissioning of the projects.
- XI. The request of the applicant was examined and the applicant was asked to provide, inter alia, following information:
- i. Whether PPA was terminated pursuant to the Commission letter date 13.04.2017.
 - ii. Whether any amendment has been made to PPA.
- XII. In response the applicant submitted the following;
- a) PPA has not been terminated considering the huge binding liability of Rs. 400 Crore in terms of Long Term Agreement (LTA) relinquishment charges without having availed any power thereof. Further, reduction of Tariff now offered by M/s SunEdison would result in a benefit of approx. Rs. 74 Cr./ annum for a period of 20 years to the consumers of TPDDL & also in the process help in meeting the RPO mandated by Hon'ble Commission. The said three scenarios clearly indicate that the consumers of TPDDL would rather stand benefited from continuation of PPA apart from fulfilment of RPO.
 - b) No amendment has been entered into till date and pursuant to the approval by the Hon'ble Commission suitable

amendment to the PPA would be entered into in line with the proposal submitted before this Hon'ble Commission.

- c) That the impact of GST and cheaper infrastructure cost with regards to Rewa project should be around 65 paise/unit as against 79 paise/unit resulting in a tariff of 3.96/unit as depicted in the table below :-

Factor	Tariff Impact (INR/kWh)	Cumulative Tariff (INR/kWh)
Lowest Discovered Solar Tariff in MP. (Latest Case II REWA Bid for a 750 MW bid)	3.31	3.31
Impact of cost of cheaper infrastructure in tariff.	0.30*	3.61
Impact of GST	0.35	3.96

- d) The tariff for SunEdison projects were compared with Generic Tariff of States. Brief details of the analysis are as below :-

SERC's	Tariff	
Karnataka	Levellized Tariff FY 2017-18	4.36 kWh
Maharashtra	Levellized Tariff without AD FY 2017-18	5.13 kWh
	Levellized Tariff with AD FY 2017-18	4.74 kWh
Tamil Nadu	Levellized Tariff without AD FY 2017-18	4.50 kWh
	Levellized Tariff with AD FY 2017-18	4.41 kWh
Rajasthan	Levellized Tariff without AD FY 2017-18	3.93 kWh
	Levellized Tariff with AD FY 2017-18	3.66 kWh
Madhya Pradesh	Levellized Tariff FY 2016-17	5.45 kWh

- e) Based on the aforementioned analysis, tariff of Rs.3.96/unit appears to be quite competitive and also substantially less by approximately Rs. 2.00/unit over the initial offer of around Rs. 5.93/- per unit.
- f) As per Electricity Act 2003 and policies thereof, safe-guarding consumer interest, and economical use of resources are common goals of the Distribution Licensee and the State Commission. Accordingly, in line with downward revision of tariff witnessed for various PV projects from the date of the PPA with M/s SunEdison, the tariff under the PPA also needs to be mutually revised in the interest of consumers.
- g) M/s SunEdison has fulfilled various Sellers condition subsequently as indicated in the letter of TPDDL and procurer has complied with its only obligations under the PPA of obtaining transmission linkage for Long Term Open Access for the transmission system beyond the Delivery Point from DTL.

h) The final revised tariff has been now arrived between parties in overall consumer interest. TPDDL has no reasonable apprehensions qua the said liquidation exercise by Parent company of M/s SunEdison. Moreover the dilution in Equity as per Terms of PPA shall be maintained by M/s SunEdison till another one year from commencement of supply for providing comfort to us and ally any fear of breach by M/s Green Co. to PPA obligations.

XVIII. The submissions made by the Applicant were examined and "In Principle' approval was granted to the Applicant vide letter dated 21.05.2018 and the Applicant was asked to file application for formal approval of this Commission.

XIX. The Applicant has filed the instant application seeking approval of this Commission to the supplementary Power Purchase Agreement signed with M/s SunEdison to amend the PPA to the following effect:

1. Revision of levelised tariff to Rs.3.96 per Kwh; and
2. Extension of time frame for commissioning by 18 months from the date of approval.

3. The counsel appearing on behalf of the Applicant submitted that negotiations are permissible in respect of tariff approved under section 63 of the Electricity Act, 2003. It was submitted that the Hon'ble Appellate Tribunal for Electricity (APTEL) in its judgment dated 06.05.2010 in the matter of M.P Power Trading Company Ltd Vs. MPERC & Others vide appeal no 44 of 2010 (para 47) has held that negotiations are permissible in respect of tariff approved under section 63 of the Electricity Act, 2003. Hon'ble APTEL has held as under:

"Even assuming that there is no explicit approval obtained by the appellant from the state commission, it shall be remembered that there is no explicit embargo on the Appellant from having negotiations with the bidders for having reduction of the prices so as to make them agree to the reduce price which is aligned with the market prices in the interest of consumers at large. Therefore the ground for rejection of the petition that there is no provision of negotiation as per the guideline and RFP documents and there is no approval for negotiation from state commission is totally wrong"

4. It was further submitted by TPDDL that the parties were under negotiations/ discussions, and the Applicant did not accord its consent to the dilution of Equity clause of the PPA. In any event the said clause no. 14.8.5 of PPA was not an unfettered power in hands of Tata Power- DDL but was qualified by the condition "that such consent shall not be reasonably withheld" thereby conferring some right (to proceed with dilution of Equity) in the Seller.
5. We do not find force in the submission made by the Counsel for the Applicant that as per judgment of Hon'ble APTEL in MP Power Trading Company Ltd. vs MPERC & Others, negotiations are permissible in case of tariff determination through competitive bidding as per Section 63. The MP Power Trading Company Ltd. case is distinguishable on the basis of facts. In this case the State Commission itself had allowed and permitted the party to approach the State Commission again with the outcome of the negotiation, which the party had with the other bidders. It was held by the APTEL that once the State Commission had permitted the party to approach the State Commission with outcome of negotiation, it was not correct on the part of the State Commission to reject the application. Further in the aforesaid matter the negotiations were done prior to the adoption of tariff by the State Commission, whereas in the instant case tariff had already been approved by the Commission.
6. The present application is in respect of approval to the Supplementary Power Purchase Agreement meant to amend the existing Power Purchase Agreements so as to allow reduced levelised tariff and to allow extended time frame for commissioning of the projects. On the issue whether it is in the ambit of the Commission to approve such Supplementary Power Purchase Agreement, a reference is made to Clause 14.1 of the existing PPAs, which provides that it is between the parties to amend the terms of PPA. Further Clause 14.3.1 provides that a party may waive of any default of break by other party in performance of any of the provision of PPA by writing duly executed by an authorized representative of such party. A supplementary agreement to amend the terms of PPA is permissible as per aforesaid provisions. As the PPAs were approved by this Commission, any amendment in the terms of PPA, through a Supplementary PPA has to be approved by this Commission only.

7. We also find reasons in the submissions made by the Applicant that the reduced tariff is comparable with the competitive tariff in the category which will ultimately benefit the consumers in perpetuity till the life of the stations. Section 86(1)(e) of the Electricity Act, 2003 mandates the State Commission to 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, a percentage of the total consumption of electricity in the area of a distribution licensee. At the same time Section 61 (d) of the Act makes it incumbent upon the State Commission to safeguard the interest of consumers.
8. We have also considered the submissions of the Applicant that the present PPAs are intended to meet the Renewable Purchase Obligation of the applicant and termination of such PPAs would adversely affect their capacity to meet the Renewable Purchase Obligation and may also entail huge financial burden on the applicant, which would ultimately adversely affect the consumers.
9. Further, it is also observed that continuing with the present PPAs with reduction of levelised tariff by Rs. 2.00 shall be in overall benefit of consumers.
10. Evaluating all the submissions made by the Applicant and the legal provisions in this regard the Commission is guided by the provisions of Section 61(d) and Section 86(1)(e) of the Electricity Act, 2003 and hereby approves the Supplementary Power Purchase Agreement dated 03.08.2018, signed by the applicant with M/s SunEdison with the condition that all the terms and requirements of Power Purchase Agreements have been duly complied with.
11. The application is disposed of accordingly.

Sd/-
(B.P. Singh)
Member

Sd/-
(Justice S S Chauhan)
Chairperson