



THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION

LUCKNOW

Petition No. 2099 of 2024

QUORUM

Hon'ble Shri Arvind Kumar, Chairman

Hon'ble Shri Sanjay Kumar Singh, Member

IN THE MATTER OF

Petition under Section with 86(1)(b) of the Electricity Act, 2003 for Approval of Power Sale Agreement dated 15.03.2024 entered into between Noida Power Company Limited and SJVN Limited for procurement of 100 MW Firm and Dispatchable Renewable Power from ISTS-Connected Renewable Energy (RE) Power Projects with Energy Storage System in India under Tariff-based Competitive Bidding on Long-Term Basis.

AND

IN THE MATTER OF

Noida Power Company Limited (NPCL),

Plot No. ESS, Knowledge Park- IV,

Greater Noida, Uttar Pradesh - 201310.

..... Petitioner

Versus

SJVN Limited (SJVNL),

Office Block, Tower - 1, 6th Floor, NBCC Complex,

East Kidwai Nagar, New Delhi - 110023

.....Respondent

FOLLOWING WERE PRESENT

1. Sh. Ajitesh Garg, Advocate, SJVNL
2. Sh. Pramod Behra, Sr. Manager, SJVNL
3. Sh. Altaf Mansoor, Advocate, NPCL
4. Sh. Tanay Chaudhary, Advocate, NPCL
5. Sh. Sanket Srivastava, NPCL
6. Sh. Abhishek Anand, Asst. Manager, NPCL

by





ORDER

(DATE OF HEARING: 05.09.2024)

1. The Petitioner, NPCL has filed this Petition seeking approval for procurement of 100MW Firm and Dispatchable Renewable Power from ISTS-Connected Renewable Energy Projects with Energy Storage System under the PSA dated 15.03.2024 executed between NPCL and SJVNL. The prayers of the Petitioner are as follows:

- (a) Approve the procurement of 100 MW Firm and Dispatchable Renewable Power from ISTS-Connected Renewable Energy (RE) Power Projects with Energy Storage System on long-term basis i.e., for 25 years.
- (b) Approve the Power Sale Agreement executed on 15.03.2024 executed between SJVNL and the Petitioner.
- (c) Condone inadvertent omissions/ errors/ rounding-off differences/ shortcomings, if any and permit the Petitioner to add/ alter this filing and make further submissions as may be required; and
- (d) Pass any other order(s) as this Commission may deem fit in the facts and circumstances of the case.

Brief facts as stated in the Petition.

2. NPCL has following long-term tie-up for supply of power:

- (a) 171MW RTC power from M/s DIL - approximately 158 MW RTC will be available at NPCL bus.
- (b) 25MW Solar Power from M/s Adani Solar Energy Chitrakoot One Limited - approximately 13-14 MW will be available during day hours at NPCL bus.
- (c) 25MW Solar Power from M/s Tata Power Renewable Energy Limited - approximately 13-14 MW will be available during day hours at NPCL bus.
- (d) 10MW Wind Power from M/s PTC India Limited - approximately 6-7 MW RTC will be available at NPCL bus.

3. Central Electricity Authority (CEA) has carried out long-term load forecast of the Petitioner till FY 2033-34. Considering the load forecast of CEA and the current tie-up, there will be a telescopic increase in the deficit from FY 2024-25 onwards. The demand

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projections vis-à-vis the existing power purchase tie-up and the Power deficit for the Petitioner is provided in the below table:

Years	Average Demand (MW)	Peak Demand (MW)	Tie-up (MW)	Average deficit (MW)	Peak deficit (MW)
	A	B	C	D=A-C	E=B-C
2024-25	465	753	372	(93)	(380)
2025-26	531	864	372	(159)	(492)
2026-27	595	973	279	(316)	(694)
2027-28	664	1093	279	(385)	(813)
2028-29	743	1228	279	(464)	(949)
2029-30	825	1371	191	(634)	(1180)
2030-31	909	1517	191	(718)	(1326)
2031-32	991	1663	191	(800)	(1472)
2032-33	1078	1817	191	(887)	(1626)
2033-34	1167	1978	191	(976)	(1787)

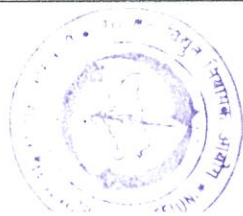
4. The year wise capacity addition suggested by CEA under the outcome of the Resource Adequacy Planning are as under:

FY	COAL	WIND	RTC/FDRE*	SOLAR	BESS
2024-25	0	95	100	0	0
2025-26	0	95	40	100	50
2026-27	50	95	70	50	150
2027-28	50	95	70	50	250
2028-29	50	95	70	50	350
2029-30	50	95	50	50	450
2030-31	50	95	0	50	550
2031-32	50	95	0	50	650
2032-33	100	95	50	100	750
2033-34	100	95	50	100	850

*This requirement is exclusive of the 100 MW of RE-RTC capacity from SJVNL

5. CEA has suggested to contract additional Firm and Dispatchable Renewable Energy (FDRE) from FY 2024-25 onwards. Further, even the Petitioner as an "Obligated Entity" is required to procure upto 15% of its total consumption from renewable sources in accordance with UPERC (Promotion of Green Energy through Renewable Purchase Obligation) Regulations, 2010 as amended from time to time.
6. SJVNL wrote to the Petitioner vide its letters dated 17.08.2023 and 11.09.2023 inter-alia stating as follows:

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- a) SJVN has floated the RfS on 20.06.2023 for Selection of RE Power Developers for Supply of 1500 MW Firm and Dispatchable Power from ISTS- Connected Renewable Energy (RE) Power Projects with Energy Storage System in India under Tariff-based Competitive Bidding on Build-Own Operate (BOO) basis with "GREENSHOE OPTION" of additional capacity up to 1500 MW.
- b) The projects are expected to deliver the RE power within 24 to 30 months after signing of Power Sale Agreement/Power Purchase Agreement.
7. Subsequently, NPCL vide its letter dated 22.09.2023 provided its consent to offtake 100 MW Firm and Dispatchable RE RTC Power with Energy Storage System subject to the approval of this Commission. On 14.12.2023, SJVN informed the Petitioner regarding the discovered tariffs and requested the Petitioner to confirm the quantum of power, so that necessary action regarding signing of the PSA could be taken. The discovered tariffs are as follows:

Sr. No.	Tariff Discovered (Rs./kWh)	Project Capacity Awarded to Bidders				CUF Proposed by Bidders (%)
		Solar (MW)	Wind (MW)	ESS (MWh)	Project/Contracted Capacity (MW)	
1	4.38	225	350	63	250	74.50
2	4.38	200	300	60	200	74
3	4.38	200	403	50	200	75
4	4.39	56	191.4	91	150	60.25
5	4.39	80	160	20	80	80
6	4.39	150	150	30	120	70
7	4.39	200	200	46	184	75

Note: SJVN Trading Margin of Rs.0.07/kWh is applicable in addition to the above discovered tariff.

8. The Commission vide its Order dated 06.03.2024 in Petition No. 1526/2019 granted in principle approval for procurement of long-term power and permitted NPCL to enter PPA with SJVNL and further, directed it to file a separate Petition. Accordingly, NPCL entered into Power Sale Agreement (PSA) with SJVNL on 15.03.2024 for procurement of 100 MW FDRE from ISTS- connected Renewable Energy (RE) Power Projects with Energy Storage System on long-term basis i.e., for 25 years at a tariff of Rs. 4.38/kWh at delivery point under the terms of the PPA between SJVNL and the Renewable Power Developer /Renewable Energy Power Generator ("RPD/REPG") for entire term of agreement. In addition to this a trading margin of Seven (7) paisa/kWh will be paid to SJVNL.

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9. Subsequent to the execution of the PSA, SJVNL has signed PPA dated 03.05.2024 with Tata Power Renewable Energy Limited (TPREL) for the contracted capacity of 460 MW FDRE from ISTS-Connected Renewable Energy Power Projects with Energy Storage System on long-term basis i.e., for 25 years at the tariff of Rs. 4.38/kWh discovered through transparent process of Competitive Bidding. Out of 460 MW, 100 MW is allocated to the NPCL while the remaining is allotted to other utilities. The above PPA dated 03.05.2024 was provided to the Petitioner by SJVNL vide its Letter dated 21.05.2024. As per Article 3.1.2(b) of the PSA, SJVNL has approached the CERC for adoption of tariff in Petition No 79/AT/2024.

Records of Proceedings:

10. On the hearing dated 20.08.2024, Counsel of NPCL submitted that CERC vide its Order dated 01.08.2024 in Petition No. 79/AT/2024 had already adopted the tariff for this power. The Commission admitted the Petition and allowed the Respondent/SJVNL to submit its response within two weeks' time with a copy to the Petitioner. SJVNL was also directed to submit its response on the justification for charging trading margin of 7 paise/unit even though the financial risk of SJVNL was almost mitigated by taking back-to-back PSM from end Discom/NPCL. On 05.09.2024, SJVNL filed its reply.
11. During the hearing dated 05.09.2024, Counsel of NPCL submitted that in response to its letter dated 22.08.2024 to SJVNL requesting reduction of trading margin, SJVNL vide letter dated 29.08.2024 categorically denied any such reduction. Counsel of SJVNL submitted that in terms of Regulation 8 of the CERC Trading Licence Regulations as well as TBCB guidelines, they were bound to charge mutually agreed trading margin of 7 paise/unit with the procurer. He further submitted that CREC has also adopted the tariff along with the agreed trading margin. Counsel of NPCL argued that TBCB guideline under Section 63 of the Electricity Act, 2003 were statutory and they would be requiring this cheaper power @CUF of over 70% to meet their RPO compliance as well. The Commission observed that in the consumer interest, Discom/NPCL should negotiate trading margin for future long-term power procurement with the intermediary procurer/Trading Licensee.
12. On 13.08.2024, NPCL filed its additional submissions wherein it stated that CERC vide its Order dated 01.08.2024 in Petition No. 79/AT/2024 has adopted the tariff of Rs.

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4.38/kWh for TPREL for initial contracted capacity of 200MW & under 'Greenshoe Option' for 260MW. On 05.09.2024, SJVNL filed its reply and has mainly submitted the following:

- a) In terms of Ministry of Power, Govt. of India Guidelines dated 09.06.2023, SJVNL has issued RfS dated 20.06.2023 for selection of RE Power Developers for supply of 1500MW FDRE power. Subsequently, the said RfS was further amended vide Amendment No.1 dated 04.08.2023 with "Greenshoe Option" of additional capacity up to 1500MW. The entire process of tendering is strictly governed by TBCB Guidelines issued under section 63 of the Electricity Act. 2003.
- b) In respect of the tendering process, the bidders have been selected by the process of e-bidding process followed by e-Reverse Auction. After following the due tendering process, SJVNL issued LoAs of total capacity of 2368 MW in favor of the following successful bidders:

Table-I: Towards initial allocated capacity

S. No.	Name of Successful Bidders	Contracted Capacity (MW)	Applicable Tariff including Trading Margin (Rs./kWh)
1.	M/s ACME Cleantech Solutions Pvt. Ltd.	250	4.45
2.	M/s Juniper Green Energy Pvt. Ltd.	200	4.45
3.	M/s Tata Power Renewable Energy Ltd.	200	4.45
4.	M/s Solar Craft Power India 16 Pvt. Ltd.	150	4.46
5.	M/s TEQ Green Power XVI Pvt. Ltd.	80	4.46
6.	M/s Hero Solar Energy Pvt. Ltd.	120	4.46
7.	M/s RENEW Solar Power Pvt. Ltd.	184	4.46

Table-II: Towards allocation of power under Greenshoe Option

S. No.	Name of Successful Bidders	Contracted Capacity (MW)	Applicable Tariff including Trading Margin (Rs./kWh)
1.	M/s ACME Cleantech Solutions Pvt. Ltd.	320	4.45
2.	M/s Juniper Green Energy Pvt. Ltd.	120	4.45
3.	M/s Tata Power Renewable Energy Ltd.	260	4.45
4.	M/s TEQ Green Power XVI Pvt. Ltd.	100	4.45
5.	M/s Hero Solar Energy Pvt. Ltd.	150	4.45
6.	M/s RENEW Solar Power Pvt. Ltd.	234	4.45

- c) The power procured by the SJVNL in terms of the RfS has been allocated to different Discoms. SJVNL has been appointed as an intermediary between supplier and buying entities for procurement and sale of such renewable energy on a back-to-back basis. SJVNL, as a trader/facilitator is charging trading margin of Rs. 0.07/kWh as envisaged under the RfS, strictly in accordance with the TBCB

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Guidelines as well as Regulation 8(1)(d) & (f) of the CERC Trading License Regulations, 2020.

- d) As a trading licensee, SJVNL undertakes significant commercial risk for the entire duration of the PSA spanning over 25 years, which far exceeds any potential earnings over the same period. The intent of the Regulation, particularly the proviso is to cap the trading margin at 2 paise/kWh only in the instances where the Trading Licensee fails to provide the requisite payment security mechanism. In the present case, SJVNL has duly provided a Letter of Credit (LC) as a payment security mechanism under the PPA.
- e) Accordingly, the trading margin of Rs. 0.07/kWh has been mutually agreed between UPPCL and SJVNL, which is in consonance with Regulation 8(1)(d) of the Trading License Regulations as well as TBCB guidelines. Further, SJVNL has kept in mind the capping of Trading margin at Rs. 0.07/kWh as given in the Trading License Regulations 2020 itself. Regulation 8(1)(d) & (f) of the CERC Trading License Regulations, 2020 does not require any prior approval from the Commission rather, Regulation leaves it at the realm of the transacting parties to decide it mutually and amicably.

Analysis & Decision

13. NPCL has filed this Petition seeking approval of procurement of 100MW FDRE Power under Tariff-based Competitive Bidding on long-term basis of 25 years along with approval of PSA dated 15.03.2024. This FDRE power procurement shall facilitate meeting its rising power demand as well as the compliance of RPO targets of NPCL.
14. The CERC vide its Order dated 01.08.2024 in Petition No. 79/AT/2024 has adopted the tariff of Rs. 4.38/kWh for TPREL for total capacity of 460MW from which 100MW would be supplied to NPCL. The relevant extract of the quantum of power executed under the PSA by NPCL as observed in the CERC's Order dated 01.08.2024 are as follows:

"43. The Petitioner has further identified the end beneficiaries and has accordingly executed the Power Sale Agreements. The Petitioner vide affidavit dated 13.4.2024 has filed the Power Sale Agreements (PSAs) executed with the several Distribution Companies for onward sale of power from the successful Bidders. The Petitioner





further filed the amended memo of parties, making the Discoms party to the present Petition. The details of the PSAs executed by the Petitioner as under:

S. No.	Name of Beneficiary	Date of PSA	Quantum	Duration
1.	Maharashtra State Electricity Distribution Co. Ltd.	13.03.2024	534 MW	25 Years
2.	Maharashtra State Electricity Distribution Co. Ltd.	13.03.2024	934 MW	25 Years
3.	Noida Power Company Ltd.	15.03.2024	100 MW	25 Years
4.	Haryana Power Purchase Centre (HPPC)	15.04.2024	800 MW	25 Years
Total			2368 MW	

44. The Petitioner, vide its affidavit dated 28.5.2024, has submitted that the whole process was carried out with transparency, and that all essential compliance was achieved in accordance with the requirements for competitive bidding in 2023 while bearing in mind the mandate of Section 63 of the Act. In view of the aforementioned discussions, it emerges that the selection of the successful bidders has been done, and the tariff of the Firm and Dispatchable RE power projects has been discovered by the Petitioner, SJVN, through a transparent process of competitive bidding in accordance with the guidelines issued under Section 63 of the Act. Therefore, in terms of Section 63 of the Act, the Commission adopts the individual tariff for the firm and dispatchable RE power, including capacity under the Greenshoe option, as agreed by the successful bidders, and for which PPAs have been entered into by the Petitioner, SJVN on the basis of the PSAs with the distribution licensee, which shall remain valid throughout the period covered in the PPAs and PSAs.

45. In view of the aforesaid discussions, it emerges that the selection of the successful bidders has been done, and the tariff of the Renewable Energy Power Developers has been discovered by the petitioner through a transparent process of competitive bidding in accordance with the "Guidelines for Tariff Based Competitive Bidding Process for Procurement of Firm and Dispatchable Power from Grid Connected Renewable Energy Power Projects with Energy Storage Systems" dated 09.06.2023, issued by the Ministry of Power, Government of India under Section 63 of the Act. Therefore, in terms of Section 63 of the Act, the Commission adopts the individual tariff for the RE power Developer, as agreed to by the successful bidder(s) as under:

Table-I: Towards initial allocated capacity

S. No.	Name of Successful Bidder	Contracted Capacity	Applicable Tariff (INR/kWh)
1.	M/s ACME Cleantech Solutions Pvt. Ltd.	250 MW	4.38
2.	M/s Hero Solar Energy Pvt. Ltd.	120 MW	4.39
3.	M/s Juniper Green Energy Pvt. Ltd.	200 MW	4.38
4.	M/s Tata Power Renewable Energy Ltd.	200 MW	4.38
5.	M/s Renewable Solar Power Pvt. Ltd.	184 MW	4.39
6.	M/s Solar Craft Power India 16 Pvt. Ltd.	150 MW	4.39
7.	M/s TEQ Green Power XVI Pvt. Ltd.	80 MW	4.39

Table-II: Towards allocation of power under Green shoe Option

S. No.	Name of Successful Bidder	Contracted Capacity	Applicable Tariff (INR/kWh)
1.	M/s ACME Cleantech Solutions Pvt. Ltd.	320 MW	4.38
2.	M/s Hero Solar Energy Pvt. Ltd.	150 MW	4.38

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3.	M/s Juniper Green Energy Pvt. Ltd.	120 MW	4.38
4.	M/s Tata Power Renewable Energy Ltd.	260 MW	4.38
5.	M/s Renewable Solar Power Pvt. Ltd.	234 MW	4.38
6.	M/s TEQ Green Power XVI Pvt. Ltd.	100 MW	4.38

15. The Commission vide its Order dated 06.03.2024 in Petition No. 1526/2019 filed by NPCL granted in principle approval of this 100MW power. The relevant extract of the said Order dated 06.03.2024 are as under:

"24. The Commission observed that vide its Order for FY 2023-24 dated 24.05.2023, NPCL has approved the **APPC of Rs. 6.06/kWh** in the True up of FY 2021-22 & Rs. 5.84/kWh for the ARR/Tariff of FY 2023-24 at NPCL periphery. As informed by the Petitioner that landed cost at NPCL periphery would be around **5.17/kWh** for the **100MW** Firm and Dispatchable RE RTC power from SJVNL. Hence the procurement of this power will bring down the APPC of the Petitioner.

25. Therefore, taking into consideration the "Guidelines for Resource Adequacy Planning Framework for India" (Resource Adequacy Guidelines) and the submission & arguments of the Petitioner, the Commission grants in principle approval to the procurement of Long-Term Power by the Petitioner. These will be subject to the approval of the Commission. The immediate long term proposal of 100MW of SJVNL on long term basis is also approved in principle & the petitioner is directed to file a separate petition for adoption of Tariff u/s 63 of the Electricity Act, 2003."

16. Section 63 of the Electricity Act, 2003, states that the Commission shall adopt the tariff arrived through transparent process of bidding in accordance with guidelines issued by Central Government. The said provision is reproduced below:

"Section 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."

Commission's View

17. The Commission observes that though NPCL and SJVNL both have relied on CERC Trading Licensee Regulations, 2020 while arguing on 7 paise trading margin, but Regulation 8(1)(d) & (f) leaves it at the realm of the transacting parties to decide it mutually and amicably within the ceiling of 7 paise per unit. This arrangement between Supplier and Procurer through the intermediary being on back-to-back basis, the intermediary's payment risk to the Project Developer would be mitigated through Payment Security Mechanism from Procurer, thus reduction in trading margin may reduce the burden cost of supply to the State consumers. However, the State

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Commission is incapacitated to take any call on interstate trading margin in face of legal dispensation as submitted by the parties. Hence, DURA LEX SED LEX – The law is hard but it is the law.

18. **In view of above, the Commission approves the power procurement of 100 MW FDRE power at the tariff of Rs. 4.38/kWh (@ CUF of 75%) along with trading margin of Rs.0.07/kWh. However, in case of failure by SJVNL to provide an Escrow arrangement or irrevocable, unconditional revolving letter of credit to the Renewable Energy generator, trading margin shall be limited to Rs.0.02/kWh in terms of Regulation 8 of the CERC Trading license Regulations, 2020. The Commission also approves the PSA dated 15.03.2024 executed between NPCL & SJVNL. Further, in the consumer's interest, NPCL should keep in mind the Commission's observations at para 17 above while entering into such power procurement arrangement in future.**

The Petition stands disposed of in terms of above.

(Sanjay Kumar Singh)

Member

(Arvind Kumar)

Chairman

Place: Lucknow

Dated: 26 .09.2024

