

**ODISHA ELECTRICITY REGULATORY COMMISSION
BUDYUT NIYAMAK BHAWAN
PLOT NO.-4, CHUNOKOLI, SAILASHREE VIHAR
BHUBANESWAR - 751021**

**Present: Shri U. N. Behera, Chairperson
 Shri S. K. Parhi, Member
 Shri G. Mohapatra, Member**

Case No. 36/2021

M/s. GRIDCO Ltd.	Petitioner
Vrs.		
DoE, GoO & Others	Respondents

In the matter of: **An application by GRIDCO Limited under Section 86 of the Electricity Act, 2003 read with Section 21 of the Odisha Electricity Reform Act, 1995 and other enabling provisions for seeking approval of the Commission on the Power Sale Agreement (PSA) executed between GRIDCO and SECI Ltd. for procurement of 270 MW solar power under VGF Scheme, Batch-IV under Phase-II of the Jawaharlal Nehru National Solar Mission of Government of India (GoI) towards fulfilling the Renewable Purchase Obligation.**

For Petitioner: Ms. Sasmita Pattajoshi, AGM, GRIDCO.

For Respondent: Ms. Sonali Patnaik, ALO, DoE, GoO; Shri M.G. Ramachandran, Advocate on behalf of SECI; Shri V. Wagle, TPCODL; Shri K. C. Nanda, DGM (F), TPWODL; Ms. Malancha Ghose (RA), TPNODL; and Shri Binod Nayak, AGM (Comm.), TPSODL.

ORDER

Date of Hearing: 24.08.2021

Date of Order: 29.10.2021

This petition has been filed by M/s. GRIDCO Ltd. under Section 86 of the Electricity Act, 2003 read with Section 21 of the Odisha Electricity Reform Act, 1995 and other enabling provisions for seeking approval of the Commission on the Power Sale Agreement (PSA) executed between GRIDCO and SECI Ltd. for procurement of 270 MW solar power under VGF Scheme, Batch-IV under Phase-II of the Jawaharlal Nehru National Solar Mission of Government of India (GoI) towards fulfilling the RPO.

2. The Petitioner – GRIDCO has submitted that to meet the RPO specified by OERC, GRIDCO requisitioned for 500 MW Solar capacity to SECI Ltd. under State specific bidding Scheme of MNRE with VGF support out of which 300 MW Solar capacity was to

be commissioned during FY 2017-18 and balance 200 MW Solar capacity was to be commissioned during FY 2018 -19 under VGF Scheme, Batch- IV with an applicable tariff of Rs 4.50/kWh including the SECI trading margin of Rs 0.07/kWh since it was low cost Solar power available to GRIDCO. Under the State specific bidding Scheme, SECI floated the RfS dated 11.05.2016 for 300 MW Solar capacity for GRIDCO, out of which only 270 MW Solar capacity got materialized. Three Solar Power Developers (SPDs) got shortlisted under the Scheme, i.e., Jyoti Infrastructure Pvt. Ltd. (10 MW), IBC Solar Ventures Pvt. Ltd. (20 MW), and Essel Green Energy Pvt. Ltd. (240 MW) and PPAs were executed between SECI and the SPDs.

3. GRIDCO has further submitted that they have executed the PSA with SECI on 25.10.2016 under VGF Scheme Batch-IV for a contracted capacity of 270 MW to be commissioned in the State within 12 months from the date of signing of PPA between the selected SPDs and SECI, with an applicable tariff of Rs.4.50 /- per kWh for 25 years. The entire solar capacity of 270 MW got commissioned in the state during FY 2018-19. The salient features of the PSA are as under:

- i. The Term of the Agreement shall be for a period of 25 years from the date of CoD of the respective Solar Projects;
- ii. The applicable tariff for the solar power shall be Rs 4.50/kWh including the trading margin of Rs.0.07/kWh fixed for the entire term of this Agreement;
- iii. Minimum energy of 401.131 MU will be made available till the end of 10 years and 377.535 MU as per the PPA signed between SECI and the SPDs for rest of the agreement through SECI, shortfall of which SPDs are liable to pay the compensation;
- iv. The Buying Utility shall be responsible for obtaining and maintaining Long Term Open Access as required and shall bear the STU charges and losses for the power evacuated from the delivery point;
- v. In the event of delay in payment of the Monthly Bill by the Buying Utility 30 days beyond the Due Date, a Late Payment Surcharge shall be payable by the Buying Utility to SECI @ 1.25 % per month on the outstanding amount calculated on a day to day basis.

- vi. The Buying Utility shall provide to SECI an unconditional, revolving and irrevocable Letter of Credit (LC) to be opened and maintained by the Buying Utility;
 - vii. The Buying Utility may identify the energy procured from the SPD Delivery Point to meet its Renewable Purchase Obligation;
 - viii. The Agreement shall come into effect from the date of its execution by the Parties;
 - ix. The Scheduling and Energy Accounting of the solar power shall be as per the provisions of the SECI-SPD PPA and Grid Code;
 - x. From the commencement of supply of power by SECI, the Buying Utility shall pay the monthly bill to SECI, on or before the Due Date.
4. The Respondents – TPNODL, TPSODL and TPWODL having similar views have submitted that giving views on the PSA at such a later stage will hardly have any meaning. The tariff fixed for the solar power appears to be on a higher side and the Petitioner has not clarified whether offer from other developers was sought or not. The details of comparative price analysis with other developers made if any before requisitioning the power to SECI may be submitted before the Commission. They submitted that SECI may be instructed to submit the details of bills presently 270 MW solar developers are raising to SECI and its per unit rate. Similarly, GRIDCO may be instructed to submit the details of bills presently SECI is raising to GRIDCO and its per unit rate.
5. TPNODL, TPSODL and TPWODL further have submitted that as per the ARR of GRIDCO for FY 2021-22, there is about 7068 MUs of surplus energy in the state and considering a demand of 28222 MU, the same works out to about 25%. If one considers the energy from solar projects, the surplus energy would go up correspondingly. This will affect the tariff to the consumers. Therefore, a holistic view may be taken by the Commission before considering any new capacity for purchase of power whether conventional or renewable. The details of present procurement status against the RPO target of OERC and the expected energy purchase with the approval of the PPA in coming five years against the RPO target from all the RE sources under the specific category with the expected CUF must be placed by GRIDCO before Commission. They have further stated that Ministry of Power has issued guidelines to enable DISCOMs to either continue or exit from PPAs with the generators after completion of the term of the PPA, i.e. 25

years or a period specified in the PPA. The lives of the PPAs with the existing Thermal Stations with which GRIDCO has tied up and the impact of terminating the PPAs may also be analyzed keeping in view the additional RE procurement in order to reduce adverse tariff impact on the consumers of the state.

6. The Respondent – TPCODL has submitted that the purchase from above power plants even by SECI would be under the jurisdiction of OERC through SECI, however, some of the clauses in PPA are referring to CERC norms. Since the Appropriate Commission would now be OERC, necessary changes need to be made in the PPA between the developer and SECI to reflect the Appropriate Commission.
7. TPCODL has further submitted that all the projects have got delayed beyond 3 months and are liable to pay LD for delay in commissioning. The applicable tariff can be substantially brought down from the present level of Rs 4.43/kWh. Therefore GRIDCO is requested to claim the applicable LDs and also the reduction in tariff from the developers if not done so far. In addition, as per the data provided by GRIDCO in their petition, there is a shortfall in the generation for FY 2019-20 and hence a compensation is payable. Further, based on the submissions of GRIDCO in other petitions, GRIDCO has not been able to meet its RPO. The PPA or PSA mentions that the compensation shall be equal to the compensation in turn payable by the Buying Utility i.e. GRIDCO for non fulfillment of RPO. No compensation as such has been levied on GRIDCO by the Commission for non-fulfillment of its RPO for FY 2019-20. Since, there is a shortfall in generation by the SPDs, compensation should be payable by them for shortfall in generation for FY 2019-20 and for shortfall in years thereafter. Therefore, GRIDCO is requested to claim appropriate compensation from solar power developer if not done so far.
8. Another Respondent - SECI in its reply has submitted that SECI is supporting the relief sought for by GRIDCO for approval of the said PSA. Regarding the issue of jurisdiction as raised by TPCODL, SECI has submitted that the current arrangement falls within the scope of section 79(1)(b) of the Electricity Act and therefore the jurisdiction is of the Central Commission. Further, SECI is an inter-state trading licensee, and the license has been granted by the Central Commission under section 12 read with section 14 of the Electricity Act, 2003. In terms of Rule 9 of the Electricity Rules, 2005, SECI is entitled to undertake intra-state trading without the need of separate license from the State

Commission. In addition, SECI has been designated a nodal agency by Government of India and has been vested with the authority to sell the quantum of power purchased from the SPDs at any time in other state under the NSM guidelines with the objective to promote renewable power in the country. Therefore, the jurisdiction will be of the Central Commission under Section 79 of the Electricity Act, 2003. SECI does not dispute the fact that this Commission is the Appropriate Commission to exercise jurisdiction in respect of approval of the procurement of power including the aggregate price inclusive of trading margin under the PSA read with PPAs with the SPDs under the NSM guidelines but Central Commission is the Appropriate Commission for matters relating to tariff adoption in the PPA. Therefore, the claims made by TPCODL before this Commission for modification in the PPAs are without any merit.

9. Regarding the issue of liquidated damages, SECI has submitted that the liquidated damages recoverable from the SPDs for delay on the part of SPDs to commission/ declare commercial operation of the power project as per the PPAs, both by way of encashment of performance bank guarantee and by way of reduction in tariff are to be appropriated towards the Payment Security Fund to be maintained by SECI under the guidance of MNRE. The liquidated damages for delay in commissioning has been earmarked in PPAs with SPDs covered under the guidelines for specific purpose of creating an adequate payment security fund to be controlled by the Central Government as a necessary incident of promoting solar power development in an aggressive manner and on pan-India basis. The purpose of the Payment Security Fund is to enable timely payment to SPDs and further to meet any charges incurred by SECI on account of litigation related to implementation of the scheme, the expenses on account of short term open access charges, Unscheduled Interchange charges, fund requirements for furnishing security deposits in the form of Bank Guarantee /Letter of Credits to State transmission Utilities in accordance with BPTA or associated charges etc. While the PPAs executed between SECI and SPDs provide for liquidated damages namely encashment of Bank Guarantee and tariff reduction (if applicable) payable to SECI in case of delay in commissioning of the solar power projects, the PSAs executed between SECI and GRIDCO do not envisage any such compensation.
10. SECI has further submitted that the PPAs expressly provide that the pre fixed tariff payable by SECI to SPDs as stipulated in Article 9.1 of the PPAs shall be reduced at the

rate of Rs.0.50 paise/ kWh per day of delay in case the commissioning of the power project is delayed beyond 3 months from SCD. The PSA provides that the said tariff is fixed for the entire duration of the PSA and, therefore, is not subject to any condition or qualification. The PSA clearly states '*The Buying Utility shall make the tariff payments to SECI as per the provisions of this Agreement*'. Therefore, no such reduction in tariff is applicable to GRIDCO under the PSA and relief admissible to GRIDCO, if any, has to be considered within the confines of the PSA. GRIDCO cannot claim under the PSA any part of the liquidated damages namely encashment of Performance Bank Guarantee or reduction in tariff (if any) for delay in commissioning provided in the PPAs. Further, the calculation of liquidated damages given by TPCODL in its reply is wrong and based on incorrect assumption. The applicable tariff of Rs.4.50/ kWh including the trading margin of Rs.0.07/ kWh was the lowest price offered to GRIDCO under the "5000 MW Grid connected SPV Power Project under Phase –II, Batch-IV" of MNRE VGF Scheme in comparison to both CERC and OERC generic tariff for the FY 2015-16 and FY 2016-17. As per the MNRE Phase-II, Batch-IV VGF Scheme document, passing of the benefit of penalty towards the Liquidated Damages for delay in commencement of supply of power to the Buying Entity is not part of the PSA.

11. Regarding shortfall in generation, SECI has submitted that it has written letters dated 19.02.2021 to the SPDs where it has intimated that minimum energy as per Article 4.4.1 of the PPA has not been met by the concerned SPD, sought for the reasons for shortfall in generation and stated that any financial implications arising due to less generation will be the sole responsibility of the concerned SPD. Till date, SECI has not received any response from the above SPDs in this regard. Further, the claim for shortfall in generation to be made by GRIDCO has to be an independent proceeding subsequent to the Order to be passed in the present petition in regard to the approval to the procurement of power sought by GRIDCO. GRIDCO may initiate fresh proceedings impleading SECI and the SPDs identified for supply of power to GRIDCO under the PSA as parties to facilitate effective adjudication of issues arising on the shortfall of generation and consequential determination and payment of the compensation. In the fresh proceedings, GRIDCO may place on record the details of the compensation including REC paid by GRIDCO, proportional to the amount of shortfall of solar energy during the contract year, as ordered by the Commission towards non-meeting of RPOs for FY 2019-20 for claiming

compensation from the SPDs on account of shortfall in generation in terms of Article 6.8.3 of the PSA. According to the Article 6.8.3 of the said PSA, minimum energy of 401.131 MU per annum will be made available till the end of 10 years and 377.535 MU per annum for the rest of the term of the Agreement, which is also in conformity with the PPA signed between SECI and the SPDs, for shortfall of which, SPDs are liable to pay the compensation and shall duly pay such compensation to SECI to enable SECI to remit the amount to Buying Utilities. During FY 2019-20 and FY 2020-21, the energy generated from the 270 MW SPV Project is 238.88 MU and 301.30 MU respectively resulting in shortfall of 162.248 MU during FY 2019-20 and 99.83 MU during FY 2020-21. Though GRIDCO has recorded the shortfall by SECI under the said PSA, the same will be claimed as per Article 6.8.3 of the PSA following the approval of the PSA by OERC and the compensation if any, as will be directed by the Commission.

12. In another submission, GRIDCO has submitted that as per the reply of SECI, commissioning of all the solar projects have been delayed beyond the SCD, i.e. 22.12.2017 and Liquidated Damage charges have been levied to the SPDs as per the terms and conditions of the PPAs in terms of encashment of Performance BG and reduction of tariff. In considering the 'back to back' arrangement with reference to the PPAs dated 22.12.2016 and the PSA dated 25.10.2016, GRIDCO, being the sole beneficiary is entitled for the benefit of penalty towards the Liquidated Damages for delay in commencement of supply of power though it is not part of the PSA dated 25.10.2016. For any reduction of tariff on account of the 6 nos. of SPDs under the terms of the PPAs, the reduced tariff to SECI should be passed on to GRIDCO as the sole beneficiary.
13. GRIDCO has further submitted that as per Article 6.8.3 of the said PSA, minimum energy of 401.131 MU will be made available till the end of 10 years and 377.535 MU for the rest of the term of the Agreement, which is also in conformity with the PPA signed between SECI and the SPDs, shortfall of which, SPDs are liable to pay the compensation to SECI, to enable SECI to remit the said amount to GRIDCO. During FY 2019-20 and FY 2020-21, the energy generated from the 270 MW SPV Project is 238.88 MU and 301.30 MU respectively resulting in shortfall of 162.248 MU during FY 2019-20 and 99.83 MU during FY 2020-21. From the last 2 years performance, it is observed that Solar projects of M/s Vento Power Pvt. Ltd., M/s Vento Power Infra Pvt. Ltd., M/s Vento Energy Infra Pvt. Ltd. & M/s Vento Power Projects Pvt. Ltd. are not generating the minimum guaranteed energy

of 58.704 MUs as per the terms and conditions of the PPAs executed with SECI. GRIDCO has recorded the shortfall and has claimed compensation as per Article 6.8.3 of the PSA.

14. The Petitioner, GRIDCO has prayed before the Commission to consider for approval of the PSA executed with SECI Ltd. on 25.10.2016 for procurement of 270 MW solar power under VGF scheme, Batch-IV through SECI under JNNSM for fulfilling the RPO of GRIDCO. The Petitioner has further prayed for reduction of tariff payable to SECI under passing of the benefit of Liquidated damages for delay in commissioning of the solar projects and issue directions for payment of compensation due to shortfall in guaranteed generation as per the terms and conditions of the PSA.
15. Heard the Parties. The Commission has observed that as per the NSM Phase II Implementation Guidelines issued by MNRE, Government of India in March 2016, penalty shall be levied by SECI in case there is delay in commissioning of the selected projects with which SECI has signed the PPA under the NSM Scheme. Further, the Guideline states that *“SECI shall open a separate flexi bank account and the funds shall be deposited and operated as per MNRE approved guidelines.”* It is observed that the Guidelines do not specify claims for liquidated damages to be made by the entity purchasing power from SECI in case there is delay in commissioning. Further, in their submissions, SECI has stated that the liquidated damages for delay in commissioning has been earmarked in PPAs with SPDs covered under the guidelines of MNRE for specific purpose of creating an adequate payment security fund to be controlled by the Central Government as a necessary incident of promoting solar power development in an aggressive manner and on pan-India basis. We feel that the benefit of the recovered penalty and the reduced tariff should be passed on to GRIDCO. GRIDCO is directed to take up the matter with MNRE in coordination with the State Government to avail these benefits including reduction in tariff for delay in commissioning of the said solar projects.
16. The Commission further observed that during FY 2019-20 and FY 2020-21, the energy generated from the 270 MW SPV Project is 238.88 MU and 301.30 MU respectively resulting in shortfall of 162.248 MU during FY 2019-20 and 99.83 MU during FY 2020-21. Article 6.8.3 of the PSA states that:

“6.8.3 SECI, at any time during a Contract Year, shall not be obligated to purchase any additional energy from the SPDs beyond 519.111 Million kWh (MU) as per PPAs signed with SECI for solar PV projects. If for any Contract Year, it is found that

the SPDs have not been able to generate minimum energy of 401.131 Million kWh(MU) till the end of 10 years and 377.535 Million kWh (MU) for the rest of the term of the Agreement, as per PPA signed with SECI for solar PV projects, on account of reasons solely attributable to the SPD, the noncompliance by SPD shall make SPD liable to pay the compensation and shall duly pay such compensation to SECI to enable SECI to remit the amount to Buying Utilities. This compensation shall be equal to the compensation payable (including RECs) by the Buying Utility towards non-meeting of RPOs, if such compensation is ordered by the State Commission and proportional to the amount of shortfall in solar energy during the Contract Year. This compensation shall be subject to the adjustment made in energy generated in case of non-availability of grid for evacuation which is beyond the control of SPD and/or abnormally low annual Global Horizontal Irradiance year and/or Force Majeure identified under PPA with SECI affecting supply of solar power by SPD.”

The PPAs executed by SECI with the developers deals with compensation due to shortfall in generation is as under:

“... The compensation shall be applied to the amount of shortfall in generation during the Contract Year. The amount of compensation shall be equal to the compensation payable (including RECs) by the Buying Utilities towards non-meeting of RPOs, if such compensation is ordered by the State Commission. However, this compensation shall not be applicable in events of Force Majeure identified under PPA with SECI affecting supply of solar power by SPD.”

The Commission has observed that the mechanism for compensation due to shortfall in generation is similar in both PPA and PSA. As per the signed PSA, this compensation shall be equal to the compensation payable (including RECs) by GRIDCO towards non-meeting of RPO, if such compensation is ordered by the State Commission and proportional to the amount of shortfall in solar energy during the Contract Year. The Commission observed that no penalty has been levied on GRIDCO till now for not meeting the RPO for FY 2019-20 and 2020-21. Hence, GRIDCO may claim such compensation for shortfall in solar generation only when penalty is levied on it.

17. With the above observations and directions, the Commission approves the aforesaid PSA executed between SECI and GRIDCO on 25.10.2016 for procurement of 270 MW solar power by GRIDCO under VGF scheme, Batch-IV through SECI under JNNSM for fulfilling its RPO. Further, the Commission directs GRIDCO to carefully analyze the terms and conditions and the implications before signing any PPA or PSA in future. Moreover,

any agreement or disagreement between the parties should be resolved before signing of the PPA or PSA.

18. The case is accordingly disposed of.

Sd/-

(G. Mohapatra)
Member

Sd/-

(S. K. Parhi)
Member

Sd/-

(U. N. Behera)
Chairperson