

**ODISHA ELECTRICITY REGULATORY COMMISSION  
BIDYUT NIYAMAK BHAWAN  
PLOT NO.-4, CHUNUKOLI, SHAILASHREE VIHAR  
BHUBANESWAR - 751 021**

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

**Case No. 55/2018**

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

**In the matter of:**      **An application under the Guidelines for Tariff Based Competitive Bidding Process for procurement of power from Grid connected Solar PV Power Projects issued by MoP, GoI under Section 63 of the Electricity Act, 2003 seeking deviations from the aforementioned guidelines.**

**For Petitioner:**      Shri Deep Rao, Advocate, Shri S. K. Tripathy, Director, on behalf of M/s. GEDCOL.

**For Respondents:**      Shri Manas Kumar Das, Director (Comm.), GRIDCO and Ms. Niharika Pattnaik, ALO, DoE, GoO.

**ORDER**

**Date of hearing: 22.01.2019**

**Date of order: 05.02.2020**

This petition has been filed by Green Energy Development Corporation of Odisha Ltd. (GEDCOL) for approval of the deviations from the Standard Bidding Guidelines (hereinafter SBG) issued by the Ministry of Power, Government of India (Resolution No. 23/27/2017-R&R-1. PREAMBLE) for Tariff based competitive bidding process for procurement of power from Grid connected Solar PV Power Projects under Section 63 of the Electricity Act, 2003. These guidelines are applicable for long term procurement of electricity by procurers from Grid connected Solar PV Power Projects having a size of 5 MW and above through competitive bidding.

2. The Ministry of New and Renewable Energy (MNRE), Government of India had approved the proposal for development of solar power parks spread over several sites in Odisha with a cumulative installed capacity of 1000 MW in October, 2015. The MNRE had appointed GEDCOL as the Solar Power Park Developer (SPPD) for the above project. This project is intended to be developed in two phases of 275 MW (Phase-I) and 725 MW (Phase-II). GRIDCO has agreed to purchase 500 MW of power

from the Solar Park Project. The projects would involve the selection of a private developer(s) through a competitive bidding process, who will install and operate grid connected ground mounted solar PV panels on the sites.

3. As per the Standard Bidding Guidelines (SBG), the Government of India is required to release Standard Bidding Documents (SBD) in order to achieve standardization of key bidding documents. The Government of India is yet to issue SBD. The petitioner GEDCOL are in the process of preparing key bidding documents which are consistent with the SBG. The Guideline-18 of the SBG allows for deviations from the process laid down therein and also provides that any deviation from SBG are subject to prior approval of the Appropriate Commission where the procurer DISCOM is located.
4. In the present petition, GEDCOL has sought some project specific deviations from the SBG in order to make the project more bankable and financially viable so that the private bidders can offer lower tariff. The deviations are sought regarding the following:
  - (a) End Procurer - GRIDCO being treated as “End Procurer” for the purposes of the project as defined under SBG.
  - (b) Payment Security Mechanism - Replacement of payment security fund with a default Escrow mechanism to be opened and maintained by GRIDCO in favour of the solar power generator.
  - (c) Change in Law resulting in any financial loss/gain to the Solar Power Generators- Allowing for a threshold limit to be incorporated in the PPA where both the financial losses or gains upto such threshold limit shall be to the solar power generator’s account.
  - (d) Metering Point - Allowing the state metering norms to be followed in the present case since they are also in consonance with the CEA (Installation and Operation of Meters) Regulations, 2006.
  - (e) Tripartite PPA – In order to apportion the risk and accountability, the GEDCOL should be a signatory to the PPA to be signed between the solar power generator and GRIDCO for the project.
  - (f) Discrepancies between Odisha RE Policy and the Solar Bidding Guidelines – In the event of any discrepancy between the RE Policy and SBG, the provisions of the SBG will prevail.

5. The petitioner, GEDCOL filed another application dt.14.12.2018 regarding certain additional deviations which are described briefly as below:

- (a) Applicability of lock-in-requirements to listed companies.

As per the Solar Bidding Guidelines, if the successful bidder being a single company is executing PPA itself then it should ensure that its promoters do not cede control of the successful bidder until the expiry of a period of one year after the commissioning of the unit unless permitted otherwise by the procurer.

The SBG has not anticipated the difficulty in applicability of this provision to listed companies whose shareholding is spread among different types of shareholders and the shares of such company are freely traded on market, as no restriction can be imposed on sale and purchase of such shares. The petitioner has therefore prayed that the Commission may consider exempting a listed company from requiring their shareholders/promoters to maintain control for the lock-in-period if it is declared the successful bidder.

- (b) In the SBG, the term “Control” is defined as “the ownership, directly or indirectly, of more than 50% (fifty percent) of the voting shares of such company or the right to appoint majority directors”. This definition would need to be widened to account for entities other than companies. The term control should also be defined in the context of a person which also includes companies but is not limited to it. Secondly the definition of control should also recognize instances where such control is exercised through the power to direct the management and policies of an entity by operation of law, contract and otherwise. The definition of control to be incorporated in PPA and RFP with respect to any person means the ownership, directly or indirectly, of more than 50% (fifty percent) of the voting shares of such person or the right to appoint majority directors or direct the management and policies of such person by operation of law, contract or otherwise.

- (c) Reduction in capacity on failure to handover land to Solar Power Developer (herein SPD). - As per the SBG, the possession of 90% of the land identified for a project must be handed over to the SPD within one month from the execution of the PPA and the remaining 10% of the land within the following two months.

The SBG further states that any delay in handing over the land to the SPD beyond the prescribed timelines will result in a corresponding extension in timeline for the financial closure and scheduled commissioning date of the unit/project provided that the maximum extension will be limited to a period of one year for the remaining 10% of the land to be handed over to the SPD. The SBG is silent on consequences of a delay in handing over the land which extends beyond one year.

The petitioner has therefore proposed that if GEDCOL fails to handover the balance 10% of the land to the SPD within 12 months from the signing of the PPA, then SPD may within 30 days from the expiry of such 12 months' period, request GEDCOL and the Procurer to reduce the capacity of the unit proportionate to the percentage of the land provided by GEDCOL.

(d) Conditions subsequent under the PPA

The SBGs contemplate only two conditions subsequent – (i) handover of land to the SPD within the prescribed timelines; and (ii) achievement of financial closure by SPD within 12 months from the signing of the PPA.

In addition to these conditions, petitioner proposed that certain additional conditions be prescribed. Such conditions include GEDCOL's obligation to grant a no objection certificate to the SPD allowing it to create security on the land in favour of its lenders and the SPD's obligation to obtain all applicable permits within 180 days from the signing of the PPA. These conditions are intended to ensure project bankability.

(e) Extension of commissioning timelines

The SBG contemplate the extension of timelines to achieve financial closure and consequently, scheduled commissioning date only on account of delay in handing over land to the SPD. To ensure project bankability, the petitioner has proposed that the PPA should provide that the SPD's obligation to meet its timelines for fulfilling its conditions subsequent (including achieving financial closure) and consequently, the commissioning timelines as well as GEDCOL's obligation to meet its timelines for fulfilling its conditions subsequent should also be subject to delays arising from conditions outside control of the parties (such as force majeure, change in law or reasons solely attributable to the

counterparty (ies). Further, if GEDCOL fails to fulfill its conditions subsequent, it is proposed that the SPD should be entitled to a day to day extension in the scheduled commissioning date, up to a period of 150 days. Additionally, GEDCOL propose that the PPA should allow for the extension of commissioning timelines based on mutual agreement between the parties to the PPA, without imposition of liquidated damages on the SPD.

(f) Applicability of bid responsiveness conditions to affiliates of the bidder

Guideline 7.2.2(a)(ii) of the SBG allows a bidder to rely upon the net worth of its affiliates to meet the financial qualification criteria, as prescribed in the RFP. If the bidder chooses to rely upon the net worth of its affiliate then such affiliate must undertake to contribute the required equity funding and submit the performance bank guarantees, as required under the RFP, in case the bidder fails to do so.

6. The petitioner GEDCOL made another submission dated 19/01/19 seeking additional deviations to the SBG, due to subsequent developments. A meeting was held on 14.01.2019 between relevant officials of DoE, GoO, GRIDCO and GEDCOL wherein certain issues were discussed, agreed and accordingly additional deviations are sought which are given as under:

- (a) In addition to the letter of credit and escrow arrangement, the state Government guarantee is to be provided to the Solar power generators under the PPA to be executed with the procurer, GRIDCO.
- (b) SBG lays down procedure to be followed and generation compensation to be provided to the SPD for off-take constraints.

i. Lack of readiness of transmission/power evacuation infrastructure.

In case of transmission/ power evacuation infrastructure unavailability after the scheduled commissioning date, the solar power generator should get a day to day extension to the scheduled commissioning date so that the PPA terms remain unchanged and the only loss to the SPD would be the net present value of the generation loss.

In addition, a long stop date may be set out, post which if transmission/ power evacuation is still not ready, the SPD should have the right to terminate the PPA.

ii. Grid Unavailability

For any back downs that occur beyond 50 generation hours in a year, the SPD should be compensated with 100% PPA tariff and not at 50% of the PPA tariff.

iii. Timeline for construction and Financial closure

The SBG guidelines were amended in the two aspects i.e reducing financial closure to 9 months from 12 months and reduction of timelines for completion of project to 15 months from 21 months from the date of signing the PPA. Since the present project is currently in a near final stage reducing these guidelines at this stage would lead to renegotiations of pre agreed project schedules and thus it would be in the interest of the project to adhere to the pre agreed time lines.

7. The Commission again heard the case on 15.01.2019 and in its interim order dated 21.01.2019 directed GEDCOL to file its written submission regarding its authority as per Electricity Act 2003 for pursuing the matter. M/s. GRIDCO was also directed to file an affidavit regarding the authorization given to GEDCOL. The legal position of M/s GEDCOL as developer as per the Act also needed to be clarified.
8. The GEDCOL in its affidavit dated 17.01.2019 submitted the following as compliance to the commission's direction:
  - a. GEDCOL has been designated to plan and develop a solar power park with capacity of 275 MW which will be competitively bid out in accordance with SBG. The petitioner is the nodal agency which will conduct the bidding process to identify the SBDs who submit the most competitive bids, playing a critical role in GRIDCO's procurement process.
  - b. GRIDCO is the state designated Entity through DoE, GoO resolution dated 17<sup>th</sup> August 2006 for execution of PPAs with generators and distribution utilities can buy power solely from GRIDCO through bulk supply agreements. GRIDCO therefore in its capacity as the nodal agency in Odisha is to conduct such bid process.
  - c. The petitioner has been formed as 100% subsidiary company of OHPC through a notification of DOE, GoO dated 15.03.2013 in order to promote investment in RE and green energy sources and to develop and execute special RE project on

commercial and demonstration basis. It is also mandated to plan, organize, implement, maintain and operate RE projects to generate and sell electric power anywhere in India and to develop infrastructure related to RE projects.

The development of a solar park as is contemplated in the present bid process constitutes the development of infrastructure related to renewable energy projects which is its clear mandate as per GoO notification dated 15.03.2013.

- d. GoO through another notification dated 22.08.2013 declared GEDCOL as the nodal agency for the development of all grid connected solar energy projects in Odisha. In the said notification, under the scope of operation, GEDCOL is to generate solar power on its own and facilitate the entrepreneurs to set up solar plant and to receive applications from the investors and to facilitate them to obtain required clearance from various departments or authorities concerned within a time frame.
- e. GEDCOL's role is also envisaged in the Odisha Renewable Energy Policy, 2016 (herein OREP) in this regard which are described as follows:
  - GEDCOL is the nodal agency for the development of all solar and hybrid power projects of 1 MW and above capacity in Odisha.
  - GoO in its notification dated 10.12.2018 states that GEDCOL remains the State designated Entity/ state Level Nodal Agency under OREP, for promotion, clearance, facilitation and recommendation of initiatives and other support measures provided under OREP including alienation/ acquisition and leasing of quantum of land for all on-grid solar and hybrid projects of 1MW capacity developed under OREP.
  - OREP provides for setting up of solar parks through GEDCOL under Solar park model and Private Developer Park model. Under former model GEDCOL is the implementing agency and is responsible for all infrastructure facilities including land and power evacuation from the solar park.
  - The solar park scheme provides that solar parks are to be developed in collaboration with state governments and their agencies and sets out several modes of setting up these solar parks. Under Model it is

provided that the state designated nodal agency shall undertake the development and management of the solar park.

- In the SBG, the term Procurer means the distribution Licensee or its Authorised representatives or an Intermediary procurer. The Authorised representative of the procurer (one who signs the PPA) is the agency carrying out the tendering/ bidding process and it will be on behalf of the procurer and shall be responsible for fulfilling all the obligations imposed on the procurer during the bidding phase in accordance with these guidelines.
  - As per the above provisions, the petitioner GEDCOL shall be deemed to be the authorized representative of the procurer (GRIDCO) and will on behalf of the procurer be responsible for fulfilling all the obligations imposed on the procurer during the bidding phase in accordance with these guidelines.
  - The SBG further set out the activities to be carried out by the procurer during the bidding phase which includes preparing the bid documents and seeking the approval of the appropriate Commission (OERC in instant case) for any deviations in the bid documents from the provisions of the SBG. Guidelines provide preparation for inviting bid and project preparedness.
  - By virtue of these provisions of SBG that the petitioner has filed the current petition before the OERC for approval of deviations from the provisions set out in SBG.
9. Procurer, GRIDCO, on oath before OERC has authorized GEDCOL to carry out bidding process on their behalf as their Authorised representative under SBG and has recorded their no objection to the deviations sought by GEDCOL.
10. GRIDCO in its compliance to the commission's direction filed their submission dated 16.01.2019 which is briefed as follows:
- GRIDCO is procuring solar power from a total capacity of 408 MW out of which 75 MW solar capacity is from outside the state and rest 333 MW is commissioned in the state.

- As per Odisha Renewable Energy Policy 2016, 2200 MW solar capacity will be commissioned in the state by 2022 for fulfilling RPO.
  - GRIDCO in principle has agreed to procure the entire 275 MW solar park project to be implemented by GEDCOL in phase one out of the total allocated capacity of 1000MW under MNRE solar park project scheme.
  - GEDCOL is the Solar park Project Developer (SPPD) who will develop all the infrastructure required for the solar park project and also do the bidding process to select the successful Solar Power Generators and GRIDCO as the end procurer will do power procurement contracts along with GEDCOL in a tri-partite agreement.
  - GEDCOL as the state nodal agency is deemed to be authorized representative of the procurer, GRIDCO, who shall be on behalf of GRIDCO shall be responsible for fulfilling all obligations during the bidding phase.
  - Under OREP, Solar park projects can be developed by GEDCOL to meet the Solar Power Obligation requirements of GRIDCO. GRIDCO has no objection that GEDCOL being the Solar park Project Developer (SPPD) for the 275 MW solar power park project to be implemented in phase one and GEDCOL as the authorized representatives of GRIDCO to carry out all the required activities as provided in the MoP, GoI resolution dated 3.08.2017.
  - GRIDCO has no objection in any points of the Petition of GEDCOL as these points were mutually discussed, deliberated and agreed and GRIDCO pray to allow the deviations from the SBG of MoP, GoI dated 03.08.2017. The necessary deviations are sought to have the 1st solar park project in Odisha and from the state prospective for the public interest of Odisha.
  - This response of GRIDCO may be considered as the joint prayer of GRIDCO and GEDCOL for all intents and purposes in this said case and no additional submission is required by GRIDCO on the merit of the case.
11. The Commission in its interim order dated 24.01.2019 directed GEDCOL to submit justification for the deviation sought for listed companies from the applicability of law – in requirement stipulated under the clause 13 of the solar bidding guidelines. The petitioner was also directed to submit the list of precedence of such relaxation granted

in respect of the listed companies along with justification of all proposed deviations from MoP guidelines by 24.01.2019.

12. The petitioner GEDCOL in its compliance to such direction of the Commission submitted the following:

- The SBG contemplate lock in period requirement for the successful bidder not to cede control until the expiry of 1 year after commissioning of the Unit unless otherwise permitted by the procurer.
- The SBG do not contemplate the applicability of this provision to listed companies whose shareholding is spread among different types of shareholders and the shares of such company are freely traded on market, as no restriction can be imposed on sale and purchase of such shares. The Commission may consider exempting a listed company from requiring their shareholders/promoters to maintain control for the lock-in-period if it is declared the successful bidder.
- Precedent for the deviation sought for the listed companies is submitted in the case of similarly placed solar project such as Dondaicha Solar park, Maharashtra, Amguri Solar park, Assam and Rewa Ultra Mega Solar project, MP.

13. We heard the matter in detail. This petition has been filed by Green Energy Development Corporation of Odisha Ltd. (GEDCOL) for grant of approval to the deviations from the Solar Bidding Guidelines (SBG) issued by the Ministry of Power, Government of India (Resolution No.23/27/2017-R&R-1. Preamble) for Tariff based competitive bidding process for procurement of power from Grid connected Solar PV Power Projects under Section 63 of the Electricity Act, 2003. These guidelines are applicable to long term procurement of electricity by procurers from Grid connected Solar PV Power Projects having a size of 5 MW and above through competitive bidding.

14. The Ministry of New & Renewable Energy (MNRE), Government of India had approved for the development of a solar power park spread over several sites in Odisha, with a cumulative installed capacity of 1000 MW in October, 2015. The MNRE has appointed GEDCOL as the Solar Power Park Developer (SPPD) for the project. This project is intended to be developed in two phases of 275 MW (Phase-I) and 725 MW (Phase-II). GRIDCO has agreed to purchase 500 MW of power from the Solar Park Project. The projects would involve the selection of a private developer(s) through a

competitive bidding process, who will install and operate grid connected ground mounted solar PV panels on the sites.

15. As per the SBG, the Government of India is required to release Standard Bidding Documents (SBD) in order to achieve standardization of key bidding documents. The Government of India is yet to issue SBD. The petitioner GEDCOL are in the process of preparing key bidding documents which are consistent with the SBG. The clause 18 of the SBG allows for deviations from the process laid down therein and provides that any deviation from SBG are subject to prior approval of the Appropriate Commission where the procurer DISCOM is located.
16. In the present petition, GEDCOL has sought some projects specific deviations from the SBG in order to make the project more bankable, financially viable and ensure availability of power at low tariff from private bidders.
17. The Commission during the course of hearing sought certain clarifications the compliance of which has been submitted by the petitioner and other parties. The Commission needs to satisfy itself on such queries and these are discussed as below:

**(a) Authority of the petitioner, the GEDCOL under the Electricity Act 2003 for handling the matter.**

The petitioner in this regard in its filing submitted that it has been formed as 100% subsidiary company of OHPC through a notification of DOE, GoO dated 15.03.2013 in order to promote investment in RE and green energy sources and to develop and execute special RE projects on commercial and demonstration basis. It is also mandated to plan, organize, implement, maintain and operate RE projects to generate and sell electric power anywhere in India and to develop infrastructure related to RE projects. GoO through another notification dated 22.08.2013 declared GEDCOL as the nodal agency for the development of all grid connected solar energy projects in Odisha. In the said notification, under the scope of operation, the GEDCOL can generate solar power on its own and also shall facilitate the entrepreneurs to set up solar plant. It shall also guide and assist investors to set up RE related industries in the state and to receive applications from the investors and facilitate required clearance from various departments or authorities concerned within a time frame in this regard.

GRIDCO is the state designated entity through DoE, GoO resolution dated 17<sup>th</sup> August 2006 for execution of PPAs with generators and distribution utilities can buy power solely from GRIDCO through bulk supply agreements. GRIDCO therefore in its capacity as the nodal agency in Odisha is to conduct such bid process. In the present case GEDCOL has been designated to plan and develop a solar power park with capacity of 275 MW to conduct the bidding process to identify the developer under competitive bids, playing a critical role in GRIDCO's procurement process.

**(b) GRIDCO's authorization given to GEDCOL for handling the matter.**

GRIDCO in its filing submitted that it has no objection in any points of the Petition of GEDCOL as these points were mutually discussed, deliberated and agreed and it prayed to allow the deviations from the SBG of MoP, GoI dated 03.08.2017. The necessary deviations have been sought to have the 1<sup>st</sup> solar park project in Odisha and from the state prospective for the public interest of Odisha. This response of GRIDCO may be considered as the joint prayer of GRIDCO and GEDCOL for all intents and purposes in this case and no additional submission is required by GRIDCO on the merit of the case.

GRIDCO in principle agreed to procure the entire 275 MW from the solar park project to be implemented by GEDCOL in phase one out of the total allocated capacity of 1000MW under MNRE solar park project scheme. GEDCOL is the Solar park Project Developer (SPPD) who will develop all the infrastructure required for the solar park project and also do the bidding process to select the successful Solar Power Generators and GRIDCO as the end procurer will do power procurement contracts along with GEDCOL in a tri-partite agreement. GEDCOL, the state nodal agency is deemed to be authorized representative of the procurer GRIDCO and shall be on behalf of GRIDCO responsible for fulfilling all obligations during the bidding phase.

18. The Commission after going through the submissions of both GEDCOL and GRIDCO is satisfied that GEDCOL is the authorized representative of the end procurer GRIDCO as envisaged in the solar bidding documents notified by MoP, GoI issued under Section 63 of the Electricity Act, 2003. GEDCOL has been declared as nodal agency by the Government of Odisha and it has been mandated under Odisha Renewable Energy Policy, 2016 as Solar Park Project Developer (SPPD) who will develop all the

infrastructure required for the solar park project and also do the bidding process to select the successful Solar Power Generators.

GRIDCO the end procurer has also submitted that it has no objection in any points of the Petition of GEDCOL as these points were mutually discussed, deliberated and agreed. GRIDCO has also submitted that this petition may be considered as the joint prayer of GRIDCO and GEDCOL for all intents and purposes in this case and no additional submission is required to be made by GRIDCO on the merit of the case.

19. We examined the Standard Bidding Guideline issued by the Government of India. The Standard Bidding Guideline at para 2.1 (b) also recognizes an authorized representative of the procurer which is an agency for carrying out tendering and bidding process and can be different from procurer. Therefore, the status of GEDCOL as authorized representative of GRIDCO is established. Accordingly Commission now considers the deviations sought from the standard bidding guidelines issued by Government of India by GEDCOL.

20. Now we take up the deviations sought:

(a) **End Procurer** - GRIDCO being treated as “End Procurer” for the purposes of the project as defined under SBG.

The SBG defines intermediary procurer as the one who aggregates the solar power purchased from different solar power generators and sells it to distribution licensee. Such procurer would be a trader buying power from solar power generators and selling the same to the distribution licensees who shall be the end procurer.

In case of Odisha, GRIDCO is a deemed trading licensee under the 5<sup>th</sup> proviso to section 14 of the EA 2003. However, GRIDCO performs the function of bulk purchaser in the interest of the state under the single buyer model. GRIDCO operates under the existing Bulk Supply Agreement (BSA) with DISCOMs who are obligated to purchase power solely from GRIDCO. The Commission accordingly determines the price at which GRIDCO would supply power to the distribution utilities through proceedings of Aggregate Revenue Requirement (ARR) of GRIDCO annually.

Since GRIDCO procures the power from generators in Odisha on behalf of DISCOM, it should serve as the End Procurer and accordingly we allow this deviation.

- (b) **Payment Security Mechanism** - Replacement of payment security fund with a default Escrow mechanism to be opened and maintained by GRIDCO in favour of the solar power generator.

The SBG mandates the payment security to be provided by the End Procurer consisting of revolving letter of credit, a payment security fund to support payment for at least three months and state Government guarantee.

The existing escrow arrangement which GRIDCO operates with Generators of the state provides adequate payment security mechanism similar to payment security fund. Additional security in the shape of Government of Odisha guarantee will be available that will provide adequate security mechanism. Since, these mechanisms adequately takes care of payment security, the deviation sought is allowed.

- (c) **Change in Law resulting in any financial loss/gain to the Solar Power Generators**- Allowing for a threshold limit to be incorporated in the PPA where both the financial losses or gains upto such threshold limit shall be to the solar power generator's account.

Since the proposed threshold limit shall be put in the PPA for approval of the Commission, this deviation is accordingly allowed.

- (d) **Metering Point** - Allowing the state metering norms to be followed for the project as they are also in consonance with the CEA (Installation and Operation of Meters) Regulations, 2006.

This deviation is allowed.

- (e) **Tripartite PPA** – In order to apportion the risk and accountability, the GEDCOL should be a signatory to the PPA to be signed between the solar power generator and GRIDCO for the project.

This deviation is allowed. This will share the risk among the parties

- (f) **Applicability of lock-in-requirements to listed companies** - To exempt a listed company from requiring their shareholders/promoters to maintain control for the lock-in-period if it is declared the successful bidder.

The commission studied the similar recent solar projects elsewhere in India particularly with regard to deviation on applicability of lock in requirements to listed companies. We find that in the request for selection (RFS) document towards selection of Solar Power Developers for setting up of 250 MW Grid connected Solar Photovoltaic Power Project at Dondaicha, Maharashtra the condition of not ceding of control of the ownership for 1 year has been waived for listed companies. The same provision finds place in Amguri Solar Park, Assam and Rewa Ultra Mega Solar Project, MP.

This deviation in case of listed company is allowed since it is justified for listed companies whose shares are freely traded.

- (g) The definition of control to be incorporated in PPA and RFP as “ with respect to any person means the ownership, directly or indirectly, of more than 50% (fifty percent) of the voting shares of such ‘person’ or the right to appoint majority directors or direct the management and policies of such person by operation of law, contract or otherwise”.

The expression ‘control’ in the SBG has been provided as Control which shall mean the ownership, directly or indirectly, of more than 50% of the voting shares of such company or right to appoint majority Directors. The Change in the definition of control, as deviation, has been sought to widen its scope to account for entities other than companies. The petition further states that term control should also be defined in the context of a ‘person’, which also includes companies but is not limited to it. The deviation is further sought on the ground that the definition of control should also recognize instances where such control is exercised through the power to direct the management and policies of an entity by operation of law, contract or otherwise. Thus the definition of the control will make it more consistent with the definition of control under Section 2(27) of the Companies Act, 2013.

Since the deviation sought is to broaden the scope of the nature of the entity without diluting the definition provided in the Companies Act, the deviation proposed is allowed.

- (h) Reduction in capacity on failure to handover land to Solar Power Developer (SPD). If GEDCOL fails to handover the balance 10% of the land to the SPD within 12 months from the signing of the PPA, then SPD may within 30 days from the expiry of such 12 months' period, request GEDCOL and the Procurer to reduce the capacity of the unit proportional to the percentage of the land not provided by GEDCOL.

Since the End procurer, GRIDCO, has agreed to such terms this deviation is allowed

- (i) **Additional Conditions subsequent under the PPA** - GEDCOL's obligation to grant a no objection certificate to the SPD allowing it to create security on the land in favour of its lenders and the SPD's obligation to obtain all applicable permits within 180 days from the signing the PPA in order to ensure project bankability.

This deviation is sought to encompass additional obligation on the part of GRIDCO, GEDCOL and SPD. These are important obligations in order to ensure completion of project in time.

Hence, we are inclined to allow this deviation.

- (j) **Extension of commissioning timelines** - The PPA should provide that the SPD's obligation to meet its timelines for fulfilling its conditions subsequent (including achieving financial closure) and consequently, the commissioning timelines as well as GEDCOL's obligation to meet its timelines for fulfilling its conditions subsequent should also be subject to delays arising from conditions outside control of the parties (such as force majeure, change in law or reasons solely attributable to the counterparty (ies). Further, if GEDCOL fails to fulfill its conditions subsequent, it is proposed that the SPD should be entitled to a day to day extension in the scheduled commissioning date, up to a period of 150 days. The PPA should allow for the extension of commissioning timelines based on

mutual agreement between the parties to the PPA, without imposition of liquidated damages on the SPD.

Department of Energy, Government of Odisha in the meeting for Odisha Solar Park (Phase I 275 MW) held on 14.1.2019 decided that in case transmission infrastructure is not ready after the scheduled commissioning date but the plant is ready, day to day extension in SCOD (Scheduled Commercial operation Date) will be considered for the delay in handing over the transmission infrastructure till a long stop date. Since the End procurer, GRIDCO, has agreed to such terms this deviation is allowed

- (k) **Applicability of bid responsiveness conditions to affiliates of the bidder** - Para 7.1 of the SBG relates to the bid responsiveness and conditions satisfying for bid evaluation. It says that the bid shall be evaluated only if it is responsive and satisfies condition that 'bidder or any of its affiliates is not a willful defaulter to any lender'. Guideline 7.2.2(a)(ii) of the SBG allows a bidder to rely upon the net worth of its affiliates to meet the financial qualification criteria, as prescribed in the RFP. If the bidder chooses to rely upon the net worth of its affiliate then such affiliate must undertake to contribute the required equity funding and submit the performance bank guarantees, as required under the RFP, in case the bidder fails to do so. The Petitioner has submitted to allow the applicability of the bid responsiveness conditions to be limited to bidders and only those affiliates of the bidders whose net worth has been relied upon by the bidders for the purposes of meeting the financial qualifications criteria under the RFP.

We have analysed this deviation in guideline. Para 7.1 of the SBG relates to the bid responsiveness and conditions satisfying for bid evaluation. It says that the bid shall be evaluated only if it is responsive and satisfies condition that 'bidder or any of its affiliates is not a willful defaulter to any lender'. Guideline 7.2.2 of the SBG deals with the financial criteria towards the qualification requirements to be met by the bidders. It says that 'the net-worth to be considered for the above purpose will be cumulative net-worth of the bidding company or consortium together with the net-worth of those Affiliates of the bidder(s) that undertake to

contribute the required equity funding and performance bank guarantees in case the bidder(s) fail to do so in accordance with the RfS'.

The word 'Affiliate' has been used in these two clauses in different way, one as a condition of bid responsiveness and another for the evaluation as the financial criteria. The commission is of the opinion that serious involvement of the Affiliate is absolutely necessary in successful running of the consortium. An affiliate who is in breach of the conditions set out in the clause 7.1 of the SBG may lead to mistrust in the entire business operation. These two guidelines are different and cannot be made applicable for seeking this deviation. **The Commission is therefore not inclined to allow this deviation and this should be guided as per the SBG.**

- (l) **In addition to the letter of credit and escrow arrangement, the state Government guarantee is to be provided to the solar power generators under the PPA to be executed with the procurer, GRIDCO.**

Since Government of Odisha has already agreed to provide State Government Guarantee, the Commission has no objection to this since this would add to the comfort level of the SPD.

**(m) Deemed Generation**

- i. Lack of readiness of transmission/power evacuation infrastructure. - In case of transmission/ power evacuation unavailability after the scheduled commissioning date, the solar power generator should get a day to day extension to the scheduled commissioning date so that the PPA terms remain unchanged and the only loss to the SPD would be the net present value of the generation loss.

In addition, a long stop date may be set out, post which if transmission/ power evacuation is still not ready, the SPD should have the right to terminate the PPA.

We have analysed this deviation, wherein the owner of the land is Government of Odisha who have leased the land to IDCO. The IDCO is mandated to develop solar park and would further sublease it to the SPD for this project. In the event of any breach of contract from the either side this shall be regulated as per the original lease

agreement or any other terms agreed by the original owner which is Government of Odisha. Moreover, we have also analysed such deviation allowed in the 750 MW Solar REWA project which is placed similar to this project.

In light of these facts we are inclined to allow this deviation.

- ii. Grid Unavailability- Any grid unavailability that occurs beyond 50 generation hours in a contract year, the SPD should be compensated at the PPA tariff in that year and not through excess generation in the succeeding 3 contract years.

This deviation is allowed

- iii. Back down - For any back downs that occur beyond 50 generation hours in a contract year, for reasons not specified in the Odisha Grid Code regulations, 2015 the SPD should be compensated with 100% PPA tariff and not at 50% of the PPA tariff.

We have analysed this deviation. Though the SBG caps compensation at 50% of the PPA tariff for grid back-down, the procurer GRIDCO has agreed to pay 100% of compensation for a grid back-down beyond 50 hours in a contract year. This was also decided in the Department of Energy, Government of Odisha in the meeting for Odisha Solar Park (Phase I 275 MW held on 14.1.2019). The similar provision is there in the 750 MW solar REWA project. In light of these facts we are inclined to allow this deviation.

Timeline for construction and financial closure - The SBG guidelines were amended by GoI, in two aspects i.e reducing financial closure to 9 months from 12 months and reduction of timelines for completion of project to 15 months from 21 months from the date of signing the PPA. Since the present project is currently in a near final stage reducing these timelines at this stage would lead to renegotiation of pre agreed project schedules and thus it would be in the interest of the project to adhere to the pre agreed time lines. We have analysed this deviation sought by the petitioner, and both GRIDCO and GEDCOL have stuck to the original timelines of completion of project though in the SBG these timelines have been revised subsequently. Department of Energy, Government of Odisha in the meeting for Odisha Solar Park (Phase I, 275 MW) held on 14.01.2019 also

decided that reducing the timelines at this stage would lead to renegotiations of pre agreed project schedules. Therefore, it would be in the interest of the project to adhere to the pre-agreed timelines. It is understood that the project facilitators with respect to land and power evacuation are not ready for the project to commence. As such the SPD will not be able to commission the project in the amended stricter timelines of financial closure to 9 months from 12 months and completion of construction of the project to 15 months from 21 months from the date of signing of the PPA. The Commission, therefore, agrees that it would be in the interest of the project to adhere to the pre agreed time lines.

21. We have gone through the above deviations sought by the petitioner GEDCOL from the Solar Bidding Guidelines (dated 3<sup>rd</sup> August 2017) issued by the Ministry of Power for Tariff based Competitive Bidding Process for procurement of Power from Grid connected Solar PV Power Projects issued under section 63 of The Electricity Act 2003. The deviations jointly sought by GEDCOL and GRIDCO have been examined and which are reasonable have been allowed by the Commission as discussed in Para 20 of this order. Deviations sought are within the framework of the Electricity Act 2003 and standard bidding guidelines.
22. The need of the hour is to encourage solar power development in the state and fallen many states have fallen behind in providing the enabling framework. Government of India has laid out ambitious plans to build 175 GW of renewable power generation capacity by 2022 out of which 100 GW is solar power. We expect that with the implementation of this 275 MW solar park project in the first phase, the total allocated capacity of 1000 MW under MNRE Solar Park Project scheme in Odisha will quickly materialize.
23. The case is accordingly disposed of.

**Sd/-**  
**(S. K. Parhi)**  
**Member**

**Sd/-**  
**(U. N. Behera)**  
**Chairperson**