

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

**Present: Shri G. Mohapatra, Chairperson
Shri S K Ray Mohapatra, Member**

Case No. 01/2022

GRIDCO Ltd.	Petitioner
Vrs.		
Department of Energy, Govt. of Odisha & Others	Respondents

In the matter of: **Application under Section 86(1)(b) & (e) of the Electricity Act, 2003 read with Section 21 of the OER Act, 1995 and other enabling provisions seeking for prior approval of the Power Sale Agreement (PSA) to be executed between GRIDCO Ltd. and NTPC Ltd. for procurement of 200MW Solar power through the ISTS-connected Solar projects towards fulfilling of the Renewable Purchase Obligations.**

For Petitioner: Shri P. K. Das, CGM (PP), Shri M. K. Das, Sr. GM (PP) and Ms. Saswati Mishra of GRIDCO Ltd.

For Respondents: Ms. Sonali Patnaik, ALO, DoE, GoO, Ms. Sakie Jakharia, Advocate on behalf of NTPC Ltd., Shri K. C. Nanda, DGM (Fin.) of TPWODL, Ms. Malancha Ghose, AGM (RA), TPNODL, Shri V. Wagle, TPCODL and Shri Hara Prasad Mahapatra, CEO, GEDCOL are present. Nobody is present on behalf of M/s. TPSODL.

ORDER

Date of Hearing: 28.02.2022

Date of Order: 30.03.2022

1. 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 Reforms Act, 1995 and other enabling provisions seeking prior approval of Power Sale Agreement (PSA) to be executed between GRIDCO Ltd. and NTPC Ltd. for procurement of 200 MW Solar power through ISTS-connected solar projects towards fulfilling its Renewable Purchase Obligation.
2. The petitioner has submitted the following:
 - (a) NTPC vide their letter dated 25.09.2021 has offered solar power capacity to the tune of 400 MW at an applicable tariff of Rs.2.50/kWh (including the trading

margin of Rs.0.07/kWh) to be available by 2024 towards RPO requirement of GRIDCO.

- (b) Out of NTPC's proposal of 400 MW, GRIDCO has issued NTPC the in-principle consent on dated 11.11.2021 for procurement of 200 MW solar power at an applicable tariff of Rs.2.50/kWh, applicable for 25 years from CoD without any burden towards ISTS charges as per MoP, GoI office order dated 21.06.2021 and without imposition of Basic Custom Duty (BCD) as per the MoP, GoI office Memorandum dated 09.03.2021.
- (c) With the solar tied-up capacity of 1539 MW and non-solar tied-up capacity of 479.15 MW, totaling to 2018.15 MW, GRIDCO will be able to meet the solar RPO of 9.75% by FY 2024-25 with the estimated State consumption of around 32731 MU, as per the OERC draft RPO Regulations, 2021. The non-solar projects of the States are not commissioned within the scheduled time, for compensation towards the shortfall of non-solar RE power (including hydro), additional solar quantum has been considered.
- (d) There are no new solar projects to be commissioned in the next two years, apart from small capacities through Rooftop solar scheme (2 MW), model solar city scheme (10 MW), PM KUSUM scheme (100 MW) under MNRE initiatives. The proposal of NTPC has a competitive tariff than other offers to be available during the same period. NTPC's solar power shall be delivered at Odisha periphery at the applicable tariff.
- (e) Four (4) of State DISCOMs (TPNODL, TPSODL, TPWODL and TPCODL) has been requested by GRIDCO to convey their consent towards procurement of 200 MW solar power from NTPC through the ISTS-connected solar power (at the applicable tariff of Rs.2.50/unit including NTPC's margin of Rs.0.07/kWh) for 25 years from CoD to be available by 2024.
- (f) Fulfilling of the RPO towards State consumption is vested with GRIDCO as an obligated Entity and GRIDCO through its long-term RE procurement planning has planned for meeting its requirement upto FY 2025-26.

3. The salient features of PSA are as follows:

- a) *NTPC has agreed to sell and make available to DISCOM the agreed contracted capacity agreed to between NTPC and the Solar Power Developer (SPD) which is 200 MW entirely on a back-to-back basis of the terms and conditions contained in the NTPC-SPD PPA to be entered into between NTPC and SPD.*

- b) *The liquidated damages are payable by SPD under the NTPC-SPD PPA for the delay in the commissioning of the solar PV projects and for short supply of the contracted capacity of the solar power. The amount of such Liquidated Damages for delay shall be payable to DISCOM only upon the receipt of the amount from the SPD. DISCOM shall not be entitled to make any deductions towards the claim of Liquidated Damages against any payment due to NTPC and all such other payments shall be made by DISCOM by the Due Dates, notwithstanding the status of the pending claims on Liquidated Damages.*
 - c) *NTPC shall be selling the solar power to DISCOM(s)/End procurer(s) at the weighted average of tariffs discovered and finalized for different bids over a period of 1st July to 31st December. MNRE may change this duration/dates The weighted average tariff shall be calculated for the tariff discovered for all the bids issued by NTPC during the period as mentioned above.*
 - d) *Any compensation as applicable under the provisions of NTPC-SPD PPA but not limited to compensation of backing down, grid unavailability, change in law, applicability of safeguard duty etc. shall be payable by DISCOMs only without any monitory liability on NTPC.*
 - e) *NTPC shall issue to the DISCOMs monthly bill on the first business day of the month based on provisional solar energy supplied in the preceding month (except for first month which shall be computed based on designed CUF and capacity of project).*
 - f) *The DISCOM shall pay the amount payable under the monthly bill on or before the due date i.e. without 45 days of presentation of bill to such account of NTPC.*
 - g) *In the event of payment of Monthly Bill by the DISCOM beyond forty five (45) days from the date of presentation of bill i.e. due date, Late payment surcharge @ 1.5% per month shall be payable by the DISCOM to NTPC on the outstanding amount calculated on a day to day basis.*
 - h) *Rebate of 1.5% shall be payable to buying entity for the payments made within a period of three (3) days of the presentation of bill through e-mail and payments made after three (3) days of the date of presentation of bill through e-mail up to the 30th day shall be allowed a rebate of 1%.*
 - i) *For payment security mechanism, provisions for Letter of Credit (LC), State Govt. Guarantee/TPS, Collateral Arrangement and Payment Security Fund are there.*
 - j) *In the event of termination of PPA/PSA, any damages or charges payable to the STU/CTU, shall be borne by the DISCOM.*
 - k) *Other terms and conditions like Third party sale by NTPC, Disputed Bill, Events of Default and Termination, Amendment, waiver and Compliance of Law have been incorporated as per the prevailing standard procedure.*
4. SPD and DISCOM(s) are grid connected entities. NTPC is an intermediary procurer and is not a grid connected entity. NTPC is an Intermediary to facilitate the promotion of Solar Power Projects and to purchase and re-sell the electricity to the distribution licensees to enable them to fulfill the Renewable Purchase Obligation (RPO) and,

therefore, the sale of electricity by NTPC to GRIDCO under this Agreement shall be entirely on a back-to-back basis to the purchase of electricity by NTPC from the SPDs under the NTPC-SPD PPA, with the intent that there shall be no residual liability on the NTPC towards the SPD which will not be fulfilled by the GRIDCO. NTPC shall proceed to sign PPA with SPD solely on the basis of agreement reached with GRIDCO for signing of agreement and PSA between NTPC and GRIDCO is a pre-condition for NTPC to sign NTPC-SPD PPA with SPD. After signing of NTPC-SPD PPA, NTPC shall approach CERC for adoption of tariff under section 63 of Electricity Act, 2003.

5. NTPC has agreed to sell the contracted capacity to GRIDCO under the proposed PSA on a back-to-back basis of the terms and conditions contained in the draft PPA (with the modifications) to be entered into between NTPC and SPD.
6. GEDCOL-Respondent No. 6 is the nodal agency for developing green energy for Odisha and responsible for implementation of solar power projects of 1 MW and above capacity in the State of Odisha as per Odisha Renewable Energy Policy, 2016. The Respondent No.6 has submitted that the statement **“no new solar projects to be commissioned in next two years apart from small capacities”** in para No.4 of the application of GRIDCO-the petitioner is not correct and following projects are in pipeline which will start generating solar power within coming two years.
 - a) **10 MW Solar Power Project near Chiplima Power House** – The bid is to be finalized and 19 MU of energy will be generated. The cost will be less than Rs.2.83/kWh (including Rs.0.06 paisa margin for GEDCOL).
 - b) **300 MW Floating Solar PV Project** – The project is to be developed in Rengali Reservoir by a joint venture company formed between NHPC and GEDCOL and the project will generate 634 MU of energy @ Rs.3.86 kWh Considering Debt : Equity Ratio 70:30 and Rs.3.56/kWh at 80:20 ratio.
 - c) **50-55 MW Land Based Solar Project at Boudh District** – Draft DPR and tender document are under scrutiny. Levelised cost of energy is expected to be around Rs.2.50/kWh.

These projects should be given priority for purchase of power by GRIDCO.

7. TPCODL-Respondent No.5 has following submissions:

- a) The existing tied up Solar Capacities (with CUFs of 26% of new Solar Projects) will not be sufficient for the Solar RPO target but only after FY 2026-27 and onwards only. Prior to this period there is adequate tie up of Solar capacity. Further the existing tied up Non Solar Capacities will not be able to meet the Non Solar RPO target beyond FY 2023-24. Based on our computation, generation from Non Solar is below 85% (for e.g. in the year FY 2024-25, the 1558 MUs/1880 is 84.46% i.e. less than 85%). Hence the Solar surplus cannot be used for meeting the Non Solar Deficit. In other words, GRIDCO's existing capacity is adequate to meet the RPO till FY 2025-26 but this capacity of 200 MW in question is available from FY 2023-24 itself. TPCODL, therefore, submit that the capacity of 200 MW is bit early to meet the RPO. Alternatively it may be appropriate to consider this capacity of 200 MW for purchase, if the OERC allows using the Solar Surplus to meet the Non Solar deficit even if the Non-solar RPO met is less than 85%.
- b) However, at this same time, the tariff of Rs.2.50/KWH is attractive. After considering a National Loss of 3.35% (Inter State Transmission Charges waiver available), the tariff for GRIDCO is Rs.2.57/KWH. GRIDCO may carry out the analysis based on the same after assessing the alternate sources of power to evaluate the requirement of this 200 MW capacity.
- c) TPCODL further submitted that there are several Renewable proposals particularly from Solar Plants which meet the overall objective of greater usage of renewable power and it would be appropriate to decide the quantum of Renewable Energy Required for the state upfront and base our power purchase planning on that basis rather than evaluate each project separately.
8. The Respondent No.2–NTPC has submitted that there is a stringent timeline for commissioning of the project, for which approval and thereafter early signing of the PSA in an expeditious manner is necessary. The same is essential to finalize the other modalities for the commissioning of the project. Further the signing of the PSA is a condition precedent to signing and approval of the PPA. This is relevant in the context of the concessions available to the beneficiaries in relation to waiver of ISTS charges as notified by the Ministry of Power by its latest order which mandates that the projects be commissioned before end of June 2025 for availing such concessions.
9. Heard the parties. The Commission observed that there are certain modifications proposed by GRIDCO-petitioner regarding Basic Custom Duty (BCD), terms and

conditions of PPA & PSA, Billing and Payments, rebate, recovery from SPD under provision of PPA as penalty etc. However, GRIDCO vide its email dated 16.02.2022 had submitted the revised PSA to NTPC incorporating all the mutually agreed provisions and the same were accepted by NTPC.

10. Before the Commission, a stand has been taken on behalf of the Respondent No. 5, TPCODL that the petitioner GRIDCO has entered into the exercise for procuring 200 MW solar power through ISTS – connected solar power projects towards meeting of the RPO from NTPC Limited/ Respondent No. 2 without any actual necessity. It is further contended that there will be surplus quantity of solar power by FY 2024-25 and that cannot be utilized either for meeting solar RPO or for meeting non-solar RPO in view of regulatory prohibitions. GRIDCO has stated that they have considered procurement of 200 MW solar power through the proposed PSA not only for increased State demand of power for FY 2024-25 onwards but also for likely revision of RPO targets by OERC in future. It appears that the contention of TPCODL/Respondent No. 5 has no leg to stand since the petitioner and the Respondent No. 2 have right to enter upon the agreement for procurement of power to face any future exigency. In other words, the contention of TPCODL/Respondent No. 5 against the proposed agreement is found to be mere misapprehension without any legal necessity.
11. In view of the above, the Commission approves the aforesaid modified/revised standard PSA to be executed between NTPC and GRIDCO towards procurement of 200 MW solar power at an applicable tariff of Rs.2.50/kWh including trading margin of Rs.0.07/kWh through the ISTS-connected solar projects for fulfillment of RPO of GRIDCO.
12. The case is accordingly disposed of.

Sd/-
(S. K. Ray Mohapatra)
Member

Sd/-
(G. Mohapatra)
Chairperson