

**TAMIL NADU ELECTRICITY REGULATORY COMMISSION**  
**(Constituted under section 82 (1) of the Electricity Act, 2003)**  
**(Central Act 36 of 2003)**

**PRESENT:**

Thiru S.Akshayakumar	....	Chairman
Thiru G.Rajagopal	....	Member
and		
Dr.T.Prabhakara Rao	....	Member

**M.P.No.18 of 2018**

Tamil Nadu Generation and Distribution Corporation Ltd.  
Represented by the Chief Engineer / Non-Conventional Energy Sources  
144, Anna Salai  
Chennai – 600 002.

... Petitioner  
(Thiru M.Gopinathan  
Standing Counsel for TANGEDCO)

Vs.

NIL

...Respondent

**Date of hearing** : 18-09-2018

**Date of Order** : 16-11-2018

The M.P.No.18 of 2018 came up for final hearing on 18-09-2018. The Commission upon perusal of the Petition and connected records and after hearing the submissions of the Petitioner hereby makes the following:

**ORDER**

**1. Prayer of the Petitioner in M.P.No.18 of 2018:-**

The prayer of the Petitioner in the above M.P.No.18 of 2018 is to –

- (a) grant approval for the draft tender specification (RFS document) and draft Power Purchase Agreement (PPA).

- (b) grant approval for the modification in the payment clause and relaxation from “Change in law” and “FDI” clauses.
- (c) pass such further or other orders as this Commission may deem fit and proper in the facts and circumstances of the case and thus render justice.

## **2. Facts of the Case:-**

The petition has been filed seeking the approval for the draft tender specification (RFS document) and draft Power Purchase Agreement (PPA) evolved by the TANGEDCO in line with the guidelines for competitive bidding process for the grid connected wind power projects issued by Ministry of Power, Gol and specific approval for certain deviations from the guidelines issued by Ministry of Power, Gol for procurement upto 500 MW (Phase 2) wind power by TANGEDCO from the private developers through reverse bidding process considering the tariff of Rs.2.65 per unit, as upper limit.

## **3. Contentions of the Petitioner:-**

3.1. TANGEDCO has filed a Miscellaneous Petition in M.P.No.8 of 2018 before the Commission seeking approval for the procurement of 1500 MW of wind power from the developers establishing wind power projects within Tamil Nadu under reverse bidding process to meet its Non-Solar RPO obligation trajectory of 10.25% fixed by the MoP, Gol for the year 2019-20, considering an upper limit tariff of Rs.2.65 per unit..

3.2. Based on the request of TANGEDCO, the Commission has accorded approval for the procurement of 1500 MW of wind power from the developers establishing Wind Power Projects in Tamil Nadu under reverse bidding process, considering an upper limit tariff of Rs.2.65 per unit and advised the TANGEDCO to

go for procurement in three stages (Phase-2,3 and 4) of 500 MW each through reverse bidding process as per Gol guidelines, instead of inviting tender for entire quantum of 1500 MW in its order dated 24.04.2018 in M.P.No.8 of 2018.

3.3. The Commission has also directed TANGEDCO to file separate petition seeking approval for draft tender specification (RFS document) and draft PPA.

3.4. Based on the direction of the Commission, this petition has been filed by TANGEDCO seeking approval for the draft tender specification (RFS document) and draft Power Purchase Agreement (PPA) evolved and approved by the Board of TANGEDCO, in line with the guidelines for tariff based competitive bidding process for procurement of power from grid connected Wind Power Projects issued by Ministry of Power, Government of India vide Resolution No.23/54/2017-R&R, dated 08.12.2017.

3.5. Clause 22 of the guidelines for tariff based competitive bidding process for procurement of power from grid connected Wind Power Projects issued by Ministry of Power provides as follows:-

*"In case there is any deviation from these guidelines and/or the SBDs, the same shall be subject to approval by the Appropriate Commission. The appropriate Commission shall approve or require modification to the bid documents within a reasonable time not exceeding 60 (sixty) days".*

3.6. TANGEDCO has considered certain deviations with regard to modification in "Payment Security" clause and relaxation from "Compliance of FDI Laws by foreign bidders" and "Change in Law" Clauses and the reasons for such deviations are as detailed below:-

3.6.1. As per the Ministry of Power, Gol guidelines, in clause (7.4):

*“The procurer shall provide payment security to the Wind power generator through-*

- (i) Revolving Letter of Credit (LC) of an amount not less than 1 (one month average billing) and*
- (ii) Payment Security Fund which shall be suitable to support payment for at least 3 (three) months billing. In addition to Revolving Letter of Credit and Payment Security Fund, the procurer shall also choose to provide State Government Guarantee, ensuring the WPG both in terms of payment of energy charges and termination compensation if any.”*

Considering the present financial position of TANGEDCO, TANGEDCO has proposed to adopt the following payment mode in this tender, as followed in previous tender instead of the payment mode specified in the guidelines.

*“The due date for payment of energy bill shall be 60 days from the date of receipt (excluding the date of receipt) of bill in complete from the generator. TANGEDCO shall provide unconditional revolving and irrevocable LC which shall be drawn upon the WPGs. TANGEDCO shall provide LC from public sector/scheduled commercial banks. The payment shall be made on 60th day from the date of receipt of passed bill (Invoice) at LC opener's bank. If the 60th day (due date) happens to be a holiday for TANGEDCO and/or Banks, then payment will be made on the next working day. All expenses relating to LC viz. Opening charges, Maintenance Charges, Negotiation Charges and renewal charges are to the account of WPG's. The revolving LC shall have a term of 12 months and validity of the LC shall be renewed year after year and remains valid upto expiry of the agreement and the amount shall also be renewed for an amount equal to 105% of the average of monthly billing of proceeding 12 months”.*

3.6.2. As per the guidelines, in case a foreign company is selected as the successful bidder, the company shall comply with all the laws and provisions related to Foreign Direct Investment (FDI) in India. In the previous tender floated, "Provision of FDI" clause was not incorporated. In spite of this, the response for the tender was good and competitive offers obtained from Indian Companies alone. Further, in the guidelines, it is not elaborately mentioned how to comply with all the laws and provisions related to Foreign Direct Investment (FDI) in India for the successful

foreign bidders and in previous tender, this clause (Compliance of FDI laws for foreign bidders) was not included in the tender specification. Hence TANGEDCO has proposed to remove this Clause from the tender specification.

3.6.3. As per the guidelines, "Change in law" which refers to the occurrence of any of the following events after the last date of the bid submission including (i) enactment of any new law or (ii) an amendment, modification or repeal of an existing law or (iii) the requirement to obtain a new consent, permit or licence or (iv) any modification to the prevailing conditions prescribed for obtaining a consent, permit or license, not owing to any default of the Wind Power Generator or (v) any change in the rates of any Taxes which have a direct effect on the Project is permitted. This tender is to be floated for procurement of Wind power and PPA will be executed with successful bidders for a period of 25 years. Considering the long term PPA to be entered with the developers and as TANGEDCO has not included "Change in Law" clause in previous tender, TANGEDCO has proposed to exclude the clause "Change in Law" specified above from tender specification and seeking approval of the Commission for the deviation.

3.7. The BLTC of TANGEDCO in its 285<sup>th</sup> meeting held on 09-07-2018 and the Board of TANGEDCO in its 81<sup>st</sup> meeting held on 26-07-2018 has accorded approval for the following:-

a. To float tender (e-tender) for the procurement of 500 MW (Phase 2 ) of Wind power from developers establishing Wind Power Projects for a minimum of 25 MW with atleast 5 MW project at one site for a single bidder or company or group of companies in the State of Tamil Nadu at the rate to be finalized through reverse

bidding, considering the fixed tariff of Rs.2.65 per unit as upper limit, after getting approval from the Commission for the draft tender specification and draft PPA format.

b. To adopt the specification with the commercial and technical conditions formulated based on the guidelines of the MNRE, with modification in the payment clause and relaxation from "Change in law" and "FDI" clauses.

c. To deviate the "Payment Security" clause as specified in MoP guidelines from the tender specification, after getting approval from the Commission.

d. To file petition before the Commission seeking approval for draft tender specification (RfS document) and draft PPA along with the deviations in certain clauses of the MNRE guidelines.

In the light of the above submissions, the Petitioner has prayed to pass appropriate orders.

#### **4. Findings of the Commission:-**

4.1. The petitioner, Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO), the Distribution Licensee in the State has sought approval for the draft tender specification (Request for Submission (RFS) document) and draft Energy Purchase Agreement with deviations in certain clauses of the MNRE guidelines for procurement of 500 MW (Phase 2) of wind power from private developers with an upper ceiling limit of Rs.2.65 per unit.

4.2. The Commission, in its Order dated 24.04.2018 in M.P.No.8 of 2018, while granting approval for procurement of power of 1500 MW of wind power through competitive bidding to meet the non-solar RPO target, opined that the procurement may be taken up in three stages of 500 MW each through reverse bidding as per

GOI guidelines. The petitioner was also directed to straight away go for such reverse bidding process without seeking fresh approval from the Commission in case there is no new deviation in the present procurement other than the ones sought for and approved by the Commission in the earlier phases.

4.3. The petitioner has however filed the present petition seeking specific approval for certain deviations in guidelines issued by Ministry of Power, Government of India vide Resolution No.23/S4/2017-R&R, dated 08.12.2017 for procurement of 500 MW (Phase 2) Wind power.

4.4. The petitioner has considered deviations from GOI Competitive Bidding guidelines with regard to modification in "Payment Security" clause and relaxation from "Compliance of FDI Laws by Foreign bidders" and "Change in Law" Clauses. The reasons for such deviations has also been detailed by the petitioner.

4.5. The Competitive Bidding Guidelines of GoI stipulates as follows with respect to deviation from process defined in the guidelines:

*"22. Deviation from Process defined in the Guidelines:  
In case there is any deviation from these Guidelines and/ or the SBDs, the same shall be subject to approval by the Appropriate Commission. The Appropriate Commission shall approve or require modification to the bid documents within a reasonable time not exceeding 60 (sixty) days."*

4.6. Commission accepts the request of the petitioner for the draft tender specification (Request for Submission (RFS) document) and draft Energy Purchase Agreement, modification/relaxation of GOI competitive bidding guidelines with respect to the clauses relating to Payment Security, Change in Law and Compliance

of FDI Laws by Foreign bidders in view of the long term of 25 years of Energy Purchase Agreement of the petitioner with the Wind Power Generator.

4.7. The Commission would like to state that during the hearing of the petition by the Commission for admission on 18.09.2018, the petitioner was advised to proceed with the e-tendering adopting reverse auction in the bidding process to get a competitive price.

4.8. The petitioner is also directed to file a separate petition for approval of the tariff on completion of the bidding process furnishing full details of the tendering process including details of Evaluation Committee, tariff quoted by the other bidders and a copy of Energy Purchase Agreement to be signed

**5. Appeal: -** An appeal against this order shall lie before the Appellate Tribunal for Electricity under section 111 of the Electricity Act, 2003, within a period of 45 days from the date of receipt of the copy of this order by the aggrieved person.

(Sd .....)  
**(Dr.T.Prabhakara Rao)**  
**Member**

(Sd.....)  
**(G.Rajagopal)**  
**Member**

(Sd.....)  
**(S.Akshayakumar)**  
**Chairman**

/ True Copy /

Secretary  
Tamil Nadu Electricity  
Regulatory Commission