Delhi Electricity Regulatory Commission
Viniyamak Bhawan, 'C' Block, Shivalik, Malviya Nagar, New Delhi – 17.

No. F.11(1730)/DERC/2018-19/CF 6605/

IA No. 01/2020
in
Petition No. 65/2019

In the matter of: **Petition filed in furtherance to in-principle approval accorded by the Commission for Procuring 200 MW of Solar Power on a Long Term Basis from SECI seeking approval of the Commission for the Power Sale Agreement dated 26.06.2019.**

Tata Power Delhi Distribution Ltd. **…. Petitioner**

Vs.

Solar Energy Corp. of India Ltd. **…Respondent**

Coram:
Hon'ble Sh. Justice S. S. Chauhan, Chairperson
Hon'ble Sh. A.K. Singhal, Member
Hon'ble Dr. A. K. Ambasht, Member

ORDER
(Date of Order: 31/12/2020)

1. The instant Petition has been filed by TPDDL seeking approval of the Commission to PSA dated 26/06/2019 executed between Solar Energy Corporation of India (SECI) and the Petitioner, and in furtherance to the in-principle approval dated 14/08/2018 accorded by the Commission for procurement of Solar Power from 300MW Inter State Transmission System (ISTS) connected Generation Project by SECI.

2. The Petitioner has submitted that:

   i. The Commission has notified the *DERC (Renewable Purchase Obligation and Renewable Energy Certificate Framework*

Implementation) Regulations, 2012 (for short RPO Regulations), in order to promote procurement of electricity through Renewable Sources. The Distribution Licensees operating in the NCT of Delhi, were mandated to procure electricity from Renewable Energy Sources to achieve the defined minimum percentage of the total consumption as prescribed under the said RPO Regulations. The relative quantum of percentage from the renewable sources qua the total consumption in a year has also been prescribed by the Commission the said RPO Regulations.

ii. The RPO Regulations further provide that the Petitioner may meet its RPO target by way of its own generation or by way of purchase from other licensee(s)/source(s) or by way of purchase of Renewable Energy Certificate(s) (hereinafter referred to as "RECs") or by way of combination of above options. RPO Regulations also prescribe that any Long Term (LT) power purchase arrangements shall be made only with the prior approval of the Commission.

iii. The Electricity Act 2003 (hereinafter referred to as "Act"), alongwith the Tariff Policy, 2016 gives impetus on promotion of generation of electricity from Renewable Sources and further mandates that procurement of Power by Distribution Licensee from Renewable Energy Sources above the notified capacity (above 5 MW), shall be done through competitive bidding process.

iv. The Petitioner herein approached the Commission for approval of procurement of 300 MW Solar Power through SECI – ISTS Solar Projects. On 16/07/2018, the Petitioner herein, vide its letter of the same date, apprised the Commission that as per the DERC (Business Plan) Regulations 2017, the Petitioner is under the obligation to procure renewable power and achieve its RPO. The Petitioner in its endeavour to meet the RPO in an optimum manner envisaged following tie-up (a) Procurement of 100 MW Solar Power from SECI and (b) Procurement of 200MW Solar Power from SECI. The Commission was pleased to grant approval to such procurement plan of the Petitioner vide its letter dated 14.08.2018.

v. The SECI had prepared and floated the Request for Selection (RfS) document on 10.01.2019 for inviting bids vis-a-vis setting up of grid connected Solar PV projects in India on "Build Own Operate" (hereinafter referred to as “BOO”) basis for an aggregate capacity of 1200MW. This RfS document was subsequently amended by document dated 05.02.2019, 06.02.2019 and 08.02.2019. As per the RfS document, SECI shall enter into a power purchase agreement with the successful Bidders selected for the purchase of Solar Power for a period of 25 years based on the terms, conditions and provisions of the RfS document. The selection of the bids was to be carried out through e-bidding and followed by e-Reverse Auction process.

vi. The solar tariff discovered through the competitive bidding route are market aligned tariffs. The bidding undertaken by SECI has been initiated pursuant to the 2017 Guidelines issued by the Government of India and squarely falls within the ambit of Section 63 of the EA 2003. Since process adopted by SECI is in line with the Guidelines issued by Government of India, the Commission has to now merely approve the Power Sale Agreement executed between the Petitioner and SECI with the competitively discovered tariff of Rs.2.61/kWh plus trading margin of 7 paise/kWh as the power procurement cost of the Petitioner for 200 MW Solar Power.

vii. On 02/03/2019 SECI vide its letter of same date apprised the Petitioner herein that it is offering power to the extent of 200 MW to the Petitioner at the maximum possible fixed tariff i.e. Rs. 2.61/kWh plus trading margin of 7 paise/kWh, upto the commissioning of the cumulative awarded capacity by SECI under RfS document i.e. 1200 MW.

viii. Where the cumulative awarded capacity by SECI under the RfS document has been commissioned, weighted average tariff of Rs. 2.585/kWh plus a trading margin of 7 paise/kWh will be payable for the balance terms of the Agreement. SECI requested the Petitioner to confirm its requirement of power from the SECI Solar Power Projects.

ix. The Petitioner entered into a Power Sale Agreement (PSA) dated 26/06/2019 with SECI for the procurement of 200MW of solar power on a long-term basis from the SECI Project for the fulfilment of its RPO targets/requirements.

x. The Petitioner has highlighted that the procurement cost from the SECI Project is highly competitive as compared to the readily available sources in the market including the Solar REC. The Petitioner herein is obligated to fulfil its RPO targets. In addition, the Petitioner is also obligated to ensure that the demand of the consumers is met through adequate tie-up of power from various sources. If the Petitioner resorts to fulfilment of its RPO targets solely relying on RECs then it will only meet is RPO targets and not get any corresponding power supply. It is submitted that the 200MW power procurement from SECI would help the Petitioner in meeting around 40% of the Solar Power RPO target.

3. Meanwhile SECI has filed an application before CERC for adoption of pooled tariff, however, CERC declined to approve pooled tariff and instead adopted project wise tariff. At the same time CERC observed that the trading margin of 7 paise/kWh is the maximum limit for short term procurement which is not applicable in long term PPAs, and directed that trading margin should be negotiated between the parties. In the backdrop of aforesaid decision of CERC, SECI has been impleaded as a necessary party.

4. SECI has filed an affidavit stating that the subject matter of adoption of Tariff under Section 63 of the Act in respect of 1200 MW ISTS connected Solar Power Projects under Global Competitive Bidding including the aforesaid quantum of power, has been disposed by Central Commission in Petition No. 204/AT/2019 on 20/11/2019. The Central Commission adopted the Tariff discovered through the tariff based competitive bid process for the individual power project. The adoption of Tariff and all matters relating to terms and conditions of tariff and other associated matters are within the jurisdiction and regulatory control of the Central Commission under Section 79 of the Electricity Act 2003. Therefore, this Petition is to be considered only to the extent of procurement of power by the Petitioner in terms of Section 86(1)(b) of the Electricity Act 2003 read with rule 8 of the Electricity Rules, 2005.

5. The Petitioner has filed an affidavit on 26/05/2020 in response to the affidavit filed by SECI wherein it has stated that:

   (i) The respondent SECI in its affidavit dated 27/02/2020 has supported the prayers being sought by the Petitioner herein i.e. this Commission is humbly prayed to exercise its power under Section 86(1)(b) of the Electricity Act, 2003 to approve the power procurement arrangement pursuant to execution of the Power Sale Agreement dated 26.06.2019 between the Petitioner and SECI;

(ii) This Commission while conveying its in principle approval on 14.08.2018 for approval of the procurement of 300 MW capacity through SECI (including the 200 MW capacity being the subject matter of the present proceedings), directed the Petitioner herein to submit the details of adoption of tariff under section 63 of the Electricity Act, 2003.

(iii) Pursuant to the order of adoption of tariff of the capacity being procured through SECI on a back to back basis from SBSR Power Cleantech Eleven Ltd. issued by CERC in Petition No. 204/AT/2019, the Petitioner has approached this Commission vide the present proceedings. As per the Order dated 20/11/2019, the CERC has adopted the tariff of the power generated by SBSR at Rs. 2.61/kWh. The trading margin of 7 paise/kWh will be payable by the Petitioner herein to SECI as per its agreement dated 26/06/2019.

(iv) The Power Supply Agreement dated 26/06/2019 would therefore be Rs. 2.61/kWh and a trading margin of 7 paise/kWh. Accordingly, the total applicable tariff payable by the Petitioner to SECI is Rs. 2.68/kWh (Rs. 2.61/kWh + Rs. 0.07/kWh).

(v) Further, the procurement cost of the power from SECI is highly competitive and therefore would allow the Petitioner to endure that the demand of its consumers are met through competitive tie-ups and the prescribed RPO targets are complied with.

(vi) In view of above, since the entire process of procurement of renewable power has been initiated with SECI in terms of the DERC (Business Plan) Regulations, 2017 and specific directions of this Commission dated 14/08/2018, this Commission be pleased to approve the PSA dated 26/06/2019 executed between the Petitioner herein and SECI for procurement of power (200 MW) from SBSR at Rs. 2.61/kWh and a trading margin payable to SECI at the rate of 7 paise/kWh.

6. The Respondent SECI has submitted that:

(i) SECI is a Government of India Enterprises and a Company incorporated under the provisions of the Companies Act, SECI has been incorporated with the main objective to assist the Ministry of New and Renewable Energy, Government of India for promotion of solar power in the country. SECI has been designated as the nodal agency for implementation of scheme for setting up of Inter State Transmission System (ISTS) connected Solar Power Projects with the mandate to call for bids under a Tariff Based Competitive Bidding process, enter into Power Purchase Agreements at the tariff discovered in the competitive bid process, enter into Power Sale Agreement with the Distribution Licensees/Buying Entities to enable them to fulfil the Renewable Purchase Obligations under Section 86(1)E of the Act and with SECI acting as an intermediary agency in purchase and sale of power under the PPAs, and PSA on a back-to-back basis.

(ii) SECI has been incorporated with the main objective to assist the Ministry of New and Renewable Energy, Government of India for promotion of solar power in the country. SECI has been designated as the nodal agency for implementation of scheme for setting up of Inter-State Transmission System (ISTS) connected Solar Power Projects with the mandate to call for bids under a Tariff Based Competitive Bidding process, enter into Power Purchase Agreements at the tariff discovered in the competitive bid process, enter into Power sale Agreements with the Distribution Licensee/Buying Entities to enable them to fulfil the Renewable Purchase Obligation under Section 86(1)(e) of the Act and with SECI acting as an intermediary agency in purchase and sale of power under the PPAs and PSAs on a back-to-back basis.

(iii) SECI is acting as an intermediary (as appointed by the Central Government) utilizing its trading license to facilitate such purchase and resale of electricity. SECI is not acting as a merchant trader or otherwise independently purchasing the electricity from the SPD having the option to sell electricity to any person at such time and on such terms and conditions including the price as SECI may decide from time to time. SECI is also not retaining the powers to trade electricity so purchased in the open market or through the platform of Power Exchange or otherwise on a long term basis to earn a trading margin, without being constrained to the fixed trading margin of 7 Paise/kWh decided by the Ministry of New and Renewable Energy (MNRE), Government of India.

(iv) The obligations and liabilities of SECI to the Solar Power Developers (SPDs), in the facts and circumstances pertaining to such dealing, are on a back to back basis to the obligation to be performed and liabilities to be discharged by Buying Entities/Distribution Companies to SECI.

(v) SECI is entitled to a consideration, namely, trading margin of 7 paise/ kWh payable by the Buying Utilities including the Petitioner in terms of the Guidelines, RfS and the PPA. In this regard, the relevant provisions of the Guidelines, RfS Documents and the PPA are reproduced as under:

GUIDELINES

"2.1.1…………

c)- 'Intermediary procurer' & 'End Procurer'

ii. The intermediary Procurer shall enter into a PPA with the WPG(s) and also enter into a Power Sale Agreement (PSA) with the distribution licensee (s). The PSA shall contain the relevant provisions of the PPA on a back to back basis. The Intermediary Procurer may charge trading margin, as notified by the Appropriate Commission or in the absence of such notification as mutually agreed with distribution licensee(s).

RFS DOCUMENT:

"Trading Margin" shall mean the margin on sale of solar power to State Utilities/DISCOMs/ other Bulk Consumers under this RfS being charged by SECI and shall be @ INR0.07/Kwh.

PSA:

ARTICLE 1: APPLICABLE TARIFF

1.1.1 *From SCD the Buying Utility shall pay the maximum possible fixed tariff of Rs. 2.61/kWh plus trading margin of Rs. 0.07/kWh fixed upto commissioning of the cumulative awarded capacity/accepted cumulative capacity by SECI under the RfS.*

1.1.2 *Weightage Average Tariff as per schedule-2 plus trading margin of Rs. 0.07 per kWh (Rupees seven paisa/kWh) shall be applicable upon commissioning of the cumulative awarded capacity/accepted cumulative capacity by SECI under the RfS for balance term of this Agreement for the energy supplied as per provisions of this Agreement.*

SECI undertakes to open the Letter of Credit in favour of Solar Power Developer before commissioning of the project as per terms and conditions of the RfS, PPA and PSA."

(vi) In terms of the above, the trading margin or 7 paise/ kWh as mutually agreed between the parties in the contract i.e. PSA is applicable and payable by the Petitioner to SECI. The same is consistent with Order dated 20/112019 of the Central Commission, Trading Margin Regulations, 2020 and provisions of the Guidelines, Bidding Document such as Request for Selection Document (RfS) and the PSA. Voluntarily agreed to and accepted the trading margin of 7 paise/ kWh when they entered into the PSA dated 26/06/2019 and thus there has been mutual agreement between SECI and the Petitioner in regard to the trading margin. The above position of Trading Margin has also been now clarified by an amendment dated 22/10/2019 in the Guidelines notified by Government of India. In this regard, the Guidelines, inter-alia reads as under:

> ***2.1.1(c) Intermediary Procurer & End Procurer***
> ***ii….***
> ***(b)****The trading Margin of Rs. 0.07/kWh, shall be payable by the End procurer to the intermediary procurer.*

(vii) State Commission's such as Hon'ble Rajasthan Electricity Regulatory Commission (RERC), Hon'ble Uttar Pradesh Electricity Regulatory Commission(UPERC), Hon'ble Tamil Nadu Electricity Regulatory Commission (TNERC) have already approved Trading Margin of 7 paise/ kWh under the respective PSAs. The orders passed by Hon'ble RERC dated 08/01/2020. In the matter of Petition No. RERC – 1594/19, Hon'ble UPERC dated 09/12/2019 in the matter of Petition No. 1505/2019 AND Hon'ble TNERC dated 09/06/2020 in the matter of M.P. No. 8 of 2020 and P.P.A.P. No. 1 of 2020.

(viii) The Price payable by the Petitioner under the PSA inclusive of the trading margin is economic, competitive and in interest margin is economic, competitive and in interest of the consumers and such lower price has emerged in view of the involvement of SECI as the nodal agency of the Ministry of New and Renewable Energy, Government of India and signing the PPA, thereby giving the confidence to Power developer to give highly competitive rate.

(ix) In terms of the above submissions, SECI respectfully submits that the PSA (including subsequent amendment to be entered into between SECI and Petitioner) which has been duly executed between SECI and Petitioner is entitled to be approved by the Commission in terms of

Section 86(1) (b) of Electricity Act, 2003 read with Rule 8 of the Electricity Rules, 2005.

(x) Hon'ble CERC in the decision dated 20/11/2019 in Petition No. 204/AT/2019 filed by SECI for adoption of tariff for Solar Tranche-III Scheme, has considered the aspect of trading margin as under:

> *29. The Petitioner has prayed to adopt the trading margin of Rs. 0.07/kWh. It is observed that Section 79(1)(j) of the Act requires the Commission "to fix the trading margin in the inter-state trading of electricity, if considered necessary". Accordingly, the Commission, being of the opinion that it was necessary to fix trading margin for inter-state trading in electricity, exercised the powers conferred under Section 178 of the Act and conceived Central Electricity Regulatory Commission (Fixation of Trading Margin) Regulations, 2010 (hereinafter referred to as "Trading Margin Regulations"), applicable to the short-term-buy-short-term sell contracts for the interstate trading in electricity undertaken by a licensee. The Regulations provide for the ceiling of the trading margin in short-term-buy-short-term-sell contracts for the inter-State trading. <u>Trading Margin Regulations do not provide for any trading margin for long term transactions and, therefore, it is upto the contracting parties to mutually agree on trading margin, if any, in such cases</u>. In any case, the Commission does not fix trading margin on case to case basis. The Spirit of the Act read with the Trading Margin Regulations gives freedom and choice to the contracting parties to mutually agree on Trading Margin for any kind of trading transaction, subject to the ceiling Trading Margin, whenever applicable. Accordingly, the Commission cannot fix or adopt any Trading Margin for long-term transactions under the provisions of the present Trading Margin Regulations.*

(xi) Trading margin of 7 paise/kWh is specified in the Notification No. 32/3/2014-15/GSP dated 14/03/2016 (related to NSM VGF Scheme Phase II Batch IV) and Resolution No. 283/57/2018-GRID SOLAR dated 22/10/2019 issued by Ministry of New & Renewable Energy.

(xii) The Hon'ble CERC vide Notification No. L-1/253/2019/CERC dated 02/01/2020 under clause 8(d) specified about Trading Margin which is reproduced as under:

> *For transactions under long term contracts, the trading margin shall be decided mutually between the trading Licensee and the seller. :*
> *Provided that in contracts where escrow arrangement or irrevocable, unconditional and revolving letter of credit as specified in clause (10) of Regulations (9) is not provided by the Trading*

Licensee in favour of the seller, the Trading Licensee shall not charge trading margin exceeding two (2.0) paise/kWh.

(xiii) SECI is opening Letter of Credit in favor of Developer before commissioning of the project as per terms and conditions of RfS, PPA and PSA, therefore, under clause 8(d) of Hon'ble CERC notification dated 02/01/2020, Trading Margin shall be decided mutually between the parties signing the PSA.

(xiv) The tariff discovered through competitive bidding in SECI schemes is quite low because of timely payment to Developers, risks (such as payment default risk, late payment risk, contract dishonor risk, inflation risk) off-taking capability of SECI and robust payment security mechanism. The same risks have also been highlighted in Hon'ble CERC's press release dated 12/01/2010.

(xv) The State Commissions' such as Hon'ble Haryana Electricity Regulatory Commission (HERC) in Case No. HERC/PRO/19 of 2018 vide order dated 03/05/2018, Hon'ble Uttar Pradesh Electricity Regulatory Commission (UPERC) in Petitioner No. 1505/2019 vide order dated 09/12/2019, Hon'ble Rajasthan Electricity Regulatory Commission (RERC) in Petition of RERC 1594/19 vide Order dated 08.01.2020 and Hon'ble Tamil Nadu Electricity Regulatory Commission (TNERC) in M.P. No. 8 of 2020 and P.P.A.P. No. 1 of 2020 vide order dated 09/06/2020 have already approved Trading Margin of 7 paise/kWh under the respective PSAs. The orders passed by these commissions are placed Annexure-D, E, F and G respectively.

(xvi) The Hon'ble Appellate Tribunal in the recent decision dated 27/02/2020 passed in Appeal Nos. 368, 369, 370, 371, 372 and 373 of 2019 in the matter of Ayana Ananthapuramu Solar Private Limited –v- Andhar Pradesh Electricity Regulatory Commission & Ors., while considering the issue of trading margin in context of PSA executed between SECI and Andhra Pradesh DISCOMs as held under:

AP Discoms have voluntarily agreed to pay the applicable tariff in terms of Article 1 of PSA i.e., tariff at Rs.2.72 per kWh for payment by NTPC/SECI to SPD in terms of PPA and in addition to that, a trading margin of Rs.0.07 per unit is payable by AP Discoms to NTPC/SECI. This trading margin was described as income of NTPC/SECI. Now is it open to AP Discoms to back out or resile from their undertaking under PSA? Are they permitted to approbate and re-approbate? On fact, once a party enters into an agreement with the other party with clear understanding of terms and conditions, they cannot take advantage

<u>of some terms and conditions of the same contract and challenge or retract/repudiate other terms and conditions of the same contract. This is well settled principle</u>. For this we rely upon (1981) 1 SCC 537 in the case of M/s New New Bihar Biri Leaves Co. & Ors. v. State of Bihar & Ors., Para 48. Therefore, AP Discoms cannot selectively rely upon some terms of PSA i.e., the tariff they are agreed to pay at Rs.2.72 per kWh but refusing to pay trading margin of Rs.0.07 per kWh along with the tariff in terms of Article 1 of PSA.

69. Objections of AP Discoms filed as reply to objections raised by Sri M. Venugopala Rao and Sri A. Punna Rao as stated above. <u>The trading margin of 7 paise is fixed under the present scheme on sale of solar power in terms of MNRE guidelines. Subsequently, it was mutually agreed upon under the PSA between AP Discoms and NTPC/SECI. Therefore, at this stage unilaterally AP discoms cannot seek reduction of trading margin to 0.02 paise which is in deviation of express provisions of RfS document, PPA and PSA</u>.

70. It is also seen from the reply of AP Discoms that APERC (Intra-State Electricity Trading) Regulations of 2005 have not provided any trading margin for long term transactions. The Judgment of CERC dated 20/11/2019 above, actually says that trading margin regulation gives freedom and choice to the contracting parties to mutually agree on trading margin for any kind of trading transaction, subject to the ceiling whenever applicable. There are no trading margin regulations of the State of Andhra Pradesh Regulatory Commission for long term transactions. <u>Therefore, the only reliance that can be placed is on the mutually agreed upon terms which are spelt out as rights and obligations of the parties under PSA</u>. Therefore, in the light of the PSA indicating Rs.0.07 as trading margin and in the absence of any Regulations that are applicable to the case on hand, we are of the opinion that trading margin of 7 paise per kWh has to be paid. <u>The PSA between AP Discoms and NTPC/SECI is the final binding document which speaks about tariff and also trading margin on the transaction of sale of power to AP Discoms</u>.

<u>COMMISSION'S ANALYSIS</u>

7. The instant Petition has been filed for approval of PSA signed by the Petitioner with SECI, for procurement of power from certain generators through SECI being an intermediary procurer/supplier precisely acting as an electricity trader. These are back to back arrangements. SECI had initiated a Tariff based Competitive Bidding Process for procurement of 1200 MW of power generated from ISTS connected Solar Power Projects on the terms and conditions contained in the Request for Selection (RfS). In terms of MNRE Guidelines, SECI is supposed to sign PPA with Solar Power Developers (SPDs) and back-to-back PSA agreement with buying utilities for resale of the power. SECI has (signed/will sign) Power Purchase Agreement (PPAs) with the Solar Power Developers selected under the RfS for procurement of 1200 MW

Solar Power or for the total capacity of projects selected under the provisions of RfS.

8. The Petitioner has agreed to purchase 200MW solar power from SECI under the above RfS and accordingly SECI has agreed to sign PPAs with SPD for procurement of 200MW Solar Power on a long terms basis for the power required by TPDDL. Copy of the PPAs shall be submitted to TPDDL within thirty (30) days of the signing of the PPAs and such PPAs shall become integral part of this Agreement.

9. The terms and conditions of the PSA have been analysed and it is observed that the tariff is discovered through competitive bidding and are composite in nature, therefore, the tariff approved/adopted by CERC would be applicable in the instant PSA. The Petitioner was directed to approach CERC for adoption of tariff. On the Petition/application filed by the Petitioner in this respect, CERC in its Order dated 20/11/2019 held that the applicable Tariff should be on individual project basis and not on pooled basis. On the issue of trading margin, CERC held that the ceiling of 7 paise/kWh as prescribed vide Notification dated 11/01/2010 is applicable to Short Term Power Purchase transactions and is not applicable for Long Term Power Purchase. It has been further observed that the trading margin should be mutually agreed between the parties in agreement. CERC in its Order dated 20/11/2019 has observed the following:

> "24. *The above provisions provide for payment security mechanism to be complied with by the parties to the present Petition. During the course of hearing, learned senior counsel for the Petitioner submitted that the Petitioner would abide by the provisions of payment security mechanism as provided under Article 10.3 and 10.4 of the PPAs. Therefore, the provisions Article 10.3 and 10.4 of the PPAs shall be abided by all the concerned parties to the present Petition.*
>
> *Regulation 7(h) of the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of trading license and other related matters) Regulations, 2009*
> (hereinafter referred to as "Trading License Regulations") provides as under:
> *"(h) The licensee shall carry out trading in accordance with the agreed terms and conditions, and may take such safeguards as he may consider necessary with regard to payment security mechanism from the buyers, but shall always ensure timely payment of dues to the seller for purchase of the agreed quantum of electricity either through a letter of credit or any other appropriate instrument or as may be mutually agreed between the seller and the licensee."*

As per the above provisions, the trading licensee is required to always ensure payment to the seller for the purchase of agreed quantum of electricity either through letter of credit or any other appropriate instrument or as may be mutually agreed between the seller and the licensee. Therefore, the Petitioner shall ensure compliance of the provisions contained under Regulation 7(h) of the Trading License Regulations during the tenure of the PPAs and PSAs.

In the light of the discussions as above, it emerges that selection of the successful bidders and the tariff of the Project has been carried out by SECI through a transparent process of competitive bidding in accordance with Guidelines issued by Ministry of Power, Government of India under Section 63 of the Act. The Petitioner vide its letter dated 18/09/2019 has certified that the process is in conformity with the Ministry of Power guidelines and no deviation was taken from the Guidelines in the RfS documents. Accordingly, in terms of Section 63 of the Act, the Commission adopts the following tariff throughout the period covered in the PSAs and PPAs.

Successful Bidders	*Bidders' Quantity MW*	*Tariff (INR/kWh)*
ReNew Solar Power Private Limited	*300*	*2.55*
Azure Power India Pvt. Ltd.	*300*	*2.58*
Eden Renewable Cite (P) Ltd.	*300*	*2.60*
SBSR Power Cleantech Eleven (P) Ltd.	*600*	*2.61*

The Petitioner has prayed to adopt the tariff at the pooled rate of Rs. 2.585/kWh. Since, the tariff at the pooled rate of Rs. 2.585/kWh is not the tariff discovered through competitive bid process, we are not inclined to adopt the tariff at the pooled rate. We are adopting the tariff discovered through the tariff based competitive bid process for the individual power project as mentioned above para.

The Petitioner has prayed to adopt the trading margin of Rs.0.07/kWh. It is observed that Section 79(1)(j) of the Act requires the Commission "to fix the trading margin in the inter-State trading of electricity, if considered necessary". Accordingly, the Commission, being of the opinion that it was necessary to fix trading margin for inter-State trading in electricity, exercised the powers conferred under Section 178 of the Act and conceived Central Electricity Regulatory Commission (Fixation of Trading Margin) Regulations, 2010 (hereinafter referred to as "Trading Margin Regulations"), Applicable to the short-term-buy-short term sell contracts for the inter State trading in electricity undertaking by a licensee. The Regulations provides for the ceiling of the trading margin in short-term-buy-short-term-sell contracts for the interstate trading. Trading Margin Regulations do not provide for any trading margin for long term transactions, and, therefore, it is upto the contracting parties to mutually agree on trading margin, if any, in such cases. In any case, the Commission does not fix trading margin on case to case basis. The spirit of the Act read with the Trading Margin Regulations gives freedom and choice to the contracting parties to mutually agree on Trading Margin for any kind of trading transaction, subject to the *ceiling Trading Margin, whenever applicable. Accordingly, the Commission cannot fix or adopt any Trading Margin for long-term transactions under the provisions of the present Trading Margin Regulations".*

10. In view of observation of CERC, it is clear that Trading Margin for Long Term transactions has to be mutually agreed between the parties subject to the ceiling trading margin, wherever applicable, but it has to be approved by the concerned SERC. It is bounden duty of SERC to safeguard the interest of consumers and to protect them from unreasonable cost of power purchase. In this backdrop, it is for consideration that what should be the limit of mutually agreed Trading Margin in case of long term transactions.

11. The SECI has made submissions justifying levy of trading margin @ 7 paise/kWh. Reference is also given to the communications and directions of the Ministry of New and Renewable Energy (MNRE) and it is also submitted that similar arrangements of 7 paise/kWh trading margin with other State DISCOMs have also been made, therefore 7 paise/kWh trading margin is justified and be allowed in the instant PPA also. If we look at the notification dated 11/01/2010 for trading margin, though it is for short term agreement, it is stipulating that in case the tariff is less than 3 (three) rupees the trading margin cannot exceed 4 paise/kWh. In the instant case also the tariff is less than 3 (three) rupees and therefore if the Regulation of January, 2010 is taken as persuasive, the trading margin shall not exceed 4 paise/kWh. It is also to be noted that CERC while deciding the matter of tariff in the Petition filed by the Petitioner TPDDL has not approved 7 paisa trading margin and held that such trading margin should be mutually decided. It is to be noted that mutually agreed trading margin ought to be within reasonable limit based on facts and factors. From the order of CERC one may infer that mutually agreed margin of 7 paise/kWh was not approved by CERC and therefore, it should be prudent to examine this 7 paise/kWh margin.

12. As regards contention of the SECI that Hon'ble APTEL in its order dated 27/02/2020 in Appeal No. 368-373 of 2019 has held that DISCOMs cannot seek unilaterally reduction of trading margin, is not applicable to the present Petition because it is not the DISCOM who has agreed the trading margin of 7 paise/ kWh is seeking reduction at a later stage rather in the instant Petition the State Commission in its bounded duty to safeguard the interest of the

consumers is deliberating upon the limit of trading margin so as the intermediate procurer can recover its cost and at the same time the consumers are also protected.

13. Regarding contention of the Petitioner that MNRE guidelines prescribe a trading margin of 7 paise/kWh, it is to be noted that it is CERC who has been entrusted with the job of deciding trading margin and the decision of CERC in this aspect will have overriding effect on any other guidelines issued. As already stated that CERC has held that for long term power purchase the trading margin should be mutually agreed between the parties and 7 paise/ kWh trading margin as per MNRE guidelines is pre decided and cannot be termed as mutual agreement between the parties. Secondly, any mutually agreed trading margin requires approval of the Commission because the trading margin has not been competitively arrived rather it was made pre decided in the RfS. It is pertinent to mention that the trading margin of 7 paise/ kWh is not sacrosanct and SECI in other purchase has quoted 5 paise/ kWh trading margin. It is also to be noted that approval of tariff through competitive bidding u/S 63 of the Electricity Act, 2003 is required to be adopted by CERC and CERC has not agreed to a trading margin of 7 paise/ kWh though it was brought before them as mutually agreed tariff margin. The State Commission is not deliberating upon the tariff u/S 63 of the Electricity Act as it was already done by CERC.

14. On this aspect of trading margin, the first set of Regulations was issued by CERC vide notification dated 23/01/2006. The Regulations stipulate as under; -

> *"The licensee shall not charge the trading margin exceeding four (4.0) paise/Kwh on the electricity trading, including all charges, except the charges for scheduled energy, open access and transmission losses."*

15. In the aforesaid notification there was no indication whether the Regulations were applicable on long term transactions or not.

16. The aforesaid Regulations were replaced by notification dated 11/01/2010 whereby the limit for trading margin was revised as 7 paise/kWh for Tariff more than Rs. 3.00/kWh and trading margin of 4 paise/kWh for tariff less than Rs.4.00/kWh. It is a point to be noted that the new Regulations were made

applicable only in respect of short term power purchase and there was no provision for long term power procurement.

17. Further, CERC in its Order dated 20/11/2019 in Petition No. 204/AT/2019 has indicated that in its *Trading Margin Regulations, 2010*, there is a provision for ceiling of trading margin in short-term-buy-short-term-sell contracts only and the said Regulations do not provide any trading margin for long term transactions. Accordingly, CERC cannot fix or adopt any trading margin for long term transactions under the provisions of Trading Margin Regulations, 2010. Therefore, in case of long term transactions it is upto the contracting parties to mutually agree on trading margin, if any, in such cases.

18. From above discussions and Regulatory provisions framed by CERC, it is observed that there was no provision for Trading Margin in case of long term transactions. Further, for short term transactions, there is a capping on Trading Margin @ 4 paise/kWh and 7 paise/kWh in case sale price is less than or equal to Rs. 3.00/kWh and sale price is more than Rs.3.00/kWh respectively.

19. However, CERC vide its notification dated 02/01/2020 notified *CERC (Procedure, Terms and Conditions for grant of trading licence and other related matters) Regulations, 2020*, wherein CERC first time introduced Trading Margin on long term transactions. Regulation 8(1)(d) of the said Regulations specify as follows:

> "*For transactions under long term contracts, the trading margin shall be decided mutually between the Trading Licensee and the seller:*
> *Provided that in contracts where escrow arrangement or irrevocable, unconditional and revolving letter of credit as specified in clause (10) of Regulation 9 is not provided by the Trading Licensee in favour of the seller, the Trading Licensee shall not charge trading margin exceeding two (2.0)paise/kWh.*"

20. From above mentioned *CERC Trading Margin Regulations, 2020*, it is observed that there is a capping for Trading Margin of 2 paise/kWh even on long term transactions, in case, where escrow arrangement or irrevocable letter of credit is not provided by the Trading Licensee. However, the said

Regulations do not specify the Trading Margin/Capping of Trading Margin for long term transactions in case escrow arrangement or irrevocable letter of credit is provided by the Trading Licensee.

21. The instant case pertains to Long Term procurement of power, for a period of 25 years, by TPDDL though SECI as Trading Licensee whose tariff has been discovered as Rs. 2.61/kWh (which is less than Rs. 3/kWh). The quantum of risk, risk sensitivity and surety of cash flows in case of long term contracts, for a period of 25 years, cannot be equated to short term contracts which is for a maximum period of 1 year. Therefore, the Trading Margin in case of long term contracts have to be less than that of short term contracts. CERC in its Trading Margin Regulations, 2010 has specified ceiling for Trading Margin as 4 paise/kWh on short term transactions wherein the tariff is less than Rs.3/kWh. Also, as mentioned paras above, CERC in its *Trading Margin Regulations, 2020* has specified ceiling for Trading Margin as 2 paise/kWh for long term transactions in case, escrow arrangement or irrevocable Letter of Credit is not provided by the Trading Licensee.

22. It is observed from article 2.5.1 of the PSA dated 26/06/2019, annexed as annexure P/6 with the instant Petition that the Buying Entity ("TPDDL" in the present case) shall provide to SECI, in respect of payment of its monthly bills, a single, unconditional, revolving and irrevocable Letter of Credit (LC) operated and maintained by buying entity, which may be drawn upon by SECI. Further, Article 2.5.7 of the said PSA states that all costs relating to opening, maintenance of the LC shall be borne by the Buying Entity.

23. As per Section 61 (d) of the Electricity Act, 2003, the Commission has to safeguard the consumers interest and at the same time provide recovery of cost of electricity in a reasonable manner, therefore, the Commission after considering the Power Sale Agreement and above mentioned Regulatory Framework for Trading Margin, deems fit to judiciously approve cumulative Trading Margin of 2 paise/kWh in the present case.

24. In view of the aforesaid discussions, a Trading Margin of 2 paise/kWh is allowed to SECI; and the PSA dated 26/06/2019 is approved subject to the condition that the applicable tariff shall be as approved by CERC with a trading margin of 2 paise/kWh. Consequently, the clauses of Article 1 of the

PSA related to applicable Tariff shall be modified accordingly. It is also held that the Order dated 20/11/2019 of CERC has bearing in respect of Tariff for procurement of solar power for which the Petitioner TPDDL has entered into PSAs with SECI. Therefore, the Tariff as approved by CERC with a trading margin of 2 paise/kWh shall be applicable also to the PSAs approved by this Commission vide Orders dated 01/03/2019 in Petitions No. 24 of 2019 and 25 of 2019.

25. The Petition is disposed of accordingly with the direction to the Petitioner to submit duly signed copy of PSAs modified as indicated above to the Commission within a period of one month.

Sd/-	Sd/-	Sd/-
(A.K. Ambasht)	**(A.K. Singhal)**	**(Justice S. S. Chauhan)**
Member	**Member**	**Chairperson**