

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 721/AT/2020

Coram:

Shri P. K. Pujari, Chairperson

Shri I.S. Jha, Member

Shri P. K. Singh, Member

Date of Order: 2nd June, 2021

In the matter of

Petition under Section 63 of the Electricity Act, 2003 for adoption of tariff for the ISTS Grid connected Solar Photo Voltaic Projects of 2000 MW selected through Competitive Bidding Process as per the Guidelines issued by Ministry of Power, Govt. of India on 3.8.2017 and its amendments thereof.

And

In the matter of

NHPC Limited,
NHPC Office Complex, Sector-33,
Faridabad (Haryana) – 121 003

....Petitioner

Vs.

1. Ministry of New and Renewable Energy Block – 14, CGO Complex, Lodhi Road, New Delhi – 110 003.
2. ABC Renewable Energy (RJ-02) Private Limited (Project SPV of ABC Renewable Energy Private Limited) 6-3-680/8/3, PNO-03, PMR Plaza, 1st Floor, Thakur Mansion Lane, Somajiguda, Hyderabad, Telangana - 500 082.
3. Altra Xergi Power Private Limited (Project SPV of O2 Power SG PTE Limited) C-53, Flatted Factory Complex, Jhandewalan, New Delhi – 110 055.
4. Eden Renewable Passy Private Limited Unit No. 236 B&C, 1st Floor, DLF South Court, Saket, New Delhi - 110 017.

5. SBE Renewables Twenty-Three Projects Private Limited
(Project SPV of SBE Renewables Seventeen Private Limited)
1st Floor, Worldmark-2,
Asset Area-8, Hospitality District, Aerocity, NH-8,
New Delhi - 110 037.
6. AVAADA Sunrays Energy Private Limited
(Project SPV of Avaada Energy Private Limited)
C-11, Sector-65,
Noida – 201 307 (Uttar Pradesh)
7. Punjab State Power Corporation Limited
The Mall, Near Kali Badi Mandir,
Patiala - 147 001 (Punjab).
8. Jammu & Kashmir Power Corporation Limited
Civil Secretariat,
Jammu, Jammu and Kashmir
9. MP Power Management Company Limited
Shakti Bhawan, Vidyut Nagar
Rampur, Jabalpur
10. Chhattisgarh State Power Distribution Co. Limited
Danganiya P.O. Sunder Nagar,
Raipur – 492 013, Chhattisgarh

.....Respondents

The following were present:

Shri Rajiv Shankar Dwivedi, Advocate, NHPC
Shri Parinay Deep Shah, Advocate, AXPPL
Shri Surabhi Pandey, Advocate, AXPPL
Shri S. P. Rathour, NHPC
Shri Himanshu Shekhar, NHPC
Shri Naresh Bansal, NHPC
Shri Pawan Kr. Sharma, ABC Renewables
Shri Arfath Khan, ABC Renewables
Shri Sunei Kapoor, AXPPL
Shri Rakesh Rathore, AXPPL
Shri Vivek Kodesia, EDEN Renewables
Shri Hitesh Sablok, EDEN Renewables
Shri Kanupriya Mehndiratta, EDEN Renewables

ORDER

The Petitioner, NHPC Limited ('NHPC'), has filed the present Petition under Section 63 of the Electricity Act, 2003 (hereinafter referred to as the 'Act') for adoption of tariff for 2000 MW solar power projects connected to inter-State Transmission System ('ISTS') and selected through competitive bidding process as per the "Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Power Projects" (hereinafter referred to as 'the Guidelines') dated 3.8.2017 as amended from time to time issued by Ministry of Power, Government of India. The Petitioner has made the following prayers:

"1. Admit the present Petition;

2. Adopt the Tariff discovered in the Competitive Bidding Process for individual Power Projects as listed in Table 1 at paragraph 9 above on terms and conditions contained in the PPAs with Solar Power Developers being Respondent Nos 2 to 6. A Trading Margin of Rs 0.07/kWh (as mutually agreed between the parties) in addition to above Tariff is to be recovered from buying Utilities /Distribution Licensee in terms of the PSA signed between NHPC & Utilities/ Distribution Licensee being respondent no 7 to 10 herein...."

Submissions of the Petitioner

2. The Petitioner, NHPC has submitted that it issued Request for Selection (RfS) along with draft Power Purchase Agreement (PPA) and Power Sale Agreement (PSA) documents for setting up of 2000 MW ISTS grid-connected solar PV power projects to be set-up anywhere in India as per the Guidelines and floated the same on 3.9.2019 on the portal of Central Public Procurement (CPP). In pursuance to the above, nine bids were received. Out of nine bids, seven bidders were shortlisted for e-reverse auction. According to the Petitioner, e-reverse auction was conducted on 16.4.2020 on CPP's portal and the final tariff was arrived. The Petitioner has submitted that the solar PV

power projects are likely to be commissioned in 2021-22 or in 2022-23 and upon commissioning, these projects would help the distribution licensees to meet their Renewable Purchase Obligation (RPOs) requirements apart from providing power at very economical rates. The Petitioner has submitted that the distribution licensees have agreed to purchase the entire 2000 MW capacity where 1680 MW are @Rs.2.55/kWh and 320 MW are @Rs. 2.56/kWh plus trading margin of Rs. 0.07/kWh. It has been submitted by the Petitioner that since the tariff discovered through competitive bid process is even lesser than the procurement cost of conventional power, it would be beneficial for the distribution licensees and the consumer at large. It has been further submitted that there will be no preferential tariff sought within Section 86(1)(e) of the Act.

3. The matter was called out for virtual hearing on 5.3.2021 after notice to the Respondents. The Respondents were directed to file their reply to the Petition, if any. No reply has been filed by the Respondents despite notice. Further, vide Record of Proceedings for the hearing dated 5.3.2021, the Petitioner was directed to submit the following information on affidavit by 15.3.2021:

(a) Details on the publication of notice in compliance with requirement of clause 6.4 of the Guidelines, and

(b) Details of deviations taken in the Bid document (RfS, PPA and PSA) from the provisions of the Guidelines, if any, along with reasons thereof and whether any approval of Appropriate Commission has been obtained for such deviations in accordance with clauses 3.1.1(b) and 18 of the Guidelines.

In compliance with the above direction, the Petitioner has furnished the information called for vide affidavit dated 13.3.2021.

4. The matter was further called out for virtual hearing on 8.4.2021. After considering the submissions of the Petitioner dated 13.3.2021, the Petitioner was directed to compile and furnish the details of all the deviations taken in the Bid documents (RfS, PPA and PSA) from the provisions of the Guidelines along with the reasons thereof on affidavit, within a period of two weeks. In compliance thereof, the Petitioner vide its affidavit dated 23.4.2021, *inter alia*, has submitted that it has taken only two deviations from the Guidelines, namely, (i) requirement of publishing RfS notice in two national newspapers under clause 6.4 of the Guidelines, and (ii) insertion of Change in Law compensation clause under Article 12.1.1(g) of the PPA. As to the reasons for deviations, the Petitioner has mainly reiterated its submissions made in the earlier affidavit dated 13.3.2021, which are reproduced and dealt with in the subsequent paragraphs of this order.

5. The matter was again called out for virtual hearing on 21.4.2021 through video conferencing. During the course of hearing, the learned counsel for the Petitioner submitted that admittedly the prior approval for the deviations was required to be taken, but had not been taken by the Petitioner. The learned counsel, however, submitted that as per the clause 18 of the Guidelines, these deviations are subject to the approval of the Commission. The learned counsel also conceded that while no prayers have been made in the Petition for approval of these deviations, the Petitioner has prayed for the exemption/waiver to the Petitioner from publishing RfS in 2(two) national newspapers in respect of clause 6.4 of the Guidelines and approval of the deviation No. (ii) i.e. Change

in Law compensation clause under Article 12.1.1(g) of the PPA vide its affidavit dated 23.4.2021.

Analysis and Decision

6. We now proceed to consider the prayer of the Petitioner as regards adoption of tariff in respect of solar PV power projects as discovered pursuant to the competitive bid process carried out in terms of the Guidelines issued by the Ministry of Power, Government of India under Section 63 of the Act.

7. Section 63 of the Act provides as under:

“Section 63. Determination of tariff by bidding process: Notwithstanding anything contained in Section 62, the Appropriate Commission shall adopt the tariff if such tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the Central Government.”

8. Thus, in terms of Section 63 of the Act, the Commission is required to adopt the tariff, on being satisfied that transparent process of bidding in accordance with the guidelines issued by the Ministry of Power, Government of India under Section 63 of the Act, has been followed in determination of such tariff.

9. The Ministry of Power, Government of India has notified the Guidelines under Section 63 of the Act vide Resolution No.23/27/2017-R&R on 3.8.2017. The Guidelines have been subsequently amended by resolutions dated 14.6.2018, 3.1.2019, 9.7.2019, 22.10.2019 and 25.9.2020. The salient features of the Guidelines are as under:

(a) The Guidelines are applicable for procurement of power from grid connected solar PV power projects having size of 5 MW and above through tariff based competitive bidding to be conducted by Procurers which includes distribution licensees, or the Authorized Representative(s), or Intermediary Procurers.

(b) The procurer shall prepare the bid documents in accordance with the Guidelines and the Standard Bid Documents notified by the Ministry of Power, Govt. of India. If any deviation is proposed to be made in the Guidelines and Standard Bid Documents, approval of the Appropriate Commission would be necessary. Intimation about initiation of the bid process shall be sent by the procurer to the Appropriate Commission.

(c) Bids shall be designed in terms of a package. The minimum size of a package should be 50 MW, in order to have economies of scale. Bidders shall quote for entire package.

(d) The procurer has option to choose to invite the two bids, namely, (i) power capacity (MW) terms, or (ii) energy quantity (kWh or million units i.e. MU) terms. For procurement of power, the procurer may opt either for tariff or viability gap funding as bidding parameter.

(e) Draft PPA proposed to be entered into with the successful bidder and draft PSA, if applicable, shall be issued along with the RfS. Standard provisions to be incorporated as part of the PPA shall include, *inter-alia*, PPA period, quantum of power/ energy to be procured, payment security, generation compensation of off-take constraint, event of default and consequences thereof and Change in Law and shall be provided for, on back to back basis, in the PSA.

(f) Procurer and Intermediary procurer shall provide payment security to the solar power generator through revolving Letter of Credit of an amount not less than one month's average billing and Payment Security Fund for at least three months' billing of all the projects tied up with such fund. In addition, the procurer may also choose to provide State Government Guarantee.

(g) End procurer shall provide payment security to the Intermediary procurer through revolving Letter of Credit of an amount of not less than one month's average billing from the project under consideration and State Government Guarantee. In addition, end procurer may also choose to provide Payment

Security Fund with at least three months' billing of all the projects tied up with such fund.

(h) The procurer shall call the bids adopting a single stage bidding process to be conducted through electronic mode (e-bidding). The procurers may adopt e-reverse auction, if it so desires. For this purpose, e-procurement platforms with a successful track record and with adequate safety, security and confidentiality features will be used. In case of solar park specific project, procurer shall provide intimation to the Solar Power Park Developer about the initiation of the bidding process and arrange the access of the bidders to the drafts of Implementation Support Agreement and land related agreement.

(i) RfS notice shall be issued in at least two national newspapers and on the websites of the procurer to provide wide publicity. Standard documentation to be provided in RfS shall include technical criteria, financial criteria, quantum of earnest money deposit and lock-in requirements for the lead members of the consortium.

(j) The procurer shall constitute committee for evaluation of the bids (Evaluation Committee) with at least three members, including at least one member with expertise in financial matters/ bid evaluation.

(k) Bidder shall submit non-refundable processing fee and/or project development fee as specified in the RfS, separate technical and priced bids and bid guarantee. To ensure competitiveness, the minimum number of qualified bidders shall be two. If the number of qualified bidders is less than two even after three attempts of bidding, and the procurer still wants to continue with the bidding process, the same may be done with the consent of the Appropriate Commission.

(l) The PPA shall be signed with the successful bidder/ project company or an SPV formed by the successful bidder. After conclusion of bidding process, Evaluation Committee shall critically evaluate the bids and certify that the bidding process and the evaluation have been conducted in conformity with the provisions

of RfS. After execution of the PPA, procurers shall disclose the name(s) of the successful bidder(s) and the tariff quoted by them in its website. Accordingly, the distribution licensee or the Intermediary procurer shall approach the Appropriate Commission for adoption of tariff in terms of Section 63 of the Act.

10. In terms of the provisions of Section 63 of the Act, we have to examine whether the process as per provisions of the Guidelines has been followed in the present case for arriving at the lowest tariff and for selection of the successful bidder.

11. The Petitioner, has been designated as Intermediary procurer/ Renewable Energy Implementing Agency by Ministry of New and Renewable Energy (MNRE), Government of India and in its role as an Intermediary procurer, NHPC invited bids for implementation of various MNRE schemes for setting-up of ISTS connected/ State specific solar/ wind power projects under Tariff Based Competitive Bid process, entered into PPAs at the tariff discovered in the competitive bid process and entered into Power Sale Agreements PSAs with the distribution licensees to enable them to fulfill their Renewable Purchase Obligations under Section 86(1)(e) of the Act. NHPC acts as an intermediary agency in purchase and sale of power under the PPAs and PSAs on back-to-back basis.

12. The Guidelines provide for procurement of solar power at a tariff to be determined through transparent process of bidding by the procurer(s), from grid connected solar PV power projects having size of 5 MW and above. As per the Guidelines, NHPC in the capacity of intermediary agency/ procurer, invited proposal for setting up of grid connected solar PV power projects for an aggregate capacity of 2000 MW and for procurement of solar power from the projects being set up in relation

thereto. As per the arrangement, NHPC is required to procure power by entering into PPAs with successful bidders with back-to-back PSAs for sale of power to the distribution licensees.

13. The key date of events in the bidding process were as under:

Sr. No.	Milestone	Date
1	Issuance of RfS by NHPC	3.9.2019
2	Last date of bids' submission	31.1.2020 (online) 3.2.2020 (offline)
3	Opening of techno-commercial bids	4.2.2020
4	Opening of financial/ price bids	6.3.2020
5	e-reverse Auction	16.4.2020
6	Issuance of Letter of Award to successful bidders	1.6.2020, 2.6.2020 and 9.7.2020

14. As per Clause 3.1.1(b) of the Guidelines, procurer is required to inform the Appropriate Commission about the initiation of the bidding process. NHPC vide its letter dated 23.8.2019 informed the Commission that it has initiated competitive bidding process for procurement of power from the grid connected solar PV power projects in terms of Clause 3.1.1(b) of the Guidelines.

15. On 3.9.2019, NHPC issued the Request for Selection document, along with draft PPAs and PSAs for setting of 2000 MW grid connected solar PV power projects. As per clause 6.4 of the Guidelines, RfS notice is required to be published in at least two national newspapers and on the websites of the procurer to provide wide publicity. As noted above, the Petitioner vide Record of Proceedings for the hearing dated 5.3.2021 was directed to submit the details of the publication of notice in compliance with requirement of clause 6.4 of the Guidelines. In response, the Petitioner vide its affidavits

dated 13.3.2021 and 23.4.2021 has submitted that it did not publish the notices in the national newspapers as per the advisory issued by Ministry of Information and Broadcasting, Government of India dated 14.6.2018 vide which it was clarified that *'though the compulsory publishing of tender notice advertisement in newspaper has been dispensed with, Administrative Ministries/ Departments are free to decide on the advertisement of tender notice in the newspapers based on merits of the case.'* On basis of the said advisory, the Petitioner issued circular No. NH/CCW/CC-I/323 dated 21.1.2019 whereby it was decided that all notices inviting tenders and other tender related notices/ information/ addendums, etc. shall only be uploaded on its web portal, CPP/ e-Procurement Service Providers' portal and no press publication shall be issued. It was also decided that press publication of NITs for tenders invited through International Competitive Bidding (ICB) shall be continued in international newspapers. Since the tender in the instant case was on basis of ICB, the Petitioner published the same in one international newspaper i.e. The Asian Age (London edition) as per the extant provisions/ practice of the Petitioner. It has also been submitted that in response of the tender, 9(nine) bidders participated in the bid process and the Petitioner has been successfully able to tie up the entire 2000 MW with the solar power developers and has also executed the PSAs with the Distribution licensees. Taking into account the submissions of the Petitioner that the publication of tender notice has been done in accordance with the advisory of the Ministry of Information and Broadcasting, Govt. of India and the objective of prompting the wider participation in the bid process having been met, we exempt the Petitioner from publishing the RfS notice in the two national newspapers as per clause 6.4 of the Guidelines in the present case.

16. Further, for opening and evaluation of the bids, the Bid Evaluation Committee comprising of the following was constituted:

Sr. No.	Name
1	Sh. Saneep Kumar, GM (Civil), Cost Engineering Division
2	Sh. M.K Kashyap, GM (Civil), Contracts (Civil) Division
3	Ms. Reshma Hemrajani, GM (Finance), Commercial Division
4	Sh. Himanshu Saha , GM (Finance), Renewable Energy and Consultancy Division
5	Sh. I.P Ranjan, GM (Finance), Design (E&M) Division

17. Last date of submission of bid was 31.1.2020 (online) and 3.2.2020 (offline) and the technical part of the bid was opened on 4.2.2020. Response to RfS was received from the following bidders:

Sr. No.	Name of Bidders
1	NTPC Limited
2	Avada Energy Private Limited
3	ABC Renewable Energy Pvt. Ltd
4	AMP Green Energy India Private Limited
5	SBE Renewables Seventeen Private Limited
6	ReNew Solar Power Private Limited
7	Tata Power Renewable Energy Limited
8	Eden Renewable Passy Private Limited
9	O2 Power SG PTE Limited

18. Pursuant to the opening and evaluation of technical and financial bids, 7(seven) bidders out of the above 9(nine) bidders were found eligible for e-reverse auction. E-reverse auction was carried out on 16.4.2020. After completion of e-reverse auction, the following were declared as successful bidders:

Sr. No.	Name of SPD/SPV	Allocated Capacity (MW)	Tariff (Rs./kWh)
1	ABC Renewable Energy (RJ-02) Private Limited (Project SPV of ABC Renewable Energy Private Limited)	400	2.55
2	Altra Xergi Power Private Limited (Project SPV of O2 Power SG PTE LTD)	380	2.55
3	Eden Renewable Passy Private Limited	300	2.55
4	SBE Renewables Twenty Three Projects Private Limited (Project SPV of SBE Renewables Seventeen Private Limited)	600	2.55
5	AVAADA Sunrays Energy Private Limited (Project SPV of Avaada Energy Private Limited)	320	2.56
	Total	2000	

19. On 1.6.2020, 2.6.2020 and 9.7.2020, NHPC issued Letters of Award (LoA) to the selected bidders and/or their Project Company/SPV. Relevant portion of Letter of Award issued to one of the SPV/Project Company, namely, O2 Power SG PTC Limited is extracted as under:

“

With reference to above and subject to the provisions of RfS document, we confirm having accepted your final offer concluded as a result of e-RA and issue this letter of Award as per the following details:

<i>Project Capacity (MW)</i>	<i>Project Location</i>	<i>Declared Capacity Utilization Factor (CUF)</i>	<i>Applicable Tariff (Rs. per kWh) (in figures and words)</i>
380	Village - Mandhopura, Tehsil - Fatehgarh, District - Jaisalmer, Rajasthan	28%	2.55 (Rupees Two and paisa Fifty Five only)

NHPC shall purchase the power generated from the proposed ISTS-Connected Solar PV Power Project under the above scheme subject to the following terms and conditions as stated in various documents referred above and briefly brought out hereinafter.

2.0 The applicable tariff as mentioned above for power generated from the proposed Solar PV Power Project for the term of Power Purchase Agreement (PPA) to be entered into between Solar Power Developer (SPD) /Project Company and NHPC Limited, for the project, shall be firmed for the entire term of the PPA. The Capacity Utilization Factor (CUF) shall be governed in terms of Clause 3.10, Clause 11 (Annexure 1 - Technical Requirements) of RFS Document.

3.0 The awards of the above Project is subject to the Guidelines including amendments/ clarifications issued by Government of India and terms and conditions of the RfS document including its clarifications/ amendments issued by NHPC.

4.0 M/s O2 Power SG PTE Ltd, being a foreign Company, as such, in terms of Clause 3.8.1 (ii) & 3.8.2 (ii) of RfS Document, it has to form an Indian Company registered under the Companies Act 2013 as its fully owned subsidiary (i.e. 100 % subsidiary) before signing of PPA. Further, M/s O2 Power SG PTE LTD shall have to comply with all the laws and provisions related to Foreign Direct Investment in India.

5.0 In terms of para 14, Format 6.1 of the RfS Document, the Project Company shall sign the PPA and execute the Project. All terms and conditions of RfS document including PPA shall apply to Project Company also, wherever applicable. Further, Project Company shall sign the Integrity pact with NHPC as per format 6.12b and submit certificates as per format 6.13b of RfS document.

6.0 In terms of Clause 3.26 of RfS Document, the shareholding of M/s O2 Power SG PTE LTD in the Project Company/SPV executing the Power Purchase Agreement (PPA), shall not fall below 51% at any time prior to 3 (three) years from the COD, except with the prior approval of NHPC.

7.0 Performance Bank Guarantee for a value of @ 20 lakh /MW shall be submitted by the SPD within 15 days of issuance of Letter of Award or before signing of PPA, whichever is earlier, in line with Clause-3.24(ii), Section -3 of the RfS Document .For online confirmation of Bank Guarantee against Performance Security, the bank details of NHPC to be communicated to the issuing Bank is as under:

.....

8.0 PPA will be executed between NHPC and the SPD/Project Company as per the breakup of the cumulative Project capacity awarded to the Bidder. This LoA is being issued in line with the Project capacity quoted in the Covering Letter (Format 6.1) as part of your response to RfS and subsequently, as applicable. However, the successful bidder shall have option to change the Project location before the Financial Closure as per Clause 3.27 of RfS Document. Any change in State location of the Project(s) awarded shall not be permitted subsequent to the above deadline.

9.0 The final project configuration, adding up to the cumulative capacity awarded to the bidder may be intimated to NHPC at the time of signing of PPA, which shall then remain unchanged subsequent to signing of PPA. Delays in connectivity and/or LTA for the Project(s) on account of such changes in Project locations, which differ from the details provided in the covering letter, shall be at the risk and cost of the Successful Bidder. The PPA shall be executed within 90 (Ninety) days from the date of issue of Letter of Award and shall be valid for a period of 25 years from the scheduled commissioning date of the project(s) .However, PPA with SPD shall be signed only after signing of PSA with Discoms. Further, the PPA shall be signed only upon receipt of total Performance Bank Guarantee of requisite value. The EMD submitted shall be released only after receipt and successful verification of the total Performance Bank Guarantee in acceptable form.

10.0 The SPD shall meet financial closure requirements for the Project in line with clause 3.27 , Section 3 of the RfS document , within 12 (twelve) months from the Effective Date of the PPA. Accordingly, the SPD shall furnish the documents pertaining to compliance of financial closure as per the above provisions.

11.0 The SPD /Project Company shall achieve commissioning of the full capacity of the Project within 18 months from the Effective Date of the PPA as per the conditions stipulated in Clause 3.28, Section-3 of the RfS and relevant articles of PPA. In case of failure in achieving the milestone, the SPD/Project Company shall pay the liquidated damages shall be levied on the SPD as per the above provisions.”

20. Based on the in-principle consent of distribution licensees for procurement of solar power, the capacity was allocated on first cum first basis as under:

Buying Utility/Distribution Licensee	Capacity Allocated (MW)	Solar Power Developer	Tariff (Rs/kWh)
Chhattisgarh State Power Distribution Company Limited (CSPDCL)	400	ABC Renewable Energy (RJ-02) Private Limited (Project SPV of ABC Renewable Energy Private Limited)	2.55
MP Power Corporation Limited (MPPCL)	1000	Altra Xergi Power Private Limited (Project SPV of O2 Power SG PTE LTD) for 380 MW	2.55
		Eden Renewable Passy Private Limited for 300 MW	2.55
		SBE Renewables Twenty Three Projects Private Limited (Project SPV of SBE Renewables Seventeen Private Limited) for 320 MW	2.55
Jammu & Kashmir Power Corporation Limited (JKPCL)	300	SBE Renewables Twenty Three Projects Private Limited for 280 MW (Project SPV of SBE Renewables Seventeen Private Limited)	2.55
		AVAADA Sunrays Energy Private Limited for 20 MW (Project SPV of Avaada Energy Private Limited)	2.56
Punjab State Power Corporation Limited (PSPCL)	300	AVAADA Sunrays Energy Private Limited for 300 MW (Project SPV of Avaada Energy Private Limited)	2.56

21. Pursuant to Letters of Award and allocation of capacity, NHPC entered into PSAs dated 15.7.2020 with JKPCL, dated 28.8.2020 with MPPMCL, dated 25.9.2020 with

CSPDCL and dated 15.10.2020 with PSPCL. NHPC also entered into PPA with ABC Renewable Energy (RJ-02) Private Limited (400 MW) dated 5.10.2020, with Altra Xergi Power Private Limited (380 MW) dated 31.8.2020, with Eden Renewable Passy Private Limited (300 MW) dated 31.8.2020, with SBE Renewables Twenty Three Projects Private Limited (600 MW) dated 10.9.2020 and with Avaada Sunrays Energy Private Limited (320 MW) dated 19.10.2020.

22. As per the Guidelines, the bidder is required to take approval for taking any deviations from the provisions of the Guidelines in the Bid documents. Relevant clauses of the Guidelines are extracted as under:

“3.1.1 Bid Documentation:

- a) *Prepare the bid documents in accordance with these Guidelines and Standard Bidding Documents (SBDs) [consisting of Model Request for Selection (RfS) Document, Model Power Purchase Agreement and Model Power Sale Agreement], notified by the Central Government, except as provided in sub clause (c) below*
- b) *Inform the Appropriate Commission about the initiation of the bidding process.*
- c) *Seek approval of the Appropriate Commission for deviations, if any, in the draft RfS, draft PPA, draft PSA (if applicable) from these Guidelines and/or SBDs, in accordance with the process described in Clause 18 of these Guidelines.*

18. Deviation from the 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 90 (ninety) days....”

23. Perusal of the PPAs entered into between the Petitioner and the Solar Power Developers indicated the insertion of the following clause under Article 12 (Change in Law) of the PPA:

“...12.1.1(g) In case of change in Law on account of Anti-dumping Duty and/ or Safeguard Duty and/or Custom Duty on Solar PV Modules, the Solar Power developer shall

be entitled for increase/ decrease in tariff. This increase/ decrease in tariff shall be for an amount equivalent to 0.5 paisa/kWh for every increase/ decrease of INR 01 (one) lakh per MW of impact on cost of Solar PV Modules, which shall be effected based on documentary evidence submitted to the concerned authority, which shall inter-alia include Bill of Lading (BL), Bill of Entry (BOE) at the Port of arrival, duty paid at the port of arrival, Lorry Receipt (LR), Goods Receipt (GR), insurance Papers/etc/ upto the Project Site.

This increase/ decrease in tariff due to this change in cost of Solar PV Modules shall be limited upto 150% (One hundred & fifty percent) of the Solar Project Capacity allocated to the Project Developer.”

24. However, the provisions of the Guidelines, in particular clause 5.7, provide as under:

5.7 Change in Law

5.7.1. In the event of a Change in Law results in any adverse financial loss/gain to the Solar Power Generator then, in order to ensure that the Solar Power Generator is placed in the same financial position as it would have been had it not been for the occurrence of the Change in Law, the Solar Power Generator/Procurer shall be entitled to compensation by the other party, as the case may be, subject to the condition that the quantum and mechanism of compensation payment shall be determined and shall be effective from such date as may be decided by the Appropriate Commission.

25. Thus, in terms of clauses 3.1.1(a) and 3.1.1(c) of the Guidelines, the Procurer (including Intermediary Procurer such as the Petitioner herein) is required to prepare the bid documents in accordance with the Guidelines and in case of any deviation in the bid documents, it is required to seek approval of the Appropriate Commission in accordance with the process specified in clause 18 of the Guidelines. Further, as noted above, as per clause 5.7.1 (Change in Law) of the Guidelines, the quantum and mechanism of compensation payment towards Change in Law are required to be determined by the Appropriate Commission.

26. However, perusal of Article 12.1.1.(g) of the PPA executed between the Petitioner and Solar Power Developer reveals that the parties themselves have

determined quantum and mechanism for certain Change in Law events such as anti-dumping duty, safeguard duty and customs duty, which is clearly at variance with the clauses of the Guidelines and thus, insertion of the Article 12.1.1(g) in the PPA is a deviation from the provisions of the Guidelines. Accordingly, the Petitioner was directed to submit the reason for the deviation taken from the Guidelines and whether any approval of Appropriate Commission had been obtained in accordance with clauses 3.1.1(c) and 18 of the Guidelines. In this regard, the Petitioner has submitted that in absence of the Standard Bidding Documents issued by Central Government, the Petitioner had prepared the Bid documents consistent with the Guidelines. Subsequently, during the tendering process, based on various feedbacks/ discussion and SECI's amendment dated 3.1.2020 in Tender No. SECI/C&P/SPD/ISTS-VII/RfS/1200MW/012020, the Petitioner added Article 12.1.1(g) to the PPAs in line with the conditions mentioned in tender documents prepared by established CPSU like SECI in expectation for better response, competitive tariff and more clarity. It has also been submitted that reason for insertion of the said clause was to improve transparency, strengthening procedural certainty, competitiveness and level playing field amongst the bidders/ aggrieved party and as per Article 12.2.1 of the PPA, the aggrieved party is nevertheless required to approach the Commission seeking approval of the Change in Law. Moreover, none of bidders have raised any queries/ objections to the said clause during the bid process. The Petitioner, vide its affidavit dated 12.3.2021, had submitted that the said clause is mere detailed elaboration of the clause mentioned in the Guidelines and if the Commission considers it as deviation, it may be condoned and approved. However, in the subsequent affidavit dated 23.4.2021 and during the course of hearing on 21.5.2021, the learned counsel for the Petitioner has fairly conceded that

the said clause amounts to deviation from the provisions of the Guidelines and has accordingly sought approval for the same.

27. The Commission observes that an extremely casual approach has been adopted by the Petitioner during the present proceedings. The Petitioner neither deemed it necessary to take prior approval of the Commission for the deviations taken in the bid documents from the provisions of the Guidelines as mandated therein nor prayed for the approval/condonation of such deviations in the instant petition filed by it. The Petitioner has sought approval/condonation of such deviations during the present proceedings only after the same has been pointed out. This, in our view, it is a serious lapse on the part of the Petitioner. We expect a CPSU like the Petitioner to be more professional and responsible and deem it necessary to advise it to comply with the provisions of the Guidelines scrupulously.

28. In light of the discussions as above, it emerges that in the process of competitive bidding undertaken by NHPC, two deviations, namely, (a) the deviation related to the Change in Law clause which has not been approved by the Commission, and (b) the deviation related to publishing documents in national newspapers which has been condoned by the Commission have been taken from the Guidelines issued by Ministry of Power, Government of India under Section 63 of the Act. The Commission observes that as per Clause 10.2 of the Guidelines, Evaluation Committee is required to certify that the bidding process and evaluation have been carried out in conformity to the provisions of RfS. In this regard, NHPC has furnished a confirmation certificate to the effect that no deviations were made in regard to RfS bidding Guidelines (excluding normal consequential addition/ deletion) and that bid evaluation has been conducted in

conformity with the provisions of RfS. Relevant portion of the said certificate is extracted as under:

“...This is to certify that no deviations were made by NHPC in regard to the Request for Selection (RfS) Bidding Guidelines (excluding normal consequential addition/deletion) and to the effect that Bid Evaluation Committee has conducted the bid evaluation in conformity with provisions of RfS (as required in terms of Article 10.2 of the Guidelines).”

29. Thus, we observe that the above mentioned certificate submitted by the Petitioner (that no deviation were made by NHPC in regard to RfS Bidding Guidelines) is incorrect, misleading and self-contradictory, in the light of the Petitioner’s own affidavit dated 23.4.2021 wherein it has itself acknowledged that it has taken two deviations from the Guidelines.

30. On the issue of deviation from the provisions of the Guidelines, we note that Rewa Ultra Mega Solar Limited, Madhya Pradesh Power Management Company Limited and West Central Railway had filed Petition No. 91/MP/2020, Petition No. 631/MP/2020 and Petition No. 672/MP/2020, respectively before this Commission under clause 18 of the Guidelines for seeking approval of certain deviations in the Bid documents in respect of the bid process initiated for the development of (i) 500 MW solar PV projects in Neemuch Solar Power Park, (ii) 450 MW solar PV projects in Shajapur Solar Park and (iii) 550 MW solar PV projects in Agar Solar Park respectively. In the said Petitions, amongst the others, the Petitioners therein had sought an approval for the identical deviation to be incorporated in the PPA. However, the Commission vide its order dated 25.4.2021 has disallowed the said deviation by observing as follows:

“137. We are of the view that the tariff once determined through competitive bidding under section 63 of the Electricity Act, 2003 and adopted by the Commission cannot be reopened/ revised. If tariff is allowed to be revised, then the bidding process itself gets

vitiated. Further, the Clause 5.7.1 of the Solar Bidding Guidelines regarding 'Change in law' requires that firstly, the quantum and mechanism of compensation payment has to be determined, and secondly the date from which the quantum and mechanism of compensation payment shall be effective, has to be declared. Therefore, the quantum and mechanism of compensation payment has to be in the form of a separate/ additional component. It may be the case of lumpsum compensation or compensation based on annuity distributed over a period of time or any other method but cannot be in the form of a revised tariff. As such the deviation in this context is not allowed."

31. In light of the above decision and in view of the fact that the Petitioner has submitted an incorrect and misleading certificate as discussed in paragraph 29 above, we are not inclined to approve the deviation taken by the Petitioner under Article 12.1.1(g) of the PPA from the provisions of clause 5.7 of the Guidelines. The Petitioner needs to take up the issue of modification of PPAs with the solar power developers so that it is in conformity with the Guidelines as regards the Change in Law provisions. The Petitioner shall remove the Article 12.1.1.(g) of the PPAs executed with the developers and shall execute Supplementary PPAs in this regard and shall place the same on record of the Commission within a period of two months from the issuance of this order.

32. The Petitioner has prayed to adopt the tariff discovered in the competitive bid process for the individual power Projects. As discussed above, it emerges that the selection of the successful bidders done and the tariff of the solar projects has been discovered by NHPC through a transparent process of competitive bidding in accordance with Guidelines (except for the deviation related to the Change in Law clause which has not been approved by the Commission and the deviation related to publishing documents in national newspapers which has been condoned by the Commission) issued by Ministry of Power, Government of India under Section 63 of the Act. Therefore, in terms of Section 63 of the Act, the Commission adopts the following

tariff for the solar projects as agreed to by the successful bidders, which shall be subject to the Petitioner removing the Article 12.1.1.(g) of the PPAs executed with the developers and shall be effective from the date of execution of the supplementary PPA as per paragraph 31 above and shall remain valid throughout the period covered in the PSAs and PPAs:

Sr. No.	Name of SPD/SPV	Allocated Capacity (MW)	Tariff (Rs./kWh)
1	ABC Renewable Energy (RJ-02) Private Limited (Project SPV of ABC Renewable Energy Pvt. Ltd.)	400	2.55
2	Altra Xergi Power Private Limited (Project SPV of O2 Power SG PTE Ltd.)	380	2.55
3	Eden Renewable Passy Private Limited	300	2.55
4	SBE Renewables Twenty Three Projects Private Limited (Project SPV of SBE Renewables Seventeen Pvt. Ltd.)	600	2.55
5	AVAADA Sunrays Energy Private Limited (Project SPV of Avaada Energy Pvt. Ltd.)	320	2.56
	Total	2000	

33. Article 10.3 of the PPA provides as under:

“10.3 Payment of Monthly Bills

10.3.1 NHPC shall pay the amount payable under the Monthly Bill/Supplementary Bill by the thirtieth Day from the presentation of bill (the due date) to such account of the SPD, as shall have been previously notified by the SPD in accordance with Article 10.3.2 below. In case the monthly bill or any other bill, including a Supplementary Bill is issued after the (fifteenth) 15th day of the next month, the Due Date for payment would be (fifth) 5th of the next month to the succeeding month.

10.3.2 All payments required to be made under this Agreement shall also include any deduction or set off for:

(i) deductions required by the Law; and

(ii) amount claimed by NHPC, if any, from the SPD, through an invoice, to be payable by the SPD, and not disputed by the SPD within fifteen (15) days of receipt of the said Invoice and such deduction or set-off shall be made to the extent of the amounts not disputed. It is clarified that NHPC shall be entitled to claim any set off or deduction under this Article, after expiry of the said fifteen (15) Days period.

(iii) The SPD shall open a bank account at National Capital region (NCR),

(the “SPD’s Designated Account”) for all Tariff Payments (including Supplementary Bills) to be made by NHPC to the SPD, and notify NHPC of the details of such account at least ninety (90) Days before the dispatch of the first Monthly Bill. NHPC shall also designate a bank account at Delhi (“NHPC’s Designated Account”) for payments to be made by the SPD to NHPC, if any, and notify the SPD of the details of such account ninety (90) Days before the Scheduled Commissioning Date. NHPC and the SPD shall instruct their respective bankers to make all payments under this Agreement to the SPD’s Designated Account or NHPC’s Designated Account, as the case may be, and shall notify either Party of such instructions on the same day.

34. Article 10.4 of the PPA provides as under:

“10.4 Payment Security

Mechanism Letter of Credit (LC):

10.4.1 Subject to opening and maintenance of Letter of Credit by the Discom(s) (as per terms of NHPC –Discom (s) (PSA) in favour of NHPC, NHPC shall extend to the SPD, in respect of payment of its Monthly Bills and/or Supplementary Bills, a monthly unconditional, revolving and irrevocable letter of credit (“Letter of Credit”), which may be drawn upon by the SPD in accordance with this Article.

10.4.2 Subject to Article 10.4.1, not later than one (1) Month before the start of supply, NHPC through a scheduled bank shall extend a Letter of Credit in favour of the SPD, to be made operative from a date prior to the Due Date of its first Monthly Bill under this Agreement. The Letter of Credit shall have a term of twelve (12) Months and shall be renewed annually, for an amount equal to:

- i) for the first Contract Year, equal to the estimated average monthly billing;*
- ii) for each subsequent Contract Year, equal to the average of the monthly billing of the previous Contract Year.*

10.4.3 The SPD shall not draw upon such Letter of Credit before thirty days from Due Date of the relevant Monthly Bill and/or Supplementary Bill, and shall not make more than one drawal in a Month.

10.4.4 If at any time, such Letter of Credit amount falls short of the amount specified in Article 10.4.2 due to any reason whatsoever, NHPC shall restore such shortfall within seven (7) days.

10.4.5 NHPC shall cause the scheduled bank issuing the Letter of Credit to intimate the SPD, in writing regarding establishing of such irrevocable Letter of Credit.

10.4.6 NHPC shall ensure that the Letter of Credit shall be renewed not later than ten (10) days prior to its expiry.

10.4.7 All costs relating to opening and maintenance of the Letter of Credit shall be borne by NHPC.

10.4.8 If NHPC fails to pay undisputed Monthly Bill or Supplementary Bill or a part thereof within thirty days from Due Date, then, subject to Article 10.4.6, the SPD may draw upon the Letter of Credit, and accordingly the bank shall pay without any reference or instructions from NHPC, an amount equal to such Monthly Bill or Supplementary Bill or part thereof, if applicable, in accordance with Article 10.3.3 above, by presenting to the scheduled bank issuing the Letter of Credit, the following documents:

- i) a copy of the Monthly Bill or Supplementary Bill which has remained unpaid to SPD and;
- ii) a certificate from the SPD to the effect that the bill at item (i) above, or specified part thereof, is in accordance with the Agreement and has remained unpaid beyond the Due Date;”

35. Clause (10) of Regulation 9 of the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of trading licence and other related matters) Regulations, 2020 (hereinafter referred to as “Trading Licence Regulations”) provides as under:

“9. (10) The Trading Licensee shall make payment of dues by the agreed due date to the seller for purchase of the agreed quantum of electricity through an escrow arrangement or irrevocable, unconditional and revolving letter of credit in favour of the seller. Such escrow arrangement or irrevocable, unconditional and revolving letter of credit in favour of the seller shall be equivalent to:

(a) one point one (1.1) times the average monthly bill amount (estimated average of monthly billing amounts for three months or actual monthly billing amount for preceding three months as the case may be) with a validity of one year for long term contracts;

(b) one point zero five (1.05) times of contract value for short term contracts.”

36. The above provisions provide for payment security mechanism to be complied with by the parties to the present Petition. Accordingly, the provisions of Articles 10.3 and 10.4 of the PPAs and Clause (10) of Regulation 9 of the Trading Licence Regulations shall be abided by all the concerned parties to the present Petition.

37. NHPC, in its prayer, has further submitted that in addition to the tariff, there will be trading margin of Rs. 0.07/kWh (as mutually agreed between the parties) to be

recovered from the distribution licensees in terms of the PSAs. In this regard, Clause (1) (d) of Regulation 8 of the Trading Licence Regulations provides as under:

“For transaction under long term contracts, the trading margin shall be decided mutually between the Trading licensee and the seller.”

The above provision gives choice to the contracting parties to mutually agree on Trading Margin for long-term transaction.

38. However, Proviso to Regulation 8(d) of the Trading Licence Regulations provides as under:

*“8(1) (d) * * * * **

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.”

39. Regulation 8 (f) of the Trading Licence Regulations provides as under:

“For transactions under Back to Back 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.”

40. The above two provisions are exceptions to the main provision as regards trading margin. Distribution licensee has agreed to a trading margin of Rs.0.07/kWh as agreed in the PSA, which is in consonance with Regulation 8(1)(d) of the Trading Licence Regulations. Therefore, in case of failure by NHPC to provide escrow arrangement or irrevocable, unconditional and revolving letter of credit to the solar generators, trading margin shall be limited to Rs.0.02/kWh as specified in Regulation 8(1)(d) and Regulation 8(1)(f) of the Trading Licence Regulations.

41. In summary, in terms of Section 63 of the Act, the Commission adopts the tariff

for the solar projects as agreed to by the successful bidders as given in paragraph 32, which shall be subject to the Petitioner removing the Article 12.1.1.(g) of the PPAs executed with the developers and shall be effective from the date of execution of the supplementary PPA as per paragraph 31 above and shall remain valid throughout the period covered in the PSAs and PPAs.

42. Petition No. 721/AT/2020 is disposed of in terms of the above.

Sd/-
(P.K.Singh)
Member

sd/-
(I.S.Jha)
Member

sd/-
(P.K.Pujari)
Chairperson