

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 278/AT/2021

Coram:

**Shri I.S. Jha, Member
Shri Arun Goyal, Member
Shri P. K. Singh, Member**

Date of Order: 7th April, 2022

In the matter of

Petition under Section 63 of the Electricity Act, 2003 for adoption of tariff for 550 MW grid connected solar PV power projects 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 issued by the Ministry of Power, Government of India on 3.8.2017 as amended from time to time.

And

In the matter of

1. Rewa Ultra Mega Solar Limited,
Urja Bhawan Link Road No. 2
Shivaji Nagar, Bhopal-462 016
Madhya Pradesh

2. Madhya Pradesh Power Management Company Limited,
Shakti Bhawan, Rampur,
Jabalpur- 482008, Madhya Pradesh

3. West Central Railway,
General Manager's Office,
3rd Floor, Indira Market,
Jabalpur- 482 001, Madhya Pradesh

.... Petitioners

Versus

1. Ministry of New and Renewable Energy
Through Secretary
Block-14, CGO Complex, Lodhi Road,
New Delhi 110 003

2. Avaada Energy Private Limited,
C-11, Sector 65, Noida-201 301
Uttar Pradesh

3. Beempow Energy Private Limited,
Co O2 Power Private Limited,
8th Floor, DLF Square, Jacaranda Marg,
DLF Phase II, Gurgaon-122 002,
Haryana

.... Respondents

The following were present:

Shri Jafar Alam, Advocate, RUMSL
Shri Saahil Kaul, Advocate, RUMSL
Ms. Parichita Chowdhury, Advocate, RUMSL

ORDER

The Petitioners, Rewa Ultra Mega Solar Limited ('RUMSL'), Madhya Pradesh Power Management Company Limited ('MPPMCL') and West Central Railways ('WC'), have jointly filed the present Petition under Section 63 of the Electricity Act, 2003 (hereinafter referred to as 'the Act'), for adoption of tariff for 550 MW grid-connected ground mounted solar photovoltaic project ('PV Project') in Agar Solar Park at Agar district in the State of Madhya Pradesh. The PV Project is to be 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" dated 3.8.2017 (hereinafter referred to as 'the Guidelines') as amended from time to time issued by Ministry of Power, Government of India. The Guidelines are applicable to long-term procurement of electricity by procurers from grid-

connected solar PV power projects having a size of 5 MW and above. The Petitioners have made the following prayers:

“(a) Admit the present petition and list the same for an early hearing;

(b) Adopt the tariffs set out in Table – VIII of this petition for the 550 MW grid-connected ground mounted solar photo voltaic projects discovered through transparent competitive bidding based on the Solar Bidding Guidelines pursuant to RfP No; RUMSL/2019-20/719/335 in accordance with section 63 of the Electricity Act, 2003; and

(c) Pass any such further orders/directions as this Hon’ble Commission may deem fit and proper in the present facts and circumstances.”

Submissions of the Petitioners

2. RUMSL has been incorporated as a 50:50 joint venture company between Solar Energy Corporation of India (‘SECI’) and Madhya Pradesh Urja Vikas Nigam Limited (‘MPUVNL’). The objectives of RUMSL are to develop and facilitate large-scale solar power projects in the State of Madhya Pradesh (‘MP’), including the Agar Solar Park. The Petitioners have submitted that the Government of MP (‘GoMP’) has been earnestly exploring different sources of clean energy to meet its increasing energy requirements, diversify sources of energy, and address climate change. The State of MP has fairly good potential for solar power generation with about 300 (three hundred) clear days of sunshine in a year and an average solar radiation of about 4.5 to 5.5 kWh/sq.m/day. Further, based on the Renewable Purchase Obligations trajectory, the GoMP is planning several projects to meet its overall solar purchase obligations.

3. The Petitioners have submitted that with a view to provide a boost to renewable energy development in MP and in line with the Government of India’s

("Gol") target of installing 100 GW of ground mounted solar power projects in India by the year 2022, the GoMP and the Government of India have decided to set up various solar parks in different parts of MP, including, Agar Solar Park. In pursuance of the aforesaid objective, RUMSL was notified as solar park project developer for the State of MP by the Ministry of New and Renewable Energy ('MNRE'), including in relation to the Agar Solar Park. The Petitioners have submitted that 550 MW in the Agar Solar Park is split into 2 (two) units of ground mounted grid-connected solar photovoltaic power plants, to be developed on a pre-identified land parcel inside the Agar Solar Park, with the unit capacity of 200 MW (Unit 1), and 350 MW (Unit 2) respectively. The Petitioners have submitted that RUMSL has been entrusted with the responsibility to carry out the bid process to select suitable solar power generators to develop, operate and maintain the three units.

4. The Petitioners have submitted that as per clause 1. 4 of RfS, 'for the purpose of the Bid Process and the Agar Solar Park, RUMSL will be the solar power park developer developing the Agar Solar Park and the Authorized Representative' for carrying out the Bid Process in accordance with 63 of the Act.' Accordingly, on 26.1.2020, RUMSL, in its capacity as the Authorized Representative of the Procurers, namely, MPPMCL and Indian Railways issued the Request for Proposal ('RfP') along with standard drafts of the project agreements including the draft Power Purchase Agreement ('PPA') for selection of *550 MW grid-connected ground mounted solar photo voltaic projects* as per Guidelines as amended from time to time on ISN Electronic Tender System (ETS), an e-bidding portal. In Response to RfP, 15 bids were received. All the fifteen bids were found to fully meet the technical criteria

and qualified for opening of the financial bids. As per the eligibility criteria mentioned in the RfP, thirteen out of fifteen bids, were shortlisted for participating in the e-reverse auction. Pursuant to the opening and evaluation of the financial proposals, three lowest quoted bids for each unit were identified in accordance with the provisions of the RfP. On 12.7.2021, e-reverse auction was conducted on ISN ETC-e-bidding portal and pursuant thereto two bidders, namely, Avaada Energy Private Limited was allocated 200 MW at tariff of Rs. 2.459/kWh and Beempow Energy Private Limited was allocated 350 MW at tariff of Rs. 2.444/kWh. The Petitioners have submitted that before initiating the bid, the Petitioners through the Petition No. 672/MP/2020, had approached the Commission for approval of deviations from the provisions of the Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Power Projects. The Commission in its order dated 25.4.2021 approved the certain deviations taken from the Guidelines. The Petitioners have submitted that no preferential tariff/trading margin is being sought by RUMSL from the procurers.

5. The Petitioners have submitted that adoption of the tariff will be consistent with the Guidelines and provisions of the Act as provided in the preamble, Section 63 and Section 79 of the Act, National Electricity Policy and National Tariff Policy framed by the Central Government under Section 3 of the Act.

Hearing dated 15.2.2022

6. The matter was admitted on 15.2.2022 and notices were issued to the Respondents to file their reply. However, no reply has been filed by the Respondents.

7. The Commission vide Record of Proceedings for the hearing dated 15.2.2022 directed the Petitioners to submit the executed project agreements including the PPAs. The Petitioners vide the affidavit dated 28.2.2022 have placed on record Power Purchase Agreements executed between the Petitioners and the selected bidders for sale of power from the projects, Implementation and Support Agreement, Land Use Permission Agreements and Coordination Agreement,

Hearing dated 24.3.2022

8. During the course of hearing, learned counsel for the Petitioners submitted that in compliance with the direction of the Commission vide Record Proceedings (RoP) for the hearing dated 15.2.2022, the Petitioners have placed on record the Project Agreements executed by the Petitioners with the selected bidders, including the Power Purchase Agreements. Learned counsel for the Petitioners submitted that while no separate intimation was issued to the Commission about the initiation of the bid process, the Petitioners had approached the Commission vide Petition No. 672/MP/2020 wherein the Petitioners had placed on record the relevant details of the bid process and had sought approval for certain deviation from the provisions of the Guidelines prior to issuance of final bid documents. Initiation of the bid process by the Petitioners had been recorded by the Commission in the RoP issued in the said matter. He further added that the bid documents are in line with the Guidelines issued by Ministry of Power, Government of India on 3.8.2017, as amended from time to time and the deviations as approved by the Commission vide combined order dated 25.4.2021 in Petition No.672/MP/2020.

Analysis and Decision

9. In view of the above, we now proceed to consider the prayers of the Petitioners as regards adoption of tariff in respect of 550 MW grid connected ground mounted solar photo voltaic projects 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.

10. 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.”

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 Government of India under Section 63 of the Act has been followed in determination of such tariff.

11. 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 the 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, Government 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. MUs) terms. For procurement of power, the procurer may opt for either 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 developer through revolving Letter of Credit of an amount not less than one month 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 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 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 the RfS stage 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 price 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 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.

12. In terms of the provisions of the 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(s).

13. The Petitioner, RUMSL has been designated as the Authorised Representative of Petitioner No. 2 and Petitioner No. 3 as provided in Clause 1.4 of the RfP and Recital (f) of the PPA(s), to select solar power developers to develop, operate and maintain grid connected solar photovoltaic power plants with an aggregate capacity of 550 MW to be set up as a part of Agar Solar Park, to invite bidding under tariff based competitive bidding process, and to enter into PPAs with developers at the tariff discovered in the competitive bid process, and to enter into PSAs with the distribution licensees to enable them to fulfill their Renewable Purchase Obligations.

14. 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 power projects having size of 5 MW and above. However, in order

to understand the scope of the bid process, the aforesaid Guidelines have to be read with MNRE's communications dated 20.4.2017 14.8.2019, 9.10.2019 and 22.5.2020. As per the Guidelines, RUMSL in the capacity of Authorised Representative of procurers, invited proposals for setting up of grid connected 550 MW solar PV Power projects on develop, operate and maintain basis and procurement of solar power from the projects being setup in relation thereto.

15. The key dates in the bidding process were as under:

S. No.	Event description	Timeline
1.	Date of issuance of RfP	26.1.2020
2.	Last date of bid submission	21.6.2021
3.	Qualification Proposal Opening	22.6.2021
4.	Financial Proposal Opening	6.7.2021
5.	Reverse Auction Process	12.7.2021
6.	Issuance of Letter of Awards	1.9.2021

16. On 26.1.2020, RUMSL, issued RfP documents along with standard PPA and others project agreements on ISN Electronic Tender System (ETS) for selection of solar power generators for setting up of 550 MW grid connected ground mounted solar PV power plants at Agar Solar Park under competitive bidding.

17. As per Clause 6.4 of the Guidelines, RfS notice is required to be published in at least two national newspapers and its own website to accord wide publicity. In this regard, RUMSL has placed on record documents demonstrating publication of RfP on the e-publishing system, Government of India. Further, on 22.1.2020, RUMSL published the notices in the leading newspapers.

18. The Bid Evaluation Committee (BEC) comprising of the following was constituted for opening and evaluation of bids for RfP dated 26.1.2020:

Technical Evaluation Committee

Tender Description	Name of officer	Designation
Selection of Developers for Setting up of 550 MW grid connected solar PV projects in Agar district.	Shri Deepak Saxena	CEO, RUMSL
	Shri Avaneesh Shukla	Executive Engineer, RUMSL
	Shri Sanjay Verma	Executive Engineer, RUMSL
	Ms. Deepali Maheshwari,	Junior Finance Officer, RUMSL

Financial Proposal Evaluation Committee:

Tender Description	Name of officer	Designation
Selection of Developers for Setting up of 550 MW grid connected solar PV projects in Agar district.	Shri Deepak Saxena	CEO, RUMSL
	Shri Avaneesh Shukla	Executive Engineer, RUMSL
	Shri Sanjay Verma	Executive Engineer, RUMSL
	Shri K.L. Gupta	CFO, RUMSL

19. Last date of submission of bid was 21.6.2021 and response to RfP was received from the following fifteen bidders:

Sr. No.	Name of Bidders
1.	ACME Solar Holdings Private Limited
2.	M/s Avaada Energy Private Limited
3.	Ayana Renewable Power Five Private Limited
4.	Azure Power India Private Limited
5.	Renew Solar Power Private Limited
6.	TP Saurya Limited
7.	Beempow Energy Private Limited
8.	Litsolaire Energy Private Limited
9.	Sprng Green Power Private Limited
10.	Aljomaih Energy & Water Co.
11.	Green Infra Wind Energy Limited
12.	Torrent Power Limited

13.	NTPC Renewable Energy Limited
14.	SJVN Limited
15.	NHDC Limited

20. The technical bids of all the above 15 bidders were found to be qualified for opening of financial proposals. Pursuant to opening and evaluation of the financial proposals, the following thirteen bidders were found eligible for participating in the reverse auction process to discover the lowest tariff:

Sr. No.	Name of Bidders
1.	ACME Solar Holdings Private Limited
2.	M/s Avaada Energy Private Limited
3.	Ayana Renewable Power Five Private Limited
4.	Azure Power India Private Limited
5.	Renew Solar Power Private Limited
6.	TP Saurya Limited
7.	Beempow Energy Private Limited
8.	Sprng Green Power Private Limited
9.	Aljomaih Energy & Water Co.
10.	Green Infra Wind Energy Limited
11.	Torrent Power Limited
12.	NTPC Renewable Energy Limited
13.	SJVN Limited

21. Subsequent to opening and evaluation of the financial proposals, the following lowest quoted (Best Quotes) for each unit were identified for each unit in accordance with the provisions of the RfP:

S. No.	Unit	Bidder	Quoted Tariff (per kWh)
1.	Unit 1 (200 MW)	TP Saurya Limited	2.73
2.	Unit 2 (350 MW)	TP Saurya Limited	2.73

22. After the identification of the Best Quotes, e-reverse auction was carried out on 12.7.2021. The final tariff and the selection of the bidders were arrived as under:

S. No.	Unit and allotted capacity	Selected bidders	Lowest tariff discovered (Rs. per kWh)
1.	Unit 1 (200 MW)	Avaada Energy Private Limited	2.459
2.	Unit 2 (350 MW)	Beempow Energy Private Limited	2.444

23. The Petitioners vide its conformity certificate 22.7.2021 has confirmed that bidding has been carried out in terms of the RfP documents and the Guidelines. Relevant portion of the conformity certificate dated 22.7.2021 is extracted as under:

“Sub: Confirmation Certificate for bid conducted pursuant to RfP No. RUMSL/2019-20/719/335 (550 MW Agar Solar Park)”

This is with reference to the Single Stage Two Envelope bid process conducted pursuant to RfP No. RUMSL/2019-20-719/335 for selection of developers for Grid Connected Solar PV Project totaling 550 MW in Agar, district of Madhya Pradesh, India.

The Qualification (Technical) Proposals of Agar Solar Park were opened on 22nd June, 2021 and Financial Proposals on 06th July, 2021. After the due technical and financial evaluation of proposals submitted by all bidders, the Revenue Auction (RA) process for Shajapur Solar Park was conducted on 12th July, 2021. After the successful completion of RA process the lowest tariff received for the 2 units of Agar solar park are as follows:

Unit No.	Lowest quoted tariff (INR)	Company Name (winning bidders)
Unit 1 for 200 MW	2.459	Avaada Energy Private Limited
Unit 2 for 350 MW	2.444	Beempow Energy Private Limited

The bid evaluation committee hereby certifies that the bid of all the eligible bidders were critically evaluated and the bidding and evaluation process have been conducted in conformity to the provisions of the RFP and Solar Bidding Guidelines.”

24. On 1.9.2021, RUMSL issued Letter of Award (LoAs) to the selected bidders to develop the project. Relevant portion of LoA issued to one of the bidders is extracted as under:

Sub: Letter of Award for the development of Unit 1 (200 MW) at the Agar Solar Park, Madhya Pradesh

Reference: Request for Proposal No. RUMSL/2019-20-719/335 dated 26 January, 2020

Dear Sir,

We are pleased to inform you that pursuant to the evaluation of the Bids received, the Reverse Auction Process conducted on 12 July 2021 and your quoted Tariff of INR 2.459/kWh, you have been declared as the Selected Bidder for the development of Unit 1 (200 MW) at the Agar Solar Park in Madhya Pradesh. Therefore, we hereby award you the rights to develop, operate and maintain the Unit in accordance with the requirements of the Project Agreements and request you to satisfy the following conditions precedent for the execution of the Project Agreements:

- 1. In accordance with Clause 21.1 of the RFP, within 15 (fifteen) days of receipt of this LOA, sign and return as acknowledgment, a duplicate copy of this LOA to RUMSL. Also, in accordance with Clause 15.1 of the RFP, submit the original versions (in hard copy) of the documents submitted online as part of your Bid submission including the hard copies of the initialed/digitally signed copies of the Bid Documents and Project Agreements, along with your acknowledgment of the LOA.*
- 2. In accordance with Clause 22.1 (b) of the RFP and Article 3.1 of the MPPMCL PPA, within 15 (fifteen) days of receipt of this LOA, submit the Performance Bank Guarantee(s) for an amount equivalent to INR 124,800,000 (Indian Rupees One Hundred and Twenty Four Million Eight Hundred Thousand) in the format as set out in Annex 1 of the MPPMCL PPA.*
- 3. In accordance with Clause 22.1(b) of the RFP and Article 3 of the Indian Railways PPA, within 15 (fifteen) days of receipt of this LOA, submit the Performance Bank Guarantee(s) for an amount equivalent to INR 35,200,000 (Indian Rupees Thirty Five Million Two Hundred Thousand) in the format as set out in Annex I of the Indian Railways PPA.*
- 4. In accordance with Clause 8.1 and 22.1 (di) of the RFP, pay Project Development Fee equivalent to a sum of INR 5,347,600 (Indian Rupees Five*

Million Three Hundred and Forty-Seven Thousand and Six Hundred) and USD 26,002 (United States Dollars Twenty Six Thousand and Two) of IFC, prior to or on the earlier of the date falling 30 (thirty) days of issuance of the LOA or date of signing of the project Agreements. Please note that the entire Project Development Fee is payable in USD and therefore, the INR component mentioned hereinabove shall be converted into USD at the exchange rate published by the Reserve Bank of India (reference rate mentioned at <https://tbil.org.in/>) on the date of issuance of LOA. IFC shall also intimate the exact amount of project Development Fee, to be paid in USD in accordance with the exchange rate as on the date of issuance of the LOA. Please note that the Project Development Fee shall be paid without any deductions whatsoever for taxes, duties, charges or other withholdings, into the bank account with the following details:

5. In accordance with Clause 22.1 (c) of the RFP, within 7 (seven) working days of receipt of this LOA, submit the relevant charter documents of the entity that will be executing the Project Agreements, including the memorandum of association and articles of association highlighting the object clause relating to power/electricity generation or developing renewable energy. Further, in the event that the Bidder intends to execute the Project Agreements through its SPV, then submit a board resolution from your side undertaking to invest in the SPV 100% (one hundred percent) of the equity requirement for developing the Unit; and

6. In addition to the above, you, the Selected Bidder, shall comply with all other requirements as set out in the Bid Documents and the Project Agreements and for all purposes, the conditions of the Bid Documents may be read as a part of this LOA and in case of any contradiction, the terms set forth in the Bid Documents shall prevail.

Upon receipt of the documents evidencing the satisfaction of all conditions precedent mentioned above within the prescribed time, we will inform you of the date, time and venue for the signing of the Project Agreements.

In the event that you fail to satisfy any of the conditions or fulfill any of the obligations mentioned in this LOA, including return of a signed copy of this LOA to us within the prescribed time, without prejudice to any right that we may have under the Bid Documents or under Applicable Law, we reserve the right to invoke the Bid Security Declaration for, amongst others, RUMSL's time, cost and efforts, withdraw this LOA and consequently, cancel the award of the Unit to you.

If it is discovered, at any time before signing the Project Agreements or after their execution and while it is in force that the Financial Capacity requirement specified in the Bid Documents has not been met by you or you have

misrepresented or have given any incorrect or false information, then this LOA shall be liable to be cancelled and, if the Project Agreements have been executed, then the Project Agreements shall be liable to be terminated forthwith. RUMSL will have the right to invoke the Bid Security, and, if after the execution of the Project Agreements, the relevant counterparty(ies) to the Project Agreements shall have the right to forfeit and appropriate the Performance Bank Guarantees, as a mutually agreed genuine pre-estimate of the loss suffered by RUMSL or the relevant counterparty(ies) to the Project Agreements, as the case may be, for, amongst others, RUMSL's or the relevant counterparty(ies) time, cost and efforts. Such forfeiture will be without prejudice to any other right or remedy that RUMSL may have under the Bid Documents and the relevant counterparty(ies) to the Project Agreements may have under the respective the Project Agreements or Applicable Law.

All other terms and conditions for the development, operations and maintenance of the Unit shall be as per the terms of the Project Agreement."

25. Pursuant to issuance of Letter of Award and allocation of capacity, Indian Railways and RUMSL entered into PPA dated 25.11.2021 with selected bidders, Avvada Sunshine Energy Private Limited for Unit 1 (200 MW) and PPA dated 25.11.2021 with Beempow Energy Private Limited for Unit 2 (350 MW) of the project. MPPMCL and RUMSL have also entered into PPAs dated 25.11.2021 with respective project developers. Along with the executed PPAs, the Petitioners have also placed on record the Implementation and Support Agreements executed between RUMSL and the successful bidders, Land Use Permission Agreements entered into between Energy Department, Madhya Pradesh, Petitioners and selected bidders, and Coordination Agreement executed between the selected bidders and the Petitioners.

26. In terms of Clauses 3.1.1(a) and 3.1.1(c) of the Guidelines, the procurer (including intermediary procurer) is required to prepare the bid documents in accordance with the provisions of 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. The Petitioners vide its affidavit dated 30.3.2022 have submitted that before approaching the Commission for adoption of the tariff, the Petitioners had filed the Petition in the Commission seeking approval of deviations from the provisions of the Guidelines prior to launch of the final bid documents (including the project agreements). The Commission in order dated 25.4.2021 in Petition No. 672/MP/2020 approved the certain deviations. The Petitioners have submitted that the present bid documents have been prepared in terms of the deviations permitted by the Commission in the above order dated 25.04.2021 and there are no deviations in the bid documents other than those permitted by the Commission in its order dated 25.4.2021. In our view, the Petitioner has complied with the provisions of Clauses 3.1.1(a) and 3.1.1(c) of the Guidelines.

27. The Petitioners have prayed to adopt the tariff discovered in the competitive bid process. As discussed above, it emerges that the selection of the successful bidders has been done and the tariff of the solar PV project has been discovered by the Petitioners 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. Therefore, in terms of Section 63 of the Act, the Commission adopts the following individual tariff for the solar PV power projects as agreed to by the successful bidders which shall remain valid throughout the period covered in the PPAs:

S. No.	Selected Bidder	Tariff (INR/kWh)	Allotted capacity (in MW)
1.	Avaada Energy Private Limited	2.459	200
2.	Beempow Energy Private Limited	2.444	350

28. Article 10.4 of the PPA provides as under:

“10.4 Payment of Monthly Bills and Supplementary Bills

- (a) *Procurer shall pay the amount payable under the Monthly Bill/ Supplementary Bill by the Due Date.*
- (b) *In the event that there are any undisputed amounts due and payable to the Procurer by the SPD under this Agreement, which are not paid within 30 (thirty) Days of receipt of an invoice by the SPD, then the Procurer shall have the right to set-off such amounts against the Tariff Payments.*
- (c) *In the event that the SPD fails to pay, in full, any and all charges payable to RUMSL under the Implementation Support Agreement and/or under Unit LUPA and such charges remain unpaid for more than 30 (thirty) days from the relevant due date under the Implementation Support Agreement and/or under Unit LUPA, as the case may be, then the Parties agree and acknowledge that RUMSL shall have the right to recover such undisputed charges from the Tariff Payments due to the SPD under this Agreement. RUMSL shall issue a notice to the Procurer, with a copy to the SPD, requiring the Procurer to set off such undisputed charges from the Tariff Payments payable by the Procurer to the SPD. Upon receipt of such notice, the Procurer shall, within 60 (sixty) days of the date of the notice, set off such amount equivalent to the undisputed charges from the Tariff Payments and pay the unpaid amounts to RUMSL. Any Tariff Payment remaining after the set-off shall be paid to the SPD.*
- (d) *The SPD shall open a bank account at Kotak Mahindra Bank, Nariman Point, Mumbai (**SPD's Designated Account**) for all payments to be made by the Procurer to the SPD under this Agreement, including payments to be made under the Supplementary Bills, and notify the Procurer of the details of such account at least 90 (ninety) days before the dispatch of the 1st (first) Monthly Bill. The Procurer shall also designate a bank account at the South Civil Lines, Jabalpur main branch of the State Bank of India bearing account number 00000034404839671 and IFSC Code SBIN0000390 (**Procurer's Designated Account**) for payments to be made by the SPD to Procurer under this Agreement, and notify the SPD of the details of such account within 90 (ninety) days from the Execution Date. The Procurer and the SPD shall instruct their respective bankers to make all payments under this Agreement to the*

SPD's Designated Account or Procurer's Designated Account, as the case may be, and shall notify either Party of such instructions on the same day."

29. Article 10.6 of the PPA provides as under:

"10.6 Payment Security Mechanism

(a) Letter of Mandate

(i) No later than 30 (thirty) days prior to the date of issue of the first Commissioning Certificate or Confirmation Certificate, as the case maybe, for initial Part Capacity or Unit COD, the Procurer shall issue an unconditional letter to the Reserve Bank of India (RBI), substantially in the format as set out in Annex 2, authorizing the RBI to debit Procurer's account and credit the account of SPD upto an amount equal to the Applicable Tariff for the energy quantum equivalent to Guaranteed Energy Offtake for 4 (four) months (Letter of Mandate), which may be drawn upon by the SPD by way of a debit claim in accordance with this Article.

Provided that the SPD shall not raise a debit claim on the Letter of Mandate prior to the Due Date of the relevant Monthly Bill and/or Supplementary Bill, and shall not make more than one drawl in a Month.

Provided that if at any time, the Letter of Mandate amount falls short of the amount specified in Article 10.6 (a) the Procurer shall restore such shortfall within 15 (fifteen) days of occurrence of such shortfall.

(ii) Upon the issuance of the debit claim by the SPD, the RBI shall unconditionally debit the Procurer's account for an amount equivalent to the claim amount and credit it in the SPD's account, without requiring any other documentary proof from the SPD in relation to the commission of default by the Procurer.

(iii) The Letter of Mandate shall be operative, at all times, until the Expiry Date.

(iv) All costs relating to the issuance of the Letter of Mandate shall be borne by the Procurer.

Not later than 15 (fifteen) days of the issuance of Letter of Mandate as set out in Article 10.6(a)(i) above the RBI shall issue a forwarding letter in favour of SPD, substantially in the format as set out in Annex 3, to acknowledge the receipt of the Letter of Mandate by the Procurer."

30. The above provisions provide for payment security mechanism to be complied with by the parties to the present Petition. Accordingly, the provisions of Articles 10.4 and 10.6 of the PPAs shall be abided by all the concerned parties to the present Petition.

31. In summary, in terms of Section 63 of the Act, the Commission adopts the tariff (as at paragraph 27 of this order) for the solar PV project as the same has been discovered through transparent competitive bidding process in terms of the Guidelines and shall remain valid throughout the period covered in the PPA.

32. Prayer (b) of the Petitioners is answered accordingly.

33. Petition No. 278/AT/2021 is disposed of in terms of the above.

Sd/-
(P.K. Singh)
Member
Member

sd/-
(Arun Goyal)

sd/-
(I.S.Jha)
Member