

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 286/AT/2021

Coram:

Shri P.K.Pujari, Chairperson

Shri I.S. Jha, Member

Shri Arun Goyal, Member

Shri P. K. Singh, Member

Date of Order: 2nd April, 2022

In the matter of

Petition under Section 63 of the Electricity Act, 2003 for adoption of tariff for 8800 MW Solar Power Plant connected to Inter-State Transmission System linked with Setting-up of Solar Manufacturing Plant, selected through competitive bidding process as per the Guidelines dated 3.8.2017 of the Central Government as amended from time to time and interpreted and modified by the Central Government vide subsequent communications.

And

In the matter of

Solar Energy Corporation of India Limited,
6th Floor, Plate-B, NBCC Office Block Tower-2,
East Kidwai Nagar,
New Delhi –110023.

....Petitioner

Vs

1. Azure Power India Private Limited,
3rd Floor, Asset 301-304 & 307,
World Mark 3, Aerocity,
New Delhi - 110037

2. Adani Green Energy Four Limited,
4th Floor- South Wing,
Shantigram, SG Highway,
Ahmedabad, Gujarat- 382421

3. GRIDCO Limited,
Janpath, Bhubaneshwar,
Khurda, Odisha-751002

4. Chhattisgarh State Power Distribution Company Limited,
Vidyut Seva Bhavan, Dangania,
Raipur-492013

5. Tamil Nadu Generation and Distribution Corporation,
144, Anna Salai,
Chennai- 600002

6. Andhra Pradesh Central Power Distribution Corporation Limited,
Beside Polytechnic college,
ITI Road, Vijaywada, Krishna,
Andhra Pradesh- 520008

7. Andhra Pradesh Eastern Power Distribution Company Limited,
P & T Colony, Seethammadhara, Visakhapatnam,
Andhra Pradesh – 530013

8. Andhra Pradesh Southern Power Distribution Company Limited,
19-13-65/A, Srinivasapuram,
Tiruchanoor Road,
Tirupati -517501, Andhra Pradesh,

9. Government of Andhra Pradesh,
Energy Department, A.P. Secretariat,
Velagapudi, Amravati,
Andhra Pradesh- 522237

10. AP Rural Agriculture Power Supply Company Limited,
Tadepalle, Guntur,
Andhra Pradesh – 522501

11. Jammu Kashmir Power Corporation Limited,
SLDC Building, Gladni Grid Complex, Narwal,
Jammu – 180 006.

....Respondents

The following were present:

Shri M. G. Ramachandran, Sr. Advocate, SECI
Ms. Tanya Sareen, Advocate, SECI
Ms. Anusha Nagarajan, Advocate, TANGEDCO
Ms. Neha Singh, SECI
Shri Atulya Kumar Naik, SECI
Shri Shibasis Das, SECI
Shri Mudit Jain, SECI
Shri Dipak Panchal, Adani Renewable
Shri Tanmay Vyas, Adani Renewable
Ms. Akriti Gandotra, Azure Power

Shri Gaurang Sethi, Azure Power
Shri Payyaula Keshav, Objector

ORDER

The Petitioner, Solar Energy Corporation of India Limited ('SECI'), has filed the present Petition under Section 63 of the Electricity Act, 2003 (hereinafter referred to as 'the Act') for adoption of tariff for 8800 MW Solar Power Plants connected to inter-State Transmission System ('ISTS') linked with setting-up of Solar Manufacturing Plant, selected through competitive bidding process as per the "Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power Grid Connected Solar PV Power Projects" (hereinafter referred to as 'the Guidelines') dated 3.8.2017 issued by Ministry of Power, Government of India (MOP) as amended from time to time and interpreted and modified by the Central Government vide subsequent communications. The Petitioner has made the following prayers:

“(a) Adopt the tariff of Rs.2.54/kWh in respect of 1800 MW under Package-I i.e. 1200 MW of Adani Green Energy Four Limited and 600 MW of Azure Power India Private Limited in respect of Package-I on the terms and conditions contained in the Letter of Awards (including Addendum)/Power Purchase Agreements as per Table 4 at Para 20 of the Petition read with the Power Sale Agreements as per Table 3 at Para 16;

(b) Adopt the tariff of Rs.2.42/kWh in respect of 7000 MW under Package-II, Package-III, Package-IV i.e. 4667 MW of Adani Green Energy Four Limited and 2333 MW of Azure Power India Private Limited on the terms and conditions contained in the Letter of Awards (including Addendum)/ Power Purchase Agreements as per Tables 6,7,8 at Para 25 of the Petition read with the Power Sale Agreements as per Table 5 at Para 23;

(c) Approve Trading Margin of Rs.0.07/kWh as agreed to by the Distribution Companies in the signed PSAs in terms of Regulation 8 (1) (d) of the Trading License Regulations, 2020; and

(d) Exempt SECI from filing hard copies of the RfS Document and the signed PPAs and PSAs on account of the voluminous record. SECI undertakes to file the hard copies of the same, if so directed by this Commission...”.

Submission of the Petitioner

2. The Petitioner has submitted that on 25.6.2019, it issued Request for Selection

(RfS) along with Standard Power Purchase Agreement (PPA) and Power Sale Agreement (PSA) documents for '*Selection of Solar Power Developers for Setting up of 7 GW ISTS Connected Solar PV Power Plants linked with Setting up of 2 GW (Per Annum) Solar Manufacturing Plant under Global Competitive Bidding*' as per the Guidelines dated 3.8.2017 on ISN Electronic Tender System (ETS) e-bidding portal. As per the Petitioner, the entire tender was split into two Bidding Packages (1) Package A: For setting up a Solar Manufacturing Plants related to Cell (500 MW) and Modules (500 MW) only; and (2) Package B: For setting up of Solar Manufacturing Plants related to Ingots (500 MW) and Wafers (500 MW) only. Two Blocks were to be allocated under each of the above two packages. The Successful bidder were assured of PPA up to 2000 MW against 500 MW of Solar Manufacturing Plant under Bidding Package A and up to 1500 MW against 500 MW manufacturing capacity under Package B. Thus, the aggregated Solar PV Power Plant capacity stipulated under the above arrangement was maximum 7000 MW for the aggregated manufacturing capacity of 2000 MW (1000 MW under Package A and 1000 MW under Package B). In response to RfS, three bids were received offering an aggregate capacity of 8000 MW under Package A. However, no response was received under Package B. All the three bids under Package A were found to fully meet the technical criteria and qualified for opening of the financial bid. As per the eligibility criteria mentioned in the RfS, all the three bidders were shortlisted for participating in the e-reverse auction under Package A. The e-reverse auction was conducted on 22.11.2019 on ISN ETS e-bidding portal and pursuant thereto two bidders, namely Azure Power Private India (in short "Azure Power") and Adani Green Energy Four Limited (in short "Adani Green") were allocated 2000 MW each at tariff of Rs.2.92/kWh.

3. Thereafter, in terms of the Amendment-VI to RfS, the under-subscribed capacity

under Bidding Package-B i.e. up to 3000 MW of Solar PV Power Plant linked with 1000 MW of Solar Manufacturing Plant was transferred to Bidding Package-A. The ratio of Solar Manufacturing Plant and Solar Power Plant was kept as 1:4 in terms of the provisions of RfS. Post transfer of capacity, the total tendered capacity under Bidding Package-A became 8000 MW of Solar PV Power Plant linked with 2000 MW of Solar Manufacturing Plant. This additional capacity of 4000 MW of Solar PV Power Plant linked with 1000 MW of Solar Manufacturing Plant was offered to all the three bidders seeking their consent for acceptance of additional transferred capacity along with their bidding capacity in terms of RfS. Out of the three bidders, only Adani Green accepted the offer of transferred capacity from un-subscribed Package B to the extent of entire 4000 MW at tariff of Rs.2.92/kWh. Accordingly, the entire transferred capacity of 4000 MW under Package B was allocated to Adani Green at tariff of Rs.2.92/kWh. In terms of Clause 6.2 of the RfS document, the Bid Evaluation Committee recommended offering of Green Shoe Option to the two successful bidders, namely, Azure Power and Adani Green, equivalent to their won capacities in addition to their existing capacities. Since both the bidders won 2000 MW Solar PV Power Plant linked with 500 MW Solar Manufacturing Plant, an additional 2000 MW was recommended for both the successful bidders at Rs.2.92/kWh. Accordingly, SECI issued Letter of Awards (LoAs) on 10.12.2019 to both the successful bidders, *inter-alia*, offering additional capacity under Green Shoe Option. By letters dated 16.12.2019, both the bidders accepted the capacities offered under Green Shoe Option. On 8.6.2020 and 23.7.2020, SECI issued addendum to the Letters of Award dated 10.12.2019 given to the selected bidders, namely, Adani Green and Azure Power respectively. In the addendum, SECI provided the final awarded capacity of 4000 MW to Azure Power and 8000 MW to Adani Green at tariff of Rs 2.92/kWh.

4. It was stipulated in the bid that PPAs shall be signed for four packages (Package I to IV; each package being 1/4th of the awarded Solar PV Project capacity) under Bidding Package A. Considering the total capacity of 12000 MW awarded under Package A, each Package comprises of 3000 MW each. On 15.7.2021, Adani Green and Azure Power furnished an undertaking with respect to suo-motu reduction in quoted tariff from Rs.2.92/kWh to Rs.2.54/kWh for Package-I (3000 MW) of Manufacturing Scheme. Accordingly, the Petitioner has entered into PPAs with Adani Green and Azure Power at the said tariff and PSAs with procuring entities, Respondent No 3, GRIDCO Limited for 500 MW, Respondent No. 4, Chhattisgarh State Power Distribution Company Limited for 300 MW, Respondent No, 5, Tamil Nadu Generation and Distribution Corporation Limited for 1000 MW under Package I as on the date of filing of the Petition. The Petitioner has submitted that the commencement of supply under this Package is in the year 2023. Further, both Adani Green and Azure Power vide their undertakings dated 3.11.2021 reduced the quoted tariff to Rs.2.42/kWh in respect of the remaining packages i.e. Package II, Package III and Package IV. The Petitioner has entered into PPAs with both the generators at tariff of Rs.2.42/kWh and PSAs with the distribution utilities of Andhra Pradesh for 7000 MW as on the date of filing of the Petition. The Petitioner has submitted that the commencement of supply under these Packages is from the year 2024 and spread till 2026. The Petitioner has submitted that the selected solar power projects will enable the distribution companies in meeting their Renewable Purchase Obligations (RPO) apart from providing power at very economical rates. It has been further submitted that in addition to tariff, there will be the trading margin of Rs.0.07/kWh to be recovered from the distribution companies, which has been duly agreed to by the distribution companies in the PSAs.

Hearing dated 13.1.2022

5. The Petition was admitted on 13.1.2022 and notices were issued to the Respondents to file their reply. The Commission vide its RoP directed the Petitioner to file a comparative statement indicating the steps and process followed by the Petitioner in the bidding/tender, mapping the same to the corresponding enabling provisions of the Guidelines as amended from time to time and interpretation/clarifications issued by the Central Government.

6. In compliance of the direction of the Commission, the Petitioner vide its affidavit dated 3.2.2022 has filed a comparative statement indicating the steps and processes followed by it in the bidding/ tender and mapping the same to the corresponding enabling provisions of the Guidelines issued by the Central Government. In the affidavit, the Petitioner has contended that the Guidelines dated 3.8.2017 (amended vide further Amendments dated 14.6.2018, 3.1.2019, 9.07.2019 and 22.10.2019) notified by the Central Government have been formulated to provide the basic framework for long term procurement of solar power at a tariff to be determined through transparent process of bidding under Section 63 of the Act. The Petitioner has submitted that the Central Government has, from time to time, issued the notifications dated 14.8.2019, 9.10.2019 and 22.5.2020 clarifying the scope and application of the Guidelines in regard to implementation of the Scheme in terms of Clause 20 ('Clarification and Modification to Guidelines') of the Guidelines (introduced vide amendment dated 9.7.2019). It has been further submitted that the Central Government by Notification dated 20.4.2017 had allowed SECI to invite bids for the setting up of solar PV manufacturing plants linked with PPAs for Solar PV Power plants and that these Notifications are relevant in regard to the

consideration of the scope of the Guidelines vis-à-vis the solar power procurement linked with manufacturing scheme. The Petitioner also placed on record a comparative statement indicating the steps and process followed by SECI in the bidding/tender, mapping the same to the corresponding enabling provisions of the Guidelines as amended from time to time and interpretation/clarifications issued by the Central Government. No reply has been filed by the Respondents.

Hearing dated 9.2.2022

7. The matter was again heard on 9.2.2022. During the hearing, the Commission observed that Shri Payyaula Keshav, in his individual capacity, had sought permission to submit his observations during the course of hearing. Accordingly, Shri Payyaula Keshav was permitted to attend the hearing as an objector. The Commission further observed that Shri Payyaula Keshav is not a party to the Petition. However, the Commission, in exercise of powers under the provisions of Section 94(3) of the Electricity Act, 2003 and in accordance with Regulation 52 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 allowed Shri Payyaula Keshav to make written submissions on the issues raised in the Petition. The Petitioner and the Respondents were directed to file their response thereafter.

Submissions by Objector Shri Payyaula Keshav

8. Shri Payyaula Keshav, as an objector, filed the written submissions vide affidavit dated 24.2.2022. The objector has mainly submitted as under:

- (a) RfS is contrary to the provisions of the Act as there exists no Guidelines for combining Solar Power Plants and Solar Manufacturing Plant.

(b) In the present RfS, the Petitioner has misconstrued the basic purpose and objective of the Act and has combined the activity of generation with “manufacturing” of equipment used in such generation without there being a legal mandate in the Act. It is a settled principle of law that while interpreting a statute, what is not specifically provided for in law cannot and in all propriety should not be read into it. Hence, the activity of manufacturing cannot be assumed as an inherent part of the Act. It is quite surprising that the Scheme for initiating the Solar PV Manufacturing Linked PPA Scheme was coined as early as 20.4.2017, yet there is not a whisper of the same in the Guidelines issued on 3.8.2017.

(c) Section 63 of the Act provides that a competitive bidding mechanism shall be conducted in accordance with the Guidelines issued by the Central Government. The said provision also requires the Appropriate Commission to adopt the tariff if the same has been discovered as per the said Guidelines. It is clear from a bare reading of Clause 1.2.1 that the Guidelines dated 3.8.2017 have been issued with a limited purpose of discovery of tariff of Solar PV Plants and also provide a framework for procurement of power by distribution licensees/intermediary procurer/trader. The Guidelines do not provide for any ancillary activities other than for discovery of tariff that may be used for procurement of electricity by either the distribution licensees or a trader.

(d) The inclusion of manufacturing as part of the RfS curtailed the number of participants thereby affecting the competitiveness of the bid and has resulted in the inordinate increase in tariff. The bid has not achieved anything which can be considered favourable from the perspective of consumers.

(e) The additional criteria of manufacturing resulted in the ceiling tariff being revised from Rs.2.75/kWh to Rs.2.93/kWh which is clearly arrived at by an increase of Rs.0.22 per kWh to Rs.0.25 per kWh on account of introducing manufacturing in the scope of the RfS. The Petitioner in its letter dated 7.12.2021 clearly admits that the price of Rs.2.75/kWh did not invoke any interest in the industry. Instead of ending the process there and then, the Petitioner pursued in its endeavour to release the RfS and as a result ended up increasing the ceiling tariff to

Rs.2.93/kWh. The intent of introducing the competitive bidding regime was to ensure that the tariffs are low. However, contrary to the said principle, the Petitioner kept on increasing the ceiling tariff with the sole purpose to introduce manufacturing into the scheme of things even though there was neither legislative intent nor sufficient takers of the scheme in the market which is clearly against the Act whose object is to ensure consumer's interest.

(f) In the absence of specific Guidelines, the RfS cannot be considered to have been issued in accordance with Section 63 of the Act. As the RfS fails to secure a competitive tariff in line with the market discovered prices of the present times, it fails to meet the basic necessity of protecting consumer interest. Therefore, the present Petition needs to be rejected *in limine*.

(g) Clause 14.3 of the Guidelines stipulates that the projects shall be commissioned within a period of 15 months from the date of execution of the PPA, for projects specified to be set up in solar park, and within a period of 18 months from the date of execution of the PPA, for projects not specified to be set up in solar park. In the extant case, it is not clear whether the projects proposed to be developed pursuant to RfS would be developed in a solar park or as an individual standalone plant. As per the terms of the RfS, the developers have been permitted to set up the plant within a maximum period of 30 months or a further time period with an imposition of ISTS charges. In essence, the additional time granted under the RfS should result in lower tariffs considering that the trend of tariffs discovered in various bids issued year on year shows that there is a gradual but consistent decline/reduction in the tariff discovered in competitive bids. The said reduction is on account of reduced prices of project components on a regular basis which is possible due to ever growing competition in the solar power sector. As on date, the tariff of standalone solar bids is pegged at Rs.2.00 per unit, there can be no rational explanation in allowing an additional time period of 12-15 months in project execution under the RfS and yet receiving a tariff of Rs.2.92 per unit, which is exorbitantly higher than the present-day tariff. The Guidelines do not provide any room for interpretation as regards the time period for commissioning of plants and hence a project awarded under the Standard Bidding Guidelines would necessarily

have to be commissioned within 18 months as stipulated in the said Guidelines. Since the additional time allowed by the Petitioner in the RfS does not have statutory sanction such an extension goes against the principles/provisions of the Guidelines and hence, cannot be allowed at any cost.

(g) The Guidelines do not provide for any revision in the tariff determined through competitive bidding process. The primary reason of the same is enshrined in the term 'transparent process of bidding', which is the heart of Section 63 of the Act. Once the tariff has been determined through bidding process, the same is required to be adopted by the Appropriate Commission for the simple reason that it is competitive and ensures that the best tariff is determined in a manner that is not arbitrary in nature.

(h) In the extant case, as is clear from the averments of the Petition, the base tariff fixed by the Petitioner in the RfS was Rs.2.92/kWh. The same was discovered after two rounds of bidding by the participants. Subsequently, after issuance of Letter of Award, the said tariff was suo-moto revised/reduced by the successful bidders purportedly on their own volition. It is strange that the Petitioner which claims to have followed the Guidelines in conducting the bid and has also filed a conformity certificate (as Annexure D of the Petition) has allowed/accepted the reduced tariff without any basis or underlying provision being there in the Guidelines. It is also difficult to construe that once a tariff determined through a bidding process is allowed to be revised it cannot be treated as a tariff determined through a transparent bidding process under Section 63 of the Act. As the revised/reduced tariff is not one that has been discovered under Section 63 of the Act, the same cannot be adopted by the Commission as per the process laid down in Section 63 of the Act. Further, the Petitioner has signed PSAs with various distribution companies at different rates which is much higher than the recently discovered tariff of Rs.2.00/kWh for standalone solar projects.

(i) Initially the bid was issued for 2 GW. Clause 3.1.1(b) of the Guidelines provide that the Petitioner (being the Procurer) was required to inform this Commission prior to initiation of the bidding process. It is not clear whether the

Petitioner had intimated the Appropriate Commission regarding subsequent revision/ increase in the bidding capacity.

(j) As per Clause 3.1.1(a) of the Guidelines, the Petitioner was required to conduct the bid in accordance with the Guidelines while using the standard bidding documents i.e. model RfS, model PPA and model PSA notified by the Ministry of Power, Government of India and the Petitioner was required to seek prior approval of the Commission in accordance with Clause 18 of the Guidelines for any deviations. On a conjoint reading of Clause 3.1.1(c) and Clause 18 of the Guidelines, it can be construed that such an approval for deviations would necessarily have to be procured prior to the bid being conducted. Accordingly, deviations from the Guidelines and the actual agreements executed between the parties would not be legally valid unless such deviations have a prior sanction of the Commission. In this regard, reliance is placed on the judgment of Hon`ble High Court of Andhra Pradesh in WP No. 674/2021 wherein Hon`ble High Court set aside a bid issued by the Andhra Pradesh Green Energy Corporation Limited as the deviations between the standard bidding documents and the RfS issued by APGECL had no prior sanction of APERC.

(k) Clause 3.1.1(d) (ii) of the Guidelines mandates that a clearance has to be procured by the end procurer of the draft RfS, PPA and PSA having details of the proposed procurement. It would necessarily mean that such a clearance would have to be sought prior to initiation of the bid. However, there is no material on record to show that such an approval has indeed been sought by any of the end procurers. In the event, an end procurer has not been identified prior to the calling of the bid, it shall be a deviation which necessitates the prior approval of the Appropriate Commission under Clause 3.1.1(c) read with Clause 18 of the Guidelines. This approval has not been sought for this deviation also making it a gross violation of the procedure stipulated in the Guidelines for which reason this bid deserves to be rejected.

(l) The Andhra Pradesh Electricity Regulatory Commission (APERC) in its Order dated 11.11.2021 has granted a conditional clearance to the execution of a

tri-partite PSA with Government of Andhra Pradesh as a guarantor securing payments under the PSA. The APERC ought to have taken cognizance of the fact that such a tri-partite PSA would not be in compliance with the Guidelines and the Standard Bidding Documents (issued by GOI) unless backed by a prior approval. Such an approval was never sought by the Petitioner from the Commission. Hence, the approval granted by the APERC for execution of the tripartite PSA is contrary to the provisions of the Guidelines and consequently the Act.

(m) The PSA dated 1.12.2021 has been executed as a tripartite agreement with the inclusion of Government of Andhra Pradesh as third party. The tripartite PSA is a clear deviation from the draft PSA which forms part of the Standard Bidding Documents. Since such an approval had to be procured prior to issuance of the bid, in absence of such an approval, the RfS would be deemed to be non-compliant with the Guidelines and hence needs to be rejected.

(n) The terms of RfS were revised to include the Green Shoe Option under which the successful bidders were to be allotted additional capacities equivalent to the capacities won by such successful bidders/ developers. The Green Shoe Option is neither provided under the Act nor in the Guidelines and thus it is a deviation from the present regulatory regime. The Petitioner via letter dated 7.12.2021 has mentioned that Green Shoe option was added to the tender in line with and basis Ministry of New and Renewable Energy (MNRE) OM dated 14.8.2019. This OM is not present in the public domain and despite repeated requests the Petitioner has not provided the same.

(o) As per the Petitioner, the manufacturing scheme and Green Shoe Option were added to the Guidelines by virtue of Notifications dated 14.8.2019, 9.10.2019, 21.10.2019 and 22.5.2020. The said Notifications as per paragraph 3 of the Petition were issued as clarifications to the Guidelines. As per Clause 20 of the Guidelines, MNRE is empowered to issue clarifications and modifications to the Guidelines. The term clarification implies that MNRE would issue a clarification interpreting an already existing provision in the Guidelines. As the manufacturing scheme and Green Shoe Option does not feature in the Guidelines or its subsequent

modifications, it cannot be considered as a clarification to the existing Guidelines. The letters stated above cannot in any manner be considered as modification of the Guidelines for the simple reason that all subsequent amendments to the initial Guidelines dated 3.8.2017 are to be considered as Guidelines alone which were published and issued through Gazette Notifications. Thus, the additional capacities allotted to the successful bidders deserve to be rejected as non-compliant to the provisions of the Act (Section 63) and the Guidelines.

(p) Any Clarifications, OMs, Notifications whatsoever cannot be construed as Guidelines for the reason that the OMs and other communications are only internal communication details that are not available in the public domain (as accepted by SECI vide letter dated 13.01.2022). That being so, internal communications cannot be construed as having force in law as they do not alter/amend/ substitute or introduce any new provisions to the Guidelines. Hence, the rationale being put forward by the Petitioner is misplaced and a wrongful interpretation of the law as it exists till date.

Rejoinder of the Petitioner

9. The Petitioner, vide its rejoinder dated 3.3.2022, has submitted as follows:

(a) RfS document is not contrary to the provisions of the Electricity Act. It is also not correct that the Guidelines issued by the Central Government do not cover the combining of Solar Power Plants and Solar Manufacturing Plants. The Guidelines dealing with competitive bid process for procurement of power from grid connected solar power projects, include within its scope all measures for the development of the Solar Power Projects (as a renewable project). This will encompass the development of indigenous manufacture of solar power equipment such as modules and cells and therefore, it will be wrong to interpret the Guidelines issued as not authorizing or otherwise prohibiting involving in matters relating to Solar Manufacturing plant. The Solar Power linked Manufacturing Scheme is equally a subject matter of and in any event has a direct nexus to the promotion of renewable energy under the provisions of Sections 61(h) and 86(1)(e) of the Act. The solar manufacturing is also a policy decision of the Central Government consistent with

Atma Nirbhar Bharat Abhiyan dated 13.05.2020, which fortifies that the solar PV generation of electricity is being rightly considered with obligation of establishing solar equipment manufacturing facility.

(b) In terms of Clause 20 of the Guidelines, the Central Government has from time to time issued the Notifications, namely dated 14.8.2019, 9.10.2019 and 22.5.2020 clarifying the scope and application of the Guidelines in regard to the implementation of the above Scheme. In addition to the above, by Notification dated 20.04.2017, the Central Government had allowed SECI to invite bids for setting up of solar PV manufacturing plants linked with PPAs for Solar PV Power plants. These Notifications specifically deals with and authorizes the combination of solar power generation linked with establishment of manufacturing plants.

(c) In the past also, the bids have been awarded in respect of conventional projects, linked with coal mining activities other than the power generation activities. Thus, combining of ancillary services are already under practice and corresponding power generation activity/capacity falls well within the ambit of the Act. The Commission has considered the tariff based competitive bidding process of Sasan Power Limited wherein it involved allocation of captive coal block where coal mining activities are also to be done by the bidder (order dated 17.10.2007 in Petition No.109/2007).

(d) With regard to allegation of the objector that the Guidelines does not provide mechanism for discovering price of solar manufacturing plant, the competitive bidding was held based on the tariff quoted by the bidders for establishing Solar PV Power Projects (Clause 3.2 of RfS Document).

(e) It is incorrect to allege that inclusion of manufacturing as a part of the bidding process/RfS has resulted in any increase cost to the consumers particularly, to the Andhra Utilities when the tariff stands finalized at Rs.2.42/kWh. Further, the public interest in establishing the indigenous manufacturing facility, which will substantially benefit the development of the Solar Power Projects with reduced prices unaffected by foreign exchange and other implications of cost is a relevant consideration.

(f) The decision on the final ceiling tariff as Rs.2.93/kWh with regard to the present competitive bidding was taken by MNRE, vide Notification dated 9.10.2019 as a policy matter considering the relevant circumstances and need for promoting indigenous solar manufacturing besides supply of solar power (renewable energy). The discovered tariff was as per the then prevalent market conditions and within the ceiling of Rs.2.93/kWh as prescribed by Central Government in the Notification dated 9.10.2019. The tariff of Rs.2.42/kWh plus trading margin under Package II to Package IV as stands finalized presently is competitive and in the interest of consumers of Andhra Pradesh.

(g) It is not correct that there has been any violation of Clause 14.3 of the Guidelines in regard to the timelines. The solar power projects to be set-up by the two selected bidders, namely Adani Green and Azure Power are not being established in the solar park as per the proposal of the said developers. These will be established by the two developers at places mentioned in the Power Purchase Agreements (PPAs) executed by them with SECI. The timelines applicable for commissioning of the projects are as per the Notification dated 9.10.2019 of the Government of India. SECI has not given any additional timeline of completion of project on its own. RfS document has followed the Guidelines and Notification of the Central Government.

(h) It is wrong on the part of the objector to compare the tariff of Rs.2.00/kWh discovered in a particular bidding process with solar power projects linked with manufacturing scheme ignoring the nature of the Scheme involved in the two cases. Further, different bids are conducted at different times and under different conditions. Project risk and associated benefits available under the prevailing regulatory framework based on which projects are bided, varies from bid to bid and from time to time and therefore cannot be compared. India has witnessed tariff going up and down in the past as well. The circumstances and nature of each bids are different and therefore no comparison can be drawn.

(i) The bidders selected through the bidding process have voluntarily on their own instance reduced the tariff from Rs.2.92/kWh to Rs.2.54/kwh for the Package-I

related to 1800 MW, the capacity to be sold to GRIDCO Limited, Chhattisgarh State Power Distribution Company Limited and Tamil Nadu Generation and Distribution Corporation. The commencement of supply under this Package is in the year 2023. Similarly, the selected bidders have voluntarily on their instance reduced the tariff from Rs.2.92/kWh to Rs.2.42/kWh for the Package-II, Package-III and Package-IV related to 7000 MW, the capacity to be sold to Andhra Pradesh Distribution Utilities (Respondent No. 6 to Respondent No. 10). The commencement in supply under these Packages is from the year 2024 and spread till 2026.

(j) It is well settled that there can be reduction in tariff at the instance of the selected bidders in a competitive bid process and the same is not contrary to any principles of transparent bidding or inconsistent with the Guidelines. As per the principles laid down by the Hon'ble Courts, it is permissible in a competitive bid process for selected bidders to reduce the tariff discovered in the bidding process as where is in consumers/public interest. In this regard, reliance is placed on judgment dated 31.1.2000 of the Hon'ble Supreme Court in the case of *Air India Limited -v- Cochin International Airport Limited*, [(2000) 2 SCC 617] ; judgment dated 21.9.2018 of the Hon'ble High Court of Bombay (Division Bench) in *Writ Petition No. 2476 of 2018* in the matter of *Arya Omnitalk Wireless Solutions Pvt. Ltd. -v- Maharashtra State Road Transport Corporation*, [2018 SCC OnLine Bom 13548] and judgment dated 21.7.2009 of the Hon'ble High Court of Andhra Pradesh in *Writ Petition No. 10150 of 2009* in the matter of *Precision Infratech limited -v- A.P. GENCO Ltd. and Others*,[2009 (6) ALD 472: 2009 (5) ALT 702].

(k) Since reduction in tariff is beneficial to the procurers, there is no basis for the objector to make any objection. It cannot be that the payment of tariff at Rs.2.92/kWh will be conducive for the interest of the public at large and not a lower tariff of Rs.2.54/kWh or Rs.2.42/kWh as reduced by the selected bidders - Adani Green and Azure Power vide their undertaking dated 15.7.2021 and undertaking dated 3.11.2021.

(l) SECI vide letter dated 17.10.2019 had duly informed this Commission about initiation of the competitive bidding process in terms of Clause 3.1.1 (b) of the

Guidelines. There is no requirement for placing the revisions or modification in the RfS from time to time.

(m) The bidding documents have been prepared by SECI in terms of Clause 3.1.1 (a) of Guidelines. The decision dated 16.7.2021 of the Hon`ble High Court of Andhra Pradesh in Writ Petition No. 674/2021 does not involve SECI and it has nothing to do with the competitive bidding process initiated and finalized by SECI. Hon`ble High Court in the said matter has dealt with the competence of the non-trading licensee to procure power from generating company for distribution and retail supply of power to the consumers of the State.

(n) With regard to compliance with Clause 3.1.1(d) of the Guidelines, APERC has approved the power procurement of 7000 MW in terms of the PSA vide order dated 11.11.2021 and permitted the Andhra Pradesh Utilities to sign PSA with SECI and Government of Andhra Pradesh. The inclusion of Government of Andhra Pradesh to secure the amounts becoming due from the Andhra Pradesh Utilities to SECI is a not a deviation from the draft PSA as alleged or otherwise. The payment security mechanism is one of the aspects to be firmed up in the PSA. The payment by Government of Andhra Pradesh is also consistent with Section 65 of the Act.

(o) The 'Green Shoe Option' under the RfS was incorporated to promote solar power development consistent with Section 61(h) and Section 86(1)(e) of the Act and the policies of the Government of India. It is not correct that the 'Green Shoe Option' was implemented in deviation from the process laid down under the Guidelines in any manner. The 'Green Shoe Option' has been clearly envisaged and promoted by the Central Government with reference to the Guidelines under which the RfS documents and its amendments have been issued. The 'Green Shoe Option' has been referred to in the Notification dated 9.10.2019 of the Central Government. Based on the Notification dated 9.10.2019 issued by Central Government (MNRE), SECI vide Amendment-I dated 11.10.2019 to RfS document included Clause 6.2 in Section-I of the RfS dealing with Green Shoe Option.

Hearing dated 10.3.2022

10. The matter was finally heard on 10.3.2022. During the hearing, the learned senior counsel for the Petitioner and the objector reiterated their contentions made in their pleadings. During the course of the hearing, the Petitioner informed the Commission that, after filing of the Petition, the Petitioner has also tied up 100 MW (from the untied capacity under Package-I @ Rs.2.54/kW) with Power Development Department, Jammu and Kashmir by signing the PSA and PPAs in this regard. Thus, the total tied up capacity has now increased to 8900 MW in Package-I. The Petitioner sought permission to place on record the aforesaid PPAs and PSA by way of an additional affidavit. Considering the request of the Petitioner, the Commission permitted the Petitioner to place on record the PPAs and PSA as entered into by the Petitioner after tying up of 100 MW with Jammu Kashmir Power Development Corporation Limited on affidavit within a week. The Petitioner was further directed to accordingly modify its prayer for adoption of tariff so as to include this additional 100 MW.

11. Accordingly, the Petitioner vide affidavit dated 22.3.2022 has placed on record the PSA dated 10.2.2022 with Jammu Kashmir Power Corporation Limited for 100 MW and PPAs dated 7.3.2020 with Azure Power and Adani Green for procurement of power for sale to Jammu Kashmir Power Corporation Ltd. and has requested the Commission to take into consideration the above PSA and PPAs for deciding the present Petition. Accordingly, the Petitioner has filed the amended memo of parties including Jammu Kashmir Power Corporation Limited and has also amended the prayers made in the Petition. The revised prayer (a) now reads as under:

"a) Adopt the tariff of Rs.2.54/kWh in respect of 1900MW under Package-I i.e. 1250 MW of Adani Green Energy Four Limited and 650 MW of Azure Power India Private Limited in respect of Package-I on the terms and conditions contained in the Letter of Awards (including Addendum)/Power Purchase Agreements as per Table

4 at Para 20 of the Petition read with the Power Sale Agreements as per Table 3 at Para 16 of the Petition and PPAs dated 07.03.2022 and PSA dated 10.02.2022..."

12. Further, with reference to the Solar Manufacturing Plant capacity being recorded as '2200 MW' in the Record of proceedings for the hearing dated 10.3.2022, the Petitioner has clarified that it has awarded the manufacturing capacity under the Letter of Awards (along with addendum to Letter of Awards) issued to Azure Power is 1000 MW and Adani Green is 2000 MW totaling to 3000 MW linked with setting of solar projects. It has been submitted by the Petitioner that it has signed two (2) Manufacturing Contract Agreements dated 8.11.2021 with Azure Power Fifty Five Private Limited and four (4) Manufacturing Contract Agreements dated 30.9.2021 with Adani Renewable Energy Holding Four Limited for setting up of 500 MW Solar PV Manufacturing Plant each totaling to 3000 MW of manufacturing capacity. Article 3.2 of the Manufacturing Contract Agreements provides that the Manufacturing Plant Commercial Operation Date (MCOB) of the entire obligated manufacturing capacity for Bidding Package A is 24 months from the effective date of 1st PPA under Package I, which is 1.10.2021 in case of Adani Green and 11.11.2021 in case of Azure Power. In view of the above factual aspect, the Petitioner has requested the Commission to consider the manufacturing capacity as 3000 MW instead of 2200 MW.

13. We also take note of a representation dated 6.1.2022 received in the Office of the Commission from Shri K. Rama Krishna, Secretary, Communist Party of India in the matter furnishing his comments on various issues, including (i) suo-motu revision of bid tariff being against the Section 63 of the Act, (ii) no provision for 'Manufacturing' in the Act and no separate Guidelines having issued to this effect, (iii) Green Shoe option being non-competitive, (iv) deviations to model PSA without prior approval, (v) timeline for project commissioning, (vi) higher tariff, (vii) extension of perpetual ISTS waiver, (viii) APERC

approval being bad in law, etc. It has also been submitted in the said representation that he has approached the Hon'ble High Court of Andhra Pradesh by invoking the writ jurisdiction challenging the RfS and the power procurement by AP Discoms and that this Commission is also a party to the said proceedings. Shri K. Rama Krishna has also requested to defer the hearing of the matter until the matter is heard by the Hon'ble AP High Court. However, it has been clarified and confirmed by the Petitioner that there is no stay in the matter. Therefore, we are of the view that no purpose will be served by keeping the matter pending. However, this order will be subject to the outcome of the decision of Hon'ble High Court of Andhra Pradesh. We further observe that comments submitted by Shri K. Rama Krishna vide the aforementioned representation are already covered in the written submissions filed by the objector Shri Payyaula Keshav as noted above, which have been dealt with in the subsequent paragraphs of this order.

Analysis and Decision

14. In view of the above, we now proceed to consider the prayers of the Petitioner as regards adoption of tariff in respect of solar power 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.

15. 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.”

16. 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.

17. 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.

18. Further, in this case, in order to understand the scope of the bid process and linking of Solar Manufacturing Plants with setting-up of the Solar Power PV Projects, the aforesaid Guidelines have to be read with MNRE's communications dated 20.4.2017 (correct date is 20.4.2018), 14.8.2019, 9.10.2019 and 22.5.2020. On 20.4.2017, MNRE, Government of India, with the approval of Minister of State (I/C) for Power & NRE, directed SECI to invite bids for setting up of solar PV manufacturing plants linked with PPAs for Solar Power PV Plants, thereby stating the broad features for the said bid. However, it is observed that the said letter is inadvertently dated as 20.4.2017 in place of dated 20.4.2018 considering that (1) SECI's acknowledgment on the letter is dated April 2018, and (2) the letter itself refers to an earlier letter of MNRE dated 18.12.2017. Accordingly, the date of letter is considered as 20.4.2018 herein afterwards. As per the direction, SECI in the capacity of intermediary agency, invited proposals for setting up of ISTS-connected 7 GW Solar Power Plants linked with setting up of 2 GW Solar Manufacturing Plants, on all

India basis, on “Build Own Operate” basis and procurement of Solar power from the projects being set up in relation thereto. As per the arrangement, SECI is to procure the solar power generated by the Solar Power Plants by entering into PPA(s) with the successful bidders and on back to back basis, PSA(s) resell the power to the distribution licensees/buying entities.

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

| Sr. No. | Event/Milestone | Date |
|----------------|---|-------------------------|
| 1 | Issuance of RfS documents | 26.6.2019 |
| 2 | Amendments to RfS documents | 11.10.2019 to 7.11.2019 |
| 3 | Last date for submissions of online bid | 13.11.2019 |
| 4 | Opening of technical bid | 14.11.2019 |
| 5 | Opening of financial bid | 21.11.2019 |
| 6 | e-Reverse auction | 22.11.2019 |
| 7 | Issuance of Letter of Award | 10.12.2019 |

20. On 25.6.2019 SECI issued the RfS documents, along with Standard PPA and PSA documents on ISN Electronic Tender System (ETS) e-bidding portal, for “*Selection of Solar Power Developers for Setting up of 7 GW ISTS Connected Solar PV Power Plants linked with Setting up of 2 GW (Per Annum) Solar Manufacturing Plant under Global Competitive Bidding*”. 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, SECI has placed on record documents demonstrating publication of RfS on the e-publishing system, Government of India. It has been further submitted that it did not publish the notices in the newspapers as per the advisory issued by Ministry of Information and Broadcasting, Government of India dated 17.5.2017 mandating e-publishing of advertisements in the relevant portal. Accordingly, on 3.7.2018, SECI published notification in the newspapers indicating that tenders of SECI would be published in its website and not in newspapers.

21. As per Clause 3.1.1(b) of the Guidelines, procurer is required to inform the Appropriate Commission about initiation of the bidding process. On 17.10.2019, SECI had informed the Commission about initiation of the competitive bidding process under the RfS document dated 25.6.2019.

22. In accordance with the MNRE communication dated 20.4.2018 and subsequent communications dated 14.8.2019, 9.10.2019 and 22.5.2020, the broad contours of the bid were as follows:

(a) The entire tender was split into two Bidding Packages as under:

(i) Bidding Package A: For setting up a Solar Manufacturing Plants related to cell and modules only. Two blocks to be awarded under this package. Each block having a minimum annual production capacity as under

| Sr. No. | Description | Minimum annual production capacity |
|---------|-------------|---|
| 1 | Cells | Corresponding to 500 MW modules of manufacturing facility |
| 2 | Modules | 500 MW |

(ii) Bidding Package B: For setting up of Solar Manufacturing Plants related to ingots and wafers only. Two blocks to be awarded under this Package. Each block, having a minimum annual production capacity as given below:

| Sr. No. | Description | Minimum annual production capacity |
|---------|-------------|---|
| 1 | Ingots | Corresponding to 500 MW modules of manufacturing facility |
| 2 | Wafers | Corresponding to 500 MW Modules of manufacturing facility |

(b) A cumulative annual solar manufacturing capacity of 2GW (2000 MW) per year will be allowed. The successful bidder was assured PPA (i) up to 2000 MW against 500 MW of Solar Manufacturing Plant under Bidding Package-A and (ii) up to 1500 MW against 500 MW of Solar Manufacturing Plant under Bidding Package-B. Thus, the

aggregate Solar PV Power Plant capacity would be a maximum of 7000 MW for aggregate manufacturing capacity of 2000 MW (1000 MW under Package A and 1000 MW under Package B).

- (c) Under Bidding Package-A, any bidder could quote up to 2000 MW of Solar PV Projects Capacity linked to 500 MW of manufacturing capacity corresponding to 1 Block. Under Bidding Package-B, any bidder could quote up to 1500 MW of Solar PV Projects capacity linked to 500MW of manufacturing capacity corresponding to 1 block.
- (d) The maximum tariff payable to SPD is fixed at Rs.2.93/ kWh for 25 years. The successful bidder shall be selected through e-Reverse auction process.
- (e) SECI shall enter into a PPA with the successful bidders selected through e-reverse auction, for a period of 25 years from the date. The PPAs shall be signed for 4 Packages under bidding as follows:
 - (i) Package-I, comprising solar PV projects having a cumulative capacity of 1/4th (One Fourth) of the awarded solar PV project capacity;
 - (ii) Package-II, comprising solar PV projects having a cumulative capacity of 1/4th (One Fourth) of the awarded solar PV project capacity;
 - (iii) Package-III, comprising solar PV projects having a cumulative capacity of 1/4th (One Fourth) of the awarded solar PV project capacity; and
 - (iv) Package-IV, comprising solar PV projects having balance capacity of 1/4th (One Fourth) of the awarded solar PV project capacity.
- (f) As per RfS (Amendment-VI to RfS) document, in case of under bidding in any of the bidding Package (i.e. Package A or B), the under subscribed portion shall be

transferred to other bidding Package which has been more than fully subscribed prior to e-reverse auction. However, this transferred capacity shall not be subject to e-reverse auction but shall be allocated on the lowest discovered tariff of the over-subscribed Package.

- (g) The ratio of Solar Manufacturing Plant and Solar PV Power Plant for such transferred capacity shall be kept the same as that of the ratio for over-subscribed Package. This additional capacity so transferred will be offered to the bidders of the Package to which this additional capacity has been transferred in the order of preference of L1, L2, L3 and so on, till the total additional capacity is exhausted.
- (h) SECI shall also provide a "Green-Shoe Option" (Amendment-I to RfS) to the successful bidder's equivalent to the capacity (ies) won by such successful bidders/ developers. In order to avail the Green-Shoe Option, the successful bidders/ developers need to match the lowest discovered tariff of the respective bidding Packages (i.e. bidding Package-A and/ or bidding Package-B) of the tender (i.e. L1 tariff of the respective bidding Packages) corresponding to the entire quantities (i.e. the original allocated quantity and the Green-Shoe quantity).
- (i) The "Green-Shoe Option" shall be indicated in the Letter of Award to be issued to the successful bidder's post completion of entire tendering activities. The successful bidders shall submit their acceptance for availing the "Green-Shoe Option" maximum within 7 (Seven) days from the date of issuance of LoA.

23. 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. 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).

24. The Petitioner has been designated as the nodal agency for implementation of MNRE Schemes for setting up of inter-State Transmission System connected/ State Specific Solar Power/Wind/Wind-Solar Hybrid power projects; to invite bidding under tariff based competitive bidding process; 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 under Section 86(1)(e) of the Act. SECI acts as an intermediary agency in purchase and sale of power under PPAs and PSAs on back-to-back basis.

25. The Bid Evaluation Committee (BEC) comprising of the following was constituted for opening and evaluation of bids for RfS dated 25.6.2019:

| Tender Description | Department | Committee Members for Offline & Online Opening of Techno-Commercial and Financial Bids | Committee Members for Evaluation of Techno-Commercial and Financial Bids and post e-RA recommendation |
|---|-------------------|---|--|
| Selection of Solar Power Developers for Setting up of 7 GW ISTS-connected Solar Power Plants linked with Setting up of 2 GW (Per Annum) Solar Manufacturing Plant | C&P | Shri Sunil, Deputy Manager (C&P) | Shri Sanjay Sharma, General Manager (C&P) |
| | Solar | Shri Alok Singh, Deputy Manager (Solar) | Shri Ajay Kumar Sinha, Assistant General Manager (Solar) |
| | Finance | Shri Ajit Sharma, Deputy Manager (Finance) | Shri Ishwar Madiwal, Assistant General Manager (Finance) |

26. Last date of submission of bid was 13.11.2019 and techno-commercial part of bid was opened on 14.11.2019. Response to RfS was received from the following three bidders:

| Sr. No. | Name of the Bidder | Bidding Package | Number of Blocks | Total Capacity quoted (in MW) |
|---------|--------------------------------------|-----------------|------------------|--|
| 1. | Adani Green Energy Four Limited | A | 2 | 4000 MW Solar PV Power Plant linked with 1000 MW Solar Manufacturing Plant (Cell and Module) |
| 2. | Azure Power India Private Limited | A | 1 | 2000 MW Solar PV Power Plant linked with 500 MW Solar Manufacturing Plant (Cell and Module) |
| 3. | Navayuga Engineering Company Limited | A | 1 | 2000 MW Solar PV Power Plant linked with 500 MW Solar Manufacturing Plant (Cell and Module) |

27. All three bidders qualified the technical criteria and the financial bids were opened on 21.11.2019. All the three bidders quoted tariff within the maximum ceiling (i.e. Rs.2.93/kWh) limit provided in the RfS document and were shortlisted for e-reverse auction which was carried out on 22.11.2019 on ISN ETS e-bidding portal.

28. Clause No. 4.3, Section-V of RfS provides as under:

“In case of a tie among two or more Bidders (i.e. their last quoted tariff being the same at the end of the e-RA), they will be considered in the chronological order of their last bid with preference to that Bidder who has quoted his last bid earlier than others”.

29. Azure Power submitted its price at 13:08:57 hrs whereas Adani Green submitted their price at 13:22:10 hrs. Thus, Azure Power emerged as L-1 bidder in the chronological order of last bid received. Azure Power was eligible for 2000 MW of Solar PV Power Plant linked with 500 MW of Solar PV Manufacturing Plant i.e. same as that of their quoted capacity. Adani Green was eligible for 2000 MW of Solar PV Power Plant linked with 500 MW of Solar PV Manufacturing Plant against their quoted capacity of 4000 MW of Solar PV Power Plant linked with 1000 MW of Solar PV Manufacturing Plant based on bucket filling methodology.

30. The final tariff and the selection of the bidders were arrived after completion of e-reverse auction. The result of e-reverse auction is as under:

| Sr. No. | Bidder | Bidding Capacity (MW) | Tariff (INR / kWh) | Allotted Capacity (MW) |
|----------------|--------------------------------------|--|---------------------------|---|
| 1. | Azure Power India Private Limited | 2000 MW Solar PV Power Plant linked with 500 MW Solar Manufacturing Plant (Cell and Module) | Rs.2.92/kWh | 2000 MW Solar PV Power Plant linked with 500 MW Solar Manufacturing Plant (Cell and Module) |
| 2. | Adani Green Energy Four Limited | 4000 MW Solar PV Power Plant linked with 1000 MW Solar Manufacturing Plant (Cell and Module) | Rs.2.92/kWh | 2000 MW Solar PV Power Plant linked with 500 MW Solar Manufacturing Plant (Cell and Module) |
| 3. | Navayuga Engineering Company Limited | 2000 MW Solar PV Power Plant linked with 500 MW Solar Manufacturing Plant (Cell and Module) | Rs.2.93/kWh | NIL |

31. Bidding Package-A was over-subscribed by 4000 MW of solar plant capacity whereas bidding Package-B was under-subscribed as no response had been received for Package-B. In accordance with Amendment-VI of RfS, the under-subscribed capacity under bidding Package-B i.e. up to 3000 MW of Solar PV Power Plant linked with 1000 MW of Solar Manufacturing Plant was transferred to bidding Package-A. The ratio of Solar Manufacturing Plant and Solar Power Plant was kept as 1:4 in terms of the provisions of RfS. Accordingly, the total tendered capacity under bidding Package-A became 8000 MW of Solar PV Power Plant linked with 2000 MW of Solar Manufacturing Plant.

32. As per RfS, the transferred capacity was not to be subject to e-reverse auction and was to be allocated on lowest discovered tariff. Accordingly, on 22.11.2019, letters were sent by SECI to all the three bidders seeking their consent for acceptance of additional transferred capacity along with their bidding capacity in terms of RfS. The allocation was required to be done in the order of preference of L1, L2 and L3 till the total additional transferred capacity is exhausted.

33. In response, Azure Power declined the offer for the additional transferred capacity vide its letter dated 22.11.2019. However, Adani Green vide its letter dated 22.11.2019 accepted the offer for transferred capacity from the un-subscribed Package B. Relevant portion of the letter dated 22.11.2019 is extracted as under:

“.... We have received your letter for accepting entire additional capacity (i.e upto 4000 MW of solar PV power plant linked with 1000 MW of solar PV manufacturing plant) or part thereof in the multiple of upto 2000 MW of solar PV power plant linked with 500 MW of solar PV manufacturing plant at the lowest discovered tariff of INR 2.92/kWH, beyond the capacity for which we become successful at the end of e-Reverse Auction

We hereby give our acceptance in accordance with RfS and above referred letter for allocation of additional capacity (a) 4000 MW of solar PV power plant linked with 1000 MW of solar PV manufacturing plant or (b) in case only part capacity is left for allocation part thereof in multiple of 2000 MW of solar PV power plant linked with 500 MW of solar PV manufacturing plant at the tariff of INR 2.92/kWH. Such acceptance is beyond the capacity for which we became successful as the end of e_Reverse Auction.”

34. Navayuga Engineering Company Limited, vide letter dated 25.11.2021, stated that it was still examining the offer and requested for two more days to respond. Hence, no capacity was allocated to L3 bidder, namely, Navayuga Engineering Company Limited. Thus, entire transferred capacity from bidding Package-B to bidding Package-A (up to 4000 MW of solar PV power plant linked with 1000 MW of solar PV manufacturing plant), was allocated to Adani Green.

35. Capacity allocation after considering the transferred capacity is tabulated below:

| Sr. No. | Name of the Bidder | Eligible Capacity for allocation | Tariff (Rs./kWh) |
|----------------|-----------------------------------|--|-------------------------|
| 1. | Azure Power India Private Limited | 2000 MW Solar PV Power Plant linked with 500 MW Solar Manufacturing Plant (Cell and Module) | 2.92 |
| 2. | Adani Green Energy Four Limited | 6000 MW Solar PV Power Plant linked with 1500 MW Solar Manufacturing Plant (Cell and Module) | 2.92 |

36. Further, in terms of Clause 6.2 of the RfS (Amendment-I to RfS), the Bid Evaluation

Committee recommended that Green Shoe Option shall be offered to the two successful bidders equivalent to their capacities won in addition to their existing eligible capacities. Since both the bidders had won 2000 MW Solar PV Power Plant linked with 500 MW Solar Manufacturing Plant, the following capacities were recommended to be offered under Green Shoe Option subject to consent from the successful bidder:

| Sr. No. | Name of the Bidder | Additional Capacity offer under Green Shoe Option | Tariff (Rs./kWh) |
|---------|-----------------------------------|---|------------------|
| 1. | Azure Power India Private Limited | 2000 MW Solar PV Power Plant linked with 500 MW Solar Manufacturing Plant (Cell and Module) | 2.92 |
| 2. | Adani Green Energy Four Limited | 2000 MW Solar PV Power Plant linked with 500 MW Solar Manufacturing Plant (Cell and Module) | 2.92 |

37. The Petitioner vide its conformity certificate dated 23.7.2020 has confirmed that bidding has been carried out in terms of the RfS documents. Relevant portion of the conformity certificate dated 23.7.2020 is extracted as under:

“With respect to the RfS No. SECI/C&P/RfS/2GW MANUFACTURING/P-3/R1/062019 dated 2506.2019, it is hereby declared as follows:

1. After the conclusion of bid submission, the Evaluation Committee constituted for evaluation of bids has conducted the techno-commercial as well as financial bid evaluation in conformity to the provisions of the RfS.

2. Applicable Schemes, Guidelines and Clarifications/amendments thereof, if any, issued by Government of India for the bidding process were followed in the above tender and no deviation was taken from the Schemes, Guidelines in the RfS documents for the above tender.”

38. On 10.12.2019, SECI issued Letters of Award (LOAs) to the selected bidders wherein SECI, *inter-alia*, offered additional capacity of up to 2000 MW Solar PV Power Plant linked with 500 MW Solar Manufacturing Plant (Cell and Module) at tariff of Rs.2.92/kWh under Green Shoe Option. The successful bidders were called upon to give acceptance within 7 days of issuance of Letter of Award for availing the said capacities

under Green Shoe Option.

39. By separate letters dated 16.12.2019, both the selected bidders accepted the capacities offered under Green Shoe Option. Relevant extract of Letter of Award issued to one of the successful bidders, namely, Adani Green Energy Four Limited, is as under:

“In reference to above and subject to the provisions of RfS, we confirm having accepted your final offer concluded and issue this letter of award as per the following details:

| Allotted Project ID: SPD-MANUFACTURING-ISTS-AGEFL-A-2000:500 | |
|---|--|
| Solar PV Project Capacity | 2000 MW |
| Solar PV Project Location | Within the State of Rajasthan, India |
| Interconnection Point Details | To be declared later |
| Proposed CUF | 28% |
| Solar PV Manufacturing Plant Capacity | 500 MW (per Annum) Corresponding to Solar PV Cells and Solar PV Modules |
| Solar PV Manufacturing Plant Capacity | Within the State of Gujarat, India |
| Applicable Tariff in Figures | INR 2.92/ kWh |
| Applicable Tariff in Words | Indian Rupees Two and Paise Ninety-Two Only |

The additional capacities of up to 2000MW of Solar PV Power Plant linked with 500MW of Solar PV Manufacturing Plant @ INR 2.92/ kWh (Indian Rupees Two and Paise Ninety-Two Only) are being offered to you under Green-Shoes Option. In order to avail the capacities under Green-Shoes Option, you shall submit your acceptance maximum within 07 (Seven) days of issuance of this Letter of Award (LoA). Post acceptance of capacities under “Green-Shoe Option” you shall submit Performance Bank Guarantees related to the capacities won under “Green-Shoe Option” (in addition to the capacities won post e-RA) in line with the provisions of RfS documents including subsequent amendment and clarification. Incase no response is received by 07th day of issuance of this LoA, it will be construed that you are not interested in availing the additional capacity and no communication shall be made by SECI in this regard.

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

1.0 The applicable tariff as mentioned above for power generated from the proposed ISTS Connected Solar PV Power Projects for the term of Power Purchase Agreements (PPA) to be entered into between Project Company or the Solar Power Developer (SPD) and SECI, for the project, shall be firm for the entire term of the PPA

1.1 The applicable tariff payable shall be fixed for 25 years from Commercial Operation Date, as discovered through the e-bidding. The SPD will be free to avail fiscal incentives like Accelerated Depreciation, Concessional Customs, Excise Duties, Tax Holidays, etc. as available for such projects. No claim shall arise on SECI for any liability if the SPD is not avail fiscal incentives and this will not have any bearing on the applicable tariff.

1.2 The award of the above project is subject to the Guidelines including amendments/

Clarifications issued by Ministry of Power (MoP) Government of India and terms and conditions of RfS documents including its clarifications/ amendments/ notifications issued by SECI.

1.3 In case of manufacturing, if the successful Bidder enters into a Manufacturing Contract with the Technology Partner and other entities, shall ensure that its shareholding in the SPV/ Project Company executing the Manufacturing Contract, shall not fall below 26% at any time prior to 03 (Three) years from the commissioning of last Solar PV Power Plant of the entire allocated capacity or commissioning of entire obligated manufacturing capacity whichever is later, except with the prior approval of SECI. However, if the successful Bidder enters into a Manufacturing Contract without the Technology Partner and other entities, shall ensure that its shareholding in the SPV/ Project Company executing the PPA, shall not fall below 51% at any time prior to 03 (Three) years from commissioning of last Solar PV Power Plant of the entire allocated capacity or commissioning of entire obligated manufacturing capacity whichever is later, except with the prior approval of SECI.

1.4 In case of Solar PV Power Plants, the successful bidder, shall ensure that its shareholding in the SPV/ Project Company executing the PPA, shall not fall below 51% at any time prior to 03 (Three) years from the commissioning of last Solar PV Power Plant of the entire allocated or commissioning of entire obligated manufacturing capacity whichever is later, except with the prior approval SECI.

1.5 In the event the successful bidder is a consortium, then the combined shareholding of the consortium members in the SPV/ Project Company executing the PPA, shall not fall below 51% or 26% as per the case may be (developing upon the structure/ modality of execution with or Without Technology Partner) at any time prior to 03 (Three) years the commissioning of last Solar PV Power Plant of entire allocated capacity of commissioning of entire obligated manufacturing capacity whichever is later, except with the prior approval of SECI. However, in case the Project is being set up by a listed Company. SECI reserves the right to take suitable action on case basis due to change in Controlling Shareholding.

1.6 The SPD shall pay the Success Charges of INR 80,000/- (Indian Rupees Eighty Thousand Only) per MW related to entire final allocated capacity of Solar PV Power Plant + 18% GST within 180 (One Hundred Eighty) days of issuance of this Letter of Award (LoA) or 10 (Ten) days prior to execution of PPAs whichever is earlier, in line with Clause No.12 Section-II of the RfS including its amendment/ clarification.

1.7 The SPD shall submit 02 (Two) separate Performance Bank Guarantees (PBGs) per Block (i.e. upto 2GW/ 1.5GW of Solar PV Power Plant and 500MW of Solar Manufacturing Plant). The value of first PBG corresponding to 500MW of Solar Manufacturing Plant shall be INR 11 Crore (Indian Rupees Eleven Crore Only) against each Block whereas the value of second PBG corresponding to Solar PV Power Plants shall be INR 5 Lacs/ MW (Indian Rupees Five Lacs per MW) against the entire final allocated capacity (ies) of each Block. The first PBG amounting INR 11 Crore per Block shall be submitted within 30 (Thirty) days of issuance of this Letter of Award (LoA) or 10 Days prior to executing of Manufacturing Contract Agreement whichever is earlier. The second PBG amounting INR 5 Lacs/MW shall be submitted within 180 (One Hundred Eighty) days of issuance of this Letter of Award (LoA) or 10 Days prior to execution of PPAs whichever is earlier.

1.8 Power Purchase Agreements (PPAs) will be executed between SECI and selected

bidder or its SPV, for allocated capacities. The PPAs shall be signed for 04 (Four) “ Packages” namely (i) Package-I, comprising Solar PV Projects having a cumulative capacity of 1/4th (One Fourth) of the awarded Solar PV project Capacity, (ii) Package-II, comprising Solar PV Project having a cumulative capacity 1/4th (One Fourth) of the awarded Solar PV Project capacity, (iii) Package-III, comprising Solar PV Projects having a cumulative capacity of 1/4th (One Fourth) of the awarded Solar PV Project capacity an (iii) Package-IV, comprising Solar PV Projects having balance capacity of 1/4th (One Fourth) of the awarded Solar PV Project capacity. PPAs for all the Packages shall be signed 180 (One Hundred Eighty) days from the date of issuance of this Letter of Award (LoA), if not extended by SECI. The PPAs shall for a period of 25 years from the schedule commissioning date or from the date of full commissioning of projects, whichever is earlier.

1.9 In addition to PPAs, SECI shall enter into a Manufacturing Contract Agreement towards Setting up of Solar Manufacturing Plant (as per Format7.12) along with the selected bidder or its SPV. The Manufacturing Contract Agreements shall be signed within 30 (Thirty) days from the date of Issuance of this Letter of Award (LoA), if not extended by SECI.

1.10 The Manufacturing Contract Agreements shall be signed only receipt of the performance Guarantee of value INR 11 Crore. Both the EMDs amounting INR 5.5 Crore each submitted shall be released only after receipt, successful verification of the total Performance Bank Guarantee amounting 11 Crore per Block related to 500MW of Solar PV Manufacturing Plants in the acceptable form.

1.11 The PPAs shall be signed only upon receipt of the Success Charges of SECI and Performance Guarantee of value INR 5 Lacs per MW related to the allocated capacities of the Solar PV Power Plants. Both the EMDs amounting INR 80 Crore each submitted shall be released only after receipt, successful verification of the total Performance Bank Guarantee amounting INR 5 Lacs per MW related to the allocated capacities of the Solar PV Power Plants in the acceptable Form.

1.12 SECI shall have the right to verify original documents of the SPD for which copies have been submitted from the date of submission of response to RfS till date, if required. PPAs as per the format given along with RfS has to be signed within 180 days from the date of issue of LoA, if not extended by SECI. In case of unavoidable delays on the part of the SPD in submission of requisite documents prior to signing of PPAs or otherwise, the Effective date of the PPAs shall remain the date as on 180th day from the issuance of LOA, irrespective of the date of signing of PPAs. In extraordinary cases of unavoidable delays on the part of SECI in signing the PPAs, the Effective Date of the PPAs shall then be the signing of PPAs.

1.13 In case, the SECI offers to execute the PPAs with the SPD and the selected Bidder refuses to execute the PPAs within the stipulated time period, the Bank Guarantee equivalent to the amount of the EMD shall be encased by SECI from the Bank Guarantee available with SECI (i.e., either EMD or PBG) as liquidated damages not amounting to penalty, and the selected Project 9S) shall stand cancelled and the selected Bidder expressly waives off its rights and objection, if any in that respect.

1.14 The SPD shall meet financial closure in line with Clause No. 15, Section-II of the RfS documents including amendment/ clarification, within 12 (Twelve) / 24 (Twenty-Four) /36 (Thirty-Six)/ 48 (Forty-Eight) months from the Effective date of the PPAs for Package-I,

Package-II, Package-III and Package-IV respectively. Accordingly, the SPD shall furnish the documents pertaining to compliance of Financial Closure as per the above provisions within 12 (Twelve) / 24 (Twenty-Four) / 36 (Thirty-Six) / 48 (Forty-Eight) months from the Effective Date of the PPAs for Package-I, Package-II, Package-III and Package-IV respectively.

1.15 In case of Solar PV Manufacturing Plants, the SPD/Projects Company shall achieve commissioning of full capacity of the Project within 24 (Twenty-Four) months from the Effective Date of PPAs as per the conditions stipulated in Clause No. 15A, Section-II of the RfS including amendments/ clarification and relevant articles of Manufacturing Contract Agreements. In case of failure to achieve this milestone, liquidated damages not amounting to penalty shall be levied on the SPD as per the above provisions.

1.16 In case of Solar PV Power Plants, the SPD/Project Company shall achieve commissioning of full capacity of the Project within 24 (Twenty-Four)/ 36 (Thirty-Six)/ 48 (Forty-Eight)/ 60 (Sixty) months from the Effective Date of the PPAs as per the conditions stipulated in Clause No. 15.B, Section-II of the RfS including amendment/ clarification and relevant articles of PPAs. In case of failure to achieve this milestone, liquidated damages not amounting to penalty shall be levied on the SPD as per the above provisions.

1.17 You are requested to make it convenient for signing of Manufacturing Contract Agreement and Power Purchase Agreements (PPAs) as per clause 14 of RfS including amendment/ Clarification, failing which provisions of the RfS including amendment/ clarification shall be applicable.

1.18 All disputes arising out of and / or in connection with the selection of Solar Power Projects under the said RfS and execution of PPA thereto shall be governed by laws of India and shall be subject to the jurisdiction of Courts of New Delhi.”

40. On 8.6.2020 and 23.7.2020, SECI issued Addendum to the Letters of Award dated 10.12.2019 given to the selected bidders, namely Adani and Azure Power respectively. In the said Addendum to the Letters of Award, SECI provided for the final awarded capacity as under:

| Sr. No. | Name of the Successful Bidders | Awarded Capacity (MW) | Tariff (Rs./kWh) |
|---------|-----------------------------------|---|------------------|
| 1. | Azure Power India Private Limited | Solar PV Project Capacity - 4000 [out of the above, 2000 MW is under Green shoe Option] Solar PV manufacturing plant capacity- 1000 MW (per annum) [out of the above, 500 MW (per annum) is under Green shoe Option] | 2.92 |
| 2. | Adani Green Energy Four | Solar PV Project Capacity - 8000 [out of the above, 4000 MW is under | 2.92 |

| | | | |
|--|-----------------|---|--|
| | Private Limited | Transferred Capacity and 2000 MW is under Green shoe Option] Solar PV manufacturing plant capacity- 2000 MW (per annum) [out of the above 1000 MW is under transferred Capacity; 500 MW (per annum) is under Green shoe Option] | |
|--|-----------------|---|--|

41. Accordingly, total of 12000 MW of Solar PV Power Projects awarded through competitive bid is divided into four Packages of 3000 MW each in terms of the provisions of RfS documents for signing of the PPAs.

Package I (3000 MW)

42. On 15.7.2021, Adani Green and Azure Power furnished an undertaking offering reduction in quoted tariff from Rs.2.92/kWh to Rs.2.54/kWh for Package-I of Manufacturing Scheme. Till date, SECI has signed PSAs with the following buying utilities/distribution companies:

| Sr. No. | State | Buying utilities | Date of PSA signing | Capacity of Project (MW) | Applicable tariff to buying utility (Rs./kWh) |
|---------|--------------|---|---------------------|--------------------------|--|
| 1. | Odisha | GRIDCO Limited (GRIDCO) | 22.7.2021 | 500 | Rs.2.54/kWh (Tariff payable to Developer) + Rs.0.07/kWh (Trading Margin) |
| 2. | Chhattisgarh | Chhattisgarh State Power Distribution Company Limited (CSPDCL) | 12.8.2021 | 300 | Rs.2.54/kWh (Tariff payable to Developer) + Rs.0.07/kWh (Trading Margin) |
| 3. | Tamil Nadu | Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO) | 16.9.2021 | 1000 | Rs.2.54/kWh (Tariff payable to Developer) + Rs.0.07/kWh (Trading Margin) |

43. On the basis of above PSAs, PPAs have been signed with the following successful bidder/ Project Company formed by the successful bidder.

| Sr. No. | Name of the Successful Bidder | Project Company formed by the successful bidder for executing the PPA | Date of PPA signing | Capacity of Project (MW) | Applicable Tariff (Rs./kWh) |
|---------|-----------------------------------|---|---------------------|--------------------------|-----------------------------|
| 1. | Adani Green Energy Four Limited | Adani Green Energy Twenty Six A Limited | 01.10.2021 | 200 | 2.54 |
| 2. | | Adani Green Energy Twenty Six Limited | 17.11.2021 | 333 | 2.54 |
| 3. | | Adani Green Energy Twenty Six Limited | 13.10.2021 | 167 | 2.54 |
| 4. | | Adani Green Energy Twenty Seven Limited | 13.10.2021 | 250 | 2.54 |
| 5. | | Adani Green Energy Twenty Seven Limited | 13.10.2021 | 250 | 2.54 |
| | Sub-Total | | | 1200 | |
| 6. | Azure Power India Private Limited | Azure Power Fifty One Private Limited | 11.11.2021 | 100 | 2.54 |
| 7. | | Azure Power Fifty Two Private Limited | 17.11.2021 | 167 | 2.54 |
| 8. | | Azure Power Fifty Two Private Limited | 11.11.2021 | 333 | 2.54 |
| | Sub-Total | | | 600 | |
| | Total | | | 1800 | |

44. Odisha Electricity Regulatory Commission vide order dated 22.6.2021 in Case No.20/2021 and order dated 18.10.2021 in Case No. 70/2021 filed by GRIDCO has approved the PSA and Supplementary PSA both dated 22.7.2021 signed with GRIDCO.

45. Tamil Nadu Electricity Regulatory Commission vide Order dated 7.9.2021 in P.P.A.P. No. 2 of 2021 approved the procurement of 1000 MW Solar Power by TANGEDCO.

46. During the course of hearing held on 10.3.2022, learned senior counsel for the Petitioner informed the Commission that, after filing of the Petition, the Petitioner has tied up 100 MW with Jammu Kashmir Power Development Corporation Limited by entering into the PSA dated 10.2.2022 and on that basis has signed the PPAs dated 7.3.2022 with

Azure Power and Adani Green. Thus, the total tied up capacity under Package-I has now increased to 1900 MW. The Petitioner vide affidavit dated 22.3.2022 has accordingly, placed on record the signed PPAs and PSA and has amended its prayer for adoption of tariff so as to include additional quantum of 100 MW under Package-I. As regards the balance capacity, the Petitioner has submitted that it is still in the process of identifying and finalizing the PSAs in respect of 1100 MW solar power capacity under Package-I.

Package-II (3000 MW), Package-III (3000 MW) and Package-IV (3000 MW)

47. As regards Package-II, Package-III and Package-IV, Adani Green and Azure Power vide their respective undertakings dated 3.11.2021 reduced the quoted tariff to Rs.2.42/kWh for these packages. Till date, SECI has signed PSAs with the following buying utilities/distribution companies for Packages II to IV:

| Sr. No. | STATE | Buying Utilities | Date of PSA signing | Capacity of Project (MW) | Applicable Tariff to Buying Utility (Rs./kWh) |
|---------|----------------|--|---------------------|--------------------------|--|
| 1. | Andhra Pradesh | (1) Andhra Pradesh Central Power Distribution Corporation Limited (2) Andhra Pradesh Southern Power Distribution Company Limited (3) Andhra Pradesh Eastern Power Distribution Company Limited (4) AP Rural Agriculture Power Supply Company Limited [Permitted successor of (1), (2), (3)] (5) Government of Andhra Pradesh | 01.12.2021 | 7000 | Rs.2.42/kWh (Tariff payable to Developer) + Rs.0.07/kWh (Trading Margin) |

48. On the basis of above PSAs, PPAs have been signed with the following successful bidders/ Project Company formed by the successful bidder.

Package II

| Sr. No. | Name of the Successful Bidder | Project Company formed by the successful bidder for executing the PPA | Date of PPA signing | Capacity of Project (MW) | Applicable Tariff (Rs./kWh) |
|---------|-----------------------------------|---|---------------------|--------------------------|-----------------------------|
| 1. | Adani Green Energy Four Limited | Adani Green Energy Twenty Four A Limited | 14.12.2021 | 250 | 2.42 |
| 2. | | Adani Green Energy Twenty Four A Limited | 14.12.2021 | 250 | 2.42 |
| 3. | | Adani Green Energy Twenty Four B Limited | 14.12.2021 | 250 | 2.42 |
| 4. | | Adani Green Energy Twenty Four B Limited | 14.12.2021 | 250 | 2.42 |
| 5. | | Adani Green Energy Twenty Four Limited | 14.12.2021 | 250 | 2.42 |
| 6. | | Adani Green Energy Twenty Four Limited | 14.12.2021 | 250 | 2.42 |
| 7. | | Adani Green Energy Twenty Five Limited | 14.12.2021 | 250 | 2.42 |
| 8. | | Adani Green Energy Twenty Five Limited | 14.12.2021 | 250 | 2.42 |
| 9. | Azure Power India Private Limited | Azure Power Fifty Three Private Limited | 16.12.2021 | 125 | 2.42 |
| 10. | | Azure Power Fifty Three Private Limited | 16.12.2021 | 125 | 2.42 |
| 11. | | Azure Power Fifty Three Private Limited | 16.12.2021 | 125 | 2.42 |
| 12. | | Azure Power Fifty Three Private Limited | 16.12.2021 | 125 | 2.42 |
| 13. | | Azure Power Fifty Four Private Limited | 16.12.2021 | 125 | 2.42 |
| 14. | | Azure Power Fifty Four Private Limited | 16.12.2021 | 125 | 2.42 |
| 15. | | Azure Power Fifty Four Private Limited | 16.12.2021 | 125 | 2.42 |
| 16. | | Azure Power Fifty Four Private Limited | 16.12.2021 | 125 | 2.42 |
| | Total | | | 3000 | |

Package III

| Sr. No. | Name of the Successful Bidder | Project Company formed by the successful bidder for executing the PPA | Date of PPA signing | Capacity of Project (MW) | Applicable Tariff (Rs./kWh) |
|---------|---------------------------------|---|---------------------|--------------------------|-----------------------------|
| 1. | Adani Green Energy Four Limited | Adani Green Energy Twenty Five C Limited | 14.12.2021 | 250 | 2.42 |
| 2. | | Adani Green Energy Twenty Five C Limited | 14.12.2021 | 250 | 2.42 |

| | | | | | |
|-----|-----------------------------------|--|------------|-------------|------|
| 3. | | Adani Green Energy Twenty Five B Limited | 14.12.2021 | 250 | 2.42 |
| 4. | | Adani Green Energy Twenty Five B Limited | 14.12.2021 | 250 | 2.42 |
| 5. | | Adani Green Energy Twenty Five A Limited | 14.12.2021 | 250 | 2.42 |
| 6. | | Adani Green Energy Twenty Four C Limited | 14.12.2021 | 250 | 2.42 |
| 7. | | Adani Green Energy Twenty Four C Limited | 14.12.2021 | 250 | 2.42 |
| 8. | | Adani Green Energy Twenty Five A Limited | 14.12.2021 | 250 | 2.42 |
| 9. | Azure Power India Private Limited | Azure Power Fifty Nine Private Limited | 16.12.2021 | 125 | 2.42 |
| 10. | | Azure Power Fifty Nine Private Limited | 16.12.2021 | 125 | 2.42 |
| 11. | | Azure Power Fifty Nine Private Limited | 16.12.2021 | 125 | 2.42 |
| 12. | | Azure Power Fifty Nine Private Limited | 16.12.2021 | 125 | 2.42 |
| 13. | | Azure Power Sixty Private Limited | 16.12.2021 | 125 | 2.42 |
| 14. | | Azure Power Sixty Private Limited | 16.12.2021 | 125 | 2.42 |
| 15. | | Azure Power Sixty Private Limited | 16.12.2021 | 125 | 2.42 |
| 16. | | Azure Power Sixty Private Limited | 16.12.2021 | 125 | 2.42 |
| | Total | | | 3000 | |

Package IV

| Sr. No. | Name of the Successful Bidder | Project Company formed by the successful bidder for executing the PPA | Date of PPA signing | Capacity of Project (MW) | Applicable Tariff (Rs./kWh) |
|---------|-----------------------------------|---|---------------------|--------------------------|-----------------------------|
| 1. | Adani Green Energy Four Limited | Adani Green Energy Twenty Seven A Limited | 14.12.2021 | 250 | 2.42 |
| 2. | | Adani Green Energy Twenty Seven A Limited | 14.12.2021 | 250 | 2.42 |
| 3. | | Adani Green Energy Twenty Six B Limited | 14.12.2021 | 167 | 2.42 |
| 4. | Azure Power India Private Limited | Azure Power Sixty Two Private Limited | 16.12.2021 | 83 | 2.42 |
| 5. | | Azure Power Sixty Two Private Limited | 16.12.2021 | 125 | 2.42 |
| 6. | | Azure Power Sixty Two Private Limited | 16.12.2021 | 125 | 2.42 |
| | Total | | | 1000 | |

49. Andhra Pradesh Electricity Regulatory Commission vide Order dated 11.11.2021 granted approval for procurement of 7000 MW Solar Power in three Package-II, Package-III & Package-IV under manufacturing linked tender to Andhra Pradesh Discoms and permitted execution of PSA.

50. The Petitioner has submitted that it is still in the process of identifying and finalizing the PSAs in respect of remaining 2000 MW under Package IV.

51. The Petitioner has pointed out a common provision in all the PPAs that provides that in case the Manufacturing Plant Commercial Operation Date (MCOB) is delayed beyond 12 months from Scheduled MCOB, the tariff relating to setting-up of the Solar PV Power Projects shall stand reduced by Rs.0.18/kWh.

52. Shri Payyaula Keshav, the objector, has raised certain objections vide its written submission dated 24.2.2022 with regards to adoption of tariff in the present Petition. We now proceed to deal with the objections raised by objector.

Objection No.1: RfS is contrary to the provisions of the Act as there exists no Guidelines for combining Solar Power Plants and Solar Manufacturing Plant

53. The objector has submitted that there is no legal mandate in the Act to combine activity of generation with manufacturing of equipment used in generation. It is apparent from Clause 1.2.1 of the Guidelines dated 3.8.2017 that the Guidelines have been issued with a limited purpose of discovery of tariff of Solar PV Plants. The Guidelines do not provide for any ancillary activities other than for discovery of tariff that may be used for procurement of electricity by either the distribution licensees or a trader. MNRE has been issuing the amendments to the Guidelines from time to time by way of resolutions backed by Gazette Notifications. Whereas, the OMs/Notifications relied upon by the Petitioner are

merely internal communications and details thereof are not available in public domain. Inclusion of manufacturing as a part of RfS has resulted in increase in tariff.

54. *Per Contra*, the Petitioner has submitted that Clause 20 of the Guidelines empowers MNRE to issue clarifications or modifications to the Guidelines with the approval of the Minister, MNRE. Therefore, the Guidelines have to be read along with the Notifications issued by MNRE dated 14.8.2019, 9.10.2019 and 22.5.2020 clarifying the scope and application of the Guidelines in regard to the implementation of the Scheme. The Petitioner has further submitted that it is not possible for the Guidelines to cover each and every minute detail therein as it only lays down the broad framework. Whereas RfS, PPA and PSA (bid documents) contain the provisions of the Guidelines in detail. It has been contended that Solar Power linked Manufacturing Scheme is equally a subject matter of and in any event has a direct nexus to the promotion of renewable energy under the provisions of Sections 61(h) and 86(1)(e) of the Act. The solar manufacturing is also a policy decision of the Central Government consistent with Atma Nirbhar Bharat Abhiyan dated 13.5.2020, which fortifies that the solar PV generation of electricity is being rightly considered with obligation of establishing solar equipment manufacturing facility. In the past also, the bids have been awarded in respect of conventional projects, linked with coal mining activities other than the power generation activities. Thus, combining of ancillary services are already under practice and corresponding power generation activity/capacity falls well within the ambit of the Act.

55. We have considered the submissions made by the objector and the Petitioner. As regards mandate under the Act, the relevant question is whether the bid conducted by SECI as per the direction of MNRE violates any specific mandate of the Act. In this regard,

the relevant provisions of the Act is extracted 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.”

56. It is evident from the above that there is nothing prescribed under Section 63 of the Act with regard to type of bid structure to deny the Central Government from issuing Guidelines as it may deem fit. Therefore, contrary to the submissions made by the objector, there is no bar on linking Solar Manufacturing Plants with PPAs for Solar Power Plants. The Government of India, in its own wisdom, decided to promote solar manufacturing by offering PPAs for Solar Power Plants. There is no role of the Commission envisaged in the Act to intervene in such policy decisions of the Central Government. In this regard, we also find merit in the submission of the Petitioner that bids have been conducted combining ancillary activities like coal mining with power generation in the past.

57. Further, the coal mining activity in thermal projects is inter-linked with power generation in those bids i.e. the power producer is required to use coal for generation of power from the said mine only. Whereas, one of the features of the bid prescribed by MNRE, Government of India vide its communication dated 20.4.2018 allowed the bidder to set up Solar PV Power Plant in parallel with setting up of manufacturing facility, i.e. the mandatory requirement of using self-produced modules in the Solar Power Plants under the scheme was not there. MNRE in the said communication has also further clarified that the project can be set up either through imported modules or through modules manufactured by the manufacturing unit being set up by the bidder or through any other

domestic modules. The same was reiterated in Clause 7 of the RfS document as under:

“7. The SPDs would be allowed to set up ISTS Connected Solar PV Power Plant in parallel with setting up of manufacturing facility, i.e. the mandatory requirement of using self-produced modules in the Solar PV Power Plants under this scheme, will not be there. This can be set up either through imported modules or through modules manufactured by the manufacturing unit being set up by the bidder or through any other domestic modules. For this ISTS Connected Solar PV Power Plant, an assured offtake in the form of PPAs for Solar Power generated in these plants would be given.”

58. However, RfS ensures penalty for delay in implementation of solar manufacturing facility. The Petitioner has informed that as per the PPA signed with the successful bidders, in case of delay in MCOD beyond 12 months from Scheduled MCOD, the tariff in relation to the Solar PV Power Projects shall stand reduced by Rs.0.18/KWh. Therefore, the bid for Solar Power Plant was linked to solar manufacturing only with an intent to promote solar manufacturing and the Scheme had not changed the essential nature or character of the Guidelines in terms of competitive procurement of electricity from solar PV Power Plants.

59. The objector has also contended that the Guidelines do not provide for linking manufacturing with Solar Power Plant bids and the OMs/notifications issued by MNRE do not constitute Guidelines. It has been further submitted that MNRE has been issuing the amendments to the Guidelines from time to time by way of resolutions backed by Gazette Notifications.

60. We note that Section 63 provides for adoption of tariff by the Appropriate Commission *‘if such tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the Central Government’*. The ‘Notification’ being clearly defined in the Act as *“means notification published in the Official Gazette and the*

expression “notify” shall be construed accordingly”, it is apparent that it is not mandatory under the Act for the Central Government to issue Guidelines only by way of Notification. If that had been the case, the Parliament would have used the expression ‘in accordance with the guidelines notified by the Central Government’, which is not the case.

61. In this context, in response to the direction of the Commission during the hearing held on 13.1.2022, the Petitioner vide its affidavit dated 3.2.2022 has submitted that Clause 20 of the Guidelines empowers MNRE to issue clarifications or modifications to the Guidelines with the approval of the Hon`ble Minister, MNRE. Therefore, the Central Government has from time to time issued the Notifications dated 14.8.2019, 9.10.019 and 22.5.2020 clarifying the scope and application of the Guidelines in regard to implementation of the Scheme. Further, the Central Government had directed SECI to invite bids for setting up of solar PV manufacturing plants linked with PPAs for Solar PV Power Plants vide Notification dated 20.4.2018. After considering the submissions of the Petitioner, it would be apt to extract Clause 20 of the Guidelines as under:

“20. CLARIFICATION AND MODIFICATION TO GUIDELINES

If any difficulty arises in giving effect to any provision of these Guidelines or interpretation of the Guidelines or modification to the Guidelines, Ministry of New & Renewable Energy is empowered to do the same, with the approval of Minister, New & Renewable Energy. The decision in this regard shall be binding on all the parties concerned.”

62. Black’s Law Dictionary (4th Edition) defines ‘Modify’ as under:

“MODIFY. To alter; to change in incidental or subordinate features; enlarge, extend; limit, reduce.”

63. Thus, the word ‘modify’ has wider meaning including ‘to extend’ or ‘to enlarge’. Through Clause 20 of the Guidelines, the Central Government/MNRE has retained the

power to issue clarification and modification of the Guidelines with the approval of the Minister in charge of MNRE. We have already held that the Notification of Guidelines and its amendments through Gazette Notification is not a mandate emerging out of the Act. We have also held that the bid for Solar Power Plant was linked to solar manufacturing only with an intent to promote solar manufacturing and it has not changed the essential nature of the Guidelines. Thus, the Central Government vide its letter dated 20.4.2018 and subsequent letters dated 14.8.2019, 9.10.2019 and 22.5.2020 has only enlarged the scope and application of the Guidelines dated 3.8.2017 for implementation of the Scheme. It is apparent from the letter dated 9.10.2019 that the Central Government had delegated to SECI to modify/amend the SBDs according to its direction from time to time as there was a specific direction stating *'Since the last date of bid submission in this tender is 27th Oct' 2019, the same may be extended up to 31st Oct' 2019 so that enough time is there for SECI to incorporate the amendments and conclude the bid'*. Consequently, suitable amendments in the SBDs were made by SECI in accordance with these modifications issued by the Central Government from the Guidelines dated 3.8.2017 for implementation of the aforesaid specific Scheme. Further, one of the directions contained in the communication dated 22.5.2020 also states that it in relation to SECI's manufacturing linked tender, the provisions of MNRE bidding guidelines, including those relating to bundling should be expeditiously acted upon. Thus, clearly in respect of its bid documents for setting up of Solar PV Power Projects linked with setting up of Solar Manufacturing Plants, SECI was required to follow the provisions of the Guidelines read with communications of Central Government dated 20.4.2018, 14.8.2019, 9.10.2019 and 22.5.2020 for implementation of the said Scheme. Therefore, the deviations from the process defined in the Guidelines under Clause 18 of the Guidelines also need to be

considered in accordance with the above modifications undertaken by the Central Government vide letters dated 20.4.2018, 14.8.2019, 9.10.2019 and 22.5.2020 in the Guidelines dated 3.8.2017 for implementation of this specific Scheme.

64. As regards allegation of the objector that inclusion of manufacturing has led to increase in discovered tariff due to lower participation in the bid, we are of the opinion that it is beyond the present scope of the Petition to deal with such allegations. Under Section 63 of the Act, the Commission is required to inquire whether the Guidelines issued by the Government of India under Section 63 of the Act have been followed for discovery of such tariff. In the foregoing paragraphs, the Commission has already observed that in the present case, the provisions of the Guidelines need to be considered with the communications dated 20.4.2018, 14.8.2019, 9.10.2019 and 22.5.2020 as issued by the Central Government for the implementation of the Scheme. The examination of the efficacy of the structure of Competitive Bidding Guidelines is beyond the scope of the present Petition as it clearly falls under the jurisdiction of the Central Government under Section 63 of the Act.

65. In light of the foregoing discussion, we do not find merit in the objections raised by the objector in this regard.

Objection No.2: The tariff put forth for adoption has been revised after conclusion of the bid, which is clearly not permissible under any provision of the Act.

66. The objector has contended that the acceptance of offer of reduced tariff by the Petitioner is in violation of the Guidelines. Once a tariff determined through a bidding process is allowed to be revised, it cannot be treated as a tariff determined through a transparent bidding process under Section 63 and, therefore, the same cannot be adopted by the Commission as per the process laid down in Section 63 of the Act.

67. *Per Contra*, the Petitioner has contended that it is well settled that there can be reduction in tariff at the instance of the selected bidders in a competitive bid process and the same is not contrary to any principles of transparent bidding or inconsistent with the Guidelines. As per the principles laid down by the various Courts, it is permissible in a competitive bid process for the selected bidders to reduce the tariff discovered in the bidding process as it is in consumer/public interest.

68. We have considered the submissions made by the objector and the Petitioner and note that the successful bidder is selected through e-reverse auction based on the lowest quoted tariff (L1). Therefore, while any upward revision of tariff after conclusion of the e-reverse auction by the Petitioner shall be against the principle and objective of Guidelines leading to undue benefit to the successful bidders, any downward revision of tariff by the successful bidders benefits the consumers in terms of lower tariff. Therefore, the reduction of tariff by the successful bidders on voluntary basis does not violate the Guidelines. On the contrary, denial of voluntary reduction of tariff by the successful bidders would be against the principles laid down in Section 61 (d) of the Act which is '*safeguarding of consumers' interest and at the same time, recovery of the cost of electricity in a reasonable manner*'. We are of the view that acceptance of this objection of objector would deny the benefits of reduced tariff to the end consumers. Therefore, the reduction of tariff by the successful bidders on voluntary basis cannot be termed as contrary to the provisions of the Guidelines and the Act.

Objection No.3: RfS runs contrary to the provisions of the Guidelines dated 3.8.2017 along with subsequent amendments.

69. The objector has raised objections with regards to RfS being contrary to the provisions of the Guidelines. Based on a careful consideration of the bid documents,

communications issued by MNRE and Guidelines, as amended from time to time, our findings are as under:

(a) Objection: The developers have been permitted to set up the plant within a maximum period of 30 months or a further time period with an imposition of ISTS charges. Clause 14.3 of the Guidelines stipulates that the projects shall be commissioned within a period of fifteen months from the date of execution of the PPA, for projects specified to be set up in solar park, and within a period of eighteen months from the date of execution of the PPA, for projects not specified to be set up in solar park.

Findings: It is observed that MNRE, Government of India prescribed the timeline for setting up of Solar Manufacturing and Solar Power Plants vide its letter dated 14.8.2019, later amended vide its letter dated 9.10.2019. We have already held that these communications are in the nature of modification of Guidelines.

(b) Objection: Initially the bid was issued for 2 GW. It is not clear whether the Petitioner had intimated the Appropriate Commission regarding subsequent revision/ increase in the bidding capacity.

Findings: In terms of Clause 3.1.1 (b), SECI is required to inform the Commission only about initiation of the bidding process. It is noted that SECI vide letter dated 17.10.2019 had informed this Commission about initiation of the competitive bidding process and duly complied with Clause 3.1.1 (b) of the Guidelines.

(c) Objection: The Petitioner did not seek prior approval of the Commission under Clause 18 of the Guidelines for deviations taken from the Guidelines dated 3.8.2017.

Findings: We have held that the Petitioner conducted the bid in terms of the direction of

the Central Government vide letter dated 20.4.2018 and subsequent communications dated 14.8.2019, 9.10.2019 and 22.5.2020 clarifying the scope and application of the Guidelines in regard to the implementation of the above Scheme. The Central Government itself modified the Guidelines, by exercising its powers under Clause 20 of the Guidelines dated 3.8.2017 through these letters and the documents were amended accordingly to incorporate the relevant provisions. Therefore, the Petitioner was only required to seek approval for deviations, if any, taken from the features prescribed by the Central Government in letters dated 20.4.2018, 14.8.2019, 9.10.2019 and 22.5.2020. However, we find that the Petitioner has conducted the bid process in accordance with Guidelines dated 3.8.2017 issued by Ministry of Power, suitably modified vide communications dated 20.4.2018, 14.8.2019, 9.10.2019 and 22.5.2020 without any deviation.

(d) Objection: There is non-compliance of Clause 3.1.1 (d) (ii) of the Guidelines which mandates that a clearance has to be procured by the end procurer of the draft RfS, PPA and PSA having details of the proposed procurement. There is no material on record to show that such an approval has indeed been sought by any of the end procurers.

Findings: Clause 3.1.1 (d) (ii) provides as under:

“(d) Procure the following clearances, as relevant:

i. In case of procurement from Projects to be located at a site to be specified by the Procurer, clearance by the relevant authority of the draft land lease or other land related agreements consistent with the draft PPA, draft PSA and other Project agreements.

ii. Clearance by the End Procurer of the draft RfS, PPA and PSA having details specific to the proposed procurement.

iii. Clearance by the agency developing the Solar Park [‘Solar Power Park Developer’ (SPPD)] for draft Implementation Agreement, consistent with the draft PPA and the draft PSA, in case of a procurement from Projects to be located in Solar Parks specified by the Procurer.”

Thus, it is evident that clearances specified in Clause 3.1.1 (d) can be invoked only if relevant. For instance, clause 3.1.1 (d)(ii) would be relevant in cases where a procurer engages SECI as intermediary procurer to initiate a bid for procurement of solar power as per the Guidelines dated 3.8.2017. However, in the present matter, as is the case in many other bids conducted by SECI, the Government of India had directed SECI to initiate the manufacturing linked tender to SECI. In all such cases, SECI has been conducting bids for procurement of solar power based on the Guidelines for discovery of tariff and, thereafter, approaches distribution utilities for their consent on procurement of power at the bid discovered tariff. The same procedure was adopted herein and we do not find any infirmity in the bid conducted by the Petitioner in this regard. Further, various State Commissions have already approved procurement of power under the present bid linked with different packages.

(e) Objection: APERC's direction in its order dated 11.11.2021 with regards to execution of a tri-partite PSA with Government of Andhra Pradesh as a guarantor securing payments under the PSA is deviation from the Guidelines.

Findings: It is undisputed that the bid was conducted without such provision being there in the PSA. It is only after the conclusion of the bid, during the proceedings before the APERC that the need for tri-partite PSA with Government of Andhra Pradesh as a guarantor arose. Therefore, the Petitioner cannot be faulted for not seeking approval from the Commission in this regard when there was no requirement for the same and no cause of action arose till conclusion of the bid process.

(f) Objection: Green Shoe Option is neither provided under the Act nor in the Guidelines and thus it is a deviation from the present regulatory regime.

Finding: As regards objection regarding Green Shoe Option being against the Act and the Guidelines, we have already observed above that Section 63 of the Act does not prescribe the type of bid structure to be adopted by the Central Government. It has been left open to the Central Government to decide the provisions of the Guidelines and bid structure for procurement of power. Accordingly, the said incorporation of Green Shoe Option cannot be held as non-compliance of any specific provision of the Act. In the present case, MNRE, Government of India vide its letter dated 14.8.2019 directed SECI to incorporate 'Green Shoe Option' in the bid. The relevant extract of the said letter dated 14.8.2019 is extracted below.

"In refence to the subject RfS, the undersigned is directed to convey to SECI, that in line with discussions with industry stakeholders and further examination in MNRE, the following decision have been taken by MNRE:

.....

viii SECI to provide a "Green-Shoe Option" to successful bidder(s) equivalent to the capacity(ies) won by such successful bidder(s).

The above decisions are in line with the approval from Hon'ble Minister (Power & NRE)"

The said provision was reiterated in the letter dated 9.10.2019 issued by MNRE, Government of India as under:

"2. The following has been decided with regard to SECI's Manufacturing-Linked-PPA Tender:

(d) The earlier instructions to SECI, vide letter no. 336/39/2017-NSM (Part File) dated 14.08.2019, my accordingly be read as under :

.....

vi SECI to provide a "Green-Shoe Option" to successful bidder(s) equivalent to the capacity(ies) won by such successful bidder(s).

3. This issues with the approval from Hon'ble Minister (Power & NRE)"

We have already held that the above communications are in the nature of modification of Guidelines. Therefore, we do not find any infirmity in the said option incorporated by SECI as per the directions of the Central Government.

(g) Objection: Clarifications, OM and Notifications relied upon by the Petitioner cannot be construed as having force in law and thereby altering/amending/substituting or introducing any new provisions of the Guidelines.

Findings: As already noted above, the communications dated 20.4.2018, 14.8.2019, 9.10.2019 and 22.5.2020 have been issued by the Central Government, which are in the nature of modification of the Guidelines and are only for the limited purpose of implementation of solar power procurement linked with solar manufacturing scheme and are not in the nature of generic modifications of the Guidelines, which would otherwise require the publication in the gazette as done in the previous cases of generic amendments to the Guidelines. Further, APTEL in its judgment dated 22.3.2022 in Appeal No. 118 of 2021 and Appeal No. 40 of 2022 has held that the publication of notification facilitates only dissemination of knowledge of law and that the publication in gazette cannot be a pre-requisite for an instrument to have a force of law. The relevant extract of the said judgment dated 22.3.2022 is extracted below.

“10. As observed earlier, the publication of notification or circular in gazette cannot be invariably a pre-requisite for an instrument to have a force of law. The trappings of law do not come by virtue of publication which facilitates only dissemination of knowledge of law, statutes, etc. [Harla vs The State of Rajasthan (AIR 1951 SC 467)].”

70. Having dealt with the objections of the objector, we have gone through the bid documents including the communications of MNRE, and other relevant documents placed on record. It emerges that selection of the successful bidders has been done and the tariff

of solar power projects has been discovered by the Petitioner, SECI through a transparent process of competitive bidding in accordance with Guidelines dated 3.8.2017 issued by Ministry of Power and suitably modified vide communications dated 20.4.2018, 14.8.2019, 9.10.2019 and 22.5.2020. It is also noted that, in accordance with Clause 20 of the Guidelines dated 3.8.2017, all the modification letters were issued by Ministry of New & Renewable Energy with the approval of Minister of State (I/C) for Power & MNRE. Admittedly, the Petitioner has been able to enter into PPA for a total capacity of 8900 MW i.e. 1900 MW under Package-I and 7000 MW under Package-II to Package-IV. Since the Petitioner is still in the process of identifying and finalizing the PSAs for balance capacity of 3100 MW, we deem it appropriate to restrict adoption of tariff, as prayed for by the Petitioner, only with respect to the quantum for which PPA has been executed with solar power developers for supply of power to the identified distribution licensees through PSA with the Petitioner. Therefore, in terms of Section 63 of the Act, the Commission adopts the individual tariffs for the solar power projects, as agreed to by the successful bidder(s), and for which PPA has been entered into by SECI on the basis of the PSAs with the distribution licensees, which shall remain valid throughout the period covered in the PPA and PSAs as under:

Package I

| Sr. No. | Name of the Successful Bidder | Project Company formed by the successful bidder for executing the PPA | Date of PPA signing | Capacity of Project (MW) | Applicable Tariff (Rs./kWh) |
|----------------|--------------------------------------|--|----------------------------|---------------------------------|------------------------------------|
| 1 | Adani Green Energy Four Limited | Adani Green Energy Twenty Six A Limited | 01.10.2021 | 200 | 2.54 |
| | | Adani Green Energy Twenty Six Limited | 17.11.2021 | 333 | 2.54 |
| | | Adani Green Energy Twenty Six Limited | 13.10.2021 | 167 | 2.54 |
| | | Adani Green Energy Twenty Seven Limited | 13.10.2021 | 250 | 2.54 |
| | | Adani Green Energy Twenty Seven Limited | 13.10.2021 | 250 | 2.54 |

| | | | | | |
|---|-----------------------------------|---|------------|-----|------|
| | | Adani Green Energy Twenty Six A Limited | 07.03.2022 | 50 | 2.54 |
| 2 | Azure Power India Private Limited | Azure Power Fifty One Private Limited | 11.11.2021 | 100 | 2.54 |
| | | Azure Power Fifty Two Private Limited | 17.11.2021 | 167 | 2.54 |
| | | Azure Power Fifty Two Private Limited | 11.11.2021 | 333 | 2.54 |
| | | Azure Power Fifty One Limited | 07.03.2022 | 50 | 2.54 |

Package II

| Sr. No. | Name of the Successful Bidder | Project Company formed by the successful bidder for executing the PPA | Date of PPA signing | Capacity of Project (MW) | Applicable Tariff (Rs./kWh) |
|----------------|--------------------------------------|--|----------------------------|---------------------------------|------------------------------------|
| 1 | Adani Green Energy Four Limited | Adani Green Energy Twenty Four A Limited | 14.12.2021 | 250 | 2.42 |
| | | Adani Green Energy Twenty Four A Limited | 14.12.2021 | 250 | 2.42 |
| | | Adani Green Energy Twenty Four B Limited | 14.12.2021 | 250 | 2.42 |
| | | Adani Green Energy Twenty Four B Limited | 14.12.2021 | 250 | 2.42 |
| | | Adani Green Energy Twenty Four Limited | 14.12.2021 | 250 | 2.42 |
| | | Adani Green Energy Twenty Four Limited | 14.12.2021 | 250 | 2.42 |
| | | Adani Green Energy Twenty Five Limited | 14.12.2021 | 250 | 2.42 |
| | | Adani Green Energy Twenty Five Limited | 14.12.2021 | 250 | 2.42 |
| 2 | Azure Power India Private Limited | Azure Power Fifty Three Private Limited | 16.12.2021 | 125 | 2.42 |
| | | Azure Power Fifty Three Private Limited | 16.12.2021 | 125 | 2.42 |
| | | Azure Power Fifty Three Private Limited | 16.12.2021 | 125 | 2.42 |
| | | Azure Power Fifty Three Private Limited | 16.12.2021 | 125 | 2.42 |
| | | Azure Power Fifty Four Private Limited | 16.12.2021 | 125 | 2.42 |
| | | Azure Power Fifty Four Private Limited | 16.12.2021 | 125 | 2.42 |
| | | Azure Power Fifty Four Private Limited | 16.12.2021 | 125 | 2.42 |
| | | Azure Power Fifty Four Private Limited | 16.12.2021 | 125 | 2.42 |

Package III

| Sr. No. | Name of the Successful Bidder | Project Company formed by the successful bidder for executing the PPA | Date of PPA signing | Capacity of Project (MW) | Applicable Tariff (Rs./kWh) |
|---------|-----------------------------------|---|---------------------|--------------------------|-----------------------------|
| 1 | Adani Green Energy Four Limited | Adani Green Energy Twenty Five C Limited | 14.12.2021 | 250 | 2.42 |
| | | Adani Green Energy Twenty Five C Limited | 14.12.2021 | 250 | 2.42 |
| | | Adani Green Energy Twenty Five B Limited | 14.12.2021 | 250 | 2.42 |
| | | Adani Green Energy Twenty Five B Limited | 14.12.2021 | 250 | 2.42 |
| | | Adani Green Energy Twenty Five A Limited | 14.12.2021 | 250 | 2.42 |
| | | Adani Green Energy Twenty Four C Limited | 14.12.2021 | 250 | 2.42 |
| | | Adani Green Energy Twenty Four C Limited | 14.12.2021 | 250 | 2.42 |
| | | Adani Green Energy Twenty Five A Limited | 14.12.2021 | 250 | 2.42 |
| 2 | Azure Power India Private Limited | Azure Power Fifty Nine Private Limited | 16.12.2021 | 125 | 2.42 |
| | | Azure Power Fifty Nine Private Limited | 16.12.2021 | 125 | 2.42 |
| | | Azure Power Fifty Nine Private Limited | 16.12.2021 | 125 | 2.42 |
| | | Azure Power Fifty Nine Private Limited | 16.12.2021 | 125 | 2.42 |
| | | Azure Power Sixty Private Limited | 16.12.2021 | 125 | 2.42 |
| | | Azure Power Sixty Private Limited | 16.12.2021 | 125 | 2.42 |
| | | Azure Power Sixty Private Limited | 16.12.2021 | 125 | 2.42 |
| | | Azure Power Sixty Private Limited | 16.12.2021 | 125 | 2.42 |

Package IV

| Sr. No. | Name of the Successful Bidder | Project Company formed by the successful bidder for executing the PPA | Date of PPA signing | Capacity of Project (MW) | Applicable Tariff (Rs./kWh) |
|---------|---------------------------------|---|---------------------|--------------------------|-----------------------------|
| 1 | Adani Green Energy Four Limited | Adani Green Energy Twenty Seven A Limited | 14.12.2021 | 250 | 2.42 |
| | | Adani Green Energy Twenty Seven A Limited | 14.12.2021 | 250 | 2.42 |
| | | Adani Green Energy Twenty Six B Limited | 14.12.2021 | 167 | 2.42 |
| 2 | Azure Power India Private | Azure Power Sixty Two Private Limited | 16.12.2021 | 83 | 2.42 |

| | | | | | |
|--|---------|---------------------------------------|------------|-----|------|
| | Limited | Azure Power Sixty Two Private Limited | 16.12.2021 | 125 | 2.42 |
| | | Azure Power Sixty Two Private Limited | 16.12.2021 | 125 | 2.42 |

71. The Petitioner is further granted liberty to approach the Commission for adoption of tariff in respect of the balance capacity once such capacity is tied up and PPAs and PSAs for such capacity are executed and the same shall be considered by the Commission in accordance with the law.

72. Prayer (a) and Prayer (b) of the Petitioner is answered in terms of paragraph 70 and paragraph 71 above.

73. Article 10.3 of the PPAs provides as under:

“10.3 Payment of Monthly Bills

10.3.1 SECI shall pay the amount payable under the Monthly Bill/Supplementary Bill by 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 (iii) below.

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 SECI, if any, from the SPD, will be adjusted from the monthly energy payment. In case of any excess payment adjustment, 1.25% surcharge will be applicable on day to day basis.

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

day.”

74. Article 10.4 of the PPA provides as under:

“10.4 Payment Security Mechanism

Letter of Credit (LC):

10.4.1 SECI shall provide 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”), opened and maintained which may be drawn upon by the SPD in accordance with this Article.

10.4.2 Subject to Article 10.4.1, before the start of supply, SECI through a scheduled bank open 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 110% of the estimated average monthly billing;

ii) for each subsequent Contract Year, equal to the average 110% of the monthly billing of the previous Contract Year.

10.4.3 Provided that the SPD shall not draw upon such Letter of Credit prior to the 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 Provided further that 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, SECI shall restore such shortfall within fifteen (15) days.

10.4.5 SECI 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 SECI shall ensure that the Letter of Credit shall be renewed not later than its expiry.

10.4.7 All costs relating to opening, maintenance of the Letter of Credit shall be borne by SECI/SPD.

10.4.8 If SECI fails to pay undisputed Monthly Bill or Supplementary Bill or a part thereof within and including the Due Date, then, subject to Article 10.4.6 & 10.5.2, the SPD may draw upon the Letter of Credit, and accordingly the bank shall pay without any reference or instructions from SECI, an amount equal to such Monthly Bill or Supplementary Bill or part thereof, in accordance with Article 10.4.3 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;”

75. 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 “the 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.”

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

77. The Petitioner, SECI has prayed to approve trading margin of Rs.0.07/kWh agreed to by the distribution companies in the signed PSAs in terms of Regulation 8(1)(d) of the Trading Licence Regulations. 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.”

78. The above provision gives choice to the contracting parties to mutually agree on trading margin for long-term transaction.

79. However, proviso to Regulation 8(1)(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.

80. Regulation 8(1)(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.”

81. The above two provisions are exceptions to the main provision as regards trading margin. Distribution licensees have agreed to a trading margin of Rs.0.07/kWh as agreed in the PSAs, which is in consonance with Regulation 8(1)(d) of the Trading Licence Regulations. However, in case of failure by SECI 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 specified in Regulation 8(1)(d) and Regulation 8(1)(f) of the Trading Licence Regulations.

82. Prayer (c) of the Petitioner is answered accordingly.

83. Shri K. Rama Krishna had submitted that he has approached the Hon'ble High

Court of Andhra Pradesh by invoking the writ jurisdiction challenging the RfS and the power procurement by AP Discoms. Therefore, this order will be subject to the outcome of the decision of Hon`ble High Court of Andhra Pradesh in the Writ Petition filed by Shri K. Rama Krishna.

84. Petition No. 286/AT/2021 is disposed of in terms of the above.

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

sd/-
(Arun Goyal)
Member

sd/-
(I.S.Jha)

sd/-
(P.K. Pujari)
Member