

Central Government and therefore, tariff for 1785 MW solar power purchase may be adopted by the Commission as mentioned in PSA.

Hearing dated 27.07.2022

3. The matter was heard on 27.07.2022. SECI requested time to file their reply in the matter. M/s Renew Hans Urja Pvt., Ltd., (hereinafter 'RHUPL'), one of the successful bidders, submitted that they had submitted an Impleadment Application in the matter requesting for impleading them as a party. However, the Petitioner opposed their request.

4. RHUPL vide Record of Proceedings for the hearing dated 27.07.2022 was directed to serve the copies of their application to the Petitioner, and the Petitioner was directed to file their objection on the application of RHUPL within a week.

Hearing dated 03.08.2022, 10.08.2022 and 25.08.2022

5. During the hearing on the Impleadment Application, applicant RHUPL submitted that they had filed the present application seeking impleadment in Petition No. 2023 of 2022 in order to draw the attention of the Commission to the Change in Law Events that have taken up after the bid submission, which will severely impact the tariff which is proposed to be adopted vide Petition No. 2023 of 2022. It was their submission that the Goods and Service Tax ("GST") on renewable energy devices and parts has increased from 5 % (at the time of bid submission) to 12% vide Ministry of Finance ("MoF") Notification No. 8 of 2021 dated 30.09.2021. Accordingly, the same qualifies as an event of the change in law under the PPA. They are a proper and necessary party since the tariff sought to be adopted by the Commission in relation to the PPA entered into by the present Applicant for its Project as the even as stated above have already occurred and have an impact on the tariff ought to be adopted by the Commission. Further, the present proceedings deal with the PPA regarding

RHUPL's Project. It also referred to the Judgment dated 12.10.2021 of the Hon'ble Appellate Tribunal in Appeal No.251 of 2021. It was requested that RHUPL ought to be impleaded as a party to the present proceedings.

6. On the contrary, it was submitted by the Petitioner that the scope of the present proceedings was limited to the adoption of the tariff, for any specific grievance of the applicant, it might have its separate cause of action and might approach the appropriate authority at the appropriate stage. At that stage, the Applicant seeking recognition and approval of Articles 12.1.3 and 12.2.2 of Power Purchase Agreement (hereinafter 'PPA') from the Commission on account of change in law, was highly premature and unwarranted. According to RUVNL, the Applicant was trying to increase the final rate discovered through the bidding process and thereby adversely impacting the rights of the Petitioner and also the provisions of PPA, which was not permissible under law. RUVNL submitted that Applicant was neither necessary nor a proper party to the petition, and thus, their application was liable to be dismissed. SECI submitted that the SPDs are the necessary parties to be joined as respondent in the present petition.

7. After hearing the parties on the Implement Application, Commission directed that all successful generators in the bid be impleaded as Respondent, and accordingly, it was further directed that the notices may be issued to them for reply in the matter within a week.

8. The matter was finally heard on 01.09.2022, and after hearing the parties Commission reserved the Order in the matter.

Submissions of SECI

9. The Respondent, SECI, in their reply and during the hearing, has mainly submitted as under:

9.1. The Petition has been filed by RUVNL under Section 63 of the Electricity Act, 2003 for adoption of tariff of 1785 MW Solar Power discovered through Competitive Bidding Process conducted by 'SECI'.

9.2. SECI has undertaken the Competitive Bidding in pursuance of the Request for Selection ('RfS') Document dated 04.03.2021 for selection of Solar Power Developers for setting up of 1785 MW Grid Connected Solar PV Power Projects in Rajasthan (Tranche-IV) scheme. The RfS Document was issued in accordance with the Guidelines for Tariff Based Competitive Bidding Process for procurement of power from Grid connected Solar PV Power Projects notified by the Government of India.

9.3. The selection of the bidders was pursuant to the competitive bidding process undertaken with the discovery of competitive tariff was arrived after completion of e-Reverse auction (competitive bidding) on 24.12.2021.

9.4. SECI entered into a Power Sale Agreement (hereinafter 'PSA') on 11.02.2022 with Rajasthan Distribution Companies for the supply of 1785 MW Solar Power to be procured from the Solar Power Developers ('SPDs') selected in the said competitive bid process.

9.5. The Solar Power Projects under the following PPAs signed by SECI with the SPDs are identified for the supply of power to Rajasthan Distribution Companies under the PSA dated 11.02.2022 as under:

Bidder	Special purpose Vehicle (SPV) of Bidder for Establishing the Project and signing of PPA (SPDs)	Applicable Tariff (Rs/kWh)	Capacity (MW)	Signing Date of PPA	Effective date of PPA
ACME Solar Holdings Private Limited	ACME Photovoltaic Solar Private Limited	2.18	375	13.04.2022	16.04.2022
Calpine Subsico Solar Energy Pvt Ltd	Calpine Subsico Solar Energy Private Limited	2.17	90	18.04.2022	16.04.2022

ReNew Solar Power Private Limited	Renew Hans Urja Private Limited	2.18	300	18.04.2022	16.04.2022
ReNew Solar Power Private Limited	Renew Hans Urja Private Limited	2.18	300	18.04.2022	16.04.2022
Sprng Natural Power Source Private Limited	Sprng Natural Power Source Private Limited	2.17	200	13.04.2022	16.04.2022
METKA EGN METKA EGN	Hera Sun Power Private Limited	2.17	20	30.05.2022	16.04.2022
NTPC Renewable Energy Limited	NTPC Renewable Energy Limited	2.17	500	01.06.2022	16.04.2022

9.6. All the above PPAs have similar provisions. One such PPA signed by SECI with ACME Photovoltaic Solar Pvt Ltd is also placed on record.

9.7. The adoption of tariff for which RUVNL has filed the above petition is the tariff quoted by the selected bidders – SPDs (besides the trading margin admissible to SECI) and the six SPDs mentioned above are necessary parties to be joined as Respondents in the present Petition.

9.8. Further, Article 1 read with Schedule B of the PSA deals with the Applicable Tariff payable by RUVNL to SECI for procurement of solar power, In this regard, Article 1 of the PSA, inter-alia, reads as under:

Article 1. APPLICABLE TARIFF

1.1 The Tariff applicable for the sale of Solar Power by SECI to the Buying Entity under this Agreement shall be the Tariff as applicable for payment by SECI to SPD under the terms of the Power Purchase Agreement between SECI and the SPD (Individual SPDs tariff as per schedule B) fixed for entire term of agreement at delivery point and in addition thereto a trading margin of Seven (7) paisa/kWh shall be payable by the Buying Entity to SECI which SECI shall be entitled to appropriate as its income.

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9.9. In addition to the adoption of tariff, it is necessary to approve the procurement of power in terms of the PSA read with the PPAs mentioned above under section 86(1)(b) of the Electricity Act, 2003.

9.10. M/s SECI submitted that the Commission may be pleased to:

- a) *Adopt the tariff discovered in the competitive bidding process for each project for aggregate capacity of 1785 MW as set out in Table-1 in terms of Section 63 of the Electricity Act, 2003. The above will be consistent with Article 2.1.3 of the PPAs read with Clause II of PSA.*
- b) *Approve the procurement of 1785 MW Solar Power by RUVNL at the tariff as set out in Table-I hereinabove plus trading margin of Rs.0.07/kWh under the PSA dated 11.02.2022 In terms of Section 86 (1) (b) of Electricity Act 2003. The above will be consistent with Clause XIII of PSA.*
- c) *Recognize in terms of Article 12.1.3 of the PPAs which reads as under:*

ARTICLE 12 OF PPAs:

ARTICLE 12: CHANGE IN LAW

12.1.3 *The quantum of compensation payment on account of Change in Law shall be provided to the affected party by the other party as per Article 12.2.2, subject to the provision that Appropriate Commission recognizes such provisions at the time of adoption of tariff by the Appropriate Commission and any decision in this regard shall be governing on SPD and Buying Entity*

12.2 Relief for Change in Law

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12.2.2 *Every net increase/decrease of Rs.1 lakh per MW in the Project Cost shall be liable for corresponding increase/decrease of an amount equal to Rs 0.005/kWh. Any such change, shall be considered upto three digits after the decimal point, and remaining digits, if any, shall be ignored.*

For e.g. in case the change in tariff payable is calculated as Rs. 0.14678/kWh, it shall be modified as Rs. 0.146/kWh.

CLAUSE XI OF PSAs: