

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 97/AT/2023

Coram:

Shri Jishnu Barua, Chairperson

Shri I.S. Jha, Member

Shri Arun Goyal, Member

Shri P.K. Singh, Member

Date of order: 23rd September, 2023

In the matter of

Petition under Section 63 of the Electricity Act, 2003 for adoption of tariff for 15 MW Floating Solar PV Project connected to BBMB Inter-State Transmission System and selected through competitive bidding process as per the Standard Bidding Guidelines dated 3.8.2017 including its amendments/ clarification issued thereof.

And

In the matter of

Bhakra Beas Management Board,
SLDC Complex, Industrial Area Phase-1,
BBMB, Chandigarh-160 002

.....Petitioner

Vs

- 1. Satluj Jal Vitran Nigam Limited,**
Sakti Sadan, Corporate Office Complex Shanan,
Shimla, Himachal Pradesh – 170 006
- 2. SJVN Green Energy Limited,**
Corporate Headquarters, Sakti Sadan,
Shanan, Shimla, Himachal Pradesh - 171 006
- 3. Punjab State Power Corporation Limited**
The Mall, PSEB Head Office, Baradari, Patiala
Punjab – 147 001.
- 4. Jaipu Vidyut Vitran Nigam Limited**
Vidyut Bhawan, Janpath Jyoti Nagar,
Jaipur, Rajasthan – 302 005.
- 5. Ajmer Vidyut Vitran Nigam Limited**
Vidyut Bhawan, Panchsheel Nagar, Makarwali Road,



Ajmer, Rajasthan – 305 004.

- 6. Jodhpur Vidyut Vitran Nigam Limited**
New Power House, Industrial Area, Jodhpur,
Rajasthan – 342 003.
- 7. Uttar Haryana Bijli Vitran Nigam Limited**
Vidyut Sadan, Plot No. 3 & 4, Sector 14
Panchkula, Haryana
- 8. Dakshin Haryana Bijli Vitran Nigam Limited**
Vidyut Sadan, Vidyut Nagar,
Hisar, Haryana – 125 005.
- 9. Himachal Pradesh State Electricity Board Limited**
Vidyut Bhawan, Shimla, Himachal Pradesh – 171 004.
- 10. Union Territory of Chandigarh**
Sector 9, UT Secretariat,
Chandigarh – 160 009.
- 11. Solar Energy Corporation of India Limited**
6th Floor, Plate B, NBCC Office Block Tower 2
East Kidwai Nagar, New Delhi - 110 023

.....Respondents

The following were present:

Shri M. G. Ramachandran, Sr. Advocate, BBMB
Shri Soumitra Chatterjee, Advocate, BBMB
Ms. Sriparna Chatterjee, Advocate, BBMB
Shri Rajiv Garg, BBMB
Shri Amrinder Singh, BBMB
Shri Sanjay Sidana, BBMB
Ms. Ruchi Sharma, BBMB
Ms. Mandakini Ghosh, Advocate, SECI
Shri Rahul Ranjan, Advocate, SECI
Shri Priyank Jain, SECI
Shri Shreedhar Singh, SECI

ORDER

The Petitioner, Bhakra Beas Management Board ('BBMB'), has filed the present Petition under Section 63 of the Electricity Act, 2003 (hereinafter referred to as 'the Act') for the adoption of tariff for a 15 MW floating Solar PV Project connected to the



BBMB Inter-State Transmission System (ISTS) and selected through a competitive bidding process as per the “Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar Power Projects” (‘the Solar Guidelines’) notified by the Ministry of Power, Government of India, vide Resolution dated 3.8.2017 along with the subsequent amendments thereto under Section 63 of the Act. The Petitioner has made the following prayers:

“(a) Admit the present Petition;

(b) Approve/ Adopt the tariff at the rate of Rs. 3.26/kWh to be recovered by the FSPD from the BBMB upon commissioning of the awarded capacity/ accepted capacity by BBMB as per the terms of PPA signed with FSPD.

(c) Pass any other or further order which this Commission may deem fit and proper in facts and circumstances of this case....”

Submissions of the Petitioner

2. The Petitioner, BBMB, has submitted that BBMB has been constituted under the provisions of Section 79(1) read with Section 80(6) of the Punjab Re-Organisation Act, 1966, by the Central Government. It is submitted that the Projects of BBMB were set-up pursuant to the arrangement entered into between the erstwhile composite States of Punjab and Rajasthan. After the re-organisation of the composite State of Punjab on 1.11.1966, the successor States of Punjab viz. Punjab, Haryana and Himachal Pradesh along with the State of Rajasthan became the partner States of BBMB. Two entities, namely, the Beas Construction Board (BCB) and the Bhakra Management Board (BMB) were constituted by the Central Government under the provisions of Section 79 and Section 80 of the Punjab Re-Organisation Act, 1966, for the construction of Bhakra Nangal & Beas Projects and the Administration, Operation, and Maintenance of Bhakra Nangal & Beas Projects respectively. The BMB, which was

constituted as per the provisions of Section 79(1) of the Punjab Re-Organisation Act by the Government of India vide a Notification dated 1.10.1967, was later renamed the BBMB as per the provisions of Section 80(6) of the Punjab Re-Organisation Act by the Government of India vide a Notification dated 15.7.1976 when the first completed component of the Project by BCB was transferred to it.

3. It is submitted that all expenses for the operation & maintenance of the BBMB projects (currently, the total installed capacity of the BBMB Hydro Power Projects is 2936.73 MW) are borne by all the partner States in the agreed ratio. Also, energy generated at BBMB power houses is apportioned amongst the partner/ beneficiary States in the agreed ratio. All the receipts and expenditures incurred by BBMB are passed on to the partner States/Power Utilities as per their agreed shares.

4. It is further submitted that the Ministry of Power, Government of India, vide its letter dated 19.7.2017 desired that all the offices under their control be made environment friendly, i.e. 100% net zero buildings. As a contribution towards the National Solar Mission, the Petitioner has also launched various schemes for setting up '3375.90 kW Roof Top Solar Power Plants' at various locations under the control of BBMB. Also, the Ministry of New & Renewable Energy, Government of India, vide Reference No. 283/20/2019-Grid Solar dated 6.9.2019 has assigned the Petitioner with the Solar Power Project target of 500 MW. In order to meet this Solar Power target, the Petitioner has been exploring the usage of surplus vacant land/ water bodies/ roof-top for installation of the Solar Power Projects and the generation of this solar power will benefit the Partner States and also protect against the encroachment of land/ water bodies. The Partner States of BBMB can consider the solar power generated at various



sub-stations and project stations under the control of the Petitioner for fulfilment of their Solar Renewable Purchase Obligation (RPO) as set by their respective State Regulators.

5. In the above backdrop, the Petitioner, BBMB, entrusted Solar Energy Corporation of India Limited ('SECI') in the capacity of a Project Management Agency to invite the Proposals on behalf of BBMB for the setting-up of a 15 MW grid connected floating Solar PV Power Project at Nangal Pond, near Village Neila, District Bilaspur, BBMB, in the State of Himachal Pradesh as per the Solar Guidelines. The Solar Guidelines have been formulated for long-term procurement of solar power at a tariff to be determined through a transparent process of bidding under Section 63 of the Act by the "Procurer(s)" from grid connected Solar Power Projects having a size of 5 MW and above through competitive bidding. It is submitted that, as per the arrangements, BBMB is to procure the power by entering into the Power Purchase Agreement (PPA) with the successful bidder for the apportionment of power to the partner States/beneficiaries of BBMB viz. Punjab, Haryana, Rajasthan, Himachal Pradesh, and the Union Territory of Chandigarh in the agreed ratio.

6. Accordingly, SECI issued the Request for Selection document along with a draft PPA for the setting-up of a 15 MW grid connected Floating Solar Power Project at Nangal Pond in line with the Solar Guidelines on 2.7.2020 on the Bharat Electronics Tender Portal. In response, 3 (three) bids were received, and out of them, 2 (two) bidders met the technical criteria. Thereafter, the financial bids of 2 bidders were opened on 22.2.2022, which was followed by an e-reverse auction on 25.2.2022 on the



Bharat Electronics tender portal. After the conclusion of the e- reverse auction, SJVNL has been selected as the successful bidder at the discovered tariff of Rs. 3.26/kWh. The Board of the Petitioner, BBMB, which is represented by its members from the partner States, also approved the above in its 242nd meeting held on 15.7.2022, and consequently, a PPA was entered into between the Petitioner and the successful bidder, SJVN Green Energy Limited (SPV/ Project Company of SJVNL Limited) on 19.12.2022.

Hearing dated 10.5.2023

7. During the course of the hearing, the representative of the Petitioner mainly reiterated the submissions made in the Petition, as already captured above. After hearing the Petitioner, the Commission expressed certain apprehensions with regard to the entire arrangement falling under the scope of the Solar Guidelines. The Commission indicated that *prima facie*, the expression 'Procurer' under the Solar Guidelines refers to the distribution licensee(s) or an intermediary procurer who procures power on behalf of distribution licensees in the capacity of an electricity trader. However, BBMB *prima facie* does not appear to fall under any of these categories. Accordingly, the Commission directed the Petitioner, BBMB to file a short written submission on the aspect as to how the entire arrangement, especially the agreement between BBMB and the Solar Power Developer would fall under the confines of the Solar Guidelines and admissibility of the Petition. The Commission further directed SECI (the project management company) and Respondents to file their respective comments on the above aspects within two weeks. Accordingly, the Commission reserved its order on 'admissibility' of the matter.

8. Pursuant to the above, the Petitioner had filed its written submission on the aspect of the admissibility. Neither the Respondents nor SECI had filed any submissions in the matter.

9. After examining the written submissions and documents placed on record by the Petitioner, BBMB, the Commission, vide its order dated 9.7.2023 admitted the present Petition with a direction to the Petitioner to implead the utilities/distribution licensees of its partner/beneficiary States, namely, PSPCL, Rajasthan Discoms, Haryana Discoms, HPSEB, and the Energy Department, Union Territory of Chandigarh, as parties to the Petition and to file a revised memo of parties. Also, since the bid process has been conducted by SECI in the capacity of the authorized representative of the Petitioner, the Petitioner shall also implead SECI as a proforma respondent to the Petition.

10. In compliance with the above direction, the Petitioner, BBMB vide its affidavit dated 17.7.2023 had filed the Revised memo of parties, impleaded the utilities/distribution licensees of its partner/beneficiary States and impleaded SECI as a proforma respondent to the Petition. Vide order dated 9.7.2023, these impleaded Respondents, utilities/distribution licensees of the Petitioner's partner/beneficiary States were also permitted to file their replies in the matter, if any. However, none of the utilities/distribution licensees have filed any reply in the matter or chose to appear during the course of the hearing in the matter.

Hearing dated 16.8.2023

11. The case was called for a hearing on 16.8.2023. After hearing the learned senior counsel for the Petitioner and learned counsel for the Respondent, SECI, the Commission observed that the provisions of Change in Law as incorporated in the Bid document/Power Purchase Agreement appear to be at variance with the provisions of the Solar Guidelines inasmuch as the Change in Law provisions in the PPA provide for pre-determined relief for the Change in Law event, whereas the Solar Guidelines, as stood at relevant point in time, provided the determination of Change in Law relief including quantum of relief by the Appropriate Commission. In response to the specific query of the Commission regarding approval of such deviation from the provisions of the Solar Guidelines, the learned senior counsel for the Petitioner and learned counsel for SECI sought liberty to place on record the supporting document(s) in this regard.

12. Considering the above, the Commission permitted the Petitioner and SECI to file relevant document(s) in response to the above query on affidavit. Subject to the above the Commission reserved the matter for order.

13. Pursuant to the liberty granted by the Commission in terms of the Record of Proceedings for the hearing dated 16.8.2023, SECI vide its affidavit dated 30.8.2023 has mainly submitted as under:

- (a) Article 12.2 (Change in Law) as incorporated in the Power Purchase Agreement are not in variance with the provisions of the Solar Guidelines dated 3.8.2017 but the same are in consonance of and within the framework of Solar Guidelines dated 3.8.2017. The formula in Change in Law provision is consistent with Guidelines dated 3.8.2017 along with amendments read with clarifications and authorization for changes given by Grid Solar Power Division, Ministry of

New and Renewable Energy (MNRE), Government of India.

(b) SECI vide affidavit dated 28.7.2023 has already placed the requisite documents to the effect that no deviations were made from the Guidelines in the Request for Selection (RfS) documents on the part of SECI.

(c) Clause 20 of the Solar Guidelines dated 3.8.2017 empowered the Ministry of New and Renewable Energy to carry out the modifications in case of difficulty on the implementation of the said Guidelines.

(d) The SECI vide its letter dated 26.11.2020 requested the Ministry of New and Renewable Energy (MNRE), Government of India to ratify the modification of Change in Law provision with the subject matter of "Bids being invited by SECI for procurement of power under different GoI Scheme *inter- alia* proposed that "the bidding document or the Power Purchase Agreement will lay down the formula (or specify a fixed INR/kWh) according to which the pass through shall be calculated and recovered".

(e) The proposed deviation by SECI vide its letter dated 26.11.2020 is in consonance with formula suggested by the Ministry of Power in the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 dated 22.10.2021 wherein the formula to calculate the adjustment in the monthly tariff due to the impact of Change in Law, which is non-recurring in nature has been suggested and said Rules were notified by the Ministry of Power under Gazette Notification.

(f) The Ministry of New and Renewable Energy, Government of India deliberated upon the letter dated 26.11.2020 written by SECI, seeking interventions from the Ministry of New and Renewable Energy on account of the difficulty faced in the implementation of the Guidelines dated 3.8.2017. The Grid Solar Power Division. The Ministry of New and Renewable Energy, Government of India vide Notification dated 1.3.2021 in exercise of its powers to issue Clarification/Modifications under the Guidelines with the approval of the Minister *inter alia*, provided the various reliefs wherein SECI was allowed to make changes/deviations, as per SECI's proposal in the aforesaid letter/ email, on the

points mentioned, both in bids that have been issued but not closed and in bids that have been issued and closed. However, where the bids have been closed, SECI should very carefully ensure that no additional benefit accrues to the successful bidder and that there is no impact on the discovered tariff.

(g) In view of the aforesaid facts and circumstances, the incorporation of the pre-determined Change in Law relief in the Power Purchase Agreement is in terms of the approval given by MNRE vide its Notification dated 1.3.2021.

Analysis and Decision

14. In the present case, SECI, on behalf of the Petitioner, issued RfS documents based on the *“Guidelines for Tariff Based Competitive Bidding Process for procurement of power from Grid Connected Solar Power Projects”* dated 3.8.2017 and subsequent amendments thereof as issued by the Ministry of Power, Government of India under Section 63 of the Act. Accordingly, we now proceed to consider the prayer of the Petitioner as regards the adoption of tariff under Section 63 of the Act in respect of the Solar Power Project(s) as discovered pursuant to the competitive bid process carried out in terms of the above Guidelines issued by the Government of India.

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, upon being satisfied that the transparent process of bidding in accordance with the Guidelines issued by the Central Government has been followed in the determination of such a tariff.



17. The Ministry of Power, Government of India has notified the Solar Guidelines under Section 63 of the Act vide Resolution No. 23/27/2017-R&R on 3.8.2017. The said Guidelines have also 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 the 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. The 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 shall be provided, on back-to-back basis, in the PSA.

(f) The procurer and the Intermediary procurer shall provide payment security to the solar power developer through a revolving Letter of Credit of an amount not less than a 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 the 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 the State Government Guarantee. In addition, end procurer may also choose to provide the 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) The 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. In terms of the provisions of Section 63 of the Act, we have to examine whether the process as per the provisions of the Solar Guidelines has been followed in the present case for arriving at the lowest tariff and for the selection of the successful bidder(s).

19. The Solar Guidelines provide a framework for the procurement of solar power at a tariff to be determined through a transparent process of bidding by the procurer(s) from grid connected Solar Power Projects having a size of 5 MW and above. As already noted above, the Ministry of New & Renewable Energy, Government of India, vide Reference No. 283/20/2019-Grid Solar dated 6.9.2019 assigned the Petitioner with Solar Power Project target of 500 MW and in order to achieve this target, the Petitioner has been exploring the usage of surplus vacant land/ water bodies/ roof tops for the installation of the Solar Power Projects and the benefits of this solar power generation



will flow to its partner States in terms of meeting their Renewable Purchase Obligations. Consequently, the Petitioner entrusted SECI, which has been designated as the nodal agency for the implementation of various MNRE schemes for setting-up ISTS connected/State specific Solar/ Wind Power Projects under the tariff based competitive bid process, to invite the proposal on its behalf for setting-up a 15 MW grid connected floating Solar PV Power Project at Nangal Pond, near Village Neila, District Bilaspur, BBMB in the State of Himachal Pradesh as per the Solar Guidelines. As per the arrangement thereunder, the Petitioner is to procure the power by entering into the Power Purchase Agreement with the successful bidder for the apportionment of power to the partner States/beneficiaries of BBMB, viz. Punjab, Haryana, Rajasthan, Himachal Pradesh, and Union Territory of Chandigarh, in the agreed ratio.

20. The key milestones in the bidding process, as indicated by SECI, were as under:

Sr.	Event	Date
1.	RfS issued by SECI on behalf of BBMB	2.7.2020
2	Pre Bid meetings held	17.7.2020 & 31.8.2021
3	Corrigendum & Amendments to the RfS document	10.9.2020- 31.12.2021
4	Last date of bid submission	14.1.2022
5	Opening of Techno Commercial bids	21.1.2022
6	Opening of Financial bids	22.2.2022
7	e-Reverse Auction conducted	25.2.2022
8	Issuance of Letters of Award (LoAs) to successful bidder	4.10.2022

21. On 2.7.2020, SECI issued a Request for Selection document along with the draft PPA for setting up a 15 MW grid connected Floating Solar PV Power Project at Nangal Pond in line with the Solar Guidelines. As per Clause 3.1.1(b) of the Solar

Guidelines, the procurer or intermediary procurer, as the case may be, is required to inform the Appropriate Commission about the initiation of the bidding process. In the present case, neither BBMB nor SECI has placed any document/letter indicating that the Appropriate Commission/this Commission had been intimated about the initiation of the aforesaid bid process as envisaged in the Solar Guidelines. However, keeping in view that the bid process has already been completed long-back, we condone the said shortcoming on the part of the Petitioner and/or SECI in complying with the provisions of the Solar Guidelines. However, we direct the Petitioner and/or SECI to strictly comply with the provisions of the Solar Guidelines with respect to future tenders/bid processes.

22. As per Clause 6.4 of the Solar Guidelines, the RfS notice is required to be published in at least two national newspapers and on the website of the procurer to provide wide publicity. In this regard, SECI has placed on record the documents demonstrating the publication of RfS on its website. It has been further indicated that it did not publish the notice in the newspapers as per the advisory issued by the Ministry of Information and Broadcasting, Government of India, dated 17.5.2017 mandating e-publishing of advertisements in the relevant portal and accordingly, SECI, on 3.7.2018, published a notification indicating that all tenders henceforth would be published on its website and not in the newspapers.

23. The Bid Evaluation Committee (BEC) comprising the following, was constituted for the opening and evaluation of bids under RfS-No. SECI/C&P/SPD/RfS/15MW/BBMB/072020 dated 2.7.2020:

Tender	Department	Offline and Online Techno-Commercial and Financial Bid Opening	Techno-Commercial and Financial evolution and post-e-RA recommendation
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15 MW Grid Connected Floating Solar PV Power Projects at Nangal Pond, Himachal Pradesh	PS	Sh. Priyank Jain, Sr. Engineer	Ms. Anita Goel, Sr. Manager
	Contracts	Sh. Umesh Patidar ET, C&P	Sh. Kartik Ganesan Dy. Manager
	Finance	Sh. Janjeet Pal Singh Dy. Manager	Sh. Janjeet Pal Singh Dy. Manager

24. Last date of submission of the bid was 14.1.2022 and the technical part of the bid was opened on 21.1.2022. Response to RfS was received from three (3) bidders, and out of them, two (2) bidders were found to meet the technical criteria. On 22.2.2022, financial bids of both the above qualified bidders were opened on the Bharat Electronic Tenders Portal in the presence of a member of the Bid Evaluation Committee. As per the eligibility criteria mentioned in the RfS document, both bidders were shortlisted for the e-reverse auction.

25. The e-reverse auction was carried out on 25.2.2022 on the Bharat Electronics tenders portal. After the completion of the e-reverse auction, the following was declared as successful bidder:

Bidder	Capacity (MW)	Tariff (INR / kWh)
SJVN Limited	15	3.26

26. After the conclusion of the e-reverse auction and the approval of the Board of Petitioner, BBMB in its 242nd Meeting held on 15.7.2022, SECI issued a Letter of Intent dated 4.10.2022 read with an amendment dated 1.12.2022 to the successful bidder, SJVN Limited. The relevant extract of the said Letter of Award reads as under:

“Sub: Letter of Intent for the Selection of Solar Power Developer for setting up of 15 MW Grid connected Floating Solar PV Power Project at Nangal Pond near Village Nell at District Bilaspur, Himachal Pradesh under Competitive Bidding for BBMB

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

Project Capacity (MW)	Inter Connection Point Details	Applicable Tariff (INR/kwh) in figures	Applicable Tariff (INR/kwh) in words
15	33 kV/ 66k V BBMB substation	Rs. 3.26/-	Rupees Three and Twenty Six Paise Only

The project owner, M/s Bhakra Beas Management Board (BBMB), Bhakra Dam shall purchase the power generated from the proposed Connected Floating Solar PV Power Project under the above scheme subject to the following terms and conditions as stated in various documents referred above and briefly brought out hereinafter.

1.0 The applicable tariff as mentioned above for power generated from the proposed Solar PV Power Project for the term of Power Purchase Agreement (PPA) to be entered into between project Company or the Solar Power Developer (SPD) and M/s BBMB for the Project, shall be firm for the entire term of the PPA.

1.1 The SPD will be free to avail fiscal incentives like Accelerated Depreciation, concessional Custom Duties, Tax Holidays etc. as available for such projects as per prevailing conditions. No claim shall arise on SECI/BBMB for any liability if the SPD is not able to avail fiscal incentives and this will not have any bearing on the applicable tariff.

1.2 The intent of the above Project is subject to the Guidelines including amendments/ clarifications issued by Government of India and terms and conditions of the RfS document including its clarifications / amendments / elaborations / notifications issued by SECI.

1.3 No change in the controlling shareholding of the Bidding Company or Bidding Consortium shall be permitted from the date of submission of response to RfS till the execution of the PPA. However, in case the Project is being set up by a listed Company, this condition will not be applicable. In case the successful Bidder itself executing the PPA, it shall ensure that its promoters shall not cede control (Control shall mean the ownership, directly or indirectly, of more than 50% of voting shares of such Company or right to appoint majority Directors), till 03 (Three) years from COD, except with the prior approval of SECI. However, in case the Project is being set up by a listed Company, this condition will not be

applicable.

1.4 In case of companies having multiple promoters (but none of the shareholders having more than 50% of voting rights and paid up share capital), it shall be considered as a company under joint control. In such cases, the shareholding pattern in the company as submitted at the time of bidding, shall be maintained for a period of 03 (three) year after COD.

1.5 In case of Project being executed through SPV, the Selected Bidder executing the Project, if being a single company, shall ensure that its shareholding in the SPV/Project Company executing the Power Purchase Agreement (PPA), shall not fall below 51 % at any time prior to 3 (Three) year after the COD, except with the prior approval of SECI. In the event the selected 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% at any time prior to 3 (Three) year after COD, except with the prior approval of SECI. However, in case the Project is being set up by a listed Company, this condition will not be applicable.

1.6 The SPD shall pay to SECI, Success Charges of Rs. 2,02,50,000 (Two Crore Two Lakh and Fifty Thousand Only) + 18% GST within 30 days of issuance of this Letter of Intent (LoI), in line with Clause 12, Section III (Instructions to Bidders) of the RfS, towards administrative overheads, coordination with State Authorities and others, DISCOM/ STU, pre-commissioning and commissioning expense. Performance Bank Guarantee(s)/ Payment on Order Instrument (POI) for a value of Rs. 2,70,00,000 (Two Crores Seventy Lakhs Only) shall be submitted by the SPD within 30 days of issuance of Letter of Intent (LoI) or before signing of PPA, whichever is earlier, in line with Clause 11, Section III (Instructions to Bidders) of the RfS.

1.7 PPA will be executed between the Project Owner, M/s BBMB and the SPD as per the breakup of the cumulative Project capacity awarded to the Bidder. This LoI is being issued in line with the Project breakup of the cumulative capacity quoted in the Covering Letter as part of your response to RfS and amended subsequently, as applicable.

1.8 The final project configuration, adding upto the cumulative capacity awarded to the bidder may be intimated to M/s BBMB at the time of signing of PPA, which shall then remain unchanged subsequent to signing of PPA. Delays in connectivity for the Project(s) on account of such changes in Project parameters, which differs from the details provided in the Covering Letter shall be at the risk and costs of the Successful Bidder. The PPAs shall be valid for the period of 25 years from the Scheduled Commissioning Date of the projects.

1.9 The SPD will have to submit the required documents as mentioned below to SECI within 21days from date of this LoI. In case of delay in submission of documents beyond the timeline as mentioned above, SECI shall not be liable for delay in verification of documents and subsequent delay in signing of PPA:

- 1) Copy of the certificate of Incorporation of the Solar Power Developer.



- 2) *The details of promoters and their shareholding in the SPD, duly certified by the practicing Chartered Accountant/ Company Secretary in original at least 7 (seven) days prior to date of their document submission (certificate date should be after the date of Lol) along with latest documents filed with ROC).*
- 3) *Copy of the Memorandum of Association (MoA) of the SPD highlighting the object clause related to generation of power/ Energy/ Renewable Energy/ Solar Power plant development.*
- 4) *In case the project being executed by a Special Purpose Vehicle (SPV) incorporated by successful bidder, such SPV shall be atleast 51% shareholding subsidiary, in line with provisions of the RfS. Further, the Successful Bidder shall submit a Board Resolution prior to signing of PPA with SECI, committing total equity infusion in the SPV as per the provisions of RfS.*
- 5) *Copy of Board Resolution for authorization of signing of PPA and subsequent relevant documents.*

Further, the PPA shall be signed only upon receipt of the Success Charges and total Performance Guarantees/ Payment on Order Instrument of requisite value.

1.10 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. PPA as per the format given along with RfS has to be signed within 30 days from the date of issue of Lol, if not extended by M/s BBMB. In case of delays on the part of the SPD in submission of requisite documents prior to signing of PPAs or otherwise, the Effective Date of the PPA shall remain the date as on 30th day from the issuance of LOI, irrespective of the date of signing of PPA. In extraordinary cases of unavoidable delays on the part of M/s BBMB in signing the PPAs, the Effective Date of the PPA shall then be the date of signing of PPA.

1.11 The SPD shall meet financial closure requirements for the Project in line with Clause 15, Section III (Instructions to Bidders) of the RfS document, within 12 (twelve) months from the Effective Date of the PPA. Accordingly, the SPD shall furnish the documents pertaining to compliance of financial closure as per the above provisions.

1.12 The SPD/Project Company shall achieve commissioning of full capacity of the Project within 18 months from the Effective Date of the PPA as per the conditions stipulated in Clause 16, Section III (Instructions to Bidders) of the RfS and relevant articles of PPA. 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.”

27. Pursuant to the above, the Petitioner, BBMB, has also entered into a, Power Purchase Agreement dated 23.12.2022 with SJVN Green Energy Limited (i.e. Project Company of Successful Bidder, SJVN Limited). It is categorically indicated by the

Petitioner that in the present transaction, it is not acting as an intermediary procurer or trader, and as such, there is no Power Supply Agreement as in the case of some other procurement through an intermediary procurer/trader. It is stated that the procurers of the power generated from the Floating Solar Power Project are the individual beneficiary States as mentioned above or the entities designated by the respective States such as PSPCL, Haryana Discoms, Rajasthan Discoms, HPSEB Limited, and the Energy Department of Union Territory of Chandigarh and the Petitioner an agency statutorily recognised by the Punjab Reorganisation Act 1966 to act on their behalf, and the actions of the Petitioner for all intents and purposes for the procurement of electricity from SJVN Green Energy Limited are the procurement by the respective entities for the above-mentioned States for their benefit. It is also indicated that the power available from SJVN Green Energy Limited will be apportioned amongst the above States/nominated entities in the same proportion as in the case of power generation managed by the Petitioner, namely, as per the directions of the Ministry of Power, Government of India, in the exercise of power under Sections 78, 79, and 80 of the Punjab Reorganisation Act, 1966.

28. In accordance with Clause 10.2 of the Solar Guidelines, SECI has also furnished Certification from the Bid Evaluation Committee certifying that the techno-commercial and financial bids have been evaluated in conformity with the provisions of the RfS. The relevant extract of the said Conformity Certificate reads as under:

“
.....
Conformity Certificate – 2

With respect to the RfS no. SECI/C&P/SPD/RfS/15MW/BBMB/072020 dated 02.07.2020, it is hereby declared as follows;

1. *After the conclusion of bid submission, the respective Evaluation Committee constituted for the evaluation of techno commercial and financial bids have evaluated the bids in conformity with the provisions of the RfS. The Financial Evaluation Committee hereby finds the conformity with the provisions of RfS.*

*Sd/-
(Janeet Pal Singh)
(Dy. Manager)*

*sd/-
(Anita Mohan Goel)
(DGM)*

*sd/-
(Kartik Ganesan)
(Manager)*

29. Additionally, SECI has also furnished a conformity certificate indicating that the applicable Guidelines and amendments/clarifications thereof, if any, issued by the Government of India were followed for the bidding process in the above tender. Further, it was indicated that there was no deviation from the Guidelines in the RfS documents for the above tender. The relevant extract of the said conformity certificate reads as under:

“ *Conformity Certificate - 1*

.....

With respect to the RfS no. SECI/C&P/SPD/RfS/15MW/BBMB/072020 dated 02.07.2020, it is hereby declared as follows;

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

30. In the above context, it was observed that Clause 5.7.1 of the Solar Guidelines provided that the quantum and mechanism of compensation payment shall be determined and shall be effective from such date as may be decided by the Appropriate Commission. However, the parties, at Article 12.2.3 of the PPA, appeared to have agreed upon a pre-determined Change in Law relief of Rs. 0.005/kWh for every increase/ decrease of Rs. 1 lakh/MW in the project cost corresponding to the contract capacity on account of Change in Law event. Accordingly, vide Record of Proceedings for the hearing dated 16.8.2023, the Commission had raised a specific query to SECI in



regard to the above and the approval of such deviation(s) from the provisions of the Solar Guidelines. In this regard, SECI, vide its affidavit dated 29.8.2023 has submitted that SECI, vide its letter dated 26.11.2020 to MNRE, Government of India, had requested the MNRE, to ratify the modification of Change in Law provisions with the subject matter of "Bids being invited by SECI for procurement of power under different Gol Schemes (viz. SBG, RTC-Thermal, etc.) and MNRE vide its letter dated 1.3.2021 had permitted SECI to make changes/ deviations, as per SECI's proposal (which included changes to Change in Law provisions), both in bids that have been issued but not closed and in bids that have been issued and closed. Accordingly, SECI has indicated that the incorporation of pre-determined Change in Law relief in the Power Purchase Agreement is in terms of the approval given by MNRE in its letter dated 1.3.2021.

31. We have considered the submissions of SECI on this aspect. We notice that the aspect of SECI having incorporated deviations in the bid documents, particularly in Change in Law provisions, based on the approval accorded by the MNRE by its letter dated 1.3.2021 has already been considered by the Commission in its past orders. In this regard, we may refer to the Commission's order dated 8.3.2022 in Petition No. 211/AT/2021 (SECI v. Avikiran Surya India Pvt. Ltd. and Ors.) which reads as under:

"37. It is observed that while the Guidelines provide for determination of quantum of compensation for off-setting the financial impact due to increase/ decrease in the costs on account of occurrence of Change in Law event by the Appropriate Commission, the Petitioner in PPA and PSA has provided for pre-determined quantum of compensation for Change in Law events, whereby for every net increase/ decrease of Rs.1 lakh per MW in the project cost, there shall be corresponding increase/ decrease of an amount equal to Rs.0.005/kWh.

38. The Petitioner has submitted that such changes have been approved by the



Ministry of New and Renewable Energy, Government of India and vide affidavit dated 10.11.2021, it has placed on record the correspondence exchanged with MNRE in this regard. The Petitioner, SECI has placed on record its letter dated 26.11.2020 and e-mail dated 13.1.2021 sent to MNRE requesting for certain modifications to the Guidelines to accommodate the concerns of various stakeholders, to allow SECI to incorporate changes in the scheme documents and to enter into PSAs and PPAs, etc. The Petitioner has also placed on record letter dated 1.3.2021 issued by MNRE to SECI, whereby MNRE in exercise of its powers to issue clarifications/ modifications under the Guidelines, granted ex-post facto approval for changes in respect of certain provisions including Change in Law provisions vis-à-vis the Guidelines in respect of (i) bids that have been issued but not closed; and (ii) bids that have been issued and closed by SECI. The relevant extract of the letter of MNRE dated 1.3.2021 is as under:

*“The Chairman & Managing Director
Solar Energy Corporation of India (SECI)
Sub: SECI’s request for allowing Deviation from Standard Bidding Guidelines, in respect of Bids by SECI for procurement of power-Reg*

Sir,

This is in reference to the SECI’s letter No. SECI/SD/Misc/40098 dated 26.11.2020 (Copy enclosed) and subsequent email dated 13.01.2021 (copy enclosed) on the subject issue:

2. In this regard, the undersigned is directed to inform SECI that:

.....

III. Meanwhile, SECI is allowed to make changes/deviations, as per SECI’s proposal in aforesaid letter/email, on the points mentioned below, both in bids that have been issued but not closed and in bids that have been issued and closed. However, where the bids have been closed, SECI should be very carefully ensure that no additional benefit accrues to the successful bidder and there is no impact on the discovered tariff;

- a. Termination compensation on Account of Non-Natural Force Majeure Conditions;*
- b. Option of taking over of the Project assets by the Buying Entities in case of SPD’s Event of Default.*
- c. Change in Law provisions*
- d. Additional Risk Premium of Rs.0.10/kWh.*

3. This issues in line with the approval of Hon`ble Minister (NRE & Power)...”

39. Thus, as per above letter of MNRE, SECI has been permitted to make changes/ deviations from the Guidelines, as per SECI's proposal vide its letter dated 26.11.2020 and e-mail dated 13.1.2021, which inter-alia included the changes/ deviations to the provisions of the Change in Law, both in (i) the bids that



have been issued but not closed and (ii) the bids that have been issued and closed.

.....
42. We observe that the modified Change in Law provisions appear to have been already incorporated in the Bid documents at the time of issuance of the same. Therefore, it does not appear to be a case that such provisions have been introduced after the closure of the bid and thus, bidder(s) participating in the bid were made aware about the said provisions. At the same time, the fact remains that the said deviations were not approved by the competent authority at the time of their incorporation in the bid documents prior to closure of bids and the approval granted for the same was only on ex-post facto basis. We are of the view that the Petitioner should have waited for the approval of its proposal from MNRE before proceeding with the bidding process. The Commission views the approach of the Petitioner not only unprofessional but also non-adherence to laid down procedures, which is not expected from a Government of India Public Sector Undertaking like SECI. In fact, issues are being raised by some Respondents that the bid process is not as per the Guidelines. We would like to advise SECI that it must invariably always comply with the procedural and legal requirements in letter and spirit.

.....
44. We observe that MNRE, in exercise of its powers to issue clarifications/modifications under the Guidelines, gave ex-post facto approval for changes in respect of certain provisions in the Guidelines only vide letter 1.3.2021. However, the conformity certificate furnished by the Petitioner is dated 18.2.2021, which is prior to 1.3.2021. This clearly implies that on the date the conformity certificate was issued, there was no approval from MNRE. Therefore, the conformity certificate submitted by SECI is false and misleading and SECI and concerned officials of SECI are liable for proceedings under appropriate provisions of the Code of Civil Procedure 1908 and the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 for submitting false statement on affidavit.

.....
58. In view of the aforesaid discussions, it emerges that the selection of the successful bidders has been done and the tariff of the solar power projects has been discovered by the Petitioner, SECI through a transparent process of competitive bidding in accordance with Guidelines (read with ex post facto approval vide letter dated 1.3.2021 of MNRE) issued by Ministry of Power, Government of India under Section 63 of the Act. Therefore, in terms of Section 63 of the Act, the Commission adopts the individual tariff for the solar power project, 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....”

32. Thus, in the aforesaid order, the Commission has considered the deviations incorporated by SECI in relation to the Change in Law provisions pursuant to the

MNRE's approval by in letter dated 1.3.2021 stated to be issued in the exercise of its power to issue clarification and modification to the provisions of Solar Guidelines under Clause 20 therein. In the said order, the Commission also severely censured the conduct of SECI for casually furnishing a no deviation/conformity certificate dated even prior to the MNRE's post-facto approval for SECI to incorporate changes in the Change in Law provision in its letter dated 1.3.2021. However, to this extent, the present case stands on a different footing inasmuch as no deviation/Conformity Certificate - 1 does predate the MNRE's letter dated 1.3.2021 permitting SECI to make changes/deviations in the Change in Law provisions in the bid documents. Besides, it appears that such a modified Change in Law clause was incorporated by SECI at the time of the issuance of RfS and the draft PPA itself, thereby enabling the bidders to factor into such a provision while placing their bids. However, this also entails that at the time of incorporation of such modified provisions in the bid documents, there was no prior approval of MNRE or an Appropriate Commission for that matter, and the approval of MNRE came only vide its letter dated 1.3.2021. Similar actions and conduct of SECI have already been noted in the above quoted order and have been severely deprecated by the Commission and therefore, we do not find any need to repeat such observations in the present case, keeping in view that they also date back to the period of 2020 i.e. contemporaneous to the tender in Petition No. 211/AT/2021. However, in our view, SECI, being a Government of India Public Sector Undertaking, should have complied with the provisions of the laid down procedures.

33. In view of the aforesaid discussions, it emerges that the selection of the successful bidder has been done and the tariff of the Floating Solar Power Project has



been discovered through a transparent process of competitive bidding in accordance with the Solar Guidelines issued by the Ministry of Power, Government of India under Section 63 of the Act read with the letter of MNRE dated 3.1.2021. Therefore, in terms of Section 63 of the Act, the Commission adopts the tariff for the Solar Power Project, as agreed to by the successful bidder, and for which a PPA has been entered into by the Petitioner and SJVN Green Energy Limited (i.e. Project Company of successful bidder SJVN Limited), for the apportionment of such power to the Petitioner's partner States/their nominated entities (Discoms), which shall remain valid throughout the period covered in the PPA as under:

S. No.	Name of the Successful Bidder	Project Company of Successful Bidder	Date of signing Contracted Capacity (MW) PPA &	Applicable Tariff (Rs./kWh)
1.	SJVN Limited	SJVN Green Energy Limited	23.12.2022 (15 MW)	3.26

34. Petition No. 97/AT/2023 is disposed of in terms of the above.

Sd/-
(P.K. Singh)
Member

sd/-
(Arun Goyal)
Member

sd/-
(I.S. Jha)
Member

sd/-
(Jishnu Barua)
Chairperson

