

**RAJASTHAN ELECTRICITY REGULATORY COMMISSION  
JAIPUR**

**Petition No. RERC/2095/2023**

**In the matter of**

**Petition seeking approval of procurement of 490 MW Hybrid power (Solar plus PSP) from Solar Energy Corporation of India Limited (SECI) under the competitive bidding conducted by SECI whereunder Greenko Energies Private Limited has offered to supply 490 MW energy to the petitioner for its consumption through Discoms.**

**Coram:**

**Dr. B.N. Sharma, Chairman**

**Shri Hemant Kumar Jain, Member**

**Dr. Rajesh Sharma, Member**

Rajasthan Urja Vikas Nigam Ltd. ('RUVNL')

**Petitioner**

Solar Energy Corporation of India Ltd. ('SECI')

Greenko Energies Private Limited ('GEPL')

**Respondents**

**Date of hearing:**

**09.05.2023 and 21.09.2023**

Present : Sh. Sandeep Pathak, Advocate for Petitioner.

Ms. Anushree Bardhan, Advocate for Respondent SECI.

Sh. Vibhor Sharma, Advocate for Respondent GEPL.

**Date of order**

**10.10.2023**

**Order**

1. The present Petition has been filed by Rajasthan Urja Vikas Nigam Ltd ('RUVNL') (hereinafter referred to as 'Petitioner') which is engaged in procurement of power from different sources and thereafter

distributing it to the consumers through the Distribution Licensees as per their respective jurisdictions. Petitioner has filed the present petition seeking approval of procurement of 490 MW Hybrid power (Solar plus PSP) from Solar Energy Corporation of India Limited (SECI) under the competitive bidding conducted by SECI where under Greenko Energies Private Limited ('GEPL') has offered to supply 490 MW energy to the petitioner for its consumption through Discoms.

2. The matter was heard on 09.05.2023 and 21.09.2023. Sh. Sandeep Pathak, Advocate appeared on behalf of Petitioner. Ms. Anushree Bardhan, Advocate appeared for the Respondent No.1 SECI and Sh. Vibhor Sharma, Advocate appeared for the Respondent No.2 GEPL.
3. Petitioner in its petition and during hearing mainly submitted as under:
  - 3.1. Commission issued the fifth Amendment to Principal Regulations, i.e., the RERC (Renewable Energy Obligation) Regulations, 2007 and prescribed obligations up to FY 2023-24 for the Petitioner to achieve the targets with regard to the procurement of energy from Renewable energy sources .
  - 3.2. MoP vide its order dated 29.01.2021 issued the RPO trajectory including Hydro Power Purchase Obligation (HPO) for FY 2021-22 to FY 2029-30. As per the order, hydro plants commissioned on 08.03.2019 & after are eligible to meet HPO. Subsequently, Commission on 02.09.2021 issued draft Seventh Amendment to the RERC (Renewable Energy Obligation) Regulations, 2007 and vide order dated 14.12.2021 issued HPO for distribution licensees for FY 2021-22 to FY 2023-24. The obligations for RPO and HPO are to be mandatorily fulfilled by the Petitioner.
  - 3.3. In furtherance to the directions of the Hon'ble Commission and to fulfill the obligations set-out by the Hon'ble Commission, Petitioner has

decided to purchase RE power through SECI which is an intermediary company facilitating purchase of sale of electricity generated from the Hybrid Power Projects.

3.4. SECI undertakes competitive bidding process for procurement of Renewable Energy and after the selection of the successful bidders/ project developers, the Power Sale Agreements ('PSA') are executed between SECI and different entities throughout the country, which include special entity like Petitioner as well as Distribution Licensees. SECI is the Nodal Agency of Ministry of New & Renewable Energy (MNRE), Government of India, for implementing various schemes of the Government and to boost Renewable Energy in India.

3.5. SECI issued Request for Selection (RfS) (Tender document) for selecting Project Developers for setting up of 1200 MW ISTS-connected RE Projects with assured Peak Power Supply in India (ISTS-VII). The bids were invited vide Tender document dated 01.08.2019. The key features of the tender are as under:

- (i) As per the RfS, bidders were required to quote the tariff for supply of power for 6 hours during peak hours. Tariff for supply of off peak hour was fixed as Rs. 2.88/kWh. The tariff discovered under this tender is fixed for 25 years.
- (ii) Schedule ability of assured Peak power from RE source anytime within the specified bands of Morning and Evening on day-ahead schedule basis to meet morning and evening peak power demand at 50 MWH in each peak hour per 100 MW.
- (iii) Renewable power supply during off-peak hours to help meeting day-time demand of the state more than 35% CUF of the supply plant which is higher than the regular stand alone renewable projects.

- (iv) Schedulable RE peak power quantum of 300 MWh available for every contracted capacity of 100 MW.
- (v) Compliance in deficit for both Solar and Non-Solar RPO and further, relief in purchasing the RECs on prorate basis of proposed generation by the developers.
- (vi) Waiver of ISTS Transmission Charges and Loses for entire term of the PSA that will lead to significant saving of delivered cost of power as compared to the supply from interstate conventional power sources.
- (vii) Relief in power sourcing through short term contracts for meeting the RPO obligation or peak demand energy requirements that ultimately leads to incremental cost per unit on account of POC injection & Withdrawal changes and losses.
- (viii) Expected commissioning of the projects will be 3<sup>rd</sup> Quarter of FY 2021-22.

3.6. Pursuant to the bidding process following Project Developers were declared successful:-

<b>S.No.</b>	<b>Qtm</b>	<b>Peak Tariff (Rs./kWh)</b>
Greenko	900	6.12
Renew Wind Power Ltd	300	6.85

3.7. After completion of bidding, SECI vide letter dated 17.02.2021 informed the Petitioner about the bidding process conducted by it and indicated the benefits of procurement of power from the successful bidder for achieving Hydro Power Purchase Obligation (HPO) and MoP Order dated 29.01.2021 was also referred.

3.8. GEPL was declared as L1 bidder for 900 MW quoted tariff for supply of peak power at Rs. 6.12/kWh and accordingly, it was awarded LOI by SECI vide letter dated 26.02.2020.

3.9. SECI vide letter dated 30.06.2021 further informed the Petitioner that in addition to the benefits mentioned under the Tender, the developer has also agreed to offer certain additional value added features at no additional cost as under:-

(i) This power supply with additional features provides much higher operational flexibility and 100% firm power with no revision of day-ahead schedule. Developer is further willing to provide even more operational flexibility and customizations as per Discom's requirement, upon mutual discussions with Discom's.

Discoms can demand peak supply anytime during the 11 hours window that is evening window(17:30 to 00:30 Hrs and morning window (05:30 to 09:30 Hrs) choose anytime.

(ii) To waive the right to claim under change in law relief under PPA/PSA for Safe Guard Duty (SGD), Basic Custom Duty (BCD) and concessional duty notification as in existence at the current date. However, waiver is only with reference to the Changes in Law events caused by the SGD Notification, BCD Notification and the Concessional Duty Withdrawal Notification, and shall not be construed as a waiver for any other Change in Law events.

3.10. In the aforesaid background, GEPL made an offer vide letter dated 11.11.2021 to the Petitioner to supply 490 MW Hybrid Power (Solar Plus PSP) on the rates which were accepted during the competitive bidding process under Section 63 of the Electricity Act, 2003 (EA-2003). It was offered that the energy supplied would not exceed average tariff of Rs. 4.00 kWh, including trading margin of Rs.0.07/kWh payable to SECI.

3.11. Considering the salient feature of the tender and additional flexibility offered by SECI/Developer, it was decided by Petitioner on its behalf and for the benefit of Petitioner and also the consumers that the power procurement of 490 MW should be made from GreenKo. Subsequent to the decision of the Board, RUVNL vide letter no 192 dated 03.12.2021, conveyed its consent for procurement of 490 MW power from RE based power project with assured peak supply as per SECI's tender from L1 bidder at peak tariff Rs 6.12/kWh & off peak tariff Rs 2.88/kWh plus trading margin of Rs 0.07/kWh, fixed for 25 years subject to the acceptance of the following additional flexibility offered SECI/developer at no additional cost to Discoms:

- (1) Firm schedule on day ahead basis:- 100% firm power with no revision or as per the requirement of Discoms mutually agreed.
- (2) The firm power shall be available as mentioned below:
  - (a) In the day hours during off peak hour 9:30 AM to 5:30PM.
  - (b) Any 6 hours during 11 peak hours, i.e., 4 hours in morning 5:30 AM to 9:30 AM and 7 hours in evening 5:30 PM to 00:30 AM of next day to maintain the power supply curve as per requirement, Discoms can even modulate its requirement during 11 hours window. No supply during night hours.
  - (c) To waive the right to claim any relief under change in law in PPA/PSA for safe guard duty, Basic Custom duty and concessional duty notification as in existence at the current rate.
  - (d) Annual weighted average tariff would not exceed Rs 4.00/kWh (Rs 3.93/kWh + SECI trading margin).

(e) RPO & HPO benefits associated with power supplied shall be provided.

3.12. Greenko has given undertaking to the SECI accepting to the terms & conditions of RUVNL which is part of PSA signed with SECI as under:

- I. Firm Schedule on day-ahead basis: 100% firm power with no revision of day-ahead schedule or as per requirement of DISCOMS to be mutually agreed.
- II. Peak and off-Peak Supply: The Firm power shall be available as mentioned below:
  - a. In the day hours during off-peak hours from 9:30 AM to 5:30 PM (8 hours)
  - b. Any 6 hours during 11 peak hours i.e. 4 hours in the morning (5:30 AM to 9:30 AM) and 7 hours in the evening (5:30 PM to 00:30 AM of the next day) to maintain the power supply curve as per requirement. DISCOMs can even modulate its requirement during this 11 hours window. No supply during night hours which is state's least demand period. Power supplied from PSP storage during peak hours is charged using solar generation sources.
- III. Duty Exemption: To waive the right to claim any relief under change in law in PPA/PSA for Safe Guard Duty, Basic Customs Duty and concessional duty notification as in existence at the current date. However, waiver is only with reference to the Change in Law caused by the SGD Notification, BCD Notification and the Concession Duty Withdrawn Notification.
- IV. For billing purposes, the applicable tariffs are Rs 2.88 per unit for off-Peak Period supply and Rs 6.12 per unit for peak period supply, plus SECI's trading margin of Rs. 0.07/ kWh, The Developer/HPD is committed to provide RE supply at maximum

annual weighted average tariff of Rs. 3.93/kWh + SECI trading margin of Rs. 0.07/ kWh in a financial year. In case of any variation in the annual RE supply, the HPD is ready to absorb any tariff deviation, so that the annual weighted average tariff would not exceed Rs 4.0/kWh (i.e., Rs. 3.93/kWh plus SECI's Trading Margin of Rs. 0.07/kWh) for the total RE power supplied during the financial year. The same will be reconciled annually in each financial year and any deviation over and above Rs 4.0/kWh (i.e., Rs. 3.93/kWh plus SECI's Trading Margin of Rs. 0.07/kWh) will be adjusted from the energy invoice of HPD in successive financial year.

- V. RPO & HPO compliant: RPO and HPO benefits associated with power supplied by the Developer shall be provided to Rajasthan DISCOMS at no additional cost.
- VI. DISCOMs shall not be liable to pay inter-state transmission charges and losses for entire contract period of 25 years as per SECI letter dated 25.02.2020 and in line with MOP notification dated 23.11.2021. In case, project gets delayed beyond the time limit of waiver of ISTS charges and losses as mentioned in MOP order dated 23.11.2021 or as amended, the same shall be on the part of the developer/HPD.

3.13. SECI is obligated to purchase and supply 1652 MU annually out of which 1116 LUs shall be available during off peak hours and 536 MUs in peak hours.

3.14. The Power Procurement by the Petitioner requires approval from the Hon'ble Commission for procuring power from Greenko through SECI. Commission has prescribed strict RPO and HPO obligations for the Petitioner. Details of the percentage targets prescribed by the Hon'ble Commission are as under: -



<b>% Target</b>	<b>FY 2021-22</b>	<b>FY 2022-23</b>	<b>FY 2023-24</b>
RPO (Solar)	8.50	9.50	10.50
HPO	0.18	0.35	0.66

3.15. Petitioner has continuously tried to meet the prescribed RPO obligations, however, owing to various factors, the targets have not been completely achieved so far. The present status of achieved targets regarding RPO and HPO by Petitioner in last four financial years is as follows:

<b>Year</b>	<b>Solar</b>		<b>HPO</b>	
	<b>Target</b>	<b>Achievement</b>	<b>Target</b>	<b>Achievement</b>
FY 2017-18	4.75	2.89	-	-
FY 2018-19	4.75	4.38	-	-
FY 2019-20	6.00	6.04	-	-
FY 2020-21	7.25	6.03	-	-
FY 2021-22	8.50	7.11	0.18	-
FY 2022-23 upto Oct. Prov.	9.50	7.96	0.35	-

3.16. From above, it is observed that there has been shortfall in compliance of solar obligation. Further, as on date there is no functional capacity tied up by Rajasthan Discoms to meet HPO. Availability of solar power shall meet the shortfall as well as solar obligation. Power from PSP plant shall meet HPO of Discoms.

3.17. As per the provisions of applicable Regulations, Petitioner has executed Power Sale Agreement (PSA) dated 25.01.2022 with SECI wherein it has been agreed that Petitioner would buy 490 MW Hybrid Power (Solar Plus PSP) from SECI through the successful bidder. Subsequently, Power Purchase Agreement (PPA) dated 02.02.2022 has been executed by the petitioner.

3.18. Pursuant to the conditions of PSA dated 25.01.2022, Petitioner filed the Petition No. 2010/2022 for seeking approval of procurement of electricity and contracted capacity.

3.19. Pursuant to the conditions of PSA dated 25.01.2022, described in Recital-H, Petitioner filed the Petition No.2010/2022 seeking approval of procurement of electricity and contracted capacity. Recital-H is reproduced as under:-

*"H. The Buying Entity undertakes to file petition before SERC seeking necessary approval for procurement of electricity and contracted capacity from SERC, under this PSA within one month from signing of PPA or PSA whichever is later."*

3.20. It is pertinent to submit here that SECI has awarded total 900 MW RE Power (Hybrid Power) assured peak power supply. Out of this total power, SECI has signed PSA dated 25.01.2022 for 490 MW with the Petitioner (Rajasthan), PSA dated 20.08.2021 for 200 MW with Damodar Valley Corporation (Kolkata), and 210 MW to be signed with BSHPCCL (Bihar State Power Holding Company Limited).

3.21. It is further submitted that Bihar State Power Holding Company Limited filed Petition no.21/2021 before Hon'ble Bihar Electricity Regulation Commission for procurement of 210 MW power and the said petition has been approved by Hon'ble BERC vide order dated 28.04.2022.

3.22. Commission vide order dated 12.05.2022 after considering the petition was of the view that the petition can only be entertained after Hon'ble Central Regulatory Electricity Commission (CERC) passes order for adoption of tariff. Accordingly, direction was issued that appropriate Petition be filed before Hon'ble CREC and liberty was granted to the Petitioner to approach the Hon'ble Commission thereafter.

3.23. Subsequently, SECI filed Petition No. 235/AT/2022 titled *SECI Vs. ReNew Solar Power Private Limited & Ors* before Hon'ble CERC for seeking adoption of tariff praying as under:

*(a) Adopt the tariff discovered in the tariff based competitive bid process for the aggregate capacity from renewable power projects on the terms and conditions contained in the Power Purchase Agreements signed with the Power Developers read with the Power Sale Agreement signed with the Buying Entities as on the date of reserving the decision in the present Petition after hearing of the parties;*

*(b) Approve Trading Margin of Rs.0.07/kWh as agreed by the Buying Entities/Distribution Licensees in the signed PSAs in terms of Regulation 8(1)(d) of the Trading License Regulations, 2020."*

3.24. CERC passed the order in the matter on 08.01.2023 and adopted the tariff for RE Power Projects as agreed by the successful bidders and for which PPA has been entered into by SECI on the basis of PSAs executed with the Distribution Licensees.

3.25. It is submitted that the electricity intended to be procured will be immensely helpful for the State of Rajasthan, since the feature of assured Peak Power Supply would ensure that Petitioner is not forced to purchase power at Peak hours on higher tariff from other sources either directly or through Energy Exchanges. It would also give certainty to the Petitioner about the availability of power for specified time during specified periods.

3.26. During the off peak hours Petitioner would get low cost RE Power which would not only be beneficial to the consumers but will also ensure fulfilment of RPO obligation of the Petitioner in accordance with the recent directions issued by the Hon'ble Commission vide order dated 25.11.2021 in Petition No. 1939/2021.

3.27. It is submitted that the facts narrated in the petition reveal that procurement of 490 MW through SECI would ensure compliance of

various directions issued by the Hon'ble Commission and will also be in the best interest of the Petitioner and the ultimate benefits would travelled to the last consumer.

3.28. Pursuant to the Regulations of Commission and the Clauses of PSAs executed between the parties, the further process pursuant for procurement of power can only be initiated once the approval is granted by the Commission. Now vide order dated 08.01.2023 passed by Hon'ble CERC, it is clear that process of adoption of tariff is completed and therefore, Commission may consider prayer of the Petitioner for grant of approval of procurement of power in terms of liberty granted by the Commission vide its order dated 12.05.2022.

3.29. The entire process of procurement can only be completed after the approval granted by the Hon'ble Commission to the Petitioner for procuring the power, as indicated in this petition.

3.30. The present petition is being filed within limitation, since the order for adoption of tariff have been passed by Hon'ble CERC on 08.01.2023. Therefore, within a period of 30 days from the date of passing of the said order and in terms of liberty granted by this Hon'ble Commission, the present petition is being filed.

**Prayer:**

3.31. It is prayed that the Hon'ble Commission may be pleased:

- i. *"To admit and allow the petition and approval of procurement of 490 MW Hybrid Power (Solar plus PSP) from SECI for which Power Sale Agreement dated 25.01.2022 have been executed.*
- ii. *To condone any error/omission and to give opportunity to rectify the same.*
- iii. *To Permit the Petitioner to make further submission, additions and alterations to this petition as may be necessary from time to time.*

iv. *To pass any such order/s and/or direction/s, which the Hon'ble Commission may deem fit and proper in the facts and circumstances of the case."*

4. Respondent No. 1 (SECI) in its reply and during hearing mainly submitted as under:

4.1. On 01.08.2019, SECI issued the Request for Selection (RfS) Document for selection of Renewable Power Developers for setting up of 1200 MW ISTS connected Renewable Power Projects with assured Peak Power Supply under Tariff-based Competitive Bidding. The RfS document has been proposed based on the Guidelines notified by Gol.

4.2. Some of the salient features of the Peak Power Scheme as provided for in the RfS Document dated 01.08.2019 are as under:

- a) The RFS provides that the Power Project to be established by the Renewable Power Developer will comprise of minimum two 'components' - one being the Energy Storage System (hereinafter 'ESS') component, and the other being the renewable energy generating component which can be either a solar PV system, or a wind power system, or a combination thereof.
- b) With respect to the ESS being used in the Project, the Bidder has the flexibility to choose the type and power rating of the energy storage system to be installed in addition to the Solar PV and/or wind power capacity. The ESS may include, but not be limited to, battery energy storage systems, pumped storage systems, mechanical and chemical systems, or combinations thereof.
- c) The power project can be located anywhere in India.

- d) The Bidders shall submit their bid by offering a single Peak Tariff for all the Projects quoted for, which shall be applicable for the 25 years as per provisions of PPA.
- e) The Projects selected under RfS shall be eligible for two-part tariffs. These shall be referred to as "Peak Tariff" and "Off-Peak Tariff" as defined in the RfS. Energy supplied during the Off-Peak Hours shall be eligible for a flat tariff payment at Rs. 2.88/kWh, i.e., the Off-Peak Tariff. Energy supplied during the Peak Hours shall be purchased at the tariff discovered through e-Reverse Auction as per this RfS, i.e. the Peak tariff. The Applicable Tariff under the PPA shall comprise both Peak and Off-Peak Tariffs, and shall be fixed for the entire term of the PPA .
- f) Trading Margin namely margin on sale of solar power to State Utilities/Distribution Companies/other Bulk Consumers to be charged by SECI under the RfS shall be @ INR 0.07/kWh.

4.3. The selected Bidder (Greenko Energies Pvt Ltd) then designated Greenko AP01 IREP Private Limited as Special Purpose Vehicle (SPV) for implementing the project. On 02.02.2022, Greenko AP01 IREP Private Limited signed the Power Purchase Agreement (hereinafter PPA') with SECI for generation and sale of 490 MW. The PPA with Greenko AP01 IREP Private Limited is identified and mapped for supply of 490 MW power to the Rajasthan Utilities. Greenko AP01 IREP Private Limited will establish solar power project with Energy Storage System (pump storage) in the State of Andhra Pradesh.

4.4. The Article 5 of the PSA executed between SECI and Petitioner provides for the applicable tariff for procurement of 490 MW (solar plus pump storage power) from SECI. The Scheduled Commissioning

Date of 490 MW Project of Greenko is in Second quarter of FY 2023-2024.

- 4.5. The ISTS charges and losses shall be borne by Buying Entity from the delivery point as per the applicable regulations notified by the Appropriate Commission. The waiver of ISTS charges and losses shall be governed as per applicable regulations notified by Central Commission and Orders of Central Government issued in this regard from time to time.
- 4.6. The nature of the transactions involved in the present matter is inter-state operations. The Renewable Power Developer Greenko is establishing the Renewable Power Project in the State of Andhra Pradesh for sale and consumption in Rajasthan. The PPAs and PSA will be governed by Section 79 (1) (b) of the Electricity Act, 2003 there being a composite scheme for generation and sale in more than one State as settled by the decision of Hon'ble Supreme Court in *Energy Watchdog case -v- Central Electricity Regulatory Commission a Ors. (2017) 14 SCC 80*.
- 4.7. Central Commission has passed Order on 08.01.2023 in Petition No.235/AT/2022 filed by SECI under Section 63 of Electricity Act for the adoption of tariff for renewable energy projects connected to ISTS with assured peak power supply in India and selected through competitive bidding process. The Order dated 08.01.2023 passed by Central Commission, inter-alia, provides as under:

*30. In light of the above discussions, it emerges that selection of the successful bidders and determination of tariff of the RE Projects have been carried out by SECI through a transparent process of competitive bidding in accordance with Guidelines issued by Ministry of Power and/or Ministry of New and Renewable Energy, Government of India under Section 63 of the Act. Therefore, in terms of Section 63 of the Act and based on the Petitioner's letter dated 18.2.2021 to the effect that bidding has been carried out as*

*per the provisions of bidding Guidelines and Rfs, the Commission hereby adopts the individual tariff for the RE Power Projects, as agreed to by the successful bidders, and for which PPAs have 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 PPAs and PSAs as under:*

S.No.	Bidder	Off-Peak power tariff(INR/kWh)	Peak power tariff(INR/kWh)	Awarded capacity (in MW)
1	Greenko Energy Pvt Ltd	2.88	6.12	900
2	Renew Solar Power Pvt Ltd	2.88	6.85	300
Total				1200

*35. The Petitioner has also prayed to approve the trading margin of Rs. 0.07/ kWh as agreed to by the distribution licensees in terms of the PSAs with the distribution licensees. In this regard, Regulation 8(1)(d) of the Trading Licence Regulations dealing with trading margin provides as under:*

*"For transactions under long term contracts, the trading margin shall be as mutually decided between the Trading licensee and the seller:..."*

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

*39. ....Distribution licensees have agreed to a trading margin of Rs. 0.07/ kWh as agreed in the PSA, which is in consonance with Regulation 8(1)(d) of the Trading Licensee Regulations....."*

4.8. The jurisdiction being exercised by the State Commission under Section 86 (1)(b) of the Electricity Act, in cases where the regulatory jurisdiction of the transaction is vested in the Central Commission, is limited namely as provided under Rule 8 of the Electricity Rules, 2005 notified by the Central Government in exercise of the powers under Section 176 of Electricity Act. Rule 8 of the Electricity Rules, 2005 read as under:



**"8. Tariffs of generating companies under section 79.-** The tariff determined by the Central Commission for generating companies under clause (a) or (b) of subsection (1) of section 79 of the Act shall not be subject to re-determination by the State Commission in exercise of functions under clauses (a) or (b) of sub-section (1) of section 86 of the Act and subject to the above the State Commission may determine whether a Distribution Licensee in the State should enter into Power Purchase Agreement or procurement process with such generating companies based on the tariff determined by the Central Commission."

- 4.9. In the facts and circumstances, the Commission may approve the procurement of 490 MW renewable power under the PSA dated 25.01.2022 executed between the Petitioner and SECI at tariff as provided in Article 5 of the PSA duly executed between the Petitioner and SECI as well as Trading Margin as applicable.
5. Respondent No. 2 (Greenko Energies Private Limited) in its reply, additional reply and during the hearing mainly submitted as under:
- 5.1. SECI on 01.08.2019 issued a RfS. Subsequently, on 26.02.2020, SECI issued LOA in favour of Respondent No.2. Meanwhile, Respondent No. 2, Greenko incorporated a SPV, Greenko AP01 IREP Pvt Ltd., for implementation of the project. Greenko Energies Private Limited supports the relief sought for by the Petitioner for the approval of procurement of 490 MW renewable power under the PSA dated 25.01.2022.
- 5.2. However, it is to bring to the notice of the Hon'ble Commission that the events as mentioned herein which is/will result in an increase in cost of the solar power project being developed along with the pump storage project by Greenko AP01 IREP Private Limited in the State of Andhra Pradesh and qualify as events of change in law under the Article 12 of the Power Purchase Agreement dated 02.02.2022 ("PPA").

- 5.3. As on the bid submission date, to import the goods required for setting up of the Solar Project, the Respondent No.2, Greenko had two routes available under the Customs Tariff Act, Chapter 85 read with 2005 Customs Notification (Route I) wherein the custom duty was ' nil', or Chapter 98 read with 2017 Customs Notification (Route II) wherein the concessional rate of customs duty was 5% subject to fulfilment of the requirements prescribed under PIR 1986.
- 5.4. Subsequent to the submission of bid i.e. 15.01.2020, by Respondent No. 2, Greenko, on 01.02.2021, Ministry of Finance issued Notification No. 03 of 2021 Customs and Notification No. 07 of 2021 - Customs dated 01.02.2021 (as "Custom Notifications") pursuant to which the exemptions as granted by MOF to the extent of 5% (ad valorem), by its earlier notification was reversed and the Basic Customs Duty ("BCD") on import of the solar inverters was increased from 5% to 20% (as provided under First Schedule to the Customs Tariff Act, 1975).
- 5.5. Subsequently, MNRE issued OM dated 09.03.2021 and informed stakeholders that the Ministry of Finance has agreed to MNRE's proposal to impose BCD on import of solar cells and modules under Chapter 85 (without grandfathering of bid out projects). OM dated 09.03.2021 was issued so that in all bids where the last date of bid submission is subsequent to the said office memorandum, bidders take the imposition of BCD into account while quoting tariffs as they were precluded from claiming imposition of BCD as Change in Law. Accordingly, as per OM dated 09.03.2021 with effect from 01.04.2022, the following rates would be levied upon import of solar cells and modules:
- 5.6. By way of MNRE's OM dated 09.03.2021 BCD on import of solar cells and modules was increased only in case of Route I, i.e., under

Chapter 85 and Heading 8451 of the Customs Tariff Act read with 2005 Customs Notification as the said OM specifically referred to the aforesaid heading. In other words, MNRE's OM dated 09.03.2021 did not in any manner impact the concessional rate of 5% of custom duty leviable upon import of solar cells or modules under Chapter 98 and Heading 9801 of the Customs Tariff Act read with the 2017 Customs Notification. Additionally, MNRE's dated 09.03.2021 was prospective in nature.

- 5.7. In view of the above, as the bid submission date in the present case was prior to 09.03.2021, the Respondent No. 2 was entitled to seek compensation towards occurrence of Change in Law on account of imposition of BCD on the import of solar cells/modules by way of the aforesaid OM dated 09.03.2021. However, as SECI was finding it difficult to execute power sale agreement(s) with distribution licensees; the Respondent No.2 was constrained to waive, its right to claim increase in rate of BCD pertaining to OM dated 09.03.2021.
- 5.8. Consequently, Greenko vide its letter dated 24.06.2021 inter alia undertook to waive its right and entitlement to claim compensation on account of Change in Law imposition of BCD with respect to OM dated 09.03.2021 (which only refers/pertains to Chapter 85 and Heading 8541), Concessional Duty Withdrawal Notification dated 25.02.2021 and event caused by SGD Notification dated 29.07.2020. Copy of Greenko's letter dated 24.06.2021 is annexed herewith and marked as ANNEXURE A/7.
- 5.9. From a bare perusal of the aforesaid waiver letter, it is clear that the Greenko's waiver to claim Change in Law is limited to OM dated 09.03.2021 which only pertains to Chapter 85 and Heading 8541, Concessional Duty Withdrawal Notification wed by SGD Notification dated any other change which impacts the right of the Greenko to

pay concessional customs duty under Chapter 98 and Heading 9801 read with the 2017 Customs Notification and PIR 1986.

5.10. A perusal of waiver letter submitted to SECI dated 24.06.2021 makes it abundantly clear that the same is limited only with reference to Change in Law event caused by SGD Notification dated 29.07. 2020, BCD Notification dated 9.03.2021, Concessional Duty Withdrawal Notification dated 25.02.2021.

5.11. On the bid submission date as well as the date of execution of the PPA, in terms of Chapter 98 and Heading 9801 read with 2017 Customs Notification and PIR 1986, goods imported for initial setting up of power projects were subjected to singular concessional rate of custom duty at 5%. Therefore, as per the then prevailing framework, the Greenko could import solar modules for setting up the Project under Chapter 98 at a concessional BCD at the rate of 5%.

5.12. However, while the Greenko was in process of applying for the benefit of 5% concessional rate of customs duty under Chapter 98 and Heading 9801 read with 2017 Customs Notification and PIR 1986, the Ministry of Finance, Department of Revenue issued the PIR Amendment Regulation, 2022 on 19.10.2022 (i.e., much after the bid submission date), whereby solar power plants/solar power projects were excluded from availing concessional B under Sr. No. 2 in Column 2 and Sr. 3 in Column 2 1986. It is pertinent to mention that Clause 1(2) of the PIR Amendment Regulation, 2022 explicitly stated that the same shall come into force on the 20<sup>th</sup> day of October 2022.

5.13. In the meantime, the Department of Revenue, Ministry of Finance, Government of India issued PIR Amendment Regulations, 2023 whereby it excluded solar power plant or solar power project from Sr. 4 at Column 2 of the Table provided in PIR 1986. Clause 1 (2) of the PIR Amendment Regulations, 2023 explicitly provides that the same

shall come into force on the 2nd day of February 2023'. In addition, the corresponding amendments in First Schedule of the Customs Tariff Act pursuant to PIR Amendment 2022 and PIR Amendment 2023 were carried out on 31.03.2023 vide the Finance Act, 2023. It is submitted that the said amendments in the Customs Tariff Act are prospective in nature, as stipulated in the Memorandum Explaining the provisions of the Finance Bill, 2023.

5.14. Subsequently, Greenko APO1 IREP Private limited on 29.06.2023 issued a Change in Law Notice to SECI with a copy to Petitioner, RUVNL claiming that the amendment in Project Import Regulations is a Change in Law events.

5.15. It is submitted that subsequent to the submission of bid i.e. 15.01.2020, by Respondent No. 2, Greenko, on 30.09.2021, the Ministry of Finance notified a 12 percent rate of Goods & Services Tax ("GST Notification") on solar photo-voltaic (PV) modules and other renewal energy equipment with effect from 01.10.2021.

5.16. Subsequently, Greenko APO1 IREP Private Limited on 08.02.2023 issued a Change in Law Notice to SECI claiming a change in law for the GST rates vide Notification No. 8/2021- Central Tax (Rate) dated 30.09.2021.

5.17. Greenko APO1 IREP Private Limited resubmitted Change in Law Notice to RUVNL dated 12.09.2023 regarding communication with SECI w.r.t. Change in Law for change in rate of GST from 5% to 12% and Amendment in Project Import Regulation stopping import of solar project at 5% concessional BCD.

5.18. The tariff of Rs. 6.12/kWh was quoted by Respondent No.2, Greenko considering the events and circumstances prevalent at the time of submission of the bid. The aforesaid events have occurred

subsequent 15.01.2020 and Greenko, at the time of submitting the bid, was in no position to foresee such additional capital expenditure.

5.19. Greenko is in the process of filing Petition before the Central Electricity Regulatory Commission to declare that that the issuance of the Project Imports (Amendment) Regulations, 2022 dated 19.10.2022, the Project Imports (Amendment) Regulations, 2023 dated 01.02.2023 and Section 135 (b) read with Third Schedule of the Finance Act, 2023 relating to Chapter 98 resulting in increase in the rates of Basic Customs Duty on import of solar modules and cells is a Change in Law event in terms of Article 12 of the Power Purchase Agreement dated 02.02.2022 and also to approve the methodology for payment of compensation towards additional cost incurred due to Change in Law event as stipulated in Article 12.2 of the Power Purchase Agreement dated 02.02.2022.

5.20. In view of the reasons and circumstances stated above, it is prayed the Hon'ble Commission may take on record the above facts and circumstances.

**Commission's view:**

6. Commission has considered the submissions, replies, additional replies and oral arguments made on behalf of the Petitioner and Respondents.
7. It is observed that RUVNL has filed the present petition for seeking approval of procurement of 490 MW Hybrid power (Solar plus PSP) from SECI under the competitive bidding conducted by SECI whereunder GEPL has offered to supply 490 MW energy to the petitioner for its consumption through Discoms.
8. SECI in their written submissions have submitted that they have issued the RfS for selection of Renewable Power Developers for setting up of 1200 MW ISTS connected Renewable Power Projects with assured Peak

Power Supply under Tariff-based Competitive Bidding on 01.08.2019. The selected bidder GEPL then designated Greenko AP01 IREP Pvt Ltd. as SPV for implementing of the project. On 02.02.2022 Greenko AP01 IREP Pvt Ltd signed PPA with SECI for generation and sale of 490 MW. The PPA with Greenko AP01 IREP Private Limited is identified and mapped for supply of 490 MW power to the Rajasthan Utilities. Further, Greenko AP01 IREP Private Limited is to establish solar power project with Energy Storage System (pump storage) in the State of Andhra Pradesh. The schedule commissioning date of 490 MW project of Greenko is in the Second quarter of FY 2023-24.

9. According to SECI, the PPAs and PSA will be governed by Section 79 (1) (b) of the Electricity Act, 2003 there being a composite scheme for generation and sale in more than one State as settled by the decision of Hon'ble Supreme Court in Energy Watchdog case -v- Central Electricity Regulatory Commission a Ors. (2017) 14 SCC 80. CERC has passed Order on 08.01.2023 in Petition No.235/AT/2022 filed by SECI under Section 63 of Electricity Act for the adoption of tariff for renewable energy projects connected to ISTS with assured peak power supply in India and selected through competitive bidding process.
10. SECI requested the Commission that in terms of Section 86(1)(b) of the Electricity Act 2003 read with Rule 8 of the Electricity Rules,2005, and Commission may approve the procurement of 490 MW renewable power under the PSA dated 25.01.2022 executed between the Petitioner and SECI at tariff as provided in Article 5 of the PSA duly executed between the Petitioner and SECI as well as Trading Margin as applicable.
11. In view of the above, Commission is considering the approval of procurement of the 490 MW renewable power by the Respondents in the succeeding paras:

12. Commission has issued the RERC (Renewable Energy Obligation) Regulations, 2007 and while making Seventh Amendment in these Regulations, Commission has specified the RPO targets for the Discoms in reference to Section 86 (1) (e) of the Electricity Act, 2003 as under:

S.No.	Year	Obligation expressed as percentage of energy consumption (%) excluding consumption met from hydro sources of power.				
		Non-solar			Solar	Total
		Wind	Biomass	HPO		
4	2021-22	8.90%	0.90%	0.18%	8.50%	18.48%
5	2022-23	9.10%	1.00%	0.35%	9.50%	19.95%
6	2023-24	9.40%	1.10%	0.66%	10.50%	21.66%

13. The petitioner in its submission has mentioned that it has continuously tried to meet the prescribed RPO targets and placed on record the present status of achieved targets regarding RPO and HPO by it the last four financial years as follows:

Year	Solar		HPO	
	Target	Achievement	Target	Achievement
FY 2017-18	4.75	2.89	-	-
FY 2018-19	4.75	4.38	-	-
FY 2019-20	6.00	6.04	-	-
FY 2020-21	7.25	6.03	-	-
FY 2021-22	8.50	7.11	0.18	-
FY 2022-23 upto Oct. (Prov.)	9.50	7.96	0.35	-

14. According to the status of RPO and HPO compliance submitted by petitioner for 2022-23, against the RPO target of 9.50%, the Discoms could meet the target as 7.96%. Further, the latest status of RPO Compliance in respect of the earlier years received from the RREC is as under:

FY	Wind (%)		Biomass (%)		Solar (%)		HPO (%)		Total (%)	
	Tgt.	Ach.	Tgt.	Ach.	Tgt.	Ach.	Tgt.	Ach.	Tgt.	Ach.
2018-19	8.00	7.40	0.60	0.48	4.75	4.38	-	-	13.35	12.26
2019-20	8.30	7.24	0.70	0.53	6.00	5.97	-	-	15.00	13.75
2020-21	8.6	6.28	0.8	0.53	7.25	6.03	-	-	16.65	12.84
2021-22	8.9	6.68	0.9	0.46	8.5	7.11	0.18	0.00	18.48	14.25



2022-23	9.10	5.59	1.0	0.42	9.50	7.46	0.35	0.00	19.95	13.47
2023-24	9.40	7.55	1.1	0.39	10.50	8.41	0.66	0.00	21.66	16.34

15. Subsequent to the above, Commission has issued the RERC (Renewable Energy Obligation) Regulations, 2023 wherein the following RPO targets beyond FY 2023-24. i.e., FY 2024-25 to FY 2029-30 have been specified as under:

S.No.	Year	Wind RPO	HPO	Other RPO	Total RPO
1	2024-25	2.46%	1.08%	26.37%	29.91%
2	2025-26	3.36%	1.48%	28.17%	33.01%
3	2026-27	4.29%	1.80%	29.86%	35.95%
4	2027-28	5.23%	2.15%	31.43%	38.81%
5	2028-29	6.16%	2.51%	32.69%	41.36%
6	2029-30	6.94%	2.82%	33.57%	43.33%

16. It is observed from the above that there has been shortfall in compliance of solar obligation. Further, as stated by the Petitioner as on date there is no functional capacity tied up by Rajasthan Discoms to meet HPO. Further, according to the petitioner, availability of solar power shall meet the shortfall as well as solar obligation and power from PSP plant shall meet HPO of Discoms.

17. It is further noted that earlier Discoms had filed the Petition no. 1939/2021 regarding RPO Compliance submitted that considering the pandemic situation, any amount of effort by the petitioner and Rajasthan Discoms would not be sufficient to clear the RPO backlog in a period as determined by the Commission and requested the Commission to waive off their current backlog of RPOs of 11454 MU accruing from the FY- 2011-2012 to 2019-20 after taking into consideration the Pandemic Scenario. Commission vide order dated 23.12.2021 in the matter had directed the Discoms to make all the efforts to meet their total RPO backlog accumulated till date along with the respective year targets given to them.

18. Role of Commission under Section 86(1)(b) of Electricity Act, 2003 is to regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for the purchase of power for distribution and supply within the State.
19. It is further observed that CERC vide its order dated 08.01.2023, has already adopted the tariff discovered through a transparent process of competitive bidding.
20. We have also noted the additional key features of the intended power procurement. In our view the flexibility by way of the assured peak supply feature should immensely help the State as the petitioner will not be forced to purchase power during peak hours on higher tariff. Further, during off peak hours, low cost RE power will be available to the Discoms. This power at the same time, will also help the Discoms to meet their statutory RPO/HPO.
21. Considering the foregoing discussion we are of the view that the instant procurement of 490 MW hybrid power will not only help the Discoms in meeting their statutory obligation of RPO but firm power with associated higher operational flexibility will become available to the State Discoms which, in turn, will help them to serve the end consumers of the State in a more efficient manner.
22. Commission has also noted the submission of Respondent No.2 GEPL regarding increase in cost of the solar power project on account of certain Change in Law events after submission of their bids and that for which they are in process of filing suitable petition before the CERC.
23. Considering the above position and the fact that the tariff discovered through competitive bidding has been adopted by CERC, the Commission allows the prayer of the Petitioner and approves the

instant procurement of 490 MW hybrid(Solar plus PSP) power by the Discoms under the provision of Section 86(1)(b) of the Electricity Act, 2003.

24. Accordingly, the Petition is disposed of in terms of the above.

(Dr. Rajesh Sharma)  
Member

(Hemant Kumar Jain)  
Member

(Dr. B.N. Sharma)  
Chairman