

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 214/AT/2023

**Coram:
Shri Jishnu Barua, Chairperson
Shri Arun Goyal, Member
Shri P.K. Singh, Member**

Date of Order: 4th January, 2024

In the matter of

Petition under Section 63 of the Electricity Act, 2003 for adoption of tariff for 600 MW Solar Power Projects (Tranche VIII) connected to the Inter-State Transmission System (ISTS) and selected through competitive bidding process as per the guidelines of the Government of India

**And
In the matter of**

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

.....Petitioner

Vs

- 1. SBE Renewables Fifteen Private Limited,**
1st Floor, Worldmark-2, Asset Area 8,
Hospitality District, Aerocity, NH-8,
Delhi – 110037
- 2. Adani Solar Energy Jodhpur Six Private Limited,**
C-105, Anand Niketan,
New Delhi-110021
- 3. North Bihar Power Distribution Company Limited,**
Third Floor, Vidyut Bhawan,
Bailey Road, Patna-800001, Bihar
- 4. South Bihar Power Distribution Company Limited,**
Second Floor, Vidyut Bhawan,
Bailey Road, Patna 800001, Bihar
- 5. Bihar State Power Holding Company Limited,**
1st Floor, Vidyut Bhawan, Jawahar Lal Nehru Marg,
Patna- 800001, Bihar

6. Tamil Nadu Generation and Distribution Company Limited,
NPKRR Maligai, 144, Anna Salai,
Chennai-600002

7. AMP Energy Green Private Limited,
309, Rectangle One, Behind Sheraton Hotel,
Saket, New Delhi - 110017

8. Eden Renewable Alma Private Limited,
Unit No 236 B & C, 1st Floor,
DLF South Court, Saket,
New Delhi- 110017.

9. ReNew Solar Power Private Limited,
ReNew Hub, Commercial Block-1, Zone-6,
Golf Course Road, DLF City Phase V,
Gurugram, Haryana- 122009.

Respondents

Parties Present:

Ms. Anushree Bardhan, Advocate, SECI
Ms. Surbhi Kapoor, Advocate, SECI
Ms. Shirsas Saraswati, Advocate, SECI
Shri Hemant Singh, Advocate, ASEJPL
Shri Lakshyajit Singh, Advocate, ASEJPL
Shri Mridul Chakravarty, Advocate, ASEJPL
Shri Ayush Raj, Advocate, ASEJPL
Ms. Alchi Thapliyal, Advocate, ASEJPL

ORDER

The Petitioner, Solar Energy Corporation of India Limited ('SECI'), has filed the present Petition under Section 63 of the Electricity Act, 2003 (hereinafter referred to as 'the Act') for the adoption of tariff for 600 MW solar power projects (Tranche-VIII) connected to inter-State transmission system ('ISTS') and selected through competitive bidding process as per the "Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Power Projects" (hereinafter referred to as 'the Guidelines') dated 3.8.2017 issued by the Ministry of Power, Government of India. The Petitioner has made the following prayers:

“a) Adopt the tariff discovered in the tariff based competitive bid process for the aggregate 600 MW capacity from Solar power projects on the terms and conditions contained in the Power Purchase Agreements signed with the Solar Power Developers read with the Power Sale Agreements signed with the Buying Entities/Distribution Licensees;

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

c) Pass any other or further orders which this Hon’ble Commission may deem fit and proper in the facts and circumstances of this case.”

Submission of the Petitioner

2. The Petitioner, SECI, has submitted that it issued a Request for Selection (‘RfS’) along with the draft Power Purchase Agreement (‘PPA’) and the draft Power Supply Agreement (‘PSA’) for the selection of 1200 MW ISTS-connected solar power projects (Tranche-VIII) as per the Guidelines and floated the same on ISN Electronic Tender System (ETS) e-bidding portal on 3.1.2020. In response, eleven bids were received offering an aggregate capacity of 4000 MW and were found to fully meet the technical criteria. As per the eligibility criteria mentioned in the RfS, eight bidders were shortlisted for participating in the e-reverse auction. The e-reverse auction was conducted on 27.2.2020 on the ISN ETS e-bidding portal, and pursuant thereto, four bidders offering an aggregate capacity of 1200 MW were selected and issued the Letters of Award on 6.4.2020. As on the date of filing of the Petition, the Petitioner has entered into two separate PPAs with Adani Solar Energy Jodhpur Six Private Limited (Project Company of successful bidder SBE Renewables Fifteen Private Limited) on 22.3.2023 for 300 MW capacity each @ Rs 2.50/kWh and PSAs with the distribution companies, Respondents No. 3, North Bihar Power Distribution Company Limited, Respondent No. 4, South Bihar Power Distribution Company Limited and Respondent No. 5, Bihar State Power Holding Company Limited for 600 MW. The Petitioner has

submitted that the selected solar power projects are scheduled to be commissioned during 2024-25, and the price discovered is competitive and will enable the distribution companies to supply power at very economical rates. It has been further submitted that in addition to the tariff, there will be a trading margin of Rs. 0.07/kWh to be recovered from the distribution companies, which have been duly agreed to by the distribution companies in the PSAs. The Petitioner has craved leave to approach the Commission for the adoption of tariff for the balance capacity after such capacity is tied up and PPAs along with PSAs are executed.

Hearing dated 11.8.2023

3. The matter was heard on 11.8.2023, and notices were issued to the Respondents to file their replies. During the course of the hearing, the Commission directed the Petitioner to clarify the substantial delay in entering into the PPAs and PSAs (2023) after the conclusion of the e-reverse auction & issuance of the Letter of Awards (2020) on an affidavit. In response to the specific query of the Commission, learned senior counsel clarified that the deviation taken by SECI in the bid documents/PPAs with regard to the Change in Law provisions of the Solar Guidelines has been approved by the Ministry of New and Renewable Energy vide its letter dated 1.3.2021.

4. In response to the clarification sought by the Commission vide Record of Proceedings for the hearing dated 11.8.2023, SECI vide affidavit dated 24.8.2023 has submitted as under

- a) SECI was able to sign the PSAs for substantial capacity in the case of solar tenders in the past few years, but still, the PSAs for 5566 MW solar capacity (including 600 MW under ISTS Solar Tranche VIII Scheme relevant for the

present case) is yet to be signed under various schemes due to lukewarm response received from the Buying Entities. The lukewarm response from the Buying Entities may be attributed to various factors such as the distribution companies/State Nodal Agencies floating their own tenders for the procurement of solar power, increase in discovered tariffs due to an increase in Basic Customs Duty and Goods and Services Tax rates, etc. The balance capacity has been offered to the various Buying Entities.

b) In some cases, distribution licensees/ Buying Entities also insist on the prior approval of the State Commission based on the offer from SECI and draft PSA before formally entering into a binding and enforceable PSA. This has resulted in SECI's inability to enter into PPAs with developers to whom letters of award have been issued.

c) In regard to the scheme relevant to the present case, i.e. ISTS Tranche-VIII Solar Scheme, as on date, SECI has signed PSA dated 13.1.2023 with Respondent Nos. 3 to 5 for 600 MW capacity of Solar Power. This was pursuant to an Order dated 23.12.2022 passed by the Bihar Electricity Regulatory Commission in Petition No.22/2022 approving the procurement of 600 MW solar power under the ISTS Tranche VIII Solar Scheme initiated by SECI. The PPAs with the other selected bidders/SPVs of the selected bidders for the remaining quantum of power will be executed after the signing of the PSAs for the said quantum of power.

Hearing dated 20.9.2023

5. The matter was listed for the hearing on 20.9.2023. During the hearing, learned counsel for Respondent No.2, Adani Solar Energy Jodhpur Six Private Limited (ASEJSPL), submitted that since Respondent No. 2 was not mapped on the e-filing portal of the Commission, it could not file its reply in the timeframe indicated vide Record of Proceedings for the hearing dated 11.8.2023. While seeking liberty to file a reply, learned counsel for Respondent No. 2 submitted that the Respondent intends to point out certain Change in Law events that have taken place after the bid deadline,

and the Commission is required to recognize such Change in Law events at the stage of adoption of tariff in terms of judgments of Appellate Tribunal for Electricity (APTEL). The Commission permitted Respondent No.2 to file its reply.

6. Respondent No. 2, ASEJSPL, vide its reply dated 25.9.2023, has mainly submitted the following:

a) ASEJSPL is not disputing/ challenging the tariff adoption petition filed by the Petitioner. However, by way of the present reply, the Respondent seeks indulgence of the Commission to recognize certain Change in Law events in the Power Purchase Agreements/ Power Sale Agreements which took place after the bid submission date and shall result in additional cost upon the solar power generators which could not at all have been factored at the time of submission of the bid.

b) Post the bid submission date (and before the present proceedings of tariff adoption), change in rates of GST by the Ministry of Finance [vide Notification No. 08/2021- Central Tax (Rate) and Notification No. 08/2021- Integrated Tax (Rate) dated 30.9.2021 (effective from 1.10.2021)] and imposition of BCD on Solar Modules, inverters and Trackers as a consequence of the withdrawal of Concessional Custom Duty (“CCD”) vide the Ministry of Finance Notification No. 07/2021-Customs dated 1.2.2021 read with the Ministry of New and Renewable Energy (“MNRE”) Office Memorandum dated 25.2.2021 are squarely covered as Change in Law under Article 12 of the PPA.

c) The Commission has the power to grant in-principal approval for an event as Change in Law under the PPA at the first available instance. The APTEL [*Appeal No. 251 of 2021; Green Infra Renewable Energy Limited v. Rajasthan Regulatory Commission & Ors.*], as well as this Commission [*Petition No. 260/AT/2021; Solar Energy Corporation of India Limited v. Adani Renewable Energy Holding Fifteen Limited*] have recognized the provisions pertaining to Change in Law events at the stage of the adoption of tariff itself.

d) The APTEL has also recognised the fact that if any Change in Law claims have been ignored by the Appropriate Commission, then such proceedings itself have been adjudged as incomplete and inchoate. [*Appeal No. 344 of 2021; Green Infra Renewable Energy Limited v. Rajasthan Electricity*]

e) The order dated 13.9.2023 passed by the Commission in Petition No. 213/AT/2023 is per-incuriam as the reliance placed by the Commission on the order dated 31.7.2023 passed by the APTEL in Appeal No 625 of 2023 & IA No 1677 of 2023 may not be correct. The said proceedings culminated from the proceedings of Petition No. 192/MP/2021, which involved a 'dispute' between parties in terms of Section 79(1)(f) of the Act. While the proceedings in Appeal No. 625 of 2023 involved the 'adjudicatory' functions of the Commission, the present case (as well as Petition No. 213/AT/2023) is on a different footing altogether, as the same involves a scenario where the Commission invokes its 'regulatory' powers qua tariff adoption/ determination conferred upon it under the provisions of the Act.

f) While exercising its powers and functions of adopting tariffs under Section 63 of the Act, the Commission can surely delve into the tariff structure where the bidding guidelines are silent by means of its extant 'regulatory' powers provided under the Act [*Energy Watchdog v. CERC reported in (2017) 14 SCC 80*].

g) In the present case, the bidding guidelines are silent on the aspect of change in tariff structure (by way of Change in Law events), which takes place after the bid submission date and before the tariff adoption. As such, this Commission has enough regulatory powers to allow the relief of Change in Law (which results in a change of tariff stream) at the tariff adoption stage.

7. SECI, vide its rejoinder dated 21.10.2023 to reply filed by ASEJSPL, has made the following submissions:

(a) A similar argument was made by some developers in a recent Petition (Petition No. 213/AT/2023, in the matter of SECI v. TP Saurya Limited and others) vis a vis certain events which could be recognised and allowed as Change in Law events (as in the present case).

(b) The Commission vide order dated 13.9.2023 declined to adjudicate the Change in Law claims of Respondent Generators in light of the APTEL judgment dated 31.7.2023 in Appeal No 625 of 2023 & IA No 1677 of 2023.

(c) In view of the above decision of the Commission, Respondent No 2 can file a separate Petition for the recognition of the events raised in the present reply as Change in Law events in terms of the applicable provisions of the PPA. The reliance placed by ASEJSPL on the decision of the APTEL dated 12.10.2021 in Appeal No. 251 of 2021 and order dated 11.4.2022 in Appeal No. 344 of 2021 in the matter of Green Infra Renewable Energy Limited v. RERC and Others has also been dealt with by this Commission in the order dated 13.9.2023 in Petition No. 213/AT/2023 wherein the Commission gave liberty to the developers to come by way of separate petitions.

(d) It is reiterated that the PPA in the present matter with Adani does not have a provision to recognise the Change in Law events at the time of the tariff adoption proceedings as in the decisions/cases on which Adani is seeking to place reliance on (including the order dated 12.10.2021 passed by the APTEL in Appeal No. 251 of 2021 and Appeal No. 344 of 2021 in the matter of Green Infra Renewable Energy Limited v. RERC and Others).

(e) The Commission may direct ASEJSPL to approach the Commission by way of a separate Petition for the said Change in Law events and not seek to delay the tariff adoption proceedings by pressing for recognition/in principle approval of the Change in Law events in these present proceedings.

Hearing dated 8.11.2023

8. During the course of the hearing on 8.11.2023, learned senior counsel for the Petitioner submitted that subsequent to the filing of the present Petition, SECI has

signed the Power Sale Agreements (PSAs) dated 13.10.2023 with TANGEDCO for another 500 MW and on the basis of the said PSAs, SECI is in process of signing the Power Purchase Agreements (PPAs) with the Renewable Energy Developers, namely, ReNew Solar Power Private Limited (200 MW) and Eden Renewables Alma Private Limited (300 MW) in terms of Letter of Award dated 6.4.2020 issued to them for the onward supply to TANGEDCO. The learned counsel for Respondent No.2, ASEJSPL, submitted that the Commission, in its recent order dated 5.11.2023 in Petition No.224/AT/2023, did not recognize the Change in Law event spelt out by the Respondent in its written submissions. However, the Commission has proceeded to recognize the GIB Order of the Hon'ble Supreme Court as the Change in Law event during the tariff adoption stage in its order dated 8.3.2023 in Petition No. 245/AT/2022 even when there was no specific prayer of SECI for recognition of the said event as Change in Law nor was there any specific provision under the PPAs related to that particular Change in Law event.

9. The Commission directed the Petitioner to map the newly impleaded Respondents, and notices were issued to the newly impleaded Respondents to file their replies. The Petitioner was directed to place on record the copies of executed PPAs with Respondents 8 & 9, if any, and indicate the status of the balance untied capacity of 100 MW (out of 1200 MW) and the tentative timeline for tying up such capacity under the PSA & PPA, if any. Pursuant to the direction of the Commission, the Petitioner, vide its affidavit dated 25.11.2023, has brought on record the PPA signed with Renew Surya Vihaan Private Limited (SPV of Bidder- Renew Solar Power Private Limited) on 14.11.2023 for 200 MW. Subsequently, the Petitioner filed an additional affidavit dated 29.11.2023 to place on record the PPA signed with Eden Renewable Alma Private Limited on 28.11.2023 for 300 MW. The Petitioner has further

submitted that the PSA and PPA for a balance capacity of 100 MW is yet to be signed, and SECI will place on record the relevant PPA and PSA after signing the same.

Hearing dated 5.12.2023

10. The matter was finally heard on 5.12.2023. The learned counsel for the Petitioner and Respondent No. 2 reiterated their submissions. After hearing the parties, the Commission permitted the parties to file their respective short written submissions. However, no written submissions have been filed by the parties.

Analysis and Decision

11. We now proceed to consider the prayers of the Petitioner as regards the adoption of tariff in respect of solar power projects discovered pursuant to the competitive bid process carried out in terms of the Guidelines issued by the Ministry of Power, Government of India under Section 63 of the Act.

12. 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.”

13. Thus, in terms of Section 63 of the Act, the Commission is required to adopt the tariff on being satisfied that the transparent process of bidding in accordance with the Guidelines issued by the Government of India under Section 63 of the Act has been followed in determination of such tariff.

14. Ministry of Power, Government of India has notified the Guidelines under Section 63 of the Act vide Resolution No.23/27/2017-R&R on 3.8.2017. The Guidelines have been subsequently amended by the resolutions dated 14.6.2018,

3.1.2019, 9.7.2019, 22.10.2019 and 25.9.2020. The salient features of the Guidelines are as under:

(a) The Guidelines are applicable for the procurement of power from grid connected solar PV power projects having a size of 5 MW and above through tariff based competitive bidding to be conducted by procurers, which includes distribution licensees, or the Authorized Representative(s), or Intermediary procurers.

(b) The procurer shall prepare the bid documents in accordance with the Guidelines and the Standard Bid Documents notified by the Ministry of Power, Government of India. If any deviation is proposed to be made in the Guidelines and Standard Bid Documents, approval of the Appropriate Commission would be necessary. Intimation about the 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 the entire package.

(d) The procurer has the 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 a bidding parameter.

(e) Draft PPA proposed to be entered into with the successful bidder and draft PSA, if applicable, shall be issued along with the RfS. Standard provisions to be incorporated as part of the PPA shall include, *inter-alia*, PPA period, quantum of power/ energy to be procured, payment security, generation compensation of off-take constraint, event of default and consequences thereof and Change in Law and shall be provided for, on back-to-back basis, in the PSA.

(f) Procurer and Intermediary procurer shall provide payment security to the solar power developer through a revolving Letter of Credit of an amount not less than one month average billing and Payment Security Fund for at least three

months` billing of all the projects tied up with such fund. In addition, the procurer may also choose to provide State Government Guarantee.

(g) The End procurer shall provide payment security to the intermediary procurer through revolving the Letter of Credit of an amount not less than one month`s average billing from the project under consideration and State Government Guarantee. In addition, the 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 they so desire. 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 the initiation of the bidding process and arrange the access of the bidders to the drafts of the 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 the evaluation of the bids (Evaluation Committee), with at least three members, including at least one member with expertise in financial matters/ bid evaluation.

(k) Bidder shall submit a 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 the conclusion of the bidding process, the 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 the adoption of tariffs in terms of Section 63 of the Act.

15. In terms of the provisions of Section 63 of the Act, we have to examine whether the process as per provisions of the Guidelines has been followed in the present case for arriving at the lowest tariff and for selection of the successful bidder(s).

16. The Petitioner has been designated as the nodal agency for the implementation of the MNRE Schemes for setting up the inter-State Transmission System connected/ State specific wind/ solar power/ wind-solar hybrid power projects; to invite bidding under tariff based competitive bidding process; to enter into PPAs with developers at the tariff discovered in the competitive bid process; and to enter into PSAs with the distribution licensees to enable them to fulfil their Renewable Purchase Obligations under Section 86(1)(e) of the Act. SECI acts as an intermediary agency in the purchase and sale of power under PPAs and PSAs on a back-to-back basis.

17. The Guidelines provide for the procurement of solar power at a tariff to be determined through a transparent process of bidding by the procurer(s) from the grid connected solar power projects having a size of 5 MW and above. As per the Guidelines, SECI, in the capacity of intermediary procurer, invited proposals for the selection of solar power developers for setting up 1200 MW ISTS connected solar power projects (Tranche- VIII). As per the arrangements, SECI is to procure the power

by entering into PPAs with the successful bidder with back-to-back PSAs for the sale of power to the distribution licensees.

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

Sr. No.	Event/Milestone	Date
1	Issuance of RfS documents	3.1.2020
2	Amendments/Corrigendums to RfS documents	3.2.2020 to 11.2.2020
3	Last date for submissions of online bid	17.2.2020
4	Opening of technical bid	20.2.2020
5	Opening of financial bid	26.2.2020
6	e-Reverse Auction	27.2.2020
7	Issuance of Letter of Award	6.4.2020

19. On 3.1.2020, SECI issued the RfS documents, along with the draft PPA and PSA, for the selection of the Solar Power Developers for setting up of 1200 MW ISTS connected solar power projects (Tranche-VIII) under tariff-base competitive bidding. As per Clause 6.4 of the Guidelines, RfS notice is required to be published in at least two national newspapers and its own website to accord wide publicity. In this regard, SECI has placed on record the documents demonstrating the publication of RfS on the e-publishing system, Government of India. It has been further submitted that it did not publish the notices in the newspapers as per the advisory issued by the Ministry of Information and Broadcasting, Government of India, dated 17.5.2017, mandating the e-publishing of advertisements in the relevant portal. Accordingly, on 3.7.2018, SECI published a notification indicating that tenders of SECI would be published on its website and not in newspapers.

20. As per Clause 3.1.1(b) of the Guidelines, the procurer is required to inform the Appropriate Commission about the initiation of the bidding process. SECI, vide its letter dated 6.1.2020, had informed the Commission that it had initiated the competitive

bidding process for procurement of power from the grid-connected solar power projects.

21. The Bid Evaluation Committee (BEC) comprising the following was constituted for opening and evaluation of bids for RfS dated 3.1.2020:

Tender	Dept.	Offline and Online Techno-commercial and Financial Bid Opening	Techno-commercial and Financial evaluation and post-e-RA recommendation
1200 MW ISTS-Connected Solar PV Power projects in India (ISTS-VIII)	Solar	Piyush Kumar Gupta, Executive Trainee	Alok Singh, Dy. Manager
	Contracts	Biblesh Meena, Dy. Manager/Jayansh Gaur, Executive Trainee	Pratik Prasun, Manager
	Finance	Ajit Sharma, Dy. Manager	Ajit Sharma, Dy. Manager

22. Last date of submission of the bid was 17.2.2020, and the technical part of the bid was opened on 20.2.2020. Response to RfS was received from the following eleven bidders:

S.No.	Name of Bidders
1	Eden Renewable Alma Private Limited
2	ABC Renewable Energy Private Limited
3	Nv vogt Singapore Pte Ltd
4	ReNew Solar Power Private Limited
5	Avaada Energy Private Limited
6	NTPC Limited
7	SBE Renewables Fifteen Private Limited
8	AMP Energy Green Private Limited
9	O2 Power SG Pte. Ltd.
10	Ayana Renewable Power Private Limited
11	Tata Power Renewable Energy Limited

23. The financial bids of all eleven technically qualified bidders were opened on 26.2.2020 on the ISN ETS e-bidding portal, and as per the criteria mentioned in RfS documents, eight bidders for capacity aggregating 3100 MW were shortlisted for an e-reverse auction. The e-reverse auction was carried out on 27.2.2020 on the ISN ETS

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

S. No.	Bidder	Bidder's Quantity (MW)	Tariff (Rs/kWh)	Allocated Capacity (MW)
1	SBE Renewables Fifteen Private Limited	600	2.5	600
2	AMP Energy Green Limited	100	2.5	100
3	Eden Renewable Alma Private Limited	300	2.5	300
4	ReNew Solar Power Private Limited	600	2.51	200
Total				1200 MW

24. On 6.4.2020, SECI issued Letters of Award to the aforesaid successful bidders. The relevant extract of the Letter of Award issued to one of the successful bidders, namely, Amp Energy Green Private Limited, is as under:

"Sub: Selection of Solar PV Power Projects under RfS for setting up of 1200 MW ISTS-connected Solar PV Power Projects (ISTS-VIII): Letter of Award for Solar PV Power Project of 100 MW (Project ID: SPD-ISTS-T8-AMPEGPL-P1-100RJ)

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 award as per the following details:

Allotted Project ID	Project Capacity (MW)	Project Location	Sub-station details for connectivity	Applicable Tariff (INR/kWh) in figures	Applicable Tariff (INR/kWh) in words
SPD-ISTS-T8-AMPEGPL-P1-100RJ	100	Village: Ekalpar Tehsil: Sam District: Jaisalmer State: Rajasthan	220 kV end of 220/400/765 kV Ramgarh PGCIL GSS	₹ 2.50/- R	Rupees Two and Fifty paise only

SECI shall purchase the power generated from the proposed ISTS-Connected 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 SECI, 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 Customs, Excise Duties, Tax Holidays, etc. as available for such projects. No claim shall arise on SECI for any liability if the SPD is not able to avail fiscal incentives and this will not have any bearing on the applicable tariff.

1.2 The award of the above Project is subject to the Guidelines including amendments / clarifications issued by 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. Controlling Shareholding (holding more than 50% of the voting rights and paid up share capital in the Company) of the Project Company of the SPD shall not change until three years after the COD of the Project, except with 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) years after COD.

1.5 The successful Bidder, 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) years from the COD, except with the prior approval of SECI. In the event the successful bidder is a consortium, then the combined shareholding of the consortium members in the SPV/project company executing the PPA, shall not fall below 51% at any time prior to 3 (three) year 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.

1.6 The SPD shall pay to SECI, Success Charges of Rs. 1 lakh/MW/project + 18% GST within 30 days of issuance of this Letter of Award (LoA), in line with Clause 12, Section-III of the RfS, towards administrative overheads, coordination with State Authorities and others, DISCOM/ STU/ CTU, pre-commissioning and commissioning expense. Performance Bank Guarantee(s) for a value of @ Rs 8 Lakh/ MW shall be submitted by the SPD within 30 days of issuance of Letter of Award or before signing of PPA, whichever is earlier, in line with Clause 11, Section-III of the RfS.

1.7 PPA will be executed between SECI and the SPD as per the breakup of the cumulative Project capacity awarded to the Bidder. This LoA 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. However, it may be noted that the Successful Bidder shall be allowed to change the State of the proposed Project locations, prior to achievement of Financial Closure for the Project. Any change in State of the Project(s) awarded shall not be permitted subsequent to the above deadline.

1.8 The final project configuration, adding up to the cumulative capacity awarded to the bidder may be intimated to SECI at the time of signing of PPA, which shall then remain unchanged subsequent to signing of PPA. Delays in connectivity and/or LTA for the Project(s) on account of such changes in Project locations, which differ from the details provided in the Covering letter, shall be at the risk and cost of the Successful Bidder. The PPAs shall be valid for a 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 70 days from date of this LoA. 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 LoA) 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 76% 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) Performance Bank Guarantee for the value of Rs. 8 lakh/MW/Project as per Format 7.3 B of the RfS document.

Further, the PPA shall be signed only upon receipt of the Success Charges and total Performance Guarantees of requisite value. The EMD submitted shall be released only after receipt and successful verification of the total Performance Bank Guarantee in the acceptable form.

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 90 days from the date of issue of LoA, if not extended by SECI. In case of unavoidable delays on the part of the SPD in submission of requisite documents prior to signing of PPAs or otherwise, the Effective Date of the PPA shall remain the date as on 90th day from the issuance of LOA, irrespective of the date of signing of PPA. In extraordinary cases of unavoidable delays on the part of SECI in signing the PPAs, the Effective Date of the PPA shall then be the date of signing of PPA.

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

1.12 The SPD shall meet financial closure requirements for the Project in line with clause 15, Section-III 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.

1.13 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 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.”

25. It has been submitted by the Petitioner that the selection of the aforesaid bidders for the supply of power and the quantum of capacity available for the procurement from the selected bidders were communicated to the concerned distribution companies/ buying utilities and that PSAs have been signed as under:

Sr. No.	Buying Utilities	Date of PSA	Capacity of Project (MW)
1	North Bihar Power Distribution Company Limited & South Bihar Power Distribution Company Limited	13.1.2023	600
2	Tamil Nadu Generation and Distribution Company Limited (TANGEDCO)	13.10.2023	300
3	Tamil Nadu Generation and Distribution Company Limited (TANGEDCO)	13.10.2023	200
Total			1100

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

Sr. No.	Name of Successful Bidder	Project Company formed for executing PPA	Date of signing of PPA	Capacity of Project (MW)	Applicable Tariff (Rs./kWh)
1	SBE Renewables Fifteen Private Limited	Adani Solar Energy Jodhpur Six Private Limited	22.3.2023	300	2.5
2	SBE Renewables Fifteen Private Limited	Adani Solar Energy Jodhpur Six Private Limited	22.3.2023	300	2.5
3	ReNew Solar Power Private Limited	ReNew Surya Vihaan Private Limited	14.11.2023	200	2.51

4	Eden Renewable Alma Private Limited		28.11.2023	300	2.5
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27. Admittedly, the Petitioner has been able to enter into the PPA for 1100 MW, while for the balance of 100 MW, PPAs have not been signed. However, we note that even after a considerable amount of time has elapsed from the issuance of LoA to the successful bidders, the supply of electricity from the generating station(s) to the distribution licensee(s) has been tied up with respect to 1100 MW out of the total selected capacity of 1200 MW and the identification of distribution licensee (s) and consequently, execution of the PPA for the balance capacity of 100 MW is yet to take place. The Petitioner, in its affidavit dated 29.11.2023, has submitted that the PSA and PPA for a balance capacity of 100 MW is yet to be signed, and SECI will place on record the relevant PPA and PSA after the signing. The Petitioner has further added that since the LoAs have been issued to the selected bidders for the whole 1200 MW bid capacity on 6.4.2020, the Commission may consider adopting the tariff for the entire 1200 MW capacity. It is pertinent to mention that only 1100 MW PPAs and PSAs have been signed by the parties. Therefore, in such circumstances, we deem it appropriate to restrict the adoption of the tariff only with respect to the quantum for which PPA has been executed with solar power developers for the supply of power to the identified distribution licensees through PSA with the Petitioner.

28. The Petitioner has submitted that it has taken certain deviations in the bid documents from the provisions of the Guidelines with regard to the provisions of the Change in Law. However, such changes have been incorporated pursuant to the approval of the Ministry of New, and Renewable Energy, vide letter dated 18.12.2020 and letter dated 1.3.2021, whereby the MNRE, in the exercise of its powers to issue clarification/modification under the Guidelines, accorded ex-post facto approval for

changes in respect of certain provisions vis-à-vis Guidelines in respect of (i) bid that have been issued but not closed; and (ii) bids that have been issued and closed by SECI and the aforesaid letters of MNRE have been placed on record by SECI vide its affidavit dated 20.10.2021.

29. We have considered the submissions made by the Petitioner. As regards deviations from the Guidelines, we observe that while the Guidelines provide for the determination of the quantum of compensation for off-setting the financial impact due to an increase/ decrease in the costs on account of the occurrence of a Change in Law event by the Appropriate Commission, the Petitioner in the PPA and the PSA has provided for the predetermined quantum of compensation for certain Change in Law events.

30. The Petitioner, SECI, has placed on record its letter dated 26.11.2020 and e-mail dated 13.1.2021 sent to MNRE requesting 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 a letter dated 1.3.2021 issued by MNRE to SECI, whereby MNRE, in the exercise of its powers to issue clarifications/ modifications under the Guidelines, granted ex-post facto approval for changes in respect of certain 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)..."

31. Thus, as per the 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.

32. The bids covered under the present petition fall under the second set of bids (where bids have been issued and closed), as the last date of submission of the bid was 17.2.2020 and even the Lol was issued on 6.4.2020, whereas the deviations were approved by MNRE vide its letter dated 1.3.2021. Further, in the said letter dated 1.3.2021, MNRE directed SECI as under:

“...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;...”

33. Given the fact that the bidding in the present case was already closed at the time of issuance of the aforesaid approval of deviations by the MNRE, the question that arises before the Commission is whether such approval of deviations from the bidding guidelines after the closure of bids violates the sanctity of bidding process rendering the bidding vitiated.

34. 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 by Amendment No. 2. 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 of 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 the closure of bids, and the approval granted for the same was only on an *ex-post facto* basis. We are of the view that the Petitioner should have waited for the approval of its proposal from the MNRE before proceeding with the bidding process. The Commission views the approach of the Petitioner not only as unprofessional but also as non-adherence to laid down procedures, which is not expected from a Government of India Public Sector Undertaking like SECI. We would like to advise SECI that it must invariably always comply with the procedural and legal requirements and provisions of the Guidelines issued by the Government of India in letter and spirit.

35. As per the Guidelines, the Evaluation Committee is required to certify that the bidding process and the evaluation have been conducted in conformity with the

provisions of the RfS. We observe that the Petitioner has made submissions that the bid documents are in line with the provisions of the Guidelines and the approvals of MNRE vide letter dated 1.3.2021. This has been certified by the Petitioner through the two conformity certificates furnished by the Petition.

“Conformity Certificate-1

(To whomsoever it may concern)

I, Ajay Kumar Sinha, working as Additional General Manager (Contracts & Procurement), at Solar Energy Corporation of India Limited, 6th Floor, Plate-B, NBCC Office Block Tower-2, East Kidwai Nagar, New Delhi-110023, do hereby solemnly certify and state as follows:

With respect to the RfS no. SECI/C&P/SPD/ISTS-VIII/RfS/1200MW/012020 dated 03.01.2020, it is hereby declared as follows:

1. Applicable Guidelines and amendments/clarifications thereof, if any, issued by the Government of India for the bidding process were followed in the above tender. A modification in the Change in Law provision in the PPA to the extent of Anti-Dumping Duty and/or Safe-Guard Duty and/or Custom Duty etc. on Solar PV Modules (as per Article 12.2.3 of PPA), with a pre-determined relief of Rs. 0.005/kWh for increase/decrease of Rs. 1 Lakh/MW in the Project cost has however been provided in the PPA in place of the mechanism specified in the Guidelines originally notified. This modification has been given a post-facto approval by MNRE vide notification dated 01.03.2021. With the above, there has been no deviation from the Guidelines in the RfS implemented and selection of bidders consistent with the bidding documents.”

“Conformity Certificate-2

(To whomsoever it may concern)

With respect to the RfS no. SECI/C&P/SPD/ISTS-VIII/1200MW/012020 dated 03.01.2020, it is hereby declared as follows:

....

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

36. In the earlier paragraph, we have pointed out several lapses in the approach of the Petitioner relating to deviations. However, as deviations in clauses of PPAs (for which post facto approval of MNRE was obtained) were part of the bid document, the bidders were aware of them at the time of submission of a bid.

37. 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 the 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 as under:

Sr. No.	Name of Successful Bidder	Project Company formed for executing PPA	Date of signing of PPA	Capacity of Project (MW)	Applicable Tariff (Rs./kWh)
1	SBE Renewables Fifteen Private Limited	Adani Solar Energy Jodhpur Six Private Limited	22.3.2023	300	2.5
2	SBE Renewables Fifteen Private Limited	Adani Solar Energy Jodhpur Six Private Limited	22.3.2023	300	2.5
3	ReNew Solar Power Private Limited	ReNew Surya Vihaan Private Limited	14.11.2023	200	2.51
4	Eden Renewable Alma Private Limited		28.11.2023	300	2.5

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

39. Prayer (a) of the Petitioner is answered in terms of paragraph 34, paragraph 44 and paragraph 45 above.

40. Article 10.3 of the PPA provides as under:

“10.3 Payment of Monthly Bills

10.3.1 SECI shall pay the amount payable under the Monthly Bill/Supplementary Bill by the Due Date to such account of the SPD, as shall have been previously notified by the SPD as below.

10.3.2 All payments required to be made under this Agreement shall also include any deduction or set off for:

(i) deductions required by the Law; and

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

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

41. Article 10.4 of the PPA provides as under:

“10.4 Payment Security Mechanism

Letter of Credit (LC):

10.4.1 SECI shall provide to the SPD, in respect of payment of its Monthly Bills and/or Supplementary Bills, a monthly unconditional, revolving and irrevocable letter of credit (“Letter of Credit”), opened and maintained which may be drawn upon by the SPD in accordance with this Article.

10.4.2 Before the start of supply, SECI through a scheduled bank open a Letter of Credit in favour of the SPD, to be made operative from a date prior to the Due Date of its first Monthly Bill under this Agreement. The Letter of Credit shall have a term of twelve (12) Months and shall be renewed annually, for an amount equal to:

i) for the first Contract Year, equal to the estimated average monthly billing;

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

10.4.3 Provided that the SPD shall not draw upon such Letter of Credit prior to 30 days beyond the Due Date of the relevant Monthly Bill and/or Supplementary Bill, and shall not make more than one drawal in a Month.

10.4.4 Provided further that if at any time, such Letter of Credit amount falls short of the amount specified in Article 10.4.2 due to any reason whatsoever, SECI shall restore such shortfall before next drawl.

10.4.5 SECI shall cause the scheduled bank issuing the Letter of Credit to intimate the SPD, in writing regarding establishing of such irrevocable Letter of Credit.

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

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

10.4.8 If SECI fails to pay undisputed Monthly Bill or Supplementary Bill or a part thereof within and including date as on 30 days beyond the Due Date, then, subject to Article 10.4.6 & 10.5.2, the SPD may draw upon the Letter of Credit, and accordingly the bank shall pay, an amount equal to such Monthly Bill or Supplementary Bill or part thereof, in accordance with Article 10.4.3 above, by presenting to the scheduled bank issuing the Letter of Credit, the following documents:

i) a copy of the Monthly Bill or Supplementary Bill (only for energy related bills) which has remained unpaid to SPD and;

ii) a certificate from the SPD to the effect that the bill at item (i) above, or specified part thereof, is in accordance with the Agreement and has remained unpaid beyond the Due Date;”

42. Clause (10) of Regulation 9 of the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of trading licence and other related matters) Regulations, 2020 (hereinafter referred to as “the Trading Licence Regulations”) provides as under:

“9. (10) The Trading Licensee shall make payment of dues by the agreed due date to the seller for purchase of the agreed quantum of electricity through an escrow arrangement or irrevocable, unconditional and revolving letter of credit in favour of the seller. Such escrow arrangement or irrevocable, unconditional and revolving letter of credit in favour of the seller shall be equivalent to:

(a) one point one (1.1) times the average monthly bill amount (estimated average of monthly billing amounts for three months or actual monthly billing amount for preceding three months as the case may be) with a validity of one year for long term contracts;

(b) one point zero five (1.05) times of contract value for short term contracts.”

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

44. The Petitioner, SECI, has also prayed to approve the trading margin of Rs.0.07/kWh agreed to by the distribution companies in the signed PSAs in terms of Regulation 8(1)(d) of the Trading Licence Regulations. In this regard, Clause (1)(d) of Regulation 8 of the Trading Licence Regulations provides as under:

“For transaction under long term contracts, the trading margin shall be decided mutually between the Trading Licensee and the seller:”

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

46. However, proviso to Regulation 8(1)(d) of the Trading Licence Regulations provides as under:

*“8(1) (d) * * * * **

Provided that in contracts where escrow arrangement or irrevocable, unconditional and revolving letter of credit as specified in clause (10) of Regulation 9 is not provided by the Trading Licensee in favour of the seller, the Trading Licensee shall not charge trading margin exceeding two (2.0) paise/kWh.”

47. Regulation 8(1)(f) of the Trading Licence Regulations provides as under:

“For transactions under Back to Back contracts, where escrow arrangement or irrevocable, unconditional and revolving letter of credit as specified in clause (10) of Regulation 9 is not provided by the Trading Licensee in favour of the seller, the Trading Licensee shall not charge trading margin exceeding two (2.0) paise/kWh.”

48. The above two provisions are exceptions to the main provision as regards the trading margin. The distribution licensees have agreed to a trading margin of Rs.0.07/kWh as agreed in the PSAs, which is in consonance with Regulation 8(1)(d) of the Trading Licence Regulations. However, in case of failure by SECI to provide escrow arrangement or irrevocable, unconditional and revolving letter of credit to the solar generators, trading margin shall be limited to Rs.0.02/kWh specified in Regulation 8(1)(d) and Regulation 8(1)(f) of the Trading Licence Regulations.

49. Prayer (b) of the Petitioner is answered accordingly.

50. Furthermore, vide its reply, Respondent No 2. ASEJSPL has sought to place on record certain Change in Law events, namely, changes in GST rates and the imposition of the Basic Customs Duty (BCD) on Solar Modules, Inverters and Trackers by the Ministry of Finance that have occurred after the cut-off date and have an adverse impact on tariffs as proposed to be adopted in the present proceeding. ASEJSPL has submitted that in terms of the regulatory framework in place, there is no prohibition upon the Appropriate Commission to adjudicate on a claim of Change in Law, in tariff adoption proceeding under Section 63 of the Act and the APTEL in its judgment dated 12.10.2021 in Appeal No. 251 of 2021 (“Green Infra Renewable Energy Ltd. v Rajasthan Electricity Regulatory Commission and Ors.”) (“Green Infra Judgment”) has held that it is a statutory duty of the Appropriate Commission under Section 86(1)(b) of the Act to not to defer a Change in Law claim which has occurred after the submission of the bid and closure of the bid process but before the adoption

of the bid discovered price in order to ensure regulatory certainty and the actual impact/ extent of the relief admissible of the Change in Law event can be determined at the appropriate stage. The said views of the APTEL were again reiterated in Appeal Nos. 344 of 2021 and 9 of 2022, titled “Green Infra Renewable Energy Ltd. v. Rajasthan Electricity Regulatory Commission & Ors.” and batch, wherein the APTEL further held that the adoption proceedings were incomplete and inchoate if any Change in Law claims had been ignored by the Appropriate Commission.

51. ASEJSPL has further contended that the reliance placed by the Commission in the order dated 13.9.2023 in Petition No. 213/AT/2023 (Solar Energy Corporation of India Limited vs. TP Saurya Limited & Ors) on the APTEL’s judgment dated 31.7.2023 in Appeal No. 625 of 2023 & IA No 1677 of 2023 to deny adjudication of Change in Law may not be correct as the said Appeal culminated from the proceedings of Petition No. 192/MP/2021, which involved a dispute between parties in terms of Section 79(1)(f) of the Act. While Petition No. 192/MP/2021 involved adjudicatory functions of the Commission, the present matter is on a different footing altogether, as the same involves a scenario where the Commission invokes its ‘regulatory’ powers qua tariff adoption/determination conferred upon it under the provisions of the Act.

52. We have considered the above submissions from ASEJSPL. The APTEL, in its judgment dated 31.7.2023 in Appeal No. 625 of 2023 & IA No. 1677 of 2023, has observed that the Appellant, Tata Power Delhi Distribution Limited (‘TPDDL’), in the capacity of a Respondent, could not have filed an IA seeking relief in a Petition filed by the 2nd Respondent i.e. SBSR Power Cleantech Eleven Private Limited (in short, “SBSR”). The Appeal was filed by the SBSR before the APTEL challenging the order of the Commission dated 5.6.2023 in IA No. 3 of 2023 filed by the TPDDL as

Respondent in Petition No. 192/MP/2021. The APTEL allowed TPDDL to withdraw the IA No. 3 of 2023 filed before this Commission with the liberty to file an independent Petition seeking appropriate relief, observing that such relief could be sought only by filing an independent Petition and not by way of an I.A. The relevant portion of the judgment is extracted as under:

“It does appear that the order under appeal came to be passed by the CERC, at the behest of the Appellant, in an IA filed by them in a Petition filed by the 2nd Respondent. Such a relief could have been sought by the Appellant only by filing an independent Petition, and not by way of an I.A. in the Petition filed by the 2nd Respondent. The fact however remains that, as long as the order under appeal passed by the CERC, continues to remain in force, the Appellant would be disabled thereby from even filing an independent petition questioning the action of the 2nd Respondent in seeking to have the PPA, between them on the one hand and SECI on the other, truncated from the original capacity of 300 MW to 150 MW.

.....

As we find force in the submission of Mr. Hemant Singh, learned Counsel for the 2nd Respondent, that the Appellant herein could not have sought the relief in an IA filed before the CERC, (in which the order under appeal was passed), in a Petition filed not by them but by the 2nd Respondent, the Appellant is permitted to withdraw the IA filed by them before the CERC, with liberty to file an independent petition before the CERC seeking appropriate relief. The appeal is accordingly disposed of.”

53. The present Petition has been filed by SECI, praying for the adoption of the tariff discovered in the tariff-based competitive bid process for the aggregate 1100 MW capacity of the Solar power projects and approval of the trading margin. We have gone through the prayers made by the Petitioner, SECI, in the present Petition. There is no prayer with regard to the adjudication of Change in Law claims by SECI. The adjudication of Change in Law claims has been sought by the ASEJSPL in its reply. Therefore, in light of the APTEL`s judgment quoted above, ASEJSPL cannot seek Change in Law relief in the instant Petition filed by SECI.

54. As regards submissions made by Respondent No 2. ASEJSPL, regarding the exercise of Regulatory Power in terms of the judgment of the Hon`ble Supreme Court in the case of Energy Watchdog to allow Change in Law in the Petition filed by SECI for the adoption of tariff, it is observed that Article 12.2 requires the aggrieved party to approach the Commission for seeking approval of Change in Law. The relevant extract of Article 12.2 is reproduced as under

“12.2 Relief for Change in Law 12.2.1 The aggrieved Party shall be required to approach the Appropriate Commission for seeking approval of Change in Law. “

55. Thus, the Petitioner ought to approach the Commission by filing a substantive Petition for Change in Law and not as a Respondent in a Petition filed by SECI. Needless to add, the ASEJSPL is at liberty to approach the Commission in a separate Petition seeking approval for Change in Law in terms of Article 12.2 of the PPA.

56. Petition No. 214/AT/2023 is disposed of in terms of the above.

Sd/-
(P.K. Singh)
Member

sd/-
(Arun Goyal)
Member

sd/-
(Jishnu Barua)
Chairperson