



नई दिल्ली
NEW DELHI

याचिका संख्या./ Petition No. 138/AT/2024

कोरम/ Coram:

श्री जिष्णु बरुआ, अध्यक्ष/Shri Jishnu Barua, Chairperson
श्री रमेश बाबू वी., सदस्य/Shri Ramesh Babu V., Member
श्री हरीश दुदानी, सदस्य/Shri Harish Dudani, Member

आदेश दिनांक/ Date of Order: 2nd of January, 2025

IN THE MATTER OF:

Petition under Section 63 of the Electricity Act, 2003 for adoption of tariff for Pilot Projects of 500 MW/1000MWh Standalone Battery Energy Storage Systems in India under Tariff-Based Global Competitive Bidding (ESS-I) process as per the guidelines of the Government of India

AND IN THE MATTER OF:

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

...Petitioner

Versus

1. JSW Renew Energy Five Limited (BESS Developer) (JREFL)
JSW CENTRE, Bandra Kurla Complex Bandra-(East)
Mumbai City, Maharashtra- 400051
2. Gujarat Urja Vikas Nigam Limited
Sardar Patel Vidyut Bhavan,
Race Course, Vadodra – 390007
3. National Load Despatch Centre (NLDC)

C/o Grid Controller of India
(Formerly Power System Operation Corporation Ltd.)
B-9 (1st Floor), Qutab Institutional Area,
Katwaria Sarai, New Delhi -110016.

...Respondents

Parties Present: Ms. Anusha Nagarajan, Advocate, SECI
Ms. Shirsa Saraswati, Advocate, SECI
Ms. Surbhi Kapoor, Advocate, SECI
Mr. Aneesh Bajaj, Advocate, SECI
Shri Aman Anand, Advocate, JREFL
Shri Aman Dixit, Advocate, JREFL
Ms. Natasha, Advocate, JREFL
Shri Gajendra Singh, NLDC
Shri Alok Mishra, NLDC

आदेश/ ORDER

The Petitioner, Solar Energy Corporation of India Ltd. (SECI), a Company registered under the Companies Act, 2013 and a Government of India enterprise under the administrative control of the Ministry of New and Renewable Energy (MNRE), Government of India. SECI has filed the present petition under section 63 of the Electricity Act, 2003 for the adoption of tariff for the pilot projects of 500 MW/1000 MWh standalone battery energy storage systems in India under tariff-based global competitive bidding (ESS-I) process as per guidelines for procurement and utilization of battery energy storage systems.

2. The Petitioner has made the following prayers:
 - a. *Adopt the tariff discovered in the tariff based competitive bid process for the aggregate capacity of the BESS Projects on the terms and conditions contained in the BESPAs signed with the BESS Developer read with the BESSA signed with the Gujarat Urja Vikas Nigam Limited and the joint submission made in Petition No. 249/MP/2023;*
 - b. *Approve Trading Margin of 0.5% of the Applicable Tariff as agreed to by the Gujarat Urja Vikas Nigam Limited in terms of Regulation 8 (1) (d) of the Trading License Regulations, 2020;*

- c. Approve Trading Margin of 0.5% of the Applicable Tariff for Capacity Charges and the additional Trading Margin of INR 0.07/kWh for charging/ discharging of BESS capacity allocated for grid ancillary portion as agreed to between SECI and NLDC by way of the joint submission in Petition No. 249/MP/2023; and/ or
- d. Pass any other or further order which this Hon'ble Commission may deem fit and proper in the facts and circumstances of this case.

3. **Factual Matrix:**

Location	State of Gujarat
Ministry of Power issued an office order for constitution of a Steering Committee to implement a battery energy storage systems (BESS) Pilot Project	16.07.2021
Nodal agency	SECI
Capacity (MW)	Pilot Projects of 500MW/ 1000MWh
Power	Electrical Power
Ministry of Power notification for the Guidelines for Procurement and Utilisation of BESS as part of Generation, Transmission and Distribution assets, along with Ancillary Services (" BESS Guidelines ") by way of Gazette Notification No. 23/16/2020-R&R	10.03.2022
RfS issued on	13.04.2022
Bid submitted on	29.07.2022
Opening of Techno-Commercial Bids	03.08.2022
Opening of Financial Bids	24.08.2022
E-Reverse auction held on	25.08.2022
LOA issued on	18.01.2023
BESSA executed by SECI with Gujarat Urja Vikas Nigam Limited on	26.06.2023
BESPA executed on (i) for 150 MW capacity for GUVNL (ii) for 150MW capacity for Ancillary	27.02.2024 Not executed
BESSA executed by SECI with Gujarat Urja Vikas Nigam Limited was approved by GERC on	23.09.2024

4. The petition was filed on 14.03.2024 and was admitted on 08.05.2024 and notices were issued to the Respondents to file their respective replies. During the course of the hearing on 05.06.2024, SECI has prayed for approval of the additional trading margin of Rs. 0.07/kWh (in addition to the trading margin of 0.5% of applicable tariff for Capacity Charges) as

agreed to between SECI and NLDC. However, in Petition No. 249/MP/2023 filed by NLDC inter alia seeking regulatory direction for procurement of the above BESS capacity for grid ancillary services, the Commission vide its order dated 16.05.2024 has inter alia held that SECI will be entitled to charge the trading margin such that the cumulative value of trading margin (i.e. trading margin of 0.5% of Capacity Charge plus additional trading margin towards charging/discharging of BESS) shall not exceed Rs. 0.07/kWh. SECI accordingly sought liberty to file an additional affidavit on the aspect in view of the Commission's order dated 16.05.2024 in Petition No. 249/MP/2023. SECI added that since, in respect of the balance, 150 MW capacity is tied-up with GUVNL, there is no additional trading margin involved. Since, the BESPAs and BSESSA have also been signed to this extent, the Commission may consider passing the order adopting the tariff to this extent. The Commission permitted SECI to file its additional affidavit.

5. During the hearing dated 08.08.2024, SECI submitted that initially, the charging and discharging of the BESS project was to be undertaken by NVVN. However, subsequently, SECI agreed to the NLDC's proposal to undertake such activities for an additional trading margin of Rs.0.07/kWh. There was no dispute raised by NLDC in regard to the obligation to pay the additional trading margin for the additional services of the intermediary trader to be provided by SECI. Further, NLDC submitted that it does not wish to make any submission and the Commission may decide these matters as may deem fit. Further, Respondent No. 2 (JSW) pointed out that in the proceedings of Petition No. 249/MP/2023, all the parties had made a joint submission and agreed to the additional trading margin of Rs 0.07/kWh to SECI for charging and discharging the BESS for Grid Ancillary Services. The Commission directed SECI and the NLDC to provide, on an affidavit, the per unit impact of trading margin of 0.5% of Capacity Charge plus additional trading margin towards the charging/discharging of BESS. The Commission reserved its order subject to the submission by the parties.
6. In compliance with the above, subsequently, SECI submitted that the tentative per unit impact of the fixed trading margin comes out in the range of 4.5 paise/kWh to 6.1 paise/kWh during the various years of the project life, with the levelized fixed trading margin of 5.1 paise /kWh. NLDC, Grid India also submitted the details for the same, and according to

Grid-India, per unit impact of fixed trading margin comes out as 4.45 paise/kWh (without annual degradation of BESS).

7. Subsequently, the Commission, through ROP dated 18.09.2024, while considering the matter for the final decision, noticed Clause 6 of G: Contract Award and Conclusion of Section III Bidding Process and Award of Project of the Guidelines, which is extracted as under:

“6. In case of delay in signing of BESPAs beyond 6 months from the date of issuance of LoAs, or any other extended date as mutually agreed between the Bidding Agency and the successful bidders, the awarded capacity shall stand cancelled. In certain cases, after the above deadline, if the cumulative capacity eligible for signing of BESPAs is lower than the cumulative capacity awarded under the tender, further course of action will be decided by the Bidding Agency, which will be clearly specified in the tender document.”

8. The Commission directed the parties to file an affidavit to the effect whether Clause 6 of G: Contract Award and Conclusion of Section III Bidding Process and Award of Project of the Guidelines, stands novated in terms of Section 62 of the Indian Contract Act, 1872.
9. During the hearing held on 10.10.2024, SECI argued that the LoA itself provided that the BESPAs would be signed subsequent to the signing of the BESSAs with the buying utilities, and the aspect of the signing of the BESSA by NLDC was decided by the Commission by order dated 16.5.2024 in Petition No. 249/MP/2023. The parties have mutually consented to the extension of the bid validity from time to time. GERC has also approved the PSA. JSW Renew Energy Five Ltd. also confirmed mutually agreeing to extend the bid validity. On the Commission specifically enquiring as to whether SECI unequivocally and unconditionally accepts the tariffs and other terms of the contract with JSW Renew Energy Five Ltd., notwithstanding the delay and the latest developments on BESS, SECI replied in the affirmative and reiterated its commitment to the continuation of the contract. The Commission directed SECI and JSW Renew Energy Five Ltd. to file their affidavits as above within seven days. SECI was also directed to submit an affidavit in clear terms to the novation of the contract as per the clause cited in the previous ROP dated 18.09.2024 uploaded on the website of the Commission. Subject to the above, the Commission reserves the order.

10. In compliance with the above direction, JSW Renew Energy Five Ltd. submitted its affidavit stating that the time for signing the BESPA stands extended to 30.11.2024 i.e. beyond the prescribed period of 6 months from issuance of the letter of award dated 18.01.2023. However, SECI did not submit any affidavit as directed.

Submission by the Petitioner:

11. SECI has submitted as under:

- a) On 13.04.2022, the Petitioner issued the Request for Selection (RfS) No. SECI/C&P/IPP/15/0001/22-23 for setting up of Pilot Projects of 500MW/ 1000MWh Standalone BESS in India under the tariff based global competitive bidding (ESS-I), with the Standard BESPA and BESSA, as per the BESS Guidelines dated 10.03.2022 and floated the same on ISN Electronic Tender System (ISN ETS) e-bidding portal. The RfS document specified that the total capacity will be 500MW, consisting of two projects of 250MW each. Under Clause 5.1 of the RfS, the bidders had the option of bidding either for one project (250MW/500 MWh) or 2 Projects (2x(250MW/500MWh)).
- b) In line with Clause 3(viii) of Section I of the Guidelines, out of the total capacity of 500MW, 200MW could be used by the Developer as merchant capacity, while the remaining 300MW was allocated to the Petitioner for purchase from the Developer and back-to-back sale to end users.
- c) Accordingly, Clause 8.1(a) of the RfS document provided that the Contracted Capacity with the Petitioner be 60% of the Project Capacity of 500MW, while utilisation of the remaining 40% will be managed by the Developer.
- d) The last date for bid submission was 29.07.2022 (18.00 hrs) and the techno commercial part of the bid was opened on 03.08.2022 for the capacity of 500MW/1000MWh. The evaluation of technical bids submitted in both offline and online modes was completed in the presence of bid evaluation committee constituted by SECI.
- e) In total, 9 number of bids were submitted, and all of them were found to fully meet the techno-commercial criteria and qualified for the opening of the financial bid.
- f) Based on the financial bids of the 9 techno-commercially qualified bidders, 8 bidders were shortlisted for e-reverse auction.

- g) The shortlisted bidders were sent automatic emails through the ISN-ETS portal, confirming their shortlisting for the e-Reverse Auction.
- h) On 25.08.2022, an e-Reverse Auction was conducted on the ISN ETS e-bidding portal. After completion of the e-Reverse auction, JSW Renew Energy Five Limited was found qualified as per the requirements of RfS documents and accordingly declared as a successful bidder. After the conclusion of the e-Reverse Auction process, on 18.01.2023, SECI issued Letters of Award (LoAs) to JSW Renew Energy Five Limited, the Selected Bidder for 2x250MW projects.
- i) Out of the total capacity of 500MW, 200MW was earmarked as merchant capacity for use by the Developer. Therefore, out of each project of 250MW, 150MW was allotted to SECI for tying up with end users (300MW total), and 100MW from each project was allocated as merchant capacity (200MW total).
- j) Till date, SECI has entered into a BESSA with the distribution licensee, Gujarat Urja Vikas Nigam Limited on 26.06.2023.
- k) Pursuant to the above, till date, SECI has entered into a BESPA for 150MW of contracted capacity with the Successful Developer identified through the competitive bidding process.
- l) The balance capacity of 150MW allocated to SECI has been earmarked for grid ancillary services, for which Respondent No. 3, National Load Dispatch Centre (NLDC), is the end user. After the conclusion of the tender process, SECI had written to NLDC, offering it a capacity of 150 MW out of the 500 MW capacity of the BESS project.
- m) NLDC filed Petition No. 249/MP/2023 before this Commission for regulatory directions for the procurement of this earmarked capacity. By way of petition, NLDC had proposed that SECI be entrusted with the responsibility of charging and discharging the BESS capacity allotted to NLDC, scheduling and dispatch this power. It was also NLDC's stand that it be allowed to use the allocated capacity and make payments through regulatory directions of this Commission in Petition No. 249/MP/2023 and not execute the BESSA with SECI.
- n) After extensive discussions between SECI, NLDC, and the Respondent No. 1 Developer, consensus was reached between the parties regarding the issues raised by NLDC in Petition No. 249/MP/2023. It was agreed among the parties that for the additional responsibilities of charging/ discharging the BESS capacity, scheduling and

despatch, etc., to be undertaken by SECI, NLDC will pay to SECI an additional trading margin of INR 0.07 per kWh. On the issue of execution of BESSA between SECI and NLDC, it was agreed that the terms and conditions of the BESSA will be accepted by both parties, and these conditions may be made part of the Commission's order. The terms and conditions of the BESPA with the Respondent No. 1 Developer for this grid ancillary services will be applicable to NLDC on a back-to-back basis. The BESPA with the Respondent No. 1 Developer for the grid ancillary portion of 150MW is yet to be executed between SECI and the Developer.

- o) SECI also submitted that Gujarat Urja Vikas Nigam Limited has agreed to a Trading Margin of 0.5% on the Applicable Tariff in the signed BESSA. NLDC has agreed to a Trading Margin of 0.5% on the Applicable Tariff for Capacity Charges and INR 0.07 per kWh on charging/ discharging BESS in the joint submission/procedure proposed by NLDC, which is in consonance with Regulation 8(1)(d) of the Trading Licence Regulations, 2020.
- p) It is argued that the tariff discovered for procurement of BESS capacity from the BESS Developer under the present bidding process is competitive and beneficial to the buying utilities/ distribution companies as well as the consumers of the buying utilities/distribution companies.
- q) Hence, the Petition.

Additional Affidavit by SECI

12. SECI vide additional affidavits dated 22.07.2024 & 22.08.2024 has reiterated its submissions made in the plaint. Additionally, SECI has submitted as under:

- a) The margin of 0.5%, which is with reference to the capacity charges, is for a distinct and different purpose than the additional trading margin of Rs. 0.07/kWh. Both services cannot be considered as part of the same services to be rendered by SECI in regard to BESS. The services undertaken by SECI in relation to installation, commissioning, operation, and maintenance of the BESS by the developer have nothing to do with the services to be rendered by the intermediary trader towards procurement or sale of electricity from or to outside sources, charging and discharging of BESS which is optional and commercial in nature. The trading margin of SECI, which is associated with the capacity charges (which is akin to rental charges) at the rate of 0.5% of the capacity charges, is not in any manner related to the purchase and

sale of electricity, i.e., charging and discharge of BESS for providing any ancillary services.

- b) The interpretation of this Commission of the stipulation contained in the guidelines and bidding documents and the minutes of the meetings with the Ministry of Power in regard to the trading margin of 0.5% of the capacity charges and Rs. 0.07/kWh being towards the same set of services and to be considered as cumulative as it would lead to double payment of trading margin for the same quantum of power is wrong. The above interpretation is harsh, unjust, and inequitable to require SECI to undertake the services of an intermediary trader for charging and discharging the BESS on behalf of the NLDC/Grid Controller and other additional activities without allowing the additional specified trading margin of Rs. 0.07/kWh.

Affidavit in compliance with RoP dated 18.09.2024 by JSW Renew Energy Five Ltd.

13. JSW Renew Energy Five Ltd. has submitted as under:

- a) In accordance with clause 6 of G of the bidding guidelines, the time period/date for signing the BESPA has been mutually agreed to be extended by the Petitioner and JSW Renew Energy Five Ltd., beyond the prescribed period of 6 months from issuance of letter of award dated 18.01.2023.
- b) SECI, along with its affidavit has placed certain documents on record, while affirming the mutual agreement for extension of time for signing of the BESPA. JSW Renew Energy Five Ltd. is also placing on record certain letters.
- c) The time for the signing of BESP presently stands extended up to 30.11.2024.

Analysis and Decision

14. We have heard the learned counsels for SECI and the Respondents and have carefully perused the records.
15. We now proceed to consider SECI's prayers as regards the adoption of tariff (s) for the Pilot Projects of 500 MW/1000MWh Standalone Battery Energy Storage Systems in India under the Tariff-Based Global Competitive Bidding (ESS-I) process as per the guidelines of the Government of India under Section 63 of the Act.
16. We observe that Section 63 of the Electricity Act, 2003 (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.”

17. As per the above, the Commission is required to adopt the tariff upon being satisfied that a transparent process of bidding in accordance with the guidelines issued by the Central Government under Section 63 of the Act has been followed. Hence, 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).
18. We observe that the Ministry of Power, Government of India has notified the Guidelines under Section 63 of the Act vide Resolution No. 23/16/2020-R&R(Part (1) on 10.03.2022 for the Procurement and Utilization of Battery Energy Storage Systems as part of Generation, Transmission and Distribution assets, along with Ancillary Services and also made subsequent amendment dated 30.05.2022 (the Guidelines).
19. Relevant provisions of the Guidelines are as under:

C. BIDDING PROCESS

- 1. The Procurer shall call for the bids adopting a single stage, two part (Technical Bid & Financial Bid), bidding process to be conducted preferably through electronic mode (e-bidding). The technical bid shall be opened first. The financial bids of only those bidders who qualify in the technical bid evaluation stage, shall be opened. The Procurer will carry out e-reverse auction for selection of successful bidders, which will be specifically mentioned in the notice inviting bids and bid document. E-procurement platforms with a successful track record and with adequate safety, security and confidentiality features will be used. In case of a RE Park specific project, intimation about the initiation of the bidding process shall be given by the Procurer to the RE Power Park Developer, who has to engage actively in the bidding process by providing all the necessary land and infrastructure related details.*
- 2. The Procurer shall invite the bidders to participate in the RfS for installation of BESS based Projects, in terms of these Guidelines.*
- 3. The bidding documents including the RfS, draft BESPA and draft BESSA (if applicable), shall be prepared by the Procurer in consonance with these Guidelines. The Procurer shall also arrange the access of the bidders to the drafts of Implementation Support Agreement and land related agreements, in case the Project is required to be set up in a RE Park.*
- 4. The Procurer shall publish the RfS notice in the Central/State Public Procurement Portal and/or its own website to accord wide publicity.*
- 5. The Procurer shall provide opportunity for pre-bid conference to the prospective bidders, and shall provide written interpretation of the tender documents to any*

bidder which shall also be made available to all other bidders. All the concerned parties shall rely solely on the written communication. Any clarification or revision to the bidding documents shall be uploaded on the website of the Procurer for adequate information. In the event of the issuance of any revision or amendment of the bidding documents, the bidders shall be provided a period of at least 7 days there from, for submission of bids.

E. BID SUBMISSION AND EVALUATION

- 1. Formation of consortium shall be permitted, in which case the consortium shall identify a lead member which shall be the contact point for all correspondences during the bidding process.*
- 2. The Bidding Agency will specify suitable technical and financial eligibility criteria for the bidders, in the tender documents.*
- 3. The Procurer shall constitute a committee for evaluation of the bids (Evaluation Committee), with at least three members, including at least one member with expertise in financial matters / bid evaluation.*
- 4. The bidders may be required to submit non-refundable processing fee and/or success fee, as specified in the RfS.*
- 5. The bidders shall be required to submit separate technical and price bids. The bidders shall also be required to furnish necessary bid-guarantee in the form of an EMD along with the bids.*
- 6. The technical bids shall be evaluated to ensure that the bids submitted meet the eligibility criteria set out in the RfS document on all evaluation parameters. Only the bids that meet the evaluation criteria set out in the RfS shall be considered for further evaluation on the price bids.*
- 7. To ensure competitiveness, the minimum number of qualified Bidders should 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.*
- 8. The price bid shall be liable to be rejected, if the bid submitted by the Bidder contains any deviation from the tender conditions.*
- 9. Bid evaluation methodology to be adopted by the Procurer for evaluating the bids: Bid Evaluation shall be carried out in terms of parameters as brought at Clause B2 above through ranking of Bids in ascending order of the Bidding Parameter. the Bidding Agency will carry out electronic reverse auction for award of Projects.*
- 10. The detailed procedure for evaluation of the bid and selection of the successful bidder(s) shall be provided for in the RfS.*

G. CONTRACT AWARD AND CONCLUSION

- 1. After the conclusion of bidding process, the Evaluation Committee constituted for evaluation of bids shall critically evaluate the bids and certify as appropriate that the bidding process and the evaluation has been conducted in conformity to the provisions of these Guidelines.*
- 2. The BESPAs shall be signed with the successful bidder/project company or an SPV formed by the successful bidder.*
- 3. The BESPAs shall be executed between BESSD and Procurer. In case of involvement of the Intermediary Procurer, BESPAs shall be executed between the*

BESSD and Intermediary Procurer and the BESSA shall be executed between the Intermediary Procurer and the End Procurer. The BESPA(s) should preferably be signed immediately after signing of the BESSA(s).

4. The Intermediary Procurer shall enter into the Battery Storage Purchase Agreement (BESPA) / Power Purchase Agreement with the Developer(s) and enter into a Battery Storage Sale Agreement (BESSA) /Power Sale Agreement with the distribution licensee(s)/ consumer(s). ***The BESSA shall contain the relevant provisions of the BESPA on a back-to-back basis.*** The Intermediary Procurer shall be entitled to charge trading margin of seven paise/kWh or 0.5% of the Capacity Charges (as applicable) from the Buying entity / Procurer for purchase and sale of such energy/capacity.

5. As long as the Intermediary Procurer follows these Guidelines for procurement of BESS, the End Procurer(s) shall be deemed to have followed these Guidelines for procurement of such power. The power procurement for Distribution licensees in some States is centralized through a holding company or another government agency. Such companies/ agencies will be considered as Procurer and not as Intermediary Procurer for the purposes of these Guidelines.

6. In case of delay in signing of BESPA beyond 6 months from the date of issuance of LoAs, or any other extended date as mutually agreed between the Bidding Agency and the successful bidders, the awarded capacity shall stand cancelled. In certain cases, after the above deadline, if the cumulative capacity eligible for signing of BESPA is lower than the cumulative capacity awarded under the tender, further course of action will be decided by the Bidding Agency, which will be clearly specified in the tender document.

7. For the purpose of transparency, the Procurer shall, after the execution of the BESPA, publicly disclose the name(s) of the successful bidder(s) and the tariff / charges quoted by them together with breakup into components, if any. The public disclosure shall be made by posting the requisite details on the website of the Procurer for at least 30 (thirty) days.

8. Subject to provisions of the Act, the distribution licensee or the Intermediary Procurer, as the case may be, should approach the Appropriate Commission for adoption of tariffs (including capacity charges, if applicable) discovered and quantum of capacity / electricity to be procured, within 30 days of issuance of Letter(s) of Award to the successful bidder(s). In case the tariff (including capacity charges, if applicable) adoption procedure requires signed BESPA to be submitted alongwith, the above timeline may be extended suitably.

9. In some cases, the Intermediary Procurer/Procurer may also stipulate a fixed value as one of the components of a two-part tariff. In such cases, the above fixed part of the tariff need not require any tariff adoption by the Appropriate Commission, and will be deemed to be applicable under these Guidelines.

10. Subsequent to the End Procurer/Intermediary Procurer approaching the Appropriate Commission for adoption of tariffs, in case, the Appropriate Commission does not decide upon the same within 120 days from the Effective Date of the BESPA, the Procurer(s) shall grant appropriate extension of time in financial closure deadline and scheduled commissioning date to the BESSDs, corresponding to the delay (beyond 120 days of Effective Date of BESPA) in adoption by the Appropriate Commission, till the date of adoption by the Appropriate Commission.

20. The Guidelines contemplate that an intermediary agency is required to aggregate BESS capacity purchased from different developers and sell it to the end procurers under the BESS Scheme. The Guidelines further provide that the intermediary agency shall execute a Battery Energy Storage Purchase Agreement (BESPA) with the BESS Developer identified through the bidding process as per the Guidelines and a Battery Energy Storage Sale Agreement (BESSA) with the end procurer on a back-to-back basis.
21. The MoP issued an office order on 16.07.2021 for the constitution of a Steering Committee to implement a battery energy storage system (BESS) Pilot Project for hybrid usages like ancillary services ramp up and ramp down, meeting peak requirements, etc. As per the recommendation of the Steering Committee, SECI has been appointed as the intermediary agency/aggregator for bidding and taking power from the BESS on a back-to-back basis on behalf of the buyers.
22. On 13.04.2022, SECI issued the Request for Selection (RfS) for the selection of a Battery Energy Storage System (BESS) developer for setting up of two BESS projects of 250 MW/ 500 MWh each for a total bidding capacity of 500 MW/ 1000 MWh as per the Guidelines dated 10.03.2022 along with the subsequent amendment dated 30.05.2022.
23. The bidding documents also included the standard Battery Energy Storage Purchase Agreement (BESPA) and Battery Energy Storage Sale Agreement (BESSA). Out of the total capacity of 500 MW, 200 MW was earmarked to be used by the Developer as merchant capacity, while the rest 300 MW was allocated to SECI for purchase from the developer and back to back sales to end users.
24. SECI constituted a Bid Opening Committee and Bid Evaluation Committee (BEC), comprising of the following officers:

Tender	Department	Offline and Online Techno Commercial and Financial Bid Opening	Techno Commercial and Financial Evaluation and post e-Reverse Auction recommendation
Setting up of Pilot Projects of 500MW/ 1000MWh	PS	Himanshu Gulati, Sr. Engineer	Jaya, Manager
	Contracts	Swapnil Gandhi, Sr. Engineer	Biblesh Meena, Manager

Standalone BESS in India	Finance	Mohit Singhal, Sr. Accounts Officer	Anuja, Manager
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25. As on the date and time for submission of bids, i.e., 29.07.2022 (18.00 hrs), a total of nine (09) bids were received by SECI. The techno-commercial part of the bid was opened on 03.08.2022 for the capacity of 500MW/ 1000MWh, and the evaluation of technical bids was completed in the presence of the bid evaluation committee.

26. Based on the techno-commercial bid evaluation report dated 23.08.2022, on 24.08.2022, the financial bids of the nine (9) bidders were opened on the ISN ETS e-bidding portal on 25.08.2024. Further, eight (8) bidders were shortlisted for e-reverse auction, as set out in the financial bid evaluation report:

S. No.	Techno Commercially qualified Bidder	Bid Capacity (MW)	Financial Bid Tariff (INR/MW/Month)
1.	Hartree Partners Singapore Pte Limited	500	12,72,501
2.	JSW Renew Energy Five Limited	500	12,99,000
3.	ACME Barmer Solar Private Limited	500	13,41,200
4.	Eden Renewables Vavin Private Limited	250	16,45,000
5.	NTPC Renewable Energy Limited	250	17,99,999
6.	Sterlite Power Transmission Limited	250	18,75,000
7.	RenNew Solar Power Private Limited	250	22,09,000
8.	Azure Power Sixty Three Private Limited	250	22,90,000

27. After completion of the e-Reverse auction, Respondent No. 1, JSW Renew Energy Five Limited was declared the successful bidder for the two BESS projects of 250 MW/ 500 MWh each for a total bidding capacity of 500 MW/ 1000 MWh.

S. No.	Name of Successful Bidder	Allotted Capacity (MW)	Tariff (INR/MW/month)
1.	JSW Renew Energy Five Limited	250	10,83,500
2.	JSW Renew Energy Five Limited	250	10,83,500
	Total Awarded Capacity	500	

28. On 18.01.2023, SECI issued Letters of Award (LoAs) to JSW Renew Energy Five Limited for the 2 X 250 MW project. Out of each project of 250 MW, 150 MW was allotted to SECI for tying up with end users (300 MW in total), and 100 MW from each project was allocated

as merchant capacity (200 MW total). The Commission observes that while the e-Reverse Auction was conducted on 25.08.2022, SECI issued a letter of award to the successful bidder, JSW Renew Energy Five Limited, after 145 days on 18.01.2023.

29. The relevant extract of the letter of Award to the successful bidder is as follows:

Ref. No. SEC1/C&P/BESSD/ESS-1/LOA/JREFL/P1/53418 **Date: 18/01/2023**

To

M/S JSW Renew Energy Five Limited

JSW Centre, BKC, Bandra East, Mumbai - 51

Kind Attn: Sh. Abhay Yagnik

Letter of Award

Sub: Selection of Pilot Projects of Standalone Battery Energy Storage Systems under RfS for setting up of Pilot Projects of 500 MW/1000MWh Standalone Battery Energy Storage Systems in India under Tariff-Based Global Competitive Bidding (ESS-I): Letter of Award for Battery Energy Storage System Project of 250 MW/500 MWh

(Project ID: BESSD-1STS-ESS-1-JREFL-P1-250MW)

Dear Sir,

Ref: This has reference to the following:

- A. The "Guidelines for Procurement and Utilization of Battery Energy Storage Systems as part of Generation, Transmission and Distribution assets, along with Ancillary Services" vide Gazette Resolution dated 10.03.2022, including subsequent amendments and clarification thereof, if any, issued, until the last date of bid submission of the RfS, by Ministry of Power (MOP) (herein referred to as "Guidelines");*
- B. The Request for Selection (RfS) document vide RfS No. SEC1/C&P/1PP/15/0001/22-23 dated 13.04.2022 including draft Battery Energy Storage Purchase Agreement (BESPA), draft Battery Energy Storage Sale Agreement (BESSA) and subsequent amendments/ clarifications/ revisions/ notifications issued by Solar Energy Corporation of India Limited (SECI) and uploaded during the process of RfS on ETS portal (<http://www.bharat-electronictender.com>);*
- C. Your response to the RfS document uploaded on ETS portal vide Organization ID (ETS-IN2022-RS0000216) against RfS for Setting up of 500 MW/ 1000MWh Standalone Battery Energy Storage Systems (ESS-I);*
- D. Your Bank Guarantee(s) towards Earnest Money Deposit (EMD) submitted along with RfS vide BG No 2203861BGB00018 and 2203861BGB00019 issued by IDBI Bank, Marigold House, Cross Rd 2, Andheri E, Mumbai, Andheri SCB-400093, for an amount of Rs.37,00,00,000/- (Rupees Thirty Seven Crores only).*
- E. Your Final monthly capacity charge (INR/MW/Month) at the end of the e-Reverse Auction conducted on ETS portal on 25.08.2022 for the referred RfS for selection of ISTS-connected Pilot Projects of Standalone Battery Energy Storage Systems (BESS).*

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:

<i>Allotted Project ID</i>	<i>Project Capacity</i>	<i>Interconnection Point Details</i>	<i>Final monthly capacity charge (INRMW/Month)</i>	<i>Final monthly capacity charge (INR/MW/Month) in words</i>
<i>BESSD-ISTS-ESS-1-JREFL-P1-250MW</i>	<i>250 MW/500 MWh</i>	<i>400/220 kV Fatehgarh-III S/S</i>	<i>10,83,500</i>	<i>Rupees Ten Lakh Eighty-Three Thousand Five Hundred only</i>

SECI shall procure energy from the proposed ISTS-Connected Pilot Projects of Standalone BESS 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 monthly capacity charge as mentioned above for Pilot Projects of Standalone BESS for the term of Battery Energy Storage Purchase Agreement (BESPA) to be entered into between Project Company or the Battery Energy Storage System Developer (BESSD) and M/S SECI, for the Project, shall be firm for the entire term of the BESPA.*
- 1.1 SECI's obligation shall be limited to the off-take of 60% of the Project Capacity and energy and utilization of remaining 40% of the Project Capacity is to be managed by the BESSD.*
- 1.2 The BESSD will be free to avail fiscal incentives like Accelerated Depreciation, Concessional Customs and Excise Duties, Tax Holidays, etc. as available, if any, for such projects. No claim shall arise on SECI for any liability if the BESSD is not able to avail fiscal incentives and this will not have any bearing on the applicable tariff.*
- 1.3 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.*
- 1.4 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 BESPA. However, in case the Project is being set up by a listed Company, this condition will not be applicable.*
- 1.5 In case of the selected Bidder itself executing the BESPA, it shall ensure that controlling shareholding of the bidding company remains unchanged until the COD. However, in case the Project is being set up by a listed Company, this condition will not be applicable.*
- 1.6 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 upto the COD.*
- 1.7 In case of Project being executed through SPVs, the successful Bidder executing the project, if being a single company, shall ensure that its shareholding in the SPV/project company executing the BESPA, shall not*

fall below 51% at any time prior to COD of the Project. In the event the selected bidder is a consortium, then the combined shareholding of the consortium members in the SPV/project company executing the BESPA, shall not fall below 51% at any time prior to COD. However, in case the Project is being set up by a listed Company, this condition will not be applicable.

- 1.8 The BESSD shall pay to SECI, success Charges of Rs. 1.00 Lakh/MW + 18% GST within 30 days of issuance of LOA, in line with Clause 19.1 of the RfS, towards administrative overheads, coordination with State Authorities and others, Discom/ STU/ CTU, pre-commissioning and commissioning expense. Performance Bank Guarantee(s)/ Payment on Order Instrument (POI) for a value of @Rs 11.10 Lakh/MW/Project shall be submitted by the BESSD prior to signing of BESPA, in line with Clause 18 of the RfS.*
- 1.9 BESPA will be executed between SECI and the BESSD 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.*
- 1.10 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 BESPA, which shall then remain unchanged subsequent to signing of BESPA. The BESPA shall be valid for a period of 12 years from the Scheduled Commissioning Date of the Project or the date of full commissioning of the Project, whichever is later.*
- 1.11 The BESSD will have to submit the required documents as mentioned below to SECI within 70 days from the issue 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 BESPA:*
 - 1) Copy of the Certificate of Incorporation of the BESSD.*
 - 2) The details of promoters and their shareholding in the BESSD, duly certified by the practicing Chartered Accountant/ Company Secretary in original at least 07 (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 BESSD highlighting the object clause related to generation of Power/ Energy/ Renewable Energy/ Standalone Battery Energy Storage System development.*
 - 4) In case the project being executed by a Special Purpose Vehicle (SPV) incorporated by successful bidder, such SPV shall be at least 51% shareholding subsidiary, in line with provisions of the RfS. Further, the Successful Bidder shall submit a Board Resolution prior to signing of BESPA with SECI, committing total equity infusion in the SPV as per the provisions of RfS.*
 - 5) Copy of Board Resolution for authorization of signing of BESPA and subsequent relevant documents.*

Further, the BESPAs shall be signed with BESSD subsequent to the signing of Battery Energy Storage Sale Agreements (BESSAs) with the Buying Entities for the cumulative awarded capacity and upon submission of the Success Charges along with total Performance Guarantees/ Payment on Order Instrument of requisite value.

- 1.12 SECI shall have the right to verify original documents of the BESSD for which copies have been submitted from the date of submission of response to RfS till date, if required. BESPA as per the format given along with RfS has to be signed within 90 days from the date of issue of this LOA, if not extended by SECI. In case of delay on the part of the BESSD in submission of requisite documents prior to signing of BESPA or otherwise, SECI shall not be liable for delay in verification of documents and subsequent delay in signing of BESPA. Effective Date of the BESPA shall be the date as on 90 days from the date of issue of LoA, or the date of signing of BESPA, whichever is later.
- 1.13 In case, the SECI offers to execute the BESPA with the Selected Bidder and the selected Bidder refuses to execute the BESPA within the stipulated time period, then the Bank Guarantee equivalent to the amount of the EMD shall be encashed by SECI from the Bank Guarantee available with SECI (i.e. EMD or PBG) as liquidated damages not amounting to penalty, the selected Project shall stand cancelled and the selected Bidder expressly waives off its rights and objections, if any, in that respect.
- 1.14 The BESSD shall meet financial closure requirements for the Project in line with clause 22 of the RfS document, within the date as on 12 months after the Effective Date of the BESPA. Accordingly, the BESSD shall furnish the documents pertaining to compliance of financial closure as per the above provisions.
- 1.15 The BESSD/Project Company shall achieve commissioning of full capacity of the Project within 18 months from the Effective Date of the BESPA, as per the conditions stipulated in Clause 9 of the RfS and relevant articles of BESPA. In case of failure to achieve this milestone, liquidated damages not amounting to penalty shall be levied on the BESSD as per the above provisions.
- 1.16 You are requested to make it convenient for signing of Battery Energy Storage Purchase Agreement (BESPA) as per clause 21 of RfS, failing which, provisions as per Clause 17, 18 and 21 of the RfS shall be applicable.
- 1.17 All disputes arising out of and/ or in connection with the selection of Pilot Projects of Standalone Battery Energy Storage Systems under the said RfS and execution of BESPA thereto shall be governed by laws of India and shall be subject to the jurisdiction of Courts of New Delhi.
- 1.18 Project implementation will be governed in line with the provisions of BESPA.

This LOA is being issued in duplicate and you are requested to kindly acknowledge receipt and acceptance of this LOA by sending the duly stamped and signed duplicate copy of LoA to SECI within 07 days from date of this LOA.”

30. As per the Guidelines, the Evaluation Committee was required to certify that the bidding process and the evaluation have been conducted in conformity with the provisions of the guidelines. SECI has placed the following certificates executed on 06.03.2024 on records:

“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/IPP/15/0001/22-23 dated 13.04.2022, it is hereby declared as follows:

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

Sd/-
Ajay Kumar Sinha
Additional General Manager (C&P)

“CONFORMITY CERTIFICATE - 2
(To whomsoever it may concern)

We, Undersigned Committee nominated 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/IPP/15/0001/22-23 dated 13.04.2022, it is hereby declared as follows:

1. After the conclusion of bid submissions, 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.

Sd/-
Biblesh Meena
Manager (C&P)

Sd/-
Anuja
Manager(Fin.)

Sd/-
Jaya
Manager(PS)

31. As per the Guidelines, SECI has placed the Key Milestones achieved on record:

Key Milestones during the Bidding Process

Sequence of events of bidding process, i.e. date in chronological order, for RfS No. SECI/C&P/IPP/15/0001/22-23 dated 13.04.2022

<i>S. No.</i>	<i>Milestone</i>	<i>Date</i>
<i>1.</i>	<i>RfS issued by SECI</i>	<i>13.04.2022</i>
<i>2.</i>	<i>Corrigendum-01 to the RfS documents uploaded</i>	<i>13.04.2022</i>

3.	<i>Corrigendum-02 to the RfS documents uploaded</i>	<i>25.04.2022</i>
4.	<i>Corrigendum-03 to the RfS documents uploaded</i>	<i>26.04.2022</i>
5.	<i>Corrigendum-04 to the RfS documents uploaded</i>	<i>05.05.2022</i>
6.	<i>Pre-bid meeting held</i>	<i>06.05.2022</i>
7.	<i>Amendment-01 to the RfS documents uploaded</i>	<i>02.06.2022</i>
8.	<i>Clarification-01 to the RfS documents uploaded</i>	<i>02.06.2022</i>
9.	<i>Corrigendum-05 to the RfS documents uploaded</i>	<i>08.06.2022</i>
10.	<i>Corrigendum-06 to the RfS documents uploaded</i>	<i>22.06.2022</i>
11.	<i>Corrigendum-07 to the RfS documents uploaded</i>	<i>08.07.2022</i>
12.	<i>Amendment-02 to the RfS documents uploaded</i>	<i>18.07.2022</i>
13.	<i>Corrigendum-08 to the RfS documents uploaded</i>	<i>27.07.2022</i>
14.	<i>Last date of bid submission</i>	<i>29.07.2022</i>
15.	<i>Opening of techno-commercial bids</i>	<i>03.08.2022</i>
16.	<i>Opening of financial bids</i>	<i>24.08.2022</i>
17.	<i>e-Reverse Auction conducted</i>	<i>25.08.2022</i>
18.	<i>Issuance of Letters of Award (LoAs) to successful bidder</i>	<i>18.01.2023</i>

32. As per No. SECI/C&P/IPP/15/0001/Clarifications-01 dated 02.06.2022 and as stipulated in the Letters of Award (LoA), the BESPAs were to be executed subsequent to the signing of the BESSAs with the buying utilities. SECI entered into a BESSA with the distribution licensee Gujarat Urja Vikas Nigam Limited on 26.06.2023. As per clause 3 of 'G: Contract Award and Conclusion' of 'Section III: Bidding Process and Award of Projects' of the Guidelines, the BESPA(s) should preferably be signed immediately after signing of the BESSA(s).

33. We observe that SECI signed BESPA for 150MW contracted capacity with the successful bidder identified through the competitive bidding process, i.e., JSW Renew Energy Five Limited, on 27.02.2024, which is 245 days after the BESSA signed with GUVNL. SECI has not submitted any explanation for this delay.

34. The balance capacity of 150 MW allocated to SECI has been earmarked for grid ancillary services, for which the National Load Dispatch Centre (NLDC/Grid Controller of India Limited) is the end user. After the conclusion of the tender process, SECI had written to NLDC, offering it a capacity of 150 MW out of the 500 MW capacity of the BESS project. However, the NLDC expressed reservations about the signing of BEESA with SECI on the

grounds of it being a statutory body entrusted with the responsibility of scheduling and despatch of reserves under the Ancillary Service Regulations and Grid Code. It was argued that NLDC is not the off-taker of the power under Ancillary Services. The payment in respect of the deployment of Ancillary Services is being settled through the Deviation and Ancillary Pool Account entrusted with the NLDC as per extant Regulatory Provisions. Accordingly, on 31.07.2023, NLDC filed Petition No. 249/MP/2023 before this Commission for regulatory directions for the procurement of this earmarked capacity under the Ancillary Service Regulations.

35. Meanwhile, SECI also informed JSW Renew Energy Five Limited that it would take additional time to complete the signing process for the remaining 150 MW BESSA, *inter-alia* stating as under:

“It is anticipated that it may take additional time to complete the signing process for the remaining 150 MW BESSA. Therefore, both SECI and JSW Renew Energy Five Limited are requested to mutually extend the timeline for signing the BESPA till 31.07.2024 to ensure compliance with the contractual obligations.”

36. JSW Renew Energy Five Limited, vide its email dated 26.03.2024, submitted their acceptance for the extension of the BESPA signing timeline for Project-2 till 31.07.2024, *inter-alia* stating as under:

“We are hereby submitting our acceptance for the extension of the BESPA signing timeline for project -2 till 31st July 2024. Please find our consent letter enclosed for your perusal.”

37. We observe that the Gujarat Electricity Regulatory Commission (GERC) vide its order dated 23.09.2024 in Petition No. 2364 of 2024 has approved the Battery Energy Storage Sale Agreement (BESSA) executed between the GUVNL and the SECI for procurement of 150 MW/300 MWh Battery Energy Storage capacity from SECI's 500 MW/1000 MWh Pilot Project to be set up by the BESSD at Fatehgarh-III Sub-Station in Rajasthan. The relevant extract of the GERC Order dt. 23.09.2024 is produced below:

*7.21. In view of the above, **the Commission hereby approve the Battery Energy Storage Sale Agreement (BESSA) executed between the Petitioner GUVNL and the Respondent No. 1 SECI on 26.06.2023** for procurement of 150 MW/300 MWh Battery Energy Storage capacity from SECI's 500 MW/1000 MWh Pilot Project to be set up by the BESSD at Fatehgarh-III Sub-Station in Rajasthan, at the tariff of 6,44,473.06 per MW per month (excluding the applicable GST, taxes and duties if any), awarded by SECI to M/s JSW Renew Energy Five Limited (JSWREFL) as*

Battery Energy Storage System Developer(BESSD), for Procurement of Energy Storage capacity by GUVNL on behalf of four State DISCOMs”

38. The Commission, while considering the matter for final decision, noticed Clause 6 of ‘G: Contract Award and Conclusion’ of ‘Section III: Bidding Process and Award of Projects’ of the Guidelines and directed the parties, vide ROP dated 18.09.2024, to file an affidavit, to the effect whether Clause 6 of G: Contract Award and Conclusion of Section III Bidding Process and Award of Project of the Guidelines, stands novated in terms of Section 62 of the Indian Contract Act, 1872. In compliance with the above direction, the Petitioner has submitted that the parties have mutually consented to the extension of the bid validity from time to time and pointed out that the Letter of Award itself provided that the BESPAAs would be signed subsequent to the signing of the BESSAs with the buying utilities, and the aspect of the signing of the BESSA by NLDC was decided by the Commission by order dated 16.05.2024 in Petition No. 249/MP/2023.
39. The Commission notes that the selection of the successful bidder has been carried out by the BPC through a transparent process of competitive bidding in accordance with the Guidelines issued by the Ministry of Power, Government of India under Section 63 of the Act. However, developments subsequent to the selection process have a bearing on the issue of adoption of the tariff so discovered. The same is being discussed in the subsequent paragraphs.
40. The Hon’ble Supreme Court, in its judgment dated 08.01.2024 in the case titled *Jaipur Vidyut Vitran Nigam Ltd. & Ors. Vs. Mb Power (Madhya Pradesh) Limited & Ors.* in Civil Appeal No. 6503 OF 2022 has held as under:
- 66. We have already reproduced Section 63 of the Electricity Act. The provisions of Section 63 of the Electricity Act fell for consideration before this Court in the case of Energy Watchdog (supra). It will be apposite to refer to paragraphs 19 and 20 of the said judgment, which are as under:*
- “19. The construction of Section 63, when read with the other provisions of this Act, is what comes up for decision in the present appeals. It may be noticed that Section 63 begins with a non obstante clause, but it is a non obstante clause covering only Section 62. Secondly, unlike Section 62 read with Sections 61 and 64, the appropriate Commission does not “determine” tariff but only “adopts” tariff already determined under Section 63. Thirdly, such “adoption” is only if such tariff has been determined through a transparent process of bidding, and, fourthly, this transparent process of bidding must be in accordance with the guidelines issued by the Central Government. **What has been argued before us is that Section 63 is a standalone provision and***

has to be construed on its own terms, and that, therefore, in the case of transparent bidding nothing can be looked at except the bid itself which must accord with guidelines issued by the Central Government. One thing is immediately clear, that the appropriate Commission does not act as a mere post office under Section 63. It must adopt the tariff which has been determined through a transparent process of bidding, but this can only be done in accordance with the guidelines issued by the Central Government. Guidelines have been issued under this section on 19-1-2005, which guidelines have been amended from time to time. Clause 4, in particular, deals with tariff and the appropriate Commission certainly has the jurisdiction to look into whether the tariff determined through the process of bidding accords with Clause 4.

20. It is important to note that the regulatory powers of the Central Commission, so far as tariff is concerned, are specifically mentioned in Section 79(1). This regulatory power is a general one, and it is very difficult to state that when the Commission adopts tariff under Section 63, it functions de hors its general regulatory power under Section 79(1)(b). For one thing, such regulation takes place under the Central Government's guidelines. For another, in a situation where there are no guidelines or in a situation which is not covered by the guidelines, can it be said that the Commission's power to "regulate" tariff is completely done away with? According to us, this is not a correct way of reading the aforesaid statutory provisions. The first rule of statutory interpretation is that the statute must be read as a whole. As a concomitant of that rule, it is also clear that all the discordant notes struck by the various sections must be harmonised. Considering the fact that the non obstante clause advisedly restricts itself to Section 62, we see no good reason to put Section 79 out of the way altogether. The reason why Section 62 alone has been put out of the way is that determination of tariff can take place in one of two ways — either under Section 62, where the Commission itself determines the tariff in accordance with the provisions of the Act (after laying down the terms and conditions for determination of tariff mentioned in Section 61) or under Section 63 where the Commission adopts tariff that is already determined by a transparent process of bidding. In either case, the general regulatory power of the Commission under Section 79(1)(b) is the source of the power to regulate, which includes the power to determine or adopt tariff. In fact, Sections 62 and 63 deal with "determination" of tariff, which is part of "regulating" tariff. Whereas "determining" tariff for inter-State transmission of electricity is dealt with by Section 79(1)(d), Section 79(1)(b) is a wider source of power to "regulate" tariff. It is clear that in a situation where the guidelines issued by the Central Government under Section 63 cover the situation, the Central Commission is bound by those guidelines and must exercise its regulatory functions, albeit under Section 79(1)(b), only in accordance with those guidelines. As has been stated above, it is only in a situation where there are no guidelines framed at all or where the guidelines do not deal with a given situation that the Commission's general regulatory powers under Section 79(1)(b) can then be used." [emphasis supplied]
67. It could thus be seen that it has been held by this Court that unlike Section 62 read with Sections 61 and 64, under the provisions of Section 63 of the Electricity Act, the appropriate Commission does not "determine" tariff but only "adopts" tariff already determined under Section 63. It has further been held that, such "adoption" is only if such tariff has been determined through a transparent process of bidding, and that, this transparent process of bidding must be in accordance with the guidelines issued by the Central Government. It was sought to be contended before this Court in the said case

that Section 63 is a standalone provision and has to be construed on its own terms, and that, therefore, in the case of transparent bidding nothing can be looked at except the bid itself which must accord with guidelines issued by the Central Government. However, rejecting the said contention, this Court observed that the appropriate Commission does not act as a mere post office under Section 63. It has been observed that, Clause 4, in particular, deals with tariff and the appropriate Commission certainly has the jurisdiction to look into whether the tariff determined through the process of bidding accords with Clause 4.

68. This Court in the said case, in paragraph 20, further observed that the entire Act shall be read as a whole. It has been held that, all the discordant notes struck by the various sections must be harmonized. It has been held that, considering the fact that the non obstante clause advisedly restricts itself to Section 62, there is no reason to put Section 79 out of the way altogether. It has been held that, either under Section 62, or under Section 63, the general regulatory power of the Commission under Section 79(1)(b) is the source of the power to regulate, which includes the power to determine or adopt tariff. It has been held that, Sections 62 and 63 deal with “determination” of tariff, which is part of “regulating” tariff. It has further been held that, in a situation where the guidelines issued by the Central Government under Section 63 cover the situation, the Central Commission is bound by those guidelines and must exercise its regulatory functions, albeit under Section 79(1)(b), only in accordance with those guidelines. It has further been held that, it is only in a situation where there are no guidelines framed at all or where the guidelines do not deal with a given situation that the Commission's general regulatory powers under Section 79(1)(b) can be used.

69. The aforesaid view of this Court in the case of *Energy Watchdog (supra)*, which is a judgment delivered by two Judge Bench, has been approved by three Judge Bench of this Court in the case of *Tata Power Company Limited Transmission (supra)*.

70. We have already referred to Section 86(1)(b) of the Electricity Act, which is analogous to Section 79 of the Electricity Act. Section 79 determines the functions of Central Commission, whereas Section 86 provides for the functions of the State Commission. Section 86 of the Electricity Act empowers the State Commission 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 purchase of power for distribution and supply within the State.

71. It can thus be seen that Section 86(1)(b) of the Electricity Act gives ample power on the State Commission to regulate electricity purchase and procurement process of distribution licensees. It also empowers the State Commission to regulate the matters including the price at which electricity shall be procured from the generating companies, etc.

73. Clause 5.15 of the Bidding Guidelines is an important clause. It provides that, the bidder who has quoted lowest levelized tariff as per evaluation procedure, shall be considered for the award. It also provides that the evaluation committee shall have the right to reject all price bids if the rates quoted are not aligned to the prevailing market prices.

74. It is thus amply clear that the evaluation committee is empowered to consider, as to whether the rates quoted are aligned to the market price or not, and that the evaluation committee shall have the right to reject all the price bids if it finds that the rates quoted are not aligned to the prevailing market price. The orders which are relied upon by the learned APTEL, specifically the order dated 19th November 2018 of this Court, had

specifically clarified that the State Commission was to decide the tariff under Section 63 of the Electricity Act having regard to the law laid down both statutorily and by this Court.

75. In this background, the State Commission was justified in considering clause 5.15 of the Bidding Guidelines, which specifically permits to reject all price bids if the rates quoted are not aligned to the prevailing market prices.

76. The contention that this Court has ordered that the bids quoted by the bidders are to be accepted without going into the question of it being market aligned or not, in our view, is without substance.

...
...

78. We are, therefore, of the considered view that the learned APTEL has grossly erred in holding that the State Commission has no power to go into the question, as to whether the prices quoted are market aligned or not and also not to take into consideration the aspect of consumers' interest.

92. It is needless to state that this Court, time and again, in various judgments including the one in the case of GMR Warora Energy Limited (*supra*) **has recognised the requirement of balancing the consumers' interest with that of the interest of the generators. It will not be permissible to take a lopsided view only to protect the interest of the generators ignoring the consumers' interest and public interest.**

41. From the above-cited judgments, it emerges that the Commission has the power to examine whether the prices quoted are market-aligned or not. There is a need to balance the consumers' interest with that of the generators. It would be a lapse on the part of the Commission to take a one-sided view and only protect the interests of the generators, ignoring the consumers' interest and public interest.

42. The abridged chronology of events is as mentioned below:

S. No.	Milestone	Date
1.	RfS issued by SECI	13.04.2022
2.	Corrigendum-01 to the RfS documents uploaded	13.04.2022
3.	Last date of bid submission	29.07.2022
4.	e-Reverse Auction conducted	25.08.2022
5.	Issuance of Letters of Award (LoAs) to successful bidder	18.01.2023
6.	BESSA executed by SECI with Gujarat Urja Vikas Nigam Limited on	26.06.2023
7.	BESPA executed on (i) GUVNL for 150 MW (ii) JSWREFL for 150MW	27.02.2024 Not executed

43. We observe that the *e-Reverse Auction* was conducted on 25.08.2022, whereas the LoAs were issued on 18.01.2023. Hence, there was a delay of 145 days in the issuance of LoAs. Further, BESSA was executed on 26.06.2023, i.e., after 160 days of issuance of LoAs. Further, as per No. SECI/C&P/IPP/15/0001/Clarifications-01 dated 02.06.2022 and as stipulated in the Letters of Award (LoA), the BESPAs were to be executed subsequent to the signing of the BESSAs with the buying utilities. SECI entered into a BESSA with the distribution licensee Gujarat Urja Vikas Nigam Limited on 26.06.2023. As per Clause 3 of ‘G: Contract Award and Conclusion’ of ‘Section III: Bidding Process and Award of Projects’ of the Guidelines, the BESPAs should preferably be *signed immediately after the signing of the BESSA(s)*. However, SECI signed BESPAs for 150MW contracted capacity with the successful bidder identified through the competitive bidding process, i.e., JSW Renew Energy Five Limited on 27.02.2024, which is 245 days after the BESSA signed with GUVNL. SECI has not submitted any explanation for these delays.

44. The Commission observes that subsequent to the e-reverse auction conducted on 25.08.2022, in the impugned project, several bids for similar projects were conducted:

e-Reverse Auction	Details	Rate discovered
August, 2022	SECI’s Project 1000MWh BESS tender capacity under Competitive Bidding Guidelines	Rs. 10,88,917/MW/month
March, 2024	GUVNL’s Pilot Projects of 250 MW/500 MWh Standalone Battery Energy Storage Systems in Gujarat under Tariff-Based Global Competitive Bidding (Phase-II)	Rs. 4,48,996 to Rs. 4,49,996 /MW/Month
June, 2024	GUVNL’s Pilot project of 250 MW/500MWh Standalone BESS under competitive bidding guidelines (Phase-III)	Rs. 3,72,978/MW/Month
August, 2024	SECI project for 1000MW/2000MWh standalone BESS	Rs. 3,81,000 to Rs.3,81,999 /MW/Month.

45. From the above, the Commission observes that the rates discovered in the subsequent bidding for similar projects are considerably lower than the price discovered in the said project. It is pertinent to mention here that JSW Renew Energy Five Limited has also won 500 MW/1000MWh capacity under this recent tender with a price of Rs. 3,81,000/MW/Month. We are of the view that this decline reflects the decreasing cost of

batteries due to a reduction in material cost and the growing competitiveness of BESS projects. It will not be out of place to mention that as per prevailing industry norms and even otherwise, the batteries are one of the last items to be purchased closer to the commissioning of the project by the developers for optimising cost. In the instant case, the Guidelines stipulate that the Scheduled Commissioning date (SCoD) shall be 18 months after the effective date of the BESPA. The chronology of the events submitted by the Petitioner revealed that there had been a delay in achieving the timelines specified in the guidelines and the RfS documents. We are of the view that the unreasonable delay (for whatever reason) in the instant case will lead to unintended gains for the developer and a wrongful loss to the public at large.

46. We are of the view that even though the bid evaluation process has been complied with as per the bidding guidelines, the tariff so proposed to be adopted is not aligned with the prevailing market prices in view of the delay in signing of BESSA and BESPA. We are of the view, in the power of adoption of the tariff as stipulated in Section 63 of the Act, there is an inherent power of the Commission for rejection of the tariff, which, according to the regulator, is not aligned with the market and is not in the interest of the public at large. It is pertinent to mention here that the Petitioner has not yet signed BESPA with the JSW Renew Energy Five Limited, and the SCoD may further get extended giving undue benefit to the BESS developer to take advantage of the reduced price in the battery market. In view of the above, we are of the view that the tariff so proposed to be adopted will give an undue advantage to the BESS developer (by taking advantage of further reduction in the price of the Battery Storage System) and will be against the public interest. As such, we reject the adoption of the tariff so discovered.
47. While parting, we would like to clarify that the Commission's decision to reject the prayer for adoption of tariff is solely based on the circumstances in the present case – that is, due to inordinate delay in signing of BESPA/BESSA and subsequent cost reduction in BESS leading to undue benefit to the developer at the cost of consumers. The Commission is conscious of the fact that price falls post bidding cannot generally be a ground for rejecting an earlier bidding process and price discovery. Even in the instant case, there would not have been any occasion for review or rejection of the adoption of the tariff, notwithstanding subsequent developments had the project been completed within the original timelines. SECI

should have been more careful in adhering to the timelines. The Commission could not have overlooked the consequences of delay.

48. The Prayer No.1 of the Petition with respect to the adoption of tariff stands disposed of in terms of the above.
49. Further, the Commission, through an order in Petition No 26/RP/2024 dated 18.11.2024, has rejected the request of the Petitioner to review this decision. Accordingly, the prayer (b) and (c) are answered against the Petitioner, SECI.
50. Petition No. 138/AT/2024 is disposed of in terms of the above.

Sd/
हरीश दुदानी
सदस्य

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रमेश बाबू वी.
सदस्य

Sd/
जिष्णु बरुआ
अध्यक्ष