

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Petition No. 187/AT/2019 and
IA No.86/2019**

**Coram:
Shri P. K. Pujari, Chairperson
Shri I.S. Jha, Member**

Date of Order: 28th of February, 2020

In the matter of:

Petition for approval of tariff under Section 63 of the Electricity Act, 2003 along with Section 79(1) (k) of the Electricity Act, 2003 for adoption of tariff for purchase of 100 MW Solar Power from Solar Energy Corporation of India Limited which has been discovered through a transparent process by way of competitive bidding conducted in terms of the competitive bidding guidelines issued by the Ministry of Power under Section 63 of the Electricity Act, 2003.

And

In the matter of

1. Tata Power Delhi Distribution Limited
NPDH House, Hudson Lines,
Kingsway Camp, Delhi – 110 009.

2. Solar Energy Corporation of India Limited
D-3, 1st Floor, Wing-A,
Prius Platinum Building,
District Centre, Saket,
New Delhi – 110 017.

.....Petitioners

Vs.

1. ACME Solar Holding Limited
104, Munish Plaza,
20, Ansari Road, Darya Ganj,
New Delhi – 110 002.

2. Shapoorji Pallonji Infrastructure Capital Company Private Limited
70, Nagindas Master Road, Fort Mumbai,
Maharashtra - 400 023.

3. Hero Solar Energy Private Limited
Plot No. 201, First Floor,
Okhla Industrial Estate Phase – III,

New Delhi – 110 020.

4. Mahindra Susten Private Limited
Mahindra Towers, Dr. G. M. Bhosale Marg,
P.K. KurneChowk, Worli, Mumbai,
Maharashtra – 400 018.

5. Azure Power India Private Limited
3rd Floor, Asset 301-304 & 307,
Worldmark 3, Aerocity,
New Delhi – 110 037.

6. Mahoba Solar (UP) Private Limited
Adani House, Nr. Mithakhali Six Roads,
Navrangpura, Ahmedabad – 380 009.

7. BSES Yamuna Poewr Limited
Shakti Kiran Building, Kakardooma,
Delhi – 110 092.

8. BSES Rajdhani Power Limited
BSES Bhawan, Nehru Place,
Delhi – 110 019.

9. Haryana Power Purchase Centre
Shakti Bhawan, Sector – 6,
Panchkula.

10. Jharkhand Bijli Vitran Nigam Limited
Engineer's Building, Dhurwa,
Ranchi – 834 004.

11. GRIDCO Limited
Janpath, Bhubaneshwar,
Khurda, Odisha – 751 002.

12. Chhattisgarh State Power Distribution Company Limited
P.O. Sunder Nagar,
Dangani, Raipur – 492 013.

.....Respondents

The following were present:

- 1) Ms. Molshree Bhatnagar, Advocate, TPDDL
- 2) Ms. Shefali Sobti, TPDDL
- 3) Shri M.G. Ramachandran, Sr. Advocate, SECI
- 4) Ms. Tanya Sareen, Advocate, SECI
- 5) Shri Atulya Kumar Naik, SECI

- 6) Shri Tarun Mukhija, SECI
- 7) Shri Kartikey Tripathi, SECI

ORDER

The Petitioner, Tata Power Delhi Distribution Limited (hereinafter referred to as “TPDDL”), has filed the present Petition under Section 63 of the Electricity Act, 2003 along with Section 79(1) (k) of the Electricity Act, 2003 (hereinafter referred to as “the Act”) for adoption of tariff for purchase of 100 MW solar power from the Petitioner, Solar Energy Corporation of India Limited (hereinafter referred to as “SECI”) which has been discovered through a transparent process by way of competitive bidding conducted in terms of the competitive bidding guidelines dated 3.8.2017 issued by Ministry of Power, Government of India under Section 63 of the Act. The Petitioner has made the following prayers:

“a) Admit and allow the present Petition; and

b) Adopt the tariff i.e. a fixed levelized tariff i.e. Rs. 2.54/ kWh (including trading margin of Rs. 0.07/kWh) till the cumulative awarded capacity by SECI under the RfS document has been commissioned and weighted average tariff of Rs. 2.502/kWh plus a trading margin of Rs. 0.07/kWh for the balance term of the Agreement once the cumulative awarded capacity by SECI under the RfS document has been commissioned in terms of Section 63 of the Electricity Act, 2003.”

Submission of the Petitioner

2. The Petitioner, TPDDL, has submitted that being a distribution licensee, TPDDL is obligated to purchase the electricity from renewable sources for fulfillment of Renewable Purchase Obligations (RPOs) as specified in Delhi Electricity Regulatory Commission (Renewable Purchase Obligation and Renewable Energy Certificate Framework Implementation) Regulations, 2012 and Delhi Electricity Regulatory

Commission (Business Plan) Regulations, 2017. Accordingly, pursuant to the competitive bid process conducted by Solar Energy Corporation of India Limited for setting up of grid connected Solar PV Projects for an aggregate capacity of 2000 MW (250 MW × 8) on Build, Own and Operate basis, TPDDL requisitioned 100 MW solar power after in-principle approval of Delhi Electricity Regulatory Commission (hereinafter referred to as “DERC”). On 6.9.2018, TPDDL signed the Power Supply Agreement (hereinafter referred to as “PSA”) with SECI for procurement of 100 MW solar power for fulfillment of its Renewable Purchase Obligation and filed Petition No. 25 of 2019 before DERC seeking, *inter-alia*, adoption of tariff discovered through the competitive bid process along with trading margin and approval of Power Supply Agreement executed with SECI. DERC in its order dated 1.3.2019 approved the Power Supply Agreement. However, with regard to adoption of tariff along with trading margin, DERC observed that the jurisdiction in respect of adoption of tariff lies with CERC and directed TPDDL to approach CERC. Accordingly, TPDDL has filed the present Petition..

Submission by SECI during hearing on 5.9.2019

3. The Petition was admitted on 6.8.2019 and notice was issued to SECI to file its reply. During the course of hearing of the matter on 5.9.2019, learned senior counsel for SECI submitted that PSA with TPDDL has been signed on the basis of the Power Purchase Agreement (hereinafter referred to as “PPA”) to be executed/executed by SECI with Solar Power Developers selected pursuant to the competitive bid process conducted for an aggregate capacity of 2000 MW. Learned senior counsel submitted that beside TPDDL, there are other distribution licensees also which are purchasing power from SECI by executing the PSAs on the basis of PPAs executed by SECI with

such Solar Power Developers. Learned senior counsel further submitted that the said competitive bid process was conducted on the basis of '*Guidelines for Tariff based Competitive Bidding process for procurement of power from the Grid Connected Solar Power Projects*' (hereinafter referred to as 'the Guidelines') dated 3.8.2017 issued by Ministry of Power. Accordingly, the Commission may adopt the tariff in a comprehensive manner in regard to all such PPAs and PSAs to avoid multiplicity of the proceedings. Learned senior counsel sought permission to file an application for its transposition as the Petitioner by impleading the Solar Power Developers and Distribution Licensees/Buying Utilities as Respondents to the Petition. Learned counsel for the Petitioner, TPDDL had no objection in this regard. Accordingly, learned senior counsel for SECI was permitted to file transposition application in the Petition.

4. Pursuant to the liberty granted by the Commission, SECI has filed the IA No. 86/2019 with the following prayers:

"a) Allow the present application;

b) Transpose Solar Energy Corporation of India Limited (SECI) as the second Petitioner and implead the Solar Power Developers (SPDs) and the Buying Entities as per the Memo of parties filed herewith as 'Appendix A' as Respondents;

c) Adopt the tariff discovered in the tariff based competitive bid process for the individual power projects as stated in Table 1 at paragraph 4 above plus the trading margin of Rs. 0.07/kWh to be recovered from the Buying Utilities/Distribution Licensees on the terms and conditions contained in the PPAs with the Solar Power Developers being Respondent Nos. 1 to 6 in the amended memo of parties and the PSAs with the Buying Utilities/Distribution licensees being Petitioner No 1 and Respondent Nos. 7 to 12 in the amended memo of parties; and

d) Grant SECI an exemption from complying with the provisions of the Clause 3.1.1(b) of the Guidelines as regards the intimation of the initiation of Bidding for the reasons mentioned in Paras 18-20 hereinabove."

5. After considering the submissions of the learned senior counsel for SECI and considering that TPDDL had no objection towards the same, vide Record of

Proceedings for hearing dated 19.11.2019, IA No. 86/2019 was allowed. Accordingly, SECI was directed to implead Solar Power Developers and Distribution Licensees/Utilities as party to the Petition and notices were issued to them to file their replies. However, no reply has been filed by them.

Analysis and Decision

6. We now proceed to consider the adoption of tariff in respect of the individual Solar Projects as 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.

7. 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.”

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

9. The Ministry of Power, Government of India has notified the Guidelines under Section 63 of the Act vide Resolution No. 23/12/2017-R&R dated 3.8.2017. The salient features of the Guidelines are as under:

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

(b) Procurer shall prepare the bid documents in accordance with the Guidelines and the Standard Bid Documents notified by the Ministry of Power, Govt. 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 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. Bidders shall quote for entire package.

(d) The Procurer has option to choose to invite the bids in, namely, (i) power capacity (MW) terms, or (ii) energy quantity (kWh or million units i.e. MU) terms. For procurement of power, the Procurer may opt for either tariff as bidding parameter or viability gap funding as bidding parameter.

(e) Draft PPA proposed to be entered into with the successful bidder and draft PSA, if applicable, shall be issued along with the RfS. PPA period shall not be less than 25 years from the date of Scheduled Commissioning Date.

(f) Procurer and Intermediary Procurer shall provide payment security to the Solar Power Developer through 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 and Intermediary Procurer may also choose to provide State Government Guarantee.

(g) End Procurer shall provide payment security to the Intermediary Procurer through revolving Letter of Credit of an amount of not less than one month's

average billing from the project under consideration and State Government Guarantee. In addition, end Procurer may also choose to provide Payment Security Fund with at least three months' billing of all the projects tied up with such fund.

(h) The Procurer shall call the bids adopting a single stage bidding process to be conducted through electronic mode (e-bidding). The Procurers may adopt e-reverse auction, if it so desires. For this purpose, e-procurement platforms with a successful track record and with adequate safety, security and confidentiality features will be used. In case of Solar Park specific project, Procurer shall provide intimation to the Solar Power Park Developer about the initiation of the bidding process and arrange the access of the bidders to the drafts of Implementation Support Agreement and land related agreement.

(i) RfS notice shall be issued in at least two national newspapers and on the websites of the Procurer to provide wide publicity. Standard documentation to be provided in the RfS Stage shall include technical criteria, financial criteria, quantum of earnest money deposit and lock in requirements for the lead members of the consortium.

(j) The Procurer shall constitute committee for evaluation of the bids (Evaluation Committee), with at least three members, including at least one member with expertise in financial matters/bid evaluation.

(k) Bidder shall submit non-refundable processing fee and/or project development fee as specified in the RfS, separate technical and priced 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) PPA shall be signed with the successful bidder/project company or an SPV formed by the successful bidder. After conclusion of bidding process,

Evaluation Committee shall evaluate the bids and certify that the bidding process and the evaluation have been conducted in conformity with the provisions of RfS. After execution of the PPA, Procurers shall disclose the name(s) of the successful bidder(s) and the tariff quoted by them in its website. Accordingly, the distribution licensee or the Intermediary Procurer shall approach the Appropriate Commission for adoption of tariff in terms of Section 63 of the Act.

10. 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).

11. SECI has been designated as the nodal agency for implementation of scheme for setting up of ISTS connected/State specific solar/wind power projects with the mandate to invite bids under Tariff Based Competitive Bidding process, enter into Power Purchase Agreements (PPAs) at the tariff discovered in the competitive bid process and enter into Power Sale Agreements (PSAs) with the Distribution licensees/Buying utilities to enable them to fulfill their Renewable Purchase Obligations under Section 86(1)(e) of the Act. SECI acts as an intermediary agency in purchase and sale of power under the PPAs and PSAs on back-to-back basis.

12. The Guidelines provide for procurement of solar power at a tariff to be determined through transparent process of bidding by the Procurer(s), from grid connected solar power projects having size of 5 MW and above. As per the Guidelines, SECI in the capacity of intermediary agency, invited proposals for setting up of ISTS-connected Solar Power Projects on pan-India basis, on "Build, Own, and Operate" basis for an aggregate capacity of 2000 MW and procurement of solar power from the projects

being set up in relation thereto. As per the arrangements, SECI is to procure the power by entering into PPAs with the successful bidders with back-to-back PSAs for sale of power to the Buying Utilities/Distribution Licensees.

13. The key milestones in the bidding process were as under:

Sr. No.	Milestone	Date
1	Issuance of RfS by SECI	30.1.2018
2	Last date of submission of bid	15.6.2018
3	Opening of techno-commercial bids	15.6.2018
4	Opening of financial bids	28.6.2018
5	e-reverse Auction	2.7.2018
6	Issuance of Letter of Award to successful bidders	27.7.2018

14. On 30.1.2018, SECI issued Request for Selection document, along with draft PPA and PSA documents for setting up of 2000 MW ISTS-connected Solar Power Projects. According to SECI, it did not publish the notices in the newspapers as per the advisory issued by Ministry of Information and Broadcasting, Government of India dated 17.5.2017 mandating e-publishing of advertisements in the relevant portal. Accordingly, on 3.7.2018, SECI published notification indicating that the tenders of SECI would be published in its website and not in the newspapers.

15. Bid Evaluation Committee (BEC) comprising of the following was constituted for opening and evaluation of bids for RfS dated 30.1.2018:

Tender	Department	Offline and Online Techno-commercial and Financial Bid Opening	Techno-commercial and Financial evaluation and post-e-RA recommendation
2000 MW ISTS-connected Solar PV Projects	Solar	Sh. Uday Pavan K., Sr. Engineer	Sh. Uday Pavan K., Sr. Engineer & Sh. M. Karukkuvel, Manager
	Contracts	Sh. Pratik Prasun, Deputy Manager	Sh. Pratik Prasun, Dy. Manager

	Finance	Ms. Arti Gupta, Junior Accountant & Ms. Jasmine Nath, Senior Accounts Officer	Sh. Ajit Sharma, Senior Accounts officer
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16. Last date of submission of bid was 15.6.2018 and the technical part of the bid was opened on the same date. Response to RfS was received from the following bidders:

Sr.	Name of Bidders
1	Azure Power India Private Limited
2	Fortum Solar India Private Limited
3	Eden Renewable Cite Private Limited
4	ACME Solar Holdings Limited
5	Hero Solar Energy Private Limited
6	Mahindra Susten Private Limited
7	ReNew Solar Energy (Jharkhand Four) Private Limited
8	Mohaba Solar (UP) Private Limited
9	SBG Cleantech Energy Eight Private Limited
10	Shapoorji Pallonji Infrastructure Capital Company Private Limited

17. The following bidders were found eligible for e-Reverse auction:

Sr.	Bidders	Capacity (MW)	Cumulative Capacity (MW)	Tariff (INR/kWh)	Rank	Shortlisted Bidders (n=10 as per the formula)
1	ACME Solar Holdings Limited	600	600	2.44	L1	ACME Solar Holdings Limited
2	Azure Power India Pvt. Limited	600	1200	2.65	L2	Azure Power India Pvt. Limited
3	Hero Solar Energy Private Limited	250	1450	2.66	L3	Hero Solar Energy Private Limited
4	Shapoorji Pallonji infrastructure Capital Company.	250	1700	2.76	L4	Shapoorji Pallonji infrastructure Capital Company
5	Mahoba Solar (UP) Private Limited	500	2200	2.76	L5	Mahoba Solar (UP) Private Limited
6	Fortum Solar India Private Limited	250	2450	2.76	L6	Fortum Solar India Private Limited

Sr.	Bidders	Capacity (MW)	Cumulative Capacity (MW)	Tariff (INR/kWh)	Rank	Shortlisted Bidders (n=10 as per the formula)
7	ReNew Solar Energy Jharkhand Four Private Limited	250	2700	2.78	L7	Renew Solar Energy Jharkhand Four Private Limited
8	Mahindra Susten Private Limited	250	2950	2.81	L8	Mahindra Susten Private Limited

18. The e-Reverse Auction for 2000 MW capacity was carried out on 2.7.2018 in the presence of members of BEC. The following were declared as successful bidders:

Sr.	Bidders	Bid Capacity (MW)	Tariff (INR/kWh)	Allotted Capacity (MW)
1	ACME Solar Holdings Limited	600	2.44	600
2	Shapoorji Pallonji Infrastructure Capital Company Private Limited	250	2.52	250
3	Hero Solar Energy Private Limited	250	2.53	250
4	Mahindra Susten Private Limited	250	2.53	250
5	Azure Power India Private Limited	600	2.53	600
6	Mahoba Solar (UP) Private Limited	500	2.54	50
	Total			2000

19. On 27.7.2018, SECI issued Letters of Intent to the above selected bidders.

20. Based on request of Buying Utilities/Distribution Licensees, the capacities were allocated as under:

Sr.	State/UT	Utility	Capacity (MW)
1	Delhi	BSES Yamuna Power Limited	150
2		BSES Rajdhani Power Limited	400
3		Tata Power Delhi Distribution Limited	100
4	Chhattisgarh	Chhattisgarh State Power Distribution Company Limited	250
5	Jharkhand	Jharkhand Bijli Vitran Nigam Limited	700
6	Haryana	Haryana Power Purchase Centre	100
7	Odisha	GRIDCO Limited	300

		Total	2000
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21. Pursuant to Letters of Intent and allocation of capacity, SECI entered into PSAs dated 2.8.2018 with BSES Yamuna Power Limited, dated 6.8.2018 with BSES Rajdhani Power Limited, dated 6.9.2018 with Tata Power Delhi Distribution Limited, dated 3.8.2018 with Chhattisgarh State Power Distribution Company Limited, dated 7.8.2018 with Jharkhand Bijli Vitran Nigam Limited, dated 27.11.2018 with Haryana Power Purchase Centre and dated 21.8.2018 with GRIDCO Limited. SECI entered into PPAs with the successful SPDs/their SPVs, namely, dated 30.11.2018 with Mahoba Solar (UP) Private Limited, dated 31.10.2018 with Azure Power India Private Limited, dated 28.12.2018 with Mahindra Susten Private Limited, dated 15.11.2018 with Hero Solar Energy Private Limited, dated 22.11.2018 with Shapoorji Pallonji Infrastructure Capital Company Private Limited and dated 6.12.2018 with ACME Solar Holdings Limited.

22. In the light of above, it emerges that selection of the successful bidders and the tariff of the Projects has been carried out by SECI through a transparent process of competitive bidding in accordance with Guidelines issued by Ministry of Power, Government of India under Section 63 of the Act. SECI vide its letter dated 18.9.2019 has certified that the process is in conformity with the Guidelines of the Ministry of Power and no deviation was taken from the Guidelines in the RfS documents. Relevant portion of the said letter dated 18.9.2019 is extracted as under:

“With respect to the RfS No. SECI/C&P/SPD/RfS/2000MW/012018 dated 30.01.2018, it is hereby declared as follows:

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

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

23. Accordingly, in terms of Section 63 of the Act, the Commission adopts the following tariff for the Projects as agreed to by the successful bidders, which shall remain valid throughout the period covered in the PSAs and PPAs:

Sr.	Bidders	Allotted Capacity (MW)	Tariff (INR/kWh)
1	ACME Solar Holdings Limited	600	2.44
2	Shapoorji Pallonji Infrastructure Capital Company Private Limited	250	2.52
3	Hero Solar Energy Private Limited	250	2.53
4	Mahindra Susten Private Limited	250	2.53
5	Azure Power India Private Limited	600	2.53
6	Mahoba Solar (UP) Private Limited	50	2.54
	Total	2000	

24. Article 10.3 of the PPA provides as under:

"10.3 Payment of Monthly Bills

10.3.1 Buyer 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 in accordance with Article 10.3.2 (iii) 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 Buyer, if any, from the SPD, will be adjusted from the monthly energy payment. In case of any excess payment adjustment, 1.5% 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 Buyer to the SPD, and notify Buyer of the details of such account at least ninety (90) Days before the dispatch of the first Monthly Bill. Buyer shall also designate a bank account at New Delhi ("Buyer's Designated Account") for payments to be made by the SPD to Buyer, if any, and notify the SPD of the details of such account ninety (90) Days before the Scheduled Commissioning Date. Buyer and the SPD shall instruct their respective bankers to make all payments under

this Agreement to the SPD's Designated Account or Buyer's Designated Account, as the case may be, and shall notify either Party of such instructions on the same day."

25. Further, Article 10.4 of the PPA provides as under:

"10.4 Payment Security Mechanism

Letter of Credit (LC):

10.4.1 Subject to opening and maintenance of Letter of Credit by the Buying Entities (as per terms of Buyer-Buying Entity PSA) in favour of the Buyer, the Buyer 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 Subject to Article 10.4.1, not later than one (1) Month before the start of supply, Buyer 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 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, buyer shall restore such shortfall within fifteen (15) days.

10.4.5 Buyer 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 Buyer 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 Buyer/SPD.

10.4.8 If Buyer fails to pay undisputed Monthly Bill or Supplementary Bill or a part thereof within and including 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 without any reference or instructions from Buyer, 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 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;”

26. Regulation 9(10) 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 “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.”

27. The above provisions provide for 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 Regulation 9(10) of the Trading Licence Regulations shall be abided by all the concerned parties to the present Petition.

28. SECI has prayed to adopt the trading margin of Rs. 0.07/kWh. Regulation 8 (1) (d) of the Trading Licence Regulations provides as under:

“8(1)(d) For the transaction under long-term contracts, the trading margin shall be as mutually decided between the Trading licensee and the seller:”

The above provision gives choice to the contracting parties to mutually agree on Trading Margin for long-term transaction. Accordingly, the Commission cannot adopt any Trading Margin. The Petitioner shall be governed by the above provisions of the

Trading Licence Regulations. In view of the above, the prayer of SECI to adopt the Trading Margin is decided accordingly.

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

*“8(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.”

In addition, Regulation 8 (1) (f) of the Trading Licence Regulations provides as under:

“8.(f). 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.”

Thus, the Petitioner, SECI shall also be governed by the above provisions of the Trading Licence Regulations.

30. SECI has also prayed to grant exemption from complying with the provisions of the Clauses 3.1.1 (b) of the Guidelines. SECI has submitted that this provision was introduced for the first time w.e.f. 3.8.2017 and there was no such provision under the previous Guidelines notified by the Central Government. As per Clause 3.1.1(b) of the Guidelines, Procurer is required to inform the Appropriate Commission about the initiation of the bidding process. However, SECI did not inform the Commission regarding initiation of bidding. Since SECI has undertaken that it will forward the intimation to the Commission henceforth before the initiation of the bidding process, we exempt SECI from complying with the requirement specified in Clause 3.1.1 (b) of the

Guidelines in the present case. However, SECI is directed to comply with such requirement in future.

31. Petition No. 187/AT/2019 along with IA No. 86/2019 is disposed of in terms of the above.

Sd/-
(I.S.Jha)
Member

sd/-
(P.K. Pujari)
Chairperson