

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 204/AT/2019

Coram:

Shri P. K. Pujari, Chairperson

Dr. M.K. Iyer, Member

Shri I.S.Jha, Member

Date of Order: 20th November, 2019

In the matter of:

Petition under Section 63 of the Electricity Act, 2003 for adoption of tariff for the 1200 MW (Tranche-III) Solar PV Projects connected to the Inter-State Transmission System (ISTS) and selected through competitive bidding process as per the Standard Bidding Guidelines dated 3.8.2017.

And

In the matter of

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

.....Petitioner

Vs.

1. Ministry of New and Renewable Energy
Block 14, CGO Complex,
Lodhi Road, New Delhi-110 003.

2. ReNew Solar Power Private Limited
138, Ansal Chamber-II
Bikaji Cama Place, New Delhi-110 066

3. Azure Power India Private Limited
Asset No. 301-4, World Mark 3 Aerocity,
New Delhi-110 017.

4. Eden Renewable Cite Private Limited
236 B & C, 1st Floor, DLF South Court,
Saket, New Delhi-110 017.

5. SBSR Power Cleantech Eleven Private Limited
5th Floor, Worldmark-2,
Asset-8, Aerocity,
Delhi-110 037

6. GRIDCO Limited
Janpath, Bhubaneshwar-751022
Odisha

7. Bihar State Power (Holding) Co. Ltd.
Vidyut Bhawan, Bailey Road,
Patna-800 021.

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

9. BSES Yamuna Power Limited
Shakti Kiran Building,
Karkardooma, New Delhi-110 092

10. Tata Power Delhi Distribution Ltd.
NDPL House, Hudson Line, Kingsway Camp,
GTB Nagar, Delhi-110 009.

.....Respondents

The following were present:

Shri M.G. Ramachandran, Sr. Advocate, SECI
Shri Shubham Arya, Advocate, SECI
Ms. Tanya Sareen, Advocate, SECI
Shri Anil Yadav, SECI
Shri Apoorva Misra, Advocate, TPDDL
Ms. Molshree Bhatnagar, Advocate, TPDDL
Ms. Kanupriya Mehndiratta, Advocate, TPDDL
Shri Anurag Bansal, TPDDL

ORDER

The Petitioner, Solar Energy Corporation of India Limited (hereinafter referred to as "SECI"), has filed the present Petition under Section 63 of the Electricity Act, 2003 (hereinafter referred to as the 'Act') for adoption of tariff for 1200 MW (Tranche-III) Solar PV Projects (Project) connected to the inter-State Transmission System (ISTS) and selected through competitive bidding process as per the Standard Bidding Guidelines dated 3.8.2017. The Petitioner has made the following prayers:

“(a) Admit the present Petition;

(b) Adopt the tariff discovered in the tariff based competitive bid process for the individual power projects as stated in Table 1 at para 6 {iv} above plus the trading margin of Rs. 0.07/kWh to be recovered by the Petitioner from the Buying Utilities/Distribution Licensees upto the commissioning of the cumulative awarded capacity/accepted cumulative capacity by SECI

(c) Approve/Adopt the tariff at the pooled rate of Rs. 2.585/kWh plus the trading margin of Rs. 0.07/kWh to be recovered by the Petitioner from the Buying Utilities/Distribution Licensees upon commissioning of the cumulative awarded capacity/accepted cumulative capacity by SECI as stated in Para 12 hereinabove.”

Submission of the Petitioner

2. The Petitioner has submitted that SECI issued Request for Selection (RfS) along with draft PPA and PSA for setting up of 1200 MW ISTS connected Solar Power Projects (Tranche III) as per “Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Power Projects”(hereinafter referred to the “Guidelines”) and floated the same on 10.1.2019 on the portal of Telecommunication Consultant India Limited (TCIL). The Petitioner has submitted that e-Reverse auction of four technically qualified bidders was conducted on 25.2.2019 on TCIL’s portal and the final tariff was arrived after completion of the same. The Petitioner has submitted that the Solar Power Projects are scheduled to be commissioned in the year 2020-21 and projects would help the Buying Utilities/ Discoms in meeting their RPO requirements apart from providing power at very economical rates. The Petitioner has submitted that SECI has agreed to sell entire 1200 power (i.e. cumulative awarded capacity/ accepted cumulative capacity by SECI) of solar power to the Buying Utilities/ Discoms i.e. at the pooled rate of Rs. 2.585/kWh plus trading margin of Rs. 0.07/ kWh upon the commissioning of the above capacity. In case of early commissioning or part commissioning of individual projects, the Buying Utilities/ Discoms shall pay the tariff at a

higher rate, as applicable, not exceeding Rs. 2.61/kWh plus the trading margin of Rs. 0.07/kWh. However, pooled tariff as indicated is liable to change depending upon the actual commissioning achieved by the respective projects. The Petitioner has submitted that the tariff of Rs. 2.585/kWh or Rs. 2.61 (maximum per kWh) plus trading margin of Rs. 0.07/kWh discovered through competitive bid process is lesser than the procurement cost of conventional power and would be beneficial for the Buying Utilities/ Discoms and the consumers at large. The Petitioner has submitted that there will be no preferential tariff sought within Section 86(1)(e) of the Act.

3. The matter was heard on 20.8.2019 and notices were issued to the Respondents to file their replies. However, no reply has been filed by the Respondents.

Analysis and Decision

4. 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.”

5. In contrast to tariff determination under Section 62 of the Act, role of the Commission in case of tariff discovery through the competitive bidding process undertaken under Section 63 of the Act is essentially confined to adoption of tariff, on being satisfied that transparent process of bidding in accordance with the guidelines have been followed in determination of such tariff. While adopting the tariff discovered through the competitive bidding process, the Commission is not required to go into the merits or analysis of the tariff so discovered.

6. Government of India, Ministry of New and Renewable Energy (hereinafter referred to as “MNRE”) 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) The 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 Authorised Representative(s), or Intermediary Procurers.

(b) Procurer shall prepare the bid documents in accordance with the Guidelines and obtain approval of the Appropriate Commission or alternatively, the Procurer can use the standard bid documents notified by the Ministry of Power. Approval of the Appropriate Commission would be necessary, if any deviation is proposed to be made in the Guidelines and standard bid documents. Intimation about the initiation of the bid process shall be sent by the Procurers to the Appropriate Commission.

(c) Bids shall be designed in terms of a package. The minimum size of a package shall 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 (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 be not less than 25 years from the date of Scheduled Commissioning Date.

(f) Procurement of power could either be in power (MW) or in energy (kWh) or million units terms.

(g) Procurer and Intermediary Procurer shall provide payment security to the solar power generator 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. In addition, the Procurer and Intermediary Procurer may also choose to provide State Government Guarantee.

(h) End Procurer shall provide payment security to the Intermediary Procurer through revolving LC 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 three months bills of all the projects tied up with such fund.

(i) 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. E-procurement platforms with a successful track record and with adequate safety, security and confidentiality features will be used. In case of a Solar Park specific project, Procurer shall provide intimation to the Solar Power Developer (SPD) 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.

(j) RfS notice shall be issued in at least two national newspapers and on 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.

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

(l) 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.

(m) 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 evacuation 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.

7. Therefore, 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.

8. The Petitioner, 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 call for bids under a Tariff Based Competitive Bidding process, enter into Power Purchase Agreements (PPAs) at the tariff discovered in the competitive bid process, enter into Power Sale Agreements (PSAs) with the Distribution Licensees/ Buying Utilities to enable them to fulfil the Renewable Purchase Obligations under Section 86(1)(e) of the Act and with SECI acting as an intermediary agency in purchase and sale of power under the PPAs and PSAs on a back-to-back basis.

9. Government of India, Ministry of Power, vide its Resolution dated 3.8.2017 issued "Guidelines" under Section 63 of the Act 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 (a) individual size of 5 MW and above at one site with minimum bid capacity of 25 MW for intra-State projects, and (b) individual size of 50 MW and above at one site with minimum bid capacity of 50 MW for inter-State projects.

10. As per the Guidelines, SECI, in the capacity of intermediary agency, invited proposals for setting up of ISTS-connected Solar Power Projects on a pan-India basis, on "Build Own Operate" basis for an aggregate capacity of 1200 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/ Discoms.

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

S.No.	Events	Date
1.	RfS issued by SECI	10.1.2019
2.	Opening of techno-commercial bids	18.2.2019
3.	Opening of financial bids	21.2.2019
4.	e-Reverse Auction	25.2.2019
5.	Issuance of Letter of Award to the successful bidders	5.3.2019

12. On 10.1.2019, SECI issued Request for Selection (RfS) document, along with draft PPA and PSA documents for setting up of 1200 MW ISTS connected solar power projects (Tranche III). According to the Petitioner, SECI did not publish the notices in the newspapers as per the advisory of 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, the Petitioner published notification regarding tenders of SECI in newspapers.

13. The Bid Evaluation Committee (BEC) comprising of the following was constituted for opening and evaluation of bids for RfS dated 10.1.2019:

Tender	Department	Offline and on-line techno-commercial and financial bids opening	Techno-commercial and financial evaluation and post-e-RA recommendation
1200 MW ISTS connected solar PV Projects (ISTS-III)	Solar	Shri Uday Pavan K., Sr. Engineer	Shri Abhishek Ambasta, Deputy Manager
	Contracts	Shri Pratik Prasun, Deputy Manager, Shri Biblesh Meena, Sr. Engineer Shri Sunil, Sr. Engineer	Shri Pratik Prasun, Deputy Manager
	Finance	Shri Ajit Sharma, Sr. Accounts Officer Ms. Jasmine Nath, Sr. Account Officer	Ms. Jasmine Nath, Sr. Account Officer

14. Last date of bid submission was 15.2.2019 and the technical part of the bid was opened on the same date. Response to RfS was received from the following bidders as per details given below:

Bidders
Azure Power India Pvt. Ltd
Fortum Solar India Private Limited
Eden Renewable Cite Private Ltd.
ACME Solar Holdings Limited
Hero Solar Energy Private Limited
Mahindra Susten Private Limited
ReNew Solar Energy (Jharkhand Four) Private Limited
Mohaba Solar (UP) Private Limited
SBG Cleantech Energy Eight Private Limited
Shapoorji Pallonji Infrastructure Capital Company Pvt. Ltd.

15. Out of ten bidders, the following four bidders qualified the techno-commercial criteria:

S.N.	Bidders	Capacity	Cumulative capacity (MW)	Tariff (INR/kWh)	Rank	Shortlisted bidders (n=4 as per the formula)
1	ReNew Solar Power Private Limited	300	300	2.55	L1	ReNew Solar Power Private Limited
2	Azure Power India Pvt. Ltd.	300	600	2.58	L2	Azure Power India Pvt. Ltd.
3	Eden Renewable Cite (P) Ltd.	300	900	2.61	L3	Eden Renewable Cite (P) Ltd.
4	SBSR Power Cleantech Eleven (P) Ltd.	600	1500	2.61	L-4	SBSR Power Cleantech Eleven (P) Ltd.

16. The e-Reverse Auction for 1200 MW capacity was carried out on 25.2.2019 in the presence of members of BEC. The following bidders were declared as successful bidders:

Bidders	Tariff (INR/kWh)	Awarded capacity (MW)
ReNew Solar Power Private Limited	2.55	300
Azure Power India Pvt. Ltd	2.58	300
Eden Renewable Cite (P) Ltd.	2.60	300
SBSR Power Cleantech Eleven (P) Ltd.	2.61	300
Total		1200

17. Based on e-Reverse bidding, SECI vide its letter dated 18.9.2019 has certified as under:

“With respect to the RfS No. SECI/C&P/SPD/ISTS-III/RfS/1200MW/012019 dated 10.1.2019, 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.”

18. On 5.3.2019, SECI issued Letter of Awards (LOAs) to the selected bidders as under:

Selected bidders	Allotted Project ID	Project Capacity (MW)	Project Location	Substation details for connectivity	Applicable Tariff (INR/kWh) in figures	Applicable Tariff (INR/kWh) in words
ReNew Solar Power Private Limited	SPD-ISTS-T3-RSEJFPL-P1-300RJ	300	Village: Manhopura, Tehsil: Fatehgarh, Dist: Jaisalmer, State: Rajasthan	Fatehgarh Powergrid 400 kV substation	Rs. 2.55	Rupees Two and Fifty five paise only
Azure Power India Pvt. Ltd	SPD-ISTS-T3-APIPL-P1-300	300	To be declared	CTU sub-station 220 kV	Rs. 2.58	Rupees two and Fifty eight paise only
Eden Renewable Cite (P) Ltd.	SPD-ISTS-T3-ERCPL-P1-300RJ	300	Village: Sanwara/Sunawara, Tehsil: Pokhran, Dist: Jaisalmer, Rajasthan	Fatehgarh PGCIL sub-station	Rs. 2.60	Rupees two and sixty paise only
SBSR Power Cleantech Eleven (P) Ltd.	SPD-ISTS-T3-SPCEPL-P1-300RJ	300	Village: Lalsar & Hapasar, Tehsil: Bikner, Dist: Bikner, State: Rajasthan	765/400 kV PGCIL sub-station at Bikaner	Rs. 2.61	Rupees two and sixty one paise only

19. Relevant portion of the one of the Letter of Awards issued to the Project developer, namely, ReNew Solar Power Private Limited is extracted as under:

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

Allotted Project ID	Project Capacity (MW)	Project Location	Substation details for connectivity	Applicable Tariff (INR/kWh) in figures	Applicable Tariff (INR/kWh) in words
SPD- ISTS-T3-RSEJFPL-P1-300RJ	300	Village: Manhopura, Tehsil: Fatehgarh, Dist: Jaisalmer, State: Rajasthan	Fatehgarh Powergrid 400 kV substation	₹2.55	Rupees Two and Fifty five paisa only

SECI shall purchase the power generated from the proposed ISTS-Connected Solar Power Project under the above scheme subject to the following terms and conditions as stated in various documents referred above and briefly brought out hereinafter.

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

1.1 The applicable tariff payable shall be fixed for 25 years from Scheduled Commissioning Date, as discovered through the e-bidding and e-Reverse Auction. The SPD will be free to avail fiscal incentives like Accelerated Depreciation, Concessional Customs, Excise Duties, Tax Holidays, etc. as available for such projects. No claim shall arise on SECI for any liability if the SPD is not able to avail fiscal incentives and this will not have any bearing on the applicable tariff.

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

1.3 No change in the controlling shareholding at the Bidding Company shall be permitted from the date of submission of response to RfS till the execution of the PPA. However, in case the Project is being set up by a listed Company, this condition will not be applicable. Controlling Shareholding (holding more than 50% of the voting rights and paid up share capital in the Company) of the Project Company of the SPD shall not change until one year after the COD of the Project, except with prior approval of SECI. However, in case the Project is being set up by a listed Company, this condition will not be applicable.

1.4 The successful Bidder, if being a single company, shall ensure that its shareholding in the SPV/project company executing the Power Purchase Agreement (PPA), shall not fall below 51% at any time prior to one year from the COD, except with the prior approval of SECI. In the event the successful bidder is a consortium, then the combined shareholding of the consortium members in the SPV/project company executing the PPA, shall not fall below 51% at any time prior to one year from COD except with the prior approval of SECI. However, in case the Project is being set up by listed Company, this condition will not be applicable.

1.5 The SPD shall pay to SECI, Success Charges of Rs. 1 lakh/MW/project + 18% GST within 30 days of issuance of this Letter of Award (LoA), in line with Clause 12, Section-III of the RfS. Performance Bank Guarantee(s) for a value of @Rs. 20 lakh/MW shall be

submitted by the SPD within 30 days of issuance of Letter of Award or being signing of PPA, whichever is earlier, in line with Clause 11, Section-III of the RfS.

1.6 PPA will be executed between SECI and the SPD as per the breakup of the cumulative Project capacity awarded to the Bidder. This LoA is being issued in line with the Project breakup of the cumulative capacity quoted in the Covering Letter as part of your response to RfS and amended subsequently, as applicable. However, it may be noted that the Successful Bidder shall be allowed to change the State of the proposed project locations, prior to achievement of Financial Closure for the Project. Any change in State of the Project(s) awarded shall not be permitted subsequent to the above deadline.

1.7 The final project configuration, adding up to the cumulative capacity awarded to the bidder may be intimated to SECI at the time of signing of PPA, which shall then remain unchanged subsequent to signing of PPA. Delays in connectivity and/or LTA for the Project(s) on account of such changes in Project locations, which differ from the details provided in the Covering Letter, shall be at the risk and cost of the Successful Bidder. The PPAs shall be valid for a period of 25 years from the scheduled commissioning date of the projects.

1.8 The SPD will have to submit the required documents as mentioned below to SECI within 70 days from the date of this LoA or before signing of PPA, whichever is earlier. In case of delay in submission of documents beyond the timeline as mentioned above, SECI shall not be liable for delay in verification of documents and subsequent delay in signing of PPA:

- 1) Copy of the Certificate of Incorporation of the Solar Power Developer.*
- 2) The details of promoters and their shareholding in the SPD, duly certified by the practicing Chartered Accountant/ Company Secretary in original at least seven days prior to date of their document submission (certificate date should be after the date of LoA) along with latest documents filed with ROC).*
- 3) Copy of the Memorandum of Association (MoA) of the SPD highlighting the object clause related to generation of Power/Energy/Renewable Energy/Solar Power plant development.*

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

1.9 SECI shall have the right to verify original documents of the SPD for which copies have been submitted from the date of submission of response to RfS till date, if required. PPA as per the format given along with RfS has to be signed within 90 days from the date of issue of LoA, if not extended by SECI. In case of unavoidable delays on the part of the SPD in submission of requisite documents prior to signing of PPAs or otherwise, the Effective Date of the PPA shall remain the date as on 90th day from the issuance of LoA, irrespective of the date of signing of PPA. In extraordinary cases of unavoidable delays on the part of SECI in signing the PPAs, the Effective Date of the PPA shall then be the date of signing of PPA.

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

1.11 The SPD shall meet financial closure and demonstrate land arrangements for the Project in line with Clause 15, Section-III of the RfS document, within 12 months from the Effective Date of the PPA. Accordingly, the SPD shall furnish the documents pertaining to compliance of financial closure and land arrangements as per the above provisions.

1.12 The SPD/Project Company shall achieve commissioning of full capacity of the project within 18 months from the Effective Date of the PPA as per the conditions stipulated in Clause 16, Section-III of the RfS and relevant articles of PPA. In case of failure to achieve this milestone, liquidated damages not amounting to penalty shall be levied on the SPD as per the above provisions.

1.13 You are requested to make it convenient for signing of Power Purchase Agreement (PPA) as per Clause 14, Section-III of RfS, falling which, provisions as per Clause 11 and Clause 14, Section-III of the RfS shall be applicable.”.

20. Based on Buying Utilities’ (Discoms) requests, the capacities were allocated as under:

Sl. No.	State/UTs	Utility	Allocation (MW) under scheme
1.	Odisha	GRIDCO Limited	200 MW
2.	Bihar	Bihar State Power (Holding) Co. Ltd.	300 MW
3.	Delhi	BSES Rajdhani Power Limited	350 MW
		BSES Yamuna Power Limited	150 MW
		Tata Power Delhi Distribution Ltd.	200 MW
		Total (MW)	1200 MW

21. Pursuant to Letter of Awards and allocation of capacity, SECI entered into PSAs dated 13.6.2019 with Bihar State Power (Holding) Co. Ltd., dated 17.6.2019 with BSES Rajdhani Power Limited and BSES Yamuna Power Limited and dated 26.6.2019 with Tata Power Delhi Dist. Ltd. GRIDCO Limited vide its letter dated 13.3.2019 has agreed to procure 200 MW solar capacity under 1200 MW ISTS-connected Solar Power Project Scheme Batch VI. Subsequently, SECI executed PPAs dated 25.6.2019, 13.8.2019,

20.8.2019, with Solar Power Developers, namely, Eden Renewable Cite Private Limited, ReNew Sun Waves Private Limited, SBSR Power Cleantech Eleven Private Limited respectively.

22. Articles 10.3 of the PPA provides as under:

“10.3 Payment of Monthly Bills

10.3.1 SECI shall pay the amount payable under the Monthly Bill/Supplementary Bill by the Due Date to such account of the SPD, as shall have been previously notified by the SPD 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 SECI, if any, from the SPD, will be adjusted from the monthly energy payment in case of any excess payment adjustment, 1.25% surcharge will be applicable on day to day basis.

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

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

10.4.2 Subject to Article 10.4.1, not later than one (1) Month before the start of supply, SECI through a scheduled bank open a Letter of Credit in favour of the SPD, to be made operative from a date prior to the Due Date of its first Monthly Bill under this Agreement. The Letter of Credit shall have a term of twelve (12) months and shall be renewed annually, for an amount equal to:

- (i) for the first Contract Year, equal to the estimated average monthly billing;*
- (ii) for each subsequent Contract Year, equal to the average of the monthly billing of the previous Contract Year.*

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

10.4.4 Provided further that if at any time, such Letter of Credit amount falls short of the amount specified in Article 10.4.2 due to any reason whatsoever, SECI shall restore such shortfall within fifteen (15) days.

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

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

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

10.4.8 If SECI 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 SCEI, 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.”

24. The above provisions provide for payment security mechanism to be complied with by the parties to the present Petition. During the course of hearing, learned senior counsel for the Petitioner submitted that the Petitioner would abide by the provisions of payment security mechanism as provided under Article 10.3 and 10.4 of the PPAs. Therefore, the provisions of Article 10.3 and 10.4 of the PPAs shall be abided by all the concerned parties to the present Petition.

25. Regulation 7(h) of the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of trading licence and other related matters) Regulations, 2009 (hereinafter referred to as “Trading Licence Regulations”) provides as under:

“(h) The licensee shall carry out trading in accordance with the agreed terms and conditions, and may take such safeguards as he may consider necessary with regard to payment security mechanism from the buyers, but shall always ensure timely payment of dues to the seller for purchase of the agreed quantum of electricity either through a letter of credit or any other appropriate instrument or as may be mutually agreed between the seller and the licensee.”

26. As per the above provision, the trading licensee is required to always ensure payment to the seller for the purchase of agreed quantum of electricity either through letter of credit or any other appropriate instrument or as may be mutually agreed between the seller and the licensee. Therefore, the Petitioner shall ensure compliance of the provisions contained under Regulation 7(h) of the Trading Licence Regulations during the tenure of the PPAs and PSAs.

27. In the light of the discussions as above, it emerges that selection of the successful bidders and the tariff of the Project 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. The Petitioner vide its letter dated 18.9.2019 has certified that the process is in conformity with the Ministry of Power Guidelines and no deviation was taken from the Guidelines in the RfS documents. 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:

Successful Bidders	Bidders' Quantity MW	Tariff (INR/kWh)
ReNew Solar Power Private Limited	300	2.55
Azure Power India Pvt. Ltd	300	2.58

Eden Renewable Cite (P) Ltd.	300	2.60
SBSR Power Cleantech Eleven (P) Ltd.	600	2.61

28. The Petitioner has prayed to adopt the tariff at the pooled rate of Rs. 2.585/kWh. Since the tariff at the pooled rate of Rs. 2.585/kWh is not the tariff discovered through competitive bid process, we are not inclined to adopt the tariff at the pooled rate. We are adopting the tariff discovered through the tariff based competitive bid process for the individual power project as mentioned in the para 27.

29. The Petitioner has prayed to adopt the trading margin of Rs. 0.07/kWh. It is observed that Section 79(1)(j) of the Act requires the Commission “to fix the trading margin in the inter-State trading of electricity, if considered necessary”. Accordingly, the Commission, being of the opinion that it was necessary to fix trading margin for inter-State trading in electricity, exercised the powers conferred under Section 178 of the Act and conceived Central Electricity Regulatory Commission (Fixation of Trading Margin) Regulations, 2010 (hereinafter referred to as “Trading Margin Regulations”), applicable to the short-term-buy-short-term sell contracts for the inter-State trading in electricity undertaken by a licensee. The Regulations provide for the ceiling of the trading margin in short-term-buy-short-term-sell contracts for the inter-State trading. Trading Margin Regulations do not provide for any trading margin for long term transactions and, therefore, it is upto the contracting parties to mutually agree on trading margin, if any, in such cases. In any case, the Commission does not fix trading margin on case to case basis. The spirit of the Act read with the Trading Margin Regulations gives freedom and choice to the contracting parties to mutually agree on Trading Margin for any kind of trading transaction, subject to the ceiling Trading Margin, whenever applicable. Accordingly, the Commission cannot fix or adopt any Trading Margin for long-term

transactions under the provisions of the present Trading Margin Regulations. In view of the above, the prayer of the Petitioner to adopt the Trading Margin is decided accordingly.

30. The Petition No. 204/AT/2019 is disposed of in terms of the above.

Sd/-
(I. S. Jha)
Member

sd/-
(Dr. M.K.Iyer)
Member

sd/-
(P.K. Pujari)
Chairperson