

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 57/AT/2020

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

Date of Order: 24th of February, 2020

In the matter of

Petition under Section 63 of the Electricity Act, 2003 for adoption of tariff for inter-State Transmission System connected 600 MW Solar PV Power Projects under open category and selected through competitive bidding process as per the Standard Bidding Guidelines issued by Ministry of Power dated 3.8.2017.

**And
In the matter of**

NTPC Limited
Scope Complex,
Core-7, Institutional Area, Lodhi Road,
New Delhi – 110 003.

.....**Petitioner**

Vs.

1. Ministry of New and Renewable Energy
Block – 14, CGO Complex,
Lodhi Road, New Delhi-110 003.
2. SB Energy Six Private Limited
5th Floor, World Mark- 2,
Asset Area – 8, Hospitality District,
Aerocity, New Delhi-110 037.
3. North Bihar Power Distribution Company Limited
3rd Floor and 2nd Floor, Vidyut Bhawan, Bailey Road,
Patna- 800 001.
4. South Bihar Power Distribution Company Limited
3rd Floor and 2nd Floor, Vidyut Bhawan, Bailey Road,
Patna- 800 001.
5. Punjab State Power Corporation Limited
The Mall, PSEB Head Office, Baraddri Patiala,
Punjab-147 001.

.....**Respondents**

The following were present:

Shri M. G. Ramachandran, Sr. Advocate, NTPC
Shri Shubham Arya, Advocate, NTPC
Ms. Poorva Saigal, Advocate, NTPC
Shri I. Uppal, NTPC
Ms. Mazag Andrabi, Advocate, SB Energy
Shri Navin Prakash, Advocate, North Bihar Power Dist. Co. Ltd.
Shri Abhishek Vikas, Advocate, South Bihar Power Dist. Co. Ltd.

ORDER

The Petitioner, NTPC Limited (hereinafter referred to as “NTPC”), has filed the present Petition under Section 63 of the Electricity Act, 2003 (hereinafter referred to as the 'Act') for adoption of tariff for 600 MW Solar Power Projects connected to inter-State Transmission System (ISTS) under open category and selected through competitive bidding process as per the “*Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Power Projects*” (hereinafter referred to as ‘the Guidelines’) dated 3.8.2017 issued by the Ministry of Power, Government of India. The Petitioner has made the following prayers:

“(a) Admit the present Petition;

(b) Adopt the tariff discovered in the competitive bid process for the 600 MW Solar PV project to be established by SB Energy Six Private Limited as stated at Sl. No. 4 in the Table at Paragraph 18 above on the terms and conditions contained in the PPA;

(c) Grant NTPC 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 Paragraphs 23-25 hereinabove.”

Submissions of the Petitioner

2. The Petitioner has submitted that it issued Request for Selection (RfS) along with draft Power Purchase Agreement (PPA) and Power Sale Agreement (PSA) documents for setting up of 2000 MW ISTS connected Solar PV Power Projects as per the Guidelines and floated the same on 9.3.2018 on the portal of Telecommunication Consultant India

Limited (TCIL). The Petitioner has submitted that e-Reverse auction of the fifteen technically qualified bidders was conducted on 21.8.2018 on TCIL's portal and the final tariff was arrived. The Petitioner has submitted that pursuant to bidding, 2000 MW capacity was allotted to the successful bidders. However, certain successful bidders have terminated the PPAs on account of failure of Buying Utilities/ Distribution Licensees to obtain requisite approvals from the respective State Electricity Regulatory Commissions within the stipulated time, a Condition Precedent, in terms of PPA and PSA. Accordingly, the Petitioner is seeking adoption of tariff in respect of only 600 MW Solar Power Projects. The Petitioner has submitted that these Solar Power Projects are scheduled to be commissioned in April 2021 and the Projects would help the Buying Utilities/ Distribution Licensees in meeting their Renewable Purchase Obligations (RPOs) requirements apart from providing power at very economical rates. The Petitioner has submitted that it has agreed to sell entire 600 MW of solar power to the Buying Utilities/ Distribution Licensees at the rate of Rs. 2.60/kWh plus trading margin of Rs.0.07/kWh upon commissioning of these solar PV projects. According to the Petitioner, since the tariff of Rs.2.67/kWh (after including the trading margin of Rs. 0.07/kWh) is less than the procurement cost of conventional power, it would be beneficial for the Buying Utilities/ Distribution Licensees and the consumer 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 12.2.2020 after notice to the Respondents. During the course of hearing, learned counsel for the Respondent, SB Energy Six Private Limited submitted that as per the provisions of PPA, the tariff is required to be adopted within two months from the signing of the Agreement and in case of failure, the developer is at liberty to terminate the PPA. Learned counsel submitted that the PPA has been entered into by

the Respondent in April, 2019 and accordingly, prayed for adoption of tariff in respect of its 600 MW Project as expeditiously as possible.

Analysis and Decision

4. 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.

5. 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.”

6. 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.

7. The Ministry of Power, Government of India has notified the Guidelines under Section 63 of the Act vide Resolution No. 23/27/2017-R&R on 3.8.2017. The 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 (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. Standard provisions to be incorporated as part of the PPA shall include, *inter-alia*, PPA period, quantum of power/ energy to be procured, payment security, generation compensation of off-take constraint, event of default and consequences thereof and Change in Law and shall be provided for, on back to back basis, in the PSA.

(f) Procurer and Intermediary Procurer shall provide payment security to the solar power developer through 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.

8. 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.

9. The Petitioner, NTPC 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 fulfil their Renewable Purchase Obligations under Section 86(1)(e) of the Act. NTPC acts as an intermediary agency in purchase and sale of power under the PPAs and PSAs on back-to-back basis.

10. 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, NTPC in the capacity of intermediary agency, invited proposals for setting up of ISTS-connected Solar PV Power Projects on pan-India basis, on “Build, Own, and Operate” basis for an aggregate capacity of 2000 MW and for procurement of solar power from the projects being set up in relation thereto. As per the arrangements, NTPC 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.

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

Sr. No.	Milestone	Date
1	Issuance of RfS by NTPC	9.3.2018
2	Last date of submission of bid	6.7.2018
3	Opening of RfS (Non-financial) bids	6.7.2018
4	Opening of RfS (financial) bids	14.8.2018
5	e-Reverse Auction	14.8.2018
6	Issuance of Letter of Award to successful bidders	17.10.2018

12. On 9.3.2018, the Petitioner, NTPC issued Request for Selection document, along with draft PPA and PSA documents for setting up of 2000 MW ISTS-connected Solar PV Power Projects. Notices in this regard were published by the Petitioner on 9.3.2018 in various newspapers, namely, Deccan Chronicle (Anantpur, Hyderabad and Banglore Editions), The Tribune (Chandigarh Edition), The Time of India, The Economic Times (Delhi Edition), Hindustan Times (Mumbai Edition), The Statesman (Kolkata Edition) and Virat Vaibhav (Delhi Edition). The same was also published by the Petitioner in its website.

13. The Bid Evaluation Committee (BEC) comprising of the following was constituted for opening and evaluation of bids for RfS dated 9.3.2018:

Sr.	Particulars
1)	Sh. M. K. Malviya, DGM (Corporate Commercial)
2)	Sh. S. K. Das, AGM (RE-CS)
3)	Sh. G. Novahu, AGM (Fin.)

14. Last date of submission of bid was 6.7.2018 and the RfS (Non-financial) bids were opened on the same date. Response to RfS was received from the following bidders:

Sr.	Name of Bidders
1	Sprng Ujjvala Energy Private Limited
2	Nisagra Renewable Energy Private Limited
3	Shapoorji Pallonji Infrastructure Capital Company Private Limited
4	SB Energy Six Private Limited
5	Alfanar Company
6	ReNew Solar Power Private Limited
7	Mahindra Susten Private Limited
8	Tata Power Renewable Energy Private Limited
9	ACME Solar Holdings Limited
10	Mahoba Solar (UP) Private Limited
11	Hero Solar Energy Private Limited
12	Azure Power India Private Limited
13	Aditya Birla Renewables Limited
14	Giriraj Renewables Private Limited
15	Rutherford Solarfarms Private Limited

Sr.	Name of Bidders
16	Eden Renewable Cite Private Limited

15. The RfS (Non-financial) bids of all the sixteen bidders were declared as responsive for opening of RfS (financial) bids. The RfS (financial) bids were opened by Bid Evaluation Committee (BEC) online on 14.8.2018 and all bidders except one bidder, namely, Sprng Ujjvala Energy Private Limited were qualified to participate in e-Reverse auction.

16. The e-Reverse auction for 2000 MW capacity was conducted on 14.8.2018 in the presence of members of BEC. The following were declared as successful bidders:

Sr.	Bidders	Tariff (INR/kWh)	Allotted Capacity (MW)
1	ACME Solar Holdings Limited	2.59	600
2	Shapoorji Pallonji Infrastructure Capital Company Private Limited	2.59	500
3	Azure Power India Private Limited	2.59	300
4	SB Energy Six Private Limited	2.60	600
Total			2000

17. On 17.10.2018, NTPC issued Letter of Intent to the above selected bidders. The relevant portion of the one of the Letter of Intent issued to the Project Developer, namely, SB Energy Six Private Limited is extracted as under:

“2.0 In response to RfS mentioned at para 1.0(C) above, you have applied for 2000 MW capacity. As per terms of RfS and based on tariff quoted by you during e-Reverse Auction mentioned at para 1.0 (H) above, you have been allotted 600 MW capacity.

3.0 NTPC is pleased to confirm its intent of accepting your Response RfS mentioned at para 1.0 (C), (F) and (H) above for development of Grid Connected Solar Photo Voltaic Project of cumulative capacity of 600 MW and Supply of Solar Power from these projects to NTPC subject to the terms and conditions contained in RfS mentioned at para 1.0 above and briefly brought out hereunder.

4.0 In line with the terms and conditions of RfS, before signing of PPA, you have the option to form Special Purpose Vehicle (hereinafter called “Project Company”) under Indian Companies Act. The company (Bidding Company or Project Company) executing the project (hereinafter called “Solar Power Developer”) shall enter into Power Purchase Agreement (PPA) as per the format given along with RfS within 90 days of issue of this Letter of Intent

(LOI). All the documents referred to at para 1.0 above shall form integral part of the Power Purchase Agreement to be entered into between Project Company/Solar Power Developer and NTPC so far these are not repugnant to the terms and conditions contained in the RfS referred to in para 1.0 above.

As specified in the RfS, irrespective of the date of signing of the PPA, the Effective Date of PPA shall be 90 days from issuance of LOI or the actual date of signing of PPA if signed beyond 90 days of issuance of this LOI for delays solely attributable to NTPC.

5.0 As per clause 3.26 of RfS document, you shall ensure that your shareholding in the SPV/project company executing the PPA shall not fall below 51% (fifty one per cent) at any time prior to 1 (one) year from the Commercial Operation Date (COD), except with the prior approval of NTPC. In case you yourself are executing the PPA, then you shall ensure that your promoters shall not cede control till 1 (one) year from the COD except with the prior approval of NTPC. Any change in the shareholding after the expiry of 1 (one) year from the COD can be undertaken under intimation to NTPC.

6.0 The Tariff for electricity generated from the Solar Power Project to be developed by the Solar Power Developer for the entire period of twenty five (25) years of Power Purchase Agreement (PPA) to be entered into between the Solar Power Developer and NTPC for this project shall be Rs.2.60/kWh (Rupees Two and Sixty paise only per Kilowatt hour).

7.0 The tariff quoted by you is inclusive of implication of Safeguard Duty imposed on import of "Solar Cell whether or not assembled in modules or panels" by the Ministry of Finance, Govt. of India vide Notification No. 01/2018-Customs (SG) dated 30.07.2018 { please refer to your offline submission of implication on Original Tariff on 13.08.2018 in response to NTPC letter dated 08.08.2018 brought at para 1.0(e)&(f) above). In case Safeguard Duty is not paid by the Solar Power Developer on procurement of "Solar Cess whether or not assembled in modules or panels" for the solar projects to be developed under the subject RfS for whatsoever reason, the Implication of Rs.0.25/kWh of Safeguard Duty quoted by you, shall be deducted from the Final Tariff of Rs.2.60/kWh quoted by you in Reverse Auction. In such case, the final tariff payable to Solar Power Developer shall be Rs.2.35/kWh for 25 years of PPA duration.

8.0 You along with your Project Company (if formed by your Company) are required to submit the following documents along with originals for verification within 15 days of issuance of LOI:

- i) Original Response to RfS referred to in para 1.0 (C) above.
- ii) If Project Company is formed by your Company for this project, Board Resolution from your Company and your Parent and/or Affiliates duly certified by the Company Secretary or the Director, as applicable, regarding fulfilment of equity investment obligations of Project Company in the same manner as provided by you and your Affiliates in your favour at the time of submission of RfS.
- iii) Copy of the Certificate of Incorporation along with Memorandum & Article of Association (MOA) of Solar Power Developer highlighting the relevant provision of Power/Energy/Renewable Energy/ Solar Power Plant development as per clause 3.15 (A 11) of RfS duly certified to be True copy by Company Secretary.
- iv) Details of Promoters and current shareholding pattern of the Bidding Company and Project Company (if formed) developing the project, duly certified by the Company Secretary in original along with a copy of Return filed with Registrar of Companies

(ROC) for registering the shareholding and its terms and conditions which became due for filing during this period.

v) If Project Company is formed by your company to execute the project, a fresh Integrity Pact between Project Company and NTPC has to be signed. Certificate for Compliance to all Provisions of RfS Documents is also to be submitted by Project Company.

9.0 Vide letter dated 20.08.2018 (copy enclosed at Annexure-VIII), you have indicated that you shall develop two (02) projects of 300 MW each as under”

Sl. No.	Capacity of Projects (MW)	Location of Project
1	300	Ugrass, Nagnechi nagar and Dadhu – villages, Phalodi- Tehsil, Jodhpur – Dist., Rajasthan.
2	300	Purohitsar and Lawan – Villages, Pokaran- Tehsil, Jaisalmer- Dist. Rajasthan.
Total Capacity = 600 MW		

In line with clause 3.27 of RfS documents, Solar Power Developer shall have option to change the Project location before the Financial Closure.

10.0 In line with the provisions of Clause 3.24 of RfS document, the Solar Power Developer shall submit Performance Bank Guarantee of Rs.25 Lakh/MW to NTPC within 30 days from the date of issue of Letter of Intent and before signing of PPA as per the Performa available in RfS document from any bank listed in the RfS for this purpose. The total value of the Performance Bank Guarantee (PBG) for the project of 600 MW capacity shall be Rs.150 Crore. The PBGs are to be submitted for each project separately. Accordingly, Solar Power Developer shall submit two (02) PBGs of Rs. 75 crore each. The Bank Guarantees shall be valid for a period of 31 months from the Effective Date of PPA. Moreover, in case of any extension is given to the project, the corresponding extension must be made in the validity of the Bank Guarantee. Further, the PPA shall be signed only upon receipt of the total Performance Bank Guarantee of requisite value.

As per provisions of RfS, the confirmation of PBG shall be through secure Structured Financial Messaging System (SFMS). In this regard, while issuing the physical BG, your Bank shall also send electronic message to NTPC’s Beneficiary Bank whose detailed are provided below:

Bank Details:

- (i) Bank Name : State Bank of India
- (ii) Branch: TFCPC-I Parliament Street, New Delhi
- (iii) IFSC Code : SBIN0005051

The Bank Guarantee towards Earned Money submitted by you along with your Response to RfS shall be released only after receipt & verification of the Performance Bank Guarantee.

11.0 The Solar Power Developer shall report financial closure within 12 months from the Effective date of Power Purchase Agreement and shall submit relevant documents to NTPC as per the terms and conditions of RfS.

12.0 All disputes arising out of and/or in connection with this “Selection of Solar Power Developers for 2000 MW Grid-Connected Solar PV Power Plants to be set up anywhere in India under OPEN Category” and Supply of Solar Power therefrom and execution of PPA thereto shall be governed by laws of India and Courts of Delhi shall have exclusive jurisdiction.”

18. Based on request of Buying Utilities/ Distribution Licensees, the capacity was allocated as under:

Sl.	State/UTs	Utility	Allocation (MW)	Date of PSA signing
1	Punjab	Punjab State Power Corporation Limited (PSPCL)	300	25.3.2019
2	Bihar	North Bihar Power Distribution Company Limited (NBPDC) & South Bihar Power Distribution Company Limited (SBPDCL)	600	18.3.2019
3	Telangana	Telangana Distribution Companies	1100	11.3.2019
Total			2000	

19. Pursuant to Letters of Intent and allocation of capacity, NTPC entered into PPAs with the bidders/ SPVs formed by the successful bidders as under:

Sl.	Name of Successful Bidder	Bidder/ SPV with which PPA signed	Capacity (MW)	Date of PPA signing
1	ACME Solar Holdings Limited	ACME Hanumangarh Solar Energy Private Limited	300	12.3.2019
2		ACME Jaigarh Solar Energy Private Limited	300	12.3.2019
3	Shapoorji Pallonji Infrastructure Capital Company Private Limited	Elaine Energy Private Limited	250	20.3.2019
4		Eloise Renewable Energy Private Limited	250	20.3.2019
5	Azure Power Forty One Private Limited	Azure Power Forty One Private Limited	300	22.4.2019
6	SB Energy Six Private Limited	SB Energy Six Private Limited	600	8.4.2019 (300 MW) 8.4.2019 (300 MW)

Sl.	Name of Successful Bidder	Bidder/ SPV with which PPA signed	Capacity (MW)	Date of PPA signing
	Total		2000	

20. The Petitioner has submitted that out of 2000 MW, 1100 MW allocated to Telangana Distribution Companies did not materialize since Telangana Discoms did not obtain requisite approval from Telangana Electricity Regulatory Commission within the time stipulated and accordingly, ACME Solar Holdings Limited (600 MW) and Shapoorji Pallonji Infrastructure Capital Company Private Limited (500 MW) have terminated the PPAs entered into in respect thereof on account of not meeting the Condition Precedent, i.e. due to not fulfilment of the provisions of the PPA and PSA. Similarly, in case of Bihar Distribution Licensees, Azure Power India Private Limited (300 MW) has also terminated the PPA on the above ground. Accordingly, NTPC is seeking adoption of tariff in respect of 600 MW to be established by SB Energy Six Private Limited (600 MW) and to be sold to Punjab State Power Corporation Limited, North Bihar Power Distribution Company Limited and South Bihar Power Distribution Company Limited. According to the Petitioner, Punjab State Power Corporation Limited has already filed an application before the PSERC seeking approval under Section 86(1)(b) of the Act and Bihar Discoms are in the process of filing the Petition before BERC.

21. In the light of the discussions as above, it emerges that selection of the successful bidders and the tariff of the Projects has been carried out by NTPC 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. Bid Evaluation Committee vide its Certificate dated 29.11.2019 has certified that the bidding process as well as the techno-

commercial and financial bid evaluation was conducted in conformity to the provisions of the RfS. Relevant portion of the said letter dated 29.11.2019 is extracted as under:

“We do hereby solemnly certify and state as follows:

With respect to the RfS no. RE-CS-0000-BOO-3 dated 09.03.2018, it is hereby declared as follows:

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

22. The Petitioner has prayed to adopt the tariff discovered in the competitive bid process for 600 MW Solar PV Project to be established by Solar Power Developer, namely, SB Energy Six Private Limited. In the light of the above discussion, in terms of Section 63 of the Act, the Commission adopts the following tariff for the Project as agreed to by the successful bidder, which shall remain valid throughout the period covered in the PSAs and PPAs:-

Sr.	Bidders	Tariff (INR/kWh)	Project Capacity (MW)
1	SB Energy Six Private Limited	2.60	600
Total			600

23. Article 10.3 of the PPA provides as under:

“10.3 Payment of Monthly Bills

10.3.1 NTPC shall pay the amount payable under the Monthly Bill/Supplementary Bill by the thirtieth day from the date of presentation of bill (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 below. In case the Monthly Bill or any other bill, including a Supplementary Bill is issued after the (fifteenth) 15th day of the next month, the Due Date for payment would be (fifth) 5th day of the next month to the succeeding Month.

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 NTPC, if any, from the SPD, through an invoice to be payable by the SPD, and no disputed by the SPD within fifteen (15) days of receipt of the said Invoice and such deduction or set-off shall be made to the extent of the amounts not

disputed. It is clarified that NTPC shall be entitled to claim any set off or deduction under this Article, after expiry of the said fifteen (15) Days period.

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

24. 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 Discoms (as per terms of NTPC-Discom (PSA) in favour of NTPC, NTPC shall extend 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"), 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, NTPC through a scheduled bank shall extend 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 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 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, NTPC shall restore such shortfall within seven (7) days.

10.4.5 NTPC 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 NTPC shall ensure that the Letter of Credit shall be renewed not later than ten (10) days prior to its expiry.

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

10.4.8 If NTPC fails to pay undisputed Monthly Bill or part thereof within and including the Due Date, then, subject to Article 10.4.6, the SPD may draw upon the Letter of Credit, and accordingly the bank shall pay without any reference or instructions from NTPC, an amount equal to such Monthly Bill or Supplementary Bill or part thereof, in accordance with Article 10.3.3 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 WPD 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;”

25. 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.”

26. 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, 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.

27. The Petitioner has submitted that it has agreed to sell entire 600 MW of solar power to the Buying Utilities/ Distribution Licensees at the rate of Rs. 2.60/kWh plus trading margin of Rs.0.07/kWh upon the commissioning of the above capacity. Regulation 8(d) of the Trading Licence Regulations dealing with trading margin provides as under:

“8(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 Petitioner shall be governed by the above provisions of the Trading Licence Regulations.

28. However, Proviso under Regulation 8 (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 (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.”

The Petitioner, NTPC shall also be governed by the above provisions of the Trading Licence Regulations.

29. NTPC has also prayed to grant exemption from complying with the provisions of the Clause 3.1.1 (b) of the Guidelines. NTPC has submitted that the intimation to be given under Clause 3.1.1 (b) has to be read along with the approval of deviation, particularly, in the context of Section 63 of the Act whereunder the process for determination of tariff as per the Guidelines is issued and not with a prior approval to be taken for procurement of solar power. Clause 3.1.1(b) of the Guidelines clearly stipulates that Procurer is required to inform the Appropriate Commission about the initiation of the bidding process. However, NTPC did not inform the Commission regarding initiation of bidding. Since NTPC has undertaken that it will forward the intimation to the Commission henceforth before the initiation of the bidding process, we exempt NTPC from complying with the requirement

specified in Clause 3.1.1 (b) of the Guidelines in the present case. However, NTPC is directed to comply with such requirement in future.

30. Petition No. 57/AT/2020 is disposed of in terms of the above.

Sd/-
(I.S.Jha)
Member

sd/-
(P.K. Pujari)
Chairperson